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Contents

Federal Register
Vol. 65, No. 53
Friday, March 17, 2000

Actuaries, Joint Board for Enrollment
See Joint Board for Enrollment of Actuaries

Agricultural Marketing Service
PROPOSED RULES
Fluid milk promotion order:
Amendments, 14484–14485
Livestock Mandatory Reporting Act:
Livestock packers and products processors and importers; market reporting requirements, 14652–14691
Watermelon research and promotion plan, 14485–14486
NOTICES
Meetings:
Tobacco Inspection Services National Advisory Committee, 14521–14522

Agriculture Department
See Agricultural Marketing Service
See Farm Service Agency
See Food Safety and Inspection Service
See Forest Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service
PROPOSED RULES
Import quotas and fees:
Sugar-containing products; tariff-rate quota licensing, 14478–14484
NOTICES
Emergency declarations:
Scrapie in U.S., 14521

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
CBS Corp. et al., 14616–14625

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Centers for Disease Control and Prevention
PROPOSED RULES
Clinical Laboratory Improvement Amendments:
Laboratories regulations—
Cytology proficiency testing; withdrawn, 14510–14513
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14573–14574

Children and Families Administration
See Refugee Resettlement Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Family Violence Prevention and Services Program, National Domestic Violence Hotline, 14574–14594

Coast Guard
RULES
Pollution:
Oil or hazardous material pollution prevention regulations for vessels; CFR correction, 14470–14471
PROPOSED RULES
Ports and waterways safety:
OPSAIL Miami 2000, Miami, FL; safety zone, 14502–14505
Skull Creek, Hilton Head, SC; safety zone, 14501–14502
Regattas and marine parades, anchorage regulations, and ports and waterways safety:
OPSAIL MAINE 2000, Portland, ME; regulated areas, 14498–14501
NOTICES
Meetings:
Chemical Transportation Advisory Committee, 14640–14641

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 14533–14534

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 14532–14533

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Pakistan, 14544

Commodity Futures Trading Commission
RULES
Reporting requirements:
Large trader reports; reporting levels changes, 14452–14458

Copyright Office, Library of Congress
PROPOSED RULES
Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition, 14505–14506

Defense Department
See Navy Department

Education Department
NOTICES
Special education and rehabilitative services:
Individuals with Disabilities Education Act (IDEA)—
Correspondence; quarterly list, 14545–14549
Applications, hearings, determinations, etc.:
Bilingual education and minority languages affairs—
Field-Initiated Research Program, 14730–14749

Employment and Training Administration
NOTICES
Adjustment assistance and NAFTA transitional adjustment assistance:
Weathervane Window, Inc., et al., 14626–14629
Agency information collection activities:
Proposed collection; comment request, 14629–14630
Labor surplus areas classifications:
Annual list
Additions, 14630

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 14630–14631

Energy Department
See Federal Energy Regulatory Commission
See Southeastern Power Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Medical Applications Program, 14549–14551
Terrestrial Carbon Processes; research, 14551–14552
Natural gas exportation and importation:
Petrocom Energy Group, Ltd., et al., 14553–14554

Environmental Protection Agency
RULES
Hazardous waste:
Identification and listing—
Organobromine production wastes, 14472–14475
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update, 14475–14476
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States; air quality planning purposes; designation of areas:
Ohio and Kentucky, 14510
Air quality implementation plans; approval and promulgation; various States:
Florida, 14506–14510
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 14558–14559
Weekly receipts, 14558
Coastal nonpoint pollution control programs; States and territories—
Rhode Island, 14543
Environmental statements; notice of intent:
Peace River Intake Facility, FL; expanded water treatment and aquifier storage/recovery facilities, 14559–14560

Export Administration Bureau
RULES
Export administration regulations:
India and Pakistan; entity list; entities removed, license policy revised, and list reformatted, 14444–14452

Farm Credit Administration
PROPOSED RULES
Farm credit system:
Disclosure to shareholders—
Annual reporting requirements, 14494–14497
Loan policies and operations—
Loans to designated parties; approval, 14491–14494

Farm Service Agency
RULES
Program regulations:
Real estate and chattel appraisals; regulatory streamlining; correction, 14432–14433
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14522–14523

Federal Aviation Administration
RULES
IFR altitudes, 14442–14444
PROPOSED RULES
Class D and Class E airspace, 14497–14498
NOTICES
Advisory circulars; availability, etc.:
Focused inspection of safety critical turbine engine parts as piece-part opportunity; continued airworthiness instructions, 14641
One-year runway incursion information and evaluation program; policy statement, 14641–14643
Passenger facility charges; applications, etc.:
Luis Munoz Marin International Airport, PR, 14643

Federal Communications Commission
RULES
Organization, functions, and authority delegations:
Headquarters; address change, 14476
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14560–14561
Common carrier services:
Wireless telecommunications services—
700 MHz guard bands; licenses auction; reserve prices or minimum opening bids, etc.; comment request, 14561–14565
Meetings:
Public Safety National Coordination Committee, 14565–14566
Meetings; Sunshine Act, 14566

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14566–14568
"Engaged in the business of receiving deposits other than trust funds"; General Counsel opinion, 14568–14572

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
DTE River Rouge No. 1, LLC, et al., 14554–14556
El Segundo Power, LLC, et al., 14556–14557
Applications, hearings, determinations, etc.:
Louisiana Generating LLC, 14554

Federal Reserve System
RULES
Bank holding companies and change in bank control (Regulation Y):
Financial holding companies—
Permissible activities, 14433–14440
Securities underwriting, dealing, and market-making activities, 14440–14442
NOTICES
Banks and bank holding companies:
Change in bank control, 14573
Formations, acquisitions, and mergers, 14573

Fish and Wildlife Service
PROPOSED RULES
Endangered and threatened species:
Pecos pupfish; withdrawn, 14513–14518
NOTICES
Endangered and threatened species permit applications, 14609

Food and Drug Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants Special Studies Advisory Committee et al., 14594

Food Safety and Inspection Service
PROPOSED RULES
Meat and poultry inspection:
Cured pork products compliance monitoring system; requirements elimination, 14489–14491
Other consumer protection activities, 14486–14489

Forest Service
NOTICES
Environmental statements; notice of intent:
Manti-La Sal National Forest, UT, 14523–14524
National Forest System lands:
San Francisco Peaks, AZ; withdrawal for protection of cultural, recreational, and resource values; public meeting, 14524–14525

Geological Survey
NOTICES
Meetings:
Water Information Advisory Committee, 14609

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
See Refugee Resettlement Office
See Substance Abuse and Mental Health Services Administration

Health Care Financing Administration
PROPOSED RULES
Clinical Laboratory Improvement Amendments:
Laboratories regulations—
Cytology proficiency testing; withdrawn, 14510–14513

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14594–14595

Housing and Urban Development Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Community development block grant program—
Multifamily housing owners; service coordinator program, 14708–14714
Facilities to assist homeless—
Excess and surplus Federal property, 14605–14608
Housing, community development, and empowerment programs and Section 8 housing voucher assistance (SuperNOFA)
Table of contents, 14608–14609
Section 202 projects; assisted living conversion program, 14694–14705
Regulatory waiver requests; quarterly listing, 14716–14727

Immigration and Naturalization Service
RULES
Irish Peace Process Cultural and Training Program; establishment, 14774–14780
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14626

Indian Affairs Bureau
RULES
Tribal revenue allocation plans, 14461–14469

Interior Department
See Fish and Wildlife Service
See Geological Survey
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service

Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14644–14645

International Trade Administration
NOTICES
Antidumping:
Corrosion-resistant carbon steel flat products from—
Japan, 14534–14535
Grain-oriented electrical steel from—
Italy, 14535
Grants and cooperative agreements; availability, etc.:
Market Development Cooperator Program, 14535–14542

Joint Board for Enrollment of Actuaries
NOTICES
Meetings:
Actuarial Examinations Advisory Committee, 14521

Justice Department
See Antitrust Division
See Immigration and Naturalization Service

Labor Department
See Employment and Training Administration
See Employment Standards Administration
NOTICES
Meetings:
Trade Negotiations and Trade Policy Labor Advisory Committee, 14626

Land Management Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14610–14611
Environmental statements; availability, etc.:
Bitter Creek and Mountain Plover Areas, MT, 14611
Environmental statements; notice of intent:
Manti-La Sal National Forest, UT, 14523–14524
Meetings:
Gila Box Riparian National Conservation Area Advisory Committee, 14612
Resource Advisory Councils—
Mojave-Southern Great Basin, 14611–14612

Motor vehicle use restrictions:
Arizona, 14612
Public land orders:
Arizona, 14614–14615
Realty actions; sales, leases, etc.:
Montana, 14612–14613
Nevada, 14613
Resource management plans, etc.:
Clancy-Unionville Vegetative Manipulation and Travel Management Project, MT, 14613–14614
Survey plat filings:
Minnesota, 14614

Library of Congress
See Copyright Office, Library of Congress

Minerals Management Service
RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Portlease operations safety; update and clarification; correction, 14469–14470
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14615–14616

National Institute of Standards and Technology
NOTICES
Inventions, Government-owned; availability for licensing, 14542
Meetings:
Manufacturing Extension Partnership National Advisory Board, 14542–14543

National Oceanic and Atmospheric Administration
PROPOSED RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico reef fish, 14518–14519
Northeastern United States fisheries—
Deep-sea red crab; correction, 14519–14520
NOTICES
Environmental statements; availability, etc.:
Coastal nonpoint pollution control programs; States and territories—
Rhode Island, 14543
Meetings:
Western Pacific Fishery Management Council, 14543–14544

Navy Department
NOTICES
Meetings:
Naval Academy, Board of Visitors, 14545

Nuclear Regulatory Commission
NOTICES
Meetings:
Nuclear Waste Advisory Committee, 14634
Reactor Safeguards Advisory Committee, 14634–14635
Applications, hearings, determinations, etc.:
Florida Power Corp., 14631–14632
Northeast Nuclear Energy Co., 14632–14633
Wisconsin Electric Power Co., 14633

Oklahoma City National Memorial Trust
RULES
Oklahoma City National Memorial regulations, 14760–14761

Pension Benefit Guaranty Corporation
RULES
Single-employer plans:
Lump sum payment assumptions, 14753–14757
Valuation of benefits; use of single set of assumptions for all benefits, 14752–14753

Personnel Management Office
RULES
Excepted service, career conditional employment system, and promotion and internal placement:
Veterans Employment Opportunities Act; staffing provisions, 14431–14432
PROPOSED RULES
Excepted service:
Persons with psychiatric disabilities; appointments, 14477–14478
NOTICES
Privacy Act:
Systems of records, 14635–14636

Public Debt Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14645–14648

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See Substance Abuse and Mental Health Services Administration

Railroad Retirement Board
RULES
Railroad Retirement Act:
Disability determination, 14458–14459
Railroad Unemployment Insurance Act:
Remuneration; definition, 14459–14461
NOTICES
Supplemental annuity program; determination of quarterly rate of excise tax, 14636

Refugee Resettlement Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Torture survivors treatement and services, 14595–14603

Rural Business-Cooperative Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14522–14523

Rural Housing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14522–14523
Grants and cooperative agreements; availability, etc.:
Rural Community Development Initiative, 14525–14532

Rural Utilities Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14522–14523

Securities and Exchange Commission
NOTICES
Decimalization implementation plan; order to submit, 14637

Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 14638–14639
Applications, hearings, determinations, etc.:
NYFIX, Inc., 14636–14637
Unique Mobility, Inc., 14637

Small Business Administration
NOTICES
Disaster loan areas:
West Virginia, 14639
License surrenders:
Astar Capital Corp., 14639
Meetings; district and regional advisory councils:
District of Columbia, 14640

Southeastern Power Administration
NOTICES
Power rate adjustments:
Jim Woodruff Project, 14557–14558

State Department
RULES
Irish Peace Process Cultural and Training Program; establishment,
Visas; nonimmigrant documentation:
Irish Peace Process Cultural and Training Program, 14768–14771
NOTICES
Meetings:
Fine Arts Committee, 14640
International Law Advisory Committee, 14640

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Women with alcohol, drug abuse, and mental health disorders who have histories of violence, and their children, 14603–14605

Surface Transportation Board
NOTICES
Railroad services abandonment:
Union Pacific Railroad Co., 14643–14644

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Surface Transportation Board
NOTICES
Meetings:
Minority Business Resource Center Advisory Committee, 14640

Treasury Department
See Internal Revenue Service
See Public Debt Bureau

Veterans Affairs Department
RULES
Board of Veterans Appeals:
Appeals regulations and rules of practice—
Case docketing, 14471–14472
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14648–14649
Meetings:
Education Advisory Committee, 14649
Women Veterans Advisory Committee, 14649

Separate Parts In This Issue

Part II
Department of Agriculture, Agricultural Marketing Srvice, 14651–14691

Part III
Department of Housing and Urban Development, 14693–14705

Part IV
Department of Housing and Urban Development, 14707–14714

Part V
Department of Housing and Urban Development, 14715–14727

Part VI
Department of Education, 14729–14749

Part VII
Department of Labor, Pension Benefit Guarantee Corporation, 14751—14757

Part VIII
Oklahoma City National Memorial Trust, 14759–14761

Part IX
State Department, 14763–14771

Part X
Department of Justice, Immigration and Naturalization Service, 14773–14780

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

5 CFR
213.....14431
315.....14431
335.....14431
Proposed Rules:
3.....14477
213.....14477
315.....14477
7 CFR
761.....14432
762.....14432
Proposed Rules:
6.....14478
57.....14653
1160.....14484
1210.....14485
8 CFR
212.....14774
214.....14774
248.....14774
278A.....14774
9 CFR
Proposed Rules:
317.....14486
318 (2 documents).....14486, 14489
319 (2 documents).....14489, 14489
327.....14489
381.....14486
12 CFR
225 (2 documents).....14433, 14440
Proposed Rules:
614.....14491
620.....14494
14 CFR
95.....14442
Proposed Rules:
71.....14497
15 CFR
744.....14444
17 CFR
15.....14452
16.....14452
17.....14452
20 CFR
220.....14458
322.....14459
22 CFR
41.....14768
139.....14764
25 CFR
290.....14461
29 CFR
4022 (2 documents).....14752, 14753
4044.....14752
4050.....14752
30 CFR
250.....14469
33 CFR
155.....14470
Proposed Rules:
100.....14498
110.....14498
165 (3 documents).....14498, 14501, 14502
36 CFR
Ch. XV.....14760
37 CFR
Proposed Rules:
201.....14505
38 CFR
19.....14471
20.....14471
40 CFR
148.....14472
261.....14472
268.....14472
271.....14472
300.....14475
302.....14472
Proposed Rules:
52 (2 documents).....14506, 14510
81.....14510
42 CFR
Proposed Rules:
493 (2 documents).....14510
47 CFR
1.....14476
50 CFR
Proposed Rules:
17.....14513
622.....14518
648.....14519

Rules and Regulations

Federal Register
Vol. 65, No. 53
Friday, March 17, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 213, 315, and 335

RIN 3206–AI51

Excepted Service; The Career Conditional Employment System; Promotion and Internal Placement

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with request for comments.

SUMMARY: Pursuant to Section 511 of the Veterans Millennium Health Care and Benefits Act, OPM is reissuing interim regulations, with amendments, to implement the staffing provisions of the Veterans Employment Opportunities Act (VEOA) of 1998. Among other things, the VEOA allows preference eligibles or veterans who have been honorably discharged from the armed forces after 3 or more years of active service to apply for vacancies under merit promotion procedures when an agency is accepting applications from outside its own workforce. Comments are invited.

DATES: Interim rules are effective March 17, 2000. Comments must be received on or before April 17, 2000.

ADDRESSES: Send or deliver written comments to: Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW, Washington, DC 20415–9000.

FOR FURTHER INFORMATION CONTACT: Mr. Raleigh M. Neville on (202) 606–0830 or FAX (202) 606–0390.

SUPPLEMENTARY INFORMATION: Under VEOA, Congress amended 5 U.S.C. 3304 to allow eligible veterans to compete for vacancies under an agency's merit promotion procedures. The act also required OPM to create an appointing authority to permit the appointment of these veterans. However, absent specific legislation or Executive order, OPM has no authority to permit the noncompetitive appointment of candidates in the competitive service. Accordingly, OPM created an excepted appointing authority under Schedule B. This allowed eligible veterans to be appointed noncompetitively into the excepted service. OPM issued interim regulations (63 FR 66705) on December 3, 1998, to implement the VEOA.

In enacting the Veterans Millennium and Health Care and Benefits Act (Pub. L. 106–117), Congress amended the VEOA to clarify that if an eligible veteran competes under the agency's merit promotion procedures and is selected, he or she will be given a career or career conditional appointment in the competitive service.

Pub. L. 106–117 also clarified that veterans who are released from their initial tours of active duty shortly before completing the 3 years required in the statute are also eligible to compete under these provisions. (In this connection, it is customary for the military to release individuals a few days before completing 3-year tours "for the convenience of the Government." These individuals should normally be considered eligible.)

As a result of these amendments, agencies may no longer make any new appointments under Schedule B authority YKB/Sch B 213.3202(n). However, OPM will temporarily leave the Schedule B authority in place until further notice. Veterans who were appointed under this Schedule B authority, but who did not compete under an agency merit promotion announcement, will remain under this authority until such time as they do compete and are selected. Veterans who competed under a merit promotion announcement must be converted to a career conditional or career appointment retroactive to the date of their original appointment under the VEOA. OPM is also making a technical update in § 315.801 on when probation is required. OPM is deleting the list of persons subject to probation when appointed by special authority or by conversion (the list was not complete), and including a new subsection specifying that such persons are subject to probation unless specifically exempt in the authority itself.

Waiver of Delay in Effective Date

Pursuant to 5 U.S.C. 553(d)(3), I find that good cause exists to waive the delay in effective date and make these regulations effective in less than 30 days. The delay in effective date is being waived because the provisions of the new law became effective upon enactment, November 30, 1999.

Regulatory Flexibility Act

I certify that these regulations will not have a significant impact on a substantial number of small entities (including small businesses, small organizational units and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 213, 315, and 335

Government employees, Reporting and recordkeeping requirements.
Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM is amending parts 213, 315, and 335 of Title 5, Code of Federal Regulations, as follows:

PART 213—EXCEPTED SERVICE

1. The authority citation for part 213 is revised to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.*; and Pub.L. 105–339.

§ 213.3202 [Amended]

2. In § 213.3202, paragraph (n) is revised to read as follows:

* * * * *

(n) Positions when filled by preference eligibles or veterans who have been separated from the armed forces under honorable conditions after 3 years or more of continuous active military service and who, in accordance with the provisions of Pub.L. 105–339, applied for these positions under merit promotion procedures when

applications were being accepted from individuals outside its own workforce. These veterans may be promoted, demoted, or reassigned, as appropriate, to other positions within the agency but would remain employed under this excepted authority as long as there is no break in service. No new appointments may be made under this authority after November 30, 1999.

PART 315—CAREER AND CAREER CONDITIONAL EMPLOYMENT

3. The authority citation for part 315 is revised to read as follows:

Authority: 5 U.S.C. 1302, 3301, and 3302; E.O. 10577. 3 CFR, 1954–1958 Comp. P. 218, unless otherwise noted. §§ 315.601 and 315.609 also issued under 22 U.S.C. 3651 and 3652. §§ 315.602 and 315.604 also issued under 5 U.S.C. 1104. § 315.603 also issued under 5 U.S.C. 8151. § 315.605 also issued under E.O. 120034, 3 CFR, 1978 Comp. p. 111. § 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp. p. 303. § 315.607 also issued under 22 U.S.C. 2506. § 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293. § 315.610 also issued under 5 U.S.C. 3304(d). § 315.611 also issued under Section 511, Pub. L. 106–117. § 315.710 also issued under E.O. 12596, 3 CFR, 1987, Comp., p. 229. Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

§ 315.611 [Added]

4. A new section 315.611 is added to subpart F to read as follows:

Subpart F—Career or Career-Conditional Appointment Under Special Authorities

* * * * *

§ 315.611 Appointment of certain veterans who have competed under agency merit promotion announcements.

(a) *Agency authority.* An agency may appoint a preference eligible or a veteran who has substantially completed at least 3 years of continuous active military service provided

(1) The veteran was selected from among the best qualified following competition under a merit promotion announcement open to candidates outside the agency's workforce; and

(2) The veteran's most recent separation from the military was under honorable conditions.

(b) *Definitions.* "Agency" in this context means an executive agency as defined in 5 U.S.C. 105. The agency determines in individual cases whether a candidate was released "shortly before" completing the required 3 years and should therefore be eligible for appointment.

§ 315.801 [Revised]

5. In § 315.801 paragraph (a) is revised and a new paragraph (e) is added to read as follows:

Subpart H—Probation on Initial Appointment to a Competitive Position

§ 315.801 Probationary period; when required.

(a) The first year of service of an employee who is given a career or career-conditional appointment under this part is a probationary period when the employee:

(1) Was appointed from a competitive list of eligibles established under subpart C of this part;

(2) Was reinstated under subpart D of this part unless during any period of service which affords a current basis for reinstatement, the employee completed a probationary period or served with competitive status under an appointment which did not require a probationary period.

* * * * *

(e) A person who is appointed to the competitive service either by special appointing authority or by conversion under subparts F or G of this part serves a 1-year probationary period unless specifically exempt from probation by the authority itself.

PART 335—PROMOTION AND INTERNAL PLACEMENT

6. The authority citation for part 335 is revised to read as follows:

Authority: 5 U.S.C. 3301, 3302, 3330; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218; 5 U.S.C. 3304 (f), and Pub.L. 106–117.

§ 335.106 [Revised]

7. Section 335.106 is revised to read as follows:

§ 335.106 Special selection procedures for certain veterans under merit promotion.

Preference eligibles or veterans who have been separated under honorable conditions from the armed forces after completing (as determined by the agency) 3 or more years of continuous active military service may compete for vacancies under merit promotion when an agency accepts applications from individuals outside its own workforce. Those veterans selected will be given career or career conditional appointments under § 315.611 of this chapter.

[FR Doc. 00–6626 Filed 3–16–00; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Parts 761 and 762

RIN 0560–AF69

Streamlining of Regulations for Real Estate and Chattel Appraisals; Correction

AGENCY: Farm Service Agency, USDA.

ACTION: Correcting amendments to final rule.

SUMMARY: This document contains corrections to the final regulations which were published in the **Federal Register** on Wednesday, November 17, 1999, (64 FR 62566–62569). The final rule removed administrative provisions and moved the regulations regarding appraisals pertaining to the Farm Service Agency's Farm Loan Programs from Chapter XVIII to Chapter VII.

DATE: Effective on March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Chris L. Greenwalt, Senior Loan Officer, Program Development and Economic Enhancement Division, USDA/FSA/PDEED/STOP 0521, 1400 Independence Avenue, S.W., Washington DC 20250–0521, telephone (202)690–0431, facsimile (202)720–8474, e-mail: chris—greenwalt@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections removed administrative provisions and clarified the requirement that Agency real estate appraisals must comply with the guidelines and standards contained in the Uniform Standards of Professional Appraisal Practice (USPAP). In addition, the requirement that specific Agency formats be used when completing appraisals was eliminated.

Need for Correction

As published, the final rule (64 FR 62566–62569) contains several errors which may prove to be misleading if not corrected. Section 761.7 is being corrected to clarify that its general requirements apply to direct loan appraisals and all appraisal reviews. Guaranteed loan appraisals will still be governed by part 762. Section 762.127 is being amended accordingly.

Section 761.7 also needs to be corrected with regards to when an existing real estate appraisal will be used. The Agency inadvertently failed to address the situation where an appraisal is over 12 months old but has been updated by the same appraiser or appraisal firm within the previous 12 months in accordance with USPAP. In such case, the existing updated real estate appraisal may be used to make or service a loan.

List of Subjects

7 CFR Part 761

Accounting, Accounting servicing, Loan programs—Agriculture, Real property—Appraisals, Rural Areas.

7 CFR Part 762

Agriculture, Loan programs—Agriculture.

Accordingly, 7 CFR parts 761 and 762 are corrected by making the following correcting amendments:

PART 761—GENERAL AND ADMINISTRATIVE

1. The authority citation for part 761 continues to read as follows:

Authority: 7 U.S.C. 1989.

2. Revise paragraphs (a) and (d) of § 761.7 to read as follows:

§761.7 Appraisals

(a) *General.* This section describes requirements for:

(1) real estate and chattel appraisals made in connection with the making and servicing of direct Farm Loan Program and nonprogram loans; and,

(2) appraisal reviews conducted on appraisals made in connection with the making and servicing of direct and guaranteed Farm Loan Program and nonprogram loans.

* * * * *

(d) *Use of an existing real estate appraisal.* The Agency may use an existing real estate appraisal to reach a loan making or servicing decision under either of the following conditions:

(1) The appraisal was completed within the previous 12 months and the Agency determines that:

(i) The appraisal meets the provisions of this section and the applicable Agency loan making or servicing requirements, and

(ii) Current market values have remained stable since the appraisal was completed; or

(2) The appraisal was not completed in the previous 12 months, but has been updated by the appraiser or appraisal firm that completed the appraisal, and both the update and original appraisal were completed in accordance with USPAP.

* * * * *

PART 762—GUARANTEED FARM LOANS

4. The authority citation for part 762 continues to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480.

5. Revise paragraph (d) of § 762.127 by adding the following at the end of the introductory text:

§762.127 Appraisal requirements.

(d) * * * Agency officials may accept an appraisal that is not current if there have been no significant changes in the market or on the subject real estate and the appraisal was either completed within the past 12 months or updated by a qualified appraisal if not completed within the past 12 months.

* * * * *

Signed in Washington, D.C., on March 7, 2000.

Parks Shackelford,

Acting Administrator Farm Service Agency.

[FR Doc. 00–6429 Filed 3–16–00; 8:45 am]
BILLING CODE 3410–05–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1062]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for public comments.

SUMMARY: The Board of Governors of the Federal Reserve System is amending its Regulation Y on an interim basis effective March 11, 2000, to include a list of the financial activities permissible for a financial holding company under the Gramm-Leach-Bliley Act. The Board also is adopting procedures a financial holding company must follow in order to engage in listed financial activities, as well as activities that are complementary to a financial activity. In addition, the Board is adopting procedures by which a financial holding company or any other interested party may make requests that the Board determine that activities not listed in the Gramm-Leach-Bliley Act are permissible for a financial holding company. The Board is promulgating this rule on an interim basis in order to make a list of permissible activities and the applicable notification procedures for engaging in those activities available to financial holding companies on the effective date of the financial holding company provisions of the Gramm-Leach-Bliley Act.

The interim rule adds five sections to Subpart I of Regulation Y. The first two sections list the financial activities in which the Gramm-Leach-Bliley Act permits a financial holding company to engage and explain that Board approval generally is not required to engage in those activities. The third section explains the post-commencement notice procedures applicable to listed activities. The fourth section establishes a procedure by which any interested party may request that the Board find an activity that is not listed in the Gramm-Leach-Bliley Act or the rule to be financial in nature or incidental to a financial activity. The fifth section establishes a procedure by which a financial holding company may seek a Board determination that a particular activity is complementary to a financial activity and receive approval to engage in that activity.

The Board solicits comments on all aspects of the interim rule and will amend the rule as appropriate in response to comments received.

DATES: This interim rule is effective on March 11, 2000. Comments must be received by May 12, 2000.

ADDRESSES: Comments should refer to docket number R–1062 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C., 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. and, outside those hours, to the Board's security control room. Both the mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583) or Adrianne G. Threatt, Attorney (202/452–3554); Legal Division; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C., 20551. For users of Telecommunications Device for the Deaf ("TDD"), contact Janice Simms at 202/452–4984.

SUPPLEMENTARY INFORMATION:

Background

The Gramm-Leach-Bliley Act (Pub. L. No. 106–102, 113 Stat. 1338 (1999)) (the "GLB Act") authorizes affiliations among banks, securities firms, insurance firms, and other financial companies. The GLB Act amends the Bank Holding Company Act ("BHC Act") (12 U.S.C. 1841 *et seq.*) to allow a bank holding company or foreign bank that qualifies as a financial holding company to engage in a broad range of activities that are defined by the GLB Act to be financial in nature or incidental to a financial activity, or that the Board, in consultation with the Secretary of the Treasury, determines to be financial in nature or incidental to a financial activity. The GLB Act also allows a financial holding company to seek Board approval to engage in any activity that the Board determines both to be complementary to a financial activity and not to pose a substantial risk to the safety and soundness of depository institutions or the financial system generally. Bank holding companies that do not qualify as financial holding companies are limited to engaging in those nonbanking activities that were permissible for bank holding companies prior to the enactment of the GLB Act.

The GLB Act provides that, in most cases, a financial holding company may engage or acquire the shares of a company that is engaged in financial activities without obtaining prior approval from the Board. A financial holding company is required instead to provide a post-commencement notice to the Board within 30 days after commencing a financial activity or acquiring a company under the new section 4(k).

As noted above, the GLB Act allows the expansion by the Board in consultation with the Secretary of the Treasury of the list of financial activities that are permissible for financial holding companies. Any interested party may request that the Board determine that an activity not listed in the GLB Act is financial in nature or incidental to a financial activity. In making its determination, the Board must consult with the Secretary of the Treasury and must take into account four factors: (1) The purposes of the GLB and BHC Acts; (2) the changes or reasonably expected changes in the marketplace in which financial holding companies compete; (3) the changes or reasonably expected changes in technology for delivering financial services; and (4) whether the proposed activity is necessary or appropriate to allow a financial holding company to compete effectively with companies seeking to provide financial services in the United States, efficiently deliver financial information and services through technological means, and offer customers any available or emerging technological means for using financial services or for the document imaging of data. The Secretary of the Treasury also may at any time recommend that the Board find an activity to be financial in nature or incidental to a financial activity.

In addition to permitting a financial holding company to engage in activities that are financial in nature or incidental to a financial activity, the GLB Act provides that a financial holding company may engage in activities that the Board determines are complementary to existing financial activities and do not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally. The Act requires that a financial holding company receive approval under section 4(j) of the BHC Act prior to conducting or acquiring a company engaged in an activity that the company believes to be complementary to a financial activity.

Interim Rule

In order to implement the provisions of the GLB Act governing the activities in which financial holding companies may engage, the Board is amending Regulation Y by adding sections that (1) list the activities in which a financial holding company may engage; (2) set forth the procedures for engaging in the listed activities; (3) establish procedures for requesting that an additional activity be deemed to be financial in nature or incidental to a financial activity; and (4) establish procedures by which a financial holding company may request that the Board determine that an activity is complementary to a financial activity and receive Board approval to conduct a complementary activity.

Section-by-Section Analysis

Section 225.85—Is Notice To or Approval From the Board Required Prior To Engaging in a Financial Activity?

Subsection (a)(1) provides that, in most cases, a financial holding company may, without providing prior notice to or obtaining prior approval from the Board, conduct an activity that is financial in nature or incidental to a financial activity (a "financial activity"). A financial holding company may conduct a financial activity by engaging directly in the activity or by acquiring and retaining the shares of any company that is engaged exclusively in one or more financial activities. A financial holding company may conduct a financial activity at any location inside or outside of the United States, subject to the laws of the jurisdiction in which the activity is conducted.

Subsection (a)(2) and (3) provide that a financial holding company may control or acquire more than 5 percent of the voting shares of a company that is not engaged exclusively in financial activities that are permissible for a financial holding company. Under paragraph (2), a financial holding company may acquire control or shares of a company that, in addition to financial activities, engages in other activities permissible for the acquiring financial holding company. In this case, the financial holding company must comply with any approval, notice or other requirement that governs the other activities. Paragraph (3) would allow acquisitions of a company with some impermissible activities, in keeping with the Board's prior practice regarding bank holding company acquisitions of companies that were not engaged exclusively in activities that were permissible for bank holding companies.

The acquisition of a company with limited impermissible activities must meet three requirements. First, the acquired company must be engaged substantially in financial activities and other activities permissible for the financial holding company. A financial holding company that is uncertain about whether a proposed acquisition meets this standard should consult with the Board. Second, in the post-commencement notice provided by the financial holding company to the Board regarding the acquisition, the financial holding company must commit to terminate or divest the impermissible activities, and the company must complete the divestiture or termination within two years of the acquisition. Finally, after being acquired by a financial holding company, the company engaged in impermissible activities may not engage in or acquire a company engaged in any activity that is not permissible for the financial holding company.

Subsection (c) identifies two circumstances under which Board approval still is required to engage in financial activities. First, prior approval in accordance with section 4(j) of the BHC Act and § 225.24 of Regulation Y is required to acquire more than 5 percent of the shares or control of a savings association.[1] In addition, the Board may, in the exercise of its supervisory authority, require a financial holding company to provide prior notice to or obtain prior approval from the Board if circumstances warrant.

[1] The GLB Act did not change in any way the requirement that a company receive prior approval of the Board under section 3 of the BHC Act before acquiring shares or control of a bank.

Section 225.86—What Activities Are Permissible for Financial Holding Companies?

This section consolidates in one place a description of all activities that the GLB Act defines as financial in nature. Subsection (a) states that financial holding companies may engage in any activity that the Board had found to be closely related to banking under section 4(c)(8) of the BHC Act by a regulation or order that is in effect on November 12, 1999. Subsection (a)(1) provides a cross reference to § 225.28, which contains a list of the relevant activities approved by regulation. Subsection (a)(2) lists activities that have been found by Board order in effect on November 12, 1999, to be closely related to banking but that are not otherwise included in the statutory list of permissible financial activities. For example, section 20 activities are not included in the list of activities approved by order because securities underwriting, dealing, and market making now is authorized for financial holding companies in a broader form at section 4(k)(4)(E) of the BHC Act. The Board specifically requests comment on whether there are other activities approved only by Board order that should be listed in § 225.86(a)(2), and whether the scope of any listed activity should be clarified.

All activities in which a financial holding company engages pursuant to subsection (a) must be conducted subject to the terms and conditions contained in Regulation Y and in the Board orders authorizing the activities. Bank holding companies that are not financial holding companies may continue to seek approval to engage in any activity that the Board determined by regulation or order in effect on November 12, 1999, to be closely related to banking. These bank holding companies must continue to use the prior notice and approval procedures listed at §§ 225.22 to 225.24.

Section 4(k)(4)(G) of the BHC Act defines as financial in nature any activity in which a bank holding company may engage outside the United States and that the Board has determined in regulations prescribed or interpretations issued under section (4)(c)(13) of the BHC Act that are in effect on November 11, 1999, to be usual in connection with the transaction of banking or other financial services abroad. Section 225.86(b) lists the three activities that have been found by the Board to be usual in connection with the transaction of banking or other financial operations abroad as listed in Regulation K (see 12 CFR 211.5(d)) that are not otherwise permissible for a bank holding company under the Board's Regulation Y or included on the statutory list of financial activities. These activities are management consulting services, operating a travel agency, and organizing, sponsoring, or managing a mutual fund.

In each case, the rule describes certain limitations that apply to the conduct of the activity. In the case of management consulting services, the services may be provided to any person on nonfinancial matters. However, the services must be advisory and not allow the financial holding company to control the person to whom the services are provided.

A financial holding company may also operate a travel agency in connection with financial services offered by the holding company or by others. Finally, a fund organized, sponsored or managed by a financial holding company may not exercise managerial control over the companies in which the fund invests and the financial holding company must reduce its ownership of the fund, if any, to less than 25 percent of the equity of the fund within one year of sponsoring the fund (or such additional period as the Board permits).

The remainder of the activities listed at § 211.5(d) have been either (1) authorized for financial holding companies in a broader form by the GLB Act (*e.g.*, underwriting, distributing, and dealing in securities and underwriting various types of insurance); or (2) authorized in the same or a broader form in Regulation Y (*e.g.*, data processing activities, real and personal property leasing, and acting as agent, broker, or adviser in leasing property). The Board notes that section 4(k)(4)(G) of the Act and this interim rule only authorize financial holding companies to engage in the activities that are listed in § 211.5(d) of Regulation K as interpreted by the Board, not in activities that the Board has approved in individual orders under section 4(c)(13).

Subsection (c) incorporates by reference the remaining activities authorized by section 4(k)(4) of the BHC Act. Those activities include activities that previously have not been permissible for bank holding companies, such as acting as principal, agent, or broker for purposes of insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability, or death, and issuing annuity products. Permissible insurance activities as principal include reinsuring insurance products. A financial holding company acting under that section may conduct insurance activities without regard to the restrictions on the insurance activities imposed on bank holding companies under section 4(c)(8).

The GLB Act also authorizes underwriting, dealing in, and making a market in securities without regard to whether such securities may be sold by a bank. This activity includes underwriting or distributing shares of open-end investment companies commonly referred to as mutual funds.

Securities underwriting activities conducted under section 4(k)(4)(E) rather than section 4(c)(8) may be conducted without regard to the 25 percent revenue limitation that is applicable to section 20 subsidiaries of bank holding companies that engage in securities underwriting and dealing under section 4(c)(8). In addition, dealing may be done without regard to the 5 percent limitation on ownership of voting securities.

In a separate proposal, the Board has determined that the operating standards applicable to section 20 companies do not apply to financial holding companies that engage in securities underwriting, dealing, and market making under section 4(k)(4)(E) of the BHC Act with two exceptions. First, intra-day extensions of credit to a securities firm from an affiliated bank or thrift or U.S. branch or agency of a foreign bank must be on market terms consistent with section 23B of the Federal Reserve Act ("FRA"). Second, the limitations of sections 23A and 23B of the FRA apply to covered transactions between a U.S. branch or agency of a foreign bank and a U.S. securities affiliate. The operating standards and revenue limit continue to apply to bank holding companies that are not financial holding companies, and to financial holding companies that continue to conduct securities activities pursuant to section 4(c)(8) of the BHC Act.

In cases where a financial holding company already has approval under section 4(c)(8) to engage in an activity now available in an expanded scope under section 4(k), the company must provide the Board with a post-commencement notice as described in § 225.87 informing the Board that the company has expanded the scope of the activity in accordance with section 4(k). Unless otherwise notified by the Board.

the financial holding company may then conduct the activity subject to the limitations set forth in section 4(k)(4)(A) through (E), § 225.86 and other applicable laws governing the activity.

Any financial holding company that feels it needs specific relief from a commitment or condition to conduct an activity in accordance with section 4(k)(4) may request in writing a determination that the condition or commitment is no longer appropriate. The Board specifically seeks comment on the types of commitments and conditions the Board has imposed on financial holding companies under section 4(c)(8) that may hinder their ability to conduct expanded activities under section 4(k)(4).

The Board reminds financial holding companies that commitments and conditions that relate to activities for which the GLB Act has not provided any additional authority, such as data processing, remain in effect. Moreover, the Board notes that this action does not relieve any financial holding company of its obligation to conduct each activity in accordance with relevant state and federal law governing the activity.

Should a company that has notified the Board that the company has expanded a section 4(c)(8) activity consistent with section 4(k)(4) choose at a later date to conduct the activity under section 4(c)(8), the company should consult with Board staff to determine the conditions under which the activity should be conducted.

The GLB Act also allows a financial holding company to engage in merchant banking activities. This activity involves directly or indirectly acquiring shares, assets, or ownership interests of a company engaged in an activity that is impermissible for a financial holding company, whether or not that interest constitutes control of the company. The Board and the Secretary of the Treasury have separately proposed interim rules regarding the conduct of this activity that are separate from this rule.

The GLB Act requires the Board to define the extent to which three activities listed in section 4(k)(5) of the BHC Act are financial in nature or incidental to a financial activity. The Board expects to initiate a rulemaking to provide further guidance concerning the 4(k)(5) activities in the near future.

An activity that is not described in the list of activities and references in this section is not a financial activity unless the Board, in consultation with the Treasury, determines that the activity is financial in nature or incidental to a financial activity. The procedures for obtaining a Board determination are described in detail in the analysis of § 225.88 below. That section also contains a procedure by which a financial holding company that is uncertain about the scope of an authorized activity may request an advisory opinion from the Board.

Section 225.87—Is Notice to the Board Required After Engaging in a Financial Activity?

Section 4(k)(6)(A) of the BHC Act generally provides that a financial holding company may engage in financial activities or acquire companies engaged in financial activities pursuant to section (4)(k)(4) by providing the Board with a written notice that describes the activity commenced or the name of and activity conducted by the acquired company, as appropriate, within 30 days of commencing the activity or consummating the acquisition.

Section 225.87 implements the post-commencement notice procedure for applicable activities commenced pursuant to section 4(k)(4). As a general matter, § 225.87(a) states that financial holding companies engaging in activities and making acquisitions listed in § 225.86 need only provide a simple written notice to the appropriate Federal Reserve Bank within 30 days after commencing the activity or making the acquisition. The notice must describe the activity commenced and the subsidiaries engaged in the activity, or identify the company acquired and describe the activities such company conducts, as relevant.

Subsection (b) describes two circumstances in which no notice to the Board is required in order to engage in an activity. First, no notice to the Board is required when a financial holding company acquires shares of a company without acquiring control of the company. The second exception applies to a financial holding company that is engaged in securities activities under 4(k)(4)(E), that makes merchant banking investments under 4(k)(4)(H), or that makes insurance company investments under 4(k)(4)(I) and has provided the System with the appropriate notice regarding the relevant activity. Under those circumstances, the company need only submit a notice in connection with the acquisition of the shares of any company as part of the securities, merchant banking or insurance investment activity if the cost of the acquisition exceeds the lesser of 5 percent of the financial holding company's Tier 1 capital or $200 million.

Section 225.88—How To Request the Board To Determine That an Activity Is Financial in Nature or Incidental to a Financial Activity?

The GLB Act provides that the Board may determine that activities are financial in nature or incidental to financial activities after consulting with the Secretary of the Treasury. Subsection (a) provides that requests for a determination that a new activity is a financial activity may be made by a financial holding company or by any other interested party.

A request for a determination that an activity is financial in nature or incidental to a financial activity must identify and define the activity for which the determination is sought. The request must also provide specific information about what the activity would involve and how it would be conducted, and explain in detail why the activity should be considered financial in nature or incidental to a financial activity. Importantly, the request must provide information that is sufficient to support a Board finding that the activity is financial. The request also must provide any additional information required by the Board.

On receiving a request, the Board will provide the Secretary of the Treasury with a copy of the proposal and consult with the Secretary in accordance with section 4(k)(2) of the BHC Act. The Board also may request public comment on the proposal. The Board will endeavor to act on all requests for a determination within 60 days of completion of the consultative process and the close of the public comment period, if applicable. The Board's initial determination regarding a particular activity will clarify whether a financial holding company that subsequently seeks to engage in the activity may do so using the post-commencement notice procedure of § 225.87, or whether a different notification or approval requirement applies.

Section 225.88(e) establishes a procedure by which financial holding companies may request from the Board an advisory opinion concerning whether a specific proposed activity falls within the scope of an activity that is permissible for a financial holding company. Such requests must be in writing and must provide detailed information about the proposed activity, including an explanation that supports a finding that the activity is within the scope of a permissible activity. The Board will provide an advisory opinion to the requester within 45 days of receiving a complete written request.

Section 225.89—How To Request Approval To Engage in an Activity That Is Complementary to a Financial Activity?

The GLB Act provides that a financial holding company may engage in an activity that the Board determines to be complementary to a financial activity. The legislative history of the GLB Act suggests that complementary activities are activities that are closely associated with a financial activity or that are normally conducted with or flow from a financial activity. However, the GLB Act itself does not define what qualifies as a complementary activity. The Board therefore requests comment on the definition of the term of "complementary activity."

The GLB Act provides that a financial holding company must obtain prior Board approval in accordance with section 4(j) of the BHC Act to engage in or acquire a company engaged in any activity that the financial holding company believes to be complementary to a financial activity. In addition to applying the standards under section 4(j), the Board must determine that the activity is complementary to a financial activity and would not pose a substantial risk to the safety or soundness of depository institutions or the financial system generally.

Section 225.87(b) implements this requirement by requiring that a request for prior approval to engage in a complementary activity provide a detailed description of the proposed complementary activity (including the projected scope and relative size of the activity), identify the particular financial activity for which the proposed activity would be complementary, and provide a detailed explanation for why the proposed activity should be considered complementary to a financial activity. The request also must discuss the impact of the proposed activity on the safety and soundness of depository institutions controlled by the financial holding company and on the financial system generally. In addition, the request must describe the potential adverse effects that conducting the activity could raise and explain measures the financial holding company intends to take to address those concerns. Requests regarding complementary activities also must include any financial, managerial, and other information required by the Board. The Board will act on requests to engage in complementary activities within the time period described in section 4(j) of the BHC Act.

The Board invites comment on all aspects of the interim rule, and particularly on the items specifically identified in the foregoing discussion.

Section 225.24—Procedures for Other Nonbanking Proposals

The Board has deleted the existing text of subsection (a)(3), which discusses the information requirements for proposals to engage in activities that are not listed in § 225.28. The GLB Act amends section 4(c)(8) to remove the Board's authority to authorize additional nonbanking activities for bank holding companies under that section. Therefore, subsection (a)(3) is unnecessary and has been deleted.

Regulatory Flexibility Act

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this interim regulation. This rule implements the provisions of Title I of the GLB Act that allow financial holding companies to engage in a broad range of financial activities by using a streamlined notification procedure. In most cases, the company need only provide the Board a brief written notice that identifies the activity commenced and the subsidiary that conducts the activity within 30 days of commencing an activity.

In addition, the rule establishes procedures by which a party can request that the Board determine additional activities are financial in nature or incidental to a financial activity and procedures by which a financial holding company can seek approval to engage in an activity it proposes to be complementary to a financial activity. These provisions are designed to require only the information necessary for the Board to evaluate the status of a proposed activity.

The procedures described in this rule apply only to bank holding companies that voluntarily elect to be financial holding companies, and those procedures apply to all financial holding companies regardless of their size. For financial holding companies that seek to engage in activities that previously were permissible under section 4(c)(8) of the BHC Act, the procedures described in this rule represent a reduction in the amount of paperwork required to engage in such activities. In addition, the notification procedures applicable to financial holding companies and the procedures for requesting the Board to determine that an activity is complementary are specified by the GLB Act itself. The Board has attempted in this rule to implement the requirements of the statute by requiring from a financial holding company only that information that is necessary for the Board to discharge its statutory responsibility. The Board specifically requests comment on the likely burden this interim rule will impose on financial holding companies that seek to engage in financial activities or to propose that the Board authorize additional activities as permissible for a financial holding company.

Administrative Procedure Act

The Board will make this interim rule effective on March 11, 2000, without first reviewing public comments. Pursuant to 5 U.S.C. 553, the Board finds that it is impracticable to review public comments prior to the effective date of the interim rule and that there is good cause to make the rule effective on March 11, 2000. Specifically, the rule sets forth requirements relating to activities that are permissible for financial holding companies as of March 11, 2000, due to statutory changes that become effective on that date. The Board is seeking comment on the interim rule and will amend the rule as appropriate after reviewing all comments it receives.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in this proposed rulemaking are found in 12 CFR 225.87, 225.88, and 225.89. This information is required to evidence compliance with the requirements of Title I of the Gramm-Leach-Bliley Act (Pub. L. 106–103, 113 Stat. 1338 (1999)) which amends section 4 of the Bank Holding Company Act (12 U.S.C. 1843). The respondents are financial holding companies.

The notice cited in 12 CFR 225.87(a) provides that a financial holding company that commences an activity or acquires shares of a company engaged in an activity listed in § 225.86, must notify the appropriate Federal Reserve Bank in writing within 30 calendar days. See 12 CFR 225.87(a) for specific details on the content of the notice. The Federal Reserve estimates that financial holding companies will make 500 filings of this notice annually and that it would take approximately 1 hour to complete this notification. This would result in an estimated annual burden of

500 hours. Based on a rate of $20 per hour, the annual cost to the public for this information collection would be $10,000.

Financial holding companies requesting the Board's determination that an activity is financial in nature or incidental to a financial activity must provide to the Board the information described in 12 CFR 225.88(b). Financial holding companies may request an advisory opinion from the Board about whether a specific proposed activity falls within the scope of an activity listed in 12 CFR 225.86 as financial in nature or incidental to a financial activity by submitting the information described in 12 CFR 225.88(e). Financial holding companies that seek prior approval to engage in an activity that the financial holding company believes is complementary to a financial activity must provide to the Board the information identified in 12 CFR 225.89(a). The Federal Reserve estimates that only 25 financial holding companies would file the information requested in these sections annually and that it would take approximately 1 hour to complete each information collection. This would result in estimated annual burden of 25 hours. Based on a rate of $20 per hour, the annual cost to the public for this information collection would be $500.

The Board requests comment on the accuracy of these burden estimates. These notifications and requests will have no formal reporting form and may be submitted in the form of a letter. They will be assigned the agency form number FR 4012. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, these information collections unless they display currently valid OMB control numbers. The OMB control number for these information collections will be 7100–0292.

A bank holding company may request confidentiality for the information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(6)).

Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the information collections, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies of such comments to be sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects in 12 CFR Part 225

Administrative practice and procedures, Banks, Banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831(i), 1831p–1, 1843(c)(8), 1843(k), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In § 225.24, remove paragraph (a)(3).

3. In subpart I, add §§ 225.85 through 225.89 to read as follows:

§ 225.85 Is notice to or approval from the Board required prior to engaging in a financial activity?

(a) *No prior approval required generally*—(1) *In general.* A financial holding company and any subsidiary (other than a depository institution or subsidiary of a depository institution) of the financial holding company may engage in any activity listed in § 225.86, or acquire control or shares of a company engaged exclusively in any activity listed in § 225.86, without providing prior notice to or obtaining prior approval from the Board unless required under paragraph (c) of this section.

(2) *May a financial holding company acquire a company engaged in other permissible activities?* In addition to the activities listed in § 225.86, a company acquired or to be acquired by a financial holding company under paragraph (a)(1) of this section may engage in activities otherwise permissible for a financial holding company under this part in accordance with any applicable notice, approval, or other requirement.

(3) *May a financial holding company acquire a financial company engaged in limited nonfinancial activities?* A financial holding company may control or acquire more than 5 percent of the voting shares of a company that is not engaged exclusively in activities that are financial in nature or incidental to a financial activity or otherwise permissible for a financial holding company if:

(i) Substantially all of the activities conducted by the company are financial in nature, incidental to a financial activity, or otherwise permissible for the financial holding company;

(ii) As part of the notice provided under § 225.87, the financial holding company commits to the Board to terminate or divest all activities that are not financial in nature or incidental to a financial activity or otherwise permissible for the financial holding company and the financial holding company completes that termination or divestiture within 2 years of the date the financial holding company acquires the company; and

(iii) Following the acquisition of the company by the financial holding company, the company does not engage in or acquire shares of any company engaged in any activity that is not permissible for the financial holding company.

(b) *In what locations may a financial holding company conduct financial activities?* A financial holding company may conduct any activity listed in § 225.86 at any location in the United States or at any location outside of the United States subject to the laws of the jurisdiction in which the activity is conducted.

(c) *Under what circumstances is prior notice to the Board required?* (1) *Acquisition of more than 5 percent of the shares of a savings association.* A financial holding company must obtain Board approval in accordance with section 4(j) of the Bank Holding Company Act (12 U.S.C. 1843(j)) and either § 225.23 or § 225.24, as appropriate, prior to acquiring control or more than 5 percent of the voting shares of a savings association.

(2) *Supervisory actions.* The Board may, if appropriate in supervisory cases, including under § 225.82(d) or § 225.83(d) or other relevant authority, require a financial holding company to provide prior notice to or obtain prior approval from the Board to engage in any activity or acquire shares or control of any company.

§ 225.86 What activities are permissible for financial holding companies?

The following activities are financial in nature or incidental to a financial activity:

(a) *Activities that were closely related to banking.* (1) Any activity that the Board had determined by regulation prior to November 12, 1999, to be so closely related to banking as to be a proper incident thereto, subject to the terms and conditions contained in this part, unless modified by the Board. These activities are listed in § 225.28.

(2) Any activity that the Board had determined by an order that was in effect on November 12, 1999, to be so closely related to banking as to be a proper incident thereto, subject to the terms and conditions contained in this part and those in the authorizing orders. These activities are:

(i) Providing administrative and other services to mutual funds (*see, e.g., Societe Generale*, 84 Federal Reserve Bulletin 680 (1998));

(ii) Owning shares of a securities exchange (*J.P. Morgan & Co, Inc., and UBS AG*, 86 Federal Reserve Bulletin 61 (2000));

(iii) Acting as a certification authority for digital signatures (*Bayerische Hypo- und Vereinsbank AG, et.al.*, 86 Federal Reserve Bulletin 56 (2000));

(iv) Providing employment histories to third parties for use in making credit decisions and to depository institutions and their affiliates for use in the ordinary course of business (*Norwest Corporation*, 81 Federal Reserve Bulletin 732 (1995));

(v) Check cashing and wire transmission services (*Midland Bank, PLC*, 76 Federal Reserve Bulletin 860 (1990) (check cashing); *Norwest Corporation*, 81 Federal Reserve Bulletin 1130 (1995) (money transmission));

(vi) In connection with offering banking services, providing notary public services, selling postage stamps and postage-paid envelopes, providing vehicle registration services, and selling public transportation tickets and tokens (*Popular, Inc.*, 84 Federal Reserve Bulletin 481 (1998)); and

(vii) Real estate title abstracting (*The First National Company*, 81 Federal Reserve Bulletin 805 (1995)).

(b) *Activities that are usual in connection with the transaction of banking abroad.* Any activity that the Board has determined by regulation in effect on November 11, 1999, to be usual in connection with the transaction of banking or other financial operations abroad (*see* § 211.5(d) of this chapter), subject to the terms and conditions in part 211 and Board interpretations in effect on that date regarding the scope and conduct of the activity. In addition to the activities listed in paragraphs (a) and (c) of this section, these activities are:

(1) Providing management consulting services, including to any person with respect to nonfinancial matters, so long as the management consulting services are advisory and do not allow the financial holding company to control the person to which the services are provided;

(2) Operating a travel agency in connection with financial services offered by the financial holding company or others; and

(3) Organizing, sponsoring, and managing a mutual fund, so long as:

(i) The fund does not exercise managerial control over the entities in which the fund invests; and

(ii) The financial holding company reduces its ownership in the fund, if any, to less than 25 percent of the equity of the fund within one year of sponsoring the fund or such additional period as the Board permits.

(c) *Activities permitted under section 4(k)(4) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)).* Any activity defined to be financial in nature under sections 4(k)(4)(A) through (E), (H) and (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(A) through (E) (H) and (I)).

§ 225.87 Is notice to the Board required after engaging in a financial activity?

(a) *Post-commencement notice is generally required to engage in a financial activity.* A financial holding company that commences an activity or acquires shares of a company engaged in an activity listed in § 225.86 must notify the appropriate Federal Reserve Bank in writing within 30 calendar days after commencing the activity or consummating the acquisition. The notice must describe, as relevant:

(1) The activity commenced and the identity of each subsidiary engaged in the activity; or

(2) The identity of the company acquired and the activities conducted by the company.

(b) *Are there any cases in which notice to the Board is not required?*

(1) *Acquisitions that do not result in control of a company.* A notice under paragraph (a) of this section is not required to acquire shares of a company if, following the acquisition, the financial holding company does not control the company.

(2) *Conduct of certain investment activities.* Except as otherwise provided in this part or as determined by the Board in the exercise of its supervisory authority, no post-commencement notice is required as part of the conduct by a financial holding company or its subsidiary of:

(i) Securities underwriting, dealing, or market making activities as described in section 4(k)(4)(E) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(E));

(ii) Merchant banking activities conducted pursuant to section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)), except as provided in § 225.174(d); or

(iii) Insurance company investment activities conducted pursuant to section 4(k)(4)(I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(I)), so long as the financial holding company provides the notice described in § 225.174(d) in connection with any insurance company investment that meets the thresholds in that section.

(3) *Condition for exceptions.* The exception provided in paragraph (b)(2) of this section applies only if the financial holding company previously has provided notice to the Board under paragraph (a) of this section that the financial holding company has commenced or acquired control of a company engaged in the relevant activity for which an exception is claimed.

§ 225.88 How to request the Board to determine that an activity is financial in nature or incidental to a financial activity?

(a) *Requests regarding activities that may be financial in nature or incidental to a financial activity.* A financial holding company or other interested party may request a determination from the Board that an activity not listed in § 225.86 is financial in nature or incidental to a financial activity.

(b) *What information must the request contain?* A request submitted under this section must be in writing and must:

(1) Identify and define the activity for which the determination is sought, specifically describing what the activity would involve and how the activity would be conducted;

(2) Explain in detail why the activity should be considered financial in nature or incidental to a financial activity; and

(3) Provide information supporting the requested determination and any other information required by the Board concerning the proposed activity.

(c) *What action will the Board take after receiving a request?* (1) *Consultation with the Secretary of the Treasury.* Upon receipt of the request, the Board will provide the Secretary of the Treasury a copy of the request and consult with the Secretary in accordance with section 4(k)(2)(A) of the Bank Holding Company Act (12 U.S.C. 1843(k)(2)(A)).

(2) *Public notice.* The Board may, as appropriate and after consultation with the Secretary, publish a description of the proposal in the **Federal Register** with a request for public comment.

(d) *When will the Board act on a request?* The Board will endeavor to make a decision on any request filed under paragraph (a) of this section within 60 days following the completion of both the consultative process described in paragraph (c)(1) of this section and the public comment period, if any.

(e) *What should a financial holding company do if it has a question about the scope of a financial activity?* (1) *Written request.* A financial holding company may request an advisory opinion from the Board about whether a specific proposed activity falls within the scope of an activity listed in § 225.86 as financial in nature or incidental to a financial activity. The request must be submitted in writing and must contain:

(i) A detailed description of the particular activity in which the company proposes to engage or the product or service the company proposes to provide;

(ii) An explanation supporting an interpretation regarding the scope of the permissible financial activity; and

(iii) Any additional information requested by the Board regarding the activity.

(2) *Board response.* The Board will provide an advisory opinion within 45 days of receiving a complete written request under paragraph (b) of this section.

§ 225.89 How to request approval to engage in an activity that is complementary to a financial activity?

(a) *Prior Board approval is required.* A financial holding company that seeks to engage in or acquire a company engaged in an activity that the financial holding company believes is complementary to a financial activity must obtain prior approval from the Board in accordance with section 4(j) of the Bank Holding Company Act (12 U.S.C. 1843 (j)). The notice must be in writing and must:

(1) Identify and define the proposed complementary activity, specifically describing what the activity would involve and how the activity would be conducted;

(2) Identify the financial activity for which the proposed activity would be complementary and provide information sufficient to support a finding that the proposed activity should be considered complementary to the identified financial activity;

(3) Describe the scope and relative size of the proposed activity, as measured by the percentage of the projected financial holding company revenues expected to be derived from and assets associated with conducting the activity;

(4) Discuss the risks that conducting the activity may reasonably be expected to pose to the safety and soundness of the subsidiary depository institutions of the financial holding company and to the financial system generally;

(5) Describe the potential adverse effects, including potential conflicts of interest, decreased or unfair competition, or other risks, that conducting the activity could raise, and explain the measures the financial holding company proposes to take to address those potential effects; and

(6) Provide any information about the financial and managerial resources of the financial holding company and any other information requested by the Board.

(b) *What standards will the Board apply in evaluating the notice?* In evaluating a notice to engage in a complementary activity, the Board must consider whether:

(1) The proposed activity is complementary to a financial activity;

(2) The proposed activity would pose a substantial risk to the safety or soundness of depository institutions or the financial system generally; and

(3) The proposal meets the standards in section 4(j)(2) of the Bank Holding Company Act (12 U.S.C. 1843(j)(2)).

(c) *How and when will the Board act on a notice?* The Board will inform the financial holding company in writing of the Board's determination regarding the proposed activity within the period described in section 4(j) of the Bank Holding Company Act (12 U.S.C. 1843(j)).

By order of the Board of Governors of the Federal Reserve System, March 10, 2000.

Dated: March 10, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6469 Filed 3–16–00; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1063]

Bank Holding Companies and Change in Bank Control; Securities Underwriting, Dealing, and Market-Making Activities of Financial Holding Companies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for public comments.

SUMMARY: Underwriting, dealing in, and making a market in securities are financial activities permissible for financial holding companies under the Gramm-Leach-Bliley Act. Bank holding companies may currently engage in these activities only to a limited extent through so-called section 20 subsidiaries. Under the Board's current rules, section 20 subsidiaries are subject to eight operating standards imposed by the Board in order to address certain potential risks and conflicts associated with the affiliation of a bank and a securities firm.

The Board is adopting this interim rule to impose two of these operating standards on financial holding companies engaged in securities underwriting, dealing or market-making activities. Under the interim rule, intra-day extensions of credit by a bank or thrift, or U.S. branch or agency of a foreign bank, to a securities affiliate engaged in securities underwriting, dealing, or market-making must be on market terms. In addition, foreign banks that are financial holding companies or that are treated as financial holding companies will be required to comply with certain affiliate transaction restrictions with respect to lending and securities purchase transactions between a U.S. branch or agency of a foreign bank and a securities affiliate engaged in securities underwriting, dealing, or market-making.

DATES: The interim rule is effective on March 11, 2000. Comments must be received by May 12, 2000.

ADDRESSES: Comments, which should refer to docket number R–1063, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. and, outside of those hours, to the Board's security control room. Both the mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Thomas Corsi, Managing Senior Counsel, Legal Division (202) 452–3275; Michael J. Schoenfeld, Senior Supervisory Financial Analyst, Division of Banking Supervision and Regulation (202) 452–2836; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Janice Simms (202) 872–4984.

SUPPLEMENTARY INFORMATION: The Gramm-Leach-Bliley Act differs from prior regulatory and statutory schemes in the manner that it addresses potential risks to a depository institution associated with securities and other activities conducted by affiliates. The current section 20 operating standards,[1] like the bills to repeal the Glass-Steagall Act that were considered in the late 1980s and early 1990s contain detailed restrictions on relationships and transactions between depository institutions and securities affiliates. The Gramm-Leach-Bliley Act relies instead on requirements that each depository institution affiliated with a securities firm be and remain well capitalized and well managed. The Gramm-Leach-Bliley Act also relies on functional regulation of the securities firm by the SEC, full supervision of the depository institution by the appropriate federal banking agency, and umbrella supervision of the overall organization by the Board to identify and address potential risks to the depository institution associated with the securities and other activities in the organization.

The Gramm-Leach-Bliley Act grants the Board authority to impose restrictions or requirements on relationships or transactions between a depository institution and any affiliate. The Board may impose a prudential limitation if the Board finds that the limitation is appropriate to avoid a significant risk to the safety and soundness of the depository institution or the Federal deposit insurance funds, to avoid other adverse effects or to prevent evasions of the banking laws.[2] The Board believes that most of the concerns that are raised by the affiliation of a securities firm with a financial holding company are addressed by the requirements of the Gramm-Leach-Bliley Act, other banking laws and regulations, and securities laws and regulations.

Two concerns that the Board believes are not addressed by current law or regulation relate to intra-day extensions of credit to a securities firm by an affiliated depository insitution, and to transactions between a U.S. branch or agency of a foreign bank that elects to become or be treated as a financial holding company, and an affiliated securities firm.

Intra-day extensions of credit: One operating standard applicable to section 20 subsidiaries ("operating standard 5") requires that intra-day extensions of credit to a section 20 subsidiary by an affiliated bank or thrift, or U.S. branch or agency of a foreign bank be on market terms consistent with section 23B of the Federal Reserve Act. In considering whether to apply this limitation to financial holding companies, the Board notes that the Gramm-Leach-Bliley Act requires the Board, within the next 18 months, to address how the restrictions in section 23A apply to intra-day extensions of credit to all affiliates. Until such time as that effort is complete, however, the Board believes that operating standard 5 remains important to ensure that intra-day extensions of credit by a depository institution to an affiliated securities firm for clearing or other purposes are not subsidizing the activities of the securities firm to the detriment of the depository institution affiliate. Accordingly, the Board is applying the limitations in operating standard 5 to financial holding companies and foreign banks treated as financial holding companies to cover intra-day extensions of credit to their subsidiary securities firms from their subsidiary banks or thrifts or U.S. branches or agencies at least until such time as the analysis regarding the application of section 23A to intra-day extensions of credit is complete.

Transactions with U.S. branches and agencies of foreign banks: Another operating standard ("operating standard 8") applicable to section 20 subsidiaries requires that a U.S. branch or agency of a foreign bank comply with sections 23A and 23B of the Federal Reserve Act[3] when extending credit to a section 20 affiliate, or when purchasing securities for which a section 20 affiliate is a principal underwriter.[4] A branch or agency also may not advertise or suggest that it is responsible for the obligations of a section 20 affiliate. Operating standard 8 permits a branch or agency of a foreign bank to engage in funding and securities purchase transactions with a section 20 affiliate subject to the same restrictions applicable to a U.S. depository institution.

The purpose of sections 23A and 23B of the Federal Reserve Act, which limit credit and other transactions between a bank and its affiliate, is to limit the possibility that the risks of activities conducted in a nonbank affiliate of a depository institution be transferred to the depository institution. The Board originally applied lending restrictions to transactions between U.S. branches and agencies of a foreign bank and a section 20 affiliate as a prudential limitation, recognizing that U.S. branches and agencies are part of the U.S. financial structure.[5] In addition, the Board adopted operating standard 8 because sections 23A and 23B apply to U.S. banks and thrifts, and the operating standard ensures competitive equity between foreign banks and U.S. banking organizations in the funding of section 20 affiliates. These are the types of concerns that section 114 of the Gramm-Leach-Bliley Act would require the Board to consider in imposing restrictions on foreign banks that become financial holding companies.

Under the Gramm-Leach-Bliley Act, foreign banks, as well as U.S. bank holding companies, that become financial holding companies will be able to engage in a broader range of securities activities than is permitted now. In view of this, the prudential and competitive equity concerns that led the Board to adopt operating standard 8 would justify applying that prudential limit in the case of a foreign bank that becomes a financial holding company. This restriction would apply only to transactions between a securities affiliate that underwrites, deals in, or makes a market in securities, and a U.S. branch or agency of a foreign bank, and not to the foreign bank itself.

Customer disclosures: The Board is not at this time imposing any customer disclosure requirements on financial holding companies with respect to the activities of a subsidiary securities firm engaged in securities underwriting, dealing, or market-making pursuant to section 4(k)(4)(E) of the BHC Act. To the extent that the securities firm makes a sale to a customer on the premises of a depository institution, or through a depository institution employee, or as a result of a referral by a depository institution, it will be required to make the disclosures contained in the Interagency Statement on Retail Sales of Nondeposit Investment Products (Interagency Statement).

Whether or not the activities of subsidiary securities firms of financial holding companies are covered by the Interagency Statement, the Board expects financial holding companies to take all necessary steps to ensure that customers are not confused about the nature of investment products they are purchasing. If the Board becomes aware

[1] 12 CFR 225.200. The operating standards would continue to apply to section 20 subsidiaries controlled by bank holding companies that do not qualify as financial holding companies.

[2] Pub. L. No. 106–102, 113 Stat. 1338, 1369–71 (1999).

[3] 12 U.S.C. 371c and 371c–1

[4] 12 CFR 225.200(b)(8).

[5] *See Canadian Imperial Bank of Commerce, et al.*, 76 Federal Reserve Bulletin 158, 163 (1990).

that customer confusion is occurring, or that action is necessary to prevent abuses, the Board may impose additional disclosure requirements on financial holding companies to address these issues.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the Board must publish an initial regulatory flexibility analysis with this interim regulation. The purpose of the interim rule is to address concerns raised by the affiliation of a securities firm with a financial holding company that are not otherwise addressed by current law or regulation. The rule applies only to bank holding companies and foreign banks that voluntarily elect to become or be treated as financial holding companies under the Bank Holding Company Act as amended by the Gramm-Leach-Bliley Act, and also engage in certain securities activities. The interim rule applies to all financial holding companies regardless of size, and requires them to comply with certain restrictions that already apply to bank holding companies that control section 20 subsidiaries engaged in securities activities. The rule applies fewer restrictions to financial holding companies seeking to engage in securities activities than apply to bank holding companies that control section 20 subsidiaries and thus represents a reduction in the limitations on engaging in certain securities underwriting and dealing activities. The Board specifically seeks comment on the likely burden this interim rule will impose on small business entities and financial holding companies that seek to engage in securities activities.

Administrative Procedure Act

The Board will make this interim rule effective on March 11, 2000 without first reviewing public comments. Pursuant to 5 U.S.C. 553, the Board finds that it is impracticable to review public comments prior to the effective date of the interim rule, and that there is good cause to make the interim rule effective on March 11, 2000, due to the fact that the rule sets forth a requirement relating to activities that financial holding companies will be able to engage in on March 11, 2000, due to statutory changes that become effective on that date. The Board is seeking public comment on the interim rule and will amend the rule as appropriate after reviewing the comments.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the interim rule.

List of Subjects in CFR 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANY AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831(i), 1831p–1, 1843(c)(8), 1844(b), 1972(1), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.4 is amended by adding a new paragraph (g) to read as follows:

§ 225.4 Corporate practices.

* * * * *

(g) *Requirements for financial holding companies engaged in securities underwriting, dealing, or market-making activities.* (1) Any intra-day extension of credit by a bank or thrift, or U.S. branch or agency of a foreign bank to an affiliated company engaged in underwriting, dealing in, or making a market in securities pursuant to section 4(k)(4)(E) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(E)) must be on market terms consistent with section 23B of the Federal Reserve Act. (12 U.S.C. 371c–1).

(2) A foreign bank that is or is treated as a financial holding company under this part shall ensure that:

(i) Any extension of credit by any U.S. branch or agency of such foreign bank to an affiliated company engaged in underwriting, dealing in, or making a market in securities pursuant to section 4(k)(4)(E) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(E)), conforms to sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) as if the branch or agency were a member bank;

(ii) Any purchase by any U.S. branch or agency of such foreign bank, as principal or fiduciary, of securities for which a securities affiliate described in paragraph (g)(2)(i) of this section is a principal underwriter conforms to sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1) as if the branch or agency were a member bank; and

(iii) Its U.S. branches and agencies not advertise or suggest that they are responsible for the obligations of a securities affiliate described in paragraph (g)(2)(i) of this section, consistent with section 23B(c) of the Federal Reserve Act (12 U.S.C. 371c–1(c)) as if the branches or agencies were member banks.

By order of the Board of Governors of the Federal Reserve System, March 10, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6502 Filed 3–16–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 29950; Amdt. No. 421]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd., Oklahoma City, OK 73169 (Mail Address: P.O. Box 25082, Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, D.C. on March 14, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 9091 UTC.

PART 95—[AMENDED]

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 421 effective date: April 20, 2000, Final]

From—Is amended to read in part	To	MEA
&95.6001 VICTOR ROUTES—U.S. &95.6006 VOR FEDERAL AIRWAY 6		
Niles, IL FIX	Chett, MI FIX	*3500
*2500—MOCA Chett, MI FIX	Gipper, MI VORTAC	*3000
*2200—MOCA		
&95.6010 VOR FEDERAL AIRWAY 10		
Niles, IL FIX	Chett, MI FIX	*3500
*2500—MOCA Chett, MI FIX	Gipper, MI VORTAC	*3000
*2200—MOCA		
&95.6165 VOR FEDERAL AIRWAY 165		
Mustang, NV VORTAC	Pyram, NV FIX	*11000
*100000—MOCA		
&95.6175 VOR FEDERAL AIRWAY 175		
Worthington, MN VOR/DME	Redwood Falls, MN VORTAC	*3300
*2800—MOCA Park Rapids, MN VOR/DME	Bemidji, MN VORTAC	3400

[FR Doc. 00–6698 Filed 3–16–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 744

[Docket No. 981019261–0020–02]

RIN 0694–AB73

Export Administration Regulations Entity List: Removal of Entities, Revision in License Policy, and Reformat of List

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: On November 18, 1998, the Bureau of Export Administration (BXA) published a rule in the **Federal Register** (63 FR 64322) that added certain Indian and Pakistani entities to the Entity List in the Export Administration Regulations (EAR). This rule removes 51 Indian entities and modifies one entity's listing. In addition, this rule will revise the license review policy for items classified as EAR99 (items that are subject to the EAR, but are not listed on the Commerce Control List) to Indian and Pakistani government, private and parastatal entities from a presumption of denial to a presumption of approval. Also, to correct two inadvertent errors in the publication of the Entity List, this rule: re-designates one existing Pakistani entry on the list as a government entity instead of a military facility; and re-designates one existing Indian entry on the list as a government entity instead of a private or parastatal entity, while also correcting the organization with which it was previously identified. Finally, after consultation between BXA and the Department of State, the subordinates of Indian and Pakistani organizations that are on the Entity List will be moved to appendix A and appendix B of the Entity List, respectively. BXA anticipates this change in policy will increase the number of license applications submitted to BXA.

DATES: This rule is effective March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Eileen M. Albanese, Director, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–0436.

SUPPLEMENTARY INFORMATION:

Background

In accordance with section 102(b) of the Arms Export Control Act, President Clinton reported to the Congress on May 13, 1998, with regard to India and May 30, 1998, with regard to Pakistan his determinations that those non-nuclear weapon states had each detonated a nuclear explosive device. The President directed in the determination reported to the Congress that the relevant agencies and instrumentalities of the United States take the necessary actions to implement the sanctions described in section 102(b)(2) of that Act. Consistent with the President's directive, the Bureau of Export Administration (BXA) implemented certain sanctions, as well as certain supplementary measures to enhance the sanctions on November 19, 1998 (63 FR 64322).

Based on a consensus decision by the Administration to more tightly focus the sanctions on those Indian entities which make direct and material contributions to weapons of mass destruction and missile programs and items that can contribute to such programs, BXA is removing 51 Indian entities from the Entity list, found in Supplement No. 4 to part 744 of the Export Administration Regulations (EAR), and revising the listing of one Indian entity. In addition, the license application review policy for the export or reexport of items classified as EAR99 to Indian and Pakistani government, private, and parastatal entities will be revised from a presumption of denial to a presumption of approval. The U.S. policy of denial for dual-use items controlled for nuclear proliferation (NP) and missile technology (MT) reasons to all Indian and Pakistani entities remains unchanged, however. Recent Congressional action supports these regulatory revisions. Section 9001(d) of the FY 2000 Defense Appropriations Act (the Act) includes language stating that "it is the sense of Congress that the broad application of export controls to nearly 300 Indian and Pakistani entities is inconsistent with the specific national security interests of the United States and that the control list requires refinement." The Act also states that it is the sense of Congress that "export controls should be applied only to those Indian and Pakistani entities that make direct and material contributions to weapons of mass destruction and missile programs and only to those items that can contribute to such programs."

This rule re-designates the Pakistani entity, Gadwal Uranium Enrichment Plant, as a government entity under § 744.11(c)(1) of the EAR, instead of its initial designation of a military entity under § 744.12(c). The license review policy for this entity will remain one of denial for items controlled for NP or MT reasons, except items intended for the preservation of safety of civil aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial. All other items subject to the EAR to this listed entity will be reviewed with a presumption of denial, with the exception of items classified as EAR99, which will be reviewed with a presumption of approval, under the new review policy set out by this rule.

This rule re-designates the Uranium Recovery Plant, located in Cochin, India, as a government entity under § 744.11(c)(1) of the EAR, instead of its initial designation of a private/parastatal entity under § 744.11(c)(2). In addition, it revises the organization with which it is identified, as the Department of Atomic Energy (DAE), instead of Fertilizers and Chemicals Travancore (FACT), Uranium Corporation of India, Ltd. (UCIL). The license review policy for this entity will remain one of denial for items controlled for NP or MT reasons, except items intended for the preservation of safety of civil aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial. All other items subject to the EAR to this listed entity will be reviewed with a presumption of denial, with the exception of items classified as EAR99, which will be reviewed with a presumption of approval, under the new review policy set out by this rule.

This rule does not change the items subject to sanctions for entities remaining on the list. The Administration will continue to review both the list of sanctioned entities and the scope of licensing requirements over items, and may make additional changes.

The removal of entities from the Entity List does not relieve exporters or reexporters of their obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR which provides that, "you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR." BXA strongly urges the use of Supplement No. 3 to part 732 of the EAR, "BXA's 'Know Your Customer' Guidance and Red Flags" when exporting or reexporting to India and Pakistan.

Entities Removed From Entity List

Ambarnath Machine Tool Prototype Factory

Ambarnath Ordnance Factory
Aruvankadu Cordite Factory
Avadi Combine Engine Plant
Avadi Heavy Vehicle Factory
Avadi Ordnance Clothing Factory
*Bharat Heavy Electrical Limited (BHEL), Hardwar and Ranipet
Bhusawal Ordnance Factory
Chandigarh Ordnance Cable Factory
Chandigarh Ordnance Parachute Factory
Combat Vehicle Research and Development Establishment (CVRDE)
Cossipore Gun and Shell Factory
Defence Bio-Engineering and Electro-Medical Laboratory (DEBEL)
Defence Food Research Laboratory (DFRL)
Defence Institute of Fire Research (DIFR)
Defence Institute of Physiology and Allied Sciences (DIPAS)
Defence Institute of Psychological Research (DIPR)
Defence Institute of Workstudy (DIWS)
Defence Research and Development Unit (DRDU)
Defence Research Laboratory (DRL)
Defence Terrain Research Laboratory (DTRL)
Dehra Dun Opto-Electronics Factory
Dehra Dun Ordnance Factory
Dehu Road Ordnance Factory
Hazratpur Ordnance Equipment Factory
Institute of Mathematical Sciences
Institute of Physics
Institute for Systems Studies and Analyses (ISSA)
Interuniversity Consortium of DAE Facilities
Jabalpur Gray Iron Foundry
Jabalpur Gun Carriage Factory
Kanpur Field Gun Factory
Kanpur Ordnance Parachute Factory
Kanpur Small Arms Factory
Katni Ordnance Factory
Khamaira Ordnance Factory
Kirkee Ammunition Factory
Medak Grey Iron Foundry
Medak Ordnance Factory
Mehta Research Institute of Maths and Math Physics
Naval Chemical and Metallurgical Laboratory (NCML)
Ordnance Factories Staff College
Ordnance Factories Training Institutes
Proof and Experimental Establishment
Saha Institute of Nuclear Physics
Scientific Analysis Group (SAG)
Shahjahanpur Ordnance Clothing Factory
Tata Institute of Fundamental Research
Tiruchchirappalli Heavy Alloy Penetrator Project
Titlagarh Ammunition Plant
Varangaon Ordnance Factory
The Variable Energy Cyclotron Centre (VECC)

*This is a revision, not a deletion. Only two cities of this entity are being removed.

Lastly, subordinate entities of listed Indian and Pakistani organizations have been moved to appendixes to Supplement No. 4 of part 744 (the Entity List). The subordinates will be listed in alphabetical order under a heading listing the organization with which they are identified.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and, to the extent permitted by law, the provisions of the EAA in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121), and August 10, 1999 (64 FR 44101, August 13, 1999).

Rulemaking Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. This rule contains and involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control number 0694–0088, "Multi-Purpose Application," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P; and 0694–0111, "India Pakistan Sanctions," which carries a burden hour estimate of 40 minutes to prepare and submit electronically and 45 minutes to submit manually on form BXA–748P . Notwithstanding any other provision of law, no person is required to respond nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (see 5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this final rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under 5 U.S.C. 553 or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Sharron Cook, Regulatory Policy Division, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 5 CFR Part 744

Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, part 744 of the Export Administration Regulations (15 CFR parts 730–774) is amended as follows:

PART 744—[AMENDED]

1. The authority citation for 15 CFR part 744 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

2. Section 744.11 is amended by revising the introductory text and paragraph (c) to read as follows:

§ 744.11 Restrictions on Certain Government, parastatal, and private entities in Pakistan and India.

To supplement sanctions measures against India and Pakistan, set forth in § 742.16 of the EAR, a prohibition is imposed on exports and reexports to certain government, parastatal, and private entities in India and Pakistan determined to be involved in nuclear or missile activities. With respect to subordinates of listed entities in India and Pakistan, only those specifically listed in Supplement No. 4 to part 744, Entity List, are subject to the restrictions and policies set forth in this section. The addition or deletion of entities to or from Supplement No. 4 to part 744, Entity List, does not relieve you of your obligations under General Prohibition 5 in § 736.2(b)(5) of the EAR: "you may not, without a license, knowingly export or reexport any item subject to the EAR to an end-user or end-use that is prohibited by part 744 of the EAR." You are urged to use the guidance in Supplement No. 3 to part 732 of the EAR, "BXA's "Know Your Customer' Guidance and Red Flags" when exporting or reexporting to India and Pakistan.

* * * * *

(c) *License review standards.* (1) *Government entities.* Applications to export or reexport items controlled for NP or MT reasons to listed government entities will be denied, except items intended for the preservation of safety of civil aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial. Items classified as EAR99 will be reviewed with a presumption of approval. All other items subject to the EAR to these listed entities will be reviewed with a presumption of denial.

(2) *Parastatal and private entities.* Applications to export or reexport items controlled for NP or MT reasons to certain parastatal and private entities will be denied, except items intended to ensure the safety of civil aviation and safe operation of commercial passenger aircraft, which will be reviewed on a case-by-case basis; and computers, which will be reviewed with a presumption of denial. Items classified as EAR99 will be reviewed with a presumption of approval. All other items subject to the EAR to these listed entities will be reviewed with a presumption of denial. Except for items controlled for NP or MT reasons, exports or reexports to listed parastatals and private entities with whom you have a preexisting business arrangement will be considered on a case-by-case basis, with a presumption of approval in cases where neither the arrangement nor the specific transaction involves nuclear or missile activities and the exports or reexports are pursuant to that arrangement. Because EAR99 items have a license review policy of presumption of approval, you may choose not to provide documentation of such arrangements for those items. The term "business arrangement" covers the full range of business agreements, including general contracts, general terms agreements (*e.g.*, agreements whereby the seller delivers products under purchase orders to be issued by the buyer), general business agreements, offset agreements, letter agreements that are stand-alone contracts, and letter agreements that are amendments to existing contracts or other agreements. The terms of the preexisting business arrangement policy may also apply to the longstanding continued supply of a particular item or items from the exporter to the entity even when there is no current agreement between the firms. BXA, in conjunction with other agencies, will determine eligibility under the preexisting business arrangement policy. In order to be eligible under the policy, you must provide documentation to establish such an arrangement. The documentation should be provided at the time you submit a license application to export or reexport items to any listed parastatal or private entity.

3. Supplement No. 4 to part 744 is amended by removing the entities for India and Pakistan and replacing them with the following list of entities for India and Pakistan, and adding Appendixes A and B to Supplement No. 4 to part 744 to read as follows:

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST

Country	Entity	License requirement	License review policy	Federal Register citation
INDIA	Aeronautical Development Agency, Ministry of Defense, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.]
	Aerospace Division, Hindustan Aeronautics Limited (HAL), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.]
	Atomic Energy Commission (AEC) located in Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Atomic Energy Regulatory Board (AERB), Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	AURO Engineering, Pondicherry	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Baroda Ammonia Plant, (collocated with the Baroda Heavy Water Production Facility), Gujarat Fertilizers, Baroda.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Bharat Dynamics Limited, Bhanur and Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Bharat Earth Movers Limited (BEML), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Bharat Electronics Limited (BEL), Bangalore, Ghaziabad, and Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	62 FR 26922, 5/16/97; 62 FR 51369, 10/1/97; 63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Bharat Heavy Electrical Limited (BHEL), Trichy (Tiruchirapalli), Hyderabad, and New Delhi.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Central Manufacturing Technology Institute, a.k.a. Central Machine Tool Institute, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Centre for Development of Advanced Computing, Department of Electronics, Pune.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Defence Research and Development Organization (DRDO) located in New Delhi and subordinate entities specifically listed in Appendix A to this supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Department of Atomic Energy (DAE) located in Mumbai (formerly Bombay) and the subordinate entities specifically listed in Appendix A to this supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Department of Defense Production and Supplies (DDPS) and the subordinate entities specifically listed in Appendix A to this supplement.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Department of Space (DOS) located in Bangalore and the subordinate entities specifically listed in Appendix A to this supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Electronics Corporation of India, Ltd. (ECIL), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Engine Division, Hindustan Aeronautics Limited (HAL), Bangalore.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Ferrodie Private Limited (FPL), Thane	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Godrej & Boyce Mfg., Co., Ltd., Precision Equipment Division (PED) and Tool Room Division, Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Hazira Ammonia Plant, (collocated at the Hazira Heavy Water Production Facility) Krishak Bharati Cooperative, Ltd., Hazira.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Indian Institute of Science (IIS), Departments of: Aerospace Engineering and Space Technology Cell, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Indian Institute of Technology (IIT), Departments of: Aerospace Engineering and Space Technology Cell, Chennai (formerly Madras).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Indian Institute of Technology (IIT), Departments of: Physics, Aerospace Engineering, and Space Technology Cell, Mumbai (formerly Bombay).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Indian Rare Earths, Ltd., (IREL), located in Mumbai (formerly Bombay) and subordinate entities specifically listed in Appendix A to this supplement.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	62 FR 35335, 6/30/97; 63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Kirloskar Brothers, Ltd. (KB), Pune	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Larsen & Toubro, Ltd. (L&T), Hazira Works, Hazira.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Machine Tool Aids & Reconditioning (MTAR), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Mishra Dhatu Nigam, Ltd. (MIDHANI), Hyderabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	National Aerospace Laboratory, Bangalore	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	National Trisonic Aerodynamic Facility, National Aerospace Laboratory, Bangalore.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	The Nuclear Power Corporation of India, Ltd. (NPCIL), located in Mumbai (formerly Bombay) and subordinate entities specifically listed in Appendix A to this supplement.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Nuclear Science Centre (NSC), New Delhi	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Precision Controls, Chennai (formerly Madras)	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Rama Krishna Engineering Works (REW), Chennai (formerly Madras).	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Talcher Ammonia Plant, (collocated at Talcher Heavy Water Production Facility) Fertilizer Corporation of India, Ltd., Talcher.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Thal-Vaishet Ammonia Plant, (collocated at Thal-Vaishet Heavy Water Production Facility), Rashtriya Chemicals & Fertilizers, Thal-Vaishet in Maharashtra.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Tuticorin Ammonia Plant, (collocated at Tuticorin Heavy Water Production Facility), Southern Petrochemical Industries Corporation, Tuticorin.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Uranium Corporation of India, Ltd. (UCIL), located in Jaduguda and subordinate entities specifically listed in Appendix A to this supplement.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Walchandnagar Industries, Ltd. (WIL), Nadu Desarai and Mahad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
PAKISTAN	Abdul Qader Khan Research Laboratories, a.k.a. Khan Research Laboratories (KRL), a.k.a. Engineering Research Laboratories (ERL), Kahuta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Al Technique Corporation of Pakistan, Ltd.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Allied Trading Co.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	ANZ Importers and Exporters, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Armed Forces Institute of Pathology—Rawalpindi Laboratory.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Center for Advanced Molecular Biology, Lahore.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Combat Development Directorate (CDD)	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Defence Science and Technology Organization (DESTO) located in Rawalpindi and subordinate entities specifically listed in Appendix B to this supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Engineering and Technical Services, Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Engineering Research Laboratories (ERL), a.k.a. Abdul Qader Khan Research Laboratories, a.k.a. Khan Research Laboratories (KRL), Kahuta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Gadwal Ammunition Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	Gadwal Uranium Enrichment Plant	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Ghulam Ishaq Khan Institute of Technology, Topai.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Golra Ultracentrifuge Plant, Golra	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Goth Macchi Nitrogen Fertilizer Plant, Sadiqabad.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Haripur Nitrogen Fertilizer Plant, Hazara	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Havelian Explosives and Ammunition Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	High Technologies, Ltd., Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Karachi CBW Research Institute, University of Karachi's Husein Ebrahim Jamal Research Institute of Chemistry (HEJRIC).	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Karachi Naval Base and Naval Hqs. And Dockyard.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Karachi Superphos Fertilizer Plant, Al Noor	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Khan Research Laboratories (KRL) a.k.a. Abdul Qader Khan Research Laboratories, a.k.a. Engineering Research Laboratories (ERL), Kahuta.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98; 62 FR 35334, 6/30/97 [INSERT FR CITE] 3/17/00.
	Khewra Soda Ash Plant, Soda Ash Businesses, Soda Ash Works, Khewra Distt. Jhelum, (owned by ICI Pakistan Limited).	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98; 64 FR 14606, 3/26/99
	Lahore Weapons Plant, PEC	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Lastech Associates, Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Machinery Master Enterprises, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Maple Engineering Pvt. Ltd. Consultants, Importers and Exporters.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Mirpur Nitrogen Fertilizer Plant, Mathelo	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Modern Engineering Services, Ltd., Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Multan Chemical Fertilizer Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.

SUPPLEMENT NO. 4 TO PART 744—ENTITY LIST—Continued

Country	Entity	License requirement	License review policy	Federal Register citation
	National Development Centre	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	62 FR 35335, 6/30/97; 63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	National Institute of Biotechnology and Genetic Engineering, Faisalabad.	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Orient Importers and Exporters, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Pakistan Atomic Energy Commission (PAEC) located in Islamabad and subordinate entities specifically listed in Appendix B to this supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Pakistan Institute for Nuclear Science and Technology (PINSTECH) located in Islamabad and subordinate entities specifically listed in Appendix B to this supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	62 FR 35334, 6/30/97; 63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Pakistan Ordnance Factories	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	People's Steel Mills, Karachi	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Prime International	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Saniwal Ammunition Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Scientific and Technical Technology, Ltd., Islamabad.	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Sihala Ultracentrifuge Plant, Sihala	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Space and Upper Atmospheric Research Commission (SUPARCO) and subordinate entities specifically listed in Appendix B to this supplement.	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Space Research Council	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Technical Services, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	The Tempest Trading Company, Islamabad	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Unique Technical Promoters	For all items subject to the EAR.	See § 744.11(c)(2) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.
	Wah Chemical Product Plant	For all items subject to the EAR having a classification other than EAR99.	See § 744.12(c) of this part.	63 FR 64322, 11/19/98.
	Wah Munitions Plant, a.k.a. Explosives Factory, Pakistan Ordnance Factories (POF).	For all items subject to the EAR.	See § 744.11(c)(1) of this part.	63 FR 64322, 11/19/98 [INSERT FR CITE] 3/17/00.

Appendix A to Supplement No. 4 to Part 744 (Entity List)—Listed Subordinates of Listed Indian Organizations

The subordinates listed in this appendix are considered listed entities to the Entity List. Subordinates have the same license requirements and review policy as the organizations they are identified under. The subordinates in this appendix are listed in alphabetical order under the organization that they are identified with, which are also listed in alphabetical order.

Defence Research and Development Organization (DRDO):

Aerial Delivery Research and Development Establishment (ADRDE), Agra
Aeronautical Development Establishment (ADE), Bangalore
Armament Research and Development Establishment (ARDE), Pune
Centre for Aeronautical Systems Studies and Analysis (CASSA), Bangalore
Defence Electronics Applications Laboratory (DEAL), Dehra Dun
Defence Electronics Research Laboratory (DERL or DLRL), Hyderabad
Defence Laboratory (DL), Jodhpur
Defence Materials and Store Research and Development Establishment (DMSRDE), Kanpur
Defence Metallurgical Research Laboratory (DMRL), Hyderabad
Defence Research and Development Establishment (DRDE), Gwalior
Defence Research and Development Laboratory (DRDL), Hyderabad
Defence Science Centre (DSC), New Delhi
Electronics and Radar Development Establishment (ERDE or LRDE), Bangalore
Explosive Research and Development Laboratory (ERDL), Pune
Gas Turbine Research Establishment (GTRE), Bangalore
Institute of Armament Technology (IAT), Pune
Instruments Research and Development Establishment (IRDE), Dehra Dun
The Missile Research and Development Complex, Imarat, Hyderabad
National Test Range, Baliabad
Naval Physical and Oceanographic Laboratory (NPOL), Cochin
Naval Science and Technological Laboratory (NSTL), Vishakhapatnam
Research and Development Establishment (Engineers) (R&DE (ENGRS)), Pune
Solid State Physics Laboratory (SSPL), New Delhi
Terminal Ballistics Research Laboratory (TBRL), Chandigarh
Vehicles Research and Development Establishment, Ahmednagar

Department of Atomic Energy (DAE):

Advanced Fuel Fabrication Facility, Tarapur
Aspara Research Reactor, Trombay
The Atomic Minerals Division (AMD), Hyderabad
Baroda Heavy Water Production Facility, Baroda
Beryllium Machining Facility, Mumbai
Bhabha Atomic Research Center (BARC), Trombay/Mumbai
Board of Radiation and Isotope Technology (BRIT), Mumbai
Boron Enrichment Plant, Trombay
Central Workshops, Trombay
Centre for Advanced Technology (CAT), Indore
Centre for the Compositional Characterization of Materials, Hyderabad
Ceramic Fuels Fabrication Plant, Hyderabad
Cirus Reactor, Mumbai
Construction Services and Estate Management Group, Mumbai
Dhruva Reactor, Mumbai
Directorate of Purchase and Stores (DPS), Mumbai
Fast Breeder Test Reactor (FBTR), Kalpakkam
Fast Reactor Fuel Reprocessing Plant (FRFRP), Kalpakkam
General Services Organization, Kalpakkam
Hazira Heavy Water Production Facility, Hazira
Heavy Water Board, Mumbai
Indira Gandhi Center for Atomic Research (IGCAR), Kalpakkam
Kalpakkam Reprocessing Plant (KARP), (a.k.a. Kalpakkam Fuel Reprocessing Plant), Kalpakkam
Kamini Research Reactor, Kalpakkam
Kota Heavy Water Production Facility, Kota
Manuguru Heavy Water Production Facility, Manuguru
Nangal Heavy Water Production Facility, Nangal
New Zirconium Sponge Plant, Hyderabad
Nuclear Fuel Complex (NFC), Hyderabad
Plutonium Reprocessing Plant, Trombay
PREFRE Reprocessing Plant, Tarapur
Prototype Fast Breeder Reactor (PFBR), Kalpakkam
Purinima Facility, Trombay
Special Materials Plant, Hyderabad
Talcher Heavy Water Production Facility, Talcher
Thal-Vaishet Heavy Water Production Facility, Thal-Vaishet in Maharashtra
Trombay Reprocessing Plant, Trombay
Tuticorin Heavy Water Production Facility, Tuticorin
Uranium Conversion Plant, Trombay
Uranium Enrichment Plant, Trombay
Uranium Fuel Assembly Plant, Hyderabad
Uranium Recovery Plant, Cochin
Zirconium Fabrication Plant, Hyderabad

Department of Defense Production and Supplies (DDPS):

Ambajhari Ordnance Factory
Chanda Ammunition Loading Plant
Chanda Ordnance Factory
Dum Dum Ordance Factory
Ishapore Metal and Steel Factory
Ishapore Rifle Factory
Itarsi Ordnance Factory
Kanpur Ordnance Equipment Factory
Kanpur Ordnance Factory
Kirkee High Explosives Factory
Muradnagar Ordnance Factory
Ordnance Factory Board
Tiruchchirappalli Ordnance Factory

Department of Space (DOS):

Ammonium Perchlorate Experimental Plant, Alwaye
Indian Space Research Organization (ISRO), Bangalore
Interim Test Range (ITR), Balasore
ISRO Inertial Systems Unit (IISU), Thiruvananthapura
Liquid Propulsion Systems Centre, Bangalore
Liquid Propulsion Systems Centre, Thiruvananthapuram or Valiamala
Liquid Propulsion Test Facility, Mahendragiri
Meteorological Rocket Station, Balasore
Physical Research Laboratory (PRL), Ahmadabad
Solid Propellant Space Booster Plant (SPROB)
Space Applications Centre (SAC), Ahmadabad
Space Physics Laboratory (SPL),Thiruvananthapuram
Sriharikota Space Centre (SHAR), Andhra Pradesh
Thumba Equatorial Rocket Launching Station
Vikram Sarabhai Space Centre (VSSC), Thiruvananthapuram

Indian Rare Earths, Ltd. (IREL):

India Minerals Separation Plants, Chhatrapur, Orissa, and Chavara
The Mineral Sand Separation Complex, Chhatrapur in the Gunjan District of Orissa
Minerals Recovery Plant, Chavara
Orissa Sands Complex (OSCOM), Chhatrapur in the Gunjan District of Orissa
Rare Earth Development Laboratory, Trombay
Rare Materials Plant, Mysore
Thorium Plant, Chhatrapur
Zirconium Oxide Plant, Manavalakuruchi

The Nuclear Power Corporation of India, Ltd. (NPCIL):

Heavy Water Upgrade Plant, Kakrapar
Kaiga Atomic Power Project (KAPP), Kaiga
Kakrapar Atomic Power Station (KAPS), Kakrapar
Kundankulam Atomic Power Project, Kundankulam
Madras Atomic Power Station (MAPS), Kalpakkam
Narora Atomic Power Station (NAPS), Bullandshahr (Uttar Pradesh)
Rajasthan Atomic Power Station (RAPS) and Rajasthan Atomic Power Project, Rawatbhata
Tarapur Atomic Power Station (TAPS) and Tarapur Atomic Power Project, Tarapur

Uranium Corporation of India, Ltd. (UCIL):

Bhatin Uranium Mine and Mill, Bhatin
Jaduguda Uranium Mine and Mill, Jaduguda
Narwapahar Uranium Mine and Mill, Narwapahar
Uranium Mine and Mill, Narwapahar, Jaduguda, and Bhatin
Uranium Mine, Turamdih
Uranium Recovery Plants, Mosabini (a.k.a. Masabeni), Rakha and Surda (a.k.a. Surdat)

Appendix B to Supplement No. 4 to Part 744 (Entity List)—Listed Subordinates of Listed Pakistani Organizations

The subordinates listed in this appendix are considered listed entities to the Entity

List. Subordinates have the same license requirements and review policy as the organizations they are identified under. The subordinates in this appendix are listed in alphabetical order under the organization that they are identified with, which are also listed in alphabetical order.

Defence Science and Technology Organization (DESTO):

Chaklala Defense Science and Technology Organization
Daud Khel Chemical Plant, Lahore
Karachi CBW & BW Warfare R&D Laboratory

Pakistan Atomic Energy Commission (PAEC):

Atomic Energy Minerals Centre, Lahore
Baghalchur Uranium Mine, Baghalchur
Center for Nuclear Studies, Islamabad (also PINSTECH)
Chasma Fuel Fabrication Plant, Kundian
Chasma Nuclear Power Plant (CHASNUPP), Kundian
Computer and Development Division, KANUPP Institute of Nuclear Power Engineering (KINPOE)
Computer Training Center (also PINSTECH), Islamabad
Dera Ghazi Khan Uranium Mine, Dera Ghazi Khan
Directorate of Technical Development
Directorate of Technical Equipment
Directorate of Technical Procurement
Hard Rock Division, Penshawar
Hawkes Bay Depot
Heavy Water Production Plant, KANUPP, Karachi
Institute of Nuclear Power, Islamabad
Issa Khel/Kubul Kel Uranium Mines and Mills, Miniawali District
Karachi Nuclear Power Plant (KANUPP), Karachi
KANUPP Institute of Nuclear Power Engineering (KINPOE), Karachi
Khushab Reactor, Khushab, Punjab
Mineral Sands Program, Karachi
Multan Heavy Water Production Facility, Multan Division, Punjab
National Engineering Service of Pakistan, CHASMA Nuclear Power Plant (CHASNUPP), Kundian
Science and Engineering Services Directorate
Uranium Conversion Facility, Islamabad

Pakistan Institute for Nuclear Science and Technology (PINSTECH):

New Laboratories, Rawalpindi
Nuclear Track Detection Center
Parr-1 Research Reactor
Parr-2 Research Reactor
Pilot Reprocessing Plant, New Laboratories
Solid State Nuclear Track Detection Center

Space and Upper Atmospheric Research Commission (SUPARCO):

Aerospace Institute, Islamabad
Computer Center, Karachi
Control System Laboratories
Flight Test Range, Sonmiani Beach
Instrumentation Laboratories, Karachi
Material Research Division
Quality Control and Assurance Unit
Rocket Bodies Manufacturing Unit
Solid Composite Propellant Unit
Space and Atmospheric Research Center, Karachi
Static Test Unit, Karachi

Dated: March 14, 2000.

Iain S. Baird,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 00–6653 Filed 3–14–00; 3:06 pm]

BILLING CODE 3510–33–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 15, 16 and 17

RIN 3038–ZA10

Changes in Reporting Levels for Large Trader Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Final Rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) periodically reviews its large trader reporting rules to ensure that the Commission is receiving adequate information to carry out its market surveillance programs. Based upon the Commission's most recent review of these rules the Commission is amending, as proposed, Parts 15, 16, and 17 of its rules, 17 CFR Parts 15, 16 and 17. The final amendments to Part 15 raise the reporting levels at which futures commission merchants (FCMs), clearing members, foreign brokers,[1] and traders must file large trader reports in certain commodities to reduce the number of required reports. The Commission is also deleting, as proposed, the requirement that where an independent account controller trades for a number of commodity pools, the carrying firm must identify separately each such commodity pool. In addition, the amendments delete, as proposed, reporting Rule 17.01(c) under which a reporting firm was required to identify the number and name of other accounts that the trader controlled or owned that were not included in the special account.

The Commission is also reorganizing, as proposed, the identifying information large traders report on CFTC Form 40 "Statement of Reporting Trader" to obtain and present data more useful to the Commission's market surveillance activities. In addition, the Commission is deleting the requirement under Part 16, as proposed, that exchanges provide weekly option large trader data directly to the Commission. These final amendments streamline the reporting process and substantially lessen the burden on persons reporting, as well as the processing workload of the Commission, without compromising the integrity of the Commission's large trader reporting system, its market surveillance activities or its oversight responsibilities.

EFFECTIVE DATE: May 16, 2000.

FOR FURTHER INFORMATION CONTACT: Lamont L. Reese, or Kimberly A. Browning, Assistant Chief Counsel, Division of Economic Analysis, Three Lafayette Centre, 1155 21st Street, NW, Washington, D.C. 20581, telephone (202) 418–5600, or electronically [lreese@cftc.gov] or [kbrowning@cftc.gov].

SUPPLEMENTARY INFORMATION:

I. Background

The Commission has re-examined its rules regarding its large trader reporting system. The Commission's large-trader reporting system is an important Commission oversight tool. These rules require FCMs to report to the Commission position information of the largest futures and options traders and require the traders themselves to provide certain identifying information. Reporting levels are set in the designated futures and option markets under the authority of sections 4i and 4c of the Act to ensure that the Commission receives adequate information to carry out its market surveillance programs. These market surveillance programs are designed to detect and to deter market congestion and price manipulation and to enforce speculative position limits. They also provide information regarding the overall hedging and speculative use of, and foreign participation in, the futures markets and other matters of public interest. Generally, the firm carrying the reportable trader's position files large trader reports.[2]

[1] FCMs, clearing members and foreign brokers are referred to herein collectively as "firms."

[2] Specifically, Parts 17 and 18 of the regulations require reports from firms and traders, respectively, when a trader holds a "reportable position." A reportable position is any open contract position that at the close of the market on any business day equals or exceeds the quantity specified in Commission Rule 15.03 in either: (1) Any one future of any commodity on any one contract market, excluding futures contracts against which notices of delivery have been stopped by a trader or issued by the clearing organization of a contract market; or (2) Long or short put or call options that exercise into the same future of any commodity on any one contract market. 17 CFR 15.00 and Part 150. The firms which carry accounts for traders holding "reportable positions" are required to identify those accounts by filing a CFTC Form 102, discussed infra, and to report all reportable positions in the accounts to the Commission. The individual trader who holds or controls the reportable position, however, is required to report to the Commission only in response to a special call.

[3] Part 17 of the Commission's regulations requires that firms report to the Commission when an account first becomes reportable. When a trade first exceeds a reporting level, the firm labels the account a special account. The firm assigns a reporting number to the special account and reports all information to the Commission using this number. The firm must also file with the Commission Form 102. Commission Rule 17.01, 17 CFR 17.01. CFTC Form 102 identifies persons who have a financial interest in or trading control of a special account, informs the Commission of the type of account that is being reported and gives preliminary information whether positions and transactions are commercial or noncommercial in nature. The CFTC Form 102 must also be updated when information concerning financial interest in, or control of, the special account changes. 17 CFR 17.02.

[4] Under Part 18 of the Commission's regulations, traders who own or control reportable positions are required to file a CFTC Form 40 on call by the Commission or its delegee disclosing information about the ownership or control of their futures and option positions.

II. Proposed Rulemakings

A. Parts 15 and 17 (64 FR 5200)

Based upon the Commission's re-examination of its large trader reporting system rules, the Commission published a notice of proposed rulemaking (proposed rulemaking) to amend Parts 15 and 17 of its rules. 64 FR 5200 (February 3, 1999). Specifically, the Commission proposed to raise the reporting levels in certain domestic contracts. The Commission also proposed to modify reporting levels for foreign currencies. In addition, the Commission proposed to list the reporting levels for the grains and soybeans in terms of contracts rather than bushels.

The Commission also proposed to streamline the reporting process by deleting those sections of § 17.01 requiring that "special account" [3] data reflected on CFTC Form 102s must include specific information on commodity pools and pool operators, as well as "other account" data, described infra, that § 17.01(c) required. In addition, the Commission proposed to reorganize its Form 40,[4] to present data in a more useful manner.

Two commenters, the Chicago Board of Trade (CBT) and the Chicago Mercantile Exchange (CME), responded to the notice of proposed rulemaking. Both CBT and CME objected to the majority of the proposed amendments. In summary, these two exchanges similarly opined that through implementation of the proposed amendments, the market surveillance activities of self-regulatory organizations would be compromised by "eliminating the collection of important market data that [the exchanges rely] upon * * * as part of [their] rigorous financial and market surveillance programs." [5] In addition, both CBT and CME expressed the same view that the exchanges, and not the Commission, should set reporting levels. These comments are discussed in greater detail below.

B. Part 16 (61 FR 37409)

Separately, in May 1997, the Commission amended its reporting rules to require that firms file option large trader reports with the Commission on a daily basis. 62 FR 24026 (May 2, 1997). Although as part of that rulemaking, the Commission proposed deleting the requirement under Part 16 that contract markets provide weekly option large trader data directly to the Commission,[6] in issuing final rules, the Commission deferred taking that action until after all firms began to provide the required daily reports. The Commission explained that it was in the process of reengineering its market surveillance software to accommodate the receipt and processing of daily option large trade data, directly from the firms, and that collection of such information could begin only after the Commission had completed its software development and had tested the software jointly with the firms. The Commission further stated that since the process could be completed prior to the Commission's deletion of the requirement that exchanges report larger trader option information under Part 16, it "will take no enforcement action against an exchange for not providing weekly option large trader data upon a finding that firms are providing such data for contract markets on the exchange." [7]

III. Final Rules

A. Reporting Levels

In the proposed rulemaking, the Commission explained that it "periodically reviews information concerning trading volume, open interest, and the number and position sizes of individual traders relative to the reporting levels for each market to determine if coverage of open interest is adequate for effective market surveillance." 64 FR 5201. The Commission noted that in performing such periodic reviews, it is also "mindful of the paperwork burden associated with these reporting requirements and reviews them with an eye to streamlining that burden to the extent compatible with its responsibilities for rigorous surveillance of the futures and option markets." Id. In this regard, the Commission explained that "its most recent review of reporting levels indicated that the size of trading volume, open interest, and position of individual traders would enable the Commission to raise [certain] reporting levels". Id.[8]

The Commission also proposed modification of the reporting levels for foreign currencies. In particular, the Commission noted that "Commission Rule 15.03 does not distinguish among foreign currencies, setting a uniform standard for all. However, surveillance of contracts on currencies of the major economies requires fewer large trader reports than for contracts on the currencies of the emerging markets." Id. Accordingly, the Commission proposed to amend Rule 15.03 to classify the European currency unit (and its successor, the Euro) and the currencies of Japan, Germany, the UK, France, Italy, Canada, Australia, Switzerland, Sweden, Belgium, and the Netherlands as "Major Foreign Currencies" and to raise the reporting level applicable to them to 400 from the then current level of 200 contracts.

In addition, the Commission proposed to lower the reporting level for all other foreign currencies to 100 contracts in order to obtain needed information in surveilling these contracts. In addition,

[5] See the CBT's letter of April 5, 1999 to the Commission (CBT letter).

[6] See, 61 FR 37409 (July 18, 1996) (Part 16 proposed rulemaking).

[7] 62 FR 24032. The Commission delegated to the Director of the Division of Economic Analysis (Division), the authority to make the required findings and determination granting this no-action relief to the exchanges. Id. For a complete discussion of the comments received in response to the Commission's Part 16 proposed rulemaking, see Id.

[8] Specifically, the Commission proposed to raise reporting levels as follows: (1) Lean Hogs from 50 to 100 contracts, (2) Rough Rice from 25 to 50 contracts, (3) Goldman Sachs Commodity Index from 25 to 100 contracts, (4) Soybean Oil from 175 to 200 contracts, (5) Soybean Meal from 175 to 200 contracts, (6) 1-Month LIBOR from 100 to 300 contracts, (7) 30-Day Fed Funds from 100 to 300 contracts, (8) 3-Month Eurodollars from 850 to 1000 contracts, (9) 3-Month Euroyen from 25 to 100 contracts, (10) 2-Year US Treasury Notes from 200 to 500 contracts, (11) 5-Year US Treasury Notes from 300 to 800 contracts, (12) 10-Year US Treasury Notes from 500 to 1000 contracts, (13) 30-Year US Treasury Bonds from 500 to 1000 contracts, (14) Municipal Bond Index from 100 to 300 contracts, (15) Dow Jones Industrial Average Index from 25 to 100 contracts, (16) NASDAQ 100 Stock Index from 25 to 100 contracts, (17) NIKKEI Stock Average from 50 to 100 contracts, (18) Russell 2000 Stock Index from 25 to 100 contracts, (19) S&P 400 Midcap Stock Index from 25 to 100 contracts, (20) S&P 500 Stock Index from 600 to 1000 contracts, (21) Crude Oil from 300 to 350 contracts, (22) Natural Gas from 100 to 175 contracts, and (23) Sugar 11 from 300 to 400 contracts.

The Commission also proposed to delete Rule 15.03's separate reference to "GNMA," a contract that is now currently dormant. See, 17 CFR 5.2(a). The Commission explained that under this proposal, if trading in GNMAs were to be reactivated, the reporting level would be 25 contracts.

the Commission proposed a 100 contract reporting level for any contract having one of the other foreign currencies as a constituent part of a crossrate contract. The Commission explained that cross-rate contracts that are composed of two major currencies would also be considered to be a major currency. Finally, the Commission also proposed to list the reporting levels for the grains and soybeans in terms of contracts rather than bushels.[9] The Commission estimated that:

> [T]hese proposed amendments to adjust reporting levels will decrease the number of daily position reports (*i.e.*, CFTC Series '01 Reports and CFTC Form 102s) required to be filed by reporting firms by about 14 percent. (The number of CFTC Form 40s required to be filed by large traders will also decrease). However, the percent of total market open interest reported through the large trader system would remain at the level deemed sufficient for rigorous market surveillance based upon the Commission's administrative experience.

Id. at 5202.

Both CBT and CME strongly objected to the Commission's proposal to raise these reporting levels. Specifically, CME opined that "given that contract markets have primary responsibility for surveiling their markets, it is they, and not the Commission, that are best equipped to determine what reporting levels are adequate for effective surveillance."[10] Similarly, CBT recommended that "[i]nstead of raising the reportable levels for certain contracts, we recommend that the Commission consider deferring to the reportable levels adopted by the exchanges."[11] In addition, both exchanges viewed the information generated through the prior reporting levels as "necessary." In this regard, CBT indicated that the information from large trader position reporting is "extremely valuable" to their financial surveillance activities. Further, CME stated that it "does not intend to raise its reporting levels to correspond to the proposed increases. [CME believes that the Commission's projected decrease in daily position reports required to be filed by reporting firms will not occur, given that] clearing members will in fact be required to continue to report at the lower levels set by CME."[12] Similarly, CBT remarked that it will probably retain the lower reporting levels currently set in its rules for certain commodities.

Based upon thorough and careful consideration of the comments, as well as the Commission's most recent review of reporting levels, the Commission finds it appropriate to amend the reporting levels in certain domestic contracts, as well as modify reporting levels for foreign currencies, as proposed. These changes will reduce both the Commission's cost of collecting surveillance data and the cost of data filers. The exchanges may set their own reporting levels as they deem appropriate. The Commission is also listing the reporting levels for the grains and soybeans in terms of contracts rather than bushels, as proposed.[13] The Commission is also deleting, as proposed, Rule 15.03's separate reference to "GNMA."

B. Final Amendments to Special Account Information (CFTC Form 102)

Previously, Commission Rule 17.01(b)(3) required that a firm identify on CFTC Form 102, each pool, the pool's account number and name, as well as the name and location of the commodity pool for which the account controller trades. In addition, Commission Rule 17.01(c) required that a trader identify on a Form 102 the names and account numbers of all other separate accounts that the reporting trader controls or in which the trader has a ten percent or greater financial interest. ("other accounts").[14]

In proposing the amendment of § 17.01 by deleting these information requirements under 17.01(b)(3) and (c), the Commission explained that this information is no longer needed for the "operation of the Commission's surveillance data systems or by routine report from firms." *Id.* Specifically, the Commission explained that "[t]hese requirements are duplicative of more complete information on account ownership and control filed by the traders themselves on CFTC Form 40, as required by Commission Rule 18.04." *Id.*

Both CBT and CME strongly disfavored the Commission's proposals to delete the information requirements under 17.01(b)(3) and (c) as described above. In particular, CBT and CME similarly stated that they rely on this information to perform effective market and financial surveillance. In addition, both exchanges pointed out that while this information may be supplied in the CFTC Form 40, the Form 40, unlike CFTC Form 102, is filed only with the Commission. Therefore, in removing the information on commodity pools and pool operators from the Form 102, the exchanges must obtain this information in some other manner. In this regard, CBT recommended that if the Commission implements the proposed changes to Form 102, it concurrently adopt procedures to provide the exchanges with copies of the Form 40 on a routine basis. In addition, CBT also questioned the necessity of the proposed changes to Commission Rule 17.01(b)(3) and Form 102 given that "the industry has been working on an electronic Form 102 to achieve the very same objective cited by the Commission of lessening the burden of reporting requirements."[15]

After careful consideration of the comments, the Commission has determined to amend § 17.01 as proposed. The Commission continues to believe that these amendments will reduce the reporting burden on the public and the processing workload of the Commission. The Commission notes here, as it did in the proposed rulemaking, that the:

> [D]eletion of these routine requirements will not in any way affect the Commission's authority to obtain complete account information from either or both the firm and the individual trader in those individual cases where additional information is necessary to the Commission's conduct of market surveillance or to the enforcement of its rules. Nor does it affect the manner in which accounts are aggregated for calculation of compliance with speculative position limits and for other compliance purposes

64 FR 5202.

In amending § 17.01 as proposed, the Commission noted the CBT's and the CME's respective concerns over their ability to continue to obtain the information that no longer must be reported on CFTC Form 102. Accordingly, to ensure that all the exchanges will continue to have access to this information, the Commission will provide the exchanges with copies of CFTC Form 40s upon request.

C. Changes to Statement of Reporting Trader (CFTC form 40)

The Commission received no comments on its proposals to reorganize the CFTC Form 40 to present data in a more useful manner. The Commission believes it appropriate to revise its Form 40 as proposed. Accordingly, "Schedule 1" has been redesigned and now clarifies information regarding the reporting trader's hedging activities. This information includes the types of futures or options contracts used to hedge, the commercial occupations or merchandising activities of traders and the futures or option markets used for hedging. In addition, the data reflected on Schedule 1 has been reorganized, as proposed, to emphasize occupations and merchandising activities of the traders rather than the markets in which they trade.[16] In addition, the Schedule 1 "Investment Groups" category has been divided, as proposed, into the following professionally managed funds subcategories: hedge funds, college endowments, managed accounts and commodity pools, trusts, foundations, pension funds, mutual funds and insurance companies. As the Commission explained in the proposed rulemaking, "this reorganization [will] provide information of greater use for surveillance activities." Id. The revised Schedule 1 is included below.

D. Deletion of Certain Contract Market Reporting Duties Imposed Under Part 16

In March 1999, the Commission completed its market surveillance software development to accommodate the receipt and processing of daily option large trader data directly from the firms, as well as software testing jointly with the firms. Also at that time, all firms began reporting this information directly to the Commission and exchanges were told that they no longer needed to provide the data to the Commission.[17] Accordingly, the Commission is amending Part 16 of its rules by deleting, as proposed, Commission Rule 16.02, 17 CFR 16.02, under which each contract market was required to file weekly reports with the Commission containing the positions of each large trader in each option on futures contract. Similarly, the Commission is deleting, as proposed, Commission Rule 16.03, 17 CFR 16.03, under which each contract market was required to provide the Commission with account identification information regarding reportable option trader positions.

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[9] As explained in the proposed rulemaking, "prior to January 1998, it was industry practice to express open interest and volume data, as well as required position reports, for the grain and soybean futures contracts, in terms of thousands of busbels. Beginning in 1998, however, industry practice for the grains and soybean contracts changed to express data for these contracts in contract units, which is consistent with the data for all other futures and option contracts." Id. Accordingly, the Commssion proposed to conform its reporting levels to this practice.

[10] See the letter of April 14, 1999 from CME to the Commission (CME letter) at p. 2.

[11] See the CBT letter at p. 2.

[12] See the CME letter at p. 2.

[13] As the Commission explained in the proposed rulemaking, it has been its "long-standing administrative practice to set reporting levels by commodity and not by individual contract market." 64 FR 5202. Consistent with this practice, although contracts on the MidAmerica Commodity Exchange are smaller in size than those traded on other exchange, the Commission is not adjusting the reporting level for MACE contracts to compensate for the smaller bushel-size of its contracts. Therefore, a MACE trader's reporting level will be set at a lower absolute number of bushels underlying a reportable position on the exchanges that trade larger-size contracts.

[14] For example, when an individual shares control of and has a financial interest in an account with one or more persons, and that individual also has his or her own account that he or she solely controls, these accounts would not be reported as a single account for special account/Form 102 reporting purposes. See, Commission Rule 17.00(b)(ii).

[15] See the CBT letter at p:3.

[16] The Commission also made changes to the list of merchandising activities to reflect those of greater surveillance importance to the Commission.

[17] In this regard, in March 1999, the Acting Director of the Division, pursuant to the delegated authority described *supra*, issued letters to the exchanges informing them that the Commission will not take any enforcement action against them for not filing with the Commission the large option trader information required under Part 16 of the Commission's rules. All exchanges ceased filing this data at that time.

SCHEDULE 1: To be completed only by traders who checked "Yes" to question 3 of part B or question 4 of part C. (1) Complete each section that pertains to the types of futures/options in which you hedge or cover a risk exposure. (2) List or check your merchandising or marketing activity(ies). (3) List all futures/option markets used. (4) List all cash commodities hedged or risk exposure covered. (Use a continuation sheet, if necessary.)

FINANCIAL FUTURES/OPTIONS (e.g., Bonds, Notes, Bills, Eurodollars, Stock Indices & Foreign Currencies) (Check **each** activity that you hedge with futures/options)	List Futures or Option Markets Used. List Cash Markets Hedged or Risk Exposure Covered.	
	FUTURES/OPTION MARKETS USED	CASH MARKETS HEDGED
☐ ARBITRAGEUR, BROKER/DEALER, MARKET MAKER (A)		
☐ U.S. COMMERCIAL BANK (C) ☐ CORPORATE TREASURY (T)		
☐ NON-U.S. COMMERCIAL BANK (B) ☐ PENSION FUND (F)		
☐ SWAPS/DERIVATIVES DEALER (S) ☐ INSURANCE COMPANY (G)		
☐ MORTGAGE ORIGINATOR (M) ☐ HEDGE FUNDS (H)		
☐ COLLEGE ENDOWMENT, TRUST, FOUNDATION (D)		
☐ MUTUAL FUND (E)		
☐ MANAGED ACCOUNTS AND COMMODITY POOLS (P)		
☐ OTHER (O): Specify _____ (e.g., Central Bank, savings & loan)		
AGRICULTURAL AND NATURAL RESOURCE FUTURES/OPTIONS (Other Than Livestock/Meat) (Check **each** commercial activity that you hedge with futures/options)	List Futures or Option Markets Used. List Cash Commodities Hedged or Risk Exposure Covered.	
	FUTURES/OPTION MARKETS USED	CASH COMMODITIES HEDGED
☐ PRODUCER (P): Specify _____ (e.g., farmer, miner)		
☐ MANUFACTURER (M): Specify _____ (e.g., refiner, miller, crusher, fabricator, sawmill, coffee roaster, cocoa grinder)		
☐ DEALER/MERCHANT (D): Specify _____ (e.g., wholesaler, exporter/importer, shipper, grain elevator operator, crude oil marketer)		
☐ SWAPS/DERIVATIVES (S): Specify _____		
☐ OTHER (O): Specify _____ (e.g., end user, restaurant chain)		
LIVESTOCK/MEAT FUTURES/OPTIONS (Check **each** commercial activity that you hedge with futures/options)	List Futures or Option Markets Used. List Cash Commodities Hedged or Risk Exposure Covered.	
	FUTURES/OPTION MARKETS USED	CASH COMMODITIES HEDGED
☐ LIVESTOCK FEEDER (F): Specify _____ (e.g., cattle feeder, hog feeder, poultry feeder)		
☐ LIVESTOCK SLAUGHTERER (S): Specify_____		
☐ OTHER (O): Specify _____ (e.g., cow/calf operator, meat processor, bacon slicer, warehouseman, restaurant chain, swaps/derivatives dealer)		

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IV. Related Matters

A. The Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies consider the impact of their rules on small businesses. The Commission has previously determined that large traders and FCMs are not "small entities" for purposes of the RFA. 47 FR 18618–18621 (April 30, 1982). The final amendments to reporting requirements fall mainly upon FCMs. Similarly, foreign brokers and foreign traders report only if carrying or holding reportable, *i.e.*, large positions. In addition, these final amendments relieve a regulatory burden. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

Commission Rule 15.03 affects the collection requirements of Part 17 and Part 18 rules. Former Commission Rules 16.02 and 16.03 contained information collection requirements. Commission Rule 17.01 contains information collection requirements. As the Paperwork Reduction Act of 1995 (Pub. L. 104–13 (May 13, 1996)) requires, the Commission submitted a copy of these rules and the associated paperwork burden to the Office of Management and Budget (OMB) for its review (44 U.S.C. 3504(h)) and requested comments on the paperwork burden from the public. The Commission did not receive comments addressing this specific associated paperwork burden. The Commission did receive and address, however, comments concerning the information that would be collected under the proposed rules.

OMB previously approved the collection of information related to these rules as information collection (3038–0009), Large Trader Reports. The final rules the Commission adopted, which have been submitted to OMB for approval, have the following paperwork burden:

Number of respondents: 5,391.
Estimated average hours per response: .35.
Frequency of response: daily.
Number of responses per year: 70,940.
Annual reporting burden: 24,829.

This represents a reduction of 1,426 burden hours as a result of the rule changes adopted to increase the reporting levels. Persons wishing to comment on the paperwork burden contained in the final rules may contact the Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB, Washington, DC 20503, (202) 395–7340. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418–5160.

List of Subjects

17 CFR Part 15

Brokers, Reporting and recordkeeping requirements.

17 CFR Part 16

Commodity futures, Reporting and recordkeeping requirements.

17 CFR Part 17

Brokers, Commodity futures, Reporting and recordkeeping requirements.

In consideration of the foregoing, and pursuant to the authority contained in the Act, and, in particular, sections 4g, 4i, 5 and 8a of the Act, 7 U.S.C. 6g, 6i, 7 and 12a (1994), the Commission hereby amends Parts 15, 16 and 17 of Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 15—REPORTS—GENERAL PROVISIONS

1. The authority citation for part 15 continues to read as follows:

Authority: 7 U.S.C. 2, 4, 5, 6a, 6c, (a)-(d), 6f, 6g, 6i, 6k, 6m, 6n, 7, 9, 12a, 19 and 21; 5 U.S.C. 552 and 552(b).

2. § 15.03 is revised to read as follows:

§ 15.03 Reporting Levels.

(a) Definitions. For purposes of this section, the term major foreign currency means the currencies and cross-rates between the currencies of Japan, Germany, the U.K., France, Italy, Canada, Australia, Switzerland, Sweden, Belgium, the Netherlands and the Euro.

(b) The quantities for the purpose of reports filed under Parts 17 and 18 of this chapter are as follows:

Commodity	Number of contracts
Agricultural:	
Wheat	100
Corn	150
Oats	60
Soybeans	100
Soybean Oil	200
Soybean Meal	200
Cotton	50
Frozen Concentrated Orange Juice	50
Rough Rice	50
Live Cattle	100
Feeder Cattle	50
Lean Hogs	100
Sugar No. 11	400
Sugar No. 14	100
Cocoa	100
Coffee	50
Natural Resources:	
Copper	100
Gold	200
Silver Bullion	150
Platinum	50
No. 2 Heating Oil	250
Crude Oil, Sweet	350
Unleaded Gasoline	150
Natural Gas	175

Commodity	Number of contracts
Financial:	
Municipal Bond Index	300
3-month (13-Week) U.S. Treasury Bills	150
30-Year U.S. Treasury Bonds	1,000
10-Year U.S. Treasury Notes	1,000
5-Year U.S. Treasury Notes	800
2-Year U.S. Treasury Notes	500
3-Month Eurodollar Time Deposit Rates	1,000
30-Day Fed Funds	300
1-month LIBOR Rates	300
3-month Euroyen	100
Major-Foreign Currencies	400
Other Foreign Currencies	100
U.S. Dollar Index	50
S&P 500 Stock Price Index	1,000
E-Mini S&P Stock Price Index	300
S&P 400 Midcap Stock Index	100
Dow Jones Industrial Average Index	100
New York Stock Exchange Composite Index	50
Amex Major Market Index, Maxi	100
NASDAQ 100 Stock Index	100
Russell 2000 Stock Index	100
Value Line Average Index	50
NIKKEI Stock Index	100
Goldman Sachs Commodity Index	100
All Other Commodities	25

PART 16—REPORTS BY CONTRACT MARKETS

3. The authority citation for Part 16 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6g, 6i, 7 and 12a.

4. Sections 16.02 and 16.03 are removed and reserved.

PART 17—REPORTS BY FUTURES COMMISSION MERCHANTS, MEMBERS OF CONTRACT MARKETS AND FOREIGN BROKERS

5. The authority citation for part 17 continues to read as follows:

Authority: 7 U.S.C. 6a, 6c, 6d, 6f, 6g, 6i, 7 and 12a unless otherwise noted.

6. § 17.01 is amended by removing and reserving paragraphs (b)(3)(ii) and (c) and by revising paragraph (b)(3)(iii) to read as follows:

§ 17.01 Special account designation and identification.

* * * * *

(b) * * *

(3) * * *

(ii) [Reserved].

(iii) If fewer than ten accounts are under control of the independent advisor, for each account the account number and the name and location of each person having a ten percent or more financial interest in the account; and

(c) [Reserved].

* * * * *

Issued in Washington, D.C., this 8th day of March 2000 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00-6345 Filed 3-16-00; 8:45 am]

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RAILROAD RETIREMENT BOARD

20 CFR Part 220

RIN 3220-AB41

Determining Disability

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations to increase from $500 to $700 the average monthly earnings guidelines used to determine whether work done by an individual may be considered regular employment. This change coincides with an increase in the guidelines contained in the regulations of the Social Security Administration for determining substantial gainful activity that became effective July 1, 1999.

DATES: *Effective Date:* This rule is effective March 17, 2000.

Applicability Date: This rule will be applied to all disability claims for which a final decision had not been rendered as of July 1, 1999.

ADDRESSES: Comments may be made to the Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Senior Attorney, (312) 751-4945, TDD (312) 751-4701.

SUPPLEMENTARY INFORMATION: The Railroad Retirement Act provides for disability annuities for employees, widow(er)s, and children of deceased railroad employees who are unable to engage in any regular employment because of a permanent physical or mental impairment. Regular employment is defined by reference to the definition of substantial gainful activity under the Social Security Act. Sections 220.141 and 220.142 of the Board's regulations reflect this definition and define "substantial gainful activity" (SGA) as work activity that involves doing significant physical or mental activities for pay or profit. Work activity is gainful if it is the kind of work usually done for pay or profit, whether or not a profit is realized. Section 220.143 sets forth earnings levels at which the Board considers a disabled person to be engaged in SGA regardless of the severity of his or her impairment. The amount of average monthly earnings that ordinarily demonstrates SGA for people with an impairment has not been increased since January 1, 1990. Consequently, with respect to months after June 1999 the Board raises from $500 to $700 the average monthly earnings guidelines used to determine whether work done by a person with a disability is substantial gainful activity. The Board has determined that an increase in the amount of earnings that constitutes SGA provides an updated indicator of when earnings demonstrate the ability to engage in SGA and is a significant improvement to the existing incentives to encourage individuals with disabilities to attempt to work. This increase also conforms to changes in the regulations of the Social Security Administration which became effective July 1, 1999 (64 FR 18566, April 15, 1999; a correction appears at 64 FR 22903, April 28, 1999).

The Board published this rule as an interim final rule on November 18, 1999 (64 FR 62976) and invited comments by July 18, 2000. No comments were received. Accordingly, the interim final rule is adopted as a final rule without change.

Dated: March 8, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00-6594 Filed 3-16-00; 8:45 am]

BILLING CODE 7905-01-P

RAILROAD RETIREMENT BOARD

20 CFR Part 322

RIN 3220-AB38

Remuneration

AGENCY: Railroad Retirement Board.

ACTION: Final rule.

SUMMARY: The Railroad Retirement Board (Board) amends its regulations defining remuneration and how that term is applied to claims for benefits under the Railroad Unemployment Insurance Act (RUIA) to reflect changes in that statute and to reflect administrative rulings not readily available to the public.

EFFECTIVE DATE: This rule will be effective April 17, 2000.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Senior Attorney, Railroad Retirement Board, (312) 751-4945, FAX (312) 751-7102, TDD (312) 751-4701.

SUPPLEMENTARY INFORMATION: As administrator of the RUIA, the Railroad Retirement Board pays benefits to qualified railroad employees for their days of unemployment or days of sickness, as defined in section 1(k) of the Act. Benefits are not payable for any day if "remuneration", as defined in section 1(j) of the RUIA, is payable or accrues to the employee for such day. Part 322 defines the term "remuneration" and explains how the term is applied to claims for benefits, but it has not been revised in recent years to reflect statutory changes and agency practice and procedure.

Section 322.1 which currently recites applicable statutory provisions, is revised to provide a plain language introduction that explains the purpose of part 322.

The general definition of "remuneration" set forth in § 322.2 is revised by expanding the definition to cover two statutory exceptions to the definition, subsidiary remuneration and supplemental unemployment or sickness benefits.

Section 322.3(b) is amended by explaining that although "remuneration" does not accrue for days that are termed "layover" days, such days are not compensable "days of unemployment". Also, a new paragraph (d) is added to explain the rules that would apply to a fully employed employee who has additional days off from work by reason of a compressed or flexible work schedule.

Paragraph (a) of § 322.4 is revised by indicating that the Board will seek information from the employee's base year employer on whether remuneration is payable for days claimed.

Section 322.5 is amended to remove a reference to an obsolete regulation.

Paragraph (a) of § 322.6 is revised by indicating that payments made to an employee with respect to personal injury are considered remuneration unless allocated to other "damages".

Section 322.7 is revised to conform with the practices of the railroad industry that coordination and dismissal allowances, separation, and severance payments are remuneration, even when paid other than through a collective bargaining agreement, and even when paid as the result of an involuntary dismissal or separation.

Section 322.8 is amended to update the amount of earnings by a local lodge official that may be regarded as subsidiary remuneration. This amendment is necessary because of a statutory change that increased to $15 per day the amount of an employee's earnings that comes within the definition of subsidiary remuneration.

Finally, a new § 322.9 is added to explain the term "subsidiary remuneration". Such remuneration does not prevent payment of benefits, except as explained in § 322.9.

The Board published this rule as a proposed rule on November 16, 1999 (64 FR 62135), and invited comments by January 18, 2000. No comments were received.

The Board, with the concurrence of OMB, has determined that this is not a significant regulatory action for purposes of Executive Order No. 12866. Therefore no regulatory impact analysis is required. The information collection requirements contained in this rule have been approved by the Office of Management and Budget under control numbers 3220-0049 and 3220-0022.

List of Subjects in 20 CFR Part 322

Railroad employees, Railroad unemployment benefits, Reporting and record keeping requirements.

For the reasons set out in the preamble, the Railroad Retirement Board amends title 20, chapter II, part 322 of the Code of Federal Regulations as follows:

PART 322—REMUNERATION

1. The authority citation for part 322 is revised to read as follows:

Authority: 45 U.S.C. 362(l).

2. Section 322.1 is revised to read as follows:

§ 322.1 Introduction.

The Railroad Unemployment Insurance Act provides benefits for a qualified employee's days of unemployment or days of sickness, as defined in section 1(k) of the Act. Under that section, no day can be a day of unemployment or a day of sickness for any employee if "remuneration" is payable or accrues to the employee for such day. In computing the amount of benefits payable to an employee for days of unemployment or days of sickness in any registration period, or in determining whether the employee has satisfied the waiting period requirement, the Board will not count any day with respect to which remuneration is payable or accrues to the employee. Section 322.2 defines the term "remuneration" and explains what types of payments to employees constitute remuneration.

3. Section 322.2 is revised to read as follows:

§ 322.2 General definition of remuneration.

(a) *Remuneration.* (1) Remuneration includes pay for services for hire, pay for time lost as defined in § 322.6, and other earned income payable or accruing with respect to any day. Income is "earned" if it is payable or accrues in consideration of services and if such services were in turn rendered in consideration of the income payable or accruing.

(2) Remuneration includes income in the form of a commodity, service, or privilege if, before the performance of the service for which it is payment, the

parties have agreed upon the value of such commodity, service, or privilege, and that such part of the amount agreed upon to be paid may be paid in the form of such commodity, service, or privilege.

(3) Remuneration for a working day that includes a part of two consecutive calendar days is deemed to have been earned on the first of such two days.

(b) *Subsidiary remuneration.* For the purpose of this part, remuneration does not include subsidiary remuneration, as defined in § 322.9. Subsidiary remuneration for any day does not prevent such day from being a day of unemployment or a day of sickness, except as explained in § 322.9.

(c) *Supplemental unemployment or sickness benefits.* The term remuneration does not include money payments received by an employee pursuant to any nongovernmental plan for unemployment or sickness insurance, as defined in part 323 of this chapter. Employer payments of sick pay to an employee are remuneration, except when payment is made pursuant to a nongovernmental plan for sickness insurance.

4. In § 322.3, revise paragraph (b), and add a new paragraph (d) to read as follows:

§ 322.3 Determining the days with respect to which remuneration is payable or accrues.

* * * * *

(b) *Layover days.* Remuneration shall not be regarded as payable or accruing to an employee with respect to his or her "layover" days between regular assignments in train and engine service solely because they are termed "layover" days. But no such "layover" day may be considered as a day of unemployment or sickness. See § 332.6 of this chapter.

* * * * *

(d) *Equivalent of full-time work.* An employee who works fewer than five days each week under a compressed work schedule that provides the equivalent of full-time employment does not earn remuneration with respect to his or her additional rest days resulting from such work schedule, but such employee will not be considered to be available for work on such rest days. See § 327.10(d) of this chapter.

5. In § 322.4, revise paragraph (a) to read as follows:

§ 322.4 Consideration of evidence.

(a) *Initial proof.* A claimant's certification that he or she did not work on any day claimed and did not receive income such as vacation pay or pay for time lost for any such day shall constitute sufficient evidence for an initial finding that no remuneration is payable or has accrued to him or her with respect to such day, unless a base year employer reports that he or she worked on days claimed or received payments that constitute remuneration as defined in this part, or unless there is other conflicting evidence.

* * * * *

§ 322.5 [Amended]

6. Amend § 322.5(c)(2) by removing "in accordance with § 222.3(h) of this chapter".

7. In § 322.6, revise paragraph (a) to read as follows:

§ 322.6 Pay for time lost.

(a) *Definition.* The term "pay for time lost" means any payment made to an employee with respect to an identifiable period of time during which the employee was absent from the active service of the person or company making the payment, including absence on account of personal injury. The entire amount paid to an employee who was absent on account of personal injury is pay for time lost if such amount includes pay for time lost, unless at the time of payment the parties, by agreement, specify a different amount as the amount of the pay for time lost and the period of time covered by such pay. The amount allocated to time lost is remuneration for every day in the period of time lost. The amount of a payment for personal injury that is apportioned to factors other than time lost is, nevertheless, a portion of "damages" for the purposes of part 341 of this chapter.

* * * * *

8. Revise § 322.7 to read as follows:

§ 322.7 Dismissal, coordination, and separation allowances.

(a) *Coordination or dismissal allowance.* Coordination or dismissal allowances are payments made to an employee who has been furloughed for a specified period of time during which he or she continues in an employment relationship and remains subject to call. Such pay is remuneration with respect to each day in the month or other period for which it is payable. The employer shall be held liable to the Board for any benefits paid to the employee and found recoverable under section 2(f) of the Railroad Unemployment Insurance Act by reason of the payment of any such allowances or other pay for the same days for which the Board paid benefits.

(b) *Separation allowance.* A separation allowance or severance payment made to an employee who voluntarily or involuntarily terminates his or her employment relationship is not remuneration with respect to any day after the employment relationship is severed. An employee who is paid a separation allowance, whether in a lump sum or in installments, is disqualified by section 4(a–1)(iii) of the Railroad Unemployment Insurance Act from receiving unemployment or sickness benefits for the period of time approximating the length of time it would have taken the employee to earn, at his or her "straight" time rate of pay, the amount of the separation allowance if he or she had continued working in the job from which he or she separated.

§ 322.8 [Amended]

9. In § 322.8(e) remove the phrase "three dollars" and add in its place "$15".

10. Add new § 322.9 to read as follows:

§ 322.9 Subsidiary remuneration.

(a) *Definition.* The term "subsidiary remuneration" means remuneration not in excess of an average of $15 per day for the period with respect to which it is payable or accrues, if

(1) The work from which the remuneration derives requires substantially less than full time as determined by generally prevailing standards; and

(2) The work is susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another occupation.

(b) *Exception.* If a claimant's remuneration is "compensation" as defined in part 302 of this chapter, such remuneration is not subsidiary unless the claimant had base year compensation from a different position or occupation of not less than two and one-half times the monthly compensation base for months in the base year in which he or she received the remuneration. Compensation in excess of an average of $15 per day is remuneration for the days for which it is payable or accrues.

(c) *Period for which remuneration is payable or accrues.* The "period" of time used in determining whether remuneration averages more than $15 per day depends on the terms and conditions of the employment and the rate of payment for the work. If the claimant is paid a monthly salary, the "month" is the period with respect to which the pay must average not more than $15 per day. The average is the monthly salary divided by 30. If the claimant is paid a weekly salary, the amount of the salary is divided by seven. If the claimant is paid by the hour or the day, the "period" is the day. Where payment is made by the hour or the day, the pay is not added up and then averaged out over the week or the month. For example, earnings of $20 on one day and $10 on another day do not average out to $15 per day so as to permit both days to be considered as days of unemployment or days of sickness.

(d) *Substantially less than full time.* The phrase "substantially less than full time" means employment of not more than four hours per day.

(e) *Compatibility with full time employment.* Work is considered to be susceptible of performance at such times and under such circumstances as not to be inconsistent with the holding of normal full-time employment in another position or occupation if it is a form of secondary employment that a claimant has done or could do at his or her own convenience while performing the duties of his or her railroad job.

(f) *Determinations.* The Board shall make a determination whether remuneration is subsidiary by applying the standards in this section to the facts of each case. Earnings that average more than $15 per day are not subsidiary remuneration under any circumstances. Also, earnings of any amount that are included in a claimant's qualifying base year compensation are not subsidiary remuneration. Even if earnings do not exceed an average of $15 per day, they may still not be subsidiary remuneration if the claimant worked more than four hours per day or if the work had to be performed at such times and under such circumstances as to be inconsistent with the holding of normal full-time work in his or her regular railroad work. If the evidence does not establish that the earnings are subsidiary remuneration, the question whether they are remuneration for particular days will then be considered.

(g) *Examples.* The following examples illustrate this section.

(1) A claimant receives a salary of $350 per month for serving as secretary-treasurer of the local lodge of his union. He performs a variety of duties at his own convenience while holding down a full-time railroad job in his craft. The average payment per day is not more than $15 and is, therefore, subsidiary remuneration.

(2) A claimant worked three hours per day, at $5 per hour, in the family insurance business. He was marked up for work as an extra board trainman and worked whenever he was called. When called, he skipped work in the family insurance business. His insurance earnings of $15 per day were subsidiary remuneration.

(3) While unemployed from her railroad job, a claimant took a job as a school bus driver. She worked from 7 a.m. to 9 a.m., and 2:30 p.m. to 5:30 p.m. Her regular railroad job was a daytime job from 8 a.m. to 4:30 p.m. Her pay as a school bus driver was not subsidiary remuneration because the job was not compatible with the holding of full time work in her regular railroad occupation.

Dated: March 8, 2000.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 00–6593 Filed 3–16–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 290

RIN 1076–AD74

Tribal Revenue Allocation Plans

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is establishing regulations to implement Section 11(b)(3) of the Indian Gaming Regulatory Act (IGRA). This rule establishes procedures for the submission, review, and approval of tribal revenue allocation plans for the distribution of net gaming revenues from tribal gaming activities.

EFFECTIVE DATE: These regulations take effect on April 17, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Pierskalla, Management Analyst, Office of Indian Gaming Management, at 202–219–4066.

SUPPLEMENTARY INFORMATION: The IGRA, 25 U.S.C. § 2701 *et seq.*, was signed into law on October 17, 1988. Pursuant to Section 11(b)(3)(B), 25 U.S.C. 2710(b)(3)(B), of IGRA, the Secretary of the Interior (Secretary) is charged with the review and approval of tribal revenue allocation plans relating to the distribution of net gaming revenues from a tribal gaming activity. These regulations establish a method for the submission, review and approval of tribal revenue allocation plans.

The IGRA provides that net gaming revenues from class II and class III gaming may be distributed in the form of per capita payments to members of the Indian tribe provided the Indian tribe has prepared a Tribal Revenue Allocation Plan which is approved by the Secretary. On December 21, 1992, the Assistant Secretary—Indian Affairs (AS–IA) issued Guidelines to Govern the Review and Approval of Tribal Revenue Allocation Plans. As outlined in IGRA, the Guidelines require that the Indian tribe must dedicate a significant share (or portion) of net gaming revenues for economic development and governmental purposes, that the interests of minors and other legally incompetent persons entitled to receive per capita payments must be protected and preserved, and that per capita payments are subject to Federal income taxes. The AS–IA does not mandate the distribution of net gaming revenues to individual tribal members. However, it is essential that Indian tribes choosing to make per capita payments comply with the requirements of IGRA. The proposed rule was published on June 7, 1996 (61 FR 29044). A notice to extend the comment period was published on March 7, 1997 (62 FR 5588). Comments received during the comment period ending August 6, 1996, and March 24, 1997, were considered in the drafting of this final rule.

Review of Public Comments

Fifty-three comments were submitted in response to the June 7, 1996, **Federal Register** publication of the proposed rule, 25 CFR 290, and the March 7, 1997, **Federal Register** publication to extend the comment period.

Section 290.1 Purpose

No comments were received on this section.

Section 290.2 Definitions—Governing Document

One comment recommended adding a definition for the term "governing document."

Response: This comment was not adopted. Some tribes do not have constitutions or other written governing documents. Some tribes which do have written governing documents have also developed substantial bodies of tribal law interpreting those documents. Accordingly, we have substituted the phrase "applicable tribal law" as a more inclusive term than the phrase "governing document" in the definition of "Member of an Indian tribe" and elsewhere. It was unnecessary, therefore, to define the term "governing document."

Section 290.2 Definitions—Legal Incompetent

One comment suggested that the definition of the term "legal

incompetent" include individuals declared by tribal or BIA Social Services to be in need of "supervised accounts" based on documented conditions such as incarceration, physical conditions, and mental/emotional conditions.

Response: This comment was not adopted but the definition is amended to add "or as established by the tribe" following tribal justice systems, to allow the tribe to determine whether an individual is in need of a supervised account.

Another comment suggested that "legal incompetent" be defined as an individual beneficiary eligible to participate in a per capita benefit program.

Response: This comment was not adopted. We believe it is inconsistent with IGRA. The IGRA refers to payments from net gaming revenues as per capita payments, 25 U.S.C. § 2710(b)(3); not payments "in a per capita benefit program."

Section 290.2 Definitions—Member of an Indian Tribe

One comment supported the proposed definition.

One comment objected to the use of "consistently maintained" because the usage was subject to Federal review of who is an Indian.

Another comment suggested that this definition was not sufficient since it may include individuals who are not enrolled in the tribe.

Several comments stated that the definition needs to be changed because it is too broad, invites argument, conflict, and potential litigation because it will entangle BIA in membership determinations.

Response: BIA agrees with the comments that membership determinations are internal tribal matters that should be decided by the tribe. Under § 290.23, if there are disputes arising from tribal determinations of who is a member eligible to receive per capita payments from net gaming revenues, such disputes should be resolved in tribal forums. The revision is based on a presumption that there will always be requirements for membership, whether in a constitution, ordinance, resolution, court decision, custom and tradition or some combination thereof. Together, to whatever degree they exist for a particular tribe, these sources of law will form the "applicable tribal law" for that tribe. The revision breaks the definition into two paragraphs based upon whether a particular tribe maintains a tribal roll. Paragraph (1), in effect, requires that a person be listed on the tribal rolls if rolls are kept, and paragraph (2) requires that the person be recognized as a member by the tribal governing body if rolls are not kept. Recognition by the governing body becomes the proof of membership in the absence of rolls.

Section 290.2 Definitions—Per Capita

Several comments recommended that the definition of the term "per capita" include or be distinguished from other payments made to individuals under special tribal programs from net gaming revenues.

Response: This recommendation was adopted and the definition is amended to clarify other payments set aside by the tribe for special purposes or programs.

Another comment suggested that the term "per capita" be defined as a benefit paid or to be paid in the future to all members of the tribe.

Response: This comment was not adopted because IGRA refers to payments from net gaming revenues as per capita payments, 25 U.S.C. 2710(b)(3), and not as "per capita benefits." The definition of the term is modified to "Per Capita Payment" for clarification purposes, and amended to reflect that the term "payment" includes money or other thing of value.

Section 290.3 Information Collection

This section is added as a requirement under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d). The information collection requirements contained in 290.12, 290.17, 290.24 and 290.26 have been approved by the OMB and assigned clearance number 1076–0152, expiration date March 31, 2000.

Section 290.4 What is a Tribal Revenue Allocation Plan?

No comments were received on this section.

Section 290.5 Who Approves Tribal Revenue Allocation Plans?

Section 290.5, formerly § 290.3, is renumbered and amended to clarify who will review and approve tribal revenue allocation plans.

One comment recommended that Indian tribes should not be required to seek Federal approval for the allocation of tribal dollars because such approval is insulting, paternalistic and diminishes tribal sovereignty.

Another comment requested that small one time payments, i.e. $100–$500, be excluded from the submission, review and approval of a tribal revenue allocation plan.

Response: These comments were not adopted. Congress has mandated that tribes submit and receive approval of tribal revenue allocation plans from the Secretary, 25 U.S.C. 2710(b)(3)(B). Regulations promulgated by BIA must comply with the requirements in IGRA.

Another comment suggested that the rule permit Indian tribes who are not subject to IGRA to adopt tribal revenue allocation plans subject to review and approval by the Secretary, and regardless of IGRA requirements, permit Indian tribes with gaming revenues to adopt a tribal revenue allocation plan in accordance with any applicable regulation, subject to the review and approval of the Secretary.

Response: This comment was not adopted. Unless specifically exempted from IGRA by Congress, any tribe is subject to IGRA, 25 U.S.C. 2703(5), 2710(b)(1) if it is:

(1) Recognized by the Secretary as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; and

(2) Recognized as possessing powers of self-government.

Section 290.6 Who Must Submit a Tribal Revenue Allocation Plan?

This section, formerly § 290.5 was renumbered due to the addition of § 290.3.

No comments were received on this section.

Section 290.7 Must An Indian Tribe Have a Tribal Revenue Allocation Plan If It Is Not Making Per Capita Payments?

This section, formerly § 290.6 was renumbered due to the addition of § 290.3.

No comments were received on this section.

Section 290.8 Do Indian Tribes Have to Make Per Capita Payments From Net Gaming Revenues to Tribal Members?

This section, formerly § 290.7 was renumbered due to the addition of § 290.3.

No comments were received on this section.

Section 290.9 How May an Indian Tribe Use Net Gaming Revenues If It Does Not Have an Approved Tribal Revenue Allocation Plan?

This section formerly § 290.8 was renumbered due to the addition of § 290.3.

No comments were received on this section.

Section 290.10 Is an Indian Tribe in Violation of IGRA If It Makes Per Capita Payments to Members From Net Gaming Revenues Without an Approved Tribal Revenue Allocation Plan?

Section 290.10 combines former §§ 290.9 and 290.24 to address the consequences of making per capita payments without an approved tribal revenue allocation plan.

One comment requested that the rule identify the ramifications for non-compliance and the procedures that the Department of Justice (DOJ) would use to enforce the rule.

Response: This comment was not adopted because enforcement procedures have not been discussed with DOJ, 25 U.S.C. 2716(c). The DOJ and the National Indian Gaming Commission (NIGC) pursuant to 25 U.S.C. 2713 (b)(1), 25 U.S.C. 2710 (d)(1)(A)(ii), and 25 U.S.C. 2710 (b)(3)(A)–(D), have authority to enforce the per capita requirements of IGRA.

290.11 May an Indian Tribe Distribute Per Capita Payments From Net Gaming Revenues Derived from Either Class II or Class III Gaming Without a Tribal Revenue Allocation Plan?

This section, formerly § 290.10, was renumbered due to the addition of § 290.3.

No comments were received on this section.

Section 290.12 What Information Must the Tribal Revenue Allocation Plan Contain?

This section, formerly § 290.11, was renumbered due to the addition of § 290.3.

One comment questioned the need for this section, but after review agreed that the section merely stated what must be in the plan and that other sections discussed the topics in more detail. Paragraph (a) requires that tribes prepare a tribal revenue allocation plan that includes a percentage breakdown of the uses to which net gaming revenues will be allocated. The percentage breakdown must total 100 percent.

One comment requested clarification that only a percentage breakdown of uses is required and not actual budget figures.

Response: This comment was not adopted because that requirement is already specified in paragraph (a).

Paragraph (b) The revenue allocation plan must meet the following criteria:

No comments were received on this paragraph.

Paragraph (b)(1) formerly 290.11 paragraph (b)(1) is removed.

Eight comments were received objecting to the limitation of 50 percent of the net gaming revenues be used for per capita payments and recommended reconsideration or elimination of the section.

Response: This recommendation was adopted. Each tribal revenue allocation plan will be reviewed by the appropriate Bureau official (ABO) on a case-by-case basis to ensure compliance with IGRA and 25 CFR part 290.

Paragraph (b)(1) is revised due to the deletion of § 290.11 (b)(1) of the proposed rule.

One comment suggested that this section, in addition to funding tribal government operations or programs and promoting tribal economic development, mandates that the tribe must also provide for the general welfare of the Indian tribe and its members; to donate to charitable organizations or to help fund operations of local government agencies.

Another comment recommended that the term "significant" be defined.

Response: These comments have been adopted in part to require the tribe to reserve an adequate portion of net gaming revenues for one or more of the purposes set forth in the IGRA, 25 U.S.C. 2710 (b)(2)(B).

Paragraph (b)(2) formerly paragraph § 290.11 (b)(3) is revised due to the deletion of § 290.11(b)(1) of the proposed rule.

One comment suggested that this section was open ended and needed to outline specific requirements the Secretary must review as required by IGRA.

This comment was adopted to require detailed information to allow the ABO to determine compliance with this section and IGRA.

Paragraph (b)(3) combines former §§ 290.11(b)(4) and 290.15 because they refer to the disbursement of minors' and legal incompetents' per capita payments to the parents or legal guardians of such minors or legal incompetents.

Several comments questioned why a minor's or legal incompetent's shares must be made available to his/her parent or legal guardian and whether the parents or legal guardians should be accountable for the funds they receive.

Response: This comment was not adopted because the IGRA requires the per capita payments to be disbursed to the parents or legal guardians of such minors or legal incompetents in such amounts as necessary for the health, education, or welfare, of the minor or other legally incompetent. It is up to the tribe to establish a method for the accountability of the funds.

One comment suggested that the rule address the following: (1) A tribe disperses funds to a parent or legal guardian and the parent or legal guardian fails to use the funds for the minor or legal incompetent. Has the tribe met its obligation to protect and preserve the shares allocated to minors and legal incompetents? (2) Precautions that a tribe may take to protect and preserve the shares allocated to minors and legal incompetents? (3) Circumstances under which a tribe should refuse to disperse funds to the parent or legal guardian of a minor or legal incompetent?

One comment recommended that §§ 290.11(b)(4) and 290.15 be cross referenced because they appear to require a separate plan for the disbursement of minors' and legal incompetents' per capita payments to the parents or legal guardians of such minors or legal incompetents.

One comment suggested this section was open ended and needed more specific information as to whether guidance is directed to the field or the public.

Response: These comments were adopted and the new revised paragraph (b)(3) includes these requirements.

Paragraph (b)(4) formerly § 290.11 (b)(5) is renumbered due to the deletion of paragraph (b)(1).

No comments were received on this paragraph.

Paragraph (b)(5) formerly § 290.11 (b)(6) is renumbered due to the deletion of paragraph (b)(1).

One comment asked whether existing tribal systems fulfill the requirement for a forum or process for the resolution of discrepancy in expenditure of net gaming revenues or disputes regarding per capita payments.

Response: This comment was not adopted but is amended to read: "and must utilize or establish a tribal court system, forum or administrative process for resolution of disputes" following eligibility requirements.

Section 290.13 Under What Conditions May an Indian Tribe Distribute Per Capita Payments?

This section, formerly 290.12, was renumbered due to the addition of § 290.3.

No comments were received on this section.

Section 290.14 Who Can Share in a Per Capita Payment?

Section 290.14 combines former §§ 290.13 and 290.14.

One comment recommended these sections be combined for clarification.

Response: This comment was adopted, §§ 290.13 and 290.14 are combined because they both refer to the per capita distribution of payments.

Section 290.15 Must the Indian Tribe Establish Trust Accounts With Financial Institutions for Minors and Legal Incompetents?

Section 290.15 formerly § 290.16 is renumbered, the former § 290.15 and § 290.11(b)(3) are combined under § 290.12(b)(4).

One comment suggested the inclusion of the following language: "Congress has not mandated any one way for you to protect and preserve the interests of minors and legal incompetents, as long as you do not distribute benefits currently to the parents or legal guardian in such a way that the parents or legal guardian may use the benefits for their own purposes unrelated to the minor's or legal incompetent's health, education, or welfare needs. You have the flexibility to consider all relevant factors, including desired income tax and other consequences for the minors and legal incompetents, in deciding how best to structure your benefit programs, subject to the requirement that the Secretary must review and approve your revenue allocation plan."

Response: This comment was not adopted. The IGRA authorizes "per capita payments" from net gaming revenues, 25 U.S.C. 2710(b)(3), not "benefits." This section has been amended to clarify that the tribe may establish trust accounts with financial institutions but should explore investment options to structure the accounts to the benefit of their members.

Section 290.16 Can the Per Capita Payments of Minors and Legal Incompetents be Deposited into Accounts Held by BIA or OTFM?

Section 290.16 formerly § 290.17 is renumbered, because former §§ 290.15 and 290.11(b)(3) are combined under § 290.12(b)(4).

One comment indicated that this section is detrimental to the health and well being of Indians requiring supervised accounts.

Another comment concerned the placement of gaming revenues into Proceeds of Labor accounts.

Another comment recommended rewording of the section because trust funds are now administered by the Office of Trust Funds Management (OTFM).

Response: Only the last comment has been adopted. This section has been amended to clarify that the Secretary will not accept any deposits of payments or funds derived from net gaming revenues to any account held by BIA or OTFM. It has long been BIA policy to place only funds derived from trust assets into Individual Indian Money accounts, Indian Moneys Proceeds of Labor Escrow accounts or special deposit funds accounts held by BIA. Gaming revenues are not funds derived from trust assets or trust resources but are tribal funds under the control of the tribe. In addition, the Internal Revenue Service (IRS) regulations, 26 CFR part 31, require that Indian tribes, not BIA or OTFM, withhold taxes for all recipients.

Section 290.17 What Documents Must the Indian Tribe Include With the Tribal Revenue Allocation Plan?

Section 290.17 formerly § 290.18 is renumbered, because former §§ 290.15 and 290.11 (b)(3) are combined under § 290.12 (b)(4).

No comments were received on this section.

Section 290.18 Where Should the Indian Tribe Submit the Tribal Revenue Allocation Plan?

Section 290.18 formerly § 290.19 is renumbered, because former §§ 290.15 and 290.11 (b)(3) are combined under § 290.12 (b)(4).

One comment suggested a deadline for review by the Superintendent be included in the rule.

Response: This comment was not adopted. The Superintendent's limited role in the process is confined to a determination that the plan was adopted in accordance with applicable tribal law. There is no need for a time deadline for forwarding the plan to the ABO.

Section 290.19 How Long Will the ABO Take to Review and Approve the Tribal Revenue Allocation Plan?

Section 290.19 formerly §§ 290.20 and 290.21 are combined.

One comment recommended these sections be combined to identify the action and the time limit necessary for review and approval of the plan by the ABO.

Response: This comment has been adopted and is amended to read: "How long will the ABO take to review and approve the tribal revenue allocation plan."

Four comments questioned what would happen after the 90-day period if no action is taken by the ABO and what recourse a tribe would have if the tribal revenue allocation plan is rejected by the ABO.

Response: In response to these comments, a new paragraph (c) is added to read: "If the ABO fails to take action within the 60 days you may appeal the failure of the ABO to act on your request in accordance with the regulations at 25 CFR part 2. A tribal revenue allocation plan is not effective without the express written approval of the ABO." The changes to this section clarify that the ABO should act on the tribal revenue allocation plan within 60 days of its submission to the ABO. These changes clarify that a failure to act within this time period can be appealed under 25 CFR part 2 and that the tribal revenue allocation plan is not effective until it has the express written approval of the ABO. The reference in the proposed rule to the tribe's governing document is omitted in the final rule in order to provide adequate time for review by the ABO, to prevent a tribe's shortened review time limits from bumping the review of another tribe's plan and because IGRA specifically requires approval of the plan by the Secretary. The time deadline has been shortened to 60 days to assure prompt consideration of the plan.

Section 290.20 When Will the ABO Disapprove a Tribal Revenue Allocation Plan?

Section 290.20 formerly § 290.22 is renumbered.

No comments were received on this section.

Section 290.21 May an Indian Tribe Appeal the ABO's Decision?

Section 290.21 formerly § 290.23 is renumbered.

One comment suggested 43 CFR part 4 be included in the appeal process.

Response: No action was taken on this comment. The process set forth in 25 CFR part 2, Appeals from Administrative Action provides the mechanism for appeal to the Interior Board of Indian Appeals, the same as 43 CFR part 4.

Section 290.22 How Does the Indian Tribe and its Members Ensure Compliance With its Tribal Revenue Allocation Plan?

Section 290.22 formerly § 290.25 is renumbered.

One comment requested clarification whether existing tribal systems fulfill the requirement for a forum or process for the resolution of discrepancy in expenditures of net gaming revenues.

Response: This comment was not adopted but is amended to include a tribal court system, forum or administrative process in the tribal revenue allocation plan for reviewing expenditures of net gaming revenues and explain how you will correct deficiencies.

Section 290.23 How Does the Indian Tribe Resolve Disputes Arising From Per Capita Payments to Individual Members or Identified Groups of Members?

Section 290.23 formerly § 290.26 is renumbered.

One comment asked whether existing tribal systems fulfill the requirement for a forum or process for the resolution of disputes regarding per capita payments.

Response: This comment was not adopted but is amended to include a tribal court system, forum or administrative process to resolve disputes arising from per capita distributions.

Section 290.24 Do Revisions/ Amendments to a Tribal Revenue Allocation Plan Require Approval?

Section 290.24 formerly § 290.27 is renumbered.

No comments were received on this section.

Section 290.25 What is the Liability of the United States Under This Part?

Section 290.25 formerly § 290.28 is renumbered.

No comments were received on this section.

Section 290.26 Are Previously Approved Tribal Revenue Allocation Plans, Revisions or Amendments Subject to Review in Accordance With 25 CFR Part 290.

A new section 290.26 is added in response to the comments requesting clarification as to whether or not the submission of a revision or amendment to the tribal revenue allocation plan would necessitate the review of the entire tribal revenue allocation plan or just that portion being revised or amended.

Executive Order 12866

OMB has determined that this rule is significant. OMB's guidance on E.O. 12866 requires that a cost-benefit analysis be done for significant rules and that it contain three elements. These elements are a statement of record, an examination of alternative approaches, and an analysis of costs and benefits.

Because of the nature of IGRA and this rule, the usual economic analysis required by E.O. 12866 is neither appropriate nor needed. The intent of E.O. 12866 is to provide decision makers with appropriate information to determine that a regulatory action imposing costs and yielding benefits, or otherwise having the effects sought by authorizing legislation, is both needed and is economically justified. Whereas many regulatory actions intervene in the economic system by prohibiting or requiring certain actions, IGRA and this rule do neither. Instead, they allow tribes to voluntarily allocate gaming revenues, including per capita payments to tribal members.

This rule does nothing to either increase or decrease the revenues from gaming operations. It allows tribes to reallocate those revenues if they choose to do so. Tribes wishing to allocate gaming revenues as allowed by IGRA will incur only the minimal administrative cost of preparing and implementing the Allocation Plan required by the rule and IGRA. The Secretary of the Interior and Federal employees to whom the Secretary's authorities under IGRA are or will be delegated may also incur minimal administrative cost in implementing the rule.

The actual allocations from tribes to individual members do not result in costs or benefits as they are defined for purposes of the economic analysis required by E.O. 12866. These allocations are transfer payments rather than expenditures. Transfer payments, in themselves, do not cause the sort of resource allocations that give rise to costs and benefits. In this regard, per capita allocations of gaming revenues are similar to Social Security payments to individuals.

These regulations establish a method for the submission, review and approval of tribal revenue allocation plans in a timely manner. The tribal revenue allocation plans provide for the distribution of tribal gaming revenue for tribal use and allow for per capita payments to tribal members for private use. The IGRA, Section 2710 (b)(2)(B) requires that net gaming revenues from any tribal gaming are not to be used for purposes other than, (i) to fund tribal government operations or programs, (ii) to provide for the general welfare of the Indian tribe and its members; (iii) to promote tribal economic development; (iv) to donate to charitable organizations; or (v) to help fund operations of local government agencies. Section 2710 (b)(3) of IGRA further provides that net revenues may be used to make per capita payments to members of the Indian tribe only if, (a) the Indian tribe has prepared a plan to allocate revenues for purposes to fund tribal government operations or programs; to provide for the general welfare of the Indian tribe and its members; to promote tribal economic development; to donate to charitable organizations; or to help fund operations of local government agencies, (b) the plan is approved by the Secretary as adequate, particularly for the purpose to fund tribal government operations and programs and to promote tribal economic development, (c) the interests of minors and other legally incompetent persons who are entitled to receive any of the per capita payments are disbursed to the parents or legal guardian of such minors or legal incompetents in such amounts as may be necessary for the health, education, or welfare of the minor or other legally incompetent person under a plan approved by the Secretary and the governing body of the Indian tribe; and (d) the per capita payments are subject to Federal taxation and tribes notify members of such tax liability when payments are made.

The anticipated expenses or costs to the public or to the tribes who submit tribal revenue allocation plans will be minimal. The plans will provide for the distribution of net revenues from any tribal gaming for tribal use and per capita payments to tribal members for private use.

In accordance with IGRA, each tribe must submit a tribal revenue allocation plan if it intends to make per capita payments to members of the Indian tribe. The regulations will establish a method for the submission, review and approval of a tribal revenue allocation plan. If a tribe distributes per capita payments from net gaming revenues without an approved tribal revenue allocation plan, the DOJ or the NIGC may enforce the per capita requirements of IGRA.

On December 21, 1992, the AS-IA issued Guidelines to Govern the Review and Approval of Tribal Revenue Allocation Plans. As outlined in IGRA, the Guidelines require that the Indian tribe must dedicate a significant share (or portion) of net gaming revenues for economic development and governmental purposes, that the interests of minors and other legally incompetent persons entitled to receive per capita payments are protected and preserved, and that per capita payments are subject to Federal income taxes. The AS-IA does not mandate the distribution of net gaming revenues to individual tribal members. However, it is essential that Indian tribes choosing to make per capita payments comply with the requirements of IGRA.

The anticipated expenses or costs to the public or to the tribes who submit tribal revenue allocation plans will be minimal. The rule will not result in an annual gross effect on the economy of $100 million or more, and therefore is not an economically significant regulatory action. The rule will allow any Indian tribe that is conducting gaming to prepare a tribal revenue allocation plan for the purpose of

making per capita payments to tribal members from net gaming revenues. A tribal revenue allocation plan will not affect the total amount of net gaming revenue available to a particular tribe. Without the rule, tribes must use net gaming revenues in accordance with Section 2710 (b)(2)(B), solely for tribal group purposes. With the rule, tribes may distribute a portion of the net gaming revenue to tribal members in per capita payments, which can be spent for private purposes. The net revenue is determined by the success of the tribe's gaming operation. Only a portion of the net gaming revenues may be used to make per capita payments to tribal members. Without a tribal revenue allocation plan, a tribe cannot make per capita payments to members of the tribe but must continue to spend all net gaming revenues for the benefit of the tribe.

Currently, there are approximately 225 Indian tribes engaged in class II (bingo) and class III (casino) gaming. Although IGRA mandates how net gaming revenues are to be used by tribes, it does not require tribes to provide to anyone the amounts of net gaming revenues earned or distributed. The tribal revenue allocation plan will require that tribes provide the Secretary a percentage breakdown of the uses to which net gaming revenues are allocated. The total percentage must equal 100 percent. To some Indian tribes who were previously unsuccessful in attracting businesses to their remote lands, gaming revenues now serve as the primary economic development tool available. Gaming revenues have enabled tribes to meet and supplement Federal funding to meet the needs of their members, by providing funds for housing assistance, education assistance, medical assistance, etc.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Indian tribes are not considered to be small entities for purposes of this Act.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule does not have an annual effect on the economy of $100 million or more. Without this rule only the tribe may spend net gaming revenues in accordance with 25 U.S.C. § 2710(b)(2)(B) of IGRA. With this rule a method for the submission, review and approval of a tribal revenue allocation plan is established to allow a tribe to distribute per capita payments to its members from net gaming revenues.

This rule will not cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability to U.S.-based enterprises to compete with foreign-based enterprises. The rule will provide a method for the submission, review and approval of tribal revenue allocation plans to allow a tribe to distribute per capita payments to its members from some of its net gaming revenues in accordance with IGRA.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local, or tribal government or the private sector. A statement containing the information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531, *et seq.*) is not required because only Indian tribes that conduct gaming activities and choose to distribute per capita payments from net gaming revenues to its members are required to submit tribal revenue allocation plans for review and approval in accordance with IGRA. Indian tribes that conduct gaming activities and who choose not to distribute per capita payments from net gaming revenues to its members are not required to submit a tribal revenue allocation plan to utilize net gaming revenues.

As an alternative to the establishment of regulations, the AS-IA issued Guidelines on December 21, 1992, to govern the review and approval of Tribal Revenue Allocation Plans. As outlined in IGRA, the guidelines require that the Indian tribe must dedicate a significant share (or portion) of net gaming revenues for economic development and governmental purposes, that the interests of minors and other legally incompetent persons entitled to receive per capita payments must be protected and preserved, and that per capita payments are subject to Federal income taxes. The AS-IA does not mandate the distribution of net gaming revenues to individual tribal members. However, it is essential that Indian tribes choosing to make per capita payments comply with the requirements of IGRA.

Takings (E.O. 12630)

The Department has determined that this rule does not have significant "takings" implications. The rule does not pertain to "taking" of private property interests, nor does it impact private property.

Federalism (E.O. 12612)

The Department has determined that this rule does not have significant Federalism effects because it pertains solely to Federal-tribal relations and will not interfere with the roles, rights and responsibilities of States.

Civil Justice Reform (E.O. 12988)

The Department has certified to OMB that these regulations meet the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order (E.O.) 12988.

National Environmental Policy Act of 1969 (NEPA) Statement

The Department has determined that this rule does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to NEPA.

Paperwork Reduction Act

The Office of Management and Budget has reviewed and approved the information collections contained in this rule and assigned them approval number 1076–0152. The proposed rule was published on June 7, 1996, 61 FR 29044, and solicited comments on the information collection. The OMB expressed a concern related to the proposed rule §§ 290.11 (b)(3) and (b)(4) [renumbered §§ 290.12 (b)(2) and (b)(3)] indicating that these sections were open ended and needed more specific information. In particular, (3) OMB indicated the rule should outline specific requirements the Secretary must review as required by IGRA and (4) OMB questioned whether guidance is submitted to field personnel and/or public.

Response: Section 290.11(b)(3) is renumbered as § 290.12(b)(2) and is amended to read: "It must contain detailed information to allow the ABO to determine that it complies with this section and IGRA particularly regarding funding for tribal governmental operations or programs and for promoting tribal economic development." Section 290.11(b)(4) is renumbered § 290.12(b)(3) and amended to state that because IGRA requires the per capita payments to be disbursed to the parents or legal guardians of such minors or legal incompetents in such amounts as necessary for the health, education, or welfare, of the minor or other legally incompetent, it is up to the tribe to establish a method for the accountability of the funds.

These concerns have been addressed in the rule and are reflected in the Paperwork Reduction Act submission.

Another comment questioned the accuracy of the Department's estimate of the burden of the proposed collection of information. No action was taken on this comment. The comment did not address why the cost or hour burden is questioned. Consultation from tribal representatives was obtained to determine the estimated burden of the collection of information.

Sections 290.12, 290.17, 290.24 and 290.26 have been amended and contain information collection requirements.

BIA invites the public to comment on the accuracy of the burden estimate and to provide suggestions for reducing the burden. Please submit your comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior, OMB Control Number 1076–0152, Washington, DC, 20503, and to the Director, Office of Indian Gaming Management, Bureau of Indian Affairs, 1849 C Street NW, MS 2070-MIB, Washington, DC 20240.

BIA needs this information to ensure that Tribal Revenue Allocation Plans include assurances that certain statutory requirements are met, a breakdown of the specific uses to which net gaming revenues will be allocated, eligibility requirements for participation, tax liability notification and the assurance of the protection and preservation of the per capita shares of minors and legal incompetents. BIA will use this information to ensure that net gaming revenues are used: (1) to fund tribal government operations and programs; (2) to provide for the general welfare of the Indian tribe and its members; (3) to promote tribal economic development; (4) to donate to charitable organizations; and (5) to fund operations of local government agencies. The likely respondents to this collection are Indian tribes, bands or groups. The estimated annual number of respondents is 50 with collections obtained periodically. The total burden for this collection of information is estimated to average 75–100 hours per response, for 5,000 total hours per year, including the time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the submission. Responses to the collection of information are mandatory in order to receive benefits.

The Paperwork Reduction Act of 1995 requires us to tell you that a Federal Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Drafting Information

The primary author of this document is Nancy Pierskalla, Management Analyst, Office of Indian Gaming Management, Bureau of Indian Affairs, Department of the Interior.

List of Subjects in 25 CFR Part 290

Gambling, Grant programs—business, Grant programs—Indians, Indians—business and finance, Indians—gaming.

For the reasons given in the preamble, part 290 is added to Chapter I of Title 25 of the Code of Federal Regulations as set forth below.

PART 290—TRIBAL REVENUE ALLOCATION PLANS

Sec.

290.1 Purpose.
290.2 Definitions.
290.3 Information collection.
290.4 What is a tribal revenue allocation plan?
290.5 Who approves tribal revenue allocation plans?
290.6 Who must submit a tribal revenue allocation plan?
290.7 Must an Indian tribe have a tribal revenue allocation plan if it is not making per capita payments?
290.8 Do Indian tribes have to make per capita payments from net gaming revenues to tribal members?
290.9 How may an Indian tribe use net gaming revenues if it does not have an approved tribal revenue allocation plan?
290.10 Is an Indian tribe in violation of IGRA if it makes per capita payments to its members from net gaming revenues without an approved tribal revenue allocation plan?
290.11 May an Indian tribe distribute per capita payments from net gaming revenues derived from either Class II or Class III gaming without a tribal revenue allocation plan?
290.12 What information must the tribal revenue allocation plan contain?
290.13 Under what conditions may an Indian tribe distribute per capita payments?
290.14 Who can share in a per capita payment?
290.15 Must the Indian tribe establish trust accounts with financial institutions for minors and legal incompetents?
290.16 Can the per capita payments of minors and legal incompetents be deposited into accounts held by BIA or OTFM?
290.17 What documents must the Indian tribe include with the tribal revenue allocation plan?
290.18 Where should the Indian tribe submit the tribal revenue allocation plan?
290.19 How long will the ABO take to review and approve the tribal revenue allocation plan?
290.20 When will the ABO disapprove a tribal revenue allocation plan?
290.21 May an Indian tribe appeal the ABO's decision?
290.22 How does the Indian tribe and its members ensure compliance with its tribal revenue allocation plan?
290.23 How does the Indian tribe resolve disputes arising from per capita payments to individual members or identified groups of members?
290.24 Do revisions/amendments to a tribal revenue allocation plan require approval?
290.25 What is the liability of the United States under this part?
290.26 Are previously approved tribal revenue allocation plans, revisions or amendments subject to review in accordance with 25 CFR part 290?

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, and 2710.

§ 290.1 Purpose.

This part contains procedures for submitting, reviewing, and approving tribal revenue allocation plans for distributing net gaming revenues from tribal gaming activities. It applies to review of tribal revenue allocation plans adopted under IGRA.

§ 290.2 Definitions.

Appropriate Bureau official (ABO) means the Bureau official with delegated authority to approve tribal revenue allocation plans.

IGRA means the Indian Gaming Regulatory Act of 1988 (Public Law 100–497) 102 Stat. 2467 dated October 17, 1988, (Codified at 25 U.S.C. 2701–2721(1988)) and any amendments.

Indian Tribe means any Indian tribe, band, nation, or other organized group or community of Indians that the Secretary recognizes as:

(1) Eligible for the speci al programs and services provided by the United States to Indians because of their status as Indians; and

(2) Having powers of self-government.

Legal incompetent means an individual who is eligible to participate in a per capita payment and who has been declared to be under a legal disability, other than being a minor, by a court of competent jurisdiction, including tribal justice systems or as established by the tribe.

Member of an Indian tribe means an individual who meets the requirements established by applicable tribal law for enrollment in the tribe and—

(1) Is listed on the tribal rolls of that tribe if such rolls are kept or

(2) Is recognized as a member by the tribal governing body if tribal rolls are not kept.

Minor means an individual who is eligible to participate in a per capita payment and who has not reached the age of 18 years.

Per capita payment means the distribution of money or other thing of value to all members of the tribe, or to identified groups of members, which is paid directly from the net revenues of any tribal gaming activity. This definition does not apply to payments which have been set aside by the tribe for special purposes or programs, such as payments made for social welfare, medical assistance, education, housing or other similar, specifically identified needs.

Resolution means the formal document in which the tribal governing body expresses its legislative will in accordance with applicable tribal law.

Secretary means the Secretary of the Interior or his/her authorized representative.

Superintendent means the official or other designated representative of the BIA in charge of the field office which has immediate administrative responsibility for the affairs of the tribe for which a tribal revenue allocation plan is prepared.

Tribal governing body means the governing body of an Indian tribe recognized by the Secretary.

Tribal revenue allocation plan or *allocation plan* means the document submitted by an Indian tribe that provides for distributing net gaming revenues.

You or your means the Indian tribe.

§ 290.3 Information collection.

The information collection requirements contained in §§ 290.12, 290.17, 290.24 and 290.26 have been approved by the OMB under the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), and assigned clearance number 1076–0152.

§ 290.4 What is a tribal revenue allocation plan?

It is the document you must submit that describes how you will allocate net gaming revenues.

§ 290.5 Who approves tribal revenue allocation plans?

The ABO will review and approve tribal revenue allocation plans for compliance with IGRA.

§ 290.6 Who must submit a tribal revenue allocation plan?

Any Indian tribe that intends to make a per capita payment from net gaming revenues must submit one.

§ 290.7 Must an Indian tribe have a tribal revenue allocation plan if it is not making per capita payments?

No, if you do not make per capita payments, you do not need to submit a tribal revenue allocation plan.

§ 290.8 Do Indian tribes have to make per capita payments from net gaming revenues to tribal members?

No. You do not have to make per capita payments.

§ 290.9 How may an Indian tribe use net gaming revenues if it does not have an approved tribal revenue allocation plan?

Without an approved tribal revenue allocation plan, you may use net gaming revenues to fund tribal government operations or programs; to provide for the general welfare of your tribe and its members; to promote tribal economic development; to donate to charitable organizations; or to help fund operations of local government agencies.

§ 290.10 Is an Indian tribe in violation of IGRA if it makes per capita payments to its members from net gaming revenues without an approved tribal revenue allocation plan?

Yes, you are in violation of IGRA if you make per capita payments to your tribal members from net gaming revenues without an approved tribal revenue allocation plan. If you refuse to comply, the DOJ or NIGC may enforce the per capita requirements of IGRA.

§ 290.11 May an Indian tribe distribute per capita payments from net gaming revenues derived from either Class II or Class III geming without a tribal revenue allocation plan?

No, IGRA requires that you have an approved tribal revenue allocation plan.

§ 290.12 What information must the tribal revenue allocation plan contain?

(a) You must prepare a tribal revenue allocation plan that includes a percentage breakdown of the uses for which you will allocate net gaming revenues. The percentage breakdown must total 100 percent.

(b) The tribal revenue allocation plan must meet the following criteria:

(1) It must reserve an adequate portion of net gaming revenues from the tribal gaming activity for one or more of the following purposes:

(i) To fund tribal government operations or programs;

(ii) To provide for the general welfare of the tribe or its members;

(iii) To promote tribal economic development;

(iv) To donate to charitable organizations; or

(v) To help fund operations of local government.

(2) It must contain detailed information to allow the ABO to determine that it complies with this section and IGRA particularly regarding funding for tribal governmental operations or programs and for promoting tribal economic development.

(3) It must protect and preserve the interests of minors and other legally incompetent persons who are entitled to receive per capita payments by:

(i) Ensuring that tribes make per capita payments for eligible minors or incompetents to the parents or legal guardians of these minors or incompetents at times and in such amounts as necessary for the health, education, or welfare of the minor or incompetent;

(ii) Establishing criteria for withdrawal of the funds, acceptable proof and/or receipts for accountability of the expenditure of the funds and the circumstances for denial of the withdrawal of the minors' and legal incompetents' per capita payments by the parent or legal guardian; and

(iii) Establishing a process, system, or forum for dispute resolution.

(4) It must describe how you will notify members of the tax liability for per capita payments and how you will withhold taxes for all recipients in accordance with IRS regulations in 26 CFR part 31.

(5) It must authorize the distribution of per capita payments to members according to specific eligibility requirements and must utilize or establish a tribal court system, forum or administrative process for resolution of disputes concerning the allocation of net gaming revenues and the distribution of per capita payments.

§ 290.13 Under what conditions may an Indian tribe distribute per capita payments?

You may make per capita payments only after the ABO approves your tribal revenue allocation plan.

§ 290.14 Who can share in a per capita payment?

(a) You must establish your own criteria for determining whether all members or identified groups of members are eligible for per capita payments.

(b) If the tribal revenue allocation plan calls for distributing per capita payments to an identified group of members rather than to all members, you must justify limiting this payment to the identified group of members. You must make sure that:

(1) The distinction between members eligible to receive payments and members ineligible to receive payments is reasonable and not arbitrary;

(2) The distinction does not discriminate or otherwise violate the Indian Civil Rights Act; and

(3) The justification complies with applicable tribal law.

§ 290.15 Must the Indian tribe establish trust accounts with financial institutions for minors and legal incompetents?

No. The tribe may establish trust accounts with financial institutions but should explore investment options to structure the accounts to the benefit of their members while ensuring compliance with IGRA and this part.

§ 290.16 Can the per capita payments of minors and legal incompetents be deposited into accounts held by BIA or OTFM?

No. The Secretary will not accept any deposits of payments or funds derived from net gaming revenues to any account held by BIA or OTFM.

§ 290.17 What documents must the Indian tribe include with the tribal revenue allocation plan?

You must include:

(a) A written request for approval of the tribal revenue allocation plan; and

(b) A tribal resolution or other document, including the date and place of adoption and the result of any vote taken, that certifies you have adopted the tribal revenue allocation plan in accordance with applicable tribal law.

§ 290.18 Where should the Indian tribe submit the tribal revenue allocation plan?

You must submit your tribal revenue allocation plan to your respective Superintendent. The Superintendent will review the tribal revenue allocation plan to make sure it has been properly adopted in accordance with applicable tribal law. The Superintendent will then transmit the tribal revenue allocation plan promptly to the ABO.

§ 290.19 How long will the ABO take to review and approve the tribal revenue allocation plan?

The ABO must review and act on your tribal revenue allocation plan within 60 days of receiving it. A tribal revenue allocation plan is not effective without the ABO's written approval.

(a) If the tribal revenue allocation plan conforms with this part and the IGRA, the ABO must approve it.

(b) If the tribal revenue allocation plan does not conform with this part and the IGRA, the ABO will send you a written notice that:

(1) Explains why the plan doesn't conform to this part of the IGRA; and

(2) Tells you how to bring the plan into conformance.

(c) If the ABO doesn't act within 60 days, you can appeal the inaction under 25 CFR part 2. A tribal revenue allocation plan is not effective without the express written approval of the ABO.

§ 290.20 When will the ABO disapprove a tribal revenue allocation plan?

The ABO will not approve any tribal revenue allocation plan for distribution of net gaming revenues from a tribal gaming activity if:

(a) The tribal revenue allocation plan is inadequate, particularly with respect to the requirements in § 290.12 and IGRA, and you fail to bring it into compliance;

(b) The tribal revenue allocation plan is not adopted in accordance with applicable tribal law;

(c) The tribal revenue allocation plan does not include a reasonable justification for limiting per capita payments to certain groups of members; or

(d) The tribal revenue allocation plan violates the Indian Civil Rights Act of 1968, any other provision of Federal law, or the United States' trust obligations.

§ 290.21 May an Indian tribe appeal the ABO's decision?

Yes, you may appeal the ABO's decision in accordance with the regulations at 25 CFR part 2.

§ 290.22 How does the Indian tribe ensure compliance with its tribal revenue allocation plan?

You must utilize or establish a tribal court system, forum or administrative process in the tribal revenue allocation plan for reviewing expenditures of net gaming revenues and explain how you will correct deficiencies.

§ 290.23 How does the Indian tribe resolve disputes arising from per capita payments to individual members or identified groups of members?

You must utilize or establish a tribal court system, forum or administrative process for resolving disputes arising from the allocation of net gaming revenue and the distribution of per capita payments.

§ 290.24 Do revisions/amendments to a tribal revenue allocation plan require approval?

Yes, revisions/amendments to a tribal revenue allocation plan must be submitted to the ABO for approval to ensure that they comply with § 290.12 and IGRA.

§ 290.25 What is the liability of the United States under this part?

The United States is not liable for the manner in which a tribe distributes funds from net gaming revenues.

§ 290.26 Are previously approved tribal revenue allocation plans, revisions, or amendments subject to review in accordance with this part?

No. This part applies only to tribal revenue allocation plans, revisions, or amendments submitted for approval after April 17, 2000.

(a) If the ABO approved your tribal revenue allocation plan, revisions, or amendments before April 17, 2000, you need not resubmit it for approval.

(b) If you are amending or revising a previously approved allocation plan, you must submit the amended or revised plan to the ABO for review and approval under this part.

Dated: October 29, 1999.

Kevin Gover

Assistant Secretary—Indian Affairs.

[FR Doc. 00–6603 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

RIN 1010–AC32

Postlease Operations Safety

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to the final rule titled "Postlease Operations Safety" that was published Tuesday, December 28, 1999 (64 FR 72756). We are correcting minor errors in four documents incorporated by reference and separating two document entries that were printed as one entry.

EFFECTIVE DATE: January 27, 2000.

FOR FURTHER INFORMATION CONTACT: Kumkum Ray, (703) 787–1600.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections supersede 30 CFR 250, subpart A, General, regulations on the effective date and affect all operators and lessees on the Outer Continental Shelf.

The published final regulations contained a complete listing of all of the

documents MMS has incorporated by reference in the 30 CFR part 250 regulations. The rulemaking also included revisions and reaffirmations of several documents. The table of documents incorporated by reference in § 250.198(e) of the published final rule contained some minor errors and typographical mistakes which we are correcting.

Need for Correction

As published, the final regulations contain errors which may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication on December 28, 1999, of the final regulations, which were the subject of FR Doc. 99–31869, is corrected as follows:

§ 250.198 [Corrected]

On page 72790, in the table in § 250.198(e), in column two for the three entries for API MPMS, Chapter 2, Section 2A; API MPMS, Chapter 3, Section 1A; and API MPMS, Chapter 3, Section 1B, the citation "§ 250.1202(1)(4)" is corrected to read "§ 250.1202(l)(4)". On pages 72790 and 72791, in the table in § 250.198(e), the entries for four documents are corrected, and the two entries that were printed as one entry should be reprinted, to read as follows:

§ 250.198 Documents incorporated by reference.

* * * * * *

(e) * * *

Title of document	Incorporated by reference at
API MPMS, Chapter 2, Section 2B, Calibration § 250.1202(1)(4) Calibration of Upright Cylindrical Tanks Using the Optical Reference Line Method, First Edition, March 1989, reaffirmed May 1996, API Stock No. H30023; also available as ANSI/ASTM D 4738–88.	250.1202(1)(4).
API MPMS, Chapter 11.1; Volume Correction Factors, Volume 1, Table 5A—Generalized Crude Oils and JP-4, Correction of Observed API Gravity to API Gravity at 60°F, and Table 6A—Generalized Crude Oils and JP–4, Correction of Volume to 60°F, against API Gravity 60°F, First Edition, August 1980, reaffirmed March 1997, API Stock No. H27000; also available as ANSI/ASTM D 1250.	§ 250.1202(a)(3), (g)(3) and (1)(4).
API MPMS, Chapter 11.2.2, Addendum to 250.1202(a)(3). Correlation of Vapor Pressure Correction for Natural Gas Liquids, First Edition, December 1984, reaffirmed March 1997, API Stock No. H27308; also available as GPA TP–15.	§ 250.1202(a)(3).
API MPMS, Chapter 14, Section 3, Part 2, Specification and Installation Requirements, Third Edition, February 1991, reaffirmed May 1996, API Stock No. H30351; also available as ANSI/API 2530, 1991.	§ 250.1203(b)(2).
API MPMS, Chapter 14, Section 5, Calculation of Gross Heating Value, Relative Density, and Compressibility Factor for Natural Gas Mixtures from Compositional Analysis, Revised 1996; order from Gas Processors Association, 6526 East 60th Street, Tulsa, Oklahoma 74145..	§ 250.1203(b)(2).
API MPMS, Chapter 14, Section 6, Continuous Density Measurement, Second Edition, April 1991, reaffirmed May 1998, API Stock No. H30346.	§ 250.1203(b)(2).

Dated: March 2, 2000.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–6663 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

Oil or Hazardous Material Pollution Prevention Regulations for Vessels

CFR Correction

In Title 33 of the Code of Federal Regulations, parts 125 to 199, revised as of July 1, 1999, part 155 is corrected by reinstating §§155.235 and 155.240 to read as follows:

§ 155.235 Emergency towing capability for oil tankers.

An emergency towing arrangement shall be fitted at both ends on board all oil tankers of not less than 20,000 deadweight tons (dwt), constructed on or after September 30, 1997. For oil tankers constructed before September 30, 1997, such an arrangement shall be fitted at the first scheduled dry-docking, but not later than January 1, 1999. The design and construction of the towing arrangement shall be in accordance with IMO resolution MSC.35(63).

[CGD 95–028, 62 FR 51194, Sept. 30, 1997]

§ 155.240 Damage stability information for oil tankers and offshore oil barges.

(a) Owners or operators of oil tankers and offshore oil barges shall ensure that their vessels have prearranged, prompt access to computerized, shore-based damage stability and residual structural strength calculation programs.

(b) Vessel baseline strength and stability characteristics must be pre-entered into such programs and be consistent with the vessel's existing configuration.

(c) Access to the shore-based calculation program must be available 24 hours a day.

(d) At a minimum, the program must facilitate calculation of the following:

(1) Residual hull girder strength based on the reported extent of damage.

(2) Residual stability when the vessel's compartments are breached.

(3) The most favorable off-loading, ballasting, or cargo transfer sequences to improve residual stability, reduce hull girder stresses, and reduce ground-force reaction.

(4) The bending and shear stresses caused by pinnacle loads from grounding or stranding.

[CGD 90–068, 58 FR 67996, Dec. 22, 1993, as amended by USCG–1998–3799, 63 FR 35531, June 30, 1998]

[FR Doc. 00–55505 Filed X–XX–00, 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 19 and 20

RIN 2900–AJ72

Appeals Regulations and Rules of Practice—Case Docketing

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Board of Veterans' Appeals (Board) adjudicates appeals from decisions on claims for veterans' benefits filed with the Department of Veterans Affairs (VA). This document updates the Board's procedures to reflect changes made by section 1003 of the Veterans Programs Enhancement Act of 1998 and to reflect the change in the name of the United States Court of Veterans Appeals to the United States Court of Appeals for Veterans Claims.

DATES:

Effective Date: March 17, 2000.

Applicability Date: November 10, 1998, except for §§ 20.609(i), 20.714(a)(5), 20.717(b), and 20.900(d) which are applicable March 1, 1999.

FOR FURTHER INFORMATION CONTACT: Steven L. Keller, Senior Deputy Vice Chairman, Board of Veterans' Appeals, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, 202–565–5978.

SUPPLEMENTARY INFORMATION: Initial decisions on claims for veterans' benefits are made at VA field offices throughout the nation. Claimants may appeal those decisions to the Board. Section 1003 of the Veterans Programs Enhancement Act of 1998, Public Law 105–368, 112 Stat. 3315, 3363–64 (1998), amended 38 U.S.C. 7107 to make these changes in procedures for processing cases before the Board:

(1) Serious illness and severe financial hardship are now included in the statutory grounds for advancing a case on the Board's docket. 38 U.S.C. 7107(a)(2).

(2) A new provision permits postponement of consideration of a case in order to afford an appellant a hearing. 38 U.S.C. 7107(a)(3).

(3) The order in which the Board conducts field hearings in areas served by VA regional offices has been changed from the order in which requests for hearings in each area are received to the docket order of the cases that are scheduled for hearings within the same area. 38 U.S.C. 7107(d)(2).

(4) The statutory grounds in 38 U.S.C. 7107(d)(3) for advancing a hearing within an area served by a regional office now conform to the grounds in 38 U.S.C. 7107(a)(2) for advancing a case on the Board's docket.

This document amends 38 CFR 19.75, 20.704, and 20.900 to conform to these statutory changes.

Section 511 of the same public law, 112 Stat. at 3341, changed the name of the United States Court of Veterans Appeals to the United States Court of Appeals for Veterans Claims. Amendments to 38 CFR 20.609, 20.714, 20.717, and 20.900 change references to the Court to reflect its new name.

VA finds under 5 U.S.C. 553(b)(3)(B) that notice and public procedure are impracticable, unnecessary, and contrary to public interest inasmuch as these amendments merely reflect statutory changes.

Because no notice of proposed rulemaking was required in connection with the adoption of this final rule, no regulatory flexibility analysis is required under the Regulatory Flexibility Act (5 U.S.C. 601–612). Even so, the Secretary hereby certifies that this final rule will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act.

There is no Catalog of Federal Domestic Assistance number for this final rule.

List of Subjects

38 CFR Part 19

Administrative practice and procedure; Claims; Veterans; Authority delegations (government agencies).

38 CFR Part 20

Administrative practice and procedure; Claims; Lawyers; Legal services; Veterans; Authority delegations (government agencies).

Approved: March 10, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 19 and 20 are amended as set forth below:

PART 19—BOARD OF VETERANS' APPEALS: APPEALS REGULATIONS

1. The authority citation for part 19 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

2. Section 19.75 is revised to read as follows:

§ 19.75 Field hearing docket.

Hearings on appeal held at Department of Veterans Affairs field facilities will be scheduled for each area served by a regional office in accordance with the place of each case on the Board's docket, established under § 20.900 of this chapter, relative to other cases for which hearings are scheduled to be held within that area. Such scheduling is subject to § 20.704(f) of this chapter pertaining to advancement of a case on the hearing docket.

(Authority: 38 U.S.C. 7107)

PART 20—BOARD OF VETERANS' APPEALS: RULES OF PRACTICE

The authority citation for part 20 continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

4. Section 20.704 is amended by revising the second sentence of paragraph (a); and revising paragraph (f) to read as follows:

§ 20.704 Rule 704. Scheduling and notice of hearings conducted by the Board of Veterans' Appeals at Department of Veterans Affairs field facilities.

(a) *General.* * * * Subject to paragraph (f) of this section, the hearings will be scheduled in the order specified in § 19.75 of this chapter.

* * *

* * * * * *

(f) *Advancement of the case on the hearing docket.* A hearing may be scheduled at a time earlier than would be provided for under § 19.75 of this chapter upon written motion of the appellant or the representative. The same grounds for granting relief, motion filing procedures, and designation of authority to rule on the motion specified in Rule 900(c) (§ 20.900(c) of this part) for advancing a case on the Board's docket shall apply.

(Authority: 38 U.S.C. 7107)

(Approved by the Office of Management and Budget under control number 2900–0085)

5. In § 20.900, paragraphs (b) and (c) are revised; and paragraph (e) is added, to read as follows:

§ 20.900 Rule 900. Order of consideration of appeals.

* * * * *

(b) *Appeals considered in docket order.* Except as otherwise provided in this Rule, appeals are considered in the order in which they are entered on the docket.

(c) *Advancement on the docket.* A case may be advanced on the docket on the motion of the Chairman, the Vice Chairman, a party to the case before the Board, or such party's representative. Such a motion may be granted only if the case involves interpretation of law of general application affecting other claims, if the appellant is seriously ill or is under severe financial hardship, or if other sufficient cause is shown. "Other sufficient cause" shall include, but is not limited to, administrative error resulting in a significant delay in docketing the case. Such motions must be in writing and must identify the specific reason(s) why advancement on the docket is sought, the name of the veteran, the name of the appellant if other than the veteran (*e.g.*, a veteran's survivor, a guardian, or a fiduciary appointed to receive VA benefits on an individual's behalf), and the applicable Department of Veterans Affairs file number. The motion must be filed with: Director, Administrative Service (014), Board of Veterans' Appeals, 810 Vermont Avenue, NW., Washington, DC 20420. Where a motion is received prior to the assignment of the case to an individual member or panel of members, the ruling on the motion will be by the Vice Chairman, who may delegate such authority to a Deputy Vice Chairman. If a motion to advance a case on the docket is denied, the appellant and his or her representative will be immediately notified. If the motion to advance a case on the docket is granted, that fact will be noted in the Board's decision when rendered.

* * * * *

(e) *Postponement to provide hearing.* Any other provision of this Rule notwithstanding, a case may be postponed for later consideration and determination if such postponement is necessary to afford the appellant a hearing.

(Authority: 38 U.S.C. 7107, Pub. Law No. 103–446, § 302)

§ 20.609 [Amended]

6. In § 20.609, paragraph (i) is amended by removing "the Court of Veterans Appeals" from the next to the last sentence and adding, in its place, "the United States Court of Appeals for Veterans Claims".

§§ 20.714, 207.17, and 20.900 [Amended]

7. Sections 20.714(a)(5), 20.717(b), and 20.900(d) are amended by removing "the United States Court of Veterans Appeals" wherever it appears and, in each such section, adding in its place "the United States Court of Appeals for Veterans Claims".

[FR Doc. 00–6613 Filed 3–16–00; 8:45 am]

BILLING CODE 8320l-01-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 148, 261, 268, 271, and 302

[FRL–6560–4]

RIN 2050–AD59

Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities; Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing the vacature of regulatory provisions governing the identification of certain wastes as listed hazardous wastes. EPA is amending its regulations to conform with an order issued by the United States Court of Appeals for the District of Columbia Circuit (D.C. Cir.) in *Great Lakes Chemical Corporation* v. *EPA* (No. 98–1312), that vacated Agency regulations listing certain organobromine wastes as hazardous wastes under the Resource Conservation and Recovery Act (RCRA).

EPA also is modifying the land disposal restrictions treatment standards in 40 CFR part 268 by deleting these wastes and the associated treatment standards. In addition, EPA is vacating the Reportable Quantity (RQ) requirements for these notifications. Under the court's order, and as amended in today's rule, the vacated federal hazardous waste listings and regulatory requirements based on those listings are to be treated as though they were never in effect. State regulations, which may be more stringent than federal rules, were not necessarily affected by the court's ruling.

EFFECTIVE DATE: This rule will be effective on March 17, 2000.

ADDRESSES: EPA does not seek comment on this document. EPA will keep the official record for this action in paper form. The official record of this action is identified by Docket Number F–98–OBLF–FFFFF. The public may view supporting materials in the RCRA Information Center (RIC), located at EPA, Crystal Gateway #1, 1st Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page.

Supporting materials are available for viewing in the RCRA Information Center (RIC), Office of Solid Waste (5305G), U.S. Environmental Protection Agency Headquarters, US EPA Ariel Rios (5101), 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, D.C., metropolitan area, call (703) 412–9810 or TDD (703) 412–3323. For information on specific aspects of the rule, contact William (Rick) Brandes of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency, US EPA Ariel Rios, 1200 Pennsylvania Avenue, N.W., Washington, D.C. 20460. [E-mail address and telephone numbers: *Brandes.william@epa.gov*, (703) 308–8871.]

SUPPLEMENTARY INFORMATION: . The court order vacating the listing determination will be added to Docket Number F–98–OBLF–FFFFF, the public docket for the rule that listed the organobromine wastes as hazardous. The rule, "Organobromine Production Wastes; Identification and Listing of Hazardous Waste; Land Disposal Restrictions; Listing of CERCLA Hazardous Substances, Reportable Quantities," was issued in the **Federal Register** at 63 FR 24596 (May 4, 1998). EPA will keep the official record for this action in paper form. The official record is the paper record maintained at the address in the **ADDRESSES** section.

Contents of This Final Rule

I. Background
II. Amended Regulations
III. State Authority
IV. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures
V. Administrative Assessments

I. Background

On May 4, 1998, EPA published in the **Federal Register** (63 FR 24596) a final rule listing as hazardous wastes under RCRA two wastes generated by the organobromine production industry. The rule added 2,4,6-tribromophenol to the list of commercial chemical products that are hazardous wastes only when they are discarded. This list is found at 40 CFR 261.33 and is divided into acutely hazardous wastes ("P-wastes") and other toxic wastes (U-wastes"). 2,4,6-tribromophenol was designated waste code U408. Sweepings, off-specification product, and spent filter media from the production of 2,4,6-tribromophenol were added to the list of hazardous wastes from specific sources and designated as waste code K140. As part of the listing determination, and in accordance with Agency regulations, EPA also listed in Appendix VII of 40 CFR part 261 the hazardous constituents in the wastes upon which the listings were based.

The May 4, 1998 final rule also designated the two organobromine wastes as hazardous substances under the Comprehensive, Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9601, and added them to the hazardous substance list at 40 CFR 302.4 with adjusted reportable quantities (RQs) of 100 pounds. EPA also promulgated land disposal restriction (LDR) regulations for the organobromine wastes. EPA amended its requirements for approval of state hazardous waste programs by adding the organobromine listings and LDR regulations to Tables 1 and 2 of 40 CFR 271.1. These tables list the regulations that establish the requirements and prohibitions applicable to state hazardous waste programs.

On April 9, 1999, the D.C. Circuit in *Great Lakes Chemical Corporation* v. *EPA*, ordered that the organobromine listing determinations be vacated. Accordingly, EPA is removing from the Code of Federal Regulations (CFR) the listings vacated by the court and all references to those listings. Today's document notifies the public that EPA is deleting from the lists of hazardous waste found in 40 CFR part 261, subpart D two wastes previously designated as hazardous waste codes K140 and U408. The first waste, previously designated as K140, is sweepings, off-speculation product and spent filter media from the production of 2,4,6-tribromophenol. The second waste, previously designated as U408, is 2,4,6-tribromophenol (commercial chemical product). EPA also is deleting 2,4,6-tribromophenol from the list of hazardous constituents in Appendix VIII of 40 CFR part 261. In addition, EPA is modifying the land disposal restrictions treatment standards in 40 CFR part 268 by deleting these wastes and the associated treatment standards. EPA also is vacating the Reportable Quantity (RQ) requirements for these notifications.

The effect of vacating the hazardous waste listing determination for these wastes is to clarify that these two wastestreams are not subject to the hazardous waste management and treatment standards under RCRA, as well as not subject to emergency notification requirements for releases of hazardous substances to the environment.

II. Amended Regulations

In 40 CFR 261.32, the following K-waste listing is deleted: K140—Floor sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol.

In the table in 40 CFR 261.33(f) the following U-waste listing is deleted:

Hazardous waste number	Chemical abstracts number	Substance
U408	118–79–6	2,4,6-Tribromophenol.

EPA also is deleting 2,4,6-tribromophenol from the hazardous constituent list in Appendix VII of 40 CFR Part 261. The Agency is deleting any mention of the vacated hazardous waste codes in Appendix VIII.

While the regulations for waste management at 40 CFR parts 262 through 266 are not affected by the court's action with regard to the vacature of the hazardous waste listing determinations for K140 and U408, it is clear that the regulations are not applicable to the vacated hazardous waste listings (unless those wastes exhibit a hazardous waste characteristic described in 40 CFR part 261, subpart C). However, to the extent that the wastes described in the vacated listings were included in federal permits before the ruling, appropriate action may need to be taken by permittees and permitting authorities to amend the permits. Any need to revise state permits will depend on state law. Since state law may be more stringent than federal law, there may be circumstances in which a facility managing organobromine wastes may be required to retain the state permits.

The land disposal restriction (LDR) regulations for hazardous wastes are amended to remove K140 and U408. Specifically, the Agency is amending 40 CFR 268.33 to remove LDR requirements for K140 and U408 and amending the table in 40 CFR 268.40 to remove the entries for K140 and U408. In addition, 2,4,6-tribromophenol is removed from the Universal Treatment Standards table in 40 CFR 268.48.

Today's final rule also removes the vacated K140 and U408 wastes from CERCLA designation as hazardous substances. Accordingly, these wastes are removed from the list of CERCLA hazardous substances at 40 CFR 302.4.

III. State Authority

The tables in 40 CFR 271.1 are amended to reflect the issuance of this document so that states will understand they are not required by the federal Resource Conservation and Recovery Act to adopt the hazardous waste listings for K140 and U408. Since today's rule does not establish any new regulations, no additional requirements or obligations are imposed on the states by its promulgation. RCRA section 3009 provides that states may not issue regulations less stringent than those authorized under subtitle C or RCRA. However, section 3009 of RCRA also provides that states may impose more stringent requirements than those regulations promulgated by EPA under subtitle C. Thus, regulations vacated by the court in *Great Lakes Chemicol Corporation* v. *EPA* may be permissible under state law.

IV. Good Cause Exemption from Notice-and-Comment Rulemaking Procedures

The Administrative Procedure Act generally requires agencies to provide prior notice and opportunity for public comment before issuing a final rule (5 U.S.C. 553(b)). Rules are exempt from this requirement if the issuing agency finds for good cause that notice and comment are unnecessary (5 U.S.C. 553(b)(3)(B)).

EPA has determined that providing prior notice and opportunity for comment on the regulations amending the RCRA hazardous waste management requirements to comply with the court decision vacating the hazardous waste listing determinations for waste codes K140 and U408, is not necessary. The regulations are no longer legally in effect by order of the federal court of appeals. Thus, amending the hazardous waste regulations has no legal impact and only states the current legal status of the rules.

For the same reasons stated above, EPA believes there is good cause for making the amending regulations immediately effective. (See 5 U.S.C. 553(d))

V. Administrative Assessments

Under Executive Order 12866 (58 FR 51735, October 4, 1993), today's action has no regulatory impact because it merely reflects the current legal status of the regulations. This "regulatory action" does not impose annual costs of $100 million or more and is not a subject to review by the Office of Management and Budget. Because this action only amends the CFR to comply with the current legal status of the rules, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202, 204 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). This action will not significantly or uniquely affect small governments, as specified in section 203 of UMRA, or communities of tribal governments, as specified in Executive Order 13084 (63 FR 27655, May 10, 1998). For the same reason, this rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045, "Protection of Children from Environmental Health risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant and because the Agency does not have reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children.

This rule does not involve technical standards; thus, the requirements of section 12(c) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Today's final rule will have no effect upon minority and/or low-income populations. The amending regulations promulgated today reflect current law and are meant only to amend the Code of Federal Regulations to comply with the current legal status of the rules. Therefore, today's rule is not subject to Executive Order 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations."

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 17, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects

40 CFR Part 148

Administrative practice and procedure, Hazardous waste, Reporting and recordkeeping requirements, Water supply.

40 CFR Part 261

Environmental protection, Hazardous materials, Waste treatment and disposal, Recycling.

40 CFR Part 268

Environmental protection, Hazardous materials, Waste management, Reporting and recordkeeping requirements, Land disposal restrictions, Treatment standards.

40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous material transportation, Hazardous waste, Indians-lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

40 CFR Part 302

Environmental protection, Air pollution control, Chemicals, Emergency Planning and Community Right-to-Know Act, Extremely hazardous substances, Hazardous chemicals, Hazardous materials, Hazardous materials transportation, Hazardous substances, Hazardous waste, Intergovernmental relations, Natural resources, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal, Water pollution control, Water supply.

Dated: March 8, 2000.

Timothy R. Fields, Jr.,

Assistant Administrator, Office of Solid Waste and Emergency Response.

For the reasons set forth in the preamble, title 40, chapter 1 of the Code of Federal Regulations is proposed to be amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for part 148 continues to read as follows:

Authority: Sec. 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

§ 148.18 [Amended]

2. Section 148.18 is amended by removing and reserving paragraph (f).

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

§ 261.32 [Amended]

4. Section 261.32 is amended in the table under "Organic Chemicals" by removing the entry for K140.

§ 261.33 [Amended]

5. Section 261.33(f) is amended in the table by removing in its entirety the entry for U408 (2,4,6-Tribromophenol).

Appendix VII to Part 261 [Amended]

6. Appendix VII to Part 261 is amended by removing the entire entry for EPA hazardous waste number K140.

Appendix VIII to Part 261 [Amended]

7. Appendix VIII to Part 261 is amended by removing the entire entry for 2,4,6-Tribromophenol.

PART 268—LAND DISPOSAL RESTRICTIONS

8. The authority citation for part 268 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, and 6924.

Subpart C—Prohibitions on Land Disposal

§ 268.33 [Amended]

9. Section 268.33 is removed and reserved.

Subpart D—Treatment Standards

§ 268.40 [Amended]

10. In § 268.40, the table is amended by removing the entire entries for K140 and U408.

§ 268.48 [Amended]

11. In § 268.48, the table is amended by removing the entire entry for 2,4,6-Tribromophenol.

PART 271—REQUIREMENTS FOR AUTHORIZATION OF STATE HAZARDOUS WASTE PROGRAMS

12. The authority citation for part 271 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), and 6926.

13. Section 271.1(j) is amended by adding the following entry to Table 1 in chronological order by date of publication in the **Federal Register**, and by adding the following entries to Table 2 in chronological order by date of publication in the **Federal Register** to read as follows:

§ 271.1 Purpose and scope.

* * * * *

(j) * * *

TABLE 1.—REGULATIONS IMPLEMENTING THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Promulgation date	Title of regulation	Federal Register reference	Effective date
March 17, 2000	Vacated Organobromine wastes	[*insert FEDERAL REGISTER page numbers.*].	November 4, 1998.

TABLE 2.—SELF-IMPLEMENTING PROVISIONS OF THE HAZARDOUS AND SOLID WASTE AMENDMENTS OF 1984

Effective date	Self-implementing provision	RCRA citation	Federal Register reference
November 4, 1998	Prohibition on land disposal of organobromine waste (Vacated wastes).	3004(g)(4)(c) and 3004(m)	3/17/00. [insert FR page numbers.].
November 4, 1998	Prohibition on land disposal of radioactive waste mixed with the newly listed and identified wastes, including soil and debris (Vacated organobromine wastes).	3004(m) and 3004(g)(4)(c)	3/17/00. [insert FR page numbers.].

* * * * *

PART 302—DESIGNATION, REPORTABLE QUANTITIES, AND NOTIFICATION

14. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 9602, 9603, and 9604; 33 U.S.C. 1321 and 1361.

§ 302.4 [Amended]

15. Section 302.4 is amended by removing the entries in Table 302.4, in their entirety, for "2,4,6-Tribromophenol," and for "K140 Floor sweepings, off-specification product and spent filter media from the production of 2,4,6-tribromophenol."

Appendix A to § 302.4 [Amended]

16. Appendix A to § 302.4—Sequential CAS Registry Number List of CERCLA Hazardous Substances is amended by removing the entire entry for CAS Registry Number 118796.

[FR Doc. 00–6393 Filed 3–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–6561–9]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of deletion of the Sand Springs Petrochemical Complex Superfund Site from the National Priorities List (NPL).

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Sand Springs Petrochemical

Complex Superfund Site in Oklahoma from the National Priorities List (NPL). The NPL is appendix B of 40 CFR part 300, which is the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. This action is being taken by EPA and the State of Oklahoma, because it has been determined that Responsible Parties have implemented all appropriate response actions required. Moreover, EPA and the State of Oklahoma have determined that remedial actions conducted at the site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Shawn Ghose, M.S., P.E. at (214) 665–6782, Remedial Project Manager, (6SF–AP), Superfund Division, U.S. EPA—Region 6, 1445 Ross Avenue, Dallas, TX 75202. Information on the site is available at the local information repository located at: Page Memorial Library, 6 East Broadway, Sand Springs, Oklahoma 74063. Requests for comprehensive copies of documents should be directed formally to the Regional Docket Office. The Region 6 Public Docket is located at EPA Region 6 Library (6MD–II), 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6424 or 665–6427.

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is Sand Springs Petrochemical Complex located at Sand Springs, Oklahoma. A Notice of Intent to Delete for this site was published August 2, 1999 (64 FR 41875). The closing date for comments on the Notice of Intent to Delete was extended to October 25, 1999. EPA received no comments and, therefore, no Responsiveness Summary was prepared.

The EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

Gregg A. Cooke,

Regional Administrator, Region VI.

40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 33 U.S.C. 1321(c)(2); 42 U.S.C. 9601–9657; E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp.; p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp.; p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the site Sand Springs Petrochemical Complex, Sand Springs, Oklahoma.

[FR Doc. 00–6712 Filed 3–16–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 00–447]

Change of Address

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to reflect the change of address of the Commission's headquarters to the Portals II Building.

DATES: Effective March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Laurence Schecker, Office of General Counsel, (202) 418–1720.

SUPPLEMENTARY INFORMATION: This order adopted February 29, 2000 amends 47 CFR 1.13(a)(1), to reflect the change of address of the Commission's headquarters to the Portals II Building, 445 12th Street, SW, Washington, DC 20554. The Commission's rules are amended as set forth:

List of Subjects in 47 CFR Part 1

Practice and procedure.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Change

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read as follows:

Authority: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r) and 309.

2. In 47 CFR 1.13(a)(1) remove the words "Room 614, 1919 M Street NW" and add, in their place, the words "Room 8–A741, 445 12th Street, SW."

[FR Doc. 00–6461 Filed 3–16–00; 8:45 am]

BILLING CODE 6712–01–U

Proposed Rules

Federal Register
Vol. 65, No. 53
Friday, March 17, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 3, 213, and 315

RIN 3206–AI94

Appointments of Persons With Psychiatric Disabilities

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to create a new Governmentwide excepted appointing authority, with noncompetitive conversion to the competitive service authorized by Executive Order 13124, for persons with psychiatric disabilities. The proposed regulations also abolish two excepted service appointing authorities that relate to persons with psychiatric disabilities, and make technical corrections to reflect the proposed changes.

DATES: Written comments will be considered if received on or before May 16, 2000.

ADDRESSES: Send or deliver written comments to Mary Lou Lindholm, Associate Director for Employment, Office of Personnel Management, Room 6500, 1900 E Street, NW., Washington, DC 20415–9000.

FOR FURTHER INFORMATION CONTACT: John Riedel-Alvarez or Paul Robinson on (202) 606–1059, TTY (202) 606–0023, or FAX (202) 606–0927.

SUPPLEMENTARY INFORMATION: On March 13, 1998, the President addressed the underemployment of people with disabilities by signing Executive Order 13078 establishing the Presidential Task Force on Employment of Adults with Disabilities. The Task Force's mission is to create a coordinated and aggressive national policy to bring adults with disabilities into gainful employment at a rate as close as possible to that of the general adult population.

The Task Force issued their first report, "Recharting the Course," on November 15, 1998. The report recommended that OPM explore paralleling the excepted service "hiring standards" of adults with psychiatric disabilities with the excepted service "hiring standards" of individuals with mental retardation and severe physical disabilities. After reviewing, we agree that the "hiring standards" for employing individuals with severe physical disabilities, mental retardation, and psychiatric disabilities should be the same.

The first step is amending the Civil Service Rules to broaden the category of people who may noncompetitively convert from the excepted service to the competitive service. Currently under the Governmentwide Schedule A excepted service authorities 5 CFR 213.3102(t) and (u), employees with mental retardation and severe physical disabilities are able to acquire competitive status after two years of satisfactory service. Executive Order 13124, signed June 4, 1999, now permits adults with psychiatric disabilities the same opportunity for noncompetitive conversion. In order for agencies to appoint adults with psychiatric disabilities, we are proposing the following.

Creating a New Governmentwide Schedule A Excepted Appointing Authority

By way of background, OPM has authority to except some positions from competitive examining procedures under Schedules A and B when it is determined that examining is impracticable for those positions, or that open competition cannot take place. Excepted authorities listed in 5 CFR part 213 under Schedules A and B (§ 213.3102 or 3202) may be used by any agency covered under title 5 appointing procedures to appoint individuals based on the criteria outlined in the authority. Agencies may also obtain specific Schedule A and B authorities for their own use. To do so, the agency must demonstrate to OPM that the competitive examining process cannot be used for the position(s) the agency wishes to place in Schedule A or B.

Employment of individuals under Schedules A and B follows the guidelines in 5 CFR part 302. Those appointed under Schedule A do not have to meet OPM qualification standards; agencies may develop their own standards. Those appointed under Schedule B must meet OPM qualification standards for the positions in question.

Currently, there are two Governmentwide excepted appointing authorities for specific categories of individuals with psychiatric disabilities. Schedule A excepted appointing authority 213.3102(h) is used to appoint former patients of Federal mental institutions who are partially recovered. Appointments are made to positions at Federal mental institutions only, because the persons still need the support and structure that the institutions provide.

Schedule B excepted appointing authority 213.3202(k) is used to update the job skills of individuals whose psychiatric disabilities are severe enough to cause significant disruption to their employment. The appointments help establish a successful performance record to counteract employer prejudice.

In order to parallel employment opportunities for all individuals with psychiatric disabilities with those appointed under 5 CFR 213.3102(t) and (u) (the appointing authorities for those with severe physical disabilities and mental retardation), Executive Order 13124 was signed June 4, 1999. The Executive Order amended the Civil Service Rules to permit noncompetitive conversion of persons with psychiatric disabilities in the excepted service to the competitive service.

After evaluating the two current excepted appointing authorities for persons with psychiatric disabilities, we felt they were not defined broadly enough to encompass all persons with psychiatric disabilities. Therefore, we are proposing a new Governmentwide Schedule A excepted appointing authority 213.3102(gg). The authority would permit a person with a psychiatric disability who either served under a competitive service temporary appointment, or is certified by a State vocational rehabilitation office or the U.S. Department of Veterans Affairs, to be appointed for any job for which they qualify and meet suitability requirements. After two years of satisfactory job performance under the (gg) authority, agencies may noncompetitively convert them to the competitive service.

Because the new Governmentwide authority is broad enough to encompass those individuals who may currently qualify for appointments under 5 CFR 213.3102(h) and 213.3202(k), we propose abolishing these two appointing authorities. Individuals currently appointed to these authorities would be given new appointments under 213.3102(gg). Current service under 5 CFR 213.3102(h) and 213.3202(k) would count toward the two-year service requirement of the new (gg) authority. Individuals would be eligible for noncompetitive conversion after serving two years total under the old (h) and (k) authorities and the new (gg) authority combined. Agencies may not require individuals to serve under a competitive temporary appointment, or begin new two-year service periods under the (gg) authority, if individuals are currently serving under the (h) and (k) authorities and are moved to the new authority.

Amending Civil Service Rule III

To reflect the Executive Order permitting noncompetitive conversion of adults with psychiatric disabilities, we are amending § 3.1 to add these employees to the list of individuals who may noncompetitively acquire status.

Amend Part 315

We propose amending § 315.709 to reflect the addition of those with psychiatric disabilities to the list of employees who may be noncompetitively converted to the competitive service.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities (including small businesses, small organizational units, and small governmental jurisdictions) because the regulations apply only to appointment procedures for certain employees in Federal agencies.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

List of Subjects in 5 CFR Parts 3, 213, and 315

Government employees.

U.S. Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend parts 3, 213, and 315 of title 5, Code of Federal Regulations, as follows:

PART 3—NONCOMPETITIVE ACQUISITION OF STATUS (RULE III)

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302.

2. In § 3.1, paragraph (b)(3) is added to read as follows:

§ 3.1 Classes of persons who may noncompetitively acquire status.

* * * * *

(b) * * *

(3) An employee with a psychiatric disability who completes at least 2 years of satisfactory service in a position excepted from the competitive service.

PART 213—EXCEPTED SERVICE

3. The authority citation for part 213 continues to read as follows:

Authority: 5 U.S.C. 3301 and 3302, E.O. 10577, 3 CFR 195401958 Comp., p. 218; § 213.101 also issued under 5 U.S.C. 2103; § 213.3102 also issued under 5 U.S.C. 3301, 3302, 3307, 8337(h) and 8456; E.O. 12364, 47 FR 22931, 3 CFR 1982 Comp., p. 185; 38 U.S.C. 4301 *et seq.*; and Pub. L. 105–339.

4. In § 213.3102, paragraph (h) is removed and reserved.

5. In § 213.3102, paragraph (gg) is added to read as follows:

§ 213.3102 Entire executive civil service.

* * * * *

(gg) Positions when filled by persons with psychiatric disabilities who:

(1) Under a temporary appointment have demonstrated their ability to perform the duties satisfactorily; or

(2) Are certified by a State vocational rehabilitation counselor, or a U.S. Department of Veterans Affairs Veterans Benefits Administration or Veterans Health Administration psychologist, vocational rehabilitation counselor, or psychiatrist, as likely to succeed in the performance of the duties of the position. Upon completion of 2 years of satisfactory service under this authority, the employee may qualify for conversion to competitive status under the provisions of Executive Order 12125 as amended by Executive Order 13124.

* * * * *

6. In § 213.3202, paragraph (k) is removed and reserved.

PART 315—CAREER AND CAREER-CONDITIONAL EMPLOYMENT

7. The authority citation for part 315 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302; E.O. 10577, 3 CFR 1954–1958 Comp., p. 218, unless otherwise noted.

Secs. 315.601 and 315.609 also issued under 5 U.S.C. 3651 and 3652.

Secs. 315.602 and 315.604 also issued under 5 U.S.C. 1104.

Sec. 315.603 also issued under 5 U.S.C. 3151.

Sec. 315.605 also issued under E.O. 12034, 3 CFR, 1978 Comp., p. 111.

Sec. 315.606 also issued under E.O. 11219, 3 CFR, 1964–1965 Comp., p. 303.

Sec. 315.607 also issued under 22 U.S.C. 2506.

Sec. 315.608 also issued under E.O. 12721, 3 CFR, 1990 Comp., p. 293.

Sec. 315.610 also issued under 5 U.S.C. 3304(d).

Sec. 315.710 also issued under E.O. 12596, 3 CFR, 1987 Comp., p. 229.

Subpart I also issued under 5 U.S.C. 3321, E.O. 12107, 3 CFR, 1978 Comp., p. 264.

8. Section 315.709 is amended by revising the section heading, the introductory text of paragraphs (a), (a)(1), and (b)(2) to read as follows:

§ 315.709 Employees who are mentally retarded, severely physically handicapped, or have psychiatric disabilities serving under Schedule A appointments.

(a) *Coverage.* Employees appointed under §§ 213.3102(t), (u), and (gg) of this chapter may have their appointments converted to career or career-conditional appointments when they:

(1) Complete 2 or more years of satisfactory service, without a break of more than 30 days, under nontemporary Schedule A appointments.

* * * * *

(b) * * *

(2) A career employee if he or she has completed 3 years of substantially continuous service in nontemporary appointments under §§ 213.3102(t), (u), or (gg) of this chapter, or has otherwise completed the service requirement for career tenure, or is excepted from it by § 315.201(c).

* * * * *

[FR Doc. 00–6625 Filed 3–16–00; 8:45 am]

BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 6

RIN 0551–AA59

Licensing for Certain Sugar-Containing Products Under Tariff-Rate Quota

AGENCY: Office of the Secretary, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule provides for licensing of imports of sugar-containing products which enter under the tariff-rate quota (TRQ) provided for in Additional U.S. Note 8 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: Comments should be received on or before April 17, 2000 to be assured of consideration.

ADDRESSES: Comments should be mailed or delivered to Diana Wanamaker, Import Policies and Programs Division, Foreign Agricultural Service, 1400 Independence Avenue SW, STOP 1021, U.S. Department of Agriculture, Washington, DC 20250–1021. Comments received may be inspected between 10 a.m. and 4 p.m. at room 5541–S, 1400 Independence Avenue SW, Washington, DC 20250–1021.

FOR FURTHER INFORMATION CONTACT: Diana Wanamaker at the address above, or telephone at 202–720–2916, or e-mail at Wanamaker@fas.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule has been classified as "not significant." In conformity with this designation, except for requirements under the Paperwork Reduction Act of 1995, the rule has not been reviewed by the Office of Management (OMB). The provisions of this proposed rule would not: (1) Result in an annual effect on the economy of $100 million or more; (2) adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; or (3) regulate issues of human health, human safety, or the environment.

Furthermore, the proposed rule would not: (1) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (2) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients; or (3) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

The Regulatory Flexibility Act ensures that regulatory and information requirements are tailored to the size and nature of small businesses, small organizations, and small governmental jurisdictions. This proposed rule will not have a significant economic impact on a substantial number of small entities. Participation in the programs is voluntary. Direct and indirect costs are likely to be very small as a percentage of revenue and in terms of absolute costs. The minimal regulatory requirements impact large and small businesses equally, and the licensing program should improve small businesses' cash flow and liquidity.

Paperwork Reduction Act

The paperwork and record keeping requirements must be approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1995. A Paperwork Reduction Act submission has been prepared for the proposed rule and copies of the information collection may be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568 or e-mail at Chisley@fas.usda.gov.

The information collection is necessary to enable FAS to implement and administer the licensing system that will be established by the proposed rule. The proposed rule will require eligible applicants for historical or nonhistorical licenses to submit a letter of application to the Department for each TRQ year that a license is being requested. All applicants shall provide the standard business information set forth in § 6.53 (e.g., address, fax number). For applicants for historical licenses, § 6.53(c)(8) also requires that: (1) Importers of sugar-containing products entered in retail size containers, submit either U.S. Customs Service Forms 7501 to document entries during the representative period, or submit a summary listing of such import entries; and (2) buyers of imports in bulk form which were packaged or processed in the United States by or for the account of an applicant, submit supporting documentation (e.g., purchase orders) that provides a record of the quantities of bulk imports that were entered during the representative period for processing or packaging in the United States. In addition, all applicants for historical licenses shall submit a notarized certification statement that the information submitted is true and accurate.

The estimated public reporting burden for the information collection for the three years period for which OMB approval is being requested is indicated in following table:

ESTIMATED ANNUAL REPORTING BURDEN

	Year 1	Year 2	Year 3	3 year average
Number of respondents	20	20	20	20
Responses per respondent	1	1	1	1
Total annual burden in hours	91.25	5.00	5.00	33.75

The estimated burden hours in the first TRQ year is higher than in the second and third TRQ years because the supporting documentation required to establish eligibility for a historical license will be compiled and submitted in that TRQ year. Once eligibility for a historical license is established, applicants will be required only to submit the standard business information and certification statement.

During the first TRQ year, it is estimated that: (1) Five applicants will apply for a historical license to import from Canada, and 10 applicant will apply for a historical license to import from other countries, and the information collection will take an estimated 6 hours per applicant (total 90 hours); (2) five applicants will apply for a nonhistorical license and the information collection will take an estimated 15 minutes per applicant (total 1.25 hours). During the second and third TRQ years, it is estimated that 20 applicants will apply for either renewal of a historical licenses or issuance of a nonhistorical license. The information collection will take an estimated 15 minutes per applicant (total 5 hours).

The total average hourly burden for the three TRQ years will be 33.75 hours. The total estimated average cost associated with the information collection, based on costs of preparing similar information collections, for the three TRQ years will be $1,012.50.

The Department requests comments on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the

quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of collection of information to those who are to respond, including through use of appropriate automated, electronic, mechanical or other technological collection techniques or other form of information technology. Comments on the information collection should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503. Attention: Desk Officer for USDA/FAS. Comments on the issues covered by the Paperwork Reduction Act should be submitted no later than 60 days from the date of publication to be assured of consideration.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988. The provisions of this proposed rule would not have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with such provision or which otherwise impede their full implementation. The proposed rule would not have retroactive effect. Administrative proceedings are not required before parties may seek judicial review.

National Environmental Policy Act

The Secretary of Agriculture has determined that this action will not have a significant affect on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is necessary for this proposed rule.

Executive Orders 12372 and 12875, and the Unfunded Mandates Reform Act (Pub. L. 104–4)

These Executive Orders and Public Law 104–4 require intergovernmental review of programs. This proposed rule does not impose an unfunded mandate or any other requirement on state, local or tribal governments. Further, the program is national in scope and involves a power delegated to the United States by the Constitution to regulate international trade. Accordingly, these programs are not subject to the provisions of Executive Order 12372, Executive Order 12875, or the Unfunded Mandates Reform Act.

Executive Order 12612

Executive Order 12612 requires implications of "federalism" be considered in the development of regulations. The Secretary of Agriculture certifies that this proposed rule has been reviewed in light of Executive Order 12612 and that it is consistent with the principles, criteria and requirements stated in sections 2 through 5 of this Executive Order. The Secretary of Agriculture further certifies that this proposed rule would impose no additional cost or burden on the states, nor affect the state's abilities to discharge traditional State governmental functions.

Executive Order 12606

Executive Order 12606 requires that government action include consideration of maintaining stability and strengthening the family. The Secretary of Agriculture has determined, under the principles and criteria established in Executive Order 12606, that this proposed rule will have no effect on the family.

Executive Order 12630

This Order requires careful evaluation of governmental actions that interfere with constitutionally protected property rights. This proposed rule would not interfere with any property rights and, therefore, does not need to be evaluated on the basis of the criteria outlined in Executive Order 12630.

Background

Previous Quotas

Presidential Proclamation 5294 of June 28, 1985 imposed absolute quotas on imports of certain sugar-containing products pursuant to the provisions of section 22 of the Agricultural Adjustment Act of 1933, as amended (7 U.S.C. 624). Action was taken to restrict imports which were entering the United States in circumvention of the absolute quota on imports of raw sugar and were entering under such conditions and in such quantities as to cause or threaten to cause material interference with the price support program for sugar beets and sugar cane. Presidential Proclamation 5340 of May 17, 1985, modified these section 22 quotas to limit their scope to imports containing over 10 percent by dry weight of sugar, and to exclude "articles not principally of crystalline structure or not in dry amorphous form that are prepared for marketing to the retail consumers in the identical form and package in which imported."

Uruguay Round Commitment on TRQs

On April 15, 1994, the President entered into trade agreements resulting from the Uruguay Round of multilateral trade negotiations ("Uruguay Round Agreements"). As part of those agreements, countries agreed that all systems of absolute quotas for all agricultural products would be eliminated and converted to TRQs, including imports of certain sugar-containing products containing over 10 percent dry weight of sugar. In section 101(a) of the Uruguay Round Agreements Act (the URAA) (Pub. L. 103–65; 108 Stat. 4809), Congress approved the Uruguay Round Agreements, including the General Agreement on Tariffs and Trade 1994. Presidential Proclamation 6763 of December 23, 1994, implemented the Uruguay Round Agreements (URAA). The Proclamation terminated section 22 quotas; proclaimed TRQs for such articles; and modified the HTS accordingly. Under the HTS, Additional U.S. Note 3 to chapter 17 defines the term sugar-containing products containing over 10 percent by dry weight of sugar. Additional U.S. Note 8 to chapter 17 provides that the aggregate quantity of articles described in Additional U.S. Note 3 which are entered under 10 specific HTS numbers are subject to a TRQ which limits imports entered from October 1 through September 30 to 64,709 metric tons. Imports from Mexico are not permitted entry under this TRQ.

Bilateral Agreement

Subsequent to the Uruguay Round, the United States and Canada entered into a bilateral agreement (September 4, 1997). As a result of that agreement, the United States Trade Representative announced on September 16, 1998, (effective October 1, 1998) an allocation of 59,250 metric tons to Canada for certain sugar-containing products entered under the TRQ set forth in U.S. Additional Note 8 of chapter 17 of the HTS. This allocation was based on Canada's historical exports to the United States. In addition, an allocation to other countries (excluding Canada) of 5,459 metric tons became effective on October 1, 1998.

The United States and Canada also signed a Record of Understanding Regarding Areas of Agricultural Trade (December 4, 1998) which requires export permits issued by the Canadian Government to accompany imports of articles containing more than 10 percent by dry weight of sugar as a condition of entry under this TRQ, effective February 4, 2000. On June 11, 1999, the Canadian Government issued the Notice to Exporters No. 117 pursuant to the Export and Import Permits Act which governs the issuance of export permits for each shipment of sugar-containing products covered by the U.S. TRQ. For each of three years beginning in 1999/2000, six percent of each licensee's bulk shipment allocation will be converted to a retail packaged allocation or moved to a retail packaged allocation pool. This proposed rule is intended to establish a U.S. import licensing system to ensure that the opportunity to fill this TRQ continues to be based on customer requirements.

Implementation of TRQs

Section 404(a) of the URAA, 19 U.S.C. 3601(a), directs the President to take such action as may be necessary in implementing Uruguay Round TRQs (set forth in Schedule XX—United States of America, annexed to the Marrakesh Protocol to the General Agreement on Tariffs and Trade 1994) to ensure that imports of agricultural products do not disrupt the orderly marketing of commodities in the United States.

Presidential Proclamation 6763 delegated authority under the statutes cited in the proclamation, including section 404(a), to the Secretary of Agriculture, the Secretary of the Treasury, and the United States Trade Representative, as necessary to perform functions assigned to them to implement the proclamation.

Presidential Proclamation 7235 of October 7, 1999, delegated authority under section 404(a) to administer the TRQs relating to agricultural products to the United States Trade Representative and delegated authority to the Secretary of Agriculture to issue licenses governing the importation of such products under the applicable TRQs. The Secretary of Agriculture exercises such licensing authority in consultation with the United States Trade Representative.

Proposed Rule

This proposed rule specifies which sugar-containing products may be entered only by or for the account of a person to whom a license has been issued. Licenses issued pursuant to the provisions of this subpart will permit a license holder to import quantities of the subject articles into the United States at the applicable TRQ rate of duty. Imports may enter without an import license (with certain exceptions) at the applicable high-tier rate of duty.

License Eligibility—Eligibility for either a historical or nonhistorical license requires that a person have a business office in the United States, be doing business in the United States, and have an agent for service of process. Eligibility for a historical license also requires that an applicant, during the representative base period, must have imported sugar-containing products under the TRQ and have been either: (1) An importer of sugar-containing products in retail size packages; or (2) a buyer of sugar-containing products entered in bulk form for processing or packaging in the United States by, or for, the account of such person.

License Applications—The annual period begins on May 1 of each TRQ year. Applicants will be requested to submit applications by August 30 in order for licenses to be issued by October 1. An application for a nonhistorical license must provide the standard business information required in § 6.53(b). An application for a historical license must provide the standard business information required in § 6.53(c), and the supporting documentation and certification statement required in § 6.53(c)(8) with respect to transactions during the representative base period. In subsequent TRQ years, historical licenses may be renewed for the same quantity from the same country without re-submission of supporting documentation. An applicant issued a historical license is not eligible for a nonhistorical license.

License Issuance—Of the total TRQ quantity of 64,709 metric tons, 59,250 metric tons will be issued for licenses to import from Canada and 5,459 metric tons will be issued to import from other countries. All licenses will specify a quantity and the country of origin. Historical license quantities will be based on an applicant's supporting documentation submitted under § 6.53(c)(8). Nonhistorical license quantities will be based on the TRQ quantities not allocated to historical licenses and the number of applicants for nonhistorical licenses. Once licenses are issued, licensees will be responsible for maintaining records on license usage.

The Secretary of Agriculture has determined that this subpart will, to the fullest extent practicable, result in fair and equitable allocation of the right to import articles subject to such TRQ. The subpart will also maximize utilization of the TRQ for such articles, taking due account of any special factors which may have affected or may be affecting the trade in the articles concerned.

The Department invites comments on all aspects of the proposed rule including the: eligibility and performance requirements for historical licenses; representative historical period; percentage of the total TRQ that should be set aside for new entrants to establish themselves in the sugar-containing products business; minimum license sizes for nonhistorical licenses for imports in bulk and retail size packages; costs and unintended market consequences of the licensing requirement to importers, buyers and consumers; and less restrictive alternatives to licensing that would address concerns that Canada's export permit system does not alter trade flows (e.g., continuing not to require the submission to the U.S. Customs Service of export permits from the Government of Canada).

List of Subjects in 7 CFR Part 6

Agricultural commodities, Agricultural trade, Exports, Imports, Sugar.

Accordingly, the regulations at 7 CFR part 6 are proposed to be amended by adding a new subpart, Licensing for Certain Sugar-Containing Products Under Tariff-Rate Quota, to read as follows:

Subpart —Licensing for Certain Sugar-Containing Products Under Tariff-Rate Quota

Sec.
6.50 Definitions.
6.51 Requirements for a license.
6.52 Eligibility for a license.
6.53 Application for a license.
6.54 Allocation of licenses.
6.55 Surrender and reallocation.
6.56 License use and license expiration.
6.57 Debarment and suspension.
6.58 Globalization or suspension of licenses.
6.59 License fee.

Subpart —Licensing for Certain Sugar-Containing Products Under Tariff-Rate Quota

Authority: Proc. 7235 of October 7, 1999, 64 FR 55609; Additional U.S. Note 8 to chapter 17 of the Harmonized Tariff Schedule of the United States and General Note 15 of the Harmonized Tariff Schedule of the United States (19 U.S.C. 1202), Pub. L. 97–258, 96 Stat. 1051, as amended (31 U.S.C. 9701); Pub. L. 103–465, secs. 103, 104, 108 Stat. 4819 (19 U.S.C. 3513, 3601).

§ 6.50 Definitions.

As used in this subpart, the following terms mean:

Agent for service of process. A person upon whom legal papers can be served.

Article or sugar-containing article. Any sugar-containing products described in Additional U.S. Note 3 to chapter 17 of the Harmonized Tariff Schedule of the United States (HTS) and listed in Additional U.S. Note 8 to chapter 17 of the HTS.

Commercial entry. Any entry except those made by or for the account of the United States Government or for a foreign government, for the personal use of the importer or for sampling, taking orders, research, or the testing of equipment.

Country. Country of origin as determined in accordance with Customs rules and regulations (19 CFR chapter I).

Department. The United States Department of Agriculture.

Licensee. A person to whom a license has been issued under this subpart.

Licensing authority. The person designated by the Director of the Import Policies and Programs Division (or its successor organization) of the Foreign Agricultural Service to administer the licensing program.

Other countries. Countries other than Canada.

Person. An individual, firm, corporation, partnership, association, trust, estate or other legal entity.

Representative base period. October 1, 1996 through September 30, 1999, inclusive.

Tariff-rate quota quantity or TRQ quantity. The aggregate quantity of sugar-containing products provided for in Additional U.S. Note 8 of chapter 17 of the HTS.

TRQ year. The 12-month period beginning on October 1 of any year through September 30 of the following year, inclusive.

United States. The Customs Territory of the United States, which is limited to the 50 states, the District of Columbia, and Puerto Rico.

§ 6.51 Requirement for a license.

(a) *General rule.* Except as provided in paragraph (b) of this section, a person who seeks to enter into the Customs Territory of the United States sugar-containing products subject to the TRQ established by Additional U.S. Note 8 to chapter 17 of the HTS shall obtain a license in TRQ year 2001 and subsequent TRQ years in accordance with this subpart. Such license shall be presented to the U.S. Customs Service at the time and place of importation of such sugar containing products.

(b) *Exceptions.* Licenses are not required if:

(1) The article is imported by or for the account of any agency of the U.S. Government;

(2) The article is imported for the personal use of the importer, provided that the net weight does not exceed five kilograms in any one shipment;

(3) The article imported will not enter the commerce of the United States and is imported as a sample for taking orders, for exhibition, for display or sampling at a trade fair, for research, for testing of equipment; or for use by embassies of foreign governments. Written approval of the Licensing Authority shall be obtained prior to entry, and the importer of record (or a broker or agent acting on its behalf) shall provide to the Licensing Authority, prior to the release of such articles, the appropriate Customs documentation identifying the article, quantity to be imported, its location, intended use, an entry number and the importer of record. The Licensing Authority may also require as a condition of import that the article be destroyed or re-exported after such use; or

(4) Such person importing the article pays the applicable high-tier rate of duty.

§ 6.52 Eligibility for a license.

(a) *Eligibility to apply for a nonhistorical license.* A person may apply for a license for each TRQ year provided such person has:

(1) A business office, and is doing business, in the United States, and

(2) An agent in the United States for service of process.

(b) *Eligibility to apply for a historical license.* In addition to meeting the requirements of paragraph (a) of this section, a person may apply for a historical license provided such person was either:

(1) A buyer of sugar-containing products that were imported in bulk form during the representative base period under the TRQ set forth in Additional U.S. Note 8 to chapter 17 of the HTS and were processed or packaged in the United States by, or for the account of such person; or

(2) An importer of record of imports of retail size packaged sugar-containing products entered during the representative base period under the TRQ set forth in Additional U.S. Note 8 to chapter 17 of the HTS.

(3) Eligibility for a historical license for imports from Canada and/or from other countries requires that the criteria of paragraphs (b)(1) or (2) of this section be met for Canada and/or other countries, respectively.

(c) *Exceptions.* (1) Any licensee that fails in a TRQ year to enter at least 95 percent of the amount permitted under a license, shall not be eligible to receive a license for the next TRQ year. For purposes of this paragraph, the amount permitted entry under a license will exclude any license amount surrendered pursuant to § 6.55(a), but will include an additional amount received pursuant to § 6.55(c). Failure to meet the 95 percent license utilization requirement for a historical license will result in cancellation of that license and the transfer of that license amount to nonhistorical licenses.

(2) Paragraph (c)(1) of this section will not apply where the licensee demonstrates to the satisfaction of the Licensing Authority that the failure resulted from breach by a carrier of its contract of carriage, breach by a supplier of its contract to supply the articles, act of God, or force majeure.

§ 6.53 Application for a license.

(a) A person seeking a license shall apply in writing to the Licensing Authority. An application for a license should be submitted between May 1 and August 30 in order for the Licensing Authority to issue licenses by October 1. However, applications may be submitted at any time during the TRQ year, and licenses may be issued based on TRQ quantities remaining unallocated.

(b) *Nonhistorical license.* A person meeting the eligibility requirements of § 6.52(a) may apply for a nonhistorical license. The letter of application shall state the:

(1) Name of the applicant and the firm;

(2) Address of the firm;

(3) Name of agent for service of process;

(4) Telephone and fax numbers for the firm;

(5) IRS number under which the applicant is conducting business;

(6) Whether a license is being requested for entry of product only for Canada, other countries, or both; and

(7) License quantity being requested.

(c) *Historical license.* A person meeting the eligibility requirements of § 6.52(a) and (b) may apply for a historical license. The letter of application shall state the:

(1) Name of the applicant;

(2) Address of the applicant;

(3) Name of agent for service of process;

(4) Telephone and fax numbers for the applicant;

(5) IRS number under which the applicant is conducting business;

(6) Whether a license is being requested for entry of product only from Canada, other countries, or both;

(7) License quantity being requested; and

(8) For a first time historical license, provide the information in paragraphs (c)(8)(i) and (ii) of this section. For renewal of a historical license share in subsequent TRQ years, submission of information in paragraph (c)(8)(i) is not required. The information to be provided is:

(i) The total quantity of imports from Canada and from other countries for each of the TRQ years in the representative base period (October 1, 1996 through September 30, 1999) that was imported in bulk form and packaged or processed in the United States by or for the account of the applicant, or imported in retail size packages by, or for, the account of the applicant. Where the applicant seeks to establish eligibility on the basis of imports of sugar-containing products entered in retail size containers, the application shall include either Customs Form 7501 to document entries from Canada and from other countries during the representative base period, or include a summary listing of import entry numbers, the quantity entered under the entry number, and date of entry for imports during the representative base period. Where the applicant seeks to establish eligibility on the basis of imports of sugar-containing products entered in bulk form, the application shall include supporting documentation that provides a record of those quantities imported in bulk form from Canada and from other countries to be packaged or processed in the United States by or for the account of the applicant.

(ii) The applicant shall submit a notarized certification statement that the applicant, or a duly authorized agent, was engaged in importing, processing, or packaging sugar-containing products imported under the TRQ set forth in Additional U.S. Note 8 to chapter 17 of the HTS during the representative base period; the applicant meets the eligibility requirements in § 6.52; and that the reported quantities of imports of sugar-containing products entered during the representative base period for which the applicant was the importer, packer, or processor is true and accurate.

§ 6.54 Allocation of licenses.

(a) *Historical licenses.* Allocation of historical licenses will be based on documentation submitted under § 6.53(c)(8). For each applicant, a renewable historical share for Canada, other countries, or both will be calculated on the basis that applicant's imports of sugar-containing products entered under Additional U.S. Note 8 to chapter 17 during the representative base period for which the applicant was either a buyer of sugar-containing products imported in bulk form which were processed or packaged in the United States by, or for the account of such person; or an importer of record of entries of sugar-containing products entered in retail size packages. Once a renewable historical share is determined, a person may apply for and be issued a historical license for the same quantity from the same supplying country in subsequent TRQ years. If an applicant requests, and is issued, a historical license in any TRQ year which exceeds that person's renewable historical share, that additional amount does not become part of the renewable historical share. Any supplementary quantities added to a historical license in any TRQ year will depend on TRQ quantities available. A person issued a historical license will not be issued a nonhistorical license.

(b) *Nonhistorical licenses.* Allocation of nonhistorical license quantities will be based on the quantities remaining after TRQ quantities have been allocated to historical licenses, license quantities requested in the applications, and the number of applicants.

(c) Of the total TRQ quantity of 64,709 metric tons, import licenses for 59,250 metric tons shall be allocated to Canada, and import licenses for 5,459 metric tons shall be allocated to other countries.

(d) Any TRQ amount not allocated by October 1 may be allocated by the Licensing Authority in any manner deemed equitable.

§ 6.55 Surrender and reallocation.

(a) If a licensee determines that it will not enter the entire amount of an article permitted under its license, such licensee should surrender its licensee right to enter the amount that it does not intend to enter. Surrender shall be made to the Licensing Authority in writing not later than July 1. Any surrender shall be final and shall be only for that TRQ year. The amount of the license not surrendered shall be subject to the license utilization requirement of § 6.52(c)(1).

(b) For each TRQ year, the Licensing Authority will, to the extent practicable, reallocate any amounts surrendered.

(c) Any person who has been issued a license for a TRQ year may apply to receive an additional license, or an addition to an existing license for a portion of the amount being reallocated. The Licensing Authority will issue a notice to licensees after July 1 advising licensees of the application period. Any new license issued shall be subject to the license utilization requirement of § 6.52(c)(1). For existing licenses, the combined total of a license amount plus any addition to that license shall be subject to the license utilization requirement of § 6.52(c)(1).

§ 6.56 License use and license expiration.

(a) All articles entered under a license shall meet country of origin requirements.

(b) An article entered or withdrawn from warehouse for consumption under a license must be entered in the name of the licensee as the importer of record by the licensee or its agent.

(c) Nothing in this subpart shall prevent the use of immediate delivery in accordance with the provisions of U.S. Customs Service regulations relating to tariff-rate quotas.

(d) A licensee shall not obtain or use a license for speculation, brokering, or offering for sale, or permit any other person to use the license for profit.

(e) A licensee shall not transfer a license to another person.

(f) If a licensee sells, transfers, or conveys its business involving sugar-containing products covered by this subpart, the license will expire.

§ 6.57 Debarment and suspension.

The Government-wide Debarment and Suspension (Nonprocurement) regulations and Government Requirements for Drug-Free Workplace (Grants), 7 CFR part 3017—Subparts A through E, apply to this subpart.

§ 6.58 Globalization or suspension of licenses.

(a) If the Licensing Authority determines that entries of sugar-containing products are likely to fall short of a country's allocated quantity, the Licensing Authority may permit, with the approval of the Office of the United States Trade Representative, the applicable licensees to enter the remaining balance of their license from any country during the remainder of the TRQ year. Requests for consideration of such adjustments shall be submitted to the Licensing Authority no later than July 1 of any TRQ year.

(b) If the Licensing Authority determines that entries of sugar-containing products under all import licenses have been less than 85 percent of the aggregate TRQ quantity, due to the failure of the licensees to make good faith efforts to procure substantially the full quantity of articles covered by their licenses, the Licensing Authority may suspend the import licensing system with the approval of the Office of the United States Trade Representative.

(c) If the Licensing Authority determines that for overriding economic reasons the licensing system should be suspended during any TRQ year, the Licensing Authority may temporarily suspend the import licensing system with the approval of the Office of the United States Trade Representative.

§ 6.59 License fee.

(a) A fee shall be assessed each TRQ year for each historical license and nonhistorical license issued to defray the Department's costs of administering the licensing system. To the extent practicable, the fee will be announced by the Licensing Authority in a notice published in the **Federal Register** no later than May 1 of the year preceding TRQ year for which the fee is assessed.

(b) The license fee for each license issued is due and payable in full by mail, postmarked no later than 60 days after issuance of a license for which the fee is assessed. Fee payments shall be made by certified check or money order payable to the Treasurer of the United States.

(c) If the license fee is not paid by the final payment date, a hold will be placed on the use of the license and no further articles will be permitted entry under that license until the fee has been paid. The Licensing Authority shall send a warning letter by certified mail, return receipt requested, advising the licensee that if payment is not mailed within 21 days from the date of the letter, that the license will be permanently revoked.

Signed at Washington, D.C. on March 9, 2000.

Timothy J. Galvin,

Administrator, Foreign Agricultural Service.

[FR Doc. 00–6403 Filed 3–16–00; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1160

[DA–00–07]

Fluid Milk Promotion Order; Invitation To Submit Comments on Proposed Amendments to the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This document invites written comments on proposals to amend the Fluid Milk Promotion Order. The proposed amendments, requested by the National Fluid Milk Processor Promotion Board (Board), which administers the order, would modify the membership status of Board members. The proposed amendments would allow a fluid milk processor to be represented by up to 3 members on the 20-member Board and allow a Board member whose fluid milk processor company affiliation has changed to serve for a period of up to 6 months or until a successor is appointed, whichever is sooner. The Board states that the proposed amendments are necessary to ensure Board continuity and full representation and allow it to operate in an efficient and effective manner.

DATES: Comments are due no later than April 17, 2000.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Programs, Promotion and Research Branch, 1400 Independence Avenue, SW, Stop 0233, Room 2958, South Building, Washington, DC 20250–0233. Advance, unofficial copies of such comments may be faxed to (202) 720–0285. Comments should reference the title of the action and docket number and will be made available for public inspection in Room 2958 South Building during regular business hours.

FOR FURTHER INFORMATION CONTACT: David Jamison, Chief, USDA/AMS/Dairy Programs, Promotion and Research Branch, 1400 Independence Avenue, Room 2958, South Building, Washington, DC 20250–0233, (202) 720–6909, David.Jamison2@usda.gov.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration as those processors employing more than 500 employees. For purposes of determining a processor's size, if the plant is part of a larger company operating multiple plants that collectively exceed the 500-employee limit, the plant will be considered a large business even if the local plant has fewer than 500 employees. There are approximately 275 fluid milk processors subject to the provisions of the Fluid Milk Promotion Order. Most of these processors are considered small entities.

The Fluid Milk Promotion Order (7 CFR Part 1160) is authorized under the Fluid Milk Promotion Act of 1990 (Act) (7 U.S.C. 6401 *et seq.*). The Order provides for a 20-member Board with 15 members representing geographic regions and five at-large members which include at least three fluid milk processors and at least one member from the general public. To the extent practicable, members representing geographic regions should represent processing operations of differing sizes.

The National Fluid Milk Processor Promotion Board has proposed amendments to the membership provisions of the Order. The proposed amendments would allow up to three representatives of a fluid milk processor to serve on the 20-person Board. Currently, the Order states that a fluid milk processor shall be represented on the Board by no more than two members. The Board indicates that this proposal is due to changes in the industry which have resulted in the formation of larger regional and national companies.

The proposed amendments also would allow a Board member whose fluid milk processor company affiliation changes to serve on the Board for a period of up to six months or until a successor is appointed, whichever is sooner, provided that the eligibility requirements of the Order are still met. Under current Order provisions, a Board member whose company affiliation changes may continue to serve on the Board for a period of up to 60 days or until a successor is appointed, whichever is sooner, provided that such member continues to meet the Order's eligibility standards. The Board states that the proposed amendment would more accurately reflect the time needed to fill a Board vacancy.

The Board believes that the proposed amendments would ensure Board continuity and full representation and allow it to operate in an effective and efficient manner.

The proposed amendments to the Order should not add any burden to regulated parties because they relate to provisions concerning Board membership. Additionally, the proposed changes would not impose additional reporting or collecting requirements. No relevant Federal rules have been identified that duplicate, overlap, or conflict with this rule.

Accordingly, pursuant to 5 U.S.C. 605(b), the Agricultural Marketing Service has certified that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12866 and the Paperwork Reduction Act

The Department is issuing this proposed rule in conformance with Executive Order 12866.

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have a retroactive effect. If adopted, this proposed rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

The Fluid Milk Promotion Act of 1990, as amended, authorizes the Fluid Milk Promotion Order. The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to a Fluid Milk Promotion Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with the law and request a modification of the Order or to be exempted from the Order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

In accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in the Fluid Milk Promotion Order have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board members' nominee information sheets that were assigned OMB No. 0505–0001.

Statement of Consideration

The proposed rule would amend certain provisions of the Fluid Milk Promotion Order. The proposed amendments would modify the membership provisions of the Order. One proposal would allow up to three representatives of a fluid milk processor to serve on the 20-member Board. Currently, the Order states that a fluid milk processor shall be represented by no more than two representatives on the Board. The Board indicated that this proposal is due to consolidations in the industry which have resulted in the formation of larger regional and national companies. Additionally, the Board asserts that the proposed amendment would provide the Secretary greater flexibility in those situations that warrant additional representation for a fluid milk processor.

The proposed amendments also would allow a Board member who changes fluid milk processor company affiliation to serve on the Board for a period of up to six months or until a successor is appointed, whichever is sooner, provided that the eligibility requirements of the Order are still met. Under current Order provisions, a Board member whose company affiliation changes may continue to serve on the Board for a period of up to 60 days or until a successor is appointed, whichever is sooner, provided that such member continues to meet the Order's eligibility standards. The Board states that the proposed amendment would more accurately reflect the time needed to fill a Board vacancy.

The Board believes that the proposed amendments would ensure Board continuity and full representation and allow it to operate in an effective and efficient manner.

Interested parties are invited to comment on this proposed rule. A 30-day comment period is provided. This period is deemed appropriate so as to implement the proposed changes, if adopted, as soon as possible, in order to avoid unnecessary vacancies on the Board.

List of Subjects 7 CFR Part 1160

Fluid milk products, Milk, Promotion.

For the reasons set forth in the preamble, it is proposed that 7 CFR part 1160 is amended as follows:

PART 1160—FLUID MILK PROMOTION PROGRAM

1. The authority citation for 7 CFR part 1160 continues to read as follows:

Authority: 7 U.S.C. 6401–6417.

2. Section 1160.200 is amended by revising paragraph (a) to read as follows:

§ 1160.200 Establishment and membership.

(a) There is hereby established a National Fluid Milk Processor Board of 20 members, 15 of whom shall represent geographic regions and five of whom shall be at-large members of the Board. To the extent practicable, members representing geographic regions shall represent fluid milk processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than three members. The at-large members shall include at least three fluid milk processors and at least one member from the general public. Except for the member or members from the general public, nominees appointed to the Board must be active owners or employees of a fluid milk processor. The failure of such a member to own or work for a fluid milk processor or its successor fluid milk processor shall disqualify that member for membership on the Board except that such member shall continue to serve on the Board for a period of up to six months following the disqualification or until appointment of a successor Board member to such position, whichever is sooner, provided that such person continues to meet the criteria for serving on the Board as a processor representative.

* * * * *

Dated: March 14, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–6675 Filed 3–16–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1210

[Docket No. FV–00–1210–610 REVIEW]

Watermelon Research and Promotion Plan; Section 610 Review

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule; notice of review and request for comments.

SUMMARY: This action announces the Agricultural Marketing Service (AMS) review of the Watermelon Research and Promotion Plan, under the criteria contained in sec. 610 of the Regulatory Flexibility Act (RFA).

DATES: Written comments on this document must be received by May 16, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice of review to the Docket Clerk, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, USDA, Stop 0244, Room 2535–S, 1400 Independence Avenue, S.W., Washington, D.C. 20250–0244. Comments should be submitted in triplicate and will be made available for public inspection at the above address during regular business hours. Comments may also be submitted electronically to: malinda.farmer@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register**. A copy of this notice may be found at: www.ams.usda.gov/fv/rpdocketlist.htm.

FOR FURTHER INFORMATION CONTACT: Karen T. Comfort, Research and Promotion Branch, Fruit and Vegetable Programs, AMS, USDA, Stop 0244, 1400 Independence Avenue, S.W., Room 2535–S, Washington, D.C. 20250–0244; telephone (888) 720–9917; Fax (202) 205–2800; or E-mail: Karen.Comfort@usda.gov.

SUPPLEMENTARY INFORMATION: The Watermelon Research and Promotion Plan (7 CFR Part 1210), regulates the development and financing (through assessments on watermelons produced in or imported into the United States) of effective, continuous, and coordinated programs of research, development, advertising, and promotion designed to strengthen, maintain, and expand domestic and foreign markets for watermelons. The Watermelon Research and Promotion Plan (Plan) is authorized under the Watermelon Research and

Promotion Act, as amended by the Watermelon Research and Promotion Improvement of 1993 (7 U.S.C. 4901–4916), hereinafter referred to as the Act.

Background

On February 18, 1999, AMS published in the **Federal Register** (63 FR 8014) its plan to review certain regulations, including the Plan, under the criteria contained in sec. 610 of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612). Because many AMS regulations impact small entities, AMS decided, as a matter of policy, to review certain regulations which, although they may not meet the threshold requirement under sec. 610 of the RFA, merit review. The February 18 notice stated that AMS would list the regulations to be reviewed in AMS' regulatory agenda which is published in the **Federal Register** as part of the Unified Agenda. However, after further consideration, AMS has decided to announce the reviews in the **Federal Register** separate from the Unified Agenda. Accordingly, this notice and request for comments is made for the review of the Plan.

The purpose of the review will be to determine whether the Plan should be continued without change, amended, or rescinded (consistent with the objectives of the Act) to minimize the impacts on small entities. In conducting this review, AMS will consider the following factors: (1) The continued need for the Plan; (2) the nature of complaints or comments received from the public concerning the Plan; (3) the complexity of the Plan; (4) the extent to which the Plan overlaps, duplicates, or conflicts with other Federal rules, and, to the extent feasible, with State and local governmental rules; and (5) the length of time since the Plan has been evaluated or the degree to which technology, economic conditions, or other factors have changed in the area affected by the Plan.

Written comments, views, opinions, and other information regarding the Plan's impact on small businesses are invited.

Dated: March 10, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–6428 Filed 3–16–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 317, 318, 319, 381

[Docket No. 97–036A]

Other Consumer Protection (OCP) Activities

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food Safety and Inspection Service (FSIS) is publishing this advance notice of proposed rulemaking to request comments on the need and desirability of revising its approach to verifying that meat and poultry products are not misbranded, economically adulterated, or otherwise unacceptable for reasons that do not necessarily raise food safety concerns. FSIS will refer to these program activities as "other consumer protection" (OCP) activities. This notice defines and describes FSIS' OCP activities and discusses the Agency's need for revised regulations and verification and enforcement procedures.

DATES: Comments must be received on or before June 15, 2000.

ADDRESSES: Submit one original and two copies of written comments to FSIS Docket Clerk, DOCKET #97–036A, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex Building, 300 12th Street, SW., Washington, DC 20250–3700. FSIS has made a technical paper available in the FSIS Docket Room and on the FSIS homepage (www.fsis.usda.gov).

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, Director, Regulations Development and Analysis Division, Food Safety and Inspection Service, Washington, DC 20250–3700, at (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Definition of Other Consumer Protections (OCP)

As defined in the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA), meat and poultry products are economically adulterated if any valuable constituent has been omitted or abstracted; any substance has been substituted; if damage or inferiority has been concealed in any manner; or if any substance has been added so as to increase its bulk or weight, or to reduce its quality or strength, or to make it appear better or of greater value than it is. Also, as defined in these Acts, meat and poultry products are misbranded if the labeling is false or misleading, or if the product purports to be a food for which there is a regulatory standard of identity, but the product fails to comply with that standard.

FSIS conducts a range of activities to ensure that meat and poultry products are not economically adulterated, misbranded, or otherwise unacceptable for reasons that do not necessarily raise food safety considerations. Some OCP activities are based on specific regulatory requirements. These are the food labeling requirements (Parts 317 and 381, Subpart N); definitions and standards of identify and composition (Parts 319 and 381, Subpart P); and the definitions of nonconformance and the finished product standards found in section 381.76. Other OCP activities are tied to specific regulations but are designed to verify that establishments are not producing economically adulterated or misbranded product as defined by the acts.

FSIS activities directed at preventing misbranded product from reaching the consumer include label review activities, formulation verification checks, net weight checks, and laboratory food chemistry analyses. (Note: The presence of illegal drug residues is considered a food safety issue.) FSIS activities that are designed to ensure that products have not been economically adulterated by the addition or undeclared substitution of lower valued ingredients include weighing poultry carcasses to verify that water retention limits are not exceeded during immersion chilling.

FSIS recognizes that its program activities do not fit cleanly into one of two well-defined categories, OCP and food safety. For example, while most consumers would view an unidentified ingredient as a misbranding issue, those with allergy concerns would view the same unidentified ingredient as a serious food safety concern. Similarly, many FSIS activities are related to enforcement of statutory provisions declaring that product is adulterated if it consists in whole or in part of any filthy, putrid, or decomposed substance or is for any other reason unsound, unhealthful, unwholesome, or otherwise unfit for human food. This provision speaks to both food safety and OCP concerns. FSIS conducts many activities to identify and prevent from entering commerce product that is unwholesome or unfit for human food but does not present a food safety concern. Examples of FSIS activities of this type include determining conformance with carcass Acceptable Quality Levels (AQL's)(e.g., checking the number of hairs remaining on the hide) and conducting boneless manufacturing meat reinspection tasks.

In this ANPR, FSIS has defined OCP activities to include verification and enforcement activities that are directed to achieving objectives that do not necessarily, or primarily, involve food safety. Issues related to humane and religious exempt slaughter are not clearly OCP matters and, therefore are not addressed in this ANPR. Also, FSIS will address all issues related to egg products in future proposed rulemaking. In an effort to provide the public with more information about the Agency's current OCP activities and to illustrate the need for change, FSIS has made a technical paper available in the FSIS Docket Room (See ADDRESSES) and the FSIS homepage (www.fsis.usda.gov).

Need for Change

FSIS intends to propose change to its approach to OCP activities for three reasons. First, the Agency needs to clarify the respective roles and responsibilities of FSIS and industry. Second, the Agency needs to use the resources allocated to OCP activities more efficiently. Third, the Agency needs to be more accountable to the public on how it allocates its OCP resources and on the results that are being achieved.

The first reason for changing the Agency's approach to OCP activities is to clarify roles and responsibilities. As FSIS described in the preamble to its Pathogen Reduction; Hazard Analysis and Critical Control Point (PR/HACCP) final rule (61 FR 38806, 7/26/96), the responsibilities of FSIS and industry have become blurred. In part, this blurring has developed because some establishments rely on inspection program personnel to find deficiencies. It is more appropriate that inspected establishments take responsibility for meeting the regulatory requirements, and that FSIS personnel verify that establishments do so.

Responsibilities have also been blurred because of the excessive reliance of the FSIS inspection program on the detection and correction of problems after the fact, rather than on assurance that problems will be prevented systematically and by design in the first place.

The second reason for changing its approach to OCP activities is the need for FSIS to manage and allocate its resources more effectively and efficiently. In most cases, inspection program personnel routinely perform OCP verification activities at the same frequency in all plants. FSIS is considering that a more suitable use of inspection resources would be to base the rate of these verification checks on the compliance history of a particular establishment.

Finally, FSIS intends to change its approach to OCP activities to improve program accountability. By "improving accountability," FSIS seeks to improve its measure of establishments' compliance and its ability to inform the public about the industry's overall compliance with OCP requirements. Accountability also implies having more consistent and effective methods for making resource allocation decisions and explaining those decisions to all interested parties.

FSIS intends to develop an approach to OCP that measures compliance, targets the Agency's inspection resources, and provides program accountability.

Possible Approaches

FSIS is not contemplating a reduction in the level of attention that it pays to misbranding, economic adulteration, or wholesomeness issues. FSIS remains committed to protecting consumers from economic adulteration and improperly labeled products.

In preparing this ANPR, FSIS began with the premise that consumer protection concerns other than food safety are important to consumers, and that the public expects the Agency to provide a broad range of consumer protections that involve more than ensuring food safety.

This section outlines the changes that FSIS is evaluating and that will most likely be needed for FSIS to continue to protect consumers from economic adulteration, misbranding, and unwholesome products while enhancing food safety. These changes will likely occur in the four following areas:

1. Revision of FSIS regulations and guidance.
2. Inspected establishments taking more responsibility for producing products that comply with all OCP requirements.
3. Changes to FSIS verification activities.
4. Changes in approach to enforcement.

1. Revisions to FSIS Regulations

The change in approach to OCP activities will require that the Agency reform its regulations. Certain current regulations charge FSIS with responsibilities that more appropriately belong to the industry. For example, at the time when FSIS established the compliance monitoring system for cured pork products (9 CFR 381.19) the Agency's approach was to assume responsibility for ensuring establishments' compliance. Therefore, the system effectively became a government run quality control system. The regulations implementing the system go so far as to provide an exemption for establishments that take responsibility and institute their own quality control procedures. (Note: Published elsewhere in this issue of the **Federal Register**, FSIS is proposing to withdraw the regulations that prescribe the compliance monitoring system for cured pork products.)

FSIS will also carefully evaluate its prior label approval program and consider streamlining its label approval programs. The Agency also intends to consider what use, if any, it should continue to make of the Standards and Labeling Policy Book.

The Agency also intends to consider its role in ensuring the soundness and wholesomeness of raw products. As noted earlier, none of the product quality criteria for meat carcasses or raw meat products are published as regulations. The Agency requests comments on whether FSIS' regulations should contain quality criteria and if so, what the criteria should be.

The Agency has already initiated a review of the standards of identity and composition for meat products and poultry products. The Agency published an ANPR on September 9, 1996 (61 FR 47453). While that ANPR focused on the continuing need for the standards of identity and composition, it noted that, in light of budget constraints and the need to address higher priority food safety concerns, the Agency was examining whether any of its approaches to regulating meat products and poultry products for economic adulteration and mislabeling should be changed.

The Agency recognizes that some of its regulations are overly prescriptive in telling industry how it must comply with certain standards. For example, the Mechanically Separated (Species)(MS(S)) regulations (9 CFR 319.5) specify how many samples an establishment needs to analyze to ensure compliance. The Agency intends to institute rulemaking to revise these regulations. FSIS has tentatively concluded that the purposes for which it adopted these regulations can be achieved by the standards of composition that are already included in the regulations. The Agency also has proposed the removal of regulations that require Partial Quality Control (PQC) programs for specific production activities, such as the production of MS(s).

2. Changes to FSIS Verification Activities

FSIS is responsible for verifying that industry is complying with regulatory requirements. A verification activity can have a narrow establishment-by-establishment focus or an industry-wide scope. FSIS believes that it can operate more efficiently and effectively by making greater use of surveys.

A verification survey can involve either collecting product samples that are sent to laboratories for analysis or conducting in-plant activities such as formulation checks. Collecting product labels that are sent to a central location for review is another type of verification survey. The survey approach to verification allows the Agency to: (1) draw conclusions about overall industry compliance, (2) inform the public, i.e., improve "accountability," and (3) use such industry-wide findings as inputs to subsequent resource allocation decisions.

Surveys are not, however, sufficient to verify compliance at individual establishments. The Agency intends to use surveys and other information resources to target establishments where overall compliance with OCP requirements is not satisfactory. In these establishments, FSIS could focus verification activities on specific products and specific requirements.

FSIS' approach to OCP verification has historically been to select a task or sampling frequency for a specific regulatory requirement, e.g., once per week or once per shift, and then apply that fixed frequency to all establishments where the requirement applies. To improve the effectiveness of verifying establishments' compliance with OCP requirements, FSIS needs to conduct inspection procedures and collect samples at the point in the production and distribution process where doing so is most efficient, and where taking these actions makes the most sense.

The concepts of measuring the level of compliance, or evaluating whether a particular level of compliance is acceptable or unacceptable, have not been adequately incorporated into FSIS regulatory design initiatives. FSIS must devise a more comprehensive and methodical approach to verification that would involve the sequential steps of: (1) Measuring compliance; (2) evaluating the level of compliance to determine causes of noncompliance, and whether there are feasible interventions that might be effective in improving compliance; (3) implementing interventions; and, (4) reassessing the overall level of compliance.

For example, FSIS has considered using a "building-block" approach to net weight compliance that has been advanced by the Codex Alimentarius Commission. This approach is modeled on a statistical limits of variance technique developed by Switzerland for application to imported, prepackaged foods. Inspection program personnel would make limited inspections for net weight compliance at retail. If the sampling technique indicates a compliance problem, additional inspection of the same product would be made at retail and, if necessary earlier in the marketing chain, such as the processing plant. If the problem continues following notification of the producers, a more precise enforcement test would be applied. This approach should lead to a more efficient and effective verification system.

Another potential innovation for verification would involve the development of an annual OCP verification plan. Annual plans would describe and assess findings from the previous year, consider the applicability of findings from ongoing research projects, and define areas of emphasis for the current year. FSIS is developing a list of factors to be considered in setting OCP priorities. These factors would include findings from consumer research and findings from analysis of consumer and industry complaints.

FSIS also believes it is practical to solicit and use input from its inspection program personnel in setting its OCP priorities.

Additionally, FSIS could use consumer research to help set its priorities for verifying the industry's OCP compliance. FSIS could use existing consumer research such as surveys compiled by trade organizations or develop its own consumer surveys to determine whether consumers are concerned about any particular OCP issues. Based on the findings, FSIS could use this information to focus its OCP verification activities. This approach would be responsive to consumer concerns.

The above examples are intended to illustrate the kinds of approaches that the Agency is considering for OCP verification. Whatever final decisions it makes, the Agency's verification activities must:

- Yield data that will allow the Agency to draw accurate conclusions about establishments' compliance.
- Permit the Agency to allocate inspection and laboratory resources to product categories that have been shown to present compliance problems, while requiring inspected establishments to maintain satisfactory control of their production processes and products.
- Provide appropriate bases for enforcement actions against establishments or companies producing and shipping economically adulterated or misbranded products.
- Accommodate any changes to the system of product standards of identity that the Agency may adopt.

3. Changes in Enforcement Approach

FSIS also needs to change its enforcement approach to repeated noncompliance with OCP requirements. FSIS will evaluate each OCP noncompliance in terms of an establishment's overall compliance record to determine whether the establishment has an effective system in place to ensure compliance with all OCP requirements and standards. For example, the Agency will not view added water noncompliance as independent from species substitution noncompliance or independent from noncompliance with fat and protein requirements.

FSIS is examining how best to communicate to establishments its findings of noncompliance and FSIS' conclusions regarding the adequacy of the establishment's control system. The role of FSIS is to verify compliance and take enforcement actions when the overall level of OCP noncompliance reaches a level that indicates that an establishment is not controlling its OCP processes effectively.

Issues for Public Comment

FSIS is soliciting comments on all aspects of its OCP activities. FSIS requests comments from all interested parties, including individuals, consumer groups, inspected establishments and industry groups, academia, importers and exporters, State and local governments, and the international community. The following questions are provided to facilitate public comment on this ANPR.

1. What level of resources should FSIS allocate to OCP program activities? What criteria should FSIS consider in allocating its resources between food safety and OCP issues?

2. What role, if any, should the Agency have in examining raw product for quality defects?

3. What priorities should FSIS give to misbranding concerns? For example, should the presence of excess sodium take priority over a misleading picture on a label?

4. Should FSIS continue testing products to determine compliance with requirements related to fat content or water retention, or whether the product is fresh or frozen? If so, how should FSIS prioritize the sampling of products?

5. Should FSIS consider which OCP issues concern consumers? If so, how could FSIS determine this? For example, are there existing data FSIS can use or should FSIS conduct its own consumer surveys? To what extent should FSIS use information about consumers' concerns to prioritize the verification of the industry compliance with the OCP requirements?

6. How should FSIS weigh the severity of noncompliance that leads to public health concerns versus noncompliances related to OCP concerns? What sanctions or penalties are appropriate for economic adulteration? How should FSIS deal with establishments that demonstrate no deliberate intent to cheat the public but experience intermittent problems of noncompliance that result in misbranding or economic adulteration?

7. What enforcement strategy is appropriate for addressing noncompliance with OCP requirements? What portion of the Agency's enforcement resources should be allocated to OCP concerns? What levels of noncompliance with OCP requirements warrant the use of severe sanctions, such as withholding the marks of inspection?

8. The Agency believes that inspected establishments need to have systems, i.e., quality control systems, managerial systems, or administrative systems, that ensure compliance with OCP requirements. Should FSIS consider promulgating a general process control regulation, or are there alternatives to such a regulation that would still enable the Agency to effectively and efficiently verify that an establishment's control systems for OCP requirements are satisfactory?

Executive Order 12866 and Regulatory Flexibility Act

This advance notice of proposed rulemaking has been reviewed under Executive Order 12866. This rule has been determined to be significant for the purposes of Executive Order 12866 and, therefore, has been reviewed by the Office of Management and Budget.

FSIS is seeking the data necessary to assess how the regulatory changes discussed in this document might affect various sectors of the meat and poultry industries. Therefore, the Agency invites comment on potential effects, including economic costs or benefits.

Departmental Regulation 4300–4, "Civil Rights Impact Analysis"

Pursuant to Department Regulation 4300–4, "Civil Rights Impact Analysis," dated September 22, 1993, FSIS will conduct a civil rights impact analysis on any proposed rule that results from this ANPR. To improve the Agency's analysis, FSIS is seeking the data necessary to assess how the resulting regulatory changes discussed in this document might affect minorities, women, and persons with disabilities.

ANPR's generally are designed to provide information and receive public comments on substantive issues that may lead to new or revised agency regulations or instructions. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are made aware of this ANPR and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information with a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720–5704.

FSIS will use a variety of methods to reach consumers and those individuals who work directly with consumers—information multipliers—to publicize the issues identified in this OCP ANPR. FSIS will send electronic messages to electronic discussion lists that reach thousands of educators, health professionals, media, industry representatives, and consumers. FSIS will use Department mailing lists for minority media and constituent groups to send information releases that can be published in local newspapers. In addition, FSIS intends to translate briefing materials and consumer information into Spanish in order to encourage publication in non-English media that directly reach consumers.

FSIS expects to arrange for one or more public meetings to be held in large urban areas with diverse populations in order to encourage public participation by individuals not typically represented by consumer-organizations or who do not have access to electronic communication, including fax machines, internet-accessible equipment, televisions, radios, or non-English printed materials.

FSIS does not expect that this ANPR or resulting rulemaking will have an adverse effect on its own employees since the ratio of tasks performed on OCP activities will be shifted more in favor of tasks performed on food safety activities.

Done at Washington, D.C., March 13, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–6642 Filed 3–16–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 318, 319, and 327

[Docket No. 97–012P]

Elimination of Requirements for the Compliance Monitoring System for Cured Pork Products

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the meat inspection regulations by removing the regulations that prescribe the Agency's compliance monitoring system for cured pork products. Removing these regulations will not affect the regulatory requirements that industry is responsible for meeting. The proposal will remove requirements that specify the frequency with which FSIS samples these products and the enforcement actions that the Agency will take in response to specific laboratory findings from analysis of product samples. FSIS is proposing to remove these prescriptive controls on itself because the Agency intends to institute a new approach to sampling and testing meat and poultry products to verify that the products meet regulatory requirements

for consumer protections other than food safety (i.e., misbranding and economic adulteration). If the Agency takes this action, it will be able to reallocate some of its in-plant and laboratory resources to give greater emphasis to food safety concerns.

DATES: Comments must be received on or before May 16, 2000.

ADDRESSES: Submit one original and two copies of written comments to Docket Clerk, DOCKET #97–012P, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102 Cotton Annex Building, 300 Twelfth Street, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Daniel Engeljohn, PhD., Director, Regulations Development and Analysis Division, Food Safety and Inspection Service, Washington, DC 20250–3700, (202) 720–5627.

SUPPLEMENTARY INFORMATION:

Background

FSIS' mission is to ensure that meat, poultry, and processed egg products are safe, wholesome, and properly marked, labeled, and packaged. FSIS has carried out its food safety responsibilities primarily by managing an inspection program within meat and poultry slaughter and processing establishments. This program has relied heavily on FSIS inspection personnel to detect and correct establishments' noncompliance.

FSIS is in the process of reforming its regulatory and administrative approach to achieving its mission. The Agency's "Pathogen Reduction; Hazard Analysis and Critical Control Point (HACCP) Systems" final rule (61 FR 38806, 7/26/96) announced and provided the framework for modernization of FSIS' inspection system, particularly with respect to its food safety goals. This rule established requirements applicable to all meat and poultry establishments that were designed to reduce the occurrence and numbers of pathogenic microorganisms on meat and poultry products. As part of FSIS' modernization of its food safety strategy, the Agency stresses the need to clarify and strengthen the responsibilities of establishments in meeting the requirements of FSIS' regulations, plus the concomitant responsibility of the Agency to hold establishments accountable for meeting those requirements.

As FSIS shifts its emphasis from telling the regulated industry how to comply with regulatory requirements to oversight of industry-developed HACCP systems and other related process control procedures, the Agency must reevaluate its regulatory approach to consumer protection issues other than food safety. In an advanced notice of proposed rulemaking (ANPR) published elsewhere in this issue of the **Federal Register**, FSIS is presenting its plans for a new approach to verifying compliance with these other consumer protection requirements. FSIS is referring to these verification activities as its other consumer protection (OCP) activities. Among these activities are the Agency's efforts to ensure that products that are subject to food standards comply with those standards.

Cured pork products, such as hams, shoulders, picnics, and butts, must comply with food standards that specify a minimum percentage of meat protein after all fat has been removed from the product. These food standards are referred to as "minimum meat Protein Fat Free (PFF) percentage requirements" or simply as "PFF requirements." The PFF requirements that establishments must meet are codified at 9 CFR 319.104 and 319.105. In 9 CFR 318.19 and 327.23, FSIS has established a monitoring system that details the sampling frequencies and enforcement procedures FSIS uses to ensure that domestic and imported cured products meet the PFF requirements.

FSIS' compliance procedures for cured pork products are not consistent with the Agency's planned approach to economic sampling. The Agency plans to consider economic risk factors, such as an establishment's compliance history, and apparent consumer protection needs in determining which products to sample and test. The PFF system generates from 6,000 to 7,000 samples annually and thus represents an impediment to efficient and effective resource allocation. This number of samples did not stand out in the mid-1980's when FSIS was analyzing approximately 100,000 food chemistry samples annually. Today, with overall food chemistry samples in the 15,000 to 25,000 range, the Agency cannot afford to devote such a large portion of its overall food chemistry activity to one issue.

The existing compliance procedures for cured pork products have contributed to confusion concerning the respective roles and responsibilities of FSIS and industry. Industry has responsibility for complying with regulatory requirements. FSIS has responsibility for verifying compliance with regulatory requirements and taking enforcement actions when it finds noncompliance. The ANPR makes clear that this basic division of responsibilities applies to other consumer protection activities in the same way that it applies to food safety. However, when FSIS established the PFF compliance monitoring system, the Agency's approach was to assume responsibility for ensuring compliance. The system has thus effectively been a government run quality control system. The regulations implementing the system go so far as to provide an exemption for establishments that take responsibility and institute their own quality control procedures. The centrally directed PFF sampling system has been applied to only those establishments that have not implemented their own control systems.

The compliance procedures for cured pork products are an anomaly within the regulatory framework for enforcing food standards. FSIS is responsible for verifying compliance with 60 different food standards. The PFF requirements for cured pork products is the only standard of identity or composition where regulations direct FSIS sampling frequencies in response to specific laboratory findings. For other products, e.g., cooked sausage, FSIS directives state that Agency sampling frequencies are to be based on cumulative laboratory results. In still other cases, such as enforcement of the 30 percent fat limit for ground beef, there are no written instructions concerning Agency responses to findings that product exceeds the limit.

Because the compliance procedures for cured pork products in §§ 318.19 and 327.23 are not consistent with the Agency's planned approach to economic sampling, require too great an expenditure of Agency resources, and are not consistent with what the Agency considers to be the appropriate division of responsibilities between itself and industry, FSIS is proposing to remove these compliance procedures from its regulations. However, as noted above, eliminating the PFF compliance monitoring system would not affect the PFF content performance standards that establishments are required to meet.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. When the rule is adopted (1) all State and local laws and regulations that are inconsistent with this rule would be preempted; (2) no retroactive effect would be given to this rule; and (3) administrative proceeding would not be required before parties may file suit in court challenging this rule.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The Administrator has determined that this proposed rule would not have a significant economic impact on a substantial number of small entities. However, this proposed rule is part of FSIS' new approach to OCP as discussed in the ANPR published elsewhere in this issue of the **Federal Register**. Because the Office of Management and Budget designated the OCP ANPR as significant, FSIS submitted this rule to OMB for review.

Establishments producing cured pork products must comply with the food standards that specify a minimum percentage of meat protein after all fat has been removed from the product (9 CFR 319.104 and 319.105). This proposed rule only removes the requirements that specify the frequency at which FSIS samples such products.

This regulatory action would enable FSIS to better allocate its resources to address matters involving food safety. Because some establishments depend on FSIS' testing as a substitute for their own quality control responsibilities, such establishments may bear higher costs. Conversely, FSIS' new approach to economic sampling will focus enforcement actions on establishments that violate the requirements of the regulations. Sample collection will be less random and arbitrary. Therefore, some sample collection activities would be reduced in some establishments.

Additional Public Notification

FSIS has considered the potential civil rights impact of this public meeting on minorities, women, and persons with disabilities. FSIS anticipates that this proposed rule will not have a negative or disportionate impact on minorities, women, or persons with disabilities. Proposed rules generally are designed to provide information and receive public comments on substantive issues that may lead to new or revised agency regulations or instructions. Public involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are made aware of this proposed rule and are informed about the mechanism for providing their comments, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update.

FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information with a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720–5704.

Paperwork Requirements

There are no paperwork or recordkeeping requirements associated with this proposed rule.

List of Subjects

9 CFR Part 318

Compliance.

9 CFR Part 319

Standards.

For the reasons set forth in the preamble, FSIS proposes to amend 9 CFR Parts 318, 319, and 327, as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for Part 318 would continue to read as follows:

Authority: 7 U.S.C. 138f; 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53

PART 318—[REMOVED]

2. Part 318 would be amended by removing section 318.19.

PART 319—DEFINITIONS AND STANDARDS OF IDENTITY AND STANDARDS OF IDENTITY OR COMPOSITION

3. The authority citation for Part 319 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.18, 2.53

§ 319.104 [Amended]

4. Section 319.104 would be amended by revising footnote 1 of paragraph (a), by removing the phrase at the end of the sentence, "and compliance shall be determined under § 318.19 of this subchapter for domestic cured pork products and § 327.23 of this subchapter for imported pork product.", by removing paragraph (c), and by redesignating paragraph (d) as paragraph (c).

§ 319.105 [Amended]

5. Section 319.105 would be amended by revising footnote 1 of paragraph (a), by removing the phrase at the end of the sentence, "and compliance shall be determined under section 318.19 of this subchapter.", by removing paragraph (c), and by re-designating paragraph (d) as paragraph (c).

PART 327—IMPORTED PRODUCTS

6. The authority citation for part 327 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.18, 2.53

§ 327.23 [Removed]

7. Part 327 would be amended by removing section 327.23.

Done at Washington, D.C. on: March 13, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–6641 Filed 3–16–00; 8:45 am]

BILLING CODE 3410–DM–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB98

Loan Policies and Operations; Loans to Designated Parties

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: The Farm Credit Administration (FCA), through the FCA Board, issues a proposed rule amending its regulations on the approval of loans to designated parties (Farm Credit System (System) "insiders" and those FCA and Farm Credit System Insurance Corporation (FCSIC) employees who may legally borrow from the System). The purpose of our proposal is to provide greater flexibility for banks and associations to approve loans to designated parties. The proposed rule also makes technical changes to conform to the Farm Credit Act of 1971, as amended. The existing regulations require a funding bank to approve all loans that it and its associations make to designated parties. The proposed amendment would give an association the option to let its own board of directors (or a committee of the board),

or in some situations its own management, approve these loans. This amendment would benefit banks and associations because it provides clear guidelines and streamlined procedures for approving loans to designated parties.

DATES: Please send your comments to us by April 17, 2000.

ADDRESSES: You may send comments by electronic mail to "reg-com@fca.gov" or through the Pending Regulations section of our Web site at "www.fca.gov." You may also send comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by fax to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TDD (703) 883–4444,
or
Jennifer Cohn, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposed amendment are to:

- Provide greater flexibility for banks and associations to approve loans to designated parties (System "insiders" and those FCA and FCSIC employees who may legally borrow from the System);
- Keep adequate controls on loans that banks and associations make to designated parties; and
- Make our regulations easier to understand and use.

II. Background

A. Withdrawn Direct Final Rule

Sections 614.4450, 614.4460, and 614.4470 of our regulations require a funding bank to approve all loans that it and its associations make to designated parties. On August 9, 1999, we published a direct final rule with opportunity to comment.[1] This direct final rule would have, in relevant part, repealed two of these regulations and amended the third. The revision would have allowed a bank or association to make a loan to a designated party with the approval of its own board of directors. Under direct final rulemaking, a rule becomes effective without further proceedings unless we receive significant adverse comment.

One association provided a significant adverse comment on the revision. Four other associations also provided comments on the revision. Because of these comments, we withdrew the portion of the direct final rule on loans to designated parties on October 14, 1999.[2]

B. Comments on Direct Final Rule

All five commenters objected to our direct final rule's requirement that the board of directors of a bank or association must approve all loans made to designated parties. Four commenters stated that we should allow an association board of directors to delegate approval of loans to designated parties to management, with post review by the board. One commenter stated that we should allow an association board of directors to delegate approval of loans under a certain dollar amount to association staff, with post review by management. The commenter further suggested that management preapprove loans over that dollar amount.

The commenters provided five main reasons for their concern. Their comments and our responses are as follows:

First Comment: Directors do not have the expertise to make credit decisions; this is a task that professional lending staff should perform.

Response: We believe directors, who are elected by their shareholders to represent them in conducting the business of their banks and associations, are qualified to make decisions on loans to designated parties. We remind directors that, as we explain in our publication entitled *The Director's Role: Farm Credit System Institutions,*[3] they are ultimately responsible for all decisions their banks and associations make. In making these decisions, directors may want to consult with the professional lending staff at their banks and associations, as well as with other credit experts.

Second Comment: Directors may be biased in reviewing and analyzing audit results if they have made the credit decisions.

Response: Part 612 of our regulations requires directors to remain impartial in carrying out their duties. We expect that directors will review and analyze audit results on their credit decisions in an unbiased manner.

Third Comment: It may be difficult for the lending staff to remain independent and responsible to the board if they disagree with the board's credit decision.

Response: Boards of directors have the ultimate responsibility for conducting the affairs of the banks and associations they are elected to serve. Boards hire management and staff to conduct day-to-day operations. Management and boards must work together as teams to ensure that banks and associations meet the needs of their borrowers and satisfy safety and soundness concerns.

Fourth Comment: Directors may find it difficult to "pass judgment" on other directors.

Response: We agree that some directors may find it difficult to make decisions on the loans of other directors. We believe, however, that management may find it even more difficult to make such decisions. Because directors are ultimately responsible for the affairs of their bank or association, we believe it is more appropriate for them to consider and act on the credit requests of other directors. If directors feel unable to make an unbiased decision in a particular situation, they always have the choice of recusing themselves from that particular decision.

Fifth Comment: Directors do not want other directors to have access to their financial information.

Response: Section 612.2140(b) of our regulations prohibits directors from divulging or making use of any information they learn as directors. In addition, § 612.2135(b) requires directors to "exercise diligence and good judgment in carrying out their duties." We believe, therefore, that our regulations sufficiently address the misuse of financial information.

III. The Proposed Regulation

When we withdrew the portion of the direct final rule on loans to designated parties, we said that we would continue with this rulemaking at a later date. We now propose an amended rule governing loans to designated parties. In developing this proposed rule, we considered carefully all the comments that we received.

Our proposed regulation would provide greater flexibility for you[4] to approve loans to designated parties, while keeping adequate controls on these loans. The proposed regulation would continue to allow you to make loans to designated parties with bank approval, but it would also let an association's board of directors, and in some situations its own management, approve such loans. Because we are proposing the regulation in plain language, we believe it will be easier to understand and carry out.

The proposal would delete all references to district boards because the Agricultural Credit Technical Corrections Act of 1988[5] abolished these boards. The proposal would also repeal § 614.4450, which provides "the authority for loan approval is vested in the Farm Credit banks and associations." More specific regulations providing for System lending authorities make this provision unnecessary.[6]

A. Section 614.4450—Definitions Used in the Proposed Regulation

We provide definitions of three key terms used in the proposed regulation. As part of our goal to use plain language in our regulations, we use the word "you" in the text of the proposed rule. Accordingly, we define "you" as a bank or association.

We define the term "designated parties" by providing a list of these parties. We updated this list from the existing §§ 614.4460 and 614.4470. The list includes bank and association "insiders" as well as certain employees of FCA and FCSIC.[7]

We define the term "loan" broadly. "Loan" means:

- The total of all loans and undisbursed commitments from you to a designated party; plus
- The total of all loans and undisbursed commitments from you to any other borrower if the designated party has a significant interest in the loan, proceeds or collateral.

B. Section 614.4460—Policy for Approval of Loans to Designated Parties

The proposed rule would require you to adopt a policy addressing the approval of loans to designated parties. Your policy must describe the procedures, as set forth in the proposed rule, you will follow in making these loans.

Depending on the size of the loan, you may choose any one of three procedures for making loans to designated parties. The first procedure allows your board of directors (or a committee of your board) to approve loans that you make to designated parties. The second procedure permits the existing practice of allowing the funding bank to approve a loan made by an association. Finally, the third procedure permits your board of directors to delegate approval of loans of $25,000 or less to designated parties to your management. Your board of directors must post review all loans to designated parties that management approves.

We continue to believe that management should not approve loans over $25,000 to designated parties. Because of their size, these loans have greater risk potential for banks and associations. Requiring board or funding bank preapproval of these credit decisions will help ensure the approval decision is independent, objective, and free from any real or perceived conflicts of interest. The commenters contended that association boards may be uncomfortable with their own members approving loans to designated parties. If this is the case, association boards have the option of continuing to have decisions on loans to designated parties made by their funding banks.

Because loans of $25,000 or less are relatively smaller, they create less potential risk for the banks and associations that make them. We believe our proposal will help to reduce the administrative burden of making loans of $25,000 or less to designated parties.[8]

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Flood insurance, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, we propose to amend part 614 of chapter VI, title 12 of the Code of Federal Regulations to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: 42 U.S.C. 4012a, 4104a, 4104b, 4106, and 4128; secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 1.11, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.18A, 4.19, 4.25, 4.26, 4.27, 4.28, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act (12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2019, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2097, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2206a, 2207, 2211, 2212, 2213, 2214, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279c–1, 2279f, 2279f–1, 2279aa, 2279aa–5); sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

2. Revise subpart M to read as follows:

Subpart M—Approval of Loans to Designated Parties

Sec.
614.4450 What definitions are used in this subpart?
614.4460 What approval policy must you adopt to make loans to designated parties?

Subpart M—Approval of Loans to Designated Parties

§ 614.4450 What definitions are used in this subpart?

(a) *You* means a Farm Credit bank or association.

(b) *Designated parties* means:

(1) Farm Credit Administration employees allowed to borrow from you under 5 CFR 4101.104;

(2) Farm Credit System Insurance Corporation employees allowed to borrow from you under 5 CFR 4001.104;

(3) Your directors and employees;

(4) Directors and employees of another bank or association under a joint management agreement with you;

(5) Directors and employees of your funding bank if you are an association;

(6) Cooperatives and other legal entities if any of their directors, officers, partners, or employees are also members of your board of directors; and

(7) Other borrowers if any of the parties identified in this paragraph are:

(i) Recipients of the loan proceeds;

(ii) Stockholders or other equity owners of the borrowers who have significant interests in the loan funds or collateral; or

(iii) Endorsers, guarantors or comakers on the credit.

(c) *Loan or loans* means:

(1) The total of all loans and undisbursed commitments from you to a designated party; plus

(2) The total of all loans and undisbursed commitments from you to any other borrower if the designated party is:

(i) A recipient of the loan proceeds;

(ii) A stockholder or other equity owner of the borrower who has significant interests in the loan funds or collateral; or

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[1] *See* 64 FR 43046.

[2] *See* 64 FR 55621.

[3] Farm Credit Administration, *The Director's Role: Farm Credit System Institutions* (Aug. 1997).

[4] As part of our objective to use plain language in our regulations, we use the word "you" to refer to banks and associations in this preamble and the proposed regulation.

[5] Pub. L. No. 100–399, 102 Stat. 1003 (Aug. 17, 1988).

[6] *See* 12 CFR part 614, Subpart A—Lending Authorities.

[7] Our proposed regulation refers explicitly to the Supplemental Standards of Ethical Conduct regulations that we and FCSIC enacted in 1995. These regulations, at 5 CFR parts 4101 and 4001, respectively, specifically prohibit most FCA and FCSIC employees from borrowing from you. For example, FCA and FCSIC Board members, examiners, procurement personnel, and all employees over a certain civil service grade level cannot legally borrow from you.

[8] This proposed $25,000 threshold is consistent with the "insider lending" regulations of the Office of the Comptroller of the Currency and the Federal Reserve System. *See* 12 CFR Parts 31 and 215, respectively.

(iii) An endorser, guarantor or comaker on the credit.

§ 614.4460 What approval policy must you adopt to make loans to designated parties?

You must adopt an approval policy to make loans to designated parties. Your policy must set forth the procedures you will follow in approving loans to designated parties. Depending on the size of the loan, you may choose from any of the following approval procedures:

(a) If you are a bank or association, your board of directors (or a committee of your board) may approve loans to designated parties;

(b) If you are an association, your funding bank may approve loans to designated parties; or

(c) If you are a bank or association, your board of directors may delegate to your management approval for loans of $25,000 or less to designated parties, with post review by your board of directors.

Dated: March 13, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–6568 Filed 3–16–00; 8:45 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

12 CFR Part 620

RIN 3052–AB94

Disclosure to Shareholders; Annual Report

AGENCY: Farm Credit Administration.

ACTION: Proposed rule.

SUMMARY: Our regulations require Farm Credit Banks (FCBs) and agricultural credit banks (collectively referred to as banks) that present their financial statements on a combined basis to distribute their annual reports to the shareholders of their related associations. We propose to revise this requirement to provide that a bank generally need not distribute its annual report to the shareholders of any related association that discloses, in a separate section of its annual report, specified information about its financial and supervisory relationship with the bank. The proposed amendment would, however, require any bank that experiences a "significant event" to distribute its annual report to the shareholders of its related associations. We also propose to amend our regulation to provide that shareholders of Farm Credit System (System) institutions may obtain copies of an institution's financial reports by electronic mail or on its Web site, as well as by traditional mail or telephone. This revision would benefit banks, associations and their shareholders because it would allow them to share necessary information at a reduced cost.

DATES: Please send your comments to us by April 17, 2000.

ADDRESSES: You may send comments by electronic mail to "reg-com@fca.gov" or through the Pending Regulations section of our Web site at "www.fca.gov." You may also send comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or by fax to (703) 734–5784. You may review copies of all comments we receive in the Office of Policy and Analysis, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT:

Robert E. Donnelly, Senior Accountant, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4450, TDD (703) 883–4444;

or

Jennifer A. Cohn, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. Objectives

The objectives of our proposed amendment are to:

- Allow banks (and indirectly their related associations and their shareholders) to save significant printing and mailing costs by relaxing the requirement that they must routinely distribute their annual reports to the shareholders of their related associations; and
- Ensure that association shareholders continue to receive the information they need about how their associations' relationships with related banks affect their own investments in the associations.

II. Background

A. Reducing Regulatory Burden

On August 18, 1998, we published a notice in the **Federal Register** that invited commenters to identify existing regulations and policies that impose unnecessary burdens on the System. *See* 63 FR 44176 (Aug. 18, 1998).[1] We specifically requested commenters to focus on those regulations and policies that are ineffective, duplicate other requirements, or impose burdens that are greater than the benefits received. We took this action as part of our continuing effort to improve the regulatory environment so the System can better serve farmers and ranchers.

Among the comment letters we received, two asked us to repeal the requirement imposed by § 620.4(b)(1). This regulation requires any bank that presents its financial statements on a combined basis with its related associations to distribute its annual report to the shareholders of the related associations. One comment letter was from the Farm Credit System Accounting Standards Work Group (ASWG), on behalf of banks that present their financial statements on a combined basis. The other comment letter was from the Farm Credit Bank of Texas (which also has a representative on the ASWG). Both commenters contended the requirement that banks distribute their annual report to an association's shareholders is of minimal benefit to those shareholders. The commenters pointed out that we already require associations to include in their own annual reports information about their financial and supervisory relationships with their related banks. The commenters stated that because of the high costs of printing and mailing annual reports to the associations' shareholders (costs that are reflected in the costs of funds of the associations and interest rates to their shareholders), the regulation imposes an undue burden. We considered these comments in drafting this proposed rule.

B. Policy Background of This Rule

We first required banks to distribute their annual reports to their related associations' shareholders in March 1986. At that time, our regulations required banks to supervise closely the activities of their related associations. In addition, many associations were experiencing severe financial difficulties and were relying heavily on their related banks for financial assistance. During the mid-1980s, banks were also experiencing their own financial difficulties. These financial difficulties were caused both by rapid changes in interest rates that hindered the banks' debt funding strategies and by the financial stress from the banks providing financial assistance to their related associations.

In part because banks and associations were so interdependent, in the mid-1980s we issued a regulation requiring banks to distribute their annual reports to shareholders of related associations. In this way, the associations' shareholders had access to full information about how the financial condition of the related banks affected their own investments in their associations. In addition, we issued a regulation requiring banks to present their financial statements on a combined basis with their related associations.[2]

Through the intervening years, with the objective of making associations more accountable for their actions, we have changed or removed many of the regulatory provisions that caused associations to be financially dependent on their banks. For instance, we adopted regulations that have caused associations to strengthen their capital positions. In addition, we are using our enforcement authorities effectively to cause associations to operate in a more safe and sound manner. Because of these and other factors, all associations have improved their financial strength to a point that they are able to operate in a more independent manner.

In 1997, recognizing that circumstances had changed and that GAAP may no longer require certain banks to present their financial statements on a combined basis, we amended our regulations to allow banks to present their financial statements on any basis that conforms to GAAP.[3] At the same time, we amended the annual report distribution requirement to allow any bank that presents its financial statements on a bank-only basis (*e.g.*, CoBank, ACB (CoBank)) not to distribute its annual reports to the shareholders of its related associations on a routine basis. We now require banks that prepare their financial statements on a bank-only basis to provide annual reports to their related associations' shareholders only when the banks are affected by a "significant event."[4] We have ensured, however, that shareholders continue to receive information about the financial and supervisory relationship between their associations and the related bank. In another regulation, we require all associations to disclose in their annual reports information about these relationships.[5] We believe this set of regulations strikes the proper balance between a bank's desire to minimize costs and shareholders' needs to receive information about how the bank's condition affects the operations and financial condition of their associations.

III. Analysis of Regulation Amendments by Section

This revision would make several changes based on our plain language initiatives. In addition, it would allow shareholders to obtain copies of an institution's financial reports by electronic mail or on its Web site, as well as by mail or telephone.

Finally, the revision would provide that a bank generally need not distribute its annual report to the shareholders of any related association that discloses, in a separate section of its annual report, specified information about its financial and supervisory relationship with the bank. The regulation would, however, require any bank that experiences a "significant event" to distribute its annual report to the shareholders of its related associations. We believe our proposed revision would provide the regulatory relief the commenters requested. As discussed above in section II.B., we have allowed CoBank not to distribute its annual reports to the shareholders of related associations since 1996. We believe this arrangement has been beneficial for the affected shareholders and associations as well as CoBank. This revision would extend similar relief to the FCBs.[6]

A. Section 620.2(h)

Existing § 620.2(h) requires institutions, in relevant part, to provide telephone numbers and addresses where shareholders may get copies of certain financial reports the institutions are required to make available. We propose to amend this rule to provide that institutions must also provide electronic mail and Web site addresses, if available. For institutions and shareholders that have this capability, we believe this extra method of receiving and responding to requests for financial reports would be cost-effective and convenient.

We also propose to reorganize this section using plain language. Other than the change discussed in the previous paragraph, we do not propose to change the meaning of the section.

B. Section 620.4(b)

Existing § 620.4(b)(2) generally allows banks that present their financial statements on a bank-only basis not to distribute their annual reports to the shareholders of their related associations. These banks must distribute the reports to shareholders of related associations only when the banks experience a "significant event" that has a "material effect" on the associations, as those terms are defined in § 620.1 of our regulations. Currently, CoBank is the only bank that presents its financial statements on a bank-only basis. CoBank, therefore, is the only bank that we have not generally required to distribute its annual report to the shareholders of its related associations.[7]

Our amended regulation would treat all banks (including CoBank) in a similar way with respect to the distribution of annual reports. Banks generally would not need to distribute their annual reports to the shareholders of any associations that disclosed, in a separate section of their own annual reports, specified information about their financial and supervisory relationship with their banks.[8] Any bank that experienced a "significant event" that has a "material effect" on the associations, however, would have to distribute its annual report to the shareholders of its related associations. The information included in this separate section is information that other existing regulations already require associations to disclose in their annual reports.[9] Our amendment would merely provide that if an association presented this information in a separate section of its annual report, its related bank would not be required to distribute its own annual report to the association's shareholders.[10]

The separate section, which could incorporate by reference information from other sections of the annual report, would have to include:

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[1] On November 18, 1998, we extended the comment period to January 19, 1999. *See* 63 FR 64013 (Nov. 18, 1998).

[2] Based on the facts and circumstances that existed in the 1980s, this requirement conformed at that time with generally accepted accounting principles (GAAP).

[3] *See* § 620.2(g), which reads: "Each Farm Credit institution shall present its reports in accordance with generally accepted accounting principles and in a manner that provides the most meaningful disclosure to shareholders."

[4] In addition, § 620.2(h)(3) requires all System institutions to make their reports available free of charge upon request.

[5] *See* § 620.5.

[6] In late 1999, the ASWG, on behalf of the FCBs, requested that we relieve the FCBs from having to distribute their annual reports to shareholders of related associations until any change to the regulation becomes effective. In January 2000, we provided a letter to the ASWG stating that, subject to the same conditions we are proposing in this regulatory amendment, we would take no action against any FCB that did not distribute its annual report as required by § 620.4(b)(1). Unless we tell the FCBs otherwise, our letter remains in effect until this rulemaking becomes effective.

[7] Based on facts and circumstances to-date, GAAP has required the banks (other than CoBank) to present their financial statements on a combined basis with their related associations. As a result, these banks have been subject to the requirements of existing § 620.4(b)(1), which requires them to distribute their annual reports to the shareholders of related associations on a routine basis.

[8] Although this amended rule would permit banks not to distribute their annual reports on a routine basis, GAAP may continue to require them to present their financial statements on a combined basis depending on the facts and circumstances.

[9] *See* §§ 620.2(h), 620.5.

[10] This rule would not prohibit any bank from distributing its annual reports to the shareholders of related associations if it wished to do so.

1. The statement required by § 620.2(h)(2), telling shareholders:
- That their investment in the association may be materially affected by the financial condition and results of operations of the related bank;
- That (if not otherwise provided) a copy of the bank's financial reports to shareholders will be made available free of charge upon request; and
- The telephone numbers and addresses (including, if available, electronic mail and Web site addresses) where shareholders may obtain copies of the related bank's financial reports.

2. If applicable, the following information required by § 620.5:
- The association's obligation to borrow only from the bank unless the bank gives approval to the association to borrow elsewhere;
- The major terms of any capital preservation, loss sharing, or financial assistance agreements between the association and the bank;
- Any bank bylaw provisions authorizing the bank to access the capital of the association;
- The extent to which the bank has assumed the association's exposure to interest rate risk; and
- Any other material operational and financial conditions that may contribute to an interdependent relationship between the association and the bank.

If associations chose to present this information in a separate section of their annual reports, we believe shareholders would be able to review the information they need about how their associations' relationships with their related banks affect their own investments more easily. With this information, we believe shareholders would be able to decide whether they should ask for a copy of the bank's annual report. If a particular association chose not to present this information in a separate section, its related bank would continue to be required to distribute its annual report to the shareholders of that association.

We considered an alternative to our bank distribution proposal that would require the association, rather than its bank, to distribute the bank's annual report. Currently, associations reimburse their banks either directly or indirectly for the cost of preparing and distributing the banks' annual reports to the shareholders of associations. Allowing the banks to require their associations to distribute the banks' annual reports would provide added flexibility to the distribution process. We believe this added flexibility could lead to cost savings that would benefit not only the banks and their related associations, but also association shareholders. We note that regardless of whether a bank or an association makes this distribution, the cost to the association should remain more or less the same. We ask commenters to consider whether this alternative is more appropriate.

Since 1996 we have permitted CoBank (because it presents its financial statements on a bank-only basis) not to distribute its annual reports to the shareholders of its related associations even if the associations have not presented the specified information in a separate section. We believe, however, that presenting this information in a separate section would impose minimal, if any, burden on CoBank's four related associations. In addition, we believe it is important to treat all System banks and associations in a consistent manner. Therefore, this rule would apply to CoBank as well as to the FCBs.

List of Subjects in 12 CFR Part 620

Accounting, Agriculture, Banks, Banking, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, we propose to amend part 620 of chapter VI, title 12 of the Code of Federal Regulations to read as follows:

PART 620—DISCLOSURE TO SHAREHOLDERS

1. The authority citation for part 620 continues to read as follows:

Authority: Secs. 5.17, 5.19, 8.11 of the Farm Credit Act (12 U.S.C. 2252, 2254, 2279aa–11); secs. 424 of Pub. L. 100–233, 101 Stat. 1568, 1656.

Subpart A—General

2. Revise § 620.2(h)(1) and (2) to read as follows:

§ 620.2 Preparing and filing the reports.

* * * * *

(h)(1) Each annual report or notice must state, in a prominent location within the report or notice:

(i) That the institution's quarterly reports are available free of charge on request;

(ii) The approximate dates the quarterly reports will be available; and

(iii) The telephone numbers and addresses (including, if available, electronic mail and Web site addresses) where shareholders may obtain a copy of the reports.

(2) Each association must state, in a prominent location within each report:

(i) That the shareholders' investment in the association may be materially affected by the financial condition and results of operations of the related bank;

(ii) That (if not otherwise provided) a copy of the bank's financial reports to shareholders will be made available free of charge on request; and

(iii) The telephone numbers and addresses (including, if available, electronic mail and Web site addresses) where shareholders may obtain copies of the related bank's financial reports.

* * * * *

Subpart B—Annual Report to Shareholders

3. Revise § 620.4(b) to read as follows:

§ 620.4 Preparing and distributing the annual report.

* * * * *

(b)(1) Except as required by paragraph (b)(2) of this section, a bank need not distribute its annual report to the shareholders of any related association that discloses, in a separate section of its annual report, its financial and supervisory relationship with the bank. This separate section may incorporate by reference information from other sections of the annual report. At a minimum, the separate section must include the statement required by § 620.2(h)(2) and the following information required by § 620.5, if applicable:

(i) The association's obligation to borrow only from the bank unless the bank gives approval to the association to borrow elsewhere;

(ii) The major terms of any capital preservation, loss sharing, or financial assistance agreements between the association and the bank;

(iii) Any bank bylaw provisions authorizing the bank to access the capital of the association;

(iv) The extent to which the bank has assumed the association's exposure to interest rate risk; and

(v) Any other material operational and financial conditions that may contribute to an interdependent relationship between the association and the bank.

(2) A bank must distribute its annual report within the period required by paragraph (a) of this section to:

(i) The shareholders of any related association that does not make the disclosure described in paragraph (b)(1) of this section; or

(ii) The shareholders of all related associations if the bank experiences a significant event that has a material effect on those associations.

(3) Any bank that is required by paragraph (b)(2) of this section to distribute its annual report must coordinate its distribution with its related associations.

* * * * *

Dated: March 13, 2000.

Vivian L. Portis,

Secretary, Farm Credit Administration Board.

[FR Doc. 00–6569 Filed 3–16–00; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ANE–91]

Proposed Establishment of Class D and Class E Airspace; Oxford, CT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes the establishment of Class D and Class E airspace areas at Oxford, CT (KOXC) to accommodate a new Air Traffic Control Tower at Waterbury-Oxford Airport, Oxford, Connecticut.

DATES: Comments for inclusion in the Rules Docket must be received on or before May 16, 2000.

ADDRESSES: Send comments on the proposal to: Manager, Airspace Branch, ANE–520, Federal Aviation Administration, Docket No. 2000–ANE–91, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7520; fax (781) 238–7596. Comments may also be sent electronically via the internet to the following address: "9-ane-airspace@faa.gov"

The official docket file may be examined in the Office of the Regional Counsel, New England Region, ANE–7, Room 401, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7050; fax (781–238–7055.

An informal docket may also be examined during normal business hours in the Air Traffic Division, Room 408, by contacting the Manager, Airspace Branch at the first address listed above.

FOR FURTHER INFORMATION CONTACT: David T. Bayley, Air Traffic Division, Airspace Branch, ANE–520.7, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7586; fax (781) 238–7596.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–ANE–91." The postcard will be date stamped and returned to the commenter.

Availability of NRPM's

Any person may obtain a copy of this NRPM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANE–520, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803–5299. Communications must identify the docket number of this NRPM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2a, which describes the application procedure.

The Proposal

The State of Connecticut has notified the FAA that it has approved plans for the construction of a permanent Air Traffic Control Tower (ATCT) at Waterbury-Oxford Airport (KOXC), Oxford, Connecticut. Construction of the new ATCT should be complete in May 2000, and the State has applied to have the ATCT operated under the FAA Contract Tower Program. Accordingly, the State has requested that the FAA establish a Class D airspace area in vicinity of the Waterbury-Oxford Airport commensurate with the commissioning of the new ATCT. Air traffic at the Waterbury-Oxford Airport has grown over the past year and presently includes both high-speed jets and slower speed reciprocating powered light aircraft and rotorcraft.

The FAA establishes Class D airspace where necessary to provide a safe environment for aircraft transiting between the enroute and terminal airspace structures. This is particularly true when aircraft with greatly different performance characteristics operate at the same airport. Class D airspace areas encompass that airspace in the vicinity of an airport from the surface upward to a specified altitude in which pilots of aircraft must establish and maintain two-way radio communications with the ATCT at that airport. This proposal would create a Class D airspace area in the vicinity of the Waterbury-Oxford Airport extending upward from the surface to 3,200 feet MSL within a 5-mile radius of the airport.

In addition, the FAA finds that Class E airspace area, extending from the surface as an extension of the Class D airspace area, is necessary in order to provide sufficient controlled airspace to accommodate those aircraft arriving at the airport using a standard instrument approach procedure (SIAP). The Waterbury Oxford Airport has a SIAP that requires the establishment of a Class E surface airspace area extending to northwest of the airport along the TBY NDB 353° bearing to a point 7.6 miles from the airport. These proposals will provide for the safe and efficient use of the navigable airspace in the vicinity of the Waterbury-Oxford Airport, and promote safe flight operations under both Instrument Flight Rules (IFR) and Visual Flight Rules (VFR) by aircraft transiting to and from enroute airspace structure.

Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9G, and Class E airspace designations for airspace designated as extensions of a Class D airspace area are published in paragraph 6004 of FAA Order 7500.9G. FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in this Order.

Agency Findings

This rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state

authorities prior to publication of this rule.

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) Does not warrant preparation of a Regulatory Evaluation as these routine matters will only affect air traffic procedures and air navigation. It is certified that these proposed rules will not have significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by references, Navigation (air).

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 10–6(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9563, 3 CFR, 1959–1963 Comp., p. 389.

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D Airspace.

* * * * *

ANE CT D Oxford, CT [New]

Waterbury-Oxford Airport, CT
(Lat. 41°28′46″N, long. 73°08′07″W

That airspace extending upward from the surface to and including 3,200 feet MSL within a 5-mile radius of Waterbury-Oxford Airport. This Class D airspace is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as Extensions to Class D Airspace Areas.

* * * * *

ANE CT E4 Oxford, CT [New]

Waterbury-Oxford Airport, CT
(Lat. 41°28′46″N, long. 73°08′07″W

That airspace extending upward from the surface within 3.6 miles on each side of the RBY NDB 353° bearing extending from a 5-mile radius of Waterbury-Oxford Airport to 7.6 miles northwest of the TBY NDB. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Burlington, MA, on March 3, 2000.

William C. Yuknewicz,

Acting Manager, Air Traffic Division, New England Region.

[FR Doc. 00–6553 Filed 3–16–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100, 110, and 165

[CGD01–99–194]

RIN 2115–AA 97, AA 98, AE 46

Temporary Regulations: Opsail Maine 2000, Portland, ME

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a regulated area, safety zone and anchorage grounds during OPSAIL MAINE 2000 events to be held between July 28 and 31, 2000 in the port of Portland, Maine. These regulations are necessary to promote the safe navigation of vessels, and the safety of life and property during the heavy volume of vessel traffic expected during this event.

DATES: Comments and related material must reach the Coast Guard on or before May 16, 2000.

ADDRESSES: Comments should be mailed to: Commanding Officer, U.S. Coast Guard Marine Safety Office, 103 Commercial St. Portland, Maine 04101–4726. The Response and Planning Department, Coast Guard Marine Safety Office maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Coast Guard Marine Safety Office between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant R. Timme, Chief of Response and Planning, Marine Safety Office, Portland at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting comments and related material. Each person submitting comments should include his/her name and address, identify the docket number for this rulemaking [CGD1–99–194–195–196], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8¼ by 11 inches, suitable for copying. Persons requesting acknowledgment of receipt of comments should include a stamped, self-addressed postcard or envelope. All comments and material received during the comment period will be considered by the Coast Guard and may change this proposed regulation.

Public Hearing

The Coast Guard does not plan to hold a public hearing. Persons may request a public meeting by writing to Commander, First Coast Guard District (m) via Marine Safety Office Portland, at the address listed under **ADDRESSES.** The request should include reasons why a public hearing would be beneficial. If the Coast Guard determines that oral presentations would aid this rulemaking, a hearing will be held at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

OPSAIL Maine 2000, Inc. is sponsoring the OPSAIL Maine 2000 Parade of Tall ships as well as a fireworks display. These events are scheduled to take place between July 28th and 30th 2000 in the Port of Portland and surrounding waters. The Coast Guard anticipates up to 1,000 spectator craft for these events. The proposed rulemaking will provide specific guidance on temporary anchorage regulations, vessel movement controls, and safety zones that will be in effect at various times in those waters during the period July 28–30, 2000. The Coast Guard may establish additional regulated areas, anchorage grounds and safety zones once confirmation of the exact number of participating vessels becomes available.

Discussion of Proposed Rule

OPSAIL MAINE 2000, Inc is sponsoring OPSAIL MAINE 2000. This event will consist of a parade of sailing vessels from Portland Head Light past a reviewing stand located at Anchorage B. This parade will continue to Portland Main where the vessels will turn west-southwest and go to berth throughout the Port of Portland.

The Coast Guard estimates up to 1,000 spectator craft will attend the events. The proposed regulations create temporary anchorage regulations, vessel movement controls, and safety zones. The regulations will be in effect at various times in Portland Harbor between July 28–30, 2000. The vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life. This proposed rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

Regulated Areas

The Coast Guard proposes to establish a regulated area in Portland Harbor that will be in effect on July 28, 2000. This proposed regulated area is needed to protect the maritime public and participating vessels from possible hazards to navigation associated with a parade of tall ships transiting the waters of Portland outer harbor in close proximity; and a large number of Tall Ships and spectator craft anchored in close proximity throughout the duration of these events. This regulated area includes vessel anchoring and operating restrictions.

This Regulated Area covers the waters of Portland Harbor Outer Harbor, Main Harbor and vicinity. It includes the following temporary anchorages established under 33 CFR § 110.T133 created under this rule: Anchorage B, Anchorage C, Anchorage D offshore of South Portland, and Anchorage E off the southeast shore of Cushing Island. Following the tall ship parade, Portland Harbor will reopen in sequence with the movement and mooring of the final flotilla of tall ships. After the final flotilla of tall ships has passed Anchorage B, vessel operators anchored in the anchorage areas may depart for locations outside Portland Harbor. This proposed regulated area is effective from 11 a.m. until 4 p.m. on July 28, 2000.

Anchorage Regulations

The Coast Guard also proposes to establish temporary Anchorage Regulations for participating OPSAIL MAINE 2000 ships and spectator craft. The Anchorage regulations in 33 CFR § 110.132 will be temporarily suspended by this regulation and new Anchorage Grounds and regulations will be temporarily established. The proposed anchorage regulations temporarily establish Anchorage grounds for spectator vessel use only. They restrict all other vessels from using these anchorage grounds during a portion of the OPSAIL MAINE 2000 event. Anchorage B will contain the official reviewing vessel. Anchorage C is designated for small vessel temporary anchorages. Additionally, Spectator Anchorage D is designated offshore of South Portland in the Outer Harbor, and Spectator Anchorage E is designated on the southeast shore of Cushing Island. These are needed to provide viewing areas for spectator vessels while maintaining a clear parade route for the participating OPSAIL MAINE 2000 vessels and to protect boaters and spectator vessels from the hazards associated with a parade of tall ships transiting in close proximity in the waters of Portland Harbor. These proposed regulations are effective from 11 a.m. until 4 p.m. on July 28, 2000.

Safety Zones

The Coast Guard proposes to establish a safety zone in Portland Harbor for a fireworks display, that will be in effect on July 28, 2000. In the case of inclement weather, the fireworks display will be held on either July 29, or July 30, 2000 and the safety zone would be in effect on those dates. The proposed safety zone is needed to protect the maritime public from possible hazards associated with the launching of fireworks in Portland Harbor. The safety zone covers a 1500 foot radius around a barge located in Anchorage A for the fireworks display. This proposed regulation is in effect from 9 p.m. until 11 p.m. on July 28–30, 2000.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Due to the short duration of these marine events and fireworks events and the advance notice provided to the maritime community, the Coast Guard expects the economic impact of this regulation to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of the Department of Transportation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule will have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

Because it expects the impact of this rule to be so minimal, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

Assistance For Small Entities

In accordance with Sec. 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), the Coast Guard wants to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise

have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under Figure 2–1, paragraph 34 (f), (g) and (h), of Commandant Instruction M16475.1C, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and record keeping requirements, Waterways.

33 CFR Part 110

Anchorage Grounds

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 100, 110, and 165 as follows:

PART 100—[AMENDED]

1. The authority for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add Temporary § 100.CGD1–194 to read as follows:

§ 100.CGD1–194 Regulated Area, Main Harbor, Portland, Maine.

(a) Regulated Area: A regulated area is established in the waters of Portland Harbor, Outer Harbor, Main Harbor and vicinity within the following boundaries: east of the Casco Bay Bridge in the Fore River; east of the line drawn from Fish Point at 43°39′59″ N–70°14′17″W to Back Cove Approach Buoy No 3 (LLNR 7845) at 43°40′17'' N–70°14′05″ W ; south of the line thence drawn to Back Cove Approach Buoy No 4 (LLNR 7850) at 43°40′21″ N–70°13′42″ W; south-southwest of the line thence drawn to Back Cove Approach Buoy No 2 (LLNR 7850) at 43°40′10″ N–70°13′22″ W; south-southwest of the line thence drawn to Casco Bay Channel Buoy No 2 (LLNR 7235) at 43°39′50″ N–70°12′52″ W; south-southwest of the line thence drawn to House Island Buoy No 1 (LLNR 7220) at 43°39′22″ N–70°12′20″ W; west of the line thence drawn to the northernmost point of Cushing Island at 43°38′49″ N–70° 12′11″ W; west of the line from the easternmost point of Cushing Island at 43°38′43″ N–70°11′25″ W to Ram Island Ledge Light (LLNR 7575) at 43°37′54″ N–70°11′12″ W; north of the line thence drawn to Portland Head Light (LLNR 7565) at 43°37′24″ N–70°12′30″ W; thence along the shore of South Portland back to the Casco Bay Bridge.

(b) *Effective dates:* This regulation is effective from 11 a.m. until 4 p.m. on July 28, 2000.

(c) *Special Local Regulation:*

(1) No vessel except OPSAIL MAINE 2000 participating vessels and their assisting tugs, spectator vessels, and those vessels exempt from the regulations in this section, may enter or navigate within the Regulated Area, unless specifically authorized by the Coast Guard Captain of the Port, Portland, Maine or his on-scene representative.

(2) Commercial vessels which need to transit the Regulated Area, and are not going to a spectator vessel anchorage, must obtain permission from the Coast Guard Captain of the Port, Portland, Maine or his on-scene representative, prior to entering the Regulated Area.

(3) Spectator vessels within the Regulated Area shall remain in designated anchorages during the effective period unless specifically authorized by the Coast Guard Captain of the Port, Portland, or his on-scene representative.

(4) Spectator vessels transiting the Regulated Area must do so at a no wake speed, or at speeds not to exceed 5 knots, whichever is less.

(5) Not withstanding paragraph (c)(1) of this section, no vessel other than OPSAIL MAINE 2000, their assisting tugs, and enforcement vessels, may enter or navigate within the boundaries of the main shipping channel within the Regulated Area unless they are specifically authorized to do so by the Coast Guard Captain of the Port, Portland, Maine or his on-scene representative. Authorization may be obtained by contacting Coast Guard Group Portland on channel 16 VHF–FM. Any vessel authorized to enter the Regulated Area during the Parade of Tall Ships must not, under any circumstances, cross through the parade, or maneuver alongside within 100 yards of any OPSAIL MAINE 2000 vessel.

(6) No vessel is permitted to anchor in the main shipping channel at any time. Vessels which need to anchor to maintain position will only do so in designated temporary anchorage areas.

(7) All persons and vessels shall comply with the instructions of on-scene Coast Guard patrol personnel. On-scene patrol personnel include commissioned, Warrant and Petty Officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local law enforcement vessels.

PART 110—[AMENDED]

3. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471; 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g)

4. From July 28 through July 30, 2000 § 110.132 is suspended and new § 100.T136 is added as follows:

§ 110.T136 Portland Harbor, ME.

(a) The anchorages. All anchorages in this paragraph are effective as specified. Vessel operators using the anchorages in this paragraph must comply with the general operational requirements specified in paragraph (c) of this section. All coordinates are NAD 1983.

(1) *Anchorage B.*

(i) That area bound by the following points; 43°39′35″ N–70°13′30″ W (Fort Gorges Island Ledge Buoy 4, LLNR 7685); 43°39′50″ N–70°12′55″ W; 43°39′26″ N–70°12′27″ W; 43°39′08″ N–70°12′58″ W (NAD 1983).

(ii) Anchorage B is intended for general purposes, but especially for use by oil tankers and other large deep-draft ships entering harbor at night and intending to proceed to the dock allotted at daylight the following morning or as soon as practicable. This area is also to be used for quarantine anchorage. Vessels must be so anchored in this area as to leave at all times an open usable channel at least 100 feet wide for passage of ferry and other boats between Portland and islands in Luckse Sound and Hussey Sound. Any vessels anchored in this area shall be ready to move on short notice when ordered to do so by the Captain of the Port, or on scene Coast Guard patrol personnel.

(2) *Anchorage C.*

(i) That area bounded by the following points: the eastern most point on House Island 43°39′16″ N–70°12′24″ W, to the point on Cushing Island at 43°38′49″ N–70°12′11″ W; thence along the western shore of Cushing Island to its southernmost point at 43°38′03″ N–70°12′24″ W; to Maine Approach Lighted Bell Buoy "12", (LLNR 7580) at 43°38′00″ N–70°12′30″ W; to Fort Scammel Point Light 2 (LLNR 7605) at 43°38′54″ N–70°12′54″ W; thence along the south-eastern shoreline to the beginning. (All positions NAD 1983.)

(ii) This anchorage is intended for use by small vessels and for temporary anchorages.

(3) *Spectator Anchorage D.*

(i) That area bound by the following points: Spring Point Ledge Light (LLNR 7610) at 43°39′06″ N–70°13′30″ W (NAD 1983); to Portland Head Light, (LLNR 7565) 43°37′24″ N–70°12′30″ W (NAD 1983); thence along the shoreline of South Portland to the point of beginning. (All positions NAD 1983.)

(ii) This anchorage is intended for use by small vessels and for temporary anchorages.

(4) *Spectator Anchorage E.*

(i) That area bounded by the following points: the eastern most point of Cushing Island at 43°38′43″ N–70°14′17″ W; to Ram Island Ledge Light (LLNR 7575) at 43°37′24″ N–70°12′30″ W; to the floating aids to navigation Maine Approach Lighted Bell Buoy "12" (LLNR 7580) at 43°37′24″ N–70°12′30″ W; to the southern most point of Cushing Island; thence along the south-eastern shore to the point of beginning. (All positions NAD 1983.)

(ii) This anchorage is intended for use by small vessels and for temporary anchorages.

(b) *Effective dates:* This section is effective from 11 a.m. until 4 p.m. on July 28, 2000.

(c) *Regulations.* Vessel operators using any of the anchorages established in this section shall:

(i) Ensure their vessels remain safely in position under all prevailing conditions.

(ii) Comply as directed by on-scene Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or local law enforcement vessels.

(iii) Vacate anchorages after termination of the effective period for those areas.

(iii) Not leave vessels unattended in any anchorage or spectator area at any time.

(iv) Not tie off to any buoy.

(v) Not maneuver between anchored vessels.

(vii) Not nest or tie off to other vessels in that anchorage or spectator area.

PART 165—[AMENDED]

5. The authority citation for part 165.11 continues to read:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(G). 6.04–1, 6.04–6, and 160.5.

6. Add new § 165.CGD1–195 to read as follows:

§ 165.CGD1–195 Safety Zone: OPSAIL Maine 2000 Fireworks Display, Portland Harbor, Portland, ME.

(a) *Location.* The following area is a safety zone: All waters in a radius of 1500 feet around a pyrotechnics barge located at approximate position 43°40′07″ N–70°13′45″ W (NAD 1983).

(b) *Effective dates.* This regulation is effective from 9 p.m. until 11 p.m. on July 28, 29 and 30, 2000.

(c) *Regulations.*

(1) The general regulations contained in 33 CFR 165.23 apply.

(2) Vessel operators must maneuver as directed by on-scene Coast Guard patrol personnel. On scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, or law enforcement vessels.

Dated: February 29, 2000.

G. N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District, Boston, Massachusetts.

[FR Doc. 00–6686 Filed 3–16–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–00–012]

RIN 2115–AE446

Special Local Regulations: Skull Creek, Hilton Head, SC

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to adopt temporary Special Local Regulations for the Skull Creek July 4th celebration Fireworks Display, Skull Creek, Hilton Head, SC. The event will be held from 9 p.m. to 10 p.m. Eastern Daylight Time (EDT) on July 4, 2000 in Skull Creek, Hilton Head, SC. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: Comments and related material must reach the Coast Guard on or before May 16, 2000.

ADDRESSES: Comments should be mailed to Commanding Officer, U.S. Coast Guard, Marine Safety Office, 196 Tradd Street, Charleston, SC 29401. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Porter at (843) 681–2772 x100.

SUPPLEMENTARY INFORMATION:

Background and Purpose

These proposed regulations are required to provide for the safety of life on navigable waters because of the inherent danger of fireworks during the Skull Creek July 4th celebration, Skull Creek, Hilton Head GA.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice [CGD07–00–012] and the specific section of this proposal to which their comments apply and give reasons for each comment. The Coast Guard requests that all comments and attachments be submitted in an 8″ X 11″ unbound format suitable for copying and electronic filing. If that is not practical, a second copy of any bound material is requested. Persons requesting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. The regulations may be changed in view of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Commander Coast Guard Group Miami at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a

time and place announced by a notice in the **Federal Register**.

Regulatory Evaluation

This proposal is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The regulated area will only be in effect for 2 hours on one day.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic effect upon a substantial number of small entities. "Small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as the regulations will only be in effect for 2 hours in a limited area near Hilton Head, South Carolina.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888-REG-FAIR (1–888–734–3247).

Collection of Information

This proposal calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this proposal under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This proposal will not impose an unfunded mandate.

Taking of Private Property

This proposal will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposal meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposal under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposal and has determined pursuant to Figure 2–1, paragraph 34(h) of Commandant Instruction M16475.1C, that this proposal is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR Part 100 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. Add temporary § 100.35T–07–012 to read as follows:

§ 100.35T–07–012 Skull Creek July 4th Celebration, Skull Creek, Hilton Head SC.

(a) *Regulated Area:* A regulated area is established for the waters in Skull Creek, Hilton Head, SC, encompassing an area within a 500 foot radius from position 32°13.95'N, 080°45.1'W. All coordinates referenced use Datum: NAD 1983.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commanding Officer, Group Charleston, SC.

(c) *Special Local Regulations:* Entry into the regulated area by other than event participants is prohibited, unless otherwise authorized by the Patrol Commander. Spectator craft are required to remain in a spectator area to be established by the event sponsor The Club Group, LTD.

(d) *Dates:* These regulations become effective at 8:30 p.m. and terminate at 10:30 p.m. EDT on July 4, 2000.

Dated: March 3, 2000.

Thad. W. Allen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 00–6687 Filed 3–16–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP MIAMI 00–015]

RIN 2115–AA97

Safety Zone: OpSail Miami 2000, Port of Miami

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking

SUMMARY: The Coast Guard proposes to establish temporary regulations in the Port of Miami for OpSail Miami 2000 activities. This action is necessary to provide for the safety of life and property on navigable waters during OpSail Miami 2000. This action will restrict vessel traffic in portions of the Port of Miami.

DATES: Comments and related material must reach the Coast Guard on or before May 1, 2000.

ADDRESSES: You may mail comments and related material to the Port Management and Response Department, Coast Guard Marine Safety Office, P.O. Box 01–6940, Miami, Florida 33101–6940, or deliver them during regular office hours, Monday through Friday, to Room 201, Coast Guard Marine Safety Office Miami, 100 MacArthur Causeway, Miami Beach, Florida 33197. Coast Guard Marine Safety Office Miami maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room 201, Coast Guard Marine Safety Office Miami, between 8 a.m., E.S.T. and 3 p.m., E.S.T. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Joseph Boudrow, Port Management and Response Department, Coast Guard Marine Safety Office Miami, (305) 535–8705.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On December 17, 1999, the Coast Guard published an advanced notice of proposed rulemaking; request for comments (ANPRM) entitled OPSAIL 2000, Port of Miami in the **Federal Register** (64 FR 70650). The Coast Guard received no letters commenting on the anticipated rulemaking. No public hearing was requested and none was held.

Request for Comments

We encourage interested persons to participate in this rulemaking by submitting comments and related material. Your comments should include your name and address, identify the docket number for this rulemaking (COTP Miami 00–015) and the specific section of this proposal to which each comment applies and give the reason for each comment. Please submit two copies of all comments and attachments in an unbound format, no larger than 8-½ by 11 inches, suitable for copying and electronic filing. If you want to know if your comment is received, enclose a stamped, self-addressed postcard or envelope. We will consider all comments received during the comment period and may change this proposal in view of the comments. The comment period for this regulation is 45 days. This time period is adequate to allow local input because we previously published an ANPRM, no comments were received, the event is highly publicized, and the shortened comment period will allow the full 30-day publication requirement prior to the final rule becoming effective. Copies of this proposal will also be placed in the local notice to mariners.

Public Meeting

The Coast Guard plans no public meeting. You may request a public meeting by writing to the Port Management and Response Department of Coast Guard Marine Safety Office Miami at the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If we determine that the opportunity for oral presentations will aid this rulemaking, it will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The proposed temporary regulations are for OpSail Miami 2000 events scheduled to be held in portions of the Port of Miami over the period of June 6–10, 2000. This rule is proposed to provide for the safety of life and property on navigable waters during OpSail Miami 2000 events.

Discussion of Proposed Rule

OpSail Miami 2000, Inc., is sponsoring OpSail Miami 2000 activities which consist of the arrival, display, and departure parade of numerous large U. S. and foreign flagged sail vessels. One or more fireworks displays may be conducted during the period of sail vessel visit. Currently, approximately 20 Class A (175 feet or larger in length) and 20 smaller Class B (100 feet up to 175 feet) and C (up to 100 feet) sail vessels have confirmed that they will participate in OpSail Miami 2000. Event sponsors anticipate as many as 100 sail vessels may ultimately be involved.

Participant sail vessels will begin arriving in the Port of Miami on June 6, 2000 and will moor alongside Dodge Island within the Port of Miami. These vessels will be open to the public during certain hours between June 7 and June 9, 2000. On June 10, 2000, these vessels will make their departure from the Port of Miami in a parade commencing approximately 12 noon EST and ending approximately 2 p.m. EST. Participant sail vessels will proceed from their moorings to the turning basin at the west end of the Main Channel. From the turning basin, they will proceed in 300 to 500 yard intervals in an ocean bound direction along the Main Channel, thence along Government Cut, thence along Bar Cut, thence along Outer Bar Cut, to the vicinity of Miami Lighted Bouy M (Light List Number (LLNR) 10455–895), located at 25 degrees, 46.0 minutes North latitude, 080 degrees, 05.0 minutes West longitude. The area of Miami Lighted Buoy M is the termination area for the parade.

Vessels subject to local pilotage rules shall have a Biscayne Bay pilot embarked for the outbound parade from moorings. Pilots are expected to disembark from their assigned sail vessels in the area of Miami Lighted Buoy M. Once out of the parade, the majority of sail vessels are expected to turn north and skirt the south Florida Atlantic Coast en route to their next port of call.

Waterborne spectator areas have been designated by the event sponsor to be on either side of Bar Cut and Outer Cut in the open ocean. These areas will be delineated by lines of marker floats placed by the sponsor. The marker floats will be round balls, orange in color, and spaced approximately 200 yards apart. They will be placed 100 yards out from the aids to navigation that mark each side of the channel. Spectator craft will be expected to remain behind the marker float lines for the duration of the parade.

Because of the number of the sail vessels, fireworks displays, and the large number of spectator watercraft expected during the parade, the Coast Guard proposes temporary regulations for the creation of a temporary safety zone and vessel movement controls in portions of the Port of Miami and its channels affected by this event. The regulations will be in effect at various times in portion of the Port of Miami during the period of June 6, 2000 through June 10, 2000. The vessel congestion due to the large number of participant and spectator vessels poses a significant threat to the safety of life and property. The Coast Guard has determined this proposed rulemaking is necessary to ensure the safety of life and property on the navigable waters of the United States within portions of the Port of Miami affected by this event.

Regulated Area

The Coast Guard proposes to establish a temporary safety zone for the Parade of Sail on June 10, 2000. The proposed safety zone shall include all waters in the Port of Miami within the turning basin at the west end of Main Channel bounded by the bridges connecting Dodge Island and Watson Island to the mainland, respectively, the Main Channel, Lummus Island Cut east of a

line drawn northward from the west end of Fisher Island, Government Cut, Bar Cut, and Outer Bar Cut. This safety zone also includes all the waters 500 yards on either side of Bar Cut and Outer Bar Cut seaward of the jetties to Miami Lighted Buoy M (LLNR 10455–895). Entry into the safety zone by non-participating vessels will be prohibited. The Coast Guard expects many spectator craft for this millennium event. These craft will be allowed to view the Parade of Sail vessels from viewing areas on either side of Bar Cut and Outer Bar Cut. These areas will delineated by marker floats placed by the sponsor of the event.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rulemaking to be so minimal that a full Regulatory Evaluation under 10e of the regulatory policies and procedures of DOT is unnecessary. Although the proposed rule prohibits all non-parade related traffic in the area of the temporary safety zone on Saturday, June 10, 2000, the effect of this regulation will not be significant for the following reasons: the regulation will be in effect for less than 6 hours; the maritime community will receive extensive advance notices through Local Notices to Mariners, facsimile, and marine information broadcasts, maritime association meetings, and Miami area newspapers; and specific viewing areas will be marked for spectator vessels. Mariners and commercial vessels can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule has a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit those portions of the Port of Miami during the six hour periods of safety zone enforcement. These regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. Although these regulations would apply to a substantial portion of the Port of Miami, the periods of the regulatory enforcement will be of short duration. Before the effective periods, the Coast Guard will make notifications to the public via mailings, facsimiles, the Local Notice to Mariners, and use of the sponsor Internet site. In addition, OpSail Miami 2000, Inc., the sponsoring organization, is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit comments (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we will assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant Joe Boudrow, Coast Guard Marine Safety Office Miami at (305) 535–8705.

Collection of Information

The Coast Guard anticipates that this rulemaking will not require any new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, and it has been determined that the rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose no unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this action and have initially determined under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this proposed rule will be categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be available in the docket where indicated under **ADDRESSES.** By controlling vessel traffic during the event, this proposed rule is intended to minimize environmental impacts of increased vessel traffic during the parade of sail.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Part 165, as follows:

PART 165—[AMENDED]

1. The Authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. A temporary § 165.T 07–015 is added to read as follows:

§ 165.T07–015 Safety Zone; Miami, Florida

(a) *Regulated area.* A temporary safety zone is established for Opsail Miami 2000 events, including a parade of sail vessels to include all waters in the Port of Miami within the turning basin at the west end of Main Channel bounded by the bridges connecting Dodge and Watson Islands with the mainland, Main Channel, Lummus Island Cut east of a line extending northward from the west end of Fisher Island, Government Cut, Bar Cut, and Outer Bar Cut. This safety zone also includes all the waters 500 yards on either side of Bar Cut and Outer Bar Cut seaward of the jetties to Miami Lighted Buoy M (LLNR 10455–895).

(b) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited to all non-parade related vessels without the prior permission of the U.S. Coast Guard Captain of the Port.

(c) *Enforcement Period.* This section becomes effective at 8 a.m., EST and terminates at approximately 4 p.m., EST on June 10, 2000.

Dated: March 3, 2000.

L.J. Bowling,

Captain, U. S. Coast Guard, Captain of the Port, Miami Zone.

[FR Doc. 00–6685 Filed 3–16–00; 8:45 am]

BILLING CODE 4910–15–U

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 99–7B]

Exemption to Prohibition on Circumvention of Copyright Protection Systems for Access Control Technologies

AGENCY: Copyright Office, Library of Congress.

ACTION: Extension of deadline for reply comment period; notice of public hearings; and deadline for post-hearing comments.

SUMMARY: The Copyright Office of the Library of Congress announces public hearings on the possible exemptions to the prohibition against circumvention of technological measures that control access to copyrighted works. The Office also announces the extension of the deadline for the submission of reply comments and announces the deadlines for submission of post-hearing comments. The hearings and comments relate to a rulemaking proceeding conducted in accordance with 17 U.S.C. 1201(a)(1), which was added by the Digital Millennium Copyright Act, and which will determine whether there are "classes of works" as to which users are, or are likely to be, adversely affected in their ability to make noninfringing uses if they are prohibited from circumventing such technological measures.

DATES: The deadline for reply comments is extended to 5:00 p.m. E.S.T. on Friday, March 31, 2000. Public hearings will be held in Washington, DC on May 2–4, 2000 and in Stanford, CA, on May 18—19, 2000. Requests to testify must be received in the Office of the General Counsel of the Copyright Office by 5:00 p.m. E.S.T. on April 14, 2000. Post-hearing written submissions must be received no later than 5:00 p.m. E.S.T. on June 23, 2000. See **SUPPLEMENTARY INFORMATION** for additional information and other requirements.

ADDRESSES: The first round of public hearings will be held at the Library of Congress in Room LA–202 of the John Adams Building, 110 Second Street, S.E., Washington, DC. The second round of public hearings will be held at Stanford University in Room 290, Stanford Law School, Crown Quadrangle, Stanford, CA. See **SUPPLEMENTARY INFORMATION** for additional address information and other requirements.

FOR FURTHER INFORMATION CONTACT: Robert Kasunic, Senior Attorney, Office of the General Counsel, or Charlotte Douglass, Principal Legal Advisor, Office of the General Counsel, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380; fax: (202) 707–8366. E-mail inquiries regarding the hearings may be sent to rkas@loc.gov.

SUPPLEMENTARY INFORMATION: On November 24, 1999, the Copyright Office published a Notice of Inquiry seeking comments in connection with a rulemaking pursuant to 17 U.S.C. 1201(a)(1), which provides that the Librarian of Congress may exempt certain classes of works from the prohibition against circumventing a technological measure that controls access to a copyrighted work. 64 FR 66139 (November 24, 1999). For a more complete statement of the background and purpose of the rulemaking, please see the Notice of Inquiry which is also available on the Copyright Office's website at: http://www.loc.gov/copyright/1201/anticirc.html.

Subsection 1201(a)(1)(A) provides, inter alia, that "No person shall circumvent a technological measure that effectively controls access to a work protected under this title." Subparagraph (B) limits this prohibition. It provides that the prohibition against circumvention of technological measures "shall not apply to persons who are users of a copyrighted work which is in a particular class of works, if such persons are, or are likely to be in the succeeding 3-year period, adversely affected by virtue of such prohibition in their ability to make noninfringing uses of that particular class of works under this title" as determined in this rulemaking. This prohibition on circumvention becomes effective on October 28, 2000, two years after the date of enactment.

During the 2-year period between the enactment and effective date of the provision, the Librarian of Congress must make the determination as to classes of works exempted from the prohibition. This determination will be made upon the recommendation of the Register of Copyrights in a rulemaking proceeding. The determination thus made will remain in effect during the succeeding three years.

In response to the Notice of Inquiry, the Office received 235 written comments that conformed to the requirements set forth in the Notice of Inquiry, as modified. The comments have been posted on the Office's website; see http://lcweb.loc.gov/copyright/1201/comments.

The Copyright Office has received a request from Time-Warner Inc. to extend the deadline for submission of reply comments. Given the unexpectedly high volume of initial comments submitted and in order to accommodate the needs of all interested parties, the Copyright Office is extending the deadline for submissions of reply comments. Reply comments must be received in the Office of the General Counsel no later than 5:00 p.m. E.S.T. on March 31, 2000. For addresses and acceptable formats for reply comments, please see the section below entitled "Format and submission of reply comments and post-hearing comments."

The purpose of reply comments is to respond to points made in initial comments submitted in this proceeding,

and not to raise new issues for the first time.

Public hearings: The Office will be conducting public hearings in Washington, DC on Tuesday, May 2, 2000, Wednesday, May 3, 2000, and Thursday, May 4, 2000 from 9:30 a.m. to 6:00 p.m. Public hearings will also be held in Stanford, CA on Thursday, May 18, 2000 and Friday, May 19, 2000 from 9:30 a.m. to 6:00 p.m. Interested parties are invited to submit requests to testify at one of these hearings.

Requirements for persons desiring to testify: A request to testify must be submitted to the Copyright Office. All requests to testify must include:

- The name of the person desiring to testify;
- The organization or organizations represented by that person, if any;
- Contact information (address, telephone, and e-mail);
- The location and date of the hearing at which the requestor wishes to testify; and
- A one page summary of the intended testimony.

This request may be sent by mail, by fax, or by hand-delivery. Requests by telephone or electronic mail will not be accepted. The Copyright Office will notify all persons wishing to testify of the date and expected time of their appearance, and the maximum time allowed for their testimony.

Addresses for requests to testify: If delivered by mail: requests to testify should be addressed to Robert Kasunic, Senior Attorney, Copyright GC/I&R, PO Box 70400, Southwest Station, Washington, DC 20024.

If sent by fax: requests to testify should be addressed to Robert Kasunic at (202) 707–8366.

If delivered by hand: requests to testify should be delivered to Robert Kasunic, the Office of the General Counsel, Copyright Office, Library of Congress, LM–403, James Madison Memorial Building, 101 Independence Avenue, S.E., Washington DC.

All requests to testify must be received by 5:00 E.S.T. on April 14, 2000.

Time limits on testimony at public hearings: There will be time limits on the testimony allowed for speakers. In the initial comment period, the Office received 235 written comments. Given the time constraints, only a fraction of that number could possibly testify at the hearings. The time limits will depend on the number of persons wishing to testify. Approximately one week prior to the hearings, the Office will notify all persons submitting requests to testify of the precise time limits that will be imposed on oral testimony. Due to the time constraints, the Copyright Office encourages parties with similar interests to select a single spokesperson to testify.

Post-hearing comments: At the conclusion of the public hearings, the Copyright Office will accept post-hearing written comments that relate specifically to matters addressed at the hearings or identified in the reply comments. This post-hearing comment period is not intended to be an opportunity for interested parties to reiterate points they have already made or to raise new issues. Post-hearing comments must be received in the Office of the General Counsel no later than 5:00 p.m. E.S.T. on June 23, 2000.

Format and submission of reply comments and post-hearing comments: The Copyright Office prefers to receive reply and post-hearing comments submitted in electronic format (by attachment to electronic mail or by delivery of 3.5-inch diskettes). While the Office prefers electronic submissions, reply and post-hearing comments in paper format will also be accepted. The applicable requirements for each form of submission are specified below:

1. *If by electronic mail:* Send to "1201@loc.gov" a message containing the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, fax number (if any), and e-mail address. The subject heading of the message should also identify the document clearly as a reply or post-hearing comment. The document itself must be sent as a MIME attachment, and must be in a single file in either: (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word Version 7.0 or earlier; (3) WordPerfect 7 or earlier; (4) ASCII text file format; or (5) Rich Text File (RTF) format. At a minimum, the comment must contain the name of the person submitting the comment.

2. *If by regular mail or hand delivery:* Send, to the appropriate address listed above, two copies of the comment, each on a 3.5-inch write-protected diskette, labeled with the name of the person making the submission and, if applicable, his or her title and organization. The document must be clearly identified as a reply or post-hearing comment. Either the document itself or a cover letter must also include the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, fax number (if any), and e-mail address (if any). The document itself must be in a single file in either (1) Adobe Portable Document File (PDF) format (preferred); (2) Microsoft Word Version 7.0 or earlier; (3) WordPerfect Version 7 or earlier; (4) ASCII text file format; or (5) Rich Text File (RTF) format. At a minimum, the comment must contain the name of the person submitting the comment.

3. *If in print only:* Anyone who is unable to submit a comment in electronic form should submit an original and fifteen paper copies by hand or by mail to the appropriate address listed above. The reply or post-hearing comment should contain the name of the person making the submission, his or her title and organization (if the submission is on behalf of an organization), mailing address, telephone number, fax number (if any), and e-mail address (if any). At a minimum, the comment must contain the name of the person making the submission.

Dated: March 14, 2000.

David O. Carson,

General Counsel.

[FR Doc. 00–6711 Filed 3–16–00; 8:45 am]

BILLING CODE 1410–30–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FL–83–1–200009; FRL–6561–4]

Approval and Promulgation of Implementation Plans; Florida: Approval of Revisions to the Florida State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Florida State Implementation Plan (SIP) submitted on December 10, 1999, by the State of Florida through the Florida Department of Environmental Protection (FDEP). This submittal consists of revisions to the ozone air quality maintenance plans for the Jacksonville (Duval County) and Southeast Florida (Broward, Dade, and Palm Beach Counties) areas to remove the emission reduction credits attributable to the Motor Vehicle Inspection Program (MVIP) from the future year emission projections contained in those plans. Florida submitted technical amendments to this revision on January 18, 2000. For the Jacksonville and Southeast Florida areas, this revision updates the control strategy by removing emissions credit for the MVIP, and as such, transportation conformity must be redetermined by the Metropolitan Planning Organizations (MPOs) within 18 months of the final approval of this action.

DATES: Comments on EPA's proposed action must be received by April 17, 2000.

ADDRESSES: All comments should be addressed to Joey LeVasseur at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Atlanta Federal Center, Region 4 Air Planning Branch, 61 Forsyth Street S.W., Atlanta, Georgia 30303–3104.

Florida Department of Environmental Protection, Twin Towers Office Building, 2600 Blair Stone Road, Tallahassee, Florida 32399–2400.

FOR FURTHER INFORMATION CONTACT: Joey LeVasseur at 404/562–9035 (E-mail: levasseur.joey@epa.gov).

SUPPLEMENTARY INFORMATION: The following sections: Background, Analysis of the State's Submittal, and Final Action, provide additional information concerning the revisions to the ozone air quality maintenance plans for the Jacksonville and Southeast Florida areas to remove the emission reduction credits attributable to the MVIP from the future year emission projections contained in those plans. Specifically this action involves a recalculation of the motor vehicle emissions budgets (budgets) for the areas, eliminating the credit for the MVIP. In this submittal, the State originally used the MOBILE 5b model to project mobile source emissions for 2005. The mobile source budgets in the maintenance plan were calculated using the MOBILE 5a model, however the same version of the model must be used for comparisons of mobile source emissions. Subsequently, on January 18, 2000, the State submitted technical amendments to the mobile source emission projection calculations. The State recalculated the 2005 mobile source emissions using the MOBILE 5a model. The change in emissions using the MOBILE 5a versus MOBILE 5b models for 2005 was negligible.

The Transportation Conformity regulations, promulgated on November 24, 1993, established the criteria and procedures for determining conformity of transportation activities to the SIP. Under these provisions and Title I of the CAA, states may revise their emissions budgets at any time through the standard SIP revision process, provided that the revised emissions budgets will not adversely affect attainment and maintenance of the ozone NAAQS for any milestone year in the required time frame. The conformity rule provides states with the option to revise the emissions budgets to reallocate emissions among sources or between pollutants and their precursors so long as this budget maintains total emissions for the area below the attainment inventory levels.

In addition, the SIP revision must not have an adverse impact on maintenance of the NAAQS for any criteria pollutant. Guidance on this issue is contained in a memorandum dated September 17, 1993, from Michael Shapiro, Acting Assistant Administrator for Air and Radiation entitled, "State Implementation Plan Requirements for Areas Submitting Requests for Redesignation to Attainment of the Ozone and Carbon Monoxide National Ambient Air Quality Standards on or after November 15, 1992." This memo states:

> As a general policy, a State may not relax the adopted and implemented SIP upon the area's redesignation to attainment. States should continue to implement existing control strategies in order to maintain the standard. However, section 175A recognizes that States may be able to move SIP measures to the contingency plan upon redesignation if the State can adequately demonstrate that such action will not interfere with maintenance of the standard.

In this revision, Florida demonstrates that the area can maintain the one-hour ozone NAAQS without the implementation of the MVIP. The EPA has reviewed the State's emissions inventory and modeling analyses and finds that they meet applicable guidance and requirements. Therefore, the State has made the necessary demonstration that the MVIP is not necessary to maintain the one-hour ozone NAAQS and that attainment of the NAAQS for any other pollutant will not be affected by removing the MVIP from the SIP. In accordance with EPA's November 15, 1992, policy, the State must include the MVIP as a contingency measure in the maintenance plan for the redesignated area, which it has done.

Tables 1 through Table 5, presented after the text in this subsection, list the revised budgets and the emissions for point, area, biogenic, on-road mobile and non-road mobile sources. The motor vehicle emission budgets are derived as a percentage of the 1990 on road emissions inventories. Upon final EPA approval, these budgets are to be used by the local metropolitan planning organizations and transportation authorities to assure that transportation

I. Background

Upon enactment of the Clean Air Act Amendments of 1990, the Jacksonville and Southeast Florida areas were classified as nonattainment for the one-hour ozone national ambient air quality standard (NAAQS). On November 16, 1992, the State of Florida submitted comprehensive inventories for volatile organic compound (VOC), oxides of nitrogen (NO_X), and carbon monoxide emissions from the Jacksonville and Southeast Florida areas. The inventories include biogenic, area, stationary, and mobile source emissions using 1990 as the base year for calculations to demonstrate NAAQS attainment and maintenance. The 1990 inventory is considered representative of attainment conditions because the one-hour ozone NAAQS was not violated during 1990. By 1993, both areas were able to demonstrate attainment of the one-hour ozone NAAQS and were able to show compliance with other requirements of the Clean Air Act as amended in 1990 (CAA) for redesignation.

On June 23, 1993, the State of Florida through the FDEP requested that the Jacksonville area be redesignated from a transitional ozone nonattainment area to attainment and on November 8, 1993, the State of Florida requested that the Southeast Florida area be redesignated from moderate ozone nonattainment to attainment. Approval of the ozone maintenance plans into the SIP, in conjunction with EPA's redesignation of the two areas to attainment with respect to the 1-hour ozone NAAQS, became effective March 6, 1995, for the Jacksonville area and March 25, 1995, for the Southeast Florida area (40 CFR 81.310).

The ozone maintenance plans for the two areas, developed pursuant to section 175A of the CAA and approved in the SIP, accounted for the MVIP in the mobile source emissions projections. The MVIP began April 1, 1991, in Duval, Palm Beach and Dade Counties and May 1, 1991, in Broward County. Currently, the MVIP is a centralized basic inspection and maintenance program. The program utilizes an idle emissions test to monitor vehicles' emission compliance.

II. Analysis of State's Submittal

On December 10, 1999, FDEP submitted a revision to the SIP for the ozone air quality maintenance plans for the Jacksonville and Southeast Florida areas to remove the emission reduction credits attributable to the MVIP from the future year emission projections contained in those plans. Specifically this action involves a recalculation of the motor vehicle emissions budgets (budgets) for the areas, eliminating the credit for the MVIP. In this submittal, the State originally used the MOBILE 5b model to project mobile source emissions for 2005. The mobile source budgets in the maintenance plan were calculated using the MOBILE 5a model, however the same version of the model must be used for comparisons of mobile source emissions. Subsequently, on January 18, 2000, the State submitted technical amendments to the mobile source emission projection calculations. The State recalculated the 2005 mobile source emissions using the MOBILE 5a model. The change in emissions using the MOBILE 5a versus MOBILE 5b models for 2005 was negligible.

The Transportation Conformity regulations, promulgated on November 24, 1993, established the criteria and procedures for determining conformity of transportation activities to the SIP. Under these provisions and Title I of the CAA, states may revise their emissions budgets at any time through the standard SIP revision process, provided

plans, programs, and projects are consistent with, and conform to, the long-term maintenance of the NAAQS in the Jacksonville and Southeast Florida areas. Emissions inventories and budgets for the Jacksonville area (Duval County) are listed in Table 1. For the Southeast Florida area (Broward, Dade, and Palm Beach), the emissions inventories and budgets are based on the three-county totals which are listed in Table 5. However, in practice, the conformity test can be made for each county on the basis of its county-specific portion of the budget. For the purposes of conformity, allocation of the emissions inventories and budgets for Broward, Dade, and Palm Beach Counties are listed in Table 2 through Table 4, respectively.

DUVAL COUNTY.—EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	VOC		NO_x	
	1990	2005	1990	2005
Point	15.60	21.16	101.16	98.40
Area	51.25	39.24	8.37	14.67
On-Road Mobile	82.49	44.30	61.40	52.10
Non-Road Mobile	24.63	29.41	21.07	23.74
Biogenic	126.70	126.70	0.30	0.30
Total	300.67	260.81	192.30	189.21
Motor Vehicle Emission Budget	n/a	44.30	n/a	52.10

BROWARD COUNTY.—EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	VOC		NO_x	
	1990	2005	1990	2005
Point	15.20	14.16	109.20	85.16
Area	55.60	35.03	6.90	8.21
On-Road Mobile	109.80	55.60	80.20	65.20
Non-Road Mobile	37.80	47.95	28.40	36.98
Biogenic	174.50	174.50	1.80	1.80
Total	392.90	327.24	226.50	197.35
Motor Vehicle Emission Budget	n/a	104.35	n/a	76.19

DADE COUNTY.—EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	VOC		NO_x	
	1990	2005	1990	2005
Point	11.46	8.59	41.30	32.00
Area	161.00	107.18	12.52	15.30
On-Road Mobile	156.60	87.30	117.70	100.80
Non-Road Mobile	65.11	77.86	36.30	56.52
Biogenic	211.30	211.30	3.00	3.00
Total	605.47	492.23	210.82	207.62
Motor Vehicle Emission Budget	n/a	148.77	n/a	111.82

PALM BEACH COUNTY.—EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	VOC		NO_x	
	1990	2005	1990	2005
Point	1.26	1.51	37.78	34.54
Area	84.06	78.29	4.19	5.03
On-Road Mobile	70.20	46.40	56.58	55.60
Non-Road Mobile	26.05	32.54	18.27	25.35
Biogenic	399.60	399.60	2.40	2.40
Total	581.17	558.34	119.22	122.92
Motor Vehicle Emission Budget	n/a	66.69	n/a	56.58

TOTAL 3—COUNTY (BROWARD, DADE, AND PALM BEACH COUNTIES) EMISSIONS INVENTORY SUMMARY

[Tons per day]

Category	VOC		NO^x	
	1990	2005	1990	2005
Point	27.92	24.26	188.28	151.70
Area	300.66	220.50	23.61	28.54
On-Road Mobile	336.60	189.30	254.48	221.60
Non-Road Mobile	128.96	158.35	82.97	118.85
Biogenic	785.40	785.40	7.20	7.20
Total	1,579.54	1,377.81	556.54	527.89
Motor Vehicle Emission Budget	n/a	319.81	n/a	244.59

Table 6 provides a comparison of the motor vehicle emissions budgets for VOC and NO_x for the Jacksonville and Southeast Florida areas with and without the emissions credits attributed to MVIP.

JACKSONVILLE AND SOUTHEAST FLORIDA AREAS—MOTOR VEHICLE EMISSIONS BUDGET

[Tons per day]

Area	2005			
	With MVIP credits		Without MVIP credits	
	VOC	NO_x	VOC	NO_x
Jacksonville	48.30	59.10	44.30	52.10
Broward County	104.35	76.19	104.35	76.19
Dade County	148.77	111.82	148.77	111.82
Palm Beach County	66.69	53.75	66.69	56.58
Southeast Florida	319.81	241.76	319.81	244.59

In summary, the budgets remain the same as the previous budgets allocated for Dade and Broward Counties. For Palm Beach County, the budget allocation for VOC is the same as the previous budget. In this submittal, the State of Florida increased the Palm Beach County motor vehicles emissions budget for NO_x from 53.75 tpd to 56.58 tpd, which is 100 percent of the 1990 on-road emissions inventory allocated for Palm Beach County. The State is allowed to allocate up to 100 percent of the 1990 on-road emissions inventory for use as the motor vehicle emissions budget. The Duval County air quality maintenance plan did not explicitly set forth conformity budgets for VOC or NO_x. For this SIP revision, the State is requesting that the conformity budgets for Duval County be set at 44.30 tpd for VOC and 52.10 for NO_x, effective upon final approval of this revision. These levels are less than the 1990 on-road emissions inventory levels of 82.49 tpd for VOC and 61.40 tpd for NO_x.

Although the motor vehicle emission budgets do not change for all of the counties, the MPOs for all four counties must redetermine conformity within 18 months of the effective date for this SIP revision. This is required because the existing conformity determinations considered emission reduction credits from the MVIP control strategy.

Proposed Action

The EPA proposes to approve the aforementioned changes to the SIP.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely proposes to approve state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and

Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 7, 2000.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 00–6566 Filed 3–16–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[OH132–1; KY116–1;KY84–1; FRL–6562–1]

Approval and Promulgation of Implementation Plans and Designation of Areas for Air Quality Planning Purposes; Ohio and Kentucky; Reopening of the Public Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; reopening of the public comment period.

SUMMARY: EPA is reopening the public comment period for a proposed rule published on January 24, 2000 (65 FR 3630). In the January 24, 2000 proposed rule, EPA proposed to determine that the Cincinnati-Hamilton moderate ozone nonattainment area (Cincinnati-Hamilton area) has attained the public health based 1-hour ozone National Ambient Air Quality Standard (NAAQS). EPA proposed to determine that certain attainment demonstration requirements, along with certain other related requirements, of part D of Title 1 of the Clean Air Act (CAA) are not applicable to the Cincinnati-Hamilton area. The EPA proposed to approve the State of Ohio Environmental Protection Agency's and the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet's requests to redesignate the Cincinnati-Hamilton ozone nonattainment area to attainment of the 1-hour ozone NAAQS. EPA re-proposed to approve an exemption from the nitrogen oxides (NO_X) requirements as provided for in section 182(f) of the CAA for the Kentucky portion of the Cincinnati-Hamilton area. EPA solicited public comment on the Ohio and Kentucky requests and on EPA's proposed actions. At the request of the Ohio Chapter of the Sierra Club, EPA is reopening the comment period through March 24, 2000. All comments received before March 24, 2000, including those received between the close of the comment period on February 23, 2000 and the publication of this proposed rule, will be entered into the public record and considered by EPA before taking final action on the proposed rule.

DATES: Comments must be received on or before March 24, 2000.

ADDRESSES: Written comments should be addressed to:

J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Kay Prince, Chief, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, 61 Forsyth Street, SW, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT:

William Jones, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6058, (jones.william@EPA.gov).

Karla L. McCorkle, Environmental Scientist, Regulatory Planning Section, Air Planning Branch, U.S. Environmental Protection Agency, Region 4, 61 Forsyth Street, SW, Atlanta, Georgia, 30303, 404–562–9043, (mccorkle.karla@epa.gov).

Dated: March 10, 2000.

Jerri-Anne Garl,

Acting Regional Administrator, Region 5.

[FR Doc. 00–6713 Filed 3–16–00; 8:45 am]

BILLING CODE 6560–50–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

Centers for Disease Control and Prevention

42 CFR Part 493

[HCFA–2233–N]

RIN 0938–AH35

CLIA Program; Cytology Proficiency Testing

AGENCY: Health Care Financing Administration (HCFA), Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Withdrawal of proposed rule.

SUMMARY: This document announces the withdrawal of a proposed rule on cytology proficiency testing that was published in the **Federal Register** November 30, 1995 (60 FR 61509). We published the proposed rule to comply with a court order that we revise the regulations to require that cytology proficiency testing (PT) be conducted, "to the extent practicable, under normal working conditions," which the court interpreted to be at a pace corresponding to the maximum workload rate for individuals examining cytology slides. After the proposed rule was published, the appeals court overturned the lower court's ruling and remanded the regulation to us for completion of rulemaking or to provide our rationale for the original position we took with respect to cytology proficiency testing. This document withdraws the proposed rule and also contains a supplementary statement of rationale, in accordance with the appeals court ruling.

DATES: The proposed rule is withdrawn as of April 17, 2000.

FOR FURTHER INFORMATION CONTACT:

Rhonda S. Whalen (770) 488–8155.

SUPPLEMENTARY INFORMATION:

I. Background

On February 28, 1992, we published a final rule with comment period in the **Federal Register** (57 FR 7002) to implement the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Pub. L. 100–578). One provision of CLIA, section 353(f)(4)(B)(i) of the Public Health Service Act (PHS Act), required the Department to establish a limit on the maximum number of cytology slides that an individual could examine daily, in order to ensure that he or she has sufficient time to adequately examine each slide. CLIA also required the Department to establish standards for the conduct of cytology proficiency testing (PT), with such testing "to take place, to the extent practicable, under normal working conditions" (section 353(f)(4)(B)(iv) of the PHS Act).

The February 28, 1992 final rule, at 42 CFR 493.1257(b)(1) and (b)(3)(i), established a maximum daily workload limit for personnel examining cytology slides in a normal work day. Under the regulations, cytology personnel may examine no more than 100 slides in any 24 hour period, and must have at least 8 hours to complete the examination of 100 slides, which results in an average of 12.5 slides per hour. This limit was established in order to ensure that an individual has sufficient time to adequately examine each slide.

CLIA also required the Department to develop a program for testing the proficiency of individuals who perform cytology examinations. The statute states that proficiency testing is to take place, to the extent practicable, under normal working conditions (section 353(f)(4)(B)(iv) of the PHS Act). The February 28, 1992 final rule, at § 493.855(b), provides that an individual must complete a 10-slide proficiency test in 2 hours and, if necessary, a 20-slide test in 4 hours. We established a lower slide examination rate for PT because a test contains a higher number of abnormal slides than a cytologist would encounter in a normal work day. We believe that a test that uses a higher number of abnormal slides more accurately assesses the skills of the cytologist.

II. Court Challenge

The Consumer Federation of America and Public Citizen challenged the regulations in the United States District Court for the District of Columbia, arguing that the PT rate of five slides per hour did not conform to normal working conditions, since it is substantially less than the 12.5 slides per hour maximum permissible workload. The district court agreed, invalidated that portion of the regulations, and ordered us to publish new proposed regulations, within 90 days of the order, that would modify the rate of cytology proficiency testing to ensure that individuals would be tested, to the extent practicable, under normal working conditions, which the district court interpreted to be at a pace corresponding to the maximum workload rate for individuals examining cytology slides. The district court order also provided that the February 28, 1992 final cytology proficiency testing regulations would remain in effect pending the issuance of a revised final rule. *Consumer Federation of America and Public Citizen* v. *Department of Health and Human Services*, 906 F.Supp. 657, 668 (D.D.C. 1995).

In compliance with the district court's order, we published a proposed rule in the **Federal Register** on November 30, 1995 (60 FR 61509). The rule proposed to modify the timeframe for completing a cytology proficiency test to equal the maximum workload rate of 12.5 slides per hour. However, in the preamble, we restated our belief that the timeframe in the original rule met the statutory requirement, and indicated the Department was appealing the district court's ruling, and seeking reinstatement of the February 28, 1992 cytology PT regulations.

In a decision dated May 21, 1996, the United States Court of Appeals for the District of Columbia Circuit reversed the district court's ruling and sent back the regulation for us to either offer an adequate explanation for the original cytology PT rule or to complete the rulemaking (*Consumer Federation of America and Public Citizen* v. *Department of Health and Human Services*, 83 F.3d 1497, 1506–07 (D.C. Cir. 1996). We continue to believe that our regulations are appropriate, and we are supplying a supplementary statement that further explains the rationale behind our policy. Our supplementary statement of rationale follows in section IV. of this notice.

III. Withdrawal of Proposed Rule

For the reasons discussed above, we are withdrawing the November 30, 1995 proposed rule. We believe that the February 28, 1992 final rule appropriately fulfills the statutory requirement that cytology proficiency testing be conducted, to the extent practicable, under normal working conditions.

IV. Supplementary Statement of Rationale

In compliance with the court's ruling, we received a memorandum from the Centers for Disease Control and Prevention (CDC) that sets forth the rationale for Cytology Proficiency Testing. This memorandum is part of the rulemaking record and appears as an addendum to this document.

Authority: Section 353 of the Public Health Act (42 U.S.C. 263a).

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; No. 93.773 Medicare—Hospital Insurance Program; and No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: March 29, 1999.

Nancy-Ann Min DeParle,

Administrator, Health Care Financing Administration.

Dated: March 2, 1999.

Jeffrey P. Koplan,

Director, Centers for Disease Control and Prevention.

Dated: May 14, 1999.

Donna E. Shalala,

Secretary.

Note: This document was received at the Office of the Federal Register on March 13, 2000.

Addendum—Supplementary Statement of Rationale for Cytology Proficiency Testing

MEMORANDUM

September 1, 1998

TO: Sue Brown, Director, Division of Regulations and Issuances.

FROM: Carlyn Collins, M.D., M.P.H., Director, Division of Laboratory Systems.

SUBJECT: HSQ–176–FC; Supplement to Rulemaking Record Re: Cytology Proficiency Testing.

This memorandum supplements the rulemaking record for HSQ–176–FC (57 FR 7002), which was published to implement the Clinical Laboratory Improvement Amendments of 1988 (CLIA). This memorandum is intended to provide further explanation for the timeframe established in that section of the CLIA final rule pertaining to completion of cytology proficiency tests (42 CFR 493.855). It is submitted to fulfill the order of the United States Court of Appeals for the District of Columbia Circuit in *Consumer Federation of America and Public Citizen* v. *Department of Health and Human Services*, 83 F.3d 1497 (D.C. Cir. 1996).

A. Background

On February 28, 1992, the Department of Health and Human Services published a final rule with comment period in the **Federal Register** (57 FR 7002) to implement the Clinical Laboratory Improvement Amendments of 1988 (CLIA) (Pub. L. 100–578, codified at 42 U.S.C. 263a). One provision of CLIA, 42 U.S.C. 263a(f)(4)(B)(i), required the Department to establish a limit on the maximum number of cytology slides that a cytologist could examine daily, in order to assure that the cytologist had sufficient time to adequately examine each slide. CLIA also required the Department to establish standards for the conduct of cytology proficiency testing (PT), with such testing "to take place, to the extent practicable, under normal working conditions." 42 U.S.C. 263a(f)(4)(B)(iv).

The February 28, 1992 final rule established a maximum daily work rate of no more than 100 slides in a 24 hour period, which, assuming an eight hour workday, averaged 12.5 slides per hour. 42 CFR 493.1257(b). The cytology PT requirement published in the final rule allows up to two hours for an individual to complete a 10-slide PT test, and up to four hours to complete a 20-slide PT test challenge. 42 CFR 493.855(b).

The Consumer Federation of America and Public Citizen challenged the regulations in the United States District Court for the District of Columbia, arguing that the PT testing rate of five slides/hour did not conform to "normal working conditions," since it is substantially less than the 12.5 slides/hour maximum permissible workload. The district court agreed, invalidated that portion of the regulations, and ordered the Department to publish new proposed regulations, within 90 days of the order, that would modify the rate of cytology proficiency testing to ensure that individuals would be tested "to the extent practicable, under normal working conditions," which the district court interpreted to be at a pace corresponding to the maximum workload rate for individuals examining cytology slides. (The district court order provided that the February 28, 1992 final cytology proficiency testing regulations would remain in effect pending the issuance of a revised final rule.) *Consumer Federation of America and Public Citizen* v. *Department of Health and Human Services*, 906 F.Supp. 657, 668–669 (D.D.C. 1995).

In compliance with the district court's order, on November 30, 1995, the Department published a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** (60 FR 61509). The NPRM proposed to modify the timeframe for completing a cytology proficiency test to equal the maximum workload rate of 12.5 slides per hour. However, in the belief that the timeframe in the original rule met the statutory requirement, the Department appealed the district court's ruling, seeking reinstatement of the February 28, 1992 cytology PT regulations.

In its May 21, 1996 decision, the United States Court of Appeals for the District of Columbia Circuit reversed the district court's ruling and remanded the regulation to the agency to proffer an adequate explanation for the original cytology PT rule or to complete the rulemaking. *Consumer Federation of America and Public Citizen* v. *Department of Health and Human Services*, 83 F.3d 1497, 1506–07 (D.C. Cir. 1996).

Under the analysis of *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–43 (1984), the court of appeals noted that "[i]n reviewing an agency's construction of a statute, we first ask whether Congress has spoken unambiguously to the precise issue at hand. If it has, we give effect to Congress' intent. If not, we consider the agency's action under 'Step Two' of *Chevron*, and defer to the agency's interpretation if it represents a 'permissible construction' of the statute." 83 F.3d at 1503.

The court of appeals found that the challenge to the Secretary's interpretation could not be resolved under the first prong of the *Chevron* analysis. By inserting the words "to the extent practicable," to precede the language the proficiency testing is to take place "under normal working conditions" (42 U.S.C. 263a(f)(4)(B)(iv)), the agency's interpretation did not require a precise replication of the workplace environment. In addition, Congress did not define with any precision when the Secretary could "deviate from workplace conditions in the interests of practicality." 83 F.3d at 1505. Because Congress did not address these issues, the court turned to the second prong of *Chevron* and inquired whether the agency's interpretation was reasonable.

However, the court further stated that it was "at a loss to understand how HHS's proficiency testing regulations reflect a reasonable interpretation of the relevant CLIA provision" (83 F.3d at 1506), by noting that the Department's explanation of the cytology PT rate in the preamble to the final rule published on February 28, 1992 (57 FR at 7041) "is simply too terse to support the agency's decision to use a [proficiency] testing rate which is less than half the maximum work rate, in the face of statutory language directing it to test under normal working conditions to the extent practicable." 83 F.3d at 1506.

While indicating some interest in the Department's further explanation proffered during the course of the litigation (which corresponds with the statement in the next section of this memorandum), the court held that this explanation constituted a "post hoc" rationalization, since this rationale was not proffered as part of the administrative record during the rulemaking process that resulted in the February 28, 1992 final rule. As such, the court noted that it was prohibited from considering it in its review of the legal basis for the final rule.

In its ruling, the court remanded to the Department to either provide an adequate explanation on the record of why the proficiency testing protocol represents a permissible interpretation of the pertinent CLIA provision or to continue the rulemaking process commenced with the issuance of the NPRM on November 30, 1995.

After further consideration of this issue, CDC believes that the final rule of February 28, 1992 appropriately fulfills the statutory requirement that cytology proficiency testing be conducted "to the extent practicable, under normal working conditions." We understand that a notice withdrawing the proposed rulemaking of November 30, 1995 will be published in the **Federal Register**. Furthermore, through this memorandum CDC "provide[s] an adequate explanation on the record of why the proficiency testing protocol represents a permissible interpretation" of the CLIA statute, as required by the court.

B. Supplemental Statement of Rationale for Timeframe in Cytology Proficiency Testing Final Rule Published February 28, 1992

As required by CLIA, the final rule established a maximum workload limit for personnel examining cytology slides. Under the regulations, cytologists may examine no more than 100 slides in any 24 hour period, and must have at least 8 hours to complete the examination of 100 slides. 42 CFR 493.1257(b)(1), (b)(3)(i). This limit was established in order to assure that individuals who perform cytology testing have sufficient time to adequately examine each slide.

CLIA also requires the Department to develop a program for testing the proficiency of individuals who perform cytology slide examinations. The statute states that proficiency testing is "to take place, to the extent practicable, under normal working conditions." 42 U.S.C. 263a(f)(4)(B)(iv). The February 28, 1992 final rule implementing the testing program (42 CFR 493.855(b)) provides that cytology personnel will be required to complete a 10-slide proficiency test in two hours and, if necessary, a 20-slide test in four hours.

The regulation proposed in the original NPRM of May 21, 1990 (55 FR 20896, 20928) did not include time limits for cytology proficiency testing. In developing the final rule, we reviewed the PT program that had been in operation in Maryland since 1990. This program had been submitted by the Maryland Department of Health and Mental Hygiene as a model for revising the cytology PT program proposed in the NPRM. As noted in the preamble to the final rule published on February 28, 1992 (57 FR at 7041), we adopted the same time limits used in the Maryland program. "These time limits," we explained, "were established to provide for equitable testing on a national scale and to allow individuals sufficient time to complete the test at their normal pace without unduly restricting or extending the time for the examination." We concluded that the time limits in the Maryland program, which require cytologists to review 5 slides per hour, satisfied CLIA's requirement that PT take place, "to the extent practicable, under normal working conditions."

We reached this conclusion even though a cytologist who reviews the maximum number of slides allowed per day will screen, on average, approximately 12.5 slides per hour.

1. First, and most importantly, we acknowledge, consistent with CLIA, that it is not "practicable" to precisely duplicate a typical working day when designing a supervised, time-limited proficiency testing program. Approximately 95% of the usual mix of cytology slides from patients are normal. Creating a proficiency test with this ratio of normal to abnormal slides, however, would not accurately assess the skills of the cytologist because it would not test the cytologist's knowledge of the full range of possible abnormalities. Consequently, under 42 CFR 493.945, the 10-slide set for a PT exam must have at least 30%, and may have up to 60% abnormal slides. In setting the 5-slide-per-hour rate, we took into account that the evaluation of abnormalities generally requires more time, whether it occurs during a normal working day or during proficiency testing. Indeed, some slides in the test may require extensive evaluation and considerable time. Therefore, an absolute comparison of normal workday rates with proficiency testing rates is inappropriate. Since the proportion of complex, abnormal slides will be much greater during proficiency testing than during a normal workday, it is not practicable to demand that cytologists examine proficiency testing slides at the maximum rate that they are permitted to work during a normal day. A slower-than-average work rate during proficiency testing is appropriate because examining abnormal slides generally takes more time than examining normal slides.

2. Second, we did not assume that "under normal working conditions" cytologists will examine 100 slides each day. When setting this limit, we explicitly stated that it "represents an absolute maximum number of slides and is not to be employed as a performance target for each individual." 42 CFR 493.1257(b)(1). Similarly, when designing the proficiency testing program, we recognized that due to varying skill levels, and other factors, some cytologists will work at a much slower pace than others. Since the proficiency program is designed to allow all individuals to work at their normal speed, the rate for proficiency testing was set below the maximum rate at which cytologists may work under the regulations.

3. Third, we also decided that the slide-per-hour rate should be lower during proficiency testing than during normal workdays because the staining characteristics of the proficiency test slides may be different from those prepared in the test subject's laboratory, forms for recording results will be unfamiliar, and the test will create some anxiety for the cytologist. To account for these factors, we determined that extra time should be allowed.

In light of the experience of the Maryland program, and the factors mentioned above, we determined that the 2 and 4 hour time limits for proficiency testing are appropriate because they take into account the differences between examination of slides during normal workdays and during a proficiency test.

Given the proficiency testing situation described above, CDC reaffirms that the timeframe established in the February 28, 1992 final rule for completion of cytology proficiency tests is, "to the extent practicable," comparable to normal working conditions, and fulfills the Congressional intent to test adequately the abilities of cytologists to determine test results accurately.

Carlyn L. Collins.

[FR Doc. 00–6580 Filed 3–16–00; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE56

Endangered and Threatened Wildlife and Plants; Withdrawal of Proposed Rule To List the Pecos Pupfish (*Cyprinodon pecosensis*) as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; withdrawal.

SUMMARY: We, the Fish and Wildlife Service (Service), withdraw the proposal to list the Pecos pupfish (*Cyprinodon pecosensis*) as an endangered species under the Endangered Species Act of 1973, as amended (Act). The Pecos pupfish is native to the Pecos River and its tributaries, and nearby lakes, sinkholes, and saline springs in New Mexico and Texas. The species now occurs in some reaches of the Pecos River in New Mexico, on lands administered by us, the New Mexico Division of State Parks (NMDSP), and the Bureau of Land Management (BLM); and on private lands in Texas. This withdrawal is based on actions taken by us and other Federal and State resource and management agencies to remove immediate threats to the species and also on commitments by us and those agencies to actively protect and enhance existing populations and habitats and to repatriate the species to appropriate habitats within its native range. In cooperation with the New Mexico Department of Game and Fish (NMDGF), New Mexico Department of Agriculture, NMDSP, Texas Parks and Wildlife Department (TPWD), and BLM, we have executed a Conservation Agreement that addresses the threats to the survival of the species. These protections will sufficiently assure the viability of the Pecos pupfish within its historical range.

ADDRESSES: The complete file for this notice is available for public inspection, by appointment, during normal business hours at our New Mexico Ecological Services Field Office, 2105 Osuna NE, Albuquerque, New Mexico 87113.

FOR FURTHER INFORMATION CONTACT: Joy Nicholopoulos, Field Supervisor, New Mexico Ecological Services Field Office, at the above address (505–346–2525).

SUPPLEMENTARY INFORMATION:

Background

The Pecos pupfish, described by Echelle and Echelle (1978), is a member of the family Cyprinodontidae. The taxonomic status of the Pecos pupfish had been uncertain for more than 30 years because of a previous description of a pupfish (*Cyprinodon bovinus*) from the Pecos River (Baird and Girard 1853). Type specimens from the Pecos River in the original series were lost or in poor condition but were assumed to be the same as the Pecos pupfish until an extant population of *C. bovinus* was found at Leon Springs, Texas, and confirmed as different from the form in the Pecos River proper (Echelle and Miller 1974).

The Pecos pupfish is a small, deep-bodied (2.8 to 4.6 centimeters (cm) (1.1 to 1.8 inches (in) average length) gray-to-brown fish. Male dorsal (back) and anal fins are black almost to the margin with no yellow on the dorsal, anal, or caudal (tail) fins. The lateral (side) bars on the female are typically broken into blotches ventrolaterally (along the sides near the bottom). The abdomen is generally without scales, except for a few scales in front of the pelvic fins and a patch just behind the gill membrane isthmus (a narrow strip of tissue). There are 20 to 21 gill rakers and usually 3 or 4 preorbital (behind the eye socket) pores on each side of the head (Echelle and Echelle 1978).

The Pecos pupfish is native to the Pecos River and its tributaries, and nearby lakes, sinkholes, and saline springs in New Mexico and Texas. The historical range of the species included the Pecos River from Bitter Lake National Wildlife Refuge and Bottomless Lakes State Park near Roswell, Chaves County, New Mexico, downstream approximately 650 kilometers (km) (404 miles (mi)) to the mouth of Independence Creek, southeast of Sheffield, Pecos County, Texas (Wilde and Echelle 1992). The species was also found in gypsum sinkholes and saline springs at Bitter Lake National Wildlife Refuge; sinkholes and springs at Bottomless Lakes State Park (Brooks and Woods 1988); and in Salt Creek, Reeves County, Texas.

In Texas, genetically pure populations of the Pecos pupfish are now thought to occur only in the upper reaches of Salt Creek, Culberson and Reeves Counties, Texas (G. Garrett, TPWD, pers. comm. 1998). In New Mexico, the species still occurs in the Pecos River from north of Malaga upstream to Bitter Lake National Wildlife Refuge. The species is also found at Bottomless Lakes State Park and the BLM's Overflow Wetlands Wildlife Habitat Area/Area of Critical Environmental Concern. This range reduction represents a loss of more than two-thirds of the species' former range (Echelle and Connor 1989; Echelle *et al.* 1997; Hoagstrom and Brooks 1998).

Since the Pecos pupfish was proposed for listing on January 30, 1998 (63 FR 4608), the most significant threats to its continued existence have been ameliorated. The main threats to the Pecos pupfish were habitat loss caused by damming and dewatering of the Pecos River, excessive pumping of groundwater, and, since the early 1980s, hybridization with the sheepshead minnow (*Cyprinodon variegatus*). Genetically pure populations have been made more secure—a fish barrier constructed at the Bitter Lake National Wildlife Refuge has protected the population that exists there; a fish barrier constructed at Dexter National Fish Hatchery and Technical Center has created a managed wetland for establishing a refugial population; and the BLM has placed the population on the BLM's Overflow Wetlands Area of

Critical Environmental Concern under active protection through BLM's Resource Management Plan. Through this plan, the BLM has prohibited surface occupancy in future oil and gas leases within a buffer zone of the Area, restricted future oil and gas surface occupancy in other areas, excluded rights-of-way in certain portions of the Area, limited use of off-highway vehicles, and retired a grazing lease. These actions, which are discussed in the Conservation Agreement, have already been implemented. Habitat for the populations at Bottomless Lakes State Park and Bitter Lake National Wildlife Refuge is being renovated. Moreover, the States of Texas and New Mexico have begun managing the introduction of the nonnative sheepshead minnow, which has hybridized and displaced the Pecos pupfish in much of the historical pupfish habitat. Both States have approved modification of existing fishing regulations to ban the use of sheepshead minnow as a bait fish in the Pecos River.

In addition to these already implemented actions, the Conservation Agreement includes commitments for long-term protective and enhancement actions for the species. For instance, various agencies in both New Mexico and Texas have committed to—(1) removing nonnative predators from sinkholes with a pupfish population, (2) replacing sheepshead minnow x Pecos pupfish hybrids with pure pupfish whenever feasible, (3) identifying additional habitats under State control for expansion of populations of Pecos pupfish, and (4) working with willing private landowners to identify potential repatriation sites on private lands. A more complete discussion is found below.

Summary of Comments and Recommendations

We proposed the Pecos pupfish for listing as an endangered species on January 30, 1998 (63 FR 4608). We published notices inviting public comment in seven newspapers of general circulation in the area of the Pecos River valley in both New Mexico and Texas—the Albuquerque Journal, the Fort Stockton Pioneer, the Pecos Enterprise, the Roswell Daily Record, the Carlsbad Current Argus, the Midland Reporter-Telegram, and the Odessa American. We also published notices of a public hearing in these same newspapers. We held the hearing on the proposal in Carlsbad, New Mexico on April 9, 1998.

During this extended public comment period (January 30 to November 20, 1998), we contacted State and Federal land and resource management agencies in New Mexico and Texas to determine if adequate protections could be implemented through a Conservation Agreement. We made the Conservation Agreement developed by these agencies available for public review through a notice of availability in the **Federal Register** (63 FR 71424) on December 28, 1998. The comment period was reopened and extended to January 27, 1999, in order to receive additional comments on the proposal and on the draft Conservation Agreement. We sent approximately 200 copies of the draft Conservation Agreement to agencies and individuals on the mailing list maintained by our New Mexico Ecological Services Field Office. The mailing included a request to the interested entities for review and comments. Finally, we reopened the comment period from February 24, 1999, to March 26, 1999 (64 FR 9119).

In accordance with our peer review policy published in the **Federal Register** on July 1, 1994 (59 FR 34270), we drafted the Conservation Agreement with the expert input of researchers who have spent decades investigating the Pecos pupfish and its habitats in Texas and New Mexico. In addition to the input received during the development of the document, we also sought peer review during periods of public comment. We presented the draft conservation agreement to the Rio Grande Fishes Recovery Team for review at the annual meeting of the team in November 1998. During the reopened public comment period, we provided the draft document for peer review to Recovery Team members in addition to other experts on the species at the University of Texas Pan-American, the University of New Mexico, Oklahoma State University, Arizona State University, and the University of Michigan. We did not receive any comments from the peer review of the draft Conservation Agreement.

We received 15 comments on the proposal to list the Pecos pupfish. We received one letter of support from a scientist working on the species. Three commenters—the NMDGF; the New Mexico Energy, Minerals & Natural Resources Department; and the Texas Commissioner to the Pecos River Compact— recommended the use of alternative methods, such as a Conservation Agreement, to protect the species. One Federal agency provided comments concerning editorial corrections to the proposal but with no position regarding the listing of the species. Ten comment letters opposed the listing.

We received a total of 11 comments on the draft Conservation Agreement: from 1 municipality, 2 private organizations, 1 county agency, 1 water power and control district, and 6 State agencies.

Below we address issues raised concerning the proposal, followed by the issues and our responses to the comments on the Conservation Agreement. We grouped comments of a similar nature into general issues delineated below for purposes of response.

Comments and Responses on the Proposed Rule

Issue 1: The Service should attempt proactive management to address the threats to the pupfish posed by the sheepshead minnow. Given that the primary threat to the Pecos pupfish is introgressive hybridization with the sheepshead minnow and that hybrids are common in the Pecos River, the prudent course at this point seem to be the establishment of secure off-channel refugia until the hybrid swarm can be eliminated, if that is possible.

Our Response: We concur that management of the sheepshead minnow to reduce or remove the threat of hybrids replacing pure Pecos pupfish in this ecosystem is important for conservation of the pupfish. Under the Conservation Agreement, fish barriers have been installed to protect off-channel refugia for remaining populations of pure Pecos pupfish. In addition, the States of Texas and New Mexico have approved regulations banning the use of sheepshead minnows as bait.

Issue 2: The Service should propose critical habitat.

Our Response: When we list a species as threatened or endangered, the Act requires that the listing rule specify, "to the maximum extent prudent and determinable," the species' critical habitat. However, this issue is now irrelevant because we are not listing the Pecos pupfish.

Comments and Responses on the Conservation Agreement

Based on the comments received during the first public comment period, particularly from the NMDGF, the TPWD, and the Texas Commissioner to the Pecos River Compact, we initiated efforts in February 1998 to develop an agreement among the management entities to address the identified threats to the Pecos pupfish. The Conservation Agreement that resulted from the meetings set forth the commitments of

State and Federal agencies to control nonnative competing species and to protect and manage the Pecos pupfish and its habitat to ensure its survival and promote its conservation.

Significant threats to the species include problems associated with small, isolated populations and the potential for hybridization with the sheepshead minnow. The signatory agencies to the Conservation Agreement made commitments to protect known extant populations of pure Pecos pupfish, to expand the distribution of the species within its native range by establishing new populations, and to prohibit the use of sheepshead minnow through revision of baitfish regulations in New Mexico and Texas. As discussed above, several of the provisions of the Conservation Agreement have been implemented.

Below is a description of comments received on the Conservation Agreement provided for public review on December 28, 1998. Some commenters raised issues on the proposal to list the Pecos pupfish in their comments on the Conservation Agreement. For the issues concerning the data upon which the biological status of the Pecos pupfish was determined, please refer to the above discussion of comments.

Issue 3: What set of circumstances would create a situation where reintroduction of the Pecos pupfish into the mainstream of the Pecos would be appropriate? To what extent would the signatories attempt to modify the environment of the mainstream of the Pecos River in order to create circumstances appropriate for reintroduction?

Our Response: The primary factor to be addressed in any consideration of repatriation of the Pecos pupfish to its historical habitat in the mainstream of the Pecos River is the presence or absence, or relative dominance within the fish community, of the sheepshead minnow. Should a significant fishkill occur naturally, such as that observed in 1985–86 in the Pecos River in Texas as a result of an algal bloom, sheepshead minnow and other nonnatives may be removed or significantly reduced. At that time, the Conservation Agreement participants would determine whether the biological conditions support the repatriation of the Pecos pupfish to the river. The signatory agencies may undertake other efforts, quite likely on a much more localized level, to eradicate the sheepshead minnow if the conditions are favorable.

We and other species experts recognize that major efforts to repatriate the pupfish to large reaches of its historical habitat in the Pecos River will not likely occur either in the near future or without significant events, either natural or induced, affecting the existing fish community. However, we believe that the potential for restoration of the species to its historical habitat should be included in any plan or agreement for its conservation. It should be noted that one of the major purposes of this Conservation Agreement is to protect and enhance habitat conditions to facilitate population expansion.

Issue 4: Several commenters requested the clarification of goals and objectives of the Conservation Agreement, particularly with respect to those objectives considered essential to the continued conservation of the Pecos pupfish and, thus, the removal of the need to protect the species by listing it under the Act.

Our Response: We modified the Conservation Agreement to include quantifiable and time-certain standards by which the agreement and its applicability to the conservation of the Pecos pupfish will be measured. However, the Conservation Agreement partners have already implemented a number of protective measures (see Background section of this rule) that, combined with measures to be implemented in the future as part of the Conservation Agreement, have reduced the threats so that the species is no longer in danger of extinction, nor likely to become so, in the foreseeable future throughout all or a significant portion of its range.

Issue 5: Some commenters objected to section V.F.8 of the draft Conservation Agreement, in which the agencies participating in the Conservation Agreement agreed to support the listing of the Pecos pupfish should the measures and actions be found insufficient to remove the threats to the species.

Our Response: We amended this section by removing the sentence regarding the support of listing by the Conservation Agreement entities should we determine that listing the species is necessary.

Issue 6: One commenter requested that we extend the time for the decision on the proposal to list by six months, in part, to better assess or gather additional biological information. The commenter felt that the biological information was not adequate to proceed with the withdrawal of the proposed rule.

Our Response: In accordance with section 4(b)(6) of the Act and the implementing regulations at 50 CFR 424.17, within one year of the publication of a proposed listing action, we generally must publish a final determination or a notice withdrawing the proposed action if we find that the available evidence does not justify the action. When there is "substantial disagreement among scientists knowledgeable about the species concerned regarding the sufficiency or accuracy of the available data relevant to the determination concerned," the Act and regulations allow for a 6-month extension of a proposed listing action.

We cannot use an extension to obtain more information or to provide more time before making a decision. We can only use this provision if there is a legitimate disagreement among scientific experts and a definitive resolution is expected that will clarify the subject of the disagreement. We do not agree with the assessment of the adequacy of the biological information presented by the commenter. We consulted experts on the Pecos pupfish (see the discussion in the paragraph on peer review, above), including scientists who performed the original research and reported the results that formed the basis of the commenter's review. No disagreement exits among these species experts concerning the status and distribution of the species to support the 6-month delay.

Issue 7: Four commenters raised concerns regarding the proposed actions of the BLM within the Conservation Agreement, including changes in grazing leases. We requested that the BLM respond to those comments. Their response is summarized as follows:

The BLM's Roswell Field Office is responsible for managing all uses of about 602,973 hectares (1,490,000 acres) where both the surface and subsurface estates are in Federal ownership. The land use plan governing management of these public lands addressed all proposed actions included in the Conservation Agreement and was, after public review and comment, signed by the Bureau's State Director on October 10, 1998. In addition, the Roswell Field Office prepared the Overflow Wetlands Habitat Management Plan and Environmental Assessment for the Overflow Wetlands Wildlife Habitat Area in 1992. The adjustment of grazing leases for Allotments 65060, 65062, and 65069, and the cancellation of the grazing lease on Allotment 65041 were presented during the development of the Roswell Resource Management Plan, as were the oil and gas lease stipulations, mineral entry closure, and rights-of-way exclusion. Socio-economic impacts of implementing the Plan were analyzed in Chapter 4 of the Proposed Plan and Final Environmental Impact Statement.

The BLM disclosed the adjustment of grazing leases for the above allotments

in the Plan to inform the public of this possible action. The types of adjustments were listed as changes in stocking rate and seasons of use, but a reduction in the number of livestock was not listed in the Resource Management Plan. Reductions could occur based on range monitoring studies for the entire allotment and not necessarily for the Pecos pupfish Conservation Agreement. The specific adjustments, if necessary, would be made by the BLM at the grazing lease/permit level with an accompanying environmental analysis, not at the Conservation Agreement level. Therefore, no specific adjustments are presented in the Conservation Agreement.

The grazing lease for Allotment 65041 was canceled. In 1991, the BLM acquired the private lands within this allotment from a willing seller (who also held the grazing lease) for the protection of the Overflow Wetlands Wildlife Habitat Area, which is now designated an Area of Critical Environmental Concern. Allotment 65041 is no longer an active grazing allotment.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. We must consider the five factors described in section 4(a)(1) of the Act when determining whether to list a species. These factors and their application to our decision to withdraw the proposal to list the Pecos pupfish are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Historical habitat of the Pecos pupfish in New Mexico has been drastically altered or destroyed by human uses of the Pecos River and activities in its watershed. These alterations include conversion of flowing waters into slack waters by impoundment; alteration of flow regimes (including conversion of perennial flow to intermittent or no flow, and the reduction, elimination, or modification of natural flooding patterns); alteration of silt and bed loads; loss of marshes and backwaters; increases or decreases in water temperatures; and alteration of stream channel characteristics from well-defined, surface-level, heavily vegetated channels with a diversity of substrates and habitats to deeply cut, unstable arroyos with little riparian vegetation, uniform substrate, and little habitat diversity.

Causes of such alterations include water diversion, damming, channelization, channel down-cutting, excessive groundwater pumping with resultant lowering of water tables, destruction of riparian vegetation, and other watershed disturbances. These changes in habitat conditions, along with displacement of the species by hybrids, threatened the survival of the Pecos pupfish throughout its entire range (Wilde and Echelle 1992; Echelle *et al.* 1997).

Low-velocity floodplain habitats adjacent to the main channel of the Pecos River provide refugia for the small Pecos pupfish from high flows in the main channel. These habitats are also characterized by higher levels of productivity and more stable food sources for the omnivorous pupfish. However, channelization and stream incision of the Pecos River, exacerbated by encroachment and channel armoring by salt cedar, have eliminated extensive floodplain habitat along the Pecos River. Wetlands and marshes adjacent to the river, once regularly flooded by peak river flows, are now dry or are only sporadically wetted. Base flows were also reduced by dam construction and reservoir operation, greatly reducing the number and extent of these habitats linked to the main river channel.

Pecos pupfish living in sinkholes and springs are threatened by groundwater depletion. In southeastern New Mexico, groundwater is the primary water source for a variety of uses, including drinking water and irrigation. This dependence on groundwater has lowered the water tables, resulting in a decline in water levels in sinkholes and springs where Pecos pupfish live. When the water table was higher, water flowed between sinkholes but because the water table has been lowered, these sinkholes are no longer interconnected (Lee Marlatt, Service, Bitter Lake National Wildlife Refuge, pers. comm. 1987). Because they are isolated from the river that is inhabited by sheepshead minnow, sinkhole populations of Pecos pupfish are more protected from the threat of hybridization than are river populations. Therefore, the loss of these populations would seriously affect the survival of the species.

The Conservation Agreement executed by the State and Federal agencies specifically addresses the protection of all known off-channel, pure populations of Pecos pupfish. As discussed in the Background section of this rule, a number of protective actions have already been implemented. Further, both State and Federal land management entities will ensure that the management of the species is incorporated into resource management plans. Additionally, each has committed to identifying additional habitats under its control for expansion of populations of Pecos pupfish. Resource management agencies in both New Mexico and Texas are committed to working with willing private landowners to identify potential repatriation sites on private lands and establish populations of the species on those lands.

In summary, while the Pecos pupfish has been eliminated from a significant portion of its historical range, we believe that the measures provided in the Conservation Agreement have significantly reduced threats to the species and will ensure its continued existence.

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* We are unaware of threats to the species from these factors. Anglers may occasionally collect Pecos pupfish as bait and scientists may collect specimens for scientific study, but these uses probably have a negligible effect on total population numbers.

C. *Disease or predation.* We are unaware of threats to the species from disease. Sinkholes that support introduced game fish have lower numbers of pupfish than sinkholes without game fish (Echelle and Echelle 1978). As the Pecos pupfish population is impacted by habitat loss and degradation and refugia become scarce, predation could become a more important threat. However, the measures through the Conservation Agreement to remove nonnative predators from sinkholes will reduce this threat.

D. *The inadequacy of existing regulatory mechanisms.* New Mexico State law provides limited protection for the Pecos pupfish. The State of New Mexico lists the Pecos pupfish as a threatened species. Threatened species, as defined by the State of New Mexico, are those species "* * * whose prospects of survival or recruitment within the State are likely to be in jeopardy within the foreseeable future." This designation provides the protection of the New Mexico Wildlife Conservation Act (sections 17–2–37 through 17–2–46) and prohibits taking of such species except under the issuance of a scientific collecting permit. The State also has a limited ability to protect the habitat of the species through the Habitat Protection Act (sections 17–6–1 through 17–6–11) and through water quality statutes and regulations. The species' habitat is also somewhat protected through a provision of the Habitat Protection Act (section 17–4–14) that

makes it illegal to de-water areas used by game fish.

The State of Texas listed the Pecos pupfish as threatened by on March 1, 1987. The State prohibits taking, possessing, and transporting State-listed species or goods made from such species (Texas Parks and Wildlife Code, section 68.015 (1975)). However, State-listing in Texas provides no protection for the habitat of listed species.

State regulations in New Mexico and Texas allow for the use of live bait in the Pecos River in areas containing the Pecos pupfish. This situation has encouraged the spread of detrimental species, specifically the sheepshead minnow, which replaces and/or hybridizes with the Pecos pupfish (see Factor E). However, the NMDGF and the TPWD modified fishing regulations to ban the use of sheepshead minnow as a bait fish. Additionally, all signatories of the Conservation Agreement have committed to, when and where feasible, replacing the sheepshead minnow x Pecos pupfish hybrids within the Pecos River and at other sites with pure Pecos pupfish.

E. *Other natural or manmade factors affecting its continued existence.* The primary cause for the recent (post 1980) range reduction of Pecos pupfish is the introduction of the sheepshead minnow, a species once confined to shallow, brackish, coastal waters of the Gulf and Atlantic coasts of the continental United States. The two *Cyprinodon* species appear to have little in the way of premating isolating mechanisms and readily hybridize (Cokendolpher 1980). Hybridization with and/or replacement by the sheepshead minnow poses a major threat to the Pecos pupfish. The sheepshead minnow was introduced into the Pecos River, probably in the vicinity of Pecos, Texas, sometime between 1980 and 1984. Sheepshead minnow x Pecos pupfish hybrids have since moved upstream and downstream at a rapid pace despite the presence of six irrigation diversion dams. The spread of hybrids has occurred both naturally and presumably through "bait bucket" introductions.

The purity of the pupfish populations in Salt Creek, Texas, and in the abandoned gravel pits near Grandfalls, Texas, were unknown at the time of the proposal. Both populations occur on privately owned lands, and surveys had not been conducted on these lands since 1989. Because the gravel pits are close to the Pecos River and because hybrids occur in that portion of the river, the gravel pit populations were considered extremely vulnerable to introgression. Research conducted during the proposal period confirmed that the gravel pit populations are hybrid.

The northward expansion of sheepshead minnow x Pecos pupfish hybrids reduced the range of the Pecos pupfish by approximately 60 percent by the late 1980s (Wilde and Echelle 1992). Subsequent expansion of the hybrids into the Pecos River upstream from Red Bluff Reservoir has further constricted the range of the pupfish. Genetically pure populations of Pecos pupfish may now occur only in off-channel habitats. While the river populations are most susceptible to replacement by and/or hybridization with sheepshead minnow, the sinkhole populations are also considered vulnerable to hybridization due to the possibility of anglers releasing sheepshead minnows into sinkholes. However, actions by the States of New Mexico and Texas to restrict the use of sheepshead minnows for bait, plus the construction of a fish barrier at Bitter Lake National Wildlife Refuge, have enhanced the security of the off-channel pupfish populations. Additionally, all signatories of the Conservation Agreement have committed to, when and where feasible, replacing the sheepshead minnow x Pecos pupfish hybrids within the Pecos River and other sites with pure Pecos pupfish.

Large-scale fish kills caused by algal blooms occurred in the Pecos River, Texas, in 1985 and 1986 (Rhodes and Hubbs 1992). Such algal blooms may affect the Pecos pupfish (Rhodes and Hubbs 1992).

Other threats to the Pecos pupfish include nonnative fish introductions and piscicide applications. Anglers interested in developing sport fisheries in sinkholes apply piscicides to remove unwanted fish species prior to introducing sport fish. Such manipulation, conducted exclusively on private lands and without the knowledge by the landowner of the presence of the Pecos pupfish, can adversely affect or eliminate Pecos pupfish populations. Enforcement by either State of its prohibitions against take of protected species on private lands is not considered an effective bar to these activities. However, we do not consider such applications of piscicides a significant threat to the species and do not specifically address piscicide application in the Conservation Agreement.

Oil spills from pipelines into Salt Creek in Texas are a threat because they have occurred in the past and represent an ongoing threat to water quality and Pecos pupfish habitats. However, Salt Creek is believed to be the only population clearly vulnerable to such a catastrophe, and the Salt Creek population, although the only known naturally occurring pure population in Texas, represents only about one-tenth of the species' population throughout its range. Catastrophic spills of oil or other contaminants into pupfish-occupied privately owned habitats are not considered controllable by the Conservation Agreement. However, establishment of more populations, as delineated in the agreement, would act as a buffer against such losses.

We consider the latter two threats, the introduction of nonnative fish and use of piscicides on private land and uncontrolled oil spills or other contamination of isolated habitats, far less significant threats to the Pecos pupfish than hybridization. Thus, we do not specifically address them in the Conservation Agreement. However, both the States of New Mexico and Texas have committed to conducting public outreach and education to inform private landowners of the occurrence of the Pecos pupfish and to increasing the numbers and security of populations of the Pecos pupfish. Hence, the increased numbers of fish diminish the potential impacts of isolated losses arising from the latter two threats.

Finding and Withdrawal

The Conservation Agreement signed by the NMDGF, New Mexico Department of Agriculture, NMSPD, TPWD, the BLM, and us was specifically developed to address and alleviate the known threats to the Pecos pupfish.

The two most significant threats, security of existing populations and loss of genetic purity of Pecos pupfish populations through hybridization with the sheepshead minnow, have received immediate action—physical barriers now prohibit access by the sheepshead minnow to occupied Pecos pupfish habitat; the resource entities have included the conservation of the Pecos pupfish as a specific management goal in planning documents; and the NMDGF and the TPWD approved revision of State regulations to ban the use of sheepshead minnow as a bait fish in the Pecos River. Additionally, signatories of the Conservation Agreement committed to establishing and protecting additional populations on lands they administer and, with the cooperation of willing landowners, on private lands within the historical range of the species. Based on these commitments, we determine that listing the Pecos pupfish as endangered or threatened under the Act is not warranted. Therefore, we withdraw our January 30, 1998, proposed rule (63 FR

4608) to list the Pecos pupfish as endangered.

References Cited

A complete list of all references we cited, as well as others, is available upon request from our New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Author

The primary author of this document is Jennifer Fowler-Propst, New Mexico Ecological Services Field Office (see **ADDRESSES** section).

Authority: The authority for this action is section 4(b)(6)(B)(ii) of the Endangered Species Act (16 U.S.C. 1532 *et seq.*).

Dated: February 25, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–6602 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 000229053–0053–01; I.D. 120699A]

RIN 0648–AK96

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Amendment 17

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS issues this proposed rule to implement Amendment 17 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). This rule proposes to extend the current commercial reef fish vessel permit moratorium, which expires on December 31, 2000, for 5 years to December 31, 2005. The purpose of the moratorium is to provide a stable environment in the fishery necessary for evaluation and development of a more comprehensive controlled access system for the entire commercial reef fish fishery.

DATES: Comments must be received no later than 5:00 p.m., eastern standard time, on May 1, 2000, at the appropriate address or fax number (see **ADDRESSES**).

ADDRESSES: Written comments must be mailed to the Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702; they may also be sent via facsimile (fax) to 727–570–5583, but they may not be sent via e-mail or the Internet.

Requests for copies of Amendment 17, which includes an environmental assessment and a regulatory impact review, should be sent to the Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, Florida 33619–2266; phone: 813–228–2815; fax: 813–225–7015; e-mail: Gulf.Council@noaa.gov.

FOR FURTHER INFORMATION CONTACT: Michael Barnette, 727-570-5305; fax: 727–570–5583; e-mail: Michael.Barnette@noaa.gov.

SUPPLEMENTARY INFORMATION: The reef fish fishery is managed under the FMP as prepared by the Gulf of Mexico Fishery Management Council (Council) and approved and implemented by NMFS under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

This proposed rule would implement FMP Amendment 17 and extend the moratorium on the issuance of new commercial reef fish vessel permits that was initiated by Amendment 4 in 1992. Amendment 4 was intended to last for 3 years but was extended twice. The second extension in 1995 was for 5 years ending on December 31, 2000. The permit moratorium was deemed necessary to moderate short-term future increases in fishing effort and to stabilize fishing mortality while the Council was considering a more comprehensive effort limitation program. During the moratorium, the Council developed an individual transferable quota system for red snapper. However, before it was implemented, Congress prohibited individual fishing quotas (IFQs) under sections 303(d) and 407 of the Magnuson-Stevens Act. The current Congressional prohibition of IFQs will lapse on October 1, 2000.

The Council intends to evaluate a broad range of controlled access systems, including IFQs, for the commercial reef fish fishery. Development and implementation of a comprehensive controlled access system are expected to extend past the period of the current moratorium. Without a moratorium, fishing effort in the resulting open access reef fish fishery is likely to increase and complicate allocation of fishing privileges, creating an unstable fishery environment.

Additional background and rationale for the measures discussed above are contained in Amendment 17, the availability of which was announced in the **Federal Register** on December 17, 1999 (64 FR 70678). Written comments on Amendment 17 were solicited and must have been received by February 15, 2000, to be considered in the approval/disapproval decision on Amendment 17. All comments received on Amendment 17 or on this proposed rule during their respective comment periods will be addressed in the preamble to the final rule.

Classification

At this time, NMFS has not determined that the amendment that this rule would implement is consistent with the national standards of the Magnuson-Stevens Act and other applicable laws. NMFS, in making that determination, will take into account the data, views, and comments received during the comment period on Amendment 17.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

The proposed rule contains a single provision to extend the commercial reef fish permit moratorium for 5 years, from its current expiration date of December 31, 2000, to December 31, 2005, unless replaced sooner by a comprehensive controlled access system. The moratorium on new permits was first instituted in May 1992 and was extended on two previous occasions by FMP Amendments 9 and 11. The current expiration date of December 31, 2000, was set by FMP Amendment 11 in January 1996 with the stated purpose of allowing time for the Gulf of Mexico Fishery Management Council (Council) to consider limited access for the reef fish fishery. However, several intervening events since January 1996, including a Congressional moratorium on new individual transferable quota management systems in effect until October 2000, have hindered the Council's taking its intended action to develop a limited access system for this fishery. Comprehensive controlled access systems are difficult to develop and implement; there is an insufficient amount of time to implement such a system by December 31, 2000. Hence, the Council is proposing the current action to provide additional time to develop a new limited access system and to ensure that the current management system will not revert to open access before the new system is developed, approved, and implemented.

The entities that could be affected by Amendment 17 are those firms holding commercial reef fish harvest permits. There are currently about 1,204 such permit holders and they all meet the Small Business Administration definition of small business entities.

The status quo (taking no action) means that the permit moratorium would expire, the fishery would revert to open access, and the number of permits issued to fishermen would likely increase. Conversely, the proposed action to extend the existing moratorium means that nothing would change and the permit moratorium, would continue. Under the status quo alternative, then there would be a number of economic effect changes related to the fishery's reversion to open access. For example, given that there were 2,200 permits issued to fishermen at the start of the moratorium in 1992 and that there are now only about 1,204 permits. it is likely that additional vessel owners would obtain permits. While some of them would probably obtain a permit with the intention only of establishing harvesting rights in the reef fish fishery and would not actively participate in the fishery, other new entrants would ostensibly be active. Some of the active new entrants might land a minimum quantity of reef fish with the expectation that having a permit in combination with at least some level of landings history would enhance their claim to future fishery access rights.

Another reason to expect additional entrants into the fishery under open access conditions is that the moratorium has created an economic situation in which about 120 permit transfers occur each year. A market has developed for reef fish permits, and recent single permit prices have been in the range of $8,000 to $10,000. This market probably exceeds the expected net present value of profits (net revenues) derived from the small catches made by marginal participants. The market value is also indicative of the value that some entrants have put on participation in the fishery. With the moratorium lifted, new entry would be possible by paying only the administrative permit fee, currently $50 for a new permit or $20 for a reef fish endorsement to an existing permit for another species. If some fishermen are willing to buy a permit for several thousand dollars, others must be ready to pay the $20 or $50 for an endorsement or for a new permit.

Further, at the present time, the fisherman giving up a permit by transfer must exit the fishery, and current exit behavior is probably influenced by the value of a permit. Logbook data indicate that some participants do not land a large amount of reef fish on an annual basis and these are the participants who are most likely to sell their existing permit to a new entrant under the continuing condition of a moratorium on new permits. the reasoning is that the expected net present value of profits (net revenues) derived from small catches would be exceeded by the current market value of the reef fish permit. This exit behavior probably accounts for the bulk of the annual transfer of about 120 permits.

In summary, maintaining the status quo and thereby allowing the current permit moratorium to expire could result in an increase in the number of permits; an increase in the catch of those reef fish species not currently subject to a commercial catch quota; an unknown, but likely small, decrease in exvessel prices; and a loss of the estimated $8,000 to $10,000 market value of a permit. The result would be a negative economic impact on all current permit holders, including those who might otherwise be expected to sell their permits and exit the fishery under the current system.

At the same time, there would also be positive impacts for at least some new entrants because they could obtain a permit for $20 to $50 instead of paying $8,000 to $10,000 for an existing permit. Some new entrants probably would be able to participate in the fishery at a significant and profitable level. In addition to these rather straightforward impacts on current participants and new entrants, the increase in the number of permitted fishermen could create derby fisheries for species subject to commercial quotas with the attendant loss in economic benefits typically associated with such fisheries.

By allowing the fishery to revert to open access, the Council would once again have to undertake the preliminary steps necessary to establish a comprehensive controlled access system. It is likely that these steps would have negative economic impacts on at least some participants who may have to reestablish a fishing history or take other steps to remain in the new system.

The overall conclusion is that if the status quo was chosen and the permit moratorium allowed to expire on December 31, 2000, there would be negative impacts on existing participants in the Gulf of Mexico reef fish fishery. While there would likely be some positive economic impacts for a portion of the new entrants, the negative impacts would be expected to exceed the positive impacts. Taking action to extend the moratorium means that the expected negative economic outcome of the status quo (letting the permit moratorium expire) will not occur. In other words, the proposed action of extending the moratorium for an additional 5 years will forestall economic changes and impacts associated with the status quo scenario. The effect of taking action in this case is to maintain the present permits system; hence, there should be no economic impacts. It follows, therefore, that there will not be a significant economic impact on a substantial number of small business entities.

As a result, a regulatory flexibility analysis was not prepared.

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 13, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is proposed to be amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraph (m) introductory text is revised to read as follows:

§ 622.4 Permits and fees.

* * * * *

(m) *Moratorium on commercial vessel permits for Gulf reef fish.* The provisions of this paragraph (m) are applicable through December 31, 2005.

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[FR Doc. 00–6714 Filed 3–16–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000223051–0051–01; I.D. 020300A]

Fisheries of the Northeastern United States; Deep-sea Red Crab Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; notice of a control date for the purposes of controlling entry in the deep-sea red crab fishery; correction.

SUMMARY: On March 1, 2000, NMFS published an announcement that it is considering, and is seeking public comment on, proposed rulemaking to control future access to the deep-sea red crab (*Chaceon quinquedens*) resource if a management regime is developed and implemented under the Magnuson-Stevens Fishery Conservation and Management Act that limits the number of participants in the fishery. The announcement indicated that written comments may be sent to the New England Fishery Management Council at the address provided in the announcement and may also be submitted by facsimile (fax). However, an incorrect fax number was provided. This document corrects the error.

DATES: Written comments must be received on or before 5:00 p.m., local time, March 31, 2000.

ADDRESSES: Written comments should be sent to Paul J. Howard, Executive Director, New England Fishery

Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950. Mark the outside of the envelope, "Comments on Deep-sea Red Crab Control Date." Comments may also be sent via fax to (978) 465–3116.

FOR FURTHER INFORMATION CONTACT: Regina L. Spallone, Fishery Policy Analyst, 978-281-9221, email: regina.l.spallone@noaa.gov

SUPPLEMENTARY INFORMATION: The notice of a control date for the purposes of controlling entry in the deep-sea red crab fishery was published in the **Federal Register** on March 1, 2000 (65 FR 11029), and invited public comment. The fax number identified in the announcement was incorrect and this action corrects the error.

Correction

Accordingly, the publication on March 1, 2000, of the advance notice of proposed rule for the deep-sea red crab fishery (I.D. 020300A), which was the subject of FR Doc. 00–4910, is corrected as follows:

On page 11029, column 3, ninth line in the **ADDRESSES** section is corrected to read as follows:

"facsimile (fax) to (978) 465–3116."

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 9, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 00–6715 Filed 3–16–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register
Vol. 65, No. 53
Friday, March 17, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Meeting of the Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries

ACTION: Notice of Federal Advisory Committee meeting.

SUMMARY: The Executive Director of the Joint Board for the Enrollment of Actuaries gives notice of a closed meeting of the Advisory Committee on Actuarial Examination at William M. Mercer, Incorporated, New York, New York, on April 3, 2000.

DATES: The meeting will be held on April 3, 2000, from 8:30 AM to 5 PM.

ADDRESSES: The meeting will be held at William M. Mercer, Incorporated, at 1166 Avenue of the Americas, Conference Room 30C, 30th Floor, New York, NY.

FOR FURTHER INFORMATION CONTACT: Patrick W. McDonough, Director of Practice and Executive Director of the Joint Board for the Enrollment of Actuaries, 202–694–1805.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Advisory Committee on Actuarial Examinations will meet at William M. Mercer, Incorporated, 1166 Avenue of the Americas, Conference Room 30C, 30th Floor, New York, NY on Monday, April 3, 2000, from 8:30 AM to 5:00 PM.

The purpose of the meeting is to discuss topics and questions, which may be recommended for inclusion on future Joint Board examinations in actuarial mathematics, pension law and methodology referred to in 29 U.S.C. 1242(a)(1)(B).

A determination has been made as required by section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that the subject of the meeting falls with the exception to the open meeting requirement set forth in Title 5, U.S.C. 552b(c)(9)(B), and that the public interest requires that such meeting be closed to public participation.

Dated: March 10, 2000.

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 00–6578 Filed 3–16–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF AGRICULTURE

Office of the Secretary

[Docket No. 99–061–1]

Declaration of Emergency Because of Scrapie in the United States

Scrapie, a degenerative and eventually fatal disease affecting the central nervous systems of sheep and goats, is present in the United States. Scrapie is a complicated disease because it often has an extremely long incubation period without clinical signs of disease.

Currently, scrapie-free countries have an enormous competitive advantage over U.S. sheep producers, who are unable to certify that their flocks originated from a scrapie-free country or region. Because importing countries are demanding that imported sheep come from scrapie-free regions and sheep producers in the United States are unable to make this certification, U.S. producers are finding themselves locked out of the international market, a situation that is taking a serious financial toll on the U.S. sheep industry.

We estimate that scrapie costs the U.S. sheep industry $20 million per year in direct losses, and millions of dollars more in lost potential markets and flock productivity.

Therefore, the Animal and Plant Health Inspection Service (APHIS) has determined it is necessary to accelerate the eradication of scrapie from the United States, an accomplishment that would allow the U.S. sheep industry to once again become competitive in the global market. We estimate this plan will cost a total of $100 million over 7 years.

However, APHIS resources are insufficient to carry out this accelerated scrapie eradication program, which requires $10 million for FY 2000. This $10 million includes approximately $3.6 million for diagnostic support; approximately $2.6 million for animal identification and regulatory enforcement; $1.2 million to indemnify owners of animals that are found through surveillance to be high risk, suspect, or test positive (although no regulations currently exist to provide for the payment of indemnity for sheep and goats, APHIS expects to have such regulations in effect in 2000); $625,000 for the purchase of animals for diagnostic purposes; $692,000 for activities such as necropsy, disposal of animal carcasses, coordination, and training; $1 million for slaughter surveillance activities; and $250,000 to update the generic database for scrapie (making it possible for field and laboratory personnel to enter test and other data efficiently and to generate required reports) and for data analysis at APHIS' Center for Epidemiology and Animal Health.

Therefore, in accordance with the provisions of the Act of September 25, 1981, 95 Stat. 953 (7 U.S.C. 147b), I declare that there is an emergency that threatens the sheep and goat industry of this country, and I authorize the transfer and use of such funds as may be necessary from appropriations or other funds available to the United States Department of Agriculture to conduct a program to accelerate the eradication of scrapie from the United States.

EFFECTIVE DATE: This declaration of emergency shall become effective February 1, 2000.

Dan Glickman,

Secretary of Agriculture.

[FR Doc. 00–6638 Filed 3–16–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–00–08]

National Advisory Committee for Tobacco Inspection Services; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of the following committee meeting:

Name: National Advisory Committee for Tobacco Inspection Services.

Date: April 20, 2000.

Time: 1:00 p.m.

Place: U.S. Department of Agriculture (USDA), Agricultural Marketing Service (AMS), 14th and Independence Avenue, SW,

Room 3501 South Agriculture Building, Washington, DC 20250.

Purpose: To review various regulations issued pursuant to the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*), and discuss the level of service (number of sets of graders) AMS will provide for the 2000–2001 tobacco marketing season. The Committee will recommend the desired level of service to be provided to producers by AMS and an appropriate fee structure to fund the recommended services for the 2000–2001 selling season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090–6456; (202) 205–0567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by April 14, 2000, and inform us of your needs.

Dated: March 14, 2000.

John P. Duncan III,

Deputy Administrator, Tobacco Programs.

[FR Doc. 00–6676 Filed 3–16–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

Farm Service Agency

Notice of Request for Extension of a Currently Approved Information Collection

AGENCIES: Rural Housing Service, Rural Business-Cooperative Service, Rural Utilities Service, and Farm Service Agency, USDA.

ACTION: Proposed collection: comments request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Housing Service (RHS), the Rural Business-Cooperative Service (RBS), Rural Utilities Service (RUS), and the Farm Service Agency's (FSA) intention to request an extension for a currently approved information collection in support of compliance with applicable acts for planning and performing construction and other development work.

DATES: Comments on this notice must be received by May 16, 2000, to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Samuel J. Hodges III, Architect, Program Support Staff, RHS, U.S. Department of Agriculture, Stop 0761, 1400 Independence Avenue, SW., Washington, DC 20250–0761, Telephone (202) 720–9653.

SUPPLEMENTARY INFORMATION:

Title: RD 1924–A, "Planning and Performing Construction and Other Development."

OMB Number: 0575–0042

Expiration Date of Approval: May 31, 2000

Type of Request: Extension of a currently approved information collection.

Abstract: The information collection under OMB Number 0575–0042 enables the Agencies to effectively administer the policies, methods, and responsibilities in the planning and performing of construction and other development work for the related construction programs.

Section 501 of Title V of the Housing Act of 1949, as amended, authorizes the Secretary of Agriculture to extend financial assistance to construct, improve, repair, replace, or rehabilitate dwellings; farm buildings; and/or related facilities to provide decent, safe, and sanitary living conditions and adequate farm buildings and other structures in rural areas.

Section 506 of the act requires that all new buildings and repairs shall be constructed in accordance with plans and specifications as required by the Secretary and that such construction be supervised and inspected.

Section 509 of the act grants the Secretary the power to determine and prescribe the standards of adequate farm housing and other buildings. The Housing and Urban-Rural Recovery Act of 1983 amended section 509 (a) and section 515 to require residential buildings and related facilities comply with the standards prescribed by the Secretary of Agriculture, the Secretary of Housing and Urban Development, or in any of the nationally recognized model building codes.

Similar authorizations are contained in sections 303, 304, 306, and 339 of the Consolidated Farm and Rural Development Act, as amended.

In several sections of both acts, loan limitations are established as percentages of development cost, requiring careful monitoring of those costs. Also, the Secretary is authorized to prescribe regulations to ensure that Federal funds are not wasted or dissipated and that construction will be undertaken economically and will not be of elaborate or extravagant design or materials.

Other information collection is required to conform to numerous Public Laws applying to all Federal agencies, such as: Civil Rights Acts of 1964 and 1968, Davis-Bacon Act, Historic Preservation Act, Environmental Policy Act; and to conform to Executive Orders governing use of Federal funds. This information is cleared through the appropriate enforcing Agency or other executive Department.

The Agencies provide forms and/or guidelines to assist in the collection and submission of information; however, most of the information may be collected and submitted in the form and content which is accepted and typically used in normal conduct of planning and performing development work in private industry when a private lender is financing the activity. The information is usually submitted via hand delivery or U.S. Postal Service to the appropriate Agency office.

The information is used by the Agencies to determine whether a loan/grant can be approved, to ensure that the Agency has adequate security for the loans financed, to provide for sound construction and development work, and to determine that the requirements of the applicable acts have been met. The information is also used to monitor compliance with the terms and conditions of the Agencies' loan/grant programs and to monitor the prudent use of Federal funds.

If the information were not collected and submitted, the Agencies would not have control over the type and quality of construction and development work planned and performed with Federal funds. The Agencies would not be assured that the security provided for loans is adequate, nor would the Agencies be certain that decent, safe, and sanitary dwelling or other adequate structures were being provided to rural residents as required by the different acts.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .33 hours per response.

Respondents: Individuals or households, farms, business or other for-profit, non-profit institutions, and small businesses or organizations.

Estimated Number of Respondents: 25,340.

Estimated Number of Responses per Respondent: 12.00.

Estimated Total Annual Burden on Respondents: 94,924 hours.

Copies of this information collection can be obtained from Diana Wareham, Regulations and Paperwork Management Division, at (202) 692–0044.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the Agencies, including whether the information will have practical utility; (b) the accuracy of the Agencies' estimate of the burden of the proposed collection of information, including the validity of methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Diana Wareham, Regulations and Paperwork Management Division, U.S. Department of Agriculture, Rural Development, Stop 0742, 1400 Independence Avenue, SW., Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 1, 2000.

James C. Kearney,

Administrator, Rural Housing Service.

Dated: March 8, 2000.

Dayton J. Watkins,

Administrator, Rural Business-Cooperative Service.

Dated: March 2, 2000.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

Dated: March 8, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–6604 Filed 3–16–00; 8:45 am]

BILLING CODE 3410–XV–U

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Manti-La Sal National Forest and Utah State Office/Price Field Office; Flat Canyon Coal Lease Track, UTU–77114 Sanpete County, UT; Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA and Bureau of Land Management, USDI.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Forest Service and Bureau of Land Management (BLM) will jointly prepare an Environmental Impact Statement (EIS) to document the analysis and disclose the environmental and human effects of proposed actions to offer the Flat Canyon Coal Lease Tract (UTU–77114) for competitive leasing in accordance with 43 CFR 3425. The Office of Surface Mining Reclamation and Enforcement will participate as a cooperating agency.

The coal lease tract to be considered for leasing, as delineated by the Interagency Tract Delineation Team, encompasses 2,692.16 areas of Federal coal lands on the Manti-La Sal National Forest as follows:

T. 13 S., R. 6 E., SLM
Section 21, lots 1–4, E½E½,
Section 28, lots 1–8, S½NW¼,SW¼;
Section 33, E½, E½W½, NW¼NW¼, SW¼SW¼.
T. 14 S., R. 6 E., SLM
Section 4, lots 1–4, S½N½,S½;
Section 5, lots 1–4, S½N½,S½.

Additions and/or deletions to the delineated tract may be considered as alternatives to the proposed action, to be developed and analyzed based on issues and management needs.

Canyon Fuel Company, LLC (Canyon Fuel) submitted an application for leasing of the Tract to the Bureau of Land Management on March 18, 1998. The purpose of the application is to obtain the right to mine the remaining Federal coal reserves to the west of the permit area for Canyon Fuel's Skyline Mine. If Canyon Fuel is successful in obtaining the tract, they intend to extend the existing underground workings of the Skyline Mine to the west into the Flat Canyon Tract to extend the mine life an estimated 7–9 years at the current production rate.

Pursuant to Canyon Fuel's application, the Bureau of Land Management, with participation from the Forest Service and State of Utah, completed a tract delineation report that set the boundaries of the tract to be evaluated for leasing (Uinta-Southwestern Utah Coal Region, Bureau of Land Management, Tract Delineation Report, Lease by Application UTU–77114, Canyon Fuel, 1999).

The Forest Service determined that the proposed lands are available for further consideration for coal leasing under the Land and Resource Management Plan (Forest Plan), Final EIS, and Record of Decision (ROD) for the MManti-La National Forest, 1986. The Bureau of Land Management (BLM) and Forest Service (FS) have determined that coal and environmental data are available to meet Uinta-Southwestern Utah Coal region Data Adequate Standards.

Agency Decisions

In accordance with the Mineral Leasing Act of 1920, as amended, the BLM Utah State Director must decide whether or not to offer the tract for competitive leasing and under what terms, conditions,and stipulations.

In accordance with the Coal Leasing Amendments Act of 1975 that amended the Mineral Leasing Act of 1920, the Forest Supervisor, Manti-La Sal National Forest must decide whether or not to consent to leasing by BLM and under what conditions for the protection of non-mineral resources. Forest Service conditions would be included into the lease document as stipulations.

DATES: Written comments concerning the scope of the analysis described in this notice should be received on or before April 18, 2000.

ADDRESSES: Send written comments to Forest Supervisor, Manti-La Sal National Forest, 599 West Price River Drive, Price, Utah 84501.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed action and EIS should be addressed to carter Reed or Aaron Howe, Manti-LA Sal National Forest, phone (435) 637–2817.

SUPPLEMENTARY INFORMATION: The EIS and Record of Decision (ROD) will tier to the final EIS and ROD for the Mani-La Sal National Forest Land and Resource Management Plan (Forest Plan). The Forest Plan provides the overall guidance (Goals, Objectives, Standards, and Management Area Direction) to achieve the Desired Future Condition for the area being analyzed, and contains specific management area prescriptions for the entire Forest.

Issues and alternatives to be evaluated in the analysis will be determined through scoping. The primary issues are expected to include the socioeconomic benefits of leasing and mining, the potential impacts of underground mining and mining-induced subsidence to surface and ground water, vegetation, wildlife, cultural resources, range improvements, recreation, and other land uses.

The Forest Service and BLM are seeking information and comments from Federal, State, and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. The agencies invite written comments and suggestions on the issues related to the proposed action and the area being analyzed. Information received will be used to

prepare the Draft and Final EIS and to make the respective agency decisions. For most effective use, comments would be submitted to the Forest Service within 30 days from the date of publication of this notice in the **Federal Register.** Preparation of the EIS will include the following steps:

1. Define the proposed action and purpose and need for action.
2. Identify potential issues.
3. Eliminate issues of minor importance or those that have been covered by previous and relevant environmental analyses.
4. Select issues to be analyzed in depth.
5. Identify reasonable alternatives to the proposed action.
6. Describe the affected environment.
7. Identify the potential environmental effects of the alternatives.

Steps 2, 3, and 4 will be completed through the scoping process.

Step 5 will consider a range of alternatives developed from the key issues and management needs. At a minimum, the "No Action" and "Proposed Action" alternatives will be analyzed. Other alternatives could involve modified tract boundaries (additions) and/or reductions) and different sets of lease stipulations for the protection of natural resources. Alternatives may also be developed to include analysis of mining and the existing adjacent lease area and additions to adjacent leases needed to prevent bypassing coal reserves.

Step 6 will describe the physical attributes of the area to be affected by this proposal, with special attention to the environmental factors that could be adversely affected.

Step 7 will analyze the environmental effects of each alternative. This analysis will be consistent with management direction outlined in the Forest Plan. The direct, indirect, and cumulative effects of each alternative will be analyzed and documented. In addition, the site-specific mitigation measures for each alternative will be identified and the effectiveness of these mitigation measures will be disclosed.

Agency representatives and other interested people are invited to visit with Forest Service and BLM officials at any time during the EIS process. Two specific time periods are identified for the receipt of formal comments on the analysis. The two comment period are, (1) during the scoping process, the next 30 days following publication of this Notice in the **Federal Register**, and (2) during the formal review period of the Draft EIS.

The Draft EIS is estimated to be filed with the Environmental Protection Agency (EPA) and available for public review in November, 2000. At that time the EPA will publish an availability notice in the **Federal Register.**

The comment period on the Draft EIS will be 45 days from the date that EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the Draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (See the Council of Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft environmental statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* (19th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338, (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at the time when it can meaningfully consider them and respond to them in the final document.

To assist the Forest Service in identifying and considering issues and concerns related to the proposed action, comments on the Draft EIS should be specific as possible. Referring to specific pages or chapters of the Draft EIS is most helpful. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, 40 CFR 1503.3, in addressing these points. The Final EIS is expected to be released in March, 2001.

The Forest Supervisor of the Manti-La Sal National Forest and Utah State Director of the Bureau of Land Management, who are the responsible officials for the EIS, will then make their respective decisions regarding this proposal, after considering the comments, Environmental Impact Statement, and applicable laws, regulations, and policies. The rationale for the respective agency decisions will be documented in the Records of Decision.

Authority: (Mineral Leasing Act of February 25, 1920 (P.L. 66–146, 41 Stat. 437, as amended; 30 U.S.C. 181–287))

Dated: March 7, 2000.

Jeff Walter,

Acting Forest Supervisor, Manti-La Sal National Forest.

Dated: March 8, 2000.

Richard L. Manus,

Field Office Manager, Bureau of Land Management, Price Field Office.

[FR Doc. 00–6150 Filed 3–16–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Public Meeting on Proposed Withdrawal of Forest Service Lands, Arizona

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the time and place for a public meeting on the proposed Forest Service withdrawal application for the protection of cultural, recreational, and resource values on and around the San Francisco Peaks near Flagstaff, Arizona. This public meeting will provide the opportunity for public involvement in this proposed action as required by regulation. All comments will be considered when a final determination is made on whether this land should be withdrawn.

MEETING DATE AND TIME: The public meeting will be held on May 17, 2000 from 5 pm to 8 pm.

MEETING LOCATION: Flagstaff City Hall, Council Chambers and Conference Room, 211 West Aspen Avenue, Flagstaff, Arizona 86001.

FOR FURTHER INFORMATION CONTACT: Ken Jacobs or Alvin Brown, Peaks Ranger District, Coconino National Forest, 520–526–0866.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal for the San Francisco Peaks/Mount Elden Area was published in the **Federal Register** issue of November 4, 1998, Vol 63, No. 213, page 59576. The notice contained a legal description of the proposed withdrawal area and stated that a public meeting would be held at a later date. Notice is hereby given that a public meeting will be held at the location, date, and time shown above. The purpose of the meeting is to allow interested persons to ask questions and comment on the proposed withdrawal.

Dated: March 8, 2000.

James W. Golden,

Forest Supervisor, Coconino National Forest.

[FR Doc. 00–6581 Filed 3–16–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI)

AGENCY: Rural Housing Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the availability of $6 million of grant funds for the RCDI program through the Rural Housing Service (RHS), herein referred to as the Agency, USDA. Applicants must provide matching funds from non-Federal sources in an amount at least equal to the Federal grant. These grants will be made to qualified intermediary organizations that will provide technical assistance to recipients to develop their capacity and ability to undertake projects to improve housing, community facilities, or community and economic development. This Notice lists the information needed to submit an application for these funds.

DATES: The deadline for receipt of an application is 4:00 p.m. EST on June 15, 2000. The application deadline is firm as to date and hour. The agency will not consider any application received after the deadline.

The comment period for information collection under the Paperwork Reduction Act of 1995 continues through May 16, 2000. Comments on the paperwork burden must be received by this date to be assured of consideration.

ADDRESSES: Entities wishing to apply for assistance may download the application requirements from the RCDI website at: www.rurdev.usda.gov/rhs/rcdi/index.htm. Applicants may also request application packages from: Beth Jones, Rural Housing Service, STOP 0787, 1400 Independence Ave. SW, Washington, DC 20250–0787, Telephone (202) 720–1498, E-mail: epjones@rdmail.rural.usda.gov.

FOR FURTHER INFORMATION CONTACT: Beth Jones, Senior Loan Specialist, Community Programs, RHS, USDA, STOP 0787, 1400 Independence Ave. SW, Washington, DC 20250–0787, Telephone (202) 720–1498, Facsimile (202) 690–0471, E-mail: epjones@rdmail.rural.usda.gov. You may also obtain information from the RCDI website at: www.rurdev.usda.gov/rhs/rcdi/index.htm.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The reporting requirements contained in this notice have received temporary emergency clearance by the Office of Management and Budget (OMB) under Control Number 0575–0180. However, in accordance with the Paperwork Reduction Act of 1995, RHS will seek standard OMB approval of the reporting requirements contained in this Notice and hereby opens a 60-day public comment period.

Abstract: RHS, an Agency within the USDA Rural Development mission area, will administer the RCDI grant program through their Community Facilities Division. The intent of the RCDI grant program is to develop the capacity and ability of rural area recipients through a program of technical assistance provided by qualified intermediary organizations.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.37 hours per response.

Respondents: Intermediaries and recipients.

Estimated Number of Respondents: 100.

Estimated Number of Responses per Respondent: 15.

Estimated Total Annual Burden on Respondents: 2,012 hours.

Copies of this information collection can be obtained from Tracy Gillin, Regulations and Paperwork Management Branch, (202) 692–0039.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility; (b) the accuracy of the Agency estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments on the paperwork burden may be sent to Tracy Gillin, Regulations and Paperwork Management Branch, Rural Development, U.S. Department of Agriculture, Stop 0742, 1400 Independence Avenue SW, Washington, DC 20250–0742. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Background

Congress created the Rural Community Development Initiative (RCDI) in Fiscal Year 2000 with an appropriation of $6 million under the Rural Community Advancement Program (RCAP). These funds are to be used solely to develop the capacity and ability of private, nonprofit community-based housing and community development organizations, and low income rural communities to improve housing, community facilities, and community and economic development projects in rural areas. Qualified private and public (including tribal) intermediary organizations proposing to carry out technical assistance programs will be eligible to receive the funding. The intermediary will be required to provide matching funds from non-Federal sources in an amount at least equal to the RCDI grant.

Definitions for RCDI Purposes

Agency—The Rural Housing Service (RHS) or its successor.

Beneficiary—entities or individuals that receive benefits from assistance provided by the recipient.

Capacity—the ability of a recipient to finance and implement housing, community facilities, and community and economic development projects or provide technical assistance to enhance a community's potential.

Intermediary—a qualified private or public (including tribal) organization that provides technical assistance to multiple recipients.

Low-income community a city, town, village, county, parish, or borough with a median household income at, or below, 80 percent of the statewide median household income.

Matching Funds cash or confirmed funding commitments from non-Federal sources. Matching funds must be at least equal to the grant amount. In-kind contributions cannot be used as matching funds.

Recipient—the entity that receives the technical assistance from the intermediary. The recipient must be either a private, nonprofit community-based housing or community development organization or a low-income rural community.

Rural and Rural Area—a city, town, or unincorporated area that has a

population of 50,000 inhabitants or less, other than urbanized areas immediately adjacent to a city, town, or unincorporated area that has a population in excess of 50,000 inhabitants.

Technical Assistance—skilled help in improving the recipient's abilities in the areas of housing, community facilities, or community and economic development. The Agency will determine whether a specific activity qualifies as technical assistance.

Eligibility Requirements

1. The recipient and beneficiary, but not the intermediary, must be located in an eligible rural area. The applicable Rural Development State Office can assist in determining the eligibility of an area. A listing of Rural Development State Offices is included in this Notice.
2. The recipients must be identified in the grant application.
3. The recipients must be private, nonprofit organizations or low-income rural communities, not individuals.
4. The intermediary must provide matching non-Federal funds at least equal to the amount of the grant.
5. The intermediary must provide a program of technical assistance to the recipient.
6. The intermediary organization must have at least three years prior experience working with nonprofit organizations or low-income rural communities in the areas of housing, community facilities, or community and economic development.
7. The respective minimum and maximum grant amount per intermediary is $50,000 and $1 million.
8. Proposals must be structured to utilize the grant funds within 3 years from the date of the award.
9. Each intermediary, whether singularly or jointly, may only submit one application for RCDI funds under this NOFA unless the intermediary's participation is limited to providing all or part of the matching funds.
10. Only federally recognized Indian tribes are eligible tribal applicants.

Eligible Grant Uses

Grant uses must be consistent with the RCDI purpose, (see "Background" section of this Notice). A nonexclusive list of eligible grant uses includes the following:

1. Provide technical assistance to develop recipients' capacity and ability to undertake projects to improve housing, community facilities, or community and economic development, (*e.g.*, the intermediary hires a staff person to provide technical assistance to the recipient; the recipient hires a staff person, under the supervision of the intermediary, to carry out the technical assistance provided by the intermediary).
2. Develop the capacity of recipients to conduct community development programs, (*e.g.*, home-ownership education or training for minority business entrepreneurs).
3. Develop the capacity of recipients to conduct development initiatives, (*e.g.*, programs that support micro-enterprise, cooperatives, and sustainable development).
4. Increase the leveraging ability and access to alternative funding sources by providing resources to recipients for training, staffing, and other related costs.
5. Develop successful essential community facilities by providing resources to recipients for training, staffing, and other related costs.
6. Assist recipients in completing predevelopment requirements for housing, community facilities, or community and economic development projects by providing resources for a technical assistance program.
7. Improve recipient's organizational capacity by providing training and resource material on developing strategic plans, board operations, and management.

Ineligible Grant Uses

1. Funding a revolving loan fund.
2. Construction (in any form).
3. Intermediary preparation of strategic plans for recipients.
4. Funding illegal activities.
5. Grants to individuals.
6. Funding a grant where there may be a conflict of interest or an appearance of a conflict of interest involving any action by the Agency.
7. Paying obligations incurred before the beginning date or after the ending date of the grant agreement.
8. Purchasing real estate.
9. Improvement or renovation of the grantee's office space or for the repair or maintenance of privately-owned vehicles.
10. Any other purpose prohibited in 7 CFR parts 3015, 3016, and 3019, as applicable.

Methods for Evaluating Applications

Applications will be rated and ranked by a review panel based on the "Evaluation Criteria and Weights" contained in this Notice. If there is a tie score after the applications have been rated and ranked, the tie will be resolved by a lottery. The names of the applicants will be entered into a drawing. The first name drawn will receive the highest ranking of those in the lottery. This name-drawing process will continue until there are no tied scores. The State Office will review their copy of the application and provide the State Director's written comments and recommendations to the National Office.

Evaluation Criteria and Weights

This information should be presented in narrative form. Documentation must be limited to two pages per criterion with the exception of "Economic Distress", which must be limited to one page per recipient.

1. Improve Capacity—maximum 60 points

The applicant must demonstrate how they will improve the recipients' capacity as it relates to the RCDI purposes. Applications must include a description of how the improved capacity will be measured. All applications will be competitively ranked with the applications providing the most improvement in capacity development and specific measurements of success being ranked the highest. Each of the following rating criteria will be equally considered, with the sub-criteria equally considered within each criterion:

a. Number of recipients trained and extensiveness of training programs on:
(1) Building organizational capacity through developing strategic plans, board operations, and management;
(2) Developing projects related to housing, community facilities or community and economic development; and
(3) Developing initiatives that support micro-enterprises, cooperatives, and home-ownership education.

b. Programs' demonstrated ability to:
(1) Increase recipients' leveraging and access to alternative funding sources;
(2) Enlarge the recipients' geographic service area;
(3) Increase the services provided by the recipient; and
(4) Allow the recipient to provide new services.

c. Any other technical assistance program that meets the recipients' unique needs to improve capacity.

The application ranking and scoring are:

Ranking	Scoring (points)
8 highest ranking applications	60
Next 8 highest ranking applications	45
Next 8 highest ranking applications	30
Next 8 highest ranking applications	15

2. Expertise—maximum 40 points

The applicant must demonstrate they have conducted programs of technical assistance and achieved measurable results in the areas of housing, community facilities, or community and economic development in rural areas. All applications will be competitively ranked using the following equally rated criteria:

a. The number of years of organizational experience the applicant has providing technical and other assistance to nonprofit organizations or low-income rural communities in the areas of housing, community facilities, or community and economic development;

b. The average number of staff years the members of the applicant organization have providing technical and other assistance to nonprofit organizations or low-income rural communities in the areas of housing, community facilities, or community and economic development; and

c. Previous Federal grant experience measured by the dollar amount of Federal grants received in the last 5 years by the intermediary and the number of housing, community facilities, or community and economic development recipients assisted.

The application ranking and scoring are:

Ranking	Scoring (points)
8 highest ranking applications	40
Next 8 highest ranking applications	30
Next 8 highest ranking applications	20
Next 8 highest ranking applications	10

3. Population—maximum 30 points

Population is based on the 1990 census data. The applicant must submit national data on population, from the Bureau of the Census, to verify the population figures being used. This data can be accessed from a link on the RCDI website. The RCDI web address is www.rurdev.usda.gov/rhs/rcdi/index.htm. The average population of the recipient locations will be used and will be scored as follows:

Population	Scoring (points)
5,000 or less	30
5,001 to 10,000	20
10,001 to 20,000	10
20,001 to 50,000	5

4. Income—maximum 30 points

Points will be awarded by comparing the average median household income of recipients' location with the State median household income using 1995 data from the Bureau of the Census. The applicant must submit national data on income to verify the income figures being used. This information can be accessed from a link on the RCDI website. The web address is www.rurdev.usda.gov/rhs/rcdi/index.htm. Points will be awarded as follows:

Average recipient median income is	Scoring (points)
Less than 60 percent of the State median household income	30
Between 60 and 70 percent of the State median household income	20
Greater than 70 percent of the State median household income	10

5. Sustainability—30 points

Applications that have self-sustaining proposals will be awarded 30 points. To be considered self-sustaining, a proposal must, at a minimum, be expected to be fully functional for at least 3 years after the expiration of the grant. Points will be awarded to applications that have the highest score on the following factors: a. The number of years the proposal will be self-sustaining and what the ongoing impact will be; b. How the capacity being built and the impact will be measured; and c. How the program will be financially sustained after funds are fully disbursed.

6. Economic Distress—maximum 20 points

Appropriate documentation and verification must be submitted to support these criteria. For each recipient location, select only one type of economic distress, if applicable, and provide documentation. The recipient location must meet the requirements listed for the category selected. The areas of economic distress that will be considered are:

a. Loss of industry—compare the annual average unemployment rate for 1998 to the lowest annual average unemployment rate since 1994. The difference between the rates must be seven percent or more and be directly related to the loss of industry. Unemployment data, to verify the differences in the unemployment rate, can be accessed from a link on the RCDI website. The RCDI web address is www.rurdev.usda.gov/rhs/rcdi/index.htm. Submit excerpts from this data to verify the difference in unemployment figures. Newspaper articles or a letter from the Chamber of Commerce can be used as verification of the loss of industry.

b. Unemployment—an annual average unemployment rate for 1998 of 11.5 percent or greater, in accordance with the U.S. Department of Labor, Bureau of Labor Statistics. This data can be accessed from a link on the RCDI website. The RCDI web address is www.rurdev.usda.gov/rhs/rcdi.index.htm. Submit the excerpt from this data to verify the unemployment rate.

c. Poverty—a location where the median household income is below 60% of the State median household income. Submit national data on income, using 1995 data from the Bureau of the Census, to verify income figures. This data can be accessed from a link on the RCDI website. The RCDI web address is www.rurdev.usda.gov/rhs/rcdi/index.htm.

d. Out-migration of population—a 10 percent or greater decline in population between the July 1, 1998 estimated population and the April 1, 1990 census population. Submit population data to verify the decline in population. The population figures can be accessed from a link on the RCDI website. The RCDI web address is www.rurdev.usda.gov/rhs/rcdi/index.htm.

e. Natural disasters—a Presidentially declared natural disaster area.

The percentages and scoring are:

Percentage of recipients with documented economic distress	Scoring (points)
95–100	20
75–94	15
50–74	10
25–49	5

7. Innovative Approach—maximum 20 points

The applicant must demonstrate that they have developed an innovative approach that can be used by other organizations as a model. To be considered innovative, the approach must propose an easily replicated new or useful service or method of providing service to recipients that builds their capacity to improve their communities in the areas of housing, community facilities or community and economic development. Points will be awarded to applications that have the highest score on the following factors:

a. Ease of replication by nonprofit organizations or low-income rural communities;

b. Uniqueness of proposal;

c. Financial return to rural communities; and

d. Need by nonprofit organization or low-income rural community.

If warranted, up to ten applicants will be eligible to receive points in this category. The application ranking and scoring are:

Ranking	Scoring (points)
5 highest ranking applications	20
Next 5 highest ranking applications	10

8. Geographic Distribution Points—20 points

Applicant must provide a map that specifically describes the areas covered by their recipients. After applications have been evaluated and awarded points under the first seven criteria, the Agency may award 20 points per application to promote a broad geographic distribution of RCDI funds.

9. Purpose Distribution Points—20 points

Applicant must state the purpose of their application, *i.e.*, housing, community facilities, or community and economic development. After applications have been evaluated and awarded points under the first seven criteria, the Agency may award 20 points per application to promote diversity of RCDI purposes.

10. Proportionol Distribution Points—20 points

Applicant must state the amount of their grant request. After applications have been evaluated and awarded points under the first seven criteria, the Agency may award 20 points per application to promote dispersion of grant awards between the range of $50,000 to $1,000,000.

Deliverables

Grant funds and matching funds must be used in equal proportions. Grant funds will be disbursed pursuant to relevant provisions of 7 CFR parts 3015, 3016, and 3019, as applicable. Matching funds must be used to support the overall purpose of the RCDI program.

Grant Amounts

In the event that the applicant is awarded a grant that is less than the amount requested, they will be required to modify their application to conform to the reduced amount before execution of the grant agreement. The Agency reserves the right to reduce or de-obligate the award if acceptable modifications are not submitted by the awardee within 15 working days from the date the application is returned to the applicant. Any modifications must be within the scope of the original application.

Program Requirements

1. A Civil Rights Impact Analysis Certification must be completed by the Agency prior to grant approval.

2. A pre-award compliance review will be conducted by the Agency prior to closing the grant.

3. The intermediary and recipient must comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and Executive Order 12250.

4. The grantee must comply with the applicable requirements of 7 CFR part 3015, "Uniform Federal Assistance Regulations," part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations."

Grantee Requirements

Grantees will be required to do the following.

1. Execute a Rural Community Development Initiative Grant Agreement, which is published at the end of this NOFA.

2. Execute Form RD 1940–1, "Request for Obligation of Funds."

3. Provide evidence of fidelity or employee dishonesty bond coverage equal to the grant amount at grant closing.

4. Use Form SF 270, "Request for Advance or Reimbursement" to request advances and reimbursements.

5. Provide financial status and project performance reports on a quarterly basis starting with the first full quarter after the grant award.

6. Maintain a financial management system that is acceptable to the Agency.

7. Provide annual audits or management reports on Forms RD 442–2, "Statement of Budget, Income, and Equity," and RD 442–3, "Balance Sheet," depending on the amount of Federal funds expended and the outstanding balance.

8. Collect and maintain data provided by recipients on race, sex, and national origin and ensure that their recipients collect and maintain the same data on their beneficiaries.

9. Provide a final project performance report.

Contents of Application Package

A complete application for RCDI funds must include the following.

1. A summary page listing the following items. This information should be double-spaced between items and not in narrative form.

a. Applicant's name,

b. Applicant's address,

c. Applicant's telephone number,

d. Name of applicant's contact person,

e. Amount of grant request,

f. Number of recipients, and

g. Source and amount of matching funds.

2. A detailed Table of Contents containing page numbers for each component of the application.

3. A project overview, no longer than three pages, which should include:

a. Recipient names and locations, (locations should include town, county, and state and the population composition of the service area of the recipient including race, sex, and national origin), submit information from the 1990 census to verify population figures;

b. Evidence that the recipient is a nonprofit organization or a public body in a low-income rural community; and

c. Verification of matching funds, i.e., a copy of a bank statement if matching funds are in cash or a copy of the confirmed funding commitment from the funding source. The applicant will be contacted by the Agency prior to grant award if verification of matching funds was not submitted with the application. The applicant will have 10 working days, from the date of contact, to submit verification of matching funds. If the applicant is unable to provide the verification within that timeframe, their application will be considered ineligible.

Describe Items "d" Through "h" in Narrative Form.

d. The type of technical assistance and how it will be implemented,

e. How the capacity and ability of the recipient will be improved,

f. The overall goal to be accomplished,

g. The benchmarks that will be used to measure success, and

h. A synopsis of what the applicant organization does or attach a copy of its mission statement, if available.

4. Each of the "Evaluation Criteria" must be addressed specifically and individually by category. Present these criteria in narrative form. Documentation must be limited to two pages per criterion with the exception of "Economic Distress", which must be limited to one page per recipient.

5. A separate one-page information sheet listing each of the "Evaluation Criteria and Weights", contained in this Notice, followed by the page numbers of all relevant material and documentation contained in the application which supports these criteria. This page should immediately follow the project overview.

6. A breakdown of specific time increments and steps to accomplish goals.

7. A detailed breakdown of estimated costs and a project budget.

8. Organizational documents for the intermediary.

9. Form SF–424, "Application for Federal Assistance."

10. Form SF–424B, "Assurances—Non-Construction Programs."

11. Form AD–1047, "Certification Regarding Debarment, Suspension, and Other

Responsibility Mattersû Primary Covered Transactions."

12. Form AD–1048, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusionû Lower Tier Covered Transactions."

13. Form AD–1049, "Certification Regarding Drug-Free Workplace Requirements."

14. Certification of Non-Lobbying Activities.

15. Standard Form LLL, "Disclosure of Lobbying Activities".

16. Form RD 400–1, "Equal Opportunity Agreement".

17. Form RD 400–4, "Assurance Agreement".

18. Identify and Report Any Association or Relationship with Rural Development Employees.

What and Where To Submit

An original and one copy of the complete application package must be submitted to: Beth Jones, Rural Housing Service, STOP 0787, 1400 Independence Ave. SW, Washington, DC 20250–0787 and a copy of the application must be submitted to the Rural Development State Office that has jurisdiction over the location of the recipients of this assistance. A listing of Rural Development State Offices is included in this Notice. Applications sent electronically or by facsimile will not be accepted.

When To Submit

The deadline for receipt of an application is 4:00 p.m. EST on June 15, 2000. The application deadline is firm as to date and hour and applies to submission of the original application and one copy to the National Office in Washington, DC. The Agency will not consider any application received after the deadline. A listing of Rural Development State Offices, their addresses, telephone numbers, and person to contact follows:

Note: Telephone numbers listed are not toll-free.

Alabama State Office, Suite 601, Sterling Centre, 4121 Carmichael Road, Montgomery, AL 36106–3683, (334) 279–3455, TDD (334) 279–3495, James B. Harris

Alaska State Office, 800 West Evergreen, Suite 201, Palmer, AK 99645, (907) 761–7705, TDD (907) 745–6494, Frank Muncy

Arizona State Office, Phoenix Corporate Center, 3003 N. Central Ave., Suite 900, Phoenix, AZ 85012–2906, (602) 280–8747, TDD (602) 280–8706, Leonard Gradillas

Arkansas State Office, 700 W. Capitol Ave., Rm. 3416, Little Rock, AR 72201–3225, (501) 301–3257, TDD (501) 301–3279, Jesse Sharp

California State Office, 430 G Street, Agency 4169, Davis, CA 95616–4169, (530) 792–5825, TDD (530) 792–5825, Charles M. Clendenin

Colorado State Office, 655 Parfet Street, Room E100, Lakewood, CO 80215, (303) 236–2801 (ext. 136), TDD (303) 236–1590, Leroy W. Cruz

Connecticut served by Massachusetts State Office

Delaware and Maryland State Office, 5201 South Dupont Highway, PO Box 400, Camden, DE 19934–9998, (302) 697–4314, TDD (302) 697–4303, Arthur Greenwood

Florida & Virgin Islands State Office, 4440 N.W. 25th Place, PO Box 147010, Gainesville, FL 32614–7010, (352) 338–3440, TDD (352) 338–3499, Glenn E. Walden

Georgia State Office, Stephens Federal Building, 355 E. Hancock Avenue, Athens, GA 30601–2768, (706) 546–2171, TDD (706) 546–2034, Jerry M. Thomas

Guam served by Hawaii State Office

Hawaii, Guam, & Western Pacific Territories State Office, Room 311, Federal Building, 154 Waianuenue Avenue, Hilo, HI 96720, (808) 933–8309, TDD (808) 933–8321, Thao Khamoui

Idaho State Office, Suite A1, 9173 West Barnes Dr., Boise, ID 83709, (208) 378–5617, TDD (208) 378–5644, Daniel H. Fraser

Illinois State Office, Illini Plaza, Suite 103, 1817 South Neil Street, Champaign, IL 61820, (217) 398–5412 (ext. 246), TDD (217) 398–5396, Gerald A. Townsend

Indiana State Office, 5975 Lakeside Boulevard, Indianapolis, IN 46278, (317) 290–3109 (ext. 431), TDD (317) 290–3343, Greg Delp

Iowa State Office, 873 Federal Building, 210 Walnut Street, Des Moines, IA 50309, (515) 284–4152, TDD (515) 284–4858, Dorman Otte

Kansas State Office, 1200 SW Executive Drive, PO Box 4653, Topeka, KS 66604, 785) 271–2728, TDD (785) 271–2767, Gary L. Smith

Kentucky State Office, 771 Corporate Drive, Suite 200, Lexington, KY 40503, (606) 224–7415, TDD (606) 224–7422, Vernon Brown

Louisiana State Office, 3727 Government Street, Alexandria, LA 71302, (318) 473–7940, TDD (318) 473–7655, Danny H. Magee

Maine State Office, 967 Illinois Ave., Suite 4, PO Box 405, Bangor, ME 04402–0405, (207) 990–9168, TDD (207) 942–7331, Alan C. Daigle

Maryland Served by Delaware State Office

Massachusetts, Connecticut, & Rhode Island State Office, 451 West Street, Amherst, MA 01002, (413) 253–4318, TDD (413) 253–7068, Daniel R. Beaudette

Michigan State Office, 3001 Coolidge Road, Suite 200, East Lansing, MI 48823, (517) 324–5192, TDD (517) 337–6795, Philip H. Wolak

Minnesota State Office, 410 AgriBank Building, 375 Jackson Street, St. Paul, MN 55101–1853, (651) 602–7820, TDD (651) 602–3799, Jackie Goodnough

Mississippi State Office, Federal Building, Suite 831, 100 W. Capitol Street, Jackson, MS 39269, (601) 965–4325, TDD (601) 965–5850, Danny Ivy

Missouri State Office, 601 Business Loop 70 West, Parkade Center, Suite 235, Columbia, MO 65203, (573) 876–0995, TDD (573) 876–9301, D. Clark Thomas

Montana State Office, Unit 1, Suite B 900 Technology Blvd., Bozeman, MT 59715, (406) 585–2515, TDD (406) 585–2562, MaryLou Affleck

Nebraska State Office, Federal Building, room 152, 100 Centennial Mall N, Lincoln, NE 68508, (402) 437–5559, TDD (402) 437–5093, Denise Brosius-Meeks

Nevada State Office, 1390 South Curry Street, Carson City, NV 89703–9910, (775) 887–1222 (ext. 26), TDD (775) 885–0633, Mike Holm

New Hampshire State Office, Concord Center, Suite 218, Box 317, 10 Ferry Street, Concord, NH 03301–5004, (603) 223–6037, TDD (603) 229–0536, William W. Konrad

New Jersey State Office, Tarnsfield Plaza, Suite 22, 790 Woodland Road, Mt. Holly, NJ 08060, (609) 265–3641, TDD (609) 265–3687, Michael P. Kelsey

New Mexico State Office, 6200 Jefferson St., NE, Room 255, Albuquerque, NM 87109, (505) 522–8775, ext. 6,TDD (505) 761–4938, Clyde F. Hudson
New York State Office, The Galleries of Syracuse, 441 S. Salina Street, Suite 357, Syracuse, NY 13202, (315) 477–6427, TDD (315) 477–6447, David Miller
North Carolina State Office, 4405 Bland Road, Suite 260, Raleigh, NC 27609, (919) 873–2061, TDD (919) 873–2003, Thurman E. Burnette
North Dakota State Office, Federal Building, Room 208, 220 East Rosser, PO Box 1737, Bismarck, ND 58502, (701) 530–2040, TDD (701) 530–2113, William C. Davis
Ohio State Office, Federal Building, Room 507, 200 North High Street, Columbus, OH 43215–2477, (614) 255–2391, TDD (614) 469–5757, David M. Douglas
Oklahoma State Office, 100 USDA, Suite 108, Stillwater, OK 74074–2654, (405) 742–1060, TDD (405) 742–1007, Rock W. Davis
Oregon State Office, 101 SW Main, Suite 1410, Portland, OR 97204–3222, (503) 414–3363, TDD (503) 414–3387, Jerry W. Sheridan
Pennsylvania State Office, One Credit Union Place, Suite 330, Harrisburg, PA 17110–2996, (717) 237–2281, TDD (717) 237–2261, Gary Rothrock
Puerto Rico State Office, New San Juan Office Bldg., Room 501, 159 Carlos E. Chardon Street, Hato Rey, PR 00918–5481, (787) 766–5095 (ext. 261), TDD 1–800–274–1572, Pedro Gomez
Rhode Island served by Massachusetts State Office,
South Carolina State Office, Strom Thurmond Federal Building, 1835 Assembly Street, Room 1007, Columbia, SC 29201, (803) 253–3432, TDD (803) 765–5697, Larry D. Floyd
South Dakota State Office, Federal Building, Room 210, 200 Fourth Street, SW, Huron, SD 57350, (605) 352–1132, TDD (605) 352–1147, Dwight Wullweber
Tennessee State Office, Suite 300, 3322 West End Avenue, Nashvile, TN 37203–1084, (615) 783–1345, TDD (615) 783–1397, Keith Head
Texas State Office, Federal Building, Suite 102, 101 South Main, Temple, TX 76501, (254) 742–9755, TDD (254) 742–9712, Eugene G. Pavlat
Utah State Office, Wallace F. Bennett Federal Building, 125 S. State Street, Room 4311, Salt Lake City, UT 84147–0350, (801) 524–4326, TDD (801) 524–3309, Jack Cox
Vermont State Office, City Center, 3rd Floor, 89 Main Street, Montpelier, VT 05602, (802) 828–6030, TDD (802) 223–6365, Rhonda Shippe
Virgin Islands served by Florida State Office
Virginia State Office, Culpeper Building, Suite 238, 1606 Santa Rosa Road, Richmond, VA 23229, (804) 287–1600, TDD (804) 287–1753, H. Kent Ware
Washington State Office, Suite B, 1835 Black Lake Boulevard, SW, Olympia, WA 98512–5715, (360) 704–7707, TDD (360) 704–7760, Deborah Davis
Western Pacific Territories served by Hawaii State Office
West Virginia State Office, Federal Building, 75 High Street, Room 320, Morgantown, WV 26505–7500, (304) 284–4868, TDD (304) 284–5941, Dianne Crysler
Wisconsin State Office, 4949 Kirschling Court, Stevens Point, WI 54481, (715) 345–7615 (ext. 131), TDD (715) 345–7614, Mark Brodziski
Wyoming State Office, 100 East B, Federal Building, Room 1005, PO Box 820, Casper, WY 82602, (307) 261–6318, TDD (307) 261–6333, Charles Huff

Dated: March 13, 2000.

Inga Smulkstys,

Acting Under Secretary, Rural Development.

OMB NO. 0575–0180

United States Department of Agriculture

Rural Housing Service

Rural Community Development Initiative Grant Agreement

THIS GRANT AGREEMENT (Agreement) dated _____, is a contract for receipt of grant funds under the Rural Community Development Initiative (RCDI).
BETWEEN

a private or public or tribal organization, (Grantee or Intermediary) and the United States of America acting through the Rural Housing Service (the Agency), Department of Agriculture, (Grantor), for the benefit of recipients listed in Grantee's application for the grant.

WITNESSETH:

The principal amount of the grant is $_____ (Grant Funds). Matching funds, in an amount equal to the grant funds, will be provided by Grantee from a non-Federal source. The Grantee and Grantor will execute Form RD 1940–1, "Request for Obligation of Funds".

WHEREAS,

Grantee will provide a program of technical assistance to develop the capacity and ability of private, nonprofit community-based housing or community development organizations, or low-income rural communities to undertake projects to improve housing, community facilities, or community and economic development projects in rural areas;

NOW, THEREFORE, in consideration of said grant;

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0575–0180. The time required to complete this information collection is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and reviewing the collection of information.

Grantee agrees that Grantee will:

A. Provide a program of technical assistance in accordance with the proposal outlined in the application, the terms of which are incorporated with this Agreement and must be adhered to. Any changes to the approved program of technical assistance must be approved in writing by the Grantor;

B. Use Grant Funds only for the purposes and activities specified in the application package approved by the Agency including the approved budget. Any uses not provided for in the approved budget must be approved in writing by the Agency in advance;

C. Charge expenses for travel and per diem that will not exceed the rates paid Agency employees for similar expenses;

D. Request cash advances in the minimum amount needed and shall be timed to be in accord only with the actual, immediate cash requirements for carrying out the grant purpose. Form SF 270, "Request for Advance or Reimbursement", will be used for this purpose;

E. Provide periodic reports as required by the Grantor. A financial status report and a project performance report will be required on a quarterly basis (due 15 working days after each calendar quarter). The financial status report must show how grant funds and matching funds have been used to date and project the funds needed and their purposes for the next quarter. A final report may serve as the last quarterly report. Grantees shall constantly monitor performance to ensure that time schedules are being met and projected goals by time periods are being accomplished. The project performance reports shall include, but are not limited to, the following:

1. A comparison of actual accomplishments to the objectives for that period;

2. Reasons why established objectives were not met, if applicable;

3. Problems, delays, or adverse conditions which will affect attainment of overall program objectives, prevent meeting time schedules or objectives, or preclude the attainment of particular objectives during established time periods. This disclosure shall be accomplished by a statement of the action taken or planned to resolve the situation;

4. Objectives and timetables established for the next reporting period;

5. If available, a summary of the race, sex, and national origin of the recipients and a summary from the recipients of the race, sex, and national origin of the beneficiaries; and

6. The final report will also address the following:

(a) What have been the most challenging or unexpected aspects of this program?

(b) What advice would you give to other organizations planning a similar program? Please include strengths and limitations of the program. If you had the opportunity, what would you have done differently?

(c) Are there any post-grant plans for this project? If yes, how will they be financed?

(d) If an innovative approach was used successfully, the grantee must describe their program in detail for replication by other organizations and communities.

F. Consider potential recipients without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability;

G. Insure that any services or training offered by the recipient, as a result of the technical assistance received, must be made available to all persons in the recipient's service area without discrimination as to race, color, religion, sex, national origin, age, marital status, or physical or mental disability at reasonable rates, including assessments, taxes, or fees. Programs and activities must be delivered from accessible locations. The recipient must ensure that where there are non-English speaking populations that materials are provided in the language that is spoken;

H. Insure that recipients are required to place nondiscrimination statements in advertisements, notices, pamphlets and brochures making the public aware of their services. The Grantee and recipient are required to provide widespread outreach and public notification in promoting any type of training or services that are available through grant funds;

I. The Grantee must collect and maintain data on recipients by race, sex, and national origin. The grantee must ensure that their recipients also collect and maintain data on beneficiaries by race, sex, and national origin as required by title VI of the Civil Rights Act of 1964 and must be provided to the Agency for compliance review purposes;

J. Upon any default under its representations or agreements contained in this instrument, Grantee, at the option and demand of Grantor, will immediately repay to Grantor the Grant Funds with any legally permitted interest from the date of the default. Default by the Grantee will constitute termination of the grant thereby causing cancellation of Federal assistance under the grant. The provisions of this Agreement may be enforced by Grantor, at its option and without regard to prior waivers of this Agreement or by such other proceedings in law or equity, in either Federal or State courts as may be deemed necessary by Grantor to assure compliance with the provisions of this Agreement and the laws and regulations under which this grant is made;

K. Provide Financial Management Systems which will include:

1. Accurate, current, and complete disclosure of the financial results of each grant. Financial reporting will be on an accrual basis;

2. Records that identify adequately the source and application of funds for grant-supported activities. Those records shall contain information pertaining to grant awards and authorizations, obligations, unobligated balances, assets, liabilities, outlays, and income;

3. Effective control over and accountability for all funds, property, and other assets. Grantees shall adequately safeguard all such assets and shall ensure that they are used solely for authorized purposes;

4. Accounting records supported by source documentation; and

5. Grantee tracking of fund usage and records that show matching funds and grant funds are used in equal proportions. The grantee will provide verifiable documentation regarding matching fund usage, i.e., bank statements or copies of funding obligations from the matching source.

L. Retain financial records, supporting documents, statistical records, and all other records pertinent to the grant for a period of at least three years after grant closing except that the records shall be retained beyond the three-year period if audit findings have not been resolved. Microfilm or photocopies or similar methods may be substituted in lieu of original records. The Grantor and the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers, and records of the Grantee's which are pertinent to the specific grant program for the purpose of making audits, examinations, excerpts, and transcripts;

M. Provide an A–133 audit report if $300,000 or more of federal funds are expended in a one year period. If federal funds expended during a one-year period are less than $300,000 and there is an outstanding loan balance of $300,000 or more, an audit in accordance with generally accepted government auditing standards is required. If federal funds expended during a one year period are less than $300,000 and there is an outstanding loan balance of less than $300,000, a management report may be submitted on Forms RD 442–2, "Statement of Budget, Income and Equity" and 442–3, "Balance Sheet";

N. Agree to account for and to return to Grantor interest earned on grant funds pending their disbursement for program purposes when the Grantee is a unit of local government. States and agencies or instrumentalities of a State are not held accountable for interest earned on grant funds pending their disbursement;

O. Not encumber, transfer or dispose of the equipment or any part thereof, acquired wholly or in part with Grantor funds without the written consent of the Grantor; and

P. Not duplicate other program purposes for which monies have been received, are committed, or are applied to from other sources (public or private).

Grantor agrees that It:

A. Will make available to Grantee for the purpose of this Agreement funds in an amount not to exceed the Grant Funds. The funds will be advanced to Grantee on a pro rata basis with the Grantee's matching funds; and

B. At its sole discretion and at any time may give any consent, deferment, subordination, release, satisfaction, or termination of any or all of Grantee's grant obligations, with or without valuable consideration, upon such terms and conditions as Grantor may determine to be:

1. Advisable to further the purpose of the grant or to protect Grantor's financial interest therein; and

2. Consistent with both the statutory purposes of the grant and the limitations of the statutory authority under which it is made.

Both Parties Agree:

A. Extensions of this grant agreement may be approved by the Agency, in writing, provided in the Agency's sole discretion the extension is justified and there is a likelihood that the grantee can accomplish the goals set out and approved in the application package during the extension period;

B. The Grantor must approve any changes in recipient or recipient composition;

C. The Grantor has agreed to give the Grantee the Grant Funds, subject to the terms and conditions established by the Grantor: *Provided, However,* That any Grant Funds actually advanced and not needed for grant purposes be returned immediately to the Grantor. This agreement shall terminate three years from this date unless extended or unless terminated beforehand due to default on the part of the Grantee or for convenience of the Grantor and Grantee. The Grantor may terminate the grant in whole, or in part, at any time before the date of completion, whenever it is determined that the Grantee has failed to comply with the conditions of this Agreement or the applicable regulations;

D. As a condition of the Agreement, the Grantee certifies that it is in compliance with and will comply in the course of the Agreement with all applicable laws, regulations, Executive Orders, and other generally applicable requirements, including those contained in 7 CFR 3015.205(b), which are incorporated into this agreement by reference, and such other statutory provisions as are specifically contained herein. The Grantee will comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and Executive Order 12250;

E. The Grantee will ensure that the recipients comply with title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973 and Executive Order 12250. Each recipient must sign Form RD 400–1, "Equal Opportunity Agreement" and Form RD 400–4, "Assurance Agreement";

F. The provisions of 7 CFR part 3015, "Uniform Federal Assistance Regulations," part 3016, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," or part 3019, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations," are incorporated herein and made a part hereof by reference; and

G. This Agreement may be terminated for cause in the event of default on the part of the Grantee or for convenience of the Grantor and Grantee prior to the date of completion of the grant purpose. Termination for convenience will occur when both the Grantee and Grantor agree that the continuation of the program will not produce

beneficial results commensurate with the further expenditure of funds.

IN WITNESS WHEREOF, Grantee has this day authorized and caused this Agreement to be executed by

Attest _____

By _____
(Grantee)

(Title) _____

United States of America, Rural Housing Service.

By _____
(Grantor) (Name) (Title)

[FR Doc. 00–6673 Filed 3–16–00; 8:45 am]

BILLING CODE 3410–XV–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: April 17, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Bag, T-Shirt Style & Bag, Produce, Star Bottom
8105–00–NIB–1023 (Bag, T-Shirt Style)
8105–00–NIB–1046 (Bag, Produce, Star Bottom) (Requirements for DeCA Northeast Region)
NPA: Envision, Inc., Wichita, Kansas

Services

Base Supply Center, Patrick Air Force Base, Florida
NPA: Signature Works, Inc., Hazlehurst, Mississippi
Base Supply Center & HAZMART, Marine Corps Air Ground Combat Center, Building 1102, TwentyNine Palms, California
NPA: L.C. Industries For The Blind, Inc., Durham, North Carolina
Janitorial/Grounds Maintenance, Federal Courthouse, Pocatello, Idaho
NPA: New Day Products, Inc., Pocatello, Idaho
Parking Facility Attendant, Department of Veterans Affairs Medical Center, John D. Dingell VA Medical Center, 4646 John R Street, Detroit, Michigan
NPA: Jewish Vocational Service and Community Workshop, Inc., Southfield, Michigan

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodities to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List:

Transparency Film, Xerographic
7530–01–386–2371
Tea Mix, Instant
8955–00–823–7016

Leon A. Wilson, Jr.,
Executive Director.

[FR Doc. 00–6668 Filed 3–16–00; 8:45 am]

BILLING CODE 6353–01–U

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List, Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the Procurement List

SUMMARY: This action adds to the Procurement List a commodity and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List commodities and services previously furnished by such agencies.

EFFECTIVE DATE: April 17, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 8, and 22, November 29, and December 27, 1999 and January 3 and February 4, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (64 FR 54862, 57031, 66611, 72312, and 65 FR 115, 5492 and 5493) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity and services and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity and services to the Government.
2. The action will not have a severe economic impact on current contractors for the commodity and services.
3. The action will result in authorizing small entities to furnish the commodity and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and services proposed for addition to the Procurement List.

Accordingly, the following commodity and services are hereby added to the Procurement List:

Commodity

Bag, Waste Receptacle
8105–01–284–2924

Services

Base Supply Center, Camp Shelby, Mississippi, Mississippi Air National Guard at the following locations: Jackson, Mississippi, Meridian, Mississippi, Gulfport, Mississippi
Commissary Shelf Stocking, Custodial and Warehousing, Fort Hamilton Commissary, Brooklyn, New York
Food Service Attendant, Air National Guard Base, 50 Sabre Street, Battle Creek, Michigan
Grounds Maintenance, U.S. Army Reserve Center, Worcester, Massachusetts
Janitorial/Custodial, 126th Air Refueling Wing, Scott Air Force Base, Illinois
Janitorial/Custodial, U.S. Army Reserve Center, OMS, Kittaning, Kittanning, Pennsylvania
Operation of Individual Equipment Element Store and HAZMART, Travis Air Force Base, California
Operation of Individual Equipment Element Store and HAZMART, Dover Air Force Base, Delaware
Operation of Individual Equipment Element Store and HAZMART, Fairchild Air Force Base, Washington
Telephone Switchboard Operations, Dyess Air Force Base, Texas

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will not have a severe economic impact on future contractors for the commodities and services.
3. The action may result in authorizing small entities to furnish the commodities and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodities and services listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodities and services are hereby deleted from the Procurement List:

Commodities

Amplifier Subassembly
5831–00–087–3408
Specimen Kit, Urine
6530–00–075–6636
Aerosol Paint, Lacquer
8010–00–721–9483
Enamel, Lacquer
8010–00–616–9144
8010–00–852–9034
8010–00–878–5761
8010–00–782–9356
8010–00–764–8434
Enamel, Aerosol, Waterbase
8010–01–363–1632

Services

Commissary Shelf Stocking, Naval Training Center, San Diego, California
Commissary Shelf Stocking and Custodial, Oakland Army Base, Oakland, California
Food Service, McClellan Air Force Base, California
Grounds Maintenance, Oakland Fleet Industrial Supply Center, Oakland, California
Grounds Maintenance
Naval Station, Treasure Island, California
Grounds Maintenance, Mare Island Naval Complex and Roosevelt Terrace, (Except the Combat Systems Technical School Command), Mare Island Naval Shipyard, Vallejo, California
Janitorial/Custodial, Naval Supply Center for the following locations in Alameda, California: DRMO Buildings 4 & 5 (Floor 1), Defense Subsistence Region Pacific, Warehouse 1, Building 6 (Floors 1 & 2), Building 7, Naval Regional Contracting Center, Building 6 (Floor 2)
Janitorial/Custodial, Naval Air Reserve, Moffett Field, California
Janitorial/Grounds Maintenance, U.S. Federal Building, 823 Marin Street, Vallejo, California
Painting Service, McClellan Air Force Base, California
Vehicle Maintenance, McClellan Air Force Base, California

Leon A. Wilson, Jr.,
Executive Director.

[FR Doc. 00–6669 Filed 3–16–00; 8:45 am]

BILLING CODE 6353–01–U

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Questionnaire for Building Permit Officials.

Form Number(s): SOC–QBPO.

Agency Approval Number: 0607–0125.

Type of Request: Extension of a currently approved collection.

Burden: 225.

Number of Respondents: 900.

Avg Hours Per Response: 15 minutes.

Needs and Uses: The Census Bureau uses the SOC–QBPO to collect information from state and local building permit officials, such as (1) the types of permits they issue, (2) the length of time a permit is valid, (3) how they store the permits, and (4) the geographic coverage of the permit system. Census Bureau field representatives visit selected permit-issuing places and conduct the survey using Computer-Assisted Personal Interviewing (CAPI) technology and a lap top computer. We need this information to carry out the sampling for the Survey of Housing Starts, Sales and Completions (OMB number 0607–0110), also known as the Survey of Construction (SOC). The SOC provides widely used measures of construction activity, including the economic indicators Housing Starts, Housing Completions, and New Housing Sales.

We plan no changes to the information collection methodology. We have increased the number of respondents from 835 to 900 due to

local changes in municipal laws. The land area covered by the survey has not increased, but when a municipality begins issuing its own permits independently from the jurisdiction that previously covered their permits (usually a county government), that new municipality becomes part of the survey.

Affected Public: Businesses or other for-profit organizations.

Frequency: Annually.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Section 182.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 13, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–6611 Filed 3–16–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–824]

Certain Corrosion-Resistant Carbon Steel Flat Products From Japan: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of rescission of antidumping duty administrative review.

SUMMARY: On October 1, 1999, the Department of Commerce published in the **Federal Register** (64 FR 53318) a notice announcing the initiation of an administrative review of the antidumping duty order on Certain Corrosion-Resistant Carbon Steel Flat Products from Japan for two producers/exporters, Nippon Steel Corporation ("Nippon") and Kawasaki Steel Corporation ("Kawasaki"), covering the period of review ("POR"), which is August 1, 1998 through July 31, 1999. The Department of Commerce has now rescinded this review with respect to Kawasaki as a result of the absence of Kawasaki's shipments and entries into the United States of subject merchandise during the period of review. In addition, it has rescinded the review with respect to Nippon at the request of petitioners, the only party that requested the review.

EFFECTIVE DATE: March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Doreen Chen, Brandon Farlander, or Rick Johnson, Office 9, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–0408, (202) 482–0182 or (202) 482–3818, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended, are to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to the regulations codified at 19 CFR Part 351 (1999).

Background

The Department published in the **Federal Register** on August 11, 1999 (64 FR 43649) a "Notice of Opportunity to Request Administrative Review" of the antidumping duty order on Certain Corrosion-Resistant Carbon Steel Flat Products from Japan. On August 31, 1999, petitioners requested that the Department conduct an administrative review of this order with respect to Nippon and Kawasaki.

On October 1, 1999, the Department initiated an administrative review for the period August 1, 1998—July 31, 1999 (64 FR 53318). On October 4, 1999, the Department issued questionnaires to Nippon and Kawasaki.

Kawasaki

On October 25, 1999, Kawasaki reported that it made no sales of the subject merchandise during the POR. On January 4, 2000, we issued a supplemental questionnaire to Kawasaki requesting that it answer additional questions concerning its statement that it did not have any sales to the United States during the POR. On January 11, 2000, Kawasaki submitted a response confirming that neither it nor any of its affiliated producers made sales of the subject merchandise to the United States during the POR. Also, Kawasaki stated that none of its subject merchandise sold to third countries during the POR was shipped to the United States. Finally, Kawasaki stated that, to the best of its knowledge, none of its third-party sales of the subject merchandise or the third-party sales of the subject merchandise made by affiliated producers, was ultimately destined for the United States. Additionally, we have reviewed U.S. Customs data, which confirms that there were no entries during the POR of merchandise produced or exported by Kawasaki. Finally, on February 10, 2000, we contacted petitioner and asked if petitioner was aware of any shipments made by Kawasaki during the POR. On February 23, 2000, petitioner confirmed that it had no information on Kawasaki's shipments to the United States during the POR. Therefore, we have determined that Kawasaki made no entries of subject merchandise into the customs territory of the United States during the POR.

Pursuant to 19 CFR 351.213(d)(3), the Department may rescind an administrative review, in whole or only with respect to a particular exporter or producer, if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise. In light of the fact that we determined that Kawasaki had no entries of the subject merchandise into the territory of the United States during the POR, we are rescinding this review for Kawasaki. The rate for Kawasaki will remain as that established in the most recently completed segment of this proceeding with respect to Kawasaki.

Nippon

On November 2, 1999, Nippon submitted section A of its questionnaire response. On December 10, 1999, it submitted sections B through D, and on December 27, it filed its response to question III.B of the Department's section D questionnaire.

On December 30, 1999, petitioners requested that the Department rescind the review with respect to Nippon. Petitioners were the only party requesting the review and their request for withdrawal was made within 90 days of the date of publication of the notice of initiation in accordance with section 351.213(d)(1) of the Department's regulations. The Department is therefore rescinding the review with respect to Nippon in accordance with that regulation.

This notice is issued and published in accordance with 19 CFR 351.213(d)(4).

Dated: March 3, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–6689 Filed 3–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

(A–475–811)

Grain-Oriented Electrical Steel From Italy: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce

EFFECTIVE DATE: March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Samantha Denenberg at (202) 482–1386, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days. The time limit for the final determination may be extended to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On October 1, 1999, the Department published a notice of initiation of administrative review of the antidumping duty order on Grain-Oriented Electrical Steel from Italy, covering the period August 1, 1998 through July 31, 1999 (64 FR 53318). The preliminary results are currently due no later than May 2, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the preliminary results until no later than August 30, 2000. *See* Decision Memorandum from Richard Weible to Joseph A. Spetrini, dated March 9, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. We intend to issue the final results no later than 120 days after the publication of the preliminary results notice.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 9, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement Group III.

[FR Doc. 00–6690 Filed 3–16–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 970424097–0068–05]

RIN 0625–ZA05

Market Development Cooperator Program

AGENCY: International Trade Administration (ITA), Commerce.

ACTION: Notice.

SUMMARY: The ITA of the U.S. Department of Commerce (the Department) requests that eligible organizations submit proposals (applications) for the fiscal year (FY) 2000 Market Development Cooperator Program (MDCP) competition. The ITA promotes U.S. exports and works to improve the global competitiveness of the United States, creating jobs for Americans. The Department administers the MDCP to build public/private export marketing partnerships. The MDCP is a competitive matching grants program that provides Federal assistance to export multipliers such as state trade departments, trade associations, chambers of commerce, world trade centers and other non-profit industry organizations that are particularly effective in reaching small-and medium-size enterprises (SMEs).

MDCP awards help to underwrite the start-up costs of new export promotion ventures which these groups are often reluctant to undertake without Federal Government support. The MDCP aims to:

- Challenge the private sector to think strategically about foreign markets;
- Be the catalyst that spurs private-sector innovation and investment in export marketing; and
- Increase the number of American companies, particularly SMEs, taking decisive export actions.

Partnerships enable the Federal Government to pool expertise and funds with non-Federal sources so that each maximizes its market development resources. They can also sharpen the focus on long-term export market development better than traditional trade promotion activities. These partnerships are also a mechanism for improving government-industry relations.

While the Department sponsors, guides and partially funds MDCP projects, it expects applicants to develop, initiate and provide matching funding to carry out market development project activities. As an active partner, the Department will, as appropriate, provide assistance that the applicant identifies as essential to the achievement of project goals and objectives.

Examples of activities that might be included in an applicant's project proposal are described below under "I. Program Description". The Department encourages applicants to propose activities that (1) would be most appropriate to the market development needs of their industry or industries; and (2) display the imagination and innovation of the applicants working in partnership with the government to obtain the maximum market development impact.

DATES: *Public Meeting:* The Department will hold a public meeting to discuss MDCP proposal preparation, procedures, and selection process on Monday, April 3, 2000. The meeting will begin at 1:30 p.m. in Room 3407, at the Herbert Clark Hoover Building, 14th and Constitution Avenue, N.W., Washington, D.C. No discussion of specific proposals will occur at this meeting. Attendance at this public meeting by potential applicants is not required.

Applications: Complete applications must be received no later than 5:00 p.m. Eastern Daylight Time, May 16, 2000. Late applications will not be accepted. They will be returned to the sender.

As set forth under *III.B.2. Number of Copies,* ITA is requesting one original application, plus six (6) copies. Applicants for whom this is a financial hardship should submit an original and two copies. Send the application to the address listed below under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Mr. Brad Hess, Manager, Market Development Cooperator Program, Trade Development, ITA, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Room 3215, Washington, D.C. 20230, (202) 482–2969. The e-mail address is *Brad_Hess@ita.doc.gov*. The fax number is (202) 482–4462.

Information Online: Information on the Internet is available at *http://www.ita.doc.gov/mdcp*.

Application Kit: A kit with all forms necessary to participate in the MDCP application process is available at the Internet address identified above. This application kit also may be obtained via first-class mail by sending a legible mailing address to the "Contact" address listed above. The address as received will serve as the label for mailing a reply.

Pre-Application Counseling: Applicants with questions should contact the Department as soon as possible, while continuing to prepare their proposals. The Department will not extend the deadline for submitting applications.

The Department regularly provides information and responds to technical and procedural questions from entities which apply or may potentially apply for FY 2000 MDCP awards. Once the annual announcement of an awards competition appears in the **Federal Register**, however, the Department may not provide such entities with guidance regarding the merits of their applications or potential applications.

SUPPLEMENTARY INFORMATION: *Authority:* The Omnibus Trade and Competitiveness Act of 1988, Pub. L. No. 100–418, Title II, sec. 2303, 102 Stat. 1342, 15 U.S.C. 4723.[1]

Catalog of Federal Domestic Assistance (CFDA): No. 11.112, Market Development Cooperator Program.

I. Program Description

The goal of the MDCP as set out in authorizing legislation is to develop, maintain, and expand foreign markets for nonagricultural goods and services produced in the United States.[2] For purposes of this program, nonagricultural goods and service means goods and services other than agricultural products as defined in 7 U.S.C. 451.[3]

A. Examples of Successful Proposals

Applicants should propose activities that would be most appropriate to the market development needs of the relevant U.S. industry. Examples of activities which applicants from prior years have found appropriate are set forth below. These are provided only for illustration. Applicants are *not* required to propose any of these activities.

1. Commissioning overseas market research, participating in overseas trade exhibitions and trade missions to promote U.S. exports, and/or hosting reverse trade missions;

2. Developing a website to connect international customers to U.S. telecommunications and Internet companies through a "virtual trade show."

3. Conducting U.S. product demonstrations abroad;

4. Conducting export seminars in the United States or market penetration seminars in the market(s) to be developed;

5. Establishing technical trade servicing that helps overseas buyers choose the right U.S. goods or services and to use the goods or services efficiently;

6. Conducting joint promotions of U.S. goods or services with foreign partners;

7. Opening an overseas office to perform development services for companies who agree to participate. Such an office should not duplicate the programs or services of the U.S. and Foreign Commercial Service (US&FCS) post(s) in the region, but could include co-location with a US&FCS Commercial Center;

8. Detailing a private-sector representative to a US&FCS post in accordance with 15 U.S.C. 4723(c);

9. Training foreign nationals to perform after-sales service or to act as distributors for U.S. goods or services;

10. Improving market access for U.S. goods or services by working with organizations in the foreign marketplace responsible for setting standards and product testing;

11. Publishing an export resource guide or an export product directory for the U.S. industry or industries in question, if no comparable one exists; and

12. Establishing an electronic business information system to identify overseas trade leads and facilitate matches with foreign partners for U.S. businesses.

B. Funding

1. Type of Funding Instrument: Since the Department will be substantially involved in the implementation of each project for which an award is made, the funding instrument for this program will be a cooperative agreement.

2. Funding Availability: For FY 2000, the total funds expected to be available for this program are $2.0 million. The Department expects to conclude a minimum of five (5) cooperative agreements with eligible entities for this competition. No award will exceed $400,000, regardless of the duration of the cooperative agreement.

3. Matching Requirements: To receive MDCP funding, the applicant must contribute at least two dollars for each Federal dollar provided. So, for each Federal dollar of MDCP funding, the applicant must make at least one dollar of new cash outlays expressly for the project. The balance of the applicant's support may consist of in-kind contributions (goods and services).[4]

a. Minimum Match: An example of the minimum match is set forth below. An applicant requesting $200,000 of Federal funds must supply, at a minimum, $200,000 of new cash outlays expressly for the project. As illustrated below, the remaining $200,000 of the required match, can be made up of additional new cash outlays or in-kind contributions.

Item	Federal share	Applicant match
Cash	200,000	200,000
Cash or In-kind		200,000
Total	200,000	400,000

This example would establish a cost-share ratio of two-to-one, two applicant dollars for each dollar of Federal funds. The applicant assumes ⅔ of the total cost. In other words, 67 percent of the funding is provided by the applicant and 33 percent by the Federal Government. This means that in order to receive one dollar of Federal funds, the applicant must incur at least three dollars in project expenditures.

b. Additional Match: Applicants may propose projects for which the matching funding exceeds two applicant dollars to each Federal dollar. However, as set forth below, this will increase the cost-share ratio.

Item	Federal share	Applicant match
Cash	200,000	200,000
Cash or In-kind		400,000
Total	200,000	600,000

This example would establish a cost-share ratio of three-to-one, three applicant dollars for each dollar of Federal funds. The applicant assumes ¾ of the total cost. In other words, 75 percent of the funding is provided by the recipient and 25 percent by the Federal Government. This means that in order to receive one dollar of Federal funds, the applicant must incur at least four dollars in project expenditures.

4. In-Kind Contributions: In the proposed budget, all in-kind contributions used to meet the applicant's share of costs are listed in a separate column from cash contributions. Applicants must describe these in-kind contributions separately in the application and in sufficient detail to determine that the requirements of 15 CFR Part 14.23(a), and 15 CFR Part 24.24 (a) and (b) are met.

5. Third Party Contributions: In order for an award recipient to outlay cash contributed by a third party, the third party must transfer the funds to the recipient. Otherwise, expenditures for goods and services contributed by a third party are considered to be in-kind contributions.

6. Indirect Costs: Federal funds may be used for a portion of the direct costs of each project, but not for indirect costs. Generally, direct costs result from activity specifically associated with an award, and usually include expenses such as personnel, fringe benefits, travel, equipment, supplies and contractual obligations relating directly to program activity. By contrast, indirect costs are generally those costs that are incurred regardless of whether there is activity associated with an award.

Federal funds may be used only to cover direct costs. The applicant must incur and pay direct costs that equal or exceed the amount of Federal funds. However, any portion of the balance of applicant's match may be used to cover indirect costs. For example, an applicant which requests $200,000 of Federal funds, must structure its match to include at least $200,000 of direct costs. The balance of the match, in this case $200,000, may be comprised entirely or partially of indirect expenses, as explained in greater detail below, under "Indirect Cost Rate."

Costs	Federal share	Applicant match
Direct	200,000	200,000
Indirect or Direct		200,000
Total	200,000	400,000

The Department will determine allowable costs on the basis of the applicable cost principles and definitions in OMB Circulars A–21, A–87, and A–122; in 45 CFR Part 74, Appendix E; and in 48 CFR Part 31.[5]

7. Indirect Cost Rate: The Department funds cannot be used to pay indirect costs. The total dollar amount of the indirect costs proposed in an application under this program (using recipient funds) must not exceed the amount calculated using the indirect cost rate and negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.[6]

8. Fee Income: Applicants may charge companies in the industry or other industry organizations reasonable fees to take part in or avail themselves of services provided as part of applicants' projects. Applicants should describe in detail any plans to charge fees. Fees generated under the award are program income and must be used for project-related purposes during the award period.

9. Approved Pre-Award-Period Expenditure: As a general matter, award recipients can request reimbursements only for costs incurred during the award period. However, if proposed in the application, award recipients can expend funds to attend an award-recipient orientation meeting even if it precedes the beginning of the award period. This orientation is usually held in Washington soon after the awards are announced. It is the first opportunity for award recipients to meet members of the Department's team. This allowable expenditure of funds prior to the beginning of the award period is limited to reimbursable expenses associated with attending the orientation.

10. Fees for Some Government Services: By winning an MDCP award, an applicant enters into a special relationship with ITA. (*See I.C.1. Project Team* below.) To fulfill its part of the partnership, ITA will provide, where possible, its resources to support project activities included in annual operating plans. (*See I.C.3. Annual Operating Plan* below.) However, ITA's ability to provide assistance free of charge is limited. For some services such as market research studies and Gold Key services, ITA is required to charge fees that recover costs. Applicants requiring ITA services that could involve charges should make provision in their budgets for such charges.

Information relating to charges for services provided in specific overseas markets can be obtained by contacting the Senior Commercial Officer (SCO) at each overseas post. Information relating to charges for services provided by Export Assistance Centers (EACs) throughout the United States can be obtained by contacting the relevant EAC director. The names of SCOs and EAC directors, and often the specific fees, can be found on the Internet via *http://www.usatrade.gov*.

C. Administration of Award Activity

1. Project Team: To administer each cooperative agreement, a project team is established including key personnel from the award-winning organization and officials from the Department who can help the award winner achieve MDCP project objectives. If representatives from other Federal agencies can make a meaningful contribution to the achievement of project objectives, they are invited to participate on the project team.

Each project team acts as a "board of directors" establishing direction for the project, recommending changes in the direction of the project, when necessary, and determining the mode of project operations and other management processes, coupled with close monitoring or operational involvement during the performance of project activities.

2. Award Period: Funds may be expended over the period of time required to complete the scope of work, but not to exceed three years from the start date of the award.

3. Annual Operating Plan: At the beginning of each year of the award period, the project team negotiates an annual operating plan, which is based on the work plan submitted in the application. The work plan sets forth a timetable for specific activities. In

[1] Unless otherwise noted, all legal authorities cited in this notice may be accessed via the Internet at *http://www.access.gpo.gov/* or at *http://wwwsecure.law.cornell.edu/federal/*.

[2] "Produced in the United States" means having substantial inputs of materials and labor originating in the United States, such inputs constituting at least 50 percent of the value of the good or service to be exported. The intended beneficiaries of the program are U.S. producers of non-agricultural goods or services that seek to export such goods or services. *See* "Trade Mission Application Form", ITA Form 4008P–1 (Rev. 8/97).

[3] This definition includes "agricultural, horticultural, viticultural, and dairy products, livestock and the products thereof, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed manufactured products thereof..."

[4] Recipient cash contributions are defined in 15 CFR Part 14, Sec. 14.2(g) as the award "recipient's cash outlay, including the outlay of money contributed to the recipient by third parties."

[5] Access OMB circulars and forms at *http://www.whitehouse.gov/omb/grants/index.html*. Appendix E referred to on this OMB site is not listed separately. It is found at the end of 45 CFR 74.91, which may be accessed directly at *http://www.access.gpo.gov/nara/cfr/waisidx 99/45cfr74 99.html*.

[6] Information on calculating an indirect cost rate is available at *http://www2.dol.gov/dol/oasam/public/programs/guide.htm*. Additional information on indirect cost rates is available at *http://www.ntia.doc.gov/otiahome/tiiap/Application/97GUIDE.HTM*.

addition to this timetable, the annual operating plan includes team responsibilities for accomplishing each activity, and the budgeted cost of each activity. Annual operating plans are not part of the application. They are developed only after receipt of an award and designation of an ITA project team.

II. Eligibility

A. Definition of Eligible Entity

U.S. trade associations, non-profit industry organizations, state trade departments and their regional associations including centers for international trade development, and private industry firms or groups of firms in cases where no entity described above represents that industry, are eligible to apply for an MDCP cooperative agreement.

1. Trade Association: For the purpose of this program, a "trade association" is defined as a fee-based organization consisting of member firms in the same industry, or in related industries, or which share common commercial concerns. The purpose of the trade association is to further the commercial interests of its members through the exchange of information, legislative activities, and the like.

2. Non-Profit Industry Organization: For the purpose of this program, a "non-profit industry organization" is:

a. A small business development center operating under agreement with the Small Business Administration, or

b. An organization that has been granted status as a non-profit organization under Title 26 U.S.C. Section 501(c) (3), (4), (5), or (6) and operates as one of the following:

(1) A local, state, regional, or national chamber of commerce;

(2) A local, state, regional, or national board of trade;

(3) A local, state, regional, or national business, export or trade council/interest group;

(4) A local, state, regional, or national visitors bureau or tourism promotion group;

(5) A local, state, regional, or national economic development group;

(6) A small business development center;

(7) A world trade center; or

(8) A port authority.

B. Eligibility of Previous Award Recipients

The program aims to increase the sum of Federal and non-Federal export market development activities by using program funds to encourage new initiatives. MDCP funds are not intended to replace funds from other sources.

Expansion of the scope of an existing project also may qualify for funding consideration. Eligible organizations that have previously received an MDCP award may propose a new project or expansion of an existing project. *See IV.A.4. Creativity and Capacity* below.

C. Determination of Eligibility

1. Request for Determination: Prospective applicants can resolve questions regarding eligibility by requesting an eligibility determination. Requests should be made in writing accompanied by basic organizational documents (*e.g.,* charters, articles of incorporation) and information on types of members, membership fees, ties to state trade departments or their regional associations, organization's purpose, and activities, and non-profit status under Internal Revenue Code provisions. Prospective applicants should submit eligibility determination requests as soon as possible if they wish to have determinations prior to the application submission deadline. This deadline will not be extended, and applicants should continue to work on proposals while awaiting the Department's eligibility determination.

2. Joint Ventures: Entities may join together to submit an application as a joint venture and to share costs. For joint venture applicants, one organization meeting the above eligibility criteria must be designated as the prospective MDCP award recipient organization for administrative purposes. For example, two trade associations representing different segments of a single industry or related industries may pool their resources and submit one application. Foreign businesses and private groups also may join with eligible U.S. organizations to submit applications and to share the costs of proposed projects.

3. Benefit to All Companies: The Department will accept applications from eligible entities representing any industry, subsector of an industry or related industries. Each applicant must permit all companies in the industry targeted in its proposal to participate in all activities that are scheduled as part of a proposed project whether or not the company is a member or constituent of the eligible organization.

III. Applications

A. Format

The basic elements of the application are set forth below. Instructions and required forms are provided in the Application Kit *See* the **FOR FURTHER INFORMATION CONTACT** section for instructions on getting the Application Kit.

1. Executive Summary: The first element of the application is a one-page summary of the proposal.

2. Background Research: Developing a project plan requires solid background research. Applications should reflect the findings of the applicant's study of the following:

a. The market potential of the U.S. good(s) or service(s) to be promoted in a particular market(s);

b. The competition from host-country and third-country suppliers; and

c. The economic situation and prospects that bear upon the ability of a country to import the U.S. good(s) or service(s).

Applicants should present an assessment of industry resources that can be brought to bear on developing a market; the industry's ability to meet potential market demand expeditiously; and the industry's after-sales service capability in a particular foreign market(s).

3. Project Description: After describing their completed basic research, applicants should develop marketing plans that set forth the overall objectives of the projects and the specific activities applicants will undertake as part of these projects.

a. Work Plan: The project description should include a list of specific activities planned, including: (1) The different phases of the project, identifying each milestone and activity in chronological order; (2) the location where activities will take place; and (3) the ways the applicant intends to involve the Department of Commerce and/or other Federal agencies as partners in project activities.

b. Performance Measures: On August 3, 1993, the Government Performance and Results Act (GPRA) was enacted into law (Public Law 103–62). GPRA requires each Federal agency to submit a strategic plan for program activities to OMB. Among other things, each strategic plan must include "performance indicators to be used in measuring or assessing the relevant outputs, service levels and outcomes of each program activity." While not abandoning outputs (units of products, including services, of an activity) as a measure of achievement, OMB directed agencies to focus more on outcomes (the resulting effect of the use or application of an output) as the primary indicator of the success of programs and activities.

The Department reports results using the GPRA measures defined for its programs and activities. Many of these measures apply only to the programs and activities of the Department and have little relevance to the activities of MDCP award winners. The following performance measures, however, have particular applicability to MDCP projects:

(1) Outcome Measures.

(a) Dollar value of exports resulting from outputs.

(b) Number of new-to-export firms participating in activities.

(c) Number of new-to-market firms participating in activities.

(d) Degree of customer satisfaction (value of outputs determined by perception of the customer based on their expectation of the output versus the plan, an agreed-upon specification, or other criteria).

(2) Output Measures.

(a) Number of counseling sessions.

(b) Number of clients counseled.

(c) Number of reports (publications) prepared.

(d) Number of copies of reports (publications) distributed.

(e) Number of trade events.

(f) Number of firms participating in trade events.

Applicants should be mindful of these performance measures and should use them wherever possible when estimating projected results in their proposals. Award recipients will be expected to use these measures in their quarterly reports and in their end-of-year assessments of project accomplishments. Each applicant should describe its recording and reporting system in its proposals. In order to demonstrate the success of their projects, applicants are encouraged to develop and utilize additional performance measures which would reasonably gauge the success of the project. Each recipient of an award should be prepared to record and report the results achieved from project activities.

c. Partnership: Applications should display the imagination and innovation of the private sector working in partnership with the government to obtain the maximum market development impact.

d. Project Funding Priorities: Project proposals must be compatible with U.S. trade and commercial policy. In addition, applicants are encouraged to address the Department's international trade priorities. *See IV.A.3. Priorities and Partnership.* The Department is interested in receiving proposals which include projects that:

(1) Maximize the participation of small- and medium-sized enterprises (SMEs) in international trade;

(2) E-commerce;

(a) Provide the basic instruction, assistance and applications to help SMEs to take the initial steps onto international e-commerce platforms and into international sales;

(b) Make SMEs aware of the unique advantages e-commerce presents as a low-cost low-risk tool to overcome SME reluctance to pursue marketing opportunities in and profit from foreign markets;

(3) Increase "hands-on" export education designed for SMEs through:

(a) Development of educational tools such as curricula and media, or;

(b) Company-specific assistance such as export business plan development, market research, customs counseling, competitive position assessment, trade event preparation, foreign distribution alliances, and securing financing.

(4) Provide technical assistance to developing economies to build commercial infrastructure such as regulatory practices;

(5) Develop non-traditional approaches to creating demand for the products/services developed from new U.S. technologies;

(6) Improve communication with and outreach to old and new private-sector international trade constituencies and initiate or enhance public/private export partnerships;

(7) Identify and/or work to eliminate tariff and non-tariff barriers to market access for U.S. goods or services, including working with organizations in the foreign marketplace responsible for setting standards and for product testing;

4. Credentials: Eligible entities desiring to participate in this program must demonstrate the ability to provide an established, competent, experienced staff and other resources to assure adequate development, supervision, and execution of the proposed project activities. Applicants must describe in detail all assistance expected from the Department or other Federal agencies to implement project activities successfully. Each applicant must provide a description of the membership/qualifications, structure and composition of the eligible entity, the degree to which the entity represents the industry or industries in question, and the role, if any, foreign membership plays in the affairs of the eligible entity. Applicants should summarize both the recent history of their industry or industries' competitiveness in the international marketplace and the export promotion history of the eligible entity and its partners that intend to work on the project. This should include a resume for the project director and principal staff and a projection of the amount of time each professional will devote to the project.

5. Finance and Budget: In addition to Form 424A "Budget Information—Non-Construction Programs", applicants will provide a detailed budget for the project award period, supporting worksheets and explanations, a discussion of financial systems and projections, a history of financial programs, financial and organizational documents, and any additional evidence of financial responsibility.

6. Forms: The Application Kit includes the following forms which must be completed and included in an application: Forms SF–424 "Application for Federal Assistance," SF–424A "Budget Information—Non-Construction Programs," SF–424B "Assurances—Non-Construction Programs," CD–346 "Applicant for Funding Assistance"; and Forms SF–LLL, CD–346, CD–511, and CD–512, which are described below under *V.A. Other Requirements.*

B. Submission of Applications

1. Number of Pages: The main body of the application is limited to 90 pages. There is no limit on the number of pages for appendices. The main body of the application should include the substance of applicant's proposal as identified in *III.A.1.* through *III.A.5.* above. Forms and documentation requested in the Application Kit, as well as any other information applicants wish to submit, must be provided as appendices.

Each page of the main body should be numbered. Tabbing and/or numbering of pages included as appendices facilitates application review.

The Department encourages applicants to submit applications that are complete and responsive. However, applicants should be discriminating in what they choose to include in the application.

2. Number of Copies: Each applicant must submit a signed original application. In addition, the Department encourages applicants to submit six (6) copies. Several copies will be needed in order for the Department to complete its evaluation. (As noted below under *IV.B. Evaluation and Selection Procedures,* four Selection Panel members and several Department staff will review each application.) However, if submitting six (6) copies creates a financial hardship, submit the minimum of two copies plus the original.

If an applicant submits an original and two copies or any other number of copies greater than two and less than six (6), the Department will make

additional copies to allow all reviewers to read each application. However, the Department cannot guarantee that the copies will include features that are not easily reproduced on standard photocopy machines. For example, tabs might not be inserted, color pages might be reproduced in black and white, fold-out pages might not fold out, unusually sized (not 8.5" × 11") pages might be broken up, and the copies might be bound with staples or clips instead of the binding used for applicant-submitted material.

C. Retention of Applications

1. Award Winners: For each award winner, the Department of Commerce will retain the application for seven years. Copies of winning applications are distributed to project team members for their use in managing winning projects.

2. Unsuccessful and Ineligible Applicants: For each eligible application which does not win an award, and for each application determined to be ineligible, the Department of Commerce will retain the signed original of the application for seven years and will destroy the copies.

3. Late Applications Returned to Sender: Late applications are not accepted or retained. They are returned to the sender. However, the Department will retain a copy of the cover page or transmittal letter for seven years.

IV. Evaluation and Selection

A. Evaluation Criteria

The Department is interested in projects that demonstrate the possibility of both significant results during the project period and lasting benefits extending beyond the project period. To that end, consideration for financial assistance under the MDCP will be based upon the following evaluation criteria:

1. Export Success Potential: Potential of the project to generate export success stories and/or export initiatives in both the short-term and medium-term. For purposes of this program, an export initiative is defined as a significant expenditure of resources (time, people, or money) by the Chief Executive Officer (CEO) of a company in the active pursuit of export sales. Examples of export initiatives include, but are not limited to, the following:

a. Participating in an overseas trade promotion event;

b. Hiring an export manager;

c. Establishing an export department;

d. Exploring a new market through an overseas trip by the CEO;

e. Developing an export marketing/business plan;

f. Translating product literature into a foreign language;

g. Making product modifications to comply with foreign market requirements;

h. Commissioning an in-depth market research study;

i. Developing a website to connect international customers to U.S. telecommunications and Internet companies through a "virtual trade show."

j. Advertising in a foreign business publication;

k. Undertaking an overseas direct-mail campaign to create product awareness;

l. Signing an agent/distributor;

m. Getting introduced to a potential foreign buyer;

n. Signing an export contract/filling an export order; or

o. Co-locating with a US&FCS Commercial Center.

Applicants should provide detailed explanations of projected results of the project.

2. Performance Measures: Projected increase (multiplier effect) in the number of U.S. companies operating in the market(s) selected, particularly SMEs, and the degree to which the project will help the industry in question increase or maintain market share in the market(s) selected. Applicants should provide quantifiable estimates of projected increases.

3. *Priorities and Partnership:* The degree to which the proposal furthers or is compatible with the Department's priorities stated above and the degree to which the proposal initiates or enhances partnership with the Department.

4. Creativity and Capacity: Creativity, innovation, and realism displayed by the work plan as well as the institutional capacity of the applicant to carry out the work plan. Creativity and innovation can be displayed in a variety of ways. Applicants might propose projects that include ideas not previously tried to promote a particular industry's goods or services in a particular market. Creativity can be demonstrated by the manner in which techniques are customized to meet the specific needs of certain client groups. A proposal can be creative in the way it brings together the strengths and resources of partners participating in project activities. Further, projects that focus on market development are inherently more creative than projects that focus only on export promotion. Market development is the process of identifying or creating emerging markets or market niches and modifying products to penetrate those markets. Market development is demand driven and designed to create long-term export capacity. In addition to promoting current sales of existing products, market development promotes future sales and future products.

Current or past MDCP applicants should be aware that to be in a position to earn the maximum number of points under this criterion, they should propose projects that are entirely new. A current or past MDCP recipient may propose an expansion of an existing or past MDCP project. In order to earn a high score on this criterion, the expansion should be the majority of the total project for the proposal. In addition, current or past MDCP applicants that apply proposing an expansion of an existing or past project must clearly demonstrate how the expansion, standing alone, is creative and innovative in accordance with the above definition.

5. Budget and Sustainability: Reasonableness of the itemized budget for project activities, the amount of the cash match that is readily available at the beginning of the project, and the probability that the project can be continued on a self-sustained basis after the completion of the award.

Current or past MDCP recipients who propose an expansion of an existing project must show how the expansion will achieve self-sustainability independent of current or past projects funded under the MDCP.

Each of the above criteria is worth a maximum of 20 points. The five criteria together constitute the application score. At 20 points per criterion, the total possible score is 100.

B. Evaluation and Selection Procedures

Office of Planning Coordination and Resource Management (OPCRM) staff will review each application for completeness as soon as practicable after the application is received. The applicant is responsible for submitting a complete application in a timely manner.

Prior to selection, each complete application receives a thorough evaluation. The steps of the evaluation and selection process are set forth below.

1. Eligibility Determination: OPCRM staff, in consultation with the Department's Office of General Counsel, reviews all applications to determine the eligibility of each applicant. If an applicant's eligibility is in question, the applicant is contacted to supply additional information or clarification.

2. Staff Review: When the eligibility review has been completed, the OPCRM Director invites comments on eligible applications from relevant offices within the Department (*e.g.*, Trade Development (TD), Market Access & Compliance (MAC), and US&FCS). This review allows the Department experts in the industry sector or geographical region to assess the claims made in the applications. The Department staff comments provide insights into both the potential benefits and the potential difficulties associated with the applications.

3. OPCRM Review: At least three representatives of OPCRM review and comment on all applications using the evaluation criteria identified above. The MDCP Manager prepares a summary of OPCRM staff comments and organizes all comments by the Department staff and applications for the Selection Panel. The OPCRM and Department staff comments afford the Selection Panel the insights and breadth of experience of Department professionals. However, they have no official weight, and the Selection Panel is free to consider or disregard them as it sees fit.

4. Selection Panel Composition: The MDCP Manager forwards all of the eligible applications, along with all related materials, to the Selection Panel of senior managers at the Department.

This panel is chaired by the OPCRM Director and typically includes three other members, one each from the Department's TD, MAC, and US&FCS bureaus. Panel members are Office Directors or higher.

5. Selection Panel Scoring: Each Selection Panel member reviews each eligible application and assigns a score for each of the five criteria stated above. The scores of each Selection Panel Member for each application reviewed are maintained in the files for seven years. The individual criteria scores are averaged to determine the total score for each application.

6. Ranked Recommendation: Based on the scores assigned by Selection Panel members and deliberations by the Selection Panel, the Selection Panel forwards the applications with the ten highest total scores to the Assistant Secretary for Trade Development and recommends which of the ten proposals should receive funding. The Selection Panel's recommendation will not deviate from the rank order. This means, for example, that the Selection Panel cannot recommend funding for the application ranked seventh without recommending funding for applicants ranked first through sixth. The Selection Panel recommendation includes the Panel's written assessment of the strengths and weaknesses of the top ten applications.

7. Selection of Applications for Funding: From the top ten applications forwarded by the Selection Panel, the Assistant Secretary for Trade Development selects those applications which will receive funding. In addition to the evaluation criteria stated above, the Assistant Secretary for Trade Development may consider the following in making decisions:

a. The scores of individual reviewers and the Selection Panel's written assessments;

b. The degree to which applications satisfy the Department priorities as established under *III.A.3.d. Project Funding Priorities* above;

c. The geographic distribution of the proposed awards;

d. The diversity of industry sectors and overseas markets covered by the proposed awards;

e. The diversity of project activities represented by the proposed awards;

f. Avoidance of redundancy and conflicts with the initiatives of other Federal agencies; and

g. The availability of funds.

C. Announcement of Award Decisions

Award winners will be notified by letter. Once award winners formally accept their awards, the Department will issue a press release and list the award winners at the MDCP Internet address.

Within ten days of the announcement of the issuance of the press release, unsuccessful applicants will be notified in writing and invited to receive a debriefing from MDCP officers.

V. Other Requirements and Classification

A. Other Requirements

1. Federal Policies and Procedures: Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

2. Past Performance: Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

3. Pre-Award Activities: Except at noted above in *I.B.9. Approved Pre-Award-Period Expenditure*, if applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

4. No Obligation for Future Funding: If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

5. Delinquent Federal Debts: No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to the Department of Commerce are made.

6. Name Check Review: All applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. The name check review process is based on information applicants provide in Form CD–346 "Applicant for Funding Assistance".

7. Primary Applicant Certifications: All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug Free Workplace Requirements and Lobbying". Explanations are provided below.

a. Non-Procurement Debarment and Suspension: Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

b. Drug-Free Workplace: Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

c. Anti-Lobbying: Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitations on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

d. Anti-Lobbying Disclosures: Any applicant that has paid or will pay for

lobbying using any funds must submit Form SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

8. Lower Tier Certifications: Recipients shall require applicants/bidders for sub-grants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure Form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL submitted by any tier recipient or sub-recipients should be submitted to the Department of Commerce in accordance with the instructions contained in the award document.

9. False Statements: A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

10. Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

11. Buy American-Made Equipment and Products: Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

12. Fly America Act: All award recipients must comply with the provisions of the Fly America Act, 49 U.S.C. 40118.

B. Classification

This notice has been determined to be not significant for purposes of Executive Order 12866. The standard forms referenced in this notice are cleared under OMB Control No. 0348–0043, 0348–0044, 0348–0040, and 0348–0046 pursuant to the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Dated: March 14, 2000.

Robert W. Pearson,

Director, Office of Planning, Coordination and Resource Management, Trade Development, International Trade Administration, Department of Commerce.

[FR Doc. 00–6688 Filed 3–16–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology, Commerce.

SUMMARY: The invention listed below is owned in whole or in part by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's ownership interest in the invention is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR Part 404 to achieve expeditious commercialization of results of Federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on this invention may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Building 820, Room 213, Gaithersburg, MD 20899; Fax 301–869–2751. Any request for information should include the NIST Docket No. and Title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the inventions for purposes of commercialization. The invention available for licensing is:

NIST Docket Number: 98–916US.

Title: Designed Protein Pores As Components For Biosensors.

Abstract: The invention is jointly owned by the U.S. Government, as represented by the Secretary of Commerce, Worcester Institute and the University of Chicago. A mutant staphylococcal alpha hemolysin polypeptide containing a heterologous analyte-binding amino acid which assembles into an analyte-responsive heptameric pore assembly in the presence of a wild type staphylococcal alpha hemolysin polypeptide, digital biosensors, and methods of detecting, identifying and quantifying analytes are described.

Dated: March 8, 2000.

Karen H. Brown,

Deputy Director.

[FR Doc. 00–6718 Filed 3–16–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Announcement of a Partially Closed Meeting of the Manufacturing Extension Partnership National Advisory Board

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology's (NIST's) Manufacturing Extension Partnership National Advisory Board (MEPNAB) will meet to hold a meeting on Wednesday, May 10, 2000. The MEPNAB is composed of nine members appointed by the Director of NIST who were selected for their expertise in the area of industrial extension and their work on behalf of smaller manufacturers. The Board was set up, under the direction of the Director of NIST, to fill a need for outside input on MEP. MEP is a unique program consisting of centers in all 50 states and Puerto Rico. The centers have been created by state, federal, and local partnerships.

The Board works closely with MEP to provide input and advice on MEP's programs, plans, and policies. The purpose of this meeting is to delve into areas of operation determined by the Board. The agenda includes a look at center operations from the national perspective of what best practices can be shared across the system and what is the best mechanism for doing so. The Board also plans to address how MEP measures impact and how that affects the operations at the center level. The portion of the meeting, which involves personnel and proprietary budget information, will be closed to the general public. All other portions of the meeting will be open to the public.

DATES AND ADDRESSES: The meeting will convene on May 10, 2000, at 8:30 am and will adjourn at 3:30 pm and will be held at the Omni Rosen, Orlando, Florida. The closed portion of the meeting is scheduled from 8:30 am to 10:00 am

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration with the concurrence of the General Counsel formally determined on December 21, 1998, pursuant to Section 10(d) of the Federal Advisory Committee Act, that these portions of the meeting may be properly closed because they are concerned with matters that are within the purview of 5 U.S.C. 522(c)(4), (6) and (9)(b). A copy of the determination is available for public inspection in the Central Reference and Records Inspection Facility, Room 6219, Main Commerce.

MEP's services to smaller manufacturers address the needs of the national market as well as the unique needs of each company. Since MEP is committed to providing this type of individualized service through its centers, the program requires the perspective of locally based experts to be incorporated into its national plans. The MEPNAB was established at the direction of the NIST Director to maintain MEP's focus on local and market-based needs. The MEPNAB was approved on October 24, 1996, in accordance with the Federal Advisory Committee Act, 5 U.S.C. app. 2., to provide advice on MEP programs, plans, and policies; to assess the soundness of MEP plans and strategies; to assess the current performance against MEP program plans, and to function in an advisory capacity. The Board will meet three times a year and reports to the Director of NIST. This will be the second meeting of the MEPNAB in 2000.

FOR FURTHER INFORMATION CONTACT: Linda Acierto, Assistant to the Director for Policy, Manufacturing Extension Partnership, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone number (301) 975–5033.

Dated: March 10, 2000.

Karen H. Brown,

Deputy Director, NIST.

[FR Doc. 00–6719 Filed 3–16–00; 8:45 am]

BILLING CODE 3510–13–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

ENVIRONMENTAL PROTECTION AGENCY

Coastal Nonpoint Pollution Control Program: Approval Decision on Rhode Island Coastal Nonpoint Pollution Control Program

AGENCY: National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and The U.S. Environmental Protection Agency.

ACTION: Notice of intent to approve the Rhode Island Coastal Nonpoint Program.

SUMMARY: Notice is hereby given of the intent to fully approve the Rhode Island Coastal Nonpoint Pollution Control Program (coastal nonpoint program) and of the availability of the draft Approval Decisions on conditions for the Rhode Island coastal nonpoint program. Section 6217 of the Coastal Zone Act Reauthorization Amendments (CZARA), 16 U.S.C. section 1455b, requires states and territories with coastal zone management programs that have received approval under section 306 of the Coastal Zone Management Act to develop and implement coastal nonpoint programs. Coastal states and territories were required to submit their coastal nonpoint programs to the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Environmental Protection Agency (EPA) for approval in July 1995. NOAA and EPA conditionally approved the Rhode Island coastal nonpoint program on September 27, 1997. NOAA and EPA have drafted approval decisions describing how Rhode Island has satisfied the conditions placed on its program and therefore has a fully approved coastal nonpoint program.

NOAA and EPA are making the draft decisions for the Rhode Island coastal nonpoint program available for a 30-day public comment period. If no comments are received, the Rhode Island program will be approved. If comments are received, NOAA and EPA will consider whether such comments are significant enough to affect the decision to fully approve the program.

Copies of the draft Approval Decisions can be found on the NOAA website at http://www.nos.noaa.gov/ocrm/czm/ or may be obtained upon request from: Joseph P. Flanagan, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, 20910, tel. 301–713–3121, extension 201, e-mail joseph.flanagan@noaa.gov.

DATES: Individuals or organizations wishing to submit comments on the draft Approval Decisions should do so by April 17, 2000.

ADDRESSES: Comments should be made to Joseph A. Uravitch, Chief, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West Highway, Silver Spring, Maryland, tel. 301–713–3155 extension 195, e-mail joseph.uravitch@noaa.gov or to Margherita Pryor, EPA Region, 1, 1 Congress Street, Suite 1100, Boston, MA, 02114–2023, tel. 617–918–1597, e-mail pryor.margherita@epamail.epa.gov.

FOR FURTHER INFORMATION CONTACT: Helen Farr, Coastal Programs Division (N/ORM3), Office of Ocean and Coastal Resource Management, NOS, NOAA, 1305 East-West, Silver Spring, Maryland 20910, tel. 301–713–3105, extension 150, e-mail helen.farr@noaa.gov.

(Federal Domestic Assistance Catalog 11.419 Coastal Zone Management Program Administration)

Dated: March 14, 2000.

Captain Ted I. Lillestolen,

Deputy Assistant, Administrator for Ocean Services and Coastal Zone Monagement, National Oceanic and Atmospheric Administration.

J. Charles Fox,

Assistant Administrator, Office of Water, Environmental Protection Agency.

[FR Doc. 00–6692 Filed 3–16–00; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031000C]

Western Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's (Council) Pelagics Advisory Panel (PAP) members will hold a meeting.

DATES: The meeting will be held April 5–6, 2000, from 8:30 a.m. to 5:00 p.m., each day.

ADDRESSES: The meeting will be held at the Ala Moana Hotel, Hibiscus Number 1 Ball Room, 410 Atkinson Drive, Honolulu, HI 96814.

Council address: Western Pacific Fishery Management Council, 1164 Bishop St., Suite 1405, Honolulu, HI 96813.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director; telephone: 808–522–8220.

SUPPLEMENTARY INFORMATION: The PAP meeting will discuss and may make recommendations to the Council on the following agenda items:

1. Review of recommendations arising from 1999 PAP;
2. Hawaii and American Samoa longline fishery reports;
3. Hawaii longline fishery issues;
4. Report of the Recreational Fisheries Data Task Force;
5. Recreational fishery issues;
6. Area closure for large pelagic fishing vessels around the islands of American Samoa;
7. Shark management in Hawaii;
8. Management of longline-protected species interactions;
9. Progress of the Multi-lateral High Level Conference process to implement a management convention for tunas in the Central-West Pacific;
10. Blue marlin research;
11. Council process; and
12. Other business as required.

Although non-emergency issues not contained in this agenda may come before this group for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Kitty M. Simonds, 808–522–8220 (voice) or 808–522–8226 (fax), at least 5 days prior to meeting date.

Dated: March 13, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–6716 Filed 3–16–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of an Import Limit for Certain Cotton Textile Products Produced or Manufactured in Pakistan

March 14, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice published in the Federal Register on December 31, 1998 (63 FR 72288) announced that the Government of the United States had requested consultations with the Government of Pakistan on December 24, 1998 with respect to combed cotton yarn in Category 301, produced or manufactured in Pakistan and that, if no solution was agreed upon in consultations with the Government of Pakistan, the Government of the United States reserved its right to establish a twelve-month limit of not less than 5,262,665 kilograms for the entry for consumption and withdrawal from warehouse for consumption of combed cotton yarn in Category 301, produced or manufactured in Pakistan. A restraint limit was established at that level for the March 17, 1999 through March 16, 2000 period.

The Government of the United States has decided to establish a limit of not less than 5,578,425 kilograms for the entry for consumption and withdrawal from warehouse for consumption of combed cotton yarn in Category 301, produced or manufactured in Pakistan for a second twelve-month period, beginning on March 17, 2000 and extending through March 16, 2001.

The United States remains committed to finding a mutually agreed solution concerning Category 301. Should such a solution be reached in consultations with the Government of Pakistan, further notice will be published in the **Federal Register.**

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 12290, published on March 12, 1999.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 14, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended; and the Uruguay Round Agreement on Textiles and Clothing (ATC), you are directed to prohibit, effective on March 17, 2000, entry into the United States for consumption and withdrawal from warehouse for consumption of combed cotton yarn in Category 301, produced or manufactured in Pakistan and exported during the twelve-month period beginning on March 17, 2000 and extending through March 16, 2001, in excess of 5,578,425 kilograms.

The limit set forth above is subject to adjustment pursuant to the provisions of the ATC.

Products in the above category exported during the March 17, 1999 through March 16, 2000 period shall be charged to the limit for that year (see directive dated March 5, 1999) to the extent of any unfilled balances. In the event the limit established for that period has been exhausted by previous entries, such products shall be charged to the limit set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–6762 Filed 3–16–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Department of the Navy

Closed Meeting of the Board of Visitors to the U.S. Naval Academy

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The U.S. Naval Academy Board of Visitors will meet to make such inquiry as the Board shall deem necessary into the state of morale and discipline, the curriculum, instruction, physical equipment, fiscal affairs, and academic methods of the Naval Academy. During this meeting inquiries will relate to the internal personnel rules and practices of the Academy, may involve on-going criminal investigations, and include discussions of personal information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. The Executive Session of this meeting will be closed to the public.

DATES: The meeting will be held on Monday, March 20, 2000, from 8:30 am to 11:45 am. The closed Executive Session will be from 10:50 am to 11:45 am.

ADDRESSES: The meeting will be held in the Bo Copped Room of Alumni Hall at the U.S. Naval Academy, Annapolis, MD.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Thomas E. Osborn, Executive Secretary to the Board of Visitors, Office of the Superintendent, U.S. Naval Academy, Annapolis, MD 21402–5000, telephone (410) 293–1503.

SUPPLEMENTARY INFORMATION: This notice of meeting is provided per the Federal Advisory Committee Act (5 U.S.C. app. 2). The Executive Session of the meeting will consist of discussions of information, which pertain to the conduct of various midshipmen at the Naval Academy and internal Board of Visitors matters. Discussion of such information cannot be adequately segregated from other topics, which precludes opening the executive session of this meeting to the public. In accordance with 5 U.S.C. app. 2, section 10(d), the Secretary of the Navy has determined in writing that the special committee meeting shall be partially closed to the public because they will be concerned with matters as outlined in section 5529b)(2), (5), (6), and (7) of title 5, U.S.C.

Dated: March 2, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–6582 Filed 3–16–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from April 1, 1999 through June 30, 1999.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Rhonda Weiss. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5465 or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 am and 8:00 pm, Eastern time, Monday through Friday, except Federal holidays.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued between April 1, 1999 and June 30, 1999.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A: General Provisions

Section 602—Definitions

Topic Addressed: Emotional Disturbance

- Letter dated June 11, 1999 to individual, (personally identifiable information redacted), regarding use of the term "emotional disturbance" in lieu of "serious emotional disturbance" and the right of each child with a disability to receive special education and related services that address that child's unique needs.

Section 607—Requirements for Prescribing Regulations

Topic Addressed: Applicable Regulations

- OSEP memorandum 99–11 dated April 27, 1999 to State Directors of Special Education, regarding final regulations published on March 12, 1999 and dates by which compliance with these regulations became mandatory for States receiving funds under Part B of IDEA.

Part B: Assistance for Education of All Children With Disabilities

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

- Letter dated April 2, 1999 to Paul T. Halverson, Wisconsin Department of Public Instruction, regarding the absence of any requirements in Part B of IDEA that a free appropriate public education be made available to children with disabilities through age 22, and clarifying a State's discretionary authority to enact a law requiring that a free appropriate public education be made available to children with disabilities through the end of the school year during which they turn 21 years of age.
- Letter dated April 9, 1999 to Attorney Sonja D. Kerr, regarding the obligation of public agencies to finance the costs of residential placements in situations where the public agency responsible for the child's education determines that the placement is necessary for the provision of special education and related services to the child.
- Letters dated April 29, 1999 to U.S. Congressman Dennis J. Kucinich and to U.S. Congresswoman Stephanie Tubbs Jones, regarding medical interventions for children with attention deficit hyperactivity disorder, and explaining that it is the responsibility of medical, not educational professionals to prescribe medication to a child with a disability, and clarifying that a school

district's failure to deliver required services to an eligible child with a disability, due to a parent's refusal to give his or her child medication, may be a violation of the free appropriate public education requirements of Part B of IDEA and section 504 of the Rehabilitation Act of 1973 (section 504).

• Letter dated May 14, 1999 to Iowa Governor Thomas J. Vilsack, regarding the U.S. Supreme Court's decision in *Cedar Rapids Community School District* v. *Garret F.*, and provisions in the IDEA that assist States and school districts in paying for the cost of special education and related services, including the types of services at issue in the *Garret F.* decision.

Topic Addressed: Least Restrictive Environment

• Letter dated June 4, 1999 to New York State Education Department Commissioner Richard P. Mills, informing New York that if its funding formula that distributes States funds on the basis of the type of setting in which a child is served is not revised in a manner that ensures compliance with the least restrictive environment requirements of the IDEA Amendments of 1997, New York will become a high risk grantee and its Part B grant award for Federal Fiscal Year 1999 will include special conditions requiring the State to revise this funding formula.

Topic Addressed: State Educational Agency General Supervisory Responsibility

• Letter dated April 30, 1999 to U.S. Congressman Roy Blunt, regarding concerns about IDEA paperwork requirements and student discipline provisions and identifying ways in which the IDEA Amendments of 1997 actually reduce unnecessary paperwork and provide for expanded authority to address disciplining students with disabilities.

Topic Addressed: Information Required for Receipt of Grant Awards

• OSEP memorandum 99–13 dated June 28, 1999, to Chief State School Officers regarding Procedures for States to Follow in order to Receive a Grant Award under sections 611 and 619 of Part B of IDEA for Federal Fiscal Year 2000, which includes, among other matters, requirements for: (1) Submission of documentation of the State's eligibility by April 14, 2000, (2) a description of how amounts retained for State level activities will be used, and (3) a description of the steps the State proposes to take to ensure equitable access to, and participation in, activities conducted under Part B of IDEA by overcoming barriers to equitable participation, in accordance with section 427 of the General Education Provisions Act.

Section 613—Local Educational Agency Eligibility

Topic Addressed: Distribution of Subgrants to Eligible Charter Schools

• OSEP memorandum 99–12 dated June 25, 1999 to State Directors of Special Education, regarding a Notice of Proposed Rulemaking implementing the Charter School Expansion Act of 1998, clarifying that this Act is applicable to formula grant programs administrated by the Department, including programs funded under sections 611 and 619 of Part B of IDEA, and setting out permissible options for States and local educational agencies to consider using in implementing the Act's requirements that newly-created charter schools and charter schools that significantly expand their enrollment receive the Part B funds for which they are eligible.

Section 614—Evaluation, Eligibility Determinations, Individualized Education Programs, and Educational Placements

Topic Addressed: Evaluations

• Letter dated June 29, 1999 to Madison Elementary School Faculty Senate President Rosemary Anderson, regarding a school district's obligations to students with disabilities who initially register to attend school, and (1) clarifying that it would be a violation of Part B and section 504 for a school district to have a blanket policy that requires students with disabilities to delay attendance at a school after registration pending the evaluation, and (2) explaining that a child can be temporarily placed and provided accommodations agreed to by the parents and the school to ensure the child's safety.

Section 615—Procedural Safeguards

Topic Addressed: Attorney's Fees

• Letter dated June 24, 1999 to Attorney Robert Hornstein, and letter dated June 24, 1999 to Florida Bureau for Education of Exceptional Students Chief Shan Goff, regarding a State court's authority to grant attorneys' fees to the parents of a child with a disability who is the prevailing party in any action or proceeding brought under section 615 of IDEA.

Topic Addressed: Mediation

• Letter dated May 12, 1999 to Vice President of Florida Statewide Advocacy Network on Disability Nikole Whitehead, regarding the absence of a requirement under Part B of IDEA that a child must remain in his or her current educational placement based solely on a request for a mediation that occurs prior to a parent's request for a due process hearing.

Topic Addressed: Student Discipline

• Letter dated April 21, 1999 to individual, (personally identifiable information redacted), regarding options available to school authorities in disciplining students with disabilities.

Section 619—Preschool Grants

Topic Addressed: Procedures for Allocating Subgrants to Eligible Entities

• Letter dated June 28, 1999 to New York State Education Department Deputy Commissioner Lawrence Gloeckler, regarding procedures for State educational agencies to use in allocating subgrants of funds awarded under section 619 of IDEA to eligible entities, procedures for calculating base payments, and procedures for calculating population and poverty payments.

Part C: Infants and Toddlers With Disabilities

Sections 631–641

Topic Addressed: Natural Environments

• Letter dated May 26, 1999 to Missouri Department of Elementary and Secondary Education Assistant Commissioner John B. Heskett, regarding States' obligations to ensure that early intervention services are provided to infants and toddlers with disabilities in natural environments, including the home or community settings in which typically developing children participate, and that individualized determinations must be made by the individualized family service plan team (which includes the parent or parents) as to whether the setting in which the services are being offered would be the natural environment for the particular child.

• Letter dated June 11, 1999 to U.S. Congressman Martin Meehan, regarding serving infants and toddlers with disabilities in natural environments appropriate for the individual child and his or her family.

Topic Addressed: Provision of a Free Appropriate Public Education to Children With Disabilities Below Age 3

• Letter dated April 30, 1999 to Iowa Department of Education Part C Technical Assistant Julie Curry, confirming that when a child below age three receives a free appropriate public education, states must comply with the requirements of: (1) both Parts B and C of IDEA when Part B funds are used, and (2) with Part C even if no IDEA Part B or C funds are used for that child as long as the State receives any Part C funds.

Part D: National Activities to Improve Education of children with Disabilities

Subpart 2—Coordinated Research, Personnel Preparation, Technical Assistance, Support, and Dissemination of Information

Section 682—Parent Training and Information Centers

Topic Addressed: Definition of Parent Organization

• Letter dated April 15, 1999 to National Association of Protection and Advocacy Systems Executive Director Curtis L. Decker, regarding the statutory definition of "parent organization" and explaining that a protection and advocacy entity that otherwise meets section 682 statutory criteria would be eligible to compete for funding as a parent training and information center (PTI).

Other Letters Relevant to the Administration of IDEA Programs

Topic Addressed: Freedom of Information Act

• Letter dated May 20, 1999 to individual, (personally identifiable information redacted), regarding an appeal of a partial denial of a request for agency records under the Freedom of Information Act (FOIA) and stating that FOIA exemption (b)(6), which protects from public disclosure information that would constitute a clear invasion of personal privacy, authorizes the Department not to release to the public personal information, such as home addresses and telephone numbers, of attendees contained in a register maintained by the Office of Special Education Programs (OSEP) of public meetings conducted in connection with OSEP's State educational agency monitoring.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register,** in text or Adobe Portable Document format (PDF) on the Internet at either of the following sites:
http://ocfo.ed.gov/fedreg.htm
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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: March 14, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–6648 Filed 3–16–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Office of Special Education and Rehabilitative Services; List of Correspondence

AGENCY: Department of Education.

ACTION: List of correspondence from July 1, 1999 through September 30, 1999.

SUMMARY: The Secretary is publishing the following list pursuant to section 607(d) of the Individuals with Disabilities Education Act (IDEA). Under section 607(d) of IDEA, the Secretary is required, on a quarterly basis, to publish in the **Federal Register** a list of correspondence from the Department of Education received by individuals during the previous quarter that describes the interpretations of the Department of Education of IDEA or the regulations that implement IDEA.

FOR FURTHER INFORMATION CONTACT: JoLeta Reynolds or Rhonda Weiss. Telephone: (202) 205–5507. Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5465 or the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8:00 am and 8:00 pm, Eastern time, Monday through Friday, except Federal holidays.

Individuals with disabilities may obtain a copy of this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to Katie Mincey, Director of the Alternate Formats Center. Telephone: (202) 205–8113.

SUPPLEMENTARY INFORMATION: The following list identifies correspondence from the Department issued between July 1, 1999 and September 30, 1999.

Included on the list are those letters that contain interpretations of the requirements of IDEA and its implementing regulations, as well as letters and other documents that the Department believes will assist the public in understanding the requirements of the law and its regulations. The date and topic addressed by a letter are identified, and summary information is also provided, as appropriate. To protect the privacy interests of the individual or individuals involved, personally identifiable information has been deleted, as appropriate.

Part A: General Provisions

Section 602—Definitions

Topic Addressed: Child With a Disability

• Letter dated September 14, 1999 to School Psychologist Anthony W. Coe, regarding criteria for establishing eligibility of children with pervasive developmental delay for services under Part B of IDEA, including any applicable State diagnostic criteria, and clarifying that the categories or conditions identified in the Diagnostic and Statistical Manual (DSM)–IV, are not synonymous with criteria for determining whether a child is a "child with a disability" under Part B of IDEA.

Topic Addressed: Related Services

• Letter dated August 2, 1999 to individual, (personally identifiable information redacted), regarding the U.S. Supreme Court's 1999 decision in *Cedar Rapids Community School District* v.*Garret F.*, which clarifies that required nursing services provided during school hours can be an eligible "school health service," the Department's views regarding the impact of the decision, and provisions in IDEA that are designed to assist States and school districts in financing the costs of required school health services.

• Letter dated August 11, 1999 to U.S. Congressman David Camp, regarding the impact on school districts of the U.S. Supreme Court's 1999 decision in *Cedar Rapids Community School District* v. *Garret F.*, and an explanation of the impact of fully funding IDEA at 40 percent of the average per pupil expenditures in public elementary and secondary schools in the United States.

• Letter dated September 21, 1999 to individual, (personally identifiable information redacted), regarding the impact on school districts of the U.S. Supreme Court's 1999 decision in *Cedar Rapids Community School District* v. *Garrett F.* and clarifying that the number of disabled students requiring the one-on-one nursing services required by the Garrett F. decision is limited.

Part B: Assistance for Education of All Children with Disabilities

Section 611—Authorization; Allotment; Use of Funds; Authorization of Appropriations

Topic Addressed: Distribution of Part B Funds

• Letter dated September 20, 1999 to Walnut Creek School District Superintendent Michael De Sa, and letter dated September 20, 1999 to individual, (personally identifiable information redacted), regarding provisions in the IDEA Amendments of 1997 that revise the formula for distribution of funds awarded under Part B of IDEA and describing increases in Federal funding levels for special education programs in the past several years, despite funding reductions in other Federal programs.

Topic Addressed: Use of Part B Funds

• Letter dated August 5, 1999 to Louisiana Department of Education Director Virginia C. Beridon regarding criteria for determining whether use of Part B funds for international travel is an allowable cost.

Section 612—State Eligibility

Topic Addressed: Free Appropriate Public Education

• Letter dated August 6, 1999 to Attorney Brian J. Bocketti, regarding State flexibility under section 504 of the Rehabilitation Act of 1973 (section 504) in determining nonresident tuition rates for students with disabilities in public school choice programs as long as appropriate educational services are made available and funded.

• Letter dated September 14, 1999 to Colorado Department of Education Federal Complaints Officer Charles M. Masner, regarding the responsibility of the State educational agency or public agency to appoint a hearing officer or to resolve a State complaint if a parent alleges either that the award of a regular high school diploma to their child was appropriate or that the award of a regular high school diploma to their child was not appropriate.

• Letter dated September 29, 1999 to individual, (personally identifiable information redacted), regarding a State's right to establish proficiency standards for high school graduation and clarifying that such State standards may not be established or implemented in a nondiscriminatory manner in violation of section 504 and Title II of the Americans With Disabilities Act, and the responsibility of the individualized education program (IEP) team under Part B of IDEA to determine if eligible students with disabilities require modifications to participate in State assessments.

Topic Addressed: Least Restrictive Environment

• Letter dated September 21, 1999 to individual, (personally identifiable information redacted), regarding the need to place certain disabled students in special schools or residential schools, and clarifying that the Part B regulatory requirement for a continuum of alternative placements does not compel a State to create an appropriate residential placement within a State if an appropriate residential placement for the child is otherwise available.

Topic Addressed: State Educational Agency General Supervisory Responsibility

• Letter dated August 5, 1999 to individual, (personally identifiable information redacted), and letter dated August 5, 1999 to Florida Department of Education Bureau of Instructional Support and Community Services Chief Shan Goff, regarding a State's obligation to resolve a complaint against a school district where a child's parents no longer reside, including: (1) Requiring appropriate corrective action by that district; and (2) using the State complaint procedures as a means of addressing both systemic and child-specific violations of Part B of IDEA.

• Letter dated August 19, 1999 to California Department of Education Superintendent of Public Instruction Delaine Eastin and Youth and Adult Correctional Agency Secretary Robert Presley, informing California of its receipt of IDEA sections 611 and 619 Part B funds for Federal Fiscal Year 1999 and its status as a high risk grantee, as well as the special conditions imposed on its receipt of these grant awards.

Topic Addressed: Information Required for State Program Grants

• Letter dated August 12, 1999 to Native American Protection & Advocacy Project, Inc. Attorneys Sarah J. Somers and Therese E. Yanan regarding the obligations of all States, including the Bureau of Indian Affairs (BIA), to submit final policies and procedures that comply with the requirements of the IDEA Amendments of 1997 as a condition for receipt of their Federal Fiscal Year 2000 Part B of IDEA grant awards, the difficulties experienced by children with disabilities attending schools funded by the BIA in obtaining appropriate educational services and in resolving disagreements with schools, and the obligations of the BIA to implement a due process system that meets the requirements of section 615 of IDEA and to ensure the availability of the State complaint procedures.

Section 614—Evaluations, Eligibility Determinations, Individualized Education Programs, and Educational placements

Topic Addressed: Individualized Education Programs

• Letter dated August 5, 1999 to Ohio Protection and Advocacy Association member Suzanne Faustini regarding the absence of a requirement in Part B of IDEA that recommendations of parents or other team members not adopted by the IEP team be included in the IEP, clarifying that the IEP is developed by consensus rather than by majority vote and that the public agency must give parents prior written notice explaining why the recommendations were not adopted.

• Letter dated September 14, 1999 to Attorney Gary D. Lander regarding whether a school board member may be a member of an IEP team, at the request of a parent or a public agency.

Section 615—Procedural Safeguards

Topic Addressed: Mediation

• Letter dated August 26, 1999 to individual, (personally identifiable information redacted), regarding the mediation confidentiality requirements of the IDEA Amendments of 1997 and the Department's regulations that prohibit the use of mediation discussions as evidence in a due process hearing or civil proceeding, but clarifying congressional intent that this requirement not be used to supersede any discovery rights in such proceedings or any parental access rights under the Family Educational Rights and Privacy Act of 1974.

Topic Addressed: Discipline Procedures

• Letter dated July 27, 1999 to U.S. Congressman Rush Holt regarding obligations of school districts to take prompt and appropriate steps whenever a student with or without a disability threatens school safety and explaining the options available to school authorities in disciplining a disabled student who threatens school safety.

• Letter dated September 20, 1999 to individual, (personally identifiable information redacted), regarding options available to school authorities in disciplining students with disabilities, particularly the use of proactive measures, including appropriate behavioral interventions, and information about some of the programs that the Department funds regarding the use of appropriate behavioral interventions.

Section 619—Preschool Grants

Topic Addressed: Procedures for Allocating Subgrants to Eligible Entities

• Letter dated July 9, 1999 to Arizona Superintendent of Public Instruction Lisa Graham Keegan regarding the formula for the Preschool Grants program and how State educational agencies allocate subgrants to local educational agencies, procedures for calculating base payments and population and poverty payments, and clarifying that there are no provisions in Part B of IDEA authorizing waivers of these requirements.

Part D: National Activities To Improve Education of Children With Disabilities

Subpart 1—State Program Improvement Grants for Children With Disabilities

Section 653—Applications

Topic Addressed: Information About State Program Improvement Grants

• OSEP memorandum 99–14 dated July 30, 1999, to interested parties providing guidance related to State program improvement grants.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO) toll free at 1–800–293–6498; or in the Washington, D.C., area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number 84.027, Assistance to States for Education of Children with Disabilities)

Dated: March 14, 2000.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 00–6649 Filed 3–16–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 00–13; Medical Applications Program

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving grant applications to support one specific research area within the Medical Applications Program: *Imaging Gene Expression in Health and Disease*. The specific goals include development of nuclear medicine driven technologies to image mRNA transcripts in real time in tissue culture and whole animals. Special consideration will be given to applications arising from a well integrated, multidisciplinary team effort of scientists with skills to address the needs, issues and importance of nucleic acid biochemistry, radioligand synthesis and macromolecular interactions; functional consequences of gene expression by targeting and perturbing the activity of a particular gene; and biological applications of optical and radionuclide imaging devices; contributing to the goal of imaging specific gene expression in real time in animals to humans. The access to, or availability of specialized molecular radioligands, transgenic animal models of human disease, and biological imaging devices for real time imaging in animals to humans, will be important factors for funding considerations. Methodological approaches that are applicable to any mRNA species are encouraged.

DATES: Before preparing a formal application, potential applicants are encouraged to submit a brief preapplication. All preapplications referencing Program Notice 00–13, should be received by DOE by 4:30 pm, EDT., April 14, 2000. A response encouraging or discouraging the submission of a formal application will be communicated by electronic mail by April 21, 2000.

Formal applications submitted in response to this notice must be received by 4:30 p.m., E.D.T., May 30, 2000, to be accepted for merit review and consideration for award in Fiscal Years 2000 and 2001.

ADDRESSES: Preapplications referencing Program Notice 00–13, must be sent by E-mail to sharon.betson@science.doe.gov. Preapplications will also be accepted if mailed to the following address: Ms. Sharon Betson, Office of Biological and Environmental Research, SC–73, 19901 Germantown Road, Germantown, MD 20874–1290.

Formal applications referencing Program Notice 00–13, should be forwarded to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–13. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or hand-carried by the applicant. An original and seven copies of the application must be submitted.

FOR FURTHER INFORMATION CONTACT: Dr. Prem C. Srivastava, Office of Biological and Environmental Research, Medical Sciences Division (SC–73), U.S. Department of Energy, 19901 Germantown, Germantown, MD 20874–1290, telephone: (301) 903–4071, FAX: (301) 903–0567, E-mail: prem.srivastava@science.doe.gov. The full text of Program Notice 00–13 is available via the Internet using the following web site address: http://www.sc.doe.gov/production/grants/grants.html.

SUPPLEMENTARY INFORMATION: The Medical Applications Program supports directed nuclear medicine research through radiopharmaceutical development, molecular nuclear medicine and medical imaging instrumentation program activities to study uses of radioisotopes for non-invasive diagnosis and internal molecular radiotherapy. Molecules directing or affected by homeostatic controls always interact and, thus, are targets for specific molecular substrates. The substrate molecules can be tailored to fulfil a specific need and labeled with appropriate radioisotopes to become measurable in real time in the body on their way to, and in interaction with their targets allowing the analysis of molecular function in homeostatic control in health and disease. The function of radiopharmaceuticals at various sites in the body is imaged by nuclear medical instruments, such as, gamma cameras and positron emission tomographs (PET). This type of imaging refines diagnostic differentiation at molecular/metabolic levels between health and disease, and among various diseases such as of the heart, brain and cancer, often leading to more effective therapy. If labeled with high energy-emitting radioisotopes, the substrate molecules, carrying the radiation dose

may be powerful tools for targeted molecular therapy especially of cancer.

Basic research in molecular biology has provided new insights to the molecular basis of disease and molecular targets of human diseases. The current Molecular Nuclear Medicine program encourages development of new technologies for molecular delivery of radioisotopes to the disease-target-sites with a high degree of molecular precision, recognition, and target selectivity.

In addition nuclear medicine, with the availability of miniaturized PET technology for small animal imaging, can facilitate mapping of the biochemistry of the metabolic organ function, visualizing the molecular biology of cell function, and zooming in on gene function for delineating differences in molecular biology of normal health from disease, in animals to humans.

With the advent of the genome project and the development of transgenic mice, there has been a rapid proliferation of small animal models of human diseases, and improvement in optical and radionuclide in vivo imaging instrumentation technologies. These technological advancements have offered a paradigm shift in the current level of nuclear medicine research challenges and opportunities. Nuclear medicine techniques can permit analysis of the molecular elements as markers of genetic manipulations, biological transformations and progression of the disease, and provide insights to molecular pathways of disease and gene function. The development of generic methods to image specific gene expression will result in major advances in our understanding of developmental biology, cancer induction and pathogenesis, and in the clinical detection of inherited and acquired diseases. Such studies are therefore a major focus of this program. Additional information can be obtained at the following web site http://www.sc.doe.gov/production/ober/msd__reports.html.

This Notice is to solicit applications for grants for imaging gene expression in real time, in tissue culture and in whole animals in vivo. Currently the expression of endogenous genes in animals (including humans) cannot be imaged, at least not directly. Given the astounding pace of biotechnology development, it may be highly challenging but not an unattainable goal. A well integrated concerted team effort from the overlapping disciplines of chemistry and radiopharmaceutical chemistry, cellular and molecular biology, and biological and nuclear medicine imaging will become increasingly important for success. It will be important for each application to address response in view of the following research areas, which may be crucial for progress in imaging gene expression:

(1) The radioligand molecules that will interact with the macromolecular nucleic acid structures in vivo. For example, the advances in antisense drug discovery means that antisense radiopharmaceuticals through combinatorial chemistry techniques can be designed to hybridize to target transcripts in a highly specific way. However, the antisense and combinatorial molecular chemistry technologies available for chemotherapeutic drug development, must be fully exploited and optimized for in vivo imaging.

(2) Molecular signal amplification methods are not yet available that work in vivo at the mRNA level, and technological advancement in this area is well desired.

(3) Equally important is the hurdle of drug targeting technology, which must be developed to such an extent that the various biological barriers can be safely surmounted in vivo.

(4) Finally, the fluorescent molecular imaging technologies available for more routine in vitro screening and in vivo real time imaging, that can be used as a proof of principle and a prelude to in vivo nuclear medicine imaging, should be exploited in conjunction with nuclear medicine devices.

Program Funding

It is anticipated that approximately $3 million will be available for multiple grant awards during Fiscal Years 2000 and 2001 contingent upon the availability of appropriated funds. Previous awards have ranged from $200,000 per year up to $400,000 per year (direct plus indirect costs) with terms lasting up to three years. Similar award sizes are anticipated for new grants. Applications may request project support up to three years, with out-year support contingent on the availability of funds, progress of the research and programmatic needs.

Preapplications

A brief preapplication should be submitted. The preapplication should identify, on the cover sheet, the title of the project, the institution, principal investigator name, address, telephone, fax, and E-mail address. The preapplication should consist of two to three pages identifying and describing the research objectives, methods for accomplishment, and the key members of the scientific team responsible for undertaking this effort. Preapplications will be evaluated relative to the scope and research needs for the Imaging Gene Expression Program.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project
2. Appropriateness of the Proposed Method or Approach
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation will include program policy factors such as the relevance of the proposed research to the terms of the announcement and the agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development, submission of applications, eligibility, limitations, evaluation, the selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

In addition, for this Notice, the Project Description must be 25 pages or less, exclusive of attachments, and the application must contain a Table of Contents, an abstract or project summary, letters of intent from collaborators (if any), and short curriculum vitae consistent with National Institutes of Health guidelines. On the SC grant face page, form DOE F4650.2, in block 15, also provide the PI's phone number, fax number, and E-mail address.

DOE policy requires that potential applicants adhere to 10 CFR 745 "Protection of Human Subjects", or such later revision of those guidelines as may be published in the **Federal Register**.

The Office of Science as part of its grant regulations requires at 10 CFR 605.11(b) that a recipient receiving a grant and performing research involving recombinant DNA molecules and/or organisms and viruses containing recombinant DNA molecules shall comply with NIH "Guidelines for Research Involving Recombinant DNA Molecules," which is available via the world wide web at: http://www.niehs.nih.gov/odhsb/biosafe/nih/rdna-apr98.pdf, (59 FR 34496, July 5, 1994,) or such later revision of those guidelines as may be published in the **Federal Register**.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on March 9, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–6654 Filed 3–16–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

Office of Science Financial Assistance Program Notice 00–12; Terrestrial Carbon Processes (TCP)

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Biological and Environmental Research (OBER) of the Office of Science (SC), U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for research on Terrestrial Carbon Processes (TCP).

DATES: The deadline for receipt of formal applications is 4:30 pm, EDT, April 27, 2000, to be accepted for merit review and to permit timely consideration for award in Fiscal Year 2000 and early Fiscal Year 2001.

ADDRESSES: Formal applications referencing Program Notice 00–12, should be sent to: U.S. Department of Energy, Office of Science, Grants and Contracts Division, SC–64, 19901 Germantown Road, Germantown, MD 20874–1290, ATTN: Program Notice 00–12. This address must also be used when submitting applications by U.S. Postal Service Express Mail or any other commercial overnight delivery service, or when hand-carried by the applicant.

FOR FURTHER INFORMATION CONTACT: Dr. Roger C. Dahlman, Environmental Sciences Division, SC–74, Office of Biological and Environmental Research, Office of Science, U.S. Department of Energy, 19901 Germantown Road, Germantown, MD 20874–1290, telephone: (301) 903–4951, E-mail: roger.dahlman@science.doe.gov, fax: (301) 903–8519. The full text of Program Notice 00–12 is available via the Internet using the following web site address: http://www.sc.doe.gov/production/grants/grants.html.

Applicants are strongly encouraged to match their research applications to terms of announcement scope, and preapplications therefore are not required. Brief questions for clarification can be addressed to Dr. Dahlman, Manager of Terrestrial Carbon Processes Research Program.

SUPPLEMENTARY INFORMATION: The general goal of TCP research is to advance the scientific understanding of terrestrial processes regulating carbon balance of ecosystems, and the role of ecosystems in the exchange of carbon dioxide (CO_2) between the atmosphere and terrestrial biosphere. Important endpoints of the research are to determine the capacity of ecosystems to store carbon, and estimate their influence on the rate of atmospheric CO_2 change. This research addresses the important global change issues of causes and rates of CO_2 change that may underlie climate change. In this context, the research is an important adjunct to policies and actions being considered for slowing the rise of greenhouse gases in the atmosphere. Interests and intents of TCP are to augment research on measurements, experiments and modeling of carbon processes. This Notice solicits research on "terrestrial carbon processes" with primary emphasis on measurements needed to derive or estimate the net exchanges of CO_2 between the atmosphere and the terrestrial biosphere, and the acquisition of new knowledge about fundamental processes that regulate exchanges.

The intent of this Notice is to strongly focus on field programs of measurement, experimental manipulation, and analysis of carbon processes; laboratory or controlled environment research is NOT encouraged. This is the third cycle of solicitations for refocused DOE research on terrestrial carbon that was formerly carried out on the global carbon cycle, and on the response of vegetation to CO_2. TCP is particularly interested in research activities that augment the existing AmeriFlux measurement program, including associated ecosystem level observations and experiments.

A central element of current TCP research is the AmeriFlux Program of measuring net CO_2 exchange, including the suite of core measurements that are needed for understanding intrinsic controls on carbon acquisition by ecosystems. The AmeriFlux Network of Sites and current Science Plan can be accessed from the web site: http://cdiac.esd.ornl.gov/programs/ameriflux/, which applicants are strongly advised to review. In general, the science questions of the current Science Plan continue to guide the AmeriFlux Program.

Progress of the AmeriFlux Program to date strongly suggests that the suites of CO_2 and biological measurements are providing unique estimates of Net Ecosystem Production (NEP), or the quantity of net annual carbon gain by the ecosystem. This is vital information for global carbon cycle analysis, and the results are providing important missing information needed to balance the global carbon budget. This solicitation seeks to continue and extend AmeriFlux research in the following ways:

(1) By moderate expansion of the AmeriFlux Network to include additional geo-climatic zones, or ecological successional states, or biome types. If applicants are interested in forming new sites, the present distribution of research locations should be reviewed from the web-sites, and then propose new locations that would significantly augment the existing Network. New sites will be considered only if they offer both compelling differences relative to existing ones in terms of unique geo-climatic zone or biome characteristics, and circumstances where NEP would be expected to be significant. New-site applications must, of course, be based on representative stands of vegetation, and possess appropriate physical attributes amenable to producing quality net CO_2 exchange data. Applications for new sites would identify the suite of measurements that would provide for a balance of CO_2 exchange data and independently derived estimates of NEP, that is by dimensional analysis, physiological measurements or other means. Either "natural" or "managed" ecosystems would be eligible sites.

(2) By augmenting research at existing sites. Assistance will be provided to current Network sites to upgrade core measurement capabilities, with emphasis on acquisition of basic biological data needed to explain net CO_2 exchange results. It would be expected that augmented resources would provide improved measures of both CO_2 flux and associated biological

processes. These applications would be expected to describe current observations, explain what augmentations are needed in terms of either CO_2 flux or biological process measures that will significantly upgrade site core data bases, and explain the value the additional measurement capability would provide to the site and to the Network. Since the overall value of the AmeriFlux Network depends on data sharing and data inter-comparison, only those sites that have made data available to the AmeriFlux community through the network data system (CDIAC) will be eligible for augmentation awards.

(3) By supporting supplemental research at existing sites. Purpose is to enhance overall quality of carbon process information at individual sites or for the AmeriFlux Network—in contrast to item (2) above which simply upgrades core capabilities. Requests for support would be considered, for example, to: (a) Improve micrometeorological characterization of the CO_2 exchange "footprint;" (b) obtain data that extend results from ecosystem to biome or regional scales (this could include aircraft flux measurements and limited support for modeling, for example;) (c) obtain isotopic data that pinpoints source and seasonality of CO_2 fluxes; (d) enhance data processing and prompt delivery of data to users; and (e) the analysis of exchanges and terrestrial carbon processes at larger scale.

Foci of these components of the solicitation are to enhance AmeriFlux science with emphasis on measurements, the development of comprehensive data sets for AmeriFlux sites, and the analysis of collateral results throughout the Network. Limited support of modeling for these purposes will be considered to the extent that analysis focuses on site and Network data sets.

Innovative applications that develop new and cost effective research approaches which can be shown to clearly contribute to understanding terrestrial carbon processes, especially the quantification of NEP, and the scientific understanding of carbon sequestration by terrestrial ecosystems, will also be considered. Examples of innovative or exploratory ideas might include, among other things, unique field experiments or manipulations of variables that regulate carbon balance, or the analysis of unique sets of data. Interest is in non-conventional approaches that offer potential for advancing both estimating carbon quantities and the scientific understanding of processes and controls. While these types of scientific studies may be linked to other on-going CO_2 carbon sequestration and carbon cycle research, they should clearly identify distinct and unique contributions—beyond already defined research of existing programs like AmeriFlux, Free Air CO_2 Enrichment (FACE) Experiments (http://cdiac.esd.ornl.gov/programs/FACE/face.html), and Carbon Sequestration (Program Notice 00–09, which closed March 2, 2000, http://www.sc.doe.gov/production/grants/fr00__09.html).

Program Funding

It is anticipated that approximately $2 million will be available for grant awards in Fiscal Year 2000, contingent upon availability of appropriated funds. Previous awards for this type of research have ranged from $100,000 up to $300,000 per year, with most not exceeding $200,000. While most awards are expected to fall within this range, a few larger awards may be granted for coordinated activities across the Network, or that have requirements for unique field investigation. Any anticipated budgets exceeding $300,000 per year per application should be discussed with the Program Manager. Funding of multiple year grant awards is expected, and is also contingent upon availability of appropriated funds.

Merit Review

Applications will be subjected to scientific merit review (peer review) and will be evaluated against the following evaluation criteria listed in descending order of importance as codified at 10 CFR 605.10(d):

1. Scientific and/or Technical Merit of the Project,
2. Appropriateness of the Proposed Method or Approach,
3. Competency of Applicant's Personnel and Adequacy of Proposed Resources,
4. Reasonableness and Appropriateness of the Proposed Budget.

The evaluation process will include program policy factors such as the relevance of the proposed research to the terms of the announcement and an agency's programmatic needs. Note, external peer reviewers are selected with regard to both their scientific expertise and the absence of conflict-of-interest issues. Non-federal reviewers may be used, and submission of an application constitutes agreement that this is acceptable to the investigator(s) and the submitting institution.

Submission Information

Information about the development and submission of applications, eligibility, limitations, evaluation, selection process, and other policies and procedures may be found in 10 CFR Part 605, and in the Application Guide for the Office of Science Financial Assistance Program. Electronic access to the Guide and required forms is made available via the World Wide Web at: http://www.sc.doe.gov/production/grants/grants.html. DOE is under no obligation to pay for any costs associated with the preparation or submission of applications if an award is not made.

The research project description must be 15 pages or less, exclusive of attachments and must contain an abstract or summary of the proposed research. On the SC grant face page, form DOE F 4650.2, in block 15, also provide the PI's phone number, fax number and E-mail address. Attachments include curriculum vitae, a listing of all current and pending federal support, and letters of intent when collaborations are part of the proposed research. Curriculum vitae should be submitted in a form similar to that of NIH or NSF (two to three pages), see for example: http://www.nsf.gov:80/bfa/cpo/gpg/fkit.htm#forms-9.

In addition to the original and seven copies of the application that must be submitted, the applicants are asked to submit an electronic copy of the abstract in ASCII format to *karen.carlson@science.doe.gov*. The abstract should include the following information: PI and co-PI's, their institutions, brief summary of research, including identification of principal subcontractor/collaborators even if no funds are requested for their support.

The technical portion of the application should not exceed 20 double-spaced pages plus 5 pages for curriculum vitae and all other data, and should include a short one-half page abstract. Applications that deviate from the terms of this Notice will be returned, and will not be considered for support in the third cycle of TCP. Applications received after the deadline will not be eligible for award in Fiscal Year 2000.

The Catalog of Federal Domestic Assistance Number for this program is 81.049, and the solicitation control number is ERFAP 10 CFR Part 605.

Issued in Washington, DC on March 9, 2000.

John Rodney Clark,

Associate Director of Science for Resource Management.

[FR Doc. 00–6655 Filed 3–16–00; 8:45 am]

BILLING CODE 6450–01–U

DEPARTMENT OF ENERGY

[FE Docket No. 00–02–NG , Et Al.]

Office of Fossil Energy; Petrocom Energy Group, LTD.; Orders Granting, Amending and Transferring Authorizations To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that it has issued Orders granting, amending and transferring natural gas import and export authorizations. These Orders are summarized in the attached appendix and may be found on the FE web site at http://www.fe.doe.gov., or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, D.C., on March 10, 2000.

John W. Glynn,

Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

Appendix—Orders Granting, Amending and Transferring Import/Export Authorizations

Order No.	Date issued	Importer/Exporter FE Docket No.	Import volume	Export volume	Comments
1566	02–01–00	Petrocom Energy Group, LTD. 00–02–NG	2 Bcf ..... 1 Bcf	1 Bcf ..... 1 Bcf	Import and export from and to Canada and Mexico over a two-year term beginning on the date of first delivery of either the import or export.
1567	02–01–00	Calpine East Fuels LLC 00–06–NG	40 Bcf	.....	Import and export a combined total from and to Canada beginning on July 1, 2000, and extending through June 30, 2002.
1568	02–04–00	Suprex Energy Corporation 00–05–NG	15 Bcf	.....	Import from Canada beginning on March 1, 2000, and extending through February 28, 2002.
1195–A	02–07–00	Bear Paw Energy, L.L.C. (The successor to Interenergy Sheffield Processing Company) 96–54–NG.	.....	.....	Transfer of long-term import authority.
1569	02–17–00	Alliance Pipeline L.P. 00–08–NG	8.8 Bcf ...	.....	Import from Canada over a two-year term beginning on the date of first delivery.
500–B ..	02–24–00	Project Orange Associates L.P. 88–01–NG	.....	.....	Amendment to long-term import authority to reflect new suppliers.
1570	02–24–00	Williams Energy Marketing & Trading Company (Formerly Williams Energy Services Company) 00–09–NG.	400 Bcf		Import and export a combined total from and to Mexico over a two year term beginning on the date of first delivery after March 31, 2000.
1571	02–25–00	Questar Energy Trading Company 00–11–NG	50 Bcf	50 Bcf	Import and export from and to Canada beginning on February 28, 2000, and extending through February 27, 2002.

[FR Doc. 00–6656 Filed 3–16–00; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES00–19–000]

Louisiana Generating LLC; Notice of Application

March 10, 2000.

Take notice that on March 8, 2000, Louisiana Generating LLC (Generating) submitted an application under Section 204 of the Federal Power Act seeking Commission authorization of its proposed financing to acquire fossil fuel-fired electric generating facilities of Cajun Electric Power Cooperative, Inc. Generating requests authorization to incur long-term indebtedness in an amount not to exceed $850,000,000 and to guarantee repayment of not more than $850,000,000 of long-term bonds issued by its parent company, NRG South Central Generating LLC. Generating also requests a waiver of the Commission's competitive bidding and negotiated placement requirements in 18 CFR 34.2.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 23, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc/fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6600 Filed 3–16–00; 8:45 am]
BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–112–000, et al.]

DTE River Rouge No. 1, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 9, 2000.

Take notice that the following filings have been made with the Commission:

1. DTE River Rouge No. 1, LLC

[Docket No. EG00–112–000]

Take notice that on March 6, 2000, DTE River Rouge No. 1, LLC (Applicant), a Michigan limited liability company, with its principal place of business at 425 S. Main Street, Suite 201, Ann Arbor, Michigan 48107, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: March 30, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Black River Limited Partnership

[Docket No. EL00–48–000]

Take notice that on March 6, 2000, Black River Limited Partnership filed with the Federal Energy Regulatory Commission (Commission) a petition for declaratory order disclaiming jurisdiction and a request for expedited consideration.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power & Light Company

[Docket No. ER00–1732–000]

Take notice that on February 29, 2000, Florida Power & Light Company (FPL), tendered for filing a settlement agreement (the Settlement Agreement) entered into by and between FPL and Florida Keys Electric Cooperative Association (FKEC) to the "Long-Term Agreement to Provide Capacity and Energy by Florida Power & Light to Florida Keys Electric Cooperative Association, Inc." (FERC Rate Schedule No. 130). The purpose of the Settlement Agreement is to modify the contractual formula rate applied in calculating the demand charges.

Comment date: March 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Pacific Gas and Electric Company

[Docket No. ER00–1807–000]

Take notice that on March 6, 2000, Pacific Gas and Electric Company (PG&E) filed a revised and amended Control Area Service Agreement between Dynegy Power Services, Inc. (DPS) and PG&E (Revised CATSA) and PG&E's request for withdrawal of the Second Amendment to the CATSA submitted on November 1, 1996 in Docket No. ER97–320–000.

The proposed revisions modify the existing CATSA to conform to the terms of a Settlement Agreement between DPS and PG&E, dated May 8, 1999.

Copies of this filing have been served upon DPS, the California Independent System Operator Corporation, the California Public Utilities Commission and the intervenors in Docket No. ER00–902–000.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power a Division of Duke Energy Corporation

[Docket No. ER00–1808–000]

Take notice that on March 6, 2000, Duke Power (Duke), a division of Duke Energy Corporation, tendered for filing a Service Agreement with American Municipal Power—Ohio, Inc. for power sales at market-based rates.

Duke requests that the proposed Service Agreement be permitted to become effective on September 10, 1999.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Avista Corporation

[Docket No. ER00–1809–000]

Take notice that on March 6, 2000, Avista Corporation tendered for filing with the Federal Energy Regulatory Commission (Commission) pursuant to section 35.12 of the Commissions, 18 CFR Part 35.12, an executed Amendment to a Mutual Netting Agreement with Merchant Energy Group of the Americas, previously filed with the Commission under Docket No. ER99–2254–000, Service Agreement No. 271, effective March 24, 1999, changing billing and payment terms.

AVA requests waiver of the prior notice requirements and requests an effective date of March 1, 2000 for the amended terms for net billing of transactions.

This filing has been served upon the following: Ms. Vangie McGilloway, Contract Administrator, Merchant Group of the Americas, 151 West Street, Suite 300, Annapolis, MD 21401.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Conectiv Energy Supply, Inc.

[Docket No. ER00–1810–000]

Take notice that on March 6, 2000, Conectiv Energy Supply, Inc. (CESI) filed with the Federal Energy Regulatory Commission a letter approving its membership in the Western Systems Power Pool (WSPP).

CESI requests that the Commission allow its membership in the WSPP to become effective on March 7, 2000.

CESI states that a copy of this filing has been served on the Delaware Public Service Commission, the WSPP Executive Committee, General Counsel to the WSPP and the members of the WSPP.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Portland General Electric Company

[Docket No. ER00–1811–000]

Take notice that on March 6, 2000, Portland General Electric Company (PGE) tendered for filing under PGE's Final Rule pro forma tariff (FERC Electric Tariff First Revised Volume No. 8, Docket No. OA96–137–000), executed Service Agreements for Short-Term Firm and Non-Firm Point-to-Point Transmission Service with Coral Power, LLC.

PGE requests that the Service Agreement become effective March 1, 2000.

A copy of this filing was served on Coral Power, LLC.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company LLC

[Docket No. ER00–1812–000]

Take notice that on March 6, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed Amendment No. 2 to Supplement No. 9 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of November 24, 1999, to Virginia Electric & Power Company.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Avista Turbine Power, Inc.

[Docket No. ER00–1814–000]

Take notice that on March 6, 2000, Avista Turbine Power, Inc. (Avista Turbine) tendered for filing a petition for acceptance of an initial rate schedule authorizing Avista Turbine to make wholesale sales of power at market-based rates.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Otter Tail Power Company

[Docket No. ER00–1815–000]

Take notice that on March 6, 2000, Otter Tail Power Company (OTP) tendered for filing a Service Agreement between OTP and Northcentral Power Co. The Service Agreement allows Northcentral Power Co. to purchase capacity and/or energy under OTP's Coordination Sales Tariff.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. DTE River Rouge No. 1, LLC

[Docket No. ER00–1816–000]

Take notice that on March 6, 2000, DTE River Rouge No. 1, LLC (DTE-River Rouge) submitted a petition for authorization to make sales of capacity and energy at market-based rates, and a request for certain related blanket authorizations and waivers.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. California Independent System Operator Corporation

[Docket No. ER00–1818–000]

Take notice that the California Independent System Operator Corporation, on March 6, 2000, tendered for filing a Scheduling Coordinator Agreement between the ISO and Constellation Power Source, Inc. for acceptance by the Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of February 28, 2000.

The ISO states that this filing has been served on Constellation Power Source, Inc. and the California Public Utilities Commission.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Northern States Power Company (Minnesota)

[Docket No. ER00–1819–000]

Northern States Power Company (Wisconsin)

Take notice that on March 6, 2000, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) (jointly NSP) tendered for filing a Non-Firm and a Short-Term Firm Point-to-Point Transmission Service Agreement between NSP and Allegheny Energy Supply Company, LLC.

NSP requests that the Commission make the Agreement effective February 7, 2000.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Commonwealth Edison Company and Commonwealth Edison Company of Indiana

[Docket No. ER00–1820–000]

Take notice that on March 6, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd) filed amendments to ComEd's Open Access Transmission Tariff (OATT) to add an Appendix K prescribing procedures for the interconnection of generation.

ComEd requests an effective date of May 1, 2000 for the proposed amendments and accordingly requests waiver of the Commission's notice requirements.

Copies of the filing were served upon ComEd's jurisdictional customers and interested state commissions.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. PJM Interconnection, L.L.C.

[Docket No. ER00–1825–000]

Take notice that on March 6, 2000, PJM Interconnection, L.L.C. (PJM) tendered for filing one signature page of Washington Gas Energy Services, Inc. to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17 listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including Washington Gas Energy Services, Inc., and each of the electric

regulatory commissions within the PJM Control Area.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6598 Filed 3–16–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1830–000, *et al.*]

El Segundo Power, LLC, *et al.*; Electric Rate and Corporate Regulation Filings

March 10, 2000.

Take notice that the following filings have been made with the Commission:

1. El Segundo Power, LLC

[Docket No. ER00–1830–000]

Take notice that on March 7, 2000, El Segundo Power, LLC (ESP), tendered for filing a proposed Non-Market Dispatch Service Tariff. The tariff provides for the dispatch of units of the ESP Facility by market participants in California to maintain reliable grid operation and other purposes and sets a rate for that service.

ESP requests that the notice requirements set forth in Section 35.3(a) be waived to the extent required to allow the tariff to become effective as of January 1, 2000.

Comment date: March 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–1817–000]

Take notice that on March 7, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and FPL Energy Power Marketing, Inc. (FPL ENERGY), dated March 6, 2000. This Service Agreement specifies that FPL ENERGY has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and FPL ENERGY to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of March 6, 2000, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. California Independent System Operator Corporation

[Docket No. ER00–1821–000]

Take notice that on March 7, 2000, the California Independent System Operator Corporation (ISO), tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and Constellation Power Source, Inc., for acceptance by the Commission.

The ISO states that this filing has been served on Constellation Power Source, Inc. and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Meter Service Agreement to be made effective as of February 28, 2000.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. California Independent System Operator Corporation

[Docket No. ER00–1822–000]

Take notice that on March 7, 2000, the California Independent System Operator Corporation, tendered for filing a Scheduling Coordinator Agreement between the ISO and Cargill-Alliant, LLC for acceptance by the Commission.

The ISO states that this filing has been served on Cargill-Alliant, LLC and the California Public Utilities Commission.

The ISO is requesting waiver of the 60-day notice requirement to allow the Scheduling Coordinator Agreement to be made effective as of February 28, 2000.

Comment date: March 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–1823–000]

Take notice that on March 7, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered for filing an executed Service Agreement between GPU Energy and DukeSolutions, Inc. (DUKESOLUTIONS), dated March 6, 2000. This Service Agreement specifies that DUKESOLUTIONS has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and DUKESOLUTIONS to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of March 6, 2000, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–1824–000]

Take notice that on March 7, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), tendered an executed Service Agreement between GPU Energy and Potomac Electric Power Company (PEPCO), dated March 6, 2000. This Service Agreement specifies that PEPCO has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and PEPCO to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of March 6, 2000, for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Detroit Edison Company

[Docket No. ER00–1826–000]

Take notice that on March 6, 2000, The Detroit Edison Company (Detroit Edison), tendered for filing Service Agreements (the Service Agreement) for Short-term Firm Point-to-Point Transmission Service under the Joint Open Access Transmission Tariff of Consumers Energy Company and Detroit Edison, FERC Electric Tariff No. 1, between Detroit Edison and CMS Marketing, Services and Trading Company, dated as of February 25, 2000. The parties have not engaged in any transactions under the Service Agreements prior to thirty days to this filing.

Detroit Edison requests that the Service Agreements be made effective as rate schedules as of March 28, 2000.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. ANP Marketing Company

[Docket No. ER00–1828–000]

Take notice that on March 7, 2000, ANP Marketing Company (Marketing), tendered for filing pursuant to Rules 205 and 207 of the Commission's Rules of Practice and Procedure (18 CFR 385.205 and 385.207) a petition seeking waivers and blanket approvals under various regulations of the Commission, and an order accepting its FERC Electric Rate Schedule No. 1, to be effective on the date of the Commission's order on such petition.

Marketing intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Marketing purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, Marketing will be functioning as a marketer. In Marketing's marketing transactions, Marketing proposes to charge rates mutually agreed upon by the parties. In transactions where Marketing does not take title to the electric power and/or energy, Marketing's role will be limited to that of a broker. Marketing is not in the business of generating or transmitting electric power, and does not currently have or contemplate acquiring title to any electric power generation or transmission facilities.

FERC Electric Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices.

Comment date: March 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Southwest Power Pool, Inc.

[Docket No. ER00–1829–000]

Take notice that on March 7, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing three executed service agreements for firm point-to-point transmission service under the SPP Tariff with Tenaska Power Services Company (Tenaska).

SPP requests effective dates for these service agreements of January 1, 2002, January 2, 2003, and January 1, 2004, respectively, which is the date service is to commence under each of the three agreements.

Copies of this filing were served upon Tenaska and Entergy Power Marketing Corporation (Entergy). Entergy has filed a complaint concerning the subject service agreements in Docket No. EL00–46 which SPP is answering concurrently with this filing.

Comment date: March 28, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6599 Filed 3–16–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Southeastern Power Administration

Proposed Rate Adjustment for the Jim Woodruff Project

AGENCY: Southeastern Power Administration, DOE.

ACTION: Notice of public hearing and opportunities for review and comment.

SUMMARY: Southeastern proposes replacing Wholesale Power Rate Schedules JW–1–E and JW–2–B with new Wholesale Rate Schedules JW–1–F and JW–2–C effective September 20, 2000. Rate Schedules JW–1–F and JW–2–C will remain in effect through September 19, 2005. Rate Schedule JW–1–F is applicable to Southeastern power sold to existing preference customers in the Florida Power Corporation Service area. Rate Schedule JW–2–C is applicable to Florida Power Corporation.

Opportunities will be available for interested persons to review the present and proposed rates, and the supporting studies and to participate in a hearing and to submit written comments. Southeastern will consider all comments received in this process.

DATES: Written comments are due on or before June 15, 2000. A public information and public comment forum will be held in Tallahassee, Florida, at 10 a.m. on May 3, 2000. Persons desiring to speak at the forum must notify Southeastern at least seven (7) days before the forum is scheduled so that a list of forum participants can be prepared. Others present at the forum may speak if time permits. Persons desiring to attend the forum should notify Southeastern at least seven (7) days before the forum is scheduled. The forum will be canceled with no further notice unless Southeastern has been notified by close of business on April 24, 2000, that at least one person intends to be present at the forum.

ADDRESSES: Five copies of written comments should be submitted to: Charles Borchardt, Administrator, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635. The public comment Forum will meet at the Courtyard by Marriott, 1018 Apalachee

Parkway, Tallahassee, Florida 32301, Phone (850) 222–8822.

FOR FURTHER INFORMATION CONTACT: Leon Jourolmon, Assistant Administrator, Finance and Marketing Division, Southeastern Power Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635, (706) 213–3800.

SUPPLEMENTARY INFORMATION: Existing rate schedules are supported by a March 1995 Repayment Study and other supporting data contained in FERC Docket EF95–3031–000. A repayment study prepared in March 2000 shows that the existing rates are not adequate to meet repayment criteria. A revised repayment study with a revenue increase of $237,000, or 4.3 percent, demonstrates that all costs are paid within their repayment life thus satisfying the repayment criteria. The increase is primarily due to costs associated with the rehabilitation of the project. Southeastern is proposing to raise rates to recover this additional $237,000.

The capacity charge in the proposed Wholesale Power Rate Schedule JW–1–F has been raised from $5.13 per kilowatt per month to $5.52 per kilowatt per month. The energy charge has been increased from 15.2 mills per kilowatt-hour to 15.49 mills per kilowatt-hour. Proposed Wholesale Power Rate Schedule JW–2–C, raises the rate from 60 percent of the Florida Power Corporation's fuel cost to 63 percent of the Corporation's fuel cost.

The studies are available for examination at the Samuel Elbert Building, Elberton, Georgia 30635, as are the 1995 repayment study and the proposed Rate Schedules.

Dated: March 1, 2000.

Charles A. Borchardt,

Administrator.

[FR Doc. 00–6677 Filed 3–16–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6252–1]

Environmental Impact Statements; Notice of Availability

RESPONSIBLE AGENCY: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa.

Weekly Receipt of Environmental Impact Statements Filed March 06, 2000 Through March 10, 2000 Pursuant to 40 CFR 1506.9

EIS No. 000071, Final EIS, TPT, CA, Presidio of San Francisco General Management Plan, Implementation, New Development and Uses within the Letterman Complex, Golden Gate National Recreation Area, City and County of San Francisco, CA, Due: April 17, 2000, Contact: John G. Pelka (415) 561–5300.

EIS No. 000072, Draft EIS, FAA, RI, T. F. Green Airport Project, To Implement the Part 150 Noise Abatement Procedures in a Safe and Efficient Manner, Warwick County, RI, Due: May 01, 2000, Contact: Theresa Flieger (781) 238–7524.

EIS No. 000073, Draft EIS, TVA, TN, Tellico Reservoir Land Management Plan, Implementation of Seven Mainstream and Two Tributary Reservoirs, Blount, Loudon and Monroe, TN, Due: May 01, 2000, Contact: Steven L. Akers (865) 988–2430.

EIS No. 000074, Draft EIS, AFS, CO, Upper Blue Stewardship Project, Implementation of Vegetation Management, Travel Management, Designation of Dispersed Camping Sites, White River National Forest, Dillion Ranger District, Summit County, CO, Due: May 12, 2000, Contact: Kathleen Phelps (970) 468–5400.

EIS No. 000075, Draft EIS, COE, NJ, Raritan Bay and Sandy Hook Bay, Hurricane and Storm Damage Reduction Project, Flood Control and Storm Damage Protection, Port Monmouth, Middletown Township, Monmouth County, NJ, Due: May 01, 2000, Contact: Mark H. Barlas (212) 264–4663.

EIS No. 000076, Draft EIS, AFS, ID, Middle Fork Weiser River Watershed Project, Implementation of Vegetation Restoration, Landscape Fire Pattern and Watershed Restoration Objectives, Payette National Forest, Council Ranger District, Adams County, ID, Due: May 18, 2000, Contact: Faye Kreieger (208) 253–0100.

EIS No. 000077, Draft EIS, BLM, OR, CA, Cascade Siskiyou Ecological Emphasis Area Management Plan, To Maintain, Protect, Restore or Enhance the Ecological Processes, Planning Area for Designation as a National Monument by the President, OR and CA, Due: June 14, 2000, Contact: Tom Sensenig (541) 618–2200.

Amended Notices

EIS No. 000034, Draft EIS, FRA, Use of Locomotive Rule, Nationwide, Due: May 26, 2000, Contact: Mark H. Tessler (202) 493–6038. Published -FR–02–18–00 This EIS was inadvertently published in the 02–18–2000 FR. The correct Notice of Availability was published in the 01–21–2000 FR CEQ #000006 the correct date comments are due back to the preparing agency is May 26, 2000.

Dated: March 13, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–6706 Filed 3–16–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6252–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared February 28, 2000 Through March 03, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 09, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–L65341–OR Rating EC2, Tower Fire Recovery Project, Restoration and Salvage, Implementation, Umatilla National Forest, North Fork John Day Ranger District, Umatilla and Grant Counties, OR.

Summary: EPA expressed concerns with the lack of information on related TMDL efforts by the Oregon Dept. of Environmental Quality, and the potential impacts to federally listed salmonid species, especially increased sedimentation and habitat fragmentation from current and proposed roads.

ERP No. D–BLM–J65318–00 Rating EC2, Montana, North Dakota and Portions of South Dakota Off-Highway Vehicle Management and Plan Amendment, Implementation, MT, ND and SD.

Summary: EPA expressed environmental concerns due to potential adverse impacts to water quality, wetlands and endangered species habitat from non-system roads and user exemptions. The final EIS should include information related to monitoring, enforcement and an inventory of non-system roads. EPA suggests that the selected alternative consider the exclusion of non-system roads and trails for OHV access prior to site-specific analysis to identify appropriate use areas.

ERP No. D–BLM–L65339–OR Rating LO, North Bank Habitat Management Area (NBHMA)/Area of Critical Environmental Concern (ACEC), Federally Endangered Columbian White-Tailed Deer (CWTD) and Special Status Species Habitat Enhancements to Ensure Viability Over Time, Implementation, OR.

Summary: EPA expressed lack of objections and expects that road restrictions, trail maintenance, camping restrictions and environmental education programs will help improve deer habitat while maintaining recreation opportunities within the area.

ERP No. D–FHW–D40303–PA Rating EC2, Mon/Fayette Transportation Project, Improvements from Uniontown to Brownsville Area, Funding and COE Section 404 Permit, Fayette and Washington Counties, PA.

Summary: EPA expressed concern due to potential impacts on cultural/natural resources and residential/commercial properties. EPA requested that the final document provide additional mitigation to avoid/protect aquatic and terrestrial resources.

ERP No. D–NPS–J65319–UT Rating LO, Zion National Park, General Management Plan, Implementation, Washington, Iron and Kane Counties, UT.

Summary: EPA has no objection to the proposed action.

ERP No. DS–FHW–G40145–00 Rating LO, US 71 Highway Improvement Project, Updated Information, between Texarkana, (US71) Arkansas and DeQueen, Texarkana Northern Loop Funding, Right-of-Way Approval and COE Section 404 Permit, Little River, Miller and Sevier Counties, AR and Bowie County, TX.

Summary: EPA's previous review indicated that there was no objection to the preferred alternative. EPA has no objections to the two new alternatives now identified in the document.

ERP No. DS–UAF–E11032–FL Rating EO2, Homestead Air Force Base (AFB) Disposal and Reuse Updated and Additional Information on Disposal of Portions of the Former Homestead (AFB), Implementation, Dade County, FL.

Summary: EPA objects to the proposed action to convert the former HAFB into a commercial regional airport. EPA believes that siting a commercial airport between the Everglades and Biscayne National Parks is inappropriate and strongly recommend an environmentally sensitive mixed use alternative be selected as the preferred alternative. Of the presented alternatives, EPA believes that the Collier Mixed Use Proposal with some modifications and assurances is the environmentally preferred alternative and should be pursued further in the final EIS.

Final EISs

ERP No. F–BLM–G65051–NM New Mexico Standards for Public Land Health and Guidelines for Livestock Grazing Management, Implementation, NM.

Summary: EPA had no objections to the proposed action.

ERP No. F–COE–E39051–FL Lake Okeechobee Regulation Schedule Study, To Maintain or Improve Existing Water Storage, St. Lucie and Caloosahatchee River Estuaries, FL.

Summary: EPA continue to express concern regarding the lack of a comprehensive downstream monitoring program. EPA requested the ROD commit to a monitoring program and that the acquired data be shared with involved state and federal agencies in determining the effects of short-term phosphorous increases on the Everglades Protection Area.

ERP No. F–FHW–F40380–IN IN–641 Terre Haute Bypass, Improve access between US 41 South to I–70 East of Terre Haute, Funding and COE Section 404 Permit, Vigo County, In.

Summary: EPA's previous issues were resolved, therefore EPA has no objection to the action as proposed.

ERP No. F–FHW–G50008–00 Great River Bridge, Construction, US 65 in Arkansas to MS–8 in Mississippi, Funding, COE Section 404 Permit and US Coast Guard Bridge Permit, Desha and Arkansas Counties, AR and Bolivar County, MS.

Summary: EPA's previous issues have been resolved, therefore EPA has no objection to the selection of the Southern Alternative as the preferred transportation corridor.

ERP No. F–FHW–J40150–ND Interstate 29 Reconstruction Project, Improvements from Rose Coulee to Cass County Road No. 20, Funding, City of Fargo, ND.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–FHW–K40193–CA I–215 Improvements, Orange Show Road to CA–30, Funding, City of San Bernardino, San Bernardino County, CA.

Summary: EPA expressed continued concern that cumulative impacts were not fully addressed. EPA requested that additional comments on air and water quality mitigation, solid waste, pollution prevention, and cumulative impacts be addressed in the Record of Decision.

ERP No. F–FRC–J05079–00 Cabinet Gorge (No. 2058–014) and Noxon Rapids (No. 2075–014) Hydroelectric Project, Relicensing, MT and ID.

Summary: EPA recommended that FERC include a minimum flow release from Noxon Rapids Dam to reduce the magnitude of flow, velocity, and depth fluctuations in the river channel below Noxon Rapids Dam. EPA also recommended that the recommended measures, terms and conditions of the US Fish and Wildlife Service to minimize an incidental take of the bull trout be included as FERC license conditions.

ERP No. F–NPS–D61051–VA Booker T. Washington National Monument (BOWA), General Management Plan, Implementation, Franklin County, VA.

Summary: EPA's previous issues have been adequately addressed, therefore EPA no objection to the action as proposed.

ERP No. F–UAF–G11038–00 Realistic Bomber Training Initiative, Improve the B–52 and B–1 Aircrews Mission Training and Maximize Combat Training Time, Barksdale Air Force Base, LA, NM and TX.

Summary: EPA has no objection to the action as proposed.

ERP No. F–USN–K11099–NV Fallon Naval Air Station (NAS), Proposal for the Fallon Range Complex Requirements, Federal and Private Lands, Churchill, Eureka, Lander, Mineral, Nye and Washoe Counties, NV.

Summary: No formal comment letter was sent to the preparing agency.

Dated: March 14, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–6707 Filed 3–16–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6252–3]

Peace River Intake Facility, DeSoto County, Florida Construction and Operation of Expanded Water Treatment and Aquifer Storage/Recovery Facilities: Intent To Prepare an Environmental Impact Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) on facility construction associated with the Peace River/Manasota Regional

Water Supply Authority Facility Construction Grant.

PURPOSE: Pursuant to 40 CFR 1501.7 and in accordance with Section 102(2)(c) of the National Environmental Policy Act (NEPA), EPA has identified the need to prepare an EIS and therefore issues this Notice of Intent pursuant to 40 CFR 1507.7.

FOR FURTHER INFORMATION AND TO BE PLACED ON THE PROJECT MAILING LIST CONTACT: Ms Lena Scott, Environmental Protection Agency—Region 4, Office of Environmental Assessment, 61 Forsyth Street, Atlanta, Georgia 30303, Telephone: (404) 562-9607 or FAX (404) 562–9598.

SUMMARY: EPA intends to prepare the EIS to evaluate the impacts of the Peace River/Manasota Regional Water Supply Authority's (Authority) proposal to construct and operate expanded water treatment and aquifer storage/recovery facilities at its existing Peace River Facility located in southwest DeSoto County, Florida. The proposed facilities will include treatment of surface water, alternative water storage including off-stream aquifer storage and recovery wells, and expansion of regional pipeline connections. EPA intends to retain the services of an independent contractor to provide technical data and to prepare the EIS using the "third party method" as provided under 40 CFR 6.510(b)(3). By utilizing the third party method, EPA enters into an agreement for the Authority to engage and pay for the services of a contractor to prepare the EIS under the direction of EPA.

NEED FOR ACTION: EPA awarded construction grants totaling $9,574,000 to the Authority for the construction of water treatment and aquifer storage/recovery facilities. Based on draft Environmental Information Documents (EID) submitted by the Authority, EPA determined the EID did not adequately address potential impacts and could not issue a Finding of No Significant Impact (FONSI). Known concerns include impacts from reduced flows on the Peace River, long-term impacts to Charlotte Harbor, threatened and endangered species, salinity regime change impacts on aquatic organisms, sport and commercial fisheries, cumulative and secondary impacts.

ALTERNATIVES:

- EPA issues construction grant with conditions.
- EPA issues construction grant with no conditions.
- EPA withholds construction grant, the No Action Alternative.

SCOPING: EPA will hold a public scoping meeting in April in which a general description of the projects and its goals will be presented. Time and meeting location will be announced in newspapers local to the project. Details of the proposed project will be presented. Both oral and written comments will be accepted at the scoping meeting to assist EPA to determine the scope of the EIS. Persons who do not attend the meeting and wish to comment on the issues and scope of the project are invited to respond in writing to this agency within 30 days of the scoping meeting.

ESTIMATED DATE OF DEIS RELEASE: September 1, 2001.

RESPONSIBLE OFFICIAL: A. Stanley Meiburg, Deputy Regional Administrator, Region 4, Environmental Protection Agency.

Dated: March 3, 2000.

Anne N. Miller,

Deptuy Director, Office of Federal Activities.

[FR Doc. 00–6705 Filed 3–16–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 10, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 16, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0752.

Title: Billing Disclosure Requirements for Pay-Per Call and Other Information Services, 47 CFR 64.1510.

Form Number: N/A.

Type of Review: Extension.

Respondents: Business or other for profit.

Number of Respondents: 1350.

Estimated Time Per Response: 40 Hours.

Total Annual Burden: 54,000 Hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; Third Party Disclosure.

Needs and Uses: Pursuant to Section 64.1510, telephone bills containing charges for interstate pay-per-call and other information services must include information detailing consumers' rights and responsibilities with respect to these charges. Specifically, telephone bills carrying pay-per-call charges must include a consumer notification stating that (1) the charges are for non-communications services; (2) local and long distance telephone services may not be disconnected for failure to pay pay-per-call charges; (3) pay per call (900 number) blocking is available upon request; and (4) access to pay-per-call services may be involuntarily blocked for failure to pay pay-per-call charges. In addition, each call billed must show the type of service, the amount of the charge, and the date, time, and duration of the call. Finally, the bill must display a toll-free number which subscribers may call to obtain information about pay-per-call services. Similar billing disclosure requirements apply to charges for information services either billed to subscribers on a collect basis or accessed by subscribers through a toll-free number. The billing disclosure contained in Section 64.1510 are intended to ensure that telephone subscribers billed for pay-per-call or other information services are able to understand the charges levied and are informed of their rights and responsibilities with respect to payment of such charges.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6670 Filed 3–16–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 9, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 17, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Report and Order in MM Docket No. 99–25—Creation of Low Power Radio Service.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit, state, local or tribal governments.

Number of Respondents: 1,200 respondents; 9,875 responses.

Estimated Time Per Response: .0003 to 6 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement, recordkeeping requirement.

Total Annual Burden: 27,350 hours.

Total Annual Cost: $9,000.

Needs and Uses: The information collection requirements contained in MM Docket No. 99–25, Report and Order, will ensure that the integrity of the FM spectrum is not compromised. It will also ensure that unacceptable interference will not be caused to existing radio services and that the statutory requirements are met. These rules will ensure that the stations are operated in the public interest.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6671 Filed 3–16–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–33–A (Auction No. 33); DA 00–559]

Auction of Licenses for the 700 MHz Guard Bands Scheduled for June 14, 2000; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document seeks comment on the reserve prices or minimum opening bids and other auction procedural issues for the upcoming auction of licenses for the 700 MHz Guard Bands (Auction No. 33) scheduled to commence on June 14, 2000.

DATES: Comments are due on or before March 22, 2000, and reply comments are due on or before March 29, 2000.

ADDRESSES: An original and four copies of all pleadings must be filed with the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, TW–A325, Washington, DC 20054. In addition, one copy of each pleading must be delivered to each of the following locations:

(1) Commission's duplicating contractor, International Transcription Service, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036;

(2) Office of Media Relations, Public Reference Center, 445 Twelfth Street, SW, Suite CY–A257, Washington, DC 20554;

(3) Rana Shuler, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, 445 Twelfth Street, SW, Suite 4–A628, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Howard Davenport or Craig Bomberger, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, at (202) 418–0660, Kathy Garland, Project Manager, at (717) 338–2888.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released March 10, 2000. The complete text of the public notice, including Attachment A, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, D.C. 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

1. By this Public Notice, the Wireless Telecommunications Bureau ("Bureau") announces the auction ("Auction No. 33") of Guard Band Manager licenses in the 700 MHz Guard Bands to commence on June 14, 2000. *See* Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99–168, FCC 00–90, released March 9, 2000 (*"700 MHz Second Report and Order"*). As discussed in greater detail herein, the Bureau proposes that Auction No. 33 be composed of 104 licenses in the 700 MHz Guard Bands, 746–747/776–777 and 762–764/792–794 MHz. One 4 megahertz license (paired 2 megahertz blocks) and one 2 megahertz license (paired 1 megahertz blocks) will be offered in each of 52 Major Economic Areas (MEAs).

2. The following table contains the Block/Frequency Band Cross Reference List for each MEA in Auction No. 33:

746–747, 762–764, 776–777, AND 792–794 MHz ALLOCATIONS 746–747, 762–764, 776–777, AND 792–794 MHz ALLOCATIONS

License suffix	Frequency	Frequency
A	746–747	776–777
B	762–764	792–794

The Balanced Budget Act of 1997 requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *" Consistent with the provisions of the Balanced Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific rules that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. *See* Memorandum Opinion and Order, and Notice of Proposed Rule Making (*"Part 1 Order"*) 62 FR 13540 (March 21, 1997) and Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding (*"Part 1 Third Report and Order"*) 63 FR 770 (January 1, 1998). We therefore seek comment on the following issues relating to Auction No. 33.

I. Auction Structure

A. Simultaneous Multiple Round Auction Design

3. We propose to award the licenses in a single, simultaneous multiple-round auction to allow bidders to take advantage of any synergies that exist among licenses. *See 700 MHz Second Report and Order*, ¶¶ 61, 62, and 71; *see also* 47 CFR 27.604. This methodology offers every license for bid at the same time in successive bidding rounds. We seek comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility

4. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned taking into account such factors as the population in each geographic license area, and the value of similar spectrum. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the close of the auction. *See* Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PD Docket No. 93–253 (*"Second Report and Order"*) 59 FR 22980 (May 4, 1994). In this case, we have information available in the form of a congressional estimate of the value of the spectrum. Accordingly, we list all licenses, including the related license area population and the proposed upfront payment for each, in Attachment A. We seek comment on this proposal.

5. We further propose that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. The maximum eligibility will determine the licenses on which a bidder may bid in each round of the auction. Thus, in calculating its upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

C. Activity Rules

6. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or use an activity rule waiver.

7. We propose to divide the auction into three stages: Stage One, Stage Two and Stage Three, each characterized by an increased activity requirement. The auction will start in Stage One. We propose that the auction will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately ten percent or below for three consecutive rounds of bidding in each stage. However, we further propose that the Bureau retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity, including, but not limited to, the auction activity level, the percentage of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

8. For the 700 MHz Guard Band Auction, we propose the following activity requirements:

Stage One: In each round of Stage One, a bidder desiring to maintain its current eligibility be required to be active on licenses encompassing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on at least 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of Stage Three, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty-fortyninths (50/49). We seek comment on these proposals.

D. Activity Rule Waivers and Reducing Eligibility

9. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid the loss of auction eligibility in the event that exigent circumstances prevent them from placing a bid in a particular round.

10. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless:

(i) There are no activity rule waivers available; or

(ii) The bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

11. A bidder with insufficient activity may wish to reduce its bidding eligibility rather than use an activity rule waiver. If so, the bidder must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules as described. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

12. A bidder may proactively use an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. An automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

13. We propose that each bidder in Auction No. 33 be provided with five activity rule waivers that may be used at the bidder's discretion during the course of the auction. We seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension or Cancellation

14. For Auction No. 33, we propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

II. Bidding Procedures

A. Round Structure

15. The Commission will use its Automated Auction System to conduct the electronic simultaneous multiple round auction format for Auction No. 33. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

16. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

17. The Balanced Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction.

18. Normally, a reserve price is an absolute minimum price below which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

19. In light of the Balanced Budget Act, the Bureau proposes to establish minimum opening bids for Auction No. 33. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool. *See* Auction of 800 MHz Upper 10 MHz Band, Minimum Opening Bids or Reserve Prices (*"800 MHz SMR Order"*) 62 FR 55252 (October 23, 1997) and Auction of the Phase II 220 MHz Service Licenses, Auction Notice and Filing Requirements for 908 Licenses Consisting of Economic Area (EA), Economic Area Grouping (EAG), and Nationwide Licenses, Scheduled for September 15, 1998, Minimum Opening Bids and Other Procedural Issues, (*"Phase II 220 MHz Public Notice"*) 63 FR 35213 (June 29, 1998). A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility. For Auction No. 33, we have information available in the form of a congressional estimate of the value of the spectrum. Accordingly, we list all licenses, including the related license area population and the proposed minimum opening bid for each, in Attachment A. We seek comment on this proposal.

20. If commenters believe that these minimum opening bids will result in substantial numbers of unsold licenses, or are not reasonable amounts, or should instead operate as reserve prices, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the minimum opening bids, we particularly seek comment on such factors as, among other things, the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 700 MHz Guard Bands. Alternatively, comment is sought on whether, consistent with the Balanced Budget Act; the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Accepted Bids and Bid Increments

21. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For Auction No. 33, we propose to use a smoothing methodology to calculate bid

increments, as we have done in several other auctions. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. We seek comment on these proposals.

22. The exponential smoothing formula calculates the bid increment for each license based on a weighted average of the activity received on each license in all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established using the exponential smoothing formula.

23. The calculation of the percentage bid increment for each license in a given round is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1, and the maximum percentage increment at 0.2.

Equations

$A_i = (C * B_i) + ((1–C) * A_{i–1})$

I_{i+1} = smaller of $((1 + A_i) * N)$ and M where,

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bids in the current round (round i)

$A_{i–1}$ = activity index from previous round (round i–1), A_0 is 0

I_{i+1} = percentage bid increment for the next round (round i+1)

N = minimum percentage increment or bid increment floor

M = maximum percentage increment or bid increment ceiling

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable I_{i+1} from above times the high bid). This result will be rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

C = 0.5, N = 0.1, M = 0.2

Round 1 (2 new bids, high bid = $1,000,000)

i. Calculation of percentage increment for round 2 using exponential smoothing:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$

The smaller of $I_2 = (1 + 1) * 0.1 = 0.2$ or 0.2 (the maximum percentage increment)

ii. Minimum bid increment for round 2 using the percentage increment (I_2 from above)

0.2 * $1,000,000 = $200,000

iii. Minimum acceptable bid for round 2 = $1,200,000

Round 2 (3 new bids, high bid = $2,000,000)

i. Calculation of percentage increment for round 3 using exponential smoothing:

$A_2 = (0.5 * 3) + (0.5 * 1) = 2$

The smaller of $I_3 = (1 + 2) * 0.1 = 0.3$ or 0.2 (the maximum percentage increment)

ii. Minimum bid increment for round 3 using the percentage increment (I_3 from above)

0.2 * $2,000,000 = $400,000

iii. Minimum acceptable bid for round 3 = $2,400,000

Round 3 (1 new bid, high bid = $2,400,000)

i. Calculation of percentage increment for round 4 using exponential smoothing:

$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$

The smaller of $I_4 = (1 + 1.5) * 0.1 = 0.25$ or 0.2 (the maximum percentage increment)

ii. Minimum bid increment for round 4 using the percentage increment (I_4 from above)

0.2 * $2,400,000 = $480,000

iii. Minimum acceptable bid for round 4 = $2,880,000

D. Information Regarding Bid Withdrawal and Bid Removal

24. For Auction No. 33, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments.

25. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions. We seek comment on these bid removal and bid withdrawal procedures.

26. In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

27. Applying this reasoning, we propose to limit each bidder in Auction No. 33 to withdraw standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive strategic purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on this proposal.

E. Stopping Rule

28. For Auction No. 33, the Bureau proposes to employ a simultaneous stopping rule approach. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." A simultaneous stopping rule means that all licenses remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals are received. After the first such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license.

29. The Bureau seeks comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used unilaterally or only in stage three of the auction.

30. The Bureau proposes to retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual, and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

31. Finally, we propose that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We seek comment on these proposals.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions & Industry Analysis Division.

[FR Doc. 00–6652 Filed 3–16–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–546]

Public Safety National Coordination Committee

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document advises interested persons of a meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC. This notice advises interested persons of the seventh meeting of the Public Safety National Coordination Committee.

DATES: April 7, 2000 at 1 p.m.–4 p.m.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Designated Federal Officer, Michael J. Wilhelm, (202) 418–0680, e-mail mwilhelm@fcc.gov. Press Contact, Meribeth McCarrick, Wireless Telecommunications Bureau, 202–418–0600, or e-mail mmccarri@fcc.gov.

SUPPLEMENTARY INFORMATION: Following is the complete text of the Public Notice: This Public Notice advises interested persons of the seventh meeting of the Public Safety National Coordination Committee ("NCC"), which will be held in Washington, D.C. The Federal Advisory Committee Act, Public Law 92–463, as amended, requires public notice of all meetings of the NCC.

Date: April 7, 2000

Meeting Time: General Membership Meeting—1 p.m.–4 p.m.

ADDRESS: Federal Communications Commission, 445 12th Street, S.W., Commission Meeting Room, Washington, D.C. 20554.

The NCC Subcommittees will meet from 8:30 a.m. to 11:30 p.m., continuing their meetings from the previous day. The NCC General Membership Meeting will commence at 1 p.m. and continue until 4 p.m. The agenda for the NCC membership meeting is as follows:

1. Introduction and Welcoming Remarks
2. Administrative Matters
3. Report from the Interoperability Subcommittee
4. Report from the Technology Subcommittee
5. Report from the Implementation Subcommittee
6. Public Discussion
7. Other Business
8. Upcoming Meeting Dates and Locations
9. Closing Remarks

The FCC has established the Public Safety National Coordination Committee, pursuant to the provisions of the Federal Advisory Committee Act, to advise the Commission on a variety of issues relating to the use of the 24 MHz of spectrum in the 764–776/794–806 MHz frequency bands (collectively, the 700 MHz band) that has been allocated to public safety services. See The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010 and Establishment of Rules and Requirements For Priority Access Service, WT Docket No. 96–86, First Report and Order and Third Notice of Proposed Rulemaking, FCC 98–191, 14 FCC Rcd 152 (1998), 63 FR 58645 (11–2–98).

The NCC has an open membership. Previous expressions of interest in membership have been received in response to several Public Notices inviting interested persons to become members and to participate in the NCC's processes. All persons who have previously identified themselves or have been designated as a representative of an organization are deemed members and are invited to attend. All other interested parties are hereby invited to attend and to participate in the NCC processes and its meetings and to become members of the Committee. This policy will ensure balanced participation. Members of the general public may attend the meeting. To attend the seventh meeting of the Public Safety National Coordination Committee, please RSVP to Joy Alford or Bert Weintraub of the Policy and Rules Branch of the Public Safety and Private Wireless Division, Wireless Telecommunications Bureau of the FCC by calling (202) 418–0680, by faxing (202) 418–2643, or by E-mailing at jalford@fcc.gov or bweintra@fcc.gov. Please provide your name, the organization you represent, your phone number, fax number and e-mail address. This RSVP is for the purpose of determining the number of people who will attend this seventh meeting. The FCC will attempt to accommodate as many people as possible. However,

admittance will be limited to the seating available. Persons requesting accommodations for hearing disabilities should contact Joy Alford immediately at (202) 418–7233 (TTY). Persons requesting accommodations for other physical disabilities should contact Joy Alford immediately at (202) 418–0694 or via e-mail at jalford@fcc.gov. The public may submit written comments to the NCC's Designated Federal Officer before the meeting.

Additional information about the NCC and NCC-related matters can be found on the NCC website located at: http://www.fcc.gov/wtb/publicsafety/ncc.html.

Federal Communications Commission.

Jeanne Kowalski,

Deputy Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

[FR Doc. 00–6672 Filed 3–16–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

Sunshine Act Meeting

March 10, 2000.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Friday, March 17, 2000, which is scheduled to commence at 9:30 a.m. in Room TW–C305, at 445 12th Street, SW, Washington, DC.

Item No., Bureau, and Subject

1—Common Carrier and Wireless Telecommunications—Title: Numbering Resource Optimization (CC Docket No. 99–200). Summary: The Commission will consider a Report and Order and Further Notice of Proposed Rule Making concerning strategies for numbering resource optimization.

2—Office of Engineering and Technology—Title: Inquiry Regarding Software Defined Radios. Summary: The Commission will consider a notice of Inquiry concerning issues related to software defined radio technology, including the current state of software defined radio technology, interoperability between radio services, the efficiency of spectrum use, and the equipment approval process.

Additional information concerning this meeting may be obtained from Maureen Peratino or David Fiske, Office of Media Relations, telephone number (202) 418–0500; TTY (202) 418–2555.

Copies of materials adopted at this meeting can be purchased from the FCC's duplicating contractor, International Transcription Services, Inc. (ITS, Inc.) at (202) 857–3800; fax (202) 857–3805 and 857–3184; or TTY (202) 293–8810. These copies are available in paper format and alternative media, including large print/type; digital disk; and audio tape. ITS may be reached by e-mail: its__inc@ix.netcom.com. Their Internet address is http://www.itsi.com.

This meeting can be viewed over George Mason University's Capitol Connection. The Capitol Connection also will carry the meeting live via the Internet. For information on these services call (703) 993–3100. The audio portion of the meeting will be broadcast live on the Internet via the FCC's Internet audio broadcast page at <http://www.fcc.gov.realaudio/>. The meeting can also be heard via telephone, for a fee, from National Narrowcast Network, telephone (202) 966–2211 or fax (202) 966–1770. Audio and video tapes of this meeting can be purchased from Infocus, 341 Victory Drive, Herndon, VA 20170, telephone (703) 834–0100; fax number (703) 834–0111.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6871 Filed 3–15–00; 3:18 pm]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Forms Relating to FDIC Outside Counsel Services."

DATES: Comments must be submitted on or before May 16, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to "Forms Relating to FDIC Outside Counsel Services." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: comments@ fdic.gov]. Comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Forms Relating to FDIC Outside Counsel Services.

OMB Number: 3064–0122.

Form Number: 5200/01.

Frequency of Response: On occasion.

Affected Public: Legal service firms and businesses.

Estimated Number of Respondents: 500.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 500 hours.

General Description of Collection: The collection ensures that law firms that seek to provide legal services to the FDIC meet the eligibility requirements established by Congress.

Request for Comment

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 10th day of March, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–6708 Filed 3–16–00; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Securities of Insured Nonmember Banks."

DATES: Comments must be submitted on or before May 16, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to "Securities of Insured Nonmember Banks." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: comments@ fdic.gov]. Comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Securities of Insured Nonmember Banks.

OMB Number: 3064–0030.

Form Number: F–7, F–8, F–8A.

Frequency of Response: Annually.

Affected Public: All financial institutions.

Estimated Number of Respondents: 3,620.

Estimated Time per Response: Form F–7 (1 hour); Form F–8 (0.5) hour; Form F–8A (1 hour)

Estimated Total Annual Burden: 2,220 hours.

General Description of Collection: The information is collected from FDIC-supervised banks and from officers, directors and shareholders subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended. The information is considered necessary for actual and potential investors making investment decisions concerning securities issued by reporting banks.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 10th day of March, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–6709 Filed 3–16–00; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning an information collection titled "Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks)."

DATES: Comments must be submitted on or before May 16, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to "Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks)." Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: comments@ fdic.gov]. Comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to renew the following currently approved collection of information:

Title: Notices Required of Government Securities Dealers or Brokers (Insured State Nonmember Banks).

OMB Number: 3064–0093.

Form Number: G–FIN, G–FINW, G–FIN–4, G–FIN–5.

Frequency of Response: On occasion.

Affected Public: All financial institutions.

Estimated Number of Respondents: 180.

Estimated Time per Response: 1 hour.

Estimated Total Annual Burden: 180 hours.

General Description of Collection: The Government Securities Act of 1986 requires all financial institutions acting as government securities brokers and dealers to notify their federal regulatory agencies of their broker-dealer activities,

unless exempted from the notice requirement by Treasury Department regulation.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Dated at Washington, D.C., this 10th day of March, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–6710 Filed 3–16–00; 8:45 am]

BILLING CODE 6714–01–U

FEDERAL DEPOSIT INSURANCE CORPORATION

General Counsel's Opinion No. 12, Engaged in the Business of Receiving Deposits Other Than Trust Funds

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of General Counsel's Opinion No. 12.

SUMMARY: Section 5 of the Federal Deposit Insurance Act provides that an applicant for deposit insurance must be "engaged in the business of receiving deposits other than trust funds." The statute has included this phrase since 1950. During the past half century the FDIC has construed the phrase so as to accommodate the evolving nature of banking. The phrase has been interpreted on a case-by-case basis to encompass non-traditional banks that do not accept unlimited non-trust deposits from the general public.

This long-standing interpretation is confirmed in this General Counsel's opinion. As set out in this opinion, the statutory requirement of being "engaged in the business of receiving deposits other than trust funds" is satisfied by the continuous maintenance of one or more non-trust deposits in the aggregate amount of $500,000.

FOR FURTHER INFORMATION CONTACT: Christopher L. Hencke, Counsel, Legal Division, (202) 898–8839, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429.

Text of General Counsel's Opinion

General Counsel's Opinion No. 12, Engaged in the Business of Receiving Deposits Other Than Trust Funds

By William F. Kroener, III, General Counsel

Introduction

The FDIC is authorized to approve or disapprove applications for federal deposit insurance. See 12 U.S.C. 1815. In determining whether to approve deposit insurance applications, the FDIC considers the seven factors set forth in the Federal Deposit Insurance Act (FDI Act). These factors are (1) the financial history and condition of the depository institution; (2) the adequacy of the institution's capital structure; (3) the future earnings prospects of the institution; (4) the general character and fitness of the management of the institution; (5) the risk presented by the institution to the Bank Insurance Fund or the Savings Association Insurance Fund; (6) the convenience and needs of the community to be served by the institution; and (7) whether the institution's corporate powers are consistent with the purposes of the FDI Act. 12 U.S.C. 1816. Also, the FDIC must determine as a threshold matter that an applicant is a "depository institution which is engaged in the business of receiving deposits other than trust funds * * *." 12 U.S.C. 1815(a)(1). Applicants that do not satisfy this threshold requirement are ineligible for deposit insurance.

The FDIC applies the seven statutory factors in accordance with a "Statement of Policy on Applications for Deposit Insurance." See 63 FR 44752 (August 20, 1998). The Statement of Policy discusses each of the factors at length; however, it does not address the threshold requirement that an applicant be "engaged in the business of receiving deposits other than trust funds."

The threshold requirement for obtaining federal deposit insurance is set forth in section 5 of the FDI Act. See 12 U.S.C. 1815(a)(1). The language used by section 5 ("engaged in the business of receiving deposits other than trust funds") also appears in section 8 and section 3 of the FDI Act. Under section 8, the FDIC is obligated to terminate the insured status of any depository institution "not engaged in the business of receiving deposits, other than trust funds * * *." 12 U.S.C. 1818(p). In section 3, the term "State bank" is defined in such a way as to include only those State banking institutions "engaged in the business of receiving deposits, other than trust funds * * *." 12 U.S.C. 1813(a)(2). This definition is significant because the term "State bank" appears in a number of sections of the FDI Act.

For many years the FDIC has applied the statutory phrase on a case-by-case basis. In applying the phrase, the FDIC has approved applications from institutions that did not intend to accept non-trust deposits from the general public. The FDIC has thus found that the acceptance of non-trust deposits from the public at large is not a necessary component of being "engaged in the business of receiving [non-trust] deposits." The acceptance of non-trust deposits from a particular group (such as affiliates or trust customers) has been deemed by the FDIC to be sufficient.

Prior to 1991 the Office of the Comptroller of the Currency (OCC) was responsible for determining whether new national banks would be "engaged in the business of receiving [non-trust] deposits." See 12 U.S.C. 1814(b) (1980). The OCC similarly never adopted an interpretation that would require new national banks to accept non-trust deposits from the general public.

The long-standing practices of the FDIC and the OCC have not been sufficient to remove all questions as to the proper interpretation of being "engaged in the business of receiving deposits other than trust funds." Questions have arisen from time to time about the application of the agencies' long-standing interpretation in the context of certain non-traditional depository institutions, such as credit card banks and trust companies.

The purpose of this General Counsel's opinion is to clarify the Legal Division's interpretation of being "engaged in the business of receiving deposits other than trust funds." Although the primary purpose of this opinion is to provide guidance to applicants for deposit insurance under section 5 of the FDI Act, the interpretation in this opinion also applies to section 8 (dealing with terminations) and section 3 (definition of "State bank").

Factors

A number of factors must be considered in determining whether a depository institution should be regarded by the FDIC as "engaged in the business of receiving deposits other than trust funds." These factors are (1) the statutory language; (2) the legislative history; (3) the practices of the FDIC and the OCC; (4) construction with other federal banking law; (5) the relevant case law; and (6) State banking statutes. Below, each of these factors is considered in interpreting the statutory phrase in the FDI Act.

Statutory Language

Under section 5 of the FDI Act an applicant cannot obtain federal deposit insurance unless it is "engaged in the business of receiving deposits other than trust funds." 12 U.S.C. 1815(a)(1). The Act does not define "engaged in the business of receiving deposits other than trust funds"; however, it defines "deposit" and "trust funds." See 12 U.S.C. 1813(l); 12 U.S.C. 1813(p). The former term ("deposit") includes but is not limited to the latter term ("trust funds"). See 12 U.S.C. 1813(l)(2). The latter term is defined as funds held by an insured depository institution in a fiduciary capacity, including funds held as trustee, executor, administrator, guardian or agent. See 12 U.S.C. 1813(p).

An applicant cannot be insured by the FDIC if it receives "trust funds" alone. Under section 5, it also must be engaged in the business of receiving non-trust or non-fiduciary deposits. Generally, the FDI Act defines "deposit" as the unpaid balance of money or its equivalent received or held by a bank or savings association in the usual course of business and for which it has given or is obligated to give credit, either conditionally or unconditionally, to a commercial, checking, savings, time, or thrift account, or which is evidenced by its certificate of deposit, thrift certificate, investment certificate, certificate of indebtedness or other such certificate. See 12 U.S.C. 1813(l)(1).

The corollary to section 5 of the FDI Act is section 8. Under the latter section the FDIC must terminate the insured status of any depository institution "not engaged in the business of receiving deposits, other than trust funds * * *." 12 U.S.C. 1818(p). Significantly, section 8 does not provide for any judicial determination of whether a depository institution is "not engaged in the business of receiving [non-trust] deposits" or judicial review of the FDIC's finding on this issue. Rather, section 8 provides that the FDIC's finding is "conclusive." See *id.*

The statutory phrase ("engaged in the business of receiving deposits, other than trust funds") also appears in section 3. In that section, the term "State bank" is defined in such a way as to include only those State banking institutions "engaged in the business of receiving deposits, other than trust funds * * *." 12 U.S.C. 1813(a)(2).

The statutory language is not unambiguous but requires interpretation by the FDIC in a number of respects. The statute does not specify whether a depository institution must hold a particular dollar amount of deposits in order to be "engaged in the business of receiving [non-trust] deposits." Similarly, the statute does not specify whether a depository institution must accept a particular number of deposits within a particular period in order to be "engaged in the business of receiving [non-trust] deposits." In addition, the statute does not specify whether a depository institution must accept non-trust deposits from the general public as opposed to accepting deposits from one or more members of a particular group (such as affiliates or trust customers). All these questions are unanswered and left to the FDIC for consideration and determination.

One possible interpretation is that an insured depository institution must receive a continuing stream of non-trust deposits from the general public. The statute refers to the "receiving" of "deposits"; however, the statute also defines "deposit" in such a way as to equate "receiving" and "holding." See 12 U.S.C. 1813(l)(1). Moreover, the statute recognizes that a single deposit can be accepted or "received" many times through rollovers. See 12 U.S.C. 1831f(b) (dealing with the acceptance of brokered deposits). Thus, the word "receiving" in the statute can be reconciled with the holding—and periodic renewal or rollover—of a single certificate of deposit. Similarly, the plural word "deposits" is not inconsistent with the holding of a single deposit account because multiple deposits of funds can be made into a single account. A depositor might, for example, make a deposit of funds every month into the same account. The accrual of interest would represent an additional deposit into the same account. In the case of a certificate of deposit, the deposit would be replaced with a new deposit at maturity.

The ambiguity of the statutory language results from the nature of the banking business. The opening of a deposit account does not represent a completed, isolated transaction. Rather, the opening of an account initiates a continuing business relationship with periodic withdrawals, deposits, rollovers and the accrual of interest. For this reason the statutory phrase ("engaged in the business of receiving deposits other than trust funds") can be interpreted as encompassing the holding of one or few non-trust deposit accounts. Nothing in the statute specifies that an institution must receive a continuing stream of non-trust deposits from the general public.

Legislative History

The phrase "engaged in the business of receiving deposits" can be traced to the Banking Act of 1935 (Pub. L. 74–305). In that Act the term "State bank" was defined as any bank, banking association, trust company, savings bank or other banking institution "which is engaged in the business of receiving deposits." This qualification has been retained in the FDI Act, which also defines "State bank" in such a manner as to include only those institutions "engaged in the business of receiving deposits, other than trust funds." 12 U.S.C. 1813(a)(2).

The qualification relating to "trust funds" can be traced to the Banking Act of 1950 (Pub. L. 81–797). In the applicable House Report the purpose of this qualification is explained as follows: "The term 'State bank' is redefined to exclude banking institutions (certain trust companies) which do not receive deposits other than trust funds. There appears to be no necessity for such institutions being insured, as they place most of their uninvested funds on deposit in insured banks, retaining only nominal amounts, if any, in their own institutions." H.R. Rep. No. 2564, reprinted in 1950 U.S.C.C.A.N. 3765, 3768. The term "nominal amounts" refers to uninvested trust funds held by the institution; it does not apply to non-trust deposits.

The House Report indicates that a trust company cannot obtain insurance if it does not receive any non-trust deposits. It provides no guidance, however, as to whether a trust company can be insured if it accepts a small amount of non-trust deposits from a particular group (such as affiliates or trust customers) as opposed to a large amount or continuing stream of non-trust deposits from the general public. In essence, the House Report simply paraphrases the statutory language that an insured depository institution must be "engaged in the business of receiving deposits other than trust funds."

A more useful reflection of Congressional intent may be found in legislation enacted after the FDIC and

the OCC had begun to interpret the statutory language. As discussed below, this subsequent legislation indicates that Congress neither modified nor indicated any disagreement with the broader construction given to the statutory phrase by the FDIC and the OCC.

Practices of the FDIC and the OCC

The FDIC has acted on a case-by-case basis in determining whether depository institutions are "engaged in the business of receiving deposits other than trust funds." The FDIC has never adopted a formal interpretation or set of guidelines. Under section 5 the FDIC for many years has approved applications for deposit insurance from non-traditional depository institutions with few non-trust deposits. This practice began at least as early as 1969 with Bessemer Trust Company (Bessemer) located in Newark, New Jersey. Originally, Bessemer was an uninsured trust company that accepted no deposits except deposits related to its trust business. In 1969 Bessemer decided to offer non-trust checking accounts to its trust customers. Bessemer did not offer non-trust deposit accounts to the general public. Notwithstanding this fact, the FDIC approved Bessemer's application for deposit insurance.

In the 1970s the FDIC approved more applications from banks that intended to serve limited groups of customers. Again, the FDIC did not object to the fact that the banks did not intend to accept non-trust deposits from the general public. Some of these banks were "Regulation Y" trust companies under the Bank Holding Company Act (BHCA). See 12 U.S.C. 1843(c); 12 CFR Part 225. The FDIC took the position that the statutory language ("engaged in the business of receiving [non-trust] deposits") should be construed very broadly so as to promote public confidence in the greatest number of institutions.

In the 1980s the FDIC staff reviewed the meaning of being "engaged in the business of receiving [non-trust] deposits." The staff noted questions about the insurance of "Regulation Y" trust companies; the staff also noted questions as to whether the acceptance of funds from a single non-trust depositor would represent a sufficient level of non-trust deposit-taking. Notwithstanding these continuing questions, the FDIC did not adopt a strict interpretation (or any formal interpretation) of the statutory phrase. Instead, the FDIC during this period continued to approve applications from depository institutions with very limited deposit-taking activities. For example, in 1984 the FDIC's Board of Directors approved an application from Bear Stearns Trust Company located in Trenton, New Jersey, even though the institution planned to accept non-trust deposits only from employees and affiliates. The institution did not intend to accept non-trust deposits from the general public.

Because the FDIC has never adopted a formal interpretation or guidelines, the FDIC's interpretation has been subject to questions from time to time. In 1991 the FDIC contemplated whether the insured status of certain national trust companies should be terminated under section 8 of the FDI Act because the trust companies held few or no non-trust deposits. The issue was not resolved because the institutions terminated their insurance voluntarily.

The practices of the OCC also are relevant. Prior to 1991 the OCC was responsible for determining whether national banks satisfied the threshold statutory requirements for obtaining deposit insurance. See 12 U.S.C. 1814(b) (1980). In exercising this authority the OCC chartered a number of national banks with limited deposit-taking functions on the basis that such banks were "engaged in the business of receiving deposits other than trust funds."

A significant statutory change occurred in 1991. At that time Congress provided that all applicants for deposit insurance must apply directly to the FDIC. See 12 U.S.C. 1815(a). Congress thus authorized the FDIC to make the requisite determination as to whether any applicant for deposit insurance would be "engaged in the business of receiving deposits other than trust funds." In making this change, Congress made no objection to the practices of the FDIC and the OCC in extending insurance to institutions with limited deposit-taking activities. Thus, Congress accepted this practice. See *Lorillard* v. *Pons*, 434 U.S. 575 (1978). In addition, Congress accepted this practice through the enactment of certain provisions in the Bank Holding Company Act (discussed in the next section).

Since 1991 the FDIC has approved applications for deposit insurance from more than 70 non-traditional depository institutions holding one or a very limited number of non-trust deposits. Some of these institutions have been credit card banks; others have been trust companies. Over the last two years the FDIC has received approximately 20 applications from limited purpose federal savings associations operating as trust companies and chartered by the Office of Thrift Supervision (OTS). Approximately 15 of these applications already have been approved. In granting insurance to some of these institutions, the FDIC has required the holding of at least one non-trust deposit (generally owned by a parent or affiliate) in the amount of $500,000.

The practices of the FDIC and the OCC support a broad, flexible interpretation of being "engaged in the business of receiving deposits other than trust funds." The agencies have approved applications from institutions that did not intend to accept deposits from the general public. Neither agency has ever specifically adopted the position that an insured depository institution must accept non-trust deposits from the general public.

The Bank Holding Company Act

The FDI Act also must be reconciled with the Bank Holding Company Act of 1956 (BHCA) as amended by the Competitive Equality Banking Act of 1987, Pub. L. No. 100–86 (CEBA). In the BHCA the definition of "bank" includes banks insured by the FDIC. See 12 U.S.C. 1841(c)(1). A list of exceptions includes institutions functioning solely in a trust or fiduciary capacity if several conditions are satisfied. The conditions related to deposit-taking are: (1) All or substantially all of the deposits of the institution must be trust funds; (2) insured deposits of the institution must not be offered through an affiliate; and (3) the institution must not accept demand deposits or deposits that the depositor may withdraw by check or similar means. See 12 U.S.C. 1841(c)(2)(D)(i)–(iii). The significant conditions are (1) and (2). The first condition provides that all or substantially all of the deposits of the institution must be trust funds; the second condition involves "insured deposits." Thus, the statute contemplates that a trust company—functioning solely as a trust company and holding no deposits (or substantially no deposits) except trust deposits—could hold "insured deposits." In other words, the BHCA contemplates that an institution could be insured by the FDIC even though the institution does not accept non-trust deposits from the general public.

The BHCA is difficult to reconcile fully with the FDI Act, which mandates that all FDIC-insured institutions must be "engaged in the business of receiving [non-trust] deposits." The appropriate way to reconcile the BHCA with the FDI Act is for the FDIC to construe the threshold requirement of being "engaged in the business of receiving deposits other than trust funds" in a flexible and broad way. The FDIC has done so by allowing depository institutions to satisfy the statutory requirement by receiving very limited non-trust deposits.

Court Decisions

The courts have offered few interpretations of being engaged in the specific "business of receiving deposits other than trust funds." The leading case is *Meriden Trust and Safe Deposit Company* v. *FDIC*, 62 F.3d 449 (2d Cir. 1995). In that case, a bank holding company acquired two State-chartered banks insured by the FDIC. One of these banks was Meriden Trust; the other was Central Bank. After making the acquisitions, the holding company transferred most of the assets and liabilities of Meriden Trust to Central Bank. Nothing was retained by Meriden Trust except the assets and liabilities relating to its trust business. Also, Meriden Trust held two non-trust deposits in the aggregate amount of $200,000. One of the non-trust deposits was owned by the holding company; the other was owned by Central Bank. In order to maintain the ability to function as a full-service bank, Meriden Trust did not seek to terminate its insurance from the FDIC.

Later, Central Bank failed. Meriden Trust then informed the FDIC that it no longer considered itself an "insured depository institution" because it had stopped accepting non-trust deposits. By taking this position, Meriden Trust hoped to avoid liability under section 5(e) of the FDI Act. Section 5(e) provides that an "insured depository institution" shall be liable for any loss incurred by the FDIC in connection with the failure of a commonly controlled insured depository institution. See 12 U.S.C. 1815(e).

The FDIC did not agree with Meriden Trust. In court, the issue was whether Meriden Trust was an "insured depository institution." Under the FDI Act, the term "insured depository institution" includes any bank insured by the FDIC including a "State bank." See 12 U.S.C. 1813(c)(2). In turn, "State bank" includes any State-chartered bank or trust company "engaged in the business of receiving deposits, other than trust funds." 12 U.S.C. 1813(a)(2)(A). Again, Meriden Trust argued that it was not "engaged in the business of receiving deposits, other than trust funds" because it had stopped accepting non-trust deposits from the general public.

The position taken by Meriden Trust was rejected by the federal district court as well as the United States Court of Appeals for the Second Circuit. The Court of Appeals relied upon the fact that Meriden Trust held two non-trust deposits (in the aggregate amount of only $200,000). Also, the court relied upon the fact that Meriden Trust never obtained a termination of its status as an "insured depository institution" in the manner prescribed by the FDI Act. Under the Act, termination of this status requires the involvement or consent of the FDIC. See 12 U.S.C. 1818; 12 U.S.C. 1828(i)(3).

Another noteworthy case is *United States* v. *Jenkins*, 943 F.2d 167 (2d Cir.), cert. denied, 502 U.S. 1014 (1991). In that case the court found that the defendant had violated the Glass-Steagall Act by engaging "in the business of receiving deposits" without proper State or federal authorization. See 12 U.S.C. 378(a). The case is noteworthy because the defendant was convicted for receiving a single deposit in the amount of only $150,000.

A recent case is *Heaton* v. *Monogram Credit Card Bank of Georgia*, Civil Action No. 98–1823 (E.D. La.). In that case credit card holders in Louisiana have brought suit against an insured State-chartered credit card bank in Georgia. The cardholders have charged the bank with violating Louisiana restrictions on fees and interest rates. In its defense the Georgia bank has cited section 27 of the FDI Act. Under that section, a "State bank" may avoid certain State restrictions on fees and interest rates when operating outside its State of incorporation. See 12 U.S.C. 1831d. The key issue in the litigation is whether the Georgia bank—holding a fixed and limited number of deposits—qualifies as a "State bank" entitled to protection under section 27.

The Georgia bank in Heaton holds only two deposits and both are from affiliates. As a non-party in the litigation, the FDIC informed the court that it deemed the bank to be a "State bank" under the FDI Act despite the bank's limited number of deposits. The court disagreed. On November 22, 1999, the federal district court ruled on a preliminary jurisdictional motion that the Georgia bank was not a "State bank" because it was not "engaged in the business of receiving deposits, other than trust funds." The Georgia bank appealed the court's ruling to the United States Court of Appeals for the Fifth Circuit. The case is pending before the Court of Appeals.

Meriden and Jenkins are more persuasive than the district court's decision in Heaton. As discussed above, the Court of Appeals in Meriden found that a trust company was "engaged in the business of receiving [non-trust] deposits" even though it held only two non-trust deposits in the aggregate amount of only $200,000. In part the court relied upon the fact that the insured status of the trust company never was terminated in the manner prescribed by the FDI Act. This reliance was appropriate in light of the FDIC's "conclusive" authority under section 8 to determine whether an insured depository institution is "not engaged in the business of receiving deposits, other than trust funds." 12 U.S.C. 1818(p).

In contrast, the Heaton court disregarded the fact that the FDIC has never terminated the insured status of the Georgia credit card bank. The implication of the Heaton decision is that a bank may remain insured by the FDIC under the FDI Act even though it ceases to exist as a "State bank" under the FDI Act. This interpretation is irrational. It would lead to the existence of State depository institutions that are insured by the FDIC but unregulated by every section of the FDI Act that regulates "State banks." See, *e.g.*, 12 U.S.C. 1831a (regulating the activities of insured "State banks").

Meriden and Jenkins support a broad interpretation of being "engaged in the business of receiving deposits other than trust funds." These cases involved and are directly relevant to banks. There are cases outside the banking field that suggest that being "engaged in a business" implies regularity of participation or involvement in multiple transactions. See, *e.g.*, *McCoach* v. *Minehill & Schuylkill Haven Railroad Co.*, 228 U.S. 295, 302 (1913); *United States* v. *Scavo*, 593 F.2d 837, 843 (8th Cir. 1979); *United States* v. *Tarr*, 589 F.2d 55, 59 (1st Cir. 1978). It is inappropriate to apply such cases (rather than Meriden and Jenkins) in the banking business because, as previously explained, the opening of a single deposit account initiates a continuing business relationship with periodic withdrawals, deposits, rollovers and the accrual of interest.

State Banking Statutes

Some State banking statutes impose significant restrictions on the ability of some depository institutions to accept non-trust deposits. For example, a Florida statute provides that a "credit card bank" (1) may not accept deposits at multiple locations; (2) may not accept demand deposits; and (3) may not accept savings or time deposits of less than $100,000. At the same time, the statute provides that the bank must obtain insurance from the FDIC. See Fla. Stat. 658.995(3). Thus, the statute contemplates that a bank may be "engaged in the business of receiving [non-trust] deposits" (a necessary condition for obtaining insurance from the FDIC) even though the bank may not

accept deposits on an unrestricted basis from the general public. Indeed, the statute contemplates that a bank may be insured by the FDIC even though the bank's business consists solely of making credit card loans and conducting such activities as may be incidental to the making of credit card loans. See Fla. Stat. 658.995(3)(f).

Similarly, a Virginia statute provides that a general business corporation may acquire the voting shares of a "credit card bank" only if certain conditions are satisfied. See Va. Code 6.1–392.1.A. These conditions comprise the definition of a "credit card bank." See Va. Code 6.1–391. These conditions include the following: (1) The bank may not accept demand deposits; and (2) the bank may not accept savings or time deposits of less than $100,000. Indeed, the statute provides that a "credit card bank" may accept savings or time deposits (in amounts in excess of $100,000) only from affiliates of the bank having their principal place of business outside the State. See Va. Code 6.1–392.1.A.3–4. In other words, the Virginia statute prohibits the acceptance of any deposits from the general public. At the same time, the statute requires the deposits of the bank to be federally insured. See Va. Code 6.1–392.1.A.4.

A third example is the Georgia Credit Card Bank Act. Prior to a recent amendment, this statute provided that a credit card bank could take deposits only from affiliated parties. In other words, the Georgia statute was similar to the current Virginia statute in prohibiting a credit card bank from accepting deposits from the general public. See Ga. Code Ann. 7–5–3(7) (1997). At the same time, Georgia law required such banks to be "authorized to engage in the business of receiving deposits." Ga. Code Ann. 7–1–4(7) (1997). Thus, Georgia law (consistent with the current Virginia law) was based on the premise that the receipt of deposits from the general public is not a necessary element of being "engaged in the business of receiving deposits." The receipt of deposits from affiliated parties was deemed sufficient. (Under the current Georgia law, a credit card bank may accept savings or time deposits in amounts of $100,000 or more from anyone. See Ga. Code 7–5–3(7).)

These State laws contemplate a broad and flexible interpretation of being "engaged in the business of receiving deposits other than trust funds." Of course, the FDIC in applying the FDI Act cannot be controlled by State law but the FDIC should be cognizant of the evolving nature of banking as reflected by State laws.

Confirmation of the FDIC'S Interpretation

For more than 30 years the FDIC has approved applications for deposit insurance from non-traditional depository institutions. During this period the FDIC has not required the acceptance of deposits from the general public in determining that applicants are "engaged in the business of receiving deposits other than trust funds." On the contrary, the FDIC has approved applications from many institutions (such as trust companies and credit card banks) that did not intend to solicit deposits from the general public. Indeed, some of these institutions planned to accept no more than one non-trust deposit from a parent or affiliate.

The FDIC's consistent practice represents an interpretation of being "engaged in the business of receiving deposits other than trust funds." This long-standing broad interpretation is consistent with the protective purposes of deposit insurance generally and is well within the FDIC's discretion in light of the ambiguity of the statutory phrase. The FDIC's long-standing interpretation also is supported by (1) the practices of the OCC; (2) the acceptance by Congress of the practices of the FDIC and the OCC; (3) the Bank Holding Company Act; (4) the relevant case law; and (5) State banking statutes. On the basis of the foregoing, I conclude that the statutory requirement of being "engaged in the business of receiving deposits other than trust funds" is satisfied by the continuous maintenance of one or more non-trust deposits in the aggregate amount of $500,000 (the amount specified in a number of recent applications).

Some discussion is warranted regarding the most limited forms of being "engaged in the business of receiving deposits other than trust funds." It could be argued that a difference exists between allowing depository institutions to decline non-trust deposits from the general public and allowing depository institutions to decline all non-trust deposits from all potential depositors with the exception of a single deposit from a parent or affiliate. Perhaps an argument also could be made that the minimum number of non-trust depositors or the minimum number of non-trust deposit accounts should be greater than one. The problem with this argument is that a single deposit account can be divided into portions. Moreover, if the FDIC required the existence of a particular number of depositors or the periodic acceptance of a particular number of non-trust deposits, institutions holding one deposit account would simply arrange for the prescribed number of depositors to hold the funds in the prescribed number of accounts. At periodic intervals, funds would be withdrawn and redeposited. The FDIC should not and need not interpret the minimum threshold requirement of the statute so as to require such stratagems.

In summary, the Legal Division believes and the General Counsel is of the opinion that the FDIC may determine that a depository institution is "engaged in the business of receiving deposits other than trust funds" as required by section 5 of the FDI Act if the institution holds one or more non-trust deposits in the aggregate amount of $500,000. This interpretation is not intended to suggest that a depository institution will necessarily not be "engaged in the business of receiving [non-trust] deposits" if it holds such deposits in the aggregate amount of less than $500,000. Rather, the Legal Division is merely adopting the opinion that the amount of $500,000 is sufficient for purposes of section 5 as well as section 8 (terminations) and section 3 (definition of "State bank"). If an applicant for deposit insurance proposes to hold non-trust deposits in a lesser amount (based on projected deposit levels), the FDIC would need to determine in that particular case whether the applicant would be "engaged in the business of receiving [non-trust] deposits." Similarly, under section 8 or section 3, the FDIC will determine on a case-by-case basis whether the holding of non-trust deposits in an amount less than $500,000 constitutes being "engaged in the business of receiving [non-trust] deposits."

Conclusion

Section 5 of the FDI Act provides that an applicant for deposit insurance must be "engaged in the business of receiving deposits other than trust funds." In the opinion of the General Counsel, on the basis of the foregoing, the holding by a depository institution of one or more non-trust deposits in the aggregate amount of $500,000 is sufficient to satisfy this threshold requirement for obtaining deposit insurance.

By Order of the Board of Directors.

Dated at Washington, D.C., this 9th day of March, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–6548 Filed 3–16–00; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than March 31, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. The Garst Family (Stephen Garst, Elizabeth Garst, Edward Garst, Rachel Garst, all of Coon Rapids, Iowa; Katherine Garst, Seattle, Washington; Jennifer Garst, Takoma Park, Maryland; and Sarah Garst, West Des Moines, Iowa) and Elizabeth Garst, individually; to acquire additional voting shares of Audubon Investment Company, Coon Rapids, Iowa, and thereby indirectly acquire additional shares of Audubon State Bank, Audubon, Iowa.

2. William W. Parish, Dallas, Texas; to acquire voting shares of Parish Bank and Trust Company, Momence, Illinois.

Board of Governors of the Federal Reserve System, March 13, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6596 Filed 3–16–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 10, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Maries County Bancorp, Inc., Vienna, Missouri, and its subsidiary, Progress Bancshares, Inc., Sullivan, Missouri; to acquire at least 89.53 percent of the voting shares of Tritten Bancshares, Inc., St. Robert, Missouri; and thereby indirectly acquire First State Bank of St. Robert, St. Robert, Missouri.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. ETN Leasing, Inc., Palestine, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of East Texas National, Inc., Palestine, Texas, and thereby indirectly acquire East Texas-Dover, Inc., Wilmington, Delaware, and East Texas National Bank, Palestine, Texas.

Board of Governors of the Federal Reserve System, March 13, 2000.

Robert deV. Frierson,

Associte Secretary of the Board.

[FR Doc. 00–6597 Filed 3–16–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–00–29]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 14 days of this notice.

Proposed Projects

Possible Estuary-Associated Syndrome (PEAS) Surveillance —New— National Center for Environmental Health (NCEH) is requesting an emergency clearance to collect data on PEAS. In 1997, scientists found a newly identified microorganism, the dinoflagellate Pfiesteria piscicida, in water samples taken from a bay tributary. The presence of large numbers of this organism (a bloom) was purportedly associated with observations of thousands of dead fish as well as with reports of a wide range of adverse human health effects. Reports of this purported association created excessive public concern about exposure to estuarine waters and a general distrust in seafood that prompted a flood of inquiries to public health and environmental quality agencies.

Since 1997, the Centers for Disease Control and Prevention (CDC) has been working with the States of Delaware, Florida, Maryland, North Carolina, South Carolina, and Virginia in a series of meetings, workshops, and conference calls to design, implement, evaluate, and revise surveillance activities to provide a quantitative estimate of the public health burden associated with responding to Pfiesteria-related events, including blooms, fish kills, and people with health complaints. Cooperative agreement funds were awarded to these states to develop a multi-state surveillance system to examine the effects of Pfiesteria blooms upon humans and to expand the scientific knowledge of the human health effects if Pfiesteria. Specifically, the states will quantify the burden of PEAS on their health agencies by enumerating the number of contacts involving public and professional requests for information as well as symptoms involved in self-reporting. In collaboration with the state health departments, NCEH has developed a standardized data collection instrument that the states may use to collect and store the surveillance data. NCEH has requested that the states report specific data elements back at regular intervals so that NCEH can compile the data and issue periodic aggregate reports.

CDC/NCEH is requesting a 6 month emergency clearance. There is no cost to respondents.

Type of burden	Number of respondents	Number of responses	Avg. burden/ response (in hrs.)	Total burden (in hrs.)
Information only calls	800	1	5/60	66
Symptomatic reports—telephone interview	80	1	25/60	33
Total				99

Dated: March 13, 2000.

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–6614 Filed 3–16–00; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–2000–07]

Fiscal Year 2000 Family Violence Prevention and Services Program—National Domestic Violence Hotline; Availability of Funds and Request for Applications

AGENCY: Office of Community Services (OCS), Administration for Children and Families (ACF), DHHS.

ACTION: Notice of the availability of funds and request for applications to establish and operate the National Domestic Violence Hotline.

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), announces the availability of funds in fiscal year (FY) 2000 for the award of one cooperative agreement on a competitive basis to operate a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence. This announcement contains all of the application materials needed to apply for this cooperative agreement.

The purpose of the national domestic violence hotline is to provide information and referral services, counseling, and assistance to victims of domestic violence, their children and other family members, and others affected by such violence and to enable them to find safety and protection in crisis situations. The successful applicant will be required to provide telephonic assistance on a 24 hour-per-day, seven day-a-week basis throughout the continental United States, and in Alaska, Hawaii, the Commonwealth of Puerto Rico, and the Virgin Islands.

Closing Date: The closing date for submission of applications is May 17, 2000. Applications postmarked after the closing date will be classified as late. Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be accepted as proof of timely mailing. Detailed application submission instructions, including the addresses where applications must be received, are found in Part IV of this announcement.

Mailing Address: Applications should be mailed to Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor Aerospace Center, 370 L'Enfant Promenade, SW Washington, DC 20447; Attention: Application for Family Violence Prevention and Services Program.

Number of Copies Required: One signed original application and four copies should be submitted at the time of initial submission. (OMB–0970–0062, expiration date 10/31/2001.)

Acknowledgment of Receipt: An acknowledgment will be mailed to all applicants with an identification number which will be noted on the acknowledgment. This number must be referred to in all subsequent communications with OCS concerning the application. If an acknowledgment is not received within three weeks after the application deadline, applicants must notify ACF by telephone (202) 401–5103. Applicant should also submit a mailing label for the acknowledgment. (**Note:** To facilitate receipt of this acknowledgment from ACF, applicant should include a cover letter with the application containing an E-mail address and facsimile (FAX) number if these items are available to applicant.)

FOR FURTHER INFORMATION CONTACT: Administration for Children and Families, Office of Community Services, Division of State Assistance, 370 L'Enfant Promenade, SW, Washington, DC 20447. Contact: William Riley, (202) 401–5529.

For a Copy of the Announcement, Contact: Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW, 5th Floor West, Washington DC 20447. Telephone: (202) 401–4787.

In addition, the announcement will be accessible on the OCS website for reading or printing at: *http://www.acf.dhhs.gov/programs/ocs* under "Funding Opportunities".

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts. Part I provides information on the legislative authority applicable to this announcement and background information on the proposed national domestic violence hotline. Part II describes the minimum requirements for the design of the hotline that the applicant must address in its application. Part III describes the evaluation criteria. Part IV provides information and instructions for the development and submission of an application.

The forms to be used for submitting an application follow Part IV. Please copy and use these forms in submitting an application under this announcement. No additional application materials are available or needed to submit an application.

Applicants should note that the cooperative agreement to be awarded under this program announcement is subject to the availability of funds.

Part I: General Information

A. Legislative Authority

Title III of the Child Abuse Amendments of 1984, (Pub. L. 98–457, 42 U.S.C. 10401, *et seq.*) is entitled the Family Violence Prevention and Services Act (the Act). The Act was first implemented in FY 1986, was reauthorized and amended in 1992 by Pub. L. 102–295, and was reauthorized and amended for fiscal years 1996 through 2000 by Pub. L. 103–322, the Violent Crime Control and Law Enforcement Act of 1994 (Crime Bill), signed into law on September 13, 1994. The Act was most recently amended by Pub. L. 104–235, the "Child Abuse Prevention and Treatment Act Amendment of 1996."

Section 316 of the Crime Bill, the Violence Against Women Act, authorized a grant award for up to five years to provide for the operation of a national, toll-free telephone hotline to provide information and assistance to victims of domestic violence.

B. Conceptual Framework and Scope of Services

The prevalence of family violence is widespread and its effective prevention and treatment requires coordination and collaboration among a broad range of legal, justice system, health, and social service providers, and advocates at the Federal, State and local levels.

To serve the wide range of expected calls effectively, the hotline must have expertise about domestic violence and services to victims of domestic violence. The staff also must understand the importance of using appropriate linkages with State and local resources to serve callers to the hotline. The benefits of a highly visible national hotline to victims and others will be directly related to the productive working relationships and coordinated provision of services between and among the hotline and State and local hotlines and other services and resources.

Calls to the hotline may range from the urgent and life-threatening to calls for general reference information. The target population to be served by the hotline is specified in the statute as "victims of domestic violence". The hotline should be prepared to respond to the broad range of violence that occurs in the context of family and intimate relationships, domestic violence, spouse abuse, partner abuse, battering of women, sexual assault, date rape, and acquaintance rape. The hotline also will serve those less directly affected by such abuse, *e.g.*, relatives, children of victims and other family members, friends, neighbors, perpetrators and batterers, other concerned individuals, and the general public.

In terms of the scope of the services provided by the hotline, the statute requires the provision of "information and assistance" and "counseling and referral services". Therefore, the applicants' proposed design and plan for operating the hotline and responding to callers is important. However, the hotline is not expected to provide extended or long-term counseling or therapy services. The fuller discussion of a problem and consideration of options is done most appropriately at the local level, given the variation in laws and services available among the States and localities.

Because domestic violence often contributes to isolation, helplessness, loss of self-esteem, and dependence, a self-help and empowerment model of services is needed. Such a model:

- Protects and assures safety for all victims and other family members;
- Builds on the strengths and resources of individuals and families;
- Offers options and support for independent decision-making based on specific individual and family needs and circumstances; and
- Assists individuals and families to obtain protection and needed services that are respectful of cultural and community characteristics.

Finally, we recognize that there is an inter-relationship between alcohol, drug abuse, and mental health (ADM) problems and domestic violence. Alcohol abuse has been demonstrated to contribute to violent behavior. Moreover, the abuse of alcohol coupled with other drugs is even more likely to be associated with severe battering incidents than is alcohol by itself. Victims of and or witnesses to domestic violence also may experience psychological consequences or turn to substance abuse to ameliorate their pain. In addition to the physical trauma resulting from acts of physical abuse, battered women suffer from a number of mental health consequences, including higher levels of depression, drug and alcohol abuse, suicide attempts, and low self-esteem. Many of the mental health consequences of spousal violence result from chronic intimidation and fear, which are often as significant as the actual, acts of physical aggression. Witnessing spousal violence contributes to the cycle of violence outside the home. There is an increased likelihood of child abuse in homes where there has already been spouse abuse.

C. Eligible Applicants

Any private nonprofit agency, organization, institution, Tribal organization, or combination thereof, is eligible to apply for these funds. The applicant nonprofit entity must submit documentation of its experience and capability to operate a 24 hour, 365 days a year, domestic violence hotline. Any nonprofit organization submitting an application must also submit proof of its nonprofit status in its application at the time of submission. Proof of nonprofit status can be accomplished by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS Code, or by providing a copy of the currently valid IRS tax exemption certificate, or by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

D. Availability of Funds

As authorized by section 316 of the Act, the Office of Community Services will award one cooperative agreement in FY 2000 for a maximum of $1,957,000 for the implementation of the toll-free rational domestic violence hotline. The source of these funds will be the Crime Bill Trust Fund.

Non-competitive continuation grant awards for each of years two through five (FYs 2001–2004) are projected to be $2,000,000 per fiscal year subject to the availability of funds.

E. Duration of Project

The Office of Community Services will award one grant, as a cooperative agreement, for up to five years (60-month project period). The initial grant award will cover a 12-month budget period. Application for continuation funding beyond the initial 12-month budget period, but within the 60-month project period, will be considered in subsequent years on a non-competitive basis, subject to the approval of the Secretary, the availability of funds, the

satisfactory performance of the grantee, and the determination that the continued funding and support of the project would be in the best interest of the government.

F. Cooperative Agreement

The Office of Community Services intends to support the national toll-free hotline through a cooperative agreement. A cooperative agreement is Federal financial aid in which substantial Federal involvement is anticipated. The responsibilities of the Administration for Children and Families and of the successful applicant will be identified and incorporated into the cooperative agreement during pre-award negotiations. It is anticipated that ACF responsibilities will not change the project requirements found in Part II of this announcement.

The grantee will outline a plan of interaction with OCS for implementation under a cooperative agreement including, as appropriate, activities involving Federal staff. The plan under the cooperative agreement will describe the general and specific responsibilities of the grantee and the grantor as well as foreseeable joint responsibilities. A schedule of tasks will be developed and agreed upon in addition to any special conditions relating to the implementation of the hotline.

Part II: Project Requirements

Requirements for Project Implementation

The following requirements must be met by the grantee and addressed in the application:

1. All funds received by the grantee pursuant to Section 316 of the Act must be used to establish and operate a national toll-free, telephone hotline to provide information and assistance to victims of domestic violence.

2. In establishing the hotline, the private, nonprofit entity shall:

- Contract with a carrier for the use of a toll-free telephone line;
- Employ, train, and supervise personnel to answer incoming calls and provide counseling and referral services on a 24-hour-a-day basis;
- Assemble and maintain a current database of information relating to services for victims of domestic violence to which callers may be referred throughout the United States, including information on the availability of shelters that serve battered women and their children; and
- Publicize the hotline to potential users throughout the United States.

3. To be approved by the Secretary, the application must include a complete description of the applicant's plan for the operation of a national domestic violence hotline, including description of:

- The training program for hotline personnel;
- The hiring criteria for hotline personnel;
- The methods for the creation, maintenance, and updating of a resource database;
- A plan for publicizing the availability of the hotline;
- A plan for providing service to non-English speaking callers, including hotline personnel who speak Spanish; and
- A plan for facilitating access to the hotline by persons with hearing impairments.

4. The applicant must demonstrate that it has:

- Nationally recognized expertise in the operation of a domestic violence hotline and a record of high quality service to victims of domestic violence, including a demonstration of support from advocacy groups, such as domestic violence State coalitions or recognized national domestic violence groups; and
- A commitment to diversity, and to the provision of services to ethnic, racial, and non-English speaking minorities, in addition to older individuals and individuals with disabilities.

5. The applicant must demonstrate knowledge of the field, including the range of services and the resources available for domestic violence victims, their children and family members, perpetrators and batterers, and other concerned individuals, including services and resources relating to substance and mental health problems; State and Indian tribal domestic violence laws, including the availability of legal protection; and the barriers affecting access to such services, resources and protection.

6. The applicant must demonstrate experience in providing high-quality crisis intervention, information and referral, and counseling services and support to battered women, their children, other domestic violence victims, their family and friends, batterers, and the general public through a national toll-free hotline.

7. The applicant must demonstrate an understanding of the relationship of alcohol, drug abuse, and mental health problems to incidents of domestic violence and the ability to make appropriate referrals to callers.

8. The applicant must demonstrate an understanding of the need for a national hotline for domestic violence victims, including a description of the function and limitation of the current network of national and State crisis hotlines, information lines, and State victims' referral services.

9. The applicant must provide a plan and demonstrated ability to build, maintain, and keep current a comprehensive database of resource information, including the full range of services available in local communities, the types of legal protection and services available in different States and localities, and the capability to access information.

10. The applicant must provide a detailed description of:

- The telecommunications and computer technology that is or will be employed to establish and support the hotline, including all management functions, referral functions, resource database management functions, monitoring functions, and overall project administration and quality control, including periodic reporting to HHS;
- The design and operation of the telephone system that will be used to provide the service; its capacity and its limitations, including information such as the capacity to facilitate the number of incoming calls, call conferencing, automatic call referral to local providers, and service integration with computers;
- The methods that will be used to ensure that the national hotline is a confidential crisis intervention and the specific provisions that will be in place to safeguard the confidentiality of callers and ensure the proper handling of confidential or sensitive information;
- The personnel recruitment, hiring, and training program (*i.e.*, a description of an initial and ongoing training plan for staff and volunteers should be included in this section) that will ensure the delivery of quality crisis intervention, information and referral, assistance, and counseling services to diverse populations;
- The specific emergency response and crisis protocol to be used, the ability to conference call (or "patch") a caller to a local domestic violence, legal services, or mental health or substance abuse program when appropriate, and the plans for minimizing such problems as crank/obscene calls and busy signals; and
- The methods the applicant will use to provide for the development, maintenance, and updating of a comprehensive resource database (distributed to the maximum extent appropriate); the technical capacity to link with other State and local databases in order to maintain an extensive and current resource locator or listing; the ability to facilitate communication among service providers to assist the provision of services; and how the information on best practices gathered through various inventories will be used to assist victims of family violence.

11. The applicant must demonstrate an understanding of the technological requirements of such a project and include a detailed timeline to provide the following services nationally:

- 24-hour/365 days per year access;
- Direct access to English and Spanish-speaking personnel at all times and provision for services to other non-English speaking callers and the hearing impaired;
- Personnel (paid staff and volunteers) trained in crisis intervention, information and referral, and counseling skills;
- Comprehensive database of current information;
- The ability to connect callers directly to local programs or services when appropriate;
- Emergency response protocol for callers in immediate danger; and
- Appropriate confidentiality safeguards; and data collection and data management capability sufficient to support program administration, reporting, monitoring, and an ongoing quality assessment of the hotline service.

12. The applicant must provide a plan to coordinate, work with, and provide hotline services and data resource and referrals that make maximum use of existing domestic violence programs and resources, including, but not limited to, local and State-wide domestic violence hotlines, State Domestic Violence Coalitions, State Sexual Assault Coalitions, shelter programs, emergency services, legal services programs, national domestic violence resource centers, other existing national hotlines, and other national organizations; resources related to child abuse and youth endangerment, ADM problems, and perpetrators and batterers programs. The applicant must provide support to State and local domestic violence hotlines in response to demands generated by the national public awareness campaign.

13. The applicant must provide a description of the quality assurance system it will use to assess regularly the quality of the services being provided by the hotline and the extent to which the goals and objectives of the service are being met. The quality assurance system also must include actions to address identified problems.

14. The applicant must provide a comprehensive plan to publicize the hotline to a national audience, including efforts to ensure promotion through the national media and through targeted outreach to racially and ethnically diverse communities, older individuals, and individuals with disabilities.

15. The applicant must demonstrate the ability to staff, financially support, and programmatically administer a national project of this scope.

16. The author(s) of the application must be clearly identified together with a description of his or her current relationship to the applicant organization and any future project role he or she may have if the project is funded.

17. The applicant must provide an assurance that any information collected as a part of this grant will become the property of the Federal Government.

18. The applicant must provide an assurance that it will work with the Federal Project Officer to identify the information that will be compiled based on incoming calls including compilation of information on both maternal and child victims of domestic violence and individual and situational factors characterizing violent and abusive behavior.

19. The applicant must provide an assurance that it will comply with the grant administration requirements in 45 CFR part 74.

Part III: Evaluation Criteria

The five criteria that follow will be used to review and evaluate how each applicant has addressed the requirements stated in Part II and should be used in developing the program narrative. The point values following each criterion heading indicate the maximum numerical weight that each section will be given in the review process.

1. Need for the Project (10 Points)

Provide a detailed discussion of the need for a national domestic violence hotline of the scope being proposed. Provide a detailed analysis of the available data related to the problem being addressed (both domestic violence in general and the specific lack of a national domestic violence hotline); the strengths and limitations of other national and local crisis intervention and victim services hotline/referral services available, and the "state-of-the-art" relative to the problem being addressed by the proposal.

2. Goals and Objectives (10 Points)

Clearly state the project goals and objectives. Objectives should be stated in concrete, measurable terms which clearly identify the population(s) to be served, the type, quality, and level of service to be provided, the timeline for the establishment and delivery of services, and other project benchmarks. The anticipated demand for hotline services during the initial start-up period and a projection of the demand on an ongoing basis should be discussed, with supporting documentation. Describe the precise location of the project.

3. Approach (30 Points)

Provide a sound workable plan of action (approach) which details: How the proposed work will be accomplished; how each task relates to the project's goals and activities; identifies the key staff member responsible for the specific tasks; provides a chart indicating the timetable for completing each task, the phasing in of the tasks over time, the lead staff person, and the time committed to the task; cites factors which might accelerate or decelerate the work; justifies the approach selected over other approaches; makes maximum use of existing facilities and resources and off-the-shelf technology; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social or community involvement; and provides projections of the accomplishments to be achieved and identifies the activities for which Federal technical assistance, advice, or guidance as the project is implemented is anticipated and would be acceptable.

4. Results and Benefits Expected (20 Points)

Identify, in specific terms, the results and benefits to be derived from the project and relate each result and benefit to a specific objective. Indicate the aggregate number of calls expected to be received and individuals to be assisted on an annual basis, *e.g.*, the expected volume of calls in such service areas as crisis counseling, immediate referrals to shelters, or the number of referrals made in response to non-English speaking callers. Indicate the anticipated impact on and the subsequent benefit of the national hotline to victims of domestic violence and on the existing network of State and local shelters and services. Identify the kinds of data to be collected, maintained, and updated, and discuss the criteria to be used to assure the quality of the services provided.

5. Level of Effort (30 Points)

Expertise, Commitment, and Support. The extent to which the applicant has nationally recognized expertise in the

area of domestic violence and a record of high quality service to victims of domestic violence, including a demonstration of support from advocacy groups, such as State Domestic Violence Coalitions or recognized national domestic violence groups; the extent of the applicant's commitment to diversity, and to the provision of service to ethnic, racial, and non-English speaking minorities, older individuals, and individuals with disabilities.

Staff Background and Organizational Experience. The adequacy of the staffing pattern for the proposed project, how the individual responsibilities are linked to project tasks, and the contributions to be made by key staff. Each collaborating or cooperative organization, individual consultant, or other key individuals who will work on the project should be listed along with a description of the nature of their effort or contribution.

Competence of Staff. The background and experience of the project director and key project staff and the history and accomplishments of the organization; the qualifications of the project team including any experience with similar projects; the variety of skills, relevant educational background, and the ability to effectively manage the project and to coordinate activities with other agencies. One or two pertinent paragraphs on each key member are preferred to vitae/resumes. However, vitae/resumes may be included.

Adequacy of Resources. The adequacy of the available resources and organizational experience with regard to the tasks of the proposed project. List the financial, physical, and other resources already committed by other public and private agencies and institutions, if any. Explain how these organizations will participate in the day to day operations of the project. Letters from these agencies and organizations identifying and discussing the specifics of their commitment and participation must be included in the application.

Budget. Relate the proposed budget to the level of effort required to obtain the project objectives. Demonstrate that the project's costs are reasonable in view of the anticipated results.

Collaborative Efforts. The additional anticipated private sector resources that may be available to support or enhance the overall program. Discuss in detail and provide documentation for any proposed collaborative or coordinated efforts with other public and private agencies or organizations. Identify these agencies or organizations and explain how their participation will enhance the project. Letters from these agencies and organizations must be included discussing their interest and/or commitment in supporting this project, the stage of the planning and decision-making, and the expected level of resource commitment.

Part IV: Other Information and Instructions for the Development and Submission of Applications

A. Required Notification of the State Single Point of Contact

This program is covered under Executive Order 12372, (E.O.) "Intergovernmental Review of Federal Programs," and 45 CFR part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the E.O., States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and territories, except Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau, have elected to participate in the E.O. process and have established a Single Point of Contact (SPOCs). Applicants from these twenty-three jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that OCS can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to differentiate clearly between mere advisory comments and those official State process recommendations that may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families Office of Grants Management/OCSE, 4th Floor Aerospace Center, 370 L'Enfant Promenade, SW, Washington, DC 20447.

A list of the Single Point of Contact for each State and Territory is included at the end of this announcement.

B. Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995, Public Law 104–13, the Department is required to submit to the Office of Management and Budget (OMB) for review and approval any reporting and recordkeeping requirements in regulations, including program announcements. This program announcement does not contain information requirements beyond those approved for ACF grant applications under OMB Control Number 0970–0062, expiration date 10/31/2001. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

C. Application Submission

The closing date and time for submittal of applications under this program announcement is found at the beginning of this program announcement under "Closing Date". Applications postmarked after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 4th Floor West, Aerospace Center, 370 L'Enfant Promenade, SW., Washington, DC 20447; Attention: Application for Family Violence Prevention and Services Program.

Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private Metered postmarks shall not be acceptable as proof of timely mailing.

Applications handcarried by applicants, applicant couriers, or by overnight/express mail couriers shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST,

and at the U.S. Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, ACF Mailroom, 2nd Floor Loading Dock, Aerospace Center, 901 D Street, SW, Washington, DC 20024, between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note: Attention: Application for Family Violence Prevention and Services Program. (Applicants are again cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late Applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of Deadlines: ACF may extend the deadline for all applicants because of acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rests with the Chief Grants Management Officer.

D. Instructions for Preparing the Application and Completing Application Forms

1. SF 424

The SF 424 and certifications have been reprinted for your convenience in preparing the application. You should reproduce single-sided copies of these forms from the reprinted forms in the announcement, typing your information onto the copies.

At the top of the Cover Page of the SF 424, enter the single priority area number under which the application is being submitted. An application should be submitted under only one priority area.

2. SF 424A—Budget Information—Non-Construction Programs

With respect to the 424A, Budget Information—Non-Construction Programs, Sections A, B, C, E, and F are to be completed. Section D does not need to be completed.

In order to assist applicants in correctly completing the SF 424 and 424A, detailed instructions for completing these forms are contained on the forms themselves. See the Instructions accompanying the attached SF 424A, as well as the instructions set forth below.

Section A—Budget Summary

Lines 1–4

Column (a) Line 1—Enter OCS FVPS Program.

Column (b) Line 1—Enter 93.592.

Columns (c) and (d)—Not Applicable.

Columns (e), (f) and (g)—For lines 1 through 4, enter in appropriate amounts needed to support the project for the entire project period.

Line 5

Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period will be entered in Column (1).

Allocability of costs is governed by applicable cost principles set forth in the *Code of Federal Regulations (CFR)*, Title 45, Parts 74 and 92.

Budget estimates for administrative costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs, salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories included under the object class *other*, identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travel; new positions; major equipment purchases; and training programs.

A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

Line 6a

Personnel—Enter the total costs of salaries and wages.

Justification—Identify the project director and staff. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b

Fringe Benefits—Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6j.

Justification—Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Line 6c

Travel—Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification—Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances. Traveler must be a person listed under the personnel line or employee being paid under non-federal share. (**Note:** Local transportation and Consultant travel costs are entered on Line 6h.)

Line 6d

Equipment—Enter the total costs of all equipment to be acquired by the project. *Equipment* means an article of nonexpendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for financial statement purposes, or (b) $5,000. (**Note:** If an applicant's current rate agreement was based on another definition for equipment, such as "tangible personal property $500 or more", the applicant shall use the definition used by the cognizant agency in determining the rate(s). However, consistent with the applicant's equipment policy, lower limits may be set.)

Justification—Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its subgrantees must not already have the equipment or a reasonable facsimile available to the project.

Line 6e

Supplies—Enter the total costs of all tangible personal property other than that included on line 6d.

Justification—Provide a general description of what is being purchased such as type of supplies: office, classroom, medical, etc. Include equipment costing less than $5,000 per item.

Line 6f

Contractual—Enter the total costs of all contracts, including (1) procurement contracts (except those which belong on other lines such as equipment, supplies, etc.) and (2) contracts with secondary

recipient organizations including delegate agencies and specific project(s) or businesses to be financed by the applicant.

Justification—Attach a list of contractors, indicating the names of the organizations, the purposes of the contracts, the estimated dollar amounts, and selection process of the awards as part of the budget justification. Also provide back-up documentation identifying the name of contractor, purpose of contract, and major cost elements.

Note 1: Whenever the applicant/grantee intends to delegate part of the program to another agency, the applicant/grantee must submit Sections A and B of this Form SF–424A, completed for each delegate agency by agency title, along with the required supporting information referenced in the applicable instructions. The total costs of all such agencies will be part of the amount shown on Line 6f. Provide draft Request for Proposal in accordance with 45 CFR part 74, appendix A. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition.

Note 2: Contractual cannot be a person—must be an organization, firm, etc. Enter Consultant cost on Line 6h.

Line 6g

Construction—Not applicable.

Line 6h

Other—Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (non-contractual), fees and travel paid directly to individual consultants, local transportation (all travel which does not require per diem is considered local travel), space and equipment rentals, printing and publication, computer use training costs including tuition and stipends, training service costs including wage payments to individuals and supportive service payments, and staff development costs.

Line 6j

Indirect Charges—Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by DHHS or other Federal agencies.

Line 6k

Totals—Enter the total amount of Lines 6i and 6j.

Line 7

Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification—Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of *Non-Federal* resources that will be used to support the project. *Non-Federal* resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (See SF–424A, Section B.6) and whether it is cash or third party in-kind. The firm commitment of these required funds must be documented and submitted with the application in order to be given credit in the Criterion.

Except in unusual situations, this documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8

Column (a)—Enter the project title.

Column (b)—Enter the amount of cash or donations to be made by the applicant.

Column (c)—Enter the State contribution.

Column (d)—Enter the amount of cash and third party in-kind contributions to be made from all other sources.

Column (e)—Enter the total of columns (b), (c), and (d).

Lines 9, 10 and 11

Leave Blank.

Line 12

Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification—Describe third party in-kind contributions, if included.

Section F—Other Budget Information

Line 21

Direct Charges—Include narrative justification required under Section B for each object class category for the total project period.

Line 22

Indirect Charges—Enter the type of DHHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement.

Line 23

Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

3. Project Summary Description

Clearly mark this separate page with the applicant name as shown in item 5 of the SF 424, and the title of the project as shown in item 11 of the SF 424. The summary description should not exceed 300 words. These 300 words become part of the computer database on each project.

Care should be taken to produce a summary description which accurately and concisely reflects the application. It should describe the objectives of the project, the approaches to be used and the outcomes expected. The description should also include a list of major products that will result from the proposed project, such as software packages, materials, management procedures, data collection instruments, training packages, or videos (please note that audiovisuals should be closed captioned). The project summary description, together with the information on the SF 424, will constitute the project "abstract." It is the major source of information about the proposed project and is usually the first part of the application that the reviewers read in evaluating the application.

4. Program Narrative Statement

The Program Narrative Statement is a very important part of an application. It should be clear, concise, and address the specific requirements mentioned under the priority area description in Part II. The narrative should also provide information concerning how the application meets the evaluation criteria using the following headings:

(a) Need for the Project;
(b) Goals and Objectives;
(c) Approach;
(d) Results and Benefits; and
(e) Level of effort.

The specific information to be included under each of these headings is described in Part III, Evaluation Criteria.

The narrative should be typed double-spaced on a single-side of an 8½" x 11" plain white paper, with 1" margins on all sides. All pages of the narrative (including charts, references/footnotes, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for the Project" as page number one. Applicants should not submit reproductions of larger size paper, reduced to meet the size requirement.

The length of the application, including the application forms and all attachments, should not exceed 60 pages. A page is a single side of an 8½" x 11" sheet of paper. Applicants are requested not to send pamphlets, maps, brochures or other printed material along with their application as these pose photocopy difficulties. These materials, if submitted, will not be included in the review process if they exceed the 60-page limit. Each page of the application will be counted to determine the total length.

5. Organizational Capability Statement

The Organizational Capability Statement should consist of a brief (two to three pages) background description of how the applicant organization (or the unit within the organization that will have responsibility for the project) is organized, the types and quantity of services it provides, and/or the research and management capabilities it possesses. This description should cover capabilities not included in the Program Narrative Statement. It may include descriptions of any current or previous relevant experience, or describe the competence of the project team and its demonstrated ability to produce a final product that is readily comprehensible and usable. An organization chart showing the relationship of the project to the current organization should be included.

6. Assurances/Certifications

Applicants are required to file an SF 424B, Assurances—Non-Construction Programs, and the Certification Regarding Lobbying. Both must be signed and returned with the application. In addition, applicants must certify their compliance with: (1) Drug-Free Workplace Requirements; and (2) Debarment and Other Responsibilities; and (3) Certification Regarding Environmental Tobacco Smoke. These certifications are self-explanatory. Copies of these assurances/certifications are reprinted at the end of this Application Kit and should be reproduced as necessary. A duly authorized representative of the applicant organization must certify that the applicant is in compliance with these assurances/certifications. A signature on the SF 424 indicates compliance with the Drug Free Workplace Requirements, and Debarment and Other Responsibilities, and Environmental Tobacco Smoke certifications.

E. The Application Package

Each application package must include an original and four copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left-hand corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with page one. In order to facilitate handling, please do not use covers, binders or tabs. Do not include extraneous materials as attachments, such as agency promotion brochures, slides, tapes, film clips, minutes of meetings, survey instruments or articles of incorporation.

Applicants should include a self-addressed stamped acknowledgment card. All applicants will be notified automatically about the receipt of their application. If acknowledgment of receipt of your application is not received within three weeks after the deadline date, please notify ACF by telephone at (202) 401–5103.

F. Post-Award Information and Reporting Requirements

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which provides the amount of Federal funds approved for use in the project, the project and budget periods for which support is provided, the terms and conditions of the award, the total project period for which support is contemplated, and the total required financial grantee participation.

General Conditions and Special Conditions (where the latter are warranted) which will be applicable to grants, grantees will be subject to the provisions of 45 CFR part 74 or 92.

Grantees will be required to submit quarterly progress and semi-annual financial reports (SF 269) throughout the project period, as well as a final progress and financial report within 90 days of the termination of the project.

Grantees are subject to the audit requirements in 45 CFR parts 74 (non-governmental), 92 (governmental), OMB Circular A–133 and OMB Circular A–128. If an applicant does not request indirect costs, it should anticipate in its budget request the cost of having an audit performed at the end of the grant period.

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides exemptions for Indian Tribes and Tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using Federal funds, other than profits from a Federal contract, for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or subgrantees (1) To certify that they have neither used nor will use any appropriated funds for payment to lobbyists; (2) to disclose the name, address, payment details, and the purpose of any agreements with lobbyists whom recipients or their subtier contractors or subgrantees will pay with profits or nonappropriated funds on or after December 22, 1989 and (3) to file quarterly up-dates about the use of lobbyists if material changes occur in their use. The law establishes civil penalties for noncompliance.

(Catalog of Federal Domestic Assistance number 93.592, Family Violence Prevention and Services)

Dated: March 9, 2000.

Donald Sykes,

Director, Office of Community Services.

Family Violence Prevention and Services Program; List of Attachments

Attachment B–1 Application for Federal Assistance
Attachment B–2 Budget Information—Non Construction Programs
Attachment B–3 Assurances—Non Construction Programs
Attachment C Certification Regarding Drug Free Requirements
Attachment D Certification Regarding Debarment, Suspension
Attachment E Certification Regarding Environmental Tobacco Smoke
Attachment F–1 Certification Regarding Lobbying
Attachment F–2 Disclosure of Lobbying Activities
Attachment G State Single Point of Contact Listing

BILLING CODE 4184–01–P

APPLICATION FOR FEDERAL ASSISTANCE

Attachment B-1, Page 1

OMB Approval No. 0348-0043

		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction		**3. DATE RECEIVED BY STATE**	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address *(give city, county, State, and zip code):*	Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*

☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION:

☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es) ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other*(specify):*

_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

☐☐ – ☐☐☐

TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT		**14. CONGRESSIONAL DISTRICTS OF:**	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		**16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?**	
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE _____	
b. Applicant	$ .00		
c. State	$ .00		
d. Local	$ .00	b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
e. Other	$ .00		
f. Program Income	$ .00		
g. TOTAL	$ .00	**17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?** ☐ Yes If "Yes," attach an explanation. ☐ No	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

BILLING CODE 4184–01–C

Instructions for the SF–424

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0043), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item and Entry

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   —"New" means a new assistance award.
   —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12. List only the largest political entities affected (*e.g.*, State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official *representative must be on file in the applicant's office.* (Certain Federal agencies may require that this authorization be submitted as part of the application.)

BILLING CODE 4184–01–M

BUDGET INFORMATION - Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-102

Attachment B-2, Page 1

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SECTION C - NON-FEDERAL RESOURCES

(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	$	$	$	$
9.				
10.				
11.				
12. TOTAL *(sum of lines 8-11)*	$	$	$	$

SECTION D - FORECASTED CASH NEEDS

	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	$	$	$	$	$
14. Non-Federal					
15. TOTAL *(sum of lines 13 and 14)*	$	$	$	$	$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT

(a) Grant Program	FUTURE FUNDING PERIODS (Years) (b) First	(c) Second	(d) Third	(e) Fourth
16.	$	$	$	$
17.				
18.				
19.				
20. TOTAL *(sum of lines 16-19)*	$	$	$	$

SECTION F - OTHER BUDGET INFORMATION

21. Direct Charges:	22. Indirect Charges:
23. Remarks:	

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Standard Form 424A (Rev. 7-97) Page

Attachment B-2, Page 2

Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal Assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a–k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the Catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the Catalog program title on each line Column (a) and the respective Catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g)

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Column (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5, Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i

Show the totals of Lines 6a to 6h in each column.

Line 6j

Show the amount of indirect cost.

Line 6k

Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5 .For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7

Enter the estimated amount of income, if any, expected to be generated from thisproject. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8–11

Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12

Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13

Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14

Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15

Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16–19

Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20

Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21

Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22

Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23

Provide any other explanations or comments deemed necessary.

Assurances—Non-Construction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the office of management and budget send it to the address provided by the sponsoring agency.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A or OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6.Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd–3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 *et seq.*), as amended, relating to nondiscrimination in the sale, rental of financing of housing; (i) any other nondiscrimination provisions in specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statue(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, a applicable, with provisions of the Hatch Act (5 U.S.C. §§ 1501–1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. § 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327–333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) Institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 *et seq.*); (f) conformity of Federal actions to State (Clean Air) Implementations Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§ 7401 *et seq.*); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93–523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 *et seq.*) related to protecting components or potential of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 469a–1 *et seq.*).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 *et seq.*) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 *et seq.*) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A–133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

Signature of Authorized Certifying Official

Applicant Organization

Title

Date Submitted

Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart, F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services,

the central pint is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement,the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace, Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals. Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority of State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 13208.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Take one of the following action, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may inset in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each effected grant. [55 FR 21690, 21702, May 25, 1990]

Certification Regarding Debarment, Suspension, and Other Responsibility Matters

Certification Regarding Debarment, Suspension and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into the transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department of agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this cause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting his proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily

excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL "Disclosure form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature _____

Title _____

Organization _____

BILLING CODE 4184–01–M

DISCLOSURE OF LOBBYING ACTIVITIES

Attachment F-2, Page 1

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure.)

1. Type of Federal Action: ☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** ☐ a. bid/offer/application b. initial award c. post-award	**3. Report Type:** ☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:** **Congressional District**, *if known*:	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $	
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____	
Federal Use Only:		Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

BILLING CODE 4184–01–C

Attachment F–2

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Attachment G

State Single Point of Contact Listing Maintained by OMB

In accordance with Executive Order #12371, "Intergovernmental Review of Federal Programs," Section 4, "the Office of Management and Budget (OMB) shall maintain a list of official State entities designated by the States to review and coordinate proposed Federal financial assistance and direct Federal development." This attached listing is the OFFICIAL OMB LISTING. This listing is also published in the Catalogue of Federal Domestic Assistance biannually

August 23, 1999—OMB State Single Point of Contact Listing*

Arizona

Joni Saad
Arizona State Clearinghouse
3800 N. Central Avenue
Fourteenth Floor
Phoenix, Arizona 85012
Telephone: (602) 280–1315
FAX: (602) 280–8144

Arkansas

Mr. Tracy L. Copeland
Manager, State Clearinghouse
Office of Intergovernmental Services
Department of Finance and Administration
515 W. 7th St., Room 412
Little Rock, Arkansas 72203
Telephone: (501) 682–1074
FAX: (501) 682–5206

California

Grants Coordination
State Clearinghouse
Office of Planning & Research
1400 Tenth Street, Room 121
Sacramento, California 95814
Telephone: (916) 445–0613
FAX: (916) 323–3018

Delaware

Francine Booth
State Single Point of Contact
Executive Department
Office of the Budget
540 S. Dupont Highway—Suite 5
Dover, Delaware 19901
Telephone: (302) 739–3326
FAX: (302) 739–5661

District of Columbia

Charles Nichols
State Single Point of Contact
Office of Grants Mgmt. & Dev.
717 14th Street, N.W. Suite 1200
Washington, D.C. 20005
Telephone: (202) 727–1700 (direct)
(202) 727–6537 (secretary)
FAX: (202) 727–1617

Florida

Florida State Clearinghouse
Department of Community Affairs
2555 Shumard Oak Blvd.
Tallahassee, Florida 32399–2100
Telephone: (850) 922–5438
FAX: (850) 414–0479
Contact: Cherie Trainor (850) 414–5495

Georgia

Deborah Stephens, Coordinator
Georgia State Clearinghouse
270 Washington Street, S.W.—8th Floor
Atlanta, Georgia 30334
Telephone: (404) 656–3855
FAX: (404) 656–7901

Illinois

Virginia Bova, State Single Point of Contact
Illinois Department of Commerce and Community Affairs
James R. Thompson Center
100 West Randolph, Suite 3–400
Chicago, Illinois 60601
Telephone: (312) 814–6028
FAX: (312) 814–1800

Indiana

Renee Miller
State Budget Agency
212 State House
Indianapolis, Indiana 46204–2796
Telephone: (317) 233–2971 (directline)
FAX: (317) 233–3323

Iowa

Steven R. McCann
Division for Community Assistance
Iowa Department of Economic Development
200 East Grand Avenue
Des Moines, Iowa 50309
Telephone: (515) 242–4719
FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director
Sandra Brewer, Executive Secretary
Intergovernmental Affairs
Office of the Governor
700 Capitol Avenue
Frankfort, Kentucky 40601
Telephone: (502) 564–2611
FAX: (502) 564–0437

Maine

Joyce Benson
State Planning Office
184 State Street
38 State House Station
Augusta, Maine 04333
Telephone: (202) 287–3261
FAX: (202) 287–6489

Maryland

Linda Janey
Manager, Plan & Project Review
Maryland Office of Planning
301 W. Preston Street—Room 1104
Baltimore, Maryland 21201–2365
Staff Contact: Linda Janey
Telephone: (410) 767–4490
FAX: (410) 767–4480

Michigan

Richard Pfaff
Southeast Michigan Council of Governments
660 Plaza Drive—Suite 1900
Detroit, Michigan 48226
Telephone: (313) 961–4266
FAX: (313) 961–4869

Mississippi

Cathy Mallette
Clearinghouse Officer
Department of Finance and Administration
550 High Street
303 Walters Sillers Building
Jackson, Mississippi 39201–3087
Telephone: (601) 359–6762
FAX: (601) 359–6758

Missouri

Lois Phol
Federal Assistance Clearinghouse
Office of Administration
P.O. Box 809
Jefferson Building, 9th Floor
Jefferson City, Missouri 65102
Telephone: (314) 751–4834
FAX: (314) 751–7819

Nevada

Department of Administration
State Clearinghouse
209 E. Musser Street, Room 220
Carson City, Nevada 89710
Telephone: (702) 687–4065
FAX: (702) 687–3983
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Pennsylvania; South Dakota; Tennessee; Vermont, Virginia; and Washington. This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

[FR Doc. 00–6547 Filed 3–16–00: 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committee; Renewals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the renewal of certain FDA advisory committees by the Commissioner of Food and Drugs (the Commissioner).

The Commissioner has determined that it is in the public interest to renew the charters of the committees listed below for an additional 2 years beyond charter expiration date. The new charters will be in effect until the dates of expiration listed below. This notice is issued under the Federal Advisory Committee Act of October 6, 1972 (Public Law 92–463 (5 U.S.C. app. 2)).

DATES: Authority for these committees will expire on the date indicated below unless the Commissioner formally determines that renewal is in the public interest.

Name of committee	Date of Expiration
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants	December 2, 2001
Food Advisory Committee	December 18, 2001
Vaccines and Related Biological Products Advisory Committee	December 31, 2001
Advisory Committee for Pharmaceutical Science	January 22, 2002
Pharmacy Compounding Advisory Committee	February 3, 2002
Medical Imaging Drugs Advisory Committee	February 28, 2002

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–5496.

Dated: March 9, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–6575 Filed 3–16–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Healthy Schools, Healthy Communities Program Data Collection and Progress Report (OMB No. 0915–0188)—Revision

This is a request for revision of approval of the Healthy Schools Data System, which contains the annual reporting requirements for the Healthy Schools, Healthy Communities grantees funded by the Bureau of Primary Health Care (BPHC), HRSA. Authorizing legislation is found in Public Law 104–299, Health Center Consolidation Act of 1996, enacting Section of the Public Health Service Act.

The Healthy Schools, Healthy Communities program provides comprehensive primary and preventive health care services. The purpose of the progress report is to collect data specific to school health services, such as service utilization, health problems and risk behaviors.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hour
Progress Report	100	4	2	800
Total	100			800

Send comments to Susan G. Queen, Ph.D., HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 13, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–6628 Filed 3–16–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Agency Information Collection Activities: Proposed Collection: Comment Request

In compliance with the requirement for opportunity for public comment on proposed data collection projects (section 3506(c)(2)(A) of Title 44, United States Code, as amended by the Paperwork Reduction Act of 1995, Pub. L. 104–13), the Health Resources and Services Administration (HRSA) publishes periodic summaries of proposed projects being developed for submission to OMB under the Paperwork Reduction Act of 1995. To request more information on the proposed project or to obtain a copy of the data collection plans and draft instruments, call the HRSA Reports Clearance Officer on (301) 443–1129.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Grantee Reporting Requirements for the Ryan White Comprehensive AIDS Resources Emergency (CARE) Act of 1990, Title III HIV Early Intervention Services Program (OMB 0915–0158)—Revision

Section 2651 of the Public Health Service (PHS) Act (commonly known as Title III of the Ryan White Comprehensive AIDS Resource Emergency (CARE) Act of 1990), provides categorical funding to increase the capacity and capability of organizations that provide primary health care to HIV-related early intervention services to medically underserved persons who have, or are at high risk for, HIV infection. These services are provided as part of a continuum of HIV prevention and health care services.

This clearance request is for a revision of OMB approval of the Title III Program Data Report form, which is submitted annually by Title III grant recipients. The bulk of the information being collected describes the epidemiologic and demographic characteristics of the populations receiving early intervention services from grant recipients, and provides the basis for the annual report to the Secretary, which is legislatively mandated. It is also used to monitor the delivery of services, guide federal policy, and assist in program development and evaluation.

The estimated response burden is as follows:

Form	Number of respondents	Responses per respondent	Hours per response	Total burden hour
Progress Report	348	1	84	29,232
Total	348			29,232

Send comments to Susan G. Queen, HRSA Reports Clearance Officer, Room 14–33, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 13, 2000.

Jane Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 00–6629 Filed 3–16–00: 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES (DHHS)

Administration for Children and Families (ACF)

[Program Announcement CFDA Number 93.604]

Discretionary Funds for Assistance for Treatment of Torture Survivors

AGENCY: Office of Refugee Resettlement (ORR), ACF, DHHS.

ACTION: Request for applications for services to victims of torture, including medical and psychological services; legal and social services; and research and training for health care providers outside of treatment centers to enable the provision of services to victims of torture.

SUMMARY: The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF), announces that competing applications will be accepted for Category I—"Treatment and Services for Torture Survivors," grants to provide assistance to victims of torture, including treatment for the physical and psychological effects of torture; and social and legal services, and Category II—"Technical Assistance for Treatment and Service Providers for Torture Survivors," a cooperative agreement for one organization to provide technical assistance such as research and training activities for the torture treatment centers and other health care providers.

DATES: The closing date for submission of applications is May 15, 2000. See Part IV of this announcement for more information on submitting applications.

ANNOUNCEMENT AVAILABILITY: The program announcement and the application materials are available from Marta Brenden, Office of Refugee Resettlement (ORR) 370 L'Enfant Promenade, SW, Washington DC 20447 and from the ORR website at www.acf.dhhs.gov/programs/orr.

FOR FURTHER INFORMATION CONTACT: Marta Brenden, Refugee Program Specialist, Division of Community Resettlement, Office of Refugee Resettlement, Tel (202) 205–3589, Fax (202) 401–5772, MBrenden@ACF.DHHS.GOV.

SUPPLEMENTARY INFORMATION: This program announcement consists of four parts:

Part I: Background and General Information—background, purpose and objectives, legislative authority, funding availability, CFDA Number, eligible applicants, project and budget periods.

Part II. General Instructions for Preparing a Full Project Description

Part III: The Review Process—intergovernmental review, initial ACF screening, evaluation criteria and competitive review.

Part IV: The Application—application development, application submission, certifications, and applicable regulations and reporting requirements.

Paperwork Reduction Act of 1995 (Pub. L. 104–13): Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed, and reviewing the collection of information. The following information collection is included in the program announcement: OMB Approval No. 0970–0139, ACF UNIFORM PROJECT DESCRIPTION (UPD), which expires 10/31/2000. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

Part I. Background and General Information

Background

Torture and Torture Victims

The psychosocial and health consequences of violence and traumatic stress have emerged as one of the public health problems of our time. Torture constitutes one of the most extreme forms of trauma, with the potential for long-term psychological and physical suffering. The term torture has been defined in different ways by different organizations and for different purposes. The two most commonly used definitions of torture were formulated by the World Health Organization (WHO) and by the United Nations (UN). The WHO, which governs professional standards and ethics for physicians, developed its definition in 1975; it is. frequently called the "Declaration of Tokyo," and it represents a popular definition among the medical community. It defines torture as:

"* * * the deliberate, systematic or wanton infliction of physical or mental suffering by one or more persons acting alone or on the orders of any authority, to force another person to yield information, to make a confession, or for any other reason."

The UN definition, developed at the same time and revised in 1989, narrows the concept of torture somewhat by adding the legal and political responsibilities of governments. It states:

* * * the term 'torture' means any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or, a third person, information or a confession, punishing him for an act he or a third person has committed, or intimidating or coercing him or a third person for any reason based on discrimination of any kind, when such pain or suffering is inflicted by or at the instigation of or with the consent or acquiescence of a public official or other person acting in an official capacity. It does not include pain or suffering arising only from, inherent in or incidental to lawful sanctions.

The United States "Torture Victims Relief Act of 1998" uses the definition of torture given the term in 18 U.S.C. 2340(l) and "includes the use of rape and other forms of sexual violence by a person acting under the color of law upon another person under his custody or physical control." The definition of "torture" at 18 U.S. C. 2340(l) provides that: torture means an act committed by a person under the color of law specifically intended to inflict severe physical or mental pain or suffering (other than pain or suffering incidental to lawful sanctions) upon another person within his custody or physical control;

This provision also defines the term "severe mental pain or suffering" as: the prolonged mental harm caused by or resulting from—

(A) The intentional infliction or threatened infliction of severe physical pain or suffering;

(B) The administration or application, or threatened administration or application, of mind-altering substances or other procedures calculated to disrupt profoundly the senses or the personality;

(C) The threat of imminent death; or

(D) The threat that another person will imminently be subjected to death, severe physical pain or suffering, or the administration or application of mind-altering substances or other procedures calculated to disrupt profoundly the senses or personality.

It should be emphasized that, for purposes of this announcement, the experience of torture may include specific characteristics of torture as documented in personal testimony or in clinical, medical, or detention settings. Some specific examples of physical and psychological types of torture are: systemic beating, sexual torture, electrical torture, suffocation, burning, bodily suspension, pharmacological torture, mutilations, dental assaults, deprivation and exhaustion, threats about the use of torture, witnessing the torture of others, humiliation, and isolation.

Estimates of the number of torture survivors have been established primarily by extrapolating from the major populations at risk—refugees and internally displaced persons. In 1997, there were estimated to be more that 13,600,000 refugees and asylum seekers in the world and 20 million internally displaced persons. The estimates of refugees, asylum seekers and displaced persons who have been tortured vary widely from 5% to 35%. This announcement, which focuses on health, social and legal services for torture survivors, as well as education and training of providers, recognizes that torture may have been an experience of many members of groups residing in the United States, including refugees, asylees, immigrants, other displaced persons, and U.S. citizens. Using data cited above, it has been estimated that there may be more than 400,000 torture survivors in the United States.

Consequences of Torture and Services for Torture Survivors

Physical consequences of torture may be extensive and severe. Specific neuropsychological symptoms are often difficult to diagnose because of head injuries and the multiplicity of symptoms. Post-traumatic stress disorder, depression, substance abuse, and other anxiety disorders are common diagnoses among torture survivors. Therefore, for many severely tortured individuals, access to medical practitioners and sophisticated diagnostic instruments and testing (*e.g.*, neuro-imaging, cognitive functions, etc.), for the purpose of differential diagnosis, is paramount.

A high percentage of torture survivors are in need of social and legal services. Access to legal and immigration services is usually a priority. Social services, such as employment assistance and training, are also extremely important and correlate with successful psychosocial adjustment and well-being. From the national experience with refugees and survivors of wartime violence, it has been demonstrated that early and adequate access to social and legal services may also preclude the need for more specialized psychological treatment services.

The torture rehabilitation and treatment center movement, which was established in Denmark in the 1970's, and adopted in the US, Canada, France and other countries, has led to the growth of specialized torture survivor treatment centers in select parts of the nation. Although the treatment center movement has created opportunities for treatment and training in specific urban areas, many torture survivors do not have access to these highly specialized programs. Medical, social and legal services for torture survivors are needed in areas and in settings and institutions wherever torture survivors will seek

assistance. Thus there is also a national need for more broad-based training of medical and mental health practitioners in the identification, diagnosis and treatment of torture survivors.

Torture survivors, now in the United States, should be provided with the rehabilitation services which would enable them to become productive community members. The Torture Victims Relief Act of 1998 provides for services for the treatment of the psychological and physical effects of torture, social and legal services for torture survivors, and research and training for health care providers.

Purpose and Objectives

The Office of Refugee Resettlement (ORR), Administration for Children and Families (ACF) intends to fund grant applications for 10–15 organizations to provide assistance to victims of torture, and for one organization under a cooperative agreement to provide technical assistance, such as research and training to the torture treatment centers, social and legal service providers and health care providers.

Applications should be clearly labeled for either Category I—Treatment and Services for Torture Survivors or Category II—Technical Assistance for Treatment Centers and Service Providers for Torture Survivors. Under the cooperative agreement for technical assistance Category II, ORR intends to review and approve: (1) proposed plan for technical assistance activities, (2) schedule, location, and individual treatment centers and community-based agencies where site visits will be conducted, (3) training and research plans, and (4) locations of proposed workshops.

Not all torture survivors have the same medical, psychological, social, or legal needs, and services funded under this announcement should reflect diverse populations to be targeted and services to be provided. This is particularly true when considering conventional psychological services. It is emphasized that, within the clinical, social and legal service domains, proposals are encouraged that will address a broad menu of services for torture survivors and may include collaborative relationships. Partnerships are encouraged among several organizations in order to provide a comprehensive program of services. For example, an organization that currently provides legal advice to detained asylum seekers, who are torture survivors, might collaborate with another social service or clinical organization to pool resources and expand their range of services.

Legislative Authority

In October 1998, Congress enacted the "Torture Victims Relief Act of 1998," Pub. Law 105–320 (22 U.S.C. 2152 note). As stated in Sec. 5 (a) ASSISTANCE FOR TREATMENT OF TORTURE VICTIMS—The Secretary of Health and Human Services may provide grants to programs in the United States to cover the cost of the following services:

(1) Services for the rehabilitation of victims of torture, including treatment of the physical and psychological effects of torture.

(2) Social and legal services for victims of torture.

(3) Research and training for health care providers outside of treatment centers, or programs for the purpose of enabling such providers to provide the services described in paragraph (1).

In November 1999, Congress enacted the "Torture Victims Relief Reauthorization Act of 1999," Pub. Law 106–87 (22 U.S. C. 2151 note).

Funding Availability

Congress appropriated $7,500,000 for carrying out section 5 of the Torture Victims Relief Act of 1998. Department of Health and Human Services Appropriations Act, 2000, as enacted by section 1000(a)(4) of the Consolidated Appropriations Act, 2000 (Pub. L. 106–113). As a result of a rescission of approximately 3%, the funds available under this program announcement total $7,265,000 for the federal fiscal year 2000. ORR anticipates making 10–15 grants in the amounts of $500,000–$750,000 and making a cooperative agreement for technical assistance for approximately $300,000.

Applications for subsequent year continuation grants funded under these awards will be entertained on a non-competitive basis, subject to the availability of funds, satisfactory progress of the grantee, and a determination that continued funding would be in the best interest of the Government.

CFDA Number: 93.604.

Eligible Applicants

Eligible applicants are public or private organizations and institutions.

Project and Budget Periods

Under this announcement, ORR solicits applications for Category I for approximately 10–15 grants to provide assistance to survivors of torture for up to 4 years with successive one year budget periods and for Category II one cooperative agreement to provide technical assistance for up to 4 years to torture treatment centers, social and legal service providers and health care providers.

Part II. General Instructions for Preparing a Full Project Description

Purpose

The project description provides a major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise and complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information considered to be relevant. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish between resources directly related to the proposed project from those that will not be used in support of the specific project for which funds are requested.

General Instructions

Cross-referencing should be used rather than repetition. ACF is particularly interested in specific factual information and statements of measurable goals in quantitative terms. Project descriptions are evaluated on the basis of substance, not length. Extensive exhibits are not required. (Supporting information concerning activities that will not be directly funded by the grant or information that does not directly pertain to an integral part of the grant funded activity should be placed in an appendix.) Pages should be numbered and a table of contents should be included for easy reference.

Project Summary/Abstract

Provide a summary of the project description (a page or less) with reference to the funding request.

Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, institutional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the

applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

Results or Benefits Expected

Identify the results and benefits to be derived. For example, an applicant might describe torture survivors and the benefits to the survivors of the proposed services.

Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state your reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people to be served and the number of microloans made. For an example of the approach in providing services to torture survivors, the applicant might provide quantitative monthly or quarterly projections of clients taken into service and the number of clinical, social or legal interventions. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Identify the kinds of data to be collected, maintained, and/or disseminated. Note that clearance from the U.S. Office of Management and Budget might be needed prior to a "collection of information" that is "conducted or sponsored" by ACF. List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

Geographic Location

Describe the precise location of the project and boundaries of the area to be served by the proposed project. Maps or other graphic aids may be attached.

Staff and Position Data

Provide a biographical sketch for each key person appointed and a job description for each vacant key position. A biographical sketch will also be required for new key staff as appointed.

Organization Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations described in Section 501(c)(3) of the IRS code, *or* by providing a copy of the currently valid IRS tax exemption certificate, *or* by providing a copy of the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

Dissemination Plan

Provide a plan for distributing reports and other project outputs to colleagues and the public. Applicants must provide a description of the kind, volume and timing of distribution.

Third-Party Agreements

Include written agreements between grantees and subgrantees or subcontractors or other cooperating entities. These agreements must detail scope of work to be performed, work schedules, remuneration, and other terms and conditions that structure or define the relationship.

Letters of Support

Provide statements from community, public and commercial leaders that support the project proposed for funding.

Budget and Budget Justification

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424. Provide a narrative budget justification that describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

General

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget. The budget justification should be a narrative.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances. Travel costs for key staff to attend ACF-sponsored workshops should be detailed in the budget.

Equipment

Description: Costs of tangible, non-expendable, personal property, having a useful life of more than one year and an acquisition cost of $5,000 or more per unit. However, an applicant may use its own definition of equipment provided that such equipment would at least include all equipment defined above.

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization that uses its own definition for equipment should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under the Equipment category.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs, such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

Indirect Charges

Description: Total amount of indirect costs. This category should be used only when the applicant currently has an indirect cost rate approved by the Department of Health and Human Services (HHS) or another cognizant Federal agency.

Justification: An applicant that will charge indirect costs to the grant must enclose a copy of the current rate agreement. If the applicant organization is in the process of initially developing or renegotiating a rate, it should immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the cognizant agency's guidelines for establishing indirect cost rates, and submit it to the cognizant agency. Applicants awaiting approval of their indirect cost proposals may also request indirect costs. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool should not also be charged as direct costs to the grant. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Program Income

Description: The estimated amount of income, if any, expected to be generated from this project.

Justification: Describe the nature, source and anticipated use of program income in the budget or refer to the pages in the application which contain this information.

Non-Federal Resources

Description: Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424.

Justification: The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

Total Direct Charges, Total Indirect Charges, Total Project Costs

self explanatory

Part III. The Review Process

Intergovernmental Review: State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State/Territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if applicable, or to ACF.

In accordance with Executive Order #12372, "Intergovernmental Review of Federal Programs," this listing represents the designated State Single Points of Contact. The jurisdictions not listed no longer participate in the process *but grant applicants are still eligible to apply for the grant even if your state, territory, commonwealth, etc. does not have a "State Single Point of Contact." Jurisdictions without "State Single Points of Contacts" include:* Alabama; Alaska; American Samoa; Colorado; Connecticut; Kansas; Hawaii; Idaho; Louisiana; Massachusetts; Minnesota; Montana; Nebraska; New Jersey; Ohio; Oklahoma; Oregon; Palau; Pennsylvania; South Dakota; Tennessee; Vermont; Virginia; and Washington.

This list is based on the most current information provided by the States. Information on any changes or apparent errors should be provided to the Office of Management and Budget and the State in question. Changes to the list will only be made upon formal notification by the State. Also, this listing is published biannually in the Catalogue of Federal Domestic Assistance.

Jurisdictions that participate in the Executive Order process have established SPOCs. Applicants from participating jurisdictions should contact their SPOCs as soon as possible to alert them of the prospective applications and receive instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a. Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade

SW, 6th Floor, Washington DC, 20447
ATTN: Ms. Daphne Weeden.

A list of the Single Points of Contact for each State and Territory is included in this announcement.

OMB State Single Point of Contact Listing

Arizona

Joni Saad, Arizona State Clearinghouse, 3800 N. Central Avenue, Fourteenth Floor, Phoenix, Arizona 85012, Telephone: (602) 280–1315, FAX: (602) 280–8144, e-mail: jonis@ep.state.az.us

Arkansas

Mr. Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, FAX: (501) 682–5206

California

Grants Coordinator, Office of Planning and Research/State Clearinghouse, 1400 Tenth Street, Room 121, Sacramento, California 95814, Telephone: (916) 323–7480, FAX: (916) 323–3018,

Delaware

Francine Booth, State Single Point of Contact, Executive Department, Office of the Budget, 540 S. duPont Highway, Suite 5, Dover, Delaware 19901, Telephone: (302) 739–3326, FAX: (302) 739–5661

District of Columbia

Charles Nichols, State Single Point of Contact, Office of Grants Management and Development, 717 14th Street, NW—Suite 1200, Washington, DC 20005, Telephone: (202) 727–6537, FAX: (202) 727–1617, e-mail: charlesnic@yahoo.com or cnichols-ogmd@dcgov.org

Florida

Cherie L. Trainor, Coordinator, Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Boulevard, Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438 or (850) 414–5495, FAX: (850) 414–0479, e-mail: cherie.trainor@dca.state.fl.us

Georgia

Debra S. Stephens, Coordinator, Georgia State Clearinghouse, 270 Washington, Street, SW—8th Floor, Atlanta, Georgia 30334, Telephone: (404) 656–3855, FAX: (404) 656–7901, e-mail: ssda@mail.opb.state.ga.us

Illinois

Virginia Bova, State Single Point of Contact, Illinois Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, FAX: (312) 814–1800

Indiana

Frances Williams, State Budget Agency, 212 State House, Indianapolis, Indiana 46204–2796, Telephone: (317) 232–5619, FAX: (317) 233–3323

Iowa

Steven R. McCann, Division for Community Assistance, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, FAX: (515) 242–4809

Kentucky

Kevin J. Goldsmith, Director, John-Mark Hack, Deputy Director, Sandra Brewer, Executive Secretary, Intergovernmental Affairs, Office of the Governor, 700 Capitol Avenue, Frankfort, Kentucky 40601, Telephone: (502) 564–2611, FAX: (502) 564–2849

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, FAX: (207) 287–6489

Maryland

Linda C. Janey, JD, Manager, Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 W. Preston Street—Room 1104, Baltimore, Maryland 21201–2305, Telephone: (410) 767–4491, FAX: (410) 767–4480, e-mail: Linda@mail.op.state.md.us

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 660 Plaza Drive—Suite 1900, Detroit, Michigan 48226, Telephone: (313) 961–4266, FAX: (313) 961–4869

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 455 North Lamar Street, Jackson, Mississippi 39202–3087, Telephone: (601) 359-6762, FAX: (601) 359–6764

Missouri

Lois Pohl/Carol Meyer, Federal Assistance Clearinghouse, Office Of Administration, P.O. Box 809, Room 915, Jefferson Building, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, FAX: (573) 522–4395

Nevada

Heather Elliott, Department of Administration, State Clearinghouse Capitol Complex, Carson City, Nevada 89710, Telephone: (702) 687–6367, FAX: (702) 687–3983

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process; Mike Blake, Office of State Planning, 2½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, FAX: (603) 271–1728

New Mexico

Nick Mandell, Local Government Division, Room 201, Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4991, FAX: (505) 827–4948

New York

New York State Clearinghouse, Division of the Budget, State Capitol, Marsha Roth, Albany, New York 12224, Telephone: (518) 474–1605, FAX: (518) 486–5617

North Carolina

Chrys Baggett, Director, North Carolina State Clearinghouse, Office of the Secretary of Administration, 116 West Jones Street—Suite 5106, Raleigh, North Carolina 27603–8003, Telephone: (919) 733–7232, FAX: (919) 733–9571

North Dakota

Jim Boyd, North Dakota Single Point of Contact, Office of Intergovernmental Assistance, 600 East Boulevard Avenue, Department 105, Bismarck, North Dakota 58505–0170, Telephone: (701) 328–2094, FAX: (701) 328–2308

Rhode Island

Kevin Nelson, Review Coordinator, Department of Administration, Division of Planning, One Capitol Hill, 4th Floor, Providence, Rhode Island 02908–5870, Telephone: (401) 222–2656, FAX: (401) 222–2083

South Carolina

Omegia Burgess, State Single Point of Contact, Budget and Control Board, Office of State Budget, 1122 Ladies Street—12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, FAX: (803) 734–0645

Texas

Tom Adams, Single Point of Contact, State of Texas, Governor's Office of Budget and Planning, Director, Intergovernmental Coordination, P.O. Box 12428, Austin, Texas 78711–2428, Telephone: (512) 463–1771, FAX: (512) 936–2681, e-mail: tadams@governor.state.tx.us

Utah

Carolyn Wright, Utah State Clearinghouse, Office of Planning and Budget, Room 116 State Capitol, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, FAX: (801) 538–1547

West Virginia

Judith Dryer, Chief Program Manager, West Virginia Development Office, Building #6, Room 645, State Capitol, Charleston, West Virginia 25305, Telephone: (304) 558–0350, FAX: (304) 558–0362,

Wisconsin

Jeff Smith, Section Chief, State/Federal Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th, Floor P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, FAX: (608) 267–6931

Wyoming

Matthew Jones, State Single Point of Contact, Office of the Governor, 200 West 24th Street, State Capital, Room 124, Cheyenne, Wyoming 82002, FAX: (307) 632-3909

Territories

Guam Mr. Giovanni T. Sgambelluri, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, FAX: 011–671–472–2825

Puerto Rico

Norma Burgos/Jose E. Caro, Chairwoman/Director, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (809) 727–4444 or (809) 723–6190, FAX: (809) 724–3270 or (809) 724–3103.

Northern Mariana Islands

Mr. Alvaro A. Santos, Executive Officer, Office of Management and Budget, Office of the Governor, Saipan, MP 96950, Telephone: (670) 664–2256, FAX: (670) 664–2272.
Please direct all questions and correspondence about intergovernmental review to: Ms. Jacoba T. Seman, Federal Programs Coordinator, Telephone: (670) 664–2289, FAX: (670) 664–2272..

Virgin Islands

Nellon Bowry, Director, Office of Management and Budget, #41 Norregade Emancipation Garden Station, Second Floor, Saint Thomas, Virgin Islands 00802.
Please direct all questions and correspondence about intergovernmental review to: Daisey Millen, Telephone: (809) 774–0750, FAX: (809) 776–0069.

Initial ACF Screening

Each application submitted under this program announcement will undergo a pre-review to determine that (1) The application was received by the closing date and submitted in accordance with the instructions in this announcement and (2) the applicant is eligible for funding.

Competitive Review and Criteria

Applications which pass the initial ACF screening will be evaluated and rated by an independent review panel on the basis of specific evaluation criteria. The evaluation criteria are designed to assess the quality of a proposed project, and to determine the likelihood of its success. The evaluation criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the evaluation criteria within the context of this program announcement.

Please Note: Applicants are reminded to appropriately label their application as Category I—"Treatment and Services for Torture Survivors" or Category II—"Technical Assistance for Treatment and Service Providers for Torture Survivors." An organization may apply to both categories but must submit separate applications, one for each category.

Review Criteria

Category I—Applications for Treatment and Services for Torture Survivors Will Be Reviewed and Ranked Against the Following Criteria

1. Objectives and Need for Assistance. The application clearly demonstrates knowledge of eligible clients, including: a.) A reasonable statement of the eligibility criteria for the intake assessment (attach the assessment form) and an understanding of eligibility by providing descriptive examples of individual torture survivors and the families that accompany them, description of the circumstances that resulted in torture (such as presenting the applicant's understanding of the political and social context in which the torture was administered); b.) Demographic details of the eligible population of torture survivors, including the number, nationality and ethnicity in the applicant's geographic service area; and c.) access to clients by adequately discussing issues of client's trust in the applicant organization, the likelihood of referral from other organizations, and outreach activities. (15 points)

2. Approach. The application provides a clear and feasible strategy for assistance to torture survivors, including: a.) client assessment strategy to determine which services are appropriate for the individual/family (e.g., not all clients will need all services, rather each client should be assessed for which social, legal, medical and psychological services are relevant to the client's circumstances); b.) goal and purpose of the assistance for the client/family; c.) description of medical, psychological, social and legal services and client access to services, such as location of treatment, proximity to communities where prospective clients live, and means of transportation that makes services accessible; and d.) established partnerships with community-based public and private agencies that participate in the provision of services to the client/family, for example, government and private organizations such as income maintenance, advocacy, immigration, recreational, public health, microenterprise, or whatever agency may be needed by the client/family with attachments that document the partnerships with memorandums of understandings (MOUs), letters of intent from partners, and plans for financial needs/arrangements for client support. (25 points)

3. Organization Profiles. The application demonstrates the organization's capacity to provide assistance appropriate to torture survivors and includes: (a.) Agency mission and organizational chart; (b.) resumes of project staff demonstrating linguistic and cultural access for clients; (c.) history of experience with torture survivors, such as experience as a treatment center or an organization that provides social and legal services to survivors of torture; (d.) management plan for the project contains systems of client records, program records, and financial management; and (e.) timeline for implementation of project activities. (25 points)

4. Results or Expected Benefits. The outcomes and benefits of the assistance are clearly explained and are reasonable. There are clear and understandable outcome measures for the services, and a reasonable plan for

reporting the outcomes to ORR. (25 points)

5. Budget and Budget Justification. The budget is reasonable and clearly justified. The methodologies for estimating the number of client/patients to be served are reasonable. The plan for obtaining funds from Medicaid, Refugee Medical Assistance (RMA), and private health coverage for client fees for treatment, when available, is appropriate, informed and viable. (10 points)

Category II—Applications for the Cooperative Agreement To Provide Technical Assistance to the Treatment Centers and Health Care Providers Will Be Reviewed and Ranked Against the Following Criteria

1. Objectives and Need for Assistance. The applicant clearly demonstrates knowledge of and access to treatment organizations providing services to torture survivors. The applicant also demonstrates a clear understanding of the nature and extent of technical assistance needed by the treatment facilities. (15 points)

2. Approach. The application provides a clear and feasible plan for providing technical assistance to approximately 15 treatment facilities. The application provides a clear and feasible strategy and persuasive explanation for technical assistance activities such as research to support training of medical, mental health, social service, and legal services, including: goals and objectives of the training and research; number of training sessions, curriculum for training; access to the targeted participants (such as, organizations and professionals whose services will be improved by training) (25 points)

3. Organization Profiles. The application demonstrates that it has the necessary staff and organization capabilities for providing technical assistance to treatment facilities and includes: a.) agency mission and organizational chart; b.) resumes of project staff demonstrating appropriate professional background and work experience with torture survivors; c.) management plan for the project contains plans for reports, program records, and financial management; and d.) timeline for implementation of project activities. (25 points)

4. Results and Expected Benefits. The outcomes and benefits of the assistance are clearly explained and are reasonable. There are clear and understandable outcome measures for the technical assistance and training, and a plan for reporting the outcomes to ORR. (25 points)

5. Budget and Budget Justification. The budget is reasonable and clearly justified. (10 points)

Part IV. Application Submission

Application Development

In order to be considered for a grant under this program announcement, an application must be submitted on the forms supplied and in the manner prescribed by ACF. Application materials including forms and instructions are available from the contact named under the "Announcement Availability" section in the preamble of this announcement. It is required that the application indicate on the SF–424 Item 11. "Descriptive Title of Applicant's Project" the category for which the application is to be considered.

Each application should include one signed original and two additional copies.

Each application narrative portion should not exceed 25 double-spaced pages in a 12-pitch font. Attachments and appendices should not exceed 25 pages and should be used only to provide supporting documentation such as maps, administration charts, position descriptions, resumes, and letters of intent for partnership agreements. Please do not include books or video tapes as they are not easily reproduced and are therefore, inaccessible to the reviewers. Each page should be numbered sequentially, including the attachments or appendices.

Funding Reconsideration

After Federal funds are exhausted for this grant competition, applications which have been independently reviewed and ranked but have no final disposition (neither approved nor disapproved for funding) may again be considered for funding. Reconsideration may occur at any time funds become available within twelve (12) months following ranking. However, ACF does not select from multiple ranking lists for a program. Therefore, should a new competition be scheduled and an application remain ranked without final disposition, applicants are informed of their opportunity to reapply for the new competition, to the extent practical.

Application Deadlines

The closing date for submission of applications is May 15, 2000. Mailed applications postmarked after the closing date will be classified as late.

Deadline: Mailed applications shall be considered as meeting an announced deadline if they are either received on or before the deadline date or sent on or before the deadline date and received by ACF in time for the independent review to: U.S. Department of Health and Human Services, Administration for Children and Families, Office of Refugee Resettlement, Attention: Ms. Daphne Weeden.

Applicants must ensure that a legibly dated U.S. Postal Service postmark or a legibly dated machine produced postmark of a commercial mail service is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service must include the logo/emblem of the commercial mail service company and must reflect the date the package was received by the commercial mail service company from the applicant. Private Metered postmarks shall not be acceptable as proof of timely mailing. (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

Applications handcarried by applicants, applicant couriers, or by other representatives of the applicant shall be considered as meeting an announced deadline if they are received on or before the deadline date, between the hours of 8:00 a.m. and 4:30 p.m., EST, at the U.S. Department of Health and Human Services, Administration for Children and Families, the Office of Refugee Resettlement, 6th Floor, Aerospace Building, 901 D Street, SW, Washington, DC 20447 between Monday and Friday (excluding Federal holidays). The address must appear on the envelope/package containing the application with the note "Attention: Ms. Daphne Weeden." (Applicants are cautioned that express/overnight mail services do not always deliver as agreed.)

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

Late applications: Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

Extension of deadlines: ACF may extend application deadlines when circumstances such as acts of God (floods, hurricanes, etc.) occur, or when there are widespread disruptions of mails service. Determinations to extend or waive deadline requirements rest with the Chief Grants Management Officer.

For Further Information Contact: Ms. Daphne Weeden, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington, DC 20447, (202) 401–4577.

Standard Language Concerning the Certifications, Assurances, and Disclosure Required for Non Construction Programs

Applicants requesting financial assistance for non construction projects must file the Standard Form 424B, "Assurances: Non-Construction Programs." Applicants must sign and return the Standard Form 424B with their applications. Applicants must provide a certification regarding lobbying when applying for an award in excess of $100,000. Applicants must sign and return the certification with their applications.

Applicants must disclose lobbying activities on the Standard Form LLL when applying for an award in excess of $100,000. Applicants who have used non Federal funds for lobbying activities in connection with receiving assistance under this announcement shall complete a disclosure form to report lobbying. Applicants must sign and return the disclosure form, if applicable, with their applications.

Applicants must make the appropriate certification of their compliance with the Drug Free Workplace Act of 1988. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

Applicants must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for an award. By signing and submitting the application, the applicant is providing the certification and need not mail back the certification with the applications.

Applicable Regulations and Reporting Requirements

1. Applicable Regulations

Applicable DHHS regulations can be found in 45 CFR Part 74 or Part 92.

2. Reporting Requirements

Grantees are required to file the Financial status Report (SF–269) and Program Performance Reports on a semi-annual basis. Funds issued under these awards must be accounted for and reported upon separately from all other grant activities. ORR does not expect the proposed components/projects to include evaluation activities, it does expect grantees to maintain adequate records to track and report on project outcomes. The official receipt point for all reports and correspondence is the ORR Grants Officer. An original and one copy of each report shall be submitted within 30 days of the end of each reporting period directly to the Grants Officer. The mailing address is: Ms. Daphne Weeden, Administration for Children and Families, Office of Refugee Resettlement, 370 L'Enfant Promenade SW, 6th Floor, Washington, DC 20447. A final Financial and Program Report shall be due 90 days after the budget expiration date or termination of grant support.

Dated: March 13, 2000.

Lavinia Limón,

Director, Office of Refugee Resettlement.

[FR Doc. 00–6661 Filed 3–16–00; 8:45 am]

BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Funding Availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT), Center for Substance Abuse Prevention (CSAP), and Center for Mental Health Services (CMHS) announces the availability of FY 2000 funds for grants for the activities discussed in detail under Section 3 of this notice. This notice is not a complete description of the activities; potential applicants *must* obtain a copy of the Program Announcements, including Part I, Cooperative Agreement To Study Women With Alcohol, Drug Abuse and Mental Health (ADM) Disorders Who Have Histories of Violence: Phase II, and Cooperative Agreement To Study Children Of Women With Alcohol, Drug Abuse and Mental Health (ADM) Disorders Who Have Histories Of Violence; and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing an application.

Activity	Application deadline	Estimated funds available, FY 2000	Estimated No. of awards	Project period
Women, ADM Disorders and Violence II.	June 13, 2000	$7,500,000	10	Up to 3 years.
Children's Subset Study	June 13, 2000	1,200,000	6	Up to 3 years.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA will publish additional notices of available funding opportunities for FY 2000 in subsequent issues of the **Federal Register**.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the

two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission

Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*

(*Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Applications sent to an address other than the address specified above will be returned to the applicant without review.

Application Deadlines

The deadlines for receipt of applications are listed in the table above. Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the deadline date will be returned to the applicant without review.

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

2. Criteria for Review and Funding

2.1 General Review Criteria

Competing applications requesting funding under the specific project activities in Section 3 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

2.2 Award Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

3. Special FY 2000 SAMHSA Activities

Cooperative Agreement Awards for Women with Alcohol, Drug Abuse and Mental Health (ADM) Disorders Who Have Histories of Violence (short title: Women, ADM Disorders, and Violence II), number TI 00–003; and

Cooperative Agreement Awards to Study Children of Women with Alcohol, Drug Abuse and Mental Health (ADM) Disorders Who Have Histories of Violence (short title: Children's Subset Study) number TI 00–006.

Application Deadline: June 13, 2000 for both announcements.

Purpose: This notice is to inform the public that the Substance Abuse and Mental Health Services Administration is making available approximately $7.5 million for approximately 10 awards in FY 2000 to current study site grantees who were funded under the Women, ADM Disorders and Violence-Phase I program. These phase II cooperative agreements will include a full scale implementation of service intervention models, integrated strategies, and outcome evaluations of alternative models of delivering and financing integrated service models for women with co-occurring ADM disorders who have histories of physical and/or sexual abuse. The study seeks to generate and apply empirical knowledge about the development of a comprehensive, integrated services approach, and the effectiveness of this approach for the target population of women with ADM disorders who are/have been the victims of violence.

In addition, it is estimated that $1.2 million will be available in FY 2000 to support up to five awards for study sites for the Children's Subset Study and one award for the Coordinating Center for the Children's Subset Study. The Children's Subset Study will evaluate children 5–10 years of age who have been impacted by their mother's co-occurring disorders and their mother's history of violence. The objective of the Children's Subset Study is to identify models of care that will prevent (or reduce) the intergenerational perpetuation of violence, substance abuse and mental health problems, and reduce the impact of violence in the lives of children whose mothers have co-occurring disorders and histories of trauma. A cross-site process and outcome evaluation of age-specific interventions and services will be conducted by the Coordinating Center.

Eligible Applicants: Applications for the cooperative agreements for the Women, ADM Disorders, and Violence II study sites may be submitted only by current SAMHSA Women, ADM Disorders and Violence Phase I study site grantees. Phase II cooperative agreements are restricted to these specific grantees because their study protocols are in place, thus allowing them to proceed immediately to the next step of expanding the project's scope to improve the knowledge base. Phase I grantees have already (1) established an integrated system of care for women with co-occurring disorders who have histories of physical and sexual abuse, (2) determined the most promising services intervention models for this population, and (3) developed project protocols in compliance with multi-site requirements established by the Steering Committee.

Applications for the Children's Subset Study may be submitted only by current SAMHSA Women, ADM Disorders and Violence Phase I study grantees who are also applying to the Women, ADM Disorders and Violence-Phase II Study. Only those receiving a Phase II award will be eligible to receive a Children's Subset Award. During Phase I, the study grantees established a Children's subcommittee whose main purpose was to develop parameters for the Children's Subset Study. In Phase I, the Children's subcommittee: (1) Developed study goals and objectives, (2) established the common service intervention, and (3) developed the multi-site protocol for the Children's Subset Study.

Only the current Coordinating Center for the SAMHSA Women, ADM Disorders and Violence Study is eligible to apply for funds to carry out additional tasks for the Children's Subset Study. The Coordinating Center is currently in the second year of its five-year project period. The Coordinating Center is an integral part of the Women, ADM Disorders and Violence Study; therefore, it is critical that continuity of the study be maintained by its leadership role during the Phase II study and during the concurrent Children's Subset Study. Its continued responsibility for coordination, technical assistance, evaluation expertise, and advice to the overall Steering Committee's Children's subcommittee established during Phase I are essential to guide those study sites selected to receive a Children's Subset Study award.

Amount: Approximately $7.5 million will be available to support approximately 10 awards under the Women, ADM Disorders and Violence II Cooperative Agreement; approximately $1.2 million will be available to support approximately 6 awards under the Children's Subset Study Cooperative Agreement in FY 2000.

Period of Support: Support may be requested for a period of up to three (3) years. Annual awards will be made subject to continued availability of funds and progress in meeting the goals and objectives of this program.

Catalog of Federal Domestic Assistance Number: 93.230.

Program Contact: For questions concerning program issues, contact: Melissa Rael, RN, M.A., Project Officer, Division of Practice and Systems Development, Center for Substance Abuse Treatment, SAMHSA, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8236.

For questions regarding grants management issues, contact: Christine Chen, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–8926.

Application kits are available from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

4. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

5. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR Part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance.

Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: March 12, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–6574 Filed 3–16–00; 8:45 am]

BILLING CODE 4162–20–U

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–11]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing

this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1998 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) Its intention to declare the property excess to the agency's needs, or (3) A statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review and should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Air Force:* Ms. Barbara Jenkins, Air Force Estate Agency, (Area-MI), Bolling Air Force Base, 112 Luke Avenue, Suite 104, Building 5683, Washington, DC 20332–8020; (202) 767–4184; *Energy:* Mr. Tom Knox, Department of Energy, Office of Contract and Resource Management, MA–53, Washington, DC 20585; (202) 586–8715; *GSA:* Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; *Navy:* Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: March 9, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 3/17/00

Suitable/Available Properties

LAND (by State)

Mississippi

Proposed Site
Army Reserve Center
Waynesboro Co: Wayne MS 39367–
Landholding Agency: GSA
Property Number: 54200010005
Status: Excess
Comment: 7.60 acres, most recent use—pine plantation, periodic flooding, possible wetlands on 30–40% of property
GSA Number: 4–D–MS–0555

Ohio

Communications Site
Trebein Road
Beavercreek Co: Greene OH 00000–
Landholding Agency: Air Force
Property Number: 18200010008
Status: Excess
Comment: 92 acres

Communications Site
Central Ohio, Lot #1
Randor Co: Delaware OH 00000–
Landholding Agency: Air Force
Property Number 18200010009
Status: Excess
Comment: 11.73 acres

Unsuitable Properties

BUILDINGS (by State)

California

Bldg. 154
Naval Air Station
North Island Co: CA 92132–
Landholding Agency: Navy
Property Number: 77200010037
Status: Excess
Reason: Extensive deterioration

Connecticut

Bldg. 480
Naval Submarine Base
Groton Co: New London CT 06349–
Landholding Agency: Navy
Property Number: 77200010075
Status: Unutilized
Reason: Secured Area

Florida

Bldg. 44
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010038
Status: Unutilized
Reason: Secured Area

Bldg. 58
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010039
Status: Unutilized
Reason: Secured Area

Bldg. 365
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010040
Status: Unutilized
Reason: Secured Area

Bldg. 455
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010041
Status: Unutilized
Reason: Secured Area

Bldg. 467
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010042
Status: Unutilized
Reason: Secured Area

Bldg. 475
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010043
Status: Unutilized
Reason: Secured Area

Bldg. 605A
Naval Air Station
Pensacola Co: Escambia FL 43508–
Landholding Agency: Navy
Property Number: 77200010044
Status: Unutilized
Reason: Secured Area

Bldg. 689
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010045
Status: Unutilized
Reason: Secured Area

Bldg. 802A
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010046
Status: Unutilized
Reason: Secured Area

Bldg. 835
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010047
Status: Unutilized
Reason: Secured Area

Bldg. 859B
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010048
Status: Unutilized
Reason: Secured Area

Bldg. 859C
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010049
Status: Unutilized
Reason: Secured Area

Bldg. 869
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010050
Status: Unutilized
Reason: Secured Area

Bldg. 1713
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010051
Status: Unutilized
Reason: Secured Area

Bldg. 2437
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010052
Status: Unutilized
Reason: Secured Area

Bldg. 2462
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010053
Status: Unutilized
Reason: Secured Area

Bldg. 3446
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010054
Status: Unutilized
Reason: Secured Area

Bldg. 3478
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010055
Status: Unutilized
Reason: Secured Area

Bldg. 3878
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77200010056
Status: Unutilized
Reason: Secured Area

Georgia

Stored Products Insects
R&D Lab
3401 Edwin Street
Savannah Co: Chatham GA 31403–
Landholding Agency: GSA
Property Number: 54200010003
Status: Excess
Reason: Floodway
GSA Number: 4–A–GA–861

Indiana

Former Army Reserve Ctr
East Hupp Road
LaPorte Co: IN 46345–0358
Landholding Agency: GSA
Property Number: 54200010004
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material. Within airport runway clear zone. Extensive deterioration
GSA Number: 1–D–IN–430F

Bldg. 3
Naval Surface Warfare
Naval Investigtion Ofc.
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010057
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area

3 Bldgs.
Naval Surface Warfare
157, 166, 171
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010058
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area

Bldgs.
Naval Surface Warfare
#22, 2792, 2794
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010059
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area

3 Bldgs.
Naval Surface Warfare
#158, 167, 172
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010060
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area

Bldgs. 162, 163
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010061
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area

Bldgs. 169D, 169E
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010062
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area

4 Bldgs.
Naval Surface Warfare
#173, 2171, 2172, 2179
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010063
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area

5 Bldgs.
Naval Surface Warfare
2174, 2175, 2176, 2193, 2784
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010064
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area

Bldgs. 2500, 2501
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010065
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area

3 Bldgs.
Naval Surface Warfare
#2502, 2503, 2715
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010066
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area

10 Bldgs.
Naval Surface Warfare
#2803, 2855–2863
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010067
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area.

Bldgs. 29095, 3074
Naval Surface Warfare
Crane Co: Lawrence IN 47522–
Landholding Agency: Navy
Property Number: 77200010068
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material. Secured Area.

New Mexico

Bldg. 149, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010024
Status: Unutilized
Reason: Secured Area.

Bldg. 312, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010025
Status: Unutilized
Reason: Secured Area.

Bldg. 313, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010026
Status: Unutilized
Reason: Secured Area.

Bldg. 314, TA–21
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010027
Status: Unutilized
Reason: Secured Area.

Bldg. 315, TA–21
Los Alamos National Lab
Los Alamos Co: NM 8754–
Landholding Agency: Navy
Property Number: 41200010028
Status: Unutilized
Reason: Secured Area

Virginia

Facility P–77
Norfolk Naval Base
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200010071
Status: Unutilized
Reason: Extensive deterioration

Bldgs. A13, A13A
Norfolk Naval Base
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77200010072
Status: Unutilized
Reason: Extensive deterioration

Washington

Bldg. 17
Naval Radio Station
Jim Creek
Arlington Co: WA 98223–8599
Landholding Agency: Navy
Property Number: 77200010073
Status: Excess
Reason: Secured Area Extensive deterioration

Bldg. 47
Naval Undersea Warfare
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77200010074
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material. Secured Area

LAND (by State)

North Carolina

0.1291 acres
Camp Lejeune
off Dogwood
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 77200010069
Status: Unutilized
Reason: Secured Area

0.1291 acres
Camp Lejeune
off Brewster Rd.
Camp Lejeune Co: Onslow NC 28542–
Landholding Agency: Navy
Property Number: 77200010070
Status: Unutilized
Reason: Secured Area

Pennsylvania

Novak Estate Land
off the Parkway West
Moon Township Co: Allegheny PA 15222–
Landholding Agency: GSA
Property Number: 54200010006
Status: Excess
Reason: inaccessible
GSA Number: 4–G–PA–7887

[FR Doc. 00–6281 Filed 3–16–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4560–N–02]

Super Notice of Funding Availability (SuperNOFA) for HUD's Housing, Community Development and Empowerment Programs and Section 8 Housing Voucher Assistance for Fiscal Year 2000; Table of Contents

AGENCY: Office of the General Counsel, HUD.

ACTION: Notice of Table of Contents to SuperNOFA for HUD Grant Programs.

SUMMARY: This notice provides a Table of Contents for HUD's SuperNOFA for HUD Grant Programs published on February 24, 2000.

FOR FURTHER INFORMATION CONTACT: For further information about the SuperNOFA, please see HUD's publication of the SuperNOFA in the **Federal Register** on February 24, 2000, at 65 FR 9321, or at HUD's website at http://www.hud.gov. You also may call, during business hours, the SuperNOFA Information Center at 1–800–HUD–8929. If you are a person with a hearing or speech impairment you may call the Center's TTY number at 1–800–HUD–2209.

SUPPLEMENTARY INFORMATION: On February 24, 2000 (65 FR 9321), HUD published its Super Notice of Funding Availability (SuperNOFA) for Housing, Community Development and Empowerment Programs and Section 8 Housing Voucher Assistance. HUD's SuperNOFA announced the availability of approximately $2.424 billion in HUD program funds covering 39 grant categories within programs operated and administered by HUD offices and Section 8 housing voucher assistance.

To assist the public in finding more easily the individual funding availability announcements within the SuperNOFA in which they may be interested, HUD is publishing a Table of Contents to the **Federal Register** publication of the SuperNOFA.

The Table of Contents follows.

Dated: March 13, 2000.

Camille E. Acevedo,

Assistant General Counsel for Regulations.

Table of Contents of FY 2000 SuperNOFA

(Published February 24, 2000, 65 FR 9320–9993)

- Application Due Dates and Address for Submitting Applications—65 FR 9322
- Introduction to the FY 2000 SuperNOFA—65 FR 9323
- Charts Providing Overview of FY 2000 SuperNOFA Programs—65 FR 9326–9334
- General Section of the FY 2000 SuperNOFA—65 FR 9335
- List of HUD Field Offices—65 FR 9341
- List of EZs, ECs, Urban Enhanced & Strategic Planning Communities—65 FR 9354–9356
- Standard Forms and Certifications—65 FR 9357–9386
- Community Development Technical Assistance—65 FR 9387
- Community Outreach Partnership Centers (COPC)—65 FR 9405
- Historically Black Colleges and Universities (HBCUs) Program—65 FR 9429
- Hispanic-Serving Institutions Assisting Communities (HSIAC)—65 FR 9455
- Alaska Native/Native Hawaiian Institutions Assisting Communities (AN/NHIAC)—65 FR 9469
- Fair Housing Initiatives Program (FHIP)—65 FR 9485
- Housing Counseling—65 FR 6519
- Lead-Based Paint Hazard Control Program—65 FR 9537
- Research to Improve the Evaluation and Control of Residential Lead-Based Paint Hazards—65 FR 9557
- Healthy Homes Initiative—65 FR 9577
- HOPE VI Revitalization and Demolition—65 FR 9597
- Public & Indian Housing Drug Elimination Technical Assistance Program (DETAP)—65 FR 9641
- Public Housing Drug Elimination: Technical Assistance for Safety and Security (DETASS)—65 FR 9653
- New Approach Anti-Drug Program—65 FR 9663
- Multifamily Housing Drug Elimination—65 FR 9681
- Resident Opportunity and Self-Sufficiency (ROSS) Program—65 FR 9695
- Outreach and Assistance Training Grants (OTAG)—65 FR 9777
- Economic Development Initiative (EDI)—65 FR 9787
- Brownfields Economic Development Initiative (BEDI)—65 FR 9813
- Self-Help Homeownership Program (SHOP)—65 FR 9823
- Youthbuild—65 FR 9829
- Continuum of Care Homeless Assistance Programs—65 FR 9849
- Housing Opportunities for Persons with AIDS (HOPWA) Program—65 FR 9865
- Section 202 Supportive Housing for the Elderly Program—65 FR 9899
- Section 811 Supportive Housing for Persons with Disabilities Program—65 FR 9927
- Mainstream Housing Opportunities for Persons with Disabilities—65 FR 9963
- Rental Assistance for Non-Elderly Persons with Disabilities Related to Certain Developments—65 FR 9975
- Rental Assistance for Non-Elderly Persons with Disabilities in Support of Designated Housing Plans—65 FR 9985

[FR Doc. 00–6639 Filed 3–16–00; 8:45 am]

BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Center for Environmental Research and Conservation, Columbia Univ., NY, NY, PRT–02924.

The applicant requests a permit to import biological tissue samples from Javan rhinoceros (*Rhinoceros sondaicus*) from the Cat-Tien National Park, Vietnam for the scientific research on genetic markers for use in population analysis to enhance the survival of the species.

Applicant: Carlos T. Oliveira, Laredo, TX, PRT–023972.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

Applicant: National Marine Fisheries Service/South West Region/Pacific Island Area Office, Honolulu, HI, PRT–022729.

The applicant requests a permit to introduce from the high seas samples and/or whole carcasses of Olive Ridley Sea Turtle, *Lepidochelys olivacea*, Green Sea Turtle, *Chelonia mydas*, Hawkswbill Sea Turtle, *Eretmochelys imbricata*, Loggerhead Sea Turtle, *Caretta caretta* and Leatherback Sea Turtle, *Dermochelys coriacea* for enhancement of the species through scientific research.

Marine Mammals

The public is invited to comment on the following application for a permit to conduct certain activities with marine mammals. The application was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18).

Applicant: Terry Meyer, Westfield, PA, PRT–023759.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport-hunted from the Davis Straight polar bear population, Northwest Territories, Canada for personal use taken prior to April 30, 1994. The holding of such a hearing is at the discretion of the Director.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 10, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–6601 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Advisory Committee on Water Information (ACWI)

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of an open meeting of the Advisory Committee on Water Information (ACWI).

SUMMARY: Notice is hereby given of a meeting of the ACWI. This meeting of the ACWI is to discuss broad policy-related topics relating to national water initiatives, and to hear reports from ACWI subgroups. The proposed agenda will include a series of discussions concerning various U.S. Government policies and programs related to the development and dissemination of water information.

The ACWI has been established under the authority of the Office of Management and Budget Memorandum 92–01 and the Federal Advisory Committee Act. The purpose of the ACWI is to provide a forum for water-information users and professionals to advise the Federal Government of activities and plans which may improve the effectiveness of meeting the Nation's water information needs. More than 30 organizations have been invited by the Secretary of the Interior to name representatives to the ACWI. These include Federal departments, State, local, and tribal government organizations, industry, academia, agriculture, environmental organizations, professional societies, and volunteer groups.

DATES: The formal meeting will convene at 8 a.m., on May 16, 2000, and will adjourn on May 17, 2000 at 3:30 p.m.

ADDRESSES: Sheraton Reston Hotel, 11810 Sunrise Valley Drive, Reston, Virginia.

FOR FURTHER INFORMATION CONTACT: Dr. Ethan T. Smith (Executive Secretary), Chief, Water Information Coordination Program, U.S. Geological Survey, 12201 Sunrise Valley Drive, 417 National Center, Reston, VA 20192. Telephone: 703–648–5022; Fax: 703–648–5295.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Up to a half hour will be set aside for public comment. Persons wishing to make a brief presentation (up to 5 minutes) are asked to provide a written request with a description of the general subject to Dr. Smith at the above address no later than noon, April 5, 2000. It is requested that 40 copies of a written statement be submitted at the time of the meeting for distribution to members of the ACWI and placement in the official file. Any member of the public may submit written information and (or) comments to Dr. Smith for distribution at the ACWI.

Dated: Dated: March 7, 2000.

Lewis V. Wade,

Assistant Chief Hydrologist for Information, U.S. Geological Survey.

[FR Doc. 00–6585 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–830–1030XP–02 241A]

Information Collection Activities; Proposed Collection; Comments Request

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) announces its intention to request approval a new collection of information. The BLM is soliciting comments concerning a proposed collection of information that would conduct surveys of the public in two user groups, state and local governments and stakeholders and partners.

DATES: Written comments for the proposed collection must be received by May 16, 2000 to assure consideration.

ADDRESSES: If you wish to comment, you may submit your comments by one of several methods. You may mail them to Andrew Goldsmith, Management Systems Group, Business and Fiscal Resources Directorate, Bureau of Land Management, 1849 C Street, NW, Room LS 1000, Washington, DC 20240. You may comment via e-mail to andrew_goldsmith@blm.gov. You may also fax your comments to 202–453–5171.

Comments, including names and street addresses of respondents, will be available for public review.

Finally, you may hand-deliver comments to the Bureau of Land Management at 1620 L Street, NW, Room 1000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Goldsmith, Bureau of Land Management, at 202–452–5169.

NATURE OF COMMENTS: In accordance with 5 CFR 1320.12(a), the BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in proposed rules or other documents to solicit comments on: (1) Whether the collection of information is necessary for the proper functioning of the BLM; (2) the accuracy of our estimates of the burden of collecting the information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information collected; and (4) how to minimize the burden of collecting the information on those who are to respond, including using the appropriate automated, electronic, mechanical or other forms of information technology. The BLM will receive and analyze any comments sent in response to this notice and include them with its request for approval under 44 U.S.C. 3501 *et seq.* to the Office of Management and Budget.

SUPPLEMENTARY INFORMATION:

I. Background
II. Current Actions
III. Methodology
IV. Requests for Comments

I. Background

The Government performance and Results Act of 1993 (Public Law 103–63) sets out to improve Federal program effectiveness and public accountability by promoting a new focus on results, service quality, and customer satisfaction (Section 2. B. 3). In order to fulfill this responsibility, the BLM must collect data from its user groups to better understand the needs and desires of the public and respond to those needs and desires accordingly.

This course of action is fortified by Executive Order 12862, signed by President Clinton on September 11, 1993, aimed at ensuring the federal government provides the highest quality service possible to the American people. The Order discusses surveys as a means for determining the kinds and qualities of services desired by the federal government's customers and for determining satisfaction levels for existing services. These voluntary customer surveys will be used to ascertain customer satisfaction with the BLM in terms of services and products. Respondents will be individuals that are the recipients of the BLM services and products. Previous customer surveys have provided useful information to the BLM for assessing how well the Bureau delivers our services and products and for making improvements. The results are used internally and summaries are provided to the Office of Management and Budget on an annual basis and are used to satisfy the requirements and spirit of Executive Order No. 12862.

II. Current Actions

The request to OMB will be for a 3-year clearance to conduct customer surveys for the BLM. During the past clearance cycle the BLM conducted four different customer surveys by telephone. (Examples of previously conducted customer surveys are available upon request.) Our planned activities in the next three fiscal years reflect our increased emphasis on and expansion of these activities.

III. Methodology

The BLM will survey customers in the following general categories: (1) Stakeholders and partners and (2) state and local governments. A randomized sampling technique is employed for both of these categories if there are more than 200 people in a state's database. If there are less than 200 individuals, a census, counting everyone, will be utilized. An 80 percent response rate goal has been set; for this reason, whenever possible telephone surveys are chosen over mail surveys for their increased response rates.

The questionnaires are developed with the help of focus groups from around the country. The BLM asks questions in the following general areas: (1) Communication with the public; (2) service quality and accountability; (3) information and education services; (4) resource management; (5) overall satisfaction; and (6) general demographics.

IV. Requests for Comments

Prospective respondents and other interested parties should comment on the actions of discussed in items II & III. The following guidelines are provided to assist you in responding.

General Issues

A. Is the proposed collection of information necessary, taking into account its accuracy, adequacy, and reliability, and the agency's ability to process the information it collects in a useful and timely fashion?

B. What enhancements can the BLM make to the quality, utility, and clarity of the information to be collected?

As a Potential Respondent

A. The average public reporting burden for a customer survey is estimated to be .25 hours per response (1720 respondents per year × 15 minutes per response = 430 hours annually). Burden includes the total time, effort, or financial resources expended to generate, maintain, retain, or disclose or provide the information including: (1) Reviewing instructions; (2) developing, acquiring, installing, and utilizing technology and systems for purposes of collecting, validating, verifying, processing, maintaining, disclosing, and providing information; (3) adjusting the existing way to comply with any previously applicable instructions and requirements; (4) training personnel to respond to a collection of information; (5) searching data sources; (6) completing and reviewing the collection of information; and (7) transmitting or otherwise disclosing the information.

Please comment on the accuracy of our estimate and how the BLM could minimize the burden of collecting the information, including the use of automated collection techniques.

B. The BLM estimates that respondents will incur no additional costs for reporting other than the time required to complete the collection. What are the estimated total dollar amount annualized for capital and start-up costs and recurring annual dollar amount of operation and maintenance and purchase of services costs associated with this data collection? The estimates should take into account the costs associated with generating, maintaining, and disclosing or providing information.

C. Do you know of any other federal, state, or local agency that collects similar data? If you do, specify the agency, collection element(s), and the methods of collection.

As a Potential User

Are there any alternative sources of data and do you use them? If so, what are their deficiencies and/or strengths?

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the survey. They also will become a matter of public record.

Dated: March 14, 2000.

Carole Smith,

BLM Information Clearance Officer.

[FR Doc. 00–6666 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–096–1610–00]

Notice of Availability

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) has prepared a draft Bitter Creek and Mountain Plover Areas of Critical Environmental Concern (ACEC) Plan Amendment and Environmental Assessment (EA). The draft plan amendment/EA addresses two potential ACECs in the Glasgow Field Station, Valley County, Montana.

DATES: Comments on the draft plan amendment/EA should be submitted to BLM on or before May 16, 2000.

ADDRESSES: Address all comments to John Fahlgren, Assistant Field Manager, Glasgow Field Station, RR1–4775, Glasgow, MT 59230.Comments, including names and street addresses of respondents, will be available for public review at the above Glasgow address during regular business hours (7:45 a.m. to 4:30 p.m.), Monday through Friday, except holidays. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: John Fahlgren, 406–228–4316.

SUPPLEMENTARY INFORMATION: This plan amendment/EA addresses special management for two potential ACECs; Bitter Creek and Mountain Plover. The public land being considered is located in Valley County, Montana. This plan would amend the Judith-Valley-Phillips Resource Management Plan (RMP).An ACEC is an area where special management attention is required to protect important historic, cultural or scenic values, fish and wildlife resources or other natural systems, or to protect life and safety from natural hazards.The Bitter Creek Wilderness Study Area (WSA) (59,660 acres) was found to meet the criteria as a potential ACEC due to the scenic diversity and variety of vegetation types and wildlife habitat. The Mountain Plover area (24,730 acres) provides natural habitat for the mountain plover, a prairie bird. It is an area of native plover habitat which is not associated with black-tailed prairie dogs.

(Authority: Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712))

Dated: February 22, 2000.

John Fahlgren,

Assistant Field Manager, Bureau of Land Management.

[FR Doc. 00–6591 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–050–1020–001]

Mojave-Southern Great Basin Resource Advisory Council—Notice of Meeting Locations and Times

March 3, 2000.

AGENCY: Bureau of Land Management, Interior.

ACTION: Resource Advisory Council meeting locations and times.

DATES: March 23, and 24, 2000.

TIME: March 23, noon–4:30 p.m., and March 24, 8 a.m.–4:30 p.m.

ADDRESS: 4765 West Vegas Drive, Las Vegas, NV 89108.

FOR FURTHER INFORMATION CONTACT: Phillip L. Guerrero, Las Vegas Field Office, Public Affairs Officer, telephone: (702) 647–5046.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C., the Department of the Interior, Bureau of Land Management (BLM), council meeting of the Mojave-Southern Great Basin Resource Advisory Council (RAC) will be held as indicated above. The agenda includes a public comment period, and discussion of public land issues.

The Resource Advisory Council develops recommendations for BLM regarding the preparation, amendment, and implementation of land use plans for the public lands and resources within the jurisdiction of the council. For the Mojave-Great Basin RAC this jurisdiction is Clark, Esmeralda, Lincoln and Nye counties in Nevada. Except for the purposes of long-range planning and the establishment of resource management priorities, the RAC shall not provide advice on the allocation and expenditure of Federal funds, or on personnel issues.

The RAC may develop recommendations for implementation of ecosystem management concepts, principles and programs, and assist the BLM to establish landscape goals and objectives.

All meetings are open to the public. The public may present written comments to the council. Public comments should be limited to issues for which the RAC may make recommendations within its area of jurisdiction. Depending on the number of persons wishing to comment, and time available, the time for individual oral comments may be limited. Individuals who plan to attend and

need further information about the meeting, or need special assistance such as sign language interpretation or other reasonable accommodations, should contact Phillip L. Guerrero at the Las Vegas District Office, 4765 Vegas Dr., Las Vegas, NV 89108, telephone, (702) 647–5000.

Dated: March 3, 2000.

Phillip L. Guerrero,

Public Affairs Officer.

[FR Doc. 00–6588 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–040–00–1040–AE]

Meeting Cancellation; Gila Box Riparian National Conservation Area Advisory Committee

AGENCY: Bureau of Land Management.

ACTION: Notice of Meeting Cancellation.

SUMMARY: The purpose of this notice is to cancel the April 7 and 8, 2000 Gila Box Riparian National Conservation Area Advisory Committee Meeting. The purpose of the Advisory Committee is to provide informed advice to the Safford Field Office Manager on management of public lands in the Gila Box Riparian National Conservation Area. The committee meets as needed, generally between two and four times a year.

The meeting was to begin at the Bureau of Land Management, Safford Field Office on April 7, 2000 commencing at 8:00 am for the purpose of floating the Gila River within the Gila Box RNCA. However, due to the lack of snow pack and runoff into the Gila River, water levels are so low it will make floating of the river nearly impossible. A new meeting date for the Advisory Committee will be negotiated with the members of the committee in the near future, and posted in the **Federal Register.**

DATES: Meeting proposed on April 7, 2000 starting 8:00 am has been cancelled.

FOR FURTHER INFORMATION CONTACT: Jon Collins, Gila Box NCA Project Coordinator, Safford Field Office, 711 14th Ave., Safford AZ 85546, Telephone (520) 348–4400.

Dated: March 10, 2000.

Frank L. Rowley,

Acting Safford Field Office Manager.

[FR Doc. 00–6488 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–00–1430–NH; AZA 31171]

Arizona: Closure of Public Land to All Vehicle Use

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of closure.

SUMMARY: Notice is hereby given that the Bureau of Land Management is closing an area of public land located within Yuma County, Arizona, approximately 1 mile south of Interstate 8 and 3 miles west of Avenue 25 E to all vehicle use.

Order: Effective upon publication, that portion of public land described below is closed to all vehicle use for a term of 2 years:

Gila and Salt River Meridian, Yuma County, Arizona

T.9S., R.20 W.,
Sec. 1, E½NE¼SW¼ within, SE¼SW¼ within,
Sec. 12, W½NE¼ within, W½SE¼NE¼ within, NE¼NE¼NW¼ within, W½NE¼SE¼ within, SE¼SE¼ within,
Sec. 13, W½NE¼NE¼ within, W½NE¼ within, SW¼SW¼ (south 50 feet) within, E½SE¼SW¼ within, SW¼SE¼SW¼ (south 50 feet) within. W½NW¼SE¼ within, SE¼ (south 50 feet) within.

Containing 22.36 acres, more or less.

No person may use, drive, transport, park, let stand, or have charge or control over any vehicle in this area. Exemptions to this order are granted to law enforcement and other emergency vehicles in the course of official duties. This order does not affect Bureau of Reclamation and Wellton-Mohawk Irrigation and Drainage District personnel in the course of their official duties along the Wellton-Mohawk Canal and related facilities. This order does not affect Arizona Department of Transportation personnel in the course of their official duties within the Interstate 8 right-of-way.

All other exemptions to this order are by written authorization of the Bureau of Land Management, Yuma Field Manager only.

EFFECTIVE DATE: March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Realty Specialist Lucas Lucero, Bureau of Land Management, Yuma Field Office, 2555 E. Gila Ridge Road, Yuma, Arizona 85365, telephone (520) 317–3237.

SUPPLEMENTARY INFORMATION: The purpose of this closure is to protect the natural and cultural resources from disturbance caused by unauthorized vehicle use. This closure is needed in order to assess existing resource damage and prevent any further damage caused by vehicle use and unauthorized road improvements. The affected area will be posted with standard signs prohibiting vehicle use. Authority for this closure of public land to vehicle use is found at Title 43 Code of Federal Regulations, subpart 8360.0–3. In accordance with 43 CFR 8360.0–7, violation of this order is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months.

Dated: March 7, 2000.

Gail Acheson,

Field Manager.

[FR Doc. 00–6592 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–62–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–5410–EQ–E030; MTM 89208]

Application for Conveyance of Mineral Interest; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is given that, pursuant to Section 209b of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1719(b)), Ms. Margaret I. Alm has applied to purchase the mineral estate described as follows:

Principal Meridian, Montana

T. 10 N., R. 4 W.,
Sec. 33, lot 1, N½NE¼, SW¼NE¼, NE¼NW¼, E½SE¼, and SW¼SE¼.

Containing 305.14 acres in Lewis and Clark County.

The mineral interest will be conveyed in whole or in part upon favorable mineral examination.

The purpose is to allow consolidation of surface and subsurface mineral ownership where there are no known mineral values or in those instances where the United States mineral reservation interferes with or precludes appropriate nonmineral development and such development is a more beneficial use of the land than the mineral development.

FOR FURTHER INFORMATION CONTACT: Deborah Sorg, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5045.

SUPPLEMENTARY INFORMATION: Upon publication of this notice in the **Federal Register** as provided in 43 CFR 2720.1–1(b), the mineral interests within the

legal description given above will be segregated to the extent that they will not be subject to appropriation under the mining and mineral leasing laws. The segregative effect of the application shall terminate upon issuance of a conveyance document, final rejection of the application, or 2 years from the date of filing of the application, April 28, 1999, whichever occurs first.

Dated: February 25, 2000.

John E. Moorhouse,

Acting Deputy State Director, Division of Resources.

[FR Doc. 00–6587 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–63292]

Notice of Realty Action: Lease/conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, DOI.

ACTION: Recreation and Public Purpose Lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a fire station.

Mount Diablo Meridian, Nevada

T. 19 S., R. 59 E.,
Sec. 25, E½SE¼NE¼SE¼.

Containing 5 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 30 feet in width along the North boundary, 50 feet in width along the East boundary, and 30 feet in width along the South boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, Las Vegas, Nevada 89108.

Classification Comments

Interested parties may submit comments involving the suitability of the land for a fire station Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a fire station.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/conveyance until after the classification becomes effective.

Dated: February 17, 2000.

Jacqueline M. Gratton,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 00–6590 Filed 3–16–00; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–00–1010–DA]

Proposed BLM Resource Management Plan Amendment From the Designation of Environmentally Preferred Alternative in the Clancy-Unionville Vegetative Manipulation and Travel Management Final Environmental Impact Statement

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The USDI, Bureau of Land Management, and USDA, Forest Service have released the Clancy-Unionville Vegetative Manipulation and Travel Management Project Final Environmental Impact Statement (FEIS) for public examination. The BLM has determined that a Resource Management Plan (RMP) Amendment is preferred, as described under the "Features Common to All BLM Action Alternatives" section of the FEIS located on page II–8 of the document.

Public Participation: Headwaters RMP Amendment: The Travel Planning features analyzed in this FEIS and part of the Environmentally Preferred Alternative are subject to the provisions of BLM regulations under 43 CFR Part 1600. The BLM travel management features, as found in the draft EIS for the Clancy-Unionville Vegetation Manipulation and Travel Management Project, were available for public review and comment for 90 days, beginning November 6, 1998. Written comments were received from agencies, individuals, and organizations. All comments were considered in the preparation of the FEIS and the proposed RMP Amendment.

The resource management planning process includes the opportunity for review of the RMP Amendment and, if desired, to submit a protest to the BLM's Director. Any person or organization who participated in the planning process and who has an interest that is or may be adversely affected by the approval of this RMP Amendment may protest the plan. Careful adherence to the following guidelines will help you prepare a protest that will assure the

greatest consideration for your point of view.

Only those persons or organizations who participated in the planning process may protest the plan. A protesting party may raise only those issues which were commented on during the planning process.

DATES: The protest period lasts 30 days and begins March 17, 2000, the day this Notice of Availability is published in the **Federal Register**. There is no provision for an extension of time. Protests filed late or filed with the State Director, Field Manager or the Forest Service shall be rejected by the Director. To be considered "timely" your protest must be postmarked no later than April 17, 2000. Although not a requirement, sending your protest by "certified mail, return receipt requested," is recommended.

ADDRESSES: Reading copies of the Environment Impact Statement and proposed RMP Amendment will be available at the BLM's Butte Field Office, 106 North Parkmont, Butte, Montana 59702, or the Forest Service's Helena Ranger District, 2001 Poplar Street, Helena, Montana 59601.

All protests must be filed in writing to: Director, Bureau of Land Management, Attention: Ms. Brenda Williams, Protests Coordinator, WO–210/LS–1075, Department of the Interior, Washington, D.C. 20240.

The Overnight Mail address is: Director, Bureau of Land Management, Attention: Ms. Brenda Williams, Protests Coordinator, 1620 L Street NW, Room 1075, Washington, D.C. 20036.

To expedite consideration, in addition to the original protect being sent by mail or overnight mail, a copy of the protest may be sent by fax to 202–452–5112 or by electronic mail to bhudgens@wo.blm.gov.

To be considered complete, your protest must contain, at a minimum, the following information:

(1) The name, mailing address, telephone number, and interest of the persons filing the protest;

(2) A statement of the issue being protested;

(3) A statement of the portion of the plan being protested. To the extent possible, this should be done by referencing specific pages, paragraphs, sections, tables, and maps in the proposed RMP Amendment.

(4) A copy of all documents addressing the issue that were submitted during the planning process or a reference to the date the issue was discussed for the record.

(5) A concise statement explaining why the BLM State Director's decision is believed to be incorrect (a critical part of the protest).

Take care to document all relevant facts and to reference or cite the planning documents, environmental analysis documents, and available planning records (meeting minutes, summaries, correspondence). A protest without data will not provide us with the benefit of your information and insight, and the Director's review will be based on the existing analysis and supporting data.

At the end of the 30-day protest period, the BLM may issue a Record of Decision approving implementation of any portion of the proposed plan not under protest. Approval will be withheld on any portion of the plan that is under protest, until the protest is resolved.

FOR FURTHER INFORMATION CONTACT: Mike Small of the BLM Butte Field Office at 406–494–5059.

Dated: February 25, 2000.

Steve Hartmann,

Acting Field Manager.

[FR Doc. 00–6589 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–030–1430–00; ES–50582, Group 547, Minnesota]

Notice of Filing of Plat of an Island; Minnesota, Suspended

On Tuesday, January 18, 2000, there was published in the **Federal Register**, Volume 5, Number 11, on page 2640, a notice entitled, "Notice of Filing of Plat of an Island; Minnesota." Said notice referenced the filing of the plat of the survey of an island in Cedar Lake, Township 117 North, Range 30 West, Fifth Principal Meridian, Minnesota, accepted on January 6, 2000.

This plat officially filed on February 22, 2000, is hereby suspended pending the consideration of a protest against the survey.

Dated: March 7, 2000.

Stephen G. Kopach,

Chief Codastral Surveyor.

[FR Doc. 00–6586 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–GJ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZA 30550, AZA 30551, AZA 30552, AZA 30553, AZA 30554, AZA 30582, AZA 30583, AZA 30584, AZA 30596, AZA 30597]

Public Land Order No. 7439; Withdrawal of National Forest System Lands for Recreation Sites, Trailhead, and Summer Home Area; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 2,833.15 acres of National Forest System lands from location and entry under the United States mining laws for 20 years to protect Alto Pit Off-Highway Vehicle Area, Camp Anytown, Camp Patterdell Pines, Camp Pearlstein, Camp Wamotochick, Granite Basin Recreation Area, Lynx Creek Recreation Area, Pine Summit Camp, Williamson Valley Trailhead, and Miller Creek Summer Home Area.

EFFECTIVE DATE: March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Beverley Everson or Doug Franch, Prescott National Forest, 344 S. Cortez Street, Prescott, Arizona 86303, 520–445–7253.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described National Forest System lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch. 2 (1994)), to protect Alto Pit Off-Highway Vehicle Area, Camp Anytown, Camp Patterdell Pines, Camp Pearlstein, Camp Wamotochick, Granite Basin Recreation Area, Lynx Creek Recreation Area, Pine Summit Camp, Williamson Valley Trailhead, and Miller Creek Summer Home Area:

Gila and Salt River Meridian, Prescott National Forest

Alto Pit OHV Area (AZA 30596)

T.14 N., R.3 W.,
Sec. 15, lots 1 to 5, inclusive, S½N½, N½SW¼, and NE¼SW¼SW¼;
Sec. 16, E½SE¼NE¼ and NE¼NE¼SE¼.

Camp Anytown (AZA 30553)

T.14 N., R.3 W.,
Sec. 24, N½N½NW¼.

Camp Patterdell Pines (AZA 30554)

T.13 N., R.2 W.,
Sec. 28, lots 9, 14, and 15.

Camp Pearlstein (AZA 30583)

T.13 N., R.3 W.,
Sec. 12, lot 5;
Sec. 13, lot 2.

Camp Wamotochick (AZA 30551)

T.13N., R2W.,
Sec. 35, lots 12 and 13.

Granite Basin Recreation Area (AZA 30597)

T.14 N., R.3W.,
Sec. 1, SW¼SW¼;
Sec. 2, SW¼NE¼, E½SE¼NW¼, E½NE¼SW¼, NW¼NE¼SW¼, E½SW¼NE¼SW¼, NE¼SE¼SW¼, E½NW¼SE¼SW¼, N½SE¼SE¼SW¼, and SE¼;
Sec. 3, NE¼NE¼SE¼, W½NE¼SE¼, W½SE¼NE¼SE¼, W½NE¼SE¼SE¼,E½NW¼SE¼SE¼, and W½SW¼SE¼SE¼;
Sec. 10, E½NE¼NE¼NE¼, W½NW¼NE¼NE¼, S½NE¼NE¼, SE¼NE¼, and E½SE¼;
Sec. 11, lots 11 to 17, inclusive, E½NE¼, W½NW¼, SW¼SW¼, and SE¼;
Sec. 12, W½ and SW¼NE¼;
Sec. 13, W½NW¼ and SW¼;
Sec. 14, lots 1 to 6, inclusive, E½NE¼, and NE¼NE¼SE¼;
Sec. 15, NE¼NE¼;
Sec. 24, lots 1, 3, and 4, and S½N½NW¼.

Lynx Creek Recreation Area Expansion (AZA 30584)

T.13N., R.1W.,
Sec. 5, lots 10 and 11, S½NW¼, and W½SW¼ (except the lands withdrawn by Public Land Order No. 5058);
Sec. 6, lot 8 and SE¼NE¼ (except the lands withdrawn by Public Land Order No. 5058);
Sec. 8, NE¼NW¼ and N½NW¼NW¼ (except the lands withdrawn by Public Land Order No. 5058).

Pine Summit Camp (AZA 30550)

T.13N., R.2W.,
Sec. 34, lots 9 (except the patented portion of MS 4226), 10 (except the patented portion of MS 4226), 11, 12, and 18;
Sec. 35, lots 14 and 15.

Williamson Valley Trailhead (AZA 30582)

T.15N., R.2W.,
Portions of lot 4, sec. 19 and lot 1, sec. 30, more particularly described by metes and bounds as follows: BEGINNING at the section corner of secs. 19, 30, 24, and 25, T. 15 N., Rs. 2 and 3 W., thence south along the west section line of sec. 30, 50 feet, thence along a line parallel with the north section line of sec. 30, 125.2 feet to the west right-of-way line of the Williamson Valley Road, A.K.A., Prescott-Simmons County Highway; thence North 23 degrees West, 320.5 feet along said right-of-way line to the west section line of sec. 19; thence south along said section line, 245 feet to the POINT OF BEGINNING.

T.15N., R.3W.,
Sec. 25, NE¼NE¼NE¼NE¼.

Miller Creek Summer Home Area (AZA 30552)

T.14N., R.3W.,
Sec. 35, W½NE¼SE¼SW¼ and NW¼SE¼SW¼.

The areas described aggregate 2,833.15 acres in Yavapai County.

2. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: March 13, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–6667 Filed 3–16–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of new information collection.

SUMMARY: As part of its continuing effort to reduce paperwork and respondent burden, MMS invites the public and other Federal agencies to comment on a proposal for the new collection of information discussed below. We intend to submit this collection of information to the Office of Management and Budget (OMB) for approval. The Paperwork Reduction Act of 1995 provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

DATES: Submit written comments by May 16, 2000.

ADDRESSES: Mail or hand carry comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: Survey—Public Information Offices (PIO).

OMB Control Number: 1010–NEW.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, requires the Secretary of the Interior to preserve, protect, and develop offshore oil and gas and sulphur resources; make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; preserve and maintain free enterprise competition; and ensure that the extent of oil and natural gas resources of the OCS is assessed at the earliest practicable time. MMS administers this program.

Executive Order 12862, September 11, 1993, Setting Customer Service Standards, provided renewed focus on surveying customers. The Executive Order states that customer satisfaction is seen as the ultimate performance indicator for the Federal Government because it shows how well our customers are being served and what we must do to close the gap between what we provide our customers and what they want. We included in our Government Performance Results Act Strategic Plan, a requirement to survey customers to validate our customer service/satisfaction performance. We have not conducted a survey of the regional PIOs for several years.

A goal included in the Strategic Plan requires the Offshore Minerals Management program to improve the level of service of its PIOs by 2003. The baseline for this improvement is FY 2000. To assess whether this goal has been met, we plan to conduct an annual customer satisfaction survey over the next 3 years. The first survey will probably include the most questions, and the results will provide the FY 2000 baseline for measuring achievement of this performance goal. The questions to be included in the subsequent surveys may be reduced, depending on the results from the baseline survey. MMS

will use the information to improve services to its customers.

No proprietary data, confidential information, or items of a sensitive nature will be collected. Responses are voluntary.

Frequency: Annual survey.

Estimated Number and Description of Respondents: Approximately 4,100 MMS customers on regional mailing lists, including Federal OCS oil, gas, and sulphur lessees and operators.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: We estimate 20–25 minutes to complete each survey, for a total annual burden of 427 hours. There are no recordkeeping requirements.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: None.

Comments: We will summarize written responses to this notice and address them in our submission for OMB approval. We specifically solicit your comments on the following questions:

(a) Is the proposed collection of information necessary for us to properly perform our functions, and will it be useful?

(b) Is the estimate of the burden hours of the proposed collection reasonable?

(c) Do you have any suggestions that would enhance the quality, clarity, or usefulness of the information to be collected?

(d) Is there a way to minimize the information collection burden on respondents, including through the use of appropriate automated electronic, mechanical, or other forms of information technology?

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744).

Dated: March 2, 2000.

E.P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–6662 Filed 3–16–00; 8:45 am]

BILLING CODE 4310–MR–W

DEPARTMENT OF JUSTICE

Antitrust Division

Proposed Final Judgment and Competitive Impact Statement: United States of America v. CBS Corporation, Infinity Broadcasting Corporation and Outdoor Systems, Inc.

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation, and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *CBS Corporation, Infinity Broadcasting Corporation and Outdoor Systems, Inc.* Case No. 1:99CV03212. The proposed Final Judgment is subject to approval by the Court after the expiration of the statutory 60-day public comment period and compliance with the Antitrust Procedures and Penalties Act. 15 U.S.C. § 16(b)–(h).

The United States filed a civil antitrust Complaint on December 6, 1999, alleging that the proposed acquisition of Outdoor Systems, Inc. ("OSI") by CBS Corporation ("CBS") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that CBS and OSI compete head-to-head to sell out-of-home advertising displays in Three Metropolitan Areas: (1) New York, New York; (2) New Orleans, Louisiana; and (3) Phoenix, Arizona; (collectively "the Three Metropolitan Areas"). Outdoor advertising companies sell out-of-home advertising display space to local and national customers. The out-of-home advertising display business in the Three Metropolitan Areas is highly concentrated. CBS, through TDI, a subsidiary of CBS-owned Infinity Broadcasting Corporation, and OIS would have a combined share of revenue is excess of 60 percent in New York, New York and a combined share in excess of 75 percent in Phoenix, Arizona and New Orleans, Louisiana. Unless the acquisition is blocked, competition would be substantially lessened in the Three Metropolitan Areas, and advertisers would likely pay higher prices.

The prayer for relief seeks: (a) An adjudication that the proposed transaction described in the Complaint would violate Section 7 of the Clayton Act; (b) Preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) An award to the United States of the costs of this action; and (d) Such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits CBS to complete its acquisition of OSI, yet preserves competition in the Three Metropolitan Areas where the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed at the same time the complaint was filed.

In Phoenix and New Orleans, the defendants are required to divest assets equivalent to all the out-of-home assets of one of the merging parties, thus completely restoring the pre-merger industry structure and resolving any competitive concerns. In New York, the defendants are required to divest assets yielding a net revenue of no less than $25.3 million, which is equivalent to all the out-of-home advertising assets of OSI with the exception of its bus shelter and subway businesses. With respect to these two businesses, if the parties possess both contracts as of February 2000, they are required to divest one of these businesses.

Unless the plaintiff grants a time extension, CBS must divest these outdoor advertising assets with one-hundred and fifty (150) days after the filing of the Complaint in this action. Finally, in the event that the Court does not, for any reason, enter the Final Judgment with that one-hundred and fifty day period, the divestitures are to occur within five (5) business days after notice of entry of the Final Judgment.

If CBS does not divest the assets within the time periods specified in the final judgment, the Court, upon plaintiff's application, is to appoint a trustee to sell the assets. The proposed Final Judgment also requires that, until the divestitures mandated by the final Judgment have been accomplished, CBS shall take all steps necessary to maintain and operate the divestiture assets as active competitors; maintain the management, staffing, sales and marketing of the out-of-home advertising displays; and maintain out-of-home advertising displays in operable condition. Further, the proposed Final Judgment requires CBS to give the United States prior notice regarding certain future outdoor advertising acquisitions or agreements pertaining to the sale of outdoor advertising in the Three Metropolitan Areas,

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

A Competitive Impact Statement filed by the United States, describes the Complaint, the proposed Final Judgment, and remedies available to private litigants.

Public comment is invited within the statutory 60-day comment period. Such comments, and the responses thereto, will be published in the **Federal Register** and filed with the Court. Written comments should be directed to Willie Hudgins, Assistant Chief, Litigation II, Antitrust Division, 1401 H Street, NW., Suite 3000, Washington,

D.C. 20530 (telephone: 202–307–0001). Copies of the Complaint, Stipulation, proposed Final Judgment and Competitive Impact Statement are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW., Washington, DC 20530 (telephone: 202–514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, Third Street and Constitution Avenue, NW, Washington, DC 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

Stipulation and Order

It is stipulated by and between the undersigned parties, by their respective attorneys, as follows:

1. The Court has jurisdiction over the subject matter of this action and over each of the parties hereto, and venue of this action is proper in the United States District Court for the District of Columbia.

2. The parties stipulate that a Final Judgment in the form hereto attached may be filed and entered by the Court, upon the motion of any party or upon the Court's own motion, at any time after compliance with the requirements of the Antitrust Procedures and Penalties Act (15 U.S.C. 16), and without further notice to any party or other proceedings, provided that plaintiff has not withdrawn its consent, which it may do at any time before the entry of the proposed Final Judgment by serving notice thereof on defendants and by filing that notice with the Court.

3. Defendants shall abide by and comply with the provisions of the proposed Final Judgment pending entry of the Final Judgment by the Court, or until expiration of time for all appeals of any Court ruling declining entry of the proposed Final Judgment, and shall, from the date of the signing of this Stipulation by the parties, comply with all the terms and provisions of the proposed Final Judgment as though the same were in full force and effect as an Order of the Court.

4. This Stipulation shall apply with equal force and effect to any amended proposed Final Judgment agreed upon writing by the parties and submitted to the Court.

5. In the event (a) the plaintiff withdraws its consent, as provided in paragraph 2 above, or (b) the proposed Final Judgment is not entered pursuant to this Stipulation, the time has expired for all appeals of any Court ruling declining entry of the proposed Final Judgment, and the Court has not otherwise ordered continued compliance with the terms and provisions of the proposed Final Judgment, then the parties are released from all further obligations under this Stipulation, and the making of this Stipulation shall be without prejudice to any party in this or any other proceeding.

6. Defendants represent that the divestitures ordered in the proposed Final Judgment can and will be made, and that defendants will later raise no claim of hardship or difficulty as grounds for asking the Court to modify any of the divestiture provisions contained therein.

Dated: December 6, 1999.

For Plaintiff United States:

Renee Eubanks,
U.S. Department of Justice, Antitrust Division, Litigation II, 1401 H Street, NW, Suite 4000, Washington, DC 20005, Washington, DC 20005, (202) 307–0001.

Dated December 6, 1999.

So Ordered:

Thomas F. Hogan,
United States District Judge.

For Defendant CBS Corporation and Infinity Broadcasting Corporation:

Helene Jaffe,
Weil, Gotshal & Manges, LLP, 767 Fifth Avenue, New York, NY 10153–0119, (212) 310–8000.

For Defendants Outdoor Systems Inc.:

Lawrence R. Fullerton,
Powell, Goldstein, Frazer, & Murphy, 1001 Pennsylvania Ave., NW, Washington, DC 20004, (202) 624–7282.

Final Judgment

Whereas, plaintiff, the United States of America, filed its Complaint in this action on December 6, 1999, and Plaintiff and Defendants by their respective attorneys, having consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law herein, and without this Final Judgment constituting any evidence against or an admission by any party with respect to any issue of law or fact herein;

And Whereas, Defendants have agreed to be bound by the provisions of this Final Judgment pending its approval by the Court;

And Whereas, the essence of this Final Judgment is prompt and certain divestiture of the out-of-home advertising assets in the Three Metropolitan Areas, as defined below, to ensure that competition is substantially preserved;

And Whereas, plaintiff requires Defendants to make the divestitures for the purpose of maintaining the current level of competition in the sale of out-of-home advertising;

And Whereas, Defendants have represented to the plaintiff that the divestitures ordered herein can and will be made and that Defendants will not later raise claims of hardship or difficulty as grounds for asking the Court to modify any of the divestitures contained below;

Now, Therefore, before the taking of any testimony, and without trial or adjudication of any issue of fact or law herein, and upon consent of the parties hereto, it is hereby *Ordered, Adjudged, and Decreed* as follows:

I. Jurisdiction

This Court has jurisdiction over each of the Defendants hereto and over the subject matter of this action. The Complaint states a claim upon which relief may be granted against the Defendants, as herein after defined, under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

II. Definitions

As used in this Final Judgment:

A. "CBS" means Defendant CBS Corporation, a Pennsylvania corporation with its headquarters in New York, New York, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees, including but not limited to, Infinity Broadcasting Corporation, and TDI Worldwide Inc., a subsidiary of CBS-owned Infinity Broadcasting Corporation.

B. "Infinity" means Defendant Infinity Broadcasting Corporation, a Delaware corporation with its headquarters in New York, New York, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

C. "OSI" means Defendant Outdoor Systems, Inc., a Delaware corporation with its headquarters in Phoenix, Arizona, and its successors, assigns, subsidiaries, divisions, groups, affiliates, partnerships and joint ventures, and directors, officers, managers, agents, and employees.

D. "Defendants" means CBS, Infinity, and OSI.

E. "Net Revenues" means gross revenues minus agency commissions as those terms are ordinarily and customarily calculated with respect to the assets covered by this Final Judgment.

F. "Out-of-Home Advertising Display Assets" means:

(1) CBS's business of selling advertising displays that appear on or in public buses in the New Orleans Metropolitan Area, the rights to place and sell advertising on such faces having been awarded to TDI through contract by the Regional Transit Authority in New Orleans or any other governing authority;

(2) Either (a) CBS's business of selling advertising displays that appear on or in public buses in the Phoenix Metropolitan Area, the rights to place and sell advertising on such faces having been awarded to TDI through contract by the Phoenix Transit System or any other governing authority, or (b) a combination of out-of-home advertising display faces in the Phoenix Metropolitan Area, to be approved by the United States in its sole discretion, consisting of mix of Bulletins, Thirty-sheet posters, Walls, and Spectaculars that yielded Net Revenues in 1998 of no less than the Net Revenues generated in 1998 from the sale of the outdoor advertising display faces described in Section II(F)(2)(a); and

(3) A combination of out-of-home advertising display faces owned and/or operated by the Defendants in the New York City Area, to be approved by the United States in its sole discretion, consisting of a mix of Bulletins, Thirty-sheet posters, Walls, and Spectaculars that yielded Net Revenues in 1998 of no less than twenty-five point three ($25.3) million dollars.

Out-of-Home Advertising Display Assets includes all tangible and intangible assets used in the sale of advertising on each of the display faces described above including, but not limited to, all real property (owned or leased); all licenses, permits and authorizations issued by any governmental organization relating to the operation of the display faces; all contracts, agreements, leases, licenses, commitments and understandings pertaining to the sale of advertising on those display faces; all applicable customer lists, contracts, accounts, promotional materials, and credit records pertaining to the sale of advertising on those display faces; all applicable logs and other records maintained by Defendants in connection with the display faces; and maps or other documents depicting the location of the display faces.

G. "New York City Subway Business" means OSI's business of selling advertising on displays within the subway transit system of the New York City Area, including, but not limited to, subway car interior displays, platform postings and lighted platform displays, the rights to place and sell advertising on such displays pursuant to contract awarded by the Metropolitan Transit Authority of New York to OSI. The New York City Subway Business includes all tangible and intangible assets used in the sale of advertising on each of the display faces described above including, but not limited to, all real property (owned or leased); all licenses, permits and authorizations issued by any governmental organization relating to the operation of the display faces; all contracts, agreements, leases, licenses, commitments and understandings pertaining to the sale of advertising on those display faces; all applicable customer lists, contracts, accounts, promotional materials, and credit records pertaining to the sale of advertising on those display faces; all applicable logs and other records maintained by Defendants in connection with the display faces; and maps or other documents depicting the location of the display faces.

H. "New York City Bus Shelter Business" means OSI's business of selling advertising on display faces mounted in glass in or on bus shelters and often backlit for 24-hour visibility, found along public bus routes in the New York City Area, the rights to place and sell advertising such displays, pursuant to contract awarded by the New York City Department of Transportation to OSI. The New York City Bus Shelter Business includes all tangible and intangible assets used in the sale of advertising on each of the display faces described above including, but not limited to, all real property (owned or leased); all licenses, permits and authorizations issued by any governmental organization relating to the operation of the display faces; all contracts, agreements, leases, licenses, commitments and understandings pertaining to the sale of advertising on those display faces; all applicable customer lists, contracts, accounts, promotional materials, and credit records pertaining to the sale of advertising on those display faces; all applicable logs and other records maintained by Defendants in connection with the display faces; and maps or other documents depicting the location of the display faces.

I. "Acquirer" or "Acquirers" means the entity or entities to whom CBS and OSI divest the assets required to be divested pursuant to this Final Judgment.

J. "Bulletins" are defined as structures typically sized 14' x 48' or larger, located primarily on major highways, expressways or principal arterials.

K. "Thirty-sheet posters" are defined as poster panels, typically of lithographed or silk-screened material, typically measuring 12' x 25' or 300 square feet or larger and located primarily on primary and secondary arterials.

L. "Walls" are defined as painted or computer generated vinyl advertisements found directly on building walls.

M. "Spectaculars" are defined as non-standard sized structures which are custom designed to gain maximum attention at key locations with mass consumer exposure.

N. "Metropolitan Areas" means: (1) With respect to New York, New York, the five boroughs of Brooklyn, Queens, Manhattan, the Bronx and Staten Island ("New York City Area"); (2) with respect to New Orleans, Louisiana, the parishes of St. Tammany, Orleans and Jefferson, ("New Orleans Metropolitan Area") and (3) with respect to Phoenix, Arizona, Maricopa County ("Phoenix Metropolitan Area").

O. "Three Metropolitan Areas" means the New York City Area, the Phoenix Metropolitan Area; and the New Orleans Metropolitan Area.

III. Applicability

A. The provisions of this Final Judgment apply to the Defendants, their successors and assigns, their subsidiaries, directors, officers, managers, agents, and employees, and all other persons in active concert or participation with any of them who shall have received actual notice of this Final Judgment by personal service or otherwise.

B. Each Defendant shall require, as a condition of the sale or other disposition of all of substantially all of their out-of-home advertising business in any of the Three Metropolitan Areas, that the purchasing party or parties agree(s) to be bound by the provisions of this Final Judgment.

IV. Divestiture

A. Defendants are hereby ordered and directed in accordance with the terms of this Final Judgment, within one hundred fifty days (150) after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to divest the Out-of-Home Advertising Display Assets to an Acquirer (or Acquirers) acceptable to the United States in its sole discretion.

B. If, as of February 1, 2000, (1) CBS or OSI is deriving revenue from the sale of advertising on displays within the subway transit system of the New York City Area, in accordance with any franchise, contract, agreement with, understanding, or condition imposed by the Metropolitan Transit Authority, and (2) CBS or OSI is deriving revenue from the sale of advertising on display faces found along public bus routes in the New York City Area, in accordance with any franchise, contract, agreement with, understanding, or condition imposed by the New York City Department of Transportation, then CBS and/or OSI must divest, by the terms of this Final Judgment, at their option, either the New York City Subway Business or the New York City Bus Shelter Business; and inform the United States on February 1, 2000 which of the two businesses they intend to divest. The divestitures required under this subsection shall also be accomplished within one hundred fifth (150) calendar days after the filing of the Complaint in this matter or five (5) days after notice of the entry of this Final Judgment by the Court, whichever is later, to an Acquirer acceptable to the United States is its sole discretion.

C. Defendants shall use their best efforts to accomplish the divestitures as expeditiously and timely as possible and shall use their best efforts to obtain all transit or other governing authority consents and approvals necessary to complete the divestitures. The United States, in its sole discretion, may extend the time period for any divestiture for two (2) additional thirty (30) day periods of time, not to exceed sixty (60) calendar days in total.

D. In accomplishing the divestitures ordered by this Final Judgment Defendants promptly shall make known, by usual and customary means, the availability of the assets required to be divested pursuant to Section IV (A) and (B) of this Final Judgment ("Divestiture Assets"). Defendants shall inform any person making any inquiry regarding a possible purchase that the sale is being made pursuant to this Final Judgment and provide such person with a copy of this Final Judgment. Defendants shall also offer to furnish to all prospective Acquirers, subject to customary confidentiality assurances, all information regarding the Divestiture Assets, customarily provided in a due diligence process except such information subject to attorney-client privilege or attorney work-product privilege. Defendants shall make available such information to the United States at the same time that such information is made available to any other person.

E. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make such inspection of the physical facilities associated with the assets and any and all financial, operational, or other documents and information customarily provided as part of a due diligence process.

F. Defendants shall not interfere with any negotiations by any Acquirer to employ any of Defendants' employees who work at, or whose principal responsibilities relate to, the Divestiture Assets.

G. Defendants shall take no action, direct or indirect, that will impede in any way the operation of Divestiture Assets.

H. Unless the United States otherwise consents in writing and whether pursuant to Section IV or Section V of this Final Judgment:

(1) The divestitures in the Phoenix Metropolitan Area shall be made to a single Acquirer;

(2) The divestitures in the New Orleans Metropolitan Area shall be made to a single Acquirer; and

(3) The divestitures in the New York City Area of the New York City Subway Business or New York City Bus Shelter Business; and those assets described in Section II (F)(3) of this Final Judgment, shall be made to a single Acquirer. If, after making a reasonable, good faith effort, Defendants are unable to effect a sale to a single Acquirer, they may submit more than one Acquirer for approval by the United States which, in its sole discretion, may determine whether to permit such a sale.

1. Unless the United States otherwise consents in writing, the divestitures pursuant to Section IV, or by trustee appointed pursuant to Section V of this Final Judgment, shall include all of the Divestiture Assets and be accomplished in such a way as to satisfy the United States, in its sole discretion, that the Divestiture Assets can and will be used by an Acquirer or Acquirers as viable, ongoing commercial businesses engaged in the sale of out-of-home advertising and that the divestiture of such advertising assets will remedy the competitive harm alleged in the Complaint. The divestitures, whether pursuant to Section IV or Section V of this Final Judgment: (1) Shall be made to an Acquirer (or Acquirers) who it is demonstrated to the United States' sole satisfaction has or have the intent and capability (including the necessary managerial, operational, and financial capability) of competing effectively in the sale of out-of-home advertising; and (2) shall be accomplished so as to satisfy the United States, in its sole discretion, that none of the terms of any agreement between an Acquirer (or Acquirers) and CBS or OSI give CBS or OSI the ability unreasonably to raise the Acquirer's (or Acquirers') costs, to lower the Acquirer's (or Acquirers') efficiency, or otherwise to interfere with the ability of the Acquirer (or Acquirers) to compete effectively.

V. Appointment of Trustee

A. In the event that Defendants have not divested the Divestiture Assets within the time specified in Section IV(A) of this Final Judgment, the Court shall appoint, on application of the United States, a trustee selected by the United States in its sole discretion to effect the divestiture of the Divestiture Assets.

B. After the appointment of a trustee becomes effective, only the trustee shall have the right to sell the Divestiture Assets. In the event that divestitures are required under Section IV(B), then the trustee shall have the right in, in its sole discretion, to divest either the New York City Subway Business or the New York City Bus Shelter Business. The trustee shall also have the right, in its sole discretion, to divest either the assets described in Section II(F)(2)(a) or the assets described in Section II(F)(2)(b). The trustee shall have the power and authority to accomplish the divestitures at the best price then obtainable upon a reasonable effort by the trustee, subject to the provisions of Sections IV and VII of this Final Judgment, and shall have such other powers as the Court shall deem appropriate. Subject to Section V(C) of this Final Judgment, the trustee shall have the power and authority to hire at the cost and expense of Defendants any investment bankers, attorneys, or other agents reasonably necessary in the judgment of the trustee to assist in the divestitures, and such professionals and agents shall be accountable solely to the trustee. The trustee shall have the power and authority to accomplish the divestitures of Divestiture Assets at the earliest possible time to an Acquirer (or Acquirers) acceptable to the United States in its sole discretion, and shall have such other powers as this Court shall deem appropriate. Defendants shall not object to a sale by the trustee on any grounds other than the trustee's malfeasance. Any such objections by Defendants must be conveyed in writing to plaintiff and the trustee within ten (10) calendar days after the trustee has provided the notice required under Section VII of this Final Judgment.

C. The trustee shall serve at the cost and expense of Defendants, on such terms and conditions as the Court may prescribe, and shall account for all monies derived from the sale of the assets sold by the trustee and all costs and expenses so incurred. After approval by the Court of the trustee's accounting, including fees for its

services and those of any professionals and agents retained by the trustee, all remaining money shall be paid to Defendants as appropriate according to ownership of the assets and the trust shall then be terminated. The compensation of such trustee and of any professionals and agents retained by the trustee shall be reasonable in light of the value of the divested business and based on a fee arrangement providing the trustee with an incentive based on the price and terms of the divestitures and the speed with which they are accomplished.

D. Defendants shall use their best efforts to assist the trustee in accomplishing the required divestitures, including best efforts to effect all necessary consents and regulatory approvals. The trustee, and any consultants, accountants, attorneys and other persons retained by the trustee, shall have full and complete access to the personnel, books, records, and facilities of the businesses to be divested, and Defendants shall develop financial or other information relevant to the businesses to be divested customarily provided in a due diligence process as the trustee may reasonably request, subject to customary confidentiality assurances. Defendants shall permit prospective Acquirers of the Divestiture Assets to have reasonable access to personnel and to make such inspection of physical facilities associated with the displays and any and all financial, operational or other documents and other information as may be relevant to the divestitures required by this Final Judgment.

E. After it appointment, the trustee shall file monthly reports with the parties and the Court setting forth the trustee's efforts to accomplish the divestitures ordered pursuant to this Final Judgment; provided, however, that to the extent such reports contain information that the trustee deems confidential such reports shall not be filed in the public docket of the Court. Such reports shall include the name, address and telephone number of each person who, during the preceding month, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact wit any such person during that period. The trustee shall maintain full records of all efforts made to divest the businesses to be divested.

F. If the trustee has not accomplished such divestitures within six (6) months after its appointment, the trustee thereupon shall file promptly with the Court a report setting forth: (1) The trustee's efforts to accomplish the required divestitures; (2) the reasons, in the trustee's judgment, why the required divestitures have not bee accomplished; and (3) the trustee's recommendations; provided, however, that to the extent such reports contain information that the trustee deems confidential, such reports shall not be filed in the public docket of the Court. The trustee shall at the same time furnish such report to the plaintiff and the Defendants, each of whom shall have the right to be heard and to make additional recommendations consistent with the purpose of the trust. The Court shall enter thereafter such orders as it shall deem appropriate in order to carry out the purpose of the trust which may, if necessary, include extending the trust and the term of the trustee's appointment by a period requested by the United States.

VI. Notice

Unless such transaction is otherwise subject to the reporting and waiting period requirements of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, 15 U.S.C. § 18a (the "HSR Act"), Defendants shall give thirty (30) days notice to the United States prior to acquiring any assets of or any interest, including any financial, security, loan, equity or management interest, in any out-of-home display advertising business, that owns and/or operates any out-of-home displays that have a similar advertising purpose as the out-of-home displays currently held by the Defendants:

(1) In the new Orleans metropolitan Area and the Phoenix Metropolitan Area that generates Net Revenues of $250,000 or greater over a twelve-month period (beginning when this Final Judgment is entered and continuing for the term of the Final Judgment); for the purposes of this limitation, acquisitions during each twelve-month period shall be aggregated; and

(2) In the New York City Area that generates Net Revenues of $3.9 million or greater over a twelve-month period (beginning when this Final Judgment is entered and continuing for the term of the Final Judgment); for the purposes of this limitation, acquisitions during each twelve-month period shall be aggregated.

Defendants are not required, however, to give notice for any acquisition derived from Defendants' successful bid on any public contract. This Section shall be broadly construed and any ambiguity or uncertainty regarding the filing of notice under this Section shall be resolved in favor of filing notice.

VII. Notification

Within two (2) business days following execution of a definitive agreement, contingent upon compliance with the terms of this Final Judgment, to effect, in whole or in part, any proposed divestitures pursuant to Sections IV or V of this Final Judgment, Defendants or the trustee, whichever is then responsible for effecting the divestitures, shall notify the United States of the proposed divestitures. If the trustee is responsible, it shall similarly notify Defendants. The notice shall set forth the details of the proposed transaction and list the name and address, and telephone number of each person not previously identified who offered to, or expressed an interest in or a desire to, acquire any ownership interest in the businesses to be divested that are the subject of the binding contract, together with full details of same. Within fifteen (15) calendar days of receipt by the United States of notice, the United States may request from Defendants, the proposed Acquirer (or Acquirers), or any other third party additional information concerning the proposed divestitures and the proposed Acquirer or Acquirers. Defendants and the trustee shall furnish any additional information requested from them within fifteen (15) calendar days of the receipt of the request, unless the parties shall otherwise agree. Within thirty (30) calendar days after receipt of the notice or within twenty (20) calendar days after the United States has been provided the additional information requested from Defendants, the proposed Acquirer (or Acquirers), and any third party, whichever is later, the United States shall provide written notice to Defendants and the trustee, if there is one, stating whether or not it objects to the proposed divestitures. If the United States provides written notice to Defendants an the trustee that the United States does not object, then the divestitures may be consummated, subject only to Defendants' limited right to object to the sale under Section V(B) of this Final Judgment. Absent written notice that the United States does not object to the proposed Acquirer (or Acquirers) or upon objection by the United States, a divestiture proposed under Section IV or Section V shall not be consummated. Upon objection by Defendants under the provision in Section V(B), a divestiture proposed under Section V shall not be consummated unless approved by the Court.

VIII. Affidavits

A. Within twenty (20) calendar days of the filing of the Complaint in this matter and every thirty (30) calendar days thereafter until the divestitures have been completed whether pursuant to Section IV or Section V of this Final Judgment, Defendants shall deliver to the United States an affidavit as to the fact and manner of compliance with this Final Judgment. Each such affidavit shall include, *inter alia*, the name, address, and telephone number of each person who, at any time after the period covered by the last such report, made an offer to acquire, expressed an interest in acquiring, entered into negotiations to acquire, or was contacted or made an inquiry about acquiring, any interest in the businesses to be divested, and shall describe in detail each contact with any such person during that period. Each such affidavit shall also include a description of the efforts that Defendants have taken to solicit a buyer for the Divestiture Assets and to provide required information to prospective Acquirers.

B. Within twenty (20) calendar days of the filing of the Complaint in this matter, Defendants shall deliver to the United States an affidavit that describes in detail all actions they have taken and all steps they have implemented on an on-going basis to preserve the Divestiture Assets pursuant to Section IX of this Final Judgment. The affidavit also shall describe, but not be limited to, the efforts of Defendants to maintain and operate the Divestiture Assets as active competitors; maintain the management, staffing, sales, and marketing of the Divestiture Assets; and maintain the Divestiture Assets in operable condition. Defendants shall deliver to the United States an affidavit describing any changes to the efforts and actions outlined in their earlier affidavit(s) filed pursuant to this Section within fifteen (15) calendar days after the change is implemented.

C. Until one year after such divestiture has been completed, Defendants shall preserve all records of all efforts made to preserve the business to be divested and effect the divestitures.

IX. Preservation of Assets

Until the divestitures required by the Final Judgment have been accomplished, Defendants shall take all steps necessary to maintain and operate the Divestiture Assets in each of the Three Metropolitan Areas, as active competitors; maintain the management, staffing, sales and marketing of the Divestiture Assets; and maintain the Divestiture Assets in operable condition. Defendants shall take no action that would jeopardize the divestitures required under this Final Judgment.

X. Financing

The Defendants are ordered and directed not to finance all or any part of any purchase by an Acquirer (or Acquirers) made pursuant to Sections IV or V of this Final Judgment.

XI. Compliance Inspection

For purposes of determining or securing compliance with the Final Judgment or of determining whether the Final Judgment should be modified or vacated, and subject to any legally recognized privilege, from time to time:

A. Duly authorized representatives of the plaintiff, upon the written request of the Assistant Attorney General in charge of the Antitrust Division of the United States Department of Justice, and on reasonable notice to the Defendants made to their principal offices, shall be permitted:

(1) Access during office hours of the Defendants to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of the Defendants, who may have counsel present, relating to the matters contained in this Final Judgment; and

(2) Subject to the reasonable convenience of the Defendants and without restraint or interference from any of them, to interview, either informally or on the record, their officers, employees, and agents, who may have counsel present, regarding any such matters.

B. Upon the written request of the Assistant Attorney General in charge of the Antitrust Division, made to the Defendants' principal offices, the Defendants shall submit such written reports, under oath if requested, with respect to any matter contained in the Final Judgment.

C. No information or documents obtained by the means provided in Sections VIII or XI of this Final Judgment shall be divulged by a representative of the plaintiff to any person other than a duly authorized representative of the Executive Branch of the United States, except in the course of legal proceedings to which the plaintiff is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the Defendants to the plaintiff, the Defendants represent and identify in writing the material in any such information or documents to which a claim or protection may be asserted under Rule 26(c)(7) of the Federal Rules of Civil Procedure, and the defendants mark each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(7) of the Federal Rules of Civil Procedure," then ten (10) calendar days notice shall be given by the plaintiff to the Defendants prior to divulging such material in any legal proceeding (other than a grand jury proceeding) to which the Defendants are not a party.

XII. Retention of Jurisdiction

Jurisdiction is retained by this Court for the purpose of enabling any of the parties to this Final Judgment to apply to this Court at any time for such further orders and directions as may be necessary or appropriate for the construction or carrying out of this Final Judgment, for the modification of any of the provisions hereof, for the enforcement of compliance herewith, and for the punishment of any violations hereof.

XIII. Termination

Unless this Court grants an extension, this Final Judgment will expire upon the tenth anniversary of the date of its entry.

XIV. Public Interest

Entry of this Final Judgment is in the public interest.

Dated: _____ _____

United States District Judge

Competitive Impact Statement

Plaintiff, the United States of America, pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

Plaintiff filed a civil antitrust Complaint on December 6, 1999, alleging that a proposed acquisition of Outdoor Systems, Inc. ("OSI") by CBS Corporation and Infinity Broadcasting Corporation (collectively "CBS") would violate Section 7 of the Clayton Act, 15 U.S.C. 18. The Complaint alleges that CBS and OSI compete head-to-head-to sell outdoor advertising in three metropolitan areas: (1) The New York City Area; (2) The New Orleans, Louisiana Metropolitan Area; and (3)

The Phoenix, Arizona Metropolitan Area, (collectively "the Three Metropolitan Areas"). Outdoor advertising companies sell out-of-home advertising display space to local and national customers. The out-of-home advertising display business in the Three Metropolitan Areas is highly concentrated. CBS and OSI have a combined share of revenue ranging from about 60 percent to over 90 percent in the Three Metropolitan Areas. Unless the acquisition is blocked, competition would be substantially lessened in the Three Metropolitan Areas, and advertisers would pay higher prices.

The prayer for relief seeks: (a) An adjudication that the proposed transaction described in the Complaint would violate Section 7 of the Clayton Act: (b) Preliminary and permanent injunctive relief preventing the consummation of the transaction; (c) An award to the United States of the costs of this action; and (d) Such other relief as is proper.

Shortly before this suit was filed, a proposed settlement was reached that permits CBS to complete its acquisition of OSI, yet preserves competition in the Three Metropolitan Areas where the transaction raises significant competitive concerns. A Stipulation and proposed Final Judgment embodying the settlement were filed along with the Complaint.

The proposed Final Judgment orders CBS to divest out-of-home advertising displays in each of the Three Metropolitan Areas. In particular, CBS must divest its business of selling advertising on buses in the New Orleans Metropolitan Area. In the Phoenix Metropolitan Area, CBS is required to divest either its bus advertising business or out-of-home advertising displays that generated the same amount of net revenues. In the New York City Area, CBS will divest a package of out-of-home advertising displays, defined in Section II F(3) of the proposed Final Judgment, worth approximately $25.3 million. In addition, if, as of February 1, 2000, CBS is deriving revenue from the sale of advertising on subway displays *and* from bus shelters in the New York City Area, then CBS will divest, at its option, either the subway or the bus shelter advertising business.

Unless the plaintiff grants an extension of time, CBS must divest the out-of-home advertising displays within one hundred fifty (150) days after the filing of the Complaint in this action or within five (5) business days after notice of entry of the proposed Final Judgment, whichever is later.

If CBS does not divest the out-of-home advertising displays in the specified areas within the divestiture period, the Court, upon plaintiff's application, shall appoint a trustee to sell the displays. The proposed Final Judgment also requires that, until the divestitures mandated by the proposed Final Judgment have been accomplished in the Three Metropolitan Areas, CBS and OSI must preserve the out-of-home advertising displays to be divested and take all steps necessary to maintain and operate them as active competitors. Further, Section VI of the proposed Final Judgment requires CBS to give the United States prior notice regarding certain future out-of-home advertising display acquisitions or agreements pertaining to the sale of out-of-home advertising in the Three Metropolitan Areas.

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered after compliance with the APPA. Entry of the proposed Final Judgment would terminate this action, except that the Court would retain, for a period of ten years, jurisdiction to construe, modify, or enforce the provisions of the proposed Final Judgment and to punish violations thereof.

II. The Alleged Violations

A. The Defendants

CBS, a major corporation engaged in numerous media businesses, including out-of-home advertising, is a Pennsylvania corporation headquartered in New York, New York. CBS conducts its out-of-home advertising business through TDI Worldwide, Inc. ("TDI"), a wholly owned subsidiary of CBS-owned Infinity Broadcasting Corporation ("Infinity"). TDI sells out-of-home advertising in various markets throughout the United States, including the Three Metropolitan Areas.

Infinity is a Delaware corporation headquartered in New York, New York. Infinity owns and/or operates numerous radio stations in major markets in the United States and conducts the sale of out-of-home advertising through its subsidiary, TDI.

OSI is a Delaware corporation headquartered in Phoenix, Arizona. OSI is the largest out-of-home advertising company in North America, operating over 100,000 out-of-home advertising display faces in approximately 90 markets throughout the United States, including in each of the Three Metropolitan Areas.

B. Description of the Events Giving Rise to the Alleged Violations

On May 17, 1999, CBS entered into an Agreement and Plan of Merger with OSI. After a newly formed and wholly owned subsidiary of Infinity is merged into OIS, OSI shareholders will receive shares of Infinity valued at approximately $6.5 billion. In addition, Infinity will assume debt obligation of OSI valued at approximately $1.8 billion, bringing the total transaction value to $8.3 billion.

CBS and OSI compete for the business of advertisers seeking to obtain out-of-home advertising space in the Three Metropolitan Areas. The proposed acquisition of OSI by CBS would eliminate that competition in violation of Section 7 of the Clayton Act.

C. The Relevant Markets and Concentration

The Complaint alleges that the sale of out-of-home advertising constitutes a relevant product market and a line of commerce and that each of the Three Metropolitan Areas constitutes a relevant geographic market and section of the country for antitrust purposes.

Advertisers select out-of-home advertising based on a number of factors, including the size of the target audience (individuals most likely to purchase the advertiser's products or services), the vehicular and pedestrian traffic patterns of the audience, as well as other audience characteristics. Many advertisers seek to reach a large percentage of their audience by selecting out-of-home advertising forms, like billboards, that appear on highways, roads and streets where vehicle and pedestrian traffic is high. This way, the advertisements will be viewed frequently by the advertiser's target audience.

In some densely populated metropolitan areas, a significant number of advertisers also select out-of-home advertising displayed within metropolitan transit authority systems. This includes displays found on the sides of buses and within subway systems. Advertisers select advertising space within a transit system because of the large number of viewers who will routinely be exposed to the advertiser's message each day. Such viewers include commuters who use the transit system, as well as pedestrians and passengers in vehicles.

Out-of-home advertising has prices and characteristics that are distinct from other advertising media. It is particularly suitable for highly visual, limited-information advertising, because consumers are exposed to an out-of-home advertisement for only a brief period of time. Out-of-home advertising is typically less expensive and more cost-efficient than other media at reaching an advertiser's target audience. Many advertisers who use out-of-home advertising also advertise in other media, including radio, television, newspapers and magazines, but use out-of-home advertising when they want a large number of exposures to consumers at a low cost per exposure.

For many advertising customers, out-of-home advertising has particular characteristics that make it an advertising medium for which there is no close substitute. Such customers would not switch to another advertising medium if out-of-home advertising prices increased by a small but significant amount.

Geographically, out-of-home advertising is typically offered on a localized, market-by-market basis, rather than nationally or regionally. Much of the inventory (*e.g.*, transit advertising contracts or leases for billboard space) is obtained on a local basis through contracts between out-of-home advertising firms and municipal authorities or property owners. Firms that sell out-of-home advertising set prices based on local market conditions and employ local sales forces.

Similarly, many advertisers need to reach consumers in a particular city or metropolitan area. For those advertisers, advertising that targets consumers in a different area (or outside the city or metropolitan area) is not an adequate substitute. Such advertisers may have their businesses located in that city or metropolitan area and therefore need to reach that area's consumers. For many advertisers who target consumers in each of the Three Metropolitan Areas, there are no reasonable substitutes for out-of-home advertising located within each of the Three Metropolitan Areas. A small but significant increase in the price of out-of-home advertising in each of the Three Metropolitan Areas would not cause these advertisers to turn to out-of-home advertising located outside each area.

The Complaint alleges that CBS's proposed acquisition of OSI would lessen competition substantially in the sale of out-of-home advertising in each of the Three Metropolitan Areas. The proposed transaction would create further market concentration in already highly concentrated markets, and CBS would control a substantial share of the out-of-home advertising revenues in these markets.

In the New York City Area, CBS and OSI are the number one and number two providers of out-of-home advertising, respectively. After the merger, CBS's share of the out-of-home advertising market, based on advertising revenues, would exceed 60 percent. The approximate Herfindahl-Hirschman Index ("HHI"), explained in Exhibit A, attacned hereto, post-merger would be 3960, representing an increase of 1850 points.

In the New Orleans Metropolitan Area, OSI and CBS are two of four major providers of out-of-home advertising. Post-merger, CBS's share of the out-of-home advertising market, based on advertising revenues, would increase to over 90 percent and the approximate post-merger HHI would be 3944, representing an increase of 672 points.

In the Phoenix Metropolitan Area, OSI and CBS are two of four major providers of out-of-home advertising. Post-merger, CBS's share of the out-of-home advertising market, based on advertising revenues, would increase to over 75 percent. The approximate post-merger HHI would be 5904, representing an increase of 568 points.

D. Harm to Competition as a Result of the Merger

In each of the Three Metropolitan Areas, CBS and OSI compete head-to-head, and, for many local and/or national advertisers buying certain types of out-of-home advertising, are each other's closest competitor. During individual price negotiations, these advertisers are currently able to ensure competitive prices by obtaining rates from both OSI and CBS and playing the rates of one off the rates of the other. CBS's acquisition of OSI will end this competition. After the acquisition, such advertisers will be unable to reach their desired audiences with equivalent efficiency without using CBS's out-of-home advertising displays. Because advertisers seeking to reach these audiences would have inferior alternatives to the merged entity as a result of the acquisition, the acquisition would give CBS the ability to raise prices and reduce the quality of its service to advertisers in each of the Three Metropolitan Areas.

New entry into the out-of-home advertising market in response to a small but significant price increase by the merged parties in any of these markets is unlikely to be timely and sufficient to render the price increase unprofitable.

For all of these reasons, plaintiff concluded that the proposed transaction would lessen competition substantially in the sale of out-of-home advertising in the Three Metropolitan Areas, eliminate actual and potential competition between CBS and OSI, and result in increased prices and/or reduced quality of services for out-of-home advertisers in each of the Three Metropolitan Areas, all in violation of Section 7 of the Clayton Act.

III. Explanation of the Proposed Final Judgment

The proposed Final Judgment would preserve existing competition in the sale of out-of-home advertising in the Three Metropolitan Areas. In the Phoenix and New Orleans Metropolitan Areas, CBS is required to divest assets equivalent to all the out-of-home assets of one of the merging parties, thus completely restoring the pre-merger industry structure and resolving any competitive concerns. In the New York City Area, CBS is required to divest a package of out-of-home advertising displays generating approximately $25.3 million in revenue—the same amount of revenue OSI's out-of-home advertising assets generated last year, with the exception of the revenue earned by its bus shelter and subway advertising operations. With respect to bus shelters and subways, if CBS if offering both kinds of advertising for sale as of February 1, 2000, it is required to divest one of those lines of business. The objective of the divestiture is to ensure that the purchaser of the divested assets receives sufficient assets to compete effectively in the market and replaces the competitor lost as a result of the merger of CBS/OSI. Out-of-home advertising displays worth $25.3 million, along with potentially either the bus shelter or subway advertising business, accomplishes this objective and thereby effectively restores the pre-merger competitive situation in the New York market.[1]

Unless plaintiff grants an extension of time, the divestitures must be completed within one hundred fifty (150) days after the filing of the Complaint in this matter or within five (5) business days after notice of entry of the proposed Final Judgment by the Court, whichever is later.

Until the divestitures occur in all Three Metropolitan Areas, defendants must maintain and operate the advertising displays as active competitors; maintain the management and staffing, sales and marketing of the advertising assets; and maintain the assets to be divested in operable condition. This requirement ensures that the advertising assets remain viable and can be used effectively by the proposed purchasers.

The divestitures must be made to a purchaser or purchasers acceptable to the plaintiff in its sole discretion. Unless plaintiff otherwise consents in writing, the divestitures shall include

[1] As of February 1, 2000, CBS was engaged in the sale of advertising on bus shelters and subways in the New York City Area and therefore must divest one of these businesses.

all the assets of the out-of-home advertising display business being divested, and shall be accomplished in such a way as to satisfy plaintiff, in its sole discretion, that such assets can and will be used as viable, ongoing commercial out-of-home advertising businesses. In addition, the purchaser or purchasers must have the intent and capability of competing effectively in the sales of out-of-home advertising and there must be no conditions restricting competition in the terms of the sale. These provisions are intended to ensure that the purchasers chosen by the defendants (or the trustee) can effectively replace competition that may be lost due to the merger.

If defendants fail to divest these out-of-home advertising displays within the time periods specified in the proposed Final Judgment, the Court, upon plaintiff's application, is to appoint a trustee nominated by plaintiff to effect the divestitures. If a trustee is appointed, the proposed Final Judgment provides that defendants will pay all costs and expenses of the trustee and any professionals and agents retained by the trustee. After appointment, the trustee will file monthly reports with the plaintiff, defendants and the Court, setting forth the trustee's efforts to accomplish the divestitures ordered under the proposed Final Judgment. If the trustee has not accomplished the divestitures within six (6) months after its appointment, the trustee shall promptly file with the Court a report setting forth (1) the trustee's efforts to accomplish the required divestitures, (2) the reasons, in the trustee's judgment, why the required divestitures have not been accomplished and (3) the trustee's recommendations. At the same time the trustee will furnish such report to the plaintiff and defendants, who will each have the right to be heard and to make additional recommendations.

Section VI of the proposed Final judgment requires CBS to provide at least thirty (30) days' notice to the Department of Justice before acquiring more than a *de minimis* interest in any assets of, or any interest in, another out-of-home advertising display company in the Three Metropolitan Areas. Such acquisitions could raise competitive concerns, but might be too small to be reported otherwise under the Hart-Scott-Rodino premerger notification statute. Thus, this provision ensures that the Department will receive notice of and be able to act, if appropriate, to stop any agreements that might have anticompetitive effects in the Three Metropolitan Areas.

The relief in the proposed Final Judgment is intended to remedy the likely anticompetitive effects of CBS's proposed transaction with OSI in the Three Metropolitan Areas. Nothing in the proposed Final Judgment is intended to limit the plaintiff's ability to investigate or bring actions, where appropriate, challenging other past or future activities of the defendants in the Three Metropolitan Areas.

IV. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bring of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against defendants.

V. Procedures Available for Modification of the Proposed Final Judgment

The plaintiff and the defendants have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the plaintiff has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the plaintiff written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this competitive Impact Statement in the **Federal Register**. The plaintiff will evaluate and respond to the comments. All comments will be given due consideration by the plaintiff, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to entry. The comments and the response of the plaintiff will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: Willie L. Hudgins, Assistant Chief, Litigation II, Antitrust Division, United States Department of Justice, 1401 H Street, NW; Suite 3000, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and that the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation or enforcement of the Final Judgment.

VI. Alternatives to the Proposed Final Judgment

Plaintiff considered, as an alternative to the proposed Final judgment, a full trial on the merits of its compliant against defendants. Plaintiff is satisfied, however, that the divestiture and other relief contained in the proposed Final Judgment will preserve viable competition in the sale of out-of-home advertising display in the Three Metropolitan Areas and will effectively prevent the anticompetitive effects that would result from the proposed acquisition.

VII. Standard of Review Under the APPA for Proposed Final Judgment

The APPA requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty (60) day comment period, after which the Court shall determine whether entry of the proposed Final Judgment " is in the public interest." In making that determination, the Court may consider

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement ad modification, duration or relief sought, anticipated effects of alternative remedies actually considered and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial. 1 U.S.C. § 16(e).

As the United States Court of Appeals for the D.C. Circuit held, this statute permits a court to consider, among other things, the relationship between the remedy secured and the specific allegations set forth in the government's complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient and whether the decree may positively harm third parties. *See United States* v. *Microsoft*, 56 F.3d 1448, 1461–62 (D.C. Cir. 1995).

The courts have recognized that the term "'public interest' take[s] meaning from the purposes of the regulatory legislation." *NAACP* v. *Federal Power Comm'n*, 425 U.S. 662,669 (1976). Since the purpose of the antitrust laws is to preserve "free and unfettered competition as the rule of trade," *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4 (1958), the focus of the "public interest" inquiry under the APPA is whether the proposed Final Judgment would serve the public interest in free and unfettered competition. *United States* v. *American Cyanamid Co.*, 719 F.2d 558,565 (2d Cir. 1983), *cert. denied*, 465 U.S. 1101 (1984); *United States* v. *Waste Management, Inc.*, 1985–2 Trade Cas. ¶ 66,651, at 63,046 (D.D.C. 1985).

In conducting this inquiry," [t]he Court is nowhere compelled to go to trail or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." [2] Rather,

> [a]bsent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances.

United States v. *Mid-American Dairymen, Inc.*, 1977–1 Trade Cas. ¶ 61,508, at 71,980 (W.D. Mo. 1977).

Accordingly, with respect to the adequacy of the relief secured by the decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.*, 858 F.2d 456, 462 (9th Cir. 1988), *citing United States* v. *Bechtel Corp.*, 648 F.2d 660,666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *see also Microsoft*, 56 F.3d at 1460–62. Precedent requires that:

> the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of the insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree. [3]

A proposed consent decree is an agreement between the parties which is reached after exhaustive negotiations and discussions. Parties do not hastily and thoughtlessly stipulate to a decree because, in doing so, they:

> waive their right to litigate the issues involved in the case and thus save themselves the time, expense, and inevitable risk of litigation. Naturally, the agreement reached normally embodies a compromise; in exchange for the saving of cost and the elimination of risk, the parties each give up something they might have won had they proceeded with the litigation.

United States Armour & Co., 402 U.S. 673,681 (1971).

The proposed Final Judgment, therefore, should not be reviewed under a standard of whether it is certain to eliminate every anticompetitive effect of a particular practice or whether it mandates certainty of free competition in the future. Court approval of a proposed final judgment requires a standard more flexible and less strict then the standard required for a finding of liability. "[A] proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest".[4]

Moreover, the court's role under the Tunney Act is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft*, 56 F.3d at 1459. Since "[t]he court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that the court "is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States might have but did not pursue. *Id.* at 1459–60.

The relief obtained in this case is strong and effective relief that should fully address the competitive harm posed by the proposed transaction.

VIII. Determination Documents

There are no determinative materials or documents within the meaning of the APPA that were considered by the plaintiff in formulating the proposed Final Judgment.

Dated: February 10, 2000.

Respectfully submitted,

Reneé Eubanks,
U.S. Department of Justice, Antitrust Division, 1401 H Street, NW; Suite 4000, Washington, DC 20530, (202) 307–0001.

Exhibit A.—Definition of HHI and Calculations for Market

"HHI" means the Herfindahl-Hirschman Index, a commonly accepted measure of market concentration. It is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers. For example, for a market consisting of four firms with shares of thirty, thirty, twenty and twenty percent, the HHI is 2600 ($30^2 + 30^2 + 20^2 + 20^2$=2600). The HHI takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases.

Markets in which the HHI is between 1000 and 1800 points are considered to be moderately concentrated, and those in which the HHI is in excess of 1800 points are considered to be concentrated. Transactions that increase the HHI by more than 100 points in concentrated markets presumptively raise antitrust concerns under the Merger Guidelines. See Merger Guideline § 1.51.

Certificate of Service

I, Renée Eubanks, hereby certify that, on February 10, 2000, I caused the foregoing document to be served on defendants CBS Corporation, Infinity Broadcasting Corporation and Outdoor Systems Inc., having a copy mailed, first-class, postage prepaid, to:

Helene Jaffe,
Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153, Counsel for CBS Corporation and Infinity Broadcasting Corporation.
Mitchell Raup,
Mayer, Brown & Platt, 1909 K Street, N.W., Washington, D.C. 2006, Counsel for Outdoor Systems, Inc.

[FR Doc. 00–4593 Filed 3–16–00; 8:45 am]
BILLING CODE 4410–11–M

[2] 119 Cong. Rec. 24598 (1973). *See United States* v. *Gillette Co.*, 406 F. Supp. 713, 715 (D. Mass. 1975). A "public interest" determination can be made properly on the basis of the Competitive Impact Statement and Response to Comments filed pursuant to the APPA. Although the APPA authorizes the use of additional procedures, 15 U.S.C. 16(f), those procedures are discretionary. A court need not invoke any of them unless it believes that the comments have raised significant issues and that further proceedings would aid the court in resolving those issues. See H.R. Rep. 93–1463, 93rd Cong. 2d Sess. 8–9 (1974), *reprinted in* U.S.C.C.A.N. 6535, 6538.

[3] *Bechtel*, 648 F.2d at 666 (citations omitted) (emphasis added); *see BNS*, 858 F.2d at 463; *United States* v. *National Broadcasting Co.*, 449 F. Supp. 1127, 1143 (C.D. Cal. 1978); *Gillette*, 406 F. Supp. at 716. *See also Microsoft*, 56 F.3d at 1461 (whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest'") (citations omitted).

[4] *United States* v. *American Tel. and Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983), *quoting Gillette*, 406 F. Supp. at 716 (citations omitted); *United States* v. *Alcon Aluminum, Ltd.*, 605 F. Supp. 619, 622 (W.D. Ky. 1985).

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; report of complaint.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 16, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of a currently approved collection.

(2) *Title of the Form/Collection:* Report of Complaint.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–847. Border Patrol Division, Immigration and Naturalization.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. This form is used to establish a record of complaint and to initiate an investigation of misconduct by an officer of the INS.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 250 responses at 15 minutes (.25 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 63 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 13, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–6664 Filed 3–16–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Labor Advisory Committee for Trade Negotiations and Trade Policy

Meeting Notice

Pursuant to the provisions of the Federal Advisory Committee Act (P.L. 92–463 as amended), notice is hereby given of a meeting of the Steering Subcommittee of the Labor Advisory Committee for Trade Negotiations and Trade Policy.

Date, time and place: March 29, 2000, 10:00 AM, U.S. Department of Labor, N–4437 B&C, 200 Constitution Ave., NW, Washington, DC 20210.

Purpose: The meeting will include a review and discussion of current issues which influences U.S. trade policy. Potential U.S. negotiating objectives and bargaining positions in current and anticipated trade negotiations will be discussed. Pursuant to 19 U.S.C. 2155(f) it has been determined that the meeting will be concerned with matters the disclosure of which would seriously compromise the Government's negotiating objectives or bargaining positions. Accordingly, the meeting will be closed to the public.

FOR FURTHER INFORMATION CONTACT: Jorge Perez-Lopez, Director, Office of International Economic Affairs. Phone: (202) 219–7597.

Signed at Washington, DC this 6th day of March 2000.

Andrew James Samet,

Deputy Under Secretary International Affairs.

[FR Doc. 00–6658 Filed 3–16–00; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of February and March, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–36,694; Weathervane Window, Inc., Brighton, MI

TA–W–37–216; AK Steel Corp., Dover Operations, Dover, OH

TA–W–37,169; Shepard Airtronics, Inc., Passaic, NJ

TA–W–37,106; Oxford Automotive, Argos, IN

TA–W–37,211; Masonite Corp., Pilot Rock, OR

TA–W–37,142, A & B; Mitchell Energy Corp., The Woodlands, TX Operating Throughout the State of TX and Ruston, LA, Mitchell Gas Service LP, The Woodlands, TX & Operating Throughout the State of TX and MND Service, Inc., The Woodlands, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37,102; Fisher-Price, Inc., Mattel Operations Group, East Aurora, NY

TA–W–37,264; KTI Energy of Martinsville, Inc., Martinsville, VA

TA–W–37,292; Deepwater Corrosion Services, Houston, TX

TA–W–37,229; L.G.&E Natural Gathering & Processing, Hobbs, NM

TA–W–37,249; Snap-On, Inc., Ottawa, IL

TA–W–37,001; AMP, Inc., Harrisburg, PA

TA–W–37,316; Lower Umpqua Federal Credit Union, Reedsport, OR

TA–W–37,240; Chevron Products Co., Roosevelt, UT

TA–W–37,313; Pacificorp, Shareholder Service & Investor Relations Dept, Portland, OR

TA–W–37,023; Cerplex, Corvallis, OR

TA–W–37,080, & A; Pratt & Whitney, Pratt and Whitney Talon, Inc., Rocky Hill, CT and Pratt & Whitney Advance Refurbishment Operations, Inc., North Haven, CT

TA–W–37,217; Penguin Putnam, Inc., Book Warehouse, Newburn, TN

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–37,325; Serrot International, Galesburg, IL

TA–W–36,984; Rheem Manufacturing Co., Air Conditioning Div., Greenville, AL

TA–W–36,078; Unocal Corp., The Geysers, Cloverdale, CA

TA–W–37,082; OMC, Evinrude Plant, Milwaukee, WI

TA–W–37,076; Appleton Paper, Inc, Newton Falls Mill, Newton Falls, NY

TA–W–37,063; Kellogg Co., South Operations Plant, Battle Creek, MI

TA–W–37,131; Chevron Chemical Corp., Orange, TX

TA–W–37,218; Bausch & Lomb, Contact Lenses Div., Rochester, NY

TA–W–36,960 & A, B, C, D, E & F; CNG Transmission Corp., Clarksburg, WV, Hope Gas, Inc., Clarksburg, WV, East Ohio Gas, Cleveland, OH, Virginia Natural Gas, Norfolk, VA, CNG Producing Co., New Orleans, LA, Peoples Natural Gas Co., Pittsburgh, PA and CNG Corp., Pittsburgh, PA

TA–W–37,060; Liz Clairborne, North Bergen, NJ

TA–W–37,244; Motorola, Inc., Cellular Infrastructure Group (CIG), Arlington Heights, IL

TA–W–37,016; Deluxe Corp., Financial Service Div., Springfield, MA

TA–W–37,318; Grifel & Lebel, Inc., New York, NY

TA–W–37,221; Weigh-Tronix, Inc., Fairmont, MN

TA–W–37,250; BP Amoco Refinery, Texas City, TX

TA–W–37,002; Sparrow Blouse Co., Nazareth, PA

TA–W–36,903 & A; UNIFI, Inc., Raeford Plant, Raeford, NC and Sanford Plant, Sanford, NC

TA–W–35,631 & B, C, D, E, F, G, H, I, K, L, & M; Burlington Industries, Statesville Plant, Statesville, NC, J.C. Cowan Plant, Forest City, NC, Raeford Plant, Raeford, NC, Raeford Dying Plant, Raeford, NC, Oxford Plant, Oxford, NC, Burlington Tailored Fashions Div. Offices, Greensboro, NC, Klopman Fabrics Div Office, Greensboro, NC, Bishopville Plant, Bishopville, SC, Johnson City Plant, Johnson City, TN, Burlington Tailored Fashions, Clarksville, VA, Stonewall Cutting Plant, Stonewall, MS, and Burlington Tailored Fashions, New York, NY

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–37,291; IMC Kalium, Carlsbad, NM

TA–W– Kemmer Prazision, Janesville, WI

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or an appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–35,631A & J; Burlington Industries, Mooresville Plant, Mooresville, NC and Hillsville Plant, Hillsville, VA: January 29, 1998.

TA–W–37,083; Hempfield Foundries Co., Greensburg, PA: November 9, 1998.

TA–W–37,059; Allied Signal, Avionics and Lighting, Boyne City, MI: October 27, 1998.

TA–W–37,195; Vinant Dress, Inc., Jermyn, PA: December 10, 1998.

TA–W–37,151; Hagale Industries, Inc., Marshfield, MO: November 23, 1998.

TA–W–37,163; White Swan—Meta, Dawson Springs, KY: December 2, 1998.

TA–W–37,256; ABB Automation, Inc., Electronic & Systems Assembly Div., Williamsport, PA: December 28, 1998.

TA–W–37,272; Winpak Portion Packaging, Bristol, PA: January 7, 1999.

TA–W–37,156; Ray-Ban Sun Optics, Inc., San Antonio, TX: November 20, 1998.

TA–W–37,160 & A,B,C; Dexter Shoe Co., Dexter, ME, Milo, ME, Skowhegan, ME and Newport, ME: February 4, 2000.

TA–W–37,199; Sulzer Pumps, Portland, OR: December 7, 1998.

TA–W–37,178; VF Workwear, Inc., Erwin, TN: November 30, 1998.

TA–W–37,138; Headwear USA, d/b/a, Identity Headwear, Pattonsburg, MO: November 18, 1998.

TA–W–37,186; Avdel Cherry Textron, Inc., Parsippany, NJ: December 8, 1998.

TA–W–37,324 7 A; The Williamson Co., Fairfield, IL and Mt. Vernon, IL: January 26, 1999.

TA–W–37,198; Sea Gull Lighting Products, Inc., Philadelphia, PA: December 6, 1998.

TA–W–37,132; Eileen Fisher, Inc., Irvington, NY: November 3, 1998.

TA–W–37,202 & A; Jockey International, Inc., Carlisle, KY and Mt. Sterling, KY: November 29, 1998.

TA–W–37,210; Cooper-Standard Automotive, Gaylord, MI: December 9, 1999.

TA–W–37,052; Metric Products, Inc., Culver City, CA: October 12, 1998.

TA–W–37,191; Arctic Pipe Inspection, Inc., Prudhoe Bay, AK: December 14, 1998.

TA–W–37,265; O'Bryan Brothers, Inc., Richland Center, WI: January 10, 1999.

TA–W–37,203; Braun Thermoscan, San Diego, CA: December 10, 1998.

TA–W–36,993; Modern Manufacturing Co., Los Angeles, CA: October 12, 1998.

TA–W–37,214 & A,B; Fox Point Sportswear, Inc., Merrill, WI, Bruce, WI, and Ironwood, MI: December 20, 1998.
TA–W–37,162; Allen Telecom-Solon, Solon, OH: December 3, 1998.
TA–W–37,232; Thomas Bradford Shirt Co., Huntington, TN: December 23, 1998.
TA–W–37,172; Rossmor Industries, Twinsburg, OH: November 19, 1998.
TA–W–37,170; International Service Group, Elizabeth, NJ: July 19, 1999.
TA–W–37,104; F.N. Burt Co., Inc., Buffalo, NY: November 9, 1998.
TA–W–37,261; Ithaca Industries, Glennville, GA: January 6, 1999.
TA–W–37,278; Cheraw Dyeing & Finishing, A. Div. of Piece Dye Acquisition Corp., Cheraw, SC: January 11, 1999.
TA–W–37,090 & A; SAS' SA Limited Sylvester, GA and Baxley, GA: November 4, 1998.
TA–W–36,847; Iron Horse Products, Inc., Port Huron, MI: September 2, 1998.
TA–W–37,254; Sony Electronics, Inc., Frackville, PA: January 6, 1999.
TA–W–37,026; Brunswick Bicycles, Olney, IL: October 18, 1998.
TA–W–37,184; Yates Foil USA, Bordentown, NJ: December 3, 1998.
TA–W–37,277; Partlow West Co., New Hartford, NY: January 13, 1999.
TA–W–36,977; Georgia Pacific Corp., Superwood Div., Bemidji, MN: October 13, 1998.
TA–W–37,129 & A, B, C; The Boeing Co., Commercial Airplace Group, Puget Sound Region, WA, Spokane, WA, Portland, OR and Wichita, KS: March 24, 1999.
TA–W–37,161; Bailey Creation, York, AL: November 30, 1998.
TA–W–37,046; Mobius, Inc., Eugene, OH: October 26, 1998.
TA–W–37,154; Phillips-Joanna, Ladd, IL: November 23, 1998.
TA–W–37,181; Trend Manufacturing, Parsons, KS: November 30, 1998.
TA–W–37,274; Fasco Motors, Eldon, MO: January 4, 1999.
TA–W–37,290; Ochoco Lumber Co., d/b/a Malheur Lumber Co., John Day, OR: January 10, 1999.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA-TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA-TAA issued during the month of February and March, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in imports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03665; Cooper Industries, Cooper Lighting, Elk Grove Village, IL
NAFTA–TAA–03611; Headwear USA, d/b/a Identity Headwear, Pattonsburg, MO
NAFTA–TAA–03646; Sea Gull Lighting Products, Inc., Philadelphia, PA
NAFTA–TAA–03669; Mineral Ridge Resources, Inc., Silver Peak, NV
NAFTA–TAA–03507; Oxford Automotive, Argos, IN
NAFTA–TAA–03605; Kellogg Co., South Operations Plant, Battle Creek, MI
NAFTA–TAA–03630; Allied Signal Aerospace, Environmental Control Systems Div., Ocala, FL
NAFTA–TAA–03587; Chevron Chemical Corp., Orange, TX
NAFTA–TAA–03638; A,B; Fox Point Sportswear, Inc., Merrill, WI, Bruce, WI and Ironwood, MI
NAFTA–TAA–03556; Appleton Paper, Inc., Newton Falls Mill, Newton Falls, NY
NAFTA–TAA–03598; Phillips-Joanna, Ladd, IL
NAFTA–TAA–03530; Deluxe Corp., Financial Services Div., Springfield, MA
NAFTA–TAA–03547; Outboard Marine Corp., Milwaukee, WI.
NAFTA–TAA–03317; Weathervane Window, Inc., Brighton, MI
NAFTA–TAA–03508; Louisiana Pacific Corp., Ketchikan Pulp Co., Ketchiken Pulp Div., Ketchikan, AK
NAFTA–TAA–03694; Noblesville Casting, Inc., Noblesville, IN
NAFTA–TAA–03681; Smiley Container Plant, Russell Stover Candies, Inc., Poplar Bluff, MO

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–3680; Sause Bros./ Southern Oegon Marine, Inc., Coos Bay, OR
NAFTA–TAA–03671; Southeast Stevedoring Corp., Port of Metlakatla, AK
NAFTA–TAA–03529; Cerplex, Corvallis, OR
NAFTA–TAA–03670; PacifiCorp., Shareholder Services and Investor Relations Dept., Portland, OR

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

NAFTA–TAA–03708; Wheat Montana Farms, Bakery and Warehouse, Three Forks, MT

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03656; Bailey Creation, York, AL: November 30, 1998.
NAFTA–TAA–03542; Mobius, Inc., Eugene, OR: October 25, 1998.
NAFTA–TAA–03641; Thomas Bradford Whirt Co., Huntingdon, TN: December 23, 1998.
NAFTA–TAA–03703; Humpty Dumpty Potato Chips Co., Inc., Scarborough, ME: January 25, 1999.
NAFTA–TAA–03636; Standard-Cooper Automotive, Gaylord, MI: December 21, 1998.
NAFTA–TAA–03705; Thaw Corp., Snow Creek Div., Wenatchee, WA: January 28, 1999.
NAFTA–TAA–03654; Porta Systems Corp., North Hills Electronics, Glen Cove, NY: December 22, 1998.
NAFTA–TAA–03517; Georgia Pacific Corp., Superwood Div., Bemidji, MN: October 13, 1998.
NAFTA–TAA–03575; Asarco, Inc., Leadville, CO: November 10, 1998.
NAFTA–TAA–03446; Iron Horse Productions, Inc., Port Huron, MI: September 15, 1998.
NAFTA–TAA–03672; Miller International, Inc., Rocky Mountain Clothing Co., Rocky Ford, Co: January 14, 1999.
NAFTA–TAA–03660; Sony Electronics, Inc., Frackville, PA: January 6, 1999
NAFTA–TAA–03725; Ochoco Lumber Co; d/b/a Malheur Lumber Co., John Day, OR: February 8, 1999.
NAFTA–TAA–03666; Otis Elevator Co., Bloomington, IN: January 7, 1999.
NAFTA–TAA–03677; American Timber, Olney, MT: January 14, 1999.
NAFTA–TAA–03679; The Nordic Group, LLC, Hubbard, OR: January 14, 1999.
NAFTA–TAA–03698; The Nordic Group, LLC, Vancouver, WA: January 25, 1999.
NAFTA–TAA–03767; ISA Cutting Room Services, El Paso, TX: February 16, 1999.

I hereby certify that the aforementioned determinations were issued during the month of February and March, 2000. Copies of these determinations were available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address;

Dated: March 8, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance

[FR Doc. 00–6659 Filed 3–16–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed two year extension of the Employment Service Complaint Referral Record, ETA–8429 and the Services to Migrant and Seasonal Farm Workers Report, ETA–5148 from the current end date of September 30, 2000 to a new end date of September 30, 2002.

A copy of the previously approved information collection request (ICR) can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 16, 2000.

ADDRESSES: Eric Johnson, Office of Workforce Security, Office of Career Transition Assistance, 200 Constitution Avenue NW., Room S–4321, Washington, DC 20210, (202–219–0316—not a toll free number) and internet address: *ejohnson@doleta gov* and/or Fax: (202–219–8506).

SUPPLEMENTARY INFORMATION:

I. Background.

As part of the settlement in the case of NAACP v. Secretary of Labor (Civil Action No. 2010–72, U.S.D.C.), the U.S. Department of Labor (DOL) negotiated with the plaintiffs a series of regulations published June 10, 1980. Employment and Training Administration (ETA) regulations at 20 CFR 651, 653 and 658 under the Wagner-Peyser Act, as amended by the Workforce Investment Act of 1998, set forth the role and responsibilities of the United States Employment Service (USES) and the State Employment Security Agencies (SESAs) regarding compliance of said regulations.

In compliance with 20 CFR 653.109, DOL establishing record keeping requirements to allow for the efficient and effective monitoring of SESAs regulatory compliance.

The ETA Form 8429, Employment Service Complaint Referral Record, is used to collect and document all individual complaints filed under the Employment Service complaint system.

The ETA Form 5148, Services to Migrant and Seasonal Farm Workers Report, is used to collect data which are primarily used to monitor and to measure the extent and effectiveness of Employment Service (ES) services to migrant and seasonal farm workers as a high priority target group for ES services.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A) to extend collection of the Employment Service Complaint Referral Record, ETA–8429 and the Services to Migrant and Seasonal Farm Workers Report, ETA–5148 from a current end date of September 30, 2000 to a new end date of September 30, 2002.

Type of Review: Extension without charge.

Agency: Employment and Training Administration.

Title: Employment Service Complaint Referral Record, ETA–8429, Services to Migrant and Seasonal Farm Workers Report, ETA–5148.

OMB Number: 1205–0039.

Frequency: Quarterly and on occasion, respectively.

Affected Public: State governments.

Total Respondents: 208.

Estimated Cost Per Respondent: No cost to respondent.

Estimated Burden Hours: 5530.

Complaint Log Maintenance

1. Record keeping
   Number of record-keepers 168
   Annual hours per record-keeper 6.3
   Record-keepers Hours 1,059
2. Processing ETA 8429

Annual number of forms 2,520
Minutes per form 8
Processing hours 327

Outreach Log

1. Record keeping
Number of record-keepers—150
Annual hours per record-keeper—26
Record-keepers hours—3,900
2. Data Collection/Reporting ETA—5148
Annual number of reports—208
Minutes per report—70
Record keeping hours—244

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 14, 2000.

Grace A. Kilbane,

Administrator, Office of Workforce Security.

[FR Doc. 00–6660 Filed 3–16–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of Addition to the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce an addition to the annual list of labor surplus ares.

DATES: This addition to the annual list of labor surplus areas is effective February 1, 2000.

FOR FURTHER INFORMATION CONTACT: William J. McGarrity, Labor Economist, USES, Employment and Training Administration, 200 Constitution Avenue, NW., Room N–4464, Attention: TEESS, Washington, D.C. 20210. Telephone: 202–219–5185, ext. 129.

SUPPLEMENTARY INFORMATION: The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR Part 654, Subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 15, 1999 (64 FR 55969).

Subpart B of Part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under Subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area listed below has been classified by the Assistant Secretary as a labor surplus area pursuant to 20 CFR 654.5(b) effective February 1, 2000.

Signed at Washington, D.C. on January 31, 2000.

Raymond L. Bramucci,

Assistant Secretary.

ADDITION TO THE ANNUAL LIST OF LABOR SURPLUS AREAS

[February 1, 2000]

Labor surplus area	Civil jurisdiction included
Illinois: DeWitt County	DeWitt County.

[FR Doc. 00–6657 Filed 3–16–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and superseded decisions thereto, contain on expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR part 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW, Room S–3014, Washington, DC 20210.

New General Wage Determination Decision

The number of the decisions added to the Government Printing Office entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and States:

Volume V

Texas
TX000121 (Mar. 17, 2000)

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ000007 (Feb. 11, 2000)

Volume II

Delaware
DE000004 (Feb. 11, 2000)
DE000005 (Feb. 11, 2000)
DE000009 (Feb. 11, 2000)
Pennsylvania
PA000001 (Feb. 11, 2000)
PA000002 (Feb. 11, 2000)
PA000003 (Feb. 11, 2000)
PA000004 (Feb. 11, 2000)
PA000013 (Feb. 11, 2000)
PA000017 (Feb. 11, 2000)
PA000018 (Feb. 11, 2000)
PA000020 (Feb. 11, 2000)
PA000032 (Feb. 11, 2000)
PA000038 (Feb. 11, 2000)
PA000041 (Feb. 11, 2000)
PA000042 (Feb. 11, 2000)
PA000065 (Feb. 11, 2000)

Volume III

Florida
FL000001 (Feb. 11, 2000)

Volume IV

Illinois
IL000019 (Feb. 11, 2000)
Michigan
MI000030 (Feb. 11, 2000)
MI000031 (Feb. 11, 2000)
MI000062 (Feb. 11, 2000)
MI000073 (Feb. 11, 2000)
MI000077 (Feb. 11, 2000)
MI000083 (Feb. 11, 2000)
MI000084 (Feb. 11, 2000)

Volume V

Iowa
IA000015 (Feb. 11, 2000)
IA000079 (Feb. 11, 2000)
Kansas
KS000015 (Feb. 11, 2000)
KS000018 (Feb. 11, 2000)
KS000019 (Feb. 11, 2000)
KS000020 (Feb. 11, 2000)
KS000021 (Feb. 11, 2000)
Texas
TX000007 (Feb. 11, 2000)
TX000013 (Feb. 11, 2000)
TX000014 (Feb. 11, 2000)
TX000033 (Feb. 11, 2000)
TX000034 (Feb. 11, 2000)
TX000037 (Feb. 11, 2000)
TX000060 (Feb. 11, 2000)
TX000061 (Feb. 11, 2000)
TX000103 (Feb. 11, 2000)
TX000104 (Feb. 11, 2000)

Volume VI

Colorado
CO000001 (Feb. 11, 2000)
CO000005 (Feb. 11, 2000)
CO000006 (Feb. 11, 2000)
CO000007 (Feb. 11, 2000)
CO000008 (Feb. 11, 2000)
CO000009 (Feb. 11, 2000)
CO000014 (Feb. 11, 2000)
CO000016 (Feb. 11, 2000)
CO000021 (Feb. 11, 2000)
CO000022 (Feb. 11, 2000)
CO000023 (Feb. 11, 2000)
CO000024 (Feb. 11, 2000)
CO000025 (Feb. 11, 2000)
Wyoming
WY000009 (Feb. 11, 2000)

Volume VII

California
CA000029 (Feb. 11, 2000)
Nevada
NV000003 (Feb. 11, 2000)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, DC this 9th day of March, 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–6251 Filed 3–16–00; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corporation, Crystal River Unit 3; Notice of Consideration of Approval of Application Regarding Proposed Acquisition by CP&L Holdings, Inc. of Florida Progress Corporation and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under Title 10, Code of Federal Regulations (10 CFR), Section 50.80, approving the indirect transfer of Facility Operating License No. DPR–72 for Crystal River Unit 3 (CR–3), to the extent currently held by Florida Power Corporation (FPC). The indirect transfer would be to a proposed new holding company, Carolina Power and Light (CP&L) Holdings, Inc. (Holdings).

According to an application for approval filed by FPC dated January 31, 2000, FPC is requesting the consent of the Commission to the indirect transfer of the CR–3 operating license that will occur under a proposed share exchange transaction between Florida Progress Corporation (Progress) and Holdings. Holdings is being formed by CP&L as part of an internal CP&L reorganization. Upon consummating the share exchange transaction, where Holdings will acquire all of the outstanding shares of Progress, Progress will become a wholly owned subsidiary of Holdings. FPC, which owns a 91.7806 percent interest in CR–3, and which will remain a wholly owned subsidiary of Progress, will become an indirect, wholly owned subsidiary of Holdings upon completion of the transaction. FPC will retain its existing ownership interest in CR–3, continue to hold the CR–3 operating license, and remain the licensed operator of CR–3 after the share exchange transaction. No direct transfer of the license will occur. No physical changes to the facility or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the

license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction effecting the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By April 6, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing, and, if not the applicants, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon R. Alexander Glenn, Director, Regulatory Counsel Group (MAC–BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042, Voice (727) 820–5587, FAX (727) 820–5519, and e-mail *Robert.A.Glenn@FPC.COM;* Steven Carr, Associate General Counsel, Legal Department, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602–1551, Voice (919) 546–4161, Fax (919) 546–3805, and e-mail *steven.carr@cplc.com;* the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, e-mail address for license transfer cases only: OGCLT@NRC.GOV; and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by April 17, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated January 31, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland this 7th day of March 2000.

For the Nuclear Regulatory Commission.

L.A. Wiens,

Senior Project Manager, Section 2, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6632 Filed 3–16–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Northeast Nuclear Energy Company; Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–65, issued to Northeast Nuclear Energy Company (NNECO/the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 2, located in New London County, Connecticut.

The proposed amendment would change Technical Specifications 3.3.2.1, "Instrumentation—Engineered Safety Feature Actuation System Instrumentation; "3.3.3.1, "Instrumentation—Monitoring Instrumentation—Radiation Monitoring"; 3.7.6.1, "Plant Systems—Control Room Emergency Ventilation System;" 3.9.3.1, "Refueling Operations—Decay Time"; 3.9.4, "Refueling Operations—Containment Penetrations"; 3.9.9, "Refueling Operations—Containment Radiation Monitoring"; 3.9.10, "Refueling Operations—Containment Purge Valve Isolation System"; 3.9.11, "Refueling Operations—Water Level—Reactor Vessel"; 3.9.13, "Refueling Operations—Storage Pool Radiation Monitoring"; 3.9.14, "Refueling Operations—Storage Pool Area Ventilation System—Fuel Movement"; 3.9.15, "Refueling Operations—Storage Pool Area Ventilation System—Fuel Storage"; 3.9.16.1, "Refueling Operations—Shielded Cask"; 3.9.16.2, "Refueling Operations—Shielded Cask;" 3.9.17, "Refueling Operations—Movement of Fuel in Spent Fuel Pool"; and 3.19.2, "Refueling Operations—Spent Fuel Pool—Storage Pattern." The Index pages and Bases for these Technical Specifications will be modified to reflect these changes. In addition, the changes will also be made to the Final Safety Analysis Report to reflect the revised fuel handling and cask drop accident analysis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By April 17, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Lillian M. Cucco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated December 14, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 7th day of March 2000.

For the Nuclear Regulatory Commission.

Jacob I. Zimmerman,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6633 Filed 3–16–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–266 and 50–301]

Wisconsin Electric Power Company, Point Beach Nuclear Plant, Units 1 and 2; Notice of Withdrawal of Application for Amendment to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Wisconsin Electric Power Company (the licensee) to withdraw its July 30, 1998, application for proposed amendments to Facility Operating License Nos. DPR–24 and DPR–27 for the Point Beach Nuclear Plant, Units 1 and 2, located in Two Rivers, Wisconsin.

The proposed amendment would have revised the Technical Specifications to more clearly define the requirements for service water system operability.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on December 30, 1998 (63 FR 71976). However, by letter dated December 21, 1999, the licensee withdrew the proposed change and submitted a new amendment request, which superceded the July 30, 1998, request.

For further details with respect to this action, see the application for amendment dated July 30, 1998, and the licensee's letter dated December 21, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 13th day of March 2000.

For the Nuclear Regulatory Commission.

Beth A. Wetzel,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6631 Filed 3–16–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Revised

The agenda for the 118th meeting of the Advisory Committee on Nuclear Waste (ACNW) scheduled to be held on March 27–29, 2000, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland, has been revised to include a discussion on: Uranium Plume Attenuation—Representatives from the NRC Office of Research will present results from a historical case analysis of the transport of uranium. Mechanisms controlling retardation of radionuclides by common soil minerals will be presented. The discussion of the DOE-NRC technical exchange on the resolution of key technical issues (on March 28) has been canceled.

All other items pertaining to this meeting remain the same as published in the **Federal Register** on Thursday, March 9, 2000 (65 FR 12595).

For further information contact: Mr. Richard K. Major, Special Assistant, ACNW (Telephone 301/415–7366), between 8 a.m. and 5 p.m. EST.

Dated: March 13, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–6635 Filed 3–16–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Meeting Notice

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on April 5–7, 2000, in Conference Room T–2B3, 11545 Rockville Pike, Rockville, Maryland. The date of this meeting was previously published in the **Federal Register** on Thursday, October 14, 1999 (64 FR 55787).

Wednesday, April 5, 2000

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–10:30 A.M.: Spent Fuel Pool Accident Risk for Decommissioning Plants (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed final report of a technical study associated with the spent fuel pool accident risk for decommissioning plants, public comments received on the proposed report, and the staff's resolution of public comments.

10:45 A.M.–12:15 P.M.: Proposed Research Plan for Digital Instrumentation and Control (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed research plan for digital instrumentation and control.

1:15 P.M.–2:45 P.M.: Proposed White Paper on Development of Risk-Based Performance Indicators (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the proposed white paper on development of risk-based performance indicators.

3 P.M.–4 P.M.: Human Performance Program (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the revised version of the human performance program.

4 P.M.–5 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

5 P.M.–7 P.M. : Discussion of Proposed ACRS Reports (Open)—The Committee will discuss a proposed ACRS report on matters considered during this meeting. In addition, the Committee will discuss a proposed ACRS report on the revision of the Commission's Safety Goal Policy Statement for Reactors as well as an ACRS/ACNW joint report on Defense-in-Depth in a Risk-Informed Regulatory Process.

Thursday, April 6, 2000

8:30 A.M.–8:35 A.M.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding the conduct of the meeting.

8:35 A.M.–9:45 A.M.: Special Studies for Risk-Based Analysis of Reactor Operating Experience (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding special studies of the staff associated with the risk-based analysis of reactor operating experience.

10 A.M.–11:15 A.M.: Operating Event at Indian Point Unit 2 (Open)—The Committee will hear presentations by and hold discussions with representatives of the NRC staff regarding the findings and recommendations of the Augmented Inspection Team, which investigated the reactor trip and partial loss of AC power event that occurred at Indian Point Unit 2 on August 31, 1999.

11:15 A.M.–11:45 A.M.: Reports of the Materials and Metallurgy and Thermal-Hydraulic Phenomena Subcommittees (Open)—The Committee will hear reports by the Chairmen of the ACRS Subcommittees on Materials and Metallurgy and on Thermal-Hydraulic Phenomena regarding the status of activities associated with the development of a revised Pressurized Thermal Shock Screening Criterion.

1 P.M.–1:15 P.M.: Future ACRS Activities (Open)—The Committee will discuss the recommendations of the Planning and Procedures Subcommittee regarding items proposed for consideration by the full Committee during future meetings.

1:15 P.M.–1:45 P.M.: Report of the Planning and Procedures Subcommittee (Open)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business.

1:45 P.M.–2 P.M.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss the responses from the NRC Executive Director for Operations (EDO) to comments and recommendations included in recent ACRS reports and letters. The EDO responses are expected to be made available to the Committee prior to the meeting.

2 P.M.–3 P.M.: Break and Preparation of Draft ACRS Reports (Open)—Cognizant ACRS members will prepare draft reports for consideration by the full Committee.

3 P.M.–7 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will discuss proposed ACRS reports.

Friday, April 7, 2000

8:30 A.M.–2 P.M.: Discussion of Proposed ACRS Reports (Open)—The Committee will continue its discussion of proposed ACRS reports.

2 P.M.–2:30 P.M.: Miscellaneous (Open)—The Committee will discuss matters related to the conduct of Committee activities and matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACRS meetings were published in the **Federal Register** on September 28, 1999 (64 FR 52353). In accordance with these procedures, oral or written views may be presented by members of the public, including representatives of the nuclear industry. Electronic recordings will be permitted only during the open portions of the meeting and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify Mr. Sam Duraiswamy, ACRS, five days before the meeting, if possible, so that appropriate arrangements can be made to allow necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting Mr. Sam Duraiswamy prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with Mr. Sam Duraiswamy if such rescheduling would result in major inconvenience.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting Mr. Sam Duraiswamy (telephone 301/415–7364), between 7:30 a.m. and 4:15 p.m., EST.

ACRS meeting agenda, meeting transcripts, and letter reports are available for downloading or viewing on the internet at http://www.nrc.gov/ACRSACNW.

Videoteleconferencing service is available for observing open sessions of ACRS meetings. Those wishing to use this service for observing ACRS meetings should contact Mr. Theron Brown, ACRS Audio Visual Technician (301–415–8066), between 7:30 a.m. and 3:45 p.m., EST, at least 10 days before the meeting to ensure the availability of this service. Individuals or organizations requesting this service will be responsible for telephone line charges and for providing the equipment facilities that they use to establish the videoteleconferencing link. The availability of videoteleconferencing services is not guaranteed.

Dated: March 13, 2000.

Andrew L. Bates,

Advisory Committee Management Officer.

[FR Doc. 00–6634 Filed 3–16–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Amendment to a System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Notice to amend a system of records.

SUMMARY: OPM proposes to amend a system of records in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. This notice is required under the Privacy Act whenever an agency establishes or revises one of its systems of records (5 U.S.C. 552a(e)(4)).

DATES: This amendment will be effective without further notice April 26, 2000, unless comments are received that result in any changes.

ADDRESSES: Send written comments to Mary Beth Smith-Toomey, Office of the Chief Information Officer, Office of Personnel Management, 1900 E Street NW., Room 5415, Washington, DC 20415–7900.

FOR FURTHER INFORMATION CONTACT: Mary Beth Smith-Toomey, (202) 606–8358.

SUPPLEMENTARY INFORMATION: This notice updates OPM/Internal-3, Security Officer Control Files, by adding a database tracking system for investigative reports. This tracking system will provide data on pending and completed schedules, types of investigations, position sensitivity levels, clearances granted and issues developed.

U.S. Office of Personnel Management.

Janice R. Lachance

Director.

OPM/INTERNAL–3

SYSTEM NAME:

Security Officer Control Files

SYSTEM LOCATION:

U.S. Office of Personnel Management, Office of Contracting and Administrative Services, 1900 E Street NW., Washington, DC 20415–7100

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

This system contains records on active, inactive and pending OPM employees and contractors.

CATEGORIES OF RECORDS IN THE SYSTEM:

The records in the system contain date of birth; social security number; classification as to position sensitivity; types and dates of investigations; investigative reports, including those from Federal law enforcement agencies, Department of Defense and internal inquiries; dates and levels of clearances; names of agencies and the reasons why they were provided clearance information on OPM employees and contractors.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM INCLUDES THE FOLLOWING WITH ANY REVISIONS OR AMENDMENTS:

Executive Orders 10450 and 12958.

PURPOSE:

These records are used exclusively by OPM Security Officers and the employees of other security offices to assist them in controlling position sensitivity and personnel clearances.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Routine uses 1, 3, 5 and 6, of the Prefatory Statement at the beginning of OPM's system notices (60 FR 63075, effective January 17, 1996) apply to the records maintained within the system. The routine uses listed below are specific to this system of records only.

a. To disclose information to an agency in the executive, legislative, or judicial branch, or the District of Columbia Government, in response to its request related to issuing a security clearance or conducting a security or suitability investigation of an individual. Only information that is relevant and necessary to the requesting agency's decision on the matter will be released.

b. To verify a security clearance in response to an inquiry from a security office of an agency in the executive legislative, or judicial branch, or the District of Columbia Government. Also, to provide OPM employees and contractors access to classified data or areas, when their official duties require such access.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are maintained in file folders and in an automated data base.

RETRIEVABILITY:

These records are retrieved by name, social security number, and date of birth of the individual on whom they are maintained.

SAFEGUARDS:

The disks and file folders are stored in fire-resistant safes contained within a secured area, in lockable metal file cabinets, or in secured rooms. The file folders do not leave the Security Office.

RETENTION AND DISPOSAL:

The Security Office automated data files are retained for five years after the individual leaves OPM. After five years the files are erased. The security folders are destroyed 90 days after the employee leave or contractor stop working for OPM.

SYSTEM MANAGER(S) AND ADDRESS:

Facility Services Division, Security Office, Office of Contracting and Administrative Services, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415–7100.

NOTIFICATION PROCEDURE:

Individuals wishing to determine whether this system of records contains information about them should contact the system manager indicated. Individuals must furnish the following for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social security number.

Record Access Procedures:

Individuals wishing to request access to records about them should contact the system manager indicated. Individuals must furnish the following for their records to be located and identified.

a. Full name.
b. Date of birth.
c. Social security number.

An individual requesting access must also follow the OPM's Privacy Act regulations regarding verification of identity and access to records (5 CFR part 297).

Note: Individuals must request access to background investigations through the Privacy Act regulations of the agency for which the investigation was conducted. Requests for background investigations maintained in the Security Office file will be denied.

CONTESTING RECORD PROCEDURES:

Individuals wishing to request amendment of their records should contact the system manager indicated. Individuals must furnish the following for their records to be located and identified:

a. Full name.
b. Date of birth.
c. Social security number.

Individuals requesting amendment must also follow the OPM's Privacy Act regulations regarding verification of identity and amendment of records (5 CFR part 297).

RECORD SOURCE CATEGORIES:

Information in this system of records is obtained from:

a. The individuals to whom the records applies.

b. OPM's investigative files maintained by Investigations Service.

c. Employment information maintained by OPM's Director of Personnel or regional personnel offices.

d. OPM Officials.

e. Federal law enforcement agencies, Department of Defense, and through external and internal inquiries.

[FR Doc. 00–6627 Filed 3–16–00; 8:45 am]

BILLING CODE 6325–01–P

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221 (c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning April 1, 2000, shall be at the rate of 26½ cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning April 1, 2000, 37.2 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 62.8 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

Dated: March 1, 2000.

By authority of the Board.

Beatrice Ezerski,

Secretary to the Boord.

[FR Doc. 00–6595 Filed 3–16–00; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (NYFIX, Inc., Common Stock, Par Value $.001 per Share) File No. 1–12292

March 10, 2000.

NYFIX, Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d[2] thereunder, to withdraw the security described above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex").

The Security has been listed and registered on the Amex pursuant to Section 12(b)[3] of the Act. On March 3, 2000, the Company Filed a Registration State on Form 8–A with the Commission pursuant to Section 12(g) of the Act,[4] and on March 6, 2000, the Security became designated for quotation and began trading as a National Market Security on the Nasdaq Stock Market, Inc. ("Nasdaq"). The Company believes it will be able to achieve better exposure and a more liquid market for its Security on the Nasdaq.

The Company has stated that it has complied with the Rules of the Amex governing the withdrawal of its Security from listing and registration on the Amex and that the Amex in turn has indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued designation for quotation and trading on the Nasdaq. By reason of Section 12(g) of the Act[5] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission required by Section 13 of the Act.[6]

Any interested person may, on or before March 31, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] *Id.*
[6] 15 U.S.C. 78m.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6606 Filed 3–16–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–10869]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Unique Mobility, Inc., Common Stock, $.01 Par Value)

March 9, 2000.

Unique Mobility, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d)[2] promulgated thereunder, to withdraw the security described above ("Security") from listing and registration on the Boston Stock Exchange, Incorporated ("BSE" or "Exchange").

In its application the Company stated that the Security, in addition to being listed on the BSE, has been listed and trades on the American Stock Exchange LLC ("Amex") and other stock exchanges. The Security has traded simultaneously on the BSE and the Amex since July 13, 1994.

In making the determination to withdraw its Security from listing and registration on the BSE, the Company considered the direct and indirect costs and expenses arising from maintaining listings for its Security on the BSE and Amex simultaneously. In view of the fact that most of the trading in the Security occurs on the Amex, the Company feels that the expenses associated with maintaining its listing on the BSE are justifiable, and that such listing has not appreciably enhanced the trading market for the Security.

The Company has stated that it has complied with the rules of the BSE governing the withdrawal of its Security from listing and registration on the Exchange, and that the Exchange has in turn indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the BSE and shall have no effect upon its continued listing and registration on the Amex or any other national securities exchange on which it is currently listed and registered. By reason of Section 12(b)[3] of the Act and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file periodic and other reports required by Section 13[4] of the Act with the Commission.

Any interested person may, on or before March 30, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the BSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6665 Filed 3–16–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–4251 / March 10, 2000, File No. 4–430]

Order Extending the Deadline for Compliance With Portions of the Commission's January 28, 2000, Order Directing the Exchanges and the National Association of Securities Dealers, Inc. To Submit a Decimalization Implementation Plan Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934

On January 28, 2000, the Securities and Exchange Commission ("Commission") issued an order requiring the American Stock Exchange LLC, the Boston Stock Exchange, Inc., the Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Inc, the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc. ("NASD"), the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc. (collectively, the "Participants")[1] to take certain, specific steps necessary to facilitate an orderly transition to decimal pricing in United States securities markets (the "Decimals Order").[2] The Decimals Order prescribed a timetable for the Participants to complete the required steps. The two earliest deadlines set by the Decimals Order require the Participants to submit jointly by March 13, 2000 a Decimals Implementation Plan, and each Participant to submit by March 28, 2000 proposed rule changes necessary to implement the Decimals Implementation Plan.

Shortly before the March 13 deadline, the NASD announced that it would be unable to begin implementing decimal pricing on July 3, 2000, as required by the Decimals Order. The NASD's announcement necessarily has consequences for the Decimals Implementation Plan being prepared by the Participants. As the Decimals Order emphasized, because of complex technical and other issues relating to the ways in which United States securities markets and related systems are linked, "it is imperative that all market participants convert to decimals in a coordinated manner."[3]

The Commission therefore deems it appropriate and in the public interest to extend until April 14, 2000 the deadline for the Participants to submit jointly a Decimals Implementation Plan required by the Decimals Order. The Commission further deems it appropriate and in the public interest to extend until April 28, 2000 the deadline for each of the Participants to submit the proposed rule changes necessary to implement the Decimals Implementation Plan.

Accordingly, *it is hereby ordered* that the deadline for the Participants to submit the Decimals Implementation Plan required by the Decimals Order is extended until April 14, 2000.

It is hereby further ordered that the deadline for the Participants to submit the proposed rule changes necessary to implement the Decimals Implementation Plan is extended until April 28, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6608 Filed 3–16–00; 8:45 am]

BILLING CODE 8010–01–M

[7] 17 CFR 200.30–3(a)(1).
[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d)

[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78m.
[5] 17 CFR 200.30–3(a)(1)

[1] Since the date of the Decimals Order, the Commission has approved the registration of the International Securities Exchange ("ISE") as a national securities exchange. Release No. 34–42455. Accordingly, the Commission hereby includes ISE within the term "Participants" as used in this Order.
[2] Release No. 34–42360 (Jan. 28, 2000), 65 FR 5003 (February 2, 2000).
[3] *Id.* at 8.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42515; File No. SR–NASD–00–09]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Extension of the Effective Date of Phase Three of Order Audit Trail System Rules

March 10, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4, thereunder,[2] notice is hereby given that on March 9, 2000, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly-owned subsidiary, NASD Regulation, Inc. ("NASDR") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NASDR. The NASDR has designated this proposal as one constituting a "non-controversial" rule change under paragraph (f)(6) of Rule 19b–4 under the Act,[3] which renders the proposal effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

NASDR proposes to amend NASD Rule 6957 to extend the effective date of the implementation of Phase Three of the Order Audit Trail System ("OATS") Rules from July 31, 2000 to October 31, 2000. The text of the proposed rule change is available at the NASD and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASDR included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASDR has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On March 6, 1998, the Commission approved the NASD's OATS Rules 6950 through 6957.[4] OATS provides a substantially enhanced body of information regarding orders and transactions that improves the NASDR's ability to conduct surveillance and investigations of member firms for violations of Association rules. In addition, OATS is intended to fulfill one of the undertakings contained in the order issued by the Commission relating to the settlement of an enforcement action against the NASD for failure to adequately enforce its rules.[5] Pursuant to the SEC Order, OATS was required, at a minimum, to: (1) Provide an accurate, time-sequenced record of orders and transactions, beginning with the receipt of an order at the first point of contact between the broker/dealer and the customer or counterparty and further documenting the life of the order through the process of execution, and (2) provide for market-wide synchronization of clocks used in connection with the audit trail.[6]

In general, OATS imposes obligations on member firms to record in electronic form and to report to the NASDR certain information with respect to orders originated, received, transmitted, modified, canceled, or executed ("reportable events") by NASD members relating to equity securities traded on The Nasdaq Stock Market, Inc. ("Nasdaq"). This information is integrated with quote information and transaction information reported to the Automated Confirmation Transaction Service ("ACT")[7] to provide the Association with an accurate, time-sequenced record of orders and other transactions.

The effective dates for OATS requirements are set forth in NASD Rule 6957, which provides for different phases of implementation. All members were required to synchronize their computer system clocks and all mechanical clocks that record times for regulatory purposes by August 7, 1998, and July 1, 1999, respectively. In addition, the implementation schedule required that electronic orders received at the trading department of a member that is a market maker in the subject securities and those received by electronic communications networks ("ECNs") be entered into OATS as of March 1, 1999 ("Phase One"). Not all information relating to electronic orders received by market makers was required to be reported to OATS during Phase One. Information items relating to all electronic orders, however, was required to be reported to OATS by August 1, 1999 ("Phase Two").

Under the current implementation schedule, the OATS rules will apply to all manual orders on July 31, 2000 ("Phase Three"). With respect to manual orders and all orders received by ECNs, however, the data required to be electronically recorded and transmitted to the OATS is limited to information that is expected to be readily available at the trading desk.[8]

Since the implementation of OATS, NASDR has been closely reviewing OATS activities with the goal of identifying ways in which to improve OATS and enhance the effectiveness of OATS as a regulatory tool. In this regard, NASDR is considering certain changes to OATS that it believes will enhance NASDR's automated surveillance for compliance with trading and market making rules such as the NASD's Limit Order Protection Interpretation, the SEC's Order Execution Rules and a member firm's best execution obligations.

Several of these enhancements that the staff is considering would change the requirements that will become effective as part of Phase Three under current OATS rules. To provide NASDR adequate time to fully analyze and consider these changes and determine whether further proposed rule changes are appropriate, the NASDR is proposing that the effective date of Phase Three implementation be extended from July 31, 2000 to October 31, 2000. In addition, the NASDR believes this extension is particularly important in light of the increased constraints on member technology and systems due to other impending regulatory initiatives, such as decimalization.

[4] *See* Securities Exchange Act Release No. 39729, 63 FR 12559 (March 13, 1998) (order approving File No. SR–NASD–97–56).

[5] *See* In the Matter of the National Association of Securities Dealers, Inc., Securities Exchange Act Release No. 37538, August 8, 1996; Administrative Proceeding File No. 3–9056 ("SEC Order").

[6] *Id.*

[7] ACT is an automated system owned and operated by Nasdaq that captures transaction information in real-time.

[8] Specifically, with respect to manual orders, information item (18) (type of account for which the order is submitted) of NASD Rule 6954(b) would be required to be reported only to the extent that such information item is available. Information items (4) (identification of any department or the identification number of any terminal where an order is received) and (5) (identification of the department of the member originating an order) of Rule 6954(b) and (1) (recordkeeping requirements for orders transmitted to another department within the member) specified in Rule 6954(c) would not be required to be recorded and reported with respect to manual orders. In addition, information items (4) (identification of any department or identification number of any terminal where an order is received), (5) (the identification of the department of the member that originates the order), (9) (the designation of the order as a short sale), (14) (any request by a customer that an order not be displayed or that a block size order be displayed, pursuant to Rule 11Ac1–4(c)), (17) (the identification of the order as related to a Program trade or an Index Arbitrage Trade), and (18) (the type of account for which the order is submitted) specified in Rule 6954(b) would not be required to be recorded and reported by ECNs receiving orders either electronically or manually.

2. Statutory Basis

The NASDR believes the proposed rule change is consistent with Section 15A(b)(6) of the Act,[9] which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. The NASDR believes that extending the effective date of Phase Three implementation of OATS will provide NASDR adequate time to fully analyze and consider certain potential enhancements to OATS and determine whether further proposed rule changes are appropriate.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASDR does not believe that the proposed rule change will impose a burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has been filed by the Association as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act.[10] Consequently, because the foregoing proposed rule change does not significantly affect the protection of investors or the public interest, does not impose any significant burden on competition, and does not become operative until 30 days after the date on which it was filed, and because NASDR provided the Commission with written notice of its intent to file the proposed rule change prior to the filing date, the proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[11] and Rule 19b–4(f)(6) thereunder.[12]

At any time within 60 days of this filing, the Commission may summarily abrogate this proposal if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the NASD. All submissions should refer to File No. SR–NASD–00–09 and should be submitted by April 7, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6607 Filed 3–16–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78o–3(b)(6).

[10] 17 CFR 240.19b–4(f)(6).

[11] 15 U.S.C. 78s(b)(3)(A).

[12] 17 CFR 240.19b–4(f)(6).

[13] 17 CFR 200.30–3–(a)(12).

SMALL BUSINESS ADMINISTRATION

[License No.: 09/09–5370]

Notice of Surrender of License

Notice is hereby given that Astar Capital Corporation, located at 9537 E. Gidley Street, Temple City, CA 91780, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act). Astar Capital Corp. was licensed by the Small Business Administration on 11/06/86.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was acted on this date, and accordingly, all rights, privileges and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.11, Small Business Investment Companies)

Dated: March 10, 2000.

Don A. Christensen,

Associate Administrator for Investment.

[FR Doc. 00–6695 Filed 3–16–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3245 (Amendment #1)]

State of West Virginia

In accordance with notices received from the Federal Emergency Management Agency on March 8, 2000, the above-numbered Declaration is hereby amended to include Preston, Randolph, Taylor, and Tucker Counties in the State of West Virginia as a disaster area due to damages caused by flooding, severe storms, and landslides. This Declaration is further amended to establish the incident period for this disaster as beginning on February 18, 2000 and continuing through February 22, 2000.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Grant, Pendleton, and Pocahontas Counties in West Virginia, and Garrett County, Maryland. Any counties contiguous to the above-named primary counties and not listed herein have been previously declared.

The economic injury number for the State of Maryland is 9G9200.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is April 28, 2000 and for economic injury the deadline is November 28, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: March 10, 2000.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 00–6697 Filed 3–16–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Washington, D.C. District Advisory Council; Public Meeting

The U.S. Small Business Administration Washington, D.C. District Advisory Council, located in the metropolitan area of Washington, D.C., will hold a public meeting from 9:00 a.m.–11:00 a.m., Wednesday, April 26, 2000, at Creative Associates, Inc., 5301 Wisconsin Avenue, N.W., Suite 700, Washington, D.C., to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Anita L. Irving, Public Information Officer, U.S. Small Business Administration, 1110 Vermont Avenue, N.W., Suite 900, (P.O. Box 34500), Washington, DC 20043–4500; telephone 202–606–4000, ext. 275.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–6696 Filed 3–16–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3257]

Fine Arts Committee; Notice of Meeting

The Fine Arts Committee of the Department of State will meet on Saturday, April 29, 2000 at 9:30 a.m. in the John Quincy Adams State Drawing Room. The meeting will last until approximately 11:00 a.m. and is open to the public.

The agenda for the committee meeting will include a summary of the work of the Fine Arts Office since its last meeting in October 1999 and the announcement of gifts of furnishings as well as financial contributions from January 1 through December 31, 1999. Public access to the Department of State is strictly controlled. Members of the public wishing to take part in the meeting should telephone the Fine Arts Office by Monday, April 24, 2000, telephone (202) 647–1990 to make arrangements to enter the building. The public may take part in the discussion as long as time permits and at the discretion of the chairman.

Dated: March 13, 2000.

Gail F. Serfaty,

Vice Chairman, Fine Arts Committee, Department of State.

[FR Doc. 00–6681 Filed 3–16–00; 8:45 am]

BILLING CODE 4710–38–U

DEPARTMENT OF STATE

[Public Notice No. 3235]

Advisory Committee on International Law Notice of Committee Renewal

The Department of State has renewed the Charter of the Advisory Committee on International Law. This advisory committee will continue to obtain the views and advice of a cross-section of the country's outstanding members of the legal profession on significant issues of international law.

The committee's consideration of legal issues in the conduct of our foreign affairs provides a unique contribution to the creation and promotion of U.S. foreign policy. The Under Secretary for Management has determined that the committee is necessary and in the public interest.

The committee consists of former Legal Advisers of the Department of State and not more than twenty individuals appointed by the Legal Adviser of the Department of State. The committee will follow the procedures prescribed by the Federal Advisory Committee Act (FACA). Meetings will be open to the public unless a determination is made in accordance with section 10(d) of the FACA, 5 U.S.C. 552b(c)(1) and (4), that a meeting or a portion of the meeting should be closed to the public. Notice of each meeting will be provided for publication in the **Federal Register** as far in advance as possible prior to the meeting.

For further information, please call: John R. Crook, Assistant Legal Adviser for United Nations Affairs, (202 647–2767.

Dated: March 13, 2000.

John R. Crook,

Assistant Legal Adviser for United Nations Affairs; Executive Director, Advisory Committee on International Law, U.S. Department of State.

[FR Doc. 00–6680 Filed 3–16–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Minority Business Resource Center Advisory Committee; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the Minority Business Resource Center Advisory Committee to be held Tuesday, April 18, 2000, from 10 a.m.–12 p.m. at the Department of Transportation, 400 7th Street, SW., Room 4438–4440, Washington, DC.

The agenda for the meeting is as follows:

— Advocacy
— DOT DBE Program
— Small Business Programs
— Outreach
— Financial Services

Attendance is open to the interested public but limited to the space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to attend and persons wishing to present oral statements should notify the Office of Small and Disadvantaged Business Utilization, Minority Business Resource Center by 4:00 p.m. on Monday, April 10, 2000. Information pertaining to the meeting may be obtained from Mrs. Marie A. Hendricks, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW., Washington, DC 20590, telephone (202) 366–1930 or (800) 532–1169. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on March 13, 2000.

Luz A. Hopewell,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 00–6682 Filed 3–16–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7053]

Chemical Transportation Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Chemical Transportation Advisory Committee (CTAC) will meet to discuss various issues relating to the marine transportation of hazardous materials in bulk. The meeting will be open to the public.

DATES: CTAC will meet on Wednesday, April 12, 2000, from 9:00 am to 3:30 pm. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before March 30, 2000. Requests to have a copy of your material distributed to each member of the committee or subcommittee should reach the Coast Guard on or before April 3, 2000.

ADDRESSES: CTAC will meet at Coast Guard Headquarters, room 2415, 2100 Second Street SW., Washington, DC. Send written material and requests to make oral presentations to Ms. Sara S. Ju, Commandant (G–MSO–3), U.S. Coast Guard Headquarters, 2100 Second, Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Commander Robert F. Corbin, Executive Director of CTAC, or Ms. Sara S. Ju, Assistant to the Executive Director, telephone 202–267–1217, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting (Tentative)

Chemical Transportation Advisory Committee (CTAC)

The tentative agenda includes the following:

(1) Establishment of a new Subcommittee to identify and develop recommended response standards for marine chemical incidents.

(2) Reestablishment of the 46 CFR Part 151 Subcommittee to revalidate previous Subcommittee recommendations.

(3) New Prevention Through People Subcommittee initiatives.

(4) Information on the revised CHRIS manual.

(5) Roles and Responsibilities of a Marine Chemist.

(6) Status report on the Tank Barge Certificate of Inspection Pilot Program.

(7) Updates on Coast Guard regulatory projects and current International Maritime organization (IMO) initiatives relative to the chemical transportation industry.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than March 30, 2000. Written material for distribution at the meeting should reach the Coast Guard no later than April 3, 2000. If you would like a copy of your material distributed to each member of the Committee in advance of the meeting, please submit 25 copies to the Executive Director no later than April 3, 2000.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 13, 2000.

Howard L. Hime,

Director of Standards (Acting), Marine Safety and Protection.

[FR Doc. 00–6704 Filed 3–16–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular; Instructions for Continued Airworthiness: Focused Inspection of Safety Critical Turbine Engine Parts at Piece-Part Opportunity

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability of proposed advisory circular and request for comments.

SUMMARY: This notice announces the availability of draft Advisory Circular (AC) No. 33.4–2, Instructions for Continued Airworthiness: Focused Inspection of Safety Critical Turbine Engine Parts at Piece-Part Opportunity.

DATES: Comments must be received on or before May 16, 2000.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attn: Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, MA, 01803–5299.

FOR FURTHER INFORMATION CONTACT: Mark Liptak, Engine and Propeller Standards Staff, ANE–110, at the above address, telephone (781) 238–7749, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under **FOR FURTHER INFORMATION CONTACT** or by downloading the draft AC from the following Internet website: www.faa.gov/avr/air/acs/draftach.htm. Interested persons are invited to comment on the proposed AC and to submit such written data, views, or arguments as they desire. Commenters must identify the subject of the AC and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine and Propeller Directorate, Aircraft Certification Service, before issuance of the final AC.

Background

This proposed AC provides guidance and acceptable methods, but not the only methods, that may be used to demonstrate compliance with the requirements of 14 CFR 33.4, Instructions for Continued Airworthiness (ICA), relating to focused inspections of safety critical turbine engine parts. Analysis of ten years of transport aircraft accident and incident data shows that the leading turbine engine unsafe condition is the uncontained failure of safety critical parts. The failure of safety critical parts can present a significant hazard to an aircraft by releasing fragments that can penetrate the cabin or fuel tanks, damage control surfaces, or sever flammable fluid or hydraulic lines. To reduce the occurrence of these incidents, parts and part features most critical to safety should be subjected to focused inspections at piece-part opportunities, using methods that detect flaws that could lead to failure.

(Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44704.)

Issued in Burlington, Massachusetts, on March 9, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–6700 Filed 3–16–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

One-Year Runway Incursion Information and Evaluation Program

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: General statement of policy.

SUMMARY: This document announces a one-year program to gather information from airmen who are involved in runway incursions and to evaluate that information in an effort to determine the root causes of such events. The document also states the FAA's policy concerning enforcement-related incentives that will be offered to airmen to encourage them to participate in the program and the FAA's policy concerning the use for enforcement purposes of information provided by airmen under the program.

DATES: *Effective date:* March 17, 2000. *Expiration Date:* The Runway Incursion Information and Evaluation Program expires on March 19, 2001.

FOR FURTHER INFORMATION CONTACT: Ross Cusimano, AFS–200, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Background

In recent years, the number of runway incursions has increased significantly. As a result, the Administrator has identified as a high priority the implementation of several initiatives aimed at reducing or eliminating accidents or incidents attributable to runway incursions. These initiatives "include efforts that address pilot familiarity with airports, navigation and communications improvements, pilot/controller memory and attention, controller skill development, compliance with FAA regulations by pilots and controllers, and improved dissemination of safety/security-related information." (1998 Airport Surface Operations Safety Action Plan, page 3). (Available on the Internet at http://www.faa.gov/ats/ato/ato102/files/actionplan/index.html).

A runway incursion is defined as "any occurrence at an airport involving an aircraft, vehicle, person, or object on the ground that creates a collision hazard or results in loss of separation withan aircraft taking off, intending to take off, landing, or intending to land." (FAA Order 8020.11A, Chapter 1, Paragraph 5). Runway incursions are grouped into four categories: Pilot Deviations, Operational Errors, Operational Deviations, and Vehicle or Pedestrian Deviations. Pilot deviations are the leading category of runway incursions, increasing by 38 percent from 1997 to 1998. An analysis of runway incursion data indicates runway incursions most likely to cause accidents generally occur at complex, high volume airports. (1998 Airport Surface Operations Safety Action Plan, page 3). The data also show there is a high incidence of runway incursions involving general aviation pilots that often result from misunderstood controller instructions, confusion, disorientation, and/or inattention. *Id.* Because runway incursions can involve and affect such a wide cross section of pilot skill levels and airport operations, the FAA has concluded that runway incursion prevention measures must be as broad in scope as possible.

One-Year Runway Incursion Information and Evaluation Program (RIIEP)

The Administrator has set a goal to reduce runway incursions by 15 percent in calendar year 2000. To help achieve this goal, the FAA is developing programs designed to reduce pilot deviations through enhanced education and training of pilots and crewmembers, and to gather and evaluate more data on the causes of runway incursions.

To assist with the development of a comprehensive compliance program for airport surface operations, the FAA is implementing a one-year program through which it seeks to gain information about runway incursions by interviewing airmen involved in such events.* While the FAA is immediately aware through the Air Traffic Service of the occurrence of a runway incursion, oftentimes the FAA knows little about why the incursion happened and the factors or events that may have led to it. The FAA believes, that given certain assurances under the RIIEP, airmen who are involved in runway incursion may be willing to share with FAA inspectors valuable safety information about those incursions. This information may help the FAA to determine root causes of runway incursions and lead to the development of effective corrective actions to help reduce or eliminate this problem.

Under the RIIEP, each regional Flight Standards Division manager will establish a group of regional aviation safety inspectors (operations) who will serve as a Flight Standards Incursion Team (FSIT) and will coordinate National Runway Safety Program (NRSP) activities at the regional level. The FSIT will be responsible for coordinating the activities of FAA field inspectors who will interview the airman involved in a runway incursion during normal working hours as soon as practicable after the incursion occurs. The field inspectors will report in writing the results of an interview to the FSIT. The FSIT will review the written report of the interview and forward the report to the national coordinator for NRSP in the Flight Standards Service, Headquarters.

Field inspectors will advise airmen that their participation in the interview process is voluntary. The interviews may be conducted in person, or by telephone. Questions that might be asked of airmen during the interview include the following:

- Were the airport signage, lighting, and markings adequate or were they a contributing factor to the runway incursion?
- What were the lighting conditions when the runway incursion occurred?
- Was the airman familiar with the airport layout?
- Were there language problems that contributed to the runway incursion?
- What was the airman's experience in operations at tower operated/high density airports?
- What does the airman believe caused the runway incursion?
- What would have helped to prevent the runway incursion from happening?

Enforcement Policy

The FAA through the Air Traffic Service ordinarily is immediately aware when a runway incursion occurs. Oftentimes, the Air Traffic Service's report of a pilot deviation or a vehicle or pedestrian deviation associated with a runway incursion will result in the opening of an enforcement investigative report for an alleged regulatory violation(s) and either legal enforcement action (certificate action or civil penalty action) or administrative action (letter of correction or warning notice) being taken against the airman involved.

To encourage participation in the RIIEP, the FAA has decided to offer certain assurances to airmen regarding enforcement action that typically would be taken for an alleged violation resulting from a runway incursion. Under the RIIEP, if an airman cooperates in answering questions that will assist in identifying the cause of the runway incursion, the FAA ordinarily does not expect to take punitive legal enforcement action (*i.e.*, civil penalty action or a fixed period of suspension) against him or her for an alleged violation that may result from the incursion, provided the alleged violation does not appear to be intentional or to involve criminal conduct, and the runway incursion did not result in an accident.

In certain cases, the FAA may determine an airman should complete corrective action to help preclude the recurrence of a runway incursion, or should at least be warned that his or her conduct was allegedly in violation of subtitle VII of Title 49 of the U.S. Code or the Federal Aviation Regulations. In these cases, the FAA will issue an appropriate administrative action to the airman.

If alleged violation(s) resulting from the runway incursion or the circumstances surrounding the runway incursion demonstrate, or raise a question of, a lack of qualification of the airman, then the FAA will proceed with appropriate remedial action, which might include reexamination and/or certificate revocation or certificate suspension pending reexamination.

The FAA recognizes airmen will have concerns the information they provide under this program will be used by the FAA to take enforcement actions against them. The FAA, however, does not expect to use information provided by airmen during interviews conducted by FAA inspectors under the RIIEP in any FAA punitive legal enforcement action.

The RIIEP will be in effect for one year beginning the date of publication of this notice.

Issued In Washington, DC on March 13, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–6683 Filed 3–16–00; 8:45 am]

BILLING CODE 4910–13–M

* The RIIEP does not apply to foreign airmen involved in runway incursions.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue from a Passenger Facility Charge (PFC) at Luis Muñoz Marin International Airport, San Juan, PR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Luis Muñoz Marin International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 17, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, FL 32822–5024.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Virgilio Acevedo, P.E., Assistant Executive Director for Engineering, Planning and Development of the Puerto Rico Ports Authority at the following address: P.O. Box 362829, San Juan, Puerto Rico 00936–2829.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Puerto Rico Ports Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ilia Quinones, Program Manager, Orlando Airports District Office, 5950 Hazeltine National Dr., Suite 400, Orlando, FL 32822–5024, 407–812–6331 extension 30. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Luis Muñoz Marin International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 13, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Puerto Rico Ports Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 14, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–04–C–00–SJU.

Level of the proposed PFC: $3.00.

Proposed charge effective date: November 1, 2002.

Proposed charge expiration date: January 1, 2011.

Total estimated net PFC revenue: $101,154,000.

Brief description of proposed project(s):

Development of Utilities Master Plan, SJU
Preliminary Engineering Dual Midfield Taxiway, SJU
EA for Improving the Runway Safety Area Rwy 26, SJU
Y2K Improvements to 107 Access Control, SJU
Acquire Two Runway Sweepers, SJU
Design & Install Terminal/Airfield Signs, SJU
Design and Build an ARFF Facility, SJU
Construct Dual Mid-Field Twy, SJU
Construct Standard Safety Area RWY 26, SJU
Design Extension TWY Sierra, SJU
Master Plan (ALP), SIG
Design/Construction Apron Expansion, X63
Installation of AWOS, BQN
Relocation of Taxiway A, BQN
Preliminary Engineering Rwy Reconstruction, BQN
Final Design Rwy Reconstruction, BQN
Reconstruct Rwy, BQN
Y2K Improvement to 107 access control, BQN
Obstruction Removal; Treshold Relocation, VQS
Install Airport Signage (Design/Construct.), PSE
Acquire. Jaws of Life & Safety Equipment, PSE
Y2K Improvements 107 access control, PSE
Acquire. Rwy Sweeper, PSE
Install Loading Bridges, PSE
Reconstruct Twy Light System, PSE
Improve Rwy 12 Safety Area, PSE
Reconstruct Terminal Apron, PSE
Reconstruct Rwy & Twy Connectors, PSE
Widen Rwy, Construct Apron, Extend Twy, CPX
Cargo Access Road, SJU
Construct New GA facilities, SJU

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: NONE.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Puerto Rico Ports Authority.

Issued in Orlando, Florida on March 13, 2000.

John W. Reynolds, Jr.,

Acting Manager, Orlando Airports District Office, Southern Region.

[FR Doc. 00–6701 Filed 3–16–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. AB–33 (Sub–No. 147X) and AB–406 (Sub–No. 11X)]

Union Pacific Railroad Company—Abandonment Exemption—in McPherson and Saline Counties, KS and Central Kansas Railway Limited Liability Company—Discontinuance of Service Exemption—in McPherson and Saline Counties, KS

Union Pacific Railroad Company (UP) and Central Kansas Railway Limited Liability Company (CKR) have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service* for UP to abandon and CKR to discontinue service over: (1) A 4.6-mile line of railroad known as the Hoisington Subdivision between milepost 491.20 near Bridgeport, KS, and milepost 495.80 near Lindsborg, KS; (2) a 10.25-mile line of railroad known as the McPherson Subdivision between milepost 534.75, near Bridgeport and milepost 545.00 near Sid, KS. Additionally, as part of the exemption, CKR also seeks to discontinue its incidental overhead trackage rights over a 6.30-mile portion of UP's trackage between milepost 545.00 near Sid, and milepost 551.30 at

Salina, KS.[1] All involved line segments are located in McPherson and Saline Counties, KS. The lines traverses United States Postal Service Zip Codes 67401, 67416, and 67456.

UP and CKR have certified that: (1) No local traffic has moved over the lines for at least 2 years; (2) there has been no overhead traffic on the lines during the past 2 years; (3) no formal complaint filed by a user of rail service on the lines (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the lines either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment*— Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 16, 2000, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by March 27, 2000. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by April 6, 2000, with: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicants' representatives: James P. Gatlin, Union Pacific Railroad Company, 1416 Dodge Street, Room 830, Omaha, NE 68179–0001; and Karl Morell, Ball Janik LLP, 1455 F St., NW, Washington, DC 20005.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

UP and CKR have filed an environmental report which addresses the effects of the abandonment and discontinuance, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by March 22, 2000. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1545. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), UP shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by UP's filing of a notice of consummation by March 17, 2001, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided March 9, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–6570 Filed 3–16–00; 8:45 am]

BILLING CODE 4915–00–P

[1] CKR was authorized to lease and operate approximately 170.7 miles of UP's rail line in addition to the incidental overhead trackage rights that it acquired in *Central Kansas Railway, L.L.C.—Lease Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 33470 (STB served Oct. 9, 1997).

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which currently is set at $1000. *See* 49 CFR 1002.2(f)(25).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9003

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9003, Additional Questions to be Completed by All Applicants for Permanent Residence in the United States.

DATES: Written comments should be received on or before May 16, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Faye Bruce, (202) 622–6665, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Additional Questions to be Completed by All Applicants for Permanent Residence in the United States.

OMB Number: 1545–1065.

Form Number: 9003.

Abstract: Internal Revenue Code section 6039E requires that applicants for permanent residence in the United States must give information regarding their last three years tax history with their applications or face a possible $500 penalty. Form 9003 is used for this purpose.

Current Actions: There are no changes being made to Form 9003 at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households.

Estimated Number of Respondents: 933,000.

Estimated Time Per Respondent: 5 min.

Estimated Total Annual Burden Hours: 77,750.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 7, 2000.

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–6577 Filed 3–16–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request By Fiduciary For Reissue of United States Savings Bonds/Notes.

DATES: Written comments should be received on or before May 19, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request By Fiduciary For Reissue Of United States Savings Bonds/Notes.

OMB Number: 1535–0012.

Form Number: PD F 1455.

Abstract: The information is requested to support a request for reissue by the fiduciary of a decedent's estate.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or businesses.

Estimated Number of Respondents: 72,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 36,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 13, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–6618 Filed 3–16–00; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Burea of the Public Debt, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Request For Reissue of United States Savings Bonds/Notes In The Name of a Person or Persons Other Than The Owner (Including Legal Guardian, Custodian for a Minor Under a Statue, etc.).

DATES: Written comments should be received on or before May 19, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Request For Reissue of United States Savings Bonds/Notes In The Name Of A Person Or Persons Other Than The Owner (Including Legal Guardian, Custodian For A Minor Under a Statue, etc.).

OMB Number: 1535–0025.

Form Number: PD F 3360.

Abstract: The information is used to support a request by the owner to reissue the savings bonds/notes in the name of another person.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 10 minutes.

Estimated Total Annual Burden Hours: 8,350.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the

agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 13, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–6619 Filed 3–16–00; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Disposition Of Retirement Plan and/or Individual Retirement Bonds Without Administration Of Deceased Owner's Estate.

DATES: Written comments should be received on or before May 19, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Application For Disposition Of Retirement Plan and/or Individual Retirement Bonds Without Administration Of Deceased Owner's Estate.

OMB Number: 1535–0032.

Form Number: PD F 3565.

Abstract: The information is used to support a request for disposition by the heirs of deceased owners or Retirement Plan and/or Individual Retirement bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 20 minutes.

Estimated Total Annual Burden Hours: 17.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 13, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–6620 Filed 3–16–00; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Creditor's Consent To Disposition Of United States Securities And Related Checks Without Administration Of Deceased Owner's Estate.

DATES: Written comments should be received on or before May 19, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Creditor's Consent To Disposition Of United States Securities And Related Checks Without Administration Of Deceased Owner's Estate.

OMB Number: 1535–0055.

Form Number: PD F 1050.

Abstract: The information is requested to obtain a creditor's consent to dispose of savings bonds/notes in settlement of a deceased owner's estate without administration.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or businesses.

Estimated Number of Respondents: 3,000

Estimated Time Per Respondent: 6 minutes.

Estimated Total Annual Burden Hours: 300.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the

information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 13, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–6621 Filed 3–16–00; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Order For Series EE and Series I U.S. Savings Bonds, and Order For Series EE and Series I U.S. Savings Bonds To Be Registered In Name Of Fiduciary.

DATES: Written comments should be received on or before May 19, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Order For Series EE U.S. Savings Bonds, Order For Series I U.S. Savings Bonds, Order For Series EE U.S. Savings Bonds To Be Registered In Name of Fiduciary, and Order for Series I U.S. Savings Bonds To Be Registered In Name of Fiduciary.

OMB Number: 1535–0084.

Form Number: PD F 5263 and 5263–1 and PD F 5374 and 5374–1.

Abstract: The information is requested from the purchaser to issue Series EE/I Savings Bonds.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or households.

Estimated Number of Respondents: 10,000,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 830,000.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 13, 2000

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–6622 Filed 3–16–00; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

AGENCY: Bureau of the Public Debt, Department of the Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Certificate of Ownership of United States Bearer Securities.

DATES: Written comments should be received on or before May 19, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Certificate of Ownership of United States Bearer Securities.

OMB Number: 1535–0102.

Form Number: PD F 1071.

Abstract: The information is requested to establish ownership and support a request for payment.

Current Actions: None.

Type of Review: Extension.

Affected Public: Individuals or businesses.

Estimated Number of Respondents: 1,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 500.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 13, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–6623 Filed 3–16–00; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Application For Issue Of United States Mortgage Guaranty Insurance Company Tax And Loss Bonds.

DATES: Written comments should be received on or before May 19, 2000, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION: *Title:* Application For Issue Of United States Mortgage Guaranty Insurance Company Tax and Loss Bonds.

Form Number: PD F 3871

Abstract: The information is used to establish and maintain Tax and Loss Bond Accounts.

Current Actions: The current collection is used to establish Tax and Loss Bond Accounts. The additional information will allow for Direct Deposit (ACH) for payments.

Type of Review: New

Affected Public: Business or other for-profit.

Estimated Number of Respondents: 80

Estimated Time Per Respondent: 15 minutes.

Estimated Total Annual Burden Hours: 20.

REQUEST FOR COMMENTS: Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 13, 2000.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 00–6624 Filed 3–16–00; 8:45 am]

BILLING CODE 4810–39–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0178]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine a claimant's continuing eligibility for education benefits.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 16, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0178" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Monthly Certification of On-the-Job and Apprenticeship Training, VA Form 22–6553d. (NOTE: A reference to VA Form 22–6553d also includes VA Form 22–6553d–1 unless otherwise specified. VA Form 22–6553d–1 contains the same information as VA Form 22–6553d.)

OMB Control Number: 2900–0178.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used by trainees and employers to report the number of hours worked in on-the-job training programs and apprenticeships, and to report terminations of training in such programs. VA uses the information to determine whether a trainee's education benefits are to be continued, changed or terminated, and the effective date of such action. VA is authorized to pay education benefits to veterans and other eligible persons pursuing approved programs not leading to a standard college degree under Title 38, U.S.C., Chapters 32 and 35, Title 10, U.S.C., Chapter 1606, and Public Law 96–342, Section 903. Benefits are authorized

monthly based upon the number of hours worked by the trainee and verified by the training establishment. Unscheduled terminations result in termination of the award of benefits. Reduction of hours worked to less than a full-time work schedule results in reduction of benefits. The form is completed by the trainee and the training establishment to report to VA the number of hours worked and/or to report the date of termination.

Affected Public: Individuals or households, business or other for-profit, not-for-profit institutions, and State, Local or Tribal Government.

Estimated Annual Burden: 15,975 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Monthly.

Estimated Number of Respondents: 10,650.

Number of Responses Annually: 95,850

Dated: February 16, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–6645 Filed 3–16–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Veterans' Advisory Committee on Education, Notice of Meeting

The Department of Veterans Affairs gives notice that a meeting of the Veterans' Advisory Committee on Education, authorized by 38 U.S.C. 3692, will be held on April 3 and April 4, 2000. The meeting will take place at the offices of Servicemembers Opportunity Colleges, 1307 New York Avenue, Washington, DC, 9 a.m. to 4 p.m. on Monday, April 3, and from 9 a.m. to 12 p.m. Tuesday, April 4. The purpose of the Committee is to assist in the evaluation of existing programs and services, and recommend needed programs and services. The focus of this meeting will be "Partnership for Veterans' Education", increasing GI Bill benefits for the 21st century, and increasing the access to Department of Veteran Affairs Regional Processing Offices by colleges.

The meeting will be open to the public. Those wishing to attend should contact Mr. Bill Susling, Education Policy and Program Administration, (phone 202–273–7187) prior to March 28, 2000.

Interested persons may attend, appear before, or file statements with the Committee. Statements, if in written form, may be filed before or within 10 days after the meeting. Oral statements will be heard at 9 a.m. Tuesday, April 4, 2000.

Dated: March 9, 2000.

By direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–6644 Filed 3–16–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans, Notice of Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Advisory Committee on Women Veterans will be held on March 21–23, 2000, at the Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC. All meetings will be held in conference room 230.

The purpose of the Committee is to advise the Secretary of Veterans Affairs regarding the needs of women veterans with respect to health care, rehabilitation, compensation, outreach, and other programs and activities administered by the Department of Veterans Affairs designed to meet such needs. The Committee will make recommendations to the Secretary regarding such activities.

All sessions will be open to the public. Those who plan to attend should contact Ms. Maryanne Carson, Department of Veterans Affairs, Center for Women Veterans, 810 Vermont Avenue, NW, Washington, DC 20420, at (202) 273–6193. A tentative agenda follows:

Tuesday, March 21

8 a.m.
Welcome and Opening Remarks
New Member Orientation
Dr. Linda Schwartz, Chair
8:30 a.m.
The Honorable Togo D. West, Jr.
Secretary of Veterans Affairs
Presentation of Appointment Certificates
9 a.m.
Review: October 1999 Minutes
Chair's Update
Dr. Linda Schwartz
9:30 a.m.
Ethics Briefing
Mr. Jeffrey Green, Office of the General Counsel
10:30 a.m.
Break
11 a.m.
Briefing: Veterans Benefits Administration
Ms. Nora Egan, Deputy Under Secretary
Mr. Robert Epley, Director, Compensation and Pension Service
12 p.m.
Lunch
1:30 p.m.
Briefing: Veterans Health Administration
Ms. Carole Turner, Director, Women Veterans' Health Programs
2:30 p.m.
Briefing: VA Homeless Initiative for Women Veterans
Ms. Joan Furey, Director, Center for Women Veterans
3:15 p.m.
Break
3:45 p.m.
General Discussion: Summit 2000
Joan A. Furey, Director, Center for Women Veterans
5 p.m.
Adjourn

Wednesday, March 22

8:30 a.m.
Briefing: Native American Issues
Ms. Connie Evans
9:30 a.m.
Site Visit Reports: Dr. Linda Schwartz, Chair
Tampa/Bay Pines: Doug Russell
Fayetteville: Doug Russell
Washington, DC: Joy Ilem, Karen Ray, Lory Manning
Houston: Bertha Cruz, Lois Johns
Wichita: Sherry Blede
Leavenworth: Sherry Blede
11 a.m.
Break
11:15 a.m.
Video—Female Anatomy: Diseases of the Breast
VBN Satellite Broadcast
12 p.m.
Lunch
1:30 p.m.
General Discussion: 2000 Committee Report
Letter to Secretary: delay because of Summit
Committee Assignments
Linda Schwartz, Chairperson
2 p.m.
Subcommittee Meetings
3:30 p.m.
Break
4 p.m.
Full Committee—Subcommittee Reports
5 p.m.
Adjourn

Thursday, March 23

9 a.m.
General Discussion 2000 Report
10 a.m.
General Discussion
New Business
Next Meeting (after Summit)
11:30 a.m.
Break
1 p.m.
Adjourn

Dated: March 13, 2000.

By direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

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Part II

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 57

Livestock and Grain Market News Branch: Livestock Mandatory Reporting; Proposed Rule

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 57

[No. LS–99–18]

RIN 0581–AB64

Livestock and Grain Market News Branch: Livestock Mandatory Reporting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and invitation for comment.

SUMMARY: This proposed rule would establish a mandatory program of reporting information regarding the marketing of cattle, swine, lambs, and products of such livestock under the "Livestock Mandatory Reporting Act of 1999." This proposed rule requires the reporting of market information by certain livestock packers, and livestock product processors and importers who annually slaughter an average of 125,000 cattle or 100,000 swine, or slaughter or process an average of 75,000 lambs. Importers who annually import an average of 5,000 metric tons of lamb are also required to report. These entities would be required to report the details of all transactions involving purchases of livestock and of domestic and imported lamb carcasses and imported lamb cuts, and the details of all transactions involving domestic and export sales of boxed beef cuts including branded product, sales of domestic and imported boxed lamb cuts including branded product, purchases of imported boxed lamb cuts including branded product, and lamb carcasses to the Agricultural Marketing Service (AMS). This program is intended to provide information on pricing, contracting for purchase, and supply and demand conditions for livestock, livestock production, and livestock products, that can be readily understood by producers, packers, and other market participants.

DATES: Written comments on this proposed rule must be received on or before April 17, 2000, and will be considered before the rule is made final. The AMS has requested and received approval from the Office of Management and Budget for a 30-day comment period on the information collection and recordkeeping requirements of this proposed rule. Accordingly, comments on the information collection and recordkeeping requirements (see Paperwork Reduction Act section of this action) must be received on or before April 17, 2000.

ADDRESSES: Send two copies of comments to John E. Van Dyke, Chief, Livestock and Grain Market News Branch, Docket No. LS–99–18, Room 2619–S; 1400 Independence Avenue; SW., Washington, D.C. 20250–0252. Comments may also be sent by fax to (202) 690–3732, by electronic mail to: john.vandyke@usda.gov, or filed via an on-line form through the AMS website at: http://www.ams.usda.gov/lsg/mprcomment.htm. State that your comments refer to Docket No. LS–99–18. Comments received may be inspected at the above location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays, or over the AMS website at: *http://www.ams.usda.gov/lsg/price.htm.*

Comments sent to the above location that specifically pertain to the information collection and recordkeeping requirements of this action should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: John E. Van Dyke, Chief, Livestock and Grain Market News Branch at (202) 720–6231, fax (202) 690–3732, or e-mail john.vandyke@usda.gov.

SUPPLEMENTARY INFORMATION:

Background

Market News

The current voluntary market news program for livestock is authorized under the provisions of the Agricultural Marketing Act of 1946, as amended (7 U.S.C. 1621 *et seq.*). In the Agricultural Marketing Act of 1946, Congress declared that a sound, efficient, and privately operated system for distributing and marketing agricultural products is essential. Furthermore, it is indispensable to the maintenance of full employment and to the welfare, prosperity, and health of the Nation. Agricultural products, capable of being produced in great abundance, must be marketed in an orderly manner and efficiently distributed. Some of the objectives of the Agricultural Marketing Act of 1946 are to improve marketing methods, reduce distribution costs, and narrow the price spread between the producer and consumer. Under the 1946 Act, the Market News Program provides for the collection and dissemination of information to facilitate the orderly and efficient marketing of agricultural products while aiding in the maintenance of farm income. Market News provides all market participants with the information necessary to make intelligent and informed marketing decisions.

Market News relies upon voluntary cooperation from the livestock, red meat, grain, and wool industry. In addition, Market News maintains voluntary working agreements with many States to cooperatively collect and disseminate market information. Market News reporters collect information daily by telephone, including talking directly with producers, packers, feedlot operators, retailers, distributors, brokers, and other industry participants. Reporters are on site at major auctions and terminal markets, gathering market information first hand. Regular trips are made to observe livestock in feedlots, on farms, ranches, and in packer holding pens. Meat packing and processing facilities are visited to observe current industry practices and conditions. Reporters attend industry meetings, seminars, and trade shows to keep abreast of the latest information. The information collected by reporters is included in reports that are available to all interested parties. These reports provide data on cattle, hog, sheep, and lamb sales, carlot meat sales of boxed beef, lamb, veal, and pork cuts, weekly wool and mohair sales, and grain and feed sales. Currently, there are a total of 800 individual reports which are released by Market News. Each day, the livestock and red meat industry uses these reports in conducting their business. Further, a wide range of users outside of and peripheral to the livestock and red meat industry depend on the information provided in these reports, including Federal and State governmental agencies, foreign governmental agencies, academia, analysts, and news media.

The Livestock Mandatory Reporting Act of 1999 (Act) was enacted into law on October 22, 1999 (Pub. L. 106–78; 113 Stat. 1188; 7 U.S.C. 1635–1636h) as an amendment to the Agriculture Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The Act provides for the mandatory reporting of market information by Federally inspected livestock processing plants which have slaughtered an average number of livestock during the immediately preceding 5 calendar years (125,000 for cattle and 100,000 for swine), including any processing plant that did not slaughter during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the plant's capacity. For entities that did not slaughter during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins

operations the AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

The Act gives the Secretary the latitude to provide for the reporting of lamb information. The Agricultural Marketing Service (AMS) is proposing in these regulations to require reporting of market information by Federally inspected lamb processing plants who have slaughtered an average of 75,000 head of lambs or processed an average of 75,000 lamb carcasses during the immediately preceding 5 calendar years. Additionally, a lamb processing plant that did not slaughter an average of 75,000 lambs or process an average of 75,000 lamb carcasses during the immediately preceding 5 calendar years will be required to report information if the Secretary determines the processing plant should be considered a packer based on its capacity. It is proposed that an importer of lamb that, for any calendar year, imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years report such lamb information as specified in these proposed regulations. Additionally, an importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years will be required to report information if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

These packers and importers would be required to report the details of all transactions involving purchases of livestock (cattle, swine, and lambs), lamb carcasses and lamb cuts, and the details of all transactions involving domestic and export sales of boxed beef cuts including branded product, sales of boxed lamb cuts, including branded product, and lamb carcasses to AMS. This information would be reported to AMS according to the schedule established by the Act and these regulations with purchases of swine reported three times each day, purchases of cattle and lambs reported twice each day, domestic and export sales of boxed beef cuts including branded boxed beef cuts reported twice each day, sales and purchases of lamb carcasses and boxed lamb cuts, including branded boxed lamb cuts, to be reported once daily, purchases of imported lamb carcasses, and sales and purchases of imported lamb cuts once weekly.

In some instances, mandatory reporting will provide new information which has never been reported under the existing voluntary reporting program. AMS anticipates that this information will provide the basis for newly published market news reports not previously provided for under voluntary reporting, including reports covering the prior day swine market, forward contract and formula marketing arrangement cattle purchases, packer-owned cattle and sheep information, sales and purchases of imported boxed lamb cuts, including branded product; purchases of imported lamb carcasses; and live lamb premiums and discounts. In other instances, mandatory reporting will provide information which is already being provided under voluntary reporting. This would include packer direct purchases of slaughter cattle, packer sales of boxed beef and lamb cuts including branded boxed cuts, packer sales of lamb carcasses, and packer negotiated purchases of swine. AMS anticipates that, in such cases, the market reports reflecting this information will continue to be published but the basis of the market reports will become mandatory information. Lastly, many voluntary-based market news reports will not be affected by mandatory reporting, including reports covering livestock auction sales, packer sales of pork cuts and byproducts, and grain trading.

Initially, AMS expects that mandatory information will be reflected in market news reports on a national level. AMS will start with the issuance of national reports to ensure the confidentiality is preserved regarding the identity of persons, including parties to a contract, and proprietary business information. In time, when and where possible, these reports may be further refined and subdivided to reflect regional and, possibly, statewide markets. AMS anticipates that it would provide notice in the **Federal Register** and opportunity for public comment in such an instance. Again, refinement and subdivision of reports will be made only where the confidentiality can be preserved regarding the identity of persons, including parties to a contract, and proprietary business information. In order to effectively address the statistical disclosure issues surrounding reporting of data elements below the national level, AMS will consult with appropriate experts in the field of statistical disclosure limitation during program development. During program development, AMS will also include industry participants in discussions regarding confidentiality issues surrounding data aggregation and reporting.

The program developed to collect and manage data received from those entities required to report will ensure security of data transmission and storage, and confidentiality of information that is maintained by AMS. During program development, AMS will include industry participants, as well as technical experts, in discussions regarding issues surrounding data security and confidentiality.

In all cases, AMS intends to continue to publish a mix of existing voluntary market reports along with the proposed mandatory market reports where duplication and inferential disclosure (disclosing information in such a way that the identity of a respondent can be inferred) is not an issue. Any duplication will be resolved with the discontinuation of the voluntary report version.

The Livestock Mandatory Reporting Act of 1999 (Act)

The Act establishes a program of information regarding the marketing of cattle, swine, lambs and products of such livestock. AMS is responsible for implementing the mandatory reporting of market information on livestock and livestock products, which is contained in Sections 211 through 256 of the Act. The Sections on mandatory reporting of livestock are divided into five Chapters. Chapter 1 and Chapter 2, Definitions and Administration, respectively, apply to all species of livestock and livestock products required to be reported. Chapters 3, 4, and 5 apply to beef, swine, and lamb, respectively, and except for lamb, establish the requirements for mandatory reporting. AMS is proposing regulations in this rulemaking to implement these sections of the Act.

The Act also directs the Secretary to encourage continued voluntary reporting by packers to which these mandatory reporting requirements do not apply. Other Agencies in the Department are responsible for implementing the remaining sections of the Act. These sections include the following provisions. Section 257 of the Act provides for the compilation and monthly publication of retail prices of beef, pork, lamb, chicken, turkey and veal and the initiation of a meat price spreads report. The Act also contains Related Beef Reporting Provisions, Sections 921 through 924 which provides for export certificates for meat and meat food products, and obtain information on imports of beef, beef variety meats, and cattle. Related Swine Reporting Provisions, Sections 931 through 934 calls for improving the hogs and pigs inventory report, the collection

of information on barrow and gilt slaughter, and the conduct of an average trim loss correlation study and preparation of report. Swine Packer Marketing Contracts, Sections 221 and 222 require the establishment and maintenance of a library or catalogue of swine packer marketing contracts offered to producers and a monthly report of contracted swine numbers.

Cattle

The Act requires that a cattle packer whose Federally inspected plant slaughtered an average of at least 125,000 cattle per year for the preceding 5 calendar years or did not slaughter cattle during the preceding 5 calendar years but is considered a packer based on plant capacity as determined by the Secretary, report market information to the Secretary. They are required to report the prices for each type of cattle purchase, categorized to clearly delineate imported from domestic market purchases, negotiated purchase, formula marketing arrangement, and forward contract, the quantity of cattle, categorized to clearly delineate imported from domestic market purchases, purchased on a live weight basis and a carcass basis, the weight, the quality grade, and premiums and discounts. This information would be reported twice a day not later than 10:00 a.m. and 2:00 p.m. Central Time. The Secretary will issue reports to the public of this information at least three times each day.

The Act further requires that a packer report marketing information not later than 9 a.m. Central Time on the first reporting day of each week for cattle bought by the type of purchase for the prior week. In addition, packers must report weekly information on the first reporting day not later than 9 a.m. Central Time for cattle purchased on a formula or contract marketing arrangement and slaughtered the prior week. The Secretary will issue a public report not later than 10 a.m. Central Time on the first reporting day of the current slaughter week.

The Act also mandates that the packer report information on boxed beef cut sales to the Secretary at least twice each reporting day not less frequently than once before and once after 12:00 noon Central Time. This information includes the price per hundredweight, the quantity in each lot of boxed beef cuts sold, information regarding the characteristics of each lot (i.e., domestic vs. export sale, USDA Quality Grade, etc.), the type of beef cut and the trim specification. The Secretary will report this information to the public twice each reporting day.

Swine

The Act requires that a swine packer whose Federally inspected plant slaughtered an average of at least 100,000 swine per year for the preceding 5 calendar years or did not slaughter swine during the preceding 5 calendar years but is considered a packer based on plant capacity as determined by the Secretary, report market information to the Secretary.

The packer must report to the Secretary not later than 7:00 a.m. Central Time information on all swine purchased, priced, or slaughtered on the prior business day. The packer must report all purchasing data including the number of swine purchased, swine scheduled for delivery and the base price and purchase data for slaughtered swine for which a price has been established. The information also includes all slaughter data by class for the total number of swine slaughtered including information concerning the net price, average net price, lowest net price, highest net price, average carcass weight, average sort loss, average backfat, average lean percentage, and total slaughter quantity. When a packer reports the average lean percentage and whenever the packer changes the manner in which the average lean percentage is calculated, the packer shall make available to the Secretary the underlying data, applicable methodology and formulae, and supporting materials used to determine the average lean percentage, which the Secretary will convert to the carcass measurements or lean percentage of the swine of the individual packer to correlate to a common percent lean measurement. Additionally, the information to be reported includes packer purchase commitments, which shall be equal to the number of swine scheduled for delivery to a packer for slaughter each of the next 14 calendar days.

The Secretary will publish the information in a prior day report not later than 8:00 a.m. Central Time on the reporting day on which the information is received from the packer.

The Act also requires packers to report to the Secretary in the morning not later than 10:00 a.m. Central Time and in the afternoon not later than 2:00 p.m. Central Time each reporting day. The information to be reported is the same for the morning and afternoon reports and includes an estimate of (1) the total number of swine purchased by each method of pricing, (2) the total number of swine purchased up until the time of reporting, and (3) the base price paid for all negotiated purchases of market hogs and the base price paid for each type of purchase of market hogs other than through a negotiated purchase. The Secretary will make the morning report available to the public not later than 11:00 a.m. Central Time and the afternoon report at 3:00 p.m. Central Time on each reporting day.

The Secretary will compile and issue a weekly noncarcass merit premium report on the first reporting day of the week not later than 5:00 p.m. Central Time. This report is prepared from information furnished to the Secretary by packers who must report not later than 4:00 p.m. Central Time on the first reporting day of the week. The information required includes each category of standard noncarcass merit premiums and the amount in dollars per hundred pounds of carcass weight paid to producers by the packer.

Further, the Act provides that the Secretary review the information required to be reported by packers at least once very two years. Also, the Act directs the Secretary to promulgate regulations that specify additional information to be reported by packers if the Secretary determines information currently reported does not accurately reflect the methods by which swine are valued or priced, or account for the fact that packers that slaughter a significant majority of the swine produced in the United States no longer use backfat or lean percentage factors as indicators of price.

Lamb

The Act gives the Secretary the authority to establish a mandatory lamb price reporting program that will provide timely, accurate, and reliable market information. The Secretary proposes to establish a mandatory lamb price reporting program.

The Act does not specify the requirements for establishing a mandatory lamb price reporting program as it does for cattle and swine. Accordingly, AMS proposes to establish a mandatory lamb price reporting program based upon its extensive knowledge of the lamb industry and market news reporting of lamb. The Agency proposes the following requirements for a mandatory lamb price reporting program.

A lamb packer whose Federally inspected plant slaughtered or processed an average of at least the equivalent of 75,000 lambs each year for the preceding 5 calendar years would report to the Secretary twice daily the price of each type of lamb purchase, negotiated purchase, formula marketing arrangements, forward contract, quantity of lamb purchased on live weight or carcass weight, a range and average estimated live weights, quality grade, premiums and discounts, state of origin, and estimated dressing percentage. The Secretary would issue a report to the public on this information not less than twice each day.

Lamb packers would be required to report to the Secretary on a weekly basis on the first reporting day of the week information from the prior week. This information would include the quantity and certain carcass characteristics of lambs purchased through a negotiated purchase, formula marketing arrangement or forward contract that were slaughtered, the quantity and carcass characteristics of packer owned lamb that were slaughtered. Reported information would include, by type of purchase, the quantity of lamb purchased on live weight and carcass weight basis that were slaughtered, the quality grade, premiums and discounts paid, dressing percentage, and shrink factor. In addition, a lamb packer would be required to report the quantity and basis level for forward contracts, the range and average of intended premiums and discounts, and the expected slaughter date.

The Secretary would make available to the public the information on the first reporting day of the current slaughter week.

Packers would report information on daily transactions of carcass lamb each reporting day and sales of boxed lamb cuts each reporting day. For transactions of carcass lamb, the information would include prices for sales, the type of sale, the branded product characteristics, the quantity of each sale, the USDA grade, trim specification, weight range, and delivery date. For sales of boxed lamb cuts, the packer would report the same information plus the quantity of boxes of each cut and the weight range of each cut. The Secretary will issue to the public a report on carcass lamb sales and boxed lamb cut sales once each reporting day.

For any calendar year, a lamb importer who imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years would report to the Secretary weekly the prices paid for imported lamb carcasses and boxed lamb cuts, and the prices received for imported lamb cuts sold on the domestic market. Additionally, an importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years would also be required to report the above information, if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

Lamb importers would be required to report weekly, prices paid for imported lamb carcasses during the prior week including the type of purchase, the quantity of each transaction, the estimated weight range of the carcasses, the product delivery date, and the product nation of origin. Lamb importers would be required to report weekly, prices paid for boxed lamb cuts during the prior week including the quantity of each transaction, the type of purchase, the cut of lamb, the trim specification, branded product characteristics, the cut weight range, the product delivery date, and the product nation of origin. Finally, lamb importers would be required to report weekly, prices received for sales of imported boxed lamb cuts sold on the domestic market during the prior week including the quantity of each transaction, the type of sale, the branded product characteristics, the cut of lamb, the trim specification, the cut weight range, the product delivery date, and the product nation of origin.

Other Provisions of the Act Involving Administration

The administrative provisions of the Act set forth the requirements for maintaining confidentiality regarding the packer reporting of proprietary information and lists the conditions under which Federal employees can release such information. These administrative provisions also establish that the Secretary can make necessary adjustments in the information reported by packers and take action to verify the information reported, and directs the Secretary to report and publish reports by electronic means to the maximum extent practical. The Act provides for what constitutes violations of the Act, such as failure to report the required information on time or failure to report accurate information.

The section on enforcement establishes a civil penalty—$10,000—for each violation and provides for the Secretary's issuance of cease and desist orders. This section also provides for notice and hearing of violations before the Secretary, judicial review, issuance of an injunction or restraining order, and establishes a civil penalty for failure to obey a cease and desist order.

The fees section directs the Secretary to not charge or assess fees for the submission, reporting, receipt, availability, or access to published reports or information collected through this program.

The section on recordkeeping requires each packer to make available to the Secretary on request for 2 years the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock and livestock products, as well as such records or other information that is necessary or appropriate to verify the accuracy of information required to be reported. Also, the Act provides that reporting entities would not be required to report new or additional information that they do not generally have available or maintain, or the provisions of which would be unduly burdensome.

Further, the Act provides that the Secretary may suspend any requirement if the Secretary determines that the application of the requirement would be inconsistent with the Act.

Proposed Rule, New Part 57 of Title 7

This proposed rule would establish and add a new Part 57 to Title 7 of the Code of Federal Regulations, implementing the mandatory livestock reporting provisions of the Act. Accordingly, these regulations include appropriate definitions; a description of which entities would be required to report market information; a description of what information they would report, when they would report, and how they would report; a description of what information the Secretary would make available to the public and when this information would be made available; an explanation of what records would be required to be maintained and made available to the Secretary.

General Provisions

Part 57 would implement the provisions of the Act. Subpart A of Part 57, General Provisions, covers those requirements pertinent to all aspects of mandatory reporting. Section 57.10 details how packers and importers would be required to report information and how reporting will be handled over weekends and holidays. Electronic reporting would be required for all information collection. Electronic reporting would involve the transfer of data from a packer's or importer's existing electronic recordkeeping system to a centrally located AMS electronic database. The packer or importer would be required to organize the information in an AMS-approved format before electronically transmitting the information to AMS.

Once the required information has been entered into the AMS database, it would be aggregated and processed into various market reports which would be released according to the daily and

weekly time schedule set forth in these proposed regulations.

Section 57.11 identifies the recordkeeping requirements imposed by the Act and these regulations on packers and importers. Reporting packers and importers would be required to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. In addition, they would be required to maintain such records or other information as is necessary or appropriate to verify the accuracy of the information required to be reported under these regulations. All of the above mentioned paperwork must be maintained by packers and importers for at least 2 years. Further, packers would be required to maintain a record of the time of day a lot of cattle, swine, or lambs was purchased, either before 10:00 a.m. Central Time, between 10:00 a.m. and 2:00 p.m. Central Time, and after 2:00 p.m. Central Time. However, to allow packers and importers time to collect, assemble and submit the information to AMS by the prescribed deadlines, all covered transactions up to within one half hour of the specified reporting times would be reported.

Lastly, under Subpart A, Section 57.20 establishes general definitions of terms used throughout the regulations which would be applicable to all subparts.

Cattle

Subpart B of Part 57 states what is required to be reported in the cattle and boxed beef sectors. Section 57.100 establishes definitions of cattle terms used in Subpart B including the definition of packer which identifies which entities would be required to report under this proposed rule. In any calendar year, the term cattle packer includes any Federally inspected cattle plant which slaughtered an average of 125,000 head of cattle a year for the immediately preceding 5 calendar years. Additionally, the term includes any processing plant that did not slaughter cattle during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on its capacity.

For entities that did not slaughter cattle during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations the AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

Section 57.101 discusses the daily reporting requirement for live cattle transactions including what information would be reported, when it would be reported, and when it would be published. Cattle plants covered under the rule would report the details of their cattle purchases twice each day to AMS (once by 10:00 a.m. Central Time, and once by 2:00 p.m. Central Time) and would include all covered transactions made up to within one half hour of the specified reporting time. Packers completing transactions during the one half hour prior to the previous reporting time would report those transactions at the next prescribed reporting time. The Secretary would publish the information not less than three times each day. Section 57.102 discusses the same types of requirements for weekly live cattle reporting. Packers would be required to report information regarding the prior slaughter week on the first reporting day of each week by 8:00 a.m. Central Time. This information would be published by the Secretary on the same day by 10:00 a.m. Central Time. Finally under Subpart B, Section 57.103 details the information required to be reported concerning sales of boxed beef cuts including what would be reported, when it would be reported, and when it would be published. Cattle plants producing boxed beef cuts would be required to report their domestic and export sales of boxed beef cuts including branded boxed beef cuts to AMS twice each reporting day, once by 10:00 a.m. Central Time and once by 2:00 p.m. Central Time, including all covered transactions made up to within one half hour of the specified reporting time. Cattle plants completing transactions during the one half hour prior to the previous reporting time would report those transactions at the next prescribed reporting time. This information would be published twice each day by the Secretary. These plants would be required to reference the USDA's Livestock and Seed Program Institutional Meat Purchase Specifications (IMPS), Fresh Beef Series 100.

Swine

Subpart C of Part 57 lists the requirements of swine reporting beginning with Section 57.200 which establishes definitions for terms used throughout the subpart including the definition of packer which identifies which entities would be covered under the regulations. In any calendar year, the term swine packer includes any Federally inspected swine plant which slaughtered an average of 100,000 head of swine a year for the immediately preceding 5 calendar years. Additionally, the term includes any processing plant that did not slaughter swine during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on its capacity.

For entities that did not slaughter swine during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations, the AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

Section 57.201 discusses the daily reporting requirement for live hog transactions including what information would be reported, when it would be reported, and when it would be published.

Swine packers required to report under this rule would report the details of their swine purchases three times each day including a prior day report not later than 7:00 a.m. Central Time, a morning report not later than 10:00 a.m. Central Time, and an afternoon report not later than 2:00 p.m. Central Time, including all covered transactions made up to within one half hour of each specified reporting time. Packers completing transactions during the one half hour prior to the previous reporting time would report those transactions at the next prescribed reporting time. This information would be published by the Secretary each reporting day not later than 8:00 a.m. Central Time, 11:00 a.m. Central Time, and 3:00 p.m. Central Time, respectively. Section 57.202 details the requirements for reporting weekly swine information to AMS including what would be reported, when it would be reported, and when it would be published. On the first reporting day of each week, not later than 4:00 p.m. Central Time, packers would be required to report information on noncarcass merit premiums used and paid to producers during the prior slaughter week by category. This information would be published on the first reporting day of each week not later than 5:00 p.m. Central Time.

Lamb

Subpart D of Part 57 covers the mandatory reporting of lambs. The Act gives the Secretary the authority to establish a mandatory lamb price reporting program but does not set forth the requirements. AMS proposes to establish a mandatory lamb price reporting program.

Section 57.300 provides definitions for terms used throughout Subpart D including definitions for packer and for importer which identifies which entities would be required to report under this proposed rule. For any calendar year, the term lamb packers includes any Federally inspected lamb plant which slaughtered or processed the equivalent of an average of 75,000 head of lambs a year for the immediately preceding 5 calendar years. Additionally, the term includes any processing plant that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the capacity of the processing plant.

For entities that did not slaughter lambs during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations the AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations.

For any calendar year, the term lamb importer includes any importer that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years. Additionally, for any calendar year, the term importer includes any lamb importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

For importers of lamb carcasses and cuts, AMS will annually review import lamb volume data obtained from the United States Customs Service to determine which importers are required to report imported lamb carcasses and boxed lamb cut purchase information and boxed lamb cut sales information under these regulations.

Entities covered under the 75,000 per year provision represent nearly all lamb packers and processors which currently contribute to voluntary reporting. The lamb packer definition varies from that of the cattle and swine definitions in that it includes entities that process as well as slaughter. The trading of lamb carcasses continues to be a mainstay of the industry and many of the major processors of lamb carcasses into boxed lamb cuts do not slaughter but, rather, purchase carcasses from slaughterers. The 75,000 head per year provision for both slaughterers and processors was included to ensure more comprehensive coverage of the lamb carcass and boxed lamb cut markets, similar to what is currently being reported under voluntary reporting.

Because imported products comprise 31% of the U.S. market, lamb importers were included for more complete information on lamb meat products being imported into the U.S., including the types, quantities, and prices of these products.

Section 57.301 covers the daily reporting requirements for live lamb transactions including what would be reported, when it would be reported, and when it would be published. Lamb plants covered under the rule would report the details of their live lamb purchases twice each day to AMS, to include all covered transactions made up to within one half hour of the specified reporting time. Lamb plants completing transactions during the one half hour prior to the previous reporting time would report those transactions at the next prescribed reporting time. The Secretary would publish this information not less than twice each day. Section 57.302 covers the same type of information for weekly reporting of live lamb transactions. Packers would be required to report information regarding the prior slaughter week on the first reporting day of each week to be published by the Secretary on the same day. Finally, Section 57.303 covers the reporting requirements for transactions of domestic and imported lamb carcasses and boxed lamb cuts including what would be reported, when it would be reported, and when it would be published. Packers would be required to report details of their domestic transactions of carcass lambs once each day and the Secretary would publish the information once each day. Packers would be required to report details of their domestic sales of boxed lamb cuts, including branded product. This information would be published once each day. These plants would be required to reference the USDA's Livestock and Seed Program Institutional Meat Purchase Specifications (IMPS), Fresh Lamb and Mutton Series 200.

Importers of lamb carcasses would be required to report the required information of their prior week imported lamb carcass purchases on the first reporting day of each week to be published by the Secretary on the same day. Importers of boxed lamb cuts would be required to report the required information of their prior week imported boxed lamb cut purchases including branded product on the first reporting day of each week to be published by the Secretary on the same day. Additionally, importers of boxed lamb cuts would be required to report details of their prior week sales of imported boxed lamb cuts on the domestic market including branded product on the first reporting day of each week to be published by the Secretary on the same day.

OMB Control Numbers

Lastly, Subpart E of Part 57 covers the OMB control numbers for the information collection requirements listed in Subparts B through D of Part 57. All required information must be reported to AMS in a standardized format. The standardized format is embodied in 16 OMB-approved data collection forms. Copies of these 16 forms are included in Appendices at the end of this rule. Cattle packers would utilize six of these forms (Appendix A) when reporting information to AMS including two for daily cattle reporting, three for weekly cattle reporting, and one for daily boxed beef cuts reporting. Swine packers would utilize three forms (Appendix B), two for daily reporting of swine purchases and one for weekly reporting of non-carcass merit premium information. Lamb packers would utilize seven of these forms (Appendix C) when reporting information to AMS including two for daily lamb reporting, three for weekly lamb reporting, one for daily and weekly boxed lamb cuts reporting and one for daily and weekly lamb carcass reporting. Lamb importers would utilize two of these forms when reporting information to AMS including one for reporting weekly imported lamb carcass and one for reporting weekly imported boxed lamb cut purchases and sales.

Executive Order 12866

Although not economically significant, this rule has been determined to be significant for the purposes of Executive Order 12866, and therefore, has been reviewed by the Office of Management and Budget (OMB). Regulations must be designed in the most cost-effective manner possible to obtain the regulatory objective while imposing the least burden on society. AMS has prepared a Regulatory Impact Assessment (RIA) consisting of a statement of the need for the proposed action, an examination of alternative approaches, and an analysis of the benefits and costs. A complete analysis of the number of affected entities and the required volume of reporting is discussed under the Paperwork Reduction Act section following this section.

Need for Proposed Action

As stated in the background section, currently, packers are not required to report prices or the terms of sale for the animals they buy from producers. Rather, AMS collects information on daily sales and price information from packers and others on a voluntary basis. However, in recent years more animals are now being transacted under marketing arrangements where neither the arrangements nor the final purchase prices are publicly disclosed. While some of these marketing arrangements are using publicly reported prices as a base, many use the base price plus a premium and a premium/discount schedule depending upon the quality of the carcass. Current market price reports do not capture these pricing mechanisms.

Likewise, importers of lamb carcasses and cuts are not required to report purchases and sales of such imported products.

In recent years, the livestock industry has undergone fundamental changes due to economies of size at both the producer and packer level. These changes are reflected in the structure and marketing practices used today. Today, four firms slaughter about 80 percent of all fed cattle, about 55 percent of all hogs, and about 80 percent of all lambs. On the producer side, about 105 feedlots account for about 39 percent of feedlot cattle marketings, the remaining 104,000 feedlots account for 61 percent of the marketings. About 2,005 hog operations control about 47 percent of the hog inventory and the remaining 90,000 farms hold 53 percent. To assure the packers consistent quantities and quality of animals, many of the larger producers, often at a premium price, will enter into private marketing agreements with the packers. The packer is assured of larger lots, scheduled delivery, and consistent quality animals yielding meat with characteristics desired by consumers. The producer gets a higher price than in the traditional open markets and reduced transaction costs.

Rather than buy and sell on the open market, many large slaughtering firms increasingly feed their own animals or utilize private marketing arrangements, such as forward contracts, formula pricing, and exclusive purchase agreements—for which prices and terms of sale are not publicly disclosed. The procurement methods make it difficult for producers, particularly smaller ones, who utilize open cash markets or wish to consider alternative marketing arrangements, to determine the actual purchase prices of livestock.

Most major packers provide information daily to Market News on cash prices and total numbers of livestock involved in transactions. This does not provide full coverage of animals purchased. Market News estimates that 60–65 percent of all slaughter steer and heifer transactions, 25 percent of slaughter hog transactions, and 60 percent of all slaughter lamb transactions are reported daily through the voluntary process. The remaining 35–40 percent of cattle transactions, 75 percent of the hog transactions, and 40 percent of the lamb transactions, which are not reported voluntarily, represent private marketing arrangements. As private marketing agreements become more prevalent, the number of reported transactions will further shrink and the accuracy and completeness of the information for U.S. marketings will erode.

Various groups have asked for mandatory price reporting of livestock products, arguing that fewer publicly reported marketing arrangements make it difficult for producers to determine the actual prevailing purchase prices of livestock. The pressure for mandatory reporting has steadily increased in recent years, though prior attempts to pass mandatory reporting legislation have been unsuccessful, largely due to a lack of broad, unified support from the industry. Over the past couple of years, reported price levels for cattle, hogs, and lambs have run below the 5-year average leading some to argue that it was due to market forces of supply and demand or lower quality animals in the cash market. In the fall of 1998, slaughter plants operated at full capacity and reported cash hog prices reached a 30 year low. During this period, producers and policy officials were looking for accurate and timely market information to guide their decisions. A true hog price picture eluded them as a large amount of unreported transactions kept market news from being able to report the actual purchase price of hogs.

Private marketing arrangements or otherwise coordinated agreements between hog producers and slaughter plants are increasingly the norm. As a result, spot-market demand for slaughter hogs is greatly influenced by slaughter capacity utilization. When the available supply of slaughter hogs exceeds the designed plant capacity, slaughter costs rise as packers turn to overtime labor. To compensate for sharply higher labor costs, slaughter plants lower their bids for slaughter hogs on the public cash markets. This reduces demand for the uncontracted supply of slaughter hogs and is reflected in sharply lower spot market cash prices. This was the situation in late 1998.

Many market participants were no longer able to obtain the actual purchase prices of hogs on which to base their marketing decisions. Even the large farm producers were unable to evaluate contracts because of the unknown premium/discount schedules, which may be different in each marketing agreement. These circumstances helped to galvanize industry support for mandatory reporting and industry groups worked throughout the latter half of 1999 to fashion a mandatory reporting proposal.

During the same time period, the General Accounting Office (GAO) was requested by members of Congress to conduct a study on USDA's pork price reporting system. The study found that USDA's current methods for reporting farm and retail prices did not accurately reflect actual prices for all methods of purchase. During periods of plentiful hog supplies, packers frequently pay a lower price for hogs procured through the spot market than those procured by contract. However, the study did point out spot market hogs are of generally lower quality and more variable in weight and availability which may explain why packers are willing to pay a premium for a stable flow of hogs with consistent quality and weights.

Ultimately, Congress passed the Livestock Mandatory Reporting Act of 1999 (Act) which seeks to provide more transparency in the price discovery process and, thereby, to encourage competition in the marketplace for livestock and livestock products. By mandating reporting, the Act seeks to provide more market information to all market participants. These proposed regulations would implement the Act. It would require packers to provide to Market News the terms of all their livestock purchases, including those obtained through private marketing arrangements. Moreover, it would require processors of boxed beef and lamb cuts, breakers of lamb carcasses, and importers of lamb carcasses and boxed lamb cuts to report all transactions.

In some instances, mandatory reporting will provide new information which has never been reported under the existing voluntary reporting program. AMS anticipates that this information will provide the basis for newly published market news reports not previously provided for under voluntary reporting, including reports covering the prior day swine market, forward contract and formula marketing arrangement cattle purchases, packer-owned cattle and sheep information, sales and purchases of imported boxed lamb cuts, including branded product; purchases of imported lamb carcasses; and live lamb premiums and discounts. In other instances, mandatory reporting will provide information which is already being provided under voluntary reporting. This would include packer direct purchases of slaughter cattle, packer sales of boxed beef and lamb cuts including branded boxed cuts, packer sales of lamb carcasses, and packer negotiated purchases of swine. AMS anticipates that, in such cases, the market reports reflecting this information will continue to be published but the basis of the market reports will become mandatory information. Lastly, many voluntary-based market news reports will not be affected by mandatory reporting, including reports covering livestock auction sales, packer sales of pork cuts and byproducts, and grain trading. Collectively, the new mandatory information and the current voluntary information will provide more transparency in the price discovery process and, thereby, encourage competition in the marketplace for livestock and livestock products.

Alternatives

As required by E.O. 12866, various methods were considered by which the objectives of the rule could be accomplished. Most private marketing reporting services rely on basic AMS livestock prices and organize the data in a particular way for a client. Further, the Act directs the Secretary to, the maximum extent practicable, provide for the reporting and publishing of information by electronic means. However, in developing these proposed regulations AMS did consider other means by which the objectives of this proposed rule could be accomplished, including reporting the required information by telephone, facsimile, and regular mail. AMS believes these alternatives are not capable of meeting the program objectives, especially timely reporting. The Act prescribes specific times that reporting entities must report to AMS. Similarly, the Act prescribes specific times for publication of a report by AMS. AMS believes electronic submission to be the only method capable of allowing for AMS to collect, aggregate and publish reports while complying with the specific time-frames set forth in the Act. AMS believes it would not be possible for the Agency to receive information over the telephone, facsimile or regular mail and then transcribe the information into electronic format before aggregating and publishing the information while still complying with the publication time-frames set forth in the Act. However, AMS may provide for an exception to electronic reporting in emergencies or in cases when an alternative is agreeable to AMS and the reporting entity. The major cost of complying with this proposed rule involves the information collection and reporting process. The information collection and reporting process is explained in the Summary of Costs Section and is referenced in Section 57.10(f) Reporting Methods. We are inviting comments concerning both the potential cost burden and methods for expediting information collection. In particular, we are interested in any costs not discussed in the analysis and any additional electronic reporting methods that may provide greater cost efficiencies to the industry as a whole. A complete discussion of the cost analysis can be found in the summary of costs section.

Summary of Benefits

Many producers contend that they cannot obtain the market information needed to easily and quickly compare marketing possibilities available from different packers. This information is needed for producers to devise a marketing strategy that obtains the best possible prices for their livestock. Private advisory services would be able to provide a more in depth analysis to clients about alternative marketing strategies. In addition, producers selling under a private marketing agreement need benchmark prices and terms to evaluate their particular agreement to assure an equitable price for their livestock. Furthermore, the growth of private marketing arrangements in the red meat industry and declining participation in the public markets make it difficult for producers to determine prevailing market prices. Mandatory reporting would require packers to provide USDA all terms of their marketing contracts.

The implementation of this proposed rule would improve the price and supply reporting services of the USDA. In addition, participants in the marketplace for livestock and livestock products would be able to easily monitor price and market conditions. The price discovery process would become more transparent ensuring equal market information access for all participants. The increased transparency would more clearly transmit market signals about qualities first buyers demand thereby rewarding producers who produce animals that yield the meat consumers desire with a higher price. The increase in the quantity and quality of available market information would encourage competition in the marketplace while providing participants with the ability to make more informed marketing decisions.

Although quantities and prices of production inputs are obtained by surveys and production costs are derived, the question remains as to how to value the output in a complex marketing environment. Producers would benefit from the increase in information brought about by mandatory reporting by being able to consider more detailed market reports and previously unavailable data on non-cash market livestock procurements. These reports would better reflect the overall supply and demand situation of the marketplace and would allow producers to better determine prevailing market prices, conditions, and arrangements pertinent to the marketing process.

Summary of Costs

The proposed regulations have been designed to achieve the regulatory objectives in as cost-effective manner as possible. To the extent practicable, they draw upon current industry practices in order to minimize the burden to the industry. The regulatory objective is to increase the amount of information available to participants in the marketplace for livestock and livestock products by mandating reporting of market information by certain members of the industry. Methods of accomplishing the required information collection in the most timely manner while minimizing the opportunity for errors and maximizing existing systems and processes were contemplated. Electronic transfer of data from the reporting entity to the Agency was chosen as the least cost reporting method to accomplish all of the objectives of mandatory information collection.

AMS considered other alternatives for firms lacking electronic data transfer capabilities, such as faxing the required information to a Market News office for hand data entry. This was rejected because of the costs to both the respondent and to AMS, the amount of time required with this alternative is unworkable given the short time-frames required for public dissemination. However, there would be an exception in emergencies or in cases when an alternative method is agreeable to AMS and the reporting entity.

Electronic data transmission of information is accomplished using an interface with an existing electronic record keeping system. In most cases, the information packers and importers

are required to report already exists in internal computerized record keeping systems. Packers and importers would provide for the translation of the information from their existing electronic recordkeeping system into the required AMS standardized format. Once accomplished, the information would be electronically transmitted to AMS where it would be automatically loaded into an AMS database. We estimate that the cost in terms of time and money for this alternative is in the initial creation of the interface. We estimate that the creation of this interface by in-house computer personnel would require an industry average of 15 hours per respondent. Further, we estimate the cost per hour to average $50.00 for a total cost, on average, of $750.00. Those companies not having in-house computer personnel would incur such costs as are necessary to bring in outside computer programmers to accomplish the task. The Agency would estimate this cost to be from $750.00 to $1,000.00.

The respondent reporting costs vary widely by species and the size of lots purchased. Section 251 (c) General Provisions Reporting by Packers requires packers to report all information required under this subtitle on an individual lot basis. Therefore, larger lots bought by the larger packers would result in a lower reporting cost per head slaughtered. Respondent reporting costs of cattle packers are estimated to be $7,420 per plant, $5,308 for hog packers, $6,042 for sheep slaughtering plants, and $2,404 for lamb importers. Using 1998 federally inspected slaughter data; the cost per animal slaughtered would decline as slaughter volume increased. The smaller cattle packers would have the highest reporting cost per head slaughter, while the largest hog slaughtering firms would have the lowest. Based on a preliminary analysis by specie, cost for cattle would be 0.012 dollars per head, swine 0.002 dollars per head, sheep 0.013 dollars per head, and lamb importers 0.097 dollars per metric ton. Comments on costs are requested, particularly as they relate to size of operation are being sought. See Table 1 Respondent Cost.

TABLE 1.—RESPONDENT COST

Size Group	Plants	Head (1,000)	Respondent cost dollars	Cost per head dollars
Respondent cost per head slaughtered, Cattle 1998				
1–124,999 (Exempted)	746	3480.4	0	0
125,000–199,999	7	1,365.5	50,449	0.036945
200,000–299,999	11	2,695.8	79,277	0.029408
300,000–499,999	8	3,335.6	57,656	0.017285
500,000–999,999	9	5,856.6	64,863	0.011075
1,000,000–1,499,999	11	13,245.7	79,277	0.005985
1,500,000+	3	4,673.6	21,621	0.004626
Total (Subject to regulation)	49	31,172.8	353,143	0.011329
Respondent cost per head slaughtered, Hogs 1998				
1–99,999 (Exempted)	704	3,526.9	0	0
100,000–249,999	12	2,006.1	39,936	0.019907
250,000–499,999	4	1,367.7	13,312	0.009733
500,000–999,999	5	3,304.7	16,640	0.005035
1,000,000–1,499,999	3	4,396.5	9,984	0.002271
1,500,000–1,999,999	7	12,469.3	23,296	0.001868
2,000,000–2,999,999	11	24,333.3	36,608	0.001504
3,000,000–3,999,999	4	14,403.2	13,312	0.000924
4,000,000+	7	33,074.6	23,296	0.000704
Total (Subject to regulation)	53	95,355.4	176,384	0.001850
Respondent cost per head slaughtered, Sheep, 1998				
1–74,999 (Exempted)	548	594.2	0	0
75,000–499,999	6	1,614.3	29,232	0.018108
500,000+	2	1,448.8	9,744	0.006726
Total (Subject to regulation)	8	3063.1	38,976	0.012724

Respondent cost per metric ton (MT) imported, Lamb and mutton, 1998

Size Group	Importers	Metric tons imported	Respondent cost dollars	Cost per ton dollars
Under 5,000 MT (Exempted)	371	6,684.3	0	0
5,000 MT and over	5	26,738.4	2,600	0.097238429
Total (Subject to regulation)	5	26,738.4	2,600	0.097238429

In addition to these costs to packers for submitting information, the mandatory price reporting program will cost approximately $4.7 million in FY 2000 and $5.9 million in FY 2001. In order to implement the program in FY 2000, AMS is hiring additional staff, issuing regulations, and setting up an electronic database to capture data and develop reports to begin in July. The 56 staff years required to administer and produce high quality mandatory price reports include reporters, auditors, clerical personnel, and computer specialists. These employees will be located in three AMS offices located across the country. Salary-related costs in FY 2001 are estimated at $3.5 million. Other costs include approximately $600 thousand for travel and transportation; $600 thousand for miscellaneous costs such as office space, utilities, communications costs, printing, reimbursements to cooperating States, training, and office supplies; $200 thousand for equipment, including computers, software, and licenses; and $1 million for a computer systems contract to develop the database required to manage the data.

Executive Order 12988

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform, and is not intended to have retroactive effect. States and political divisions of States are specifically preempted by section 259 of the Act from imposing requirements in addition to, or inconsistent with, any requirements of the Act with respect to the submission or publication of information on the prices and quantities of livestock or livestock products. Further, the Act does not restrict or modify the authority of the Secretary to administer or enforce the Packers and Stockyards Act, 1921 (7 U.S.C. 181 et seq.); administer, enforce, or collect voluntary reports under the Act or any other laws; or access documentary evidence as provided under sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50). There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Civil Rights Review

AMS has considered the potential civil rights implications of this rule on minorities, women, or persons with disabilities to ensure that no person or group shall be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or family status. This included those persons who are employees of those entities required to participate and those individuals who wish to use information collected by this proposed mandatory program of information regarding the marketing of cattle, swine, lambs, and products of such livestock. This proposed rule does not require affected entities to relocate or alter their operations in ways that could adversely affect such persons or groups. Further, this proposed program would not exclude from participation any persons or groups, deny any persons or groups the benefits of the program, or subject any persons or groups to discrimination.

Executive Order 13132

This proposed rule has been reviewed under Executive Order 13132, Federalism. This Order directs agencies to construe, in regulations and otherwise, a Federal statute to preempt State law only when the statute contains an expressed preemption provision. This proposed rule is required by the Livestock Mandatory Reporting Act of 1999. Section 259 of the Act, Federal Preemption, states, "In order to achieve the goals, purposes, and objectives of this title on a nationwide basis and to avoid potentially conflicting State laws that could impede the goals, purposes, or objectives of this title, no State or political subdivision of a State may impose a requirement that is in addition to, or inconsistent with, any requirement of this subtitle with respect to the submission or reporting of information, or the publication of such information, on the prices and quantities of livestock or livestock products.

For a number of years, States have operated programs of voluntary market reporting of livestock and livestock products. Many of these programs have been operated in conjunction with the USDA through Federal-State agreements. Under these agreements, the USDA and the States work cooperatively to gather and disseminate information on the livestock markets within the State. Until now, all of these programs have been based on voluntary reporting of market information. The Act and these proposed regulations are not intended to have an effect on any voluntary market reporting programs currently being operated by the States.

However, recently, several States have enacted legislation mandating, to various degrees, the reporting of market information on transactions of cattle, swine, and lambs conducted within that particular State. Currently, this includes the States of Iowa, Minnesota, Missouri, Nebraska, and South Dakota. Of these, only Minnesota and South Dakota are collecting mandated market information.

Section 259 of the Act, preempts States from imposing mandatory reporting requirements that are in addition to or inconsistent with any requirement of this proposed rule with respect to the collection and publication of information on the prices and quantities of livestock and livestock products. This preemption clause would affect all mandatory reporting programs currently in effect by the States and the implementation of any mandatory reporting programs currently developed, in the process of being developed, or that may be developed at a later date.

With regard to consultation with States, AMS has made sure that the States are aware of the Act and AMS has engaged in formal and informal discussions regarding the implications of Federal livestock mandatory reporting with those States which either currently have mandatory reporting programs or are in the process of developing mandatory reporting programs. Further, States and local jurisdictions are expressly invited to comment on this proposal as it relates to the operation of State livestock and livestock products reporting programs.

Regulatory Flexibility Act

In General

This proposed rule has been reviewed under the requirements of the Regulatory Flexibility Act (RFA)(5 U.S.C. 601 *et seq.*). The purpose of the RFA is to consider the economic impact of a proposed rule on small business entities. Alternatives, which would accomplish the objectives of the rule without unduly burdening small entities or erecting barriers that would restrict their ability to compete in the marketplace, have been evaluated. Regulatory action should be appropriate to the scale of the businesses subject to the action. The proposed collection of information is necessary for the proper performance of the functions of AMS concerning the mandatory reporting of livestock information. The Livestock Mandatory Reporting Act of 1999 requires AMS to collect and publish livestock market information. The required information is only available directly from those entities required to report under the Act and by these proposed regulations and exists nowhere else. Therefore, this proposed rule does not duplicate market information reasonably accessible to the Agency.

In formulating this proposed rule, particular consideration was given to reducing the burden on entities while still achieving the objectives of the proposed regulation. Accordingly, thresholds were set which defined those entities which would be required to report information on purchases of live cattle, swine, lambs, lamb carcasses, and boxed lamb cuts including branded product, as well as information on domestic and export sales of boxed beef cuts including branded product, and sales of lamb carcasses, boxed lamb cuts

including branded product, and imported boxed lamb cuts including branded product.

In any calendar year, only Federally inspected cattle plants which slaughtered an average of 125,000 head of cattle a year for the immediately preceding 5 calendar years are required to report. Additionally, any cattle plant that did not slaughter cattle during the immediately preceding 5 calendar years would be required to report if the Secretary determines that the plant should be considered a packer based on its capacity. For entities that did not slaughter cattle during the immediately preceding 5 calendar years, such as a new plant or existing plant that begins operations the AMS will project the plant's annual slaughter or production based upon the plant's estimate of annual slaughter capacity to determine which entities meet the definition of a packer as defined in these regulations. This accounts for approximately 49 out of 795 cattle plants or 6.2% of all Federally inspected cattle plants.

For any calendar year, any Federally inspected swine plant which slaughtered an average of 100,000 head of swine a year for the immediately preceding 5 calendar years would be required to report information. Additionally, any swine plant that did not slaughter swine during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the capacity of the processing plant would be required to report. This accounts for approximately 50 out of 757 swine plants or 6.6% of all Federally inspected swine plants.

In any calendar year, Federally inspected lamb plants which slaughtered the equivalent of an average of 75,000 head of lambs a year for the immediately preceding 5 calendar years would be considered a packer and required to report. A packer includes a processing plant that purchases and processes an average of 75,000 lamb carcasses annually rather than slaughter live lambs. Additionally, any processing plant that did not slaughter an average of 75,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the plant should be considered a packer based on the capacity of the processing plant would be required to report.

For any calendar year, lamb importers that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years would be required to report. Additionally, lamb importers that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years if the Secretary determines that the person should be considered an importer based on the volume of lamb imports would be required to report. Some lamb plants may also be importers. This accounts for approximately 16 out of 556 lamb plants and importers or 2.9% of all Federally inspected lamb plants and importers.

Fully 93.8% of all cattle, 93.4% of all swine, and 97.1% of all lamb plants in the U.S. would be exempted by this proposed rule from reporting information.

Accordingly, we also have prepared an initial regulatory flexibility analysis. The RFA compares the size of meat packing plants to the Standard Industrial Code (SIC) to determine the percentage of small businesses within the meat packing industry. Under these size standards, meat packing companies with 500 or less employees are considered small business entities.

Objectives and Legal Basis

The objective of this proposed rule is to improve the price and supply reporting services of the Department of Agriculture in order to encourage competition in the marketplace for livestock and livestock products by increasing the amount of information available to participants. This is accomplished through the establishment of a program of information regarding the marketing of cattle, swine, lambs, and products of such livestock as specifically directed by the Act and these proposed regulations, as described in detail in the background section.

Estimated Number of Small Businesses

This proposed rule provides for the mandatory reporting of market information by livestock packers who for any calendar year have slaughtered a certain number of livestock during the immediately preceding 5 calendar years. This number is 125,000 head per year for cattle and 100,000 head per year for swine. Lamb plants required to report include those that for any calendar year slaughter or process the equivalent of 75,000 head per year during the immediately preceding 5 calendar years. Additionally, for any calendar year lamb importers that imported an average of 5,000 metric tons of lamb meat products per calendar year during the immediately preceding 5 calendar years are also required to report details of their purchases. For cattle and swine processing plants that have not slaughtered livestock during the immediately preceding 5 calendar years are also required to report if the Secretary determines that the plants should be considered packers based on their capacity. Additionally, lamb packers and lamb meat processors and importers that did not slaughter or process the equivalent of 75,000 head per year or import 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years would be required to report if the Secretary determines that they should be considered an importer based on their volume of lamb imports.

These packers and importers would be required to report the details of all transactions involving purchases of livestock, of lamb carcasses, and of import lamb carcasses and boxed lamb cuts including branded boxed lamb cuts; and the details of all transactions involving domestic and export sales of boxed beef cuts including branded product, and sales of domestic boxed lamb cuts including branded product, imported boxed lamb cuts including branded product and lamb carcasses to AMS. Cattle and swine information would be reported to AMS according to the schedule directed by the Act and these proposed regulations with purchases of swine reported three times each day, purchases of cattle twice each day, and sales of domestic and exported boxed beef cuts, including branded product, reported twice each day. Lamb information would be reported to AMS according to the schedule mandated by these proposed regulations with purchases of lambs reported twice each day and sales and purchases of lamb carcasses reported once each day. Previous week purchases of imported lamb carcasses and boxed lamb cuts including branded boxed lamb cuts would be reported once weekly on the first reporting day of the week and sales of imported boxed lamb cuts including branded boxed lamb cuts would be reported once weekly on the first reporting day of the week.

The SIC size standard classifies a small business in the meat packing industry as a company with less than 500 employees. Although it is common in the red meat industry for larger companies to own several plants, some of which may employ less than 500 people, those companies and lamb importers with a total slaughter plant employment at all locations of less than 500 are considered to be small businesses for the purposes of this proposed rule even though individual plants are mandated to report as provided by the Act and these proposed regulations.

For any calendar year, Federally inspected beef plants required to report include those that slaughtered an average of 125,000 head per year during the immediately preceding 5 calendar years. Also included are processing plants that did not slaughter cattle during the immediately preceding 5 calendar years but are determined to be a packer by the Secretary based on the capacity of the processing plant. By this definition, approximately 30 individual beef packing companies representing 49 individual plants would be required to report information to AMS. Based on the SBA size standard, 10 of these 30 beef packing companies would be considered small businesses, representing 10 plants that would be required to report. The figure of 49 plants required to report represents 6.2% of the cattle plants in the U.S. The remaining 93.8% of cattle plants, nearly all estimated to qualify as small business, are exempt from mandatory reporting.

For any calendar year, Federally inspected pork plants required to report include those that slaughtered an average of 100,000 head per year during the immediately preceding 5 calendar years. Also included are processing plants that did not slaughter swine during the immediately preceding 5 calendar years but are determined to be a packer by the Secretary based on the capacity of the processing plant. By this definition, approximately 29 individual pork packing companies representing a total of 50 individual plants, would be required to report information to AMS. Based on the SBA size standard, 15 of these 29 pork packing companies would be considered small businesses, representing 15 individual plants that would be required to report. The figure of 50 plants required to report represents 6.6% of the swine plants in the U.S. The remaining 93.4% of swine plants, nearly all estimated to qualify as small business, are exempt from mandatory reporting.

For any calendar year, lamb packers required to report include those that slaughtered or processed the equivalent of 75,000 head per year during each of the immediately preceding 5 calendar years. Also included are processing plants that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years but are determined to be a packer by the Secretary based on the capacity of the processing plant. For any calendar year, an importer that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years would be required to report. Additionally, a lamb importer that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years if the Secretary determines that the person should be considered an importer based on the volume of lamb imports, would also be required to report. By this definition, 16 individual companies including importers representing a total of 14 plants, would be required to report information. Based on the SBA size standard, all 14 of these lamb plants would be considered small businesses with none employing more than 500 people. The figure of 14 plants required to report represents 2.9% of the lamb plants in the U.S. Nearly all of the remaining 97.1% of lamb plants are estimated to qualify as small businesses and are exempt from mandatory reporting.

Projected Reporting

This proposed rule requires the reporting of specific market information regarding the buying and selling of livestock and livestock products. The information would be reported to AMS by electronic means. Electronic reporting would involve the transfer of data from a packer's or importer's electronic recordkeeping system to a centrally located AMS electronic database. The packer or importer would be required to organize the information in an AMS-approved format before electronically transmitting the information to AMS.

Once the required information has been entered into the AMS database, it would be aggregated and processed into various market reports which would be released according to the daily and weekly time schedule set forth in these proposed regulations.

Information regarding the specific characteristics of each reported sale must be supplied by lot without aggregation. In order to adequately describe and categorize each transaction, as many as fifteen separate pieces of information are required to be reported. This information includes price, head count, weight, quality grade, and yield grade. The frequency respondents are required to report is 1 to 3 times each reporting day depending on the species and type of information required.

In 1999, an average of 700,000 cattle were slaughtered each week. Beef plants identified as small businesses contributed an estimated 7,000 head per day, on average, to this weekly slaughter with each business contributing an estimated 700 head per day on average based upon publicly available information. At a maximum, if each of these 700 cattle were purchased in lots of one head each and 15 pieces of information were required for each purchase, as many as 10,500 individual pieces of information would have to be reported by each small beef packing plant each reporting day. In addition, each of the small beef packing plants is required to report all domestic and export sales of boxed beef cuts including branded product. On average, each of these small entities slaughters an estimated 700 head per day. Since most beef carcasses are usually fabricated at the point of slaughter, each of these small beef packers would be processing about 700 beef cattle into boxed beef cuts each day. Normally, boxed beef cut sales average about 200 boxes per transaction and each head of cattle equals 7 boxes. This would represent 25 separate transactions which, if 15 pieces of information were required per transaction, would translate into 375 pieces of information reported by each small beef packing business producing boxed beef each business day. AMS estimates the total annual burden on each small cattle packer and boxed beef processing entity to be $7,420, including $5,590 for annual costs associated with electronically submitting data and $1,830 for the storage and maintenance of electronic files that were submitted to AMS.

This figure was calculated by estimating the time required to complete the necessary data submission and factoring by the number of times reporting is required per day for an estimated total of 260 reporting days in a year (see Paperwork Reduction Act section for a complete, detailed discussion).

On average each week in 1999, 1.9 million swine were slaughtered. Pork plants identified as small businesses contributed an estimated 17,000 head per day to this weekly slaughter with each business contributing on average an estimated 1,125 head per day, based on publicly available figures. If each of these head were purchased in lots of one head each and 15 pieces of information were required for each purchase, 16,875 pieces of information would have to be reported by each small pork packing plant per day.

Using the same methodology as described above for cattle, AMS estimates the total annual burden on each small swine packing entities to be $5,308, including $3,478 for annual costs associated with electronically submitting data and $1,830 for the storage and maintenance of electronic files that were submitted to AMS. This estimate does not include costs associated with reporting sales of pork

products which would not be required to be reported.

Sheep slaughter in 1999 averaged 70,000 head per week. All lamb plants contributing to this weekly slaughter are identified as small businesses. On average, these lamb plants each slaughtered an estimated 2,200 head per day, based on publicly available information. If each of these lambs were purchased one at a time and 15 pieces of information were required for each transaction, 33,000 pieces of information would have to be reported by each small lamb packing plant. In addition, all lamb plants processing the equivalent of 75,000 lambs per year during each of the immediately preceding 5 calendar years, which are required to report, qualify as small businesses. These plants would be required by regulation to report information on their sales of boxed lamb cuts. It is estimated that negotiated sales comprise the majority of all boxed lamb cut sales. Based on publicly available information, lamb plants processing lamb into boxed lamb cuts, on average, process the equivalent of an estimated 1,200 head per day. It is normal business practice that these lamb cuts are sold in units averaging between 25–150 boxes per transaction, representing about 8–50 head of lambs (about 3 boxes per head). At 1,200 head per day, there could be as many as 150 transactions per day per reporting packer. Assuming that each of these 150 transactions required 15 pieces of information per transaction, 2,250 pieces of information would have to be reported by each small lamb packing plant.

In any calendar year, importers of lamb meat products that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years would be required to report the details of their purchases and sales of boxed lamb cuts including branded product and their purchases of lamb carcasses to AMS on a weekly basis. Additionally, in any calendar year, lamb importers that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years if the Secretary determines that the person should be considered an importer based on the volume of lamb imports would be required to report the above information. AMS estimates that each of the 5 importers required to report import, on average, 180 metric tons of lamb products per week. AMS estimates that the majority of these imports are contracted over a period of time, usually from 3–6 months, possibly as much as 12 months. Price would normally be negotiated at the time the contract was entered into along with the particular cut of lamb and the volume. During the time the contract is in effect, prices would not be expected to change from week to week but quantities might. Assuming that an average importer would purchase an average of 10 different cut styles, each at a single price, from an average of 2 suppliers, AMS estimates that the weekly reporting burden for each importer would include information for up to 20 different transactions. Each transaction would require 7 pieces of information including, price, quantity, cut, trim, weight, delivery date, and nation of origin, for a total of 140 separate pieces of information.

AMS estimates the total annual burden on each small lamb packer would be $6,042 including $4,212 for annual costs associated with electronically submitting data and $1,830 for the storage and maintenance of electronic files that were submitted to AMS.

AMS estimates the total annual burden on each small importer of lamb to be $2,404 including $574 for annual cost associated with electronically submitting data and $1,830 for storage and maintenance of electronic files that were submitted to AMS.

Normally, few packers buy livestock or livestock products in one head or one head equivalent lots. Similarly, few importers buy imported carcasses or imported lamb cuts in less than carlot volumes. Therefore, the estimated reporting burden described here would reflect the maximum reporting burden on small businesses.

Projected Recordkeeping

Each packer and importer required to report information to the Secretary must maintain such records as are necessary to verify the accuracy of the information provided to AMS. This includes information regarding price, class, head count, weight, quality grade, yield grade, and other factors necessary to adequately describe each transaction. These records are already kept by the industry. Reporting packers and importers are required by these proposed regulations to maintain and to make available the original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. Reporting packers and importers are also required to maintain copies of the information provided to AMS. All of the above-mentioned paperwork must be kept for at least 2 years. Packers and importers are not required to report any other new or additional information that they do not generally have available or maintain. Further, they would not be required to keep any information that would prove unduly burdensome to maintain. The paperwork burden that would be imposed on the packers and importers is further discussed in the section entitled Paperwork Reduction Act that follows.

In addition, we have not identified any relevant Federal rules that are currently in effect that duplicate, overlap, or conflict with this rule. AMS will continue to report market information collected through its voluntary market reporting program provided the collection of such information does not duplicate the information collection requirements of this proposed rule.

Professional skills required for recordkeeping under this proposed rule would not be different than those already employed by the reporting entities. Reporting would be accomplished using computers or similar electronic means. AMS believes the skills needed to maintain such systems are already in place in those small businesses affected by this proposed rule. Comments are requested on the extent to which employees of these small businesses already possess the skills required to report and maintain recordkeeping systems.

Alternatives

This proposed rule as directed by the Act requires cattle and swine packing plants of a certain size to report information to the Secretary at prescribed times throughout the day and week. Further, lamb slaughter and processing plants and lamb importers of a certain size are required by these proposed regulations to report information to the Secretary at prescribed times throughout the day and week. These proposed regulations already exempt many small businesses by the establishment of daily slaughter, processing, and import capacity thresholds. Based on figures published by the National Agricultural Statistics Service (NASS), there were 795 cattle, 757 swine, and 556 lamb Federally inspected slaughter plants operating in the U.S. at the end of 1998. AMS estimates that approximately 49 cattle plants would be required to report information (6.2% of all Federally inspected cattle plants), 50 swine plants would be required to report information (6.6% of all Federally inspected swine plants), and 16 lamb packers and importers would be required to report information (1.9% of all Federally inspected lamb plants and 1.3% of all lamb importers). Therefore, fully 93.8% of all cattle plants, 93.4% of all swine plants, and 98.1% of all lamb packers and 98.7% of lamb importers would not be required to report.

AMS recognizes that a major economic impact of this proposed rule on those small entities required to report involves the manner in which information must be reported to the Secretary. However, in developing these proposed regulations AMS did consider other means by which the objectives of this proposed rule could be accomplished, including reporting the required information by telephone, facsimile and regular mail. AMS believes these alternatives are not capable of meeting the program objectives, especially timely reporting. The Act prescribes specific times that reporting entities must report to AMS. Similarly, the Act prescribes specific times for publication of a report by AMS. AMS believes electronic submission to be the only method capable of allowing for AMS to collect, aggregate and publish reports while complying with the specific time-frames set forth in the Act. AMS believes it would not be possible for the Agency to receive information over the telephone, facsimile or regular mail and then transcribe the information into electronic format before aggregating and publishing the information while still complying with the publication time-frames set forth in the Act. However, AMS may provide for an exception to electronic reporting in emergencies or in cases when an alternative is agreeable to AMS and the reporting entity.

AMS cannot envision an alternative to the proposed method of data transmission that would be less burdensome to small businesses. Therefore, AMS is expressly seeking comment from those small businesses covered by this proposed rule regarding the burden imposed on them by this program. Specifically, AMS is seeking comments on the reporting format, including alternatives from small businesses that would be less burdensome. AMS will work actively with those small businesses required to report to minimize the burden on them to the maximum extent practicable.

Paperwork Reduction Act

This proposed rule contains recordkeeping and submission requirements that are subject to public comment and review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. Chapter 35). In accordance with 5 CFR Part 1320, we include the description of the reporting and recordkeeping requirements and an estimate of the annual burden on packers required to report information under this proposed rule. Because there is insufficient time for a normal clearance procedure, AMS has requested emergency processing and received temporary approval from OMB for the use of the information collection and recordkeeping requirements that we propose to use to implement the mandatory livestock reporting program on an expedited basis.

Title: Livestock Mandatory Reporting Act of 1999.

OMB Number: 0581–0186.

Expiration Date of Assessment: July 31, 2000.

Type of Request: Extension.

Abstract: The information collection and recordkeeping requirements in this regulation would be essential to establishing and implementing a mandatory program of livestock and livestock products reporting. Based on the information available, AMS estimates that there would be 49 beef packer plants, 50 pork packer plants, 11 lamb packer plants and 5 lamb importers that would be required to report market information under this proposed rule. These companies have similar recordkeeping systems and business operation practices and conduct their operations in a similar manner. AMS believes that all of the information required under this proposed rule can be collected from existing materials and systems and that these materials and systems can be adapted to satisfy the proposed forms. The PRA also requires AMS to measure the recordkeeping burden. Under this proposed rule, each packer and importer required to report must maintain and make available upon request for 2 years, such records as would be necessary to verify the accuracy of the information required to be reported. These records include original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock. Under this proposed rule, the electronic data files which the packers would be required to utilize when submitting information to AMS would have to be maintained as these files provide the best record of compliance. The recordkeeping burden includes the amount of time needed to store and maintain records. AMS estimates that, since records of original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock are stored and maintained as a matter of normal business practice by these companies for a period in excess of 2 years, additional annual costs would be nominal. AMS estimates the annual cost per respondent for the storage of the electronic data files which were submitted to AMS in compliance with the reporting provisions of this proposed rule to be $1,830.00. This estimate includes the cost of electronic data storage media, backup electronic data storage media, and backup software required to maintain an estimated annual electronic recordkeeping and backup burden of 42 megabytes, on average, per respondent. In addition, this estimate includes the cost per employee to maintain such records which is estimated to average 70 hours per year at $20.00 per hour for a total salary component cost of $1,400.00 per year. AMS welcomes any additional information from the industry regarding such costs.

In this proposed rule, information collection requirements include the submission of the required information on a daily and weekly basis in the standard format provided in the following forms: (1) Live Cattle Daily Report (Current Established Prices), (2) Live Cattle Daily Report (Committed and Delivered Cattle), (3) Live Cattle Weekly Report (Forward Contract and Packer-Owned), (4) Live Cattle Weekly Report (Formula Purchases), (5) Cattle Premiums and Discounts Weekly Report, (6) Boxed Beef Daily Report, (7) Swine Prior Day Report, (8) Swine Daily Report, (9) Swine Noncarcass Merit Premium Weekly Report, (10) Live Lamb Daily Report (Current Established Prices), (11) Live Lamb Daily Report (Committed and Delivered Lambs), (12) Live Lamb Weekly Report (Packer-Owned), (13) Live Lamb Weekly Report (Formula and Forward Contract Purchases), (14) Lamb Premiums and Discounts Weekly Report, (15) Boxed Lamb Report, and (16) Lamb Carcass Report. Copies of these 16 forms are included in Appendices at the end of this rule. Cattle packers would utilize six of these forms (Appendix A) when reporting information to AMS including two for daily cattle reporting, three for weekly cattle reporting, and one for daily boxed beef cuts reporting. Swine packers would utilize three forms (Appendix B), two for daily reporting of swine purchases and one for weekly reporting of non-carcass merit premium information. Lamb packers would utilize seven of these forms (Appendix

C) when reporting information to AMS including two for daily lamb reporting, three for weekly lamb reporting, one for daily and weekly boxed lamb cuts reporting and one for daily and weekly lamb carcass reporting. Lamb importers would utilize two of these forms when reporting information to AMS including one for reporting weekly imported lamb carcass and one for reporting weekly imported boxed lamb cut purchases and sales.

These information collection requirements have been designed to minimize disruption to the normal business practices of the affected entities. Each of these forms requires the minimal amount of information necessary to properly describe each reportable transaction, as required under this proposed rule. The number of forms is a result of an attempt to reduce the complexity of each form.

1. Live Cattle Daily Report (Current Established Prices): Form LS–113.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 4,332 hours.

Total Cost: $86,640.

2. Live Cattle Daily Report (Committed and Delivered Cattle): Form LS–114.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 4,332 hours.

Total Cost: $86,640.

3. Live Cattle Weekly Report (Forward Contract and Packer-Owned): Form LS–115.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 637 hours.

Total Cost: $12,740.

4. Live Cattle Weekly Report (Formula Purchases): Form LS–116.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 637 hours.

Total Cost: $12,740.

5. Cattle Premiums and Discounts Weekly Report: Form LS–117.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .08 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live cattle purchases to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 204 hours.

Total Cost: $4,080.

6. Boxed Beef Daily Report: Form LS–126.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .125 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on domestic and export boxed beef cut sales to the Secretary.

Estimated Number of Respondents: 49 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,185 hours.

Total Cost: $63,700.

7. Swine Prior Day Report: Form LS–118.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days).

Estimated Total Annual Burden on Respondents: 3,250 hours.

Total Cost: $65,000.

8. Swine Daily Report: Form LS–119.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 4,420 hours.

Total Cost: $88,400.

9. Swine Noncarcass Merit Premium Weekly Report: Form LS–120.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live swine purchases to the Secretary.

Estimated Number of Respondents: 50 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 650 hours.

Total Cost: $13,000.

10. Live Lamb Daily Report (Current Established Prices): Form LS–121.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 707 hours.

Total Cost: $14,140.

11. Live Lamb Daily Report (Committed and Delivered Lambs): Form LS–122.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .17 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 520 (2 per day for 260 days).

Estimated Total Annual Burden on Respondents: 707 hours.

Total Cost: $14,140.

12. Live Lamb Weekly Report (Packer-Owned): Form LS–123.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 104 hours.

Total Cost: $2,080.

13. Live Lamb Weekly Report (Formula and Forward Contract Purchases): Form LS–124.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .25 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 104 hours.

Total Cost: $2,080.

14. Lamb Premiums and Discounts Weekly Report: Form LS–125.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .08 hours per electronically submitted response.

Respondents: Packer processing plants required to report information on live lamb purchases to the Secretary.

Estimated Number of Respondents: 8 plants.

Estimated Number of Responses per Respondent: 52 (1 per week for 52 weeks).

Estimated Total Annual Burden on Respondents: 33 hours.

Total Cost: $660.

15. Boxed Lamb Report: Form LS–128.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .167 hours per electronically submitted response.

Respondents: Packer processing plants and importers required to report information on boxed lamb cut purchases and sales to the Secretary.

Estimated Number of Respondents: 14 entities (including 1 entity that both processes and imports).

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days) for domestic packing plants; 52 (1 per week for 52 weeks) for importers.

Estimated Total Annual Burden on Respondents: 434 hours for domestic packing plants and 43 hours for importers.

Total Cost: $8,680 for domestic packing plants and $860.00 for importers for a total of $9,540.00.

16. Lamb Carcass Report: Form LS–129.

Estimate of Burden: Public reporting burden for collection of information is estimated to be .167 hours per electronically submitted response.

Respondents: Packer processing plants and importers required to report information on lamb carcass purchases and sales to the Secretary.

Estimated Number of Respondents: 12 entities (including 1 entity that both slaughters and imports).

Estimated Number of Responses per Respondent: 260 (1 per day for 260 days) for domestic packing plants; 52 (1 per week for 52 weeks) for importers.

Estimated Total Annual Burden on Respondents: 347 hours for domestic packing plants and 43 hours for importers.

Total Cost: $6,940 for domestic packing plants and $860.00 for importers for a total of $7,800.00.

Estimated Total Annual Burden on Respondents by Species:

Live Cattle and Boxed Beef: $363,560 including $273,890 for annual costs associated with electronically submitted responses (13,327 annual hours @ $20.00 per hour plus initial electronic data transfer setup costs of $7,350 consisting of 147 annual hours at $50 per hour) and $89,670 for the storage and maintenance of electronic files that were submitted to AMS.

Live Swine: $265,400 including $173,900 for annual costs associated with electronically submitted responses (8,320 annual hours @ $20.00 per hour plus initial electronic data transfer setup costs of $7,500 consisting of 150 annual hours at $50 per hour) and $91,500 for the storage and maintenance of electronic files that were submitted to AMS.

Live Lambs, Boxed Lamb, and Lamb Carcasses: $82,120 including $52,840 for annual costs associated with electronically submitted responses (2,522 annual hours @ $20.00 per hour plus initial electronic data transfer setup costs of $2,400 consisting of 48 annual hours at $50 per hour) and $29,280 for the storage and maintenance of electronic files that were submitted to AMS.

AMS is soliciting comments from all interested parties concerning the information collection and recordkeeping requirements contained in this proposed rule. Comments are specifically invited on the following: (1) The accuracy of the agency's burden estimate of the proposed collection of information including the validity of the methodology and assumptions used; (2) ways to minimize the burden of the collection of information on those who would be required to respond, including through the use of appropriate electronic collection methods; (3) whether the proposed collection of information is sufficient or necessary for the proper performance of the functions of the agency as mandated by the Act; and (4) ways to enhance the quality, utility, and clarity of the information to be collected. Comments concerning the information collection and recordkeeping requirements contained in this action should reference OMB number 0581–0186 together with the date and page number of this issue of the **Federal Register** and should be sent in duplicate to John E. Van Dyke, Chief, Livestock and Grain Market News Branch, Docket No. LS–99–18, Room 2619–S; 1400 Independence Avenue; SW., Washington, D.C. 20250–0252. Comments may also be sent by fax to (202) 690–3732, by electronic mail to: john.vandyke@usda.gov, or filed via an on-line form through the AMS website at: http://www.ams.usda.gov/lsg/mprcomment.htm. State that your comments refer to Docket No. LS–99–18. Comments received may be inspected at the above location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays, or over the AMS website at: *http://www.ams.usda.gov/lsg/price.htm.*

Comments sent to the above location should also be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503. All responses to this action will be summarized and included in the request for OMB approval. All comments will become a matter of public record.

A 30-day comment period is provided for interested persons to comment on this proposed rule. The 30-day period is deemed appropriate in order to provide a sufficient amount of time to comment while conforming, as closely as possible, to the time-frames contemplated by the Act.

List of Subjects in 7 CFR Part 57

Cattle, Hogs, Lamb, Livestock, Sheep.

For the reasons set forth in the preamble, it is proposed that Chapter I of Title 7 of the CFR be amended by adding Part 57 to read as follows:

PART 57—LIVESTOCK MANDATORY REPORTING

Subpart A—General Provisions

Sec.

57.10 General administrative provisions.
57.11 Recordkeeping.
57.20 Definitions.

Subpart B—Cattle Reporting

57.100 Definitions.
57.101 Mandatory daily reporting for live cattle.
57.102 Mandatory weekly reporting for live cattle.
57.103 Mandatory reporting of boxed beef sales.

Subpart C—Swine Reporting.

57.200 Definitions.
57.201 General reporting provisions.
57.202 Mandatory daily reporting for swine.
57.203 Mandatory weekly reporting for swine.

Subpart D—Lamb Reporting

57.300 Definitions.
57.301 Mandatory daily reporting for lambs.
57.302 Mandatory weekly reporting for lambs.
57.303 Mandatory roporting of lamb carcasses and boxed lamb.

Subpart E—OMB Control Number

57.400 OMB control number assigned pursuant to the Paperwork Reduction Act.

Authority: 7 U.S.C. 1621 et seq.

Subpart A—General Provisions

§ 57.10 General administrative provisions.

(a) *Reporting by Packers and Importers.* A packer or importer shall report all information required under this part on an individual lot basis.

(b) *Reporting Schedule.* Whenever a packer or importer is required to report information on transactions of livestock and livestock products under this part by a set time, all covered transactions up to within one half hour of the reporting deadline shall be reported. Transactions completed during the one half hour prior to the previous reporting time, but not reported in the previous report, shall be reported at the next scheduled reporting time.

(c) *Regional reporting and aggregation.* The Secretary shall make information obtained under this part available to the public only in a manner that:

(1) Ensures that the information is published on a national and a regional or statewide basis as the Secretary determines to be appropriate;

(2) Ensures that the identity of a reporting person or the entity which they represent is not disclosed; and

(3) Market information reported to the Secretary by packers and importers shall be aggregated in such a manner that the market reports issued will not disclose the identity of persons, packers and importers, including parties to a contract and packer's and importer's proprietary information.

(d) *Adjustments.* Prior to the publication of any information required under this part, the Secretary may make reasonable adjustments in information reported by packers and importers to reflect price aberrations or other unusual or unique occurrences that the Secretary determines would distort the published information to the detriment of producers, packers, or other market participants.

(e) *Reporting of activities on weekends and holidays.* Livestock and livestock products committed to a packer, or importer, or purchased, sold, or slaughtered by a packer or importer on a weekend day or holiday shall be reported to the Secretary in accordance with the provisions of this part and reported by the Secretary on the immediately following reporting day. A packer shall not be required to report such actions more than once on the immediately following reporting day.

(f) *Reporting methods.* Whenever information is required to be reported under this part, it shall be reported by electronic means and shall adhere to a standardized format established by the Secretary to achieve the objectives of this part, except in emergencies or in cases when an alternative method is agreeable to the entity required to report and AMS.

§ 57.11 Recordkeeping.

(a) *In general.* Each packer or importer required to report information to the Secretary under the Act and this part shall maintain for 2 years and make available to the Secretary the following information on request:

(1) The original contracts, agreements, receipts, and other records associated with any transaction relating to the purchase, sale, pricing, transportation, delivery, weighing, slaughter, or carcass characteristics of all livestock or livestock products; and

(2) Such records or other information as is necessary or appropriate to verify the accuracy of the information required to be reported under the Act and this part.

(b) *Purchases of livestock and sales of boxed beef cuts.* A record of a purchase of a lot of cattle, a unit of boxed beef cuts, a lot of swine, or a lot of lambs by a packer shall evidence whether the purchase occurred:

(1) Before 10:00 a.m. Central Time;

(2) Between 10:00 a.m. and 2:00 p.m. Central Time; or

(3) After 2:00 p.m. Central Time.

(c) *Purchases and sales of domestic and imported lamb carcasses and cuts.* A record of a purchase or sale by a packer of lamb carcasses and cuts, or by an importer of lamb carcasses and cuts shall evidence time and date the purchase or sale occurred.

(d) *Reporting sales of boxed beef cuts and sales and purchases of lamb carcasses and cuts.*

(1) Beef packers must report all sales of boxed beef cuts by the applicable Institutional Meat Purchase Specification (IMPS), Fresh Beef Series 100 item number or by the packer's cut and trim specifications.

(2) Lamb packers and importers must report all sales and purchases of boxed lamb carcasses and cuts by the applicable IMPS, Fresh Lamb and Mutton Series 200 item number or by the packer's and importer's cut and trim specifications.

(3) You may obtain a copy of IMPS Fresh Beef Series 100 and Fresh Lamb and Mutton Series 200 from U.S. Department of Agriculture, Agricultural Marketing Service, Livestock and Seed Program, Livestock and Meat Standardization Branch, Room 2603 South Building STOP 0254, PO Box 96456 Washington, D.C. 20090–6456. You may inspect a copy of the above in Room 2603, South Building, 14th and Independence Ave., SW, Washington, D.C. 20250, or at the office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, D.C. 20488.

§ 57.20 Definitions.

The following definitions apply to this part:

Base price. The term 'base price' means the price paid for livestock, delivered at the packing plant, before application of any premiums or discounts, expressed in dollars per hundred pounds of hot carcass weight.

Basis level. The term 'basis level' means the agreed on adjustment to a future price to establish the final price paid for livestock.

Committed. The term 'committed' means the agreement between a buyer and seller to schedule livestock for delivery at some date.

Current slaughter week. The term 'current slaughter week' means the period beginning Monday, and ending Sunday, of the week in which a reporting day occurs.

Discount. The term 'discount' means the adjustment, expressed in dollars per hundred pounds, subtracted from the base price due to weight, quality grade, yield grade, livestock class, dark cutting, breed, or dressing percentage.

F.O.B. The term 'F.O.B.' means free on board, regardless of the mode of transportation, at the point of direct shipment by the seller to the buyer (F.O.B. Plant or F.O.B. Feedlot).

Livestock. The term 'livestock' means cattle, swine, and lambs.

Lot. The term 'lot' means a group of one or more livestock that is identified for the purpose of a single transaction between a buyer and a seller.

Marketing. The term 'marketing' means the sale or other disposition of livestock, livestock products, or meat or meat food products in commerce.

Negotiated purchase. The term 'negotiated purchase' means a cash or spot market purchase by a packer of livestock from a producer under which the base price for the livestock is determined by seller-buyer interaction and agreement on a delivery day, and the livestock are scheduled for delivery to the packer not more than 14 days after the date on which the livestock are committed to the packer.

Negotiated sale. The term 'negotiated sale' means a cash or spot market sale by a producer of livestock to a packer under which the base price for the livestock is determined by seller-buyer interaction and agreement on a delivery day and the livestock are scheduled for delivery to the packer not later than 14 days after the date on which the livestock are committed to the packer. When used in reference to sales of boxed meat cuts and carcasses the term 'negotiated sale' means a cash or spot market sale by a processor of boxed meat cuts or carcasses to a buyer of boxed meat cuts or carcasses under which the base price for the boxed meat cuts or carcasses is determined by seller-buyer interaction and agreement on a day.

Premium. The term 'premium' means the adjustment, expressed in dollars per hundred pounds, added to the base price due to weight, quality grade, yield grade, livestock class, and breed.

Priced. The term 'priced' means the actual determination of a price either through buyer-seller interaction and agreement or as the result of a formula marketing arrangement or forward contract.

Prior slaughter week. The term 'prior slaughter week' means the Monday through Sunday prior to a reporting day.

Producer. The term 'producer' means any person engaged in the business of selling livestock to a packer for slaughter (including the sale of livestock from a packer to another packer).

Purchased. The term 'purchased' means the agreement on a price, or the method for calculating a price, determined through buyer-seller interaction and agreement.

Reporting day. The term 'reporting day' means a day on which a packer conducts business regarding livestock committed to the packer, or livestock purchased, sold, or slaughtered by the packer; the Secretary is required to make such information available to the public; and the Department of Agriculture is open to conduct business.

Secretary. The term 'Secretary' means the Secretary of Agriculture of the United States or any other officer or employee of the Department of Agriculture to whom authority has been delegated or may hereafter be delegated to act in the Secretary's stead.

State. The term 'State' means each of the 50 States.

Subpart B—Cattle Reporting

§ 57.100 Definitions.

The following definitions apply to this part:

Branded. The term 'branded' means boxed beef cuts which are marketed based on a distinctive characteristic or combination of characteristics. These characteristics are categorized by quality grade (including ungraded or no-roll), trim specification, weight, breed, and packaging.

Carcass characteristics. The term 'carcass characteristics' means those traits pertinent to the proper categorization of live cattle including the estimated average live weight in pounds, the estimated percentage of cattle of a quality grade of Choice or better, and an estimate of the cattle dressing percentage.

Cattle committed. The term 'cattle committed' means cattle that are scheduled to be delivered to a packer within the 7-day period beginning on the date of an agreement to sell the cattle.

Cattle type. The term 'cattle type' means the following types of cattle purchased for slaughter:

(1) Fed steers;

(2) Fed heifers;

(3) Fed Holsteins and other fed dairy steers and heifers;

(4) Cows; and

(5) Bulls.

Formula marketing arrangement. The term 'formula marketing arrangement' means the advance commitment of cattle for slaughter by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date. When used in reference to boxed beef, the term 'formula marketing arrangement' means the advance commitment of boxed beef by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

Forward contract. The term 'forward contract' means an agreement for the purchase of cattle, executed in advance of slaughter, under which the base price is established by reference to prices quoted on the Chicago Mercantile Exchange, or other comparable publicly available prices. When used in reference to boxed beef, the term 'forward contract' means an agreement for the sale of boxed beef, executed in advance of manufacture, under which the base price is established by reference to publicly available quoted prices.

Packer. The term 'packer' means any person engaged in the business of buying cattle in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from cattle for sale or shipment in commerce, or of marketing meats or meat food products from cattle in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term 'packer' includes only a Federally inspected cattle processing plant that slaughtered an average of 125,000 head of cattle per year during the immediately preceding 5 calendar years. Additionally, in the case of a cattle processing plant that did not slaughter cattle during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant should be considered a packer under this subpart after considering its capacity.

Packer-owned cattle. The term 'packer-owned cattle' means cattle that a packer owns for at least 14 days immediately before slaughter.

Prices for cattle. The term 'prices for cattle' includes the price per hundredweight; the purchase type; the quantity on a live and a dressed weight basis; the range and estimated live weights; the estimated percentage of cattle of a quality grade Choice or better; any premiums or discounts associated with weight, quality grade, yield grade, or type of cattle; cattle State of origin; expected date of slaughter; estimated cattle dressing percentage; and price basis as F.O.B. feedlot or delivered at the plant.

Terms of trade. The term 'terms of trade' means, with respect to the purchase of cattle for slaughter:

(1) Whether a packer provided any financing agreement or arrangement with regard to the cattle;

(2) Whether the delivery terms specified the location of the producer or the location of the packer's plant;

(3) Whether the producer is able to unilaterally specify the date and time during the business day of the packer that the cattle are to be delivered for slaughter; and

(4) The percentage of cattle purchased by a packer as a negotiated purchase that are delivered to the plant for slaughter more than 7 days, but fewer than 14 days, after the earlier of either the date on which the cattle were committed to the packer, the date on which the cattle were purchased by the packer, or the date on which the cattle were priced by the packer.

Type of purchase. The term 'type of purchase' with respect to cattle, means a negotiated purchase, a formula market arrangement, and a forward contract.

Type of sale. The term 'type of sale' with respect to boxed beef, means a negotiated sale, a formula market arrangement, and a forward contract.

§ 57.101 Mandatory daily reporting for live cattle.

(a) *In general.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least two times each reporting day not later than 10:00 a.m. Central Time and not later than 2:00 p.m. Central Time the following information for each cattle type, inclusive since the last reporting, categorized to clearly delineate domestic from imported market purchases as described in (57.10(b).

(1) The prices for cattle (per hundredweight) established on that day, categorized by:

(i) The type of purchase;

(ii) The quantity of cattle purchased on a live weight basis;

(iii) The quantity of cattle purchased on a dressed weight basis;

(iv) A range and average of estimated live weights of cattle purchased;

(v) An estimate of the percentage of the cattle purchased that were of a quality grade of Choice or better; and

(vi) Any premiums or discounts associated with weight, quality grade, yield grade, or type of purchase.

(2) The quantity of cattle delivered to the packer (quoted in numbers of head) on that day, categorized by:

(i) The type of purchase;

(ii) The quantity of cattle delivered on a live basis; and

(iii) The quantity of cattle delivered on a dressed basis.

(3) The quantity of cattle committed to the packer (quoted in numbers of head) as of that day, categorized by the type of purchase, quantity of cattle to be delivered on a live basis, and the quantity of cattle to be delivered on a dressed basis.

(4) The terms of trade regarding the cattle, as applicable.

(b) *Publication.* The Secretary shall make the information available to the public not less frequently than three times each reporting day.

§ 57.102 Mandatory weekly reporting for live cattle.

(a) *In general.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary, on the first reporting day of each week, not later than 9:00 a.m. Central Time, the following information applicable to the prior slaughter week, categorized to clearly delineate domestic from imported market purchases:

(1) The quantity of cattle purchased through forward contracts that were slaughtered;

(2) The quantity of cattle delivered under a formula marketing arrangement that were slaughtered;

(3) The quantity and carcass characteristics of packer-owned cattle that were slaughtered; and

(4) The quantity, basis level, and delivery month for all cattle purchased through forward contracts.

(b) *Premiums and discounts.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary, on the first reporting day of each week, not later than 9:00 a.m. Central Time, the range and average of intended premiums and discounts (associated with weight, quality grade, yield grade, or type of cattle) that are expected to be in effect for the current slaughter week.

(c) *Formula purchases.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary, on the first reporting day of each week, by 8:00 a.m. Central Time, the following information for cattle purchased through a formula marketing arrangement and slaughtered during the prior slaughter week, categorized to clearly delineate domestic from imported market purchases:

(1) The quantity (quoted in both numbers of head and pounds) of cattle;

(2) The weighted average price paid for a carcass, including applicable premiums and discounts;

(3) The range of premiums and discounts paid;

(4) The weighted average of premiums and discounts paid;

(5) The range of prices paid;

(6) The aggregate weighted average price paid for a carcass; and

(7) The terms of trade regarding the cattle, as applicable.

(d) *Publication.* The Secretary shall make available to the public the information obtained under paragraphs (a), (b), and (c) of this section on the first reporting day of the current slaughter by 10:00 a.m. Central Time.

§ 57.103 Mandatory reporting of boxed beef sales.

(a) *Daily reporting.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least twice each reporting day (once by 10:00 a.m. Central Time, and once by 2:00 p.m. Central Time) the following information on total boxed beef domestic and export sales established on that day inclusive since the last reporting as described in § 57.10(b):

(1) The price for each lot of each boxed beef sale, quoted in dollars per hundredweight on a F.O.B. plant basis;

(2) The quantity for each lot of each sale, quoted by number of boxes sold; and

(3) The information regarding the characteristics of each sale is as follows:

(i) The type of sale;

(ii) The branded product characteristics, if applicable;

(iii) The grade of beef (USDA Choice or better, Select, or ungraded no-roll product);

(iv) The cut of beef, referencing the USDA's Livestock and Seed Program Institutional Meat Purchase Specifications (IMPS), Fresh Beef Series 100, when applicable;

(v) The trim specification;

(vi) The weight range of the cut;

(vii) The number of boxes;

(viii) The product weight;

(ix) The product delivery period;

(x) The product manufacture date;

(xi) The product buyer and delivery location; and

(xii) The beef type (steer/heifer, dairy steer/heifer, or cow).

(b) *Publication.* The Secretary shall make available to the public the information obtained under paragraph (a) of this section not less frequently than twice each reporting day.

Subpart C—Swine Reporting

§ 57.200 Definitions.

The following definitions apply to this subpart:

Affiliate. The term 'affiliate', with respect to a packer, means:

(1) A person that directly or indirectly owns, controls, or holds with power to vote, 5 percent or more of the outstanding voting securities of the packer;

(2) A person 5 percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote, by the packer; and

(3) A person that directly or indirectly controls, or is controlled by or under common control with, the packer.

Applicable reporting period. The term 'applicable reporting period' means the period of time prescribed by the prior day report, the morning report, and the afternoon report, as provided in § 57.202.

Average backfat. The term 'average backfat' means the average of the backfat thickness (in inches) measured between the third and fourth from the last ribs, 7 centimeters from the carcass split (or adjusted from the individual packer's measurement to that reference point using an adjustment made by the Secretary) of the swine slaughtered during the applicable reporting period.

Average carcass weight. The term 'average carcass weight' means the weight obtained by dividing the total carcass weight of the swine slaughtered at the packing plant during the applicable reporting period by the number of these same swine.

Average lean percentage. The term 'average lean percentage' means the value equal to the average percentage of the carcass weight comprised of lean meat for the swine slaughtered during the applicable reporting period. Whenever the packer changes the manner in which the average lean percentage is calculated, the packer shall make available to the Secretary the underlying data, applicable methodology and formulae, and supporting materials used to determine the average lean percentage, which the Secretary may convert either to the carcass measurements or lean percentage of the swine of the individual packer to correlate to a common percent lean measurement; and the total slaughter quantity, which shall be equal to the total number of swine slaughtered during the applicable reporting period, including all types of purchases and packer-owned swine.

Average net price. The term 'average net price' means the quotient (stated per hundred pounds of carcass weight of swine) obtained by dividing the total amount paid for the swine slaughtered at a packing plant during the applicable reporting period (including all premiums and less all discounts) by the total carcass weight of the swine (in hundred pound increments). The average net price includes any sum deducted from the price (per hundredweight) paid to a producer that reflects the repayment of a balance owed by the producer to the packer, or the accumulation of a balance to later be repaid by the packer to the producer, less all discounts.

Average sort loss. The term 'average sort loss' means the average discount (in dollars per hundred pounds carcass weight) for swine slaughtered during the applicable reporting period, resulting from the fact that the swine did not fall within the individual packer's established carcass weight range or lot variation range.

Barrow. The term 'barrow' means a neutered male swine, with the neutering performed before the swine reached sexual maturity.

Base market hog. The term 'base market hog' means a hog for which no discounts are subtracted from and no premiums are added to the base price.

Boars. The term 'boar' means a sexually-intact male swine.

Bred female swine. The term 'bred female swine' means any female swine, whether a sow or gilt, that has been mated or inseminated, or has been confirmed, to be pregnant.

Formula price. The term 'formula price' means a price determined by a mathematical formula under which the price established for a specified market serves as the basis for the formula.

Gilt. The term 'gilt' means a young female swine that has not produced a litter.

Highest net price. The term 'highest net price' means the highest net price paid for a single lot or group of swine slaughtered at a packing plant during the applicable reporting period per hundred pounds of carcass weight of swine.

Hog Class. The term 'hog class' means, as applicable, barrows or gilts; sows; or boars or stags.

Lowest net price. The term 'lowest net price' means the lowest net price paid for a single lot or group of swine slaughtered at a packing plant during the applicable reporting period per hundred pounds of carcass weight of swine.

Net price. The term 'net price' means the total amount paid by a packer to producers (including all premiums, less all discounts) per hundred pounds of carcass weight of swine delivered at the plant. The total amount paid shall include any sum deducted from the price (per hundredweight) paid to a producer that reflects the repayment of a balance owed by the producer to the packer or the accumulation of a balance to later be repaid by the packer to the producer. The total amount paid shall exclude any sum earlier paid to a producer that must be repaid to the packer.

Noncarcass merit premium. The term 'noncarcass merit premium' means an increase in the base price of the swine offered by an individual packer or packing plant, based on any factor other than the characteristics of the carcass, if the actual amount of the premium is known before the sale and delivery of the swine.

Other market formula purchase. The term 'other market formula purchase' means a purchase of swine by a packer in which the pricing mechanism is a formula price based on any market other than the market for swine, pork, or a pork product. The term 'other market formula purchase' includes a formula purchase in a case which the price formula is based on 1 or more futures or options contracts.

Other purchase arrangement. The term 'other purchase arrangement' means a purchase of swine by a packer that is not a negotiated purchase, swine or pork market formula purchase, or other market formula purchase; and does not involve packer-owned swine.

Packer. The term 'packer' means any person engaged in the business of buying swine in commerce for purposes of slaughter, of manufacturing or preparing meats or meat food products from swine for sale or shipment in commerce, or of marketing meats or meat food products from cattle in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term 'packer' includes only a Federally inspected swine processing plant that slaughtered an average of 100,000 head of swine per year during the immediately preceding 5 calendar years. Additionally, in the case of a swine processing plant that did not slaughter swine during the immediately preceding 5 calendar years, it shall be considered a packer if the Secretary determines the processing plant should be considered a packer under this subpart after considering its capacity.

Packer-owned swine. The term 'packer-owned swine' means swine that a packer (including a subsidiary or affiliate of the packer) owns for at least 14 days immediately before slaughter.

Packer-sold swine. The term 'packer-sold swine' means the swine that are owned by a packer (including a subsidiary or affiliate of the packer) for more than 14 days immediately before sale for slaughter; and sold for slaughter to another packer.

Pork. The term 'pork' means the meat of a porcine animal.

Pork product. The term 'pork product' means a product or byproduct produced or processed in whole or in part from pork.

Purchase data. The term 'purchase data' means all of the applicable data, including weight (if purchased live), for all swine purchased during the applicable reporting period, regardless of the expected delivery date of the swine, reported by:

(1) Hog class;

(2) Type of purchase; and

(3) Packer-owned swine.

Slaughter data. The term 'slaughter data' means all of the applicable data for all swine slaughtered by a packer during the applicable reporting period, regardless of whether the price of the swine was negotiated or otherwise determined, reported by:

(1) Hog class;

(2) Type of purchase; and

(3) Packer-owned swine.

Sow. The term 'sow' means an adult female swine that has produced 1 or more litters.

Stag. The term 'stag' means a male swine that was neutered after reaching sexual maturity.

Swine. The term 'swine' means a porcine animal raised to be a feeder pig, raised for seedstock, or raised for slaughter.

Swine or pork market formula purchase. The term 'swine or pork market formula purchase' means a purchase of swine by a packer in which the pricing mechanism is a formula price based on a market for swine, pork, or a pork product, other than a future or option for swine, pork, or a pork product.

Type of purchase. The term 'type of purchase', with respect to swine, means:

(1) A negotiated purchase;

(2) Other market formula purchase;

(3) A swine or pork market formula purchase; and

(4) Other purchase arrangement.

§ 57.201 General Reporting Provisions.

(a) *Packer-owned swine.* Information required under this section for packer-owned swine shall include quantity and carcass characteristics, but not price.

(b) *Packer-sold swine.* If information regarding the type of purchase is required under this section, the information shall be reported according to the numbers and percentages of each type of purchase:

(1) Packer-sold swine; and

(2) All other swine.

§ 57.202 Mandatory Daily Reporting for Swine.

(a) *Prior day report.* The corporate officers or officially designated representatives of each packer shall report to the Secretary for each business day of the packer not later than 7:00 a.m. Central Time on each reporting day information regarding all swine purchased, priced, or slaughtered during the prior business day of the packer as specified in § 57.10(b):

(1) All purchase data including the total number of swine purchased and swine scheduled for delivery; and the base price and purchase data for slaughtered swine for which a price has been established.

(2) The following slaughter data for the total number of swine slaughtered:

(i) Information concerning the net price;

(ii) Information concerning the average net price;

(iii) Information concerning the lowest net price;

(iv) Information concerning the highest net price;

(v) The average carcass weight;

(vi) The average sort loss;

(vii) The average backfat;

(viii) The average lean percentage; and

(ix) Total quantity slaughtered.

(3) Packer purchase commitments, which shall be equal to the number of swine scheduled for delivery to a packer for slaughter for each of the next 14 calendar days.

(4) *Publication.* The Secretary shall publish the information obtained under this paragraph in a prior day report not later than 8:00 a.m. Central Time on the reporting day on which the information is received from the packer.

(b) *Morning report.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary not later than 10:00 a.m. Central Time each reporting day as described in § 57.10(b):

(1) The packer's best estimate of the total number of swine, packer-owned swine, and packer-sold swine expected to be purchased throughout the reporting day through each type of purchase;

(2) The total number of swine, packer-owned swine, and packer-sold swine purchased up to that time of the reporting day through each type of purchase;

(3) The base price paid for all base market hogs purchased up to that time of the reporting day through negotiated purchases; and

(4) The base price paid for all base market hogs purchased through each type of purchase other than negotiated purchase up to that time of the reporting day, unless such information is unavailable due to pricing that is determined on a delayed basis. The packer shall report information on such purchases on the first reporting day or scheduled reporting time on a reporting day after the price has been determined.

(5) *Publication.* The Secretary shall publish the information obtained under this paragraph in the morning report as soon as practicable, but not later than 11:00 a.m. Central Time, on each reporting day.

(c) *Afternoon report.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary not later than 2:00 p.m. Central Time each reporting day as described in § 57.10(b):

(1) The packer's best estimate of the total number of swine, packer-owned swine, and packer-sold swine expected to be purchased throughout the reporting day through each type of purchase;

(2) The total number of swine, packer-owned swine, packer-sold swine purchased up to that time of the reporting day through each type of purchase;

(3) The base price paid for all base market hogs purchased up to that time of the reporting day through negotiated purchases; and

(4) The base price paid for all base market hogs purchased through each type of purchase other than negotiated purchase up to that time of the reporting day, unless such information is unavailable due to pricing that is determined on a delayed basis. The packer shall report information on such purchases on the first reporting day or scheduled reporting time on a reporting day after the price has been determined.

(5) *Publication.* The Secretary shall publish the information obtained under this paragraph in the afternoon report as soon as practicable, but not later than 3:00 p.m. Central Time, on each reporting day.

§ 57.203 Mandatory Weekly Reporting for Swine.

(a) *Weekly noncarcass merit premium report.* Not later than 4:00 p.m. Central Time in accordance with § 57.10(b) on the first reporting day of each week, the corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary a noncarcass merit premium report that lists:

(1) Each category of standard noncarcass merit premiums used by the packer in the prior slaughter week; and

(2) The dollar value (in dollars per hundred pounds of carcass weight) paid to producers by the packer, by category.

(b) *Premium list.* A packer shall maintain and make available to a producer, on request, a current listing of the dollar values (per hundred pounds of carcass weight) of each noncarcass merit premium used by the packer during the current or the prior slaughter week.

(c) *Publication.* The Secretary shall publish the information obtained under this subsection as soon as practicable, but not later than 5:00 p.m. Central Time, on the first reporting day of each week.

Subpart D—Lamb Reporting

§ 57.300 Definitions.

The following definitions apply to this subpart:

Branded. The term 'branded' means boxed lamb cuts which are marketed based on a distinctive characteristic or combination of characteristics. These characteristics are categorized by quality grade (including ungraded or no-roll), trim specification, weight, breed, and packaging.

Formula marketing arrangement. The term 'formula marketing arrangement' means the advance commitment of lambs for slaughter by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date. When used in reference to boxed lamb, the term 'formula marketing arrangement' means the advance commitment of boxed lamb cuts for delivery by any means other than through a negotiated purchase or a forward contract, using a method for calculating price in which the price is determined at a future date.

Forward contract. The term 'forward contact' means an agreement for the purchase of lambs, executed in advance of slaughter, under which the base price is established by reference to publicly available prices. When used in reference to boxed lamb, the term 'forward contract means' an agreement for the sale of boxed lamb cuts, executed in advance of manufacture, under which the base price is established by reference to publicly available quoted prices.

Importer. The term 'importer' means any person engaged in the business of importing meat products from lambs for sale or shipment in commerce. For any calendar year, the term includes only those that imported an average of 5,000 metric tons of lamb meat products per year during the immediately preceding 5 calendar years. Additionally, the term includes those that did not import an average of 5,000 metric tons of lamb meat products during the immediately preceding 5 calendar years, if the Secretary determines that the person should be considered an importer based on their volume of lamb imports.

Lambs committed. The term 'lambs committed' means lambs that are scheduled to be delivered to a packer within the 7-day period beginning on the date of an agreement to sell the lambs.

Packer. The term 'packer' means any person engaged in the business of buying lambs in commerce for purposes of slaughter, of manufacturing or preparing meat products from lambs for sale or shipment in commerce, or of marketing meats or meat products from lambs in an unmanufactured form acting as a wholesale broker, dealer, or distributor in commerce. For any calendar year, the term includes only a Federally inspected lamb processing plant which slaughtered or processed the equivalent of an average of 75,000 head of lambs per year during the immediately preceding 5 calendar years. Additionally, the term includes a lamb processing plant that did not slaughter or process an average of 75,000 lambs during the immediately preceding 5 calendar years if the Secretary determines that the processing plant should be considered a packer after considering its capacity.

Packer-owned lambs. The term 'packer-owned lambs' means lambs that a packer owns for at least 14 days immediately before slaughter.

Terms of trade. The term 'terms of trade' includes, with respect to the purchase of lambs for slaughter:

(1) Whether a packer provided any financing agreement or arrangement with regard to the lambs;

(2) Whether the delivery terms specified the location of the producer or the location of the packer's plant;

(3) Whether the producer is able to unilaterally specify the date and time during the business day of the packer that the lambs are to be delivered for slaughter; and

(4) The percentage of lambs purchased by a packer as a negotiated purchase that are delivered to the plant for slaughter more than 7 days, but fewer than 14 days, after the earlier of either the date on which the lambs were committed to the packer, the date on which the lambs were purchased by the packer, or the date on which the lambs were priced by the packer.

Type of purchase. The term 'type of purchase' means a negotiated purchase, a formula market arrangement, and a forward contract.

Type of sale. The term 'type of sale' with respect to boxed lamb, means a negotiated sale, a formula market arrangement, and a forward contract.

§ 57.301 Mandatory daily reporting for lambs.

(a) In General. The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary at least twice each reporting day not later than 10:00 a.m. Central Time and not later than 2:00 p.m. Central Time the following information for lamb, categorized to clearly delineate domestic from imported market purchases as described in § 57.10(b):

(1) The prices for lambs (per hundredweight) established on that day, categorized by:

(i) The type of purchase;

(ii) The quantity of lambs purchased on a live weight basis;

(iii) The quantity of lambs purchased on a dressed weight basis;

(iv) A range and average of estimated live weights of lambs purchased;

(v) An estimate of the percentage of the lambs purchased that were of a quality grade of Choice or better;

(vi) Any premiums or discounts associated with weight, quality grade, or yield grade;

(vii) Lamb State of origin;

(viii) Slaughter plant destination;

(ix) Expected date of slaughter; and

(x) Estimated lamb dressing percentage.

(2) The quantity of lambs delivered to the packer (quoted in numbers of head) on that day, categorized by the quantity of lambs delivered on a live basis and the quantity of lambs delivered on a dressed basis.

(3) The quantity of lambs committed to the packer (quoted in numbers of head) as of that day, categorized by the quantity of lambs to be delivered on a live basis and the quantity of lambs to be delivered on a dressed basis.

(4) The terms of trade regarding the lambs, as applicable.

(b) *Publication.* The Secretary shall make the information available to the public not less than twice each reporting day.

§ 57.302 Mandatory Weekly Reporting for Lambs.

(a) *In general.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary on the first reporting day of each week, not later than 9:00 a.m. Central Time, the following information applicable to the prior slaughter week categorized to clearly delineate domestic from imported market purchases:

(1) The quantity of lambs purchased through forward contracts that were slaughtered.

(2) The quantity of lambs delivered under a formula marketing arrangement that were slaughtered.

(3) The quantity and carcass characteristics of packer-owned lambs that were slaughtered, including:

(i) The quantity of lambs purchased on a live weight basis;

(ii) The quantity of lambs purchased on a dressed weight basis;

(iii) A range and average of estimated live weights of lambs purchased;

(iv) An estimate of the percentage of the lambs purchased that were of a quality grade of Choice or better;

(v) Lamb State of origin;

(vi) Estimated lamb dressing percentage;

(vii) Price basis as F.O.B. or delivered; and

(viii) Shrink factor.

(4) The quantity, basis level, and delivery month for all lambs purchased through forward contracts.

(5) The range and average of intended premiums and discounts (associated with weight, quality grade, or yield grade) that are expected to be in effect for the current slaughter week.

(b) *Premiums and discounts.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary on the first reporting day of each week, not later than 9:00 a.m. Central Time, the following information applicable to the current slaughter week. The range and average of intended premiums and discounts associated with weight, quality grade, or yield grade, categorized to clearly delineate domestic from imported purchases.

(c) *Formula purchases.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary on the first reporting day of each week, not later than 9 a.m. Central Time, the following information for lambs purchased through a formula marketing arrangement and slaughtered during the prior week:

(1) The quantity (quoted in both numbers of head and pounds) of lambs;

(2) The weighted average price paid for a carcass, including applicable premiums and discounts, associated with weight, quality grade, or yield grade;

(3) The range of premiums and discounts, associated with weight, quality grade, or yield grade, paid;

(4) The weighted average of premiums and discounts, associated with weight, quality grade, or yield grade, paid;

(5) The actual premium and discount paid by carcass characteristic;

(6) The range of prices paid;

(7) The aggregate weighted average price paid for a carcass;

(8) The terms of trade regarding the lambs, as applicable; and

(9) The quantity, basis level, and delivery month for all lamb purchased.

(d) *Forward contract purchases.* The corporate officers or officially designated representatives of each packer processing plant shall report to the Secretary on the first reporting day of each week, not later than 9 a.m. Central Time, the following information for lambs purchased through a forward contract arrangement and slaughtered during the prior week:

(1) The quantity (quoted in both numbers of head and pounds) of lambs;

(2) The weighted average price paid for a carcass, including applicable premiums and discounts, associated with weight, quality grade, or yield grade;

(3) The range of premiums and discounts, associated with weight, quality grade, or yield grade, paid;

(4) The weighted average of premiums and discounts, associated with weight, quality grade, or yield grade, paid;

(5) The actual premium and discount paid by carcass characteristic;

(6) The range of prices paid;

(7) The aggregate weighted average price paid for a carcass;

(8) The terms of trade regarding the lambs, as applicable; and

(9) The quantity, basis level, and delivery month for all lamb purchased.

(e) *Publication.* The Secretary shall make available to the public the information obtained under paragraphs (a), (b), (c), and (d) of this section on the first reporting day of the current slaughter week.

§ 57.303 Mandatory reporting of lamb carcasses and boxed lamb.

(a) *Daily reporting of domestic lamb carcass transactions.* The corporate officers or officially designated representatives of each packer shall report to the Secretary each reporting day the following information on total domestic lamb carcass transactions not later than 3:00 p.m. Central Time in accordance with § 57.10(b):

(1) The price for each lot of each lamb carcass transaction, quoted in dollars per hundredweight on an F.O.B. plant basis;

(2) The quantity for each lot of each transaction, quoted by number of carcasses sold or bought; and

(3) The following information regarding the characteristics of each transaction:

(i) The type of sale;

(ii) The U.S.D.A. quality grade of lamb;

(iii) The trim specification or U.S.D.A. yield grade;

(iv) The estimated weight range of the carcasses;

(v) The product delivery date;

(vi) The product manufacture date; and

(vii) The product buyer and delivery location.

(b) *Daily reporting of domestic boxed lamb sales.* The corporate officers or officially designated representatives of each packer shall report to the Secretary each reporting day the following information on domestic total boxed lamb cut sales not later than 2:30 p.m. Central Time as described in § 57.10(b):

(1) The price for each lot of each boxed lamb cut sale, quoted in dollars per hundredweight on a F.O.B. plant basis;

(2) The quantity for each lot of each sale, quoted by number of boxes or product weight sold; and

(3) The following information regarding the characteristics of each transaction:

(i) The type of sale;

(ii) The branded product characteristics, if applicable;

(iii) The U.S.D.A. quality grade of lamb;

(iv) The cut of lamb, referencing the USDA's Livestock and Seed Program Institutional Meat Purchase Specifications (IMPS), Fresh Lamb and Mutton Series 200;

(v) The cut or trim specification or U.S.D.A. yield grade;

(vi) The weight range of the cut;

(vii) The product delivery period;

(viii) The product manufacture date; and

(ix) The product buyer and delivery location.

(c) *Weekly reporting of imported lamb carcass purchases.* The corporate officers or officially designated representatives of each lamb importer shall report to the Secretary on the first reporting day of each week the following information applicable to the prior week for imported lamb carcass purchases not later than 10:00 a.m. Central Time:

(1) The price for each lot of each lamb carcass transaction, quoted in dollars per hundredweight on an F.O.B. Ex-Dock basis;

(2) The quantity for each lot of each transaction, quoted by number of carcasses bought; and

(3) The following information regarding the characteristics of each transaction:

(i) The type of purchase;

(ii) The estimated weight range of the carcasses;

(iii) The product delivery date; and

(iv) The product country of origin.

(d) *Weekly reporting of imported boxed lamb purchases.* The corporate officers or officially designated representatives of each lamb importer shall report to the Secretary on the first reporting day of each week the following information applicable to the prior week for imported boxed lamb cut purchases not later than 10:00 a.m. Central Time:

(1) The price for each lot of each boxed lamb cut purchase, quoted in dollars per hundredweight on an F.O.B. Ex-Dock basis;

(2) The quantity for each lot of each transaction, quoted by number of boxes or product weight bought; and

(3) The following information regarding the characteristics of each transaction:

(i) The type of purchase;

(ii) The branded product characteristics, if applicable;

(iii) The cut of lamb;

(iv) The trim specification;

(v) The weight range of the cut;

(vi) The product delivery period; and

(vii) The product country of origin.

(e) *Weekly reporting of imported boxed lamb sales.* The corporate officers or officially designated representatives of each lamb importer shall report to the Secretary on the first reporting day of each week the following information applicable to the prior week for imported boxed lamb cut sales not later than 10:00 a.m. Central Time:

(1) The price for each lot of each boxed lamb cut sale, quoted in dollars per hundredweight on a F.O.B. plant basis;

(2) The quantity for each lot of each transaction, quoted by number of boxes or product weight bought; and

(3) The following information regarding the characteristics of each transaction:

(i) The type of sale;

(ii) The branded product characteristics, if applicable;

(iii) The cut of lamb;

(iv) The trim specification;

(v) The weight range of the cut;

(vi) The product delivery period; and

(vii) The product country of origin.

(f) *Publication.* The Secretary shall make available to the public the information required to be reported under paragraphs (a) and (b) of this section not less frequently than once each reporting day and the information required to be reported under paragraphs (c), (d), and (e) of this section on the first reporting day of the current slaughter week.

Subpart E—OMB Control Number

§ 57.400 OMB Control Number Assigned Pursuant to the Paperwork Reduction Act.

The information collection and recordkeeping requirements of this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB Control Number 0581–0186.

Dated: March 9, 2000.

Barry L. Carpenter,

Deputy Administrator, Livestock and Seed Program.

Note: The following Appendices will not appear in the Code of Federal Regulations.

Appendix A.—Cattle Mandatory Reporting Forms

The following 6 forms referenced in Subpart B Part 57 would be used by persons required to report electronically transmitted mandatory market information on domestic and import sales and purchases of live cattle and boxed beef to the Agricultural Marketing Service.

Cattle

LS–113 Live Cattle Daily Report (Current Established Prices)
LS–114 Live Cattle Daily Report (Committed and Delivered Cattle)
LS–115 Live Cattle Weekly Report (Forward Contract and Packer-Owned)
LS–116 Live Cattle Weekly Report (Formula Purchases)
LS–117 Cattle Premiums and Discounts Weekly Report
LS–126 Boxed Beef Daily Report

Appendix B.—Swine Mandatory Reporting Forms

The following 3 forms referenced in Subpart C of Part 57 would be used by persons required to report electronically transmitted mandatory market information on domestic and import sales and purchases of live swine to the Agricultural Marketing Service.

Swine

LS–118 Swine Prior Day Report
LS–119 Swine Daily Report
LS–120 Swine Noncarcass Merit Prenium Weekly Report

Appendix C.—Lamb Mandatory Reporting Forms

The following 7 forms referenced in Subpart D of Part 57 would be used by persons required to report electronically transmitted mandatory market information on domestic and import sales and purchases of live lamb and boxed lamb to the Agricultural Marketing Service.

Lamb

LS–121 Live Lamb Daily Report (Current Established Prices)
LS–122 Live Lamb Daily Report (Committed and Delivered Lambs)
LS–123 Live Lamb Weekly Report (Packer-Owned)
LS–124 Live Lamb Weekly Report (Formula and Forward Contract Purchase)
LS–125 Lamb Premiums and Discounts Report
LS–128 Boxed Lamb Report
LS–129 Lamb Carcass Report

BILLING CODE 3410–02–P

Appendix A

REPRODUCE LOCALLY. *Include form number and date on all reproductions.*

FORM APPROVED. - OMB NO. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE CATTLE DAILY REPORT
(Current Established Prices)

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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REPORTING DATE: ____/____/____

REPORTING TIME: ☐ 10:00 A.M. ☐ 2:00 P.M.

PAGE ____ OF ____

1. COMPANY NAME
2. PLANT LOCATION
3. PLANT ADDRESS
4. CONTACT NAME
5. PHONE NO. *(Include Area Code)*

6. PURCHASE TYPE
1 = NEGOTIATED
2 = NEGOTIATED *(Auction/Terminal)*
3 = FORMULA MARKETING ARRANGEMENT
4 = FORWARD CONTRACT

7. CLASS
M = MIXED STEER/HEIFER
S = STEER
H = HEIFER
D = DAIRYBRED STEER/HEIFER
CD = DAIRY COW
CB = BEEF COW
B = BULL
O = OTHER

8. MAJORITY GRADE
1 = PRIME
2 = CHOICE
3 = SELECT
4 = STANDARD
5 = CUTTER/CANNER 90%
6 = BONER 85%
7 = BREAKER 75%
8 = BULL 92%

LOT ID	DOMESTIC (D) OR IMPORTED (I)	PURCHASE TYPE	CLASS	BASIS (L = Live, O = Drsd)	SHIP 1 = FOB 2 = Dlvd.	HEAD COUNT	WEIGHT RANGE (Pounds)	ESTIMATED AVERAGE WEIGHT (Pounds)	PRICE ($/cwt)	% CHOICE OR BETTER	MAJORITY GRADE	ESTIMATED DRESSING PERCENTAGE	ORIGIN (2-letter State abbr.)	SLAUGHTER DATE (mm/dd/yy)	PREMIUMS AND DISCOUNTS PAID			
															WEIGHT	QUALITY	CUTABILITY	OTHER
(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)	(27)

LS-113 (02-00)

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FORM APPROVED. - OMB No. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE CATTLE DAILY REPORT
(Committed and Delivered Cattle)

REPORTING DATE: ____/____/____

REPORTING TIME: ☐ 10:00 A.M. ☐ 2:00 P.M.

PAGE ____ OF ____

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

1. COMPANY NAME
2. PLANT LOCATION
3. PLANT ADDRESS
4. CONTACT NAME
5. TELEPHONE NO. *(Include Area Code)*

CLASS
M = MIXED STEER/HEIFER
S = STEER
H = HEIFER
CD = DAIRY COW
CB = BEEF COW
B = BULL
O = OTHER

LOT ID	D = DELIVERED C = COMMITTED	CLASS	HEAD COUNT		CATTLE ORIGIN (2-letter State abbr.)	TERMS OF TRADE			
			LIVE BASIS	DRESSED BASIS		DID PACKER PROVIDE FINANCING AGREEMENT OR ARRANGEMENT WITH REGARDS TO CATTLE? (Y = YES; N = NO)	DO DELIVERY TERMS SPECIFY LOCATION OF PRODUCER OR LOCATION OF PACKER'S PLANT? (1 = PRODUCER 2 = PACKER	CAN PRODUCER UNILATERALLY SPECIFY DATE AND TIME CATTLE ARE TO BE DELIVERED FOR SLAUGHTER? (Y = YES; N = NO)	NUMBER OF NEGOTIATED PURCHASED CATTLE TO BE DLVD. FOR SLAUGHTER <7 AND <14 DAYS FROM COMMITTED, PURCHASED, OR PRICED DATE.
(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)

LS-114 (02-00)

REPRODUCE LOCALLY. *Include form number and date on all reproductions.* FORM APPROVED. - OMB No. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE CATTLE WEEKLY REPORT
(Forward Contract and Packer-Owned)

PRIOR WEEK ENDED: ____/____/____ PAGE _____ OF _____

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 328-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

1. COMPANY NAME
2. PLANT LOCATION
3. PLANT ADDRESS
4. CONTACT NAME
5. TELEPHONE NO. *(Include Area Code)*

6. SLAUGHTERED CATTLE QUANTITY *(Cattle slaughtered during the prior week)*

	HEAD COUNT	
	DOMESTIC	IMPORTED
FORWARD CONTRACT CATTLE:		
FORMULA MARKETING ARRANGEMENT CATTLE:		

PACKER-OWNED CATTLE

FORWARD CONTRACT CATTLE PURCHASED *(Cattle purchased during the prior week)*

DOMESTIC (D) OR IMPORTED (I) (7)	HEAD COUNT (8)	ESTIMATED LIVE WEIGHT RANGE (9)	ESTIMATED AVERAGE LIVE WEIGHT (10)	ORIGIN *(2-Letter State abbr.)* (11)	ESTIMATED % QUALITY GRADE CHOICE OR BETTER (12)	ESTIMATED DRESSING PERCENTAGE (13)	HEAD COUNT (14)	BASIS LEVEL *($/cwt)* (15)	DELIVERY MONTH (16)

LS-116 (02-00)

REPRODUCE LOCALLY. *Include form number and date on all reproductions.* FORM APPROVED. - OMB NO. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE CATTLE WEEKLY REPORT
(Formula Purchases)

PRIOR WEEK ENDING: ____/____/____ PAGE _____ OF _____

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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1. COMPANY NAME
2. PLANT LOCATION
3. PLANT ADDRESS
4. CONTACT NAME
5. PHONE NO. *(Include Area Code)*

6. TERMS OF TRADE

1 = PACKER PROVIDED FINANCING ARRANGEMENT OR AGREEMENT WITH REGARDS TO CATTLE (Y = Yes; N = No)

2 = DELIVERY TERMS SPECIFY LOCATION OF PRODUCER (1) OR OF PLANT (2)

3 = PRODUCER SPECIFIED DATE AND TIME OF DELIVERY AND SLAUGHTER (Y = Yes, N = No)

FORMULA MARKETING ARRANGEMENT CATTLE SLAUGHTERED

LOT ID	DOMESTIC (D) OR IMPORTED (I)	HEAD COUNT	TOTAL POUNDS	WEIGHTED AVERAGE CARCASS PRICE	RANGE OF PRICES PAID	WEIGHTED AVERAGE AGGREGATE PRICE	PREMIUMS AND DISCOUNTS PAID: RANGE	PREMIUMS AND DISCOUNTS PAID: WEIGHTED AVERAGE	TERMS OF TRADE (See above): 1 Y OR N	2 1 OR 2	3 Y OR N

LS-116 (02-00)

REPRODUCE LOCALLY. *Include form number and date on all reproductions.* FORM APPROVED. - OMB No. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

CATTLE PREMIUMS AND DISCOUNTS WEEKLY REPORT

INTENTIONS FOR WEEK BEGINNING: ____/____/____

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

1. COMPANY NAME

2. PLANT LOCATION

3. PLANT ADDRESS

4. CONTACT NAME | 5. TELEPHONE NO. *(Include Area Code)*

PREMIUM/DISCOUNT	RANGE	AVERAGE
QUALITY CHARACTERISTICS		
PRIME		
CHOICE		
SELECT		
STANDARD		
AVG. CHOICE OR BETTER		
DAIRY-TYPE		
BULLOCK/STAG		
HARDBONE		
DARK CUTTER		
OTHER *(Describe)*		
CUTABILITY CHARACTERISTICS		
GRADE / FAT COVER*		
1.0 - 2.0 / <.1"		
2.0 - 2.5 / <.2"		
2.5 - 3.0 / <.4"		
3.0 - 3.5 / <.6"		
3.5 - 4.0 / <.8"		
4.0 - 5.0 / <1.2"		
5.0/UP / >1.2"		
Other *(Describe)*		
WEIGHT CHARACTERISTICS		
400-500 LBS.		
500-550 LBS.		
550-600 LBS.		
600-900 LBS.		
900-950 LBS.		
950-1000 LBS.		
OVER 1000 LBS.		
OTHER *(Describe)*		
OTHER *(Describe)*		

*If yield grades are not available, yield differentials may be based on fat at 12th rib using a constant of average ribeye area and muscling for carcass weight and KPH. Superior or inferior muscling may adjust lean yield.

LS-117 (02-00)

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REPRODUCE LOCALLY. *Include form number and date on all reproductions.*

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

BOXED BEEF DAILY REPORT

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 5 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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1. COMPANY NAME

2. PLANT LOCATION

3. PLANT ADDRESS

4. CONTACT NAME | 5. PHONE NO. *(Include Area Code)*

REPORTING DATE: ____/____/____

REPORTING TIME: ☐ 10:00 A.M. ☐ 2:00 P.M.

PAGE ____ OF ____

6. DELIVERY CODE
1 = 0-21 DAYS
2 = 22-60 DAYS
3 = 61-90 DAYS
4 = 91/UP DAYS

7. TYPE OF SALE
1 = NEGOTIATED
2 = FORMULA MARKETING ARRANGEMENT
3 = FORWARD CONTRACT

8. CLASS CODE
M = MIXED STEER/HEIFER
S = STEER
H = HEIFER
D = DAIRYBRED STEER/HEIFER
MC = MIXED STEER/HEIFER/COW
CD = DAIRY COW
CB = BEEF COW
B = BULL
O = OTHER

9. GRADE CODE
1 = PRIME
2 = CHOICE
3 = CERTIFIED
4 = SELECT
5 = OTHER
6 = CUTTER/CANNER 90%
7 = BONER 85%
8 = BREAKER 75%
9 = BULL 92%

10. BRANDED CODE
1 = QUALITY
2 = TRIM
3 = WEIGHT
4 = BREED
5 = PACKAGING

11. TRIM CODE
1 = 3/4" AVG; 1" MAX
2 = 1/4" AVG; 1/2" MAX
3 = 1/8" AVG; 1/4" MAX
4 = PRACTICALLY FREE; 1/8" MAX
5 = PEELED/DENUDED; 1/8" MAX
6 = PEELED/DENUDED SURFACE MEMBRANE REMOVED; 1/8" MAX

DOMESTIC (D) OR EXPORT (E) (12)	CUT DATE (mm/dd/yy) (13)	TYPE OF SALE (14)	DELIVERY PERIOD CODE (15)	CLASS CODE (16)	USDA GRADE CODE (17)	BRANDED CODE (18)	BEEF CUT (Reference Institutional Meat Purchase Specification (IMPS) Number) (19)	TRIM SPEC CODE (20)	WEIGHT (L = Light H = Heavy M = Mixed) (21)	BOX COUNT (for Weight for cows only) (22)	FOB PLANT BASIS PRICE (/Cwt) (23)	BUYER (24)	DESTINATION (25)

Appendix B

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FORM APPROVED. - OMB No. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

SWINE PRIOR DAY REPORT

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number is 0581-0188. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

REPORTING DATE: ____/____/____ PAGE ____ OF ____

1. COMPANY NAME		8. PACKER PURCHASE COMMITTMENTS *(Swine scheduled for delivery each of next 14 days by head count)*				7. PURCHASED SWINE DATA
2. PLANT LOCATION		DAY 1:	DAY 5:	DAY 9:	DAY 13:	1 = NEGOTIATED
3. PLANT ADDRESS		DAY 2:	DAY 6:	DAY 10:	DAY 14:	2 = NEGOTIATED (auction/terminal)
4. CONTACT NAME	5. TELEPHONE NO. *(Include Area Code)*	DAY 3:	DAY 7:	DAY 11:		3 = FORMULA MARKETING ARRANGEMENT
		DAY 4:	DAY 8:	DAY 12:		4 = FORWARD CONTRACT

8. SLAUGHTERED SWINE SLAUGHTER DATA *(Swine Slaughtered and Priced)*

BARROWS/GILTS BY PURCHASE TYPE	HEAD COUNT	NET PRICE	AVG. NET PRICE	LOWEST NET PRICE	HIGHEST NET PRICE	AVG. LIVE WEIGHT	AVG. CARCASS WEIGHT	AVG. SORT LOSS	AVG. BACKFAT	AVG. LEAN %
NEGOTIATED										
NEGOTIATED (AUCTION/TERMINAL)										
FORMULA MARKETING ARRANGEMENT										
FORWARD CONTRACT										
PACKER-OWNED										
PACKER SOLD										

SOWS BY PURCHASE TYPE	HEAD COUNT	NET PRICE	AVG. NET PRICE	LOWEST NET PRICE	HIGHEST NET PRICE	AVG. LIVE WEIGHT	AVG. CARCASS WEIGHT	AVG. SORT LOSS	AVG. BACKFAT	
NEGOTIATED										
NEGOTIATED (AUCTION/TERMINAL)										
FORMULA MARKETING ARRANGEMENT										
FORWARD CONTRACT										
PACKER-OWNED										
PACKER SOLD										

BOARS/STAGS BY PURCHASE TYPE	HEAD COUNT	NET PRICE	AVG. NET PRICE	LOWEST NET PRICE	HIGHEST NET PRICE	AVG. LIVE WEIGHT	AVG. CARCASS WEIGHT	AVG. SORT LOSS	AVG. BACKFAT	
NEGOTIATED										
NEGOTIATED (AUCTION/TERMINAL)										
FORMULA MARKETING ARRANGEMENT										
FORWARD CONTRACT										
PACKER-OWNED										
PACKER SOLD										

9. PURCHASED SWINE DATA

BARROWS/GILTS BY PURCHASE TYPE	BASE PRICE ($/CWT.)	TOTAL HEAD OF SWINE PURCHASED	LIVE WEIGHT
NEGOTIATED			
NEGOTIATED (AUCTION/TERMINAL)			
FORMULA MARKETING ARRANGEMENT			
FORWARD CONTRACT			
PACKER-OWNED			
PACKER SOLD			

SOWS BY PURCHASE TYPE	BASE PRICE ($/CWT.)	TOTAL HEAD OF SWINE PURCHASED	LIVE WEIGHT
NEGOTIATED			
NEGOTIATED (AUCTION/TERMINAL)			
FORMULA MARKETING ARRANGEMENT			
FORWARD CONTRACT			
PACKER-OWNED			
PACKER SOLD			

BOARS/STAGS BY PURCHASE TYPE	BASE PRICE ($/CWT.)	TOTAL HEAD OF SWINE PURCHASED	LIVE WEIGHT
NEGOTIATED			
NEGOTIATED (AUCTION/TERMINAL)			
FORMULA MARKETING ARRANGEMENT			
FORWARD CONTRACT			
PACKER-OWNED			
PACKER SOLD			

LS-118 (02-00)

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FORM APPROVED. - OMB No. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

SWINE DAILY REPORT

REPORTING DATE: ____/____/____

REPORTING TIME: ☐ 10:00 A.M. ☐ 2:00 P.M.

PAGE ____ OF ____

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1. COMPANY NAME		PURCHASE TYPE	CLASS
2. PLANT LOCATION		1 = NEGOTIATED	BG = BARROWS/GILTS
3. PLANT ADDRESS		2 = NEGOTIATED (auction/terminal)	S = SOWS
4. CONTACT NAME	5. TELEPHONE NO. *(Include Area Code)*	3 = FORMULA MARKETING ARRANGEMENT	B = BOARS/STAGS
		4 = FORWARD CONTRACT	

SLAUGHTER SWINE DATA

LOT ID (6)	PURCHASE TYPE (7)	CLASS (8)	HEAD COUNT (9)	BASE PRICE *($/cwt)* (10)	ORIGIN *(2-letter State abbr.)* (12)

13. SWINE PURCHASES FOR TODAY

	ESTIMATED NUMBER OF HEAD	ACTUAL NUMBER OF HEAD
PACKER-OWNED SWINE	= _____	_____
BREAKDOWN BY PURCHASE TYPE:		
NEGOTIATED	= _____	_____
NEGOTIATED (auction/terminal)	= _____	_____
FORMULA MARKETING ARRANGEMENT	= _____	_____
TOTAL ESTIMATE	= _____	_____

REMARKS

LS-119 (02-00)

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USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

SWINE NONCARCASS MERIT PREMIUM WEEKLY REPORT

PRIOR SLAUGHTER WEEK ENDED: ____/____/____

NOTE: According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0188. The time required to complete this information collection is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The U.S. Department of Agriculture (USDA) prohibits discrimination in all its programs and activities on the basis of race, color, national origin, gender, religion, age, disability, political beliefs, sexual orientation, and marital or family status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means for communication of program information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at 202-720-2600 (voice and TDD). To file a complaint of discrimination, write USDA, Director, Office of Civil Rights, Room 326-W, Whitten Building, 14th and Independence Avenue, SW, Washington, DC 20250-9410 or call (202) 720-5964 (voice and TDD). USDA is an equal opportunity provider and employer.

1. COMPANY NAME

2. PLANT LOCATION

3. PLANT ADDRESS

4. CONTACT NAME | 5. TELEPHONE NO. *(Include Area Code)*

MERIT PREMIUM	RANGE	AVERAGE
NONCARCASS MERIT CATEGORY		
VOLUME		
TRANSPORT		
ACQUISITION		
DELIVERY TIMING		
OTHER *(Describe)*		

LS-120 (02-00)

Appendix C

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USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE LAMB DAILY REPORT (Current Established Prices)

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0188. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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REPORTING DATE: ____/____/____

REPORTING TIME: ☐☐ 10:00 A.M. ☐☐ 2:00 P.M.

PAGE ____ OF ____

1. COMPANY NAME

2. PLANT LOCATION

3. PLANT ADDRESS

4. CONTACT NAME | 5. PHONE NO. *(Include Area Code)*

8. PURCHASE TYPE: 1 = NEGOTIATED; 2 = NEGOTIATED *(auction/terminal)*; 3 = FORMULA MARKETING ARRANGEMENT; 4 = FORWARD CONTRACT

7. MAJORITY GRADE: 1 = PRIME; 2 = CHOICE; 3 = GOOD; 4 = UTILITY; 5 = CULL

8. PELT: 1 = WOOLED; 2 = #1 FALL SHORN; 3 = #2; 4 = #3-4

LOT ID	PURCHASE TYPE	DOMESTIC (D) OR IMPORTED (I)	BASIS (L = Lbs. C = Cwt.)	SHIP (1 = COB 2 = Dvd.)	HEAD COUNT	WEIGHT RANGE (Pounds)	ESTIMATED AVERAGE WEIGHT (Pounds)	PRICE ($/cwt)	% CHOICE OR BETTER	MAJORITY GRADE	ESTIMATED DRESSING PERCENTAGE	ORIGIN (2 Letter State abbr.)	DELIVERY DATES (mm/dd/yy)	PELT	PREMIUMS AND DISCOUNTS PAID: WEIGHT	QUALITY	YIELD	OTHER
(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)	(25)	(26)	(27)

LS-121 (02-00)

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USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE LAMB DAILY REPORT
(Committed and Delivered Lambs)

REPORTING DATE: _____/_____/_____

REPORTING TIME: ☐ 10:00 A.M. ☐ 2:00 P.M.

PAGE _____ OF _____

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1. COMPANY NAME

2. PLANT LOCATION

3. PLANT ADDRESS

4. CONTACT NAME | 5. TELEPHONE NO. *(Include Area Code)*

LOT ID (6)	D = DELIVERED C = COMMITTED (7)	HEAD COUNT: LIVE BASIS (8)	HEAD COUNT: DRESSED BASIS (9)	LAMB ORIGIN *(2-letter State abbr.)* (10)	TERMS OF TRADE: DID PACKER PROVIDE FINANCING AGREEMENT OR ARRANGEMENT WITH REGARDS TO LAMBS? (Y = YES; N = NO) (11)	TERMS OF TRADE: DO DELIVERY TERMS SPECIFY LOCATION OF PRODUCER OR LOCATION OF PACKER'S PLANT? (1 = PRODUCER 2 = PACKER (12)	TERMS OF TRADE: CAN PRODUCER UNILATERALLY SPECIFY DATE AND TIME LAMBS ARE TO BE DELIVERED FOR SLAUGHTER? (Y = YES; N = NO) (13)	TERMS OF TRADE: NUMBER OF NEGOTIATED PURCHASED LAMBS TO BE DLVD. FOR SLAUGHTER <7 AND <14 DAYS FROM COMMITTED, PURCHASED, OR PRICED DATE. (14)

LS-122 (02-00)

REPRODUCE LOCALLY. *Include form number and date on all reproductions.* **FORM APPROVED.** - OMB No. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE LAMB WEEKLY REPORT
(Packer-Owned)

PRIOR WEEK ENDED: _____/_____/_____

PAGE _____ OF _____

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1. COMPANY NAME

2. PLANT LOCATION

3. PLANT ADDRESS

4. CONTACT NAME | 5. TELEPHONE NO. *(Include Area Code)*

PACKER-OWNED LAMBS

HEAD COUNT (6)	ESTIMATED LIVE WEIGHT RANGE (7)	ESTIMATED AVERAGE LIVE WEIGHT (8)	ORIGIN *(2-Letter State abbr.)* (9)	ESTIMATED % QUALITY GRADE CHOICE OR BETTER (10)	ESTIMATED DRESSING PERCENTAGE (11)

LS-123 (02-00)

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FORM APPROVED. - OMB NO. 0581-0186

USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LIVE LAMB WEEKLY REPORT
(Formula and Forward Contract Purchases)

PRIOR WEEK ENDING: ____/____/____ PAGE ____ OF ____

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1. COMPANY NAME

2. PLANT LOCATION

3. PLANT ADDRESS

4. CONTACT NAME

5. PHONE NO. *(Include Area Code)*

6. TERMS OF TRADE

1 = PACKER PROVIDED FINANCING ARRANGEMENT OR AGREEMENT WITH REGARDS TO LAMBS (Y = Yes, N = No)

2 = DELIVERY TERMS SPECIFY LOCATION OF PRODUCER (1) OR OF PLANT (2)

3 = PRODUCER SPECIFIED DATE AND TIME OF DELIVERY AND SLAUGHTER (Y = Yes, N = No)

7. SLAUGHTERED LAMB QUANTITY
(Slaughtered during prior week)

HEAD OUNT: DOMESTIC | IMPORTED

FORWARD CONTRACT LAMBS:

FORMULA MARKETING ARRANGEMENT LAMBS:

8. FORMULA MARKETING ARRANGEMENT AND FORWARD CONTRACT LAMBS SLAUGHTERED

LOT ID	FORMULA = 1 FORWARD CONTRACT = 2	HEAD COUNT	TOTAL POUNDS	WEIGHTED AVERAGE CARCASS PRICE	RANGE OF PRICES PAID	WEIGHTED AVERAGE AGGREGATE CARCASS PRICE	PREMIUMS AND DISCOUNTS PAID RANGE	PREMIUMS AND DISCOUNTS PAID WEIGHTED AVERAGE

8. FORMULA LAMBS PURCHASED *(Purchased during prior week)*

HEAD COUNT	BASIC LEVEL (¢/CWT)	DELIVERY MONTH

10. FORWARD CONTRACT LAMBS PURCHASED *(Purchased during prior week)*

HEAD COUNT	BASIC LEVEL (¢/CWT)	DELIVERY MONTH

11. TERMS OF TRADE *(See above)*

1	2	3
Y OR N	1 OR 2	Y OR N

LS-124 (02-00)

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USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LAMB PREMIUMS AND DISCOUNTS WEEKLY REPORT

INTENTIONS FOR WEEK BEGINNING: ____/____/____

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1. COMPANY NAME

2. PLANT LOCATION

3. PLANT NAME

4. CONTACT NAME

5. TELEPHONE NO. *(Include Area Code)*

PREMIUM/DISCOUNT	RANGE	AVERAGE
QUALITY CHARACTERISTICS		
PRIME		
CHOICE		
GOOD		
STANDARD		
CHOICE YG 2 OR BETTER		
BUCKY		
YEARLING OR OLDER		
OTHER *(Describe)*		
CUTABILITY CHARACTERISTICS		
GRADE / FAT COVER*		
1.0 - 2.0 / <.16"		
2.0 - 3.0 / <.26"		
3.0 - 4.0 / <.36"		
4.0 - 5.0 / <.46"		
5.0/UP / >.46"		
Other *(Describe)*		
WEIGHT CHARACTERISTICS		
UNDER 45 LBS.		
45-50 LBS.		
55-65 LBS.		
65-75 LBS.		
75-85 LBS.		
OVER 85 LBS.		
OTHER *(Describe)*		
PELTS		
WOOLED		
#1 FALL SHORN		
#2		
#3-4		
OTHER *(Describe)*		
OTHER *(Describe)*		

* If yield grades are not available, yield differentials may be based on fat at 12th rib using a constant of average ribeye area and muscling for carcass weight and KPH. Superior or inferior muscling may adjust lean yield.

LS-125 (02-00)

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USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

BOXED LAMB REPORT

According to the Paperwork Reduction Act of 1995, an agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is 0581-0186. The time required to complete this information collection is estimated to average 10 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

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REPORTING DATE: ____/____/____

PAGE _____ OF _____

1. COMPANY NAME

2. PLANT LOCATION

3. PLANT ADDRESS

4. CONTACT NAME

5. PHONE NO. *(Include Area Code)*

6. DELIVERY CODE	7. TYPE OF SALE/PURCHASE	8. BRANDED CODE	9. GRADE CODE	10. TRIM CODE
1 = 0-21 DAYS	1 = NEGOTIATED	1 = QUALITY	1 = PRIME	1 = 3/4" AVG; 1" MAX
2 = 22-80 DAYS	2 = FORMULA MARKETING ARRANGEMENT	2 = TRIM	2 = CHOICE	2 = 1/4" AVG; 1/2" MAX
3 = 81-90 DAYS	3 = FORWARD CONTRACT	3 = WEIGHT	3 = PRIME/CHOICE	3 = 1/8" AVG; 1/4" MAX
4 = 91/UP DAYS		4 = BREED	4 = CERTIFIED	4 = PRACTICALLY FREE; 1/8" MAX
		5 = PACKAGING	5 = GOOD	5 = PEELED/DENUDED; 1/8" MAX
			6 = UTILITY	6 = PEELED/DENUDED SURFACE
			7 = CULL	MEMBRANE REMOVED; 1/8" MAX
			8 = UNGRADED	

DOMESTIC (D) OR IMPORT (I) (11)	TYPE OF SALE/PURCHASE (12)	CUT DATE *(mm/dd/yy)* (13)	DELIVERY PERIOD CODE (14)	1 = FRESH 2 = FROZEN (15)	USDA GRADE CODE (16)	BRANDED CODE (17)	LAMB CUT *(Reference Institutional Meat Purchase Specifications (IMPS) Number)* (18)	TRIM SPEC CODE (19)	WEIGHT *L = Light H = Heavy M = Mixed* (20)	BOX COUNT OR PRODUCT WEIGHT (21)	FOB PLANT OR FOB EX-DOCK BASIS PRICE *($/cwt)* (22)	NATION OF ORIGIN (23)	BUYER (24)	DESTINATION (25)

LS-128 (02-00)

[FR Doc. 00-6322 Filed 2-14-00; 8:45 am]
BILLING CODE 3410-02-C

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USDA

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

LAMB CARCASS REPORT

REPORTING DATE: ____/____/____

PAGE _____ OF _____

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1. COMPANY NAME

2. PLANT LOCATION

3. PLANT ADDRESS

4. CONTACT NAME

5. TELEPHONE NO. *(Include Area Code)*

GRADE CODE
1 = PRIME
2 = CHOICE
3 = PRIME/CHOICE
4 = CERTIFIED
5 = GOOD
6 = UTILITY
7 = CULL
8 = UNGRADED

DOMESTIC (D) OR IMPORT (I) (6)	TYPE OF SALE/PURCHASE 1 = NEGOTIATED; 2 = FORMULA MARKETING ARRANGEMENT; 3 = FORWARD CONTRACT (7)	PRICE *($/cwt)* FOB PLANT DOM. EX-DOCK IMP. (8)	NUMBER OF CARCASSES (9)	USDA GRADE CODE (10)	YIELD GRADE (11)	ESTIMATED WEIGHT RANGE (12)	DELIVERY DATE *(mm/dd/yy)* (13)	MANUFACTURED DATE *(mm/dd/yy)* (14)	NATION OF ORIGIN (15)	BUYER (16)	DELIVERY DESTINATION (17)

LS-129 (02-00)

Federal Register

Friday,
March 17, 2000

Part III

Department of Housing and Urban Development

Fiscal Year 2000 Funding Availability for the Assisted Living Conversion Program (ALCP) for Section 202 Projects; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4581–N–01]

Fiscal Year 2000 Notice of Funding Availability for the Assisted Living Conversion Program (ALCP) for Section 202 Projects

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces the FY 2000 funding available for conversions of units within existing Section 202 projects into licensed Assisted Living Facilities (ALFs).

Purpose of the Program. The purpose of this program is to provide the owners/borrowers of Section 202, 202/8 and 202 Project Rental Assistance Contract (PRAC) projects designed for the elderly with a grant to allow conversion of some or all of the units in these housing projects into ALFs serving frail elderly, as defined in Section 232(B)(6) of the National Housing Act.

Available Funds. $50 million for Section 202 conversions to ALFs.

Eligible Applicants. Only owners/borrowers of eligible developments (as described in Section III of this NOFA) may apply for and become the recipient of a grant.

Application Due Date. July 17, 2000.

Match. None required.

ADDITIONAL INFORMATION:

I. Application Due Date, Application Kits, and Technical Assistance

Application Due Date. Your completed application (one original and four copies) is due on or before 6:00 pm, local time, on July 17, 2000, at the address shown below:

Addresses for Submitting Applications. The official place for receipt of your application is ONLY in the designated lead Multifamily Hub in the HUD State Office.

You must ALSO send one copy of your application to the Office of Portfolio Management, Room 6160, ATTN: ALCP Staff, HUD Building, 451 Seventh Street, SW, Washington, DC 20410

Submit an original and three copies of the ALCP application to the lead HUD Multifamily Hub, as designated in Section II of this NOFA, with jurisdiction over your development.

Appendix A to this NOFA lists the four (4) lead Multifamily Hubs with the Program Centers under them, to facilitate applicants knowing the correct location to send the application. Appendix B to this NOFA consists of a list of the four (4) lead HUD Housing Multifamily Hubs designated to receive ALCP applications, with addresses and phone numbers.

Application Submission Procedures. Mailed Applications. If your application is mailed, your application will be considered timely filed if postmarked on or before 12:00 midnight on the application due date and received by the appropriate HUD Multifamily Hub on or within ten (10) days of the application due date.

Applications Sent by Overnight/Express Mail Delivery. If your application is sent by overnight delivery or express mail, your application will be considered timely filed if received at the Multifamily Hub before or on the application due date, or upon submission of documentary evidence that the application was placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. If your application is hand carried, the application will be accepted by a Multifamily Hub between 8:45 a.m. and 5:15 p.m., local time, Monday through Friday (except on designated national holidays, *e.g.*, Memorial Day (5/31/00) and Independence day (7/4/00)). On the application due date, applications will be accepted at the Hub up to 6:00 p.m. local time. This deadline is firm.

For Application Kits, Further Information, and Technical Assistance. For Application Kits. You may obtain an ALCP application kit and supplemental information by calling either the Multifamily Housing Clearinghouse at (voice) 1–800–MULTI–70 (1–800–685–8470). There is a separate application kit for service coordination information (which is necessary for those needing to enhance or add service coordination per Section III(A)(14) of this NOFA). Please make sure to provide your name, address (including zip code), and telephone number (including area code). The application kit is also available on the Internet through the HUD web site at http://www.hud.gov.

For Further Information and Technical Assistance. You should contact the lead Multifamily Hub where you will be mailing your ALCP Application. (Please refer to Hub telephone numbers in Appendix B.)

You also may contact Aretha Williams, Housing Project Manager, Office of Business Products, Room 6138, at (202)–708–2866 x2480, for questions regarding the physical conversion of the ALF. Ms. Williams can be reached, also by e:mail, at "aretha__m.__williams@hud.gov". For questions about management of the ALF and coordination with agencies of the Department of Health and Human Services and other third parties, you may contact Jerry Nachison, Senior Housing Project Manager, Office of Portfolio Management, Room 6168 at (202)–708–3730 x2485. Mr. Nachison may be reached also by e:mail at "jerold__s.__nachison@hud.gov". Both Ms. Williams and Mr. Nachison are located at the Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410 (neither of the telephone numbers are toll free).

If you have a hearing or speech impairment, you may access either telephone number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

II. Amount Allocated

This NOFA makes available $50,000,000 for the physical conversion of section 202 projects or portions of projects to ALFs. The FY 2000 funding is in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, for the fiscal year ending September 30, 2000 (Pub.L. 106–74, 113 Stat. 1047, approved October 20, 1999).

Under the ALCP, the 18 HUD Multifamily Hubs are grouped into four geographic areas, so that the amount of fair-shared grant funds will be sufficient to enable reasonable competition, and insure projects of feasible size and quality.

The four geographic areas and the lead Hub under the ALCP for each are:

The lead Hub for the *East* Geographic Area is Buffalo (the other Hubs which feed into Buffalo for the ALCP are Boston, New York, Philadelphia, and Baltimore).

The lead Hub for the *South* Geographic Area is Greensboro (the other Hubs which feed into Greensboro for the ALCP are Atlanta, Jacksonville, and Fort Worth).

The lead Hub for the *Central* Geographic Area is Kansas City (the other Hubs which feed into Kansas City for the ALCP are Chicago, Columbus, Detroit, and Minneapolis).

The lead Hub for the *West* Geographic Area is San Francisco (the other Hubs which feed into San Francisco for the ALCP are Seattle, Los Angeles and Denver).

The allocation formula used for the ALCP reflects demographic characteristics of age and incidence of frailty that would be expected for program participants. The Fiscal Year (FY) 2000 formula consists of three data

elements from the 1990 decennial census:

(1) The number of non-institutional elderly population aged 55 years or older with a self-care limitation,

(2) The number of non-institutional elderly population aged 75 or older with a mobility limitation, and,

(3) The number of the non-institutional elderly population aged 75 or older with both a mobility limitation and a self-care limitation.

The data were taken from the 1990 Census Special Tabulation on Aging, STP–14, sponsored by the Administration on Aging, U.S. Department of Health and Human Services.

A mobility limitation is defined as a health condition that has lasted for six (6) or more months, making it difficult for the person to go outside the home alone. This includes outside activities such as shopping or visiting the doctor's office. A self-care limitation is defined as a health care limitation that has lasted for six (6) months or more which makes it difficult for the person to take care of his/her own personal needs such as dressing, bathing, or getting around in the home.

A fair share factor for each state was developed by taking the sum of the three elements within each state as a percentage of the sum of the three elements for the total United States. The resulting percentage for each state was then adjusted to reflect the relative difference in the cost of providing housing among the states. The total of the grant funds available ($50 million) was multiplied by the adjusted fair share percentage for each state, and the resulting funds for each state were totaled for each of the four geographic areas.

The ALCP grant funds fair share allocations for the four geographic areas are shown below:

FISCAL YEAR ALLOCATION 2000 FOR THE ASSISTED LIVING CONVERSION PROGRAM (ALCP)

Area	Grant authority
East	$14,760,882
South	14,567,452
Central	11,989,455
West	8,682,211
	50,000,000

III. Program Description; Eligible and Ineligible Applicants, Developments, and Activities

(A) Program Description

Assisted living facilities are designed to accommodate frail elderly and people with disabilities who can live independently but need assistance with activities of daily living (*e.g.*, assistance with eating bathing, grooming, dressing and home management activities. ALFs must provide support services such as personal care, transportation, meals, housekeeping, and laundry. Frail elderly person means an individual 62 years of age or older who is unable to perform at least three activities of daily living (ADLs) as defined by the regulations for HUD's Section 202 Program (Supportive Housing for the Elderly) at 24 CFR 891.205.

Assisted living is defined in section 232(b)(6) of the National Housing Act (12 U.S.C. 1715w). The ALCP provides funding for the physical costs of converting some or all of the units of a section 202 development into an ALF, including the unit configuration, common and services space and any necessary remodeling, consistent with HUD or the State's statute/regulations (whichever is more stringent).

Typical funding will cover basic physical conversion of existing project units, common and services space. There must be sufficient community space to accommodate a central kitchen or dining facility, lounges, recreation and other multiple-areas available to all residents of the Section 202 projects, or office/staff spaces in the ALF. When food is prepared at an off-site location, the preparation area of the facility must be of sufficient size to allow for the installation of a full kitchen, if necessary. You must provide supportive services for the residents either directly or through a third party. Your application must include a firm commitment for the supportive services to be offered within the ALF as part of the application. You may charge assisted living residents for meals and/or service fees. Residents may contract with third party agencies directly for nursing, therapy or other services not offered by the ALF.

(B) Program Requirements

The following program requirements apply:

(1) Your ALF facility must be licensed and regulated by the State (or if there is no State law providing such licensing and regulation, by the municipality or other subdivision in which the facility is located). Each assisted living unit must include its own kitchen, bathroom, living/dining area (1 bedroom unit) or bedroom/living/dining area (efficiency unit) and must meet the state and/or local licensing, building, zoning and other requirements for an ALF.

(2) Your ALF must be available to qualified elderly and persons with disabilities, consistent with the rules and payment plans of the State, who need and want the supportive services in order to remain independent and avoid premature institutionalization.

(3) Your ALF's residents are section 202 tenants and must comply with the requirements applicable thereto. Thus, you cannot charge additional rent over what is charged to residents in the non-ALF portion of the section 202 project. All admissions to the ALF must be through the section 202 project admissions office. However, persons accepted into the ALF also must sign an ALF admissions agreement which shall be an addendum to the section 202 lease.

(4) At a minimum, your ALF must provide room, board (as defined in Section III(A)(6)) of this NOFA) and continuous protective oversight (CPO). CPO involves a range of activities and services that may include such things as awareness by management and staff of the occupant's condition and location as well as an ability to intervene in a crisis for dependent and relatively independent occupants on a 24-hour basis. The two occupant groups in an ALF are:

(a) *Independent Occupants:* Awareness by management and staff of the occupant's condition and whereabouts as well as the availability of assistance for the occupants as needed.

(b) *Dependent occupants:* Supervision of nutrition, assistance with medication and continuous responsibility for the occupants' welfare.

(5) Anyone moving into an ALF unit must agree to accept as a condition of occupancy the board and services required for the purpose of complying with state and local law and regulation. *However, occupancy in an ALF unit may not be conditioned on receipt of other services or board not required by state or local requirements.*

(6) Your ALF must offer three meals per day to each resident.

(a) Residents in old section 202 ("SH") projects (those approved before 1972) which may not have kitchens in their units must take such meals as required by their mandatory meals agreement, or by the state's mandated requirements if more stringent (*e.g.*, 2 meals, 2 snacks daily).

(b) Residents whose apartments have kitchens must take at least the number of meals a day provided by the facility, per their mandatory meals requirement, or as required by state or local rules, if more stringent. If the facility does not have a mandatory meals plan, then state and local rules govern.

In either case, ALF management must coordinate meals requirements with the needs of residents who are out part of the day, *e.g.*, in day care. The meals program may not be operated at a profit by the owner/borrower.

(7) Your ALF's operation must be part of the section 202 owner/borrower's management organization. Some or all of its functions may be contracted out. The ALF must predicate its budget on a two-tiered structure under which board and supportive service income and expenses must be maintained separately and independently from the regular income and expenses of the section 202 project. The two components of ALF costs are:

(a) Charges/payment for board, which may be on a sliding scale or any other equitable fee system; and

(b) Charges/payment for necessary supportive services, which may include a combination of resident fees, Medicaid and/or other third party payments.

(8) Priority admissions for ALF units is as follows:

(a) Current residents desiring an ALF unit and meeting the program requirements (no resident can be required to accept an ALF unit).

(b) Qualified individuals or families needing ALF services who are already on the section 202 project's waiting list;

(c) Qualified individuals or families in the community needing ALF services wanting to be added to the project's waiting list; and

Note: Qualified physically disabled non-elderly persons needing assisted living services are eligible to occupy these units on the same basis as elderly persons.

(9) The management of the section 202 project must set up a separate waiting list for ALF units. ALF units must be for eligible Section 202 residents who meet the admissions/discharge requirements as established for assisted living by State and local licensing, or HUD frailty requirements under 24 CFR 891.205 if more stringent.

(10) Costs of meals and supportive services are NOT covered by this HUD grant.

These items must be paid for through other sources, *e.g.*, a mix of resident fees and/or third party providers. Evidence of third party commitment(s) must be included as part of the application. (See Section IV(B) of this NOFA.) The assisted living supportive services program must promote independence and provide personal care assistance based on individual needs in a home-like environment (see Section VI(B)(8)(b) through (c) of this NOFA).

(11) Upon receipt of a grant under this program, all owner/borrowers participating in the ALCP must provide a Declaration of Restrictive Covenants (DRC), which will be recorded with the land, to retain the low income character of the housing, and to maintain the project (including the ALF), as a moderate, low, or very low income facility (as appropriate) for at least 20 years beyond the current 40-to-50 year term of the Section 202 mortgage loan or capital advance.

(12) In addition to the physical costs of the conversion (see Section VI(B)(5) of this NOFA), the grant will pay for reasonable legal, architectural and consultant fees, and temporary relocation costs for current tenants if they must vacate their unit while conversion work is underway (normal temporary relocation costs include increases in rent, reconnection of telephones, moving costs and appropriate out-of-pocket expenses).

(13) This program does NOT allow permanent displacement of any resident living in the project at the time the application was submitted to HUD.

(14) The ALCP requires service coordination responsible for linking the ALF to services in the community which are available to low income persons. All section 202 projects funded under this NOFA must have sufficient service coordination in place, or request additional funds if appropriate, to ensure that services meeting licensing requirements are available to ALF residents on an ongoing basis. Service coordination must be described in the application (see Section VI(B)(8)(b) through (c) of this NOFA). If you need to enhance an existing service coordination program or add one where it does not exist, you must apply for funding through the Service Coordinator NOFA, published elsewhere in this edition of the **Federal Register**, and attach a copy of the Form HUD 424M so indicating the request to the ALCP application. Alternatively, you may show evidence that funding for the enhanced service coordination is provided by other sources and indicate such funding on the HUD Form 424M which is exhibit 10(c) of your ALF application. If you are funded under this NOFA and requested new or enhanced service coordination in this application, you will be funded first under the service coordinator NOFA.

In addition to above requirements, the following applicable guidelines are stated:

(a) The ALF must be staffed either directly or through coordination with local agencies, depending on state regulations or local requirements. These may also serve non-ALF residents of the project on a time available and appropriate fee basis.

(b) The ALF may cater to the special needs of residents depending on the condition or diagnosis, such as Alzheimer's disease. If it does so, the design/environment of such facilities must accommodate those needs, *e.g.*, dementia special care unit. However, the ALF CANNOT provide a service it is not licensed by the State or locality to provide.

Note 1: Owners of section 202/PRAC projects are reminded that they may include a PRAC payment of up to $15/unit/month consistent with 24 CFR 891.225(b)(2) to cover part of the cost of meals and/or supportive services for frail elderly residents, including residents of the ALF.

Note 2: Training for ALF staff is an eligible project cost under existing operating procedures.

For further information on ALFs, please refer to Handbook 4600.1, CHG–1, "Mortgage Insurance for Residential Care Facilities," Chapter 13. This Handbook and recent ALF program Notices are accessible through HUDCLIPS on HUD's web site. The URL for the HUDCLIPS Database Selection Screen is http://www.hudclips.org/subscriber/cgi/legis.cgi. These notices are in the Handbooks and Notices—Housing Notices database. Enter only the number without the letter prefix (*e.g.*, 99–16) in the "Document number" to retrieve the program notice.

For further guidance on service coordinators, please refer to Handbook 4381.5 REV–2, CHANGE–2, Chapter 8, "The Management Agent's Handbook," which is also available through the HUDCLIPS database.

(C) Eligible Applicants

Only owner/borrower corporations defined in 24 CFR part 278 as it existed before April 1, 1995 (those section 202 projects funded before 1972), and in 24 CFR 891.200 and 891.500 (those section 202 projects funded from 1976 onward) are eligible for funding. To be eligible, owner/borrowers of any Section 202, 202/8 or Section 202/PRAC development must meet the following criteria:

(1) Must be in compliance with your Loan Agreement, Capital Advance Agreement, Regulatory Agreement, Housing Assistance Payment contract, Project Rental Assistance Contract, Rent Supplement or LMSA contract, or any other HUD grant or contract.

(2) Must be in compliance with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). See Section V(B) of this NOFA for further explanation.

Note: If your eligibility status changes during the course of the grant term, making it ineligible to receive the grant (*e.g.*, prepayment of mortgage, sale/TPA of property, or opting out of a Section 8 Housing Assistance payment (HAP) contract), HUD retains the right to terminate the grant and recover funds made available through this NOFA.

(D) Eligible Developments

Section 202, 202/8 and 202/PRAC developments for the elderly that have been in occupancy for no less than five years since the date of the HUD–2485 Form "permission to occupy" permit and have completed Final Closing. Your project must:

(1) Meet HUD's Uniform Physical Conditions Standards at 24 CFR part 5, subpart G. Meeting these standards as described, means that the project, based on the most recent Real Estate Assessment center (REAC) physical inspection report and responses thereto, must have a "satisfactory" rating as evidenced by a score of 60 or better or an approved and on schedule repair plan for developments scoring less than 60. Additionally, the project must have no uncorrected and outstanding Exigent Health and Safety violations. Finally, the project must not have on file a management review with a rating of "minimally satisfactory" or "unsatisfactory" with open and unresolved findings.

(2) Have a residual receipts account separate from the Reserve for Replacement account, or agree to establish this account as a condition for getting the award(s).

(E) Ineligible Applicants

(1) Owners of Section 202 developments designed specifically for people with disabilities.

(2) Owners of Section 232 developments and any other project insured by one or more sections of the National Housing Act.

(3) Owners of Section 202/236 developments. These are section 202 projects which were converted to section 236 mortgage insurance during their development phase in the early 1970s.

(4) Property management companies and agents of property management companies.

(F) Eligible Conversion Activities

Eligible activities are:

(1) Retrofitting to meet Section 504 accessibility requirements, minimum property standards for accessibility and/or building codes and health and safety standards for ALFs in that jurisdiction. Examples are items such as addition of:

(a) Sprinkler systems;

(b) An elevator or upgrades thereto;

(c) Lighting upgrades;

(d) Major physical or mechanical systems of projects necessary to meet local code or assisted living requirements;

(e) Upgrading to accessible units for the ALF with moveable cabinetry, accessible appliances, sinks, bathroom and kitchen fixtures, closets, hardware and grab bars, widening of doors, *etc.*

(f) Upgrades to safety and emergency alert systems;

(g) Addition of hallway railings; and,

(h) Medication storage and work stations;

(2) Retrofitting to add, modify and/or outfit common space, office or related space for ALF staff including a service coordinator and file security, and/or a central kitchen/dining facility to support the ALF function (*e.g.*, outfit lounge/common space/dining furniture, kitchen equipment for cooking/serving and dishware).

(3) Retrofitting to upgrade a regular unit to an accessible unit for a person/family with disabilities who is being displaced from an accessible unit in the portion of the project that is being converted to the ALF, where such unit is not available.

(4) Temporary relocation; and,

(5) Consultant, architectural and legal fees.

(G) Ineligible Activities

You may not use funds available through this NOFA to:

(1) Add additional dwelling units to the existing project;

(2) Pay the costs of any of the necessary direct supportive services needed to operate the ALF;

(3) Purchase or lease additional land;

(4) Rehabilitate (see definition at 24 CFR 891.105) the project for needs unrelated directly to the conversion of units and common space for assisted living;

(5) Use the ALCP to reduce the number of accessible units in the project that are not part of the ALF and currently occupied by people with disabilities who need the features of an accessible unit;

(6) Permanently relocate any resident out of the project; and,

(7) Increase the management fee.

IV. Program Requirements

Each applicant must comply with the following requirements:

(A) Statutory, Regulatory and Other Program Requirements.

You must comply with all section 202 program statutory requirement (see Section 202 of the Housing Act of 1959 as amended) and regulatory requirements (see 24 CFR part 891) and statutory requirements under Section 232(b)(6). Please note that all ALCP projects must conform to the 500-year flood plain limitation (See Section VIII of this NOFA.) Construction of ALCP units is considered a "critical action" for purposes of the flood plain requirement.

Excess Residual Receipts (over $500/unit) and Reserve for Replacement (R4R) funds (over $1000/unit) in Project Accounts that are not approved for another use at the time of application to HUD under this NOFA are considered available funds and must be applied towards the cost of conversion activities. Before making this determination, however, HUD staff will consider the extent of repair/replacement needs indicated in the most recent REAC physical inspection and not yet approved and any ongoing commitments such as non-grant-based service coordinator or other funding, where existing, deduct the estimated costs of such items from the R4R and residual receipts balances to determine the extent of available residual receipts and R4R funds for the ALCP.

If funded, you must also file a HUD Form-2530 for all construction contractors, architects, consultants, and service provider organizations under direct contract with you that will be engaged under this NOFA and comply with all state and local licensing, zoning and building code requirements.

(B) Meals and Supportive Services

You must develop and submit a Supportive Services Plan (SSP) for the services and coordination of the supportive services which will be offered in the ALF to the appropriate State or local organization(s) which are expected to provide those supportive services. (See Section VI(B)(8) of this NOFA below, for the information which must be in the SSP.) You must submit one copy of your SSP to each appropriate state or local service funding organizations well in advance of the application deadline, for appropriate review. The state or local funding organization(s) must return the SSP to you with appropriate comments and indication of funding commitment, which you will then include with the application you submit to HUD.

You must ALSO submit the application to the appropriate organization(s) which license ALFs in your jurisdiction. The licensing agency(ies) must approve your plan, and must also certify that the ALF and the proposed supportive services identified in your SSP, is consistent with local statute and regulations and well

designed to serve the needs of the frail elderly and people with disabilities who will reside in the ALF portion of your project.

Finally, you must also submit an agreement to pursue appropriate ALF licensing in a timely manner.

(C) Minimum Size Limits for an ALF

An ALF must be economically feasible. Consistent with HUD Handbook 4600.1, CHG–1, the minimum size for an ALF is five units.

(D) Economic Opportunities for Low and Very Low-Income Persons (Section 3).

You must comply with section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. 1701u (Economic Opportunities for Low and Very Low Income Persons), and its implementing regulations at 24 CFR part 135. You must ensure that training, employment and other economic opportunities shall, to the greatest extent feasible, be directed toward low and very low-income persons, particularly those who are recipients of government assistance for housing and to business concerns which provide economic opportunities to low and very low income persons and including people with disabilities.

(E) Compliance with Fair Housing and Civil Rights Laws

If you, the applicant (a) have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) are the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) have received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, your application will not be evaluated under this NOFA if, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department before the application deadline, HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken necessary to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(F) Additional Nondiscrimination Requirements

As you will be converting some of your project to an ALF, you should note that 24 CFR 891.120(b) requires you to meet all accessibility requirements. Additionally, you must comply with the section 504 regulations at 24 CFR part 8, the Americans with Disabilities Act and the regulations at 24 CFR part 36, as applicable.

V. Application Selection Process

(A) Review for Curable Deficiencies.

You should ensure that your application is complete before submitting it to HUD.

HUD will screen all applications received by the deadline for curable deficiencies. With respect to correction of deficient applications, HUD may not, after the application due date and consistent with HUD's regulations in 24 CFR part 4, subpart B, consider any unsolicited information an applicant may want to provide. HUD may contact an applicant to clarify an item in the application or to correct technical deficiencies. Please note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of a response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable (correctable) technical deficiencies include failure to submit the proper certifications or failure to submit an application that contains an original signature by an authorized official. In each case under this NOFA, the appropriate HUD field office will notify you in writing by describing the clarification or technical deficiency. You must submit clarifications or corrections of technical deficiencies in accordance with the information provided by the GMC within 14 calendar days of the date of receipt of the HUD notification. (If the due date falls on a Saturday, Sunday, or Federal holiday, your correction must be received by HUD on the next day that is not a Saturday, Sunday, or Federal holiday.) If the deficiency is not corrected within this time period, HUD will reject the application as incomplete, and it will not be considered for funding. The following is a list of the deficiencies that will be considered curable in ALCP applications:

Exhibits

(1) *(a) Articles of Incorporation, or certification of Articles of Incorporation
*(b) By-laws, or certification of by-laws
(c) Exhibit 3—Evidence of occupancy for at least five years
(d) Exhibit 5(c)—Original project plans
(e) Exhibit 5(h)—Relocation
(f) Exhibit 7 —Evidence of Permissive Zoning
(g) Exhibit 8(h)—Support Letters from Governmental Agencies that License ALFs

(10) *Certifications and Forms*
(a) Standard Form 424, Application for Federal Assistance
(b) Standard Form 424D, Assurances Construction Programs
(c) Form HUD 424M, Federal Assistance Funding Matrix
(d) Form HUD–50070, Drug-free Workplace
(e) Form HUD–50071, Payments to Influence Federal Transactions and Standard Form-LLL, Disclosure of Lobbying Activities
(f) Form HUD 2880, Applicant/Recipient Disclosure/Update Report, including Social Security and Employment Identification numbers
(g) Form HUD–2992, Certification Regarding Debarment and Suspension,
(h) Form HUD–2991, Certification of Consistency with the Consolidated Plan (Plan), for the Jurisdiction in Which the Proposed ALF will be located.
(i) Executive Order 12372 Certification, a certification that you have submitted a copy of your application, if required, to the State agency (single point of contact) for State review in accordance with Executive Order 12372.
(j) Certification of Residual Receipts Account
(k) Conflict of Interest Certification
(l) Certification for ALF
(m) Combined Certification

The HUD Office will notify you in writing if your application is missing any of the exhibits listed above and you will be given 14 days from the date of receipt of the HUD notification to submit the information required to cure the noted deficiencies. The exhibits listed in items 1(a)+(b), above, must be dated on or before the application deadline date. If not so dated the application will be rejected.

After the completeness review, HUD Field Office staff will review your application to determine whether the application meets the Field Office threshold requirements listed below. Only if your application meets all the threshold requirements is it eligible to be rated and ranked.

(B) Field Office Threshold Review

In order to pass threshold, you must:

(1) Be in compliance with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a), and as noted earlier in this NOFA under Sections III(B)(2) and IV(E).

(2) Additionally, HUD will also reject your application if the SSP and/or commitment and support letter(s) from the appropriate funding organizations and the appropriate licensing agency(ies): (i) are not submitted with your application; (ii) indicate that the ALF units, facilities, meals and supportive services to be provided are not designed to meet the special needs of the residents who will reside in the ALF as defined in this NOFA, (iii) do not show commitment for funding the meals and supportive services proposed; or (iv) indicate that the project as proposed will not meet the licensing requirements of the appropriate State/local agency(ies).

(C) Rating Panels

The Office of Housing's Multifamily Hubs will establish review panels to rate all eligible applications that have passed threshold, using Rating Factors 1–5. The panels may include knowledgeable persons not currently employed by HUD.

(D) Rating of Applications

HUD staff teams will review and rate ALCP applications in accordance with the Ranking and Selection procedures (see Section V(E) of this NOFA below). All applications will be either rated or technically rejected at the end of technical review. If your application meets all program eligibility requirements after completion of technical review, it will be rated according to the rating selection factors in Section V(F) of this NOFA. HUD reserves the right to reduce the cost of the application if any proposed components are ineligible or if the cost of items is not deemed reasonable.

HUD will *NOT* reject an ALCP application based on technical review without notifying you of that rejection with all the reasons for the rejection, and providing you an opportunity to appeal. As discussed above, you will have 14 calendar days from the date of HUD's written notice to appeal a technical rejection to the Multifamily Hub where the applications were sent originally. HUD staff make a determination on an appeal before finalizing selection recommendations.

(E) Ranking and Selection Procedures

Applications submitted in response to this NOFA that are eligible, pass threshold and have a total score of 60 points (or more) are eligible for ranking and selection.

(1) Hub staff teams will be established for ALCP review in each geographic area to do the application ratings (see Section V(D) above). See list of lead Hubs in Section II of this NOFA.

After the team's application ratings are finalized, the teams will place all rated applications from within that geographic area in rank order.

(2) From within this rank order, Hub staff teams in each of the four geographic areas will select the highest ranking applications from within that geographic area in order, without regard to which Hub the application was submitted (see Section II of this NOFA) that can be funded from within the dollars available.

(3) After making the initial selections, however, HUD may use any residual funds in each geographic area to select the next rank-ordered application by reducing the dollars requested by no more than 10 percent (10%) and reducing the number of units proposed, but in no case reducing the number of units below the financial threshold feasibility of five ALF units.

(4) Funds remaining after these processes are completed will be returned to HUD Headquarters. HUD will use these funds to restore units to any project reduced as a result of using the residual grant funds in a geographic area. Secondly, HUD will use these funds for selecting one or more additional applications based on field office rating and rankings, beginning with the highest rated application nationwide. Only one application will be selected per geographic area from the national residual amount. If there are no approvable applications in other geographic areas, the process will begin again with the selection of the next highest rated application nationwide. This process will continue until all approvable applications are selected using the available remaining funds. If there is a tie score between two or more applications, and there are insufficient residual funds to cover all tied applications, HUD Headquarters staff will choose the winning application(s) by lottery and/or reduction of grant requests consistent with Section VI(E)(3) or (4) of this NOFA, above.

(F) Factors For Award Used To Evaluate and Rate Applications

HUD will rate ALCP applications that successfully complete technical processing using the Rating Factors set forth below and in accordance with the application submission requirements identified in Section VI(B) of this NOFA, below. The maximum number of points an application may receive under this program is 100.

Rating Factor 1: Capacity of the Applicant and Relevant Organizational Staff (15 Points)

This factor addresses your capacity to carry out the conversion in a timely, cost-conscious and effective manner. It also reviews your experience with the supportive services which the ALF intends to provide to elderly residents, especially in such areas as meals, 24-hour staffing and on-site health care. Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(4)(c), (5)(a), (8)(i), and (2)(d) of this NOFA.

In rating this factor, HUD will consider the extent to which your application demonstrates your ability to carry out a successful conversion of the project and to implement the plan to deliver the supportive services on a long term basis, considering the following:

(1) (7 points) The practicality of your plan and timetable to carry out the physical conversion of the development to the ALF.

(2) (8 points) Your past experience in providing or arranging for supportive services either on or off site for those who are frail. Examples are: Meals delivered to apartment of resident or in a congregate setting (1 point), arranging for or providing personal care (2 points), providing 24-hour staffing (1 point), providing or making available on-site preventive health care (2 points) and other support services (1 point).

Rating Factor 2: Need/Extent of the Problem (25 Points)

This factor addresses the extent to which the conversion is needed by the categories of elderly persons and persons with disabilities that the ALF is intended to serve (very low income elderly persons and people with disabilities who have limitations in three or more activities of daily living). The application must provide evidence of current needs among project residents and needs of potential residents in the housing market area for such persons including economic and demographic information on very-low income frail elderly and people with disabilities and information on current assisted living resources in the market area.

The factor also addresses your inability to fund the repairs or conversion activities from existing financial resources. In making this determination, HUD will consider project financial information. The Department will also review more favorably those applications which establish a connection between the proposed ALF and the community's

Analysis of Impediments to Fair Housing Choice (AI) or other planning document that analyzes fair housing issues and is prepared by a local planning or similar organization. Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(1)(a) through (b), (2)(a) and (9)(a) through (c) of the NOFA. In evaluating this factor, HUD will consider:

(1) (10 points) The need for assisted living among the elderly and disabled residents of the project taking into consideration those currently in need and the depth of future needs given aging in place.

(2) (5 points) The need for assisted living among very-low income elderly persons and people with disabilities in the housing market area.

(3) (10 points) Insufficient funding for any needed conversion work, as evidenced by the project's financial statements and specifically the lack of excess reserve for replacement dollars (R4R) and residual receipts. If the available R4R and residual receipts are less than 10% of the total funds needed—10 points; if the available R4R and residual receipts are 10–50% of need = 5 points; and, if the available R4R and residual receipts are 51% or more of the total funds of needed = 0 points).

Rating Factor 3: Soundness of Approach (25 Points). This factor is rated by HUD Headquarters

This factor addresses the quality and effectiveness of your proposal in addressing the proposed conversion, effectiveness of service coordination and management planning and the meals and supportive services which the ALF intends to provide. There must be a relationship between the proposed activities, the project's and the community's needs and purposes of the program funding for your application to receive points for this factor. Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(5)(b) and (c), and (7) and (B)(8))(a) through (e) and (g) and (h) of this NOFA.

In evaluating this factor, HUD will consider the following:

(1) (7 points) The extent to which the proposed ALF design will meet the special physical needs of frail elderly or disabled persons expected to be served at reasonable cost (consider that ALF design = meets needs = 7 points; ALF design partially meets needs = 3 points; and ALF design does not meet needs = 0 points).

(2) (7 points) The extent to which the ALF's proposed management and operational plan ensures that the provision of both meals and supportive services planned will be accomplished over time. (Consider ALF design/management plan = meets needs of management operations, for 7 points; ALF design/management plan partially meets needs of management operations, for 3 points; and ALF design/management plan does not meet needs of management operations, for 0 points.)

(3) (5 points) The extent to which the proposed supportive services meet the identified needs of the anticipated frail elderly and disabled residents (consider Yes = 5 points; partially meets needs = 3 points; and, does not meet needs = 0 points); and

(4) (5 points) The extent to which the service coordination function is addressed and explained as onsite and sufficient, onsite and augmented or new, and addresses the ongoing procurement of needed services for the residents of the ALF (does meet = 5 points, partially meets = 3 points, does not meet = 0 points).

(5) (1 point) The extent to which there is an operating philosophy which promotes the autonomy and independence of the frail elderly persons it is intended to serve (is fully addressed = 1 point, no or not addressed = 0 points).

Rating Factor 4: Leveraging Resources (30 Points).

This factor addresses your ability to secure other community resources which can be combined with HUD's grant funds to achieve program purposes. For the ALCP to succeed, you *MUST* generate local funding for the necessary supportive services to operate the ALF. HUD also encourages local funding for some of necessary conversion work, or other work needed in the project (*e.g.*, general modernization) which is *NOT* specifically linked to the ALF).

Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(5)(g), (B)(6) and (B)(8)(f) of this NOFA.

(1) (25 points) The extent to which there are commitments for the funding needed for the meals and the supportive services planned for the ALF and that the total cost of the estimated budget of the ALF is covered. Consider 90% or more commitment for the total budget with no more than 10% general support = 25 points; 80–89.9% or more commitment for the total budget with no more than 20% general support = 17 points; 65–79.9% firm commitment with no more than 35% general support = 12 points; 40–64.9% firm commitment for the total budget with no more than 60% general support = 7 points; less than 40% firm commitment for the total budget with no more than 60% general support = 0 points.

(2) (3 points) The extent of local organizations' support which is firmly committed to providing at least 50 percent of the total cost of ALF conversion (consider 50% or more = 3 points, 20–49.9% = 2 points, and under 20% = 0 points).

(3) (2 points) The extent of local organizational support which is firmly committed to providing funds for additional repair or retrofit necessary for the project NOT specifically directed to activities eligible under this NOFA (consider yes = 1 point, no = 0 points).

Rating Factor 5: Comprehensiveness and Coordination (5 Points).

This factor addresses the extent to which you have evidenced general support for conversion by participating in your community's Consolidated Planning Process, involving the residents in the planning and are working toward addressing the need in a holistic and comprehensive manner through linkages with other activities in the community. Submit information responding to this factor in accordance with Application Submission Requirements in Section VI(B)(2)(b) through (d) of this NOFA.

(1) (3 points) The involvement of project residents or their representatives, in the development of the ALCP application, and your intent to involve residents, in the development and operation of the project and in relocation planning (Minus one (−1) point if not addressed);

(2) (1 point) The extent to which you demonstrated that you have been actively involved (or if not currently active, the steps you will take to become actively involved) in your community's Consolidated Planning/AI processes to identify and address a need/problem that is related in whole or part, directly or indirectly to the proposed project;

(3) (1 point) The extent to which you developed linkages with other activities, programs or projects related to the proposed project to coordinate your activities so solutions are holistic and comprehensive.

VI. Application Submission Requirements

(A) Application—General

Your application must include all of the information, materials, forms, and exhibits listed in Section VI(B). In cases where your (i) articles of incorporation and (ii) by-laws have NOT changed since the project was originally approved by HUD, self-certification to that effect—that the documents on file with HUD are current—is sufficient. Items in Section VI(B) for which self-certification of currency is possible are denoted by a "**".

In addition to this relief of paperwork burden in preparing applications, you will not have to submit certain new/recent information and exhibits you have previously prepared. See individual item descriptions, below to identify such items. An example of such an item may be the FY 1999 Annual Financial Statement.

(B) General Application Requirements

(1) Evidence that you are a private nonprofit organization or nonprofit consumer cooperative and have the legal ability to operate an AFL program, per the following:

(a) Articles of Incorporation, constitution, or other organizational documents, or self-certification of these documents, if there has been no change in the Articles since they were originally filed by HUD;**

(b) By-laws, or self-certification of by-laws, if there has been no change in the by-laws since they were originally filed with HUD;**

(2) A description of your community ties and established linkages.

(a) A description of your links to the community at large and to the minority and elderly communities in particular; and

(b) A description of your efforts to involve elderly persons, including minority elderly persons and persons with disabilities in:

(i) The development of the application,

(ii) The development of the ALF operating philosophy,

(iii) Review of the application; and

(iv) Your intent to involve elderly persons in the operation of the project or not.

Also, demonstrate that you made the application available to the residents of the project (in their language(s)) AND requested and considered comments from them (in their language(s)).

(c) A description of your involvement in your community's *Consolidated Planning and Analysis of Impediments to Fair Housing (AI)* processes including:

(i) An identification of the lead/facilitating agency(ies) that organizes/administers the processes;

(ii) A listing of the Consolidated Plan/AI issue areas in which you participate;

(iii) The level of your participation in the processes, including active involvement with any neighborhood-based organizations, associations, or any committees that support programs and activities that enhance projects or the lives of residents of the projects, such as the one proposed in your application.

If you are not currently active, describe the specific steps you will take to become active in the Consolidated Planning and AI processes. (Consult the local HUD Office for the identification of the Consolidated Plan community process for the appropriate area.)

(d) A description of the linkages that you have developed with other related activities, programs or projects in order that the development of the project provides a comprehensive and holistic solution to the needs of the target population.

(3) Evidence of your project being in occupancy for at least five years as of the date of application to HUD. This evidence must be submitted by all applicants whose section 202 identifying number has an "EE" as digits 4 & 5, *i.e.*, xxx–EExxx, OR any "EH" project, *i.e.*, xxx–EHxxx, that was converted to PRAC.

(4) A market analysis of the need for the proposed ALF units, including information from both the project and the housing market, containing:

(a) Evidence of need for the ALF by current project residents:

(i) A description of the demographic characteristics of the elderly residents currently living in the project, including the current number of residents, distribution of residents by age and sex, an estimate of the number of residents with frailties/limitations in activities of daily living and an estimate of the number of residents in need of assisted living services.

(ii) A description of the services which are currently available to the residents and/or provided on or off-site and what services are lacking;

(b) Evidence of the need for ALF units by very low income elderly and disabled households in the market area; a description of the trend in elderly and disabled population and household change; data on the demographic characteristics of the very low income elderly in need of assisted living services (age, race, sex, household size and tenure) and extent of residents with frailty/limitations in existed federally-assisted housing for the elderly (HUD and Rural Housing Service): And an estimate of the very low income elderly and disabled in need of assisted living taking into consideration any available state or local data.

(c) A description of the extent, types and availability and cost of alternate care and services locally, such as: Home health care, adult day care, housekeeping services, meals programs, visiting nurses, on-call transportation services, health care and providers of supportive services who address the needs of the local low income population.

(d) A description of how information in the community's Analysis of Impediments to Fair Housing Choice was used in documenting the need for the ALF (covering items in Section VI(B)(4)(a) and (b) of this NOFA).

(5) A description of the physical ALF conversion, including the following:

(a) How you propose to carry out the physical conversion (including a timetable and relocation planning).

(b) A short narrative stating the number of units, special design features, community and office space/storage, dining and kitchen facility and staff space and the physical relationship to the rest of the 202 project. Also, you must describe how this design will facilitate the delivery of services in an economical fashion and accommodate the changing needs of the residents over at least the next 10 years.

(c) A copy of the original plans for all units and other areas of the development which will be included in the conversion.

(d) A description of the conversion must clearly address the following accessibility issues: All door openings must have a minimum clear opening of 32"; and, All bathrooms and kitchens must be accessible to and functional for persons in wheelchairs, according to the "Uniform Federal Accessibility Standards.".

(e) Architectural sketches of the conversion to a scale of inch to one foot that indicate the following:

(i) All doors being widened;

(ii) Typical kitchen and bathroom reconfiguration: show all wheelchair clearances, wall reinforcing, grab bars and elevations of counters and work surfaces;

(iii) Bedroom/living/dining area modification, if needed;

(iv) Any reconfigured common space;

(v) Added/reconfigured office and storage space;

(vi) Monitoring stations, and

(vii) The kitchen and dining facility.

All architectural modifications must meet section 504 and ADA requirements as appropriate.

(f) A budget showing at least estimated costs for materials, supplies, fixtures and labor for each of the items listed in Section VI(B)(5)(e), items i through vii, above.

(g) Include firm commitment letters with specific dollar amounts from appropriate organization(s) for

conversion needs (within the scope of the ALF conversion NOFA) which will be supported by non-HUD funding.

(h) A description of any relocation of current tenants including a statement that:

(i) Indicates the estimated cost of temporary relocation payments and other related services.

(ii) Identifies the staff organization that will carry out the relocation activities; and

(iii) Identifies all tenants that will have to be temporarily moved to another unit within the development OR from the development during the period that the physical conversion of the project is under way.

Note: If any of the relocation costs will be funded from sources other than the ALCP grant, you must provide evidence of a firm commitment of these funds. When evaluating applications, HUD will consider the total cost of proposals (*i.e.*, cost of conversion, temporary relocation, service coordinator and other project costs).

(6) A description of any retrofit or renovation which will be done at the project (with third party funds) that is separate and distinct from the ALF conversion. With such description, attach firm commitment letters from third party organizations in specific dollar amounts which will cover the cost of any work outside the scope of this NOFA.

(7) Evidence of permissive zoning, showing that the modifications to include the ALF into the project as proposed are permissible under applicable zoning ordinances or regulations, or a statement of the proposed action required to make the proposed project permissible and the basis for your belief that the proposed action will be completed successfully within six months of the date of grant award by HUD. *e.g.*, a summary of the results of any requests for rezoning and/or the procedures for obtaining special or conditional use permits on land in similar zoning classifications and the time required for such rezoning, or preliminary indications of acceptability from zoning bodies, *etc.*);

(8) A supportive services plan (SSP), a copy of which must be submitted to the appropriate state and/or local agency as instructed in Section IV(C) of this NOFA. For those applicants needing to contact state Medicaid offices, a list of them may be accessed on the Internet at "www.hcfa.gov/medicaid/scon1.htm". The fifth character from the end is the numeral "1", not the letter "l" that includes:

(a) A description of the supportive services needed for the frail elderly the ALF is expected to serve. This must include at least (i) meals and such other supportive services required locally or by the State, and (ii) such optional services or care to be offered on an "as needed" basis.

Examples of both mandatory and optional services (which will vary from state to state) are: two meals and two snacks or three mails daily; 24-hour protective oversight; personal care; housekeeping services; personal counseling and transportation.

(b) A description of how you will provide the supportive services to those who are frail and have disabilities (*i.e.*, on or off-site or combination of on or off-site), including an explanation of *how* the service coordination role will facilitate the adequate provision of such services to ALF residents, and how the services will meet the identified needs of the residents.

(c) A description of how the operation of your ALF will work. Address (i) general operating procedures, (ii) ALF philosophy and how it will promote the autonomy and independence of the frail elderly and persons with disabilities, (iii) what will the service coordination function will do and the extent to which it is existing, augmented or new, (iv) ALF staff training plans, and (v) the degree to which and *how* the ALF will relate to the day-to-day operations of the rest of the Section 202 project.

(d) The monthly individual rate for board and supportive services for the ALF listing the total fee and components of the total fee for the items required by State or local licensing AND list the appropriate rate for any optional services the you plan to offer to the ALF residents. Provide an estimate of the total annual costs of the required board and supportive services you expect to provide and an estimate of the amount of optional services you expect to provide.

(e) List who will pay for the board and supportive services, *e.g.*, $__ for meals by sponsor, $__ for housekeeping services by city government; $__ for personal care by State Department of Health; $__ for __ by state __ program; $__ in fees by tenants; and, $__ by __.

The amounts and commitments from both tenants and/or providers must equal the estimated amounts necessary to cover the monthly rates for the number of people expected to be served. If you include tenant fees in the proposal, list and show any proposed scaling mechanism. All amounts committed/collected must equal the annualized cost of the monthly rates calculated by the expected percentage of units filled.

(f) A support/commitment letter from *EACH* listed proposed funding source per paragraph (e), above, for the planned meals and supportive services listed in the application. The letter must cover the total planned annual commitment (and multiyear amount total, if different), length of time for the commitment, and the amounts payable for each service covered by the provider/paying organization. There must be a letter from *EACH* participating organization listed in Section VI(B)(8)(e) of this NOFA, above.

(g) A support letter from *EACH* governmental agency(ies) which provides licensing for ALFs in that jurisdiction.

(h) A description of your relevant experience in arranging for and/or delivering supportive services to frail residents. The description should include any supportive services facilities owned/operated; your past or current involvement in any project-based programs that demonstrates your management capabilities. The description should include data on the facilities and specific meals and/or supportive services provided on a regular basis, the racial/ethnic composition of the populations served, if available, and information and testimonials from residents or community leaders on the quality of the services.

Note: If a funds request for service coordination for the ALF and/or the whole project is included as part of this application, the Form HUD–424M, indicating the dollars requested must be attached as Exhibit 10(c). Do NOT attach the whole service coordinator application.

(9) A description of your project's resources:

(a) A copy of the most recent project Repair and Replacement (R4R) account statement, and an R4R analysis showing plans for its use over the next five years, and any approvals received from the HUD field office to date.

(b) A copy of the most recent Residual Receipts Account statement. Indicate any approvals for the use of such receipts from the field office for over $500/unit.

(c) Annual Financial Statement (AFS). If your FY 2000 AFS was due to REAC more than 120 days BEFORE the due date for this application, in the interest of reducing work burden, only include the date that it was sent to REAC. If the AFS was due to REAC 120 days or less from the due date of this application, you MUST include a paper copy.

(10) *Forms, Certifications and Resolutions.* The following exhibits, forms, certifications and assurances are required:

(a) *Standard Form 424, Application for Federal Assistance* and indication of whether you are delinquent on any federal debt.

(b) *Standard Form 424D, Assurances, Construction Programs*

(c) *Form HUD 424M, Federal Assistance Funding Matrix.*

(d) *Form HUD–50070, Drug-free Workplace.* Certification to provide a drug-free workplace.

(e) *Form HUD–50071, Payments to Influence Federal Transactions and Standard Form-LLL, Disclosure of Lobbying Activities.* Certification of whether any of the funds received will be used to influence any federal transactions and disclosure of these activities, if applicable.

(f) *Form-HUD 2880, Applicant/Recipient Disclosure/Update Report, including Social Security and Employment Identification numbers.* A disclosure of assistance from other government sources received in connection with the project.

(g) *Certification Regarding Debarment and Suspension (HUD–2992) (24 CFR 24.510).*

(h) *Form HUD–2991, Certification of Consistency with the Consolidated Plan (Plan),* for the jurisdiction in which the proposed ALF will be located. The certification must be made by the unit of general local government if it is required to have, or has, a complete Plan. Otherwise, the certification may be made by the State, or by the unit of general local government if the project will be located within the jurisdiction of the unit of general local government authorized top use an abbreviated strategy, and if it is willing to prepare such a Plan.

All certifications must be made by the public official responsible for submitting the plan to HUD. The certifications must be submitted as part of the application by the application submission deadline date set forth herein.

The Plan regulations are published in 24 CFR part 91.

(i) *Executive Order 12372 Certification.* A certification that you have submitted a copy of your application, if required, to the State agency (single point of contact) for State review in accordance with Executive order 12372.

(j) *Certification of Residual Receipts Account.* If you do not have an existing residual receipts account you must agree to set up one as soon as there is surplus cash available, as a condition of getting this grant award.

(k) *A certified Board Resolution that no officer or director of the Owner/borrower or Sponsor has or will have any financial interest in any contract with the Owner* or in any firm or corporation that has or will have a contract with the Owner, including a current listing of all duly qualified and sitting officers and directors by title, and the beginning and ending dates of each person's term.

(l) *Certification for ALF.* Certification that you agree to apply for an ALF license with due diligence and in a timely fashion (and that the conversion will NOT be a nursing home or an Intermediate Care facility).

(m) *Owner/borrower's Combined Certifications.*

(i) A certification of compliance with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act, the Age Discrimination Act of 1975, Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u) and the implementing regulations at 24 CFR part 135, the affirmative fair housing marketing requirements of 24 CFR part 200, subpart M and the implementing regulations at 24 CFR part 108, and other applicable Federal, State and local laws prohibiting discrimination and promoting equal opportunity including affirmatively furthering fair housing, and other certifications listed in the application.

(ii) Certification of Compliance with section 232 of the National Housing Act, as applicable, the Uniform Federal Accessibility Standards (24 CFR 40.7), section 504 of the Rehabilitation Act of 1973 and HUD's implementing regulations at 24 CFR part 8, and the design and construction requirements of the Fair Housing Act and HUD's implementing regulations at 24 CFR part 100, and the Americans with Disabilities Act of 1990 for all portions of the development physically affected by this proposal;

(iii) *Davis-Bacon.* Certification of compliance with the Davis-Bacon requirements and the Contract Work Hours and Safety Standards Act as applied to this program. While it has been determined that Davis-Bacon does not apply statutorily to the ALCP, the Department has administratively determined that Davis-Bacon standards and overtime rates in accordance with the Contract-Work Hours and Safety Standards Act will be adhered to in any ALCP conversion grant in which the total cost of the physical conversion to an ALF (and including any additional renovation work undertaken at the same time) is $500,000 or more (this includes ALCP grant funds, owner funds, or any third party funds loaned or granted in support of the conversion or other renovation for the project associated with this grant), AND in which the ALF portion of the project is 12 units or more.

VII. Environmental Requirements

Your ALCP application is subject to the National Environmental Policy Act of 1969 and applicable related Federal environmental authorities. (See 24 CFR part 50, as applicable.) An environmental review will be completed before the award of any grant under this program. Pursuant to 24 CFR Part 55, ALCP projects are critical actions for purposes of floodplain management review.

VIII. Findings and Certifications

(A) Paperwork Reduction Act

The information collection requirements contained in this notice have been submitted to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The OMB approval number, once approved, will be published in the **Federal Register**. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance number for this program is 14.157.

(C) Executive Order 13132, Federalism

This notice does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled "Federalism"). This notice invites only applications from 202 developments for assisted living conversion grants.

(D) Prohibition Against Lobbying Activities

You, the applicant, are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not, and have not, used appropriated funds for any prohibited lobbying activities.

In addition, you must disclose, using Standard Form LLL, "Disclosure of Lobbying Activities," any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Tribes and tribally designated housing entities (TDHEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.

(E) Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(F) Section 103 of the HUD Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition must confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(G) Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, implementing section 102(2)(C) of the national Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410.

IX. Authority

The Section 202 Supportive Housing for the Elderly Program is authorized by section 202 of the Housing Act of 1959 (12 U.S.C. 1701q), as amended. The Assisted Living Conversion Program is authorized by Title V, section 522 of the FY 2000 Departments of Veteran's Affairs, HUD and Independent Agencies Appropriations Act, 2000 (12 U.S.C. 1701q–2).

Dated: March 13, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commission.

Appendix A—Instructions for Application Submission to the Proper Hub

(a) Applicants required to submit applications to the Buffalo Hub are normally serviced by the Boston, Hartford, Manchester, Providence, New York, Buffalo, Philadelphia, Charleston, Newark, Philadelphia, Pittsburgh, Baltimore, Washington, DC, and Richmond Field Offices.

(b) Applicants required to submit applications to the Greensboro Hub are normally serviced by the Greensboro, Columbia, Atlanta, Caribbean, Knoxville, Louisville, Nashville, Jacksonville, Miami, Jackson, Ft. Worth, Albuquerque, Dallas, Houston, Little Rock, New Orleans, San Antonio, and Shreveport Field Offices.

(c) Applicants required to submit applications to the Kansas City Hub are normally serviced by the Cincinnati, Cleveland, Columbus, Chicago, Indianapolis, Detroit, Grand Rapids, Des Moines, Kansas City, Oklahoma City, Omaha, St. Louis, Tulsa, Milwaukee and Minneapolis Field Offices.

(d) Applicants required to submit applications to the San Francisco Hub are normally serviced by Denver, Los Angeles, San Diego, San Francisco, Honolulu, Las Vegas, Phoenix, Sacramento, Anchorage, Portland, Seattle and Spokane Field Offices.

Appendix B—HUD Field Office List for Mailing ALCP Applications

Note: The first line of the mailing address for all offices is Department of Housing and Urban Development. Telephone numbers listed are not toll-free.

HUD—Buffalo Hub

Buffalo Office,

Fifth Floor, Lafayette Court, 465 Main Street, Buffalo, NY 14203–1780, (716) 551–5755, TTY Number: (716) 551–5787.

HUD—Greensboro Hub

Greensboro Office

Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407–3707, (336) 547–4000, TTY Number: (336) 547–4055.

HUD—Great Plains

Kansas City Office

Room 200, Gateway Tower II, 400 State Avenue, Kansas City, KS 66101–2406, OFC Phone: (913) 551–5462, FAX: (913) 551–6972.

HUD—San Francisco Hub

San Francisco Office

Phillip Burton Federal Building and U.S. Courthouse, 450 Golden Gate Avenue, P.O. Box 36003, San Francisco, CA 94102–3448, (415) 436–6550, TTY Number: (415) 436–6594.

[FR Doc. 00–6572 Filed 3–14–00; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Friday,
March 17, 2000

Part IV

Department of Housing and Urban Development

Fiscal Year 2000; Notice of Funding Availability for Service Coordinators in Multifamily Housing; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4582–N–01]

Fiscal Year 2000 Notice of Funding Availability for Service Coordinators in Multifamily Housing.

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability (NOFA).

SUMMARY: This NOFA announces the FY 2000 funding available for the Service Coordinator Program in multifamily housing.

Purpose of the Program. The purpose of this Service Coordinator program is to allow multifamily housing owners to assist elderly residents and residents with disabilities to obtain needed supportive services from the community, in order to enable them to continue living as independently as possible in their apartments.

Available Funds. Approximately $25 million.

Eligible Applicants. Only owners of eligible developments may apply for and become the recipient of grant funds. Property management companies may administer grant programs but are not eligible applicants. See Section III for more detailed eligibility criteria.

Application Deadline. July 17, 2000.

Match. None.

Additional Information

I. Application Due Date, Application Kits, and Technical Assistance

Application Due Date. The application due date is July 17, 2000.

Number of copies. Submit three completed applications (an original and two copies). See the following paragraphs for specific procedures governing the form of application submissions (e.g., mailed applications, express mail, overnight delivery, or hand carried).

Addresses for Submitting Applications. Submit your application (original and two copies) to the HUD Field Office with jurisdiction over your development. The Appendix contains a list of the HUD Field Offices with addresses and phone numbers. Address your application to the Multifamily HUB or Multifamily Program Center Director in the appropriate Field Office. You should not submit any copies of your applications to HUD Headquarters.

Application Submission Procedures. Mailed Applications. Applications will be considered timely filed if postmarked on or before 12 midnight on the application due date and received by the designated HUD Office on or within *ten (10) days* of the application due date.

Applications Sent by Overnight/Express Mail Delivery. Applications sent by overnight delivery or express mail will be considered timely filed if received before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications. Hand carried applications to HUD Field offices will be accepted during normal business hours before the application due date. On the application due date, business hours will be extended to 6 pm local time.

For Application Kits, Further Information, and Technical Assistance. For Application Kits. You may obtain an application kit and supplemental information by calling either the Multifamily Housing Clearinghouse at (voice) 1–800–MULTI–70 (1–800–685–8470) or (TTY) 1–800–483–2209 or HUD's Direct Distribution Center at 1–800–767–7468. When requesting the application kit, please refer to the Service Coordinator Program. Please make sure to provide your name, address (including zip code), and telephone number (including area code). The application kit will also be available on the Internet through the HUD web site at http://www.hud.gov.

For Further Information and Technical Assistance. The Multifamily Housing Resident Initiatives Specialist or Service Coordinator contact person in your local HUD Field Office can answer most of the questions you have regarding this NOFA and your application kit. Please refer to Field Office telephone numbers in the Appendix. If you are an owner of a Section 515 development, contact the Multifamily HUB or Multifamily Program Center in the HUD Field Office that normally provides asset management to that development. If you have a general question that the Field staff are unable to answer, please call Carissa Janis, Housing Project Manager, Office of Portfolio Management, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6176, Washington, DC 20410; (202) 708–3944, extension 2484. (This number is not toll free). If you are hearing or speech impaired, you may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

II. Amount Allocated

This NOFA makes available approximately $25,000,000 in FY 2000 funding from the $50 million provided in the Housing for Special Populations account in the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Pub.L. 106–74, 113 Stat. 1047, approved October 20, 1999). (HUD will use the remaining $25 million appropriated this year to provide one-year extensions to expiring Service Coordinator and Congregate Housing Services Program grants.)

HUD will first fund Service Coordinator costs in applications selected to receive an Assisted Living Conversion Program (ALCP) grant award. The Department estimates that approximately $5 million will be needed to fund these programs. The actual amount will be based upon demand and the number of applications that meet threshold criteria in both the ALCP and Service Coordinator programs. HUD will set-aside the requested amount of ALCP/Service Coordinator funds prior to conducting the national lottery. Any funds not used for ALCP Service Coordinator programs will revert to the lottery to fund all other eligible applications submitted under this NOFA.

In FY 1999, HUD awarded 51 grants with the available $5 million. With approximately $20 million available this year to non-ALCP applicants, HUD expects to award approximately 200 grants in FY 2000.

Alternative Funding for Service Coordinators. Owners may request processing under Housing's Management Agent Handbook 4381.5, REVISION–2, CHANGE–2, Chapter 8. This Handbook provides procedures for requesting funding for a coordinator using residual receipts, the budget-based rent increase process, contract rents adjusted by the Annual Adjustment Factor (AAF) or the Project Rental Assistance Contract (PRAC). Section 8 approvals must be consistent with current policy. Your local HUD Field Office staff may approve budget-based funding for a Service Coordinator at any time, as long as available funds in your budget allow for this increase. You are not required to apply for these grant funds prior to seeking budget-based funding for a Service Coordinator.

III. Program Description; Eligible and Ineligible Applicants, Developments, and Activities

(A) Program Description

The Service Coordinator Program provides funding for the employment and support of service coordinators in insured and assisted housing developments that are designed for the elderly and persons with disabilities and continue to operate as such. Service coordinators help residents obtain supportive services from the community that are needed to enable independent living and aging in place.

A service coordinator is a social service staff person hired or contracted by the development's owner or management company. The coordinator is responsible for assuring that elderly residents, especially those who are frail or at risk, and those non-elderly residents with disabilities are linked to the specific supportive services they need to continue living independently in that development. All services should meet the specific desires and needs of the residents themselves. The service coordinator may not require any elderly individual or person with a disability to accept any specific supportive service(s).

You may want to review the Management Agent Handbook 4381.5 REVISION–2, CHANGE–2, Chapter 8 for further guidance on service coordinators. This Handbook and past Service Coordinator program Notices are accessible through HUDCLIPS on HUD's web site. The URL for the HUDCLIPS Database Selection Screen is http://www.hudclips.org/subscriber/cgi/legis.cgi. These notices are in the Handbooks and Notices—Housing Notices database. Enter only the number without the letter prefix (*e.g.*, 94–99) in the "Document Number" to retrieve the program notice.

As was the case in FY 1999, there is no minimum unit number for eligible developments. In proposing a Service Coordinator program at a small development, however, you must be careful to conform to the hiring guidelines provided in the application kit. Funding is also allowed to augment current Service Coordinator programs and to continue programs in cases where current or previous funding sources are no longer available. Please refer to Sections III.D and III.F, below.

(B) Eligible Applicants

(1) Only owners of eligible developments listed in paragraph D.1 below may apply for funding through this NOFA.

(2) If you are a Section 202 owner/borrower corporation applying for an Assisted Living Conversion Program (ALCP) grant, you may apply for new or augmented Service Coordinator costs to serve Assisted Living residents and/or all residents of your development.

(3) To be eligible, owners must meet the criteria listed below for all HUD insured and assisted developments they own:

(a) Have no outstanding HUD contract violations of a contractual or regulatory nature.

(b) You, the applicant, must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If you, the applicant (i) have been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (ii) are the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (iii) have received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, your application will not be evaluated under this NOFA if, prior to the application deadline, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken necessary to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(4) If your eligibility status changes during the course of the grant term, making you ineligible to receive a grant (*e.g.* due to prepayment of mortgage, sale of property, or opting out of a Section 8 Housing Assistance Payment (HAP) contract), HUD has the right to terminate your grant.

(C) Ineligible Applicants

Property management companies, area agencies on aging, and other like organizations are *not* eligible applicants for Service Coordinator funds. Such agents may prepare applications and sign application documents if they provide written authorization from the owner corporation as part of the application. In such cases, the owner corporation *must* be indicated on all forms and documents as the funding recipient.

(D) Eligible Developments

Eligible developments must meet the following criteria:

(1) Are Section 202 and 202/8, existing Section 8 project-based and moderate rehabilitation developments (including Rural Housing Service (RHS) Section 515/8 and Section 221(d)(4)), Section 221(d)(3) below-market interest rate, and 236 developments that are insured or assisted.

(2) Have frail or at-risk elderly residents and/or non-elderly residents with disabilities who together total at least 25 percent of the building's residents.

(3) Are designed for the elderly or persons with disabilities and continue to operate as such. This includes any building within a mixed-use development that was designed for occupancy by elderly persons or persons with disabilities at its inception and continues to operate as such, or consistent with title VI, subtitle D of the Housing and Community Development Act of 1992. If not so designed, a development in which the owner gives preferences in tenant selection (with HUD approval) to eligible elderly persons or persons with disabilities, for all units in that development.

(4) You have completed Final Closing.

(5) Are current in mortgage payments or are current under a workout agreement.

(6) Meet HUD's Uniform Physical Conditions Standards (codified in 24 CFR part 5, subpart G), based on the most recent physical inspection report and responses thereto, as evidenced by a score of 60 or better or an approved plan for developments scoring less than 60.

(7) Are in compliance with their regulatory agreement, HAP Contract, and other outstanding directives.

(8) Section 202 developments must have a residual receipts account separate from the Repair and Replacement account, or agree to establish this account. This requirement does not apply to Sections 8, 221(d)(3) below-market interest rate, or 236 developments.

(9) Owners using the AAF rent increase process or who are profit-motivated must provide certification that rental and other income from the development are insufficient to pay for a service coordinator.

(E) Ineligible Developments

(1) Developments not designed for the elderly or disabled or those no longer operating as such.

(2) Section 221(d)(4) developments without project-based Section 8 assistance.

(3) Section 202/811 developments with a PRAC. Owners of Section 202 PRAC developments may obtain funding by requesting an increase in their PRAC payment consistent with Handbook 4381.5 REVISION–2, CHANGE–2, Chapter 8. There is no statutory authority for service coordinators in Section 811 developments.

(F) Eligible Activities

(1) Service Coordinator Program grant funds may be used to pay for the salary, fringe benefits, and related administrative costs for employing a service coordinator. Administrative costs may include, but are not limited to, purchase of furniture, office equipment and supplies, training, quality assurance, travel, and utilities.

(2) You may use funds to augment a current Service Coordinator program, by increasing the hours of a currently employed Service Coordinator, or hiring an additional Service Coordinator or aide on a part- or full-time basis.

(3) You may use funds to continue a Service Coordinator program that has previously been funded through other sources. In your application, you must provide evidence that this funding source has already ended or will discontinue within six months following the application deadline date and that no other funding mechanism is available to continue the program. This applies only to funding sources other than the subsidy awards provided by the Department through program Notices beginning in FY 1992. HUD currently provides one-year extensions to these subsidy awards through a separate funding action.

(4) You may propose reasonable costs associated with setting up a confidential office space for the Service Coordinator. Such expenses must be one-time only administrative start-up costs. Such costs may involve acquisition, leasing, rehabilitation, or conversion of space. HUD Field Office staff must approve both the proposed costs and activity and must perform an environmental assessment on such proposed work prior to grant award.

(G) Ineligible Activities

(1) You may not use funds available through this NOFA to replace currently available funding from other sources for a service coordinator or for some other staff person who performs service coordinator functions.

(2) Owners with existing service coordinator subsidy awards may not apply for renewal or extension of those programs under this NOFA.

(3) Congregate Housing Services Program (CHSP) grantees may not use these funds to meet statutory program match requirements and may not use these funds to replace current CHSP program funds to continue the employment of a service coordinator.

(4) The cost of application preparation is not eligible.

(5) Grant funds cannot be used to increase a project's management fee.

IV. Program Requirements

These requirements apply to all activities funded under this program.

(A) *Administrative Costs.* HUD has the right to reduce the proposed costs if they appear unreasonable or inappropriate.

(B) *Term of Funded Activities.* The grant term is three years. Grants will be renewable subject to the availability of funds.

(C) *Subgrants and Subcontracting.* You may directly hire a Service Coordinator or you may contract with a qualified third party to provide this service.

(D) *Environmental Requirements.* It is anticipated that most activities under this program are categorically excluded under 24 CFR 50.19(b)(3), (4), (12), or (13). If grant funds will be used to cover the cost of any non-exempt activities, HUD will perform an environmental review, to the extent required by 24 CFR part 50, prior to grant award.

(E) *Required Certifications, Assurances, and Other Forms.* All applications for funding under the Service Coordinator Program must contain the following documents and information:

(1)(a) FY 1999 applicants' letter to use FY 1999 applications (no other documentation required) or

(b) Transmittal letter and request, using the designated format.

(2) (If applicable) Lead agency letter format.

(3) Evidence of comparable salaries in local area.

(4) If quality assurance is included in the proposed budget, a justification and explanation of how this work will be performed.

(5) A bank statement showing the current residual receipts or surplus cash balance in the development's account.

(6) (If applicable) Evidence that prior funding sources for your development's Service Coordinator program are no longer available.

(7) *Service Coordinator Certifications.* This includes certifications that you, the applicant, will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and that you will affirmatively further fair housing.

(8)(a) Certification from an Independent Public Accountant or the cognizant government auditor stating that the financial management system employed by the applicant meets proscribed standards for fund control and accountability required by HUD regulations at 24 CFR parts 84 and 85.

(b) Owners applying on behalf of developments using the AAF must also provide certification from the auditor that the development's rental or other income is insufficient to pay the costs of employing a Service Coordinator.

(9) Service Coordinator Applicant Data Input Sheet.

(10) Applicant checklist.

(11) Each applicant must also submit signed copies of the following forms, assurances and certifications:

(a) Standard form (SF) 424, Application for Federal Assistance;

(b) Standard Form (SF) 424–B, Assurances for Non-construction Programs;

(c) Drug-Free Workplace Certification (HUD–50070);

(d) Certification and Disclosure Form Regarding Lobbying Activities (SF–LLL); and

(e) Applicant/Recipient Disclosure Update Report (HUD–2880).

V. Application Selection Process

(A) General

Service Coordinator Program grant funds will not be awarded through a rating and ranking process. Instead, HUD will hold one national lottery for all approvable applications forwarded from Multifamily HUB or Multifamily Program Centers (a list of these offices is found in the Appendix to this notice).

(B) Threshold Eligibility Review

(1) HUD Multifamily Field Office staff will review applications for completeness and compliance with the eligibility criteria set forth in Section III of this NOFA. Field Office staff will forward application information to Headquarters for entry into the lottery if the application was received by the deadline date, meets all eligibility criteria, proposes reasonable costs for eligible activities, and includes all technical corrections by the designated deadline date.

(2) "Reasonable costs" are further discussed in the application kit, but are generally those that are consistent with salaries and administrative costs of similar programs in the jurisdiction of the HUD Field Office.

(C) Service Coordinators in ALCP Projects

The Department will first fund approved Service Coordinator requests in ALCP applications selected to receive an ALCP award. HUD estimates that approximately $5 million will be needed to fund these programs. Any funds not used for ALCP Service Coordinator programs will revert to the national lottery.

(D) The Lottery

HUD staff will use a computer program to randomly select applications. HUD will fully fund as many applications as possible with the given amount of funds. If funds remain after fully funding as many applications as possible, HUD will offer to partially fund the next application chosen in the lottery, in order to use the entire allocation of funds.

VI. Application Submission Requirements

(A) FY 1999 Applicants

If your FY 1999 application was approved by the Field Office but not selected in the FY 1999 lottery and you wish to apply again this year, you may use the same application to apply for FY 2000 funds. You need not submit a new application, if no components of your proposed FY 1999 program will change. You must submit a letter to your local Field Office, by the application deadline date, stating that you would like the Field Office to approve your application for FY 2000 funding, that no part of your proposed program will change, and that the development and owner entity continue to meet all eligibility requirements. If this letter is not received by the deadline date, your FY 1999 application will not be considered for funding. The Field staff has the right to reject your FY 1999 application for FY 2000 funding, if recent circumstances cause the application to become ineligible. If you wish to change any component of your proposed FY 1999 program, you must submit a new application.

(B) Full Application Submission Requirements

(1) *Single Applications.*

(a) You may submit one application for one or more developments that your corporation owns.

(b) You may submit more than one application to a single Field Office, if you wish to increase your chances of selection in the lottery. Each application must propose a stand-alone program and the development(s) must all be located in the same Field Office jurisdiction.

(c) If you wish to apply on behalf of developments located in different Field Office jurisdictions, you must submit a separate application to each Field Office.

(2) *Joint Applications.* You may join with one or more other eligible owners to share a Service Coordinator and submit a joint application. In the past, joint applications have been used by small developments who joined together to hire and share a part or full-time Service Coordinator.

(3) *There is no maximum grant amount.* The grant amount you request must be consistent with the staffing guidelines provided in the application kit and your proposed salary must be supported by evidence of comparable salaries in your area.

(C) Application Submission Requirements for ALCP Applicants

If you are an ALCP applicant and you request new or additional Service Coordinator costs specifically for your proposed Assisted Living Program, you must submit an application containing all required documents and information listed in this NOFA. In addition, you must submit a HUD–424–M "Federal Assistance Funding Matrix and Certifications" with your ALCP application, which indicates the amount of funds you are requesting to cover Service Coordinator costs. HUD Field Office staff will review both applications simultaneously.

ALCP applicants must submit all the required items in the Service Coordinator application listed in Section IV(E) of this NOFA. You will submit the following standard forms as part of your ALCP application. You may provide a copy of these forms in your Service Coordinator application. If you do not provide either an original or copy of these forms, your Service Coordinator application will be incomplete.

(a) Standard form (SF) 424, Application for Federal Assistance;

(b) Drug-Free Workplace Certification (HUD–50070);

(c) Certification and Disclosure Form Regarding Lobbying Activities (SF–LLL); and

(d) Applicant/Recipient Disclosure Update Report (HUD–2880).

If you currently do not have a Service Coordinator working at the development proposed in your ALCP application and your ALCP application is selected to receive an ALCP award, HUD will fund a Service Coordinator to serve either ALCP residents only or all residents of the development dependent upon your request. If your development currently has a Service Coordinator, you may request additional hours for the Service Coordinator to serve the Assisted Living residents. If you request additional hours, you must specify the number of additional hours per week and provide an explanation based on the anticipated needs of the Assisted Living residents. Provide this explanation in your ALCP application as instructed in Section VI(C)(3)(b) of the ALCP NOFA.

If you request Service Coordinator funding to serve all residents of your development, your request can be entered into the national lottery if your ALCP application is not selected to receive an award. You will be able to indicate this request in the application materials.

Owners applying for ALCP grants may also submit separate Service Coordinator applications for entry into the lottery for other eligible developments they own and that are not included in their ALCP application.

VII. Corrections to Deficient Applications

After the application due date, HUD may not, consistent with its regulations in 24 CFR part 4, subpart B, consider any unsolicited information you, the applicant, may want to provide. HUD may contact you, however, to clarify an item in your application or to correct technical deficiencies. You should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of your response to any selection factors. In order not to unreasonably exclude applications from being rated and ranked, HUD may, however, contact applicants to ensure proper completion of the application and will do so on a uniform basis for all applicants. *Examples* of curable (correctable) technical deficiencies include your failure to submit the proper certifications or your failure to submit an application that contains an original signature by an authorized official. In each case, HUD will notify you in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. You must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If your deficiency is not corrected within this time period, HUD will reject your application as incomplete, and it will not be considered for funding.

VIII. Findings and Certifications

(A) Paperwork Reduction Act

The information collection requirements contained in this notice were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0198. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance number for this program is 14.191, Multifamily Service Coordinator Program.

(C) Executive Order 13132, Federalism

This notice does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled "Federalism"). This notice merely invites applications from assisted housing developments for service coordinator grants. As a result, the notice is not subject to review under the Order.

(D) Prohibition Against Lobbying Activities

You, the applicant, are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991, 31 U.S.C. 1352 (the Byrd Amendment), which prohibits recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. You are required to certify, using the certification found at Appendix A to 24 CFR part 87, that you will not, and have not, used appropriated funds for any prohibited lobbying activities. In addition, you must disclose, using Standard Form LLL, "Disclosure of Lobbying Activities," any funds, other than Federally appropriated funds, that will be or have been used to influence Federal employees, members of Congress, and congressional staff regarding specific grants or contracts. Tribes and tribally designated housing entities (TDHEs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but tribes and TDHEs established under State law are not excluded from the statute's coverage.

(E) Section 102 of the HUD Reform Act; Documentation and Public Access Requirements

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545) (HUD Reform Act) and the regulations codified in 24 CFR part 4, subpart A, contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992 (57 FR 1942), HUD published a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 apply to assistance awarded under this NOFA as follows:

(1) *Documentation and public access requirements.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a 5-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations in 24 CFR part 15.

(2) *Disclosures.* HUD will make available to the public for 5 years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period less than 3 years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 5.

(3) *Publication of Recipients of HUD Funding.* HUD's regulations at 24 CFR 4.7 provide that HUD will publish a notice in the **Federal Register** on at least a quarterly basis to notify the public of all decisions made by the Department to provide:

(i) Assistance subject to section 102(a) of the HUD Reform Act; or

(ii) Assistance that is provided through grants or cooperative agreements on a discretionary (non-formula, non-demand) basis, but that is not provided on the basis of a competition.

(F) Section 103 of the HUD Reform Act

HUD's regulations implementing section 103 of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3537a), codified in 24 CFR part 4, apply to this funding competition. The regulations continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by the regulations from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition must confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Ethics Law Division at (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, the employee should contact the appropriate field office counsel, or Headquarters counsel for the program to which the question pertains.

(G) Environmental Impact

A Finding of No Significant Impact with respect to the environment for this rule has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, SW, Washington, DC 20410.

IX. Authority

Section 808 of the Cranston-Gonzalez National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), as amended by sections 671, 674, 676, and 677 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992), provides authority for service coordinators in multifamily assisted housing developments.

Dated: March 13, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

Appendix A.—HUD Field Office List for Mailing Service Coordinator Applications

ALABAMA

Multifamily Housing Program Center, HUD—Birmingham Office, 600 Beacon Parkway West, Rm. 300, Birmingham, AL 35209–3144, OFC Phone: (205) 290–7611, FAX: (205) 290–7632

ALASKA

Multifamily Housing Hub, HUD Seattle Office, 909 First Avenue, Suite 190, MS–0AHM, Seattle, WA 98104–1000, OFC Phone: (206) 220–5228 ext. 3250, FAX: (206) 220–5206

ARIZONA

Multifamily Housing Program Center, HUD Phoenix Office, 400 North Fifth Street, Suite 1600, Phoenix, AZ 85004–2361, OFC Phone: (602) 379–4434, FAX: (602) 379–3985

ARKANSAS

Multifamily Housing Program Center, HUD Little Rock Office, 425 West Capitol Avenue #900, Little Rock, AR 72201–3488, OFC Phone: (501) 324–5401, FAX: (501) 324–6142

CALIFORNIA

Multifamily Housing Hub, HUD—San Francisco Office, 450 Golden Gate Avenue, PO Box 36003, San Francisco, CA 94102–3448, OFC Phone: (415) 436–6505, FAX: (415) 436–8996

Los Angeles Multifamily Hub, 611 West Sixth Street, Suite 800, Los Angeles, CA 90017, OFC Phone: (213) 894–8000 x 3634, Fax: (213) 894–8255

COLORADO

Multifamily Housing Hub, HUD Denver Office, 633 17th Street, 11th Floor, Denver, CO 80202–3607, OFC Phone: (303) 672–5343, FAX: (303) 672–5153

CONNECTICUT

Multifamily Housing Program Center, HUD—Hartford Office, One Corporate Center, 19th floor, Hartford, CT 06103–3220, OFC Phone: (860) 240–4800 Ext. 3068, FAX: (860) 240–4850

DELAWARE

Multifamily Housing Hub,HUD Philadelphia Office, The Wanamaker Building, 100 Penn Square, East, Philadelphia, PA 19107–3380, OFC Phone: (215) 656–0609 Ext. 3533, FAX: (215) 656–3427

DISTRICT OF COLUMBIA

Multifamily Housing Program Center, HUD Washington, DC Office, Suite 300, 820 First Street, NE, Washington, DC 20002–4205, OFC Phone: (202) 275–9200, FAX: (202) 275–9212

FLORIDA

Multifamily Housing Hub, HUD—Jacksonville Office, 301 West Bay Street, Suite 2200, Jacksonville, FL 32202–5121, OFC Phone: (904) 232–1777 x2144, FAX: (904) 232–2731

GEORGIA

Multifamily Housing Hub, HUD—Atlanta Office, Five Points Plaza Building, 40 Marietta Street, S.W., Atlanta, Georgia 30303–2806, OFC Phone: (404) 331–4976, FAX: (404) 331–4028

HAWAII

Multifamily Housing Program Center, HUD Honolulu Office, 7 Waterfront Plaza, 500 Ala Moana Blvd. #500, Honolulu, HI 96813–4918, OFC Phone: (808) 522–8185 Ext. 244, FAX: (808) 522–8194

IDAHO

Multifamily Housing Hub, HUD Seattle Office, 909 First Avenue, Suite 190, MS–0AHM, Seattle, WA 98104–1000, OFC Phone: (206) 220–5228 ext. 3250, FAX: (206) 220–5206

ILLINOIS

Multifamily Housing Hub, HUD—Chicago Office, Ralph Metcalfe Federal Building, 77 West Jackson Boulevard, Chicago, IL 60604–3507, OFC Phone: (312) 353–6236 Ext. 2202, FAX: (312) 886–2729

INDIANA

Multifamily Housing Program Center, HUD Indianapolis Office, 151 North Delaware Street, Suite 1200, Indianapolis, IN 46204–2526, OFC Phone: (317) 226–6303, FAX: (317) 226–7308

IOWA

Multifamily Housing Program Center, HUD Des Moines Office, 210 Walnut Street, Room 239, Des Moines, IA 50309–2155, OFC Phone: (515) 284–4736, FAX: (515) 284–4743

KANSAS

Multifamily Housing Hub, HUD Kansas City Office, 400 State Avenue, Room 200, Kansas City, KS 66101–2406, OFC Phone: (913) 551–6844, FAX: (913) 551–5469

KENTUCKY

Multifamily Housing Program Center, HUD—Louisville Office, 601 West Broadway, PO Box 1044, Louisville, KY 40201–1044, OFC Phone: (502) 582–6124, FAX: (502) 582–6547

LOUISIANA

Multifamily Housing Program Center, HUD New Orleans Office, Hale Boggs Bldg.—501 Magazine Street, 9th Floor, New Orleans, LA 70130–3099, OFC Phone: (504) 589–7236, FAX: (504) 589–6834

MAINE

Multifamily Housing Program Center, HUD—Manchester Office, Norris Cotton Federal Bldg., 275 Chestnut Street, Manchester, NH 03101–2487, OFC Phone: (603) 666–7684, FAX: (603) 666–7697

MARYLAND

Multifamily Housing Hub, HUD Baltimore Office, 5th Floor, 10 South Howard Street, Baltimore, MD 21201–2505, OFC Phone: (410) 962–2520 Ext. 3474, FAX: (410) 962–1849

MASSACHUSETTS

Multifamily Housing Hub, HUD—Boston Office, O'Neil Federal Building, 10 Causeway Street, Rm. 375, Boston, MA 02222–1092, OFC Phone: (617) 565–5162, FAX: (617) 565–6557

MICHIGAN

Multifamily Housing Hub, HUD Detroit Office, 477 Michigan Avenue, Detroit, MI 48226–2592, OFC Phone: (313) 226–7900, FAX: (313) 226–5611

Multifamily Housing Program Center, HUD Grand Rapids, Trade Center Building, 50 Louis Street, N.W., Grand Rapids, MI 49503–2648, OFC Phone: (616) 456–2100, FAX: (616) 456–2191

MINNESOTA

Multifamily Housing Hub, HUD Minneapolis Office, 220 Second Street, South, Minneapolis, MN 55401–2195, OFC Phone: (612) 370–3051 Ext. 0, FAX: (612) 370–3090

MISSISSIPPI

Multifamily Housing Program Center, HUD Jackson Office—McCoy Federal Building, 100 W. Capitol Street, Room 910, Jackson, MS 39269–1096, OFC Phone: (601) 965–4738, FAX: (601) 965–4773

MISSOURI

Multifamily Housing Hub, HUD Kansas City Office, 400 State Avenue, Room 200, Kansas City, KS 66101–2406, OFC Phone: (913) 551–6844, FAX: (913) 551–5469

Multifamily Housing Program Center, HUD St. Louis Office, Robert A. Young Federal Building, 1222 Spruce Street—Third Floor, St. Louis, MO 63103–2836, OFC Phone: (314) 539–6382, FAX: (314) 539–6356

MONTANA

Multifamily Housing Hub, HUD Denver Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, OFC Phone: (303) 672–5343, FAX: (303) 672–5153

NEBRASKA

Multifamily Housing Program Center, HUD Omaha Office, 10909 Mill Valley Road, Suite 100, Omaha, NE 68154–3955, OFC Phone: (402) 492–3113, FAX: (402) 492–3184

NEVADA

Multifamily Housing Program Center, HUD Las Vegas Office, 333 N. Rancho Drive—Atrium Bldg. Suite 700, Las Vegas, NV 89106–3714, OFC Phone: (702) 388–6525, FAX: (702) 388–6244

NEW HAMPSHIRE

Multifamily Housing Program Center, HUD—Manchester Office, Norris Cotton Federal Bldg., 275 Chestnut Street, Manchester, NH 03101–2487, OFC Phone: (603) 666–7684, FAX: (603) 666–7697

NEW JERSEY

Multifamily Housing Program Center, HUD—Newark Office—13th Floor, One Newark Center, Newark, NJ 07102–5260, OFC Phone: (973) 622–7900 Ext. 3400, FAX: (973) 645–2271.

NEW MEXICO

Multifamily Housing Hub, HUD Ft. Worth Office, 801 Cherry Street, PO Box 2905, Ft.

Worth, TX 76102–2905, OFC Phone: (817) 978–5764, FAX: (817) 978–5520

NEW YORK

Multifamily Housing Hub, HUD—New York Office, 26 Federal Plaza—Room 3214, New York, NY 10278–0068, OFC Phone: (212) 264–0777 Ext. 3713, FAX: (212) 264–1277

Multifamily Housing Hub, HUD—Buffalo Office, Lafayette Court, 5th Floor, 465 Main Street, Buffalo, NY 14203–1780, OFC Phone: (716) 551–5755 Ext. 5509, FAX: (716) 551–3252

NORTH CAROLINA

Multifamily Housing Hub, HUD Greensboro Office—Koger Building, 2306 West Meadowview Road, Greensboro, NC 27407, OFC Phone: (336) 547–4034, FAX: (336) 547–4121

NORTH DAKOTA

Multifamily Housing Hub, HUD Denver Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, OFC Phone: (303) 672–5343, FAX: (303) 672–5153

OHIO

Multifamily Housing Hub, HUD Columbus Office, 200 North High Street, Columbus, OH 43215–2499, OFC Phone: (614) 469–5737, Ext. 8111, FAX: (614) 469–2432

Multifamily Housing Program Center, HUD Cincinnati Office, 525 Vine Street, Suite 700, Cincinnati, OH 45202–3188, OFC Phone: (513) 684–2350, FAX: (513) 684–6224

Multifamily Housing Program Center, HUD Cleveland Office, 1350 Euclid Avenue, Suite 500, Cleveland, OH 44115–1815, OFC Phone: (216) 522–4058 Ext. 7000, FAX: (216) 522–4067

OKLAHOMA

Multifamily Housing Program Center, HUD Oklahoma City Office, 500 W. Main Street, Suite 400, Oklahoma City, OK 73102–2233, OFC Phone: (405) 553–7410, FAX: (405) 553–7406

OREGON

Multifamily Housing Hub, HUD Seattle Office, 909 First Avenue, Suite 190, MS–0AHM, Seattle, WA 98104–1000, OFC Phone: (206) 220–5228 ext. 3250, FAX: (206) 220–5206

PENNSYLVANIA

Multifamily Housing Hub, HUD Philadelphia Office, The Wanamaker Building, 100 Penn Square, East Philadelphia, PA 19107–3380, OFC Phone: (215) 656–0609 Ext. 3533, FAX: (215) 656–3427

Multifamily Housing Program Center, HUD Pittsburgh Office, 339 Sixth Avenue—Sixth Floor, Pittsburgh, PA 15222–2515, OFC Phone: (412) 644–6639, FAX: (412) 644–5872

PUERTO RICO

Multifamily Housing Program Center, HUD Caribbean Office, 171 Carlos E. Chardon Avenue, San Juan, PR 00918–0903, OFC Phone: (787) 766–5401, FAX: (787) 766–5522

RHODE ISLAND

Multifamily Housing Program Center, HUD—Providence Office, 10 Weybosset Street, Sixth Floor, Providence, RI 02903–2808, OFC Phone: (401) 528–5230, FAX: (401) 528–5097

SOUTH CAROLINA

Multifamily Housing Program Center, HUD Columbia Office, 1835 Assembly Street, Columbia, SC 29201–2480, OFC Phone: (803) 765–5162, FAX: (803) 253–3043,

SOUTH DAKOTA

Multifamily Housing Hub, HUD Denver Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, OFC Phone: (303) 672–5343, FAX: (303) 672–5153

TENNESSEE

Multifamily Housing Program Center, HUD—Knoxville Office, 710 Locust Street, SW, Knoxville, TN 37902–2526, OFC Phone: (423) 545–4411, FAX: (423) 545–4578

Multifamily Housing Program Center, HUD—Nashville Office, 251 Cumberland Bend Drive, Suite 200, Nashville, TN 37228–1803, OFC Phone: (615) 736–5748, FAX: (615) 736–2018

TEXAS

Multifamily Housing Hub, HUD Ft. Worth Office, 801 Cherry Street, PO Box 2905, Ft. Worth, TX 76102–2905, OFC Phone: (817) 978–5764, FAX: (817) 978–5520

Multifamily Housing Program Center, HUD Houston Office, 2211 Norfolk, #200, Houston, TX 77098–4096, OFC Phone: (713) 313–2274 Ext. 7015, FAX: (713) 313–2319

Multifamily Housing Program Center, HUD San Antonio Office, 800 Dolorosa, San Antonio, TX 78207–4563, OFC Phone: (210) 475–6831, FAX: (210) 472–6897

UTAH

Multifamily Housing Hub, HUD Denver Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, OFC Phone: (303) 672–5343, FAX: (303) 672–5153

VERMONT

Multifamily Housing Program Center, HUD—Manchester Office, Norris Cotton Federal Bldg., 275 Chestnut Street, Manchester, NH 03101–2487, OFC Phone: (603) 666–7684, FAX: (603) 666–7697

VIRGINIA

Multifamily Housing Hub, HUD Richmond Office, 3600 West Broad Street, Richmond, VA 23230–4920, OFC Phone: (804) 278–4500 Ext. 3146, FAX: (804) 278–4613

WASHINGTON

Multifamily Housing Hub, HUD Seattle Office, 909 First Avenue, Suite 190, MS–0AHM, Seattle, WA 98104–1000, OFC Phone: (206) 220–5228 Ext. 3250, FAX: (206) 220–5206

WEST VIRGINIA

Multifamily Housing Program Center, HUD—Charleston Office, 405 Capitol Street, Suite 708, Charleston, WV 25301–1795, OFC Phone: (304) 347–7000 Ext. 103, FAX: (304) 347–7050

WISCONSIN

Multifamily Housing Program Center, HUD Milwaukee Office, 310 West Wisconsin Avenue, Room 1380, Milwaukee, WI 53203–2289, OFC Phone: (414) 297–3214 Ext. 8662, FAX: (414) 297–3204

WYOMING

Multifamily Housing Hub, HUD Denver Office, 633 17th Street, 14th Floor, Denver, CO 80202–3607, OFC Phone: (303) 672–5343, FAX: (303) 672–5153

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Federal Register

Friday,
March 17, 2000

Part V

Department of Housing and Urban Development

Regulatory Waiver Requests Granted; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4512–N–04]

Notice of Regulatory Waiver Requests Granted

AGENCY: Office of the Secretary, HUD.

ACTION: Public Notice of the Granting of Regulatory Waivers from October 1, 1999 through December 31, 1999.

SUMMARY: Section 106 of the Department of Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), requires HUD to publish quarterly **Federal Register** notices of all regulatory waivers it has approved. Each notice must cover the quarterly period since the most recent **Federal Register** notice. The purpose of this notice is to comply with the requirements of section 106 of the HUD Reform Act. This notice contains a list of regulatory waivers granted by HUD during the quarter beginning on October 1, 1999 and ending on December 31, 1999.

FOR FURTHER INFORMATION CONTACT: For general information about this notice, contact Camille E. Acevedo, Assistant General Counsel for Regulations, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–3055 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

For information concerning a particular waiver action for which public notice is provided in this document, contact the person whose name and address is set out for the particular item, in the accompanying list of waiver-grant actions.

SUPPLEMENTARY INFORMATION: As part of the Housing and Urban Development Reform Act of 1989 (the "HUD Reform Act"), the Congress adopted, at HUD's request, legislation to limit and control the granting of regulatory waivers by HUD. Section 106 of the HUD Reform Act added a new section 7(q) to the Department of Housing and Urban Development Act (2 U.S.C. 3535(q)), which provides that:

1. Any waiver of a regulation must be in writing and must specify the grounds for approving the waiver;

2. Authority to approve a waiver of a regulation may be delegated by the Secretary only to an individual of Assistant Secretary rank or equivalent rank, and the person to whom authority to waive is delegated must also have authority to *issue* the particular regulation to be waived;

3. Not less than quarterly, the Secretary must notify the public of all waivers of regulations that HUD has approved, by publishing a notice in the **Federal Register**. These notices (each covering the period since the most recent previous notification) shall:

a. Identify the project, activity, or undertaking involved;

b. Describe the nature of the provision waived, and the designation of the provision;

c. Indicate the name and title of the person who granted the waiver request;

d. Describe briefly the grounds for approval of the request;

e. State how additional information about a particular waiver grant action may be obtained.

Section 106 of the HUD Reform Act also contains requirements applicable to waivers of HUD handbook provisions that are not relevant to the purpose of this notice.

Today's document follows publication of HUD's Statement of Policy on Waiver of Regulations and Directives issued by HUD on April 22, 1991 (56 FR 16337). This notice covers HUD's waiver-grant activity from October 1, 1999 through December 31, 1999. Additionally, this notice contains several reports of regulatory waivers granted during September of 1999, but that were not included in HUD's **Federal Register** notice of waiver grant activity from July 1, 1999 to September 30, 1999.

For ease of reference, the waivers granted by HUD are listed by HUD program office (for example, the Office of Community Planning and Development, the Office of Housing, the Office of Public and Indian Housing, etc.). Within each program office grouping, the waivers are listed sequentially by the section of title 24 being waived. For example, a waiver-grant action involving the waiver of a provision in 24 CFR part 58 would come before a waiver of a provision in 24 CFR part 570.

Where more than one regulatory provision is involved in the grant of a particular waiver request, the action is listed under the section number of the first regulatory requirement in title 24 that is being waived as part of the waiver-grant action. For example, a waiver of both § 58.73 and § 58.74 would appear sequentially in the listing under § 58.73.

Waiver-grant actions involving the same initial regulatory citation are in time sequence beginning with the earliest-dated waiver grant action.

Should HUD receive additional reports of waiver actions taken during the period covered by this report before the next report is published, the next updated report will include these earlier actions, as well as those that occurred between January 1, 2000 through March 30, 2000.

Accordingly, information about approved waiver requests pertaining to HUD regulations is provided in the Appendix that follows this notice.

Dated: March 13, 2000.

Andrew Cuomo,

Secretary.

Appendix

Listing of Waivers of Regulatory Requirements Granted by Officers of the Department of Housing and Urban Development October 1, 1999 through December 31, 1999

Note to Reader: More information about the granting of these waivers, including a copy of the waiver request and approval, may be obtained by contacting the person whose name is listed as the contact person directly before each set of waivers granted.

I. Regulatory Waivers Granted by the Office of Community Planning and Development

For Items 1 Through 3, Waivers Granted for 24 CFR Parts 50 and 1000, Contact: Bruce Knott, National Office of Native American Programs, U.S. Department of Housing and Urban Development, 1999 Broadway, Suite 3390, Denver, CO 80201; telephone (303) 675–1600 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

1. Regulation: 24 CFR 50.17 and 1000.20(a).

Project/Activity: White Mountain Apache Tribe; Apache Dawn Phase One project.

Nature of Requirement: HUD's regulation at 50.17 provides that the required environmental reviews must be completed before the decision points specified by the regulation. HUD's regulation at § 1000.20(a) provides that a HUD environmental review must be completed for Indian Housing Block Grant (IHBG) program activities not excluded from review under 24 CFR 50.19(b) before a recipient may commit HUD funds used in conjunction with IHBG program assisted activities.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development; Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: November 30, 1999.

Reasons Waived: A request was made by the White Mountain Apache Tribe for HUD to perform the environmental review under 24 CFR part 50 for the Apache Dawn Phase One Project. The tribally designated housing entity (TDHE) made several errors during the 24 CFR part 58 environmental review and clearance process for the project (to be financed with Section 184/Ginnie Mae collateralized tax-exempt bonds), resulting in the TDHE obligating Section 184 Loan Guarantee proceeds and Indian Housing Block Grant (IHBG) funds prior to HUD approval of a Request for a Release of Funds and Certification. The Tribe and TDHE acted in good faith in trying to comply with HUD's environmental review and clearance process. No environmental degradation resulted from the regulatory noncompliance identified. The errors committed under 24 CFR part 58 would have delayed the bond closing resulting in the cancellation of the project.

2. Regulation: 24 CFR 50.17 and 1000.20(a).

Project/Activity: The Quileute Tribe and its housing authority were provided grant funds to develop 15 houses on the Indian reservation. Prior to the obligation of funds, the Tribe is required to complete an environmental assessment under 24 CFR part 58 or HUD is required to complete the environmental assessment under 24 CFR part 50. The Tribe elected to comply with the part 58 requirements. However, HUD discovered procedural errors during a post review of the environmental record.

Nature of Requirement: HUD's regulation at § 50.17 provides that the required environmental reviews must be completed before the decision points specified by the regulation. HUD's regulation at § 1000.20(a) provides that a HUD environmental review must be completed for Indian Housing Block Grant (IHBG) program activities not excluded from review under 24 CFR 50.19(b) before a recipient may commit HUD funds used in conjunction with IHBG program assisted activities.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development; Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: December 6, 1999.

Reason Waived: Based on the information that was provided by the Tribe, the documentation that was received by HUD, and a determination by HUD that no environmental degradation resulted from the regulatory noncompliance, HUD believed that there was good cause to waive the requirements of §§ 1000.20(a) and 50.17.

3. Regulation: 24 CFR 50.17 and 1000.20(a).

Project/Activity: The Coeur D'Alene Tribe and its housing authority were provided grant funds to develop 5 houses on the Indian reservation. Prior to the obligation of funds, the Tribe is required to complete an environmental assessment under 24 CFR part 58 or HUD is required to complete the environmental assessment under 24 CFR part 50. The Tribe elected to comply with the part 58 requirements. However, HUD discovered procedural errors during a post review of the environmental record.

Nature of Requirement: HUD's regulation at § 50.17 provides that the required environmental reviews must be completed before the decision points specified by the regulation. HUD's regulation at § 1000.20(a) provides that a HUD environmental review must be completed for Indian Housing Block Grant (IHBG) program activities not excluded from review under 24 CFR 50.19(b) before a recipient may commit HUD funds used in conjunction with IHBG program assisted activities.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development; Mr. Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: December 6, 1999.

Reason Waived: Based on the information that was submitted by the Tribe, the documentation that was received by HUD, and a determination by HUD that no environmental degradation resulted from the regulatory noncompliance, HUD believed that there was good cause to waive the requirements of §§ 1000.20(a) and 50.17.

For Items 4 Through 10, Waivers Granted for 24 CFR Parts 91, 92, 570 and 576 Contact: Cornelia Robertson-Terry, Office of Community Planning and Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 7152, Washington, DC 20410; telephone (202) 708–2565 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

4. Regulation: 24 CFR 91.520(a).

Project/Activity: Harris County, Texas requested a waiver of the submission deadline for the County's 1998 program year CAPER.

Nature of Requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: October 19, 1999.

Reasons Waived: HUD determined that there was good cause for the waiver. The County requested an extension because staff is addressing concerns raised by HUD regarding the County's data collection methods during a recent monitoring visit. This additional time helped to ensure that the data reported in the CAPER was accurate and complete.

5. Regulation: 24 CFR 91.520(a).

Project/Activity: The County of Onondaga, New York requested a waiver of the submission deadline for the County's 1998 program year CDBG Performance Annual Evaluation Report (CAPER).

Nature of Requirement: HUD's regulation at 24 CFR 91.520(a) requires each grant recipient to submit a performance report to HUD within 90 days after the close of the grantee's program year.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: November 24, 1999.

Reasons Waived: HUD determined that there was good cause for the waiver. The County had experienced difficulties as a result of staff illness and the installation of new computer equipment.

6. Regulation: 24 CFR 92.500(d)(1)(C).

Project/Activity: The City of Santa Monica, California requested a waiver to extend the deadline for disbursement of HOME program disaster grant funds.

Nature of Requirement: HUD's regulation at 24 CFR 92.500(d)(1)(C) requires grantees to disburse HOME program funds within five years of the time HUD makes them available.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: October 25, 1999.

Reasons Waived: The project experienced delay due to inclement weather and restrictions on site access. The loss of the funds committed to a project already under construction would constitute a hardship to the City of Santa Monica. HUD determined that there was good cause for a waiver and allowed the City until February 29, 2000 to expend its remaining HOME disaster grant funds.

7. Regulation: 24 CFR 570.200(h)(1)(i).

Project/Activity: The City of Berwyn Illinois and the Village of Palatine, Illinois requested a waiver of the requirement governing reimbursement for CDBG pre-award costs.

Nature of Requirement: HUD's Community Development Block Grant (CDBG) program regulations at 24 CFR 570.200 (h)(1)(i) provide that, before the effective date of the CDBG grant agreement, a recipient may incur costs for activities included in a Consolidated Plan Action Plan, or an amended Consolidated Plan and then reimburse itself after the grant is received.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 13, 1999.

Reasons Waived: The two communities that requested this waiver are new entitlements and do not have Consolidated Plans in place. In order for these communities to incur costs to carry out these activities and reimburse themselves for such costs after their CDBG grants are awarded, a waiver of 24 CFR 570.200(h)(1)(i) was necessary. HUD may waive any requirement, not specifically required by law, upon determination of good cause, if undue hardship would result from applying the requirement. It is not HUD's intention to put the financial burden for program start-up costs on local resources by prohibiting reimbursement from CDBG program funds. This could negatively impact the implementation of the City's and Village's CDBG programs and their ability to effectively carry-out activities that will benefit low- and moderate-income residents.

8. Regulation: 24 CFR 570.200(h)(1)(i).

Project/Activity: The City of Auburn, Alabama requested a waiver of the requirement governing reimbursement for CDBG pre-award costs.

Nature of Requirement: HUD's Community Development Block Grant (CDBG) program regulations at 24 CFR 570.200 (h)(1)(i) provide that, before the effective date of the CDBG grant agreement, a recipient may incur costs for activities included in a Consolidated Plan Action Plan, or an amended Consolidated Plan and then reimburse itself after the grant is received.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: December 13, 1999.

Reasons Waived: The community that requested the waiver is a new entitlement, and does not have a Consolidated Plan in place. In order for this community to incur

costs to carry out activities and reimburse itself for such costs after its grant is awarded, a waiver of 24 CFR 570.200(h)(1)(i) was necessary. HUD may waive any requirement, not specifically required by law, upon determination of good cause, if undue hardship would result from applying the requirement. It is not HUD's intention to put the financial burden for program start-up costs on local resources by prohibiting reimbursement from CDBG program funds. This could negatively impact the implementation of the City's CDBG program and its ability to effectively carry-out activities that will benefit low-and moderate-income residents.

9. Regulation: 24 CFR 576.21.

Project/Activity: The County of Onandaga, NY requested a waiver of the Emergency Shelter Grant (ESG) program regulations at 24 CFR 576.21.

Nature of Requirement: HUD's regulation at 24 CFR 576.21 state that recipients of ESG grant funds are subject to the limits on the use of assistance for essential services established in section 414(a)(2)(B) of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11374(a)(2)(B)). Essential services are commonly defined as services that provide health, employment, drug abuse, and education to homeless persons.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: October 20, 1999.

Reasons Waived: Under the Stewart B. McKinney Homeless Assistance Act, amended by the National Affordable Housing Act the 30 percent cap on essential services may be waived if the grantee "demonstrates that the other eligible activities under the program are already being carried out in the locality with other resources." A letter from the County Administrator to HUD documented that other resources were being used to address homeless needs. Therefore, HUD allowed the County to expend 32.57 percent of its FY 1998 ESG funds for this expenditure category.

10. Regulation: 24 CFR 576.35(b)(2)(ii).

Project/Activity: The State of Tennessee requested a waiver of the 180-day month expenditure deadline.

Nature of Requirement: The ESG program regulation at 24 CFR 576.35(b)(2)(ii) requires State recipients using ESG funds for homeless prevention activities to expend those funds within 180 days of the date on which grant amounts were made available.

Granted by: Cardell Cooper, Assistant Secretary for Community Planning and Development.

Date Granted: November 2, 1999.

Reasons Waived: The State requested approval to use ESG homeless prevention funds during the first 365 days of the ESG grant term. The waiver was requested to help ensure that the State would not experience a shortfall of resources during the wintertime, when a large number of requests for assistance with rent and utility arrearages are received. HUD recognized the State's need to be able to provide assistance beyond the 180 days allowed in the regulation.

II. Regulatory Waivers Granted by the Office of Housing

For Item 11, Waiver Granted for 24 CFR Part 203, Contact:

Vance T. Morris, Director, Office of Single Family Program Development, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 9266, Washington, DC 20410; telephone (202) 708–2700 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

11. Regulation: 24 CFR 203.49(c).

Project/Activity: Corinthian Mortgage Corporation requested a waiver of the requirements of 24 CFR 203.49(c) to extend the initial adjustment dates for adjustable rate mortgage (ARM) loans beyond the 12 to 18 month window currently provided for in the regulation.

Nature of Requirement: The regulation requires that interest rate adjustments for ARMs must occur on an annual basis, except that the first adjustment may occur no sooner than 12 months nor later than 18 months from the date of the mortgagor's first debt service payment.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 12, 1999.

Reason Waived: Approving the waiver enabled the lender to securitize the loan and rendered no harm to the borrowers or the Department.

For Item 12: Waiver Granted for 24 CFR Part 241, Contact: Gloria Burton, Western and Atlantic Servicing Branch, Office of Portfolio Management, U.S. Department of Housing and Urban Development, 451 7th Street SW, Room 6176, Washington, DC 20410; telephone (202) 708–3944 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8391.

12. Regulation: 24 CFR 241.1069(a).

Project/Activity: Kansas City, Missouri (Hawthorne Complex—Project Numbers 084–55005, 084–55014, 084–55040, 084–41006, 084–55052). The Kansas City Multifamily Hub has requested a waiver of escrow requirements for the subject projects.

Nature of Requirement: HUD's regulations at 24 CFR part 241 require that 10% of each second mortgage loan be deposited with the second mortgage lender in Housing Quality Standards (HQS) escrows to be held for a period of 5 years from the date the loan was made as assurance of compliance by the project owner with applicable local housing codes and HUD's HQS.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Reason Waived: The Assistant Secretary granted the waiver to allow release of $540,291 from the HQS Escrow to purchase of the Hawthorne Complex, as well as 36 management needs of the property. This will allow release of a portion requisite 5-year period and preserve the long term affordability of the Hawthorne Complex.

For Items 13 Through 85, Waivers Granted for 24 CFR Part 891, Contact: Willie Spearmon, Director, Office of Business Products, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6134, Washington, DC 20410; telephone (202) 708–3000 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

13. Regulation: 24 CFR 891.100(d).

Project/Activity: Everett Non-Profit Housing, Everett, MA, Project Number: 023–EE068/MA06–S961–004.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 30, 1999.

Reason Waived: The project is modest in design, and comparable in cost to similar projects. Further, the sponsor has not been able to secure all funds needed to cover the increased costs from outside sources.

14. Regulation: 24 CFR 891.100(d).

Project/Activity: Jackson Supportive Housing Development, Jackson, Mississippi, Project Number: 065–HDO19/MS26–Q971–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 30, 1999.

Reason Waived: The project is modest in design, comparable in costs to other similar projects, and the Sponsors were not able to raise any additional funds nor do they have the capacity to provide the funds.

15. Regulation: 24 CFR 891.100(d) and 891.165.

Project/Activity: Mt. Zion Baptist Church, St. Louis, Missouri, Project Number: 085–EE038/MO36–S971–005.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 30, 1999.

Reason Waived: The sponsor/owner has taken all reasonable measures to reduce project cost by competitively bidding the project and has no other funds available to cover the shortfall in project development costs. The project was delayed due to a HUD error which required the construction contract to be competitively bid.

16. Regulation: 24 CFR 891.100(d).

Project/Activity: Reisterstown Village Senior Housing, Reisterstown, Maryland, Project Number: 052–EE025/MD06–S981–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 13, 1999.

Reason Waived: Additional funds were needed to cover increased costs caused by the local government requiring a sprinkler system.

17. Regulation: 24 CFR 891.100(d) and 891.165.

Project/Activity: East 21st Midwood Residence, Brooklyn, New York, Project Number: 012–HD052–WDD/NY36–Q961–005.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 13, 1999.

Reason Waived: Additional funds were needed because the sponsor had exhausted all reasonable measures to reduce project shortfalls and had no other funds to cover the shortfall. The sponsor required additional time because an alternate site had to be selected by the sponsor after it lost site control of its original site.

18. Regulation: 24 CFR 891.100(d).

Project/Activity: QLS Meadows, Atlanta, Georgia, Project Number: 061–EE053/GA06S961007.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 26, 1999.

Reason Waived: The Sponsor/Owner had to acquire another site, which resulted in additional land and construction costs.

19. Regulation: 24 CFR 891.100(d) and 891.165.

Project/Activity: Tongore Pines, Oliverbridge, New York, Project Number: 012–EE193/NY36–S961–011.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred. HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 16, 1999.

Reason Waived: The project is modest in design, comparable in costs to other similar projects, and the owner could not raise any additional funds for this project. Additional time was needed for the owner to obtain the additional time needed for the project.

20. Regulation: 24 CFR 891.100(d).

Project/Activity: Presbyterian Village of Michigan (Brush Park), Detroit, Michigan, Project Number: 044–EE053/MI28–S971–008.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner

Date Granted: December 14, 1999.

Reason Waived: Construction costs have escalated and created shortages of materials and skilled labor in Southeast Michigan due to a construction boom. The owners have exhausted all attempts to raise the additional capital to eliminate the shortfall.

21. Regulation: 24 CFR 891.100(d).

Project/Activity: Monsignor Henry J. Reel Village II, Suffolk, New York, Project Number: 012–EE220/NY36–S971–007.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.100(d) allows HUD to amend the amount of an approved capital advance only after an initial closing has occurred.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 16, 1999.

Reason Waived: The capital advance issued at the fund reservation stage did not reflect development costs within the New York metropolitan area. The Sponsor was unable to funds the necessary increase.

22. Regulation: 24 CFR 891.165.

Project/Activity: Ralston Mercy Douglass House, Philadelphia, Pa., Project Number: 034–EE061/PA26–S961–005.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the National Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 1999.

Reason Waived: Additional time was needed to review closing documents.

23. Regulation: 24 CFR 891.165.

Project/Activity: ARC Housing, Milwaukee, Wisconsin, Project Number: 075–HDO49–WDD/WI39–Q961004.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 1999.

Reason Waived: Additional time was needed to resolve architectural problems.

24. Regulation: 24 CFR 891.165.

Project/Activity: VOA Riverside 10, Fort Worth, Texas, Project Number: 113–HDO15–WPD/TX21–Q971–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 22, 1999.

Reason Waived: The project was delayed because the owner had to find a new site due to neighborhood opposition.

25. Regulation: 24 CFR 891.165.

Project/Activity: Royale Gardens Residences, Chicago, Illinois, Project Number: 071–EE125/IL06–S961–016.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 23, 1999.

Reason Waived: Additional time was needed for the Sponsor to secure secondary financing from the City of Chicago's Department of Housing to cover additional construction costs.

26. Regulation: 24 CFR 891.165.

Project/Activity: Citrus Gardens, Orlando, Orange County, Florida, Project Number: 067–EE082/FL29–S971–008; Goodwill Industries, St. Petersburg, Florida, Project Number: 067–HDO54/FL29–Q971–008; Bethel Towers, Tallahassee, Florida, Project Number: 067–EE016/FL29–S971–002; Cape Coral Home, Cape Coral, Florida, Project Number: 066–HDO38/FL29–Q971–005; Matthew's Corner, Tampa, Project Number: 067–HDO53/FL29–Q071–007.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 28, 1999.

Reason Waived: Citrus Gardens: Closing of the project has been delayed due to deficiencies in the firm commitment application and the owner's efforts to resolve issues with the City of Orlando. *Goodwill Industries:* The project was delayed because the owner was forced to seek an alternate site. *Bethel Towers:* Additional time was needed for the owner to resolve deficiencies in the Firm Commitment application and to identify alternate funding sources to meet a cash shortage. *Cape Coral Home:* Delays in closing the project are due to the General Contractor revising his cost. *Matthew's Corner:* Closing of this project has been delayed due to deficiencies in the Firm Commitment application and in the State's review and approval of the Owner Corporation.

27. Regulation: 24 CFR 891.165.

Project/Activity: Woodgrove Apartments, Maryville, Tennessee, Project Number: 087–HDO33/TN37–Q961–004.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: September 30, 1999.

Reason Waived: Additional time was needed for HUD to process the firm application and the Owner's Attorney to prepare the initial closing documents.

28. Regulation: 24 CFR 891.165.

Project/Activity: Riverview St. Mary's, Knoxville, Tennessee, Project Number: 087–EE030–NP–WAH/TN37–S971–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 12, 1999.

Reason Waived: The Owner experienced a delay in obtaining their 501(c) tax exempt status from the IRS.

29. Regulation: 24 CFR 891.165.

Project/Activity: Summerdale Court, Clairton, Allegheny County, Pennsylvania, Project Number: 033–HDO39/PA28–Q971001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 13, 1999.

Reason Waived: The project experienced delays when the original site met neighborhood opposition and the sponsor chose to find a new site rather than contest the arguments of the neighbors.

30. Regulation: 24 CFR 891.165.

Project/Activity: Friendship Manor, Kingsport, Tennessee, Project Number: 087–EE031.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 18, 1999.

Reason Waived: HUD needed additional time to review the draft closing documents.

31. Regulation: 24 CFR 891.165.

Project/Activity: Council for the Spanish Speaking, Inc., Milwaukee, Wisconsin, Project Number: 075–EE063–WAH/WI39–S971–007

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 1999.

Reason Waived: The project's delay was caused by a change of site from one city to another, problems with the coordination of civil, structural and mechanical engineering, and the addition of previously unknown electrical substation requirements.

33. Regulation: 24 CFR 891.165.

Project/Activity: Abraham Lincoln Centre, Chicago, Illinois, Project Number: 071–HDO95/IL06–Q061–010.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 26, 1999.

Reason Waived: Project has been delayed due to a significant amount of neighborhood opposition.

32. Regulation: 24 CFR 891.165.

Project/Activity: Lakeland Manor, Santa Fe Springs, California, Project Number: 122–HD089–WPD–NP/CA16–Q961–005.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 1999.

Reason Waived: Approval of the sites has taken more time than expected. The City has required the Sponsor to obtain the approval of each alderman and the aldermen have required the approval of each of the communities involved.

34. Regulation: 24 CFR 891.165.

Project/Activity: Nome Community Center, Nome, Alaska, Project Number: 176–EE012/AK06–S971–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 1999.

Reason Waived: Development of this project has been delayed by factors beyond the control of HUD and the owners.

35. Regulation: 24 CFR 891.165.

Project/Activity: Victoria Jennings Residences, Chicago, Illinois, Project Number: 071–HDO88/IL06–Q961–003.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 1999.

Reason Waived: Additional time is needed for the firm commitment to be reprocessed and for the project to be initially closed.

36. Regulation: 24 CFR 891.165.

Project/Activity: ASI Dakota County, Burnsville, Minnesota, Project Number: 092–HDO44/MN46–Q971–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 1999.

Reason Waived: This project experienced delays when the site had to be subdivided due to improvements on the adjacent property.

37. Regulation: 24 CFR 891.165.

Project/Activity: Mercy Gardens, San Diego, California, Project Number: 129–HDO11–WPD–NP/CA33–Q961–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 1999.

Reason Waived: Delays that this project has experienced in achieving a construction start have been for reasons that were beyond the Sponsor's control.

38. Regulation: 24 CFR 891.165.

Project/Activity: Mariposa Manor, Los Angeles, California, Project Number: 122–EE118/CA16–S971–003.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 1999.

Reason Waived: The project has been delayed due to the complications rising from the Section 106 historic Preservation Review process.

39. Regulation: 24 CFR 891.165.

Project/Activity: Webster Supportive Housing, Webster, Texas, Project Number: 114–HDO12/TX24–Q961–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 1999.

Reason Waived: The Sponsor was denied a special use permit from the city of Webster on their original site which necessitated a search for an alternate.

40. Regulation: 24 CFR 891.165.

Project/Activity: Woodgrove Apartments, Maryville, Tennessee, Project Number: 087–HDO33.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 1999.

Reason Waived: HUD required additional time to review the closing documents.

41. Regulation: 24 CFR 891.165.

Project/Activity: Ralston Mercy-Douglass House, Philadelphia, PA, Project Number: 034–EE061/PA26–S961–005.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 9, 1999.

Reason Waived: HUD required additional time to review the initial closing documents.

42. Regulation: 24 CFR 891.165.

Project/Activity: Jackson Supportive Housing Development, Jackson, Mississippi, Project Number: 065–HDO19.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 9, 1999.

Reason Waived: The firm commitment application was delayed because construction bids obtained by the co-sponsor/owner exceeded the fund reservation and the owner needed to seek ways to lower costs and find other funds.

43. Regulation: 24 CFR 891.165.

Project/Activity: ARC Housing, Inc., Milwaukee, Wisconsin, Project Number: 075–HDO49/WI39–Q961–004.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 16, 1999.

Reason Waived: The project was delayed due to architectural problems.

44. Regulation: 24 CFR 891.165.

Project Activity: Ray Rawson Villa, Las Vegas, Nevada, Project Number: 125–HDO64–NP–WPD/NV25–Q971–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 16, 1999.

Reason Waived: Delays occurred as the owner tried to obtain acceptable contractor bids and to secure additional secondary financing to cover cost overruns.

45. Regulation: 24 CFR 891.165.

Project/Activity: Sumac Trail Apartments, Inc., Rhinelander, Wisconsin, Project Number: 075–HDO50–CMI/WI39–Q971–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that

the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 16, 1999.

Reason Waived: Delays occurred while the owner tried to reduce the project costs.

46. Regulation: 24 CFR 891.165.

Project Activity: Good Samaritan Housing, Fennimore, Wisconsin, Project Number: 075–EE058/WI39–S971–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 16, 1999.

Reason Waived: Additional time was required for the owner to seek ways to reduce an up-front cash requirement.

47. Regulation: 24 CFR 891.165.

Project/Activity: ARC Housing in Milwaukee, Inc., Wauwatosa, Wisconsin, Project Number: 075–HDO53–WDD/WI39–Q971–004.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 16, 1999.

Reason Waived: Owner had to locate a new site for the project.

48. Regulation: 24 CFR 891.165.

Project/Activity: 1116 Brookview (aka St. Paul's) Toledo, Ohio, Project Number: 042–EE087–WAH/OH12–S971–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 16, 1999.

Reason Waived: There was a need for more time to gain approval of a community unit plan and for HUD to review the closing documents.

49. Regulation: 24 CFR 891.165.

Project/Activity: Wesley Acres II, Decatur, Alabama, Project Number: 062–EE037/AL09–S971–003.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 16, 1999.

Reason Waived: The previous contractor had to be terminated by the Owner. The new general contractor required time to revise the plans and specifications in order to reduce construction costs.

50. Regulation: 24 CFR 891.165.

Project/Activity: Estates II, Hattiesburg, Mississippi, Project Number: 065–EE022–CA/MS26–S971–003.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 16, 1999.

Reason Waived: The project experienced unusual delays due to the local government's review process.

51. Regulation: 24 CFR 891.165.

Project/Activity: Chenango Street Apartments, Buffalo, New York, Project Number: 014–EE163/NY06–S971–019.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 16, 1999.

Reason Waived: The project was unable to proceed to initial closing due to a HUD delay.

53. Regulation: 24 CFR 891.165.

Project/Activity: John King Senior Community, San Francisco, California, Project Number: 121 EE099–NP–WAH/CA39–S961–012.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 16, 1999.

Reason Waived: Delays resulted from increases in construction costs which required the owner to seek a substantial amount of additional secondary financing from the City and County, the complexity of the design, and a relocation problem that was only resolved recently by court action.

54. Regulation: 24 CFR 891.165.

Project/Activity: Clinton House, Detroit, Michigan, Project Number: 044–HDO20/MI28–Q961–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 24, 1999.

Reason Waived: The project encountered delays as it sought additional amendment funds because of a required project redesign and local government requirements.

55. Regulation: 24 CFR 891.165.

Project/Activity: Timber Ridge Group Home Northridge, California, Project Number: 122–HD103/CA16–Q971–009; Ranch House Group Home, Sylmar, California, Project Number: 122–HD104/CA16–Q971–010.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 24, 1999.

Reason Waived: The delays that this project experienced in achieving a construction start have been for reasons beyond the owner's control. Further delay was encountered because all proposed designs far exceeded the available budget and consequently the scope of the project was reevaluated.

56. Regulation: 24 CFR 891.165.

Project/Activity: Oroysom Senior Housing, Fremont, California, Project Number: 121–EE103–NP–WAH/CA39–S971–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 1, 1999.

Reason Waived: The HUD field office was not able to proceed to initial closing due to HUD delay.

57. Regulation: 24 CFR 891.165.

Project/Activity: Bishop Curtis Homes, East Bridgeport, Connecticut, Project Number: 017–EE033/CT26–S971–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 6, 1999.

Reason Waived: Delays have occurred as the owner aggressively sought ways to reduce project costs and to obtain additional funding from the City of Bridgeport.

58. Regulation: 24 CFR 891.165.

Project/Activity: Volunteers of America, Inc., Bath/Thomaston, Maine, Project Number: 024–EE038/MA36–S971–003.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 6, 1999.

Reason Waived: The sponsor had to locate a new site due to the City not approving zoning on the original site. Additional time was required for HUD to review the new site.

59. Regulation: 24 CFR 891.165.

Project/Activity: Baden Supportive Housing, Baden, Pennsylvania, Project Number: 033–EE091/PA28–S971–007.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 6, 1999.

Reason Waived: A few days before closing, the General Contractor notified the owner that he could no longer build the project and the project owner had to select a new contractor.

60. Regulation: 24 CFR 891.165.

Project/Activity: Lake Street Apartments, St. Albans, Vermont, Project Number: 024–HDO25/VT36–Q971–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 6, 1999.

Reason Waived: Additional time was needed for the City to complete rehabilitation of the building that will house the project.

61. Regulation: 24 CFR 891.165.

Project/Activity: Hamilton Manor, Hamilton, Alabama, Project Number: 062–HDO37/AL09–Q971–003.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 6, 1999.

Reason Waived: The delay in initial closing is directly attributable to HUD which may necessitate reprocessing of the firm commitment application.

62. Regulation: 24 CFR 891.165.

Project/Activity: Berry Manor, Berry Alabama, Project Number: 062–HDO36/AL09–Q971–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 6, 1999.

Reason Waived: The delay in initial closing is directly attributable to HUD which may necessitate reprocessing of the firm commitment application.

63. Regulation: 24 CFR 891.165.

Project/Activity: Glen Burnie Senior Housing, Baltimore, Maryland, Project Number: 052–EE022/MD06–S971–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 6, 1999.

Reason Waived: The extension of time was necessary for the project to achieve an initial closing.

64. Regulation: 24 CFR 891.165.

Project/Activity: Monsignor Henry J. Reel Village II, Suffolk, New York, Project Number: 012–EE220/NY36–S971–007.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 16, 1999.

Reason Waived: Additional time was needed to process the Firm Commitment Application, which was delayed due to submission of three unacceptable appraisals.

65. Regulation: 24 CFR 891.165.

Project/Activity: Stoney Pine Apartments, Sunnyvale, California, Project Number: 121–HD063/CA39–Q971–008.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: Additional time was required to complete the firm commitment process.

66. Regulation: 24 CFR 891.165.

Project/Activity: Crockett Senior Housing, Crockett, California, Project Number: 121–EE104/CA39–S971–003.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The project was unable to proceed to closing due to a moratorium placed on closings during the month of October.

67. Regulation: 24 CFR 891.165.

Project/Activity: Lenore Street Senior Housing, Willits, California, Project Number: 121–EE017/CA39–S971–006.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The project was unable to proceed to closing due to a moratorium placed on closings during the month of October.

68. Regulation: 24 CFR 891.165.

Project/Activity: St. Anthony Homes, Hunt Valley, Maryland, Project Number: 052–HD035/MD06–Q971–003.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: Additional time was needed to reach initial closing.

69. Regulation: 24 CFR 891.165.

Project/Activity: Jefferson Cottage, Inc., Martinsburg, West Virginia, Project Number: 045–HD021/WV15–Q961–003.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The project was unable to proceed to initial closing due to the moratorium placed on closings during the month of October.

71. Regulation: 24 CFR 891.165.

Project/Activity: Highview Unity Apartments, Inc., Charleston, West Virginia, Project Number: 045–EE010/WV15–S971–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The project was unable to proceed to initial closing due to the moratorium placed on closings during the month of October.

70. Regulation: 24 CFR 891.165.

Project/Activity: Charles Street Village, Cotati, California, Project Number: 121–EE105/CA39–S971–004.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The firm commitment application was delayed due to cost concerns and a request for additional funding to cover the financial shortfall.

72. Regulation: 24 CFR 891.165.

Project/Activity: Jackson Place, Red Bluff, California Project Number: 136–HD009/CA30–Q961–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The sponsor encountered cost problems and had to seek gap funds through Community Development Block Grant funds available through the State of California.

73. Regulation: 24 CFR 891.165.

Project/Activity: ASI Dakota County, Burnsville, Minnesota, Project Number: 092–HD044/MN46–Q971–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The preparation of the closing documents was delayed due to improvements on the adjacent property which encroached on the subject site and necessitated a subdivision of the site.

74. Regulation: 24 CFR 891.165.

Project/Activity: Nashville Supportive Housing, Nashville, Tennessee, Project Number: 086–HD016/TN–43–Q971–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The sponsor was required to find an alternative site and had problems scheduling the rezoning hearing before the Planning Commission.

75. Regulation: 24 CFR 891.165.

Project/Activity: LaCasa Village II, Wauesha, WI Project Number: 075–EE065/WI39–S971–009.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The firm commitment processing was delayed due to the fact that the Sponsor had to negotiate with a new contractor.

76. Regulation: 24 CFR 891.165.

Project/Activity: Arc HUD III, Project Number: 032–HD017/DE26–Q961–003; St. Peter's Place, Project Number: 034–EE070/PA26–S971–002; Freedom House, Project Number: 034–HD049/PA26–Q971–001; Randolphy/Mercy-Douglass Home for the Blind, Project Number: 034–HD052/PA26–Q9771–004.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: HUD required additional time to review ARC HUD III's closing documents and to complete the firm commitment processing for the other three projects.

77. Regulation: 24 CFR 891.165.

Project/Activity: Venice Senior Housing, Venice, California, Project Number: 122–EE127/CA16–S971–012.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The project experienced delays due to neighborhood and community groups filing legal appeals and a pending request for additional funding from LAHD.

78. Regulation: 24 CFR 891.165.

Project/Activity: West Hamlin Unity Place, West Hamlin, West Virginia, Project Number: 045–HD026/WV15–Q971–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The firm commitment application was delayed due to cost concerns and a request for additional funding to cover a financial shortfall.

79. Regulation: 24 CFR 891.165.

Project/Activity: Barbara Chappelle Manor, Grenada, Mississippi, Project Number: 065–EE018/MS26–S961–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: Additional time was needed to allow the Sponsor to resolve deficiencies in the initial closing package.

80. Regulation: 24 CFR 891.165.

Project/Activity: Connections (West Commons), Wilmington, Delaware, Project Number: 032–HD018/DE26–Q961–004.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: Additional time was needed to process the firm commitment application and to finalize gap financing since a new site had to be found for the project.

81. Regulation: 24 CFR 891.165.

Project/Activity: New Canaan Group Home, New Canaan, Connecticut, Project Number: 017–HD021/CT26–Q971–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: Additional time needed to close the project.

82. Regulation: 24 CFR 891.165.

Project/Activity: Southbury Senior Housing, Project Number: 017-EE040/CT26-S971–008.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The Sponsor required additional time to resolve building permit issues with the City.

83. Regulation: 24 CFR 891.165.

Project/Activity: Interfaith Housing, Westport, CT, Project Number: 017–HD015/CT26–Q961–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The Owner had to find another general contractor and resolve cost problems when the construction bid prices exceeded the fund reservation amount.

85. Regulation: 24 CFR 891.165.

Project/Activity: Warren Hempel Apartments, Alton, Illinois, Project Number: 072–HD102/IL06–Q971–002.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: Delays occurred due to the Sponsor experiencing extreme difficulty in securing adequate properties for rehabilitation. Further, the Sponsor required additional time to conduct fund raising activities to resolve a financial shortfall.

84. Regulation: 24 CFR 891.165.

Project/Activity: Knights of Peter Claver Apartments, Tunica, Mississippi, Project Number: 065–EE020/MS26–S971–001.

Nature of Requirement: HUD provides capital advances under section 202 of the Housing Act of 1959 (12 U.S.C. 1701q) and section 811 of the national Affordable Housing Act (42 U.S.C. 8013). HUD's regulation at 24 CFR 891.165 provides that the duration of the fund reservation for the capital advance is 18 months from the date of issuance, with limited exceptions up to 24 months.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The Sponsor required additional time to resolve building permit issues with the City.

For Items 86 Through 92, Waivers Granted for 24 CFR Part 891, Contact: Jerold Nachison, Eastern and Atlantic Servicing Branch, Office of Portfolio Management, Office of Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6168, Washington, DC 20410; telephone (202) 708–3730 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

86. Regulation: 24 CFR 891.305 and 891.410(c).

Project/Activity: Omaha, Nebraska (Richland Apartments—Project Number 103–HD105). The Kansas City Multifamily Hub has requested a waiver to allow an ineligible family admitted erroneously to this Section 811 project to remain temporarily to avoid a potential hardship if the family were immediately displaced.

Nature of Requirement: The HUD regulations at 24 CFR part 891 define a disabled household as "one or more persons at least one of whom is an adult (18 years or older) who has a disability." The regulations also require that an owner is to determine eligibility in selecting tenants.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 12, 1999.

Reason Waived: The Assistant Secretary granted this waiver based on the special circumstances of this case in which management did not focus on the eligibility limitations of the section 811 program. This waiver allowed the family to stay for the remaining term of their lease or one year, whichever was less. Further, the project was required to bear the costs of the family's relocation. The waiver applied solely to the subject household.

87. Regulation: 24 CFR 891.305 and 891.410(c).

Project/Activity: Greensboro, North Carolina (Morehead-Simkin Independent Living Center—Project Number 053–EE067). The Greensboro Multifamily Hub requested an age and disability waiver for the subject project to allow five households who were erroneously admitted to temporarily remain in the project.

Nature of Requirement: The HUD regulations at 24 CFR part 891 require occupancy to be limited to Very Low Income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy). The regulations also require that an owner is to determine eligibility in selecting tenants.

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 12, 1999.

Reason Waived: The Assistant Secretary granted a one year waiver of the regulation to allow project management to assist five households (in which no resident is near the age of 60), to relocate to another apartment and pay for moving expenses, etc. One ineligible resident is over the age of 60 and will be 61 at the end of the one year waiver period. In this case the waiver will be extended to her 62nd birthday, so that she may remain in the project. These measures are being taken to restore the project to a 202/PRAC for the elderly over time.

88. Regulation: 24 CFR 891.575 and 891.610(c).

Project/Activity: Salt Lake City, Utah (Calvary Tower—Project Number 105–EH048). The Denver Multifamily Hub has requested an age waiver for the project to assist with renting units.

Nature of Requirement: The HUD regulations at 24 CFR part 891 require that occupancy be limited to Very Low Income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: October 12, 1999.

Reason Waived: The Assistant Secretary for Housing granted the waiver to raise the income ceiling for the project, which would assist in renting vacant units in the project.

89. Regulation: 24 CFR 891.575 and 891.610(c).

Project/Activity: McKee, Kentucky (McKee Manor Apartments—Project Number 083–EH043). The Atlanta Multifamily Hub has requested an age waiver for the project because of occupancy difficulties.

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to Very Low Income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 3, 1999.

Reason Waived: The Assistant Secretary for Housing granted an age waiver for this project in order to allow flexibility in attempting to rent up the vacant units which exists because of a "soft" housing market in the area.

90. Regulation: 24 CFR 891.575 and 891.610(c).

Project/Activity: Burkesville, Kentucky (Burkesville Manor—Project Number 083–EH153). The Atlanta Multifamily Hub has requested an age waiver for the project to assist in renting up vacant project units.

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to Very Low Income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: November 16, 1999.

Reason Waived: The Assistant Secretary granted the waiver for this project due to the local "soft" market in the area to assist in project occupancy and allow project management more flexibility in renting vacant units.

91. Regulation: 24 CFR 891.575 and 891.610(c).

Project/Activity: Racine, Wisconsin (Marian Housing Center—Project Number: 075–EH247). The Milwaukee Multifamily Program Center requested an age waiver for the subject project due to occupancy difficulties.

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to Very Low Income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The Assistant Secretary for Housing granted this waiver based on the area's "soft" housing market resulting in difficulty in renting remaining units. The waiver would allow project management additional flexibility in attempting to rent up vacant units.

92. Regulation: 24 CFR 891.575 and 891.610(c).

Project/Activity: North Lewisburg, Ohio (Cherry Arbors—Project Number 043–EE012). The Columbus Multifamily Hub has requested an income waiver to assist with severe vacancy problems for this 202/PRAC project.

Nature of Requirement: HUD regulations at 24 CFR part 891 require that occupancy be limited to Very Low Income (VLI) elderly persons (*i.e.*, households composed of one or more persons at least one of whom is 62 years of age at time of initial occupancy).

Granted by: William C. Apgar, Assistant Secretary for Housing-Federal Housing Commissioner.

Date Granted: December 22, 1999.

Reason Waived: The Assistant Secretary granted this waiver in order to allow low income elderly in addition to very low income since the project has been suffering severe vacancy problems which could lead to future foreclosure. This would assist the project in fully renting up its vacant units.

III. Regulatory Waivers Granted by the Office of Public and Indian Housing

For Items 93 and 94, Waivers Granted for 24 CFR Part 982, Contact: Gerald Benoit, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4210, Washington, DC 20410; telephone (202) 708–0477 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

93. Regulation: 24 CFR 982.303(a) and 982.503(c)(4)(ii).

Project/Activity: San Francisco Housing Authority, California; Section 8 Housing Choice Voucher Program.

Nature of Requirement: HUD's regulation at 24 CFR 982.303(a) provides for an initial voucher term of 60 days. HUD's regulation at 24 CFR 982.503(c)(4)(ii) provides that HUD will only approve an exception payment standard above 120 percent of the fair market rent (FMR) after six months from the date of HUD approval of an exception payment standard implementing 120 percent payment standards.

Granted by: Harold Lucas, Assistant Secretary for Pubic and Indian Housing.

Date Granted: December 27, 1999.

Reason Waived: Approval of the waiver was necessary to allow an initial term of six months and thereby provide a longer initial search time for families to find housing under the program in the extremely tight San Francisco rental market. The waiver also immediately increased the payment standards above 120 percent to ensure that families were not required to pay more than 40 percent of their income for rent.

94. Regulation: 24 CFR 982.312.

Project/Activity: Cumberland County Housing Authority, Pennsylvania; Section 8 Housing Choice Voucher Program.

Nature of Requirement: The regulation provides that a family may not be absent from the unit for a period of more than 180 consecutive calendar days.

Granted by: Harold Lucas, Assistant Secretary for Pubic and Indian Housing.

Date Granted: December 17, 1999.

Reason Waived: Approval of the waiver prevented further stress and hardship on a program participant that was hospitalized for an extended period of time due to complications resulting from heart transplant surgery.

For Item 95, Waiver Granted for 24 CFR Part 990, Contact: Stephen Sprague, Funding and Financial Management Division, Office of Public and Indian Housing, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4216, Washington, DC 20410; telephone (202) 708–1872 (this is not a toll-free number). Hearing or speech-impaired persons may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8391.

95. Regulation: 24 CFR 990.107(f) and 990.109.

Project/Activity: Housing Authority of San Joaquin, CA.

Nature of Requirement: HUD's regulations at 24 CFR part 990 establish the policies and procedures governing the Performance Funding System (PFS). The PFS regulations at §§ 990.107(f) and 990.109 provide that the energy conservation incentive that relates to energy performance contracting applies to only PHA-paid utilities. The Housing Authority of San Joaquin has *both* PHA-paid and tenant-paid utilities.

Granted by: Harold Lucas, Assistant Secretary for Public and Indian Housing.

Date Granted: October 12, 1999.

Reason Waived: A request was made to permit the Authority to benefit from energy performance contracting for developments which have tenant-paid utilities. The PHA estimates that it could increase savings substantially if it were able to undertake energy performance contracting for *both* PHA-paid and tenant-paid utilities. In September 1996, the Oakland Housing Authority was granted a waiver to permit the Authority to benefit from energy performance contracting for developments with tenant-paid utilities. The waiver was granted on the basis that the Authority presented a sound and reasonable methodology for doing so. The Housing Authority of San Joaquin requested a waiver based on the same approved methodology. The waiver permits the PHA to exclude from its PFS calculation of rental income, increased rental income due to the difference between updated baseline utility (before implementation of the energy conservation measures) and revised allowances (after implementation of the measures) for the project(s) involved for the duration of the contract period, which cannot exceed 12 years.

[FR Doc. 00–6640 Filed 3–16–00; 8:45 am]

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Federal Register

Friday,
March 17, 2000

Part VI

Department of Education

Bilingual Education: Field-Initiated Research Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.292B]

Bilingual Education: Field-Initiated Research Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2000

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program. The statutory authorization for this program is contained in section 7132 of the Elementary and Secondary Education Act of 1965 (ESEA), 20 U.S.C. 7452, as amended by the Improving America's Schools Act of 1994, Pub. L. 103–382 (October 20, 1994).

Purpose of Program: The purpose of this program is to provide grants for field-initiated research activities related to the improvement of bilingual education and special alternative instructional programs for limited English proficient (LEP) children and youth.

Eligible Applicants: Institutions of higher education, nonprofit organizations, State educational agencies, and local educational agencies that have received grants under subparts 1 or 2 of Part A (or Part A or Part B, as in effect prior to October 20, 1994) of Title VII of the ESEA within the previous five years.

Applications Available: March 17, 2000.

Deadline for Transmittal of Applications: April 17, 2000.

Deadline for Intergovernmental Review: May 16, 2000.

Available Funds: $180,000.

Estimated Range of Awards: $50,000–$70,000.

Estimated Average Size of Awards: $60,000.

Estimated Number of Awards: 3.

Note: The Department is not bound by any estimates in this notice.

Project Period: 12 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86, 97, 98, and 99 the regulations in 34 CFR part 299, General Provisions, ESEA.

Description of Program

Funds under this program are available to carry out field-initiated research conducted by current or recent recipients of grants under subparts 1 or 2 who have received those grants within the previous five years. Research under this program may provide for longitudinal studies of students or teachers in bilingual education, monitoring the education of those students from entry in bilingual education through secondary school completion.

Priorities

Invitational Priority: The Secretary is particularly interested in applications that meet the following invitational priority. However, an application that meets this invitational priority does not receive competitive or absolute preference over other applications (34 CFR 75.105(c)(1)):

Applications that propose to focus on research that leads to answering significant questions on the assessment of academic achievement for LEP students.

Note: For further information on assessment issues, see "High Stakes Assessment: A Research Agenda for English Language Learners," which is available from the National Clearinghouse for Bilingual Education, telephone—1–800–321–6223 or website at: http://www.ncbe.gwu.edu

Selection Criteria

The Secretary uses the following selection criteria in 34 CFR 75.210 to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Need for the project* (5 points). (1) The Secretary considers the need for the proposed project. (2) In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(b) *Significance* (10 points). (1) The Secretary considers the significance of the proposed project.

(2) In determining the significance of the proposed project, the Secretary considers the following factors:

(i) The significance of the problem or issue to be addressed by the proposed project.

(ii) The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(iii) The likelihood that the proposed project will result in system change or improvement.

(iv) The importance or magnitude of the results or outcomes likely to be attained by the proposed project, especially improvements in teaching and student achievement.

(c) *Quality of the project design* (50 points). (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the proposed project is based upon a specific research design, and the quality and appropriateness of that design, including the scientific rigor of the studies involved.

(iii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(iv) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(d) *Quality of project personnel* (20 points). (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of the project director or principal investigator.

(ii) The qualifications, including relevant training and experience, of key project personnel.

(e) *Adequacy of resources* (5 points). (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the budget is adequate to support the proposed project.

(ii) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(f) *Quality of the management plan* (10 points). (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on April 28, 1999 (64 FR 22963); or you may view the latest SPOC list on the OMB Web site at the following address: http://www.whitehouse.gov/omb/grants

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department. Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.292B, U.S. Department of Education, Washington, DC 20202–0124.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (EST) on the date indicated in this Notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. *Do not send applications to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant must—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention (CFDA# 84.292B), Washington, DC 20202–4725 or

(2) Hand-deliver the original and two copies of the application by 4:30 p.m. (EST) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.292B), Room 3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes:

(1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9495.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 3 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and suffix letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions, plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act (GEPA), a checklist for applicants, various assurances, certifications, and required documentation:

a. Instructions for the Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden Statement.

d. Notice to All Applicants.

e. Checklist for Applicants.

f. Application for Federal Assistance (Standard Form 424) and instructions.

g. Budget Information—Non-Construction Programs (ED Form No. 524) and instructions.

h. Eligibility Certification.

i. Assurances—Non-Construction Programs (Standard Form 424B) and instructions.

j. Certifications Regarding: Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

k. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014, 9/90) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

l. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. This document has been marked to reflect statutory changes. See the notice published in the **Federal Register** (61 FR 1413) by the Office of Management and Budget on January 19, 1996.

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as "original" or "copy." No grant may be awarded unless a completed application has been received.

FOR FURTHER INFORMATION CONTACT: Socorro Lara, U.S. Department of Education, 400 Maryland Ave., SW., Room 5086, Switzer Building, Washington, DC 20202–6510. Telephone: (202) 205–9730. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this notice in an alternate format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph. Please note, however, that the Department is not able to reproduce in an alternate format the standard forms included in the notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using the PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498 or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

Program Authority: 20 U.S.C. 7452.

Dated: March 10, 2000.

Art Love,

Acting Director, Office of Bilinguol Educotion and Minority Languages Affairs.

Estimated Public Reporting Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0547 (Exp. 04/30/2002). The time required to complete this information collection is estimated to average 145 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of Bilingual Education and Minority Languages Affairs, U.S. Department of Education, 400 Maryland Avenue, SW., Room 5086, Switzer Building, Washington, DC 20202–6510.

Application Instructions

Mandatory Page Limit for the Application Narrative

The narrative portion of the application must not exceed the equivalent of 50 pages, using the following standards:

- A pageis 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The narrative section must be paginated and should include a one-page abstract. The 50-page limit applies to the abstract, proposal narrative, charts, graphs, tables, graphics, budget narrative, position descriptions (and resumes, if included), and any appendices. The page limit does not apply to application forms, attachments to those forms, assurances, certifications, and the table of contents. The page limit applies only to item 11 and not to the other items in the Checklist for Applicants. Applications with a narrative section that exceeds the page limit will not be considered for funding. The narrative section should begin with an abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities. If, to meet the page limit, you use more than one side of the page, you use a larger page, or you use a print size, spacing, or margins smaller than the standards in this notice, we will reject your application.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead.

Additional Guidance

Table of Contents

The application should include a table of contents listing the sections in the order required.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Submission of Application to State Educational Agency

Section 7116(a)(2) of the ESEA, 20 U.S.C. 7426(a)(2), requires all applicants except schools funded by the Bureau of Indian Affairs to submit a copy of their application to their State educational agency (SEA) for review and comment. Section 75.156 of EDGAR requires these applicants to submit their application to the SEA on or before the deadline date for submitting their application to the Department of Education. This section of EDGAR also requires applicants to attach to their application a copy of their letter that requests the SEA to comment on the application (34 CFR 75.156). A copy of this letter should be attached to the Project Documentation Form contained in this application package. Applicants that do not submit a copy of their application to their state educational agency in accordance with these statutory and regulatory requirements will not be considered for funding.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Assistance Form (OMB No. 1875–0106).
2. Budget Information Form (ED Form No. 524).
3. Itemized budget for each year.
4. Assurances—Non-Construction Programs Form (SF 424B).
5. Certifications Regarding Lobbying, Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
6. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
7. Disclosure of Lobbying Activities Form (SF–LLL).
8. Copy of letter requesting SEA comment on the application.
9. Form on General Education Provisions Act (GEPA) Requirement (See section entitled NOTICE TO ALL APPLICANTS (OMB No. 1801–0004)).
10. Table of Contents.
11. Application narrative, including abstract (not to exceed 50 pages).
12. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

BILLING CODE 4000–01–P

OMB Control No. 1801-0004 (Exp. 8/31/2001)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Pub. L. 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

The time required to complete this information collection is estimated to vary from 1 to 3 hours per response, with an average of 1.5 hours, including the time to review instructions, search existing data resources, gather and maintain the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, DC 20202-4651.

Application for Federal Education Assistance

Note: If available, please provide application package on diskette and specify the file format.

U.S. Department of Education

Form Approved OMB No. 1875-0106 Exp. 06/30/2001

Applicant Information

1. Name and Address — Organizational Unit

Legal Name: _____

Address: _____

City _____ State _____ County _____ ZIP Code + 4 _____

2. Applicant's D-U-N-S Number [ ][ ][ ][ ][ ][ ][ ][ ][ ]

3. Catalog of Federal Domestic Assistance #: 8 4 . 2 9 2 B ➡ Title: Bilingual Education: Field-Initiated Research Program

4. Project Director: _____

Address: _____

City _____ State _____ ZIP Code + 4 _____

Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

E-Mail Address: _____

5. Is the applicant delinquent on any Federal debt? ☐ Yes ☐ No
(If "Yes," attach an explanation.)

6. Type of Applicant *(Enter appropriate letter in the box.)* ☐

A State — H Independent School District
B County — I Public College or University
C Municipal — J Private, Non-Profit College or University
D Township — K Indian Tribe
E Interstate — L Individual
F Intermunicipal — M Private, Profit-Making Organization
G Special District — N Other *(Specify)*: _____

7. Novice Applicant ☐ Yes ☐ No

Application Information

8. Type of Submission:

—PreApplication	—Application
☐ Construction	☐ Construction
☐ Non-Construction	☐ Non-Construction

9. Is application subject to review by Executive Order 12372 process?
☐ Yes *(Date made available to the Executive Order 12372 process for review):* ___/___/_____
☐ No *(If "No," check appropriate box below.)*
☐ Program is not covered by E.O. 12372.
☐ Program has not been selected by State for review.

10. Proposed Project Dates: Start Date: ___/___/_____ End Date: ___/___/_____

11. Are any research activities involving human subjects planned at any time during the proposed project period? ☐ Yes ☐ No
a. If "Yes," Exemption(s) #: _____ *OR* b. Assurance of Compliance #: _____
c. IRB approval date: _____ ☐ Full IRB or ☐ Expedited Review

12. Descriptive Title of Applicant's Project:

Estimated Funding

13a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

Authorized Representative Information

14. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Typed Name of Authorized Representative

b. Title

c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____

d. E-Mail Address:

e. Signature of Authorized Representative — Date: ___/___/_____

REV. 1/12/99 — ED 424

Instructions for ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com/dbis/aboutdb/intlduns.htm.**

3. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested.

4. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

5. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

6. **Type of Applicant.** Enter the appropriate letter in the box provided.

7. **Novice Applicant.** Check **"Yes"** only if assistance is being requested under a program that gives special consideration to novice applicants and you meet the program requirements for novice applicants. By checking "Yes" the applicant certifies that it meets the novice applicant requirements specified by ED. Otherwise, check **"No."**

8. **Type of Submission.** Self-explanatory.

9. **Executive Order 12372.** Check **"Yes"** if the application is subject to review by Executive Order 12372. Also, please enter the month, date, and four (4) digit year (e.g., 12/12/2000). Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. Otherwise, check **"No."**

10. **Proposed Project Dates.** Please enter the month, date, and four (4) digit year (e.g., 12/12/2000).

11. **Human Subjects.** Check "Yes" or "No". If research activities involving human subjects are **not** planned **at any time** during the proposed project period, check **"No." The remaining parts of item 11 are then not applicable.**

    If research activities involving human subjects, whether or not exempt from Federal regulations for the protection of human subjects, **are** planned **at any time** during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution, check **"Yes."** If **all** the research activities are designated to be exempt under the regulations, enter, in item 11a, the exemption number(s) corresponding to one or more of the six exemption categories listed in **"Protection of Human Subjects in Research"** attached to this form. Provide sufficient information in the application to allow a determination that the designated exemptions in item 11a, are appropriate. **Provide this narrative information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page. Skip the remaining parts of Item 11.**

    If **some or all** of the planned research activities involving human subjects are covered (nonexempt), skip item 11a and continue with the remaining parts of item 11, as noted below. In addition, follow the instructions in **"Protection of Human Subjects in Research"** attached to this form to prepare the six-point narrative about the nonexempt activities. **Provide this six-point narrative in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

    If the applicant organization has an approved Multiple Project Assurance of Compliance on file with the Grants Policy and Oversight Staff (GPOS), U.S. Department of Education, or with the Office for Protection from Research Risks (OPRR), National Institutes of Health, U.S. Department of Health and Human Services, that covers the specific activity, enter the Assurance number in item 11b and the date of approval by the Institutional Review Board (IRB) of the proposed activities in item 11c. This date must be no earlier than one year before the receipt date for which the application is submitted and must include the four (4) digit year (e.g., 2000). Check the type of IRB review in the appropriate box. An IRB may use the expedited review procedure if it complies with the requirements of 34 CFR 97.110. If the IRB review is delayed beyond the submission of the application, enter **"Pending"** in item 11c. If your application is recommended/selected for funding, a follow-up certification of IRB approval from an official signing for the applicant organization must be sent to and received by the designated ED official within 30 days after a specific formal request from the designated ED official. **If the applicant organization does not have** on file with GPOS or OPRR **an approved Assurance of Compliance** that covers the proposed research activity, enter **"None"** in item 11b and skip 11c. In this case, the applicant organization, by the signature on the application, is declaring that it will comply with 34 CFR 97 within 30 days after a specific formal request from the designated ED official for the Assurance(s) and IRB certifications.

12. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

13. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 13.

14. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office.

    Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 14e, please enter the month, date, and four (4) digit year (e.g., 12/12/2000) in the date signed field.

Paperwork Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106.** The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH (Attachment to ED 424)

I. Instructions to Applicants about the Narrative Information that Must be Provided if Research Activities Involving Human Subjects are Planned

If you marked item 11 on the application "Yes" and designated exemptions in 11a, **(all research activities are exempt),** provide sufficient information in the application to allow a determination that the designated exemptions are appropriate. Research involving human subjects that is exempt from the regulations is discussed under **II.B. "Exemptions,"** below. The Narrative must be succinct. **Provide this information in an "Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

If you marked "Yes" to item 11 on the face page, and designated no exemptions from the regulations **(some or all of the research activities are nonexempt),** address the following six points for each nonexempt activity. In addition, if research involving human subjects will take place at collaborating site(s) or other performance site(s), provide this information before discussing the six points. Although no specific page limitation applies to this section of the application, be succinct. Provide the six-point narrative and discussion of other performance sites in an **"Item 11/Protection of Human Subjects Attachment" and insert this attachment immediately following the ED 424 face page.**

(1) Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable.

(2) Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

II. Information on Research Activities Involving Human Subjects

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Is it a research activity?

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, such as an exploratory study or the collection of data to test a hypothesis, it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Is it a human subject?

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are children, this exemption applies only to research involving educational tests or observations of public behavior when the investigator(s) do not participate in the activities being observed.*** [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S Department of Agriculture.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff (GPOS) Office of the Chief Financial and Chief Information Officer, U.S. Department of Education, Washington, D.C., telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://ocfo.ed.gov/humansub.htm.

U.S. DEPARTMENT OF EDUCATION

BUDGET INFORMATION

NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004

Expiration Date: 02/28/2003

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

Name of Institution/Organization

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

Certification of Eligibility for Federal Assistance in Certain Programs

I understand that 34 CFR 75.60, 75.61, and 75.62 require that I make specific certifications of eligibility to the U.S. Department of Education as a condition of applying for Federal funds in certain programs and that these requirements are in addition to any other eligibility requirements that the U.S. Department of Education imposes under program regulations. Under 34 CFR 75.60 – 75.62:

I. I certify that

A. I do not owe a debt, or I am current in repaying a debt, or I am not in default (as that term is used at 34 CFR Part 668) on a debt:

1. To the Federal Government under a nonprocurement transaction (e.g., a previous loan, scholarship, grant, or cooperative agreement); or

2. For a fellowship, scholarship, stipend, discretionary grant, or loan in any program of the U.S. Department of Education that is subject to 34 CFR 75.60, 75.61, and 75.62, including:

- Federal Pell Grant Program (20 U.S.C. 1070a, et seq.);
- Federal Supplemental Educational Opportunity Grant (SEOG) Program (20 U.S.C. 1070(b), et seq.):
- State Student Incentive Grant Program (SSIG) 20 U.S.C. 1070c, et seq.);
- Federal Perkins Loan Program (20 U.S.C. 1087aa, et seq.);
- Income Contingent Direct Loan Demonstration Project (20 U.S.C. 1087a, note);
- Federal Stafford Loan Program, Federal Supplemental Loans for Students [SLS], Federal PLUS, or Federal Consolidation Loan Program (20 U.S.C. 1071, et seq.);
- Cuban Student Loan Program (20 U.S.C. 2601, et seq.);
- Robert C. Byrd Honors Scholarship Program (20 U.S.C. 1070d-31, et seq.);
- Jacob K. Javits Fellows Program (20 U.S.C. 1134h-1134l);
- Patricia Roberts Harris Fellowship Program (20 U.S.C. 1134d-1134g);
- Christa McAuliffe Fellowship Program (20 U.S.C. 1105-1105i);
- Bilingual Education Fellowship Program (20 U.S.C. 3221-3262);
- Rehabilitation Long-Term Training Program (29 U.S.C. 774(b));
- Paul Douglas Teacher Scholarship Program (20 U.S.C. 1104, et seq.);
- Law Enforcement Education Program (42 U.S.C. 3775);
- Indian Fellowship Program (29 U.S.C. 774(b));

OR

B. I have made arrangements satisfactory to the U.S. Department of Education to repay a debt as described in A.1. or A.2. (above) on which I had not been current in repaying or on which I was in default (as that term is used in 34 CFR Part 668).

II. I certify also that I have not been declared by a judge, as a condition of sentencing under section 5301 of the Anti-Drug Abuse Act of 1988 (21 U.S.C. 862), ineligible to receive Federal assistance for the period of this requested funding.

I understand that providing a false certification to any of the statements above makes me liable for repayment to the U.S. Department of Education for funds received on the basis of this certification, for civil penalties, and for criminal prosecution under 18 U.S.C. 1001.

_____ (Signature)

_____ (Date)

_____ (Typed or Printed Name)

Name or number of the USDE program under which this certification is being made: _____

ED 80-0016 (9/92)

OMB Approval No. 0348-0040

ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management, and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with the provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Standard Form 424B (Rev. 7-97)
Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. ээ276a to 276a-7), the Copeland Act (40 U.S.C. э276c and 18 U.S.C. ээ874) and the Contract Work Hours and Safety Standards Act (40 U.S.C. ээ 327-333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. ээ1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. ээ7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).

12 Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. ээ1721 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. э470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. ээ469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. ээ2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. ээ4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, AAudits of States, Local Governments, and Non-Profit Organizations.≅

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE
(GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled ACertification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,= without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ____ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ___ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**	**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**	
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____	
8. Federal Action Number, *if known:*	**9. Award Amount,** *if known:* $	
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*	**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____	
Federal Use Only	**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**	

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

[FR Doc. 00–6651 Filed 3–16–00; 8:45 am]
BILLING CODE 4000–01–C

Federal Register

Friday,
March 17, 2000

Part VII

Pension Benefit Guaranty Corporation

29 CFR Part 4022 et al.
Valuation of Benefits; Use of Single Set of Assumptions for all Benefits; and Lump Sum Payment Assumptions; Final Rules

PENSION BENEFIT GUARANTY CORPORATION

29 CFR PARTS 4022, 4044, 4050

RIN 1212–AA91

Valuation of Benefits; Use of Single Set of Assumptions for all Benefits

AGENCY: Pension Benefit Guaranty Corporation.
ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations to provide for the use of a single set of valuation assumptions —those currently used by the PBGC to value benefits to be paid as annuities—for purposes of allocating assets to benefits under section 4044 of ERISA.

On the same day that it proposed this amendment, the PBGC published a notice of intent to propose rulemaking relating to the future of its lump sum interest rates. In a final rule published elsewhere in today's **Federal Register**, the PBGC is amending provisions of its regulations related to lump sum interest rates. That action is independent of today's final rule on valuation of benefits.

EFFECTIVE DATE: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: On October 26, 1998, the PBGC published a proposal (63 FR 57229) to simplify one aspect of its valuation rules. The PBGC received no comments on the proposed rule and is adopting it without modification.

Background

When a plan terminates in a distress or involuntary termination, the PBGC values the plan's benefits in order to allocate assets to benefits in accordance with the priority categories established under section 4044 of ERISA. This valuation and allocation affect the amount of the PBGC's employer liability claim and participant benefit entitlements beyond guaranteed benefits. The PBGC also values each benefit to determine whether it is de minimis ($5,000 or less) and, therefore, payable as a lump sum under section 4022 (and, if so, in what amount).

The PBGC's regulations currently provide for the use of two sets of assumptions to value benefits for allocation purposes—one for benefits to be paid as annuities and another for benefits payable as lump sums. When the PBGC values a benefit for lump sum payment purposes—*i.e*, to determine whether the benefit is payable as a lump sum under section 4022 (and, if so, in what amount)—it uses the lump sum assumption set.

Currently, the assumptions used to value benefits (whether for allocation purposes under section 4044 or for payment purposes under section 4022) are found in part 4044 of the PBGC's regulations.

Amendment

Under the amendment in this final rule, all benefits will be valued for plan asset allocation purposes under ERISA section 4044 by using the PBGC's annuity assumptions, regardless of whether the benefit is to be paid as an annuity or is payable as a lump sum. The amendment does not change the way the PBGC values benefits for purposes of paying lump sum benefits under section 4022. The PBGC will continue to use its existing lump sum assumptions for lump sum payment purposes under section 4022 of ERISA. (See *Related action* regarding possible future changes.)

Because the assumptions the PBGC uses to value lump sums for payment purposes will no longer apply to the allocation of assets under section 4044, the amendment makes a nonsubstantive conforming change by moving the assumptions for lump sum payment purposes from Part 4044 to Part 4022. The PBGC expects that plan lump sum provisions referring to the PBGC's lump sum interest rates under Part 4044 will be interpreted as referring to the rates being moved to Part 4022. (As explained under *Related action*, while the PBGC will publish two sets of lump sum interest rates under Part 4022, the two sets will be identical until the PBGC, through rulemaking, provides otherwise.)

Finally, the PBGC is making nonsubstantive changes to the definition of "missing participant lump sum assumptions" and "missing participant annuity assumptions" in its Missing Participants regulation (Part 4050) to conform to the amendments to Parts 4022 and 4044.

Applicability

These amendments apply to any plan with a termination date on or after May 1, 2000.

Related Action

At the same time that the PBGC proposed this regulation, it published (at 63 FR 57228) a notice of intent to propose rulemaking (the "NIPR"), addressing the future of the PBGC's lump sum interest rates under section 4022. In a final rule published elsewhere in today's **Federal Register**, the PBGC is amending provisions of its regulations related to lump sum interest rates. The amendments provide that the PBGC will publish two separate sets of lump sum rates " one for PBGC payments and one for private-sector payments. The two sets of rates will be identical until the PBGC, through rulemaking, provides otherwise. That action is independent of today's final rule.

Compliance With Rulemaking Guidelines

The PBGC has determined that this rule is not a "significant regulatory action" under the criteria set forth in Executive Order 12866. The PBGC certifies that the amendment will not have a significant economic effect on a substantial number of small entities. The amendments generally affect only the valuation of *de minimis* benefits and will have an immaterial effect on liabilities associated with plan termination. Accordingly, as provided in section 605(b) of the Regulatory Flexibility Act, sections 603 and 604 do not apply.

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 4050

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC amends parts 4022, 4044, and 4050 of 29 CFR chapter XL as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In § 4022.7, paragraph (d) is revised to read as follows:

§ 4022.7 Benefits payable in a single installment.

* * * * *

(d) *Determination of lump sum amount.* For purposes of paragraph (b)(1)(i) through (iii) of this section, the lump sum value of a benefit shall be calculated by valuing the monthly annuity benefits payable in the form determined under § 4044.51(a) of this chapter and commencing at the time determined under § 4044.51(b) of this chapter. The actuarial assumptions used shall be those described in § 4044.52, except that—

(1) *Loading for expenses.* There shall be no adjustment to reflect the loading for expenses;

(2) *Mortality rates and interest assumptions.* The mortality rates in appendix A to this part and the interest assumptions in appendix B to this part shall apply; and

(3) *Date for determining lump sum value.* The date as of which a lump sum value is calculated is the termination date, except that in the case of a subsequent insufficiency it is the date described in section 4062(b)(1)(B) of ERISA.

Appendix to Part 4022 [Redesignated as Appendix C to Part 4022]

3. The Appendix to Part 4022 is redesignated as Appendix C to part 4022, and the heading is revised to read as follows:

Appendix C to Part 4022—Maximum Guaranteeable Monthly Benefit

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. Section 4044.52 is revised to read as follows:

§ 4044.52 Valuation of benefits.

The plan administrator shall value all benefits as of the valuation date by—

(a) Using the mortality assumptions prescribed by § 4044.53 and the interest assumptions prescribed in appendix B to this part;

(b) Using interpolation methods, where necessary, at least as accurate as linear interpolation;

(c) Using valuation formulas that accord with generally accepted actuarial principles and practices;

(d) Taking mortality into account during the deferral period of a deferred joint and survivor benefit only with respect to the participant (or other principal annuitant); and

(e) Adjusting the values to reflect loading expenses in accordance with appendix C to this part.

6. In § 4044.53, the section heading and paragraph (a) are revised to read as follows:

§ 4044.53 Mortality assumptions.

(a) *General rule.* Subject to paragraph (b) of this section (regarding certain death benefits), the plan administrator shall use the mortality factors prescribed in paragraphs (c), (d), and (e) of this section to value benefits under § 4044.52.

* * * * *

§ 4044.54 [Removed and Reserved]

7. Section 4044.54 is removed and reserved.

Appendix A to Part 4044—[Amended]

8. In appendix A to part 4044, Table 3—Lump Sum Mortality Table is redesignated as appendix A to part 4022 and the heading is revised to read as follows:

Appendix A to Part 4022—Lump Sum Mortality Rates

Appendix B to Part 4044—[Amended]

9. In appendix B to part 4044:

a. The appendix heading is revised;

b. The heading "Table I—[Annuity Valuations]" is removed.

The revision reads as follows:

Appendix B to Part 4044—Interest Rates Used to Value Benefits

10. In appendix B to part 4044, Table II—[Lump Sum Valuations] is redesignated as appendix B to part 4022 and the heading is revised to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates

Appendix C to Part 4044—[Amended]

11. In appendix C to part 4044, the table is amended in the third column by removing the reference "Table I of appendix B for the valuation of annuities" and adding the reference "appendix B of this part for the valuation of benefits" in its place.

PART 4050—MISSING PARTICIPANTS

12. The authority citation for part 4050 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1350.

13. In § 4050.2, the definitions of *Missing participant annuity assumptions* and *Missing participant lump sum assumptions* are revised to read as follows:

§ 4050.2 Definitions

* * * * *

Missing participant annuity assumptions means the interest rate assumptions and actuarial methods for valuing benefits under § 4044.52 of this chapter, applied—

(1) As if the deemed distribution date were the termination date;

(2) Using the mortality rates prescribed in Revenue Ruling 95–6, 1995–1 C.B. 80 (for availability, see 26 CFR 601.601(d));

(3) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter;

(4) Without making the adjustment for expenses provided for in § 4044.52(e) of this chapter; and

(5) By adding $300, as an adjustment (loading) for expenses, for each missing participant whose designated benefit without such adjustment would be greater than $5,000.

* * * * *

Missing participant lump sum assumptions means the interest rate and mortality assumptions and actuarial methods for determining the lump sum value of a benefit under § 4022.7(d) of this chapter applied—

(1) As if the deemed distribution date were the termination date; and

(2) Without using the expected retirement age assumptions in §§ 4044.55 through 4044.57 of this chapter.

* * * * *

Issued in Washington, DC, this 9th day of March, 2000.

Alexis M. Herman,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 00–6646 Filed 3–16–00; 8:45 am]
BILLING CODE 7708–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR PART 4022

RIN 1212–AA92

Lump Sum Payment Assumptions

AGENCY: Pension Benefit Guaranty Corporation.
ACTION: Final rule.

SUMMARY: The PBGC intends to continue to calculate and publish lump sum interest rates determined using the PBGC's current methods (or a surrogate for those rates) indefinitely. For the time being, the PBGC will continue to use

these historic rates for determining and paying de minimis lump sums. However, because many private-sector plans calculate lump-sum benefits using PBGC rates, and the PBGC wants to preserve the option of changing the way it sets the rates it uses for its own payments without affecting those private-sector calculations, the PBGC will publish two separate sets of lump sum rates—one for PBGC payments and one for private-sector payments. Initially, the two sets of rates will be identical; therefore, the change is nonsubstantive.

Sometime in the future, the PBGC, through a separate rulemaking, might change the way it sets the lump sum interest rates it uses for its own payments. If that occurs, the PBGC would continue to publish the historic rates (or a surrogate) to be used by the private sector. The PBGC cautions pension practitioners to exercise care when drafting or amending documents that refer to the lump sum interest rates used by the PBGC.

The Internal Revenue Service has informed the PBGC that a plan that refers to PBGC lump sum interest rates for purposes of calculating the amount of a distribution subject to Internal Revenue Code section 417(e)(3) and that is amended before the PBGC amends its regulations to provide lump sum interest rates for PBGC payments that are no longer identical to the lump sum interest rates for private-sector payments will not fail to satisfy the "anti-cutback" rules of Internal Revenue Code section 411(d)(6) merely because it is amended to clarify that the plan's reference to PBGC lump sum interest rates means the lump sum interest rates for private-sector payments.

EFFECTIVE DATE: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, or James L. Beller, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, Suite 340, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY/TTD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Background

Each month, the PBGC publishes the interest rates it uses to determine whether the PBGC will pay a pension benefit in the form of a lump sum and, if so, the amount the PBGC will pay. Private-sector plans and annuity providers historically have relied upon the PBGC lump sum interest rates, along with appropriate mortality assumptions, to determine the minimum amount of a participant's lump sum benefit for purposes of Internal Revenue Code (Code) section 417(e)(3) and ERISA section 205(g)(3). While the law no longer requires private plans to use the PBGC lump sum interest rates, some plans continue to use them for the transition period permitted under the Code and ERISA, and some plans will choose to continue to use them indefinitely where they produce a larger distribution than the minimum benefit amount required by Code section 417(e)(3) and ERISA section 205(g)(3). In addition, many existing annuity contracts provide benefits calculated using the PBGC lump sum interest rates.

October 1998 Notice of Intent To Propose Rulemaking

In a notice of intent to propose rulemaking (63 FR 57228 (October 26, 1998)), the PBGC announced that it was considering (1) discontinuing use of its existing lump sum assumptions for payment purposes and replacing them with a modified version of its existing annuity assumptions, effective sometime after December 2000, and (2) discontinuing calculation and publication of its existing lump sum interest rates at, or sometime after, the time the PBGC discontinues their use.

None of the commenters objected to the PBGC's changing the way it sets the interest rates it uses to pay lump sums for its own purposes. However, all of the commenters asked the PBGC either to continue to calculate and publish its lump sum interest rates determined using the PBGC's current methods or to provide a surrogate rate. Many plan sponsors and plan participants stated that their plans would continue to refer to PBGC rates, noting that the plan's participants have come to rely upon those rates and the larger lump sum amounts they produce. Commenters also noted that the private sector uses the PBGC rates in other contexts, including insurance contracts purchased to satisfy plan liabilities. Some commenters felt that the PBGC should update the mortality assumptions it uses to derive its lump sum interest rates.

Separation of PBGC Rates and Private-sector Rates

For the time being, the PBGC has decided that it will not make any change in the way it sets the lump sum interest rates it uses for its own payments. However, because those rates have been derived from a mortality table that is becoming increasingly outdated, the PBGC would like to preserve the option to do so in the future.

The PBGC is concerned that any future change might create confusion and difficulties for plans that continue to refer to the PBGC lump sum interest rates. Accordingly, the PBGC is eliminating the linkage between the lump sum interest rates it uses to pay benefits and the PBGC rates the private sector relies upon. In order to eliminate this linkage, the PBGC will publish separate tables of lump sum interest rates for these distinct purposes—one table called "Lump Sum Rates for PBGC Payments" and another table called "Lump Sum Rates for Private-Sector Payments." By publishing two sets of lump sum rates, the PBGC could change the way it sets the rates it uses for its own payments without affecting the rates used by the private sector. Because the PBGC is not at this time changing the way it sets the lump sum interest rates it uses for its own payments, the two sets of rates will initially be identical.

The PBGC will continue to publish its lump sum interest rates (in both the PBGC table and the private-sector table) for a given month on the 15th of the previous month (or, if the 15th falls on a weekend or holiday, the preceding regular workday), or as close to that date as circumstances permit.

Surrogate Rate

The PBGC is exploring whether there is a reasonable surrogate (*e.g.*, some percentage of the average yield on 30-year Treasury securities) for its historic rates. If such a surrogate exists, the PBGC might replace the historic rates with the surrogate pursuant to a separate rulemaking. The PBGC would not make such a change unless the Internal Revenue Service concludes that the use of the surrogate in lieu of the historic rates would not cause a plan to fail to satisfy the "anti-cutback" rules of Code section 411(d)(6).

Mortality Assumptions for Setting Interest Rates for Private-Sector Payments

The PBGC does not intend to update the mortality assumptions it uses to set its lump sum interest rates for private-sector payments; doing so would increase those interest rates and thereby reduce private-sector lump sums. This would be inconsistent with the desire of various commenters (including several who suggested the PBGC update its mortality assumptions) that the PBGC continue publishing its historical rates (or provide a substitute for those rates) because participants have come to rely upon the larger lump sum amounts these rates produce.

Possible Future Changes to Lump Sum Rates Used by the PBGC

If the PBGC in the future changes the way it sets lump sum rates for its own payments, a number of interpretation and drafting issues might arise for private sector payments. Because there is potential for confusion and misinterpretation, the PBGC cautions pension practitioners to exercise care when drafting or amending documents that refer to the PBGC lump sum interest rates. In particular, plan practitioners should avoid referring to the "PBGC lump sum rates" or the rates the PBGC "uses." If they wish to refer to the PBGC's historical lump sum rates, they should refer to the PBGC's lump sum interest rates for private-sector payments. This reference would be to the PBGC's historical rates or a surrogate for those rates and therefore would be unaffected by any change the PBGC might make to the method it uses to determine the rates for its own lump sum payments. Alternatively, plan practitioners may refer to the PBGC's lump sum interest rates for PBGC payments. This reference would be to the rates the PBGC uses for its own lump sum payments and therefore could result in unexpected changes in plan lump sum amounts if the PBGC changes the way it sets rates for its own payments.

Anti-Cutback Issues Under Code Section 411(d)(6)

The Internal Revenue Service has informed the PBGC that a plan that refers to PBGC lump sum interest rates for purposes of calculating the amount of the distribution subject to Code section 417(e)(3) and that is amended before the PBGC amends its regulations to provide lump sum interest rates for PBGC payments that are no longer identical to the lump sum interest rates for private-sector payments will not fail to satisfy the "anti-cutback" rules of Code section 411(d)(6) merely because it is amended to clarify that the plan's reference to PBGC lump sum interest rates means the lump sum interest rates for private-sector payments. The Internal Revenue Service has not yet determined whether other amendments relating to PBGC lump sum interest rates would cause the plan to fail to satisfy the "anti-cutback" rules of Code section 411(d)(6).

Compliance With Rulemaking Guidelines

The PBGC has determined that there is good cause for dispensing with notice and comment rulemaking as unnecessary. 5 U.S.C. 553(b). This rule provides that instead of publishing one set of monthly lump sum interest rates, the PBGC will publish two sets—one for PBGC payments and one for private-sector payments. This is a nonsubstantive change because the two sets of rates will be identical until the PBGC, through rulemaking, provides otherwise.

The PBGC has determined that this rule is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this rulemaking, the Regulatory Flexibility Act does not apply (5 U.S.C. 601(2)).

List of Subjects in 29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC amends part 4022 of 29 CFR chapter XL (as amended by the PBGC's final rule published elsewhere in today's **Federal Register**) as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In § 4022.7, a new paragraph (e) is added to read as follows:

§ 4022.7 Benefits payable in a single installment.

* * * * *

(e) *Publication of lump sum rates.* The PBGC will provide two sets of lump sum interest rates as follows—

(1) In appendix B to this part, the lump sum interest rates for PBGC payments, as provided under paragraph (d)(2) of this section; and

(2) In appendix C to this part, the lump sum interest rates for private-sector payments.

Appendix B to Part 4022

3. In newly redesignated Appendix B to part 4022, the appendix heading is revised to read as follows:

Appendix B to Part 4022—Lump Sum Interest Rates for PBGC Payments

Appendix C to Part 4022 [Redesignated as Appendix D to Part 4022]

4. Newly redesignated Appendix C to part 4022 is further redesignated as Appendix D to part 4022, and a new Appendix C is added to part 4022 to read as follows:

Appendix C to Part 4022—Lump Sum Interest Rates for Private-Sector Payments

[In using this table: (1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply; (2) For benefits for which the deferral period is y years (where y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years, and thereafter the immediate annuity rate shall apply; (3) For benefits for which the deferral period is y years (where y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply; (4) For benefits for which the deferral period is y years (where y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years, and thereafter the immediate annuity rate shall apply.]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
1	11–1–93	12–1–93	4.25	4.00	4.00	4.00	7	8
2	12–1–93	1–1–94	4.25	4.00	4.00	4.00	7	8
3	1–1–94	2–1–94	4.50	4.00	4.00	4.00	7	8
4	2–1–94	3–1–94	4.50	4.00	4.00	4.00	7	8
5	3–1–94	4–1–94	4.50	4.00	4.00	4.00	7	8
6	4–1–94	5–1–94	4.75	4.00	4.00	4.00	7	8
7	5–1–94	6–1–94	5.25	4.50	4.00	4.00	7	8
8	6–1–94	7–1–94	5.25	4.50	4.00	4.00	7	8
9	7–1–94	8–1–94	5.50	4.75	4.00	4.00	7	8
10	8–1–94	9–1–94	5.75	5.00	4.00	4.00	7	8

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
11	9–1–94	10–1–94	5.50	4.75	4.00	4.00	7	8
12	10–1–94	11–1–94	5.50	4.75	4.00	4.00	7	8
13	11–1–94	12–1–94	6.00	5.25	4.00	4.00	7	8
14	12–1–94	1–1–95	6.25	5.50	4.25	4.00	7	8
15	1–1–95	2–1–95	6.00	5.25	4.00	4.00	7	8
16	2–1–95	3–1–95	6.00	5.25	4.00	4.00	7	8
17	3–1–95	4–1–95	6.00	5.25	4.00	4.00	7	8
18	4–1–95	5–1–95	5.75	5.00	4.00	4.00	7	8
19	5–1–95	6–1–95	5.50	4.75	4.00	4.00	7	8
20	6–1–95	7–1–95	5.50	4.75	4.00	4.00	7	8
21	7–1–95	8–1–95	4.75	4.00	4.00	4.00	7	8
22	8–1–95	9–1–95	4.75	4.00	4.00	4.00	7	8
23	9–1–95	10–1–95	5.00	4.25	4.00	4.00	7	8
24	10–1–95	11–1–95	4.75	4.00	4.00	4.00	7	8
25	11–1–95	12–1–95	4.75	4.00	4.00	4.00	7	8
26	12–1–95	1–1–96	4.50	4.00	4.00	4.00	7	8
27	1–1–96	2–1–96	4.50	4.00	4.00	4.00	7	8
28	2–1–96	3–1–96	4.25	4.00	4.00	4.00	7	8
29	3–1–96	4–1–96	4.25	4.00	4.00	4.00	7	8
30	4–1–96	5–1–96	4.75	4.00	4.00	4.00	7	8
31	5–1–96	6–1–96	5.00	4.25	4.00	4.00	7	8
32	6–1–96	7–1–96	5.00	4.25	4.00	4.00	7	8
33	7–1–96	8–1–96	5.00	4.25	4.00	4.00	7	8
34	8–1–96	9–1–96	5.25	4.50	4.00	4.00	7	8
35	9–1–96	10–1–96	5.25	4.50	4.00	4.00	7	8
36	10–1–96	11–1–96	5.25	4.50	4.00	4.00	7	8
37	11–1–96	12–1–96	5.00	4.25	4.00	4.00	7	8
38	12–1–96	1–1–97	4.75	4.00	4.00	4.00	7	8
39	1–1–97	2–1–97	4.50	4.00	4.00	4.00	7	8
40	2–1–97	3–1–97	4.75	4.00	4.00	4.00	7	8
41	3–1–97	4–1–97	5.00	4.25	4.00	4.00	7	8
42	4–1–97	5–1–97	4.75	4.00	4.00	4.00	7	8
43	5–1–97	6–1–97	5.00	4.25	4.00	4.00	7	8
44	6–1–97	7–1–97	5.25	4.50	4.00	4.00	7	8
45	7–1–97	8–1–97	5.25	4.50	4.00	4.00	7	8
46	8–1–97	9–1–97	4.75	4.00	4.00	4.00	7	8
47	9–1–97	10–1–97	4.50	4.00	4.00	4.00	7	8
48	10–1–97	11–1–97	4.75	4.00	4.00	4.00	7	8
49	11–1–97	12–1–97	4.50	4.00	4.00	4.00	7	8
50	12–1–97	1–1–98	4.50	4.00	4.00	4.00	7	8
51	1–1–98	2–1–98	4.25	4.00	4.00	4.00	7	8
52	2–1–98	3–1–98	4.25	4.00	4.00	4.00	7	8
53	3–1–98	4–1–98	4.25	4.00	4.00	4.00	7	8
54	4–1–98	5–1–98	4.25	4.00	4.00	4.00	7	8
55	5–1–98	6–1–98	4.25	4.00	4.00	4.00	7	8
56	6–1–98	7–1–98	4.25	4.00	4.00	4.00	7	8
57	7–1–98	8–1–98	4.00	4.00	4.00	4.00	7	8
58	8–1–98	9–1–98	4.00	4.00	4.00	4.00	7	8
59	9–1–98	10–1–98	4.00	4.00	4.00	4.00	7	8
60	10–1–98	11–1–98	4.00	4.00	4.00	4.00	7	8
61	11–1–98	12–1–98	3.75	4.00	4.00	4.00	7	8
62	12–1–98	1–1–99	4.00	4.00	4.00	4.00	7	8
63	1–1–99	2–1–99	4.00	4.00	4.00	4.00	7	8
64	2–1–99	3–1–99	4.00	4.00	4.00	4.00	7	8
65	3–1–99	4–1–99	4.00	4.00	4.00	4.00	7	8
66	4–1–99	5–1–99	4.25	4.00	4.00	4.00	7	8
67	5–1–99	6–1–99	4.25	4.00	4.00	4.00	7	8
68	6–1–99	7–1–99	4.25	4.00	4.00	4.00	7	8
69	7–1–99	8–1–99	4.50	4.00	4.00	4.00	7	8
70	8–1–99	9–1–99	5.00	4.25	4.00	4.00	7	8
71	9–1–99	10–1–99	5.00	4.25	4.00	4.00	7	8
72	10–1–99	11–1–99	5.00	4.25	4.00	4.00	7	8
73	11–1–99	12–1–99	5.00	4.25	4.00	4.00	7	8
74	12–1–99	1–1–00	5.25	4.50	4.00	4.00	7	8
75	1–1–00	2–1–00	5.00	4.25	4.00	4.00	7	8
76	2–1–00	3–1–00	5.25	4.50	4.00	4.00	7	8
77	3–1–00	4–1–00	5.25	4.50	4.00	4.00	7	8
78	4–1–00	5–1–00	5.25	4.50	4.00	4.00	7	8

Issued in Washington, DC, this 9th day of March, 2000.

Alexis M. Herman,

Chairman, Board of Directors, Pension Benefit Guaranty Corporation.

Issued on the date set forth above pursuant to a resolution of the Board of Directors authorizing its Chairman to issue this final rule.

James J. Keightley,

Secretary, Board of Directors, Pension Benefit Guaranty Corporation.

[FR Doc. 00–6647 Filed 3–16–00; 8:45 am]

BILLING CODE 7708–01–P

Federal Register

Friday,
March 17, 2000

Part VIII

Oklahoma City National Memorial Trust

Rules and Regulations for Oklahoma City National Memorial; Final Rule

OKLAHOMA CITY NATIONAL MEMORIAL TRUST

36 CFR Chapter XV

Rules and Regulations for Oklahoma City National Memorial

AGENCY: Oklahoma City National Memorial Trust.

ACTION: Final rule.

SUMMARY: The Oklahoma City National Memorial Trust will adopt and enforce those rules and regulations that are applicable to the operation of the National Park System and that may be necessary and appropriate to carry out its duties and responsibilities under the Oklahoma City National Memorial Act of 1997. This rule will enable the Trust to safely and efficiently operate the Memorial by establishing general provisions, regulations for resource protection and public use, vehicles and traffic safety, and commercial and private operations. Public comment was invited on the proposed rule and was considered by the Trust in creating this final rule. No public comments were received by the Trust.

DATES: *Effective Date:* April 18, 2000.

ADDRESSES: The text of 36 CFR chapters I and XV may be viewed at the office of the Oklahoma City National Memorial Trust, One Leadership Square, Suite 150, Oklahoma City, OK 73102.

FOR FURTHER INFORMATION CONTACT: Kari Watkins, 405–235–3313.

SUPPLEMENTARY INFORMATION:

Background

The Oklahoma City National Memorial Act of 1997 (Public Law 105–58, October 9, 1997) establishes (1) the Oklahoma City National Memorial in Oklahoma City as a unit of the National Park System and (2) the Oklahoma City National Memorial Trust as a wholly owned government corporation to administer the memorial in cooperation with the Secretary of Interior in accordance with laws governing units of the National Park System. At the request of the Trust, the Secretary of Interior is required to provide, for a period not to exceed two years, personnel and technical expertise. A superintendent is assigned to coordinate National Park Service (NPS) assistance to the Trust. Also at the Trust's request, NPS is required to provide uniformed personnel to carry out day-to-day visitor service programs on a reimbursable basis.

Statutory Authority

The Oklahoma City National Memorial Trust is a wholly owned government corporation created by the Oklahoma City National Memorial Act, Public Law 105–58 (Act). Pursuant to section 4 of the Act, the Trust administers the Memorial, which is comprised of the lands, facilities, and structures within the boundaries depicted on the map referenced in the statute.

Section 6(g) of the Act enables the Trust to

> Adopt, amend, repeal, and enforce bylaws, rules and regulations governing the manner in which its business may be conducted and the powers vested in it may be exercised. The Trust is authorized, in consultation with the Secretary [of the Interior], to adopt and to enforce those rules and regulations that are applicable to the operation of the National Park System and that may be necessary and appropriate to carry out its duties and responsibilities under this Act.

Consistent with that authority, and in order to protect, preserve, and operate the Memorial, the Trust created this rule concerning resource protection and public use; vehicles and traffic safety; and commercial and private operations.

Title 36 of the Code of Federal Regulations (CFR) chapter I, parts 1, 2, 4, and 5 already govern the management and activities within the units of the National Park System throughout the United States. The Trust recognizes the national scope and inherent continuity of 36 CFR, its necessity within the National Park System, and therefore, adopts those regulations that are relevant and applicable to the Memorial. In an attempt to keep the regulations clear and concise, the Trust has excluded those portions of the existing regulations that are not applicable and would have no bearing on the management or protection of the Memorial.

Consultation

Prior to proposing these regulations, the Trust consulted with the Secretary of the Interior's designee, the National Park Service Director, Intermountain Region, who serves on the Trust's Board of Directors pursuant to section 6(g) of the Act. The Director, Intermountain Region facilitated the advisory process by providing direct access to officials in the National Park Service and the National Park Service Solicitor's Office.

Discussion of Comments on Proposed Rule

The Trust provided for a public comment period of 30 days on these regulations. The Proposed Rule was published in the **Federal Register** on February 16, 2000 (FR Volume 65, Number 32, Pages 8010–8011). No public comments on the proposed rules were received. Since no comments were received, no amendments were made to the proposed regulations.

Related Documents

The entire regulations and their respective environmental assessment may be found at the Trust's internet website (www.oklahoman.net/connections/memorial). A written copy of the regulations and 36 CFR is available for review at the Trust's office at One Leadership Square, Suite 150, Oklahoma City, OK 73102.

Regulatory Impact

This rulemaking does not have an annual effect of $100 million or more on the economy nor adversely affect productivity, competition, jobs, prices, the environment, public health or safety, or State or local governments. These rules do not interfere with an action taken or planned by another agency or raise new legal or policy issues. In short, little or no effect on the national economy will result from adoption of this rule. Because this rule is not economically significant, it is not subject to review by the Office of Management and Budget under Executive Order 12866.

The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, that this rule does not have a significant economic effect on a substantial number of small entities. This rule is not a major rule within the meaning of the Congressional Review Act, 5 U.S.C. 801 *et seq.*

Environmental Impact

The Trust prepared an Environmental Assessment (EA) in connection with the proposed version of this rule. The EA determined that the rule would not have a significant effect on the quality of the human environment because it is neither intended nor expected to change the physical status quo of the Memorial in any significant manner. The EA was prepared in accordance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.* The EA is available for public inspection at the office of the Trust, One Leadership Square, Suite 150, Oklahoma City, OK 73102 or on the Trust's internet website (www.oklahoman.net/connections/memorial).

Environmental consequences include the enhanced protection of the Memorial through the ability of the Trust's required rulemaking authority to regulate and maintain the Memorial as a unit of the National Park System. The regulations enable the Trust to adequately manage and protect the natural, cultural, and historic resources of the Memorial as well as the safe and efficient management of the Memorial's public use. No long term adverse effects are expected on the natural or cultural environment, and constructive manage of the use of the historic Journal Record building will ensure its long-term preservation.

The memorial site is in an urban business district, and nearby buildings include two churches, business offices, the post office, federal courthouse, and a high-rise apartment complex. Adoption of the regulations would have no effect on these properties or other elements of the socioeconomic environment. There will be no disproportionately high or adverse human health or environmental effects on minority populations, low-income populations, or Indian tribes from the proposal. An alternative to adopting these regulations is the no-action alternative. This would require the Trust to adopt no regulations for the Memorial. This would result in the inefficient management of the Memorial, which would hinder the ability of the Trust to protect the visitors, their experience at the Memorial, and the natural and cultural environment. The no-action alternative is in opposition to the purpose and guidance of the Memorial's enabling legislation.

List of Subjects in 36 CFR Part 1501

Monuments and memorials.

For the reasons set forth in the preamble, a new chapter XV is established in title 36 of the Code of Federal Regulations consisting of part 1501 to read as follows:

CHAPTER XV—OKLAHOMA CITY NATIONAL MEMORIAL TRUST

PART 1501—GENERAL PROVISIONS

§ 1501.1 Cross reference to National Park Service regulations.

As permitted by the Oklahoma City National Memorial Act, the Oklahoma City National Memorial Trust (the Trust) adopts by cross reference the provisions of the National Park Service in 36 CFR chapter I as shown in the following table. The table also indicates those parts, sections, and paragraphs that the Trust has chosen to exclude from adoption.

National Park Service Regulations

36 CFR Chapter I
Excluding parts 3 and 6–199
PART 1 GENERAL PROVISIONS
§ 1.1 Purpose
§ 1.2 Applicability and Scope
§ 1.3 Penalties
Excluding paragraphs (b) and (c)
§ 1.4 Definitions
Excluding paragraph (b)
§ 1.5 Closures and public use limits
§ 1.6 Permits
§ 1.7 Public Notice
§ 1.8 Information Collection
§ 1.10 Symbolic Signs
PART 2 RESOURCE PROTECTION, PUBLIC USE AND RECREATION
Excluding §§ 2.3, 2.16, 2.19, 2.60
§ 2.1 Preservation of natural and cultural and archeological resources
§ 2.2 Wildlife Protection
Excluding paragraphs (b), (c), and (d)
§ 2.4 Weapons, traps, and nets
Excluding paragraph (a)(2)
§ 2.5 Research specimens
§ 2.10 Camping and food storage
Excluding paragraphs (b)(1), (b)(2), (b)(3), (b)(4), (b)(6), (b)(8), and (d)
§ 2.11 Picnicking
§ 2.12 Audio Disturbances
Excluding paragraph (a)(3)
§ 2.13 Fires
Excluding paragraph (c)
§ 2.14 Sanitation and refuse
Excluding paragraphs (a)(7) and (a)(9)
§ 2.15 Pets
Excluding paragraphs (b) and (e)
§ 2.17 Aircraft and air delivery
Excluding paragraph (a)(2)
§ 2.18 Snowmobiles
Excluding paragraphs (d) and (e)
§ 2.20 Skating, skateboards and similar devices
§ 2.21 Smoking
Excluding paragraph (b)
§ 2.22 Property
§ 2.23 Recreation fees
Excluding paragraph (a)
§ 2.30 Misappropriation of property and services
§ 2.31 Trespassing, tampering and vandalism
§ 2.32 Interfering with agency functions
§ 2.33 Report of injury or damage
§ 2.34 Disorderly conduct
§ 2.35 Alcoholic beverages and controlled substances
§ 2.36 Gambling
§ 2.37 Noncommercial soliciting
§ 2.38 Explosives
§ 2.50 Special events
§ 2.51 Public assemblies, meetings
§ 2.52 Sale or distribution of printed matter
§ 2.61 Residing on Federal lands
§ 2.62 Memorialization
PART 4 VEHICLES AND TRAFFIC SAFETY
§ 4.1 Applicability and scope
§ 4.2 State law applicable
§ 4.3 Authorized emergency vehicles
§ 4.4 Report of motor vehicle accident
§ 4.10 Travel on park roads and designated routes
Excluding paragraph (c)(3)
§ 4.11 Load, weight and size limits
§ 4.12 Traffic control devices
§ 4.13 Obstructing traffic
§ 4.14 Open container of alcoholic beverage
§ 4.15 Safety belts
§ 4.20 Right of way
§ 4.21 Speed limits
Excluding paragraphs (a)(2) and (a)(3)
§ 4.22 Unsafe operation
§ 4.23 Operating under the influence of alcohol or drugs
§ 4.30 Bicycles
§ 4.31 Hitchhiking
PART 5 COMMERCIAL AND PRIVATE OPERATIONS
Excluding §§ 5.4, 5.9, and 5.10
§ 5.1 Advertisements
§ 5.2 Alcoholic beverages; sale of intoxicants
Excluding paragraph (b)
§ 5.3 Business operations
§ 5.5 Commercial photography
§ 5.6 Commercial vehicles
§ 5.7 Construction of buildings or other facilities
§ 5.8 Discrimination in employment practices
§ 5.13 Nuisances
§ 5.14 Prospecting, mining, and mineral leasing

Authority: 16 U.S.C. 450ss; Pub. L. 105–58, 111 Stat. 1261.

Dated: March 14, 2000.

Robert M. Johnson,

Chairman.

[FR Doc. 00–6797 Filed 3–15–00; 2:08 pm]

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Federal Register

Friday,
March 17, 2000

Part IX

Department of State

Bureau of European Affairs

22 CFR Part 139
Miscellaneous: Irish Peace Process Cultural and Training Program; Interim Rule

22 CFR Part 41
Visas: Nonimmigrant Classes; Irish Peace Process Cultural and Training Program Visitors, Q Classification; Interim Rule

DEPARTMENT OF STATE

Bureau of European Affairs

22 CFR Part 139

[Public Notice 3258]

Miscellaneous: Irish Peace Process Cultural and Training Program

AGENCY: Bureau of European Affairs, Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule establishes a training and employment program in the United States for certain residents of Northern Ireland and designated counties of the Republic of Ireland. This new program is mandated by legislation enacted in 1998. Under the program, in each of three program years beginning in FY 2000, up to 4000 persons, inclusive of their spouses and children, who are physically resident in Northern Ireland or the designated counties in the Republic of Ireland, will be eligible to enter the United States for a maximum of three years in order to develop job skills and conflict resolution abilities in support of the Irish peace process.

DATES: This interim rule is effective March 17, 2000. The Department invites written comments which must be received no later than May 16, 2000.

ADDRESSES: Submit written comments, in duplicate, to the Director, Office for United Kingdom, Benelux and Ireland Affairs, Bureau of European Affairs, Room 4513, Department of State, Washington, D.C. 20520.

FOR FURTHER INFORMATION CONTACT: Patricia Nelson, Officer for Ireland and Northern Ireland Affairs, Bureau of European Affairs, Room 4513, Department of State, Washington, D.C. 20520, Tel. (202) 647–6585.

SUPPLEMENTARY INFORMATION:

What Does This Rule Do?

This interim rule amends Subchapter N, Title 22 of the Code of Federal Regulations relating to miscellaneous matters within the purview of the Department of State by adding a new Part 139 that describes the Irish Peace Process Cultural and Training Program.

Why Is It Necessary To Establish This Program?

In the "Irish Peace Process Cultural and Training Program Act of 1998" (hereinafter "IPPCTPA"), Public Law 105–319, Congress mandated that the Secretary of State and the Attorney General establish a program to allow young people from disadvantaged areas of Northern Ireland and designated counties of the Republic of Ireland suffering from sectarian violence and high structural unemployment to enter the United States for the purpose of developing job skills and conflict resolution abilities in a diverse, cooperative, peaceful, and prosperous environment. Those young people would return to their homes better able to contribute toward economic regeneration and the Irish peace process. Congress required that the program promote cross-community and cross-border initiatives to build grassroots support for long-term peaceful coexistence.

What Requirements Did Congress Establish for the Program?

The "IPPCTPA" provides that in each of three consecutive program years beginning in FY 2000, up to 4000 residents of Northern Ireland or of six counties designated within the Republic of Ireland, inclusive of their spouses and children, may be provided nonimmigrant visas for the purpose of entering the United States temporarily (i.e., for up to thirty-six months) to develop job skills and conflict resolution abilities. Each person admitted to the program must have a residence abroad that he or she has no intention of abandoning and must otherwise be qualified to receive a United States nonimmigrant visa. The principal alien also must be under 36 years of age. The six designated counties of the Republic of Ireland are Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal. The Immigration and Naturalization Service ("INS") is required to maintain records of the nonimmigrant status and place of residence in the United States of all persons admitted under the program and report to Congress on all those who overstay their nonimmigrant visas.

What Are the Respective Responsibilities of the Departments of State and Justice in Establishing and Running the Program?

Responsibility in the Department of State for establishing the program structure and maintaining its operation has been delegated to the Bureau of European Affairs (unless otherwise specifically stated herein, further references to the Department or to the Department of State will refer to this bureau). The INS will be the responsible agency representing the Attorney General. After extensive consultations between the Department and INS it was agreed that the Department would be responsible for: (1) The design of the program mandated by IPPCTPA; (2) the formulation of policies and procedures concerning the Irish Peace Process Cultural and Training Program (IPPCTP); (3) the selection and oversight of the Program Administrator (see discussion below); (4) coordination with other U.S. Government agencies and representatives of the governments of the Republic of Ireland and of Northern Ireland; and (5) establishment of the requirements for and approval of United States employers who will participate in the program. The INS is responsible for authorizing employment under this program. INS is also responsible for: (1) Monitoring the nonimmigrant status and residence of all participants in the United States; and (2) reporting to Congress on program participants who overstay their nonimmigrant visas, at the end of the three program years and during the three subsequent years. (See the separate rule regarding visa issuance to program participants published concurrently with this rule by the Bureau of Consular Affairs of the Department of State in Part 41 of this title and the corresponding rule of the INS published concurrently in Title 8).

How Will the Program Be Administered?

The Department and INS have agreed that the most efficient manner in which to administer the Irish Peace Process Cultural and Training Program is to select a "Program Administrator" from the private sector experienced in managing projects of similar scope and complexity. The Program Administrator will be responsible for the day-to-day management of the program. Consequently, this rule provides for the selection of such a Program Administrator and for the delegation of responsibilities to that Program Administrator. Logicon, Inc. has been chosen as the Program Administrator. Logicon may be reached by phone at (877) 925–7484, via the Internet at www.WalshVisa.net, via e-mail at logicon@walshvisa.net, or by mail at: Walsh Visa Program, Logicon, Inc., 1831 Wiehle Avenue, Suite 100, Reston, VA 20190–5241.

What Are the Principal Functions of the Program Administrator?

The principal functions of the Program Administrator are:

(a) Identifying job/training opportunities in designated economic sectors, and recommending to the Department employers in the United States who meet the criteria of section 139.7 and who wish to participate in the IPPCTP. Job/training opportunities will be located in a number of geographic areas across the United States,

depending on the availability of jobs, relative cost of living, support infrastructure, and other relevant factors.

(b) Making available, through electronic or other means, information about job/training openings to potential program participants and assisting them in securing job placements in the United States.

(c) Certifying in writing to a United States consular officer in the United States Embassy in Dublin or the United States Consulate General in Belfast, or to an officer of the INS, that a principal alien has been selected to participate in the IPPCTP. This certification will be used only to assist in: (1) nonimmigrant visa issuance to and adjudication of an application for admission made by the principal alien and accompanying family members, or (2) adjudicating a request made by the principal alien to change employers under the IPPCTP while in the United States.

(d) Providing pre-departure and pre-employment orientation seminars to program participants, as appropriate, and otherwise assisting participants in a smooth transition to life in the United States.

(e) Monitoring participants' compliance with Program requirements while in the United States, and verifying that participants are receiving the agreed training and skills.

(f) Cooperating with the Training and Employment Authority of the Republic of Ireland ("FAS") and the Training and Employment Agency of Northern Ireland ("T&EA") in all aspects of the program, including assisting participants in finding jobs in their home countries upon completion of their U.S. training.

(g) Reporting to the Department and INS on various aspects of the program and on program participants as directed. And

(h) Developing and maintaining a computerized database and website to underpin all of the above functions.

What Are the Specific Criteria for the Initial Selection of the Participants?

This rule establishes the following basic criteria for program participants. All applicants must be between 18 and 35 years of age and be physically resident in Northern Ireland or one of the border counties for at least three months prior to applying to the Program. The minimum age of 18 was selected to prevent any conflict with the employment laws of any state in the United States. The upper age limit was established by statute.

All applicants deemed eligible must also meet United States immigration/visa requirements, including being in receipt of a job offer certified by the Program Administrator, and demonstrating satisfactorily to a Consular Officer that they have a residence abroad that they have no intention of abandoning.

In addition, candidates must fall within one of the following two categories of persons.

(a) The first category consists of unemployed applicants: (1) who have been unemployed for at least 3 months, or (2) who have completed or are currently participating in a program of T&EA or of FAS, or of another publicly funded training and employment program. Persons who have recently been made redundant in their employment (i.e., lost their jobs) or received a notice of redundancy (termination of employment) may apply to the program immediately without having to wait 3 months after becoming unemployed.

(b) The second category consists of persons: (1) who are currently employed and (2) whose current employer has nominated them to participate in the program for additional training and/or job experience that will benefit both the employee and the employer upon returning to their same employment.

How Were These Criteria Developed?

The Department, in consultation with INS, FAS, and T&EA, developed the criteria. The Department believes that for the program to contribute to peace and economic regeneration, local authorities and employers ought to determine which individuals would most benefit from the training offered and, in turn, whose receipt of training would most contribute to the regenerative and peaceful goals of the IPPCTP. This rule establishes the role of the training and employment agencies in the program participant selection process.

What Types of Training Will Be Offered to the Participants?

The Department, in consultation with INS and the training and employment agencies, determined that, to be of maximum benefit to the economies of Northern Ireland and the six border counties, the program must provide a wide range of job/training opportunities in those sectors experiencing personnel or skills shortages, or in which the governments expect rapid future growth and/or new inward investment. All parties agreed the program would begin with the following sectors: hospitality and tourism; customer service; information and communications technology; pharmaceuticals; engineering; sales, marketing and promotion; agriculture/horticulture diversification; food processing; and furniture. This rule names the sectors initially identified and agreed upon and permits the selection of additional sectors or the deletion of already identified sectors upon agreement of the Department, INS, and both training and employment agencies, or of one of the agencies with respect to participants from that agency's country.

How Will Employers Be Selected for Participation in the Program?

Employers will be selected for participation in the program according to the criteria established by this rule. The criteria have been adopted to ensure that employers will offer employment and training commensurate with the goals of the program. To participate in the Irish Peace Process Cultural and Training Program, U.S. employers must:

- Provide job/training opportunities that:

(1) Correspond to one of the occupational areas identified by the governments of Northern Ireland and the Republic of Ireland, and that

(2) Include a career path comprising (1) work assignment rotations, and/or (2) training opportunities, which offer promotion potential if job performance is satisfactory.

- Offer health insurance, which, at a minimum, provides:

(1) Medical benefits of at least $50,000 per accident or illness (major medical); and

(2) A deductible not to exceed $500 per accident or illness.

- Pay participants at least the minimum wage and at the same rate as American workers doing the same or similar work.
- Agree not to petition for a change of immigration status or non-immigrant status for any participant.
- Grant permission to the Program Administrator to conduct on-site visits and take other measures necessary to verify that each employer's job/training contract is being followed.
- Notify the Program Administrator in the event of the termination of a participant from employment, or departure of the participant from the Program. And,
- Prepare a written record describing the work experience gained, and make it available to each participant.

How Is the Department of State Amending Its Regulations?

The Department is adding Part 139A in order to establish a regulation for the purpose of implementing the

requirements of the Irish Peace Process Cultural and Training Program Act of 1998 ("IPPCTPA"). The new regulation, at § 139.1, *et seq.*, sets forth the structure of a new training program, relevant definitions for the program, rules for participation in the program and responsibilities of various entities involved in the administration of the program. This regulation is being promulgated in conjunction with regulations by the INS and the Bureau of Consular Affairs of the Department of State regarding this program.

Section 139.1 explains the origin and purpose of the Irish Peace Process Cultural and Training Program ("IPPCTP") and the general responsibility within the Department of State for establishing it.

Section 139.2 provides definitions of frequently used terms associated with the IPPCTP.

Section 139.3 establishes the specific responsibilities of the Bureau of European Affairs for formulating general policies and procedures for the IPPCTP, including the selection of a private sector Program Administrator to be responsible for the day-to-day operation of the IPPTCP.

Section 139.4 establishes the specific responsibilities of the Program Administrator.

Section 139.5 establishes participant trainee selection criteria.

Section 139.6 establishes the method by which program candidates may request acceptance into the IPPCTP.

Section 139.7 establishes criteria for the selection of United States employers wishing to participate in the IPPCTP.

Section 139.8 identifies the economic sectors in which training and employment under the IPPTCP will initially focus. This section also provides for the deletion or addition of economic sectors from or to the list.

Administrative Procedure Act

The Department is implementing this regulation as an interim rule, with a 60-day provision for post-promulgation public comments. Publication as an interim rule is based upon the "good cause" exceptions set forth at 5 U.S.C. sections 553(b)(3)(B) and (d)(3). The Department determined that there was not enough time to issue a proposed rule with request for comments as the Irish Peace Process Cultural and Training Program is scheduled under the relevant statutory provision to begin in FY 2000 (October 1, 1999 through September 30, 2000). Publication of this regulation as an interim rule will expedite implementation of Public Law 105–319 and allow eligible aliens to apply for and participate in this program as soon as possible in light of the statutory expiration of the program on October 1, 2005.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act (5 U.S.C. section 605(b)), the Department of State has reviewed this regulation and certifies that it will not have a significant economic impact on a substantial number of small entities. Participation in the Irish Peace Process Cultural and Training Program is limited to 4,000 individuals annually for three consecutive years. The activities of the participants in the United States will take place in multiple locations and economic sectors so that no significant economic impact should occur.

Unfunded Mandates Reform Act of 1995

This rule will not include any Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, of $100 million or more, or increased expenditures by the private sector of $100 million or more. Therefore, the requirements of the Unfunded Mandates Reform Act of 1995 do not apply here.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996.

Executive Order 12866

Although exempted from Executive Order 12866, this rule has been reviewed to ensure consistency with its principles. This rule is not a "significant regulatory action" under the Executive Order.

Executive Orders 13132

This regulation does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under Executive Order 13132.

Paperwork Reduction Act

This rule involves collections of information subject to the Paperwork Reduction Act of 1995. These collections are in the process of being approved by the Office of Management and Budget.

List of Subjects in 22 CFR Part 139

Aliens, Passports and visas.

Accordingly, add 22 CFR part 139 to read as follows:

PART 139—IRISH PEACE PROCESS CULTURAL AND TRAINING PROGRAM

Sec.

139.1 Purpose.
139.2 Definitions.
139.3 Responsibilities of the Department.
139.4 Responsibilities of the Program Administrator.
139.5 Qualifications required for selection as a trainee.
139.6 Requesting participation in the IPPCTP.
139.7 Qualifications for participation as an employer in the United States.
139.8 Target economic sectors.

Authority: Pub. L. 105–319, 112 Stat. 3013.

§ 139.1 Purpose.

(a) The regulations set forth in this Part implement, in part, the "Irish Peace Process Cultural and Training Program Act of 1998 (the "IPPCTPA"), Public Law 105–319, 112 Stat. 3013. The purpose of the IPPCTPA is to establish a program to "allow young people from disadvantaged areas of designated counties suffering from sectarian violence and high structural unemployment to enter the United States for the purpose of developing job skills and conflict resolution abilities in a diverse, cooperative, peaceful, and prosperous environment, so that those young people can return to their homes better able to contribute toward economic regeneration and the Irish peace process." This part describes the Irish Peace Process Cultural and Training Program (the "IPPCTP") hereby established by the Department, the procedures for its operation and the requirements for participation.

(b) The Department, in consultation with the Immigration and Naturalization Service ("INS"), will implement the program specified in the IPPCTPA by working with the relevant governmental authorities in the Republic of Ireland and in Northern Ireland to further the goals of the IPPCTPA, by selecting a Program Administrator to carry out the day-to-day operation of the IPPCTP, by approving, upon the recommendation of the Program Administrator, employers in the United States to carry out the training and employment elements of the IPPTCP and by providing general oversight of the IPPCTP.

§ 139.2 Definitions.

The following definitions apply to this part:

Accompanying family members means the spouse and minor children of the principal alien.

Applicant sponsor means FAS, T&EA, or an employer in the border counties or in Northern Ireland who has nominated an employee to participate in the IPPCTP.

Border counties means the counties of Louth, Monaghan, Cavan, Leitrim, Sligo and Donegal in the Republic of Ireland.

FAS means the Training and Employment Authority of the Republic of Ireland.

IPPCTP means the Irish Peace Process Cultural and Training Program.

Program Administrator means the organization selected by the Department to carry out the Department's responsibilities for the day-to-day management of the IPPCTP.

Program Participant means an individual selected to participate in the IPPCTP.

T&EA means the Training and Employment Agency of Northern Ireland.

United States employer means an employer with operations in the United States that has been recommended by the Program Administrator and approved by the Department of State for participation in the IPPCTP.

§ 139.3 Responsibilities of the Department.

The Department of State retains overall authority for all IPPCTP activities, including, but not limited to:

(a) The design of the program mandated by IPPCTPA;

(b) The formulation of policies and procedures concerning the IPPCTP;

(c) The selection and oversight of the Program Administrator;

(d) Coordination with other U.S. Government agencies and representatives of the governments of the Republic of Ireland and Northern Ireland; and

(e) Establishment of the requirements for and approval of the United States employers who will participate in the program.

§ 139.4 Responsibilities of the Program Administrator.

The Program Administrator will be responsible for the following:

(a) Identifying job/training opportunities in designated economic sectors, and recommending to the Department employers in the United States who meet the criteria of § 139.7 and who wish to participate in the IPPCTP. Job/training opportunities will be located in a number of geographic areas across the United States, depending on the availability of jobs, relative cost of living, support infrastructure, and other relevant factors.

(b) Making available, through electronic or other means, information about job/training openings to potential program participants and assisting them in securing job placements in the United States.

(c) Certifying in writing to a United States consular officer in the United States Embassy in Dublin or the United States Consulate General in Belfast, or to an officer of the INS, that a principal alien has been selected to participate in the IPPCTP. This certification will be used only to assist in:

(1) Nonimmigrant visa issuance to and adjudication of an application for admission made by the principal alien and accompanying family members; or

(2) Adjudicating a request made by the principal alien to change employers under the IPPCTP while in the United States.

(d) Providing pre-departure and pre-employment orientation seminars to program participants, as appropriate, and otherwise assisting participants in a smooth transition to life in the United States.

(e) Monitoring participants' compliance with Program requirements while in the United States, and verifying that participants are receiving the agreed training and skills.

(f) Cooperating with FAS and T&EA in all aspects of the program, including assisting participants in finding jobs in their home countries upon completion of their U.S. training.

(g) Reporting to the Department and INS on various aspects of the program and on program participants as directed.

(h) Developing and maintaining a computerized database and website to underpin all of the functions in paragraphs (a) through (g) of this section.

§ 139.5 Qualifications required for selection as a trainee.

To be selected as a program participant in the IPPCTP, a person must:

(a) Be between 18 and 35 years of age; and

(b) Have been physically resident in Northern Ireland or one of the border counties for at least three months prior to applying to the Program; and

(c) Meet United States immigration/visa requirements, including being in receipt of a job offer certified by the Program Administrator, and able to demonstrate satisfactorily to a Consular Officer that he/she has a residence abroad that he/she has no intention of abandoning; and

(d)(1) Be unemployed for at least 3 months, or have completed or currently be enrolled in a training/program sponsored by T&EA or FAS, or by other such publicly funded programs, or have been made redundant in their employment (i.e., lost his/her job) or have received a notice of redundancy (termination of employment); or

(2) Be a currently employed person whose employer has nominated him/her to participate in this program for additional training or job experience that will benefit both the employee and his/her employer upon returning to the same employment.

§ 139.6 Requesting participation in the IPPCTP.

Requests for participation as a trainee in the IPPCTP must be made to FAS or T&EA in the case of § 139.5(d)(1); or, in the case of § 139.5(d)(2), directly to the Program Administrator by the prospective participant's employer.

§ 139.7 Qualifications for participation as an employer in the United States.

To participate in the Irish Peace Process Cultural and Training Program, U.S. employers must:

(a) Provide job/training opportunities that:

(1) Correspond to one of the occupational areas identified by the governments of Northern Ireland and the Republic of Ireland; and

(2) Include a career path comprising work assignment rotations, and/or training opportunities, which offer promotion potential if job performance is satisfactory.

(b) Offer health insurance, which, at a minimum, provides:

(1) Medical benefits of at least $50,000 per accident or illness (major medical); and

(2) A deductible not to exceed $500 per accident or illness.

(c) Pay participants at least the minimum wage and at the same rate as American workers doing the same or similar work.

(d) Agree not to petition for a change of immigration status or non-immigrant status for any participant.

(e) Grant permission to the Program Administrator to conduct on-site visits and take other measures necessary to verify that each employer's job/training contract is being followed.

(f) Notify the Program Administrator in the event of the termination of a participant from employment, or departure of the participant from the Program.

(g) Prepare a written record describing the work experience gained, and make it available to each participant.

§ 139.8 Target economic sectors.

(a) Job/Training under the IPPCTP will focus initially on the following economic sectors:

(1) Hospitality and tourism;

(2) Customer service;

(3) Information and communications technology;
(4) Pharmaceuticals;
(5) Engineering;
(6) Sales, marketing and promotion;
(7) Agriculture/horticulture diversification;
(8) Food processing;
(9) Furniture.
(b) Additional sectors may be added to or deleted from the list in paragraph (a) of this section upon the agreement of the Department and FAS and/or T&EA.

Dated: March 1, 2000.

Marc Grossman,

Assistant Secretary for European Affairs, Department of State.

[FR Doc. 00–6832 Filed 3–16–00; 8:45 am]
BILLING CODE 4710–23–P

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 3259]

Visas: Nonimmigrant Classes; Irish Peace Process Cultural and Training Program Visitors, Q Classification

AGENCY: Bureau of Consular Affairs, Department of State.

ACTION: Interim rule with request for comments.

SUMMARY: This rule establishes procedures and requirements for the issuance of visas in a new nonimmigrant visa category, "Q–2". The rule also makes certain changes to existing provisions of the Code of Federal Regulations to conform to relevant "plain language" requirements. Visas in the new category will be issued pursuant to a program, the Irish Peace Process Cultural and Training Program (IPPCTP), established by Congress to permit young people from designated areas of Ireland and Northern Ireland to temporarily enter the United States in order to develop their job skills and conflict resolution abilities so they will be better able to contribute to the Irish peace process and the economic regeneration of their homelands. The rule will result in the issuance of up to 4,000 visas in each of three program years to qualified applicants and their dependents, beginning in FY 2000.

DATES: This interim rule is effective March 17, 2000. Written comments must be received no later than May 16, 2000.

ADDRESSES: Written comments may be submitted, in duplicate, to H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Department of State, Washington, DC 20520–0106.

FOR FURTHER INFORMATION CONTACT: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Department of State, Washington, D.C. 20520–0106, (202) 663–1204; or e-mail: *odomhe@state.gov.*

SUPPLEMENTARY INFORMATION:

Background

What does the Irish Peace Process Cultural and Training Program Act Do?

The Irish Peace Process Cultural and Training Program Act of 1998 ("IPPCTPA"), Public Law 105–319, amended the Immigration and Nationality Act ("INA") by creating a new nonimmigrant visa sub-category. Under the Act, section 101(a)(15)(Q) of the INA was amended by inserting "(i)" after the (Q) and adding the language of the Act as subpart (ii) in that section. Under this new provision, aliens 35 years or younger having a residence in Northern Ireland or in the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, or Donegal within the Republic of Ireland may be issued a visa in order to apply for entry into the United States for a period not to exceed 36 months. The purpose of this new nonimmigrant sub-category is to provide such aliens with practical training, employment, and the experience of coexistence and conflict resolution in a diverse society so that they may return to Ireland or Northern Ireland to bolster that region's economy and support the peace process.

The program envisioned in the legislation contains numerical and time limitations. The Immigration and Naturalization Service may only admit 4,000 aliens per year under this program, for a maximum of 36 months each, and only during fiscal years 2000, 2001 and 2002, as the Act provides that it is repealed on October 1, 2005. The numerical limitation includes a principal alien's spouse and minor children who may be accompanying or following to join the principal alien. As required in the IPPCTPA, for every alien admitted under the IPPCTP, the numerical limit for the H–2B category, described at INA section 214(g)(1)(B), shall be reduced by one for that fiscal year.

How Does the New Q Visa Program Differ From the Existing Q Visa Program?

Although part of the Q visa category, the new Q visa sub-category, designated Q–2 by the Department of State and INS, has important differences from the existing Q visa (which will now be referred to as the Q–1 visa). There are several obvious differences. First, only aliens aged 35 or younger may participate. Further, in order that the IPPCTP not conflict with the labor laws of any state, the Department of State and INS have determined the minimum age for participation in the program to be 18. Second, participants must have been physically resident in the designated areas for at least three months immediately preceding application to the program. Finally, the entire program is short term in nature in that participants may be initially admitted into the United States only through FY 2002.

In addition, there are other less apparent, but significant differences, some of which have been established by the Department of State and INS for the purpose of the efficient administration of the IPPCTP. First, the IPPCTPA contains no provision for a petition to INS. Therefore, none will be required. Second, much of the visa application and employment placement process will be coordinated through a program administrator selected by the Department of State in consultation with the INS. Third, the program administrator will be required to work with the Training and Employment Authority of the Republic of Ireland (FAS) and the Training and Employment Agency of Northern Ireland (T&EA) to identify and train candidates for the program.

Why Are the Participation of a Program Administrator and the Training and Employment Agencies Necessary?

The use of the program administrator is designed to make the program cohesive and efficient and to permit it to be carried out with a minimum of bureaucratic delay. The program administrator will also have the capacity to work directly with U.S. employers to identify suitable jobs for the program and to fill those jobs with eligible program candidates. In this regard, the program administrator will have the responsibility not only to work with FAS and T&EA to identify eligible candidates for participation in the program, but will also be responsible for identifying employers in the United States who can offer employment and training consistent with the goals of the program and for placing the candidates with those employers. The program administrator will also have the responsibility to monitor and assist program participants throughout their stay in the United States. The involvement of the training and employment agencies of Ireland and Northern Ireland will insure that the program meets the needs of those countries and thus, best fulfills Congressional intent.

Who Will Be the Program Administrator?

The Department of State, after consultation with INS, has selected Logicon, Inc. to be the program administrator through September 30, 2000. Logicon's Irish Peace Process Training and Cultural Program project office may be reached toll free at 1–877–(WALSHVISA) 925–7484. Logicon's mailing address is 1831 Wiehle Avenue, Suite 100, Reston, Virginia 20190–5241. Logicon has established a web site for this program. Its internet address is: *www.walshvisa.net.* is its internet address. Employers wishing to participate in the IPPCTP should contact the project office.

Program Requirements and Offerings

Who May Qualify as a Candidate for the IPPCTP?

Candidates for the IPPCTP will be selected from two categories. The first includes those who have been unemployed for at least three months, or who have completed or are currently participating in a T&EA- or FAS-sponsored training program, or other publicly funded employment/training program, or who have been made redundant (lost their job through a reduction in force) or have received a notice of redundancy. The second category includes those persons already employed and whose current employer has nominated them to participate in the program for additional training/job experience that will benefit both the employer and the employee upon that person's return to employment in Northern Ireland or the Republic of Ireland. FAS and T&EA will be responsible for the initial selection of candidates from the first category. Employers of employees in the second category may nominate the employee directly to the program administrator.

What Types of Employment and Training Will the IPPCTP Offer?

The program will focus on employment and training in occupations that will be the most beneficial to the economies of the relevant areas, as determined by the Department of State in consultation with T&EA, FAS, and the program administrator. Initially, the following sectors have been identified: hospitality and tourism; customer service; information and communications technology; pharmaceuticals; engineering; sales, marketing and promotion; agriculture/horticulture diversification; food processing, and furniture.

Obtaining a Q–2 or Q–3 Visa

Must All IPPCTP Participants Obtain a Q–2 Visa?

Every IPPCTP participant must obtain a Q–2 visa and his or her spouse and children must obtain Q–3 visas. Program participants will not be allowed to enter the United States under the Visa Waiver Pilot Program in order to participate in the IPPCTP. Except as otherwise provided in this rule, the procedures for application for a nonimmigrant visa found in Subpart J of Part 41 of 22 CFR are applicable to applications for the Q–2 and Q–3 visas.

What Are the Requirements To Obtain a Q–2 Visa?

Generally, as part of the process to gain the new Q–2 visa, after selection by FAS or T&EA or nomination by his or her current employer, an alien must be able to show to the consular officer's satisfaction that he or she meets the statutory age and residence requirements for this category, has no intention of abandoning his or her foreign residence, is qualified for the position in question, will be employed while in the United States and is not otherwise ineligible for a nonimmigrant visa. The alien must provide the information concerning selection for the program, position qualifications and employment to the consular officer in the form of a certification letter provided and approved by the program administrator. While this certification letter will be considered prima facie evidence that the alien has met the requirements for participation in the IPPCTP, before issuing a visa the consular officer still will have the responsibility to evaluate all aspects of the alien's application and the information gained at the visa interview.

What Will Be the Period of Validity of the Q–2 and Q–3 Visas?

In most cases, the visas for the principal alien and for the spouse and children will be issued for 36 months, the maximum possible period of work and training permitted under the IPPCTPA. If, however, the job to which the alien has been contracted and the planned period of training is of a duration less than 36 months, for example, or if the consular officer, at his or her discretion, determines that the visa should be issued for a shorter period of time, then the consular officer may issue the visa for the period most suitable to that particular applicant.

Where May Q–2 and Q–3 Visas Be Obtained?

Generally, according to 22 CFR 41.101(a), a nonimmigrant visa applicant may apply for a visa at either: (1) the consular office with jurisdiction over the alien's place of residence (22 CFR 41.101(a)(1)); or (2) the consular office with jurisdiction over the area of the alien's physical presence (at the consular officer's or the Department's discretion) (22 CFR 41.101(a)(1)(ii)). In the case of the Q–2 and Q–3 visa, since according to the IPPCTPA principal applicants must be resident in either Northern Ireland or one of the six designated counties of the Republic of Ireland, an alien residing in Northern Ireland or one of the six counties of the Republic of Ireland may apply at the American Consulate General at Belfast or the American Embassy at Dublin respectively. Consular officers at the Consulate General and at the Embassy also will retain the discretion to accept an application for a Q–2 visa from an applicant who is physically present in their consular district, but who is a resident of the Q–2 geographic area over which the other post has jurisdiction. However, consular officers at other consular posts will not have the discretion to accept applications from an applicant for a Q–2 or Q–3 visa who is a resident of a Q–2 geographic area, but who is physically present in their respective consular district. Amendatory language has been added to 22 CFR 41.101 to reflect this.

Interim Rule

How Is the Department of State Amending Its Regulations?

This rule amends 22 CFR 41.57 by making the existing section paragraph (a) and by adding a new paragraph (b). This change is necessary to make that section conform to the requirements of the IPPCTPA. There are also stylistic changes made to 22 CFR 41.57 that are intended solely to make it conform to the President's plain writing initiative.

The new paragraph (b) contains the visa processing aspects of the IPPCTPA. It establishes the requirements in order for a consular officer to issue a nonimmigrant visa under INA § 101(a)(15)(Q)(ii). These changes, published in conjunction with the publication of a similar rule by the Immigration and Naturalization Service, establish the procedures for an alien to obtain a visa and enter the United States in order to participate in the IPPCTP.

Paragraph (1) of the new subsection (b) states the requirements of the Q–2 visa classification, with the main focus being the certification letter received

from the designated program administrator responsible for the operation of the IPPCTP.

Paragraph (2) of new subsection (b) provides for the issuance of a letter of certification by the program administrator to the consular officer in order to verify the selection of an individual visa applicant for the IPPCTP.

Paragraph (3) of new subsection (b) allows the consular officer to suspend processing of the application in those cases where the consular officer, at the consular officer's discretion, believes or has reason to believe that the applicant is not qualified under paragraph (1) or (2).

Administrative Procedure Act

The Department's implementation of this regulation as an interim rule, with a provision for public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The Department decided that there was not enough time to issue a proposed rule with request for comments as the Irish Peace Process Cultural and Training Program is limited by law to a period that has already begun (FY 2000 through FY 2005, i.e., October 1, 1999 through September 30, 2005). Publication of this regulation as an interim rule will expedite implementation of Public Law 105–319 that is already in effect and allow eligible aliens to apply for and participate in this program as soon as possible in light of the statutory expiration of the program on October 1, 2005.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Participation in the Irish Peace Process Cultural and Training Program Act of 1998 is limited to 4,000 individuals annually for three consecutive years. The activities of the participants in the United States will take place in various locations and in a number of sectors of the economy so that no significant economic impact should occur.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State. local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule, to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has waived its review process under section 6(a)(3)(A).

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements. The information collection requirement (Form OF–156) contained by reference in this rule was previously approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

List of Subjects in 22 CFR Part 41

Aliens, Applications, Nonimmigrants, Passports and visas.

Accordingly, amend 22 CFR part 41 as follows:

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681 *et seq.*

2. Amend § 41.12 in the table as follows:

a. Revise the section of law "101(a)(15)(Q)" for category "Q–1" to read "101(a)(15)(Q)(i)";

b. Add two new entries in alpha-numeric order to read as follows:

§ 41.12 Classification symbols.

* * * * *

NONIMMIGRANTS

Symbol	Class	Section of law
Q–2	Irish Peace Process Program Participant	101(a)(15)(Q)(ii)
Q–3	Spouse or child of Q–2	101(a)(15)(Q)(ii)

3. Revise § 41.57 to read as follows:

§ 41.57 International cultural exchange visitors and visitors under the Irish Peace Process Cultural and Training Program Act (IPPCTPA).

(a) *International cultural exchange visitors.* (1) *Requirements for classification under INA section 101(a)(15)(Q)(i).* A consular officer may classify an alien under the provisions of INA 101(a)(15)(Q)(i) if:

(i) The consular officer is satisfied that the alien qualifies under the provisions of that section, and

(ii) The consular officer has received official evidence of the approval by INS of a petition or the extension by INS of the period of authorized stay in such classification.

(2) *Approval of petition.* INS approval of a petition does not establish that the alien is eligible to receive a nonimmigrant visa.

(3) *Validity of visa.* The period of validity of a visa issued on the basis of this paragraph (a) must not exceed the period indicated in the petition, notification, or confirmation required in paragraph (a)(2) of this section.

(4) *Alien not entitled to Q classification.* The consular officer must suspend action on the alien's application and submit a report to the approving INS office if the consular officer knows or has reason to believe that an alien does not qualify under INA section 101(a)(15)(Q)(i).

(b) *Trainees under INA section 101(a)(15)(Q)(ii).* (1) *Requirements for classification under INA section 101(a)(15)(Q)(ii).* A consular officer may classify an alien under the provisions of INA section 101(a)(15)(Q)(ii) if:

(i) The consular officer is satisfied that the alien qualifies under the provisions of that section;

(ii) The consular officer has received a certification letter prepared by a program administrator charged by the Department of State in consultation with the Department of Justice with the operation of the Irish Peace Process Cultural and Training Program which states at a minimum:

(A) The name of the alien's employer in the United States;

(B) That the employment is in an occupation designated by the employment and training administration of the alien's place of residence as being most beneficial to the local economy;

(C) That the program administrator has registered the alien in the program;

(D) That the alien has been physically resident in Northern Ireland or in the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal in the Republic of Ireland and the length of time immediately prior to the application that the alien has claimed such place as his or her residence;

(E) The alien's date and place of birth;

(iii) If applicable, the consular officer is satisfied the alien is the spouse or child of an alien classified under INA section 101(a)(15)(Q)(ii), and is accompanying or following to join the principal alien.

(2) *Requirements for certification letter.* Before the program administrator (or its agent) may properly issue the certification letter required under paragraph (a)(1)(ii) of this section, the program administrator (or agent) must establish:

(i) Either that the alien:

(A) Has been unable to maintain regular employment for the three months prior to the date of application for participation in the program; or

(B) Has completed or is currently participating in a T&EA or FAS or other publicly funded training/employment program; or

(C) Has received a redundancy notice (notice of loss of employment by reduction in force); or

(D) If the alien is regularly employed, the alien's employer has nominated the alien to leave such employer temporarily in order to participate in the program;

(ii) That the position selected for the alien by the program administrator reasonably fits within the alien's background and experience; and

(iii) That the alien understands both the requirements for maintenance of lawful nonimmigrant status in the United States and that to qualify for visa issuance the alien must have a residence abroad that the alien has no intention of abandoning.

(3) *Aliens not entitled to such classification.* The consular officer must suspend action on the alien's application and notify the alien and the designated program administrator described in paragraph (b)(1)(ii) of this section if the consular officer knows or has reason to believe that an alien does not qualify under INA section 101(a)(15)(Q)(ii).

4. Amend § 41.101 by adding new paragraph (f) to read as follows:

§ 41.101 Place of application.

* * * * *

(f) *Q–2 nonimmigrant visas.* The American Consulate General at Belfast is designated to accept applications for the Q–2 visa from residents of the geographic area of Northern Ireland. The American Embassy at Dublin is designated to accept applications for Q–2 visas from residents of the geographic area of the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal in the Republic of Ireland. Notwithstanding any other provision of this section, an applicant for a Q–2 visa may not apply at any other consular post. Consular officers at the Consulate General at Belfast and at the Embassy at Dublin have discretion to accept applications for Q–2 visas from aliens who are resident in a qualifying geographic area outside of their respective consular districts, but who are physically present in their consular district.

Dated: March 2, 2000.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, U.S. Department of State.

[FR Doc. 00–6833 Filed 3–16–00; 8:45 am]

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Federal Register

Friday,
March 17, 2000

Part X

Department of Justice

Immigration and Naturalization Service

8 CFR Part 212 et al.

Irish Peace Process Cultural and Training Program; Interim Rule

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 212, 214, 248 and 274a

[INS No. 2000–99]

RIN 1115–AF51

Irish Peace Process Cultural and Training Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: The Irish Peace Process Cultural and Training Program allows visitors from Northern Ireland and certain designated counties in the Republic of Ireland to come to the United States temporarily for training, for employment, and to experience coexistence and conflict resolution in a diverse society. This rule amends the regulations of the Immigration and Naturalization Service (Service) by establishing procedures for implementing the Irish Peace Process Cultural and Training Program. This program is designed to provide a peaceful and cooperative environment in which these temporary visitors from various backgrounds can develop the necessary job skills to aid in the economic regeneration of their region.

EFFECTIVE DATE: This interim rule is effective March 17, 2000.

Comment Date: Written comments must be received on or before May 16, 2000.

ADDRESSES: Please submit written comments, *in triplicate*, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 2000–99 on your correspondence. Comments are available for public inspection by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Donna N. Crump, Adjudications Officer, Business and Trade Services Branch, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW, Room 3214, Washington, DC 20536, telephone (202) 616–7445.

SUPPLEMENTARY INFORMATION:

Background

What is Q–2 classification?

The Q–2 classification is established to identify principal participants in the Irish Peach Process Cultural and Training Program.

How did this change in the Q classification originate?

Legislation to create the Irish Peace Process Cultural and Training Program Act of 1998 (IPPCTPA) was introduced in July 1998 by Congressman James Walsh of New York. The IPPCTPA supports the peace process by offering young people from Northern Ireland and the border counties of the Republic of Ireland who have been subjected to decades of sectarian conflict the opportunity to come to the United States temporarily to gain valuable work skills and to experience a multi-cultural environment. This program is designed to provide these young people from different communities with the necessary economic and cultural training to start the process of rebuilding a working, civil society in their home countries. On October 30, 1998, President Clinton signed into law the Irish Peace Process Cultural and Training Program Act of 1998, Pub. L. 105–319.

What Are the Provisions of the IPPCTPA?

This legislation requires that the Secretary of State and the Attorney General establish a program that permits, for each of 3 consecutive years, the annual entry of not more than 4,000 visitors from Northern Ireland and certain designated counties in the Republic of Ireland to participate in training, work, and conflict resolution activities. The participants are to be under 36 years of age and reside in designated areas which have suffered from sectarian violence and high unemployment. This program is designed to help these visitors develop job skills and conflict resolution abilities in a diverse society so that when they return home they can help contribute to the economic rejuvenation of their region and promote the peace process. This program has three consecutive program years: Fiscal Years (FYs) 2000 (October 1, 1999, through September 30, 2000), 2001 (October 1, 2000, through September 30, 2001) and 2002 (October 1, 2001, through September 30, 2002). The participating individuals may remain in the United States for up to 36 months, and spouses and minor children of the principal alien may accompany or follow-to-join the principal alien program participant. The IPPCTPA requires the Service to reduce by one the number of H–2B nonimmigrants admitted for every individual admitted under this program. On October 1, 2005, the provisions of this Public Law are repealed.

What Are the Eligibility Criteria for Participation?

The legislation provides that any resident of Northern Ireland or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal within the Republic of Ireland, who is 35 years of age or younger, is eligible to apply.

Following several working meetings between officials of the U.S. Department of State (DOS), the U.S. Immigration and Naturalization Service (Service), the Training and Employment Agency of Northern Ireland (T&EA), and the Training and Employment Authority of Ireland (FAS), eligibility requirements were further defined to meet the needs of Northern Ireland and the Republic of Ireland. For participation in this program, the candidate must be physically resident in either Northern Ireland or in the designated border counties of the Republic of Ireland for at least 3 months immediately preceding application to the program and be between the ages of 18 and 35 at the time of initial admission to the United States under the program. In addition, candidates must fall within one of the following two categories of persons:

(1) The first category consists of unemployed applicants: (a) who have been unemployed for at least 3 months, or (b) who have completed or are currently participating in a program of the T&A or of FAS or another publicly funded training and employment program. In addition, persons who have recently been made redundant in their employment (i.e., lost their job) or have received a notice of redundancy (termination of employment) may apply to the program immediately without having to wait 3 months after becoming unemployed.

(2) The second category in this program consists of persons who (a) are currently employed and (b) whose current employer has nominated them to participate in the program for additional training and/or job experience that will benefit both the employee and the employer upon that person's return to his or her prior employment.

The T&EA and FAS are responsible for identifying candidates to the program from the first category. The employers of individuals in the second category may nominate employees directly to the DOS' Program Administrator.

Why does this program have age limitations?

The maximum age of 35 is stipulated in the IPPCTPA. The minimum age of 18 is needed so that there is no conflict with child labor laws of individual U.S. States.

Do all individuals who successfully complete a training and employment program or who are recommended to the program by their employers automatically become program participants?

Nomination by the T&EA or FAS or recommendation by an employer for program participation is the first stage of the selection process. A U.S. employer, approved by the DOS, must also be willing to offer employment or training to such individuals. All candidates must then meet U.S. visa and immigration requirements. If no U.S. employer is interested in hiring a particular candidate or if any particular candidate is ineligible for either a U.S. visa or admission into the United States, then that individual is ineligible for participation in this program.

Is there any petition requirement?

There is no petition requirement for visitors under the Irish Peace Process Cultural and Training Program (IPPCTP). However, each candidate will be required to have a written certification from the DOS' Program Administrator indicating that he or she has been selected for participation in the IPPCTP prior to applying for a Q–2 visa.

How does a U.S. employer hire one of these indivduals?

A U.S. employer interested in employing and/or providing training to these candidates must be approved by the DOS in accordance with its regulations before a visa will be issued. Interested employers may contact the DOS' Program Administrator for details of the approval process. The Department of State has designated Logicon, Inc. of Northern Virginia as the Program Administrator for this program through September 30, 2000. Logicon may be reached at 1–877–925–7484 or via e-mail at logicon@walshvisa.net. Logicon's mailing address is Walsh Visa Program, Logicon, 1831 Weihle Avenue, Suite 100, Reston, Virginia 20190–5241. Logicon has established an Internet web site for this program: *www.walshvisa.net.*

Are there any restrictions on the type of employment permitted?

Employment must be in a field of endeavor that has been identified by governmental agencies in Northern Ireland and Ireland as one that will be useful to the economy of the region. The designated sectors currently include hospitality and tourism, customer service, information and communications technology, pharmaceuticals, engineering, sales, marketing and promotion, and furniture. The selection of additional sectors or the deletion of already identified sectors will occur upon the agreement of the DOS, with one or both of the training and employment agencies.

May the principal alien of this program bring family members?

The principal alien may bring his/her spouse and minor children to the United States. These family members may either travel with the principal alien to the United States or join him/her at a later date. They will be counted in the total annual number admitted to the United States under this program. The visa designation for eligible family members will be Q–3. All family members must depart the United States at the end of the principal alien's program. However, those spouses or minor children who do not wish to accompany or follow-to-join the principal alien, but desire only to briefly visit the principal alien in the United States, might wish to avail themselves of the visitors' visa waiver pilot program or obtain a visitor's visa (B–2).

Are program participants eligible for the visitor's visa woiver pilot program?

No, since the length of stay of these participants will be longer than 90 days, and thus exceeds the maximum length of stay available under the visa waiver pilot program. In addition, those individuals admitted under the visa waiver pilot program are not authorized to work. All principal aliens and any eligible family members in this program must have passports valid for the length of their U.S. stay and be issued either a Q–2 visa or a Q–3 visa prior to entering the United States. Applications for these visas may be made at either the U.S. Consulate in Belfast or at the U.S. Embassy in Dublin. These are the two posts that will be authorized to issue visas for this program.

What happens when those qualifying for participate in the program exceed the 4,000 annual admission limitation?

The DOS will be tracking the processing of Q–2 and Q–3 visas to ensure that no more than 4,000 visas are issued in each of the three program years. Should there be more candidates than visas available, those candidates without visas will have to wait until the next program year to participation in the IPPCTP.

May visitors already in the United States admitted under other nonimmigrant visa classifications change to a Q–2?

No, because visitors already in the United States would not meet one of the eligibility requirements, which stipulates that participation must be physically resident in either Northern Ireland or Ireland for at least 3 months immediately preceding application to the program.

Are family members able to work and go to school?

Family members entering the United States with a Q–3 visa under this program are not allowed to work. The spouse and minor children of the principal alien may attend school without violating their Q–3 status. Those spouses who are also principal participants and have been issued a Q–2 visa are eligible to work.

Will any documentation for employment authorization be issued?

All principal aliens will have their Forms I–94, Arrival-Departure Record, endorsed by an Immigration Inspector at the time of inspection. This endorsement will authorize their employment with a specific employer based on the certification from the DOS' Program Administrator. They will not be issued a separate employment authorization document (Form I–766).

Will the principal aliens have to pay taxes and contribute to Social Security?

The principal aliens are responsible for paying all applicable Federal, State, and local income taxes, employment and related taxes, as well as Social Security contributions on any salaries received.

How will training and conflict resolution activities be administered?

Training or conflict resolution activities offered to the principal aliens will be coordinated by the DOS' Program Administrator.

What organizations are cooperating on this program?

The DOS and the Service are working together with the T&EA and with FAS to make all potential participants aware of this program. These agencies have also encouraged nongovernmental organization to become involved.

Since the number of visas issued under this program reduces the number of H–2B visas available, what impact does the Service expect this program to have on the H–2B program?

The Service does not expect the Q–2 program to adversely affect the H–2B

program. Since the establishment of numerical limitations for the H–2B classification in Fiscal Year 1992, the numerical limitation has not been reached. Based on the past demand for the H–2B classification, the Service expects sufficient visa numbers to be available for participants in both the H–2B program and the Q–2 program for the duration of the Q–2 program.

Why does the Service not process these participants under the H–2B program?

Congress specified that the IPPCTP should have a separate nonimmigrant visa classification. In addition, some training and employment that is permissible under this program may not qualify under the H–2B program.

How will the Service track program participants or overstays?

Service regulations at 8 CFR 25.1 require the participants to inform the Service of any address changes. This will be accomplished by requiring each participant to forward Form AR–11, Alien's Change of Address Card, to the Service through the DOS Program Administrator. The arrival and departure of all visitors to and from the United States in this program will be tracked through the use of Form I–94, Arrival-Departure Record. The Service will identify overstays through this tracking system. In addition, the DOS' Program Administrator will monitor the program activities of each individual participant and will be required to inform the Service of any Q–2 or Q–3 visa holder who is no longer participating in this program and those who have completed the program but not yet departed.

What will happen if a Q–2 or Q–3 visa holder remains in the United States beyond his/her authorized period of stay?

The intent of Public Law 105–319 is for the participants to return home to contribute to the economic regeneration of their region and to promote the peace process.

Several factors will provide a strong incentive for the participants in this program to return home. First, the DOS' Program Administrator will, with the training and employment agencies in the cooperating counties, assist each participant to identify specific job opportunities in his/her home area during the course of the participant's stay in the United States. Every effort will be made to ensure a job placement before the end of each participant's U.S. program. Second, any participant who is no longer in valid nonimmigrant status and remains in the United States or who remains in the United States beyond the 36-month period of admission, risks being put into removal proceedings by the Service along with other adverse immigration consequences, including penalties described in section 212(a)(9) of the Immigration and Nationality Act (Act).

What are the Service's reporting requirements for overstays under the Q–2 program?

The legislation requires the Service to compile and submit to Congress a report on the number of aliens admitted under section 101(a)(15)(Q)(ii) of the Act who have overstayed their visas. Such reports will be submitted to Congress at the end of the third program year and for each of the succeeding 3 years.

In providing these congressional reports, the Service will require the participants and their families to adhere to the 3-year stay limitations as set forth in the legislation. Their valid program time period will expire 3 years after the date of their initial admission, *including* any time spent outside the United States during the 3-year period of authorized stay. Additionally, any participant who remains outside the United States beyond three consecutive months will not be considered in valid program status. Such an individual will have to reapply to the program, should he/she wish to resume a Q–2 program activity, and will not be readmitted on the initial Q–2 visa.

In order to provide accurate reporting, the Service will confirm its overstay data with the DOS' Program Administrator. The Service will also maintain contact throughout the program with the U.S. Consulate in Belfast and the Consular section at the U.S. Embassy in Dublin, as well as with the T&EA and FAS to verify overstays.

Explanation of changes

How is the Service amending its regulations to implement Public Law 105–319?

This rule revises the original Q nonimmigrant classification by renumbering its paragraphs in § 214.2(q) and by changing the reference of "Q" to "Q–1" and its reference to the Act. However, this redesignation in no way alters the regulations or established procedures for participating in such a program. One technical change to these regulations was also made as a result of enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Public Law 104–208, 110 Stat. 3546, which recodified the deportation charge applicable to an alien who engages in unlawful employment and thereby violates his nonimmigrant status (formerly 241(a)(1)(C)(i) of the Act) at 237(a)(1)(C)(i) of the Act. In addition, an individual participating in a Q–1 program will now be referred to as an "international cultural exchange visitor." The Service has removed any references to "cultural visitor" under the Q–1 program, as the term "cultural visitor" now refers to participants in both the Q–1 and Q–2 programs.

The Service is also revising the Q classification to add a paragraph addressing the new Q–2/Q–3 nonimmigrant classifications at § 214.2(q). Paragraphs have been added at 8 CFR parts 212, 248 and 274a concerning this new nonimmigrant classification.

Since no substantive changes have been made in the program to be redesignated as Q–1, written comments submitted to the Service regarding this interim rule should be confined to the implementing rules of the Q–2/Q–3 visa classifications.

The Service and the DOS are publishing simultaneously their respective rules on the Q–2 program. The two agencies have consulted with each other during the rulemaking process. (See the DOS' rules published elsewhere in this issue of the **Federal Register**.)

Good Cause Exception

The Service's implementation of this regulation as an interim rule, with a provision for post-promulgation public comments, is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). The reason and necessity for issuing this regulation as an interim rule are as follows: (1) In order to provide for the addition of the new Q–2 classification, the original Q classification was renumbered and stylistic changes were made. The technical change correcting the citation to the appropriate deportation charge was necessitated by the recodification of that charge by the IIRIRA. None of these changes were substantive in nature. (2) There is not enough time to issue a proposed rule with request for comments because the initial group of IPPCTP participants is scheduled to arrive in the United States at the end of March 2000. Publication of this regulation as an interim rule will expedite implementation of Public Law 105–319 and allow eligible aliens to apply for and participate in this program as soon as possible in light of the statutory expiration of the program on October 1, 2005. Any delay in the publication of this interim rule will result in a significant delay in the start of the program which in turn will have a severely negative impact on the success of the program given that unused numbers in one program year cannot be carried over to the next.

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities. Participation in the IPPCTP is limited to 4,000 individuals annually for three consecutive program years. This rule does not affect small entities as that term is defined in 5 U.S.C. 601(6).

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely effect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is not considered by the Department of Justice, Immigration and Naturalization Service, to be a "significant regulatory action" under Executive Order (E.O.) 12866, section 3(f), Regulatory Planning and Review, and the Office of Management and Budget has therefore waived its review process under section 6(a)(3)(A).

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This interim rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Paperwork Reduction Act

This rule does not impose any new reporting or recordkeeping requirements. The information collection requirements (Forms I–94 and AR–11) contained in this rule were previously approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5, Display of control numbers.

List of Subjects

8 CFR Part 212

Administrative practice and procedure, aliens, Immigration, Passports and visas, reporting and recordkeeping.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, employment, Penalties Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.1 is amended by adding a new paragraph (n) to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(n) *Alien in Q–2 classification.* Notwithstanding any of the provisions of this part, an alien seeking admission as a principal according to section 101(a)(15)(Q)(ii) of the Act must be in possession of a Certification Letter issued by the Department of State's Program Administrator documenting participation in the Irish peace process cultural and training programs.

PART 214—NONIMMIGRANT CLASSES

3. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

4. Section 214.1 is amended by:

a. Removing the word "and" at the end of paragraph (a)(1)(v);

b. Removing the period at the end of paragraph (a)(1)(vi) and adding in its place a "; and";

c. Adding a new paragraph (a)(1)(vii);

d. Amending the table in paragraph (a)(2) by removing the entry for "101(a)(15)(Q)" and by adding the entries for "101(a)(15)(Q)(i)", "101(a)(15)(Q)(ii)", and "101(a)(15)(Q)(iii)" in proper numerical sequence;

e. Revising the heading of paragraph (b);

f. Adding a new paragraph (b)(4);

g. Revising the first sentence in paragraph (c)(1);

h. Removing the word "or" at the end of paragraph (c)(3)(v);

i. Removing the period at the end of paragraph (c)(3)(vi) and adding in its place a "; or"; and by

j. Adding a new paragraph (c)(3)(vii), to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) * * *

(1) * * *

(vii) Section 101(a)(15)(Q)(ii) is divided to create a (Q)(iii) for subclassification for the spouse and children of a nonimmigrant classified under section 101(a)(15)(Q)(ii) of the Act.

(2) * * *

Section	Designation
. . . . .	. . . . .
101(a)(15)(Q)(i)	Q–1.
101(a)(15)(Q)(ii)	Q–2.
101(a)(15)(Q)(iii)	Q–3.
. . . . .	. . . . .

* * * * *

(b) *Readmission of nonimmigrants under section 101(a)(15) (F), (J), (M), or (Q)(ii) to complete unexpired periods of previous admission or extension of stay*—* * *

* * * * *

(4) *Section 101(a)(15)(Q)(ii).* The inspecting immigration officer shall readmit for the unexpired period of stay authorized prior to the alien's departure, if the alien:

(i) Is admissible;

(ii) Is applying for readmission after an absence from the United States not exceeding 30 days solely in contiguous territory or adjacent islands;

(iii) Is in possession of a valid passport;

(iv) Presents, or is the accompanying spouse or child of an alien who presents, an Arrival-Departure Record, Form I–94, issued to the alien in connection with the previous admission or stay. The principal alien must also present a Certification Letter issued by the Department of State's Program Administrator.

(c) * * * (1) * * * An employer seeking the services of an E–1, E–2, H–1A, H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, Q–1, R–1, or TC nonimmigrant beyond the period previously granted, must petition for an extension of stay on Form I–129.* * *

* * * * *

(3) * * *

(vii) Any nonimmigrant who is classified according to section 101(a)(15)(Q)(ii) of the Act beyond a total of 3 years.

* * * * *

5. Section 214.2 is amended by:

a. Revising the heading of paragraph (q);

b. Redesignating paragraph (q)(1) as paragraph (q)(1)(iii);

c. Adding new paragraphs (q)(1)(i) and (q)(1)(ii);

d. Revising the heading of paragraphs (q)(2), (q)(5), (q)(6), and (q)(7);

e. Revising paragraph (q)(9)(i);

f. Adding two new sentences at the end of paragraph (q)(9)(ii);

g. Adding and reserving paragraphs (q)(12) through (q)(14); and by

h. Adding a new paragraph (q)(15), to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(q) *Cultural visitors*—(1)(i) *International cultural exchange visitors program.* Paragraphs (q)(2) through (q)(11) of this section provide the rules governing nonimmigrant aliens who are visiting the United States temporarily in an international cultural exchange visitors program (Q–1).

(ii) *Irish peace process cultural and training program.* Paragraph (q)(15) of this section provides the rules governing nonimmigrant aliens who are visiting the United States temporarily under the Irish peace process cultural and training program (Q–2) and their dependents (Q–3).

* * * * *

(2) *Admission of international cultural exchange visitor*—* * *

(5) *Filing of petitions for international cultural exchange visitor program*—* * *

(6) *Substitution or replacements of participants in an international cultural exchange visitor program*—* * *

(7) *Approval of petition for international cultural exchange visitor program*—* * *

* * * * *

(9) * * * (i) *General.* The petitioner shall immediately notify the appropriate Service center of any changes in the employment of a participant which would affect eligibility under section 101(a)(15)(Q)(i) of the Act.

(ii) * * * No further action or notice by the Service is necessary in the case of automatic revocation. In any other case, the Service shall follow the revocation procedures in paragraphs (q)(9) (iii) through (v) of this section.

* * * * *

(12) (Reserved)

(13) (Reserved)

(14) (Reserved)

(15) *Irish peace process cultural and training program visitors (Q–2) and their dependents (Q–3).* (i) *General.* An Irish Peace Process Cultural and Training Program (IPPCTP) visitor is a nonimmigrant alien coming to the United States temporarily to gain or upgrade work skills through training and temporary employment and to experience living in a diverse and peaceful environment.

(ii) *What are the requirements for participation?* (A) The principal alien must have been physically resident in either Northern Ireland or the counties of Louth, Monaghan, Cavan, Leitrim, Sligo, and Donegal in the Republic of Ireland, for at least 3 months immediately preceding application to the program and must show that he or she has no intention of abandoning this residence.

(B) The principal alien must be between the ages of 18 and 35.

(C) The principal alien must:

(*1*) Be unemployed for at least 3 months, or have completed or currently be enrolled in a training/employment program sponsored by the Training and Employment Agency of Northern Ireland (T&EA) or by the Training and Employment Authority of Ireland (FAS), or by other such publicly funded programs, or have been made redundant from employment (*i.e.*, lost their job), or have received a notice of redundancy (termination of employment); or

(*2*) Be a currently employed person whose employer has nominated him/her to participate in this program for additional training or job experience that is to benefit both the participant and his/her employer upon returning home.

(D) The principal alien must intend to come to the United States temporarily, for a period not to exceed 36 months, in order to obtain training, employment, and the experience of coexistence and conflict resolution in a diverse society.

(iii) *Are there any limitations on admissions?* (A) No more than 4,000 participants, including spouses and any minor children of principal aliens, may be admitted annually for 3 consecutive program years, beginning with FY 2000 (October 1, 1999, through September 30, 2000).

(B) For each alien admitted under section 101(a)(15)(Q)(ii) of the Act, the number of aliens admitted under section 101(a)(15)(H)(ii)(b) of the Act is reduced by one for that fiscal year or the subsequent fiscal year.

(C) This program expires on October 1, 2005.

(iv) *What are the requirements for initial admission to the United States?* (A) Principal aliens, their spouses, and minor children of principal aliens must present valid passports and either a Q–2 or Q–3 visa at the time of inspection.

(B) Initial admission for those principal and dependent aliens in this program who received their visas at either the U.S. Embassy in Dublin or the U.S. Consulate in Belfast must take place at the Service's Pre-Flight Inspection facilities at either the Shannon or Dublin airports in the Republic of Ireland.

(C) The principal alien will be required to present a Certification Letter issued by the Department of State's (DOS') Program Administrator documenting him or her as an individual selected for participation in the IPPCTP. Eligible dependents may be requested to present written documentation certifying their relationship to the principal.

(v) *May the principal alien and dependents make brief visits outside the United States?* (A) The principal alien, spouse, and any minor children of the principal alien may make brief departures, for periods not to exceed 3 consecutive months, and may be readmitted without having to obtain a new visa. However, such periods of time spent outside the United States will not be added to the end of stay, which is not to exceed a total of 3 years from the initial date of entry of the principal alien.

(B) Those participants or dependents who remain outside the United States in excess of 3 consecutive months will not be readmitted by the Service on their initial Q–2 or Q–3 visa. Instead, any such individual and eligible dependents wishing to rejoin the program will be required to reapply to the program and be in receipt of a new Q–2 or Q–3 visa and a Certification Letter issued by the DOS' Program Administrator, prior to any subsequent admission to the United States.

(vi) *How long may a Q–2 or Q–3 visa holder remain in the United States under this program?* (A) The principal alien and any accompanying, or following-to-join, spouse or minor children of the principal alien are admitted for the duration of the principal alien's planned cultural and training program or 36 months, whichever is shorter.

(B) Those participants and eligible dependents admitted for specific periods less than 36 months may extend their period of stay through the Service so that their total period of stay is 36 months, provided the extension of stay is related to employment or training certified by the DOS' Program Administrator.

(vii) *How is employment authorized under this program?* (A) Following endorsement of his/her Form I–94, Arrival-Departure Record, by a Service officer, any principal alien admitted under section 101(a)(15)(Q)(ii) of the Act is permitted to work for an employer or employers listed on the Certification Letter issued by the DOS' Program Administrator.

(B) The accompanying spouse and minor children of the principal alien may not accept employment, unless the spouse has also been designated as a principal alien (Q–2) in this program and has been issued a Certification Letter by the DOS' Program Administrator.

(viii) *May the principal alien change employers?* Principal aliens wishing to change employers must request such a change through the DOS' Program Administrator to the Service. Following review and consideration of the request by the Service, the Service will inform the participant of the decision. The Service will grant such approval of employers only if the new employer has been approved by DOS in accordance with its regulations and such approval is communicated to the Service through the DOS' Program Administrator. If approved, the participant's Form I–94 will be annotated to show the new employer. If denied, there is no appeal under this section.

(ix) *May the principal alien hold other jobs during his/her U.S. visit?* No; any principal alien classified as an Irish peace process cultural and training program visitor may only engage in employment that has been certified by the DOS' Program Administrator and approved by the DOS or the Service as endorsed on the Form I–94. An alien who engages in unauthorized employment violates the terms of the Q-2 visa and will be considered to have violated section 237(a)(1)(C)(i) of the Act.

(x) *What happens if a principal alien loses his/her job?* A principal alien, who loses his or her job, will have 30 days from his/her last date of employment to locate appropriate employment or training, to have the job offer certified by the DOS' Program Administrator in accordance with the DOS' regulations and to have it approved by the Service. If appropriate employment or training cannot be found within this 30-day-period, the principal alien and any accompany family members will be required to depart the United States.

§ 214.2 [Amended]

6. Section 214.2 is amended in newly redesignated paragraph (q)(1)(iii) under the definition of "Duration of program", and in paragraph (q)(4)(iii), by revising the term "cultural exchange program" to read "international cultural exchange program".

7. Section 214.2 is amended in the newly redesignated paragraph (q)(1)(iii) under the definition "*International cultural exchange visitor or cultural visitor*" by removing the term "*or cultural visitor*".

8. Section 214.2 is amended by revising the term "a cultural visitor" to read "an international cultural exchange visitor" wherever that term appears in the following paragraphs:

a. Paragraph (q)(2)(i);

b. Paragraph (q)(2)(ii);

c. Paragraph (q)(3)(iv);(D);

d. Paragraph (q)(5)(v);

e. Paragraph (q)(10); and

f. Paragraph (q)(11)(ii).

9. Section 214.2 is amended by revising the term "cultural visitor's" to read "international cultural exchange visitor's" wherever that term appears in paragraphs (q)(3)(i), (q)(3)(iii)(B); (q)(3)(iii) (C), and (q)(6).

10. Section 214.2 is amended by revising the term "cultural visitors" to read "international cultural exchange visitors" wherever that term appears in paragraphs (q)(5)(i), (q)(8)(ii).

11. Section 214.2 is amended by revising the term "*cultural visitors*" to read "*international cultural exchange visitors*" to read "*international cultural exchange visitors*" in the heading of paragraph (q)(3)(iv).

12. Section 214.2 is amended by revising the term "cultural visitors" to read "international cultural exchange visitors" wherever that term appears in the following paragraphs:

a. Paragraph (q)(3)(iv) introductory text;

b. Paragraph (q)(4)(ii)(A);

c. Paragraph (q)(5)(iii), (q)(5)(iv), and (q)(5)(v);

d. Paragraph (q)(6); and

e. Paragraph (q)(9)(iii) (A)

13. Section 214.2 is amended by revising the reference "section 101(a)(15)(Q)" to read "section 101(a)(15)(Q)(i)" wherever that reference appears in the following paragraphs:

a. Newly redesignated paragraph (q)(1)(iii) under the definition "*Qualified employer*"

b. Paragraph (q)(2)(ii);

c. Paragraph (q)(5)(v);

d. Paragraph (q)(7)(iii) and (q)(7)(iv);

e. Paragraph (q)(10); and

f. Paragraph (q)(11)(i).

14. Section 214.2 is amended by revised the term "Q status" to read "Q-1 status" whenever that term appears in the following paragraphs:

a. Paragraph (q)(2)(i) and (q)(2)(ii); and

b. Paragraph (q)(3)(i) and (q)(3)(ii).

15. Section 214.2 is amended by revising the term "Q visa" to read "Q-1 visa" in paragraph (q)(5)(ii); and by revising the term "Q nonimmigrant" to read "Q-1 nonimmigrant" wherever that term appears in paragraph (q)(11)(i).

16. Section 214.2 is amended by revising the reference to "section 241(a)(1)(C)(i)" to read "section 237(a)(1)(C)(i)" in paragraph (q)(11)(i).

17. Section 214.2 is amended by revising the term "cultural visitors' " to read "international cultural exchange visitors' " in paragraph (q)(4)(ii)(B).

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

18. The authority citation for part 248 continues to read to follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

§ 248.3 [Amended]

19. In § 248.3, paragraph (a) is amended in the first sentence by

revising the reference to "Q" to read "Q–1".

20. Section 248.3 is amended by adding a new paragraph (d) and revising paragraph (e)(2) to read as follows:

§ 248.3 Application.

* * * * *

(d) *Special provisions for change of nonimmigrant classification from Q–2 classification.* Any alien classified as a Q–2 nonimmigrant, who requests a change to another nonimmigrant classification, must file Form I–539, with appropriate free, to the Nebraska Service Center. Any spouse or minor children of the principal alien who are in the United States and who are also classified as either Q–2 or Q–3 nonimmigrants may be included in the application.

(e) * * *

(2) An alien classified under sections 101(a)(15)A) or 101(a)(150(G) of the Act as a member of the immediate family of a principal alien classified under the same section, or an alien classified under sections 101(a) (15) (E), (F), (H), (I), (J), (L), (M), or (Q)(ii) of the Act as the spouse of child who accompanied or followed-to-join a principal alien who is classified under the same section, may attend school in the United States, as long as the immediate family member, spouse, or child continues to be qualified for and maintains the status under which the family member, spouse, or child is classified.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

21. The authority citation for part 274a is revised to read as follows: Pub. L. 101–410, 104 Stat. 890, as amended by Pub. L. 104–134, 110 Stat. 1321;

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2

22. Section 274a.12 is amended by:

a. Revising paragraph (b)(15); and

b. Adding a new paragraph (c)(23), to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(b) * * *

(15) An international cultural exchange visitor (Q–1), according to § 214.2(q)(1) of this chapter. An alien may only be employed by the petitioner through whom the status was obtained;

* * * * *

(c) * * *

(23) An Irish peace process cultural and training program visitor (Q–2), pursuant to § 214.2(q)(15) of this chapter and 22 CFR 41.57 and 22 CFR part 139. An alien in this status may only accept employment with the employer listed on the Certification Letter issued by the DOS' Program Administrator.

* * * * *

Dated: March 15, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–6818 Filed 3–16–00; 8:45 am]

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Federal Register

Vol. 65, No. 53

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FEDERAL REGISTER PAGES AND DATE, MARCH

10931–11196	1
11197–11454	2
11455–11734	3
11735–11858	6
11859–12060	7
12061–12426	8
12427–12904	9
12905–13234	10
13235–13658	13
13659–13864	14
13865–14206	15
14207–14430	16
14431–14780	17

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7276 11197
7277 11199
7278 11455
7279 11733
7280 12903

Executive Orders:
12170 (See Notice of March 13, 2000) 13863
12957 (Continued by Notice of March 13, 2000) 13863
12959 (See Notice of March 13, 2000) 13863
13059 (See Notice of March 13, 2000) 13863
13146 11201
13147 13233

Administrative Orders:
Presidential Determinations:
No. 2000-15 of February 24, 2000 10931
Notices:
March 13, 2000 13863

5 CFR

213 14431
315 14431
335 14431
792 13659

Proposed Rules:
3 14477
213 14477
315 14477

7 CFR

2 12427
205 13512
210 12429
215 12429
220 12429
225 12429
226 12429
301 11203
457 11457
761 14432
762 14432
993 12061
955 12442
1421 13865
1427 13865
1464 10933
1710 14207
1721 10933
3019 14406

Proposed Rules:
6 14478
20 11483
27 10979
28 ..... 10979, 12140
29 13915
57 14652
97 13917
201 12952
1140 10981
1160 14484
1205 12146
1210 14485
1306 12141
1307 12141
1309 12141
1710 12952
1717 12952
1718 12952

8 CFR

212 14774
214 14774
248 14774
278A 14774

9 CFR

78 12064

Proposed Rules:
71 11485
77 ..... 11485, 11912
78 11485
93 12486
98 12486
113 12151
130 12486
317 14486
318 ..... 14486, 14489
319 ..... 144867, 14489
327 14489
381 14486
590 11486

10 CFR

72 ..... 11458, 12444
170 11204
600 14406

Proposed Rules:
21 11488
50 11488
52 11488
54 11488
100 11488
430 14128
431 10984
960 11755
963 11755
Ch. XVIII 13700

12 CFR

5 12905
204 12916
225 ..... 14433, 14440
724 10933
745 10933
925 13866
950 13866
Ch. IX 13663
1510 12064

Proposed Rules:
3.....12320
208.....12320
225.....12320
325.....12320
567.....12320
614.....14491
620.....14494
709.....11250
716.....10988
741.....10988
1750.....13251

13 CFR

Proposed Rules:
124.....12955

14 CFR

25.....13666
39.....10934, 10937, 10938, 11204, 11459, 11859, 11861, 12071, 12072, 12073, 12075, 12077, 12080, 12081, 12082, 12084, 12085, 12460, 12462, 12463, 13668, 13871, 13875, 13877, 14207, 14209
71.....11369, 11461, 11866, 12630, 12917, 12918, 14344
95.....14442
97.....13669, 13671, 13673
1260.....14406

Proposed Rules:
25.....13703
39.....11006, 11505, 11940, 11942, 12489, 12957, 13251, 13919, 13921, 13923, 14216, 14218
71.....12153, 12957, 13704, 13705, 13707, 14497
255.....11009

15 CFR

14.....14406
734.....12919
738.....12919
740.....12919
742.....12919
743.....12919
744.....12919, 14444
748.....12919
774.....12919, 13879

16 CFR

1615.....12924
1616.....12924
1630.....12929
1631.....12929
1632.....12935

Proposed Rules:
307.....11944
312.....11947
313.....11174

17 CFR

15.....14452
16.....14452
17.....14452
1.....12466
4.....10939, 12938
200.....12469
240.....13235
242.....13235

Proposed Rules:
4.....11253, 12318
228.....11507
229.....11507
230.....11507
232.....11507
239.....11507
240.....11507
248.....12354
249.....11507
250.....11507
259.....11507
260.....11507
269.....11507
270.....11507
274.....11507

18 CFR

35.....12088
157.....11461, 12115

19 CFR

12.....12470
24.....13880
111.....13880
178.....13880

20 CFR

220.....14458
322.....14459
404.....11866
416.....11866

21 CFR

20.....11881
101.....11205
176.....13675
524.....13904
558.....11888
640.....13678
868.....11464
870.....11465
1301.....13235
1308.....13235

Proposed Rules:
101.....14219
314.....12154

22 CFR

22.....14211
23.....14211
41.....14768
51.....14211
139.....14764
145.....14406
226.....14406

Proposed Rules:
22.....13253

23 CFR

1340.....13679

24 CFR

905.....14422

Proposed Rules:
81.....12632
990.....11525

25 CFR

290.....14461

26 CFR

1.....11205, 11467, 12471
301.....11211, 11215
602.....11205, 11211, 11215

Proposed Rules:
1.....11012, 11269
301.....11271, 11272

27 CFR

4.....11889
5.....11889
7.....11889
16.....11889

Proposed Rules:
4.....12490

28 CFR

70.....14406

29 CFR

95.....14406
4022.....14752, 14753
4044.....13905, 14752
4050.....14752

Proposed Rules:
1614.....11019
1910.....11948, 13254

30 CFR

202.....11467
206.....11467, 14022
250.....14469

Proposed Rules:
914.....11950, 12492

31 CFR

103.....13683

32 CFR

22.....14406
32.....14406
668.....13906

33 CFR

95.....14223
110.....11892
117.....11893, 12943
127.....10943
140.....14226
141.....14226
142.....14226
143.....14226
144.....14226
145.....14226
146.....14226
147.....14226
154.....10943
155.....10943, 14470
159.....10943
164.....10943
167.....12944
177.....14223
183.....10943

Proposed Rules:
100.....11274, 13926, 14498
110.....13926, 14498
165.....13926, 14498, 14501, 14502
175.....11410
177.....11410
179.....11410
181.....11410
183.....11410

34 CFR

74.....14406
1100.....11894

36 CFR

Ch. XV.....14760
701.....11735, 11736
1210.....14406

Proposed Rules:
212.....11680
261.....11680
295.....11680
1190.....12493
1191.....12493

37 CFR

Proposed Rules:
201.....14227, 14505

38 CFR

3.....12116
19.....14471
20.....14471
21.....12117, 13893

Proposed Rules:
3.....13254

39 CFR

111.....12946

Proposed Rules:
20.....11023
111.....13258
913.....14229
952.....13707

40 CFR

30.....14406
51.....11222
52.....10944, 11468, 12118, 12472, 12474, 12476, 12481, 12948, 13239, 13694, 14212
60.....13242
63.....11231
68.....13243
86.....11898
136.....14344
141.....11372
148.....14472
180.....10946, 11234, 11243, 11736, 12122, 12129
261.....14472
262.....12378
268.....14472
271.....14472
300.....13697, 14475
302.....14472
445.....14344

Proposed Rules:
51.....11024
52.....11027, 11275, 11524, 12494, 12495, 12499, 12958, 13260, 13709, 14506, 14510
63.....11278
81.....14510
141.....11372
438.....11755
503.....11278

42 CFR

405.....13911
410.....13911

Proposed Rules:
410.....13082
493.....14510

43 CFR

12.....14406
3500.....11475

45 CFR

74.....14406
612.....11740
613.....11740

46 CFR

28.....10943

30.....10943
32.....10943
34.....10943
35.....10943
38.....10943
39.....10943
54.....10943
56.....10943
58.....10943
61.....10943
63.....10943
76.....10943
77.....10943
78.....10943
91.....11904
92.....10943
95.....10943
96.....10943
97.....10943
105.....10943
108.....10943
109.....10943
110.....10943
111.....10943
114.....10943
115.....11904
119.....10943
125.....10943
132.....11904
133.....11904
134.....11904
151.....10943
153.....10943
154.....10943
160.....10943
161.....10943
162.....10943
163.....10943
164.....10943
170.....10943
174.....10943
175.....10943
182.....10943
189.....11904
190.....10943
193.....10943
195.....10943
199.....10943, 11904

Proposed Rules:
2.....11410
10.....11410
15.....11410
24.....11410
25.....11410
26.....11410
28.....11410
30.....11410
70.....11410
90.....11410
114.....11410
169.....11410
175.....11410
188.....11410
199.....11410

47 CFR

1.....14476
24.....14213
27.....12483
54.....12135
73.....11476, 11477, 11750, 13250
76.....12135

Proposed Rules:
1.....13933
2.....14230
26.....14230
27.....14230
54.....13933
61.....13933
69.....13933
73.....11537, 11538, 11539, 11540, 11541, 11955, 12155, 13260, 13261

48 CFR

Ch. 2.....14380
Ch. 5.....11246
202.....14397
204.....14397
207.....14397
208.....14397, 14400
212.....14400
222.....14397, 14402
244.....14400
247.....14400
252.....14397, 14400, 14402
1806.....12484
1808.....12484
1811.....12484
1813.....12484
1815.....12484
1825.....12484
1835.....12484
1837.....12484
1842.....12484
1848.....12484
1851.....12484
2409.....12950

Proposed Rules:
Ch. 9.....13416

49 CFR

19.....14406
193.....10950
385.....11904
571.....11751
572.....10961

Proposed Rules:
Ch I.....11541
40.....13261
171.....11028
172.....11028
173.....11028
174.....11028
175.....11028
176.....11028
177.....11028
178.....11028
179.....11028
180.....11028

50 CFR

648.....11478, 11909
660.....11480
622.....12136
679.....10978, 11247, 11481, 11909, 12137, 12138, 13698

Proposed Rules:
16.....11756
17.....12155, 12181, 13262, 13935, 14513
216.....11542
223.....12959
224.....12959, 13935
300.....13284
600.....11956
622.....11028, 14518
648.....11029, 11956, 14519
679.....11756, 11973, 12500

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 17, 2000

AGRICULTURE DEPARTMENT
Farm Service Agency
Program regulations:
Real estate and chattel appraisals; regulatory streamlining; correction; published 3-17-00

COMMERCE DEPARTMENT
Export Administration Bureau
Export administration regulations:
India and Pakistan; entity list; entities removed, license policy revised, and list reformatted; published 3-17-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Critical habitat designations—
Washington, Oregon, Idaho, and California; salmon and steelhead; evolutionarily significant units; published 2-16-00
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Salmon; published 3-3-00

DEFENSE DEPARTMENT
Collection from third party payers of reasonable costs of healthcare services; published 2-16-00

ENVIRONMENTAL PROTECTION AGENCY
Hazardous waste:
Identification and listing—
Organobromine production wastes; published 3-17-00
Solid wastes:
Storage and collection of residential, commercial, and institutional solid waste; published 12-17-99
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; published 3-17-00

FEDERAL COMMUNICATIONS COMMISSION
Organization, functions, and authority delegations:
Headquarters; address change; published 3-17-00
Radio stations; table of assignments:
New York; published 2-16-00
Oregon; published 2-16-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Keck's checker-mallow; published 2-16-00

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Irish Peace Process Cultural and Training Program; establishment; published 3-17-00

JUSTICE DEPARTMENT
Police Corps eligibility and selection criteria:
Educational expenses; timing of reimbursements; published 2-16-00

PERSONNEL MANAGEMENT OFFICE
Excepted service, career conditional employment system, and promotion and internal placement:
Veterans Employment Opportunities Act; staffing provisions; published 3-17-00

RAILROAD RETIREMENT BOARD
Railroad Retirement Act:
Disability determination; published 3-17-00

STATE DEPARTMENT
Irish Peace Process Cultural and Training Program; establishment; published 3-17-00
Visas; nonimmigrant documentation:
Irish Peace Process Cultural and Training Program; published 3-17-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 2-10-00
Cessna; published 1-27-00

TRANSPORTATION DEPARTMENT
Federal Motor Carrier Safety Administration
Motor carrier proceedings; practice rules; commercial regulations violations; published 2-16-00

VETERANS AFFAIRS DEPARTMENT
Board of Veterans Appeals:
Appeals regulations and rules of practice—
Case docketing; published 3-17-00¶

RULES GOING INTO EFFECT MARCH 19, 2000

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Motor carriers:
Motor passenger intra-corporate family transactions; class exemption; published 2-18-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Hazelnuts grown in—
Oregon and Washington; comments due by 3-20-00; published 1-19-00
Meats, prepared meats, and meat products; grading, certification, and standards:
Federal meat grading and certification services; fee changes; comments due by 3-20-00; published 1-20-00
Olives grown in—
California; comments due by 3-20-00; published 1-19-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Ports of entry—
Dayton, OH; port designated for exportation of horses; comments due by 3-20-00; published 2-17-00

AGRICULTURE DEPARTMENT
Commodity Credit Corporation
Loan and purchase programs:
Peanuts; comments due by 3-20-00; published 2-18-00

AGRICULTURE DEPARTMENT
Farm Service Agency
Farm marketing quotas, acreage allotments, and production adjustments:
Peanuts; comments due by 3-20-00; published 2-18-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
West Coast States and Western Pacific fisheries—
Salmon; comments due by 3-20-00; published 3-3-00

CONSUMER PRODUCT SAFETY COMMISSION
Poison prevention packaging:
Child-resistant packaging requirements—
Household products containing low-viscosity hydrocarbons; comments due by 3-20-00; published 1-3-00

DEFENSE DEPARTMENT
Defense Logistics Agency
Privacy Act; implementation; comments due by 3-20-00; published 1-20-00

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Time-and-materials or labor-hours; comments due by 3-24-00; published 1-24-00
Privacy Act; implementation:
National Reconnaissance Office; comments due by 3-20-00; published 1-19-00

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 3-20-00; published 2-17-00
Illinois; comments due by 3-20-00; published 2-17-00
Indiana; comments due by 3-24-00; published 2-23-00
Missouri; comments due by 3-20-00; published 2-17-00
North Carolina; comments due by 3-20-00; published 2-17-00
Virginia; comments due by 3-20-00; published 2-17-00
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Ohio and Kentucky; comments due by 3-24-00; published 3-17-00
Pesticide programs:
Pesticide container and containment standards; comments due by 3-20-00; published 2-24-00
Pesticides and ground water strategy; State management plan regulation; comments due by 3-24-00; published 2-23-00
Sewage sludge; use or disposal standards:
Dioxin and dioxin-like compounds; numeric concentration limits; comments due by 3-23-00; published 3-2-00
Solid wastes:
Municipal solid waste landfill permit programs; adequacy determinations—
Tennessee; comments due by 3-24-00; published 2-23-00
Tennessee; comments due by 3-24-00; published 2-23-00
Tennessee; comments due by 3-24-00; published 2-23-00

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Georgia and South Carolina; comments due by 3-23-00; published 2-16-00
Pennsylvania and South Dakota; comments due by 3-20-00; published 3-8-00
Vermont; comments due by 3-23-00; published 2-16-00
Washington and Kentucky; comments due by 3-20-00; published 2-16-00

FEDERAL RESERVE SYSTEM
Labor relations; unfair labor practice procedures; comments due by 3-20-00; published 1-18-00

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Time-and-materials or labor-hours; comments due by 3-24-00; published 1-24-00
Federal property management:
Aviation, transportation, and motor vehicles—
Transportation payment and audit; comments due by 3-23-00; published 2-22-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Human drugs:
Drug products discontinued from sale for reasons of safety or effectiveness; list; comments due by 3-20-00; published 1-4-00
Over-the-counter drugs classification as generally recognized as safe and effective and not misbranded; additional criteria and procedures; comments due by 3-22-00; published 12-20-99
Medical devices:
Premarket notification; substantially equivalent premarket notification; redacted version requirement; comments due by 3-22-00; published 12-21-99

HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Inpatient Disproportionate Share (DSH) Hospital adjustment calculation—
States with section 1115 expansion waivers; change in treatment of certain Medicaid patient days; comments due by 3-20-00; published 1-20-00
Payment amount if customery charges are less than reasonable costs; comments due by 3-23-00; published 2-22-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Grants and cooperative agreements; availability, etc.:
Substance Abuse Prevention and Treatment (SAPT) block grant program—
Application deadline; comments due by 3-20-00; published 2-4-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
California tiger salamander; comments due by 3-20-00; published 1-19-00
Fish and wildlife restoration; Federal aid to States:
National Boating Infrastructure Grant Program; comments due by 3-20-00; published 1-20-00

INTERIOR DEPARTMENT
Minerals Management Service
Royalty management:
Oil values for royalty due on Indian leases; establishment; comments due by 3-20-00; published 2-28-00

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Kentucky; comments due by 3-20-00; published 2-18-00

JUSTICE DEPARTMENT
Drug Enforcement Administration
Schedules of controlled substances:
Exempt anabolic steroid products; comments due by 3-20-00; published 1-20-00
Correction; comments due by 3-20-00; published 2-2-00

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Copyright office and procedures:
Litigation; public information; comments due by 3-21-00; published 1-21-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Administrative authority and policy:
Inspection of persons and personal effects on NASA property; comments due by 3-20-00; published 1-19-00
Federal Acquisition Regulation (FAR):
Time-and-materials or labor-hours; comments due by 3-24-00; published 1-24-00

NUCLEAR REGULATORY COMMISSION
Performance-based activities; high-level guidelines; comments due by 3-24-00; published 1-24-00
Radioactive material packaging and transportation:
Nuclear waste shipment; advance notification to Native American Tribes; comments due by 3-22-00; published 12-21-99
Rulemaking proceedings:
Christie, Bob; comments due by 3-22-00; published 1-12-00

PERSONNEL MANAGEMENT OFFICE
Retirement:
Nuclear materials couriers under CSRS and FERS; eligibility; comments due by 3-20-00; published 1-18-00

TRANSPORTATION DEPARTMENT
Coast Guard
Regattas and marine parades, anchorage regulations, and ports and waterways safety:
OPSAIL 2000/International Naval Review 2000; regulated areas; comments due by 3-23-00; published 2-7-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; comments due by 3-20-00; published 2-2-00
Bombardier; comments due by 3-21-00; published 1-21-00
Eurocopter France; comments due by 3-20-00; published 1-20-00
Fokker; comments due by 3-20-00; published 2-17-00
Kaman Aerospace Corp.; comments due by 3-24-00; published 1-24-00
Class E airspace; comments due by 3-20-00; published 2-7-00

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Engineering and traffic operations:
Uniform Traffic Control Devices Manual—
Tourist oriented directional signs, recreation and cultural interest signs, and traffic controls for bicycle facilities; comments due by 3-24-00; published 6-24-99

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Rulemaking and program procedures, etc.; Regulatory Flexibility Act and plain language reviews; comments due

by 3-22-00; published 12-20-99

TREASURY DEPARTMENT

Internal Revenue Service

Income taxes:

Construction aid contribution; definition; comments due by 3-22-00; published 12-20-99

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H.R. 3557/P.L. 106–175

To authorize the President to award a gold medal on behalf of the Congress to John Cardinal O'Connor, Archbishop of New York, in recognition of his accomplishments as a priest, a chaplain, and a humanitarian. (Mar. 5, 2000; 114 Stat. 21)

H.R. 149/P.L. 106–176

Omnibus Parks Technical Corrections Act of 2000 (Mar. 10, 2000; 114 Stat. 23)

H.R. 764/P.L. 106–177

To reduce the incidence of child abuse and neglect, and for other purposes. (Mar. 10, 2000; 114 Stat. 35)

H.R. 1883/P.L. 106–178

Iran Nonproliferation Act of 2000 (Mar. 14, 2000; 114 Stat. 38)

S. 613/P.L. 106–179

Indian Tribal Economic Development and Contract Encouragement Act of 2000 (Mar. 14, 2000; 114 Stat. 46)

Last List March 16, 2000

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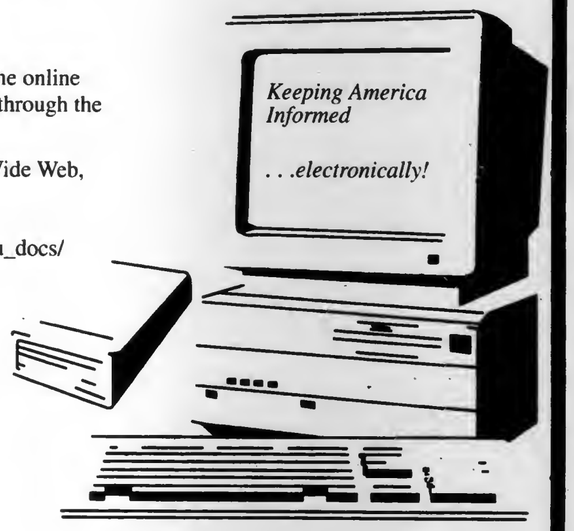
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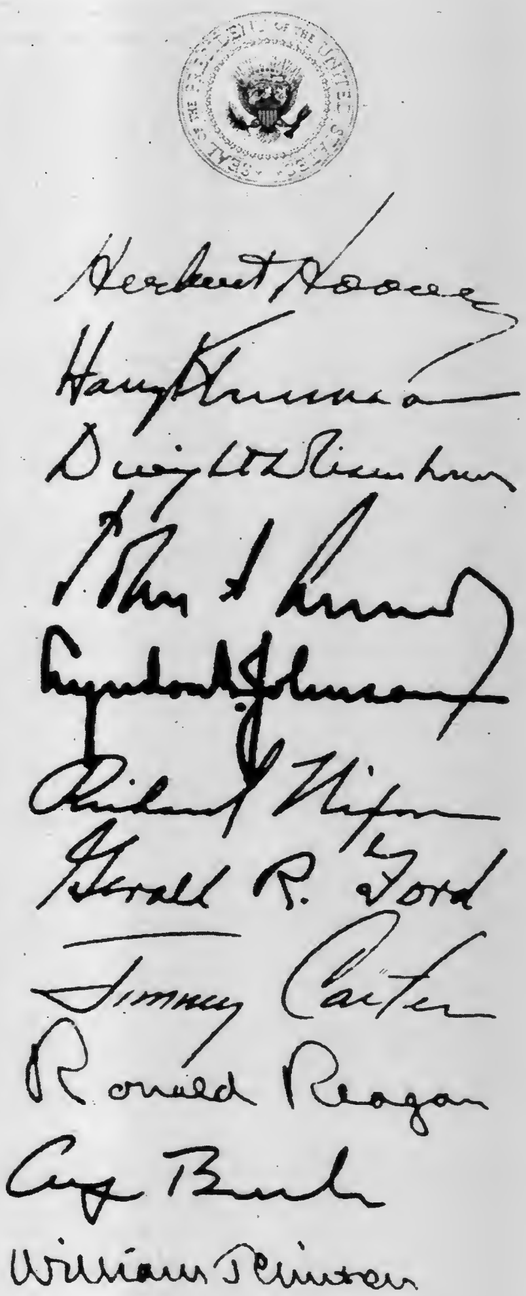
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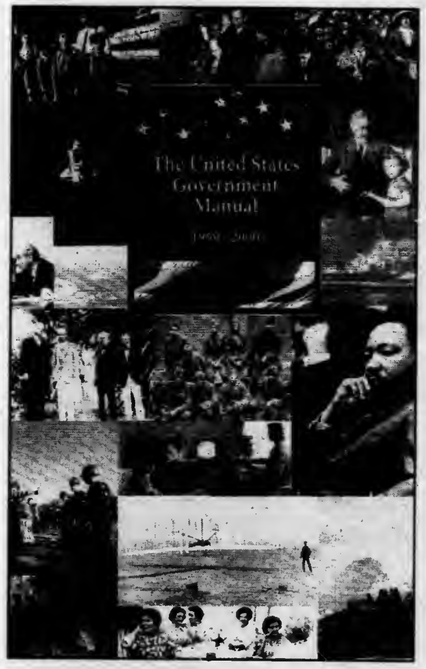
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Contents

Federal Register
Vol. 65, No. 54
Monday, March 20, 2000

Agency for International Development
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14938

Agriculture Department
See Animal and Plant Health Inspection Service
See Food Safety and Inspection Service
See Natural Resources Conservation Service
See Rural Utilities Service

Animal and Plant Health Inspection Service
PROPOSED RULES
Noxious weed regulations:
Update, 14927–14931

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
AlliedSignal Inc. et al., 15013–15016

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
Human immunodeficiency virus (HIV)—
Information Interchange and Technical and Financial Assistance for Prevention Program, 14979–14981
Meetings:
Aluminum in vaccines; workshop, 14982
Breast and Cervical Cancer Early Detection and Control Advisory Committee, 14982
Clinical Laboratory Improvement Advisory Committee, 14982–14983

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Alabama, 14940
Kansas and Missouri, 14940
Ohio, 14940

Coast Guard
RULES
Ports and waterways safety:
Puget Sound, WA; vessel traffic service; radio frequencies; effective date, 14863–14864
San Juan Harbor, PR; safety zone, 14864–14865

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 14940–14941

Comptroller of the Currency
NOTICES
National banks:
Preemption applications, etc.—
Auctioneers; application of Pennsylvania laws, 15037–15041

Defense Department
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 14950–14951

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14951–14952

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Los Alamos National Laboratory, NM; conveyance and transfer of land tracts administered by DOE, 14952–14961
Meetings:
Environmental Management Site-Specific Advisory Board—
Hanford Site, WA, 14961–14962

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
New Mexico, 14873–14878
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
New Mexico, 14931–14932
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 14965–14966
Air quality; prevention of significant deterioration (PSD):
Permit determinations, etc.—
ConAgra Soybean Processing Co., IN, 14966
Meetings:
Children's cancer risk; information needs; workshop, 14966–14967
Pesticide programs:
Organophosphates; risk assessments and public participation in risk management—
Phosmet, 14967–14969
Toxic and hazardous substances control:
New chemicals; receipt and status information, 14969–14973

Executive Office of the President
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
Export privileges, actions affecting:
Ahmad, Mohammad Reza, 14941–14942
Ahmad, Mohammad Reza, et al., 14942–14943
Ahmad, Mohammad Reza, et al., 14943–14944
Ahmad, Mohammad Reza, et al., 14944–14945
Ahmad, Mohammad Reza, et al., 14945–14946
Ahmad, Mohammad Reza, et al., 14946–14947
Ahmad, Mohammad Reza, et al., 14947–14948
Ahmad, Mohammad Reza, et al., 14948–14949

Federal Aviation Administration
RULES
Airworthiness directives:
Boeing, 14849–14851
Bombardier, 14851–14853
Fokker, 14853–14855
Pratt & Whitney, 14855–14857
Rolls-Royce plc, 14857–14859
Class E airspace, 14859–14863
PROPOSED RULES
Airworthiness directives:
Boeing, 14895–14897
Bombardier, 14897–14899
Fokker, 14899–14901
Pratt & Whitney, 14901–14903
Rolls-Royce plc, 14903–14905
Class E airspace, 14905–14907
NOTICES
Meetings:
Aeronautical Radio, Inc., 15016
Aviation Rulemaking Advisory Committee, 15016–15017
Passenger facility charges; applications, etc.:
Lubbock International Airport, TX, 15017

Federal Communications Commission
RULES
Radio stations; table of assignments:
Arizona, 14863
Texas, 14863
PROPOSED RULES
Radio stations; table of assignments:
Arizona, 14907
Texas, 14907
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14973–14974
Submission for OMB review; comment request, 14974–14975
Meetings:
Advanced Television Systems Committee, 14975

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Entergy Services, Inc., et al., 14952
Hydroelectric applications, 14952
Meetings; Sunshine Act, 14952–14954
Public Utility Regulatory Policies Act; implementation:
Small power production and cogeneration facilities; qualifying status; self-certification, etc., 14954–14955

Federal Reserve System
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14975–14976
Banks and bank holding companies:
Change in bank control, 14976
Formations, acquisitions, and mergers, 14976–14977
Permissible nonbanking activities, 14977
Meetings; Sunshine Act, 14977

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 14991–14992

Food and Drug Administration
RULES
Food additives:
Polymers—
Polyethylene terephthalate, 14859
PROPOSED RULES
Medical devices:
Ophthalmic devices—
Intraocular lenses; reclassification, 14907–14908
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14977–14978
Submission for OMB review; comment request, 14978–14979
Meetings:
Medical Devices Advisory Committee, 14979

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Pathogen reduction; hazard analysis and critical control point (HACCP) systems, 14908–14909
NOTICES
Meetings:
Codex Alimentarius Commission—
Food Labeling Committee, 14938–14939

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 14992

General Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14979

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14979

Health Resources and Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14980
Submission for OMB review; comment request, 14980–14981

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14983–14984
Submission for OMB review; comment request, 14984–14985
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 14985–14986
Mortgage and loan insurance programs:
Debenture interest rates, 14986

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14992–14993

Inspector General Office, Health and Human Services Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14981–14982

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Brass sheet and strip from—
Various countries, 14939–14940
Export trade certificates of review, 14940

Justice Department
See Antitrust Division
See Immigration and Naturalization Service
NOTICES
Pollution control; consent judgments:
Ashland Inc., et al., 14993
Cargill, Inc., et al., 14993–14994
Cleveland, OH, et al., 14994
Dow Chemical Co., et al., 14994–14995
Hercules Inc., et al., 14995
Lake Charles, LA, et al., 14995–14996
Lyondell Petrochemical Co., et al., 14996
Mobil Oil Corp., et al., 14996–14997
Monsanto Co., et al., 14997
Rohm and Haas Co., et al., 14997–14998
Shell Oil Co., et al., 14998
Tenneco Packaging Inc., et al., 14998–14999
Tosco Corp., et al., 14999
Union Pacific Railroad Co., et al., 14999–15000
Wyandotte, MI, et al., 15000

Land Management Bureau
NOTICES
Meetings:
Resource advisory councils—
Eastern States, 14992
Public land orders:
Arizona, 14992

Minerals Management Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14987–14988
Outer Continental Shelf; development operations coordination:
Amerada Hess Corp., 14988
Anadarko Petroleum Corp., 14988
Chevron U.S.A. Inc., 14988–14989
Kerr-McGee Corp., 14989
Pennzoil Exploration & Production Co., 14989
Phillips Petroleum Co., 14989–14990
Shell Offshore Inc., 14990
Texaco Exploration & Production Inc., 14990
Vastar Resources, Inc., 14990–14991

National Aeronautics and Space Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15000–15001
Meetings:
Space Science Advisory Committee, 15001

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 14982
National Center for Research Resources, 14982
National Institute of Allergy and Infectious Diseases, 14982
National Institute of Child Health and Human Development, 14982
National Institute of Dental Research, 14982
National Institute of Diabetes and Digestive and Kidney Diseases, 14982
National Institute of Environmental Health Sciences, 14982
National Institute of Mental Health, 14982
National Institute of Neurological Disorders and Stroke, 14982
National Institute on Aging, 14982
National Institute on Deafness and Other Communication Disorders, 14982
National Library of Medicine, 14982
Recombinant DNA Advisory Committee, 14982

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic coastal fisheries cooperative management—
Atlantic striped bass, 14878–14879
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish, 14879–14880
PROPOSED RULES
Fishery conservation and management:
Atlantic coastal fisheries cooperative management—
Atlantic striped bass, 14909–14910
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 14940
Permits:
Marine mammals, 14940

National Park Service
NOTICES
Meetings:
Cape Cod National Seashore Advisory Commission, 14991
Concession contracts and permits:
Expiring contracts; extension, 14991

Natural Resources Conservation Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14939

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15001–15002
Meetings; Sunshine Act, 15002

Patent and Trademark Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14941

Reclamation Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14992

Rural Utilities Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14939

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15002–15003
Meetings; Sunshine Act, 15003–15004
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 15004–15005
Chicago Stock Exchange, Inc., 15005–15006
National Association of Securities Dealers, Inc., 15006–15007
New York Stock Exchange, Inc., 15007–15008
Pacific Exchange, Inc., 15008–15009
Philadelphia Stock Exchange, Inc., 15009–15010
Self-regulatory organizations; unlisted trading privileges:
Chicago Stock Exchange, Inc., 15010
Pacific Exchange, Inc., 15010–15011
Philadelphia Stock Exchange, Inc., 15011
Applications, etc.:
Public utility holding company filings, 15011–15012

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15012
Submission for OMB review; comment request, 15012–15013

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15013

State Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15013

Trade Representative, Office of United States
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15017–15018

Transportation Department
See Coast Guard
See Federal Aviation Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15018–15019

Treasury Department
See Comptroller of the Currency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15019–15020

Export Administration Bureau
RULES
Export administration regulations:
Administrative enforcement proceedings, 14862–14863
Editorial clarifications and revisions, 14858–14862

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 14853–14854
Ayres Corp., 14847–14848
Boeing, 14834–14850
Bombardier, 14822–14825
British Aerospace, 14850–14853, 14845–14847
Dornier, 14828–14831
Fairchild, 14825–14828
Honeywell International Inc., 14831–14834
Class E airspace, 14855–14858
NOTICES
Passenger facility charges; applications, etc.:
Greater Peoria Airport Authority, IL, et al., 15033–15034

Federal Deposit Insurance Corporation
RULES
Asset purchase restrictions, 14816–14819

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 14973

Federal Emergency Management Agency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14973–14974
Disaster and emergency areas:
Ohio, 14974–14975
Virginia, 14975
West Virginia, 14975–14976
Meetings:
Dam Safety Interagency Committee, 14976
National Dam Safety Review Board, 14976–14977

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
United Illuminating Co. et al.; correction, 15044
Environmental statements; notice of intent:
National Fuel Gas Supply Corp., 14963–14964
Meetings:
Regional transmission organizations; regional collaborative workshops, 14964–14965
Applications, hearings, determinations, etc.:
Florida Power Corp., 14962
Gulfstream Natural Gas System, L.L.C., 14962
Louisiana Intrastate Gas Co., L.L.C., 14962
Southern Natural Gas Co.; correction, 15044
Transok, LLC, 14962–14963

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 14977

Federal Reserve System
RULES
Membership of State banking institutions (Regulation H):
Financial subsidiaries, 14810–14816, 15050–15052
NOTICES
Banks and bank holding companies:
Change in bank control, 14977
Formations, acquisitions, and mergers, 14977–14978

Fish and Wildlife Service
RULES
Endangered and threatened species:
La Graciosa thistle, et al., 14888–14898
Purple amole, 14878–14888
Santa Cruz tarplant, 14898–14909
PROPOSED RULES
Endangered and threatened species:
Finding on petitions, etc.—
Great Basin redband trout, 14932–14936
Mountain yellow-legged frog; southern California distinct vertebrate population segment, 14936–14937
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Andrews County et al., TX; aplomado falcon, 14999
Reports and guidance documents; availability, etc.:
Cactus ferruginous pygmy-owl; recommended private landowner guidance and survey protocol, 14999–15000

Food and Drug Administration
NOTICES
Food additive petitions:
FMC Corp., 14983
Human drugs:
New drug applications—
Lilly Research Laboratories et al.; approval withdrawn, 14983–14985

Food Safety and Inspection Service
NOTICES
Meetings:
Slaughter plants; hazard analysis and critical control point (HACCP)-based inspection models project, 14939

General Services Administration
NOTICES
Acquisition regulations:
Request for issuance of replacement check due to error in name and/or designation of payee (SF 1147); revision, 14978
Agency information collection activities:
Submission for OMB review; comment request, 14978–14979
Environmental statements; availability, etc.:
Alcohol, Tobacco and Firearms National Headquarters, Washington, DC, 14979
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 14950–14951

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Inspector General Office, Health and Human Services Department
See National Institutes of Health
See Public Health Service

Health Care Financing Administration
See Inspector General Office, Health and Human Services Department

NOTICES
Agency information collection activities:
Proposed collection; comment request, 14985
Submission for OMB review; comment request, 14986

Housing and Urban Development Department
RULES
Lead-based paint hazards in federally owned residential property and housing receiving Federal assistance; notification, evaluation, and reduction
Correction, 15044
NOTICES
Low income housing:
Housing assistance payments (Section 8)—
Operating cost adjustment factors, 15046–15047

Immigration and Naturalization Service
NOTICES
Temporary protected status program designations:
Guinea-Bissau, 15016–15018

Inspector General Office, Health and Human Services Department
NOTICES
Program exclusions; list, 14986–14989

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Central Utah Project—
Diamond Fork System, Bonneville Unit, 14998–14999

Internal Revenue Service
NOTICES
Health Insurance Portability and Accountability Act of 1996; implementation:
Expatriation; individuals losing United States citizenship; quarterly list, 15041–15042

International Development Cooperation Agency
See Overseas Private Investment Corporation

International Trade Administration
NOTICES
Antidumping:
Circular seamless stainless steel hollow products from—
Japan, 14941
Countervailing duties:
Iron-metal castings from—
India, 14941

International Trade Commission
NOTICES
Import investigations:
Cased pencils from—
China, 15007–15008
Cold-rolled steel products from—
Various countries, 15008
Crabmeat from swimming crabs, 15008–15009
Forged stainless steel flanges from—
India and Taiwan, 15009–15010
Paper clips from—
China, 15010–15011

Justice Department
See Antitrust Division
See Immigration and Naturalization Service
See National Institute of Corrections
NOTICES
Pollution control; consent judgments:
AT&T Corp. et al., 15011
Doe, Jane, as Executrix of Edmund Barbera Estate, et al., 15011–15012
Fisher Sand & Gravel Co., 15012
Mountain Metal Co. et al., 15012–15013
Tampa Electric Co., 15013

Labor Department
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15000–15006
Realty actions; sales, leases, etc.:
Colorado, 15006

Mississippi River Commission
NOTICES
Meetings; Sunshine Act, 15019

National Aeronautics and Space Administration
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 14950–14951

National Highway Traffic Safety Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15034–15035

National Institute of Corrections
NOTICES
Grants and cooperative agreements; availability, etc.:
Managing long term aging offenders and offenders with chronic and terminal illnesses; correction, 15018

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 14989–14992
National Center for Research Resources, 14992–14993
National Institute of Allergy and Infectious Diseases, 14994
National Institute of Child Health and Human Development, 14993
National Institute of Diabetes and Digestive and Kidney Diseases, 14994–14995
National Institute of Mental Health, 14993–14994
National Institute on Drug Abuse, 14994–14995
Scientific Review Center, 14995–14997
Women's Health Research Advisory Committee, 14997

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Individual Fishing Quota Program; cost recovery program, 14919–14926
Pollock, 14926
International fisheries regulations:
Pacific halibut—
Catch sharing plans, 14909–14919

NOTICES
Grants and cooperative agreements; availability, etc.:
South Florida Ecosystem Restoration Prediction and Modeling Program and South Florida Living Marine Resources Program, 14942–14946
Meetings:
Gulf of Mexico Fishery Management Council, 14946–14947
Permits:
Marine mammals, 14947–14948

Natural Resources Conservation Service
RULES
Organization, functions, and authority delegations:
Headquarters reorganization, 14781–14784
NOTICES
Environmental statements; availability, etc.:
Caernarvon Diversion Outfall Management Project, LA, 14939–14940

Nuclear Regulatory Commission
RULES
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list additions, 14790–14810
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15020
Reports and guidance documents; availability, etc.:
Nuclear power reactors—
Operator licensing examination standards, 15020–15021

Nuclear Waste Technical Review Board
NOTICES
Meetings:
Yucca Mountain, NV, repository, 15021

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15018–15019

Office of United States Trade Representative
See Trade Representative, Office of United States

Overseas Private Investment Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15007

Patent and Trademark Office
RULES
Patent cases:
Application examiniation and provisional application practice; changes, 14865–14873
NOTICES
Agency information collection activities:
Proposed collection; comment request, 14948–14950

Postal Service
NOTICES
Meetings; Sunshine Act, 15021–15022

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
National Toxicology Program:
Chemicals nominated for toxicology studies; testing recommendations; comment request, 14997–14998

Reclamation Bureau
NOTICES
Meetings:
CALFED Bay-Delta Program Policy Group, 15006–15007

Rural Utilities Service
RULES
Electric loans:
Load forecasts; borrower requirements, 14785–14790

Securities and Exchange Commission
PROPOSED RULES
Securities:
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR)—
Modernization; filing requirements; changes; correction, 15044
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15022–15023
Investment Company Act of 1940:
Exemption applications—
Colchester Street Trust et al., 15030–15032
Options Price Reporting Authority:
Temporary capacity allocation plan; correction, 15044
Applications, hearings, determinations, etc.:
Public utility holding company filings, 15023–15030

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15032–15033

Thrift Supervision Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15042–15043

Trade Representative, Office of United States
NOTICES
World Trade Organizations:
Dispute settlement panel establishment requests—
Dispute settlement roster of panel candidates; nominations, 15033

Transportation Department
See Coast Guard
See Federal Aviation Administration
See National Highway Traffic Safety Administration

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service
See Thrift Supervision Office
RULES
Financial subsidiaries:
Comparable ratings requirement for national banks among second 50 largest insured banks, 15050–15052
Financial activities; determination procedures, 14819–14822

NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15035–15037

Separate Parts In This Issue

Part II
Department of Housing and Urban Development, 15045–15047

Part III
Federal Reserve System, Department of the Treasury, 15049–15052

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
600.....14781
601.....14781
1710.....14785
Proposed Rules:
360.....14927

10 CFR
72.....14790

12 CFR
208 (2 documents).....14810, 15050
340.....14816
1501 (2 documents).....14819, 15050

14 CFR
39 (11 documents).....14822, 14826, 14827, 14831, 14832, 14834, 14838, 14845, 14847, 14847, 14848, 14850, 14853
71 (4 documents).....14855, 14856 14857

15 CFR
736.....14858
738.....14858
740.....14858
742.....14858
756 (2 documents).....14858, 14862
762.....14862
766.....14862
770.....14862
774.....14862

17 CFR
Proposed Rules:
228.....15043

24 CFR
200.....15043

33 CFR
26.....14863
161.....14863
165.....14864

37 CFR
1.....14865

40 CFR
52.....14873
Proposed Rules:
52.....14831

50 CFR
17 (3 documents).....14878, 14888, 14898
300.....14909
679 (2 documents).....14919, 14926
Proposed Rules:
17 (2 documents).....14932, 14936

Rules and Regulations

Federal Register
Vol. 65, No. 54
Monday, March 20, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

7 CFR Parts 600 and 601

Organization and Functions

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Final rule.

SUMMARY: The Natural Resources Conservation Service revises the information on the organization and functions to reflect changes as a result of the USDA reorganization and the agency's headquarters reorganization.

EFFECTIVE DATE: January 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Cressel, 202–690–0547.

SUPPLEMENTARY INFORMATION:

Rulemaking Analyses: EO 12291: Non-major.

Regulatory Flexibility Act: No significant impact.

Paperwork Reduction Act: No significant impact.

National Environmental Policy ACt: Exempt.

List of Subjects in 7 CFR Parts 600 and 601

Functions and organization (Government agencies).

For the reason stated in the preamble, CFR Chapter 7 is amended by revising Parts 600 and 601 to read as follows.

7 CFR, Chapter VI

SUBCHAPTER A—GENERAL

PART 600—ORGANIZATION

Sec.

600.1 General.
600.2 National headquarters.
600.3 Regional offices.
600.4 State offices.
600.5 Area offices.
600.6 Field offices.
600.7 Specialized field offices.
600.8 Plant materials centers.
600.9 Major land resource area soil survey offices.

Authority: 7 U.S.C. 6962.

§ 600.1 General.

(a) The Natural Resources Conservation Service (NRCS) was authorized by the Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (Pub. L. 103–354, 7 U.S.C. 6901 note) and established by Secretary's Memorandum 1010–1 (2.b.6), *Reorganization of the Department of Agriculture,* to provide national leadership in the conservation, development, and productive use of the Nation's natural resources. Such leadership encompasses the conservation of soil, water, air, plant, and animal resources with consideration of the many human (economic and sociological) interactions. NRCS is the Federal agency that works with landowners on private lands to help them conserve their natural resources. NRCS employees are highly skilled in many scientific and technical specialties, including soil science, soil conservation, agronomy, biology, agroecology, range conservation, forestry, engineering, geology, hydrology, wetlands science, cultural resources, and economics. NRCS was formerly the Soil Conservation Service (SCS) which was established by the Soil Conservation Act of 1935 (Pub. L. 74–46, 49 Stat. 163 (16 U.S.C. 590 (a–f))). NRCS has responsibility for three major areas:

(1) Soil and water conservation;

(2) Natural resource surveys including soil surveys, resources inventory, snow surveys, and water supply forecasting; and

(3) Community resource protection and management including watershed projects, river basin studies and investigations, resource conservation and development areas, land evaluation and site assessment, and emergency watershed protection. In addition, NRCS has leadership for the Wetlands Reserve Program, Environmental Quality Incentives Program, Grazing Lands Conservation Initiative, Farmland Protection Program, Wildlife Habitat Incentives Program, Forestry Incentives Program, and Conservation Farm Option. NRCS provides technical support for the Conservation Reserve Program.

(b) The NRCS organization consists of a National Headquarters located in Washington, D.C.; six regional offices; 50 state offices and two equivalent offices in the Caribbean Area and the U.S. Trust Territories of the Pacific Basin Area; approximately 2,500 field offices and 300 specialized offices; 26 plant materials centers; 17 major land resource area soil survey offices; nine national centers; and seven national institutes. A Chief who reports to the USDA Under Secretary for Natural Resources and Environment heads NRCS.

§ 600.2 National headquarters.

(a) *Chief.* The Chief, with assistance of the Associate Chief, is responsible for administering a coordinated national program of natural resource conservation; planning, directing, and coordinating all program, technical, and administrative activities of NRCS; developing policies and procedures; correlating NRCS conservation programs with other agencies; accepting departmental leadership for programs for other activities assigned by the Secretary of Agriculture; and serving as Equal Employment Opportunity Officer for NRCS.

(b) *Deputy chiefs.* Five deputy chiefs assist the Chief as follows:

(1) *Deputy Chief for Management.* The Deputy Chief for Management is responsible for policies, guidelines, and standards for management services, human resources management, financial management, information technology, administrative support (providing a coordinated administrative management program for National Headquarters activities), NRCS outreach, training, and correspondence management. This deputy chief also is responsible for the activities of three national centers: business management, information technology, and employee development.

(2) *Deputy Chief for Strategic Planning and Accountability.* The Deputy Chief for Strategic Planning and Accountability is responsible for policies, guidelines, and standards for strategic and performance planning, budget planning and analysis, and operations management and oversight.

(3) *Deputy Chief for Programs.* The Deputy Chief for Programs is responsible for policies, guidelines, and standards for conservation operations,

resource conservation and community development, watersheds and wetlands, international programs, conservation compliance activities, conservation programs funded by the Commodity Credit Corporation, and animal husbandry and clean water programs.

(4) *Deputy Chief for Soil Survey and Resource Assessment.* The Deputy Chief for Soil Survey and Resource Assessment is responsible for policies, guidelines, and standards for NRCS technical activities, and provides leadership for soils, resource inventory, and resource assessment. This deputy chief also is responsible for the activities of two national centers (soil survey and cartography and geospatial) and two national institutes (soil quality and natural resources inventory and analysis).

(5) *Deputy Chief for Science and Technology.* The Deputy Chief for Science and Technology is responsible for policies, guidelines, and standards for the agency, and provides leadership for resource economics and social sciences, conservation engineering, and ecological sciences. This deputy chief also is responsible for the activities of four national centers (water and climate, water management, soil mechanics, and plant data) and five national institutes (grazing lands technology, social sciences, watershed science, wetlands science, and wildlife habitat management). This deputy chief, working closely with the deputy chiefs for Management and Soil Survey and Resource Assessment, provides overall direction for the National Science and Technology Consortium.

(c) *National Science and Technology Consortium.* The consortium consists of three divisions, four centers, five technical institutes, and several cooperating scientists under the Deputy Chief for Science and Technology; two divisions, two centers, and two technical institutes under the Deputy Chief for Soil Survey and Resource Assessment; and one division and three centers under the Deputy Chief for Management.

(1) *Centers.* The nine centers provide specific products and services that maintain and enhance the technical quality of the agency. The centers are: water and climate, water management, soil mechanics, plant data, soil survey, cartography and geospatial, information technology, business management, and employee development.

(2) *Institutes.* The seven institutes are: soil quality, natural resources inventory and analysis, grazing lands technology, social sciences, watershed science, wetlands science, and wildlife habitat management. The institutes provide training; develop technical materials; and acquire, develop, and transfer needed technology in special emphasis areas so field employees can better serve their customers. The institutes often establish partnerships with other Federal agencies, universities, and public and private organizations.

(3) *Cooperating Scientists.* Cooperating scientists work in the areas of soil erosion and sedimentation, air quality, and agroforestry. These scientists are located at various universities and research centers.

(d) *Civil Rights.* The Civil Rights staffs provide coordination, assistance, and recommendations to the Chief on civil rights employment and program compliance issues.

(e) *Legislative Affairs.* The Legislative Affairs Staff provides coordination and assistance to the Chief on legislative affairs issues and activities.

(f) *Conservation Communications.* The Conservation Communications Staff is responsible for communications, volunteer programs, conservation education, and public affairs activities.

(g) *Strategic Natural Resource Issues.* The Strategic Natural Resource Issues Staff is responsible for coordinating priority strategic issues as determined by the Chief.

§ 600.3 Regional offices.

Each regional office is under the direction and supervision of a regional conservationist. Regional offices are responsible for

(1) Providing agency leadership, guidance, coordination, and partnering for solutions to regional resource issues;

(2) Program implementation, consistency, and accountability;

(3) Region-wide strategic planning, performance measurement, and operations management;

(4) Administrative operations and support;

(5) Fund integrity and accountability;

(6) Technical quality of work; and

(7) All NRCS activities in the region. Regional offices are located in Beltsville, Maryland; Atlanta, Georgia; Fort Worth, Texas; Madison, Wisconsin; Lincoln, Nebraska; and Sacramento, California.

§ 600.4 State offices.

Each office is under the direction and supervision of a State conservationist. Each State conservationist is responsible for NRCS programs in a State. The Pacific Basin Area Office, under the direction and supervision of a director, serves the U.S. Trust Territories in that area. The Caribbean Area Office, under the direction and supervision of a director, serves the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Directors of the Pacific Basin and Caribbean areas have the same responsibility and authority as a State conservationist. All references to State conservationists in this chapter include the directors of the Pacific Basin and Caribbean areas.

§ 600.5 Area offices.

Each area office is under the direction and supervision of an area conservationist or assistant State conservationist for field operations who is responsible for NRCS activities in the geographical area served by the area office. Usually the geographical area includes multiple field offices and counties. Many area offices now consist of teams working on a watershed or other geopolitical basis.

§ 600.6 Field offices.

Each field office is under the direction and supervision of a district conservationist who is responsible for NRCS activities in the geographical area served by the field office. Usually the geographical area of a field office includes one or more conservation districts and one or more counties. Field offices are generally collocated with other USDA agencies in USDA Service Centers.

§ 600.7 Specialized field offices.

Other field offices serve specialized activities, such as watershed protection and flood reduction projects, construction projects, resource conservation and development areas, and soil survey activities. State conservationists designate direction and supervision of these offices.

§ 600.8 Plant materials centers.

Plant materials centers (PMC) assemble and test plant species for conservation uses. Usually a PMC serves two or more States, and is under the jurisdiction of the State conservationist where the center is located. Each PMC is directed and supervised by a manager who is responsible to a State office specialist/manager as designated by the State conservationist.

§ 600.9 Major land resource area soil survey offices.

The United States is divided into 17 major land resource areas (MLRA) for the purpose of soil survey production. Major land resource area soil survey offices (MO) provide the technical leadership, coordination, and quality assurance for all soil survey project activities within the respective MLRA. Each MO serves two or more States (except for the MO in Alaska), and is under the jurisdiction of the State conservationist where the office is located. Each MO is directed and supervised by a leader who is designated by the State conservationist.

PART 601—FUNCTIONS

Sec.

601.1 Functions assigned.
601.2 Functions reserved to the Secretary of Agriculture.
601.3 Defense responsibilities.

Authority: 7 U.S.C. 1010–1011; 16 U.S.C. 590a–590f, 1001–1008, 2001–2009, 2203–2205, 3801 *et seq.*; 33 U.S.C. 701b–1.

§ 601.1 Functions assigned.

The Natural Resources Conservation Service (NRCS) is the Federal agency that works with private landowners to conserve their natural resources. NRCS employees help land users and communities approach conservation planning and implementation with an understanding of how natural resources relate to each other and to people—and how human activities affect those resources. The agency emphasizes voluntary, science-based assistance, partnerships, and cooperative problem solving at the community level. The mission of NRCS is to work on the Nation's non-Federal lands to conserve, improve, and sustain natural resources. The following functions support the mission.

(a) NRCS facilitates and provides conservation technical assistance at the local level that helps people assess their natural resource conditions and needs, set goals, identify programs and other resources to address those needs, develop proposals and recommendations, implement solutions, and measure their success. The agency's role is to assist with:

(1) Resource inventories,

(2) Resource assessments,

(3) Planning assistance, and/or

(4) Technical assistance.

(b) NRCS provides technical assistance through local conservation districts to land users, communities, watershed groups, Federal and State agencies, other partners, and customers.

(c) NRCS provides assistance on a voluntary basis.

(d) The agency's work focuses on soil, water, air, plant, and animal conservation including erosion reduction, water quality improvement, wetland restoration and protection, fish and wildlife habitat improvement, range management, stream restoration, water management, and other natural resource issues.

(e) Through the conservation operations program, NRCS maintains a cadre of conservationists and interdisciplinary technical experts who provide landowners with advice and recommendations. Science based procedures and techniques are based on new knowledge and research provided by the Agricultural Research Service and others. NRCS developed and maintains a system of directives—including manuals, handbooks, and technical references—to institutionalize new methods, procedures, and standards used to deliver technical assistance at the field level.

(f) NRCS has general responsibility for administration of the following programs:

(1) Conservation operations, authorized by the Soil Conservation Act of 1935 and the Soil and Water Resources Conservation Act of 1977. Activities include:

(i) Conservation technical assistance to land users, communities, units of State and local government, and other Federal agencies in planning and implementing natural resource solutions to reduce erosion, improve soil and water quantity and quality, improve and conserve wetlands, enhance fish and wildlife habitat, improve air quality, improve pasture and range conditions, reduce upstream flooding, and improve woodlands. Assistance is also provided to implement the highly erodible land (HEL) and wetland conservation (Swampbuster) provisions and—on a reimbursable basis—the Wetlands Reserve Program (WRP) and Conservation Reserve Program (CRP) in the 1985 Food Security Act, as amended by the Food, Agriculture, Conservation and Trade Act of 1990 and Federal Agriculture Improvement and Reform Act of 1996. NRCS technical field staff make HEL and wetland determinations and assist land users to develop and implement conservation plans needed to ensure compliance with the law. NRCS is also the lead Federal agency for delineating wetlands on agricultural lands for purposes of implementing both the provisions of the Food Security Act and Section 404 of the Clean Water Act.

(ii) Soil surveys that provide the public with local information on the uses and capabilities of their soil resource. Soil surveys are based on scientific analysis and classification of the soils and are used to determine land capabilities and conservation treatment needs. Surveys are conducted cooperatively with other Federal agencies, land grant universities, State agencies, and local units of government. NRCS is the world leader in soil classification and soil mapping, and is expanding into soil quality.

(iii) Snow survey and water supply forecasts that provide western States and Alaska with vital information and forecasts of seasonable variable water supplies. NRCS field staff in cooperation with partnering organizations manually collect data from 850 remote high mountain sites. Data is electronically collected from an additional 600 SNOTEL (automated snowpack telemetry network) sites. In cooperation with the National Weather Service, the data is assembled and analyzed. Then, NRCS staff develop seasonal water supply forecasts.

(iv) Plant Material Centers that assemble, test, and encourage increased plant propagation and usefulness of plant species for biomass production, carbon sequestration, erosion reduction, wetland restoration, water quality improvement, streambank and riparian area protection, coastal dune stabilization, and to meet other special conservation treatment needs. The work is carried out cooperatively with State and Federal agencies, private organizations, commercial businesses, and seed and nursery associations. After species are proven, they are released to the private sector for commercial production.

(v) National Resources Inventory (NRI) that is a statistically-based survey designed and implemented using scientific principles to assess conditions and trends of soil, water, and related resources on nonfederal lands in the United States. The NRI captures data on land cover and use, soil erosion, prime farmland, wetlands, habitat diversity, selected conservation practices, and related attributes at thousands of scientifically selected sample sites in all 50 states, Puerto Rico, the U.S. Virgin Islands, and some Pacific Basin locations.

(2) Conservation programs in the Federal Agriculture Improvement and Reform Act of 1996, most of which are funded by the Commodity Credit Corporation (CCC). NRCS provides leadership and technical assistance for the following programs:

(i) *Environmental Quality Incentives Program (EQIP).* EQIP provides a single, voluntary conservation program for farmers and ranchers who face serious threats to soil, water, and related natural resources. Nationally, it provides technical, financial, and educational assistance, half of it targeted to livestock-related natural resource problems and half to more general conservation priorities.

(ii) *Wetlands Reserve Program (WRP).* WRP is a voluntary program to restore and protect wetlands on private property. It provides an opportunity for landowners to receive financial incentives to restore wetlands in

exchange for retiring marginal agricultural land.

(iii) *Wildlife Habitat Incentives Program (WHIP).* WHIP is a voluntary program for people who want to develop and improve wildlife habitat on private lands. It provides both technical assistance and cost sharing to help establish and improve fish and wildlife habitat.

(iv) *Farmland Protection Program (FPP).* This program provides funds to help purchase development rights to keep productive farmland in agricultural use. Working through existing programs, USDA joins with State, tribal, or local governments to acquire voluntary conservation easements or other interests from landowners.

(v) *Forestry Incentives Program (FIP).* FIP supports good forest management practices on privately owned, non-industrial forest lands nationwide. FIP is designed to benefit the environment while meeting future demands for wood products. Although not funded by CCC, Section 373 of the Federal Agriculture Improvement and Reform Act of 1996 extended the program under discretionary appropriations.

(3) Resource Conservation and Development (RC&D) Program, authorized by Section 102 of the Flood and Agriculture Act of 1962 (Pub. L. 87–702) and Sections 1528–1538 of the Agriculture and Food Act of 1981 (Pub. L. 97–98). This program is initiated and directed at the local level by volunteers who involve multiple communities, various units of government, municipalities, and grassroots organizations. RC&D is a catalyst for civic-oriented groups to share knowledge and resources in a collective attempt to solve common problems. The program offers aid in balancing the environmental, economic, and social needs of an area.

(4) Rural Abandoned Mine Program (RAMP) and other responsibilities assigned under the Surface Mining Control and Reclamation Act of 1977 (Pub. L. 95–87). Under RAMP, NRCS provides technical and financial assistance to landowners to reclaim certain abandoned coal-mined lands. This assistance can be used to reclaim these lands for approved uses, which include pasture, range, woodland, cropland, noncommercial recreation, and wildlife habitat. The program's first priority is to protect public health, welfare, safety, and property from hazards caused by past surface coal mining or by surface effects of deep mining.

(5) Watershed surveys and planning, authorized by the Watershed Protection and Flood Prevention Act (Pub. L. 83–566, Section 6 (16 U.S.C. 1001–1008)). The 1996 appropriations act combined the Small Watershed Planning and the River Basin Surveys and Investigations programs into a new program called the Watershed Surveys and Planning Program. The program involves cooperation with other Federal, State, and local agencies to conduct watershed planning, river basin surveys and investigations, flood hazard analysis, and floodplain management assistance, which aid in the development of coordinated water resource programs, including the development of guiding principles and procedures.

(6) Watershed and flood prevention operations include several activities. Watershed operations are authorized by the Flood Control Act of 1944 (Public Law 78–534) and the Watershed Protection and Flood Prevention Act of 1954 (Public Law 87–566) and amendments; both of which are addressed by 7 CFR 622. Since 1998, the appropriations act for the Watershed Protection and Flood Prevention Act (Public Law 83–566) has included funds, not to exceed a specified amount, that may be used for Public Law 78–534 projects.

(i) Public Law 83–566 and Public Law 78–534, jointly called the Small Watershed Program, authorize the Secretary of Agriculture to cooperate with State and local agencies to plan and carry out works of improvement for flood prevention; for the conservation, development, utilization, and disposal of water; and for the conservation and proper use of land in watershed or sub-watershed areas. Under Public Law 83–566, these areas shall not exceed 250,000 acres. There is no acreage limitation under Public Law 78–534.

(ii) The Small Watershed Program provides for cooperation with State and other public agencies (called project sponsors) in the installation of planned works of improvement and land treatment measures in authorized watershed projects. Eligible measures include flood prevention, water conservation, recreation, agricultural water management, floodplain easements, municipal and industrial water, and rural water supply.

(7) Emergency Watershed Protection (EWP) Program, authorized by Section 216 of Public Law 81–516, 33 U.S.C. 701b–1, and Section 403 of the Agriculture Credit Act of 1978 (Public Law 95–334, 16 U.S.C. 2203), as amended by Section 382 of the Federal Agriculture Improvement and Reform Act of 1996 (Public Law 104–127, 110 Stat. 888, 1016). EWP provides assistance to reduce an imminent threat to life and property caused by a sudden impairment of a watershed from a natural disaster. Emergency work includes such measures as removing debris from streams, stabilizing streambanks, repairing levees, critical area stabilization, and purchasing floodplain easements. Technical and financial assistance is available to sponsoring local organizations (units of government, Indian tribes and tribal organizations, and organizations formed by State law) for this disaster recovery work. Sponsors are required to provide the local share of the costs; obtain real property rights, water rights, and permits; and do any needed operation and maintenance.

§ 601.2 Functions reserved to the Secretary of Agriculture.

(a) Designation of new Resource Conservation and Development (RC&D) areas. Once designated, these areas may receive RC&D Program assistance from NRCS.

(b) Administration of the Soil and Water Resources Conservation Act of 1977 (Public Law 95–192) to conduct an appraisal and develop a national conservation program every five years.

§ 601.3 Defense responsibilities.

In the event of nuclear attack, NRCS is responsible for providing:

(a) Technical guidance, based upon results of radiological monitoring and the extent of radiological contamination to farmers, ranchers, and others relating to:

(1) The selection and use of land for agricultural production.

(2) The harvesting of crops.

(3) The use of crops stored on the farm.

(4) The use, conservation, disposal, and control of water to insure adequate usable water for agricultural purposes and to prevent floods.

(5) The safety of livestock.

(b) Basic soil information, land use guides, and onsite technical assistance in selecting land for production and in applying practices to increase production of food and fiber with maximum efficiency.

Danny D. Sells,

Associate Chief, Natural Resources Conversation.

[FR Doc. 00–6767 Filed 3–17–00; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1710

RIN 0572–AB05

Load Forecasts

AGENCY: Rural Utilities Service, USDA.

ACTION: Final rule.

SUMMARY: The Rural Utilities Service (RUS) is amending its regulations to revise requirements for borrower load forecasts and load forecast work plans (historically referred to as power requirements studies and power requirements study work plans). These changes reduce the level of detail required in load forecasts filed by small power supply borrowers and their members and by distribution borrowers unaffiliated with a large power supply borrower. These changes also give borrowers greater flexibility in preparation of load forecasts required to be submitted to RUS.

EFFECTIVE DATE: April 19, 2000.

FOR FURTHER INFORMATION CONTACT: Georg A. Shultz, Chief, Energy Forecasting Branch, Electric Staff Division, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave., SW., Room 1246–SBldg., STOP 1569, Washington, DC 20250–1569, telephone number: (202) 720–1920, fax: (202) 720–7491, E-mail: gshultz@rus.usda.gov.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This rule has been determined to be not significant for purposes of Executive Order 12866 and, therefore, has not been reviewed by Office of Management and Budget (OMB).

Executive Order 12372

This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State, and tribal governments or the private sector. See the final rule related notice entitled "Department Programs and Activities Excluded from Executive Order 12372," (50 FR 47034).

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. RUS has determined that this rule meets the applicable standards provided in section 3 of the Executive Order. In accordance with the Executive Order and the rule: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) No retroactive effect will be given to this rule; and, (3) In accordance with § 212(e) of the Department of Agriculture Reorganization Act of 1994 (7 U.S.C. 6912(e)), administrative appeal procedures, if any are required, must be exhausted prior to initiating litigation against the Department or its agencies.

Regulatory Flexibility Act Certification

The Administrator of RUS has determined that a rule relating to RUS' electric loan program is not a rule as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and, therefore, the Regulatory Flexibility Act does not apply to this rule. RUS borrowers, as a result of obtaining Federal financing, receive economic benefits that exceed any direct economic costs associated with complying with RUS regulations and requirements.

Information Collection and Recordkeeping Requirements

The Office of Management and Budget has approved the reporting and recordkeeping requirements contained in this rule under the Paperwork Reduction Act of 1993 (44. U.S.C. chapter 35) and assigned control number 0572–0032.

National Environmental Policy Act Certification

The Administrator of RUS has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.850, Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402–9325. Telephone: (202) 512–1800.

Unfunded Mandates

This final rule contains no Federal mandates (under the regulatory provision of title II of the Unfunded Mandates Reform Act of 1995) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of section 202 and 205 of the Unfunded Mandates Reform Act of 1995.

Background

The Rural Utilities Service (RUS) makes and guarantees loans to furnish and improve electric service in rural areas pursuant to the Rural Electrification Act of 1936. (7 U.S.C. 901 *et seq.*) (RE Act). Under the RE Act, RUS may make or guarantee a loan only if the Administrator determines that the security for the loan is reasonably adequate and that the loan will be repaid within the time agreed. Most borrowers apply for a new loan to meet system needs every two to three years. The security for these loans is generally a first lien on the borrower's electric system, evidenced through the filing of a mortgage. In order to determine the feasibility of a new loan and whether borrowers will have sufficient revenues to repay existing loans, RUS requires most borrowers to file load forecasts, historically called "power requirements studies" by RUS, containing current and detailed information and analyses on existing and expected future loads. Detailed information from the load forecasts are used in RUS' independent analysis and oversight of borrower systems.

RUS regulations on the preparation and approval of power requirements studies and power requirements work plans, contained at 7 CFR part 1710, subpart E, were last revised in 1992, at 57 FR 1053 and 57 FR 4513. Since then, the business and regulatory environment in the electric industry has undergone rapid change. State regulatory agencies, power supply systems, power pools, and other entities are modifying their power planning processes and requirements in the light of competitive changes in the industry. Even greater transformations lie ahead as many states move to adopt retail competition. In the years since the existing regulations were adopted, both RUS and our borrowers have gained greater familiarity with the development and use of load forecasts, and supporting analyses and data and the experience and sophistication of RUS financed systems have increased.

In response to changes in the industry and the Administration's ongoing commitment to improving customer service, RUS has amended a number of its regulations and practices involving its oversight of borrower systems to update and streamline these requirements. This regulation is part of RUS' continuing effort to improve customer service.

This final rule implements recommendations to modify load forecast requirements which arose out of the RUS strategic planning process.

These changes simplify the procedure and minimize the detail of information RUS needs for loan feasibility determinations. The revisions to the existing rule balance RUS' continuing need to maintain current up-to-date load forecast information for electric borrowers with its goal of reducing regulatory requirements and burdens on borrowers.

In the usual course of business, all prudent utilities engage in a continuing planning process incorporating objective load forecasts in order to provide reliable electric service for their existing and future customers. Borrowers submit their load forecasts and load forecast work plans to RUS in order to provide the necessary support for RUS approval of loans and a basis for RUS to monitor future borrower performance for loan security purposes. This rule modifies the existing requirements and reduce the number of borrower systems required to maintain current load forecasts on file with RUS. These changes allow borrowers greater flexibility in preparation of the load forecasts and supporting information submitted to RUS and will reduce burdens on both borrowers and the RUS electric program.

Comments

RUS received comments from two commenters to the proposed regulation published in the **Federal Register** on July 7, 1999, at 64 FR 36609. One commenter maintained that it was inappropriate for RUS to reduce its oversight of rural electric borrowers. In response to this comment RUS notes that most distribution borrowers and all power supply borrowers are required by the regulation to submit a separate and current load forecast when requesting a loan or loan guarantee. In addition, borrowers requesting relatively small loans must submit their load data and supporting material as part of their financial forecast. Because of the small size of the loans relative to the borrower's total utility plant, RUS believes that a detailed load forecast is not needed to evaluate a borrower's request. Power supply borrowers are required to submit a detailed load forecast but are not required to incorporate their member forecasts. Large power supply borrowers must provide a detailed forecast incorporating their member forecasts. RUS believes that this approach provides the agency with adequate decision support for the type and magnitude of the loans and guarantees under consideration. No changes in the proposed regulation are required.

The second commenter was a power supply borrower that had questions regarding what type forecast was necessary for members of a large power supply borrower that are not RUS borrowers. RUS believes that for a load forecast to be valid it must address 100 percent of the borrowers anticipated load. It is incumbent on the borrower to determine what constitutes an appropriate forecast. No changes in the proposed regulation are required.

List of Subjects 7 CFR Part 1710

Electric power, Electric utilities loan programs—energy, Reporting and recordkeeping requirements, Rural areas.

For the reasons set out in the preamble, RUS amends 7 CFR chapter XVII as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 is revised to read as follows:

Authority: 7 U.S.C. *et seq.*, 1921 *et seq.*, and 6941 *et seq.*

2. Section 1710.2(a) is amended by revising the definition of *Power requirements study (PRS)* and by adding the remaining definitions in alphabetical order:

§ 1710.2 Definitions and rules of construction.

* * * * *

Approved load forecast means a load forecast that RUS has determined is current for RUS purposes and has been approved by RUS pursuant to 7 CFR part 1710, subpart E.

Approved load forecast work plan means a load forecast work plan that RUS has determined is current for RUS' purposes and has been approved pursuant to 7 CFR part 1710, subpart E.

* * * * *

Load forecast means the thorough study of a borrower's electric loads and the factors that affect those loads in order to determine, as accurately as practicable, the borrower's future requirements for energy and capacity.

Load forecast work plan means the plan that contains the resources, methods, schedules, and milestones to be used in the preparation and maintenance of a load forecast.

* * * * *

Power requirements study (PRS) has the same meaning as load forecast.

* * * * *

PRS work plan has the same meaning as load forecast work plan.

* * * * *

3. Revise § 1710.152(a) to read as follows:

§ 1710.152 Primary Support Documents.

* * * * *

(a) *Load forecast.* The load forecast provides the borrower and RUS with an understanding of the borrower's future system loads, the factors influencing those loads, and estimates of future loads. The load forecast provides a basis for projecting annual electricity (kWh) sales and revenues, and for engineering estimates of plant additions required to provide reliable service to meet the forecasted loads. Subpart E of this part contains the information to be included in a load forecast and when an approved load forecast is required.

* * * * *

4. Revise subpart E of part 1710 to read as follows:

Subpart E—Load Forecasts

Sec.

1710.200 Purpose.
1710.201 General.
1710.202 Requirement to prepare a load forecast-power supply borrowers.
1710.203 Requirement to prepare a load forecast-distribution borrowers.
1710.204 Filing requirements for borrowers that must maintain a current RUS approved load forecast on an ongoing basis.
1710.205 Minimum requirements for all borrower load forecasts.
1710.206 Requirements for load forecasts prepared pursuant to RUS approved load forecast work plans.
1710.207 RUS approval criteria for approval of load forecasts by distribution borrowers not required to maintain a current load forecast on an ongoing basis.
1710.208 RUS approval criteria for load forecasts submitted by all power supply borrowers and by distribution borrowers required to maintain a current load forecast on an ongoing basis.
1710.209 Requirements for load forecast work plans.
1710.210 Waiver of requirements or approval criteria.
1710.211–1710.249 [Reserved]

Subpart E—Load Forecasts

§ 1710.200 Purpose.

This subpart contains RUS policies for the preparation, review, approval and use of load forecasts and load forecast work plans. A load forecast is a thorough study of a borrower's electric loads and the factors that affect those loads in order to estimate, as accurately as practicable, the borrower's future requirements for energy and capacity. The load forecast of a power supply borrower includes and integrates the load forecasts of its member systems. An approved load forecast, if required by this subpart, is one of the primary documents that a borrower is required to submit to support a loan application.

§ 1710.201 General.

(a) The policies, procedures and requirements in this subpart are intended to implement provisions of the loan documents between RUS and the electric borrowers and are also necessary to support approval by RUS of requests for financial assistance.

(b) Notwithstanding any other provisions of this subpart, RUS may require any power supply or distribution borrower to prepare a new or updated load forecast for RUS approval or to maintain an approved load forecast on an ongoing basis, if such documentation is necessary for RUS to determine loan feasibility, or to ensure compliance under the loan documents.

§ 1710.202 Requirement to prepare a load forecast—power supply borrowers.

(a) A power supply borrower with a total utility plant of $500 million or more must maintain an approved load forecast that meets the requirements of this subpart on an ongoing basis and provide an approved load forecast in support of any request for RUS financial assistance. The borrower must also maintain an approved load forecast work plan. The borrower's approved load forecast must be prepared pursuant to the approved load forecast work plan.

(b) A power supply borrower that is a member of another power supply borrower that has a total utility plant of $500 million or more must maintain an approved load forecast that meets the requirements of this subpart on an ongoing basis and provide an approved load forecast in support of any request for RUS financial assistance. The member power supply borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the approved load forecast of its power supply borrower. The approved load forecasts must be prepared pursuant to the RUS approved load forecast work plan.

(c) A power supply borrower that has total utility plant of less than $500 million and that is not a member of another power supply borrower with a total utility plant of $500 million or more must provide an approved load forecast that meets the requirements of this subpart in support of an application for any RUS loan or loan guarantee which exceeds $50 million. The borrower is not required to maintain on an ongoing basis either an approved load forecast or an approved load forecast work plan.

§ 1710.203 Requirement to prepare a load forecast—distribution borrowers.

(a) A distribution borrower that is a member of a power supply borrower with a total utility plant of $500 million or more must maintain an approved load forecast that meets the requirements of this subpart on an ongoing basis and provide an approved load forecast in support of any request for RUS financial assistance. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the approved load forecast of its power supply borrower. The distribution borrower's load forecast must be prepared pursuant to the approved load forecast work plan of its power supply borrower.

(b) A distribution borrower that is a member of a power supply borrower which is itself a member of another power supply borrower that has a total utility plant of $500 million or more must maintain an approved load forecast that meets the requirements of this subpart on an ongoing basis and provide an approved load forecast in support of any request for RUS financial assistance. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the approved load forecast of its power supply borrower. The distribution borrower's approved load forecast must be prepared pursuant to the approved load forecast work plan of the power supply borrower with total utility plant in excess of $500 million.

(c) A distribution borrower that is a member of a power supply borrower with a total utility plant of less than $500 million must provide an approved load forecast that meets the requirements of this subpart in support of an application for any RUS loan or loan guarantee that exceeds $3 million or 5 percent of total utility plant, whichever is greater. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the approved load forecast of its power supply borrower. The borrower is not required to maintain on an ongoing basis either an approved load forecast or an approved load forecast work plan.

(d) A distribution borrower with a total utility plant of less than $500 million and that is unaffiliated with a power supply borrower must provide an approved load forecast that meets the requirements of this subpart in support of an application for any RUS loan or loan guarantee which exceeds $3 million or 5 percent of total utility plant, whichever is greater. The borrower is not required to maintain on an ongoing basis either an approved load forecast or an approved load forecast work plan.

(e) A distribution borrower with a total utility plant of $500 million or more must maintain an approved load forecast that meets the requirements of this subpart on an ongoing basis and provide an approved load forecast in support of any request for RUS financing assistance. The borrower must also maintain an approved load forecast work plan. The distribution borrower may comply with this requirement by participation in and inclusion of its load forecasting information in the approved load forecast of its power supply borrower.

§ 1710.204 Filing requirements for borrowers that must maintain an approved load forecast on an ongoing basis.

(a) *Filing of load forecasts and updates.* A power supply or distribution borrower required to maintain an approved load forecast on an ongoing basis under § 1710.202 or § 1710.203 may elect either of the following two methods of compliance:

(1) Submitting a new load forecast to RUS for review and approval at least every 36 months, and then submitting updates to the load forecast to RUS for review and approval in each intervening year; or

(2) Submitting a new load forecast to RUS for review and approval not less frequently than every 24 months.

(b) *Extensions.* RUS may extend any time period required under this section for up to 3 months at the written request of the borrower's general manager. A request to extend a time period beyond 3 months must be accompanied by a written request from the borrower's general manager, an amendment to the borrower's approved load forecast work plan incorporating the extension, a board resolution approving the extension request and any amendment to the approved load forecast work plan, and any other relevant supporting information. RUS may extend the time periods contained in this section for up to 24 months.

§ 1710.205 Minimum approval requirements for all load forecasts.

(a) *Documents required for RUS approval of a borrower's load forecast.* The borrower must provide the following documents to obtain RUS approval for a load forecast:

(1) The load forecast and supporting documentation;

(2) A memorandum from the borrower's general manager to the board

of directors recommending that the board approve the load forecast and its uses; and

(3) A board resolution from the borrower's board of directors approving the load forecast and its uses.

(b) *Contents of Load Forecast.* All load forecasts submitted by borrowers for approval must include:

(1) A narrative describing the borrower's system, service territory, and consumers;

(2) A narrative description of the borrower's load forecast including future load projections, forecast assumptions, and the methods and procedures used to develop the forecast;

(3) Projections of usage by consumer class, number of consumers by class, annual system peak demand, and season of peak demand for the number of years agreed upon by RUS and the borrower;

(4) A summary of the year-by-year results of the load forecast in a format that allows efficient transfer of the information to other borrower planning or loan support documents;

(5) The load impacts of a borrower's demand side management activities, if applicable;

(6) Graphic representations of the variables specifically identified by management as influencing a borrower's loads; and

(7) A database that tracks all relevant variables that might influence a borrower's loads.

(c) *Formats.* RUS does not require a specific format for the narrative, documentation, data, and other information in the load forecast, provided that all required information is included and available. All data must be in a tabular form that can be transferred electronically to RUS computer software applications. RUS will evaluate borrower load forecasts for readability, understanding, filing, and electronic access. If a borrower's load forecast is submitted in a format that is not readily usable by RUS or is incomplete, RUS will require the borrower to submit the load forecast in a format acceptable to RUS.

(d) *Document retention.* The borrower must retain its latest approved load forecasts, and supporting documentation until RUS approval of its next load forecast. Any approved load forecast work plan must be retained as part of the approved load forecast.

(e) *Consultation with RUS.* The borrower must designate and make appropriate staff and consultants available for consultation with RUS to facilitate RUS review of the load forecast work plan and the load forecast when requested by RUS.

(f) *Correlation and consistency with other RUS loan support documents.* If a borrower relies on an approved load forecast or an update of an approved load forecast as loan support, the borrower must demonstrate that the approved load forecast and the other primary support documentation for the loan were reconciled. For example, both the load forecast and the financial forecast require input assumptions for wholesale power costs, distribution costs, other systems costs, average revenue per kWh, and inflation. Also, a borrower's engineering planning documents, such as the construction work plan, incorporate consumer and usage per consumer projections from the load forecast to develop system design criteria. The assumptions and data common to all the documents must be consistent.

(g) *Coordination.* Power supply borrowers and their members that are subject to the requirement to maintain an approved load forecast on an ongoing basis are required to coordinate preparation of their respective load forecasts, updates of load forecasts, and approved load forecast work plan. A load forecast of a power supply borrower must consider the load forecasts of all its member systems.

§ 1710.206 Approval requirements for load forecasts prepared pursuant to approved load forecast work plans.

(a) *Contents of load forecasts prepared under an approved load forecast work plan.* In addition to the minimum requirements for load forecasts under § 1710.205, load forecasts developed and submitted by borrowers required to have an approved load forecast work plan shall include the following:

(1) Scope of the load forecast. The narrative shall address the overall approach, time periods, and expected internal and external uses of the forecast. Examples of internal uses include providing information for developing or monitoring demand side management programs, supply resource planning, load flow studies, wholesale power marketing, retail marketing, cost of service studies, rate policy and development, financial planning, and evaluating the potential effects on electric revenues caused by competition from alternative energy sources or other electric suppliers. Examples of external uses include meeting state and Federal regulatory requirements, obtaining financial ratings, and participation in reliability council, power pool, regional transmission group, power supplier or member system forecasting and planning activities.

(2) Resources used to develop the load forecast. The discussion shall identify and discuss the borrower personnel, consultants, data processing, methods and other resources used in the preparation of the load forecast. The borrower shall identify the borrower's member and, as applicable, member personnel that will serve as project leaders or liaisons with the authority to make decisions and commit resources within the scope of the current and future work plans.

(3) A comprehensive description of the database used in the study. The narrative shall describe the procedures used to collect, develop, verify, validate, update, and maintain the data. A data dictionary thoroughly defining the database shall be included. The borrower shall make all or parts of the database available or otherwise accessible to RUS in electronic format, if requested.

(4) A narrative for each new load forecast or update of a load forecast discussing the methods and procedures used in the analysis and modeling of the borrower's electric system loads as provided for in the load forecast work plan.

(5) A narrative discussing the borrower's past, existing, and forecast of future electric system loads. The narrative must identify and explain substantive assumptions and other pertinent information used to support the estimates presented in the load forecast.

(6) A narrative discussing load forecast uncertainty or alternative futures that may determine the borrower's actual loads. Examples of economic scenarios, weather conditions, and other uncertainties that borrowers may decide to address in their analysis include:

(i) Most-probable assumptions, with normal weather;

(ii) Pessimistic assumptions, with normal weather;

(iii) Optimistic assumptions, with normal weather;

(iv) Most-probable assumptions, with severe weather;

(v) Most-probable assumptions, with mild weather;

(vi) Impacts of wholesale or retail competition; or

(vii) new environmental requirements.

(7) A summary of the forecast's results on an annual basis. Include alternative futures, as applicable. This summary shall be designed to accommodate the transfer of load forecast information to a borrower's other planning or loan support documents. Computer-generated forms or electronic submissions of data are acceptable. Graphs, tables, spreadsheets or other exhibits shall be included throughout the forecast as appropriate.

(8) A narrative discussing the coordination activities conducted between a power supply borrower and its members, as applicable, and between the borrower and RUS.

(b) *Compliance with an approved load forecast work plan.* A borrower required to maintain an approved load forecast work plan must also be able to demonstrate that both it and its RUS borrower members are in compliance with its approved load forecast work plan for the next load forecast or update of a load forecast.

§ 1710.207 RUS criteria for approval of load forecasts by distribution borrowers not required to maintain an approved load forecast on an ongoing basis.

Load forecasts submitted by distribution borrowers that are unaffiliated with a power supply borrower, or by distribution borrowers that are members of a power supply borrower that has a total utility plant less than $500 million and that is not itself a member of another power supply borrower with a total utility plant of $500 million or more must satisfy the following minimum criteria:

(a) The borrower considered all known relevant factors that influence the consumption of electricity and the known number of consumers served at the time the study was developed;

(b) The borrower considered and identified all loads on its system of RE Act beneficiaries and non-RE Act beneficiaries;

(c) The borrower developed an adequate supporting data base and considered a range of relevant assumptions; and

(d) The borrower provided RUS with adequate documentation and assistance to allow for a thorough and independent review.

§ 1710.208 RUS criteria for approval of all load forecasts by power supply borrowers and by distribution borrowers required to maintain an approved load forecast on an ongoing basis.

All load forecasts submitted by power supply borrowers and by distribution borrowers required to maintain an approved load forecast must satisfy the following criteria:

(a) The borrower objectively analyzed all known relevant factors that influence the consumption of electricity and the known number of customers served at the time the study was developed;

(b) The borrower considered and identified all loads on its system of RE Act beneficiaries and non-RE Act beneficiaries;

(c) The borrower developed an adequate supporting database and analyzed a reasonable range of relevant assumptions and alternative futures;

(d) The borrower adopted methods and procedures in general use by the electric utility industry to develop its load forecast;

(e) The borrower used valid and verifiable analytical techniques and models;

(f) The borrower provided RUS with adequate documentation and assistance to allow for a thorough and independent review; and

(g) In the case of a power supply borrower required to maintain an approved load forecast on an ongoing basis, the borrower adequately coordinated the preparation of the load forecast work plan and load forecast with its member systems.

§ 1710.209 Approval requirements for load forecast work plans.

(a) In addition to the approved load forecast required under §§ 1710.202 and 1710.203, any power supply borrower with a total utility plant of $500 million or more and any distribution borrower with a total utility plant of $500 million or more must maintain an approved load forecast work plan. RUS borrowers that are members of a power supply borrower with a total utility plant of $500 million or more must cooperate in the preparation of and submittal of the load forecast work plan of their power supply borrower.

(b) An approved load forecast work plan establishes the process for the preparation and maintenance of a comprehensive database for the development of the borrower's load forecast, and load forecast updates. The approved load forecast work plan is intended to develop and maintain a process that will result in load forecasts that will meet the borrowers' own needs and the requirements of this subpart. An approved work plan represents a commitment by a power supply borrower and its members, or by a large unaffiliated distribution borrower, that all parties concerned will prepare their load forecasts in a timely manner pursuant to the approved load forecast work plan and they will modify the approved load forecast work plan as needed with RUS approval to address changing circumstances or enhance the usefulness of the approved load forecast work plan.

(c) An approved load forecast work plan for a power supply borrower and its members must cover all member systems, including those that are not borrowers. However, only members that are borrowers, including the power supply borrower, are required to follow the approved load forecast work plan in preparing their respective load forecasts. Each borrower is individually responsible for forecasting all its RE Act beneficiary and non-RE Act beneficiary loads.

(d) An approved load forecast work plan must outline the coordination and preparation requirements for both the power supply borrower and its members.

(e) An approved load forecast work plan must cover a period of 2 or 3 years depending on the applicable compliance filing schedule elected under § 1710.204.

(f) An approved load forecast work plan must describe the borrower's process and methods to be used in producing the load forecast and maintaining current load forecasts on an ongoing basis.

(g) Approved load forecast work plans for borrowers with residential demand of 50 percent or more of total kWh must provide for a residential consumer survey at least every 5 years to obtain data on appliance and equipment saturation and electricity demand. Any such borrower that is experiencing or anticipates changes in usage patterns shall consider surveys on a more frequent schedule. Power supply borrowers shall coordinate such surveys with their members. Residential consumer surveys may be based on the aggregation of member-based samples or on a system-wide sample, provided that the latter provides for relevant regional breakdowns as appropriate.

(h) Approved load forecast work plans must provide for RUS review of the load forecasts as the load forecast is being developed.

(i) A power supply borrower's work plan must have the concurrence of the majority of the members that are borrowers.

(j) The borrower's board of directors must approve the load forecast work plan.

(k) A borrower may amend its approved load forecast work plan subject to RUS approval. If RUS concludes that the existing approved load forecast work plan will not result in a satisfactory load forecast, RUS may require a new or revised load forecast work plan.

§ 1710.210 Waiver of requirements or approval criteria.

For good cause shown by the borrower, the Administrator may waive any of the requirements applicable to borrowers in this subpart if the

Administrator determines that waiving the requirement will not significantly affect accomplishment of RUS' objectives and if the requirement imposes a substantial burden on the borrower. The borrower's general manager must request the waiver in writing.

§§ 1710.211–1710.249 [Reserved]

Dated: March 10, 2000.

Jill Long Thompson,

Under Secretary, Rural Development.

[FR Doc. 00–6761 Filed 3–17–00; 8:45 am]

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG 18

List of Approved Spent Fuel Storage Casks: TN–32 Addition

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to add the Transnuclear TN–32 cask system to the list of approved spent fuel storage casks. This amendment allows the holders of power reactor operating licenses to store spent fuel in this approved cask system under a general license.

EFFECTIVE DATE: This final rule is effective on April 19, 2000.

FOR FURTHER INFORMATION CONTACT: Merri Horn, telephone (301) 415–8126, e-mail mlh1@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary [of Energy] shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear reactor power sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 10 CFR Part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new Subpart L within 10 CFR Part 72 entitled, "Approval of Spent Fuel Storage Casks" containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

This rule will add the Transnuclear TN–32 cask system to the list of NRC approved casks for spent fuel storage in 10 CFR 72.214. Following the procedures specified in 10 CFR 72.230 of Subpart L, Transnuclear submitted an application for NRC approval with the Safety Analysis Report (SAR) entitled, "TN–32 Dry Storage Cask Topical Safety Analysis Report (TSAR)." The NRC evaluated the Transnuclear submittal and issued a preliminary Safety Evaluation Report (SER) and a proposed Certificate of Compliance (CoC) for the Transnuclear TN–32 cask system. The NRC published a proposed rule in the **Federal Register** (64 FR 45923; August 23, 1999) to add the TN–32 cask system to the listing in 10 CFR 72.214. The comment period ended on November 8, 1999. Four comment letters were received on the proposed rule.

Based on NRC review and analysis of public comments, the NRC staff has modified, as appropriate, its proposed CoC and the Technical Specifications (TSs) for the TN–32 cask system. The NRC staff has also removed the bases section from the TSs. The NRC staff has modified its preliminary SER. The NRC staff has also modified the rule language by changing the word "Certification" to "Certificate" to clarify that it is the Certificate that expires.

The proposed CoC has been revised to clarify the requirements for making changes to the CoC by specifying that the CoC holder must submit an application for an amendment to the certificate if a change to the CoC, including its appendices, is desired. The CoC has also been revised to delete the proposed exemption from the requirements of 10 CFR 72.124(b) because a recent amendment of this regulation makes the exemption unnecessary (64 FR 33178; June 22, 1999). The staff has also updated the CoC, including the addition of explicit conditions governing acceptance tests and maintenance program, approved contents, design features, and authorization, and has removed the bases section from the TSs attached to the CoC to ensure consistency with NRC's format and content. In addition, other minor, nontechnical changes have been made to CoC 1021 to ensure consistency with NRC's new standard format and content for CoCs.

The NRC finds that the TN–32 cask system, as designed and when fabricated and used in accordance with the conditions specified in its CoC, meets the requirements of 10 CFR Part 72. Thus, use of the TN–32 cask system, as approved by the NRC, will provide adequate protection of public health and safety and the environment. With this final rule, the NRC is approving the use of the TN–32 cask system under the general license in 10 CFR Part 72, Subpart K, by holders of power reactor operating licenses under 10 CFR Part 50. Simultaneously, the NRC is issuing a final SER and CoC that will be effective on April 19, 2000. Single copies of the CoC and SER are available for public inspection and/or copying for a fee at the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

Summary of Public Comments on the Proposed Rule

The NRC received four comment letters on the proposed rule. The commenters included the applicant, a user's group, and two letters from members of the public. Copies of the public comments are available for review in the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003–1527.

Comments on the TN–32 Cask System

The comments and responses have been grouped into nine subject areas: general, radiation protection, accident analysis, criticality analysis, thermal, materials, design, technical specifications, and miscellaneous issues. Several of the commenters provided specific comments on the draft CoC, the NRC staff's preliminary SER, and the TSs. To the extent possible, all of the comments on a particular subject are grouped together. The listing of the TN–32 cask system within 10 CFR 72.214, "List of approved spent fuel storage casks" has not been changed as a result of the public comments. A review of the comments and the NRC staff's responses follow:

A. General

Comment A.1: One commenter stated that the NRC is certifying more casks generically rather than on a site-specific basis. This is not consistent with the Nuclear Waste Policy Act (NWPA) guidance and results in more site specific changes or amendments, confuses workers in the industry, complicates the approval process, requires significant NRC resources to address problems as casks get loaded, and requires special NRC inspection teams to address new cask problems. The commenter further suggested that a standard design should be developed by having DOE, NRC, Congress, and other organizations work together to choose the best design proposed by vendors. The commenter asked how many designs the NRC would ultimately certify, their compatibility with the total transport and disposal system and the time and money that will be spent approving so many designs.

Response: The NRC disagrees with the comment. The NWPA directs the NRC to establish one or more technologies and does not include specific guidance on the number and types of cask designs that should be considered, approved, or used. The NRC does not require that a cask be universal or be useable at every reactor site. This comment is beyond the scope of this rule that is focused solely on whether to place a particular cask design, the TN–32 cask system, on the list of approved casks.

Comment A.2: One commenter stated that having different designs at one site confuses workers because of the need for different procedures and the need to be aware of all changes made to the CoC, the SAR and amendment changes. Further, the commenter stated that multiple designs will add the potential for human error and could have an adverse affect on public health and safety and that the NRC should evaluate how multiple cask systems used at one plant can affect safe operations at the plant.

Response: This comment is beyond the scope of this rule that is focused solely on whether to place the TN–32 cask system on the list of approved casks.

Comment A.3: One commenter stated that regulations should be written more simply to enhance successful implementation.

Response: The NRC agrees with the commenter that the regulations should be easy to understand; however, the commenter did not offer any specifics as to what in the regulation was confusing. The actual rule change is the addition of the TN–32 cask system to the listing of approved casks. The NRC staff is committed to issuing its regulations in plain English including this rule.

Comment A.4: One commenter stated that the NRC should form a committee to consider the nuclear waste "picture" based on current NRC practices and how it will change in the future.

Response: This comment is beyond the scope of this rule.

Comment A.5: One commenter stated that NRC approving a large number of casks generically results in more site specific changes and amendments being needed, confuses workers in the industry, complicates the approval process, requires significant NRC resources to address problems as casks get loaded, and requires special NRC inspection teams to address new cask problems.

Response: This comment is beyond the scope of this rule.

Comment A.6: One commenter stated that allowing TN–32 casks to be fabricated by exemption adds risk to the public because they will be used with as little change as possible. The commenter further stated that no TN–32 casks should have been built until a generic certification is issued and the documents are finalized and accurate.

Response: The NRC exemption that allows the casks to be fabricated before the design being approved included a technical evaluation of the impacts of this action. This evaluation reflected that fabrication of the casks with no fuel loading does not add any measurable risk to the public. Casks are not used (loaded) until they conform to the final NRC approval in the form of an issued CoC or site-specific license.

Comment A.7: One commenter discussed the Wisconsin Public Service Commission (WPSC) lack of concern about TN not having to use positive means to verify continued efficacy of the neutron absorbing material in the casks.

Response: Issues related to WPSC are beyond the scope of this rule.

Comment A.8: One commenter asked if a generic TN–32 had ever been built and tested, if there are similar designs being used at the Surry nuclear plant and if the Surry casks are site-specific designs, if Wisconsin Electric Power Company (WEPCO) has built similar cask designs, if any similar designs have been loaded, what the track record has been for similar designs, how long the casks have been used at other sites, whether closure seals have been replaced and where, whether exemptions were required elsewhere, and whether these other casks will need changes to meet the current proposed design.

Response: As noted in the SAR in Chapter 1, the standard TN–32 cask was approved by the NRC as a Topical Report in 1996 for reference in site-specific applications. Currently there are nine TN–32 casks located at the Surry site that were first loaded in 1996 and five at the North Anna site first loaded in 1998. A successful dry run was performed before the first loading at each site. WEPCO has the VSC–24 design casks at its Point Beach site that is a different design than the TN–32. O-rings have been replaced on casks on the Surry site. Exemptions have been granted to other cask designs and are publically available. There will be no requirements to change already approved cask designs to meet the specifications of the design being approved by this rule, because there has been no NRC finding as part of the current review that calls into question any NRC safety findings on previous TN–32 designs.

Comment A.9: One commenter stated that the environmental assessment (EA) using the tiered approach on past environmental analysis is not valid and an environmental impact analysis should be performed for the TN–32 and every other new cask design.

Response: The NRC disagrees with the comment. The EA and finding of no significant impact (FONSI) for this rule are limited in scope to the TN–32 in a generic setting. The NRC has given specific consideration of environmental impacts of dry storage and has not found any new information affecting the conclusion that these impacts are expected to be extremely small and not environmentally significant. Therefore, the NRC believes that meaningful new environmental insights would not be gained by performing an environmental impact analysis for each new cask that is certified. The EA covering the proposed rule, as well as the FONSI prepared and published for this rulemaking, fully comply with NRC's environmental regulations in 10 CFR Part 51. The Commission's environmental regulations in Part 51 implement the National Environmental Policy Act (NEPA) and give proper consideration to the guidelines of the Council of Environmental Quality (CEQ). The EA and FONSI prepared for the TN–32, as required by 10 CFR Part 51, conform to NEPA procedural requirements. Tiering on past environmental Impact Statements (EISs) and EAs is a standard process under NEPA. As stated in CEQ's "Forty Frequently Asked Questions," the tiering process makes each EIS/EA of greater use and meaning to the public as the plan or program develops, without duplication of the analysis prepared for the previous impact statement.

Comment A.10: One commenter provided a number of comments and questions on the use of TN–32 casks by WEPCO. The commenter asked about why casks may be made in Japan and who would regulate this process. This commenter also expressed concern about the increased costs for the TN–32 over that of the VSC–24.

Response: These comments are beyond the scope of this rule that is focused solely on whether to place the TN–32 cask system on the list of approved casks. Decisions made by specific utilities on why a specific cask is chosen over another design are beyond the scope of this rule. If WEPCO chooses to use the TN–32 cask design at the Point Beach site, the licensee will be required to perform an evaluation in accordance with 10 CFR 72.212 to determine whether activities related to storage of spent fuel under the general license would involve any unreviewed safety question as provided under 10 CFR 50.59. In accordance with this regulation, the licensee would make changes to existing lifting systems and any physical changes to the facility as necessary to accommodate new cask designs. Each of these changes would need to be evaluated per 10 CFR 50.59 to determine their impact on other systems and on existing safety analyses. The NRC does not have a role in selecting particular manufacturers for a cask. Each CoC holder and licensee is responsible for ensuring that the quality assurance requirements for a cask are met by the fabricator. The cost of cask fabrication is beyond the scope of this rule.

Comment A.11: One commenter stated an opinion that burnable poison rod assemblies (BPRAs) and thimble plug assemblies (TPAs) should not be placed in casks but should be shipped in low level waste containers to low level waste storage facilities. This would make the shipping process less costly and would result in simpler procedures and analyses.

Response: The NRC disagrees with this comment. The inclusion of BPRAs and TPAs in the spent fuel casks provides better protection by limiting potential radiation exposure for the plant workers and the public than handling these items separately. Even though the radiation source term in the casks due to BPRAs and TPAs is higher, the user at each site must take steps and measurements to ensure that the regulatory limits on dose rates are met. The cask users will have procedures to address the differences in handling casks with and without BPRAs and TPAs. Storage of spent fuel assemblies and their associated hardware that includes BPRAs and TPAs in a cask is not prohibited by NRC regulations. The comment about storage of BPRAs and TPAs at a low level waste facility is beyond the scope of this rule.

Comment A12: One commenter asked who verifies that fabricators are qualified to build casks and suggested that the NRC set up evaluation criteria and enforcement programs to bar unqualified companies. The commenter also voiced a concern that vendors and subcontractors are new to the nuclear industry and require strong and effective quality assurance.

Response: The CoC holder and licensee are responsible for verifying that fabricators are qualified. The choice of who fabricates a container is a business decision made by the licensee or certificate holder seeking to build containers. The CoC holder and licensee must have an NRC-approved Quality Assurance (QA) Program that is approved as part of the licensing or CoC issue process. This QA program must meet the requirements of 10 CFR 72.148 and 10 CFR 72.154 for the selection of fabricators. Also, the procurement documents issued to the fabricator must comply with 10 CFR 21.31. These requirements are passed onto fabricators as part of a contract or through other procurement documents. The licensee/CoC holder is required to verify that all regulations applicable to the container are met. The NRC inspects the licensee/CoC holders and fabricators to verify compliance as well. The NRC has a defined process for taking enforcement actions against those that do not comply with NRC regulations.

Comment A.13: One commenter recommended that the NRC certify only dual purpose casks in the future.

Response: This comment is beyond the scope of this rule. The current regulatory framework does not preclude an applicant from requesting certification of either a transport, storage, or dual purpose cask. The NRC may approve any one of these designs.

Comment A.14: One commenter disagreed with the NRC position that the independent spent fuel storage installation (ISFSI) must be designed to withstand the same safe shut down earthquake as for the adjacent nuclear power plant. Instead, this commenter recommended that an ISFSI pad should be required to have its own specific seismic analysis because the reactor and the ISFSI may be located on different types of soil or land forms.

Response: The NRC disagrees with the recommendation that each ISFSI pad be required to have a specific seismic analysis. Before using the TN–32 cask, the general licensee must evaluate the site to determine whether or not the chosen site parameters are enveloped by the design bases of the approved cask as required by 10 CFR 72.212.

Comment A.15: One commenter addressed the references included in the NRC SER. This commenter suggested that all references should be dated and that more current versions of references should be listed.

Response: The NRC agrees with this comment. Reference dates have been added and more current versions of references have been added to the SER where appropriate.

Comment A.16: One commenter stated that the utility should not decide the amount of dose to the public that will be generated by the casks and that there should be a public hearing for each design that is proposed for use by a utility. The commenter further stated that the public knows nothing about how utilities choose cask designs at most locations, does not read the **Federal Register**, and feels incapable of reading NRC documents. The commenter added that the public should be given a choice as to what they want to be placed on a pad in the vicinity of their homes.

Response: This comment is beyond the scope of this rule. The NRC is not involved in the decision process used by utilities to select a cask design. A utility may choose any certified cask design for spent fuel storage. However, the potential dose to the public from the cask use may not exceed NRC regulatory dose limits. The rulemaking process used by the NRC for generic approval of casks is the regulatory vehicle used to obtain public input and ensure protection of public health and safety and the environment. This final rule adds the TN–32 cask design to the list of approved casks available for use by a power plant licensee under the conditions of the general license in 10 CFR Part 72. Those conditions require each licensee to determine if the reactor site parameters are encompassed by the cask design bases considered in the cask SAR and SER.

Comment A.17: One commenter stated that the computer based safety analysis that is discussed in SER Chapter 6 is not a realistic way of dealing with the design and accidents and requested that actual conditions be evaluated.

Response: The NRC disagrees with this comment. As stated in SER Section 6.3.1, the most limiting conditions are combined and bound all credible conditions. The NRC staff accepts analytic conclusions based on sound engineering methods and practices. NRC accepts the use of computer modeling codes to analyze cask performance. The NRC found the computer codes and models used by TN to be appropriate as discussed in the SER.

Comment A.18: One commenter asked who would be responsible for conducting a heat load test following a cask design change. The commenter suggested that a cask user would probably evaluate the design change under 10 CFR 72.48 rather than conducting a heat load test. The commenter also stated that the use of 10 CFR 72.48 results in "goofing up" design documents.

Response: The comment on the 10 CFR 72.48 process affecting design document quality is beyond the scope of this rule. As required by the TN–32 Certificate of Compliance (CoC), prior to loading a cask with a heat load equal to or greater than 23.7 kilowatts, the heat transfer performance of a cask shall be verified by a thermal test. The CoC also requires that any changes to the fabrication process be evaluated for thermal impact. If the change is found to be significant, the heat transfer performance of a modified cask shall be verified by an additional thermal test prior to loading a modified cask with a heat load equal or greater than 23.7 kilowatts. If the heat load exceeds the CoC specified value, there is no option to use 10 CFR 72.48 to avoid performing a repeat test.

Comment A.19: One commenter asked how the NRC will ensure that TN will independently verify the adequacy of the cask design and that changes to design documents will be reviewed and approved by the same organizations who performed the original design.

Response: Independent design verification reviews and reviewing design changes are governed by an NRC-approved QA program. The NRC performs inspections to verify that a CoC holder meets its approved QA program requirements. 10 CFR 72.232, "Inspection and Tests" provides the NRC permission to perform inspections and tests at any time. The NRC will be able to determine the adequacy of the independence of TN's cask design verification through the inspection program.

Comment A.20: One commenter stated that design records should be legible because their use is important during emergency situations, that the requirement for independent inspections should be emphasized in documentation and enforced, that calibration records are of grave importance and need constant verification that each action was completed, and that verifications should be done in a timely manner.

Response: The NRC agrees that design records must be legible and should be complete and accurate. Several regulations address the quality of records that are maintained by applicants and licensees. Each CoC holder must have an NRC-approved QA program. An NRC-approved program includes specific requirements for quality assurance records, independent inspection and testing, and control of measuring and test equipment. Ultimately, according to their approved QA program, the licensee/CoC holder must maintain necessary and sufficient records as evidence of activities affecting quality under routine and emergency conditions.

Comment A.21: One commenter asked what the standard industry decommissioning practices are for decommissioning (referred to on Page 14–1 of the SER), asked if implementation of decommissioning will be a big problem for the TN–32 design, how wet transfer will be dealt with for casks in the future, and when a dry transfer method will be used along with dual purpose casks. Also, the commenter asked if there is a proposal for a dry storage method with an associated dry transfer process and what the results were from the Transnucleaire of France report to DOE and EPRI on dry transfer.

Response: The phrase "standard industry decommissioning practices" in the SER refers to general practices of decontamination, cask disassembly with adequate radiological and occupational safety controls, fuel handling procedures, and safe component transportation and disposal. Decommissioning implementation will be addressed as a site-specific issue. The remaining portions of this comment are beyond the scope of this rule.

Comment A.22: One commenter stated that the review should consider the ultimate disposal of the spent fuel.

Response: This comment is beyond the scope of this rule. The CoC for the TN–32 is intended for the interim storage of spent fuel. Use of the TN–32 cask design for disposal at a high-level waste repository is beyond the scope of this rule. DOE has not yet made final decisions regarding cask design or deployment for the cask design to be used in the high-level waste repository.

Comment A.23: One commenter asked if the TN–24 design had ever been used and why it is not in production currently. Also, the commenter asked why casks holding 24 and 32 assemblies are being approved and used while the Yucca Mountain facility description discusses casks with a 21 assembly capacity.

Response: The comments on the TN–24 design are beyond the scope of this rule. A final decision on the design of storage casks for disposal at Yucca Mountain has not been made.

Comment A.24: One commenter stated that unloading procedures should be placed in the NRC public document room.

Response: The NRC disagrees with the comment. Detailed loading and unloading procedures are developed and evaluated on a site-specific basis by the licensee using the cask. There is no requirement to have detailed procedures placed in the public document room.

Comment A.25: One commenter stated that the NRC should always remember that the priority is public and worker safety, not keeping the plants operating; and that the NRC should do the certifications of new cask designs very carefully and not as fast as the utility schedule demands.

Response: The NRC's highest priority is to protect health and safety of the public including those working at a nuclear plant. Each cask certification requires a thorough and careful review of the design details and how each design complies with existing regulations. The NRC is aware of utility schedules but the NRC completion of certifications is based on available resources, the adequacy and completeness of applicant submittals, and the complexity of identified technical issues.

B. Radiation Protection

Comment B.1: One commenter stated that the assumptions of ranges of cobalt impurities included in the SAR are too great and that more current and accurate information should be used. The commenter also asked why the value for grid spacers is 4700 ppm and if anyone really knows what an accurate measurement is for all of the cobalt in the cask. The commenter stated that if the NRC confirmatory calculations resulted in 15% lower values for cobalt source terms, then there was a mistake.

Response: The NRC disagrees with the comment. The measurement data cited in the SER on cobalt impurity levels in fuel assembly hardware was collected before the effects of cobalt impurity were fully appreciated. More recently, cobalt impurity levels have been controlled during the fabrication process and typically do not exceed 1200 ppm. The assumed impurity value of 4700 ppm is accepted as a bounding value that will cover past, present, and anticipated future fabrication practices for Inconel hardware, and is conservative.

The difference between the applicant's and NRC staff's calculations for the cobalt source term is not a mistake. The methods available for estimating the Co-60 source term are not exact and the results depend on the assumed reactor operating conditions that change over time and vary from plant to plant. Some variation in results is expected. The fact that the NRC staff's values were lower for the Co-60 source term show that the applicant's calculations for this term were bounding.

Comment B.2: One commenter noted that in the SER the NRC stated that the integration of the neutron source as a function of axial position resulted in a 28% larger total neutron source than that given in Table 5.2–3 of the SAR . The commenter asked if the applicant's calculations were wrong. Further the commenter suggested that a cask design should not just meet requirements but should be "ALARA-not up to the limit."

Response: The NRC disagrees with the comment. The calculations of the neutron source term made by the applicant are correct. The methods available for calculating neutron source terms as well as gamma-ray source terms are not exact and some variation between code results is expected. The neutron dose rate on the surface of the neutron shield is only 10 percent to 15 percent of the total dose from the cask. The difference in neutron source term was offset by the higher gamma-ray source term estimate by the applicant. Overall, the applicant provided a bounding shielding analysis.

Provided the applicant's design meets the regulatory limits for off-site dose, the NRC finds this acceptable. Doses to individuals will be determined when the cask is used at an actual site. Each general license user of the cask will have a radiation protection program that seeks to identify operational alternatives to keep the dose to workers as low as reasonably achievable (ALARA).

Comment B.3: One commenter noted that the NRC concludes in the SER that because the aluminum tubes containing the neutron shield material have a wall thickness of only 1/8 inch and actual measurements have not detected streaming, that streaming through the aluminum wall is not significant. The commenter asked who did the measurements and if the streaming . evaluation was carefully performed. Also, the commenter asked who developed the information in Appendix 5A, whether this was the source of the measurements, and if the measurements were accurate.

Response: Appendix 5A does not address the streaming issue and was initially provided to support an analysis in a second appendix that was later deleted. However, the applicant left Appendix 5A in the SAR for informational purposes only. In response to a request for additional information on the potential for streaming, the applicant cited other measured dose rates around the TN–24P (EPRI NP–5128), the TN–40 and TN–32 casks, that, "have shown no streaming effects in moving circumferentially around the neutron shield." This information was considered during the NRC staff's review. Measurements by licensees are subject to NRC inspection and no further investigation of their accuracy was deemed necessary.

Comment B.4: One commenter asked why the radial neutron shield is not the full length of the cask because dose rates can be higher above and below the shield and BPRAs and TPAs have higher doses. The commenter also asked what the real dose a person inspecting the cask can be expected to receive near the trunnion area above and below the neutron shield especially to the head and feet (not just the average dose to a person working near the side of the cask).

Response: The radial neutron shield runs the full length of the active fuel region of the fuel assemblies that is the location of the neutron source term. The peak surface dose rates at the top and bottom edges of the neutron shield are very localized and drop off rapidly as one moves away from the shield edge. The applicant's estimate of worker exposure did account for the higher doses at the edges of the neutron shield coupled with the number and duration of tasks necessary in those regions. The estimated dose for loading operations around the upper corner of the cask is 2.9 person-rem. The user's ALARA program is established to identify local hot spots such as the trunnion area and take measures to avoid worker proximity to those areas as much as possible. The ALARA program will control the actual doses when the casks are loaded at the plant.

Comment B.5: One commenter stated that the accident dose would be much less if BPRAs were not loaded in the casks. The commenter asked how the BPRAs affect the total dose to the public in a full cask array, how close the calculated doses are to regulatory limits, and how the doses compare to those of other approved casks.

Response: The data provided in the SAR show a less than 20 percent increase in the normal and accident doses due to the presence of BPRAs. For normal conditions, each general licensee who uses the TN–32 cask must perform an evaluation to show that the regulatory off-site dose limits will be met at the licensee's site. Thus, a direct comparison to the regulatory limits will depend on site-specific conditions and usage. The analysis of a typical cask array shows that the dose limit to a public resident is met at a distance of approximately 450 meters from the storage pad. The accident dose at 100 meters from a cask is estimated to be approximately 15 percent of the regulatory limit. Because the NRC evaluates the cask design versus the regulatory limits, comparison of the TN–32 design to other approved cask designs is beyond the scope of this rule.

Comment B.6: One commenter stated that the casks are really site-specific from a dose perspective because the dose from everything at a site needs to be considered including effluents, low level waste, old steam generators, etc. The commenter suggested that a berm would be needed, especially to minimize the dose to the public. The commenter also asked who evaluates this (the licensee or the utility) and if NRC checks the dose calculations.

Response: The NRC agrees that the actual doses are a site-specific issue that will be addressed by the cask users ALARA program. Under 10 CFR 72.212(b)(2), each general licensee who uses the TN–32 cask must perform an evaluation to show that the regulatory off-site dose limits are met at the licensee's site. The evaluations are made available for NRC inspection and review.

Comment B.7: One commenter asked if the total dose of 4.25 person-rem per cask is acceptable to the NRC, if other cask designs have much lower total doses, and if the total dose may exceed this value in the future. The commenter suggested that an acceptable dose is one that is closest to the minimum.

Response: Although acceptable, the operational dose estimates in the application are considered to be bounding values (conservative overestimates) and actual doses are expected to be lower. Occupational dose limits are set in 10 CFR Part 20. The total dose received during cask loading will be shared by a number of workers and is monitored by the user's radiation protection program. That program must ensure that occupational doses do not exceed regulatory limits. One component of an approved radiation protection program is an ALARA program and is subject to NRC inspection. Because the NRC evaluates the cask design versus the regulatory limits, comparison of the TN–32 design to other approved cask designs is beyond the scope of this rule.

Comment B.8: One commenter asked if Regulatory Guide 8.8, "Information Relevant to Ensuring that Occupational Radiation Exposures at Nuclear Power Stations will be As Low as Reasonably Achievable" applies to doses to the public.

Response: The Regulatory Guide does not directly address dose to the general public. It specifically addresses occupational doses to reactor station personnel.

Comment B.9: One commenter asked for the dose rate under the bottom plates and how radioactive the pad would become by the time the pad is decommissioned.

Response: The applicant estimated a dose rate of 498 mrem/hour on the bottom surface of the cask for a full load of design basis fuel assemblies. The amount of activation in the pad is expected to be small and will depend on the actual fuel loaded and time of storage. At the time of final decommissioning, the cask user will be required to measure any induced radiation in the pad and activated material will be handled according to the regulatory requirements.

Comment B.10: One commenter asked why the shielding analysis is based on nominal uranium content that is slightly less than the specified values.

Response: For a given fuel design, there will be slight variations in the uranium content due to occasional minor modifications made to meet the special needs of the buyer for a particular batch of fuel. The range of variations is much less than the accuracy of the methods currently available for the analysis and will not change the finding of reasonable assurance for approval of the design. The maximum limits on uranium content specified in TS 2.1.c are set to bound all potential variations for the particular design. The values used in the analysis are more representative of the fuel most likely to be stored in the cask.

Comment B.11: One commenter asked how hard it is to decontaminate the outside of the TN–32 after being in the pool. The commenter further inquired as to the extra dose received by the worker in decontaminating the cask.

Response: Decontamination is not a particularly difficult task but does take some time and care. Steps are performed to aid the process of decontamination as the cask is placed in the pool. Tests are performed to determine that effective decontamination is achieved and additional decontamination will be performed when needed. Decontamination is estimated in the SAR to take 1.5 hours with a maximum worker dose of 0.27 person-rem.

Comment B12: This commenter asked if the expected dose rates for the TN–32 would be three times that of the VSC–24.

Response: The projected annual dose from one TN–32 loaded cask is described in Table 10.2–1 in the SER and shows what the dose would be at different distances. This dose for this design is within regulatory limits. The NRC does not conduct its dose review on a comparative basis considering other cask designs. The expected doses from other approved designs are reflected in SARs from those designs and are publically available.

C. Accident Analysis

Comment C.1: One commenter stated that the 15 minute transporter fuel fire should not be the bounding fire accident and recommended that the NRC evaluate a large airplane crashing into a full array of casks, a lightening strike induced fire, a fuel fire fed by aircraft fuel, or a missile that causes a fire at the pad breaking up casks, and burning the plastic, seals, and resins. The commenter also asked what the total amount of material that could be off-gassed, melted, and burned up if several casks were hit by an airplane; what an emergency crew would be expected to do given a catastrophic crash into a cask array; what a fire crew should spray or dump on a fire to mitigate its severity; how one would move and unload a cask with a destroyed neutron shield and burned out seals; and whether local emergency crews have action plans for such severe fires at a storage pad.

Response: The NRC disagrees with this comment. The basis for the 15-minute fire is associated with the time it would take to burn approximately 200 gallons of fuel, presumably carried by the transporter. The analyzed fire is assumed to burn at 1550 °F and is assumed to produce the worse case scenario of fire/heated air for the TN–32. The fire is assumed to fully engulf the cask, thus maximizing the heat input into the cask. Fire of this duration exposed to the outside of the cask would have little effect on the contents due to the thermal inertia of the cask. The weather cover o-ring and neutron shield may burn or char if exposed to the design basis fire. Complete combustion of the weather cover o-ring would contribute an insignificant amount of heat to the TN–32 and would not affect any components that are important to safety. The radial neutron shield is a polyester material which includes about 50 percent fire retardant fill, which makes it self-extinguishing when exposed to fire. The top neutron shield is polypropylene which is slow burning or may not burn at all in a fire environment. The applicant has added information to the SAR to address the combustibility of the neutron shield.

Other external sources of heat associated with the TN–32 are solar insolation and ambient temperatures. These sources are included in the thermal analysis in section 4 of the TN–32 SAR. External pressure sources include normal atmospheric conditions, flood submersion, and explosions. These sources are included in the safety analysis in Sections 2, 3, and 11 of the TN–32 SAR.

The applicant's evaluation of a lightning strike is provided in section 2.2.5.2.8 of the TN–32 SAR. No significant thermal effect was identified since the electricity would be conducted through the metal components to ground. Other vehicles causing the fire (such as airplanes, trains, delivery trucks or missiles) are not plausible and are beyond the scope of this rule. However, the applicant did evaluate the design capability to withstand an explosion with a force up to 25 psi of external pressure. (See also discussion for Comment C.7.)

Before using the TN–32 casks, the general licensee must evaluate the site to determine whether or not the chosen site parameters are enveloped by the design bases of the approved cask as required by 10 CFR 72.212(b)(3). Included in this evaluation is the verification that no credible source of an external explosion that would produce an external pressure above 25 psi and that any cask handling equipment used to move the TN–32 cask to the pad is limited to 200 gallons of fuel (refer to Technical Specification 4.3.5—Site Specific Parameters and Analyses). Also, when a general licensee uses the cask design, it will review its emergency plan for effectiveness in accordance with 10 CFR 72.212. This review will consider interdiction and remedial actions to address accidents of all types and coordination with local emergency response teams.

Comment C.2: One commenter questioned what tornados, lightning, fire, and puncture damage would do to the effectiveness of the neutron shield. The commenter also questioned whether the plastic seals burn easily.

Response: The top neutron shield and the radial neutron shield have not been designed to withstand all of the hypothetical accident loads. There may be local damage due to accidents such as tornado missiles, fire, etc. Therefore, cask structural analyses have been performed assuming that the neutron

shield is completely removed during the accident conditions. The results indicate that the cask without the neutron shield is adequately designed to withstand various load combinations of the accident condition as presented in Sections 2, 3, 4, and 11 of the SAR. The lid seals are metal. The design has been found capable of maintaining the confinement of radioactive material under the identified credible accident conditions even with the loss of the neutron shield. Thus, any dose to the public is controlled and would be within regulatory limits.

Comment C.3: One commenter stated that casks should not be permitted to slide at all or much less than the 7.88 in. discussed in the SER. Further, the commenter suggested that the analysis should assume that the casks could slide in more than one direction. The commenter also asked if sliding affects other casks already certified.

Response: The NRC disagrees. The TN–32 cask will not tipover or slide due to tornado and wind loading as analyzed in Section 2 of the SAR. The SAR indicates that the cask may slide 7.88 in. due to a 4,000 lb. missile (in this case, an automobile) impacting below the center of gravity of the cask at 126 mph. This is much smaller than the approximately 94 inch distance between casks. In the unlikely event that two 4,000 lb missiles were to impact below the center of gravity of two adjacent casks from opposite directions, the two casks still would not collide with each other. Furthermore, the automobile is conservatively assumed to be rigid and absorbs no energy in the analysis. In reality, upon impact the majority of the energy will be absorbed by the crushing of the automobile rather than moving of the cask. The NRC has not identified any design issues in the TN–32 review which affect any other casks previously approved.

Comment C.4: One commenter asked that during a tornado, what structures are near the casks that could hit one of them and whether a meteorological analysis had been done to evaluate the effects of tornados on the casks.

Response: This is a site-specific issue. The cask user will have to address this issue in its 10 CFR 72.212 evaluation.

Comment C.5: One commenter asked about how a cask could become buried and what assumptions were used for causes for the burial accident.

Response: TN–32 SAR Section 11.2.10 provides possible causes for accidental cask burial such as an earthquake.

Comment C.6: One commenter stated that the unloading function is not given much attention in the full safety analysis of the cask for accidents.

Response: General procedure descriptions for these operations are summarized in Section 8.2 of the SAR. These procedure descriptions were reviewed by the NRC. As discussed in Section 8 of the SER, the NRC concluded that these procedure descriptions were acceptable for use in developing detailed site-specific procedures. Detailed loading and unloading procedures will be developed on a site-specific basis by the cask user.

Comment C.7: One commenter asked a number of questions relating to the accident analysis assumptions for explosions involving combustible materials shipped to reactor sites and on transportation links near nuclear power plants. Specifically, the commenter asked about controls over what is shipped near the Point Beach plant and a number of other potential sources of explosion.

Response: This comment about Point Beach is beyond the scope of this rule. The applicant, Transnuclear, did evaluate the TN–32 cask design for its capability to withstand an explosion with a force up to 25 psi of external pressure. Further, the NRC has evaluated the effects of a truck bomb located adjacent to storage casks. The use of a generally licensed cask by a utility requires that the user ensure that the site is not subject to any potential accident that has not been analyzed. This would include any potential active or passive source of explosion at or near the pad.

Comment C.8: One commenter stated that consideration of a sabotage threat is not up to date for ISFSI designs.

Response: The NRC disagrees with the comment. The NRC reviewed potential issues related to possible radiological sabotage of storage casks at reactor site ISFSIs in the 1990 rule that added Subparts K and L to 10 CFR Part 72 (55 FR 29181; July 18, 1990). The NRC still finds the results of the 1990 rule current and acceptable. In addition, each Part 72 licensee is required by 10 CFR 73.51 or t 73.55 to develop a physical protection plan for the ISFSI. The licensee is also required to install systems that provide high assurance against unauthorized activities that could constitute an unreasonable risk to public health and safety.

D. Criticality

Comment D.1: One commenter stated that in the KENO input file of page 6.6–7, the last zero in the unit cell resonance correction input should be changed to a 3.

Response: The NRC agrees with the typographical correction suggested by the commenter. The correct unit cell data was used in the NRC staff's confirmatory calculations and demonstrated that this error had a negligible effect on the criticality safety analysis results. The SAR has been revised as appropriate.

Comment D.2: One commenter asked a question about what confirming demonstration and analysis the NRC used to show that "significant" degradation of the neutron absorbing material used in each cask can not occur over the life of the facility. The commenter also disagreed with the NRC statement in the SER that neutron absorber plates would have a continued efficacy over the 20 year cask life because there is no knowledge basis for this and fabricators do not meet perfection in their products.

Response: The NRC staff does not consider the loss or degradation of fixed neutron poisons credible after installation into the cask because the poisons are fixed in place and contained. The neutron absorber is designed to remain effective in the TN–32 system for a storage period greater than 20 years and there are no credible means to lose the neutron absorber. Section 6.3.2 of the TN–32 SAR describes the neutron absorber and its environment, and evaluated boron depletion due to neutron absorption. Section 9.1.7 of the SAR describes the testing procedures for the neutron absorber material that will be manufactured and tested under the control and surveillance of a quality assurance and quality control program that conforms to the requirements of 10 CFR Part 72, Subpart G. The compositions and densities for the materials in the computer models were reviewed by the NRC staff and determined to be acceptable. The NRC staff notes that these materials are not unique and are commonly used in other spent fuel storage and transportation applications.

Comment D.3: One commenter asked what the comprehensive fabrication test was that is capable of verifying the presence and uniformity of the neutron absorber and if any of these tests really exist.

Response: As stated in SER Sections 6.1 and 6.3.2, the fabrication requirements and neutron and visual acceptance tests that must be performed are described in SAR Section 9.1.7. In SER Section 9.1.5, the NRC staff found the tests are adequate to validate the specified boron content and fabrication quality.

Comment D.4: One commenter asked why the applicant did not perform a calculation to verify that criticality safety is maintained for each type of fuel with TPAs that will be stored in the cask versus relying on a bounding analysis for fuel containing BPRAs.

Response: In SAR Section 6.4.2, the applicant explicitly evaluated all of the proposed fuel types to determine the most reactive fuel configuration. The most reactive fuel type was then used in the remainder of the criticality safety evaluation. The SAR shows that displacement of highly borated water within the active fuel region causes a slight increase in reactivity for this cask under the conditions evaluated. The BPRAs bound the TPAs. A fuel assembly can only contain either a BPRA or a TPA. The BPRAs extend down into the active fuel region and, as stated in SAR Section 2.3.4.1, they displace more borated water than the TPAs.

Comment D.5: One commenter asked about the fuel pin pitch parameter role in the calculation of k_{eff}, if the NRC understands what happens as it varies, and if the NRC expects different effects on k_{eff} than the applicant does. The commenter also asked if the fuel pins "straighten up" and become "more centered" as water comes in around them, and stated that there are a lot of unknowns about fuel behavior in dry casks.

Response: The pin pitch is the distance between fuel pins and can decrease if the fuel assembly grid spacers fail as evaluated in SAR Section 6A. The NRC staff compared the effects of varying the amount of borated water between an array of fuel pins and varying the amount of borated water between fuel assemblies in a TN–32 cask. As pin pitch is reduced for assemblies in a TN–32 cask, the amount of borated water between assemblies increases, resulting in a decrease in reactivity.

Comment D.6: One commenter asked what operating experience in cask unloading is used to establish the frequency for checking the boron concentration.

Response: The frequency for checking the changes to the water boron concentration is based on spent fuel pool operating experience that does not require experience in cask unloading. There is significant spent fuel pool operating experience that supports the TS frequency for checking the boron concentration of the water.

E. Thermal

Comment E.1: One commenter asked why the maximum fuel cladding temperature had been reduced from 348 °C [as approved in another cask design] to 328 °C [for the TN–32 design].

Response: The fuel cladding temperature is established to protect the cladding from failure during the storage lifetime. This temperature limit is based on several factors including the cladding hoop stress and the length of time the fuel has been cooled. Cladding hoop stress is related to the rod internal pressure. The rods are pressurized by gas present in the plenum and gap. Because casks certified under 10 CFR 72 Subpart L have a broad range of applicability and in response to the NRC staff comments, the applicant selected an upper-bound rod internal pressure to develop the clad temperature limits. The resulting maximum cladding temperature limit was 328 °C. The temperature limit is based on the methods given in PNL–6189, Levy, I.S., et al., Pacific Northwest Laboratories, "Recommended Temperature Limits for Dry Storage of Spent Light-Water Zircaloy Clad Fuel Rods in Inert Gas" May 1987. The limit was found acceptable by the NRC staff in the TN–32 Preliminary SER. The methods in PNL–6189 are also referenced in NUREG–1536, "Standard Review Plan for Dry Cask Storage Systems" January 1997.

Comment E.2: One commenter asked why SAR Revision 11A on page 4–1 was referenced for this design while Revision 9A was used in a previous SAR for the TN–32, and asked if there was a problem with the previous analysis and what substantial thermal changes had been included in the new analysis.

Response: The TN–32 SAR Revision 11A, was the version of the SAR reviewed and approved by the NRC staff as part of the process of cask certification under 10 CFR 72, Subpart L. SAR Revision 9A was the version reviewed by the NRC staff for site-specific licensing for casks used at Surry and North Anna. The information included in SAR Revision 9A was not applicable to the TN–32 thermal design and was not reviewed by the NRC staff for this current design approval. Therefore, the differences in thermal design between the two designs are beyond the scope of this rule. The NRC staff did not identify any safety issues in Revision 11A that applied to any other cask designs.

Comment E.3: One commenter asked that the NRC define clearly what is meant by "short term" for the temperature limit of 1058 °F on page 4–1 of the SER.

Response: The short term temperature limit is applicable to temporary spikes in cladding temperature such as those that may occur in some accidents or during operations like vacuum drying. The NRC agrees that this term is unclear and has adopted the concept of a transient temperature limit. Guidance on the application of the transient temperature limit (referred to as "short term") is discussed in NUREG–1536, Section 4,V.1. The basis of the 1058 °F temperature limit for zirconium alloy clad fuel, given in NUREG–1536, is from A.B Johnson and E.R. Gilbert, Pacific Northwest Laboratories, "Technical Basis for Storage of Zircaloy-Clad Spent Fuel in Inert Gases" PNL–4835, September 1983. Experimental data in that report demonstrated no damage to zirconium alloy cladding when subjected to 1058° F for 30 days. The basis for the temperature limit is to avoid conditions that could cause a rod to burst due to excessive internal pressure and to limit the amount of creep that may occur at the elevated temperatures.

For spent fuel storage, the NRC staff generally expects the length of time the cladding would be at elevated temperatures above the long term limit to be much less than 30 days. This expectation is consistent with technical specification actions to implement temporary cooling of the fuel or to establish acceptable conditions for normal storage within periods that are much less than 30 days. These actions typically limit the time fuel is allowed to approach and remain at the transient temperature limit. In addition, if suitable long term storage conditions do not exist or cannot be established, the technical specifications may also require further actions such as removal of the fuel from the cask within 30 days. This expectation is also consistent with the assumptions for accident durations of 30 days or less.

Comment E.4: One commenter asked a number of questions concerning the cask heat up model discussed on pages 4–4 through 4–8 of the SER. Specific comments addressed: whether BPRAs and thimble plugs were included in the model for weight inputs and for radiation hot spots; why the model assumes gaps between the basket and cask bottom, between the basket and rails, and between the rails and cavity wall; and whether the gaps really exist or are added for conservatism.

Response: The heat contribution from the BPRAs and thimble plugs was considered in the cask analysis. Rather than explicitly modeling the fuel assemblies, BPRAs, and thimble plugs, they were modeled as homogenized units that had equivalent heat transfer characteristics. The weights of various

fuel assemblies including the heaviest BPRAs for storage in the TN–32 cask are presented in Table 2.1–1 of the SAR. In SAR Table 5.1–2, the applicant provided the incremental dose rate resulting from the BPRAs and TPAs at the same locations around the cask as for the fuel assemblies including the hot spots above and below the neutron shield. Gaps are assumed in the modeling as discussed in the response to Comment E.5.

Comment E.5: One commenter stated opposition to the thermal performance of the cask design being based on the gap size in the cask body layers. The commenter stated that fabricators will not be able to control the gap size to 0.04 inch that errors will occur, and that the limit is not conservative enough, adding risk to public safety. Further, the commenter noted that requiring only one demonstration test of conformance to the gap limit by the applicant will not guarantee that the other casks used will meet the same limit.

Response: Gaps between the various cask components were assumed in the analysis to account for fabrication and assembly tolerances and uncertainties. The NRC staff expects that the as-built casks will have gaps that are less than or equal to those assumed in the analysis. The implemented QA program at the fabricator's facility provides reasonable assurance that this will occur. However, to demonstrate the adequacy of the fabrication process and to provide defense-in-depth, the NRC will require thermal testing of a single cask by each agent or subcontractor authorized by the certificate holder to complete final assembly of the TN–32 cask body. This test shall be performed before the first loading of any cask assembled by that agent and/or subcontractor with a heat load equal to or greater than 23.7 kilowatts. The test will evaluate thermal performance for a range of heat loads up to and including the maximum authorized heat load of 32.7 kilowatts. Further, any changes to the fabrication process are required to be evaluated for thermal impact. If the change is found to be significant, the heat transfer performance of the modified cask must be verified by an additional thermal test.

Comment E.6: One commenter suggested that the vendor or applicant should conduct tests of the unloading process and full scale testing of the cask with a complete load and a representative fuel basket before the design is certified by rulemaking. Further, the commenter suggested that the test results should be presented to a public service commission hearing before a utility decides which cask to purchase and use, that the NRC should specify criteria on how the approval process is to be conducted and what specifications should be included in the SAR and other design documents, and that the NRC should specify that vendors and applicants will be fined or contracts will be terminated if fabricators do not meet the design criteria. Also, the commenter asked why the applicant does not know the thermal responses for the design and if the thermal test will be conducted with both sets of trunnions for thermal results.

Response: The NRC disagrees with the comment. The TN–32 storage cask design has been reviewed by the NRC. The basis of the safety review and findings are clearly identified in the SER and CoC. Testing is normally required when the analytic methods have not been validated or assured to be appropriate and/or conservative. In lieu of testing, the NRC finds analytic conclusions that are based on sound engineering methods and practices to be acceptable. The NRC staff has reviewed the analyses performed by the applicant and found them acceptable. The authority of a public service commission to approve a design or the use of tests is beyond the scope of this rule. The NRC has issued a number of guidance documents including NUREG–1536, "Standard Review Plan for Dry Cask Storage Systems" that provide information about the criteria used by the NRC to approve spent fuel storage cask designs. The design approval process is outlined in 10 CFR Part 72. It is the vendor's or applicant's responsibility who contracts with a fabricator to ensure that the casks and components are built in accordance with the approved design specifications and criteria, and in accordance with the CoC holder's QA program. If the NRC determines through inspection or other means that a cask has been fabricated that does not meet design criteria, then the NRC will take necessary enforcement action against the CoC holder or utility that is using the cask. The SAR provides a thermal analysis acceptable to the NRC staff as discussed in the TN–32 SER, Section 4. The purpose of the thermal test is discussed in the response to Comment E.5 above.

F. Materials

Comment F.1: One commenter stated that the use of a coating on the carbon steel in the cask design will cause problems and stated that stainless steel should be used in fabrication.

Response: The NRC disagrees with this comment. The materials used in the fabrication of the cask are described in Chapters 1 and 3 of the SAR and discussed in Section 3.1.4 of the NRC SER. Materials have been found to have properties that are acceptable as they meet the requirements for their respective applications in the cask system. The coating on the cask interior is flame sprayed aluminum that is a tightly adherent and stable coating in the spent fuel storage environment. These materials have been found to be suitable for the expected loading and storage in wet and dry environments, including corrosion and galvanic effects as discussed in Section 3.2.1 of the SER. There is no requirement for designers to select materials from a given class, e.g. stainless steels.

Comment F.2: One commenter stated that freeze-thaw causes icicles to hang down from the top of cask and have covered outlets on a VSC–24 cask at Point Beach and at Fort Saint Vrain. The commenter then asked if this can occur on a TN–32 cask and cause dripping along the neutron shield; if the resins in the shield can become water saturated; if the aluminum sleeves are water tight; if chemical reactions can occur; if snow, ice, and water can enter cracks or flaws in the gamma shield and reach the containment outer wall; if gaps exist in the trunnion area where water can enter; and if corrosion of carbon steel is a concern in this design. The commenter also asked if fog, rain, mist, and air pollution can affect these casks over time.

Response: The TN–32 design does not include vents, and therefore, there is no concern about ice formation. The outer shell of the neutron shield consists of a cylindrical shell section with closure plates at each end. The closure plates are welded to the surface of the gamma shield. The resins are encased (on all sides) with aluminum or steel. Therefore, it is unlikely that water will come in contact with resins. However, if water contacted the resin, there is no concern because the neutron shielding materials are common plastics that are inert with respect to water. The carbon steel is painted to prevent corrosion and the integrity of that paint will be monitored by the cask user, and repairs will be made if needed.

Comment F.3: One commenter asked if the quenching effect on BPRAs and thimble plugs has been evaluated; if the BPRAs and plugs absorb water, expand, and add weight when the cask is reflooded; if the BPRAs or plugs fall apart or depressurize, will that affect the removal of assemblies from the cask; if pinhole and hairline cracks in the fuel rods will absorb water and then later expand as the rods are dried out; and if the reflooding water is factored into the lifting weight of the cask. Further, the commenter asked if fuel rods absorb water, will that prevent removal after long term storage. Lastly, the commenter recommended that tests include unloading of a real cask at Surry or elsewhere and that an inspection be conducted to determine what has happened to the fuel pellets, zircaloy, etc.

Response: BPRAs rods are constructed in a manner similar to fuel in that the neutron absorbing material is placed in sealed tubes made of either stainless steel or zirconium alloy. The thimble plug devices are solid stainless steel rods. Both BPRAs rods and thimble plug rods are attached to a stainless steel baseplate. The NRC staff has not identified any conditions in spent fuel dry storage, including quenching, that would cause failures of BPRAs or thimble plugs that would allow them to absorb water or break apart and affect unloading. Further if they are assumed to break apart, the NRC staff has concluded there are no adverse safety consequences. Table 1.2–1 in the TN–32 SAR provides the cask weight when filled with water.

Comment F.4: One commenter stated that the applicant should know the actual Charpy data rather than providing preliminary data; the flaw should not be parallel, radial, or in a line; the flaw depth and width should be known; and a special examination of the gamma shield is necessary even if the identified flaw size is less than the allowable. The commenter also asked how the Charpy V-notch testing will be verified before the tested materials are to be used in fabrication, and that the NRC clarify just what it is allowing and why.

Response: The NRC disagrees with the comment. The "preliminary data" is data based upon other plates and heats made to the same specifications as the gamma shield material, SA 266 Grade 2. The materials used in actual TN–32 casks will be tested before use in the cask to ensure that their properties meet or exceed what is required, as indicated in SER Section 9.1.1. The Charpy and other properties enumerated in the SER ensure safe performance under service thermal conditions. Charpy tests are always conducted using a standard ASTM method, E23, "Standard Test Methods for Notched Bar Impact Testing of Metallic Materials."

The gamma shield is a forged component. Flaws in forgings are very small. There is no safety related risk or materials problem related to the use of a forging in this application. Appendix 3E of the SAR specifies the allowable flaws for various orientations and locations. Flaws of these sizes will not propagate under service conditions. Any flaw in the gamma shield will be smaller than these sizes.

Comment F.5: One commenter noted that the NRC stated in a November 1, 1996, letter that aluminum oxide flaking might occur in the cask during initial heating and cooling, and that the flakes would most likely fall to the bottom of the cask and not come in contact with the fuel basket. The commenter disagreed with this statement because cask transportation and unloading evolutions could cause the flaking to contact the basket. The commenter asked what the basis is for NRC's position discussed in the 1996 letter and recommended that further analysis be performed to determine what happens to the aluminum oxide at the end of cask life.

Response: The comment about the November 1996 letter is beyond the scope of this rule. The letter is not related to this cask design. As discussed in the response to Comment I.13 the NRC staff expects no oxide flaking to occur in the cask.

Comment F.6: One commenter asked if aluminum flame spray induced stains can generate hydrogen or cause other chemical reactions that could cause problems, whether there is sufficient time in procedures to address this problem, if the NRC understands what the stain is, and if it could cloud the pool water and hinder unloading of the cask.

Response: There is no safety significant effect of the staining due to iron or other contaminants in the aluminum oxide. The concentration of impurities needed to lead to staining is believed to be so small that the NRC staff does not require analysis of chemical reactions that might result from the presence of these impurities. There is no expected effect on water quality or unloading operations.

Comment F.7: One commenter asked if basket support rails or the basket itself will yield and if an evaluation of the effects of yield, temperature changes and drying, and a side or vertical drop or tipover for unloading at the end of cask life has been conducted.

Response: The basket and the rails are evaluated in Appendix 3B of the SAR. The aluminum rail will not yield, even under vertical or tip-over conditions. The internals are always hot. There is no freeze-thaw condition. At the end of life, these internal components are expected to be in exactly the same condition as they were at the beginning of the storage period.

G. Design

Comment G.1: One commenter stated the assumption that the new top lifting trunnions are compatible with the Point Beach transporter and will be addressed by existing procedures. The commenter then asked if the TN–32 trunnions have been tested with the Point Beach transporter criteria, if there may be gaps and streaming at trunnion locations, what the dose effect may be, what heavy load criteria exist, and what testing will be done.

Response: The comment on the trunnion testing and compatibility with the Point Beach transporter is beyond the scope of this rule. Point Beach will have to address the issue in its site-specific evaluation under 10 CFR 72.212. Under a cask user's ALARA program to minimize worker exposure, localized radiation hot spots such as gaps and streaming around the trunnions will be avoided, or have temporary additional shielding during cask handling and preparation for transport to the storage pad.

Comment G.2: One commenter asked a number of questions about the fuel basket cavity that included: what the weight or total load that is transferred from the fuel basket cavity to the lip on the gamma shield shell is, and where the load is transferred; how the shrink fit works, how it is performed, why it is done, and if it has been tested; could water get between the containment shell and the gamma shield shell; what the potential is for corrosion between the two shells; whether an external event such as an airplane crash, tipover, or seismic event could cause the shells to separate; whether tests for freeze-thaw temperature changes for the life of the cask have been done; whether the two shells contract or expand together; if there is a way that pressure or stress can be transferred from one shell to the other and cause cracks in the welds or the containment wall; how much stress is created in the welds and on the bottom plate; and how the inner shell is lifted without removing the inner containment.

Response: The area referred to by the commenter as the "lip on the gamma shield shell" is interpreted by the NRC staff to be the confinement shell top forging. The fuel basket and fuel assemblies that weigh about 66,000 pounds rest directly on the bottom confinement plate. Therefore, the fuel basket and fuel assemblies weights are not transferred to the confinement shell top forging.

The shrink fit is established as follows: The gamma shield shell and the confinement shell are fabricated

separately. In order to obtain a close fit between these two shells, the outside diameter of the confinement shell is slightly larger than the inside diameter of the gamma shield shell. The gamma shield is then preheated which causes it to expand before slipping on the confinement shell. After the gamma shield shell cools, it shrinks and tightly clamps onto the confinement shell. Therefore, the fit between these two shells is very tight and no water could migrate between the two shells over the life of the cask. Consequently, corrosion between the two shells is not a concern. An external event such as a fire, tipover, or seismic event would not cause the two shells to separate as demonstrated in Sections 3, 4, and 11 of the SAR.

Likewise, temperature effects on the cask are evaluated in Sections 3 and 4 of the SAR. Due to the similarity of materials, both shells will contract or expand together. The 1.5-inch thick confinement shell is supported by the 8-inch thick gamma shield shell. Under accident conditions, the gamma shield shell protects the confinement shell from damages. The amount of stresses that are created in the welds and on the bottom plate due to various service loading combinations are less than the ASME allowable values and are presented in Sections 3.4 and Appendix 3A of the SAR. The TN–32 cask has a confinement shell that can not be removed.

Comment G.3: One commenter stated that the shape of the cask is of concern because the neutron outer shell does not cover the gamma shell at the top and bottom. The commenter then asked if this is due to the location of the trunnions and suggested that in a drop accident, the bottom trunnions might crack off and the edge of the neutron shell could be easily crushed or smashed.

Response: The NRC does not agree with the comment. Radially, except at the trunnions, the neutron shield runs the full length of the active region of the spent fuel assemblies which is the source of neutron radiation. The accident analysis for the TN–32 cask assumes that the neutron shield and steel outer shell were removed completely. With this assumption, the accident analysis bounds any lesser damage to the neutron shield and shell, and the estimated dose is within regulatory limits.

Comment G.4: One commenter asked if the load bearing aluminum rails can be jammed during unloading, whether crud or paint particles can fall into the rail slots and cause a movement problem, what other movement problems exist, or whether there would ever be a reason to remove the basket.

Response: The aluminum rails are located outside the basket. They do not interfere with the unloading operation. The aluminum rails establish and maintain basket orientation, and enhance heat transfer. The rails that surround the basket are oriented parallel to the axis of the cask body and are attached to the inner cavity wall of the cask body. Consequently, lateral movement of the basket inside the cavity is restricted by the rails. Although the basket is not attached to the cask body, there is no need to remove the basket from the cask cavity during an unloading operation.

Comment G.5: One commenter stated that the TN–32 is designed not to be susceptible to brittle fracture in temperatures as low as 20°F and noted that this was a positive characteristic for storage in cold climates.

Response: No response is necessary.

Comment G.6: One commenter asked a number of questions on fuel rod gas including: why the assumption is made that fuel gas internal pressure is present when the NRC permits an unlimited number of pinhole leaks and hairline cracks that would apparently permit the gas to escape over the 20 year life of the cask; what happens to the gas and does it mix with the helium; what the gas is; and what chemical reactions it can cause inside the cask.

Response: Based on operational experience, only a very small fraction of the fuel rods develop leaks (pin holes, hairline cracks, etc.) during reactor operation and pool storage. At the time of dry storage, the majority of fuel rods are intact and contain pressurized gas. The gas present in the spent fuel rod after removal from the reactor is from two sources helium fill gas placed in the rod during manufacture and a fraction of the fission gases (mostly krypton, xenon, and tritium) produced and released from the fuel pellets during reactor operation. Maintenance of intact cladding and retention of the gases within the rods, throughout dry storage, is part of the cask design consideration to protect operational personnel from unnecessary dose during unloading and to provide defense-in-depth. If the unlikely release of gas from a rod were to occur, the gases would mix with the cask fill gas and remain within the confinement boundary. The bulk of these gases are chemically inert and will not react with materials inside the cask. The trace amounts of gases that are chemically reactive include cesium (a volatile expected to exhibit gas-like behavior at cask conditions). There may be some chemical reactions between these reactive materials and the zirconium and steel in the cask. These reactions would be minimal and would not adversely affect the functions of any components that are important to safety.

Comment G.7: One commenter asked a number of questions about fuel pellets including, what the basis is for determining the weight of the fuel pellets after reactor exposure and pool exposure; whether pellets crack or break up over time, whether the pellets can absorb or adsorb water coming in from pinhole leaks and hairline cracks, and how it is determined that the pellets are dry when put into storage.

Response: The fuel weight is based upon data supplied originally for new fuel. Increases in fuel weight due to service exposure are minimal because they are due to oxidation. The fuel is UO_2 and does not oxidize unless the fuel cladding fails in service. After exposure to oxygen or water (in failed fuel) it becomes more rich in oxygen. This is represented as U_4O_9. Because most of the weight is in the uranium (mass about 238) and not in the oxygen (mass 16), this small increase represents an insignificant change. An average weight for the fuel type is taken into account in any calculations that require knowledge of mass of this system component.

The pinholes and hairline cracks would not absorb water, although they may be involved in the sorption of moisture and uptake of oxygen within the fuel because they could permit pool water, cask moisture, or cask oxygen to enter the fuel rod and contact the fuel pellets. Pinholes and hairline cracks are not expected to form during dry storage because the storage environment for the fuel cladding is maintained under protective and durable conditions.

The behavior of the fuel pellets is well studied and many literature references are available on this topic. Cracking in the fuel pellets generally occurs during reactor operation . The fuel pellets are fairly inert in the absence of oxygen. Therefore, the fuel is dried and then stored in a dry, helium gas (water and oxygen free) environment to preclude further oxidation.

In preparation for dry storage, the loading process ensures that moisture is removed from the fuel cladding, any fuel that may have pinholes or hairline cracks, and from the cask internals. The cask is thoroughly vacuum dried as prescribed in the technical specifications and the SAR. The vacuum drying process, which involves two, complete evacuate-fill cycles, coupled with the heat generation of the fuel, very effectively removes residual moisture that may be present in the fuel pellets and interior components of the cask system and oxygen that is inside the cask. The helium fill gas is very pure and dry, and the cask is sealed to prevent entry of water and air during storage. The effectiveness of the vacuum drying process, the sources of residual impurities, and the potential effects of impurities, are reported in PNL–6365, "Evaluation of Cover Gas Impurities and Their Effects on the Dry Storage of LWR Spent Fuel" November 1987. Because the storage system provides an inert environment throughout the licensed period, very little further oxidation is expected to occur under normal storage conditions.

Comment G.8: One commenter asked how the aluminum boxes filled with resin are arranged around the cask, how far apart they are, how they are held to the gamma shield wall while the outer shell is installed, and to what are they attached.

Response: As shown in TN–32 SAR drawing 1049–70–2 and described in TN–32 SAR Sections 1.2.1, 3.1.1, and 4.1, about 60 aluminum boxes are tightly fitted around the exterior of the gamma shield. A steel outer shell completely encloses the aluminum boxes and holds them in place after construction. Details, such as temporary measures to hold the boxes in place during construction will be addressed by fabrication procedures and are beyond the scope of this rule.

Comment G.9: One commenter asked if the fuel basket rails discussed on page 4–2 of the SER can come loose over time along with the basket and affect the unloading of the fuel, and why they are not welded instead of being bolted as designed.

Response: Neither the applicant nor the NRC staff has identified any mechanisms that would cause the basket rail bolts to come loose over time. The basket rails are bolted to the cask wall because they are aluminum (for heat transfer) and the container wall is steel. The only function of the basket rail attachment bolts is to attach the basket rail to the inner cavity wall of the cask body; the bolts do not support any other loads. A bolted attachment functions as well as a welded attachment. Therefore, there is no need to weld the basket rail.

Comment G.10: One commenter suggested that changes be made to the SER concerning the shield lid design for the TN–32. The commenter stated that the only drawing in the SER of the shield lid is not very clear and asked if it is accurate. Further, the commenter suggested that the drawing should add details about TN–32 designs A and B to show the differences in lid designs and why they exist. The commenter suggested that on page 5–1 of the SER that the NRC should provide a better explanation of the lid thickness calculations and that the SER should discuss the materials that are being used in the lid design and how the changes affect the analysis of the cask.

Response: The NRC disagrees with this comment. The commenter requested changes in the level of detail included in the SER to better describe the cask design. The applicant's SAR includes a level of design detail that enables the NRC to make a safety finding. However, that same level of detail does not need to be repeated in the SER because it is already available on the docket and is retrievable by the NRC staff and the public. The NRC further disagrees that additional information on thickness calculations, a discussion of lid materials, and how changes in materials affect cask analysis should be added to the SER in Chapter 5. The applicant chooses design materials, dimensions, and methods of shielding, and includes details on this and supporting analysis in its SAR. The NRC followed its review guidance in NUREG–1536, "Standard Review Plan For Dry Cask Storage Systems" January 1997 and provided the appropriate level of detail and information specifically in Chapter 5 to reflect areas of review and findings.

Comment G.11: One commenter noted a concern about the applicant's proposed compression of BRPA springs or using a modified lid design. The commenter suggested that this was another example of a generic design being changed to a site-specific one in effect and, therefore, this should have been requested as a site-specific cask design application for approval of storage of BPRAs. The commenter then asked why the applicant had not designed the casks to hold Westinghouse 14x14 fuel in the beginning rather than changing the design later to accommodate longer assemblies due to the BPRAs collar. The commenter also stated that the design changes lead to confusion.

Response: The NRC disagrees with this comment. A vendor can choose to include any design characteristics and must demonstrate that the design is safe and in compliance with existing regulations. Adding the capability to store BPRAs could also have been requested under a site-specific license, but the regulations do not suggest one method over the other. The question about why the applicant did not originally design the cask to hold 14x14 fuel is beyond the scope of this rule.

Comment G.12: One commenter asked for a description of the difference between the configuration of the 6 inch shield plate and the 4.88 inch shield plate of the lid, why the 4.88 inch plate is acceptable, for a description of the 1.25 inch plate incorporated in the neutron shield, how the lids are put together, how having different lid designs will affect handling procedures, if the top neutron shield (4 inch thick polypropylene) is encased by 0.25 inches of steel on the top and bottom resulting in a total thickness of 4.5 inches, what being encased means, how the neutron shield encasing is welded together, if polypropylene is flammable or if it holds water, how it reacts under accident conditions of increased pressure and temperature caused by fire or explosions, how it could effect the resins on the outside of the cask during a fire event, and if it could be repaired after being melted. The commenter also suggested that it should be assured that the design can accommodate a correct fit of the drain pipe through the lid and that vent and drain closures are appropriate for the design.

Response: "Encased" means that the neutron shield is enclosed in a steel shell on all sides. The casing seams are welded with full penetration or fillet welds depending on the joint configuration. The alternate lid design for the TN–32A removes 1.12 inches of steel from the under-side of the lid and adds a 1.25 inch plate on the top side of the lid. Thus, for the TN–32 and TN–32B, the neutron shield casing is 0.25 inches thick on the top and bottom giving a thickness of 0.5 inches in the casing material plus 10.5 inches (6 inches + 4.5 inches) in the lid for a total steel thickness of 11 inches at the top of the cask. For the TN–32A, the bottom of the casing is the 1.25-inch thick supplemental plate and the top of the casing is a 0.38-inch thick steel plate giving a thickness of 1.63 inches in the casing material plus 9.38 inches (4.88 inches + 4.5 inches) in the lid for a total steel thickness of 11.01 inches at the top of the cask. Thus, the effective thickness of the lid was not changed and is acceptable. The two thick steel plates in the lid are welded together and the neutron shield in its casing is bolted to the top of the lid.

The radial neutron shield is a polyester that includes about 50 weight percent fire-retardant mineral fill, making it self-extinguishing. The top neutron shield is polypropylene that is "slow burning to nonburning" according to Table 24, Section 1 of the "Handbook of Plastics and Elastomers." Furthermore, the weather protective cover isolates the top neutron shield

material from sources of ignition and the radial neutron shield is completely encased by the aluminum tubes and by the outer shell.

Both neutron shielding materials are common commercial plastics that are inert with respect to water. Again, the weather cover and the outer shell protect the material from direct contact with water.

Each user of the cask will have operating procedures to address the different lid designs if more than one design is used onsite. The two different lid designs are configured to accommodate the correct fitting of the drain and vent closures and associated hardware.

Comment G.13: One commenter asked if the requirement of 10 CFR 72.236(c) for redundant sealing is only for O-rings and about the applicability of this requirement for the welds for the VSC–24, and whether the shield lid weld is verified by ultrasonic testing.

Response: The requirement of 10 CFR 72.236(c) for redundant sealing is applicable to all casks that are approved under 10 CFR 72 Subpart L. The question about VSC–24 is beyond the scope of this rule. The TN–32 cask does not have a shield lid weld.

Comment G.14: One commenter asked if hydrogen would build up above the water level if the evacuation line became iced up and blocked, how the cask remains vented, whether it uses a metal pipe that runs far from the cask rather than using a flammable plastic pipe or duct tape, whether there are any sources of ignition if hydrogen did escape from the venting, what the heat source is that the NRC discusses in the SER and how it would affect the vented hydrogen, and whether a clogged line could cause water to remain in the cask longer than expected like it did at Arkansas Nuclear One.

Response: A discussion about hydrogen generation and control is discussed in the response to Comment I.5. The TN–32 SAR, Table 8.1–1, recommends the use of heat tape as the heat source to preclude icing of the evacuation line during vacuum drying.

Clogging of the drain line due to a design or material condition in the TN–32 cask is judged by the NRC staff to be an unlikely occurrence. However, if a clogged line caused delays in a draining operation, there is not an immediate safety concern because the fuel will be adequately cooled, or a criticality or shielding concern, and any hydrogen that may form will be vented.

Comment G.15: One commenter suggested that the marking on a dry cask should carry more information than model number, identification number, and empty weight, and that the marking should be on a plate that is covered and will not rust, and should state all important information about its contents because paper records can be lost or destroyed. This labeling would be useful in an accident, sabotage, or war to identify cask contents. The commenter also asked if the NRC has carefully reviewed the labeling of casks and the storage of supporting documents.

Response: The NRC agrees in part with this comment. Each cask must be conspicuously and durably marked with model number, a unique identification number, and with its empty weight under 10 CFR 72.236. The NRC did evaluate the need for and types of labeling in the statements of consideration for 10 CFR Part 72. The applicant in Section 1.2.1 of the SAR states that each cask will be marked with the required information but did not address the durability and visibility aspect of the marker. The SAR has been modified to reflect this missing information.

However, NRC regulations do not require the identification of cask contents on permanent markings affixed to the cask. The NRC notes that 72.212(b)(8) requires that each general licensee accurately maintain a record for each cask that lists the spent fuel stored in the cask. This record must be maintained by the cask user until decommissioning of the cask is complete.

Comment G.16: One commenter suggested that this cask design requires a berm to minimize doses to the public and that all dry cask storage installations should require berms to reduce line of sight for potential sabotage, vehicle access, and dose to the public.

Response: The NRC disagrees with this comment. These are site-specific issues that will be addressed by the cask user's ALARA program and physical protection program.

Comment G.17: One commenter stated that replacement of O-rings in a cask causes unnecessary dose consequences, requires time and resources and creates schedule problems for pool use. The commenter asked if using O-rings in the design was a good idea because of the need for replacement over time, how complicated the replacement process is, and if it must be performed with the cask in the pool.

Response: The materials used for the cask seals are durable and are expected to remain functional for the lifetime of the cask. In SAR Section 2.3.2.1, the applicant included test results for seals that have been in service since 1973. These tested seals are similar to those planned for use in the TN–32. Those results demonstrate a very good record of seal integrity, performance, and endurance.

If a seal required replacement, the expected dose for the workers performing that task would be less than or equal to the dose expected for cask unloading operations. The actions to replace the seal will be similar to those required for unloading except that fuel manipulation is not required. Seal replacement for the TN–32 would require placing the cask in a suitably shielded environment such as the spent fuel pool.

Comment G.18: One commenter had several questions/concerns on the design of the TN–32 cask as follows: whether the neutron shield on the top overlaps the gamma shield enough to cover the area of streaming up the gap on the sides of the lid, why there isn't a bolt on the left of the gamma lid, whether the rim with all of the bolt holes has been evaluated for stresses and cracking around the bolts and holes, why the neutron shields don't go up higher and down lower to cover the entire area, and why the trunnions don't fit into the neutron shield rather than above and below the shield. The commenter further questioned whether the doses would be lower with a different outside neutron shield.

Response: The neutron shield on the cask lid overlaps the outer most edge of the fuel by about one inch and is sufficient to prevent vertical streaming of the neutrons. The effects of angular streaming were considered in the analysis and included in the estimated operational dose to the workers and off site. The drawing is simply showing different sections of the cask in the same view and is not a symmetrical cross section. There are 48 bolts for attaching the lid to the cask body. Closure bolts were simulated in the finite element model by the coupling of corresponding nodes at the location of the bolt. Stresses in the closure bolts and surrounding areas due to various serviced loading combinations are less than the ASME allowable values as demonstrated in Appendix 3A of the SAR. Consequently, cracking around the bolts and holes will not occur. The radial neutron shield runs the full length of the active fuel region that is the location of the neutron source. The design has been found to be acceptable after a review against the regulatory requirements. The neutron shield extends half way up the upper trunnion so the trunnion must penetrate through the shield to attach to the cask body. The placement of the trunnions is influenced by operational and handling considerations as well as regulatory factors. As long as the cask design meets the regulatory requirements, the details of design are the applicant's prerogative.

Comment G.19: One commenter expressed concern over the issue of ice clogging drain lines and asked if some company could develop a vacuum draining system that wouldn't have ice clogging concerns.

Response: The potential for ice formation in the vacuum lines can occur from the cooling effect of water vaporization and system depressurization that occur during evacuation. Icing is not expected in the cask because of the heat generated by the fuel. Reasonable precautions such as heating the evacuation lines (using heat tape) or controlling the evacuation rates by performing the evacuation in a series of stages are adequate to preclude icing problems.

Comment G.20: One commenter suggested changes to the tolerances in SAR drawings 1049–70–1, 1049–70–3, 1049–70–4, and 1049–70–5.

Response: The NRC agrees with the comment. These changes to the tolerances specified on the SAR drawings will not affect the structural analyses and the conclusions reached in the SER. The drawings have been changed accordingly in the SAR.

Comment G.21: One commenter stated that a note should be added to drawing 1049–70–4 specifying that a test fitting may be supplied on the access port cover plate.

Response: The NRC agrees with this comment. The addition of this fitting does not affect safety. Its purpose is to facilitate leak testing of the overpressure monitoring system. The drawing has been revised to reflect this change.

Comment G.22: One commenter stated that a note should be added to drawing 1049–70–7 allowing alternate configurations for the plumbing of the pressure monitoring system.

Response: The NRC agrees with this comment. The note should also state that the parts and equipment used are equivalent to those specified in the drawing. An adequate level of safety is obtained by the quality assurance process and leak testing and monitoring of the system as required by the technical specifications. The drawing has been revised to reflect this change.

Comment G.23: One commenter stated that the vent and drain port cover seal groove diameters on drawing 1049–70–3 should be changed as follows; 5.88 groove O.D. to 5.92, and 4.70 I.D. to 4.65.

Response: The NRC agrees with this comment. The changes to the drawing do not affect the structural design or the confinement boundary. A note has been added to the drawing to follow the manufacturer's recommendations.

Comment G.24: One commenter stated that in SAR Chapters 2 and 7 the metallic O-ring seal liners should be specified as stainless steel or nickel alloy.

Response: The NRC agrees with this comment. The use of either stainless steel or nickel alloy is acceptable to the NRC staff. The SAR has been revised.

Comment G.25: One commenter asked how the bottom plate is welded to the confinement shell, how the gamma shield bottom plate is welded to its shell, how the plates are arranged, how weld locations affect stresses, what the actual stresses are, and what mechanism could cause the plates to be detached.

Response: The weld between the bottom confinement plate and the confinement shell is a complete penetration weld. The weld has the same thickness as the plate and shell. Therefore, it makes no difference whether the weld is outside or inside the shell. The gamma shield shell rests on the bottom gamma shield plate and is welded all around the outside perimeter of the joint. Weld locations are included in the finite element model. Stress intensities for different cask components and welds for each service condition and the load combination are presented in Appendix 3A of the SAR. The bottom plate could become detached from the gamma shield shell if the weld connecting the gamma shield shell to the bottom plate were to fail completely. The mechanism for possible failure of this weld is discussed in Appendix 3E of the SAR. Special examinations are required for this weld to ensure that defects are detected and repaired before use for fuel storage. These requirements are presented in Appendix 3E of the SAR and discussed in Section 3.1.4.4 of the SER.

Comment G.26: One commenter stated that at this point in time TN should know if the bottom inner plate weld is going to be applied before or after the outer and inner shell assembly. The commenter asked if it was the shrink fit and why TN did not appear to know. The commenter stated an understanding that one shell has a seam and the carbon steel is wrapped into a cylinder and welded at the one meeting seam, while the other shell is in two halves requiring two seams and asked if that was correct. Then the commenter asked if there is a concern if one seam is located over or near the seam of the other, if the plate pushes out at the shell wall around its thickness, or if the shell of either the containment or gamma shield rests on their bottom plates, how this affects the weight distribution, how these two shells are put together, when welding is to be performed, and exactly how the welding will be inspected. The commenter noted that the use of the word "if" in the acceptance test section of the SER is not acceptable because the level of detail in the design and fabrication should be decided before a design is certified.

Response: The NRC disagrees with the comment. As long as the confinement barrier is welded to meet ASME code Section III, Subsection NB requirements, test standards, and acceptance standards, the barrier will be in conformance with a standard that will satisfy all of the safety requirements for this application. No adverse effects on the cask integrity is expected from either of the two fabrication alternatives; either alternative is acceptable. Therefore, the SAR can specify welding either before or after shell assembly. See the discussion for Comment G–2 about how the shells are assembled.

The steel of the seam meets the requirements of the steel used for the vessel. Location of seams in relation to one another will not affect performance. In terms of any alterations in stress (or weight distribution), it is noted that the containment vessel (and its seams) is ground to tight tolerances so that it will be exactly the right size to make the shrink fit process work. Circumferential and longitudinal confinement boundary welds are examined volumetrically by radiography and liquid penetrant or magnetic particle methods accepted by ASME NB–5000 standards. ASME Code, Section III, Division 1, Subsection NB–5231(b) requires either ultrasonic or radiographic examinations and either liquid penetrant or magnetic particle examinations be performed on the full penetration corner welded joints. Therefore, the fabricator can choose either ultrasonic or radiographic examinations to inspect the corner weld. In this case, the bottom inner plate weld is inspected using ultrasonic examination methods if the weld is applied before the outer and inner shells are assembled. If the weld is applied after assembly, this inspection is done radiographically. Both methods will be supplemented by either liquid penetrant or magnetic particle examinations. Non-confinement welds are inspected in accordance with the ASME Code, Subsection NF. Additional inspections will also be performed on the gamma shield shell to the bottom shield weld

and the lid to the shield lid weld as specified in SAR Section 9.

Comment G.27: One commenter stated that using mirrors and auxiliary lighting to inspect welds that were not directly visible "sounded tricky." The commenter noted that ensuring that the basket retains its form throughout its life is important and asked the NRC to clarify what a plug weld is and how they are inspected.

Response: The NRC has accepted a number of methods to visually inspect hardware to verify materials quality, including the use of mirrors and auxiliary lighting as appropriate. The basket will retain its shape over the life of the containment system because it is fabricated using acceptable methods. Also, the cask is filled with helium that precludes environmentally induced alterations. Further, the basket is designed to accommodate the thermal cycles of the application without substantial distortions. The plug weld technique is used to connect the stainless steel tubes together as part of the fuel basket using solid stainless steel connecting bars. Each plug weld penetrates the full thickness of the stainless steel tube wall. These welds are not only 100 percent visually inspected, but sample coupons made by the same welding procedures, technique, and weld machine are tested to verify quality.

H. Technical Specifications

Comment H.1: One commenter stated that the maximum uranium content should be deleted from Section 2.1 of the TSs because this information is already included in the SAR.

Response: The NRC disagrees with this comment. This design information is crucial to the conclusions reached by the NRC about the TN–32 design in its SER. The maximum uranium masses, along with other fuel parameters, include the design tolerances considered in the SAR and, therefore, are not overly restrictive. The uranium content in the TSs are set to bound all potential variations for the design. Further, the NRC considers the maximum uranium content to be a fuel parameter that is a part of the design that can not be changed without NRC review and approval. Therefore, it should remain in the TSs.

Comment H.2: One commenter stated that the parameter labeling of Table 2.1.1–1 of the TSs should be revised as Minimum Initial Enrichment and Maximum Burnup to avoid confusion.

Response: The NRC agrees with this comment. TS Table 2.1.1–1 has been revised to use the terms Minimum Initial Enrichment and Maximum Burnup. Footnotes clarifying that the actual minimum enrichment is to be rounded down and burnup is to be rounded up were also added to the table. Additionally, a discussion related to the footnotes was added to the bases for the TSs (B2.1/B2.2) located in Chapter 12 of the SAR.

Comment H.3: One commenter stated that the frequency for Surveillance Requirement (SR) 3.1.3 and 3.1.4 should use the term TRANSPORT OPERATIONS for consistency.

Response: The NRC agrees with this comment. The affected TSs have been changed to use the term TRANSPORT OPERATIONS.

Comment H.4: One commenter stated that the frequency of SR 3.1.6.1 should be revised to state "immediately prior to lifting the cask . . .".

Response: The NRC agrees with this comment. The FREQUENCY requirement of SR 3.1.6.1 has been changed to state "Once, immediately prior to lifting the cask and prior to cask transfer to or from ISFSI."

Comment H.5: One commenter stated that the applicability of SR 3.2.1 should be revised to "during TRANSPORT OPERATIONS'.

Response: The NRC disagrees with this comment because it is not necessary to include this information in the body of the TS. However, it is appropriate for clarity to insert a comment in the basis for the TS (B3.2.1) located in Chapter 12 of the SAR. The SAR has been revised accordingly.

Comment H.6: One commenter stated that the cell opening and boron loading should be removed from Section 4.1.1 of the TSs.

Response: The NRC disagrees with this comment. This design information is crucial to the conclusions reached by the NRC in its SER. The minimum boron loading and the minimum cell opening for the basket include any design tolerances included in the SAR. Design features that may affect safety if altered or modified are included in the TSs.

Comment H.7: One commenter stated that the Codes and Standards Section, 4.1.3, of the TSs should be removed.

Response: The NRC disagrees with the comment. This information is required under 10 CFR 72.24(c)(4).

Comment H.8: One commenter stated that in the storage location for Casks, 4.2.1 of the TSs, the 16-foot dimension should be listed as a minimum value or a tolerance should be added.

Response: The NRC does not agree with this comment to add a tolerance. As written, the TSs state that "the casks shall be spaced a minimum of 16 feet apart, center-to-center." This specification assures that the minimum cask spacing assumed in the analysis is achieved to allow proper dissipation of radiant heat energy.

Comment H.9: One commenter stated that references to consideration as important to safety [for a berm] be removed from Section 4.3.6 of the TSs.

Response: The NRC disagrees with this comment. As defined in 10 CFR 72.3, structures, systems, and components important to safety are those features of the ISFSI or monitored retrievable storage (MRS) whose function is to maintain the conditions required to store spent fuel safely. Thus, when a berm or other system, structure, or component is installed to meet the normal condition dose limits of 10 CFR 72.104 (i.e., to provide safe storage), it is considered important to safety. However, under 10 CFR 72.122, the quality standards for the feature's design, fabrication, erection, and testing may be at a level commensurate with the safety importance of the function to be performed. See NUREG/CR 6407, "Classification of Transportation Packaging and Dry Spent Fuel Storage Components According to Importance to Safety" February 1996. Generally, features that are not needed to meet the accident conditions will not have to meet as high a standard as those that need to function in an accident.

Comment H.10: One commenter stated that the proposed TN–32 TSs are confusing, more complicated than those of the VSC–24, and are not written in plain English. For example, the commenter noted that 1.3 "completion times" on page 1.3–2 is confusing with too many words.

Response: The NRC disagrees with the comment. The TN–32 TSs are modeled on the improved Standard Technical Specifications (ISTS) for power reactors. The ISTS were developed as the result of extensive technical meetings and discussions between the NRC staff and the nuclear power industry in the early 1990s in an effort to improve clarity and consistency of the power reactor TSs and to make them easier for operators to use. The most likely users of the TN–32 spent fuel storage cask technical specifications are power reactor licensees familiar with the format of the ISTS. Although different in form than the VSC–24 TSs, the NRC staff believes that the format of the proposed TN–32 TSs will make them easier for operators to use and will help to achieve consistency between power reactor TSs and spent fuel dry cask storage TSs. The NRC staff also believes that the specific wording of Section 1.3, "Completion Times" helps to clarify the TSs by walking the user through each step in

detail and by explaining the conditions, the required action, and the allowable time to complete the required action.

Comment H.11: One commenter requested an explanation of SR 3.0.2. The commenter stated that the use of 1.25 times the interval specified was confusing and that workers should have definite clear directions. One commenter questioned the 25 percent extension of time allowed by SR 3.0.2. The commenter stated that the surveillance should not be missed and should be completed on time.

Response: The basis for SR 3.0.2 is discussed in the TN–32 Technical Specification Bases Section B 3.0, "Surveillance Requirement Applicability." This section explains the NRC staff's rationale for allowing a 25-percent extension in the completion of periodic surveillances. The NRC staff finds the 25-percent extension does not significantly degrade the reliability that results from performing the surveillance at its specified frequency. For those cases where it is necessary to adhere to a strict time frame for completing a surveillance, the specific SR will state that the 25-percent extension of SR 3.0.2 is not applicable. The 25-percent extension is also not applicable in cases when a surveillance frequency is specified by a regulation because the requirements of the regulations take precedence over TSs. The NRC staff believes that the provisions of SR 3.0.2 are clear to users of the TSs and will ensure that all required surveillances will be performed within an acceptable time period, consistent with the NRC staff's safety analyses.

Comment H.12: One commenter asked the frequency of alarm checks and calibration for accuracy. The commenter stated that automatic testing and alarms at the plant should be developed. The commenter also stated that the testing interval of every 36 months for the channel operational test (COT) in SR 3.1.5.2 was inadequate due to the importance of the pressure switch.

Response: The NRC agrees that the instrumentation for monitoring the seals is important and that is why the NRC required TSs for surveillance of this instrumentation. The surveillance requirements for the cask interseal pressure monitoring (e.g. alarm checks and calibration frequency) are given in SR 3.1.5.1 and SR 3.1.5.2.

SR 3.1.5.1 requires monitoring of the interseal pressure at a frequency of once per 7 days. This check ensures that the condition of the alarm is verified at an acceptable frequency. The surveillance frequency is acceptable to the NRC staff based on the measures to verify the integrity of the cask seals and the pressure monitoring system during cask preparations, the static and passive nature of the seals, and the low likelihood that the seal or the monitoring system will develop a leak after placing them into service.

SR 3.1.5.2 requires a channel operational test (COT) of the pressure monitoring instrumentation at a frequency of once every 36 months. According to the TS definition, the COT tests the pressure sensing instrumentation and low pressure indication feature by injecting an actual or simulated signal as close to the sensor as possible to verify the operability of the alarm functions. The COT also includes adjustments, as necessary, of the required alarm setpoint so that the setpoint is within the required range and accuracy. Section 8.3 of the SAR that was reviewed and accepted by the NRC further describes the COT for the TN–32.

By establishment of requirements in the TSs, the NRC imposed minimum performance requirements of the equipment used for the overpressure monitoring system. It is incumbent on the general licensee to procure and install pressure monitoring equipment on the TN–32 cask that has acceptable reliability. This would include having provisions for instrument drift to ensure that the requirements for continuous monitoring of the cask seal are met. Based on considerable industry experience with instrumentation, suitable instrumentation that meets the performance requirements for the TN–32 is available. Further, the monitoring frequency is also acceptable to the NRC staff based on the measures to verify the integrity of the cask seals, the pressure monitoring system during cask preparations, and the low likelihood that the seal or the system will develop a leak after placing them into service.

Regarding the commenter's suggestion of creating an automated or computerized method for testing the instrumentation, details on site-specific design of this equipment is beyond the scope of this rule.

Comment H.13: One commenter stated that the measurement location for the cask temperature in SR 3.1.6.1 should be outside the auxiliary loading area in ambient conditions before the cask starts the transfer to the ISFSI. The commenter further stated that additional criteria is needed to specify the location because the cask temperature should not be taken next to a heater inside the building.

Response: The NRC disagrees with this comment. The cask body temperatures are not going to undergo rapid change induced by ambient conditions. This is because the mass of the cask is so large. It is the cask user's responsibility to ensure that the temperature measurement represents the actual temperature of the outer surface of the cask rather than some other heat source that might be located in the vicinity of the cask. This level of detail is beyond the scope of this rule.

Comment H.14: One commenter asked for clarification of the limitations on changes discussion in LCO 3.0.4. The commenter felt that the way the LCO was worded is ambiguous because it allows actions to be taken that are not endorsed.

Response: The ultimate purpose of LCO 3.0.4 is to allow the cask to be placed in a safe condition in accordance with the Required Action(s) of the governing TS. LCO 3.0.4 precludes placing the cask in an unacceptable condition; specifically one in which the governing LCO would not be met in the Applicability desired to be entered, or if that Applicability would have to be exited at a certain time to comply with the Required Actions. LCO 3.0.4 does not allow actions to be taken that are not approved by the NRC staff.

Comment H.15: One commenter stated that a clarification to the code should be made in Table 4.1–1 of the TSs that the weld of the lid shield plate to the lid is not impact tested.

Response: The NRC agrees with the comment and the TSs have been changed accordingly.

Comment H.16: One commenter stated that in Section 4.1.3, and Table 4.1–1 of the TSs, all references to NB should be changed to NF for the basket.

Response: The NRC agrees with the comment because the TN–32 is a storage only cask, and have changed the TSs accordingly.

I. Miscellaneous

Comment I.1: One commenter pointed out that an NRC letter and technical report calculation numbers are not the same.

Response: The NRC agrees with this comment. The SAR has been revised to correct the discrepancy.

Comment I.2: One commenter stated that the SAR Rev. 11A references an old technical report revision date.

Response: The NRC agrees in part with this comment and has determined that the technical report referenced by the applicant in the SAR was the one used in the supporting analysis and is not the most recent version. The NRC has determined that the information used in the supporting analysis is consistent with that included in the more recent revision. Therefore, using the more recent revision would not

impact the applicant's analysis and the NRC requires no update to the reference in the SAR.

Comment I.3: One commenter asked if a vacuum pump fails while a cask is filled with air and some water, how long could workers take to fix the pump before heat up took place in the cask?

Response: The time and rate of heatup of a cask partially filled with water would depend on the type of fuel, its burnup, and enrichment. According to SR 3.1.1.1, vacuum drying must be complete within 24 hours of the completion of cask draining. Therefore, if vacuum drying is not complete for whatever reason by the 24-hour period, specific actions are required by TS 3.1.1 to place the fuel in the desired safe condition.

Comment I.4: One commenter asked for information about Interim Staff Guidance (ISG) 7 referred to in the SER. Further, the commenter asked what different cask is referred to, if partial helium injection is effective, and if it has been tested. Also, the commenter recommends that testing be conducted for the TN–32.

Response: The purpose of the helium injection is to improve the thermal conductivity of the fill gas as a temporary measure to provide an opportunity to troubleshoot and repair breakdowns during the drying or helium fill process. ISG 7, "Potential Generic Issue Concerning Heat Transfer in a Transportation Accident" dated October 2, 1998, provides NRC staff guidance for mixtures of gases within the VSC–24, a spent fuel storage cask. In support of ISG–7, a sensitivity study was performed to evaluate the relative change in cladding temperatures as a result of significant reductions in the thermal conductivity of the fill gas (e.g., 30 percent that of helium). This evaluation found that the cladding temperature was relatively insensitive to gas thermal conductivity as evidenced by an increase in the fuel cladding and bulk gas temperatures of about 3 percent. The NRC staff did not review nor require any testing of the helium injection process based on the analysis and the restrictions imposed by the TSs on operations without a full helium environment.

Comment I.5: One commenter suggested that an unloading test should be done to see what would happen. The commenter asked how the check valve is put into the documents [procedures], how workers can validate this, what water level is in the cask with how much space above, can hydrogen accumulate in that space, and if the draining and venting is performed through connected hoses. The commenter also suggested that the procedure is dangerous, could be confusing for a new worker, and that figure 8.2–1 of the SAR should be added to the SER for clarity. Further, the commenter asked a number of questions about the reflooding evolution: what happens to steam and if hydrogen can form and mix and could exit the cask; what other chemical reactions could occur, if paint, crud or BPRAs pieces, or bits of aluminum could fall and clog equipment; what would occur if cooling water were put in at the top hole instead of in the drain pipe at the bottom of the cask; and if the SER and SAR provide sufficient and correct guidance on the fill, vent, and drain opening for loading and unloading.

Response: The NRC disagrees with this comment about testing. Testing is normally required when the analytic methods have not been validated or assured to be appropriate and/or conservative. In lieu of testing, the NRC finds analytic conclusions that are based on sound engineering methods and practices to be acceptable. The TN–32 Dry Storage Cask design including the unloading process has been reviewed by the NRC. The basis of the safety review and findings are clearly identified in the SER and CoC. In addition, as a condition of the CoC, each cask user must demonstrate the ability to unload a cask as a part of its pre-operational testing and training exercise. The demonstration of the ability to unload a cask, in combination with NRC staff review and acceptance of the analyses performed by TN, provides reasonable assurance that the TN–32 cask can be safely unloaded.

The unloading process including the check valve is described in TN–32 SAR Section 8.2. Detailed site-specific procedures for performing unloading operations are required to be developed and demonstrated at each facility that uses the TN–32. Cask users are required to provide adequate procedures, training, and quality oversight to ensure that the procedure actions are performed as required. The vent and drain ports have different size pipe threads in order to aid in precluding any confusion for the worker. A note has been added to the SAR drawing and Chapter 8 for clarification.

For hydrogen generation to occur, there must be either a chemical interaction between the water in the cask and cask materials or radiolysis of the water. Hydrogen generation itself is not a safety problem because there must also be conditions that allow for accumulation of hydrogen and air (or oxygen) to an ignitable mixture and an ignition source. For the materials present in the TN–32 cask, the rate of hydrogen generation is low when compared to other materials such as zinc based coatings. The applicant provided an evaluation of hydrogen in the TN–32 SAR, Section 3.4.1.4, that addressed hydrogen generation, measures to preclude hydrogen accumulation, and that the TN–32 does not have any ignition sources because the cask closure is bolted.

During loading, the cask is completely filled with water and continuously vented which precludes the accumulation of hydrogen. For the cask draining operation, the cask remains vented. The applicant concluded that the hydrogen buildup in a 2-hour period (the expected time for draining) would be well below the ignitable limit of 4 percent. Vacuum drying is performed after draining. In this condition there is no longer a source of hydrogen generation.

During cask reflood, the cask is continuously vented, precluding the accumulation of hydrogen. The cask fill gas and possibly steam will be forced out of the cask through the vent until the cask is full and the reflood is complete. After the reflood is complete, the cask remains vented as it is placed in the pool and the lid removed. The procedure descriptions in the TN–32 SAR, Section 8, include specific provisions for venting of the cask during times when the cask is filled with water such as during draining and reflood operations.

The NRC staff reviewed and accepted the analysis of hydrogen generation and procedure descriptions to load and unload the TN–32 cask in Preliminary SER Sections 3.1.4.1 and 8. A discussion of crud development is included in the response to Comment I.13.

Comment I.6: One commenter stated that based on the information in the documents that pressurized water reactor (PWR) fuel burned to 45,000 MWD/MTU with a 6-year cooling time can not be loaded in the cask because it increases the neutron source by 12%.

Response: The NRC agrees with the comment. As specified in Table 2.1.1–1 of the TSs, fuel must be cooled at least 7 years before it can be stored in the TN–32 cask.

Comment I.7: One commenter asked how pinhole leaks and hairline cracks can be detected or seen in rods in the middle of an assembly, how many of these defects are permitted in one rod, (as many as 100?), what is the acceptable defect size, if blisters and crud can be present, if a rod or BPRAs can be depressurized, and if utilities or the NRC are clear on what is acceptable.

Response: An example of pinhole leaks and hairline cracks is given in SAR Section 6A.3. Only assemblies that are intact are allowed in the TN–32. The TN–32 meets the criticality safety requirements of 10 CFR Part 72 without any additional fuel condition requirements. The criteria for an intact assembly are defined in TS Section 1.1 as fuel assemblies without known or suspected cladding defects other than pinhole leaks or hairline cracks and can be handled by normal means. Partial fuel assemblies (fuel assemblies with missing fuel rods) must not be classified as intact fuel assemblies unless dummy fuel rods are used to displace an amount of water greater than or equal to that displaced by the original fuel rods. As proof that the fuel to be loaded is undamaged, the NRC will accept, as a minimum, a review of the records to verify that the fuel is undamaged, followed by an external visual examination of the fuel assembly before loading to identify any obvious damage. For fuel assemblies where reactor records are not available, the level of proof will be evaluated on a case-by-case basis. The purpose is to provide reasonable assurance that the fuel is undamaged. Depressurized rods and BPRAs do not impact the safe operation of the cask as discussed in the response to F.3 above.

Comment I.8: One commenter asked how helium purity is tested, if it will be done and if it will be in the documents [procedures].

Response: Testing or sampling for helium purity is performed by the helium supplier and certified to the cask user upon delivery. TS 4.1.4 requires that the cask be filled with helium with a purity of at least 99.99 per cent and documented accordingly. The purity of the helium will be controlled under the licensee's quality assurance program. Only pure helium will be used to backfill the cask; no other gasses will be added during backfill. Acceptable helium purity for dry spent fuel storage casks was defined by R. W. Knoll et al. At Pacific Northwest Laboratory in, "Evaluation of Cover Gas Impurities and Their Effects on the Dry Storage of LWR Spent Fuel" PNL–6365, November 1987.

Comment I.9: One commenter asked if the 0.10 fraction for release of full fines is valid, if there has been any more testing after the 1992 Sandia report, and if anything new has been conducted after the 1980 rod burst tests.

Response: The NRC staff has accepted the 0.10 fraction for releasability of fuel fines for the TN–32. The basis for this acceptance is provided in the TN–32 SER Section 7.3. The NRC staff does not have information on experiments or testing more recent than that referenced in the SER.

Comment I.10: One commenter asked why there is a progression to backfill twice with helium.

Response: This process ensures a high confidence that residual moisture and oxidizing impurities are removed from the cask cavity. It is a recommendation of PNL–6365, "Evaluation of Cover Gas Impurities and Their Effects on the Dry Storage of LWR Spent Fuel" November 1987.

Comment I.11: One commenter asked what would happen if a gas sample found that helium had been lost , if a water sample reflected crud particulates, paint flakes, or parts of a deteriorated BPRA or TPA. The commenter noted a concern that the above materials in the water could clog equipment and require filter changes in the pool if mixed with spent fuel pool water. The commenter suggested that some equipment to filter the cask water before to mixing with pool water is needed along with a filtration system to control gas releases from the cask.

Response: There is not a requirement to sample the cask cavity for the presence of helium. The cask is designed and analyzed to maintain a helium environment for the duration of the authorized storage period. However, if helium is hypothetically assumed to not be present in a cask during storage, there is a possibility that the fuel may be degraded. Any leakage from these postulated degraded fuel rods would be retained by the cask confinement system that acts as a barrier to releases of radioactive materials to the environment. Specific actions are outlined in the unloading procedure descriptions in SAR Table 8.2–1 regarding analyzing a gas sample for radioactive material (to detect degraded fuel). If degraded fuel is detected, appropriate actions are required for the cask user to develop procedures to minimize exposures to workers and releases to the environment. A requirement to sample the water discharged from the cask during reflood operations is beyond the scope of this rule.

The NRC disagrees with the recommendation to add a filtration system to cask water because the spent fuel pool already has a filtration and purification system in place. Further, the design of the cask precludes the need for a gas filtration system. A discussion of crud development is included in the response to Comment I.13.

Comment I.12: One commenter discussed the use of poured resin material, the importance of procedures for mixing and pouring, the need for detailed procedures for workers who may never have worked on nuclear application material, the need for management supported work ethics, the need to report and correct mistakes, and the need for production workers making the boron aluminum sheets to be aware of the effects of flaw removal. The commenter asked if there are clear criteria for inspection and testing of resin material by the fabricator, and what the measures are to ensure the absence of voids in resin material and if they are clear.

Response: The fabrication of the resin neutron shield will be performed under specific controls and procedures to provide a uniform and effective material. Radiation surveys performed around the cask after loading are designed to detect flaws or mistakes that will adversely affect the ability of the cask to meet the offsite dose limits. Fabrication, testing, and repair of the components in the cask important to safety are covered by an NRC approved quality assurance program either directly or as a supplier or subcontractor to a holder of a QA program. The applicable QA requirements are contained in 10 CFR Part 72 Subpart G.

Comment I.13: One commenter asked a number of questions on the cask filling and venting process and how the procedures will preclude ignition of hydrogen. The commenter asked how the cask filling process works and if the fill and drain lines vent gases during cask filling and if hydrogen can form during the process; if steam, hydrogen, paint flakes, or crud (debris) will fall into the fuel basket and between rods and clog the drain lines, and what happens to these materials during the fill process; if effluent flows from the cask to the fuel pool and affects pool water quality or reacts chemically with materials ; and if casks can be safely unloaded based on the above.

Response: The filling and venting process are discussed in the response to Comment I.5. Except for crud, the NRC staff does not expect paint flakes, particles or debris in the TN–32 cask because the coating on the cask interior is flame sprayed aluminum that is a tightly adherent and stable coating in the spent fuel storage environment and the other cask materials do not create debris during any of the expected conditions in the cask. Some crud may be dislodged from the fuel cladding during spent fuel dry storage, but the crud particles for PWR fuel are very small with diameters ranging from 1 to 3 micro-meters as reported in SAND88–1358, "Estimate of CRUD Contribution to Shipping Cask Containment

Requirements." Particles of this size do not pose a clogging concern in vent/drain lines for this cask. Apart from the crud, no materials other than water and steam are discharged to the pool, where crud from wet fuel storage is already present. The amount of crud from the spent fuel cask is expected to be very small and would be captured in the spent fuel pool filtration system. Crud is generally made up of metal oxides that are not chemically reactive.

The unloading process is outlined in section 8.2 of the TN–32 SAR along with supporting analysis in sections 3 and 4. The NRC staff reviewed and accepted the operating descriptions and analysis, and concluded in the SER that there was reasonable assurance that the casks could be safely unloaded by qualified personnel using detailed procedures developed by the cask user at an ISFSI site.

Comment I.14: One commenter asked the basis for the 24 hour timeframe for conducting the dryness test; the basis for stating that a high vacuum is an indication that the cavity is dry; what analysis provides the basis for the height of the vacuum and whether the analysis is for the specific materials in the cask; the definition of a dry cavity and whether it includes the aluminum paint, drain pipe, bottom plate, zircaloy, pellets, etc.; how do you really know that the contents of the cavity are dry.

Response: The basis for the 24-hour time limit to achieve the required vacuum and cask dryness is discussed in detail in TS bases B.3.1.1. The purpose of the time limit is to prevent the temperature of the basket components from exceeding their analyzed temperature range. A high vacuum ensures that most of the moisture will be removed from all components in the cavity including coatings. The vacuum drying process is further discussed in the response to Comment G.7.

Comment I.15: One commenter asked if an analysis has ever been completed to see what happens when the fuel and other cavity contents are dried out and then placed back in the pool. The commenter asked how the materials react with the pool water and whether it affects the pool.

Response: The information provided in SAR Section 3.4.1 discusses material interactions and would apply to when the fuel and cavity were dried out and placed in the pool with the introduction of water to the materials. The NRC staff has determined that this information is complete and acceptable.

Comment I.16: One commenter asked if it is appropriate to use the same procedures to dry the cask out after being in the pool for seven days and if the process is still accurate.

Response: The procedures used for drying the cask and the expected materials and fuel interactions are discussed in the response to Comment G.7. The procedures are applicable to an exposure of the cask to pool water of any duration.

Comment I.17: One commenter asked if there was a weld problem in Precision Components Fabrication and how the problem was resolved. The commenter believed there was a concern with the shims and asked where the shims are located and how they are removed at unloading.

Response: Shims are not used in the TN–32 cask closure design; the lid is bolted on and not welded. Questions related to the fabrication activities at Precision Components Fabrication are beyond the scope of this rule.

Comment I.18: One commenter asked if the TN–RAM shipping problems had been resolved and if this was a concern for the TN–32 design.

Response: This comment is beyond the scope of this rule that deals with a storage cask design.

Comment I.19: One commenter stated that the gaps (in welds) was one of the real concerns for the TN–32 and asked what are the gaps.

Response: Gap welds are not a concern with the TN–32 cask design because the lid is bolted not welded in place. Therefore, this comment is not applicable to this rule.

Comment I.20: One commenter asked if the documents at Transnuclear and the subcontractors were controlled according to their Quality Assurance (QA) program. The commenter stated that there had been some problems with the Transnuclear QA manual and asked if the problem was now resolved. The commenter further asked if workers understand what a defect is and if the QA program clearly defines a defect. The commenter stated that there should be a requirement to store documents in process in fireproof boxes at the end of each work day.

Response: The NRC recognizes the relationship of the comment with the inspection findings noted in NRC Inspection reports 71–0250/97 and 72–1021/97–206. The inspection findings were addressed and the resolution was reviewed by the NRC. TN was notified that their response was acceptable and that no further information was required in NRC letters to Transnuclear dated July 28, 1997, and August 8, 1997. There is no regulatory requirement or applicant procedure to store design documents in fireproof boxes.

Comment I.21: One commenter asked if the SAR has been updated and if it will have another update with the CoC approval.

Response: The applicant has revised the SAR in response to rulemaking comments and questions before CoC issuance. The final version issued with this rule is available in the NRC Public Document Room.

Comment I.22: One commenter asked if soil liquefaction has been adequately addressed in the TN–32 pad design.

Response: Soil liquefaction is a site-specific issue and is beyond the scope of this rule that adds a generic cask design to the listing.

Comment I.23: One commenter asked if the Surry cask design has been amended to use increased burnup and enrichment.

Response: Virginia Power has submitted a request to the NRC to amend their cask design to permit storage of fuel with higher enrichment and with higher burnup. This request will be reviewed by the NRC staff.

Comment I.24: One commenter asked if "assembly line methods" of fabrication are causing problems and multiple non-conformance for the TN–32 design, and if there are problems that should be resolved.

Response: The NRC is not aware of any fabrication methods that have caused problems or non-conformance with the TN–32 design.

Summary of Final Revisions

As a result of the staff's response to public comments, or to rectify issues identified during the comment period, the following items in the TSs have been modified: TS 1.1 (staff initiative), TS 2.1 (staff initiative), Table 2.1.1–1 (see comment H.2), TS 3.1.3 (see comment H.3), TS 3.1.4 (see comment H.3), TS 3.1.6.1 (see comment H.4), TS 4.1.3 (see comment H.16), Table 4.1–1 (see comment H.15 and H.16), and TS 5.2.3 (staff initiative).

The proposed CoC has been revised to clarify the requirements for making changes to the CoC by specifying that the CoC holder must submit an application for an amendment to the certificate if a change to the CoC, including its appendices, is desired. The CoC has also been revised to delete the proposed exemption from the requirements of 10 CFR 72.124(b) because a recent amendment of this regulation makes the exemption unnecessary (64 FR 33178; June 22, 1999). The staff has also updated the CoC, including the addition of explicit conditions governing acceptance tests and maintenance program, approved contents, design features, and

authorization, and has removed the bases section from the TSs attached to the CoC to ensure consistency with NRC's format and content. In addition, other minor, nontechnical changes have been made to CoC 1021 to ensure consistency with NRC's new standard format and content for CoCs. The NRC staff has also modified its SER. The NRC staff has also modified the rule language by changing the word "Certification" to "Certificate" to clarify that it is the Certificate that expires.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. This final rule adds an additional cask to the list of approved spent fuel storage casks that power reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals from the Commission. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Merri Horn, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–8126, e-mail mlh1@nrc.gov.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113), requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is adding the Transnuclear TN–32 cask system to the list of NRC-approved cask systems for spent fuel storage in 10 CFR 72.214. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR Part 72. The amendment provided for the storage of spent nuclear fuel in cask systems with designs approved by the NRC under a general license. Any nuclear power reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be routinely added to the listing in 10 CFR 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR Part 72, Subpart L.

The alternative to this action is to withhold approval of this new design and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rule will eliminate the above problems and is consistent with previous Commission actions. Further, the rule will have no adverse effect on public health and safety.

The benefit of this rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plants in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA direction to certify and list approved casks. This rule has no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this

determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553; the NRC is adopting the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168(c),(d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1021 is added to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1021.

SAR Submitted by: Transnuclear, Inc.

SAR Title: Final Safety Analysis Report for the TN–32 Dry Storage Cask.

Docket Number: 72–1021.

Certificate Expiration Date: April 19, 2020.

Model Number: TN–32, TN–32A, TN–32B.

Dated at Rockville, Maryland, this 6th day of March, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–6630 Filed 3–17–00; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–1064]

Membership of State Banking Institutions in the Federal Reserve System

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for public comments.

SUMMARY: The Board is amending Regulation H to implement provisions of the Gramm-Leach-Bliley Act for state member banks. The Gramm-Leach-Bliley Act authorizes state member banks to control, or hold an interest in, financial subsidiaries which may conduct certain activities that are financial in nature or incidental to a financial activity. The Board has promulgated this rule on an interim basis, effective on March 11, 2000, in order to allow state member banks that meet applicable criteria to acquire control of, or an interest in, a financial subsidiary as soon as possible following the effective date of the relevant provisions of the Gramm-Leach-Bliley Act.

The Board solicits comments on all aspects of the interim rule and will amend the rule as appropriate in response to comments received.

DATES: This interim rule is effective on March 11, 2000. Comments must be submitted on or before May 12, 2000.

ADDRESSES: Comments, which should refer to Docket No. R–1064, may be mailed to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to Room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m., weekdays or delivered to the guard station in the Eccles Building Courtyard on 20th Street, N.W. (between Constitution Avenue and C Street, N.W.) at any time. Comments will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room MP–500 of the Martin Building, between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in § 261.8 of the Board's Rules Regarding Availability of Information (12 CFR 261.8).

FOR FURTHER INFORMATION CONTACT: Oliver Ireland, Associate General Counsel (202/452–3625), Kieran J. Fallon, Senior Counsel (202/452–5270), Michael J. O'Rourke, Counsel (202/452–3288), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), contact Janice Simms (202/872–4984).

SUPPLEMENTARY INFORMATION:

Background

The Board is amending Regulation H (Membership of State Banking Institutions in the Federal Reserve System) to implement section 121 of the Gramm-Leach-Bliley Act (GLB Act) (Pub. L. 106–102; 113 Stat. 1373–82) as it applies to state member banks. The Comptroller of the Currency has recently issued a rule to implement those parts of section 121 applicable to national banks (65 FR 12905, March 10, 2000). The Board's rule for state member banks parallels that adopted by the Comptroller.

The GLB Act permits qualifying state member banks to control, or hold an interest in, a new type of subsidiary, referred to as a "financial subsidiary." A financial subsidiary may engage in activities that have been determined to be financial in nature or incidental to financial activities under the GLB Act, including general insurance agency activities in any location and travel agency activities. In addition, a financial subsidiary may engage in underwriting, dealing in and making a market in all types of securities—activities previously prohibited for subsidiaries of state member banks by the Glass-Steagall Act. A financial subsidiary also may conduct any activity that the state member bank is permitted to conduct directly.

The GLB Act prohibits financial subsidiaries from engaging in certain types of activities. As a general matter, a financial subsidiary may not engage as principal in underwriting insurance, providing or issuing annuities, real estate development or real estate investment, and merchant banking and insurance company investment activities.

A financial subsidiary is defined as any company controlled by one or more insured depository institutions, but does not include (1) a subsidiary that the state member bank is specifically authorized to hold by the express terms of Federal law (other than section 9 of the Federal Reserve Act), such as an Edge Act subsidiary held under section 25 of the Federal Reserve Act, or (2) a subsidiary that engages only in activities that the parent bank could conduct directly and that are conducted on the same terms and conditions that govern the conduct of the activity by the state member bank.

The interim rule sets forth the criteria that state member banks must meet to own or control a financial subsidiary, the activities that financial subsidiaries may and may not engage in, and the procedures that will be applied to state member banks that own or control a financial subsidiary and that fail to continue to meet the Act's eligibility requirements. The interim rule also establishes a streamlined notice procedure for state member banks to receive the Federal Reserve's approval to acquire a financial subsidiary or engage in a newly authorized financial activity through an existing financial subsidiary.

The authority for a state member bank to own or control a financial subsidiary is in addition to the existing authority of state member banks to establish so-called operations subsidiaries that engage in activities that the parent bank may conduct directly and that are conducted on the same terms and conditions that govern the conduct of these activities by the bank. See 12 CFR 250.141. Thus, state member banks may continue to retain and to establish new operations subsidiaries permitted under state law and the Board's interpretation without complying with the requirements of this subpart applicable to financial subsidiaries.

Description of the Interim Rule

Section 208.71—What Are the Requirements To Invest in or Control a Financial Subsidiary?

Under the GLB Act, a state member bank may control, or hold an interest in, a financial subsidiary only if certain criteria are met. First, the state member bank and each of its depository institution affiliates must be well capitalized and well managed. An institution is well capitalized if it meets or exceeds the capital levels designated as "well capitalized" by the institution's appropriate Federal banking agency under section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831o). Well managed is defined by reference to the achievement of specific examination ratings.[1] Second, the aggregate consolidated total assets of the bank's financial subsidiaries may not exceed the lesser of 45 percent of the bank's consolidated total assets or $50 billion. This dollar figure will be adjusted according to an indexing mechanism to be established jointly by the Board and the Secretary of the Treasury.

Third, if the state member bank is one of the largest 100 insured banks, the bank must have at least one issue of outstanding eligible debt that is currently rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating organization. Eligible debt refers to unsecured debt that has an initial maturity of more than 360 days. The debt must be issued and outstanding, may not be supported by any form of credit enhancement, and may not be held in whole or in any significant part by affiliates or insiders of the bank or by any other person acting on behalf of or with funds from the bank or an affiliate. If the state member bank is one of the second 50 largest insured banks, the bank may meet this debt rating requirement or an alternative criteria that the Board and the Secretary of the Treasury anticipate establishing by regulation in the near future. The debt rating and alternative criteria do not apply to a bank if its financial subsidiaries do not engage in any newly authorized financial activity as principal.

Finally, the state member bank must obtain the Federal Reserve's approval to acquire control of, or an interest in, the financial subsidiary using the streamlined notice procedures set forth in § 208.76 of the rule. The state member bank also must obtain any necessary approvals from its state supervisory authority.

Section 208.72—What activities may a financial subsidiary conduct?

A financial subsidiary of a state member bank may conduct only three types of activities:

- Activities that have been determined to be financial in nature or incidental to financial activities and permissible for financial holding companies under section 4(k) of the Bank Holding Company Act of 1956. These activities are listed in § 225.86 of the Board's Regulation Y; [2]
- Activities that the Secretary of the Treasury, in consultation with the Board, determines to be financial in nature or incidental to financial activities and permissible for financial subsidiaries of national banks pursuant to section 5136A(b) of the Revised Statutes of the United States (12 U.S.C. 24a(b)); and
- Activities that the state member bank is permitted to engage in directly, subject to the same terms and conditions that govern the conduct of the activity by the state member bank.

As required by the GLB Act, the rule prohibits a financial subsidiary of a state member bank from engaging as principal in insurance underwriting (except to the extent permitted under state law and the GLB Act), providing or issuing annuities, real estate investment or development (except to the extent expressly authorized by applicable state and Federal law), and merchant banking and insurance company investment activities permitted for financial holding companies under sections 4(k)(4)(H) or (I) of the Bank Holding Company Act.

[1] *See* 12 C.F.R. 208.77(f). A depository institution that has not been examined will be considered well managed if its appropriate Federal banking agency determines that the institution's managerial resources are satisfactory.

[2] On March 10, 2000, the Board adopted amendments to its Regulation Y, which include a new § 225.86 that sets forth the activities that are financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act.

Section 208.73—What Additional Restrictions Are Applicable to State Member Banks With Financial Subsidiaries?

The GLB Act requires that a state member bank that owns or controls a financial subsidiary comply with a number of prudential safeguards. Section 208.73 implements these requirements.

For purposes of determining its compliance with all applicable regulatory capital standards, the state member bank must deduct its aggregate outstanding equity investment, including retained earnings, in all financial subsidiaries from its total assets and tangible equity and deduct such amount from its total risk-based capital, and "de-consolidate" the assets and liabilities of the financial subsidiary from those of the bank. The capital deduction must be made equally from Tier 1 and Tier 2 capital. The bank must meet all applicable capital requirements—including the well capitalized requirement of § 208.71 and the capital levels established by the Board under section 38 of the Federal Deposit Insurance Act—after these adjustments.

Subsection (b) requires that the state member bank establish policies and procedures to manage the financial and operational risks arising from its ownership of a financial subsidiary and preserve the bank's separate corporate identity. In addition, the rule specifies that a financial subsidiary of a state member bank is considered an affiliate (and not a subsidiary) of the bank for purposes of sections 23A and 23B of the Federal Reserve Act, and a subsidiary of a bank holding company (and not a subsidiary of a bank) for purposes of the anti-tying prohibitions of the Bank Holding Company Act Amendments of 1970.

Section 208.74—What Happens if the State Member Bank Fails to Continue To Meet Certain Requirements?

The Board will give notice to a state member bank that owns or controls a financial subsidiary if the Board finds that the state member bank or any of its depository institution affiliates fails to continue to be well capitalized and well managed, that the assets of the bank's financial subsidiaries exceed 45 percent of the parent bank's consolidated assets, or that the state member bank has failed to comply with the operational safeguards required by the rule. To assist the Board in enforcing the requirements of the Act, the rule requires a state member bank to notify the Board if the bank learns that any of its depository institution affiliates has ceased to be well capitalized and well managed.

If a state member bank receives a notice of noncompliance from the Board, the bank must execute an agreement with the Board to bring itself back into compliance with the rule's requirements. Any relevant depository institution affiliate also must execute an agreement with its appropriate Federal banking agency to restore itself to well capitalized and well managed status. The Board and the appropriate Federal banking agency may impose conditions on the direct or indirect activities of the state member bank or depository institution affiliate, respectively, until the institution restores its compliance with rule's requirements. If the deficiencies are not corrected within 180 days (or such longer period as the Board may permit), the Board may require the state member bank to divest its financial subsidiaries.

If a state member bank that is one of the largest 100 insured banks fails to continue to meet the debt rating requirement or alternative criteria of § 208.71(b), if applicable, the state member bank may not acquire any additional equity capital (including debt qualifying as capital) of the financial subsidiary until the bank once again meets these requirements.

Section 208.75—What Happens if the State Member Bank or Any of Its Insured Depository Institution Affiliates Has Received Less Than a "Satisfactory" CRA Rating?

The GLB Act requires the Board to prohibit a state member bank from acquiring control of a financial subsidiary, or commencing any additional activity or acquiring control of any company through an existing financial subsidiary if the bank or any insured depository institution affiliate has received less than a "satisfactory" rating from its appropriate Federal banking agency at its most recent examination under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*) (CRA). Section 208.75 implements these prohibitions. The rule clarifies that, if this prohibition is in effect, the financial subsidiary may not acquire control of another company by acquiring substantially all of the assets of the company. These prohibitions are effective until the bank or relevant insured depository institution achieves at least a "satisfactory" rating in its next examination under the CRA. Subsection (b) clarifies that this section does not prohibit a financial subsidiary from engaging in any additional activity, or acquiring control of a company engaged only in activities, that the state member bank is permitted to engage in directly.

The prohibition applies only if the state member bank or any of its insured depository institution affiliates has received a less than "satisfactory" rating in meeting community credit needs at its most recent examination under the CRA. Accordingly, the CRA rating requirement does not apply to special purpose banks that are not subject to CRA examination under the Federal banking agencies' CRA regulations,[3] or to *de novo* insured depository institutions that have not yet received (and are not the successor of an institution that has received) a CRA rating.

Section 208.76—What Federal Reserve Approvals Are Necessary for Financial Subsidiaries?

The rule establishes a streamlined notice procedure for state member banks that seek to engage in newly authorized financial activities through a financial subsidiary. As a general matter, the notice must provide basic information on the financial subsidiary and its existing and proposed activities and include a certification that the state member bank and its depository institution affiliates meet the requirements of the GLB Act and the rule to own or control a financial subsidiary. If the notice relates to the initial affiliation of the state member bank with a company engaged in insurance activities, the notice also must describe the company's insurance activities and identify the states where the company holds an insurance license. This additional information will assist the Board in fulfilling its obligations to consult with the relevant state insurance authorities under section 307(c) of the GLB Act.

A state member bank must file a notice with the appropriate Reserve Bank prior to acquiring control of, or an interest in, a financial subsidiary, or engaging in an additional financial activity through an existing financial subsidiary. A notice is not required for a financial subsidiary to engage in an additional activity that the parent state member bank is permitted to conduct directly. A notice will be deemed approved on the fifteenth day after receipt by the appropriate Reserve Bank of an informationally complete submission, unless the notice is disapproved or the bank is notified that additional time to review the notice is needed.

[3] *See* 12 C.F.R. 228.11(c)(3).

II. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires an agency to publish an initial regulatory flexibility analysis with this interim regulation. The interim rule implements the new investment powers granted to state member banks under authority of section 121 of the Gramm-Leach-Bliley Act. (Pub. L. 106–102; 113 Stat. 1373–82). As the rule authorizes expanded activities by state member banks, no additional burdens are being placed on the banks and, in fact, these new powers should enhance the overall efficiency and flexibility of the banks. The rule does not overlap with other federal rules, and enables state member banks to engage in an expanded range of activities using a streamlined notification procedure. The notice procedure described in this rule is voluntary, and the criteria set forth in the rule to control, or hold an interest in, a financial subsidiary, are those required by the Gramm-Leach-Bliley Act.

The initial regulatory flexibility analysis also requires a description of and, where feasible, an estimate of the number of small entities to which the rule will apply. The interim rule will apply to all state member banks (which numbered 1011 as of December 31, 1999), regardless of size, and allows small banking organizations to take advantage of the expanded powers conferred by the Gramm-Leach-Bliley Act with minimal additional burdens. The Board specifically seeks comment on the likely burden that the interim rule may impose on banks that seek to control or hold an investment in financial subsidiaries.

III. Administrative Procedure Act

The Board will make the interim rule effective on March 11, 2000, without first reviewing public comments. Pursuant to 5 U.S.C. 553, the Board finds that it is impracticable to review public comments prior to the effective date of the interim rule, and that there is good cause to make the interim rule effective on March 11, 2000. This is because the rule sets forth procedures to implement statutory changes that will become effective on March 11, 2000. The Board is seeking public comment on the interim rule and will amend the rule as appropriate after reviewing the comments.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget.

The OMB control number for this interim rule is 7100–0292. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the Board has displayed a currently valid OMB control number.

The collection of information requirements in this rulemaking are found in 12 CFR 208.76. This information is required to evidence compliance with section 121 of the Gramm-Leach-Bliley Act. The respondents are current and future state member banks.

The notice cited in 12 CFR 225.76 provides that a state member bank may control, or hold an interest in, a financial subsidiary, or engage in an additional financial activity through an existing financial subsidiary, by filing a single written declaration with the appropriate Federal Reserve Bank. The notice must identify the financial subsidiary and its activities and certify that the bank meets the relevant statutory criteria to own or control a financial subsidiary. In addition, if the notice reflects the initial affiliation of a bank with a company engaged in permissible insurance activities, information regarding the nature, scope, and authority of such activities must be provided. There will be no reporting form for this information collection. The agency form number for this declaration will be the FR 4017. The Board estimates that approximately 100 state member banks will file this notice during the first year and that it will take an average of 1 hour to complete this notice. This would result in an estimated annual burden of 100 hours. Based on a rate of $20 per hour, the annual cost to the public for this information collection is estimated to be $2,000.

A bank may request confidentiality for the information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(6)).

Comments are invited on: (1) whether the collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (2) the accuracy of the Federal Reserve's estimate of the burden of the information collections, including the cost of compliance; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies of such comments to be sent to Mary M. West, Federal Reserve Clearance Officer, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

V. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the GLB Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments about how to make the interim rule easier to understand, including answers to the following questions:

(1) Is the material organized is an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If not, which language requires clarification?

(4) Would a different format (with respect to the grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

List of Subjects in 12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Crime, Currency, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Securities.

Authority and Issuance

For the reasons set forth in the preamble, Title 12, Chapter II, Part 208 of the Code of Federal Regulations is amended as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for Part 208 continues to read as follows:

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9),

1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. The existing Subpart G—Interpretations is redesignated as Subpart H.

3. A new Subpart G is added to read as follows:

Subpart G—Financial Subsidiaries of State Member Banks

208.71 What are the requirements to invest in or control a financial subsidiary?
208.72 What activities may a financial subsidiary conduct?
207.73 What additional provisions are applicable to state member banks with financial subsidiaries?
208.74 What happens if the state member bank fails to continue to meet certain requirements?
208.75 What happens if the state member bank or any of its insured depository institution affiliates has received a less than a "satisfactory" CRA rating?
208.76 What Federal Reserve approvals are necessary for financial subsidiaries?
208.77 Definitions.

Subpart G—Financial Subsidiaries of State Member Banks

§ 208.71 What are the requirements to invest in or control a financial subsidiary?

(a) *In general.* A state member bank may control, or hold an interest in, a financial subsidiary only if:

(1) The state member bank and each depository institution affiliate of the state member bank are well capitalized and well managed;

(2) The aggregate consolidated total assets of all financial subsidiaries of the state member bank do not exceed the lesser of:

(i) 45 percent of the consolidated total assets of the parent bank; or

(ii) $50,000,000,000, which dollar amount shall be adjusted according to an indexing mechanism jointly established by the Board and the Secretary of the Treasury;

(3) The state member bank, if it is one of the largest 100 insured banks (based on consolidated total assets of the bank as of the end of each calendar year), meets the debt rating or alternative requirement of paragraph (b) of this section, if applicable; and

(4) The Board or the appropriate Reserve Bank has approved the bank to acquire the interest in or control the financial subsidiary under § 208.76.

(b) *Debt rating or alternative requirement for 100 largest insured banks—*

(1) *General.* A state member bank meets the debt rating or alternative requirement of this paragraph (b) if:

(i) The bank has at least one issue of outstanding eligible debt that is currently rated in one of the three highest investment grade rating categories by a nationally recognized statistical rating organization; or

(ii) If the bank is one of the second 50 largest insured banks (based on consolidated total assets of the bank as of the end of each calendar year), the bank satisfies any alternative criteria jointly established by the Board and the Secretary of the Treasury.

(2) *Financial subsidiaries engaged only in financial agency activities.* This paragraph (b) does not apply to a state member bank if the financial subsidiaries of the bank engage in financial activities described in § 208.72(a)(1) and (2) only in an agency capacity.

§ 208.72 What activities may a financial subsidiary conduct?

(a) *Authorized activities.* A financial subsidiary may engage in only the following activities:

(1) Any activity listed in § 225.86 of the Board's Regulation Y (12 CFR 225.86);

(2) Any activity that has been determined to be financial in nature or incidental to a financial activity by the Secretary of the Treasury, in consultation with the Board, pursuant to Section 5136A(b) of the Revised Statutes of the United States (12 U.S.C. 24a(b)); and

(3) Any activity that the state member bank is permitted to engage in directly (subject to the same terms and conditions that govern the conduct of the activity by the state member bank).

(b) *Impermissible activities.* Notwithstanding paragraph (a) of this. section, a financial subsidiary may not engage as principal in the following activities:

(1) Insuring, guaranteeing, or indemnifying against loss, harm, damage, illness, disability or death (except to the extent permitted under applicable state law and sections 302 or 303(c) of the Gramm-Leach-Bliley Act (Pub. L. 106–102, 113 Stat. 1407–1409, 15 U.S.C. 6712 or 6713(c)), or providing or issuing annuities the income of which is subject to tax treatment under section 72 of the Internal Revenue Code (26 U.S.C. 72);

(2) Real estate development or real estate investment, unless otherwise expressly authorized by applicable state and Federal law; and

(3) Any activity permitted for financial holding companies by section 4(k)(4)(H) or (I) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H) and (I)).

§ 208.73 What additional provisions are applicable to state member banks with financial subsidiaries?

(a) *Capital deduction.*

(1) *Capital deduction required.* For purposes of determining compliance with applicable regulatory capital standards (including the well capitalized standard of § 208.71(a)(1)), a state member bank that controls or holds an interest in a financial subsidiary must:

(i) Deduct the aggregate amount of the bank's outstanding equity investment, including retained earnings, in all financial subsidiaries from its total assets and tangible equity and deduct such investment from its total risk-based capital (this deduction shall be made equally from Tier 1 and Tier 2 capital); and

(ii) Not consolidate the assets and liabilities of any financial subsidiary with those of the bank.

(2) *Financial statement disclosure of capital deduction.* Any published financial statement of a state member bank that controls or holds an interest in a financial subsidiary must, in addition to providing information prepared in accordance with generally accepted accounting principles, separately present financial information for the bank reflecting the capital deduction and adjustments required by paragraph (a)(1) of this section.

(b) *Safeguards for the bank.* A state member bank that establishes, controls or holds an interest in a financial subsidiary must:

(1) Establish procedures for identifying and managing financial and operational risks within the state member bank and the financial subsidiary that adequately protect the state member bank from such risks; and

(2) Establish reasonable policies and procedures to preserve the separate corporate identity and limited liability of the state member bank and the financial subsidiaries of the state member bank.

(c) *Application of sections 23A and 23B of the Federal Reserve Act.* For purposes of sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1):

(1) A financial subsidiary of a state member bank shall be deemed an affiliate, and not a subsidiary, of the bank;

(2) The restrictions contained in section 23A(a)(1)(A) of section 23A shall not apply with respect to covered transactions between the bank and any individual financial subsidiary of the bank;

(3) The bank's investment in a financial subsidiary shall not include retained earnings of the financial subsidiary;

(4) Any purchase of, or investment in, the securities of a financial subsidiary by an affiliate of the bank will be considered to be a purchase of, or investment in, such securities by the bank; and

(5) Any extension of credit by an affiliate of the bank to a financial subsidiary of the bank will be considered to be an extension of credit by the bank to the financial subsidiary if the Board determines that such treatment is necessary or appropriate to prevent evasions of the Federal Reserve Act and the Gramm-Leach-Bliley Act.

(d) *Application of anti-tying prohibitions.* A financial subsidiary of a state member bank shall be deemed a subsidiary of a bank holding company and not a subsidiary of the bank for purposes of the anti-tying prohibitions of section 106 of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1971 et seq.).

§ 208.74 What happens if the state member bank fails to continue to meet certain requirements?

(a) *Qualifications and safeguards.* The following procedures apply to a state member bank that controls or holds an interest in a financial subsidiary.

(1) *Notice by Board.* If the Board finds that a state member bank or any of its depository institution affiliates fails to continue to be well capitalized and well managed or comply with the asset limitation set forth in § 208.71(a)(2) or the safeguards set forth in § 208.73(b), the Board will notify the state member bank in writing and identify the areas of noncompliance.

(2) *Notification by state member bank.* A state member bank must promptly notify the Board if the bank becomes aware that any depository institution affiliate of the bank has ceased to be well capitalized and well managed.

(3) *Execution of agreement.* Within 45 days after receiving a notice under paragraph (a)(1) of this section, or such additional period of time as the Board may permit, the:

(i) State member bank must execute an agreement acceptable to the Board to comply with all applicable capital, management, asset and safeguard requirements; and

(ii) Any relevant depository institution affiliate of the state member bank must execute an agreement acceptable to its appropriate Federal banking agency to comply with all applicable capital and management requirements.

(4) *Imposition of limits.* Until the Board determines that the conditions described in the notice under paragraph (a)(1) of this section are corrected:

(i) The Board may impose any limitations on the conduct or activities of the state member bank or any subsidiary of the bank as the Board determines to be appropriate under the circumstances and consistent with the purposes of section 121 of the Gramm-Leach-Bliley Act (12 U.S.C. 24a, 335, 371c, and 1971), including requiring the Board's prior approval for any financial subsidiary of the bank to acquire any company or engage in any additional activity; and

(ii) The appropriate Federal banking agency for any relevant depository institution affiliate may impose any limitations on the conduct or activities of the depository institution or any subsidiary of that institution as the agency determines to be appropriate under the circumstances and consistent with the purposes of section 121 of the Gramm-Leach-Bliley Act (12 U.S.C. 24a, 335, 371c, and 1971).

(5) *Divestiture.* The Board may require a state member bank to divest control of any financial subsidiary if the conditions described in a notice under paragraph (a)(1) of this section are not corrected within 180 days of receipt of the notice or such additional period of time as the Board may permit. Any divestiture must be completed in accordance with any terms and conditions established by the Board.

(6) *Consultation.* The Board will consult with all relevant Federal and state regulatory authorities in taking any action under this subsection.

(b) *Debt rating or alternative requirement.* If a state member bank does not continue to meet any applicable debt rating or alternative requirement of § 208.71(b), the bank may not, directly or through a subsidiary, purchase or acquire any additional equity capital of any financial subsidiary until the bank restores its compliance with the requirements of that section. For purposes of this paragraph, the term "equity capital" includes, in addition to any equity investment, any debt instrument issued by the financial subsidiary if the instrument qualifies as capital of the subsidiary under federal or state law, regulation or interpretation applicable to the subsidiary.

§ 208.75 What happens if the state member bank or any of its insured depository institution affiliates has received less than a "satisfactory" CRA rating?

(a) *Limits on establishment of financial subsidiaries and expansion of existing financial subsidiaries.* If a state member bank, or any of its insured depository institution affiliates, has received less than a "satisfactory" rating in meeting community credit needs in its most recent examination under the Community Reinvestment Act of 1977 (12 U.S.C. 2901 *et seq.*):

(1) The state member bank may not, directly or indirectly, acquire control of any financial subsidiary; and

(2) Any financial subsidiary controlled by the state member bank may not commence any additional activity or acquire control, including all or substantially all of the assets, of any company.

(b) *Exception for certain activities.* The prohibition in paragraph (a)(2) of this section does not apply to any activity, or to the acquisition of control of any company that is engaged only in activities, that the state member bank is permitted to conduct directly and that are conducted on the same terms and conditions that govern the conduct of the activity by the state member bank.

(c) *Duration of prohibitions.* The prohibitions described in paragraph (a) of this section shall continue in effect until such time as the state member bank and each insured depository institution affiliate of the state member bank has achieved at least a "satisfactory" rating in meeting community credit needs in its most recent examination under the Community Reinvestment Act.

§ 208.76 What Federal Reserve approvals are necessary for financial subsidiaries?

(a) *Notice requirements.* (1) A state member bank may not acquire control of, or an interest in, a financial subsidiary unless it files a notice (in letter form, with enclosures) with the appropriate Reserve Bank.

(2) A state member bank may not engage in any additional activity pursuant to § 208.72(a)(1) or (2) through an existing financial subsidiary unless the state member bank files a notice (in letter form, with enclosures) with the appropriate Reserve Bank.

(b) *Contents of notice.* Any notice required by paragraph (a) of this section must:

(1) In the case of a notice filed under paragraph (a)(1) of this section, describe the transaction(s) through which the bank proposes to acquire control of or an interest in the financial subsidiary;

(2) Provide the name and head office address of the subsidiary;

(3) Provide a description of the current and proposed activities of the financial subsidiary and the specific authority permitting each activity;

(4) Certify that the bank and each of its depository institution affiliates, was well capitalized at the close of the previous calendar quarter, and remains well capitalized as of the date the bank files its notice;

(5) Certify that the bank and each of its depository institution affiliates is well managed as of the date the bank files its notice;

(6) Certify that the bank meets the debt rating or alternative requirement of § 208.71(b), if applicable; and

(7) Certify that the bank and its financial subsidiaries are in compliance with the asset limit set forth in § 208.71(a)(3) both before the proposal and on a pro forma basis.

(c) *Insurance activities.* (1) If a notice filed under paragraph (a) of this section relates to the initial affiliation of the bank with a company engaged in insurance activities, the notice must describe the type of insurance activity that the company is engaged in or plans to conduct and identify each state where the company holds an insurance license and the state insurance regulatory authority that issued the license.

(2) The appropriate Reserve Bank will send a copy of any notice described in this subsection to the appropriate state insurance regulatory authorities and provide such authorities with an opportunity to comment on the proposal.

(d) *Approval procedures.* A notice filed with the appropriate Reserve Bank will be deemed approved on the fifteenth day after receipt of a complete notice by the appropriate Reserve Bank, unless prior to that date the Board or the appropriate Reserve Bank notifies the bank that the notice is approved, that the notice will require additional review, or that the bank does not meet the requirements of this subpart.

§ 208.77 Definitions.

The following definitions shall apply to this subpart:

(a) *Affiliate, Company, Control, and Subsidiary.* The terms "affiliate", "company", "control", and "subsidiary" have the meanings given those terms in section 2 of the Bank Holding Company Act of 1956 (12 U.S.C. 1841).

(b) *Appropriate Federal Banking Agency, Depository Institution, Insured Bank and Insured Depository Institution.* The terms "appropriate Federal banking agency", "depository institution", "insured bank" and "insured depository institution" have the meanings given those terms in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

(c) *Eligible Debt.* The term "eligible debt" means unsecured debt with an initial maturity of more than 360 days that:

(1) Is not supported by any form of credit enhancement, including a guarantee or standby letter of credit; and

(2) Is not held in whole or in any significant part by any affiliate, officer, director, principal shareholder, or employee of the bank or any other person acting on behalf of or with funds from the bank or an affiliate of the bank.

(d) *Financial Subsidiary.* The term "financial subsidiary" means any company that is controlled by one or more insured depository institutions *other than:*

(1) A subsidiary that only engages in activities that the state member bank is permitted to engage in directly and that are conducted on the same terms and conditions that govern the conduct of the activities by the state member bank; or

(2) A subsidiary that the state member bank is specifically authorized by the express terms of a Federal statute (other than section 9 of the Federal Reserve Act (12 U.S.C. 321 *et seq.*)), and not by implication or interpretation, to control, such as by section 25 or 25A of the Federal Reserve Act (12 U.S.C. 601–604a or 12 U.S.C. 611–631) or the Bank Service Company Act (12 U.S.C. 1861 *et seq.*).

(e) *Well Capitalized.* The term "well capitalized" has the meaning given the term in section 38 of the Federal Deposit Insurance Act (12 U.S.C. 1831.).

(f) *Well Managed.* The term "well managed" means:

(1) Unless otherwise determined in writing by the appropriate Federal banking agency, the institution has received a composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating under an equivalent rating system) in connection with its most recent examination or subsequent review and at least a rating of 2 for management (if such rating is given); or

(2) In the case of any depository institution that has not been examined by its appropriate Federal banking agency, the existence and use of managerial resources that the appropriate Federal banking agency determines are satisfactory.

By order of the Board of Governors of the Federal Reserve System, March 10, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6468 Filed 3–17–00; 8:45 am]

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FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 340

RIN 3064–AB37

Restrictions on the Sale of Assets from the Federal Deposit Insurance Corporation

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is issuing this rule to implement certain requirements of the Resolution Trust Corporation Completion Act of 1993. Under that law, people or entities that may have done certain acts that might have contributed to the failure of an insured institution may not buy assets of failed institutions from the FDIC. This rule establishes a self-certification process as a prerequisite to the purchase of assets from the FDIC and provides definitions of various terms in the law in order to make the limitations of the law clearer.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Steven K.Trout, Senior Resolutions Specialist, Division of Resolutions and Receiverships, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 898–3758; or Elizabeth Falloon, Counsel, Legal Division, Federal Deposit Insurance Corporation, Washington, DC 20429, telephone (202) 736–0725.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Background
II. Final Rule
III. Regulatory Analysis
A. Paperwork Reduction Act
B. Regulatory Flexibility Act
C. Small Business Regulatory Enforcement Fairness Act
D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families.

I. Background

The FDIC is required to issue regulations that accomplish two things. First, the regulations must prohibit the sale of an asset of a failed financial institution to certain individuals or entities who may have contributed to the demise of that institution. Second, the regulations must prohibit the sale of an asset using FDIC financing to certain persons who have defaulted and engaged in fraudulent activities with respect to a loan from the institution.

This requirement is found at section 20 of the Resolution Trust Corporation Completion Act of 1993 (RTCCA or Act), which amended section 11(p) of the Federal Deposit Insurance Act (FDI Act).

In order to meet this requirement, we published a notice of proposed rulemaking in the **Federal Register** on September 21, 1999 (64 FR 51084) and solicited comments on the proposed rule. This rule implements the statutory requirements and is somewhat broader than the statutory minimum. The most significant way that the rule exceeds the statutory minimum relates to whether the restriction goes beyond the particular institution harmed by the particular wrongdoing. Under the regulation, prospective purchasers who are prohibited from buying assets of a failed institution may not purchase assets of any failed institution. In contrast, the statutory requirements might only limit the restriction to the assets of a particular institution.

Under the regulation, prospective purchasers are restricted from buying assets from failed financial institutions for which the FDIC are acting as conservator or receiver in certain circumstances. Specifically, under § 340.3 of the regulation, an individual or entity (or its associated person, as that term is defined) that has defaulted on obligations owed to a failed financial institution or the FDIC that aggregate over $1 million, and has made fraudulent misrepresentations in connection with any one of those obligations, is prohibited from using FDIC financing to purchase assets of any failed financial institution.

Section 340.4(a)(1) of the regulation provides that if an officer or director of a failed financial institution (or a related entity) participated in a material way in one or more transactions that resulted in a substantial (greater than $50,000) loss to that failed financial institution, the person would not be permitted to purchase an asset of any failed institution from the FDIC. The rule defines when an individual or entity has "participated in a material way in a transaction that caused a substantial loss to a failed institution," as this phrase is not defined in the statute. The definition includes anyone who has been found by a court or tribunal (or, in certain circumstances, has been alleged in formal legal proceedings) in connection with a substantial loss to a failed institution to have (i) violated any federal banking laws or to have breached a written agreement with a federal banking agency or with the failed financial institution; (ii) engaged in an unsafe or unsound practice in conducting the affairs of the failed institution; or (iii) breached a fiduciary duty to the failed institution.

Under § 340.4(a)(2), if an individual or entity has, by federal regulatory action, been removed from or barred from participating in the affairs of any failed financial institution, the person would not, regardless of the source of payment or financing, be permitted to purchase an asset of any failed financial institution from the FDIC.

Under § 340.4(a)(3), if a prospective purchaser or related entity has demonstrated a pattern or practice of defalcation, as defined in the rule, regarding an obligation to a failed financial institution, the prospective purchaser would be barred from purchasing any asset of any failed institution from the FDIC, regardless of the source of financing or payment. The definition of "pattern or practice of defalcation" requires more than one incident involving either intent or reckless disregard for whether a loss was caused and requires that the resulting loss be "substantial".

Finally, under § 340.4(a)(4), a person who has defaulted on an obligation to a failed institution and has been convicted of committing, or conspiring to commit, any offense under section 215, 656, 657, 1005, 1006, 1007, 1014, 1032, 1341, 1343 or 1344 of Title 18 of the United States Code (generally having to do with financial crimes, fraud and embezzlement) affecting any failed institution will not be permitted to purchase any asset of any failed institution from the FDIC.

In promulgating this regulation, we do not intend to imply that we will provide seller financing in connection with any particular asset sale just because a purchaser is not disqualified under the regulation. Persons who want seller financing will have to satisfy other criteria, such as creditworthiness. Further, we may promulgate other policies and rules restricting purchasers' eligibility to buy assets from the FDIC.

The rule provides for implementation of the restrictions set forth above through a self-certification process. All purchasers of assets covered by the regulation must execute a Purchaser Eligibility Certification in the form established by the FDIC. Federal, state and local governmental agencies and instrumentalities and government-sponsored entities such as Government National Mortgage Association, Fannie Mae and Freddie Mac are excepted from the self-certification requirement, but the Director of the FDIC's Division of Resolutions and Receiverships (DRR), can require a certification from any prospective purchaser if it appears that such a prospective purchaser would fall within the restricted categories. In the final rule, a language change has been made to § 340.7 to clarify that the list of enumerated organizations is not exclusive, and that other similar federally-regulated, government-sponsored enterprises may be exempt from the requirement of providing a certification unless otherwise required by the Director of DRR.

The prohibitions do not apply to a sale or transfer of assets that is part of a workout or settlement of obligations to a failed institution.

Some of the requirements of this regulation have been in effect under prior FDIC policies. The FDIC may continue to have additional policy requirements relating to buyer qualifications that address other policy goals.

In response to our Notice of Proposed Rulemaking we received two comments. One of these comments came from a trade association, and the other came from a financial institution, and both of them supported the adoption of the proposed rule in its entirety.

II. Final Rule

We are adopting the proposed rule without substantive change. However, section 722 of the Gramm-Leach-Bliley Act, Public Law 106–102, section 722, 113 Stat. 1338 (1999), requires the federal banking agencies to use plain language in all rulemakings. Thus, we have made numerous nonsubstantive changes to the regulation to ensure that it is in plain language.

III. Regulatory Analysis

A. Paperwork Reduction Act

This rule requires the collection of certain information from prospective purchasers of assets from the FDIC. The information is collected through the completion of a Purchaser Eligibility Certification form. The Office of Management and Budget (OMB) has reviewed and approved this form in accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et. seq.*). The Purchaser Eligibility Certification has been assigned control number 3064–0135. OMB clearance will expire on February 28, 2003.

The FDIC has a continuing interest in the public's opinion regarding collections of information. Members of the public may submit comments, at any time, regarding any aspect of these collections of information. Comments may be sent to: Steven F. Hanft, Assistant Executive Secretary (Regulatory Analysis), Federal Deposit Insurance Corporation, Room F–4080,

550 17th Street NW., Washington, DC 20429.

B. Regulatory Flexibility Act

The only burden imposed by this regulation is the completion of a certification form described above in the Paperwork Reduction Act section. The burden produced by this requirement does not require the use of professional skills or the preparation of special reports or records and has a minimal impact, economic and time-wise, on those individuals and entities that seek to purchase assets from the FDIC. Moreover, this minimal burden is imposed only on those individuals and entities voluntarily seeking to purchase assets from the FDIC. Accordingly, the Board certifies that the final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis are not applicable.

C. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress and for Congress to review the rules. The reporting requirement is triggered when the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA.

The Office of Management and Budget has determined that this final rule does not constitute a "major rule" as defined by SBREFA.

D. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, Public Law 105–277, 112 Stat. 2681 (1998).

List of Subjects in 12 CFR Part 340

Asset disposition, Banks, banking.

For the reasons set out in the preamble, the FDIC amends chapter III of title 12 of the Code of Federal Regulations by adding a new part 340 to read as follows:

PART 340—RESTRICTIONS ON SALE OF ASSETS BY THE FEDERAL DEPOSIT INSURANCE CORPORATION

Sec.

340.1 What is the statutory authority for the regulation, what are its purpose and scope, and can the FDIC have other policies on related topics?
340.2 Definitions.
340.3 What are the restrictions on the sale of assets by the FDIC if the buyer wants to finance the purchase with a loan from the FDIC?
340.4 What are the restrictions on the sale of assets by the FDIC regardless of the method of financing?
340.5 Can the FDIC deny a loan to a buyer who is not disqualified from purchasing assets using seller-financing under this regulation?
340.6 What is the effect of this part on transactions that were entered into before its effective date?
340.7 When is a certification required, and who does not have to provide a certification?
340.8 Does this part apply in the case of a workout, resolution, or settlement of obligations?

Authority: 12 U.S.C. 1819 (Tenth), 1821(p).

§ 340.1 What is the statutory authority for the regulation, what are its purpose and scope, and can the FDIC have other policies on related topics?

(a) *Authority.* The statutory authority for adopting this part is section 11(p) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1821(p). Section 11(p) was added to the FDI Act by section 20 of the Resolution Trust Corporation Completion Act (Pub. L. 103–204, 107 Stat. 2369 (1993)).

(b) *Purpose.* The purpose of this part is to prohibit individuals or entities who profited or engaged in wrongdoing at the expense of an insured institution, or seriously mismanaged an insured institution, from buying assets of failed financial institutions from the FDIC.

(c) *Scope.* The restrictions of this part generally apply to assets of failed institutions owned or controlled by the FDIC in any capacity, even though the assets are not owned by the insured institution that the prospective purchaser injured. Unless we determine otherwise, this part does not apply to the sale of securities in connection with the investment of corporate and receivership funds pursuant to the Investment Policy for Liquidation Funds managed by the FDIC as it is in effect from time to time. In the case of a sale of securities backed by a pool of assets that may include assets of failed institutions by a trust or other entity, this part applies only to the sale of assets by the FDIC to an underwriter in an initial offering, and not to any other purchaser of the securities.

(d) *The FDIC retains the authority to establish other policies restricting asset sales.* Neither section 11(p) of the FDI Act nor this part in any way limits the authority of the FDIC to establish policies prohibiting the sale of assets to prospective purchasers who have injured any failed financial institution, or to other prospective purchasers, such as certain employees or contractors of the FDIC, or individuals who are not in compliance with the terms of any debt or duty owed to the FDIC. Any such policies may be independent of, in conjunction with, or in addition to the restrictions set forth in this part.

§ 340.2 Definitions.

(a) *Associated person* of an individual or entity means:

(1) With respect to an individual:

(i) The individual's spouse or dependent child or any member of his or her immediate household;

(ii) A partnership of which the individual is or was a general or limited partner; or

(iii) A corporation of which the individual is or was an officer or director;

(2) With respect to a partnership, a managing or general partner of the partnership; or

(3) With respect to any entity, an individual or entity who, acting individually or in concert with one or more individuals or entities, owns or controls 25 percent or more of the entity.

(b) *Default* means any failure to comply with the terms of an obligation to such an extent that:

(1) A judgment has been rendered in favor of the FDIC or a failed institution; or

(2) In the case of a secured obligation, the property securing such obligation is foreclosed on.

(c) *FDIC* means the Federal Deposit Insurance Corporation.

(d) *Failed institution* means any bank or savings association that has been under the conservatorship or receivership of the FDIC or RTC. For the purpose of this part, "failed institution" includes any entity owned and controlled by a failed institution.

(e) *Obligation* means any debt or duty to pay money owed to the FDIC or a failed institution, including any guarantee of any such debt or duty.

(f) *Person* means an individual, or an entity with a legally independent existence, including: a trustee; the beneficiary of at least a 25 percent share of the proceeds of a trust; a partnership; a corporation; an association; or other organization or society.

(g) *RTC* means the former Resolution Trust Corporation.

(h) *Substantial loss* means:

(1) An obligation that is delinquent for ninety (90) or more days and on which there remains an outstanding balance of more than $50,000;

(2) An unpaid final judgment in excess of $50,000 regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding;

(3) A deficiency balance following a foreclosure of collateral in excess of $50,000, regardless of whether it becomes forgiven in whole or in part in a bankruptcy proceeding;

(4) Any loss in excess of $50,000 evidenced by an IRS Form 1099–C (Information Reporting for Discharge of Indebtedness).

§ 340.3 What are the restrictions on the sale of assets by the FDIC if the buyer wants to finance the purchase with a loan from the FDIC?

A person may not borrow money or accept credit from the FDIC in connection with the purchase of any assets from the FDIC or any failed institution if:

(a) There has been a default with respect to one or more obligations totaling in excess of $1,000,000 owed by that person or its associated person; and

(b) The person or its associated person made any fraudulent misrepresentations in connection with any such obligation(s).

§ 340.4 What are the restrictions on the sale of assets by the FDIC regardless of the method of financing?

(a) A person may not acquire any assets from the FDIC or from any failed institution if the person or its associated person:

(1) Has participated, as an officer or director of a failed institution or of an affiliate of a failed institution, in a material way in one or more transaction(s) that caused a substantial loss to that failed institution;

(2) Has been removed from, or prohibited from participating in the affairs of, a failed institution pursuant to any final enforcement action by the Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Board of Governors of the Federal Reserve System, the FDIC, or any of their successors;

(3) Has demonstrated a pattern or practice of defalcation regarding obligations to any failed institution; or

(4) Has been convicted of committing or conspiring to commit any offense under 18 U.S.C. 215, 656, 657, 1005, 1006, 1007, 1014, 1032, 1341, 1343 or 1344 affecting any failed institution and there has been a default with respect to one or more obligations owed by that person or its associated person.

(b) For purposes of paragraph (a) of this section, a person has participated "in a material way in a transaction that caused a substantial loss to a failed institution" if, in connection with a substantial loss to a failed institution, the person has been found in a final determination by a court or administrative tribunal, or is alleged in a judicial or administrative action brought by the FDIC or by any component of the government of the United States or of any state:

(1) To have violated any law, regulation, or order issued by a federal or state banking agency, or breached or defaulted on a written agreement with a federal or state banking agency, or breached a written agreement with a failed institution;

(2) To have engaged in an unsafe or unsound practice in conducting the affairs of a failed institution; or

(3) To have breached a fiduciary duty owed to a failed institution.

(c) For purposes of paragraph (a) of this section, a person or its associated person has demonstrated a "pattern or practice of defalcation" regarding obligations to a failed institution if the person or associated person has:

(1) Engaged in more than one transaction that created an obligation on the part of such person or its associated person with intent to cause a loss to any financial institution insured by the FDIC or with reckless disregard for whether such transactions would cause a loss to any such insured financial institution; and

(2) The transactions, in the aggregate, caused a substantial loss to one or more failed institution(s).

§ 340.5 Can the FDIC deny a loan to a buyer who is not disqualified from purchasing assets using seller-financing under this regulation?

The FDIC still has the right to make an independent determination, based upon all relevant facts of a person's financial condition and history, of that person's eligibility to receive any loan or extension of credit from the FDIC, even if the person is not in any way disqualified from purchasing assets from the FDIC under the restrictions set forth in this part.

§ 340.6 What is the effect of this part on transactions that were entered into before its effective date?

This part does not affect the enforceability of a contract of sale and/or agreement for seller financing in effect prior to July 1, 2000.

§ 340.7 When is a certification required, and who does not have to provide a certification?

(a) Before any person may purchase any asset from the FDIC that person must certify, under penalty of perjury, that none of the restrictions contained in this part applies to the purchase. The FDIC may establish the form of the certification and may change the form from time to time.

(b) Notwithstanding paragraph (a) of this section, a state or political subdivision of a state, a federal agency or instrumentality such as the Government National Mortgage Association, or a federally-regulated, government-sponsored enterprise such as Fannie Mae or Freddie Mac does not have to give a certification before it can purchase assets from the FDIC, unless the Director of the FDIC's Division of Resolutions and Receiverships, or his designee, in his discretion, requires a certification of any such entity.

§ 340.8 Does this part apply in the case of a workout, resolution, or settlement of obligations?

The restrictions of §§ 340.3 and 340.4 do not apply if the sale or transfer of an asset resolves or settles, or is part of the resolution or settlement of, one or more obligations, regardless of the amount of such obligations.

Dated at Washington, D.C. this 9th day of March, 2000.

By Order of the Board of Directors, Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–6823 Filed 3–17–00; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

12 CFR Part 1501

RIN 1505–AA80

Financial Subsidiaries

AGENCY: The Department of the Treasury.

ACTION: Interim final rule with request for comments.

SUMMARY: The Department of the Treasury (Treasury) is issuing an interim final rule to implement the provisions of section 121 of the Gramm-Leach-Bliley Act (GLBA) that authorize the Secretary of the Treasury (Secretary), in consultation with the Board of Governors of the Federal

Reserve System (Board), to determine whether activities are financial in nature or incidental to a financial activity, and therefore permissible for a financial subsidiary of a national bank. The interim final rule sets forth the procedure whereby a national bank or other interested party may request the Secretary to make such a determination.

DATES: This interim final rule is effective March 14, 2000. Written comments must be submitted on or before May 15, 2000.

ADDRESSES: Please direct written comments to: New Financial Activities Request, Office of Financial Institutions Policy, 1500 Pennsylvania Avenue, NW, Room SC 37, Washington, DC 20220. Comments also may be mailed electronically to *financial.institutions@do.treas.gov* or delivered to the Treasury Department mail room between the hours of 8:45 a.m. and 5:15 p.m. at the 15th Street entrance to the Treasury Building. Members of the public may inspect comments in Room SC 37 of the Treasury Department.

FOR FURTHER INFORMATION CONTACT: Joan Affleck-Smith, Director, Office of Financial Institutions Policy (202/622–2740); Matthew Green, Senior Financial Analyst (202/622–2740), Gerry Hughes, Senior Financial Analyst (202/622–2740); Roberta K. McInerney, Assistant General Counsel (Banking and Finance) (202/622–0480); or Gary W. Sutton, Senior Banking Counsel (202/622–0480).

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1999, the President signed the GLBA, Public Law 106–102, 113 Stat. 1338, which comprehensively restructures the statutory framework that governs the financial services industry to allow affiliations among banks, securities firms, insurance firms and other financial companies. Section 121 of the GLBA authorizes national banks to acquire control of, or hold an interest in, a new type of subsidiary called a "financial subsidiary." The GLBA defines a financial subsidiary as a company that is controlled by one or more insured depository institutions, other than a subsidiary that engages solely in activities that national banks may engage in directly (under the same terms and conditions that govern the conduct of these activities by national banks) or a subsidiary that a national bank is specifically authorized to control by the express terms of a Federal statute. A financial subsidiary may engage in specified activities that are financial in nature and activities that are incidental to financial activities if the national bank and the subsidiary meet certain requirements and comply with stated safeguards.

Under section 121 of the GLBA, an activity is financial in nature or incidental to a financial activity if the activity has been defined to be financial in nature or incidental to a financial activity for bank holding companies pursuant to section 4(k)(4) of the Bank Holding Company Act of 1956. The activities already defined to be financial in nature that are authorized for a financial subsidiary are listed in 12 CFR 5.39(e) (65 FR 12905, March 10, 2000). (Certain of these activities are further delineated in 12 CFR 225.86 (See the Board's interim rule published in the **Federal Register** of March 17, 2000.).)

Under section 121 of the GLBA, the Secretary of the Treasury, in consultation with the Board, is also authorized to determine that additional activities are financial in nature or incidental to a financial activity in accordance with subparagraph (B) of section 121(b)(1). Subparagraph (B) sets forth the procedure that a national bank or other party must follow to request the Secretary to determine that an activity is financial in nature or incidental to a financial activity. This interim regulation further explains those procedures.

Interim Effectiveness of the Rule

This interim rule is effective on March 14, 2000. Section 553 of the Administrative Procedure Act permits agencies to issue a rule without public notice and comment when the agency, for good cause, finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Section 553 also permits agencies to issue a rule without delaying its effectiveness for thirty days from publication if the agency finds good cause and publishes this finding with the rule. 5 U.S.C. 553(d)(3).

Treasury finds that there is good cause for issuing this interim rule without notice and public comment and without a delayed effective date for the following reason: section 121 of the GLBA, which permits national banks through financial subsidiaries to engage in activities that are financial in nature, becomes effective on March 11, 2000. Such activities include both the activities defined in section 4(k)(4) of the Bank Holding Company Act to be financial in nature (subject to certain exceptions), and those determined by the Secretary, in consultation with the Board, to be financial in nature or incidental to a financial activity. It is in the public interest to make this interim rule effective immediately, so that national banks and other interested parties will know how to request that the Secretary make such a determination. Treasury requests comments on all aspects of this interim rule and will consider those comments before the rule is finalized. However, publishing the rule in interim final form enables national banks and other interested parties to seek a determination as to whether an activity is financial in nature during this comment process.

Section-by-Section Analysis

The GBLA authorizes the Secretary to determine that activities are financial in nature or incidental to financial activities after consulting with the Board. Subsection (a) states that a national bank or any other interested party may request a determination that a new activity is financial in nature.

A request for a determination that an activity is financial in nature must identify and define the activity for which the determination is sought. The request must also include specific information about what the activity would involve and how it would be conducted, and explain in detail why the activity should be considered financial in nature or incidental to a financial activity. Importantly, the request must provide information that is sufficient to support a finding by the Secretary that the activity is financial. The requester also must provide any additional information required by the Secretary.

On receiving a request, the Secretary will provide the Board with a copy of the proposal and consult with the Board in accordance with section 5136A(b)(1)(B)(i) of the Revised Statutes. The Secretary also may request public comment on the proposal. The Secretary will endeavor to act on all requests within 60 days of completion of the consultative process and the close of the public comment period, if applicable.

Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required for this interim final rule, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply.

Paperwork Reduction Act

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed under the requirements of the Paperwork Reduction Act (44 U.S.C. 3507(j)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget (OMB) under control number 1505–0174. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

Comments concerning the collection of information should be directed to OMB, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC, 20503, with copies to Joan Affleck-Smith, Director, Office of Financial Institutions Policy, 1500 Pennsylvania Avenue NW, Room SC 37, Washington, DC 20220. Any such comments should be submitted not later than May 19, 2000. Comments are specifically requested concerning: whether the proposed collection of information is necessary for the proper performance of the functions of the Secretary, including whether the information will have practical utility; the accuracy of the estimated burden associated with the proposed collection of information (see below); how to enhance the quality, utility, and clarity of the information to be collected; how to minimize the burden of complying with the proposed collection of information, including the application of automated collection techniques or other forms of information technology; and estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collection of information in this regulation is in 12 CFR 1501.1. This information is required to request that the Secretary determine whether an activity is financial in nature or incidental to a financial activity. This information will be used to enable the Secretary to evaluate a request for such a determination. The collection of information is required to obtain a benefit. The likely respondents are national banks.

Estimated total annual reporting burden: 400 hours.

Estimated average annual burden hours per respondent: 20 hours.

Estimated number of respondents: 20.

Estimated annual frequency of responses: Once.

Executive Order 12866 Determination

The Department of the Treasury has determined that this rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

List of Subjects in 12 CFR Part 1501

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Department of the Treasury adds a new part 1501 to chapter XV of title 12, to read as follows:

PART 1501—FINANCIAL SUBSIDIARIES

Sec.

1501.1 How do you request the Secretary to determine that an activity is financial in nature or incidental to a financial activity?

Authority: Section 5136A of the Revised Statutes of the United States (12 U.S.C. 24a).

§ 1501.1 How do you request the Secretary to determine that an activity is financial in nature or incidental to a financial activity?

(a) *Requests regarding activities that may be financial in nature or incidental to a financial activity.* A national bank or other interested party may request the Secretary to determine that an activity not defined to be financial in nature or incidental to a financial activity in Section 4(k)(4) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)), is financial in nature or incidental to a financial activity.

(b) *What information must the request contain?* A request submitted under this section must be in writing and must:

(1) Identify and define the activity for which the determination is sought, specifically describing what the activity would involve and how the activity would be conducted;

(2) Explain in detail why the activity should be considered financial in nature or incidental to a financial activity; and

(3) Provide information supporting the requested determination and any other information required by the Secretary concerning the proposed activity.

(c) *What factors will the Secretary take into account in making his determination?* (1) Section 121 of the Gramm-Leach-Bliley Act (GLBA) (Public Law 106–102, 113 Stat. 1373) requires the Secretary to take into account the following factors in making his determination:

(i) The purposes of section 5136A of the Revised Statutes (12 U.S.C. 24a) and the GLBA;

(ii) Changes or reasonably expected changes in the marketplace in which banks compete;

(iii) Changes or reasonably expected changes in the technology for delivering financial services; and

(iv) Whether the activity is necessary or appropriate to allow a bank and the subsidiaries of a bank to—

(A) Compete effectively with any company seeking to provide financial services in the United States;

(B) Efficiently deliver information and services that are financial in nature through the use of technological means, including any application necessary to protect the security or efficacy of systems for the transmission of data or financial transactions; and

(C) Offer customers any available or emerging technological means for using financial services or for the document imaging of data.

(2) Because the Secretary is required to consider the factors in paragraph (c)(1) of this section in making his determination, any request should address the factors in paragraph (c)(1) of this section. The Secretary may also consider other relevant factors.

(d) *What action will the Secretary take after receiving a request?* (1) *Consultation with the Board of Governors of the Federal Reserve System (Board).* Upon receiving the request, the Secretary will send a copy to the Board and consult with the Board in accordance with section 5136A(b)(1)(B)(i) of the Revised Statutes (12 U.S.C. 5136A(b)(1)(B)(i)).

(2) *Public notice.* The Secretary may, as appropriate and after consultation with the Board, publish a description of the proposal in the **Federal Register** with a request for public comment.

(e) *How and when will the Secretary act on a request?* In the case of each request, the Secretary:

(1) Will inform the requester of the Secretary's final determination regarding the requested activity; and

(2) Will endeavor to inform the requester of the Secretary's final determination within 60 days of completion of both the consultative process described in paragraph (d)(1) of this section and the public comment period, if any.

(f) *What must a national bank do in order for a financial subsidiary to engage in activities that the Secretary has determined are financial in nature or incidental to financial activities?* Once the Secretary determines that an activity is financial in nature or incidental to a financial activity (either in accordance with this section or after evaluation of a proposal raised by the Board under section 5136A(b)(1)(B)(ii) of the Revised Statutes), a financial subsidiary may engage in the activity subject to the requirements of 12 CFR

part 5 and in accordance with any terms or conditions established by the Secretary in connection with authorizing the activity.

Dated: March 13, 2000.

Gregory A. Baer,

Assistant Secretary for Financial Institutions, Department of the Treasury.

[FR Doc. 00–6610 Filed 3–17–00; 8:45 am]

BILLING CODE 4810–25–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–44–AD; Amendment 39–11643; AD 2000–06–03]

RIN 2120–AA64

Airworthiness Directives; Bombardier Inc. Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all Bombardier Inc. (Bombardier) Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes that are equipped with pneumatic deicing boots. This AD requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: May 5, 2000.

ADDRESSES: You may examine information related to this AD at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-CE-44-AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What caused this AD?: This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What is the potential impact if the FAA took no action?: The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA taken any action to this point?: Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Bombardier Models DHC–6–1, DHC–6–100, DHC–6–200, and DHC–6–300 airplanes that are equipped with pneumatic deicing boots. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 12, 1999 (64 FR 55201). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the public invited to comment?: Yes. Interested persons were afforded an opportunity to participate in the making of this amendment. The following paragraphs present the comments received on the NPRM. Also included is the FAA's response to each comment, including any changes incorporated into the final rule based on the comments.

Comment Issue No. 1: Coordinate With Original Equipment Manufacturer

What is the Commenter's Concern?: One commenter states that the FAA should coordinate with the original equipment manufacturer before issuing the AD.

What is the FAA's Response to the Concern?: We concur.

The FAA coordinates and will continue to coordinate with the manufacturer of any affected airplanes before issuing an AD.

Is it Necessary to Change the AD?: No.

Comment Issue No. 2: Provide the Criteria for Determining Acceptable Stall Warning Margins

What is the Commenter's Concern?: One commenter requests that the FAA provide the criteria for determining whether an airplane has an acceptable stall warning margin. The commenter references recent NPRM AD withdrawals in the FAA's Transport Airplane Directorate.

What is the FAA's Response to the Concern?: We cannot provide such information because no regulatory basis exists for determining or applying a mandatory stall margin with contamination. We can review manufacturer-provided data to determine what testing was conducted, and then determine the effects of ice accretion on the stall angle and the handling characteristics in the roll axis. This would include reviewing the service history of each airplane. With all of this information, we could determine whether the stall warning margin was acceptable and if the AD action could be withdrawn.

Such was the case with the NPRM withdrawals in the FAA's Transport Airplane Directorate. The airplanes affected were Cessna Models 500, 501, 550, 551, and 560 series airplanes, and British Aerospace Jetstream Model 4101 airplanes. You may find the specific justification for each of these withdrawals in the **Federal Register** through the following citations:

—For the Cessna airplanes: 64 FR 62995, November 18, 1999; and -For the Jetstream airplanes: 64 FR 62990, November 18, 1999.

No specific information was submitted for the Bombardier DHC–6 series airplanes.

Is it Necessary to Change the AD?: No.

Comment Issue No. 3: Review the Effects of Ice Bridging

What is the Commenter's Concerns?: A commenter states that the FAA did not reference in the NPRM any testing to assure that ice bridging does not exist on any of the affected airplanes. This commenter requests that the FAA carefully review the effects of ice bridging. Ice bridging, as referred to in the aviation community, occurs when the mechanical deicing boots do not clear airframe icing from the wing surface. This occurs because the "ice bridge" that forms over the inflated boots increases in ice thickness while the deicing boots ineffectively inflate and deflate under the ice bridge.

The commenter also requests explanation on the use of the term "modern" in a similar AD action that the FAA's Transport Airplane Directorate initiated.

What is the FAA's Response to the Concerns?: The FAA considered the effects of ice bridging while developing the AD. We consulted the aviation community, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and the National Aeronautics and Space Administration (NASA). Based on information from the aviation community, we believe that little evidence of ice bridging exists as it relates to current deicing boot designs. Also, ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

The FAA's Transport Airplane Directorate addressed the issue of "modern" versus "older" pneumatic boot systems in a recent AD action. That information, in its entirety, follows:

> "Several commenters request that the difference between the "older" and "modern" boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.
>
> The FAA acknowledges that definitions of "older" and "modern" pneumatic boot systems should be provided. Therefore, for the purposes of this AD, "modern" pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. "Older" pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early deice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)"

Is it Necessary to Change the AD?: No.

Comment Issue No. 4: Limit the AFM Change to Approach and Hold Phases of Flight

What is the Commenter's Concern? One commenter requests that the FAA limit the AFM change of operating the boots at the first sign of ice accretion to the approach and hold phases of flight. This commenter references the work that the Ice Protection Harmonization Working Group (IPHWP) is currently doing. The commenter states that the IPHWP believes that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments. Since these operations occur at lower speeds, ice accumulating on the wing and tail surfaces could cause instability.

What is the FAA's Response to the Concern? We do not concur to limiting the AFM change to the holding and approach phases of flight. We acknowledge that the IPHWG is working on a proposed operations rule. The IPHWG continues to work on this proposed rule and has not reached technical agreement. We have records of in-flight roll upsets in icing during the climb and cruise phases of flight on small airplanes that are of a similar type design to the Bombardier DHC–6 series airplanes.

We concur that the ice protection system should not be operated at times when no ice is accreting. We have changed the description of the atmospheric conditions that the deicing boots must be operated from "icing conditions" to "known or observed/detected icing that the flight crew visually observed on the aircraft or was identified by the on-board sensors."

Is it Necessary to Change the AD?: Yes. We have made the change described above in the final rule.

Comment Issue No. 5: Conduct Further Testing Before Issuing the AD

What is the Commenter's Concern? One commenter requests that the FAA conduct more tests before proceeding with this AD action. The commenter agrees that operating the pneumatic boots continuously is the best way to identify ice accretion. However, the commenter states concern over the residual ice that could accumulate in this mode. The commenter recommends the following:

—The FAA research the possibility of mandating the installation of a reliable ice detection system to alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions;

—The FAA work together with the manufacturers to determine how efficient the pneumatic boots are in shedding significant thinner ice accretions than encountered previously; and

—The FAA quantify the performance effects of prolonged operation with residual ice on the airfoil prior to implementing any new boot operation procedures.

What is the FAA's Response to the Concern? We do not concur with the concerns over residual ice. Operation of the pneumatic deicing boots typically results in persistent ice accretions on the boots surfaces, even with 1/4-inch to 1/2-inch of ice accretion prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activating the wing and tail pneumatic deicing boots at the first sign of ice accretion (or at the annunciation of an ice detector system) and periodically operating the deicing boots will result in persistent ice accretions.

However, the proposed actions will minimize the residual and intercycle ice accretions because the ice will shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness that results from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. The thickness, shape, texture, and location of the ice accretion affect the adverse airplane flying qualities that result from ice accretions.

Certain airplane manufacturers have previously issued AFM information that contains procedures to activate the deicing boots at the first sign of ice accumulation. We have received no reports indicating any adverse effects of residual ice because of early activation of the deicing boots for these airplane designs.

Those airplane models that are equipped with deicing boot systems with automatic operating modes result in operation of the boots with less than the recommended thickness of accreted ice. We have received no reports indicating any adverse effects resulting from the use of the automatic mode.

We concur that the installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretion. We are working with industry on the possibility of developing such a system. If developed, tested, and approved, the FAA may consider additional rulemaking. For the time being, we are issuing this AD to impose a deicing boot operation change to address the reduced handling qualities or controllability problems associated with ice accretion on the protected surfaces.

Is it Necessary to Change the AD? No.

Comment Issue No. 6: Require Action to Reduce Adhesion Characteristics

What is the Commenter's Concern? One commenter requests that the FAA mandate actions to minimize or reduce the ice adhesion characteristics of boot material. The commenter states that one reason flightcrews see large amounts of residual ice is because residual ice

sticks to the boot surface as the boot ages. This may increase if the adhesion qualities of the boot material are not maintained. The commenter suggests the use of certain compounds, such as ICEX™ (an ice-phobic chemical spray), to reduce ice adhesion.

What is the FAA's Response to the Concern?: We concur that materials such as ICEX™ could reduce ice adhesion. However, factors such as normal wear and tear, patching, and oxidation of boot material, prevent us from establishing an effective level of application or adequate intervals of application. We will include a NOTE in the AD to recommend regular treatment of deicing boots with use of approved ice release agents. This is in addition to the required actions.

Is it Necessary to Change the AD?: No. However, as discussed above, the FAA is including a NOTE in the AD to recommend regular treatment of deicing boots with use of approved ice release agents.

The FAA's Determination

What is the FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the following:

—The change in the description of the atmospheric conditions that the deicing boots must be operated;

—The addition of the NOTE to recommend regular treatment of deicing boots with use of approved ice release agents; and

—Minor editorial corrections.

How does the change, addition, and corrections affect the AD?: We have determined that the change, addition, and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact?: We estimate that 162 airplanes in the U.S. registry will be affected.

What is the cost impact of the affected airplanes on the U.S. Register?: There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–06–03 Bombardier Inc.: Amendment 39–11643; Docket No. 99–CE–44–AD.

(a) *What airplanes are affected by this AD?* Models DHC–6–1, DHC–6–100, DHC–6–200, DHC–6–300 airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic de-icing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?:* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

• "Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after:

—Leaving known or observed/detected icing that the flight crew has visually observed on the aircraft or was identified by the on-board sensors; and

—After the airplane is determined to be clear of ice."

Note: The FAA recommends periodic treatment of deicing boots with approved ice release agents, such as ICEX™, in accorance with the manufacturer's application instructions.

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4121; facsimile: (816) 329–4091.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on May 5, 2000.

Issued in Kansas City, Missouri, on March 10, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6616 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–52–AD; Amendment 39–11644; AD 2000–06–04]

RIN 2120–AA64

Airworthiness Directives; Fairchild Aircraft Corporation SA226 and SA227 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all Fairchild Aircraft Corporation (Fairchild) SA226 and SA227 series airplanes that are equipped with pneumatic deicing boots. This AD requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: May 5, 2000.

ADDRESSES: You may examine information related to this AD at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–52–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What caused this AD?: This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What is the potential impact if the FAA took no action?: The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA taken any action to this point?: Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Fairchild SA226 and SA227 series airplanes that are equipped with pneumatic deicing boots. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 12, 1999 (64 FR 55177). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the public invited to comment?: Yes. Interested persons were afforded an opportunity to participate in the making of this amendment. The following paragraphs present the comments received on the NPRM. Also included is the FAA's response to each comment, including any changes incorporated into the final rule based on the comments.

Comment Issue No. 1: Coordinate With Original Equipment Manufacturer

What is the Commenter's Concern?: One commenter states that the FAA should coordinate with the original equipment manufacturer before issuing the AD.

What is the FAA's Response to the Concern?: We concur. The FAA coordinates and will continue to coordinate with the manufacturer of any affected airplanes before issuing an AD.

Is it Necessary to Change the AD?: No.

Comment Issue No. 2: Provide the Criteria for Determining Acceptable Stall Warning Margins

What is the Commenter's Concern?: One commenter requests that the FAA provide the criteria for determining whether an airplane has an acceptable stall warning margin. The commenter references recent NPRM AD withdrawals in the FAA's Transport Airplane Directorate.

What is the FAA's Response to the Concern?: We cannot provide such information because no regulatory basis exists for determining or applying a mandatory stall margin with contamination. We can review manufacturer-provided data to determine what testing was conducted, and then determine the effects of ice accretion on the stall angle and the handling characteristics in the roll axis. This would include reviewing the service history of each airplane. With all of this information, we could determine whether the stall warning margin was acceptable and if the AD action could be withdrawn.

Such was the case with the NPRM withdrawals in the FAA's Transport Airplane Directorate. The airplanes affected were Cessna Models 500, 501, 550, 551, and 560 series airplanes, and British Aerospace Jetstream Model 4101 airplanes. You may find the specific justification for each of these withdrawals in the **Federal Register** through the follbwing citations:

—For the Cessna airplanes: 64 FR 62995, November 18, 1999; and

—For the Jetstream airplanes: 64 FR 62990, November 18, 1999.

No specific information was submitted for the Fairchild SA226 and SA227 series airplanes.

Is it Necessary to Change the AD?: No.

Comment Issue No. 3: Review the Effects of Ice Bridging

What is the Commenter's Concerns?: A commenter states that the FAA did not reference in the NPRM any testing to assure that ice bridging does not exist on any of the affected airplanes. This commenter requests that the FAA carefully review the effects of ice bridging. Ice bridging, as referred to in the aviation community, occurs when the mechanical deicing boots do not clear airframe icing from the wing surface. This occurs because the "ice bridge" that forms over the inflated boots increases in ice thickness while the deicing boots ineffectively inflate and deflate under the ice bridge.

The commenter also requests explanation on the use of the term "modern" in a similar AD action that the FAA's Transport Airplane Directorate initiated.

What is the FAA's Response to the Concerns?: The FAA considered the effects of ice bridging while developing the AD. We consulted the aviation community, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and the National Aeronautics and Space Administration (NASA). Based on information from the aviation community, we believe that little evidence of ice bridging exists as it relates to current deicing boot designs. Also, ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

The FAA's Transport Airplane Directorate addressed the issue of "modern" versus "older" pneumatic boot systems in a recent AD action. That information, in its entirety, follows:

> "Several commenters request that the difference between the "older" and "modern" boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.
>
> The FAA acknowledges that definitions of "older" and "modern" pneumatic boot systems should be provided. Therefore, for the purposes of this AD, "modern" pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. "Older" pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early deice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)"

Is it Necessary to Change the AD?: No.

Comment Issue No. 4: Limit the AFM Change to Approach and Hold Phases of Flight

What is the Commenter's Concern? One commenter requests that the FAA limit the AFM change of operating the boots at the first sign of ice accretion to the approach and hold phases of flight. This commenter references the work that the Ice Protection Harmonization Working Group (IPHWP) is currently doing. The commenter states that the IPHWP believes that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments. Since these operations occur at lower speeds, ice accumulating on the wing and tail surfaces could cause instability.

What is the FAA's Response to the Concern?: We do not concur to limiting the AFM change to the holding and approach phases of flight. We acknowledge that the IPHWG is working on a proposed operations rule. The IPHWG continues to work on this proposed rule and has not reached technical agreement. We have records of in-flight roll upsets in icing during the climb and cruise phases of flight on small airplanes that are of a similar type design to the Fairchild SA226 and SA227 series airplanes.

We concur that the ice protection system should not be operated at times when no ice is accreting. We have changed the description of the atmospheric conditions that the deicing boots must be operated from "icing conditions" to "known or observed/detected icing that the flight crew visually observed on the aircraft or was identified by the on-board sensors."

Is it Necessary to Change the AD?: Yes. We have made the change described above in the final rule.

Comment Issue No. 5: Conduct Further Testing Before Issuing the AD

What is the Commenter's Concern?: One commenter requests that the FAA conduct more tests before proceeding with this AD action. The commenter agrees that operating the pneumatic boots continuously is the best way to identify ice accretion. However, the commenter states concern over the residual ice that could accumulate in this mode. The commenter recommends the following:

—The FAA research the possibility of mandating the installation of a reliable ice detection system to alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions;

—The FAA work together with the manufacturers to determine how efficient the pneumatic boots are in shedding significant thinner ice accretions than encountered previously; and

—The FAA quantify the performance effects of prolonged operation with residual ice on the airfoil prior to implementing any new boot operation procedures.

What is the FAA's Response to the Concern? We do not concur with the concerns over residual ice. Operation of the pneumatic deicing boots typically results in persistent ice accretions on the boots surfaces, even with ¼inch to ½inch of ice accretion prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activating the wing and tail pneumatic deicing boots at the first sign of ice accretion (or at the annunciation of an ice detector system) and periodically operating the deicing boots will result in persistent ice accretions.

However, the proposed actions will minimize the residual and intercycle ice accretions because the ice will shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness that results from this procedure is less than the ice accretion thickness typically recommended prior to operation of the pneumatic deicing boot. The thickness, shape, texture, and location of the ice accretion affect the adverse airplane flying qualities that result from ice accretions.

Certain airplane manufacturers have previously issued AFM information that contains procedures to activate the deicing boots at the first sign of ice accumulation. We have received no reports indicating any adverse effects of residual ice because of early activation of the deicing boots for these airplane designs.

Those airplane models that are equipped with deicing boot systems with automatic operating modes result in operation of the boots with less than the recommended thickness of accreted ice. We have received no reports indicating any adverse effects resulting from the use of the automatic mode.

We concur that the installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretion. We are working with industry on the possibility of developing such a system. If developed, tested, and approved, the FAA may consider additional rulemaking. For the time being, we are issuing this AD to impose a deicing boot operation change to address the reduced handling qualities or controllability problems associated with ice accretion on the protected surfaces.

Is it Necessary to Change the AD? No.

Comment Issue No. 6: Require Action To Reduce Adhesion Characteristics

What is the Commenter's Concern? One commenter requests that the FAA mandate actions to minimize or reduce the ice adhesion characteristics of boot material. The commenter states that one reason flightcrews see large amounts of residual ice is because residual ice sticks to the boot surface as the boot ages. This may increase if the adhesion qualities of the boot material are not maintained. The commenter suggests the use of certain compounds, such as ICEX™(an ice-phobic chemical spray), to reduce ice adhesion.

What is the FAA's Response to the Concern?: We concur that materials such as ICEX™ could reduce ice adhesion. However, factors such as normal wear and tear, patching, and oxidation of boot material, prevent us from establishing an effective level of application or adequate intervals of application. We will include a NOTE in the AD to recommend regular treatment of deicing boots with use of approved ice release agents. This is in addition to the required actions.

Is it Necessary to Change the AD?: No. However, as discussed above, the FAA is including a NOTE in the AD to recommend regular treatment of deicing boots with use of approved ice release agents.

The FAA's Determination

What is the FAA's final determination on this issue?: After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the following:

—The change in the description of the atmospheric conditions that the deicing boots must be operated;

—The addition of the NOTE to recommend regular treatment of deicing boots with use of approved ice release agents; and

—Minor editorial corrections.

How does the change, addition, and corrections affect the AD?: We have determined that the change, addition, and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact?: We estimate that 160 airplanes in the U.S. registry will be affected.

What is the cost impact of the affected airplanes on the U.S. Register? There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–06–04 Fairchild Aircraft Corporation: Amendment 39–11644; Docket No. 99–CE–52–AD.

(a) *What airplanes are affected by this AD?* Models SA226–T, SA226–AT, SA226–T(B), SA227–AT, SA227–TT, SA226–TC, SA227–AC, SA227–PC, SA227–BC, SA227–CC, SA227–DC airplanes, all serial numbers, that are:

(1) equipped with pneumatic deicing boots; and

(2) certificated in any category.

(b) *Who must comply with this AD?:* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic de-icing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?:* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

- "Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.
- Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

- The wing and tail leading edge pneumatic deicing boot system may be deactivated only after:

—Leaving known or observed/detected icing that the flight crew has visually observed on the aircraft or was identified by the on-board sensors; and

—After the airplane is determined to be clear of ice."

Note: The FAA recommends periodic treatment of deicing boots with approved ice release agents, such as ICEX™, in accordance with the manufacturer's application instructions.

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on May 5, 2000.

Issued in Kansas City, Missouri, on March 10, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6617 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–43–AD; Amendment 39–11642; AD 2000–06–02]

RIN 2120–AA64

Airworthiness Directives; Dornier Luftfahrt GmbH 228 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all Dornier Luftfahrt GmbH (Dornier) 228 series airplanes that are equipped with pneumatic deicing boots. This AD requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: May 5, 2000.

ADDRESSES: You may examine information related to this AD at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–43–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What caused this AD?: This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What is the potential impact if the FAA took no action?: The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA taken any action to this point?: Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Dornier 228 series airplanes that are equipped with pneumatic deicing boots. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 8, 1999 (64 FR 54818). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the public invited to comment?: Yes. Interested persons were afforded an opportunity to participate in the making of this amendment. The following paragraphs present the comments received on the NPRM. Also included is the FAA's response to each comment, including any changes incorporated into the final rule based on the comments.

Comment Issue No. 1: Coordinate With Original Equipment Manufacturer

What is the Commenter's Concern?: One commenter states that the FAA should coordinate with the original equipment manufacturer before issuing the AD.

What is the FAA's Response to the Concern?: We concur. The FAA coordinates and will continue to coordinate with the manufacturer of any affected airplanes before issuing an AD.

Is it Necessary to Change the AD?: No.

Comment Issue No. 2: Provide the Criteria for Determining Acceptable Stall Warning Margins

What is the Commenter's Concern?: One commenter requests that the FAA provide the criteria for determining whether an airplane has an acceptable stall warning margin. The commenter references recent NPRM AD withdrawals in the FAA's Transport Airplane Directorate.

What is the FAA's Response to the Concern?: We cannot provide such information because no regulatory basis exists for determining or applying a mandatory stall margin with contamination. We can review manufacturer-provided data to determine what testing was conducted, and then determine the effects of ice accretion on the stall angle and the handling characteristics in the roll axis. This would include reviewing the service history of each airplane. With all of this information, we could determine whether the stall warning margin was acceptable and if the AD action could be withdrawn.

Such was the case with the NPRM withdrawals in the FAA's Transport Airplane Directorate. The airplanes affected were Cessna Models 500, 501, 550, 551, and 560 series airplanes, and British Aerospace Jetstream Model 4101 airplanes. You may find the specific justification for each of these withdrawals in the **Federal Register** through the following citations:

—For the Cessna airplanes: 64 FR 62995, November 18, 1999; and

—For the Jetstream airplanes: 64 FR 62990, November 18, 1999.

No specific information was submitted for the Dornier 228 series airplanes airplanes.

Is it Necessary to Change the AD?: No.

Comment Issue No. 3: Review the Effects of Ice Bridging

What is the Commenter's Concerns?: A commenter states that the FAA did not reference in the NPRM any testing to assure that ice bridging does not exist on any of the affected airplanes. This commenter requests that the FAA carefully review the effects of ice bridging. Ice bridging, as referred to in the aviation community, occurs when the mechanical deicing boots do not clear airframe icing from the wing surface. This occurs because the "ice bridge" that forms over the inflated boots increases in ice thickness while the deicing boots ineffectively inflate and deflate under the ice bridge.

The commenter also requests explanation on the use of the term "modern" in a similar AD action that the FAA's Transport Airplane Directorate initiated.

What is the FAA's Response to the Concerns?: The FAA considered the effects of ice bridging while developing the AD. We consulted the aviation community, including airframe manufacturers, air carriers, airline pilot associations, airplane owner associations, deicing boot manufacturers, and the National Aeronautics and Space Administration (NASA). Based on information from the aviation community, we believe that little evidence of ice bridging exists as it relates to current deicing boot designs. Also, ice that is not shed after the initial boot cycle continues to increase in thickness and sheds during subsequent cycles.

The FAA's Transport Airplane Directorate addressed the issue of "modern" versus "older" pneumatic boot systems in a recent AD action. That information, in its entirety, follows:

"Several commenters request that the difference between the "older" and "modern" boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of "older" and "modern" pneumatic boot systems should be provided. Therefore, for the purposes of this AD, "modern" pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. "Older" pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early deice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)"

Is it Necessary to Change the AD?: No.

Comment Issue No. 4: Limit the AFM Change to Approach and Hold Phases of Flight

What is the Commenter's Concern?: One commenter requests that the FAA limit the AFM change of operating the boots at the first sign of ice accretion to the approach and hold phases of flight. This commenter references the work that the Ice Protection Harmonization Working Group (IPHWP) is currently doing. The commenter states that the IPHWP believes that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments. Since these operations occur at lower speeds, ice accumulating on the wing and tail surfaces could cause instability.

What is the FAA's Response to the Concern?: We do not concur to limiting the AFM change to the holding and approach phases of flight. We acknowledge that the IPHWG is working on a proposed operations rule. The IPHWG continues to work on this proposed rule and has not reached technical agreement. We have records of in-flight roll upsets in icing during the climb and cruise phases of flight on small airplanes that are of a similar type design to the Dornier 228 series airplanes.

We concur that the ice protection system should not be operated at times when no ice is accreting. We have changed the description of the atmospheric conditions that the deicing boots must be operated from "icing conditions" to "known or observed/detected icing that the flight crew visually observed on the aircraft or was identified by the on-board sensors."

Is it Necessary to Change the AD?: Yes. We have made the change described above in the final rule.

Comment Issue No. 5: Conduct Further Testing Before Issuing the AD

What is the Commenter's Concern?: One commenter requests that the FAA conduct more tests before proceeding with this AD action. The commenter agrees that operating the pneumatic boots continuously is the best way to identify ice accretion. However, the commenter states concern over the residual ice that could accumulate in this mode. The commenter recommends the following:

—The FAA research the possibility of mandating the installation of a reliable ice detection system to alleviate the difficulties associated with flightcrew recognition of airfoil ice accretions;

—The FAA work together with the manufacturers to determine how efficient the pneumatic boots are in shedding significant thinner ice accretions than encountered previously; and

—The FAA quantify the performance effects of prolonged operation with residual ice on the airfoil prior to implementing any new boot operation procedures.

What is the FAA's Response to the Concern?: We do not concur with the concerns over residual ice. Operation of the pneumatic deicing boots typically results in persistent ice accretions on the boots surfaces, even with ¼-inch to ½-inch of ice accretion prior to activation of the boots. The persistent residual and inter-cycle ice accretions typically result in adverse aerodynamic effects and degraded airplane flying qualities. Activating the wing and tail pneumatic deicing boots at the first sign of ice accretion (or at the annunciation of an ice detector system) and periodically operating the deicing boots will result in persistent ice accretions.

However, the proposed actions will minimize the residual and intercycle ice accretions because the ice will shed when the minimum thickness or mass required for shedding is reached. The residual and intercycle ice accretion thickness that results from this procedure is less than the ice accretion thickness typically recommended prior

to operation of the pneumatic deicing boot. The thickness, shape, texture, and location of the ice accretion affect the adverse airplane flying qualities that result from ice accretions.

Certain airplane manufacturers have previously issued AFM information that contains procedures to activate the deicing boots at the first sign of ice accumulation. We have received no reports indicating any adverse effects of residual ice because of early activation of the deicing boots for these airplane designs.

Those airplane models that are equipped with deicing boot systems with automatic operating modes result in operation of the boots with less than the recommended thickness of accreted ice. We have received no reports indicating any adverse effects resulting from the use of the automatic mode.

We concur that the installation of a reliable ice detection system would alleviate the difficulties associated with flightcrew recognition of airfoil ice accretion. We are working with industry on the possibility of developing such a system. If developed, tested, and approved, the FAA may consider additional rulemaking. For the time being, we are issuing this AD to impose a deicing boot operation change to address the reduced handling qualities or controllability problems associated with ice accretion on the protected surfaces.

Is it Necessary to Change the AD?: No.

Comment Issue No. 6: Require Action To Reduce Adhesion Characteristics

What is the Commenter's Concern?: One commenter requests that the FAA mandate actions to minimize or reduce the ice adhesion characteristics of boot material. The commenter states that one reason flightcrews see large amounts of residual ice is because residual ice sticks to the boot surface as the boot ages. This may increase if the adhesion qualities of the boot material are not maintained. The commenter suggests the use of certain compounds, such as ICEX™ (an ice-phobic chemical spray), to reduce ice adhesion.

What is the FAA's Response to the Concern?: We concur that materials such as ICEX could reduce ice adhesion. However, factors such as normal wear and tear, patching, and oxidation of boot material, prevent us from establishing an effective level of application or adequate intervals of application. We will include a NOTE in the AD to recommend regular treatment of deicing boots with use of approved ice release agents. This is in addition to the required actions.

Is it Necessary to Change the AD?: No. However, as discussed above, the FAA is including a NOTE in the AD to recommend regular treatment of deicing boots with use of approved ice release agents.

The FAA's Determination

What is the FAA's final determination on this issue?: After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the following:

—The change in the description of the atmospheric conditions that the deicing boots must be operated;
—The addition of the NOTE to recommend regular treatment of deicing boots with use of approved ice release agents; and
—Minor editorial corrections.

How does the change, addition, and corrections affect the AD?: We have determined that the change, addition, and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact?: We estimate that 13 airplanes in the U.S. registry will be affected.

What is the cost impact of the affected airplanes on the U.S. Register?: There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–06–02 Dornier LuftfahrtGMBH: Amendment 39–11642; Docket No. 99–CE–43–AD.

(a) *What airplanes are affected by this AD?:* Models Dornier 228–100, Dornier 228–101, Dornier 228–200, Dornier 228–201, Dornier 228–202, and Dornier 228–212 airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

(b) *Who must comply with this AD?:* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic de-icing boots.

(c) *What problem does this AD address?:* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?:* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and
—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after:

—Leaving known or observed/detected icing that the flight crew has visually observed on the aircraft or was identified by the on-board sensors; and
—After the airplane is determined to be clear of ice."

Note: The FAA recommends periodic treatment of deicing boots with approved ice release agents, such as ICEX, in accorance with the manufacturer's application instructions.

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on May 5, 2000.

Issued in Kansas City, Missouri, on March 10, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6691 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–11–AD; Amendment 39–11634; AD 2000–05–24]

RIN 2120–AA64

Airworthiness Directives; Honeywell International Inc. KAP 140 and KFC 225 Autopilot Systems

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all aircraft equipped with a certain Honeywell International Inc. (Honeywell) KAP 140 or KFC 225 autopilot system. AlliedSignal Avionics Inc. manufactured these autopilot systems before transferring the design data to Honeywell. This AD requires that you inspect the autopilot servo actuator for a loose fastener and modify the autopilot servo actuator when a loose fastener is found. This AD is the result of a report of failure of the autopilot servo actuator to disengage when the autopilot power was removed. The actions specified by this AD are intended to detect and correct a loose fastener in the autopilot servo actuator, which could cause the autopilot servo actuator to not disengage when power to the autopilot is removed. This could cause the pilot to experience additional control forces.

DATES: Effective April 12, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of April 12, 2000.

The FAA must receive any comments on this rule on or before April 28, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE–11–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in this AD from Honeywell International Inc., 23500 West 105th Street, Olathe, Kansas 66061. You may examine this information at the FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–11–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Clyde Erwin, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4149; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused this AD?

We recently received a field report describing an instance of excessive flight control friction associated with an airplane equipped with a Honeywell KS 271C aileron servo actuator. This event occurred during ground operations with no power applied to the airplane. The Honeywell KS 270C, KS 271C, and KS 272 series autopilot servo actuators are utilized on aircraft equipped with a Honeywell KAP 140 or KFC 225 autopilot system.

AlliedSignal Avionics Inc. manufactured these autopilot systems before transferring the design data to Honeywell.

Examination of the subject actuator revealed a loose fastener, which inhibited free motion of the servo actuator engagement and disengagement mechanism. This autopilot servo actuator failed to properly disengage when power to the autopilot was removed.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not detected and corrected, could cause the autopilot servo actuator to not disengage when power to the autopilot is removed. This could cause the pilot to experience additional control forces.

Relevant Service Information

Is there service information that applies to this subject? Yes. Honeywell has issued the following service bulletins:

Service Bulletin No.	Date	Applies to
SB KS 270C–4 ALERT Part number (P/N): 600–01514–0041.	Revision 1: February/2000	KS 270C Pitch Servo Actuators, P/N 065–00178–XXXX (all versions), serial numbers (S/N) 2701 and below.
SB KS 271C–5 ALERT P/N: 600–01516–0051.	Revision 1: February/2000	KS 271C Primary Servo Actuators, P/N 065–00179–XXXX (all versions), S/N 4201, 4158 through 4148, and 4103 and below.
SB KS 272C–4 ALERT P/N: 600–01518–0042.	Revision 2: February/2000	KS 272C Trim Servo Actuators, P/N 065–00180–XXXX (all versions), S/N 2435 and below.

What are the provisions of the service bulletins? The service bulletins specify and include procedures for inspecting the autopilot servo actuator for a loose fastener and modifying the autopilot servo actuator when a loose fastener is found.

The FAA's Determination and an Explanation of the Provisions of the AD

What has the FAA decided?: After examining the circumstances and reviewing all available information related to the events described above, including the relevant service information, the FAA has determined that:

—An unsafe condition exists or could develop on all aircraft that are certificated in any category and are equipped with a certain Honeywell KAP 140 or KFC 225 autopilot system;

—The actions of the above-referenced service bulletins should be accomplished on aircraft with an affected autopilot servo actuator installed; and

—AD action should be taken in order to detect and correct a loose fastener in the autopilot servo actuator, which could cause an autopilot servo actuator to not disengage when power to the autopilot is removed. This could cause the pilot to experience additional control forces.

What does this AD require?: This AD requires that you inspect the autopilot servo actuators for a loose fastener and modify the autopilot servo actuator when a loose fastener is found. This AD also gives you the option of accomplishing the following actions as an alternative to the inspection and modification actions:

—Check the primary flight controls for normal feel and motion and make any necessary adjustments;

—Pull and tie off the applicable circuit breakers as referenced in the Compliance section of the applicable service information; and

—Fabricate a placard, using letters of 1/8-inch in height, with the words "Autopilot Not Operational", and install this placard in the cockpit within the pilot's clear view.

What is the compliance time of this AD?: Within 15 hours time-in-service (TIS) after the effective date of this AD.

Will the public have the opportunity to comment prior to the issuance of the rule?: No. Since a situation exists that requires the immediate adoption of this regulation, the FAA finds that notice and opportunity for public prior comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, the FAA invites comments on this rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at http://www.plainlanguage.gov.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–11–AD." We will date stamp and mail the postcard back to you.

Regulatory Impact

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–05–24 **Honeywell International Inc.:** Amendment 39-11634; Docket No. 2000-CE–11-AD.

(a) *What aircraft are affected by this AD?:* Any aircraft, certificated in any category, that is equipped with a Honeywell KAP 140 or KFC 225 autopilot system and incorporates any autopilot servo actuator referenced in the Honeywell service information and the chart presented below. AlliedSignal Avionics Inc. manufactured the KAP 140 and KFC 225 autopilot systems before transferring the design data to Honeywell:

Service Bulletin No.	Date	Applies to
SB KS 270C–4 ALERT Part number (P/N): 600–01514–0041.	Revision 1: February/2000	KS 270C Pitch Servo Actuators, P/N 065–00178–XXXX (all versions), serial numbers (S/N) 2701 and below.
SB KS 271C–5 ALERT P/N: 600–01516–0051.	Revision 1: February/2000	KS 271C Primary Servo Actuators, P/N 065–00179–XXXX (all versions), S/N 4201, 4158 through 4148, and 4103 and below.
SB KS 272C–4 ALERT P/N: 600–01518–0042.	Revision 2: February/2000	KS 272C Trim Servo Actuators, P/N 065–00180–XXXX (all versions), S/N 2435 and below.

(b) *Who must comply with this AD?* Anyone who wishes to operate an aircraft on the U.S. Register, where the aircraft incorporates one of the above-referenced autopilot servo actuators. These autopilot systems and autopilot servo actuators could be installed on, but not limited to, the following aircraft:

Type certificate holder	Aircraft models	Autopilot installed
Cessna Aircraft Company	172R, 172S, 182S, 206H, and T206H airplanes	Model KAP 140.
Commander Aircraft Company	114B and 114TC airplanes	Model KFC 225.
Mooney Aircraft Corporation	M20R and M20S airplanes	Model KFC 225.
The New Piper Aircraft, Inc	PA–28–181 airplanes	Model KAP 140.
The New Piper Aircraft, Inc	PA–46–350P airplanes	Model KFC 225.
Raytheon Aircraft Company	Beech A36 airplanes, S/N E3157, E3218 through E3293, E3295, and E3297 through E3301.	Model KFC 225.
Raytheon Aircraft Company	Beech B36TC airplaces, S/N EA611, EA620, EA629 through EA649, and EA651.	Model KFC 225.
Raytheon Aircraft Company	Beech 58 airplanes, S/N TH1841, TH1870, TH1884 through TH1932, and TH1934.	Model KFC 225

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct a loose fastener in an autopilot servo actuator, which could cause the autopilot servo actuator to not disengage when power to the autopilot is removed. This could cause the pilot to experience additional control forces.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following:

Action	When	In accordance with
Inspect the autopilot servo actuator for a loose fastener.	Within 15 hours time-in-service after the effective date of this AD.	The applicable service information referenced in paragraph (a) of this AD.
Modify the autopilot servo actuator when a loose fastener is found.	Prior to further flight after the required inspection.	The applicable service information referenced in paragraph (a) of this AD.

(e) *Is it permissible to just not use the autopilot since it is optional equipment?* You may do this provided you accomplish the following:

(1) Check the primary flight controls for normal feel and motion and make any necessary adjustments;

(2) Pull and tie off the applicable circuit breakers as referenced in the Compliance section of the applicable service information referenced in paragraph (a) of this AD;

(3) Fabricate a placard, using letters of 1/8-inch in height, with the words "Autopilot Not Operational"; and

(4) Install this placard in the cockpit within the pilot's clear view.

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) This AD applies to each aircraft identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For aircraft that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact Clyde Erwin, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4149; facsimile: (316) 946–4407.

(h) *What if I need to fly the aircraft to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your aircraft to a location where you can accomplish the requirements of this AD.

(i) *Are any service bulletins incorporated into this AD by reference?* Yes. Actions required by this AD must be done in accordance with Honeywell Service Bulletin No. SB KS 270C–4 ALERT, P/N: 600–01514–0041, Revision 1: February/2000; Honeywell Service Bulletin No. SB KS 271C–5 ALERT, P/N: 600–01516–0051, Revision 1: February/2000; or Honeywell Service Bulletin No. SB KS 272C–4 ALERT, P/N: 600–01518–0042, Revision 2:

February/2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Honeywell International Inc., 23500 West 105th Street, Olathe, Kansas 66061. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC.

(j) *When does this amendment become effective?* This amendment becomes effective on April 12, 2000.

Issued in Kansas City, Missouri, on March 6, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6161 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–58–AD; Amendment 39–11639; AD 2000–05–29]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–100, –200, –300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes, that requires repetitive inspections to detect cracking of various areas of the forward pressure bulkhead, and repair, if necessary. This amendment also provides for certain optional preventive modifications, which, if accomplished, would terminate the repetitive inspections for the affected areas. This amendment is prompted by reports indicating that numerous fatigue cracks were found on critical areas of the forward pressure bulkhead. The actions specified by this AD are intended to prevent such fatigue cracking, which could result in rapid decompression of the airplane fuselage.

DATES: Effective April 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 24, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nenita K. Odesa, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 737–100, –200, –300, –400, and –500 series airplanes was published in the **Federal Register** on October 9, 1998 (63 FR 54391). That action proposed to require repetitive inspections to detect cracking of various areas of the forward pressure bulkhead, and repair, if necessary. That action also proposed to require certain preventive modifications, which, when accomplished, would terminate the repetitive inspections for most, but not all, of the affected areas.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

Two commenters support the proposed rule.

Request to Increase the Initial Inspection Threshold

Several commenters, including the manufacturer, request an increase in the initial inspection threshold from 15,000 total flight cycles, as proposed, to 20,000 total flight cycles, as recommended in Boeing Alert Service Bulletin 737–57A1173, Revision 2, dated January 15, 1998. The commenters state that research by the manufacturer supports the conclusion that the compliance threshold recommended in the alert service bulletin is adequate. To justify its request, the manufacturer submitted substantiating data that show that the compliance time recommended in the service bulletin is conservative.

The FAA concurs with the commenters' requests to revise the initial compliance threshold in the final rule to match the compliance time recommended by the manufacturer in the alert service bulletin (i.e., prior to the accumulation of 20,000 total flight cycles or within 3,000 flight cycles after the effective date of this AD, whichever occurs later). After review of the data submitted by the manufacturer, the FAA has determined that the compliance times recommended in the alert service bulletin are adequate to ensure that any cracks will be detected before the cracks reach critical length. Therefore, paragraph (a) of this final rule has been revised accordingly, and paragraphs (a)(1) and (a)(2) have not been included in this final rule.

Request to Use Repetitive Inspection Interval Specified in Alert Service Bulletin

Most of the commenters request that the repetitive inspection interval be revised to more closely correspond with those recommended in Boeing Alert Service Bulletin 737–57A1173, Revision 2. Several of the commenters justify their requests by stating that, because of the difficulty in accessing the affected area, accomplishing the proposed inspections outside of a regularly scheduled "C"-check would place a significant burden on operators. The commenters also provide various other justifications for their requests, including:

- The compliance times specified in the alert service bulletin are conservative.
- Operators are already performing the inspections specified in the service bulletin, so there is a significant amount of data on cracking in the affected area.
- No in-flight incidents (including loss of pressurization) have been reported related to the cracking addressed in the proposal.
- Cracks in the affected area of the forward pressure bulkhead propagate very slowly.

A number of commenters also provide substantial amounts of data to support their requests.

The FAA concurs with the commenters' requests to require the repetitive inspections at the interval recommended in the alert service bulletin. Based on the FAA's review of the analyses submitted by the manufacturer to substantiate the repetitive inspection intervals recommended in the alert service bulletin, the FAA has determined that a repetitive inspection interval of 6,000 flight cycles is adequate to ensure that any cracking will be detected and corrected in a timely manner. Paragraph (a) of this final rule has been revised accordingly.

Request to Address Existing Repairs

Two commenters request that the proposal be revised to address repairs on the affected areas of the forward pressure bulkhead. Paragraph (b) of the proposal states that repairs are to be accomplished "in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1173, Revision 2, dated January 15, 1998; except, where the alert service bulletin specifies that the manufacturer may be contacted for repair instructions,. . ." repairs should be accomplished in accordance with a method approved by the FAA. One commenter also inquires whether repairs in accordance with the Structural Repair Manual (SRM) (which is approved by the FAA) that are not referenced in Boeing Alert Service Bulletin 737–53A1173, Revision 2, or other repairs that are approved by the FAA, will need further approval.

The FAA concurs with the request to address repairs that are accomplished in accordance with the SRM but are not referenced in the alert service bulletin. Since the issuance of the notice of proposed rulemaking (NPRM), the FAA has reviewed and approved Boeing Alert Service Bulletin 737–53A1173, Revision 3, dated May 6, 1999. Among other things, Revision 3 of the alert service bulletin includes references to new chapters of the SRM as acceptable sources of service information for the accomplishment of repairs. In addition, since the issuance of the NPRM, the FAA also has determined that SRM chapters referenced in Boeing Service Bulletin 737–53A1173, Revision 1, dated April 25, 1996, are acceptable sources of service information for accomplishment of repairs. Therefore, paragraph (b) of this final rule has been revised to add references to Boeing Service Bulletin 737–53A1173, Revision 1, and Boeing Alert Service Bulletin 737–53A1173, Revision 3, as acceptable sources of information for accomplishment of repairs, except where the service bulletin specifies that the manufacturer may be contacted for repair instructions.

Another commenter requests that the proposal be revised to approve repairs accomplished in accordance with data approved by a Designated Engineering Representative (DER) but not in accordance with the SRM.

The FAA concurs that repairs not in accordance with the SRM but approved by a DER are acceptable for compliance with this AD. However, the FAA has determined that DER-approved repairs are acceptable methods of compliance to the AD only if the responsible DER has been authorized by the FAA to make such a finding. For all other repairs (i.e., repairs not accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such a finding) that affect the performance of the requirements of this AD, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. Therefore, paragraph (b) of the final rule has been revised to state that repairs accomplished in accordance with a method approved by the FAA, or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings, are acceptable for compliance with this AD.

In addition, one commenter, the airplane manufacturer, inquires whether Boeing DER's have the authority to approve Boeing Service Bulletin 737–53A1208, and Boeing Alert Service Bulletin 73757A1173, Revision 3. The commenter also inquires whether Boeing DER's will be authorized to approve alternative methods of compliance to the AD when allowed by law. The commenter makes no specific request for a change to the AD.

With regard to DER approval of the referenced service bulletins, as stated previously, since receipt of the comment, the FAA has reviewed and approved Boeing Service Bulletin 737–53A1208, and Boeing Service Bulletin 737–57A1173, Revision 3. With regard to DER approval of alternative methods of compliance, the FAA is considering authorizing certain Boeing DER's to approve alternative methods of compliance that provide an acceptable level of safety. After this AD has been issued, designated DER's will receive a letter from the FAA defining the limits of their approval authority. No change to the final rule is necessary in this regard.

Request to Revise Number of Affected Airplanes

One commenter questions how the FAA arrived at its estimate that there are 2,802 affected airplanes in the worldwide fleet, as stated in the proposal. The commenter points out that the effectivity of Boeing Alert Service Bulletin 737–57A1173, Revision 2, includes Boeing Model 737–100, –200, –200C, –300, –400, and –500 series airplanes having line numbers before 2738. The commenter states that 157 of these affected airplanes are out of service; therefore, the actual number of affected airplanes should be 2,580 airplanes. The commenter makes no specific request related to its comment.

The FAA infers that the commenter is requesting that the proposed rule be revised to reduce the estimated number of affected airplanes in the worldwide fleet, such that the estimated number of affected airplanes is based on airplanes having line numbers 1 through 2737, as defined in the alert service bulletin. The FAA concurs with such a reduction, and the cost impact section of the preamble of this final rule has been revised accordingly.

In addition, as a result of this comment, the FAA finds that some clarification of the applicability of this AD may be necessary. Therefore, the applicability statement of this final rule has been revised to specifically reference the line numbers of the affected airplanes—i.e., line numbers 1 through 2737 inclusive—rather than the service bulletin in which the affected airplanes are listed. (This change makes no additional airplanes subject to this AD.)

Request to Use Alternative Repetitive Inspection Interval

Two commenters suggest repetitive inspection intervals other than those specified in the NPRM or the alert service bulletin. One commenter recommends that the FAA require repetitive visual inspections at intervals not to exceed 4,500 flight cycles, and repetitive high frequency eddy current inspections at intervals not to exceed 12,000 cycles. Another commenter's recommendation involves scheduling the repetitive inspections based on the number of total flight cycles accrued.

The FAA does not concur with the commenters' suggestions for an alternative repetitive inspection threshold. The FAA finds that to require

only visual inspections at intervals not to exceed 4,500 flight cycles, and high frequency eddy current inspections at intervals not to exceed 12,000 cycles, may not ensure that cracking will be detected in a timely manner. Regarding the request to schedule the repetitive inspections based on the number of total flight cycles accrued, the commenter submitted no technical data to substantiate its request. No change to the final rule is necessary in this regard.

Request to Eliminate Requirement for Preventive Modifications

One commenter requests that the proposal be revised to eliminate the requirement to accomplish the preventive modifications of the center web, vertical chords, and side chord areas of the forward pressure bulkhead. The commenter justifies its request on the basis that Boeing is monitoring the occurrences of cracking of the forward pressure bulkhead in the fleet of affected airplanes.

The FAA does not concur with the commenter's rationale for eliminating the preventive modification requirement. The proposal to mandate the preventive modifications is based on the FAA's determination that long-term continued operational safety will be better assured by modifications or design changes to remove the source of the problem, rather than by repetitive inspections.

However, since the issuance of the NPRM, the FAA has determined that the preventive modification of the center web specified in Boeing Alert Service Bulletin 737–53A1173, Revision 2 [which paragraph (c) of the NPRM cites as the appropriate source of service information for the preventive modifications], is not adequate to ensure the prevention of cracking in the center web area.

As stated previously, the FAA has reviewed and approved Boeing Alert Service Bulletin 737–57A1173, Revision 3. The FAA has determined that accomplishment of the preventive modifications of the forward pressure bulkhead in accordance with Revision 3 of the alert service bulletin is adequate to ensure prevention of cracking and would eliminate the need for the repetitive inspections. However, because additional work would be required over that which was proposed in the NPRM, mandating the preventive modifications in accordance with Revision 3 of the alert service bulletin would require the issuance of a supplemental notice of proposed rulemaking to reopen the public comment period. The FAA finds that to delay this final rule in this way would be inappropriate because the FAA has determined that an unsafe condition exists and the required inspections and repairs, if necessary, must be accomplished in a timely manner to ensure continued safety.

In addition, the FAA finds that it would be more appropriate to provide the option for all preventive modifications to be accomplished, at the same time, in accordance with Revision 3 of the alert service bulletin, rather than to require only the modification of the vertical chords and side chords at WL 195 in accordance with Revision 2 of the alert service bulletin. Therefore, paragraph (c) of this final rule has been revised to remove the requirement to accomplish any of the preventive modifications, and to provide for accomplishment of the preventive modifications in accordance with Revision 3 of the alert service bulletin as an option that would constitute terminating action for the repetitive inspection requirements of this AD. The FAA also may consider further rulemaking to require accomplishment of the preventive modifications in accordance with Revision 3 of the alert service bulletin.

Request for Clarification of Language

One commenter notes that, in several locations, the NPRM refers to an "unsafe condition." The commenter inquires what is meant by "unsafe," and how such a determination was made by the FAA. The commenter makes no specific request for a change.

The FAA infers that the commenter is requesting clarification of language used in the NPRM. The FAA defines an unsafe condition as one that could result in a hazardous condition. As stated in the preamble of the NPRM, the FAA has received reports indicating that operators have found numerous fatigue cracks on the body station 178 forward pressure bulkhead on certain Boeing Model 737 series airplanes. Because fatigue cracks were found in certain critical structural areas of the bulkhead, the FAA finds that such fatigue cracking constitutes an unsafe condition, in that it could result in rapid decompression of the airplane fuselage. No change to the final rule is necessary in this regard.

The same commenter inquires what is meant by the phrases "degree of urgency associated with the unsafe condition," and "average utilization of the affected fleet," which appear in the "Differences Between Proposed Rule and Alert Service Bulletin" section of the NPRM. With regard to "degree of urgency," the commenter inquires how this degree was determined and considered in the NPRM. The commenter questions what events have occurred since 1994 (i.e., when the largest reported bulkhead crack was found and the initial issue of Boeing Service Bulletin 737–53A1173 was issued) that lend a "degree of urgency" to the proposed rulemaking. With regard to "average utilization of the affected fleet," the commenter questions how average utilization was considered in the proposed rulemaking.

The FAA infers from the context in which the phrases were used (specifically, in explaining why the proposed compliance time was reduced from the compliance time recommended in the service bulletin) that the commenter is requesting clarification as to what events or specific factors prompted the FAA to propose a compliance time of 15,000 total flight cycles and a repetitive interval of 3,000 flight cycles for the repetitive inspections proposed in the NPRM.

The degree of urgency associated with the unsafe condition was determined and considered based on the nature of the cracking. A 25-inch crack in the web of the forward pressure bulkhead prompted the issuance of the original service bulletin in 1994. In 1997, the FAA received reports of cracking in a new area—the side chord at WL 207. Upon review of the history of cracking in the forward pressure bulkhead, the FAA determined that cracks had been found in the multiple locations on the web, in the vertical beam chords, and in the side chords at WL 195 and 207. This determination prompted the FAA to consider further rulemaking action, which resulted in the issuance of the subject NPRM.

The FAA evaluated the average utilization of the fleet based on a review of the average annual cycles of affected airplanes. Such annual utilization numbers and the "C"-check maintenance interval (approximately 12 to 18 months) of several operators of the affected airplanes were considered in developing the compliance times.

However, considering the context in which the subject phrases appeared, the FAA finds that the commenter's inquiries on both degree of urgency and average utilization of the fleet are no longer relevant to the final rule. As stated previously, this final rule has been revised to specify the same compliance times recommended by the manufacturer in Revisions 2 and 3 of the service bulletin. The FAA finds that no further change to the final rule is necessary in this regard.

Request to Consider Additional Rulemaking

One commenter, the airplane manufacturer, states that it is considering issuing a separate service bulletin to address fatigue cracking in Boeing Model 737 series airplanes having line numbers 2738 through 3071 inclusive. The commenter inquires whether the FAA is considering rulemaking activity for that service bulletin, but makes no specific request related to its comment.

Since receipt of the comment, Boeing has issued Service Bulletin 737–53A1208, dated May 6, 1999, which specifies inspections and modifications to address fatigue cracking in Boeing Model 737 series airplanes having line number 2738 through 3071 inclusive. The FAA may consider further rulemaking action to mandate the inspections and modifications defined in the service bulletin. No change to the final rule is necessary in this regard.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 2,580 airplanes of the affected design in the worldwide fleet. The FAA estimates that 1,130 airplanes of U.S. registry will be affected by this AD.

It will take approximately 380 work hours per airplane to accomplish the required inspections, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspections required by this AD on U.S. operators is estimated to be $25,764,000, or $22,800 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–29 Boeing: Amendment 39–11639. Docket 98–NM–58–AD.

Applicability: Model 737–100, –200, –300, –400, and –500 series airplanes; having line numbers 1 through 2737 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect fatigue cracking of the forward pressure bulkhead, which could result in rapid decompression of the airplane fuselage, accomplish the following:

Initial and Repetitive Inspections

(a) Prior to the accumulation of 20,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later, perform inspections of the center web, vertical chords, and side chord areas of the forward pressure bulkhead for fatigue cracking, in accordance with the Accomplishment Instructions of Boeing Alert Service Bulletin 737–53A1173, Revision 2, dated January 15, 1998, or Revision 3, dated May 6, 1999. Thereafter, repeat the inspections at intervals not to exceed 6,000 flight cycles until the preventive modifications specified by paragraph (c) of this AD have been accomplished.

Repairs

(b) If any crack is found during any inspection required by paragraph (a) of this AD, prior to further flight, repair the area in accordance with the Accomplishment Instructions of Boeing Service Bulletin 737–53A1173, Revision 1, dated April 25, 1996, or Boeing Alert Service Bulletin 737–53A1173, Revision 2, dated January 15, 1998, or Revision 3, dated May 6, 1999; in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings; except, where the alert service bulletin specifies that the manufacturer may be contacted for repair instructions, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Optional Terminating Action

(c) Accomplishment of the preventive modifications of the center web, vertical chords, and side chord areas, including the side chord areas at water line 207, of the forward pressure bulkhead, in accordance with Boeing Alert Service Bulletin 737–53A1173, Revision 3, dated May 6, 1999, constitutes terminating action for the repetitive inspections requirements of paragraph (a) of this AD for that area.

Note 2: Accomplishment of the preventive modification of the vertical chords and side chord areas at water line 195 in accordance with Boeing Alert Service Bulletin 737–53A1173, Revision 2, constitutes terminating action for the repetitive inspections requirements of paragraph (a) of this AD for the vertical chords and side chord at WL 195 only.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The inspections shall be done in accordance with Boeing Alert Service Bulletin 737–53A1173, Revision 2, dated January 15, 1998, or Boeing Alert Service Bulletin 737–53A1173, Revision 3, dated May 6, 1999. Except as provided by paragraph (b) of this AD, repairs shall be accomplished in accordance with Boeing Service Bulletin 737–53–1173, Revision 1, dated April 25, 1996, or Boeing Alert Service Bulletin 737–53A1173, Revision 2, dated January 15, 1998, or Boeing Alert Service Bulletin 737–53A1173, Revision 3, dated May 6, 1999. The preventive modifications, if accomplished, shall be done in accordance with Boeing Alert Service Bulletin 737–53A1173, Revision 3, dated May 6, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 24, 2000.

Issued in Renton, Washington, on March 10, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6491 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–22–AD; Amendment 39–11640; AD 2000–05–30]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that requires repetitive inspections to detect discrepancies of the cables, fittings, and pulleys of the engine thrust control cable installation, and replacement, if necessary. This AD also requires certain preventative actions on the engine thrust control cable installation for certain airplanes. This amendment is prompted by reports of failure of engine thrust control cables. The actions specified by this AD are intended to prevent such failures, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane.

DATES: Effective April 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dionne M. Krebs, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2250; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Boeing Model 747 series airplanes was published in the **Federal Register** on October 1, 1999 (64 FR 53275). That action proposed to require repetitive inspections to detect discrepancies of the cables, fittings, and pulleys of the engine thrust control cable installation, and replacement, if necessary. The action also proposed to require certain preventative actions on the engine thrust control cable installation for certain airplanes.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Support for the Proposal

One commenter supports the proposed rule.

Request for Clarification of Applicability

One commenter does not request a specific change to the proposal, but suggests that since Model 747–200B SUD and 747–200B SUD SF series airplanes are not specified in the applicability section of the proposed AD, those model airplanes are excluded from the proposal.

The FAA does not concur with the commenter's statement. Although Model 747–200B SUD and 747–200B SUD SF series airplanes are not specified in the applicability section of the proposal, the FAA stated the applicability according to the airplane models identified in the 747 type certificate data sheet (TCDS). All models of the airplane are encompassed by the identification in the TCDS. The FAA notes that the commenter previously modified its Model 747–200B series airplanes to stretched upper deck and special freighter configurations; however, since the Model 747–200B SUD and 747–200B SUD SF series airplanes are not specifically identified in the 747 TCDS, the FAA has determined that those modified airplanes are Model 747–200B series airplanes. Therefore the final rule does apply to the Model 747–200B SUD and 747–200B SUD SF series airplanes. No change to the final rule is necessary.

Request for Extension of Compliance Time

Two commenters request that the compliance time for the repetitive inspection intervals specified in paragraph (a) of the proposed AD be extended.

The first commenter suggests that the inspection intervals correspond to its current maintenance program; which specifies a thrust control cable system inspection for the cables and pulleys from the fuselage outboard at "1C" check intervals, and the cables and pulleys internal to the fuselage at "3C" check intervals. (This commenter considers a "C" check interval to be 18 months.) The commenter states that it has no reports of significant damage or wear to the cables on airplanes in service or in check. It estimates that the 18-month repetitive inspection interval specified in the proposal would necessitate approximately 20 additional work hours for unscheduled seat and sidewall removals.

The second commenter requests that the areas of the thrust control cable system covered by the ceiling, sidewall, and floor panels located in the pressurized cabin area be inspected at its normal "D" check interval. (This commenter considers a "D" check interval to be 60 months.) The commenter states that, as specified in the maintenance planning document, it has implemented an inspection to verify the integrity of the thrust control cables from the cockpit to the pylon area. However, the majority of its airplanes have an extended 280-inch upper deck, which makes it difficult to perform the detailed visual inspections for the upper deck area in accordance with the proposal. The commenter suggests that the areas not covered by the ceiling, sidewall, and floor panels located in the pressurized cabin area, as well as the wing and pylon area, can be inspected in accordance with paragraph (a) of the proposed rule.

The FAA concurs with the first commenter's statement that the thrust control cable system inspection for the cables and pulleys from the fuselage outboard be accomplished at "1C" check intervals. The FAA chose an 18-month inspection interval in order to encompass the 747 operators' current maintenance program for accomplishment of the inspection at "1C" check intervals. The FAA infers that the 18-month interval is consistent with the commenter's current inspection maintenance schedule of the thrust control cables and pulleys from the fuselage outboard. The FAA also concurs with the second commenter that the inspection interval required by paragraph (a) of the final rule is appropriate for those areas not covered by the ceiling, sidewall, and floor panels located in the pressurized cabin area, as well as the wing and pylon area.

The FAA does not concur with the commenters' requests to extend the compliance time for the repetitive inspections of certain areas of the thrust control cable system to "3C" check or "D" check intervals per the commenters' current maintenance programs. When establishing the 18-month inspection interval for the thrust control cable inspections, the FAA was aware that unscheduled maintenance actions, in addition to the operator's existing maintenance program, may be necessary. Additionally, the FAA is aware of thrust control cable failures on airplanes that should have been previously inspected in accordance with the inspection intervals and procedures recommended in the manufacturer's maintenance planning document. The second commenter provides no substantiating data relevant to its request for extending the repetitive inspection interval for certain areas of the thrust control cable system. Based on a review of the service experience for airplanes that should be utilizing the manufacturer's maintenance planning document to perform the thrust control cable inspections, the FAA has determined that the current inspection intervals have not prevented failures of the thrust control cables.

In developing an appropriate compliance time for the repetitive inspections, the FAA considered not only the degree of urgency associated with addressing discrepancies of the thrust control cables, fittings, and pulleys, but other factors as well. Those factors include the recommendations of the manufacturer, and the practical aspect of accomplishing the repetitive inspections within an interval of time coinciding with normal scheduled maintenance for the majority of affected operators. Considering those factors, the FAA has determined that the compliance time of 18 months after the effective date of this AD represents the maximum interval in which the affected airlines can continue to operate without compromising safety. In view of those factors, and the amount of time that has already elapsed since issuance of the notice of proposed rulemaking, the FAA has determined that further delay of these inspections is, in general, not appropriate. The FAA may, however, approve a request for an adjustment of the compliance time under the provisions of paragraph (h) of this final rule if data are submitted to substantiate that such an adjustment would provide an equivalent level of safety. No change to the final rule is necessary.

Request to Allow Operator's Equivalent Procedures

One commenter states that it has modified the nacelle strut idler pulley in accordance with the instructions specified in Boeing Service Bulletin 747–76–2067, Revision 1, and is performing inspections through its maintenance program at an interval of "1D" checks and/or "1C" checks. Therefore, with this inspection in place, the commenter notes that there is no need to comply with the requirements in paragraph (d) of the proposed rule.

The FAA interprets this as a request that the commenter be allowed to use its own operator procedures to accomplish the actions required by paragraph (c)(2)(ii), as referenced in paragraph (d) of the final rule. Paragraph (d) of the final rule states, "Where Boeing Service Bulletin 747–76–2067, Revision 1, dated November 19, 1987, specifies that the actions required by paragraph (c)(2)(ii) of this AD may be accomplished in accordance with an 'operator's comparable procedure,' the actions must be accomplished in accordance with the applicable chapters of the Boeing 747 Maintenance Manual, as specified in the service bulletin." Paragraph (c)(2)(ii) of the final rule requires a detailed visual inspection to detect wear of the engine thrust control cables in any area where an aluminum-type pulley is installed. The intent of paragraphs (c)(2)(ii) and (d) of the final rule is to require the use of the standard inspection procedures provided in the Boeing 747 Maintenance Manual when inspecting the thrust control cable after the replacement of an aluminum-type pulley. Since the commenter states that its airplanes have been modified in accordance with the instructions specified in the service bulletin, no further action is required by the commenter in this regard. However, the airplane manufacturer has determined that damaged components of a worn aluminum pulley could cause the thrust control cables to wear in any area where an aluminum-type pulley was installed; therefore, the FAA has determined that a one-time inspection of the thrust control cables as required by paragraph (c)(2)(ii) of this AD, in lieu of depending on the repetitive inspections required by paragraph (a) of the AD, is required to detect that wear. Therefore, no change to the final rule is necessary.

Proposed Repetitive Inspection Requirement

One commenter does not request a specific change to the proposal, but suggests that the repetitive inspections identified in paragraph (a) of the proposed AD do not appear to be justified. The commenter reiterates from the proposal the statements that the thrust control cable failures were found on Model 757 and 767 series airplanes and that because of similar design, the thrust control cables could fail on other airplane models. The commenter states that the proposed AD does not identify what caused the thrust control cable failures on the Model 757 and 767 series airplanes, where the thrust control cables failed, or how other airplane models could have a similar condition. The commenter also questions whether or not the thrust control cable failures could have been prevented with a modification or a one-time inspection. The commenter asks if the operators of the Model 757 and 767 series airplanes that experienced the failures had a maintenance program in place to inspect the cables, and if so, when was the last maintenance inspection before the failures occurred.

The commenter further notes that it inspects its thrust control cables and pulleys from the fuselage outboard at "1C" check intervals, and the cables internal to the fuselage at "3C" check intervals. (The commenter considers a "C" check interval to be 18 months.) The commenter states that it has had no reports of significant damage or wear to the cables.

In response to this commenter, the FAA is providing the following information, in general terms, to clarify the circumstances surrounding the thrust control cable failures on the Model 757 and 767 series airplanes. The first Model 757 failure event occurred on the right engine thrust control cable, which was severed by arcing with a cargo compartment light power wire. The failure condition was discovered while the airplane was at the gate, during engine start, when the flightcrew could not control the engine speed. The second Model 757 failure event was due to thrust cable chafing with a window heat power supply cable. The failure condition was detected when, at stable cruise, the right thrust lever "jumped back" and at the same time, the right engine began to accelerate towards N1 redline, despite attempts by the flightcrew to hold back the right thrust lever to idle power. The Model 767 thrust control cable failure occurred during the engine start; at airplane push-back from the gate, the number 2 engine accelerated without command. Investigation revealed that the cause of the failure was a broken thrust control cable at a location adjacent to the right-hand wing root.

In response to the commenter's question, there is no evidence in any of the aforementioned events that the operators were not following the manufacturer's maintenance planning document recommendation for thrust control cable inspections. The incident reports for those failure events did not provide data on how long it had been between thrust control cable inspections when the failures occurred. In AD's similar to this one, for Model 747 series airplanes, the FAA has required both modifications, as well as repetitive inspections, to address the hazard associated with failures of the thrust control cables on the Model 757 and 767 series airplanes.

The proposed AD did not identify specific details of the Model 757 or 767 series airplanes thrust control cable failures because the specific failure modes of the thrust control cables may not exist on the Model 747 series airplane. The unsafe condition addressed by this final rule relates to the effect of a thrust control cable failure on the controllability of the airplane. In that respect, certain Model 747, 757, and 767 series airplanes have similar design characteristics so that when the engine control thrust "B" cable fails during landing, it changes the position of the thrust reverser directional control valve, causing the thrust reverser to stow and the engine to accelerate. The other engine(s) are not affected by the thrust control cable failure, and remains in full reverse. This severe asymmetric thrust condition during landing is the unsafe condition. None of the modifications required by paragraphs (b) through (g) of the final rule, nor those modifications specified in the associated AD's applicable to Model 757 or 767 series airplanes, change the effects of a thrust control "B" cable failure. The repetitive inspections required by paragraph (a) of the final rule are intended to detect wear and corrosion prior to thrust control cable failure. Such wear and corrosion could be caused by numerous problems, not just those problems addressed by the actions specified in paragraphs (b) through (g) of the final rule.

Although modifications have been developed to address specifically identified failure modes of the thrust control cables, there is no available modification that will eliminate the unsafe condition. Therefore, the FAA has determined that repetitive inspections of the thrust control cable system are the only proactive method to alleviate the unsafe condition. Additionally, although the commenter reports that it has not yet identified areas of significant thrust control cable wear or damage during its regular maintenance intervals, the fact that wear and damage to the cables has been identified and addressed by the manufacturer supports the FAA's position that repetitive inspections are required to address the unsafe condition. No change to the final rule is necessary.

Explanation of Change Made to the Final Rule

The FAA has revised Figure 1 of Appendix 1 in the final rule to correct the percentage of wear of each outer wire of the thrust control cables as illustrated. The correct percentage (40%) was specified in Appendix 1, Paragraph 2.B.(1) of the proposal. Figure 1 of Appendix 1 in the proposal illustrated, "Each outer wire worn less than 50%." Figure 1 of Appendix 1 in the final rule illustrates "Each outer wire worn less than 40%."

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 624 airplanes of the affected design in the worldwide fleet. The FAA estimates that 182 airplanes of U.S. registry will be affected by this AD.

It will take approximately 3 work hours per airplane to accomplish the required inspection to verify the engine thrust control cable integrity, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection required by this AD on U.S. operators is estimated to be $32,760, or $180 per airplane, per inspection cycle.

For airplanes identified in Boeing Service Bulletin 747–76–2019 (30 U.S.-registered airplanes), it will take approximately 4 work hours per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. No parts are required. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $7,200, or $240 per airplane.

For airplanes identified in Boeing Service Bulletin 747–76–2067, Revision 1 (12 U.S.-registered airplanes), it will take approximately 6 work hours per airplane to accomplish the required inspection of the nacelle strut idler pulleys, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the one-time inspection required by this AD on U.S. operators is estimated to be $4,320, or $360 per airplane.

For airplanes identified in Boeing Service Bulletin 747–76A2068, Revision 3 (4 U.S.-registered airplanes), it will take approximately 16 work hours per airplane to accomplish the required replacement, at an average labor rate of $60 per work hour. Required parts will cost approximately $2,000 per airplane. Based on these figures, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $11,840, or $2,960 per airplane.

For airplanes identified in Boeing Alert Service Bulletin 747–76A2073, Revision 1 (12 U.S.-registered airplanes), it will take approximately 4 work hours per airplane to accomplish the required action, at an average labor rate of $60 per work hour. The cost of required parts will be minimal. Based on these figures, the cost impact of this required action on U.S. operators is estimated to be $2,880, or $240 per airplane.

Currently, there are no airplanes identified in Boeing Service Bulletin 747–53–2327, Revision 2, and subject to this AD, on the U.S. Register. However, should an affected airplane be imported and placed on the U.S. Register in the future, it would require approximately 1 work hour to accomplish this required inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this one-time inspection would be $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–30 Boeing: Amendment 39–11640. Docket 99–NM–22–AD.

Applicability: Model 747–100, –100B, –100B SUD, –200B, –200C, –200F, –300, SR, and SP series airplanes; certificated in any category; equipped with Pratt & Whitney Model JT9D–3 or –7 series engines, General Electric Model CF6–45 or –50 series engines, or Rolls-Royce Model RB211–524B, C, or D series engines.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine thrust control cable failures, which could result in a severe asymmetric thrust condition during landing, and consequent reduced controllability of the airplane, accomplish the following:

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repetitive Inspections

(a) For all airplanes: Within 18 months after the effective date of this AD, accomplish the "Thrust Control Cable Inspection Procedure" specified in Appendix 1 (including Figure 1) of this AD to verify the integrity of the engine thrust control cables. Prior to further flight, replace any discrepant component found, in accordance with the procedures described in the Boeing 747 Maintenance Manual. Repeat the detailed visual inspection thereafter at intervals not to exceed 18 months.

Modification

(b) For airplanes identified in Boeing Service Bulletin 747–76–2019, dated June 9, 1971: Within 18 months after the effective date of this AD, modify the strut bulkhead assembly to enlarge the holes (2 places in each strut) through which the engine thrust control cables pass, in accordance with the service bulletin.

Inspection/Replacement

(c) For airplanes equipped with General Electric Model CF6 series engines and identified in Boeing Service Bulletin 747–76–2067, Revision 1, dated November 19, 1987: Within 18 months after the effective date of this AD, perform a one-time inspection of each nacelle strut idler pulley to determine the type of pulley installed, in accordance with the service bulletin.

Note 3: This paragraph does not apply to airplanes equipped with Pratt & Whitney Model JT9D–70 engines.

(1) If no aluminum-type pulley is installed, no further action is required by this paragraph.

(2) If any aluminum-type pulley is installed, prior to further flight, accomplish paragraphs (c)(2)(i) and (c)(2)(ii) of this AD in accordance with the service bulletin.

(i) Replace any aluminum-type pulley with a phenolic-type pulley having Boeing part number BACP30F4.

(ii) Except as provided by paragraph (d) of this AD: Perform a detailed visual inspection of the engine thrust control cables in any area where an aluminum-type pulley was installed, to detect wear. If any wear outside the criteria contained in Chapter 20–21–03 of the Boeing 747 Maintenance Manual is found, prior to further flight, replace the cable with a new cable, in accordance with the service bulletin. If any wear within the criteria contained in the maintenance manual is found, no further action is required by this paragraph.

Note 4: Accomplishment of the actions specified in Boeing Service Bulletin 747–76–2067, dated September 26, 1986, is acceptable for compliance with the actions required by paragraph (c) of this AD.

(d) Where Boeing Service Bulletin 747–76–2067, Revision 1, dated November 19, 1987, specifies that the actions required by paragraph (c)(2)(ii) of this AD may be accomplished in accordance with an "operator's comparable procedure," the actions must be accomplished in accordance with the applicable chapters of the Boeing 747 Maintenance Manual, as specified in the service bulletin.

Replacement

(e) For airplanes identified in Boeing Service Bulletin 747–76A2068, Revision 3, dated August 22, 1991; including Notice of Status Change 747–76A2068 NSC 2, dated December 12, 1991: Within 18 months after the effective date of this AD, replace aluminum idler pulley brackets with steel brackets, in accordance with paragraphs E., F., G., and H. of the Accomplishment Instructions of the service bulletin.

Inspection/Modification

(f) For airplanes identified in Boeing Alert Service Bulletin 747–76A2073, Revision 1, dated July 28, 1988: Within 18 months after the effective date of this AD, accomplish paragraphs (f)(1) and (f)(2) of this AD, in accordance with the alert service bulletin.

(1) Perform a detailed visual inspection of the engine thrust control cables and pulley mounting bracket screws in the area aft and above main entry door number 2 on the left and right sides of the airplane to detect damage. If any damage is found, prior to further flight, replace the cable with a new cable.

(2) Modify the pulley mounting bracket.

Note 5: Accomplishment of the actions specified in Boeing Alert Service Bulletin 747–76A2073, dated February 4, 1988, is acceptable for compliance with the actions required by paragraph (f) of this AD.

Inspection/Modification/Replacement

(g) For Model 747–100B SUD series airplanes identified in Boeing Service Bulletin 747–53–2327, Revision 2, dated September 24, 1998, with angle assemblies having Boeing part numbers 015U0454–63 and 015U0454–64 installed at body station 970: Within 18 months after the effective date of this AD, perform a detailed visual inspection to measure the clearance between the engine thrust control cables and the cable penetration holes, in accordance with the Cable Chafing Inspection of the Accomplishment Instructions of the service bulletin. If insufficient clearance exists, as specified in the service bulletin, prior to further flight, accomplish paragraphs (g)(1) and (g)(2) of this AD.

(1) Modify the cable penetration holes or replace the plate, as applicable, in accordance with Figure 7 of the service bulletin.

(2) Perform a detailed visual inspection of the engine thrust control cables in any area of the plate to detect wear, in accordance with Chapter 20–21–03 of the Boeing 747 Maintenance Manual. If any wear outside the criteria contained in the maintenance manual is found, prior to further flight, replace the cable with a new cable, in accordance with the procedures described in the Boeing 747 Maintenance Manual. If any wear within the criteria contained in the maintenance manual is found, no further action is required by this paragraph.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 6: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(i) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as provided by paragraphs (a), (d), and (g)(2) of this AD, the actions shall be done in accordance with the following Boeing Service Bulletins, which contain the specified list of effective pages, as applicable:

Service bulletin referenced and date	Page No. shown on page	Revision level shown on page	Date shown on page
76–2019, June 9, 1971	1–6	Original	June 9, 1971.
747–76–2067, Revision 1, November 19, 1987	1–4	1	November 19, 1987.
	5–12	Original	September 26, 1986.
747–76A2068, Revision 3, August 22, 1991	1, 3–30	3	August 22, 1991.
	2	2	July 20, 1989.
Notice of Status Change 747–76A2068, NSC 2, December 12, 1991.	1	Original	December 12, 1991.
747–76A2073, Revision 1, July 28, 1988	1–4, 12	1	July 28, 1988.
	5–11, 13	Original	February 4, 1988.
747–53–2327, Revision 2, September 24, 1998	1–80	2	September 24, 1998.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(k) This amendment becomes effective on April 24, 2000.

Appendix 1

Thrust Control Cable Inspection Procedure

1. General

A. Clean the cables, if necessary, for the inspection, in accordance with Boeing 747 Maintenance Manual 12–21–05.

B. Use these procedures to verify the integrity of the thrust control cable system. The procedures must be performed along the entire cable run for each engine. To ensure verification of the portions of the cables which are in contact with pulleys and quadrants, the thrust control must be moved by operation of the thrust and/or the reverse thrust levers to expose those portions of the cables.

C. The first task is an inspection of the control cable wire rope. The second task is an inspection of the control cable fittings. The third task is an inspection of the pulleys.

Note: These three tasks may be performed concurrently at one location of the cable system on the airplane, if desired, for convenience.

2. Inspection of the Control Cable Wire Rope

A. Perform a detailed visual inspection to ensure that the cable does not contact parts other than pulleys, quadrants, cable seals, or grommets installed to control the cable routing. Look for evidence of contact with other parts. Correct the condition if evidence of contact is found.

B. Perform a detailed visual inspection of the cable runs to detect incorrect routing, kinks in the wire rope, or other damage. Replace the cable assembly if:

(1) One cable strand had worn wires where one wire cross section is decreased by more than 40 percent (see Figure 1),

(2) A kink is found, or

(3) Corrosion is found.

C. Perform a detailed visual inspection of the cable: To check for broken wires, rub a cloth along the length of the cable. The cloth catches on broken wires.

(1) Replace the 7x7 cable assembly if there are two or more broken wires in 12 continuous inches of cable or there are three or more broken wires anywhere in the total cable assembly.

(2) Replace the 7x19 cable assembly if there are four or more broken wires in 12 continuous inches of cable or there are six or more broken wires anywhere in the total cable assembly.

3. Inspection of the Control Cable Fittings

A. Perform a detailed visual inspection to ensure that the means of locking the joints are intact (wire locking, cotter pins, turnbuckle clips, etc.). Install any missing parts.

B. Perform a detailed visual inspection of the swaged portions of swaged end fitting to detect surface cracks or corrosion. Replace the cable assembly if cracks or corrosion are found.

C. Perform a detailed visual inspection of the unswaged portion of the end fitting. Replace the cable assembly if a crack is visible, if corrosion is present, or if the end fitting is bent more than 2 degrees.

D. Perform a detailed visual inspection of the turnbuckle. Replace the turnbuckle if a crack is visible or if corrosion is present.

4. Inspection of Pulleys

A. Perform a detailed visual inspection to ensure that pulleys are free to rotate. Replace pulleys which are not free to rotate.

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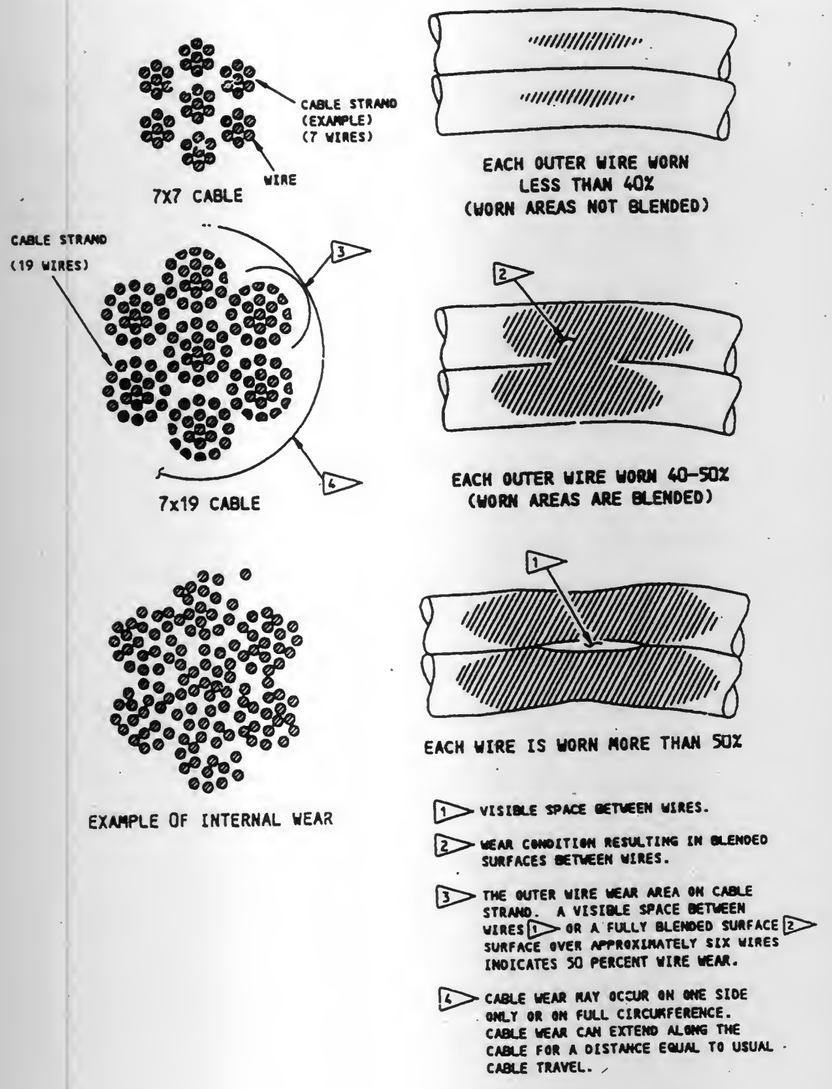


FIGURE 1

Issued in Renton, Washington, on March 10, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6490 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–237–AD; Amendment 39–11637; AD 2000–05–27]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, that currently requires either a one-time non-destructive test (NDT) inspection or a detailed visual inspection for cracking of the fuselage skin in the vicinity of frame 29 between stringers 12 and 13, and repair, if necessary. This amendment requires that the current thresholds for these inspections be reduced and that repetitive inspections be performed. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct fatigue cracking of the fuselage skin in the specified area, which could result in reduced structural integrity of the airplane.

DATES: Effective April 24, 2000.

The incorporation by reference of British Aerospace Service Bulletin SB.53–144, Revision 1, dated May 21, 1999, as listed in the regulations, is approved by the Director of the Federal Register as of April 24, 2000.

The incorporation by reference of British Aerospace Service Bulletin SB.53–144, dated April 27, 1998, was approved previously by the Director of the Federal Register as of November 10, 1998 (63 FR 53550, October 6, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–21–06, amendment 39–10814 (63 FR 53550, October 6, 1998), which is applicable to certain British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, was published in the **Federal Register** on October 14, 1999 (64 FR 55636). The action proposed to require either a one-time non-destructive test (NDT) inspection or a detailed visual inspection for cracking of the fuselage skin in the vicinity of frame 29 between stringers 12 and 13, and repair, if necessary. The action also proposed to require that the current thresholds for these inspections be reduced and that repetitive inspections be performed.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Cite Revision 1 of Service Bulletin

One commenter, the manufacturer, states that, although paragraph (a) of the proposed AD contains the statement "* * * at the earlier of the applicable times specified in paragraphs (a)(1) and (a)(2) * * *," the commenter considers the paragraph's structure to be confusing. [Paragraphs (a)(1) and (a)(2) require compliance times as specified in British Aerospace Service Bulletin SB.53–144, dated April 27, 1998, and Revision 1, dated May 21, 1999, respectively]. The commenter requests that the main text of the proposed rule be revised to cite only Revision 1 of Service Bulletin SB.53–144 and its associated inspection periods, which are reduced from those specified in the original issue of the service bulletin. The commenter states that it has monitored results of inspections and has conducted metallurgical analysis on samples. From this effort, it has concluded that any uninspected airplanes should be inspected at the reduced compliance times specified in the later revision of the service bulletin.

The FAA acknowledges that clarification of the AD may be helpful. However, the FAA does not concur with the request to include only those compliance times recommended in Revision 1 of Service Bulletin SB.53–144. Omitting compliance thresholds of an existing AD could result in the inadvertent extension of the compliance time for certain airplanes in a superseding AD. If the compliance thresholds of the existing AD are not restated in the new AD, such that only the compliance times of the new AD are required, the new grace period can result in additional time allowed before the inspection must be accomplished. Therefore, when an AD is superseded specifically to reduce a compliance threshold, such an inadvertent extension of the compliance threshold would be contrary to the intent of requiring accomplishment of the existing requirements within an earlier timeframe.

In this case, the FAA's intent was to ensure that operators accomplish the inspection at the earliest time required by either the existing AD or this superseding AD. Consequently, this AD includes both the thresholds required by AD 98–21–06 and the reduced thresholds recommended in the service bulletin. An airplane subject to the requirements of the existing AD, and due to be inspected per the requirements of the existing AD, should still be inspected if the compliance time in the existing AD is earlier than that specified in the new AD.

Reference to Original Service Bulletin

The same commenter, in relation to the previous comment, suggests that the proposed AD be revised to reference the original issue of the service bulletin in a note to the AD. The commenter states that the note could identify that although the compliance times recommended in Revision 1 of the service bulletin are reduced, the inspection remains the same and, if the inspection has already been conducted, further inspections should continue in accordance with the Maintenance Review Board (MRB).

The FAA does not concur. Since "NOTE 2" of the AD already states that the actions defined in the original issue and Revision 1 of the service bulletin are identical, the FAA does not consider it necessary to add further information in regard to Service Bulletin SB.53–144. Additionally, since paragraph (b) of the

AD already requires repetitive inspections as specified in a certain task of the MRB, there is no need to state that further inspections should continue in accordance with the MRB. No change to the AD is necessary.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

The FAA estimates that 23 airplanes of U.S. registry will be affected by this AD.

For operators that elect to accomplish the visual inspection rather than the NDT inspection, it will take approximately 6 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the visual inspection on U.S. operators is estimated to be $360 per airplane, per inspection cycle.

For operators that elect to accomplish the NDT inspection rather than the visual inspection, it will take approximately 8 work hours per airplane to accomplish it, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the NDT inspection on U.S. operators is estimated to be $480 per airplane, per inspection cycle.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10814 (63 FR 53550, October 6, 1998), and by adding a new airworthiness directive (AD), amendment 39–11637, to read as follows:

2000–05–27 BRITISH AEROSPACE REGIONAL AIRCRAFT (FORMERLY BRITISH AEROSPACE REGIONAL AIRCRAFT LIMITED, AVRO INTERNATIONAL AEROSPACE DIVISION; BRITISH AEROSPACE, PLC; BRITISH AEROSPACE COMMERCIAL AIRCRAFT LIMITED): Amendment 39–11637. Docket 99–NM–237–AD. Supersedes AD 98–21–06, Amendment 39–10814.

Applicability: Model BAe 146–100A, –200A, and –300A series airplanes; as listed in British Aerospace Service Bulletin SB.53–144, dated April 27, 1998, or Revision 1, dated May 21, 1999; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking of the fuselage skin in the vicinity of frame 29 between stringers 12 and 13, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspections

(a) Perform either a non-destructive test (NDT) inspection or a detailed visual inspection for cracking of the fuselage skin in the vicinity of frame 29 between stringers 12 and 13, in accordance with British Aerospace Service Bulletin SB.53–144, dated April 27, 1998, or Revision 1, dated May 21, 1999, at the earlier of the applicable times specified in paragraphs (a)(1) and (a)(2).

Note 2: The actions defined in the original issue and Revision 1 of the service bulletin are identical. However, the compliance times and effectivity groupings are different. Accomplishment of either revision level, at the earlier of the applicable compliance times of paragraphs (a)(1) and (a)(2) of this AD, is acceptable for compliance with the requirements of paragraph (a) of this AD.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(1) For airplanes identified in the specified paragraph of Service Bulletin SB.53–144, dated April 27, 1998:

(i) Paragraph 1.D.(1)(a): Inspect prior to the accumulation of 12,000 total flight cycles, or within 1,000 flight cycles after November 10, 1998 (the effective date of AD 98–21–06, amendment 39–10814), whichever occurs later.

(ii) Paragraph 1.D.(1)(b): Inspect prior to the accumulation of 16,000 total flight cycles, or within 1,200 flight cycles after November 10, 1998, whichever occurs later.

(iii) Paragraph 1.D.(1)(c): Inspect prior to the accumulation of 13,500 total flight cycles, or within 1,000 flight cycles after November 10, 1998, whichever occurs later.

(iv) Paragraph 1.D.(1)(d): Inspect prior to the accumulation of 22,000 total flight cycles, or within 1,400 flight cycles after November 10, 1998, whichever occurs later.

(2) For airplanes in the applicable configuration specified in Table 1 of Service Bulletin SB.53–144, Revision 1, dated May 21, 1999:

(i) For Model BAe 146–100 airplanes on which Modification HCM00020P has not been accomplished: Inspect prior to the accumulation of 11,600 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(ii) For Model BAe 146–100 airplanes on which Modification HCM00020P has been accomplished: Inspect prior to the accumulation of 14,500 total flight cycles, or within 1,200 flight cycles after the effective date of this AD, whichever occurs later.

(iii) For Model BAe 146–200 airplanes on which Modification HCM00021J has not been accomplished: Inspect prior to the accumulation of 12,600 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(iv) For Model BAe 146–200 airplanes on which Modification HCM00021J has been accomplished: Inspect prior to the accumulation of 11,600 total flight cycles, or within 1,000 flight cycles after the effective date of this AD, whichever occurs later.

(v) For Model BAe 146–300 airplanes on which Modification HCM01000B has not been accomplished: Inspect prior to the accumulation of 17,200 total flight cycles, or within 1,400 flight cycles after the effective date of this AD, whichever occurs later.

(b) Repeat the inspections required by paragraph (a) of this AD at the intervals defined in Significant Structural Item (SSI) Task No. 53–20–160 as detailed in Section 6 of the BAe 146 Maintenance Review Board Report, Revision 5, dated November 1998.

Corrective Action

(c) If any cracking is detected during any inspection required by paragraph (a) or (b) of this AD, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Civil Aviation Authority (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The inspections shall be done in accordance with British Aerospace Service Bulletin SB.53–144, dated April 27, 1998, or British Aerospace Service Bulletin SB.53–144, Revision 1, May 21, 1999. Revision 1 of British Aerospace Service Bulletin 53–144 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–3, 7	1	May 21, 1999.
4–6, 8–10	Original	April 27, 1998.

(1) The incorporation by reference of British Aerospace Service Bulletin SB.53–144, Revision 1, dated May 21, 1999, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of British Aerospace Service Bulletin SB.53–144, dated April 27, 1998, was approved previously by the Director of the Federal Register as of November 10, 1998 (63 FR 53550, October 6, 1998).

(3) Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in British airworthiness directive 005–04–98.

(g) This amendment becomes effective on April 24, 2000.

Issued in Renton, Washington, on March 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6329 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–57–AD; Amendment 39–11633; AD 2000–05–23]

RIN 2120–AA64

Airworthiness Directives; Ayres Corporation S2R Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all Ayres Corporation (Ayres) S2R series airplanes that are equipped with at least one main landing gear fuselage attach bolt with a grease fitting installed through the shank. This AD requires replacing the main landing gear fuselage attach bolts that are drilled with a grease fitting with undrilled (no grease access) attach bolts. This AD is the result of a report of cracks found in all four main landing gear fuselage attach bolts on one of the affected airplanes. The actions specified by this AD are intended to prevent collapse of the main landing gear caused by cracked main landing gear fuselage attach bolts, which could result in main landing gear collapse with possible wing fuel tank rupture and consequent fire.

DATES: Effective May 5, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 5, 2000.

ADDRESSES: Service information that applies to this AD may be obtained from Ayres Corporation, P.O. Box 3090, One Ayres Way, Albany, Georgia 31706–3090; telephone: (912) 883–1440; facsimile: (912) 439–9790. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–57–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Satish Lall, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone: (770) 703–6082; facsimile: (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all Ayres S2R series airplanes of the same type design, that are equipped with at least one main landing gear fuselage attach bolt with a grease fitting installed through the shank, was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 24, 1999 (64 FR 66116). The NPRM proposed to require replacing the main landing gear fuselage attach bolts that are drilled with a grease fitting with undrilled (no grease access) attach bolts. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with both Ayres Service Bulletin No. SB-AG-42, dated June 16, 1999, and the applicable maintenance manual.

The NPRM was the result of a report of cracks found in all four main landing gear fuselage attach bolts on one of the affected airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

After careful review of all available information related to the subject presented above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor

editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Differences Between the Service Bulletin and this AD

Ayres Service Bulletin No. SB-AG–42, dated June 16, 1999, specifies repetitive inspections and repetitive replacements of the main landing gear fuselage attach bolts. The FAA does not have justification to mandate the repetitive inspections and repetitive replacements. Based on all available information, and the FAA has determined that initially replacing the main landing gear fuselage attach bolts with attach bolts of improved design will correct the unsafe condition on the affected airplanes.

Cost Impact

The FAA estimates that 1,000 airplanes in the U.S. registry will be affected by this AD, that it will take approximately 4 workhours per airplane to accomplish the replacement, and that the average labor rate is approximately $60 an hour. Parts cost approximately $88 per airplane (4 bolts per airplane at $22 each). Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $328,000, or $328 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES**".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–05–23 AYRES CORPORATION: Amendment 39–11633; Docket No. 99–CE–57–AD.

Applicability: The following airplane models, all serial numbers, certificated in any category, that have at least one main landing gear fuselage attach bolt (that is drilled with a grease fitting), part number 21418T001 or 21418T005 (or FAA-approved equivalent part number):

Models

S–2R, S2R–G1, S2R–G5, S2R–G6, S2R–G10, S2R–R3S, S2R–T11, S2R–T15, S2R–T34, S2R–T45, S2R–T65, S2R–R1340, S2R–R1820, S2RHG–T34, and S2RHG–T65.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD, unless already accomplished.

To prevent collapse of the main landing gear caused by cracked main landing gear fuselage attach bolts, which could result in main landing gear collapse with possible wing fuel tank rupture and consequent fire, accomplish the following:

(a) Within the next 100 hours time-in-service (TIS) after the effective date of this AD, replace each main landing gear fuselage attach bolt that is drilled with a grease fitting with an undrilled (no grease access) attach bolt, part number AN10–33 or NAS6610–42D (or FAA-approved equivalent part number). Accomplish this replacement in accordance with both Ayres Service Bulletin No. SB–AG–42, dated June 16, 1999, and the applicable maintenance manual.

(b) As of the effective date of this AD, no person may install, on any affected airplane, a main landing gear fuselage attach bolt (that is drilled with a grease fitting), part number 21418T001 or 21418T005 (or FAA-approved equivalent part number).

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO), One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) The replacements required by this AD shall be done in accordance with Ayres Service Bulletin No. SB–AG–42, dated June 16, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Ayres Corporation, P.O. Box 3090, One Ayres Way, Albany, Georgia 31706–3090. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(f) This amendment becomes effective on May 5, 2000.

Issued in Kansas City, Missouri, on March 7, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate Aircraft Certification Service.

[FR Doc. 00–6162 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–73–AD; Amendment 39–11629; AD 2000–05–19]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 727 series airplanes, that requires a one-time detailed visual inspection of the fuselage skin and bonded doubler area above the forward entry doorway to detect fatigue cracking or the existence of certain repairs, and follow-on corrective actions, if necessary. This action also requires a preventive modification or full-sized repair doubler, as applicable. This amendment is prompted by reports of fatigue cracking in the fuselage skin and bonded doublers in the forward and aft corners above the forward entry doorway. The actions specified by this AD are intended to prevent such fatigue cracking of the fuselage skin and bonded doubler, which could result in reduced structural integrity and consequent loss of cabin pressurization.

DATES: Effective April 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all Boeing Model 727 series airplanes was published in the **Federal Register** on December 7, 1999 (64 FR 68297). That action proposed to require a one-time detailed visual inspection of the fuselage skin and bonded doubler area above the forward entry doorway to detect fatigue cracking or the existence of certain repairs, and follow-on corrective actions, if necessary. That action also proposed to require a preventive modification or full-sized repair doubler, as applicable.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule. Another commenter states that it is not affected by the proposed rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 1,429 airplanes of the affected design in the worldwide fleet. The FAA estimates that 887 airplanes of U.S. registry will be affected by this AD.

The FAA estimates that it will take approximately 1 work hour per airplane to accomplish the inspection of the fuselage skin and bonded doubler area, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $53,220, or $60 per airplane.

The FAA estimates that it will take approximately 27 work hours per airplane to accomplish the preventive modification or full-sized repair doubler, and that the average labor rate is $60 per work hour. Required parts will cost approximately $979 per airplane. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $2,305,313, or $2,599 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–19 BOEING: Amendment 39–11629. Docket 99-NM–73–AD.

Applicability: All Model 727 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuselage skin and bonded doubler area above the forward entry doorway, which could result in reduced structural integrity and consequent loss of cabin pressurization, accomplish the following:

Detailed Visual Inspection

(a) Prior to the accumulation of 60,000 total flight cycles, or within 3,000 flight cycles after the effective date of this AD, whichever occurs later: Perform a one-time detailed visual inspection of the fuselage skin and

bonded doubler area above the forward entry doorway to detect fatigue cracking or the existence of a previous repair, in accordance with Boeing Service Bulletin 727–53–0186, Revision 1, dated May 21, 1992.

Corrective Action

(1) If no crack or repair is detected, prior to further flight, perform the preventive modification in accordance with the service bulletin. No further action is required by this AD.

(2) If any crack but no repair is detected, prior to further flight, accomplish the actions required by paragraph (a)(2)(i), (a)(2)(ii), or (a)(2)(iii), as applicable.

(i) If any crack is less than or equal to 2.5 inches, perform the full-sized repair doubler in accordance with Boeing Service Bulletin 727–53–0186, Revision 1, dated May 21, 1992. Accomplishment of this action constitutes terminating action for the requirements of this AD.

(ii) If any crack exceeds 2.5 inches, repair in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative (DER) who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, or the Boeing DER, as required by this paragraph, the approval letter must specifically reference this AD.

(iii) If any crack in the bear strap is detected, repair in accordance with a method approved by the Manager, Seattle ACO; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, or the Boeing DER, as required by this paragraph, the approval letter must specifically reference this AD.

(3) If any repair is found, accomplish paragraph (a)(3)(i), (a)(3)(ii), or (a)(3)(iii), of this AD, as applicable.

(i) If a full-sized repair doubler is found, as specified by Boeing Service Bulletin 727–53–0186, dated April 27, 1989, or Revision 1, dated May 21, 1992, and any crack is less than or equal to 2.5 inches, no further action is required by this AD.

(ii) If a half-sized repair doubler is found, as specified by Boeing Service Bulletin 727–53–0186, dated April 27, 1989, or Revision 1, dated May 21, 1992, and any crack is less than or equal to 2.5 inches and is not in the bear strap: Prior to further flight, perform the full-sized repair doubler in accordance with Boeing Service Bulletin 727–53–0186, Revision 1, dated May 21, 1992. No further action is required by this AD.

(iii) If a half-sized or full-sized repair doubler is found, as specified by the service bulletin, and any crack exceeds 2.5 inches or is located in the bear strap: Prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, or the Boeing DER, as required by this paragraph, the approval letter must specifically reference this AD.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at an intensity deemed appropriate by the inspector. Inspection aids such as mirrors, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

Terminating Action for AD 94–05–04

(b) Accomplishment of the requirements of this AD constitutes terminating action for the requirements of paragraph (a) of AD 94–05–04, amendment 39–8842 (which are required to be accomplished in accordance with Appendices A.3, B.3, and C.3 of Boeing Document Number D6–54860, "Aging Airplane Service Bulletin Structural Modification and Inspection Program—Model 727," Revision G, dated March 5, 1993), with respect to the modification specified in Boeing Service Bulletin 727–53–0186, dated April 27, 1989. All other service bulletins referenced in Boeing Document Number D6–54860 still apply.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(d) Special flight permits may be issued in accordance with § 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) Except as provided by paragraphs (a)(2)(ii), (a)(2)(iii), and (a)(3)(iii) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 727–53–0186, Revision 1, dated May 21, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on April 24, 2000.

Issued in Renton, Washington, on March 8, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6157 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–174–AD; Amendment 39–11635; AD 2000–05–25]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146–100A, –200A, and –300A Series Airplanes Equipped With AlliedSignal ALF502R-Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, that currently requires installation of a placard prescribing special procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch ON; modification of the air brake auto-retract function; and a revision to the Airplane Flight Manual (AFM) relative to altitude and operating limitations associated with flight in icing conditions above 26,000 feet. This amendment requires installation/replacement of new placards. This amendment also provides for a terminating modification for the AFM revision and installation/replacement of placards. This amendment is prompted by reports of uncommanded engine thrust reductions (rollback) when operating in certain icing conditions that exist in the vicinity of thunderstorms. The actions specified by this AD are intended to prevent engine power rollback during flight in icing conditions, a condition that could result in insufficient power to sustain flight.

DATES: Effective April 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 24, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 96–14–09, amendment 39–9694 (61 FR 37199, July 17, 1996), which is applicable to all British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes, was published in the **Federal Register** on December 9, 1999 (64 FR 68956). The action proposed to continue to require installation of a placard prescribing special procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch ON; modification of the air brake auto-retract function; and a revision to the Airplane Flight Manual (AFM) relative to altitude and operating limitations associated with flight in icing conditions above 26,000 feet. The action also proposed to add a requirement for installation/replacement of new placards. The action also proposed to provide for a terminating modification for the AFM revision and installation/replacement of placards.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Revise Applicability

One commenter requests that the proposed AD be revised to include only airplanes with ALF502R-series engines installed. The commenter states that AlliedSignal has provided substantiation to the FAA's Engine and Propeller Directorate to demonstrate that the ALF507–1H engine is not subject to the engine rollback phenomenon; therefore, airplanes with these engines installed should be excluded from the applicability of the AD.

The FAA concurs. The FAA has determined that British Aerospace Model BAe 146–100A, –200A, and –300A series airplanes equipped with ALF502R-series engines are those that should be subject to the requirements of this AD. The FAA has revised the applicability of the final rule accordingly.

Request To Revise Reference to Terminating Modification

The same commenter requests that the proposed AD be revised to eliminate references to an "optional terminating modification." The proposed AD provides for accomplishment of the actions described in British Aerospace Service Bulletin SB.71–72–30473A, dated July 8, 1998, or Revision 1, dated November 2, 1998, as terminating action for the requirements of this AD. This service bulletin defines various modifications necessary to implement the rollback prevention package, including an engine modification, which is described in AlliedSignal Engines Service Bulletin ALF/LF72–1020. The commenter states that referral to these modifications as optional is misleading, because the engine modification is actually required via separate rulemaking action [FAA AD 99–15–06, amendment 39–11225 (64 FR 38557, July 19, 1999)]. The commenter suggests that the Summary of the proposed AD be revised to state that "the proposed AD would also provide terminating action by incorporation of the engine modification." For the same reasons, the commenter also suggests that the wording in the paragraph titled "Actions Since Issuance of Previous Rule" in the proposed AD be revised.

The FAA concurs that reference to the modifications as optional in this AD may be misleading, since the engine modification is already required by FAA AD 99–15–06. The FAA's intent was to allow for accomplishment of the modifications prior to the compliance threshold required by AD 99–15–06, and to provide for removal of the AFM revision and placards required by this AD following accomplishment of the modifications. The FAA has revised the appropriate sections of this final rule to remove the word "optional" in reference to the terminating modification. The FAA also has removed the associated cost estimates from the Cost Impact information, below. However, since the paragraph titled "Actions Since Issuance of Previous Rule" in the proposed AD is not restated in the final rule, no change is made to that paragraph of the AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 40 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 96–14–09 take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the previously required actions on U.S. operators is estimated to be $9,600, or $240 per airplane.

The new actions that are required by this new AD will take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new requirements of this AD on U.S. operators is estimated to be $2,400, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–9694 (61 FR 37199, July 17, 1996), and by adding a new airworthiness directive (AD), amendment 39–11635, to read as follows:

2000–05–25 British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–11635. Docket 98–NM–174–AD. Supersedes AD 96–14–09, Amendment 39–9694.

Applicability: Model BAe 146–100A, –200A, and –300A series airplanes, certificated in any category; equipped with AlliedSignal ALF502R-series engines.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine power rollback during flight in icing conditions, a condition that could result in insufficient power to sustain flight, accomplish the following:

Restatement of Requirements of AD 96–14–09, Amendment 39–9694

Placard Installation

(a) For airplanes listed in British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992: Within 30 days after December 17, 1992 (the effective date of AD 92–24–09, amendment 39–8415), install a placard below the ice protection switches on the flight deck overhead panel to include additional procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch ON, in accordance with British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992.

Modification

(b) For airplanes listed in British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992: Within 30 days after December 17, 1992 (the effective date of AD 92–24–09, amendment 39–8415), modify the air brake auto-retract function, in accordance with British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992.

Airplane Flight Manual Revision

(c) Within 6 days after July 22, 1996 (the effective date of AD 96–14–09, amendment 39–9694), amend the FAA-approved Airplane Flight Manual (AFM) as required by paragraphs (c)(1) and (c)(2) of this AD.

(1) Remove the following Temporary Revisions (TR) from the Limitations Section and Normal/Abnormal Procedures Section, as applicable:

(i) For Model BAe 146–100A series airplanes: TR 30, Issue No. 2 (Document No. BAe 3.3), dated February 1994.

(ii) For Model BAe 146–200A series airplanes: TR 41, Issue No. 2 (Document No. BAe 3.3), dated February 1994, or TR 42, Issue No. 2 (Document No. BAe 3.3), dated February 1994, as applicable.

(iii) For Model BAe 146–300A series airplanes: TR 23, Issue No. 2 (Document No. BAe 3.3), dated February 1994.

(2) Insert the following TR's into the Limitations Section and the Normal/Abnormal Procedures/Handling Section, as applicable.

(i) For Model BAe 146–100A series airplanes: TR 32, Issue No. 2 (Document BAe 3.3), dated July 1996.

(ii) For Model BAe 146–200A series airplanes: TR 44, Issue No. 2 (Document BAe 3.6), dated July 1996.

(iii) For Model BAe 146–300A series airplanes: TR 25, Issue No. 2 (Document BAe 3.11), dated July 1996.

(d) When the TR's specified in paragraph (c)(2) have been incorporated into an AFM General Revision, the applicable AFM General Revision may be inserted into the corresponding FAA-approved AFM, provided the information contained in the AFM General Revision corresponds identically to that specified in TR 32, TR 44, or TR 25.

New Requirements of This AD

Placard Installation

(e) Within 30 days after the effective date of this AD, install a placard on the flight deck to indicate that a 26,000 feet altitude limitation in icing is applicable, and replace the ice protection panel placard with a new placard for N2 limitations, in accordance with British Aerospace Service Bulletin SB.11–137–30405A, dated March 26, 1998. Upon accomplishment of this placard installation, the placard required by paragraph (a) of this AD may be removed.

Terminating Modification (Including Modification Required by AD 99–15–06)

(f) Modification of all four engines (i.e., reduction of the length core-flow/fan-flow splitter (cut-back splitter); modification of the splitter lip insulating baffle; installation of a heated exit guide vane (EGV); relocation of the engine anti-ice air source to the combustor bleed plenum; installation of a new anti-ice valve with improved couplings; and installation of improved insulated connections), and insertions of AFM revisions, in accordance with British Aerospace Service Bulletin SB.71–72–30473A, dated July 8, 1998, or Revision 1, dated November 2, 1998; constitutes terminating action for the requirements of this AD. After the modification is accomplished, the AFM revisions and placards required by paragraphs (c), (d), and (e) of this AD may be removed.

Note 2: British Aerospace Service Bulletin SB.71–72–30473A, dated July 8, 1998, and Revision 1, dated November 2, 1998, only describe procedures for installation of engines that have been modified in accordance with the requirements of AD 99–15–06, amendment 39–11225.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 96–14–09, amendment 39–9694, are approved as alternative methods of compliance with this AD.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(i) The actions shall be done in accordance with British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992; Airplane Flight Manual Temporary Revision 32, Issue No. 2 (Document BAe 3.3), dated July 1996; Airplane Flight Manual Temporary Revision 44, Issue No. 2 (Document BAe 3.6), dated July 1996; Airplane Flight Manual Temporary Revision 25, Issue No. 2 (Document BAe 3.11), dated July 1996; and British Aerospace Service Bulletin SB.11–137–30405A, dated March 26, 1998; as applicable.

(1) The incorporation by reference of British Aerospace Service Bulletin SB.11–137–30405A, dated March 26, 1998, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of British Aerospace Service Bulletin SB.11–97–01285A, Revision 1, dated April 3, 1992, was approved previously by the Director of the Federal Register as of December 17, 1992 (57 FR 53548, November 12, 1992).

(3) The incorporation by reference of Airplane Flight Manual Temporary Revision 32, Issue No. 2 (Document BAe 3.3), dated July 1996; Airplane Flight Manual Temporary Revision 44, Issue No. 2 (Document BAe 3.6), dated July 1996; and Airplane Flight Manual Temporary Revision 25, Issue No. 2 (Document BAe 3.11), dated July 1996; was approved previously by the Director of the Federal Register as of July 22, 1996 (61 FR 37199, July 17, 1996).

(4) Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directives 004–03–98 and 003–06–96, Revision 1.

(j) This amendment becomes effective on April 24, 2000.

Issued in Renton, Washington, on March 8, 2000.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6158 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–211–AD; Amendment 39–11628; AD 2000–05–18]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300, A310, and A300–600 series airplanes, that requires repetitive eddy current inspections to detect cracking on the door edge frames of the fuselage bulk cargo compartment, and repair, if necessary. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracks in the door edge frames of the fuselage bulk cargo compartment, which could result in reduced structural integrity of the airframe.

DATES: Effective April 24, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of April 24, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300, A310, and A300–600 series airplanes was published in the **Federal Register** on January 4, 2000 (65 FR 254). That action proposed to require repetitive eddy current inspections to detect cracking on the door edge frames of the fuselage bulk cargo compartment, and repair, if necessary.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Changes Made to the Final Rule

Since the issuance of the proposed rule, the FAA has reviewed and approved Revision 01 of Airbus Service Bulletins A310–53–2106, including Appendix 01; and A300–53–6114, including Appendix 01; both dated July 28, 1998. These revisions are essentially identical to the original issues, which were cited in the proposed AD as the appropriate source of service information for accomplishment of the specified actions. This final rule has been revised to include these revisions as additional sources of service information.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Interim Action

This is considered to be interim action. The inspection reports that are required by this AD will enable the manufacturer to obtain better insight into the nature, cause, and extent of the cracking, and eventually to develop final action to address the unsafe condition. Once final action has been identified, the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 126 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $15,120, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic

impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–18 Airbus Industrie: Amendment 39–11628. Docket 98–NM–211–AD.

Applicability: Model A300 series airplanes on which Airbus Modification 2140 (reference Airbus Service Bulletin A300–53–109) has been accomplished; and Model A310 and A300–600 series airplanes, except those airplanes on which Airbus Modification 5438 was accomplished during production; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracks in the door edge frames of the bulk cargo compartment, which could result in reduced structural integrity of the airframe, accomplish the following:

Repetitive Inspections

(a) Perform an eddy current inspection to detect cracking in the inner and outer flanges on the door edge frames of the fuselage bulk cargo compartment, in accordance with Airbus Service Bulletins A300–53–0339, Revision 01, including Appendix 01, dated July 28, 1998 (for Model A300 series airplanes); A310–53–2106, including Appendix 01, dated October 2, 1997; or A310–53–2106, Revision 01, including Appendix 01, dated July 28, 1998 (for Model A310 series airplanes); A300–53–6114, including Appendix 01, dated October 2, 1997; or A300–53–6114, Revision 01, including Appendix 01, dated July 28, 1998 (for Model A300–600 series airplanes); as applicable; at the applicable time specified in paragraph (a)(1) or (a)(2) of this AD. Thereafter, repeat the inspection at intervals not to exceed 5 years.

(1) For airplanes with less than 15 years since date of manufacture as of the effective date of this AD: Inspect within 10 years since date of manufacture, or within 12 months after the effective date of this AD, whichever occurs later.

(2) For airplanes with 15 or more years since date of manufacture as of the effective date of this AD: Inspect within 6 months after the effective date of this AD.

Note 2: For Model A300 series airplanes, accomplishment of an eddy current inspection prior to the effective date of this AD in accordance with Airbus Service Bulletin A300–53–0339, dated October 2, 1997, is considered acceptable for compliance with the initial eddy current inspection required by paragraph (a) of this AD.

Corrective Actions

(b) If any crack is detected during any inspection required by paragraph (a) of this AD, prior to further flight, repair the door edge frame in accordance with Airbus Service Bulletins A300–53–0339, Revision 01, including Appendix 01, dated July 28, 1998 (for Model A300 series airplanes); 310–53–2106, including Appendix 01, dated October 2, 1997; or A310–53–2106, Revision 01, including Appendix 01, dated July 28, 1998, (for Model A310 series airplanes); A300–53–6114, including Appendix 01, dated October 2, 1997; or A300–53–6114, Revision 01, including Appendix 01, dated July 28, 1998 (for Model A300–600 series airplanes); as applicable. Complete replacement of a door edge frame with a new door frame in accordance with the service bulletin constitutes terminating action for the repetitive inspections required by this AD for that door frame only.

Report Requirements

(c) Submit a report of the inspection results (both positive and negative findings) to Airbus Industrie, Customer Services Directorate, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, at the applicable time specified in paragraph (e)(1) or (e)(2) of this AD. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(1) For airplanes on which any inspection is accomplished after the effective date of this AD: Submit the report within 30 days after performing any inspection required by paragraph (a) or (b) of this AD.

(2) For airplanes on which the inspection has been accomplished prior to the effective date of this AD: Submit the report within 10 days after the effective date of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus Service Bulletin A300–53–0339, Revision 01, including Appendix 01, dated July 28, 1998; Airbus Service Bulletin A310–53–2106, including Appendix 01, dated October 2, 1997; Airbus Service Bulletin A310–53–2106, Revision 01, including Appendix 01, dated July 28, 1998; Airbus Service Bulletin A300–53–6114, including Appendix 01, dated October 2, 1997; or Airbus Service Bulletin A300–53–6114, Revision 01, including Appendix 01, dated July 28, 1998; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in French airworthiness directive 98–123–245(B), dated March 11, 1998.

(g) This amendment becomes effective on April 24, 2000.

Issued in Renton, Washington, on March 8, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6159 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–34]

Revision of Class E Airspace; Bonham, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Bonham, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 700, incorporating the correction published at 65 FR 8046, is effective 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 6, 2000, (65 FR 700).

Subsequently, the FAA discovered an error in the legal description and published a direct final rule correction in the **Federal Register** on February 17, 2000 (65 FR 8046). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 20, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule incorporating the subsequent correction to the legal description will be effective on that date.

Issued in Fort Worth, TX, on March 3, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–6556 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–09]

Revision of Class E Airspace; Fort Stockton, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Fort Stockton, TX. The development of a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/DME) Standard Instrument Approach Procedure (SIAP), at Fort Stockton-Pecos County Airport, Fort Stockton, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Fort Stockton-Pecos County Airport, Fort Stockton, TX.

DATES: Effective 0901 UTC, August 10, 2000.

Comments must be received on or before May 4, 2000.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–09, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Fort Stockton, TX. The development of a VOR/DME SIAP, at Fort Stockton-Pecos County Airport, Fort Stockton, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Fort Stockton-Pecos County Airport, Fort Stockton, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided in the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to other address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic,

environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–ASW–09." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Fort Stockton, TX [Revised]

Fort Stockton-Pecos County Airport, TX
(Lat. 30°54′56″N., long. 102°54′58″W.)
Fort Stockton VORTAC
(Lat. 30°57′08″ N., long. 102°58′33″ W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of Fort Stockton-Pecos County Airport and within 4 miles north and 8 miles south of the 307° radial of the Fort Stockton VORTAC extending from the airport to 12 miles northwest of the airport and within 8 miles north and 4 miles south of the 127° radial of the Fort Stockton VORTAC extending from the airport to 12.3 miles southeast of the airport.

* * * * *

Issued in Fort Worth, TX, on March 3, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–6555 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–08]

Revision of Class E Airspace; Waco, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class E airspace at Waco, TX. The development of a VHF Omnidirectional Range/Distance Measuring Equipment (VOR/CME) Standard Instrument Approach Procedure (SIAP), at Marlin Airport, Marlin, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Marlin Airport, Marlin, TX.

DATES: Effective 0901 UTC, August 10, 2000. Comments must be received on or before May 4, 2000.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–08, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class E airspace at Waco, TX. The development of NDB SIAP, at Marlin Airport, Marlin, TX, has made this rule necessary. This action is intended to provide adequate controlled airspace extending upward from 700 feet or more above the surface for Instrument Flight Rules (IFR) operations to Marlin Airport, Marlin, TX.

Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR § 71.1. The Class E airspace designation listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to this address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–ASW—08." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implication under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(G), 40103, 40113, 40120; E.O. 1085; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points*, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Waco, TX [Revised]

Waco, Regional Airport, TX
(Lat. 31°36′41″ N., long. 97°13′50″ W.)
Waco VORTAC
(Lat. 31°39′44″ N., long. 97°16′09″ W.)
Waco, TSTC-Waco Airport, TX
(Lat. 31°38′16″ N., long. 97°04′27″ W.)
McGregor Muncipal Airport, TX
(Lat. 31°29′06″ N., long. 97°19′00″ W.)
Waco, Marlin Airport, TX
(Lat. 31°20′26″ N., long. 96°51′07″ W.)
Leroi NDB
(Lat. 31°44′27″ N., long. 97°04′41″ W.)

That airspace extending upward from 700 feet above the surface within a 11.5-mile radius of Waco Regional Airport and within 4 miles east and 8 miles west of the 014° radial of the Waco VORTAC extending from the 11.5-mile radius to 16 miles north of the VORTAC and within a 7.9-mile radius of TSTC-Waco Airport and within 2.3 miles each side of the 358° bearing from the Leroi NDB extending from the 7.9-mile radius to 13.1 miles north of the airport and within a 6.6-mile radius of McGregor Municipal Airport and within a 6.3-mile radius of Marlin Airport and within 2.2 miles each side of the 132° radial of the Waco VORTAC extending from the 6.3-mile radius to 14 miles northwest of the airport.

* * * * *

Issued in Fort Worth, TX, on March 3, 2000.

Robert N. Stevens,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–6554 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–54]

Amendment to Class E Airspace; Estherville, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Estherville, IA.

DATE: The direct final rule published at 65 FR 348 is effective on 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106, telephone (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal**

Register on January 5, 2000 (65 FR 348). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 20, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 8, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–6699 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 736, 738, 740, 742, 756, 762, 770, and 774

[Docket No. 000207028–0028–01]

RIN 0694–AC02

Editorial Clarifications and Revisions to the Export Administration Regulations

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to make certain editorial revisions and clarifications.

DATES: This rule is effective March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Kirsten Mortimer, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to make certain editorial revisions and clarifications. Specifically, this rule makes the following corrections and clarifications:

(1) In paragraph 736.2(b)(5)—General Prohibition Five, a typographical error is corrected by changing the word "of" to "or".

(2) In paragraph 736.2(b)(8)(i)—General Prohibition Eight (Unlading and shipping in transit), a clarification is made to the scope of this prohibition by adding the phrase "or unless such an export or reexport is eligible to such a country of transit without a license".

(3) In paragraph 738.3(a)(2)(ii), ECCNs 0A989, 1C355, and 1C995 are added to the list of unique entries, while ECCNs 0A986 and 1A005 are removed from the list of unique entries. These entries do not require you to consult the Country Chart to determine whether a license is required.

(4) In paragraph 740.7(d)(5)(iii), the reference to the Arms Control and Disarmament Agency (ACDA) is removed. This reflects the merging of the ACDA with the State Department effective April 1, 1999.

(5) In Supplement No. 1 to part 740, Country Group B, an error is corrected in the spelling of Antigua.

(6) Supplement No. 3 to part 740 is removed and reserved. This change conforms with the January 14, 2000 rule amending the EAR with respect to encryption items.

(7) In paragraph 742.7(a)(1), ECCN 0A987 is added to the list describing the ECCNs controlled under CC Column 1. This change conforms with the April 13, 1999 rule amending the EAR with respect to firearms exports.

(8) In paragraph 742.10(b)(1), a description of the denial policy for Sudan of technology for the production of Chemical Weapons Convention (CWC) Schedules 2 and 3 chemicals controlled under ECCN 1E355 is added. This change conforms with May 18, 1999 rule amending the EAR to implement the CWC.

(9)–(10) In paragraph 756.2(b)(1) (Appeals), a correction is made to the room number where appeals are filed.

(11) In paragraph 762.2(b) (Recordkeeping), additional record retention references are added to reflect new annual report and end-use certificate requirements under the CWC. This change conforms with the May 18, 1999 rule amending the EAR to implement the CWC.

(12) In paragraph 770.3(b) (Interpretations), references to section 740.8 are corrected to refer to the appropriate references to section 740.13.

(13) In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and Toxins, the reference to MT controls (Missile Technology) in the Reason for Control section is removed from Export Control Classification Number (ECCN) 1C216. This ECCN is only controlled for NP (Nuclear Nonproliferation) and AT (Anti-terrorism) reasons.

(14) In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and Toxins, corrections are made to the heading and License Requirements sections of ECCN 1E001. Specifically, ECCN 1A102 is removed from the ECCN heading. ECCN 1A005 is added to the ECCN heading and the NS (National Security) controls section. This change conforms with the Wassenaar Arrangement. In addition, ECCNs 1B225, 1C230, 1C231, 1C233, and 1C234 are removed from the NS controls section. These ECCNs are appropriately referenced in the NP controls section of ECCN 1E001.

(15) In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, ECCN 3A002 is amended by revising "3A202" in Related Controls and N.B. to read "3A292". This correction reflects the August 5, 1997 removal of ECCN 3A202 and creation of ECCN 3A292 on the Commerce Control List.

(16) In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, ECCN 6A002 is amended by adding the phrase "Equipment in Number" to the "Unit" paragraph in the List of Items Controlled section. This corrects an inadvertent omission from the March 25, 1996 rule simplifying the EAR.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121) and August 13, 1999 (64 FR 44101).

Rule Making Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to nor be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current valid OMB Control Number. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). These collections have been approved by the Office of Management and Budget under control numbers 0694–0088, 0694–0114, and 0694–0117. There are neither additions nor subtractions to these collections due to this rule.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Kirsten Mortimer, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, D.C. 20044.

List of Subjects

15 CFR Part 736, 738, 742, 770, and 774

Exports, Foreign trade.

15 CFR Part 740

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements.

15 CFR Part 756

Administrative practice and procedure, Exports, Foreign trade, Reporting and recordkeeping requirements, Penalties.

15 CFR Part 762

Administrative practice and procedure, Business and industry, Confidential business information, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 736, 738, 740, 742, 748, 756, 762, 770, and 774 of the Export Administration Regulations (15 CFR Parts 730–774) are amended as follows:

1. The authority citations for 15 CFR Parts 736, 748 and 770 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999);

2. The authority citation for 15 CFR Part 738 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c; 22 U.S.C. 3201 *et seq.*; 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999);

3. The authority citation for 15 CFR Part 740 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

4. The authority citation for 15 CFR Part 742 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 3201 *et seq.*; 42 U.S.C. 2139a; E.O. 12058, 43 FR 20947, 3 CFR, 1978 Comp., p. 179; E.O. 12851, 58 FR 33181, 3 CFR, 1993 Comp., p. 608; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 12938, 59 FR 59099, 3 CFR, 1994 Comp., p. 950; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of November 12, 1998, 63 FR 63589, 3 CFR, 1998 Comp., p. 305; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

5. The authority citation for 15 CFR parts 756 and 762 are revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

6. The authority citation for 15 CFR Part 774 continues to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; 10 U.S.C. 7420; 10 U.S.C. 7430(e); 18 U.S.C. 2510 *et seq.*; 22 U.S.C. 287c, 22 U.S.C. 3201 *et seq.*, 22 U.S.C. 6004; 30 U.S.C. 185(s), 185(u); 42 U.S.C. 2139a; 42 U.S.C. 6212; 43 U.S.C. 1354; 46 U.S.C. app. 466c; 50 U.S.C. app. 5; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; E.O. 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 736—[AMENDED]

7. Section 736.2 is amended:

a. By revising the phrase "end-user of end-use" in paragraph (b)(5) to read "end-user or end-use'; and

b. By revising paragraph (b)(8)(i) to read as follows:

§ 736.2 General prohibitions and determination of applicability.

* * * * *

(b) * * *

(8) * * *

(i) *Unlading and shipping in transit.* You may not export or reexport an item through or transit through a country listed in paragraph (b)(8)(ii) of this section unless a License Exception or license authorizes such an export or reexport directly to such a country of transit, or unless such an export or reexport is eligible to such a country of transit without a license.

* * * * *

PART 738—[AMENDED]

§ 738.3 [Amended]

8. Section 738.3 is amended by revising the phrase *"ECCNs 0A986, 0A988, 0B986, 1A005, 2A994, 2D994, and 2E994."* in paragraph (a)(2)(ii) to read *"ECCNs 0A988, 0A989, 0B986, 1C355, 1C995, 2A994, 2D994, and 2E994."*

PART 740—[AMENDED]

§ 740.7 [Amended]

9. Section 740.7 is amended by revising the phrase "Departments of Defense, Energy, State, and the Arms Control and Disarmament Agency (ACDA)" in paragraph (d)(5)(iii) to read "Departments of Defense, Energy, and State".

10. Supplement No. 1 to part 740, Country Group B, is amended by revising "Antiqua" to read "Antigua".

11. Supplement No. 3 to part 740 is removed and reserved.

PART 742—[AMENDED]

§ 742.7 [Amended]

12. Section 742.7 is amended by revising the phrase "0A985, 0E984" in paragraph (a)(1) to read "0A985, 0A987, 0E984".

§ 742.10 [Amended]

13. Section 742.10 is amended by adding paragraph (b)(1)(viii) to read as follows:

742.10 Anti-terrorism: Sudan.

* * * * *

(b) * * *

(1) * * *

(viii) Technology for the production of Chemical Weapons Convention

(CWC) Schedule 2 and 3 chemicals controlled under ECCN 1E355.

* * * * *

PART 756—[AMENDED]

§ 756.2 [Amended]

14.–15. Section 756.2 is amended by revising "Room H–3886C" in paragraph (b)(1) to read "Room 3898".

PART 762—[AMENDED]

§ 762.2 [Amended]

16. Section 762.2 is amended by revising paragraphs (b)(37) and (b)(38) and adding paragraphs (b)(39) and (b)(40) to read as follows:

§ 762.2 Records to be retained.

* * * * *

(b) * * *

(37) § 743.1, Wassenaar reports;
(38) § 748.14, Exports of firearms;
(39) § 745.1, Annual reports; and
(40) § 745.2, End-use certificates.

PART 770—[AMENDED]

§ 770.3 [Amended]

17. § 770.3 is amended by revising the phrase "operating technology and software described in § 740.8(a) of the EAR; sales technology described in § 740.8(b) of the EAR; and software updates described in § 740.8(c)" in paragraph (b) to read "operating technology and software described in § 740.13(a) of the EAR; sales technology described in § 740.13(b) of the EAR; and software updates described in § 740.13(c)".

PART 774—[AMENDED]

Supplement No. 1 to Part 774—The Commerce Control List

18. In Supplement No. 1 to part 774 (the Commerce Control List), Category 1—Materials, Chemicals, "Microorganisms," and Toxins, is amended:

a. By revising the License Requirements section for ECCN 1C216; and

b. By revising the entry heading and License Requirements section for ECCN 1E001, as follows:

1C216 Maraging Steel, Other Than That Controlled by 1C116, Capable of an Ultimate Tensile Strength of 2,050 MPa or More, at 293 K (20° C), Except Forms in Which no Linear Dimension Exceeds 75 mm

License Requirements

Reason for Control: NP, AT.

Control(s)	Country chart
NP applies to entire entry.	NP Column 1.
AT applies to entire entry.	AT Column 1.

* * * * *

1E001 "Technology" According to the General Technology Note for the "Development" or "Production" of Items Controlled by 1A001.b, 1A001.c, 1A002, 1A003, 1A005, 1B or 1C (Except 1C355, 1C980 to 1C984, 1C988, 1C990, 1C991, 1C992, and 1C995)

License Requirements

Reason for Control: NS, MT, NP, CB, AT.

Control(s)	Country chart
NS applies to "technology" for items controlled by 1A001.b and .c, 1A002, 1A003, 1A005, 1B001 to 1B003, 1B018, 1C001 to 1C010, or 1C018.	NS Column 1.
MT applies to "technology" for items controlled by 1B001, 1B101, 1B115, 1B116, 1B117, 1C001, 1C007, 1C101, 1C107, 1C011, 1C111, 1C116, 1C117, or 1C118 for MT reasons.	MT Column 1.
NP applies to "technology" for items controlled by 1A002, 1B001, 1B101, 1B201, 1B225 to 1B232, 1C001, 1C010, 1C202, 1C210, 1C216, 1C225 to 1C234, 1C236 to 1C238 for NP reasons.	NP Column 1.
CB applies to "technology" for items controlled by 1C351, 1C352, 1C353, or 1C354	CB Column 1.
CB applies to "technology" for materials controlled by 1C350	CB Column 2.
AT applies to entire entry	AT Column 1.

License Requirement Notes: See § 743.1 of the EAR for reporting requirements for exports under License Exceptions.

* * * * *

19. In Supplement No. 1 to part 774 (the Commerce Control List), Category 3—Electronics, Export Control Classification Number (ECCN) 3A002 is amended by revising the List of Items Controlled section, to read as follows:

3A002 General Purpose Electronic Equipment, as Follows (See List of Items Controlled)

* * * * *

List of Items Controlled

Unit: Number.

Related Controls: See also 3A292 and 3A992.

Related Definitions: N/A.

Items:

a. Recording equipment, as follows, and specially designed test tape therefor:

a.1. Analog instrumentation magnetic tape recorders, including those permitting the recording of digital signals (e.g., using a high density digital recording (HDDR) module), having any of the following:

a.1.a. A bandwidth exceeding 4 MHz per electronic channel or track;

a.1.b. A bandwidth exceeding 2 MHz per electronic channel or track and having more than 42 tracks; *or*

a.1.c. A time displacement (base) error, measured in accordance with applicable IRIG or EIA documents, of less than ± 0.1 μs;

Note: Analog magnetic tape recorders specially designed for civilian video purposes are not considered to be instrumentation tape recorders.

a.2. Digital video magnetic tape recorders having a maximum digital interface transfer rate exceeding 360 Mbit/s;

Note: 3A002.a.2 does not control digital video magnetic tape recorders specially designed for television recording using a signal format, which may include a compressed signal format, standardized or recommended by the ITU, the IEC, the SMPTE, the EBU or the IEEE for civil television applications.

a.3. Digital instrumentation magnetic tape data recorders employing helical scan techniques or fixed head techniques, having any of the following:

a.3.a. A maximum digital interface transfer rate exceeding 175 Mbit/s; *or*

a.3.b. Being "space qualified";

Note: 3A002.a.3 does not control analog magnetic tape recorders equipped with HDDR conversion electronics and configured to record only digital data.

a.4. Equipment, having a maximum digital interface transfer rate exceeding 175 Mbit/s, designed to convert digital

video magnetic tape recorders for use as digital instrumentation data recorders;

a.5. Waveform digitizers and transient recorders having all of the following:

N.B.: See also 3A292.

a.5.a. Digitizing rates equal to or more than 200 million samples per second and a resolution of 10 bits or more; *and*

a.5.b. A continuous throughput of 2 Gbit/s or more;

Technical Note: For those instruments with a parallel bus architecture, the continuous throughput rate is the highest word rate multiplied by the number of bits in a word. Continuous throughput is the fastest data rate the instrument can output to mass storage without the loss of any information while sustaining the sampling rate and analog-to-digital conversion.

b. "Frequency synthesizer", "assemblies" having a "frequency switching time" from one selected frequency to another of less than 1 ms;

c. "Signal analyzers", as follows:

c.1. "Signal analyzers" capable of analyzing frequencies exceeding 31 GHz;

c.2. "Dynamic signal analyzers" having a "real-time bandwidth" exceeding 25.6 kHz;

Note: 3A002.c.2 does not control those "dynamic signal analyzers" using only constant percentage bandwidth filters (also known as octave or fractional octave filters).

Technical Note: Constant percentage bandwidth filters are also known as octave or fractional octave filters.

d. Frequency synthesized signal generators producing output frequencies, the accuracy and short term and long term stability of which are controlled, derived from or disciplined by the internal master frequency, and having any of the following:

d.1. A maximum synthesized frequency exceeding 31 GHz;

d.2. A "frequency switching time" from one selected frequency to another of less than 1 ms; *or*

d.3. A single sideband (SSB) phase noise better than $-(126 + 20 \log_{10}F - 20 \log_{10}f)$ in dBc/Hz, where F is the off-set from the operating frequency in Hz and f is the operating frequency in MHz;

Note: 3A002.d does not control equipment in which the output frequency is either produced by the addition or subtraction of two or more crystal oscillator frequencies, or by an addition or subtraction followed by a multiplication of the result.

e. Network analyzers with a maximum operating frequency exceeding 40 GHz;

f. Microwave test receivers having all of the following:

f.1. A maximum operating frequency exceeding 40 GHz; *and*

f.2. Being capable of measuring amplitude and phase simultaneously;

g. Atomic frequency standards having any of the following:

g.1. Long-term stability (aging) less (better) than 1×10^{-11}/month; *or*

g.2. Being "space qualified".

Note: 3A002.g.1 does not control non-"space qualified" rubidium standards.

20. In Supplement No. 1 to part 774 (the Commerce Control List), Category 6—Sensors and Lasers, Export Control Classification Number (ECCN) 6A002 is amended by revising the List of Items Controlled section, to read as follows:

6A002 Optical Sensors

* * * * *

List of Items Controlled

Unit: Equipment in number; parts and accessories in $ value.

Related Controls: See also 6A102, 6A202, and 6A992.

Related Definitions: 1.) "Image intensifiers" defined in 6A002.a.2 and "focal plane arrays" defined in 6A002.a.3 specially designed, modified, or configured for military use and not part of civil equipment are subject to the export licensing authority of U.S. Department of State, Office of Defense Trade Controls (22 CFR part 121). 2.) "Space qualified" "monospectral imaging sensors", and "multispectral imaging sensors" defined in 6A002.b, and "space-qualified" "focal plane arrays" defined in 6A002.e, specially designed or modified for items on the U.S. Munitions List are subject to the export licensing authority of the Department of State, Office of Defense Trade Controls (22 CFR part 121).

Items:

a. Optical detectors, as follows:

Note: 6A002.a does not control germanium or silicon photodevices.

a.1. "Space-qualified" solid-state detectors, as follows:

a.1.a. "Space-qualified" solid-state detectors, having all of the following:

a.1.a.1. A peak response in the wavelength range exceeding 10 nm but not exceeding 300 nm; *and*

a.1.a.2. A response of less than 0.1% relative to the peak response at a wavelength exceeding 400 nm;

a.1.b. "Space-qualified" solid-state detectors, having all of the following:

a.1.b.1. A peak response in the wavelength range exceeding 900 nm but not exceeding 1,200 nm; *and*

a.1.b.2. A response "time constant" of 95 ns or less;

a.1.c. "Space-qualified" solid-state detectors having a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm;

a.2. Image intensifier tubes and specially designed components therefor, as follows:

a.2.a. Image intensifier tubes having all of the following:

a.2.a.1. A peak response in the wavelength range exceeding 400 nm but not exceeding 1,050 nm;

a.2.a.2. A microchannel plate for electron image amplification with a hole pitch (center-to-center spacing) of 15 μm or less; *and*

a.2.a.3. Photocathodes, as follows:

a.2.a.3.a. S–20, S–25 or multialkali photocathodes with a luminous sensitivity exceeding 240 μA/lm;

a.2.a.3.b. GaAs or GaInAs photocathodes; *or*

a.2.a.3.c. Other III-V compound semiconductor photocathodes;

Note: 6A002.a.2.a.3.c does not control compound semiconductor photocathodes with a maximum radiant sensitivity of 10 mA/W or less.

a.2.b. Specially designed components, as follows:

a.2.b.1. Microchannel plates having a hole pitch (center-to-center spacing) of 15 μm or less;

a.2.b.2. GaAs or GaInAs photocathodes;

a.2.b.3. Other III–V compound semiconductor photocathodes;

Note: 6A002.a.2.b.3 does not control compound semiconductor photocathodes with a maximum radiant sensitivity of 10 mA/W or less.

a.3. Non-"space-qualified" "focal plane arrays", as follows:

Technical Note: Linear or two-dimensional multi-element detector arrays are referred to as "focal plane arrays".

Notes: 1. 6A002.a.3 includes photoconductive arrays and photovoltaic arrays.

2. 6A002.a.3 does not control silicon "focal plane arrays", multi-element (not to exceed 16 elements) encapsulated photoconductive cells or pyroelectric detectors using any of the following:

a. Lead sulphide;
b. Triglycine sulphate and variants;
c. Lead-lanthanum-zirconium titanate and variants;
d. Lithium tantalate;
e. Polyvinylidene fluoride and variants;
f. Strontium barium niobate and variants; *or*
g. Lead selenide.

a.3.a. Non-"space-qualified" "focal plane arrays", having all of the following:

a.3.a.1. Individual elements with a peak response within the wavelength range exceeding 900 nm but not exceeding 1,050 nm; *and*

a.3.a.2. A response "time constant" of less than 0.5 ns;

a.3.b. Non-"space-qualified" "focal plane arrays", having all of the following:

a.3.b.1. Individual elements with a peak response in the wavelength range

exceeding 1,050 nm but not exceeding 1,200 nm; *and*

a.3.b.2. A response "time constant" of 95 ns or less;

a.3.c. Non-"space-qualified" "focal plane arrays", having individual elements with a peak response in the wavelength range exceeding 1,200 nm but not exceeding 30,000 nm.

b. "Monospectral imaging sensors" and "multispectral imaging sensors" designed for remote sensing applications, having any of the following:

b.1. An Instantaneous-Field-Of-View (IFOV) of less than 200 μr (microradians); *or*

b.2. Being specified for operation in the wavelength range exceeding 400 nm but not exceeding 30,000 nm and having all the following;

b.2.a. Providing output imaging data in digital format; *and*

b.2.b. Being any of the following:

b.2.b.1. "Space-qualified"; *or*

b.2.b.2. Designed for airborne operation, using other than silicon detectors, and having an IFOV of less than 2.5 mr (milliradians).

c. Direct view imaging equipment operating in the visible or infrared spectrum, incorporating any of the following:

c.1. Image intensifier tubes having the characteristics listed in 6A002.a.2.a; *or*

c.2. "Focal plane arrays" having the characteristics listed in 6A002.a.3.

Technical Note: "Direct view" refers to imaging equipment, operating in the visible or infrared spectrum, that presents a visual image to a human observer without converting the image into an electronic signal for television display, and that cannot record or store the image photographically, electronically or by any other means.

Note: 6A002.c does not control the following equipment incorporating other than GaAs or GaInAs photocathodes:

a. Industrial or civilian intrusion alarm, traffic or industrial movement control or counting systems;

b. Medical equipment;

c. Industrial equipment used for inspection, sorting or analysis of the properties of materials;

d. Flame detectors for industrial furnaces;

e. Equipment specially designed for laboratory use.

d. Special support components for optical sensors, as follows:

d.1. "Space-qualified" cryocoolers;

d.2. Non-"space-qualified" cryocoolers, having a cooling source temperature below 218 K (−55° C), as follows:

d.2.a. Closed cycle type with a specified Mean-Time-To-Failure (MTTF), or Mean-Time-Between-Failures (MTBF), exceeding 2,500 hours;

d.2.b. Joule-Thomson (JT) self-regulating minicoolers having bore (outside) diameters of less than 8 mm;

d.3. Optical sensing fibers specially fabricated either compositionally or structurally, or modified by coating, to be acoustically, thermally, inertially, electromagnetically or nuclear radiation sensitive.

e. "Space qualified" "focal plane arrays" having more than 2,048 elements per array and having a peak response in the wavelength range exceeding 300 nm but not exceeding 900 nm.

Dated: March 9, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–6678 Filed 3–17–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 756 and 766

[Docket No. 000306060–0060–01

RIN 0694–AC16

Revision to the Export Administration Regulations; Administrative Enforcement Proceedings

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by amending its regulations on administrative enforcement proceedings. Specifically, this rule amends the EAR by providing that, notwithstanding certain circumstances, when determining whether to deny the export privileges of a person convicted of violating certain laws, BXA will give prior notice of this administrative action and an opportunity for that person to make written comments to BXA stating why a denial is not appropriate. This rule further clarifies the scope of the export privileges which may be denied. In addition, it clarifies in part 756 of the EAR that these administrative procedures are subject to the appeals procedures described in that part.

DATES: This rule is effective March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Kirsten Mortimer, Office of Exporter Services, Bureau of Export Administration, Telephone: (202) 482–2440.

SUPPLEMENTARY INFORMATION: In 1985, the Export Administration Act (EAA) was amended to add subsection 11(h), which provided that, at the discretion of the Secretary of Commerce, no person who has been convicted of a violation of certain designated statutes shall be eligible to apply for or use any export license for a period of up to 10 years from the date of the conviction. The designated statutes include the EAA or any regulation, license, authorization or order issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act; section 4(b) of the Internal Security Act of 1950; 18 U.S.C. sections 793, 794 or 798, and section 38 of the Arms Export Control Act. The Secretary may also revoke any export license under this Act in which such person has an interest at the time of the conviction. BXA uses this denial authority to protect U.S. national security and foreign policy interests.

Section 766.25(a) provides that "the Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny permission to apply for or use any license, including any License Exception, to any person who has been convicted of a violation of the" aforementioned designated statutes. This rule amends section 766.25(b) of the EAR by providing that, unless exceptional circumstances exist, BXA will notify a person convicted of one of the designated statutes that BXA is going to issue an order denying that person's export privileges and giving that person an opportunity to make written submission to BXA regarding BXA's proposed denial. This rule further clarifies that the export privileges that may be denied in any such order, include, but are not limited, to applying for, obtaining, or using any license, License Exception, or export control document; or participating in or benefiting in any way from any export or export-related transaction subject to the EAR.

Section 756.1(a) states, in pertinent part, that actions taken under part 766 of the EAR are not subject to the appeals procedures described in part 756. This rule amends section 756.1(a)(2) to provide that an appeal from an action taken under section 766.25 shall be subject to the appeals procedures in part 756.

Although the Export Administration Act (EAA) expired on August 20, 1994, the President invoked the International Emergency Economic Powers Act and continued in effect the EAR, and to the extent permitted by law, the provisions of the EAA, as amended, in Executive

Order 12924 of August 19, 1994, as extended by the President's notices of August 15, 1995 (60 FR 42767), August 14, 1996 (61 FR 42527), August 13, 1997 (62 FR 43629), August 13, 1998 (63 FR 44121) and August 13, 1999 (64 FR 44101).

Rule Making Requirements

1. This final rule has been determined to be not significant for purposes of E.O. 12866.

2. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a current valid OMB Control Number. This regulation does not involve any paperwork collections.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 13132.

4. The provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in effective date, are inapplicable because this regulation involves a military and foreign affairs function of the United States (5 U.S.C. 553(a)(1)). Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this interim rule. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule under the Administrative Procedure Act or by any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are not applicable. Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Kirsten Mortimer, Office of Exporter Services, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects

15 CFR Part 756

Administrative practice and procedures, Exports, Foreign trade, Penalties.

15 CFR Part 766

Administrative practice and procedures, Business and industry, Confidential business information, Exports, Foreign trade, Reporting and recordkeeping requirements.

Accordingly, parts 756 and 766 of the Export Administration Regulations (15 CFR parts 730–774) are amended as follows:

1. The authority citation for parts 756 and 766 are revised to read as follows:

Authority: 50 U.S.C. app. 2401 *et seq.*; 50 U.S.C. 1701 *et seq.*; E.O. 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; Notice of August 10, 1999, 64 FR 44101 (August 13, 1999).

PART 756—[AMENDED]

2. Section 756.1 is amended by revising paragraph (a)(2) to read as follows:

§ 756.1 Introduction.

(a) * * *

(2) Denial or probation orders, civil penalties, sanctions, or other actions under parts 764 and 766 of the EAR, except that, an appeal from an action taken under § 766.25 shall be subject to the appeals procedures described in this part 756.

* * * * *

PART 766—[AMENDED]

3. Section 766.25 is amended by revising the section heading and paragraphs (a), (b), (d), (e) and (f) to read as follows:

§ 766.25 Administrative action denying export privileges.

* * * * *

(a) *General.* The Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, may deny the export privileges of any person who has been convicted of a violation of the EAA, the EAR, or any order, license, or authorization issued thereunder; any regulation, license or order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706); 18 U.S.C. 793, 794 or 798; section 4(b) of the Internal Security Act of 1950 (50 U.S.C. 783(b)), or section 38 of the Arms Export Control Act (22 U.S.C. 2778).

(b) *Procedure.* Upon notification that a person has been convicted of a violation of one or more of the provisions specified in paragraph (a) of this section, the Director of the Office of Exporter Services, in consultation with the Director of the Office of Export Enforcement, will determine whether to deny such person export privileges, including but not limited to applying for, obtaining, or using any license, License Exception, or export control document; or participating in or benefiting in any way from any export or export-related transaction subject to the EAR. Before taking action to deny a person export privileges under this section, the Director of the Office of Exporter Services will provide the person written notice of the proposed action and an opportunity to comment through a written submission, unless exceptional circumstances exist. In reviewing the response, the Director of the Office of Exporter Services will consider any relevant or mitigating evidence why these privileges should not be denied. Upon final determination, the Director of the Office of Exporter Services will notify by letter each person denied export privileges under this section.

* * * * *

(d) *Duration.* Any denial of export privileges under this section shall not exceed 10 years from the date of the conviction of the person who is subject to the denial.

(e) *Effect.* Any person denied export privileges under this section will be considered a "person denied export privileges" for purposes of § 736.2(b)(4) (General Prohibition 4—Engage in actions prohibited by a denial order) and § 764.2(k) of the EAR.

(f) *Publication.* The name and address(es) of any person denied export privileges under this section will be published as described in Supplement No. 2 to part 764 of the EAR, noting that such action was taken pursuant to this section and section 11(h) of the EAA.

* * * * *

Dated: March 9, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

[FR Doc. 00–6679 Filed 3–17–00; 8:45 am]

BILLING CODE 3510–33–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 26 and 161

[USCG–1999–6141]

RIN 2115–AF92

Puget Sound Vessel Traffic Service

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: On December 14, 1999, the Coast Guard published a direct final rule (64 FR 69633; USCG–1999–6141). this direct final rule notified the public of the Coast Guard's intent to amend the designated monitoring areas of the Puget

Sound Vessel Traffic Service (VTS). This amendment enhances safe navigation by moving a frequency-monitoring boundary so that mariners are no longer required to change designated frequencies and report to the VTS while attempting to negotiate a bend in the navigational channel. We have not received an adverse comment, or notice of intent to submit an adverse comment, objecting to this rule. Therefore, this rule will go into effect as scheduled.

DATES: The effective date of the direct final rule is confirmed as March 15, 2000.

FOR FURTHER INFORMATION CONTACT: For questions on this rule, call Mr. Jorge Arroyo, Project Manager, Office of Vessel Traffic Management (G–MWV), Coast Guard, telephone 202–267–6277 or E-mail jarroyo@comdt.uscg.mil.

Dated: March 3, 2000.

R.C. North,

Assistant Commandant for Marine Sofety and Environmental Protection.

[FR Doc. 00–6703 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Juan 00–013]

RIN 2115–AA97

Safety Zone Regulations; San Juan Harbor, San Juan, Puerto Rico

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary fixed safety zone in a 500 yard radius surrounding the cement carrier M/V SERGO ZAKARIADZE which is grounded at the entrance of San Juan Harbor in Puerto Rico. The zone will be placed into effect and terminated at different times by a broadcast notice to mariners during salvage operations to protect vessels in the vicinity. Entry into this zone is prohibited, unless authorized by the Captain of the Port.

DATES: The rule becomes effective at 7 a.m. on March 1, 2000, and terminates at 7 a.m. on March 22, 2000

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Lefevers at Coast Guard Marine Safety Office San Juan, Puerto Rico, tel: (787) 706–2444.

SUPPLEMENTARY INFORMATION:

Background and Purpose

These regulations are needed to provide for the safety of life on navigable waters from hazards associated with the salvage of the vessel SERGO ZAKARIADZE which is grounded at the entrance to San Juan Harbor.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this rule and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to public safety since immediate action is needed to minimize potential danger to the public, as the recent offloading of cement has increased the danger to vessels in the area.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040 February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The safety zone will only be placed into effect for short periods when the salvage operations temporarily block the entrance to San Juan Harbor.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.), the Coast Guard must consider whether this rule will have a significant economic effect upon a substantial number of small entities. "Small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a substantial economic impact on a substantial number of small entities as the regulations will only be in effect for a short period during salvage operations in the San Juan Channel.

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environmental

The Coastal Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Subpart C of Part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Temporary 165.T07–013 is added to read as follows:

165.T07–013 Safety Zone; San Juan, Puerto Rico.

(a) *Regulated Area.* A temporary fixed safety zone is established within a 500 yard radius surrounding the M/V SERGO ZAKARIADZE which is grounded at the entrance to San Juan Harbor in position 18°28′3″N, 066°07′5″W.

(b) *Regulations.* In accordance with the general regulations in 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port.

(c) *Dates.* These regulations become effective and terminate upon a broadcast notice to mariners issued by the Captain of the Port San Juan during the period from 7 a.m. on March 1, 2000, to 7 a.m. on March 22, 2000.

Dated: February 29, 2000.

J. Servidio,

Commander, U.S. Coast Guard, Captain of the Port, San Juan, Puerto Rico.

[FR Doc. 00–6684 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No. 000301056–0056–01]

RIN 0651–AB13

Changes to Application Examination and Provisional Application Practice

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Interim rule.

SUMMARY: The United States Patent and Trademark Office (Office) is revising the rules of practice in patent cases to implement certain provisions of the "American Inventors Protection Act of 1999." These provisions of the "American Inventors Protection Act of 1999" provide for continued examination of an application for a fee, extend the pendency of a provisional application if the date that is twelve months after the filing date of the provisional application falls on a Saturday, Sunday, or a Federal holiday within the District of Columbia, eliminate the copendency requirement for a nonprovisional application to claim the benefit of a provisional application, provide for the conversion of a provisional application to a nonprovisional application, and to provide a prior art exclusion for certain commonly assigned patents.

DATES: Effective Date: May 29, 2000.

COMMENTS: To be ensured of consideration, written comments must be received on or before May 19, 2000. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: rce.comments@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Special Program Law Office, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, located at Room 3-C23 of Crystal Plaza 4, 2201 South Clark Place, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: http://www.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Robert W. Bahr, Karin L. Tyson, or Robert A. Clarke by telephone at (703) 308–6906, or by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, DC 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr.

SUPPLEMENTARY INFORMATION: The "American Inventors Protection Act of 1999" (Title IV of the "Intellectual Property and Communications Omnibus Reform Act of 1999" (S. 1948) as introduced in the 106th Congress on November 17, 1999) was incorporated and enacted into law on November 29, 1999, by § 1000(a)(9), Division B, of Public Law 106–113, 113 Stat. 1501 (1999). The "American Inventors Protection Act of 1999" contains a number of changes to title 35, United States Code. This interim rule changes the rules of practice to implement the provisions of §§ 4403, 4801, and 4807 of the "American Inventors Protection Act of 1999."

Section 4403 of the "American Inventors Protection Act of 1999" is effective on the date six months after the date of enactment of the "American Inventors Protection Act of 1999" (May 29, 2000), and applies to applications (other than for a design patent) filed on or after June 8, 1995. Section 4801 of the "American Inventors Protection Act of 1999" is effective on the date of enactment of the "American Inventors Protection Act of 1999" (November 29, 1999) and applies to all provisional applications (with limited exception) filed on or after June 8, 1995. Section 4807 of the "American Inventors Protection Act of 1999" is effective on the date of enactment of the "American Inventors Protection Act of 1999" (November 29, 1999) and applies to all applications filed on or after November 29, 1999.

Section 4403 (Continued Examination of Patent Applications): Section 4403 of the "American Inventors Protection Act of 1999" amends 35 U.S.C. 132 to state that the Office "shall prescribe regulations to provide for the continued examination of applications for patent at the request of the applicant," and that the Office "may establish appropriate fees for such continued examinations and shall provide a 50 percent reduction in such fees for small entities that qualify for reduced fees under [35 U.S.C. 41(h)(1)]." Currently, an applicant must file a continuing application (a continuing application under § 1.53(b) or a continued prosecution application under § 1.53(d)) to obtain continued examination of an application for a fee (the application filing fee). Section 4403 of the "American Inventors Protection Act of 1999" will provide statutory authority for the continued examination of an application for a fee (to which the small entity reduction will be applicable) without requiring the applicant to file a continuing application.

Section 4801 (Provisional Applications): Section 4801(a) of the "American Inventors Protection Act of 1999" amends 35 U.S.C. 111(b)(5) to provide that "[n]otwithstanding the absence of a claim, upon timely request and as prescribed by the Director, a provisional application may be treated as an application filed under [35 U.S.C. 111(a)]" but that if "no such request is made, the provisional application shall be regarded as abandoned 12 months after the filing date of such application and shall not be subject to revival

thereafter." Section 1.53(c), which currently provides for the conversion of a nonprovisional application (35 U.S.C. 111(a) and § 1.53(b)) to a provisional application (35 U.S.C. 111(b) and § 1.53(c)), is thus being amended to also provide for the conversion of a provisional application (35 U.S.C. 111(b) and § 1.53(c)) to a nonprovisional application (35 U.S.C. 111(a) and § 1.53(b)).

Section 4801 of the "American Inventors Protection Act of 1999" contains no provision for according the resulting nonprovisional application a filing date other than the original filing date of the provisional application. Thus, under 35 U.S.C. 154(b), the term of a nonprovisional application resulting from the conversion of a provisional application pursuant to 35 U.S.C. 111(b)(5) will be measured from the original filing date of the provisional application (which is the filing date accorded the nonprovisional application resulting from conversion under § 4801 of the "American Inventors Protection Act of 1999"). Applicants are strongly cautioned to consider the patent term implications of converting a provisional application into a nonprovisional application pursuant to 35 U.S.C. 111(b)(5), rather than simply filing a nonprovisional application within twelve months of the filing date of the provisional application and claiming the benefit of that provisional application under 35 U.S.C. 119(e).

Section 4801(b) of the "American Inventors Protection Act of 1999" also amends 35 U.S.C. 119(e) to provide that "[i]f the day that is 12 months after the filing date of a provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia, the period of pendency of the provisional application shall be extended to the next succeeding secular or business day."

Section 4801(c) of the "American Inventors Protection Act of 1999" also amends 35 U.S.C. 119(e) to eliminate the requirement that a provisional application be pending on the filing date of the nonprovisional application for the nonprovisional application to claim the benefit of the provisional application.

Section 4807 (Prior Art Exclusion): 35 U.S.C. 103 was amended in 1984 to exclude subject matter developed by another person which qualifies as prior art only under 35 U.S.C. 102(f) or (g) as prior art under 35 U.S.C. 103 against a claimed invention, provided that the subject matter and the claimed invention were commonly owned by the same person or organization or subject to an obligation of assignment to the same person or organization at the time the claimed invention was made. *See* Public Law 98–622, § 103, 98 Stat. 3384 (1984). Section 4807 of the "American Inventors Protection Act of 1999" amends 35 U.S.C. 103(c) to exclude subject matter developed by another person which qualifies as prior art only under one or more of 35 U.S.C. 102(e), (f), or (g) as prior art under 35 U.S.C. 103 against a claimed invention, again provided that the subject matter and the claimed invention were commonly owned by the same person or organization or subject to an obligation of assignment to the same person or organization at the time the claimed invention was made. The Office is in the process of developing guidelines concerning the implementation of this change to 35 U.S.C. 103(c).

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Part 1, is amended as follows:

Section 1.7 is amended by designating the current text as paragraph (a) and adding a new paragraph (b) to provide that if the day that is twelve months after the filing date of a provisional application under 35 U.S.C. 111(b) and § 1.53(c) falls on Saturday, Sunday, or a Federal holiday within the District of Columbia, the period of pendency shall be extended to the next succeeding secular or business day which is not a Saturday, Sunday, or a Federal holiday.

Section 1.17(e) sets forth the fee to request continued examination pursuant to new § 1.114, which is set at an amount equal to the basic filing fee for a utility application. Therefore, the fee for considering a submission pursuant to § 1.114 is $690.00 ($345.00 for a small entity).

Section 1.17(i) is amended to include a reference to the fee to convert a provisional application filed under § 1.53(c) to a nonprovisional application under § 1.53(b), and to eliminate the reference to § 1.312.

Section 1.53 is amended by redesignating paragraph (c)(3) as paragraph (c)(4) and adding a new paragraph (c)(3) to provide for the conversion of a provisional application to a nonprovisional application. Section 1.53(c)(3) provides that a request to convert a provisional application filed under § 1.53(c) to a nonprovisional application under § 1.53(b) must be accompanied by the fee set forth in § 1.17(i) and an amendment including at least one claim as prescribed by the second paragraph of 35 U.S.C. 112, unless the provisional application otherwise contains at least one claim. Section 1.53(c)(3) also provides that such a request must be filed prior to the earliest of: (1) abandonment of the provisional application; or (2) expiration of twelve months after the filing date of the provisional application. Section 1.53(c)(3) also provides that the conversion of a provisional application to a nonprovisional application will not result in either the refund of any fee properly paid in the provisional application or the application of any such fee to the filing fee, or any other fee, for the nonprovisional application.

The conversion of a provisional application to a nonprovisional application will not result in any savings in filing fees over the filing of a nonprovisional application claiming the benefit under 35 U.S.C. 119(e) and § 1.78 of the earlier provisional application. Thus, an applicant may simply file a nonprovisional application claiming the benefit under 35 U.S.C. 119(e) and § 1.78 of the earlier provisional application and avoid the fee set forth in § 1.17(i) required to convert a provisional application to a nonprovisional application (as well as the adverse patent term effects discussed above).

Section 1.53(d)(1)(i) is amended to provide that continued prosecution application (CPA) practice under § 1.53(d) does not apply to applications (other than design) if the prior application has a filing date on or after May 29, 2000. Thus, an application (except for a design application) must have an actual filing date before May 29, 2000, for the applicant to be able to file a CPA of that application. While the Office uses the filing date (and application number) of the prior application of a CPA for identification purposes, the filing date of a CPA under § 1.53(d) is the date the request for a CPA is filed. *See* § 1.53(d)(2). Thus, if a CPA of an application (other than for a design patent) is filed on or after May 29, 2000, § 1.53(d)(1)(i) does not permit the filing of a further CPA, regardless of the filing date of the prior application as to the first CPA (*i.e.*, the filing date used for identification purposes for the CPA).

In the event that an applicant files a request for a CPA of a utility or plant application that was filed on or after May 29, 2000 (to which CPA practice no longer applies), the Office will automatically treat the improper CPA as a request for continued examination of the prior application (identified in the request for CPA) under new § 1.114. If an applicant files a request for a CPA of an application to which CPA practice no longer applies and does not want the request for a CPA to be treated as a request for continued examination

under § 1.114 (*e.g.*, the CPA is a divisional CPA), the applicant may file a petition under § 1.53(e) requesting that the improper CPA be converted to an application under § 1.53(b). The requirements for such a petition under § 1.53(e) are identical to those set forth in section 201.06(b) of the Manual of Patent Examining Procedure (7th ed.1998) (MPEP) for converting an improper file wrapper continuing (FWC) application under former § 1.62 to an application under § 1.53(b). The Office will not grant such a petition unless it is before the appropriate deciding official before an Office action has been mailed in response to the request for continued examination under § 1.114 (as the improper CPA is being treated). If an Office action has been mailed in response to the request for continued examination under § 1.114, the applicant should simply file an application under § 1.53(b) within the period for reply to such Office action.

Section 1.53(d)(1)(ii)(A) is amended to refer to "§ 1.313(c)" rather than "§ 1.313(b)(5)" for consistency with the change to § 1.313.

Section 1.78 is amended to eliminate the requirement that a nonprovisional application be "copending" with a provisional application for the nonprovisional application to claim the benefit under 35 U.S.C. 119(e) of a provisional application. Section 1.78 is also amended to require that, for a nonprovisional application to claim the benefit of a provisional application, the provisional application must be entitled to a filing date as set forth in § 1.53(c), and have paid therein the basic filing fee set forth in § 1.16(k) within the time period set forth in § 1.53(g), and have any required English-language translation filed therein within the time period set forth in § 1.52(d).

Section 1.97(b) is amended to indicate that an information disclosure statement will also be considered if it is filed before the mailing of a first Office action after the filing of a request for continued examination under § 1.114.

Section 1.104(c)(4) is revised to replace "35 U.S.C. 102(f) or (g)" with "35 U.S.C. 102(e), (f) or (g)" for consistency with 35 U.S.C. 103(c) as amended by § 4807 of the "American Inventors Protection Act of 1999."

Section 1.113 is amended to take into account that an applicant's after final reply options include filing a request for continued examination under § 1.114. Section 1.113 is also amended to locate the last two sentences of paragraph (a) in a new paragraph (c).

Section 1.114 is added to implement § 4403 of the "American Inventors Protection Act of 1999." The Office is providing a procedure under which an applicant may obtain continued examination of an application by filing a submission and paying a specified fee, even if the application is under a final rejection, appeal, or a notice of allowance. If a subsequent rejection or action is made final (or if the application is subsequently allowed), the applicant may again obtain continued examination of an application (consideration of a submission) upon the filing of a submission and an additional payment of the specified fee prior to abandonment of the application. This procedure will not be available for: (1) a provisional application (which is not examined under 35 U.S.C. chapter 12); (2) an application for a utility or plant patent filed under 35 U.S.C. 111(a) before June 8, 1995; (3) an international application filed under 35 U.S.C. 363 before June 8, 1995; (4) an application for a design patent; or (5) a patent under reexamination.

Under this procedure, the filing of a request for continued examination after the filing of a Notice of Appeal to the Board of Patent Appeals and Interferences, but prior to a decision on the appeal, will be considered a request to withdraw the appeal and to reopen prosecution of the application before the examiner. The filing of a request for continued examination (accompanied by the fee and a submission) after a decision by the Board of Patent Appeals and Interferences, but before the filing of a Notice of Appeal to the Court of Appeals for the Federal Circuit (Federal Circuit) or the commencement of a civil action, will also result in the finality of the rejection or action being withdrawn and the submission being considered.

In addition to the *res judicata* effect of a Board of Patent Appeals and Interferences decision in an application (*see* MPEP 706.03(w)), a Board of Patent Appeals and Interferences decision in an application is the "law of the case," and is thus controlling in that application and any subsequent related application. *See* MPEP 1214.01 (where a new ground of rejection is entered by the Board of Patent Appeals and Interferences pursuant to § 1.196(b), argument without either amendment of the claims so rejected or the submission of a showing of facts can only result in a final rejection of the claims, since the examiner is without authority to allow the claims unless amended or unless the rejection is overcome by a showing of facts not before the Board of Patent Appeals and Interferences). As such, a submission containing arguments without either amendment of the rejected claims or the submission of a showing of facts will not be effective to remove such rejection.

The procedure set forth in § 1.114 will not be available in an application after the filing of a Notice of Appeal to the Federal Circuit or the commencement of a civil action, unless the appeal or civil action is terminated and the application is still pending. Unless an application contains allowed claims (or the court's mandate clearly indicates that further action is to be taken in the Office), the termination of an unsuccessful court appeal or civil action results in the abandonment of the application. *See* MPEP 1216.01.

If the application is under final rejection, the fee acts only to withdraw the finality of an Office action. If reply to a final or non-final Office action is outstanding, a submission meeting the reply requirements of § 1.111 must be timely received to continue prosecution of an application. Put simply, the mere payment of the fee for continued examination will not operate to toll the running of any time period set in the previous Office action for reply to avoid abandonment of the application. Likewise, payment of the fee (and a submission) in an allowed application without a petition under § 1.313 to withdraw the application from issue will not operate to toll the period for payment of the issue fee (if running) or avoid issuance of the application as a patent (if the issue fee has been paid).

To avoid confusion as to whether an applicant desires to amend the application prior to receiving continued examination of the application, an appeal brief under § 1.192 or a reply brief under § 1.193(b), or related submissions, are expressly excluded as a submission for the purposes of § 1.114. The submission, however, may consist of the arguments in a previously filed appeal brief or reply brief submitted as a reply to the final rejection, or may simply consist of a submission that incorporates by reference the arguments in a previously filed appeal brief or reply brief.

35 U.S.C. 132 provides that "[n]o amendment shall introduce new matter into the disclosure of the invention." Any amendment entered pursuant to § 1.114 that is determined to contain new matter will be treated in the same manner that a reply under § 1.111 determined to contain new matter is currently treated. In those instances in which an applicant seeks to add new matter to the disclosure of an application, the procedure in § 1.114 is not available, and the applicant must file a continuation-in-part application under § 1.53(b) containing such new matter. In addition, as 35 U.S.C. 132(b)

and § 1.114 provide continued examination of an application (and not examination of a continuing application), the Office will not permit an applicant to obtain continued examination on the basis of claims that are independent and distinct from the claims previously claimed and examined (*see* § 1.145).

The request for continued examination procedure in § 1.114 should not be confused with the transitional procedure for the further limited examination of patent applications set forth in § 1.129(a) (*see Changes to Implement 20-Year Patent Term and Provisional Applications*, Final Rule Notice, 60 FR 20195 (April 25, 1995), 1174 *Off. Gaz. Pat. Office* 15 (May 2, 1995)) or the continued prosecution application (CPA) procedure set forth in § 1.53(d) (*see Changes to Patent Practice and Procedure*; Final Rule Notice, 62 FR 53131 (October 10, 1997), 1203 *Off. Gaz. Pat. Office* 63 (October 21, 1997)).

Comparison of the request for continued examination procedure in § 1.114 with the transitional procedure for the further limited examination of patent application set forth in § 1.129(a): The procedure set forth in this notice does not apply to any application that was filed prior to June 8, 1995. The transitional procedure set forth in § 1.129(a) applies only to applications, other than for reissue or design patent, that have been pending for at least two years as of June 8, 1995, taking into account any references in such applications to any earlier filed application under 35 U.S.C. 120, 121, or 365(c), and is not applicable to any application filed after June 8, 1995. Therefore, an application eligible for the transitional procedure set forth in § 1.129(a) (unless filed on June 8, 1995), or any application filed before June 8, 1995, is not eligible for the procedure for continued examination set forth in this notice.

In addition, an applicant in an application eligible for the procedure for continued examination set forth in this notice is not limited in the number of times the fee for continued examination may be submitted. An applicant in an application eligible for the transitional procedure set forth in § 1.129(a), however, is limited to two opportunities to pay the fee for further examination of the application.

Moreover, under the transitional procedure set forth in § 1.129(a), a submission after final rejection or action will be considered if the submission and the requisite fee are filed prior to abandonment of the application and prior to the filing of an appeal brief. Under the request for continued examination procedure set forth in this notice, a submission will be considered if the submission and the requisite fee is filed prior to abandonment of the application. That is, under the request for continued examination procedure, a submission (and requisite fee) need not be filed prior to the filing of an appeal brief. In addition, under the request for continued examination procedure, a submission will be considered in an allowed application if the submission and the requisite fee are filed prior to payment of the issue fee (or later if a petition under § 1.313(c) to withdraw the application from issue is granted).

Comparison of the request for continued examination procedure in § 1.114 with the CPA procedure set forth in § 1.53(d): Section 1.53(d) is amended to make CPA practice inapplicable to applications (other than for a design patent) filed under 35 U.S.C. 111(a) on or after May 29, 2000, or resulting from international applications filed under 35 U.S.C. 363 on or after May 29, 2000. CPA practice was adopted to permit applicants to obtain continued examination of an application (for a fee) via the filing of a continuing application. 35 U.S.C. 132(b), however, provides statutory authority for the Office to prescribe regulations to permit applicants to obtain continued examination of an application (for a fee) without the need for a continuing application. The Office is not completely abolishing CPA practice in favor of the request for continued examination practice in § 1.114 because the request for continued examination practice in § 1.114 is not applicable to applications filed before June 8, 1995 (or design applications), and the patent term adjustment provisions of Public Law 106–113 do not apply to applications filed before May 29, 2000. The Office, however, is restricting CPA practice to utility and plant applications filed before May 29, 2000, and design applications because maintaining two practices (as to applications eligible for the continued examination procedure of § 1.114) designed for the same purpose (obtaining continued examination of an application) is unnecessary and will result in confusion.

Since the request for continued examination practice in § 1.114 is applicable to utility and plant applications filed on or after June 8, 1995, and continued prosecution application (CPA) practice in § 1.53(d) is applicable to utility and plant applications filed before May 29, 2000 (and design applications), an applicant in a utility or plant application filed on or after June 8, 1995, but before May 29, 2000, may obtain further examination either by filing a request for continued examination under § 1.114 or by filing a CPA under § 1.53(d). Since the patent term adjustment provisions of Public Law 106–113 do not apply to applications filed before May 29, 2000, and a request for continued examination practice under § 1.114 (unlike a CPA under § 1.53(d)) is not the filing of a new application, whether further examination of such an application is sought by a request for continued examination under § 1.114 or a CPA under § 1.53(d) has an impact on whether any resulting patent is entitled to the patent term adjustment provisions of Public Law 106–113. Specifically, if an applicant in a utility or plant application filed before May 29, 2000 files a CPA under § 1.53(d) after May 29, 2000, the application being prosecuted (now a CPA) is an application filed on or after May 29, 2000 and is entitled to the patent term adjustment provisions of Public Law 106–113. If, however, an applicant in a utility or plant application filed before May 29, 2000 (but on or after June 8, 1995) files a request for continued examination under § 1.114, the application being prosecuted is not an application filed on or after May 29, 2000, and is not entitled to the patent term adjustment provisions of Public Law 106–113.

In addition, there are a number of additional differences between request for continued examination procedure set forth in this notice with the CPA procedure set forth in § 1.53(d) resulting from the fact that a CPA is the filing of a new application whereas continued examination under § 1.114 merely continues the examination of the same application: (1) the fee for continued examination under § 1.114 (§ 1.17(e)) does not include additional claims fees (*cf.* 1.53(d)(3)(ii)); (2) the fee for continued examination under § 1.114 may not be deferred (*cf.* § 1.53(f)); (3) a request for continued examination under § 1.114 is entitled to the benefit of a certificate of mailing under § 1.8 (*cf.* 1.8(a)(2)(i)(A)); (4) an applicant may not obtain examination of a different or non-elected invention (*e.g.*, a divisional) in a request for continued examination under § 1.114; and (5) any change of inventors must be via the procedure set forth in § 1.48 (*cf.* 1.53(d)(4)).

Discussion of the specific provisions of new § 1.114: Section 1.114 is added to provide for continued examination of an application under 35 U.S.C. 132(b).

Section 1.114(a) provides that an applicant may obtain continued examination of an application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of: (1)

payment of the issue fee, unless a petition under § 1.313 is granted; (2) abandonment of the application; or (3) the filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated. The action immediately subsequent to the filing of a submission and fee under § 1.114 may be made final only if the conditions set forth in MPEP 706.07(b) for making a first action final in a continuing application are met.

Section 1.114(b) provides that a submission as used in § 1.114 includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. This definition in § 1.114 for "submission" is taken from § 1.129(a). Section 1.114(b) also provides that if reply to a final or non-final Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of § 1.111. This will permit applicants to file a submission under § 1.114 containing only an information disclosure statement (§§ 1.97 and 1.98) in an application subject to a notice of allowance under 35 U.S.C. 151.

Section 1.114(c) provides that if an applicant timely files the fee set forth in § 1.17(e) and a submission, the Office will withdraw the finality of any Office action to which a reply is outstanding and the submission will be entered and considered. The phrase "withdraw the finality of any Office action" includes the withdrawal of the finality of a final rejection, as well as the closing of prosecution by an Office action under *Ex parte Quayle*, 1935 Comm'r Dec. 11 (1935), or notice of allowance under 35 U.S.C. 151 (or notice of allowability). Section 1.114(c) also provides that if an applicant files a request for continued examination under § 1.114 after appeal, but prior to a decision on the appeal, it will be treated as a request to withdraw the appeal and to reopen prosecution of the application before the examiner. Thus, the filing of a request for continued examination under § 1.114 in an application containing an appeal awaiting decision after appeal will be treated as a withdrawal of the appeal by the applicant, regardless of whether the request for continued examination under § 1.114 includes the appropriate fee (§ 1.17(e)) or a submission (§ 1.114(b)). Applicants should advise the Board of Patent Appeals and Interferences when a request for continued examination under § 1.114 is filed in an application containing an appeal awaiting decision. Otherwise, the Board of Patent Appeals and Interferences may refuse to vacate a decision rendered after the filing (but before recognition by the Office) of a request for continued examination under § 1.114. Section 1.114(c) also provides that an appeal brief or a reply brief (or related papers) will not be considered submission under § 1.114 (discussed above).

Section 1.114(d) provides that an applicant cannot request continued examination of an application until after the Office acts on the application by mailing at least one of an Office action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151. Section 1.114(d) also provides that the request for continued examination provisions of § 1.114 do not apply to: (1) a provisional application; (2) an application for a utility or plant patent filed under 35 U.S.C. 111(a) before June 8, 1995; (3) an international application filed under 35 U.S.C. 363 before June 8, 1995; (4) an application for a design patent; or (5) a patent under reexamination.

Section 1.116 is amended to add a paragraph (a) that takes into account that an applicant's after final amendment options include filing a request for continued examination under § 1.114, and to redesignate existing paragraphs (a), (b), and (c) as paragraphs (b), (c), and (d), respectively.

Section 1.198 is amended to take into account that an application in which an appeal has been decided by the Board of Patent Appeals and Interferences may also be reopened under the request for continued examination provisions of § 1.114.

Section 1.312 is amended based upon previously proposed changes to that section. *See Changes to Implement the Patent Business Goals*, Notice of Proposed Rulemaking, 64 FR 53772, 53810, 53838 (October 4, 1999), 1228 *Off. Gaz. Pat. Office* 15, 49, 76 (November 2, 1999). These changes are being adopted in this interim rule because of the overlap between the continued examination provisions of new § 1.114 and the withdrawal from issue provisions of § 1.313 (which in turn overlaps with the provisions of § 1.312).

The Office proposed changing § 1.312 to provide that any amendment filed after the date the issue fee is paid must be accompanied by: (1) A petition under § 1.313(c)(1) to withdraw the application from issue; (2) an unequivocal statement that one or more claims are unpatentable; and (3) an explanation as to how the amendment is necessary to render such claim or claims patentable. The Office is adopting this change to § 1.312 by clarifying that an amendment under § 1.312 (after allowance) must be filed prior to or with payment of the issue fee, and eliminating § 1.312(b) (since the provisions of proposed § 1.312(b) are duplicative of the provisions of proposed and adopted § 1.313(c)(1)).

Section 1.313 is amended to provide that an application may also be withdrawn from issue after payment of the issue fee on petition by the applicant for consideration of a submission pursuant to § 1.114. Section 1.313, as amended, also adopts previously proposed changes to that section. *See Changes to Implement the Patent Business Goals*, 64 FR at 53810–11, 53838–39, 1228 *Off. Gaz. Pat. Office* at 49–50, 76–77.

Of the comments submitted in response to that notice of proposed rulemaking, three comments addressed the proposed changes to §§ 1.312 and 1.313.

Comment (1): One comment addressing the proposed change to § 1.313 favored the proposed change to § 1.313, but suggested that § 1.313(c) and § 1.53(d) be amended to clarify that an application may be withdrawn from issue after payment of the issue fee for express abandonment in favor of a continued prosecution application (CPA) under § 1.53(d). The comment also suggested that the Office provide a notice of rule change to accompany the notice of allowance for some time after adoption of the change to provide further notice to the public of the rule change.

Response: Section 1.53(d)(1)(ii)(A) as amended provides that a CPA under § 1.53(d) must be filed prior to payment of the issue fee on the prior application unless a petition under § 1.313(c) is granted in the prior application. Since a CPA under § 1.53(d) is a continuing application, there is no need to amend § 1.313(c) to specifically refer to a CPA. Specifically referring to a CPA under § 1.53(d) in § 1.313(c) may result in confusion because: (1) An application may be withdrawn from issue after payment of the issue fee for express abandonment (without the filing of any type of continuing application); (2) an application may also be withdrawn from issue after payment of the issue fee for express abandonment in favor of a continuing application under § 1.53(b); and (3) an application may be withdrawn from issue after payment of the issue fee for continued examination under § 1.114 (if eligible for that practice). The suggestion concerning the notice of rule change will be taken into account in preparing training materials

related to the implementation of the rule changes related to the Patent Business Goals and the "American Inventors Protection Act of 1999."

Comment (2): Two comments addressing the proposed change to § 1.313 suggested that the conditions under which an applicant could withdraw an application from issue after payment of the issue fee was too limited, and that § 1.313 should not preclude a request to withdraw an application from issue when reasonably efficient processing could prevent the patent from issuing without having some important matter considered.

Response: The Office must limit withdrawal from issue after payment of the issue fee (at applicant's initiative) to those conditions specified in § 1.313(c) due to changes to the patent printing process, which will dramatically reduce the period between the date of issue fee payment and the date a patent is issued. An applicant who must have an important matter considered by the Office before a patent is issued must file a petition under § 1.313(c) to withdraw the application from issue to have such matter considered during continued examination under § 1.114 (if eligible) or in a continuing application, unless the applicant can meet the conditions specified in § 1.313(c)(1).

The Office cannot ensure that any petition under § 1.313(c) will be acted upon prior to the date of patent grant. *See Filing of Continuing Applications, Amendments, or Petitions after Payment of Issue Fee,* Notice, 1221 *Off. Gaz. Pat. Office* 14 (April 6, 1999). Since a request for continued examination under § 1.114 (unlike a CPA under § 1.53(d)) is not any type of new application filing, the Office cannot grant a petition to convert an untimely request for continued examination under § 1.114 to a continuing application under § 1.53(b). Therefore, applicants are strongly cautioned to file any desired request for continued examination under § 1.114 prior to payment of the issue fee. In addition, applicants considering filing a request for continued examination under § 1.114 after payment of the issue fee are strongly cautioned to call the Office of Petitions to determine whether sufficient time remains before the patent issue date to consider (and grant) a petition under § 1.313(c) and what steps are needed to ensure that a grantable petition under § 1.313(c) is before an appropriate official in the Office of Petitions in sufficient time to grant the petition before the patent is issued. Finally, applicants filing a request for continued examination under § 1.114 after allowance but prior to payment of the issue fee are cautioned against subsequently paying the issue fee because doing so may result in the prompt issuance of a patent.

Classification

Administrative Procedure Act

The changes in this interim rule concern only the manner by which an applicant obtains continued examination of a nonprovisional application, requests conversion of a provisional application into a nonprovisional application, or claims the benefit of a provisional application, as provided for in §§ 4403 and 4801 of the "American Inventors Protection Act of 1999" (Title IV of S. 1948, incorporated into Pub. L. 106–113). Therefore, prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553(b)(A), or any other law.

Regulatory Flexibility Act

As prior notice and an opportunity for public comment are not required pursuant to 5 U.S.C. 553 (or any other law), the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable.

Executive Order 13132

This interim rule does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866

This interim rule has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act

This interim rule involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this interim rule have been reviewed and previously approved by OMB under the following control numbers: 0651–0031, 0651–0032, and 0651–0033. The United States Patent and Trademark Office is not resubmitting information collection packages to OMB for its review and approval because the changes in this interim rule do not affect the information collection requirements associated with the information collections under these OMB control numbers.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this interim rule is to implement the changes to Office practice necessitated by sections 4403, 4801, and 4807 of the "American Inventors Protection Act of 1999."

OMB Number: 0651–0031.
Title: Patent Processing (Updating).
Form Numbers: PTO/SB/08/21–27/31/42/43/61/62/63/64/67/68/91/92/96/97.
Type of Review: Approved through October of 2002.
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 2,040,630.
Estimated Time Per Response: 0.39 hours.
Estimated Total Annual Burden Hours: 788,421 hours.
Needs and Uses: During the processing for an application for a patent, the applicant/agent may be required or desire to submit additional information to the United States Patent and Trademark Office concerning the examination of a specific application.

The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

OMB Number: 0651–0032.
Title: Initial Patent Application.
Form Number: PTO/SB/01–07/13PCT/17–19/29/101–110.
Type of Review: Approved through October of 2002.
Affected Public: Individuals or Households, Business or Other For-Profit, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 344,100.
Estimated Time Per Response: 8.7 hours.
Estimated Total Annual Burden Hours: 2,994,160 hours.
Needs and Uses: The purpose of this information collection is to permit the United States Patent and Trademark Office to determine whether an application meets the criteria set forth in the patent statute and regulations.

The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the United States Patent and Trademark Office in processing and examination of the application.

OMB Number: 0651–0033.
Title: Post Allowance and Refiling.
Form Numbers: PTO/SB/13/14/44/50–57; PTOL–85b.
Type of Review: Approved through September of 2000.
Affected Public: Individuals or Households, Business or Other For-Profit, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 135,250.
Estimated Time Per Response: 0.325 hour.
Estimated Total Annual Burden Hours: 43,893 hours.
Needs and Uses: This collection of information is required to administer the patent laws pursuant to title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Special Program Law Office, United States Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs, OMB, 725 17th Street, N.W., Washington, D.C. 20503, (Attn: PTO Desk Officer).

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.7 is revised to read as follows:

§ 1.7 Times for taking action; Expiration on Saturday, Sunday or Federal holiday.

(a) Whenever periods of time are specified in this part in days, calendar days are intended. When the day, or the last day fixed by statute or by or under this part for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding business day which is not a Saturday, Sunday, or a Federal holiday. See § 1.304 for time for appeal or for commencing civil action.

(b) If the day that is twelve months after the filing date of a provisional application under 35 U.S.C. 111(b) and § 1.53(c) falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the period of pendency shall be extended to the next succeeding secular or business day which is not a Saturday, Sunday, or a Federal holiday.

3. Section 1.17 is amended by adding paragraph (e) and revising paragraph (i) to read as follows:

§ 1.17 Patent application processing fees.

* * * * *

(e) To request continued examination pursuant to § 1.114:

By a small entity 345.00

By other than a small entity 690.00

* * * * *

(i) For filing a petition to the Commissioner under one of the following sections which refers to this paragraph 130.00

§ 1.12—for access to an assignment record.

§ 1.14—for access to an application.

§ 1.41—to supply the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.

§ 1.47—for filing by other than all the inventors or a person not the inventor.

§ 1.48—for correction of inventorship, except in provisional applications.

§ 1.53—to accord a filing date, except in provisional applications.

§ 1.53(c)—to convert a provisional application filed under § 1.53(c) to a nonprovisional application under § 1.53(b).

§ 1.55—for entry of late priority papers.

§ 1.59—for expungement and return of information.

§ 1.84—for accepting color drawings or photographs.

§ 1.91—for entry of a model or exhibit.

§ 1.97(d)—to consider an information disclosure statement.

§ 1.102—to make an application special.

§ 1.103—to suspend action in application.

§ 1.177—for divisional reissues to issue separately.

§ 1.313—to withdraw an application from issue.

§ 1.314—to defer issuance of a patent.

§ 1.666(b)—for access to an interference settlement agreement.

§ 3.81—for a patent to issue to assignee, assignment submitted after payment of the issue fee.

* * * * *

4. Section 1.53 is amended by redesignating paragraph (c)(3) as paragraph (c)(4), adding a new paragraph (c)(3), and revising paragraph (d)(1) to read as follows:

§ 1.53 Application number, filing date, and completion of application.

* * * * *

(c) * * *

(3) A provisional application filed under paragraph (c) of this section may be converted to a nonprovisional application filed under paragraph (b) of this section and accorded the original filing date of the provisional application. The conversion of a provisional application to a nonprovisional application will not result in either the refund of any fee properly paid in the provisional application or the application of any such fee to the filing fee, or any other fee, for the nonprovisional application. A request to convert a provisional application to a nonprovisional application must be accompanied by the fee set forth in § 1.17(i) and an

amendment including at least one claim as prescribed by the second paragraph of 35 U.S.C. 112, unless the provisional application under paragraph (c) of this section otherwise contains at least one claim as prescribed by the second paragraph of 35 U.S.C. 112. A request to convert a provisional application to a nonprovisional application must also be filed prior to the earliest of:

(i) Abandonment of the provisional application filed under paragraph (c) of this section; or

(ii) Expiration of twelve months after the filing date of the provisional application filed under paragraph (c) of this section.

* * * * *

(d) * * *

(1) A continuation or divisional application (but not a continuation-in-part) of a prior nonprovisional application may be filed as a continued prosecution application under this paragraph, provided that:

(i) The prior nonprovisional application is:

(A) A utility or plant application that was filed under 35 U.S.C. 111(a) before May 29, 2000, and is complete as defined by § 1.51(b);

(B) A design application that is complete as defined by § 1.51(b); or

(C) The national stage of an international application that was filed under 35 U.S.C. 363 before May 29, 2000, and is in compliance with 35 U.S.C. 371; and

(ii) The application under this paragraph is filed before the earliest of:

(A) Payment of the issue fee on the prior application, unless a petition under § 1.313(c) is granted in the prior application;

(B) Abandonment of the prior application; or

(C) Termination of proceedings on the prior application.

* * * * *

Section 1.78 is amended by revising paragraph (a)(3) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross-references to other applications.

(a) * * *

(3) A nonprovisional application other than for a design patent may claim an invention disclosed in one or more prior filed provisional applications. In order for a nonprovisional application to claim the benefit of one or more prior filed provisional applications, each prior provisional application must name as an inventor at least one inventor named in the later filed nonprovisional application and disclose the named inventor's invention claimed in at least one claim of the later filed nonprovisional application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior provisional application must be entitled to a filing date as set forth in § 1.53(c), have any required English-language translation filed therein within the time period set forth in § 1.52(d), and have paid therein the basic filing fee set forth in § 1.16(k) within the time period set forth in § 1.53(g).

* * * * *

5. Section 1.97 is amended by revising paragraph (b) to read as follows:

§ 1.97 Filing of information disclosure statement.

* * * * *

(b) An information disclosure statement shall be considered by the Office if filed by the applicant within any one of the following time periods:

(1) Within three months of the filing date of a national application;

(2) Within three months of the date of entry of the national stage as set forth in § 1.491 in an international application;

(3) Before the mailing of a first Office action on the merits; or

(4) Before the mailing of a first Office action after the filing of a request for continued examination under § 1.114.

* * * * *

6. Section 1.104 is amended by revising paragraph (c)(4) to read as follows:

§ 1.104 Nature of examination.

* * * * *

(c) * * *

(4) Subject matter which is developed by another person which qualifies as prior art only under 35 U.S.C. 102(e), (f) or (g) may be used as prior art under 35 U.S.C. 103 against a claimed invention unless the entire rights to the subject matter and the claimed invention were commonly owned by the same person or organization or subject to an obligation of assignment to the same person or organization at the time the claimed invention was made.

* * * * *

7. Section 1.113 is revised to read as follows:

§ 1.113 Final rejection or action.

(a) On the second or any subsequent examination or consideration by the examiner the rejection or other action may be made final, whereupon applicant's or patent owner's reply is limited to appeal in the case of rejection of any claim (§ 1.191), or to amendment as specified in § 1.114 or § 1.116. Petition may be taken to the Commissioner in the case of objections or requirements not involved in the rejection of any claim (§ 1.181). Reply to a final rejection or action must comply with § 1.114 or paragraph (c) of this section.

(b) In making such final rejection, the examiner shall repeat or state all grounds of rejection then considered applicable to the claims in the application, clearly stating the reasons in support thereof.

(c) Reply to a final rejection or action must include cancellation of, or appeal from the rejection of, each rejected claim. If any claim stands allowed, the reply to a final rejection or action must comply with any requirements or objections as to form.

8. Section 1.114 is added immediately following § 1.113 to read as follows:

§ 1.114 Request for continued examination.

(a) An applicant may request continued examination of the application by filing a submission and the fee set forth in § 1.17(e) prior to the earliest of:

(1) Payment of the issue fee, unless a petition under § 1.313 is granted;

(2) Abandonment of the application; or

(3) The filing of a notice of appeal to the U.S. Court of Appeals for the Federal Circuit under 35 U.S.C. 141, or the commencement of a civil action under 35 U.S.C. 145 or 146, unless the appeal or civil action is terminated.

(b) A submission as used in this section includes, but is not limited to, an information disclosure statement, an amendment to the written description, claims, or drawings, new arguments, or new evidence in support of patentability. If reply to an Office action under 35 U.S.C. 132 is outstanding, the submission must meet the reply requirements of § 1.111.

(c) If an applicant timely files a submission and fee set forth in § 1.17(e), the Office will withdraw the finality of any Office action and the submission will be entered and considered. If an applicant files a request for continued examination under this section after appeal, but prior to a decision on the appeal, it will be treated as a request to withdraw the appeal and to reopen prosecution of the application before the examiner. An appeal brief under § 1.192 or a reply brief under § 1.193(b), or related papers, will not be considered a submission under this section.

(d) The provisions of this section do not apply in any application in which the Office has not mailed at least one of an Office action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151. The provisions of this section also do not apply to:

(1) A provisional application;

(2) An application for a utility or plant patent filed under 35 U.S.C. 111(a) before June 8, 1995;

(3) An international application filed under 35 U.S.C. 363 before June 8, 1995;

(4) An application for a design patent; or

(5) A patent under reexamination.

9. Section 1.116 is revised to read as follows:

§ 1.116 Amendments after final action or appeal.

(a) An amendment after final action or appeal must comply with § 1.114 or this section.

(b) After a final rejection or other final action (§ 1.113), amendments may be made canceling claims or complying with any requirement of form expressly set forth in a previous Office action. Amendments presenting rejected claims in better form for consideration on appeal may be admitted. The admission of, or refusal to admit, any amendment after final rejection, and any related proceedings, will not operate to relieve the application or patent under reexamination from its condition as subject to appeal or to save the application from abandonment under § 1.135.

(c) If amendments touching the merits of the application or patent under reexamination are presented after final rejection, or after appeal has been taken, or when such amendment might not otherwise be proper, they may be admitted upon a showing of good and sufficient reasons why they are necessary and were not earlier presented.

(d) No amendment can be made as a matter of right in appealed cases. After decision on appeal, amendments can only be made as provided in § 1.198, or to carry into effect a recommendation under § 1.196.

10. Section 1.198 is revised to read as follows:

§ 1.198 Reopening after decision.

Cases which have been decided by the Board of Patent Appeals and Interferences will not be reopened or reconsidered by the primary examiner except under the provisions of § 1.114 or § 1.196 without the written authority of the Commissioner, and then only for the consideration of matters not already adjudicated, sufficient cause being shown.

11. Section 1.312 is revised to read as follows:

§ 1.312 Amendments after allowance.

No amendment may be made as a matter of right in an application after the mailing of the notice of allowance. Any amendment filed pursuant to this section must be filed before or with the payment of the issue fee, and may be entered on the recommendation of the primary examiner, approved by the Commissioner, without withdrawing the application from issue.

12. Section 1.313 is revised to read as follows:

§ 1.313 Withdrawal from issue.

(a) Applications may be withdrawn from issue for further action at the initiative of the Office or upon petition by the applicant. To request that the Office withdraw an application from issue, applicant must file a petition under this section including the fee set forth in § 1.17(i) and a showing of good and sufficient reasons why withdrawal of the application is necessary. If the Office withdraws the application from issue, the Office will issue a new notice of allowance if the Office again allows the application.

(b) Once the issue fee has been paid, the Office will not withdraw the application from issue at its own initiative for any reason except:

(1) A mistake on the part of the Office;

(2) A violation of § 1.56 or illegality in the application;

(3) Unpatentability of one or more claims; or

(4) For interference.

(c) Once the issue fee has been paid, the application will not be withdrawn from issue upon petition by the applicant for any reason except:

(1) Unpatentability of one of more claims, which petition must be accompanied by an unequivocal statement that one or more claims are unpatentable, an amendment to such claim or claims, and an explanation as to how the amendment causes such claim or claims to be patentable;

(2) Consideration of a submission pursuant to § 1.114; or

(3) Express abandonment of the application. Such express abandonment may be in favor of a continuing application.

(d) A petition under this section will not be effective to withdraw the application from issue unless it is actually received and granted by the appropriate officials before the date of issue. Withdrawal of an application from issue after payment of the issue fee may not be effective to avoid publication of application information.

Dated: March 10, 2000.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 00–6514 Filed 3–17–00; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–26–1–6944a; FRL–6561–6]

Approval and Promulgation of Implementation Plan for New Mexico: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving a revision to the New Mexico State Implementation Plan (SIP) that contains the transportation conformity rule. The conformity rules assure that in air quality nonattainment or maintenance areas, projected emissions from transportation plans and projects stay within the motor vehicle emissions ceiling in the SIP. The transportation conformity SIP revision enables the State to implement and enforce the Federal transportation conformity requirements in regulations on Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws. The EPA's approval action streamlines the conformity process and allows direct consultation among agencies at the local levels. The final approval action is limited to regulations on Transportation Conformity. We approved the SIP revision on conformity of general Federal actions on September 9, 1998 (61 FR 48407).

The EPA approves this SIP revision under sections 110(k) and 176 of the Federal Clean Air Act (Act). We have given our rationale for approving this SIP revision in this action.

DATES: This rule is effective on May 19, 2000 without further notice, unless EPA receives adverse comment by April 19, 2000. If we receive adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting

Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202.

New Mexico Environment Department (NMED), Harold Runnels Building, 1190 St. Francis Drive, P.O. Drawer 226110, Santa Fe, New Mexico 87502–0110.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P. E. or Mr. Ken Boyce; Air Planning Section (6PD–L), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 665–7247 or (214) 665–7259, *behnam.jahanbakhsh@epamail.epa.gov or boyce.kenneth@epamail.epa.gov.*

SUPPLEMENTARY INFORMATION: We have outlined the contents of this document below for your reading convenience:

I. Background

A. What is a SIP?

B. What is the Federal approval process for a SIP?

C. What is transportation conformity?

D. Why must the State send a transportation conformity SIP?

E. How does transportation conformity work?

II. Approval of the State Transportation Conformity Rule

A. What did the State send?

B. What is EPA approving today and why?

C. How did the NMED satisfy the interagency consultation process?

D. Why did the NMED exclude the grace period for new nonattainment areas (93.102(d))?

E. What parts of the rule are excluded?

III. Opportunity for Public Comments

IV. Administrative Requirements

I. Background

A. What is a SIP?

The states under section 110 of the Act must develop air pollution regulations and control strategies to ensure that state air quality meets the National Ambient Air Quality Standards (NAAQS) established by EPA. The Act under section 109 established these ambient standards which currently includes six criteria pollutants. These pollutants are: carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must send these regulations and control strategies to us, for approval and incorporation into the federally enforceable SIP. Currently, each state has a federally approved SIP which protects air quality and has emission control plans for nonattainment areas. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

B. What is the Federal approval process for a SIP?

The states must formally adopt the regulations and control strategies consistent with state and Federal laws for incorporating the state regulations into the federally enforceable SIP. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state will send these provisions to us for inclusion in the federally enforceable SIP. We must then decide on an appropriate Federal action, provide public notice, and request additional public comment on the action. If anyone sends adverse comments, we must consider the comments before a final action.

We incorporate all state regulations and supporting information (sent under section 110 of the Act) into the federally approved SIP after our approval action. We maintain records of such SIP actions in the Code of Federal Regulations (CFR) at Title 40, part 52, entitled "Approval and Promulgation of Implementation Plans. The Government does not reproduce the text of the federally approved state regulations in the CFR. They are "incorporated by reference," which means that the specific state regulation is cited in the CFR and is considered a part of the CFR the same as if the text were fully printed in the CFR.

C. What is transportation conformity?

Conformity first appeared in the Act's 1977 amendments (Public Law 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated.

The Act's 1990 Amendments expanded the scope and content of the conformity concept by defining conformity in relation to an implementation plan. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

D. Why must the State send a transportation conformity SIP?

We were required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each State submit a revision to its SIP including conformity criteria and procedures. We published the first transportation conformity rule in the November 24, 1993, **Federal Register**, and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. We required the States and local agencies to adopt and submit a transportation conformity SIP revision to us by November 25, 1994. The State Governor sent a transportation conformity SIP on December 19, 1994. However, this SIP was not approvable. We revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), and August 15, 1997 (62 FR 43780), and it was codified under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (62 FR 43780). Our action of August 15, 1997, required the States to change their rules and send a SIP revision by August 15, 1998.

E. How Does Transportation Conformity Work?

The Federal or State transportation conformity rule applies to all nonattainment and maintenance areas in the State. The Metropolitan Planning organizations (MPO), the State Departments of Transportation (in absence of a MPO), and U.S. Department of Transportation make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs, transportation plans, and projects. The MPOs calculate the projected emissions for the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the motor vehicle emissions ceiling for showing a positive conformity with the SIP.

II. Approval of the Transportation Conformity Rule

A. What Did the State Send?

The State of New Mexico initially submitted a SIP revision on November 17, 1994, however, this SIP was not approvable. On November 20, 1998, the Governor of New Mexico sent a SIP revision that includes the transportation conformity and consultation rule. The NMED adopted this SIP revision on November 9, 1998, after appropriate public participation and interagency consultation. In addition, this SIP was revised to correct a typographical error in section 124. The Governor submitted this revision on August 27, 1999. Today's approval action is solely based on the November 20, 1998, and August 27, 1999, submissions.

B. What is EPA Approving Today and Why?

We are approving the transportation conformity rule that the Governor of New Mexico sent us on November 20, 1998, and August 27, 1999, except for New Mexico Administrative Code (NMAC) Title 20, Chapter 2, Part 99, sections 109. C.1, 114, 128.C–F, 137.E, 139.A.2, 140.A.1, and 147.B. The rationale for exclusion of these sections is discussed in section II–E of this action. The NMED has adopted the Federal rules in verbatim form except for the interagency consultation section (40 CFR 93.105) and the grace period for new nonattainment areas (40 CFR 93.102(d)). We will discuss the reasons for exclusion of these two sections later in this document.

The Federal Transportation Conformity Rule required the states to adopt a majority of the Federal rules in verbatim form with a few exceptions. The States can not make their rules more stringent than the Federal rules unless the state's rules apply equally to nonfederal as well as Federal entities. The NMED's transportation conformity rule is the same as the Federal rule and the State has made no additional changes or modifications, with the exception of those sections mentioned above.

We have evaluated this SIP revision and have determined that the NMED has fully adopted the Federal Transportation Conformity Rules as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. Also, the NMED has completed and satisfied the public participation and comprehensive interagency consultations during development and adoption of these rules at the local level. Therefore, we are approving this SIP revision.

Our approval action does not include general conformity (40 CFR part 51, subpart W). We approved the general conformity SIP on September 9, 1998 (63 FR 48106).

C. How Did the NMED Satisfy the Interagency Consultation Process?

Our rule requires the states to develop their own processes and procedures for interagency consultation among the Federal, State, and local agencies and resolution of conflicts by meeting the criteria in 40 CFR 93.105. The SIP revisions must include processes and procedures to be followed by the MPO, State Department of Transportation (DOT), and the U.S. Department of Transportation (USDOT) in consulting with the State and local air quality agencies and EPA before making conformity determinations. Also, the transportation conformity SIP revision must have processes and procedures for the State and local air quality agencies and EPA in coordinating development of applicable SIPs with MPOs, State DOT, and USDOT.

The NMED developed its own consultation rule based on the elements in 40 CFR 93.105. As a first step, the NMED established an *ad hoc* multi-agency committee that included representatives from the State air quality agency, State DOT, USDOT, MPOs, EPA, the local air quality agency, local transportation agencies, and local transit operators. The NMED served as the lead agency in coordinating the multi-agency efforts for developing the consultation rule. The committee met periodically and drafted consultation rules by considering the elements in 40 CFR 93.105 and 23 CFR part 450, and by integrating the local procedures and processes into the final consultation rule. The consultation rule developed through this process is codified under 20 NMAC 2.99.119 and 2.99.120. We have determined that the NMED adequately included all elements of 40 CFR 93.105 in their rule and it meets the EPA SIP requirements.

D. Why Did the NMED Exclude the Grace Period for New Nonattainment Areas (40 CFR 93.102(d))?

The NMED excluded 40 CFR 93.102(d) from its rule. This section allows up to 12 months for newly designated nonattainment areas to complete their conformity determination. However, Sierra Club challenged this section of the rule arguing that allowing a 12 month grace period was unlawful under the Act. On November 4, 1997, the United Sates Court of Appeals for the District of Columbia Circuit held in *Sierra Club* v. *Environmental Protection Agency*, 129 F.3d 137 (D.C. Cir. 1997), that EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, the NMED has excluded this section from its rule. We agree with the NMED's action, and exclusion of 40 CFR 93.102(d) will not prevent us from approving the State transportation conformity SIP.

E. What Parts of the Rule Are Excluded?

We promulgated the transportation conformity rule on August 15, 1997. On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency*, 167 F.3d 641 (D.C. Cir. 1999). The Court granted the environmental group's petition for review and ruled that 40 CFR 93.102(c)(1), 40 CFR 93.121(a)(1), and 40 CFR 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 40 CFR 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination the federal actions will not cause or increase violations or delay attainment. The sections that were included in this decision were:

(a) 40 CFR 93.102(c)(1) which allowed certain projects for which the NEPA process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity lapse,

(b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (MVEB) in the submitted SIPs after 45 days if EPA had not declared them inadequate,

(c) 40 CFR 93.120(a)(2) which allowed use of the MVEB in a disapproved SIP for 120 days after disapproval,

(d) 40 CFR 93.121(a)(1) which allowed the nonfederally funded projects to be approved if included in the first three years of the most recently conforming transportation plan and transportation improvement programs, even if conformity status is currently lapsed, and

(e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval.

Since the States were required to submit transportation conformity SIPs not later than August 15, 1998, and include those provisions in verbatim form, the State's SIP revision includes all those sections which the Court ruled unlawful or remanded for consistency

with the Act. The EPA cannot approve these sections.

We believe that the NMED has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to EPA. If the court had issued its ruling before adoption and SIP submittal by the NMED, we believe the NMED would have removed these unlawful sections from its SIP. The NMED has expended its resources and time in preparing this SIP and meeting the Act's statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP on time.

The NMED will be required to submit a SIP revision in the future when EPA revises its rule to comply with the court decision. Because the court decision has invalidated these provisions, we believe that it would be reasonable to exclude the corresponding sections of the NMED rules from this SIP approval action. As a result, we are not taking any action on 20 NMAC, Chapter 2, Part 99, sections 109. C.1, 114, 128.C–F, 137.E, 139.A.2, 140.A.1, and 147.B under the State Transportation Conformity Rules. The conformity determinations affected by these sections must comply with the relevant requirements of the statutory provisions of the Clear Air Act underlying the court's decision on these issues. The EPA has already issued guidance on how to implement these provisions in the interim prior to EPA's amendment of the Federal transportation conformity rules. Once these Federal rules have been revised, conformity determinations should comply with the requirements of the revised Federal rule until corresponding provisions of the State's conformity SIP have been approved by EPA.

III. Opportunity for Public Comments

The EPA is publishing this rule without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve this SIP revision if adverse comments are filed. This rule will be effective on May 19, 2000 without further notice unless we receive adverse comment by April 19, 2000. If EPA receives adverse comment, we will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. We will address all public comments in a subsequent final rule based on the proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review.

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation. This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This final rule is not subject to Executive Order 13045 because it approves a State program.

D. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities.

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *See Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995, signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves preexisting requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule can not take effect until 60 days after it is published in the **Federal Register**. This action is not a "major" rule as defined by 5 U.S.C. 804(2). This rule will be effective May 19, 2000.

H. Petitions for Judicial Review

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 19, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Dated: March 6, 2000.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

Part 52, Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart GG—New Mexico

2. Section 52.1620(c) is amended by adding to the end of the first table to read as follows:

§52.1620 Identification of plan.

* * * * *

(c) * * *

State citation	Title/subject	State approval/effective date	EPA approval date	Explanation
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2—Air Quality				
Part 98 * *				
New Mexico Administrative Code (NMAC) Title 20—Environment Protection Chapter 2				
Part 99 ...	Transportation Conformity	11/23/98 and 09/08/99	3/20/00 [FR volume and page number].	(1) No action is taken on sections 109. C.1, 114, 128.C–F, 137.E, 139.A.2, 140.A.1, and 147.B

[FR Doc. 00–6563 Filed 3–17–00; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE76

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for *Chlorogalum purpureum* (Purple Amole), a Plant From the South Coast Ranges of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service, determine threatened status pursuant to the Endangered Species Act of 1973, as amended (Act), for the California plant, *Chlorogalum purpureum* (purple amole). This species comprises two varieties, *C. p. var. purpureum* and *C. p.* var. *reductum*. *Chlorogalum purpureum* var. *purpureum* is known only from the south coast ranges in Monterey County, on lands managed by the Department of the Army at Fort Hunter Liggett. It is threatened by loss and alteration of habitat, direct loss of plants from construction and use of military training facilities and from military field training activities, displacement by nonnative annual grasses, and potentially by alteration of fire cycles due to military training. Livestock grazing is a potential threat, as grazing may be reinstated in occupied habitat in the future. The other variety, *C. p.* var. *reductum*, is known only from two sites in the La Panza region of the coast ranges in San Luis Obispo County, on U.S. Forest Service and private lands. It is threatened by illegal vehicle trespass into the population on Forest Service land, road maintenance, displacement by nonnative annual grasses, and by livestock grazing depending upon the intensity of grazing use within the population area. This final rule implements the Federal protection and recovery provisions afforded by the Act. Although this rule lists *Chlorogalum purpureum* at the species level, each variety should be treated as a separate taxonomic unit for the purposes of applying the section 7 jeopardy standard and identifying recovery units, if applicable.

DATES: This rule is effective April 19, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Listing and Recovery, at the address above (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Chlorogalum purpureum was first described by Brandegee in 1893 from specimens collected in the Santa Lucia Mountains by William Vortriede a year earlier (Brandegee 1893). In 1904, E.L. Greene (1904) published the new combination *Laothoe purpurea* when he discovered that the genus name *Laothoe* had been published earlier than *Chlorogalum*. However, R.F. Hoover (1940) reinstated use of the name *Chlorogalum* through the rule of *nomen conservandum*. Hoover (1964) described the variety *reductum* (Camatta Canyon amole), first collected in the late 1940s, based on its shorter stature compared to the nominative variety. This nomenclature was retained in the most recent treatment of the genus (Jernstedt 1993). These two varieties comprise the entire species.

Chlorogalum purpureum is a bulb-forming perennial herb in the lily family (Liliaceae). It has a basal rosette of linear leaves 2 to 5 millimeters (mm) (0.1 to 0.2 inches (in)) wide with wavy margins. A widely branching stem supports bluish-purple flowers with six recurved tepals (petals and sepals that have a similar appearance). The stems of *C. p.* var. *purpureum* are 25 to 40 centimeters (cm) (10 to 16 in) high, whereas those of *C. p.* var. *reductum* are only 10 to 20 cm (4 to 8 in) high (Hoover 1964, Jernstedt 1993). Chlorogalum purpureum is the only member of the genus with bluish-purple flowers that open during the day (Jernstedt 1993).

Reproduction in *Chlorogalum purpureum* is primarily by seed. Each flower contains six ovules, although not all develop into seeds in the wild (Hoover 1964). The species is reported to be self-compatible, and insect pollination appears to result in increased seed set (D. Wilken, Santa Barbara Botanic Garden, *in litt.* 1998; M. Elvin, U.S. Fish and Wildlife Service, pers. com. 1998). Hoover (1940) reports that clonal reproduction by longitudinal splitting of the bulbs is rare; some splitting has been noted in one population of *C. p.* var. *reductum* (Alice Koch, California Department of Fish and Game (CDFG), pers. comm. 1997b).

Chlorogalum purpureum occurs in grassland, oak woodland, and oak savannah between 300 and 620 meters (m) (1,000 and 2,050 feet (ft)) in elevation in the south coast ranges of California. Like other members of the lily family, *C. purpureum* is probably mycorrhizal (develops root-hyphae relationships with a fungus).

Mycorrhizal relationships can aid in nutrient and water uptake by a host plant and can alter growth and competitive interactions between species (Allen 1991).

Chlorogalum purpureum var. *purpureum* is known from oak woodlands and grasslands at three sites near Jolon in Monterey County on lands owned and managed by the Department of the Army (Fort Hunter Liggett). Historically, appropriate habitat may have existed east of the base, in Jolon Valley, but most of the flat areas in that valley have been converted to cropland, pasture, or vineyards. At Fort Hunter Liggett, the plant occurs on flat or gently sloping terrain with a gravelly surface underlain by clay soils, often where other herbaceous vegetation is sparse.

Of the three localities of *Chlorogalum purpureum* var. *purpureum*, one comprises discontinuous and fragmented patches of plants scattered over an area 7 to 9 kilometers (km) (4 to 6 miles (mi)) long and about 5 km (3 mi) wide in the cantonment (housing and administration area), the Ammunition Supply Point, adjacent Training Area 13, and the boundary of Training Area 10 (U.S. Army Reserve Command 1996; map provided by D. Hines, *in litt.* 1998; Painter and Neese 1998). While some of the discontinuities in distribution are due to unsuitable intervening habitat, other patches have been fragmented by roads, the historical settlement of Jolon, and military training facilities. No population counts have been made at this site, but estimates of some areas within it suggest that it supports several thousand plants (U.S. Department of the Army 1997, Painter and Neese 1998). The second locality is about 4 km (2.5 mi) to the southeast in Training Area 25. The taxon is patchily distributed in an area of about 6 square km (2 square mi) that is laced with vehicle tracks and dirt roads. At one location there, 400 to 500 plants have been recorded (Painter and Neese 1998), but the entire site may support several thousand individuals. The third and southernmost locality is at the boundaries of Training Areas 23, 24, and 27. This is the largest known site and contains plants in high densities. Following a fire that may have promoted flowering, this site was estimated to support up to 10,000 plants (Painter and Neese 1998).

The primary threats to *Chlorogalum purpureum* var. *purpureum* are the loss, fragmentation, and alteration of habitat and direct elimination of plants from construction and use of military training facilities, military field training activities, displacement by nonnative annual grasses, and potentially by alteration of fire cycles due to military training. Livestock grazing and associated habitat changes may threaten this taxon if grazing is resumed in occupied habitat in the future.

About 110 km (70 mi) to the south, *Chlorogalum purpureum* var. *reductum* occurs in one region in the La Panza Range of San Luis Obispo County. It is currently known from only two sites. The larger site is located adjacent to a two-lane State highway; a smaller site is located approximately 5 to 8 km (3 to 5 mi) farther to the south. The larger locality is located on a narrow, flat-topped ridge or plateau supporting blue oak (*Quercus douglasii*) savannah. This plateau, bisected by a highway, is probably the remains of an ancient elevated alluvial terrace (a terrace consisting of material deposited by running water), most of which has been eroded away by surrounding drainages that are now 90 to 120 m (300 to 400 ft) below the plateau (H. Ehrenspeck, *in litt.* 1994). The soils have been described as well-drained red clays with a large component of gravel and pebbles (Hoover 1964, Lopez 1992). North of the highway, the population occurs on private lands. South of the highway, it grows on public lands managed by the U.S. Forest Service (USFS) on Los Padres National Forest (LPNF). A few plants may extend into the California Department of Transportation (Caltrans) right-of-way along the highway. Caltrans has designated both sides of the highway right-of-way in this area as Botanical Management Areas. These areas are to be managed for their special resource values (D. Magney, consulting biologist, pers. comm. 1999).

This population is patchily distributed over the plateau and has been estimated to occupy just 2 to 3 hectares (ha) (fewer than 8 acres (ac)) south of the highway and probably somewhat less on the highway's north side (Gaskin 1990; Lopez 1992; M. Borchert and K. Danielsen, USFS, pers. comm. 1997). A graded dirt road about 10 m (30 ft) wide bisects the portion of the population on public land. The road leads to private inholdings and residences on the LPNF and is bounded on either side by a pipe barrier that was installed in 1989 or 1990 to prevent off-highway vehicles (OHVs) from using the site (David Magney, biological consultant, pers. comm. 1997). A removable portion of the barrier and a barbed wire section of fence have been routinely breached by OHVs. Such illegal use was noted to be increasing from 1995 through 1997 (A. Koch, California Department of Fish and Game (CDFG), *in litt.* 1997a). In 1998, after publication of the proposed rule to list the species (63 FR 15142), the Forest Service replaced the broken section of barbed wire fence with a single post barrier and rewelded sections of broken pipe barrier elsewhere.

Because the site north of the highway is on private land, estimates of abundance or recent information on habitat conditions are not currently available. Population size estimates south of the highway, on public lands, have ranged from 1,000 individuals to several hundred thousand individuals (Borchert 1981, Warner 1991, Borchert *et al.* 1997). Some of this variability reflects changes in the above-ground presence of plants, since bulbs may remain dormant during years with unfavorable growing conditions. Monitoring along a 100 m (330 ft) transect showed that plant numbers were relatively stable within the transect between 1991 and 1997 (Borchert *et al.* 1997). This transect is not located in an area where vehicle trespass has continued to occur and is, therefore, not representative of the status of the population in areas subject to OHV activity. That portion of the population where the transect is located is accessible to livestock.

The second known locality of *Chlorogalum purpureum* var. reductum was first documented by botanists in the mid 1990s. It is located 5 to 8 km (3 to 5 mi) south of the LPNF population in an area with similar soils and topography (David Chipping, California Polytechnic State University, *in litt.* 1997). The taxon has been estimated to occupy less than 0.1 ha (0.25 ac) and consists of several hundred plants in two or more patches on private land. The landowner has expressed an interest in the plant and its protection (D. Chipping, *in litt.* 1997).

Chlorogalum purpureum var. *reductum* is threatened by illegal vehicle trespass into the larger locality on LPNF.

Livestock use may be detrimental to this taxon depending upon the intensity of livestock use and the extent to which livestock congregate in the population area. The effects of livestock grazing on this taxon need further evaluation.

Previous Federal Action

Federal Government actions on this species began as a result of section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Doc. No. 94–51) was presented to Congress on January 9, 1975, and included *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* as endangered. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3) of the Act) and of our intention to review the status of the plant taxa named therein.

On June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. This list, which included *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum*, was assembled on the basis of comments and data received by us and by the Smithsonian Institution in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Endangered Species Act required that all proposals over 2 years old be withdrawn.

A 1-year grace period was given to those proposals already more than 2 years old. Subsequently, on December 10, 1979, we published a notice (44 FR 70796) of the withdrawal of the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* were included in that withdrawal notice.

On December 15, 1980, we published an updated Candidate Notice of Review (NOR) for plants (45 FR 82480). This notice included *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* as "category 2 candidates." Category 2 candidates were defined as taxa for which we had data on biological vulnerability and threats indicating that listing was possibly appropriate, but the data were not sufficient to support proposed rules. The two *Chlorogalum* taxa were

included as category 1 candidates in the revised plant NOR is published in the **Federal Register** on September 27, 1985 (50 FR 39526), February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). Category 1 candidates were defined as those taxa for which we had on file sufficient information on biological vulnerability and threats to support the preparation of listing proposals, but issuance of proposed rules was precluded by other pending listing proposals of higher priority. The two *Chlorogalum* taxa were included as candidates in the NOR published on February 28, 1996 (61 FR 7596), as well as in the NOR published on September 19, 1997 (62 FR 49398). The definition formerly applied to category 1 candidates now applies to candidates as a whole. On March 30, 1998, we published a proposed rule in the **Federal Register** (63 FR 15142) to list *Chlorogalum purpureum* as threatened.

The processing of this final rule conforms with our fiscal year 2000 listing priority guidance, published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance establishes the order in which we will process rulemakings. The guidance calls for giving highest priority to handling emergency situations (Priority 1). With the exception of emergency actions, all other listing activities may be undertaken simultaneously; however, relative priorities for non-emergency listing actions may be based on the following priority levels. Processing final decisions on pending proposed listings are priority 2 actions. Priority 3 actions are the resolution of the conservation status of species identified as candidates (resulting in a new proposed rule or a candidate removal). Priority 4 actions are the processing of 90-day or 12-month administrative findings on petitions. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. This final rule is a priority 2 action and is being completed in accordance with the current listing priority guidance.

Summary of Comments and Recommendations

In the March 30, 1998, proposed rule (63 FR 15142), all interested parties were requested to submit factual reports or information that might contribute to development of a final rule. Appropriate Federal agencies, State agencies, county and city governments, scientific organizations, and other interested parties were contacted and requested to provide comments. Newspaper notices inviting public comment were published in the San Luis Obispo County *Telegram-Tribune* on April 2, 1998, and in the *Monterey Herald* on April 10, 1998. The comment period closed on May 29, 1998.

Nine comments were provided by individuals, organizations, and agencies on the proposed rule. Six of the commenters supported the listing, and two commenters opposed it. Several commenters provided additional technical information that, along with other clarifications, has been incorporated into the "Background" or "Summary of Factors Affecting the Species" sections of this final rule. Issues raised by commenters, and our response to each, are summarized as follows:

Issue 1: Two commenters noted that *Chlorogalum purpureum* var. *purpureum* is present in old roadbeds and areas that have been used or disturbed by vehicles. They speculated that disturbance may be beneficial to the plant; one commenter noted that we did not address this possibility in the proposed rule.

Our response: Observations of flowering *Chlorogalum purpureum* in vehicle tracks and scraped areas do exist (Gaskin 1990, Koch 1997). Because *C. purpureum* grows from an underground bulb, some mature plants may be able to survive situations when the above-ground portions are crushed by vehicles. The reduction in other vegetation may make the flowering *C. purpureum* more visible, as even a light cover by annual grasses can obscure the flowers of this species due to its short stature. It is also possible that the removal or suppression of competing vegetation that may occur due to multiple passes of a vehicle may temporarily make available greater light, water, or nutrient resources to the surviving *C. purpureum* plants. Mature *C. purpureum* plants may respond to this temporary increase in available resources by flowering. However, it would be inappropriate to therefore conclude that the species responds "favorably" to disturbance. The type of "disturbance" and its effects on all life history stages of the plant must be considered. For instance, increased flowering has been observed in many bulb-forming plants following fires (Gill 1977, Zedler and Zammit 1989). While scraping or vehicle use may mimic the removal of vegetation that occurs following fires, these activities do not mimic the other effects of fire (*e.g.*, conversion of thatch and other plant biomass to ash, alteration of nutrient availability, and soil chemistry (Gill 1977, Zedler and Zammit 1989)). In addition to crushing or removal of competing vegetation, vehicle-use in grassland habitats is also likely to cause soil compaction, loss of cryptogamic crusts, and introduction and spread of nonnative plant species; damage mycorrhizae; and crush seedlings, adult rosettes, and flowering stalks. Seedling establishment of *C. purpureum* var. reductum in compacted soils is reduced in comparison to establishment in loosened soils (Koch 1997). While *C. purpureum* has evolved in systems that are periodically "disturbed" by events such as wildfire, the human-caused "disturbances" addressed here do not mimic those with which the plant has evolved, have many unfavorable effects (as mentioned above), and take place in an environment where nonnative invasive plants are now established. We are not aware of any evidence to suggest that vehicle use, soil surface scraping, and excessive trampling in populations of *C. purpureum* would be other than detrimental to their long-term persistence.

Issue 2: One commenter suggested that quantitative data is inadequate to support listing *Chlorogalum purpureum* var. *purpureum* and that threats to this taxon discussed in the proposed rule should be considered only "potential" threats. The commenter stated that the number of documented locations of *C. p.* var. *purpureum* has increased, since 1994, from 5 to about 100, with few documented losses.

Our response: The Act requires that we use the best available scientific information as the basis for our listing decisions. In addition to published papers in peer-reviewed journals, scientific reports, letters, and personal correspondence, we consider professional judgment and expert opinion by knowledgeable biologists in making decisions. We have assessed the best available information provided by the Army at Fort Hunter Liggett and by other parties on the activities occurring in the locations supporting *C. p.* var. *purpureum*. While the Army has been responsive and shown initiative in implementing their environmental review process and while this may benefit *C. p.* var. *purpureum* and other sensitive plant species, we conclude that the activities occurring in the populations of *C. p.* var. *purpureum*, and the damage to associated soils and vegetation, are of sufficient magnitude that the taxon is imperiled and meets the definition of "threatened" under the Act. To assess the comment on the number of locations of *C. p.* var. *purpureum*, we compared the data on

known locations of *C. p.* var. *purpureum* submitted by this commenter with data we had received previously from this commenter and others on the locations of *C. p.* var. *purpureum* and found no substantial difference, other than how the locations are described. For instance, in the proposed rule, we described the northern site of *C. p.* var. *purpureum* as patches of plants occurring over an area 7 to 9 km (4 to 6 mi) long, while the commenter has this area mapped as about 60 individual locations. Because many of the patches of *C. p.* var. *purpureum* in this area grow within 100 meters of one another, gene flow may be occurring between them; and they may function as one or multiple populations. Therefore, we concluded that it is most appropriate to describe the distribution of plants in this area as a single discontinuous locality. Plants had been documented in this locality by 1994.

Issue 3: One commenter stated that the effects of military training activities on *Chlorogalum purpureum* var. *purpureum* are not known and that no evidence exists that foot traffic resulting from use of the obstacle course will degrade the *C. p.* var. *purpureum* sites. In response to our observation that no areas where this taxon occurs are off-limits to training, the commenter stated that eliminating military training from *C. p.* var. *purpureum* localities may not be needed because the plant is doing well at Fort Hunter Liggett under current conditions.

Our response: We disagree that the plant is doing well at Fort Hunter Liggett under current conditions. Military training activities, including field maneuvers, occur in the populations of *Chlorogalum purpureum* var. *purpureum*. Their effects are most evident in the locality in Training Area 25. Field maneuvers typically involve tracked and wheeled vehicles, placement of temporary housing (tents) for troops, digging of latrines, protection berms or bunkers, and use by hundreds of troops (U.S. Army Reserve Command 1996). Field maneuvers and bivouacking (temporary encampments) have resulted in soil compaction, ruts in the soil that alter microhabitat characteristics (Painter and Neese 1998; D. Steeck, pers. obs. 1998; J. Chesnut, consulting biologist, *in litt.* 1998), and loss of most herbaceous vegetation in areas where troop use is heavy (D. Steeck, pers. obs. 1997, 1998) and may result in direct crushing or trampling of vegetative or reproductive parts of purple amole. Such activity may also increase the spread or abundance of nonnative plant species. Other training activities involve the use of developed facilities, such as obstacle courses. According to their records (Hormann 1996), the Army at Fort Hunter Liggett avoided placing individual obstacles for the obstacle course directly on plants, however the obstacles were placed within the population. Use of the obstacle course is likely to reduce seedling establishment through crushing and soil compaction, and the construction of the course and its use may increase the abundance of nonnative grasses and weedy species on the site. We conclude that adequate evidence exists that military training activities, including field maneuvers and development and use of training facilities such as the obstacle course, are detrimental to *C. p.* var. *purpureum* at Fort Hunter Liggett.

Issue 4: One commenter stated that, because the historical distribution of *Chlorogalum purpureum* var. *purpureum* is not known, the extent of fragmentation cannot be known.

Our response: We agree that the extent of fragmentation of *Chlorogalum purpureum* var. *purpureum* populations is not known. Patches of plants may be discontinuous due to differences in soils and microhabitat conditions, even without human-induced changes to the landscape. However, in numerous places at Fort Hunter Liggett, plants occur up to, and on both sides of, a road or other human structure, strongly suggesting that they were once continuous (for instance, plants within the "triangle" of roads at the entrance gate, those on both sides of Mission Creek Road and on both sides of the dirt road leading to the rifle range and conditioning course). In these cases, depending on pollinator type and amount and type of converted habitat, gene flow from seed and pollen dispersal between the isolated or fragmented patches of plants will be reduced. We conclude that the historical settlement of Jolon on Fort Hunter Liggett and the construction and use of training areas, roads, and buildings have fragmented and isolated patches of *C. p.* var. *purpureum*.

Issue 5: One commenter suggested that we should not have included *Chlorogalum purpureum* var. *purpureum* in the proposed rule because it had a candidate listing priority number of 9, suggesting less threat than that for *C. p.* var. *reductum*, which had a candidate listing priority number of 3.

Our response: Assigning listing priority numbers to candidates, based on immediacy and degree of threat, is simply a method to help us prioritize the order in which candidates will be proposed for listing. By definition, a candidate species is one for which we have determined that we have adequate information on file to propose listing. When candidate species occur together in the same habitat or have close taxonomic affinities, we often include them together in a listing package to increase efficiency. The two taxa addressed in this listing make up the entire species *Chlorogalum purpureum*, so it is appropriate to address the entire species in one rule.

Issue 6: One commenter stated that a new road was not constructed at Fort Hunter Liggett as had been reported in 1988 by an observer. The commenter stated that Fort Hunter Liggett simply repaved an abandoned road that had fallen into disrepair. An aerial photograph from 1950 was presented to document the statement.

Our response: We have reviewed the photo and agree that it appears that the road in question was in place by 1950. The area where the plants are located (the commenter has illustrated their location on the photo) does not appear to have been surrounded by roads in 1950, however, suggesting that additional road construction since 1950 has occurred and has resulted in their being left in a triangular-shaped area, bounded on all sides by roads.

Issue 7: One commenter clarified that, since 1995, under the Army's environmental review procedures, projects have been modified in all cases where it was necessary to protect the *Chlorogalum purpureum* var. *purpureum*, not in just some cases, as the proposed rule described.

Our response: We are pleased to learn that, during the environmental review process, projects have been modified in all cases where needed to reduce impacts to this taxon. Our assessment is that these modifications have not always been sufficient. The wording in this final rule has been altered to reflect this determination. We also recognize that some activities that threaten this plant, such as bivouacking, are not addressed through the environmental review process but cause substantial modification of habitat for *Chlorogalum purpureum*, particularly in Training Area 25.

Issue 8: One commenter stated that *Chlorogalum purpureum*, particularly var. *reductum*, should be listed as endangered, due to the combined effects of livestock grazing and OHV trespass, which are degrading a significant portion of this taxon's range.

Our response: Although *Chlorogalum purpureum* var. *reductum* occupies a very limited area, the taxon is abundant within that area. The species is long-lived, and the threat of OHV trespass has been partially addressed by the

USFS through fencing, although more rigorous monitoring and maintenance of the barriers are needed. Transect data have shown that recruitment is occurring in the transect area where numbers of *C. p.* var. *reductum* have been relatively stable over the last 7 years (Borchert *et al.* 1997). The transect is in an area accessible to cattle, but is not in an area where OHV trespass has continued to occur and cannot be considered representative of the population. We have concluded that, while not currently in danger of extinction, *C. p.* var. *reductum* is "* * * likely to become endangered in the foreseeable future throughout all or a significant portion of its range" (the definition of "threatened") if impacts from increasing OHV trespass, road use and maintenance, livestock grazing, and potential displacement by nonnative species continue or increase.

Issue 9: One commenter stated that the Service, in the proposed rule, failed to address means, other than grazing, of reducing the impacts of invasive nonnative species on *Chlorogalum purpureum* var. *reductum*. The commenter also requested that the final rule include measures the USFS will take to reduce vehicle trespass into the population area.

Our response: We do not typically make management recommendations in proposed or final rules. Therefore, in this rule we have not included a discussion of methods to reduce the impacts of nonnative plants on *Chlorogalum purpureum* populations or the measures by which the USFS will address vehicle trespass. The latter will be addressed in the consultation process under section 7 of the Act, and both issues will be addressed through the recovery planning process after the species is listed. In the proposed rule, we noted that previous reports had suggested that *C. purpureum* might benefit from grazing if it reduced the abundance of nonnative annual grasses that occur in the population area and which may displace *C. purpureum*. These reports were not based on monitoring data, as none is available that address the effects of livestock on nonnative grasses at this site. In the proposed rule, we did not advocate or oppose livestock grazing as a means to reduce the effects of nonnative plants on *C. purpureum;* we believe studies investigating the effects of livestock grazing on *C. purpureum* are necessary should cattle continue to have access to the habitat of this taxon on Federal lands.

Issue 10: One commenter stated that our argument for not designating critical habitat was not well justified and that a designation of critical habitat would provide additional benefit to *Chlorogalum purpureum* var. *reductum* through the section 7 process.

Our response: We are deferring a critical habitat determination for *Chlorogalum purpureum* in accordance with the Final Listing Priority Guidance for FY 2000 (64 FR 57114). The Critical Habitat section in this rule contains further discussion of this issue.

Issue 11: One commenter stated that we lack jurisdiction to enact the proposed rule and that the rule should be withdrawn since there is no connection between regulation of these plants and a substantial effect on "interstate commerce."

Our response: Congress does have the authority pursuant to the Commerce Clause of the U.S. Constitution, to extend the regulatory protection of the Act to species that occur in a single site, such as the one in this final rule. A recent federal court case has upheld this authority (*National Association of Home Builders* v. *Babbitt, 130 F. 3d 1041 (D.C. Cir. 1997). cert. denied 118 S.Ct. 1998*).

Peer Review

In accordance with our peer review policy published on July 1, 1994 (59 FR 34270), we solicited the expert opinions of three peer reviewers regarding pertinent scientific or commercial data and assumptions relating to population status and biological and ecological information for *Chlorogalum purpureum*. Two of the three peer reviewers provided responses. Both respondents supported the listing of the species and described the information included in the rule as factually correct to the best of their knowledge. Both provided technical corrections. One reviewer also provided additional detailed technical information and references pertaining to threats to the species which the reviewer suggested needed more thorough discussion than that provided in the proposed rule.

Summary of Factors Affecting the Species

Section 4 of the Act and the regulations (50 CFR part 424) that implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Chlorogalum purpureum* Brandegee (purple amole) are as follows:

A. The present or threatened destruction, modification, or curtailment of its habitat or range.

Chlorogalum purpureum var. *purpureum* is known only from three localities on Fort Hunter Liggett, Monterey County. The northern site comprises discontinuous and fragmented patches over a 7 to 9-km (4 to 6-mi) area in the cantonment (housing and command center), several training areas, the Ammunition Supply point, and near the Jolon entrance gate. Habitat for *C. p.* var. *purpureum* has been destroyed, and patches of plants have been isolated and fragmented by the historical settlement of Jolon, roads, and the construction and use of training facilities over the past several decades. In the last 50 years, a large group of plants near the Jolon entrance gate was isolated by the addition of a new road (aerial photos from Hines *in litt.* 1998). Bounded on all sides by roads, this area was used as a vehicle parking area in the 1980s. Representatives from Fort Hunter Liggett and the Monterey Chapter of the California Native Plant Society (CNPS) cooperated in constructing barriers to reduce impacts to the area (Matthews and Branson 1988). Although the military has committed to maintaining these protective barriers, this site remains vulnerable due to its proximity to roads and isolation from surrounding patches of plants. For example, in 1996 a vehicle mishap resulted in a large piece of earth-moving machinery entering the site; its tracks through the population were still evident in September 1997 (Painter and Neese 1998; D. Steeck, U.S. Fish and Wildlife Service, pers. obs. 1997).

In another portion of this northern locality, the Army recently expanded training facilities (Hormann 1996). Since 1996, a new obstacle course and two small parking areas have been placed in habitat occupied by *Chlorogalum purpureum* var. purpureum. Although the obstacles and parking areas themselves were placed to avoid individual patches of plants (Hormann 1996; Hines *in litt.* 1998), foot traffic and use of the training facilities will likely degrade the habitat and eliminate a portion of the population. In addition to the obstacle course and parking areas, the Army has in the past 3 years constructed a confidence course and upgraded a firing range along the stretch of dirt road adjacent to the locality. The existence of some training facilities made this area more attractive for additional construction because the facilities could be located within walking distance of one another (Hormann 1996). For the same reason, this area is likely to be attractive for the siting of future training facilities, although the Army recently stated that they do not intend to develop the area further and are willing to enter into an agreement stating this decision (Hines *in litt.* 1998).

The second locality is in Training Area 25, which is used for field training maneuvers and is crossed by numerous dirt roads and tracks. Field maneuvers at Fort Hunter Ligget involve setting up temporary camps (bivouac sites), which may include excavations for latrines and washing facilities, bunkers, and protective berms. Field maneuvers routinely involve hundreds of troops and support staff as well as both tracked and wheeled vehicles (U.S. Army Reserve Command 1996). Large areas where substantial bivouacking occurred in 1997 were denuded, with much of the herbaceous vegetation among the oaks destroyed (D. Steeck, pers. obs. 1997). Vehicle tracks were evident throughout the site (D. Steeck, pers. obs. 1997, 1998) and had been reported by other observers (Painter and Neese 1998). Bivouacking typically occurs in these areas in summer (U.S. Army Reserve Command 1996). Although soils are not as susceptible to compaction at that time, fruiting stalks are destroyed and the loss of vegetation may lead to erosion and consequent loss of existing seeds and bulbs in the soil, as well as an increase in the abundance of nonnative plants. Soil compaction may damage soil mycorhizzae, and the loss of cryptobiotic crusts may hinder seedling establishment of native species (Belnap 1994), thereby intensifying displacement of native species by nonnative grasses. Cryptobiotic crusts have been observed in at least one locality where *Chlorogalum purpureum* var. *purpureum* is found (Painter *in litt.* 1998). Vehicle tracks have also been reported in the third locality of *C. p.* var. *purpureum* at the boundaries of Training Areas 23, 24, and 27 (Painter and Neese 1998, J. Chesnut, *in litt.* 1998). In 1997, the vegetation of this area appeared to be the least affected by training activities, although military training the previous year had caused a spring fire that burned the site and destroyed most of the year's seed crop (Painter and Neese 1998).

The larger site of *Chlorogalum purpureum* var. *reductum*, located on LPNF and on private land, is estimated to occupy less than 8 ha (20 ac) (maps in Borchert 1981, Gaskin 1990; Danielsen pers. comm. 1997). It was likely once continuous, but is now divided by a two-lane highway. The southern portion of the site, on public lands, is further bisected by a dirt road that is currently about 10 m (33 ft) wide and runs the length of the population. Although this road has existed for many decades, grading during the past 5 years has widened it toward the bounds of the pipe barrier fence that lines it, causing direct loss of some individuals of *C. p.* var. *reductum* and additional habitat loss (D. Magney, pers. comm. 1997). Because the roadbed is graded and highly compacted, the loss of habitat due to the roadbed is relatively permanent, barring extensive restoration efforts. Dust from use of the road during late spring may impede pollination in those plants exposed to it, and dust coating leaves can reduce photosynthetic abilities (Farmer 1993).

In the 1970s and 1980s, most of the LPNF locality of *Chlorogalum purpureum* var. *reductum* was used as a staging area by OHV enthusiasts (McLeod 1987). An active 4-wheel drive route still exists near the population (USFS 1993). A portion of the population was fenced in the early 1980s by the CNPS with help from the USFS to protect it from OHV use. In 1989 or 1990, due to continued OHV use in the area, the USFS installed a pipe barrier on both sides of the dirt road that bisects the population, to exclude vehicles from most of the population. Vehicles repeatedly trespassed onto the site over the past 5 years through broken fences leaving ruts or exposed tracks in the population (K. Danielsen pers. comm. 1996; A. Koch, CDFG, *in litt.* 1997; D. Steeck, pers. obs. 1997). In 1998, the USFS replaced a section of barbed wire fence with a metal post and rewelded broken pipe barriers. Continued monitoring and repairs will be needed to exclude vehicles. In addition to causing injury or death of individual plants, vehicle passes may destroy cryptobiotic soil crusts (Webb and Wilshire 1983), damage soil mycorrhizae, and cause soil compaction, altering the soil's water-holding capacity and interfering with the ability of roots to penetrate the soil (Webb and Wilshire 1983). The existing scars of older vehicle tracks in the population are probably partly the result of soil compaction. Biologists attempting to establish seedlings of *C. p.* var. *reductum* in old OHV tracks in the LPNF population found that only 36 percent of the seeds planted in untreated tracks germinated and survived through their first 1.5 years. Survival was 66 percent for seeds planted in old tracks where the top 10 cm (4 in) of soil was loosened prior to planting to reduce the effects of soil compaction. Bulbs in unloosened soil of old tracks also had a lower survival rate compared to those in loosened soil (Koch 1997). Other tests of germination response suggest that seeds require burial for post-germination survival and that uncompacted soils containing small fissures and spaces around gravel components are likely essential to successful seedling establishment (D. Wilken, *in litt.* 1998). Little information is available on the portion of this population located on private lands north of the highway.

The second site for *Chlorogalum purpureum* var. *reductum*, located solely on private lands, is reported to be extremely small (less than 0.1 ha (0.25 ac) with several hundred plants), compared to the population managed by the USFS (8 ha). Because this taxon is so narrowly distributed, the degradation of even an acre or two of the occupied habitat in the LPNF population constitutes a significant portion of this taxon's range.

Most localities of *Chlorogalum purpureum* are, or have been, subject to cattle grazing. The negative effects of livestock use on oak savannah habitat, where *C. purpureum* is most likely to occur, includes soil compaction, soil disturbance that enhances the introduction or spread of nonnative aggressive weedy species, direct crushing of the above-ground portion of plants, and diminished seedling establishment from trampling or from destruction of cryptobiotic crusts (Beymer and Klopatek 1991). It has been suggested that light grazing in the habitat of *C. purpureum* var. *reductum* may benefit *C. p. var. reductum* by reducing competition from annual grasses (The Nature Conservancy 1987, CDFG 1988). Others have noted, however, that any benefits of cattle use in the area may be more than offset by loss of reproductive structures, damage to seedlings, and habitat damage caused by livestock, since the allotment is in use February through May, a critical season in the life cycle of the purple amole (B. Painter *in litt.* 1998; J. Kuyper, Environmental Defense Center, *in litt.* 1998). Cattle use is likely to negatively affect the habitat of this species to the extent that cattle actually use the portion of the allotment where the population is located. Anecdotal observations in recent years suggest the cattle spend more time in other areas of the allotment where water and more forage is available (M. Fountain, pers. comm. 1998). However, cattle impacts can vary from year-to-year through variation in the grazing, congregating, or trailing patterns of the cattle without an increase in the permitted level of forage utilization in the allotment. If cattle have continued access to the population area, their effect on the population on Federal lands must be monitored; the

allotment should be managed to prevent negative effects to this taxon. Predation by cattle is discussed below under Factor C of this section.

B. Overutilization for commercial, recreational, scientific, or educational purposes.

Overutilization is not currently known to be a factor affecting this species.

C. Disease or predation.

Nearly every locality of *Chlorogalum purpureum* either is or has been subject to cattle grazing. The potential negative effects of livestock grazing (actual herbivory) on *C. purpureum* include the loss of flowers, fruit, and leaves. Cattle have been recorded grazing a substantial portion of the leaves of other, larger, *Chlorogalum* species (Willoughby 1986). Leaves of *C. p.* var. *purpureum* are more likely than those of *C. p.* var. *reductum* to be attractive to cattle, as the leaves of the latter are narrow and only a couple of inches long. All three localities of *C. p.* var. *purpureum* at Fort Hunter Liggett were in grazing allotments prior to 1991. Documented overgrazing occurred from 1963 to 1977 at Fort Hunter Liggett, after which a study of grazing was begun (Stechman 1995). During the grazing study, cattle stocking rates continued to exceed the capacity of the habitats to support them, especially when combined with the drought of the late 1980s and early 1990s (Stechman 1995). No specific information is available on the condition of the localities of *C. p.* var. *purpureum* during the period of overgrazing, as no basewide surveys for sensitive plant species had been conducted and the status of populations was not tracked. Grazing on Fort Hunter Liggett stopped in 1991, following an extended drought and poor range condition (Stechman 1995), but is scheduled to be resumed in the future, although no date has been set. If the recommendations in the grazing assessment are followed, cattle grazing leases would include most of the extended northern locality of this taxon and all of the second locality in Training Area 25. Only the southernmost locality, at the boundaries of Training Areas 23, 24, and 27, would be completely excluded from cattle use (Stechman 1995).

Chlorogalum purpureum var. *reductum* is within an active grazing allotment on the LPNF that cattle use from February through May (USFS 1997). The permitted level of use of the allotment by livestock is moderate (USFS 1997). In 1986 livestock use became a problem when cattle congregated within the population behind a fence built to block vehicle access (The Nature Conservancy 1987). A pipe barrier with low sections was later installed to permit cattle movement over the barriers. Because the period of cattle use coincides with growth and flowering of *C. p.* var. *reductum*, it is likely that reproduction would be negatively affected if cattle congregated on the plateau within the locality containing the population. In 1995 and 1996, cattle appeared to have spent little time on the plateau (A. Koch, pers. comm. 1997a). In 1997, fecal evidence suggested that cattle spent relatively more time within the site (D. Steeck, pers. obs. 1997; A. Koch, pers. comm. 1997b). Although current monitoring data are insufficient to evaluate the use of the allotment on *C. p.* var. *reductum*, grazing has the potential to negatively affect reproduction and survival (through loss of inflorescences and photosynthetic tissue), and may exacerbate damage already caused by vehicles or other human activities. We consider the inclusion of the population in an active grazing allotment a potential threat that should be assessed.

D. The inadequacy of existing regulatory mechanisms.

Pursuant to the Native Plant Protection Act (Div. 2, chapter 10 sec. 1900 *et seq.* of the California Department of Fish and Game Code) and the California Endangered Species Act (Div. 3, chapter 1.5 sec. 2050 *et seq.*), the California Fish and Game Commission listed *Chlorogalum purpureum* var. *reductum* as rare in 1978. California Senate Bill 879, passed in 1997 and effective January 1, 1998, requires individuals to obtain a section 2081(b) permit from CDFG to take a listed species incidental to otherwise lawful activities, and requires that all impacts be fully mitigated and all measures be capable of successful implementation. As applied to State-listed plant species, however, these requirements have not been tested; their effectiveness cannot be evaluated for several years.

Chlorogalum purpureum var. *reductum* occurs primarily on Federal lands managed by the LPNF and on private lands. State listing provides no consultation or other requirements for protection on Federal lands, although it is USFS policy to work with the State in the conservation of such taxa. The management of sensitive resources on the LPNF is guided by various policies and regulations, including the National Environmental Policy Act (NEPA) of 1969 (Pub. L. 91–109, 42 U.S.C. 4321–4347, 83 Stat. 852), National Forest Management Act (16 U.S.C. 1600 *et seq.*), and the Land and Resource Management Plan for the Los Padres National Forest (USFS 1988).

The NEPA requires that the USFS disclose and consider potential environmental impacts of a proposed project. Under new regulations, 10-year grazing permits are subject to the NEPA process, and the NEPA process is under way for the grazing allotment where *Chlorogalum purpureum* var. *reductum* occurs (USFS 1997). Although NEPA requires disclosure of potential effects of Federal actions and allows for comment by agencies and the public, it does not, of itself, provide additional protection.

The Land and Resource Management Plan for LPNF (USFS 1988) directs the USFS to ensure the viability of sensitive plant species and to emphasize the improvement and protection of habitat for sensitive species in their management activities. These regulations appear to be adequate, but their implementation by the USFS has not been consistent. Unless the barriers around portions of the population are regularly monitored and maintained, illegal trespass by vehicles into the habitat of *Chlorogalum purpureum* var. *reductum* is likely to continue. To date, the USFS has not adequately monitored vehicle trespass, repaired fencing, bolstered barriers in a timely manner, or adequately evaluated the effects of permitted livestock use on the population on LPNF (D. Steeck, pers. obs. 1998).

Chlorogalum purpureum var. *purpureum* occurs solely on Federal lands managed by Fort Hunter Liggett. The Department of Defense has various policies and directives to guide the management of sensitive natural resources. Army Regulation 200–3 provides for environmental review of projects that might affect sensitive and listed species. Fort Hunter Liggett has had an environmental review process since 1994, and *C. p.* var. *purpureum* is included in this process. According to the Army at Fort Hunter Liggett (D. Hines *in litt.* 1998), all projects are modified to reduce impacts to this taxon if impacts are predicted to occur. For example, a planned bayonet course was relocated to avoid placing it within or directly adjacent to patches of *C. p.* var. *purpureum*. In other cases, such as with the recent construction of the obstacle course and parking areas in occupied habitat, project modifications have been insufficient, and projects continue to be sited in occupied habitat and continue to affect this taxon. In addition, environmental review only occurs for projects that require excavation; bivouacking and vehicle impacts are not covered by this process. The environmental review process does not always allow for assessment surveys to be conducted at the time of year when the plant can be identified (H. Hormann, *in litt.* 1997). For example, surveys for the proposed bayonet course occurred in late summer 1997, when the above-ground portions of the plants were dry and difficult to locate.

Under Army Regulation 200–3, a Species Management Plan for *Chlorogalum purpureum* var. *purpureum* and other sensitive species on the base has been developed (Hazebrook and Clark 1997). While some of the goals will benefit *C. p.* var. *purpureum* if achieved, the actual protection the plan affords is minimal and based primarily on avoiding impacts to populations "when feasible." To date, no areas where *C. p.* var. *purpureum* occurs on the base are off-limits to training. We conclude that Army directives, while improving the consideration that this taxon receives on the base, have not yet altered activities to sufficiently reduce the threats posed by military activities.

E. *Other natural or manmade factors affecting its continued existence.*

Other factors affecting individuals of *Chlorogalum purpureum* var. *purpureum* include military training, changes in fire frequency, and the invasion of this taxon's habitat by nonnative plant species. Training activities that involve trampling, camping, or driving through occupied habitat can directly crush flowers, fruits, and vegetative parts of *C. p.* var. *purpureum* and result in diminished reproductive success, lower seedling establishment, and reduced plant vigor. At Fort Hunter Liggett, training activities increase in the spring, around April, and peak in the summer (U.S. Dept. of Army 1997), a period that coincides with flowering and fruiting of the taxon. Military field training activities can reduce seedling establishment by direct crushing and by altering soil bulk density and water-holding capacity. Training activities lead to soil compaction and soil disturbance, which also encourages the invasion of weedy, nonnative plant species that may compete directly with *C. p.* var. *purpureum*. Habitat alterations due to training activities are further discussed under Factor A.

The oak savannah and grassland habitats in which *Chlorogalum purpureum* occurs have been invaded by nonnative annual plants such as wild oats (*Avena* sp.), soft chess (*Bromus hordeaceus*), red brome (*Bromus madritensis* var. *rubens*), schismus (*Schismus barbatus*), and filaree (*Erodium* sp.) (Borchert 1981; Magney 1988; Painter and Neese 1998). Hoover (1970) noted that *C. p.* var. *reductum* grew higher under oaks where the soil was looser with greater humus content; others have noted since then that *C. p.* var. *reductum* is not found where annual nonnative grasses are dense (Borchert 1981, Painter *in litt.* 1998), which tends to be under oaks at the site on USFS land (D. Steeck, pers. obs. 1998). It may be that *C. p.* var. *reductum* has been displaced by nonnative grasses in these areas, restricting *C. p.* var. *reductum* to the patches of gravelly soils where nonnative grasses are stunted or sparse. Increasing invasion by nonnative annual grasses has been implicated in loss of habitat for other rare geophytes (*e.g.*, Rosentreter 1994). Cryptobiotic crusts that form on the soil surface have been shown to enhance seedling establishment in some native taxa (Belnap 1994), and the displacement of crusts may enhance invasion by nonnative species. These soil crusts are found in at least some populations of *C. purpureum* (Painter and Neese 1998; B. Painter *in litt.* 1998). Scraping or other activity that disturbs the soil surface has been noted in one instance at Fort Hunter Liggett to result in at least temporary high abundance of nonnative annual grasses (Painter and Neese1998). The rapid, dense growth of nonnative annual grasses may also act as an abundant, rapidly replenished fuel source leading to more frequent range fires as has been documented in other areas (Wright 1985) or the need for more frequent prescribed burns to reduce the potential of uncontrolled range fires (J. Chesnut, consulting biologist, *in litt.* 1998).

Burning too frequently or during seasons of growth and reproduction may threaten *Chlorogalum purpureum* var. *purpureum* at Fort Hunter Liggett. A spring burn swept through the southernmost locality on Fort Hunter Liggett in 1995. Botanists conducting a post-fire survey reported that all observed fruiting inflorescences were either damaged or destroyed, and they concluded that the seed crop was mostly, if not completely, destroyed (Painter and Neese 1998). The fire occurred in May, rather than summer or early fall, when most seeds would have been dispersed (Painter and Neese 1998). Burning too frequently may damage a population due to the slow growth rate of seedlings. Estimates of time needed for *C. purpureum* to reach reproductive maturity in the wild range from 5 to 15 years (Judy Jernstedt, University of California at Davis, *in litt.* 1998; M. Elvin, pers. comm. 1998). In addition, immature plants with small bulbs located near the soil surface may be particularly vulnerable to fires. The fire did appear to stimulate an increase in the number of plants flowering the following year (Painter and Neese 1998).

In developing this final rule, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species. Based on this evaluation, the preferred action is to list the species as threatened. This species is particularly vulnerable due to the restricted range it occupies. Threats to the species are vehicle trespass on USFS lands, military activities due to the species' location in active training areas and in the housing and administration area of an Army base, road use and maintenance, displacement by nonnative plant species, and livestock grazing. Because the Army's environmental directives are increasing the consideration afforded to this and other rare plant species on Fort Hunter Liggett and because the USFS has implemented some management actions for this species, we determine that threatened status is currently appropriate. The species is not currently in danger of extinction, but is likely to become so if substantial use of its habitat for military training activities continues and if OHV activities or livestock impacts increase in the population area on USFS lands.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by the species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that the designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other human activity, and

identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species.

The Final Listing Priority Guidance for FY 2000 (64 FR 57114) states, the processing of critical habitat determinations (prudency and determinability decisions) and proposed or final designations of critical habitat will no longer be subject to prioritization under the Listing Priority Guidance. Critical habitat determinations, which were previously included in final listing rules published in the **Federal Register**, may now be processed separately, in which case stand-alone critical habitat determinations will be published as notices in the **Federal Register**. We will undertake critical habitat determinations and designations during FY 2000 as allowed by our funding allocation for that year. As explained in detail in the Listing Priority Guidance, our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for *Chlorogalum purpureum* will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *Chlorogalum purpureum* without further delay.

We propose that critical habitat is prudent for *Chlorogalum purpureum*. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that designation of critical habitat would be prudent for *Chlorogalum purpureum*.

In the absence of a finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. In the case of this species, there may be some benefits to designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There may also be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for *Chlorogalum purpureum*.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the *Chlorogalum purpureum* as soon as feasible, considering our workload priorities.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat, if any is designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

Although this final rule lists *Chlorogalum purpureum* at the specific level, we intend through the recovery planning process to designate each of the varieties as a separate recovery unit for purposes of section 7 consultation and the recovery process. In other words, the jeopardy standard would be applied to either *C. p.* var. *purpureum* or *C. p.* var. *reductum* as separately identified recovery units, in accordance with our Endangered Species Consultation Handbook.

Federal agencies that may affect the species proposed in this rule through activities they fund, authorize, or carry out are the USFS (at Los Padres National Forest), the Department of the Army (at Fort Hunter Liggett) and, to a much smaller extent, the Federal Highway Administration through funds provided for State highway construction or maintenance.

Chlorogalum purpureum var. *purpureum* occurs wholly on Federal lands managed by the Department of the Army. Activities the Army funds, authorizes, or carries out that could affect this taxon include, but are not limited to, construction and use of training facilities, field training exercises, road construction and maintenance, prescribed burning, fire suppression activities, livestock grazing, and hunting.

Chlorogalum purpureum var. *reductum* occurs primarily on public lands managed by the USFS on Los Padres National Forest. Activities that the USFS funds, authorizes, or carries out that could affect this taxon include livestock grazing, OHV activities, road maintenance, fire suppression activities, and special use permits authorizing use and the development of management plans for special use areas.

Listing *Chlorogalum purpureum* as threatened will provide for the development of a recovery plan. The plan will bring together Federal, State, and local efforts for the plant's conservation, establishing a framework for cooperation and coordination. The plan will set recovery priorities and describe site-specific management actions necessary to achieve the conservation of the species. Additionally, pursuant to section 6 of the Act, we will be more likely to grant

funds to the State for management actions promoting the protection and recovery of the species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened plants. All prohibitions of section 9(a)(2) of the Act implemented by 50 CFR 17.71 for threatened plants apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce the species to possession any such species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, or in the course of violation of State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to this species in the future if regulations are promulgated. Seeds from cultivated specimens of threatened plants are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to agents of the Service and State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits are also available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. It is anticipated that few trade permits would ever be sought or issued because this species is not in cultivation or common in the wild. Information collections associated with these permits are approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. For additional information concerning these permits and associated requirements, see 50 CFR 17.72.

Requests for copies of the regulations on listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone: 503/231–2063; facsimile: 503/231–6243).

It is our policy, published in the **Federal Register** (59 FR 34272) on July 1, 1994, to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the species' listing on proposed and ongoing activities within its range. Collection of listed plants are prohibited without a Federal endangered species permit. We are unaware of any activities on non-Federal lands that constitute a violation of section 9 of the Act.

Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Regulatory Planning and Review

This rule is not subject to review by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* is required. An information collection related to the rule pertaining to permits for endangered and threatened species has OMB approval and is assigned clearance number 1018–0094. For additional information concerning permits and associated requirements for threatened plants, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author:

The primary author of this final rule is Diane Steeck, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulations Promulgation

Accordingly, we hereby amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend section 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
•	•	•	•	•	•	•	
Chlorogalum purpureum.	Purple amole	U.S.A. (CA)	Liliaceae—Lily	T	689	NA	NA
•	•	•	•	•	•	•	

Dated: March 14, 2000.
Jamie Rappaport Clark,
Director, Fish-and Wildlife Service.
[FR Doc. 00–6836 Filed 3–15–00; 4:31 pm]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE81

Endangered and Threatened Wildlife and Plants; Final Rule for Endangered Status for Four Plants From South Central Coastal California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have determined endangered status for *Cirsium loncholepis* (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), *Hemizonia increscens* ssp. *villosa* (Gaviota tarplant), and *Lupinus nipomensis* (Nipomo Mesa lupine), pursuant to the Endangered Species Act (Act) of 1973, as amended. These plants are in danger of extinction because their habitats have been significantly reduced over time by residential, commercial, agricultural, and oil and gas development. Their remaining habitats have been adversely affected by development, military activities, alteration of natural fire cycles, and the invasion of nonnative plant species. The limited distribution and small population sizes of these four species also make them more vulnerable to extinction from naturally occurring catastrophic events. Existing regulations do not provide adequate protection to prevent further losses from ongoing activities. This rule will extend the Act's protection to these plants.

EFFECTIVE DATE: This rule is effective April 19, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Tim Thomas, Botanist, at the above address (telephone 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Cirsium loncholepis (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), *Hemizonia increscens* ssp. *villosa* (Gaviota tarplant), and *Lupinus nipomensis* (Nipomo Mesa lupine) occur along the south central California coast. They are restricted to a narrow area in northern and western Santa Barbara County, southern San Luis Obispo County, and southern Monterey County.

These species occur in sensitive, declining or altered habitats including central dune scrub, central maritime chaparral, valley needlegrass grassland, coastal freshwater wetlands, and southern bishop pine forest (Holland 1986; Schoenherr 1992). Two of these habitats, central dune scrub and coastal freshwater wetlands, are notable for their geological and biological value. The largest coastal dune system in California, the Guadalupe Dune region, is located in southern San Luis Obispo County near Guadalupe, where approximately 47 square kilometers (sq km) (18 sq miles (mi)) of active dunes create a series of back dune lakes. The Department of the Interior added the Guadalupe Dune region to the National Natural Landmark system in 1980, recognizing the biological and physical diversity of the area (Schoenherr 1992).

Lupinus nipomensis is wholly restricted to these dunes. *Cirsium loncholepis* is also restricted to these dunes with the exception of a small disjunct population in southern Monterey County (California Natural Diversity Data Base (CNDDB) 1998). The coastal dune habitats are highly disturbed, and all habitat remnants have been invaded by nonnative plant species. Invasive weeds such as *Ehrharta calycina* (veldt grass), *Ammophila arenaria* (European beach grass), *Carpobrotus edulis* (iceplant), and *Mesembryanthemum crystalinum* (crystalline iceplant) are serious threats to the natural ecological processes of coastal sandy habitats and to the viability of *L. nipomensis* and *C. loncholepis* (Smith 1976; Zedler and Scheid 1988; Schoenherr 1992).

Inland from the active dunes, remnants of prehistoric uplifted dunes have formed a weakly cemented sandstone that has weathered to produce a sandy, extremely well drained, and nearly infertile soil (Davis *et al.* 1988). This substrate has a limited distribution, occurring on the following mesas in the area: Nipomo Mesa, Casmalia Hills, San Antonio Terrace, Burton Mesa, Lompoc Terrace, and Purisima Hills. The habitat that occurs on these sand hills has been called the central coast maritime chaparral and has been the focus of several studies (Ferren *et al.* 1984; Davis *et al.* 1988; Philbrick and Odion 1988; Davis et al. 1989; Odion *et al.* 1992). Two of the locations of *Eriodictyon capitatum* occur in maritime chaparral. Seven local endemic plant species, and at least 16 other uncommon plant species, are also components of this habitat. This community type is an exceptional biological resource due to the concentration of rare plants found within it, but most of it has been converted to other land uses or degraded by weed invasion and habitat fragmentation (Davis *et al.* 1988; Odion *et al.* 1992). Central coast maritime chaparral is considered threatened and sensitive by the California Department of Fish and Game's (CDFG) Natural Heritage Division (Holland 1986). Southern bishop pine (*Pinus muricata*) forest is scattered in the Purisima Hills and intergrades with the central coast maritime chaparral (Holland 1986).

Hemizonia increscens ssp. *villosa* is associated with the rare needlegrass grasslands, composed of native purple needlegrass (*Nassella* spp.). The habitat intergrades with coastal sage scrub made up of *Artemisia californica* (California sagebrush), *Baccharis pilularis* (coyote bush), and *Hazardia squarrosa* (sawtooth golden bush).

Discussion of the Four Species

Cirsium loncholepis

Cirsium loncholepis (La Graciosa thistle) was collected by Eastwood in 1906 near the village site of La Graciosa (razed in 1877 and the current site of Orcutt) in San Luis Obispo County (Smith 1976). *Cirsium loncholepis* is a short-lived (1 to 2 years), spreading, mound-like or erect, and often fleshy, spiny member of the sunflower family (Asteraceae). Plants are from 1 to 10 decimeters (dm) (4 to 40 inches (in.)) in height, with one to several stems. The leaves are wavy-margined. The lower leaves are 10 to 30 centimeters (cm) (4 to 12 in.) long with spiny petioles and usually deeply lobed with secondary lobes or teeth. The leaf base of the middle and upper leaves forms short, spiny wings along the petiole. The flower heads are in tight clusters at the tips of the stems. Flowering heads are 2 to 4 cm (0.8 to 1.6 in.) wide. The corollas are 25 to 30 millimeters (mm) (1 to 1.2 in.) long and more or less white with a purplish tube containing purple anthers. This species closely resembles *Cirsium brevistylum* (Indian thistle), a taller plant with the upper portion covered with cobwebby hairs. The leaves of *C. brevistylum* are shallowly lobed, whereas the leaves of *C. loncholepis* are deeply lobed with secondary lobes (Keil and Turner 1993).

Cirsium loncholepis is largely restricted to back dune and coastal wetlands of southern San Luis Obispo County and northern Santa Barbara County, from the Pismo Dunes lake area and south historically to the Santa Ynez River. The Guadalupe Dune complex, in which the majority of the species occurs, extends inland only up to 3.2 kilometers (km) (2 miles (mi)). Deflation areas behind the foredunes often intersect the water table, creating wetlands and back dune lakes. *Cirsium loncholepis* is found in wet soils surrounding the dune lakes and in the moist dune swales, where it is often associated with *Juncus* spp. (rush), *Scirpus* spp. (tule), *Salix* spp. (willow), *Toxicodendron diversilobum* (poison oak), *Distichlis spicata* (salt grass), and coyote brush (Hendrickson 1990). The historic distribution of the species included extensive areas in the Orcutt region that have been converted from wetland habitat to agricultural uses or otherwise developed. Large populations, similar to an existing one at the mouth of the Santa Maria River, likely occurred in these areas prior to their conversion. As early as 1950, Smith studied the lack of suitable habitat for *C. loncholepis* in the vicinity of La Graciosa (Smith 1976). Historic maps show the area covered with extensive wetlands, which no longer exist (Hendrickson 1990). One small population has been reported from moist openings in coastal scrub habitat in a coastal drainage in southern Monterey County (Vern Yadon, pers. comm. 1998).

There are 17 known locations for *Cirsium loncholepis*. The populations in the dune systems are small and isolated, and show a reduced reproductive vigor (Hendrickson 1990). Seven of the populations are reported to have fewer than 60 plants each (CNDDB 1998). Only one population has had a substantial number of plants, fluctuating between 6,000 and 54,000 individuals. However, it is located at the mouth of the Santa Maria River in the floodplain, where it was significantly disrupted by flooding in 1998 (John Chesnut, private consultant, *in litt.* 1998). Surveys in 1998 of five known population locations found that all of them were much reduced or apparently extirpated since surveys were conducted in 1990 (J. Chesnut, *in litt.* 1998). The declines apparently are due to the change in habitat as riparian willows and other vegetation invade the areas that previously supported this wet meadow plant (J. Chesnut, *in litt.* 1998).

Ongoing threats to this species include groundwater pumping, oil field development, and competition from nonnative plants (Hendrickson 1990; CDFG 1992). Cattle grazing in the riparian habitat at the mouth of the Santa Maria River may reduce the competition from other species (Hendrickson 1990), but the long-term effects of livestock use on the habitat are unknown. All but one population of *C. loncholepis* are on private lands. A small population occurs in the Los Padres National Forest in southern Monterey County. The trend for *C. loncholepis* has been one of decline (CDFG 1992; CNDDB 1998). The State listed this species as threatened in 1990 (CDFG 1992).

Eriodictyon capitatum

Eriodictyon capitatum (Lompoc yerba santa) was collected by Hoffman in 1932 near Lompoc growing under bishop pine and described the following year (Eastwood 1933). *Eriodictyon capitatum* is a shrub in the waterleaf family (Hydrophyllaceae) with sticky stems up to 3 meters (m) (10 feet (ft)) tall. The sticky leaves are narrowly linear. The head-like inflorescence has lavender corollas that are 6 to 15 mm (0.2 to 0.6 in.) long. It is distinguished from related species by its narrow, entire leaves and its head-like inflorescence (Halse 1993).

Eriodictyon capitatum occurs in maritime chaparral with *Dendromecon rigida* (bush poppy), *Quercus berberidifolia, Q. parvula* (scrub oaks), and *Ceanothus cuneatus* (buck brush) and in southern bishop pine forests that intergrade with chaparral *Arctostaphylos* spp. (manzanita) and *Salvia mellifera* (black sage) (Smith 1983). The four known locations of the *E. capitatum* occur in western Santa Barbara County. Two of these locations, composed of three groups, are on Vandenberg Air Force Base (VAFB). The other two locations are on private land in the oilfields south of Orcutt (comprising one group) and at the western end of the Santa Ynez Mountains (made up of three groups). Based on isozyme analysis, Elam (1994) determined that two of the VAFB groups are apparently uniclonal, a single plant composed of many stems produced by the vegetative spread of the root system. All of the Santa Ynez Mountains colonies, and the remaining group at VAFB, were multiclonal. The Orcutt location was not studied due to inaccessibility. The three Santa Ynez Mountains groups ranged from 11 to 20 clones each. The three VAFB groups ranged from 1 to 18 clones each. *Eriodictyon capitatum* is self-incompatible (i.e., it requires pollen from genetically different plants to produce seed), and its fruits appear to be parasitized by an insect (Elam 1994). A study of one of the apparently uniclonal groups at VAFB showed that *E. capitatum* successfully resprouted from the base of the plant after a prescribed fire. However, several stems died, and no seedling recruitment occurred; a uniclonal, self-incompatible plant would be expected to produce little or no seed (Jacks *et al.* 1984).

Fire management practices, invasive nonnative plant species, low seed productivity, and naturally occurring catastrophic events pose significant threats to the long-term survival of this species. None of the colonies are actively protected. *Eriodictyon capitatum* was listed as rare by the State of California in 1979 (CDFG 1992).

Hemizonia increscens ssp. villosa

Hemizonia increscens ssp. *villosa* (Gaviota tarplant) is a member of the sunflower family. Tanowitz (1982) described this plant from collected material, as well as a specimen gathered in 1902 by Elmer near Gaviota, 24 km (15 mi) west of Santa Barbara. *Hemizonia increscens* ssp. *villosa* is a yellow-flowered, variable gray-green, soft, hairy annual that is 3 to 9 dm (12 to 35 in.) tall with stems branching near the base. The lower leaves are 5 to 8.6 cm (2 to 3.4 in.) long. The inflorescence is rounded to flat-topped with mostly 13-ray flowers and 18 to 31 disk flowers that are usually sterile. Two other subspecies, *H. increscens* ssp. *increscens* and *H. increscens* ssp. foliosa, differ from *H. increscens* ssp. *villosa* by their stiff-bristly, deep-green foliage; however, chemical composition is the best means to differentiate these species (obtained from a glycone exudate, which can be tested easily with thin layer chromatography) (Keil 1993; Katherine Rindlaub, Biological Consulting, *in litt.* 1998). Occasional observations of 13-rayed *H. increscens* ssp. *increscens* are reported as *H. increscens* ssp. *villosa* (K. Rindlaub, *in litt.* 1998).

Hemizonia increscens ssp. *villosa* has a highly localized distribution in western Santa Barbara County, where it is associated with needlegrass grasslands dominated by *Avena* spp. (a nonnative wild oat), and occasional native purple needlegrass, that intergrade with coastal sage scrub composed of California sagebrush, coyote bush, and sawtooth golden bush. Its habitat lies on an uplifted, narrow marine terrace 46 to 60 m (150 to 200 ft) above sea level. The plant is restricted to Conception and Milpitas-Positas soils, which consist of acidic, fine, sandy loams (All American Pipeline Company (AAPC) 1990). A subsurface clay layer, 2.5 to 90 cm (1 to 36 in.) deep, may serve as a reservoir of

soil moisture in an area otherwise characterized by summer drought (Howald 1989). *Hemizonia increscens* ssp. *villosa* consistently occurs where the depth to clay is only 2.5 to 5 cm (1 to 2 in.) (K. Rindlaub, *in litt.* 1998).

Hemizonia increscens ssp. *villosa* is known only from a narrow, 3.5-km (2.2-mi) long band of coastal terrace situated between the Santa Ynez Mountains and the ocean near Gaviota. Within this band, one scattered population occurs on a total of about 24 hectares (ha) (60 acres (ac)) of habitat. The patches are often separated by no more than 100 m (330 ft) and represent one extended population (Howald 1989). Other pockets of Conception and Milpitas-Positas soils occur along the coast to the west and east of Gaviota, where the vegetation continues to be altered by development, cattle grazing, and farming. Repeated extensive surveys have been conducted without positive verification of *H. increscens* ssp. *villosa* in these areas (Howald 1989). As is typical of annual plant species, the number of individuals present from 1 year to the next varies dramatically, depending on climatic conditions and other factors. In some years, patches may contain few to no individuals (Howald 1989). In 1995 and 1997, the taxon was not abundant at any location (K. Rindlaub, pers. comm. 1995, *in litt.* 1998).

The narrow coastal terrace is bisected lengthwise by Highway 101, a railroad, and several pipelines. Most of the habitat for *Hemizonia increscens* ssp. *villosa* lies on the north side of the highway on private lands owned by the petroleum industry. A few colonies occur on the south side of Highway 101 on land owned by the California Department of Parks and Recreation.

Hemizonia increscens ssp. *villosa* is threatened by destruction of individual plants, habitat loss, and degradation from the development of oil and gas facilities, including pipelines, and competition with nonnative weeds. The trend for this taxon has been one of decline (CDFG 1992). *Hemizonia increscens* ssp. *villosa* was listed as endangered by the State of California in 1990 (CDFG 1992).

Lupinus nipomensis

Lupinus nipomensis (Nipomo mesa lupine) was collected in 1937 by Eastwood and Howell from Nipomo Mesa, San Luis Obispo County; Eastwood subsequently published a description of the species (Eastwood 1939). Although Munz and Keck (1959) submerged *L. nipomensis* as a synonym of *L. concinnus*, other authors, including the most recent treatment, recognize *L. nipomensis* as a species (Abrams 1944; Riggins 1993). *Lupinus nipomensis* is an annual member of the pea family (Fabaceae). It is 1 to 2 dm (4 to 8 in.) tall and hairy with decumbent stems. The leaves, with 5 to 7 leaflets, are 10 to 15 mm (0.4 to 0.6 in.) long and 5 to 6 mm (0.2 to 0.23 in.) wide. The inflorescence is not whorled, and the flowers are 6 to 7 mm (0.23 to 0.3 in.) long with pink petals. *Lupinus nipomensis* is distinguished from the related *L. concinnus* by its decumbent inflorescence, succulent leaflets, lack of axillary flowers, and restriction to sand dune habitat (Walters and Walters 1988).

Lupinus nipomensis grows in stabilized back dune habitat of the Guadalupe dunes in the southwestern corner of San Luis Obispo County. The plant occurs as 1 extended population made up of 7 colonies with fewer than 700 plants. The small patches are spread over 2.4 km (1.5 mi). At least three historical localities have been extirpated, including its type locality (CDFG 1992; CNDDB 1998). The majority of the habitat is considered degraded by either physical disturbance or invasion by nonnative weedy species (Walters and Walters 1988). Even high-quality habitat is adversely affected by impacts from nonnative invasive species. Under the best conditions, the species occurs in dune swales with a higher diversity of native annuals and widely spaced individuals of *Ericameria ericoides* (mock heather), a small native subshrub. In both types of habitat, *L. nipomensis* requires pockets of bare sand, suggesting a low tolerance for competition (Walters and Walters 1988).

All known occurrences of *Lupinus nipomensis* are on private lands and remain unprotected. The primary threat to the species is the uncontrolled invasion of aggressive nonnative weeds, especially veldt grass, and the subsequent displacement of the species. The plant was listed by the State as endangered in 1987, and the trend has been one of decline (CDFG 1992).

Previous Federal Action

Federal action on these plants began as a result of section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and included *Cirsium loncholepis* and *Eriodictyon capitatum* as endangered. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act, and our intention to review the status of the reported plant species.

On June 16, 1976, we published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Cirsium loncholepis* and *Eriodictyon capitatum* were included in this **Federal Register** publication. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). The Endangered Species Act Amendments of 1978 required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), we published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

We published an updated Notice of Review (NOR) for plants on December 15, 1980 (45 FR 82480). This notice included *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Lupinus nipomensis* as category 1 candidate species. Category 1 candidates were formerly defined as species for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals, but issuance of a proposed rule was precluded by other listing activities of higher priority. On November 28, 1983, we published a supplement to the NOR in the **Federal Register** (48 FR 53640), in which *C. loncholepis* and *L. nipomensis* were included as category 2 candidates. Category 2 formerly included species for which information in our possession indicated that proposing to list as endangered or threatened was possibly appropriate, but for which sufficient data on biological vulnerability and threats were not available to support a proposed rule.

The plant NOR was again revised on September 27, 1985 (50 FR 39526). In this notice, *Eriodictyon capitatum* was included as a category 1 candidate, and *Cirsium loncholepis* and *Lupinus nipomensis* remained category 2 candidates. On February 21, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144), revised NORs were published that included *C. loncholepis*, *E. capitatum*, *Hemizonia increscens* ssp. *villosa*, and *L. nipomensis* as category 1

candidates. On February 28, 1996, we published an NOR in the **Federal Register** (61 FR 7596) that discontinued the designation of category 2 species as candidates. That notice included as candidates only those species meeting the former definition of category 1, and included the four species in this rule. They maintained candidate status in the NORs published on September 19, 1997 (62 FR 49398), and October 15, 1999 (64 FR 57534).

Section 4(b)(3)(B) of the Act requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. That provision of the Act applied to *Cirsium loncholepis*, *Eriodictyon capitatum*, *Hemizonia increscens* ssp. *villosa*, and *Lupinus nipomensis*, because the 1975 Smithsonian report had been accepted as a petition. On October 13, 1983, we found that the petitioned listing of this species was warranted but precluded by other pending listing actions, in accordance with section 4(b)(3)(B)(iii) of the Act; notification of this finding was published on January 20, 1984 (49 FR 2485). Such a finding requires the petition to be recycled, pursuant to section 4(b)(3)(C)(i) of the Act. The finding was reviewed annually in October of 1984 through 1995. On March 30, 1998, a proposed rule to list *Cirsium loncholepis*, *Eriodictyon capitatum*, *Hemizonia increscens* ssp. *villosa*, and *Lupinus nipomensis* as endangered was published in the **Federal Register** (63 FR 15164).

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance.

We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule and to incorporate information obtained through the public comment period. This additional information did not alter our decision to list these species.

Summary of Comments and Recommendations

In the March 30, 1998, proposed rule, we requested interested parties to submit comments or information that might contribute to the final listing determination for these four plant species. We sent announcements of the proposed rule to appropriate Federal and State agencies, county and local governments, scientific organizations, and other interested parties, and requested comments. During the public comment period, nine written comments were received. Eight of the commenters provided additional data and information concerning the threats, biology, and ecology of the subject species. We evaluated this information and incorporated it into the final determination, as appropriate. A single issue raised by one commenter that is relevant to the listing of the plant species is summarized as follows, along with our response:

Issue: The Federal Government, and hence the U.S. Fish and Wildlife Service, does not have the authority to list a species found in only one State, and we exceeded the scope of the Federal commerce power under the Commerce Clause of Article I, section 8 of the U.S. Constitution.

Our Response: The Federal Government has the authority under the Commerce Clause of the U.S. Constitution to protect these species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S.Ct. 2340 (1998). That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with the species in this rule, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the Act's prohibition against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate (1) use of channels of interstate commerce; and (2) activities substantially affecting interstate commerce, because applying the Act in that case prevented destructive interstate competition and loss of biodiversity. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends and regulates commercial development that is part of interstate commerce.

The Federal Government also has the authority under the Property Clause of the Constitution to protect *Cirsium loncholepis* occurring in the Los Padres National Forest. If this species were to become extinct or extirpated, the diversity of plant life in the Los Padres would be diminished. The courts have long recognized Federal authority under the Property Clause to protect Federal resources in such circumstances. See e.g., *Kleppe* v. *New Mexico*, 429 U.S. 873 (1976); *United States* v. *Alford*, 274 U.S. 264 (1927); Camfield v. *United States*, 167 U.S. 518 (1897); *United States* v. *Lindsey*, 595 F.2d 5 (9th Cir. 1979).

Peer Review

We solicited formal scientific peer review of the proposal in accordance with our July 1, 1994, Interagency Cooperative Policy for Peer Review (59 FR 34270). We requested three individuals who possess expertise in botany and/or conservation biology to review the proposed rule by the close of the comment period. We received comments from two of the three reviewers within the comment period. Both concurred with our position on factors relating to the taxonomy of the species and the biological and ecological information. One provided additional information on threats. We considered their comments and incorporated the additional information into the final rule.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Cirsium loncholepis* Petrak (La Graciosa thistle), *Eriodictyon capitatum* Eastw. (Lompoc yerba santa), *Hemizonia increscens* ssp. *villosa* B.D. Tanowitz (Gaviota tarplant), and *Lupinus nipomensis* Eastw. (Nipomo Mesa lupine) are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Habitat fragmentation and alteration of species composition and vegetation structure threaten the long-term survival of all of the species in this rule. These species have extremely limited natural distributions (*Eriodictyon capitatum* and *Hemizonia increscens* ssp. *villosa*)

or reduced distributions resulting from loss of habitat (*Cirsium loncholepis* and *Lupinus nipomensis*).

Eriodictyon capitatum is associated with the central maritime chaparral and bishop pine forest, which are threatened habitat types with limited distribution and rich in plant species of limited distribution (Holland 1986). Most of the central maritime chaparral has been converted to a variety of land uses, and degraded by development, weed invasion, habitat fragmentation, and other factors (Hoover 1970; Davis *et al.* 1988; Odion *et al.* 1992; CNDDB 1998). Iceplant invasion threatens to convert the maritime chaparral into a habitat dominated by mats of the exotic succulent (Odion *et al.* 1992). Iceplant was documented as an invasive in habitat occupied by *E. capitatum* following a prescribed fire (Jacks *et al.* 1984). Veldt grass, seeded in controlled burns and used for soil stabilization at VAFB, has become widespread and naturalized (Smith 1976; Jones and Stokes Associates 1997). Comparison of historic and current photographs of habitat similar to that occupied by *E. capitatum* show no veldt grass in 1973, whereas in 1997, the same site was dominated by veldt grass (Chris Gillespie, VAFB, pers. comm. 1997).

Department of Defense base closures across the nation have resulted in the relocation of activities to those bases that remain operational. Facility maintenance and development for military and private commercial purposes planned at VAFB are likely to result in additional loss and alteration of habitat occupied by *Eriodictyon capitatum* (Al Nadel, VAFB, pers. comm. 1993).

With considerable competition for use of the commercial spaceport on the base by 25 to 30 companies and launches anticipated to occur every 2 weeks (C. Gillespie, pers. comm. 1995), missile launch operations could adversely affect habitats surrounding launch facilities. For example, in 1993, a missile was destroyed shortly after launching at VAFB, and a series of brush fires caused by burning rocket fuel burned more than 162 ha (400 ac). Large fragments of metal blasted downward toward the ground caused physical damage to the habitat (Wallace 1993). In September 1997, a 200–ha (500–ac) fire and a 600–ha (1,500–ac) fire burned near occupied habitat of *Eriodictyon capitatum* (Los Angeles Times 1997a). Fire containment lines constructed by bulldozers in the vicinity of the species were observed after the fire (J. Watkins, pers. comm. 1997). On November 1, 1997, a 495–ha (1,225–ac) fire that was accidentally set by an explosives disposal team at VAFB was partially contained by back-burning an area containing a population of *E. capitatum* (Los Angeles Times 1997b). In addition, nonnaturally occurring fires facilitate the invasion of aggressive nonnative plant species into the maritime chaparral habitats. This occurrence will likely become more of a problem under the existing prescribed burn program and suppression activities (see factor E below).

Hemizonia increscens ssp. *villosa* occurs within a narrow 3.6-km (2.25-mi) band of coastal terrace grassland about 24 ha (60 ac) in extent. About 40 percent of the coastal terrace habitat within the known range of *H. increscens* ssp. *villosa* has been destroyed, altered, or fragmented by the construction of oil and gas facilities and pipelines. Projects during the past 5 years within the taxon's habitat include the installation of a water pipeline for the relocated Vista del Mar school, the proposed construction of the Pacific and Mariposa pipelines (oil/gas), and the Molino drilling station. The Molino parcel contains the single largest continuous population of *H. increscens* ssp. *villosa* (M. Meyer, pers. comm. 1996). Maintenance of pipelines and facilities will continue to disturb the species' habitat and encourage the establishment of invasive weed species.

Because the Santa Ynez Mountains occur only 0.4 km (0.25 mi) inland from the coastline, the relatively flat coastal terrace forms a natural corridor for any utility project passing between Gaviota Pass to the west and Santa Barbara to the east. All future projects that pass through this corridor are very likely to adversely affect habitat for the *Hemizonia increscens* ssp. *villosa* by further destroying, degrading, and fragmenting habitat. The highest quality habitat remains unprotected and lies within this pipeline corridor. In an attempt to mitigate habitat loss, a preserve area has been established by the oil industry within the corridor. However, it protects less than 5 percent of the habitat. Because invasive species must be managed intensively to prevent their dominance, whether this management area can sustain a colony of *H. increscens* ssp. *villosa* without ongoing maintenance is questionable (K. Rindlaub, pers. comm. 1995). Additional impacts to *H. increscens* ssp. *villosa* may result from a proposed bikepath on State Park property that will extend throughout most of the plant's range. The proposed bikepath will create a linear zone of disturbance that will act as a corridor for weed dispersal into pristine *H. increscens* ssp. *villosa* habitat (S. Treanor, State Park Superintendent, *in litt.* 1998). Also, as the oil and gas industry abandons some of the facilities in Gaviota, proposed development options include recreational vehicle campgrounds, golf courses, a convention center, and residential housing (K. Rindlaub, *in litt.* 1998).

The Guadalupe Dunes, which contain the only known population of *Lupinus nipomensis* and the majority of the populations of *Cirsium loncholepis*, have been extensively developed and altered for petroleum extraction (Rindlaub *et.al.* 1985). About one-third of the historic occurrences of *C. loncholepis* have been extirpated (CDFG 1992). While the future extent of development and habitat alteration is unknown at this time, continued energy-related operations, including maintenance activities, hazardous waste cleanup, and other commercial development that result in additional habitat modification, remain a predominant threat (CDFG 1992). Ground water extraction in the Guadalupe Dunes and vicinity is thought to have diminished the total area of suitable habitat of *C. loncholepis* by lowering the water table and drying the wetlands (Smith 1976; Hendrickson 1990; CDFG 1992). Hydrological alterations remain a significant threat to this taxon (CDFG 1992). At least 3 historic populations of *L. nipomensis*, including the type locality, have been extirpated. Development, along with invasion by nonnative plant species (see factor E below), are the primary threats to this species (CDFG 1992).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not currently known to be a factor for these plants. However, simply listing a species could attract commercial or scientific interest, both legal and illegal, which can threaten the species through unauthorized and uncontrolled collection. Unrestricted collecting for scientific or horticultural purposes, and impacts from excessive visits by individuals interested in seeing rare plants could result in a reduction of plant numbers and seed production. These species have such small populations that even limited collecting pressure could have significant impacts.

Vandalism is also a concern for these species. For example, approximately one-third of a *Lupinus nipomensis* colony was destroyed by bulldozer activity during road construction to provide staff access at the Oceano State Vehicular Recreation Area, in spite of staff knowledge of the location and rarity of this species (J. Chesnut, *in litt.* 1998).

C. *Disease or predation.* Disease is not known to be a factor affecting any of the species in this rule. Herbivory by pocket gophers (*Thomomys bottae*) has been documented to consume whole colonies of *Lupinus nipomensis* and is considered a major threat (Walters and Walters 1988). Veldt grass, a food source for pocket gophers, was observed to be increasing during the course of a 3-year monitoring program for *L. nipomensis* and is forming pure stands in the back dune habitat of *L. nipomensis* (Walters and Walters 1988; J. Chesnut, *in litt.* 1998). Veldt grass provides a year-round food source, thus creating artificially high densities of gophers and increased predation pressure upon *L. nipomensis*.

Several invertebrate species have been documented as predators of *Lupinus nipomensis*, reducing the vigor and seed production of this species. The most significant predator is an anthomyid fly (*Hylemya lupini*), whose larvae burrow into the terminal inflorescence, reducing seed production and sometimes killing the entire plant (Walters and Walters 1988). Other invertebrate predators noted are mites, the caterpillars of the common painted lady butterfly (*Vanessa cardui*), a noctuid moth that feeds on leaves (family Notuidae), a tent-building microlepidopteran larva (family Pyralidae) that causes leaf damage, and a lupine blue butterfly larva (*Plebejus lupini monticola*) that feeds on seed pods (Walters and Walters 1988). Predation by these species does not threaten *L. nipomensis* in and of itself, but because of the limited range and small population size, predation in combination with other threats could adversely affect population viability.

Approximately 50 percent of the disk and ray achenes of *Hemizonia increscens* ssp. *villosa* have been observed to be infested by an unidentified flower beetle (K. Rindlaub, *in litt.* 1998).

Cattle grazing occurs within the habitats of *Cirsium loncholepis* and *Hemizonia increscens* ssp. *villosa*. Low levels of grazing may enhance the opportunities for both species to propagate successfully, as it may serve to reduce competition from nonnative species. However, recent evidence indicates that heavy grazing has affected individuals of *H. increscens* ssp. *villosa* by reducing their stature and the number of seeds that can be produced. Cattle grazing in the area west of the oil and gas facility appears to have facilitated the displacement of *H. increscens* ssp. *villosa* and favored the dominance of *H. fasciculata*, a common native tarplant (K. Rindlaub, *in litt.* 1998). Similar observations were made in the Guadalupe dunes and along the Santa Maria River where *C. loncholepis* was adversely affected (Hendrickson 1990).

No known predation threats affect *Eriodictyon capitatum*.

D. *The inadequacy of existing regulatory mechanisms.* The California Fish and Game Commission has listed *Eriodictyon capitatum* as rare, *Cirsium loncholepis* as threatened, and *Hemizonia increscens* ssp. *villosa* and *Lupinus nipomensis* as endangered under the Native Plant Protection Act (NPPA) (chapter 1.5 sec. 1900 *et seq.* of the California Fish and Game Code), and the California Endangered Species Act (CESA) (chapter 1.5 sec. 2050 *et seq.*). California Senate Bill 879, passed in 1997 and effective January 1, 1998, requires individuals to obtain a section 2081(b) permit from CDFG to take a listed species incidental to otherwise lawful activities, and requires that all impacts be fully mitigated and all measures be capable of successful implementation. These requirements have not been tested as applied to State-listed plants; it will be several years before their effectiveness can be evaluated. In the past, attempts to mitigate rare plant populations have often failed, largely due to inadequate consideration of a species' biological needs and inadequate protection and management of the mitigation site (Howald 1993).

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects. The public agency with primary authority or jurisdiction over the project is designated as the lead agency and is responsible for conducting a review of the project and consulting with other agencies concerned about the resources affected by the project. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Once significant effects are identified, the lead agency has the option to require mitigation for effects through changes in the project or to decide that overriding considerations make mitigation infeasible. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of State-listed species. Protection of listed species through CEQA, therefore, is dependent upon the discretion of the agency involved.

State agencies reviewing requests for large development projects are required by CEQA to conduct surveys of the biological resources of a project site. Most public documents such as environmental impact reports are prepared by the project proponent for the State agency. Sensitive species located during surveys are to be reported to the CNDDB, which is maintained by the CDFG Natural Heritage Division. If, however, the project proponent considers the information proprietary, consulting biologists may not report to the CNDDB (Carl Wishner, Envicom Consulting, Agoura, California, pers. comm. 1999).

One of the species in this rule, *Cirsium loncholepis*, could potentially be affected by projects requiring a permit under section 404 of the Clean Water Act (CWA). Perennial freshwater emergent marshes and back dune wetlands are generally small and scattered, and treated as isolated wetlands or waters of the United States for regulatory purposes by the U.S. Army Corps of Engineers (Corps) under section 404. However, the CWA by itself does not protect *C. loncholepis*. For example, Nationwide Permit No. 26 (33 CFR part 330 Appendix B (26)) was established by the Corps to facilitate issuance of permits for discharge of fill into wetlands up to 1.2 ha (3 ac). For project proposals falling under this permit, the Corps seldom withholds authorization unless a listed threatened or endangered species' continued existence would likely be jeopardized by the proposed action. Current section 404 regulations require an applicant to obtain an individual permit to fill isolated wetlands or waters larger than 1.2 ha (3 ac). In either case, candidate species receive no special consideration. Additionally and equally important, the upland watersheds that contribute significantly to the hydrology of marshes are not provided any direct protection under section 404. Alterations of hydrology resulting from groundwater pumping are thought to pose the most likely and serious threat to *C. loncholepis*. No permit is required under the CWA for groundwater pumping. As a consequence, the habitat of *C. loncholepis* receives insufficient protection under section 404.

Although several public agencies manage lands with occurrences of these and other sensitive, threatened and endangered species, none of those agencies have specific management plans for the species in this rule. Serious threats to the habitats of all of the plants in this rule persist and are not currently being addressed with active management (see factor E below). The CDFG prepared an unpublished management plan for the State-listed *Cirsium loncholepis* (Morey 1990), but

its recommendations have not yet been implemented.

Mitigation performed to satisfy CEQA requirements for *Hemizonia increscens* ssp. *villosa* has included salvaging seedbank and topsoil for transfer to a habitat creation site, seeding of areas disturbed by facility and pipeline construction, and enhancement of areas with low density of this taxon (AAPC 1990). These experimental mitigation measures are in progress, and the long-term success of treatments will not be known for years. As of 1997, none of the sites showed success (K. Rindlaub, *in litt.* 1998). *Hemizonia increscens* ssp. *villosa* does not compete well with other annual species, and long-term survival of relocated plants requires intensive maintenance to control nonnative weeds. These experimental mitigation measures focus on reintroducing the plant and not necessarily reestablishing the other elements of the habitat that would maintain the plant in perpetuity. If the original habitat has been destroyed and mitigation fails, the loss of the resource is irretrievable. Too little is known to predict the success of any mitigation measures that involve moving or creating habitat. Minimal soil disturbance and shrub removal, included as mitigation measures that enhanced *H. increscens* ssp. *villosa* germination, in the past may now result in colonization by veldt grass (K. Rindlaub, *in litt.* 1998).

The Los Padres National Forest is aware of the presence of *Cirsium loncholepis* on their land. No projects planned at this time will affect this species. Vandenburg Air Force Base (VAFB) does not have any planned projects that may affect *Eriodictyon capitatum*. However, with the listing of these species, both agencies will be required to consult with us on future projects.

E. *Other natural or manmade factors affecting their continued existence.* Other threats to the species in this rule include displacement by nonnative weeds, altered fire regimes, facility accidents by oil companies or VAFB, small population size, and loss of reproductive vigor. The most severe threat to the species in this rule is the active invasion and subsequent modification or conversion of habitat and displacement of native species by aggressive nonnative weeds such as European beach grass, iceplant, veldt grass, and crystalline iceplant (Davis *et al.* 1988; Zedler and Schied 1988; Morey 1989; Walters and Walters 1988; Odion *et al.* 1992; CNDDB 1998; J. Chesnut, *in litt.* 1998). Current research and management approaches are inadequate to provide control of the problem of nonnative plant invasions (Hobbs and Humphries 1995; Schierenbeck 1995). The California Exotic Pest Plant Council (CalEPPC) has compiled a list of the exotic pest plants of greatest ecological concern in California. The most invasive wildland pest plants that threaten native plants and natural habitats have been placed on two lists: list A–1 (widespread pest plants) and list A–2 (regional pest plants). European beach grass and iceplant are on list A–1, and veldt grass is on list A–2 (CalEPPC 1994). All of the habitats for the species in this rule are fragmented and dissected by roads and pathways that are the principal corridors for introduction of weedy species (Odion *et al.* 1992).

Iceplant, widely disseminated in the feces of deer and rabbits, tends to displace native plant species, particularly after fire or mechanical disturbance. Iceplant has been observed invading native vegetation occupied by *Eriodictyon capitatum* after a prescribed fire, resulting in a documented increase in iceplant cover from negligible to 26 percent 3 years after the fire. This increase was attributed to post-fire seedling production of over 7,800 iceplant seedlings per ha (2,800 per ac) the year after the fire, with a survivorship of over 70 percent 3 years later (Zedler and Schied 1988). After establishment, each plant can grow to over 6 m (18 ft) in diameter (Vivrette 1993), virtually replacing all other vegetation. The Air Force is currently conducting prescribed burns on VAFB for fuels management without a program to control the subsequent invasion of weedy species (J. Watkins, pers. comm. 1997). An effort is made occasionally to apply herbicides to a burn area; however, such an effort is ineffective without followup measures to ensure the control of the invasive species. Because fire is inevitable in natural habitats, and prescribed burns are utilized for hazard fuels reduction, iceplant and other invasive weed invasions will continue to degrade habitat and adversely affect *E. capitatum, Hemizonia increscens* ssp. *villosa*, and *Lupinus nipomensis*.

Other invasive plants, including Australian saltbush (*Atriplex semibaccata*), veldt grass, and wild oats threaten *Hemizonia increscens* ssp. *villosa* by displacement and the buildup of thatch (accumulated dead leaves and stems). *Hemizonia increscens* ssp. *villosa* requires open habitat in which to germinate and become established. Thatch from the nonnative grass species that dominate the habitat effectively prevents its establishment (K. Rindlaub, pers. comm. 1995).

In addition to affecting *Hemizonia increscens* ssp. *villosa*, veldt grass is actively invading habitat occupied by *Eriodictyon capitatum* and *Lupinus nipomensis* and is becoming a significant threat (Zedler and Schied 1988; Morey 1989; Walters and Walters 1988; Bonnie Walters, California Polytechnic State University, pers. comm. 1997; J. Chesnut, *in litt.* 1998; K. Rindlaub, *in litt.* 1998). Veldt grass prefers sandy soils and has the potential to persist for long periods of time. This nonnative grass has a mass of roots that captures the majority of the soil moisture, effectively outcompeting the native vegetation and dominating habitats as a monoculture (David Chipping, California Native Plant Society, pers. comm. 1997).

Used to control nonnatives, herbicides may inadvertently harm these species. For example, *Cirsium loncholepis* at Mud Lake was destroyed by herbicide application on poison oak (Hendrickson 1990; CNDDB 1998). However, the significance of herbicide application as a threat to the survival of *C. loncholepis or the other three species is unknown.*

Eriodictyon capitatum and *Hemizonia increscens* ssp. *villosa* occupy habitats that experience periodic fires. Wildfires are an important component of natural ecosystems in California wildland habitats, and suppression of natural fires facilitates ecosystem degradation (Schoenherr 1992; Keeley 1995). All recent fires in the central maritime chaparral have been human-caused, resulting from arson, prescribed management, or accidental ignition (Philbrick and Odion 1988). The highly fragmented nature of the remaining chaparral habitat has ended the occurrence of large wildfires that burn under natural conditions in the coastal chaparral areas considered in this rule. Wildfire frequencies and intensities are not known, but estimates of historic burn intervals exceed 30 years. Wildfires naturally occur during high wind events that force the fire quickly through a stand of fuel, resulting in short burn durations and generally cooler ground temperatures. The use of prescribed burning as a management technique is restricted to periods when environmental conditions are favorable to preventing the spread of escaped fire, thus preventing a normal wildfire situation. Prescribed fire behavior does not mimic natural conditions, since low wind speed is required for control of the fire. Low wind speed causes an increase in the duration and intensity of the fire and results in higher mortality of seeds in the soil and reduced post-fire species diversity (Odion *et al.* 1992; Keeley 1995). Additionally, with the higher mortality of plants and seeds from a more intense fire, burned habitats are more susceptible to the rapid invasion by nonnative species that alter the type and structure of the plant community and, thus, future fuels for fires (Odion *et al.* 1992).

Petroleum-processing plant catastrophes are rare events, but have the potential to threaten the long-term survival of *Hemizonia increscens* ssp. *villosa* and *Lupinus nipomensis*, which have the smallest distributions of the species in this rule. All known individuals of *H. increscens* ssp. *villosa* are contained within a 3.2-km (2-mi) radius, and all known locations for *L. nipomensis* occur within a 1.2-km (0.75-mi) radius, of oil and gas refineries and associated storage facilities. The oil and gas facility, managed by at least 12 operating companies to consolidate pipelines and treating plants, is near the center of the distribution of *H. increscens* ssp. *villosa*. The Santa Maria TASCO refinery and storage facilities are near the center of the distribution of *L. nipomensis*. These facilities occur in a tectonically complex and active region that is historically characterized by locally moderate to high earthquake activity, which can result in facility catastrophes (AAPC 1990). In the event of a facility catastrophe, the resulting habitat modification could destroy populations, causing the extinction of species with such extremely limited distribution.

All the species in this rule are vulnerable to naturally occurring events, such as failure to produce viable seed and catastrophic incidents. For example, *Eriodictyon capitatum* is self-incompatible and produces few viable seeds. In two colonies of this species, each presumably composed of a single genetic unit, virtually no seed production occurs (Elam 1994). Seeds of *Cirsium loncholepis* in small back dune populations have been shown to be of limited viability (Hendrickson 1990). Because of the small population sizes, the four species' vulnerability is heightened by natural events, such as drought, flooding, fires, earthquakes, outbreaks of insects or disease, or other catastrophic events, that could destroy a significant percentage of the individuals of these species.

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in making this rule final. The habitats for these species have been much reduced due to residential, commercial, agricultural, and oil and gas development. These species continue to face threats from development, military activities, alteration of natural fire cycles, and invasion of nonnative species. The limited habitat for the four species and their small population sizes make *Cirsium loncholepis, Eriodictyon capitatum, Hemizonia increscens* ssp. *villosa*, and *Lupinus nipomensis* particularly vulnerable to extinction from naturally occurring events. Existing regulations do not provide adequate protection to prevent further losses; many actions that adversely affect these species and their habitats are ongoing. Because the four plant species are in danger of extinction throughout all or a significant portion of their ranges, they fit the Act's definition of endangered under the Act.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species.

In the proposed rule, we indicated that designation of critical habitat for these four species was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered, since most of the historical ranges of these plants occur on private land.

We find that designation of critical habitat is prudent for *Cirsium loncholepis, Eriodictyon capitatum, Hemizonia increscens* ssp. *villosa*, and *Lupinus nipomensis*. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that the designation of critical habitat for these four species would be prudent.

Due to the small number of populations, *Cirsium loncholepis, Eriodictyon capitatum, Hemizonia increscens* ssp. *villosa*, and *Lupinus nipomensis* are vulnerable to unrestricted collection, vandalism, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, we have examined the evidence available and have not found specific evidence of taking, vandalism, collection, or trade of these species or any similarly situated species. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that critical habitat would increase threats to a species, if any benefits would result from critical habitat designation, then a prudent finding is warranted. In the case of these species, some benefits may result from designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by these species would not be likely to change the section 7 consultation outcome because an action

that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in some instances, section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Some educational or informational benefits may also result from designating critical habitat. Therefore, we find that critical habitat is prudent for *Cirsium loncholepis, Eriodictyon capitatum, Hemizonia increscens* ssp. *villosa*, and *Lupinus nipomensis*.

As explained in detail in the Final Listing Priority Guidance for FY2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. We anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for these species, than we have in recent fiscal years. We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. Deferral of the critical habitat designation for these species will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of *C. loncholepis, E. capitatum, H. increscens* ssp. *villosa*, and *L. nipomensis* without further delay. We will develop a proposal to designate critical habitat for *Cirsium loncholepis, Eriodictyon capitatum, Hemizonia increscens* ssp. *villosa*, and *Lupinus nipomensis* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Funding may be available through section 6 of the Act for the State to conduct recovery activities. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened, and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat, if designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us, under section 7(a)(2) of the Act.

VAFB and the U.S. Forest Service will be required to consult with us on activities that may affect federally listed plant species found on their lands through the section 7 consultation process. While no activities are known at this time, future activities may affect populations of or habitat for *Cirsium loncholepis* and *Eriodictyon capitatum*. The Corps might become involved with *C. loncholepis* through its permitting authority as described under section 404 of the CWA. As previously discussed, nationwide or individual permits cannot be issued when a federally listed endangered or threatened species would be affected by a proposed project without first completing a section 7 consultation with us. In addition, sections 2(c)(1) and 7(a)(1) of the Act require Federal agencies to utilize their authorities in furtherance of the purposes of the Act to carry out conservation programs for endangered and threatened species.

Listing of these plants as endangered would provide for development of recovery plans for the plants. Such plans would identify both State and Federal efforts for conservation of the plants and establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plans would set recovery priorities and describe site-specific management actions necessary to achieve conservation and survival of the plants. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to affected States for management actions promoting the protection and recovery of these species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61 for endangered plants, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove such plants from areas under Federal jurisdiction. In addition, the Act prohibits the malicious damage or destruction of such plants on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants on any other area in knowing violation of any State law or regulation, or in the course of a violation of State criminal trespass law. Certain exceptions to the prohibitions apply to our agents and State conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. We anticipate that few trade permits would be sought or issued because these species are not in cultivation or common in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6241; facsimile 503/231–6243).

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), our policy is to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of

section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. We believe that, based upon the best available information, activities on private lands that do not require Federal authorization and do not involve Federal funding, such as grazing management, agricultural conversions, wetland and riparian habitat modification (not including filling of wetlands), flood and erosion control, residential development, road construction, pesticide/herbicide application, and pipelines or utility lines crossing suitable habitat, conducted in accordance with State law would not likely result in a violation of section 9.

We believe that the following actions could result in a violation of section 9; however, possible violations are not limited to these actions alone:

(1) Unauthorized collecting of the species on Federal lands;

(2) Malicious destruction of the species on Federal lands; and

(3) Interstate or foreign commerce and import/export without previously obtaining an appropriate permit. Permits to conduct activities are available for purposes of scientific research and enhancement of propagation or survival of the species.

Questions regarding whether specific activities would constitute a violation of section 9 should be directed to the Field Supervisor of the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. For additional information concerning permits and associated requirements for endangered species, see 50 CFR 17.62 and 17.63.

This rule has not been reviewed by the Office of Management and Budget under Executive Order 12866.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author:

The primary author of this final rule is Tim Thomas, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
•	•	•	•	•	•	•	
Cirsium loncholepis	La Graciosa thistle	U.S.A. (CA)	Asteraceae	E	691	NA	NA
•	•	•	•	•	•	•	
Eriodictyon capitatum.	Lompoc yerba santa	U.S.A. (CA)	Hydrophyllaceae	E	691	NA	NA
•	•	•	•	•	•	•	
Hemizonia increscens ssp. *villosa.*	Gaviota tarplant	U.S.A. (CA)	Asteraceae	E	691	NA	NA
•	•	•	•	•	•	•	
Lupinus nipomensis	Nipomo Mesa lupine	U.S.A. (CA)	Fabaceae	E	691	NA	NA
•	•	•	•	•	•	•	

Dated: March 13, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–6835 Filed 3–15–00; 4:31 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE80

Endangered and Threatened Wildlife and Plants; Threatened Status for *Holocarpha macradenia* (Santa Cruz tarplant)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), have determined threatened status according to the Endangered Species Act of 1973, as amended, for *Holocarpha macradenia* (Santa Cruz tarplant). *Holocarpha macradenia* is an aromatic annual herb that is currently known from coastal grasslands and prairies in Contra Costa, Santa Cruz, and Monterey Counties, California. It is threatened by alteration and destruction of habitat due to historic and ongoing urban and commercial development, historic habitat alteration due to grazing, limited success of seed transplant populations, and competition from nonnative plants.

DATES: This rule becomes effective April 19, 2000.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, California 93003.

FOR FURTHER INFORMATION CONTACT: Carl Benz, Assistant Field Supervisor, Listing and Recovery, Ventura Fish and Wildlife Office (see **ADDRESSES** section) (telephone number 805/644–1766; facsimile 805/644–3958).

SUPPLEMENTARY INFORMATION:

Background

Holocarpha macradenia (Santa Cruz tarplant) was first recognized by Augustin-Pyramus de Candolle, who published the name *Hemizonia macradenia* in 1836 (Ferris 1960). In 1897, E. L. Greene referred the species to the genus *Holocarpha* with publication of the new combination *Holocarpha macradenia* (DC.) E. Greene (Ferris 1960). This name continues to be recognized in the most recent treatment for the genus (Keil 1993).

Holocarpha macradenia, an aromatic annual herb in the aster (Asteraceae) family, is one of only four species of *Holocarpha*, which are all geographically restricted to California. The genus name, derived from the Greek *holos* for whole and *karphos* for chaff, refers to the scales found among the florets on the receptacle (the structure that supports the florets in the daisy-like flower head). The plant is rigid, with lateral branches that arise to the height of the main stem, which is 1 to 5 decimeters (dm) (4 to 20 inches (in.)) tall. The lower leaves are broadly linear and up to 12 centimeters (cm) (5 in.) long. The upper leaves are smaller, with rolled back margins, and are truncated by a distinctive craterform gland. The yellow flower head is surrounded from beneath by individual bracts that have about 25 stout gland-tipped projections (Keil 1993). *Holocarpha macradenia* is distinguished from other members of the genus by its numerous ray flowers and black anthers. However, as with all other members of the genus, *H. macradenia* establishes seedbanks, so that sites that support a population of this plant, particularly those that support small populations (fewer than 100 individuals), may not display individuals in any given year, but still have a viable population in other years.

Habitat for *Holocarpha macradenia* historically consisted of grasslands and prairies found on coastal terraces below 100 meters (m) (330 feet (ft)) in elevation, from Monterey County, north to Marin County. In the 1800s, coastal prairies covered an estimated 350,000 hectares (ha) (865,000 acres (ac)) (Huenneke 1989). This coastal prairie habitat is becoming increasingly fragmented and restricted in distribution. Four major factors contributed to changes in the distribution and composition of coastal prairies: grazing; introduction of highly competitive, nonnative species; elimination of periodic fire; and cultivation (Heady *et al.* 1988). Currently, the California Department of Fish and Game's Natural Diversity Database (CNDDB 1996, cited in Holl 1998) lists just over 800 ha (1977 ac) of high-quality coastal prairie remaining, of which less than 5 percent is *H. macradenia* habitat.

Holocarpha macradenia populations occur on the alluvium resulting from the terrace deposits (Palmer 1986). Typically terrace soils are sandy clay soils; the clay component of these soils holds moisture longer into the growing season compared to the surrounding sandy soils. In the Santa Cruz area, *H. macradenia* exists on the gently sloping terrace platforms that are separated by steep-sided "gulches," whereas in the Watsonville (Santa Cruz County) and Monterey areas, and on the east side of San Francisco Bay, the terraces are more extensively dissected.

Although *Holocarpha macradenia* is historically associated with native herbaceous species and grasses (including other tarplants (*Hemizonia* sp.), needlegrass (*Nasella* sp.) and California oatgrass (*Danthonia californica)),* nonnative grasses, such as wild oats (*Avena fatua*), Mediterranean barley (*Hordeum hystrix*), and bromes (*Bromus* sp.), have invaded its habitat. At some locations, *H. macradenia* is found with other species that may be threatened or endangered, including the Ohlone tiger beetle (*Cicindela ohlone;* federally proposed as endangered), San Francisco popcorn flower (*Plagiobothrys diffusus;* State-listed as endangered), Santa Cruz clover (*Trifolium buckwestiorum;* State-listed as a species of concern), and Gairdner's yampah (*Perideridia gairdneri)* (CNDDB 1997). Other locally unique plant species, such as Choris's popcorn flower (*Plagiobothrys chorisianus* var. *chorisianus),* triteleia (*Triteleia ixiodes),* coast coyote thistle (*Eryngium armatum*), and San Francisco gumplant (*Grindelia hirsutula* var. *maritima*) also occur in these areas (Kathy Lyons, pers. comm. 1998).

Historically, *Holocarpha macradenia* was known from "low dry fields about San Francisco Bay" (Jepson 1925). Around the San Francisco Bay, herbarium collections were made from Tamalpias in Marin County in 1934; near Berkeley, Oakland, and San Lorenzo in Alameda County as early as 1894; and Pinole in Contra Costa County (CNDDB 1997, Specimen Management System for California Herbaria (SMASCH) 1997). All of the native San Francisco Bay area populations have since been extirpated. The last remaining native population, known as the Pinole Vista population, consisting of 10,000 plants, was eliminated in 1993 by a commercial development (California Department of Fish and Game (CDFG) 1997).

In 1959, Keck (in Munz 1959) noted the species in Santa Cruz County, but also added that the species could possibly be extinct. Fortunately, numerous collections were made from the Monterey Bay area in Santa Cruz County in the late 1950s and early 1960s. In 1966 and 1969, Hoover made the first collection of the species in northern Monterey County, just south of the Santa Cruz County line (SMASCH 1997). Additional populations were found in Monterey County in the subsequent decades, although the lack of specific location noted on herbarium labels makes it difficult to determine exactly how many populations occurred there. According to CNDDB, nine populations in Santa Cruz and Monterey Counties have been extirpated by development (CDFG 1994). The most recent extirpation occurred in 1993 when a population in Watsonville (Anna Street site) was destroyed during construction of office buildings and a parking lot (CDFG 1995a).

Holocarpha macradenia is currently known from a total of 20 populations; 12 of these are remaining native populations, and 8 are a result of experimental seedings. Eleven of the native populations occur in Santa Cruz County. Six occur around the City of Santa Cruz (Graham Hill Road, Twin Lakes, Arana Gulch, O'Neill/Tan, Winkle, and Fairway), and five occur around the City of Watsonville, scattered from Watsonville Airport to Hall Road, 8 kilometers (km) (4 miles (mi)) to the south-southeast (Watsonville Airport, Harkins Slough, Apple Hill, Struve Slough, and Spring Hills Golf Course). Only one population (Porter Ranch) occurs in Monterey County, just south of the Santa Cruz County line and the City of Watsonville. The size of each of these populations and the last year they were surveyed are as follows: Graham Hill Road, 475 (1999); Twin Lakes, 16 (1999); Arana Gulch, 12,820 (1998); O'Neill/Tan, 0 (1998); Winkle, 0 (1994); Fairway, 1,500 (1993); Watsonville Airport, 8 million (1999); Harkins Slough, 15,000 (1993); Apple Hill, 0 (1999); Struve Slough, 1 (1994); Spring Hills Golf Course, 4,000 (1990); Porter Ranch, 3,200 (1993). As stated earlier, there are years where few or no plants are present on a site, but a viable population is still probable due to the established seedbank.

The other eight existing populations of *Holocarpha macradenia* have resulted from experimental planting of seeds in Wildcat Regional Park in the east San Francisco Bay area. The names of the eight populations and their population size, based on 1997/1998/1999 surveys, are as follows: Big Belgum, 148/318/74; Big Belgum West, 51/23/0; Upper Belgum, 22/59/59; Mezue, 5,000–7,000/3,128/10,000; Fowler, 22/7/0; Nimitz Way 0/56/0; Upper Havey, 17/1/2; and Lower Sather 0/2/0 (Olson *et al.* 1997; Olson, pers. comm. 1998; CDFG, *in litt.* 1999).

Holocarpha macradenia is threatened primarily by historic and recent habitat alteration and destruction caused by residential and commercial development. Future loss of habitat may also result from recreational development, airport expansion, and agriculture. Occupied habitat that has been set aside in preserves, conservation easements, and open spaces also suffers secondary impacts from casual use by residents, introduction of nonnatives (*e.g.,* French broom (*Genista monspessulana*), eucalyptus (*Eucalyptus* sp.), acacia (*Acacia decurrens, A. melanoxylon*), artichoke thistle (*Cynara cardunculus*), and grass species), and changes in hydrology, problems that are all exacerbated by the lack of management plans. In addition, smaller preserve areas with *H. macradenia* suffer because they are cut off from the ecosystem functions that would be present in larger, more contiguous sites. More often, these smaller areas are left as open spaces, but without the benefit of the grassland management needed to sustain them. Finally, random disturbance, including unseasonable fires or a drought event, also threatens small populations of this species. Probability of population extirpation increases as the number of individuals and the area of habitat decrease.

Previous Federal Action

Federal action on this plant began as a result of section 12 of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered to be endangered, threatened, or extinct in the United States. This report (House Document No. 94–51) was presented to Congress on January 9, 1975, and included *Holocarpha macradenia* as endangered. We published a notice in the July 1, 1975, **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian Institution report as a petition within the context of section 4(c)(2) (petition provisions are now found in section 4(b)(3)) of the Act, and our intention to review the status of the reported plant species.

On June 16, 1976, we published a proposal in the **Federal Register** (41 FR 24523) to determine approximately 1,700 vascular plant species to be endangered species pursuant to section 4 of the Act. *Holocarpha macradenia* was included in this **Federal Register** publication. General comments received in relation to the 1976 proposal were summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). However, the Endangered Species Act Amendments of 1978 required that all proposals more than 2 years old be withdrawn. A 1-year grace period was given to those proposals already more than 2 years old. In the December 10, 1979, **Federal Register** (44 FR 70796), we published a notice of withdrawal of the June 16, 1976, proposal, along with four other proposals that had expired.

We published an updated Notice of Review (NOR) for plants on December 15, 1980 (45 FR 82480). This notice included *Holocarpha macradenia* as a category 1 candidate species. Category 1 candidates were formerly defined as a species for which we had on file substantial information on biological vulnerability and threats to support preparation of a listing proposal, but for which issuance of a proposed rule was precluded by other listing activities of higher priority.

On February 15, 1983, we published a notice (48 FR 6752) of our prior finding that the listing of *Holocarpha macradenia* was warranted but precluded in accordance with section 4(b)(3)(B)(iii) of the Act as amended in 1982. Pursuant to section 4(b)(3)(C)(i) of the Act, this finding must be recycled annually, until the species is either proposed for listing, or the petitioned action is found to be not warranted. Each October, from 1983 through 1990, further findings were made that the listing of *H. macradenia* was warranted, but that the listing of this species was precluded by other pending proposals of higher priority.

Holocarpha macradenia continued to be included as a category 1 candidate in plant NORs published on September 27, 1985 (50 FR 39526), February 1, 1990 (55 FR 6184), and September 30, 1993 (58 FR 51144). Upon publication of the February 28, 1996 NOR (61 FR 7596), we ceased using category designations and included *H. macradenia* as a candidate. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list them as threatened or endangered. Our September 19, 1997, NOR (62 FR 49398) retained *H. macradenia* as a candidate, with a listing priority of 2. On March 30, 1998, we published a proposed rule in the **Federal Register** (63 FR 15142) to list *H. macradenia* as threatened.

The processing of this final rule conforms with our Final Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority (Priority 3) is

processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority (Priority 4). The processing of this final rule is a Priority 2 action.

Summary of Comments and Recommendations

In the March 30, 1998, proposed rule (63 FR 15142), we requested interested parties to submit factual reports or information that might contribute to development of a final rule. We contacted appropriate Federal agencies, State agencies, county and city governments, scientific organizations and other interested parties and requested information and comments. We published newspaper notices inviting public comment in the Monterey Herald, the Santa Cruz Sentinel, and the Oakland Tribune on, respectively, April 2, 3, and 4, 1998. The comment period closed on May 29, 1998.

During the comment period, we received 16 comments from 15 individuals, agencies, or group representatives concerning the proposed rule. Five commenters supported the proposal, six provided neutral comments, and four were opposed to the proposal. Several commenters provided additional information that, along with other clarifications, has been incorporated into the "Background" or "Summary of Factors" sections of this final rule. Opposing and technical comments have been organized into specific issues, and our responses to each are summarized as follows:

Issue 1: One commenter stated that the "tarplant" is a useless and unattractive weed that gums up mowers, is difficult to eradicate, and is not worthy of listing. Another commenter offered that there is no shortage of "tarweed," as there are about 400 ha (990 ac) of it in San Benito County. A third commenter stated that protection is not needed because *Holocarpha macradenia* can be propagated on sites other than native stands.

Our response: Many different plant species are commonly referred to as tarweeds or tarplants. However, the species that is the subject of this rulemaking is known from only a few locations. The total acreage of currently occupied habitat is less than 40 ha (99 ac). The species has been eliminated from a number of sites within its historic range and has become not only rare, but is likely to become endangered within the foreseeable future, throughout its range. Although experimentally seeded populations have been established on sites that historically have not been occupied by *Holocarpha macradenia*, these sites have had limited success in maintaining a viable population.

Issue 2: A number of commenters were concerned that listing of the species would result in project delays, additional permitting requirements or restrictions on private property owners, and increased cost of land. For example, several commenters were concerned that Federal listing would delay or affect the proposed expansion of the Watsonville Airport. On the other hand, one commenter was concerned that the airport should not be allowed to expand into habitat for *Holocarpha macradenia*.

Our response: The Act requires us to base our listing decisions on the best scientific and commercial information available, without regard to the effects, including economic effects, of listing. The Federal listing of *Holocarpha macradenia* should not lead to significant project delays, additional permitting requirements or restrictions on private property owners, or increased cost of land. Because the species is already State-listed, many project sites have already been subject to California Environmental Quality Act (CEQA) review and permitting requirements under the California Endangered Species Act (CESA). Agencies responsible for review of those few projects that are pending are aware of the declining status of this species and are taking this issue into consideration. In addition, most populations of this species are on private land where there is no Federal nexus.

CDFG and the airport are currently developing a memorandum of understanding (MOU) to ensure that loss of *Holocarpha macradenia* habitat from airport expansion would be offset by establishing the plant in adjacent suitable locations. We are participating in this effort. The Federal Aviation Administration (FAA) should also have conferred with us under the provisions of section 7(c) of the Act since the plant was proposed for listing. Because the conservation solution is currently being developed through the MOU, and a conference opinion can be expeditiously converted to a biological opinion, pursuant to section 7(a)(2) of the Act, the Federal listing in itself should not delay the proposed expansion of the airport. Likewise, the expansion of the airport, as long as the requirements of both the State and Federal regulations are followed, should not adversely affect the *H. macradenia* population currently located at the airport.

Issue 3: One commenter suggested that cooperation is needed between the Service, the University of California Agricultural Extension Service, and California Department of Transportation (CALTRANS), so that the species can be propagated and out-planted on CALTRANS property where they can be viewed and appreciated by millions of people. Another commenter wanted to know what we know about minimum population size/areas to support continued existence of the species.

Our response: We agree that cooperation among agencies is important to prevent further losses of currently occupied habitat, as well as for developing options for future management and conservation of the species. Although our recovery planning process typically occurs after the species has been federally listed, the previous State listing of this species has served to advance the process of identifying appropriate recovery actions. We currently do not know what minimum plant population size and habitat areas are needed to support the continued existence of this species. However, the specific recovery objectives and criteria to delist the species in the future, including targets for population/habitat sizes, will be developed during the formal recovery planning process. This process will involve species experts, scientists, and interested members of the public, in accordance with the interagency policy on recovery plans under the Act, published on July 1, 1994 (59 FR 34272).

Issue 4: One commenter asked what additional protection Federal listing will provide given that the species is already State-listed.

Our response: Federal listing will provide additional protection for the species through Federal regulations and recovery efforts. Additional protection will potentially be provided through the consultation process for projects that are funded, permitted, or carried out by a Federal agency. At this time, the only projects in occupied habitat, with an identified Federal nexus, are the expansion of the Watsonville Airport and the construction of a bicycle path in Arana Gulch. In addition, Federal listing of a species generally provides for recognition and additional funding, by our agency as well as others, for the conservation and recovery of the listed species.

Issue 5: One commenter believed that the current status of *Holocarpha macradenia* warranted listing as endangered rather than threatened. Another commenter thought that the appropriate status hinged on opportunities for funding current management needs; should no funding

be available for appropriate management, the status of the species should more appropriately be endangered.

Our response: We believe that the determination of threatened status is appropriate for the species at this time because ongoing intensive management has forestalled imminent extinction. However, should factors such as reduced funding for managing the species result in its continued decline, we would have the option of reclassifying the species to endangered.

Issue 6: One commenter suggested that we lack jurisdiction to enact the proposed rule and that the rule should be withdrawn, believing that no connection exists between regulation of these plants and a substantial effect on interstate commerce.

Our response: The Federal Government has the authority under the Commerce Clause of the U.S. Constitution to protect this species, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S.Ct. 2340 (1998). That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly *(Rhaphiomidas terminatus abdominalis)*. As with *Holocarpha macradenia*, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the Act's prohibition against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate: (1) use of channels of interstate commerce; and (2) activities substantially affecting interstate commerce, because applying the Act in that case prevented destructive interstate competition and loss of biodiversity. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends and regulates commercial development that is part of interstate commerce.

Peer Review

We requested and received the expert opinions of four peer reviewers regarding pertinent scientific or commercial data and assumptions related to population status and supporting biological and ecological information for *Holocarpha macradenia*. This action is consistent with the interagency policy on peer review published on July 1, 1994 (59 FR 34270). Three of the four reviewers supported the listing of the species, and one reviewer was neutral. One of the reviewers provided typographical corrections to the proposed rule. The second reviewer provided minor technical corrections and updates to the background information on several of the populations. Both reviewers also addressed the lack of funding available to provide management for populations at Arana Gulch and in the East Bay Regional Parks District. The third reviewer commented that, with lack of needed management, the species qualified for endangered rather than threatened status, particularly because the viability of seed banks at unmanaged locations could be extirpated within a decade. The fourth reviewer provided updates on the Graham Hill Road, Arana Gulch, and O'Neill/Tan sites.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) issued to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1) of the Act. These factors and their application to *Holocarpha macradenia* (DC.) Greene are as follows:

A. *The present or threatened destruction, modification, or curtailment of its habitat or range.* Urbanization has been responsible for severely reducing the extent of coastal prairie habitat that supports *Holocarpha macradenia*. Since *H. macradenia* was listed as endangered by the State of California in 1979, CDFG has been tracking the status of its populations. Although it is difficult to assess the total number of historical populations, since herbarium specimens often have only general location information, it is apparent that the species has declined considerably. All native populations of *H. macradenia* have been extirpated from Alameda, Contra Costa, and Marin Counties around the San Francisco Bay (CDFG 1997a). Habitat for the last naturally occurring population in the San Francisco Bay area, near Pinole in Contra Costa County, was converted to a shopping center in 1993 (CDFG 1997a, CNDDB 1997). The only populations that persist in this area are eight populations that were planted from seed in Wildcat Canyon Regional Park in Contra Costa County. The CDFG has also determined that the plant has been extirpated from nine locations around the Monterey Bay since 1979 (CDFG 1993, CNDDB 1997). Most recently, sometime after a 1992 survey, a population at the Anna Street site in Watsonville was destroyed during construction of office buildings and a parking lot (CDFG 1995a, CNDDB 1997).

In the last 5 years, increasing concern over the loss of *Holocarpha macradenia* habitat and populations has prompted some permitting agencies to require conservation of remaining habitat through the review and permitting of development projects. This permitting requirement has decreased the rate of habitat destruction. However, although occupied habitat has been conserved in developed areas, the indirect effects of residential and local use in these areas often threaten the remaining *H. macradenia* habitat and populations. In many cases, the historical alteration of native *H. macradenia* habitat has been further exacerbated by current human activities. Descriptions of the 12 remaining native sites and the current threats of habitat destruction or modification facing these sites are given below. These descriptions do not include the eight sites that were seeded with *H. macradenia* in Contra Costa County where the species was not known to be native. The threats to those sites are discussed under "Factor E."

The Graham Hill Road site is owned by Standard Pacific Corporation. An Environmental Impact Report (EIR) was approved by the County of Santa Cruz in 1996 for a development that comprises 52 residences, a fire station, a common area, a park, and an equestrian facility and trails on a 69-ha (170-ac) parcel (Environmental Science Associates 1996). The approved EIR also includes 0.2 ha (0.5 ac) of occupied *Holocarpha macradenia* habitat, and 4 ha (10 ac) of coastal prairie habitat within a 7-ha (17-ac) conservation easement. The EIR provides for prairie management, habitat restoration, and a 20-year maintenance and monitoring program (Lyons, *in litt.* 1998). In 1994, five colonies of *H. macradenia* occupied less than 0.4 ha (1 ac) of habitat. One colony supported 10,000 individuals, and the other four collectively supported 2,000 individuals. By this time, French broom had invaded the coastal prairie habitat and threatened all of the plant species of concern, including *H. macradenia* (Environmental Science Associates 1995). In 1998, French broom was removed from the conservation easement area, and in June and September, mowing was implemented (Valerie Haley, Native Vegetation Network, pers. comm. 1998). In 1998, only 2 of the 5 colonies were located, supporting a total of 675 individuals (V. Haley, pers. comm. 1998). In addition to *H. macradenia*, other species of concern occur on the site, including Gairdner's

yampah, San Francisco popcorn flower, and Santa Cruz clover.

The Twin Lakes site is owned by the California Department of Parks and Recreation (CDPR). The site has been fragmented by an access road for park vehicles and several hiking paths. The population occupies less than 0.4 ha (1 ac) and appears to have been declining since 1986 (120 individuals in 1986; fewer than 10 in 1994; 1 in 1996; 0 in 1997; and 12 in 1998). The decline has been attributed to competition from French broom and nonnative grasses (CDFG 1995a; G. Gray, ecologist, CDPR, pers. comm. 1997). In the last 3 years, CDPR has made progress in removing French broom from the site. They also have experimented with management actions that would enhance habitat for *Holocarpha macradenia* through mowing, raking, simulating cattle hoof action with wood blocks, and burning. However, the population has continued to decline. In 1997, CDPR committed significant funding to continue with experimental management actions, and by 1998, a draft management plan was prepared (G. Gray, pers. comm. 1997, CDPR 1998). In 1997, a portion of the habitat was accidentally disturbed through the use of a road grader; in 1998, another portion of the habitat was scraped with hand tools. Of the 12 plants that appeared in 1998, 6 appeared in each of the 2 disturbed areas (CDPR 1998).

The Arana Gulch population is on a 25-ha (62-ac) parcel of land that has been owned and managed by the City of Santa Cruz since 1994. In the late 1980s, the population comprised approximately 100,000 individuals. In 1988, cattle grazing was terminated, and over the next few years, population sizes decreased due to competition with nonnative grasses. In 1993, only 133 individuals appeared, and in 1994, no individuals were seen. In 1994, the City of Santa Cruz acquired the land from the private landowner. The city entered into an MOU with CDFG in 1997 to manage the four remaining colonies, which covered approximately 2 ha (5 ac) within a 7-ha (17-ac) management area (CDFG 1997b). In 1995, management of one colony included fall mowing, raking, hoeing, and mechanical scraping of the habitat. By the summer of 1996, the *Holocarpha macradenia* colony had recovered to approximately 7,500 individuals (summer 1996). However, in the fall of 1996, a portion of the treated colony was accidentally burned, and the City and local volunteers began management of a second colony (by grass raking, hoeing, and mowing). A total of 20,000 individuals were observed in these two areas in 1997, and a total of 12,820 were observed in 1998 (K. Lyons, consultant, pers. comm. 1997, 1998). The City now proposes to construct a bicycle path that would bisect the management area (Brady and Associates, Inc. 1997). Direct impacts to occupied *H. macradenia* habitat would be avoided, but secondary impacts associated with increased recreational use, such as increased trampling from humans, pets, and bicycles, may have a negative impact on the remaining habitat and increase the difficulty of managing this site.

The O'Neill/Tan population straddles the boundary of two parcels, the O'Neill Ranch owned by the County Redevelopment Agency (CRA) and the privately owned Tan property. In 1996, the county approved development of the 40-ha (100-ac) O'Neill property into a county park. *Holocarpha macradenia* is located in the upper reaches of the park where past recreational use consisted of occasional hiking. A park management plan is currently being developed and will include the population of *H. macradenia* in a 6-ha (15-ac) conservation easement that is zoned for "passive recreation." The plan may recommend fencing around 0.4 ha (1 ac) of *H. macradenia* habitat in lieu of trying to restrict hikers to designated trails (S. Gilchrist, CRA, pers. comm. 1997). Although the site receives light use currently, development of the adjacent Tan property will allow easier access to a larger number of people. The County hopes to establish a cooperative management strategy with the developers of the Tan property to address management of this population. The size of the *H. macradenia* population on the O'Neill property has fluctuated from up to 200 plants in 1979 down to 0 in 1998 (1979—between 100 to 200 plants; 1984–0; 1985–0; 1986–170; 1990–0; 1991–170; 1993–2; 1997–0; 1998–0) (Brady and Associates 1995, K. Lyons, pers. comm. 1998). Santa Cruz clover and Gairdner's yampah also occur on this site.

The 43-ha (106-ac) Tan property was approved in 1997 for the development of 28 residential units. The habitat mitigation plan for this development includes approximately 0.2 ha (0.5 ac) that support *Holocarpha macradenia* in the 4.2-ha (10.4-ac) conservation parcel. This parcel will be managed by the homeowner's association (HRG 1996). Management prescriptions for the conservation parcel include mowing, weed control, fencing, and removal of invasive nonnative plants. These invasive nonnative plants include French broom, rattlesnake grass (*Briza* sp.), and eucalyptus (HRG 1996).

The size of the *Holocarpha macradenia* population on the Tan parcel is difficult to determine because historic surveys did not count these individuals separately from those on the O'Neill parcel. However, the total number of individuals in the entire population has never been larger than 200 individuals, with the Tan parcel supporting only a portion of those. In 1996, only one tarplant individual was seen (Val Haley, consultant, *in litt.* 1997). In 1997 and 1998, no individuals were seen (K. Lyons, pers. comm. 1997, 1998).

In addition to *Holocarpha macradenia*, the privately owned Winkle Avenue site also supports populations of the Ohlone tiger beetle and Gairdner's yampah. Part of the *Holocarpha macradenia* population at this site was destroyed by two phases of a residential development in 1986, and a portion of the remaining 23 ha (57 ac) of habitat was placed in a "temporary open space easement" (Strelow Consulting 1995). The 23-ha (57-ac) parcel is now being proposed for the development of 21 residential units (Parsons Engineering Science, Inc. 1997). Although approval by the County of Santa Cruz is still pending, the planning department has recommended that the development be limited to 10 residential units, with the remaining 11 lots being placed in a preservation easement (K. Tschantz, County of Santa Cruz Planning Department, pers. comm. 1997; CDFG *in litt.* 1997). In 1993, the *H. macradenia* population consisted of approximately 100 plants covering 16 cubic meters (174 square feet) (Parsons Engineering Science, Inc 1997). In 1994, no plants were seen on the site (CDFG 1995). In addition to the threat of development, the population on this site has been subject to competition and habitat alteration from the invasion of French broom and nonnative grasses.

The Fairway Drive site is a 12-ha (30-ac) parcel of land that is privately owned. In 1989, the year that grazing by horses ceased, the site supported a population of approximately 5,000 plants on less than 0.4 ha (1 ac). At the time, the site was considered a "well-preserved fragment of native grassland" that supported native bunchgrasses (California oatgrass and purple needlegrass (*Nasella pulchra*)) as well as several species of concern, including Gairdner's yampah and San Francisco popcorn flower (CNDDB 1997). In 1993, the population was approximately 1,500 plants (CDFG 1995a, Greening Associates 1995); the decline being attributed to cessation of grazing. Several woody nonnative species, including French broom, acacia, pampas

grass (*Cortaderia jubata*), and eucalyptus (*Eucalyptus globulus*), have invaded the grasslands and are rapidly spreading. In 1996, the County approved a lot split into four parcels, with the condition that the coastal terrace prairie habitat be placed in a preservation easement of approximately 6 ha (15 ac) and a management plan be developed and implemented (K. Tschantz, pers. comm. 1997).

The Watsonville Airport site, owned by the City of Watsonville, supports the largest population of *H. macradenia*. Successive population estimates at this site show an overall increase in population size and extent over time: 459,000 plants in 1993; 240,000 plants in 1994 (CNDDB 1997); 27,854,000 plants in 1998 (a year with greater than average rainfall) (John Gilchrist & Associates 1999); and 8,200,000 plants in 1999 (L. Kiguchi, John Gilchrist & Associates, pers. comm. 1999). Portions of the 15-ha (37-ac) site are grazed, and other portions are mowed several times between late spring and late summer to maintain visual clearance of the runways. This management appears to have benefitted *H. macradenia* by reducing competition from nonnative species. In 1994, the City released an initial study for a proposed clay mining operation and a 20-year airport expansion plan. Both activities would potentially reduce available *H. macradenia* habitat (Denise Duffy & Associates 1994). Since then, the proposal to mine clay has been removed from consideration due to permitting complications. CDFG is working with city representatives to formalize an agreement to use ongoing management activities to enhance the available habitat, but a final agreement has not been reached. CDFG is also working with representatives from the City of Watsonville to develop a strategy to phase in airport expansion over a number of years so that loss of habitat would be mitigated in advance, by enhancing habitat for *H. macradenia* in adjacent suitable areas.

The Harkins Slough site is privately owned. In 1993, the population consisted of about 15,000 plants in 2 colonies; the current status of the population is unknown due to limited access to the property. The first colony covers 0.4 ha (1 ac), and the other colony is 0.4 ha (1 ac) in size. Cattle grazing was discontinued in 1990. Current uses of the property include fava bean production. In 1997, the owners requested that the property be annexed to the City of Watsonville in anticipation of developing residences and a golf course. The city council turned down the request due to public concern over the loss of prime agricultural land in the area. The CDFG has approached the owners with a proposal to assist in conservation efforts; however, no agreement has been reached.

The Apple Hill site is owned by CALTRANS. The population previously comprised three colonies. However, two colonies were extirpated by the construction of a housing development on adjacent private property. The remaining colony occurs on a strip of land between the housing development and Highway 152. The continued existence of this colony is in jeopardy due to use of the habitat strip by local residents as a play area, repository for yard waste, and walkway to adjacent businesses (CDFG 1994; G. Smith, resource ecologist, CDPR, pers. comm 1997). In an effort to protect the colony, CALTRANS had proposed placing a fence along the highway to limit access (G. Ruggerone, CALTRANS, pers. comm. 1997). However, prior to taking this action, CDFG and CALTRANS agreed that additional fencing would also limit access to the site for mowing and that a monitoring program to determine the extent of indirect effects posed by the adjacent development and the fence should be established (CALTRANS and CDFG pers. comm. 1999). The *Holocarpha macradenia* population has fluctuated between 4,000 (1986) and 81 plants (1994). In 1995, the population supported 700 individuals (CNDDB 1997). In 1998, the population supported 1,000 individuals, and habitat was mowed in the fall to reduce biomass of nonnative grasses (Thomas M. Edell, *in litt.* 1998). In 1999, no plants appeared at this site (T. Edell, pers. comm. 1999).

The privately owned Struve Slough site currently supports a very small population of *Holocarpha macradenia*, as well as the Santa Cruz long-toed salamander (*Ambystoma macrodactylum croceum*), a federally endangered species. In the late 1980s, the site supported one of the largest populations of Santa Cruz tarplant, occupying 2 ha (5 ac) and comprising 400,000 plants (CDFG 1995). When cattle grazing was terminated on the site in 1989, the population size dropped considerably. This trend currently continues. The site is now dominated by nonnative wild oats (*Avena* sp.), prickly lettuce (*Picrus echioides*), and fennel (*Foeniculum vulgare*), which are outcompeting the *H. macradenia* (CDFG 1995). As of 1994, only one Santa Cruz tarplant has been observed. In 1992, the City of Watsonville approved an Environmental Impact Report for the Bay Breeze housing development at this site. In 1999, the City circulated a draft supplemental EIR for the housing project. It proposed to set aside a portion of the site that supports *H. macradenia* as a conservation area, but proposed no active management plan for the project. Due to the extent of area that is occupied by nonnative grasses, it is unlikely that *H. macradenia* will reappear at the site unless it is actively managed. The CDFG has expressed an interest in enlisting the property owners in conservation efforts, but no agreements have yet been reached (D. Hillyard, plant ecologist, CDFG, pers. comm. 1997).

The Spring Hills Golf Course site is privately owned. In 1989, *Holocarpha macradenia* was observed growing in five separate colonies scattered over 5 ha (12 ac) in unlandscaped patches between the fairways of the golf course. The distribution of the colonies suggests that *H. macradenia* habitat was altered by development of the golf course, especially in the fairways. In 1989 and 1990, the largest colony supported 2,000 to 3,000 plants. Each of the other four colonies supported between 100 and 400 plants (CNDDB 1997). *H. macradenia* was last observed at this site in 1995; no population size estimates were made, but all of the colonies appeared to still be present (B. Davilla, pers. comm. 1997). In 1997, CDFG approached representatives of the golf course and expressed an interest in enlisting them in conservation efforts. To date, however, no agreements have been made (D. Hillyard, pers. comm. 1997). Since there are no apparent plans for expansion of the golf course, the continued threats to H. macradenia on this site are uncertain.

The Porter Ranch site, the only site in Monterey County, is privately owned. Taylor (1990) noted that this site is unusual in that the *Holocarpha macradenia* population is primarily in the bottom of a small canyon, rather than on the adjacent terrace or upper slope. The population is scattered over approximately 1 ha (2.5 ac). Between 1984 and 1993, population sizes fluctuated between 1,500 (1984) and 43,000 plants (1989) (CNDDB 1997). The most recent population estimate in 1993 was 3,200 plants. Cattle grazing at this site continues with varying intensity (M. Silberstein, Elkhorn Slough Foundation, pers. comm. 1997). Within cattle exclosures, constructed to protect *H. macradenia* from heavy grazing, the number of plants had decreased to fewer than 100 by 1996 (R. Morgan, pers. comm. 1997). The owners are interested in developing management plans in conjunction with The Nature Conservancy that would address

appropriate grazing levels to benefit *H. macradenia* (CDFG 1994, M. Silberstein, pers. comm. 1997). In 1998, CDFG acquired a 16-ha (40-ac) conservation easement on the Porter Ranch that surrounds the *H. macradenia* population (D. Hillyard, *in litt.* 1998). The threats to *H. macradenia* on this site are uncertain.

In summary, development, with its associated effects, is a primary threat to *Holocarpha macradenia*. Six of the 12 remaining native populations are on privately owned lands that are currently or anticipated to be proposed for urban development (Graham Hill Road, the Tan portion of O'Neill/Tan, Winkle Avenue, Fairway Drive, Harkins Slough, and Struve Slough). One site has plans for a phased, 20-year airport expansion (Watsonville Airport). Three sites have also been subjected to secondary effects of adjacent residential development (Arana Gulch, Twin Lakes, Apple Hill). Seven of the 12 sites include plans for conservation of *H. macradenia*, either through development-related mitigation, or by virtue of being on city, county, or State agency lands. However, none of these conservation plans have yet been successful. In particular, the size and quality of conservation areas and management actions prescribed through the environmental review process (see Factor D) may not be biologically adequate to meet the goal of long-term conservation of the species. Also, some *H. macradenia* conservation areas where populations are small in number, small in area, whose habitat is degraded, or that continue to receive secondary effects of adjacent human activities are more vulnerable to extirpation from random, natural events (see Factor E).

B. *Overutilization for commercial, recreational, scientific, or educational purposes.* Overutilization is not known to be a problem for this species.

C. *Disease or predation.* Disease is not known to be a problem for this species. Predation of adult plants by cattle, livestock, or other wildlife species is not known to occur, probably due to the presence of oil glands that would make the plant unpalatable. Whether very young plants are subject to predation prior to maturation of oil glands is unknown.

Although *Holocarpha macradenia* does not appear to be directly impacted by grazing, it has altered the plant's habitat at a number of sites (Arana Gulch, O'Neill/Tan, Watsonville Airport, Harkins Slough, Struve Slough, Porter Ranch, and all eight seed transplant populations in Wildcat Regional Park). Prior to the spread of nonnative annual grasses in the valleys and foothills of California, the openings between perennial grasses in grassland and oak woodland communities were probably occupied by native herbaceous plants (Barbour *et al.* 1993). With the introduction of nonnative grasses, cattle grazing has changed, and continues to alter, the species composition of grasslands in several ways. The hooves of cattle sufficiently disturb soil to create open ground and a seedbed for the establishment of nonnative species. Cattle selectively forage on native species, thus favoring the establishment of nonnative species (Painter 1995). Cattle also act as dispersal vectors for nonnative species to new sites (Heady 1977, Willoughby 1986, Sauer 1988). Once nonnative plants become established, these species compete with native herbs and grasses for water, nutrients, and light (Heady 1977, McClintock 1986). Because nonnative grasses are typically prolific seeders, they continue to increase in abundance at the expense of the native taxa, even after grazing is discontinued (Painter 1995).

Once *Holocarpha macradenia* habitat has been altered by grazers and nonnative plants have proliferated throughout the native ecosystem, continued grazing may either be deleterious or beneficial to the viability of *H. macradenia*. The indirect effects of continued grazing depend on several factors, including the current condition of the site, the timing, and the amount of grazing. In some cases, light to moderate grazing will remove sufficient biomass of nonnative grasses to allow *H. macradenia* to persist (CDFG 1995a, CDFG 1995b). For example, a combination of mowing and grazing has likely favored the persistence of *H. macradenia* at the Watsonville Airport site. The decline of *H. macradenia* on the Struve Slough site has been attributed to the elimination of grazers without new grassland management (Taylor 1990, CDFG 1995a). On the other hand, the indirect result of heavy grazing is most likely responsible for the decline or restriction in *H. macradenia* population sizes at the Arana Gulch, Tan, and portions of the Porter Ranch sites (CDFG 1995a, CNDDB 1997), as well as one of the seed transplant populations (Big Belgum) in Wildcat Canyon Regional Park (CDFG 1995b). Additional discussion on this issue is found under Factor E of this rule.

D. *The inadequacy of existing regulatory mechanisms.* The California Fish and Game Commission listed *Holocarpha macradenia* as an endangered species in 1979 under the California Native Plant Protection Act (CNPPA) (Division 2, chapter 10 section 1900 *et seq.* of the CDFG Code). In 1984, this species became an endangered species under the California Endangered Species Act (CESA) (Division 3, chapter 1.5 sec. 2050 *et seq.*). Although the "take" of State-listed plants has long been prohibited under the CNPPA (Division 2, chapter 10, section 1908) and CESA (Division 3, chapter 1.5, section 2080), these statutes do not provided adequate protection for such plants from the impacts of habitat modification and land use change. For example, under CNPPA, certain activities, such as agricultural or timber operations, mining assessment work, or removal of plants from a right-of-way (e.g., canal, lateral ditches, building site or road), are exempt from the general take prohibitions. Also under CNPPA, after CDFG notifies a landowner that a State-listed plant grows on his or her property, the statute requires only that the landowner notify the agency "at least ten days in advance of changing the land use to allow salvage of such plant" (section 1913). With recent amendments to CESA, a permit under section 2081(b) of the CDFG Code is required to "take" State-listed species incidental to otherwise lawful activities. The amendments require that impacts to the species be fully mitigated. However, these new requirements have not yet been tested, and evaluating their effectiveness will take several years. The scope of these exceptions to the CNPPA take prohibition, and consequently to the protections for plants under CESA, have been the subject of some controversy, even after an opinion in 1998 by the California Attorney General (Opinion #98–105, June 23, 1998). This opinion cataloged the legal mechanisms for take of California-listed plants, and included both incidental take permits issued under the CESA and projects that are statutorily exempt from CNPPA's take prohibition. The opinion did not, however, clarify the scope of the CNPPA exemptions, including a provision that allows the removal of California-listed rare and endangered plants from building sites.

The California Environmental Quality Act (CEQA) requires a full disclosure of the potential environmental impacts of proposed projects on State-or federally listed species or species that are eligible for State listing as rare, threatened, or endangered but have not yet been listed. The public agency with primary authority or jurisdiction over the project is designated as the lead agency, and is responsible for conducting a review of the project and consulting with other agencies concerned with the resources affected by the project. However, protection of listed species through

CEQA is dependent upon the discretion of the agency involved. Section 15065 of the CEQA Guidelines requires a finding of significance if a project has the potential to "reduce the number or restrict the range of a rare or endangered plant or animal." Once significant effects are identified, the lead agency may require mitigation for those effects by changing the project or deciding that overriding considerations make the significant effects acceptable. In the latter case, projects may be approved that cause significant environmental damage, such as destruction of endangered species.

The County of Santa Cruz recently revised its Local Coastal Program and General Plan (Santa Cruz County 1994). Under this plan, "grasslands in the coastal zone" are identified as one of a number of official Sensitive Habitats. Uses allowed within Sensitive Habitat areas are restricted to those that are dependent on the habitat's resources unless other uses are "(a) consistent with protection policies and serve a specific purpose beneficial to the public; (b) it is determined through environmental review that any adverse impacts on the resource will be completely mitigated and that there is no feasible less-damaging alternative; and (c) legally necessary to allow a reasonable economic use of the land, and there is no feasible less-damaging alternative" (Santa Cruz County 1994). The County has attempted to protect *Holocarpha macradenia* during the review of proposals for development that fall under their jurisdiction with conservation easements voluntarily established by the project applicant, or preservation easements requested of the applicant by the County. To date, these include development projects at the Graham Hill Road, O'Neill, Tan, Winkle, and Fairway Drive sites. These easements typically set aside all or most of the occupied habitat of *H. macradenia* and provide for implementation of management plans for the coastal prairie habitat. Despite these efforts, the easements cover only small remnants that represent a fragment of the coastal prairie habitat that historically occurred in the region. Intensive grassland management will be needed to sustain and enhance populations of *H. macradenia* on these sites.

In the late 1980s and early 1990s, CDFG became more concerned about the status of *Holocarpha macradenia* when it became apparent that native populations were being destroyed by development, both in the San Francisco Bay area and the Monterey Bay area. In 1993 and 1995, CDFG hosted three *H. macradenia* recovery workshops to review the status of the species and identify actions needed to conserve the species. These workshops resulted in the development of an MOU between the CDFG and the City of Santa Cruz to address management of the population at Arana Gulch. The workshops also initiated discussion with the City of Watsonville regarding the development of an MOU for management of the Watsonville Airport site. Funding for management of several populations was generated (including those at Arana Gulch and at Wildcat Regional Park), and a conservation plan was developed for the species that included a list of four sites to be targeted. In 1998, CDFG secured a conservation easement over a 16.4–ha (40.5–ac) parcel on one of the four sites (Porter Ranch) prioritized for conservation. Currently, however, efforts to secure conservation easements with the other three property owners have been suspended (Cochrane, *in litt.*, 1998).

E. *Other natural or manmade factors affecting its continued existence.* In addition to the threats described above, three additional factors threaten the continued existence of *Holocarpha macradenia*: limited success of transplant efforts conducted as part of mitigation projects, competition with nonnative plants, and extinction caused by random, naturally occurring events.

In Factor A above, detailed accounts were given of the 12 remaining native populations of *Holocarpha macradenia*. The other eight existing populations of *H. macradenia* are the result of experimental seed transplants. In 1911, Jepson referred to *H. macradenia* as being "abundant" in west Berkeley and Oakland (Havlik 1986). However, close to 50 years later, due to loss of habitat to urbanization, Munz (1959) considered the taxon "possibly extinct." Therefore, when several populations were found near Pinole and Richmond in Contra Costa County in the late 1970s and early 1980s, botanists placed a high priority on establishing additional populations to forestall extinction. Experiments were carried out to establish new populations by seeding what was thought to be appropriate habitat (Havlik 1986). Most of the seedings were done at Wildcat Canyon Regional Park, which straddles Alameda and Contra Costa Counties, but several were done on lands owned and managed by East Bay Municipal Utility District (EBMUD).

Havlik (1989) reviewed the first 7 years of monitoring sites that were seeded with *Holocarpha macradenia* and included discussions on how habitat characteristics such as soil type, grazing pressure (cattle), and landscape position within the coastal fog belt may have affected the species' seeding success. In initial results, populations exposed to moderate grazing pressure were larger than those exposed to low grazing pressure. From 1982 to 1986, 22 sites were seeded within Wildcat Regional Park and on EBMUD land. Most of the sites are monitored annually. By 1989, 3 sites supported over 3,000 plants; 2 had over 1,000 plants; 11 had over 100 plants; 2 had over 10 plants; and 4 had no plants.

By 1993, 1 site (referred to as Mezue) supported a population of 6,400 plants; 4 had fewer than 300 plants; 2 had fewer than 100 plants; 10 had no plants; and 3 sites could not be relocated (CDFG 1994). By 1997, the Mezue site supported between 5,000 and 7,000 plants; one had fewer than 300 plants; 4 had fewer than 100 plants; and 7 had no plants. Most of the remaining sites were not checked because previous multiple-year monitoring indicated that plants had disappeared from those sites. In 1998, the Mezue site supported 3,128 plants; one had 318 plants; 6 had fewer than 100 plants; and 5 had no plants (B. Olson, pers. comm. 1998). Although more sites supported plants in 1998 (eight compared to six in 1997), the total number of plants was less. Also, of those sites that support small populations (fewer than 100 individuals), some may not display any individuals in a given year, even though a seedbank may be present. Although the seeds were probably planted in less than perfect habitat, the competition for limited resources between *H. macradenia* and artichoke thistle and nonnative grasses probably contributed to the decline in populations of the former.

Although the information gathered from these seeded sites has been valuable for understanding the life-history of the plant and how it responds to various types of management, these sites have had limited success in establishing viable populations of *Holocarpha macradenia*. The seeded sites, therefore, have a limited value for maintaining the viability of the species when compared to the native populations.

One of the most prevalent forms of habitat alteration occurring within the coastal prairie habitat of *Holocarpha macradenia* is the conversion of the plant community from one dominated by native grasses to one dominated by nonnative grass species. Nonnative grasses may quickly gain a competitive advantage over native grasses because they germinate early and seed prolifically (Heady 1977, McClintock

1986). As discussed in Factors A and C, the conversion of native prairie habitats to grazing lands enhances the opportunity for nonnative grasses to be introduced and disseminated into the surrounding areas. Field survey reports show that nonnative grasses often dominate coastal prairie habitat and represent a potential threat at eight *H. macradenia* sites (Arana Gulch, Twin Lakes, Tan, Watsonville Airport, Harkins Slough, Struve Slough, Spring Hills and Porter sites) (CNDDB 1997, Taylor 1990).

In 1989, the Struve Slough site supported one of the largest populations of *Holocarpha macradenia*. Before 1989, the cattle grazing regime in place favored the presence of nonnative grasses such as oatgrass (*Avena barbada*), ryegrass (*Lolium multiflorum*), and quaking grass (*Briza maxima*). However, even after cattle were removed from the site in 1989, wild oat and other nonnatives, primarily prickly lettuce and wild fennel, further invaded the site. Even without continual grazing to facilitate the growth of nonnative plants, previous grazing practices had established sufficient numbers of these nonnative plants that they could outcompete the native plants and increase their abundance. Probably as a result of nonnative competition, *H. macradenia* has not been seen on the site since 1994, despite the apparent existence of a seedbank.

Both the native populations and the seeded ones are threatened to some extent by competition with artichoke thistle. An individual thistle, the wild variety of the edible artichoke, occupies a large area, has allelopathic properties, and creates shade (Kelly and Pepper 1996). The artichoke thistle also resprouts vigorously from a perennial taproot, has extended flowering, and prolific seed production. Other weedy characteristics of the artichoke thistle include germinating and resprouting in a variety of environmental conditions and over several seasons (Kelly and Pepper 1996). In the 1880s, artichoke thistle was introduced around Benicia, only a few miles north of the Regional Park. By the 1930s, 28,330 ha (70,000 ac) in the hills around the east and north side of San Francisco Bay were infested with the artichoke thistle (Ball in Thomsen *et al.* 1986). In 1996, the Regional Park and Alameda County initiated a cooperative artichoke thistle removal program using herbicides. Although sites that support *Holocarpha macradenia* are a priority for artichoke thistle removal, the abundance of artichoke thistle in adjacent areas allows it to reseed back into treated areas.

Nonnative grasses also occur with *Holocarpha macradenia* at the eight seeded sites. All eight sites are grazed by cattle. If nonnative grasses become too abundant, they can outcompete *H. macradenia*. As stated above in Factor C, cattle grazing can decrease the abundance of nonnative grasses; however, at the Big Belgum site an increase in grazing pressure is believed to have caused the *H. macradenia* population to decline (CDFG 1995b).

French broom is another aggressive nonnative species that threatens *Holocarpha macradenia*. French broom colonizes easily and spreads rapidly in many types of habitats. It is especially aggressive in disturbed areas such as roadsides and newly cleared land. French broom can eventually form dense thickets that displace native vegetation, including *H. macradenia* (Habitat Restoration Group (HRG) n.d.). French broom occurs at five of the natural *H. macradenia* sites (Arana Gulch, Graham Hill Road, Twin Lakes, O'Neill/Tan, Fairway Drive) (CDFG 1997, HRG 1996).

So much of the coastal prairie habitat that supports *Holocarpha macradenia* has been altered, fragmented, or destroyed that most of the remaining habitat is of small acreage and supports only very small populations. Species with a small number of populations and few individuals (compared to historical numbers) are vulnerable to the threat of local extinction from random, naturally occurring events. Such random events can affect long-term survival or cause extinction at several different levels—genetic, demographic, environmental, and catastrophic. For example, the random loss of a few individuals in these small populations can further decrease a species' already diminished gene pool. This loss of genetic diversity can affect the species' ability to adapt to routine environmental change, such as drought. The loss of genetic diversity is often manifested in depressed reproductive vigor. In other circumstances, sites with small populations or few individuals may be vulnerable to forces that affect their ability to successfully complete their life cycle. For example, the loss of pollinators may reduce successful seed-set, and could lead to reduced species viability and possible extirpation over time. Large-scale disturbances such as floods, drought, or untimely fire can destroy a significant percentage of a species' individuals or entire populations.

Since *Holocarpha macradenia* populations naturally tend to fluctuate in number due to climatic factors, the species is especially vulnerable to catastrophic disturbance during periods when population numbers are low. Watsonville Airport, the largest of the 12 native sites, supports a population that fluctuates from 200,000 to 28 million plants on 15 ha (37 ac). The Struve Slough site formerly supported 400,000 individuals on 1.6 ha (4 ac), but had declined to a single individual in 1994. The Spring Hills Golf Course site supports up to 3,500 plants on 5 ha (12 ac). The Porter Ranch site once supported 43,000 plants on 1 ha (2.5 ac), but by 1996, the population had declined to fewer than 100 plants. The Arana Gulch site supported 12,820 plants on 2 ha (5 ac) in 1998. The remaining seven native sites support approximately 0.4 ha (1 ac) or less of occupied habitat. In 1997, 2 of these native sites (Twin Lakes and O'Neill/Tan) had no plants, while Twin Lakes had only 12 plants in 1998. Of the 8 seed transplant sites in Wildcat Canyon Regional Park, in the east San Francisco Bay area, 1 site supported a population of 3,128 individuals, and the remaining 7 supported between 0 and 318 individuals (1998). Each of these sites is estimated to cover 0.4 to 1.2 ha (1 to 3 ac). The total area of all eight seeded sites is between 3 and 8 ha (8 and 20 ac) (B. Olson, biologist, EBRPD, pers. comm. 1997).

We have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this taxon in determining to make this final rule. Based on this evaluation, we find that *Holocarpha macradenia* (Santa Cruz tarplant) meets the definition of a threatened species under the Act. This species is likely to become endangered in the foreseeable future throughout all or a significant portion of its range due to habitat alteration and destruction, resulting primarily from urban and commercial development; invasion of its habitat and competition from nonnative species due to grazing; limited success of seed transplant populations; and vulnerability to random disturbance in populations of small size and number. Although a few of the native populations are on city, county, or State lands, most are on private lands. Conservation efforts indicate that this species may be maintained by applying intensive management techniques. These efforts will be most effective on sites with large tracts of remaining habitat that support naturally large populations and that can be secured from threats to the species. Although conservation efforts have been prescribed as part of mitigation for a number of development projects, the small acreage, small population sizes, and physical proximity of threats lessen the chance that such efforts will lead to secure, self-sustaining populations at these sites.

Critical Habitat

Critical habitat is defined in section 3, paragraph (5)(A) of the Act as the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features essential to the conservation of the species and that may require special management considerations or protection; and specific areas outside the geographical area occupied by a species at the time it is listed in accordance with the provisions of section 4 of the Act, upon a determination by the Secretary that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

Critical habitat designation, by definition, directly affects only Federal agency actions through consultation under section 7(a)(2) of the Act. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, we designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist—(1) the species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species.

In the proposed rule, we indicated that designation of critical habitat for *Holocarpha macradenia* was not prudent because we believed that designation of critical habitat would not provide any additional benefit beyond that provided through listing as threatened, since most of the current populations of the plant occur on private land or on local/county/State land that is subject to additional conservation regulations.

We now find that designation of critical habitat is prudent for *Holocarpha macradenia*. In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (e.g., *Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we believe that the designation of critical habitat for *H. macradenia* would be prudent.

Due to the small number of populations, we are concerned that *Holocarpha macradenia* could be vulnerable to unrestricted collection, vandalism, or other disturbance. Although we have found no specific evidence of such activities, we are also concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. However, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, we do not expect that the identification of critical habitat will increase the degree of threat to this species of taking or other human activity.

In the absence of a finding that identification of critical habitat would increase threats to a species, if any benefits would result from a critical habitat designation, then a prudent finding is warranted. In the case of this species, designation of critical habitat may provide some benefits. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in certain instances, section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also provide some educational or informational benefits. Therefore, we find that critical habitat is prudent for *Holocarpha macradenia*.

As explained in detail in the Final Listing Priority Guidance for FY 2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. We anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Final Listing Priority Guidance for FY 2000, such as the designation for this species, than we have in recent fiscal years. We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. Therefore, deferral of a critical habitat designation for this species will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, without delaying the final listing decision for *Holocarpha macradenia*. We will develop a proposal to designate critical habitat for *H. macradenia* as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States, and requires that recovery actions be carried out for all listed species. Funding may be available through section 6 of the Act for the State to conduct recovery activities. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part

402. Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction. or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat, if designated. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us, under section 7(a)(2) of the Act. Federal agency involvement, on the part of the Federal Highway Administration, has been identified for the Arana Gulch site. In addition, the FAA will be involved in the expansion of the Watsonville Airport.

Listing of this plant as threatened provides for the development of a recovery plan. Such a plan would bring together Federal, State, and local efforts for its conservation. The recovery plan would establish a framework for cooperation and coordination in recovery efforts, set recovery priorities, and describe site-specific management actions necessary to achieve conservation and survival of the listed species. Additionally, pursuant to section 6 of the Act, we will be able to grant funds to affected States for management actions promoting the protection and recovery of this species.

The Act and its implementing regulations set forth a series of general prohibitions and exceptions that apply to all threatened plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71 for threatened plants, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale in interstate or foreign commerce, or remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for plants listed as endangered, the Act prohibits the malicious damage or destruction on areas under Federal jurisdiction and the removal, cutting, digging up, or damaging or destroying of such plants in knowing violation of any State law or regulation, including State criminal trespass law. Section 4(d) of the Act allows for the provision of such protection to threatened species through regulation. This protection may apply to *Holocarpha macradenia* in the future if regulations are issued. Seeds from cultivated specimens of threatened plant species are exempt from these prohibitions provided that their containers are marked "Of Cultivated Origin." Certain exceptions to the prohibitions apply to our agents and those of State conservation agencies.

The Act and 50 CFR 17.62, 17.63, and 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered or threatened plant species under certain circumstances. Such permits are available for scientific purposes and to enhance the propagation or survival of the species. For threatened plants, permits also are available for botanical or horticultural exhibition, educational purposes, or special purposes consistent with the purposes of the Act. We anticipate that few trade permits would ever be sought or issued because this species is not in cultivation or common in the wild. Requests for copies of the regulations on listed species and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Portland Regional Office, 911 NE 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–6131, facsimile 503/231–6243).

As published in the **Federal Register** (59 FR 34272) on July 1, 1994, our policy is to identify to the maximum extent practicable those activities that would or would not be likely to constitute a violation of section 9 of the Act if a species is listed. The intent of this policy is to increase public awareness of the effect of the species' listing on proposed and ongoing activities within its range. Collection on Federal lands is prohibited without a Federal endangered species permit. Conducting commerce with this species is also prohibited.

Questions regarding whether specific activities, such as changes in land use, will constitute a violation of section 9 should be directed to the Field Supervisor, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that environmental assessments and environmental impact statements, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. We published a notice outlining our reasons for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244).

Paperwork Reduction Act

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened plants, see 50 CFR 17.72.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author:

The primary author of this final rule is Constance Rutherford, Ventura Fish and Wildlife Office (see **ADDRESSES** section).

List of Subjects in 50 CFR part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of a chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201–4205; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Amend 17.12(h) by adding the following, in alphabetical order under FLOWERING PLANTS, to the List of Endangered and Threatened Plants:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
•	•	•	•	•	•	•	•
Holocarpha macradenia.	Santa Cruz tarplant	U.S.A. (CA)	Asteraceae	T	690	NA	NA
•	•	•	•	•	•	•	•

Dated: March 13, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–6834 Filed 3–15–00; 4:31 pm]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 991220343–0071–02; I.D. 120999D]

RIN 0648–AM52

Pacific Halibut Fisheries; Catch Sharing Plans

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; annual management measures for Pacific halibut fisheries and approval of catch sharing plans.

SUMMARY: The Assistant Administrator for Fisheries, NOAA (AA), on behalf of the International Pacific Halibut Commission (IPHC), publishes the annual management measures promulgated as regulations by the IPHC and approved by the Secretary of State governing the Pacific halibut fishery. The AA also announces the approval of modifications to the Catch Sharing Plan (Plan) for Area 2A and implementing regulations for 2000. These actions are intended to enhance the conservation of the Pacific halibut stock and further the goals and objectives of the Pacific Fishery Management Council (PFMC) and the North Pacific Fishery Management Council (NPFMC).

DATES: Effective March 15, 2000.

ADDRESSES: NMFS Alaska Region, 709 West 9th Street., P.O. Box 21668, Juneau, AK 99802–1668; or NMFS Northwest Region, 7600 Sand Point Way NE, Seattle, WA 98115–0070 (http://www.nwr.noaa.gov).

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–4345 or Yvonne deReynier, 206–526–6140.

SUPPLEMENTARY INFORMATION: The IPHC has promulgated regulations governing the Pacific halibut fishery in 2000, under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the North Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, D.C., on March 29, 1979). The IPHC regulations have been approved by the Secretary of State of the United States under section 4 of the Northern Pacific Halibut Act (Halibut Act, 16 U.S.C. 773–773k). Pursuant to regulations at 50 CFR 300.62, the approved IPHC regulations setting forth the 2000 IPHC annual management measures are published in the **Federal Register** to provide notice of their effectiveness, and to inform persons subject to the regulations of the restrictions and requirements.

The IPHC held its annual meeting on January 10–13, 2000, in Lynnwood, WA, and adopted regulations for 2000. The substantive changes to the previous IPHC regulations (64 FR 13519, March 19, 1999) include:

1. New catch limits for all areas;
2. A requirement that the operator of a vessel that offloads halibut must completely offload all halibut from the vessel once the offloading commences;
3. Establishment of opening dates for the Area 2A commercial directed halibut fishery.

In addition, this action implements the Plan for regulatory Area 2A. This Plan was developed by the PFMC under authority of the Halibut Act. Section 5 of the Halibut Act (16 U.S.C. 773c) provides that the Secretary of Commerce (Secretary) shall have general responsibility to carry out the Halibut Convention (Convention) between the United States and Canada, and that the Secretary shall adopt such regulations as may be necessary to carry out the purposes and objectives of the Convention and the Halibut Act. The Secretary's authority has been delegated to the AA. Section 5 of the Halibut Act also authorizes the Regional Fishery Management Council having authority for the geographic area concerned to develop regulations governing the Pacific halibut catch in U.S. Convention waters that are in addition to, but not in conflict with, regulations of the IPHC. Pursuant to this authority, NMFS requested the PFMC to allocate halibut catches should such allocation be necessary.

Catch Sharing Plan for Area 2A

The PFMC prepared annual Plans from 1988 to 1994 to allocate the halibut catch limit for Area 2A among treaty Indian, non-Indian commercial, and non-Indian sport fisheries in and off Washington, Oregon, and California. In 1995, NMFS implemented a Council-recommended long-term Plan (60 FR 14651, March 20, 1995). In each of the intervening years between 1995 and the present, minor revisions to the Plan have been made to adjust for the changing needs of the fisheries. The Plan allocates 35 percent of the Area 2A total allowable catch (TAC) to Washington treaty Indian tribes in Subarea 2A–1, and 65 percent to non-treaty fisheries in Area 2A, with the treaty fisheries divided into commercial fisheries, and ceremonial and subsistence fisheries. The allocation to non-treaty fisheries is divided into three shares, with the Washington sport fishery (north of the Columbia River) receiving 36.6 percent, the Oregon/California sport fishery receiving 31.7 percent, and the commercial fishery receiving 31.7 percent. The commercial fishery is further divided into two sectors; a directed (traditional longline) commercial fishery that is allocated 85 percent of the non-Indian commercial harvest, and 15 percent for harvests of halibut caught incidental to the salmon troll fishery. The directed commercial fishery in Area 2A is confined to southern Washington (south of 46°53'18" N. lat.), Oregon and California. The Plan also divides the sport fisheries into seven geographic areas, each with separate allocations, seasons, and bag limits.

No vessel with a commercial license (directed or incidental) for halibut may be used in any sport fishery for halibut. No vessel with a charter license for halibut or that has been used to fish for halibut in sport fisheries may be used to fish in a commercial fishery for halibut in the same calendar year. A vessel may be licensed either to fish the directed commercial fishery for halibut, or to land halibut incidentally to the salmon troll fishery, but not both.

For 2000, PFMC recommended changes to the Plan to modify the Pacific halibut fisheries in Area 2A in 2000 and beyond pursuant to recommendations from the Washington Department of Fish and Wildlife (WDFW) and the Oregon Department of Fish and Wildlife (ODFW), and pursuant to a Stipulation and Order resulting from a sub-proceeding of *U.S. v. Washington*.. The purpose of these changes is to align the structure of the CSP more closely with the character of the Washington and Oregon sport fisheries, and to bring the Plan into compliance with a court order for the allocation between treaty and non-treaty fisheries. For the Washington sport fisheries, PFMC recommended altering the boundary between the Puget Sound and North Coast subareas, the two northernmost sport fishing subareas in Area 2A. This change would move the boundary eastward from the Bonilla-Tatoosh line to the mouth of the Sekiu River. To account for a shift in the size of the two subareas, PFMC also recommended changing the Plan to increase the portion of the Washington sport quota allocated to the North Coast subarea from 57.7 percent of the first 130,845 lb (59.4 mt) allocated to the Washington sport fishery to 62.2 percent. The portion of the Washington sport quota allocated to the Puget Sound subarea will correspondingly decrease from 28 percent of the first 130,845 lb (59.4 mt) allocated to the Washington sport fishery to 23.5 percent. For the Washington sport fisheries, PFMC also recommended increasing the flexibility of the process by which the closed "hot spot" zone in the Washington South Coast subarea could be opened inseason. For the Oregon sport fisheries, PFMC has recommended combining the subquotas for the inside 30–fathom fisheries for Northern and Southern Central Coast subareas. This change will simplify management of the inside 30–fathom fisheries to ensure that the seasons are of the same duration north and south of the Siuslaw River.

In addition to the above changes proposed by the States of Washington and Oregon, PFMC recommended accommodating in the Plan a court-ordered change in the allocation of halibut between treaty and non-treaty fisheries. In July 1999, the tribes, states, and Federal government agreed to settle the tribes' claim for an equitable adjustment to the current halibut allocation arising from allocations during the years 1989 through 1993, in which tribal treaty rights to halibut had not been met. The parties agreed in a stipulation, and their agreement has been entered as a court order, that 25,000 lb (11.3 mt) (dressed weight) of halibut would be transferred from the non-treaty halibut allocation to the treaty halibut allocation in each year from 2000 through 2007.

A complete description of the PFMC recommended changes to the Plan, notice of a draft Environmental Assessment and Regulatory Impact Review (EA/RIR), and proposed sport fishery management measures were published in the **Federal Register** on January 4, 2000 (65 FR 272), with a request for public comments. No public comments were received on the proposed changes to the Plan or on the EA/RIR. Therefore, NMFS has approved the changes to the Plan as proposed, made a finding of no significant impact, and finalized the EA/RIR. Copies of the complete Plan for Area 2A as modified and the final EA/RIR are available from the NMFS Northwest Regional Office (see **ADDRESSES**).

In accordance with the Plan, the ODFW and the WDFW held public workshops (after the IPHC set the Area 2A quota) on January 31 and February 3, 2000, respectively, to develop recommendations on the opening dates and weekly structure of the sport fisheries. The WDFW and ODFW sent letters to NMFS advising on the outcome of the workshops and provided the following comments and recommendations on the opening dates and season structure for the sport fisheries.

Comment 1: WDFW recommended a May 25 to July 27 season, 5 days per week (closed Tuesday and Wednesday) for the Washington Inside Waters area sport fishery. The recommended number of fishing days is based on analysis of past harvest patterns in this fishery.

Response: NMFS agrees with the calculated number of fishing days necessary to achieve, but not exceed, the subquota for this area. The recommended season has been incorporated in the 2000 sport fishery measures.

Comment 2: WDFW recommended that the Washington North Coast area sport fishery be structured such that 7,000 lb (3.2 mt) of the subarea quota be reserved to provide for the second priority in the Plan—a July 1 season. The WDFW recommendation is for the sport fishery to open on May 2 and continue 5 days per week (closed Sunday and Monday) to June 30, or until 92,744 lb (42 mt) of the 99,774 lb (45.2 mt) quota are harvested. The fishery would reopen on July 1 and on July 4, and continue 5 days per week until the quota has been taken.

Response: NMFS agrees and has incorporated these recommendations into the 2000 sport fishery measures.

Comment 3: WDFW recommended that the seasonal structure set forth in the Plan and described in the proposed rule (65 FR 272, January 4, 2000) be implemented for the sport fisheries in the Washington South Coast and the Columbia River subareas. WDFW further requested a review in the first week of May to determine whether the South Coast subarea "hot spot" should remain closed during the sport fishing season.

Response: NMFS has structured the seasons for these subareas in accordance with the Plan, and will schedule a South Coast area "hot spot" discussion with WDFW and interested stakeholders at the beginning of the season.

Comment 4: ODFW recommended a 5-day season of May 11, 12, 13, 18, and 19 for the May opening in the Oregon Central Coast and South Coast subareas based on an analysis of past harvest rates, which indicated an increasing annual trend in the sport fishery.

Response: NMFS has implemented ODFW's recommendation for the 5-day fixed season in May for these two subareas. The Plan stipulates that the number of fixed season days established will be based on the projected catch per day with the intent of not exceeding the subarea season subquotas.

Comment 5: ODFW and the public in attendance at the ODFW workshop recommended that if sufficient unharvested quota remains for an additional day of fishing after the May fixed opening days in the Oregon Central and South Coast subareas, an additional opening date would be scheduled for Friday, June 9; if sufficient quota remains for three, four, five, or six additional days, then June 8, June 16, June 16–17, and June 15 would also be opened, in that order.

Response: The Plan stipulates that "If sufficient catch remains for an additional day of fishing after the May season or the August season, openings will be provided if possible in May and August respectively. Potential additional open dates for both the May and August seasons will be announced preseason." Further, the Plan stipulates

that "ODFW will monitor landings and provide a post-season estimate of catch within 2 weeks of the end of the fixed season." Since a 5-day May season would extend to late May (May 19), additional opening dates in May cannot be set that would provide the necessary 2-week timeframe for ODFW to estimate the catch during the fixed season. Therefore, NMFS agrees with the recommendation to set potential additional open dates in June.

Comment 6: ODFW recommended a mid-July review of the May all-depth harvest and the catch projections for the inside 30-fathom curve fisheries, to determine whether sufficient halibut remains for an August fishery. If sufficient halibut quota remains, ODFW recommends Friday, August 4 or Friday and Saturday, August 4 and 5 for the August fishery. If a post-fishery assessment indicates that enough halibut remains in the quota for a third fishing day in August, the additional day would occur on August 18.

Response: If the mid-July review indicates that there is sufficient halibut for an August fishery, the fishery will be open on Friday, August 4, in accordance with the Plan. If there is enough quota available for 2 days of fishing, the second day of the fishery will be August 5. NMFS concurs with the ODFW recommendation to reserve August 18 as a third possible August fishing day, if sufficient quota remains from the August 4 and/or 5 fishery.

NMFS has implemented sport fishing management measures in Area 2A based on recommendations from the states in accordance with the CSP.

Annual Halibut Management Measures

The annual management measures that follow for the 2000 Pacific halibut fishery are identical to those recommended by the IPHC and approved by the Secretary of State, and include the domestic regulations approved by NMFS that are necessary to implement the CSP in Area 2A.

2000 PACIFIC HALIBUT FISHERY REGULATIONS

1. Short Title

These regulations may be cited as the Pacific Halibut Fishery Regulations.

2. Interpretation

(1) In these Regulations,

(a) *Authorized officer* means any State, Federal, or Provincial officer authorized to enforce these regulations including, but not limited to, the National Marine Fisheries Service (NMFS), Canada's Department of Fisheries and Oceans (DFO), Alaska Division of Fish and Wildlife Protection (ADFWP), the United States Coast Guard (USCG), the Washington Department of Fish and Wildlife, and the Oregon State Police;

(b) *Charter vessel* means a vessel used for hire in sport fishing for halibut, but not including a vessel without a hired operator;

(c) *Commercial fishing* means fishing the resulting catch of which either is or is intended to be sold or bartered;

(d) *Commission* means the International Pacific Halibut Commission;

(e) *Daily bag limit* means the maximum number of halibut a person may take in any calendar day from Convention waters;

(f) *Fishing* means the taking, harvesting, or catching of fish, or any activity that can reasonably be expected to result in the taking, harvesting, or catching of fish, including specifically the deployment of any amount or component part of setline gear anywhere in the maritime area;

(g) *Fishing period limit* means the maximum amount of halibut that may be retained and landed by a vessel during one fishing period;

(h) *Land*, with respect to halibut, means the offloading of halibut from the catching vessel;

(i) *License* means a halibut fishing license issued by the Commission pursuant to section 3;

(j) *Maritime area*, in respect of the fisheries jurisdiction of a Contracting Party, includes without distinction areas within and seaward of the territorial sea or internal waters of that Party;

(k) *Operator*, with respect to any vessel, means the owner and/or the master or other individual on board and in charge of that vessel;

(l) *Overall length* of a vessel means the horizontal distance, rounded to the nearest foot, between the foremost part of the stem and the aftermost part of the stern (excluding bowsprits, rudders, outboard motor brackets, and similar fittings or attachments);

(m) *Person* includes an individual, corporation, firm, or association;

(n) *Regulatory area* means an area referred to in section 6;

(o) *Setline gear* means one or more stationary, buoyed, and anchored lines with hooks attached;

(p) *Sport fishing* means all fishing other than commercial fishing and treaty Indian ceremonial and subsistence fishing;

(q) *Tender* means any vessel that buys or obtains fish directly from a catching vessel and transports it to a port of landing or fish processor;

(2) In these Regulations, all bearings are true and all positions are determined by the most recent charts issued by the National Ocean Service or the Canadian Hydrographic Service.

(3) In these Regulations all weights shall be computed on the basis that the heads of the fish are off and their entrails removed.

3. Licensing Vessels

(1) No person shall fish for halibut from a vessel, nor possess halibut on board a vessel, used either for commercial fishing or as a charter vessel in Area 2A unless the Commission has issued a license valid for fishing in Area 2A in respect of that vessel.

(2) A license issued for a vessel operating in Area 2A shall be valid only for operating either as a charter vessel or a commercial vessel, but not both.

(3) A vessel with a valid Area 2A commercial license cannot be used to sport fish for Pacific halibut in Area 2A

(4) A license issued for a vessel operating in the commercial fishery in Area 2A shall be valid only for either the directed commercial fishery during the fishing periods specified in paragraph (2) of section 8 or the incidental catch fishery during the salmon troll fishery specified in paragraph (3) of section 8, but not both.

(5) A license issued in respect of a vessel referred to in paragraph (1) must be carried on board that vessel at all times and the vessel operator shall permit its inspection by any authorized officer.

(6) The Commission shall issue a license in respect of a vessel, without fee from its office in Seattle, Washington, upon receipt of a completed, written, and signed "Application for Vessel License for the Halibut Fishery" form.

(7) A vessel operating in the directed commercial fishery in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 P.M. on April 30, or on the first weekday in May if April 30 is a Saturday or Sunday.

(8) A vessel operating in the incidental commercial fishery during the salmon troll season in Area 2A must have its "Application for Vessel License for the Halibut Fishery" form postmarked no later than 11:59 P.M. on March 31, or the first weekday in April if March 31 is a Saturday or Sunday.

(9) Application forms may be obtained from any authorized officer or from the Commission.

(10) Information on "Application for Vessel License for the Halibut Fishery" form must be accurate.

(11) The "Application for Vessel License for the Halibut Fishery" form

shall be completed and signed by the vessel owner.

(12) Licenses issued under this section shall be valid only during the year in which they are issued.

(13) A new license is required for a vessel that is sold, transferred, renamed, or re-documented.

(14) The license required under this section is in addition to any license, however designated, that is required under the laws of the United States or any of its States.

(15) The United States may suspend, revoke, or modify any license issued under this section under policies and procedures in Title 15, Code of Federal regulations, part 904.

4. Inseason Actions

(1) The Commission is authorized to establish or modify regulations during the season after determining that such action:

(a) Will not result in exceeding the catch limit established preseason for each regulatory area;

(b) Is consistent with the Convention between the United States of America and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea, and applicable domestic law of either Canada or the United States; and

(c) Is consistent, to the maximum extent practicable, with any domestic catch sharing plans developed by the United States or Canadian governments.

(2) Inseason actions may include, but are not limited to, establishment or modification of the following:

(a) Closed areas;
(b) Fishing periods;
(c) Fishing period limits;
(d) Gear restrictions;
(e) Recreational bag limits;
(f) Size limits; or
(g) Vessel clearances.

(3) Inseason changes will be effective at the time and date specified by the Commission.

(4) The Commission will announce inseason actions under this section by providing notice to major halibut processors; Federal, State, United States treaty Indian, and Provincial fishery officials; and the media.

5. Application

(1) These Regulations apply to persons and vessels fishing for halibut in, or possessing halibut taken from, waters off the west coast of Canada and the United States, including the southern as well as the western coasts of Alaska, within the respective maritime areas in which each of those countries exercises exclusive fisheries jurisdiction as of March 29, 1979.

(2) Sections 6 to 21 apply to commercial fishing for halibut.

John—This language differs slightly from IPHC language. I don't know what AKR prefers. (3) Section 7 applies to the Western Alaska Community Development Quota (CDQ) fishery in Area 4E.

(4) Section 22 applies to the United States treaty Indian tribal fishery in Area 2A–1.

(5) Section 23 applies to sport fishing for halibut.

(6) These Regulations do not apply to fishing operations authorized or conducted by the Commission for research purposes.

6. Regulatory Areas

The following areas shall be regulatory areas for the purposes of the Convention:

(1) Area 2A includes all waters off the states of California, Oregon, and Washington;

(2) Area 2B includes all waters off British Columbia;

(3) Area 2C includes all waters off Alaska that are east of a line running 340° true from Cape Spencer Light (58°11'57" N. lat., 136°38'18" W. long.) and south and east of a line running 205° true from said light;

(4) Area 3A includes all waters between Area 2C and a line extending from the most northerly point on Cape Aklek (57°41'15" N. lat., 155°35'00" W. long.) to Cape Ikolik (57°17'17" N. lat., 154°47'18" W. long.), then along the Kodiak Island coastline to Cape Trinity (56°44'50" N. lat., 154°08'44" W. long.), then 140° true;

(5) Area 3B includes all waters between Area 3A and a line extending 150° true from Cape Lutke (54°29'00" N. lat., 164°20'00" W. long.) and south of 54°49'00" N. lat. in Isanotski Strait;

(6) Area 4A includes all waters in the Gulf of Alaska west of Area 3B and in the Bering Sea west of the closed area defined in section 10 that are east of 172°00'00" W. long. and south of 56°20'00" N. lat.;

(7) Area 4B includes all waters in the Bering Sea and the Gulf of Alaska west of Area 4A and south of 56°20'00" N. lat.;

(8) Area 4C includes all waters in the Bering Sea north of Area 4A and north of the closed area defined in section 10 which are east of 171°00'00" W. long., south of 58°00'00" N. lat., and west of 168°00'00" W. long.;

(9) Area 4D includes all waters in the Bering Sea north of Areas 4A and 4B, north and west of Area 4C, and west of 168°00'00" W. long.;

(10) Area 4E includes all waters in the Bering Sea north and east of the closed area defined in section 10, east of 168°00'00" W. long., and south of 65°34'00" N. lat.

7. Fishing in Regulatory Area 4E

(1) A person may retain halibut taken with setline gear in the Area 4E CDQ fishery that are smaller than the size limit specified in section 13, provided that no person may sell or barter such halibut.

(2) The manager of a CD CDQ organization that authorizes persons to harvest halibut in the Area 4E CDQ fishery must report to the Commission the total number and weight of undersized halibut taken and retained by such persons pursuant to section 7, paragraph (1). This report, that shall include data and methodology used to collect the data, must be received by the Commission prior to December 1 of the year in which such halibut were harvested.

(3) Section 7 shall be effective until December 31, 2000.

8. Fishing Periods

(1) The fishing periods for each regulatory area apply where the catch limits specified in section 11 have not been taken.

(2) Each fishing period in the Area 2A directed fishery south of 46°53'18" N. lat. shall begin at 0800 hours and terminate at 1800 hours local time on July 5, July 19, August 2, August 23, September 6, and September 20, unless the Commission specifies otherwise.

(3) Notwithstanding paragraph (2), and paragraph (7) of section 11, an incidental catch fishery is authorized during salmon troll seasons in Area 2A. Vessels participating in the salmon troll fishery in Area 2A may retain halibut caught incidentally during authorized periods, in conformance with the annual salmon management measures announced in the **Federal Register**. The notice also will specify the ratio of halibut to salmon that may be retained during this fishery.

(4) The fishing period in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall begin at 1200 hours local time on March 15 and terminate at 1200 hours local time on November 15, unless the Commission specifies otherwise.

(5) All commercial fishing for halibut in Areas 2A, 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E shall cease at 1200 hours local time on November 15.

9. Closed Periods

(1) No person shall engage in fishing for halibut in any regulatory area other than during the fishing periods set out in section 8 in respect of that area.

(2) No person shall land or otherwise retain halibut caught outside a fishing period applicable to the regulatory area where the halibut was taken.

(3) Subject to paragraphs (7), (8), (9), and (10) of section 19, these Regulations do not prohibit fishing for any species of fish other than halibut during the closed periods.

(4) Notwithstanding paragraph (3), no person shall have halibut in his/her possession while fishing for any other species of fish during the closed periods.

(5) No vessel shall retrieve any halibut fishing gear during a closed period if the vessel has any halibut on board.

(6) A vessel that has no halibut on board may retrieve any halibut fishing gear during the closed period after the operator notifies an authorized officer or representative of the Commission prior to that retrieval.

(7) After retrieval of halibut gear in accordance with paragraph (6), the vessel shall submit to a hold inspection at the discretion of the authorized officer or representative of the Commission.

(8) No person shall retain any halibut caught on gear retrieved under paragraph (6).

(9) No person shall possess halibut aboard a vessel in a regulatory area during a closed period unless that vessel is in continuous transit to or within a port in which that halibut may be lawfully sold.

10. Closed Area

All waters in the Bering Sea north of 55°00'00" N. lat. in Isanotski Strait that are enclosed by a line from Cape Sarichef Light (54°36'00" N. lat., 164°55'42" W. long.) to a point at 56°°20'00" N. lat., 168°30'00" W. long.; thence to a point at 58°21'25" N. lat., 163°00'00" W. long.; thence to Strogonof Point (56°53'18" N. lat., 158°50'37" W. long.); and then along the northern coasts of the Alaska Peninsula and Unimak Island to the point of origin at Cape Sarichef Light are closed to halibut fishing and no person shall fish for halibut therein or have halibut in his/her possession while in those waters except in the course of a continuous transit across those waters. All waters in Isanotski Strait between 55°00'00" N. lat. and 54°49'00" N. lat. are closed to commercial halibut fishing.

11. Catch Limits

(1) The total allowable catch of halibut to be taken during the halibut fishing periods specified in section 8 shall be limited to the weight expressed in pounds or metric tons shown in the following table:

CATCH LIMITS

Regulatory Area	Pounds	Metric Tons
2A	163,096.00	74.00
2B	10,600,000.00	4,807.30
2C	8,400,000.00	3,809.50
3A	18,310,000.00	8,303.90
3B	15,030,000.00	6,816.30
4A	4,970,000.00	2,254.00
4B	4,910,000.00	2,226.80
4C	2,030,000.00	920.60
4D	2,030,000.00	920.60
4E	390,000.00	176.90

(2) Notwithstanding paragraph (1) of this section, the catch limit in Area 2A shall be divided between a directed halibut fishery to operate south of 46°53'18" N. lat. during the fishing periods set out in paragraph 2 of Section 8 and an incidental halibut catch fishery during the salmon troll fishery in Area 2A described in paragraph 3 of Section 8. Inseason actions to transfer catch between these fisheries may occur in conformance with the Catch Sharing Plan for Area 2A.

(a) The catch limit in the directed halibut fishery is 138,632 lb (62.9 mt).

(b) The catch limit in the incidental catch fishery during the salmon troll fishery is 24,464 lb (11.1 mt).

(3) The Commission shall determine and announce to the public the specific dates during which the directed fishery will be allowed in Area 2A and the date on which the catch limit for Area 2A will be taken.

(4) Notwithstanding paragraph (1), Area 2B will close only when all Individual Vessel Quotas assigned by Canada's Department of Fisheries and Oceans are taken, or November 15, whichever is earlier.

(5) Notwithstanding paragraph (1), Areas 2C, 3A, 3B, 4A, 4B, 4C, 4D, and 4E will each close only when all Individual Fishing Quotas and all Community Development Quotas issued by the National Marine Fisheries Service have been taken, or November 15, whichever is earlier.

(6) If the Commission determines that the catch limit specified for Area 2A in paragraph (1) would be exceeded in an unrestricted 10–hour fishing period as specified in paragraph (2) of section 8, the catch limit for that area shall be considered to have been taken unless fishing period limits are implemented.

(7) When under paragraphs (2), (3) or (6) the Commission has announced a date on which the catch limit for Area 2A will be taken, no person shall fish for halibut in that area after that date for the rest of the year, unless the Commission has announced the reopening of that area for halibut fishing.

12. Fishing Period Limits

(1) It shall be unlawful for any vessel to retain more halibut than authorized by that vessel's license in any fishing period for which the Commission has announced a fishing period limit.

(2) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut to a commercial fish processor, completely offload all halibut on board said vessel to that processor and ensure that all halibut is weighed and reported on State fish tickets.

(3) The operator of any vessel that fishes for halibut during a fishing period when fishing period limits are in effect must, upon commencing an offload of halibut other than to a commercial fish processor, completely offload all halibut on board said vessel and ensure that all halibut are weighed and reported on State fish tickets.

(4) The provisions of paragraph (3) are not intended to prevent retail over-the-side sales to individual purchasers so long as all the halibut on board is ultimately offloaded and reported.

(5) When fishing period limits are in effect, a vessel's maximum retainable catch will be determined by the Commission based on:

(a) The vessel's overall length in feet and associated length class;

(b) The average performance of all vessels within that class; and

(c) The remaining catch limit.

(6) Length classes are shown in the following table:

Overall Length	Vessel Class
1–25	A
26–30	B
31–35	C
36–40	D
41–45	E
46–50	F
51–55	G
56+	H

(7) Fishing period limits in Area 2A apply only to the directed halibut fishery referred to in paragraph (2) of section 8.

13. Size Limits

(1) No person shall take or possess any halibut that:

(a) With the head on, is less than 32 inches (81.3 cm) as measured in a straight line, passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail; or

(b) With the head removed, is less than 24 inches (61.0 cm) as measured from the base of the pectoral fin at its most anterior point to the extreme end of the middle of the tail.

(2) No person shall possess on board a vessel a halibut that has been mutilated, or otherwise disfigured in any manner that prevents the determination of whether the halibut complies with the size limits specified in this section, except that:

(a) This paragraph shall not prohibit the possession on board a vessel of halibut cheeks cut from halibut caught by persons authorized to process the halibut on board in accordance with NMFS regulations published at Title 50, Code of Federal regulations, part 679; and

(b) No person shall possess a filleted halibut on board a vessel.

(3) No person on board a vessel fishing for, or tendering, halibut caught in Area 2A shall possess any halibut that has had its head removed.

14. Careful Release of Halibut

All halibut that are caught and are not retained shall be immediately released outboard of the roller and returned to the sea with a minimum of injury by

(a) Hook straightening;

(b) Cutting the gangion near the hook; or

(c) Carefully removing the hook by twisting it from the halibut with a gaff.

15. Vessel Clearance in Area 4

(1) The operator of any vessel that fishes for halibut in Areas 4A, 4B, 4C, or 4D must obtain a vessel clearance before fishing in any of these areas, and before the unloading of any halibut caught in any of these areas, unless specifically exempted in paragraphs (9), (12), (13), (14), or (15).

(2) The vessel clearance required under paragraph (1) prior to fishing in Area 4A may be obtained only at Dutch Harbor or Akutan, Alaska from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(3) The vessel clearance required under paragraph (1) prior to fishing in Area 4B may only be obtained at Nazan Bay on Atka Island or Adak, Alaska from an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(4) The vessel clearance required under paragraph (1) prior to fishing in Area 4C or 4D may be obtained only at St. Paul or St. George, Alaska from an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(5) The vessel operator shall specify the specific regulatory area in which fishing will take place.

(6) Before unloading any halibut caught in Area 4A, a vessel operator may obtain the clearance required under paragraph (1) only in Dutch Harbor or Akutan, Alaska, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor.

(7) Before unloading any halibut caught in Area 4B, a vessel operator may obtain the clearance required under paragraph (1) only in Nazan Bay on Atka Island or Adak, by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor by VHF radio or in person.

(8) Before unloading any halibut caught in Area 4C or 4D, a vessel operator may obtain the clearance required under paragraph (1) only in St. Paul, St. George, Dutch Harbor, or Akutan, Alaska, either in person or by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearances obtained in St. Paul or St. George, Alaska, can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel.

(9) Any vessel operator who complies with the requirements in section 18 for possessing halibut on board a vessel that was caught in more than one regulatory area in Area 4 is exempt from the clearance requirements of paragraph (1) of this section, but must comply with the following requirements:

(a) The operator of the vessel must obtain a vessel clearance prior to fishing in Area 4 in either Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul, St. George, Adak, or Nazan Bay on Atka Island can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. This clearance will list the Areas in which the vessel will fish; and

(b) Before unloading any halibut from Area 4, the vessel operator must obtain a vessel clearance from Dutch Harbor, Akutan, St. Paul, St. George, Adak, or Nazan Bay on Atka Island by contacting an authorized officer of the United States, a representative of the Commission, or a designated fish processor. The clearance obtained in St. Paul or St. George can be obtained by VHF radio and allowing the person contacted to confirm visually the identity of the vessel. The clearance obtained in Adak or Nazan Bay on Atka Island can be obtained by VHF radio.

(10) Vessel clearances shall be obtained between 0600 and 1800 hours, local time.

(11) No halibut shall be on board the vessel at the time of the clearances required prior to fishing in Area 4.

(12) Any vessel that is used to fish for halibut only in Area 4A and lands its total annual halibut catch at a port within Area 4A is exempt from the clearance requirements of paragraph (1).

(13) Any vessel that is used to fish for halibut only in Area 4B and lands its total annual halibut catch at a port within Area 4B is exempt from the clearance requirements of paragraph (1).

(14) Any vessel that is used to fish for halibut only in Area 4C and lands its total annual halibut catch at a port within Area 4C is exempt from the clearance requirements of paragraph (1).

(15) Any vessel that is used to fish for halibut only in Areas 4D and 4E and lands its total annual halibut catch at a port within Areas 4D, 4E, or the closed area defined in section 10, is exempt

from the clearance requirements of paragraph (1).

16. Logs

(1) The operator of any U.S. vessel that has an overall length of 26 feet (7.9 meters) or greater shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality. The log information must be recorded in the groundfish daily fishing logbook provided by NMFS, or Alaska hook-and-line logbook provided by Petersburg Vessels Owner Association or Alaska Longline Fishermen's Association, or the logbook provide by IPHC.

(2) The log referred to in paragraph (1) shall be

(a) Maintained on board the vessel;

(b) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) Retained for a period of two years by the owner or operator of the vessel;

(d) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand; and

(e) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for five (5) days following offloading halibut.

(3) The log referred to in paragraph (1) does not apply to the incidental halibut fishery in Area 2A defined in paragraph (3) of section 8.

(4) The operator of any Canadian vessel shall keep an accurate log of all halibut fishing operations including the date, locality, amount of gear used, and total weight of halibut taken daily in each locality. The log information must be recorded in the British Columbia Halibut Fishery logbook provided by DFO.

(5) The log referred to in paragraph (4) shall be:

(a) Maintained on board the vessel;

(b) Updated not later than 24 hours after midnight local time for each day fished and prior to the offloading or sale of halibut taken during that fishing trip;

(c) Retained for a period of two years by the owner or operator of the vessel;

(d) Open to inspection by an authorized officer or any authorized representative of the Commission upon demand;

(e) Kept on board the vessel when engaged in halibut fishing, during transits to port of landing, and for five (5) days following offloading halibut; and

(f) Mailed to the Department of Fisheries and Oceans (white copy) and IPHC (yellow copy) within seven days of offloading.

(6) The poundage of any halibut that is not sold, but is used by the vessel operator, his/her crew members, or any other person for personal use, shall be recorded in the vessel's log within 24–hours of offloading.

(7) No person shall make a false entry in a log referred to in this section.

17. Receipt and Possession of Halibut

(1) No person shall receive halibut from a United States vessel that does not have on board the license required by section 3.

(2) No person shall offload halibut from a vessel unless the gills and entrails have been removed prior to offloading.

(3) A commercial fish processor or buyer in the United States who purchases or receives halibut directly from the owner or operator of a vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on State fish tickets or Federal catch reports the date, locality, name of vessel, Halibut Commission license number (for Area 2A), the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel including the pounds purchased; pounds in excess of IFQs, IVQs, or fishing period limits; pounds retained for personal use; and pounds discarded as unfit for human consumption. It shall be the responsibility of the owner or operator of the vessel making the offload to offload all halibut from the vessel once offloading commences.

(4) The master or operator of a Canadian vessel that was engaged in halibut fishing must weigh and record all halibut on board said vessel at the time offloading commences and record on Provincial fish tickets or Federal catch reports the date, locality, name of vessel, the name(s) of the person(s) from whom the halibut was purchased; and the scale weight obtained at the time of offloading of all halibut on board the vessel including the pounds purchased; pounds in excess of IVQs; pounds retained for personal use; and pounds discarded as unfit for human consumption.

(5) No person shall make a false entry on a State fish ticket or a Federal catch or landing report referred to in paragraph (3) and (4).

(6) A copy of the fish tickets or catch reports referred to in paragraph (3) and (4) shall be:

(a) Retained by the person making them for a period of three years from the date the fish tickets or catch reports are made; and

(b) Open to inspection by an authorized officer or any authorized representative of the Commission.

(7) No person shall possess any halibut that he/she knows to have been taken in contravention of these Regulations.

(8) When halibut are delivered to other than a commercial fish processor the records required by paragraph (3) shall be maintained by the operator of the vessel from which that halibut was caught, in compliance with paragraph (6).

(9) It shall be unlawful to enter a Halibut Commission license number on a State fish ticket for any vessel other than the vessel actually used in catching the halibut reported thereon.

18. Fishing Multiple Regulatory Areas

(1) Except as provided in this section, no person shall possess at the same time on board a vessel halibut caught in more than one regulatory area.

(2) Halibut caught in Regulatory Areas 2C, 3A, and 3B may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board when required by NMFS regulations published at Title 50, Code of Federal Regulations, § 679.7(f)(4); and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(3) Halibut caught in Regulatory Areas 4A, 4B, 4C, and 4D may be possessed on board a vessel at the same time providing the operator of the vessel:

(a) Has a NMFS-certified observer on board the vessel when halibut caught in different regulatory areas are on board; and

(b) Can identify the regulatory area in which each halibut on board was caught by separating halibut from different areas in the hold, tagging halibut, or by other means.

(4) Halibut caught in Regulatory Areas 4A, 4B, 4C, and 4D may be possessed on board a vessel when in compliance with paragraph (3) and if halibut from Area 4 are on board the vessel, the vessel can have halibut caught in Regulatory Areas 2C, 3A, and 3B on board if in compliance with paragraph (2).

19. Fishing Gear

(1) No person shall fish for halibut using any gear other than hook and line gear.

(2) No person shall possess halibut taken with any gear other than hook and line gear.

(3) No person shall possess halibut while on board a vessel carrying any

trawl nets or fishing pots capable of catching halibut.

(4) All setline or skate marker buoys carried on board or used by any United States vessel used for halibut fishing shall be marked with one of the following:

(a) The vessel's name;

(b) The vessel's state license number; or

(c) The vessel's registration number.

(5) The markings specified in paragraph (4) shall be in characters at least four inches in height and one-half inch in width in a contrasting color visible above the water and shall be maintained in legible condition.

(6) All setline or skate marker buoys carried on board or used by a Canadian vessel used for halibut fishing shall be

(a) Floating and visible on the surface of the water; and

(b) Legibly marked with the identification plate number of the vessel engaged in commercial fishing from which that setline is being operated.

(7) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72–hour period immediately before the opening of a halibut fishing period shall catch or possess halibut anywhere in those waters during that halibut fishing period.

(8) No vessel from which setline gear was used to fish for any species of fish anywhere in Area 2A during the 72–hour period immediately before the opening of a halibut fishing period may be used to catch or possess halibut anywhere in those waters during that halibut fishing period.

(9) No person on board a vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72–hour period immediately before the opening of the halibut fishing season shall catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(10) No vessel from which setline gear was used to fish for any species of fish anywhere in Areas 2B, 2C, 3A, 3B, 4A, 4B, 4C, 4D, or 4E during the 72–hour period immediately before the opening of the halibut fishing season may be used to catch or possess halibut anywhere in those areas until the vessel has removed all of its setline gear from the water and has either

(a) Made a landing and completely offloaded its entire catch of other fish; or

(b) Submitted to a hold inspection by an authorized officer.

(11) Notwithstanding any other provision in these regulations, a person may retain and possess, but not sell or barter halibut taken with trawl gear only as authorized by NMFS' Prohibited Species Donation regulations.

20. Retention of Tagged Halibut

(1) Nothing contained in these Regulations prohibits any vessel at any time from retaining and landing a halibut that bears a Commission tag at the time of capture, if the halibut with the tag still attached is reported at the time of landing and made available for examination by a representative of the Commission or by an authorized officer.

(2) After examination and removal of the tag by a representative of the Commission or an authorized officer, the halibut

(a) May be retained for personal use; or

(b) May be sold if it complies with the provisions of section 13, Size Limits.

21. Supervision of Unloading and Weighing

The unloading and weighing of halibut may be subject to the supervision of authorized officers to assure the fulfillment of the provisions of these Regulations.

22. Fishing by United States Treaty Indian Tribes

(1) Halibut fishing in subarea 2A–1 by members of United States treaty Indian tribes located in the State of Washington shall be regulated under regulations promulgated by the National Marine Fisheries Service and published in the **Federal Register**.

(2) Subarea 2A–1 includes all waters off the coast of Washington that are north of 46°53'18" N. lat. and east of 125°44'00" W. long., and all inland marine waters of Washington.

(3) Commercial fishing for halibut in subarea 2A–1 is permitted with hook and line gear from March 15 through November 15, or until 305,000 pounds (138.3 mt) is taken, whichever occurs first.

(4) Ceremonial and subsistence fishing for halibut in subarea 2A–1 is permitted with hook and line gear from January 1 through December 31, and is estimated to take 10,500 pounds (4.8 metric tons).

23. Sport Fishing for Halibut

(1) No person shall engage in sport fishing for halibut using gear other than a single line with no more than two hooks attached; or a spear.

(2) In all waters off Alaska:

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(3) In all waters off British Columbia:

(a) The sport fishing season is from February 1 to December 31;

(b) The daily bag limit is two halibut of any size per day per person.

(4) In all waters off California, Oregon, and Washington:

(a) The total allowable catch of halibut shall be limited to 188,307 pounds (85.4 mt) in waters off Washington and 163,097 pounds (74.0 mt) in waters off California and Oregon;

(b) The sport fishing subareas, subquotas, fishing dates, and daily bag limits are as follows, except as modified under the inseason actions in Section 24. All sport fishing in Area 2A is managed on a "port of landing" basis, whereby any halibut landed into a port counts toward the quota for the area in which that port is located, and the regulations governing the area of landing apply, regardless of the specific area of catch.

(i) In Puget Sound and the U.S. waters in the Strait of Juan de Fuca, east of a line extending from 48°17'30" N. lat., 124°23'70" W. long.) north to the 48°24'10" N. lat., 124°23'10" W. long., there is no quota. This area is managed by setting a season that is projected to result in a catch of 49,137 lb (22.3 mt).

(A) The fishing season is May 25 through July 27, 5 days a week (Thursday through Monday).

(B) The daily bag limit is one halibut of any size per day per person.

(ii) In the area off the north Washington coast, west of the line described in paragraph (d)(2)(i) of this section and north of the Queets River (47°31'42" N. lat.), the quota for landings into ports in this area is 99,774 lb (45.3 mt).

(A) The fishing seasons are:

(*1*) Commencing May 2 and continuing 5 days a week (Tuesday through Saturday) until 92,774 lb (42.1 mt) are estimated to have been taken and the season is closed by the Commission, or until June 30, whichever occurs first.

(*2*) Commencing July 1 and continuing 5 days a week (Tuesday through Saturday) until the overall area quota of 99,774 lb (45.3 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A portion of this area about 19 nm (35 km) southwest of Cape Flattery is closed to sport fishing for halibut. The closed area is within a rectangle defined by these four corners: 48°18'00" N. lat., 125°11'00" W. long.; 48°18'00" N. lat., 124°59'00" W. long.; 48°04'00" N. lat., 125°11'00" W. long.; and, 48°04'00" N. lat., 124°59'00" W. long.

(iii) In the area between the Queets River, WA and Leadbetter Point, WA (46°38'10" N. lat.), the quota for landings into ports in this area is 34,482 lb (15.6 mt).

(A) The fishing season commences on May 1 and continues 5 days a week (Sunday through Thursday) in all waters, and commences on May 1 and continues 7 days a week in the area from Queets River south to 47°00'00" N. lat. and east of 124°40'00" W. long., until 33,482 lb (15.2 mt) are estimated to have been taken and the season is closed by the Commission. Immediately following this closure, the season reopens in the area from the Queets River south to 47°00'00" N. lat. and east of 124°40'00" W. long. and continues every day until 34,482 lb (15.6 mt) are estimated to have been taken and the area is closed by the Commission, or until September 30, whichever occurs first.

(B) The daily bag limit is one halibut of any size per day per person.

(C) A portion of this area is closed to sport fishing for halibut. The closed area is within a rectangle defined by these four corners: 47°19'00" N. lat., 124°53'00" W. long.; 47°19'00" N. lat., 124°48'00" W. long.; 47°16'00" N. lat., 124°53'00" W. long.; and, 47°16'00" N. lat., 124°48'00" W. long.

(iv) In the area between Leadbetter Point, WA and Cape Falcon, OR (45°46'00" N. lat.), the quota for landings into ports in this area is 8,177 lb (3.7 mt).

(A) The fishing season commences on May 1, and continues every day through September 30, or until 8,177 lb (3.7 mt) are estimated to have been taken and the area is closed by the Commission, whichever occurs first.

(B) The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

(v) In the area off Oregon between Cape Falcon and the Siuslaw River at the Florence north jetty (44°01'08" N. lat.), the quota for landings into ports in this area is 143,574 lb (65.1 mt).

(A) The fishing seasons are:

(*1*) The first season is limited to the area inside the 30–fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600. It commences May 1 and continues every day through September 30, or until the combined subquotas of the north central and south central inside 30–fathom fisheries (12,324 lb (5.6 mt)) or any inseason revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier.

(*2*) The second season is open on May 11, 12, 13, 18, and 19. The projected catch for this season is 97,630 lb (44.3 mt). If sufficient unharvested catch remains for an additional days fishing, the season will reopen. Dependent on the amount of unharvested catch available, the season reopening dates will be June 9; if sufficient quota remains for two days, then June 10 would also be open; if sufficient quota remains for three, four, five, or six additional days, then June 8, June 16–17, then June 15 would also be opened, in that order. If a decision is made inseason by NMFS to allow fishing on one or more of these additional dates, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on any of the additional dates in June unless the opening date is announced on the NMFS hotline.

(*3*) The third season is open on August 4 or until the combined quotas for the all-depth fisheries in the subareas described in paragraphs (v) and (vi) of this section totaling 142,618 lb (64.7 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier. An inseason announcement will be made in mid-July as to whether the fishery will be open on August 4 and/or 5. If the harvest during this opening does not achieve the 142,618 lb (64.7 mt) quota, the season will reopen. Dependent on the amount of unharvested catch available, the season reopening date will be August 18. If a decision is made inseason to allow fishing on August 5 or August 18, notice of the reopening date will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825.

(B) The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

(vi) In the area off Oregon between the Siuslaw River at the Florence north jetty and Humbug Mountain, Oregon (42°40'30" N. lat.), the quota for landings into ports in this area is 11,368 lb (5.2 mt).

(A) The fishing seasons are:

(*1*) The first season is limited to the area inside the 30–fathom (55 m) curve nearest to the coastline as plotted on National Ocean Service charts numbered 18520, 18580, and 18600. It commences May 1 and continues every day through September 30, or until the combined subquotas of the north central and south central inside 30–fathom fisheries (12,324 lb (5.6 mt)) or any inseason revised subquota is estimated to have been taken and the season is closed by the Commission, whichever is earlier.

(*2*) The second season is open on May 11, 12, 13, 18, and 19. The projected catch for this season is 9,094 lb (4.1 mt). If sufficient unharvested catch remains for an additional days fishing, the season will reopen. Dependent on the amount of unharvested catch available, the season reopening dates will be June 9; if sufficient quota remains for three, four, five, or six additional days, then June 8, then June 16–17, then June 15 would also be opened, in that order. If a decision is made inseason by NMFS to allow fishing on one or more of these additional dates, notice of the opening will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825. No halibut fishing will be allowed on any of the additional dates in June unless the opening date is announced on the NMFS hotline.

(*3*) The third season is open on August 4 or until the combined quotas for the all-depth fisheries in the subareas described in paragraphs (v) and (vi) of this section totaling 142,618 lb (64.7 mt) are estimated to have been taken and the area is closed by the Commission, whichever is earlier. An inseason announcement will be made in mid-July as to whether the fishery will be open on August 4 and/or 5. If the harvest during this opening does not achieve the 142,618 lb (64.7 mt) quota, the season will reopen. Dependent on the amount of unharvested catch available, the season reopening date will be August 18. If a decision is made inseason to allow fishing on August 5 or August 18, notice of the reopening date will be announced on the NMFS hotline (206) 526–6667 or (800) 662–9825.

(B) The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

(vii) In the area south of Humbug Mountain, Oregon (42°40'30" N. lat.) and off the California coast, there is no quota. This area is managed on a season that is projected to result in a catch of less than 4,893 lb (2.2 mt).

(A) The fishing season will commence on May 1 and continue every day through September 30.

(B) The daily bag limit is the first halibut taken, per person, of 32 inches (81.3 cm) or greater in length.

(c) The Commission shall determine and announce closing dates to the public for any area in which the

subquotas in this Section are estimated to have been taken.

(d) When the Commission has determined that a subquota under paragraph (4)(b) of this section is estimated to have been taken, and has announced a date on which the season will close, no person shall sport fish for halibut in that area after that date for the rest of the year, unless a reopening of that area for sport halibut fishing is scheduled in accordance with the Catch Sharing Plan for Area 2A, or announced by the Commission.

(5) Any minimum overall size limit promulgated under Commission or NMFS regulations shall be measured in a straight line passing over the pectoral fin from the tip of the lower jaw with the mouth closed, to the extreme end of the middle of the tail.

(6) No person shall fillet, mutilate, or otherwise disfigure a halibut in any manner that prevents the determination of minimum size or the number of fish caught, possessed, or landed.

(7) The possession limit for halibut in the waters off the coast of Alaska is two daily bag limits.

(8) The possession limit for halibut in the waters off the coast of British Columbia is three halibut

(9) The possession limit for halibut in the waters off Washington, Oregon, and California is the same as the daily bag limit.

(10) The possession limit for halibut on land in Area 2A north of Cape Falcon, OR is two daily bag limits.

(11) The possession limit for halibut on land in Area 2A south of Cape Falcon, OR is one daily bag limit.

(12) Any halibut brought aboard a vessel and not immediately returned to the sea with a minimum of injury will be included in the daily bag limit of the person catching the halibut.

(13) No person shall be in possession of halibut on a vessel while fishing in a closed area.

(14) No halibut caught by sport fishing shall be offered for sale, sold, traded, or bartered.

(15) No halibut caught in sport fishing shall be possessed on board a vessel when other fish or shellfish aboard the said vessel are destined for commercial use, sale, trade, or barter.

(16) The operator of a charter vessel shall be liable for any violations of these regulations committed by a passenger aboard said vessel.

24. Flexible inseason management provisions in Area 2A.

(1) The Regional Administrator, NMFS Northwest Region, after consultation with the Chairman of the Pacific Fishery Management Council, the Commission Executive Director, and the Fisheries Director(s) of the affected state(s), is authorized to modify regulations during the season after making the following determinations.

(A) The action is necessary to allow allocation objectives to be met.

(B) The action will not result in exceeding the catch limit for the area.

(C) If any of the sport fishery subareas north of Cape Falcon, OR are not projected to utilize their respective quotas by September 30, NMFS may take inseason action to transfer any projected unused quota to a Washington sport subarea projected to have the fewest number of sport fishing days in the calendar year.

(2) Flexible inseason management provisions include, but are not limited to, the following:

(A) Modification of sport fishing periods;

(B) Modification of sport fishing bag limits;

(C) Modification of sport fishing size limits; and

(D) Modification of sport fishing days per calendar week.

(3) Notice procedures.

(A) Actions taken under this section will be published in the **Federal Register**.

(B) Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, at 206–526–6667 or 800–662–9825 (May through September) and by U.S. Coast Guard broadcasts. These broadcasts are announced on Channel 16 VHF-FM and 2182 kHz at frequent intervals. The announcements designate the channel or frequency over which the notice to mariners will be immediately broadcast. Since provisions of these regulations may be altered by inseason actions, sport fishers should monitor either the telephone hotline or U.S. Coast Guard broadcasts for current information for the area in which they are fishing.

(4) Effective dates.

(A) Any action issued under this section is effective on the date specified in the publication or at the time that the action is filed for public inspection with the Office of the Federal Register, whichever is later, except that any partial or complete inseason opening of the Washington South Coast sport fishery closed area may be made effective upon announcement on the NMFS hotline.

(B) If time allows, NMFS will invite public comment prior to the effective date of any inseason action filed with the **Federal Register**. If the Regional Administrator determines, for good cause, that an inseason action must be filed without affording a prior opportunity for public comment, public comments will be received for a period of 15 days after of the action in the **Federal Register**.

(C) Any inseason action issued under this section will remain in effect until the stated expiration date or until rescinded, modified, or superseded. However, no inseason action has any effect beyond the end of the calendar year in which it is issued.

(5) Availability of data. The Regional Administrator will compile, in aggregate form, all data and other information relevant to the action being taken and will make them available for public review during normal office hours at the Northwest Regional Office, NMFS, Sustainable Fisheries Division, 7600 Sand Point Way NE, Seattle, WA.

25. Fishery election in Area 2A.

(1) A vessel that fishes in Area 2A may participate in only one of the following three fisheries in Area 2A:

(a) The sport fishery under Section 23;

(b) The commercial directed fishery for halibut during the fishing period(s) established in Section 8; or

(c) The incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(2) No person shall fish for halibut in the sport fishery in Area 2A under Section 23 from a vessel that has been used during the same calendar year for commercial halibut fishing in Area 2A or that has been issued a permit for the same calendar year for the commercial halibut fishery in Area 2A.

(3) No person shall fish for halibut in the directed halibut fishery in Area 2A during the fishing periods established in Section 8 from a vessel that has been used during the same calendar year for the incidental catch fishery during the salmon troll fishery as authorized in Section 8.

(4) No person shall fish for halibut in the directed commercial halibut fishery in Area 2A from a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A or that is licensed for the sport charter halibut fishery in Area 2A.

(5) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the sport halibut fishery in Area 2A, or that is licensed for the sport charter halibut fishery in Area 2A.

(6) No person shall retain halibut in the salmon troll fishery in Area 2A as authorized under Section 8 taken on a vessel that, during the same calendar year, has been used in the directed commercial fishery during the fishing periods established in Section 8 for Area 2A or that is licensed to participate in the directed commercial fishery during the fishing periods established in Section 8 in Area 2A.

26. Previous Regulations Superseded

These regulations shall supersede all previous regulations of the Commission, and these regulations shall be effective each succeeding year until superseded.

Classification

IPHC Regulations

Because approval by the Secretary of State of the IPHC regulations is a foreign affairs function, the notice-and-comment and delay-in-effective date requirements of the Administrative Procedure Act, 5 U.S.C. 553, do not apply to this notice of the effectiveness and content of the IPHC regulations, *Jensen v. NMFS*, 512 F.2d 1189 (9th Cir. 1975). Because prior notice and an opportunity for public comment are not required to be provided for this rule by 5 U.S.C. 553, or by any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are not applicable.

Catch Sharing Plan for Area 2A

An Environmental Assessment/Regulatory Impact Review was prepared on the proposed changes to the CSP. NMFS has determined that the proposed changes to the CSP and the management measures implementing the CSP contained in these regulations will not significantly affect the quality of the human environment, and the preparation of an environmental impact statement on the final action is not required by section 102(2)(C) of the National Environmental Policy Act or its implementing regulations. At the proposed rule stage, the Chief Counsel for Regulation, Department of Commerce, certified to the Chief Counsel for Advocacy of the Small Business Administration that this action will not have a significant economic impact on a substantial number of small entities. No comments were received on this certification. Consequently, no regulatory flexibility analysis has been prepared.

This action has been determined to be not significant for purposes of E.O. 12866.

List of Subjects in 50 CFR Part 300

Fisheries, Fishing, Reporting and recordkeeping requirements, Treaties.

Authority: 16 U.S.C. 773–773k.

Dated: March 15, 2000.

Andrew A. Rosenberg,

Deputy Asst. Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–6837 Filed 3–15–00; 2:31 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991207325–0063–02; I.D. 100699A]

RIN 0648–AJ52

Fisheries of the Exclusive Economic Zone Off Alaska; A Cost Recovery Program for the Individual Fishing Quota Program

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS establishes regulations to implement cost recovery for the Individual Fishing Quota (IFQ) program for fixed gear halibut and sablefish fisheries in waters in and off of Alaska (IFQ Program). Cost recovery is necessary because section 304(d) of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires the Secretary of Commerce (Secretary) to collect fees to recover actual costs incurred for Federal management and enforcement of these IFQ fisheries. This action is intended to impose and provide for collection of such fees.

DATES: Effective March 15, 2000.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review (EA/RIR) and the Final Regulatory Flexibility Analysis (FRFA) for this action may be obtained from NMFS, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668 Juneau, AK 99802–1668, Attn: Lori J. Gravel, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Jay Ginter, 907–586–7228.

SUPPLEMENTARY INFORMATION: Section 304(d)(2)(A) of the Magnuson-Stevens Act requires the Secretary to "collect a fee to recover the actual costs directly related to the management and enforcement of any * * * individual fishing quota program." Section 304(d)(2)(B) of the Magnuson-Stevens Act specifies an upper limit on these fees, when the fees must be collected, and where the fees must be deposited. Section 303(d)(4) of the Magnuson-Stevens Act allows NMFS to reserve up to 25 percent of the fees collected for use in an IFQ loan program to aid in financing the purchase of IFQ or quota share (QS) by entry-level and small-vessel fishermen.

The final rule will recover costs for the IFQ Program only. NMFS intends to implement cost recovery for the Community Development Quota (CDQ) program through separate rulemaking.

The Magnuson-Stevens Act specifies the following with respect to the imposition of IFQ cost-recovery fees:

1. Fees must recover actual costs directly related to actual enforcement and management of the IFQ Program;

2. Fees must not exceed 3 percent of the ex-vessel value of fish harvested under any such program;

3. Fees are in addition to any other fees charged under the Magnuson-Stevens Act;

4. With the exception of money reserved for the IFQ loan program, fees must be deposited in the Limited Access System Administrative Fund (LASAF) in the U.S. Treasury; and

5. Fees must be collected at either the time of a legal landing of halibut or sablefish, filing of a landing report, or sale of such fish during a fishing season or in the last quarter of the calendar year in which the fish is harvested.

Background

NMFS, Alaska Region, administers the IFQ Program. The IFQ Program is a limited access system authorized by section 303(b) of the Magnuson-Stevens Act and the Northern Pacific Halibut Act of 1982. NMFS implemented the IFQ Program in March 1995. Regulations implementing the IFQ Program are set forth at 50 CFR part 679. NMFS published a proposed rule to recover costs of managing and enforcing the IFQ Program on December 27, 1999 (64 FR 72302), and solicited public comments through January 26, 2000.

Cost Recovery Program Description

An IFQ permit holder incurs a fee liability for every pound of IFQ halibut and sablefish that is landed on his or her permit. The IFQ permit holder must collect from himself or herself the amount due for all IFQ halibut and IFQ sablefish landings on his or her permit(s). The IFQ permit holder is also responsible for submitting this payment to NMFS on or before the due date of January 31 following the calendar year in which the landings were made. The dollar amount of the fee due is determined by multiplying the IFQ fee percentage (3 percent or less) by the ex-

vessel value of each IFQ landing made on a permit and summing the totals of each permit (if more than one).

More information on the background and details of the program can be found in the preamble to the proposed rule (64 FR 72302, December 27, 1999).

Changes from the Proposed Rule in the Final Rule

In § 679.5(7)(ii)(C)(*2*)(*ii*), examples of documentation that could establish a factual basis for a revised IFQ fee liability are provided in response to comment 7.

The proposed rule published December 27, 1999, was corrected to replace four typographical errors with the correct regulatory text (65 FR 11756; March 6, 2000).

Response to Written Public Comments on the IFQ Cost Recovery Program Proposed Rule

NMFS, Alaska Region, received several written public comments regarding the IFQ Cost Recovery Program proposed rule. They are summarized and responded to as follows.

Comment 1: There is no mechanism or method to determine the amount (up to 25 percent) of the IFQ cost recovery collections that are directed to the IFQ loan program.

Response: In September 1997, the North Pacific Fishery Management Council (Council) recommended to the Secretary an IFQ loan program that would reserve 25 percent of the fees collected under section 303(d)(2) of the Magnuson-Stevens Act in the halibut and sablefish fisheries off Alaska to guarantee obligations that aid in financing the purchase of IFQs in that fishery by fishermen who fish from small vessels and the first-time purchase of IFQs by entry level fishermen. Section 303(d)(4) of the Magnuson-Stevens Act sets 25 percent as the maximum amount of the collected fees that may be reserved for loan program purposes. The Secretary has not yet acted to approve this Council recommendation. No deductions from collected fees will be made until the Council's loan program recommendation is approved. The absence of this revenue to the U.S. Treasury, however, does not prevent the U.S. Congress from appropriating any amount for purposes of the loan program.

Comment 2: NMFS should provide an accounting of how collected fees are spent.

Response: NMFS agrees. This rule provides for an IFQ Cost Recovery Program Annual Report that will summarize the actual direct costs associated management and enforcement of the IFQ Program. This annual report will be made available to the public.

Comment 3: The International Pacific Halibut Commission (IPHC) should be eligible to receive part of the funds collected under the IFQ Cost Recovery Program.

Response: NMFS agrees. The IPHC is in the process of formally submitting to NMFS an estimate of reimbursable management costs incurred as a result of the IFQ Program. NMFS will include such costs in the annual determination of the revised IFQ fee percentage after receiving these submissions annually from the IPHC. Should such costs be submitted and included in any future IFQ fee percentage calculation, the IPHC would subsequently receive the appropriate portion of IFQ cost recovery collections as reimbursement for those IFQ Program related costs.

Comment 4: A cost recovery program for the Alaska Community Development Quota (CDQ) program should also be imposed in the future.

Response: NMFS agrees. The IFQ Program and the CDQ Program are different fishery management programs and, subsequently, have distinct costs eligible for Federal or state cost recovery. NMFS and the State of Alaska (State) are currently considering a CDQ cost recovery fee program that would be similar in design to, but implemented separately, from the IFQ program. Because the costs for the CDQ Program and the IFQ Program involve separate and distinct costs, the corresponding fee percentages would not necessarily be equal. The exception to this would be in years when costs of both programs individually equaled or exceeded the 3 percent limit established by Magnuson-Stevens Act and the fee percentage of each would, therefore, equal 3 percent during that year.

Comment 5: The IFQ Cost Recovery Program does not include a process for an "Oversight Committee" that would allow industry to review and comment on agency budgets and the associated fee percentage on an annual basis.

Response: A process exists for individual citizens or independent groups to provide comment to the Regional Administrator regarding possible adjustment of the IFQ fee percentage. NMFS will publish and distribute specific information regarding the actual management and enforcement cost of the IFQ Program during the most recently completed fiscal year, as well as such information regarding projected costs of the IFQ Program during the current fiscal year. In addition, the Annual Report as described in § 679.45(i) of this rule will provide a summary of the actual annual budgetary expenditures by each of the relevant NMFS Divisions and the IPHC.

The Council has two oversight committees, the longstanding IFQ Implementation Committee and the more recently established IFQ/CDQ Fee Committee, either of which may provide the Regional Administrator with relevant new information. The IFQ/CDQ Fee Committee contributed significantly to the constructive development of this IFQ Cost Recovery Program rule. Both are Council Committees and can provide relevant information.

Comment 6: IFQ standard prices should be distributed to the fleet through industry associations.

Response: NMFS agrees and will provide industry associations with copies of the NMFS IFQ standard price list for distribution. This is in addition to making available to the public the NMFS IFQ standard price list via the **Federal Register** and other means of public notification such as direct mailing to all IFQ permit holders and IFQ registered buyers.

Comment 7: The rule should provide additional clarification of the "adequate documentation" that would be required for a fishermen seeking to establish a revised IFQ fee liability.

Response: NMFS agrees but does not want to overly constrain IFQ permit holders by limiting options for defensibly documenting transactions of initial sale of their IFQ landings. Clarification language that includes examples of such documentation is incorporated in this final rule in § 679.5(l)(7)(ii)(C)(*2*)(*ii*).

Comment 8: Making IFQ permit holders responsible for collecting from themselves and submitting the fees to NMFS rather than making IFQ registered buyers operating as shoreside processors the responsible fee collectors and submitters will preclude the ability to track fee amounts owed by fishery, IFQ permit holder, and species year after year.

Response: NMFS disagrees. NMFS has developed a new computerized system capable of integrating aspects of the IFQ fisheries, including IFQ landings by species, permit number, IFQ permit holder, location, ex-vessel value, and date, storing this information year after year. The Restricted Access Management Division will maintain and operate this computerized data management system for the IFQ Cost Recovery Program. Furthermore, this rule requires IFQ registered buyers operating as shoreside processors to collect and submit to NMFS ex-vessel value information regarding IFQ landings. This volume and value information will be included in the new computerized IFQ cost recovery system and will help track the amount owed by IFQ permit holders through the determination of NMFS standard prices by species, port or port-group, and month.

Comment 9: One commentator assumed that NMFS plans to enforce payment from IFQ permit holders by withholding the following year's quota issuance.

Response: NMFS clarifies this incorrect assumption. NMFS will issue IFQ each year to IFQ permit holders. However, if the Regional Administrator determines that an IFQ permit holder has not paid the full IFQ fee liability incurred by the permit holder, then the Regional Administrator may disapprove any transfer of IFQ or QS to or from the IFQ permit holder in accordance with § 679.41(c)(4). The Regional Administrator's determination may be appealed by the IFQ permit holder pursuant to § 679.45(h). During the period of an appeal the IFQ permit will remain valid, although transfer restrictions may be imposed or, if already imposed, remain in place. The IFQ permit will remain valid until a final agency action (FAA) is issued to the IFQ permit holder. Upon issuance of an FAA which identifies a final IFQ fee liability amount still due by the IFQ permit holder as specified in §§ 679.45 and 679.5(l)(7)(ii), the IFQ permit (i.e., the authorization to fish the IFQ/QS) will immediately become invalid pursuant to § 679.4(d)(7).

Compliance Guide for Small Entities

In compliance with the Small Business Regulatory Enforcement Fairness Act of 1996, NMFS is publishing this paragraph as a compliance guide that explains how small entities must comply with regulatory changes made by this final rule. This final rule requires IFQ permit holders to collect and submit to NMFS their IFQ fees as established and described in these regulations. IFQ permit holders should be aware that all of their IFQ landings have an IFQ fee liability, at the default rate of 3 percent of ex-vessel value, for which they are responsible for collecting and submitting in accordance with § 679.5.(l)(7)(ii) and § 679.45 of this regulation. Also, IFQ registered buyers should be aware that they must comply with the IFQ reporting and record-keeping requirements specified in § 679.5(l) and the landing report at § 679.5(i)(2), in particular.

Classification

The Regional Administrator has determined that this final rule is necessary to fulfil the requirement of section 304(d)(2) the Magnuson-Stevens Act. This action has been determined to be not significant for purposes of E.O. 12866.

The AA finds for good cause under 5 U.S.C. 553(d)(3) that the effectiveness of this rule should not be delayed for 30 days because a delay would be contrary to the public interest. The primary effect of this action will occur in January 2001 when the IFQ permit holders are required to submit fees based on the IFQ halibut and sablefish landings they made during the previous year. While submission of fees is not required until January 2001, fee liability starts with the effective date of the rule. Delayed effectiveness of the rule would prevent fee liability from being applied uniformly to all landings made during the IFQ fishing season, which starts March 15, 2000, and would cause substantial confusion and inequity as to which landings IFQ fee liability applies.

NMFS prepared an FRFA for this final rule in compliance with the Regulatory Flexibility Act. The FRFA describes the impact this final rule will have on small entities. A copy of the FRFA can be obtained from NMFS (see ADDRESSES).

The Magnuson-Stevens Act requires the Secretary to impose a fee to recover the actual management and enforcement costs of the Alaska IFQ Program. The objective of this rule is to collect revenue from fishermen participating in the IFQ Program to help recover the costs incurred by the Federal government as a result of the management and enforcement of the IFQ Program.

This rule applies to persons who possess and use IFQ Registered Buyer Permits or IFQ Permits (fishermen). IFQ registered buyer permit holders who do not operate as shoreside processors or those IFQ permit holders who do not land IFQ fish (i.e., possess unfished permits) would not be subject to this rule. In 1998, approximately 9 percent of IFQ pounds available remained unfished by the end of the season. As for IFQ registered buyers, generally, fewer than 40 percent of those who held IFQ Registered Buyer Permits actually reported landings (i.e., active buyer permit users). In addition, imposition of the cost recovery fees could indirectly impact the income of IFQ crew members if IFQ permit holders reduce the income to members of their crews due to the cost recovery fees. Detailed figures for the number of IFQ crew members are not available.

This action directly affects two types of registered small entities as defined by the Small Business Administration: (1) IFQ registered buyers who operate as shoreside processors and purchase IFQ halibut or sablefish from IFQ permit holders, and (2) halibut and sablefish IFQ permit holders. By year-end 1998, 3,978 persons held one or more IFQ permits (fishermen) and reported landings of at least 1 lb (0.45 kg) of IFQ fish. Also in 1998, NMFS issued 859 IFQ registered buyer permits, but only 309 were active IFQ registered buyers. Only 79 of the active IFQ registered buyers operated as shoreside processors that purchased IFQ halibut or sablefish. The 79 IFQ registered buyers identified themselves in 1998 as shoreside processors, and would be the only type of IFQ registered buyers regulated under the proposed action. The number of IFQ permits and IFQ registered buyer permits has decreased each year since 1995 when the program was initiated and is expected to stabilize near 1998 levels. For purposes of the IFRA, all 79 IFQ permits holders are considered small entities. Therefore, the total number of small entities that this rule would apply to IFQ registered buyers and permit holders would be expected to be equal to or less than 4,057. This rule imposes new Recordkeeping and reporting requirements. These are discussed below in the context of the Paperwork Reduction Act burden.

A broad variety of alternatives was considered in the development of the proposed regulations for IFQ cost recovery. The alternatives were considered in the context of combining various options associated with a specific set of necessary program elements. Some of the necessary program elements include the scope of the IFQ cost recovery regulations; identification of the IFQ fishery; the annual fee percentage value; the IFQ fish subject to the IFQ cost recovery fee; the method used to determine ex-vessel values of IFQ halibut and IFQ sablefish landings; the method used to establish standard ex-vessel prices for IFQ halibut and IFQ sablefish; the methods of accounting for post-season ex-vessel price adjustments and other corrections to ex-vessel value; IFQ fee collection and submission mechanisms and schedules; and the implementation date.

In selecting the preferred alternative, NMFS incorporated many elements designed to minimize negative impacts on small entities.

1. The fee would apply only to IFQ halibut and sablefish landings, and not to all species landed by IFQ fishermen.

2. Fishermen would be able to choose whether to use actual or standard ex-

vessel value of their IFQ landings whenever possible.

3. Standard prices would be primarily based on current year ex-vessel prices rather than previous year ex-vessel prices, and would be refined to represent ex-vessel prices by species, by month, and by port-group.

4. Registered buyers and IFQ permit holders would be required to submit recordkeeping and reporting information only once a year, rather than multiple mid-season submissions.

NMFS also considered the alternative of not implementing an IFQ cost recovery (status quo). The status quo alternative would minimize economic impacts on small entities in that no new fee would be imposed. However, this alternative would not be in compliance with the Magnuson-Stevens Act. Alternatives to the proposed recordkeeping and reporting requirements could reduce economic impacts on small entities. For instance, implementing an electronic reporting system could reduce the burdens associated with filing annual reports; however, NMFS has not ascertained whether electronic reporting would allow for comparable, easily interpreted data and costs associated with acquiring new software could counterbalance any benefits. NMFS also considered extracting data from reports currently required of AGF&G. The ADF&G reports would not provide all the necessary data in a sufficiently timely manner. NMFS also considered an alternative that would not have assessed a fee on retro-payments. While this approach would benefit permit-holders who accepted retro-payments, it would not be acceptable to those who do not. In addition, this approach might not comply with the spirit of the statute to assess a fee on the full amount of payment.

NMFS received no comments on the Initial Regulatory Flexibility Analysis prepared for this rule and no changes were made in the final rule.

Notwithstanding any other provision of law, no person is required to respond to and no person shall be subject to a penalty for failure to comply with a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This rule contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA). The collection of this information has been approved by the Office of Management and Budget, OMB Control Number 0648–0398.

The recordkeeping and reporting requirements will apply to the IFQ permit holder and the IFQ registered buyer operating as a shoreside processor and buying halibut or sablefish landed under the IFQ Program. The estimated time for an IFQ permit holder to complete the IFQ payment submission form package is 2.0 hours per response. The time required to complete the buyer report is estimated to be 2.0 hours per report. The estimated response times shown include the time to review the instructions, search existing sources, gather and maintain the data needed, and complete and review the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS (see ADDRESSES) and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503, Attention: NOAA Desk Officer.

List of Subjects in 50 CFR Part 679

Alaska, Cost recovery, Fees, Fisheries, IFQ, and Recordkeeping and reporting requirements.

Dated: March 13, 2000

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 679 is amended to read as follows:

PART 679—FISHERIES OF THE EXCLUSIVE ECONOMIC ZONE OFF ALASKA

1. The authority citation for part 679 continues to read as follows:

Authority: 16 U.S.C. 773 *et seq.*, 1801 *et seq.*, and 3631 *et seq.*

2. In § 679.2, definitions for listed terms are added in alphabetical order to read as follows:

§ 679.2 Definitions.

* * * * *

KIFQ actual ex-vessel value means the U.S. dollar amount of all compensation, monetary or non-monetary, including any IFQ retro-payments received by an IFQ permit holder for the purchase of IFQ halibut or IFQ sablefish landing(s) on his or her permit(s) described in terms of IFQ equivalent pounds.

* * * * *

IFQ equivalent pound(s) means the weight amount, recorded in pounds, for an IFQ landing and calculated as round weight for sablefish and headed and gutted weight for halibut.

IFQ fee liability means that amount of money for IFQ cost recovery, in U.S. dollars, owed to NMFS by an IFQ permit holder as determined by multiplying the appropriate standard ex-vessel value or actual ex-vessel value of his or her IFQ halibut or IFQ sablefish landing(s) by the appropriate IFQ fee percentage.

IFQ fee percentage means that positive number no greater than 3 percent (0.03) determined by the Regional Administrator and established for use to calculate the IFQ cost recovery fee liability for an IFQ permit holder.

* * * * *

IFQ permit holder means the person identified on an IFQ permit, at the time a landing is made, as defined at § 679.4(d)(3)(B).

IFQ program means the individual fishing quota program for the fixed gear fisheries for Pacific halibut and sablefish in waters in and off Alaska and governed by regulations under this part.

IFQ registered buyer means the person identified on a registered buyer permit, as defined at § 679.4(d)(2).

IFQ retro-payment means the U.S. dollar value of a payment, monetary or non-monetary, made to an IFQ permit holder for the purchase of IFQ halibut or IFQ sablefish landed at some previous time.

* * * * *

IFQ standard ex-vessel value means the total U.S. dollar amount of IFQ halibut or IFQ sablefish landings as calculated by multiplying the number of landed IFQ equivalent pounds by the appropriate IFQ standard price determined by the Regional Administrator.

IFQ standard price means a price, expressed in U.S. dollars per IFQ equivalent pound, for landed IFQ halibut and IFQ sablefish determined annually by the Regional Administrator and documented in an IFQ standard price list published by NMFS.

* * * * *

Limited Access System Administrative Fund (LASAF) means the administrative account used for depositing cost recovery fee payments into the U.S. Treasury as described in the Magnuson-Stevens Act under section 304(d)(2)(C)(i) and established under section 305(h)(5)(B).

* * * * *

NMFS Person Identification Number means a unique number assigned by NMFS to any person who applied for, or who has been issued, a certificate, license, or permit under any fishery management program administered by the Alaska Region for purposes of the NMFS/Alaska Region Integrated Regional Data System.

* * * * *

3. In § 679.4, paragraph (a)(5) is revised and paragraph (d)(7) is added to read as follows:

§ 679.4 Permits.

(a) * * *

(5) *Sanctions and denials.* Procedures governing sanctions and denials are found at subpart D of 15 CFR part 904. Such procedures are required for enforcement purposes, not administrative purposes.

* * * * *

(d) * * *

(7) *Validity.* An IFQ permit issued under this part is valid only if all IFQ fee liability of the IFQ permit holder that is due as a result of final agency action has been paid as specified in §§ 679.45 and 679.5(l)(7)(ii).

* * * * *

4. In § 679.5, paragraph (l)(7) is added to read as follows:

§ 679.5 Recordkeeping and reporting.

* * * * *

(l) * * *

(7) *IFQ cost recovery program*—(i) *IFQ buyer report.*

(A) *Applicability.* An IFQ registered buyer that also operates as a shoreside processor and receives and purchases IFQ landings of sablefish or halibut must submit annually to NMFS a complete IFQ Buyer Reportas described in this paragraph (l) and as provided by NMFS for each reorting period, as described at § 679.5 (l)(7)(i)(E), in which the registered buyer receives IFQ fish.

(B) *Due date.* A complete IFQ Buyer Report must be postmarked or received by the Regional Administrator not later than October 15 following the reporting period in which the IFQ registered buyer receives the IFQ fish.

(C) *Information required.* A complete IFQ Buyer Report must include the following information:

(*1*) *IFQ registered buyer identification,* including:

(*i*) Name,

(*ii*) Registered buyer number,

(*iii*) Social Security number or tax identification number,

(*iv*) NMFS person identification number (if applicable),

(*v*) Business address,

(*vi*) Telephone number,

(*vii*) Facsimile telephone number,

(*viii*) Primary registered buyer activity,

(*ix*) Other registered buyer activity, and

(*x*) Landing port location;

(*2*) *Pounds purchased and values paid.* (*i*) The monthly total weights, represented in IFQ equivalent pounds by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(*ii*) The monthly total gross ex-vessel value, in U.S. dollars, of IFQ pounds, by IFQ species, that were landed at the landing port location and purchased by the IFQ registered buyer;

(*3*) *Value paid for price adjustments.* (*i*) The monthly total U.S. dollar amount of any IFQ retro-payments (correlated by IFQ species, landing month(s), and month of payment) made in the current year to IFQ permit holders for landings made during the previous calendar year;

(*ii*) *Certification,* including the signature of the individual authorized by the IFQ registered buyer to submit the IFQ Buyer Report, and date of signature.

(D) *Submission address.* A complete IFQ Buyer Report must be received at the following address by mail or facsimile transmission: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802–1668, Facsimile: (907) 586–7354.

(E) *Reporting period.* The reporting period of the IFQ Buyer Report shall extend from October 1 through September 30 of the following year, inclusive.

(ii) *IFQ permit holder Fee Submission Form*—(A) *Applicability.* An IFQ permit holder who holds an IFQ permit against which a landing was made must submit to NMFS a complete IFQ permit holder Fee Submission Form provided by NMFS.

(B) *Due date and submittal.* A complete IFQ permit holder Fee Submission Form must be postmarked or received by the Regional Administrator not later than January 31 following the calendar year in which any IFQ landing was made.

(C) *Contents of an IFQ Fee Submission Form.* For each of the sections described here, a permit holder must provide the specified information.

(*1*) *Identification of the IFQ permit holder.* An IFQ permit holder with an IFQ landing must accurately record on the identification section of the IFQ Fee Submission Form the following information:

(*i*) The printed name of the IFQ permit holder;

(*ii*) The NMFS person identification number;

(*iii*) The Social Security number or tax ID number of the IFQ permit holder;

(*iv*) The business mailing address of the IFQ permit holder; and

(*v*) The telephone and facsimile number (if available) of the IFQ permit holder.

(*2*) *IFQ landing summary and estimated fee liability.* NMFS will provide to an IFQ permit holder an IFQ Landing Summary and Estimated Fee Liability page as required by § 679.45(a)(2). The IFQ permit holder must either accept the accuracy of the NMFS estimated fee liability associated with his or her IFQ landings for each IFQ permit, or calculate a revised IFQ fee liability in accordance with paragraph (l)(7)(ii)(C)(*2*)(*i*) of this section. The IFQ permit holder may calculate a revised fee liability for all or part of his or her IFQ landings.

(*i*) *Revised fee liability calculation.* To calculate a revised fee liability, an IFQ permit holder must multiply the IFQ percentage in effect by either the IFQ actual ex-vessel value or the IFQ standard ex-vessel of the IFQ landing. If parts of the landing have different values, the permit holder must apply the appropriate values to the different parts of the landings.

(*ii*) *Documentation.* If NMFS requests in writing that a permit holder submit documentation establishing the factual basis for a revised IFQ fee liability, the permit holder must submit adequate documentation by the 30th day after the date of such request. Examples of such documentation regarding initial sales transactions of IFQ landings include valid fish tickets, sales receipts, or check stubs that clearly identify the IFQ landing amount, species, date, time, and ex-vessel value or price.

(*3*) *Fee calculation section*—(*i*) *Information required.* An IFQ permit holder with an IFQ landing must record the following information on the Fee Calculation page: The name of the IFQ permit holder; the NMFS person identification number; the fee liability amount due for each IFQ permit he or she may hold; the IFQ permit number corresponding to such fee liability amount(s) due; the total price adjustment payment value for all IFQ halibut and/or sablefish (e.g., IFQ retro-payments) received during the reporting period for the IFQ Fee Submission Form as described in § 679.5(l)(7)(ii)(D); and the fee liability amount due for such price adjustments.

(*ii*) *Calculation of total annual fee amount.* An IFQ permit holder with an IFQ landing must perform the following calculations and record the results on the Fee Calculation page: add all fee liability amount(s) due for each IFQ permit and record the sum as the sub-total fee liability for all permits: multiply price adjustment payment(s) received for each IFQ species by the fee percentage in effect at the time the payment(s) was received by the IFQ permit holder; add the resulting fee

liability amounts due for all price adjustment payments for each IFQ species, then enter the sum as the sub-total fee for price adjustments; add the sub-total fee liability for all permits and the sub-total fee for price adjustments, then enter the resulting sum as the total annual fee amount on the Fee Calculation page and on the Fee Payment page.

(*4*) *Fee payment and certification section—(i) Information required.* An IFQ permit holder with an IFQ landing must provide his or her NMFS person identification number and must sign and date and have notarized by a Notary Public the Fee Payment section and record the following: his or her printed name; the total annual fee amount as calculated and recorded on the Fee Calculation page; the total of any pre-payments submitted to NMFS that apply to the total annual fee amount; the remaining balance fee; and the enclosed payment amount.

(*ii*) *Calculation of balance fee payment.* An IFQ permit holder with an IFQ landing must perform the following calculation on the Fee Payment section of the Fee Submission Form: Subtract from the total annual fee amount the total of all pre-payments made (if any) to NMFS and any credits held by NMFS that are applicable to that year's total IFQ cost recovery fees, and record the result as the balance of the fee amount due.

(D) *Reporting Period.* The reporting period of the IFQ Fee Submission Form shall extend from January 1 to December 31 of the year prior to the January 31 due date described in § 679.5(l)(7)(ii)(B).

* * * * *

5. In § 679.41, paragraph (c)(8) is revised and paragraph (c)(9) is added to read as follows:

§ 679.41 Transfer of quota shares and IFQ.

* * * * *

(c) * * *

(8)(i) The person applying to make or receive the IFQ or QS transfer has paid all IFQ fees that have become due as a result of an initial administrative determination.

(ii) The person applying to make or receive the IFQ or QS transfer who has not paid all IFQ fees that are due (as provided under § 679.45(a)) has timely appealed the administrative determination that IFQ fees have not been paid in full and has submitted to NMFS an amount sufficient to satisfy any disputed liability pending a final agency action.

(9) Other pertinent information requested on the Application for Transfer has been supplied to the satisfaction of the Regional Administrator.

* * * * *

6. Section 679.45 is added to Subpart D to read as follows:

§ 679.45 IFQ cost recovery program.

(a) *Cost recovery fees—(1) Responsibility.* The person documented on the IFQ permit as the permit holder at the time of an IFQ landing must comply with the requirements of this section. Subsequent transfer of QS or IFQ does not affect the permit holder's liability for noncompliance with this section.

(2) *IFQ Fee Liability Determination.* After each IFQ fishing year, the Regional Administrator will issue each IFQ permit holder a summary of his or her IFQ pounds landed during that IFQ fishing year for each permit as part of the IFQ Landing and Estimated Fee Liability page described at § 679.5(l)(7)(ii)(C)(*2*). The summary will include an estimated IFQ fee liability based on the standard ex-vessel values of the landings. The summary and estimated fee liability will include details of IFQ equivalent pounds landed by permit, port or port-group, species, date, and IFQ standard prices. The permit holder must either accept NMFS's estimate of IFQ liability or revise NMFS's estimate of IFQ fee liability using the Fee Submission Form described at § 679.5(l)(7)(ii). If the permit holder revises NMFS's estimate of his or her fee liability, NMFS may request in writing that the permit holder submit documentation establishing the factual basis for the revised calculation. If the permit holder fails to provide adequate documentation by the 30th day after the date of such request, NMFS will determine the IFQ permit holder's fee liability based on standard ex-vessel values.

(3) *Fee Collection.* An IFQ permit holder with an IFQ landing is responsible for self-collecting his or her own fee during the calendar year in which the IFQ fish is harvested.

(4) *Payment—(i) Payment due date.* An IFQ permit holder must submit his or her IFQ fee liability payment(s) to NMFS at the address provided in this section at paragraph (a)(4)(iii) of this section not later than January 31 of the year following the calendar year in which the IFQ landings were made.

(ii) *Payment recipient.* Make payment payable to NMFS.

(iii) *Payment address.* Mail payment and related documents to: Administrator, Alaska Region, NMFS, Attn: RAM Program, P.O. Box 21668, Juneau, AK 99802–1668, Facsimile: (907) 586–7354.

(iv) *Payment method.* Payment must be made by personal check drawn on a U.S. bank account, money order, or bank certified check.

(b) *IFQ ex-vessel value determination and use—(1) General.* An IFQ permit holder must use either the IFQ standard ex-vessel value or the IFQ actual ex-vessel value when determining the IFQ fee liability based on ex-vessel value. An IFQ permit holder must base all fee liability calculations on the ex-vessel value that correlates to landed IFQ fish that is recorded in IFQ equivalent pounds.

(2) *IFQ actual ex-vessel value.* An IFQ permit holder that uses actual ex-vessel value, as defined in § 679.2, to determine IFQ fee liability must document actual ex-vessel value for each IFQ permit.

(c) *IFQ standard ex-vessel value determination and use—(1) Use of standard price.* An IFQ permit holder that uses standard ex-vessel value to determine the IFQ fee liability as part of a revised IFQ fee liability submission must use the corresponding standard price(s) as published in the **Federal Register.**

(2) *Duty to publish list—(i) General.* Each year the Regional Administrator will publish IFQ standard prices in the **Federal Register** during the last quarter of each calendar year. The standard prices will be described in U.S. dollars per IFQ equivalent pound, for IFQ halibut and sablefish landings made during the current calendar year.

(ii) *Effective duration.* The IFQ standard prices will remain in effect until revised by the Regional Administrator by notification in the **Federal Register** based upon new information of the type set forth in this section. IFQ standard prices published in the **Federal Register** by NMFS shall apply to all landings made in the same calendar year as the IFQ standard price publication and shall replace any IFQ standard prices previously provided by NMFS that may have been in effect for that same calendar year.

(iii) *Determination.* NMFS will calculate the IFQ standard prices to reflect, as closely as possible by month and port or port-group, the variations in the actual ex-vessel values of IFQ halibut and IFQ sablefish landings based on information provided in the IFQ Buyer Reports as described in § 679.5(l)(7)(i). The Regional Administrator will base IFQ standard prices on the following types of information:

(A) Landed pounds by IFQ species, port-group, and month;

(B) Total ex-vessel value by IFQ species, port-group, and month; and

(C) Price adjustments, including IFQ retro-payments.

(d) *IFQ fee percentage.—(1) Default percentage.* The IFQ fee percentage is 3 percent (0.03) unless adjusted by the Regional Administrator by publication in the **Federal Register** in accordance with § 679.45(d)(3).

(2) *Calculating fee percentage value.* Each year the Regional Administrator will calculate the fee percentage.

(i) *Factors.* In making the calculations the Regional Administrator will consider the following factors:

(A) The catch to which the IFQ fee will apply;

(B) The projected ex-vessel value of that catch;

(C) The costs directly related to the management and enforcement of the IFQ program;

(D) The funds available for the IFQ program in the Limited Access System Administrative Fund (LASAF); and

(E) Nonpayment of fee liabilities.

(ii) *Methodology.* In making the calculation, the Regional Administrator will use the methodology described here.

[100 x (DPC - AB) / V] / (1 -NPR)

where:

DPC is the direct program costs for the IFQ fishery for the previous fiscal year,

AB is the projected end of the year LASAF account balance for the IFQ program,

V is the projected ex-vessel value of the catch subject to the IFQ fee for the current year, and

NPR is the fraction of the fee assessments that is expected to result in nonpayment.

(3) *Adjustments.* (i) *General.* During or before the last quarter of each year, the Regional Administrator will consider adjusting the IFQ fee percentage. Consideration will be based on the calculations described in § 679.45(d)(2). The Regional Administrator may reduce the IFQ fee percentage at any time based on new information of the type set forth in § 679.45(d)(2).

(ii) *In-season effective period.* An in-season reduction in the IFQ fee percentage supersedes the IFQ fee percentage previously in effect for the calendar year and remains in effect through the end of the calendar year in which it was determined unless otherwise adjusted by the Regional Administrator.

(4) *Publication.* The Regional Administrator will publish notification in the **Federal Register** any adjustment of the IFQ fee percentage.

(5) *Applicable percentage.* The IFQ permit holder must use the IFQ fee percentage in effect at the time an IFQ landing is made to calculate his or her fee liability for such landed IFQ pounds unless the percentage is subsequently adjusted as described in § 679.45(d)(3). The IFQ permit holder must use the IFQ percentage in effect at the time an IFQ retro-payment is received by the IFQ permit holder to calculate his or her IFQ fee liability for the IFQ retro-payment.

(e) *Non-payment of fee.* If an IFQ permit holder does not submit a complete Fee Submission Form and corresponding payment by the due date described in § 679.45(a)(2) and (3), the Regional Administrator may:

(1) At any time thereafter send an IAD to the IFQ permit holder stating that the IFQ permit holder's estimated fee liability, as calculated by the Regional Administrator and sent to the IFQ permit holder pursuant to § 679.45(a)(2) is the amount of IFQ fee due from the IFQ permit holder.

(2) Disapprove any transfer of IFQ or QS to or from the IFQ permit holder in accordance with § 679.41(c)(8)(i). Upon final agency action determining that an IFQ permit holder has not paid his or her IFQ fee liability, any IFQ fishing permit held by the IFQ permit holder is not valid until all IFQ fee liabilities are paid. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(f) *Underpayment of IFQ fee.* (1) When an IFQ permit holder has incurred a fee liability and made a timely payment to NMFS of an amount less than the NMFS estimated IFQ fee liability, the Regional Administrator will review the Fee Submission Form and related documentation submitted by the IFQ permit holder. If the Regional Administrator determines that the IFQ permit holder has not paid a sufficient amount, the Regional Administrator may disapprove any transfer of IFQ or QS to or from the IFQ permit holder in accordance with § 679.41(c)(4). The Regional Administrator will notify the IFQ permit holder by letter that an insufficient amount has been paid and that the IFQ permit holder has 30 days from the date of the letter to either pay the amount determined to be due or provide additional documentation to prove that the amount paid was the correct amount. The Regional Administrator will evaluate any additional documentation submitted by an IFQ permit holder in support of his or her payment. If the Regional Administrator determines that the additional documentation does not meet the IFQ permit holder's burden of proving his or her payment is correct, the Regional Administrator will send the permit holder an IAD indicating that the permit holder did not meet the burden of proof to change the IFQ fee liability as calculated by the Regional Administrator based upon the IFQ standard ex-vessel value.

(2) After expiration of the 30-day period, the Regional Administrator will issue an IAD and notify the IFQ permit holder. The IAD will set out the facts and indicate the deficiencies in the documentation submitted by the permit holder. An IFQ permit holder who receives an IAD may appeal pursuant to § 679.43. In an appeal of an IAD made under this section, the IAD permit holder has the burden of proving his or her claim.

(3) If the permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. If the IAD is appealed and the final agency action is a determination that additional sums are due from the IFQ permit holder, the IFQ permit holder must pay any IFQ fee amount determined to be due not later than 30 days from the issuance of the final agency action. Once a fee liability determination becomes final, any IFQ fishing permit held by the IFQ permit holder will be deemed not valid until all IFQ fee liabilities have been paid. If payment is not received by the 30th day after the final agency action, the matter will be referred to the appropriate authorities for purposes of collection.

(g) *Over payment.* Upon issuance of final agency action, any amount submitted to NMFS in excess of the IFQ fee liability determined to be due by the final agency action will be returned to the IFQ permit holder unless the permit holder requests the agency to credit the excess amount against the IFQ permit holder's future IFQ fee liability.

(h) *Appeals and requests for reconsideration.* An IFQ permit holder who receives an IAD may either appeal the IAD pursuant to § 679.43 or request reconsideration. Within 60 days from the date of issuance of the IAD, the Regional Administrator may undertake a reconsideration of the IAD on his or her own initiative. If a request for reconsideration is submitted or the Regional Administrator initiates a reconsideration, the 60-day period for appeal under § 679.43 will begin anew upon issuance of the Regional Administrator's reconsidered IAD. The Regional Administrator may undertake only one reconsideration of the IAD, if any. If an IFQ permit holder fails to file an appeal of the IAD pursuant to § 679.43, the IAD will become the final agency action. In any appeal or reconsideration of an IAD made under this section, an IFQ permit holder has the burden of proving his or her claim.

(i) *Annual report.* NMFS will publish annually a report describing the status of the IFQ Cost Recovery Program.

[FR Doc. 00–6674 Filed 3–14–00; 4:53 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 031000A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 620 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 620 outside the Shelikof Strait conservation area in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 620 outside the Shelikof Strait conservation area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 15, 2000, until 1200 hrs, A.l.t., August 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the B season allowance of pollock TAC in Statistical Area 620 outside the Shelikof Strait conservation area is 273 metric tons (mt) as established by the Final 2000 Harvest Specifications for Groundfish (65 FR 8298, February 18, 2000) and subsequent correction (65 FR 11909, March 7, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the B season allowance of the pollock TAC in Statistical Area 620 outside the Shelikof Strait conservation area will be reached and is necessary as incidental catch to support other anticipated groundfish fisheries. Consequently, the Regional Administrator establishes the B season directed fishing allowance as zero. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 620 outside the Shelikof Strait conservation area in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the seasonal allocation of pollock in Statistical Area 620 outside the Shelikof Strait conservation area. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 15, 2000.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–6831 Filed 3–15–00; 2:31 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 54
Monday, March 20, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 360

[Docket No. 98–064–1]

RIN 0579–AB07

Noxious Weed Regulations; Update of Current Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking and request for comments.

SUMMARY: We are considering revising the noxious weed regulations issued under the Federal Noxious Weed Act in order to maximize their effectiveness. We believe changes may be necessary to improve control and limit the spread of invasive weed species that are not covered under the current noxious weed regulations. We are considering categorizing weeds according to geographic, regulatory, and other criteria. This notice solicits public comment on these categories and on the criteria for assigning weeds to each category. We are also asking the public to help us determine how to prioritize funding resources for existing and future programs. After evaluating public comment on the issues presented in this document, we will determine whether to propose changes to our regulations.

DATES: We invite you to comment on this docket. We will consider all comments we receive by May 19, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 98–064–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 98–064–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW, Washington DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Scientific Services, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737–1236; (301) 734–8896.

SUPPLEMENTARY INFORMATION:

Background

The noxious weeds regulations, contained in 7 CFR part 360 and referred to below as the regulations, were established in 1976 under the authority of the Federal Noxious Weed Act (FNWA) of 1974 (7 U.S.C. 2801 *et seq.*). The FNWA authorizes the Animal and Plant Health Inspection Service (APHIS) to regulate the movement of noxious weeds into or through the United States, and interstate, in order to prevent the artificial spread of noxious weeds into noninfested areas of the United States.

APHIS lists noxious weeds in § 360.200 of the regulations.[1] In this section, weeds are divided into three categories: Aquatic weeds, parasitic weeds, and terrestrial weeds. In order for a weed to be listed, it must meet the definition contained in the FNWA for "noxious weed." The FNWA defines a "noxious weed" as

"* * * any living stage (including but not limited to, seeds and reproductive parts) of any parasitic or other plant of a kind, or subdivision of a kind, which is of foreign origin, is new to or not widely prevalent in the United States, and can directly or indirectly injure crops, other useful plants, livestock, or poultry or other interests of agriculture, including irrigation, or navigation or the fish or wildlife resources of the United States or the public health * * *"

[1] This list is also available on the Internet at http://www.aphis.usda.gov/ppq/bats/fnwsbycat-e.html. Copies of the lsit are also available by contacting Polly Lehtonen at the address listed under **FOR FURTHER INFORMATION CONTACT**.

In simple terms, for a weed to be listed in § 360.200:

- It must have demonstrated that it is harmful to crops, other plants, livestock, poultry, or other interests of agriculture, including irrigation, navigation, the fish or wildlife resources of the United States, or the public health.
- It must be a species of plant that is not native to the United States.
- It must be new to or not be widely prevalent in the United States.

Under the current regulations, listed Federal noxious weeds are only eligible to be moved into and through the United States, or interstate, under a permit granted by APHIS. Persons who move noxious weeds under permit must follow all the conditions contained in the permit with regard to storage, shipment, cultivation, and propagation.

APHIS actively participated in developing the National Strategy for Invasive Plant Management, endorsed and supported by Federal and State Government agencies and nongovernmental private sector interests. The strategy outlines a nationwide effort to address the problem of invasive plant species in the United States. Invasive plant species are plants that are defined as "noxious weeds" under the FNWA, as well as other plant species that are, or may be, harmful to crops, other plants, livestock, poultry, fish and wildlife resources, natural areas, or the public health. Effective regulation is a crucial part of the strategy's first goal: effective prevention.

Consistent with that goal and with Executive Order 13112 of February 3, 1999, "Invasive Species," in this document we are informing the public that we are considering revising the Federal noxious weed regulations by creating two categories in which weeds would be grouped according to their distribution. We are also considering, among other things, creating additional weed lists for informational purposes that would contain weeds that are not currently defined as Federal noxious weeds. We are requesting public comment on this initiative.

Requests To Amend the Weed List

In recent years, scientists, State governments, environmental groups, trade groups, and farmers, among others, have requested that APHIS adopt new measures to provide additional safeguards against the introduction and

spread of noxious weeds in the United States. These groups and individuals have expressed concern with the limitations of our current weed-listing policy. They have requested that APHIS provide additional guidance in the identification and control of plants that may not meet the FNWA's definition of "noxious weed" but that are known to cause damage to crops, livestock and poultry, and natural ecosystems, and that could otherwise be defined as invasive plant species. These stakeholders perceive that the formal listing of such weeds would be a catalyst for creating awareness and encouraging participation by, and cooperation between, State and local governments and natural resource organizations to establish effective control initiatives.

How the Weed List Could Be Amended

In order to direct safeguarding resources appropriately, we are considering revising the current noxious weed list to categorize noxious weeds according to their distribution. The existing list of Federal noxious weeds would be divided into two categories: (1) Weeds that do not exist in the United States, and (2) weeds that do exist in the United States. For Category 1 weeds, resources would be directed towards exclusion and early detection. For Category 2 weeds, resources would be directed towards exclusion, delimiting surveys, eradication, and containment and/or control.

Further, in order to better address the threat posed to crops, other useful plants, livestock, poultry, fish and wildlife resources, natural areas, and the public health by "widespread" native and nonnative weeds, we are considering creating two additional categories of plants that are not currently regulated under the FNWA, but are regulated as noxious weeds by at least one State, or that are believed to be invasive plant species.

Category 1

In developing the Category 1 list, we listed a weed based on the following criteria:

- It is currently listed as a Federal noxious weed (i.e., it has demonstrated that it is harmful to crops, other plants, livestock, poultry, or other interests of agriculture, including irrigation, navigation, the fish or wildlife resources of the United States, or the public health).
- It is not known to exist in the United States.

Weeds that would be listed in this category are known to be harmful and invasive in their native regions or other regions. Additional weeds could be added to this list under the same conditions currently used to identify new or unlisted Federal noxious weeds. The following table lists the weeds currently contained in the Federal noxious weed list that we believe would meet the above criteria.

CATEGORY 1

Federal noxious weed	Common name
Aeginetia spp.	aeginetia.
Alectra spp.	alectra.
Azolla pinnata	mosquito fern, water velvet.
Carthamus oxyacantha	wild safflower.
Caulerpa taxifolia (Mediterranean clone)	caulerpa.
Cuscuta spp. (other than native or introduced species)	dodder.
Digitaria abyssinica	African couchgrass.
Drymaria arenarioides	lightning weed.
Lagarosiphon major	oxygen weed.
Leptochloa chinensis	Asian sprangletop.
Lycium ferocissimum	African boxthorn.
Mikania cordata	mile-a-minute.
Monochoria hastata	monochoria.
Nassella trichotoma	serrated tussock.
Opuntia aurantiaca	jointed prickl pear.
Oryza longistaminata	red rice.
Oryza punctata	red rice.
Prosopis alpataco	mesquite.
Prosopis argentina	mesquite.
Prosopis articulata	mesquite.
Prosopis burkartii	mesquite.
Prosopis caldenia	mesquite.
Prosopis calingastana	mesquite.
Prosopis campestris	mesquite.
Prosopis castellanosii	mesquite.
Prosopis denudans	mesquite.
Prosopis elata	mesquite.
Prosopis ferox	mesquite.
Prosopis fiebrigii	mesquite.
Prosopis hassleri	mesquite.
Prosopis humilis	mesquite.
Prosopis kuntzei	mesquite.
Prosopis palmeri	mesquite.
Prosopis rojasiana	mesquite.
Prosopis ruizlealii	mesquite.
Prosopis ruscifolia	mesquite.
Prosopis sericantha	mesquite.
Prosopis torquata	mesquite.
Sparganium erectum	exotic bur-reed.
Spermacoce alata	borreria.
Striga spp. (other than S. asiatica and S. Gesnerioides)	witchweed.

Once again, the weeds listed above are weeds that we believe do not exist in the United States. If you believe that any of the weeds listed above exists in your area, or in another area of the United States, please submit a written comment to the address listed under **ADDRESSES**.

Category 2

In developing the Category 2 list, we listed a weed based on the following criteria:

- It is currently listed as a Federal noxious weed (*i.e.*, it has demonstrated that it is harmful to crops, other plants, livestock, poultry, or other interests of agriculture, including irrigation, navigation, the fish or wildlife resources of the United States, or the public health; it is not a species of plant native to the United States; and it is new to or not widely prevalent in the United States).
- It occurs (or is suspected to occur) somewhere in the United States.

For a weed to be considered "new to or not widely prevalent," it must not exist in more than a few States. Generally, we have considered weeds that were known to exist in only a few States at the time of listing as eligible for inclusion in the Federal noxious weed list. However, we make exceptions to this policy for weeds that have spread beyond a few States prior to listing if we believe such weeds occupy only a fraction of their full potential range and present a serious threat to other plants, crops, livestock, poultry, or other interests of agriculture.

The table below lists noxious weeds currently listed in the regulations that are known to exist in some areas of the United States. For each listed weed, we have also indicated the State(s) where that weed is believed to exist.

CATEGORY 2

Federal noxious weeds, introduced	Common name	Suspected distribution
Ageratina adenophora	crofton weed	HI, CA
Altemanthera sessilis	sessile joyweed	HI, PR, FL, MD, GA, LA, VI, TX, MS, SC, AI
Asphodelus fistulosus	onionweed	CA, TX, NM
Avena sterilis	animated or wild oat	PA, NJ, CA, OR, VT
Chrysopogon aciculatus	Pilipiliula	HI
Commelina benghalensis	Benghal dayflower	FL, HI, GA, CA, LA
Crupina vulgaris	common crupina	ID, OR, WA, CA, MA
Digitaria velutina	velvet fingergrass TX	
Eichhornia azurea	anchored waterhyacinth	PR, FL
Emex australis	three-comered jack	CA
Emex spinosa	devil's thorn	HI, CA, MA, NJ, TX
Galega officinalis	goatsrue	UT, NY, PA, CT, ME, MA, NE, CO, MD, WA
Heracleum mantegazzianum	giant hogweed	NY, WA, ME, PA, MI
Hydrilla verticillata	hydrilla	widespread (16 States)
Hygrophila polysperma	Miramar weed	FL, VA, TX
Imperata brasiliensis	Brazilian satintail	AL, FL, LA, MS, SC, PR
Imperata cylindrica	cogongrass	AL, FL, GA, HI, MS, OR, LA, SC
Ipomoea aquatica	Chinese waterspinach	CA, FL, TX, HI, PR
Ischaemum rugosum	murain-grass	MD
Limnophila sessiliflora	ambulia	FL, TX, GA
Malaleuca quinquenervia	melaleuca	FL, CA, HI, PR
Melastoma malabathricum	melastoma	HI
Mikania micrantha	mile-a-minute	PR
Mimosa invisa (now in Mimosa diplotrichia)	giant sensitive plant	PR
Mimosa pigra	catclaw mimosa	FL, TX, PR
Monochoria vaginalis	monochoria	CA, HI
Orobanche minor	small broomrape	WA, OR, FL, GA, SC, NC, VA, WV, MD, DE, NJ, PA, NY
Orobanche ramosa	branched broomrape	CA, TX, NC, IL, KY, NJ
Oryza rufipogon	red rice	FL, CA
Ottelia alismoides	duck-lettuce	CA, LA, TX
Paspalum scrobiculatum	Kodo-millet	HI, FL, NJ, TX, MD
Pennisetum clandestinum	Kikuyugrass	CA, HI, AZ, PR
Pennisetum macrourum	African feathergrass	CA, HI
Pennisetum pedicellatum	kyasuma-grass	FL
Pennisetum polystachion	missiongrass	HI, PR, FL
Prosopis farcta	mesquite	AZ
Prosopis pallida	mesquite	HI, PR, VI
Prosopis reptans	mesquite	TX
Prosopis strombulifera	mesquite	CA
Rottboelia cochinchinensis	itchgrass	AL, AR, FL, GA, IN, LA, MS, NC, PR, TX
Rubus fruticosus	wild blackberry complex	NC, SC, VA, WV
Rubus moluccanus	wild blackberry	HI
Saccharum spontaneum	wild sugarcane	FL, HI, PR
Sagittaria sagittifolia	arrowhead	HI
Salsola vermiculata	wormleaf salsola	CA
Salvinia auriculata	giant salvinia	PR
Salvinia molesta	giant salvinia	TX, LA, SC, MS, AL, FL, HI, NC
Setaria pallide-fusca (=S. pumila ssp. pallidifusca).	cattail grass	LA, OR, TX, FL, MD, CA
Solanum tampicense	wetland nightshade	FL
Solanum torvum	turkey berry	FL, HI, PR, CA, AL, MD, VI
Solanum viarum	tropical soda apple	FL, LA, MS, GA, AL, TN, PR
Striga asiatica	witchweed	NC, SC

CATEGORY 2—Continued

Federal noxious weeds, introduced	Common name	Suspected distribution
Striga gesnerioides	indigo witchweed	FL
Tridax procumbens	coat buttons	FL, HI, PR, TX, VI
Urochloa panicoides	liverseed grass	TX, NM, MD

Distributions derived from: PLANTS database, USDA, NRCS, 1997 (http://plants.usda.gov), and Biota of North America Program (BONAP) North Carolina Botanical Garden at UNC Chapel Hill (http://www.cdsl.tamu.edu/FLORA/b98/check98.htm).

If you believe that the distribution of any Category 2 weed listed above is incorrect, please submit a comment to the address provided under **ADDRESSES.**

Category 3

In developing the Category 3 list, we listed a weed based on the following criteria:

- It is not currently listed as a Federal noxious weed.
- It is listed as a weed in at least one State's plant protection regulations.

We would publish this list periodically in the **Federal Register** and on the Internet as an informational service to States, other Federal agencies, and various interest groups. This list would serve as a reference for the public, containing a comprehensive listing of all applicable weeds and the States that list them as noxious weeds. The most current Category 3 list is available on the Internet at http://www.aphis.usda.gov/ppd/rad/noxweeds.html. Copies are also available by contacting Ms. Polly Lehtonen at the address listed under **FOR FURTHER INFORMATION CONTACT.** As stated earlier in this document, weeds listed in Category 3 would not be subject to Federal regulation, and the importation or interstate movement of such weeds would not be restricted.

Category 4

We have not yet developed a Category 4 list, but a weed would likely be listed in Category 4 based on the following, and perhaps other criteria:

- It is not currently listed as a Federal noxious weed.
- It is not listed as a weed in any State's plant protection regulations.
- It has been documented to be an invasive plant species.

We would publish this list periodically in the **Federal Register** and on the Internet as an informational service to States, other Federal Agencies, and various interest groups. This list would serve as a reference for the public, containing a comprehensive listing of all applicable weed species that are not listed in Federal or State regulations, but that are believed to be an invasive plant species. As stated earlier in this document, weeds listed in Category 4 would not be subject to Federal or State regulation.

We would like your comments regarding any additional criteria that you think should be used to determine which weeds should be included in the Category 4 list, including whether we should base the Category 4 list on lists of invasive plant species maintained by scientists in the private sector, such as *Alien Plant Invaders of Natural Areas.*[2] What weed lists should we base the Category 4 list on? If we base the Category 4 list on such weed list(s), should we exclude listed weeds if the weeds are economically valuable to domestic or international trade? What criteria, economic or otherwise, should we base such exclusions on?

Questions—New Weed Categories

We would like your comments as to whether and how these new categories would improve our efforts to control and limit the spread of Federally listed noxious weeds and other weed species. In particular, we would like you to address as many of the following questions as you can:

- Should we divide the current Federal noxious weed list into two categories (Category 1, Federal noxious weeds that do not exist in the United States, and Category 2, Federal noxious weeds that exist in some areas of the United States)?
- Regarding Category 2: Is our listing of the distribution of Federal noxious weeds accurate? Do listed noxious weeds exist in States other than those listed? Have we listed States where a weed is not known to exist?
- As shown in the Category 2 list above, several of the weeds currently listed have spread beyond a few States since their listing (some to as many as 16 States). Should we continue to list weeds that have spread beyond a few States since the time they were originally listed as Federal noxious weeds? At what point should a noxious weed be deleted from Federal regulation by removing it from Category 2? Should any weeds currently listed in Category 2 be moved into Category 3 or Category 4? How should we interpret the part of the FNWA definition of "noxious weed" that states that weeds must be "new to, or not widely prevalent in the United States"? How new is "new to"? Within the last century? Within the last decade? Rather than consider the number of States a weed occurs in, APHIS could consider whether a weed occupies its full potential biological range. "Not widely prevalent" could be defined as "not yet widely prevalent throughout the weed's potential biological range." The difficulty with such an interpretation is that we do not know the potential biological range for most of the weeds already listed. Phytotron studies are expensive and time consuming, and the software for estimating range has limitations. What criteria should APHIS use to determine if a weed is or is not widely prevalent?
- Should we make available and maintain the Category 3 and Category 4 lists as outlined above? Would these lists be useful to States and the public, even though they would not have any binding effect, and would not be accompanied by additional funding to State and local weed control programs?
- In the Category 1 and Category 2 lists, we could continue to group weeds according to their habitat (i.e., aquatic, terrestrial, parasitic). Should there be other divisions within any of the four categories? Should there be fewer than four categories? Should the criteria for listing in any of the categories be modified?

States maintain unique noxious weed lists that often include weeds that do not meet the definition of a Federal noxious weed, but that are of local concern. We would provide a summary of these lists as an informational service. We would make no endorsement regarding the listings, nor would we sanction actions of States pursuant to the listings. Since each State has unique restrictions regarding noxious weeds, we ask that the public please refrain from commenting on the individual weed listings contained in Category 3. We are unable to address questions or comments regarding the individual Category 3 listings, especially questions or comments regarding particular State regulations and/or restrictions on particular weeds. Such concerns should be addressed to the appropriate State plant board. State officials are requested to submit amendments to their weed list that have been made since the drafting of this rule.

Other Questions

Sterile Cultivars of Federal Noxious Weeds

Imperata cylindrica, a listed Federal noxious weed, has sterile cultivars that are widely planted in the United States and extensively sold in the nursery trade. The wild, seed-producing biotype is clearly undesirable, but many in the nursery trade consider the sterile cultivars to be well-behaved ornamentals. Should there be a category of Federal noxious weeds where only seed producing cultivars are regulated, such that sterile cultivars would be exempt from the regulations? *Imperata cylindrica* would be moved into this category, and other species, such as *Vetiveria zizanioides,* vetiver grass, could be listed in this category as well. Seeds of weeds in this category (and by extension, the commodities they reside in) would be prohibited from entering the United States or moving interstate, but vegetatively produced sterile stock could be moved without restriction.

Weeds for Human Consumption

Some of the currently listed Federal noxious weeds are valued as foods by various groups. For example, *Ipomoea aquatica* (Chinese water spinach) was imported in large quantities before it was listed as a Federal noxious weed and is now widely available in specialty markets around the United States. Should APHIS issues permits for the importation and interstate movement of certain weeds for consumption only? If so, under what conditions?

Pest Risk Assessments

APHIS uses pest risk assessments (PRA's) as a basis for weed exclusion decisions. Individuals with an interest in seeing a particular plant species listed as a Federal noxious weed (Category 1 or Category 2) may submit draft risk assessments for review and consideration. Some of the Category 3 and Category 4 weeds might also be candidates to be listed as Federal noxious weeds, and proponents may submit draft risk assessments for review. The PRA guidelines for weeds are available on the Internet at "http://www.aphis.usda.gov/ppq/weeds/weedsrisk99.html". The main components of a risk assessment include:

1. Taxonomy and description of the plant species.
2. Distribution.
3. Local, State, or other control efforts in the United States.
4. Determination of the consequences of introduction by considering risk elements 1–4.
   Risk element 1. Habitat suitability in the United States.
   Risk element 2: Spread potential after establishment, dispersal potential.
   Risk element 3: Economic impact.
   Risk element 4: Environmental impact.
5. Determination of the likelihood of introduction or spread.
6. Citation of references.

We welcome comments related to risk assessment guidelines and the process itself.

Allocation of Resources and Funding

Given that APHIS has limited resources for weed programs, should we focus all our resources on the exclusion of weeds not yet introduced into the United States (Category 1) and on the control and eradication of introduced weeds of limited distribution (Category 2)? Which programs should receive the highest priority for funding? Should we also provide additional guidance on controlling widespread weeds (Category 3 and Category 4)? What kind of guidance should we provide regarding the Category 3 and Category 4 lists?

APHIS conducts the following activities under the weed program. In what order of priority should limited resources be devoted? Which of these activities should receive highest priority? Which should receive lowest?

- Port of entry inspection and detection.
- Eradication of incipient infestations.
- Review of weed permit applications and issuance of weed permits.
- Survey and early detection of noxious weeds.
- Risk assessment to support new listings or delistings.
- Devitalization studies (for example, heat, radiation, and microwave treatments for commodities infested with noxious weeds).
- Weed control technology, development and transfer.
- Regulation review and revision (regulations promulgated under the Federal Noxious Weed Act, Federal Seed Act, and Federal Plant Pest Act).
- Data management.
- Public education.
- Integrated management of introduced weeds (e.g., through biological control), in cooperation with other agencies.

We invite comments on these topics. We also welcome ideas as to different approaches we might take to improve our weed programs. In responding to the questions posed in this notice, commenters are urged to include economic reasons and data supporting their positions, whenever possible.

Authority: 7 U.S.C. 2803 and 2809; 7 CFR 2.22, 2.80, and 371.2(c).

Done in Washington, DC, this 15th day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–6825 Filed 3–17–00; 8:45 am]

BILLING CODE 3410–34–U

[2] *Alien Plant Invaders of Natural Areas*—a developing list based on a variety of sources, including those produced or published by The Nature Conservancy (John M. Randall, 1995), California Exotic Pest Plant Council, Florida Exotic Pest Plant Council, Tennessee Exotic Pest Plant Council, University of Hawaii (Hawaii Ecosystems at Risk Project), Faith T. Campbell, Maryland Natural Heritage Program, the University of Florida, and University of Georgia (Kim D. Coder). Available on the World Wide Web at http://www.nps.gov/plants/alien/scie-d.thm.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[NM–26–1–6944b; FRL–6561–7]

Approval and Promulgation of Implementation Plan for New Mexico: Transportation Conformity Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the New Mexico State Implementation Plan (SIP) that contains the transportation conformity rule. If EPA approves this transportation conformity SIP revision, the New Mexico Environment Department will be able to implement and enforce the Federal transportation conformity requirements at the State level per regulations on Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws. This proposed action would streamline the conformity process and allow direct consultation among agencies at the local levels. The proposed approval is limited to regulations on Transportation Conformity. The EPA approved the SIP revision for conformity of general Federal actions on September 9, 1998 (61 FR 48407).

The EPA is proposing to approve this SIP revision under sections 110(k) and 176 of the Federal Clean Air Act. The EPA has given its rationale for the

proposed approval and other information in the Final Rules section of this **Federal Register**.

In the "Rules and Regulations" section of **Federal Register**, EPA is approving the State's SIP revision as a direct final rule without prior proposal because EPA views this as a noncontroversial revision and anticipate no adverse comment. The EPA has explained its reasons for this approval in the preamble to the direct final rule. If EPA receives no adverse comment, EPA will not take further action on this proposed rule. If EPA receives adverse comment, EPA will withdraw the direct final rule and it will not take effect. The EPA will address all public comments in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time.

DATES: We must receive your comments on this proposed rule in writing, by April 19, 2000. If we do not receive any adverse comment, then the direct final rule will be effective on May 19, 2000.

ADDRESSES: You should send your written comments to Mr. Thomas H. Diggs, Chief, Air Planning Section (6PDL) at the address given below. You may inspect copies of the State's SIP revision and other relevant information during normal business hours at the following locations. If you wish to examine these documents, you should make an appointment with the appropriate office at least 24 hours before the visiting day.

Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone: (214) 665–7214.

New Mexico Environment Department, Harold Runnels Building, 1190 St. Francis Drive, P.O. Drawer 226110, Santa Fe, New Mexico, telephone: (505) 827–4200.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E. or Mr. Ken Boyce; Air Planning Section (6PDL), Multimedia Planning and Permitting Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone (214) 665–7247 or (214) 665–7259, respectively. *behnam.jahanbakhsh@epamail.epa.gov* or *boyce.kenneth@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION: If you wish to obtain additional information, you should read the Direct Final rule which is located in the Rules section of this **Federal Register**.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Transportation conformity, Transportation-air quality planning, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671 *et seq.*

Dated: March 8, 2000.

Lynda F. Carroll,

Acting Regional Administrator, Region 6.

[FR Doc. 00–6564 Filed 3–17–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 12-Month Finding for a Petition To List the Great Basin Redband Trout as Threatened or Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 12-month petition finding.

SUMMARY: We, the Fish and Wildlife Service (Service), announce a 12-month finding for a petition to list the Great Basin redband trout (*Oncorhynchus mykiss* ssp.) as threatened or endangered pursuant to the Endangered Species Act of 1973, as amended (Act). Great Basin redband trout maintain viable and self-sustaining populations in the Catlow, Fort Rock, Harney, Goose Lake, Warner, and Chewaucan Basins that make up Oregon's Great Basin. Great Basin redband trout densities are moderate to high in each of these basins. After review of all available scientific and commercial information, we find that listing the Great Basin redband trout is not warranted at this time.

DATES: The finding announced in this document was made on March 13, 2000.

ADDRESSES: You may submit questions concerning this petition finding to the Field Supervisor, U.S. Fish and Wildlife Service, Oregon State Office, 2600 SE. 98th Ave., Suite 100, Portland, Oregon 97266. You may obtain copies of the status review for Great Basin redband trout from the above address. The complete administrative file for this finding is also available for inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Antonio Bentivoglio, at the above address, or telephone (503) 231–6179.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(B) of the Act (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action is: (a) Not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending listing proposals of higher priority. Such 12-month findings are to be published promptly in the **Federal Register**.

The processing of this petition finding conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. The processing of this petition finding is a Priority 4 action and is being completed in accordance with the current Listing Priority Guidance.

On September 8, 1997, we received a formal petition to list the Great Basin redband trout as threatened or endangered throughout its range in southeastern Oregon, northeastern California, and northwestern Nevada. Specifically the petition addressed the redband trout populations in Catlow, Fort Rock, Harney, Goose Lake, Warner, and Chewaucan Basins (together these six closed basins make up the Great Basin as described in the petition). The petition also requested the designation of critical habitat concurrent with listing. Petitioners included the Oregon Natural Desert Association (ONDA), Oregon Trout, Native Fish Society, and the Oregon Council of Trout Unlimited.

At the time the petition was received, we were operating under the final listing priority guidance for fiscal year 1997, published December 5, 1996 (61 FR 64475), and an extension of that listing priority guidance published October 23, 1997 (62 FR 55268). Based on biological considerations, the guidance established a "multi-tiered approach that assigned relative priorities, on a descending basis, to

actions carried out under section 4 of the Act" (61 FR 64479).

On September 24, 1997, we sent a letter to the main petitioner, ONDA, acknowledging receipt of the Great Basin redband trout petition and stating our intent to proceed with a 90-day finding according to the listing priority guidance issued on December 5, 1996 (61 FR 64475). On November 10, 1997, we sent a letter to ONDA informing them that we had done a preliminary review of the petition (as described in 61 FR 64475) and no emergency existed for listing the Great Basin redband trout and, therefore, that the petition fell into the Tier 3 category as described in 61 FR 64475.

We further indicated that our Oregon Fish and Wildlife Office (which was assigned the responsibility for processing the petition) in Portland, Oregon, would continue to direct personnel and budget toward accomplishment of ongoing Tier 2 and Tier 3 activities for species judged to be in greater need of the Act's protection than Great Basin redband trout. As these higher priority activities were accomplished, and personnel and funds became available, we would proceed with the 90-day finding on the petition for Great Basin redband trout.

On January 13, 1998, we received a notice of intent to sue from the petitioners for failure to respond to the Great Basin redband trout petition within 90 days. On March 13, 1998, a lawsuit was filed asking for declaratory judgment that we failed to make a 90-day finding on the petition to list the Great Basin redband trout.

On May 8, 1998, we published the final listing priority guidance for fiscal years 1998 and 1999 (63 FR 25502). This new guidance changed the four-tier priority system to a three-tier system. Under the three-tier system, first priority (Tier 1) was completion of emergency listings for species facing the greatest risk to their well-being. Second priority (Tier 2) was processing final decisions on pending proposed listings; processing new proposals to add species to the list; processing 90-day and 12-month administrative findings on petitions to add species to the lists, and petitions to delist or reclassify species; and delisting or downlisting actions on species that have achieved or are moving toward recovery. Third priority (Tier 3) was processing petitions for critical habitat designations and preparing proposed and final critical habitat designations. Under the new guidance, the processing of the Great Basin redband trout petition was a Tier 2 action.

On November 16, 1998, we published a 90-day finding (63 FR 63657) that the petition provided substantial information indicating that the listing of the Great Basin redband trout as threatened or endangered may be warranted. At the time, we initiated a status review for the Great Basin redband trout with a request for information and public comment with a closing date of January 15, 1999. On January 6, 1999 (64 FR 821), the public comment period was extended until March 16, 1999. Public information meetings were held in Lakeview, Oregon, on February 2, 1999, and in Burns, Oregon, on February 3, 1999.

On November 23, 1998, Earthlaw filed a notice of intent to sue for violation of the Act. On March 22, 1999, a lawsuit was filed by the Southwest Center for Biological Diversity for failure to complete a 12-month finding on the Great Basin redband trout. On November 17, 1999, the Court ordered us to complete the 12-month finding by March 15, 2000.

Status Review

A status review team consisting of our biologists was appointed to prepare the status review for Great Basin redband trout and make appropriate recommendations in response to the petitioned listing action.

Redband trout are related to the more widely distributed rainbow trout (*Oncorhynchus mykiss*). Great Basin redband trout occur in Oregon's Great Basin, which comprises six closed basins in southeastern Oregon, and small portions of northeastern California and northwestern Nevada. These six basins have no direct connection to the ocean. Several of these basins have semipermanent lakes or marshes that redband trout occupy when they contain water. Severe drought in the early 1990s dried up most of these lakes, restricting the redband trout to streams. Great Basin redband trout have a distinctive red stripe on both sides, and smaller individuals have parr marks (dark lateral marks typical of immature trout) (Hendricks 1995). These trout are adapted to the dry, hot summers of eastern Oregon and can withstand short periods of time at peak water temperatures of 24–27° C (75–80° F), which would be lethal to most other trout (Bowers *et al.* 1979).

Petitioners' Assertions

The petitioners asserted that non-anadromous redband trout populations in the Great Basin and Columbia Plateau are extinct in 72 percent of their historic range, and strong populations remain in only 10 percent of their historic habitat. The petitioners indicated that habitat degradation from improper livestock grazing practices, irrigation, stream channel manipulation, and timber harvest impact redband trout by increasing erosion of stream banks, increasing sedimentation, reducing stream bottom complexity, widening and shallowing the stream cross-sections, increasing stream temperatures, reducing streamside vegetation, fragmenting populations, dewatering streams, reducing water tables, and reducing the amount of large, woody debris. The petitioners presented the effects of such degradation for each individual basin and as widespread occurrences in the Great Basin.

The petitioners provided evidence that introgression and competition by introduced fishes are threats to the continued existence of Great Basin redband trout. Introgression resulting from Great Basin redband trout interbreeding with stocked hatchery rainbow trout reduces the native redband offspring's ability to survive harsh Great Basin conditions; introduced nonnative fishes (both hatchery rainbow trout (*Oncorhynchus mykiss*) and species like brook trout (*Salvelinus fontinalis*), carp (*Cyprinus carpio*), bass (*Micropterus* spp.), catfish (*Ictalurus* spp.), and crappie (*Pomoxis* spp.) feed on or compete with native redband for resources and can degrade the habitat.

The petitioners asserted that threats to Great Basin redband trout remain because of the inadequacy of existing regulations. They also asserted that emergency fishing regulations, conservation/protective designations by government agencies and professional societies, water quality protection measures, and other current and planned conservation measures have failed to stop the decline of Great Basin redband trout.

Petition Finding

In response to our 90-day finding notice, we received information on Great Basin redband trout from State fish and wildlife departments, the U.S. Forest Service (USFS), the Bureau of Land Management (BLM), and private corporations, as well as private citizens, organizations, species experts, and other entities. We also reviewed information on Great Basin redband trout obtained from peer-reviewed journal articles, agency reports and file documents, and telephone interviews and written correspondence with natural resources managers familiar with Great Basin redband trout.

For the purposes of the status review, we assumed that trout classified by State fish and wildlife departments in the six basins as redband trout represent the Great Basin redband trout, even though the precise genetic characteristics of those stocks may not be known. In addition, we evaluated Great Basin redband trout status solely on the basis of Great Basin redband trout stocks that currently occur within the historic range of the subspecies.

Distinct Vertebrate Population Segment Analysis

Species is defined in the Act as "any subspecies of fish or wildlife or plants, and any distinct population segment (DPS) of any species of vertebrate fish or wildlife that interbreeds when mature." Thus, DPSs are eligible for protection under the Act. One of the purposes of defining species to include subspecies and DPSs is to conserve genetic diversity that is found in a taxon smaller than a species.

On February 7, 1996, we published a joint policy with the National Marine Fisheries Service to clarify our interpretation of the phrase "distinct population segment" for the purposes of listing, delisting, and reclassifying species under the Act (61 FR 4721). This policy consists of three elements to be considered in a decision regarding the status of a possible DPS as endangered or threatened under the Act—(1) the discreteness of the population segment in relation to the remainder of the species or subspecies to which it belongs; (2) the significance of the population segment to the species or subspecies to which it belongs; and (3) the population segment's conservation status in relation to the Act's standards for listing.

The petitioners stated their belief that grouping the redband trout populations from the six basins qualified as a DPS. They also stated that they would not object to identifying as a DPS each of the populations in the six basins specified in the petition. To determine the most appropriate grouping, we analyzed existing scientific information for designation of the redband trout in the six basins as one DPS, as six individual DPSs, or as any number between one and six DPSs.

The first criterion to be fulfilled in designating a DPS is discreteness of the taxon in question. As defined in our policy (61 FR 4721), discreteness may include physical, physiological, ecological, or behavioral factors showing a marked separation from other populations. The information summarized in the status report (Service 2000) provides evidence of a mosaic of mixing and isolation that has led to the redband trout that we see today in the Great Basin.

As a whole, the redband trout in the Great Basin show many similarities, which make them distinct from surrounding redband populations. Evident in all of the six basins are similar climatic conditions and fish species assemblages. The current fish assemblages in the Great Basin probably arose from other basins (Snake, Klamath, or Sacramento basins). Similarities in the fish assemblages of the six basins making up the Great Basin, combined with knowledge of past connections and mixing of fishes, make determination of which basin(s) transferred fish to which other basin(s) difficult. However, for approximately the past 10,000 years, the fishes in the Great Basin have largely been isolated from the Sacramento, Snake, and Klamath basins. Extremes in temperature and harsh climatic conditions have forced all redband trout in the Great Basin to adapt in similar ways, and all redband trout in the Great Basin have retained a high degree of flexibility in their life-history characteristics, to take best advantage of the habitats that occur in these six basins. Morphologically, all Great Basin redband trout share an increase in the number of gill rakers that is not as prevalent in redband from basins outside the Great Basin. Geologically, all six basins are closed basins, with the extremely rare exception of the Goose Lake basin, which can drain into the Pit River Basin. This is a one-way movement of fish out of Goose Lake since no fish can move from the Pit River into Goose Lake.

The naturally closed nature of these basins creates a unique ecological setting not found in other basins where redband exist. Behnke (1999) notes, "The significance aspect of the DPS [question] fittingly characterizes the Great Basin redband trout." For these reasons, we recognize the redband trout in the six basins, Fort Rock, Chewaucan, Goose Lake, Warner, Catlow, and Harney, as a single DPS, which we will collectively refer to as Great Basin redband trout.

We, therefore, find that the most appropriate grouping of Great Basin redband from these six basins is as a single group encompassing all populations as was petitioned for listing. This finding recognizes that using only a limited set of information, such as only genetics, other groupings of the redband forms could be defined as discrete and thus possibly qualify as a DPS. However, as described above, a single group encompassing all six basins has the most compelling support of all the available evidence.

Summary of the Species Status

In the context of the Act, the term "threatened species" means any species (or subspecies or DPS for vertebrate organisms) that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. The term "endangered species" means any species that is in danger of extinction throughout all or a significant portion of its range. The Act does not indicate threshold levels of historic population size at which, as the population of a species declines, listing as either threatened or endangered becomes warranted. Instead, the principal considerations in the determination of whether a species warrants listing are the threats that currently confront the species and the likelihood that the species will persist in the foreseeable future. Thus, listing of a species may be warranted when the species still occupies much of its historic range but confronts significant, widespread threats. In contrast, if not confronted by significant threats, a species occupying only a small portion of its historic range may be considered to be neither threatened nor endangered. Similarly, a species that has experienced past reductions but has since increased in abundance may not warrant listing under the Act.

In the case of Great Basin redband trout, at least two major declines in population numbers and distribution apparently occurred in historic times. Undoubtedly a prehistoric major reduction occurred around 2,000 years ago when the pluvial lakes dried to current levels, but no available data to demonstrate this occurrence. Good anecdotal evidence suggests that during the latter part of the 19th century and into the first part of the 20th century, widespread habitat destruction occurred that undoubtedly correlated with reduced redband trout numbers and distribution. A good example is presented in the Upper Chewaucan Watershed Assessment (USFS 1999) that probably is representative of most of the other basins. In 1909, 110,000 sheep, and 26,000 cattle and horses were allowed to graze Fremont National Forest lands in the Chewaucan Basin. By 1929, these numbers dropped to 78,000 sheep and 10,996 cattle and horses but the habitat was reported to be in a deplorable state. For example, a tributary of Coffeepot Creek was described as having drastically reduced vegetation that resulted in severe bank erosion and downcutting. By 1959,

numbers had been reduced to 31,210 sheep and 12,392 cattle and horses. In the 1960s, sheep were removed; currently, there are about 12,500 cattle in the Upper Chewaucan watershed.

These degraded habitat conditions were exacerbated by droughts in 1926 and from 1929 to 1934 that dried up Goose Lake (dry in 1926 and virtually dry 1929–1934) and Malheur Lake (dry in 1926 and 1934 and virtually dry 1931–1933). Despite half a decade of drought conditions, the redband trout survived and have increased their numbers and distribution in all six basins.

More recently the Great Basin experienced a drought from 1987 to 1992, with 1994 also being a very dry year. The drought caused Goose Lake, Hart Lake (Warner basin), and Malheur Lakes to go dry in 1992. This second drought eliminated the lake habitat and, consequently the lacustrine redband trout that made spawning runs up connected creeks. This drought also undoubtedly reduced the available stream habitat. However, despite this recent drought, the numbers of redband trout in all basins appear to have rebounded. As an example, in 1995 no fish were found in Skull Creek (Catlow basin), whereas in 1997, 16 fish representing 3 different age classes were found after sampling 263 square meters.

An analysis of historic and current distributions based on area concluded that Great Basin redband trout currently occupy 59 percent of their historic distribution. Specific stream surveys in 1999 (Dambacher 1999) determined densities of Great Basin redband trout in each of the six basins. The densities were 0.423 fish per meter square in the Catlow basin, 0.372 fish per meter square in the Harney basin, 0.216 fish per meter square in the Warner basin, 0.171 fish per meter square in the Fort Rock basin, 0.143 fish per meter square in the Chewaucan basin, and 0.140 fish per meter square in the Goose Lake basin. These densities correspond with moderate and high categories according to Dambacher and Jones (in press). Dambacher and Jones (in press) analyzed 80 redband trout density estimates from the Great Basin between 1968 and 1995 and determined qualitative ranges for densities. They concluded that a low density was less than 0.059 fish per meter square, moderate density was between 0.06 and 0.19 fish per meter square, and high density was over 0.2 fish per meter square. Based on this analysis, Catlow, Harney, and Warner basins had high densities of redband trout, and Fort Rock, Goose Lake, and the Chewaucan Basins had moderate densities. Because redband trout populations in all basins have rebounded, the effects of any potential threats to the Great Basin redband trout and the likelihood of extinction of the species is substantially reduced.

The petition identified general threats causing changes to ecological processes that result in habitat degradation. We agree that habitat degradation is present in all six basins. Historic overgrazing combined with water withdrawal, building of dams and roads, timber harvest, and draining of marshes and wetlands has reduced the habitat available for the Great Basin redband trout. However, the data on Great Basin redband trout abundance and distribution reflect an aquatic habitat that provides enough of the ecological parameters necessary for spawning, rearing, and survival to have supported an increasing population since the end of the drought. Therefore, the current level of threat from aquatic habitat destruction or modification or curtailment in range does not place the Great Basin redband trout in danger of extinction or make it likely to become so in the foreseeable future.

Furthermore, a Conservation Agreement (CA) in the Catlow Basin and a Conservation Strategy (CS) in the Goose Lake basin are improving habitat for redband trout. The goal of both the CA and CS is to identify the threats to the native fishes (including Great Basin redband trout) and implement projects to remove threats and enhance habitat. These cooperative efforts among private, State, and Federal entities are largely responsible for habitat or fish population improvements in the Catlow and Goose Lake basins.

Based on the Catlow CA 1999 Progress Report (Catlow Valley CA Signatories *in litt.* 1999), most of the originally identified actions, and numerous, additional "adaptive management" actions, have been initiated or completed. Of the 74 actions identified in the Catlow CA, 36 were completed, 33 other long-term projects were well under way and showing success, and only 5 were not initiated (often because they were to be initiated at a later date, after preliminary data were collected). In addition, 22 new conservation actions were identified by CA participants, and of these, only 1 was either not completed or initiated as of the summer of 1999.

Significant habitat restoration has occurred within the Catlow basin due to the Catlow CA. During 1998, vegetation objectives were reached on 95 percent of redband streams, and in 1999 alternate grazing sites were found so that almost all of the streams covered by the Catlow CA were rested. These actions significantly increased riparian recovery. Threemile Reservoir had filled with sediment since Kunkel's (1976) report. The reservoir was dredged in 1998 and enlarged in 1999 to again provide a lacustrine habitat for redband trout and connection with Threemile Creek. Numerous fences and water enhancement projects were installed that benefitted cattle management and overall upland and riparian health. A road in Upper Skull Creek was closed and multiple fire rehabilitation and juniper encroachment projects were completed. The Oregon Department of Fish and Wildlife conducted fish surveys and habitat monitoring throughout the Catlow basin in 1997 through 1999 and found that redband trout densities had increased significantly from the surveys in 1995, when densities were depressed due to the drought. Based on the cooperation between private, State and Federal parties, most if not all of the current threats to redband trout in the Catlow Basin are being or will be addressed.

Due to a continuing drought (1987–1994) affecting the water level of Goose Lake and its tributaries, a group of concerned individuals from private, State, and Federal agencies formed the Goose Lake Fishes Working Group (GLFWG) in 1991. The GLFWG signed a Memorandum of Understanding in July 1994 to protect and reestablish native fishes in the Goose Lake basin in California and Oregon. On May 22, 1995, the GLFWG completed the Goose Lake Fishes Conservation Strategy (GLFCS 1996). The goal of this strategy was to conserve all native fishes in Goose Lake by reducing threats, stabilizing population numbers, and maintaining the ecosystem. The Conservation Strategy identified factors in each stream that were affecting fish and provided a list of actions since 1958 that were implemented to benefit potential problems.

Since publication of the GLFCS in 1996, a number of additional projects have been completed or long-term projects begun. These include 2 culvert improvements, 11 diversion or passage projects, 10 fencing projects, 16 habitat improvement projects, 11 fish surveys, and road improvement project to reduce sedimentation. Based on the conscientious efforts of the GLFWG, threats to redband in the Goose Lake basin are being addressed. The Goose Lake basin is a much larger system than the Catlow basin with many more interested parties and specific projects needed to benefit redband trout. Recent projects have substantially benefitted redband trout but more resources and

time will be needed to complete all of the projects identified in the GLFCS.

Existing CAs have had a large influence in protecting redband trout and the habitat they require for survival. These efforts continue to improve habitat, provide for passage over barriers, screen diversions, and survey for redband trout. Cooperative efforts involving all parties are excellent avenues for restoring habitat and species.

We have carefully assessed the best available scientific and commercial information available, and we find that listing the Great Basin redband trout as a threatened or endangered species is not warranted at this time because it is not in danger of extinction or likely to become so within the foreseeable future. This conclusion is based on information on Great Basin redband trout populations within the historic range of redband trout, as reported and summarized in the Great Basin redband trout status review (Service 2000). However, in the event that conditions change and the species becomes imperiled due to the factors discussed in this finding, or other unforeseen factors, we could propose to list the species under the Act or, if circumstances warranted, invoke the emergency listing provisions of the Act.

References Cited

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Dambacher, J. 1999. Assessment of Stream Populations and Habitat of Great Basin Redband Trout (*Oncorhynchus mykiss*).

Dambacher, J., and K. Jones. (In press). Regional and Basin-Wide Patterns of Abundance of Redband Trout (*Oncorhynchus mykiss*) in Oregon Streams.

Hendricks, S. 1995. Fishes found in the tributaries of Goose Lake. California Department of Fish and Game. Inland Fisheries Division. Endangered Species Project. February 1, 1995.

U.S. Forest Service. 1999. Upper Chewaucan Watershed Assessment. Prepared for the Upper Chewaucan Watershed Council, September 1999, Paisley, OR.

U.S. Fish and Wildlife Service. 2000. Status Review for Great Basin Redband Trout. U.S. Department of the Interior, Fish and Wildlife Service, Region 1, Portland, Oregon. January 2000.

Author:

The primary author of this document is Antonio Bentivoglio, Oregon Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

AUTHORITY

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: March 13, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–6864 Filed 3–17–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018—AE30

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for the Southern California Distinct Population Segment of the Mountain Yellow-Legged Frog

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), reopen the comment period on the proposed rule to list the southern California distinct population segment (DPS) of the mountain yellow-legged frog (*Rana muscosa*) as an endangered species. The comment period is reopened in response to requests from the public for additional time to obtain biological information regarding the frog and formulate comments on the proposed rule. In addition, reopening of the comment period will allow further opportunity for all interested parties to submit comments on the proposal, which is available (see **ADDRESSES** section). We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The reopened comment period closes April 19, 2000.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California, 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Glen Knowles at the above address, telephone 760–431–9440; facsimile 760–431–9618.

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1999, the Service published a rule proposing endangered status for the southern California DPS of the mountain yellow-legged frog (*Rana muscosa*) in the **Federal Register** (64 FR 71714). The original comment period closed on February 22, 2000. The comment period now closes on April 19, 2000. Written comments should be submitted to the Service (see **ADDRESSES** section).

The mountain yellow-legged frog is a true frog in the family Ranidae. The southern California mountain yellow-legged frog can still be found in four small streams in the San Gabriel mountains, San Bernardino mountains, and the San Jacinto mountains. In addition to predation from trout and other widespread factors, the few remaining frogs are threatened by recreation (i.e. suction dredging, campgrounds, day use areas), the introduction of non-native competitors and predators, and demographics associated with small populations. Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location and status of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Additional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on the mountain yellow-legged frog or its habitat.

Author:

The primary author of this notice is Glen Knowles (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 10, 2000.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 00–6795 Filed 3–17–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 54
Monday, March 20, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections being Reviewed by the Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning (a) Whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on this information collection on or before May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, D.C., 20523, (202) 712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0017.

Form No.: AID 1440–3.

Title: Contractor's Certificate and Agreement with the Agency for International Development/Contractor's Invoice and Contract Abstract.

Type of Review: Renewal of Information Collection.

Purpose: USAID finances host country contracts, for technical and professional services and for the construction of physical facilities, between the contractors for such services and entities in the country receiving assistance under loan or grant agreements with the recipient country. USAID is not a party to these contracts, and the contracts are not subject to the FAR. In its role as the financing agency, USAID needs some means of collecting information directly from the contractors supplying such services so that it may take appropriate action in the event that the contractor does not comply with applicable USAID regulations. The information collection, recordkeeping, and reporting requirements are necessary to assure that USAID funds are expended in accordance with statutory requirements and USAID policies.

Annual Reporting Burden

Respondents: 18.

Total annual responses: 216.

Total annual hours requested: 126 hours.

Dated: March 8, 2000.

Joanne Paskar,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 00–6583 Filed 3–17–00; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Send comments on this information collection on or before May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, Agency for International Development, Room 2.07–106, RRB, Washington, D.C., 20523, (202) 712–1365 or via e-mail bjohnson@usaid.gov.

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–0020.

Form No.: AID 1450–4.

Title: Supplier's Certificate and Agreement with the Agency for International Development for Project Commodities/Invoice and Contract Abstract.

Type of Review: Renewal of Information Collection.

Purpose: When USAID is not a party to a contract which it finances, it needs some means of collecting information directly from the suppliers of such commodities and related services to enable it to take appropriate action in the event that they do not comply with applicable USAID regulations. The information collection, recordkeeping, and reporting requirements are necessary to assure that USAID funds are expended in accordance with statutory requirements and USAID policies. It also allows for positive identification of transactions where overcharges occur.

Annual Reporting Burden

Respondents: 50.

Total annual responses: 300.

Total annual hours requested: 196 hours.

Dated: March 8, 2000.

Joanne Paskar,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 00–6584 Filed 3–17–00; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–003N]

Meeting on HACCP-Based Inspection Models Project

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice of public meeting.

SUMMARY: The Food Safety and Inspection Service (FSIS) is holding a public meeting to discuss its HACCP-based Inspection Models Project (HIMP) for slaughter plants. The purpose of this meeting, the latest in a series, is to present new inspection procedures and performance standards that the Agency is developing through the project for plants that slaughter young chickens. The Agency will also describe the rulemaking process that it intends to follow to implement these new inspection procedures and performance standards for all young chicken slaughter plants under Federal inspection should the data developed in the project support such an action. The meeting will conclude with an open discussion period.

DATES: The meeting will be held on March 30, 2000 from 9 a.m. to 3 p.m.

ADDRESSES: The meeting will be held at the Holiday Inn Rosslyn at Key Bridge, 1900 North Fort Myer Drive, Arlington, Virginia 22209, (703) 807–2000.

FOR FURTHER INFORMATION CONTACT: To register for the meeting, contact Mr. Ron Niemeyer, of the FSIS Planning Staff at (202) 501–7247 or FAX (202) 501–7642 or e-mail: *ron.niemeyer@usda.gov.* Attendees who require a sign language interpreter or other special accommodations should contact Mr. Niemeyer at the above numbers by March 21, 2000. For technical information, contact Michael Grasso at (202) 205–0025, fax (202) 205–0058, email: *Mike.Grasso@usda.gov.*

SUPPLEMENTARY INFORMATION: The HACCP-based Inspection Models Project (HIMP) is an outgrowth of the Agency's Pathogen Reduction/Hazard Analysis and Critical Control Point (PR/HACCP) Systems Final Rule, published on July 25, 1996. The PR/HACCP rule calls for the establishment of a HACCP-based food safety system to reduce the risk of foodborne illness from meat and poultry products. In a **Federal Register** Notice of June 10, 1997, FSIS requested public comments on the design and development of new inspection models for slaughter and processing in a HACCP environment (62 FR 31553). This notice summarized recommendations by the National Academy of Sciences and the General Accounting Office that FSIS reduce its reliance on organoleptic (sensory) inspection and redeploy its resources by using inspection methods that are based on the risks inherent in meat and poultry slaughter operations. To accomplish these objectives, new inspection methods are being developed and tested that are consistent with the meat and poultry products inspection laws and the systems now required by the PR/HACCP rule. The HACCP-based Inspection Models Project is designed to help define the respective responsibilities of FSIS and the regulated industry in slaughter establishments operating under HACCP systems and to develop new approaches to inspection in plants slaughtering young, healthy, and uniform animals. A public meeting was held in Washington DC on July 27, 1998 (63 FR 39068, July 21, 1998) to discuss the project. Another public meeting on the project was held in Washington DC on December 2, 1998 (63 FR 63827, November 17, 1998) to discuss results from baseline testing in initial plants and projected activities.

The March 30, 2000 meeting will specifically address activities in young chicken slaughter plants and will include the final report of baseline data collection results under current inspection procedures in young chicken slaughter plants participating in the project. The Agency will present performance standards for food safety and non-food safety concerns in HIMP young chicken plants. These performance standards are drawn from the baseline data collection results and will provide the terms by which HIMP young chicken plants will be measured. New inspection procedures are being designed to provide verification that plants are meeting these performance standards. FSIS intends to institute rulemaking to adopt new inspection procedures and performance standards for all young chicken slaughter plants under Federal inspection if the data developed in HIMP support such action.

Additional Public Notification

Pursuant to Departmental Regulation 4300–4, "Civil Rights Impact Analysis," dated September 22, 1993, FSIS has considered the potential civil rights impact of this notice on minorities, women, and persons with disabilities. Therefore, to better ensure that these groups and others are made aware of this meeting, FSIS will announce it and provide copies of the **Federal Register** publication in the FSIS Constituent Update. The Agency provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on line through the FSIS web page located at *http://www.fsis.usda.gov.* The update is used to provide information regarding Agency policies, procedures, regulations, **Federal Register** Notices, FSIS public meetings, recalls and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals and other individuals that have requested to be included. Through these various channels, the Agency is able to provide information with a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Office of Congressional and Public Affairs, at (202) 720–5704.

Transcripts of this meeting will be made available in the FSIS Docket Room, Room 102 Cotton Annex, 300 12th Street SW, Washington, D.C.

Done in Washington, DC, on: March 14, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–6824 Filed 3–17–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

BS–3a Caernarvon Diversion Outfall Management Project Plaquemines Parish, Louisiana

AGENCY: Natural Resources Conservation Service.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Natural Resources Conservation Service Guidelines (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Caernarvon Diversion Outfall Management Project, Plaquemines Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government

Street, Alexandria, Louisiana 71302; telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of the federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that preparation and review of an environmental impact statement is not needed for this project.

The project will promote better utilization of available freshwater and nutrients from the Mississippi River, via the Caernarvon Diversion, for the maintenance of project area marshes. Benefits will include increasing freshwater retention time and allowing river water dispersion into interior marshes during periods of low diversion discharges from the Caernarvon Diversion Structure. This will reduce saltwater intrusion and salinity variation within the project area.,The project is expected to protect and enhance existing marshes, increase the occurrence of emergent and submergent marsh vegetation, and improve fish and wildlife habitat on 18,200 acres of intermediate marsh and shallow open water bodies.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data collected during the environmental assessment are on file and may be reviewed by contacting Donald W. Gohmert.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 00–6735 Filed 3–17–00; 8:45 am]

BILLING CODE 3410–16–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Alabama Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Alabama Advisory Committee to the Commission will convene at 6:00 p.m. and adjourn at 9:00 p.m. on April 11, 2000, at the Four Points Sheraton Hotel, 1000 Glen Hearn Boulevard, Huntsville, Alabama 35824. The purpose of the meeting is to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 9, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–6737 Filed 3–17–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Kansas and Missouri Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a community forum of the Kansas and Missouri Advisory Committees to the Commission will convene at 10:00 a.m. and adjourn at 8:00 p.m. on Thursday, April 27, 2000, at the Holiday Inn South, 5701 Longview Road, Kansas City, Missouri 64137. The purpose of the community forum is to collect data on hate crimes and racial profiling in the states of Kansas and Missouri.

Persons desiring additional information, or planning a presentation to the Committees, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 9, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–6738 Filed 3–17–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Ohio Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Ohio Advisory Committee to the Commission will convene at 9:00 a.m. and adjourn at 2:00 p.m. on Tuesday, April 4, 2000, at the Crowne Plaza Hotel, 33 East Fifth Street, Dayton, Ohio 45402. The purpose of the meeting is to hold a press conference to release the Committee's report, Employment Opportunities for Minorities in Montgomery County, Ohio, and to plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Altagracia Ramos, 614–466–6715, or Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 9, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–6736 Filed 3–17–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DOC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration (BXA).

Title: Report of Sample Shipments of Chemical Weapon Precursors.

Agency Form Number: None.

OMB Approval Number: 0694–0086.

Type of Request: Renewal of an existing collection.

Burden Hours: 23 hours.

Average Time Per Response: 35 minutes per response.

Number of Respondents: 40 respondents.

Needs and Uses: This collection of information will be used to monitor sample shipments of chemical weapon precursors in order to facilitate and enforce provisions of the EAR that permit limited exports of sample shipments without a validated export license. The reports will be reviewed by the Bureau of Export Administration to monitor quantities and patterns of shipments that might indicate circumvention of the regulation by entities seeking to acquire chemicals for chemical weapons purposes.

Affected Public: Individuals, businesses or other for-profit institutions.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, Office of the Chief Information Officer (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, D.C. 20230.

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, D.C. 20230.

Dated: March 15, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–6870 Filed 3–17–00; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–853]

Notice of Postponement of Preliminary Antidumping Duty Determination: Circular Seamless Stainless Steel Hollow Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Constance Handley and Charles Riggle, Office 5, DAS Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW, Washington, DC 20230; telephone (202) 482–0631 or (202) 482–0650, respectively.

Postponement of Preliminary Determination

The Department of Commerce (the Department) is postponing the preliminary determination in the antidumping duty investigation of circular seamless stainless steel hollow products from Japan. The deadline for issuing the preliminary determination in this investigation is now April 24, 2000.

On November 15, 1999, the Department initiated an antidumping investigation of circular seamless stainless steel hollow products from Japan. *See Initiation of Antidumping Duty Investigation: Circular Seamless Stainless Steel Hollow Products From Japan*, 64 FR 62385, (November 19, 1999). The notice stated that the Department would issue its preliminary determinations no later than 140 days after the date of initiation (*i.e.*, April 3, 2000).

The Department has now concluded, consistent with section 733(c)(1)(B) of the Act, that this case is extraordinarily complicated, and that additional time is necessary to issue the preliminary determination due to the complexity of certain issues raised in this case, including issues of affiliation, sales reporting, and product coverage. *See* Memorandum from Gary Taverman to Holly Kuga dated March 14, 2000. Therefore, in light of the fact that a party to this proceeding has been cooperating, pursuant to section 733(c)(1) of the Act, the Department is postponing the deadline for issuing this determination 21 days (*i.e.*, until April 24, 2000).

This extension is in accordance with section 733(c) of the Act and 19 CFR 351.205(b)(2).

Dated: March 14, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–6868 Filed 3–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–533–063]

Certain Iron-Metal Castings From India: Extension of Time Limit for Final Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Final Results of Countervailing Duty Administrative Review.

EFFECTIVE DATE: March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Copyak at (202) 482–2786, Office of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within the time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

Background

On November 30, 1998, the Department published a notice of initiation of administrative review of the countervailing duty order on certain iron-metal castings from India, covering the period January 1, 1997, through December 31, 1997 (63 FR 65748). On November 12, 1999, (64 FR 61592), we published the preliminary results of review. In our notice of preliminary results, we stated our intention to issue the final results of this review no later than March 13, 2000.

Extension of Final Results of Review

We determine that it is not practicable to complete the final results of this review within the original time limit. Therefore the Department is extending the time limits for completion of the final results until no later than May 10, 2000. *See* Decision Memorandum from John Brinkman to Holly A. Kuga, dated March 13, 2000, which is on file in the Central Records Unit.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 13, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Import Administration, Group II.

[FR Doc. 00–6869 Filed 3–17–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Docket No. [000202024–0024–01; I.D. No. 011000C]

RIN: [0648–ZA79]

Announcement of Funding Opportunity for the South Florida Ecosystem Restoration Prediction and Modeling Program and the South Florida Living Marine Resources Program

AGENCIES: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (CSCOR/COP), the National Ocean Service (NOS); the Southeast Fisheries Science Center (SEFSC), the National Marine Fisheries Service (NMFS); the National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of Funding Opportunity for financial assistance for project grants.

SUMMARY: The purpose of this notice is to advise the public that CSCOR and SEFSC are soliciting 1 to 2-year proposals for the South Florida Ecosystem Restoration Prediction and Modeling Program (SFERPM) and South Florida Living Marine Resources Program (SFLMR) to begin in FY 2000, contingent on the availability of funds.

These programs are two of a number of Federal and state programs that together comprise the Interagency Florida Bay (IFB) and Adjacent Marine Waters Science Program. The overall goal of this interagency effort is to develop the information and policies necessary for restoring the Everglades, Florida Bay, and adjacent marine ecosystems.

DATES: The deadline for receipt of proposals at the COP office is 3:00 p.m., EST. April 19, 2000. It is anticipated that projects funded under this announcement will have a July 1, 2000 start date.

ADDRESSES: Submit the original and 19 copies of your proposal to Coastal Ocean Program Office (SFERPM 2000), SSMC#3, 9th Floor, Station 9700, 1315 East-West Highway, Silver Spring, MD 20910. NOAA Standard Form Applications with instructions are accessible on the following COP Internet Site: http://www.cop.noaa.gov under the COP Grants Support Section, Part D, Application Forms for Initial Proposal Submission.

FOR FURTHER INFORMATION CONTACT: Technical Information:

Larry Pugh, SFERPM 2000 Program Manager, COP Office, 301–713–3338/ext 117, Internet: Larry.Pugh@noaa.gov; or Dr. Nancy Thompson, SFLMR 2000 Program Manager, SEFSC, 305–361–4284, Internet: Nancy.Thompson@noaa.gov; Business Management Information: Leslie McDonald, COP Grants Administrator, 301–713–3338/ext 137, Internet: Leslie.McDonald@noaa.gov.

Specific information about the ongoing SFERPM program, including descriptions of presently funded projects and the data management policy can be obtained from htttp://www.aoml.noaa.gov/ocd/sferpm. Reference is made to SFERPM Data Policy requirements later in this document under Part II: Further supplementary Information, paragraph (14) Other Requirements, subsection (b).

For complete information about the Interagency Florida Bay web sites and Adjacent Marine Systems Science Program Management Committee (PMC) (discussed later in this document under **SUPPLEMENTARY INFORMATION**); its Scientific Oversight Panel; copies of the Abstracts of its Annual Conferences; reports from its numerous topical workshops and research team meetings as well as the most recent overall Strategic Science Plan, consult http://www.aoml.noaa.gov/flbay/; or contact the IFB Program's Executive Officer: William Nuttle, Executive Officer, Interagency Science Center, 98630 Overseas Highway, Key Largo, FL 33037.

The Florida Keys National Marine Sanctuary (FKNMS) resources trusteeship and management activities discussed later in this document under **SUPPLEMENTARY INFORMATION** can be viewed on http://www.fknms.nos.noaa.gov. The geographic scope and the subregions encompassed referred to later in this document under **SUPPLEMENTARY INFORMATION** can be found at: http://www.aoml.noaa.gov/ocd/sferpm/sub.html.

Detailed information regarding South Florida Ecosystem Restoration discussed later in this document under **SUPPLEMENTARY INFORMATION**, subparagraph, the Research Program, can be viewed at http://www.sfrestore.org.

To view Important Documents including the Florida Bay Interagency Program Management Committee (PMC) comments on the RESTUDY Draft Feasibility Report and the Feasibility report referenced later in this document under **SUPPLEMENTARY INFORMATION**, subparagraph, The Research Program, see the COP or SFERPM websites listed earlier in this section.

SUPPLEMENTARY INFORMATION:

Background

Program Description

For complete Program Description and Other Requirements criteria for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual notification in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

The SFERPM and SFLMR programs are two of a number of Federal and state programs that together comprise the IFB Program. The interagency program supports monitoring, research and modeling activities designed to understand the effects of South Florida Ecosystem Restoration upon coastal ecosystems including the FKNMS.

It is intended to provide some of the information required by an iterative restoration process through which management alternatives are developed and selected, alternatives implemented and physical and biological responses assessed. It is further anticipated that this evaluation process will be repeated as restoration proceeds since decisions will be driven by the best available scientific information.

The activities conducted to restore the South Florida ecosystem occur predominately upstream of Florida Bay and the restoration impacts may not be direct or immediate. Therefore, improving our capability to predict these impacts is the ultimate goal of the IFB Science Program. Attaining this predictive capability implies a better understanding of the physics and ecology of Florida Bay and the larger coastal ecosystem.

The SFLMR program focuses upon research on fishery resources, protected resources, and higher trophic level organisms and the interactions with living marine resources. Living marine resources include: fishery resources, both recreational and commercial, and protected resources—including endangered species, marine mammals, corals, and species that are candidates for listing under the Endangered Species Act (ESA) and their habitats. Research results will allow for the projection of the impacts of changes in freshwater delivery on living marine resources.

The Florida Bay Science Program was initially based upon the 1994 Florida Bay Science Plan developed for the Florida Bay Interagency Working group, as specifically suggested by a scientific panel convened at the request of the Secretary of the Interior. That Science Plan identified research deficiencies and unanswered questions concerning the condition and ecological history of Florida Bay and established the Florida

Bay PMC and its formal administrative process.

The PMC, explicitly linked to and sanctioned by the South Florida Restoration Task Force through its Working Group and Science Coordination Team, consists of designated representatives of the state and Federal agencies conducting or funding research in this part of the South Florida coastal marine ecosystem. The PMC is charged with providing policy makers reliable scientific information and science-based recommendations, including timely evaluation of the effects that different upstream management alternatives might have upon the ecosystem within Florida Bay and the adjacent coastal marine ecosystem.

To accomplish its objectives the PMC:

(1) Developed a Strategic Science Plan in March 1997 for Florida Bay to guide individual agency implementation plans and to prioritize allocation of resources;

(2) Evaluates individual agency implementation plans to avoid redundancy and assures research efforts are complementary; and together, to make the best use of the technical and financial resources being made available for South Florida coastal ecosystem restoration science;

(3) Sponsors an Annual Science Conference to which all funded investigator teams in all the various agencies are required to participate;

(4) Sponsors topical workshops on critical scientific issues;

(5) Established a Scientific Oversight Panel composed of distinguished, knowledgeable, but financially disinterested, scientists from outside this region. This panel is asked to attend the Annual Science Conference; to chair or participate in topical workshops that require technical panel input; and to recommend to the PMC any changes in the science program to assure it is meeting the requirements of the South Florida Ecosystem Restoration Process;

(6) Established research teams consisting of funded investigators and interested experts to review and integrate plans and sampling protocols of related projects including data management; and

(7) Established an administrative infrastructure consisting of an Executive Officer, a Florida Bay Research Coordinator, and an Outreach/Education Office.

Additional Program Description

SFERPM's contribution to the Interagency Science Program has been to focus upon the larger oceanographic, atmospheric, geological and fisheries context within which Bay restoration will proceed. This has implied studying the Bay's interaction and exchange with the adjacent Atlantic and Gulf of Mexico coastal marine ecosystems and its regulation by large scale atmospheric and meteorological processes that so intimately link the coastal marine to the coastal terrestrial systems in South Florida.

The SFLMR Program began in 1996 with funding through the NMFS. Funding of research projects beginning in FY 2000 will result from this competitive process. The focus of this program is on living marine resources, especially those that are commercially and recreationally important, or are protected, and their habitats.

SFERPM directly addresses the linkage between Florida Bay and the Florida Keys, thus complementing other NOAA South Florida Ecosystem Restoration Initiative related activities such as the NMFS-lead Protection of Living Marine Resources/Threatened and Endangered Species studies, NOS-led Integrated Florida Bay and Florida Keys Ecosystem Monitoring programs, FKNMS resources trusteeship and management activities. Detailed information including the most recent SFERPM Implementation Plan for the program and other program documents can be obtained from the address/homepage address listed earlier in this document under **FURTHER INFORMATION.**

Program Goals

The overall goals of the Interagency Program were outlined as five management related central questions in the Strategic Science Plan for Florida Bay. These are:

(1) How, and at what rates, do storms, changing freshwater flows, sea level rise, and local evaporation/precipitation influence circulation and salinity patterns within Florida bay and outflows from the Bay to adjacent waters?

(2) What is the relative importance of the influx of external nutrients and of internal nutrient cycling in determining the nutrient budget of Florida Bay? What mechanisms control the sources and sinks of the Bay's nutrients?

(3) What regulates the onset, persistence and fate of planktonic algal blooms in Florida Bay?

(4) What are the causes and mechanisms for the observed changes in the sea grass community of Florida Bay? What is the effect of changing salinity, light, and nutrient regimes on these communities?

(5) What is the relationship between environmental and habitat change and the recruitment, growth, and survivorship of animals in Florida Bay?

The NOAA role has been to focus on the larger oceanographic, atmospheric, geological, and biological aspects of these questions. As noted earlier, detailed descriptions of past projects supported and their findings to date can be found on the SFERPM website under Funded Projects. The geographic scope and the subregions encompassed can be found at the address/homepage listed earlier in this document under **FURTHER INFORMATION.** Where essential to describe the linkages between Florida Bay and the adjacent waters, some projects have had a still wider geographic scope.

The Research Program

The Interagency Science Program has been underway for several years and is now entering an Implementation Phase at which it is being asked to deliver information directly to the Restoration Management Community concerning minimum flow levels to Florida Bay; restoration performance measures; and ecological success criteria. See the South Florida Ecosystem Restoration Website for additional details at the address/homepage listed earlier in this document under **FURTHER INFORMATION.**

Moreover, water quality and physical modeling efforts are relatively mature but require validation and verification. Using these models to evaluate restoration scenarios will require continued data assimilation. Ecological models of upper and lower trophic levels are also in development and will have similar data requirements.

To date, restoration targets relative to Florida Bay have been posed purely in terms of flow delivery to points well upstream of Florida Bay. These are deemed by the PMC to be good first steps but ultimately inadequate. See the CSCOR or SFERPM websites listed earlier in this document under **FURTHER INFORMATION** to view Important Documents including PMC Comments on the RESTUDY Draft Feasibility Report and the Feasibility report itself.

In its review of the Restudy, the PMC committed itself to providing ecologically based restoration targets and performance measures for use in evaluating restoration scenarios and actions. Given the advice and recommendations of the PMC and Florida Bay Science Oversight Panel (FBSOP), NOAA's trustee and other management responsibilities in the region, and the likely funding of our Federal and state agency partners, CSCOR and NMFS/SEFSC anticipate funding SFERPM projects in the following research areas:

(1) *Nutrient Dynamics*: Includes phosphorous and nitrogen cycles within

the water column, exchange between the water column and benthos, and governing biogeochemical processes;

(2) *Water Column Biology*: Includes trophic linkages, benthic-pelagic coupling, and the potential impact of Bay water quality upon living marine resources and the FKNMS;

(3) *Physical Science*: Includes circulation within the Bay, improving estimates of critical processes (i.e., evaporation, precipitation and wind stress), and providing data assimilation model based boundary conditions to bay circulation and hydrological models;

(4) *Ecosystem Modeling Studies*: Includes modeling of trophic relationships of recruitment pathways;

(5) *Higher trophic levels*: Monitoring and research are needed to provide answers to question 5 in the Strategic Science Plan. Results obtained should be directed at determination of the effects of changes in water quality and quantity and patterns on higher trophic level organisms especially important commercial and recreational fishery resources and mass protected resources, such as sea turtles, marine mammals and species listed as candidates for listing under the ESA.

Research Areas

(1) Nutrients

The growth of both sea grasses and planktonic algae blooms depends upon the supply of plant nutrients. In Florida Bay these are introduced by freshwater runoff, groundwater seepage, atmospheric deposition, resuspension of bottom sediments and exchange with the Southwest Florida shelf. A quantitative understanding of the relative importance of these various processes and how they effect algal blooms has been the goal of SFERPM Nutrient Chemistry projects. Proposals are now solicited that refine our understanding of phosphorous and nitrogen cycles within the water column as well as between the water column and benthos and biogeochemical processes governing nutrient availability including atmospheric flux and the microbial loop.

(2) Water Column Biology

Florida Bay is both a nursery ground and primary habitat for numerous commercially and recreationally significant fisheries species. The principal food of the young of many of these species is zooplankton that, in turn, consume planktonic algae. Moreover, many fisheries species have early stages living in the plankton. Planktonic animals are very sensitive to changes in water quality. Predicting the consequences of Restoration upon this ecosystem has been a goal of SFERPM Water Column Biology projects.

The health of the coral reef community of the Florida Keys National Marine Sanctuary (FKNMS) depends upon the water quality (temperature, salinity, nutrients, and chemical contaminants) of the waters that flow over them. With Restoration, not just water quantity but water quality throughout South Florida coastal waters will be changed. Proposals are now solicited that address trophic relationships between biological communities, ecosystem changes directly or indirectly related to Bay habitat changes, algal bloom causation and fate, benthic-pelagic coupling, and the impact of Bay water quality upon living marine resources and the FKNMS.

(3) Physical Science

Unless we have a detailed understanding of circulation, temperature, and salinity within the Bay and how the Bay is linked to the surrounding waters of the South West Florida shelf and the FKNMS, we will be unable to predict the physical effects of Restoration i.e., what parts of the Bay will be affected by altered water flows and how they will be changed.

Similarly, unless we have a detailed understanding of the wind field over the Bay, and the rainfall and evaporation distribution over the entire Peninsula, we will be unable to predict which parts of the Bay will be affected by altered water flows and what the resultant changes will be. Providing estimates of these critical parameters and how they will be locally and regionally altered by the major land use changes implicit in Restoration has been a goal of the SFERPM physical oceanography and atmospheric science projects. Proposals are now solicited characterizing circulation and flow within the Bay (including improving estimates of basin residence and turnover times), improving estimates of critical physical processes (especially evaporation and precipitation) and providing the meteorological boundary conditions required by circulation and hydrological models.

(4) Ecosystem Modeling Studies

Over the past several decades we have seen fundamental changes in the Bay ecosystem; and with Restoration, we can expect the rate of change to accelerate. The goal of SFERPM Ecological Modeling has been to use the physical, chemical and biological information being generated by SFERPM and other projects to predict how the underlying ecology of Florida Bay will change with restoration.

Proposals are now solicited that contribute to the Interagency Upper Trophic Level modeling program including the modeling of recruitment pathways within the FKNMS and/or between the FKNMS and Florida Bay. The PMC website should be consulted for the results of PMC sponsored workshops entitled: Higher Trophic Level Initiative for the Florida Bay Program and Progress Review of Florida Bay Models: Report of the Model Evaluation Group.

(5) Higher Trophic Level Research and Monitoring

The success of restoration is measured in part by the sustainability of fishery and protected resources. It is imperative that models be developed which will provide information on how changes in water quality, including salinity levels and contaminants, will effect the population and trophic dynamics of living marine resources and their habitats. These models require data.

Proposals are now solicited to conduct research and monitoring to define both qualitatively and quantitatively the mechanisms controlling growth, reproduction, recruitment and age/stage specific survivorship of commercially and recreationally important species and protected resources, such as sea turtles and bottle nosed dolphins are encouraged.

For protected resources in particular, proposals which provide population estimates and the relative importance of South Florida coastal waters to recovery are encouraged. Information generated by research projects directed at the other four questions in the Strategic Science Plan is expected to be integrated with the proposed research in so far as it effects the dynamics of individual species and protected resources and their habitats.

Part I: Schedule and Proposal Submission

The guidelines for proposal preparation provided here are mandatory. Proposals received after the published deadline or proposals that deviate from the prescribed format will be returned to the sender without further consideration. This announcement and additional background information will be made available on the COP home page.

Full Proposals

Applications submitted in response to this announcement require an original proposal and 19 proposal copies at time of submission. This includes color or high-resolution graphics, unusually-sized materials (not 8.5" x 11" or 21.6 cm x 28 cm), or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for the number of original proposal copies provide for a timely review process because of the large number of technical reviewers. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

All recipients are to closely follow the instructions and guidelines in the preparation of the standard NOAA Application Forms and Kit requirements listed in Part II: Further Supplementary Information, paragraph (10) of this document. Each proposal must also include the following seven elements:

(1) *Signed Summary title page*: The title page should be signed by the Principal Investigator (PI) and the institutional representative. The Summary Title page identifies the project's title starting with the acronym SFERPM 2000, a short title (<50 characters), and the lead PI's name and affiliation, complete address, phone, FAX, and E-mail information. The requested budget for each fiscal year should be included on the Summary Title page. Multi-institution proposals must include signed Summary Title pages from each institution.

(2) *One-page abstract/project summary*: The Project Summary (Abstract) Form, which is to be submitted at time of application, shall include an introduction of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. The prescribed COP format for the Project Summary Form can be found on the COP Internet site under the COP Grants Support Section, Part D.

The summary should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost, and budget period. These should be written in the third person. The summary is used to help compare proposals quickly and allows the respondents to summarize these key points in their own words.

(3) *Statement of work/project description:* The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goals of the SFERPM Program, and its scientific priorities. The project description section (including Relevant Results from Prior Support) should not exceed 15 pages.

Project management should be clearly identified with a description of the functions of each PI within a team. It is important to provide a full scientific justification for the research; do not simply reiterate justifications presented in this document. Both page limits are inclusive of figures and other visual materials, but exclusive of references and milestone chart. This section should also include:

(a) The objective for the period of proposed work and its expected significance;

(b) The relation to the present state of knowledge in the field and relation to previous work and work in progress by the proposing principal investigator(s);

(c) A discussion of how the proposed project lends value to the program goals, and

(d) Potential coordination with other investigators.

NOAA has specific requirements that environmental data be submitted to the National Oceanographic Data Center.

(e) References cited: Reference information is required. Each reference must include the name(s) of all authors in the same sequence in which they appear in the publications, the article title, volume number, page numbers, and year of publications. While there is no established page limitation, this section should include bibliographic citations only and should not be used to provide parenthetical information outside of the 15–page project description.

(4) *Milestone chart*: Time lines of major tasks covering the 12 to 24-month duration of the proposed project.

(5) *Budget*: At time of proposal submission, all applicants shall submit the Standard Form, SF–424 (Rev 7–97), Application for Federal Assistance, to indicate the total amount of funding proposed for the whole project period. In lieu of the Standard Form 424A, Budget Information (Non-Construction), at time of original application, all proposers are required to submit a COP Summary Proposal Budget Form for each fiscal year increment (i.e., 2000, 2001). Multi-institution proposals must include budget forms from each institution.

Use of this budget form will provide for a detailed annual budget and the level of detail required by the COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form is compatible with forms in use by other agencies that participate in joint projects with COP, and can be found on the COP home page under COP Grants Support, Part D.

All applicants shall include a budget narrative/justification that supports all proposed budget object class categories. The program office will review the proposed budgets to determine the necessity and adequacy of proposed costs for accomplishing the objectives of the proposed grant. Ship time needs must be identified in the proposed budget. The SF–424A, Budget Information (Non-Construction) Form, shall be requested from only those recipients subsequently recommended for award.

(6) *Biographical sketch*: Abbreviated curriculum vitae, two pages per investigator, are sought with each proposal. Include a list of up to five publications most closely related to the proposed project and up to five other significant publications. A list of all persons (including their organizational affiliation), in alphabetical order, who have collaborated on a project, book, article, or paper within the last 48 months should be included. If there are no collaborators, this should be so indicated. Students, post-doctoral associates, and graduate and postgraduate advisors of the PI should also be disclosed. This information is used to help identify potential conflicts of interest or bias in the selection of reviewers.

(7) *Proposal format and assembly*: Clamp the proposal in the upper left-hand corner, but leave it unbound. Use one inch (2.5 cm) margins at the top, bottom, left and right of each page. Use a clear and easily legible type face in standard 12 points size.

Part II: Further Supplementary Information

(1) *Program authorities*: For a list of all program authorities for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page. Specific authority cited for this announcement is 33 U.S.C. 1442 *et seq.*

(2) *Catalog of Federal Domestic Assistance Numbers*: 11.478 for the Coastal Ocean Program and 11.472 for the National Marine Fisheries Service, Southeast Fisheries Science Center.

(3) *Program description*: For complete COP program descriptions, see the annual COP General Document (64 FR 49162, September 10, 1999).

(4) *Funding availability*: Funding is contingent upon receipt of fiscal years 2000–2001 Federal appropriations. The anticipated maximum annual funding

for SFERPM and SFLMR activities is $1.9 million.

If an application is selected for funding, NOAA has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Renewal of an award to increase funding or extend the period of performance based on satisfactory performance and is at the total discretion of the funding agency.

Publication of this document does not obligate NOAA to any specific award or to any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

(5) *Matching requirements*: None.

(6) *Type of funding instrument*: Project grants

(7) *Eligibility criteria*: For complete eligibility criteria for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page under General Announcement.

Federal researchers in successful multi-investigator proposals will be funded through NOAA. Proposals deemed acceptable from Federal researchers will be funded through a mechanism other than a grant or cooperative agreement, where legal authority allows for such funding. Non-NOAA Federal applicants are required to submit certification or documentation which clearly shows that they can receive funds from the Department of Commerce (DoC) for research (i.e., legal authority exists allowing the transfer of funds from DoC to the non-NOAA Federal applicant's agency).

(8) *Award period*: Full Proposals should cover a project period of 1 to 2 years, from FY 2000–01 to FY 2001–02.

(9) *Indirect costs*: If indirect costs are proposed, the following statement applies: The total dollar amount of the indirect costs proposed in an application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

(10) *Application forms*: For complete information on application forms for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999); the COP home page; and the information given earlier in this document under Required Elements, paragraph (5) Budget.

(11) *Project funding priorities*: For description of project funding priorities, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(12) *Evaluation criteria*: For complete information on evaluation criteria, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(13) *Selection procedures*: For complete information on selection procedures, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(14) *Other requirements*: As participants in the Interagency Science Program, funded principal investigators will be expected to:

(a) Participate in meetings for planning and coordination of the Interagency Program. This includes attending and contributing to the Annual Interagency Florida Bay Science Program Conference, Research Team Meetings, and other relevant technical workshops sponsored by the PMC at the request of the SFERPM Coordinating Office.

(b) Promptly quality control their data and make them readily available through the SFERPM Data Management Office in accordance with the SFERPM Data Policy, which is referenced earlier in this document under **FURTHER INFORMATION.**

(c) Assist the SFERPM Coordinating Office and the Interagency PMC in the synthesis and interpretation of research results and the development of products of value to restoration and resource managers. For a complete description of other requirements, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(15) Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

(16) Pursuant to Executive Orders 12876, 12900 and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

(17) This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL have been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

The COP Grants Application Package has been approved by OMB under control number 0648–0384 and includes the following information collections: a Summary Proposal Budget Form, a Project Summary Form, standardized formats for the Annual Performance Report and the Final Report, and the submission of up to 20 copies of proposals. Copies of these forms and formats can be found on the COP Home Page.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: March 13, 2000.

Ted I. Lillestolen,

Deputy Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

Dated: March 3, 2000.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–6852 Filed 3–17–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031400A]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting of the Mackerel Stock Assessment Panel (MSAP).

DATES: This meeting will begin at 1:00 p.m. on Monday, April 3, 2000 and will conclude by 12:00 noon on Friday, April 7, 2000.

ADDRESSES: The meeting will be held at the National Marine Fisheries Service Southeast Fisheries Science Center, 75 Virginia Beach Drive, Miami, Florida.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Leard, Senior Fishery Biologist, Gulf of Mexico Fishery Management Council; 813–228–2815.

SUPPLEMENTARY INFORMATION: The MSAP will convene to review a full stock assessment for Gulf group king mackerel. The MSAP will also review stock assessment updates for the Atlantic group king mackerel and Gulf and Atlantic migratory groups of Spanish mackerel. The MSAP will consider available information, including but not limited to, commercial and recreational catches, natural and fishing mortality estimates, recruitment, fishery-dependent and fishery-independent data, and data needs. These analyses will be used to determine the condition of the stocks and the levels of acceptable biological catch for the 1999–2000 fishing year. The MSAP will also review available stock assessment data for dolphin and wahoo. The MSAP may also review estimates/proxies for maximum sustainable yield management targets, and rebuilding schedules.

Although non-emergency issues not contained in this agenda may come before the MSAP for discussion, those issues may not be the subject of formal MSAP action during this meeting. MSAP action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305 (c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency. A copy of the MSAP agenda can be obtained by calling (813) 228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 14, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–6811 Filed 3–17–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 030100E]

Marine Mammals; File No. 763–1534–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that the National Zoological Park, Smithsonian Institution, Washington, D.C. 20008–2598 [Principal Investigator: Dr. Daryl Boness], has been issued a permit to import/export grey seal specimen and other non-endangered marine mammal specimen for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289); and

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On December 30, 1999, notice was published in the **Federal Register** (64 FR 73523) that a request for a scientific research permit to collect samples from grey seals and import/export samples taken opportunistcally from non-endangered marine mammals of the Orders Pinnipedia (except walrus) and Cetacea had been submitted by the above-named organization. The requested permit has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), and the Fur Seal Act of 1966, as amended (16 U.S.C. 1151 *et seq.*).

Dated: March 10, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–6810 Filed 3–17–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 013100B]

Marine Mammals; File No. 376–1520–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. James H.W. Hain, Holder/Principal Investigator, Associated Scientists of Woods Hole, Box 721, 3 Water Street, Woods Hole, Massachusetts 02543, has been issued a permit to take marine mammals for purposes of scientific research.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930, (978/281–9250); and

Regional Administrator, Southeast Region, NMFS, 9721 Executive Center Drive North, St. Petersburg, FL 33702–2432 (813/570–5312).

FOR FURTHER INFORMATION CONTACT: Ruth Johnson, 301/713–2289.

SUPPLEMENTARY INFORMATION: On June 23, 1999, Notice was published in the **Federal Register** (64 FR 33470) that a request for a scientific research permit to take various cetacean species, harbor and grey seals, and sea turtles during aerial/vessel surveys, collect stomach contents and baleen, and conduct passive acoustic activities had been submitted by the above-named individual. A modified version of the permit request has been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as

amended (ESA; 16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222–226). The take of right whales and sea turtles, and collection of stomach contents/baleen was not authorized.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: March 10, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–6838 Filed 3–17–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Electronic Filing System (EFS) Pilot

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DoC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 19, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 or via the Internet (LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Diane Lewis, EFS Project Staff, Search Information Resources Administration, Arlington, VA 22202, by telephone at (703) 305–9892, or by e-mail at EFS@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Patent and Trademark Office (PTO) has started a pilot program that enables applicants to expand upon the use of the Electronic Filing System (EFS) to file new utility patent applications electronically via the Internet. The EFS pilot program is currently limited to nine participants, however, the PTO expects to increase participation in August 2000. Electronic filing under this pilot is currently limited to new utility patent applications. Once the PTO moves into production, the electronic filing capability will be expanded to include filings of additional information after the initial filing of the new utility patent application. The PTO plans to put EFS into full production no later than February 2001.

In order to file a new utility patent application through the EFS, the applicant uses two different components—the EFS Specification Authoring Template and the electronic Packaging and Validation Engine (ePAVE). The authoring template enables the applicant to create an electronically tagged patent application specification document that is one part of a new utility patent application. The ePAVE desktop software enables applicants to author information related to the submission of a new utility patent application, as well as securely bundle and transmit all new patent application parts and information to the PTO via the Internet. The EFS Specification Authoring Template facilitates the authoring of the narrative that discloses the technical description of the invention. The template does not produce a form document, but rather a multi-line electronic document with tagged elements that may or may not have drawings. The template creates the XML tags that are necessary for the electronic document to be filed using the Internet and ensures that all of the information needed to process the application is provided by the applicant.

The EFS Specification Authoring Template allows the applicant to create a structured, extensible Mark-up Language (XML) tagged specification document using a commercially available word processing package. This document may also contain one or more TIFF (tagged image file format) files containing the scanned image of the drawing figure(s), oaths or declarations, and small entity statements.

The ePAVE software transmits the documents created by the EFS Specification Authoring Template to the PTO via the Internet. The ePAVE software enables the applicant to create the rest of the information required for a new utility patent application submission. The applicant attaches the XML-tagged specification document file and TIFF images (*e.g.* declaration, drawings) and creates an XML fee transmittal document that calculates the filing fees. The ePAVE software captures the applicant's signature, validates the submission, confirms with the applicant that the submission is correct, uploads it to the PTO, and sends an Acknowledgment Screen. The ePAVE software saves a copy of all of the electronic files associated with the electronic filing of a new utility patent application. The ePAVE software compresses the electronic files prior to transmission to the PTO, so filers do not need to compress their files when submitting applications via the Internet using EFS.

The PTO will not accept executable files (.exe) as part of an application filed electronically through the Internet. In order to use EFS to file the utility patent applications, applicants must have a digital certificate. Applicants can obtain an application for a digital certificate through the PTO Electronic Business Center website, http://pto-ebc.uspto.gov. Currently, applications in the biotechnology arts, design patent applications, provisional applications, and those involving color are not suitable for filing. Applicants do not have to use the EFS Specification Authoring Template to create specification documents, but if they plan on using EFS to file a new utility patent application, they must use the authoring template.

II. Method of Collection

Electronically through the ePAVE software via the Internet.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: New collection.
Affected Public: Individuals or households; businesses or other for-profit organizations; not-for-profit institutions; farms; state, local or tribal governments; and the Federal Government.
Estimated Number of Respondents: The PTO estimates that 30,000 new utility patent applications will be filed electronically via the Internet per year once EFS moves into full production. At this time, participation in the pilot is limited to nine participants. In August, the PTO plans to steadily increase the participation in the pilot to a wider audience.
Estimated Time Per Response: It is estimated to take approximately 13.25 hours to read the instructions and the user guide, gather the necessary data, complete, and submit a new utility patent application using the EFS Specification Authoring Template and ePAVE. This includes 10.75 hours to gather the information, read the instructions and user guides, and prepare the specification document using the EFS Specification Authoring Template, and 2.5 hours for tagging the elements and submitting the application electronically.
Estimated Total Annual Burden Hours: 397,500 hours per year.

Estimated Total Annual Cost Burden: The PTO provides the EFS specification authoring template and ePAVE software to the customer. However, some participants have voluntarily purchased a word processing license or upgrade to their word processing package to take full advantage of the authoring template. In light of this, the PTO estimates a possible capital start-up cost ranging from $100 to $200. The PTO has determined from the pilot that a mix of attorneys and paraprofessional clerical personnel have been creating and submitting the new utility patent applications using EFS. Using the average of the professional hourly rate for associate attorneys in private firms ($175) and paraprofessional/clerical ($30), the PTO estimates $40,942,500 for salary costs associated with respondents.

Format/data entry screens	PTO form number	Estimated time for response	Estimated annual burden hours	Estimated annual responses
EFS Pilot Specification Authoring Template	No Forms Associated	10.75	397,500	30,000
ePAVE		2.5		
Totals			397,500	30,000

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 14, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–6764 Filed 3&–17&–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Patent Cooperation Treaty

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 19, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, D.C. 20230 or via the Internet *(LEngelme@doc.gov).*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Rafael Bacares by telephone at (703) 308–6312, by facsimile transmission at (703) 308–6459, or by e-mail at *rbacares@uspto.gov.*

SUPPLEMENTARY INFORMATION:

I. Abstract

This collection of information is required by the provisions of the Patent Cooperation Treaty (PCT), a United Nations Treaty that was signed on June 19, 1970 by the 20 member states of the Paris Union for the Protection of Industrial Property (of which the United States is a member). The general purpose of the PCT is to simplify the filing of patent applications for the same invention in different countries. This treaty standardizes the filing procedures and the format of the application, and enables an applicant to file one international application in one location, in one language and pay one initial set of fees. The international application receives an international filing date (priority date) that is considered to be the actual filing date in the various designated countries. The PCT has streamlined the filing process and made it more efficient. The PCT became operational in June of 1978, and is administered by the World Intellectual Property Organization (WIPO) in Geneva, Switzerland.

The United States Patent and Trademark Office (PTO) acts in the capacity of the United States Receiving Office (RO/US) for international applications filed by residents and nationals of the United States. While applicants send most of their correspondence directly to the PTO, they also can file certain documents directly with the International Bureau (IB). The PTO also serves in the capacity of an International Searching Authority (ISA) and an International Preliminary Examining Authority (IPEA).

The PCT allows for the introduction of electronic filing of the international application, as long as the confidentiality requirements are met. The PTO currently has various electronic filing efforts underway. One of these, the Patent Cooperation Treaty (PCT) Operations Workflow and Electronic Review (POWER), will allow for the electronic filing of international applications. POWER is being implemented in two phases. Phase I, which the PTO released in October 1999, allows the PTO to electronically process international applications. The second phase of POWER, currently in development, will allow applicants to file their international applications electronically. The PTO estimates that Phase II will be released in late FY 2000.

II. Method of Collection

The current method of collection of the PCT application by the PTO is either by mail or hand delivery. Follow-up communications (e.g. amendments, petitions, etc.), except for drawings, may, in addition to the above methods, be transmitted to the PTO by facsimile.

III. Data

OMB Number: 0651–0021.

Form Numbers: Form PCT/RO/101, Form PCT/RO/101 (Annex), PTO/1382, Form PCT/Model of power of attorney, Form PCT/Model of general power of attorney, Form PCT/RO/134, Form PCT/RO/144, Form PCT/IPEA/401, Form PCT/IPEA/401 (Annex), and Form PCT/IB/328. Not all of the information required by this collection is collected from the public by using forms. It is not mandatory that an applicant use these forms to provide the PTO with the necessary information. However, the PTO advises applicants to use these forms to ensure that all of the necessary information is provided and to assist the PTO in processing the international applications quickly and efficiently.

Type of Review: Renewal with change.

Affected Public: Individuals or households, business or other for-profit organizations; not-for-profit institutions, farms, Federal Government, and state, local, or tribal government.

Estimated Number of Respondents: 467,103 responses per year. Of this total, 48,149 responses are due to additional requirements overlooked in previous submissions. The PTO estimates that 29,367 requests to the IB to transmit copies of an international application; 3,305 withdrawals of internal applications, designations of the state, demands, election, and priority claims; 522 requests/authorizations to access international applications; and 14,955 translations will be submitted per year.

Estimated Time Per Response: The PTO estimates that it will take the public from 15 minutes to 4 hours to gather the information required by this information collection. In addition, the PTO estimates that it will take the public from 15 minutes to 2 hours to provide the information for the information requirements overlooked in the previous submissions. The time estimates for the forms include the amount of time that the PTO estimates that it will take an applicant to read and understand the instructions, gather the necessary information, complete the forms, prepare the necessary attachments, and submit the forms to the PTO.

Estimated Total Annual Burden Hours: 467,103 hours per year.

Estimated Total Annual Cost Burden: $0 (no capital start-up or maintenance expenditures are required). Using the professional hourly rate of $175.00 for associate attorneys in private firms, the PTO estimates $81,743,025 for salary costs associated with respondents.

Item	PTO form number	Estimated time for response (hours)	Estimated annual burden hours	Estimated annual responses
Request and Fee Calculation	PCT/RO/101	1	30,305	30,305
Description/claims/drawings/ abstracts	Not Applicable	3	91,000	273,000
Transmittal letter to the RO/US	PTO/1382	0.25	21,214	5,304
PCT/Model of Power of Attorney	Same as Title	0.25	20,000	5,000
PCT/Model of General Power of Attorney	Same as Title	0.25	2,729	682
Extensions of time	Not Applicable	0.25	24,244	6,061
Priority documents	Not Applic able	0.25	45,000	11,250
Indications/deposited microorganisms	PCT/RO/134	0.25	303	76
Response to invitation to correct defects	Not Applicable	2	91,000	182,000
Request for rectification of obvious errors	Not Applicable	0.5	2,174	1,087
Notice/confirmation/precautionary designations	PCT/RO/144	0.25	3,305	826
Demand (Annex and Notes)	PCT/IPEA/40/1	1	14,151	14,151
Amendments	Not Applicable	1	12,028	12,028
Notice Effecting Later Elections	PCT/IB/328	0.25	47,621	11,905
Fee Authorization	Not Applicable	0.25	12,122	3,031
Petitions	Not Applicable	4	1,758	7,032
Requests to transmit copies of international application	Not Applicable	0.25	29,367	7,342
Withdrawal of international application/designations of the state/ demands/elections/priority claims.	Not Applicable	0.25	3,305	826
Request/authorization to access international application	Not Applicable	0.25	522	131
Translations	Not Applicable	2	14,955	29,910
TOTALS			467,103	601,947

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, e.g., the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 14, 2000.

Madeleine Clayton,

Management Analyst, Office of the Chief Information Officer.

[FR Doc. 00–6765 Filed 3–17–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0149]

Proposed Collection; Comment Request Entitled Subcontract Consent

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0149).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Subcontract Consent. This OMB Clearance expires on June 30, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before May 19, 2000.

ADDRESSES: Comments including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Office of Federal Acquisition Policy Division, GSA (202) 501–3775.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective to consent to subcontract, as discussed in FAR Part 44, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds, and complies with Government policy when subcontracting. The consent package provides the administrative contracting officer a basis for granting, or withholding consent to subcontract.

B. Annual Reporting Burden

Number of Respondents: 4,252.
Responses Per Respondent: 3.61.
Total Responses: 15,349.
Average Burden Hours Per Response: .87.
Total Burden Hours: 13,353.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0149, Subcontract Consent, in all correspondence.

Dated: March 14, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–6725 Filed 3–17–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0007]

Proposed Collection; Comment Request Entitled Summary Subcontract Report

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension of an existing OMB clearance (9000–0007).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Summary Subcontract Report. This OMB Clearance expires on June 30, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before May 19, 2000.

ADDRESSES: Comments including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), Room 4035 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Victoria Moss, Office of Federal Acquisition Policy Division, GSA (202) 501–4764.

SUPPLEMENTARY INFORMATION:

A. Purpose

In accordance with the Small Business Act (15 U.S.C. 631, *et seq.*), contractors receiving a contract for more than $10,000 agree to have small and small disadvantaged business concerns participate in the performance of the contract as far as practicable. Contractors receiving a contract or a modification to a contract expected to exceed $500,000 ($1 million for construction) must submit a subcontracting plan that provides maximum practicable opportunities for small and small disadvantaged business concerns. Specific elements required to be included in the plan are specified in section 8(d) of the Small Business Act and are implemented in FAR 19.7.

Number of Respondents: 4,253.
Responses Per Respondent: 1.66.
Total Responses: 7,060.
Average Burden Hours Per Response, 12.90.
Total Burden Hours: 91,074.
Obtaining Copies of Justifications: Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, 1800 F Street, NW, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0007, Summary Subcontract Support, in all correspondence.

Dated: March 14, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–6726 Filed 3–17–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 19, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 14, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Reinstatement.
Title: Performance Report for the Ronald E. McNair Postbaccalaureate Achievement Program.
Frequency: Annually.
Affected Public: Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 1.
Burden Hours: 702.

Abstract: The Ronald E. McNair Postbaccalaureate Achievement Program grantees are required to submit the report annually. The reports are used to monitor the performance of grantees prior to awarding continuation funds and to assess a grantee's prior experience at the end of each budget period. The Department will also aggregate the data to provide descriptive information and analyze program impact.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Written comments or questions regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–6763 Filed 3–17–00; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

National Nuclear Security Administration [1]

Record of Decision: Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico

AGENCY: Department of Energy.
ACTION: Record of decision.

SUMMARY: The U.S. Department of Energy (DOE) is issuing this Record of Decision on the conveyance and transfer of certain land tracts previously identified as being potentially suitable for this action as required by Public Law 105–119, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Fiscal Year 1998 (Section 632, 42 United States Code [U.S.C.] § 2391; the Act). This Record of Decision is based upon the requirements for DOE action as stated in the Act and upon the information contained in the Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico, DOE/EIS–0293. DOE has decided to implement the Preferred Alternative, i.e., seven tracts will be conveyed or transferred in full, and three tracts (Airport, TA–21, and White Rock Y) will be conveyed or transferred in part, based on DOE's continuing or future need for an individual tract, or a portion of the tract, to meet the national security mission support function at the Los Alamos National Laboratory (LANL). In the "Conveyance and Transfer" EIS discussion of the Preferred Alternative, DOE identified the potential partial transfer of the White Rock Y Tract due to the developing proton radiography project, and the tract was considered as one of the tracts that would be conveyed in whole or in part by 2007. In this Record of Decision, DOE is conveying or transferring only part of the White Rock Y Tract because of the potential national security mission need. Should DOE's siting of the proposed proton radiography project not require a part of the White Rock Y Tract as a buffer area, DOE will reassess the need to retain any buffer areas and amend this Record of Decision, as needed.

Additionally, the disposition of each tract, or portion of a tract, will be subject to the ability of DOE to complete any necessary environmental restoration or remediation. DOE will convey to the Incorporated County of Los Alamos and/or transfer to the Department of the Interior, in trust for the San Ildefonso Pueblo, ten tracts, in whole or in part, totaling about 4,046 acres. Pursuant to the Allocation Agreement between the County of Los Alamos and the San Ildefonso Pueblo submitted to the Secretary of Energy on January 7, 2000, all lands are to be received by the County of Los Alamos except for portions of the TA–74 Tract, the White Rock Y Tract, and the White Rock Tract.

FOR FURTHER INFORMATION CONTACT: For further information on the Conveyance and Transfer EIS or to receive a copy of this EIS or other information related to this Record of Decision, contact: Elizabeth Withers, Document Manager, U.S. Department of Energy, Los Alamos Area Office, 528 35th Street, Los Alamos, NM 87544, (505) 667–8690.

[1] The National Nuclear Security Administration was established by the National Defense Authorization Act for Fiscal Year 2000, Public Law 106–65, Title XXXII, Oct. 5, 1999, 113 Stat. 953 *et seq.*

For information on the DOE National Environmental Policy Act (NEPA) process, contact: Carol M. Borgstrom, Director, Office of NEPA Policy and Assistance (EH–42), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600, or leave a message at (800) 472–2756.

SUPPLEMENTARY INFORMATION:

Background

DOE prepared this Record of Decision pursuant to the regulations of the Council on Environmental Quality for implementing NEPA (40 CFR parts 1500–1508) and DOE's NEPA Implementing Procedures (10 CFR part 1021). This Record of Decision is based on several factors such as national security mission need, estimated costs and cleanup durations and the technical feasibility of achieving restoration and remediation, and on information provided in the Environmental Impact Statement for the Conveyance and Transfer of Certain Land Tracts Administered by the Department of Energy and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, New Mexico (DOE/EIS–0293) (Conveyance and Transfer EIS).

LANL is one of several national laboratories that supports DOE's responsibilities for national security, energy resources, environmental quality, and science. LANL is located in north-central New Mexico, about 60 miles (97 kilometers) north-northeast of Albuquerque, and about 25 miles (40 kilometers) northwest of Santa Fe. The small communities of Los Alamos townsite, White Rock, Pajarito Acres, the Royal Crest Mobile Home Park, and San Ildefonso Pueblo are located in the immediate vicinity of LANL. LANL occupies an area of approximately 27,832 acres (11,272 hectares), or approximately 43 square miles (111 square kilometers). DOE also has administrative control over other properties and land within Los Alamos County that total about 915 acres (371 hectares).

In 1943, the Federal Government began acquiring land in the general area of Los Alamos, New Mexico, for the location of a secret research and development facility for the world's first nuclear weapon, known originally as "Project Y of the Manhattan Project" (now known as LANL). DOE is the Federal agency with current administrative responsibility for LANL. In 1949, the New Mexico Legislature created the County of Los Alamos (the County) from portions of Santa Fe and Sandoval Counties. However, most of the County remained under the control of the Federal Government until the 1950s.

Under the Atomic Energy Community Act (AECA) of 1955 (42 U.S.C. 2301–2394), the Federal Government recognized its responsibility to provide support for a specified period to agencies or municipalities that were strongly affected by their proximity to facilities that are part of the nation's nuclear weapons complex while these communities achieved self-sufficiency. Los Alamos, New Mexico, was established as a such a wholly government-owned community in which the Federal Government provided all municipal, educational, medical, housing, and recreational facilities. The AECA set forth the policies and obligations of the Federal Government to these communities, including provisions related to financial assistance payments. These policies were directed at terminating Federal Government ownership and management of the communities by facilitating the establishment of local self-government, providing for the orderly transfer to local entities of municipal functions, and providing for the orderly sale to private purchasers of property within these communities. The establishment of self-government and transfer of infrastructure and land were intended for the purpose of encouraging self-sufficiency of the communities through the establishment of a broad base for economic development. DOE's predecessor agency leased and disposed of some of the Federal lands under its management to the County, other government agencies, and to private parties in the late 1950's and early 1960's. In 1967, DOE's predecessor agencies began to transfer ownership of land tracts, roads, buildings, and some of the utility systems managed by DOE to the County to be made available for public use. The land that was released at that time was primarily located within the Los Alamos townsite and had been used for civilian housing and community support functions. A relatively small amount of land was auctioned to individuals and private developers to establish the Royal Crest Mobile Home Park, the White Rock and Pajarito Acres communities, and to develop areas in and around the Los Alamos townsite. Additionally, a number of various leases for small tracts of land within the County were entered into during this period. The release of these lands from Federal Government use in the late 1960's enabled them to be developed for a variety of uses, ranging from preservation to urban development.

Over the years, the LANL boundaries have changed and have been reduced extensively as a result of several land transfer efforts. Today, only about 38 percent of the total land that historically comprised the LANL reserve remains under DOE's administrative control. The bulk of this remaining land is occupied by LANL, with the University of California as DOE's current Management and Operating contractor conducting day-to-day operation of the site. Currently, LANL is bounded by the lands of several landowners and stewards with a variety of land uses.

On November 26, 1997, Congress passed Public Law 105–119, the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, Fiscal Year 1998 ("the Act"). Section 632 of the Act (42 U.S.C. 2391) directs the Secretary of Energy (the Secretary) to convey to the Incorporated County of Los Alamos, New Mexico, or to the designee of the County, and transfer to the Department of the Interior, in trust for the San Ildefonso Pueblo, parcels of land under the jurisdictional administrative control of the Secretary at or in the vicinity of LANL. Such parcels, or tracts, of land must meet suitability criteria established by the Act. The purpose of the conveyances and transfers is to fulfill the obligations of the United States with respect to Los Alamos, New Mexico, under sections 91 and 94 of the Atomic Energy Community Act of 1955 (AECA) (42 U.S.C. 2391, 2394). Upon the completion of the conveyance or transfer, the Secretary of Energy shall make no further financial assistance payments with respect to LANL under the AECA.

The Act sets forth the criteria, processes, and dates by which the tracts will be selected, titles to the tracts reviewed, environmental issues evaluated, and decisions made as to the allocation of the tracts between the two recipients. DOE's responsibilities under the Act include identifying potentially suitable tracts of land according to criteria set forth in the law (Land Transfer Report, April 1998); conducting a title search on each tract of land (Title Report, September 1998); identifying any environmental restoration and remediation that would be needed for each tract of land (Environmental Restoration Report, August 1999); conducting National Environmental Policy Act of 1969 (NEPA) review of the proposed conveyance or transfer of the land tracts (the Conveyance and Transfer EIS,

October 1999, distributed in January 2000); reporting to Congress on the results of the Environmental Restoration Report review and the final Conveyance and Transfer EIS (Combined Data Report, January 2000); and preparing a plan for conveying or transferring land according to the allocation agreement of parcels for Congress (Conveyance and Transfer Plan, planned for April 2000). The Act further states that the Secretary must, to the maximum extent practicable, conduct any needed environmental restoration or remediation activities within 10 years of enactment (by November 26, 2007), and convey and transfer the tracts meeting the suitability criteria. Under the Act, DOE has no role in the designation of recipients nor how the parcels of land will be allocated between the recipients.

As required by the Act, DOE identified 10 tracts of land as being potentially suitable for conveyance and transfer. The 10 tracts are the subject of DOE's Land Transfer Report submitted to Congress in April 1998. These 10 tracts of land are as follows (all acreages given are approximate and have been adjusted herein to include some rights-of-ways that were inadvertently excluded from the original April 1998 report):

The Rendija Canyon Tract consists of about 910 acres (369 hectares). The canyon is undeveloped except for the shooting range (the Sportsman's Club) that serves the local community; the shooting range is currently under lease from DOE to the community.

The DOE Los Alamos Area Office (LAAO) Tract consists of about 15 acres (6 hectares). It is within the Los Alamos townsite. DOE employees occupy offices at the site.

The Miscellaneous Site 22 Tract is a small, Los Alamos townsite parcel located on the edge of the mesa overlooking Los Alamos Canyon. It consists of less than 0.5 acre (0.2 hectare) of disturbed land that is undeveloped and currently is used as an unsanctioned vehicle parking area.

The Miscellaneous Manhattan Monument Tract consists of less than 0.5 acre (0.02 hectare). The Manhattan Monument is a small, rectangular site located within Los Alamos County land and adjacent to Ashley Pond, where most of the first Los Alamos laboratory work was conducted. A small log structure occupies the site.

The DP Road Tract (North, South and West) consists of about 50 acres (20 hectares). It is generally undeveloped except for the West section where the LANL archives are currently located in one of two buildings.

The TA–21 Tract consists of about 260 acres (105 hectares) and is located east of the Los Alamos townsite. This occupied site is remote from the main LANL area; University of California workers occupy offices at the site, and LANL operations are conducted at facilities there.

The Airport Tract consists of about 205 acres (83 hectares). Located east of the Los Alamos townsite, it is close to the East Gate Business Park. The Los Alamos Airport is located on part of the tract, while other portions of the tract are undeveloped.

The White Rock Y Tract consists of about 540 acres (219 hectares). It is undeveloped and is associated with the major transportation routes connecting Los Alamos with northern New Mexico.

The TA–74 Tract consists of about 2,715 acres (1,100 hectares). It is a large, remote site located east of the Los Alamos townsite and is largely undeveloped.

The White Rock Tract consists of about 100 acres (40 hectares). It is undeveloped except for utility lines, a water pump station, and a small building in use by the County.

As required by the Act, DOE conducted a review of its ownership for each of the 10 tracts of land identified as being potentially suitable for conveyance and transfer. The results of this search (in the form of formal Title Reports) for any claims, liens, or similar instruments affecting DOE's title to its interests in the real property for each of the 10 subject tracts were submitted to Congress in September 1998. No "clouds on the titles" were discovered during the search.

DOE identified the environmental restoration and remediation necessary before it can dispose of the subject tracts in the Environmental Restoration (ER) Report, as required by the Act. Descriptions of the type and extent of known tract contamination, the regulatory status of the site contamination, potential waste generation associated with environmental restoration activities, the estimated costs and durations for cleanup, and other site concerns are included in the report; it also identifies areas where no site data is yet available.

The LANL ER Project has its own process of site investigation, data analysis, public and stakeholder involvement and remediation that occurs under auspices of an Administrative Authority (either the New Mexico Environment Department or DOE). LANL is regulated under the *Resource Conservation and Recovery Act* (RCRA). The activities under the LANL ER Project are subject to DOE review for compliance with NEPA at the time that proposals for actions become ripe for decision, which is typically after public input and Administrative Authority agreement to pursue specific types of cleanup activities. To the extent that this information was known or that reasonably bounding data has been developed, the information was presented and used in the Conveyance and Transfer EIS analysis. Additional DOE NEPA review will be necessary for the majority of the activities yet to be undertaken at most of the subject tracts.

The review of environmental impacts of the conveyance or transfer of each parcel, as required by the Act, is the subject of the Conveyance and Transfer EIS. The NEPA compliance process, the general document scope, the purpose and need for DOE action, the decisions supported by the impact analysis, a description of the alternatives analyzed, and a brief discussion and comparison of the impacts likely to occur from implementing the alternatives analyzed are included in the Conveyance and Transfer EIS.

As required by the Act, a report (Combined Data Report) presenting information regarding the environmental restoration or remediation required for the subject tracts (including estimated costs and cleanup durations), and the potential environmental impacts associated directly, indirectly, and cumulatively with conveyance and transfer of the subject tracts was submitted to Congress on January 24, 2000. This report makes recommendations for the conveyance or transfer of each of the subject tracts, either in whole or in part, with regard to the likelihood of DOE being able to meet the suitability criteria established in the Act.

The Incorporated County of Los Alamos and San Ildefonso Pueblo, as required by the Act, have reached an agreement on the allocation of parcels between them and submitted their agreement to the Secretary of Energy on January 7, 2000. Under that agreement, all subject lands are to be received by the County of Los Alamos except for portions of the TA–74 Tract, the White Rock Y Tract, and the White Rock Tract.

As required by the Act, DOE must submit a plan outlining how it will proceed with the actual conveyance or transfer of each of the subject tracts, in whole or in part, to the two recipients pursuant to their agreement of allocation. This plan will be submitted to Congress in April 2000. DOE shall convey or transfer parcels in accordance with the allocation agreement between the two recipients, subject to the requirements of the Act for retention of

lands needed for DOE to meet its national security mission and/or the requirements for environmental restoration or remediation (providing these requirements can be met within the 10-year period beginning on the date of enactment of the Act, which ends November 26, 2007), and subject to the decisions in this Record of Decision.

This Record of Decision considers, and the Conveyance and Transfer Plan will consider: the need for land to support its national security mission requirements, estimated costs and cleanup durations and the technical feasibility of achieving restoration and remediation to the maximum extent practical, as required under the Act, for one of the three uses established by PL 105–119; the information on environmental impacts associated with the subject tracts as a result of conveyance and transfer; and other factors discussed later in this Record of Decision.

Alternatives Considered

DOE analyzed two alternatives in the Conveyance and Transfer EIS: the No Action Alternative and the Proposed Action Alternative.

Alternative 1—No Action

The No Action Alternative reflects the conditions that would prevail if DOE did not convey or transfer the subject tracts of land. Under this alternative, DOE would continue its administrative control of each or all of the individual tracts tentatively identified as a candidate for conveyance and transfer, and conveyance or transfer actions for each or all of the tracts would not occur. The subject lands would continue to be used as they are currently. Individual tracts would continue to be used to either support LANL uses (as undeveloped programmatic activity buffer zones; historic, cultural, or environmental preservation areas; or future growth areas) or in support of ongoing or similar mission support functions. DOE would continue to lease properties to the County and others for continuance of their current public relations, recreational, and commercial purposes. Under this alternative, land might not be restored or remediated in the same manner or time frame as under the Proposed Action Alternative. LANL ER Project activities would be conducted on the tracts as they become funded in accordance with either existing or similar plans. Neither the County nor San Ildefonso Pueblo would gain additional land to promote self-sufficiency or diversification of their income basis.

Alternative 2—Proposed Action Alternative

Under the Proposed Action Alternative, each of the 10 tracts of land identified as potentially suitable in DOE's Land Transfer Report (April 1998) would individually be either conveyed or transferred, in whole or in part, to either the County or the Secretary of the Interior, in trust for San Ildefonso Pueblo. DOE actions associated with the conveyance and transfer of these land tracts would involve certain "paper transactions," and some tenant relocation activities. DOE actions would result in potential direct impacts because of various resources passing out of the administrative responsibility and protection of DOE. Additionally, indirect impacts could result from the development and use of the tracts by the two recipient parties. Potential cumulative impacts from the actions of other local and regional past, present, and future reasonably anticipated actions could also result from conveying and transferring the land tracts and their subsequent recipient uses.

Environmental restoration or remediation of the subject tracts potentially identified for conveyance and transfer would be the responsibility of DOE and are expected to be accomplished as currently considered by DOE in its plan entitled Accelerating Cleanup: Paths to Closure (DOE 1998) and similar plans. It is not anticipated that the cleanup efforts would differ much between the Proposed Action Alternative and the No Action Alternative, although there could be some areas of cleanup that may differ between the alternatives. These possible exceptions include the timing of some activities (cleanup of some tracts could be completed sooner under the Proposed Action Alternative than under the No Action Alternative); the decommissioning, decontamination, and demolition of buildings and structures currently in use; and some cleanup actions in flood plains. Therefore, most of the environmental restoration or remediation actions are not unique to the Proposed Action Alternative.

In considering the full suite of potential impacts that could result from DOE's action in implementing the conveyance and transfer of these parcels, DOE considered the planned uses of the land and the ensuing potential environmental impacts after the conveyance and transfer. Both the County and San Ildefonso Pueblo have expressed interest in pursuing uses of the parcels for the purposes established by the Act in ways that are potentially different from the manner in which DOE has used the land. Therefore, the Conveyance and Transfer EIS analysis focuses on subsequent property development and use contemplated by the County and by San Ildefonso Pueblo (including their tenants or other third parties) that could only occur if DOE conveys and transfers the subject land tracts.

Preferred Alternative

In both the draft and the final Conveyance and Transfer EIS, the Preferred Alternative is identified as a subset of the Proposed Action Alternative by each tract. The Preferred Alternative would convey or transfer seven tracts in whole and three (Airport, TA–21, and White Rock Y) in part. In the Conveyance and Transfer EIS discussion of the Preferred Alternative, DOE identified the potential partial transfer of the White Rock Y Tract due to the developing proton radiography project, and the tract was considered as one of the tracts that would be conveyed in whole or in part by 2007. In this Record of Decision, DOE is conveying or transferring only part of the White Rock Y Tract because of the potential national security mission need. As specified in PL 105–119, the actual disposition of each tract, or portion of a tract, would be subject to DOE's need for the individual tract, or a portion of the tract, to meet a national security mission support function, which could range from either direct or indirect activity involvement. Additionally, the disposition of each tract, or portion of a tract, would be subject to DOE's completion of any necessary environmental restoration or remediation required.

While both of these suitability criteria were considered in the formulation of the Preferred Alternative, the national security mission support criteria has led DOE to the recognition that portions of three tracts (the White Rock Y, TA–21 Tract and the Airport Tracts) may not be available for conveyance or transfer within the 10-year period specified by PL 105–119 because of the operational needs of two facilities within TA–21 and the need for surrounding areas to be retained as security, health, and safety buffer areas.

DOE additionally recognizes with regard to five of the tracts (Rendija Canyon, DOE LAAO, DP Road, TA–74, White Rock) that meeting the conveyance and transfer criteria within the mandated 10-year time frame may not be possible for all portions of these tracts. For example, the current national security mission support functions that

are conducted on DOE LAAO Tract and the DP Road Tract may require portions of the tracts to be retained for use beyond the 10-year time frame established by the Act, although this is considered to be unlikely. Similarly, there may be newly proposed activities at LANL facilities that could require the retention of portions of tracts for national security mission support reasons. One example of this is a proton radiography project that will be proposed for consideration through DOE's Fiscal Year 2002 budget request. DOE will evaluate this project over the next several months to determine whether to propose that the project should proceed. The project evaluation will include a NEPA analysis that considers various siting locations and engineering design controls and features, which will then be used to reach a project construction decision(s). Engaging in this project could result in an expanded security, health, and safety buffer area(s) being required that may intrude upon one or more of the tracts under consideration for disposal. Because the White Rock Y Tract is the nearest subject tract to one of the LANL locations that will likely be evaluated for the proton radiography project, DOE has reduced this tract to a partial status for disposition. Only essential areas will be retained, and the remainder of the tract will be conveyed or transferred. DOE will make every effort to minimize the portions of the tracts it retains.

In a like vein, some portions of the five tracts that have associated potential contamination issues may require restoration or remediation that could require more than the 10-year period established under the Act for completion of these actions. The LANL ER Project process, which includes input from stakeholders and approval by the Administrative Authority(ies), will proceed with the anticipation of completing the necessary environmental restoration and remediation actions by November 26, 2007, for all parcels except for TA–21. However, some tracts that have complex contamination issues will consume more time and resources, and be more expensive to complete cleanup because, for example, the cleanup technical strategy could change from those currently planned by the ER Project. Reaching agreement on the cleanup approach and conducting the necessary characterization and remedial action could take more time than anticipated in ER project plans. Thus, it may not be possible to complete the necessary actions within the allotted time frame.

The environmental impacts of the Preferred Alternative, based on the EIS, would be expected to be less than those of the Proposed Action Alternative and greater than those of the No Action Alternative for each tract.

Environmentally Preferable Alternative

The Council on Environmental Quality, in its "Forty Most Asked Questions Concerning CEQ's NEPA Regulations," (46 FR 18026, 2/23/81) with regard to 40 CFR 1505.2, defined the "environmentally preferable alternative" as the alternative "that will promote the national environmental policy as expressed in NEPA's Section 101. Ordinarily, this means the alternative that causes the least damage to the biological and physical environment; it also means the alternative which best protects, preserves, and enhances historic, cultural, and natural resources." After considering impacts to each resource area by alternative, DOE has identified the No Action Alternative as the environmentally preferable alternative. This Alternative was identified as having the fewest direct impacts to the physical environment and to cultural and historic resources. This is because tract disturbances would be at the lowest levels for the greatest number of acres under DOE's continued ownership, rather than under either the Proposed Action Alternative or the Preferred Alternative. Therefore the No Action Alternative would have the fewest impacts, and the Proposed Action would have the most.

Environmental Impacts of Alternatives

DOE analyzed the potential impacts that might occur for land resources; environmental restoration waste volumes; transportation; infrastructure requirements; noise; visual resources, socioeconomics; ecological resources; cultural resources; geological and soil conditions; water resources; air resources; global climate changes; human health; and environmental justice for each of the 10 tracts under the two different alternatives—No Action and Proposed Action. DOE considered the impacts that might occur from potential accidents associated with LANL operations on worker and residential populations that would be brought into closer proximity to LANL facilities. DOE considered the impacts of each contemplated land use associated with each alternative for each tract, the irreversible or irretrievable commitments of resources, and the relationship between short-term uses of the environment and the maintenance and enhancement of long-term productivity. The EIS shows important differences in potential environmental impacts among alternatives including: the potential for damage or degradation to ecological resources, including federally listed threatened or endangered species potential habitat areas, and to cultural and historic resources; land use changes; traffic volume changes; infrastructure requirements, including water use, electrical use, natural gas use, solid waste generation and disposal requirements and wastewater sewage generation, treatment and disposal needs, noise generation; changes to the visual character of the tracts; socioeconomic changes; surface water quality; air resource degradation; human health effects; and environmental justice impacts. A comparison of the impacts of the No Action Alternative and the impacts projected to result from implementation of the Proposed Action Alternative are discussed below for both direct and indirect impacts.

Direct Impacts

The potential direct impacts of the proposed conveyance and transfer of the subject tracts include those associated with the relocation of DOE operations and personnel who currently reside on the various tracts. DOE could move employees requiring relocation to existing buildings on other parts of LANL property, or could construct new buildings. These plans are not ripe for decision. Any decision regarding construction of new facilities would be preceded by appropriate NEPA review. There would be no difference in direct impacts between the Proposed Action and the No Action Alternatives in infrastructure, noise, visual resources, socioeconomics, geology and soils, water resources, or human health. The differences between the direct impacts of the Proposed Action and the No Action Alternatives in land use, transportation, ecological resources, cultural resources, and air resources are discussed by affected resource in the following paragraphs.

Under the No Action Alternative, no specific changes in direct impacts in land use are anticipated. Completion of environmental restoration activities, including decontamination, decommissioning, and possible demolition of DOE facilities may allow possible changes in future land use. Environmental restoration activities would proceed in accordance with existing and developing plans pursuant to the RCRA Corrective Action permit and DOE requirements. Worker impacts associated with environmental restoration activities cannot be projected at this time. Environmental restoration activities would be subject to their own

DOE NEPA review. Under the Proposed Action Alternative, no specific changes in direct impacts in land use are anticipated. In general, environmental restoration activities are independent of the conveyance and transfer process, but the conveyance and transfer scenarios may influence decisions on the timing, cleanup levels, and the inclusion of certain buildings in environmental restoration activities. The waste volume estimates would be approximately the same as for the No Action Alternative.

Under the No Action Alternative, no specific changes in direct impacts in *transportation* are anticipated. Under the Proposed Action Alternative, direct consequences of the conveyance and transfer of the tracts include small alteration of the overall daily commute. DOE and contractor personnel relocated from the DOE LAAO, TA–21, and DP Road Tracts would have to change their commuting routes. Some DOE and contractor personnel may have a shorter drive to work, such as those living in White Rock for example; but, most would have farther to travel.

Under the No Action Alternative, no specific changes in direct impacts to *ecological resources* are anticipated. Direct impacts of the Proposed Action Alternative are limited to the changes in responsibility for resource protection. Environmental review and protection processes and procedures for future activities could be different from those that are currently governing the subject tracts and may not be as rigorous. The LANL Threatened and Endangered Species Habitat Management Plan would no longer be in effect for those tracts occupied by or containing suitable habitat for endangered species.

Under the No Action Alternative, no specific changes in direct impacts to *cultural resources* are anticipated. Direct impacts of the Proposed Action Alternative are limited to the potential transfer of known and unidentified cultural resources and historic properties out of the responsibility and protection of DOE. Under the Criteria of Adverse Effects (36 CFR 800.5(a)(1), the transfer, lease, or sale of resources eligible for listing on the National Register of Historic Places (NRHP) is an adverse effect. NRHP eligible resources are present on nine of the ten tracts, and would be directly impacted by the Federal action. The disposition of some of the subject tracts also may affect the protection and accessibility to Native American sacred sites or sites needed for the practice of traditional religion by removing them from consideration under the *American Indian Religious Freedom Act, Religious Freedom Restoration Act*, and Executive Order 13007, "Indian Sacred Sites." In addition, the disposition of the tracts could potentially affect the treatment and disposition of any human remains, funerary objects, sacred objects, and objects of cultural patrimony that may be discovered on the tracts, under the *Native American Graves Protection and Repatriation Act*.

Under the No Action Alternative, no specific changes in direct impacts in *air resources* or *global warming* are anticipated. Direct consequences of the Proposed Action Alternative include small alteration of the overall daily commute. As noted under the discussion of transportation, DOE and contractor personnel relocated from the DOE LAAO, TA–21, and DP Road Tracts would have to change their commuting routes. Some DOE and contractor personnel may have a shorter drive to work; but most would have farther to travel. This would result in slightly greater emissions.

Indirect Impacts

Indirect impacts are anticipated from the subsequent uses contemplated by the receiving parties for several of the 10 tracts (see Table S–3 at the end of this section). The receiving parties have identified a combination of contemplated uses for the tracts after conveyance or transfer. These uses include development of part or all of some of these tracts. Estimates of the development acreage reflect the best available information on the footprint of the contemplated developments. This acreage may include the redevelopment of disturbed land as well as the new use of relatively undisturbed areas. The EIS impact analysis assumes that these footprints represent an approximation of areas that would be developed but these estimates may not include all areas that would otherwise be disturbed. Likewise, the EIS does not quantify acreage estimates for land that may be disturbed or developed for land uses that include currently undefined improvements to utilities or recreational areas. These areas were qualitatively addressed in the impact analysis.

Under the No Action Alternative, no specific changes in indirect impacts in *land use* are anticipated. Under the Proposed Action Alternative, the potential indirect impacts include regional changes in land use, such as the development of forest, grazing, and open-space land for residential and commercial uses. Future land use patterns could change on several tracts. Approximately 826 acres (335 hectares) of the total acreage proposed for transfer and conveyance could be developed or redeveloped for other uses. There is the potential for the introduction of land uses that would be incompatible with adjacent landowners' resource protection efforts. There may be loss of recreational opportunities currently enjoyed on some tracts. While cumulative impacts to land use affect only a small percentage of the total region, many of the anticipated impacts are concentrated in the vicinity of Los Alamos, LANL, and White Rock and therefore could appear substantial.

Under the No Action Alternative, no specific changes in indirect impacts related to *transportation* are anticipated. Under the Proposed Action Alternative, the conveyance and transfer of the tracts, commercial, industrial, and residential developments would greatly increase the number of vehicle trips. Peak-hour traffic entering or exiting 6 of the 10 tracts could increase by a range of approximately 751 to 3,775 trips. There could be a positive regional traffic impact in that more LANL employees could live in Los Alamos and reduce overall commuter traffic from other areas. Potential cumulative impacts related to regional transportation include substantial increases in overall regional and local traffic that would require improvements to traffic controls, new roads, road widening, and bridges. The anticipated impacts related to transportation would be expected to be concentrated near the Los Alamos townsite and the immediate LANL area.

Under the No Action Alternative, the electrical *infrastructure* will remain the same, which is already at the limits of its capacity, and it often exceeds system capacity. Under the Proposed Action Alternative, the total estimated increases in utility usage associated with the development of the tracts would be as follows: Electricity use—32 gigawatt-hours (gwh); Peak power: 6 megawatts (mw); Natural Gas: 459 million cubic feet (mcf) (13,000 million liters per year [mly]); Water: 382 million gallons per year (mgy) (1,446 mly); Solid Waste: 2,385 tons per year (tpy) (2,163 metric tons per year [mty]). Increases in discharges to wastewater treatment plants could be 132 mgy (500 mly) for the Bayo Wastewater Treatment Plant and 41 mgy (155 mly) for the White Rock plant. The increase in peak electricity demand is in addition to the already anticipated exceedance of the capacity of the electrical power system. Water usage demand is projected to exceed water rights. The natural gas delivery systems may have to be upgraded to handle the increased demand. The existing wastewater treatment capacity is expected to be exceeded. Solid waste production is expected to reduce the expected life of

the regional landfill. However, given the conservative assumptions used in the calculations and the phased approach in the development of the tracts, the actual utility usage may not reach capacity limits within the next 10 years.

Under the No Action Alternative, no specific changes in indirect impacts from *noise* are anticipated. Under the Proposed Action Alternative, ambient noise levels would be expected to increase above current levels for most of the contemplated land uses. Ambient noise levels associated with cultural preservation may decrease, and noise levels associated with natural areas would be expected to remain the same or increase slightly. Noise associated with transportation and utility corridors would remain the same or could increase with additional infrastructure construction and use. Demolition and construction activities would be expected to temporarily elevate noise levels on the tracts from the No Action Alternative levels to a range of 74 to 95 decibels (dB) on the A-weighted scale (dBA). Residential uses typically would result in ambient noise levels between 50 and 70 dBA depending on traffic, density, and location. Commercial and industrial land uses typically would result in 60 to 70 dBA. Noise would be present during a greater part of the day than currently on the tracts that are developed for residential, commercial, and industrial land uses. Overall noise from vehicular traffic would increase.

Under the No Action Alternative, no specific changes in indirect impacts on *visual resources* are anticipated. Under the Proposed Action Alternative, most of the tracts would maintain their current level of visual aesthetic value after conveyance and transfer and any subsequent development. However, the development of currently undeveloped areas, such as the Rendija Canyon and White Rock Tracts, would typically degrade the visual landscape. The reduction in visual quality would not be substantial on a regional scale, but local diminished viewsheds could impact resources important to maintaining a positive visitor experience on adjacent National Park Service lands.

Under the No Action Alternative, no specific changes in indirect impacts in *socioeconomics* are anticipated. Under the Proposed Action Alternative, short-term economic gains would be expected from employment due to construction activities for new development. Long-term gains would depend on the intensity and success of the development. Depending on the scenarios implemented, 320 businesses could be developed on the tracts, employing up to 6,080 workers and generating a total of 8,957 jobs within the region of influence (ROI). As many as 2,360 residences could be placed on the tracts, increasing White Rock's and Los Alamos' population by 6,620 residents. Overall impacts to employment, income, population, and housing would be minor within the ROI, but would be concentrated in the Los Alamos area. Improvements would be expected in the Los Alamos County tax base but would probably not offset the loss of assistance payments, according to information provided by the County.

Under the No Action Alternative, no specific changes in indirect impacts in *ecological resources* are anticipated. Under the Proposed Action Alternative, development footprints for the 10 tracts include approximately 770 acres (312 hectares) of relatively undisturbed habitat, primarily ponderosa pine forest and pinyon-juniper woodland. Contemplated uses also would be expected to degrade large amounts of adjacent habitat, including preferred habitat for the American peregrine falcon and the Mexican spotted owl. Highly mobile wildlife would be forced to relocate to adjacent undeveloped areas. However, successful relocation may not occur due to increased competition for limited resources. For less-mobile species, direct mortality could occur during the actual construction or from habitat alteration. Habitat modification could affect several Federally-listed threatened and endangered species. Development in some tracts could result in direct loss of wetland structure and function with potential increased downstream and offsite sedimentation. The current lack of a natural resources management plan by either the County of Los Alamos or the San Ildefonso Pueblo would impede the development of an integrated, multiagency approach to short- or long-term natural resource management strategies. Additionally, transfer of the land tracts may result in a much less rigorous environmental review and protection review process for future activities because neither the County of Los Alamos nor the San Ildefonso Pueblo have regulations that would match the Federal review and protection process. Cumulatively, the development could result in fragmentation of habitat and disruption of wildlife migration corridors.

Under the No Action Alternative, no specific changes in indirect impacts in *cultural resources* are anticipated. Under the Proposed Action Alternative, the development of approximately 826 acres (335 hectares) and use of tracts for recreation could result in physical destruction, damage, or alteration of cultural resources on the subject tracts and in adjacent areas and disturbance of traditional religious practices.

Under the No Action Alternative, no specific changes in indirect impacts in *geology* and *soils* are anticipated. Under the Proposed Action Alternative, soil would be disturbed by development, new road building, and utilities. Removal of vegetation and increased runoff from new impermeable surfaces could increase erosion. The cumulative impacts to geology and soils would not be substantial.

Under the No Action Alternative, no specific changes in indirect impacts in *water resources* are anticipated. Under the Proposed Action Alternative, supplies of groundwater would be reduced, potentially accelerating draw down of the main aquifer. Placement of new water supply wells could impact groundwater quality. New development could potentially degrade the surface water quality by increasing the pollutant loads and surface runoff volumes from construction activity, and by creating additional impermeable surfaces such as roads and parking lots.

Under the No Action Alternative, no specific changes in indirect impacts on *air resources* are anticipated. Under the Proposed Action Alternative, there would be increases in criteria pollutants from mobile sources and homes using natural gas or propane. Slight increases in emissions of hazardous air pollutants would be expected from the development of new industrial facilities. The current contributions to *global climate* change from the land tracts would increase more than 25-fold over the No Action Alternative due to motor vehicle traffic and residential use of fossil fuels. Additional use of artificial lighting could impact the visibility of the night sky.

Under the No Action Alternative, no specific changes in indirect impacts in human health are anticipated. Under the Proposed Action Alternative, as many as 900 new residents could be brought into closer proximity to LANL facilities at the DOE LAAO and DP Road Tracts, and another 2,200 residents and lodgers could be brought closer at the White Rock Tract. Commercial development could bring as many as 6,000 private-sector employees into existing one-half mile radiation site evaluation circles at the DP Road, TA–21, and Airport Tracts (these "circles" are discussed in Chapter 4, Section 4.2.12.2, Conveyance and Transfer EIS). While the maximally exposed individual doses would nc increase, these developments would mean increased total population exposures to radiological and chemical emissions from normal LANL operations and hypothetical accidents due to the closer proximity of people to emission sources. A substantial increase in the public collective radiation dose and latent cancer fatalities could result although the estimates of effects are calculated using very conservative methods and actual observable effects would be expected to be less than those estimated. Under normal operating conditions, development of the subject tracts would not be expected to contribute substantially to human health impacts in the area. The estimated number of excess latent cancer fatalities that could result from the reasonably foreseeable radiologic accidents (events that have an estimated frequency of less than one in a million per year) could maximally increase from about 57 to about 98 excess cancer fatalities. Development of the tracts by the recipients would involve construction with its attendant risks to workers. Should the development include industrial activities, these activities would involve commensurately greater worker risks.

There would be no *environmental justice* indirect impacts anticipated under the No Action Alternative. Under the Proposed Action Alternative, indirect impacts to traditional cultural properties (TCPs) potentially may cause disproportionately high or adverse effects on minority or low-income communities, but these effects cannot be determined at this point in the consultation process. As part of the comments received in the draft Conveyance and Transfer EIS, the Homesteaders of the Pajarito Plateau and legal counsel for the San Ildefonso Pueblo expressed the belief that the conveyance or transfer and contemplated uses would have additional adverse environmental justice impacts on their populations.

Comments on the Final Environmental Impact Statement

DOE distributed approximately 300 copies of the final CT EIS to Congressional members and committees, the State of New Mexico, various American Indian Tribal governments and organizations, local governments, other Federal agencies, and the general public. DOE did not receive comments on the final Conveyance and Transfer EIS.

Decision Factors

DOE's decisions under Public Law 105–119 are based on the lack of need for the tracts, in whole or in part, to support its national security mission requirements, and DOE's ability to conduct necessary environmental restoration and remediation on portions of the tracts within the time frame established by the Act. There are currently three tracts (the TA–21 Tract, the LAAO Tract, and the DP Road Tract) that have structures that are occupied by activities that support DOE's mission responsibilities at LANL. Additionally, portions of the Airport Tract and the White Rock Y Tract are or may be needed to serve as health and safety buffer areas for LANL activities occurring both at TA–21 and elsewhere. With regard to environmental clean up, the Act states that the conduct of any needed environmental restoration or remediation be performed to the maximum extent practicable. DOE included in its decision the estimated cost of such actions and DOE's dedication of other resources to pursue these actions. Hence, DOE's decisions are based primarily in its mission responsibilities and the ability to perform environmental restoration activities in a timely and fiscally prudent manner.

Decisions

DOE has decided to implement the Preferred Alternative, which will allow for the conveyance and transfer of tracts of land, in whole or in part, in the near term and delay such conveyance and transfer of portions of tracts that either require environmental restoration or remediation activities, or that are being used or may be used for mission support activities before November 2007, the deadline established by the Act. DOE will pursue restoration and remediation activities, as well as relocation of workers and DOE mission support functions from the subject tracts, so that those portions so encumbered may be conveyed or transferred to the greatest extent practicable before November 2007. This alternative reflects DOE's efforts to meet the requirements of Public Law 105–119 to the best of its ability in a reasonable and prudent manner. It should be noted that the decisions in this Record of Decision will be reflected in DOE budget requests and management practices. However, the actual implementation of these decisions is dependent on DOE funding levels and allocations of the DOE budget across competing priorities.

For the tracts that are conveyed in part, DOE would continue to resolve outstanding national security mission support issues and contamination issues on the remaining portions of the tracts; so that conveyance or transfer of those portions could occur before the end of the 2007 deadline stated in the Act. DOE also may include deed restrictions, notices, and similar land use controls as deemed appropriate and necessary that are protective of human health and safety.

For each of the ten tracts analyzed for conveyance and transfer, DOE's decisions are presented below:

The Rendija Canyon Tract consists of about 910 acres (369 hectares). The canyon is undeveloped except for the shooting range (the Sportsman's Club) that serves the local community; the shooting range is currently under lease from DOE to the community. DOE will convey or transfer the entire tract.

The DOE LAAO Tract consists of about 15 acres (6 hectares) within the Los Alamos townsite. The DOE LAAO Tract is partially occupied by the DOE LAAO Building that currently houses about 120 DOE staff and contractor staff personnel in support of DOE's mission responsibilities at LANL. DOE will convey or transfer the entire tract upon relocation of its activities.

The Miscellaneous Site 22 Tract is a small, Los Alamos townsite parcel located on the edge of the mesa overlooking Los Alamos Canyon. It consists of less than 0.5 acre (0.2 hectare) of disturbed land that is undeveloped and currently is used as an unsanctioned vehicle parking area. DOE will convey or transfer the entire tract.

The Miscellaneous Manhattan Monument Tract consists of less than 0.5 acre (0.02 hectare). The Manhattan Monument is a small, rectangular site located within Los Alamos County land and adjacent to Ashley Pond, where most of the first Los Alamos laboratory work was conducted. A small log structure occupies the site. DOE will convey or transfer the entire tract.

The DP Road Tract consists of about 50 acres (20 hectares). It is generally undeveloped except for the West section, which is occupied by two large buildings that support DOE's mission responsibilities at LANL; one is used for the LANL archive storage and one is used as a support contractor facility. DOE will convey or transfer the entire tract upon relocation of its activities.

The TA–21 Tract consists of about 260 acres (105 hectares) and is located east of the Los Alamos townsite. This occupied site is remote from the main LANL area; University of California workers occupy offices at the site, and LANL operations are conducted at facilities there. Specifically, the DP East section of the TA–21 Tract currently houses the Tritium Systems Test Assembly and the Tritium Sciences and Fabrication Facility. These two research facilities are needed for the national security mission. There is currently no formal plan to relocate them; however, DOE is the early stages of assessing the

feasibility of relocating these operations to another facility within LANL. In any event, relocation of the tritium operations, decommissioning and decontamination of the buildings, and the necessary remediation and restoration for the whole tract will not be completed by 2007. At this time, DOE will only convey or transfer approximately 20 acres in the northwest section of the TA–21 Tract adjacent to the DP Road Tract.

The Airport Tract consists of about 205 acres (83 hectares), east of the Los Alamos townsite and near the East Gate Business Park. The Los Alamos Airport is located on the northern part of the tract, while other portions of the tract are undeveloped. Portions of the Airport Tract are needed to serve as health and safety buffer areas for the tritium activities within TA–21. At this time, DOE will only convey or transfer part of the tract, approximately 110 acres North of East Road. Should DOE shutdown its tritium activities at TA–21, DOE will reassess the need to retain any buffer areas and amend this Record of Decision, as needed.

The White Rock Y Tract consists of about 540 acres (219 hectares). It is undeveloped and is associated with the major transportation routes connecting Los Alamos with northern New Mexico. Portions of the White Rock Y Tract may be needed to serve as health and safety buffer areas for proposed LANL activities occurring elsewhere, such as the proposed proton radiography project, in support of the national security mission. In the Conveyance and Transfer EIS discussion of the Preferred Alternative, DOE identified the potential partial transfer of the White Rock Y Tract due to the developing proton radiography project, and the tract was considered as one of the tracts that would be conveyed in whole or in part by 2007. In this Record of Decision, DOE is only conveying or transferring only part of the White Rock Y Tract because of the potential national security mission need. At this time, DOE will only convey or transfer part of the White Rock Y Tract, approximately 125 (50 hectares) acres including the highway exchange and areas east of it. Should DOE's siting of the proposed proton radiography project not require a part of the White Rock Y Tract as a buffer area, DOE will reassess the need to retain any buffer areas and amend this Record of Decision, as needed.

The TA–74 Tract consists of about 2,715 acres (1,100 hectares). It is a large, remote site located east of the Los Alamos townsite and is largely undeveloped. DOE will convey or transfer the entire tract.

The White Rock Tract consists of about 100 acres (40 hectares). It is undeveloped except for utility lines, a water pump station, and a small building in use by the County. DOE will convey or transfer the entire tract.

Mitigation Measures

The Conveyance and Transfer Environmental Impact Statement included a discussion of mitigation measures both that are (a) within the scope of DOE's control and (b) those that DOE could recommend to the receiving parties. The following discussion outlines the mitigation measures that DOE will undertake to reduce the impacts of conveying and transferring the tracts and portions of tracts in accordance with the Preferred Alternative as outlined in this Record of Decision.

DOE Mitigations Prior to Conveyance or Transfer

Prior to conveyance or transfer of any of the land tracts, DOE will initiate cultural resource consultations with the affected Pueblos and tribal nations and the State Historic Preservation Office, and complete consultation regarding threatened or endangered species or their habitat with the U.S. Fish and Wildlife Service (USFWS). Consistent with the provisions of the Act, in the case of conveyance of land tracts to the County, DOE may include deed restrictions precluding any development within the 100-year flood plains or wetlands. DOE also may include other deed restrictions, notices, and similar land use controls as deemed appropriate and necessary that are protective of human health and safety. DOE will relocate any environmental monitoring stations after consultation with State regulators, as appropriate.

Recommended Mitigations With DOE Participation

DOE will engage in discussions, consultations, and similar planning activities with other organizations and land recipients. DOE will coordinate consultations with the New Mexico State Historic Preservation Office, the Advisory Council on Historic Preservation, the receiving parties, and other interested agencies and parties to ensure adequate consideration of impacts on cultural resources, as well as recreational resources *(e.g.,* historic trails), resulting from the conveyance and transfer of the subject tracts from the responsibility and protection of DOE. The goal of these consultations would be a formal Memorandum of Agreement (MOA) addressing the impacts of the potential loss of certain cultural resource protections and DOE responsibilities on the subject tracts and defining specific procedures and responsibilities for managing cultural resource concerns upon transfer to the receiving parties. These could include covenants to be developed for the protection of various cultural resources.

Specific issues to be discussed include, but are not limited to: minimize impacts to cultural resources in and adjacent to the subject tracts from the loss of responsibility and protection of DOE by delegating cultural resources preservation responsibilities and developing a process that parallels existing protections and procedures; minimize the adverse effect of the transfer or conveyance of NRHP-eligible properties out of the responsibility and protections of DOE by including adequate restrictions or conditions to ensure preservation of the properties' significant historic features or collection of appropriate data concerning the properties; minimize potential impacts to historic buildings from the loss of DOE responsibility and protection by completing an appropriate identification and evaluation effort for historic buildings on the subject tracts; ensuring that NRHP-eligible buildings continue to be used (to the maximum extent feasible) and maintained in a manner that preserves their historical value; and exploring the reuse of other NRHP-eligible buildings for activities that must be relocated; minimize potential impacts to traditional cultural properties (TCPs) by completing consultations to identify the presence and importance of these resources within the subject tracts, identifying any potential impacts of conveyance or transfer on access to TCPs in adjacent areas, and exploring methods to avoid disturbance to TCPs and traditional users; minimize potential impacts from the loss of DOE protections and guarantees regarding the preservation of Native American sacred sites and the rights of Native Americans to practice traditional religions on the subject tracts under the American Indian Religious Freedom Act and Executive Order 13007, "Indian Sacred Sites," by allowing for the continuation of any traditional religious practices; minimize the potential impacts from the loss of DOE protection for archeological sites, the disposition of archeological materials and penalties for unauthorized excavation, vandalism, and trafficking of archeological materials; minimize the potential impacts from the loss of DOE responsibility for the protection and disposition of Native American sacred objects, objects of cultural patrimony, and funerary objects under the Native American Graves Protection and Repatriation Act by establishing agreements outlining similar procedures for addressing the inadvertent discovery of Native American human remains or funerary objects and their disposition; provide for the loss of DOE responsibility for the curation of archaeological and cultural resource collections from these tracts under 36 CFR 79 by assigning these responsibilities and contracting for curation services; develop a natural resources management plan that is integrated and developed with the natural resources management plans of other adjacent land management agencies; continue involvement in the roles and responsibilities that have been established with the townsite of Los Alamos, County of Los Alamos, State of New Mexico, U.S. Department of Agriculture, Forest Service, for emergency response, including the notification processes for each of the response groups and mutual aid in the event of an emergency; explore the establishment of a proactive means toward developing future use options for transferred properties, in accordance with State law and the County Charter (participation in a Future Use Options Logistics and Support Working Group with the U.S. Forest Service, New Mexico Environment Department, U.S. Bureau of Land Management, Pueblos, and local citizens groups would be encouraged, as well as public involvement through the Citizens Advisory Board as instrumental steps in providing interim recommendations on future land use options); and coordinate with local jurisdictions, Native Americans, and State officials to explore methods to maintain a rigorous environmental review process for future development and other activities.

Potential Resource-Specific Mitigations

DOE outlined a variety of resource-specific mitigation issues in the Conveyance and Transfer EIS that are not within DOE's control. These mitigations are presented as recommendations for action by the recipients with the assistance of DOE as discussed in previous paragraphs. These recommendations are not discussed further herein.

Mitigation Action Plan

In accordance with 10 CFR 1021.331, DOE is preparing a Mitigation Action Plan that will identify specific actions needed to implement the mitigation measures identified that are within DOE's control and provide schedules for completion. These mitigation measures represent all practicable means to avoid or minimize harm from the alternative selected.

Conclusion

DOE has identified environmental impacts, stakeholder concerns, and national policy concerns with regard to the actions required of it by Public Law 105–119, and, to the extent allowed by that Act, have considered these in its decisions regarding the conveyance and transfer of the subject land tracts. The analysis contained in the Conveyance and Transfer EIS is both programmatic and site specific in detail. It is programmatic from the broad perspective and site specific in the detailed tract activity analysis in as much as these are known. The impacts identified in the Conveyance and Transfer EIS were based on conservative estimates and assumptions. In this regard, the analyses bound the impacts of the alternatives evaluated in the Conveyance and Transfer EIS. The Preferred Alternative was defined to include activities to implement the requirements of the Act inasmuch as they are known at this time. This Conveyance and Transfer EIS and the analyses it contains can be used to support future land owner or administrator decisions.

In accordance with the provisions of NEPA, its implementing procedures and regulations, and DOE's NEPA regulations, DOE has considered the information contained within the Conveyance and Transfer EIS to the extent that this information could be incorporated under the requirements of Public Law 105–119. Being fully apprised of the environmental consequences of the alternatives and other decision factors described above, DOE has decided to convey and transfer all or parts of the subject tracts as described.

Issued at Washington, DC, March 8, 2000.

Thomas F. Gioconda,

Acting Deputy Administrator for Defense Programs, Department of Energy.

[FR Doc. 00–6504 Filed 3–16–00; 9:44 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford Site. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 6, 2000: 9:00 a.m.–5:00 p.m.; Friday, April 7, 2000: 8:30 a.m.–4:00 p.m.

ADDRESSES: Red Lion Inn—Hanford House, 802 George Washington Way, Richland, WA, (509) 946–7611.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA; 99352; Ph: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

- Tri-Party Agreement (TPA)
  Brief history and purpose of TPA;
  Discussion of milestones (high level grouping) and identification of important milestones for the next 5 and 10 years (DOE and regulator perspecties); and
  Implications for the future.
- Fiscal Year 2002 Budget
  Overview of the FY 2000 and FY 2001 budgets; and
  FY 2002 draft budget: overview of budget priorities and criteria, overview of the Office of River Protection (non-privatization) budget, and overview of the Richland budget.
- Update and Potential Sounding Board
  Overview of 300 Area cleanup approach; and
  Update on 618 Tritium plume.
- Updates
  Briefing on offsite waste discussion;
  Report from Tank Waste Treatment Ad Hoc Committee; and
  K-Basins.

Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available by writing to

Gail McClure, Department of Energy Richland Operations Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC on March 14, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–6822 Filed 3–17–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1797–000]

Florida Power Corporation; Notice of Filing

March 14, 2000.

Take notice that on March 3, 2000, Florida Power Corporation (FPC), tendered for filing service agreements between Cargill-Alliant, L.L.C. and FPC and Tractebel Energy Marketing, Inc., and FPC and FPC's Market-Based Wholesale Power Sales Tariff (MR–1), FERC Electric Tariff, Original Volume No. 8. This Tariff was accepted for filing by the Commission on June 25, 1997, in Docket No. ER97–2846–000. The service agreement with Cargill-Alliant, L.L.C., proposed to be effective February 24, 2000, and the service agreement with Tractebel Energy Marketing, Inc., is proposed to be effective February 29, 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 23, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–6755 Filed 3–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–12–000]

Louisiana Intrastate Gas Company, L.L.C.; Notice of Petition for Rate Approval

March 14, 2000.

Take notice that on March 3, 2000, Louisiana Intrastate Gas Company, L.L.C. (LIG) tendered for filing an application pursuant to 18 CFR 284.123(B)(2) of the Commission's regulations to justify the system-wide rate it proposes to charge for transporting natural gas pursuant to Section 311(a)(2) of the Natural Gas Policy Act commencing March 3, 2000.

LIG is seeking a maximum interruptible transportation rate of $.2134 per MMBtu, a maximum firm commodity charge of $.0000 per MMBtu with a monthly demand charge of $6.4914 per MMBtu, and a maximum overrun charge of $.2134 per MMBtu under Section 311(a)(2) transportation services.

LIG proposes to retain from its shippers a pro-rata share of gas consumed by LIG as compressor fuel, company use and unaccounted-for gas, as provided in relevant agreements, subject to a 2% maximum for such compressor fuel, company use and unaccounted-for gas.

LIG, a Louisiana limited liability company, is an intrastate pipeline, as that term is defined in the NGPA. LIG's pipeline system is located in Louisiana.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before March 29, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6759 Filed 3–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–6–000]

Gulfstream Natural Gas System, L.L.C.; Notice of Site Visit

March 14, 2000.

On March 21–23, 2000 the Office of Energy Projects (OEP) staff will inspect the Gulfstream Natural Gas System, L.L.C. (Gulfstream) proposed route and potential alternative routes in central Florida. The areas will be inspected by automobile and by aerial reconnaissance (March 22 only). Representatives of Gulfstream will accompany the OEP staff. Anyone interested in participating in the site visits must provide their own transportation.

For additional information, contact Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Secretary

[FR Doc. 00–6756 Filed 3–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–13–000]

Transok, LLC; Notice of Filing

March 14, 2000.

Take notice that on March 3, 2000, Transok, LLC (Transok) submitted for filing a revised fuel factor for its Oklahoma Transmission System as calculated under the terms of Transok's filed fuel tracker.

Transok seeks an effective date of May 1, 2000. Transok has served notice of the filing and the revised fuel percentage on all current shippers and on the Oklahoma Corporation Commission.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, D.C. 20426, in accordance with rules 211 and 214 of the commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before March 29, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6757 Filed 3–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–91–000]

National Fuel Gas Supply Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Line AM–60 Replacement Project and Request for Comments on Environmental Issues

March 14, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Line AM–60 Replacement Project involving the construction and operation of facilities by National Fuel Gas Supply Corporation (National Fuel) in Elk, McKean and Warren Counties, Pennsylvania.[1] This EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity. The application and other supplemental filings in this docket are available for viewing on the FERC Internet website (www.ferc.fed.us). Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and the follow the instructions.

If you are a landowner receiving this notice, you may be contacted by a pipeline company representive about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right to eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice National Fuel provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

Summary of the Proposed Project

The project would be known as the AM–60 Replacement Project, and would replace 12.9 miles of 8-inch-diameter pipelines known as Lines A–M60 and S–1; abandon in place 18.9 miles of 8- and 10-inch-diameter pipeline; add 360 horsepower to the Roystone Compressor Station; and relocate, modify or abandon other appurtenant facilities. National Fuel proposes to replace Lines A–M60 and S–1 with a new 20-inch-diameter pipeline to be known as Line AM–60. Section 1 of Line AM–60 would be located within 6.3 miles of the existing Line S–1 right-of-way, but section 2 would need about 6.6 miles of additional permanent right-of-way to construct the balance of the replacement along the existing Line A–M60 segment.

The location of the project facilities is shown in appendix 1.

Land Requirements for Construction

Construction of the proposed facilities would require about 132.2 acres of land including 7.6 acres of permanent right-of-way (ROW), and 124.6 acres of temporary construction ROW that includes extra work spaces, staging areas and access roads. National Fuel proposes to use two 5-acre staging areas, and up to 11 access roads for construction. Extra work spaces would be used at road and railroad crossings, areas of steep side slopes, and in agricultural areas.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that could occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources and wetlands.
- Vegetation, fisheries and wildlife.
- Endangered and threatened species.
- Cultural resources.
- Land use.
- Air quality and noise.
- Public safety.

We will also evaluate possible alternatives to the proposed project or portions of the project, and make recommendations on how to lessen or void impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section beginning on page 6 of this notice.

Currently Identified Environmental Issues

We have already identified the following issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by National Fuel. This preliminary list of issues may be changed based on your comments and our analysis.

- Twenty-six wetlands would be crossed by the project route, with 3.22 acres of potential wetland impacts.
- Thirteen perennial streams that are all high quality cold water systems would be crossed by the project route, including 3 between 10- and 25-feet-wide.
- Seven water supply wells would be within 150 feet of the construction ROW.

[1] National Fuel's application was filed with the Commission of February 22, 2000, under Sections 7(b and c) of the Natural Gas Act.

- Ten residences in the project area would be within 50 feet of the construction ROW.
- About 10.6 miles of forest would be crossed by the project route, and 38.8 acres of forest would be cleared. This includes areas of habitat potentially used by federally endangered Indiana bats for maternity roosting areas.
- About 5.0 of the 12.9 miles of AM–60 replacement pipeline, and all of the 18.9 miles of Line L pipeline to be abandoned in place, would be on federally owned land within the Allegheny National Forest.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of the Gas Group 2;
- Reference Docket No. CP00–91–000; and
- Mail your comments so that they will be received in Washington, DC on or before April 13, 2000.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–6758 Filed 3–17–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Regional Transmission Organizations; Notice of Meeting

March 14, 2000.

In the matter of: RM99–2–000; EL00–20–000; EL96–37–000; EL96–45–000; EL99–91–000; EL00–32–000; ER97–2358–000; ER98–2351–000; ER97–2355–000; ER98–2322–000; ER97–2364–000; ER97–4235–000; ER98–497–000; ER98–2371–000; OA96–161–000; ER96–1456–000; ER96–697–000; ER97–4468–000; ER97–2355–000; ER98–1261–000; ER98–1685–000; ER99–3719–000; EC99–100–000; ER99–2332–000; ER99–2338–000; EL00–39–000; ER00–555–000; ER00–1239–000; ER00–1365–000; EC00–63–000; EL99–44–000; ER98–3594–000; ER99–4545–000; ER99–4462–000; ER99–3426–000; ER99–3713–000; EL99–50–000; ER99–3145–000; EL98–46–000; ER00–950–000; EL99–75–000; ER98–3760–000; EC96–19–000; ER96–1663–000; ER00–997–000; ER00–866–000; ER00–703–000; ER98–2843–000; ER98–2844–000; ER98–2883–000; ER98–2971–000; ER98–2972–000; ER00–1439–000; ER98–2977–000; ER98–3106–000; ER98–3416–000; ER98–3417–000; ER98–3418–000; ER98–4497–000; ER98–4498–000; ER99–1971–000; ER98–1028–000; ER98–1029–000; ER98–1030–000; ER98–1032–000; ER98–2499–000; ER98–3708–000; ER98–899–000; ER98–1923–000; ER98–1923–000; ER98–495–000; ER98–1614–000; ER98–2145–000; ER98–3603–000; ER98–496–000; ER98–2160–000; ER99–2730–000; EL99–67–000; ER99–1770–000; OA96–200–000; EL98–44–000; ER99–2326–000; EL99–68–000; SC97–2–000; ER99–28–000; EL99–38–000; ER99–945–000; ER99–3301–000; ER99–896–000; ER98–2550–000; ER98–917–000; ER98–2382–000; ER91–505–000; EL92–18–000; EL94–5–000; EL96–40–000; EL97–54–000; and OA96–28–000; Southern California Water Company, d/b/a Bear Valley Electric v. Southern California Edison Company; Pacific Gas & Electric Company; Modesto Irrigation District; Pacific Gas & Electric Company; Public Service Company of Colorado; Pacific Gas & Electric Company; Southern California Edison Company; San Diego Gas & Electric; Puget Sound Energy, Inc; Southern California Edison Company; Mountain West Independent System Administrator; Sierra Pacific Power Company and Nevada Power Company; Sierra Pacific Power Company; Nevada Power Company; Southwest Power Pool, Inc.; California Independent System Operator Corporation; California Independent System Operator Corporation; California Independent System Operator Corporation; Sierra Pacific Power Company; Nevada Power Company; Portland General Electric Company; Arizona Public Service Company v. Idaho Power Company; California Independent System Operator Corporation; California Independent System Operator Corporation; California Independent System Operator Corporation; San Diego Gas & Electric Company; Pacific Gas and Electric Company; Fresno Irrigation District; Pacific Gas and Electric Company; Laguna Irrigation District; California Power Exchange Corporation; California Electricity Oversight Board; California Independent System Operator Corporation; California Independent System Operator Corporation; California Independent System Operator Corporation; California Independent System Operator Corporation; AES Redondo Beach, L.L.C.; AES Huntington Beach, L.L.C.; AES Alamitos, L.L.C.; El Segundo Power, LLC; Long Beach Generation, LLC; Automated Power Exchange, Inc.; Ocean Vista Power Generation, L.L.C.; Mountain Vista Power Generation, L.L.C.; Alta Power Generation, L.L.C.; Oeste Power Generation, L.L.C.; Ormond Beach Power Generation, L.L.C.; Williams Energy Services Company; Duke Energy Oakland, L.L.C.; Duke Energy Morro Bay, L.L.C.; Duke Energy Moss Landing, L.L.C.; Sempra Energy Trading Corporation; San Diego Gas & Electric Company; California Independent System Operator Corporation; California Independent System Operator Corporation; California Independent System Operator Corporation; Pacific Gas & Electric Company; San Diego Gas & Electric Company; California Independent System Operator Corporation; California Independent System Operator Corporation; El Paso Electric Company; Southwestern Public Service Company v. El Paso Electric Company; Pacific Gas and Electric Company; City of Las Cruces, New Mexico v. El Paso Electric Company; Sierra Pacific Power Company; California Independent System Operator Corporation; California Independent System Operator Corporation; El Segundo Power, LLC; Southwest Reserve Sharing Group; Montana Power Company; Pacific Gas and Electric Company; San Diego Gas & Electric Company v. Public Service Company of New Mexico; and Pacific Gas & Electric Company.

On December 20, 1999, the Commission issued Order No. 2000 to advance the formation of Regional Transmission Organizations (RTOs). Order No. 2000 announced the initiation of a regional collaborative process to aid in the formation of RTOs. To initiate the collaborative process, the Commission organized a series of regional workshops. These workshops are open to all interested parties. The third workshop is scheduled for March 23–24, 2000 in Las Vegas, Nevada. During the course of the Las Vegas workshop, discussion of the above-listed cases could arise. Any person having an interest in an above-listed case is invited to attend the Las Vegas workshop. There will be no Commission transcript of any of the workshops, and information discussed or disseminated in the workshop will not constitute part of the decisional record in the above-listed cases, unless formally filed in accordance with Commission regulations.

David P. Boergers,

Secretary.

[FR Doc. 00–6760 Filed 3–17–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6562–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emissions Standards for Hazardous Air Pollutants (NESHAP) for Aerospace Manufacturing and Rework Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NESHAP Subpart GG: Aerospace Manufacturing and Rework Facilities, OMB Control Number 2060–0314, expiration date March 31, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 19, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1687.05. For technical questions about the ICR contact Anthony Raia at (202) 564–6045.

SUPPLEMENTARY INFORMATION:

Title: NESHAP for Aerospace Manufacturing and Rework Facilities (OMB Control No. 2060–0314, EPA ICR No. 1687.05) expiring 3/31/00. This is a request for an extension of a currently approved collection.

Abstract: The information collection includes initial, semiannual and annual reports, and periodic record keeping necessary for the EPA to ensure compliance with the National Emission Standards for Hazardous Air Pollutants for Aerospace Manufacturing and Rework. Respondents are owners or operators of new and existing aerospace manufacturing and rework facilities that are in operation after promulgation of the NESHAP.

In addition to the initial notification and notification of compliance status required by the General Provisions to 40 CFR part 63 (subpart A), the final rule requires semiannual and annual reports. The final rule also requires that the results of any performance test required under section 63.7 of the General Provisions be reported no later than 30 days after the completion of the test. A permit application as required under title V of the Act may be used in lieu of the initial notification provided the same information is contained in the permit application as required for the initial notification.

The General Provisions, 40 CFR 63.9 and 63.10, identify the type of information to be included in the initial notification, notification of compliance status, and other reports. The emissions test reports and other records must be kept at the facility for a minimum of 5 years and be made available to the Administrator upon request. The respondent's State or local agency can be delegated as the enforcement authority by the EPA and may also request these reports. The information is used to determine that all sources subject to the NESHAP are achieving the standards. The final rule adopts the general record keeping and reporting requirements contained in sections 63.7 through 63.10 of 40 CFR part 63 and does not contain any conflicting requirements with section 63.10.

For each cleaning solvent used for aerospace cleaning operations at the facility, the final rule will require a record of the name of the cleaning solvent and documentation that shows the organic HAP constituents of the solvent. For each cleaning solvent used in hand-wipe aerospace cleaning operations that does not conform to the composition requirements, but does conform to the vapor pressure requirement, the information required to be recorded is the name of the aerospace cleaning solvent, the monthly usage of the cleaning solvent at each aerospace operation, the composite vapor pressure, the manufacturer's data sheets or other documentation of the vapor pressure, and any test reports and calculations performed to determine the composite vapor pressure. For each aerospace cleaning solvent that conforms to the composition requirements, the records that are required to be maintained are the name of the aerospace cleaning solvent, documentation demonstrating compliance with the composition requirements, and annual purchase records showing the annual volume purchased.

For aerospace cleaning solvents that do not conform to either the composition or vapor pressure requirements and are used for the exempt cleaning operations, monthly records must be maintained of the name and volume of each cleaning solvent and the processes where these solvents were utilized. In addition, a record must be kept of all leaks from spray gun cleaners, including source identification, the date that the leak was discovered, and the date that the leak was repaired.

The notification of compliance status will include an identification of each aerospace cleaning solvent used at the facility, a description of the procedures to be used to ensure that bags and containers are kept closed when not in use and that cleaning solvents are stored in closed containers, the name of each cleaning solvent that does not conform to the approved composition list, and the vapor pressure test results of each.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document

required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 07/31/1998, one comment was received and evaluated.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 52 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners and operators of aerospace manufacturing or rework facilities.

Estimated Number of Respondents: 16,402.

Frequency of Response: start-up, and semi-annual.

Estimated Total Annual Hour Burden: 856,437 hours.

Estimated Total Annualized Cost Burden: $561,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No 1687.05 and OMB Control No. 2060–0314 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: March 13, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–6859 Filed 3–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[IN124; FRL–6562–4]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determination; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this document is to announce that on September 8, 1999, the Environmental Protection Agency's Environmental Appeals Board (EAB) dismissed two appeals of a permit issued to the ConAgra Soybean Processing Company by the Indiana Department of Environmental Management (IDEM) pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations in the Clean Air Act, as administered by the State of Indiana.

DATES: The effective date of EAB's decision denying review is September 8, 1999.

ADDRESSES: The documents relevant to the above action are available for public inspection during normal business hours at the following address: Environmental Protection Agency, Region 5, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Pallavi Reddy, United States Environmental Protection Agency, Region 5, 77 W. Jackson Blvd. (AR–18J), Chicago, Illinois 60604, (312) 886–6204.

SUPPLEMENTARY INFORMATION: On August 14, 1998, the IDEM issued construction permit number CP–129–8541–0039 under the PSD requirements of the Clean Air Act of 1990 to ConAgra Soybean Processing Company for the construction of a new soybean processing plant in Posey County, Indiana. On September 14, 1998, two separate entities, Valley Watch Inc., a non-profit environmental group, and Consolidated Grain and Barge Company filed petitions for review of this permit with the EPA's EAB (PSD Appeal Nos. 98–27 & 98–28). The petitioners alleged that: (1) IDEM improperly issued ConAgra's permit because the permit fails to demonstrate that the proposed facility will not cause or contribute to an exceedance of the National Ambient Air Quality Standard for ozone as required by the Act; (2) the permit fails to satisfy the requirements for pre-construction monitoring for PM–10; (3) IDEM improperly issued the permit because the increment consumption analysis for PM–10 does not comply with the requirements of 40 CFR 52.21(c), (k), and (m); and (4) the additional impacts analysis of the proposed project on economic growth, soils, vegetation, and visibility required by 40 CFR 52.21(o) was inadequate.

On October 18, 1999, the EAB denied the petitioners' request for review. The petitioners failed to prove that the permit or permit condition was based on a finding of fact or conclusion of law that was clearly erroneous, or to demonstrate that there was an exercise of discretion or important policy consideration warranting the EAB's discretionary review, as required by 40 CFR 124.19(a). The EAB also ordered IDEM to revise Condition 38 of the permit, which relates to emissions offsets, to strike reference to Federal law and specifically, 40 CFR 52.21(k).

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 9, 2000.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 00–6860 Filed 3–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6563–5]

Workshop on Information Needs To Address Children's Cancer Risk

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The EPA's Office of Research and Development and the National Institutes of Health's National Institute of Environmental Health Sciences (NIEHS) are co-sponsoring a workshop entitled, "Information Needs to Address Children's Cancer Risk." The main focus of the workshop is to discuss children's cancer risk assessment and related data needs to address issues that have arisen during public review of the Agency's 1999 Draft Revised Guidelines for Carcinogen Risk Assessment. These issues include: characterizing the ideal data set to adequately address children's cancer risk, and proposed approaches to using available data in the absence of the ideal data set. Invited participants represent the pediatric, toxicologic, and risk assessment communities and are leaders in the area of human health testing, research, and assessment.

DATES: The workshop will begin on Thursday, March 30, 2000, at 7:00 p.m. and end on Friday, March 31, 2000, at 4:30 p.m. There will be space available for observers on a first-come, first-served basis.

ADDRESSES: The meeting will be held at the Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, Virginia, 22203, Tel: (703) 243–9800. As seating capacity is limited, please contact Eastern Research Group, Inc., Tel: (781) 674–7374, Fax: (781) 674–2906 by Monday, March 27, 2000, to attend the workshop as an observer.

FOR FURTHER INFORMATION CONTACT: For technical inquires, contact Linda C. Tuxen (Mail Code 8601D), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460, Tel: (202) 564–3332, Fax: (202) 565–0090, and E-Mail: tuxen.linda@epa.gov. Inquiries concerning the workshop should be directed to Eastern Research Group, Inc. Copies of background materials will be made available to observers upon request from Eastern Research Group, Inc., Tel: (781) 674–7374. Copies of background materials will also be available at the workshop.

SUPPLEMENTARY INFORMATION: The purpose of the workshop is focused and derives from issues discussed in the EPA's 1999 Draft Revised Guidelines for Carcinogen Risk Assessment. First, participants will consider the content of the ideal data set to adequately address children's cancer risk. The workshop participants will focus on data needed for assessing the impact of childhood (including in utero) exposures to carcinogens and the issues related to hazard identification and dose-response analyses. The participants will address not only induction of childhood cancer, but also increased risks of cancer during adulthood resulting from childhood exposure. As part of this discussion, the participants also will be asked to consider how current protocols might be redesigned to better answer questions related to children's cancer risk and what additional types of data might be brought to bear on children's cancer risk assessment. This would include information that is currently collected as well as data sets using new approaches. In addition, the workshop participants will be asked to discuss the question, What are the elements of a "cogent biological rationale," as presented in the draft revised cancer guidelines, for addressing modes-of-action for children's cancer? Further, participants will address whether and how such a rationale can be made, which is sufficiently health-protective of children, based on the kinds of data that are typically collected by and available to Federal and state health science agencies at the present time. These might include data on cancer mode-of-action, comparative pharmacokinetics and pharmacodynamics in adults and children, rate and pattern of exposure in adults and children, etc. The background for these discussions is the reality that chemical-specific data are often lacking to specifically address children's cancer risk from environmental chemical exposures. As a consequence, the assessment of children's risk is currently addressed by evaluations of traditional cancer bioassays in mature animals using sensitive responders, comparative biochemistry and physiology between adults and developing animals and humans, and public-health-protective default positions in the absence of child-specific data. It is expected that workshop discussions will be valuable to the general risk assessment community, will provide input to Federal testing strategies for the future, and will inform the public dialogue around children's health issues as they are addressed in the EPA's draft revised cancer guidelines.

The workshop format will be an evening session on Thursday at which the key participants will set the stage for the discussion to follow at the Friday full-day session. The evening session will include an overview of the contents of and current issues coming out of the EPA's 1999 Draft Revised Guidelines for Cancer Risk Assessment regarding assessment of children's cancer risk, and a discussion of the questions to be addressed in detail at the Friday session. A summary report of the perspectives and views coming out of this workshop will be published in the peer-reviewed, scientific literature.

Dated: March 15, 2000.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 00–6936 Filed 3–17–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34173B; FRL–6499–2]

Organophosphate Pesticide; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, phosmet. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34173B for phosmet, must be received by EPA on or before May 19, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34173B for phosmet in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on phosmet, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to

the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. *In person.* The Agency has established an official record for this action under docket control number OPP–34173B for phosmet. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34173B for phosmet in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34173B for phosmet. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate pesticide, phosmet. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the phosmet preliminary risk assessments, which was released to the public January 15, 1999 (64 FR 10) (FRL–6056–9) through a notice in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for phosmet. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific phosmet use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre-harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commentors may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate pesticide tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before May 19, 2000 at the addresses given under the "ADDRESSES" section. Comments and proposals will become part of the Agency record for the organophosphate pesticide specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 13, 2000.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–6862 Filed 3–15–00; 3:46 pm]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51942; FRL–6497–3]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 2, 2000 to February 11, 2000, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

This notice also corrects a previously published Certain New Chemicals; Receipt and Status Information document.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51942 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management, and Evaluation, Office of Pollution Prevention and Toxics (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/.* On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** -- Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/.*

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51942. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51942 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51942 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior

notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 2, 2000 to February 11, 2000, consists of the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

This notice also corrects a previously published Certain New Chemicals; Receipt and Status Information document. Inadvertently, in the **Federal Register** of February 25, 2000 (65 FR 10086) (FRL–6494–1) the period covered should have read "January 1, 2000 to February 1, 2000."

III. Receipt and Status Report for PMNs

This status report identifies the PMNs, pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 36 PREMANUFACTURE NOTICES RECEIVED FROM: 02/02/00 TO 02/11/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0466	02/02/00	05/02/00	CBI	(G) Acrylic adhesive or coating	(G) Acrylic
P–00–0467	02/02/00	05/02/00	CBI	(G) Intermediate	(G) Phosphate ester of alkyl phenol ethoxylate
P–00–0468	02/04/00	05/04/00	CBI	(S) Polyester curative for urethane food packaging adhesive	(G) Aliphatic polyester
P–00–0469	02/04/00	05/04/00	Nof America Corporation	(S) A surfactant for cosmetics and toiletries	(S) Glycine, *n*-(carboxymethyl)-*n*-dodecyl-,monosodium salt*
P–00–0470	02/09/00	05/09/00	CBI	(G) Open, non-dispersive (dispersant)	(G) Polyurethane
P–00–0471	02/08/00	05/08/00	Orient Corporation of America	(S) Manufacture of ink	(S) [1,1′-biphenyl]-2,2′-disulfonic acid, 4,4′-bis [[1–(3-aminophenyl)-4,5-dihydro-3-methyl-5-oxo-1*h*-pyrazol-4-yl]azo]-disodium salt, reaction products with 2,2′- [1,2-ethanediylbis (oxymethylene)] bis[oxirane],2′,4′,5′, 7′tetrabromo-3′,6′-dihydroxyspiro [isobenzofuran-1(3*h*), 9′-[9*h*] xanthen]-3-one disodium salt and 2′, 4′,5′,7′-tetrabromo-4,5,6,7-tetrachloro-3′, 6′-dihydroxyspiro [isobenzofuran-1(3*h*), 9′-[9*h*]xanthen]-3-one disodium salt*
P–00–0472	02/07/00	05/07/00	CBI	(G) Processing aid	(G) Halogenated alkane
P–00–0473	02/09/00	05/09/00	CBI	(G) Open non-dispersive (resin)	(G) Aqueous polyurethane resin dispersion
P–00–0474	02/07/00	05/07/00	CBI	(G) Printing ink resins	(G) 2-propenoic acid, 2-methyl-, 2-(dimethylamino)ethyl ester, polymer with methyl 2-methyl-2-propenoate, acid salt
P–00–0475	02/08/00	05/08/00	CBI	(S) Additive in an industrial coating	(S) Hexane, 1,6-diisocyanato-, homopolymer, benzenemethanamine-blocked*

I. 36 PREMANUFACTURE NOTICES RECEIVED FROM: 02/02/00 TO 02/11/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0476	02/07/00	05/07/00	Ciba Specialty Chemicals, performance polymers	(S) Epoxy curing agent	(G) Propanoic acid, compds. with bisphenol a-an epoxy resin-epichlorohydrin-ethylenediamine-polyethylene glycol polymer-glycidyl *o*-tolyl ether reaction products
P–00–0477	02/07/00	05/07/00	CBI	(G) Printing ink resin	(G) Fatty acids, tall-oil, polymers with 5-amino-1,3,3-trimethylcyclohexanemethanamine, dicarboxylic acid, fumarated rosin and pentaerythritol
P–00–0478	02/07/00	05/07/00	Ashland Inc.	(G) Open, non-dispersive use in molding operations	(G) Unsaturated polyester
P–00–0479	02/07/00	05/07/00	Zeon Chemicals l.p.	(S) Polymerization emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsatd., branched and linear, sodium salts*
P–00–0480	02/09/00	05/09/00	CBI	(S) Additive for industrial coatings	(G) Organo silane ester
P–00–0481	02/08/00	05/08/00	Lyondell Chemical Company	(S) Gasoline anti-corrosion additive	(G) Alkoxylated acetophenone
P–00–0482	02/07/00	05/07/00	CBI	(G) Automatic transmission fluid	(G) Alky methacrylate copolymer
P–00–0483	02/07/00	05/07/00	CBI	(G) Ingredient for use in consumer products;highly dispersive use.	(G) Cycloalkyl proplynitrile
P–00–0484	02/07/00	05/07/00	CBI	(G) Open, non-dispersive	(G) Polyalkylene oxide imine quarternary ammonium ethyl sulfate complex
P–00–0485	02/07/00	05/07/00	CBI	(G) Intermediate for coatings manufacture	(S) Phenol, 4,4′-(1-methylethylidene)bis-, styrenated*
P–00–0486	02/07/00	05/07/00	CBI	(G) Intermediate for coatings manufacture	(S) Phenol, 4,4′-(1-methylethylidene)bis-, reaction products with 1-ethenyl-4-methylbenzene*
P–00–0487	02/07/00	05/07/00	CBI	(G) Intermediate for coatings manufacture	(S) Phenol, 4,4′-(1-methylethylidene)bis-, reaction products with 1-(1,1-dimethylethyl)-4-ethenylbenzene*
P–00–0488	02/10/00	05/10/00	Dow Corning Corporation	(S) Silicone electronic potting compound	(G) Crosslinked polymethylsiloxane
P–00–0489	02/10/00	05/10/00	CBI	(G) Open non-dispersive (additive)	(G) Aqueous solution of polyamide-amine
P–00–0490	02/10/00	05/10/00	CBI	(G) Delivery substrate	(G) Substituted acrylamides copolymer
P–00–0491	02/10/00	05/10/00	CBI	(S) Base fluid for hydraulic fluids;base fluid engine lubricants	(G) Mixed polyol-glycerol fatty aid ester
P–00–0492	02/09/00	05/09/00	Ciba Specialty Chemicals Corporation	(S) Plant micronutrient for use in fertilizers	(G) Chelated metal complexes
P–00–0493	02/09/00	05/09/00	CBI	(S) Solution acrylic resin is used as a component in a protective coating (paint)	(S) 2-propenoic acid, 2-methyl-, butyl ester, polymer with 1,1-dimethylethyl 2-methyl-2-propenoate, ethenylbenzene and 2-hydroxyethyl 2-methyl-2-propenoate, tert-bu 3,5,5-trimethylhexaneperoxoate-initiated*
P–00–0494	02/09/00	05/09/00	Ashland Inc.	(G) Adhesive	(G) Copolymer of acrylic esters and styrene
P–00–0495	02/09/00	05/09/00	Ashland Inc.	(G) Adhesive	(G) Copolymer of acrylic esters and styrene
P–00–0496	02/09/00	05/09/00	Ashland Inc.	(G) Adhesive	(G) Copolymer of acrylic esters and styrene
P–00–0497	02/09/00	05/09/00	Ashland Inc.	(G) Adhesive	(G) Copolymer of acrylic esters and styrene
P–00–0498	02/11/00	05/11/00	Orient Corporation of America	(S) Manufacture of ink	(S) 3*h*-indolium, 2-[[(4-chlorophenyl) methylhydrazono]methyl] -1,3,3-trimethyl-, salt with dodecylbenzenesulfonic acid (1:1)*

I. 36 PREMANUFACTURE NOTICES RECEIVED FROM: 02/02/00 TO 02/11/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0499	02/11/00	05/11/00	Orient Corporation of America	(S) Manufacture of ink	(S) Methanaminium, *N*-[4–[[4-(dimethylamino)phenyl] [4-(methylphenylamino)-1-naphthalenyl]methylene] -2,5-cyclohexadien-1-ylidene] -*N*-methyl-, [29*h*,31*h*-phthalocyanine- *c,c,c*-trisulfonato(5-)-*n*29,*n* 30,*n*31,*n* 32]cuprate(3-) (3:1)*
P–00–0500	02/11/00	05/11/00	CBI	(G) Rheomate, the commercial formulation based on zirconyl citrate, is an additive for water based drilling fluids to be used as a thinner/deflocculant, alone or in combinatio with other additives for low and high temperature applications on-shore and off-shore	(G) Zirconyl citrate
P–00–0501	02/11/00	05/11/00	CBI	(S) Catalyst/reaction intermediate	(G) Sodium phenolate

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 46 NOTICES OF COMMENCEMENT FROM: 02/02/00 TO 02/11/00

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0037	02/07/00	01/25/00	(S) Canola oil, hydrogenated*
P–00–0051	02/01/00	01/20/00	(G) Modified melamine alkyd resin
P–00–0072	02/04/00	01/21/00	(G) Macrocyclic cobalt complex
P–95–0215	02/09/00	01/07/00	(G) Rosin, maleic anhydride, substituted phenols, paraformaldehyde reaction product, triglyceride coester
P–97–0017	02/08/00	01/24/00	(G) Benzenesulfonic acid amino trizinyl amino substituted yalky amino substituted anthracene compound
P–97–0357	02/11/00	02/04/00	(G) Methylene bridged naphthalenesulfonic acid, sodium salt
P–97–1078	02/08/00	02/02/00	(G) Amide-functional siloxane
P–98–0041	01/28/00	01/03/00	(S) 1,3 -isobenzofurandione, 5-(phenylethynyl)*
P–98–0199	02/10/00	01/18/00	(G) Polyvinyl fluoride copolymer
P–98–0709	02/07/00	01/25/00	(G) Alkenyl grignard reagent
P–98–0794	02/04/00	01/18/00	(G) Mono-halo-substituted alkene
P–98–1274	01/27/00	01/15/00	(G) Silicoaluminophosphates
P–98–1275	02/07/00	01/27/00	(S) Aluminosilicates, phospho-*
P–99–0015	02/08/00	01/17/00	(G) Alkenes, maleic anhydride polymer reaction product with aminopropyl fatty amine
P–99–0137	02/08/00	01/17/00	(G) Alkylarylamine
P–99–0178	01/27/00	01/11/00	(G) Acrylate functional polyester
P–99–0517	01/28/00	12/28/99	(G) Polyamines polymer with epichorohydrin
P–99–0521	02/01/00	12/28/99	(G) Copolymer of acrylic ester and acrylic acid
P–99–0540	02/01/00	12/26/99	(G) Experimental mdi prepolymer
P–99–0541	02/08/00	01/13/00	(G) Water dispersable polyurethane polymer
P–99–0565	02/07/00	01/22/00	(S) Propanoic acid, 2-hydroxy-, methyl ester, (2*s*)-*
P–99–0566	02/07/00	01/22/00	(S) Propanoic acid, 2-hydroxy- ethyl ester, (2*s*)-*
P–99–0567	02/07/00	01/22/00	(S) Propanoic acid, 2-hydroxy- butyl ester, (2*s*)-*
P–99–0641	02/01/00	01/26/00	(G) Hydroxyalkylmodified polysiloxane
P–99–0722	02/08/00	01/17/00	(S) Cyclopentene, polymer with 1-butene, (2*e*)-2-butene, (2*z*)-2-butene, 2-methyl-1-propene and 1,3-pentadiene*
P–99–0773	02/07/00	01/22/00	(S) Propanoic acid, 2-hydroxy-, monopotassium salt, (2*s*)-*
P–99–0843	01/27/00	01/06/00	(G) Polyester acrylate
P–99–0850	02/08/00	01/13/00	(G) Polyester polymer of aromatic polycarboxylic acid with aliphatic polyalcohols
P–99–0863	01/27/00	01/06/00	(G) Silicone acrylate
P–99–0893	02/11/00	01/27/00	(G) Alkanolamine carboxylate salts
P–99–0894	02/11/00	01/27/00	(G) Alkanolamine carboxylate salts
P–99–0921	01/18/00	11/19/99	(G) Cyclic nitroxyl
P–99–0942	01/31/00	01/21/00	(G) Fluorinated polyurethane, modified with acrylate groups and siloxanes
P–99–0965	02/10/00	02/07/00	(S) Furan, octafluorotetrahydro-*
P–99–1001	02/08/00	12/28/99	(G) Ethylene acrylate copolymer
P–99–1036	01/27/00	01/06/00	(G) Epoxy acrylate
P–99–1053	02/09/00	02/03/00	(G) Polyester methacrylate
P–99–1079	02/07/00	01/31/00	(G) Phenylmethyl-bis(arylazo pyrazolone)

II. 46 NOTICES OF COMMENCEMENT FROM: 02/02/00 TO 02/11/00—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–99–1088	02/09/00	01/26/00	(G) Polyether acrylate
P–99–1157	02/10/00	01/22/00	(G) Substituted alkane anilide
P–99–1219	02/10/00	01/18/00	(S) Asphalt, polymer with butadiene and styrene*
P–99–1232	01/31/00	01/06/00	(S) 2-propenoic acid, 2-methyl-, 2-hydroxyethyl ester, polymer with ethyl 2-propenoate, methyl 2-methyl-2-propenoate, oxiranylmethyl 2-methyl-2-propenoate and 2-propenenitrile*
P–99–1307	02/02/00	01/07/00	(G) Polymer modified rosin
P–99–1319	02/08/00	01/25/00	(G) Poly etherpoly siloxane
P–99–1334	02/07/00	01/05/00	(G) Vegetable oil, sulfurized
P–99–1350	02/07/00	01/23/00	(S) 2-oxepanone, polymer with .alpha. -hydro-.omega.-hydroxypoly(oxy-1,4-butanediyl)*

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: March 10, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–6861 Filed 3–17–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

* * * * *

DATE & TIME: Thursday, March 23, 2000, at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This Meeting will be open to the Public.

The following item has been added to the agenda:

Notice of Proposed Rulemaking on Administrative Fines.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary of the Commission.

[FR Doc. 00–7005 Filed 3–16–00; 3:11 pm]

BILLING CODE 6715–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency is submitting a request for review and approval of an expired information collection. The request is submitted under the emergency processing procedures in Office of Management and Budget OMB) regulation 5 CFR 1320.13. FEMA is requesting that this information collection be approved by March 24, 2000, for use through September 31, 2000.

FEMA plans to follow this emergency request with a request for a 3-year approval. The request will be processed under OMB's normal clearance procedures in accordance with the provisions of OMB regulation 5 CFR 1320.10. To help us with the timely processing of the emergency and normal clearance submissions to OMB, we invite the general public to comment on the proposed collection of information. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning the collection of information which will assist FEMA in monitoring program delivery to disaster applicants and complying with other Federal requirements (flood insurance, environmental assessments, and floodplain management).

SUPPLEMENTARY INFORMATION: The Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 100–707; 44 CFR 206.13, effective March 21, 1989 and the interim IFG Program Federal regulations, are the statutory, regulatory and agency policies that covers why the program was established, why the data was collected is needed and the purpose of the data collection.

Collection of Information

Title: Individual and Family Grant (IFG) Program Information.

Type of Information Collection: Reinstatement, with change, of a previously approved collection for which approval has expired.

OMB Number: 3067–0163.

Form Numbers:

FEMA Form 76–27, DARIS Entry Document, Initial Report, is initiated by the Region based on the data provided by the State. The State provides FEMA preliminary information on the IFG Program for staffing and management purposes. This report is completed once for each disaster, and establishes an account for each new IFG program.

FEMA Form 76–28, DARIS Entry Document, Status Report, is completed by the State IFG staff and provided to the FEMA Regional Director. It serves as the framework for reviewing, analyzing and monitoring the progress of the program. The report tracks the number and dollar amount of applications approved by the State, the number and dollar amount of grants disbursed and the number of grants appealed. The data carried on this report is used to make determinations on the need for additional allocation and obligation of funds for program activity.

FEMA Form 76–29, DARIS Entry Document, Final Statistical Report, captures information that constitutes a funding history by category of each IFG program. This data is critical for reports to OMB and the Congress. The information reveals the total IFG program cost. The form can also be used as a management tool to check on the States' record of accuracy in estimating IFG Program costs and in requesting advances. The State is responsible for completing the form, and the FEMA Region is responsible for entering the information into DARIS.

FEMA Form 76–32, Worksheet for Case File Reviews, is utilized by State IFG personnel in reviewing five percent of all cases. FEMA requires the State to keep the information and on occasions makes requests to the States for information derived from the reviews.

FEMA Form 76–34, Checklist for IFG Program Review, is used during the interview State of the IFG Mid-Program Review of the States' administration of the program. The form is completed by FEMA Human Services staff and is

designed as a guide for the reviewer. It covers all items that must be monitored by FEMA to ensure effective management of the IFG program.

FEMA Form 76–38, Floodplain Management Analysis, Executive Orders 11988, Floodplain Management Analysis, and 11990, Protection of Wetlands, place a responsibility on FEMA and the State to perform reviews before certain IFG assistance in the housing category can be approved. The review involves an eight step decision-making process if the action, such as providing funds for purchase of a mobile home and the location (prior to the disaster) of the unit could affect a floodplain or wetland. The State is responsible for completing steps 3 and 4 of the process, while the Regions retains responsibility for steps 2, 6 and 7, with the State providing the background information for these three steps. Steps 1, 5 and 8 are jointly shared by the State and Region.

Abstract. This collection of information is essential to the effective monitoring and management of the State administered IFG Program by FEMA Regional Office. FEMA Regional staff and Headquarters staff will utilize the information to effectively monitor and evaluate the States' administration of the IFG Program, thus enabling FEMA to assess compliance, consistency and uniformity with Federal requirements. It is FEMA's responsibility to ensure that States perform and adhere to FEMA regulations and policy guidance.

Affected Public: Federal, State, Local or Tribal Governments.

Estimated Total Annual Burden Hours: 814 hours.

FEMA form No.	No. of responses	Minutes per response (B)	Annual burden hours [(A × B)/60]
76–27	40	15	10.00
76–28	7200	5	600.00
76–29	40	30	20.00
76–32	40	30	20.00
76–34	40	240	160.00
76–38	2	120	4.00
	7362		814.00

Estimated Cost. The total estimated annual cost to the respondent States is $13,789.16. The cost is determined by the average hourly rate of a GS9/5 ($16.94) times the 814 estimated annual burden hours. The total estimated annual cost to the Federal Government is $9,213.25. The cost is determined from calculating the amount of time (5%) that a Senior Federal employee spends reviewing the accuracy the forms and multiplying it by their annual salary of roughly $80,000 (GS14/5). Then, we add it to the amount of time (25%) that a data entry clerk spends inputting these figures into our database (25%) and multiplying it by their annual salary of $20,853. (4,000+5,213.25=9,213.25) This cost covers all responses submitted by all respondents.

Comments: Written comments are solicited to: (a) Evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.,* permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESSES: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625. FAX number (202) 646–3524 or email *muriel.anderson@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Contact Charles D. Robinson, Branch Chief, Program Guidance and Implementation Branch, Human Services Division (202) 646–3649 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection of information.

Dated: March 10, 2000.

Thomas Behm,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–6847 Filed 3–17–00; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1321–DR]

Ohio; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA–1321–DR), dated March 7, 2000, and related determinations.

EFFECTIVE DATE: March 7, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated March 7, 2000, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the State of Ohio resulting from severe storms and flooding beginning on February 18, 2000, and continuing through March 2, 2000, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, P.L. 93–288, as amended ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Hazard Mitigation in the designated areas and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation will be limited to 75 percent of the total eligible costs. If Public Assistance is requested and is determined to be warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Brad Gair of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

Adams, Gallia, Lawrence, Meigs, and Scioto Counties for Individual Assistance.

All counties within the State of Ohio are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

James L. Witt,

Director.

[FR Doc. 00–6843 Filed 3–17–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1318–DR]

Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia (FEMA–1318–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: March 9, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 2000:

City of Manassas for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) under Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–6839 Filed 3–17–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1319–DR]

West Virginia; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia, (FEMA–1319–DR). dated February 28, 2000, and related determinations.

EFFECTIVE DATE: March 6, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of West Virginia is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 2000:

Ritchie County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1321–DR]

Ohio; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Ohio (FEMA–1321–DR), dated March 7, 2000, and related determinations.

EFFECTIVE DATE: March 10, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Ohio is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of March 7, 2000:

Jackson and Pike Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–6844 Filed 3–17–00; 8:45 am]

BILLING CODE 6718–02–P

Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–6840 Filed 3–17–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1319–DR]

West Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia (FEMA–1319–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the incident period for this disaster is closed effective February 22, 2000.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence Zensinger,

Division Director, Human Services Division, Response and Recovery Directorate.

[FR Doc. 00–6841 Filed 3–17–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1319–DR]

West Virginia; Amendment No. 4 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of West Virginia, (FEMA–1319–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: March 8, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of West Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 2000:

Preston, Randolph, Taylor and Tucker Counties for Individual Assistance (already designated for Public Assistance)

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Laurence Zensinger,

Division Director, Human Services Division, Response and Recovery Directorate.

[FR Doc. 00–6842 Filed 3–17–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Opening Meeting, Interagency Committee on Dam Safety

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with section 8(h) of the National Dam Safety Program Act (Pub. L. 104–303), the Federal Emergency Management Agency gives notice that the following meeting will be held:

Name: Interagency Committee on Dam Safety.

Date of Meeting: April 11, 2000.

Place: Residence Inn by Marriott, Thomas Circle, 1199 Vermont Ave. NW, Washington, DC 20005.

Time: 2 p.m.–5 p.m.

Proposed Agenda: Review initiatives for FY2000.

Status: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Donald Bathurst, Director, National Dam Safety Program, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 416, Washington, DC 20472, telephone (202) 646–2753 or by facsimile at (202) 646–3990.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first served basis. Members of the general public who plan to attend the meeting should contact Rita Henry, Federal Emergency Management Agency, 500 C Street, SW, Room 416, Washington, DC 20472, Telephone (202) 646–2704 or by facsimile at (202) 646–3990 on or before April 3, 2000.

Minutes of the meeting will be prepared and available upon request 30 days after they have been approved by the Interagency Committee on Dam Safety.

Dated: March 8, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–6846 Filed 3–17–00; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Opening Meeting, National Dam Safety Review Board

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of meeting.

SUMMARY: In accordance with § 8(h) of the National Dam Safety Program Act (Pub. L. 104–303), the Federal Emergency Management Agency gives notice that the following meeting will be held:

NAME: National Dam Safety Review Board.

DATE OF MEETING: April 10, 2000.

PLACE: Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

TIME: 1p.m.–4p.m.

PROPOSED AGENDA: Review policy issues for 2000.

STATUS: This meeting is open to the public.

FOR FURTHER INFORMATION CONTACT: Donald Bathurst, Director, National Dam Safety Program, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW, Room 416, Washington, DC 20472, telephone (202) 646–2753 or by facsimile at (202) 646–3990.

SUPPLEMENTARY INFORMATION: This meeting is open to the public with limited seating available on a first-come, first served basis. Members of the general public who plan to attend the meeting should contact Rita Henry, Federal Emergency Management Agency, 500 C Street, SW, Room 416, Washington, DC 20472, Telephone (202) 646–2704 or by facsimile at (202) 646–3990 on or before April 3, 2000.

Minutes of the meeting will be prepared and available upon request 30 days after they have been approved by the National Dam Safety Review Board.

Dated: March 8, 2000.

Michael J. Armstrong,

Associate Director for Mitigation.

[FR Doc. 00–6845 Filed 3–17–00; 8:45 am]

BILLING CODE 6718–05–P

FEDERAL HOUSING FINANCE BOARD

Announcing an Open Meeting of the Board

TIME AND DATE: 1:00 P.M., Wednesday, March 22, 2000.

PLACE: Board Room, Second Floor, Federal Housing Finance Board 1777 F Street, N.W., Washington, D.C. 20006

STATUS: The entire meeting will be open to the public.

MATTERS TO BE CONSIDERED DURING PORTIONS OPEN TO THE PUBLIC:

- Final Rule: Duties and Responsibilities of FHLBank Board of Directors.
- Final Rule: Calculation of REFCorp Obligation.
- Proposed Rule: Amendments to Advances and other Regulations to implement Gramm-Leach-Bliley Act Collateral Provisions and make related revisions.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

William W. Ginsberg,

Managing Director.

[FR Doc. 00–6932 Filed 3–16–00; 11:41 am]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 3, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Tommy Don Craighead and Marilyn S. Craighead, Norman, Oklahoma; Mel Van Craighead and Deana R. Craighead, Ardmore, Oklahoma; Lana Jayne Martin and Steven C. Martin, Ardmore, Oklahoma; Brandon Lee Martin, Ardmore, Oklahoma; Russell Noble, Trustee of The TCC & BJC Trust No. 1 U/A Dated June 30, 1994, Ardmore, Oklahoma; Russell Noble, Trustee of The TCC & BJC Trust No. 2 U/A Dated June 30, 1994, Ardmore, Oklahoma; Russell Noble, Trustee of The TCC & BJC Trust No. 3 U/A Dated June 30, 1994, Ardmore, Oklahoma; Russell Noble, Trustee of The TCC & BJC Trust No. 4 U/A Dated June 30, 1994, Ardmore, Oklahoma; Russell Noble, Trustee of The TCC & BJC Trust No. 5 U/A Dated June 30, 1994, Ardmore, Oklahoma; Russell Noble, Trustee of The TCC & BJC Trust No. 6 U/A Dated June 30, 1994, Ardmore, Oklahoma; Russell Noble, Trustee of The TCC & BJC Trust No. 7 U/A Dated June 30, 1994, Ardmore, Oklahoma; to acquire voting shares of Citizens Commerce Corporation, Ardmore, Oklahoma, and thereby indirectly acquire voting shares of Citizens Bank & Trust Company, Ardmore, Oklahoma.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. Bank of Lodi Employee Stock Option Plan, Bakersfield, California; to acquire additional voting shares of First Financial Bancorp, Lodi, California, and thereby indirectly acquire additional voting shares of Bank of Lodi, N.A., Lodi, California.

Board of Governors of the Federal Reserve System, March 14, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6731 Filed 3–17–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 4, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. The Joe D. Butcher Family Trust, Cimarron, Kansas; Kimberly Jo Fairbank, Cimarron, Kansas; Grant Butcher, Dodge City, Kansas; Robert Butcher, Davidsonville, Maryland; and Harold Ott, Cimarron, Kansas; to acquire voting shares of First National Agency, Cimarron, Kansas, and thereby indirectly acquire First National Bank in Cimarron, Cimarron, Kansas.

Board of Governors of the Federal Reserve System, March 15, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6850 Filed 3–17–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the

Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 13, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Dentel Bancorporation, Victor, Iowa; to acquire 100 percent of the voting shares of Pocahontas Bancorporation, Pocahontas, Iowa, and thereby indirectly acquire The Pocahontas State Bank, Pocahontas, IA.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. FDB Bancorp, Inc., Louisville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of The First Capital Bank of Kentucky, Louisville, Kentucky.

C. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. State Bank of Slater Employee Stock Ownership Plan and Trust, Slater, Missouri; to become a bank holding company by acquiring 27.9 percent of the voting shares of Slater Bancshares, Inc., Slater, Missouri, and thereby indirectly acquire State Bank of Slater, Slater, Missouri.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. CPBK Holdings, Inc., Houston, Texas, and CPBK Holdings of Delaware, Inc., Wilmington, Delaware; to become bank holding companies by acquiring 100 percent of the voting shares of CompuBank, National Association, Houston, Texas.

Board of Governors of the Federal Reserve System, March 14, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6730 Filed 3–17–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 2000.

A. Federal Reserve Bank of Cleveland (Paul Kaboth, Banking Supervision) 1455 East Sixth Street, Cleveland, Ohio 44101–2566:

1. SNB Bancorp, Inc., Salyersville, Kentucky; to become a bank holding company by acquiring 100 percent of the voting shares of Salyersville National Bank, Salyersville; Kentucky.

2. Park National Corporation, Newark, Ohio; to acquire 100 percent of the voting shares of SNB Corp., Greenville, Ohio, and thereby indirectly acquire Second National Bank, Greenville, Ohio.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. BancPlus Corporation, Belzoni, Mississippi; to merge with First Holmes Corporation, Lexington, Mississippi, and thereby indirectly acquire First National Bank of Holmes County, Lexington, Mississippi.

Board of Governors of the Federal Reserve System, March 15, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–6851 Filed 3–17–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Office of Communications; Revision of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The Department of the Treasury has revised the construction of the following Standard form:

SF 1147, Request for Issuance of Replacement Check Due to Error in Name and/or Designation of Payee.

This form is now a cutsheet padded form with 50 sheets to a pad. You can obtain this form from the following address:

Department of the Treasury—FMS; Ardmore Industrial Center; 3361–L 75th Avenue; Landover, MD 20785; 301.344.8577.

FOR FURTHER INFORMATION CONTACT: Irving Wilson, Department of the Treasury, 202.622.1575.

DATES: Effective March 20, 2000.

Dated: March 14, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–6827 Filed 3–17–00; 8:45 am]

BILLING CODE 6820–34–M

GENERAL SERVICES ADMINISTRATION

Proposed Collection; Submission for OMB Review; Comment Request Entitled: Art in Architecture Program National Artist Registry

AGENCY: Public Buildings Service, GSA.

ACTION: Notice of request for approval of a new information collection entitled Art In Architecture Program, National Artist Registry.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), GSA has submitted to the Office of Management and Budget (OMB) a request to review and approve a new information collection concerning Art In Architecture Program, National Artist Registry. The information collection was published in the Federal Register on January 12, 2000 at 65 FR 1898 allowing for a 60-day public comment period. No comments were received.

The Art in Architecture Program is the result of a policy decision made in January 1963 by GSA Administrator, Bernard L. Boudin, who had served on the Ad Hoc Committee on Federal Office Space in 1961–62.

The program has been modified over the years, most recently in 1996 when a renewed focus on commissioning works of art that are an integral part of the building's architecture and adjacent landscape was instituted. The program continues to commission works of art from living American artists. One half of one percent of the estimated construction cost of new or substantially renovated Federal buildings and U.S. courthouses is allocated for commissioning works of art.

DATES: Submit comments on or before April 19, 2000.

ADDRESSES: Comments concerning this notice should be submitted to Edward Springer, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503 and also may be submitted to Susan Harrison, Public Buildings Service, Historic Buildings and Arts, Room 2308, 1800 F Street, NW., Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Susan Harrison, Public Buildings Service, Historic Buildings and Arts, Room 2308, 1800 F Street, NW., Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

The Art in Architecture Program actively seeks to commission works from the full spectrum of American artists, and strives to promote new media and inventive solutions for public art. The GSA Form 7437, Art In Architecture Program National Artist Registry will be used to collect information from artists across the country to participate and to be considered for commissions.

B. Annual Reporting Burden

Respondents: 360; annual responses; 360; average hours per response: .15; burden hours: 90.

Copy of Proposal: A copy of this proposal may be obtained from the GSA Acquisition Policy Division (MVP), Room 4011, GSA Building, 1800 F Street, NW., Washington, DC 20405.

Dated: March 13, 2000.

Sue McIver,

Acting Deputy Associate Administrator for Acquisition Policy.

[FR Doc. 00–6828 Filed 3–17–00; 8:45 am]

BILLING CODE 6820–61–M

GENERAL SERVICES ADMINISTRATION

Notice of Intent To Prepare an Environmental Impact Statement

The General Services Administration and the Bureau of Alcohol, Tobacco and Firearms (ATF) intend to prepare an Environmental Impact Statement, in compliance with the National Environmental Policy Act, on the following project:

ATF National Headquarters, Washington, DC.

The ATF National Headquarters is currently located in leased space at 650 Massachusetts Avenue, NW. and other leased space in the District of Columbia. The lease at 650 Massachusetts Avenue expires on September 30, 2000. The proposed project would consolidate ATF Headquarters operations and would improve the agency's ability to meet its missions. In addition, the Government would decrease operational expenditures by relocating from leased private office space to a Government-owned building.

This project will provide a new ATF National Headquarters with 325,000 gross square feet and parking for approximately 200 vehicles. The project is authorized to house approximately 1,100 ATF personnel.

Alternatives to be considered include:

- Construction of a new Federally-owned building on Square 710 at the intersection of New York and Florida Avenues, NE.
- Renovation of the Federally-owned Regional Office Building at 7th and D Streets, SW.
- No-Action Alternative under which ATF would remain in leased-space.

A Public Scoping Meeting has been scheduled for:

Wednesday, March 29, 2000, 7:00 p.m., Gallaudet University Kellogg Conference Center, 800 Florida Avenue, NE, Washington, DC. 20001.

GSA is requesting your input to ensure that all pertinent issues are addressed in the Environmental Impact Statement (EIS). In addition, GSA is soliciting public comment on historic and archaeological resources under Section 106 of the National Historic Preservation Act.

In the interest of available time, each speaker will be asked to limit their oral comments to five (5) minutes. A short, formal presentation will precede the request for public comments. GSA and ATF representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that Federal, state and city agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed in the EIS.

Agencies and the general public are also invited and encouraged to provide written comment in addition to, or in lieu of, comments at the public meeting. To be most helpful, scoping comments should clearly described specific issues or topics which the commentator believes the EIS should address.

If you can not attend the Public Scoping Meeting, please send comments to the address below. All comments must be postmarked by April 24, 2000.

Mr. Dawud Abdur-Rahman, General Services Administration, National Capital Region, Public Buildings Service, Room 2021 WPC, 7th & D Streets, SW., Washington, DC 20407, Fax (202) 708–4964, E-mail: *dawud.abdur-rahman@gsa.gov*

Dated: March 13, 2000.

Arthur Turowski,

Deputy Assistant Regional Administrator, Public Buildings Service, GSA, National Capital Region.

[FR Doc. 00–6826 Filed 3–17–00; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00054]

Information Interchange and Technical and Financial Assistance for Human Immunodeficiency Virus (HIV) Prevention; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for a cooperative agreement program for Information Interchange and Technical and Financial Assistance for Human Immunodeficiency Virus (HIV) Prevention. This program addresses the "Healthy People 2010" priority area(s) of Human Immunodeficiency Virus (HIV) Infection. The purpose of the program is

to continue supporting: an information exchange program among mayors and other local and State government officials concerning: HIV prevention; HIV prevention program and policy development; and the provision of technical and financial assistance to community-based organizations (CBOs), local and State health departments, and others involved in health promotion and disease prevention activities.

B. Eligible Applicants

Assistance will be provided only to the United States Conference of Mayors (USCM). No other applications are solicited.

Eligibility is limited to USCM since it provides representation from city and local officials, including social service, education, and other community officials and organizations, in approximately 1,000 cities with populations of more than 30,000 and, through its affiliate The United States Conference of Local Health Officials, provides representation from approximately 2,000 additional local health officials. USCM was created specifically to represent this wide variety of local organizations and community officials to the Federal government and other national organizations and is unique in its role as a liaison between these officials. It has served as a policy-development and capacity-building organization in intergovernmental affairs for more than 65 years and has as one of its major objectives the sharing of information between local governments.

Note: Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, cooperative agreement, contract, loan, or any other form.

C. Availability of Funds

Approximately $1,000,000 is available in FY 2000, to support an HIV prevention cooperative agreement with USCM. It is expected that the award will begin on or about May 1, 2000 and will be made for a 12-month budget period within a project period of up to 5 years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Direct Assistance

You may request Federal personnel as direct assistance, in lieu of a portion of financial assistance.

Use of Funds

Funds may not be used to supplant or duplicate existing funding.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient shall be responsible for the activities under 1. "Recipient Activities," and CDC will be responsible for the activities listed under 2. "CDC Activities."

1. Recipient Activities

a. Collaborate with CDC in identifying those HIV prevention policies, practices, procedures, programs, and processes that have been demonstrated to be effective.

b. Disseminate to local government officials, health departments, CBOs, and others, effective HIV/AIDS prevention-related policies, practices, procedures, programs, processes, materials and related items, as well as technical and practical information warranted by new epidemiological, behavioral, or clinical discoveries. Use existing information vehicles, *e.g.*, information exchange newsletters, capsule and technical assistance reports, case studies, information alerts, directories, conferences, workshops, and HIV/AIDS-related telecommunications networks. This activity should include assisting mayors in mid-to-high HIV/AIDS incidence areas in identifying mechanisms to incorporate HIV prevention into their short-and long-range plans.

c. Compete, objectively review applications, award, and announce funding given to local health departments (LHDs) and CBOs working collaboratively to conduct HIV prevention needs assessments or implementation of high priority HIV prevention activities. Except in the case of non-competing continuation awards, efforts should be made to avoid funding the same localities and agencies during subsequent funding cycles.

d. Provide technical assistance to funded and unfunded LHDs and CBOs on HIV prevention program and management issues such as: fiscal accounting systems, grant writing, educational material development, and program development, implementation, and evaluation.

e. Conduct assessments of HIV prevention programs, resources, and capacities and report findings in case studies.

f. Develop case studies that will enable: Community Planning Groups (CPGs), LHDs and CBOs to benefit from the experience of other organizations in the planning, development, implementation, and evaluation of HIV prevention planning processes, needs assessments, programs and related activities.

g. Prepare abstracts, posters, and oral presentations and articles for publication in peer-reviewed journals.

h. Obtain information and materials through surveys of cities, local school districts and health departments, other local government agencies, CBOs, CPGs, and other community entities concerning HIV/AIDS prevention-related funding, policies, practices, procedures, programs, and processes.

i. Evaluate impact of outreach to mayors.

2. CDC Activities

a. Collaborate in the development of a dissemination plan so that practical and technical information related to HIV/AIDS prevention can be rapidly shared with the appropriate government and health department officials, as well as CBOs and CPGs.

b. Identify: (1) HIV prevention-related policies, practices, procedures, community needs and processes; (2) local health education/risk reduction programs that have demonstrated the capability to successfully serve the needs of people with AIDS or HIV infection, sex and needle-sharing partners, high-risk populations, health-care providers, or the general public; and (3) other local HIV prevention-related efforts (*e.g.* community planning or peer youth education) that offer valuable lessons to benefit others.

c. Collaborate in the planning of all USCM workshops, conferences and other professional gatherings that are determined to serve a large public health purpose, and provide speakers for meetings that are national in scope.

d. Give technical feedback to USCM on drafts of all HIV-related materials intended for dissemination.

e. Collaborate in the analysis and presentation of all material for publication.

f. Identify community planning groups in need of fiscal services.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. Provide a detailed plan for activities for the initial budget period and a more general plan for activities in years 2 through 5 of the project period. Specifically:

1. Describe the need for and a plan to address the required recipient activities.

2. Provide realistic, measurable, and time-phased objectives that are related to the purpose of this program and the Healthy People: 2010 national objectives. Provide both budget (1-year) and project (5-year) period objectives.

3. Describe the activities that will be carried out to accomplish the proposed objectives.

4. Provide a plan of evaluation that addresses each of the objectives and activities. Indicate how the evaluation findings will be used in program planning and decision making.

5. Provide a line item budget and justification that is consistent with the purpose of this program and the proposal submitted.

The narrative should be no more than 20 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

Direct Assistance

To request new direct-assistance assignees, include:

A. number of assignees requested;

B. description of the position and proposed duties;

C. ability or inability to hire locally with financial assistance;

D. justification for request;

E. organizational chart and name of intended supervisor;

F. opportunities for training, education, and work experiences for assignees; and

G. description of assignee's access to computer equipment for communication with CDC (*e.g.*, personal computer at home, personal computer at workstation, shared computer at workstation on site, shared computer at a central office).

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are in the application kit. On or before March 24, 2000, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are either:

(a) Received on or before the deadline date; or

(b) Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. The extent to which the applicant has described its ability to conduct HIV prevention activities and programs. (25 points)

2. The extent to which the application includes an achievable plan, with specific, measurable, and attainable objectives, for conducting project activities as described under the section "Program Requirements, 1. Recipient Activities." (25 points)

3. The extent to which the application includes reasonable and appropriate methods for evaluating the project's effectiveness. (40 points)

4. The extent to which the applicant demonstrates the existence and use of organizational policies and procedures requiring the hiring, training and assigning of qualified personnel to conduct and manage project activities. (10 points)

In addition, the budget will be evaluated (but not scored) to determine if it is reasonable, clearly justifiable, and consistent with the intended use of funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Progress reports, annual;

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial status and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–5 HIV Program Review Panel Requirements

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–14 Accounting System Requirements

AR–20 Conference Support

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317 of the Public Health Service Act, [42 U.S.C. sections 241(a) and 247(b). The Catalog of Federal Domestic Assistance number is 93.939, HIV Prevention Activities—Non-Governmental Organizations.

J. Where to Obtain Additional Information

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888 472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest.

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sharon Robertson, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement Number [00054], Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341, Telephone: (770) 488–2782, E-mail: sqr2@cdc.gov.

Access to this and all other CDC program announcements are available on the CDC home page on the Internet: http://www.cdc.gov.

For program technical assistance, contact: Mr. David Brownell, National Center for HIV, STD and TB Prevention, Centers for Disease Control and Prevention, 1600 Clifton Road N.W., Mailstop E–35, Atlanta, Georgia 30333, Telephone: (404) 639–5200, Email: dfb2@cdc.gov.

Dated: March 14, 2000.

John L. Williams,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–6801 Filed 3–17–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

The National Vaccine Program Office (NVPO), of the Centers for Disease Control and Prevention (CDC), Announces the Following Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Workshop on Aluminum in Vaccines.

Times and Dates: 9 a.m.–9 p.m., May 11, 2000; 9 a.m.–2 p.m., May 12, 2000.

Place: Hilton Caribe Hotel, San Juan, Puerto Rico.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 500 people.

Purpose: The Workshop will discuss the role of aluminum in vaccines.

Matters To Be Discussed: Agenda items will include presentations and discussion including: the role of adjuvants in vaccines; and, the pharmacokinetics, toxicology, health guidance values, immunology, and possible adverse events associated with aluminum in vaccines.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Sandra Browning and/or Lena Kombo, NVPO, CDC, 1600 Clifton Road, NE, M/S D66, Atlanta, Georgia 30333, telephone 404/687–6672. You may also visit the NVPO website for additional information: www.cdc.gov/od/nvpo/calendar.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: March 13, 2000.

Carolyn Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–6799 Filed 3–17–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Breast and Cervical Cancer Early Detection and Control Advisory Committee Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Breast and Cervical Cancer Early Detection and Control Advisory Committee.

Times and Dates: 1 p.m.–4:45 p.m., May 9, 2000; 9 a.m.–5 p.m., May 10, 2000.

Place: The Wyndham Hotel, (Midtown), 10th Street, Atlanta, Georgia, 30311, telephone: 404/873–4800.

Status: Open to the public, limited only by the space available.

Purpose: This committee is charged with providing advice and guidance to the Secretary, the Assistant Secretary for Health, and the Director of CDC, regarding the need for early detection and control of breast and cervical cancer and to evaluate the Department's current breast and cervical cancer early detection and control activities.

Matters to be Discussed: The discussion will primarily focus on the role of Professional Education and Training in the National Breast and Cervical Cancer Early Detection Program. Additional items to be discussed include the (1) termination date of the committee: and (2) progress made towards the 1990 Strategic Plan.

Members of the public who wish to make a brief oral presentation at the meeting should contact Ms. Tamikio Bohler, 770/488–3199 or Ms. Cecilia Nkabinde, 770/488–3199 by 4 p.m. on April 13, 2000, to have time reserved on the agenda. Each individual or group making an oral presentation will be limited to 5 minutes. The request should identify the name of the individual who will make the presentation and an outline of the issues to be addressed. At least 25 copies of the presentation and 25 copies of the visual aids used at the meeting are to be given to Ms. Bohler, no later than the time of the presentation for distribution to the Committee and the interested public.

Contact Person for Additional Information: Tamikio Bohler, Division of Cancer Prevention and Control, National Center for Chronic Disease Prevention and Health Promotion, CDC, 4770 Buford Highway, NE, M/S K–64, Atlanta, Georgia 30341–3724, telephone 770/488–3199.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 14, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–6798 Filed 3–17–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee (CLIAC): Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meetings.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times And Dates: 8:30–5 p.m., April 5, 2000; 8:30 a.m.–3:30 p.m., April 6, 2000.

Place: CDC, Koger Center, Williams Building, Conference Rooms 1802 and 1805, 2877 Brandywine Road, Atlanta, Georgia 30341.

Status: Open to the public, limited only by the space available. The meeting rooms accommodate approximately 85 people.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services, the Assistant Secretary for Health, and the Director, CDC, regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters To Be Discussed: The agenda will include discussion on specimens and test systems not currently regulated under Clinical Laboratory Improvement Amendments (CLIA), current and future research related to CLIA, and introduction to proficiency testing issues.

The Committee solicits oral and written testimony on all three areas cited in the matters to be discussed above. Requests to make an oral presentation should be submitted in writing to the contact person listed below by close of business, March 29, 2000. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Written comments should not exceed five single-spaced typed pages in length and should be received by the contact person listed below by close of business, March 29, 2000.

Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Devery Howerton, Chief, Laboratory Practice Standards Branch, Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, Mailstop F–11, Atlanta, Georgia 30341–3724, telephone 770/488–8044, FAX 770/488–8279.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both CDC and ATSDR.

Dated: March 14, 2000.

Carolyn J. Russell,

Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–6800 Filed 3–17–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 98F–0568]

FMC Corp.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 8A4605) proposing that the food additive regulations be amended to provide for the safe use of sodium stearoyl lactylate as an emulsifier, stabilizer, and texturizer in salad dressings and soups.

FOR FURTHER INFORMATION CONTACT: Mary E. LaVecchia, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3072.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 27, 1998 (63 FR 40126), FDA announced that a food additive petition (FAP 8A4605) had been filed by FMC Corp., c/o Keller and Heckman, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in § 172.846 *Sodium stearoyl lactylate* (21 CFR 172.846) to provide for the expanded safe use of sodium stearoyl lactylate as an emulsifier, stabilizer, and texturizer in salad dressings and soups. FMC Corp. has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: February 23, 2000.

Alan M. Rulis,

Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–6721 Filed 3–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0988]

Lilly Research Laboratories et al.; Withdrawal of Approval of 22 New Drug Applications and 36 Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of 22 new drug applications (NDA's) and 36 abbreviated new drug applications (ANDA's). The holders of the applications notified the agency in writing that the drug products were no longer marketed and requested that the approval of the applications be withdrawn.

DATES: Effective April 19, 2000.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of the applications listed in the table in this document have informed FDA that these drug products are no longer marketed and have requested that FDA withdraw approval of the applications. The applicants have also, by their request, waived their opportunity for a hearing.

Application No.	Drug	Applicant
NDA 6–139	Surfacaine (cyclomethycaine).	Lilly Research Laboratories, Lilly Corporate Center, Indianapolis, IN 46285.
NDA 6–904	Terfonyl (trisulfapyrimidines) Tablets and Oral Suspension.	Bristol-Myers Squibb Co., P.O. Box 4000, Princeton, NJ 08543–4000.
NDA 9–357	Rau-Sed (reserpine) Tablets.	Do.
NDA 9–523	Tyzine 0.1% (tetrahydrozoline HCl).	Pfizer, Inc., 235 East 42d St., New York, NY 10017–5755.
NDA 9–941	Tyzine 0.05% (tetrahydrozoline HCl) Pediatric Nasal Drops.	Do.
NDA 10–520	Leritine (anileridine HCl) Injection	Merck & Co., Inc., P.O. Box 4, BLA–20, West Point, PA 19486.
NDA 11–028	Hydeltrasol (prednisolone sodium phosphate) Sterile Ophthalmic Ointment, 0.25%.	Do.
NDA 11–178	Isuprel (isoproterenol hydrochloride) Mistometer.	Sanofi Winthrop, Inc., 90 Park Ave., New York, NY 10016–1389.
NDA 11–602	Kenalog (triamcinolone acetonide) Lotion.	Bristol-Myers Squibb Co.
NDA 12–335	Forhistal (dimethindene maleate) Tablets.	Novartis Pharmaceuticals Corp., 59 Route 10, East Hanover, NJ 07936–1080.
NDA 12–337	Forhistal (dimethindene maleate) Syrup.	Do.
NDA 12–338	Forhistal (dimethindene maleate) Pediatric Drops.	Do.
NDA 16–755	Diapid (Lypressin Nasal Solution USP) Nasal Spray.	Novartis Pharmaceuticals Corp.
NDA 16–990	Intal (Cromolyn Sodium for Inhalation USP) Capsules.	Rhone-Poulenc Rorer Pharmaceuticals, Inc., 500 Arcola Rd., P.O. Box 1200, Collegeville, PA 19426–0107.
NDA 17–605	Xylo-Pfan (Xylose USP) Powder.	Savage Laboratories, 60 Baylis Rd., Melville, NY 11747.
NDA 19–215	FEMSTAT (butoconazole nitrate) 2% Vaginal Cream (prescription).	Hoffmann-La Roche, Inc., 340 Kingsland St., Nutley, NJ 07110–1199.
NDA 19–359	FEMSTAT (butoconazole nitrate) Suppositories, 100 milligrams (mg).	Do.

Application No.	Drug	Applicant
NDA 20–750	Tilade (nedocromil sodium inhalation solution) Nebulizer Solution.	Rhone-Poulenc Rorer Pharmaceuticals, Inc.
NDA 50–128	Bicillin (penicillin G benzathine) Tablets.	Wyeth-Ayerst Laboratories, P.O. Box 8299, Philadelphia, PA 19101–8299.
NDA 50–306	GEOPEN (carbenicillin disodium) IM/IV.	Pfizer, Inc.
NDA 50–318	Kenalog-S Nasal Spray (neomycin sulfate-gramicidin and triamcinolone acetonide with phenylephrine)	Bristol-Myers Squibb Co.
NDA 50–518	Meclan (meclocycline sulfosalicylate) Cream, 1%.	Johnson & Johnson Consumer Companies, Inc., 199 Grandview Rd., Skillman, NJ 08558–9418.
ANDA 60–124	Strycin (streptomycin) Syrup.	Bristol-Myers Squibb Co.
ANDA 60–513	Streptomycin Sulfate Injection USP.	Do.
ANDA 60–933	Spectrocin (Neomycin Sulfate and Gramicidin Ointment USP).	Do.
ANDA 61–523	Achromycin (tetracycline HCl) Diagnostic Susceptibility Powder, 20 mg.	Wyeth-Ayerst Laboratories.
ANDA 61–605	ETHRIL (Erythromycin Stearate Tablets USP).	Bristol-Myers Squibb Co.
ANDA 62–224	Neomycin Sulfate Ointment USP.	Do.
ANDA 62–305	Pediamycin Suspension and Pediamycin Oral Drops (erythromycin ethylsuccinate for oral suspension).	Abbot Laboratories, 100 Abbott Park Rd., D–491, AP6B–1SW, Abbott Park, IL 60064–6108.
ANDA 62–306	Erythromycin Ethylsuccinate Tablets, 200 mg.	Do.
ANDA 62–334	Cefadroxil for Oral Suspension USP.	Apothecon, Inc., A Bristol-Myers Squibb Co., P.O. Box 4500, Princeton, NJ 08543–4500.
ANDA 62–390	Cifadroxil Tablets USP, 1 gram (g).	Do.
ANDA 62–818	Neomycin and Polymyxin B Sulfates and Gramicidin Ophthalmic Solution.	Fujisawa Healthcare, Inc., 3 Parkway North Center Deerfield, IL 60015–2548.
ANDA 64–026	Tobramycin Sulfate Injection USP, 40 mg/mL.	Apothecon, Inc.
ANDA 71–151	Bretylium Tosylate Injection.	AstraZeneca, 725 Chesterbrook Blvd., Wayne, PA 19087–5677.
ANDA 71–153	Bretylium Tosylate Injection.	Do.
ANDA 71–319	Naproxen Sodium Tablets USP.	Purepac Pharmaceutical Co., 200 Elmora Ave., Elizabeth, NJ 07207.
ANDA 74–360	Gemfibrozil Tablets USP, 600 mg.	Do.
NDA 74–380	Metoprolol Tartrate Tablets USP, 50 mg and 100 mg.	Do.
ANDA 74–658	Acyclovir Tablets USP, 400 and 800 mg.	Lek Pharmaceutical and Chemical Co. d.d., c/o Lek USA, Inc., 333 Sylvan Ave., Englewood Cliffs, NJ 07632.
ANDA 74–750	Acyclovir Capsules USP, 200 mg.	Do.
ANDA 75–516	Serecon Eye Drops (pheniramine maleate and naphazoline HCl ophthalmic solution), 0.315%/0.02675%.	Optikem International, Inc., c/o Medvice Consulting, Inc., 623 Glacier Dr., Grand Junction, CO 81503.
ANDA 80–321	Prednisone Tablets USP, 5 mg.	Vintage Pharmaceuticals, Inc., 3241 Woodpark Blvd. Charlotte, NC 28206.
ANDA 80–322	Prednisolone Tablets USP, 5 mg.	Do.
ANDA 80–860	Vitamin A Capsules USP	Bristol-Myers Squibb Co.
ANDA 83–807	Prednisolone Tablets USP, 20 mg.	Vintage Pharmaceuticals, Inc.
ANDA 84–627	Quinidine Sulfate Tablets USP, 200 mg.	Pharmavite Corp., P.O. Box 9606, Mission Hills, CA 91346–9606.
ANDA 85–147	Quinidine Sulfate Tablets USP, 200 mg.	Jones Pharma, Inc., 1945 Craig Rd., P.O. Box 46903, St. Louis, MO 63146.
ANDA 85–150	Diphenhydramine HCl Capsules USP, 50 mg.	Purepac Pharmaceutical Co.
ANDA 85–156	Diphenhydramine HCl Capsules USP, 25 mg.	Do.
ANDA 85–665	Austaire (theophylline anhydrous) Tablets.	Pfizer, Inc.
ANDA 86–454	AMITID Tablets (Amitriptyline HCl Tablets USP).	Bristol-Myers Squibb Co.
ANDA 86–569	Theoclear L.A.–130 and Theoclear L.A.–260 (theophylline extended-release capsules, 130 mg and 260 mg).	Schwarz Pharma, Inc., 5600 West County Line Rd., Mequon, WI 53092.
ANDA 87–073	MD–76 (Diatrizoate Meglumine and Diatrizoate Sodium Injection USP, 66%/10%).	Mallinckrodt, Inc., 675 McDonnell Blvd., P.O. Box 5840, St. Louis, MO 63134.
ANDA 88–758	Butalbital, Acetaminophen, and Caffeine Capsules USP, 50 mg/325 mg/40 mg.	Mallinckrodt Chemical, Inc., P.O. Box P, 58 Pearl St., Hobart, NY 13788–0416.
ANDA 89–023	TRIAD (Butalbital, Acetaminophen, and Caffeine Capsules USP), 50 mg/325 mg/40 mg.	Do.
ANDA 89–102	FEMCET (Butalbital, Acetaminophen, and Caffeine Capsules USP), 50 mg/325 mg/40 mg.	Do.
ANDA 89–426	Dipyridamole Tablets USP, 50 mg.	Purepac Pharmaceutical Co.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed in the table in this document, and all amendments and supplements thereto, is hereby withdrawn, effective April 19, 2000.

Dated: March 7, 2000.

Janet A. Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 00–6722 Filed 3–17–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–643]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved request; *Title of Information Collection:* Hospice Survey and Deficiencies Report Form and Supporting Regulations at 42 CFR Part 418.1–418.405; *Form No.:* HCFA–643 (OMB# 0938–0379); *Use:* In order to participate in the Medicare program, a hospice must meet certain Federal health and safety conditions of participation. This form will be used by State surveyors to record data about a hospice's compliance with these conditions of participation in order to initiate the certification or recertification process; *Frequency:* Annually; *Affected Public:* State, local or tribal government; *Number of Respondents:* 2,293; *Total Annual Responses:* 2,293; *Total Annual Hours:* 5,733.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 8, 2000.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards

[FR Doc. 00–6739 Filed 3–17–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–668B]

Agency Information Collection Activities: Proposed Collection: Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection; *Title of Information Collection:* Post Laboratory Survey Questionnaire—Laboratory, and Supporting Regulations in 42 CFR 493; *Form No.:* HCFA–668B (OMB# 0938–0653); *Use:* To provide an opportunity and a mechanism for CLIA laboratories surveyed by HCFA or HCFA's agent to express their satisfaction and concerns about the CLIA survey process; *Frequency:* Biennially; *Affected Public:* Business or other for-profit, not-for-profit institutions; *Number of Respondents:* 25,000; *Total Annual Responses:* 12,500; *Total Annual Hours:* 3,125.

We have revised one of the questions in the beginning section and have deleted one of the questions in Section II of the form.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Julie Brown, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: February 25, 2000

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–6741 Filed 3–17–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–250]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Skilled Nursing Facility (SNF) Resident Assessment MDS Data and Supporting Regulations in 42 CFR 413.343 and 424.32.

Form No.: HCFA–R–250 (OMB# 0938–0739).

Use: Skilled Nursing Facilities (SNFs) are required to submit Resident Assessment Data as described at 42 CFR 483.20 in the manner necessary to administer the payment rate methodology described in 42 CFR 413.337. Pursuant to sections 4204(b) and 4214(d) of OBRA 1987, the current requirements related to the submission and retention of resident assessment data for the 5th, 30th, 60th and 90th days following admission, necessary to administer the payment rate methodology described in § 413.337, are subject to the Paperwork Reduction Act.

Frequency: Monthly.

Affected Public: Business or other for-profit, and Not-for-profit institutions.

Number of Respondents: 17,000.

Total Annual Responses: 204,000.

Total Annual Hours: 5,696,218.25.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, D.C. 20503.

Dated: February 14, 2000

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–6740 Filed 3–17–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Inspector General; Program Exclusions: February 2000

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of February 2000, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, and all Federal Health Care programs. In addition, no program payment is made to any business or facility, *e.g.*, a hospital, that submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all Executive Branch procurement and non-procurement programs and activities.

Subject, city, state	Effective date
Program-Related Convictions	
ALVAREZ, IVAN	03/20/2000
MIAMI, FL	
BARRON, CONCEPCION	03/20/2000
MIAMI, FL	
BERRY, NABIL	03/20/2000
DEARBORN, MI	
CAPALDO, GEORGE ROCKY	03/20/2000
DENVER, CO	
CLARK, BARBARA J	03/20/2000
PEMBROKE, NH	
CRITCHFIELD, CARRIE ANN	03/20/2000
BELLOWS FALLS, VT	
DIAZ, MANUEL	03/20/2000
MIAMI, FL	
EASON, ALMEDIA SHENELL	03/20/2000
HOBBSVILLE, NC	
ENOS, ARTHUR W	03/20/2000
BURLINGTON, MA	
ENOS AMBULANCE SERVICE INC	03/20/2000
BURLINGTON, MA	
ESPINO, OTTO NELSON	03/20/2000
MIAMI, FL	
FARMACIA NUEVO MODELO	03/20/2000
BAYAMON, PR	
FERNANDEZ, OMAR	03/20/2000
MIAMI, FL	
GHEN, ROBERT	03/20/2000
DELRAY BEACH, FL	
GONZALEZ, BARBARA	03/20/2000
MIAMI, FL	
HERNANDEZ, ELSA	03/20/2000
MIAMI, FL	
HYLAND, JOHN F	03/20/2000
DETROIT, MI	
JEFFERSON, GARY	03/20/2000
BALTIMORE, MD	
KERWIN, PATRICK MICHAEL	03/20/2000
PORTLAND, OR	
LEPORE, ROBERT	03/20/2000
BUFFALO, NY	
LOPEZ, GLORIA ESTRADA	03/20/2000
COLEMAN, FL	
LUNA, MICHAEL	03/20/2000
LONG ISLAND, NY	
MARTINEZ-ROIG, CESAR	03/20/2000
MIAMI, FL	
MENDEZ, ESTHER	03/20/2000
MIAMI, FL	
MORALES, DANIEL	03/20/2000
HIALEAH GARDENS, FL	
MURTAGH, OWEN J	03/20/2000
DIX HILLS, NY	
NABIL BERRY, D D S, P C	03/20/2000
DEARBORN, MI	
PARIENTE, ALBERTO	03/20/2000
MIAMI, FL	
PEREZ, ZENAIDA	03/20/2000
MIAMI, FL	
RAMOS, CARLOS ARMANDO	03/20/2000
HIALEAH, FL	
RODRIGUEZ, BETTY	03/20/2000
MIAMI, FL	
RODRIGUEZ-MACHADO, ALFREDO	03/20/2000
SAN JUAN, PR	
ROSEN, BARBARA M	03/20/2000
CEDARHURST, NY	
SAMARITAN TELE-MED, INC	03/20/2000
DELRAY BEACH, FL	
SOCARRAS, JOSE	03/20/2000
MIAMI, FL	
VILLAMIZAR, OTTO	03/20/2000
MIAMI, FL	
WALSH, MARCELLE J	03/20/2000
KEY COLONY BEACH, FL	
WOZONK, GEORGE	03/20/2000
VINELAND, NJ	
ZANDER, PAUL D	11/02/1999
LOS ANGELES, CA,	
Felony Conviction for Health Care Fraud	
HAAS, CHRISTOPHER K	03/20/2000
PLAINSVIEW, NY	
HIGGINS, PAULETTE A	03/20/2000
MARIANNA, FL	
INDEPENDENT HOME MEDICAL	03/20/2000
COEBURN, VA	
MCCONNELL, DORIS J	03/20/2000
ALDERSON, VA	
MCCONNELL, MARSHA L	03/20/2000
ALDERSON, VA	
THOMAS, LISA M	03/20/2000
IRVINGTON, NJ	
WOOD, PENNY L	03/20/2000
PEORIA, IL	
Felony Control Substance Conviction	
BEAULIEU, PAMELA	03/20/2000
WOODBRIDGE, VA	
FELDMAN, STEVEN J	03/20/2000
OSPREY, FL	
FINKELSTEIN, LOUIS	03/20/2000
PHILADELPHIA, PA	
MCCLELLAND, MARCIA	03/20/2000
ELLWOOD CITY, PA	
TAYLOR, VAKESSA LEONETTE	03/20/2000
MARTINSVILLE, VA	
Patient Abuse/Neglect Convictions	
ADAMS, ROSIE MARIE	03/20/2000
ETHEL, LA	
ALEMAN, MIQUEL	03/20/2000
SAN ANTONIO, TX	
ALUMBAUGH, GERALD ROY	03/20/2000
LOOMIS, WA	
ARGUETA, EDWARD A	03/20/2000
SEASIDE PARK, NJ	
BROOKS, OSCAR J	03/20/2000
MAPLE SHADE, NJ	
CLARK, LARRY D	03/20/2000
PARK CITY, KY	
COOPER, TIMOTHY	03/20/2000
OAKS CORNERS, NY	
COPLEY, JAMES W	03/20/2000
AMES, IA	
COX, CARLA SUSAN	03/20/2000
SHINGLETOWN, CA	
D'ANGELO, ELEANOR	03/20/2000
FREEPORT, NY	
DEAN, ALBERT	03/20/2000
GRAND RAPIDS, MI	
GANTT, STEVEN	03/20/2000
MORGANTON, NC	
MACKALL, ROCHELLE RENEE	03/20/2000
CATONSVILLE, MD	
NUNN, CRAIG R	03/20/2000
NASHVILLE, TN	
PERKINS, BRENDA	03/20/2000
SUMTER, SC	
REAVES, CHARLEASE	03/20/2000
ROCHESTER, NY	
REGISTER-ADAY, JACKIE	03/20/2000
HAMILTON, TX	
SCHULTZ, ANGELA J	03/20/2000
GREEN BAY, WI	
SCOTT, LYNDON GEORGE	03/20/2000
LONG BEACH, CA	
SMITH, ARNOLD K SR	03/20/2000
ENDICOTT, NY	
Conviction for Health Care Fraud	
RICHARDS, KRISTY MARIE	03/20/2000
IOLA, KS	
WALKER, JOE DONALD	03/20/2000
ARKANSAS CITY, KS	
Controlled Substance Convictions	
DEBELLIS, LEONARD T	03/20/2000
ZIEGLERVILLE, PA	
License Revocation/Suspension/ Surrendered	
AHMADI, HOSSAINALLI D	03/20/2000
ENGLEWOOD, OH	
ALLEN, CAROLE ANNE G	03/20/2000
NEWPORT NEWS, VA	
AMBROSE, TINA ALIVANNE	03/20/2000
HUGHES, AK	
AMES, BRUCE ANTHONY	03/20/2000
REDDING, CA	
AMROZEWICZ, SCOTT J	03/20/2000
EXTON, PA.	
ARNDT, LINDA JARRELL	03/20/2000
HENDERSON, TX	
BAKUZIS, ILZE	03/20/2000
W ST PAUL, MN.	
BAYLESS, PAULA C	03/20/2000
GAHANNA, OH.	
BECHTEL, DEBRA ANN	03/20/2000
FAIRFIELD, CA.	
BECKER, JOHN C	03/20/2000
TAFT, TX.	
BIGLANE, VELVET LYNN	03/20/2000
SEMINARY, MS.	
BLANDFORD, KATHLEEN MARY	03/20/2000
FT PIERCE, FL.	
BOUGHTON, JUDITH	03/20/2000
WEST HAVEN, CT.	
BOWEN, JOHN L	03/20/2000
HOUSTON, TX.	
BOWERS, NILDA LEANO	03/20/2000
TEMPLE TERRACE, FL.	
BOYCE, CHRIS T	03/20/2000
SPOKANE, WA.	
BROWN, CARLA	03/20/2000
BOWLING GREEN, KY.	
BUTLER, JAMES ANTHONY	03/20/2000
TAMPA, FL.	
CABELL, GWENDOLYN	03/20/2000
RICHMOND, VA.	
CAMERON, MARGARET LUCILLE	03/20/2000
SPLENDORA, TX.	
CARMACK, JOEY DEAN	03/20/2000
GLENCOE, AL.	
CARTER, YVETTE BOYD	03/20/2000
MOODY, AL.	
CASSI, PAMELA R	03/20/2000
RAVENNA, OH.	
CASTNER, SEAN DOUGLAS	03/20/2000
ABILENE, TX.	
CHALOUPKA, MICHELLA J	03/20/2000
ORTONVILLE, MN.	
CHAPMAN, SUSAN	03/20/2000
PULASKI, VA.	
CHERRY, SHANDARA VALERIE	03/20/2000
MIAMI, FL.	
CHRISTIAN, LINDA	03/20/2000
VIRGINIA BEACH, VA.	
CLEMENTS OGDEN, DAWN E	03/20/2000
MARSHFIELD, VT.	
COLEMAN, CONSTANCE MUNFORD	03/20/2000
RICHMOND, VA.	
COLL, TAMMY T	03/20/2000
JAFFREY, NH.	
CONRAD, JACKIE	03/20/2000
HENDERSON, KY.	
COSTIGAN, KEVIN	03/20/2000
LONG BRANCH, NJ.	
DERAMO, STACY FRANCES	03/20/2000
FERN PARK, FL.	
DODDS, DARLENE	03/20/2000
MINOT, ND.	
DONNELLY, JOHN PATRICK	03/20/2000
VAUGHN, CA.	
DOSS, MARSHA ANN	03/20/2000
LAWRENCEBURG, KY.	
DOYLE, DEBRA A	03/20/2000
MIDLAND, MI.	
DUDENHEFER, CANDIS L	03/20/2000
PASADENA, TX.	
EATON, LAURA LEE	03/20/2000
ROSEVILLE, CA.	
FINCH, MONTY L	03/20/2000
CORPUS CHRISTI, TX.	
FLORSCHUTZI, DARKO	03/20/2000
SPICER, MN.	
FOLEY, LINDA RUTH	03/20/2000
MONTGOMERY, AL.	
FORDHAM, DEBORAH ANN	03/20/2000
GLENCOE, AL.	
FUGATE, SUSAN DIANE	03/20/2000
PHIL CAMPBELL, AL.	
GAISIOR, DAWN F	03/20/2000
MILROY, PA.	
GARRISON, RUSSELL A	03/20/2000
DES MOINES, IA.	
GILMORE, CADORA G	03/20/2000
RICHMOND, VA.	
GREEN, JACQUELINE	03/20/2000
MONTGOMERY, AL.	
GREGORY, LORI WAGNER	03/20/2000
KINGSLEY, PA.	
GROSS, NANCY PAULINE	03/20/2000
CAMPTON, KY.	
HAAKENSEN, MOIRA M	03/20/2000
DULUTH, MN.	
HARPER-MUELLER, ELLA MAE	03/20/2000
FRONT ROYAL, VA.	
HARRELL, MARTHA KAY	03/20/2000
DOTHAN, AL.	
HAWKINS, RITA KAYE HARBISON	03/20/2000
HUNTSVILLE, AL.	
HAWKS, CHARLES FRANKLIN	03/20/2000
JACKSON, TN.	
HERRINE, GREGORY MAURICE SR	03/20/2000
MOBILE, AL.	
HESTER, CHARLOTTE A	03/20/2000
DADEVILLE, AL.	
HEWITT, LAURA T	03/20/2000
MILFORD, MI.	

Subject, city, state	Effective date
HINRICHS, DEBRA A	03/20/2000
ST PAUL, MN.	
HODGES, JENNIFER WATSON	03/20/2000
VIRGINIA BEACH, VA.	
HOLGATE, MARY B	03/20/2000
SHAKOPEE, MN.	
HOLT, THERESA A	03/20/2000
TRACY, MN.	
HORTON, BARBARA	03/20/2000
RICHLANDS, VA.	
HUNT, DANIEL C	03/20/2000
EAGAN, MN.	
HUTTON, FAITH E ANN	03/20/2000
BEDFORD, NH.	
JACZYNSKI, DANIEL WILLIAM	03/20/2000
CAMILLA, GA.	
JENNINGS, SANDRA S	03/20/2000
VIRGINIA BEACH, VA.	
JENNINGS, MICHAEL WARREN	03/20/2000
STATE FARM, VA.	
JOHNSON, CHRISTINE M	03/20/2000
RICHMOND, VA.	
JOHNSON, TERESA W	03/20/2000
ATLANTA, GA.	
JONES, YVETTE	03/20/2000
LOUISVILLE, KY.	
JONES, KEVIN A	03/20/2000
ST LOUIS PARK, MN.	
KATSAMPES, ERNEST THOMAS	03/20/2000
MOUNTAIN VIEW, CA.	
KELM, PEGGY T	03/20/2000
SALT LAKE CITY, MN.	
KENNEDY, MAUREEN E	03/20/2000
HANSON, MA.	
KENYON, ERIC S	03/20/2000
CHARLESTOWN, RI.	
KIRK, MONA	03/20/2000
MARION, KY.	
KNOTH, ANN C	03/20/2000
DAYTON, OH.	
KOGER, MICHAEL PIGOTT	03/20/2000
ATLANTA, GA.	
KOWALSKI, REXANNA SALLY	03/20/2000
LAKESIDE, AZ.	
KUCHARSKI, BARBARA R	03/20/2000
GRAND RAPIDS, MI.	
KUISLE, FRANCES M	03/20/2000
ROCHESTER, MN.	
LAROCHE, LEWIS	03/20/2000
LAGRANGE, KY.	
LEDBETTER, EDWARD	03/20/2000
MARINA, CA.	
LINDGREN, KRISTEN	03/20/2000
LEXINGTON, KY.	
LLOYD-RECTOR, VICTORIA CLARE	03/20/2000
SACRAMENTO, CA.	
LOSEE, LYNDA S	03/20/2000
RAVENNA, MI.	
MACKIE, ARLENE R	03/20/2000
SUPERIOR, WI.	
MAIBENCO, THOMAS A	03/20/2000
ALBUQUERUQE, NM.	
MARKELL, BARRY S	03/20/2000
PARK RIDGE, IL.	
MARLER, DELTA LOUISE	03/20/2000
PADUCAH, KY.	
MARROTTE, MARIE ANN	03/20/2000
CANNON CITY, CO.	
MARTINA, LISA ANN	03/20/2000
BIRMINGHAM, AL.	
MATTHEWS, STEPHANIE RENEE	03/20/2000
SANTA CRUZ, CA.	
MCCARTT, LORI A	03/20/2000
CEDAR RAPIDS, IA.	
MCDADE, DELORES A	03/20/2000
EUCLID, OH.	
MCDOWELL, MICHELLE	03/20/2000
HAMPTON, VA.	
MCGARVEY-NELSON, LAURA	03/20/2000
LEMMON, SD.	
MELLO, CHRISTINE R	03/20/2000
PORTSMOUTH, RI.	
MESSER, MICHAEL L	03/20/2000
MONTGOMERY, AL.	
METZGER, GEORGETTA FABRE	03/20/2000
MOBILE, AL.	
MEYER-WINTERS, JODI M	03/20/2000
SHAKOPEE, MN.	
MILLER, SAMUEL	03/20/2000
W WARWICK, RI.	
MITCHELL, MARY ELLEN	03/20/2000
LINDEN, AL.	
MOBLEY, SHERRY A	03/20/2000
MORGANFIELD, KY.	
MOORE, BRANNEN J	03/20/2000
STAUNTON, VA.	
MORBITZER, CATHY SUE	03/20/2000
FORT WORTH, TX.	
MORTHLAND, JANE E	03/20/2000
NEW HAVEN, MO.	
MOUSSA, ASNAT F	03/20/2000
ALMA, MI.	
MURREN, DONNA N	03/20/2000
NEWPORT NEWS, VA.	
NEEDHAM, DEBORAH KAY JOLES	03/20/2000
OKEECHOBEE, FL.	
OWENS, DELORES D	03/20/2000
JASPER, AL.	
PAPA, NANCY	03/20/2000
PAWTUCKET, RI.	
PAYNE, RHONDA	03/20/2000
SOMERSET, KY.	
PHILLIPS, GLORIA HELEN	03/20/2000
LAFAYETTE, CA.	
PORTER, CAROLYN R	03/20/2000
PORTSMOUTH, VA.	
POUND, BELINDA	03/20/2000
JONESBORO, GA.	
POWERS, JIMMY L	03/20/2000
SALEM, VA.	
PRESTON, STEPHANIE A	03/20/2000
RICHARDSON, TX.	
PREVETT, SHERRY LYNN	03/20/2000
GREENVILLE, AL.	
QUILLIN, RHONDA LEE	03/20/2000
EL PASO, TX.	
RAPP, VALERIE JOY	03/20/2000
IRVING, TX.	
REIFF, J DONALD	03/20/2000
MONTGOMERY, PA.	
REMBERT, SHAWNTELL ANTONETTE	03/20/2000
MOBILE, AL.	
RHYMES, JESSIE F	03/20/2000
LONGVIEW, TX.	
ROSENBERG, ALAN DAVID	03/20/2000
SAN PABLO, CA.	
ROSS, DARRELL GREGORY	03/20/2000
LEXINGTON, KY.	
SAHAIDA, DAVID	03/20/2000
HAZELTON, PA.	
SAVAGE, HILDA L	03/20/2000
BIRMINGHAM, AL.	
SCOTT, LAWRENCE B	03/20/2000
FALLS CHURCH, VA.	
SHERWOOD-GONZALEZ, KRISTY LYNN	03/20/2000
CORPUS CHRISTIE, TX.	
SITHER, JUDITH	03/20/2000
NICHOLASVILLE, KY.	
SMITH, JACQUELINE L	03/20/2000
VIRGINIA BEACH, VA.	
SMITH, HERMAN JR	03/20/2000
HAMPTON, VA.	
SMITH, ELLEN IRENE	03/20/2000
CONCORD, CA.	
SPANGLER, MARTHA J	03/20/2000
EAU CLAIRE, WI.	
STALLINGS, RONALD I	03/20/2000
FRANKLIN, VA.	
STARNS, PRISCILLA HOPE	03/20/2000
FORT WORTH, TX.	
STARR, KEITH A	03/20/2000
NEW KENSINGTON, PA	
STERGIS, DELORES MULLINS	03/20/2000
CULPEPER, VA	
STROWHOUER, THEODORE R	03/20/2000
WILMINGTON, DE	
SUMMERS, LILLIAN K	03/20/2000
ALEXANDRIA, VA	
SWANEY, MAYME M	03/20/2000
UNIONTOWN, PA	
THAYER, DOROTHY REGINA SAN ANTONIO, TX	03/20/2000
TITTERMARY, LORRAINE W	03/20/2000
BELLE HAVEN, VA	
TUNIS, JONATHON D	03/20/2000
GRAND RAPIDS, MI	
TURNER, LATANNYA	03/20/2000
LOUISVILLE, KY	
TUSING, LYDIA A	03/20/2000
BRIDGEWATER, VA	
VAN ETTEN, MELISSA L	03/20/2000
COLCHESTER, VT	
VEMURI, DWARKA NATH	03/20/2000
WHEELING, WV	
WALRAVEN, JANET L	03/20/2000
ROSE HILL, IA	
WELLS, JOHNNY	03/20/2000
GRACEY, KY	
WESTHOFF, PAULETTE R	03/20/2000
HOWARD LAKE, MN	
WILLIAMS, CARLA T	03/20/2000
ROANOKE, VA	
WOOD, WILLIAM C	03/20/2000
EAST ALTON, IL	
WRIGHT, TERESA A RUBLE	03/20/2000
LEXINGTON, KY	
ZENK, JOHN L	03/20/2000
MINNEAPOLIS, MN	

Federal/State Exclusion/Suspension

METRO AMBULANCE SERVICES, INC	03/20/2000
HELLERTOWN, PA	
ROHANA, MARCEL	03/20/2000
ROBINSON, IL	
SHAH, ARVIND	03/20/2000
OAK BROOK, IL	
TAJIDDIN, FAISAL	03/20/2000
FLOSSMOOR, IL	
THACHENKERY, MARIA	03/20/2000
LEMONT, IL	
THAWANI, RAM	03/20/2000
WILMETTE, IL	

Fraud/Kickbacks

A K MEDICAR, INC	11/17/1999
LINCOLNWOOD, IL	
EZRA MEDICAL TRANSPORTATION	11/17/1999
LINCOLNWOOD, IL	
GUTMAN, IRIT	11/17/1999
LINCOLNWOOD, IL	
LUBINCSKIY, ILYIA	11/17/1999
LINCOLNWOOD, IL	
TAMID MEDICAL TRANSPORT, INC	11/17/1999
LINCOLNWOOD, IL	

Owned/Controlled by Convicted/Excluded

A & J MEDICAL CORP	03/20/2000
HIALEAH, FL	
GENESIS MEDICAL, INC	03/20/2000
MIAMI, FL	
GRAMI CORPORATION, INC	03/20/2000
HIALEAH, FL	
GREEN EXPRESS MEDICAL EQUIP	03/20/2000
HIALEAH, FL	
HOME AWAY HOME	03/20/2000
LAKEWOOD, CO	
LOCK CHIROPRACTIC CENTER	03/20/2000
ROYERSFORD, PA	
RESOURCE MGMT GROUP OF S FL	03/20/2000
TUCKER, GA	
THERAPEUTIC INTERVENTIONS, INC	03/20/2000
VERSAILLES, MO	
WESTWOOD ORTHOPEDIC CO	11/02/1999
LOS ANGELES, CA	

Default on Heal Loan

AYERS, STEPHEN C	03/20/2000
LAKE CHARLES, LA.	
CHURCH, STEVEN D	11/19/1999
MERIDEN, CT.	
COLE, PERRY J	03/20/2000
JACKSONVILLE, FL.	
DOHERTY, PAUL J	03/20/2000
ABINGTON, MA.	
EMERY, FRED B	03/20/2000
TULSA, OK.	
ETZLER, RICHARD A	03/20/2000
LOS ANGELES, CA.	
FELDMAN, STEPHEN J	03/20/2000
SAINT LOUIS, MO.	
FIFIELD, FRED W	02/17/2000
MODESTO, CA.	
FLOYD, REGINALD J	03/20/2000
MONTGOMERY, AL.	
GODFREY, JOHN T	03/20/2000
EDMOND, OK.	
GONZALES, DAVID L JR	03/20/2000
S HOUSTON, TX.	
JOHNSON, DELILAH A	03/20/2000
BON AQUA, TN.	
LUYANDO, DAVID JR	03/20/2000
DOLTON, IL.	
NELSON, ROBERT L	03/20/2000
MACON, GA.	
READ, ELIZABETH G	03/20/2000
RALEIGH, NC.	
ROBINSON, KENNETH E	03/20/2000
AMERICUS, GA.	
SIDORE, STEVEN C	03/20/2000
ROCHESTER, NY.	
SMYTHE, WILLIAM R	03/20/2000
MISSOURI CITY, TX.	
SOMERVILLE, LAURIE A	03/20/2000
W PALM BEACH, FL.	
WARRICK, DENNIS A	03/20/2000
ATLANTA, GA.	
WATERMAN, ERNEST MARK	03/20/2000
CLAREMONT, CA.	
WHITEHALL, WESLEY W	03/20/2000
SAN DIEGO, CA.	

Dated: February 6, 2000.

Joanne Lanahan,

Director, Health Care Administrative Sanctions, Office of Inspector General.

[FR Doc. 00–6742 Filed 3–17–00; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Board of Scientific Counselors, National Cancer Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C., as amended. The discussions could reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of discussions related to personnel and programmatic issues would be likely to significantly frustrate the subsequent implementation of recommendations.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee A—Clincal Sciences and Epidemiology.

Date: March 22–23, 2000.

Closed: March 22, 2000, 7 pm to 10:15 pm.

Agenda: Chairman's Remarks and Discussion of personnel and programmatic issues; Review and evaluation of individual Principal Investigators.

Place: Residence Inn by Marriott, Montgomery II, 7335 Wisconsin Ave., Bethesda, MD 20814.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee B—Basic Sciences.

Date: March 22–23, 2000.

Closed: March 22, 2000, 7 pm to 9:50 pm.

Agenda: Chairman's Remarks and Discussion of personnel and programmatic issues; Site visit Reports; Review and evaluation of individual Principal Investigators.

Place: Holiday Inn-Washington/Chevy Chase, Somerset Room, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Open: March 23, 2000, 8 am to 9:30 am.

Agenda: Joint Session with Board of Scientific Counselors, National Cancer Institute, Subcommittee A—Clinical Sciences and Epidemiology and the National Cancer Institute, Board of Scientific Advisors Report of the Director, NCI.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C wing, 6th Floor, Conference Room 10, Bethesda, MD 20892.

Closed: March 23, 2000, 9:30 am to 10:30 am. Joint Meeting of the Board of Scientific Counselors, National Cancer Institute, Subcommittee A—Clincal Sciences and Epidemiology and Subcommittee B—Basic Sciences.

Agenda: To review and evaluate personal qualifications and performance and competence of individual investigators.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Room 6, Bethesda, MD 20892.

Nome of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee A— Clinical Sciences and Epidemiology.

Closed: March 23, 2000, 10:30 am to 4 pm.

Agenda: To review and evaluate personal qualifications and performance and competence of individual investigators.

Place: Hyatt Regency Bethesda, Fellini's One Bethesda Metro Center, Bethesda, MD 20814.

Open: March 23, 2000, 4 pm to 4:45 pm.

Agenda: Concept Review: Human papillomavirus type 16 vaccine trial in Costa Rica.

Place: Hyatt Regency Bethesda, Fellini's, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Abby Sandler, Executive Secretary, Institute Review Office, Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7019, Bethesda, MD 20892, (301) 496–7628.

Name of Committee: Board of Scientific Counselors, National Cancer Institute, Subcommittee B—Basic Sciences.

Closed: March 23, 2000, 10:30 am to 5:30 pm.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: National Cancer Institute, 9000 Rockville Pike, Building 31, C Wing, 6th Floor, Conference Rooms 6 and 7, Bethesda, MD 20892.

Contact Person: Florence E. Farber, Executive Secretary, Institute Review Office; Office of the Director, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 7017, Bethesda, MD 20892, (301) 496–7628.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the intramural research review cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 9, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6769 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Director's Challenge: Toward a Molecular Classification of Tumors.

Date: April 12–13 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Ray Bramhall, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Suite 8060, Rockville, MD 20892, 301/594–1403.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health HHS)

Dated: March 10, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6777 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee A—Cancer Centers.

Date: April 10–11, 2000.

Time: 7:30 am to 4 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Georgetown, 2101 Wisconsin Avenue, N.W., Washington, DC 20007.

Contact Person: David E. Maslow, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard—Room 8054, Bethesda, MD 20892–7405, 301/496–2330.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 10, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6778 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee D—Clinical Studies.

Date: April 12–14, 2000.

Time: 7:30 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Martin H. Goldrosen, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8050, Rockville, MD 20852–7408, (301) 496–7930.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 10, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6779 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee E—Cancer Epidemiology, Prevention & Control.

Date: April 12–14, 2000.

Time: 7 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Mary C. Fletcher, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Blvd., Room 8056, Bethesda, MD 20814, 301–496–7413.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 10, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6780 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Insight Awards To Stamp Out Breast Cancer.

Date: April 17–18, 2000.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Timothy C. Meeker, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301–594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer treatment Research; 93.396, Cancer Biology Research; 93,397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 10, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6782 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which

would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Diagnostic Imaging and Guided Therapy in Prostate Cancer: SBIR/STTR Initiative.

Date: April 27, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gerald G. Lovinger, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8070, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 10, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6783 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Diagnostic Imaging and Guided Therapy in Prostate Cancer (Phased Innovation Award).

Date: April 25–26, 2000.

Time: 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Gerald G. Lovinger, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8070, Rockville, MD 20892–7405, 301/496–7987.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 10, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6784 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Cancer Institute Board of Scientific Advisors, March 23, 2000, 8:30 AM to March 24, 2000, 12:00 PM, Building 31, C Wing, 6th Floor, Conference Room 10, National Institutes of Health, 3100 Center Drive, Bethesda, MD, 20892 which was published in the **Federal Register** on March 8, 2000, 65FR12274.

The meeting start time has been changed to 8:00 AM on March 23, 2000. The meeting is partially closed to the public.

Dated: March 10, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6785 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, General Clinical Research Centers.

Date: May 2, 2000.

Time: 8 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott, 1221 22nd Street N.W., Washington, DC 20037.

Contact Person: John L. Meyer, Deputy Director, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6771 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel, General Clinical Research Centers.

Date: May 16–17, 2000.

Time: May 16, 2000, 8 am to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Washington Marriott, 1221 22nd Street N.W., Washington, DC 20037.

Contact Person: John L. Meyer, Deputy Director, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, 301–435–0806.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS).

Dated: March 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6772 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Center for Research Resources Special Emphasis Panel Comparative Medicine.

Date: March 30, 2000.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Office of Review, National Center for Research Resources, 6705 Rockledge Drive, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: John D. Harding, Scientific Review Administrator, Office of Review, National Center for Research Resources, 6705 Rockledge Drive, MSC 7965, Room 6018, Bethesda, MD 20892–7965, (301) 435–0810.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 13, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6787 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development, Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel.

Date: March 30–31, 2000.

Time: 7:30 pm to 2 pm.

Agenda: To review and evaluate grant applications.

Place: Crowne Plaza, 610 Hilton Boulevard, Ann Arbor, MI 48108.

Contact Person: Gopal M. Bhatnagar, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 10, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

FR Doc. 00–6775 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 27, 2000.

Time: 9:30 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Jerry Cott, Scientific Review Administrator, National Institute of Mental Health, NIH, 6001 Executive Blvd, Room 7160, MSC 9635, Bethesda, MD 20892–9635, (301) 443–1185.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 4, 2000.

Time: 9 am to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Robert H. Stretch, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6150, MSC 9608, Bethesda, MD 20892–9608, (301) 443–4728.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 10, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6776 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, NIDA.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute on Drug Abuse, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, NIDA.

Date: April 18–19, 2000.

Time: 12 p.m. to 11:30 a.m.

Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.

Place: Division of Intramural Research, NIDA, Johns Hopkins Bayview Campus, Bldg. C. 2nd Floor Auditorium, 5500 Nathan Shock Drive, Baltimore, MD 21224.

Contact Person: Stephen J. Heishman, Research Psychologist, Clinical Pharmacology Branch, Addiction Research Center, National Institute on Drug Abuse, National Institutes of Health, DHHS, 5500 Nathan Shock Drive, Baltimore, MD 21224, (410) 550–1547.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278. Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6789 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: April 7, 2000.

Time: 8:30 a.m. to 3 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn, 2 Montgomery Village Avenue, Gaithersburg, MD 20879.

Contact Person: Vassil S. Georgiev, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2217, 6700–B Rockledge Drive, MSC, 7610, Bethesda, MD 20892–7610, 301–496–2550.

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6790 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–2 (M3) B.

Date: March 20, 2000.

Time: 3 p.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: 45 Center Drive, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Shan W. Wong, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS43H, National Institutes of Health, Bethesda, MD 20892, (301) 594–7797.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–6 M6 P.

Date: March 31, 2000.

Time: 2 p.m. to 3:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, Natcher Building, 45 Center Drive, Bethesda, MD 20982 (Telephone Conference Call).

Contact Person: Neal A. Musto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–6 M4 P.

Date: April 4–6, 2000.

Time: 7:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 315 Fourth Avenue, N. Nashville, TN 37219.

Contact Person: Neal A. Musto, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS–37A, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel. ZDK1 GRB–7 M1 P.

Date: April 5–7, 2000.

Time: 7:30 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Doubletree Hotel, 315 Fourth Avenue, N. Nashville, TN 37219.

Contact Person: Lakshmana Sankaran, Scientific Review Administrator, Review Branch, DEA, NIDDK, Natcher Building, Room 6AS25F, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7799.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 14, 2000.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6791 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel "Medication Discovery Using Rat Models of Relapse to Cocaine Self-Administration".

Date: March 21, 2000.

Time: 9 a.m. to 1 p.m.

Agenda: To review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6792 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Center for Scientific Review Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Center for Scientific Review Advisory Committee.

Date: May 8–9, 2000.

Time: 8:30 am to 12 pm.

Agenda: Discussion of activities related to the organization and function of the Center for Scientific Review process.

Place: National Institutes of Health, Two Rockledge Center, Conference Room 9104, 6701 Rockledge Drive, Bethesda, MD 20892.

Contact Person: Samuel Joseloff, Public Affairs Specialist, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3016, MSC 7776, Bethesda, MD 20892, (301) 435–1040, joselofs@csr.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6773 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 16, 2000, 8:30 am to March 17, 2000, 5 pm, Latham Hotel, 3000 M Street, N.W., Washington, DC 20007–3701 which was published in the **Federal Register** on March 8, 2000, 65 FR 12277.

The meeting will be held at the Georgetown Inn, Washington, DC. The date and time remains the same. The meeting is closed to the public.

Dated: March 10, 2000.

Anna Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6774 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 21, 2000, 2:00 PM to March 21, 2000, 3:00 PM, NIH, Rockledge 2, Bethesda, MD 20892 which was published in the Federal Register on March 9, 2000, 65 FR 12564.

The meeting will be held on March 28, 2000. The time and location remain the same. The meeting is closed to the public.

Dated: March 13, 2000.

Anna P. Snouffer,

Acting Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6788 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets of commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 27, 2000.
Time: 1 p.m. to 3 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Martin L. Padarathsingh, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 27, 2000.
Time: 2:30 p.m. to 5 p.m..
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Victoria S. Levin, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3172, MSC 7848, Bethesda, MD 20892, (301) 435–0912, levinv@csr.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 29, 2000.
Time: 8:30 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Georgetown Holiday Inn, 2101 Wisconsin Avenue, NW, Washington, DC 20007.
Contact Person: Paul K. Strudler, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4100, MSC 7804, Bethesda, MD 20892, (301) 435–1716,

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 29, 2000.
Time: 2 p.m. to 3:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contract Person: Jerrold Fried, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 29, 2000.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Joanne T. Fujii, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 30–31, 2000.
Time: 8 a.m. to 6 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8777 Georgia Avenue, Silver Spring, MD 20910.
Contact Person: Nancy Shinowara, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4208, MSC 7814, Bethesda, MD 20892–7814, (301) 435–1173, shinowan@drg.nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 30–31, 2000.
Time: 8 a.m to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Sami A. Mayyasi, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5112, MSC 7852, Bethesda, MD 20892, (301) 435–1169.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 30, 2000.
Time: 10 am. to 1 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Palladian West, Chevy Chase, MD 20815.
Contact Person: Gamil C. Debbas, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5170, MSC 7844, Bethesda, MD 20892, (301) 435–1018.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 30, 2000.
Time: 2 p.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard Marcus, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard.marcus@nih.gov.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306, 93.333. Clinical Research, 93.333, 93.337, 93.393–93.396, 93,837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6793 Filed 3–17–00 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee on Research on Women's Health.

The meeting will be open to the public with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee on Research on Women's Health.
Date: April 10, 2000.
Time: 8:30 am to 5 pm.
Agenda: To provide advice on appropriate research activities with respect to women's health and related studies to be undertaken by the national research institutes, to provide recommendations regarding ORWH activities, and to assist in monitoring compliance regarding the inclusion of women in clinical research.
Place: 9000 Rockville Pike, Building 31C, Conference Room 6, Bethesda, MD 20892.
Contact Person: Joyce Rudick, Director, Programs & Management, Office of Research on Women's Health, Office of the Director, National Institutes of Health, Building 1, Room 201, Bethesda, MD 20892, 301/402–1770.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for the Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–6770 Filed 3–17–00 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

PUBLIC HEALTH SERVICE

Solicitation of Comments and Nominations

National Toxicology Program; National Institute of Environmental Health Sciences; Center for the Evaluation of Risks to Human Reproduction solicits comments on eleven chemicals being considered for further evaluation by the Center; solicits nominations of other chemicals for future consideration; and describes the Center's evaluation process.

Background

The National Toxicology Program (NTP) and the National Institute of Environmental Health Sciences have established the NTP Center for the Evaluation of Risks to Human Reproduction (63 FR 68782, No. 239). The purpose of the Center is to provide timely and unbiased, scientifically sound evaluations of human and experimental evidence for adverse effects on reproduction, including development, caused by agents to which humans may be exposed. The goals of the individual assessments are to (1) interpret for and provide to the general public information about the strength of scientific evidence that a given exposure or exposure circumstance poses a hazard to reproduction and the health and welfare of children: (2) provide regulatory agencies with objective and scientifically credible assessments of reproductive/development health effects associated with exposure to specific chemicals or classes of chemicals, including descriptions of any uncertainties associated with the assessment of risks, and (3) identify knowledge gaps to help establish research and testing priorities.

Chemicals Recommended for Further Consideration

The CERHR Core Committee, made up of representatives of NTP-participating agencies, reviewed chemical nominations for further study and recommended the following eleven chemicals for further consideration. Dossiers will be prepared on these chemicals reviewing information on their use, production volume, and general, reproductive, and developmental toxicity. Selection of candidate chemicals will be based upon production volume, extent of human exposures, public concern about chemical hazard, published evidence of reproductive or developmental toxicity, and evaluation of any additional information submitted by the public in response to this announcement. The chemicals to be considered for Expert Panel evaluation in the year 2000 are listed below with their Chemical Abstracts Service registry numbers (where available).

1-Bromopropane (106–94–5)
2-Bromopropane (75–26–3)
Dimethyl Methyl Phosphonate (DMMP) (756–79–6)
Ethylene glycol (107–21–1)
Glycol ethers (not available)
Glyphosate (1071–83–6)
Methanol (67–56–1)
Nicotine (54–11–5)
Phenol (108–95–2)
Thimerosal (54–64–8)
Toluene (108–88–3)

Request for Public Comment on Candidate Chemicals

The Center invites public comment on the candidate chemicals listed above, including toxicology information from completed or ongoing studies, and information on planned studies, as well as current production data, human exposure information, use patterns, and environmental occurrence. Written comments received May 4, 2000, will be considered in the review. Please forward comments and chemical information to: Dr. John Moore, CERHR, 1800 Diagonal Road, Suite 500, Alexandria, VA 22314–2808, Phone: (703) 838–9440.

Request for Nominations for Future Reviews

Nominations of chemicals for future evaluations are also encouraged. Any individual or organization may nominate. Nominations should include the chemical name, Chemical Abstract Service registry number (if known), reason for the nomination, and references or articles on the chemical, when possible. The nominator's name, address, telephone number and e-mail address should be included with the nomination. Nominations can be made through the Center's web site or by mail to Dr. John Moore at the address listed above.

Review Process

The Center's review process is outlined below:

- Chemical Nominations
  —open nomination process includes interested individuals, NTP Executive Committee, Federal Agencies, NTP Staff, Labor Unions, Industry
- CERHR multi-agency Core Committee
  —nominations reviewed quarterly by Core Committee made up of NTP

Agency representatives.
—highest priority chemicals identified based on production volume, evidence of reproductive or developmental toxicity, human exposure, public concern.
—candidate chemicals transmitted to Associate Director, NTP
—Center staff prepares dossiers on candidate chemicals
- First Solicitation of Public Comment
—notice of candidate chemicals and request for public comment published in **Federal Register**, NTP Newsletter and listserver, and CERHR website
—public comments are compiled by Center staff for review by the Core Committee
- CERHR Core Committee Review
—reviews dossiers and material submitted in public comments
—recommends list of prioritized chemicals to Associate Director, NTP, for final selection.
- Second Solicitation of Public Comment
—**Federal Register** notice announces selected chemical(s) and solicits public comment, new data, information on exposure, and nominations of individuals qualified to serve on the Expert Panel.
- Expert Panel Meeting
—the Panel meets in public session to discuss their review of the literature and to prepare the Panel report.
—meeting includes time for presentation of public comments.
- Final Solicitation of Public Comment
—**Federal Register** notice announces availability of Expert Panel report and requests public comment.
- Expert Panel Report is submitted for publication in Environmental Health Perspectives, monograph section
- NTP Center Report Transmitted and Published
—NTP staff prepares an NTP Center Report on the chemical(s) evaluated (intended for a readership of non-scientists). This report integrates background information on the chemical evaluated, the findings in the Expert Panel Report, a summary of the public comments, and a discussion of any recent relevant study findings.
—the Center Report is distributed to Federal and state agencies, interested stakeholders, and the public, and is published in EHP, monthly section.

Further information about the NTP Center for the Evaluation of Risks to Human Reproduction can be obtained through the Center's web site: *http://cerhr.niehs.nih.gov* or by contacting: Michael D. Shelby, Ph.D., Director, CERHR, NIEHS/NTP B3–09, P.O. Box 12233, Research Triangle Park, NC 27709, telephone 919–541–3455, facismile 919–541–4634 or John A. Moore, D.V.M., Principal Investigator, CERHR, 1800 Diagonal Road, Suite 500, Alexandria, VA 22314, 703–838–9440, 703–684–2223.

Dated: Janaury 10, 2000.

Kenneth Olden,

Director, NIEHS.

[FR Doc. 00–6768 Filed 3–17–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Notice of Availability of the Draft Environmental Assessment for the Diamond Fork System Proposed Action Modifications

AGENCY: Office of the Assistant Secretary—Water and Science, Department of the Interior.

ACTION: Notice of availability of the draft Environmental Assessment for the Diamond Fork System Proposed Action Modifications.

SUMMARY: Pursuant to the National Environmental Policy Act of 1969, the Central Utah Water Conservancy District (CUWCD), Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission), and the Department of the Interior (Interior) announces the availability of the draft Environmental Assessment for the Diamond Fork System Proposed Action Modifications (EA). The draft EA is now available to the public for review and comment.

DATES: Written comments must be submitted on or before April 27, 2000.

ADDRESSES: Comments on the draft EA should be addressed to: Harold Sersland, Environmental Program Manager, Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058–7303, (801) 226–7110.

SUPPLEMENTARY INFORMATION:

Draft Environmental Assessment—The draft EA addresses modifications to the Proposed Action as a result of value engineering studies on the Proposed Action of the Diamond Fork System 1999 Final Supplement to the Final Environmental Impact Statement (FSFEIS) that was filed with the Environmental Protection Agency July 1, 1999. A Record of Decision (1999 ROD) documenting the selection of the Proposed Action Alternative as presented in the FSFEIS was signed by the Assistant Secretary—Water and Science on September 29, 1999. The 1999 ROD required value engineering studies, pursuant to public law 104–106, to be conducted on the Proposed Action to determine whether the design could be improved to further reduce environmental impacts or project construction costs. Based on value engineering studies the following modifications to the Proposed Action are addressed in the draft EA: (1) replacing a series of tunnels and pipelines with one tunnel and one pipeline; (2) relocating flow control facilities; and (3) adjusting the alignment of the Diamond Fork System. The proposed modifications would reduce environmental impacts and reduce project construction costs while not changing the Proposed Action's purposes or needs as described in the FSFEIS and 1999 ROD.

Background

The Diamond Fork System is one of six systems of the Bonneville Unit of the Central Utah Project that would develop central Utah's water resources for irrigation, municipal and industrial supply, fish and wildlife, and recreation. It was first identified in the Bonneville Unit Final EIS in 1973 and described in detail in the: Diamond Fork Power System Final EIS in 1984; Diamond Fork System Final Supplement to the Final EIS in 1990, and the Diamond Fork System Final Supplement to the Final EIS in 1999. The Diamond Fork System has been modified over the years and has been partially constructed.

Proposed Action Modifications

The Proposed Action Modifications would: (1) Maintain the statutorily mandated minimum flows in Diamond Fork Creek and Sixth Water Creek; (2) implement Interior's environmental commitments from the 1995 and 1999 Records of Decision; (3) meet the CUWCD's Municipal and Industrial water contractual commitments to Salt Lake, Utah and Wasatch Counties; and (4) provide the Mitigation Commission the opportunity and flexibility for future restoration of aquatic and riparian habitat in Sixth Water and Diamond Fork creeks to protect water quality and threatened species in Diamond Fork Creek.

FOR FURTHER INFORMATION: Copies of the draft EA or information on matters related to this notice can be obtained on request from: Ms. Nancy Hardman, Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058, Telephone: (801) 226–7187, Fax: (801) 226–7150.

Copies are also available for inspection at:

Central Utah Water Conservancy District, 355 West University Parkway, Orem, Utah 84058

Utah Reclamation Mitigation and Conservation Commission, 102 West 500 South, Suite 315, Salt Lake City, Utah 84101

Department of the Interior, Natural Resource Library, Serials Branch, 18th and C Streets, NW, Washington, D.C. 20240

Department of the Interior, Central Utah Project Completion Act Office, 302 East 1860 South, Provo, Utah 84606

Dated: March 14, 2000.

Ronald Johnston,

CUP Program Director, Department of the Interior.

[FR Doc. 00–6794 Filed 3–17–00; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability

SUMMARY: The Peregrine Fund (J. Peter Jenny; applicant) has requested an amendment to its incidental take permit pursuant to Section 10(a) of the Endangered Species Act (Act) issued by the U.S. Fish and Wildlife Service (Service) on December 16, 1996, under permit number PRT–814839. The amendment requests that 42 additional counties, including Andrews, Brewster, Cochran, Crane, Crockett, Culberson, Dawson, Dimmit, Duval, Ector, Edwards, El Paso, Frio, Gaines, Hudspeth, Jeff Davis, Jim Hogg, Kinney, La Salle, Loving, Martin, Maverick, McMullen, Medina, Midland, Pecos, Presidio, Real, Reeves, Starr, Sutton, Terrel, Terry, Upton, Uvalde, Val Verde, Ward, Webb, Yoakum, Winkler, Zapata and Zavala Counties be added to the 15 county area in Texas where The Peregrine Fund already has a permit for incidental take in association with their aplomado falcon (*Falco femoralis septentrionalis*) reintroduction program.

DATES: Written comments on the amendment should be received on or before April 19, 2000.

ADDRESSES: Persons wishing to review the amendment may obtain a copy by writing to the Regional Director, U.S. Fish and Wildlife Service, 500 Gold Avenue, S.W., P.O. Box 1306, Albuquerque, New Mexico 87103. In addition, the amendment will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the Service's Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058. Written comments concerning the application should be submitted to the Field Supervisor, Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058. Please refer to the amendment to PRT–814839 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Edith A. Erfling, Clear Lake Ecological Services Field Office, 17629 El Camino Real, Suite 211, Houston, Texas 77058; (281) 286–8282.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of endangered species such as the aplomado falcon. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species when such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

To facilitate the reintroduction of the aplomado falcon, The Peregrine Fund is currently authorized to take aplomado falcons, incidental to lawful land-use activities, on specific lands enrolled in The Peregrine Fund's "Safe Harbor" program. To date, eight landowners have enrolled a total of 1.26 million acres in The Peregrine Fund's "Safe Harbor" program. A total of 466 captive-bred aplomado falcons have been released. At least 19 pairs have become established and have successfully fledged at least 19 young. As aplomado falcon pairs become established they fiercely defend their territory and behave aggressively towards other falcons. This behavior, while normal, effectively reduces areas available for future releases. Therefore, additional habitat is needed to achieve the goal of a self-sustaining population of aplomado falcons.

APPLICANT: This amendment to permit PRT—814839 would authorize incidental take on an additional 48,994,295 acres, again, only on land that is enrolled in the "safe harbor" program for that purpose. To facilitate the reintroduction of the aplomado falcon, The Peregrine Fund is currently authorized to take aplomado falcons, incidental to lawful land-use activities, on specific lands enrolled in The Peregrine Fund's "safe harbor" program.

Geoffrey L. Haskett,

Regional Director, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–6803 Filed 3–17–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability; Recommended Guidance for Private Landowners Concerning the Cactus Ferruginous Pygmy-owl; and the Cactus Ferruginous Pygmy-owl Survey Protocol

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Availability; Private Landowner Guidance and Survey Protocol for the Cactus Ferruginous Pygmy-owl.

SUMMARY: The Fish and Wildlife Service (Service), announces the availability of its recommended private landowner guidance for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl). These recommendations will assist private landowners in minimizing their risk of inadvertently "taking" (harming, harassing or killing) a pygmy-owl. In addition, the Service in cooperation with the Arizona Game and Fish Department (AGFD), announces the availability of a revised survey protocol for the pygmy-owl. This survey protocol should be used by landowners and managers in determining presence/absence of the endangered pygmy-owl.

On March 10, 1997, the Service published a final rule adding the Arizona population of the pygmy-owl to the federal list of endangered species (62 FR 10730). The principle cause for the decline in population and reduction in current known range for the once "common" and "fairly numerous" species is the loss of habitat.

In December 1997, the Service provided interim guidance describing the habitat relied upon by the pygmy-owl and suggested that landowners with such habitat have surveys conducted on their land to determine whether the habitat is occupied by an owl prior to disturbing the habitat. The intent of the Service was to furnish landowners and agencies with enough information to determine the level of stewardship their development planning should require in order to avoid harming, harassing, or killing (taking) a pygmy-owl. On August 13, 1998 the Service published two

notices of availability and opening of public comment periods for the proposed pygmy-owl landowner guidance (63 FR 43363) and survey protocol (63 FR 43362). On September 16, 1998, the Service announced the extension of the comment period from September 14, 1998, to November 14, 1998 for both the landowner guidance and protocol (63 FR 49539). Public information meetings were also held on the guidance and survey protocol on October 5, 1998, in Phoenix, Arizona; on October 6, 1998, in Tucson, Arizona; and on October 7, 1998, in Sierra Vista, Arizona. On November 20, 1998, the Service again announced the extension of the comment period for both the guidance and protocol to March 14, 1999 (63 FR 64449).

Using information gathered during the comment period and subsequently from researchers in the field, and with technical assistance of AGFD, we revised the proposed "Guidance for Private Landowners and Federal, State, and Local Agencies Concerning Take of the Endangered Cactus Ferruginous Pygmy-owl" and "Protocol for Surveying for the Endangered Cactus Ferruginous Pygmy-owl". The Service's recommended landowner guidance entitled "Recommended Guidance for Private Landowners Concerning the Cactus Ferruginous Pygmy-owl" and the AGFD-Service authored "The Cactus Ferruginous Pygmy-owl Survey Protocol", both dated January 2000, incorporate those modifications found to be appropriate, and replace the 1998 proposed landowner guidance and 1993 AGFD survey protocol. We and AGFD intend to annually review and (as appropriate) modify this survey protocol, to ensure that the best scientific information is incorporated into the prescribed methodology.

ADDRESSES: Copies of the revised landowner guidance and survey protocol may be obtained from the Service's Region 2 World Wide Web Home Page at: http://ifw2es.fws.gov/Arizona/ or from the Field Supervisor, Arizona Ecological Services Field Office, 2321 West Royal Palm Road, Suite 103, Phoenix, Arizona 85021–4951.

FOR FURTHER INFORMATION CONTACT: Mike Wrigley at the above address (telephone 602/640–2720, facsimile 602/640–2730).

SUPPLEMENTARY INFORMATION:

Background

The cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) (pygmy-owl) was listed as an endangered species on March 10, 1997 as result of loss and degradation of habitat, overutilization for recreational purposes, inadequacy of existing regulatory mechanisms, low levels of genetic variation, possible contamination from pesticides, and potential competition from other bird species that use cavities for nesting (62 FR 10730). Historically in Arizona, pygmy-owls occupied areas of south-central Arizona from the New River, about 56 km (35 mi) north of Phoenix, west to Agua Caliente near Gila Bend and Cabeza Prieta Tanks, and east to near present day Geronimo and Fort Thomas along the Gila River. Recent records (since 1993) suggest that pygmy-owls in Arizona may only occur in Pima and Pinal counties, however, the total number and their distribution in Arizona is currently unknown because not all areas have been surveyed. Only 39 adult individuals were known to exist in the state in the spring of 1999. Most of these birds were distributed in three areas: northwest Tucson, Organ Pipe Cactus National Monument, and the Altar Valley, including Buenos Aires National Wildlife Refuge.

In Arizona, pygmy-owls rarely occur below 305 m (1,000 ft) or above 1,219 m (4,000 ft). Historically, cottonwood (*Populus fremontii*)-mesquite (*Prosopis* spp.) forest and mesquite woodland along the Gila and Salt rivers, and major tributaries were environments typically used by the owls. Pygmy-owls currently occupy paloverde (*Cercidium* spp.)-mesquite-acacia (*Acacia* spp.) xeroriparian, and saguaro (*Carnegiea gigantea*)-paloverde desertscrub areas often with ironwood (*Olneya tesota*) and/or exotic landscaping supported by irrigation. Recently, pygmy-owls have also been located in semidesert and Sonoran savanna grasslands with xeroriparian washes. Dominant tree species in riparian areas include mesquite, ash (*Fraxinus* spp.), and hackberry (*Celtis* spp.). Uplands in these areas primarily consist of grasslands with dispersed mesquite trees, and very few, isolated saguaro cacti in some areas.

Nancy M. Kaufman,

Regionol Director, Albuquerque, New Mexico.

[FR Doc. 00–6802 Filed 3–17–00; 8:45 am]

BILLING CODE 4510–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–01–24 1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0004

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of approval for the collection of information from those persons who submit an application (Form 2520–1), to apply for a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands in the Western United States. The BLM uses the information to determine if the applicant is eligible to make a desert-land entry under the appropriate land entry laws.

DATES: Comments on the proposed information collection must be received by May 19, 2000.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington, D.C. 20240.

Comments may be sent Internet to: WOComment@blm.gov. Please include "Attn: 1004–0004" and your name and address in your Internet message.

Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401 L Street NW., Washington, D.C.

Comments will be available for public review at the L Street address during regular business hours (7:45 am to 4:15 pm, Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Alzata L. Ransom, Lands and Realty Group, at (202) 452–7772.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules to solicit comments on of information to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or technological collection techniques or other forms of information technology.

The Desert Land Act of March 3, 1877 (19 Stat. 377; 43 U.S.C. 321–323), as amended by the Act of March 3, 1891 (26 Stat. 1096; 43 U.S.C. 231, 323, 325, 327–329), was passed by the Congress to encourage and promote the economic development of the arid and semiarid public lands. Through the Act, you may apply for a desert-land entry to reclaim, irrigate, and cultivate arid and semiarid public lands in the Western United States. The regulations in 43 CFR 2520 provide guidelines and procedures to obtain public lands under the Act. These regulations were adopted on June 13, 1970, 35 FR 9581.

You qualify to file a desert-land entry if you are a citizen of the United States; 21 years old; and a resident in the States of Arizona, California, Colorado, Idaho, Montana, New Mexico, North Dakota, South Dakota, Utah, Washington, or Wyoming (no residency is required in the State of Nevada).

You may apply for one or more tracts of public lands totaling no more than 320 acres. The lands are located in the States of Arizona, California, Colorado, Idaho, Montana, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington and Wyoming. The lands must be surveyed or unsurveyed, unappropriated, non-mineral, non-timber, and incapable of producing an agricultural crop without irrigation. The lands must be suitable for agricultural purposes and more valuable for that purpose than any other. The tracts of land must be sufficiently close to each other to be managed satisfactorily as an economic unit.

You must find lands that you feel can be economically developed and determine the legal description. You must contact the BLM State Office where the lands are located and verify the lands are available for desert-land application.

The information collected on Form No. 2520–1 is required by the regulations in 43 CFR 2720 to process requests for public lands under the provisions of the Desert Land Act. If you desire to enter the public lands under the desert-land laws, you must file an application with the BLM District Office where the lands are located. The following information is collected on the form: (1) Your name and address, and description of the lands you are applying for; (2) $15 filing fee plus advanced payment of 25 cents per acre; (3) age, residence, and citizenship requirements; (4) information about previous desert land entry applications, assignments, or acquisitions; (5) declaration of your on-the-ground examination of the lands; (6) mineral information; (7) cultivation information; (8) characteristics of the land (irrigated, watered, overflowed); (9) soil characteristics; (10) irrigation requirements; (11) irrigation plan; (12) water rights information; (13) estimated farm budget; (14) explanation of the economic feasibility of farming the lands as an economic unit, if the lands do not have a common boundary); (15) type of assistance you received in completing the application; (16) petition classification information; (17) disclosure of your plans, and financial arrangements to develop, cultivate, and irrigate the lands; (18) date of application, and signature of applicant; and; (19) certified statement of your acquaintance with the lands described in your application.

After receiving the application, the BLM will examine your application for completeness and accuracy, and classify the lands included in the application. The BLM will approve your application if the lands are classified suitable of desert-land entry, or reject your application if the lands are classified unsuitable for desert-land entry.

If the BLM approves your application, your have 4 years from the date your application is approved to comply with the requirements of the desert-land laws. You are required to develop an adequate water supply to reclaim, irrigate, and cultivate all of the lands in your desert-land entry, and one-eighth of the lands must be properly cultivated and irrigated.

If you successfully meet the requirements of the desert-lands laws, you will receive a patent from the BLM which gives you legal title to the lands. If you experience an unavoidable delay in reclaiming and cultivating the lands, BLM will grant you an extension if you clearly show that the failure to reclaim and cultivate the lands within the 4-year period was due to no fault of your own. If you failed to act or were unable to get financial backing to make the required development, the BLM cannot grant you an extension.

The BLM estimates that approximately 20 applications (Form 2520–1) are received annually. Based on the BLM's experience in processing an application, it will take an average time of 90 minutes for a applicant to supply the requested information. Based on the estimated 20 applications the BLM receives annually and the average time of 90 minutes it takes an applicant to supply the requested information, the total annual burden is collectively 30 hours.

Any interested member of the public may request and obtain, without charge, a copy of the R&PP application (Form 2520–1) by contacting the person identified under

FOR FURTHER INFORMATION CONTACT: All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: March 15, 2000.

Carole Smith,

BLM Informotion Collection Officer.

[FR Doc. 00–6812 Filed 3–17–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PE–01–24 1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0010

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of approval for the collection of information from those persons who submit a Conveyances Affecting Color or Claim of Title Application (Form No. 2540–2) to apply for public lands under a color-of-title claim. The BLM uses the information to determine if the applicant is eligible to acquire public lands under the Color-of-Title Act of December 22, 1928.

DATES: Comments on the proposed information collection must be received by May 14, 2000, to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401 LS, Washington, D.C. 20240.

Comments may be sent via Internet to: WOComment@blm.gov. Please include "Attn: 1004–0029" and your name and return address in your Internet address.

Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401, L Street NW, Washington, D.C. 20036.

Comments will be available for public review at the L Street address during regular business hours (7:45 A.M. to 4:15 P.M., Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Alzata L. Ransom, Lands and Realty Group, 202–452–7772.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), the BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Color-of-Title Act of December 22, 1928 (45 Stat. 1069), as amended by the Act of July 28, 1953 (67 Stat. 227), (U.S.C. 1068–1068b), was passed by Congress to provide for transferring legal title to the public lands from the United States to eligible individuals, groups, or corporations who have a valid color-of-title claim. The regulations in 43 CFR 2540 provide guidelines and procedures to file a color-of-title claim. These regulations were adopted on June 13, 1970 (35 FR 9592).

Any individual, group, or corporation who has evidence giving the appearance of having title to public lands which are administered by the BLM and legal title to the lands remains vested in the United States may file a color-of-title application.

The two claims recognized by the Act are referred to as Class 1 and Class 2. A Class 1 claim is one which has been held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for a minimum of 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation under claim or color-of-title, and upon which the claimant or predecessors in interest have placed valuable improvements, or on which some part of the land has been reduced to cultivation. A Class 2 claim is one which has been held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

The Information collected on Conveyances Affecting Color of Title Form No. 2540–2 is required by the regulations in 43 CFR 2540 to process requests to acquire legal title to the public lands under the provisions of the Act of December 22, 1928, as amended by the Act of July 28, 1953. If you believe you have a valid color-of-title claim you may file an application with the BLM Office having responsibility for the public lands you desire to acquire legal to. The following information is collected on the form: (1) Applicant's name; (2) legal description of the lands claimed; (3) itemized data relating to all record and non-record title conveyances in chronological order, and (4) certification by the proper county official or an abstractor.

After receiving your application, the BLM will analyze the information on your application, conduct an on-site field examination of the lands, and prepare reports. The BLM will approve your application if you meet the requirements of a Class 1 or Class 2 claim or reject your application if you do not meet the requirements of a Class 1 or Class 2 claim. Class 2 claims are discretionary and may be rejected if the public interest in retention of the lands clearly outweighs the interest of the applicant.

The BLM estimates that approximately 37 applications (Form 2540–2) are received annually. Based on the BLM's experience in processing an application, it will take an average of one hour for an applicant to supply the requested information. Based on the estimated 37 applications the BLM receives annually and the average time of one hour it takes an applicant to supply the requested information, the total annual burden is collectively 37 hours.

Any interested member of the public may request and obtain, without charge, a copy of Conveyances Affecting Color or Claim of title Form 2540–2 by contacting any BLM Office or the person identified under **FOR FURTHER INFORMATION CONTACT.**

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: March 15, 2000.

Carole Smith,

BLM Information Collection Officer.

[FR Doc. 00–6813 Filed 3–17–00; 8:45 am]

BILLING CODE 4310–84–M

U.S. DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–01–24 1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0011

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of approval for the collection of information from those persons who submit a Color-of-Title Tax Levy and Payment Record Application (Form No. 2540–3) to apply for public lands under a color-of-title claim. The BLM uses the information to determine if the applicant is eligible to acquire public lands under the Color-of-Title Act of December 22, 1928.

DATES: Comments on the proposed information collection must be received by May 19, 2000, to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401 LS, Washington, D.C. 20240.

Comments may be sent via Internet to: WOComment@blm.gov. Please include "Attn: 1004–0029" and your name and return address in your Internet address.

Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401, L Street, NW, Washington, D.C. 20036.

Comments will be available for public review at the L Street address during regular business hours (7:45 am to 4:15 pm, Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Alzata L. Ransom, Lands and Realty Group, 202–452–7772.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), the BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Color-of-Title Act of December 22, 1928 (45 Stat. 1069), as amended by the Act of July 28, 1953 (67 Stat. 227), (U.S.C. 1068–1068b), was passed by Congress to provide for transferring legal title to the public lands from the United States to eligible individuals, groups, or corporations who have a valid color-of-title claim. The regulations in 43 CFR 2540 provide guidelines and procedures to file a color-of-title claim. These regulations were adopted on June 13, 1970 (35 FR 9592).

Any individual, group, or corporation who has evidence giving the appearance of having title to public lands which are administered by the BLM and legal title to the lands remains vested in the United States may file a color-of-title application.

The two claims recognized by the Act are referred to as Class 1 and Class 2. A Class 1 claim is one which has been held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for a minimum of 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation under claim or color-of-title, and upon which the claimant or predecessors in interest have placed valuable improvements, or on which some part of the land has been reduced to cultivation. A Class 2 claim is one which has been held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for Federal purposes.

The Information collected on Color-of-Title Tax Levy and Payment Record Form No. 2540–3 is required by the regulations in 43 CFR 2540 to process requests to acquire legal title to the public lands under the provisions of the Act of December 22, 1928, as amended by the Act of July 28, 1953. If you believe you have a valid color-of-title claim you may file an application with the BLM Office having responsibility for the public lands you desire to acquire legal to. The following information is collected on the form: (1) Applicant's name; (2) legal description of the lands claimed; (3) itemized data relating to all recorded tax payments in chronological order, and; (4) certification by the proper county official.

After receiving your application, the BLM will analyze the information on your application, conduct an on-site field examination of the lands, and prepare reports. The BLM will approve your application if you meet the requirements of a Class 1 or Class 2 claim or reject your application if you do not meet the requirements of a Class 1 or Class 2 claim. Class 2 claims are discretionary and may be rejected if the public interest in retention of the lands clearly outweighs the interest of the applicant.

The BLM estimates that approximately 37 applications (Form 2540–3) are received annually. Based on the BLM's experience in processing an application, it will take an average of one hour for an applicant to supply the requested information. Based on the estimated 37 applications the BLM receives annually and the average time of one hour it takes an applicant to supply the requested information, the total annual burden is collectively 37 hours.

Any interested member of the public may request and obtain, without charge, a copy of Claim-of-Title Tax Levy and Payment Record Form 2540–3 by contacting any BLM Office or the person identified under **FOR FURTHER INFORMATION CONTACT.**

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: March 15, 2000.

Carole Smith,

BLM Information Collection Officer.

[FR Doc. 00–6814 Filed 3–17–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PF–01–24 1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0012

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of approval for the collection of information from States and local government agencies, and from qualified nonprofit corporations and associations who submit an Application for Land for Recreation or Public Purposes (Form 2740–1) to obtain public lands and benefits for recreational and public purposes. The BLM uses the information to determine if an applicant meets the requirements of the Recreation and Public Purpose Act (R&PP) of June 14, 1926.

DATES: Comments on the proposed information collection must be received by May 19, 2000, to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW., Room 401LS, Washington, D.C. 20240.

Comments may be sent via Internet to: WOComment@blm.gov. Please include "Attn: 1004–0012" and your name and address in your Internet message.

Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401 L Street NW., Washington, D.C.

Comments will be available for public review at the L Street address during regular business hours (7:45 am to 4:15 pm, Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Alzata L. Ransom, Realty Use Group, at (202) 452–7772.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules to solicit comments on (a) whether the proposed

collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or technological collection techniques or other forms of information technology.

The Recreation and Public Purpose Act (R&PP) of June 14, 1926, as amended (43 U.S.C. 869 *et seq.*), authorizes the Secretary of the Interior to lease or convey certain public lands to States and local government agencies, and to qualified nonprofit corporations and associations, for recreational and public purposes under specified conditions. The regulations in 43 CFR 2740 provide guidelines and procedures for the lease or conveyance of public lands under the Act. The regulations were last revised on July 23, 1992, (57 FR 32732).

The term "public purpose" means for the purpose of providing facilities or services for the benefit of the public in connection with, but not limited to, public health, safety, or welfare. Use of lands or facilities for habitation, cultivation, trade, or manufacturing is permissible only when necessary for and integral to, *i.e.*, essential part of, the public purpose.

The Act applies to all public lands, except lands within national forest, national parks and monuments, national wildlife refuges, Indian lands, and acquired lands. Revested Oregon and California Railroad grant lands, and reconveyed Coos Bay Wagon Road grant lands in western Oregon may only be leased to State and Federal instrumentalities and political subdivisions and to municipal corporations.

Lease periods may be for any length, but shall not exceed 20 years for nonprofit entities, and 25 years for Federal, States and local governmental entities. Leases are issued subject to appropriate environmental and legal stipulations, and contain provisions for compliance with: (a) Nondiscrimination based on race, color, sex, age, religion, or national origin; (b) an approved plan of management and development upon which lease was considered and issued (leases may be canceled for nonuse or a use other than that for which the lease was issued without prior consent of the BLM); (c) under certain conditions, the Federal Government may reserve the standing timber, use of water, or place other limitations on the use of natural resources; and (d) other reasonable stipulations as may be required as part of the consideration for the moderate charge being made for land.

Patents issued under the Act convey a restricted title since they contain provisions or clauses which, if not complied with, may result in reversion of the title to the United States. These provisions are: (a) Nondiscrimination clauses providing that the patentee may not restrict or permit restriction of the use of the lands conveyed or facilities thereon because of race, color, sex, age, religion, or national origin; (b) a provision that, if the patentee or its successor in interest attempts to transfer title or control over the land to another, or the land is devoted to a use other than that for which it was conveyed without the consent of the BLM, title will revert to the United States; (c) the patent will stipulate that the land will be used in perpetuity for the purposes for which they are acquired (the lease or patent may stipulate that certain provisions of the development program, including the management plan, may be subject to review by the Secretary of the Interior or his delegate); and (d) all minerals will be reserved to the United States.

The information collected on Form 2740–1 is required by the regulations in 43 CFR 2741 to process request for public lands under the provisions of the R&PP Act. Based on its reviews and evaluation, the BLM may approve or disapprove any application in whole or in part, or require its revision. The following information is collected on the form: (1) Applicant's name and address (home and address telephone number); (2) legal description of the lands applied for; (3) type of authorization and proposed use of the lands; (4) description of proposed use, plan and schedule for development, use of revenues, and known environmental and cultural concerns specific to the land; (5) statutory authority to hold the lands for the purpose requested (if applicant is State or Political subdivision); (6) copy of the applicant's authority to file the application and to take actions necessary to fulfill the requirements of the R&PP Act; (7) compliance with nondiscrimination as to access to the lands and facilities based on race, color, religion, sex, age or national origin in accordance with Title VI of the Civil Rights Act of 1964 (78 Stat. 241). In addition, the form instructs the applicant to submit: (a) A copy of their charter, a copy of their articles of incorporation, and a copy of their authority to operate in the State where the lands applied for are located; (c) a plan of development, use, and maintenance that includes a statement of proposed use of the lands, description of the proposed project, anticipated expenditure for development, source of funds to be used for development, and a statement describing administration of the tract; (d) maps showing the nature and location of facilities, land ownership of the entire project, and access routes; (e) timetable for development; and (f) explanation of proposed maintenance responsibilities and procedures.

After receiving the form, the BLM will: (a) Determine if the applicants proposal is in conformance with land use planning, review land status to determine if the lands are subject to application, and determine if the application meets all requirements of the law and regulations; (b) review the development and management plans to determine their adequacy and effectiveness, and evaluate the construction schedule and estimated financing to ensure they are realistic and practicable; (c) secure the views of other agencies that may have an interest in the lands, including State and local planning and zoning departments; (d) check for the presence of unpatented mining claims (R&PP leases and conveyances cannot be issued where mining claims are present, and if it is necessary to determine the validity of a mining claim in order to allow the lease, the cost of the determination will be the responsibility of the applicant); (e) conduct a field examination and other investigations to gather information and data on the environmental considerations and proper classification of the lands; and (f) publish a notice to solicit views and comments from the public concerning the proposal. After reviewing and evaluating your application, the BLM may approve or disapprove your application in whole or in part, or require revisions to the application.

Potential applicants should contact the appropriate District Office of the BLM well in advance of the anticipated submission of Form 2740–1. Early consultation with the BLM is needed to familiarize a potential applicant with management responsibilities, and terms and conditions which may be required in a lease or conveyance.

The BLM estimates that approximately 55 R&PP applications (Form 2740–1) are received annually. Based on the BLM's experience in processing an application, it will take an average time of 40 hours for an applicant to supply the requested information. Based on the estimated 55 applications the BLM receives annually and the average time of 40 hours it takes an applicant to supply the requested information, the total annual burden is collectively 2,200 hours.

Any interested member of the public may request and obtain, without charge, a copy of the R&PP application (Form 2740–1) by contacting the person identified under **FOR FURTHER INFORMATION CONTACT** All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: March 15, 2000.

Carole Smith,

BLM Information Collection Officer.

[FR Doc. 00–6815 Filed 3–17–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–350–1430–PE–01–24 1A]

Extension of Currently Approved Information Collection; OMB Approval Number 1004–0029

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) is announcing its intention to request extension of approval for the collection of information from those persons who submit a Color-of-Title Application (Form No. 2540–1) to apply for public lands under a color-of-title claim. The BLM uses the information to determine if the applicant is eligible to acquire public lands under the relevant statutes.

DATES: Comments on the proposed information collection must be received by May 19, 2000, to be considered.

ADDRESSES: Comments may be mailed to: Regulatory Management Team (420), Bureau of Land Management, 1849 C Street NW, Room 401 LS, Washington, D.C. 20240.

Comments may be sent via Internet to: WOComments@blm.gov. Please include "Attn: 1004–0029" and your name and return address in your Internet address. Comments may be hand delivered to the Bureau of Land Management Administrative Record, Room 401, L Street NW, Washington, D.C. 20036.

Comments will be available for public review at the L Street address during regular business hours (7:45 am to 4:15 pm, Monday through Friday).

FOR FURTHER INFORMATION CONTACT: Alzata L. Ransom, Lands and Realty Group, 202–452–7772.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), the BLM is required to provide 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules to solicit comments on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Color-of-Title Act of December 22, 1928 (45 Stat. 1069), as amended by the Act of July 28, 1953 (67 Stat. 227), (U.S.C. 1068–1068b), was passed by Congress to provide for transferring legal title to the public lands from the United States to eligible individuals, groups, or corporations who have a valid color-of-title claim. The regulations in 43 CFR 2540 provide guidelines and procedures to file a color-of-title claim. These regulations were adopted on June 13, 1970 (35 FR 9592).

Any individual, group, or corporation who has evidence giving the appearance of having title to public lands which are administered by the BLM and legal title to the lands remains vested in the United States may file a color-of-title application with the BLM District Office where the lands are located.

The two claims recognized by the Act are referred to as Class 1 and Class 2. A Class 1 claim is one which has been held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for a minimum of 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation under claim or color-of-title, and upon which the claimant or predecessors in interest have placed valuable improvements, or on which some part of the land has been reduced to cultivation. A Class 2 claim is one which has been held in good faith and peaceful, adverse possession by a claimant, his ancestors or grantors, under claim or color-of-title for the period commencing not later than January 1, 1901, to the date of application, during which time they have paid taxes levied on the land by State and local governmental units. A claim is not held in good faith where held with knowledge that the land is owned by the United States. A claim is not held in peaceful, adverse possession where it was initiated while the land was withdrawn or reserved for federal purposes.

The information collected on Color-of-Title Application Form No. 2540–1 is required by the regulations in 43 CFR 2540 to process requests to acquire legal title to the public lands under the provisions of the Act of December 22, 1928, as amended by the Act of July 28, 1953. If you believe you have a valid color-of-title claim you may file an application with the BLM Office having responsibility for the public lands you desire to acquire legal to. The following information is collected on the form: (1) Applicant's name; (2) applicant's address; (3) applicant's area code and phone number; (4) legal description of the lands claimed; (5) type of application (class 1, class 2, or both); (6) record titleholder declaration and explanation; (7) description and copy of the written document the title is based on (deed, will, court order, etc.); (8) date the applicant learned about the title problems; (9) source of information from which the applicant learned about the title problems; (10) name, address, and phone number of the title examiner and date of examination; (11) total purchase price of the property, estimated value of structural and cultural improvements on the date of purchase, estimated value of existing structural and cultural improvements added since the date of purchase, and the amount received for forest products sold since the date of purchase; (12) cultivation statement; (13) calendar years the lands have been cultivated, and the number of acres cultivated; (14) list of improvements to the property; (15) mineral estate information; (16) $10 filing fee; and (17) date of application, and signature of applicant.

After receiving your application, BLM will analyze the information on your application, conduct an on-site field examination of the lands, and prepare reports. The BLM will approve your application if you meet the requirements of a Class 1 or Class 2

claim or reject your application if your do not meet the requirements of a Class 1 or Class 2 claim. Class 2 claims are discretionary and may be rejected if the public interest in retention of the lands clearly outweighs the interest of the applicant.

The BLM estimates that approximately 37 applications (Form 2540–1) are received annually. Based on the BLM's experience in processing an application, it will take an average of 15 minutes for an applicant to supply the requested information. Based on the estimated 37 applications the BLM receives annually and the average time of 15 minutes it takes an applicant to supply the requested information, the total annual burden is collectively 9 hours.

Any interested member of the public may request and obtain, without charge, a copy of Conveyances Affecting Color or Claim of Title Form 2540–1 by contacting any BLM Office or the person identified under **FOR FURTHER INFORMATION CONTACT.**

All responses to the notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also become part of the public record.

Dated: March 15, 2000.

Carole Smith,

BLM Information Collection Officer.

[FR Doc. 00–6816 Filed 3–17–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1430–EU] COC–57547, COC–63624

Notice of Realty Action

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Realty Action.

SUMMARY: The following public lands in Boulder and Prowers County have been examined and found suitable for classification for lease or conveyance under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*)

COC–57547: The Town of Ward, proposes to include the following lands in the development of a recreational and wildlife reserve area:

Sixth Principal Meridian

T. 1 N., R. 73 W.,
Sec. 1, Public lands south and west of Brainard Lake Road, excluding that portion of the Johanna Lode, MS 12731, that is in conflict with the unpatented Warrior Lode mining claim
Sec. 12, lots 1, 3, 4, 9 and a portion of lot 2
Consisting of approximately 166.23 acres.

COC–63624: Colorado Division of Wildlife proposes to include the following lands in the X–Y Ranch State Wildlife Area:

Sixth Principal Meridian

T. 22 S., R. 43 W.,
Sec. 31, SE¼SE¼
T. 23 S., R. 43 W.,
Sec. 4, NW¼SW¼
Sec. 5, SW¼NE¼, NW¼NW¼
Sec. 10, NE¼SW¼, SW¼SE¼
Sec. 14, SE¼SE¼
Sec. 24, NW¼NW¼
Consisting of approximately 320 acres.

The lands are not needed for Federal purposes. Lease or conveyance for recreational use is consistent with current BLM land use planning and would be in the public interest.

Upon publication of this notice in the **Federal Register**, the lands in Prowers County will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. The lands in Boulder County are currently segregated under COC–63637, dated February 10, 2000.

DATES: Interested parties may submit comments regarding the proposed lease/conveyance or classification of the lands before April 21, 2000. Reference the applicable serial number in all correspondence. In the absence of any adverse comments, the classification will become effective May 19, 2000.

ADDRESSES: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, Colorado 81215–2200.

FOR FURTHER INFORMATION CONTACT: COC–57547: Jan Fackrell, Realty Specialist at 719–269–8525. COC–63624: Dave Hallock, Realty Specialist at 719–269–8536.

SUPPLEMENTARY INFORMATION: Classification comments—interested parties may submit comments involving the suitability of the land for the purposes stated. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application comments—interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for the proposals.

This action is in response to applications by the Town of Ward and Colorado Division of Wildlife. Lease of the lands will not be authorized until after the classification becomes effective. Lease or patent of the lands for recreational or public purpose use would be subject to the following terms, conditions, and reservations:

1. Provisions of the Recreation and Public Purposes Act and to all applicable regulations of the Secretary of the Interior.

2. All valid existing rights documented on the official public land records at the time of lease/patent issuance.

3. All minerals shall be reserved to the United States, together with the right to prospect for, mine, and remove the minerals.

4. Any other reservations that the authorized officer determines appropriate to ensure public access and proper management of Federal lands and interests therein.

Donnie R. Sparks,

Field Office Manager.

[FR Doc. 00–6743 Filed 3–17–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

CALFED Bay-Delta Program Policy Group

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The CALFED Bay-Delta Program Policy Group will meet on April 19, 2000. The agenda for the Policy Group meeting will include discussion of the CALFED Long-Term Water Management Strategy Evaluation Framework and the Preferred Program Alternative in the Final Programmatic EIS/R. This meeting is open to the public. Interested persons may make oral statements to be CALFED Bay-Delta Program Policy Group or may file written statements for consideration.

DATES: The CALFED Bay-Delta Program Policy Group meeting will be held from 9:00 a.m. to 5:00 p.m. on Wednesday, April 19, 2000.

ADDRESSES: This meeting will meet at The Sacramento Convention Center, 1400 J Street, Room 302–303, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Mary Selkirk, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stablize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the direction of the CALFED Policy Group. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. The CALFED Policy Group provides general policy direction on all aspects of the CALFED Program.

Lester A. Snow,

Regional Director.

[FR Doc. 00–6804 Filed 3–17–00; 8:45 am]

BILLING CODE 4310–94–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Submission for OMB Review: Comment Request

AGENCY: Overseas Private Investment Corporation.

ACTION: Request for Comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to publish a Notice in the **Federal Register** notifying the public that the Agency is preparing an information collection request for OMB review and approval and to request public review and comment on the submission. Comments are being solicited on the need for the information, its practical utility, the accuracy of the Agency's burden estimate, and on ways to minimize the reporting burden, including automated collection techniques and uses of other forms of technology. The proposed form under review is summarized below.

DATES: Comments must be received on or before May 19, 2000.

ADDRESSES: Copies of the subject form and the request for review prepared for submission to OMB may be obtained from the Agency Submitting Officer. Comments on the form should be submitted to the Agency Submitting Officer.

FOR FURTHER INFORMATION CONTACT: *OPIC Agency Submitting Officer:* Carol Brock, Records Manager, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527; 202/336–8563.

SUMMARY OF FORM UNDER REVIEW:

Type of Request: Extension of currently approved form.

Title: Small Business Application for Political Risk Investment Insurance.

Form Number: OPIC–223.

Frequency of Use: Once per investor per project.

Type of Respondents: Small business or other institutions qualifying as small business under OPIC's definition (except farms); individuals qualifying as small business under OPIC's definition.

Standard Industrial Classification Codes: All.

Description of Affected Public: Small U.S. companies or citizens investing overseas.

Reporting Hours: 4 hours per project.

Number of Responses: 50 per year.

Federal Cost: $750 per year.

Authority for Information collection: Sections 231 and 234(a), 239(d), and 240A of the Foreign Assistance Act of 1961, as amended.

Abstract (Needs and Uses): The small business application is the principal document used by OPIC to determine the small business investor's and project's eligibility, assess the environmental impact and developmental effects of the project, measure the economic effects for the United States and the host country economy, and collect information for underwriting analysis.

Dated: March 14, 2000.

Ralph A. Kaiser,

Assistant General Counsel, Administrative Affairs Department of Legal Affairs.

[FR Doc. 00–6734 Filed 3–17–00; 8:45 am]

BILLING CODE 3210–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–669 (Review)]

Scheduling of an Expedited Five-Year Review Concerning the Antidumping Duty Order on Cased Pencils From China

AGENCY: United States International Trade Commission.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on cased pencils from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2000, the Commission determined that the domestic interested party group response to its notice of institution (64 FR 67304, December 1, 1999) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would

warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on June 26, 2000, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review, may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before June 29, 2000, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by June 29, 2000. However, should Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 15, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6853 Filed 3–17–00; 8:45 am]

BILLING CODE 7020–02–P

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the responses submitted by Aakron Rule; Dixon; General Pencil; Musgrave Pencil; Sanford; Tennessee Pencil; and WIMA, Pencil Section, Antidumping Committee, to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–393 (Final) and 731–TA–829–830, 833–834, 836, and 838 (Final)]

Certain Cold-Rolled Steel Products From Argentina, Brazil, Japan, Russia, South Africa, and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations, the United States International Trade Commission determines,[2] pursuant to sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. § 1671d(b), 1673d(b)) (the Act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Brazil of certain cold-rolled steel products, that have been found by the Department of Commerce to be subsidized by the Government of Brazil, and by reason of imports of certain cold-rolled steel products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted these investigations effective June 2, 1999, following receipt of petitions filed with the Commission and the Department of Commerce by Bethlehem Steel Corporation (Bethlehem, PA); U.S. Steel Group (Pittsburgh, PA); Ispat Inland, Inc. (East Chicago, IL); LTV Steel Co., Inc. (Cleveland, OH); National Steel Corporation (Mishawaka, IN); Gulf States Steel, Inc. (Gadsden, AL); Steel Dynamics Inc. (Butler, IN); Weirton Steel Corporation (Weirton, WV); and the United States Steelworkers of America, Pittsburgh, PA. The final phase of the investigations was scheduled by the Commission following notification of preliminary determinations by the Department of Commerce that imports of cold-rolled steel from Brazil were being subsidized within the meaning of section 703(b) of the Act (19 U.S.C. 1671b(b)), and that imports from Argentina, Brazil, Japan, Russia, South Africa, and Thailand were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the scheduling of the Commission's investigations and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of December 1, 1999 (64 FR 67307). The hearing was held in Washington, DC, on January 20, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in these investigations to the Secretary of Commerce on March 13, 2000. The views of the Commission are contained in USITC Publication 3283 (March 2000), entitled Certain Cold-Rolled Steel Products from Argentina, Brazil, Japan, Russia, South Africa, and Thailand: Investigations Nos. 701–TA–393 and 731–TA–829–830, 833–834, 836 and 838 (Final).

Issued: March 15, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6856 Filed 3–17–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR § 207.2(f)).

[2] Chairman Lynn M. Bragg dissenting.

INTERNATIONAL TRADE COMMISSION

Investigation No. TA–201–71

Crabmeat From Swimming Crabs

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of an investigation under section 202 of the Trade Act of 1974 (19 U.S.C. 2252) (the Act) and determination that the investigation is extraordinarily complicated.

SUMMARY: Following receipt of a petition filed on March 2, 2000, on behalf of the Blue Crab Coalition, McClellanville, SC, the Commission instituted investigation No. TA–201–71 under section 202 of the Act to determine whether crabmeat from swimming crabs (family *Portunidae*), in all its forms, including frozen, fresh, and chilled crabmeat, however packed, preserved, pasteurized, or prepared, and of any grade or size (such as jumbo lump, lump, back fin, claw, select, and the like), is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article. Such crabmeat is generally classified in subheadings 1605.10.20 and 1605.10.40 of the Harmonized Tariff Schedule of the United States (HTS), but may also be entering under HTS subheadings 0306.14.20 and 0306.24.20. Although the HTS categories are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

The Commission has determined that this investigation is "extraordinarily complicated" within the meaning of section 202(b)(2)(B) of the Trade Act of 1974 (19 U.S.C. 2252(b)(2)(B)). This determination allows the Commission to take up to 30 additional days to make its injury determination in this investigation—that is, the Commission must make its injury determination before the 150th day of the filing of the petition, as opposed to the 120th day. The Commission envisions using only a part of the extra 30 days to make its injury determination. This will allow the Commission more than sufficient time to consider the question of remedy should the Commission make an affirmative injury determination.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 206, subparts A and B (19 CFR part 206).

EFFECTIVE DATE: March 2, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Participation in the Investigation and Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than 21 days after publication of this notice in the **Federal Register**. The Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Confidential Business Information (CBI) Under an Administrative Protective Order (APO) and CBI Service List

Pursuant to section 206.17 of the Commission's rules, the Secretary will make CBI gathered in this investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than 21 days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive CBI under the APO.

Hearings on Injury and Remedy

The Commission has scheduled separate hearings in connection with the injury and remedy phases of this investigation. The hearing on injury will be held beginning at 9:30 a.m. on June 15, 2000, at the U.S. International Trade Commission Building. In the event that the Commission makes an affirmative injury determination or is equally divided on the question of injury in this investigation, a hearing on the question of remedy will be held beginning at 9:30 a.m. on July 25, 2000. Requests to appear at the hearings should be filed in writing with the Secretary to the Commission on or before June 9, 2000, and July 19, 2000, respectively. All persons desiring to appear at the hearings and make oral presentations should attend prehearing conferences to be held at 9:30 a.m. on June 13, 2000, and July 21, 2000, respectively, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the hearing are governed by sections 201.6(b)(2) and 201.13(f) of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. The deadline for filing prehearing briefs on injury is June 9, 2000; that for filing prehearing briefs on remedy, including any commitments pursuant to 19 U.S.C. § 2252(a)(6)(B), is July 19, 2000. Parties may also file posthearing briefs. The deadline for filing posthearing briefs on injury is June 20, 2000; that for filing posthearing briefs on remedy is July 31, 2000. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the consideration of injury on or before June 20, 2000, and pertinent to the consideration of remedy on or before July 31, 2000. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain confidential business information must also conform with the requirements of section 201.6 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with section 201.16(c) of the Commission's rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under the authority of section 202 of the Trade Act of 1974; this notice is published pursuant to section 206.3 of the Commission's rules.

Issued: March 15, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–6857 Filed 3–17–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–639–640 (Review)]

Forged Stainless Steel Flanges From India and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of expedited five-year reviews concerning the antidumping duty orders on forged stainless steel flanges from India and Taiwan.

SUMMARY: The Commission hereby gives notice of the scheduling of expedited reviews pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty orders on forged stainless steel flanges from India and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207). Recent amendments to the Rules of Practice and Procedure pertinent to five-year reviews, including the text of subpart F of part 207, are published at 63 F.R. 30599, June 5, 1998, and may be downloaded from the Commission's World Wide Web site at http://www.usitc.gov/rules.htm.

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2000, the Commission determined that the domestic interested party group responses to its notice of institution (64 FR 67313, December 1, 1999) were adequate and the respondent interested party group responses were inadequate. The Commission did not find any other circumstances that would warrant conducting full reviews.[1] Accordingly, the Commission determined that it would conduct expedited reviews pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the reviews will be placed in the nonpublic record on June 27, 2000, and made available to persons on the Administrative Protective Order service list for these reviews. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the reviews and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the reviews, may file written comments with the Secretary on what determinations the Commission should reach in the reviews. Comments are due on or before June 30, 2000, and may not contain new factual information. Any person that is neither a party to the five-year reviews nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the reviews by June 30, 2000. However, should Commerce extend the time limit for its completion of the final results of its reviews, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the responses submitted by Gerlin, Inc.; Ideal Forging Corp.; Maass Flange Corp.; and Westbrook Flange to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

Determinations

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 15, 2000
By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 00–6855 Filed 3–17–00; 8:45 am]
BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–663 (Review)]

Paper Clips From China

AGENCY: United States International Trade Commission.

ACTION: Scheduling of an expedited five-year review concerning the antidumping duty order on paper clips from China.

SUMMARY: The Commission hereby gives notice of the scheduling of an expedited review pursuant to section 751(c)(3) of the Tariff Act of 1930 (19 U.S.C. § 1675(c)(3)) (the Act) to determine whether revocation of the antidumping duty order on paper clips from China would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 3, 2000.

FOR FURTHER INFORMATION CONTACT: Debra Baker (202–205–3180), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On March 3, 2000, the Commission determined that the domestic interested party group response to its notice of institution (64 FR 67320, December 1, 1999) was adequate and the respondent interested party group response was inadequate. The Commission did not find any other circumstances that would warrant conducting a full review.[1] Accordingly, the Commission determined that it would conduct an expedited review pursuant to section 751(c)(3) of the Act.

Staff Report

A staff report containing information concerning the subject matter of the review will be placed in the nonpublic record on July 3, 2000, and made available to persons on the Administrative Protective Order service list for this review. A public version will be issued thereafter, pursuant to section 207.62(d)(4) of the Commission's rules.

Written Submissions

As provided in section 207.62(d) of the Commission's rules, interested parties that are parties to the review and that have provided individually adequate responses to the notice of institution,[2] and any party other than an interested party to the review, may file written comments with the Secretary on what determination the Commission should reach in the review. Comments are due on or before July 7, 2000, and may not contain new factual information. Any person that is neither a party to the five-year review nor an interested party may submit a brief written statement (which shall not contain any new factual information) pertinent to the review by July 7, 2000. However, should Commerce extend the time limit for its completion of the final results of its review, the deadline for comments (which may not contain new factual information) on Commerce's final results is three business days after the issuance of Commerce's results. If comments contain business proprietary information (BPI), they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

[1] A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

[2] The Commission has found the response submitted by ACCO to be individually adequate. Comments from other interested parties will not be accepted (see 19 CFR 207.62(d)(2)).

Determination

The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. § 1675(c)(5)(B).

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 15, 2000.

By order of the Commission.

Donna R. Koehnke,
Secretary.

[FR Doc. 00–6854 Filed 3–17–00; 8:45 am]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a consent decree in *United States* v. *AT&T Corp., AT&T of the Virgin Islands, A&L Underground, Inc., and BioImpact, Inc.*, Civil Action No. 2000–42, was lodged with the United States District Court for the District of the Virgin Islands on March 9, 2000.

This is a civil enforcement action stating claims against AT&T Corp., AT&T of the Virgin Islands, A&L Underground, Inc., and BioImpact, Inc for violations of the Rivers and Harbors Act ("RHA"), 33 U.S.C. 401 *et seq.*, and the Clean Water Act ("CWA"), 33 U.S.C. 1251 *et seq.*, in connection with the Defendants' construction of a transoceanic cable landing facility in St. Croix, the U.S. Virgin Islands.

The proposed Consent Decree would resolve these violations and, among other provisions, would require Defendants to (1) pay a civil penalty in the amount of $1.8 million, and (2) conduct further monitoring of the areas where drilling mud was released, to ensure that any remaining drilling mud is discovered and removed.

The Department of Justice will accept written comments relating to the proposed Consent Decree for thirty (30) days from the date of publication of this notice. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Scott J. Jordan, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026–3986, and must refer to *United States* v. *AT&T Corp., AT&T of the Virgin Islands, A&L Underground, Inc., and BioImpact, Inc.*, DJ Reference No. 90–5–1–1–4466.

The proposed consent decree is on file at the Clerk's Office, United States District Court, District of the Virgin Islands, 310 Federal Building, 5500 Veterans Drive, Charlotte Amalie, St. Thomas, Virgin Islands 00802, and may be examined there to the extent allowed by the rules of the Clerk's Office. In addition, written requests for a copy of the consent decree may be mailed to Scott J. Jordan, Environmental Defense Section, U.S. Department of Justice, P.O. Box 23986, Washington, DC 20026–3986, and should refer to *United States* v. *AT&T Corp., AT&T of the Virgin Islands, A&L Underground, Inc., and BioImpact, Inc.*, DJ Reference No. 90–5–1–1–4466. All written requests for a copy of the Consent Decree must include the full mailing address to which the Consent Decree should be sent.

Letitia J. Grishaw,
Chief, Environmental Defense Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 00–6746 Filed 3–17–00; 8:45 am]
BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA")

Consistent with Department policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Jane Doe, as Executrix of the Estate of Edmund Barbera, et al.*, 96 Civ. 8563 (BSJ), was lodged on March 8, 2000 with the United States District Court for the Southern District of New York. The Consent Decree addresses the hazardous waste contamination at the Port Refinery Superfund Site (the "Site"), located in the Village of Rye Brook, Westchester County, New York. The Consent Decree requires the current owner of the Site to pay to the United States the net proceeds of the sale of the Site, after certain costs in connection with the sale are paid and after purchase

of an annuity to cover the living expenses of the owner.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, D.C. 20044–7611, and should refer to *United States* v. *Jane Doe, as Executrix of the Estate of Edmund Barbera, et al.*, DOJ Ref. #90–11–3–1142A.

The proposed consent decree may be examined at the office of the United States Attorney for the Southern District of New York, 100 Church Street, New York, New York, 10007 (contact Assistant United States Attorney Kathy S. Marks); and the Region II Office of the Environmental Protection Agency, 290 Broadway, New York, New York, 10007–1866 (contact Assistant Regional Counsel Cynthia Psoras). A copy of the proposed consent decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, D.C. 20044–7611. In requesting a copy please refer to the referenced case and enclose a check in the amount of $7.00 (25 cents per page reproduction costs) for the Consent Decree, payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–6744 Filed 3–17–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Proposed Consent Decree

In accordance with 28 CFR 50.7(b), notice is hereby given that a proposed Consent Decree in *United States* v. *Fisher Sand & Gravel Co.*, Civil Action No. 98–CV–0276–D (D. Wyo.), was lodged with the United States District Court for the District of Wyoming on March 8, 2000. Final approval of the proposed Consent Decree is subject to the requirements of 28 CFR 50.7.

In this case, the United States filed suit against Fisher Sand & Gravel Co., Emulsified Asphalt, Inc. of Wyoming, and others for alleged violations of Clean Water Act sections 301 and 404. The Complaint alleges that the defendants discharged dredged or fill material into waters of the United States within Deer Creek near Glenrock, Wyoming, without a permit issued by the United States Army Corps of Engineers.

The United States and the defendants have reached agreement on the terms of a proposed Consent Decree. Under the proposed settlement, the defendants will complete restoration, perform three to five years of monitoring, be enjoined against future unauthorized discharges, and pay a civil penalty.

The Department of Justice will receive written comments on the proposed Consent Decree for a period of 30 days from the date of publication of this notice. Comments should be addressed to Joshua E. Swift, Trial Attorney, U.S. Department of Justice, Environment & Natural Resources Division, Environmental Defense Section, P.O. Box 23986, Washington, DC 20026, and refer to *United States* v. *Fisher Sand & Gravel Co.*, Civil Action No. 98–CV–0276–D (D. Wyo.), DJ# 90–5–1–1–05204.

The proposed Consent Decree may be examined at the Clerk's Office, United States District Court for the District of Wyoming, 2120 Capitol Avenue, Room 2131, Cheyenne, Wyoming 82001. The telephone number of the Clerk's Office is (307) 772–2145.

Letitia J. Grishaw,

Chief, Environmental Defense Section Environment & Natural Resources Division.

[FR Doc. 00–6745 Filed 3–17–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decrees Under the Comprehensive, Environmental Response, Compensation and Liability Act ("CERCLA")

Notice is hereby given that four proposed consent decrees in *United States* v. *Mountain Metal Company, et al.*, Civil Action No. CV–98–2562–S, and one proposed consent decree in *United States* v. *Mountain Metal Company, et al.*, Civil Action No. CV–98–C–2562–S and consolidated action *Exide Corporation and Johnson Controls, Inc.*, v. *Aaron Scrap Metals, et al.*, Civil Action No. CV–98–J–2886–S, were lodged on March 7, 2000, with the United States District Court for the Northern District of Alabama, Southern Division.

In these actions, the United States and Exide Corporation and Johnson Control, Inc. have sought injunctive relief and recovery of response costs under Sections 106(a) and 107 of CERCLA, 42 U.S.C. 9606(a) and 9607, against over forty generator defendants with respect to the Interstate Lead Company ("ILCO") Superfund Site, located in Leeds, Jefferson County, Alabama ("the Site").

The United States has now agreed to settlement of its claims under Sections 106 and 107 of CERCLA, 42 U.S.C. 9606 and 9607, for existing contamination at the Site with respect to five defendants: Battery Post, Inc. ("Battery Post"), Goldsboro Iron & Metal Company, Inc. ("Goldsboro"), Micon Metals, Inc. ("Micon") Omega Tire & Sales ("Omega") and V.H. Holmes & Sons, Inc. ("V.H. Holmes"). Battery Post will pay $6,000 plus interest over a twelve month period to the United States to resolve its claims. Micon will pay $500 with 30 days of Decree entry, to the United States to resolve its claims. Omega will pay $1,000 within 30 days of Decree entry, to the United States to resolve its claims. V.H. Holmes will pay $20,000 plus interest within one year of Decree entry, to the United States to resolve its claims. Goldsboro will pay the United States $195,750, plus interest, within 30 days of proposed consent decree entry to resolve its claims. Goldsboro will also pay Exide Corporation and Johnson Control, Inc., a total of $479,250 in principal plus interest, with $104,250 paid with 30 days of proposed consent decree entry, and 30 monthly payments of $12,500 plus interest to resolve the claims in the consolidated action.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decrees. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, P.O. Box 7611, Department of Justice, Washington, DC 20044, and should refer to *United States* v. *Mountain Metal Company, et al.*, Civil Action No. CV–98–C–2562–S and consolidated action *Exide Corporation and Johnson Controls, Inc.*, v. *Aaron Scrap Metals, et al.*, Civil Action No. CV–98–J–2886–S and DOJ #90–11–2–108/2.

Any of the proposed consent decrees may be examined at the Office of the United States Attorney, Northern District of Alabama, 200 Robert S. Vance Federal Building & Courthouse, 1800 5th Ave. N., Room 200, Birmingham, AL 35203–2198, and at U.S. EPA Region 4, Atlanta Federal Center, 61 Forsyth Street, S.W. Atlanta, Georgia 30303. A copy of the Consent Decree also may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check in the amount of $8.00 (25 cents per page reproduction costs) per

Consent Decree, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–6748 Filed 3–17–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under the policy set out at 28 CFR 50.7, notice is hereby given that on February 29, 2000, a proposed Consent Decree (Decree) in *United States of America* v. *Tampa Electric Company*, Civil Action No. 99–2524 CIV–T–23F, was lodged with the United States District Court for the Middle District of Florida.

In this enforcement action under the Clean Air Act involving alleged violations of requirements intended to prevent the deterioration of air quality, the United States sought injunctive relief and civil penalties from Tampa Electric Company, the owner and operator of the coal-fired electric generating stations known as Gannon and Big Bend. Those stations are located in Hillsborough County, Florida, near the City of Tampa. The United States alleged that Tampa Electric failed to comply with the requirements of the Clean Air Act at Big Bend and Gannon by failing to seek permits prior to making major modifications to parts of these facilities and by failing to install appropriate pollution control devices to control emissions of air pollutants from those facilities.

The Decree requires Tampa Electric to undertake various steps at Big Bend and Gannon in order to reduce the emission of various air pollutants, including the following measures: optimize operation and use of existing pollution control equipment; observe limits on use of fuels in generating electricity; install new pollution control equipment; and meet various emission limits for certain air pollutants, namely: oxides of nitrogen, sulphur dioxide and particulate matter. Also under the Decree, Tampa Electric must undertake a series of additional pollution control or mitigation projects (at a cost of at least $10 million) that are related to the emission of oxides of nitrogen at Tampa Electric's generating stations and to the examination of air quality in the Tampa Bay area. Tampa Electric is also required to pay a civil penalty of $3.5 million.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States of America* v. *Tampa Electric Power Company*, D.J. Ref. 90–5–2–1–06932.

The Decree may be examined at the Office of the United States Attorney, 400 N. Tampa Street, Suite 3200, Tampa, Florida 33602, and at U.S. EPA Region 4, Office of Regional Counsel, 61 Forsyth Street, S.W., Atlanta, Georgia 30303. A copy of the Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $15.25 (25 cents per page reproduction cost), payable to the Consent Decree Library.

Bruce S. Gelber,

Deputy Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–6747 Filed 3–17–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. AlliedSignal Inc. and Honeywell Inc., Case No. 1:99 CV 02959 (PLF) (D.D.C.); Response to Public Comments on Antitrust Consent Decree

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that on March 9, 2000, the United States filed is responses to public comments on the proposed Final Judgment in *United States* v. *AlliedSignal Inc. and Honeywell Inc.* Case No. 1:99 CV 02959 (PLF) (D.D.C., filed November 8, 1999), with the United States District Court for the District of Columbia.

On November 8, 1999, the United States filed a Complaint which alleged that AlliedSignal's proposed merger with Honeywell would violate Section 7 of the Clayton Act, 15 U.S.C. 18, by substantially lessening competition in the traffic alert and collision avoidance systems ("TCAS") market, the search and surveillance weather radar ("SSWR") market, the reaction and momentum wheel market, and the inertial systems market. The proposed Final Judgment, also filed on November 8, 1999, requires AlliedSignal and Honeywell to divest the TCAS business of Honeywell located in Glendale, Arizona; the SSWR business of AlliedSignal located in Olathe, Kansas; the space and navigation business of AlliedSignal located in Teterboro, New Jersey; the mechanical rate gyroscope business of AlliedSignal located in Cheshire, Connecticut, and a related repair business in Newark, Ohio; the microSCIRAS technology business of AlliedSignal located in Redmond, Washington, or, in the alternative, the micro-electro-mechanical systems inertial sensor business of Honeywell located in Minneapolis and Plymouth, Minnesota; and the AlliedSignal micromachined silicon accelerator and micromachined accelerometer gyroscope technology business.

Public comment was invited within the statutory 60-day comment period. The public comments and the United States' responses thereto are hereby published in the **Federal Register** and have been filed with the Court. Copies of the Complaint, Hold Separate Stipulation and Order, proposed Final Judgment, Competitive Impact Statement, and the United States' Certificate of Compliance with Provisions of the Antitrust Procedures and Penalties Act (to which the public comments and the United States' responses are attached) are available for inspection in Room 215 of the Antitrust Division, Department of Justice, 325 7th Street, NW, Washington, DC 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001.

Copies of any of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations & Merger Enforcement, Antitrust Division.

INSPEC Japan

January 17, 2000

Mr. J. Robert Kramer II
Chief, Litigation II Section, Antitrust Division, United States Department of Justice, 1401 H Street, N.W., Suite 3000, Washington D.C. 20530

Dear Sir: *Subject: Antitrust Case # 1:99CV02959, United States of America v. Allied Signal Inc and Honeywell Inc. Invitation to submit written comment*

My company, INSPEC International Co. Ltd., a Japanese registered corporation, is a long term Supplier to Honeywell of an electro-mechanical sub-assembly which is used in the TCAS cockpit display, as well as a number of individual piece parts.

As a result of the United States request of Honeywell to sell the TCAS product line, it is conceivable that the new Owner will not continue to procure either products or services from the existing Honeywell Suppliers, which could include INSPEC.

Avionics products such as this are generally known, and reasonably anticipated, to continue in production for many years. INSPEC, as a Honeywell Supplier in good standing, and an asset friendly to the United States, may suffer losses or unexpected costs in the event of prematurely terminated procurement by the new Owner.

Furthermore, as a Small Business, with limited resources, the effect on my company could be much more severe than that experienced by other larger Honeywell Suppliers but, nonetheless, significantly effect the livelihood of staff employed by any Supplier, large or small. This may also include Suppliers of Allied Signal company.

Based on this, I would like to offer the comment that the United States, as the party requiring the divestiture as approval for the merger, may damage Suppliers unfairly and should seek to protect and preserve the manufacturing ability and know-how of them after the divestiture has taken place, as well as the revenue they could reasonably expect for their continuing products and services throughout the life of a program, particularly as the risk of a government forcing a complete stoppage of an existing program in this way is not one which is generally anticipated by a business owner such as myself.

Whilst unsure of the exact vehicle to do this, it would seem the most simplest solution could perhaps be by way of an Order requiring continued procurement by the new Owner.

A further comment would be that divestiture will result in forced termination of our existing Supplier relationship with Honeywell. A hard earned relationship which we value greatly. Re-establishing that relationship on another program is not easy. Whilst there appears to be no right to a continuing relationship, I feel there is a presumption that Suppliers in good standing should be granted the opportunity re-establish a relationship with the new Allied Signal/Honeywell organization. In view of this, it would be appropriate if the United States would also consider the additional costs and effort this will involve Suppliers in.

In closing, I would like to make it clear that INSPEC only recently learnt of the divestiture and we do not oppose it because of its obvious merits to the two organizations nor, to date, have we been in discussion with Honeywell concerning it. I am sure that when we are, we will enjoy their usual highly professional handing of our concerns.

Finally, whilst I would argue, from an academic point of view, that a merger would not necessarily involve reduced Quality of products or services in experienced companies such as Honeywell and Allied Signal as you have stated, but could actually result in an improvement of the many aspects which contribute to our perception and experience of Quality in its overall sense, whilst reducing specific Costs Of Quality to the benefit of the government, public and shareholders. I understand the position of the Untied States in the other concerns you have outlined. Nevertheless, I would strongly urge you to consider the potential negative impact upon Suppliers outlined above that this forced divestiture entails without proper safeguards, and who may not be aware or adequately represented or considered in this case.

Thank you for your kind consideration of my comments.

Very Truly Yours,

INSPEC International Co. Ltd.

Richard Wicks,

President.

U.S. Department of Justice

March 9, 2000.

Mr. Richard Wicks,

President, INSPEC International Company Ltd., 1–1–4 Wakomatsu Cho, Fuchu, Tokyo, 183, Japan

Re: Comment on Proposed Final Judgment in *United States* v. *AlliedSignal Inc. and Honeywell Inc.*, No. 1:99 CV 002959 (PLF)(D.D.C. November 8, 1999)

Dear Mr. Wicks: Thank you for your letter of January 17, 2000 concerning the proposed Final Judgment in *United States* v. *AlliedSignal Inc. and Honeywell Inc.*, currently pending before the federal district court for the District of Columbia. The United States' complaint alleges that the merger as proposed between AlliedSignal Inc. and Honeywell Inc. would have substantially lessened competition in four product areas—traffic alert and collision avoidance systems; search and surveillance weather radar; reaction and momentum wheels, and inertial systems. The proposed Final Judgment would settle the case by requiring the post-merger company, now known as Honeywell International Inc. ("Honeywell"), to divest, among other assets, its traffic alert and collision avoidance system ("TCAS") business in Glendale, Arizona. Negotiations to divest this business consistent with the terms of the proposed Final Judgment are ongoing.

Your letter states that INSPEC INTERNATIONAL Company Ltd. ("INSPEC") manufactures an electro-mechanical product which is supplied to the Honeywell TCAS business soon to be divested. INSPEC is concerned that the proposed divestiture may damage its business unfairly and terminate its hard-earned relationship with Honeywell. Given INSPEC's investment in the products it now sells to Honeywell, it requests that the United States consider requiring the new owner of the TCAS assets to purchase products from INSPEC.

Every change in corporate ownership, whether by divestiture or otherwise, raises the potential that a new owner may seek new suppliers. Since U.S. antitrust laws are intended to preserve competition, not specific competitors, the United States respectfully declines to require the new purchaser of the TCAS assets to deal with INSPEC or any other specific supplier. INSPEC' competitive assets, the technological know-how and manufacturing ability referenced in your letter, and your company's reputation with the employees of the TCAS business in Glendale, Colorado (who overwhelmingly will remain with the business) will be unaffected by the divestiture and will provide a platform for your firm to continue to compete successfully against other potential suppliers.

Thank you for bringing your concerns to our attention; we hope this letter will help you understand the reasons for our position. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and his response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,

Chief, Litigation II Section.

January 6, 2000.

J. Robert Kramer, II,

Chief, Litigation II Section, Antitrust Division, U.S. Dep't. of Justice, 1401 H St., NW., Suite 3000, Washington, DC 20005, (202) 307–0924

This protest is being submitted in accordance with the opportunity offered to submit written comment concerning the proposed decree during a 60-day comment period.

I represent a significant number of Honeywell employees who have eligibility for retirement and have been offered employment with the 1.3 Corporation, Space and Navigation Systems Division. We submit the comments below for your consideration. We (the potential retirees) only recently inadvertently obtained a copy of the Honeywell memo citing the 60-day comment period (Honeywell issued the memo to certain people Nov. 10, 1999).

The items listed below encourage resignation of key employees, adversely affecting the viability of the 1.3 Space and Navigation Div. in conflict with the spirit if not the intent of the Divestiture agreement. Additional comments may be forthcoming next week.

Whereas Honeywell has reneged on its commitment to provide retiree medical benefits to divested Space and Navigation personnel accepting comparable employment with 1.3 subsequent to retirement from 1.3.

Whereas, 1.3 is requiring approval for previously accepted divested retiree-eligible Space and Navigation personnel on a non-comparable employment basis in exchange for Honeywell retirement pension and medical benefits in conflict with the intent of published AlliedSignal commitments to their employees.

Whereas divested Honeywell Space and Navigation employees are excluded from the "foster the employment and the retention of employees" specified in para. F. of Section 4 "Divestiture" contained in U.S. District Court for the District of Columbia Civil No. 992959 filed on 11/8/99.

Your attention to this matter would be appreciated.

Sincerely Yours,

Stephen Suckenick,

3951 Gouverneur Ave., New York, New York 10463.

December 27, 1999

J. Robert Kramer II,

Chief Litigation II Section, Antitrust Division, U.S. Department of Justice

Dear Sir: With reference to the Consent Decree between the Department of Justice and Allied Signal/Honeywell, I represent a group of approximately 60 employees of the new Honeywell International Corporation who are being divested in the Teterboro-based Navigation/Space operation. They would like to know why the Teterboro operation was not given the same severance benefit as the other operations listed on page 16, paragraph E?

Sincerely,

Stephen Suckenick,

3951 Gouverneur Ave, New York, NY 10463.

November 30, 1999.

Dear Sir, the following regards the planned divestiture of the AlliedSignal Space and Navigation business located in Teterboro, New Jersey. My understanding is that this divestiture is a result of an agreement between AlliedSignal and the Department of Justice (DOJ) and is a condition of the DOJ approval of the merger of AlliedSignal, Inc. and Honeywell, Inc. My further understanding is that this divestiture is intended to maintain the former AlliedSignal Space and Navigation business as a viable long term aerospace subsystems supplies.

This letter is intended to inform your office of a situation which could prevent the Space and Navigation business from being a viable long term aerospace subsystems supplier and to solicit DOJ intervention in precluding this outcome. The specific situation concerns the large number of senior staff employees who are pension eligible and are likely to retire at the time of the divestiture rather than sustain the risks associated with having their vested pension and retiree health benefits redefined by the new owner's benefit policy changes and the risk associated with the new owner's long-term financial stability. This outcome did in fact occur as a result of two recent sales of AlliedSignal divisions (the communications Division in Towson, Maryland and the Ocean Systems Division in Sylmar, California). It is estimated that at the Space and Navigation business one third of the employees are pension eligible and they clearly represent a critical mass of technical and business knowledge essential to the continuing success of this business.

The Space and navigation business sale is targeted to be closed by December 24, 1999. It is requested that the DOJ involve itself immediately in the issue described above and assure an outcome which will support the DOJ's stated objective.

Sincerely,

Stephen Suckenik,

3951 Gouverneur Avenue, New York, N.Y. 10463, (718–884–6986)

U.S. Department of Justice

March 9, 2000.

Mr. Stephen Suckenik,

3951 Gouveneur Avenue, New York, New York 10463

Re: Comments on Proposed Final Judgment in *United States* v. *AlliedSignal Inc. and Honeywell Inc.*, No. 1:99 CV 002959 (PLF) (D.D.C. November 8, 1999)

Dear Mr. Suckenik: This letter responds to your comments dated November 30, 1999, December 27, 1999 and January 6, 2000 concerning the proposed Final Judgment in *United States* v. *AlliedSignal Inc.* and *Honeywell Inc.*, currently pending before the federal district court for the District of Columbia. The United States' complaint alleges that the merger as proposed between AlliedSignal Inc. and Honeywell Inc. would have substantially lessened competition in four product areas—traffic alert and collision avoidance systems; search and surveillance whether radar; reaction and momentum wheels, and inertial systems. The proposed Final Judgment would settle the case by requiring the post-merger company, now known as Honeywell International Inc. ("Honeywell"), to divest, among other assets, its space and navigation business in Teterboro, New Jersey. That business produces numerous products, including ring laser gyroscopes, fiber optic gyroscopes and reaction and momentum wheels.

In a transaction approved in advance by both the U.S. Department of Justice and the U.S. Department of Defense in December 1999, L–3 Communications Corporation ("L–3") has now purchased the space and navigation business and certain other divested assets from Honeywell. The purchase was approved by the Government only after a careful review of L–3 led to the conclusion that L–3 had the financial capability, the intent and the managerial expertise to operate the space and navigation business in competition with other businesses making the same products, including Honeywell.

Your letters state that you represent a significant number of Honeywell employees (approximately 60) who are eligible for retirement with Honeywell but have received offers of employment from L–3 to work in the divested space and navigation business in Teterboro. The letters collectively raise several concerns about the proposed Final Judgment as it affects the divestiture of Honeywell's space and navigation business to L–3. Your November 30 comment suggests that the long-term viability of the divested space and navigation business may be affected negatively by the likely retirement of a large number of senior staff members in lieu of their acceptance of the risks related to L–3's potential redefining of their vested pension and retiree health benefits. In your December 27 letter, you ask why the Teterboro space and navigation business employees did not receive severance benefits identical to those received by certain other employees pursuant to Section IV(E) of the proposed Final Judgment. Your January 6, 2000 comment again states that the resignation of key Honeywell employees could affect the viability of the divested space and navigation business. You note, among other reasons, that Honeywell has reneged on its commitment to provide retiree medical benefits to former Honeywell employees accepting employment with L–3, after their retirement from L–3, and that the incentives given to certain Honeywell employees under Section IV(E) of the proposed Final Judgment are not offered to space and navigation employees who join L–3.

Differences in the retirement or severance benefits offered by a new employer as compared to those afforded by a prior one are always a concern when a business is sold. The facts here strongly suggest, however, that L–3 has successfully avoided the potential resignation of key Honeywell employees involved with the space and navigation business in Teterboro. L–3 considered approximately 430 applicants who had been previously employed by Honeywell in its space and navigation business. L–3 subsequently offered jobs to roughly 383 persons, and virtually all of those offers (about 94 percent) have been accepted. L–3 believes it has successfully recruited the key Honeywell employees it requires to insure the long-term viability of the divested space and navigation business.

In addition, Section IV(E) of the proposed Final Judgment intentionally provides a different incentive package to specific groups of Honeywell employees based on the United States' assessment that certain employee groups would require greater motivation to join the new purchaser of a divested business. Where a product to be divested constitutes less than an entire Honeywell business unit or sub-unit, the opportunity for affected employees to remain at Honeywell in a similar capacity is greater because the Honeywell business unit in which the employee works will still be part of Honeywell. In those situations, incentives to motivate movement to the new purchaser of a divested product were increased by requiring Honeywell to vest all unvested pension rights of the employee and to provide that employee with all severance benefits to which the employee would have been entitled if terminated without cause. The Teterboro space and navigation business functioned as a separate Honeywell business sub-unit, and was not therefore entitled to the additional incentives described above. The virtual unanimity with which key employees of the space and navigation business accepted L–3's offers of employment confirms the correctness of the United States' judgment on this issue.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C.

§ 16(d), a copy of your comments and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,
Chief, Litigation II Section.

36 William Drive, Rockaway, NJ 07866,
November 10, 1999

J. Robert Kramer II,
Chief, Litigation II Section, Antitrust Division, U.S. Department of Justice, 1401 H St., NW., Suite 3000, Washington, DC 20005

Dear Mr. Kramer: This letter concerns the AlliedSignal divestiture of its space and navigation business at Teterboro, New Jersey. In my opinion, there will likely be unintended consequences stemming from the Government's antitrust suit and the resulting consent decree that were not mentioned in today's Department of Justice press release.

First, it is probable that the Teterboro facility will be closed. As you may know, Teterboro's business has not been on plan. Employees were told a planned sizable layoff was delayed only because of the moratorium on such action imposed by the Government. The already troubled Teterboro business will not survive as two smaller businesses.

Second, employees forced to become part of the Space and Navigation entity to be divested may lose important benefits. For example, there has been no assurance from AlliedSignal that an employee's severance benefits will be honored by the acquiring Company. This is especially important because involuntary layoffs of Space and Navigation business employees seem certain because of the poor business prospects mentioned above.

In summary, the Government's principled attempt to preserve competition has sparked a series of decisions and events detrimental to Teterboro employees.

Sincerely,

Michael J. Kelly.

cc: Hon. Frank Lautenberg, Hon. Robert Torricelli, Hon. Rodney Frelinghuysen.
Mr. Michael J. Kelly,
36 William Drive, Rockaway, NJ 07866

Re: Comment on Proposed Final Judgment in *United States* v. *AlliedSignal Inc. and Honeywell Inc.*, No. 1:99 CV 002959 (PLF) (D.D.C. November 8, 1999)

Dear Mr. Kelly, This letter responds to your November 10, 1999 comment on the proposed Final Judgment in *United States* v. *AlliedSignal Inc. and Honeywell Inc.*, currently pending before the federal district court for the District of Columbia. The United States' complaint alleges that the merger as proposed between AlliedSignal Inc. and Honeywell Inc. would have substantially lessened competition in four product areas—traffic alert and collision avoidance systems; search and surveillance weather radar; reaction and momentum wheels, and inertial systems. The proposed Final Judgment would settle the case by requiring the post-merger company, now known as navigation business in Teterboro, New Jersey. That business produces numerous products, including ring laser gyroscopes, fiber optic gyroscopes and reaction and momentum wheels.

In a transaction approved in advance by both the U.S. Department of Justice and the U.S. Department of Defense in December 1999, L–3 Communications Corporation ("L–3") has now purchased the space and navigation business and certain other divested assets from Honeywell. The purchase was approved by the Government only after a careful review of L–3 led to the conclusion that L–3 had the financial capability, the intent and the managerial expertise to operate the space and navigation business in competition with other businesses making the same products, including Honeywell. We disagree with the suggestion in your letter that separating the space and navigation business from the remainder of Honeywell's Teterboro operations makes it more likely that the space and navigation business, or any other operation, will fail. A more likely outcome is that L–3's specific focus on the management and growth of its recent acquisition will insure that the space and navigation business has the best chance possible to succeed.

Your November 10 letter further expresses the concern that L–3 may not honor the same severance benefits provided by Honeywell in the past, and notes that this benefit is particularly important in the context of a business struggling to survive in a tough business environment. Understanding the importance of this benefit, the United States does not generally dictate the terms and conditions pursuant to which a particular purchase is made; these details are subject to negotiation between the buyer and seller. Section IV(E) of the proposed Final Judgment encourages L–3 to make reasonable offers to those employees it desires to recruit by precluding Honeywell from hiring any employee for a period of two years once a reasonable offer has been received from L–3. This requirement, together with L–3's already-strong incentive to make attractive offers to key personnel it needs to recruit, provides reasonable protection to Honeywell employees joining L–3 or any other approved purchaser of a divested business. Following its review of the space and navigation business, L–3 offered jobs to roughly 383 persons; virtually all of those offers (about 94 percent) have now been accepted.

Thank you for bringing your concerns to our attention; we hope this information will help alleviate them. Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(d), a copy of your comment and this response will be published in the **Federal Register** and filed with the Court.

Sincerely yours,

J. Robert Kramer II,
Chief, Litigation II Section.

cc: Honorable Frank Lautenberg, Honorable Robert Torricelli, Honorable Rodney Frelinghuysen.

[FR Doc. 00–6749 Filed 3–17–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2043–00; AG Order No. 2292–2000]

RIN 1115–AE26

Six-Month Extension and Termination of Designation of Guinea-Bissau Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Attorney General's designation of Guinea-Bissau under the Temporary Protected Status program (TPS) expires on March 10, 2000. After reviewing country conditions and consulting with the appropriate Government agencies, the Attorney General has determined that conditions in Guinea-Bissau no longer support a TPS designation. However, because this determination was not made at least 60 days before the termination date, the designation of Guinea-Bissau for TPS was automatically extended by statute for 6 months, until September 10, 2000. The termination will therefore take effect on September 10, 2000. After that date, aliens who are nationals of Guinea-Bissau (and aliens having no nationality who last habitually resided in Guinea-Bissau) who have had TPS will no longer have such status. This notice contains information regarding the 6-month extension and subsequent termination of the TPS designation for Guinea-Bissau.

DATES: The TPS designation for Guinea-Bissau is extended until September 10, 2000. On September 10, 2000 the TPS designation for Guinea-Bissau will be terminated.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Office of Adjudications, Residence and Status Branch, Immigration and Naturalization Service, Room 3040, 425 I Street, NW., Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

What Is the Statutory Authority for the Designation, Extension, and Termination of a TPS Designation?

Under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. 1254a, the Attorney General is authorized to designate a foreign state (or part of a state) for TPS. The Attorney General must then grant TPS to eligible nationals of that foreign state (or aliens having no nationality who last habitually resided in that state). Section 244(b)(3)(A) of the Act requires the Attorney General to review, at least 60 days before the end of the TPS designation, the conditions in a foreign state designated under section 244(b)(1) of the Act. 8 U.S.C. 1254a(b)(3)(A).

Section 244(b)(3)(B) of the Act further requires the Attorney General to terminate the state's designation when the Attorney General determines conditions are no longer met. 8 U.S.C. 1254a(b)(3)(B). The Attorney General must then publish a notice of termination in the **Federal Register.** If the Attorney General fails to make the determination required by section 244(b)(3)(A) of the Act at least 60 days prior to the end of the initial period of designation, then the designation is automatically extended for an additional period of 6 months. 8 U.S.C. 1254a(b)(3)(C).

Why Did the Attorney General Decide To Terminate TPS for Guinea-Bissau?

On March 11, 1999, the Attorney General published a notice in the **Federal Register** designating Guinea-Bissau for TPS for a period of 1 year, based upon conditions in Guinea-Bissau at that time. That TPS designation is scheduled to expire on March 10, 2000. 64 FR 12181 (Mar. 11, 1999).

Based upon a more recent review of conditions within Guinea-Bissau by the Departments of Justice and State, the Attorney General finds that conditions no longer support a TPS designation. The Department of State recommendation concerning Guinea-Bissau states that: "Since the military junta ousted President Vieira in May [1999], conditions within Guinea Bissau have been relatively stable although the country is in sever economic distress. In late November, the interim civilian government successfully carried out the first round of multi-party elections." The recommendation also states: "We estimate that some 85% of the 10,000 refugees who were in Senegal and Guinea have all now returned as have those who were internally displaced out of the capitol [sic]. Given the high volume of returns and the relative civic stability evidenced by the successful and peaceful elections, it appears that Guinea Bissauans can return in safety."

Based on these findings, the Attorney General has decided to terminate the designation of Guinea-Bissau for TPS. However, since the Attorney General did not make this determination at least 60 days before the end of the current designation, the designation is automatically extended by statute for an additional 6 months. The termination will therefore take effect at the end of this 6-month extension.

If I Currently Have TPS, How Do I Register for the 6-Month Extension?

Persons previously granted TPS under the Guinea-Bissau program may apply for the 6-month extension by filing a Form I–821, Application for Temporary Protected Status, without the fee, during the re-registration period that begins March 20, 2000 and ends April 19, 2000. Additionally, you must file a Form I–765, Application for Employment Authorization. See the chart below to determine whether or not you must submit the $100 filing fee with the Form I–765.

If	Then
You are applying for employment authorization through September 10, 2000..	You must complete and file the Form I–765, Application for Employment Authorization, with the $100 fee.
You already have employment authorization or do not require employment authorization..	You must complete and file the Form I–765, Application for Employment Authorization, with no fee.
You are applying for employment authorization and are requesting a fee waiver..	You must complete and file the Form I–765, a fee waiver request, and the requisite affidavit (and any other information) in accordance with 8 CFR 244.20

To re-register for TPS, you must also include two identification photographs (1½"×1½").

Is Late Registration Possible?

Yes. In addition to timely re-registration, late initial registration is possible for some persons from Guinea-Bissau under 8 CFR 244.2(f)(2). To apply for late initial registration an applicant must:

(1) Be a national of Guinea-Bissau (or an alien having no nationality who last habitually resided in Guinea-Bissau),

(2) Have been continuously physically present in the United States since March 11, 1999.

(3) Have continuously resided in the United States since March 11, 1999, and

(4) Be admissible as an immigrant except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act.

Additionally, the applicant must be able to demonstrate that, during the initial registration period from March 11, 1999, through March 10, 2000, he or she:

(1) Was a nonimmigrant, or was granted voluntary departure or any relief from removal,

(2) Had an application for change of status, adjustment of status, asylum, voluntary departure, or any relief from removal pending or subject to further review,

(3) Was a parolee or had a pending request for reparole, or

(4) Is the spouse or child of an alien currently eligible to be a TPS registrant.

An applicant for late initial registration must register no later than 60 days from the expiration or termination of the qualifying condition.

Where Should I File for an Extension of TPS?

You may register for the extension of TPS by submitting an application and accompanying materials to the Immigration and Naturalization Service's local office that has jurisdiction over your place of residence.

Where Can I File for and Extension of TPS?

The 30-day-re-registration period begins March 20, 2000, and will remain in effect until April, 19, 2000.

What Can I Do if I Feel That My Return to Guinea-Bissau Is Unsafe?

This notice terminates the designation of Guinea-Bissau under the TPS program. There may be avenues of immigration relief available to aliens who are nationals of Guinea-Bissau (and aliens having no nationality who last habitually resided in Guinea-Bissau) in the United States who believe that their particular circumstances make return to Guinea-Bissau unsafe. Such avenues may include, but are not limited to, asylum or withholding of removal.

How does the Termination of TPS Affect Former TPS Beneficiaries?

After the designation of Guinea-Bissau for TPS is terminated on September 10, 2000, those aliens who are nationals of Guinea-Bissau (and aliens having no nationality who last habitually resided in Guinea-Bissau) will revert back to the immigration status they had prior to TPS, unless they have been granted another immigration status. The stay of removal and eligibility for employment authorization due to the designation of Guinea-Bissau under the TPS program will no longer be available. However, the termination of the TPS designation for Guinea-Bissau will not affect any pending applications for other forms of immigration relief.

Those persons who received TPS under the Guinea-Bissauan designation may begin accruing unlawful presence as to September 10, 2000, if they have not been granted any other immigration benefit or have no application for such a benefit pending. Aliens who accrue certain periods of unlawful presence in the United States may be barred from admission to the United States under section 212(a)(9)(B)(i) of the Act. See 8 U.S.C. 1182(a)(9)(B)(i).

Notice of 6-Month Extension and Termination of Designation of Guinea-Bissau Under the TPS Program

By the authority vested in me as Attorney General under section 244(b)(3) of the Act, I have consulted with the appropriate agencies of Government concerning conflict and security conditions in Guinea-Bissau. 8 U.S.C. 1254a(b)(3). Based on these consultations, I have determined that Guinea-Bissau no longer meets the conditions for designation of TPS under section 244(b)(1) of the Act. see U.S.C. 1254a(b)(1).

Guinea-Bissau has been relatively stable since May 1999, and during that time, no general conflict has occurred. I also understand that, even though the country is experiencing economic difficulties, the return of persons to Guinea-Bissau would not result in a danger to their personal safety. In view of the recommendations of the Departments of Justice and State for termination, I terminate the designation of Guinea-Bissau under the TPS program. However, since I did not make this determination at least 60 days prior to the expiration of the designation, the designation is automatically extended for 6 months, until September 10, 2000. The TPS designation for Guinea-Bissau will terminate on September 10, 2000.

Accordingly, I order as follows:

(1) The designation of Guinea-Bissau for TPS under section 244(b) of the Act is terminated effective September 10, 2000.

(2) I estimate that there are approximately 400 nationals of Guinea-Bissau (and aliens having no nationality who last habitually in Guinea-Bissau) who have been previously granted TPS.

(3) Information concerning the termination of the TPS program for nationals of Guinea-Bissau (and aliens having no nationality who last habitually resided in Guinea-Bissau) will be available at local Service offices, or at the Service website, located at http://www.ins.usdoj.gov, upon publication of this notice.

Dated: March 14, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–6750 Filed 3–17–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Correction to Solicitation for a Cooperative Agreement—Managing Long Term Aging Offenders and Offenders With Chronic and Terminal Illnesses

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Correction to solicitation for a cooperative agreement.

SUMMARY: The above solicitation was published on Page 8446 of the **Federal Register** on February 18, 2000 (Volume 65, Number 34). There is a correction under the section entitled "Objectives."

The third paragraph is corrected to read: "NIC considers it important for the applicant to discuss how the following questions or other criteria identified by the applicant would be employed for documenting effective prison health services and interventions:"

DATES: the deadline has been revised to 4 p.m. Eastern Time, Friday, April 28, 2000. All other requirements and information remain the same.

Authority: Public Law 93–415.

Deadline for Receipt of Applications: The revised deadline for applications is 4:00 p.m. Eastern Time, Friday, April 28, 2000. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Number of Awards: One (1).

NIC Application Number: OOP11.

Dated: March 14, 2000.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 00–6729 Filed 3–17–00; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR1218–0233(2000)]

Rigging Equipment—Proof Testing of Welded End Wire Rope Attachment; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information collection requirements contained in the standard on Rigging Equipment—Proof-testing of Welded End Wire Rope Attachment (29 CFR 251(c)(15)(ii)).

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful.
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before May 19, 2000.

ADDRESSES: Submit comments to the Docket Office, Docket No. ICR1218–0233 (2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, N.W., Washington, DC 20210, telephone: (202) 693–2350. You may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen Martínez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, N.W., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements on Rigging Equipment—Proof-testing of Welded End Wire Rope attachments is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Kathleen Martinez at (202) 693–2444 or Todd Owen at (202) 693–2444. For electronic copies of the ICR on Rigging Equipment—Proof-testing of Welded End Wire Rope Attachment (29 CFR 251(c)(15)(ii), contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and cost) is minimal, collection instruments clearly understood, and the impact of information collection requirements on respondents can be properly assessed. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

II. Proposed Actions

Paragraph (c)(15)(ii) of 29 CFR 1926.251 requires employers to retain a certificate of proof-test from the manufacturer. The retention of manufacturer certifies is necessary to assure proof-testing of the welded end wire rope attachment and also to assure testing of all welded end attachments at twice their rated capacity.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Rigging Equipment—Proof testing of Welded End Wire Rope Attachment (29 CFR 251(c)(15)(ii)).

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Rigging Equipment—Proof testing of Welded End Wire Rope Attachment (29 CFR 251(c)(15)(ii)).

OMB Number: 1218–0233.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 18,940.

Frequency: On occasion.

Average Time per Response: 5 minutes.

Estimated Total Burden House: 1,515 hours.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 11.

Signed at Washington, D.C., this 14 day of March 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–6724 Filed 3–17–00; 8:45 am]

BILLING CODE 4510–26–M

MISSISSIPPI RIVER COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETINGS: Mississippi River Commission.

TIME AND DATE: 8:30 a.m., April 10, 2000.

PLACE: On board MISSISSIPPI V at City Front, Cape Girardeau, MO.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED: State of the Valley Report by President of the Commission on general conditions of the Mississippi River and Tributaries project and regional and national issues affecting the Corps of Engineers programs and projects; (2) District Commander's report on the Mississippi River and Tributaries project in the respective District area; and (3) presentations by public participants on matters pertaining to the Flood Control, Mississippi River and Tributaries project affecting the water resources infrastructure needs in the valley and, in addition, views and opinions on other water-related issues such as marine transportation, flooding impacts, environmental benefits, water and sewage infrastructure, and emergency response to natural disasters.

Time and Date: 8:30 a.m., April 10, 2000.

Place: On board MISSISSIPPI V at City Front, Memphis, TN.

Status: Open to the public.

Matters To Be Considered: (1) State of the Valley Report by President of the Commission on general conditions of the Mississippi River and Tributaries project and regional and national issues affecting the Corps of Engineers programs and projects; (2) District Commander's report on the Mississippi River and Tributaries project in the respective District area; and (3) presentations by public participants on matters pertaining to the Flood Control, Mississippi River and Tributaries project affecting the water resources infrastructure needs in the valley and, in addition, views and opinions on other water-related issues such as marine transportation, flooding impacts, environmental benefits, water and sewage infrastructure, and emergency response to natural disasters.

Time and Date: 8:30 a.m., April 12, 2000.

Place: On board MISSISSIPPI V at City Front, Greenville, MS.

Status: Open to the public.

Matters To Be Considered: (1) State of the Valley Report by President of the Commission on general conditions of the Mississippi River and Tributaries project and regional and national issues affecting the Corps of Engineers programs and projects; (2) District Commander's report on the Mississippi River and Tributaries project in the respective District area; and (3) presentations by public participants on matters pertaining to the Flood Control, Mississippi River and Tributaries project affecting the water resources infrastructure needs in the valley and, in addition, views and opinions on other water-related issues such as marine transportation, flooding impacts, environmental benefits, water and sewage infrastructure, and emergency response to natural disasters.

Time and Date: 8:30 a.m., April 14, 2000.

Place: On board MISSISSIPPI V at Corps of Engineers District Office, Foot, of Prytania Street, New Orleans, LA.

Status: Open to the public.

Matters To Be Considered: (1) State of the Valley Report by President of the Commission on general conditions of the Mississippi River and Tributaries project and regional and national issues affecting the Corps of Engineers programs and projects; (2) District Commander's report on the Mississippi River and Tributaries project in the respective District area; and (3) presentations by public participants on matters pertaining to the Flood Control, Mississippi River and Tributaries project affecting the water resources infrastructure needs in the valley and, in addition, views and opinions on other water-related issues such as marine transportation, flooding impacts, environmental benefits, water and sewage infrastructure, and emergency response to natural disasters.

Contact Person for More Information: Mr. Stephen Gambrell; telephone 601–634–5766.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–6997 Filed 3–16–00; 2:49 pm]

BILLING CODE 3710–6–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

Information Pertaining to the Requirement to be Submitted

1. *The title of the information collection:* DOE/NRC Form 742, "Material Balance Report;" NUREG/BR–0007, "Instructions for Completing Material Balance Report and Physical Inventory Listing;" and DOE/NRC Form 742C, "Physical Inventory Listing."

2. *Current OMB approval number:* DOE/NRC Form 742 and NUREG/BR–0007: 3150–0004; DOE/NRC Form 742C: 3150–0058.

3. *How often the collection is required:* DOE/NRC Forms 742 and 742C are submitted semiannually following a physical inventory of nuclear materials.

4. *Who is required or asked to report:* Persons licensed to possess specified quantities of special nuclear or source material.

5. *The number of annual respondents:* DOE/NRC Form 742: 200 licensees; DOE/NRC Form 742C: 180 licensees.

6. *The number of hours needed annually to complete the requirement or request:* DOE/NRC Form 742: 300 hours; DOE/NRC Form 742C: 2,160 hours.

7. *Abstract:* Each licensee authorized to possess special nuclear material totalling more than 350 grams of contained uranium-235, uranium-233, or plutonium, or any combination thereof, and any licensee authorized to possess 1,000 kilograms of source material is required to submit DOE/NRC Form 742. Reactor licensees required to submit DOE/NRC Form 742, and facilities subject to 10 CFR Part 75, are required to submit DOE/NRC Form 742C. The information is used by NRC to fulfill its responsibilities as a participant in US/IAEA Safeguards Agreement and bilateral agreements with Australia and Canada, and to satisfy its domestic safeguards responsibilities.

Submit, by May 19, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?
2. Is the burden estimate accurate?
3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?
4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail at BJS1@NRC.GOV.

Dated at Rockville, Maryland, this 14th day of March, 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–6806 Filed 3–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Supplementary Changes to Revision 8 of NUREG–1021, "Operator Licensing Examination Standards for Power Reactors;" Notice of Availability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of Availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued for public comment and voluntary use, on a trial basis, a draft supplementary change to Revision 8 of NUREG–1021, "Operator Licensing Examination Standards for Power Reactors." The Commission uses NUREG–1021 to provide policy and guidance for the development, administration, and grading of written examinations and operating tests used to determine the qualifications of individuals who apply for operator and senior operator licenses at nuclear power plants pursuant to the Commission's regulations. NUREG–1021 provides similar guidance for verifying the continued qualifications of licensed operators when the staff determines that NRC requalification examinations are necessary.

The draft supplement includes two notable changes that the NRC staff believes will maintain safety and public confidence while reducing unnecessary burden on those facility licensees that elect to prepare their own examinations for NRC review and approval and improving efficiency and effectiveness. The first change clarifies the sampling guidelines used in preparing the written examination to ensure a truly random process for selecting the question topics and, based upon this process, eliminates the limits on the number of questions that can be repeated from prior examinations and quizzes. The second change clarifies the guidance regarding the documentation of examination quality issues in the NRC's examination reports in a manner that will establish a threshold for discussion of examination preparation deficiencies when an examination meets the NRC's target range for acceptability. Several other changes are being made to correct typographical and administrative errors in Revision 8 and address questions raised since Revision 8 was issued. The changes are identified with highlights and strikeouts for ease of review.

The draft supplement is available for review via the NRC Public Electronic Reading Room (http://www.nrc.gov/NRC/ADAMS/index.html), on the NRC's Operator Licensing web site (http://www.nrc.gov/NRC/REACTOR/OL/OLguidance.html), and at the NRC Public Document Room, 2120 L Street NW, Washington, DC. If you do not have electronic access to NRC documents, you may request a single copy of the draft supplement by writing to the Office of the Chief Information Officer, Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (Facsimile: 301–512–2289). Telephone requests cannot be accommodated. NUREG documents are not copyrighted, and Commission approval is not required to reproduce them.

The draft supplement is being immediately implemented on a voluntary, trial basis. The NRC will evaluate any comments and recommendations that are received and any lessons that are learned during the trial period, incorporate any additional changes, as appropriate, and, thereafter, publish final Supplement 1 for general use.

DATES: The comment period ends June 19, 2000. Comments received after this date will be considered if it is practical to do so, but the staff is able to assure consideration only for comments received on or before this date.

ADDRESSES: Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001. You may also provide comments via the NRC's Operator Licensing web site (http://www.nrc.gov/NRC/REACTOR/OL/OLguidance.html). Copies of comments received may be examined on the NRC Public Electronic Reading Room (http://www.nrc.gov/NRC/ADAMS/index.html) and at the NRC Public Document Room, 2120 L Street NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. S. Guenther by telephone at (301) 415–1056, or by e-mail sxg@nrc.gov.

Dated at Rockville, Maryland, this 14th day of March 2000.

For the Nuclear Regulatory Commission.

Harold O. Christensen

Acting Chief, Operator Licensing, Human Performance and Plant Support Branch, Division of Inspection Program Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6807 Filed 3–17–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board Meeting; May 1, 2000—Pahrump, Nevada; Discussion of the Current Design for a Potential Repository at Yucca Mountain, Nevada; Update on Geochemistry and other Scientific Studies Undertaken at the Yucca Mountain Site.

Pursuant to its authority under section 5051 of Public Law 100–203, Nuclear Waste Policy Amendments Act of 1987, the Nuclear Waste Technical Review Board (Board) will meet in Pahrump, Nevada, on Monday, May 1, 2000, to review the status of the U.S. Department of Energy's (DOE) efforts to develop a design for a potential repository for disposing of spent nuclear fuel and high-level radioactive waste at Yucca Mountain, Nevada. The DOE also will present updates on geochemistry and on other scientific studies, including chlorine-36 investigations. In addition, the Board will hear from representatives of Nye County, Nevada, on recent scientific activities. The DOE is evaluating the Yucca Mountain site, about 100 miles northwest of Las Vegas, to determine its suitability as the location of a repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

The meeting will be held at the Bob Ruud Community Center, 150 North Highway 160, Pahrump, Nevada 89048. The pay-phone number for the community center is (775) 727–9991. The meeting will begin at 8:30 am.

An overview of recent developments in the repository program will begin the meeting. The general overview will be followed by more-extensive presentations on the subsurface and engineered barrier system designs currently being considered by the DOE for a potential Yucca Mountain repository. Later in the day, the DOE will update the Board on the status of geochemical studies being conducted in connection with the characterization or the Yucca Mountain site. Representatives of Nye County, Nevada, also have been invited to comment and update the Board on their recent scientific activities, including the drilling program being conducted at the site under the auspices of the county.

The meeting will be open to the public. Time for public comment will be set aside before the lunch break and at the end of the session. Those wanting to speak are encouraged to sign the "Public Comment Register" at the check-in table. Depending on the number of requests, a time limit may be set on oral statements; written comments may be submitted for inclusion in the record of the meeting. Interested parties also may submit written questions to the Board. As time permits, written questions will be answered during the sessions. Interested members of the public also are invited to join the Board for coffee from 7:30 to 8:15 am before the meeting begins.

A detailed agenda will be available approximately one week before the meeting. Copies of the agenda can be requested by telephone or obtained from the Board's Web site at www.nwtrb.gov. Transcripts of the meeting will be available on the Board's Web site, via e-mail, on computer disk, and on a library-loan basis in paper format from Davonya Barnes of the Board staff, beginning on May 29, 2000.

A block of rooms has been reserved at the Saddle West Hotel/Casino, 1220 South Highway 160, Pahrump, Nevada 89048. The telephone numbers for Saddle West are (800) 433–3987 and (775) 727–1111. When making a reservation, please state that you are attending the Nuclear Waste Technical Review Board meeting.

For further information on the meeting, contact Karyn Severson, External Affairs, NWTRB, at 2300 Clarendon Boulevard, Suite 1300, Arlington, Virginia 22201–3367; (tel) 703–235–4473; (fax) 703–235–4495; (e-mail) info @nwtrb.gcv.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987. The Board's purpose is to evaluate the technical and scientific validity of activities undertaken by the Secretary of Energy related to managing the disposal of the nation's spent nuclear fuel and high-level radioactive waste. In the same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, to determine its suitability as the location of a potential repository for the permanent disposal of spent nuclear fuel and high-level radioactive waste.

March 14, 2000.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 00–6817 Filed 3–17–00; 8:45 am]

BILLING CODE 6820–AM–M

POSTAL SERVICE

Sunshine Act Meeting

TIMES AND DATES: 8:30 a.m., Monday, April 3, 2000; 8:30 a.m., Tuesday, April 4, 2000; 10:00 a.m., Tuesday, April 4, 2000.

PLACE: Washington, D.C., at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room.

STATUS: April 3 (Closed); April 4—8:30 a.m. (Open); 10:00 a.m. (Closed).

MATTERS TO BE CONSIDERED:

Monday, April 3—8:30 a.m. (Closed)

1. Strategic Planning.
2. ePayments.
3. Financial Performance.
4. Revision of Designation of Functions for the Office of Inspector General.

Tuesday, April 4—8:30 a.m. (Open)

1. Minutes of the Previous Meeting, March 6–7, 2000.
2. Remarks of the Postmaster General/Chief Executive Officer.
3. Quarterly Report on Service Performance.
4. Quarterly Report on Financial Results.
5. REDRESS (Resolve Employment Disputes Reach Equitable Solutions Swiftly) Program Update.
6. Capital Investments.
   a. Los Angeles, California, Bulk Mail Center Expansion.
   b. Point of Service (POS) One—Stage 2B Deployment.
7. Tentative Agenda for the May 1–2, 2000,

meeting in Washington, D.C.

Tuesday, April 4—10:00 a.m. (Closed)

1. Continuation of Monday's Closed Agenda.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Koerber, Secretary of the Board, U.S. Postal Service, 475 L'Enfant Plaza, S.W., Washington, D.C. 20260–1000. Telephone (202) 268–4800.

Thomas J. Koerber,

Secretary.

[FR Doc. 00–6978 Filed 3–16–00; 2:08 pm]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Form N–4, SEC File No. 270–282, OMB Control No. 3235–0318

Notice is hereby given that, pursuant to the Paperwork Reduction of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget a request for extension of the previously approved collection of information discussed below.

Description of Form N–4, Its Purpose and the Industry Entities Affected

There are two separate statutes which require investment companies to file registration statements with the Commission if they are offering their securities to the public. Each must register as an investment company under the Investment Company Act of 1940 ("1940 Act"), and must register the securities it will offer under the Securities Act of 1933 ("1933 Act"). Form N–4 is part of the integrated registration and reporting system by which registrants satisfy the registration requirements of both the 1940 Act and the 1933 Act by filing a single registration statement. Form N–4 is the required form that insurance company separate accounts organized as unit investment trust ("IC UIT separate accounts") must if they offer variable annuity contracts.

The Form N–4's purpose is to provide investors with material information concerning securities offered for public sale. The first part includes a simplified prospectus that satisfies the prospectus delivery requirements of the 1933 Act. The second part is a Statement of Additional Information available free of charge to prospective investors upon request. A third part of the registration statement includes all of the other mandatory information that is not specifically required to be in the prospectus or the Statement of Additional Information.

As a regulatory matter, the Form N–4 satisfies the disclosure requirements of the 1933 Act. Form N–4 also satisfies the 1940 requirement that investment companies file a registration statement with the Commission pursuant to Section 8(b).

It is estimated that, currently, there are 615 IC UIT separate accounts required to file initial and post effective registration statements on an annual and as required basis using Form N–4. The burden from Form N–4 requires approximately 219.8 hours per post effective amendment and 298 hours for each initial registration. The total burden hours for Form N–4 is estimated at 284,379.20 in the aggregate. The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the costs of Commission rules and forms.

The collection of information based on registration using the Form N–4 is mandatory. The information provided by Form N–4 is not keep confidential. The Commission may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons; (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3208, New Executive Office Building Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 13, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6751 Filed 3–17–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, N.W., Washington, D.C. 20549.

Extension:
Form N–54A, SEC File No. 270–182, OMB Control No. 3235–0237
Form N–54C, SEC File No. 270–184, OMB Control No. 3235–0236
Form N–6F, SEC File No. 270–185, OMB Control No. 3235–0238

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 [44 U.S.C. 3501 *et seq.*] (the "Act"), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget ("OMB") a request for extension of the previously approved collections of information discussed below.

Form N–54A Under the Investment Company Act of 1940; Notification of Election to be Subject to Sections 55 Through 65 of the Investment Company Act of 1940 Filed Pursuant to Section 54(a) of the Act

Form N–54A [17 CFR § 274.53] is the notification of election to the Commission to be regulated as a business development company. A company making such an election only has to file a Form N–54A once.

It is estimated that approximately 3 respondents per year file with the Commission a Form N–54A. Form N–54A requires approximately 0.5 burden hours per response resulting from creating and filing the information required by the form. The total burden hours for Form N–54A would be 1.5 hours per year in the aggregate. The estimated annual burden of 1.5 hours represents a decrease of 0.5 hours over the prior estimate of 2 hours. The decrease in burden hours is attributable to a decrease in the number of respondents from 4 to 3.

Form N–54C Under the Investment Company Act of 1940, Notification of Withdrawal of Election to be Subject to Sections 55 through 65 of the Investment Company Act of 1940 Filed Pursuant to Section 54(c) of the Investment Company Act of 1940

Form N–54C [17 CFR § 274.54] is a notification to the Commission that a company withdraws its election to be regulated as a business development company. Such a company only has to file a Form N–54C once.

It is estimated that approximately 12 respondents per year file with the Commission a Form N–54C. Form N–54C requires approximately 1 burden hour per response resulting from creating and filing the information required by the form. The total burden hours for Form N–54C would be 12 hours per year in the aggregate. The estimated annual burden of 12 hours represents an increase of 11 hours over the prior estimate of 1 hour. The increase in burden hours is attributable to an increase in the number of respondents from 1 to 12.

Form N–6F Under the Investment Company Act of 1940, Notice of Intent to Elect to be Subject to Sections 55 Through 65 of the Investment Company Act of 1940

Certain companies may have to make a filing with the Commission before they are ready to elect on Form N–54A to be regulated as a business development company.[1] A company that is excluded from the definition of "investment company" by Section 3(c)(1) of the Investment Company Act of 1940 because it has fewer than one hundred shareholders and is not making a public offering of its securities may lose such an exclusion solely because it proposes to make a public offering of securities as a business development company. Such a company, under certain conditions, would not lose its exclusion if it notifies the Commission on Form N–6F [17 CFR 274.15] of its intent to make an election to be regulated as a business development company. The company only has to file a Form N–6F once.

It is estimated that approximately 3 respondents per year file with the Commission a Form N—6F. Form N–6F requires approximately 0.5 burden hours per response resulting from creating and filing the information required by the form. The total burden hours for Form N–6F would be 1.5 hours per year in the aggregate. The estimated annual burden 1.5 hours represents a decrease of 0.5 hours over the prior estimate of 2 hours. The decrease in burden hours is attributable to a decrease in the number of respondents from 4 to 3.

The estimates of average burden hours for Form N–54A, N–54C and N–6F are made solely for the purposes of the Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

The collections of information under Forms N–54A, N–54C and N–6F are mandatory. The information provided by such Forms is not kept confidential. The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, D.C. 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 14, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6829 Filed 3–17–00; 8:45 am]

BILLING CODE 8010–01–M

[1] A company might not be prepared to elect to be subject to Sections 55 through 65 of the Investment Company Act of 1940 because its capital structure or management compensation plan is not yet in compliance with the requirements of those sections.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27151]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 13, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment (s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 4, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 4, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc. (70–9623)

Notice of Proposal To Issue Common Stock and Other Securities Under Long-Term Incentive Plan; Order Authorizing Proxy Solicitation

American Electric Power Company, Inc. ("AED"), a registered holding company, 1 Riverside Plaza, Columbus, Ohio 43215, has filed an application-declaration with this Commission under sections 6(a), 7, 9(a), 10, 12(c) and 12(e) of the Act and rules 42, 54, 62 and 65 under the Act.

On January 26, 2000, AEP's Board of Directors adopted a new incentive compensation plan for employees and non-employee Directors ("2000 Plan"). AEP requests authority to issue and distribute securities under the 2000 Plan, including up to 9.5 million shares of common stock with par value of $6.50 per share.

The common shares will be made available from authorized but unissued shares and/or shares reacquired by AEP. The other securities include stop options, stock appreciation rights, and other securities whose value is related to the value of AEP common shares.

The 2000 Plan will be administered by the Human Resources Committee ("Committee") of AEP's board of directors ("Board"). The 2000 Plan has no fixed expiration date, except that, for purposes of awarding incentive stock options, the 2000 Plan will expire ten years from the date it is adopted by the Board.

The purpose of the 2000 Plan is to promote the interest of AEP and its shareholders by strengthening AEP's ability to attract, motivate and retain employees and directors, to align further the interests of AEP's management with the shareholders, and to provide an additional incentive for employees and directors to promote the financial success and growth of AEP.

The affirmative vote of holders of a majority of shares of common stock outstanding on March 7, 2000, is required to authorize approval of the 2000 Plan. AEP intends to submit the proposal to its shareholders for their approval at the annual meeting of shareholders to be held on April 26,

2000. AEP proposes to solicit proxies for this purpose from the holders of its outstanding common stock to be voted on at the meeting.

AEP requests that an order authorizing the solicitation of proxies be issued as soon as practicable under rule 62(d). It appears to the Commission that AEP's declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately under rule 62.

It is ordered that the declaration regarding the proposed solicitation of proxies be permitted to become effective immediately under rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act.

For the Commission, by the Office of Public Utility Regulation, under delegated authority.

Margaret H. McFarland,

Deputy Secretory.

[FR Doc. 00–6753 Filed 3–17–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27152]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 13, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 4, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 4, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

National Fuel Gas, et al. 70–9153

National Fuel Gas Company ("NFG"), a registered holding company, NFG's wholly owned gas utility subsidiary, National Fuel Gas Distribution Corporation, and NFG's nonutility subsidiaries, National Fuel Gas Supply Corporation, Highland Land & Minerals, Inc., Leidy Hub, Inc., Horizon Energy Development, Inc., Data-Track Account Services, Inc. and Seneca Independence Pipeline Company, each of 10 Lafayette Square, Buffalo, New York 14203, Seneca Resources Corporation, Niagara Independence Marketing Company and Upstate Energy Inc., each of 1201 Louisiana Street, Suite 400, Houston, Texas 77002, and National Fuel Resources, Inc. (collectively, "Current Money Pool Participants") and NFR Power, Inc. ("Power")[1] of 165 Lawrence Bell Drive, Suite 120, Williamsville, New York 14221 (collectively, "Applicants", the Applicants, other than NFG, are referred to collectively as "Subsidiaries"), have filed with this Commission a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), 12(f) and 32 of the Act, and rules 45, 53 and 54 under the Act to their application-declaration filed under sections 6(a), 7, 9(a), 10, 12(b), 12(f), 32 and 33 of the Act, and rule 53 under the Act.

By order dated March 20, 1998 (HCAR No. 26847) ("March Order"), the Current Money Pool Participants were authorized to engage in various financing and related transactions through December 31, 2002 ("Authorization Period"). The March Order also authorized, among other things, the Current Money Pool Participants to continue to engage in a money pool arrangement ("Money Pool") through the Authorization Period.

Applicants now request authorization for Power to become a limited participant in the Money Pool through the Authorization Period. Specifically, Power's participation would be limited to depositing surplus funds that it may have from time to time into the Money Pool and withdrawing its own funds as needed. In addition, Power's participation would be subject to the terms and conditions for Money Pool participation contained in the March Order.

The March Order also authorized NFG to guarantee securities of, and provide other forms of credit support with respect to obligations of, its Subsidiaries in an aggregate amount not to exceed $2 billion at any time during the Authorization Period ("Guarantee Authority"). NFG proposes to guarantee securities of Power, and to provide other forms of credit support with respect to obligations of Power as may be necessary or appropriate to enable Power to carry on in the ordinary course of business. Such guarantees and credit support to Power would be subject to the terms and conditions of the Guarantee Authority contained in the March Order.

GPU, Inc., et al. (70–9599)

GPU, Inc. ("GPU"), a registered public utility holding company, and its wholly owned subsidiary, GPX Acquisition Corp. ("Acquisition Corp.", and together with GPU, "Applicants"), both located at 300 Madison Avenue, Morristown, New Jersey 07962, have filed an application-declaration under sections 6(a), 7, 9(a), 10, 11(b)(1), 12, and 13(b) of the Act and rules 51, 54, 90 and 91 under the Act.

The Applicants propose to acquire for cash all of the issued and outstanding common shares of MYR Group, Inc. ("MYR"), a Delaware corporation (the "Merger"), under the terms of a Plan and Agreement of Merger, dated as of December 21, 1999 ("Merger Agreement"). MYR is a publicly held utility infrastructure services and electrical contracting company headquartered in Rolling Meadows, Illinois. MYR's common stock is registered under section 12(b) of the Securities Exchange Act of 1934, as amended ("Exchange Act"), and is listed for trading on the New York Stock Exchange.

Under the terms of the Merger Agreement, Acquisition Corp. on December 29, 1999 commenced a cash tender offer in accordance with section 14 of the Exchange Act ("Tender Offer") to acquire MYR common stock subject to the terms and conditions of the Tender Offer.[1] Following completion of the Tender Offer, Acquisition Corp. will be merged with and into MYR, with MYR as the surviving entity. MYR will then become a direct wholly owned subsidiary of GPU. On February 24, 2000, the Applicants extended the Tender Offer expiration date from February 29, 2000 to March 24, 2000.

Under the Merger Agreement, GPU has agreed to pay MYR common-stock shareholders $30.10 per share in cash for their shares. MYR currently has 6,429,135 shares of common stock outstanding (including 335,927 shares issued under MYR's restricted stock plans). An additional 882,086 MYR shares are issuable under outstanding MYR convertible debt,[2] and a total of 756,650 shares of MYR common stock are issuable under outstanding stock options. Holders of these stock options may elect to convert these options into options to purchase shares of GPU common stock, as described below, or may elect to receive cash in an amount per share equal to the difference between $30.10 and the per share exercise price. The aggregate purchase price for all shares of MYR common stock outstanding, after taking into account the offsetting payments attributable to the future exercise of stock options, is approximately $215 million.

Subject to Commission authorization, GPU has agreed to allow the holders of MYR stock options and the holders of outstanding shares of MYR restricted stock to elect, in lieu of the cash payments described above, to: (1) Receive options to purchase shares of GPU common stock in exchange for MYR stock options; or (2) receive shares of GPU common stock in exchange for MYR restricted stock. GPU therefore seeks authority to issue shares of GPU's common stock for this purpose. The amount of GPU common stock issued or issuable under this arrangement will be determined according to a formula intended to provide holders of MYR stock options and MYR restricted stock with equivalent value in GPU common stock. The "Exchange Ratio" will be determined by dividing $30.10 by the average closing price of GPU common stock for the five trading days immediately preceding the date of consummation of the Merger (the "Operative Price"). The number of shares of GPU common stock issuable in respect of any assumed MYR stock option shall be equal to the product of the number of shares of MYR common stock covered by such option multiplied by the Exchange Ratio, and the per share exercise price for the GPU common stock so issuable shall be equal to the quotient determined by dividing the exercise price per share specified for such MYR stock option by the Exchange Ratio. The number of shares of GPU common stock issuable in respect of any assumed outstanding shares of MYR restricted stock shall be equal to the product of the number of shares of this restricted stock multiplied by the number determined by dividing $30.10 by the Operative Price.

GPU will finance the purchase price of MYR with short-term bank borrowings under its existing lines of credit. GPU will account for the acquisition under the "purchase method" of accounting. The expected acquisition premium, the amount of which has not been quantified, will be amortized over a period yet to be determined.

MYR's business consists of providing utility transmission and distribution, infrastructure and related commercial and industrial electrical (and some mechanical) contracting services to utility, industrial, mining, institutional and governmental entities on a nationwide basis. MYR is the fifth largest specialty contractor in the United States and has eight operating subsidiaries across the country.[3] For the nine-month period ended September 30, 1999, MYR had total consolidated assets of $120,769,000, consolidated gross revenues (referred to as "contract revenues") of $348,116,000; and consolidated net income of $9,281,000.[4]

MYR's transmission and distribution services ("T&D Services") represented approximately 54% of MYR's 1999 gross revenues and is MYR's predominant business activity. T&D Services include the construction and maintenance of transmission and distribution power lines and substations for utility, industrial, institutional and governmental facilities. MYR also performs storm and other emergency restoration services for utility networks.

MYR's infrastructure services include telecommunications installation services and traffic signalization work, each of which represented less than 10% of MYR's 1999 gross revenues. Telecommunications services are provided to primary telecommunications carriers, regional service providers and commercial clients and include the construction of telecommunications towers, installation of overhead and underground copper and fiber optic cables, and installation and maintenance of LAN/WAN, telephone, video, data, and other similar communication systems.

Traffic signalization services generally consist of electrical construction and maintenance of traffic and light rail signalization equipment, such as fiber optic interconnections for traffic management systems, ramp metering, and highway lighting installation. Customers for these services include government transportation agencies, regional transit districts and municipalities.

MYR's commercial and industrial services ("C&I Services") primarily consist of electrical construction activities such as the installation of complete electrical system wiring for utilities and commercial and industrial facilities. MYR also performs some related heavy mechanical construction services involving the installation of complex piping systems and related mechanical equipment and instrumentation for major new construction projects. In 1999, C&I Services accounted for approximately 33% of MYR's gross revenues.

MYR has entered into a letter of intent ("LOI") to acquire from the two sole stockholders all of the issued and outstanding stock of a relatively small, privately held transmission and distribution electrical contracting company located in Colorado ("T&D Co."). T&D Co. is a regional utility infrastructure contractor engaged solely in the construction and installation of electrical substation, transmission and distribution facilities for both investor-owned and municipal utility systems as well as governmental entities.[5] In addition, T&D Co. constructs and installs fiber optic lines. For 1999, T&D Co.'s gross revenues were approximately $18 million. MYR currently expects to complete its acquisition of T&D Co. prior to GPU's acquisition of MYR. MYR intends to fund the entire purchase price (approximately $5 million) from internal sources.

In the event that the T&D Co. transaction is not completed prior to GPU's acquisition of MYR common stock under the Tender Offer, Applicants request further authorization for MYR to acquire the T&D Co.

[1] Power is a nonutility subsidiary of NFG, and, as a result of a determination of the Federal Energy Regulatory Commission dated March 29, 1996 (Docket No. EG96–47–000), is an exempt wholesale generator as defined in section 32(a)(1) of the Act.

[1] The Tender Offer is subject to the terms and conditions of rule 51 under the Act, which states that consummation of the Tender Offer is expressly conditioned upon Commission approval of the Merger under the Act.

[2] MYR redeemed all of this outstanding convertible debt on March 5, 2000 in accordance with the optional redemption provisions of these securities. The total redemption price was $2,272,538.

[3] MYR operates through the following subsidiary companies: L.E. Myers Co. in the Southeast, Midwest and Northeast; Harlan Electric Company in Michigan, the Northeast and the Ohio Valley; Sturgeon Electric Company, Inc. in the West; Hawkeye Construction, Inc. in the Pacific Northwest; D.W. Close Company, Inc. in Seattle; Power Piping Company in Pennsylvania, Virginia and the Ohio River Valley; ComTel Technology, Inc. in Colorado and Arizona; and MYRcom in the Southeast and Southwest.

[4] Financial data for the nine months ended September 30, 1999 has been derived from unaudited financial statements.

[5] T&D Co.'s largest customers during 1998 (accounting for about 72% of its gross revenues) were Bonneville Power Administration; IREA; M&A Electric Association; Tri-State G&T; Luke Air Force Base; Lea County Electric; Texas-New Mexico Power; and Western Area Power Administration.

common stock for an aggregate purchase price not to exceed $5 million.

After the Merger, MYR will provide T&D Services, C&I Services, and other related infrastructure services to both non-affiliates and affiliates of GPU, including GPU's wholly owned utility subsidiary companies.[6] All services provided by MYR to affiliates within the GPU system will be provided at cost pursuant to Rules 90 and 91 under the Act except to the extent the Commission may grant an exemption from such rules or as otherwise provided in the Act. All services provided by MYR to non-affiliates would be offered at market-based rates

New Century Energies, Inc., et al. (70–9539)

New Century Energies, Inc. ("NCE"), a registered public utility holding company located at 1225 Seventeenth Street, Denver, Colorado, 80202, and Northern States Power Company ("NSP"), public utility holding company exempt from registration by order under section 3(a)(2) of the Act,[1] located at 414 Nicollet Mall, Minneapolis, Minnesota, 55401, (collectively "Applicants") have filed an application-declaration under sections 6(a), 7, 9(a), 9(c)(3), 10, 12(d), 13(b) of the Act, and rules 44, 54, 87, 90 and 91 under the Act.

In summary, NCE and NSP propose to combine their businesses under a new holding company, Xcel Energy Inc. Under an Agreement and Plan of Merger, dated as of March 24, 1999 (the "Merger Agreement"), NCE will merge with and into NSP ("Merger"). NSP, as the surviving corporation, will change its name to Xcel Energy Inc. ("Xcel"). Also as part of the Merger, NSP intends to transfer its existing utility operations currently at the parent company level to a newly formed, wholly owned utility subsidiary of Xcel ("New NSP").[2] Xcel will have six public-utility subsidiaries after the Merger: Public Service Company of Colorado ("PSC"), Cheyenne Light, Fuel and Power Company ("Cheyenne") and Southwestern Public Service Company ("SPS") (collectively, the "NCE Operating Companies"), New NSP, Black Mountain Gas Company ("BMG")[3] and NSP's current utility subsidiary, NSP–Wisconsin ("NSP–W" and, together with BMG and New NSP, "NSP Operating Companies") (collectively, "Xcel Operating Companies"). Xcel will register under section 5 of the Act following the merger. In addition, NSP and NCE propose to engage in various intrasystem transactions. NCE further requests an extension of time provided in an earlier Commission order to complete a planned interconnection between SPS and PSC.

I. Background

A. NCE

In accordance with an order of the Commission dated August 1, 1997 ("1997 Order"),[4] NCE's utility operations consist for three integrated utility systems. The two electric utility integrated systems include (1) PSC's and SPS's electric utility operations and (2) the Cheyenne system. The integrated gas utility system is comprised of PSC's and Cheyenne's gas utility operations.[5]

PSC serves approximately 1.;2 million electric customers and approximately one million gas customers in Colorado. PCS's transmission facilities are located in Colorado. PSC is a member of the Western Systems Coordinating Council ("WSCC"), an interstate network of transmission facilities owned by public entities and investor-owned utilities. WSCC is the regional reliability coordinating organization for member electric power systems in the entire western electric grid of the United States ("Western Interconnect"). Nearby PSC are the two high voltage direct current ("HVDC") between the WSCC and the eastern electrical grid of the United States ("Eastern Interconnect"). PSC is subject to rate regulation by the Public Utilities Commission of the State of Colorado. PSC is also subject to wholesale rate regulation by the Federal Energy Regulatory Commission (the "FERC") under the Federal Power Act, as amended (the "FPA") and the Natural Gas Act of 1935, as amended (the "NGA")

SPS, a New Mexico corporation, serves approximately 1.2 million electric customers in portions of Texas, New Mexico, Oklahoma and Kansas. SPS' transmission system is located in parts of Texas, New Mexico, Oklahoma and Kansas. SPS is a member of the Southwest Power Pool ("SPP") and has the ability to purchase or sell energy from power producers in the Eastern Interconnect through its interconnection with Public Service Company of Oklahoma ("PSO"), and electric public utility subsidiary of Central and South West Corporation, a registered holding company, and West Plains Energy-Kansas, a division of UtiliCorp United Inc., a holding company exempt from registration under the Act. SPS also has the ability to purchase and sell energy from power producers in the Western Interconnect through its interconnection with the WSCC. SPS is regulated by the Public Utility Commission of Texas, the New Mexico Public Regulation Commission, the Kansas Corporation Commission and the Oklahoma Corporation Commission. SPS is also subject to regulation by the FERC under the FPA.

Cheyenne, also a member of WSCC, serves approximately 35,000 electric customers and 28,000 gas customers in and around Cheyenne, Wyoming. Cheyenne's limited transmission facilities, which are located in Wyoming, serve primarily to deliver power that Cheyenne purchases from its full requirements supplier, PacifiCorp.[6] Cheyenne is subject to regulation by the Wyoming Public Service Commission.[7]

NCE also owns, directly or indirectly, various nonutility subsidiaries.[8] NCE's two directly owned non-utility subsidiaries are West Gas InterState, Inc., a natural gas pipeline company subject to FERC jurisdiction under the NGA, and NC Enterprises, Inc., a holding company for NCE's foreign operations and most of its nonutility businesses.

As of September 30, 1999, 115,533,704 shares of NCE Common Stock and no shares of NCE preferred stock were issued and outstanding. The consolidated assets of NCE, as of September 30, 1999, were approximately $8.1 billion, representing $5.1 billion in net electric utility property, plant and equipment ($1.7 billion for SPS, $3 billion for PSC and $42 million for Cheyenne); $808 million in net gas utility property, plant and equipment (&779 million for PSC and $29 million for Cheyenne); $443 million in nonutility subsidiary property, plant and equipment; and $1.7 billion in other corporate assets.

Revenues for Cheyenne NCE's utility operations for the 12 months ended September 30, 1999 are as follows ($ in millions):

	Electric utility revenues	Gas utility revenues
SPS	717	
PSC	1,156	477
Cheyenne	40	19

B. NSP

NSP is engaged primarily in the generation, transmission and distribution of electricity throughout a 30,000 square mile service area in Minnesota, North Dakota and South Dakota. NSP also purchases, distributes and sells natural gas to retail customers in this area and transports customer-owned gas in approximately 118 communities within this area and in Arizona.[9] As of September 30, 1999, NSP provided retail electric utility service to approximately 1.2 million customers and gas utility service to approximately 385,000 customers. NSP–W generates, transmits and distributes electricity to approximately 210,400 retail customers in an area of approximately 18,900 square miles in northwestern Wisconsin and to approximately 9,100 electric retail customers in an area of approximately 300 square miles in the western portion of Michigan's Upper Peninsula. In addition, NSP–W purchases, distributes and sells natural gas to retail customers or transports customer-owned natural gas in the same service territory to approximately 78,000 in Wisconsin and 5,000 customers in Michigan.[10]

The electric transmission system of NSP and NSP–W is located throughout the service territories of the two utilities in Minnesota, North and South Dakota, Michigan and Wisconsin. NSP and NSP–W are directly connected with each other through numerous transmission lines that they own.[11] In addition, NSP and NSP–W are members of the Mid-Continent Area Power Pool ("MAPP"), the regional reliability council for numerous electric providers in portions of the Midwest. The NSP electric system is interconnected with 19 other utility systems, including utilities in MAPP and in the Mid-America Interconnected Network.

Retail sales rates, services and other aspects of NSP's retail operations are subject to the jurisdiction of the Minnesota Public Utilities Commission ("Minnesota Commission"), the North Dakota Public Service Commission, the South Dakota Public Utilities Commission and the Arizona Corporation Commission within their respective states. Retail sales rates, services and other aspects of NSP–W's retail operations are subject to the jurisdiction of the Wisconsin Public Service Commission ("Wisconsin Commission") and the Michigan Commission. Certain activities of NSP and NSP–W, including wholesale rates for interstate sales of electricity, the interstate transmission of electricity and the sale of natural gas for resale, are subject to the jurisdiction of the FERC.

NSP is also engaged in various nonutility businesses. NSP directly provides: (i) an appliance services program for its residential customers, (ii) construction of natural gas distribution systems for third parties (primarily end-users and municipal gas systems), (iii) sale and installation of power quality instruments primarily to protect customers' equipment from electric surges, (iv) sale of steam to industrial customers in NSP's service territory, and (v) installation and maintenance of street lighting for municipalities and other customers.

In addition, NSP owns the following subsidiaries: (i) NSP Financing I, a special purpose business trust; (ii) Viking Gas Transmission Company, an interstate natural gas pipeline subject to FERC jurisdiction under the NGA; (iii) Eloigne Company ("Eloigne"), an investor in projects that qualify for low-income housing tax credits; (iv) Energy Masters International, Inc. ("Energy Masters"), an energy services company; (v) Seren Innovations, Inc., a company that provides cable, telephone and high-speed internet access; (vi) Ultra Power Technologies, Inc., a company that markets power-cable testing technology; (vii) First Midwest Auto Park, Inc., an owner of a parking garage; (viii) United Power and Land Company, a real estate investment company; (ix) NRG Energy, Inc., a holding company for many of NSP's nonutility businesses, including significant investments in the independent power projects and foreign operations; (x) Reddy Kilowatt Corporation, the owner of certain energy-related intellectual property rights; (xi) Nuclear Management Company ("NMCC"), a limited liability company that will provide services to the nuclear operations of its members; and (xii) Natrogas, Inc., a provider of propane services.[12]

Further, Eloigne, Energy Masters and NRG Energy have their own non-utility subsidiaries. Eloigne's subsidiaries all invest in affordable housing projects, while Energy Masters' subsidiary, Energy Solutions International, Inc., provides energy services. According to the Applications, NRG Energy's subsidiaries include exempt wholesale generators ("EWGs"), qualifying facilities ("QFs"), QF holding companies, foreign utility companies ("FUCOs"), and other companies engaged either in activities specified in the various subparts of rule 58(b)(1) or in other nonutility activities that comply with Commission precedent.[13]

NSP–W owns Clearwater Investments, Inc., an investor in housing projects that qualify for low-income housing tax credits, and NSP Land, Inc., a real estate investment company. NSP–W also owns &75.86% of Chippewa and Flambeau Improvement Company, a company that builds and operates dams and reservoirs for hydro-electric plants.

As of September 30, 1999, there were 154,358,267 shares of NSP Common Stock and 1,050,000 shares of NSP cumulative preferred stock issued and outstanding. Consolidated assets of NSP and its subsidiaries as of September 30, 1999 were approximately $8.7 billion, consisting of $3.5 billion in net electric utility property, plant and equipment ($2.9 billion for NSP and $622 million for NSP–W); $459 million in net gas utility property, plant and equipment ($395 million for NSP and $64 million for NSP–W); and $2.9 billion in nonutility subsidiary assets, and $1.7 billion in other corporate assets.

Revenues for NSP's utility operations for the year ended September 30, 1999 are as follows (before intercompany eliminations (($ in millions):

	Electric utility revenues	Gas utility revenues
NSP	2,343	360
NSP–W	335	81

II. Description of the Merger

Under the Merger Agreement, each share of NCE common stock issued and outstanding immediately prior to the effective time of the Merger, together with any NCE Rights (as defined

[6] GPU's utility subsidiaries are: Jersey Central Power & Light Company; Pennsylvania Electric Company; and Metropolitan Edison Company.

[1] See *Northern States Power Co.*, Holding Co. Act Release No. 22334 (Dec. 23, 1981). Section 3(a)(2) of the Act provides an exemption from registration to a holidng company that is "predominantly a public-utility company whose operations as such do not extend beyond the State in which it is organized and states contiguous thereto."

[2] NSP requests authority to organize and capitalize New NSP for this purpose.

[3] Black Mountain Gas Company will be the name of a company NSP has separately proposed to establish (in File No. 70–9337), that would assume the assets and operations of NSP's gas and propane utlity business in Arizona, currently run as a division of NSP.

[4] See *New Century Energies, Inc.*, HCAR No. 26748 (August 1, 1997) (authorizing the formation of the NCE system).

[5] SPS has no gas utility operations.

[6] The lines consist of two 115 kilovolt transmission line segments that total 25.5 miles in length.

[7] Cheyenne does not have any wholesale load.

[8] The application states that the nonutility operations of NCE have all been previously authorized under the Act or have been established under a rule or statutory exemption.

[9] As noted above, NSP currently serves these customers in Arizona out of a division that NSP intends to incorporate.

[10] In 1998, NSP–W provided approximately 13% of NSP's consolidated revenues.

[11] The Commission has previously determined that the electric and gas properties, respectively, of NSP each constitute an integrated public-utility system. *See Northern States Power Co.*, supra at note 1.

[12] NSP owns 100% of all of these businesses with the exception of its 25% membership interest in NMC.

[13] These activities include payroll and related services, operations and management services, international power project business development, and non-profit community development activities.

below),[14] will be converted into the right to receive 1.55 shares (the "Conversion Ratio") of NSP common stock,[15] and each share of NCE common stock, together with any NCE Right, owned by NSP or a subsidiary or held in the treasury of NCE, will be canceled.[16] Based upon the capitalization of NCE and NSP on March 24, 1999 (the date on which the Merger Agreement was signed) and the Conversion Ratio, NCE and NSP shareholders would own 54% and 46%, respectively, of the common equity of Xcel as of that date. As a result of the Merger, PSC, SPS and Cheyenne will come subsidiaries of Xcel along with New NSP and NSP–W.[17]

III. The Combined Operations

A. Overview

The application states that the gas utility operations of the NSP Operating Companies, PSC and Cheyenne, together will constitute a gas integrated public-utility system within the meaning of section 2(a)(29)(B) of the Act. In addition, the application states that the electric utility operations of the NSP Operating Companies, PSC and SPS will be an electric integrated public-utility system (the "Primary System") within the meaning of section 2(a)(29)(A).[18]

Applicants state that the Primary System will not engage in joint economic dispatch. As more particularly described below. Applicants contend that the Primary System will be integrated through, among other things, the coordination of transmission operations, the coordination of generation operations, and the coordination of marketing and administrative operations.

B. The Primary System

1. *Transmission Coordination.* Applicants state that three of the Xcel Operating Companies, *i.e.*, NSP, NSP–W and SPS, will participate in the Midwest Independent Transmission System Operator, Inc. ("MISO").[19] Applicants state that participation in MISDO will consolidate in MISO management and control of Applicants' transmission facilities, along with those of the other MISDO members, and through their access to the MISO transmission tariff, will enable Applicants to transact with each other and with the other MISO members at single-system transmission rates.

At present, PSO whose service territory lies between SPS and Ameren Corporation ("Ameren"), the nearest member of MISO, does not plan to become a member of MISO. Applicants anticipate, however, that, by the time that MISO becomes fully operational, it will have attracted additional members, which will permit SPS to be connected with MISO through intervening MISO-member utilities. For example, if the SPP were to join MISO,[20] Applicants state that there would be a MISO transmission region between SPS and NSP that would be contiguous to both utilities. Absent changes that result in a connection between SPS, another MISO member and NSP, however, SPS intends to obtain a firm, 200 MW bi-directional transmission path from the point at which SPS connects with PSO to the point at which PSO connects with Ameren.

Applicants also state that, whether or not these changes occur, they plan to achieve additional operational efficiencies for the combined electric operations through reservation of a 100 MW firm transmission unit-directional path from SPS to New NSP, through SPP and Ameren for the period 2002 through 2004 (the "Contract Path").[21] The Contract Path would permit a flow of 100 MW from a point of receipt in SPS's service territory (its Tolk generating station) to a point of delivery in NSP–W's service territory (its Sherbourne County generation station).

2. *Coordination of Generation Operations.* Applicants state that they have entered into a joint operating agreement ("Joint Operating Agreement"), according to which they will coordinate the operation and dispatch of the electric generating resources of the Xcel Operating Companies. Applicants assert that although not providing for joint economic dispatch the Joint Operating Agreement will provide for coordinated dispatch. Under this arrangement, system dispatchers will arrange for economy energy sales where the sales would lower the operating costs of the purchasing Xcel Operating Company.

The Joint Operating Agreement also provides for short-term capacity and associated energy sales, subject to the same limitations. In addition, the Joint Operating Agreement provides for joint generation planning and the common procurement of resources. Further, the Joint Operating Agreement vests New Century Services, Inc., (to be renamed Xcel Energy Services Inc.) ("New Century Services"), currently NCE's service company subsidiary, with the responsibility of arranging joint sales and purchases of electricity and makes provision for the allocation of associated costs and revenues.

3. *Marketing and Administrative Coordination.* The Xcel Operating Companies will coordinate through joint marketing efforts, both as buyers and sellers. The Xcel Operating Companies already have the ability to reach common suppliers, purchasers, and trading hubs in various combinations.

Applicants state that virtually all administrative and general services will be performed for the Xcel system by New Century Services. Applicants note that the accounting functions of the combined system will be consolidated. Applicants further state that there will also be coordination and integration of information system networks; customer service; procurement organizations; organized structures for power generation, energy delivery and customer relations; and support services.

C. Combined Gas Operations

The Xcel gas system will operate in Michigan, Wisconsin, Minnesota, North Dakota, South Dakota, Wyoming, Colorado and Arizona. Applicants state that approximately 74% of the 324.7 billion cubic feet of natural gas purchased by the applicants during 1998 were from common supply sources. Applicants also state that NSP and NCE share access, through their respective pipeline transporters, to several industry-recognized market and supply-area hubs.

IV. Proposed Intrasystem Transactions

A. Extension of Service Company Subsidiary Services

Applicants propose that New Century Services be the service company subsidiary for the Xcel system. Applicants request a finding that New Century Services is so organized and will be so conducted as to meet the requirements of section 13(b) with respect to all associates in the Xcel system. New Century Services will provide Xcel, New NSP, NSP–W, PSC, SPS and Cheyenne, under the Utility Service Agreement, and the nonutility subsidiaries of the combined system, under the Non-Utility Service Agreement, with various services. These include: administrative, management and support services, including services relating to support of electric and gas plant operations (*i.e.*, energy supply management of the bulk power and natural gas supply, procurement of fuels, dispatch of generating units, coordination of electric and natural gas distribution systems, maintenance, construction and engineering work); customer bills and related matters; materials management; facilities; real estate; rights of way; human resources; finance; accounting; internal auditing; information systems; corporate planning and research; public affairs; corporate communications; legal; environmental matters; and executive services. These services will comply with the at-cost standards of section 13(b) and rules 87, 90 and 91 under the Act, unless otherwise exempted as discussed below.

B. Services, Goods and Assets Involving the Xcel Operating Companies

The Xcel Operating Companies may provide to one another and other associate companies services incidental to their utility businesses, such as power plant maintenance overhauls and power plant and storm outage emergency repairs. These services will be provided in accordance with rules 87, 90 and 91. Moreover, in accordance with these rules, an Xcel Operating Company may provide certain goods through a leasing arrangement or otherwise to one or more other Xcel Operating Companies, and may use certain assets for the benefit of one or more other associate companies.

In addition to the foregoing, NSP and NSP–W are currently providing goods and services to, or receiving goods and services from, affiliated interests, as defined under applicable state law, in accordance with agreements approved by the Minnesota Commission. Those transactions between NSP or NSP–W and these affiliated interests performed in accordance with Minnesota law are generally priced on a "fully allocated cost" basis. To the extent necessary, Applicants request an exemption under section 13(b) of the Act from the at-cost requirements of section 13 and rules 90 and 91 with respect to these transactions.

C. Nonutility Sale of Goods and Services to EWGs, FUCOs and QFs

The 1997 Order and an order of the Commission dated April 7, 1999 ("1999 Order")[22] granted an exemption from the at-cost requirements of section 13 and rules 90 and 91 for the sale of goods and services by New Century Services and certain nonutility subsidiaries of NCE to associate QFs, EWGs and FUCOs ("Associate Exempt Entities") where certain conditions were met ("Nonutility Exemption"). In the 1999 Order, the Commission reserved jurisdiction over a request for an exemption from the at-cost standards for the sale by these subsidiaries of goods and services to exempt telecommunication companies under section 34 of the Act, to rule 58 companies, or to other nonutility subsidiaries that do not derive any part of their income from sales of goods, services or other property to the NCE Operating Companies ("Requested Additional Exemption"). Applicants now request that the Nonutility Exemption and the Requested Additional Exemption be extended, on the same conditions as those described in the 1999 Order, to the sale of goods and services by certain Xcel nonutility subsidiaries.

Applicants also note that the 1997 NCE Order exempted two NCE nonutility subsidiaries, Utility Engineers Corporation ("UE") and Quixx Power Services, Inc. from the at-cost requirements of section 13(b) with respect to the sale of services to an associate QF.[23] Applicants request that this exemption be extended, to the extent necessary following the Merger, to transactions that are still ongoing.

D. Other Sales of Goods and Services by Nonutility Subsidiaries

Applicants note that the 1997 NCE Order authorized an NCE nonutility subsidiary, UE, to perform engineering, development, design, construction and other related services to the NCE Operating Companies at cost. Applicants now request that this authority be extended to enable UE to provide such services to Xcel Operating Companies.

In addition, Applicants request authority for NMC to provide services to New NSP. Applicants note that the Commission recently authorized NMC to provide certain services to IES Utilities, Inc., a utility subsidiary of another registered holding company, Alliant Energy corporation.[24] The services to be provided by NMC to New NSP will comply with the at cost standards of section 13(b).

V. Extension of Time To Construct Interconnection

The 1997 Order requires that, "[i]n the event that New Century Energies at any time determines not to construct the tie, or the tie is not substantially completed within five years of the date of consummation of the [PSC/SPS] merger [interconnecting SPS with PSC ("SPS–PSC Interconnection")], New Century Energies will file a post-effective amendment concerning the measures it will take to ensure that the requirements of section 2(a)(29)(A) are satisfied."

Applicants state that the project to complete the SPS–PSC Interconnection will be accomplished in a phased approach and will require various regulatory approvals. The first phase will involve construction of a 230-mile, 345 kV line from Amarillo, Texas to Holcomb, Kansas, expected to be completed in the third quarter of 2001. The second phase will involve construction of a 100-mile, 345 kV line from Holcomb to Lamar, Colorado and a HVDC facility that would interconnect the PSC and SPS systems, as well as the WSCC and SPP regional transmission grids. The application states that this second phase is now scheduled for completion in 2004.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[14] The "NCE Rights" are rights issued by NCE that entitled registered holders of purchase from NCE one-hundredth of a share of Series A Junior Participating Preferred Stock for each NCE Right. The NCE Rights were distributed a dividend on each outstanding share of NCE Common Stock as part of NCE's shareholder rights plan, which was approved in the 1997 Order.

[15] As noted above, NSP will change its name to Xcel at or before the Merger.

[16] Each issued and outstanding share of NSP Common Stock and each share of preferred stock of NSP issued and outstanding immediately prior to the effective time of the Merger will remain outstanding.

[17] As noted above, NSP has proposed that BMG become a subsidiary of Xcel after the Merger. See note 3 supra.

[18] The Commission determined in the 1997 Order that NCE could own the electric operations of Cheyenne as an additional electric integrated system.

[19] The participating transmission owners in MISO currently are: Allegheny Energy, Alliant Corporation (on behalf of IES Utilities, Inc., Interstate Power Company, South Benoit Water, Gas & Electric Company, and Wisconsin Power Company), Ameren (on behalf of Central Illinois Public Service Company and Union Electric Company), Central Illinois Light Company, Cinergy Corp. (on behalf of Cincinnati Gas & Electric Company, PSI Energy, Inc., and Union Light, Heat & Power), Commonwealth Edison Company (including Commonwealth Edison Company of Indiana), Hoosier Energy Rural Electric Cooperative, Inc., Illinois Power Company, Kentucky Utilities Company, Louisville Gas & Electric Company, Northern States Power Company, Southern Illinois Power Cooperative, Southern Indiana Gas & Electric Company, Wabash Valley Power Association, Inc. and Wisconsin Electric Power Company. PSC will not be a member of MISO.

[20] Applicants state that the SPP currently plans to join MISO.

[21] Applicants state that the Contract Path, like virtually every firm contract path, has some market concentrating effects as a result of loop-flows, as well as market-deconcentrating effects. For this reason, Applicants have treated the Contract Path as a separate option from MISO in their filing for FERC approval of the Merger.

[22] HCAR No. 27000.

[23] The 1997 Order noted that power from the QF would be sold to SPS.

[24] Alliant Energy Corporation, et al., HCAR No. 27096 (October 26, 1999).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27153]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 14, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 4, 2000, to the Secretary, Securities and Exchange Commission, Washington, D.C. 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 4, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

SCANA Corporation (70–9639)

SCANA Corporation ("SCANA"), 1426 Main Street, Columbia, South Carolina 29201, a registered holding company, and SCANA Services, Inc. (collectively "Declarants") have filed a declaration under sections 6(a), 7, and 12(e) of the Act and rules 62 and 65 under the Act.

Declarants propose to issue, over a period of three years, up to five million shares of its no par value common stock ("Common Stock") for distribution to participants in SCANA's Long-Term Equity Compensation Plan ("Plan") by a variety of means. SCANA also seeks authorization to solicit proxies regarding approval of the Plan at SCANA's 2000 Annual Meeting of Shareholders.

Under the Plan, SCANA will offer long-term compensation to the directors of SCANA and its affiliates, as well as to employees of these companies who are selected as significant contributors to the success of their company ("Key Employees"). Five types of long-term compensation are awardable: stock options, stock appreciation rights ("SARs"), restricted stock, performance stock, and performance units (collectively "Equity Compensation").

Declarants explain that the Plan, which links Plan participants' interests to those of shareholders, is designed to optimize the profitability and growth of SCANA by (1) allowing Plan participants to share in the successes of SCANA; (2) providing Plan participants incentives to achieve excellence in their individual performances and promote teamwork; and (3) allowing SCANA to motivate, attract, and retain the services of Plan participants.

The Plan will remain in effect until all options and rights granted under the Plan have been satisfied or terminated in accordance with the terms of the Plan, and all performance-based awards granted under the Plan have been completed. In no event, however, shall Equity Compensation be awarded on or after December 31, 2009.

The Plan was approved by the Board on February 22, 2000 but has not yet been approved by SCANA's shareholders. Declarants propose to submit the Plan to SCANA shareholders for consideration and action on April 27, 2000 and, correspondingly, intend to solicit proxies from SCANA shareholders. SCANA therefore requests that its declaration regarding the solicitation of proxies be permitted to become effective as soon as practicable, as provided in Rule 62(d).

It is stated that no State or federal commission, other than this Commission, has jurisdiction over the proposed transactions.

It appearing to the Commission that Declarants' declaration regarding the proposed solicitation of proxies should be permitted to become effective immediately, under rule 62:

It is ordered, that the declaration regarding the proposed solicitation of proxies be, and hereby is, permitted to become effective immediately under rule 62 and subject to the terms and conditions prescribed in rule 24 under the Act. The Commission reserves jurisdiction over all other matters contained in the Declaration.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6830 Filed 3–17–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24337; 812–11798]

Colchester Street Trust, et al.; Notice of Application

March 13, 2000.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under sections 6(c), 12(d)(1)(J) and 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from sections 12(d)(1) and 17(a).

SUMMARY OF APPLICATION: Applicants request an order that would amend a prior order ("Prior Order")[1] that permits a fund of funds arrangement. The order also would permit purchases by a fund of funds of shares of an underlying fund in-kind and the purchase and sale of portfolio securities between the fund of funds and the underlying funds in accordance with rule 17a–7 under the Act.

APPLICANTS: Colchester Street Trust, Fidelity Aberdeen Street Trust, Fidelity Advisor Series I, Fidelity Advisor Series II, Fidelity Advisor Series III, Fidelity Advisor Series IV, Fidelity Advisor Series V, Fidelity Advisor Series VI, Fidelity Advisor Series VII, Fidelity Advisor Series VIII, Fidelity Beacon Street Trust, Fidelity Boston Street Trust, Fidelity California Municipal Trust, Fidelity California Municipal Trust II, Fidelity Capital Trust, Fidelity Charles Street Trust, Fidelity Commonwealth Trust, Fidelity Concord Street Trust, Fidelity Congress Street Fund, Fidelity Contrafund, Fidelity Court Street Trust, Fidelity Court Street Trust II, Fidelity Covington Trust, Fidelity Destiny Portfolios, Fidelity Devonshire Trust, Fidelity Exchange Fund, Fidelity Financial Trust, Fidelity Fixed-Income Trust, Fidelity Hastings Street Trust, Fidelity Hereford Street Trust, Fidelity Income Fund, Fidelity Investment Trust, Fidelity Magellan Fund, Fidelity Massachusetts Municipal Trust, Fidelity Money Market Trust, Fidelity Mt. Vernon Street Trust, Fidelity Municipal Trust, Fidelity Municipal Trust II, Fidelity New York Municipal Trust, Fidelity New York Municipal Trust II, Fidelity Oxford Street Trust, Fidelity Phillips Street Trust, Fidelity Puritan Trust, Fidelity Revere Street Trust, Fidelity School Street Trust, Fidelity Securities Fund, Fidelity Select Portfolios, Fidelity Summer Street Trust, Fidelity Trend

[1] *Daily Money Fund, et al.,* Investment Company Act Release Nos. 22107 (July 29, 1996) (notice) and 22171 (Aug. 26, 1996) (order).

Fund, Fidelity Union Street Trust, Fidelity Union Street Trust II, Newbury Street Trust, Variable Insurance Products Fund, Variable Insurance Products Fund II, Variable Insurance Products Fund III; Fidelity Management & Research Company ("FMR"); Fidelity Management Trust Company ("FMTC"); Fidelity Service Company, Inc. ("FSC"); Fidelity Investments Institutional Operations Company, Inc. ("FIIOC"); Fidelity Distributors Corporation ("FDC"); National Financial Services Corporation ("NFSC"); Strategic Advisers, Inc. ("SAI"); and all other registered open-end investment companies and series thereof that are (a) advised by FMR, FMTC, or SAI, or a person controlling, controlled by, or under common control with FMR (collectively, the "Adviser") or (b) distributed by FDC or NFSC, or a person controlling, controlled by, or under common control with FDC or NFSC (collectively the future and current investment companies and their series are, the "Fidelity Funds").[2]

FILING DATES: The application was filed on October 4, 1999. Applicants have agreed to file an amendment, the substance of which is reflected in this notice, during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 7, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Applicants, 82 Devonshire Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Senior Counsel, at (202) 942–0572, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Each Fidelity Fund is registered under the Act as an open-end management investment company and currently is organized as either a Massachusetts or Delaware business trust. Certain of the Fidelity Funds are organized as series investment companies. FMR, FMTC, or SAI act as each Fidelity Fund's investment adviser. FMR and SAI are investment advisers registered under the Investment Advisers Act of 1940 (the "Advisers Act"). FMTC is excluded from the definition of an investment adviser under the Advisers Act. Any other Adviser will be registered under the Advisers Act or exempt from registration. FDC and NFSC serve as distributors of the Fidelity Funds. FSC and FIIOC serve as transfer and dividend paying agents for the Fidelity Funds. FMR, FMTC, SAI, FDC, NFSC, FSC, and FIIOC are direct or indirect subsidiaries of FMR Corp.

2. The Prior Order permits Fidelity Funds that are funds of funds ("FOFs") to invest in shares of other Fidelity Funds ("Underlying Funds"). In addition to investing in shares of Underlying Funds, the FOFs may make direct investments in stocks, bonds, and money market instruments.[3] Applicants request an order amending the Prior Order to update certain conditions. Applicants also request relief to permit purchases by the FOFs of shares of the Underlying Funds in-kind and to permit the purchase and sale of portfolio securities between the FOFs and the Underlying Funds in accordance with rule 17a–7 under the Act.

Applicant's Legal Analysis

A. Section 12(d)(1)

1. Section 12(d)(1)(A) of the Act provides, in relevant part, that no investment company may acquire securities of a registered investment company if such securities represent more than 3% of the acquired company's outstanding voting stock, more than 5% of the acquiring company's total assets, or if such securities, together with the securities of other acquired investment companies, represent more than 10% of the acquiring company's outstanding total assets. Section 12(d)(1)(B) of the Act provides that no registered open-end investment company may sell its securities to another investment company if the sale will cause the acquiring company to own more than 3% of the acquired company's voting stock, or if the sale will cause more than 10% of the acquired company's voting stock to be owned by the investment company and other investment companies and companies controlled by them. Applicants state that the investment by the FOFs in shares of the Underlying Funds is subject to the limits in sections 12(d)(1)(A) and (B).

2. Section 12(d)(1)(G) of the Act provides that section 12(d)(1) shall not apply to the securities of an acquired company purchased by an acquiring company if: (i) The acquiring company and the acquired company are part of the same group of investment companies; (ii) the acquiring company holds only securities of acquired companies that are part of the same group of investment companies, government securities, and short-term paper; (iii) the aggregate sales loads and distribution-related fees of the acquiring company and the acquired company are not excessive under rules adopted pursuant to section 22(b) or section 22(c) by a securities association registered under section 15A of the Securities Exchange Act of 1934, or the Commission; and (iv) the acquired company has a policy that prohibits it from acquiring securities of registered open-end investment companies or registered unit investment trusts in reliance on sections 12(d)(1)(F) or (G). Section 12(d)(1)(G)(ii) defines the term "group of investment companies" to mean any two or more registered investment companies that hold themselves out to investors as related companies for purposes of investment and investor services. Applicants state that the proposed transactions would comply with section 12(d)(1)(G) but for the fact that the FOFs may invest directly in stock, bonds, and other financial instruments, in addition to investing in the Underlying Funds.[4]

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt, conditionally or unconditionally , any person, security, or transaction from any provision of section 12(d)(1) if and to the extent that

[2] All existing registered open-end investment companies that currently intend to rely on the requested order are named as applicants. Any other existing and future registered open-end investment company will rely on the requested order only in accordance with the terms and conditions of the application.

[3] The Prior Order also permits the FOFs, the Underlying Funds, and their transfer agent to enter into a "special servicing agreement" with respect to the payment of administrative expenses.

[4] These other investments will not include shares of registered investment companies that are not Fidelity Funds.

such exemption is consistent with the public interest and the protection of investors. Applicants request relief pursuant to section 12(d)(1)(J) to update the conditions of the Prior Order.

B. Section 17(a)

1. Section 17(a) of the Act makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such affiliated person ("second-tier affiliate"), acting as principal, to sell or purchase any security to or from such investment company. Section 2(a)(3) of the Act defines an affiliated person to include any person directly or indirectly (a) controlling, controlled by, or under common control with, the other person; or (b) owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person. Because the FOFs and the Underlying Funds are advised by the Adviser, they may be deemed to be under "common control" and therefore affiliated persons of each other. In addition, because of FOF may own more than 5% of an Underlying Fund, the FOF and the Underlying Fund may be deemed to be affiliated persons of one another. As a result, applicants state that section 17(a) would prohibit purchases by the FOFs of shares of the Underlying Funds in-kind as well as the purchase and sale of portfolio securities between the FOFs and the Underlying Funds.

2. Rule 17a–7 under the Act generally provides an exemption from section 17(a) for a purchase or sale transaction between a registered investment company and an affiliated person (or second-tier affiliate), provided certain conditions are met, including that the transaction must be for no consideration other than cash. In addition, the affiliation between the registered investment company and the affiliated person or second-tier affiliate must exist solely by reason of the entities having a common investment adviser, common directors and/or common officers. Applicants state that the FOFs and the Underlying Funds may be unable to rely on rule 17a–7 because some of the FOFs may own more than 5% of the outstanding voting securities of an Underlying Fund. In addition, the in-kind purchases of shares of an Underlying Fund would not meet the cash payment requirement of rule 17a–7(a).

3. Section 17(b) of the Act authorizes the SEC to exempt a transaction from section 17(a) if the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the proposed transaction is consistent with the policy of each registered investment company concerned, and the proposed transaction is consistent with the general policy of the Act. Section 6(c) under the Act permits the SEC to exempt any person or transaction from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies of the Act.

4. Applicants submit that the requested relief satisfies the standards for relief in sections 6(c) and 17(b). Applicants state that, with respect to the in-kind purchases, the consideration paid by the FOFs for shares of the Underlying Funds will be based on the net asset value of the Underlying Funds. With respect to the purchase and sale of portfolio securities between the FOFs and the Underlying Funds, applicants state that the price paid for the securities will be the current market price of the securities. Further, applicants state that any in-kind purchase will comply with the requirements of rule 17a–7(b) through (f) and any purchase and sale transaction will comply with requirements of rule 17a–7(a) through (f).

Applicants' Conditions

Applicants agree that the amended order will be subjected to the following conditions:

1. Each FOF and each Underlying Fund will be part of the same "group of investment companies," as defined in section 12(d)(1)(G)(ii) of the Act.

2. No Underlying Fund will acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except to the extent that the Underlying Fund (a) receives securities of another investment company as a dividend or as a result of a plan of a reorganization of a company (other than a plan devised for the purpose of evading section 12(d)(1) of the Act); or (b) acquires (or is deemed to have acquired) securities of another investment company pursuant to exemptive relief from the Commission permitting the Underlying Fund to (i) acquire securities of one or more affiliated investment companies for short-term cash management purposes or (ii) lend cash to another fund.

3. Prior to approving any advisory contract under section 15 of the Act, the board of trustees of each FOF, including a majority of the trustees who are not "interested persons" of the FOF, as that term is defined in section 2(a)(19) of the Act, shall find that the advisory fees charged under the contract are based on services that will be in addition to, rather than duplicative of, services provided under the contract of any Underlying Fund in which the FOF may invest; provided, however, that no finding will be necessary if (a) the FOF pays no advisory fee; or (b) the FOF pays an advisory fee and either (i) the Underlying Fund pays no advisory fee or (ii) the advisory fee paid by the FOF is reduced by the proportional amount of the advisory fee paid by the Underlying Fund with respect to the shares held by the FOF. If a finding is necessary, the finding, and the basis upon which the finding was made, will be recorded fully in the minute books of the FOF.

4. Any sales charges, distribution-related fees, and service fees relating to the shares of an FOF, when aggregated with any sales charges, distribution-related fees, and services fees paid by the FOF relating to its acquisition, holding, or disposition of shares of the Underlying Funds, will not exceed the limits set forth in rule 2830 of the National Association of Securities Dealers' Rules of Conduct.

5. Any in-kind purchase of shares of the Underlying Funds by the FOFs will be effected in accordance with the terms of rule 17a–7(b) through (f). Any purchase or sale of portfolio securities between the FOFs and the Underlying Funds will be effected in accordance with the terms of rule 17a–7(a) through (f).

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6752 Filed 3–17–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before May 19, 2000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Michael McHale, Associate Administrator, Office of HUBZone Empowerment Contracting Program, Small Business Administration, 409 3rd Street, SW., Suite 8000.

FOR FURTHER INFORMATION CONTACT: Michael McHale, Associate Administrator, 202–205–8885 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "HUBZone Empowerment Contracting Program—Annual Self-Certification Form".

Form No: 2103A.

Description of Respondents: Small Businesses.

Annual Responses: 500.

Annual Burden: 250.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–6805 Filed 3–17–00; 8:45 am]

BILLING CODE 8025–01–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Opportunity To Apply for Nomination To the World Trade Organization Dispute Settlement Roster of Panel Candidates—Extension of Time

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of extension of time limit for applications from the public.

SUMMARY: By Federal Register Notice of November 9, 1999 (64 FR 61173) the Office of the United States Trade Representatives announced the opportunity to apply for nomination by the United States to the World Trade Organization (WTO) indicative list of non-governmental persons for potential service as a panelist in settlement of WTO trade disputes. The application deadline cited was December 9, 1999. The deadline has been extended to April 15, 2000.

DATES: Eligible citizens are encouraged to apply by April 15, 2000 to be considered for nomination to the roster.

FOR FURTHER INFORMATION CONTACT: Information concerning the form of the application appears at 64 FR 61173–61175. For information concerning WTO procedures or the duties involved, contact Amelia Porges, Senior Counsel for Dispute Settlement, (202) 395–7305. Further information on the WTO and dispute settlement is available on the Internet at *http://www.ustr.gov/reports/tpa/2000/ii.pdf* and *http://www.ustr.gov/reports/tpa/2000/annex2.pdf;* the text of the WTO Dispute Settlement Understanding is available on the Internet at *http://www.wto.org/wto/dispute/dsu.htm.*

A. Jane Bradley,

Assistant U.S. Trade Representative for Monitoring and Enforcement.

[FR Doc. 00–6723 Filed 3–17–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly Notice of PFC Approvals and Disapprovals. In February 2000, there were three applications approved. Additionally, 11 approved amendments to previously approved applications are listed.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158). This notice is published pursuant to paragraph (d) of §158.29.

PFC Applications Approved

Public Agency: Greater Peoria Airport Authority, Peoria, Illinois.

Application Number: 00–02–C–00–PIA.

Application Type: Impose and use a PFC.

PFC Level : $3.00.

Total PFC Revenue Approved in This Decision: $5,776,324.

Earliest Charge Effective Date: July 1, 2001.

Estimated Charge Expiration Date: September 1, 2009.

Class of Air Carriers not Required to Collect PFC'S: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Greater Peoria Regional Airport.

Brief Description of Projects Approved for Collection and Use:

Rehabilitate runway 4/22 and connecting taxiways.

Overlay and rehabilitation of the asphalt portions of the terminal entrance/Ring Road.

Rehabilitation airport rotating beacon.

Rehabilitation of three underground fuel storage tanks.

Terminal expansion (two gates).

Passenger loading bridges.

Remove waivered obstructions from runway 31 safety area and object free area.

Relocate runway 31 landing threshold.

Relocate runway 31 glide slope, localizer, and medium intensity approach lighting system with runway end identification lights.

Install flight information display system (FIDS).

Public announcement system.

Rehabilitate and widen portions of the runway 13/31 parallel taxiway system.

Snow removal equipment replacement.

Construct runway 13/31 exit taxiway.

Construct runway 4/22 exit taxiway.

Rehabilitate air carrier apron.

Landside development for expansion of southeast air cargo park.

Baggage system rehabilitation.

Land reimbursement.

Update airport layout plan (phases 1 and 2).

Airport environmental assessment.

Decision Date: February 3, 2000.

FOR FURTHER INFORMATION CONTACT: Denis Rewerts, Chicago Airports District Office, (847) 294–7195.

Public Agency: Jacksonville Port Authority, Jacksonville, Florida.

Application Number: 00–05–C–00–JAX.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $13,081,065.

Earliest Charge Effective Date: March 1, 2000.

Earliest Charge Expiration Date: March 1, 2000.

Class of Air Carriers not Required to Collect PFC's: Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information contained in the public's agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Jacksonville International Airport.

Brief Description of Projects Approved for Collection and use: Airport master plan and airport layout plan update.

Land acquisition parcel 1.

Brief description of Project Approved in Part for Collection: Land acquisition parcel 2, 3, 4, 5, and 7.

Determination: Partially approved. The approved amount is less than the PFC amount requested in the application. The public agency requested this reduction by letter dated January 24, 2000.

Decision Date: February 15, 2000.

FOR FURTHER INFORMATION CONTACT: Richard M. Owen, Orlando Airports District Office, (407) 812–6331, ext. 19.

Public Agency: City of Chicago, Department of Aviation, Chicago, Illinois.

Application Number: 00–07–C–00–MDW.

Application Type: Impose and use a PFC.

PFC Level: $3.00.

Total PFC Revenue Approved in This Decision: $592,053,661.

Earliest Charge Effective Date: July 1, 2018.

Estimated Charge Expiration Date: August 1, 2046.

Class of Air Carriers not Required to Collect PFC's: Air taxi operators.

Determination: Approved. Based on information contained in the public agency's application, the FAA has determined that the approved class accounts for less than 1 percent of the total annual enplanements at Chicago Midway Airport.

Brief Description of Projects Approved for Collection and Use:

Reconstruct taxiway P.

Service road reconstruction along taxiway N.

Taxiway K rehabilitation between runway 31C and taxiway V.

Taxiway J rehabilitation between taxiway W and runway 4L.

Runway 31C exit taxiway rehabilitation.

Runway 13C hold pad rehabilitation.

Taxiway N and taxiway Q rehabilitation.

Apron edge taxiway rehabilitation.

Terminal apron construction.

Additional residential insulation.

Midway radio trunking system.

Blast fences northeast and northwest corners.

Land acquisition parcel #131.

Land acquisition parcel #132.

Concourse building.

Terminal explosive detection system.

Taxiway/taxilane.

Aircraft parking apron construction.

Parking structure blast mitigation.

On-airport roads.

Airline equipment (security).

Airline equipment (FIDS).

Brief Description of Projects Approved in Part for Collection and Use: Midway equipment acquisition 1998–2002.

Determination: Partially approved. The public agency, by letter dated January 12, 2000, revised the scope of this project to include only those pieces of equipment for which a contract will be awarded by February 2002. Therefore, some pieces of equipment originally requested in the application were not included in the approved project.

Land acquisition parcel #130.

Determination: Partially approved. The approved amount was reduced from the amount requested to reflect the receipt of an Airport Improvement Program grant. This grant was received after the PFC application had been submitted.

Airline equipment (loading bridges, public seating, and podia).

Determination: Partially approved. The public agency withdrew two proposed elements of this project, baggage handling system and battery chargers, by letters dated January 31, 2000 and February 2, 2999. Therefore, the approved amount is $364,722 less than the amount requested for this component.

Decision Date: February 22, 2000.

FOR FURTHER INFORMATION CONTACT: Philip M. Smithmeyer, Chicago Airports district Office, (847) 294–7335.

AMENDMENTS TO PFC APPROVALS

Amendment No. city, state	Amendment approved date	Original approved net PFC revenue	Amended approved net PFC revenue	Original estimated charge exp. date	Amended estimated charge exp. date
98–02–C–01–JAN, Jackson, MS	01/28/00	$2,992,244	2,828,000	03/01/00	04/01/00
97–03–C–01–LSE, LaCrosse, WI	02/02/00	315,000	485,000	03/01/00	09/01/00
93–01–C–05–MDW, Chicago, IL	02/03/00	96,294,613	131,084,161	10/01/17	07/01/18
94–02–U–01–MDW, Chicago, IL	02/03/00	NA	NA	10/01/17	07/01/18
95–03–C–03–MDW, Chicago, IL	02/03/00	69,354,783	54,021,160	10/01/17	07/01/18
96–05–C–01–MDW, Chicago, IL	02/03/00	163,875,000	156,353,754	10/01/17	07/01/18
98–03–C–01–DSM, Des Moines, IA	02/10/00	27,811,427	28,211,427	03/01/06	05/01/06
93–01–C–03–MOT, Minot, ND	02/10/00	629,327	639,163	02/01/04	02/01/04
92–01–C–04–MCO, Orlando, FL	02/23/00	36,171,733	36,441,847	08/01/94	09/01/94
96–04–C–06–MCO, Orlando, FL	02/23/00	94,327,100	94,740,321	06/01/98	06/01/98
99–06–C–06–MCO, Orlando, FL	02/23/00	95,772,673	95,772,673	06/01/03	06/01/03

Issued in Washington, DC on March 11, 2000.

Eric Gabler,

Manager, Passenger Facility Charge Branch.

[FR Doc. 00–6821 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. HTSA–2000–6977]

Reports, Forms, and Recordkeeping Requirements

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Request for public comment on proposed collection of information.

SUMMARY: Before a Federal agency can collect certain information from the public, it must receive approval from the Office of Management and Budget (OMB). Under procedures established by the Paperwork Reduction Act of 1995, before seeking OMB approval, Federal agencies must solicit public comment on proposed collections of information, including extensions and reinstatements of previously approved collections.

This document describes one collection of information for which NHTSA intends to seek OMB approval.

DATES: Comments must be received on or before May 19, 2000.

ADDRESSES: Comments must refer to the docket and notice numbers cited at the beginning of this notice and be submitted to Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Please identify the proposed collection of information for which a comment is provided, by referencing its OMB clearance number. It is requested, but not required, that 1 original plus 2 copies of the comments be provided. The Docket Section is open on weekdays from 10 am to 5 pm.

FOR FURTHER INFORMATION CONTACT: Complete copies of each request for collection of information may be obtained at no charge from Deborah Mazyck, NHTSA, 400 Seventh Street, SW, Room 5320, NPS–32, Washington, DC 20590. Ms. Mazyck's telephone number is (202) 366–0846. Please identify the relevant collection of information by referring to its OMB clearance number.

SUPPLEMENTARY INFORMATION: Under the Paperwork Reduction Act of 1995, before an agency submits a proposed collection of information to OMB for approval, it must publish a document in the **Federal Register** providing a 60-day comment period and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. The OMB has promulgated regulations describing what must be included in such a document. Under OMB's regulations (at 5 CFR 1320.8(d)), an agency must ask for public comment on the following:

(i) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) How to enhance the quality, utility, and clarity of the information to be collected; and

(iv) How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

In compliance with these requirements, NHTSA asks public comment on the following proposed collection of information:

Insurer Reporting Requirement for 49 CFR Part 544

Type of Request: Reinstatement of clearance.

OMB Clearance Number: 2127–0547.

Form Number: This collection of information uses no standard forms.

Requested Expiration Date of Approval: Three years from date of approval.

Summary of the Collection of Information: The Motor Vehicle Theft Law Enforcement Act of 1984 was amended by the Anti Car Theft Act (ACTA) of 1992 (Pub. L. 102–519) which mandated this information collection. One component of the comprehensive theft prevention package required the Secretary of Transportation (delegated to the National Highway Traffic Safety Administration (NHTSA)) to promulgate a theft prevention standard to provide for the identification of certain motor vehicles and their major replacement parts to impede motor vehicle theft. Section 615 of the ACTA requires insurance companies and rental/leasing companies to provide information to NHTSA on comprehensive insurance premiums which address motor vehicle theft.

Description of the need for the information and proposed use of the information: The insurer's report will be submitted by motor vehicle insurance companies and rental/leasing companies on an annual basis to NHTSA. All rental/leasing companies (which have a fleet of 50,000 or more units in its fleet and are not covered by theft insurance policies issued by motor vehicle insurers) are bound to comply. Specific motor vehicle insurance companies and subject rental and leasing companies are listed in Appendices A, B, and C of Part 544. These reports are required to be submitted in a specified format as shown in Parts 544.5 and 544.6, giving requirements and contents of the report.

The information will be used by NHTSA in exercising its statutory authority to help reduce comprehensive insurance premiums charged by insurers of motor vehicles due to motor vehicle thefts. The report will also show the rate of theft and recoveries of stolen vehicles that they insure by type and other categories.

Without this information, the agency cannot adequately assess the effectiveness of the ACTA as directed by Congress.

Description of the Likely Respondents (Including Estimated Number, and Proposed Frequency of Response to the Collection of Information): The respondents are specific vehicle insurance companies, and rental/leasing companies (which have a fleet size of 50,000 or more and are not covered by theft insurance policies issued by motor vehicle insurers). The agency estimates the number of respondents to total 30 vehicle insurance companies and 13 rental/leasing companies. The frequency of response to the collection of information is determined by the number of specific motor vehicle insurance companies, and rental/leasing companies listed in Appendices A, B, and C of Part 544. The lists are updated annually.

Estimate of the Total Annual Reporting and Recordkeeping Burden Resulting from the Collection of Information: The agency estimates that the reporting burden for this year will be $1,168,090 for 30 insurance companies and $99,840 for approximately 17 rental/leasing companies with a fleet size of 50,000 or more. The reporting burden is based on claim adjusters' salaries, clerical and technical expenses, and labor costs.

Authority: 440 U.S.C. 3506(c); delegation of authority at 49 CFR 1.50.

Issued: March 15, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–6820 Filed 3–17–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 8, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 19, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0202.

Form Number: IRS Forms 5310 and 6088.

Type of Review: Revision.

Title: Application for Determination Upon Termination (5310); and Distributable Benefits from Employee Pension Benefit Plans (6088).

Description: Employers who have qualified deferred compensation plans can take an income tax deduction for contributions to their plans. IRS uses the data on Forms 5310 and 6088 to determine whether a plan still qualifies and whether there is any discrimination in benefits.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 30,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 5310	Form 6088
Recordkeeping	48 hr., 47 min.	6 hr., 28 min.
Learning about the law or the form	5 hr., 31 min.	1 hr., 12 min.
Preparing, copying, assembling and sending the form to the IRS	12 hr., 33 min.	1 hr., 21 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,138,050 hours.

OMB Number: 1545–0957.

Form Number: IRS Form 8508.

Type of Review: Extension.

Title: Request for Waiver From Filing Information Returns on Magnetic Media.

Description: Certain filers of information returns are required by law to file on magnetic media. In some instances, waivers from this requirement are necessary and justified. Form 8508 is submitted by the filer and provides information on which IRS will base its waiver determination.

Respondents: Business or other for-profit, not-for-profit institution, farms, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 750.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 00–6732 Filed 3–17–00; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 13, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 19, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1007.

Form Number: IRS Form 8606.

Type of Review: Revision.

Title: Nondeductible IRAs.

Description: Internal Revenue Code (IRC) section 408(o) requires certain information regarding nondeductible contributions to traditional IRAs (reported on Part I of Form 8606). IRC section 408A(d) requires information regarding conversions from traditional IRAs to Roth IRAs (reported on Parts II and III of Form 8606). IRC section 530 requires information regarding distributions from ED IRAs (reported on Part IV of Form 8606).

Respondents: Individuals or households.

Estimated Number of Respondents/Recordkeepers: 1,800,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 1 hr., 6 min.

Learning about the law or the form: 1 hr., 37 min.

Preparing the form: 2 hr., 11 min.

Copying, assembling, and sending the form to the IRS: 58 min.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 2,198,320 hours.

OMB Number: 1545–1506.

Notice Number: Notice 96–65.

Type of Review: Extension.

Title: Treatment of a Trust as Domestic or Foreign-Changes Made by the Small Business Job Protection Act.

Description: Notice 96–65 announces that a domestic trust may avoid an involuntary change in status caused by operation of the Small Business job Protection Act of 1996 by reforming within a reasonable period of time. The notice also announces how to elect to apply the new trust status rules retroactively.

Respondents: Individuals or households, Business or other for-profit, Not-for-profit institution.

Estimated Number of Respondents: 1,200.

Estimated Burden Hours Per Respondent: 28 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 550 hours.

OMB Number: 1545–1512.

Revenue Procedure Number: Revenue Procedure 98–50 (formerly Revenue Procedure 96–61).

Type of Review: Revision.

Title: Form 1040 RS e-file Program.

Description: Revenue Procedure 98–50 information those who participate in the Electronic Filing Program for Form 1040, and Form 1040A, and Form 1040EZ, of their obligations to the Internal Revenue Service, and other participants..

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 75,000.

Estimated Burden Hours Per Respondent/Recordkeeper: 30 hours, 19 minutes (or approximately six (6) minutes per electronically filed return).

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 2,273,932 hours.

OMB Number: 1545–1513.

Revenue Procedure Number: Revenue Procedure 98–51 (formerly Revenue Procedure 96–62).

Type of Review: Revision.

Title: Form 1040 On-Line Filing Program.

Description: Revenue Procedure 98–51 information those who participate in the On-Line Filing Program for Form 1040, Form 1040A, and Form 1040EZ, of their obligations to the Internal Revenue Service, taxpayers, and other participants.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 14.

Estimated Burden Hours Per Respondent/Recordkeeper: 5,179 hours (or approximately two (2) minutes per on-line electronically-filed return).

Frequency of Response: On occasion.

Estimated Total Reporting/Recording Burden: 72,509 hours.

OMB Number: 1545–1667.

Revenue Procedure Number: Revenue Procedure 99–50.

Type of Review: Extension.

Title: Combined Information Reporting.

Description: The revenue procedure permits combined information reporting by a successor "business entity" (*i.e.*, a corporation, partnership, or sole proprietorship) in certain situations following a merger or an acquisition. The successor must file a statement with the Internal Revenue Service indicating what forms are being filed on a combined basis.

Respondents: Business or other for-profit, not-for-profit institution, farms.

Estimated Number of Respondents: 6,000.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 500 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–6733 Filed 3–17–00; 8:45 am]

BILLING CODE 4830–01–M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

[Docket No. 00–08]

Preemption Determination

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice.

SUMMARY: The Office of the Comptroller of the Currency (OCC) is publishing its response to a written request for the OCC's determination of whether federal law preempts the application of Pennsylvania laws regulating auctioneers. The OCC has determined that, if the state law applied, it would be preempted under federal law.

FOR FURTHER INFORMATION CONTACT: Mark Tenhundfeld, Assistant Director, Legislative and Regulatory Activities Division, (202) 874–5090.

SUPPLEMENTARY INFORMATION: A national bank headquartered in Pennsylvania (the Bank) uses an auction format to market and sell certificates of deposit (CDs) over the Internet. The Bank's Internet website permits visitors to link to a site on which the Bank offers potential customers the opportunity to purchase CDs that it issues and that are priced through an online auction process. Interested parties submit bids equal to or below the maximum annual percentage yield that the Bank will pay on the CDs, with the winning bidders being those submitting the lowest bids. The winning bidders then complete an application to purchase the CDs pursuant to the terms and conditions established by the Bank as posted on the auction site.

A Pennsylvania statute [1] requires that auctioneers be licensed and subjects them to examination and inspection by the state. It defines an "auction" as the offer to sell property to the members of an audience congregated for the purpose of making bids for the purchase of property in an effort by the auctioneer or apprentice auctioneer to advance the amount of the bids to obtain the highest or most favorable offer.[2]

Auctioneers are required to keep detailed records of sales of property at auction.[3] They are subject to civil and criminal penalties if they fail to obtain a license.[4] The Pennsylvania law permits either individuals or corporations to be auctioneers, thereby leading the Bank to conclude that a corporation that employs an individual auctioneer may have to be licensed both as an auctioneer and as an auction company.

The Bank has submitted a written request for the OCC's opinion on whether federal law preempts the application of the Pennsylvania statute to the Bank's online auction program. The Bank asserted that federal law authorizes it to conduct the online auction program, and that the licensing, recordkeeping, and examination requirements in the Pennsylvania auction statute impermissibly condition and burden the exercise of this federal authority. The Bank relies on the express authority of 12 U.S.C. 24(Seventh) to receive deposits, on the incidental powers clause of § 24(Seventh), and on the OCC's regulation at 12 CFR 7.1019, which authorizes a national bank to do electronically that which it may do by other means. The Bank concludes that the state law conflicts with these federal laws and violates the OCC's exclusive visitorial power to examine and supervise national banks.

Section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 [5] requires the OCC to publish notice in the **Federal Register** before issuing a final written opinion about the preemptive effect of federal law in four specified areas: Community reinvestment, consumer protection, fair lending, or the establishment of interstate branches. Section 114 also requires the OCC to publish any final opinion letter in which the OCC concludes that federal law preempts a state law in one of the four specified areas. Although it is not clear that the Pennsylvania statute under review falls within one of the four areas covered by section 114, the OCC nevertheless published a notice of the request in the **Federal Register** in light of the novelty of the question presented (namely, the applicability of state law to national banks that provide traditional financial services through electronic means),[6] and is publishing its response to the preemption request as an appendix to this notice.

As is explained in greater detail in the response, the OCC agrees that the activities in question—receiving deposits, marketing, and using electronic means to engage in permissible activities—are authorized by federal law. The OCC also agrees that the state law, if it is applied to the Bank's online auction program, would be preempted, because it would limit or condition the ability of the Bank to exercise its powers under federal law, would frustrate the purposes for which the national banking system was established, and would violate the OCC's exclusive visitorial powers.

Dated: March 14, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

Appendix

March 7, 2000.
Thomas P. Vartanian,
Fried, Frank, Harris, Shriver & Jacobson
1001 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20004–7008
Re: *Online Deposit Program*

Dear Mr. Vartanian: This responds to your letter dated December 10, 1999 (the

[1] 63 Pa. Stat. section 734 *et seq.*

[2] *Id.* at § 734.2.

[3] *Id.* at § 734.16.

[4] *Id.* at § 734.29.

[5] Pub. L. 103–328, sec. 114, 108 Stat. 2338, 2366–68 (1994), codified at 12 U.S.C. 43.

[6] 65 FR 2455 (January 14, 2000).

"Letter"), in which you requested confirmation by the Office of the Comptroller of the Currency of your view that federal law preempts a Pennsylvania statute regulating the conduct of auctions under the circumstances described in your letter. For the reasons discussed below, we conclude that federal law would preempt such a state law if it were found to apply to your client's online auction program.

Background

The bank in question ("Bank") is a national bank headquartered in Pennsylvania with offices in several other states. It markets certificates of deposit ("CDs") over the Bank's website on the Internet through an online auction program. The rate paid on those CDs is determined by bids submitted by people who participate in the auction. Each auction has a starting and ending time and identifies the dollar face amount, the term, the quantity, and the maximum annual percentage yield ("APY") of the CDs that are being offered. If, for example, the Bank offers 100 CDs at a stated maturity and face amount with a maximum APY of 8%, the 100 bids with the lowest APY equal to or below 8% will be selected as the winning bidders.

You note that Pennsylvania has a statute governing auctions, and that the statute defines "auction" as—

> [t]he offer to sell property by an auctioneer or apprentice auctioneer to the members of an audience congregated for the purpose of making bids for the purchase of property in an effort by the auctioneer or apprentice auctioneer to advance the amount of the bids to obtain the highest or most favorable offer.

63 Pa. Stat. § 734.2 (1998). This statute requires auctioneers (which includes both individuals and corporations) to be licensed by the Pennsylvania Board of Auctioneer Examiners (*id.* at § 734.3), and contemplates the payment of a license fee in connection with the filing of an application to obtain a license (*id.* at § 734.6). Under the statute, Pennsylvania auctioneers are required to keep records of sales of property at auction (*id.* at § 734.16) and are subject to examination by the state (*id.* at § 734.20). Auctioneers are required to pay examination fees which, together with licensing application fees and other fees imposed on auctioneers, must be sufficient to pay for whatever enforcement efforts are required under the Pennsylvania law (*id.* at § 734.6(b)). You suggest that these statutes may apply to the Bank's online auction program, and you request confirmation that federal law would preempt the state laws.

The OCC published a notice of your request in the **Federal Register**,[1] inviting interested parties to comment on whether federal law preempts the Pennsylvania auctioneer laws. Four comments were received in response to the notice. Three commenters opined that federal law does preempt the type of state law in question. Each of these commenters cited the authority of national banks under 12 U.S.C. § 24(Seventh) to engage in deposit-taking activities and other activities necessary to carry on the business of banking. Each also noted that federal law preempts state laws that purport to regulate an activity that is authorized by federal law. The fourth comment was submitted by the Chief Counsel of the Pennsylvania Department of Banking (Banking Department), who, after speaking with counsel to the Pennsylvania Board of State Auctioneers (the Board), stated that, in the view of the Board staff, the Pennsylvania auction laws do not apply to the Bank's online auction program. While this comment by the Banking Department, representing the views of the staff of the Board, might settle the issue in Pennsylvania for the time being, we have concluded, in light of the non-binding nature of those staff views, that it still would be useful to respond to the question you posed in order to provide an advisory opinion on the application of preemption principles when banking activities, such as the activity in question, are conducted over the Internet.

Analysis

Permissibility of the Activity

The threshold question in any preemption analysis is whether the activities in question are permissible for a national bank under federal law. If they are not, then there is no preemption issue.

There are essentially three components to the Bank's activities here. First, the Bank is engaging in an authorized banking activity—deposit-taking. Second, it is marketing one of its deposit products. Third, it is using the Internet to conduct these deposit-taking and marketing activities. Each of these activities is permissible under 12 U.S.C. 24(Seventh).

Section 24(Seventh) specifically authorizes national banks to receive deposits. Thus, a national bank need look no further than the express language of the statute for authorization to accept deposits.

Section 24(Seventh) also authorizes national banks to engage in the more general "business of banking" and activities incidental thereto. The Supreme Court has made clear that the "business of banking" authorized by section 24(Seventh) is a broad, flexible concept that allows the National Bank Act to adapt to changing times. *See NationsBank of North Carolina, N.A.* v. *Variable Annuity Life Ins. Corp.*, 513 U.S. 251, 258, n.2 (1995) ("We expressly hold that the "business of banking" is not limited to the enumerated powers in section 24 Seventh and that the Comptroller therefore has discretion to authorize activities beyond those specifically enumerated."). An activity will be deemed "incidental" to the business of banking if it is "convenient or useful in connection with the performance of" a power authorized under federal law. *Arnold Tours, Inc.* v. *Camp*, 472 F.2d 427, 432 (1st Cir. 1972). Clearly, the authority under section 24(Seventh) is sufficiently broad to permit a national bank to market its products and services. *See Franklin National Bank* v. *New York*, 347 U.S. 373, 377 (1954).

Finally, the OCC has clearly established that a permissible activity is equally authorized regardless of whether it is conducted in a traditional manner or through an electronic medium. See 12 CFR 7.1019 ("A national bank may perform, provide, or deliver through electronic means and facilities any activity, function, product, or service that it is otherwise authorized to perform, provide, or deliver.").

Thus, each of the activities that together comprise the Bank's online auction program is permissible under well-settled authority.

Preemptive Effect of Federal Law

As previously noted, at a staff level, the Board has indicated that its auction laws would not apply to the Bank's online auction program. However, given the unique nature of the Internet that enables the Bank to offer the online auction program in every state simultaneously and the possible

[1] 65 Fed. Reg. 2455 (January 14, 2000) (the Notice). As stated in the Notice, section 114 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Pub. L. 103–328, sec. 114, 108 Stat. 2338, 2366-68 (1994), codified at 12 U.S.C. § 43) requires the OCC to publish notice in the **Federal Register** before issuing a final written opinion about the preemptive effect of federal law in the areas of community reinvestment, consumer protection, fair lending, and the establishment of interstate branches. While it is not clear that the Pennsylvania statutes in question fall within one of these four areas, the OCC decided to invite comments on the issues raised in your letter given the novelty of addressing preemption in the context of national banks providing traditional financial services through electronic means.

application of other laws in other jurisdictions,[2] and in view of the non-binding nature of the communication of the staff's views, we believe it is appropriate to provide guidance on the preemptive effect of federal law in the context of state auction laws that are found to apply to auctions conducted over the Internet.[3]

We believe that a court likely would find that federal law preempts laws of the sort adopted by Pennsylvania, assuming they are found to apply to a national bank's online activities, because they would conflict with federal law authorizing the Bank to engage in the activities in question and they would violate the OCC's exclusive visitorial powers over national banks. These points are addressed in more detail below, following a brief summary of the law governing preemption and the OCC's visitorial powers.

Preemption and Visitorial Powers

When the federal government acts within the sphere of authority conferred upon it by the Constitution, federal law is paramount over, and may preempt, state law. U.S. Const. art. VI, cl. 2 (the Supremacy Clause); *Cohen* v. *Virginia*, 19 U.S. (6 Wheat.) 264, 414 (1821) (Marshall, C.J.). Federal authority over national banks stems from several constitutional sources, including the Necessary and Proper Clause and the Commerce Clause of the United States Constitution. U.S. Const. art. I, § 8, cl.3, cl. 18; *McCulloch* v. *Maryland*, 17 U.S. (4 Wheat.) 316, 409 (1819).

The United States Supreme Court has identified several bases for federal preemption of state law. First, Congress may expressly state that it intends to preempt state law. *E.g., Jones* v. *Rath Packing Co.*, 430 U.S. 519 (1977). Second, a federal statute may create a scheme of federal regulation "so pervasive as to make reasonable the inference that Congress left no room for the States to supplement it." *Rice* v. *Norman Williams Co.*, 458 U.S. 654, 659 (1982). Third, the state law may conflict with a federal law. See, *e.g.*, Franklin National Bank, supra; *Davis* v. *Elmira Savings Bank*, 161 U.S. 275 (1896). In elaborating on this third test, the Supreme Court has stated—

> federal law may be in "irreconcilable conflict" with state law. *Rice* v. *Norman Williams Co.*, 458 U. S. 654, 659 (1982). Compliance with both statutes, for example, may be a "physical impossibility," *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U. S. 132, 142–143 (1963); or, the state law may "stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." *Hines* v. *Davidowitz*, 312 U. S. 52, 67 (1941).

Barnett Bank of Marion County v. *Nelson*, 517 U.S. 25, 31 (1996). The Court in Barnett went on to state that—

> In defining the pre-emptive scope of statues and regulations granting a power to national banks, these cases [*i.e.*, national bank preemption cases] take the view that normally Congress would not want States to forbid, or to impair significantly, the exercise of a power that Congress explicitly granted. To say this is not to deprive States of the power to regulate national banks, where * * * doing so does not prevent or significantly interfere with the national bank's exercise of its powers.

517 U.S. at 33.

A conflict between a state law and federal law need not be complete in order for federal law to have preemptive effect. If a state law places limits on an unrestricted grant of authority under federal law, the state law will be preempted. See, e.g., *New York Bankers Association, Inc.* v. *Levin*, 999 F. Supp. 716 (W.D.N.Y. 1998). Moreover, federal law preempts not only state laws that purport to prohibit a national bank from engaging in an activity permissible under federal law but also state laws that condition the exercise by a national bank of its express or incidental powers. As stated in Barnett,

> * * * where Congress has not expressly conditioned the grant of "power" upon a grant of state permission, the Court has ordinarily found that no such condition applies. In *Franklin Nat. Bank*, the Court made this point explicit. It held that Congress did not intend to subject national banks' power to local restrictions, because the federal power-granting statute there in question contained "no indication that Congress [so] intended * * * as it has done by express language in several other instances."

517 U.S. at 34 (citations omitted; emphasis in original).

When reviewing the application of state laws to national banks, the Supreme Court's analysis is informed by the unique purposes for which the national banking system was created. Through the national charter, Congress has established a banking system intended to be both nationwide in scope and uniform in character.[4] As stated by the Supreme Court in *Easton* v. *Iowa*, 188 U.S. 220 (1903), federal legislation affecting national banks "has in view the erection of a system extending throughout the country, and independent, so far as the powers conferred are concerned, of state legislation which, if permitted to be applicable, might impose limitations and restrictions as various and as numerous as the states." Id. at 229. See also *Davis*, *supra*, at 283 ("This freedom from State control over a national bank's powers protects national banks from conflicting local laws unrelated to the purpose of providing the uniform, nationwide banking system that Congress intended."); *Farmers' & Merchants National Bank* v. *Dearing*, 91 U.S. 29, 33–34 (1875) ("National banks organized under [the National Bank A]ct are instruments designed to be used to aid the government in the administration of an important branch of the public service. They are means appropriate to that end. * * * Being such means, brought into existence for this purpose, and intended to be so employed, the States can exercise no control over them, nor in any wise affect their operation, except in so far as Congress may see proper to permit. Any thing beyond this is "an abuse, because it is the usurpation of power which a

[2] You note in your letter that laws similar to the Pennsylvania law have been adopted in other states. For instance, Kentucky requires a person seeking to be licensed as an auctioneer to serve two years as an apprentice and to pass an examination (Ky. Rev. Stat. § 330.070), Ohio requires an applicant to complete a course of study and serve an apprenticeship for at least twelve months during which time he or she must participate in at least twelve auctions (Ohio Rev. Code § 4707.09), and Pennsylvania requires a person to serve a two-year apprenticeship, pass an examination, and participate in at least 30 auctions (63 Pa. Stat. § 734.5). A licensed auctioneer in Pennsylvania may have only one apprentice at any one time, while in Ohio, a licensed auctioneer may have two apprentices. At least one state has passed an auction law that would purport to apply to online auctions. See the Illinois Auction License Act, Public Act 91–0603, effective January 1, 2000.

[3] This letter assumes, solely for the sake of analysis, that a given state's laws would apply to the Bank's online auction program. We note, however, that the law governing "prescriptive" jurisdiction (*i.e.*, the jurisdiction to regulate conduct, as opposed to "procedural" jurisdiction, which is the ability to summon a party into a given court) in the context of commerce conducted over the Internet is not settled. For a discussion of some of the jurisdictional issues presented by Internet commerce, see the American Bar Association's Project on Internet Jurisdiction at http://www.kentlaw.edu/cyberlaw/. By assuming for the sake of the preemption analysis that a state's laws would apply to the Bank's online auction program, we are not expressing any views on the applicability of a particular state law purporting to regulate online auctions conducted by national banks.

[4] One of the original purposes of the national banking system was to foster a stable and unitary banking and financial system. The sponsors of the national system expected that State banks would cease to exist and national banks, centrally and uniformly regulated, would replace them. See, e.g., B. Hammond, Banks and Politics in America from the Revolution to the Civil War, 724–34 (1957); P. Studenski & H. Krooss, Financial History of the United States, 154–55, 178–79 (1st ed. 1952); Hackley, Our Baffling Banking System, 52 Va. L. Rev. 565, 571–73 (1966). Subsequent developments led to the continuation of State banks. However, the original purpose that national banks would be uniformly and centrally governed continues.

single State cannot give.") (citations omitted).

The Supreme Court has consistently relied on the special federal purpose of national banks as an important reason for concluding that national bank powers normally are not limited by state law. Congress created the national bank charter to serve the purpose of providing a uniform, nationwide banking system. Through national banks, Congress intended to promote the nationwide availability of private credit and other banking services vital to economic development and expansion. As stated by the Court in Davis, *supra:*

> National banks are instrumentalities of the Federal government, created for a public purpose, and as such necessarily subject to the paramount authority of the United States. It follows that an attempt by a State to define their duties, or control the conduct of their affairs is absolutely void, wherever such attempted exercise of authority expressly conflicts with the laws of the United States, and either frustrates the purpose of the national legislation, or impairs the efficiency of these agencies of the Federal government to discharge the duties for the performance of which they were created. This freedom from State control over a national bank's powers protects national banks from conflicting local laws unrelated to the purpose of providing the uniform, nationwide banking system that Congress intended.

161 U.S. at 283. More recently, the Supreme Court, after quoting approvingly the language from Davis about national banks being instrumentalities of the federal government, went on to state that "[c]lose examination of the National Bank Act of 1864, its legislative history, and its historical context makes clear that, contrary to the suggestion of petitioners, Congress intended to facilitate what Representative Hooper termed a 'national banking system.'" *Marquette National Bank* v. *First of Omaha Corp.*, 423 U.S. 299, 314–315 (1978) (citations omitted). See also *First National Bank of San Jose* v. *California*, 262 U.S. 366, 369 (1923) (FNB San Jose) ("[A]ny attempt by a state to define [national banks'] duties or control the conduct of their affairs is void, whenever it conflicts with the laws of the United States or frustrates the purposes of the national legislation, or impairs the efficiency of the bank to discharge the duties for which it was created.").

Consistent with the goal of establishing a nationwide banking system, Congress vested the OCC with the authority to determine whether a national bank is engaging in permissible activities. Under 12 U.S.C. 484 and other federal statutes (see, e.g., 12 U.S.C. 93, 481, and 1818), the OCC has exclusive visitorial powers over national banks except as otherwise expressly provided by federal law. *Guthrie* v. *Harkness*, 199 U.S. 148 (1905); *Bank One Texas, N.A.* v. *Patterson*, No. 3:93–CV–108–G (N.D. Tex. Sept. 9, 1994), aff'd 68 F.3d 469 (5th Cir. 1995). These powers include the right to examine a bank, inspect a bank's books and records, regulate and supervise activities authorized or permitted pursuant to federal banking law, and enforce compliance with any applicable federal or state laws concerning those activities. 12 CFR 7.4000(a)(2). See also *First National Bank of Youngstown* v. *Hughes*, 6 F. 737, 740–41.

Application of Federal Law to State Statutes

State licensing laws such as the Pennsylvania auction law, to the extent that they are found to apply to the Bank's online activities, present several potential conflicts with federal law.[5]

First, the state laws that require licensing by, and the payment of a fee to, a state would be preempted because they would "stan[d] as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress." Hines, 312 U.S. at 67. Clearly, Congress intended to permit national banks to engage in, among other things, deposit-taking activities when it enacted 12 U.S.C. 24(Seventh). Congress also intended that national banks would have available to them "all such incidental powers as shall be necessary to carry on the business of banking," including the power to market the bank's products and services. See Franklin, supra. The online auction program is simply another way to engage in these activities. To the extent that a state asserts the right to restrict or condition a national bank's exercise of the federally granted powers, that state's law will be preempted. *Barnett, supra,* at 34; *Franklin, supra,* at 378; *Bank of America National Trust & Savings Ass'n* v. *Lima*, 103 F. Supp. 916, 918, 920 (D. Mass. 1952) (exercise of national bank powers is not subject to state approval; states have no authority to require national banks to obtain a license to engage in an activity permitted to them by federal law.). See also OCC Interpr. Ltr. No. 866 (Oct. 8, 1999) (state law requirements that purport to preclude national banks from soliciting trust business from customers located in states other than where the bank's main office is located would be preempted); OCC Interpr. Ltr. No. 749 (Sept. 13, 1996) (state law requiring national banks to be licensed by the state to sell annuities would be preempted); OCC Interpr. Ltr. 644 (March 24, 1994) (state registration and fee requirements imposed on mortgage lenders would be preempted).[6]

Second, state regulation of the Bank's online auction program would be inconsistent with the purpose of creating a uniform, nationwide banking system. The Internet presents financial institutions with the opportunity to offer banking products and services efficiently to anyone with access to the Internet. By so doing, the Internet greatly facilitates the operation of the nationwide banking system envisioned by Congress when it established the national bank charter. Supplanting the primary federal regulator's supervision and regulation of an activity conducted nationwide would present a significant interference with the efficient operation of the national banking system.[7]

Finally, the application by a state of its auctioneer licensing laws would violate the exclusive visitorial authority vested in the OCC. As previously noted, only the OCC may determine whether a national bank is engaging in activities permissible under federal law. See, e.g., 12 U.S.C. 484; 12 CFR 7.4000(a)(2). A state law that purports to vest this authority in a state (by, for instance, applying licensing and qualification requirements to national banks[8]) is preempted by the OCC's exclusive visitorial authority.

Conclusion

If the Pennsylvania auction laws were to apply to the Bank's online auction program, we believe that federal law would preempt the state laws. We trust that this is responsive to your inquiry. Our conclusions are based on the facts and representations made in your letter. Any material change in facts or circumstances could affect the conclusions stated in this letter.

Sincerely,

Julie L. Williams,

First Senior Deputy Comptroller and Chief Counsel.

[5] Because the activities in question do not involve the business of insurance, the unique preemption standard established under the McCarran-Ferguson Act is not at issue. 15 U.S.C. 1012. Nor are the recently enacted provisions of the Gramm-Leach-Bliley Act. Pub. L. 106–102, sec. 104 (to be codified at 15 U.S.C. 6701).

[6] We note that the exercise of permissible federal banking powers over the Internet may present preemption issues unique to the Internet context. There may be instances, beyond licensing and examination laws, where states would assert prescriptive jurisdiction (see footnote 3 for a description of "prescriptive jurisdiction"] over an activity performed via the Internet. If the debate over prescriptive jurisdiction is resolved in a way that subjects an entity engaged in commerce over the Internet to substantive requirements imposed by every state in the country, this could create a situation where the state laws collectively present such a significant impairment or interference with the activity that federal law would be found to preempt them. However, because we are faced in the instant situation with state licensing and examination laws that would be preempted according to well-established preemption principles, we need not address this issue here.

[7] While the Internet is a medium of communication available both to state banks and national banks, this does not change the fact that the Internet facilitates the operation of the "uniform, nationwide banking system that Congress intended." Davis, supra, 161 U.S. at 283.

[8] Kentucky requires a person seeking to be licensed as an auctioneer to serve two years as an apprentice and to pass an examination (Ky. Rev. Stat. § 330.070), Ohio requires an applicant to complete a course of study and serve an apprenticeship for at least twelve months during which time he or she must participate in at least twelve auctions (Ohio Rev. Code § 4707.09), and Pennsylvania requires a person to serve a two-year apprenticeship, pass an examination, and participate in at least 30 auctions (63 Pa. Stat. § 734.5). A licensed auctioneer in Pennsylvania may have only one apprentice at any one time, while in Ohio, a licensed auctioneer may have two apprentices.

[FR Doc. 00–6865 Filed 3–17–00; 8:45 am]

BILLING CODE 4840–33–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Quarterly Publication of Individuals, Who Have Chosen To Expatriate, as Required by Section 6039G

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice.

SUMMARY: This notice is a correction to the notice published in the August 11, 1998 **Federal Register** and is provided in accordance with IRC section 6039G, as amended, by the Health Insurance Portability and Accountability Act (HIPPA) of 1996. This listing contains the name of each individual losing United States citizenship (within the meaning of section 877(a)) with respect to whom the Secretary received information during the quarter ending June 30, 1998.

Last name	First name	Middle name
ABEGGLEN	JAMES	CHRISTIAN.
AIDA	MERIKO.	
AKIBA	TAKESHI.	
ALLEN-POLLOCK	BONNIE	SUE.
ARANTTA	MARIA	MARISA.
B0YCE	ALAN	ANDERSON.
BARSCH	MARIA	BENEDIKTA.
BRANN	PETER	SCOTT.
CARTER	PHILIPPE	PIERRE-FELICIEN.
CHO	FREDERICK	HYUNKOOK.
CHOI	YOUNG	HEE.
CHRISTOPHER-STICKEY	FRANCIS	ROBIN.
CULLEN	BARBARA	JEAN.
D'ARCY	JERRY	FRANCIS.
DAVIES	PETER	FREENAM.
DON PARK	DANIEL	YOUNG.
DRAPAC	JON	THOMAS.
DRAPAC-WEIDEN	LUCIA	MARIA.
FREELAND	FRED	CHARLES.
GEIPEL	GERARD	CHRISTIAN.
GLOVER-MESSER	EVA	MARIE.
GRAHAM	RICHARD	DAVID.
HALL	CHARLES	ROBERT.
HAMILL	MAURA.	
HONG	SUK	IN.
HURDSTORN	KAREN.	
IDETA	TAKESHI	ARNOLD.
IGASHI	MARIKO.	
ISAACSON	PAUL	W.
JOHNSON NEE COREMAN	ANNIE	YVONNE.
KENNY	ROBERT	ALEXANDER.
KIM	JONATHAN	KUNDO.
KIM	YOON	KOO.
KIM	EUGENE	YOUNG-SOO.
KIMOTO	ROSE	MARIE.
KING	CHRISTOPHER	CARLSON.
KOTLER	MARC	WILLIAM.
LARKIN	CAROL-ANN.	
LUCAS	NANCY	ELLEN.
MAHIA	HELLEN	WAITHERERO.
MCDONAGH	MAUREEN	ANGELA.
MORRIS	WILLIAM	WESLEY.
MYERS	MICHAEL	TODD.
NEE MITCHELL	CONSTANCE	ELLEN-CARSTENS.
NICOD	ROSE	MARIE.
PAIE	JI-EUN.	
PECARINA	MARIJAN.	
POPE	PETRELLA	THERESE.

Last name	First name	Middle name
POPE	WILLIAM.	
QUINN	ATAN.	
REESE	MANUELA	KATHY.
REN	CHENG	GANG.
RHEE	KUN	MIN.
SAID	DINA.	
SAKURAI	MITSUHIRO.	
SANTO	MASASHI.	
SCHATZ	IRENE.	
SCHREYER	LORE.	
SCHRODER	BERNARD	LOUIS.
SHEPARD	STEPHEN	MICHAEL.
SHIN	HYUNHEE	KIMBERLY.
SLATER	NOBUKO	NATASHA.
SPRADLEY	ROBERT	DOUGLAS.
TAKAHASHI	AYA.	
TAYLOR	SAMANTHA	SUE.
TUGGLE	JAMES	DOUGLAS.
UENOHARA	HIROYUKI.	
VALERIANI	DOMENICO.	
VAN ECK DUYMAER VAN TWIST	BIRGIT	BELINDA.
VARPU-YLONEN EXSCHNEIDER	NANNELI	LEA.
VON RIESENFELDER	ELIZABETH..	
WALL	JOYCE	ELLEN.
WALLER	MYONG	SUK.
WANTANABE	TAKAHIRO.	
WILJAKKALA	OLGA.	

Approved: February 29, 2000.

Doug Rogers,

Chief, Special Projects & Support Branch, International District.

[FR Doc. 00–6579 Filed 3–17–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Fiduciary Powers of Federal Savings Associations information collection package.

DATES: Submit written comments on or before May 19, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0037. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Y. Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Fiduciary Powers of Federal Savings Associations.

OMB Number: 1550–0037.

Form Number: Not applicable.

Abstract: Section 12 CFR part 550 requires Federal savings associations that want to exercise fiduciary powers to file an application containing information sufficient for adequate OTS review. Part 550 also requires Federal savings associations to keep adequate fiduciary records, including but not limited to, documentation of the establishment and termination of each fiduciary account; requires Federal Savings associations to note at least annually in the minutes of its Board of Directors' meeting the results of an audit (required at least once every calendar year) of its fiduciary activities; and requires Federal savings associations seeking to surrender their authority to exercise trust powers to file with the OTS a certified copy of the resolution of its Board of Directors evidencing that intent.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 88.

Estimated Time Per Respondent: 2.5 hours.

Estimated Total Annual Burden Hours: 216 hours.

Request for Comments: The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 14, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–6766 Filed 3–17–00; 8:45 am]

BILLING CODE 6720–01–P

Corrections

Federal Register
Vol. 65, No. 54
Monday, March 20, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[RP99-496-003]

Southern Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

Correction

In notice document 00–6183, appearing on page 13742, in the issue of Tuesday, March 14, 2000, make the following correction:

On page 13742, in the third column, the docket number is corrected to read as set forth above.

[FR Doc. C0–6183 Filed 3–17–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–58–000, et al.]

The United Illuminating Company, et al.; Electric Rate and Corporate Regulation Filings

Correction

In notice document 00–5439 beginning on page 11996 in the issue of Tuesday, March 7, 2000, make the following correction:

On page 11996, in the second column, under the headings numbered 2 and 3, and in the third column, under headings 4 and 5, the portion of each docket number reading "EC00" should read "ER00".

[FR Doc. C0–5439 Filed 3–17–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–3482–F–06]

RIN 2501–AB57

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance

Correction

In rule document 99–23016 beginning on page 50140 in the issue of Wednesday, September 15, 1999, make the following correction:

PART 200 [CORRECTED]

On page 50224, in the second column, the subpart heading for the text should read **Subpart O—Lead-Based Paint Poisoning Prevention.**

[FR Doc. C9–23016 Filed 3–17–00; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 228

[Release Nos. 33-7803; 34-42462; 35-27142; 39-2382; IC-24319 File No. S7-05-00]

RIN 3235-AH79

Rulemaking for EDGAR System

Correction

In proposed rule document 00–5045 beginning on page 11507 in the issue of Friday, March 3, 2000, make the following correction:

§228.601 [Corrected]

On page 11519, second column, amendatory instruction 2 is corrected to read as follows:

"2. By amending § 228.601, by removing exhibits (27) and (28), and by reserving exhibits (27) through (98), and removing footnote * * * * * in the exhibit table in paragraph (a), by removing paragraph (b)(27) and reserving paragraphs (b)(27) through (b)(98), and by removing paragraph (c) and Appendices A through F."

[FR Doc. C0–5045 Filed 3–17–00; 8:45 am]
BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-42493; File No. SR-OPRA-00-03]

Options Price Reporting Authority; Notice of Filing and Order Granting Accelerated Effectiveness of Amendment to OPRA Plan Adopting a Temporary Capacity Allocation Plan

Correction

In notice document 00–5757 beginning on page 12597, in the issue of Thursday, March 9, 2000, make the following correction:

On page, 12599, in the third column, in the first line, "Dated: " should be removed.

[FR Doc. C0–5757 Filed 3–17–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
March 20, 2000

Part II

Department of Housing and Urban Development

Notice of Certain Operating Cost-Adjustment Factors; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4569–N–01]

Notice of Certain Operating Cost Adjustment Factors

AGENCY: Office of the Secretary, HUD.

ACTION: Publication of Fiscal Year (FY) 2000 Operating Cost Adjustment Factors (OCAFs) for Section 8 rent adjustments at contract renewal under section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA), as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA) Projects assisted with Section 8 Housing Assistance Payments.

SUMMARY: This notice establishes factors used in rent adjustments under Section 524 of the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, and under the Low-Income Housing Preservation and Resident Homeownership Act of 1990 (LIHPRHA).

EFFECTIVE DATE: March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Department of Housing and Urban Development, Office of Multifamily Housing, Office of Business Products, 451 Seventh Street, SW, Washington, DC 20410; Telephone (202) 708–3000; (This is not a toll-free number). Hearing or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Operating Cost Adjustment Factors (OCAFs)

Various statutes provide for rents under Section 8 project-based assistance contracts to be determined using OCAFs. The legislation requiring HUD to establish OCAFs for LIHPRHA projects and projects with contract renewals under Section 524 of MAHRA is similar in wording and intent, and HUD has developed factors that will be applied to both programs. Section 524 gives HUD broad discretion in setting OCAFs. The law simply refers to "operating cost factors established by the Secretary." The one specific requirement is that application of an OCAF shall not result in a negative adjustment.

An analysis of operating cost data for FHA-insured projects showed that their expenses could be grouped into nine categories: wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, and water and sewer. States are the lowest level of geographical aggregation at which there are enough projects to permit statistical analysis. Based on an analysis of these data, HUD derived estimates of the percentage of routine operating costs that were attributable to each of these nine expense categories. Data for projects with unusually high or low expenses due to unusual circumstances were deleted from analysis. No data was available for the Western Pacific Islands, and data for Hawaii was used to generate OCAFs for these areas.

The best current measures of cost changes for the nine cost categories were selected. The only categories for which current data are available at the State level are for fuel oil, electricity, and natural gas. Current price change indices for the other six categories are only available at the national level. The Department had the choice of using dated State-level data or relatively current national data. It opted to use national data rather than data that would be two or more years older (e.g., the most current local wage data are for 1996). The data sources for the nine cost indicators selected used were as follows:

Labor Costs—Bureau of Labor Statistics (BLS).

Employment Benefit Costs—BLS Employment Cost Index.

Property Taxes—BLS Consumer Price Index, All Items Index.

Goods, Supplies, Equipment—BLS Producer Price Index, Finished Goods Less Food and Energy.

Insurance—BLS Consumer Price Index, residential insurance index.

Fuel Oil—U.S. Department of Energy, average State prices for #2 residential fuel oil (U.S. average change was used for the States with too little fuel oil consumption to have values).

Electricity—U.S. Department of Energy, "Electric Power Monthly"—October 1999, "Electric Sales and Revenue—1998."

Natural Gas—U.S. Department of Energy, "Natural Gas Monthly" average annual change (monthly data are available, but are so erratic that annual averages offer a more reliable measure).

Water and Sewer—BLS Consumer Price Index Detailed Report.

The sum of the nine cost components equals 100 percent of operating costs for purposes of OCAF calculations. To calculate the OCAFs, the selected inflation factors are multiplied by the relevant State-level operating cost percentages derived from the previously referenced analysis of FHA insured projects. For instance, if wages in Virginia comprised 50 percent of total operating cost expenses and wages increased by 4 percent from March 1998 to March 1999, the wage increase component of the Virginia OCAF for FY 2000 would be 2.0 percent (4% X 50%). This 2.0 percent would then be added to the increases for the other eight expense categories to calculate the FY 2000 OCAF for Virginia. These types of calculations were made for each State for each of the nine cost components, and are included as the Appendix to this Notice.

OCAFs are to be applied uniformly to all projects utilizing OCAFs as the method by which rents are adjusted upon expiration of the term of the contract. OCAFs are applied to project contract rent less debt service.

II. MAHRA OCAF Procedure

The Multifamily Assisted Housing Reform and Affordability Act of 1997, title V of Pub. L. 105–65 (approved October 7, 1997), 42 U.S.C. 1437f note (MAHRA) as amended by the Preserving Affordable Housing for Senior Citizens and Families into the 21st Century Act of 1999, created the Mark-to-Market Program to reduce the cost of Federal housing assistance, enhance HUD's administration of such assistance, and to ensure the continued affordability of units in certain multifamily housing projects. Section 524 of MAHRA authorizes renewal of Section 8 project-based assistance contracts for projects without Restructuring Plans under the Mark-to-Market Program, including renewals that are not eligible for Plans and those for which the owner does not request Plans. Renewals must be at rents not exceeding comparable market rents except for certain projects. For Section 8 Moderate Rehabilitation projects, other than single room occupancy projects (SROs) under the Stewart B. McKinney Homeless Assistance Act (Mckinney Act, 42 U.S.C. 11301 *et seq.*), that are eligible for renewal under section 524(b)(3) of MAHRA, the renewal rents are required to be set at the lesser of: 1) the existing rents under the expiring contract, as adjusted by the OCAF; 2) fair market rents (less any amounts allowed for tenant-purchased utilities; or 3) Comparable market rents for the market area.

III. Findings and Certifications

Environmental Impact. This issuance sets forth rate determinations and related external administrative requirements and procedures that do not constitute a development decision affecting the physical condition of specific project areas or building sites. Accordingly, under 24 CFR 50.19(c)(6), this notice is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Executive Order 13132, Federalism. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled "Federalism").

Catalog of Federal Domestic Assistance Number. The Catalog of Federal Domestic Assistance Number for this program is 14.187.

Dated: March 13, 2000.

Andrew Cuomo,

Secretary.

Appendix

FY 2000 OPERATING COST ADJUSTMENT FACTORS (OCAF) FOR RENT ADJUSTMENTS AT SECTION 8 CONTRACT RENEWAL

[In percent]

State	Total
Alabama	2.6
Alaska	2.4
Arizona	2.3
Arkansas	2.2
California	2.0
Colorado	2.4
Connecticut	2.0
Delaware	2.5
Dist. of Columbia	2.5
Florida	2.2
Georgia	2.0
Hawaii	1.3
Idaho	2.5
Illinois	1.7
Indiana	2.4
Iowa	2.2
Kansas	2.0
Kentucky	2.2
Louisiana	2.0
Maine	1.9
Maryland	2.4
Massachusetts	1.6
Michigan	2.2
Minnesota	2.0
Mississippi	2.4
Missouri	2.3
Montana	2.4
Nebraska	2.1
Nevada	2.9
New Hampshire	2.2
New Jersey	2.0
New Mexico	1.8
New York	2.0
N. Carolina	2.5
N. Dakota	2.7
Ohio	2.4
Oklahoma	2.1
Oregon	2.7
Pennsylvania	2.2
Rhode Island	1.1
S. Carolina	2.5
S. Dakota	2.1
Tennessee	2.7
Texas	2.0
Utah	2.7
Vermont	2.4
Virginia	2.2
Washington	2.4
W. Virginia	2.5
Wisconsin	2.3
Wyoming	2.5
Pacific Islands	2.1
Puerto Rico	2.4
Virgin Islands	2.0
U.S. Average	2.1

[FR Doc. 00–6727 Filed 3–17–00; 8:45 am]

BILLING CODE 4210–32–P

Federal Register

Monday,
March 20, 2000

Part III

Federal Reserve System

Department of the Treasury

12 CFR Parts 208 and 1501
Financial Subsidiaries; Interim Rule

FEDERAL RESERVE SYSTEM

12 CFR Part 208

[Regulation H; Docket No. R–1066]

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

12 CFR Part 1501

RIN 1505–AA77

Financial Subsidiaries

AGENCIES: The Department of the Treasury and the Board of Governors of the Federal Reserve System.

ACTION: Joint interim rule with request for comments.

SUMMARY: The Department of the Treasury (Treasury) and the Board of Governors of the Federal Reserve System (Board) are jointly issuing this interim rule pursuant to section 121 of the Gramm-Leach-Bliley Act (GLBA). The GLBA permits a national bank or state member bank that is among the second 50 largest insured banks to own or control a financial subsidiary only if the bank meets either the eligible debt requirement set forth in section 121 of the Act or alternative criteria established jointly by Treasury and the Board. This interim rule establishes the alternative criteria and provides that a bank meets the criteria if it has a current long-term issuer credit rating from a nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the organization.

DATES: This interim rule is effective March 14, 2000. Written comments must be submitted on or before May 15, 2000.

ADDRESSES: Comments should refer to docket number R–1066 and should be sent both: to Comparable Ratings Regulation, Office of Financial Institutions Policy, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Room SC 37, Washington, D.C. 20220, and to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Comments addressed to the Treasury Department also may be mailed electronically to *financial.institutions@do.treas.gov* or delivered to the Treasury Department mail room between the hours of 8:45 a.m. and 5:15 p.m. at the 15th Street entrance to the Treasury Building. Comments addressed to Ms. Johnson also may be mailed electronically to *regs.comments@federalreserve.gov* or delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. and, outside of those hours, to the Board's security control room. Both the Board's mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room SC 37 of the Treasury Department and in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT:

Department of the Treasury: Joan Affleck-Smith, Director, Office of Financial Institutions Policy (202/622–2740); Matthew Green, Senior Financial Analyst (202/622–2740); or Gary W. Sutton, Senior Banking Counsel (202/622–1976).

Board of Governors: Kieran J. Fallon, Senior Counsel, Legal Division (202/452–5270); or Mark S. Carey, Senior Economist, Division of Research & Statistics (202/452–2784). For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Janice Simms (202/872–4984).

SUPPLEMENTARY INFORMATION:

Background

On November 12, 1999, the President signed the GLBA, Public Law 106–102, 113 Stat. 1338, which comprehensively restructures the statutory framework that governs the financial services industry. Section 121 of the Act authorizes national banks and state member banks to acquire control of, or hold an interest in, a new type of subsidiary called a "financial subsidiary." A financial subsidiary may, with certain exceptions, engage in activities that have been determined to be financial in nature or incidental to financial activities in accordance with the GLBA, and in other activities that the parent bank is permitted to conduct directly.

In order for a national bank or state member bank to control, or hold an interest in, a financial subsidiary, the bank and each of its depository institution affiliates must be "well-capitalized" and "well-managed," as those terms are defined in the GLBA. The aggregate consolidated total assets of all financial subsidiaries of the bank also may not exceed the lesser of 45 percent of the consolidated total assets of the parent bank or $50 billion. (The $50 billion limit is to be adjusted according to an indexing mechanism established in a separate regulation to be issued jointly by Treasury and the Board.) In addition, in order to acquire control of a financial subsidiary, the bank and each of its insured depository institution affiliates must have received a "satisfactory" or better rating at its most recent examination under the Community Reinvestment Act.

In addition, if the bank is one of the 50 largest insured banks, as determined by the bank's consolidated total assets at the end of the most recent calendar year, the bank must have at least one issue of outstanding eligible debt that is rated in one of the three highest rating categories by a nationally recognized statistical rating organization (debt rating requirement). If the bank is one of the second 50 largest insured banks, the bank must meet either this debt rating requirement or such alternative criteria that the Secretary of the Treasury and the Board jointly determine by regulation to be comparable to and consistent with the purpose of the rating requirement.[1] This interim rule establishes such alternative criteria.

Description of the Interim Rule

The interim rule provides that a national bank or state member bank within the second 50 largest insured banks satisfies the alternative criteria if the bank has a current long-term issuer credit rating from a nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the rating organization. A long-term issuer credit rating is one that assesses the bank's overall capacity and willingness to pay on a timely basis its unsecured financial obligations.[2] Unlike debt ratings, an issuer credit rating does not assess the bank's ability and willingness to make payments on any individual class or issue of debt, nor does it reflect priority or preference in payment among financial obligations. Ratings organizations may issue long-term or short-term issuer credit ratings for the same bank and separate ratings for dollar-denominated and foreign currency-denominated obligations. Only long-term issuer credit ratings for dollar-denominated obligations satisfy the requirements of the rule. A long-term issuer credit rating is one that reflects the bank's ability over a period of not less than one year to fulfill its financial obligations on a timely basis.

Treasury and the Board believe that the long-term issuer credit rating required by the rule is comparable to, and consistent with the purposes of, the debt rating requirement applicable to the 50 largest insured banks. The long-term issuer credit rating assigned large banks generally is identical to the rating given the bank's senior long-term unsecured debt, where such rated debt exists. Furthermore, representatives of rating organizations have indicated that the rating given to a specific long-term unsecured financial obligation of an issuer is anchored to the issuer's long-term issuer credit rating because the latter rating exemplifies the issuer's fundamental creditworthiness over the long-term. For these reasons, Treasury and the Board believe that the long-term issuer credit rating is consistent with the purposes underlying the debt rating requirement.

The interim rule requires that the parent bank have a long-term issuer credit rating in the top three investment grade rating categories from at least one nationally recognized statistical rating organization. Standard & Poor's top three investment grade categories for long-term issuer credit ratings are AAA, AA, or A, with AAA denoting the highest rating.[3] Standard & Poor's may modify its AA or A ratings with the addition of a plus (+) or minus (−) sign to show relative standing within these rating categories. Any rating from A minus to AAA would satisfy the long-term issuer credit rating requirement; an A minus would constitute the lowest acceptable rating (in the case of Standard & Poor's). Moody's top three investment grade categories for long-term issuer credit ratings are Aaa, Aa, or A, with Aaa denoting the highest rating. Moody's likewise applies numerical modifiers of 1, 2 and 3 in the Aa and A rating categories, with 3 denoting the lowest end of the letter-rating modifiers. Any rating from A–3 to Aaa would satisfy the long-term issuer credit rating requirement; a rating of A–3 would be the lowest acceptable rating (in the case of Moody's).

Interim Effectiveness of the Rule

This interim rule is effective on March 14, 2000. Section 553 of the Administrative Procedure Act permits agencies to issue a rule without public notice and comment when the agency, for good cause, finds (and incorporates the finding and a brief statement of reasons therefor in the rule issued) that notice and public comment are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B). Section 553 also permits agencies to issue a rule without delaying its effectiveness for thirty days from publication if the agency finds good cause and publishes this finding with the rule. 5 U.S.C. 553(d)(3). In addition, section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802(b), permits federal banking agencies to issue a regulation which takes effect before the first day of a calendar quarter beginning on or after the date on which the regulations are published in final form when the agency determines for good cause (published with the regulation) that the regulation should become effective before such time.

For the reasons set forth below, Treasury and the Board find that there is good cause for issuing this interim rule without notice and public comment and without a delayed effective date. For the same reasons, Treasury and the Board find that there is good cause for the interim rule to become effective before the first day of a calendar quarter beginning on or after the date on which the regulations are published in final form.

Section 121 of the GLBA becomes effective on March 11, 2000. A national bank or state member bank that is among the second 50 largest insured banks may control a financial subsidiary or hold an interest in a financial subsidiary only if the bank meets the debt rating requirement or the alternative criteria established by this rule. To prevent any bank from being denied the opportunity to control or hold an interest in a financial subsidiary, it is in the public interest to make this interim rule effective immediately. Treasury and the Board are soliciting comments on all aspects of the interim rule and will consider those comments before the rule is finalized.

Regulatory Flexibility Act Analysis

Because no notice of proposed rulemaking is required for this interim final rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.) do not apply. In addition, the interim rule applies only to national banks and state member banks that are within the second 50 largest insured banks. Accordingly, the interim rule is not expected to have a significant economic impact on a substantial number of small entities.

Executive Order 12866 Determination

The Department of the Treasury has determined that this rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments about how to make the interim rule easier to understand, including answers to the following questions:

(1) Is the material organized in an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If not, which language requires clarification?

(4) Would a different format (with respect to the grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

List of Subjects

12 CFR Part 208

Administrative practice and procedure, Federal Reserve System, Banks.

12 CFR Part 1501

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements.

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends part 208 of Chapter II, Title 12 of the Code of Federal Regulations as follows:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for part 208 continues to read as follows:

[1] A bank does not have to satisfy the debt rating requirement or the alternative criteria established by this rule if the bank's financial subsidiaries engage in the newly authorized financial activities solely as agent and not as principal.

[2] Issuer credit ratings that are assigned to a subsidiary or affiliate of the bank, such as a subsidiary engaged in derivatives activities, do not meet the rule's requirements.

[3] Standard & Poor's also issues counterparty credit ratings, which are a form of issuer credit rating.

Authority: 12 U.S.C. 24, 36, 92a, 93a, 248(a), 248(c), 321–338a, 371d, 461, 481–486, 601, 611, 1814, 1816, 1818, 1820(d)(9), 1823(j), 1828(o), 1831, 1831o, 1831p–1, 1831r–1, 1831w, 1835a, 1882, 2901–2907, 3105, 3310, 3331–3351, and 3906–3909; 15 U.S.C. 78b, 78l(b), 78l(g), 78l(i), 78o–4(c)(5), 78q, 78q–1, and 78w; 31 U.S.C. 5318; 42 U.S.C. 4012a, 4104a, 4104b, 4106 and 4128.

2. Section 208.71 is amended by adding a new paragraph (c) to read as follows:

§ 208.71 What are the requirements to invest in or control a financial subsidiary?

* * * * *

(c) *Alternative requirement.* A state member bank satisfies the alternative criteria referenced in paragraph (b)(1)(ii) of this section if the bank has a current long-term issuer credit rating from at least one nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the organization.

3. Section 208.77 is amended by redesignating paragraphs (e) and (f) as paragraphs (f) and (g), respectively, and adding a new paragraph (e) to read as follows:

§ 208.77 Definitions.

* * * * *

(e) *Long-term issuer credit rating.* The term "long-term issuer credit rating" means a written opinion issued by a nationally recognized statistical rating organization of the bank's overall capacity and willingness to pay on a timely basis its unsecured, dollar-denominated financial obligations maturing in not less than one year.

* * * * *

By order of the Board of Governors of the Federal Reserve System, March 14, 2000.

Jennifer J. Johnson,

Secretary of the Board.

Department of the Treasury

12 CFR Chapter XV

Authority and Issuance

For the reasons set forth in the preamble, the Department of the Treasury amends part 1501 of Chapter XV of Title 12 of the Code of Federal Regulations as follows:

PART 1501—FINANCIAL SUBSIDIARIES

1. The authority citation for part 1501 continues to read as follows:

Authority: Section 5136A of the Revised Statutes of the United States (12 U.S.C. 24a).

2. A new § 1501.2 is added to read as follows:

§ 1501.2 Comparable ratings requirement for national banks among the second 50 largest insured banks.

(a) *Scope and purpose.* Section 5136A of the Revised Statutes permits a national bank that is within the second 50 largest insured banks to own or control a financial subsidiary only if, among other requirements, the bank satisfies the eligible debt requirement set forth in section 5136A or an alternative criteria jointly established by the Secretary of the Treasury and the Board of Governors of the Federal Reserve System. This section establishes the alternative criteria that national banks among the second 50 largest insured banks may meet, which criteria is comparable to and consistent with the purposes of the eligible debt requirement established by section 5136A.

(b) *Alternative criteria.* A national bank satisfies the alternative criteria referenced in Section 5136A(a)(2)(E) of the Revised Statutes (12 U.S.C. 24a) and 12 CFR 5.39(g)(3) if the bank has a current long-term issuer credit rating from at least one nationally recognized statistical rating organization that is within the three highest investment grade rating categories used by the organization.

(c) *Definition of long-term issuer credit rating.* A '*long-term issuer credit rating*' is a written opinion issued by a nationally recognized statistical rating organization of the bank's overall capacity and willingness to pay on a timely basis its unsecured, dollar-denominated financial obligations maturing in not less than one year.

Dated: March 14, 2000.

Gregory A. Baer,

Assistant Secretary for Financial Institutions, Department of the Treasury.

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Vol. 65, No. 54

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Federal Register/Code of Federal Regulations	
General Information, indexes and other finding aids	**202–523–5227**
Laws	**523–5227**
Presidential Documents	
Executive orders and proclamations	**523–5227**
The United States Government Manual	**523–5227**
Other Services	
Electronic and on-line services (voice)	**523–4534**
Privacy Act Compilation	**523–3187**
Public Laws Update Service (numbers, dates, etc.)	**523–6641**
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FEDERAL REGISTER PAGES AND DATE, MARCH

10931–11196	1
11197–11454	2
11455–11734	3
11735–11858	6
11859–12060	7
12061–12426	8
12427–12904	9
12905–13234	10
13235–13658	13
13659–13864	14
13865–14206	15
14207–14430	16
14431–14780	17
14781–15052	20

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7276 11197
7277 11199
7278 11455
7279 11733
7280 12903

Executive Orders:
12170 (See Notice of March 13, 2000) 13863
12957 (Continued by Notice of March 13, 2000) 13863
12959 (See Notice of March 13, 2000) 13863
13059 (See Notice of March 13, 2000) 13863
13146 11201
13147 13233

Administrative Orders:
Presidential Determinations:
No. 2000-15 of February 24, 2000 10931
Notices:
March 13, 2000 13863

5 CFR

213 14431
315 14431
335 14431
792 13659

Proposed Rules:
3 14477
213 14477
315 14477

7 CFR

2 12427
205 13512
210 12429
215 12429
220 12429
225 12429
226 12429
301 11203
457 11457
600 14781
601 14781
761 14432
762 14432
993 12061
955 12442
1421 13865
1427 13865
1464 10933
1710 ..... 14207, 14785
1721 10933
3019 14406

Proposed Rules:
6 14478
20 11483
27 10979
28 ..... 10979, 12140
29 13915
57 14652
97 13917
201 12952
360 14926
1140 10981
1160 14484
1205 12146
1210 14485
1306 12141
1307 12141
1309 12141
1710 12952
1717 12952
1718 12952

8 CFR

212 14774
214 14774
248 14774
278A 14774

9 CFR

78 12064

Proposed Rules:
71 11485
77 ..... 11485, 11912
78 11485
93 12486
98 12486
113 12151
130 12486
317 14486
318 ..... 14486, 14489
319 ..... 144867, 14489
327 14489
381 14486
590 11486

10 CFR

72 ..... 11458, 12444, 14790
170 11204
600 14406

Proposed Rules:
21 11488
50 11488
52 11488
54 11488
100 11488
430 14128
431 10984
960 11755
963 11755
Ch. XVIII 13700

12 CFR

5 12905
204 12916
208 ..... 14810, 15050
225 ..... 14433, 14440
340 14816
724 10933

745.....10933
925.....13866
950.....13866
Ch. IX.....13663
1510.....12064, 14819, 15050

Proposed Rules:
3.....12320
208.....12320
225.....12320
325.....12320
567.....12320
614.....14491
620.....14494
709.....11250
716.....10988
741.....10988
1750.....13251

13 CFR

Proposed Rules:
124.....12955

14 CFR

25.....13666
39.....10934, 10937, 10938, 11204, 11459, 11859, 11861, 12071, 12072, 12073, 12075, 12077, 12080, 12081, 12082, 12084, 12085, 12460, 12462, 12463, 13668, 13871, 13875, 13877, 14207, 14209, 14822, 14826, 14827, 14831, 14834, 14838, 14844, 14846, 14847, 14849, 14852
71.....11369, 11461, 11866, 12630, 12917, 12918, 14344, 14855, 14856, 14857
95.....14442
97.....13669, 13671, 13673
1260.....14406

Proposed Rules:
25.....13703
39.....11006, 11505, 11940, 11942, 12489, 12957, 13251, 13919, 13921, 13923, 14216, 14218
71.....12153, 12957, 13704, 13705, 13707, 14497
255.....11009

15 CFR

14.....14406
734.....12919
736.....14858
738.....12919, 14857
740.....12919, 14857
742.....12919, 14857
743.....12919
744.....12919, 14444
748.....12919
756.....14857, 14861
762.....14858
766.....14862
770.....14857
774.....12919, 13879, 14862

16 CFR

1615.....12924
1616.....12924
1630.....12929
1631.....12929
1632.....12935

Proposed Rules:
307.....11944
312.....11947
313.....11174

17 CFR

15.....14452
16.....14452
17.....14452
1.....12466
4.....10939, 12938
200.....12469
240.....13235
242.....13235

Proposed Rules:
4.....11253, 12318
228.....11507, 15043
229.....11507
230.....11507
232.....11507
239.....11507
240.....11507
248.....12354
249.....11507
250.....11507
259.....11507
260.....11507
269.....11507
270.....11507
274.....11507

18 CFR

35.....12088
157.....11461, 12115

19 CFR

12.....12470
24.....13880
111.....13880
178.....13880

20 CFR

220.....14458
322.....14459
404.....11866
416.....11866

21 CFR

20.....11881
101.....11205
176.....13675
524.....13904
558.....11888
640.....13678
868.....11464
870.....11465
1301.....13235
1308.....13235

Proposed Rules:
101.....14219
314.....12154

22 CFR

22.....14211
23.....14211
41.....14768
51.....14211
139.....14764
145.....14406
226.....14406

Proposed Rules:
22.....13253

23 CFR

1340.....13679

24 CFR

200.....15043
905.....14422

Proposed Rules:
81.....12632
990.....11525

25 CFR

290.....14461

26 CFR

1.....11205, 11467, 12471
301.....11211, 11215
602.....11205, 11211, 11215

Proposed Rules:
1.....11012, 11269
301.....11271, 11272

27 CFR

4.....11889
5.....11889
7.....11889
16.....11889

Proposed Rules:
4.....12490

28 CFR

70.....14406

29 CFR

95.....14406
4022.....14752, 14753
4044.....13905, 14752
4050.....14752

Proposed Rules:
1614.....11019
1910.....11948, 13254

30 CFR

202.....11467
206.....11467, 14022
250.....14469

Proposed Rules:
914.....11950, 12492

31 CFR

103.....13683

32 CFR

22.....14406
32.....14406
668.....13906

33 CFR

26.....14863
95.....14223
110.....11892
117.....11893, 12943
127.....10943
140.....14226
141.....14226
142.....14226
143.....14226
144.....14226
145.....14226
146.....14226
147.....14226
154.....10943
155.....10943, 14470
159.....10943
161.....14863
164.....10943
165.....14864
167.....12944
177.....14223
183.....10943

Proposed Rules:
100.....11274, 13926, 14498
110.....13926, 14498
165.....13926, 14498, 14501, 14502
175.....11410
177.....11410
179.....11410
181.....11410
183.....11410

34 CFR

74.....14406
1100.....11894

36 CFR

Ch. XV.....14760
701.....11735, 11736
1210.....14406

Proposed Rules:
212.....11680
261.....11680
295.....11680
1190.....12493
1191.....12493

37 CFR

1.....14864

Proposed Rules:
201.....14227, 14505

38 CFR

3.....12116
19.....14471
20.....14471
21.....12117, 13893

Proposed Rules:
3.....13254

39 CFR

111.....12946

Proposed Rules:
20.....11023
111.....13258
913.....14229
952.....13707

40 CFR

30.....14406
51.....11222
52.....10944, 11468, 12118, 12472, 12474, 12476, 12481, 12948, 13239, 13694, 14212, 14873
60.....13242
63.....11231
68.....13243
86.....11898
136.....14344
141.....11372
148.....14472
180.....10946, 11234, 11243, 11736, 12122, 12129
261.....14472
262.....12378
268.....14472
271.....14472
300.....13697, 14475
302.....14472
445.....14344

Proposed Rules:
51.....11024
52.....11027, 11275, 11524, 12494, 12495, 12499, 12958, 13260, 13709, 14506, 14510, 14930
63.....11278
81.....14510
141.....11372

438.....11755
503.....11278

42 CFR

405.....13911
410.....13911

Proposed Rules:
410.....13082
493.....14510

43 CFR

12.....14406
3500.....11475

45 CFR

74.....14406
612.....11740
613.....11740

46 CFR

28.....10943
30.....10943
32.....10943
34.....10943
35.....10943
38.....10943
39.....10943
54.....10943
56.....10943
58.....10943
61.....10943
63.....10943
76.....10943
77.....10943
78.....10943
91.....11904
92.....10943
95.....10943
96.....10943
97.....10943
105.....10943
108.....10943
109.....10943
110.....10943
111.....10943
114.....10943
115.....11904
119.....10943
125.....10943
132.....11904
133.....11904
134.....11904
151.....10943
153.....10943
154.....10943
160.....10943
161.....10943
162.....10943
163.....10943
164.....10943
170.....10943
174.....10943
175.....10943
182.....10943
189.....11904
190.....10943
193.....10943
195.....10943
199.....10943, 11904

Proposed Rules:
2.....11410
10.....11410
15.....11410
24.....11410
25.....11410
26.....11410
28.....11410
30.....11410
70.....11410
90.....11410
114.....11410
169.....11410
175.....11410
188.....11410
199.....11410

47 CFR

1.....14476
24.....14213
27.....12483
54.....12135
73.....11476, 11477, 11750, 13250
76.....12135

Proposed Rules:
1.....13933
2.....14230
26.....14230
27.....14230
54.....13933
61.....13933
69.....13933
73.....11537, 11538, 11539, 11540, 11541, 11955, 12155, 13260, 13261

48 CFR

Ch. 2.....14380
Ch. 5.....11246
202.....14397
204.....14397
207.....14397
208.....14397, 14400
212.....14400
222.....14397, 14402
244.....14400
247.....14400
252.....14397, 14400, 14402
1806.....12484
1808.....12484
1811.....12484
1813.....12484
1815.....12484
1825.....12484
1835.....12484
1837.....12484
1842.....12484
1848.....12484
1851.....12484
2409.....12950

Proposed Rules:
Ch. 9.....13416

49 CFR

19.....14406
193.....10950
385.....11904
571.....11751
572.....10961

Proposed Rules:
Ch I.....11541
40.....13261
171.....11028
172.....11028
173.....11028
174.....11028
175.....11028
176.....11028
177.....11028
178.....11028
179.....11028
180.....11028

50 CFR

17.....14876, 14886, 14896
300.....14907
648.....11478, 11909
660.....11480
622.....12136
679.....10978, 11247, 11481, 11909, 12137, 12138, 13698, 14918, 14924

Proposed Rules:
16.....11756
17.....12155, 12181, 13262, 13935, 14513, 14931, 14935
216.....11542
223.....12959
224.....12959, 13935
300.....13284
600.....11956
622.....11028, 14518
648.....11029, 11956, 14519
679.....11756, 11973, 12500

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 19, 2000

TRANSPORTATION DEPARTMENT
Surface Transportation Board
Motor carriers:
Motor passenger intra-corporate family transactions; class exemption; published 2-18-00¶

RULES GOING INTO EFFECT MARCH 20, 2000

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Tomatoes grown in—
Florida; published 2-18-00
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Poultry improvement:
National Poultry Improvement Plan and auxiliary provisions—
Plan participants and participating flocks; new program classifications and new or modified sampling and testing procedures; published 2-17-00
AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meat and poultry inspection:
Sodium diacetate, sodium acetate, sodium lactate and potassium lactate; use as food additives; published 1-20-00
COMMERCE DEPARTMENT
Export Administration Bureau
Export administration regulations:
Administrative enforcement proceedings; published 3-20-00
Export administrations regulations:
Editorial clarifications and revisions; published 3-20-00
ENVIRONMENTAL PROTECTION AGENCY
Air pollution control; new motor vehicles and engines:
Heavy-duty engines and light-duty vehicles and trucks; test procedures; and gaseous fueled vehicles and engines; emission standard provisions; published 2-18-00
Air quality implementation plans; approval and promulgation; various States:
Florida; published 1-19-00
Missouri; published 2-17-00
Nebraska; published 1-20-00
Tennessee; published 1-19-00
Air quality implementation plans; √A√approval and promulgation; various States; air quality planning purposes; designation of areas:
Indiana; published 1-19-00
Hazardous waste program authorizations:
North Dakota; published 1-19-00
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; published 1-19-00
National priorities list update; published 1-19-00
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Texas; published 2-16-00
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Adhesive coatings and components and paper and paperboard components—
2-acrylamido-2-methyl-propanesulfonic acid, homopolymer, sodium salt; published 2-18-00
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Alexander Schleicher Segelflugzeugbau; published 3-1-00
McDonnell Douglas; published 3-3-00
Short Brothers plc; published 2-1-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Upland cotton; official color grade determination; comments due by 3-31-00; published 3-1-00
Raisins produced from grapes grown in—
California; comments due by 3-31-00; published 1-31-00
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Canine and equine semen from Canada; comments due by 3-27-00; published 1-26-00
AGRICULTURE DEPARTMENT
Forest Service
Alaska National Interest Lands Conservation Act:
Title VII implementation (subsistence priority)
Kenai Peninsula determination; comments due by 3-31-00; published 2-22-00
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; subsistence taking; comments due by 3-27-00; published 2-2-00
COMMERCE DEPARTMENT
Anticybersquatting Consumer Protection Act; abusive domain registrations involving personal names; resolution issues; comments due by 3-30-00; published 2-29-00
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Deep-sea red crab; comments due by 3-31-00; published 3-1-00
Deep-sea red crab; correction; comments due by 3-31-00; published 3-17-00
DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00
ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Energy conservation:
Weatherization assistance program for low-income persons; comments due by 3-27-00; published 1-26-00
ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Essential-use allowances ; allocation; comments due by 3-27-00; published 2-25-00
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Georgia; comments due by 3-27-00; published 2-25-00
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 3-29-00; published 3-14-00
New Mexico; comments due by 3-29-00; published 2-28-00
Hazardous waste program authorizations:
Louisiana; comments due by 3-29-00; published 2-28-00
Missouri; comments due by 3-29-00; published 2-28-00
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Local exchange carriers, low-volume long distance users, and Federal-State Joint Board on Universal Service—
Access charge reform and price cap performance review; comments due by 3-30-00; published 3-15-00
Radio stations; table of assignments:

Alabama and Florida; comments due by 3-27-00; published 2-16-00
Texas; comments due by 3-27-00; published 2-16-00
Television broadcasting:
Broadcast licensees; public interest obligations; comments due by 3-27-00; published 1-26-00
FEDERAL DEPOSIT INSURANCE CORPORATION
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00
FEDERAL RESERVE SYSTEM
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00
FEDERAL TRADE COMMISSION
Consumer financial information; privacy requirements; comments due by 3-31-00; published 3-1-00
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00
INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act:
Fish and wildlife resources on public lands; preference for subsistence use—
Kenai Peninsula; comments due by 3-31-00; published 2-22-00
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; subsistence taking; comments due by 3-27-00; published 2-2-00
Endangered and threatened species:
Columbian sharp-tailed grouse; status review; comments due by 3-27-00; published 1-24-00
Tidewater goby; comments due by 3-31-00; published 2-15-00
LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 3-31-00; published 3-17-00
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00
NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Consumer financial information; privacy requirements; comments due by 3-31-00; published 3-1-00
PERSONNEL MANAGEMENT OFFICE
Absence and leave:
Sick leave for family care purposes; comments due by 3-27-00; published 2-9-00
Prevailing rate systems; comments due by 3-30-00; published 2-29-00
POSTAL SERVICE
International Mail Manual:
International surface mail; postal rate changes; comments due by 3-31-00; published 3-1-00
SECURITIES AND EXCHANGE COMMISSION
Practice and procedure:
Market information fees and revenues; public dissemination; comments due by 3-31-00; published 12-17-99
Privacy of Consumer Financial Information (Regulation S-P); comments due by 3-31-00; published 3-8-00
Securities:
Selective disclosure and insider trading; comments due by 3-29-00; published 12-28-99
SMALL BUSINESS ADMINISTRATION
Small business size standards:
Compliance with other agency programs; comments due by 3-27-00; published 1-26-00
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; comments due by 3-27-00; published 1-26-00
Airbus; comments due by 3-27-00; published 2-24-00
Alexander Schleicher Segelflugzeugbau; comments due by 3-31-00; published 3-1-00
Empresa Brasileira de Aeronautica S.A.; comments due by 3-27-00; published 2-24-00
Eurocopter Deutschland GMBH; comments due by 3-27-00; published 1-25-00
Airworthiness standards:
Special conditions—
McDonnell Douglas Model MD-10-10/10F and MD10-30/30F airplanes; comments due by 3-27-00; published 2-25-00
Transport airplane fuel tank system design review, flammability reduction, and maintenance and inspection requirements; comments due by 3-27-00; published 2-16-00
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Compatibility with International Atomic Energy Agency regulations; comments due by 3-29-00; published 12-28-99
TREASURY DEPARTMENT
Comptroller of the Currency
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00
TREASURY DEPARTMENT
Customs Service
Country of origin marking; comments due by 3-27-00; published 1-26-00
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Source of compensation for labor or personal services; comments due by 3-29-00; published 1-21-00
Procedure and administration:
Combat zone service and Presidentially declared disaster; tax-related deadline relief; comments due by 3-30-00; published 12-30-99
TREASURY DEPARTMENT
Thrift Supervision Office
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

LIST OF PUBLIC LAWS

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H.R. 3557/P.L. 106–175
To authorize the President to award a gold medal on behalf of the Congress to John Cardinal O'Connor, Archbishop of New York, in recognition of his accomplishments as a priest, a chaplain, and a humanitarian. (Mar. 5, 2000; 114 Stat. 21)

H.R. 149/P.L. 106–176
Omnibus Parks Technical Corrections Act of 2000 (Mar. 10, 2000; 114 Stat. 23)

H.R. 764/P.L. 106–177
To reduce the incidence of child abuse and neglect, and for other purposes. (Mar. 10, 2000; 114 Stat. 35)

H.R. 1883/P.L. 106–178
Iran Nonproliferation Act of 2000 (Mar. 14, 2000; 114 Stat. 38)

S. 613/P.L. 106–179
Indian Tribal Economic Development and Contract Encouragement Act of 2000 (Mar. 14, 2000; 114 Stat. 46)

Last List March 16, 2000

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
***4**	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
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1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
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210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
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1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
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1940–1949	(869–038–00019–9)	34.00	Jan. 1, 1999
1950–1999	(869–042–00020–0)	38.00	Jan. 1, 2000
2000–End	(869–042–00021–8)	31.00	Jan. 1, 2000
8	(869–038–00022–9)	36.00	Jan. 1, 1999
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–042–00031–5)	22.00	Jan. 1, 2000
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
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600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–042–00041–2)	25.00	Jan. 1, 2000
15 Parts:			
0–299	(869–042–00042–1)	28.00	Jan. 1, 2000
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	50.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441–1.500	(869-038-00082-2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200-End	(869-038-00097-1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869-038-00098-9)	39.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0-99	(869-038-00100-4)	28.00	July 1, 1999
100-499	(869-038-00101-2)	13.00	July 1, 1999
500-899	(869-038-00102-1)	40.00	[8] July 1, 1999
900-1899	(869-038-00103-9)	21.00	July 1, 1999
1900-1910 (§§ 1900 to 1910.999)	(869-038-00104-7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869-038-00105-5)	28.00	July 1, 1999
1911-1925	(869-038-00106-3)	18.00	July 1, 1999
1926	(869-038-00107-1)	30.00	July 1, 1999
1927-End	(869-038-00108-0)	43.00	July 1, 1999
30 Parts:			
1-199	(869-038-00109-8)	35.00	July 1, 1999
200-699	(869-038-00110-1)	30.00	July 1, 1999
700-End	(869-038-00111-0)	35.00	July 1, 1999
31 Parts:			
0-199	(869-038-00112-8)	21.00	July 1, 1999
200-End	(869-038-00113-6)	48.00	July 1, 1999
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-038-00114-4)	46.00	July 1, 1999
191-399	(869-038-00115-2)	55.00	July 1, 1999
400-629	(869-038-00116-1)	32.00	July 1, 1999
630-699	(869-038-00117-9)	23.00	July 1, 1999
700-799	(869-038-00118-7)	27.00	July 1, 1999
800-End	(869-038-00119-5)	27.00	July 1, 1999
33 Parts:			
1-124	(869-038-00120-9)	32.00	July 1, 1999
125-199	(869-038-00121-7)	41.00	July 1, 1999
200-End	(869-038-00122-5)	33.00	July 1, 1999
34 Parts:			
1-299	(869-038-00123-3)	28.00	July 1, 1999
300-399	(869-038-00124-1)	25.00	July 1, 1999
400-End	(869-038-00125-0)	46.00	July 1, 1999
35	(869-038-00126-8)	14.00	[8] July 1, 1999
36 Parts			
1-199	(869-038-00127-6)	21.00	July 1, 1999
200-299	(869-038-00128-4)	23.00	July 1, 1999
300-End	(869-038-00129-2)	38.00	July 1, 1999
37	(869-038-00130-6)	29.00	July 1, 1999
38 Parts:			
0-17	(869-038-00131-4)	37.00	July 1, 1999
18-End	(869-038-00132-2)	41.00	July 1, 1999
39	(869-038-00133-1)	24.00	July 1, 1999
40 Parts:			
1-49	(869-038-00134-9)	33.00	July 1, 1999
50-51	(869-038-00135-7)	25.00	July 1, 1999
52 (52.01-52.1018)	(869-038-00136-5)	33.00	July 1, 1999
52 (52.1019-End)	(869-038-00137-3)	37.00	July 1, 1999
53-59	(869-038-00138-1)	19.00	July 1, 1999
60	(869-038-00139-0)	59.00	July 1, 1999
61-62	(869-038-00140-3)	19.00	July 1, 1999
63 (63.1-63.1119)	(869-038-00141-1)	58.00	July 1, 1999
63 (63.1200-End)	(869-038-00142-0)	36.00	July 1, 1999
64-71	(869-038-00143-8)	11.00	July 1, 1999
72-80	(869-038-00144-6)	41.00	July 1, 1999
81-85	(869-038-00145-4)	33.00	July 1, 1999
86	(869-038-00146-2)	59.00	July 1, 1999
87-135	(869-038-00146-1)	53.00	July 1, 1999
136-149	(869-038-00148-9)	40.00	July 1, 1999
150-189	(869-038-00149-7)	35.00	July 1, 1999
190-259	(869-038-00150-1)	23.00	July 1, 1999
260-265	(869-038-00151-9)	32.00	July 1, 1999
266-299	(869-038-00152-7)	33.00	July 1, 1999
300-399	(869-038-00153-5)	26.00	July 1, 1999
400-424	(869-038-00154-3)	34.00	July 1, 1999
425-699	(869-038-00155-1)	44.00	July 1, 1999
700-789	(869-038-00156-0)	42.00	July 1, 1999
790-End	(869-038-00157-8)	23.00	July 1, 1999
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
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10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-038-00158-6)	14.00	July 1, 1999
101	(869-038-00159-4)	39.00	July 1, 1999
102-200	(869-038-00160-8)	16.00	July 1, 1999
201-End	(869-038-00161-6)	15.00	July 1, 1999
42 Parts:			
1-399	(869-038-00162-4)	36.00	Oct. 1, 1999
400-429	(869-038-00163-2)	44.00	Oct. 1, 1999
430-End	(869-038-00164-1)	54.00	Oct. 1, 1999
43 Parts:			
1-999	(869-038-00165-9)	32.00	Oct. 1, 1999
1000-end	(869-038-00166-7)	47.00	Oct. 1, 1999
44	(869-038-00167-5)	28.00	Oct. 1, 1999
45 Parts:			
1-199	(869-038-00168-3)	33.00	Oct. 1, 1999
200-499	(869-038-00169-1)	16.00	Oct. 1, 1999
500-1199	(869-038-00170-5)	30.00	Oct. 1, 1999
1200-End	(869-038-00171-3)	40.00	Oct. 1, 1999
46 Parts:			
1-40	(869-038-00172-1)	27.00	Oct. 1, 1999
41-69	(869-038-00173-0)	23.00	Oct. 1, 1999
*70-89	(869-038-00174-8)	8.00	Oct. 1, 1999
90-139	(869-038-00175-6)	26.00	Oct. 1, 1999
140-155	(869-038-00176-4)	15.00	Oct. 1, 1999
156-165	(869-038-00177-2)	21.00	Oct. 1, 1999
166-199	(869-038-00178-1)	27.00	Oct. 1, 1999
200-499	(869-038-00179-9)	23.00	Oct. 1, 1999
500-End	(869-038-00180-2)	15.00	Oct. 1, 1999
47 Parts:			
0-19	(869-038-00181-1)	39.00	Oct. 1, 1999
20-39	(869-038-00182-9)	26.00	Oct. 1, 1999
40-69	(869-038-00183-7)	26.00	Oct. 1, 1999
70-79	(869-038-00184-5)	39.00	Oct. 1, 1999
80-End	(869-038-00185-3)	40.00	Oct. 1, 1999
48 Chapters:			
1 (Parts 1-51)	(869-038-00186-1)	55.00	Oct. 1, 1999
1 (Parts 52-99)	(869-038-00187-0)	30.00	Oct. 1, 1999
2 (Parts 201-299)	(869-038-00188-8)	36.00	Oct. 1, 1999
3-6	(869-038-00189-6)	27.00	Oct. 1, 1999
7-14	(869-038-00190-0)	35.00	Oct. 1, 1999
15-28	(869-038-00191-8)	36.00	Oct. 1, 1999
29-End	(869-038-00192-6)	25.00	Oct. 1, 1999
49 Parts:			
1-99	(869-038-00193-4)	34.00	Oct. 1, 1999
100-185	(869-038-00194-2)	53.00	Oct. 1, 1999
186-199	(869-038-00195-1)	13.00	Oct. 1, 1999
200-399	(869-038-00196-9)	53.00	Oct. 1, 1999
400-999	(869-038-00197-7)	57.00	Oct. 1, 1999
1000-1199	(869-038-00198-5)	17.00	Oct. 1, 1999
1200-End	(869-038-00199-3)	14.00	Oct. 1, 1999
50 Parts:			
1-199	(869-038-00200-1)	43.00	Oct. 1, 1999
200-599	(869-038-00201-9)	22.00	Oct. 1, 1999

Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

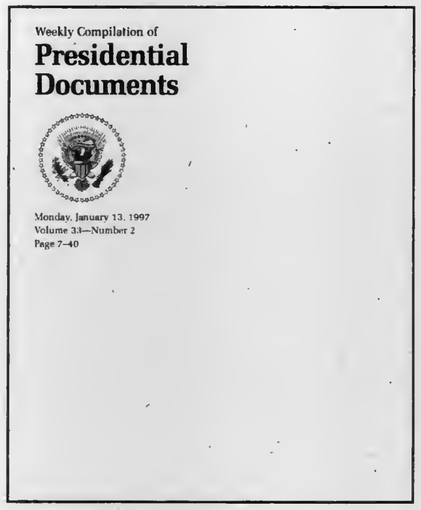
[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

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Contents

Federal Register
Vol. 65, No. 55
Tuesday, March 21, 2000

Agency for Healthcare Research and Quality
NOTICES
Meetings:
Health Services Research Initial Review Group, 15163

Agency for Toxic Substances and Disease Registry
NOTICES
Hazardous substances releases and facilities:
Public health assessments and effects; list, 15163–15164

Agriculture Department
See Food and Nutrition Service
See Food Safety and Inspection Service
See Forest Service

Alcohol, Tobacco and Firearms Bureau
RULES
Alcohol, tobacco, and other excise taxes:
Tobacco products—
Cigarette papers and tubes; tax increase; correction, 15058
Tobacco product importers qualification and technical miscellaneous amendmentss; correction, 15058–15059
PROPOSED RULES
Alcohol, tobacco, and other excise taxes:
Tobacco products—
Importation restrictions, markings, minimum manufacturing requirements, and penalty provisions, 15115

Antitrust Division
NOTICES
National cooperative research notifications:
Aerospace Vehicle Systems Institute, 15174
Application Service Provider Industry Consortium, Inc., 15174–15175
Enterprise Computer Telephony Forum, 15175
J Consortium, Inc., 15175–15176
MEDAL, L.P., 15176
National Center for Manufacturing Sciences, Inc., 15176
Portland Cement Association, 15176–15177
Standard MEMS, 15177
Telemanagement Forum, 15177
United Defense, L.P., 15177–15178

Army Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15136
Meetings:
Scientific Advisory Board, 15136–15137

Coast Guard
PROPOSED RULES
Meetings:
Commercial fishing vessel safety listening sessions
[Editorial Note: This document, published at 65 FR 14332 in the Federal Register of March 16, 2000, was incorrectly identified in that issue's table of contents.]

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Dominican Republic, 15132–15133

Comptroller of the Currency
PROPOSED RULES
Independent trust banks; assessment formula, 15111–15113

Consumer Product Safety Commission
NOTICES
Natural rubber latex (NRL); request for petition to declare NRL a strong sensitizer, 15133

Corporation for National and Community Service
NOTICES
Grants and cooperative agreements; availability, etc.:
AmeriCorps* VISTA programs—
Nationwide grants, 15133–15136

Defense Department
See Army Department
See Defense Logistics Agency
See Navy Department

Defense Logistics Agency
NOTICES
Grants and cooperative agreements; availability, etc.:
Procurement technical assistance centers, 15137–15138

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Organichem Corp., 15178

Education Department
PROPOSED RULES
Postsecondary education:
Developing Hispanic-Serving Institutions Program; Strengthening Institutions Program; Strengthening Historically Black Colleges and Universities Program, 15115–15118
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15138
Submission for OMB review; comment request, 15138–15139
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program, 15139–15140
Meetings:
Student Financial Assistance Advisory Committee, 15140–15141

Energy Department
See Energy Information Administration
See Federal Energy Regulatory Commission

NOTICES
Atomic energy agreements; subsequent arrangements, 15141
Grants and cooperative agreements; availability, etc.:
Petroleum Industries Vision of the Future, 15141–15142

Energy Information Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15142

Environmental Protection Agency
RULES
Reporting and recordkeeping requirements, 15090–15091
Water pollution; effluent guidelines for point source categories:
Builders' paper and board mills, 15091–15092
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15149–15150
Reporting and recordkeeping requirements, 15150–15151
Submission for OMB review; comment request, 15151–15152
Confidential business information and data transfer, 15152–15153

Equal Employment Opportunity Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15153–15154

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
PROPOSED RULES
Air carrier certification and operations:
Aviation security screening companies
Meetings, 15113–15115
NOTICES
Encumbered aircraft; repossession certificates; impact on aircraft registration; legal opinion. 15188–15192
Exemption petitions; summary and disposition, 15192
Meetings:
Research, Engineering, and Development Advisory Committee, 15192–15193
RTCA, Inc., 15193
Passenger facility charges; applications, etc.:
Lynchburg Regional Airport, VA, 15193

Federal Communications Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15154–15155
Submission for OMB review; comment request, 15155–15156

Federal Emergency Management Agency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15156

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Black River L.P. et al., 15145–15147
Hydroelectric applications, 15147–15149
Applications, hearings, determinations, etc.:
Eastern Shore Natural Gas Co., 15142–15143
ExxonMobil Pipeline Co., 15143
Green Mountain Energy Resources, L.L.C., 15143
Northern Border Pipeline Co., 15143–15144
Texas Gas Transmission Corp., 15144
Transcontinental Gas Pipe Line Corp., 15144
Trunkline Gas Co., 15144–15145

Federal Highway Administration
NOTICES
Environmental statements; notice of intent:
Sandoval County, NM, 15194

Federal Motor Carrier Safety Administration
RULES
Motor carrier safety standards:
Transportation Equity Act for 21st Century; implementation—
Commercial Motor Carrier Saftey Assistance Program; State responsibility, 15092–15110

Federal Reserve System
RULES
Bank holding companies and change in bank control (Regulation Y):
Financial holding company requirements
Elections by foreign banks, etc., 15053–15057

Federal Trade Commission
NOTICES
Prohibited trade practices:
Rhodia et al., 15156–15159

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Connecticut Surety Co.; termination, 15196
Safety National Casualty Corp., 15196–15197

Fish and Wildlife Service
NOTICES
Interim land acquisition priority system criteria; availability and comment request, 15167–15168

Food and Drug Administration
RULES
Food additives:
Polymers—
Polyphenylene sulfone resins, 15057–15058
NOTICES
Meetings:
Egg safety action plan, 15119–15122

Food and Nutrition Service
NOTICES
Child and nutrition programs:
National school lunch program—
Free and reduced price application requirements and verification procedures, alternatives; pilot projects, 15119

Food Safety and Inspection Service
NOTICES
Meetings:
Egg safety action plan, 15119–15122

Forest Service
NOTICES
Environmental statements; notice of intent:
Mt. Baker-Snoqualmie National Forest, WA, 15122–15123
Meetings:
John Day/Snake Resource Advisory Council, 15123

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration
NOTICES
Grant and cooperative agreement awards:
National Minority AIDS Council, 15159
Grants and cooperative agreements; availability, etc.:
Bilingual/Bicultural Service Demonstration Program, 15159–15163

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15167

Immigration and Naturalization Service
NOTICES
Immigration:
H-1B nonimmigrants; numerical limitation reached for 2000 FY; information, 15178–15180

Indian Affairs Bureau
NOTICES
Reservation establishment, additions, etc.:
Cow Creek Band of Umpqua Tribe of Indians, OR, 15168–15169

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Cold-rolled flat-rolled carbon-quality steel products from—
Turkey, 15123–15125
Fresh garlic from—
China, 15125
Overseas trade missions:
2000 trade missions—
Application opportunity (April and May), 15125

International Trade Commission
NOTICES
Meetings; Sunshine Act, 15174

Justice Department
See Antitrust Division
See Drug Enforcement Administration
See Immigration and Naturalization Service

Labor Department
See Labor Statistics Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15180–15181

Labor Statistics Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15181–15182

Land Management Bureau
NOTICES
Closure of public lands:
Utah, 15169–15170
Realty actions; sales, leases, etc.:
Nevada, 15170–15172

Maritime Administration
NOTICES
Coastwise trade laws; administrative waivers:
CALEDONIA, 15194–15195
GAFIA, 15195–15196

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Spiny dogfish, 15110
NOTICES
Grants and cooperative agreements; availability, etc.:
Coastal Ecosystem Research Project, Northern Gulf of Mexico, 15125–15129
Meetings:
New England Fishery Management Council, 15129
Pacific Fishery Management Council, 15129–15130
Science Advisory Board, 15130–15131
Permits:
Endangered and threatened species, 15131–15132

National Park Service
RULES
National Park System:
Personal watercraft use, 15077–15090
NOTICES
Environmental statements; availability, etc.:
Shasta-Trinity-Whiskeytown National Recreation Area, CA, 15172
Meetings:
Trail of Tears National Historic Trail Advisory Council, 15172
National Register of Historic Places:
Pending nominations, 15172–15173

National Science Foundation
NOTICES
Meetings:
Biological Infrastructure Advisory Panel, 15182
Design, Manufacture, and Industrial Innovation Special Emphasis Panel, 15182
Electrical and Communications Systems Special Emphasis Panel, 15183
Experimental and Integrative Activities Special Emphasis Panel, 15183
Mathematical Sciences Special Emphasis Panel, 15183
Methods, Cross-Directorate, and Science and Society Advisory Panel, 15183
Physiology and Ethology Advisory Panel, 15184
Public Affairs Advisory Group, 15184

Navy Department
RULES
Attorneys practicing under cognizance and supervision of Judge Advocate General; professional conduct, 15059–15077

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 15185
Applications, hearings, determinations, etc.:
Omaha Public Power District, 15184–15185

Presidential Documents
Proclamations
Special observances:
Poison Prevention Week, National (Proc. 7281), 15201–15202

Public Debt Bureau
See Fiscal Service

Public Health Service
See Agency for Healthcare Research and Quality
See Agency for Toxic Substances and Disease Registry
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Meetings:
Glen Canyon Adaptive Management Work Group and Glen Canyon Technical Work Group; correction, 15173–15174

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 15186–15188
Applications, hearings, determinations, etc.:
Ancor Communications, Inc., 15185
E-SIM Ltd., 15185–15186

Substance Abuse and Mental Health Services Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15164–15165
Submission for OMB review; comment request, 15165–15167

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Toxic Substances and Disease Registry Agency
See Agency for Toxic Substances and Disease Registry

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Motor Carrier Safety Administration
See Maritime Administration
PROPOSED RULES
Workplace drug and alcohol testing programs:
Procedures; revisions; electronic public discussion forum, 15118

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Comptroller of the Currency
See Fiscal Service

Separate Parts In This Issue

Part II
The President, 15199–15202

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7281 15201

12 CFR
225 15053
Proposed Rules:
8 15111

14 CFR
Proposed Rules:
108 15113
109 15113
111 15113
129 15113
191 15113

21 CFR
177 15057

27 CFR
275 (2 documents) 15058
Proposed Rules:
200 15115
270 15115
275 15115
290 15115

32 CFR
776 15059

34 CFR
Proposed Rules:
606 15115
607 15115
608 15115

36 CFR
1 15077
3 15077
13 15077

40 CFR
9 15090
431 15091

49 CFR
350 15092
355 15092
Proposed Rules:
40 15118

50 CFR
648 15110

Rules and Regulations

Federal Register
Vol. 65, No. 55
Tuesday, March 21, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1057]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule with request for public comments.

SUMMARY: The Board of Governors is adopting on an interim basis, effective immediately, amendments to the interim rule published in the **Federal Register** on January 25, 2000, that established procedures for bank holding companies and foreign banks that operate a branch, agency, or commercial lending company in the United States to elect to become financial holding companies. The rule was promulgated on an interim basis, effective March 11, 2000, to implement provisions of the recently enacted Gramm-Leach-Bliley Act that enable bank holding companies and foreign banks that meet applicable statutory requirements to become financial holding companies and thereby engage in a broader range of financial and other activities than are permissible for bank holding companies.

As a result of its experience in processing elections under the interim rule, the Board is amending the interim rule to make three changes concerning the elections by foreign banks. First, in order to make the processing of elections by foreign banks parallel to the processing of elections filed by domestic bank holding companies, the interim rule is being amended to permit elections filed by foreign banks that meet the rule's well managed and well capitalized standards to become effective on the 31st day after filing, unless the Board finds the election ineffective or the foreign bank agrees to extend the review period. Second, in order to make the requirements for foreign banks consistent with the requirements imposed on bank holding companies, the Board is amending the interim rule to require that all U.S. depository institution subsidiaries (such as thrifts and nonbank trust companies) of electing foreign banks be well capitalized and well managed and have satisfactory or better composite and Community Reinvestment Act ratings. Third, the Board is amending the interim rule to encourage foreign banks that are chartered in countries where no other bank from that country has received a comprehensive consolidated supervision determination from the Board to use the pre-clearance process provided by the interim rule if such bank is considering making an financial holding company election. The Board also is seeking comment on whether comprehensive consolidated supervision should be required in connection with comparability determinations on capital and management. Finally, the Board is amending provisions of the interim rule applicable to bank holding companies by removing the compliance rating component from the definition of well managed for depository institutions for purposes of determining qualification as a financial holding company.

The Board solicits comments on all aspects of the interim rule, including these amendments, and will amend the rule as appropriate in response to comments received.

DATES: These amendments to the interim rule are effective on March 15, 2000. Comments on these amendments to the interim rule must be received by April 17, 2000.

ADDRESSES: Comments should refer to docket number R–1057 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC, 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. and, outside of those hours, to the Board's security control room. Both the mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, NW Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Ann E. Misback, Assistant General Counsel (202/452–3788), Thomas M. Corsi, Managing Senior Counsel (202/452–3275), or Christopher W. Clubb, Senior Counsel (202/452–3904), Legal Division; for the hearing impaired only, Telecommunications Device for the Deaf (TDD), Janice Simms (202) 872–4984.

SUPPLEMENTARY INFORMATION:

Background

Title I of the Gramm-Leach-Bliley Act (Pub. L. No. 106–102, 113 Stat. 1338 (1999)) amends section 4 of the Bank Holding Company Act (12 U.S.C. 1843) ("BHC Act") to authorize bank holding companies and foreign banks that qualify as "financial holding companies" to engage in securities, insurance, and other activities that are financial in nature or incidental to a financial activity. The Gramm-Leach-Bliley Act defines a financial holding company as a bank holding company that meets certain eligibility requirements. In order for a bank holding company to become a financial holding company and be eligible to engage in the new activities authorized under the Gramm-Leach-Bliley Act, the Act requires that all depository institutions controlled by the bank holding company be well capitalized and well managed. With regard to a foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, the Act requires the Board to apply comparable capital and management standards that give due regard to the principle of national treatment and equality of competitive opportunity.

In order to implement the provisions of the Gramm-Leach-Bliley Act governing the creation and conduct of financial holding companies, on January 19, 2000, the Board amended its Regulation Y by adding subpart I to establish procedures for bank holding companies as well as foreign banks that operate a branch, agency, or commercial lending company in the United States to elect to become financial holding companies. The Board promulgated the

rule on an interim basis, effective March 11, 2000 (65 FR 3785, January 25, 2000).

Amendments to Interim Rule

Based on its experience to date, the Board is amending the interim rule as it was issued on January 19, 2000, in order to address three issues that arose in connection with processing elections filed by foreign banks. In addition, the Board is amending the regulatory definition of well managed in the interim rule that is applicable to depository institutions for purposes of determining qualification for financial holding company status.

With respect to the foreign bank provisions, the first amendment is intended to make the processing of elections filed by foreign banks parallel to the processing of elections filed by domestic bank holding companies. Under the provisions of the interim rule as issued on January 19, 2000, an election to become a financial holding company by a foreign bank or company is not effective until the Board makes an affirmative finding that the foreign bank's capital and management meet standards comparable to those applicable to U.S. banks owned by financial holding companies. In contrast, a domestic bank holding company's election to become a financial holding company is effective within 31 days of its filing unless the Board determines that it is ineffective.

In adopting the interim rule, the Board was concerned that it would be unable to carry out its statutory responsibility to apply comparable standards to foreign banks within the constraint of a short notice process and thus adopted the review procedure described above. The Board's experience, however, in reviewing and acting on the elections filed by foreign banks that meet the standards set out in the interim rule indicates that such elections may be reviewed and comparable standards may be applied within a 31 day notice period. Accordingly, based on this experience and to accommodate concerns expressed regarding the difference in process applicable to foreign banks, the Board has decided to amend the interim rule to adopt a 31 day review process for foreign bank elections, as is currently applicable for bank holding company elections.

Under the amendment, if a foreign bank meets the rule's quantitative capital requirements, as well as the well managed standards, an election filed by that foreign bank would become effective on the 31st day after filing, unless the Board were to find the election ineffective or the foreign bank agreed to extend the review period. The Board would retain the ability to find the election ineffective because the capital is not comparable to the capital required for a U.S. bank owned by a financial holding company. In addition, the rule is being amended to allow the Board to find an election ineffective if the Board does not have sufficient information to assess whether the foreign bank meets the standards. The Board is of the view that these changes would ensure that foreign banks that meet the rule's requirements will receive treatment on the same basis as U.S. bank holding companies. If a foreign bank does not meet the rule's specified requirements, it may nevertheless file a pre-clearance request for a specific determination on the comparability of its capital and management.

The second change is intended to clarify the interim rule with respect to foreign banks that do not have a U.S. subsidiary bank, but may have other U.S. depository institution subsidiaries, such as thrifts and nonbank trust companies. As mentioned above, the Gramm-Leach-Bliley Act requires that all depository institutions controlled by a bank holding company be well capitalized and well managed in order for that bank holding company to be eligible to become a financial holding company. The interim rule as issued on January 19, 2000, required only that a foreign bank and each of its U.S. branches, agencies, and commercial lending subsidiaries be well capitalized and well managed in order for the foreign bank to be eligible to be treated as a financial holding company. In order to make the requirements for foreign banks consistent with the requirement imposed on bank holding companies, the interim rule is being amended to require that all U.S. depository institution subsidiaries of the foreign bank must be well capitalized and well managed in order for the foreign bank to be eligible to be treated as a financial holding company. As a result, the rule also is being amended to require that the foreign bank certify in any declaration filed that its U.S. depository institution subsidiaries are well capitalized and well managed.

The third change relates to the review of comprehensive consolidated supervision ("CCS") in connection with financial holding company elections by foreign banks. Home country supervision is an important element in the determination that a bank is well managed and the Board expects that most foreign banks that elect to be treated as financial holding companies will be subject to comprehensive consolidated supervision. The interim rule permits a foreign bank or company to request a review of its qualifications to be treated as a financial holding company prior to formally filing its election. In order to facilitate the Board's review of whether the management of a foreign bank meets standards comparable to those required of a U.S. bank owned by a financial holding company, the interim rule is being amended to encourage foreign banks that have not been reviewed by the Board with respect to home country supervision and that are chartered in countries where no other bank from that country has received a CCS determination from the Board (including a determination that the home country supervisor is actively working toward a system of CCS) to use the pre-clearance process if such bank is considering making an election to be treated as a financial holding company. In addition, the Board is requesting comment on whether a foreign bank should be required to meet a CCS standard in order to be treated as a financial holding company.

The amendment to the interim rule regarding bank holding companies is a revision of the definition of well managed applicable to a depository institution for purposes of determining qualification as a financial holding company under the Gramm-Leach-Bliley Act. For this purpose, the Board initially adopted the existing Regulation Y definition of well managed. The Board's definition requires that a depository institution have at least a satisfactory composite examination rating and at least a satisfactory rating for both management and compliance. This three-part definition was initially adopted by the Board as part of its effort to determine whether a bank holding company qualifies for expedited treatment in applications processing. In that context, a bank holding company qualified for expedited processing if 80 percent of the depository institution assets of the company were well managed. In order to become and remain a financial holding company under the Gramm-Leach-Bliley Act, all of the depository institution assets of a bank holding company must be well managed.

The Gramm-Leach-Bliley Act does not address compliance ratings in determining whether an institution is well managed. Accordingly, the Board is amending its regulatory definition of "well managed" for purposes of determining qualification as a financial holding company to reflect the two-part test in the statute. Thus, a depository institution will be considered well managed for this purpose if it has a satisfactory composite rating and a satisfactory rating for management.

The Board continues to believe that compliance ratings are important, and will address issues relating to compliance in other contexts. In particular, the Board and other federal banking agencies have supervisory authority to take full action against an institution if compliance issues are raised. In addition, each agency may consider compliance ratings when determining whether to approve any merger or expansion proposal involving the depository institution or the parent bank holding company of the institution.

For these reasons, the Board is amending its interim rule to remove the compliance rating component from the definition of well managed in Regulation Y for purposes of determining qualification as a financial holding company.

Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board published an initial regulatory flexibility analysis with the interim rule on January 25, 2000. The amendments contained herein do not change that analysis.

Administrative Procedure Act

The interim rule became effective on March 11, 2000 without review of public comments. These amendments are effective March 15, 2000. Pursuant to 5 U.S.C. 553, the Board finds that it is impracticable to review public comments prior to the effective date of the interim rule, and that there is good cause to make the interim rule effective immediately, due to the fact that the rule sets forth procedures to implement statutory changes that became effective on March 11, 2000. The Board is seeking public comment on the interim rule until March 27, 2000, and will accept comments on the amendments until April 17, 2000. The Board will amend the rule as appropriate after reviewing the comments.

Paperwork Reduction Act

The amendments to the interim rule do not affect the collections of information outlined in the interim rule issued by the Board on January 19, 2000.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and record keeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANY AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 continues to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831(i), 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.2(s)(1) introductory text is revised to read as follows:

§ 225.2 Definitions.

* * * * *

(s) *Well managed*—(1) *In general.* Except as otherwise provided in this part, a company or depository institution is well managed if:

* * * * *

3. In § 225.81, paragraph (c) is redesignated as paragraph (d), and a new paragraph (c) is added to read as follows:

§ 225.81 What is a financial holding company?

* * * * *

(c) *Well managed*—(1) *In general.* For purposes of this subpart, a depository institution is well managed if:

(i) At its most recent inspection or examination or subsequent review by the appropriate Federal banking agency for the depository institution, the institution received:

(A) At least a satisfactory composite rating; and

(B) At least a satisfactory rating for management; or

(ii) In the case of a depository institution that has not received an examination rating, the Board has determined, after a review of managerial and other resources of the depository institution and after consulting the appropriate Federal banking agency for the institution, that the institution is well managed.

(2) *Merged institutions.* A depository institution that results from the merger of two or more depository institutions that are well managed shall be considered to be well managed unless the Board determines otherwise after consulting with the appropriate Federal banking agency for each depository institution involved in the merger.

* * * * *

4. Sections 225.90 through 225.94 are revised to read as follows:

§ 225.90 What are the requirements for a foreign bank to be treated as a financial holding company?

(a) *Foreign banks as financial holding companies.* A foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, and any company that owns or controls such a foreign bank, will be treated as a financial holding company if:

(1) The foreign bank, and any U.S. depository institution that is owned or controlled by the foreign bank or company, is and remains well capitalized and well managed; and

(2) The foreign bank, or the company that owns the foreign bank, has made an effective election to be treated as a financial holding company under this subpart.

(b) *Standards for "well capitalized."* A foreign bank will be considered "well capitalized" if either:

(1)(i) Its home country supervisor, as defined in § 211.21 of the Board's Regulation K (12 CFR 211.21), has adopted risk-based capital standards consistent with the Capital Accord of the Basel Committee on Banking Supervision (Basel Accord);

(ii) The foreign bank maintains a Tier 1 capital to total risk-based assets ratio of 6 percent and a total capital to total risk-based assets ratio of 10 percent, as calculated under its home country standard;

(iii) The foreign bank maintains a Tier 1 capital to total assets leverage ratio of at least 3 percent; and

(iv) The foreign bank's capital is comparable to the capital required for a U.S. bank owned by a financial holding company; or

(2) The foreign bank has obtained a determination from the Board under § 225.91(c) that the foreign bank's capital is otherwise comparable to the capital that would be required of a U.S. bank owned by a financial holding company.

(c) *Standards for "well managed."* A foreign bank will be considered "well managed" if:

(1) Each of the U.S. branches, agencies, and commercial lending subsidiaries of the foreign bank has received at least a satisfactory composite rating at its most recent assessment;

(2) The home country supervisor of the foreign bank considers the overall operations of the foreign bank to be satisfactory or better; and

(3) The management of the foreign bank meets standards comparable to those required of a U.S. bank owned by a financial holding company.

§ 225.91 How may a foreign bank elect to be treated as a financial holding company?

(a) *Filing requirement.* A foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States, or a company that owns or controls such a foreign bank, may elect to be treated as a financial holding company by filing a written declaration with the appropriate Reserve Bank.

(b) *Contents of declaration.* The declaration must:

(1) State that the foreign bank or the company elects to be treated as a financial holding company;

(2) Provide the risk-based and leverage capital ratios of the foreign bank as of the close of the most recent quarter and as of the close of the most recent audited reporting period;

(3) Certify that the foreign bank meets the standards of well capitalized set out in § 225.90(b)(1)(i), (ii) and (iii) or § 225.90(b)(2) as of the date the foreign bank or company files its election;

(4) Certify that the foreign bank is well managed as defined in § 225.90(c)(1) as of the date the foreign bank or company files its election;

(5) Certify that all U.S. depository institutions controlled by the foreign bank or company are well capitalized and well managed as of the date the foreign bank or company files its election; and

(6) Provide the capital ratios for all relevant capital measures (as defined in section 38 of the Federal Deposit Insurance Act) as of the close of the previous quarter for each U.S. depository institution controlled by the foreign bank or company.

(c) *Pre-clearance process.* Before filing an election to be treated as a financial holding company, a foreign bank or company may file a request for review of its qualifications to be treated as a financial holding company. The Board will endeavor to make a determination on such requests within 30 days of receipt. A foreign bank chartered in a country where no other bank from that country has been reviewed by the Board for comprehensive consolidated supervision under the Bank Holding Company Act or the International Banking Act is encouraged to use this process.

§ 225.92 How does an election by a foreign bank become effective?

(a) *In general.* An election described in § 225.91 is effective on the 31st day after the date that an election was received by the appropriate Federal Reserve Bank, unless the Board notifies the foreign bank or company prior to that time that:

(1) The election is ineffective; or

(2) The period is extended with the consent of the foreign bank or company making the election.

(b) *Earlier notification that an election is effective.* The Board or the appropriate Federal Reserve Bank may notify a foreign bank or company that its election to be treated as a financial holding company is effective prior to the 31st day after the election was filed with the appropriate Federal Reserve Bank. Such notification must be in writing.

(c) *Under what circumstances will the Board find an election to be ineffective?* An election to be treated as financial holding company shall not be effective if, during the period provided in paragraph (a) of this section, the Board finds that:

(1) The foreign bank certificant, or any foreign bank that operates a branch or agency or owns or controls a commercial lending company in the United States and is controlled by a foreign company certificant, is not both well capitalized and well managed;

(2) Any insured depository institution controlled by the foreign bank or company (except an institution excluded under paragraph (d) of this section) or any U.S. branch of a foreign bank that is insured by the Federal Deposit Insurance Corporation has not achieved at least a rating of "satisfactory record of meeting community needs" under Community Reinvestment Act at the institution's most recent examination;

(3) Any U.S. depository institution subsidiary of the foreign bank or company is not both well capitalized and well managed; or

(4) The Board does not have sufficient information to assess whether the foreign bank or company making the election meets the requirements of this subpart.

(d) *How is CRA performance of recently acquired insured depository institutions considered?* An insured depository institution will be excluded for purposes of the review of CRA ratings described in paragraph (c)(2) of this section consistent with the provisions of § 225.82(e).

(e) *Factors used in the Board's determination regarding comparability of capital and management.* In determining whether a foreign bank is well capitalized and well managed in accordance with comparable capital and management standards, the Board will give due regard to national treatment and equality of competitive opportunity. In this regard, the Board may take into account the foreign bank's composition of capital, accounting standards, long-term debt ratings, reliance on government support to meet capital requirements, the extent to which the foreign bank is subject to comprehensive consolidated supervision, and other factors that may affect analysis of capital and management. The Board will consult with the home country supervisor for the foreign bank as appropriate.

§ 225.93 What are the consequences of a foreign bank failing to continue to meet applicable capital and management requirements?

(a) *Notice by the Board.* If a foreign bank or company has made an effective election to be treated as a financial holding company under this subpart and the Board finds that the foreign bank, or any U.S. depository institution owned or controlled by the foreign bank or company, ceases to be well capitalized or well managed, the Board will notify the foreign bank or company in writing that it is not in compliance with the applicable requirement(s) for a financial holding company and identify the areas of noncompliance.

(b) *Notification by a financial holding company required.* Promptly upon becoming aware that the foreign bank, or any U.S. depository institution owned or controlled by the foreign bank or company, has ceased to be well capitalized or well managed, the foreign bank, or any company that controls such foreign bank, must notify the Board and identify the area of noncompliance.

(c) *Execution of agreement acceptable to the Board—(1) Agreement required; time period.* Within 45 days after receiving a notice under paragraph (a) of this section, the foreign bank or company must execute an agreement acceptable to the Board to comply with all applicable capital and management requirements.

(2) *Extension of time for executing agreement.* Upon request by a company, the Board may extend the 45-day period under paragraph (c)(1) of this section if the Board determines that granting additional time is appropriate under the circumstances. A request by a company for additional time must include an explanation of why an extension is necessary.

(3) *Agreement requirements.* An agreement required by paragraph (c)(1) of this section to correct a capital or management deficiency must:

(i) Explain the specific actions that the foreign bank or company will take to correct all areas of noncompliance;

(ii) Provide a schedule within which each action will be taken;

(iii) Provide any other information that the Board may require; and

(iv) Be acceptable to the Board.

(d) *Limitations during period of noncompliance.* Until the Board determines that a company has corrected the conditions described in a notice under paragraph (a) of this section:

(1) The Board may impose any limitations or conditions on the conduct or the U.S. activities of the foreign bank or company or any of its affiliates as the Board finds to be appropriate and consistent with the purposes of the Bank Holding Company Act; and

(2) The company and its affiliates may not engage in any new activity in the United States or acquire control or shares of any company under section 4(k) of the Bank Holding Company Act (12 U.S.C. 1843(k)) without prior approval from the Board.

(e) *Consequences of failure to correct conditions within 180 days—(1) Termination of offices and divestiture.* If a foreign bank or company does not correct the conditions described in a notice under paragraph (a) of this section within 180 days of receipt of the notice or such additional time as the Board may permit, the Board may order the foreign bank or company to terminate the foreign bank's U.S. branches and agencies and divest any commercial lending companies owned or controlled by the foreign bank or company. Such divestiture must be done in accordance with the terms and conditions established by the Board.

(2) *Alternative method of complying with a divestiture order.* A foreign bank or company may comply with an order issued under paragraph (e)(1) of this section by ceasing to engage (both directly and through any subsidiary) in all activities that are not permissible for a foreign bank to conduct under sections 2(h) and 4(c) of the Bank Holding Company Act (12 U.S.C. 1841(h) and 1843(c)). The termination of activities must be done within the time period referred to in paragraph (e)(1) of this section and subject to terms and conditions acceptable to the Board.

(f) *Consultation with other Agencies.* In taking any action under this section, the Board will consult with the relevant Federal and state regulatory authorities.

§ 225.94 What are the consequences of an insured branch or depository institution failing to maintain a satisfactory or better rating under the Community Reinvestment Act?

(a) *Insured branch as an "insured depository institution."* A U.S. branch of a foreign bank that is insured by the Federal Deposit Insurance Corporation shall be treated as an "insured depository institution" for purposes of § 225.84.

(b) *Applicability.* The provisions of § 225.84, with the modifications contained in this section, shall apply to a foreign bank that operates an insured branch referred to in paragraph (a) of this section or an insured depository institution in the United States, and any company that owns or controls such a foreign bank, that has made an effective election under § 225.92 in the same manner and to the same extent as they apply to a financial holding company.

By order of the Board of Governors of the Federal Reserve System, March 15, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–6849 Filed 3–20–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 99F–0461]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyphenylene sulfone resins as articles or components of articles intended for repeated use in contact with food. This action is in response to a petition filed by Ticona.

DATES: This rule is effective March 21, 2000; submit written objections and requests for a hearing by April 20, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3081.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 19, 1999 (64 FR 13586), FDA announced that a food additive petition (FAP 9B4644) had been filed by Ticona, c/o Keller and Heckman LLP, 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend the food additive regulations in part 177 *Indirect Food Additives: Polymers* (21 CFR part 177) to provide for the safe use of polyphenylene sulfone resins as articles or components of articles intended for repeated use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) that the regulations in part 177 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4644 (64 FR 13586, March 19, 1999). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 20, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the

objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objection received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, and redelegated to the Director, Center for Food Safety and Applied Nutrition part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.2500 is added to subpart C to read as follows:

§ 177.2500 Polyphenylene sulfone resins.

The polyphenylene sulfone resins (CAS Reg. No. 31833–61–1) identified in paragraph (a) of this section may be safely used as articles or components of articles intended for repeated use in contact with food, subject to the provisions of this section.

(a) *Identity.* For the purpose of this section, polyphenylene sulfone resins consist of basic resin produced by reacting polyphenylene sulfide with peracetic acid such that the finished resins meet the specifications set forth in paragraph (c) of this section. The polyphenylene sulfide used to manufacture polyphenylene sulfone is prepared by the reaction of sodium sulfide and *p*-dichlorobenzene, and has a minimum weight average molecular weight of 5,000 Daltons.

(b) *Optional adjuvant substances.* The basic polyphenylene sulfone resins identified in paragraph (a) of this section may contain optional adjuvant substances required in the production of such basic resins. These optional adjuvant substances may include substances permitted for such use by regulations in parts 170 through 189 of this chapter, substances generally recognized as safe in food, or substances used in accordance with a prior sanction or approval.

(c) *Specifications.* The glass transition temperature of the polymer is 360±5 °C as determined by the use of differential scanning calorimetry.

Dated: February 29, 2000.

L. Robert Lake,

Director, Office of Regulations Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–6875 Filed 3–20–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 275

[T.D. ATF–420a]

RIN 1512–AB88

Increase in Tax on Tobacco Products and Cigarette Papers and Tubes [99R–88P]

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects the revision of a section of regulations that was erroneously changed in a final rule published in the **Federal Register** of December 22, 1999, regarding the increase in tax on tobacco products and cigarette papers and tubes.

EFFECTIVE DATE: January 1, 2000.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, (202) 927–8202, mdruhf@atfhq.atf.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) published a document in the **Federal Register** of December 22, 1999 (64 FR 71937). ATF erroneously revised § 275.117(b) and (c). This document corrects this error.

In rule FR Doc. 99–32605 published on December 22, 1999, on page 71944, in the second column, the instruction in paragraph 34 is removed.

Dated: March 15, 2000.

Bradley A. Buckles,

Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc. 00–6994 Filed 3–20–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 275

[T.D. ATF–422a]

RIN 1512–AC07

Implementation of Public Law 105–33, Section 9302, Requiring the Qualification of Tobacco Product Importers (98R–316P) and Miscellaneous Technical Amendments

AGENCY: Bureau of Alcohol, Tobacco and Firearms, Treasury.

ACTION: Temporary rule; correction.

SUMMARY: This document corrects the authority citation and removes three changes of a temporary rule published in the **Federal Register** of December 22, 1999, regarding qualification of tobacco product importers and miscellaneous technical amendments contained in part 275, title 27 Code of Federal Regulations (CFR).

DATES: This rule is effective March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW, Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

The Bureau of Alcohol, Tobacco and Firearms (ATF) published a document in the **Federal Register** of December 22, 1999 (64 FR 71947). The authority citation for 27 CFR part 275 was incorrect in this document. Also, we erroneously removed and reserved §§ 275.39 and 275.117 and erroneously revised paragraph (a) of § 275.81. This document corrects these errors.

In rule FR Doc. 99–32600 published on December 22, 1999, make the following corrections:

On page 71948, in the second column, revise the authority citation for Part 275 to read as follows:

Authority: 18 U.S.C. 2342; 26 U.S.C. 5701, 5703, 5704, 5705, 5708, 5712, 5713, 5721, 5722, 5723, 5741, 5754, 5761, 5762, 5763, 6301, 6302, 6313, 6404, 7101, 7212, 7342, 7606, 7652, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

On page 71948, in the third column, instruction paragraph 5 is removed.

On page 71949, in the first column, the instruction in paragraph 10 is corrected to read as follows:

Par. 10. [Corrected]. Paragraphs (b) and (c) introductory text of § 275.81 are revised to read as follows:

§ 275.81 Tax Payment.

* * * * *

(b) *Method of payment.* Except in the case of articles imported or brought into the United States under §§ 275.85 and 275.85a, the internal revenue tax must be determined and paid to the Port Director of Customs before the tobacco products, cigarette papers, or cigarette tubes are removed from customs custody. The tax must be paid on the basis of a return on the customs form or by authorized electronic transmission by which the tobacco products, cigarette papers, or cigarette tubes are duty and tax paid to Customs.

(c) *Required information.* When tobacco products, cigarette papers, or cigarette tubes enter the United States for consumption, or when they are removed for consumption, the importer must include on the customs form or authorized electronic transmission the following internal revenue tax information.

* * * * *

On page 71951, in the first column, instruction paragraph 21 is removed.

Dated: March 15, 2000.

Bradley A. Buckles,

Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc. 00–6995 Filed 3–20–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 776

RIN 0703–AA54

Professional Conduct of Attorneys Practicing Under the Cognizance and Supervision of the Judge Advocate General

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: This final rule amends regulations concerning the professional conduct of attorneys practicing law under the cognizance and supervision of the Judge Advocate General of the Navy by incorporating several changes and revising the regulations. This revision will ensure the professional supervision of judge advocates, military trial and appellate military judges, and other lawyers who practice in Department of the Navy proceedings and other legal programs.

DATES: Effective March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Barry J. Goehler, JAGC, U.S. Navy, 703–604–8280.

SUPPLEMENTARY INFORMATION: On July 12, 1999 (64 FR 37473), the Department of the Navy published a proposed rule to revise the rules regulating the professional conduct of attorneys practicing law under the cognizance and supervision of the Judge Advocate General of the Navy. The comment period closed September 10, 1999. Interested persons have been afforded the opportunity to participate in the making of this amendment. The only comments received were submitted by the Office of Government Ethics. In response to the comments of the Office of Government Ethics regarding conflict with or supplementation of the Standards of Ethical Conduct for Employees of the Executive Branch, the following sections of this rule were changed: 776.11; 776.24; and 776.27.

As background, the Judge Advocate General of the Navy (JAG) is responsible for the professional supervision and discipline of military trial and appellate military judges, judge advocates, and other lawyers who practice in Department of the Navy proceedings governed by the Uniform Code of Military Justice and the Manual for Courts-Martial. See, 10 U.S.C. 806, 806a, 826, 827, and Rule for Courts-Martial 109. The JAG has further responsibilities to supervise the provision of legal advice and related services in the Department of the Navy's Legal Assistance Program and such other legal programs as assigned by the Secretary of the Navy. See, 10 U.S.C. 1044; Article 0331, U.S. Navy Regulations (1990); Secretary of the Navy Instruction 5430.27A. To discharge these responsibilities, the JAG has prescribed Rules of Professional Conduct (JAG Rules) for attorneys providing legal services or otherwise practicing in proceedings under JAG cognizance and supervision. These Rules, and the procedures by which JAG investigates and resolves allegations of professional misconduct, are found at 32 CFR part 776.

By this final rule, the Department of the Navy has completely revised 32 CFR part 776. While there are numerous administrative changes in the revised text, the most significant substantive revisions are as follows:

1. The terms "covered attorney," "covered United States Government (USG) attorney," and "covered non-USG attorney" are introduced and incorporated throughout part 776. The former version of subpart B to 32 CFR part 776 used the generic term "judge advocate" in fashioning rules of professional conduct, with the proviso that this term applied to all other attorneys who practice under the supervision of the JAG (to include civilian attorneys defending individual clients in courts-martial or administrative separation proceedings). The new terms will define better to whom, when, and how the JAG Rules apply.

2. Addition of a specific rule prohibiting sexual relations between covered attorneys and their clients or other principals to the particular matter which is the subject of the representation. This rule is modeled, in significant part, on Rule 1.18 of the Revised Rules of Professional Conduct of the North Carolina State Bar.

3. Addition of a specific rule that requires all covered USG attorneys to remain in good standing with state licensing authorities. The rule further ensures that covered non-USG attorneys representing individual clients in court-martial or administrative separation proceedings are members in good standing with, and authorized to practice law by, the bar of a Federal court or of the bar of the highest court of a State, or a lawyer otherwise authorized by a recognized licensing authority to practice law.

4. Addition of a procedure wherein the JAG may impose an interim suspension of a covered attorney where there is probable cause to believe that the attorney has committed misconduct and poses a substantial threat of irreparable harm to clients or the orderly administration of military justice.

5. Removal of subpart D, Outside Part-Time Practice of Naval Service Attorneys. This subpart is limited in application to covered USG attorneys, and, as an internal administrative rule which does not affect the public, need not be published in the CFR. Covered USG attorneys who wish to engage in the part-time practice of law, outside of their official Department of the Navy responsibilities, must still obtain JAG approval, notice of which is contained in § 776.11 of this part. Additional information for covered USG attorneys is available in JAG Instruction 5803.1 (series).

The JAG Rules contained in subpart B of this part are based upon the American Bar Association's (ABA's) Model Rules of Professional Conduct. Like the ABA's Model Rules, each JAG Rule has accompanying commentary which explains and illustrates the meaning and purpose of the Rule. This commentary for the JAG Rules is not

reprinted in subpart B of this part. A complete version of the JAG Rules, with accompanying commentary, may be found in JAG Instruction 5803.1 (series), copies of which may be obtained from the address indicated.

Matters of Regulatory Procedure

Executive Order 12866, Regulatory Planning and Review

This rule does not meet the definition of "significant regulatory action" for purposes of E.O. 12866.

Regulatory Flexibility Act

This rule will not have a significant economic impact on a substantial number of small entities for purposes of the Regulatory Flexibility Act (5 U.S.C. Chapter 6).

Paperwork Reduction Act

This rule does not impose collection of information requirements for purposes of the Paperwork Reduction Act (44 U.S.C. Chapter 35, 5 CFR part 1320).

List of Subjects in 32 CFR Part 776

Conflict of interests, Lawyers, Legal services, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Department of the Navy revises 32 CFR part 776 to read as follows:

PART 776—PROFESSIONAL CONDUCT OF ATTORNEYS PRACTICING UNDER THE COGNIZANCE AND SUPERVISION OF THE JUDGE ADVOCATE GENERAL

Subpart A—General

Sec.
776.1 Purpose.
776.2 Applicability.
776.3 Policy.
776.4 Attorney-client relationships.
776.5 Judicial conduct.
776.6 Conflict.
776.7 Reporting requirements.
776.8 Professional Responsibility Committee.
776.9 Rules Counsel.
776.10 Informal ethics advice.
776.11 Outside part-time practice of law.
776.12 Maintenance of files.
776.13–776.17 [Reserved]

Subpart B—Rules of Professional Conduct

776.18 Preamble.
776.19 Principles.
776.20 Competence.
776.21 Establishment and scope of representation.
776.22 Diligence.
776.23 Communication.
776.24 Fees.
776.25 Confidentiality of information.
776.26 Conflict of interests: General rule.
776.27 Conflict of interests: Prohibited transactions.
776.28 Conflict of interests: Former client.
776.29 Imputed disqualification: General rule.
776.30 Successive government and private employment.
776.31 Former judge or arbitrator.
776.32 Department of Navy as client.
776.33 Client under a disability.
776.34 Safekeeping property.
776.35 Declining or terminating representation.
776.36 Prohibited sexual relations.
776.37 Advisor.
776.38 Mediation.
776.39 Evaluation for use by third persons.
776.40 Meritorious claims and contentions.
776.41 Expediting litigation.
776.42 Candor and obligations toward the tribunal.
776.43 Fairness to opposing party and counsel.
776.44 Impartiality and decorum of the tribunal.
776.45 Extra-tribunal statements.
776.46 Attorney as witness.
776.47 Special responsibilities of a trial counsel.
776.48 Advocate in nonadjudicative proceedings.
776.49 Truthfulness in statements to others.
776.50 Communication with person represented by counsel.
776.51 Dealing with an unrepresented person.
776.52 Respect for rights of third persons.
776.53 Responsibilities of the Judge Advocate General and supervisory attorneys.
776.54 Responsibilities of a subordinate attorney.
776.55 Responsibilities regarding non-attorney assistants.
776.56 Professional independence of a covered USG attorney.
776.57 Unauthorized practice of law.
776.58–776.65 [Reserved]
776.66 Bar admission and disciplinary matters.
776.67 Judicial and legal officers.
776.68 Reporting professional misconduct.
776.69 Misconduct.
776.70 Jurisdiction.
776.71 Requirement to remain in good standing with licensing authorities.
776.72–776.75 [Reserved]

Subpart C—Complaint Processing Procedures

776.76 Policy.
776.77 Related investigations and actions.
776.78 Informal complaints.
776.79 The complaint.
776.80 Initial screening and Rules Counsel.
776.81 Charges.
776.82 Interim suspension.
776.83 Preliminary inquiry.
776.84 Ethics investigation.
776.85 Effect of separate proceeding.
776.86 Action by JAG.
776.87 Finality.
776.88 Report to licensing authorities.

Subpart D—[Reserved]

Authority: 10 U.S.C. 806, 806a, 826, 827; Manual for Courts-Martial, United States, 1998; U.S. Navy Regulations, 1990; Secretary of the Navy Instruction 5430.27 (series), Responsibility of the Judge Advocate General for Supervision of Certain Legal Services.

Subpart A—General

§ 776.1 Purpose.

In furtherance of the authority citations (which, if not found in local libraries, are available from the Office of the Judge Advocate General, 1322 Patterson Avenue, SE., Suite 3000, Washington Navy Yard DC 20374–5066), which require the Judge Advocate General of the Navy (JAG) to supervise the performance of legal services under JAG cognizance throughout the Department of the Navy (DON), this part is promulgated:

(a) To establish Rules of Professional Conduct (subpart B of this part) for attorneys subject to this part;

(b) To establish procedures (subpart C of this part) for receiving, processing, and taking action on complaints of professional misconduct made against attorneys practicing under the supervision of JAG, whether arising from professional legal activities in DON proceedings and matters, or arising from other, non-U.S. Government related professional legal activities or personal misconduct which suggests the attorney is ethically, professionally, or morally unqualified to perform legal services within the DON; and

(c) To ensure quality legal services at all proceedings under the cognizance and supervision of the JAG.

§ 776.2 Applicability.

(a) This part defines the professional ethical obligations of, and applies to, all "covered attorneys."

(b) "Covered attorneys" include:

(1) The following U.S. Government (USG) attorneys, referred to, collectively, as "covered USG attorneys" throughout this part:

(i) All active-duty Navy judge advocates (designator 2500 or 2505) or Marine Corps judge advocates (MOS 4402 or 9914).

(ii) All active-duty judge advocates of other U.S. armed forces who practice law or provide legal services under the cognizance and supervision of the JAG.

(iii) All civil service and contracted civilian attorneys who practice law or perform legal services under the cognizance and supervision of the JAG.

(iv) All Reserve or Retired judge advocates of the Navy or Marine Corps (and any other U.S. armed force), who, while performing official DON duties, practice law or provide legal services under the cognizance and supervision of the JAG.

(v) All other attorneys appointed by JAG (or the Director, Judge Advocate (JA) Division, Headquarters Marine Corps (HQMC), in Marine Corps matters) to serve in billets or to provide legal services normally provided by Navy or Marine Corps judge advocates. This policy applies to officer and enlisted reservists, to active-duty personnel, and to any other personnel who are licensed to practice law by any Federal or state authorities, but who are not members of the Judge Advocate General's Corps or who do not hold the 4402 or 9914 designation in the Marine Corps.

(2) The following non-U.S. Government attorneys, referred to, collectively, as "covered non-USG attorneys" throughout this part: All civilian attorneys representing individuals in any matter for which JAG is charged with supervising the provision of legal services. These matters include, but are not limited to, courts-martial, administrative separation boards or hearings, and disability evaluation proceedings.

(3) The term "covered attorney" does not include those civil service or civilian attorneys who practice law or perform legal services under the cognizance and supervision of the General Counsel of the Navy.

(c) Professional or personal misconduct unrelated to a covered attorney's DON activities, while normally outside the ambit of these rules, may be reviewed under procedures established in subpart C of this part and may provide the basis for decisions by the JAG regarding the covered attorney's continued qualification to provide legal services in DON matters.

(d) Although the Rules in subpart B of this part do not apply to non-attorneys, they do define the type of ethical conduct that the public and the military community have a right to expect from DON legal personnel. Covered USG attorneys who supervise non-attorney DON employees are responsible for their ethical conduct to the extent provided for in § 776.55 of this part. Accordingly, subpart B of this part shall serve as a model of ethical conduct for the following personnel when involved with the delivery of legal services under the supervision of the JAG:

(1) Navy legalmen and Marine Corps legal administrative officers, legal service specialists, and legal services reporters (stenotype);

(2) Limited duty officers (LAW);

(3) Legal interns; and

(4) Civilian support personnel including paralegals, legal secretaries, legal technicians, secretaries, court reporters, and others holding similar positions.

§ 776.3 Policy.

(a) Covered attorneys shall maintain the highest standards of professional ethical conduct. Loyalty and fidelity to the United States, to the law, to clients both institutional and individual, and to the rules and principles of professional ethical conduct set forth in subpart B of this part must come before private gain or personal interest.

(b) Whether conduct or failure to act constitutes a violation of the professional duties imposed by this part is a matter within the sole discretion of JAG or officials authorized to act for JAG. Rules contained in subpart B of this part are not substitutes for, and do not take the place of, other rules and standards governing DON personnel such as the Department of Defense Joint Ethics Regulation, the Code of Conduct, the Uniform Code of Military Justice (UCMJ), and the general precepts of ethical conduct to which all DON service members and employees are expected to adhere. Similarly, action taken per this part is not supplanted or barred by, and does not, even if the underlying misconduct is the same, supplant or bar the following action from being taken by authorized officials:

(1) Punitive or disciplinary action under the UCMJ; or

(2) Administrative action under the Manual for Courts-Martial, U.S. Navy Regulations, or under other applicable authority.

(c) Inquiries into allegations of professional misconduct will normally be held in abeyance until any related criminal investigation or proceeding is complete. However, a pending criminal investigation or proceeding does not bar the initiation or completion of a professional misconduct investigation (subpart C of this part) stemming from the same or related incidents or prevent the JAG from imposing professional disciplinary sanctions as provided for in this part.

§ 776.4 Attorney-client relationships.

(a) The executive agency to which assigned (DON in most cases) is the client served by each covered USG attorney unless detailed to represent another client by competent authority. Specific guidelines are contained in § 776.32 of this part.

(b) Covered USG attorneys will not establish attorney-client relationships with any individual unless detailed, assigned, or otherwise authorized to do so by competent authority. Wrongfully establishing an attorney-client relationship may subject the attorney to discipline administered per this part. See § 776.21 of this part.

(c) Employment of a non-USG attorney by an individual client does not alter the professional responsibilities of a covered USG attorney detailed or otherwise assigned by competent authority to represent that client.

§ 776.5 Judicial conduct.

To the extent that it does not conflict with statutes, regulations, or this part, the American Bar Association's Code of Judicial Conduct applies to all military and appellate judges and to all other covered USG attorneys performing judicial functions under JAG supervision within the DON.

§ 776.6 Conflict.

To the extent that a conflict exists between this part and the rules of other jurisdictions that regulate the professional conduct of attorneys, this part will govern the conduct of covered attorneys engaged in legal functions under JAG cognizance and supervision. Specific and significant instances of conflict between the rules contained in subpart B of this part and the rules of other jurisdictions shall be reported promptly to the Rules Counsel (see § 776.9 of this part), via the supervisory attorney. See § 776.53 of this part.

§ 776.7 Reporting requirements.

Covered USG attorneys shall report promptly to the Rules Counsel any disciplinary or administrative action, including initiation of investigation, by any licensing authority or Federal, State, or local bar, possessing the power to revoke, suspend, or in any way limit the authority to practice law in that jurisdiction, upon himself, herself, or another covered attorney. Failure to report such discipline or administrative action may subject the covered USG attorney to discipline administered per this part. See § 776.71 of this part.

§ 776.8 Professional Responsibility Committee.

(a) *Composition.* This standing committee will consist of the Assistant Judge Advocate General (AJAG) for Military Justice; the Vice Commander, Naval Legal Service Command (NLSC); the Chief Judge, Navy-Marine Corps Trial Judiciary; and in cases involving Marine Corps judge advocates, the Deputy Director, JA Division, HQMC; and such other personnel as JAG from time-to-time may appoint. A majority of the members constitutes a quorum. The Chairman of the Committee shall be the

AJAG for Military Justice. The Chairman may excuse members disqualified for cause, illness, or exigencies of military service, and may request JAG to appoint additional or alternate members on a temporary or permanent basis.

(b) *Purpose.* (1) When requested by JAG or by the Rules Counsel, the Committee will provide formal advisory opinions to JAG regarding application of rules contained in subpart B of this part to individual or hypothetical cases.

(2) On its own motion, the Committee may also issue formal advisory opinions on ethical issues of importance to the DON legal community.

(3) Upon written request, the Committee will also provide formal advisory opinions to covered attorneys about the propriety of proposed courses of action. If such requests are predicated upon full disclosure of all relevant facts, and if the Committee advises that the proposed course of conduct is not violative of subpart B of this part, then no adverse action under this part may be taken against a covered attorney who acts consistent with the Committee's advice.

(4) The Chairman will forward copies of all opinions issued by the Committee to the Rules Counsel.

(c) *Limitation.* The Committee will not normally provide ethics advice or opinions concerning professional responsibility matters (e.g., ineffective assistance of counsel, prosecutorial misconduct, etc.) that are then the subject of litigation.

§ 776.9 Rules Counsel.

Appointed by JAG to act as special assistants for the administration of this part, the Rules Counsel derive authority from JAG and, as detailed in this part, have "by direction" authority. The Rules Counsel shall cause opinions issued by the Professional Responsibility Committee of general interest to the DON legal community to be published in summarized, non-personal form in suitable publications. Unless another officer is appointed by JAG to act in individual cases, the following officers shall act as Rules Counsel:

(a) Director, JA Division, HQMC, for cases involving Marine Corps judge advocates, or civil service and contracted civilian attorneys who perform legal services under his cognizance; and

(b) AJAG for Civil Law, in all other cases.

§ 776.10 Informal ethics advice.

(a) *Advisors.* Covered attorneys may seek informal ethics advice either from the officers named below or from supervisory attorneys in the field. Within the Office of the JAG and HQMC, the following officials are designated to respond, either orally or in writing, to informal inquiries concerning this part in the areas of practice indicated:

(1) Head, Military Affairs/Personnel Law Branch, Administrative Law Division: administrative boards and related matters;

(2) Deputy Director, Criminal Law Division: military justice matters;

(3) Director, Legal Assistance Division: legal assistance matters;

(4) Deputy Director, JA Division, HQMC: cases involving Marine Corps judge advocates, or civil service and contracted civilian attorneys who perform legal services under the cognizance and supervision of Director, JA Division, HQMC; and

(5) Head, Standards of Conduct/Government Ethics Branch, Administrative Law Division: all other matters.

(b) *Limitation.* Informal ethics advice will not normally be provided by JAG/HQMC advisors concerning professional responsibility matters (e.g., ineffective assistance of counsel, prosecutorial misconduct) that are then the subject of litigation.

(c) *Written advice.* A request for informal advice does not relieve the requester of the obligation to comply with subpart B of this part. Although covered attorneys are encouraged to seek advice when in doubt as to their responsibilities, they remain personally accountable for their professional conduct. If, however, an attorney receives written advice on an ethical matter after full disclosure of all relevant facts and reasonably relies on such advice, no adverse action under this part will be taken against the attorney. Written advice may be sought from either a supervisory attorney or the appropriate advisor in paragraph (a) of this section. JAG is not bound by unwritten advice or by advice provided by personnel who are not supervisory attorneys or advisors. See § 776.54 of this part.

§ 776.11 Outside part-time practice of law.

A covered USG attorney's primary professional responsibility is to the client, as defined by § 776.4 of this part, and he or she is expected to ensure that representation of such client is free from conflicts of interest and otherwise conforms to the requirements of these rules and other regulations concerning the provision of legal services within the Department of the Navy. The outside practice of law, therefore, must be carefully monitored. Covered USG attorneys who wish to engage in the part-time, outside practice of law must first obtain permission from JAG. Failure to obtain permission before engaging in the outside practice of law may subject the covered USG attorney to administrative or disciplinary action, including professional sanctions administered per subpart C of this part. Covered USG attorneys may obtain further details in JAGINST 5803.1 (series). This requirement does not apply to non-USG attorneys, or to Reserve or Retired judge advocates unless serving on active-duty for more than 30 consecutive days.

§ 776.12 Maintenance of files.

Ethics complaint records shall be maintained by the Administrative Law Division, Office of the Judge Advocate General, and, in the case of Marine records, by the Judge Advocate Research and Civil Law Branch, JA Division, HQMC.

(a) Requests for access to such records should be referred to Deputy Assistant Judge Advocate General (Administrative Law), Office of the Judge Advocate General (Code 13), 1322 Patterson Avenue, SE., Suite 3000, Washington Navy Yard DC 20374–5066, or to Head, Judge Advocate Research and Civil Law Branch, JA Division, Headquarters Marine Corps, Washington Navy Yard DC 20380–0001, as appropriate.

(b) Local command files regarding professional responsibility complaints will not be maintained. Commanding officers and other supervisory attorneys may, however, maintain personal files but must not share their contents with others.

§§ 776.13—§ 776.17 [Reserved]

Subpart B—Rules of Professional Conduct

§ 776.18 Preamble.

(a) A covered USG attorney is a representative of clients, an officer of the legal system, an officer of the Federal Government, and a public citizen who has a special responsibility for the quality of justice and legal services provided to the DON and to individual clients. The Rules of Professional Conduct contained in this subpart govern the ethical conduct of covered attorneys practicing under the Uniform Code of Military Justice, the Manual for Courts-Martial, 10 U.S.C. 1044 (Legal Assistance), other laws of the United States, and regulations of the DON.

(b) This subpart not only addresses the professional conduct of judge advocates, but also applies to all other covered attorneys who practice under

the cognizance and supervision of the JAG. See § 776.2 of this part.

(c) All covered attorneys are subject to professional disciplinary action imposed by the JAG for violation of the Rules contained in this subpart. Action by the JAG does not prevent other Federal, State, or local bar associations or other licensing authorities from taking professional disciplinary or other administrative action for the same or similar acts.

§ 776.19 Principles.

The Rules of this subpart are based on the following principles. Interpretation of this subpart should flow from common meaning. To the extent that any ambiguity or conflict exists, this subpart should be interpreted consistent with these general principles.

(a) Covered attorneys shall:

(1) Obey the law and military regulations, and counsel clients to do so.

(2) Follow all applicable ethics rules.

(3) Protect the legal rights and interests of clients, organizational and individual.

(4) Be honest and truthful in all dealings.

(5) Not derive personal gain, except as authorized, for the performance of legal services.

(6) Maintain the integrity of the legal profession.

(b) Ethical rules should be consistent with law. If law and ethics conflict, the law prevails unless an ethical rule is constitutionally based.

(c) The military criminal justice system is a truth-finding process consistent with constitutional law.

§ 776.20 Competence.

(a) *Competence.* A covered attorney shall provide competent, diligent, and prompt representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and expeditious preparation reasonably necessary for representation. Initial determinations as to competence of a covered USG attorney for a particular assignment shall be made by a supervising attorney before case or issue assignments; however, assigned attorneys may consult with supervisors concerning competence in a particular case.

(b) [Reserved].

§ 776.21 Establishment and scope of representation.

(a) *Establishment and scope of representation:* (1) Formation of attorney-client relationships by covered USG attorneys with, and representation of, clients is permissible only when the attorney is authorized to do so by competent authority. Military Rule of Evidence 502, the Manual of the Judge Advocate General (JAG Instruction 5800.7 (series)), and the Naval Legal Service Office and Trial Service Office Manual, define when an attorney-client relationship is formed between a covered USG attorney and a client servicemember, dependent, or employee.

(2) Generally, the subject matter scope of a covered attorney's representation will be consistent with the terms of the assignment to perform specific representational or advisory duties. A covered attorney shall inform clients at the earliest opportunity of any limitations on representation and professional responsibilities of the attorney towards the client.

(3) A covered attorney shall follow the client's well-informed and lawful decisions concerning case objectives, choice of counsel, forum, pleas, whether to testify, and settlements.

(4) A covered attorney's representation of a client does not constitute an endorsement of the client's political, economic, social, or moral views or activities.

(5) A covered attorney shall not counsel or assist a client to engage in conduct that the attorney knows is criminal or fraudulent, but a covered attorney may discuss the legal and moral consequences of any proposed course of conduct with a client, and may counsel or assist a client in making a good faith effort to determine the validity, scope, meaning, or application of the law.

(b) [Reserved].

§ 776.22 Diligence.

(a) *Diligence.* A covered attorney shall act with reasonable diligence and promptness in representing a client, and shall consult with a client as soon as practicable and as often as necessary upon being assigned to the case or issue.

(b) [Reserved].

§ 776.23 Communication.

(a) *Communication:*

(1) A covered attorney shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information.

(2) A covered attorney shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

(b) [Reserved].

§ 776.24 Fees.

(a) *Fees:*

(1) A covered USG attorney shall not accept any salary, fee, compensation, or other payments or benefits, directly or indirectly, other than Government compensation, for services provided in the course of the covered USG attorney's official duties or employment.

(2) A covered USG attorney shall not accept any salary or other payments as compensation for legal services rendered, by that covered USG attorney in a private capacity, to a client who is eligible for assistance under the DON Legal Assistance Program, unless so authorized by the JAG. This rule does not apply to Reserve or Retired judge advocates not then serving on extended active-duty.

(3) A Reserve or Retired judge advocate, whether or not serving on extended active-duty, who has initially represented or interviewed a client or prospective client concerning a matter as part of the attorney's official Navy or Marine Corps duties, shall not accept any salary or other payments as compensation for services rendered to that client in a private capacity concerning the same general matter for which the client was seen in an official capacity, unless so authorized by the JAG.

(4) Covered non-USG attorneys may charge fees. Fees shall be reasonable. Factors considered in determining the reasonableness of a fee include the following:

(i) The time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(ii) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the attorney;

(iii) The fee customarily charged in the locality for similar legal services;

(iv) The amount involved and the results obtained;

(v) The time limitations imposed by the client or by the circumstances;

(vi) The nature and length of the professional relationship with the client;

(vii) The experience, reputation, and ability of the attorney or attorneys performing the services; and

(viii) Whether the fee is fixed or contingent.

(5) When the covered non-USG attorney has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation.

(6) A fee may be contingent on the outcome of the matter for which the service is rendered, except in a matter

in which a contingent fee is prohibited by paragraph (a)(7) of this section or other law. A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the covered non-USG attorney in the event of settlement, trial or appeal, litigation and other expenses to be deducted from the recovery, and whether such expenses are to be deducted before or after the contingent fee is calculated. Upon conclusion of a contingent fee matter, the covered non-USG attorney shall provide the client with a written statement stating the outcome of the matter and, if there is a recovery, showing the remittance to the client and the method of its determination.

(7) A covered non-USG attorney shall not enter into an arrangement for, charge, or collect a contingent fee for representing an accused in a criminal case.

(8) A division of fees between covered non-USG attorneys who are not in the same firm may be made only if:

(i) The division is in proportion to the services performed by each attorney or, by written agreement with the client, each attorney assumes joint responsibility for the representation;

(ii) The client is advised of and does not object to the participation of all the attorneys involved; and

(iii) The total fee is reasonable.

(b) Paragraphs (a)(4) through (a)(8) of this section apply only to private civilian attorneys practicing in proceedings conducted under the cognizance and supervision of the JAG. The primary purposes of paragraphs (a)(4) through (a)(8) of this section are not to permit the JAG to regulate fee arrangements between civilian attorneys and their clients but to provide guidance to covered USG attorneys practicing with non-USG attorneys and to supervisory attorneys who may be asked to inquire into alleged fee irregularities. Absent paragraphs (a)(4) through (a)(8) of this section, such supervisory attorneys have no readily available standard against which to compare allegedly questionable conduct of a civilian attorney.

§ 776.25 Confidentiality of information.

(a) *Confidentiality of Information:*

(1) A covered attorney shall not reveal information relating to representation of a client unless the client consents after consultation, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (a)(2) and (a)(3) of this section.

(2) A covered attorney shall reveal such information to the extent the covered attorney reasonably believes necessary to prevent the client from committing a criminal act that the covered attorney believes is likely to result in imminent death or substantial bodily harm, or significant impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapon system.

(3) A covered attorney may reveal such information to the extent the covered attorney reasonably believes necessary to establish a claim or defense on behalf of the covered attorney in a controversy between the covered attorney and the client, to establish a defense to a criminal charge or civil claim against the attorney based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the attorney's representation of the client.

(b) Conduct likely to result in the significant impairment of national security or the readiness or capability of a military unit, vessel, aircraft, or weapon system include, but are not limited to: Divulging the classified location of a special operations unit such that the lives of members of the unit are placed in immediate danger; sabotaging a vessel or aircraft to the extent that the vessel or aircraft could not conduct an assigned mission, or that the vessel or aircraft and crew could be lost; and compromising the security of a weapons site such that the weapons are likely to be stolen or detonated. Paragraph (a)(2) of this section is not intended to and does not mandate the disclosure of conduct which may have a slight impact on the readiness or capability of a unit, vessel, aircraft, or weapon system. Examples of such conduct are: absence without authority from a peacetime training exercise; intentional damage to an individually assigned weapon; and intentional minor damage to military property.

§ 776.26 Conflict of interest: General rule.

(a) *Conflict of interest: General rule:*

(1) A covered attorney shall not represent a client if the representation of that client will be directly adverse to another client, unless:

(i) The covered attorney reasonably believes the representation will not adversely affect the relationship with the other client; and

(ii) Each client consents after consultation.

(2) A covered attorney shall not represent a client if the representation of that client may be materially limited by the covered attorney's responsibilities to another client or to a third person, or by the covered attorney's own interests, unless:

(i) The covered attorney reasonably believes the representation will not be adversely affected; and

(ii) The client consents after consultation.

(3) When representation of multiple clients in a single matter is undertaken, the consultation shall include explanation of the implications of the common representation and the advantages and risks involved.

(b) *Reserve judge advocates.* These conflict of interest rules only apply when Reservists are actually drilling or on active-duty for training, or, as is the case with Retirees, on extended active-duty or when performing other duties subject to JAG supervision. Therefore, unless otherwise prohibited by criminal conflict of interest statutes, Reserve or Retired attorneys providing legal services in their civilian capacity may represent clients, or work in firms whose attorneys represent clients, with interests adverse to the United States. Reserve judge advocates who, in their civilian capacities, represent persons whose interests are adverse to the DON will provide written notification to their supervisory attorney and commanding officer, detailing their involvement in the matter. Reserve judge advocates shall refrain from undertaking any official action or representation of the DON with respect to any particular matter in which they are providing representation or services to other clients.

§ 776.27 Conflict of interests: Prohibited transactions.

(a) *Conflict of interests: Prohibited transactions.*

(1) Covered USG attorneys shall strictly adhere to current Department of Defense Ethics Regulations and shall not:

(i) Knowingly enter into any business transactions on behalf of, or adverse to, a client's interest which directly or indirectly relate to or result from the attorney-client relationship; or

(ii) Provide any financial assistance to a client or otherwise serve in a financial or proprietorial fiduciary or bailment relationship, unless otherwise specifically authorized by competent authority.

(2) No covered attorney shall:

(i) Use information relating to representation of a client to the disadvantage of the client unless the client consents after consultation, except as permitted or required by § 776.25 or § 776.42 of this part;

(ii) Prepare an instrument giving the covered attorney or a person related to

the covered attorney as parent, child, sibling, or spouse any gift from a client, including a testamentary gift, except where the client is related to the donee;

(iii) In the case of covered non-USG attorneys, accept compensation for representing a client from one other than the client unless the client consents after consultation, there is no interference with the covered attorney's independence of professional judgment or with the attorney-client relationship, and information relating to representation of a client is protected as required by § 776.25 of this part;

(iv) Negotiate any settlement on behalf of multiple clients in a single matter unless each client provides fully informed consent;

(v) Prior to the conclusion of representation of the client, make or negotiate an agreement giving a covered attorney literary or media rights for a portrayal or account based in substantial part on information relating to representation of a client;

(vi) Represent a client in a matter directly adverse to a person whom the covered attorney knows is represented by another attorney who is related as parent, child, sibling, or spouse to the covered attorney, except upon consent by the client after consultation regarding the relationship; or

(vii) Acquire a proprietary interest in the cause of action or subject matter of litigation the covered attorney is conducting for a client.

(b) [Reserved].

§ 776.28 Conflict of interest: Former client.

(a) *Conflict of interest: Former client.* A covered attorney who has represented a client in a matter shall not thereafter:

(1) Represent another person in the same or a substantially related matter in which the person's interests are materially adverse to the interests of the former client, unless the former client consents after consultation;

(2) Use information relating to the representation to the disadvantage of the former client or to the covered attorney's own advantage, except as § 776.25 or § 776.42 of this part would permit or require with respect to a client or when the information has become generally known; or

(3) Reveal information relating to the representation except as § 776.25 or § 776.42 of this part would permit or require with respect to a client.

(b) [Reserved].

§ 776.29 Imputed disqualification: General rule.

(a) *Imputed disqualification: General rule.* Covered USG attorneys working in the same military law office are not automatically disqualified from representing a client because any of them practicing alone would be prohibited from doing so by § 776.26, § 776.27, § 776.28, or § 776.38 of this part. Covered non-USG attorneys must consult their federal, state, and local bar rules governing the representation of multiple or adverse clients within the same office before such representation is initiated, as such representation may expose them to disciplinary action under the rules established by their licensing authority.

(b)(1) The circumstances of military (or Government) service may require representation of opposing sides by covered USG attorneys working in the same law office. Such representation is permissible so long as conflicts of interests are avoided and independent judgment, zealous representation, and protection of confidences are not compromised. Thus, the principle of imputed disqualification is not automatically controlling for covered USG attorneys. The knowledge, actions, and conflicts of interests of one covered USG attorney are not imputed to another simply because they operate from the same office. For example, the fact that a number of defense attorneys operate from one office and normally share clerical assistance would not prohibit them from representing co-accused at trial by court-martial. Imputed disqualification rules for non-USG attorneys are established by their individual licensing authorities and may well proscribe all attorneys from one law office from representing a co-accused, or a party with an adverse interest to an existing client, if any attorney in the same office were so prohibited.

(2) Whether a covered USG attorney is disqualified requires a functional analysis of the facts in a specific situation. The analysis should include consideration of whether the following will be compromised: Preserving attorney-client confidentiality; maintaining independence of judgment; and avoiding positions adverse to a client. See, e.g., *U.S. v. Stubbs*, 23 M.J. 188 (CMA 1987).

(3) Preserving confidentiality is a question of access to information. Access to information, in turn, is essentially a question of fact in a particular circumstance, aided by inferences, deductions, or working presumptions that reasonably may be made about the way in which covered USG attorneys work together. A covered USG attorney may have general access to files of all clients of a military law office (e.g., legal assistance attorney) and may regularly participate in discussions of their affairs; it may be inferred that such a covered USG attorney in fact is privy to all information about all the office's clients. In contrast, another covered USG attorney (e.g., military defense counsel) may have access to the files of only a limited number of clients and participate in discussion of the affairs of no other clients; in the absence of information to the contrary, it should be inferred that such a covered USG attorney in fact is privy to information about the clients actually served but not to information of other clients. Additionally, a covered USG attorney changing duty stations or changing assignments within a military office has a continuing duty to preserve confidentiality of information about a client formerly represented. See § 776.25 and § 776.28.7 of this part.

(4) Maintaining independent judgment allows a covered USG attorney to consider, recommend, and carry out any appropriate course of action for a client without regard to the covered USG attorney's personal interests or the interests of another. When such independence is lacking or unlikely, representation cannot be zealous.

(5) Another aspect of loyalty to a client is the general obligation of any attorney to decline subsequent representations involving positions adverse to a former client in substantially related matters. This obligation normally requires abstention from adverse representation by the individual covered attorney involved, but, in the military legal office, abstention is not required by other covered USG attorneys through imputed disqualification.

§ 776.30 Successive Government and private employment.

(a) *Successive Government and private employment:*

(1) Except as the law or regulations may otherwise expressly permit, a former covered USG attorney shall not represent a private client in connection with a matter in which the covered USG attorney participated personally and substantially as a public officer or employee, unless the appropriate Government agency consents after consultation. If a former covered USG attorney in a firm, partnership, or association knows that another attorney within the firm, partnership, or association is undertaking or continuing representation in such a matter:

(i) The disqualified former covered USG attorney must ensure that he or she is screened from any participation in the

matter and is apportioned no part of the fee or any other benefit therefrom; and,

(ii) Must provide written notice promptly to the appropriate Government agency to enable it to ascertain compliance with the provisions of applicable law and regulations.

(2) Except as the law or regulations may otherwise expressly permit, a former covered USG attorney, who has information known to be confidential Government information about a person which was acquired while a covered USG attorney, may not represent a private client whose interests are adverse to that person in a matter in which the information could be used to the material disadvantage of that person. The former covered USG attorney may continue association with a firm, partnership, or association representing any such client only if the disqualified covered USG attorney is screened from any participation in the matter and is apportioned no part of the fee or any other benefit therefrom.

(3) Except as the law or regulations may otherwise expressly permit, a covered USG attorney shall not:

(i) Participate in a matter in which the covered USG attorney participated personally and substantially while in private practice or nongovernmental employment, unless under applicable law no one is, or by lawful delegation may be, authorized to act in the covered USG attorney's stead in the matter; or,

(ii) Negotiate for private employment with any person who is involved as a party or as attorney for a party in a matter in which the covered USG attorney is participating personally and substantially.

(4) As used in this section, the term "matter" includes:

(i) Any judicial or other proceeding, application, request for a ruling or other determination, contract, claim, controversy, investigation, charge, accusation, arrest, or other particular matter involving a specific party or parties, and

(ii) Any other matter covered by the conflict of interest rules of the Department of Defense, DON, or other appropriate Government agency.

(5) As used in this section, the term "confidential Governmental information" means information which has been obtained under Governmental authority and which, at the time this Rule is applied, the Government is prohibited by law or regulations from disclosing to the public or has a legal privilege not to disclose, and which is not otherwise available to the public.

(b) [Reserved]

§ 776.31 Former judge or arbitrator.

(a) *Former judge or arbitrator:*

(1) Except as stated in paragraph (a)(3) of this section, a covered USG attorney shall not represent anyone in connection with a matter in which the covered USG attorney participated personally and substantially as a judge or other adjudicative officer, arbitrator, or law clerk to such a person, unless all parties to the proceeding consent after disclosure.

(2) A covered USG attorney shall not negotiate for employment with any person who is involved as a party or as attorney for a party in a matter in which the covered USG attorney is participating personally and substantially as a judge or other adjudicative officer. A covered USG attorney serving as law clerk to a judge, other adjudicative officer, or arbitrator may negotiate for employment with a party or attorney involved in a matter in which the clerk is participating personally and substantially, but only after the covered USG attorney has notified the judge, other adjudicative officer, or arbitrator, and been disqualified from further involvement in the matter.

(3) An arbitrator selected as a partisan of a party in a multi-member arbitration panel is not prohibited from subsequently representing that party.

(b) [Reserved].

§ 776.32 Department of the Navy as client.

(a) *Department of Navy as client:*

(1) Except when representing an individual client pursuant to paragraph (a)(6) of this section, a covered USG attorney represents the DON (or the Executive agency to which assigned) acting through its authorized officials. These officials include the heads of organizational elements within the Naval service, such as the commanders of fleets, divisions, ships and other heads of activities. When a covered USG attorney is assigned to such an organizational element and designated to provide legal services to the head of the organization, an attorney-client relationship exists between the covered attorney and the DON as represented by the head of the organization as to matters within the scope of the official business of the organization. The head of the organization may not invoke the attorney-client privilege or the rule of confidentiality for the head of the organization's own benefit but may invoke either for the benefit of the DON. In invoking either the attorney-client privilege or attorney-client confidentiality on behalf of the DON, the head of the organization is subject to being overruled by higher authority.

(2) If a covered USG attorney knows that an officer, employee, or other member associated with the organizational client is engaged in action, intends to act or refuses to act in a matter related to the representation that is either adverse to the legal interests or obligations of the DON or a violation of law which reasonably might be imputed to the Department, the covered USG attorney shall proceed as is reasonably necessary in the best interest of the Naval service. In determining how to proceed, the covered USG attorney shall give due consideration to the seriousness of the violation and its consequences, the scope and nature of the covered USG attorney's representation, the responsibility in the Naval service and the apparent motivation of the person involved, the policies of the Naval service concerning such matters, and any other relevant considerations. Any measures taken shall be designed to minimize prejudice to the interests of the Naval service and the risk of revealing information relating to the representation to persons outside the service. Such measures shall include among others:

(i) Asking for reconsideration of the matter by the acting official;

(ii) Advising that a separate legal opinion on the matter be sought for presentation to appropriate authority in the Naval service;

(iii) Referring the matter to, or seeking guidance from, higher authority in the chain of command including, if warranted by the seriousness of the matter, referral to the supervisory attorney assigned to the staff of the acting official's next superior in the chain of command; or

(iv) Advising the acting official that his or her personal legal interests are at risk and that he or she should consult counsel as there may exist a conflict of interests for the covered USG attorney, and the covered USG attorney's responsibility is to the organization.

(3) If, despite the covered USG attorney's efforts per paragraph (a)(2) of this section, the highest authority that can act concerning the matter insists upon action or refuses to act, in clear violation of law, the covered USG attorney shall terminate representation with respect to the matter in question. In no event shall the attorney participate or assist in the illegal activity. In this case, a covered USG attorney shall report such termination of representation to the attorney's supervisory attorney or attorney representing the next superior in the chain of command.

(4) In dealing with the officers, employees, or members of the Naval service a covered USG attorney shall explain the identity of the client when it is apparent that the Naval service's interests are adverse to those of the officer, employee, or member.

(5) A covered USG attorney representing the Naval service may also represent any of its officers, employees, or members, subject to the provisions of § 776.26 of this part and other applicable authority. If the DON's consent to dual representation is required by § 776.26 of this part, the consent shall be given by an appropriate official of the DON other than the individual who is to be represented.

(6) A covered USG attorney who has been duly assigned to represent an individual who is subject to disciplinary action or administrative proceedings, or to provide legal assistance to an individual, has, for those purposes, an attorney-client relationship with that individual.

(b) [Reserved].

§ 776.33 Client under a disability.

(a) *Client under a disability:*

(1) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability, or for some other reason, the covered attorney shall, as far as reasonably possible, maintain a normal attorney-client relationship with the client.

(2) A covered attorney may seek the appointment of a guardian or take other protective action with respect to a client only when the covered attorney reasonably believes that the client cannot adequately act in the client's own interest.

(b) [Reserved].

§ 776.34 Safekeeping property.

(a) *Safekeeping property.* Covered USG attorneys shall not normally hold or safeguard property of a client or third persons in connection with representational duties. See § 776.27 of this part.

(b) [Reserved].

§ 776.35 Declining or terminating representation.

(a) *Declining or terminating representation:*

(1) Except as stated in paragraph (a)(3) of this section, a covered attorney shall not represent a client or, when representation has commenced, shall seek to withdraw from the representation of a client if:

(i) The representation will result in violation of the Rules contained in this subpart or other law or regulation;

(ii) The covered attorney's physical or mental condition materially impairs his or her ability to represent the client; or

(iii) The covered attorney is dismissed by the client.

(2) Except as stated in paragraph (a)(3) of this section, a covered attorney may seek to withdraw from representing a client if withdrawal can be accomplished without material adverse effect on the interests of the client, or if:

(i) The client persists in a course of action involving the covered attorney's services that the covered attorney reasonably believes is criminal or fraudulent;

(ii) The client has used the covered attorney's services to perpetrate a crime or fraud;

(iii) The client insists upon pursuing an objective that the covered attorney considers repugnant or imprudent;

(iv) In the case of covered non-USG attorneys, the representation will result in an unreasonable financial burden on the attorney or has been rendered unreasonably difficult by the client; or

(v) Other good cause for withdrawal exists.

(3) When ordered to do so by a tribunal or other competent authority, a covered attorney shall continue representation notwithstanding good cause for terminating the representation.

(4) Upon termination of representation, a covered attorney shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for assignment or employment of other counsel, and surrendering papers and property to which the client is entitled and, where a non-USG attorney provided representation, refunding any advance payment of fee that has not been earned. The covered attorney may retain papers relating to the client to the extent permitted by law.

(b) [Reserved].

§ 776.36 Prohibited Sexual Relations.

(a) *Prohibited sexual relations:*

(1) A covered attorney shall not have sexual relations with a current client. A covered attorney shall not require, demand, or solicit sexual relations with a client incident to any professional representation.

(2) A covered attorney shall not engage in sexual relations with another attorney currently representing a party whose interests are adverse to those of a client currently represented by the covered attorney.

(3) A covered attorney shall not engage in sexual relations with a judge who is presiding or who is likely to preside over any proceeding in which the covered attorney will appear in a representative capacity.

(4) A covered attorney shall not engage in sexual relations with other persons involved in the particular case, judicial or administrative proceeding, or other matter for which representation has been established, including but not limited to witnesses, victims, co-accuseds, and court-martial or board members.

(5) For purposes of this Rule, "sexual relations" means:

(i) Sexual intercourse; or

(ii) Any touching of the sexual or other intimate parts of a person or causing such person to touch the sexual or other intimate parts of the covered attorney for the purpose of arousing or gratifying the sexual desire of either party.

(b) [Reserved].

§ 776.37 Advisor.

(a) *Advisor.* In representing a client, a covered attorney shall exercise independent professional judgment and render candid advice. In rendering advice, a covered attorney should refer not only to law but to other considerations such as moral, economic, social, and political factors that may be relevant to the client's situation.

(b) [Reserved].

§ 776.38 Mediation.

(a) *Mediation:*

(1) A covered attorney may act as a mediator between individuals if:

(i) The covered attorney consults with each individual concerning the implications of the mediation, including the advantages and risks involved, and the effect on the attorney-client confidentiality, and obtains each individual's consent to the mediation;

(ii) The covered attorney reasonably believes that the matter can be resolved on terms compatible with each individual's best interests, that each individual will be able to make adequately informed decisions in the matter, and that there is little risk of material prejudice to the interests of any of the individuals if the contemplated resolution is unsuccessful; and,

(iii) The covered attorney reasonably believes that the mediation can be undertaken impartially and without improper effect on other responsibilities the covered attorney has to any of the individuals.

(2) While acting as a mediator, the covered attorney shall consult with each individual concerning the decisions to be made and the considerations relevant in making them, so that each individual can make adequately informed decisions.

(3) A covered attorney shall withdraw as a mediator if any of the individuals so requests, or if any of the conditions stated in paragraph (a)(1) of this section is no longer satisfied. Upon withdrawal, the covered attorney shall not represent any of the individuals in the matter that was the subject of the mediation unless each individual consents.

(b) [Reserved].

§ 776.39 Evaluation for use by third persons.

(a) *Evaluation for use by third persons:*

(1) A covered attorney may undertake an evaluation of a matter affecting a client for the use of someone other than the client if:

(i) The covered attorney reasonably believes that making the evaluation is compatible with other aspects of the covered attorney's relationship with the client, and,

(ii) The client consents after consultation.

(2) Except as disclosure is required in connection with a report of an evaluation, information relating to the evaluation is otherwise protected by § 776.25 of this part.

(b) [Reserved].

§ 776.40 Meritorious claims and contentions.

(a) *Meritorious claims and contentions.* A covered attorney shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis for doing so that is not frivolous, which includes a good faith argument for an extension, modification, or reversal of existing law. A covered attorney representing an accused in a criminal proceeding or the respondent in an administrative proceeding that could result in incarceration, discharge from the Naval service, or other adverse personnel action, may nevertheless defend the client at the proceeding as to require that every element of the case is established.

(b) [Reserved].

§ 776.41 Expediting litigation.

(a) *Expediting litigation.* A covered attorney shall make reasonable efforts to expedite litigation or other proceedings consistent with the interests of the client and the attorney's responsibilities to tribunals.

(b) [Reserved].

§ 776.42 Candor and obligations toward the tribunal.

(a) *Candor and obligations toward the tribunal:*

(1) A covered attorney shall not knowingly:

(i) Make a false statement of material fact or law to a tribunal;

(ii) Fail to disclose a material fact to a tribunal when disclosure is necessary to avoid assisting a criminal or fraudulent act by the client;

(iii) Fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the covered attorney to be directly adverse to the position of the client and not disclosed by opposing counsel;

(iv) Offer evidence that the covered attorney knows to be false. If a covered attorney has offered material evidence and comes to know of its falsity, the covered attorney shall take reasonable remedial measures; or

(v) Disobey an order imposed by a tribunal unless done openly before the tribunal in a good faith assertion that no valid order should exist.

(2) The duties stated in paragraph (a) of this section continue to the conclusion of the proceedings, and apply even if compliance requires disclosure of information otherwise protected by § 776.25 of this part.

(3) A covered attorney may refuse to offer evidence that the covered attorney reasonably believes is false.

(4) In an ex parte proceeding, a covered attorney shall inform the tribunal of all material facts known to the covered attorney which are necessary to enable the tribunal to make an informed decision, whether or not the facts are adverse.

(b) [Reserved].

§ 776.43 Fairness to opposing party and counsel.

(a) *Fairness to opposing party and counsel.* A covered attorney shall not:

(1) Unlawfully obstruct another party's access to evidence or unlawfully alter, destroy, or conceal a document or other material having potential evidentiary value. A covered attorney shall not counsel or assist another person to do any such act;

(2) Falsify evidence, counsel or assist a witness to testify falsely, or offer an inducement to a witness that is prohibited by law;

(3) In pretrial procedure, make a frivolous discovery request or fail to make reasonably diligent effort to comply with a legally proper discovery request by an opposing party;

(4) In trial, allude to any matter that the covered attorney does not reasonably believe is relevant or that will not be supported by admissible evidence, assert personal knowledge of facts in issue except when testifying as a witness, or state a personal opinion as to the justness of a cause, the credibility of a witness, the culpability of a civil litigant, or the guilt or innocence of an accused; or

(5) Request a person other than a client to refrain from voluntarily giving relevant information to another party unless:

(i) The person is a relative, an employee, or other agent of a client; and

(ii) The covered attorney reasonably believes that the person's interests will not be adversely affected by refraining from giving such information.

(b) [Reserved].

§ 776.44 Impartiality and decorum of the tribunal.

(a) *Impartiality and decorum of the tribunal.* A covered attorney shall not:

(1) Seek to influence a judge, court member, member of a tribunal, prospective court member or member of a tribunal, or other official by means prohibited by law or regulation;

(2) Communicate ex parte with such a person except as permitted by law or regulation; or

(3) Engage in conduct intended to disrupt a tribunal.

(b) [Reserved]

§ 776.45 Extra-tribunal statements.

(a) *Extra-tribunal statements:*

(1) A covered attorney shall not make an extrajudicial statement about any person or case pending investigation or adverse administrative or disciplinary proceedings that a reasonable person would expect to be disseminated by means of public communication if the covered attorney knows or reasonably should know that it will have a substantial likelihood of materially prejudicing an adjudicative proceeding or an official review process thereof.

(2) A statement referred to in paragraph (a)(1) of this section ordinarily is likely to have such an effect when it refers to a civil matter triable to a jury, a criminal matter, or any other proceeding that could result in incarceration, discharge from the Naval service, or other adverse personnel action, and the statement relates to:

(i) The character, credibility, reputation, or criminal record of a party, suspect in a criminal investigation, victim, or witness, or the identity of a victim or witness, or the expected testimony of a party, suspect, victim, or witness;

(ii) The possibility of a plea of guilty to the offense or the existence or contents of any confession, admission, or statement given by an accused or suspect or that person's refusal or failure to make a statement;

(iii) The performance or results of any forensic examination or test or the refusal or failure of a person to submit to an examination or test, or the identity or nature of physical evidence expected to be presented;

(iv) Any opinion as to the guilt or innocence of an accused or suspect in a criminal case or other proceeding that could result in incarceration, discharge from the Naval service, or other adverse personnel action;

(v) Information the covered attorney knows or reasonably should know is likely to be inadmissible as evidence before a tribunal and would, if disclosed, create a substantial risk of materially prejudicing an impartial proceeding;

(vi) The fact that an accused has been charged with a crime, unless there is included therein a statement explaining that the charge is merely an accusation and that the accused is presumed innocent until and unless proven guilty; or

(vii) The credibility, reputation, motives, or character of civilian or military officials of the Department of Defense.

(3) Notwithstanding paragraphs (a)(1) and (a)(2)(i) through (a)(2)(vii) of this section, a covered attorney involved in the investigation or litigation of a matter may state without elaboration:

(i) The general nature of the claim, offense, or defense;

(ii) The information contained in a public record;

(iii) That an investigation of the matter is in progress, including the general scope of the investigation, the offense or claim or defense involved and, except when prohibited by law or regulation, the identity of the persons involved;

(iv) The scheduling or result of any step in litigation;

(v) A request for assistance in obtaining evidence and information necessary thereto;

(vi) A warning of danger concerning the behavior of the person involved, when there is reason to believe that there exists the likelihood of substantial harm to an individual or to the public interest; and

(vii) In a criminal case, in addition to paragraphs (a)(3)(i) through (a)(3)(vi) of this section:

(A) The identity, duty station, occupation, and family status of the accused;

(B) If the accused has not been apprehended, information necessary to aid in apprehension of that person;

(C) The fact, time, and place of apprehension; and (D) The identity of investigating and apprehending officers or agencies and the length of the investigation.

(4) Notwithstanding paragraphs (a)(1) and (a)(2)(i) through (a)(2)(vii) of this section, a covered attorney may make a statement that a reasonable covered attorney would believe is required to protect a client from the substantial undue prejudicial effect of recent publicity not initiated by the covered attorney or the attorney's client. A statement made pursuant to this paragraph shall be limited to such information as is necessary to mitigate the recent adverse publicity.

(5) The protection and release of information in matters pertaining to the DON is governed by such statutes as the Freedom of Information Act and the Privacy Act, in addition to those governing protection of national defense information. In addition, other laws and regulations may further restrict the information that can be released or the source from which it is to be released (e.g., the Manual of the Judge Advocate General).

(b) [Reserved].

§ 776.46 Attorney as witness.

(a) *Attorney as witness:*

(1) A covered attorney shall not act as advocate at a trial in which the covered attorney is likely to be a necessary witness except when:

(i) The testimony relates to an uncontested issue;

(ii) The testimony relates to the nature and quality of legal services rendered in the case; or

(iii) Disqualification of the covered attorney would work substantial hardship on the client.

(2) A covered attorney may act as advocate in a trial in which another attorney in the covered attorney's office is likely to be called as a witness, unless precluded from doing so by § 776.26 or § 776.28 of this part.

(b) [Reserved].

§ 776.47 Special responsibilities of a trial counsel.

(a) *Special responsibilities of a trial counsel.* A trial counsel shall:

(1) Recommend to the convening authority that any charge or specification not warranted by the evidence be withdrawn;

(2) Make reasonable efforts to assure that the accused has been advised of the right to, and the procedure for obtaining, counsel and has been given reasonable opportunity to obtain counsel;

(3) Not seek to obtain from an unrepresented accused a waiver of important pretrial rights;

(4) Make timely disclosure to the defense of all evidence or information known to the trial counsel that tends to negate the guilt of the accused or mitigates the offense, and, in connection with sentencing, disclose to the defense all unprivileged mitigating information known to the trial counsel, except when the trial counsel is relieved of this responsibility by a protective order or regulation;

(5) Exercise reasonable care to prevent investigators, law enforcement personnel, employees, or other persons assisting or associated with the trial counsel from making an extrajudicial statement that the trial counsel would be prohibited from making under § 776.45 of this part; and

(6) Except for statements that are necessary to inform the public of the nature and extent of the trial counsel's actions and that serve a legitimate law enforcement purpose, refrain from making extrajudicial comments that have a substantial likelihood of heightening public condemnation of the accused.

(b) *Role of the trial counsel.* (1) The trial counsel represents the United States in the prosecution of special and general courts-martial. See Article 38(a), UCMJ, and R.C.M. 103(16), 405(d)(3)(A), and 502(d)(5), MCM, 1998. Accordingly, a trial counsel has the responsibility of administering justice and is not simply an advocate. This responsibility carries with it specific obligations to see that the accused is accorded procedural justice and that guilt is decided upon the basis of sufficient evidence. Paragraph (a)(1) of this section recognizes that the trial counsel does not have all the authority vested in modern civilian prosecutors. The authority to convene courts-martial, and to refer and withdraw specific charges, is vested in convening authorities. Trial counsel may have the duty, in certain circumstances, to bring to the court's attention any charge that lacks sufficient evidence to support a conviction. See *United States* v. *Howe*, 37 M.J. 1062 (NMCMR 1993). Such action should be undertaken only after consultation with a supervisory attorney and the convening authority. See also § 776.42 of this part, governing ex parte proceedings. Applicable law may require other measures by the trial counsel. Knowing disregard of those obligations or a systematic abuse of prosecutorial discretion could constitute a violation of § 776.69 of this part.

(2) The "ABA Standards for Criminal Justice: The Prosecution Function," (3rd ed. 1993), has been used by appellate courts in analyzing issues concerning trial counsel conduct. To the extent consistent with this part, the ABA standards may be used to guide trial counsel in the prosecution of criminal

cases. See United States v. Howe, 37 M.J. 1062 (NMCR 1993); *United States* v. *Dancy*, 38 M.J. 1 (CMA 1993); *United States* v. *Hamilton*, 41 M.J. 22 (CMA 1994); *United States* v. *Meek*, 44 M.J. 1 (CMA 1996).

§ 776.48 Advocate in nonadjudicative proceedings.

(a) *Advocate in nonadjudicative proceedings.* A covered attorney representing a client before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of § 776.42, § 776.43, and § 776.44 of this part.

(b) [Reserved].

§ 776.49 Truthfulness in statements to others.

(a) *Truthfulness in statements to others.* In the course of representing a client a covered attorney shall not knowingly;

(1) Make a false statement of material fact or law to a third person; or

(2) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by § 776.25 of this part.

(b) [Reserved].

§ 776.50 Communication with person represented by counsel.

(a) *Communication with person represented by counsel.* In representing a client, a covered attorney shall not communicate about the subject of the representation with a party the covered attorney knows to be represented by another attorney in the matter, unless the covered attorney has the consent of the other attorney or is authorized by law to do so.

(b) [Reserved].

§ 776.51 Dealing with an unrepresented person.

(a) *Dealing with an unrepresented person.* When dealing on behalf of a client with a person who is not represented by counsel, a covered attorney shall not state or imply that the covered attorney is disinterested. When the covered attorney knows or reasonably should know that the unrepresented person misunderstands the covered attorney's role in the matter, the covered attorney shall make reasonable efforts to correct the misunderstanding.

(b) [Reserved].

§ 776.52 Respect for rights of third persons.

(a) *Respect for rights of third persons.* In representing a client, a covered attorney shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

(b) [Reserved].

§ 776.53 Responsibilities of the Judge Advocate General and supervisory attorneys.

(a) *Responsibilities of the Judge Advocate General and supervisory attorneys.* (1) The JAG and supervisory attorneys shall make reasonable efforts to ensure that all covered attorneys conform to this part.

(2) A covered attorney having direct supervisory authority over another covered attorney shall make reasonable efforts to ensure that the other attorney conforms to this part.

(3) A supervisory attorney shall be responsible for another subordinate covered attorney's violation of this part if:

(i) The supervisory attorney orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(ii) The supervisory attorney has direct supervisory authority over the other attorney and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(4) A supervisory attorney is responsible for ensuring that the subordinate covered attorney is properly trained and is competent to perform the duties to which the subordinate covered attorney is assigned.

(b) [Reserved].

§ 776.54 Responsibilities of a subordinate attorney.

(a) *Responsibilities of a subordinate attorney:*

(1) A covered attorney is bound by this part notwithstanding that the covered attorney acted at the direction of another person.

(2) In recognition of the judge advocate's unique dual role as a commissioned officer and attorney, subordinate judge advocates shall obey lawful directives and regulations of supervisory attorneys when not inconsistent with this part or the duty of a judge advocate to exercise independent professional judgment as to the best interest of an individual client.

(3) A subordinate covered attorney does not violate this part if that covered attorney acts in accordance with a supervisory attorney's written and reasonable resolution of an arguable question of professional duty. See § 776.10.

(b) [Reserved].

§ 776.55 Responsibilities regarding non-attorney assistants.

(a) *Responsibilities regarding non-attorney assistants.* With respect to a non-attorney acting under the authority, supervision, or direction of a covered attorney:

(1) The senior supervisory attorney in an office shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of a covered attorney;

(2) A covered attorney having direct supervisory authority over the non-attorney shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of a covered attorney; and

(3) A covered attorney shall be responsible for conduct of such a person that would be a violation of this part if engaged in by a covered attorney if:

(i) The covered attorney orders or, with the knowledge of the specific conduct, explicitly or impliedly ratifies the conduct involved; or

(ii) The covered attorney has direct supervisory authority over the person, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

(b) [Reserved].

§ 776.56 Professional independence of a covered USG attorney.

(a) *Professional independence of a covered USG attorney.*

(1) Notwithstanding a judge advocate's status as a commissioned officer subject, generally, to the authority of superiors, a judge advocate detailed or assigned to represent an individual member or employee of the DON is expected to exercise unfettered loyalty and professional independence during the representation consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(2) Notwithstanding a civilian USG attorney's status as a Federal employee subject, generally, to the authority of superiors, a civilian USG attorney detailed or assigned to represent an individual member or employee of the DON is expected to exercise unfettered loyalty and professional independence during the representation consistent with these Rules and remains ultimately responsible for acting in the best interest of the individual client.

(3) The exercise of professional judgment in accordance with paragraphs (a)(1) and (a)(2) of this section shall not, standing alone, be a basis for an adverse evaluation or other prejudicial action.

(b)(1) This section recognizes that a judge advocate is a military officer required by law to obey the lawful orders of superior officers. It also recognizes the similar status of a civilian USG attorney. Nevertheless, the practice of law requires the exercise of judgment solely for the benefit of the client and free of compromising influences and loyalties. Thus, when a covered USG attorney is assigned to represent an individual client, neither the attorney's personal interests, the interests of other clients, nor the interests of third persons should affect loyalty to the individual client.

(2) Not all direction given to a subordinate covered attorney is an attempt to influence improperly the covered attorney's professional judgment. Each situation must be evaluated by the facts and circumstances, giving due consideration to the subordinate's training, experience, and skill. A covered attorney subjected to outside pressures should make full disclosure of them to the client. If the covered attorney or the client believes the effectiveness of the representation has been or will be impaired thereby, the covered attorney should take proper steps to withdraw from representation of the client.

(3) Additionally, a judge advocate has a responsibility to report any instances of unlawful command influence. See R.C.M. 104, MCM, 1998.

§ 776.57 Unauthorized practice of law.

(a) *Unauthorized practice of law.* A covered USG attorney shall not:

(1) Except as authorized by an appropriate military department, practice law in a jurisdiction where doing so is prohibited by the regulations of the legal profession in that jurisdiction; or

(2) Assist a person who is not a member of the bar in the performance of activity that constitutes the unauthorized practice of law.

(b) Limiting the practice of law to members of the bar protects the public against rendition of legal services by unqualified persons. A covered USG attorney's performance of legal duties pursuant to a military department's authorization, however, is considered a Federal function and not subject to regulation by the states. Thus, a covered USG attorney may perform legal assistance duties even though the covered attorney is not licensed to practice in the jurisdiction within which the covered attorney's duty station is located. Paragraph (a)(2) of this section does not prohibit a covered USG attorney from using the services of non-attorneys and delegating functions to them, so long as the covered attorney supervises the delegated work and retains responsibility for it. See § 776.55 of this part. Likewise, it does not prohibit covered USG attorneys from providing professional advice and instruction to non-attorneys whose employment requires knowledge of law; for example, claims adjusters, social workers, accountants and persons employed in Government agencies. In addition, a covered USG attorney may counsel individuals who wish to proceed pro se or non-attorneys authorized by law or regulation to appear and represent themselves or others before military proceedings.

§§ 776.58–776.65 [Reserved]

§ 776.66 Bar admission and disciplinary matters.

(a) *Bar admission and disciplinary matters.* A covered attorney, in connection with any application for bar admission, appointment as a judge advocate, employment as a civilian USG attorney, certification by the JAG or his designee, or in connection with any disciplinary matter, shall not:

(1) Knowingly make a false statement of fact; or

(2) Fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this section does not require disclosure of information otherwise protected by § 776.25 of this part.

(b) The duty imposed by this section extends to covered attorneys and other attorneys seeking admission to a bar, application for appointment as a covered USG attorney (military or civilian) or certification by the JAG or his designee. Hence, if a person makes a false statement in connection with an application for admission or certification (e.g., misstatement by a civilian attorney before a military judge regarding qualifications under Rule for Courts-Martial 502), it may be the basis for subsequent disciplinary action if the person is admitted or certified, and in any event may be relevant in a subsequent admission application. The duty imposed by this section applies to a covered attorney's own admission or discipline as well as that of others. Thus, it is a separate professional offense for a covered attorney to make a knowing misrepresentation or omission in connection with a disciplinary investigation of the covered attorney's own conduct. This section also requires affirmative clarification of any misunderstanding on the part of the admissions, certification, or disciplinary authority of which the person involved becomes aware.

§ 776.67 Judicial and legal officers.

(a) *Judicial and legal officers.* A covered attorney shall not make a statement that the covered attorney knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, investigating officer, hearing officer, adjudicatory officer, or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) [Reserved].

§ 776.68 Reporting professional misconduct.

(a) *Reporting professional misconduct:*

(1) A covered attorney having knowledge that another covered attorney has committed a violation of this part that raises a substantial question as to that covered attorney's honesty, trustworthiness, or fitness as a covered attorney in other respects, shall report such violation in accordance with the procedures set forth in subpart C of this part.

(2) A covered attorney having knowledge that a judge has committed a violation of applicable rules of judicial conduct that raises a substantial question as to the judge's fitness for office shall report such violation in accordance with the procedures set forth in subpart C of this part.

(3) This Rule does not require disclosure of information otherwise protected by § 776.25 of this part.

(b) [Reserved].

§ 776.69 Misconduct.

(a) *Misconduct.* It is professional misconduct for a covered attorney to:

(1) Violate or attempt to violate this subpart, knowingly assist or induce another to do so, or do so through the acts of another;

(2) Commit a criminal act that reflects adversely on the covered attorney's honesty, trustworthiness, or fitness as an attorney in other respects;

(3) Engage in conduct involving dishonesty, fraud, deceit, or misrepresentation;

(4) Engage in conduct that is prejudicial to the administration of justice;

(5) State or imply an ability to influence improperly a government agency or official; or

(6) Knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

(b)(1) Judge advocates hold a commission as an officer in the Navy or Marine Corps and assume legal responsibilities going beyond those of other citizens. A judge advocate's abuse of such commission can suggest an inability to fulfill the professional role of judge advocate and attorney. This concept has similar application to civilian USG attorneys.

(2) Covered non-USG attorneys, Reservists, and Retirees (acting in their civilian capacity), like their active-duty counterparts, are expected to demonstrate model behavior and exemplary integrity at all times. JAG may consider any and all derogatory or beneficial information about a covered attorney, for purposes of determining the attorney's qualification, professional competence, or fitness to practice law in DON matters, or to administer discipline under this part. Such consideration shall be made, except in emergency situations necessitating immediate action, according to the procedures established in subpart C of this part.

§ 776.70 Jurisdiction.

(a) *Jurisdiction.* All covered attorneys, as defined in § 776.2 of this part, shall be governed by this part.

(b)(1) Many covered USG attorneys practice outside the territorial limits of the jurisdiction in which they are licensed. While covered attorneys remain subject to the governing authority of the jurisdiction in which they are licensed to practice, they are also subject to these Rules.

(2) When covered USG attorneys are engaged in the conduct of Navy or Marine Corps legal functions, whether serving the Navy or Marine Corps as a client or serving an individual client as authorized by the Navy or Marine Corps, the rules contained in this subpart supersede any conflicting rules applicable in jurisdictions in which the covered attorney may be licensed. However, covered attorneys practicing in State or Federal civilian court proceedings will abide by the rules adopted by that State or Federal civilian court during the proceedings. As for covered non-USG attorneys practicing under the supervision of the JAG, violation of the rules contained in this subpart may result in suspension from practice in DON proceedings.

(3) Covered non-USG attorneys, Reservists, or Retirees (acting in their civilian capacity) who seek to provide legal services in any DON matter under JAG cognizance and supervision, may be precluded from such practice of law if, in the opinion of the JAG (as exercised through this instruction) the attorney's conduct in any venue renders that attorney unable or unqualified to practice in DON programs or proceedings.

§ 776.71 Requirement to remain in good standing with licensing authorities.

(a) *Requirement to remain in good standing with state licensing authority:*

(1) Each officer of the Navy appointed as a member of the Judge Advocate General's Corps, each officer of the Marine Corps designated a judge advocate, and each civil service and contracted civilian attorney who practices law under the cognizance and supervision of the JAG shall maintain a status considered "in good standing" at all times with the licensing authority admitting the individual to the practice of law before the highest court of at least one State, Territory, Commonwealth, or the District of Columbia.

(2) The JAG, the Director, JA Division, HQMC, or any other supervisory attorney may require any covered USG attorney over whom they exercise authority to establish that the attorney continues to be in good standing with his or her licensing authority. Representatives of the JAG or of the Director, JA Division, HQMC, may also inquire directly of any such covered USG attorney's licensing authority to establish whether he or she continues to be in good standing and has no disciplinary action pending.

(3) Each covered USG attorney shall immediately report to the JAG if any jurisdiction in which the covered USG attorney is or has been a member in good standing commences disciplinary investigation or action against him or her or if the covered USG attorney is disciplined, suspended, or disbarred from the practice of law in any jurisdiction.

(4) Each covered non-USG attorney representing an accused in any court-martial or administrative separation proceeding shall be a member in good standing with, and authorized to practice law by, the bar of a Federal court or of the bar of the highest court of a State, or a lawyer otherwise authorized by a recognized licensing authority to practice law and found by the military judge to be qualified to represent the accused.

(b)(1) The licensing authority granting the certification or privilege to practice law within the jurisdiction generally defines the phrase "in good standing." At a minimum it means that the individual is subject to the jurisdiction's disciplinary review process; has not been suspended or disbarred from the practice of law within the jurisdiction; is up-to-date in the payment of all required fees; has met applicable continuing legal education requirements which the jurisdiction has imposed (or the cognizant authority has waived those requirements in the case of the individual); and has met such other requirements as the cognizant authority has set to remain eligible to practice law. So long as these conditions are met, a covered USG attorney may be considered "inactive" as to the practice of law within a particular jurisdiction and still be considered "in good standing" for purposes of this section.

(2) Rule for Courts-Martial 502(d)(3)(A) requires that any civilian defense counsel representing an accused in a court-martial be a member of the bar of a Federal court or of the bar of the highest court of a State. This civilian defense counsel qualification only has meaning if the attorney is a member "in good standing," see *U.S.* v. *Waggoner,* 22 M.J. 692 (AFCMR 1986), and is then authorized to practice law within that jurisdiction. It is appropriate for the military judge, in each and every case, to ensure that a civilian defense counsel is qualified to represent the accused.

(3) Failure of a judge advocate to comply with the requirements of this Rule may result in professional disciplinary action as provided for in this instruction, loss of certification under Articles 26 and/or 27(b), UCMJ, adverse entries in military service records, and administrative separation under Secretary of the Navy Instruction 1920.6 (series) based on the officer's failure to maintain professional qualifications. In the case of civil service and contracted civilian attorneys practicing under the JAG's cognizance and supervision, failure to maintain good standing or otherwise to comply with the requirements of this Rule may result in adverse administrative action under applicable personnel regulations, including termination of employment.

(4) A covered USG attorney need only remain in good standing in one jurisdiction. If admitted to the practice of law in more than one jurisdiction, however, and any jurisdiction commences disciplinary action against or disciplines, suspends or disbars the covered USG attorney from the practice of law, the covered USG attorney must so advise the JAG.

(5) Certification by the United States Court of Appeals for the Armed Forces that a covered attorney is in good standing with that court will not satisfy the requirement of this section, since such status is normally dependent on Article 27 UCMJ certification alone.

§§ 776.72–776.75 [Reserved]

Subpart C—Complaint Processing Procedures

§ 776.76 Policy.

(a) It is JAG's policy to investigate and resolve, expeditiously and fairly, all allegations of professional impropriety lodged against covered attorneys practicing under JAG cognizance and supervision.

(b) Rules Counsel approval will be obtained before conducting any preliminary inquiry or formal investigation into an alleged violation of subpart B of this part or the Code of Judicial Conduct. The Rules Counsel will notify the JAG prior to the commencement of any preliminary inquiry or investigation. The preliminary inquiry and any subsequent investigation will be conducted according to the procedures set forth in this subpart.

§ 776.77 Related investigations and Actions.

Acts or omissions by covered attorneys may constitute professional misconduct, criminal misconduct, poor performance of duty, or a combination of all three. Care must be taken to characterize appropriately the nature of a covered attorney's conduct to determine who may and properly should take official action.

(a) Questions of legal ethics and professional misconduct by covered attorneys are within the exclusive province of JAG. Ethical or professional misconduct will not be attributed to any covered attorney in any official record without a final JAG determination, made in accordance with this part, that such misconduct has occurred.

(b) Criminal misconduct is properly addressed by the covered USG attorney's commander through the disciplinary process provided under the UCMJ and implementing regulations, or through referral to appropriate civil authority.

(c) Poor performance of duty is properly addressed by the covered USG attorney's reporting senior through a variety of administrative actions, including documentation in fitness reports or employee appraisals.

(d) Prior JAG approval is not required to investigate allegations of criminal conduct or poor performance of duty involving covered attorneys. When, however, investigations into criminal conduct or poor performance reveal conduct that constitutes a violation of this part, or of the Code of Judicial Conduct in the case of judges, such conduct shall be reported to the Rules Counsel immediately.

(e) Inquiries into allegations of professional misconduct will normally be held in abeyance until any related criminal investigation or proceeding is complete. However, a pending criminal investigation or proceeding does not bar the initiation or completion of a professional misconduct investigation stemming from the same or related incidents or prevent the JAG from imposing professional disciplinary sanctions as provided for in this subpart.

§ 776.78 Informal Complaints.

Informal, anonymous, or "hot line" type complaints alleging professional misconduct must be referred to appropriate authority (such as the JAG Inspector General or the concerned supervisory attorney) for inquiry. Such complaints are not, by themselves, cognizable under this subpart but may, if reasonably confirmed, be the basis of a formal complaint described in § 776.79 of this part.

§ 776.79 The Complaint.

(a) The complaint shall:

(1) Be in writing and be signed by the complainant;

(2) State that the complainant has personal knowledge, or has otherwise received reliable information indicating, that:

(i) The covered attorney concerned is, or has been, engaged in misconduct that demonstrates a lack of integrity, that constitutes a violation of subpart B of this part or a failure to meet the ethical standards of the profession; or

(ii) The covered attorney concerned is ethically, professionally, or morally unqualified to perform his or her duties; and

(3) Contain a complete, factual statement of the acts or omissions constituting the substance of the complaint, as well as a description of any attempted resolution with the covered attorney concerned. Supporting statements, if any, should be attached to the complaint.

(b) A complaint may be initiated by any person, including the Administrative Law Division of the Office of JAG (JAG (13)), or the Judge Advocate Research and Civil Law Branch, JA Division, HQMC (JAR).

§ 776.80 Initial Screening and Rules Counsel.

(a) Complaints shall be forwarded to JAG(13) or, in cases involving Marine Corps judge advocates or civil service and contracted civilian attorneys who perform legal services under the cognizance and supervision of Director, JA Division, HQMC, to JAR.

(b) JAG(13) and JAR shall log all complaints received and will ensuro that a copy is provided to the covered attorney who is the subject of the complaint.

(c) The covered attorney concerned may elect to provide an initial statement regarding the complaint for the Rules Counsel's consideration. The covered attorney will promptly inform JAG(13) or JAR if he or she intends to submit any such statement. At this screening stage, forwarding of the complaint to the Rules Counsel will not be unduly delayed to await the covered attorney's submission.

(d) The Rules Counsel shall initially review the complaint, and any statement submitted by the covered attorney complained of, to determine whether it complies with the requirements set forth in § 776.79 of this part.

(1) Complaints that do not comply with the requirements may be returned to the complainant for correction or completion, and resubmission to JAG(13) or JAR. If the complaint is not corrected or completed, and resubmitted within 30 days of the date of its return, the Rules Counsel may close the file without further action. JAG (13) and JAR will maintain copies of all correspondence relating to the return and resubmission of a complaint, and shall notify the covered attorney concerned if and when the Rules Counsel takes action to close the file.

(2) Complaints that comply with the requirements shall be further reviewed by the Rules Counsel to determine whether the complaint:

(i) Establishes probable cause to believe that a violation of this part or of the Judicial Code has occurred; or

(ii) Alleges ineffective assistance of counsel, or other violations of subpart B of this part, as a matter of defense in a court-martial, administrative separation, or nonjudicial punishment proceeding. If so, the Rules Counsel shall forward a copy of the complaint to the proper appellate authority for appropriate action and comment.

(e) The Rules Counsel shall close the file without further action if the complaint does not establish probable cause to believe that a violation has occurred. The Rules Counsel shall notify the complainant and the covered attorney concerned that the file has been closed. JAG(13) and JAR will maintain copies of all correspondence related to the closing of the file.

(f) The Rules Counsel may close the file if there is a determination that the complaint establishes probable cause but the violation is of a minor or technical nature appropriately addressed through corrective

counseling. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure the covered attorney concerned receives appropriate counseling and shall notify the complainant and the covered attorney concerned that the file has been closed. JAG(13) and JAR will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting of such action.

§ 776.81 Charges.

(a) If the Rules Counsel determines that there is probable cause to believe that a violation of this part or of the Code of Judicial Conduct has occurred, the Rules Counsel shall draft charges alleging violations of this part or of the Code of Judicial Conduct and forward the charges, together with the original complaint and any allied papers, as follows:

(1) In cases involving Marine Corps attorneys not serving as defense counsel or attached to Navy units, to the officer exercising general court-martial jurisdiction (OEGCMJ) over the charged covered attorney, and request, on behalf of JAG, that the OEGCMJ appoint a covered attorney (normally the concerned attorney's supervisor) to conduct a preliminary inquiry into the matter;

(2) In all other cases, to the supervisory attorney in the charged attorney's chain of command (or such other officer as JAG may designate), and direct, on behalf of JAG, the supervisory attorney to conduct a preliminary inquiry into the matter.

(b) The Rules Counsel shall provide a copy of the charges, complaint, and any allied papers to the covered attorney against whom the complaint is made and notify him or her that a preliminary inquiry will be conducted. Service of complaints, charges, and other materials shall be made by personal service, or by registered or certified mail sent to the covered attorney's last known address reflected in official Navy or Marine Corps records or in the records of the state bar(s) which licensed the attorney to practice law.

(c) The Rules Counsel shall also provide a copy of the charges to the commanding officer, or equivalent, of the covered USG attorney concerned if the complaint involves a covered USG attorney on active duty or in civilian Federal service.

(d) The Rules Counsel shall also forward a copy of the charges as follows:

(1) In cases involving Navy or Marine Corps judge advocates serving in Naval Legal Service Command (NLSC) units, to Vice Commander, NLSC;

(2) In cases involving Navy attorneys serving in Marine Corps units, or involving Marine Corps attorneys serving in Navy units, to the Commandant of the Marine Corps (Attn: JA);

(3) In cases involving members of the Navy-Marine Corps Trial Judiciary, to the Trial Judiciary Chief Judge; and

(4) To the appropriate military service attorney discipline section if the complaint involves covered attorneys certified by the Judge Advocates General/Chief Counsel of the other uniformed services.

§ 776.82 Interim suspension.

(a) Where the Rules Counsel determines there is probable cause to believe that a covered attorney has committed misconduct or other violations of this part, and poses a substantial threat of irreparable harm to his or her clients or the orderly administration of military justice, the Rules Counsel shall so advise the JAG. Examples of when a covered attorney may pose a "substantial threat of irreparable harm" include:

(1) When charged with the commission of a crime which involves moral turpitude or reflects adversely upon the covered attorney's fitness to practice law, and where substantial evidence exists to support the charge;

(2) When engaged in the unauthorized practice of law (e.g., failure to maintain good standing in accordance with § 776.71 of this part); or

(3) Where unable to represent client interests competently.

(b) Upon receipt of information from the Rules Counsel, JAG may order the covered attorney to show cause why he or she should not face interim suspension, pending completion of a professional responsibility investigation. The covered attorney shall have 10 calendar days in which to respond.

(c) If an order to show cause has been issued under paragraph (b) of this section, and the period for response has passed without a response, or after consideration of any response and finding sufficient evidence demonstrating probable cause to believe that the covered attorney is guilty of misconduct and poses a substantial threat of irreparable harm to his or her client or the orderly administration of military justice, JAG may direct an interim suspension of the covered attorney's certification under Articles 26(b) or 27(b), UCMJ, or R.C.M. 502(d)(3), or the authority to provide legal assistance, pending the results of the investigation and final action under this instruction.

(d) Within 10 days of JAG's decision to impose an interim suspension, the covered attorney may request an opportunity to be heard before an impartial officer designated by JAG. Where so requested, that opportunity will be scheduled within 10 calendar days of the request. The designated officer shall receive any information that the covered attorney chooses to submit on the limited issue of whether to continue the interim suspension. The designated officer shall submit a recommendation to JAG within 5 calendar days of conclusion.

(e) A covered attorney may, based upon a claim of changed circumstances or newly discovered evidence, petition for dissolution or amendment of JAG's imposition of interim suspension.

(f) Any professional responsibility investigation involving a covered attorney who has been suspended pursuant to this section shall proceed and be concluded without appreciable delay. However, JAG may determine it necessary to await completion of a related criminal investigation or proceeding, or completion of a professional responsibility action initiated by other licensing authorities. In such cases, JAG shall cause the Rules Counsel to so notify the covered attorney under interim suspension. Where necessary, continuation of the interim suspension shall be reviewed by JAG every 6 months.

§ 776.83 Preliminary inquiry.

(a) The purpose of the preliminary inquiry is to determine whether, in the opinion of the officer appointed to conduct the preliminary inquiry (PIO), the questioned conduct occurred and, if so, whether it constitutes a violation of this part or the Code of Judicial Conduct. The PIO is to recommend appropriate action in cases of substantiated violations.

(b) Upon receipt of the complaint and charges, the PIO shall promptly investigate the charges, generally following the format and procedures set forth in the Manual of the Judge Advocate General for the conduct of command investigations. Reports of relevant investigations by other authorities including, but not limited to, State bar associations may be used. The PIO should also:

(1) Identify and obtain sworn affidavits or statements from all relevant and material witnesses to the extent practicable;

(2) Identify, gather, and preserve all other relevant and material evidence; and

(3) Provide the covered attorney concerned an opportunity to review all evidence, affidavits, and statements collected and a reasonable period of time (normally not exceeding 7 days) to submit a written statement or any other written material that the covered attorney wishes considered.

(c) The PIO may appoint and use such assistants as may be necessary to conduct the preliminary inquiry.

(d) The PIO shall personally review the results of the preliminary inquiry to determine whether, by a preponderance of the evidence, a violation of this part or of the Judicial Code has occurred.

(1) If the PIO determines that no violation has occurred or that the violation is minor or technical in nature and warrants only corrective counseling, then he or she may recommend that the file be closed.

(2) If the PIO determines by a preponderance of the evidence that a violation did occur, and that corrective action greater than counseling may be warranted, he or she shall then recommend what further action is deemed appropriate.

(e) The PIO shall forward (via the OEGCMJ in appropriate Marine cases) the results of the preliminary inquiry to the Rules Counsel, providing copies to the covered attorney concerned and all parties to whom the charges were previously sent.

(f) The Rules Counsel shall review all preliminary inquiries. If the report is determined by the Rules Counsel to be incomplete, the Rules Counsel shall return it to the PIO, or to another inquiry officer, for further or supplemental inquiry. If the report is complete, then:

(1) If the Rules Counsel determines, either consistent with the PIO recommendation or through the Rules Counsel's own review of the report, that a violation of this part or Code of Judicial Conduct has not occurred and that further action is not warranted, the Rules Counsel shall close the file and notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file.

(2) If the Rules Counsel determines, either consistent with a PIO recommendation or through the Rules Counsel's own review of the report, that a violation of this part has occurred but that the violation is of a minor or technical nature, then the Rules Counsel may determine that corrective counseling is appropriate and close the file. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure that the covered attorney concerned receives appropriate counseling and shall notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint that the file has been closed. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting such action.

(3) If the Rules Counsel determines, either consistent with a PIO recommendation or through the Rules Counsel's own review of the report, that further professional discipline or corrective action may be warranted, the Rules Counsel shall:

(i) In cases involving Marine Corps attorneys not serving as defense counsel or attached to Navy units, request, on behalf of JAG, that the subject attorney's OEGCMJ appoint a disinterested covered attorney (normally senior to the covered attorney complained of and not previously involved in the case) to conduct an ethics investigation into the matter;

(ii) In all other cases, appoint, on behalf of JAG, a disinterested covered attorney (normally senior to the covered attorney complained of and not previously involved in the case) to conduct an ethics investigation; and

(iii) Notify those supervisory attorneys listed in § 776.81(c) and § 776.81(d) of this part.

§ 776.84 Ethics investigation.

(a) Whenever an ethics investigation is initiated, the covered attorney concerned will be so notified, in writing, by the Rules Counsel.

(b) The covered attorney concerned will be provided written notice of the following rights in connection with the ethics investigation:

(1) To request a hearing before the investigating officer (IO);

(2) To inspect all evidence gathered;

(3) To present written or oral statements or materials for consideration;

(4) To call witnesses at his or her own expense (local military witnesses should be made available at no cost);

(5) To be assisted by counsel (see paragraph (c) of this section);

(6) To challenge the IO for cause (such challenges must be made in writing and sent to the Rules Counsel via the challenged officer); and

(7) To waive any or all of these rights.

(c) The covered attorney may be represented by counsel at the hearing. Such counsel may be:

(1) A civilian attorney retained at no expense to the Government; or,

(2) In the case of a covered USG attorney, another USG attorney:

(i) Detailed by the cognizant Naval Legal Service Office (NLSO), Law Center, or Legal Service Support Section (LSSS); or

(ii) Requested by the covered attorney concerned, if such counsel is attached to the cognizant NLSO, Law Center, LSSS, or to a Navy or Marine Corps activity located within 100 miles of the hearing site at the time of the scheduled hearing, and if such counsel is reasonably available, as determined by the requested counsel's reporting senior in his or her sole discretion. There is no right to detailed counsel if requested counsel is made available.

(d) If a hearing is requested, the IO will conduct the hearing after reasonable notice to the covered attorney concerned. The hearing will not be unreasonably delayed. The hearing is not adversarial in nature and there is no right to subpoena witnesses. Rules of evidence do not apply. The covered attorney concerned or his or her counsel may question witnesses that appear. The proceedings shall be recorded but no transcript of the hearing need be made. Evidence gathered during, or subsequent to, the preliminary inquiry and such additional evidence as may be offered by the covered attorney shall be considered.

(e) The IO may appoint and use such assistants as may be necessary to conduct the ethics investigation.

(f) The IO shall prepare a report which summarizes the evidence, to include information presented at any hearing.

(1) If the IO believes that no violation has occurred or that the violation is minor or technical in nature and warrants only corrective counseling, then he or she may recommend that the file be closed.

(2) If the IO believes that a violation did occur, and that corrective action greater than counseling is warranted, he or she shall then recommend what further action is deemed appropriate.

(g) The IO shall forward the ethics investigation, including the IO's recommendations, to the Rules Counsel, as follows:

(1) In cases involving Navy or Marine Corps attorneys serving with NLSC units, via Vice Commander, NLSC;

(2) In cases involving Navy attorneys serving with Marine Corps units, via the Commandant of the Marine Corps (Attn: JA);

(3) In cases involving Navy or Marine Corps attorneys serving in subordinate Navy fleet or staff billets, via the fleet or staff judge advocate attached to the appropriate second-echelon commander;

(4) In cases involving members of the Navy-Marine Corps Trial Judiciary, via the Trial Judiciary Chief Judge;

(5) In cases involving Marine Corps attorneys serving in defense billets, via the Chief Defense Counsel of the Marine Corps;

(6) In cases involving Marine Corps attorneys not serving in defense counsel billets or in Navy units, via the OEGCMJ over the concerned attorney; and

(7) In cases involving covered attorneys certified by the Judge Advocates General/Chief Counsel of the other U.S. Armed Forces, via the appropriate military service attorney discipline section of that U.S. Armed Force.

(h) The Rules Counsel shall review all ethics investigations. If the report is determined by the Rules Counsel to be incomplete, the Rules Counsel shall return it to the IO, or to another inquiry officer, for further or supplemental inquiry. If the report is complete, then:

(1) If the Rules Counsel determines, either consistent with the IO recommendation or through the Rules Counsel's own review of the investigation, that a violation of this part or Code of Judicial Conduct has not occurred and that further action is not warranted, the Rules Counsel shall close the file and notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file.

(2) If the Rules Counsel determines, either consistent with the IO recommendation or through the Rules Counsel's own review of the investigation, that a violation of this part or Code of Judicial Conduct has occurred but that the violation is of a minor or technical nature, then the Rules Counsel may determine that corrective counseling is appropriate and close the file. The Rules Counsel shall report any such decision to the JAG. The Rules Counsel shall ensure that the covered attorney concerned receives appropriate counseling and shall notify the complainant, the covered attorney concerned, and all officials previously provided copies of the complaint that the file has been closed. JAG(13) and/or JAR, as appropriate, will maintain copies of all correspondence related to the closing of the file. The covered attorney concerned is responsible, under these circumstances, to determine if his or her Federal, state, or local licensing authority requires reporting such action.

(3) If the Rules Counsel believes, either consistent with the IO recommendation or through the Rules Counsel's own review of the investigation, that professional disciplinary action greater than corrective counseling is warranted, the Rules Counsel shall forward the investigation, with recommendations as to appropriate disposition, to JAG.

§ 776.85 Effect of separate proceeding.

(a) For purposes of this section, the term "separate proceeding" includes, but is not limited to, court-martial, non-judicial punishment, administrative board, or similar civilian or military proceeding.

(b) In cases in which a covered attorney is determined, at a separate proceeding determined by the Rules Counsel to afford procedural protection equal to that provided by a preliminary inquiry under this instruction, to have committed misconduct which forms the basis for ethics charges under this instruction, the Rules Counsel may dispense with the preliminary inquiry and proceed directly with an ethics investigation.

(c) In those cases in which a covered attorney is determined to have committed misconduct at a separate proceeding which the Rules Counsel determines has afforded procedural protection equal to that provided by an ethics investigation under this instruction, the previous determination regarding the underlying misconduct is *res judicata* with respect to that issue during an ethics investigation. A subsequent ethics investigation based on such misconduct shall afford the covered attorney a hearing into whether the underlying misconduct constitutes a violation of this part, whether the violation affects his or her fitness to practice law, and what sanctions, if any, are appropriate.

(d) The Rules Counsel may dispense with the preliminary inquiry and ethics investigation, and if warranted, recommend to JAG that the covered attorney concerned be disciplined, consistent with this subpart, after providing the covered attorney concerned written notice and an opportunity to be heard in writing, in those cases in which a covered attorney has been:

(1) Decertified or suspended from the practice of law or otherwise subjected to professional responsibility discipline by the Judge Advocate General of another Military Department;

(2) Disbarred or suspended from the practice of law or otherwise subjected to professional responsibility discipline by the Court of Appeals for the Armed Forces or by any Federal, State, or local bar; or

(3) Convicted of a felony (or any offense punishable by one year or more of imprisonment) in a civilian or military court which, in the opinion of the Rules Counsel, renders the attorney unqualified or incapable of properly or ethically representing the DON or a client when the Rules Counsel has determined that the attorney was afforded procedural protection equal to that provided by an ethics investigation under this instruction.

§ 776.86 Action by JAG.

(a) JAG is not bound by the recommendation rendered by the Rules Counsel, IO, PIO, or any other interested party, but will base any action on the record as a whole. Nothing in this instruction limits JAG authority to suspend from the practice of law in DON matters any covered attorney alleged or found to have committed professional misconduct or violated this part, either in DON or civilian proceedings.

(b) JAG may, but is not required to, refer any case to the Professional Responsibility Committee for an advisory opinion on interpretation of subpart B of this part or its application to the facts of a particular case:

(c) Upon receipt of the ethics investigation, and any requested advisory opinion, JAG will take such action as JAG considers appropriate in JAG's sole discretion. JAG may, for example:

(1) Direct further inquiry into specified areas.

(2) Where determining the allegations to be unfounded, or that no further action is warranted, direct the Rules Counsel to make appropriate file entries and to notify the complainant, covered attorney concerned, and all interested parties of such determination.

(3) Where determining the allegations to be supported by clear and convincing evidence, take appropriate corrective action including, but not limited to:

(i) Limiting the covered attorney to practice under direct supervision of a supervisory attorney;

(ii) Limiting the covered attorney to practice in certain areas or forbidding him or her from practice in certain areas;

(iii) Suspending or revoking, for a specified or indefinite period, the covered attorney's authority to provide legal assistance;

(iv) Where finding that the misconduct so adversely affects the covered attorney's continuing ability to practice law in the naval service or that the misconduct so prejudices the reputation of the DON legal community, the administration of military justice, the practice of law under the cognizance of JAG, or the armed services as a whole, that certification under Article 27(b), UCMJ (10 U.S.C. 827(b)), or R.C.M. 502(b)(3), MCM, 1998, should be suspended or is no longer appropriate, directing such certification to be suspended for a prescribed or indefinite period or to be removed permanently;

(v) In the case of a judge, where finding that the misconduct so prejudices the reputation of military trial and appellate judges that certification under Article 26(b), UCMJ (10 U.S.C. 826(b)), should be suspended or is no longer appropriate, directing such certification to be suspended for a prescribed or indefinite period or to be removed permanently; and

(vi) Directing the Rules Counsel to contact appropriate authorities such as the Chief of Naval Personnel or the Commandant of the Marine Corps so that pertinent entries in appropriate DON records may be made; notifying the complainant, covered attorney concerned, and any officials previously provided copies of the complaint; and notifying appropriate tribunals and authorities of any action taken to suspend, decertify, or limit the practice of a covered attorney as counsel before courts-martial or the U.S. Navy-Marine Corps Court of Appeals, administrative boards, as a legal assistance attorney, or in any other legal proceeding or matter conducted under JAG cognizance and supervision.

§ 776.87 Finality.

Any action taken by JAG is final, subject to any remedies afforded by Navy Regulations or any other regulation to the covered attorney concerned.

§ 776.88 Report to licensing authorities.

Upon determination by JAG that a violation of the Rules or the Code of Judicial Conduct has occurred, JAG may cause the Rules Counsel to report that fact to the Federal, State, or local bar or other licensing authority of the covered attorney concerned. If so reported, notice to the covered attorney shall be provided by the Rules Counsel. The JAG's decision in no way diminishes a covered attorney's responsibility to report adverse professional disciplinary action as required by the attorney's Federal, State, and local bar or other licensing authority.

Subpart D—[Reserved]

Dated: March 1, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–6522 Filed 3–20–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Parts 1, 3 and 13

RIN 1024–AC65

Personal Watercraft Use Within the NPS System

AGENCY: National Park Service, (NPS), Interior

ACTION: Final rule.

SUMMARY: This rule will prohibit personal watercraft (PWC) in areas of the National Park System unless the NPS determines that PWC use is appropriate for a specific area based on that area's enabling legislation, resources and values, other visitor uses and overall management objectives. This rule describes a process that will allow continued PWC use in some areas and will enable us to protect visitors and resources while managing the use of personal watercraft.

EFFECTIVE DATE: April 20, 2000.

ADDRESSES: Mail inquiries to: NPS—Ranger Activities Division, Room 7408, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Chip Davis at the above address or by calling 202–208–4874.

SUPPLEMENTARY INFORMATION:

Background

The NPS is granted broad statutory authority under various acts of Congress to manage and regulate water activities in areas of the National Park System, 16 United States Code (U.S.C.), and 16 U.S.C. 1a–2(h) and 3. The Organic Act, 16 U.S.C. 1 *et seq.*, authorizes the NPS to "* * * regulate the use of the Federal areas known as national parks, monuments, and reservations * * * by such means and measures as conform to the fundamental purpose of the said parks * * * which purpose is to conserve the scenery and the natural and historic objects and the wildlife therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations." Congress has also emphasized that the "* * * authorization of activities shall be construed and the protection management and administration of these areas shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by congress." 16 U.S.C. 1a–1. The appropriateness of a visitor use or recreational activity will vary from park to park. *NPS Management Policies* states that "* * * because of differences in individual park enabling legislation and resources and differences in the missions of the NPS and other Federal agencies, an activity that is entirely appropriate when conducted in one location may be inappropriate if conducted in another" (Chapter 8:2–3).

NPS Management Policies provide further direction in implementing the intent of the congressional mandate and other applicable Federal legislation. The policy of the NPS regarding protection and management of natural resources is "The National Park Service will manage the natural resources of the national park system to maintain, rehabilitate, and perpetuate their inherent integrity" (Chapter 4:1).

The Organic Act and the other statutory authorities of the NPS vest us with substantial discretion in determining how best to manage park resources and provide for park visitors. "Courts have noted that the Organic Act is silent as to the specifics of park management and that 'under such circumstances, the Park Service has broad discretion in determining which avenues best achieve the Organic Act's mandate. * * * * Further, the Park Service is empowered with the authority to determine what uses of park resources are proper and what proportion of the park resources are available for each use." *Bicycle Trails Council of Marin* v. *Babbitt*, 82 F.3d 1445, 1454 (9th Cir. 1996), quoting *National Wildlife Federation* v. *National Park Service*, 669 F. Supp. 384, 390 (D.Wyo. 1987). In reviewing a challenge to NPS regulations at Everglades National Park, the court stated, "The task of weighing the competing uses of Federal property has been delegated by Congress to the Secretary of the Interior. * * * Consequently, the Secretary has

broad discretion in determining how best to protect public land resources." *Organized Fishermen of Florida* v. *Hodel*, 775 F.2d 1544, 1550 (11th Cir. 1985), *cert. denied*, 476 U.S. 1169 (1986). There is a limitation on this discretion.

Over the years, NPS areas have been impacted with new, and what often prove to be controversial, recreational activities. These recreational activities tend to gain a foothold in NPS areas in their infancy, before a full evaluation of the possible impacts and ramifications that expanded use will have on the area can be initiated, completed and considered. PWC use fits this category.

PWC use is a relatively new recreational activity that has been observed in about 32 of the 87 areas of the National Park System that allow motorized boating. PWCs are high performance vessels designed for speed and maneuverability and are often used to perform stunt-like maneuvers. PWC includes vessels commonly referred to as jet ski, waverunner, wavejammer, wetjet, sea-doo, wet bike and surf jet. Over 1.3 million PWCs are in use today with annual sales of approximately 150,000 units. The Personal Watercraft Industry Association (PWIA), which consists of about five or six PWC manufacturers, coined the term "Personal Watercraft."

This rule takes a conservative approach to managing PWC use in areas of the National Park System based on consideration of the potential resource impacts, conflicts with other visitors' uses and enjoyment, and safety concerns. The rule prohibits PWC use in areas of the National Park System unless we determine that PWC use is appropriate for a specific area based on that area's enabling legislation, resources, values, other visitor uses, and overall management objectives.

It is the policy of the National Park Service to regulate motorized recreational activity in park areas to mitigate resource degradation. It is our intention to utilize the expertise of the Environmental Protection Agency, Occupational Safety and Health Administration and other cooperating agencies as a way of maintaining the environmental integrity of park areas.

The rule allows two methods of authorizing PWC use. The first method is available for a relatively small group of Park Service areas (10 park areas identified in Table 1) where authorization might be appropriately and successfully accomplished through the Park Superintendent's Compendium, a locally based procedure described in 36 CFR 1.5 and 1.7. This method is referred to as Park Designated PWC Use. The second method, Special Regulation rulemaking through the **Federal Register**, is available for all park areas (including the 10 park areas in Table 1) where authorization of PWC use may be deemed appropriate. This method is referred to in this rule as Special Regulation PWC Use.

As an interim measure, a two-year grace period is available to NPS areas listed in the regulation. Park areas are identified for inclusion on the two tables established in this rule based upon whether there is current PWC use and an area's enabling legislation, resources, values, other visitor uses, and overall management objectives for the individual park area. The grace period would allow PWC use to continue, with any necessary and appropriate restrictions, while park managers evaluates the impact of PWC use in the identified park area. Superintendents may restrict PWC use through zoning, hour limits, etc., during the grace period. PWC use could also be closed during the grace period in any area through the compendium procedures, by following the public process described in 36 CFR 1.5 and 1.7.

The first method for authorizing PWC use in park areas is through the Park Superintendent's Compendium. The following areas are in this Park Designated PWC Use category:

TABLE 1.—PARK DESIGNATED PWC USE

Name	Water type	State
Amistad National Recreation Area	Impounded Lake	TX
Bighorn Canyon National Recreation Area	Impounded Lake	MT
Chickasaw National Recreation Area	Impounded Lake	OK
Curecanti National Recreation Area	Impounded Lake	CO
Gateway National Recreation Area	Open Ocean/Bay	NY
Glen Canyon National Recreation Area	Impounded Lake	AZ/UT
Lake Mead National Recreation Area	Impounded Lake	AZ/NV
Lake Meredith National Recreation Area	Impounded Lake	TX
Lake Roosevelt National Recreation Area	Impounded Lake	WA
Whiskeytown-Shasta-Trinity National Recreation Area	Impounded Lake	CA

In these Park Designated areas, Table 1., PWC use could continue, subject to management restrictions through the compendium, until April 22, 2002. After this date continued PWC use in these areas will require authorization either by the compendium or by special regulation as described below. During the grace period (April 20, 2000 to April 22, 2002) no authorizing administrative action is needed to allow PWCs to continue to operate in the park areas identified in Table 1. The grace period maintains the authority requirements that existed prior to the adoption of this regulation for two years. The compendium procedures authorize the superintendent to restrict or allow activities, among other things, "for the maintenance of public health and safety, protection of environmental or scenic values, protection of natural or cultural resources, * * * or the avoidance of conflict among visitor use activities." 36 CFR 1.5(a). These procedures authorize the superintendent to take such actions using locally based methods, unless the proposed action "is of a nature, magnitude and duration that will result in a significant alteration in the public use pattern of the park area, adversely affect the park's natural, aesthetic, scenic or cultural values, require a long-term or significant modification in the resource management objectives of the area, or is of a highly controversial nature * * *" 36 CFR 1.5(b). In these circumstances, the superintendent must elevate the authorization to a Special Regulation rulemaking through the **Federal Register**, which is the authorization procedure required by this rule of all other areas of the National Park System designating PWC use.

A review of the legislation establishing these ten Park Designated areas shows that water-related recreation was a primary purpose for these ten parks and they are characterized by substantial motorized use. Nine of the park areas contain man-made lakes created by the construction of dams, and one park area has open ocean or bay waters. It has been our experience that visitors to all ten areas appear generally to expect and accept a variety of motorized boating, including PWCs.

Whether a regulation or a compendium has been adopted to designate the use of PWCs in an area, the superintendent maintains the authority under 36 CFR 1.5 to manage the PWC use within these areas, e.g., by area closures, public use limits or other restrictions.

The second method for authorizing PWC use in park areas is a Special Regulation rulemaking in the **Federal Register**. The following areas covered by the two-year grace period are in this Special Regulation category:

TABLE 2.—SPECIAL REGULATION PWC USE

Name	Water type	State
Assateague Island National Seashore	Open Ocean/Bay	MD/VA
Cape Cod National Seashore	Open Ocean/Bay	MA
Cape Lookout National Seashore	Open Ocean/Bay	NC
Cumberland Island National Seashore	Open Ocean/Bay	GA
Fire Island National Seashore	Open Ocean/Bay	NY
Gulf Islands National Seashore	Open Ocean/Bay	FL/MS
Padre Island National Seashore	Open Ocean/Bay	TX
Indiana Dunes National Lakeshore	Natural Lake	IN
Pictured Rocks National Lakeshore	Natural Lake	MI
Delaware Water Gap National Recreation Area	River	PA/NJ
Big Thicket National Preserve	River	TX

In these Special Regulation areas, Table 2., PWC use could continue during the grace period, subject to appropriate limited restrictions through the compendium, until April 22, 2002. During this two-year grace period, the superintendents of these areas would be able to develop special regulations to allow PWC use to continue. After April 22, 2002, PWC use in these areas can be authorized only by special regulation as described below.

The Special Regulation method provides publication in the **Federal Register** with nationwide notice and opportunity to comment on any proposal to authorize PWC use in an area of the NPS. This method is similar to the approach we have used on other activities that raise questions of resource impacts, visitor use conflicts, or significant controversy, such as snowmobile and off-road vehicle use, bicycle use in undeveloped park zones, aircraft landing, and hang-gliding. (See, e.g., 36 CFR 2.17, 2.18, and 4.30).

Classification	Two year grace period		After two years	
	Open	Closed	Open	Closed
Park Designated Areas (36 CFR 1.5 & 1.7) (10 Areas).	Yes, Manage PWC by Compendium.	No, Can close by Compendium.	No, Except by Compendium or Special Regulation.	Yes, If no Compendium or Special Regulation in place.
Special Regulation Areas (11 Areas).	Yes, Manage PWC by Compendium.	No, Can close by Compendium.	No, Except by Special Regulation.	Yes, If no Special Regulation in place.
All Other Areas	No, Except by Special Regulation.	Yes, Closed by General PWC Regulation.	No, Except by Special Regulation.	Yes, If no Special Regulation in place.

Our conservative approach to authorizing PWC use in areas of the NPS reflects many concerns that have been raised about such use. These concerns, detailed in the preamble for the proposed rule, coupled with an analysis of the comments received, lead us to conclude that PWC use is inappropriate in most areas of the National Park System. We also recognize that PWC use appears to be appropriate in certain park areas. It is clear that Congress intended the NPS to manage an active motorized water-based recreation program on the large man-made lakes of Lake Mead and Glen Canyon National Recreation Areas and it seems appropriate for PWC use to be part of that recreation program. The

final rule designates park areas where PWC use would be allowed. Any designation must take into consideration the park area's enabling legislation, resources and values and other visitor uses.

Twelve NPS areas are closed as a result of the current rulemaking, (listed below, Group A). Two additional areas have existing closures by prior park specific regulations, Everglades & Yellowstone National Parks and two additional areas have horsepower and/or engine restrictions which prohibit PWC use, Buffalo & Ozark National Rivers (listed below Group B). Crescent Lake in Olympic National Park and lakes in Glacier and North Cascades National Parks closed based on public comment and hearings during the park General Management Plan process. Additional lakes in Olympic NP may close during this rulemaking.

GROUP A.—NPS AREAS OF PRIOR PWC USE THAT CLOSED DURING THIS RULEMAKING

Name	Water type	State
Biscayne National Park	Open Ocean/Bay	FL
Canaveral National Seashore	Open Ocean/Bay	FL
Golden Gate National Rec Area	Open Ocean/Bay	CA
Cape Hatteras National Seashore	Open Ocean/Bay	NC
Apostle Islands National Lakeshore	Natural Lake	WI
Isle Royal National Park	Natural Lake	MI
Glacier National Park	Natural Lake	MT
Olympic National Park	Natural Lake	WA
Sleeping Bear Dunes National Lakeshore	Natural Lake	MI
Canyonlands National Park	River	UT
Grand Canyon National Park	River	AZ
St. Croix National Scenic Riverway	River	WI/MN

GROUP B.—NPS AREAS CLOSED TO PWC USE BY OTHER PRIOR MEANS

Name	Water type	State
Everglades National Park	Open Ocean/Bay	FL
Buffalo National Scenic River	River	AK
Ozark National Scenic Riverways	River	MO
Glacier National Park	Natural Lake	MT
Olympic National Park	Natural Lake	WA
Yellowstone National Park	Natural Lake	MT/WY
North Cascades National Park	Impounded Lake	WA

The National Recreation Lakes Study Commission (NRLS) lists 1,782 federally managed man-made lakes and reservoirs. The NPS manages 82 of these lakes, (4.6%). A number of the NPS managed lakes will have continued PWC use. Therefore, well over 95% of the federally managed recreation lakes will be unaffected by this rulemaking. The NRLS report is available on the Department of Interior's web site *www.doi.gov/nrls/freq—ask.htm*

Changes to the Final Rule

Some changes have been made to the lists of park areas that were in the proposed rule. The two-year grace period described in the proposed rule remains available to a limited number of listed park areas. The grace period allows PWC use to continue, with any necessary restrictions, while park management evaluates the future of PWC use in the identified park area. Golden Gate and Chattahoochee National Recreation Areas and Canaveral and Cape Hatteras National Seashores were removed from the list. The Superintendents in these park areas determined since the proposed rule was published that PWC use posed a significant threat to park resources and values and adversely affected the park experience of other visitors. Sleeping Bear Dunes National Lakeshore was removed from the lists because the Superintendent determined that PWC use interferes with park visitor's opportunity to experience solitude and quiet in a near primitive environment. The Superintendents closed park waters to PWC use after determining that PWC use is not compatible with the purpose of the parks or the goals/objectives for management of the parks. Therefore, these park areas no longer need the coverage of the grace period.

Gulf Islands and Padre Island National Seashores were moved from the list of areas in the proposed rule using the Superintendent's compendium to authorize PWC use (Table 1) to the list of areas required to use Special Regulation rulemaking in the **Federal Register** (Table 2) in order to authorize the use of PWCs after the two year grace period. These two park areas were moved to the Special Regulation list (Table 2) because the park areas listed in the Park Designated PWC Use category (Table 1) are National Recreation Areas consisting of impounded lakes with active boating programs (Gateway National Recreation Area is also included in Table 1). It was determined that the two National Seashores should be on the list (Table 2) with the other National Seashores and subject to the same procedural requirements of promulgating a Special Regulation if PWC use is to continue after the two year grace period.

Big Thicket National Preserve was added to the list of areas covered by the grace period in order to allow use of PWC to continue during the Special Regulation rulemaking period (Table 2). Big Thicket National Preserve should have been included in the list (Table 2) in the proposed rule and was not included only because of an administrative oversight by the NPS. Big Thicket National Preserve satisfies the same criteria as the other park areas listed in Table 2. There is current PWC use at Big Thicket Preserve as a recreational activity consistent with the enabling act for the park. The use of PWCs presently is consistent with the resources and values of the park, is not causing any conflicts with other park visitors and is consistent with the overall management objectives of the park. The two-year grace period will enable these three park areas to evaluate the impacts of continuation of use and the appropriateness of future use as part of the rulemaking process.

As a result of comments received, specifically from the State of Alaska, the proposed rule was changed to reflect the statutory (16 U.S.C. 3170) and regulatory (43 CFR 36.11) authority that exists authorizing this use in Alaska park areas. The proposed rule has also been changed for purposes of clarification by including in 36 CFR part 13, a definition of motorboat.

Summary of Comments

This rule was published in proposed form for public comment on September 15, 1998 (63 FR 49312), with the comment period lasting until November 16, 1998. The National Park Service received almost 20,000 timely written responses regarding the proposed regulation. Of the responses 13,089 were form letters, 724 were individual letters, 778 were electronic mail, and 7,391 were signatures on 87 separate petitions. Responses received included 14,688 from individuals, 1,639 from businesses, 5,650 from organizations, 2 from Federal agencies, and 3 from State governments.

Within the analysis, the term "commenter" refers to an individual, business, or organization that responded. The term "comments" refers to statements made by a commenter.

Analysis of Comments

Issue 1

We received 12,783 comments from groups, organizations, and individuals alleging discrimination in the prohibition of personal watercraft use in National Park Service areas. Almost all of the commenters stated that we could not prohibit one type of vessel in an area, such as PWC, and allow all other vessels. They said that we could not discriminate. The majority of these comments were from petitions stating that we based the proposed rule on anecdotal evidence and not scientific fact. They said that there was no basis to prohibit personal watercraft use in National Parks.

NPS Response

The District of Columbia Court of Appeals in Personal Watercraft Industry Association v. Department of Commerce, 48 F.3d 540 (D. C. Cir. 1995), ruled that an agency could discriminate and manage one type of vessel (PWC) differently than other vessels, provided the agency explains its reasons for doing so. The NPS regulation is intended to give the agency an opportunity to evaluate the impacts of PWC use before authorizing their use. This is the same general approach that the NPS uses for snowmobiles, off-road vehicles and other similar activities. PWC have been singled out because of the concerns raised by park visitors and park managers. These concerns include visitor conflicts, safety, inappropriate use, resource impacts, noise, wildlife disturbance and pollution.

Issue 2

Numerous commenters suggested that we were abdicating our responsibility to manage personal watercraft use by simply prohibiting their use entirely. They stated that enforcement of existing rules and regulations would remedy or mitigate problems and thus would not discriminate against the vast majority of law abiding PWC users.

NPS Response

We recognize that enforcement of existing rules and regulations are important; however, enforcement cannot completely prevent user conflicts or resource damage. The NPS believes that giving Superintendents the opportunity to evaluate the impact of personal watercraft use to determine if the use is detrimental to a park's natural, cultural, scenic, aesthetic or recreational values is the best approach for regulating PWC use at this time.

Issue 3

We received several industry comments stating that the outspoken views of certain park managers who object to personal watercraft use is indicative of the widespread Service exclusionary attitude toward personal watercraft.

NPS Response

We do not agree with this statement. There are park areas that will allow uninterrupted PWC use to continue and several others that may allow use after adopting a special regulation through public notice and comment rulemaking process.

Issue 4

Numerous commenters stated that our reliance on the Everglades National Park (ENP) report is flawed because it is not a scientific study, more recent research is available, and that the opinions stated in the ENP report are unsupported.

NPS Response

The ENP report stated that the Endangered Species Act specifically allows for prohibition of activities that may have adverse impacts on listed or proposed species, until studies determine otherwise. We recognize the need for more research but do not subscribe to the idea that there must be harm to the resources before we take action. Further, this rule is not based on the findings of the Everglades National Park Report. The report is merely an additional piece of information supporting this rule.

Issue 5

Several commenters suggested that the erosion of solitude was due to a steady increase in park visitation, not one specific type of recreational vessel.

NPS Response

The average visitation has increased in park areas and the NPS is working hard to maintain the purposes and values of the parks including solitude. Personal watercraft use is one of the activities that can have a direct and adverse effect on park values such as peace and quiet. As stated in the NPS Management Policies, the appropriateness of a visitor use or recreational activity will vary from park to park. This is particularly true with uses like PWCs.

Issue 6

Numerous commenters stated that we are suggesting that one type of park experience is more meaningful than another. They consider this subjective or discriminatory toward the four million personal watercraft users.

NPS Response

The implication is that we place less value on personal watercraft use than other forms of recreation. The Organic Act is the gauge by which the NPS evaluates recreational activities. Those activities that are contrary to the Act must be prohibited. The damage to natural and cultural resources and derogation of other values for which the park was created must be minimized or eliminated in order to avoid activities that permanently impair essential park resources.

Issue 7

Several commenters suggested that the proposed rule be withdrawn and that any regulation of personal watercraft become a part of the current National Park Service comprehensive planning for park use.

NPS Response

This rule provides for determinations based on the management objectives of specific park areas. These objectives are part of the comprehensive park planning process. The Organic Act establishes our primary mission as the

preservation of parks' natural and cultural resources, while providing for the enjoyment of the visitor. The appropriateness of a visitor use or recreational activity may vary from park to park. *NPS Management Policies* states that ". . . because of differences in individual park enabling legislation and resources and differences in the missions of the NPS and other Federal agencies, an activity that is entirely appropriate when conducted in one location may be inappropriate if conducted in another" (Chapter 8:2–3).

Issue 8

One organization commented on the social aspect of PWC, stating that the proposed rule could be unfair to the over 1,000,000 PWC owners and the over 3,000,000 family and friends who enjoy PWC use with those owners.

NPS Response

The NPS manages a very small portion of the total U. S. water recreation area available to U. S. citizens. There are numerous water recreation areas available for PWC use other than NPS areas. We will still provide recreation opportunity for PWC use in a number of NPS areas where it is appropriate. Closure of some NPS areas to PWC use will enhance the visitor experience for numerous visitors. NPS management policies derive from the Organic Act and Congressional mandates. Protection of sensitive resources is a primary objective of NPS management. Our conservative approach to PWC use in NPS areas allows us to meet this objective.

Issue 9

We received 271 comments indicating that we could not manage PWC use in NPS areas and banning their use was a simple solution to the problem.

NPS Response

PWC have been managed by various methods. This regulation is another method for managing PWC use. As stated in this preamble, the NPS is taking this conservative approach because it believes it is the best method for managing PWC use at this time.

Issue 10

The State of Alaska commented that the proposed regulation was silent on how the special access and procedural provisions of the Alaska National Interest Lands Conservation Act (ANILCA) will be met when regulating PWC use in Alaska's national park system units. The comment noted that Section 1110(a) of ANILCA recognized that motorized equipment used for recreation in the lower 48 states was, in Alaska, often used for access for traditional activities. The comment also stated that PWC use may be incompatible with the other uses and natural values of many park units nationwide and in Alaska. The comment noted that the State is particularly concerned about conflicts with other boaters and other park users and impacts on wildlife, birds and aquatic vegetation.

NPS Response

NPS shares the State's concern about the incompatibility of PWC's within park units in Alaska and elsewhere in the United States; such concerns have prompted this regulatory action. The proposed regulations as well as the final regulations here apply to all units of the National Park System, including those in Alaska. The proposed rule clearly indicated that it applied to the Alaska park units in subsection 3.24(a) which stated that PWCs were "allowed only in designated areas" within the National Park System nationwide. Furthermore, no Alaska parks were identified for separate regulatory treatment under either subsections 3.24 (b) or (c) of the proposal.

For the reasons explained below, NPS believes that nothing in this regulation is inconsistent with either Section 1110(a) of ANILCA, which allows access within Alaska conservation system units (including national park system units) by certain specified means, including motorboats, for traditional activities and travel to and from villages and homesites, or the Departmental regulations implementing that statute found at 43 CFR part 36. In response to the State's comment, we have clarified our interpretation in the NPS regulations at 36 CFR 13.1 by including a definition of the term "motorboat" which clarifies that it does not include a PWC.

The regulations use the term "vessel", which could give rise to an argument that PWCs are "vessels" protected by 43 CFR part 36. However, the term used in Section 1110(a) of ANILCA is not the broad term "vessel" but the more specific term "motorboat." After examining the legislative history of Section 1110(a), and the Department's analysis in promulgating 43 CFR part 36 in 1986, as explained in what follows, we concluded that PWCs are not "motorboats" for purposes of Section 1110(a).

There is no existing statutory definition in ANILCA for either "motorboat" or "PWC." It is NPS' understanding that PWCs were rarely, if ever, found in Alaska when ANILCA was enacted. Nothing in the legislative history suggests that Congress intended to authorize the use of PWCs in conservation system units for the purpose of conducting traditional activities in accordance with Section 1110(a). In light of the significant resource impacts posed by PWCs, which were discussed at length in the preamble to the proposed regulation and alluded to in the State of Alaska's comment, and the generally lesser resource impacts of motorboats, we believe that Congress has left to the discretion of the Secretary the authority to define the term "motorboat," and the Secretary has reasonably concluded that this term does not include PWCs.

This conclusion is buttressed by the analysis made by the Department in 1986 when it promulgated two sets of regulations: Regulations applicable to FWS, NPS and BLM which implement Section 1110(a), at 43 CFR part 36; and the special regulations applicable to motorboat and other motorized watercraft usage on the Kenai National Wildlife Refuge at 50 CFR 36.39(i). The Department-wide regulations were approved by the Undersecretary of the Interior on July 2, 1986, although they were not published in the **Federal Register** until September 4, 1986 (51 FR 31619), and became effective on October 6, 1986. The **Federal Register** notice for the general regulation identified the Assistant Secretary for Fish and Wildlife and Parks (formerly Deputy Undersecretary for Alaska) as one of its primary authors. The Assistant Secretary also approved the Kenai NWR specific regulations on August 26, 1986. The Kenai regulations were published in the **Federal Register** on September 11, 1986 (51 FR 32329).

The Department has historically made interpretations of the terms and provisions in Section 1110(a). For example, in the general regulations, the Department concluded that helicopters were excluded from the Section 1110(a) protections afforded to airplanes:

> * * * A few objected to any restrictions being placed upon helicopter use, arguing that helicopters are a widely used means of transportation in Alaska, and that there is no reason to distinguish helicopters from fixed-wing aircraft. Others suggested that the provisions be amended to specifically allow emergency use of helicopters in areas without a permit, and also to allow helicopter use if pursuant to a memorandum of understanding with the appropriate Federal agency. Interior does not read the statutory authorization "airplane" of section 1110(a) as including helicopters. Accordingly, it is within its discretion to restrict helicopter use. Interior's experience has shown that uncontrolled helicopter use may have negative impacts on the purposes and values for which the various areas were established, especially upon the wildlife. * * *

51 FR at 31627. Using the same kind of reasoning, we have excluded PWCs from the definition of "motorboat."

In the Kenai regulations, the Assistant Secretary approved a comprehensive regulatory scheme for access under Section 1110(a). Significantly, these regulations distinguished between motorboats and other forms of motorized watercraft:

> Off-Road Vehicles. (i) The use of air cushion, airboat, or other motorized watercraft, except motorboats, is not allowed on the Kenai NWR, except as authorized by a special use permit from the Refuge Manager.

50 CFR 36.39(i)(3)(i). This was explained in the preamble to the regulation:

> With respect to airboats, section 1110(a) of ANILCA and its legislative history indicate that motorboats were the only methods of motorized water transport that were to be given special access to conservation units. The Service recognizes that the modifier "traditional" in section 1110(a) does not refer to transportation methods but to the activities for which access is given. The Service therefore has revised section 3(i) of the regulations by rewording the phrase "non-traditional motorized watercraft" to read "motorized watercraft except motorboats."

Thus, in approving the Kenai NWR regulations in 1986, the Assistant Secretary specifically recognized that not all motorized watercraft are motorboats for purposes of Section 1110(a).

The Department's conclusion here is further supported by its treatment of snowmachines, another transportation form recognized in Section 1110(a). In separate regulations promulgated in 1981 implementing, in part, Section 1110(a) only months after the passage of ANILCA, NPS and FWS separately exercised the interpretive discretion afforded to the Secretary and by definition limited the class of snowmachines falling under the provisions of Section 1110(a) to those having a curb weight of less than 1,000 pounds. See, 46 FR 31854 (June 17, 1981) and 46 FR 31827 (June 17, 1981), respectively. While the Department-wide, general regulation in 1986 replaced various provisions of these NPS and FWS regulations, the general regulation did not define the term snowmachines and left unchanged both the FWS and NPS definitions. See, 51 FR 31619 (September 4, 1986). We have utilized this same interpretive discretion to exclude PWCs from the definition of motorboats herein placed in 36 CFR 13.1.

As noted in the preamble to the proposed regulations, there has also been a long regulatory history by various Federal agencies, including NPS, FWS and NOAA, in treating PWCs differently from other classes of motorized watercraft. The preamble also noted that at least 34 states have implemented or are considering legislation or regulations specific to the use and operation of PWCs. See 63 FR at 49314.

We also note the provision of the 1986 general regulation which explicitly preserves the ability of the appropriate agency to restrict or limit uses of an area under other applicable statutory authority (see, 43 CFR 36.11(h)(6)) and for which the following explanation was provided:

> It is Interior's view however, that these uses may be limited or restricted pursuant to other applicable law. The Secretary of the Interior has authority in the areas administered by Interior to close areas or restrict use for a variety of reasons, such as for health and safety. We do not believe that these provisions of this section of ANILCA were intended to preclude the Secretary from utilizing other statutory authorizations to restrict these uses. * * * Interior has determined that these regulations should be limited to closures under the authority of that section [1110(a)]. Accordingly, by, limiting these regulations to closures authorized by section 1110(a), it was determined that the category of closure "emergency" was no longer necessary, and as such is covered by other established authority. Regulations providing for the closure of areas for reasons other than under the provisions of section 1110(a) include: For the NPS, 36 CFR 1.5; for the FWS, 50 CFR 25.21; and for the BLM, 43 CFR 8364; 51 F.R. at 31628.

Given the lack of any legislative history suggesting that access by PWC was intended to be protected by Section 1110(a), the Department's analysis in 1986 that underlay the Departmental and Kenai NWR regulations implementing Section 1110(a), and the different resource impacts posed by PWCs compared to motorboats, it is within the Secretary's discretion to define the term "motorboat" to exclude PWCs, and a clarifying definition was included in the final rule to that effect. Because there is little, if any, present use of PWCs in the National Parks in Alaska, we find that excluding PWCs from the definition of motorboat will have little effect on continued access to the parks for the conduct of traditional activities as intended by Section 1110(a).

Issue 11

The International Association of Fish and Wildlife Agencies commented that the NPS could only regulate PWC use in waters where we have jurisdiction. They contend that this authority to regulate could not extend to adjacent waters or navigable waters within Park boundaries that are subject to regulations by States.

NPS Response

Congress has directed and the courts have upheld the authority of the NPS to regulate waters within the congressionally established boundaries of a park area. *United States* v. *Armstrong,* 186 F.3d 1055 (8th Cir. 1999). Pursuant to the Property and Commerce Clauses of the U. S. Constitution, Congress has given the NPS specific statutory authority to regulate boating and other activities on waters, including navigable waters, within units of the National Park System, 16 U. S. C. 1a–2 (h).

Issue 12

One PWC manufacturer submitted a comment about the usefulness of PWC in situations other than recreation. For example, they suggest PWC might be useful during flood relief efforts, surf rescue or crowd control during boating events. Additionally the manufacturer suggests that PWC are more functional for disabled users. They contend that the advantage of PWC use by visitors who are paraplegic or otherwise wheelchair bound is that a PWC offers hand controls.

NPS Response

Administrative activities in emergency operations involving threats to life, property or park resources, conducted by the NPS or authorized agents will not be affected by this rule. Visitors with disabilities engage in many park experiences including a variety of water activities such as motorized boating where appropriate. PWC use by visitors with disabilities will be allowed in areas where PWC use is determined to be appropriate.

Issue 13

We received four comments in support of PWC as a traditional use and 67 comments opposing PWC, as a traditional use. The remainder of the pro-PWC comments focused on the subjectivity of the term "traditional". They argue that a PWC regulation based on traditional use as defined by the NPS is one-sided and that the NPS has no right to define what is or is not traditional use. The remaining comments came from a petition saying that PWC use conflicts with many other long-standing traditional uses of parks such as preserves for natural peace and quiet or as wildlife preserves.

NPS Response

We believe that National Park System areas are preserved specifically because they are outstanding examples of unique natural or historical resources. Thus, by their very nature, the resources of parks

are limited and cannot serve all potential uses. Indeed, we are ". . . empowered to determine what uses of park resources are proper and what proportion of the resources are available for each use." *Bicycle Trails Council of Marin* v. *Babbitt*, 82 F.3d 1445, 1454 (9th Cir. 1996), quoting *National Wildlife Federation* v. *National Park Service*, 669 F. Supp. 384, 390 (D.Wyo. 1987).

Issue 14

We received 253 comments indicating that this regulation as proposed would negatively impact the personal watercraft industry. The majority of these were from small business owners or employees. They claimed they make a significant contribution to the economy of their local community and that their business had been hurt. They stated that media leaks from the NPS staff generated negative headlines that have kept customers away. Individual commenters express concern about the negative impact on the PWC industry.

In one response, the Personal Watercraft Industry Association (PWIA) challenges the average annual unit sales data in the proposed NPS rule stating, " the seven year average for the highest seven sales volume years is 147,140, over 25% below the number the NPS quotes." In addition, PWIA questions the our assertion that there will be little, if any, economic impact on PWC users or the PWC industry on a regional or national basis. They state, " the number of local and state jurisdictions who have called (cited) the pending NPS PWC rules as justification for restriction or prohibition of PWC use is substantial. In PWIA's opinion, combining the spill over impact in local communities with the negative media interpretation has substantial potential for impact of sales." The PWIA believes that we have not conducted a valid market analysis to conclude that the regulation will result in little economic impact.

NPS Response

We expect PWC use to continue in several areas of the National Park System. None of the comments related to economic impacts cited specific examples or instances where effects of the regulation would occur. It is likely that any restrictions in one area would likely shift usage to other areas open to PWC use. Since it is likely that the areas of the National Park System which receive the majority of PWC use will remain open, we expect little, if any, economic effect.

The annual sales data we referenced in the proposed rule was extracted from a 1996 PWIA market report, which also indicates that despite declining sales in 1996, PWC sales are expected to continue to grow at a significant rate.

A study entitled *Economic Activity Associated with Personal Watercraft Use in Monroe County Florida* indicates that local economies will continue to benefit financially from PWC use even if adjacent NPS areas are closed to PWC use.

Issue 15

People who supported PWC use submitted about 100 comments expressing the opinion that they had a "right" to use PWC in NPS areas. The majority of those commenters said that since they pay taxes, they have a right to use public lands and waters. Thirty-six commenters cited the Aquatic Resources Trust Fund (Wallop-Breaux) as a reason that PWC could not be prohibited. They felt this law would not allow the NPS to deny access to taxpayer funded boating facilities. A few commenters stated that it was their constitutional "right" to travel unrestricted on PWC.

NPS Response

The payment of taxes does not give a taxpayer the right to unrestricted use of public lands and waters. The Washington State Supreme Court determined that the payment of boat registration fees does not grant the right to use public waters, *Weden* v. *San Juan County*, 135 Wash.2d 678 (1998). Congress requires the NPS to regulate use of public lands and waters within the NPS system, in order to provide proper protection, management and administration of these areas.

The U.S. Fish and Wildlife Service administers the Wallop-Breaux program providing assistance to States for management of recreational fishing and boating programs. This program does not fund boating facilities in Federal areas such as National Parks. The Wallop-Breaux program only applies to facilities that have accepted federal grant funding. There is nothing in this law that would prevent the NPS from regulation of activities in NPS areas.

Issue 16

We received 161 responses referring to the enabling legislation of certain recreation areas and stated that PWC should be allowed under these sections of the United States Code.

NPS Response

We agree that PWC use may be appropriate in some areas of the NPS system. *NPS Management Policies* states that "* * * because of differences in individual park enabling legislation and resources and differences in the missions of the NPS and other Federal agencies, an activity that is entirely appropriate when conducted in one location may be inappropriate if conducted in another."

Issue 17

We received numerous comments citing the Organic Act and the mission of the Park Service to "protect park resources * * * for future generations." Most respondents stated that PWC use was in direct conflict with preservation of the parks. We received 8,122 comments indicating the negative impacts of PWC use on wildlife or wildlife habitat. PWIA objects to our statement in the proposed rule that says "studies also show the disturbance of fish and wildlife associated with PWCs." They state that "If this statement is meant to provide justification for elimination of an activity, then one could reasonably infer that all access to parks should be banned since all human contact disturbs fish and wildlife." Further, PWIA objects to the our statement in the proposed rule that states "PWC have a shallow draft, which gives them the ability to penetrate areas that are not available to conventional motorized watercraft." They state that "a PWC can certainly operate in shallower water than a keel sailboat or an offshore sport fishing vessel. It will operate in the same depth of water as any other waterjet powered runabout." In addition, all PWC manufacturers recommend operation of PWC in a minimum of two feet of water. PWIA also implies that in the proposed rule we failed to consider a study, which demonstrates no impact to shallow water benthic communities from PWC use in water depths of two feet or more. Finally, the PWIA objects to our statement that PWC access (attributable to shallow draft) has the potential to adversely impact wildlife and aquatic vegetation in these shallow areas. They state "any boating activity can have the same level of impact on wildlife and the study data indicates that a human walking has an impact at an even greater distance than a boat or PWC."

NPS Response

We and the U.S. Fish and Wildlife Service have used existing and potential impacts to wildlife as a primary justification for banning and/or restricting PWC use. Since PWC use is erratic and incidental, it is difficult to design studies that capture direct impacts to wildlife. However, there is increasing scientific evidence and anecdotal information that impacts to wildlife from PWC use may be more significant than those caused by conventional boats.

Other waterjet-propelled craft may have the same ability to penetrate areas as PWC, but PWC can penetrate areas not accessible to conventional motorized watercraft. This access has the potential to, and has, adversely impacted wildlife. Studies by both James A. Rodgers, Jr. in Florida and Skip Snow in Everglades National Park support this contention. The fact that manufacturers recommend operation of PWC in a minimum of two feet of water to protect resources is admirable; however, it is evident that not all PWC operators feel compelled to comply with such recommendations. Further, no specific water depth has been established as a "safe" depth for resource protection.

Issue 18

The PWIA states that any boating activity may have an impact on wildlife. The statement, which references the Rodgers study indicating that a walking human has an impact at an even greater distance than a boat or PWC, is misleading. Consideration must be given to the totality of scientific information available within any study before such conclusions are drawn.

Petitioners through the Blue Water Network agree with university studies that indicate that PWC harass and damage wildlife such as shore birds, fish, and seals. Most individual comments concluded that "These noisy machines harass, injure, and kill wildlife." In one response, the Blue Water Network states, "wildlife biologists throughout North America and elsewhere have testified on the existing and potential impacts of personal watercraft on birds, marine mammals and fish. PWC pose a unique threat to wildlife and wilderness areas because they are multiple impact machines." Blue Water also asserts that PWC are a physical threat to wildlife because they typically travel at high speeds, in shallow water near sensitive habitats. PWC regularly change direction and speed without warning and emit high-pitched, whining sounds. Blue Water also asserts that PWC lack low frequency, long-distance, sub-surface sounds, which might allow wildlife enough time to avoid collisions.

NPS Response

Evaluations conducted by park managers will include close examination of sensitive areas and study wildlife impacts. Mitigation in the form of zoning, seasons, number or speed limits will be available as management options, in addition to area closures.

Issue 19

We received 7,930 comments from individuals and organizations regarding pollution. The vast majority of the comments stated reasons why PWC use should not be allowed in NPS while a few comments challenged the validity of those reasons. Numerous commenters cited exhaust smoke and smell as a concern. Numerous comments also stated that the exhaust on a PWC contains up to 25% of unburned fuel, which pollutes the water.

NPS Response

We are concerned about pollution in any form, and exhaust gasses from two cycle marine engines is no exception. We recognize that a certain amount of exhaust smoke and smell is inherent with any two-cycle engine and that the comments addressed excessive amounts from PWC. We acknowledge the findings of the Environmental Protection Agency's (EPA) 1991 study that indicate two stroke engines lose roughly 25% of the fuel they consume unburned into the water, resulting in high levels of hydrocarbon emissions from these engines. The excessive smoke and smell from PWC could be attributed to unique operational characteristics of those vessels. PWC are often operated with throttle settings that transition from idle to full throttle and back to idle, typically in a rapid and repeated sequence. Additionally, we are aware of an industry-generated statistic, which states that 25% of all owners have made mechanical changes or modifications to their PWC, which may affect emissions.

Issue 20

Numerous comments expressed concern about the amount of raw fuel spilled into the water or on the shoreline when PWC were refueled by owners/operators at sites other than marina fuel docks. Comments were received from a few of organizations that addressed pollution of park waters that are used as a source of drinking water. Methyl Tertiary Butyl Ether (MTBE), a gasoline additive and suspected human carcinogen, introduced into the water may be costly and difficult to remove. Commenters continued by saying that the consequences of PWC use on park waters should not be borne by downstream water suppliers or their customers.

NPS Response

There is an increasing trend toward off-marina refueling of PWC and fuel spill clean-up materials usually available at marina locations are not available outside of those locations. We are concerned not only with resources within park boundaries, but also with resources and issues adjacent to parks.

Issue 21

One organization specifically referenced Executive Order (EO) 12898, which states that the EPA must protect minority or low income communities from pollution. They also identified park areas that currently affect some of those types of communities.

NPS Response

We will continue to comply with all Executive Orders. It is the policy of the National Park Service to regulate motorized recreational activity in park areas to mitigate resource degradation. It is our intention to utilize the expertise of the Environmental Protection Agency, Occupational Safety and Health Administration and other cooperating agencies as a way of maintaining the environmental integrity of park areas.

Issue 22

We received 5,732 comments that cited user conflicts. Of that total, 222 of these comments were from individuals and 5,510 were from a petition from one organization. Specific incidents cited included conflicts between PWC and kayakers, fishermen, and swimmers. A few PWC supporters said these conflicts resulted from a minority of inconsiderate PWC operators and that we should regulate inappropriate behavior or enforce existing regulations rather than prohibit PWC use. Numerous comments referenced rude, impolite or aggressive behavior by a majority of PWC operators. Numerous comments said that a minority of PWC operators interfere with the enjoyment of the parks by a majority of visitors.

NPS Response

It is apparent from the comments received that PWC use negatively impacts across a broad spectrum of park users. NPS recognizes these conflicts between park users and will try different management practices in an effort to minimize these impacts.

Issue 23

A number of comments were received regarding specific parks. These comments were general in nature, stating that PWC should be prohibited in specific parks. For example, Cabrillo National Monument received a number

of comments stating that PWC use is "not even an issue" and asking why they are being banned.

NPS Response

Cabrillo has been identified as an area where the enabling legislation, resource education values, other visitor uses, and several management objectives support the prohibition of PWC.

Issue 24

Opponents to PWC use identified several park specific areas for potential PWC closure, including Grand Teton NP, Lake Mead NRA, Sleeping Bear Dunes NL, Lake Powell at Glen Canyon NRA, Lake Shasta and Whiskeytown Lake at Whiskeytown-Shasta-Trinity NRA, Padre Island NS, Cape Cod NS, and Gulf Islands NS.

NPS Response

The NPS recognizes that certain activities that may be appropriate in one area may not be appropriate in another area. NPS Management Policies 1988 states in part that * * * "because of differences in individual park enabling legislation and resources and differences in the missions of the NPS and other Federal agencies, an activity that is entirely appropriate when conducted in one location may be inappropriate if conducted in another" (Chapter 8:2–3). PWC use has been reported to occur in 32 units of the National Park System and may be appropriate in approximately 21 of these areas. There are a number of areas where PWC use is not appropriate and should not be allowed. It is the objective of this regulation to ensure that PWC use only occur where authorized after determining its appropriateness.

Issue 25

We received 5,894 comments related to vessel operation and operator behavior. PWC industry representatives dispute statistical analysis of conservation organization PWC safety data. The industry offers contradictory data and dismisses the methods of tabulation.

NPS Response

A 1989 U.S. Coast Guard boating safety study defends industry contentions that other sporting activities are inherently more dangerous than PWC operation. The study indicates that canoes are several times more likely to have critical incidents than PWC. The PWC industry also noted a 1998 National Transportation Safety Board study that stated that alcohol impairment in PWC accidents was less frequent than in other boating related accidents. These claims were contradicted by statistical data that reflect an inordinate percentage of PWC accidents and injuries in relation to the number of overall registered vessels throughout the country. Opponents were vivid in describing episodes and encounters, including fatalities, involving PWC.

Issue 26

One commenter described how after being approached by PWC while kayaking "It felt like being mugged in an urban park." A large number of commenters described dangerous episodes involving PWC and swimmers and kayakers, including near incidents of being capsized. Other power vessel operators cited dangerous encounters with PWC operators attempting to jump their vessels' wake, failing to yield the right of way, and erratic vessel operation. Commenters also described youthful or underage PWC operators as lacking full control of the vessel. Other powerboaters described rude and abusive encounters with PWC operators particularly when advice was offered on safety issues. One respondent stated that PWC operators "seem to have a case of maritime road rage." This underscored their claim that these types of craft constitute a danger or at least a perception of danger when they are operated in close proximity to other users.

NPS Response

The rule prohibits PWC use in many areas used primarily by paddlers and visitors seeking solitude. In areas where PWCs are authorized, the NPS will take steps to minimize the adverse impacts from and between the different user groups. This should mitigate most conflicts of the type described in this comment.

Issue 27

Approximately 500 individuals, 10 business and 5,600 people through petitions, expressed an opinion that PWC use adversely impacts natural resources. The commenters did not offer specific evidence of resource damage, but expressed the opinion that we should protect the natural resources until more is known about the impact PWC have on natural resources. One organization cited Executive Orders that direct the NPS to close areas to off-road vehicles (including water vessels) if the vehicles cause damage to resources. Another organization stated that resource damages are only allegations.

NPS Response

This rule will prohibit PWC in areas of the National Park System unless the NPS determines that PWC use is appropriate for a specific area based on that area's enabling legislation, resources and values, other visitor uses and overall management objectives. This rule describes a process that will allow continued PWC use in some areas and will enable us to better manage the use of personal watercraft. NPS Management Policies state that if we have reasonable belief that resource damage may occur, we will implement limitations on the use.

Issue 28

We received 3,093 comments, mostly individuals, citing a variety of concerns over the noise associated with PWC use. All of the comments regarding noise noted the loss of quiet and solitude with the intrusion of PWC use. In almost all cases this noise was characterized as "annoying." Specific concerns included the constant and repeated fluctuation in engine tone and pitch as PWCs enter and exit the water while jumping wakes, changing speed and performing other quick maneuvers along with the persistent noise associated with remaining in one general location rather than traveling from point-to-point.

NPS Response

The enjoyment of solitude and natural quiet are values deemed important to most park visitors. The NPS is working on a number of measures to preserve the soundscape in park areas. The rule requires the NPS to determine that PWC use is consistent with a park unit's enabling legislation, resources and values, other visitor uses and overall management objectives before authorizing PWC use in the park unit.

Issue 29

One organization and numerous individuals requested that the "two year loophole" be eliminated and that parks be either open to PWC use or closed upon publication of this rule.

NPS Response

We feel a grace period is helpful to allow an opportunity for proper evaluation of the actual impacts of PWC use. This period will allow us time to consider management alternatives and options. Park areas with PWC use during the grace period will retain the authority to restrict use or close areas if necessary to protect against damage to natural or cultural resources and derogation of any other values or purposes of the park area. We will also conduct studies and surveys of existing

PWC use during this period for use in the Special Regulation rulemaking process. The areas developing special regulations will use this time to accept and evaluate public comment on their proposed regulations.

Issue 30

We received 7,988 comments stating the opinion that PWC use was inappropriate in some areas of the NPS. These comments were general in nature stating that PWC, "should not be allowed", or "are inappropriate." Some comments stated that PWC disturbed the "tranquillity" or "solitude", of NPS areas. Many commenters stated that parks were sanctuaries where they went to rejuvenate themselves from the pressures of the outside world and that PWC detracted from their enjoyment. PWIA also acknowledges that PWC use may be inappropriate in some areas of the National Park System.

NPS Response

We expect PWC use to continue in several areas of the National Park System. Because these same areas currently have the preponderance of PWC use in areas of the National Park System, we expect little, if any, economic impact on PWC users or the PWC industry on a regional or national basis. We completed a threshold analysis, as required by the Regulatory Flexibility Act, to examine potential impacts on small entities and consider alternatives to minimize such impact. We do not expect significant impacts on commercial PWC operations in and adjacent to NPS areas from this rule. A substantial number of small entities will not be affected.

Moreover, from the point of view of both users and the industry, it is quite likely that any restrictions in one area would only shift usage to other areas, either within or outside the park area. While such restrictions may reduce the quality of experience for some PWC users, we expect this rule to have a positive impact on non-PWC users.

Issue 31

We received an additional 401 miscellaneous comments from individuals, groups, and organizations citing a number of opinions, both for and against personal watercraft use. Opponents of PWC compared them with off-road vehicles, snowmobiles, and airboats as a form of recreation that detracted from the experience of other visitors. Proponents of PWCs consider their use as a valid form of recreation regardless of the NPS mandates for preservation. We received one comment from an organization suggesting that we develop an Appropriate Recreation Task Force to analyze future use.

NPS Response

This rule takes a conservative approach to managing PWC use based on consideration of the potential resource impacts, conflicts with other visitors' uses and enjoyment, and safety concerns.

This is the same regulatory approach we use to manage snowmobiles (36 CFR 2.18), off-road vehicle use (36 CFR 4.10), aircraft, including powerless hanggliders (36 CFR 2.17), and use of bicycles outside developed areas (36 CFR 4.30 (b)). The rule prohibits PWC use unless we determine that PWC use is appropriate based on an area's enabling legislation, resources, values, other visitor uses, and overall management objectives. Each park area is unique and represents only a small part of a much larger picture that depicts our nation's heritage. Because of this uniqueness, we do not think a national level task group would be productive.

Drafting Information

The principal authors of this final rule are; Chip Davis, Washington Office of Ranger Activities, National Park Service, Michael Tiernan, Office of the Solicitor, Department of the Interior and Destry Jarvis, Office of the Assistant Secretary for Fish and Wildlife and Parks, Department of the Interior, Washington, D.C. In addition, numerous NPS employees from areas throughout the National Park System contributed significantly to the review and development of this regulation.

Compliance with Other Laws

Regulatory Planning and Review

The Office of Management and Budget reviewed this rule under Executive Order 12866. This rule will not create inconsistencies with other agencies' actions. Entitlement programs or the rights and obligations of their recipients will not be materially affected. This rule does not raise novel legal policy issues. The effects of this rule may be controversial in some areas, but they are not novel. State and local governments and other Federal agencies have implemented the same measures in efforts to manage PWC use.

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The Regulatory Flexibility Act, as amended, requires agencies to analyze impacts of regulatory actions on small entities (businesses, nonprofit organizations, and governments), and to consider alternatives that minimize such impacts while achieving regulatory objectives. This threshold analysis examines impacts of the proposed regulation that would restrict PWC use within the National Park System. A combination of quantitative and qualitative indicators is used to determine whether these regulations would impose significant impacts on a substantial number of small entities. The threshold economic analysis of commercial PWC activity in relation to NPS areas supports this determination.

Analysis of Impacts

The PWC regulation could potentially impact two types of small businesses: manufacturers and rental shops. Small nonprofit organizations and small governments will not be affected. With respect to small manufacturers, significant impacts are not likely given the relatively low level of PWC use in affected NPS units compared to the overall use of PWCs throughout the United States. Over 1.3 million PWCs are currently in use in the U.S. with annual sales of approximately 200,000. Currently, PWC use has been observed in only 32 NPS units, 10 of which will likely not be affected significantly by these regulations (Table 1). Those 10 units, which are specifically authorized in their enabling legislation for water recreation, account for the vast majority of PWC use in NPS units. Consequently, PWC use would likely be potentially affected in only 22 NPS units. Those 22 affected units generally have alternative sites nearby where PWC use is allowed. Therefore, it is not anticipated that PWC manufacturers will suffer a significant decrease in sales due to these regulations.

Most, if not all, rental shops that supply PWCs for use within NPS units could be classified as small businesses for purposes of this threshold analysis. In the 22 potentially affected units, where PWCs are currently in use some rental shops that could be potentially impacted. However, any impacts from this rulemaking should not be widespread or significant for the following reasons:

1. In 11 of the 22 affected units, a 2-year grace period would allow a locally based determination on PWC use until unit-specific rulemakings can determine appropriate management measures. Such measures would not automatically prohibit PWC use, but could limit use to areas and times that are consistent with a unit's enabling legislation,

resources and values, other visitor uses, and overall management objectives. Therefore, not only would potentially affected rental shops benefit from the 2 year grace period, but a determination of appropriate levels of PWC use would be made in these units under future unit-specific regulations.

2. Future rulemakings will solicit and consider public comments on proposed management measures, potentially increasing the flexibility of such measures.

3. The remaining 11 affected units have limited commercial PWC use from rental shops. The primary use is by individuals with privately owned PWCs. Therefore, there would be limited impacts on rental shops near those units.

4. The affected units having commercial PWC rental operations operate on larger bodies of water (oceans, lakes and rivers) of which the NPS managed portions are only a part of the larger body of water. NPS jurisdiction typically extends from the shoreline out to ¼ mile and up to one mile in various units. PWC use is managed by State and local governments in the waters outside NPS jurisdiction and is unaffected by the NPS regulation.

5. Significant opportunities for PWC use exists at alternative sites near each of the 22 affected NPS units. Therefore, potentially affected rental shops would continue to be able to rent PWCs for use at these alternative sites.

6. No direct compliance costs, such as those associated with reporting requirements, would be imposed on rental shops.

Therefore, significant impacts on PWC rental shops are not expected from this rulemaking. Moreover, even if significant impacts were expected, a substantial number of rental shops will not be affected. Currently, there are over 100 rental shops that supply PWCs for use in NPS units. However, less than 10 rental shops supply PWCs for use in units that would be automatically closed to PWC use by this rulemaking.

There are virtually tens of thousands of water areas nationwide where PWCs may be operated. A very small percentage of the nation's 1.3 million PWCs are used in units of the NPS. In most areas where significant PWC use already occurs in the NPS, there are anticipated to be few changes that would adversely affect their current activity. Where PWC use does not already occur, the possibility of keeping those areas free of PWC use will not pose any additional economic impact.

These considerations indicate that this rulemaking will not impose significant impacts on a substantial number of small entities.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under the Congressional review provisions of the Small Business Regulatory Enforcement Fairness Act (5 U.S.C. 804(2)). This rule:

a. Does not have an effect on the economy of $100 million or more, as demonstrated in the threshold analysis (Regulatory Flexibility Act Section).

b. Will not cause an increase in costs or prices for consumers, individual industries, Federal, State or local governments entities, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises (Regulatory Flexibility Act Section).

Unfunded Mandates Reform Act

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1502 *et seq.*):

a. This rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. This rule does not change the relationship between the NPS and small governments.

b. The Department has determined and certifies pursuant the Unfunded Mandates Reform Act, that this rule will not impose a cost of $100 million or more in any given year on local, State or tribal governments or private entities.

Takings

In accordance with Executive Order 12630, the rule does not have significant takings implications. A takings implication assessment is not required. No takings of personal property will occur as a result of this rule.

Federalism

The effective date of Executive Order 13132 occurred after the publication of the proposed rule. This rule does not have significant Federalism effects. A Federalism assessment is not required. The rule will manage PWC use in NPS areas and does not infringe on State authority to manage PWC use in areas of State jurisdiction. State authorities were consulted and involved in the planning of this rule and representatives of the National Association of State Boating Law Administrators also participated.

Individual park areas regularly consult with elected state officials and various state management agencies involving a myriad of resource and recreation issues. Public comment and participation is sought on a frequent and recurring basis during general management planning and at various phases involving management of park areas. A number of areas requested comments through press releases during the decision process and received considerable feedback including correspondence from state agencies. Consideration of these comments and their impact on management decisions is reflected in the changes made to the final rule.

Civil Justice Reform

The Department has determined that this rule meets the applicable standards provided in Section 3(a) and 3(b)(2) of Executive Order 12988. The rule does not unduly burden the judicial system. NPS drafted this rule in "Plain-English" to provide clear standards and to ensure that the rule is easily understood. We consulted with the Department of Interior's Office of the Solicitor during the drafting process.

Paperwork Reduction Act

This rulemaking does not contain collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act of 1995.

National Environmental Policy Act

The NPS has determined that this rule will maintain the quality of the human environment, health and safety because it is not expected to:

(a) increase public use to the extent of compromising the nature and character of the area or causing physical damage to it;

(b) introduce conflicting uses, which compromise the nature and characteristics of the area or cause physical damage to it;

(c) conflict with adjacent ownership or land uses; or

(d) cause a nuisance to adjacent owners or occupants.

Also after a careful review of the exceptions to categorical exclusions in 516 DM 2, Appendix 2, the NPS has concluded that none of the listed exceptions would apply in the case of these regulations.

Based on this determination, the regulation is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental guidelines in 516 DM 6, Appendix 7, section 7.4 A. (10). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects on the tribes.

List of Subjects

36 CFR Part 1

National parks, Penalties, Reporting and recordkeeping requirements, Signs and symbols.

36 CFR Part 3

Marine safety, National parks, Reporting and recordkeeping requirements.

36 CFR Part 13

Alaska, National parks, Reporting and recordkeeping requirements.

In consideration of the foregoing, the NPS amends 36 CFR Chapter I as follows:

PART 1—GENERAL PROVISIONS

1. The authority citation for part 1 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460 1–6a(e), 469(k); D.C. Code 8–137, 40–721 (1981).

2. Section 1.4 is amended by revising the section heading and adding a new definition, in alphabetical order, in paragraph (a), to read as follows:

§ 1.4 What terms do I need to know?

(a) * * *

Personal watercraft refers to a vessel, usually less than 16 feet in length, which uses an inboard, internal combustion engine powering a water jet pump as its primary source of propulsion. The vessel is intended to be operated by a person or persons sitting, standing or kneeling on the vessel, rather than within the confines of the hull. The length is measured from end to end over the deck excluding sheer, meaning a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bow sprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments, are not included in the measurement. Length is stated in feet and inches.

* * * * *

PART 3—BOATING AND WATER USE ACTIVITIES

1. The authority citation for part 3 continues to read as follows:

Authority: 16 U.S.C. 1, 1a–2(h), 3.

2. New § 3.24 is added to read as follows:

§ 3.24 Regulation of personal watercraft (PWC).

(a) *Is personal watercraft (PWC) use prohibited in units of the National Park System?* Yes, the use of personal watercraft in units of the National Park System is prohibited, except in designated areas.

(b) *How will the National Park Service designate areas for PWC use?* We will designate areas for personal watercraft through the **Federal Register**, using special regulations, except for the park areas identified in the following Table 1, where personal watercraft use may be designated using the criteria and procedures of §§ 1.5 and 1.7 of this chapter:

TABLE 1.—PARK DESIGNATED PWC USE

Name	Water type	State
Amistad National Recreation Area	Impounded Lake	TX
Bighorn Canyon National Recreation Area	Impounded Lake	MT
Chickasaw National Recreation Area	Impounded Lake	OK
Curecanti National Recreation Area	Impounded Lake	CO
Gateway National Recreation Area	Open Ocean/Bay	NY
Glen Canyon National Recreation Area	Impounded Lake	AZ/UT
Lake Mead National Recreation Area	Impounded Lake	AZ/NV
Lake Meredith National Recreation Area	Impounded Lake	TX
Lake Roosevelt National Recreation Area	Impounded Lake	WA
Whiskeytown-Shasta-Trinity National Recreation Area	Impounded Lake	CA

(c) *How does the grace period apply?* For the park areas identified in Tables 1 and 2 of this section, this section provides a two-year grace period (April 20, 2000 to April 22, 2002) from the requirements of this section. During the grace period no authorizing administrative action is needed to allow PWCs to continue to operate in the park areas identified in this section. Table 2 follows:

TABLE 2.—SPECIAL REGULATION PWC USE

Name	Water type	State
I. National Seashores:		
Assateague Island National Seashore	Open Ocean/Bay	MD/VA
Cape Cod National Seashore	Open Ocean/Bay	MA
Cape Lookout National Seashore	Open Ocean/Bay	NC
Cumberland Island National Seashore	Open Ocean/Bay	GA
Fire Island National Seashore	Open Ocean/Bay	NY
Gulf Islands National Seashore	Open Ocean/Bay	FL/MS
Padre Island National Seashore	Open Ocean/Bay	TX
II. National Lakeshores:		
Indiana Dunes National Lakeshore	Natural Lake	IN
Pictured Rocks National Lakeshore	Natural Lake	MI
III. National Recreation Area: Delaware Water Gap National Recreation Area	River	PA/NJ
IV. National Preserve: Big Thicket National Preserve	River	TX

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA

1. The authority citation for part 13 continues to read as follows:

Authority: 16 USC 1. 3, 462(k), 3101 *et seq.*; Sec. 13.65 also issued under 16 USC 1a–2(h), 20, 1361, 1531, 3197; Pub. L. 105–277, 112 Stat. 2681, October 21, 1998; Pub. L. 106–31, 113 Stat. 57, May 21, 1999.

2. Section 13.1 is amended by redesignating paragraphs (j) through (v) as paragraphs (k) through (w) and add new paragraph (j) to read as follows:

§ 13.1 Definitions.

* * * * *

(j) The term *motorboat* refers to a motorized vessel other than a personal watercraft.

* * * * *

Dated: December 6, 1999.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife ond Parks.

[FR Doc. 00–6717 Filed 3–20–00; 8:45 am]

BILLING CODE 4310–70–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 9

[FRL–6560–5]

OMB Approvals Under the Paperwork Reduction Act; Technical Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA), this technical amendment amends the table that list the Office of Management and Budget (OMB) control numbers issued under the PRA for Federal Plan Requirements for Municipal Solid Waste Landfills that Commenced Construction Prior to May 30, 1991 and have not been Modified or Reconstructed since May 30, 1991.

EFFECTIVE DATE: this final rule is effective March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Ann Warner at (919) 541–1192, Program Implementation and Review Group, Information Transfer and Program Integration Division (MD–12), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: EPA is amending the table of currently approved information collection request (ICR) control numbers issued by OMB for various regulations. The amendment updates the table to list those information collection requirements promulgated under the Federal Plan Requirements for Municipal Solid Waste Landfills that Commenced Construction Prior to May 30, 1991 and have not been Modified or Reconstructed since May 30, 1991 which appeared in the **Federal Register** on November 8, 1999 (64 FR 60689–60706). The affected regulation is codified at 40 CFR 62.14350–62.14356. EPA will continue to present OMB control numbers in a consolidated table format to be codified in 40 CFR part 9 of the Agency's regulations. The table lists CFR citations with reporting, recordkeeping, or other information collection requirements, and the current OMB control numbers. This listing of the OMB control numbers and their subsequent codification in the CFR satisfies the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and OMB's implementing regulations at 5 CFR part 1320.

This ICR was previously subject to public notice and comment prior to OMB approval. Due to the technical nature of the table, EPA finds that further notice and comment is unnecessary. As a result, EPA finds that there is "good cause" under section 553(b)(B) of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), to amend this table without prior notice and comment.

I. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. In addition, this action does not impose any enforceable duty, contain any unfunded mandate, or impose any significant or unique impact on small governments as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). This rule also does not require prior consultation with State, local, and tribal government officials as specified by Executive Order 12875 (58 FR 58093, October 28, 1993) or Executive Order 13084 (63 FR 27655 (May 10, 1998), or involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). Because this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This rule is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 21, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 9

Environmental protection, Reporting and recordkeeping requirements.

Dated: March 8, 2000.

Oscar Morales,

Director, Collections Strategies Division, Office of Environmental Information.

For the reasons set out in the preamble, 40 CFR part 9 is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1318, 1321, 1326, 1330, 1342, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g–1, 300g–2, 300g–3, 300g–4, 300g–5, 300g–6, 300j–1, 300j–2, 300j–3, 300j–4, 300j–9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. In § 9.1 the table is amended by adding an undesignated heading and entry in numerical order to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
. . . . .	
Approval and Promulgation of State Plans for Designated Facilities and Pollutants	
62.14355	2060–0430
. . . . .	

[FR Doc. 00–6217 Filed 3–20;–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 431

[FRL–6562–3]

Amendment to the Effluent Limitations Guidelines, Pretreatment Standards, and New Source Performance Standards for the Builders' Paper and Board Mills Point Source Category; Technical Amendment; Removal

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical amendment.

SUMMARY: This action removes duplicative regulatory language for the Builders' Paper and Board Mills Point Source Category. The regulatory requirements for this category are already included in regulations related to the Secondary Fiber, Non-Deink Subcategory of the Pulp, Paper, and Paperboard Point Source Category.

DATES: Effective on March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Mark A. Perez, Engineering and Analysis Division (4303), U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460; call (202) 260–2275 or e-mail: perez.mark@epa.gov.

SUPPLEMENTARY INFORMATION:

Need for Removing 40 CFR Part 431

On April 15, 1998, EPA promulgated effluent limitations guidelines and standards, under the Clean Water Act (CWA), for a portion of the pulp, paper and paperboard industry. 63 FR 18504. EPA also promulgated national emission standards for hazardous air pollutants (NESHAP) under the Clean Air Act (CAA) as amended in 1990, for the pulp and paper production source category. Id. In that rulemaking, known as the Cluster Rules, EPA reorganized 26 subcategories (formerly found in parts 430 and 431) into 12 new subcategories. See 63 FR 18637. In reorganizing the subcategories, mills formerly in the Builders' Paper and Board Mills Point Source Category (part 431) were placed under the Secondary Fiber Non-Deink Subcategory (part 430, subpart J). EPA did not make any substantive changes to the limitations and standards applicable to mills in this subcategory in the April 15, 1998 rule, but simply reprinted in their entirety the current effluent limitations guidelines and standards applicable to these mills. Thus, the regulations codified under part 431 are now duplicative and are removed by this action.

Administrative Requirements and Related Government Acts

Section 553 of the Administrative Procedure Act, 5 U.S.C. 553(b)(B), provides that, when an agency for good cause finds that notice and public procedure are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making today's rule final without prior proposal and opportunity for comment because the revisions in this final rule are not substantive. Today's correction removes redundant regulatory language for the Builders' Paper and Board Mills Point Source Category. The same requirements for this category appear in 40 CFR parts 430 and 431. This action removes the redundant part 431 requirements. Thus, notice and public procedure are unnecessary. EPA finds that this constitutes good cause under 5 U.S.G. 553(b)(B). For the same reason, the Agency has determined that good cause exists to waive the requirement under 5 U.S.C. 553(d) that a rule be published not less than 30 days before its effective date. In this case, the revision in today's final rule is not substantive in nature because it withdraws duplicative requirements. Therefore, the amendments are effective immediately.

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and is therefore not subject to review by the Office of Management and Budget. Because the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the Administrative Procedure Act or any other statute, as described above, it is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose significant intergovernmental mandates, as described in sections 203 and 204 of UMRA. This rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant.

This technical correction action does not involve technical standards; thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. The rule also does not involve special consideration of environmental justice related issues as required by Executive Order 12898 (59 FR 7629, February 16, 1994). This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in the April 15, 1998 **Federal Register** document.

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996). EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows

the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefor, and established an effective date of March 21, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 431

Environmental protection, Paper and paper products industry, Waste treatment and disposal, Water pollution control.

Dated: March 8, 2000.

J. Charles Fox,

Assistant Administrator for Water.

PART 431—[REMOVED]

Accordingly under the authority of Sections 301, 304(b), (c), (e), and (g), 306(b) and (c), 307(b) and (c), and 501 of the Clean Water Act (the Federal Water Pollution Control Act Amendments of 1972, as amended by the Clean Water Act of 1977) (the "Act"); 33 U.S.C. 1311, 1314(b), (c), (e), and (g), 1316(b) and (c), 1317(b) and (c), and 1361; 86 Stat. 816, Public Law 92–500; 91 Stat. 1567, Public Law 95–217, 40 CFR part 431 is removed and reserved.

[FR Doc. 00–6975 Filed 3–20–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Parts 350 and 355

[Docket No. FMCSA–98–4878 (formerly FHWA Docket No. FHWA–98–4878)]

RIN 2126–AA40 (formerly RIN 2125–AE46)

Motor Carrier Safety Assistance Program

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Final rule.

SUMMARY: The FMCSA is revising the Motor Carrier Safety Assistance Program (MCSAP) to comply with the congressionally-mandated provisions of the Transportation Equity Act for the 21st Century (TEA–21). This action broadens the scope of the MCSAP beyond enforcement activities and programs by requiring participating States to assume greater responsibility for improving motor carrier safety. These rules will now require States to develop performance-based plans reflecting national priorities and performance goals, revise the MCSAP funding distribution formula, and create a new incentive funding program. These rules provide States greater flexibility in designing programs to address national and State goals for reducing the number and severity of commercial motor vehicle (CMV) accidents. This action also includes conforming amendments to the regulations on compatibility of State laws and regulations affecting interstate motor carrier operations.

DATES: The effective date of this rule is April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. F. Daniel Hartman, National Safety Programs Division, MSP–10, (202) 366–9579, Federal Motor Carrier Safety Administration, 400 Seventh Street, SW., Washington, DC 20590; or Mr. Charles E. Medalen, Office of the Chief Counsel, HCC–20, (202) 366–1354, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC, in response to previous rulemaking notices concerning the docket referenced at the beginning of this notice by using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions on-line for more information and help.

You may download an electronic copy of this document using a modem and suitable communications software from the U.S. Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at URL: *http://www.nara.gov/fedreg* and from the U.S. Government Printing Office's databases at URL: *http://www.access.gpo.gov/nara*.

Creation of New Agency

In October 1999, the Secretary of Transportation rescinded the authority previously delegated to the Federal Highway Administrator to perform the motor carrier functions and operations, and to carry out the duties and powers related to motor carrier safety, that are statutorily vested in the Secretary. That authority was redelegated to the Director of the Office of Motor Carrier Safety (OMCS), a new office within the Department (see 64 FR 56270, October 19, 1999, and 64 FR 58356, October 29, 1999). The OMCS had previously been the FHWA's Office of Motor Carriers (OMC).

The Motor Carrier Safety Improvement Act of 1999 (MCSIA) established the Federal Motor Carrier Safety Administration (FMCSA) as a new operating administration within the Department of Transportation, effective January 1, 2000 (Public Law 106–159, 113 Stat. 1748, December 9, 1999). The Secretary therefore rescinded the motor carrier authority delegated to the Director of the OMCS and redelegated it to the Administrator of the FMCSA (65 FR 220, January 4, 2000).

The staff previously assigned to the FHWA's OMC, and then to the OMCS, are now assigned to the FMCSA. The motor carrier functions of the FHWA's Resource Centers and Division (*i.e.*, State) Offices have been transferred without change to the FMCSA Service Centers and FMCSA Division Offices, respectively. For the time being, all phone numbers and addresses are unchanged. Similarly, rulemaking activities begun under the auspices of the FHWA and continued under the OMCS will be completed by the FMCSA.

Background

The Motor Carrier Safety Assistance Program (MCSAP) is a Federal grant-in-aid program. The MCSAP was first authorized in the Surface Transportation Assistance Act of 1982 (STAA)(Public Law 97–424, 96 Stat. 2079, 2154), reauthorized in the Commercial Motor Vehicle Safety Act of 1986 (Public Law 99–570, 100 Stat. 3207, 3207–186), and again in the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) (49 U.S.C. 31101–31104, as amended). The original authorization contained certain eligibility requirements for financial assistance, including agreement to adopt and enforce safety regulations compatible with the FMCSRs and Hazardous Materials Regulations (HMRs). The regulatory compatibility requirement remains today and ensures

a permanent and consistent enforcement and safety presence throughout the nation.

The Motor Carrier Safety Act of 1984 (Title II of Public Law 98–554, 98 Stat. 2832, 2838) created the Commercial Motor Vehicle Safety Regulatory Review Panel (Safety Panel) to analyze State CMV safety requirements and develop recommendations on how to achieve compatibility with the Federal regulations. The Safety Panel recommended, in part, that the FHWA establish procedures for the continual review and analysis of the compatibility of State safety laws and regulations with Federal requirements through the MCSAP. Consistent with these recommendations, the FHWA incorporated an annual review process as a MCSAP eligibility criterion. Section 208 of the 1984 Act also authorized the Secretary to preempt those State laws and regulations affecting interstate CMV safety found to be inconsistent with Federal laws and regulations. Such a finding would have the effect of rendering inconsistent State laws and regulations unenforceable.

Summary of TEA–21

The TEA–21 (Public Law 105–178, 112 Stat. 107) was signed into law on June 9, 1998. Section 4003 of the TEA–21 authorized the MCSAP at the following funding levels for FY 1998 through FY 2003: $79 million for FY 1998, $90 million for FY 1999, $95 million for FY 2000, $100 million for FY 2001, $105 million for FY 2002, and $110 million for FY 2003.

Section 4002 of the TEA–21 adds a new section 31100 to title 49 of the U.S. Code which revises the purpose of the grant program. The goals and directives outlined in this section closely parallel the concepts and principles of a performance-based program. The changes foster greater coordination and cooperation between State and Federal jurisdictions in improving CMV safety. The changes also give States more flexibility to address their particular safety issues through the MCSAP. Section 4002 of the TEA–21 also sets forth four current program goals:

(1) Investing in activities achieving maximum accident reductions.

(2) Assessing and improving statewide program performance by setting program outcome goals, improving information and analysis systems, and monitoring program effectiveness.

(3) Ensuring adequate training of enforcement personnel.

(4) Advancing promising technologies and safe operating procedures.

Section 4003 of the TEA–21 has expanded the definition of "commercial motor vehicle" to include vehicles with a gross vehicle weight (GVW) or gross vehicle weight rating (GVWR) of at least 10,001 pounds. This amendment simplifies enforcement efforts in cases where a vehicle with a GVW of more than 10,001 pounds does not have a corresponding manufacturer's GVWR plate or is being operated in excess of the manufacturer's GVWR. The hazardous materials portion of the definition of "commercial motor vehicle" in 49 U.S.C. 31101 is also revised to make it consistent with the "commercial motor vehicle" definition in 49 U.S.C. 31132.

A key provision of TEA–21 is the section 4003 requirement that MCSAP participating States implement performance-based CMV safety programs by FY 2000. This provision shifts the emphasis of State programs from measuring activity levels or input (e.g., the number of vehicles inspected) to focusing program effort on outcomes (e.g., reductions in CMV accidents, fatalities, and injuries). States have reacted very positively to this change and all participating MCSAP jurisdictions have implemented performance-based programs.

Section 4003 also revised the grant eligibility criteria and the State plan format to require references to "improving" CMV safety and "hazardous materials" enforcement. This section emphasizes that the principal goal of the MCSAP is not simply to enforce regulations but to encourage States to assume the responsibility for finding ways to actively improve CMV safety. It also reinforces the concept that it is equally important to adopt and enforce both the FMCSRs and the HMRs. Additional requirements include (1) establishing programs ensuring proper and timely correction of safety violations noted during roadside inspections, and (2) ensuring that roadside inspections are conducted at locations that will adequately protect the safety of both drivers and enforcement personnel. These provisions codify and reinforce longstanding best practices of State CMV safety programs.

The legislation expands the existing requirement that State agencies coordinate the Commercial Vehicle Safety Plans (CVSP), originally called the State Enforcement Plan (SEP), with the State Highway Safety Plans under 23 U.S.C. 402. The TEA–21 mandates States participating in MCSAP to coordinate the CVSP and data collection and information systems with the State agency administering highway safety programs under title 23, U.S. Code. The January 1, 1994, deadline for SAFETYNET participation, as required by 49 U.S.C. 31102(b)(M), has been deleted since all States have met the requirement. Each jurisdiction receiving MCSAP funding is required to participate in SAFETYNET and other information systems. There is also a new requirement for States to exchange information in a timely manner. These requirements encourage States and agencies within a State to share best practices and develop broader-based safety programs.

Section 4003(f) of TEA–21 removes the current funding set-asides for research and development, traffic enforcement, hazardous materials training, public awareness, and demonstration of technologies and methodologies. These set-asides were created to encourage uniform State implementation of significant national programs but limited States' flexibility in allocating their MCSAP resources. The set-asides have been replaced by new allocation criteria allowing the administrative flexibility needed for States to design programs targeting their unique safety problems as well as meeting national priorities. The new funding allocation allows up to 5 percent of MCSAP funds to be designated for States, local governments, and other persons using and training qualified personnel for high priority activities and programs that improve CMV safety and compliance with safety regulations. Up to 5 percent of MCSAP funds will also be available to States, local governments, and other persons using and training qualified personnel to carry out border CMV safety programs, enforcement activities, and other projects. The Secretary may also reimburse State agencies, local governments, or other persons up to 100 percent for public education activities relating to border or high priority activities, programs, and projects.

The overall MCSAP funding consists of four parts:

1. Basic Program Funds emphasizing uniform roadside driver and CMV safety inspections, data collection and reporting, traffic enforcement, drug and alcohol enforcement, educational activities, compliance reviews, and current complementary activities.

2. Incentive Funds encourage States to improve CMV accident performance and to meet other safety performance criteria.

3. High Priority and Border Activity Funds for States to improve CMV safety and compliance with safety regulations and to carry border CMV safety

programs, enforcement, and other projects.

4. Administrative set-aside of 1.25 percent to cover program administration and State personnel training costs.

General Discussion of the NPRM

The notice of proposed rulemaking (NPRM) to amend the regulations governing the MCSAP and to request comments was published in the **Federal Register** on March 9, 1999 (64 FR 11414). In the preamble to the NPRM, proposed changes to the regulations were thoroughly explained.

Discussion of Responses to the NPRM

The comment period of the NPRM closed on May 10, 1999. Forty-three comments were received. Of these, thirty-three were from MCSAP agencies, six were from various safety associations, one was from a trucking company, one from a Federal agency, one from the Upper Great Plains Transportation Institute, and one from an individual.

Specific Concerns

Definitions

Four commenters believed that "large truck" should be defined.

The FMCSA agrees and, for the purpose of distributing Incentive Funds for reducing the number and rate of large truck-involved fatal accidents, is using the Fatality Analysis Reporting System (FARS) definition of a "large truck."

The State of Louisiana supported the revised definition of a CMV.

The term "performance factor" has been deleted, since the proposal to adjust the States' basic program funding level by applying a factor based upon a State's reduction in its CMV accident rate has been removed.

While the calculation of "accident rate" and "10-year average accident rate" were described in detail in the NPRM, those terms were not included in the definitions section. Those definitions have been added. For the purpose of determining States' eligibility under § 350.327(b)(2) Incentive Funds, the definition of "10-year average accident rate" has been added to § 350.105. For example, for the FY 2000 distribution:

1. The FMCSA would calculate a State's 10-year average accident rate period from 1987 through 1996. The average 10-year accident rate would be calculated by dividing the number representing the State's aggregated number of large truck-involved fatal crashes as reported in the FARS from 1987 through 1996 by the number representing the State's aggregate vehicle miles traveled (VMT) as reported by the FHWA for the same 10-year period.

2. The FMCSA would then calculate the State's 1997 accident rate by dividing the number of large truck-involved fatal crashes as reported in the FARS by the number representing the State's vehicle miles traveled (VMT) and compare that to the average 10-year accident rate.

3. If a comparison reveals the State's accident rate has increased, the State would not be eligible to receive accident-rate incentive shares for the current funding year since there was no reduction.

4. If a comparison reveals that the accident rate has decreased, the State would be eligible to receive accident-rate incentive shares for the current funding year.

5. If a comparison reveals the State's 1997 accident rate is within the lowest 10 percent of accident rates and the 1997 rate is the same as the State's 10-year average accident rate, the State would be eligible to receive accident rate incentive shares for the current funding year.

6. The calculations in steps 1 through 5 would be repeated in FY 2001 through 2003, adjusting the 10-year period and average and using the most recent calendar year for which data are available for comparison to the 10-year average.

Finally, the term "crash" has been replaced by the term "accident" throughout the preamble and the rule to more accurately reflect the nature of our CMV safety program.

Basic Program Funds Allocation Formula

While most of the respondents support the performance-based concept, the greatest source of disagreement on the Basic Program Funds allocation formula concerned the new performance factor. Twenty-three different comments suggested that the performance factor be dropped from the formula or that some measure other than accidents be used to determine performance. States believe that the Basic Program Funds should be left intact in order to provide funding continuity from year to year. Most States with a low fatality count were concerned that a single fatal accident could significantly affect the amount of funds received. It was noted that using the fatal accident rate both to penalize a State's receipt of Basic Program Funds and also to fail to reward a State with Incentive Funds appears to be double jeopardy. States believed that reducing a State's Basic Program Funds based on fatal accidents, which can be caused by factors not directly controllable by the State's safety programs (*e.g.*, weather), is unfair.

The FMCSA agrees that applying a performance factor to the basic program fund allocation could have a negative effect on MCSAP programs within a State and, therefore, will remove the performance factor (proposed § 350.325) from the Basic Program Funds formula process.

The States of Idaho, Vermont, Wyoming, and Montana, and the American Trucking Associations (ATA), questioned the use of population as a formula factor, stating that population is not a direct measure of commercial vehicle activity.

Because the major goal of the MCSAP is to reduce the number and severity of CMV accidents and population provides an indirect measure of accident exposure, the FMCSA has determined that population is a relevant formula factor and will be retained in the basic formula.

California and New York, two States with large urban populations, recommended the use of lane miles rather than highway road miles.

The FMCSA analyzed the use of lane miles as a potential formula factor and found that it correlated highly with highway road miles. Because of this high correlation and because highway road miles were already an accepted factor, the FMCSA decided that there was no need to change from highway road miles to lane miles.

The States of Idaho and Wyoming recommended the use of CMV miles traveled (CVMT) rather than total VMT in the formula, stating that non-commercial vehicle travel has little to do with CMV safety activities.

The FMCSA considered the use of CVMT as a factor. The CVMT (calculated as the VMT of combination and heavy single-unit trucks) is highly correlated to total VMT but has the disadvantage of requiring additional calculations. In addition, one State does not report VMT data for CMVs. Finally, a majority of fatal accidents involving CMVs also involve other vehicles. As a result, the FMCSA decided to use total VMT as a direct indicator of accident exposure.

Oregon and Montana suggested that highway road miles within federally controlled lands (*e.g.*, those areas controlled by the Bureau of Land Management (BLM)) and any road open to CMVs be included in the mileage factor.

The source of the mileage used in the MCSAP formula is the totals column of Table HM–10 of the FHWA's publication, "Highway Statistics." [1] This table includes both rural and urban highway road miles as submitted by the States to the FHWA. The FMCSA acknowledges that the exclusion of the BLM road miles from the FHWA's statistics beginning with 1998 could adversely affect CMV safety in States with a significant number of BLM road miles. Since States perform safety tasks on these roads, the FMCSA has decided to use the 1997 FHWA Road Miles calculation through FY 2003.

The Commonwealth of the Northern Mariana Islands and the Government of Guam requested reconsideration of reducing grants to the Territories. The NPRM noted that grants were proposed to be reduced from prior funding levels because Territories had lower population levels, road miles, and VMT and did not report special fuel consumption. These commenters explained that their special geographic situation and taxation system were different from the 50 States, which caused their reporting system to be different. They also asserted that a reduction in funding level would adversely affect their programs.

The FMCSA acknowledges the difference in reporting requirements but significant differences remain between the Territories and the 50 States in terms of population and road miles. With the increased funds authorized by the TEA–21, the FMCSA will add more funding to the Territories (Guam, American Samoa, Northern Mariana Islands, and the Virgin Islands) and hold them closer to their FY 1999 funding level. This amount is fixed at $350,000 and will not change through FY 2003.

The State of Idaho, which has a large percentage of Federal land, suggested using Federal acreage as a formula factor because the building of new roads is restricted within Federal lands, which penalizes the State's ability to increase its total highway mileage.

The FMCSA considered acreage and rejected it because the existence of large land areas, without extensive road miles, simply does not relate to accident potential.

The Owner-Operator Independent Drivers Association (OOIDA) recommended that the number of CMV accidents be used as a formula factor, where the number of accidents is directly proportional to the amount of money received (*i.e.*, States that have more accidents would receive more funding).

The FMCSA considered the possibility of using CMV accidents as a factor in the formula for distribution of Basic Program Funds. Incorporation of CMV accidents was rejected because (1) there is not *currently* a valid source of complete CMV accident data, (2) the four formula factors, as described, apportion funds to those States with the greatest accident exposure, and (3) using accidents as a factor does not place emphasis on accident reduction (a performance goal).

North Carolina suggested that a State's economy should be reconsidered as a formula factor because a booming economy would directly correlate to the number of CMVs traveling in a State.

The FMCSA determined that the use of special fuels (*e.g.*, diesel) was a better measure of CMV activity in a State.

Louisiana suggested using traffic density as a factor.

The FMCSA examined traffic density in detail because it appeared to be a reasonable measure of accident potential. For States that are consistently urban (high traffic density; *e.g.*, Washington, D.C.) or consistently rural (low traffic density; *e.g.*, North Dakota), a measure of traffic density makes sense. For States with a combination of very urban areas and great expanses of rural areas (*e.g.*, Texas), however, the logic of an overall traffic density factor for the entire State fails. Therefore, traffic density will not be incorporated as a factor in the formula.

The State of Illinois asserted that if a performance factor had to be applied to the Basic Program Funds allocation, then strong consideration should be given to adding a comparison of each State to the National accident rate.

Since the performance factor has been deleted, this recommendation is no longer a consideration.

Distribution of Basic Program Funds and Incentive Funds

Ten respondents disagreed with dividing the MCSAP funds into the Basic Program Funds and Incentive Funds by percentages which changed each year (*i.e.*, a 90–10 split in the year 2000; 85–15 split in the year 2001; 80–20 split in the year 2002; and 75–25 split in the year 2003, etc.). While the National Association of Governors' Highway Safety Representatives and the Commercial Vehicle Safety Alliance (CVSA) recommended that the Basic Program Funds not be decreased in order to provide more funding for Incentive Funds, State agencies in New York, Minnesota, and Illinois recommended different percentages for the splits. States commented that the final MCSAP Basic Program Funds distribution should be continued at the States' current levels of funding to encourage enrichment or enhancement of those efforts in areas of greatest safety potential.

After careful consideration of these comments, the FMCSA has adjusted the percentages for dividing the MCSAP funds. The revised percentages are shown in the table below. The MCSAP Basic Program Funds distribution has been increased to provide funding in FY 2000 above the FY 1999 funding amount of $80,000,000, thereby providing a modest growth in the Basic Program Funds through FY 2003. Therefore, the Incentive Funds have been recalculated to begin at 5 percent of the total MCSAP funds available in FY 2001, with an increase of 3 percent per year, with the final percent in FY 2003 at 11 percent.

The MCSIA has provided additional funding for the motor carrier safety grant program. Section 103(b)(1) of the MCSIA increased the amount available in fiscal years 2001, 2002 and 2003 for motor carrier safety grants by $65 million per fiscal year. This amount was reduced by a total of $10 million per fiscal year for FY's 2001 through 2003 to fund the Commercial Motor Vehicle Crash Causation Study (section 224(f), $5 million) and data collection and analysis activities (section 225(f), $5 million) of the MCSIA. Accordingly, the table entitled "MCSAP Funds Distribution Based on TEA–21 and MCSIA Authorization Levels" has been revised to reflect a net increase of $55,000,000 per fiscal year in FY's 2001 through 2003 for motor carrier safety grants.

MCSAP FUNDS DISTRIBUTION BASED ON TEA–21 AND MCSIA AUTHORIZATION LEVELS

Fiscal year	2000	2001	2002	2003
Total MCSAP Funds	$95,000,000	$100,000,000	$105,000,000	$110,000,000

[1] "Highway Statistics" is published annually by the Federal Highway Administration. It is available for inspection and copying as prescribed at 49 CFR part 7 and may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

MCSAP FUNDS DISTRIBUTION BASED ON TEA–21 AND MCSIA AUTHORIZATION LEVELS—Continued

Fiscal year	2000	2001	2002	2003
		55,000,000	55,000,000	55,000,000
		155,000,000	160,000,000	165,000,000
Administrative Takedown*	1,187,500	1,937,500	2,000,000	2,062,500
High Priority Activities	4,750,000	7,750,000	8,000,000	8,250,000
Border Activities	4,750,000	7,750,000	8,000,000	8,250,000
Basic Program Funds	84,312,500	130,684,375 (95%)	130,640,000 (92%)	130,329,375 (89%)
Incentive Funds	0**	6,878,125 (5%)	11,360,000 (8%)	16,108,125 (11%)

* Minimum of 75 percent is dedicated for training State Personnel.
** No Incentive Funds were distributed in fiscal year 2000.

The table entitled "MCSAP Funds Distribution" has been removed from proposed § 350.313(d) due to the uncertainty that the annual congressional MCSAP appropriation will be identical to the current authorized funding level.

Incentive Funds Allocation

Eight States and two organizations asserted that the philosophy of rewarding States for cutting down on their accident problem was illogical. They stated that the funds should go to those States with the biggest accident problems in order to deal with those problems.

The objective of the MCSAP is not to distribute funds to the States, the objective is to reduce accidents, injuries, and fatalities. Simply providing more funds to States with increased accidents, injuries and fatalities provides no incentive to improve safety. However, the four-factor formula for allocating Basic Program Funds, while not based on the number of accidents, does provide the greatest amount of funds to those States with the greatest potential for accident problems.

Ten States and one safety advocacy group disagreed with the use of population in the determination of the accident rate and suggested using all VMT rather than population in the calculation. One comment indicated that population is a fair basis for allocating basic funding because population is an indirect measure of accident potential. However, for determining the accident rate, use of VMT was recommended because VMT links fatalities to the actual rate of exposure.

The FMCSA agrees with this set of comments. The definition of fatal-accident rate has been changed to the total number of large truck-involved fatal crashes as reported in FARS for each State divided by the total VMT for each State for all vehicles.

Seven States and the ATA recommended using the number of CMV accidents rather than the number of fatal accidents in determining the accident rate. Various reasons were given. First, the costs of crippling injuries and property damage are significant, even if a fatality is not involved. Second, the difference between a fatal accident and a serious injury accident is often a difference of luck or the physical condition of the victim. Third, a small State may have relatively few fatal CMV accidents and any fluctuation would have profound impacts upon the accident rate. Using the total number of CMV accidents would have less impact from year to year.

The FMCSA basically agrees with all of these arguments. However, the reason for not using all CMV accidents at this point is the lack of a mature, reliable data base. The Motor Carrier Management Information System (MCMIS) accident module will eventually be an excellent source for CMV accident data. At this time, however, not all States are reporting accurate and consistent data to MCMIS. As MCMIS accident reporting by the States improves, the agency may consider using CMV accidents as the safety performance measure for MCSAP funding.

The States of Louisiana, Maryland, South Carolina, and South Dakota, the National Association of Governors' Highway Safety Representatives, and the ATA disagreed with the proposal to compare the ten-year average accident rate with the current one-year accident rate. The ATA suggested comparing a three-year average with the ten-year average to prevent unwarranted penalties because of random annual fluctuations in the number of accidents in States with relatively few fatal accidents.

The purpose of comparing the ten-year average to the current year's fatal accident rate is to give an incentive to reduce accidents. The purpose of comparing one year's accidents and accident rate to the average of the preceding 10 years is to determine the effectiveness of that year's accident reduction strategies. For this reason, the FMCSA will retain the proposed method of calculation.

Massachusetts commented that the definition of accident rates appears to change between the description of Basic and Incentive Funds.

The word "fatal" is added to the description of accident rates in §§ 350.317 and 350.327.

The Association of Waste Hazardous Materials Transporters questioned the fairness of allocating MCSAP Incentive Funds based on all CMV-involved fatal accidents and asserted that the accident rates should be derived using the number of accidents attributable to the CMV (based on law-enforcement citations).

The FMCSA does not agree with this recommendation because the issuing of citations as a result of an accident (as recorded in the FARS) does not always provide a complete determination of "fault."

Fourteen commenters recommended that the FMCSA not use accident rates for allocation of Incentive Funds. Three reasons were given:

1. An improved accident rate is not always the result of State efforts, and accidents may increase even after a State has put forth its best effort to reduce accidents.
2. States with low numbers of accidents will be penalized by very small changes in the number of accidents, even when the changes may not be statistically significant.
3. States will be penalized for improvements in accident reporting.

To lessen the impact of the accident statistics in the Incentive Funds allocation process, one commenter suggested allotting equal shares to each factor. Another comment was to use positive rather than negative incentive measures (*e.g.*, assign incentive points for proactive program development plans).

Incentive Funds do not "penalize" the States. These are additional funds beyond the Basic Program Funds allocation and serve to reward States which have seen a reduction in the number of fatal accidents or the fatal accident rate and an improvement in other areas. If a State's performance continues to improve, the State will continue to receive Incentive Funds. Proactive program development should result in a reduction in accidents. Reducing accidents is a positive measure.

The State of New York noted that the approach to incentive funding fails to recognize States that have developed successful CMV safety programs. New York commented that "it is designed to make it relatively easy for states with poorer programs to get significant incentive funding for modest gains even though they are at the bottom of any reasonable comparative national ranking."

The FMCSA recognizes that States with the best (or lowest) fatal accident rates may have difficulty reducing those rates further, while States with higher accident rates have more room for improvement. To encourage those States with the lowest fatal accident rates who were unable to reduce—but were able to maintain—those outstanding fatal accident rates, three incentive shares will be awarded.

Although comments generally supported the concept of incentive funding, comments from nine States and the CVSA indicated concern that establishing an incentive award for timely upload of CMV accidents may actually have the effect of reducing the completeness and accuracy of the data. These States also maintain that they have no control over the speed with which certain accident data is reported to them, thereby resulting in late reporting to the FMCSA.

We are sympathetic to the States' accident reporting challenges, particularly their dependence on law enforcement agencies outside the lead MCSAP agency jurisdiction, but the collection of complete, accurate and timely accident data is vital to reducing fatalities and accidents. We cannot compromise our safety goals due to a fear that States will not report accident information in order to prevent their timeliness record from suffering. A sufficiently populated accident database provides the CMV accident information necessary to profile high-risk carriers and drivers and establish national policies and regulations that promote safety. More importantly, however, a complete and timely accident database enables the States to evaluate current safety and enforcement programs, to formulate effective future programs, and to allocate resources based upon sound data—elements of an effective performance-based program. As such, the FMCSA will retain timely accident data upload as an incentive element, and will continue to work with the States in seeking ways to improve State-wide accident reporting mechanisms.

In addition, the weighting of the incentive categories has been adjusted to emphasize the importance of fatality reduction compared to other program element improvements.

The States of California, Illinois, Michigan, and New York commented that the proposed method of calculating and distributing incentive award funds failed to reflect the relative size of States' Basic Program Funds. The FMCSA agrees and has modified the formula to weight shares based upon a State's percentage of participation in the Basic Program Funds distribution formula.

The total of all States' shares will be divided into the dollar amount of Incentive Funds available, thereby establishing the value of one share. Each State's incentive allocation will then be determined by multiplying the State's percentage of participation in the formula allocation of Basic Program Funds, by the number of shares it has that year, by the dollar value of one share.

Use of FARS Data for the Incentive Funds

Six States commented about using FARS data rather than the office's own SAFETYNET accident data for all accidents to determine incentive shares.

Currently, the FMCSA SAFETYNET Accident Module is not sufficiently populated to be used to distribute funds. The agency is working aggressively with States to record all required CMV accidents in SAFETYNET. As accident data collection improves, the agency can use it as the basis for calculating incentive funding. The FARS is a nationally recognized source of fatal accident data and the most consistent and reliable data source available at this time.

Partial Funding (50 Percent) Basic Program Funds

The States of Florida, Maine, and South Dakota commented that there was no provision in the NPRM for continued partial (50 percent) funding of the MCSAP Basic Program Funds for those States with existing incompatible intrastate regulations outside the Tolerance Guidelines and the FMCSRs. The State of Michigan commented that no State would be eligible for any funding for incompatibility based on § 350.203, and that the FMCSA should amend that section.

Eliminating partial funding from the NPRM for States that currently have incompatible intrastate regulations was an administrative oversight and has been corrected in the final rule under § 350.335. Florida, Maine and South Dakota will continue to receive 50 percent funding of their Basic Program Funds formula allocation until the incompatibilities are removed, and provided no further incompatibilities have been created. However, any State that becomes incompatible, other than the existing three incompatible States, will not be eligible for funding.

The State of Maine (Department of Public Safety) commented on § 350.341(d) of the Tolerance Guidelines prohibiting exemptions to the FMCSRs based upon the distance a motor carrier or driver operates from the work reporting location. Maine has three regulatory variances which exempt from all of Parts 391 and 395, and portions of 396, intrastate carriers, except those transporting Hazardous Materials, whose drivers operate within a 100 air-mile radius of their terminal. Maine stated: "[I]t is the position of the State of Maine that our exemption does not impact highway safety and that the penalty imposed restricts the ability of the State of Maine to maximize our ability to impact highway safety by limiting activities under the MCSAP Program."

Maine believes that the FMCSA would circumvent the intent of Congress through administrative rulemaking if § 350.341(d) is adopted. The substance of § 350.341(d) has been part of the Tolerance Guidelines since September 8, 1992. Until the study required by section 4032 of TEA–21 is complete, and a final decision is made, the States of Maine, Florida, and South Dakota will continue to receive 50 percent of their MCSAP Basic Program Funds.

Conditions To Qualify for Basic Program Funds

California commented that the FMCSA did not specifically identify those parts of the FMCSRs that the States are required to adopt or be compatible with in order to qualify for and receive MCSAP funds.

The FMCSA did not intend to extend the scope of required compliance beyond Parts 390 through 397. That is the clear meaning of § 350.201. However, § 350.201(a) has been

rewritten to clarify which parts of the FMCSRs and HMRs must be adopted by the States to qualify for MCSAP funding. This paragraph incorporates exceptions previously found in the "Conditions for basic grant approval" and the "Tolerance Guidelines."

Maintenance of Effort

Section 103(c) of the MCSIA amends the maintenance of effort required in the ISTEA by changing the base period to fiscal years 1997, 1998, and 1999 for measuring the level of effort. The effect of this change is to greatly increase the level of commercial motor vehicle safety activities that the State must maintain to participate in MCSAP. The intent of the maintenance of effort provision is to ensure that Federal funds supplement State funds and do not replace them. Further, it ensures that States commit to continuing their past efforts in commercial motor vehicle safety activities.

Enforcement of Registration and Financial Responsibility Requirements

Section 207 of the MCSIA amended 49 U.S.C. 31102(B)(1)(R) to read as follows (new material *italicized*): "(R) ensures that the State will cooperate in the enforcement of registration *requirements under section 13902* and financial responsibility requirements under sections *13906*, 31138, and 31139, and regulations issued thereunder." The references to § 13902 ("Registration of motor carriers") and 13906 ("Security of motor carriers, brokers, and freight forwarders") merely clarified the meaning of the previous text by identifying the statutory provisions that deal with registration and financial responsibility requirements. Since Sec. 207 did not substantively change subparagraph (R), the FMCSA finds good cause, pursuant to 5 U.S.C. 553(b)(3)(B) of the Administrative Procedure Act, to incorporate these changes into § 350.201(t) without prior notice and opportunity for comment.

Local Jurisdictions

The State of California, the OOIDA, the National Association of Governors' Highway Safety Representatives, and the CVSA were strongly opposed to local jurisdictions participating in High Priority MCSAP funding.

The FMCSA believes that under very limited circumstances, it may be desirable to fund local agencies' CMV safety program activities. In those cases, the local agency receiving a grant would be held to essentially the same qualification, certification, and administrative requirements as any other MCSAP jurisdiction, and in any event be required to coordinate all activities through the lead MCSAP agency in that State.

Compatibility

Parts of 49 CFR pertaining to the FMCSRs and HMRs which were inadvertently omitted from the NPRM but are in the current part 350, appendix C, have been added to § 350.337. The response to the question found at § 350.337 in the NPRM was not sufficiently clear about the extent to which State laws governing interstate commerce may differ from Federal law and still be compatible. The response has been rewritten to agree with the regulatory adoption requirements and exceptions stated in § 350.201. The FMCSA has added the phrase "and provide an orderly transition to full regulatory adoption at a later date" in § 350.341(g). This phrase is in the current Tolerance Guidelines in part 350 and was inadvertently left out of the NPRM. There was no intention of changing the standard for grandfather clauses.

The Wisconsin Motor Carriers Association and the Wisconsin DOT both commented about the addition of the words "engaged exclusively in intrastate commerce" with regard to the Tolerance Guidelines in § 350.339. Their comments suggested that this phrase could be interpreted to require any motor carrier that uses the same drivers and vehicles in both interstate and intrastate commerce to be subject only to the U. S. DOT jurisdiction and the FMCSRs rather than allowing those carriers, drivers and CMVs to be subject to State rules when operating on an intrastate basis.

The FMCSA agrees with these comments and has removed the word "exclusively" from §§ 350.339, 350.341, and 350.343.

The U.S. Equal Employment Opportunity Commission commented and urged the FMCSA to revise the State waiver standard in § 350.341(h) to be no more restrictive than the newly adopted waiver standards under section 4007 of TEA–21.

The FHWA's interim final rule implementing section 4007, "Federal Motor Carrier Safety Regulations; Waivers, Exemptions, and Pilot Programs; Rules and Procedures," [63 FR 67600, December 8, 1998] applies to interstate commerce. As indicated earlier in this notice, the Secretary has rescinded the authority previously delegated to the FHWA to carry out motor carrier functions and operations. Therefore, the regulations issued by the FHWA are now regulations of the FMCSA.

The Tolerance Guidelines in the current part 350 set forth the limited deviations from the FMCSRs allowed for laws and regulations that apply only to motor carriers, CMV drivers and CMVs engaged in intrastate commerce that are not subject to Federal jurisdiction. Section 350.341(h)(1) describes variances in place prior to the implementation of the requirements of the Surface Transportation Assistance Act of 1982. Presumably, the States who had variances grandfathered under § 350.341(h)(1) ensured that they were based upon appropriate performance standards and had no adverse effect upon safety. Since the driver qualification standard in § 350.341(h)(2) is consistent with the requirements of 49 CFR part 381—Waivers, Exemptions, and Pilot Programs, no change has been made to the Tolerance Guidelines in § 350.341(h)(2).

California commented that participating States should be given latitude to enact regulations and statutes that are compatible with Federal regulations but not identical. The State suggested that the FMCSA should retain the terminology "having the same effect as" in lieu of the word "identical."

It was an administrative oversight to leave out the phrase "having the same effect as." We have added it to the language in § 350.105 only for the FMCSRs. The word "identical" will also remain.

California commented that under § 350.345, a State should be able to apply for additional variances from the Tolerance Guidelines and have those variances apply to interstate commerce.

California's request would undermine the congressional intent and purpose of the MCSAP to ensure uniformity of regulations and enforcement among the States. Since the inception of the program, the agency has required each State to enforce uniform motor carrier safety and hazardous materials regulations for both interstate and intrastate motor carriers and drivers. Safety standards in one State must be compatible with the requirements in another State in order to foster a uniform national safety environment. The purpose of variances is to set forth the limits within which a State can deviate from the FMCSRs and still be considered compatible for funding purposes under 49 CFR 350. But these variances are applicable only to those State rules and regulations where the U.S. Department of Transportation does not have jurisdiction, namely intrastate commerce. Variances are not available for State rules and regulations governing interstate commerce.

Commercial Vehicle Safety Plan (CVSP)

Nine comments dealt with the CVSP.

Nevada was opposed to including a safe inspection location requirement in the State Certification. Nevada indicated most States have inspection sites that are adequate or barely adequate for CMV inspections and some are not safe under all weather conditions and certain times of the day.

The OOIDA and the ATA supported the requirement.

Since section 4003(c)(8) of TEA–21 requires that States ensure roadside inspections will be conducted at a location that is adequate to protect the safety of drivers and enforcement personnel as a condition for Basic Program Funds, that requirement must be part of the State Certification. The language has been revised to require that the MCSAP agency have departmental policies stipulating that roadside inspections are conducted at locations adequate to protect the safety of drivers and enforcement personnel.

The FMCSA is adding three items to the State Certification to be consistent with the conditions a State must meet to qualify for Basic Program Funds: (1) The State will participate in SAFETYNET and ensure information is exchanged with other States in a timely manner; (2) The State will ensure that requirements relating to the licensing of CMV drivers is enforced, including checking the status of commercial driver's licenses (CDL); and (3) The State will ensure that CMV size and weight enforcement activities funded with MCSAP funds will not diminish the effectiveness of other CMV safety enforcement programs.

Nevada and Wisconsin commented that the States need clarification regarding the requirement that the CVSP, data collection, and information systems be coordinated with State highway safety programs under 23 U.S.C. 402.

This requirement is neither another layer of approval for the CVSP nor a means to validate the States' SAFETYNET data with section 402 data. The requirement to coordinate a State's CVSP (formerly SEP) with the State highway safety plan under 23 U.S.C. 402 has always been a component of the State Certification. Section 4003(c)(2) of TEA–21 merely expands the requirement to also include the coordination of data collection and information systems with State highway safety programs under title 23, U.S. Code. Certification item 12 has been revised to reflect that mandate. The intent of this congressional direction is to ensure close coordination of State highway safety programs. State highway safety programs aimed at passenger cars and drivers and those aimed at CMVs and CMV drivers should complement each other to the fullest possible extent. Both the section 402 State and community grant program and MCSAP are data-driven and performance-based programs designed to reduce accidents, injuries, and fatalities. The Congress intends for these programs to share data, information, and program plans to reduce fatalities. The States must certify that information exchange or coordination of safety plans was accomplished.

The OOIDA, Advocates for Highway and Auto Safety (AHAS), and the States of Iowa and Maryland commented about the timely and proper correction of all CMV safety violations. The OOIDA commented that there are no standards which define the "timely and proper" correction of CMV violations. Iowa commented that the term "all" should be eliminated. The AHAS expressed its concern for eliminating "the prior regulatory requirement that states enact and enforce an out-of-service (OOS) verification program in favor of a 'certification acceptance' that the States have a process in place for timely and proper correction of all CMV safety violations noted during inspections." Maryland is concerned that the State has no control over interstate carriers not domiciled in their State.

Section 4003(c)(4) of TEA–21 eliminates the current statutory requirement that the States establish an out-of-service verification program and mandates that the States "will establish a program to ensure the proper and timely correction of commercial motor vehicle safety violations noted during an inspection* * *." This mandate does not preclude the States from continuing their out-of-service verification programs. This is not a new requirement for the States. Section 350.9(p) currently requires the correction of all violations cited on roadside inspection reports. States are also required to have a tracking system in place to ensure that motor carriers certify the corrections of safety violations and that inspection reports are returned to the issuing agency (§ 350.13(b)(4)(v)).

Standards to define "timely and proper" corrections of CMV violations are found in 49 CFR 396.9(d)(2) which states: "Motor carriers shall examine the report. Violations or defects noted thereon shall be corrected." Additionally, 49 CFR 396.11(c) states that, "prior to requiring or permitting a driver to operate a vehicle, every motor carrier or its agent shall repair any defect or deficiency listed on the driver vehicle inspection report which would likely affect the safety of operation of the vehicle." Section 396.9 also requires that a motor carrier shall certify that all repairs have been made and return the signed inspection form to the issuing agency within 15 days following the inspection. Furthermore, the North American Uniform Out-of-Service Criteria states that "violations other than out-of-service conditions detected during the inspection process will not preclude the completion of the current trip or dispatch. However, such violations must be corrected or repaired prior to redispatch."

The Upper Great Plains Transportation Institute provided comments to the docket on suggested revisions for § 350.213, "What must a CVSP include." The FMCSA agrees that the CVSP guidelines should be consistent with the Performance-Based MCSAP training. The following paragraphs have been amended: "(a) A statement of the State agency goal or mission" is amended to read "(a) A General overview section that must include the following two items: (1) A statement of the State agency goal or mission." Paragraph "(b)" is now "(2)" under Paragraph "(a)" and the phrase "comprehensive evaluation" is changed to "program summary." The sentence, "Evaluation data should measure program progress in one-year increments" has been deleted and replaced with, "Data periods used must be consistent from year to year." In the next sentence of this paragraph the phrase "chosen by the State" is replaced with "for which the State's data is current." The word "evaluation" that appears in the next sentence has been changed to "summary." Paragraph (b) has been expanded to include descriptions of the State's activities related to removing impaired CMV drivers from the highways and interdicting controlled substances transported by CMVs (as required by § 350.201(q)) and enforcing registration and financial responsibility requirements (as required by § 350.201(t)). In paragraph (f), now paragraph (e), the second sentence has been replaced with "Strategies may include education, enforcement, legislation, or technology/infrastructure." In paragraph (g), now paragraph (f), the second sentence has been completely deleted. To be consistent with the Performance-Based MCSAP training, a new paragraph (i) has been added. The Performance-Based MCSAP training specifies that each

State specific objective must be evaluated. The new paragraph (i) describes the information the States will discuss in this section of its CVSP. To be consistent with the Performance-Based MCSAP training, paragraphs (n) through (r) have been added to this section. Paragraphs (c) through (m) have been redesignated as paragraphs (b) through (g) and (j) through (m), respectively.

Size and Weight Enforcement

Michigan and Oregon asked for a clarification regarding cost eligibility of size and weight enforcement at fixed sites.

The MCSAP rule on this point has not changed since 1992. To be eligible for reimbursement, (§ 350.29(c)(5)) size and weight enforcement must be conducted at locations other than fixed weight facilities, at specific geographic locations where the weight of the vehicle can significantly affect the safe operation of the vehicle, or at seaports where intermodal shipping containers enter and exit the United States. These size and weight enforcement activities must be carried out in conjunction with an appropriate North American Standard Inspection and inspection report.

Consolidation of Appendices

This rulemaking incorporates appendices A, B, and C into the regulatory text. The following table shows where each section of the amended regulations appear in the new format:

Old regulation	New regulation
350.1—Purpose	350.103.
350.3—Definitions	350.105.
350.5—Policy	350.101.
350.7—Objective	350.101.
350.9—Conditions for basic grant approval	350.107, 350.201.
350.11—Adopting and enforcing compatible laws and regulations (generally):	
350.11(a)	350.201(a).
350.11(b)	350.331(c).
350.11(c)	Removed.
350.11(d)	350.105 (compatible/compatibility).
350.11(e)	350.203.
350.11(f)	350.331(d).
350.11(g)	350.345.
350.11(h)	350.335(d).
350.11(i)	350.335(e).
350.13—State Enforcement Plan (SEP) for a basic grant	350.213.
350.15—Certification of compliance by State	350.209.
350.17—Maintenance of effort	350.301.
350.19—Grant application submission	350.205.
350.21—Distribution of funds:	
350.21(a)	350.303.
350.21(b)	350.305.
350.21(c)	350.323(a).
350.21(d)	350.323(b).
350.21(e)–(f)	350.313, 350.315, 350.317, 350.319, 350.321, 350.323, 350.327, 350.329.
350.31(g)	350.307.
350.23—Acceptance of State Plan	350.205, 350.207.
350.25—Effect of failure to submit a satisfactory State Plan	350.205, 350.207.
350.27—Procedure for withdrawal of approval	350.215.
350.29—Eligible costs	350.309, 350.311, 350.315.
350 App A—Guidelines To Be Used in Preparing State Enforcement Plan.	350.213 the SEP has been renamed the Commercial Vehicle Safety plan (CFSP).
350 App B—Form of State Certification	350.211.
350 App C—Tolerance Guidelines for Adopting Compatible State Rules and Regulations:	
paragraph 1	Removed.
paragraph (2)(a)	350.337.
paragraph (2)(b)	350.337.
paragraph (3)(a)	Removed.
paragraph (3)(b)	350.341(a).
paragraph (3)(c)	350.341(b).
paragraph (3)(d)	350.341(c).
paragraph (3)(d)(1)–(d)(11)	350.343.
paragraph (3)(e)	350.341(d).
paragraph (3)(f)	350.341(e).
paragraph (3)(g)	350.341(f).
paragraph (3)(h)	350.341(g).
paragraph (3)(i)	350.341(h).
paragraph (3)(j)	Removed.

Conforming Amendments

This action amends various sections of 49 CFR part 355 to conform with changes to the MCSAP and 49 CFR part 350. Under § 355.5, the terms "compatible/compatibility" and "State" are revised to be consistent with part 350. The acronym "FMCSRs" has been added to the definition for "Federal Motor Carrier Safety Regulations" and replaces "FMCSR" throughout this part. Section 355.21(c) now reflects the requirement that State laws and regulations be identical to the Hazardous Materials Regulations. The term "Commercial Vehicle Safety Plan (CVSP)" replaces "Safety Enforcement Plan (SEP)." Cross-references to part 350 have been updated.

The FMCSA has eliminated the last two sentences under the paragraph titled "Definitions" in Appendix A to Part 355—Guidelines for the Regulatory Review. States must continue to ensure that definitions of terms used in their laws and regulations are consistent with FMCSR definitions. We have simply removed the example term "commercial motor vehicle." An interim final rule "Federal Motor Carrier Safety Regulations; Definition of Commercial Motor Vehicle; Interim Final Rule" published on September 3, 1999, at 64 FR 48510 revised the CMV definition under § 390.5 to cover "vehicles designed or used to transport more than 8 passengers (including the driver) for compensation." But the action exempts the operation of these small passenger-carrying vehicles from all of the FMCSRs for 6 months to allow time for the completion of a separate rulemaking action also published on September 3, 1999, at 64 FR 48518. Revising appendix A to reflect the new CMV definition is premature and potentially confusing to the States.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is not a significant regulatory action within the meaning of Executive Order 12866 or significant within the meaning of DOT regulatory policies and procedures. The revisions to the FMCSRs will not cause an annual impact on the economy of over $100 million, and they will not adversely affect a sector of the economy in a material way. The changes will not create an inconsistency or otherwise interfere with another agency's actions, nor do they raise novel legal or policy issues. These changes merely implement a recently enacted legislative mandate which directed the FMCSA to amend its regulations pertaining to the MCSAP. This final rule broadens the scope of the MCSAP beyond enforcement activities and programs by requiring participating States to assume greater responsibility for improving motor carrier safety. It revises the MCSAP funding distribution formula, creates a new incentive funding program, and requires States to develop performance-based CMV safety plans. Thus, in light of this analysis, especially the finding that the economic impact of this action is likely to be minimal, the FMCSA has determined that a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has evaluated the effects of this rule on small entities. It is anticipated that this rulemaking will have little or a non-significant impact upon small entities. The changes merely implement TEA–21 provisions pertaining to the MCSAP affecting only States and local jurisdictions. This rule provides a process for making high priority activity and border activity funds available to local jurisdictions as well as MCSAP agencies. The basic conditions for local agencies to qualify for these funds are consistent with the conditions local agencies must now follow to receive funds through the MCSAP agency. Local agencies will not be required to participate unless they find it is in their best interest. The number of local agencies that would receive direct funding will be minimal since the FMCSA will provide grants directly to local agencies only where it is not possible to work through the lead MCSAP agency. Therefore, the FMCSA hereby certifies that this proposed action will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act

This rule does not impose a Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year (2 U.S.C. 1531 *et seq.*).

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this action under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in acordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined this action does not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. The changes in this rule implement TEA–21 provisions. The MCSAP is a grant-in-aid type program whereby Federal financial assistance is provided to States. The basic nature of the program and the level of total funding for the program are not affected by these changes. Nothing in this document directly preempts any State law or regulation. Therefore, this rulemaking does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment.

Executive Order 12372 (Intergovernmental Review)

The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program. Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501, *et. seq.*), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. In its March 9, 1999, notice of proposed rulemaking (NPRM) titled "Motor Carrier Safety Assistance Program (MCSAP), the agency stated that this action might increase the number of respondents in the MCSAP information collection (OMB Control No. 2126–0010). The

agency has subsequently determined that the number of respondents would not change as a result of this rulemaking, and therefore, is not requesting any revisions to the currently approved collection which will expire on March 31, 2001. The NPRM specifically solicited comments regarding the information collections imposed by this action. The comments that were received are being addressed as a program element of the MCSAP and will not result in any changes to this information collection.

National Environmental Policy Act

The agency has analyzed this action for purposes of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and it has determined that this action will not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 350

Grant programs—transportation, Highway safety, Motor carriers.

49 CFR Part 355

Administrative practice and procedure, Federal-State relations, Grant programs, Hazardous materials transportation.

Issued on: March 14, 2000

Julie Cirillo,

Acting Deputy Administrator.

In consideration of the foregoing, the FMCSA amends title 49, Code of Federal Regulations, chapter III, as follows:

1. Part 350 is revised to read as follows:

PART 350—COMMERCIAL MOTOR CARRIER SAFETY ASSISTANCE PROGRAM

Subpart A—General

Sec.

350.101 What is the Motor Carrier Safety Assistance Program (MCSAP)?
350.103 What is the purpose of this part?
350.105 What definitions are used in this part?
350.107 What jurisdictions are eligible for MCSAP funding?
350.109 What are the national program elements?
350.111 What constitutes "traffic enforcement" for the purpose of the MCSAP?

Subpart B—Requirements for Participation

350.201 What conditions must a State meet to qualify for Basic Program Funds?
350.203 [Reserved]
350.205 How and when does a State apply for MCSAP funding?
350.207 What response does a State receive to its CVSP submission?
350.209 How does a State demonstrate that it satisfies the conditions for Basic Program funding?
350.211 What is the format of the certification required by § 350.209?
350.213 What must a State CVSP include?
350.215 What are the consequences for a State that fails to perform according to an approved CVSP or otherwise fails to meet the conditions of this part?

Subpart C—Funding

350.301 What level of effort must a State maintain to qualify for MCSAP funding?
350.303 What are the State and Federal shares of expenses incurred under an approved CVSP?
350.305 Are U.S. Territories subject to the matching funds requirement?
350.307 How long are MCSAP funds available to a State?
350.309 What activities are eligible for reimbursement under the MCSAP?
350.311 What specific items are eligible for reimbursement under the MCSAP?
350.313 How are MCSAP funds allocated?
350.315 How may Basic Program Funds be used?
350.317 What are Incentive Funds and how may they be used?
350.319 What are permissible uses of High Priority Activity Funds?
350.321 What are permissible uses of Border Activity Funds?
350.323 What criteria are used in the Basic Program Funds allocation?
350.325 [Reserved]
350.327 How may States qualify for Incentive Funds?
350.329 How may a State or a local agency qualify for High Priority or Border Activity Funds?
350.331 How does a State ensure its laws and regulations are compatible with the FMCSRs and HMRs?
350.333 What are the guidelines for the compatibility review?
350.335 What are the consequences if my State has laws or regulations incompatible with the Federal regulations?
350.337 How may State laws and regulations governing motor carriers, CMV drivers, and CMVs in interstate commerce differ from the FMCSRs and still be considered compatible?
350.339 What are tolerance guidelines?
350.341 What specific variances from the FMCSRs are allowed for State laws and regulations governing motor carriers, CMV drivers and CMVs engaged in intrastate commerce and not subject to Federal jurisdiction?
350.343 How may a State obtain a new exemption for State laws and regulations for a specific industry involved in intrastate commerce?
350.345 How does a State apply for additional variances from the FMCSRs?

Authority: 49 U.S.C. 31100–31104, 31108, 31136, 31140–31141, 31161, 31310–31311, 31502; and 49 CFR 1.73.

Subpart A—General

§ 350.101 What is the Motor Carrier Safety Assistance Program (MCSAP)?

The MCSAP is a Federal grant program that provides financial assistance to States to reduce the number and severity of accidents and hazardous materials incidents involving commercial motor vehicles (CMV). The goal of the MCSAP is to reduce CMV-involved accidents, fatalities, and injuries through consistent, uniform, and effective CMV safety programs. Investing grant monies in appropriate safety programs will increase the likelihood that safety defects, driver deficiencies, and unsafe motor carrier practices will be detected and corrected before they become contributing factors to accidents. The MCSAP also sets forth the conditions for participation by States and local jurisdictions and promotes the adoption and uniform enforcement of safety rules, regulations, and standards compatible with the Federal Motor Carrier Safety Regulations (FMCSRs) and Federal Hazardous Material Regulations (HMRs) for both interstate and intrastate motor carriers and drivers.

§ 350.103 What is the purpose of this part?

The purpose of this part is to ensure the Federal Motor Carrier Safety Administration (FMCSA), States, and other political jurisdictions work in partnership to establish programs to improve motor carrier, CMV, and driver safety to support a safe and efficient transportation system.

§ 350.105 What definitions are used in this part?

10-year average accident rate means for each State, the aggregate number of large truck-involved fatal crashes (as reported in the Fatality Analysis Reporting System (FARS)) for a 10-year period divided by the aggregate vehicle miles traveled (VMT) (as defined by the Federal Highway Administration (FHWA)) for the same 10-year period.

Accident rate means for each State, the total number of fatal crashes involving large trucks (as measured by the FARS for each State) divided by the total VMT as defined by the FHWA for each State for all vehicles.

Agency means Federal Motor Carrier Safety Administration.

Administrative Takedown Funds means funds deducted by the FMCSA each fiscal year from the amount made available for the MCSAP for expenses incurred in the administration of the MCSAP, including expenses to train State and local government employees.

Administrator means Federal Motor Carrier Safety Administrator.

Basic Program Funds means the total MCSAP funds less the High Priority Activity, Border Activity, Administrative Takedown, and Incentive Funds.

Border Activity Funds means funds provided to States, local governments, and other persons carrying out programs, activities, and projects relating to CMV safety and regulatory enforcement supporting the North American Free Trade Agreement (NAFTA) at the U.S. border. Up to 5 percent of total MCSAP funds are available for these activities.

Commercial motor vehicle (CMV) means a motor vehicle that has any of the following characteristics:

(1) A gross vehicle weight (GVW), gross vehicle weight rating (GVWR), gross combination weight (GCW), or gross combination weight rating (GCWR) of 4,537 kilograms (10,001 pounds) or more.

(2) Regardless of weight, is designed or used to transport 16 or more passengers, including driver.

(3) Regardless of weight, is used in the transportation of hazardous materials and is required to be placarded pursuant to 49 CFR part 172, subpart F.

Commercial vehicle safety plan (CVSP) means the document outlining the State's CMV safety objectives, strategies, activities and performance measures.

Compatible or *Compatibility* means State laws and regulations applicable to interstate commerce and to intrastate movement of hazardous materials are identical to the FMCSRs and the HMRs or have the same effect as the FMCSRs. State laws applicable to intrastate commerce are either identical to, or have the same effect as, the FMCSRs or fall within the established limited variances under § 350.341.

High Priority Activity Funds means funds provided to States, local governments, and other persons carrying out activities and projects that directly support the MCSAP, are national in scope in that the successful activity or project could potentially be applied in other States on a national scale, and improve CMV safety and compliance with CMV safety regulations. Up to 5 percent of total MCSAP funds are available for these activities.

Incentive Funds means funds awarded to States achieving reductions in CMV involved fatal accidents, CMV fatal accident rate, or meeting specified CMV safety program performance criteria.

Large truck means a truck over 10,000 pounds gross vehicle weight rating including single unit trucks and truck tractors (FARS definition).

Motor carrier means a for-hire motor carrier or private motor carrier. The term includes a motor carrier's agents, officers, or representatives responsible for hiring, supervising, training, assigning, or dispatching a driver or concerned with the installation, inspection, and maintenance of motor vehicle equipment or accessories or both.

North American Standard Inspection means the methodology used by State CMV safety inspectors to conduct safety inspections of CMVs. This consists of various levels of inspection of the vehicle or driver or both. The inspection criteria are developed by the FMCSA in conjunction with the Commercial Vehicle Safety Alliance (CVSA), an association of States, Canadian Provinces, and Mexico whose members agree to adopt these standards for inspecting CMVs in their jurisdiction.

§ 350.107 What jurisdictions are eligible for MCSAP funding?

All of the States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands are eligible to receive MCSAP grants directly from the FMCSA. For purposes of this subpart, all references to "State" or "States" include these jurisdictions.

§ 350.109 What are the national program elements?

The national program elements include the following five activities:

(a) Driver/vehicle inspections.
(b) Traffic enforcement.
(c) Compliance reviews.
(d) Public education and awareness.
(e) Data collection.

§ 350.111 What constitutes "traffic enforcement" for the purpose of the MCSAP?

Traffic enforcement means enforcement activities of State or local officials, including stopping CMVs operating on highways, streets, or roads for violations of State or local motor vehicle or traffic laws (*e.g.*, speeding, following too closely, reckless driving, improper lane change). To be eligible for funding through the grant, traffic enforcement must include an appropriate North American Standard Inspection of the CMV or driver or both prior to releasing the driver or CMV for resumption of operations.

Subpart B—Requirements for Participation

§ 350.201 What conditions must a State meet to qualify for Basic Program Funds?

Each State must meet the following twenty-two conditions:

(a) Assume responsibility for improving motor carrier safety and adopting and enforcing State safety laws and regulations that are compatible with the FMCSRs (49 CFR parts 390–397) and the HMRs (49 CFR parts 107 (subparts F and G only), 171–173, 177, 178 and 180), except as may be determined by the Administrator to be inapplicable to a State enforcement program.

(b) Implement a performance-based program by the beginning of Fiscal Year 2000 and submit a CVSP which will serve as the basis for monitoring and evaluating the State's performance.

(c) Designate, in its State Certification, the lead State agency responsible for implementing the CVSP.

(d) Ensure that only agencies having the legal authority, resources, and qualified personnel necessary to enforce the FMCSRs and HMRs or compatible State laws or regulations are assigned to perform functions in accordance with the approved CVSP.

(e) Allocate adequate funds for the administration of the CVSP including the enforcement of the FMCSRs, HMRs, or compatible State laws or regulations.

(f) Maintain the aggregate expenditure of funds by the State and its political subdivisions, exclusive of Federal funds, for motor carrier and highway hazardous materials safety enforcement, eligible for funding under this part, at a level at least equal to the average expenditure for Federal or State fiscal years 1997, 1998, and 1999.

(g) Provide legal authority for a right of entry and inspection adequate to carry out the CVSP.

(h) Prepare and submit to the FMCSA, upon request, all reports required in connection with the CVSP or other conditions of the grant.

(i) Adopt and use the reporting standards and forms required by the FMCSA to record work activities performed under the CVSP.

(j) Require registrants of CMVs to declare, at the time of registration, their knowledge of applicable FMCSRs, HMRs, or compatible State laws or regulations.

(k) Grant maximum reciprocity for inspections conducted under the North

American Standard Inspection through the use of a nationally accepted system that allows ready identification of previously inspected CMVs.

(l) Conduct CMV size and weight enforcement activities funded under this program only to the extent those activities do not diminish the effectiveness of other CMV safety enforcement programs.

(m) Coordinate the CVSP, data collection and information systems, with State highway safety programs under title United States Code (U.S.C.).

(n) Ensure participation in SAFETYNET and other information systems by all appropriate jurisdictions receiving funding under this section.

(o) Ensure information is exchanged with other States in a timely manner.

(p) Emphasize and improve enforcement of State and local traffic laws and regulations related to CMV safety.

(q) Promote activities in support of the national program elements listed in § 350.109, including the following three activities:

(1) Activities aimed at removing impaired CMV drivers from the highways through adequate enforcement of restrictions on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment.

(2) Activities aimed at providing an appropriate level of training to MCSAP personnel to recognize drivers impaired by alcohol or controlled substances.

(3) Interdiction activities affecting the transportation of controlled substances by CMV drivers and training on appropriate strategies for carrying out those interdiction activities.

(r) Enforce requirements relating to the licensing of CMV drivers, including checking the status of commercial drivers' licenses (CDL).

(s) Require the proper and timely correction of all CMV safety violations noted during inspections carried out with MCSAP funds.

(t) Enforce registration requirements under 49 U.S.C. section 13902 and 49 CFR part 356 and financial responsibility requirements under 49 U.S.C. sections 13906, 31138 and 31139 and 49 CFR part 387.

(u) Adopt and maintain consistent, effective, and reasonable sanctions for violations of CMV, driver, and hazardous materials regulations.

(v) Ensure that MCSAP agencies have policies that stipulate roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.

§ 350.203 [RESERVED]

§ 350.205 How and when does a State apply for MCSAP funding?

(a) The lead agency, designated by the Governor, must submit the State's CVSP to the Motor Carrier State Director, FMCSA, on or before August 1 of each year.

(b) This deadline may, for good cause, be extended by the State Director for a period not to exceed 30 calendar days.

(c) For a State to receive funding, the CVSP must be complete and include all required documents.

§ 350.207 What response does a State receive to its CVSP submission?

(a) The FMCSA will notify the State, in writing, within 30 days of receipt of the CVSP whether:

(1) The plan is approved.

(2) Approval of the plan is withheld because the CVSP does not meet the requirements of this part, or is not adequate to ensure effective enforcement of the FMCSRs and HMRs or compatible State laws and regulations.

(b) If approval is withheld, the State will have 30 days from the date of the notice to modify and resubmit the plan.

(c) Disapproval of a resubmitted plan is final.

(d) Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

§ 350.209 How does a State demonstrate that it satisfies the conditions for Basic Program funding?

(a) The Governor, the State's Attorney General, or other State official specifically designated by the Governor, must execute a State Certification as described in § 350.211.

(b) The State must submit the State Certification along with its CVSP, and supplement it with a copy of any State law, regulation, or form pertaining to CMV safety adopted since the State's last certification that bears on the items contained in § 350.201 of this subpart.

§ 350.211 What is the format of the certification required by § 350.209?

The State's certification must be consistent with the following content:

I (name), (title), on behalf of the State (or Commonwealth) of (State), as requested by the Administrator as a condition of approval of a grant under the authority of 49 U.S.C. 31102, as amended, do hereby certify as follows:

1. The State has adopted commercial motor carrier and highway hazardous materials safety rules and regulations that are compatible with the FMCSRs and the HMRs.

2. The State has designated (name of State CMV safety agency) as the lead agency to administer the CVSP for the grant sought and (names of agencies) to perform defined functions under the plan. These agencies have the legal authority, resources, and qualified personnel necessary to enforce the State's commercial motor carrier, driver, and highway hazardous materials safety laws or regulations.

3. The State will obligate the funds or resources necessary to provide a matching share to the Federal assistance provided in the grant to administer the plan submitted and to enforce the State's commercial motor carrier safety, driver, and hazardous materials laws or regulations in a manner consistent with the approved plan.

4. The laws of the State provide the State's enforcement officials right of entry and inspection sufficient to carry out the purposes of the CVSP, as approved, and provide that the State will grant maximum reciprocity for inspections conducted pursuant to the North American Standard Inspection procedure, through the use of a nationally accepted system allowing ready identification of previously inspected CMVs.

5. The State requires that all reports relating to the program be submitted to the appropriate State agency or agencies, and the State will make these reports available, in a timely manner, to the FMCSA on request.

6. The State has uniform reporting requirements and uses FMCSA designated forms for record keeping, inspection, and other enforcement activities.

7. The State has in effect a requirement that registrants of CMVs declare their knowledge of the applicable Federal or State CMV safety laws or regulations.

8. The State will maintain the level of its expenditures, exclusive of Federal assistance, at least at the level of the average of the aggregate expenditures of the State and its political subdivisions during State or Federal fiscal years 1997, 1998, and 1999. These expenditures must cover at least the following four program areas, if applicable:

(a) Motor carrier safety programs in accordance with 49 CFR 350.301.

(b) Size and weight enforcement programs.

(c) Traffic safety.

(d) Drug interdiction enforcement programs.

9. The State will ensure that CMV size and weight enforcement activities funded with MCSAP funds will not diminish the effectiveness of other CMV safety enforcement programs.

10. The State will ensure that violation fines imposed and collected by the State are consistent, effective, and equitable.

11. The State will ensure it has a program for timely and appropriate correction of all violations discovered during inspections conducted using MCSAP funds.

12. The State will ensure that the CVSP, data collection, and information systems are coordinated with the State highway safety program under title 23, U.S. Code. The name of the Governor's highway safety representative (or other authorized State official through whom coordination was accomplished) is _____. (Name)

13. The State participates in SAFETYNET and ensures information is exchanged with other States in a timely manner.

14. The State has undertaken efforts to emphasize and improve enforcement of State and local traffic laws as they pertain to CMV safety.

15. Ensure that MCSAP agencies have departmental policies stipulating that roadside inspections will be conducted at locations that are adequate to protect the safety of drivers and enforcement personnel.

16. The State will ensure that requirements relating to the licensing of CMV drivers are enforced, including checking the status of CDLs.

Date _____

Signature _____

§ 350.213 What must a State CVSP include?

The State's CVSP must reflect a performance-based program, and contain the following eighteen items:

(a) A general overview section that must include the following two items:

(1) A statement of the State agency goal or mission.

(2) A program summary of the effectiveness of the prior years' activities in reducing CMV accidents, injuries and fatalities, and improving driver and motor carrier safety performance. Data periods used must be consistent from year to year. This may be calendar year or fiscal year or any 12-month period of time for which the State's data is current. The summary must show trends supported by safety and program performance data collected over several years. It must identify safety or performance problems in the State and those problems must be addressed in the new or modified CVSP.

(b) A brief narrative describing how the State program addresses the national program elements listed in § 350.109. The plan must address these elements even if there are no planned activities in a program area. The rationale for the resource allocation decision must be explained. The narrative section must include a description of how the State supports the three activities identified in § 350.201(q):

(1) Activities aimed at removing impaired CMV drivers from the highways through adequate enforcement of restrictions on the use of alcohol and controlled substances and by ensuring ready roadside access to alcohol detection and measuring equipment.

(2) Activities aimed at providing an appropriate level of training to MCSAP personnel to recognize drivers impaired by alcohol or controlled substances.

(3) Interdiction activities affecting the transportation of controlled substances by CMV drivers and training on appropriate strategies for carrying out those interdiction activities.

(4) Activities to enforce registration requirements under 49 U.S.C. 13902 and 49 CFR part 365 and financial responsibility requirements under 49 U.S.C. 13906, 31138 and 31139 and 49 CFR part 387.

(c) A definitive problem statement for each objective, supported by data or other information. The CVSP must identify the source of the data, and who is responsible for its collection, maintenance, and analysis.

(d) Performance objectives, stated in quantifiable terms, to be achieved through the State plan. Objectives must include a measurable reduction in highway accidents or hazardous materials incidents involving CMVs. The objective may also include documented improvements in other program areas (e.g., legislative or regulatory authority, enforcement results, or resource allocations).

(e) Strategies to be employed to achieve performance objectives. Strategies may include education, enforcement, legislation, use of technology and improvements to safety infrastructure.

(f) Specific activities intended to achieve the stated strategies and objectives. Planned activities must be eligible under this program as defined in §§ 350.309 and 350.311.

(g) Specific quantifiable performance measures, as appropriate. These performance measures will be used to assist the State in monitoring the progress of its program and preparing an annual evaluation.

(h) A description of the State's method for ongoing monitoring of the progress of its plan. This should include who will conduct the monitoring, the frequency with which it will be carried out, and how and to whom reports will be made.

(i) An objective evaluation that discusses the progress towards individual objectives listed under the "Performance Objectives" section of the previous year's CVSP and identifies any safety or performance problems discovered. States will identify those problems as new objectives or make modifications to the existing objectives in the next CVSP.

(j) A budget which supports the CVSP, describing the expenditures for allocable costs such as personnel and related costs, equipment purchases, printing, information systems costs, and other eligible costs consistent with §§ 350.311 and 350.309.

(k) A budget summary form including planned expenditures for that fiscal year and projected number of activities in each national program element, except data collection.

(l) The results of the annual review to determine the compatibility of State laws and regulations with the FMCSRs and HMRs.

(m) A copy of any new law or regulation affecting CMV safety enforcement that was enacted by the State since the last CVSP was submitted.

(n) Executed State Certification as outlined in § 350.211.

(o) Executed MCSAP–1 form.

(p) List of MCSAP contacts.

(q) Annual Certification of Compatibility, § 350.331.

(r) State Training Plan.

§ 350.215 What are the consequences for a State that fails to perform according to an approved CVSP or otherwise fails to meet the conditions of this part?

(a) If a State is not performing according to an approved plan or not adequately meeting conditions set forth in § 350.201, the Administrator may issue a written notice of proposed determination of nonconformity to the Governor of the State or the official designated in the plan. The notice will set forth the reasons for the proposed determination.

(b) The State will have 30 days from the date of the notice to reply. The reply must address the deficiencies or incompatibility cited in the notice and provide documentation as necessary.

(c) After considering the State's reply, the Administrator will make a final decision.

(d) In the event the State fails timely to reply to a notice of proposed determination of nonconformity, the notice becomes the Administrator's final determination of nonconformity.

(e) Any adverse decision will result in immediate cessation of Federal funding under this part.

(f) Any State aggrieved by an adverse decision under this section may seek judicial review under 5 U.S.C. chapter 7.

Subpart C—Funding

§ 350.301 What level of effort must a State maintain to qualify for MCSAP funding?

(a) The State must maintain the average aggregate expenditure (monies spent during the base period of Federal or State fiscal years 1997, 1998, and 1999) of State funds for motor carrier and highway hazardous materials safety enforcement purposes, in the year in which the grant is sought.

(b) Determination of a State's level of effort must not include the following three things:

(1) Federal funds received for support of motor carrier and hazardous materials safety enforcement.

(2) State matching funds.

(3) State funds used for federally sponsored demonstration or pilot CMV safety programs.

(c) The State must include costs associated with activities performed during the base period by State or local agencies currently receiving or projected to receive funds under this part. It must include only those activities which meet the current requirements for funding eligibility under the grant program.

§ 350.303 What are the State and Federal shares of expenses incurred under an approved CVSP?

(a) The FMCSA will reimburse up to 80 percent of the eligible costs incurred in the administration of an approved CVSP.

(b) In-kind contributions are acceptable in meeting the State's matching share if they represent eligible costs as established by 49 CFR part 18 or agency policy.

§ 350.305 Are U.S. Territories subject to the matching funds requirement?

The Administrator waives the requirement for matching funds for the Virgin Islands, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands.

§ 350.307 How long are MCSAP funds available to a State?

The funds obligated to a State will remain available for the rest of the fiscal year in which they were obligated and the next full fiscal year. The State must account for any prior year's unexpended funds in the annual CVSP. Funds must be expended in the order in which they are obligated.

§ 350.309 What activities are eligible for reimbursement under the MCSAP?

The primary activities eligible for reimbursement are:

(a) The five national program elements listed in § 350.109 of this part.

(b) Sanitary food transportation inspections performed under 49 U.S.C. 5708.

(c) The following three activities, when accompanied by an appropriate North American Standard Inspection and inspection report:

(1) Enforcement of size and weight regulations conducted at locations other than fixed weight facilities, at specific geographical locations where the weight of the vehicle can significantly affect the safe operation of the vehicle, or at seaports where intermodal shipping containers enter and exit the United States.

(2) Detection of the unlawful presence of controlled substances in a CMV or on the driver or any occupant of a CMV.

(3) Enforcement of State traffic laws and regulations designed to promote the safe operation of CMVs.

§ 350.311 What specific items are eligible for reimbursement under the MCSAP?

All reimbursable items must be necessary, reasonable, allocable to the approved CVSP, and allowable under this part and 49 CFR part 18. The eligibility of specific items is subject to review by the FMCSA. The following six types of expenses are eligible for reimbursement:

(a) Personnel expenses, including recruitment and screening, training, salaries and fringe benefits, and supervision.

(b) Equipment and travel expenses, including per diem, directly related to the enforcement of safety regulations, including vehicles, uniforms, communications equipment, special inspection equipment, vehicle maintenance, fuel, and oil.

(c) Indirect expenses for facilities, except fixed scales, used to conduct inspections or house enforcement personnel, support staff, and equipment to the extent they are measurable and recurring (*e.g.*, rent and overhead).

(d) Expenses related to data acquisition, storage, and analysis that are specifically identifiable as program-related to develop a data base to coordinate resources and improve efficiency.

(e) Clerical and administrative expenses, to the extent necessary and directly attributable to the MCSAP.

(f) Expenses related to the improvement of real property (e.g., installation of lights for the inspection of vehicles at night). Acquisition of real property, land, or buildings are not eligible costs.

§ 350.313 How are MCSAP funds allocated?

(a) After deducting administrative expenses authorized in 49 U.S.C. 31104(e), the MCSAP funds are allocated as follows:

(1) Up to 5 percent of the MCSAP funds appropriated for each fiscal year may be distributed for High Priority Activities and Projects at the discretion of the Administrator.

(2) Up to 5 percent of the MCSAP funds appropriated for each fiscal year may be distributed for Border CMV Safety and Enforcement Programs at the discretion of the Administrator.

(3) The remaining funds will be allocated among qualifying States in two ways:

(i) As Basic Program Funds in accordance with § 350.323 of this part,

(ii) As Incentive Funds in accordance with § 350.327 of this part.

(b) The funding provided in paragraphs (a)(1) and (a)(2) of this section may be awarded through contract, cooperative agreement, or grant. The FMCSA will notify States if it intends to solicit State grant proposals for any portion of this funding.

(c) The funding provided under paragraphs (a)(1) and (a)(2) of this section may be made available to State MCSAP lead agencies, local governments, and other persons that use and train qualified officers and employees in coordination with State motor vehicle safety agencies.

§ 350.315 How may Basic Program Funds be used?

Basic Program Funds may be used for any eligible activity or item consistent with §§ 350.309 and 350.311.

§ 350.317 What are Incentive Funds and how may they be used?

Incentive Funds are monies, in addition to Basic Program Funds, provided to States that achieve reduction in CMV-involved fatal accidents, CMV fatal accident rate, or that meet specified CMV safety performance criteria. Incentive Funds may be used for any eligible activity or item consistent with §§ 350.309 and 350.311.

§ 350.319 What are permissible uses of High Priority Activity Funds?

(a) The FMCSA may generally use these funds to support, enrich, or evaluate State CMV safety programs and to accomplish the five objectives listed below:

(1) Implement, promote, and maintain national programs to improve CMV safety.

(2) Increase compliance with CMV safety regulations.

(3) Increase public awareness about CMV safety.

(4) Provide education on CMV safety and related issues.

(5) Demonstrate new safety related technologies.

(b) These funds will be allocated, at the discretion of the FMCSA, to States, local governments, and other organizations that use and train qualified officers and employees in coordination with State safety agencies.

(c) The FMCSA will notify the States when such funds are available.

(d) The Administrator may designate up to 5 percent of the annual MCSAP funding for these projects and activities.

§ 350.321 What are permissible uses of Border Activity Funds?

(a) The FMCSA may generally use such funds to develop and implement a national program addressing CMV safety and enforcement activities along the United States' borders.

(b) These funds will be allocated, at the discretion of the FMCSA, to States, local governments, and other organizations that use and train qualified officials and employees in coordination with State safety agencies. The FMCSA will notify the States when such funds are available. The Administrator may designate up to 5 percent of the annual MCSAP funding for these projects and activities.

§ 350.323 What criteria are used in the Basic Program Funds allocation?

(a) The funds are distributed proportionally to the States using the following four, equally weighted (25 percent), factors.

(1) 1997 Road miles (all highways) as defined by the FHWA.

(2) All vehicle miles traveled (VMT) as defined by the FHWA.

(3) Population—annual census estimates as issued by the U.S. Census Bureau.

(4) Special fuel consumption (net after reciprocity adjustment) as defined by the FHWA.

(b) Distribution of Basic Program Funds is subject to a maximum and minimum allocation as illustrated in the Table to this section, as follows:

TABLE TO § 350.323(b)—BASIC PROGRAM FUND ALLOCATION LIMITATIONS

Recipient	Maximum allocation	Minimum allocation
States and Puerto Rico	4.944% of the Basic Program Funds	$350,000 or 0.44% of Basic Program Funds, whichever is greater.
U.S. Territories	$350,000 (fixed amount)	

§ 350.325 [Reserved]

§ 350.327 How may States qualify for Incentive Funds?

(a) A State may qualify for Incentive Funds if it can demonstrate that its CMV safety program has shown improvement in any or all of the following five categories:

(1) Reduction of large truck-involved fatal accidents.

(2) Reduction of large truck-involved fatal accident rate or maintenance of a large truck-involved fatal accident rate that is among the lowest 10 percent of such rates of MCSAP recipients.

(3) Upload of CMV accident reports in accordance with current FMCSA policy guidelines.

(4) Verification of CDLs during all roadside inspections.

(5) Upload of CMV inspection data in accordance with current FMCSA policy guidelines.

(b) Incentive Funds will be distributed based upon the five following safety and program performance factors:

(1) Five shares will be awarded to States that reduce the number of large truck-involved fatal accidents for the most recent calendar year for which data are available when compared to the 10-year average number of large truck-involved fatal accidents ending with the preceding year. The 10-year average will be computed from the number of large truck-involved fatal crashes, as reported by the FARS, administered by the National Highway Traffic Safety Administration (NHTSA).

(2) Four shares will be awarded to States that reduce the fatal-accident rate for the most recent calendar year for which data are available when compared to each State's average fatal accident rate for the preceding 10-year period. States with the lowest 10 percent of accident rates in the most recent calendar year for which data are available will be awarded three shares if the rate for the State is the same as its average accident rate for the preceding 10-year period.

(3) Two shares will be awarded to States that upload CMV accident data within FMCSA policy guidelines.

(4) Two shares will be awarded to States that certify their MCSAP inspection agencies have departmental policies that stipulate CDLs are verified, as part of the inspection process, through Commercial Driver's License Information System (CDLIS), National Law Enforcement Tracking System (NLETS), or the State licensing authority.

(5) Two shares will be awarded to States that upload CMV inspection reports within current FMCSA policy guidelines.

(c) The total of all States' shares awarded will be divided into the dollar amount of Incentive Funds available, thereby establishing the value of one share. Each State's incentive allocation will then be determined by multiplying the State's percentage participation in the formula allocation of Basic Program Funds, by the number of shares it received that year, multiplied by the dollar value of one share.

(d) States may use Incentive Funds for any eligible CMV safety purpose.

(e) Incentive Funds are subject to the same State matching requirements as Basic Program Funds.

(f) A State must annually certify compliance with the applicable incentive criteria to receive Incentive Funds. A State must submit the required certification as part of its CVSP or as a separate document.

§ 350.329 How may a State or a local agency qualify for High Priority or Border Activity Funds?

(a) States must meet the requirements of § 350.201, as applicable.

(b) Local agencies must meet the following nine conditions:

(1) Prepare a proposal in accordance with § 350.213, as applicable.

(2) Coordinate the proposal with the State lead MCSAP agency to ensure the proposal is consistent with State and national CMV safety program priorities.

(3) Certify that your local jurisdiction has the legal authority, resources, and trained and qualified personnel necessary to perform the functions specified in the proposal.

(4) Designate a person who will be responsible for implementation, reporting, and administering the approved proposal and will be the primary contact for the project.

(5) Agree to fund up to 20 percent of the proposed request.

(6) Agree to prepare and submit all reports required in connection with the proposal or other conditions of the grant.

(7) Agree to use the forms and reporting criteria required by the State lead MCSAP agency and/or the FMCSA to record work activities to be performed under the proposal.

(8) Certify that the local agency will impose sanctions for violations of CMV and driver laws and regulations that are consistent with those of the State.

(9) Certify participation in national data bases appropriate to the project.

§ 350.331 How does a State ensure its laws and regulations are compatible with the FMCSRs and HMRs?

(a) A State must review any new law or regulation affecting CMV safety as soon as possible, but in any event immediately after enactment or

issuance, for compatibility with the FMCSRs and HMRs.

(b) If the review determines that the new law or regulation is incompatible with the FMCSRs and/or HMRs, the State must immediately notify the Motor Carrier State Director.

(c) A State must conduct an annual review of its laws and regulations for compatibility and report the results of that review in the annual CVSP in accordance with § 350.213(l) along with a certification of compliance, no later than August 1 of each year. The report must include the following two items:

(1) A copy of the State law, regulation, or policy relating to CMV safety that was adopted since the State's last report.

(2) A certification, executed by the State's Governor, Attorney General, or other State official specifically designated by the Governor, stating that the annual review was performed and that State CMV safety laws remain compatible with the FMCSRs and HMRs. If State CMV laws are no longer compatible, the certifying official shall explain.

(d) As soon as practical after the effective date of any newly enacted regulation or amendment to the FMCSRs or HMRs, but no later than three years after that date, the State must amend its laws or regulations to make them compatible with the FMCSRs and/or HMRs, as amended.

§ 350.333 What are the guidelines for the compatibility review?

(a) The State law or regulation must apply to all segments of the motor carrier industry (*i.e.*, for-hire and private motor carriers of property and passengers).

(b) Laws and regulations reviewed for the CDL compliance report are excluded from the compatibility review.

(c) Definitions of words or terms must be consistent with those in the FMCSRs and HMRs.

(d) A State must identify any law or regulation that is not the same as the corresponding Federal regulation and evaluate it in accordance with the table to this section as follows:

TABLE TO § 350.333—GUIDELINES FOR THE STATE LAW AND REGULATION COMPATIBILITY REVIEW

Law or regulation has same effect as corresponding Federal regulation	Applies to interstate or intrastate commerce	Less stringent or more stringent	Action authorized
(1) Yes			Compatible—Interstate and intrastate commerce enforcement authorized.
(2) No	Intrastate		Refer to § 350.341
(3) No	Interstate	Less stringent	Enforcement prohibited.
(4) No	Interstate	More stringent	Enforcement authorized if the State can demonstrate the law or regulation has a safety benefit or does not create an undue burden upon interstate commerce (See 49 CFR Part 355).

§ 350.335 What are the consequences if my State has laws or regulations incompatible with the Federal regulations?

(a) A State that currently has compatible CMV safety laws and regulations pertaining to interstate commerce (i.e., rules identical to the FMCSRs and HMRs) and intrastate commerce (i.e., rules identical to or within the tolerance guidelines for the FMCSRs and identical to the HMRs) but enacts a law or regulation which results in an incompatible rule will not be eligible for Basic Program Funds nor Incentive Funds.

(b) A State that fails to adopt any new regulation or amendment to the FMCSRs or HMRs within three years of its effective date will be deemed to have incompatible regulations and will not be eligible for Basic Program nor Incentive Funds.

(c) Those States with incompatible laws or regulations pertaining to intrastate commerce and receiving 50 percent of their basic formula allocation on April 20, 2000 will continue at that level of funding until those incompatibilities are removed, provided no further incompatibilities are created.

(d) Upon a finding by the FMCSA, based upon its own initiative or upon a petition of any person, including any State, that your State law, regulation or enforcement practice pertaining to CMV safety, in either interstate or intrastate commerce, is incompatible with the FMCSRs or HMRs, the FMCSA may initiate a proceeding under § 350.215 for withdrawal of eligibility for all Basic Program and Incentive Funds.

(e) Any decision regarding the compatibility of your State law or regulation with the HMRs that requires an interpretation will be referred to the Research and Special Programs Administration of the DOT for such interpretation before proceeding under § 350.215.

§ 350.337 How may State laws and regulations governing motor carriers, CMV drivers, and CMVs in interstate commerce differ from the FMCSRs and still be considered compatible?

States are not required to adopt 49 CFR parts 398 and 399, subparts A through E and H of part 107, and §§ 171.15 and 171.16, as applicable to either interstate or intrastate commerce.

§ 350.339 What are tolerance guidelines?

Tolerance guidelines set forth the limited deviations from the FMCSRs allowed in your State's laws and regulations. These variances apply only to motor carriers, CMV drivers and CMVs engaged in intrastate commerce and not subject to Federal jurisdiction.

§ 350.341 What specific variances from the FMCSRs are allowed for State laws and regulations governing motor carriers, CMV drivers, and CMVs engaged in intrastate commerce and not subject to Federal jurisdiction?

(a) A State may exempt a CMV from all or part of its laws or regulations applicable to intrastate commerce, provided that neither the GVW, GVWR, GCW, nor GCWR of the vehicle equals or exceeds 11,801 kg (26,001 lbs.). However, a State may not exempt a CMV from such laws or regulations if the vehicle:

(1) Transports hazardous materials requiring a placard.

(2) Is designed or used to transport 16 or more people, including the driver.

(b) State laws and regulations applicable to intrastate commerce may not grant exemptions based upon the type of transportation being performed (*e.g.*, for-hire, private, etc.).

(c) A State may retain those exemptions from its motor carrier safety laws and regulations that were in effect before April, 1988, are still in effect, and apply to specific industries operating in intrastate commerce.

(d) State laws and regulations applicable to intrastate commerce must not include exemptions based upon the distance a motor carrier or driver operates from the work reporting location. This prohibition does not apply to those exemptions already contained in the FMCSRs nor to the extension of the mileage radius exemption contained in 49 CFR 395.1(e) from 100 to 150 miles.

(e) Hours of service—State hours-of-service limitations applied to intrastate transportation may vary to the extent of allowing the following:

(1) A 12-hour driving limit, provided driving a CMV after having been on duty more than 16 hours is prohibited.

(2) Driving prohibitions for drivers who have been on duty 70 hours in 7 consecutive days or 80 hours in 8 consecutive days.

(f) Age of CMV driver—All CMV drivers must be at least 18 years of age.

(g) Grandfather clauses—States may provide grandfather clauses in their rules and regulations if such exemptions are uniform or in substantial harmony with the FMCSRs and provide an orderly transition to full regulatory adoption at a later date.

(h) Driver qualifications:

(1) Intrastate drivers who do not meet the physical qualification standards in 49 CFR 391.41 may continue to be qualified to operate a CMV in intrastate commerce if the following three conditions are met:

(i) The driver was qualified under existing State law or regulation at the time the State adopted physical qualification standards compatible with the Federal standards in 49 CFR 391.41.

(ii) The otherwise non-qualifying medical or physical condition has not substantially worsened.

(iii) No other non-qualifying medical or physical condition has developed.

(2) The State may adopt or continue programs granting variances to intrastate drivers with medical or physical conditions that would otherwise be non-qualifying under the State's equivalent of 49 CFR 391.41 if the variances are based upon sound medical judgment combined with appropriate performance standards ensuring no adverse affect on safety.

§ 350.343 How may a State obtain a new exemption for State laws and regulations for a specific industry involved in intrastate commerce?

The FMCSA strongly discourages exemptions for specific industries, but will consider such requests if the State submits documentation containing information supporting evaluation of the following 10 factors:

(a) Type and scope of the industry exemption requested, including percentage of industry affected, number of vehicles, mileage traveled, number of companies involved.

(b) Type and scope of the requirement to which the exemption would apply.

(c) Safety performance of that specific industry (*e.g.*, accident frequency, rates and comparative figures).

(d) Inspection information (*e.g.*, number of violations per inspection, driver and vehicle out-of-service information).

(e) Other CMV safety regulations enforced by other State agencies not participating in the MCSAP.

(f) Commodity transported (*e.g.*, livestock, grain).

(g) Similar variations granted and the circumstances under which they were granted.

(h) Justification for the exemption.

(i) Identifiable effects on safety.

(j) State's economic environment and its ability to compete in foreign and domestic markets.

§ 350.345 How does a State apply for additional variances from the FMCSRs?

Any State may apply to the Administrator for a variance from the FMCSRs for intrastate commerce. The variance will be granted only if the State satisfactorily demonstrates that the State law, regulation or enforcement practice:

(a) Achieves substantially the same purpose as the similar Federal regulation.

(b) Does not apply to interstate commerce.

(c) Is not likely to have an adverse impact on safety.

PART 355—[AMENDED]

2. Revise the authority citation for 49 CFR part 355 to read as follows:

Authority: 49 U.S.C. 504 and 31101 *et seq.*; 49 CFR 1.73.

3. Amend § 355.5 by revising the definitions of "compatible or compatibility," "Federal Motor Carrier Safety Regulations," and "State"; by adding a definition of "Federal Hazardous Materials Regulations"; and by placing the definitions in alphabetical order, to read as follows:

§ 355.5 Definitions.

* * * * *

Compatible or *Compatibility* means that State laws and regulations applicable to interstate commerce and to intrastate movement of hazardous materials are identical to the FMCSRs and the HMRs or have the same effect as the FMCSRs; and that State laws applicable to intrastate commerce are either identical to, or have the same effect as, the FMCSRs or fall within the established limited variances under §§ 350.341, 350.343, and 350.345 of this subchapter.

Federal Hazardous Materials Regulations (FMHRs) means those safety regulations which are contained in parts 107, 171–173, 177, 178 and 180, except part 107 and §§ 171.15 and 171.16.

Federal Motor Carrier Safety Regulations (FMCSRs) means those safety regulations which are contained in parts 390, 391, 392, 393, 395, 396, and 397 of this subchapter.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam and the Virgin Islands.

4. Revise § 355.21(c) to read as follows:

§ 355.21 Regulatory review.

* * * * *

(c) *State review.* (1) The State shall determine which of its laws and regulations pertaining to commercial motor vehicle safety are the same as the Federal Motor Carrier Safety or Federal Hazardous Materials Regulations. With respect to any State law or regulation which is not the same as the FMCSRs (FHMRs must be identical), the State shall identify such law or regulation and determine whether:

(i) It has the same effect as a corresponding section of the Federal Motor Carrier Safety Regulations;

(ii) It applies to interstate commerce;

(iii) It is more stringent than the FMCSRs in that it is more restrictive or places a greater burden on any entity subject to its provisions.

(2) If the inconsistent State law or regulation applies to interstate commerce and is more stringent than the FMCSRs, the State shall determine:

(i) The safety benefits associated with such State law or regulation; and

(ii) The effect of the enforcement of such State law or regulation on interstate commerce.

(3) If the inconsistent State law or regulation does not apply to interstate commerce or is less stringent than the FMCSRs, the guidelines for participation in the Motor Carrier Safety Assistance Program in §§ 350.341, 350.343, and 350.345 of this subchapter shall apply.

5. Revise § 355.23 to read as follows:

§ 355.23 Submission of results.

Each State shall submit the results of its regulatory review annually with its certification of compliance under § 350.209 of this subchapter. It shall submit the results of the regulatory review with the certification no later than August 1 of each year with the Commercial Vehicle Safety Plan (CVSP). The State shall include copies of pertinent laws and regulations.

6. Amend appendix A to part 355 by revising the paragraph entitled "**Definitions**" and by revising the heading to the paragraph "**Hours of Service**" and placing them in alphabetical order, to read as follows:

Appendix A to Part 355—Guidelines for the Regulatory Review

* * * * *

DEFINITIONS

Definitions of terms must be consistent with those in the FMCSRs.

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HOURS OF SERVICE OF DRIVERS

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[FR Doc. 00–6819 Filed 3–20–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990713189–9335–02; I.D. 060899B]

RIN 0648–AK79

Fisheries of the Northeastern United States; Spiny Dogfish Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; delay of effectiveness.

SUMMARY: NMFS delays the effective date of a final rule published January 11, 2000, from March 15, 2000, until March 27, 2000. The final rule was to have been effective February 10, 2000; however, its effectiveness was previously delayed until March 15, 2000. The final rule will implement approved management measures for the spiny dogfish fishery, as contained in the Spiny Dogfish Fishery Management Plan (FMP). This action is being taken in order to provide the Mid-Atlantic and New England Fishery Management Councils (Councils) with the opportunity to come to an agreement on how to proceed with implementation of the FMP. If the Councils have not reached an agreement by March 27, 2000, NMFS will assess the situation to determine the appropriate course of action to take at that time.

DATES: The effective date of the final rule implementing the Spiny Dogfish Fishery Management Plan (published on January 11, 2000, at 65 FR 1557) and whose effectiveness was delayed until March 15, 2000 (65 FR 7460, February 15, 2000) is further delayed until March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Pearson, Fishery Policy Analyst, at 978–281–0279.

SUPPLEMENTARY INFORMATION: The FMP was developed jointly by the Councils, with the Mid-Atlantic Council having the administrative lead. A Notice of Availability for the FMP was published in the **Federal Register** on June 29, 1999 (64 FR 34759), and solicited public comment through August 30, 1999. The proposed rule to implement the FMP was published in the **Federal Register** on August 3, 1999 (64 FR 42071), and solicited public comments through September 17, 1999. NMFS made the decision to partially approve the FMP on September 29, 1999. A final rule to implement the FMP was published in the **Federal Register** January 11, 2000 (65 FR 1557), to be effective on February 10, 2000. A delay in effectiveness of the final rule was filed on February 10, 2000, and published on February 15, 2000 (65 FR 7460), which made the effective date of this rule March 15, 2000. The final rule will now be effective March 27, 2000.

Dated: March 15, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–6809 Filed 3–15–00; 3:29 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 55
Tuesday, March 21, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 8

[Docket No. 00–09]

RIN 1557–AB72

Assessment of Fees; National Banks; District of Columbia Banks

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to amend the assessment formula it uses to assess independent trust banks. A trust bank is considered independent for purposes of this proposal if it specializes in trust activities and is not affiliated with a full service national bank. Under the revised rate structure, all trust banks would continue to be assessed based on balance sheet assets. However, independent trust banks with over $1 billion in trust assets would pay an additional assessment to reflect the supervision required of these banks' off-balance sheet activities, while smaller independent trust banks would pay a flat fee.

DATES: Comments must be received by April 20, 2000.

ADDRESSES: Comments should be directed to, and may be inspected and copied at: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 00–09. In addition, comments may be sent via facsimile at (202) 874–5274 or via Internet at regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: Mitchell E.F. Plave, Senior Attorney, Legislative and Regulatory Activities Division, (202) 874–5090; or Karen McCluskey, National Bank Examiner (Trust Banks), (202) 874–7276.

SUPPLEMENTARY INFORMATION:

I. Background

The OCC charters, regulates, and supervises approximately 2400 national banks and 58 Federal branches and agencies of foreign banks in the United States, accounting for nearly 60 percent of the nation's banking assets. Its mission is to ensure a safe, sound, and competitive national banking system that supports the citizens, communities, and economy of the United States.

The OCC funds the activities it undertakes to carry out this mission through assessments on national banks. The National Bank Act authorizes the OCC to collect assessments, fees, or other charges as necessary or appropriate to carry out the responsibilities of the Office of the Comptroller. 12 U.S.C. 482 (Supp. 1999). The statute requires that our charges be set to meet the Comptroller's expenses in carrying out authorized activities. *Id.* The OCC, under part 8, currently assesses national banks and Federal branches and agencies according to a formula based on factors that affect the cost of our supervision, including a bank's size, condition, and whether it is the "lead" bank or "non-lead" bank among national banks in a holding company.[1] The regulation also authorizes the OCC to assess a fee for certain special examinations and for examining the fiduciary activities of national banks. 12 CFR 8.6(a). In recent years, however, the OCC stopped separately charging national banks for the cost of examining and supervising fiduciary activities.

Since the OCC eliminated those separate fees, the number, size, and complexity of the activities of independent trust banks have increased and their balance sheet assets increasingly do not reflect the ongoing scope or complexity of their activity, nor the extent of the OCC's supervisory responsibilities with respect to them. For example, although trust assets managed by a bank are not shown on the bank's balance sheet, the bank's fiduciary activities are subject to extensive regulatory standards under 12 CFR part 9 as well as under state laws that are made applicable to national bank fiduciary activities by 12 U.S.C. 92a. The OCC evaluates the bank's adherence to those standards as part of our supervision and examination of the bank.

This proposal would amend the OCC's assessment regulation to revise the formula for independent trust banks to better align our assessment structure for these banks with the extent of the OCC's supervisory responsibilities. We invite comment on any aspect of this proposal.

The OCC notes that, while not covered by this proposed rulemaking, independent credit card banks raise many of the same issues that are raised by independent trust banks. Accordingly, the OCC anticipates that it soon will be publishing a proposed rule seeking comment on changes to the assessment structure for independent credit card banks.

II. Discussion of the Proposal and Request for Comment

The proposal would amend 12 CFR 8.6 by adding a new paragraph (c) that provides the OCC with the flexibility to increase assessments on independent trust banks by applying either a managed assets component or a flat fee, depending on the amount of assets a particular bank has under management. The proposal defines an "independent trust bank" as a national bank that has trust powers, does not primarily offer full service banking, and is not affiliated with a full service national bank.[2] The managed assets component and flat fee would be assessed, as appropriate, on independent trust banks in addition to the assessment calculated on book assets under 12 CFR 8.2.

Banks with at least $1 billion in managed assets. Independent trust banks with at least $1 billion in assets under management would pay a managed assets component that would be calculated by multiplying the amount of assets under management by a factor to be supplied by the OCC in the annual Notice of Comptroller of the Currency Fees (Notice of Fees) pursuant to 12 CFR 8.8. "Assets under management" are those assets reported by national banks on Schedule A, Line 18 of the Annual Report of Trust Assets (FFIEC Form

[1] A "lead bank" is the largest national bank controlled by a company, based on a comparison of the total assets held by each national bank controlled by that company as reported in each bank's most recent Consolidated Report of Condition (Including Domestic and Foreign Subsidiaries) (Call Report). 12 CFR 8.2(a)(6)(ii)(A).

[2] *See Charters*, Corporate Manual, Office of the Comptroller of the Currency at 19–20 (1998) (describing trust banks).

001). This figure aggregates assets over which the bank has investment discretion (discretionary assets) with those that it holds without investment discretion (non-discretionary assets), for example, in a custodial capacity.[3] We invite comment on the feasibility of distinguishing discretionary from non-discretionary assets for assessment purposes by requiring banks to report these two types of assets separately.

The OCC proposes to use a declining marginal rate to calculate the managed assets component, with the rates declining at $1 billion and again at $10 billion of assets under management. While the actual rate will be provided in the Notice of Fees and may change as the OCC's experience in supervising independent trust banks changes over time, the OCC anticipates that a bank, in calculating each of its semiannual assessments, initially will multiply the first $1 billion in assets under management by 0.0000150, assets under management over $1 billion up to $10 billion by 0.0000030, and all assets under management over $10 billion by 0.0000005. The bank then would add the product to the semiannual assessment as otherwise calculated under current Part 8.[4]

Banks with under $1 billion in managed assets. The OCC incurs a minimum cost in supervising any independent trust bank, regardless of size. To reflect this, the OCC proposes to require independent trust banks having less than $1 billion in assets under management to pay a flat fee in addition to the assessment the bank would pay based on the bank's balance sheet assets. While the actual amount of the minimum fee would be stated in the Notice of Fees and would be subject to change depending on the OCC's experience in supervising small trust banks, the OCC anticipates that this fee would be approximately $12,500 per semiannual assessment.[5]

III. Comment Solicitation

The OCC requests comment on all aspects of this proposal. In addition, the OCC seeks comment on the impact of this proposal on community banks. The OCC recognizes that community banks operate with more limited resources than larger institutions and may present a different risk profile. Thus, the OCC specifically requests comment on the impact of the proposal on community banks' current resources, and whether the goals of the proposal could be achieved, for community banks, through an alternative approach.

Finally, the OCC requests comment on whether the proposal is written clearly and is easy to understand. On June 1, 1998, the President issued a Memorandum directing each agency in the Executive branch to write its rules in plain language. This directive applies to all new proposed and final rulemaking documents issued on or after January 1, 1999. In addition, Public Law 106–102 requires each federal agency to use plain language in all proposed and final rules published after January 1, 2000. The OCC invites comment on how to make this rule clearer. For example, you may wish to discuss:

(1) Whether we have organized the material to suit your needs;

(2) Whether the requirements of the rule are clear; or

(3) Whether there is something else we could do to make the rule easier to understand.

IV. Regulatory Flexibility Act

An agency must prepare a Regulatory Flexibility Analysis if a rule it proposes will have a "significant economic impact" on a "substantial number of small entities." 5 U.S.C. 603, 605. If, after an analysis of a rule, an agency determines that the rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) provides that the head of the agency may so certify. The OCC has reviewed the impact this proposed rule would have on small independent trust banks. Based on that review, the OCC certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities. The basis for this conclusion is that the proposed rule will apply to a very small portion of national banks. For purposes of this Regulatory Flexibility Analysis and regulation, the OCC defines "small independent trust banks" to be those banks with less than $100 million in total assets, including managed assets.[6] Using this definition, the proposed rule will affect only seven small entities, representing less than 1% of all national banks. The OCC does not believe this to be a substantial number of small entities.

V. Executive Order 12866

The OCC has determined that this proposal is not a significant regulatory action under Executive Order 12866.

VI. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (2 U.S.C. 1532) (Unfunded Mandates Act), requires that an agency prepare a budgetary impact statement before promulgating any rule likely to result in a federal mandate that may result in the expenditure by state, local, and tribal governments, in the aggregate, or by the private sector of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires an agency to identify and consider a reasonable number of regulatory alternatives before promulgating a rule. The OCC has determined that the proposed rule will not result in expenditures by state, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, this rulemaking requires no further analysis under the Unfunded Mandates Act.

List of Subjects in 12 CFR Part 8

National banks.

Authority and Issuance

For the reasons set forth in the preamble, the OCC proposes to amend chapter I, Part 8 of title 12 of the Code of Federal Regulations as follows:

PART 8—ASSESSMENT OF FEES; NATIONAL BANKS; DISTRICT OF COLUMBIA BANKS

1. The authority citation for part 8 continues to read as follows:

[3] The Office of Thrift Supervision (OTS) recently revised its trust assessment structure to distinguish "fiduciary" from "nonfiduciary" trust assets. See Thrift Bulletin TB 48–16 (January 18, 2000). The OCC's rules do not make this distinction, but do distinguish assets that are held with investment discretion from those that are not. See 12 CFR 9.2(i) (definition of investment discretion in the OCC's rules governing fiduciary activities).

[4] This approach is similar to the approach recently adopted by the OTS. *See* Assessments and Fees, 63 FR 65663 (Nov. 30 1998) (final rule; codified at 12 CFR part 502). The OCC's statutory assessment authority is similar in certain key respects to the OTS's statutory assessment authority. Both agencies are authorized to fund their expenses through such assessments as each agency finds necessary or appropriate. *Compare* 12 U.S.C. 482 *with* 12 U.S.C. 1467(k) (OTS authority to impose fees for examinations and supervisory activities).

[5] We note that the OTS's assessment rule in 12 CFR part 502 uses a billable hours approach to assessing thrifts with total assets under management of $1 billion or less. We invite comment on both approaches.

[6] The OCC is using this definition for the sole purpose of this preliminary regulatory flexibility analysis after consulting with the Small Business Administration's Office of Advocacy. The OTS, in its assessment regulation, also consulted with the Office of Advocacy and defined "small savings associations" as those with less than $100 million in total assets, including off-balance sheet assets. See Assessments and Fees, 63 FR 43642, 43646 (1998).

Authority: 12 U.S.C. 93a, 481, 482, and 3102 and 3108; 15 U.S.C. 78c and 781; and 26 D.C. Code 102.

2. In § 8.6, the section heading is revised and a new paragraph (c) is added to read as follows:

§ 8.6 Fees and assessments for examinations and investigations; independent trust banks.

* * * * *

(c) *Additional assessments for independent trust banks.* The assessment of independent trust banks will include a component in addition to the assessment calculated according to § 8.2. For purposes of this part, an "independent trust bank" is a national bank that has trust powers, does not primarily offer full service banking, and is not affiliated with a full service national bank.

(1) *Managed assets component.* Independent trust banks having at least $1 billion in trust assets as reported on Schedule A, Line 18 of the Annual Report of Trust Assets (FFIEC Form 001) shall pay an assessment that is calculated by multiplying the amount of those trust assets by a rate or rates provided by the OCC in the Notice of Fees.

(2) *Flat fee.* Independent trust banks having less than $1 billion in trust assets as reported on Schedule A, Line 18 of FFIEC Form 001 will pay a flat fee in an amount to be provided in Notice of Comptroller of the Currency Fees (Notice of Fees) published as stated in § 8.8.

Dated: March 14, 2000.

John D. Hawke, Jr.,

Comptroller of the Currency.

[FR Doc. 00–6866 Filed 3–20–00; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 108, 109, 111, 129 and 191

[Docket No. FAA–1999–6673; Notice No. 00–02]

RIN 2120–AG84

Certification of Screening Companies

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings and extension of comment period.

SUMMARY: This action extends the comment period and announces two pubic meetings on the subject of "Certification of Screening Companies; Notice of Proposed Rulemaking (NPRM)" (65 FR 560, January 5, 2000). In that NPRM, the FAA proposes to require that all companies that perform aviation security screening be certificated by the FAA and meet enhanced requirements. This extension and the public meetings are a result of a formal request from the Air Transport Association (ATA) and the Regional Airline Association (RAA) to extend the comment period and hold a public meeting on the proposal. These actions will afford interested parties additional opportunity to present their views on the proposed rulemaking.

DATES: The public meetings will be on April 4, 2000, in San Francisco, CA and April 6, 2000, in Fort Worth, TX. The meetings will begin at 9 a.m. Persons unable to attend the meetings are invited to provide written comments, which must be received on or before May 4, 2000.

ADDRESSES: The public meeting on April 4, 2000, will be held at the State of California Building Auditorium, 455 Golden Gate Avenue, San Francisco, CA 94102. The public meeting on April 6, 2000, will be held at the Fritz Lanham Federal Building, Room 1A03, 819 Taylor Street, Fort Worth, TX 76102. Persons unable to attend the meetings may mail their comments in duplicate to: U.S. Department of Transportation Dockets, Docket No. FAA–1999–6673, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 am and 5 pm weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/* at anytime. Commenters who wish to file comments electronically should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Requests to present a statement at the meetings or questions regarding the logistics of the meetings should be directed to Judy Courbois, Federal Aviation Administration, Office of Rulemaking, ARM–102, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9783; fax (202) 267–5075. Questions concerning the subject matter of the meetings should be directed to Scott Cummings, Office of Civil Aviation Security Policy and Planning (ACP–100), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9468; fax (202) 267–5359.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments, as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposed rule also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel on this rulemaking, will be filed in the docket. All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in notice No. 99–21 may be changed in light of the comments received.

Comments received on the proposal will be available before and after the closing date for comments in the DOT Rules Docket for examination by interested persons. However, the Assistant Administrator for Civil Aviation Security has determined that the security programs required by parts 108, 109, and 129 contain sensitive security information. As such, the availability of information pertaining to these security programs is governed by part 191. Carriers, screening companies, and others who wish to comment on the NPRM should be cautious not to include in their comments any information contained in any security program.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice or to the NPRM must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. FAA–1999–6673." The postcard will be date stamped and mailed to the commenter.

Availability of Notices

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this notice by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the notice number or docket number of this document.

Persons interested in being placed on the mailing list for future notices should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, that describes the application procedure.

Background

On December 15, 1999, the FAA issued notice No. 99–21, "Certification of Screening Companies, NPRM" (65 FR 560, January 5, 2000). Comments to that document were to be received on or before April 4, 2000.

By letter dated January 20, 2000, ATA and RAA requested that the FAA schedule a public meeting and extend the comment period for notice No. 99–21 by 90 days until July 5, 2000. ATA and RAA stated that given the length and complexity of the rule, it is unreasonable for the FAA to expect that affected parties will be able to thoroughly analyze the operational and financial impact of the proposed rule within the comment period the FAA allocated. It also noted that there are many entities, including small screening companies that are unfamiliar with the FAA's regulatory procedures and may have never participated in the rulemaking process. ATA and RAA further stated that it is in the interest of the FAA and the aviation industry to provide a detailed briefing of the elements of the NPRM.

In accordance with § 11.29(c) of title 14, Code of Federal Regulations, the FAA has reviewed ATA and RAA's petition for extension of the comment period to notice No. 99–21 and request for a public meeting. ATA and RAA have shown a substantive interest in the proposed rule and good cause for the extension and a public meeting.

The FAA scheduled one public meeting in Washington, DC on March 10, 2000, as announced in the **Federal Register** on February 2, 2000. The FAA believes that two additional public meetings and a 30-day extension of the comment period will provide the public sufficient additional opportunity to present comments on the proposed rule. However, in view of the Congressional mandate to improve the training and testing of screeners without delay, the FAA has determined that the requested 90-day extension of the comment period is not appropriate. The FAA also has determined that extending the comment period and holding public meetings are consistent with the public interest.

Participation at the Meetings

The FAA should receive requests from persons who wish to present oral statements at either meeting no later than March 24, 2000. Such requests should be submitted to Judy Courbois, as listed above in the section titled **FOR FURTHER INFORMATION CONTACT**, and should include a written summary of oral remarks to be presented and an estimate of time needed for the presentation. The FAA will prepare an agenda of speakers, which will be available at the meetings. The names of those individuals whose requests to present oral statements are received after the date specified above may not appear on the written agenda. To accommodate as many speakers as possible, the amount of time allocated to each speaker may be less than the amount of time requested. Persons requiring audiovisual equipment should notify the FAA when requesting to be placed on the agenda.

Public Meeting Procedures

The FAA will use the following procedures to facilitate the meetings:

(1) There will be no admission fee or other charge to attend or to participate in the meetings. The meetings will be open to all persons who are scheduled to present statements or who register between 8:30 am and 9 am on the day of the meetings. While the FAA will make every effort to accommodate all persons wishing to participate, admission will be subject to availability of space in the meeting rooms. The meetings may adjourn early if scheduled speakers complete their statements in less time than is scheduled for the meetings.

(2) An individual, whether speaking in a personal or a representative capacity on behalf of an organization, may be limited to a 10-minute statement. If possible, we will notify the speaker if additional time is available.

(3) The FAA will try to accommodate all speakers. If the available time does not permit this, speakers generally will be scheduled on a first-come-first-served basis. However, the FAA reserves the right to exclude some speakers if necessary to present a balance of viewpoints and issues.

(4) Sign and oral interpretation can be made available at the meetings, as well as an assistive listening device, if requested 10 calendar days before the meetings.

(5) Representatives of the FAA will preside over the meetings. A panel of FAA personnel involved in this proposal will be present.

(6) The meetings will be recorded by a court reporter. A transcript of the meetings and any material accepted by the FAA representatives during the meetings will be included in the public docket. Any person who is interested in purchasing a copy of the transcript should contact the court reporter directly. Additional transcript purchase information will be available at the meetings.

(7) The FAA will review and consider all material presented by participants at the meetings. Position papers or material presenting views or arguments related to the certification of screening companies may be accepted at the discretion of the presiding officer and subsequently placed in the public docket. The FAA requests that persons participating in the meetings provide six copies of all materials to be presented for distribution to the FAA representatives; other copies may be provided to the audience at the discretion of the participant.

(8) Statements made by FAA representatives are intended to facilitate discussion of the issues or to clarify issues. Any statement made during the meetings by an FAA representative is not intended to be, and should not be construed as, a position of the FAA.

(9) The meetings are designed to solicit public views and gather additional information on the certification of screening companies. Therefore, the meetings will be conducted in an informal and non-adversarial manner. No individual will be subject to cross-examination by any other participant; however, FAA representatives may ask questions to clarify a statement and to ensure a complete and accurate record.

Extension of Comment Period

The FAA has reviewed the request for consideration of an extended comment period for notice No. 99–21 and determined that an extension would be in the public interest, and that good cause exists for taking this action.

Accordingly, the comment period for notice No. 99–21 is extended to May 4, 2000.

Issued in Washington, DC on March 15, 2000.

Jan Brecht-Clark,

Director, Office of Civil Aviation Security Policy and Planning.

[FR Doc. 00–6872 Filed 3–15–00; 3:46 pm]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 200, 270, 275 and 290

[Notice No. 893: Ref: Notice No. 887]

RIN 1512–AB99

Implementation of Public Law 105–33, Section 9302, Relating to Tobacco Importation Restrictions, Markings, Minimum Manufacturing Requirements, and Penalty Provisions (98R–369P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice reopens the comment period for Notice No. 887, a notice of proposed rulemaking cross-referenced to temporary regulations, published in the **Federal Register** on December 22, 1999. ATF has received several requests to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received by April 20, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221; Notice No. 893.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel J. Hiland, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226; Telephone (202) 927–8210.

SUPPLEMENTARY INFORMATION: On December 22, 1999, ATF published a notice of proposed rulemaking cross-referenced to temporary regulations in the **Federal Register**. The notice solicited comments from all interested persons regarding temporary regulations that implemented several provisions of the Balanced Budget Act of 1997. Section 9302 of the new law: (1) Places restrictions on the importation of previously exported tobacco products, (2) requires markings on tobacco products or cigarette papers and tubes removed or transferred without payment of the federal excise tax, (3) provides penalties for selling, relanding, or receiving, within the jurisdiction of the United States, tobacco products or cigarette papers and tubes which have been labeled and shipped for exportation and were removed after the effective date, and (4) authorizes the Secretary to prescribe minimum capacity or activity requirements as a criteria for issuance of a manufacturer's permit. These new provisions of law became effective on January 1, 2000.

The temporary rule implemented these changes in law by providing new and amended regulations in parts 200, 270, 275 and 290 of title 27 of the Code of Federal Regulations (CFR). Additionally, the Bureau of Alcohol, Tobacco and Firearms (ATF) made several other clarifying changes to the tobacco regulations. The temporary rule will remain in effect until superseded by final regulations.

The comment period for Notice 887 closed on February 22, 2000. Prior to the close of the comment period, ATF received several requests to extend the comment period for an additional 30 days. Several interested parties stated that they would need additional time to prepare a full response for their company or client.

In consideration of the above, ATF finds that a reopening of the comment period is warranted. Therefore, the comment period is being reopened for an additional 30 days until April 20, 2000. The Bureau believes that a comment period totaling 90 days is a sufficient amount of time for all interested parties to respond.

Disclosure

Copies of this notice, Notice No. 887, and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

Drafting Information. This notice was written by Mr. Daniel Hiland, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 200

Administrative practice and procedure, Authority delegations.

27 CFR Part 270

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Electronic fund transfer, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products.

27 CFR Part 275

Administrative practice and procedure, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Electronic fund transfer, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting requirements, Seizures and forfeitures, Surety bonds, Tobacco products, U.S. possessions, Warehouses.

27 CFR Part 290

Administrative practice and procedure, Aircraft, Authority delegations, Cigarette papers and tubes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Surety bonds, Tobacco products, Vessels, Warehouses.

Authority and Issuance.

This notice is issued under the authority in 26 U.S.C. 7805.

Dated: March 15, 2000.

Bradley A. Buckles,

Director, Bureau of Alcohol, Tobacco and Firearms.

[FR Doc. 00–6996 Filed 3–20–00; 8:45 am]

BILLING CODE 4810–31–U

DEPARTMENT OF EDUCATION

34 CFR Parts 606, 607, and 608

Developing Hispanic-Serving Institutions Program, Strengthening Institutions Program, and Strengthening Historically Black Colleges and Universities Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: We propose to amend the regulations governing the Developing Hispanic-Serving Institutions, Strengthening Institutions, and Strengthening Historically Black Colleges and Universities Programs to incorporate statutory changes made by the Higher Education Amendments of 1998 (1998 Amendments). The 1998 Amendments provide that an institution's use of grant funds for endowment fund purposes under the Developing Hispanic-Serving Institutions, Strengthening Institutions, and Strengthening Historically Black Colleges and Universities Programs can be subject to appropriate requirements under the Endowment Challenge Grant

Program. These regulations propose amendments to implement the statutory changes.

DATES: We must receive your comments on or before May 22, 2000.

ADDRESSES: Address all comments about these proposed regulations to Darlene Collins, U.S. Department of Education, 1990 K Street, NW, Room 6032, Washington, DC 20006–8512. If you prefer to send your comments through the Internet, use the following address:

http://www.ed.gov/offices/OPE/HEP/idues/title3a.html

If you want to comment on the information collection requirements you must send your comments to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble. You may also send a copy of these comments to the Department representative named in this preamble.

FOR FURTHER INFORMATION CONTACT: Darlene Collins. Telephone: (202) 502–7576. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each of your comments addresses and to arrange your comments in the same order as the proposed regulations.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing regulatory burden that might result from these proposed regulations. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about these proposed regulations in 1990 K St. N.W., Room 6032, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

Background

As amended by the 1998 Amendments, sections 311(d)(3), 323(b)(3), and 503(c)(3) of the Higher Education Act of 1965, as amended (HEA), provide, in effect, that we can subject an institution's use of grant funds for endowment fund purposes under the Developing Hispanic Serving-Institutions, Strengthening Institutions, and Strengthening Historically Black Colleges and Universities Programs to appropriate requirements in the Endowment Challenge Grant Program.

We have implemented the requirements contained in the Endowment Challenge Grant Program in 34 CFR part 628. We propose that §§ 628.3, 628.6, 628.10, and 628.41 through 628.47 contain appropriate requirements for grantees to follow that wish to use part of their grant funds for endowment purposes. However, we believe that applicable provisions in three of these sections need revision for purposes of clarification and to reflect statutory requirements.

Based upon questions we received over the years, we propose to revise the definition of the term "endowment fund income" in § 628.6 to clarify that endowment fund income includes fund appreciation and retained fund earnings, including interest and dividends.

We propose that the institutional match in § 628.10(a) be revised to reflect the statutory requirement that it must be made on at least a one-to-one basis. That is, each grant dollar to be used for endowment purposes must be matched with at least one non-Federal dollar.

We further propose that when an institution decides to use grant funds for endowment fund purposes, unlike the provisions in § 628.41, it must immediately match those grant funds with non-Federal dollars. We believe this latter requirement to be appropriate given the grantee institution's flexibility as to when to use its grant funds for endowment purposes, and the limited amount of grant funds that may be used for that purpose.

We propose to amend §§ 606.10, 607.10, and 608.10 to implement these requirements by adding a new paragraph (d) relating to the use of grant funds by a grantee for establishing or increasing an endowment fund.

Clarity of the Regulations

Executive Order 12866 and the President's Memorandum of June 1, 1998 on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 608.10 *What activities may be carried out under a grant?*)
- Could the description of the proposed regulations in the **SUPPLEMENTARY INFORMATION** section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?
- Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. These proposed regulations would affect small institutions of higher education using grant funds for endowment fund purposes under the Developing Hispanic-Serving Institutions, Strengthening Institutions, or Strengthening Historically Black Colleges and Universities Programs. However, the regulations implement statutory amendments applicable to the award of grant funds under these programs and are not expected to have a significant economic impact on the institutions affected.

Paperwork Reduction Act of 1995

These proposed regulations do not contain any information collection requirements.

Intergovernmental Review

These programs are subject to Executive Order 12372 and the regulations in 34 CFR part 79. One of the objectives in the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for these programs.

Assessment of Educational Impact

The Secretary particularly requests comments on whether these proposed regulations would require transmission of information that any other agency or authority of the United States gathers or makes available.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, D.C., area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

(Catalog of Federal Domestic Assistance Numbers: 84.031S, 84.031A, and 84.031B)

List of Subjects in 34 CFR Parts 606, 607, and 608

Colleges and universities, Grant programs-education, Reporting and recordkeeping requirements.

Dated: March 13, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

For the reasons discussed in the preamble, the Secretary proposes to amend title 34 of the Code of Federal Regulations by amending parts 606, 607, and 608 as follows:

PART 606—DEVELOPING HISPANIC-SERVING INSTITUTIONS PROGRAM

1. The authority citation for part 606 continues to read as follows:

Authority: 20 U.S.C. 1101 *et seq.*, unless otherwise noted.

2. Section 606.10 is amended by adding a new paragraph (d) to read as follows:

§ 606.10 What activities may and may not be carried out under a grant?

* * * * *

(d) *Endowment funds.* If a grantee uses part of its grant funds to establish or increase an endowment fund, it must comply with the provisions of §§ 628.3, 628.6, 628.10, and 628.41 through 628.47 of this chapter with regard to the use of those funds, except—

(1) The definition of the term "endowment fund income" in § 628.6 of this chapter does not apply. For purposes of this paragraph (d), "endowment fund income" means an amount equal to the total value of the fund, including fund appreciation and retained interest and dividends, minus the endowment fund corpus;

(2) Instead of the requirement in § 628.10(a) of this chapter, the grantee institution must match each dollar of Federal grant funds used to establish or increase an endowment fund with one dollar of non-Federal funds; and

(3) Instead of the requirements in § 628.41(a)(3) through (a)(5) and the introductory text in § 628.41(b) and § 628.41(b)(2) and (b)(3) of this chapter, if a grantee institution decides to use any of its grant funds for endowment purposes, it must match those grant funds immediately with non-Federal funds when it places those funds into its endowment fund.

PART 607—STRENGTHENING INSTITUTIONS PROGRAM

3. The authority citation for part 607 continues to read as follows:

Authority: 20 U.S.C. 1057–1059c, 1066–1069f, unless otherwise noted.

4. Section 607.10 is amended by adding a new paragraph (d) to read as follows:

§ 607.10 What activities may and may not be carried out under a grant?

* * * * *

(d) *Endowment funds.* If a grantee uses part of its grant funds to establish or increase an endowment fund, it must comply with the provisions of §§ 628.3, 628.6, 628.10 and 628.41 through 628.47 of this chapter with regard to the use of those funds, except—

(1) The definition of the term "endowment fund income" in § 628.6 of this chapter does not apply. For purposes of this paragraph (d), "endowment fund income" means an amount equal to the total value of the fund, including fund appreciation and retained interest and dividends, minus the endowment fund corpus;

(2) Instead of the requirement in § 628.10(a) of this chapter, the grantee institution must match each dollar of Federal grant funds used to establish or increase an endowment fund with one dollar of non-Federal funds; and

(3) Instead of the requirements in § 628.41(a)(3) through (a)(5) and the introductory text in § 628.41(b) and § 628.41(b)(2) and (b)(3) of this chapter, if a grantee institution decides to use any of its grant funds for endowment purposes, it must match those grant funds immediately with non-Federal funds when it places those funds into its endowment fund.

PART 608—STRENGTHENING HISTORICALLY BLACK COLLEGES AND UNIVERSITIES PROGRAM

5. The authority citation for part 608 continues to read as follows:

Authority: 20 U.S.C. 1060 through 1063a, 1063c, 1066, 1068, 1069c, 1069d, and 1069f, unless otherwise noted.

6. Section 608.10 is amended by adding a new paragraph (d) to read as follows:

§ 608.10 What activities may be carried out under a grant?

* * * * *

(d) *Endowment funds.* If a grantee uses part of its grant funds to establish or increase an endowment fund, it is subject to the provisions of §§ 628.3, 628.6, 628.10 and 628.41 through 628.47 of this chapter with regard to the use of those funds, except—

(1) The definition of the term "endowment fund income" in § 628.6 of this chapter does not apply. For purposes of this paragraph (d), "endowment fund income" means an amount equal to the total value of the fund, including fund appreciation and retained interest and dividends, minus the endowment fund corpus;

(2) Instead of the requirement in § 628.10(a) of this chapter, the grantee institution must match each dollar of Federal grant funds used to establish or increase an endowment fund with one dollar of non-Federal funds; and

(3) Instead of the requirements in § 628.41(a)(3) through (a)(5) and the introductory text in § 628.41(b) and § 628.41(b)(2) and (b)(3) of this chapter, if a grantee institution decides to use

any of its grant funds for endowment purposes, it must match those grant funds immediately with non-Federal funds when it places those funds into its endowment fund.

[FR Doc. 00–6650 Filed 3–20–00; 8:45 am]
BILLING CODE 4000–01–U

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 40

[Docket No. OST–99–6578]

RIN 2105–AC49

Procedures for Transportation Workplace Drug and Alcohol Testing Programs

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of proposed rulemaking; forum announcement.

SUMMARY: This document announces an electronic public discussion forum through which the public may provide comment on the U.S. Department of Transportation's (DOT) notice of proposed rulemaking (NPRM) to revise the Department's drug and alcohol testing procedures, published in the **Federal Register** on December 9, 1999 (64 FR 69076). The electronic public discussion forum (commonly referred to as a "bulletin board") will be available to the public for a three-day period from April 3, 2000 through April 5, 2000. The electronic public discussion forum is an alternative means by which the public may provide comments, or have last-minute questions addressed, on the drug and alcohol procedures originally published at 64 FR 69076 on December 9, 1999. All comments, questions, and answers will become part of the total docket package.

DATES: The electronic public discussion forum will be available to the public from 12:00 AM, EST, April 3, 2000 through 11:59 PM, EST, April 5, 2000.

ADDRESSES: The Internet address for the electronic public discussion forum is *http://dot.kudosnet.net/*. Comments addressed to this site will become part of the Dockets Management System, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0000.

FOR FURTHER INFORMATION CONTACT: For general information on the electronic public discussion forum, contact Kenneth Edgell, Office of Drug and Alcohol Policy and Compliance, U.S. Department of Transportation, Room 10403, 400 Seventh Street, SW., Washington, DC 20590, telephone number (202) 366–3784, fax number (202) 366–3897, or e-mail at *kenneth.edgell@ost.dot.gov*.

SUPPLEMENTARY INFORMATION: The purpose of the electronic public discussion forum is to provide an alternative capacity for gathering comments on the Department's proposed drug and alcohol procedures. Another capability of the bulletin board-type system is to allow interchange between the public and the Office of Drug and Alcohol Policy and Compliance to attempt to clarify issues, or answer last-minute questions, for the public through a question and answer format. Topics can be generated, questions may be posed, and clarification will be provided (by ODAPC). All of the interchange (e.g., question, answers, comments) generated in this context will be viewable by all users of the system. Specific instructions for use of the electronic public discussion forum will be provided at the Internet site.

Issued this 15th day of March, 2000, at Washington, DC.

Mary Bernstein,

Director, Office of Drug and Alcohol Policy and Compliance, Department of Transportation.

[FR Doc. 00–6879 Filed 3–20–00; 8:45 am]
BILLING CODE 4910–62–P

Notices

Federal Register
Vol. 65, No. 55
Tuesday, March 21, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

RIN 0584–AC89

National School Lunch Program: Pilot Projects, Alternatives to Free and Reduced Price Application Requirements and Verification Procedures—Extension of Date for Submission of Applications

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice; extension of application date.

SUMMARY: On January 21, 2000, the Department issued a notice (65 FR 3409) announcing pilot projects which would permit selected school food authorities and State agencies to test alternatives to the application procedures and verification process for households participating in the National School Lunch Program. The January 21 notice advised interested parties that applications to conduct a pilot project must be postmarked no later than March 21, 2000. Subsequently, interested parties have advised the Department that the 60 days provided for submission of applications is not sufficient. This notice provides an additional 45 days by extending the date for submission of applications to the Food and Nutrition Service of the Department to May 5, 2000.

DATES: Applications to conduct a pilot project must be postmarked no later than May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Matthew Sinn by telephone at (703) 305–2107 to request an application packet or in writing to Mr. Matthew Sinn, Office of Analysis, Nutrition and Evaluation, Room 503, 3101 Park Center Drive, Alexandria, Virginia 22302; or electronically at matthew.sinn@fns.usda.gov. The application packet is also available at the Food and Nutrition Service Web site, located at http://www.fns.usda.gov/oane/. The January 21, 2000 notice (65 FR 3409) announcing the pilot projects is available at the Food and Nutrition Service Web site, located at http://www.fns.usda.gov/cnd/lunch/governance/verification.html.

SUPPLEMENTARY INFORMATION:

Background

The Department published a notice in the **Federal Register** (FR 65 FR 3409) on January 21, 2000, announcing pilot projects which would permit selected school food authorities and State agencies to test alternatives to the free and reduced price application procedures and verification process for households participating in the National School Lunch Program. The Department provided interested parties 60 days in which to submit an application to participate. Subsequent to issuance of the notice, interested parties indicated that the 60-day submission period, ending March 21, 2000, does not provide sufficient time to develop an application.

The Department is eager to ensure that interested parties have sufficient time to develop and submit an application. To achieve this end, the Department will continue to receive applications postmarked no later than May 5, 2000.

Dated: March 15, 2000.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 00–7022 Filed 3–20–00; 8:45 am]
BILLING CODE 3410–30–U

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 98–045N3]

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0504]

Egg Safety Action Plan; Public Meetings

AGENCIES: Food Safety and Inspection Service, USDA; Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

SUMMARY: The Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) are announcing two joint public meetings to solicit and discuss information for reducing or eliminating the risk of *Salmonella Enteritidis* (SE) in shell eggs and egg products using a farm-to-table approach. The current status of the Egg Safety Action Plan also will be discussed.

DATES: The first meeting will be held on Thursday, March 30, 2000, from 8:30 a.m. to 5 p.m. in Columbus, Ohio. The second meeting will be held on Thursday, April 6, 2000, from 8:30 a.m. to 5 p.m. in Sacramento, California. Comments must be submitted no later than April 20, 2000.

ADDRESSES: The first meeting will be held at the Hyatt Regency Columbus at the Greater Columbus Convention Center, 350 North High St., Columbus, OH 43215. Telephone: 614–463–1234. The second meeting will be held in the Auditorium of the California Department of Food and Agriculture Building, 1220 N St., Sacramento, CA 95814. Telephone: 916–654–0561.

FOR FURTHER INFORMATION CONTACT: For registration for the Columbus, OH meeting: Linda Russell, FSIS, 202–501–7249 or FAX 202–501–7615.

For registration for the Sacramento, CA meeting: Mary Harris, FSIS, 202–501–7315 or FAX 202–501–7615. Persons requiring a sign language interpreter or other special accommodations should notify Ms. Russell or Ms. Harris 1 week before the meeting.

For general information regarding either meeting: Nancy Bufano, FDA, 202–401–2022, FAX 202–205–4422, or e-mail: nbufano@bangate.fda.gov; Alice Thaler, FSIS, 202–690–2683, FAX 202–720–8213; or Martha Workman, FSIS, 202–720–3219, FAX 202–690–0824.

SUPPLEMENTARY INFORMATION:

I. Background and Information Solicitation

The President's Council on Food Safety was established in August 1998 to improve the safety of the food supply through science-based regulation and well-coordinated inspection, enforcement, research, and education programs. The Council on Food Safety was charged with developing a

comprehensive long-range strategic plan that can be used to set priorities, improve coordination and efficiency, identify gaps in the current system, recommend ways to fill those gaps, enhance and strengthen prevention and intervention strategies, and identify or develop measures to show progress.

The Council has identified egg safety as one component of the public health issue of food safety that warrants immediate Federal, interagency action. In July 1999, FDA and FSIS committed to developing an action plan to address the presence of SE in shell eggs and egg products using a farm-to-table approach.

As part of this action plan, FDA and FSIS held a public meeting on August 26, 1999, to obtain stakeholder input on the draft goals, as well as to further develop the objectives and action items. The Egg Safety Action Plan, announced by the President on December 11, 1999, was developed, in part, from the input received at the meeting. The Egg Safety Action Plan is available on the Internet at www.foodsafety.gov or from Alice Thaler, FSIS, or Nancy Bufano, FDA (see contact persons).

In this notice, FSIS and FDA are announcing two joint public meetings to solicit and discuss information related to the implementation of the Egg Safety Action Plan. Therefore, the agencies invite comments on the following general questions regarding the Action Plan:

1. Does the Egg Safety Action Plan comprehensively cover the problem of SE in eggs and measures for reducing this hazard? If not, what should the Plan include to be more complete?

2. What are the costs and benefits of implementing each risk reduction component in the Action Plan?

3. What training should be associated with respect to each component of the Action Plan?

However, the specific purpose of the public meetings is to gather information for reducing or eliminating the risk of SE in eggs. In 2000, FDA will propose regulations for egg producers that the States and FDA will enforce; FSIS will propose regulations with performance standards for packers and egg products processors that the States and USDA (FSIS and Agricultural Marketing Service) will enforce. The information shared at the public meetings and during the comment period for the public meetings will be carefully considered as the new regulations are crafted. After the proposed rules are published, the agencies plan to hold additional public meetings to discuss, among other issues, enforcement strategies, as well as strategies to effectively communicate between State and Federal governments.

To obtain public comment on components of the Egg Safety Action Plan, the agencies developed the series of questions posed in this notice. These questions are offered to focus both the discussions at the public meetings and the written comments to be submitted to the docket. Some of the questions reference possible components of an SE-reduction program. An outline of these components will be provided as a handout at the public meetings, and is available on the Internet at www.usda.fsis.gov or from Alice Thaler, FSIS (see contact person above).

FDA envisions that the on-farm risk reduction measures may include several mandatory components, including the requirement for a risk reduction plan. Environmental testing may be used to verify that this risk reduction plan is effectively controlling SE in the environment. In order to develop appropriate and adequate on-farm standards, the agency has the following questions regarding shell egg production:

4. Are the following appropriate and adequate components for a nationwide SE reduction program: Bio-security, SE-negative feed, chicks from SE-monitored breeders, flock health monitoring program, cleaning and disinfection of houses, rodent/pest control, monitored water supply?

5. How effective do you think each component would be? Which component(s) do you think will provide the most risk reduction?

6. Is environmental testing an appropriate verification step to ensure that the risk reduction plan is working? If so, how often and when should testing be performed to ensure that the plan is working and that the consumer is protected from consuming SE-contaminated eggs?

7. In the event that an environmental sample for SE is positive, what, if any, additional steps should a producer be required to take with the positive flock/house and with the next flock that will be placed in that house?

8. Where vaccines have been used, is there a correlation between vaccine use and reduction of SE in eggs?

FSIS envisions that packer/processor risk reduction measures may include several mandatory components of a risk reduction plan. In order to propose appropriate and adequate packer/processor performance standards, the agency has the following questions regarding shell egg packing and egg products processing:

9. In the event eggs from an SE-positive layer flock are diverted from the table egg market, what measures should be implemented to ensure those eggs are pasteurized?

10. In the event eggs from an SE-positive flock are diverted to the production of liquid, frozen, or dried egg products, should the eggs be handled or processed differently? Indicate the cost associated with the described process.

11. Do customer specifications exist that prohibit the processing of SE-positive eggs for egg products? Considering your production volume and available market for egg products, will this influence the price for SE-positive eggs?

12. What is an estimated cost to implement the proposed components of a HACCP-based system, including adequate good manufacturing practices to minimize the growth of SE and prevent cross contamination, for each of the following processing operations (include only the new costs incurred such as record keeping, company verification on a continuing basis, and revised processing procedures for conformance):

a. Packer of shell eggs for the consumer?

b. In-shell pasteurization of eggs?

c. HACCP in egg products establishments?

13. For the development of a performance standard(s) for the thermal processing of liquid eggs and other egg products, we are requesting information regarding the enumeration of SE in liquid eggs prior to pasteurization.

14. What is the cost of maintaining refrigerated storage (maximum temperature 60 °F) for eggs received that are destined for grading and packaging or in-shell pasteurization, when time to processing will exceed 24 hours from time of lay?

15. Are there any methods by which a packer/processor can determine how old eggs are when they are received?

16. When packing shell eggs for the consumer, will the use of only new primary packing materials increase your marketing costs? If so, what is the estimated cost? Is there a way to clean plastic containers to prevent cross contamination so they can be re-used?

17. Are the proposed components of the national standards for packing and processing of shell eggs and egg products appropriate and adequate to reduce the risk associated with SE?

In addition to standards for shell egg production and packer/processor standards, the Egg Safety Action Plan includes measures to reduce SE contamination of eggs during distribution and at retail and includes plans to accelerate SE research. The agencies have the following questions related to retail and research:

18. Do the provisions in the 1999 Food Code which apply to shell eggs adequately protect at-risk consumers in retail establishments? If not, what other provisions are necessary for their protection? (Note: The 1999 Food Code is available on the Internet under "Federal/State Food Programs" at www.cfsan.fda.gov.)

19. Rewashing of shell eggs is a widespread industry practice. Are there data or research to support it? If it is disallowed, what economic effect will it have on the shell egg industry?

20. What research on SE in eggs is already underway and what additional research is needed to assist producers, packer/processors, and retailers in proper practices?

To assess the economic impact of any proposed risk reduction plan, FDA's economics team would like information on the shell egg industry. Useful information which egg farm operators can provide include answers to the following questions:

21. To what extent are you already engaging in the following practices:

a. Use of chicks from National Poultry Improvement Plan (NPIP) SE-monitored breeders?

b. Rodent/pest control?

c. Bio-security?

d. Cleaning and disinfecting?

e. Use of monitored water supply?

f. Use of SE-controlled feed?

22. Testing for verification on the on-farm plan. We are interested in your answers to the following questions for both environmental testing and egg testing:

a. To what extent are you currently testing?

b. What is the sampling plan for the tests you conduct?

c. What tests do you use? Do you test for the presence of Salmonella, SE, SE stereotypes, etc.?

d. How much do these tests cost (include separately both lab costs and on-farm labor costs)?

23. How much would it cost you to implement each of the proposed components of the risk reduction plan? (Note: The costs you estimate should be the new costs you will bear in excess of what you are already spending on risk reduction.)

24. What are the current market prices or costs you pay or get for the following:

a. Chicks from NPIP SE-monitored breeders versus chicks from noncertified sources?

b. Grade A/B eggs versus breaker eggs?

c. Dry cleaning versus dry, wet disinfecting poultry houses?

d. SE-controlled feed versus noncontrolled feed?

25. Can you get replacement chicks/pullets at a time different from your usual lay cycle? If so, what price premium, if any, would you have to pay to get these birds?

26. Do you currently vaccinate your layers for SE? At what time(s)? What does it cost?

27. Before processing or shipping for processing, are your eggs stored on the farm in an environment that is not temperature controlled? For how long? If so, what temperatures are the eggs stored at and how long do they stay in storage?

28. When you ship your eggs from the farm to the processor/ packer, do you reuse packing materials? What steps are taken to minimize any bio-security hazards that may arise from such a practice? How much would it cost to sanitize or use new packing materials for each egg shipment?

29. To help us understand the viewpoint from which you are making your comments, it would be helpful for us to have some information about the structure of your firm. This will help us to determine whether your comment represents an additional perspective that we should consider. Answers to the following questions would be useful:

a. In what State(s) do you currently operate?

b. How many layer houses do you have?

c. What style of house(s) is typical for your operation?

d. What is the average number of layers in each house?

e. Is yours an in-line or an off-line operation?

f. Do you currently molt your layers? If molting is used, when is it used?

II. Five Segments of the Public Meetings

The agenda for both public meetings will address the following five segments of the farm-to-table egg safety continuum:

1. On-farm production;
2. Packer shell egg processing;
3. Egg products processing;
4. Retail, food service, and consumer; and
5. Research.

The format of both public meetings will involve discussion of the questions posed in the previous section of this notice. The discussion will be led by a panel composed of stakeholders representing industry, Federal and State government, academia, and consumer interests, and it will include all meeting participants. In addition, there will be time at the end of each meeting for general public comment. However, attendees must request time in advance to participate in this public comment session. Time allotted for comment will be approximately 5 minutes for each participant, but will depend on the number of people participating.

III. Agenda for Public Meetings Implementing the Egg Safety Action Plan in Columbus, OH (March 30, 2000) and Sacramento, CA (April 6, 2000)

8:30 a.m.; Opening presentation—current status of the Egg Safety Action Plan (FDA/FSIS)

8:45 a.m. Significance and prevalence of SE infection associated with eating raw or undercooked eggs (Centers for Disease Control and Prevention)

9:00 a.m. On-farm production—overview of the issues (FDA)

9:10 a.m. Discussion—issues for on-farm production

10:10 a.m. Break

10:25 a.m. Packer/shell egg processing—overview of the issues (FSIS)

10:35 a.m. Discussion—issues for packer/shell egg processing

11:35 a.m. Lunch—1 hour

12:35 p.m. Egg products processing—overview of the issues (FSIS)

12:45 p.m. Discussion—issues for egg products processing

1:45 p.m. Retail/food service/consumer—overview of the issues (FDA)

1:55 p.m. Discussion—issues for retail/food service/consumer

2:25 p.m. Regulatory impact analysis—the role of economics in rulemaking (FDA)

2:35 p.m. Research—overview of the issues (FDA)

2:45 p.m. Discussion—issues for research

3:15 p.m. Break

3:30 p.m. Open microphone—participants must sign in to request a slot

4:30 p.m. Closing remarks (FDA/FSIS)

IV. Additional Public Notification

Public awareness of and involvement in all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce the notice and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In

addition, the update is available on line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the congressional and Public Affairs Office, at 202–720–5704.

V. Public Dockets and Submission of Comments

The agencies have established public dockets to which comments may be submitted. Comments should be directed either to FSIS, Docket No. 98–045N3, or to FDA, Docket No. 00N–0504. All comments must include the appropriate docket number. Submit written comments in triplicate to:

USDA/FSIS Hearing Clerk, 300 12th St. SW., rm. 102, Cotton Annex, Washington, DC 20250–3700, or to

FDA/Dockets Management Branch (HFA–305), 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. You may also send comments to the Dockets Management Branch at the following e-mail address: FDADockets@oc.fda.gov or via the FDA Internet at http://www.accessdata.fda.gov/scripts/oc/dockets/comments/commentdocket.cfm.

VI. Meeting Summaries

Summaries of the proceedings of the public meetings will be posted on the Internet at www.foodsafety.gov. This website is a joint FDA, USDA, and Environmental Protection Agency food safety homepage. It is linked to each agency for persons seeking additional food safety information. Summaries of the proceedings of the public meetings may also be requested in writing from the Dockets Management Branch, FDA (address above) approximately 30 business days after the meetings, at a cost of 10 cents per page. The summaries of the public meetings will be available for public examination at the Docket Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 15, 2000.

Thomas J. Billy,

Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation, Food and Drug Administration.

[FR Doc. 00–7004 Filed 3–16–00; 4:33 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF AGRICULTURE

Forest Service

Supplement to the Final Environmental Impact Statement for the Huckleberry Land Exchange, Mt. Baker-Snoqualmie National Forest, Skagit, Snohomish, King, Pierce, Lewis, Kittitas, and Cowlitz Counties, Washington

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplemental environmental impact statement.

SUMMARY: The USDA Forest Service will prepare a supplement to the final environmental impact statement for the Huckleberry Land Exchange. The supplemental EIS is intended to meet the May 19, 1999 order of the United States Court of Appeals for the Ninth Circuit, as remanded back to the Forest Service by United States District Court on October 12, 1999 (No. C97–786WD and C97–803WD, 9th Cir. No. 98–35043). Further analysis will be done to address specific issues raised by the Court of Appeals.

DATES: Any comments concerning the analysis should be received, in writing, by April 17, 2000 to be most useful. See below for information on estimated dates for release of the supplemental draft environmental impact statement and public comment period.

ADDRESSES: Send written comments to John Phipps, Forest Supervisor, 21905—64th Avenue West, Mountlake Terrace, WA 98043.

FOR FURTHER INFORMATION CONTACT: Everett White, Washington Lands Adjustment Team Leader, Forest Supervisor's Office. Phone: (425) 744–3442. Email: *ewhite01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: In July 1991, the USDA Forest Service and Weyerhaeuser Company signed a Statement of Intent to enter into a land exchange involving lands in the Huckleberry Mountain area and other areas within the boundaries of the Mt. Baker-Snoqualmie National Forest. Scoping and public involvement was initiated in June 1994; a draft environmental impact statement (DEIS) was released in July 1996. After a public comment period, a final EIS and concurrent Record of Decision (ROD) was issued in November 1996. The ROD called for implementation of the exchange through a modification of Alternative 3, as analyzed in the FEIS.

The decision was appealed (pursuant to 36 CFR part 215) in early 1997. The three appeals were denied in early March 1997.

In late March 1997, pursuant to the ROD, the Forest Service and Weyerhaeuser Company executed an exchange agreement: Weyerhaeuser conveyed to the United States 30,253 acres of land in and around the Mt. Baker-Snoqualmie National Forest in return for 4,362 acres of land in the Huckleberry Mountain area. In addition, Weyerhaeuser donated to the United States 962 acres for addition to the Alpine Lakes Wilderness and 1,034 acres for addition to the National Forest System outside the Wilderness.

In the spring of 1997, two complaints were filed in the federal district court, seeking declaratory and injunctive relief to halt the Huckleberry Land Exchange. The district court consolidated the two actions and granted Weyerhaeuser's motion to intervene. In December, 1997, the district court concluded the agency had met all applicable laws and denied the plaintiff's motion.

Plaintiffs did not seek a stay of the district court's order pending appeal, but appealed to the Ninth Circuit Court of Appeals the district court's decision regarding their claims under the National Environmental Protection Act (NEPA) and the National Historic Preservation Act (NHPA).

Because there was no stay, the exchange was finalized on March 12, 1998. Weyerhaeuser initiated timber harvest on the lands the company acquired.

On May 19, 1999, the Ninth Circuit Court reversed the decision of the district court in several areas and remanded the case back to the district court with directions that it remand to the Forest Service for further proceedings under NEPA and NHPA consistent with the opinion. The Ninth Circuit Court also enjoined any further management activities on the land until the Forest Service satisfies the NEPA and NHPA obligations it identified. In response, the Forest Service has decided to prepare a supplemental environmental impact statement.

The SEIS will display the original alternatives (including no action); the modified Alternative 3, selected in the 1996 ROD; and three new alternatives: the two alternatives ordered by the Ninth Circuit Court of Appeal (purchase and deed restrictions) and an alternative that would include fewer acres exchanged. The SEIS will not address any exchange parcels that were not analyzed in the 1996 EIS. The SEIS will disclose the direct, indirect, and cumulative effects of the alternatives. Past, present, and projected activities on both private and National Forest system lands will be considered.

The original issues will guide the analysis, along with the issues raised by the Court of Appeals.

No scoping meetings are planned (40 CFR 1502.9(c)(4)). Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR part 215. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality should be aware that, under the FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 30 days.

The draft SEIS is expected to be filed in July 2000. Following release of the Draft SEIS, there will be a 45-day public comment period from the date the Environmental Protection Agency published the notice of availability in the **Federal Register.**

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

The final SEIS is scheduled to be completed in December 2000. In the final SEIS, the Forest Service will respond to comments received (during the comment period) that pertain to the environmental consequences discussed in the draft SEIS, and applicable laws, regulations, and policies considered for this proposal. The lead agency is the Forest Service; the Forest Supervisor of the Mt. Baker-Snoqualmie National Forest is the responsible official. The responsible official will document the decision and the rationale for the decision in the Record of Decision. That decision will be subject to Forest Service appeal regulations 36 CFR part 215.

Dated: March 7, 2000.

Mary E. Wells,

Acting Forest Supervisor.

[FR Doc. 00–6903 Filed 3–20–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

John Day/Snake Resource Advisory Council, Hells Canyon Subgroup

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hells Canyon Subgroup of the John Day/Snake Resource Advisory Council will meet on April 13 and 14, 2000 at Nez Perce Tribal Headquarters, Main St., and Beaver Grade, Lapwai, ID. The meeting will begin at 9 a.m. and continue until 5 p.m. the first day and will begin at 8 a.m. and continue until 4 p.m. on the second day. Agenda items to be covered include: (1) Review draft CMP alternatives and, (2) Open public forum. All meetings are open to the public. Public comments will be received at 1:30 p.m. on April 13, 2000.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Kendall Clark, Area Ranger, USDA, Hells Canyon National Recreation Area, 88401 Highway 82, Enterprise, OR 97828, 541–5501.

Dated: March 15, 2000.

John C. Schuyler,

Deputy Forest Supervisor.

[FR Doc. 00–6991 Filed 3–20–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–808]

Notice of Final Determinations of Sales at Less Than Fair Value; Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 21, 2000.

ACTION: Notice of final determination of sales at less than fair value.

FOR FURTHER INFORMATION CONTACT: Charles Ranado, Stephanie Arthur or Robert James at (202) 482–3518, (202) 482–6312 or (202) 482–0649, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations

refer to the regulations codified at 19 CFR part 351 (April 1, 1999).

Final Determinations

We determine that cold-rolled flat-rolled carbon-quality steel products (cold-rolled steel) from Turkey are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 735 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

We published in the **Federal Register** the preliminary determination in this investigation on January 7, 2000. *See Notice of Preliminary Determination of Sales at Less Than Fair Value: Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Turkey*, 65 FR 1127 (January 7, 2000) (*Preliminary Determination*). Since the publication of the Preliminary Determination the following events have occurred.

The Department verified sections A–C of Borcelik Celik Sanayii ve Ticaret A.S. (Borcelik's) responses from December 6 through December 9, 1999, at Borcelik's administrative headquarters in Istanbul, Turkey. The Department also verified section D of Borcelik's response from December 13 through December 17, 1999, at Borcelik's administrative headquarters. *See* Memorandum For the File; "Verification of Sales Data—Borcelik", January 19, 2000 (Sales Verification Report) and Memorandum to Neal Halper, Acting Director, Office of Accounting; "Verification of the Cost of Production and Constructed Value Data—Borcelik," January 19, 2000 (Cost Verification Report). Public versions of these, and all other Departmental memoranda referred to herein, are on file in the Central Records Unit, room B–099 of the main Commerce building.

On January 24, 2000, Eregli Demir ve Çelik Fabrikalari T.A.S. (Erdemir) requested a public hearing. In addition, on February 7, 2000, petitioners [1] also requested a hearing. On February 11, 2000, both respondents (Borcelik and Erdemir) filed case briefs while petitioners filed case briefs on issues concerning Borcelik. We received rebuttal briefs from all parties on February 18, 2000. The Department held a hearing on February 22, 2000.

Period of Investigation

The period of investigation (POI) is April 1, 1998 through March 31, 1999.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memorandum) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 13, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099.

In addition, a complete version of the Decision Memorandum can be accessed directly on the World Wide Web at www.ita.doc.gov/import_admin/records/frn. The paper copy and electronic version of the Decision Memorandum are identical in content.

Scope of Investigation

For a description of the scope of this investigation, see the "Scope of Investigation" section of the Decision Memorandum, which is on file in B–099 and available on the Web at www.ita.doc.gov/import_admin/records/frn/.

Use of Facts Available

For a discussion of our application of facts available, see the "Facts Available" section of the Decision Memorandum, which is on file in B–099 and available on the Web at www.ita.doc.gov/import_admin/records/frn/.

Changes Since the Preliminary Determination

Based on our analysis of comments received and findings at verification, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any allegations of programming or clerical errors with which we do not agree are discussed in the relevant sections of the "Decision Memorandum," accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we are instructing Customs to continue to suspend liquidation of all entries of cold-rolled flat-rolled, carbon-quality steel products from Turkey that are entered, or withdrawn from warehouse, for consumption on or after January 7, 2000, the date of publication of the Preliminary Determination. The Customs Service shall continue to require a cash deposit or the posting of a bond based on the estimated weighted-average dumping margins shown below. The suspension of liquidation instructions will remain in effect until further notice.

We determine that the following weighted-average dumping margins exist for the period April 1, 1998 through March 31, 1999:

Exporter/manufacturer	Weighted-average margin (percent)
Erdemir	32.91
Borcelik	8.67
All Others	8.67

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination. As our final determination is affirmative, the ITC will determine, within 45 days, whether these imports are causing material injury, or threat of material injury, to an industry in the United States. If the ITC determines that material injury or threat of injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue in antidumping order directing Customs officials to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse for consumption on or after the effective date of the suspension of liquidation.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 13, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix I—Issues in Decision Memo

Comments and Responses

1. Facts Available
   1. Adverse Facts Available
   2. Major Input Rule
2. Date of Sale
3. COP/CV
   1. Exchange Rate Gains and Losses
   2. Translation Gains and Losses
   3. Major Input—Trace to Individual Coils
   4. Missing Coils
   5. Auditor's Adjustments
   6. Sales of Scrap
4. Adjustments to Export Price
   1. Movement Expenses
   2. Duty Drawback
5. Adjustments to Normal Value
   1. Returns
   2. Interest Revenue
   3. Technical Services
6. Model Match
7. Ministerial Errors

[FR Doc. 00–6992 Filed 3–20–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] Petitioners in this case are Bethlehem Steel Corporation, Gulf States Steel, Inc., Ispat Inland Inc., LTV Steel Company Inc., National Steel Company, Steel Dynamics, Inc., U.S. Steel Group, a unit of USX Corporation, Weirton Steel Corporation, United Steelworkers of America, and Independent Steelworkers Union (collectively, petitioners).

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–831)

Fresh Garlic From the People's Republic of China; Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Extension of Time Limit for Final Results of Antidumping Duty Administrative Review.

SUMMARY: The Department of Commerce is extending the time limit for the final results of the administrative review of the antidumping duty order on fresh garlic from the People's Republic of China. The review covers three producers/exporters of subject merchandise. The period of review is November 1, 1997, through October 31, 1998.

EFFECTIVE DATE: March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Farah Naim or Richard J. Rimlinger, Office of Antidumping/Countervailing Duty Enforcement 3, Import Administration, International Trade Administration, U.S. Department of Commerce, Room 4203, 14th Street and Constitution Avenue, N.W., Washington, DC 20230; telephone (202) 482–3174 or (202) 482–4477, respectively.

SUPPLEMENTARY INFORMATION: Under section 751(a)(3)(A) of the Trade and Tariff Act of 1930, as amended (the Act), the Department of Commerce (the Department) may extend the deadline for completion of an administrative review if it determines that it is not practicable to complete the review within the statutory time limit of 120 days after the date on which the notice of preliminary results was published in the **Federal Register**. In a situation in which the Department issued the preliminary results within the original statutory time limit, the Department may extend the time limit for completion of the final results, provided that the final results are issued within 300 days after the date on which the preliminary results were published.

In the instant case, the preliminary results were published in the **Federal Register** on July 21, 1999 (64 FR 39115), within the original statutory time frame. On November 18, 1999, we extended the final results partially for this case from November 18, 1999, to March 15, 2000 (64 FR 66884). However, because comments made by the petitioners concerning the existence of a re-packaging scheme present unusual issues, we find it not practicable to consider and address these issues fully by the March 15, 2000, deadline. Accordingly, the Department is extending the time limit for the final results to no later than May 16, 2000 (*i.e.*, 300 days after the publication of the preliminary results).

We are publishing this notice in accordance with 19 CFR 351.302.

Dated: March 15, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–6993 Filed 3–20–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Overseas Trade Missions

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: The Department of Commerce invites U.S. companies to participate in the following overseas trade missions to be held between April and May 2000. For a more complete description of the trade mission, obtain a copy of the mission statement from the Project Officer indicated below. The recruitment and selection of private sector participants for these missions will be conducted according to the Statement of Policy Governing Department of Commerce Overseas Trade Missions announced by Secretary Daley on March 3, 1997.

Thailand Airports 2000

Bangkok, Thailand, April 26–27, 2000, Recruitment closes April 7, 2000.

For further information contact: Alain DeSarran, U. S. Department of Commerce, Tel: 202–482–2422, Fax: 202–501–6165, E-mail: ADeSarran@mail.doc.gov

Aerospace Trade Mission to Brazil

Rio de Janeiro, Sao Paulo, Brazil, May 14–20, 2000, Recruitment closes April 25, 2000.

For further information contact: Kim Wells, U.S. Department of Commerce, Tel: 202–482–2232, Fax: 202–482–3383, E-Mail: Kim_Wells@ita.doc.gov

U.S. Information Technology Trade Mission to Far East Asia

Hong Kong, China, Taipei, Taiwan, Seoul and Pusan, South Korea, June 8–17, 2000, Recruitment closes April 15, 2000

For further information contact: Tu-Trang Phan, U.S. Department of Commerce, Tel: 202–482–0480, Fax: 202–482–3002, E-mail: Tu-Trang_Phan@ita.doc.gov

For further information contact: Reginald Beckham, U.S. Department of Commerce. Tel: 202–482–5478, Fax: 202–482–1999.

Dated: March 15, 2000.

Tom Nisbet,

Director, Promotion Planning and Support Division, Office of Export Promotion Coordination.

[FR Doc. 00–6900 Filed 3–20–00; 8:45 am]

BILLING CODE 3510–DR–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Docket No. [000202023–0023–01; I.D. No. 011000B]

RIN 0648–ZA78

Announcement of Opportunity to submit proposals for the Coastal Ecosystem Research Project in the Northern Gulf of Mexico

AGENCY: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Announcement of Funding Opportunity for financial assistance for project grants and cooperative agreements.

SUMMARY: The purpose of this document is to advise the public that NOAA/NOS/

CSCOR/COP is soliciting proposals from 1 to 3 years in duration for monitoring studies, particularly of the hypoxic zone, and for retrospective and modeling studies in the Northern Gulf of Mexico (N-GOMEX). It is anticipated that projects funded under this announcement will have a July 1, 2000, start date.

This notice solicits applications for research projects from eligible non-Federal and Federal applicants. In an effort to maximize the use of limited resources, applications from non-Federal, non-NOAA Federal and NOAA applicants will be competed against each other. Research proposals selected for funding from non-Federal researchers will be funded through a project grant. Research proposals selected for funding from non-NOAA Federal applicants will be funded through an interagency transfer provided legal authority exists for the federal applicant to receive funds from another agency. Research proposals selected for funding from NOAA will be funded through NOAA.

DATES: The deadline for receipt of proposals at the COP office is 3:00 pm, EST, April 21, 2000.

ADDRESSES: Submit the original and 10 copies of your proposal to Coastal Ocean Program Office (N-GOMEX 2000), SSMC#3, 9th Floor, Station 9700, 1315 East-West Highway, Silver Spring, MD 20910. NOAA Standard Form Applications with instructions are accessible on the following COP Internet Site: http://www.cop.noaa.gov under the COP Grants Support Section, Part D, Application Forms for Initial Proposal Submission. If you are unable to access this information, you may call COP at 301–713–3338 to leave a mailing request.

FOR FURTHER INFORMATION CONTACT: Technical Information: Kenric Osgood, N-GOMEX 2000 Program Manager, COP Office, 301–713–3338/ext 130, Internet: Kenric.Osgood@noaa.gov; Business Management Information: Leslie McDonald, COP Grants Administrator, 301–713–3338/ext 137, Internet: Leslie.McDonald@noaa.gov. The following web sites furnish results of studies concerning the periodic hypoxia associated with the northern Gulf of Mexico referred to later in this Document under **SUPPLEMENTARY INFORMATION:** http://www.aoml.noaa.gov/ocd/necop/ and http://www.nos.noaa.gov/Products/pubs_hypox.html.

A report of the workshop, U.S. GLOBEC report No. 19, is available from the following address or homepage: U.S. GLOBEC Coordinating Office, UMCES, Chesapeake Biological Laboratory, P.O. Box 38, Solomons, MD 20688; Phone: 410–326–7370; Fax: 410–326–7341; Internet: fogarty@usglobec.org and http://www.usglobec.org. This report is referenced later in this Document under **SUPPLEMENTARY INFORMATION.**

SUPPLEMENTARY INFORMATION:

Background

Program Description.

For complete Program Description and Other Requirements criteria for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

Coastal regions dominated by large rivers are disproportionately important to the biological production of the world's oceans, primarily because these rivers carry large amounts of "new" nitrogen. An important river-dominated coastal ecosystem in the U.S. is the Mississippi River, which supports high primary and secondary production in the Gulf of Mexico. Approximately 20 percent of the U.S. commercial fishery landings by dollar value are from the northern Gulf. Major recreational fisheries also exist in this region.

There is a strong relationship between riverine inputs (especially nutrients) and primary production, followed in turn by zooplankton production and fish production in a classic Nutrient-Phytoplankton-Zooplankton-Fish food web. Anthropogenic nitrogen loadings from the Mississippi River to the Gulf of Mexico have increased dramatically during the past several decades, which has led to changes in the ecosystem of the northern Gulf, including (1) the annual development of an extensive zone of bottom water hypoxia during the summer stratified period; (2) a probable increase in overall biological production; and (3) an apparent shift from a balanced pelagic/demersal fish community to one significantly more dominated by pelagic fisheries.

Several past and present programs have studied the periodic hypoxia associated with the northern Gulf of Mexico. Notably, from 1990 to 1997, the Coastal Ocean Program supported a study on Nutrient Enhanced Coastal Ocean Productivity; and the Committee on Environment and Natural Resources recently completed an integrated assessment of Gulf of Mexico hypoxia. Results of those studies can be found on the web sites listed earlier in this Document under **FURTHER INFORMATION:**

A workshop was held in January 1999 to discuss relationships between the Mississippi River, the production of marine populations, and ecosystem parameters in the Gulf of Mexico; and to discuss how these relationships might be affected by changes in weather and climate. A report of the workshop, U.S. GLOBEC report No. 19, is available from the address or homepage shown earlier in this Document under **FURTHER INFORMATION.**

This solicitation for proposals will begin a program to examine the inter-relationships driving the Mississippi River-dominated Gulf of Mexico ecosystem. The planned suite of studies will enable improved predictions about future effects of nutrient loading, eutrophication, hypoxia, and climate change on the Gulf of Mexico ecosystem. The currently requested proposals should focus on monitoring the spatial and temporal changes in the distribution of the hypoxic zone in the northern Gulf of Mexico. A secondary priority for this announcement is the effects of hypoxia on the distribution and abundance of fishery species, and the species upon which they depend.

Structure of the Research Program

The NOAA Coastal Ocean Program intends to support an initial research program comprising monitoring and possibly, retrospective analyses and modeling. Subsequent announcements may solicit further proposals in these areas and for process field studies in the region, depending on the outcome of the proposed research solicited here, and the levels of future appropriated funding.

Monitoring studies could include shipboard surveys, multi-disciplinary mooring observations, drifters, and analysis of regional satellite data. Highest priority monitoring activities for this announcement are monitoring the magnitude and extent of the hypoxic zone in the northern Gulf of Mexico in space and time. Monitoring activities with lower priorities for this announcement include monitoring the distribution and abundance of nutrient-stimulated phytoplankton, zooplankton and fishery populations and their relation to eutrophication, hypoxia, and Mississippi River plume dynamics.

Retrospective analyses are a secondary priority for this initial announcement. Retrospective analyses should be used to provide quantitative and detailed information on issues relevant to the objectives listed above, but not already completed, in the recent CENR report. Examples include retrospective analyses of biological data concerning key animal populations; retrospective analyses of meteorological and physical oceanographic controls on

plume distribution; retrospective analyses of the coupling between transport and population dynamics of key species; and retrospective analyses of coupling between climate, drainage basin, and shelf oceanography.

Modeling studies are a tertiary priority for this initial announcement. Modeling activities will be used to guide further program development and identify important processes for the extensive fieldwork anticipated to follow this preliminary phase. For example, models of NPZF and trophic responses to varying nutrient inputs, including organic flux to the bottom; models of water column stability, oxygen demand in bottom waters, and hypoxia; and physical-biological coupled models of transport and population dynamics of key zooplankton and fishery populations.

In order to fully develop predictive capability, a more intensive 5–7 year program is being planned for when additional funding becomes available. This complete program will include monitoring, retrospective studies, modeling and process field studies to identify relationships among ecosystem constituents. The process studies will be nested within monitoring efforts which identify and measure important ecosystem components, and retrospective and modeling efforts which will place the field measurements into broader temporal and theoretical context. The overall goal of the entire program is to understand and ultimately predict how changes in climate, nutrient loading and hypoxia will affect populations of marine animal species in the northern Gulf of Mexico. The projects conducted as a result of this solicitation for proposals will help guide the development of the more complete program.

Part I: Schedule and Proposal Submission

The provisions for proposal preparation provided here are mandatory. Proposals received after the published deadline or proposals that deviate from the prescribed format will be returned to the sender without further consideration. This announcement, additional background information, and proposal preparation instructions will be made available on the COP home page (http://www.cop.noaa.gov).

Full Proposals

Applications submitted in response to this announcement require an original proposal and 10 proposal copies at time of submission. This includes color or high-resolution graphics, unusually-sized materials (not 8.5″ × 11″ or 21.6 cm x 28 cm), or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for the number of proposal copies provide for a timely review process because of the large number of technical reviewers. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

All recipients are to closely follow the instructions and requirements in the preparation of the standard NOAA Application Forms and Kit requirements listed in Part II: Further Supplementary Information, paragraph (10) of this Document. Each proposal must also include the following seven elements:

(1) *Signed summary title page*: The title page should be signed by the Principal Investigator (PI) and the institutional representative. The Summary Title page identifies the project's title starting with the acronym N-GOMEX 2000, a short title (<50 characters), and the lead PI's name and affiliation, complete address, phone, FAX, and E-mail information. The requested budget for each fiscal year should be included on the Summary Title page. Multi-institution proposals must include signed Summary Title pages from each institution.

(2) *One-page abstract/project summary*: The Project Summary (Abstract) Form, which is to be submitted at time of application, shall include an introduction of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. The prescribed COP format for the Project Summary Form can be found on the COP Internet site under the COP Grants Support Section.

The summary should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost, and budget period. It should be written in the third person. The summary is used to help compare proposals quickly and allows the respondents to summarize these key points in their own words.

(3) *Statement of work/project description*: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the program goals, and its scientific priorities. The project description section (including Relevant Results from Prior Support) should not exceed 15 pages. Page limits are inclusive of figures and other visual materials, but exclusive of references and milestone chart.

Project management should be clearly identified with a description of the functions of each PI within a team. NOAA has specific requirements that environmental data be submitted to the National Oceanographic Data Center. It is important to provide a full scientific justification for the research; do not simply

reiterate justifications presented in this document. This section should also include:

(a) The objective for the period of proposed work and its expected significance;

(b) The relation to the present state of knowledge in the field and relation to previous work and work in progress by the proposing principal investigator(s);

(c) A discussion of how the proposed project lends value to the program goals, and

(d) Potential coordination with other investigators.

(e) References cited: Reference information is required. Each reference must include the name(s) of all authors in the same sequence in which they appear in the publications, the article title, volume number, page numbers, and year of publications. While there is no established page limitation, this section should include bibliographic citations only and should not be used to provide parenthetical information outside of the 15–page project description.

(4) *Milestone chart*: Time lines of major tasks covering the duration of the proposed project, up to 36 months, if proposing a 3-year project.

(5) *Budget*: At time of proposal submission, all applicants shall submit the Standard Form, SF–424 (Rev 7–97), "Application for Federal Assistance", to indicate the total amount of funding proposed for the whole project period. In lieu of the Standard Form 424A, Budget Information (Non-Construction), at time of original application, all proposers are required to submit a COP Summary Proposal Budget Form for each fiscal year increment. Multi-institution proposals must include budget forms from each institution.

Use of this budget form will provide for a detailed annual budget and the level of detail required by the COP program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form is compatible with forms in use by other agencies that participate in joint projects with COP; and can be found on the COP home page under COP Grants Support, Part D.

All applicants shall include a budget narrative/justification that supports all proposed budget object class categories. The program office will review the proposed budgets to determine the necessity and adequacy of proposed costs for accomplishing the objectives of the proposed grant. Ship time needs should be identified in the proposed budget. The SF–424A, Budget Information (Non-Construction) Form, shall be requested from only those recipients subsequently recommended for award.

(6) *Biographical sketch*: Abbreviated curriculum vitae, two pages per investigator, are sought with each proposal. Include a list of up to five publications most closely related to the proposed project and up to five other significant publications. A list of all persons (including their organizational affiliation), in alphabetical order, who have collaborated on a project, book, article, or paper within the last 48 months should be included. If there are no collaborators, this should be so indicated. Students, post-doctoral associates, and graduate and postgraduate advisors of the PI should also be disclosed. This information is used to help identify potential conflicts of interest or bias in the selection of reviewers.

(7) *Proposal format and assembly*: Clamp the proposal in the upper left-hand corner, but leave it unbound. Use one inch (2.5 cm) margins at the top, bottom, left and right of each page. Use a clear and easily legible type face in standard 12 points size.

Part II: Further Supplementary Information

(1) *Program authorities*: For a list of all program authorities for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual Document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page. Specific Authority cited for this Announcement is 33 U.S.C. 1442.

(2) *Catalog of Federal Domestic Assistance Number*: 11.478 Coastal Ocean Program.

(3) *Program description*: For complete COP program descriptions, see the annual COP General Document (64 FR 49162, September 10, 1999).

(4) *Funding availability*: Funding is contingent upon the availability of Federal appropriations. It is anticipated that up to $600,000 per fiscal year will be available for supporting studies proposed by submissions to this announcement. The priorities for these funds are stated earlier in this Document.

If an application is selected for funding, NOAA has no obligation to provide any additional prospective funding in connection with that award in subsequent years. Renewal of an award to increase funding or extend the period of performance is based on satisfactory performance and is at the total discretion of the funding agency.

Publication of this document does not obligate the Coastal Ocean Program to any specific award or to any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

(5) *Matching requirements*: None.

(6) *Type of funding instrument*: Project Grants for non-Federal applicants; interagency transfer agreements or other appropriate mechanisms other than project grants or cooperative agreements for Federal applicants.

(7) *Eligibility criteria*: For complete eligibility criteria for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page. Proposals deemed acceptable from Federal researchers will be funded through a mechanism other than a grant or cooperative agreement where legal authority allows for such funding. Non-NOAA Federal applicants are required to submit certification or documentation which clearly shows that they can receive funds from the Department of Commerce (DOC) for research (i.e., legal authority exists allowing the transfer of funds from DOC to the non-NOAA Federal applicant's agency).

(8) *Award period*: Full Proposals should cover a project period of up to 3 years, with a start date of July 1, 2000. Multi-year project period funding may be funded incrementally on an annual basis; but once awarded, multi-year projects will not compete for funding in subsequent years. Each award shall require a Statement of Work that can be easily separated into annual increments of meaningful work which represent solid accomplishments if prospective funding is not made available, or is discontinued.

(9) *Indirect costs*: If indirect costs are proposed, the following statement applies: The total dollar amount of the indirect costs proposed in an application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

(10) *Application forms*: For complete information on application forms for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual Document in the **Federal Register** (64 FR 49162, September 10, 1999); the COP home page; and the information given earlier in this Document under *Required Elements*, paragraph (5) Budget.

(11) *Project funding priorities*: For description of project funding priorities, see COP's General Grant Administration Terms and Conditions annual notification in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(12) *Evaluation criteria*: For complete information on evaluation criteria, see COP's General Grant Administration Terms and Conditions annual Document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(13) *Selection procedures*: For complete information on selection procedures, see COP's General Grant Administration Terms and Conditions annual Document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page. All proposals received under this specific Document will be evaluated and ranked individually in accordance with the assigned weights of the above evaluation criteria by independent peer mail review.

(14) *Other requirements*: For a complete description of other requirements, see COP's General Grant Administration Terms and Conditions annual Document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(15) Pursuant to Executive Orders 12876, 12900 and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

(16) Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

(17) This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF–LLL have been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

The COP Grants Application Package has been approved by OMB under control number 0648–0384 and includes the following information collections: a Summary Proposal Budget Form, a Project Summary Form, standardized formats for the Annual Performance Report and the Final Report, and the submission of up to 20 copies of proposals. Copies of these forms and formats can be found on the COP Home Page under Grants Support section, Part F.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: March 13, 2000.

Ted I. Lillestolen,

Deputy Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

[FR Doc. 00–6980 Filed 3–20–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031400E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scallop Committee and Advisory Panel in April, 2000 to consider actions affecting New England fisheries in the exclusive economic zone (EEZ). Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The Council will hold these meetings between Thursday, April 6, 2000 and Friday, April 21, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: All meetings will be held in Warwick, RI. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978)465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Thursday, April 6, 2000,at 10 a.m. and Friday, April 7, 2000, at 8:30 a.m. — Scallop Oversight Committee Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

The committee will develop draft management alternatives for Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan (FMP). The committee will recommend these draft alternatives to the Council at its May 3–5, 2000 meeting for inclusion and analysis in the Draft Supplemental Environmental Impact Statement (DSEIS).

Friday, April 21, 2000, at 9:30 a.m. — Joint Scallop Oversight Committee and Advisory Committee Meeting

Location: Radisson Airport Hotel, 2081 Post Road, Warwick, RI 02886; telephone: (401) 739–3000.

The committee and advisors will review and finalize the draft management alternatives for Amendment 10 to the FMP. The committee will recommend these draft alternatives to the Council at its May 3–5, 2000 meeting for inclusion and analysis in the DSEIS.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 15, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–6982 Filed 3–20–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031500B]

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council (Council) and its advisory entities will hold public meetings.

DATES: The Council and its advisory entities will meet April 3–7, 2000. The Council meeting will begin on Monday, April 3, at 1:30 p.m., reconvening each day through Friday. All meetings are open to the public, except a closed session will be held from 8 a.m. until 8:30 a.m. on Tuesday, April 4 to address litigation and personnel matters. The Council will meet as late as necessary each day to complete its scheduled business.

ADDRESSES: The meetings and hearing will be held at the Doubletree Hotel - Columbia River, 1401 Hayden Island Drive, Portland, OR 97217; telephone: (503) 283–2111.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dr. Donald O. McIsaac, Executive Director; telephone: (503) 326–6352.

SUPPLEMENTARY INFORMATION: The following items are on the Council agenda, but not necessarily in this order:

A. Call to Order

1. Opening Remarks, Introductions, Roll Call

2. Executive Director's Report

3. Approve Agenda

B. Groundfish Management

1. Agendum Overview

2. Status of Federal Regulations, Research Programs, and Other Activities

3. Harvest Rate Policy

4. Exempted Fishing Permits: Research Efforts

5. Canary Rockfish Allocation and Inseason Adjustment in the Pink Shrimp and Other Fisheries
6. Adoption of Rockfish Bycatch Estimate and Inseason Adjustments in Relevant Fisheries
7. Inseason Adjustments including English Sole and Redband Rockfish Retention Regulations
8. Inseason Adjustment in the Vertical Line Black Rockfish Allocation
9. Plan Amendment for Stock Rebuilding
10. Rebuilding Plans for Canary Rockfish and Cowcod
11. Status of Groundfish Strategic Plan
12. Observer Program
13. Plan Amendment to Address Bycatch and Management Measure Issues-Review First Draft
14. Renewal of Emergency Rule for 2000 Management Measures
15. American Fisheries Act
16. Efforts to Reduce Yellowtail Rockfish Catch in the Whiting Fishery: Review of Exempted Fishing Permit

C. Salmon Management
1. Agendum Overview
2. Identification of Stocks Not Meeting Escapement Goals for Three Consecutive Years
3. Methodology Reviews for 2000
4. Tentative Adoption of 2000 Ocean Salmon Management Measures for Analysis
5. Clarify Council Direction on 2000 Management Measures, If Necessary
6. Final Action on 2000 Measures
7. Clarification of Final Action on 2000 Measures (IF NECESSARY)

D. Administrative and Other Matters
1. Agendum Overview
2. Report of the Budget Committee
3. Report of the Legislative Committee
4. Establishment of a Council Operating Procedure for E-Mail
5. Appointments to and Composition of Council Advisory Entities
6. Groundfish Workload Issues
7. June 2000 Draft Agenda

E. Marine Reserves
Staff Report

F. Habitat Issues
Report of the Habitat Steering Group

Advisory Meetings

The Groundfish Management Team will meet at 1 p.m. on Sunday, April 2 and throughout the week as necessary to address groundfish management items on the Council agenda.

The Salmon Advisory Subpanel will convene on Monday, April 3, at 8 a.m. and will continue to meet throughout the week as necessary to address salmon management items on the Council agenda.

The Scientific and Statistical Committee will convene on Monday, April 3, at 8 a.m., and on Tuesday, April 4, at 8 a.m. to address scientific issues on the Council agenda.

The Habitat Steering Group meets at 9 a.m. on Monday, April 3, to address issues and actions affecting habitat of fish species managed by the Council.

The Budget Committee meets on Monday, April 3 at 9 a.m. to review the status of the 2000 Council budget and the proposed budget for 2001.

The Groundfish Advisory Subpanel will meet at 9:30 a.m. on Monday, April 3 and will convene throughout the week to address groundfish management items on the Council agenda.

The Salmon Technical Team will convene throughout the week (Monday April 3 through Friday April 7) as necessary to address salmon management items on the Council agenda.

The Enforcement Consultants meet at 5:30 p.m. on Tuesday, April 4, and will continue to meet as necessary through Friday, April 7 to address enforcement issues relating to Council agenda items.

The ad-hoc Marine Reserve Committee will meet on Tuesday, April 4 at 5 p.m. to discuss marine reserve issues relating to Council agenda items.

Comments on Council Agenda Items will not be accepted if submitted via e-mail or internet.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John S. Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: March 16, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–6981 Filed 3–20–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Science Advisory Board

AGENCY: Office of Oceanic and Atmospheric Research, NOAA, DOC.

ACTION: Notice of open meeting.

SUMMARY: The Science Advisory Board (SAB) was established by a Decision Memorandum dated September 25, 1997, and is the only Federal Advisory Committee with responsibility to advise the Under secretary of Commerce for Oceans and Atmosphere on long- and short-range strategies for research, education, and application of science to resource management. SAB activities and advice will provide necessary input to ensure that National Oceanic and Atmospheric Administration (NOAA) science programs are of the highest quality and provide optimal support to resource management.

Time and Date: The meeting will be held Wednesday, April 5, 2000, from 8:00 a.m. to 5:30 p.m.; Thursday, April 6, 2000, from 8:00 a.m. to 5:00 p.m.; and Friday, April 7, 2000, from 8:00 a.m. to 5:30 p.m.

Place: American Geophysical Union, 2000 Florida Avenue, NW, Washington, DC.

Status: The meeting will be open to public participation with two 30-minute time periods set aside during the meeting for direct verbal comments or questions from the public. The SAB expects that public statements presented at its meeting swill not be repetitive of previously submitted verbal or written statements. In general, each individual or group making a verbal presentation will be limited to a total time of five (5) minutes. Written comments (at least 35 copies) should be received in the SAB Executive Director's Office by March 29, 2000, in order to provide sufficient time for SAB review. Written comments received by the SAB Executive Director after March 29 will be distributed to the SAB, but may not be reviewed prior to the meeting date. Approximately thirty (30) seats will be available for the public including five (5) seats reserved for the media. Seats will be available on a first-come first-served basis.

Matters to Be Considered: The meeting will include the following topics: (1) Overview and SAB discussion of FY 2000 NOAA budget, (2) NOAA update to SAB recommendations concerning the establishment of three pilot SAB Working Groups to develop review processes that will be used to review various NOAA science efforts (see *http://www.sab.noaa.gov/oct1999finalminutes.html,* (3) NOAA response to SAB request to establish an Ocean and Coastal Information Dissemination Service (see *http://www.sab.noaa.gov/oct1999finalminutes.html),* (4) Discussion of the SAB Report for the next NOAA Administrator, (5) Public Input Session with SAB discussion, (6) Presentations and SAB discussion of the "Census of Marine Life" and NOAA's Ocean Exploration and Research Initiative, (7) Overview and SAB discussion of potential recommendations relating to the NOAA FY 2002 budget request, (8) SAB Sub-Committee and Issue Group Reports, (9) Overview and SAB discussion of NOAA/Universities Administrative Efficiencies Subcommittee, (10) Presentation and SAB discussion of Aquaculture Initiative.

FOR FURTHER INFORMATION CONTACT: Dr. Michael S. Uhart, Executive Director Science Advisory Board, NOAA, Rm. 11142, 1315 East-West Highway, Silver Spring, Maryland 20910 (Phone: 301–713–9121, Fax: 301–713–3515, E-mail: Michael.Uhart@noaa.gov); or visit the NOAA SAB website at *www.sab.noaa.gov.*

Dated: March 15, 2000.

Louisa Koch,

Deputy Assistant Administrator, OAR.

[FR Doc. 00–6873 Filed 3–20–00; 8:45 am]

BILLING CODE 3510–08–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031400B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (1245); receipt of applications to modify permits (1194, 1212); and receipt of a modification to an application to modify a permit (994).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a permit application from Mr. J. David Whitaker, of South Carolina Department of Natural Resources (SCDNR) (1245); NMFS has received applications for permit modifications from Northwest Fisheries Science Center, NMFS at Seattle, WA (NWFSC)(1194, 1212); and NMFS has received an amendment to an application for permit modifications from the Idaho Cooperative Fish and Wildlife Research Unit at Moscow, ID (ICFWRU) (994).

DATES: Comments or requests for a public hearing on the new application or any of the modification requests must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 p.m. eastern standard time on April 20, 2000.

ADDRESSES: Written comments on the new application or any of the modification requests should be sent to the appropriate office as indicated below. Comments may also be sent via fax to the number indicated for the application or modification request. Comments will not be accepted if submitted via e-mail or the internet. The applications and related documents are available for review in the indicated office, by appointment:

For permits 994, 1194, and 1212: Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (ph: 503–230–5400, fax: 503–230–5435).

For permit 1245: Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910 (ph: 301–713–1401, fax: 301–713–0376).

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: For permits 994, 1194, and 1212: Robert Koch, Portland, OR (ph: 503–230–5424, fax: 503–230–5435, e-mail: Robert.Koch@noaa.gov).

For permit 1245: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Sea Turtles

Endangered green turtle (*Chelonia mydas*), endangered Kemp's ridley turtle (*Lepidochelys kempii*), endangered leatherback turtle (*Dermochelys coriacea*), threatened loggerhead turtle (*Caretta caretta*).

Fish

Sockeye salmon (*Oncorhynchus nerka*): endangered Snake River (SnR).

Chinook salmon (*O. tshawytscha*): threatened SnR spring/summer; threatened SnR fall; endangered upper Columbia River (UCR) spring; threatened lower Columbia River (LCR).

Steelhead (*O. mykiss*): threatened SnR; endangered UCR; threatened middle Columbia River (MCR); threatened LCR.

To date, final protective regulations for threatened LCR chinook salmon and SnR, MCR, and LCR steelhead under section 4(d) of the ESA have not been promulgated by NMFS. Protective regulations are currently proposed for threatened LCR chinook salmon (65 FR 169, January 3, 2000) and threatened SnR, MCR, and LCR steelhead (64 FR 73479, December 30, 1999). This notice of receipt of applications requesting takes of these species is issued as a precaution in the event that NMFS issues final protective regulations that prohibit takes of threatened LCR chinook salmon and threatened SnR, MCR, and LCR steelhead. The initiation of a 30-day public comment period on the applications, including their proposed takes of threatened LCR chinook salmon and threatened SnR, MCR, and LCR steelhead does not presuppose the contents of the eventual final protective regulations.

New Applications Received

SCDNR (1245) has requested a 3-year permit to establish scientifically valid indices of abundance for the northern sub-population of the loggerhead, Kemp's ridley, green and leatherback sea turtles which occur in the Atlantic Ocean off the southeastern United States. This study is intended to capture juveniles and adults, thereby providing a more comprehensive assessment of total population abundance and an assessment of the health of individual animals.

Modification Requests Received

NWFSC requests a modification to ESA section 10(a)(1)(A) scientific research permit 1194. Permit 1194 authorizes NWFSC annual takes of adult artificially propagated SnR spring/summer chinook salmon and adult artificially propagated UCR steelhead associated with an evaluation of passive integrated transponder (PIT) tag interrogation systems at Bonneville Dam on the Columbia River in the Pacific Northwest. The objectives of the study are to evaluate the ability of the prototype tag detection systems to detect PIT-tagged adult salmon passing through the facility and evaluate the effects of the detection system on adult behavior as they approach and pass through the system. For the modification, NWFSC requests an annual take of adult UCR spring chinook salmon associated with the research. ESA-listed adult chinook salmon are proposed to be captured, tagged with PITs and non-permanent visual markers, released, and monitored from above or underwater with video cameras. The modification is requested to be valid for the duration of the permit, which expires on December 31, 2003.

NWFSC requests a modification to ESA section 10(a)(1)(A) scientific research permit 1212. Permit 1212 authorizes NWFSC annual takes of juvenile SnR sockeye salmon; juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon; juvenile SnR fall chinook salmon; and juvenile naturally produced and artificially propagated UCR steelhead associated with four studies at the hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. The goal of Study 1 is to provide up-to-date survival estimates of juvenile salmonids as they migrate past McNary Dam on the Columbia River. The goal of Study 2 is to evaluate the specific trouble areas in the juvenile fish bypass system at Lower Monumental Dam on the Snake River. The goal of Study 3 is to compare the performance of juvenile salmonids tagged with Sham radiotransmitters with juvenile salmonids tagged with PITs at Lower Granite Dam on the Snake River. The goal of Study 4 is to determine tailrace residence times of radio-tagged hatchery chinook salmon under varying operational conditions at Lower Monumental Dam and to identify spill conditions that utilize the smallest volumes of water to maximize fish passage efficiency at Ice Harbor Dam on the Snake River. The research will provide information that will be used to develop corrective measures to improve juvenile fish passage at the dams. For the modification, NWFSC requests a take of juvenile MCR steelhead associated with Study 1. ESA-listed juvenile steelhead are proposed to be captured at McNary Dam, sampled for biological information, and released. ESA-listed juvenile steelhead indirect mortalities associated with the research are also requested. The modification is requested to be valid for the duration of the permit, which expires on December 31, 2003.

Amendment to Modification Request Received

On September 25, 1998, NMFS published a notice in the **Federal Register** (63 FR 51340) that an application was received from ICFWRU for a modification to ESA section 10(a)(1)(A) scientific research permit 994. Permit 994 authorizes ICFWRU annual takes of adult SnR sockeye salmon; adult SnR spring/summer and fall chinook salmon; and adult UCR steelhead associated with scientific research designed to assess the passage success and homing behavior of adult salmonids that migrate upriver past the eight dams and reservoirs in the lower Columbia and lower Snake Rivers, evaluate specific flow and spill conditions, and evaluate measures to improve adult anadromous fish passage. For the modification, ICFWRU requested a take of adult SnR steelhead associated with the scientific research. The modification to permit 994 has not yet been issued because a final rule providing take prohibitions for SnR steelhead under section 4(d) of the ESA has not been published by NMFS. NMFS has received an amendment of ICFWRU's application for modifications to permit 994. In the application amendment, ICFWRU requests an increase in the take of adult SnR sockeye salmon associated with a new study designed to monitor the passage of adult sockeye salmon returning to the upper Salmon River in Idaho. ESA-listed adult sockeye salmon are proposed to be captured at Lower Granite Dam on the Snake River, tagged with radiotransmitters and identifier tags, released, and tracked electronically. Also for the application amendment, ICFWRU requests takes of adult UCR spring chinook salmon; adult LCR chinook salmon; adult MCR steelhead; and adult LCR steelhead associated with the sampling effort at Bonneville Dam on the Columbia River. The modification as amended is requested to be valid for the duration of the permit, which expires on December 31, 2000.

Dated: March 14, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–6983 Filed 3–20–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

March 15, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, carryforward and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50495, published on September 17, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 15, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on March 21, 2000, you are directed to adjust the current limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
338/638	1,156,475 dozen.
339/639	1,212,631 dozen.
340/640	1,190,527 dozen.
342/642	837,801 dozen.
351/651	1,352,548 dozen.
442	84,552 dozen.
443	143,928 numbers.
444	84,552 numbers.
448	43,558 dozen.
633	174,685 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–6882 Filed 3–20–00; 8:45 am]

BILLING CODE 3510–DR–F

CONSUMER PRODUCT SAFETY COMMISSION

Petition Requesting Rule Declaring Natural Rubber Latex a Strong Sensitizer

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: The Commission has received a petition from Debi Adkins, editor of *Latex Allergy News*, requesting that the Commission issue a rule declaring that natural rubber latex ("NRL") and products containing NRL are strong sensitizers under the Federal Hazardous Substances Act ("FHSA"). The Commission solicits written comments concerning the petition.

DATES: The Office of the Secretary should receive comments on the petition by May 22, 2000.

ADDRESSES: Comments, preferably in five copies, on the petition should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207, telephone (301) 504–0800, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, Maryland 20814. Comments may also be filed by telefacsimile to (301) 504–0127 or by email to cpsc-os@cpsc.gov. Comments should be captioned "Petition HP 00–2, Petition on Natural Rubber Latex." A copy of the petition is available for inspection at the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Rockelle Hammond, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800, ext. 1232.

SUPPLEMENTARY INFORMATION: The Commission has received correspondence from Debi Adkins, editor of Latex Allergy News, that requests the Commission to declare that natural rubber latex ("NRL") and products containing NRL are strong sensitizers under the Federal Hazardous Substances Act ("FHSA"). The petitioner asserts that a portion of the population has developed an allergy to NRL that can cause serious allergic reactions, even death. NRL may be in such consumer products as gloves, adhesives, shoes, balloons, pacifiers, and carpet backing, as well as many medical products. Ms. Adkins asks the Commission to add NRL and products containing NRL to its list of strong sensitizers so that these products would require labeling. The Commission is docketing the correspondence as a petition under provisions of the FHSA, 15 U.S.C. 1261–1277.

Interested parties may obtain a copy of the petition by writing or calling the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0800. A copy of the petition is also available for inspection from 8:30 a.m. to 5 p.m., Monday through Friday, in the Commission's Public Reading Room, Room 419, 4330 East-West Highway, Bethesda, Maryland.

Dated: March 15, 2000.

Sadye E. Dunn,

Secretary, Consumer Product Sofety Commission.

[FR Doc. 00–6874 Filed 3–20–00; 8:45 am]

BILLING CODE 6355–01–P

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for AmeriCorps*VISTA Grants Nationwide

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter "the Corporation") announces the availability of funds for fiscal year 2000, for new AmeriCorps*VISTA (Volunteers in Service to America) program grants throughout the United States, the District of Columbia, Puerto Rico, and the Virgin Islands. Project applications will be written to cover a 12-month period and grants will be awarded for a 12-month period with a renewal option. As part of this effort, the Corporation is soliciting applications from public or private non-profit organizations, including current AmeriCorps*VISTA project sponsors. Approximately 10 to 12 grants are expected to be awarded in summer 2000, subject to the availability of FY 2000 funding.

DATES: Applications must be received by 5 p.m. April 17, 2000.

ADDRESSES: Application instructions and kits are available from the Corporation for National and Community Service, AmeriCorps*VISTA, 1201 New York Avenue, NW, Washington, DC, 20525, (202) 606–5000, ext. 134; TDD (202) 565–2799, or TTY via the Federal Information Relay Service at (800) 877–8339. Five original signature copies of the application should be submitted to the Corporation for National and Community Service, 1201 New York Avenue, NW, Room 9207, Attn: Matt Dunne, Director, AmeriCorps*VISTA, Washington, DC, 20525. The Corporation will not accept applications that are submitted via facsimile or e-mail transmission. Applications submitted via overnight mail that arrive after the closing date will be accepted if they are postmarked at least two days prior to the closing date. Otherwise, late applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: For further information, contact AmeriCorps*VISTA Headquarters, in Washington, DC, at (202) 606–5000, ext. 134.

SUPPLEMENTARY INFORMATION:

A. Background

AmeriCorps*VISTA is authorized under the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory mandate of AmeriCorps*VISTA is "to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enbling persons from all walks of life, all geographical areas, and all age groups * * * (to) assist in the solution of poverty and poverty-related problems, and * * * to generate the commitment of private sector resources, to encourage volunteer service at the local level, and to strengthen local agencies and organizations to carry out the purpose (of the program)." (42 U.S.C. 4951) AmeriCorps*VISTA carries out its legislative mandate by assigning individuals 18 years and older, on a full-time, year-long basis, to public and private non-profit organizations whose goals are in accord with AmeriCorps*VISTA's legislative mission. Each AmeriCorps*VISTA project must focus on the mobilization of community resources, the transference of skills to community residents, and the expansion of the capacity of community-based organizations to solve local problems. Programming should encourage permanent, long-term solutions to problems confronting low-income communities rather than short-term approaches for handling emergency needs.

AmeriCorps*VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success as well as to make the activities undertaken by AmeriCorps*VISTA members self-sustaining when the Corporation no longer provides resources.

B. Purpose of This Announcement

This is a nationwide effort to create and expand opportunities for low-income individuals in one of the following areas: (1) Technology assistance to community based and school based learning centers; (2) Welfare to work initiatives including job creation, micro-business enterprise, business training and assistance to public assistance recipients who are starting new businesses to work in these areas; and (3) Literacy, after-school and summer reading programs for youth.

*AmeriCorps*VISTA Projects in These Initiatives will Focus On*

1. National, local, state or multi-state organizations working in conjunction with local affiliates that share a vision of promoting economic self-sufficiency; or literacy, afterschool and summer reading programs for youth; or technology assistance with communities and/or schools.
2. Promotion of partnerships and collaboration between the public and private sectors including businesses, community-based organizations; faith-based organizations and other service programs;
3. Recruitment, training, and coordination of local volunteers;
4. Mobilization of resources needed to support the project; and
5. Development of a sustainable capacity in local communities.

C. Eligible Applicants

Eligible applicants for AmeriCorps*VISTA program grants supporting these initiatives must be public or private non-profit organizations: regional or national non-profit organizations, tribal or territorial governments, or organizations representing tribal populations. Current AmeriCorps*VISTA sponsoring organizations may apply without affecting the status of their existing projects.

D. Scope of Grant

Each grant budget will support a minimum of 15 AmeriCorps*VISTA members on a full-time basis for one year of service. The average Federal cost of an AmeriCorps*VISTA service year, i.e., total Federal cost divided by total number of members, will range from approximately $11,000 to $13,000 in the continental United States depending upon the location of the assignment(s). (Higher rates apply in Alaska and Hawaii.) Specific budget guidance is available in the project application kit; average allowance costs contained in the instructions should be used to prepare the budget submission.

Each grant will include funds for the grantee to pay: a monthly subsistence allowance for AmeriCorps*VISTA members that is commensurate with the cost-of-living of the assignment area and covers the cost of food, housing, utilities, and incidental expenses; an end-of-service cash stipend payment, accrued at the rate of $100 per month, for those members not selecting the AmeriCorps education award; and relocation expenses for those AmeriCorps*VISTA members who must relocate in order to serve. The grant will also include funds for member in-service training, member supervision, and member/supervisor job-related transportation.

The following costs will be covered by the Corporation: an AmeriCorps education award in the amount of $4725 for AmeriCorps*VISTA members who complete their year of service and do not elect the stipend, health support for all AmeriCorps*VISTA members; a child care allowance for eligible AmeriCorps*VISTA members; travel from home of record to training to assignment for all AmeriCorps*VISTA members as well as travel home at the end of service.

Grant applicants should demonstrate their commitment to matching the Federal contribution toward the operation of the AmeriCorps*VISTA program grant by offsetting all, or part of, the costs of member supervision, transportation, and training, as well as the basic costs of the program itself (e.g., space, telephone, etc.). This support can be achieved through cash or in-kind contributions.

Grants will be awarded on a 12-month basis with a renewal option subject to need, satisfactory performance, and the availability of Corporation resources. Publication of this announcement does not obligate the Corporation to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the AmeriCorps*VISTA program.

E. Responsibilities of the Grantee

The applicant organization must demonstrate a strong institutional commitment of personnel, resources, training and technical expertise. Applicant organizations must develop a strong and well-coordinated multi-site or single site project rather than loosely tying together several unrelated local programs.

The applicant organization will have several crucial roles and responsibilities in operating an AmeriCorps*VISTA project. All applicant organizations must: identify local sites and assist them with preparation of Part A of the Project Application (CNS Form 1421A) (OMB Control Number 3045–0038), provide on-going monitoring, training, technical assistance, and support to local sites, assist in member recruitment, and work with sites to develop long-term sustainability plans.

After selection, the grantees will be advised by the Corporation of specific requirements related to the AmeriCorps*VISTA project, including the submission of Project Progress Reports (CNS Form 1433) (OMB Control Number 3045–0043), to the Americorps*VISTA project manager and assistance in the design and delivery of training. The Corporation State Office works with the local project affiliates to develop Part B (CNS Form 1421B) (OMB Control Number 3045–0038), of the project application and to provide in-service training and technical assistance for the members. The Corporation State Office also provides training to AmeriCorps*VISTA supervisors through periodic site visits and meetings with supervisors. A Project Progress Report is submitted by each local affiliate to the Corporation State Office on a quarterly basis.

F. Submission Requirements

To be considered for funding, applicants must submit five copies, with original signatures on items 2 and 3, of the following:

1. A one-page narrative summary description, single-spaced, single-sided in 10–12 point, of the proposed AmeriCorps*VISTA project including the name, address, telephone number, and contact person for the applicant organization as shown on the SF 424. The summary should include the major objectives and expected outcomes of the project. The summary will be used as a project abstract to provide reviewers with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary which accurately and concisely reflects the proposal.
2. Application for Federal Assistance, SF 424, with a detailed narrative budget justification.
3. AmeriCorps*VISTA Project Application, Form 1421, Parts A and B. All project information must be contained in the space provided on the application form except where additional sheets may be submitted for the Project Work Plan and/or Member Assignment Description(s).
4. Current resume of potential AmeriCorps*VISTA supervisor(s), if available, or resume of the director of the applicant organization.
5. List of members of the Board of Directors including their professional affiliations and/or program-related activities.
6. Organizational chart illustrating the location of the AmeriCorps*VISTA project within the overall applicant organization.
7. Letters of support must be provided from outside organizations that will be collaborating in the overall project effort. Letters should reflect knowledge and endorsement of the specific objectives of the project, as well as any commitment of resources to the project if applicable.
8. For each local site that will be hosting AmeriCorps*VISTA member(s), Part A of the application must be included. No other documents pertaining to the local sites should be attached.

National Applicant Organizations Must Also Submit One Copy of the Following

1. Current Articles of Incorporation.
2. Proof of non-profit status, or an application for non-profit status and related documentation.
3. CPA certification of accounting capability.
4. A copy of most recent annual report, if available.
5. No additional attachments are to be included. Such attachments will not be read or given to reviewers.

G. Criteria for AmeriCorps*VISTA Project Selection

All of the following elements must be incorporated in the applicant's submission:

I. Program Design

a. Getting Things Done

The proposed project must:

1. Address the needs of low-income communities and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended, (42 U.S.C. 4951 *et seq.*) applicable to AmeriCorps*VISTA, and all applicable published regulations, guidelines, and Corporation policies.
2. Be internally consistent, i.e., the problem statement that demonstrates need, the project work plan, the AmeriCorps*VISTA member assignment description, and all other components must be related logically to each other.
3. Contain clear and measurable objectives/outcomes in the project application for a 12-month period that address the overall objectives of the initiative. Proposed projects must show how the activities of the AmeriCorps*VISTA members contribute to specific outcomes related to increased economic opportunity for low-income people. It is expected that outcome objectives will reflect the evolution of the project over the 12-month period.
4. Include activities and mechanisms that provide for the involvement of beneficiaries of the project.
5. Indicate how the proposed project complements and/or enhances activities already underway in, or planned for, the community(ies) which will be served by the project. To the extent possible, projects should seek out opportunities to collaborate with other Corporation programs, as well as with other community partners, including the business sector.
6. Describe how the number of AmeriCorps*VISTA members requested is appropriate for the project goals/objectives, and how the skills requested are appropriate for the assignment(s).

b. Strengthening Communities

The proposed project must:

1. Describe how the project will develop a sustainable capacity in the local community to effectively foster the long-term self-sufficiency of the community. Project services should provide assistance oriented towards long-term solutions.
2. Demonstrate collaboration with organizations which provide supportive services to enhance job creation and community development.
3. Be designed to generate public and/or private sector resources, and to promote local, part-time volunteer service at the community level.
4. Describe in measurable terms the anticipated self-sufficiency outcomes at the conclusion of the project, including outcomes related to the sustainability of the project activities.

c. Member Development

The proposed project must:

1. Clearly state how AmeriCorps*VISTA members will be trained, supervised, and supported to ensure the achievement of program goals and objectives as stated in the project work plan.
2. Describe how AmeriCorps*VISTA assignments are designed to utilize the full-time AmeriCorps*VISTA member's time to the maximum extent.

II. Organizational Capacity

The proposed project must:

1. Ensure that resources needed to achieve project goals and objectives are available.
2. Have the management and technical capability to implement the project successfully.
3. Have a track record or experience in dealing with the issues addressed by the proposed project.
4. Have systems for the evaluation and monitoring of project activities. Applicants must describe the methods that will be used to track progress toward the stated objectives, and the procedures that will provide the feedback needed to make adjustments and improve program quality. Projects must also be prepared to cooperate with the Corporation for National Service and its evaluation partners in all Corporation monitoring and evaluation efforts.

III. Budget/Cost-Effectiveness:

The proposed project must:

1. Include a budget that adequately supports the program design.
2. Include a budget that adheres to budget guidance provided with the application.
3. Describe how the applicant organization is committing resources necessary for program implementation.

H. Application Review

Proposal Evaluation

To ensure fairness to all applicants, the Corporation reserves the right to take action, up to and including disqualification, in the event that a proposal fails to comply with any requirements specified in this Notice.

1. Program Design (60% as described below):

The project application allows the Corporation to assess the capacity of the applicant organization to implement the project and accomplish the purpose of the initiative. The overall quality of the application will be evaluated as follows:

a. Responsiveness to Getting Things Done Criteria (25%).

b. Responsiveness to Strengthening Communities Criteria (30%).

c. Responsiveness to Member Development Criteria (5%).

2. Organizational Capacity (25%):

The applicant organization's capacity to direct, manage, support, provide technical assistance, assess the project, and promote long-term implementation of the project's efforts, must be reflected in the Project Application.

3. Budget (15%):

Applicants must prepare the budget according to information contained in Item D, Scope of Grant, above, and instructions about costs and allowance levels contained in the application kit. A detailed Budget Narrative must identify and justify each line item and cost. The Corporation will assess the cost-effectiveness of the proposed project and the project's ability to leverage significant resources from private and/or public sources.

I. Geographic Diversity

After evaluating the overall quality of the proposal and its responsiveness to the criteria noted above, the Corporation will take into consideration whether funded projects are: (1) geographically diverse, including projects in both urban and rural areas, and projects are identified throughout the five geographical regions as designated by CNS, and (2) in areas of high concentration of low-income residents, including those in empowerment zones, enterprise communities and homeownership zones.

J. Program Authority

Corporation Authority to make these grants is authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113).

Dated: March 16, 2000.

Matt Dunne,

*Director, AmeriCorps*VISTA.*

[FR Doc. 00–6987 Filed 3–20–00; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

AGENCY: Deputy Chief of Staff for Personnel (DAPE–ZXI–RM), U.S. Army, DoD.

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Department of the Army announces a proposed public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the proposed information collection; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 22, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to Department of the Army, Office of the Assistant Secretary Manpower and Reserve Affairs, 111 Army Pentagon, Washington, DC 20310–0111, ATTN: SAMR–MPP, (Kathleen A. Dillion). Consideration will be given to all comments received within 60 days of the date of publication of this notice.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call Department of the Army Reports clearance officer at (703) 614–0454.

TITLE, ASSOCIATED FORM, AND OMB NUMBER: Army Recruiting Market Tracking Survey.

NEEDS AND USES: The Army urgently needs redesigned marketing and recruiting strategies. New research is being carried out on the factors that affect youth willingness to enter the Army, the perceptions of their key influencers, patterns of recruiters-youth-influencers interactions, and on youth's and influencers's media habits. That research will provide the baseline information required to design new enlistment options, marketing campaigns, and recruiting strategies.

Affected Public: Individuals or household.

Annual Burden Hours: 5146.

Number of Respondents: 9,750 (6,500 youth; 3,250 parents).

Responses Per Respondent: 1.

Average Burden Per Response: 1 hour (35 youth; 25 parents).

Frequency: Voluntary.

SUPPLEMENTARY INFORMATION: The Army requires a second companion survey to provide ongoing assessments of the results of these changes and to pinpoint additional modifications that may be needed to enhance cost-effectiveness and strengthen Army recruiting. The survey will be administered to a national probability sample of youth 16–24 years of age. In half these cases, a shorter interview with one of the respondent's parent will be completed.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–6999 Filed 3–20–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Scientific Advisory Board

AGENCY: Armed Forces Institute of Pathology (AFIP), DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, Public Law (92–463), announcement is made of the following open meeting:

Name of Committee: Scientific Advisory Board (SAB).

Date of Meeting: 11–12 May 2000.

Place: Armed Forces Institute of Pathology, Building 54, 14th St. & Alaska Ave., NW, Washington, DC 20306–6000.

Time: 8:30 a.m.–4:30 p.m. (11 May 2000)—8 a.m.–12 p.m. (12 May 2000).

FOR FURTHER INFORMATION CONTACT: Mr. Ridgely Rabold, Center for Advanced Pathology (CAP), AFIP, Building 54, Washington, DC 20306–6000, phone (202) 782–2553.

SUPPLEMENTARY INFORMATION:

General function of the board: The Scientific Advisory Board provides scientific and professional advice and guidance on programs, policies and procedures of the AFIP.

Agenda: The Board will hear status reports from the AFIP Deputy Director, Center for Advanced Pathology Director, the National Museum of Health and Medicine, and each of the pathology departments which the Board members will visit during the meeting.

Open board discussions: Reports will be given on all visited departments. The reports will consist of findings, recommended areas of further research, and suggested solutions. New trends and/or technologies will be discussed and goals established. The meeting is open to the public.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–6998 Filed 3–20–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Cost Sharing Cooperative Agreement Applications

AGENCY: Defense Logistics Agency (DLA).

ACTION: Notice of solicitation for cost sharing cooperative agreement applications.

SUMMARY: The Defense Logistics Agency (DLA) issued a solicitation for cooperative agreement applications (SCAA) to assist state and local governments and other nonprofit eligible entities in establishing or maintaining procurement technical assistance centers (PTACs). These centers help business firms market their goods and services to the Department of Defense (DoD), other federal agencies, and state and/or local government agencies. Notice of the issuance of this SCAA was published in the March 17, 1999 **Federal Register** (Volume 64, Number 51, page 13176). This solicitation governs the submission of applications for calendar years 1999, 2000, 2001, and 2002 and applies to all applications from all eligible entities, including Indian Economic Enterprises and Indian Tribal Organizations.

Pursuant to Section "I" paragraph "J" of the SCAA, notice is hereby given that limited additional funds are anticipated to be available in order to accept applications for additional new programs. However, applications will only be accepted from eligible entities that propose programs that will provide service to areas that are not currently receiving service from an existing program. This provision prohibiting applications from new programs proposing to service areas currently receiving service from an existing program is absolute, and the provisions of Section V, paragraph D. of the SCAA do not apply should a new applicant propose to service an area currently receiving service from an existing program. In addition, Section II of the SCAA is amended by changing the definition of a statewide program so as to prohibit more than one statewide program per state. Section V of the SCAA is amended to include situations where more than one applicant applies as a statewide program for an individual state, as an unacceptable duplicate coverage situation. Section VIII of the SCAA is amended by adding a new paragraph F. "LIMITATIONS" which limits the amount of DoD's funding for any option year to no more than that which was obligated for the base year award and the DoD percentage of total net program cost for any option year shall not be greater than DoD's percentage of total net program cost for the base year award. The March 15, 1999 SCAA is amended as follows; all applications submitted after March 10, 2000 and all PTAC awards made and options exercised after April 1, 2000 shall be governed by this amended version of the SCAA:

* * * * *

Section II

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30. Statewide program. A PTA program that provides statewide coverage. There can be only one statewide program per state. In the event more than one applicant applies as a statewide program, the procedure in Section V, paragraph D. will be followed. For the purpose of the funding limitations appearing in Section I, paragraph F.3., PTA programs providing services to all the reservations within one of the twelve Bureau of Indian Affairs (BIA) Area Offices (which are Aberdeen, Albuquerque, Anadarko, Billings, Eastern, Juneau, Minneapolis, Muskogee, Navajo, Phoenix, Portland and Sacramento) and at least 50 per cent of the reservations of another BIA Area Office will be considered a statewide program.

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Section V

D. Duplicate Coverage

Applications whose proposals produce a duplicate coverage situation will be reviewed by the GO to determine if the extent of duplicate coverage is acceptable or unacceptable. A duplicate coverage situation shall be deemed unacceptable if any of the following occur:

1. An applicant proposes to provide PTA services to more than 25 percent of the total number of counties that another applicant is proposing to service.

2. Two or more applicants **cumulatively** propose to provide PTA service to more than 25 percent of the total number of counties that another individual applicant proposes to service.

3. Two or more applicants apply as statewide programs servicing the same state.

Applicants that propose to provide service primarily to reservations (at least 75% of their total program cost will be dedicated to providing service to reservations) will not be considered to duplicate applicants that do not propose to provide service primarily to reservations, notwithstanding the areas either propose to service.

When the GO determines that an unacceptable duplicate coverage situation exists, only the applicant(s) determined to be most meritorious among those proposing the duplicate coverage situation using the selection procedures listed in Section VI will be considered for award.

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Section VIII

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F. Limitations

The total mount of DoD funding for any program in any option year shall not exceed the total amount *obligated* by DoD for the base year award. The percentage of DoD's share of total net program cost for any option year shall not be greater than the percentage of DoD's share of total net program cost for the base year award.

(end of SCAA revisions)

DATES: On line submissions of applications for new programs will be available on or about March 20, 2000. The closing date for the submission of applications is May 5, 2000.

The SCAA is currently available for review on the Internet Website: http://www.dla.mil/scaa

Printed copies are not available for distribution.

Eligible entities may only submit an application as outlined in Section IV of the SCAA. In order to comply with the electronic portion of the submission, applicants must obtain a log in account and password from DLA. To obtain

these, applicants must furnish the Grants Officer written evidence that they meet the criteria of an eligible entity as set forth in paragraph 14 of Section II of the SCAA.

This information should be mailed or otherwise delivered to: HQ, Defense Logistics Agency, Small and Disadvantaged Business Utilization Office (DDAS Room 1127), 8725 John J. Kingman Road, Ft. Belvoir, VA 22060–6221.

FOR FURTHER INFORMATION CONTACT: If you have any questions or need additional information please contact Ms. Diana Maykowskyj at (703) 767–1656.

Anthony J. Kuders,

Deputy Director, Small and Disadvantaged Business Utilization.

[FR Doc. 00–6904 Filed 3–20–00; 8:45 am]

BILLING CODE 3620–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 22, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 15, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Revision.

Title: Comprehensive Program Annual Performance Report.

Frequency: Annually.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 140; Burden Hours: 2,800.

Abstract: The Comprehensive Program is a discretionary grant program that makes competitive awards to support reform and innovations through projects that improve educational practice at the postsecondary level. Grantees annually submit a performance report to demonstrate that substantial progress is being made toward meeting the objectives of their projects. Reporting requirements are currently based on broad criteria from the Education Department General Administrative Regulations (EDGAR). This request is to use a reporting format that elicits needed information on program-specific outcomes within the annual report without posing additional burden to the grantee.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–6901 Filed 3–20–00; 8:45 am]

BILLING CODE 4001–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 20, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and

proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 15, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: ED-Flex State Application Guidance.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 45

Burden Hours: 1,800

Abstract: Pub L. 106–25, the Education Flexibility Partnership Act of 1999, permits States, which do not currently have Ed-Flex authority, to submit an application to the Secretary of Education to request Ed-Flex authority. Thirty-eight states, plus the outlying areas, will voluntarily apply for the authority to waive Federal regulations for seven USDE programs, as delineated under the law. In the application, the State must demonstrate that the eligible State has adopted an educational flexibility plan for the State that includes: a description of the process the State will use to evaluate applications from school districts or schools requesting waivers, how the State has met the eligibility requirements, a description of the State's evaluation process, and how the Ed-Flex plan will assist in implementing the State's reform plan.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–6902 Filed 3–20–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education—School Improvement Programs—Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program

AGENCY: Department of Education.

ACTION: Notice of Proposed Priorities for fiscal Year (FY) 2000.

SUMMARY: The Secretary announces absolute priorities for the FY 2000 grant competition under the Native Hawaiian Curriculum Development, Teacher Training and recruitment Program. After funding continuation awards, the Secretary would use the remaining FY 2000 funds available under the program to award new grants to support activities in one or more of the following areas: (1) Computer literacy and and technology education, (2) agriculture education partnerships, (3) astronomy, (4) indigenous health, (5) waste management innovation, (6) prisoner education, and (7) marine resource management.

DATES: We must receive your comments on or before April 20, 2000.

ADDRESSES: Address all comments about this proposed priority to Lynn Thomas, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3C124, Washington, DC 20202–6410, Telephone: (202) 260–7779. If you prefer to send your comments through the Internet, use the following address: Lynn__thomas@ed.gov

FOR FURTHER INFORMATION CONTACT: Lynn Thomas, (202) 260–1541. If you use a telecommunications device for deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (*e.g.,* Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation To Comment: Interested persons are invited to submit comments and recommendations regarding these proposed priorities. All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in Room 3C124, 400 Maryland Avenue, SW, Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuol With Disabilities in Reviewing the Rulemaking Record: On request, the Department supplies an appropriate aid, such as a reader or print magnifier, to an individual with a disability that needs assistance to review the comments. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

General: There is available for distribution under the Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program (20 USC 7909) a total of $5,500,000 of FY 2000 funds. Of this amount, approximately $3,300,000 will be used to award continuation awards to successful applicants in the FY 1999 competition. The remaining $2,200,000 of FY 2000 funds will be used to support curriculum development and teacher training activities in one or more of the following areas: (1) Computer literacy and technology education, (2) agriculture education partnerships, (3) astronomy, (4) indigenous health, (5) waste management innovation, (6) prisoner education, and (7) marine resource management. Except for marine resource management, these are the same areas that were funded under the FY 1999 competition. Congress has urged the Secretary to support activities in these seven areas and the Secretary believes that limiting newly funded projects in this way will help address the needs of Native Hawaiian students in these significant areas of Native Hawaiian culture and traditions. Therefore, the Secretary is announcing absolute funding priorities and intends to use available FY 2000 funds under the program for a competition to support projects in one or more of the seven categories.

The Secretary will announce final priorities for these competitions in a notice in the **Federal Register.** The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of a particular project depends on the final priority, the availability of funds, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. A notice inviting applications under the competitions will be published in the **Federal Register** concurrent with or following the notice of final priorities.

Absolute Priorities: Under the Native Hawaiian Curriculum Development, Teacher Training and Recruitment Program, the Secretary announces absolute preference to applications that focus entirely on activities in one of the following areas:

(1) Computer literacy and technology education—to support curriculum development, teacher training and model programs designed to increase computer literacy and access for Native Hawaiian elementary and secondary school students;

(2) Agriculture education partnerships—to support the integration of agricultural and businesses practices into high school curriculum through the expansion of partnerships between community-based agricultural businesses and high schools with high concentrations of Native Hawaiian students;

(3) Astronomy—to support the development of educational programs in astronomy for Native Hawaiian elementary and secondary school students to assist them in reaching challenging science and mathematics standards and to encourage them to enter the field of astronomy;

(4) Indigenous health—to support curriculum development, teacher training, and instruction activities that will foster a better understanding and knowledge of Native Hawaiian traditional medicine, particularly among Native Hawaiian elementary and secondary students;

(5) Waste management innovation—to study and document traditional Hawaiian practices of sustainable waste management and to prepare teaching materials for educational purpose and for demonstration on the use of native Hawaiian plants and animals for waste treatment and environmental remediation;

(6) Prisoner education—to support programs that target juvenile offenders and/or youth at risk of becoming juvenile offenders. Comprehensive and culturally sensitive strategies for reaching the target population will include family counseling, basic education/jobs skills training, and the involvement of community elders as mentors; and

(7) Marine resource management—to support programs designed to teach Native Hawaiian elementary and secondary students about traditional fishery management techniques used in the Native Hawaiian culture.

Intergovernmental Review: This program is subject to Executive Order 12372 and the regulations in 34 CFR part 79. one of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Program Authority: Sections 9209 of the Elementary and Secondary Education Act of 1965, as amended (20 U.S.C. 7909) CFDA 84.297A.

Electronic Access to This Document: You may review this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites: *http://www.ed.gov/fedreg.htm* or *http://ocfo.ed.gov/news.html.*

To use the PDF you must have Adobe Acrobat Reader Program with Search, which is available free at either of the preceding sites. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.** Free Internet access to the official edition of the **Federal Register** and the Code of Federal Domestic Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*

Dated: March 16, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–6946 Filed 3–20–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

Advisory Committee on Student Financial Assistance; Meeting

AGENCY: Advisory Committee on Student Financial Assistance, Education.

ACTION: Notice of Upcoming Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of the Advisory Committee on Student Financial Assistance which is open to the public. Individuals who will need accommodations for a disability in order to attend the meeting (i.e., interpreting services, assistive listening devices, and/or materials in alternative format) should notify Ms. Hope M. Gray at 202–708–7439 or via e-mail at hope_gray@ed.gov no later than April 3, 2000. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation. The meeting site is accessible to individuals with disabilities. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public.

DATES AND TIMES: Wednesday, April 12, 2000, beginning at 8:30 a.m. and ending at approximately 5:00 p.m.; and Thursday, April 13, 2000, beginning at 8:30 a.m. and ending at approximately 2:00 p.m.

ADDRESSES: Boston University, School of Management, Executive Leadership Center, 595 Commonwealth Avenue, Boston, Massachusetts 02118.

FOR FURTHER INFORMATION CONTACT: Dr. Brian K. Fitzgerald, Staff Director, Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue SW, Suite 601, Washington, DC 20202–7582 (202) 708–7439.

SUPPLEMENTARY INFORMATION: The Advisory Committee on Student Financial Assistance is established under section 491 of the Higher Education Act of 1965 as amended by Public Law 100–50 (20 U.S.C. 1098). The Advisory Committee serves as an independent source of advice and counsel to the Congress and the Secretary of Education on student financial aid policy. Since its inception, the Committee has been charged with providing technical expertise with regard to systems of need analysis and application forms, making recommendations that result in the maintenance of access to postsecondary education for low- and middle-income students; conducting a study of institutional lending in the Stafford Student Loan Program; assisting with activities related to the 1992 reauthorization of the Higher Education Act of 1965; conducting a third-year evaluation of the Ford Federal Direct Loan Program (FDLP) and the Federal Family Education Loan Program (FFELP) under the Omnibus Budget Reconciliation Act (OBRA) of 1993; and assisting Congress with the 1998 reauthorization of the Higher Education Act.

The congressional mandate requires the Advisory Committee to conduct objective, nonpartisan, and independent analyses on important aspects of the student assistance programs under Title IV of the Higher Education Act. The Committee traditionally approaches its work from a set of fundamental goals: promoting program integrity, eliminating or avoiding program complexity, integrating delivery across the Title IV programs, and minimizing burden on students and institutions.

Reauthorization of the Higher Education Act has provided the Advisory Committee with a significantly expanded agenda in six major areas, such as, Performance-based Organization (PBO); Modernization; Technology; Simplification of Law and Regulation; Distance Education; and Early Information and Needs Assessment. In each of these areas, Congress has asked the Committee to: monitor progress toward implementing the Amendments of 1998; conduct independent, objective assessments; and make recommendations for improvement to the Congress and the Secretary. Each of these responsibilities flows logically from and effectively implements one or more of the Committee's original statutory functions and purposes.

The proposed agenda includes: (a) discussion sessions on implementing the provisions of the Higher Education Amendments of 1998 and their impact on all Title IV programs, in particular, examining long-term issues that are central to the federal role of providing access to postsecondary education for low- and middle-income students, and (b) progress to date on distance education and Gear Up. In addition, the Committee will discuss its plans for the remainder of fiscal year 2000 and address other Committee business. Space is limited and you are encouraged to register early if you plan to attend. You may register through Internet at ADV_COMSFA@ED.gov or Tracy_Deanne_Jones@ED.gov. Please include your name, title, affiliation, complete address (including Internet and e-mail—if available), and telephone and fax numbers. If you are unable to register electronically, you may mail or fax your registration information to the Advisory Committee staff office at (202) 401–3467. Also, you may contact the Advisory Committee staff at (202) 708–7439. The registration deadline is Monday, April 3, 2000.

The Advisory Committee will meet in Boston, Massachusetts on April 12, 2000, from 9:00 a.m. until approximately 5:00 p.m., and on April 13, from 8:30 a.m. until approximately 2:00 p.m.

Records are kept of all Committee proceedings, and are available for public inspection at the Office of the Advisory Committee on Student Financial Assistance, Portals Building, 1280 Maryland Avenue, SW, Suite 601, Washington, DC from the hours of 9:00 a.m. to 5:30 p.m., weekdays, except Federal holidays.

Dated: March 15, 2000.

Brian K. Fitzgerald,

Staff Director, Advisory Committee on Student Financial Assistance

[FR Doc. 00–6934 Filed 3–20–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Arms Control and Nonproliferation; Proposed Subsequent Arrangement

AGENCY: Department of Energy.

ACTION: Subsequent arrangement.

SUMMARY: This notice is being issued under the authority of Section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160). The Department is providing notice of a proposed "subsequent arrangement" under the Agreement for Cooperation in the Peaceful Uses of Nuclear Energy between the United States of America and the Republic of South Africa.

This subsequent arrangement concerns the cropping and transfer of 49 U.S.-origin spent fuel elements consisting of 5700.1 grams of uranium, of which 4276.6 grams of the isotope U–235 is 90 percent enriched, from the Pelindaba Safari Reactor storage facility to the Thabana Pipe Storage facility for long-term storage. The transfer, cropping and storage of the 49 fuel elements will be done under IAEA supervision and will take no longer than 2 months to complete. The purpose of the transfer is to alleviate the shortage of storage space at the Pelindaba Safari Reactor facility.

In accordance with Section 131 of the Atomic Energy Act of 1954, as amended, we have determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Trisha Dedik,

Director, International Policy and Analysis Division for Arms Control and Nonproliferation, Office of Defense Nuclear Nonproliferation.

[FR Doc. 00–6918 Filed 3–20–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Idaho Operations Office; Notice of Availability of Solicitation for Awards of Financial Assistance Solicitation Number DE–PS07–00ID13909—Petroleum Industries Vision of the Future

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of solicitation.

SUMMARY: The U.S. Department of Energy (DOE), Idaho Operations Office (ID), is seeking applications for cost-shared research and development of technologies which will reduce energy consumption, reduce environmental impacts and enhance economic competitiveness of the domestic downstream (refining) sector of the Petroleum Industry. The research is to address downstream (refining) research priorities identified by the Petroleum Industry in the areas of Energy and Process Efficiency, Materials and Inspection Technology and Environmental Performance.

DATES: The deadline for receipt of full applications is May 17, 2000, at 3:00 p.m. MST.

ADDRESSES: Applications should be submitted to: Procurement Services Division, U. S. DOE, Idaho Operations Office, Attention: Carol Van Lente [DE–PS07–00ID13909], 850 Energy Drive, MS 1221, Idaho Falls, Idaho 83401–1563.

FOR FURTHER INFORMATION CONTACT: Carol Van Lente, Contract Specialist, by facsimile at (208) 526–5548, e-mail: *vanlencl@id.doe.gov*, or by telephone at (208) 526–1534, Dallas L. Hoffer, Contracting Officer at *hofferdl@id.doe.gov.*

SUPPLEMENTARY INFORMATION: The Petroleum Vision and Roadmap are located at *http://www.oit.doe.gov/petroleum/.* Approximately $2,250,000 of funding will be available to fund the first year of selected research efforts. DOE anticipates making 4 or more cooperative agreement awards each with a duration of three years or less. A minimum 50% non-federal cost share is required for research and development projects over the life of the project. First year cost share can be as low as 30% if subsequent years have sufficient cost share so that non-federal share totals at least 50%. Collaborations between industry, university, and National Laboratory participants are encouraged. The issuance date of Solicitation Number DE–PS07–00ID13909 is on or about March 17, 2000. The solicitation is available in its full text via the

Internet at the following address: *http://www.id.doe.gov/doeid/PSD/procdiv.html*. The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on March 14, 2000.

M.L. Adams,

Branch Chief, Contracts and Assistance Branch.

[FR Doc. 00–6917 Filed 3–20–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collection Activities

AGENCY: Energy Information Administration, Department of Energy.

ACTION: Agency Information Collection Activities: Request for Emergency Review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection listed at the end of this notice to the Office of Management and Budget (OMB) for emergency processing under provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13) (44 U.S.C. 3501 *et seq.*) by March 22, 2000. The reason for this emergency clearance request is to obtain data needed for responding to requests from the Secretary of Energy and Congress on the impact of interruptible natural gas contracts, which affected home heating oil supplies in the Northeastern United States during January and February 2000.

The Supplementary Information contains the following: (1) The collection number and title; (2) a summary of the collection of information (includes the sponsor (i.e., the DOE component)), current OMB document number (if applicable), type of request (new, revision, extension, or reinstatement), response obligation (mandatory, voluntary, or required to obtain or retain benefits); (3) a description of the need and proposed use of the information; (4) a description of the likely respondents; and (5) an estimate of the total annual reporting burden (i.e., the estimated number of likely respondents times the proposed frequency of response per year times the average hours per response).

DATES: Comments must be filed by March 22, 2000.

ADDRESS: Address comments to the Mr. Erik Godwin, Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW, Washington, DC 20503. (Mr. Godwin may be reached by telephone at (202) 395-3084. Comments should also be addressed to the Statistics and Methods Group at the address immediately below.)

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Herbert Miller, Statistics and Methods Group, (EI–70), Forrestal Building, U.S. Department of Energy, Washington, DC 20585–0670. Mr. Miller may be contacted by telephone at (202) 426–1103, FAX at (202) 426–1081, or e-mail at Herbert.Miller@eia.doe.gov.

SUPPLEMENTARY INFORMATION:

The energy information collection submitted to OMB for review was:

1. EIA–903, "Natural Gas Service Interruptions in the Northeast during January and February 2000".

2. The Energy Information Administration plans to collect information in four parts from 34 natural gas companies who deliver natural gas (i.e., have natural gas service arrangements) to consumers in the Northeast.

Part I requests information on interruptions of any firm service arrangements during January and February 2000. Part II requests information on selected characteristics of interruptible service arrangements. Part III requests baseline monthly and weekly information for those categories of service which were interrupted during January and February 2000. Part IV requests information on customers who were interrupted. This is a new survey and a new OMB number is being requested. The response obligation will be mandatory.

3. The data are needed to respond to a request from the Secretary of Energy and Congress to jointly conduct a study on the impact of interruptible contracts on home heating oil supplies in the Northeast, during January and February 2000.

4. Respondents will be 34 natural gas companies who deliver natural gas to consumers.

5. The reporting burden is expected to be 680 hours. (34 respondents ×1 response ×20 hours)

Statutory Authority: Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13).

Issued in Washington, D.C., March 16, 2000.

Jay H. Casselberry,

Agency Clearance Office, Statistics and Methods Group, Energy Information Administration.

[FR Doc. 00–7070 Filed 3–20–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–214–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 15, 2000.

Take notice that on March 8, 2000, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, bear a proposed effective date of April 1, 2000.

ESNG states that the purpose of this instant filing is to track rate changes attributable to storage services purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedules GSS and LSS and Columbia Gas Transmission Corporation (Columbia) under its Rate Schedules SST and FSS. The costs of the above referenced storage services comprise the rates and charges payable under ESNG's Rate Schedules GSS, LSS and CFSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedules GSS, LSS and CFSS.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–6890 Filed 3–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR00–2–000]

ExxonMobil Pipeline Company; Notice of Petition for Declaratory Order

March 15, 2000.

Take notice that on March 9, 2000, pursuant to Rules 207(a)(2) and 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, 385.212, ExxonMobil Pipeline Company (EMPCo.) tendered for filing a petition for a declaratory order regarding the proposed rate for transportation service to be provided through a new crude oil pipeline from the Diana and Hoover Fields in the offshore Gulf of Mexico, to onshore facilities at Quintana and Freeport, Texas.

EMPCo. seeks regulatory assurance regarding its initial Hoover Offshore Oil Pipeline System (HOOPS) rate, which it states is based on the Commission's customary oil pipeline ratemaking formula with two narrow variations. First, EMPCo requests authority to use the unit of throughput (UOT) method of depreciation, rather than straight-line or some other form of remaining life depreciation. Second, EMPCo seeks authority to develop its initial rate based on a five-year "levelized" rate approach.

EMPCo. anticipates a June 15, 2000 start-up of operations, and requests that the Commission issue an expedited order declaring (1) that the unit of throughput depreciation approach may be used for HOOPS rates; (2) that the initial HOOPS rate may be based on projected costs and revenues levelized over the first five years of HOOPS operations. EMPCo states that it proposes to charge the initial rate of $2.104 per barrel set forth in Attachment B–10 to the filing, if its petition is accepted before start-up subject to changes only as permitted or required by the Commission's indexing rules. EMPCo states that absent the grant of its petition before start-up it would be required to charge $2.35 per barrel, as set forth in Attachment B–6 to the filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 30, 2000, with replies to any protests due April 10, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–6885 Filed 3–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–2489–000]

Green Mountain Energy Resources, L.L.C; Notice of Issuance of Order

March 15, 2000.

Green Mountain Energy Resources, L.L.C. (Green Mountain) submitted for filing a rate schedule under which Green Mountain will engage in wholesale electric power and energy transactions as a marketer. Green Mountain also requested waiver of various Commission regulations. In particular, Green Mountain requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Green Mountain.

On June 2, 1999, pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulation, granted requests for blanket approval under Part 34, subject to the following:

Within thirty days of the date of the order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Green Mountain should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, Green Mountain is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Green Mountain's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is March 30, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6883 Filed 3–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–215–000]

Northern Border Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 15, 2000.

Take notice that on March 10, 2000, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective April 10, 2000:

Third Revised Sheet Number 159
Second Revised Sheet Number 160

Northern Border proposes to revise section 5.0 and remove section 5.1 under Rate Schedule T–1. The herein proposed changes do not result in a change in Northern Border's total revenue requirement.

Northern Border states that copies of this filing have been sent to all of Northern Border's contracted shippers

and interested state regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–6891 Filed 3–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–83–002]

Texas Gas Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 15, 2000.

Take notice that on March 10, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets to become effective January 14, 2000:

Substitute First Revised Sheet No. 79
Substitute Original Sheet No. 80
Substitute Original Sheet No. 80G
Substitute Original Sheet No. 80H

On November 29, 1999, Texas Gas filed proposed tariff sheets to establish a new Summer No-Notice Service (SNS). The Commission Order issued January 12, 2000, suspended the effective date of those tariff sheets until June 14, 2000, subject to refund, the conditions set forth within the Order, and the outcome of a technical conference. Texas Gas states that the tariff sheets submitted herein reflect changes to the SNS Rate Schedule, which Texas Gas agreed to as a result of the recent technical conference.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the Commission's official service list as well as to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–6889 Filed 3–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP97–71–019 and RP97–312–008]

Transcontinental Gas Pipe Line Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 15, 2000.

Take notice that on March 7, 2000, Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing to its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets which tariff sheets are enumerated in Appendix A attached to the filing. The tariff sheets are proposed to be effective April 1, 2000.

On January 20, 1998, Transco filed a Stipulation and Agreement (Settlement) in Docket No. RP97–71 which, among other things, resolved Transco's cost of service, overall throughput level, and mix of throughput for the RP97–71 rate period. Article VI, Section B of the Settlement, as approved by the June 12 Order, requires Transco, "[t]o the extent necessary to prevent Transco from over-collecting its costs", to make a limited Section 4 rate filing to adjust the cost of service, cost allocations, throughput and throughput mix underlying Transco's existing rates "coincident with the 'spin-down' of all or a portion of Transco's gathering or transmission (as currently functionalized) facilities."

On February 17, 1998, in Docket No. CP98–242–000, Transco filed for approval to abandon by sale to Williams Gas Processing-Gulf Coast Gathering Company, L.P. the Tilden/McMullen Gathering System. On May 4, 1999, the Commission issued an order approving the abandonment of certain limited gathering facilities (the Facilities) and permitting Transco one year to effectuate the spin-down. In compliance with the Settlement and the Commission's order, Transco proposes to effectuate the spin-down of the Facilities on April 1, 2000.

Transco states that it is serving copies of the instant filing to its affected customers, State Commissions and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–6888 Filed 3–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–114–000]

Trunkline Gas Company; Notice of Application

March 15, 2000.

Take notice that on March 9, 2000, Trunkline Gas Company (Trunkline), 5444 Westheimer Road, Houston, Texas 77056–5306, filed an application pursuant to Section 7(b) of the Natural Gas Act (NGA) and the Commission's Regulations thereunder, for an order permitting and approving the abandonment of 720 miles of mainline transmission facilities by transfer to CMS Trunkline Pipeline Holdings, Inc. (TPH), for conversion to refined petroleum products transportation service, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Any questions regarding this application should be directed to William W. Grygar, Vice President of Rates and Regulatory Affairs, 5444 Westheimer Road, Houston, Texas 77056–5306 at (713) 989–7000.

Specifically, Trunkline is requesting authorization to abandon approximately 720 miles of mainline facilities known as the 26-inch Line 100–1 by transfer to TPH,[1] and thereby reduce its certificated mainline capacity by 255 MDt/d, from the current level of 1,810 MDt/d to 1,555 MDt/d. Trunkline states that abandonment of these facilities is being proposed in response to the underutilization of Trunkline's system that exists on an annual basis and the excess capacity which exists in the Midwest region. Trunkline states that in the absence of vigorous discounting practices, the actual underutilization of its system would be substantially greater. Trunkline further states that the abandonment will have no adverse effect on the service needs of existing or future customers and will not affect Trunkline's ability to meet all of its firm service obligations. Trunkline states that the abandonment will allow Trunkline to redeploy these pipeline facilities to serve the public interest in another area of interstate commerce. Trunkline states that no adverse environmental impact will result from the proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before April 5, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to a participate as a party in any hearing therein must file a petition to intervene in accordance with the Commission's Rules.

[1] Trunkline states the TPH is a wholly-owned subsidiary of Trunkline.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no petition to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a petition for leave is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Trunkline to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–6884 Filed 3–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–76–000, et al.]

Black River Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

March 13, 2000.

Take notice that the following filings have been made with the Commission:

1. Black River Limited Partnership

[Docket No. EG00–76–000]

Take notice that on March 7, 2000, Black River Limited Partnership filed with the Federal Energy Regulatory Commission an amendment to the Application for Determination of Exempt Wholesale Generator Status.

Copies of the application have been served upon the New York Public Service Commission, the North Carolina Utilities Commission, the South Carolina Public Service Commission and the Securities and Exchange Commission.

Comment date: April 3, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. CinCap VII, LLC

[Docket No. EG00–113–000]

Take notice that on March 8, 2000, CinCap VII, LLC (CinCap VII), with its principal office at 1100 Louisiana Street, Suite 4950, Houston, Texas 77002, submitted with the Commission an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

CinCap VII states that it is a limited liability company duly organized and existing under the laws of the State of Delaware. CinCap VII will be engaged directly and exclusively in the business of owning and operating three natural gas-fired peaking generation combustion turbines consisting of 132 megawatts (when operating at summer conditions) located in Cadiz, Henry County, Indiana (the Cadiz Facility). The Cadiz Facility is expected to begin commercial operations in June 2000.

CinCap VII intends to operate the Cadiz Facility as a merchant plant and sell all energy and capacity generated by the Cadiz Facility at wholesale, subject to the jurisdiction of the Commission. CinCap VII will not make any retail sales, foreign or otherwise.

Comment date: April 3, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Dynegy Power Marketing, Inc.

[Docket No. ER94–968–031]

Take notice that on March 8, 2000, Dynegy Power Marketing, Inc. filed a quarterly report for the quarter ending December 31, 1999 for information only.

4. Cabrillo Power I LLC

[Docket No. ER00–1827–000]

Take notice that on March 7, 2000, Cabrillo Power I LLC filed a quarterly report for the quarter ending December 31, 1999.

Comment date: April 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. ComCap VII, LLC

[Docket No. ER00–1831–000]

Take notice that on March 8, 2000, CinCap VII, LLC (CinCap VII) submitted for approval CinCap VII's Rate Schedule FERC No. 1; a Code of Conduct; a request for certain blanket approvals, including the authority to sell electricity at market-based rates and reassign transmission capacity; and a request for waiver of certain Commission regulations.

CinCap VII is a limited liability company duly organized and existing under the laws of the State of Delaware and is qualified to do business in the State of Indiana. CinCap VII is a wholly-owned subsidiary of VMC Generating Co., a Texas general partnership owned on a 50/50 basis by CinCap VIII, LLC, an indirect wholly-owned subsidiary of Cinergy Corp., and Duke Energy Trenton, LLC, an indirect wholly-owned subsidiary of Duke Energy Corp. (Duke Energy).

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Quest Energy, L.L.C.

[Docket No. ER00–1832–000]

Take notice that on March 8, 2000, Quest Energy, L.L.C. (Quest) tendered for filing, pursuant to Rules 205 and 207 of the Federal Energy Regulatory Commission's (Commission) Rules of Practice and Procedure, 18 CFR 385.205 and 385.207, and Section 35.12 of the Commission's regulations, 18 CFR 35.12, an application for blanket authorizations and certain waivers under various regulations of the Commission, and for an order accepting its FERC Electric Rate Schedule No. 1 to be effective the earlier of May 8, 2000, or the date of a Commission order granting approval of this Rate Schedule.

Quest intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where Quest purchases power, including capacity and related services from electric utilities, qualifying facilities, and independent power producers, and resells such power to other purchasers, Quest will be functioning as a marketer. In Quest's marketing transactions, Quest proposes to charge rates mutually agreed upon by the parties. In transactions where Quest does not take title to the electric power and/or energy, Quest will be limited to the role of a broker and will charge a fee for its services. Quest is not in the business of producing nor does it contemplate acquiring title to any electric power transmission facilities.

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Arizona Public Service Company

[Docket No. ER00–1833–000]

Take notice that on March 8, 2000, Arizona Public Service Company (APS) tendered for filing a Service Agreement to provide Retail Network Integration Transmission Service under APS' Open Access Transmission Tariff to the Salt River Project Agricultural Improvement and Power District Merchant Group (Merchant Group).

A copy of this filing has been served on the Merchant Group and the Arizona Corporation Commission.

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. CinCap VIII, LLC

[Docket No. ER00–1834–000]

Take notice that on March 8, 2000, CinCap VIII, LLC (CinCap VIII) submitted for approval CinCap VIII's Rate Schedule FERC No. 1; a Code of Conduct; a request for certain blanket approvals, including the authority to sell electricity at market-based rates and reassign transmission capacity; and a request for waiver of certain Commission regulations.

CinCap VIII is a Delaware limited liability company and is a wholly owned subsidiary of Cinergy Capital & Trading, Inc., which, in turn, is an indirect, wholly-owned subsidiary of Cinergy Corp., a Delaware corporation that is a registered public utility holding company under the Public Utility Holding Company Act of 1935, as amended.

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Carolina Power & Light Company

[Docket No. ER00–1835–000]

Take notice that on March 8, 2000, Carolina Power & Light Company (CP&L) tendered for filing Service Agreements for Short-Term Firm Point-to-Point Transmission Service with El Paso Merchant Energy, L.P. and The Legacy Energy Group, LLC; and Service Agreements for Non-Firm Point-to-Point Transmission Service with El Paso Merchant Energy, L.P. and The Legacy Energy Group, LLC. Service to each Eligible Customer will be in accordance with the terms and conditions of Carolina Power & Light Company's Open Access Transmission Tariff.

CP&L is requesting an effective date of March 2, 2000 for each Agreement.

Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. The Cincinnati Gas & Electric Company

[Docket No. ER00–1836–000]

Take notice that on March 8, 2000, The Cincinnati Gas & Electric Company tendered a Notice of Cancellation of Service Agreement No. 21 under its Electric Tariff, First Revised Volume No. 1 for service under Rate WS–S to the City of Lebanon, Ohio.

Copies of the filing were served upon the affected customer and the Public Utilities Commission of Ohio.

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. FirstEnergy Corp. and Pennsylvania Power Company

[Docket No. ER00–1837–000]

Take notice that on March 8, 2000, FirstEnergy Corp. tendered for filing on behalf of itself and Pennsylvania Power Company, a Service Agreement for Network Integration Service and an Operating Agreement for the Network Integration Transmission Service under the Pennsylvania Electric Choice Program with ACN Power, Inc. pursuant to the FirstEnergy System Open Access Tariff. These agreements will enable the parties to obtain Network Integration Service under the Pennsylvania Electric Choice Program in accordance with the terms of the Tariff.

The proposed effective date under these agreements is March 1, 2000.

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Commonwealth Edison Company, Commonwealth Edison Company of Indiana

[Docket No. ER00–1838–000]

Take notice that on March 8, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd) filed to update Appendix A to Schedule 9 of ComEd's Power Sales and Reassignment of Transmission Rights Tariff (PSRT–1).

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Virginia Electric and Power Company

[Docket No. ER00–1839–000]

Service Agreement between Sonat Power Marketing L.P. and Virginia Power for Firm Point-To-Point Transmission Service dated October 7, 1997 and approved by the FERC in a letter order on January 2, 1998 under Docket No. ER98–671–000.

Service Agreement between Sonat Power Marketing L.P. and Virginia Power for Non-Firm Point-To-Point Transmission Service dated October 27, 1997 and approved by the FERC in a letter order on January 15, 1998 under Docket No. ER98–849–000.

Virginia Power respectfully requests an effective date of the termination of

February 18, 2000, as requested by El Paso Merchant Energy, L.P., successor to Sonat Power Marketing L.P.

Copies of the filing were served upon El Paso Merchant Energy, L.P., the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Arizona Public Service Company

[Docket No. ER00–1840–000]

Take notice that on March 8, 2000, Arizona Public Service Company (APS) tendered for filing a revised Contract Demand Exhibit for Southern California Edison (SCE) applicable under the APS–FERC Rate Schedule No. 120.

Copies of this filing have been served on SCE, the California Public Utilities Commission and the Arizona Corporation Commission.

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Otter Tail Power Company

[Docket No. ER00–1841–000]

Take notice that on March 6, 2000, Otter Tail Power Company (OTP) tendered for filing a Service Agreement between OTP and Northwestern Wisconsin Electric Co. The Service Agreement allows Northwestern Wisconsin Electric Co. to purchase capacity and/or energy under OTP's Coordination Sales Tariff.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Alliant Energy Corporate Services Inc.

[Docket No. ER00–1842–000]

Take notice that on March 9, 2000, Alliant Energy Corporate Services Inc. (ALTM) tendered for filing a signed Service Agreement under ALTM's Market Based Wholesale Power Sales Tariff (MR–1) between itself and NUI Energy Brokers, Inc. (NUI).

ALTM respectfully requests a waiver of the Commission's notice requirements, and an effective date of March 8, 2000.

Comment date: March 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph E

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–6931 Filed 3–20–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Applications Accepted for Filing and Soliciting Motions To Intervene and Protests

March 15, 2000.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

a. *Type of Applications:* New Major Licenses.

b. *Projects:* Soda Project No. 20–019, Grace-Cove Project No. 2401–007, and Oneida Project No. 472–017.

c. *Date filed:* September 27, 1999.

d. *Applicant:* PacifiCorp.

e. *Location:* On the Bear River in Caribou and Franklin Counties, Idaho. The projects are partially located on United States lands administered by the Bureau of Land Management.

f. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

g. *Applicant Contacts:* Randy Landolt, Managing Director, Hydro Resources, PacificCorp, 825 NE Multnomah Street, Suite 1500, Portland, OR 97232, (503) 813–6650, or, Thomas H. Nelson, 825 Multnomah Street, Suite 925, Portland, OR 97232, (503) 813–5890.

h. *FERC Contact:* Héctor Pérez, E-mail address hector.perez@ferc.fed.us, or (202) 219–2843.

i. *Deadline for filing motions to intervene and protest:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervener filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource energy.

j. *Status of environmental analysis:* This application is not ready for environmental analysis at this time.

k. *The existing Soda Project consists of:* (1) The 103-foot-high and 433-foot-long concrete gravity Soda Dam with a 114-foot-long spillway section; (2) the Soda Reservoir with a surface area of 1,100 acres, an active storage capacity of 16,300 acre-feet, and a maximum water surface elevation of 5,720 feet; (3) the Soda Powerhouse containing two units with a total installed capacity of 14 megawatts (MW); and (4) other appurtenances.

The existing Grace Development consists of: (1) A 51-foot-high and 180-foot-long rock filled timber crib dam that creates a 250-acre-foot usable storage capacity forebay; (2) a 26,000-foot-long flowline and surge tanks; and (3) a powerhouse with three units with total installed capacity of 33 MW. The Cove Department consists of: (1) a 26.5-foot-high and 141-foot-long conrete dam creating a 60-acre-foot capacity forebay; (2) a 6,125-foot-long concrete and wood flume; (3) a 500-foot-long steel penstock; and (4) a powerhouse with a 7.5-MW unit.

The existing Oneida Project consists of: (1) The 111-foot-high and 456-foot-long concrete gravity Oneida Dam; (2) the Oneida Reservoir with an active storage of 10,880 acre-feet and a surface area of 480 acres; (3) a 16-foot-diameter, 2,240-foot-long flowline; (4) a surge tank; (5) three 12-foot-diameter, 120-foot-long steel penstocks; (6) the Oneida Powerhouse and three units with a total installed capacity of 30 MW; and (7) other appurtenances.

l. Copies of the applications are available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). Copies are also available for inspection and reproduction at the address in item g above.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with

the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will notify all persons on the service list and affected resource agencies and Indian tribes. If any person wishes to be placed on the service list a motion to intervene must be filed by the specified deadline date herein for such motions. All resource agencies and Indian tribes that have official responsibilities that may be affected by the issues addressed in this proceeding, and persons on the service list will be able to file comments, terms and conditions, and prescriptions within 60 days of the date the Commission issues a notification letter that the application is ready for an environmental analysis. All reply comments must be filed with the Commission within 105 days from the date of that letter.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION to INTERVENE" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–6886 Filed 3–20–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Notice Soliciting Motions To Intervene and Protests, and Notice Soliciting Comments, Final Terms and Conditions, Recommendations and Prescriptions

March 15, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 2016–044.

c. *Date filed:* December 27, 1999.

d. *Applicant:* City of Tacoma.

e. *Name of Project:* Cowlitz River Hydroelectric Project.

f. *Location:* On the Cowlitz River, in Lewis County, Washington. About 5 acres are included within the Gifford Pinchot National Forest and about 59 acres are on lands owned by the Bureau of Land Management.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Toby Freeman, Tacoma Power, 3628 South 35th Street, Tacoma, WA 98411; (253) 502–8862.

i. *FERC Contact:* David Turner (202) 219–2844, Email: david.turner@ferc.fed.us.

j. *Deadline for filing interventions, protests, comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Brief Project Description:* The 462-megawatt (MW) project consists of the following: (1) 606-foot-high, 1,300-foot-long Mossyrock Dam and powerhouse containing two generating units with a combined capacity of 300 MW; (2) 11,830-acre Riffe Lake at maximum operating pool elevation of 778.5 feet; (3) 250-foot-high, 850-foot-long Mayfield Dam and powerhouse containing four generating units with a combined capacity of 162 MW; (4) 2,250-acre Mayfield Lake at maximum operating pool elevation of 425 feet; (5) 17.9 miles of 230-kilovolt transmission line; (6) Cowlitz Salmon Hatchery; (7) a 400-foot-long, 28-foot-high zoned earthen embankment that connects to a 320-foot-long, 12-foot-high concrete fish barrier at the Cowlitz Salmon Hatchery, known as Barrier Dam; (8) Cowlitz Trout Hatchery; (9) Mossyrock Park; (10) Taidnapam Park; and other associated facilities.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or motions to intervene must be received on or before the specified comment date for the particular application.

n. Filing and Service of Response Documents—The Commission is requesting final comments on the applicant's application and draft environmental assessment, final reply comments, final recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to Section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," "OR PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis; and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–6887 Filed 3–20–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6562–8]

Agency Information Collection Activities: Continuing Collection; Comment Request; Quality Assurance Specification and Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB): Quality Assurance Specification and Requirements, ICR Number 0866, OMB No. 2080–0033, current expiration date 08/31/2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 22, 2000.

ADDRESSES: Quality Staff (2811R), U.S. EPA, Washington, DC 20460. Comments will be accepted electronically at *quality@epa.gov*. The ICR may be obtained without charge by contacting the person listed below or by electronically downloading it from the following Internet site: http://es.epa.gov/ncerqa/qa/index.html.

FOR FURTHER INFORMATION CONTACT: Nancy Wentworth, Director, Quality Staff; 202–564–6830, Facsimile Number 202–565–2441; quality@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which apply for Federal financial assistance from EPA for proposed projects that involve environmentally-related measurements or data generation.

Title: ICR Number 0866, Quality Assurance Specification and Requirements, OMB Control No. 2080–0033, expiring 8/31/2000.

Abstract: This ICR covers the quality assurance (QA) paperwork burden that appears at 40 CFR 30.54, 40 CFR 31.45, and 40 CFR 35.260 and 35.6055. (These references may also be obtained at the Internet site listed above.) These are subsections from 40 CFR part 30—Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations, 40 CFR part 31—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and 40 CFR part 35—State and Local Assistance. The information collection activity involves the development and implementation of quality assurance practices consisting of policies, procedures, specifications, standards, and documentation sufficient to produce data of quality adequate to meet project objectives and to minimize loss of data due to out-of-control conditions or malfunctions. Specifically, this refers to the preparation of QA management and project plans. The quality system of the recipient of 40 CFR part 30 assistance must comply with the requirements of ANSI/ASQC E4, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs." A clarifying statement for all organizations receiving EPA financial assistance under 40 CFR part 31 and 40 CFR part 35 has been issued by the Office of Grants and Debarment. This clarifying statement defines Agency-wide criteria for meeting the requirements under the applicable CFRs and is consistent with Agency policy since 1988. It cites the ANSI/ASQC E4 as a national consensus standard that applies to all recipients. (This statement is also accessible through the Internet site listed above.) All QA submissions are reviewed and approved by an EPA certified project officer and/or a designated quality assurance officer.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The currently approved ICR estimated the burden for annual reporting and recordkeeping to be 85 hours each for 567 state and local respondents applying for assistance, and 70 hours each for 708 principal investigators who solicit assistance. The Agency burden for review of QA plans and preparation assistance to respondents was estimated at 17 hours each for the estimated 1,275 awards. This estimate included the time needed to review instructions, search existing data sources, gather and maintain the

data needed, and complete and review the collection of information.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 14, 2000.

Margaret N. Schneider,

Deputy Assistant Administrator, Office of Environmental Information.

[FR Doc. 00–6974 Filed 3–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6562–6]

Agency Information Collection Activities; OMB Responses

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notices.

SUMMARY: This document announces the Office of Management and Budget's (OMB) responses to Agency clearance requests, in compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at 260–2740, or email at farmer.sandy@epa.gov, and please refer to the appropriate EPA Information Collection Request (ICR) Number.

SUPPLEMENTARY INFORMATION:

OMB Responses to Agency Clearance Requests

OMB Approvals

EPA ICR No. 1395.04; Emergency Planning and Release Notification Requirements (EPCRA, Sections 302, 303, and 304); in 40 CFR part 355; was approved 01/21/2000; OMB No. 2050–0092; expires 01/31/2003.

EPA ICR No. 1814.02; National Health Protection Survey of Beaches; was approved 01/31/2000; OMB No. 2040–0189; expires 01/31/2003.

EPA ICR No. 0795.10; Notification of Chemical Exports—TSCA Section (12b); in 40 CFR part 707; was approved 01/31/2000; OMB No. 2070–0030; expires 01/31/2003.

EPA ICR No. 1899.01; Reporting and Recordkeeping Requirements for the Emission Guidelines for Hospital/Medical/Infectious Waste Incinerators; in 40 CFR part 60, subpart Ce; was approved 01/31/2000; OMB No. 2060–0422; expires 01/31/2003.

EPA ICR No. 1901.01; Emission Guidelines Reporting and Recordkeeping Requirements for Existing Small Municipal Waste Combustion (MWC) Units; in 40 CFR part 60, subparts B and BBBB; was approved 02/03/2000; OMB No. 2060–0424; expires 02/28/2003.

EPA ICR No. 1648.02; Control Technology Determination for Equivalent Emissions Limitations by Permit; in 40 CFR part 63, subpart B; was approved 02/03/2000; OMB No. 2060–0266; expires 11/30/2001.

EPA ICR No. 0328.08; Spill Prevention, Control, and Countermeasures (SPCC) Plans; in 40 CFR part 112; was approved 02/03/2000; OMB No. 2050–0021; expires 12/31/2000.

EPA ICR No. 1352.07; Community Right-to-Know Reporting Requirements under Sections 311 and 312 of the Emergency Planning and Community Right-to-Know Act (EPCRA); in 40 CFR part 370; was approved 02/04/2000; OMB No. 2050–0072; expires 08/31/2001.

EPA ICR No. 1891.02; NESHAP for Source Category: Publicly Owned Treatment Works; in 40 CFR part 63, subpart VVV; was approved 02/04/2000; OMB No. 2060–0428; expires 02/28/2003.

EPA ICR No. 0111.09; National Emission Standard for Asbestos; in 40 CFR part 61, subpart M; was approved 02/09/2000; OMB No. 2060–0101; expires 02/28/2003.

EPA ICR No. 0246.07; Contractor Cumulative Claim and Reconciliation; was approved 02/02/2000; OMB No. 2030–0016; expires 02/28/2003.

EPA ICR No. 1037.06; Oral and Written Purchase Orders; was approved 02/02/2000; OMB No. 2030–0007; expires 02/28/2003.

EPA ICR No. 1039.09; Monthly Progress Reports; was approved 02/02/2000; OMB No. 2030-0005; expires 02/28/2003.

EPA ICR No. 1893.02; Federal Emission Guidelines for Existing Municipal Solid Waste Landfills; in 40 CFR part 62, subpart Cc; was approved 02/02/2000; OMB No. 2060–0430; expires 02/28/2003.

EPA ICR No. 1925.01; RCRA Section 3007 Questionnaire for the Paint Manufacturing Industry; was approved 02/03/2000; OMB No. 2050–0168; expires 06/30/2001.

EPA ICR No. 1900.01 NSPS for Small Municipal Waste Combustors—Reporting and Recordkeeping Requirements; in 40 CFR part 60, subpart AAAA; was approved 02/01/2000; OMB No. 2060–0423; expires 02/28/2003.

EPA ICR No. 1906.01; Agricultural Health Study: Pesticide Exposure Study; was approved 02/09/2000; OMB No. 2080–0063; expires 02/28/2003.

EPA ICR No. 1541.06; NESHAP for Benzene Waste Operations; in 40 CFR part 61, subpart FF; was approved 02/14/2000; OMB No. 2060–0183; expires 02/28/2003.

EPA ICR No. 1088.09; NSPS for Industrial-Commercial-Institutional Steam Generating Units; in 40 CFR part 60, subpart Db; was approved 02/15/2000; OMB No. 2060–0072; expires 02/28/2003.

EPA ICR No. 1055.06; NSPS for Kraft Pulp Mills; in 40 CFR part 60, subpart BB; was approved 02/15/2000; OMB No. 2060–0021; expires 02/28/2003.

EPA ICR No. 1052.06; NSPS for Fossil-Fuel-Fired Steam Generating Units; in 40 CFR part 60, subpart D; was approved 02/15/2000; OMB No. 2060–0026; expires 02/28/2003.

OMB Disapproval

EPA ICR No. 1768.02; Collection of Impact Data on Technical Information Request for Generic Clearance, Design for the Environment (DFE); OMB No. 2070–0152; on 02/11/2000 OMB disapproved this collection.

Comments Filed

EPA ICR No. 1884.01; Inventory Update Rule Amendments (Proposed Rule); on 01/04/2000 OMB filed comment.

EPA ICR No. 1870.01; Management Standards for Cement Kiln Dust Waste—Reporting and Recordkeeping Requirements; in 40 CFR part 259; on 01/14/2000 OMB filed comment.

EPA ICR No. 1363.08; Toxic Chemical Release Reporting, Recordkeeping, Supplier Notification, and Petition under Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (Proposed Rule), OMB No. 2070–0093; on 01/21/2000; OMB filed comment.

EPA ICR No. 1927.01; Reporting and Recordkeeping Requirements for the Emission Guidelines for Existing Commercial and Industrial Solid Waste Incineration (CISWI) Units; on 02/02/2000 OMB filed comment.

EPA ICR No.1926.01; Reporting and Recordkeeping Requirements for Standards of Performance for New Stationary Sources: Commercial and Industrial Solid Waste Incineration (CISWI) Units; on 02/02/2000 OMB filed comment.

Extensions of Expiration Dates

EPA ICR No. 1783.01; National Emission Standards for Hazardous Air Pollutants for Flexible Polyurethane Foam Production; in 40 CFR part 63, subpart III; OMB No. 2060–0357; on 01/18/2000 OMB extended the expiration date through 04/30/2000.

EPA ICR No. 0877.05; Environmental Radiation Ambient Monitoring System (ERAMS); OMB No. 2060–0015; on 01/18/2000 OMB extended the expiration date through 05/31/2000.

EPA ICR No. 1080.09; National Emission Standards for Hazardous Air Pollutants Benzene Emissions from Benzene Storage Vessels, and Coke By-Product Recovery Plants; in 40 CFR part 61, subpart L and Y; OMB No. 2060–0185; on 01/14/2000 OMB extended the expiration date through 07/31/2000.

EPA ICR No. 0095.10; Pre-certification and Testing Exemption Reporting and Recordkeeping Requirements; in 40 CFR part 89, subparts G and J; OMB No. 2060–0007; on 01/31/2000 OMB extended the expiration date through 07/31/2000.

EPA ICR No. 1428.04; Trade Secrets for Community Right-to-Know and Emergency Planning—EPCRA Section 322; in 40 CFR part 350; OMB No. 2050–0078; on 02/04/2000 OMB extended the expiration date through 05/31/2000.

EPA ICR No. 1415.03; NESHAP for Dry Cleaning Facilities/Perchloroethylene (PCE); in 40 CFR part 63, subpart M; OMB No. 2060–0234; on 02/01/2000 OMB extended the expiration date through 06/30/2000.

Dated: March 14, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–6976 Filed 3–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6562–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, National Emissions Standards for Coke Oven Batteries

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: National Emissions Standards for Coke Oven Batteries, part 63, subpart L; OMB No. 2060–0253; EPA No. 1362.04.; expiration date is April 30, 2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 20, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-mail at farmer.sandy@epamail.epa.gov or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1362.04. For technical questions about the ICR, please contact: Maria T. Malave, (202) 564–7027.

SUPPLEMENTARY INFORMATION:

Title: National Emissions Standards for Coke Oven Batteries, Part 63, Subpart L; OMB No. 2060–0253; EPA No. 1362.04; expiration date is April 30, 2000. This is a request for a revision a currently approved collection.

Abstract: These standards apply to owners or operators of by-product and non-recovery coke oven batteries, whether existing, new, reconstructed, rebuilt or restarted. It also applies to all batteries using the conventional by-product recovery, the nonrecovery process, or any new recovery process. Applicability dates vary depending on the emission limitation the affected facility is subject. The National Emissions Standards for Coke Oven Batteries were proposed on December 4, 1992 and promulgated on October 27, 1993. Under this rule, all existing batteries must choose a compliance track. Three compliance approaches are available under the rule: the "MACT (Maximum Achievable Control Technology) track," the "LAER (Lowest Achievable Emission Rate) extension track," and straddling both tracks (until January 1, 1998).

Owners or operators of coke oven batteries, whether existing, new, reconstructed, rebuilt or restarted, are required to comply with the following monitoring, recordkeeping and reporting requirements:

Monitoring Requirements Include:

1. Daily monitoring of coke oven batteries by a certified observer for each emission point and calculate the 30-run rolling average.

2. Daily performance tests for each coke oven battery are needed to determine compliance with the visible emission limitations for coke oven doors, topside port lids, offtake systems, and charging operations.

3. Monitoring of pollution control equipment operation and maintenance (*e.g.*, flare system).

4. Daily inspection of the collecting main for leaks according to Method 303.

Recordkeeping Requirements Include:

1. Maintain records of the startup, shutdown, or malfunction plan developed under section 63.310.

2. Maintain records of the coke oven emission control work practice plan developed under section 63.306.

3. Maintain records of maintenance and inspection on leaks for by-product coke oven batteries.

4. Maintain records of daily operating parameters and design characteristics for nonrecovery coke oven batteries.

5. Maintain records of bypass/bleeder stack flare system or an approved alternative control device.

6. Maintain records onsite for at least a year and must thereafter be accessible within three working days upon the Administrator's request.

Reporting Requirements Include:

1. Submit one-time notifications to elect a compliance track and to certify initial compliance.

2. If applicable, respondents also would submit one-time notifications or requests for constructing a new, brownfield, or padup rebuild by-product coke oven battery using a new recovery technology; restarting a cold-idle battery shutdown prior to November 15, 1990; obtaining an exemption from control requirements for bypass/bleeder stacks by committing to permanent closure of a battery or using an equivalent alternative control system for the stacks; and obtaining an alternative standard for coke oven doors on a battery equipped with a shed.

3. If a malfunction occurred, respondents must notify the enforcement agency and follow up with a written report. A report also would be required if coke oven gas were vented

through a bypass/bleeder stack and not flared as required under the rule.

4. Report for the venting of coke oven gas other than through a flare system.

5. Submit semiannual compliance certifications.

Based on recorded and reported information, EPA and states can identify compliance problems and what records or processes should be inspected at the plant. The records the plants maintain help indicate whether plants are in compliance with the standard, reveal misunderstanding about how the standard is to be implemented, and indicate to EPA whether plant personnel are operating and maintaining their process equipment properly.

Reporting and recordkeeping requirements on the part of the respondent are mandatory under sections 112 and 114 of the Clean Air Act as amended. All information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on August 16, 1999; no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 1,804 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of By-Product & Non-Recovery Coke Oven Batteries.

Estimated Number of Respondents: 25.

Frequency of Response: Semiannual.

Estimated Total Annual Hour Burden: 104,659 hours.

Estimated Total Annualized Capital and O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1362.04 and OMB No. 2060–0253 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania, Ave., NW., Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

Dated: March 14, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–6977 Filed 3–20–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–140284; FRL–6497–8]

Access to Confidential Business Information by Chemical Abstract Services

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor Chemical Abstract Services (CAS) and its subcontractor TMC MicroImage, Inc., both of Columbus, Ohio, access to information which has been submitted to EPA under sections 5 and 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA occurred as a result of an approved waiver dated February 28, 2000, which requested granting CAS and TMC immediate access to TSCA CBI. This waiver was necessary to allow CAS and TMC to assist the Office of Pollution Prevention and Toxics (OPPT) in microfilming and processing TSCA CBI materials.

FOR FURTHER INFORMATION CONTACT: For General Information Contact: Barbara Cunningham, Director, Office of Program Management and Evaluation (7401), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460, telephone number: (202) 554–1404; e-mail: TSCA-Hotline@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Notice Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to "those persons who are or may be required to conduct testing of chemical substances under the Toxic Substances Control Act (TSCA)." Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

Electronically. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

III. What Action is the Agency Taking?

Under contract number 68–W5–0015, contractor CAS and its subcontractor TMC, both of Columbus, Ohio, will assist the Office of Pollution Prevention and Toxics (OPPT) in microfilming and processing of TSCA CBI materials.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W5–0015, CAS and TMC will require access to CBI submitted to EPA under sections 5 and 8 of TSCA to perform successfully the duties specified under the contract.

CAS and TMC personnel will be given access to information submitted to EPA under sections 5 and 8 of TSCA. Some of the information may be claimed or determined to be CBI. In a previous notice published in the **Federal Register** of February 24, 1998 (63 FR 9229) (FRL–5771–5), CAS and TMC were authorized access to TSCA CBI submitted to EPA under sections 5 and 8(b) of TSCA.

EPA is issuing this notice to inform all submitters of information under sections 5 and 8 of TSCA that EPA may provide CAS and TMC access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at either CAS' Columbus, Ohio facility or the subcontractor may take TSCA CBI materials to its facility for the purpose of microfilming, provided the transfer of materials is done so only under the direct supervision of a CAS official authorized for TSCA CBI access and that all TSCA CBI materials be returned daily to CAS' facility.

CAS and TMC will be authorized access to TSCA CBI at their facilities under the EPA *TSCA Confidential Business Information Security Manual.* Before access to TSCA CBI is authorized at CAS and TMC sites, EPA will perform the required inspection of its facilities and ensure that the facilities are in compliance with the Manual.

Upon completing review of the CBI materials, CAS will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until June 30, 2000.

CAS and TMC personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: March 13, 2000.

Allan S. Abramson,

Director, Information Management Division, Pollution Prevention and Toxics.

[FR Doc. 00–6979 Filed 3–20–00 8:45 am]

BILLING CODE 6560–50–F

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

RIN 3046–AA45

Agency Information Collection Activities: Proposed Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension of the expiration date without change the existing collection requirements under 29 CFR part 1602, Recordkeeping and Reporting Requirements under Title VII and the ADA. The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before May 22, 2000.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW, Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number of the FAX received is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment.

Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4078 (voice) or (202).663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW, Washington, DC 20507 between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Deputy Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel or Stephanie D. Garner, Senior Attorney, at (202) 663–4670 or TDD (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces Title VII of the Civil Rights Act of 1964 which prohibits employment discrimination on the basis of race, color, religion, national origin or sex and Title I of the ADA, which prohibits employment discrimination against qualified individuals with disabilities. Sections 709(c) of Title VII and 107(a) of the ADA authorize the EEOC to issue recordkeeping regulations that are deemed reasonable, necessary or appropriate to the enforcement of the Acts. EEOC has promulgated recordkeeping regulations under Title VII and the ADA. The EEOC seeks extension without change of the information collection requirements contained in the recordkeeping regulations.

Collection Title: Recordkeeping and Reporting under Title VII and the ADA.

OMB Control Number: 3046–0040.

Description of Affected Public: Employers with 15 or more employees are subject to Title VII and the ADA.

Responses: 627,000.

Reporting Hours: One.

Federal Cost: None.

Number of Forms: None.

Abstract: Section 709(c) of Title VII, 42 U.S.C. 2000e–8(c), and section 107(a) of the ADA, 42 U.S.C..12117, require the Commission to establish regulations pursuant to which employers subject to those Acts shall make and preserve certain records to assist the EEOC in assuring compliance with the Acts' nondiscrimination requirements in employment. The Commission requires, in 29 CFR Part 1602, that any personnel record made or kept by an entity must be maintained for one year or until the later disposition of a charge or enforcement proceeding.

This is a recordkeeping requirement. Any of the records maintained which are subsequently disclosed to the EEOC during an investigation are protected from public disclosure by the confidentiality provisions of sections 706(b) and 709(e) of Title VII and section 107(a) of the ADA.

Burden Statement: There will be no increased burden on employers. All employers subject to Title VII are subject to the ADA, and the same EEOC records retention requirements are applicable to both.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 5, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who

are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Dated: March 9, 2000.

For the Commission.

Ida L. Castro,

Chairwoman.

[FR Doc. 00–6460 Filed 3–20–00; 8:45 am]

BILLING CODE 6570–01–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 14, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 22, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0580.

Title: Limits on Carriage of Vertically Integrated Programming—Section 76.504 and 76.1710.

Form Number: None.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 1,500.

Estimated Time Per Response: 15 hours.

Total Annual Burden: 22,500 hours.

Total Annual Costs: $7,500.

Needs and Uses: The records are to be made available to members of the public, local franchising authorities and the Commission on reasonable notice and during regular business hours. The records will be reviewed by local franchising authorities and the Commission to monitor compliance with channel occupancy limits in respective local franchise areas.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6876 Filed 3–20–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

March 14, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 22, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, Room 1 A–804, 445 Twelfth Street, SW, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0569.

Title: Commercial Leased Access Dispute Resolution—Section 76.975.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 60.

Estimated Time Per Response: 2–10 hours.

Frequency of Response: On occasion filing requirement.

Total Annual Burden: 1,320 hours.

Total Annual Costs: $69,000.

Needs and Uses: The information will be used by leased access programmers and will be reviewed by the Commission to resolve leased access disputes.

OMB Control Number: 3060–0563.

Title: Change in Status of Cable Operator—Section 76.915.

Form Number: Not applicable.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit entities.

Number of Respondents: 70.

Estimated Time Per Response: 13 hours.

Frequency of Response: On occasion filing requirement.

Total Annual Burden: 950 hours.

Total Annual Costs: $450.

Needs and Uses: The information is used by the Commission and LFAs to examine potential changes in the regulatory status of cable systems resulting from the presence of effective competition in the systems' franchise areas.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6877 Filed 3–20–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) being Reviewed by the Federal Communications Commission

March 14, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 20, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1-C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0581.

Title: Section 76.503, National Subscriber Limits.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 10 respondents; 20 responses.

Estimated Time Per Response: 1 hour.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 20 hours.

Total Annual Cost: $800.

Needs and Uses: Section 76.503(g) (formerly section 76.503(c)), states that "prior to acquiring additional multichannel video-programming providers, any cable operator that serves 20% or more of multichannel video-programming subscribers nationwide shall certify to the Commission, concurrent with its applications to the Commission for transfer of license at issue in the acquisition, that no violation of the national subscriber limits prescribed in this section will occur as a result of such acquisition."

The certification filings under this rule section will be used by the Commission staff to ensure that cable operators do not violate the 30 percent share rule in their acquisitions of additional multi-channel programming providers. Section 76.503, Note 1, certification filings will be used by the Commission to verify that limited partners who so certify are not involved in management or operations of the media-related activities of the partnership.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6947 Filed 3–20–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

March 13, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 20, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Edward C. Springer, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via internet at edward.springer@omb.eop.gov, and Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley at 202–418–0214 or via internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: *The Commission has requested emergency OMB review of this collection with an approval by March 17, 2000.*

OMB Control Number: 3060–XXXX.

Type of Review: New Collection.

Title: Survey to Provide Information on Historical Participants in Broadcast and Wireless Licensing by the FCC and Secondary Market, 1950 to the Present.

Form No.: N/A.

Respondents: Individuals or households; business or other for-profit.

Number of Respondents: 150.

Estimated Time Per Response: 1.5 hours.

Frequency of Response: One time reporting requirement.

Total Annual Burden: 225 hours.

Total Annual Cost: N/A.

Needs and Uses: The Commission requests emergency OMB review and

approval by March 17, 2000, for a survey that will be used to provide the basis for the FCC's investigation that seeks to provide a historical perspective on what market barriers, if any, are faced by small, women- and minority-owned businesses in the acquisition, sale, or transfer of FCC broadcast and wireless licenses.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–6878 Filed 3–20–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Federal Emergency Management Agency, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed information collections. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)), this notice seeks comments concerning proposed collection of information Survey of Contractor Responsibility.

SUPPLEMENTARY INFORMATION: This information collection is required by the Federal Acquisition Regulation Part 9, Contractor Qualifications to make a determination of contractors responsibility prior to the awarding of Government Contracts. The Contacting officer must make a determination that the contractor has a satisfactory record of integrity, business ethics and financial resources to complete the job.

Collection of Information

Title: Survey of Contractor Responsibility.

Type of Information Collection: Reinstatement of a previously approved collection.

OMB Number: 3067–0181.

Form Numbers: 40–25.

Abstract: FEMA Form 40–25, Survey of Contractor Responsibilities is part of an evaluation process of proposals or offers received by FEMA's Disaster Contracting Officer. Data is used by the Acquisition Management Staff to determine responsibility, adequate financial resources, performance record and a satisfactory record of integrity and business ethics. In the event of contractual problems the information on the form may be turned over to the General Accounting Office, FEMA's Office of Inspector General and the legal office of the Department of justice.

Affected Public: Individuals and households, small business organizations

Number of Respondents: 150.

Frequency of Response: On occasion.

Hours per Response: 2 hours.

Estimated Total Annual Burden Hours: 250

Estimated Cost. $11,250.

COMMENTS: Written comments are solicited to (a) evaluate whether the proposed data collection is necessary for the proper performance of the agency, including whether the information shall have practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) enhance the quality, utility, and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses. Comments should be received within 60 days of the date of this notice.

ADDRESS: Interested persons should submit written comments to Muriel B. Anderson, FEMA Information Collections Officer, Federal Emergency Management Agency, 500 C Street, SW, Room 316, Washington, DC 20472. Telephone number (202) 646–2625, FAX number (202) 646–3524, e-mail addressmuriel.anderson@fema.gov.

FOR FURTHER INFORMATION CONTACT: Contact H. Robert Weiss, Acting Director, Grants and Acquisition Support Division, Office of Financial Management (202) 646–3748 for additional information. Contact Ms. Anderson at (202) 646–2625 for copies of the proposed collection.

Mike Bozzelli,

Acting Director, Program Services Division, Operations Support Directorate.

[FR Doc. 00–6986 Filed 3–20–00; 8:45 am]

BILLING CODE 6718–01–P

FEDERAL TRADE COMMISSION

[File No. 991 0237]

Rhodia, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 13, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., N.W., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Robert Tovsky, FTC/S–3105, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2634.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 14, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Rhodia, Donau Chemie AG ("Donau"), and Albright & Wilson PLC ("A&W") (collectively "respondents"). The Consent Agreement is intended to resolve anticompetitive effects stemming from Rhodia's proposed acquisition of A&W. The Consent Agreement includes a proposed Decision and Order (the "Order"), that would require Rhodia to divest A&W's pure phosphoric acid business to Potash Corp. of Saskatchewan ("PCS"). For the last several years, A&W and PCS have been partners in a phosphates manufacturing joint venture (the "Joint Venture"), which includes, among other assets, a pure phosphoric acid production facility in Aurora, North Carolina, and in phosphates manufacturing plant in Cincinnati, Ohio. The Consent Agreement also includes an Order to Maintain Assets that requires respondents to preserve the assets they are required to divest as a viable, competitive, and ongoing operation until the divestiture is achieved.

The Order, if finally issued by the Commission, would settle charges that Rhodia's proposed acquisition of A&W may have substantially lessened competition in the United States market for pure phosphoric acid. The Commission has reason to believe that Rhodia's proposed acquisition of A&W would have violated section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act. The proposed complaint, described below, relates the basis for this belief.

The proposed Order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the agreement and comments received and decide whether to withdraw its acceptance of the Consent Agreement or make final the proposed Order.

According to the Commission's proposed complaint, the relevant line of commerce in which to analyze the effects of Rhodia's proposed acquisition of A&W is pure phosphoric acid, and the relevant geographic market is the United States. Pure phosphoric acid is used as an input into a wide variety of consumer of industrial products, ranging from cola beverages to cleaning compounds and metal treatments. The proposed complaint alleges that the pure phosphoric acid market in the United States already is highly concentrated, and that the proposed acquisition of A&W by Rhodia would increase concentration in that market, as measured by the Herfindahl-Hirschman Index, by over 600 points, to a level close to 3000. The Commission's complaint further notes that Rhodia and A&W currently employ the low-cost solvent extraction process to produce pure phosphoric acid.

The proposed complaint also alleges that entry into the relevant market would not be timely, likely, or sufficient to deter or offset adverse effects of the acquisition on competition. Entry is difficult in this market because of the length of time it would take to build new construction facilities and enter the market; and because of the large minimum efficient scale of new production facilities, which would require a new entrant to sell large volumes of pure phosphoric acid into the North American market, driving down market prices to a level that would render new entry unprofitable. Significant expansion by smaller producers also is unlikely.

The proposed complaint alleges that Rhodia's proposed acquisition of A&W would lessen competition by making coordinated interaction among the remaining producers more likely. The complaint describes how Rhodia's documents project that the combination of Rhodia and Albright & Wilson would lead to higher prices for pure phosphoric acid.

The proposed Order is designed to remedy the anticompetitive effects of the acquisition in the United States market for pure phosphoric acid, as alleged in the complaint, by requiring the divestiture to PCS of A&W's United States pure phosphoric acid business, including A&W's interest in the Joint Venture, as well as joint venture manufacturing assets, including the Aurora pure phosphoric acid plant and the Cincinnati plant. The Order would also require respondents to provide PCS with technology A&W has developed for manufacturing pure phosphoric acid and for using it in certain applications. PCS would be able to use that technology to build pure phosphoric acid plant both within and outside of the United States, and to license the technology to other firms that sought to build pure phosphoric acid plants. The proposed Order would also require respondents to divest other assets related to A&W's pure phosphoric acid business, including customer lists, contracts, and other intangible assets. The proposed divestiture does not require divestiture of A&W's pure phosphoric acid plant in Mexico, which does not export pure phosphoric acid to customers in the United States. A&W's Mexican plant produces pure phosphoric acid used primarily in home laundry detergents in Mexico, an application that no longer exists in the United States.

PCS, based in Saskatoon, Saskatchewan, is the world's third-largest producer of phosphoric acid for fertilizer. It also produces other fertilizer materials such as nitrogen and potash. PCS entered the phosphates business in 1995, through its acquisition of Texasgulf. A publicly-traded Canadian company, PCS in 1998 had an operating income of $446 million and a net income of $261 million on sales of $2.3 billion. PCS mines phosphate rock at Aurora, North Carolina, and also produces "green" phosphoric acid at that site. Slightly over 10% of PCS's green acid production at Aurora is used as a feedstock for the manufacture of pure phosphoric acid.

If the Commission, at the time that it accepts the Order for public comment, notifies respondent that it does not approve of the proposed divestiture to PCS, or the manner of the divesture, the proposed Order provides that respondents would have 120 days to divest the A&W pure phosphoric acid business to a different acquirer. If respondents did not complete the divestiture in that period, a trustee would be appointed.

The proposed Order to Maintain Assets that is also included in the Consent Agreement requires that respondents preserve the A&W assets they are required to divest as a viable and competitive operation until those assets are transferred to the Commission-approved acquirer. It requires that respondents to maintain the viability and competitiveness of the assets, and to conduct the A&W pure phosphoric acid business in the ordinary course of business. Furthermore, the Order to Maintain Assets includes an obligation on respondents to build and maintain a sufficient inventory of pure phosphoric acid to ensure there is no shortage of supply during the period that the business is being transferred to the Commission-approved acquirer. The Order to Maintain Assets also requires respondents to provide necessary support services and maintain an adequate workforce for the A&W pure phosphoric acid business.

The Consent Agreement requires respondents to provide the Commission, within thirty (30) days of the date the Agreement is signed, with an initial report setting forth in detail the manner

in which respondents will comply with the provisions relating to the divestiture of assets. The proposed Order further requires respondents to provide the Commission with a report of compliance with the Order within thirty (30) days following the date the Order becomes final and every thirty (30) days thereafter until they have complied with the terms of the Order.

The purpose of this analysis is to facilitate public comment on the proposed Consent Agreement and the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement or the proposed Order or in any way to modify the terms of the Consent Agreement or the proposed Order.

By direction of the Commission.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mozelle W. Thompson

In the matter of *Rhodia*, staff has presented to the Commission a complaint and consent order that would settle the section 7, Clayton Act and section 5, Federal Trade Commission Act concerns raised by Rhodia's acquisition of Albright & Wilson plc from Donau Chemie AG. The proposed complaint narrowly defines the relevant market for pure phosphoric acid (PPA) as within the boundaries of the United States. For the following reasons, I disagree.

The North American PPA market has operated in an oligopolistic manner for the past twenty years or more. The major North American competitors have successfully engineered the highest PPA prices in the world through a variety of actions, including signaling prices, retaliating selectively to enforce high prices, controlling imports through agreements with a foreign supplier, and eliminating domestic competitors through acquisition. Rhodia, a significant member of the North American oligopoly, now proposes to acquire Albright & Wilson. I believe such an acquisition would allow Rhodia to:

(1) Reinforce its world-wide dominant position among phosphates producers;

(2) Protect PPA prices and market share in North America; and

(3) Position itself to have the capacity to enforce market discipline in the North American market.

Evidence of Rhodia's view of the acquisition's impact on the North American market alone leads me to believe that the geographic scope of the PPA product extends to all of North America, thus including Albright & Wilson's Mexican plant in the market. Other evidence, however, also demonstrates that North America is the relevant market. Accordingly, the Commission should have fully considered ordering the sale of Albright & Wilson's interests in both of its North American PPA plants to Potash Corporation and/or another purchaser not saddled with the incentives and history Rhodia carries.

Shipment Decisions and the Scope of the Geographic Market

The complaint apparently limits the scope of the geographic market because Albright & Wilson, the owner of a Mexican PPA plant and part owner of a North Carolina plant, does not currently ship Mexican PPA into the United States even though the evidence convinces me that the Mexican capacity could be used to supply customers in the United States. Although this private business decision from a multi-plant supplier creates a shipment pattern that superficially supports finding a United States PPA market, one principle of geographic market analysis is that competition among geographically differentiated producers may be linked indirectly by the customers they can economically serve.

Despite the decision not to ship PPA into the United States from the Mexican plant, North American capacity is competitively linked—and North American PPA suppliers compete—because the Mexican plant's PPA is sold to customers in Mexico and Canada that U.S. domestic plants would otherwise supply. Moreover, Albright & Wilson's joint venture plant, as well as other competitors' U.S. plants, undoubtedly serve customers that Albright & Wilson's Mexican plant would otherwise serve, but for Albright & Wilson's decision concerning which of its plants would serve which North American customers.

Divestiture Policy and the Adequacy of the Ordered Relief

As a routine starting point, the Commission's ongoing policy concerns about merger relief generally leads us to consider requiring the complete divestiture of either one of the merging parties' overlapping businesses in the relevant market. This divestiture policy limits the potential adverse market consequences by maintaining the pre-acquisition market structure and by maximizing the potential that the purchaser would be viable and competitive.

I am concerned that we have not adhered to this policy here, where there is significant evidence that the market is acting noncompetitively, as well as compelling evidence supporting a challenge of the proposed acquisition. Rhodia is the dominant phosphates producer in the world and it will become—even taking into account the majority's relief—the leader in the North American PPA market. Thus, Rhodia, through this acquisition, would gain additional North American capacity that could be used to enforce higher prices.

Although the relief set forth in the consent order—which requires Rhodia to sell the current Albright & Wilson joint venture interest in the North Carolina plant—does limit the potential adverse market impact, I still am concerned that the relief does not go far enough. In looking forward, if we allow Rhodia to acquire the Mexican plant and become the competitor controlling the greatest amount of capacity in North America, it could leverage the Mexican plant's capacity to discipline competitors' pricing. Thus, a settlement that allows Rhodia to become the North American market leader by acquiring Albright & Wilson's interest in either of its two North American plants should be fully and cautiously scrutinized by the Commission to determine whether further relief is warranted. By alleging a United States geographic market here, the majority has unfortunately isolated itself from a full consideration of the appropriate divestiture and, when evaluating future possible PPA plant acquisitions, the Commission would face the additional burden of justifying a market redefinition.

One could argue that Rhodia's ownership of the Mexican plant, while providing it the capacity to attain the leading position in North America, ironically may well slightly improve the market concentration data. But the limited evidence before me suggests that the majority neither fully explored nor evaluated the consequences of this concentration data or the options available to the Commission. These options include ordering the sale of all of the Albright & Wilson assets to Potash, a North American-only competitor, or ordering the sale of the joint venture interest in the North Carolina plant to Potash and the Mexican plant to another independent purchaser. These options—when evaluated with the limited information presented to the Commission—appear no worse than allowing Rhodia to own the Mexican plant, and, in fact, either of these options might prove superior to the majority's relief.

Thus, by basing a complaint on a narrow United States market and avoiding direct confrontation of the issue whether Rhodia should be allowed to purchase the Mexican plant, the majority permits Rhodia to acquire additional North American capacity and perhaps ensures that the PPA market will act noncompetitively in the future. In my view, the majority's unwillingness to make a minor correction now could squander a valuable opportunity to protect North American PPA consumers.

[FR Doc. 00–6988 Filed 3–20–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Notice of a Cooperative Agreement With the National Minority AIDS Council

AGENCY: Office of the Secretary, Office of Minority Health, HHS.

ACTION: Notice of a cooperative agreement with the National Minority AIDS Council.

The Office of Minority Health (OMH), Office of Public Health and Science, announces its intent to continue support of the umbrella cooperative agreement with the National Minority AIDS Council (NMAC). This cooperative agreement will continue the broad programmatic framework in which specific projects can be supported by various governmental agencies during the project period.

The purpose of this cooperative agreement is to assist NMAC in expanding and enhancing its activities relevant to HIV prevention, services, treatment, and research in racial and ethnic minority populations, with the ultimate goal of improving the health status of minorities and disadvantaged people.

The OMH will provide technical assistance and oversight as necessary for the implementation, conduct, and assessment of the project activities. On an as-needed basis, OMH will assist in arranging consultation from other government agencies and non-government agencies.

Authority: This cooperative agreement is authorized under Section 1707(e)(1) of the Public Health Service Act, as amended.

Background

Assistance will continue to be provided to NMAC. During the last 3 years, NMAC has successfully demonstrated the ability to work with health agencies on activities relevant to HIV prevention, services, treatment, and research in racial and ethnic minority populations, with the ultimate goal of improving the health status of minorities and disadvantaged people. The NMAC is uniquely qualified to continue to accomplish the purposes of this cooperative agreement because it has the following combination of factors:

- It has developed, expanded, and managed an infrastructure to coordinate and implement various educational programs within local communities and organizations that deal extensively with HIV in each of the four racial and ethnic minority populations served by OMH. The Council established national initiatives, e.g., conferences, public policy education programs (including policy forums), technical assistance programs, and publications (including newsletters, action alerts and training manuals), that provide a foundation upon which to develop, promote, and manage HIV-related education and health related programs aimed at preventing and reducing unnecessary morbidity and mortality rates among racial and ethnic minority populations.
- It has established itself and its members as a national association with professionals who serve as leaders and experts in planning, developing, implementing, promoting, and evaluating HIV-related education and policy campaigns, both nationally and locally, aimed at reducing the impact of HIV in minority communities.
- It has developed a base of critical knowledge, skills, and abilities related to serving minority individuals and organizations with a range of HIV-related health and social problems. Through collective efforts of its members, community-based organizations, and volunteers, NMAC has demonstrated (1) the ability to work with minority and non-minority organizations, the Federal Government, academic institutions, and health groups on mutually beneficial education, research, and health endeavors relating to the goal of health promotion and disease prevention among racial and ethnic minority populations; (2) the national leadership necessary to focus the nation's attention on minority-related HIV issues; and (3) the leadership needed to assist health-care professionals to work more effectively with racial/ethnic minority communities.
- It has developed a national network of individuals; community-based organizations; and state, regional, and national health and civil rights organizations committed to addressing the HIV prevention, service, treatment, and research needs of individuals affected and infected by HIV and AIDS.

This cooperative agreement will be continued for an additional five-year project period with 12-month budget periods. Depending upon the types of projects and availability of funds, it is anticipated that this cooperative agreement will receive approximately $100,000 per year. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this cooperative agreement, contact Ms. Cynthia Amis, Office of Minority Health, 5515 Security Lane, Suite 1000, Rockville, Maryland 20852 or telephone (301) 594–0769.

OMB Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance Number for this cooperative agreement is 93.004.

Dated: March 10, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–6896 Filed 3–20–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Availability of Funds for Grants for the Bilingual/Bicultural Service Demonstration Grant Program

AGENCY: Office of the Secretary, Office of Minority Health.

ACTION: Notice of Availability of Funds and Request for Applications for the Bilingual/Bicultural Service Demonstration Grant Program.

Authority: This program is authorized under section 1707(e)(1) of the Public Health Service Act, as amended by Public Law 105–392.

Purpose

The purpose of this Fiscal Year 2000 Bilingual/Bicultural Service Demonstration Grant Program is to:

(1) Improve and expand the capacity for linguistic and cultural competence of health care professionals and paraprofessionals working with limited-English-proficient (LEP) minority communities; and

(2) Improve the accessibility and utilization of health care services among the LEP minority populations.

These grants are intended to demonstrate the merit of programs that involve partnerships between minority community-based organizations and health care facilities in a collaborative effort to address cultural and linguistic barriers to effective health care service delivery and to increase access to effective health care for the LEP minority populations living in the United States.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2010, a PHS-led national activity announced in January 2000 to eliminate health disparities and improve years and quality of life. More information on the Health People 2010 objectives may be found on the Healthy People 2010 web site: *http://www.health.gov/healthypeople*. Copies of the Healthy People 2010: Conference Edition Volumes I and II can be purchased by calling (301) 468–5960 (cost $22.00). Another reference is the *Healthy People 2000 Review–1998–99*. One free copy may be obtained from the National Center for Health Statistics (NCHS), 6525 Belcrest Road, Room 1064, Hyattsville, MD 20782 or telephone (301) 436–8500 (DHHS Publication No. (PHS) 99–1256). This document may also be downloaded from the NCHS web site *http://www.cdc.gov/nchs*.

Background

Large numbers of LEP minorities are linguistically isolated. According to the 1990 U.S. Census, 31.8 million persons or 13 percent of the total U.S. population (ages 5 and above) speak a language other than English at home. Almost 2 million people do not speak English at all and 4.8 million people do not speak English well. The 1990 U.S. Census also found that various minority populations and subgroups are linguistically isolated: approximately 4 million Hispanics; approximately 1.6 million Asians and Pacific Islanders; approximately 282,000 Blacks; and approximately 77,000 Native Americans and Alaska Natives.

Research has suggested that culture provides a unique concept of disease, risk factors, and preventive actions.[1] Definitions of health and illness are often culturally determined and therefore, the study of culture and tradition is a valuable tool in understanding the underlying motives for health behavior.[2] The clients' understanding of the Western health care model and their cultural beliefs, influence their access to health care services, the acceptance of health education, and their compliance with health care advice.

Rural populations must contend with several characteristics that further exacerbate their health care needs. These include an uneven pattern of disease burden and an acute lack of health care resources compared to urban places. A little over 62 percent of all non-metropolitan counties are designated by DHHS as Primary Care Health Professional Shortage Areas.[3]

In FY 1993, the Office of Minority Health (OMH) launched the Bilingual/Bicultural Service Demonstration Grant Program to address the linguistic, cultural and social barriers the LEP minority populations encounter when accessing health services. In addition, the program recognized other factors which contribute to the poor health status of LEP minorities including:

- Inadequate number of health care providers and other health care professionals skilled in culturally competent and linguistically appropriate delivery of services;
- Scarcity of trained interpreters at the community level;
- Deficiency of knowledge about appropriate mechanisms to address language barriers in health care settings;
- Absence of effective partnerships between major mainstream provider organizations and LEP minority communities;
- Geographic isolation;
- Low economic status;
- Lack of health insurance, and
- Organizational barriers.

These barriers continue to impede the LEP populations' ability to access and attain quality health care. Therefore it is essential that care providers, health care professionals and other staff become informed about the diverse linguistic, cultural and medical perspectives of their clientele. Enhancement of cultural competency among these individuals should increase LEP minority populations' knowledge of the Western health care model, and increase their access to and willingness to accept appropriate health care. In FY 2000, the Bilingual/Bicultural program will concentrate on the Health People 2010 Focus Areas, six of which the Surgeon General has identified as priorities: cardiovascular disease, child and adult immunizations, HIV/AIDS, infant mortality, cancer screening and management, and diabetes.

Eligible Applicants

Public and private, nonprofit minority community-based organizations. The minority community-based organization must serve a targeted LEP minority community and have an established linkage with a health care facility. The linkage between the community-based organization and the health care facility must be documented in writing as specified under the project requirements described in this announcement. Local affiliates of national organizations which have an established link with a health care facility are eligible to apply.

National organizations are not eligible to apply. Other non-eligible entities are for-profit hospitals, universities and schools of higher learning.

Organizations are not eligible to receive funding from more than one OMH grant program concurrently.

Funding Preference

There are rural areas which have much higher rates of illness and disease than non-rural areas. For instance, infant mortality rates (mirrored by birth weight rates) show a distinct regional distribution with up to 74.1 infant deaths per 1,000 births in rural and frontier counties.[4] Morbidity rates for Hepatitis A and tuberculosis in the Border are much higher than the respective national rates.[5] The OMH recognizes the special needs of minority LEP populations in certain geographic areas. To address these special needs, a preference in funding will be given to applications submitted by minority community-based organizations located in border areas, frontier areas, and rural areas (see the definitions of these areas in this announcement). This preference will only be applies to applications that rank above the 50th percentile of applications recommended for approval by the objective review committee.

Deadline

To receive consideration, grant applications must be received by the OMH Grants Management Office by May 22, 2000. Applications will be considered as meeting the deadline if they are: (1) Received on or before the deadline date, or (2) postmarked on or before the deadline date and received in time for orderly processing. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will be accepted as proof of timely mailing. Applications submitted by facsimile transmission (FAX) or any other electronic format will not be accepted. Applications which do not meet the deadline will be considered late and will be returned to the applicant unread.

Addresses/Contacts

Applications must be prepared using Form PHS 5161–1 (Revised June 1999). Application kits and technical assistance on budget and business aspects of the application may be obtained from Ms. Carolyn A. Williams, Grants Management Officer, Division of Management Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, Maryland 20852, telephone (301) 594–0758. Completed applications are to be submitted to the same address.

Questions regarding programmatic information and/or requests for technical assistance in the preparation of grant applications should be directed to Ms. Cynthia H. Amis, Director, Division of Program Operations, Office of Minority Health, Rockwall II Building, Suite 1000, 5515 Security Lane, Rockville, Maryland 20852, telephone number (301) 594–0769.

Technical assistance is also available through the OMH Regional Minority Health Consultants (RMHCs). A listing of the RMHCs and how they may be contacted will be provided in the grant application kit. Additionally, applicants can contact the OMH Resource Center (OMHRC) at 1–800–444–6472 for health information.

Availability of Funds

Approximately $1.5 million is available for award in FY 2000. It is projected that awards of up to $150,000 total costs (direct and indirect) for a 12-month period will be made to approximately 10 to 12 competing applicants.

Period of Support

The start date for the Bilingual/Bicultural Service Demonstration Program grants is September 30, 2000. Support may be requested for a total project period not to exceed 3 years. Noncompeting continuation awards of up to $150,000 will be made subject to satisfactory performance and availability of funds.

Definitions

For purposes of this grant announcement, the following definitions apply:

Border Area—The area lying 100 kilometers (62 miles) to the north of the 3,141 kilometer (1,952 mile) U.S.-Mexico boundary (as defined in Article 4 of the La Paz Agreement between the U.S. and the United Mexican States, entered into force February 16, 1984).

Community-Based Organization—Public and private, nonprofit organizations which are representative of communities or significant segments of communities, and which address health and human services.

Cultural Competency—a set interpersonal skills that allow individuals to increase their understanding and appreciation of cultural differences and similarities within, among and between groups. This requires a willingness and ability to draw on community-based values, traditions and customs, and to work with knowledgeable persons of and from the community in developing focused interventions, communications and other supports. (Orlandi, Mario A., 1992.)

Health Care Facility—a public nonprofit facility that has an established record for providing comprehensive health care services to a targeted, LEP racial/ethnic minority community. Facilities providing only screening and referral activities are not included in this definition. A health care facility may be a hospital, outpatient medical facility, community health center, migrant health center, or a mental health center.

Frontier Area—an area (borough, county or parish) with 6 or fewer persons per square mile.

Limited-English-Proficient Populations (LEP)—individuals (as defined in Minority Populations below) with a primary language other than English who must communicate in that language if the individual is to have an equal opportunity to participate effectively in and benefit from any aid, service or benefit provided by the health provider.

Minority Community-Based Organization—a public or private nonprofit community-based minority organization or a local affiliate of a national minority organization that has: a governing board composed of 51 percent or more racial/ethnic minority members, a significant number of minorities employed in key program positions, and an established record of service to a racial/ethnic minority community.

Minority Populations—American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, and Native Hawaiian or other Pacific Islander. (Revision to the Standards for the Classification of Federal Data on Race and Ethnicity, Federal Register, Vol. 62, No. 210, pg. 58782, October 30, 1997)

Rural Area—a borough, county or parish with a population less than 50,000 that is not included in a Metropolitan Statistical Area (MSA) as defined by the Office of Management and Budget.

Project Requirements

Each project funded under this demonstration grant must address all of the following requirements.

1. Address at least one, but no more than three of the health focus areas referenced in the Background section of this announcement.

2. Carry out activities to improve and expand the capacity of health care providers and other health care professionals to deliver linguistically and culturally competent health care services to the target population. Potential activities may include: language and cultural competency training and curricula development; health promotion or health service access information in the native language of the target population; on-site interpretation services; or training products such as CD–ROMs, video tapes, or on-line distance based learning formats for continuing education.

3. Carry out activities to improve access to health care for the LEP population. Potential activities may include those that will: Educate the target population on the importance of health promotion and disease prevention; enhance the ability of the target population to communicate their health care concerns to health care providers; increase their understanding of health education information; and improve compliance with health care treatments. The applicant may utilize culturally and/or linguistically appropriate information or methods of communication, such as printed materials with pictorial messages, mass media, public service announcements and neighborhood outreach as educational tools. Forums, seminars or workshops to promote information exchange among the targeted LEP population and the health care professionals may also be considered activities for the education of both groups.

4. Have an established, formal linkage between the minority community-based organization and a health care facility,

[1] Evans, P.E. (1988) Minorities and AIDS. Health Education Research, Vol 3, No. 1, pp 113–115

[2] Toumishey, H. (1993), Multicultural Health Care: An Introductory Course. In R. Masi, L. Mensah, & K. McLeod (eds.), Health and Cultures: Exploring the Relationships, pp 113–138. Mosaic Press, Ontario, Canada

[3] North Carolina Rural Health Research and Policy Analysis Center (1998), The University of North Carolina at Chapel Hill in Mapping Rural Health: The Geography of Health Care and Health Resources in Rural America.

[4] *Ibid.*

[5] Border Issues (updated April 1997); United States-Mexico Chamber of Commerce web site *http://www.usmcoc.org/borderl.html.*

prior to submission of an application. The linkage must be confirmed by a signed agreement between the applicant organization and the health care facility which specifies in detail the roles and resources that each entity will bring to the project, and state the duration and terms of the linkage. The document must be signed by individuals with the authority to represent the organization (*e.g.*, president, chief executive officer, executive director).

Use of Grant Funds

Budgets of up to $150,000 total cost (direct and indirect) per year may be requested to cover costs of: personnel, consultants, supplies (including screening and outreach supplies), equipment, and grant-related travel. Funds may not be used for medical treatment, construction, building alterations, or renovations. All budget requests must be fully justified in terms of the proposed goals and objectives and include a computational explanation of how costs were determined.

Criteria for Evaluating Applications

Review of Applications: Applications will be screened upon receipt. Those that are judged to be incomplete, non-responsive to the announcement or nonconforming will be returned without comment. Each organization may submit no more than one proposal under this announcement. If an organization submits more than one proposal, all will be deemed ineligible and returned without comment. Accepted applications will be reviewed for technical merit in accordance with PHS policies. Applications will be evaluated by an Objective Review Panel chosen for their expertise in minority health and their understanding of the unique health problems and related issues confronted by the racial/ethnic minority populations in the United States.

Applicants are advised to pay close attention to the specific program guidelines and general and supplemental instructions provided in the application kit.

Application Review Criteria: The technical review of applications will consider the following generic factors:

Factor 1: Background (15%)

Adequacy of: Demonstrated knowledge of the problem at the local level; demonstrated need within the proposed community and target population; demonstrated support and established linkage(s) in order to conduct the proposed model; and extent and documented outcome of past efforts and activities with the target population.

Factor 2: Objectives (15%)

Merit of the objectives, their relevance to the program purpose and stated problem, and their attainability in the stated time frames.

Factor 3: Methodology (35%)

Appropriateness of proposed approach and specific activities for each objective. Logic and sequencing of the planned approaches in relation to the objectives and program evaluation. Soundness of the established linkages.

Factor 4: Evaluation (20%)

Thoroughness, feasibility and appropriateness of the evaluation design, and data collection and analysis procedures. Potential for replication of the project for similar target populations and communities.

Factor 5: Management Plan (15%)

Applicant organization's capability to manage and evaluate the project as determined by: the qualification of proposed staff or requirements for "to be hired" staff; proposed staff level of effort; management experience of the lead agency; and experience of each member of the linkage as it relates to its defined roles and the project.

Award Criteria

Funding decisions will be determined by the Deputy Assistant Secretary of Minority Health, Office of Minority Health, and will take under consideration: the recommendations and ratings of the review panel; the funding preference; geographic and racial/ethnic distribution; and health problem areas having the greatest impact on minority health. Consideration will be given to projects proposed to be implemented in Empowerment Zones and Enterprise Communities.

Reporting and Other Requirements

General Reporting Requirements

A successful applicant under this notice will submit: (1) Bi-annual progress reports; (2) an annual Financial Status Report, and (3) a final progress report and final Financial Status Report in the format established by the Office of Minority Health, in accordance with provisions of the general regulations which apply under "Monitoring and Reporting Program Performance," 45 CFR Part 74, Subpart J.

Provision of Smoke-Free Workplace and Nonuse of Tobacco Products by Recipients of PHS Grants

The Public Health Service strongly encourages all grant recipients to provide a smoke-free workplace and to promote the nonuse of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care or early childhood development services are provided to children.

Public Health System Reporting Requirements

This program is subject to Public Health Systems Reporting Requirements. Under these requirements, a community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based, nongovernmental applicants are required to submit, no later than the Federal due date for receipt of the application, the following information to the head of the appropriate state and local health agencies in the area(s) to be impacted: (a) a copy of the face page of the applications (SF 424), (b) a summary of the project (PHSIS), not to exceed one page, which provides: (1) A description of the population to be served, (2) a summary of the services to be provided, (3) a description of the coordination planned with the appropriate State or local health agencies. Copies of the letters forwarding the PHSIS to these authorities must be contained in the application materials submitted to the Office of Minority Health.

State Reviews

This program is subject to the requirements of Executive Order 12372 which allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application kit to be made available under this notice will contain a listing of States which have chosen to set up a review system and will include a State Single Point of Contact (SPOC) in the State for review. Applicants (other than federally recognized Indian tribes) should contact their SPOCs as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline by the Office of Minority Health's Grants Management Officer. The Office of Minority Health does not guarantee that it will accommodate or explain its responses to State process recommendations received after that date. (See "Intergovernmental Review of Federal Programs," Executive Order 12372, and 45 CFR Part 100 for a description of the review process and requirements.)

OMB Catalog of Federal Domestic Assistance

The OMB Catalog of Federal Domestic Assistance Number for the Bilingual and Bicultural Service Demonstration Program is 93.105.

Dated: March 14, 2000.

Nathan Stinson, Jr.,

Deputy Assistant Secretary for Minority Health.

[FR Doc. 00–6897 Filed 3–20–00; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality

Notice of Meeting

In accordance with section 10(d) of the Federal Advisory Committee Act as amended (5 U.S.C., Appendix 2), the Agency for Healthcare Research and Quality (AHRQ) announces a meeting of a scientific peer review group. The subcommittee listed below is part of the Agency's Health Services Research Initial Review Group.

The subcommittee meeting will be closed to the public in accordance with the Federal Advisory Committee Act, section 10(d) of 5 U.S.C., Appendix 2 and 5 U.S.C., 552b(c)(6). Grant applications are to be reviewed and discussed at this meeting. These discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure under the above-cited statutes.

1. *Name of Subcommittee:* Health Care Research Training

Date: April 13, 2000 (Open from 10 a.m. to 10:15 a.m. and closed for remainder of the meeting)

Place: AHRQ, Executive Office Center, 6010 Executive Boulevard, 4th Floor Conference Center, Rockville, Maryland 20852

Contact Person: Anyone wishing to obtain a roster of members or minutes of the meetings should contact Ms. Jenny Griffith, Committee Management Officer, Office of Research Review, Education and Policy, AHRQ, 2101 East Jefferson Street, Suite 400, Rockville, Maryland 20852, Telephone (301) 594–1847.

Agenda items for these meetings are subject to change as priorities dictate.

Dated: March 13, 2000.

John M. Eisenberg,

Director.

[FR Doc. 00–6964 Filed 3–20–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–157]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from October through December 1999. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and also includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 639–0610.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on January 11, 2000, (65 FR1637). This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities (42 CFR Part 90). This rule sets forth ATSDR's procedures for conducting public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) (42 U.S.C. 9604(i)).

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 am and 4:30 pm, Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between, October 1 and December 31 1999, public health assessments were issued for the sites listed below:

NPL Sites

Georgia

Camilla Wood Preserving Company—(a/k/a Escambia Treating Company Incorporated)—Camilla—(PB20–103266).

Illinois

Depue/Jersey Zinc/Mobil Chemical Corporation—Depue—(PB20–102450). Evergreen Manor Groundwater Contamination Plume—Roscoe—(PB20–102849). Savanna Army Depot Activity—Savanna—(PB20–102850).

Iowa

Iowa Army Ammunition Plant—Middletown—(PB20–102851).

Maryland

Fort George G. Meade—Fort Meade—(PB20–101390).

Michigan

West Beitz Creek Fill Area—(a/k/a Marshall Elementry School)—Livonia—(PB20–101391).

New Jersey

Fort Dix (Landfill Site)—Wrightstown—(PB20–100618).

Ohio

Wright-Patterson Air Force Base—Fairborn—(PB20–101405).

Texas

Austin City of Holly Street Power—Austin—(a/k/a Holly Street Power Plant)—(PB20–101712).

Washington

Port Hadlock Detachment (US Navy) [a/k/a US Navy Port Hadlock Detachment (Indian Island Depot)]—Port Hadlock—(PB20–102551).

Wyoming

F.E. Warren Air Force Base—Cheyenne—(PB20–101764).

Non NPL Petitioned Sites

Georgia

T.H. Agriculture and Nutrition (Albany)—Albany—(PB20–102004).

New Jersey

Atlantic State Cast Iron Pipe—Phillipsburg—(PB20–102003).

New York

Brookfield Avenue Landfill—Staten Island—(PB20–101763).

Dated: March 15, 2000.

Georgi Jones, Director,

Office of Policy and External Affairs Agency for Toxic Substances and Disease Registry.

[FR Doc. 00–6905 Filed 3–20–00; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: Assessment of Hablemos en Confianza Materials

New—In the United States, Hispanic/Latinos present a disproportionately higher prevalence of alcohol, tobacco, cocaine, and marijuana use than other ethnic groups. In the Spring of 1995, the Secretary of the U. S. Department of Health and Human Services authorized the establishment of the Departmental Working Group on Hispanic Issues. Part of the Hispanic Agenda for Action calls for an increase in the Department's capacity to reach out and communicate with Hispanic/Latino populations using culturally and language appropriate techniques. In-depth literature review documented a lack of materials focusing on substance abuse prevention targeting Hispanic/Latino populations. Based on formative research, the "Hablemos en Confianza" kit (HEC) was designed specifically to respond to this need for culturally and language appropriate materials.

The HEC kit consists of five booklets addressing various aspects of communication between parents/caregivers with children, three fotonovelas with open-ended stories of Hispanic/Latino families who are learning to discuss and resolve the issue of alcohol and drug use by their children, and a poster for youth 13–17 years old. The dissemination of the materials was initiated in October, 1999 through the National Clearinghouse for Alcohol, and Drug Information (NCADI). The information resulting from the proposed survey will be employed by SAMHSA's Center for Substance Abuse Prevention (CSAP) to assess the quality of the materials regarding cultural adequacy and clarity, as well as the short term impact of the messages. This information will be instrumental in highlighting areas that should be addressed in future CSAP prevention/education materials targeting Hispanic/Latino audiences.

The adequacy of the prevention messages will be assessed by conducting a survey to collect data on five major areas: (1) Assess the degree to which the materials raise awareness in parents/caregivers about the potential communication problems with their children regarding substance use/abuse matters; (2) assess the degree to which the materials prompt parents/caregivers to generate intent or to pursue actions toward improving communication with their children; (3) assess the degree to which the materials are perceived as providing and/or increasing adults' capacity to communicate with youth; (4) assess the quality of the materials (clarity of the messages, cultural adequacy, and attractiveness of the materials); and (5) determine whether there are aspects to be modified and/or enhanced in the development of future materials focusing substance use/abuse targeted to Hispanic/Latino audiences. The study population is composed of parents or care givers (person responsible for the care of the children) who have requested the materials from NCADI.

The following table presents the response burden for this project.

Number of respondents	Responses/ Respondent	Hours/ Response	Total burden
1,375	1	.2	275

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: March 15, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–6906 Filed 3–20–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–7978.

Treatment Improvement Protocol Evaluation: Addiction Technology Transfer Center Study

New—The ATTC Study is a special study under the ongoing TIPs Evaluation Project. Since 1993, SAMHSA's Center for Substance Abuse Treatment (CSAT) has published 36 Treatment Improvement Protocols, or TIPs, which provide consensus-based administrative and clinical practice guidance to the substance abuse treatment field; and 23 Technical Assistance Publications (TAPs), which are publications, manuals, and guides developed by experts with first-hand experience to offer practical responses to emerging issues and concerns in the substance abuse treatment field.

A qualitative study, the ATTC study will elicit data related to assessing both actual use, and usefulness, of TIPs, TAPs and other CSAT products in developing curricula and other knowledge application products for ATTCs. Data will be collected through intensive interviews with both ATTC faculty and curriculum developers at six of the 13 ATTCs. Purposive sampling will be used to identify appropriate participants; ATTC Directors will recommend faculty/curriculum developers for participation. Prior to the interview process, faculty and curriculum developers will be asked to complete a brief questionnaire. Measures will be primarily descriptive and process, for example, whether, and if so, which, TIPs and TAPs have been or are being used in development of ATTC curricula; how and to what extent TIPs and TAPs are used; faculty/trainers' and curriculum developers' perceptions regarding the advantages and disadvantages of using TIPs and TAPs; and their impressions and suggestions concerning the content and format of TIPs and TAPs.

Burden for faculty/trainers and curriculum developers includes participation in a study introduction phone call (15 minutes); written responses to a brief questionnaire, including mailing it back to the contractor (30 minutes); and subsequent participation in an indepth interview (1½ hours). Burden attributed to the ATTC Directors of the six selected ATTCs includes time spent assisting the study team with background information, site visit coordination, and identifying and discussing possible participants for interviews.

	No. of respondents	Responses/ respondent	Hours/ response	Burden hours
Faculty/Curriculum Developers	90	1	*2.25	202.50
ATTC Directors	6	1	0.50	3.00
Total	96			205.50

*includes travel time.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 15, 2000.

Richard Kopanda,

Executive Officer, SAMSHA.

[FR Doc. 00–6907 Filed 3–20–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–7978.

Registration Form for the National Registry of Effective Prevention Programs

New—Section 515(d) of the Public Health Service Act (42 U.S.C. 290bb–21) requires that the Director of SAMHSA's Center for Substance Abuse Prevention (CSAP) establish a national data base providing information on programs for the prevention of substance abuse and specifies that the data base shall contain information appropriate for use by public entities and information appropriate for use by nonprofit private entities. Since 1994, CSAP has met this responsibility through the High Risk Populations Databank on programs for the prevention of substance abuse funded by direct CSAP grants. Because relatively few direct grants of this type have been issued in recent years, CSAP must expand its information collection to include voluntary submission of descriptions of effective substance abuse prevention conducted by state and local governments, nonprofit entities, and the private sector.

CSAP has developed a template to enable practitioners who have evidence that their program reduces risk factors or increases protective factors pertaining to substance abuse to nominate their own standardized program for the

Registry. Each program that is nominated should have been standardized (including curriculum manuals, implementation manuals, videotapes, etc.), well implemented, and findings should derive from well designed research efforts. Program models nominated will be reviewed and rated by experts annually to be recommended to the field.

CSAP will promote selected models by providing funds to support development of program materials for dissemination, by connecting program developers with organizations able to help in the dissemination efforts, and by promoting model programs nationally through CSAP's State Incentive Grant recipients and regional Centers for Applied Prevention Technology. Annual burden estimates for the Registry are shown in the table below.

Type of submission	No. of respondents	Responses/ respondent	Hours/ response	Total burden hours
Complete	250	1	1.25	313
Abbreviated	10	1	.25	2
Total	260			315

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 15, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–6908 Filed 3–20–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Submission for OMB Review; Comment Request

Periodically, the Substance Abuse and Mental Health Services Administration (SAMHSA) will publish a list of information collection requests under OMB review, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). To request a copy of these documents, call the SAMHSA Reports Clearance Officer on (301)443–7978.

Survey of Vermont Employers to Assess the Effects of the Vermont Parity Act

New—In support of its mission to support activities related to improving mental health and substance abuse treatment and prevention through demonstration projects, evaluations and service system assessments, SAMHSA is taking advantage of the implementation of the Vermont Parity Act on January 1, 1998. The Vermont Parity Act provides SAMHSA with an important opportunity to study the health insurance coverage impacts of the nation's most comprehensive parity law and to provide useful data to state and federal policy makers, employers, health care providers, advocates, and consumers.

SAMHSA will conduct a telephone survey of private employers in Vermont to assess their responses to the state law. The employer survey will gather information on the effects of the Vermont parity lay on employer-sponsored health insurance coverage. As a study of the most comprehensive state parity law in the nation, this survey will provide SAMHSA its first opportunity to understand: (1) employer knowledge of and satisfaction with parity; (2) estimated effects of parity on employer health care costs; (3) effects of parity on employer health insurance purchasing decisions, such as decisions to self-insure, drop coverage, change insurance carriers, shift a higher share of costs to employees, or carve-out benefits and/or shift to managed care; (4) other changes brought about by parity, such as establishment of employee assistance plans or wellness programs; and (5) suggestions for improving the parity law in the future.

Data will be collected between June and October 2000, a period when employers typically re-evaluate their health insurance coverage decisions for the upcoming fiscal year. Upon completion of the data collection, descriptive and multivariate analyses of employer responses to and satisfaction with parity will be conducted. Responses will be analyzed by employer characteristics such as firm size, location, and type of industry. SAMHSA will use the survey results and survey data to advise governmental bodies such as the National Advisory Mental Health Council (NAMHC), which was charged by the Senate Appropriations Committee in 1996 to provide periodic reports on parity coverage in mental health services "as more data throughout the country become available." The table below shows the total burden for this one-year study.

Type of interview	Number of respondents	Responses/ respondent	Hours/ response	Total burden hours
Businesses offering insurance(screener & full interview) [1]	600	1	.42	252
Uninsured businesses (screener & short interview only) [2]	222	1	.25	56
Ineligible/nonresponding businesses (screener only) [3]	489	1	.08	39
Total	1,311			347

[1] Businesses currently offering insurance to employees or that stopped offering insurance to employees after January 1, 1998.
[2] Businesses that either stopped offering insurance to employees before January 1, 1998 or never offered insurance to employees.
[3] Businesses that are no longer in operation or are owned by the state or federal government and non-responding businesses that effuse to participate.

Written comments and recommendations concerning the proposed information collection should be sent within 30 days of this notice to: Allison Eydt, Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated:March 12, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–6909 Filed 3–20–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FP–4561–N–13]

Notice of Submission of Proposed Information Collection to OMB; Family Self-Sufficiency Program (FSS)

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 20, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0178) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission, including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information;

Title of Proposal: Family Self-Sufficiency Program (FSS).

OMB Approval Number: 2577–0178.

Form Numbers: HUD–52650 and HUD–52652.

Description of the Need for the Information and Its Proposed Use: The Family Self-Sufficiency Program (FSS) promotes development of local strategies that coordinate the use of public housing assistance and assistance under section 8 rental certificate and voucher programs with public-private resources to enable eligible families to eligible families to achieve economic independence and self-sufficiency. Housing agencies enter into a Contract of Participation with each eligible family that opts to participate in the program; consult with local officials to develop an Action Plan; and report annually to HUD on implementation of the FSS program.

Respondents: Individual or households, State or Local Government.

Frequency of Submission: On Occassion.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Action plan	50		4,550		8.6		39,090

Total Estimated Burden Hours: 39,090.

Status: Reinstatement, with change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 15, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–6990 Filed 3–20–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Interim Land Acquisition Priority System Criteria

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We are announcing the availability of and opportunity to comment on our Interim Land Acquisition Priority System criteria. These interim criteria replace the criteria developed in 1987 and modified in 1992. We will use the interim criteria to set land acquisition priorities for projects funded under the Land and Water Conservation Fund beginning with the FY 2002 budget cycle.

DATES: Submit comments on or before June 30, 2000.

ADDRESSES: You may obtain copies of the Interim Land Acquisition Priority System package or submit comments on the interim criteria by any one of several methods.

You may obtain the document from the Division of Realty's internet site at http://realty.fws.gov/laps.htm.

You may mail or hand-deliver requests for copies or comments to Andrew French, LAPS Team Leader, Division of Realty, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035.

You may send requests for copies or comments by electronic mail to Andrew__French@fws.gov. Please submit internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: LAPS Comments" and your name and return address in your message.

You may fax requests for copies or comments to (413) 253–8480.

FOR FURTHER INFORMATION CONTACT: Andrew French, Team Leader, U.S. Fish and Wildlife Service, telephone (toll free) (877) 289–8495 (ext. 8590)

SUPPLEMENTARY INFORMATION: We implemented Land Acquisition Priority System Criteria in 1987 and revised the criteria in 1992. In 1993, the National Research Council appointed the Committee on Scientific and Technical Criteria for Federal Acquisition of Lands for Conservation. In their report,

entitled "Setting Priorities for Land Conservation," the committee affirmed the need for criteria by stating, "Each agency should develop individual criteria to rank its own acquisitions, because no single set of criteria will work to satisfy fully the different agency missions." The interim criteria implement the National Wildlife Refuge System Improvement Act of 1997, which states, "the Mission of the System is to administer a national network of lands and waters for the conservation, management, and where appropriate, restoration of the fish, wildlife, and plant resources and their habitat within the United States for the benefit of present and future generations of Americans."

Interim Land Acquisition Priority System Criteria

The purpose of the Land Acquisition Priority System is: (1) To document land acquisition needs and opportunities for the Fish and Wildlife Service nationwide; (2) to prioritize land acquisition projects submitted by our Regions; and (3) to serve as a starting point for the annual land acquisition budget request. The criteria are one of the "tools" that we use to build our annual land acquisition priorities among the most important habitat projects in the Nation. The criteria consist of four components: Fisheries and Aquatic Resources, Endangered and Threatened Species, Bird Conservation, and Ecosystem Conservation.

The Fisheries and Aquatic Resources Component addresses: (1) The status and trends of aquatic populations; (2) species diversity for trust resources; (3) critical habitats, including free-flowing rivers and watersheds; (4) wetland types and trend status; and (5) wetland losses by percent of historic wetland base by State.

The Endangered and Threatened Species Component is: (1) Recovery oriented; (2) considers habitat and biological community integrity as well as species occurrences; and (3) focuses on actual habitat use.

The Bird Conservation Component consists of: (1) Regionally developed lists of 70 species of management concern for each region as well as Hawaii and Puerto Rico; (2) a population importance index; and (3) an avian diversity index. We give emphasis to Nongame Species of Management Concern and the North American Wetlands Conservation Act Priority Waterfowl Species.

The Ecosystem Conservation Component addresses: (1) Biodiversity through distribution and abundance of rare communities; (2) ecosystem decline and protection of native diversity of threatened ecosystems; (3) landscape conservation by preserving large, intact habitats through partnerships; and (4) contributions to national plans and designations.

Comment Solicitation

We seek public comments on this interim document and will take into consideration comments and additional information received during the comment period. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Authority

We issue this notice under the authority of the Land and Water Conservation Fund Act of 1995 as amended (16 U.S.C. 460l–4 *et seq.*) and the National Wildlife Refuge System Administration Act of 1966 as amended, (16 U.S.C. 668dd *et seq.*).

Dated: March 10, 2000.

Jamie Rappaport Clark,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–6985 Filed 3–20–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Cow Creek Band of Umpqua Tribe of Indians in Oregon

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of reservation proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 285.16 acres as an addition to the reservation of the Cow Creek Band of Umpqua Tribe of Indians on March 10, 2000. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Division of Real Estate Services, MS–4510/MIB/Code 220, 1849 C Street, NW, Washington, DC 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tract of land described below. The land was proclaimed to be an addition to and part of the reservation of the Cow Creek Band of Umpqua Tribe of Indians for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Reservation of the Cow Creek Band of Umpqua Tribe of Indians

Parcel 1

A portion of the Southeast quarter of Section 11 and the Southwest quarter of Section 12, Township 29 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, described as follows: Beginning at an iron pipe from which point the corner to Sections 11, 12, 13 and 14, Township 29 South, Range 6 West, Willamette Meridian, Douglas County, Oregon, bears South 7°44′ West 672.8 feet; thence South 86°43′30″ West 261.75 feet; thence North 69°43′ West 623.0 feet to the southeast corner of the lands of G.E. Clayton as described in deed, Recorder's No. 91854, Deed records of Douglas County, Oregon; thence North 7°47′ East 1633.33 feet along the east line of said Clayton lands to an iron pipe on the south right of way of Old State Highway No. 99, which point is also a P.C. of a 9°30′ curve left with central angle 5°05′; thence along the south right of way of said curve to the left, 53.5 feet to the P.C. of said curve; thence South 80°19′ East 812.3 feet along said south right of way of Old Highway No. 99 to an iron pipe; thence South 7°47′ West 1686.8 feet to the place of beginning.

EXCEPT that portion thereof lying Southerly of the following described line: Beginning at a point on the easterly line of the above described lands, which bears North 8°00′ East 689.17 feet from the section corner common to Sections 11, 12, 13 and 14, Township 29 South, Range 6 West, Willamette Meridian, Douglas County, Oregon; thence running North 77°28′40″ West 864.57 feet to the southeast corner of lands conveyed to G.E. Clayton by Deed recorded in Volume 167, Recorder's No. 91854, Deed Records of Douglas County, Oregon.

Said premises are also known as Parcel 2 of Land Partition No. 1991–10, Partition Plat Records of Douglas County, Oregon.

Together with an easement as granted in Recorder's No. 91–4911, Records of Douglas County, Oregon, containing 32.84 acres, more or less.

Parcel 2

All of that portion of the following described real property lying in the South half of Section 12, Township 29 South, Range 6 West, and in the Southwest quarter of Section 7, Township 29 South, Range 5 West, Willamette Meridian, Douglas County, Oregon, and within a parcel described by Warranty Deed, Recorder's No. 96–14413, Records of Douglas County, Oregon: Beginning at the section corner common to Sections 7 and 18, Township 29 South, Range 5 West, and to Sections 12 and 13, Township 29 South, Range 6 West, Willamette Meridian, Douglas County, Oregon: thence along the south boundary of said Section 12, Township 29 South, Range 6 West, South 86°25′08″ West 2557.11 feet to the quarter corner common to said Sections 12 and 13, Township 29 South, Range 6 West; thence continuing along said south boundary of said Section 12, North 88°47′15″ West 1294.35 feet to a 5/8 inch iron rod; thence leaving said south boundary of said Section 12 and running North 0°27′56″ West 27.41 feet to a 5/8 inch iron rod; thence North 84°12′23″ West 778.16 feet to a 5/8 inch iron rod; thence North 88°47′10″ West 21.05 feet to a 5/8 inch iron rod; thence North 70°09′59″ West 102.84 feet to a 5/8 inch iron rod; thence North 25°33′36″ West 112.45 feet to a 5/8 inch iron rod; thence North 17°14′59″ West 466.80 feet to a 5/8 inch iron rod; thence North 78°45′34″ West 68.44 feet to a 5/8 inch iron rod; thence North 7°19′04″ East 1678.92 feet to a 5/8 inch iron rod located on the southerly right of way of State Highway No. 99; thence along said southerly right of way, South 80°55′54″ East 773.94 feet to a 5/8 inch iron rod; thence continuing along said southerly right of way, South 80°58′54″ East 705.26 feet to a 5/8 inch iron rod; thence continuing along said southerly right of way, along the arc of a 1462.40 foot radius curve to the left, the long chord of which bears North 89°54′28″ East 463.13 feet to a 5/8 inch iron rod; thence continuing along said southerly right of way, North 80°47′49″ East 413.83 feet to a 5/8 inch iron rod; thence leaving said southerly right of way of said State Highway No. 99, and running South 16°36′07″ East 391.53 feet to a 5/8 inch iron rod; thence South 16° 17′28″ East 548.51 feet to a 5/8 inch iron rod; thence North 78°21′39″ East 177.48 feet to a 5/8 inch iron rod; thence North 7°01′04″ East 133.17 feet to a 5/8 inch iron rod; thence North 70°11′35″ East 329.53 feet to a 5/8 inch iron rod; thence North 76°52′25″ East 311.43 feet to a 5/8 inch iron rod; thence North 81°14′36″ East 273.93 feet to a 5/8 inch iron rod; thence North 81°16′41″ East 274.05 feet to a 5/8 inch iron rod; thence South 81°46′40″ East 262.71 feet to a 5/8 inch iron rod; thence North 48°59′59″ East 345.89 feet to a 5/8 inch iron rod; thence South 69°12′59″ East 669.35 feet to a 5/8 inch iron rod; thence South 46°09′21″ East 1463.80 feet to a 5/8 inch iron rod; thence South 28°46′18″ East 551.96 feet to a 5/8 inch iron rod; thence South 18°12′15″ East 87.52 feet to a 5/8 inch iron rod located on the south boundary of said Section 7, Township 29 South, Range 5 West, Willamette Meridian; thence along said south boundary of said Section 7, Township 29 South, Range 5 West, North 89°02′06″ West 1660.45 feet to the point of beginning. Containing 252.32 acres, more or less.

Together, Parcels 1 and 2 contain a total of 285.16 acres, more or less.

Title to the land described above is conveyed subject to any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–6963 Filed 3–20–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–070–1210–00]

Notice of Emergency Off-Road Vehicle Closures in Wilderness Study Areas Located in the San Rafael Swell Region

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of a temporary emergency closure pursuant to regulations at 43 CFR 8341.2(a) to off-road vehicles (ORVs), also commonly referred to as off-highway vehicles (OHVs), on public lands and existing vehicle ways within the boundaries of seven Wilderness Study Areas (WSAs).

SUMMARY: This notice closes public lands within the Muddy Creek, Sid's Mountain/Sid's Cabin, Devil's Canyon, Crack Canyon, San Rafael Reef, Horseshoe Canyon and Mexican Mountain WSAs, located in the San Rafael Swell region of central Utah, to motorized vehicles. An emergency closure order is necessary due to ORV-caused damage to soils, vegetation and other resources which is impairing wilderness values over extensive portions of the affected WSAs. The closure effects motorized vehicle use on all public lands in WSAs in the Price Field Office with the exception of "four" routes in Sid's Mountain WSA described as follows: (1) The wash bottom of Coal Wash, including the short dugway from the west which enters this wash, and North Fork Coal Wash south until it exits the WSA over "Fix-It-Pass", (2) the wash bottom of South Fork Coal Wash from its junction with the North Fork to and including the "Eva Conover" way, (3) the "Devil's Racetrack" way, and (4) the Justensen Flat access way, including lower Eagle Canyon southeast from the junction of this way. These routes will remain open on a conditional basis. This closure applies to all motor vehicle use with the exception of law enforcement and emergency personnel or administrative uses authorized by the BLM.

DATES: This emergency closure order is effective immediately and will remain in effect until adverse effects are eliminated and measures are implemented to prevent reoccurrence, as identified in 43 CFR 8341.2 (a). Should the rehabilitation work and non-impairment plan associated with Coal Wash, South Fork and North Fork of Coal Wash, the Eva Conover and Devil's Racetrack routes, the Justensen Flat access way and adjacent lands not result in abatement of adverse effects, the ways will be closed to motorized vehicle use. Authorities for the closure order are 43 CFR 8341.2(a).

FOR FURTHER INFORMATION CONTACT: Dick Manus, Price Field Office Manager, 125 South, 600 West, Price, Utah 84501. Telephone (435) 636–3600.

SUPPLEMENTARY INFORMATION: The establishment of WSAs in the San Rafael Swell region in 1980 placed lands under protective management as specified by the Interim Management Policy (IMP) for lands under wilderness review. Under the IMP, motor vehicle use could continue on existing vehicle ways as long as that use does not impair

wilderness values. The 1991 San Rafael Resource Management Plan (RMP) further addressed ORV use in the region by allocating all lands in the affected WSAs in either the "limited use" restricted to designated routes, or the "closed" to ORV use categories. Following the RMP, the BLM Price Office initiated a planning effort to designate the routes in the San Rafael planning unit, including lands in the affected WSAs within the limited use ORV category. This planning effort included extensive coordination with local governments and interest groups, as well as the formation of a citizen's team to advise on ORV route designations. Despite these efforts, route designation has remained a contentious issue and a travel plan for the San Rafael Swell, including the affected WSAs, has not been completed. Throughout this period, ORV use in the San Rafael Swell has increased tremendously. The proliferation of vehicle ways beyond the ways inventoried at the time of WSA designation has become a serious problem. Damage to soils, vegetation and other resources is occurring in many areas degrading naturalness and other wilderness qualities. The impairment of wilderness values necessitates this emergency closure order in the seven WSAs located in the San Rafael Swell region. The closure effects motorized vehicle use on all public lands in WSAs in the Price Field Office with the exception of "four" routes in Sid's Mountain WSA described as follows: (1) The wash bottom of Coal Wash, including the short dugway from the west which enters this wash, and North Fork Coal Wash south until it exits the WSA over "Fix-It-Pass", (2) the wash bottom of South Fork Coal Wash from its junction with the North Fork to and including the "Eva Conover" way, (3) the "Devil's Racetrack" way, and (4) the Justensen Flat access way, including lower Eagle Canyon southeast from the junction of this way. These routes will remain open on a conditional basis. Motorized use of these routes will be allowed to continue contingent upon the success of a rehabilitation and monitoring plan designed to restore areas to non-impairment conditions and prevent further travel off of these pre-described routes. Should the plan not restore the area, these areas will also be closed until adverse effects can be eliminated. The net effect of this action combined with previous land use decisions, is that all WSA's administered by the Price Field Office are closed to ORV use except for the routes specified as conditionally open in this notice.

Nothing in this order alters in any way legal rights which Emery County or the State of Utah may claim to assert R.S. 2477 highways, and to challenge in Federal court or other appropriate venue, any BLM road closures that they believe are inconsistent with their claims.

Sally Wisely,

State Director.

[FR Doc. 00–6796 Filed 3–20–00; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05;N–66181]

Notice of Realty Action: Lease/ Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Lease/conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a public park.

Mount Diablo Meridian, Nevada

T. 20 S., R. 59 E., sec 1
W½NE¼SE¼NW½

Containing 5 acres, more or less.

The land is not required for any federal purpose. The lease/conveyance is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 30 feet in width along the North boundary, 30 feet in width along the West boundary, 30 feet in width along the South boundary and 30 feet in width along the East boundary in favor of the City of Las Vegas for road, sewer, public utilities and flood control purposes.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral material disposal laws. For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed lease/ conveyance for classification of the lands to the Field Manager, Las Vegas Field Office, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a public park. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a public park.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/ conveyance until after the classification becomes effective.

Dated: March 8, 2000.

Judy A. Fry,

Acting Assistant Field Manager, Division of Lands, Las Vegas, NV.

[FR Doc. 00–6892 Filed 3–20–00; 8:45 am]

BILLING CODE 4510–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930; 1430–ES, N–61015]

Notice of Realty Action: Conveyance for Recreation and Public Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and Public Purpose Conveyance.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for conveyance for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). Clark County proposes to use the land for a solid waste convenience station.

Mount Diablo Meridian, Nevada

T. 15 S., R. 67 E., section 16,
S½SE¼NW¼SW¼NE¼,
NW¼SE¼NW¼SW¼NE¼.

Consisting of 1.88 acres.

The land is not required for any federal purpose. The conveyance is consistent with current Bureau planning for this area and would be in the public interest. The patents, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following provisions and reservations to the United States:

1. Excepting and Reserving to the United States: A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe and will be subject to.

3. SUBJECT TO: The patentee shall comply with all Federal and State laws applicable to the disposal, placement or release of hazardous substances as defined in 40 CFR part 302, and indemnify the United States against any legal liability or future cost that may arise out of any violation of such laws.

4. Under no circumstances will any portion of the lands that have been used for solid waste disposal, or for any other purpose that the authorized officer determines may result in disposal, placement, or release of any hazardous substance, be reconveyed to United States.

5. If, at any time the patentee transfers to another party ownership of any portion of the land not used for the purpose(s) specified in the application and the approved plan of development, the patentee shall pay the Bureau of Land Management the fair market value, as determined by the authorized officer, of the transferred portion as of the date of transfer, including the value of any improvement thereon.

6. The above described land has been conveyed for utilization as a solid waste disposal site as follows:

T. 15 S., R. 67 E., section 16,
S½SE¼NW¼SW¼NE¼,
NW¼SE¼NW¼SW¼NE¼.

Upon closure, the site may contain small quantities of commercial and household hazardous waste as determined in the Resource Conservation and Recovery Act of 1976, as amended, (42 U.S.C. 6901), as defined in 40 CFR 261.4 and 261.5. Although there is no indication these materials pose any significant risk to human health or the environment, future land uses should be limited to those which do not penetrate the linear or final cover of the landfill unless excavation is conducted subject to applicable State and Federal requirements.

7. All valid and existing rights.

8. Clark County, a political subdivision of the State of Nevada, and its assignees, assumes all liability for and shall defend, indemnify, and save harmless the United States and its officers, agents, representatives, and employees (hereinafter referred to in this clause as the United States) from all claims, loss, damage, actions, causes of action, expense, and liability (hereinafter referred to in this clause as claims) resulting from, brought for, or on account of, any personal injury, threat of personal injury, or property damage received or sustained by any person growing out of, occurring, or attributable directly or indirectly, to the disposal of solid waste on, or the release of hazardous substances from the S½SE¼NW¼SW¼NE¼, NW¼SE¼NW¼SW¼NE¼, Section 16, T. 15 S., R. 67 E., regardless of whether such claims shall be attributable to: (1) The concurrent, contributory, or partial fault, failure, or negligence of the United States, or (2) the sole fault, failure, or negligence of the United States.

9. In addition to the above the patent of the herein described land is subject to the following reservations, conditions, and limitations: The patentee or its successor in interest shall comply with and shall not violate any of the terms or provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 241) and requirements of the regulations, as modified or amended, of the Secretary of the Interior issued pursuant thereto (43 CFR 17) for the period that the lands conveyed herein is used for the purpose for which the grant was issued pursuant to the act cited or for another purpose involving the provision of similar services or benefits.

10. The United States shall have the right to seek judicial enforcement of the requirements of Title VI of the Civil Rights Act of 1964, and the terms and conditions of the regulations, as modified or amended, of the Secretary of the Interior issued pursuant to said Title VI, in the event of their violation by the patentee.

11. The patentee or its successor in interest will, upon request of the Secretary of the Interior or his delegate, post and maintain on the property conveyed by this document, signs or posters bearing legend concerning the applicability of Title VI of the Civil Rights Act of 1964 to the property conveyed.

12. The reservations, conditions and limitations contained in paragraphs 9 through 11 shall constitute a covenant running with the land, binding on the lessee and its successors in interest for the period for which the land herein is used for the purpose for which this grant was made or for another purpose involving the provision of similar services or benefits.

13. The assurances and covenant required by paragraphs 9 through 12 above shall not apply to ultimate beneficiaries under the program for which this patent is made. Ultimate beneficiaries are identified in 43 CFR 17.12(h). Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas Field Office, 4765 W. Vegas Drive, Las Vegas, Nevada. 89108.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for conveyance under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposal under the mineral material disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments regarding the proposed conveyance for classification of the lands to the District Manager, Las Vegas Field Office, 4765 Vegas Drive, Las Vegas, Nevada 89108.

Classification Comments: Interested parties may submit comments involving the suitability of the land for a solid

waste convenience station. Comments on the classifications are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a solid waste convenience station.

Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for conveyance until after the classification becomes effective.

Dated: March 8, 2000.

Judy A. Fry,

Acting Assistant Field Manager, Division of Lands, Las Vegas Field Office.

[FR Doc. 00–6893 Filed 3–20–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ General Management Plan, Whiskeytown Unit, Shasta -Trinity-Whiskeytown National Recreation Area, Shasta County, California; Notice of Approval of Record of Decision

SUMMARY: Pursuant to 102(2)(C) of the National Environmental Policy Act of 1969 (Pub. L.91–190, as amended) and the regulations promulgated by the Council on Environmental Quality (40 CFR 1505.2), the Department of the Interior, National Park Service has prepared and approved a Record of Decision for the Final Environmental Impact Statement/General Management Plan for Whiskeytown National Recreation Area. The no-action period was initiated September 17, 1999, with the U.S. Environmental Protection Agency's **Federal Register** notification of the filing of the Final Environmental Impact Statement (FEIS).

Decision

As soon as practical the National Park Service will begin to implement the General Management Plan described as the Proposed Action (Alternative C) contained in the FEIS. This alternative was deemed to be the environmentally preferred alternative. This course of action and three alternatives were identified and analyzed in the Final and Draft Environmental Impact Statements (the latter was distributed on September 8, 1998). The full range of foreseeable environmental consequences were assessed, and appropriate mitigation measures identified.

Copies

Interested parties desiring to review the Record of Decision may obtain a copy by contacting the Superintendent, Whiskeytown National Recreation Area, P.O. Box 188, Whiskeytown, California 96095; or via telephone request at (530) 242–3400.

Dated: March 8, 2000.

John J. Reynolds,

Regional Director, Pacific West Region.

[FR Doc. 00–6912 Filed 3–20–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Trail of Tears National Historic Trail Advisory Council Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92–463, that a meeting of the Trail of Tears National Historic Trail Advisory Council will be held April 26, 2000, 8:30 a.m., at the Holiday Inn, 2336 Highway 411N, White, Georgia.

The Trail of Tears National Historic Trail Advisory Council was established administratively under authority of section 3 of Public Law 91–383 (16 U.S.C. 1s–2(c)), to consult with the Secretary of the Interior on the implementation of a comprehensive plan and other matters relating to the Trail, including certification of sites and segments, standards for erection and maintenance of markers, preservation of trail resources, American Indian relations, visitor education, historical research, visitor use, cooperative management, and trail administration.

The matters to be discussed include:

—Plan Implementation Status
—Trail Association Status
—Cooperative Agreements Negotiation
—Trail Route and other Historical Research

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Superintendent.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Superintendent, Long Distance Trails Group Office-Santa Fe, National Park Service, P.O. Box 728, Santa Fe, New Mexico 87504–0728, telephone 505/988–6888. Minutes of the meeting will be available for public inspection at the Office of the Superintendent, located in Room 205, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: March 7, 2000.

David M. Gaines,

Superintendent.

[FR Doc. 00–6962 Filed 3–20–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 11, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by April 5, 2000.

Beth Boland,

Acting Keeper of the National Register.

ARIZONA

Coconino County: Grand Canyon Railway, From Williams, AZ, to Grand Canyon National Park, Williams, 00000319

ARKANSAS

Phillips County: Maple Hill Cemetery, N. Holly St., Helena, 00000318

CALIFORNIA

Mono County: Yellow Jacket Petroglyphs, Address Restricted, Bishop, 00000321
San Mateo County: Coxhead, Ernest, House, 37 E. Santa Inez Ave., San Mateo, 00000322
Stanislaus County: First National Bank of Oakdale Building, 338 East F St., Oakdale, 00000320

COLORADO:

Phillips County: Reimer—Smith Oil Station, 109 S. Campbell Ave, Holyoke, 00000323

CONNECTICUT

Fairfield County: Fourth Ward Historic District, Roughly along Church, Division, Northfield and William Sts.; and Putnam Court and Sherwood Place, Greenwich, 00000324
New Haven County: Birmingham Green Historic District, Roughly bounded by Fifth, Caroline, Fourth and Olivia Sts., Derby, 00000325

IDAHO

Idaho County: Big Creek Commissary, Yellow Pine, Payette National Forest, Big Creek, 00000327

IOWA

Emmet County: Brugield—Peterson Family Farmstead District, 2349 450th Ave., Wallingford, 00000326

KANSAS

Washington County: Washington County Courthouse, 214 C St., Washington, 00000328

LOUISIANA

Natchitoches Parish: Jones, John Carroll, House, (Louisiana's French Creole Architecture MPS) 473 LA 484, Natchez, 00000329

MISSISSIPPI

Bolivar County: Rosedale Historic District, Roughly along Main, Front, and Levee Sts., from Elizabeth Ave. to Brown St., Rosedale, 00000331
Jackson County: Pascagoula High School, Old, 2903 Pascagoula St., Pascagoula, 00000330
Madison County: Mt. Zion Baptist Church, 514 West North St., Canton, 00000333
Winston County: Foster—Fair House, 507 S. Columbus Ave., Louisville, 00000332

MISSOURI

Jackson County: Pilgrim Lutheran Church for the Deaf of Greater Kansas City and Parsonage, 3801–3807 Gilham Rd., Kansas City, 00000334

MONTANA

Missoula County: Mrs. Lydia McCaffery's Furnished Rooms, (Missoula MPS) 501 West Alder, Missoula, 00000335

NEVADA

Douglas County: Farmers' Bank of Carson Valley, 1596 Esmeralda Ave., Minden, 00000338
Washoe County:
Nystrom Guest House, 333 Ralston St., Reno, 00000339
Peavine Ranch, 11220 N. Virginia St., Reno, 00000337
Twaddle—Pedroli Ranch, 4970 Susan Lee Circle, Washoe Valley, 00000340
Withers Log Home, 344 Wassou, Crystal Bay, 00000341

NEW MEXICO

Rio Arriba County: Tierra Amarilla AFS P–8 Historic District, 9.0 mi. SE of Tierra Amarilla on NM 112, Tierra Amarilla, 00000342

NEW YORK

Greene County:
Fischel, Harry, House, 6302 Main St., Hunter, 00000348
Halcott Grange No. 881, Cty Rte. 3, Halcott, 00000351
Livingston County: Hemlock Fairground, East Ave., Hemlock, 00000347
Onondaga County: Southwood Two-Teacher School, 4621 Barker Hill Rd., Jamesville, 00000349
Orange County: Brotherhood Winery, Brotherhood Plaza, Washingtonville, 00000345
Rockland County:
Hopper, Edward, Birthplace and Boyhood Home, 82 North Broadway, Nyack, 00000352
Sloat's Dam and Mill Pond, Off of Station Rd., Sloatsburg, 00000344
Wayside Chapel, Former, 24 River Rd., Grand View-On-Hudson, 00000346
Sullivan County: Cochecton Center Methodist Episcopal Church, Skipperdine Rd., Cochecton Center, 00000343
Wyoming County: Epworth Hall, Perry Ave., Perry, 00000350

NORTH CAROLINA

Buncombe County: Fire Station Number 4, 300 Merrimon Ave., Asheville, 00000336

TENNESSEE

Williamson County: Roper's Knob Fortifications, (Civil War Historic and Historic Archeological Resources in Tennessee MPS) Off Liberty Pike, Franklin, 00000353

UTAH

Iron County: Lyman, William and Julia, House, 191 S. Main St., Parowan, 00000355
Salt Lake County: Green, Alvin and Annie, House, (Sandy City MPS) 8400 Danish Rd., Sandy, 00000356
Uintah County: Carter Road, Ashby National Forest, Ashby National Forest, 00000354
Utah County: Cedar Fort School, 40 E. Center St., Cedar Fort, 00000357

VERMONT

Caledonia County: Building at 143 Highland Avenue, 143 Highland Ave., Hardwick, 00000358

WISCONSIN

Dane County: Sun Prairie Water Tower, Jct. of Columbus, Church and Cliff Sts., Sun Prairie, 00000360
Green County: Chicago, Milwaukee and Saint Paul Railroad Depot, 418 Railroad St., New Glarus, 00000359

On March 13, 2000, the following resource was removed from the National Register of Historic Places; determined eligible for the National Register of Historic Places:

PENNSYLVANIA

Greene County: Kent, Thomas, Jr. Farm 208 Laurel Run Rd., Waynesburg, 98000444

[FR Doc. 00–6911 Filed 3–20–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Glen Canyon Adaptive Management Work Group (AMWG) and Glen Canyon Technical Work Group (TWG)

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice; correction.

SUMMARY: The Bureau of Reclamation published a document in the **Federal Register** on February 24, 2000, concerning the announcement of an upcoming public meeting of the Glen Canyon Dam Adaptive Management Work Group. The meeting has been canceled.

FOR FURTHER INFORMATION CONTACT: Randall Peterson, Bureau of Reclamation, Upper Colorado Regional Office, 125 South State Street, Room 6107, Salt Lake City, Utah 84138–1102; telephone (801) 524–3758; faxogram (801) 524–3858; E-mail at rpeterson@uc.usbr.gov at least FIVE (5) days prior to the meeting. Any written comments received will be provided to the TWG and AMWG members at the meetings.

In the **Federal Register** of February 24, 2000, in FR Doc. 00–4205, on page 9296, in the third column, correct the information under April 4–5, 2000, Phoenix, Arizona, to read as follows:

April 4–5, 2000, Phoenix, Arizona—The AMWG Meeting has been canceled. For further information on future

meeting dates, please check out the Bureau of Reclamation web site at http://www.uc.usbr.gov/amp.

Dated: March 15, 2000.

Erica Petacchi,

Federal Register Lioison.

[FR Doc. 00–6899 Filed 3–20–00; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Meeting; Sunshine Act

AGENCY HOLDING THE MEETING: United States International Trade Commission

TIME AND DATE: March 22, 2000 at 11 a.m.

PLACE: Room 101, 500 E Street SW, Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: none.
2. Minutes.
3. Ratification List.
4. Inv No. 731–TA–377 (Review) (Internal Combustion Industrial Forklift Trucks from Japan)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on April 4, 2000.)
5. Inv. Nos. 731–TA–474–475 (Review) (Chrome-Plated Lug Nuts from China and Taiwan)— briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on March 29, 2000.)
6. Outstanding action jackets: none

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission:

Issued: March 15, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7071 Filed 3–17–00; 12:10 pm]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Aerospace Vehicle Systems Institute ("AVSI") Cooperative

Notice is hereby given that, on September 21, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Aerospace Vehicle Systems Institute ("AVSI") Cooperative has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Hamilton Standard Division of United Technologies Corporation and Sunstrand Corporation have merged to form Hamilton Sunstrand Division of United Technologies Corporation, Windsor Locks, CT. Additionally, the AVSI Cooperative intends to work on the following joint research projects:

Systems Engineering and Information Management—To evaluate and develop systems engineering and information management processes and tools to be used at the aerospace vehicle and subsystem level for the efficient, industry-wide communication of requirements and configuration management information.

Certification Cost Minimization—To evaluate and recommend new standard industry-wide processes and guidelines for both design and compliance methods for aerospace vehicle electrical equipment hardware and software that will minimize both initial and subsequent qualification and certification costs and cycle times.

Defining Real Operating Environments—To establish aerospace vehicle system local environmental operating conditions to allow refinement of design requirements for subsystems, electrical and hardware components.

Rapid Prototyping Tools for Flight Deck Display Systems—To produce a common development process and associated interface standards to allow rapid prototyping of flight deck and cockpit display concepts and to efficiently transition these concepts into avionics systems.

Systems Bus Study—To determine whether a new databus technology should be developed for application to commercial aircraft and to evaluate the appropriate level of technologies needed in a new databus.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Aerospace Vehicle Systems Institute ("AVSI") Cooperative intends to file additional written notification disclosing all changes in membership.

On November 18, 1998, Aerospace Vehicle Systems Institute ("AVSI") Cooperative filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 18, 1999 (64 FR 8123).

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–6957 Filed 3–20–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Application Service Provider Industry Consortium, Inc.

Notice is hereby given that, on July 28, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Application Service Provider Industry Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are AT&T, San Jose, CA; AristaSoft Corp., Mountain View, CA; Boundless Technologies, Inc., Hauppauge, NY; Cisco Systems, Inc., San Jose, CA; Citrix Systems, Inc., Ft. Lauderdale, FL; Compaq Computer Corporation, Marlborough, MA; CyLex Systems, Inc., Boca Raton, FL, Ernst & Young, Calgary, Alberta, CANADA; Exodus Communications, Inc., Santa Clara, CA; FutureLink Distribution Corp., Calgary, Alberta, CANADA; GTE, Irving, TX; Great Plains Software, London, Ontario, CANADA; IBM Corp., White Plains, NY; Interpath Communications, Inc., RTP, NC; JAWS Technologies, Inc., Calgary, Alberta, CANADA; Marimba, Inc., Mountain View, CA; Onyx Software Corp., Bellevue, WA; SaskTel, Regina, Saskatchewan, CANADA; Sharp Electronics Corp., Mahwah, NJ; Sun Microsystems, Palo Alto, CA; Taylor Group, Bedford, NH; Telecomputing, Fort Lauderdale, FL; UUNET, Fairfax, VA; Verio, Englewood, CO; WYSE, San Jose, CA; Breakaway Solutions, Inc., Boston, MA; Daleen Technologies, Inc., Boca Raton, FL; ebaseOne Corp., Houston, TX; GraphOn Corp., Campbell, CA; National Semiconductor, Santa Clara, CA; Progress Software, Bedford, MA; Xanthon, Inc., Salt Lake City, UT; AboveNet, San Jose, CA; BlueSky, Delray Beach, FL; Interliant, Houston, TX; Mincom Limited, Brisbane, Q'Land, AUSTRALIA; US West, Denver, CO; Softblox, Atlanta, GA; Documentum, Pleasanton, CA; Netstore Group Ltd., Bracknell, Berkshire, UNITED KINGDOM; Learningstation.com, Charlotte, NC; SCO, Cambridge, UNITED KINGDOM; NaviSite, Inc., Andover, MA; Fujitsu Limited, Tokyo, JAPAN; Professional Advantage, North Sydney NSW, AUSTRALIA; Lucent Technologies, Warren, NJ; MetaSolv Software, Inc., Plano, TX; Microsoft Corporation, Redmond, WA; L.I.M.S. (USA) Inc., Hollywood, FL; Solution 6 Pty Ltd., Sydney, NSW, AUSTRALIA; Ensim Corporation, Mountain view, CA; Data General, Westboro, MA; Digital Island, Inc., San Francisco, CA; EpiCON, Inc., Waltham, MA; Sprint Corporation, Dallas, TX; Network Computing Devices, Mountain View, CA; Packeteer, Inc., Cupertino, CA; FirstSense Software, Inc., Burlington, MA; National Payroll Systems Pty Ltd., Malvern, Victoria, AUSTRALIA; Esoft Ltd., Stockport, Cheshire, UNTIED KINGDOM; Nortel Networks, RTP, NC; ChoicePoint, Tipton, PA; Hewlett-Packard, Roseville, CA; NTT America, Inc., Mountain View, CA; Imago ASP Services, Lenexa, KS; CIBER Enterprise Outsourcing, Columbia, SC; EMC,[2] Hopkinton, MA; Unisys, Blue Bell, PA; Aventail Corp., Seattle, WA; Netier Technologies, Inc., Carrollton, TX; Data Return Corporation, Arlington, TX; BCA it Ltd., Melbourne, Victoria, AUSTRALIA; SunGard Computer Services Inc., Wayne, PA; PBM Corp., Cleveland, OH; Eggrock Partners, LLC, Concord, MA; International Energy Services, Inc., Houston, TX; JustOn, Santa Clara, CA; Deloitte Consulting, East Brunswick, NJ; Madge Networks Ltd., Wexham, Slough, ENGLAND; X-Collaboration Software Corporation, Boston, MA; Abatis Systems Corporation, Burnaby, British Columbia, CANADA; ELF Technologies, Inc., Mercer Island, WA; Enterprise Development Services, Atlanta, GA; Compuware Corporation, Campbell, CA; Sequent Computer Systems, Beaverton, OR; Imagecom, Arlington Heights, IL; Avnet, Tempe, AZ; and Prologue Software, Les Ulis, FRANCE. The nature and objectives of the venture are to educate the market worldwide about the benefits of the ASP industry, provide common definitions for the industry, serve as a forum for discussion of issues that are related to, or may further, such goals, sponsor industry research, establish interoperability guidelines, and engage in such other activities (e.g., certification and/or branding programs) as may further such goals.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–6961 Filed 3–20–00; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Enterprise Computer Telephony Forum

Notice is hereby given that, on July 8, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Enterprise Computer Telephony Forum ("ECTF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damage under specified circumstances. Specifically, CCS Trexcom, Inc., Norcross, GA; Witness Systems, Inc., Alpharetta, GA; Ariel Corporation, Cranbury, NJ; Blue Wave Systems, Leicestershire, United Kingdom; BST Communication Technology, Ltd., Guangzhou, China; Communiq ASA, Sola, Norway; Etex-Sprachsynthese AG, Frankfort, Germany; Global Communications Systems Research, Alexandria, VA; Industrial Technology Research Institute, Taejon, Korea; Inter-Tel, Inc., Chandler, AZ; and Logic Ltd., Aldermaston, United Kingdom have been added as parties to this venture. Also, Advanced Digital Telephony, Altadena, CA; Amteva Technologies, Inc., Glen Allen, VA; Computer Communication Specialists, Norcross, GA; British Telecom, Sundbury, United Kingdom; Comdial, Charlottesville, VA; and Systems Integration, Ltd., Aldermaston, United Kingdom have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Enterprise Computer Telephony Forum ("ECTF") intends to file additional written notification disclosing all changes in membership.

On February 20, 1996, Enterprise Computer Telephony Forum ("ECTF") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on May 13, 1996 (61 FR 22074).

The last notification was filed with the Department on April 1, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–6954 Filed 3–20–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; J. Consortium, Inc.

Notice is hereby given that, on August 9, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), J. Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Advanced VLSL Engineering Inc., San Jose, CA; Advantisys, Upland, CA; Anacon Systems Inc., Mountain View, CA; Aonix, San Diego, CA; Brooks Automation Software Corp., Richmond, B.C., CANADA; Coactive Networks, Sausalito, CA; EIB Association scrl (EIBA), Brussels, BELGIUM; FI System, Paris, FRANCE; GraphOn, Campbell, CA; Groupe Silicomp Research Institute, Gieres, FRANCE; Hewlett Packard, Cupertino, CA; Hinditron Information Ltd., Andhen (East), MUMBAI; Icon Laboratories, Inc., West Des Moines, IA; KALKI Communications Technology, Koramangala, BANGALORE; Microsoft, Redmond, WA; Mitsubishi Electric Corp., Kobe, JAPAN; Murata Manufacturing Co., Ltd., Siga, JAPAN; Navia Maritime AS, division Autronica, Trondheim, NORWAY; NewMonics Inc., Ames, IA; Russell J. Richards, Woodbridge, VA; Octera Corporation, San Diego, CA; OMRON Corporation, Santa Clara, CA; Jack Xu, Milpitas, CA; Perennial, San Jose, CA; Plum Hall Inc.,

Kamuela, HI; Schlumberger Test & Transactions, Montrouge Cedex, FRANCE; Siemens A&D, Nurnberg, GERMANY; Transmedia Communications, Fremont, CA; WindRiver, Alameda, CA; Xerox PARC, Palo Alto, CA; Xycom Automation Inc., Chagrin Falls, OH; Yamatake Corporation, Kanagawa, JAPAN; Yokogawa Electric Corporation, Tokyo, JAPAN; and E. Douglas Jensen, Sherborn, MA. The nature and objectives of the venture are to promote the development and adoption of open, accessible standards and specifications relating to real-time and embedded applications for JAVA™ technologies, such as the Java Virtual Machine (JVM), Java Application Programming Interfaces (APIs, or packages), etc. ("Specifications"); to promote such specifications and solutions worldwide to ensure the ability for application developers to create soft- and hard-real-time applications for such technologies, to provide for testing and conformity assessment of implementations in order to ensure compliance with Specifications; to create and own distinctive trademarks; and to operate a branding program based upon distinctive trademarks to create high customer awareness of, demand for, and confidence in products designed in compliance with Specifications; and to undertake such other activities as may from time to time be appropriate to further the purposes and achieve the goals set forth above.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 00–6958 Filed 3–20–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Medal, L.P.—High Performance Inorganic—Organic Mixed Matrix Composite Membranes

Notice is hereby given that, on July 7, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, U.S.C. 4301 *et seq.* ("the Act"), MEDAL, L.P.—High Performance Inorganic—Organic Mixed Matrix Composite Membranes has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identifies of the parties and (2) the nature and objectives of the venture. The notification were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are MEDAL, L.P., Newport, DE; and Chevron Research and Technology Company, Richmond, CA. The nature and objectives of the venture are to conduct research on high-performance inorganic-organic mixed matrix composite membranes for the separation of gases and liquids.

Constance K. Robinson,
Director of Operations Antitrust Division.
[FR Doc. 00–6960 Filed 3–20–00; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; National Center for Manufacturing Sciences, Inc. ("NCMS"): Advanced Embedded Passives Technology

Notice is hereby given that, on August 5, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), National Center for Manufacturing Sciences, Inc. ("NCMS"): Advanced Embedded Passives Technology has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Electro Scientific Industries, Inc., Portland, OR; and MicroFab Technologies, Inc., Plano, TX have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and National Center for Manufacturing Sciences, Inc. ("NCMS"): Advanced Embedded Passives Technology intends to file additional written notification disclosing all changes in membership.

On October 7, 1998, National Center for Manufacturing Sciences, Inc. ("NCMS"): Advanced Embedded Passives Technology filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 22, 1999 (64 FR 3571).

The last notification was filed with the Department on February 3, 1999. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 1, 1999 (64 FR 29357).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 00–6952 Filed 3–20–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Portland Cement Association ("PCA")

Notice is hereby given that, on September 7, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Glacier Northwest Canadian Ltd., Vancouver, BC, Canada; and Bulk Materials International Company, Inc., Newton, CT; (an Associate Member) have been added as parties to this venture. Also, Holderbank Consulting Limited's corrected company name is Holderbank Engineering Canada Ltd., Mississauga, Ontario, Canada; and Polysius Corporation's corrected name is Krupp-Polysius Corp., Atlanta, GA.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Portland Cement Association ("PCA") intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, Portland Cement Association ("PCA") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985 (50 FR 67591).

The last notification was filed with the Department on June 2, 1999. A notice has not yet been published in the **Federal Register**.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 00–6955 Filed 3–21–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1933; Standard MEMS

Notice is hereby given that, on August 3, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Standard MEMS has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Microscan Systems, Inc., Renton, WA; Maxim Integrated Products, Sunnyvale, CA; Microcosm Technologies, Inc., Cambridge, MA; Optical Micro Systems, Inc., San Diego, CA; Standard MEMS, Hauppauge, NY; and Xerox Corporation, Webster, NY. The nature and objectives of the venture are to develop a manufacturing process and manufacturing infrastructure for Micro-Opto-Electro-Mechanical Systems. The activities of this project will be partially funded by an award from the Advanced Technology Program, National Institute of Standards and Technology, Department of Commerce. The goals of this collaboration are to overcome the barriers that limit the application of low-cost Micro-Opto-Electro-Mechanical Systems (MOEMS) devices in commercial applications in telecommunications, data acquisition, and reprographics. The most important technical barriers are in the areas of packaging, systems partitioning, the optical and mechanical properties of thin film elements, and the assembly and alignment of free-space micro-optical systems. To overcome the technical barriers, Standard MEMS will develop a broadly enabling MOEMS fabrication process, and utilize this process to demonstrate prototype MOEMS devices at Optical Micro-Machines, Microscan Systems, and Xerox, to enable commercialization of the prototypes following the completion of the ATP collaboration.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 00–6953 Filed 3–20–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Telemanagement Forum

Notice is hereby given that, on June 8, 1999, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 et seq. ("the Act"), Telemanagement Form has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Citizens Communications, Dallas, TX; Bea Systems, Inc., Sunnyvale, CA; Telstra Corporation, Melbourne, AUSTRALIA; Telecordia Technologies, Red Bank, NJ; and Metamor Industry Solutions, Birmingham, AL have been added as Corporate Members. ETIS, Brussels, BELGIUM has been added as an Affiliate Member. Level (3) Communications, Westminster, CO; Raychem Corp., Menlo Park, CA; Telecommunications Management Network de Mexico, Mexico City, MEXICO; Object-Mart, Inc., San Jose, CA; Pathnet, Washington, DC; ITS., Inc., Piscataway, NJ; Teledesic LLC, Kirland, WA; Accunet Ltd., Newbury, Berkshire, ENGLAND; Telekom Applied Business SDN BHD, Kuala Lumpur, MALAYSIA; Commtech Corp., Cranbury, NJ; Streamsoft, Inc., Fremont, CA; Hitachi Telecom (USA); Inc., Norcross, GA; ISR Global Telecom, Orlando, FL; Protek, Kokstad, Bergen, NORWAY; SITA, Neuilly-sur-Seine, FRANCE; and Fore Systems, Dublin, IRELAND have been added as Associate Members. Also, Hitachi Telecom (USA), Inc., Norcross, GA; ISR Global Telecom, Orlando, FL; ETIS, Brussels, BElGIUM; Bellcore, Red Bank, NJ; and Technology and Process Consulting, Inc., Birmingham, AL have been dropped as Corporate Members. SITA, Neuilly-sur-Seine, FRANCE has been dropped as an Affiliate Member. Bea Systems, Inc., Sunnyvale, CA; Telstra Corp., Melbourne, AUSTRALIA; Nera AS, Kokstad, Bergen, NORWAY; and Euristix Ltd, Dublin, IRELAND have been dropped as Associate Members.

Nera AS is no Protek; Sita/Equant is now Sita; Bellcore is now Telcordia Technologies; Euristix is now Fore Systems; and Technology Process and Consulting, Inc. is now Metamor Industry Solutions.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Telemanagement Forum intends to file additional written notification disclosing all changes in membership.

On October 21, 1988, Telemanagement Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on February 19, 1999. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,
Director of Operations Antitrust Division.
[FR Doc. 00–6956 Filed 3–20–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993; United Defense, L.P. ("UDLP"): Crusader Advanced Field Artillery System Program

Notice is hereby given that, on October 15, 1998, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), United Defense, L.P. ("UDLP"): Crusader Advanced Field Artillery System Program has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are United Defense, L.P., Minneapolis, MN; and General Dynamics Corporation, Sterling Heights, MI. The nature and objectives of the venture are the U.S. Army currently is developing its next generation field artillery system,

which is called The Crusader Advanced Field Artillery System Program ("Crusader Program"). Development is being managed by a joint government-industry "integrated product team" that includes the U.S. Army Tank-automotive Armaments Command-Armaments Research, Development and Engineering Center (TACOM–ARDEC), Office of the Project Manager—Crusader (OPM–Crusader), and UDLP as the prime contractor for the Crusader Program. GD is a major subcontractor for the Program. The Army has approved a non-competitive acquisition strategy for the Crusader Program.

Contracts previously have been awarded to DULP for certain initial development phases of the Crusader Program, and additional contracts may be awarded for future phases and stages of the Program. The objectives of the parties' teaming agreement are to identify their respective and mutual roles, obligations and responsibilities pertaining to accomplishment of the Crusader Program. By this agreement, the parties intend to form an exclusive team for all phases and stages of the Crusader Program, including further system development and production, and to pursue Program-related sales to the U.S. Government and international customers. The parties will jointly prepare and submit proposals containing technical, management and cost information for implementation of the Crusader Program. UDLP will continue to perform as prime contractor under any contracts that have been or may be awarded and GD will perform as subcontractor.

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–6959 Filed 3–20–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to section 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on December 27, 1999, Organichem Corporation, 33 Riverside Avenue, Renssalaer, New York 12144, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Meperidine (9230)	II

The firm plans to manufacture meperidine as bulk product for distribution to its customers and to manufacture methylphenidate for distribution to a customer.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, D.C. 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 22, 2000.

March 13, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–6984 Filed 3–20–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS 2049–00]

Information Regarding the H–1B Numerical Limitation for Fiscal Year 2000

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice explains how the Immigration and Naturalization Service (the Service/INS) will process H–1B petitions for new employment for the remainder of this fiscal year now that it is clear that the demand for H–1B workers will exceed the statutory numerical limit (the cap) of 115,000 H–1B petitions for Fiscal Year 2000. This notice is published so that the public will understand the Service's procedure for processing H–1B petitions, as the procedure may affect the business decisions of some prospective H–1B petitioners. These procedures are intended to minimize the confusion and burden to employers who use the H–1B program, reduce the administrative burden at the Service Centers, and eliminate the need for employers to inquire about the status of pending H–1B petitions.

This notice also serves to inform the public that the Commissioner of the INS is exercising her authority under 8 CFR 214.2(f)(5)(vi) and (j)(1)(vi) for this fiscal year to extend the duration of stay for certain F and J nonimmigrants (students and exchange visitors) if their employer has filed a timely request for change of nonimmigrant status to that of an H–1B nonimmigrant alien and the petition was filed before October 1, 2000. This measure will prevent a lapse of status for these aliens before the Service is able to act on petitions to change their status.

DATES: This notice is effective March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Tracy Renaud, Adjudications Officer, Immigration Services Division, Immigration and Naturalization Service, 801 I Street, NW, Room 980, Washington, DC 20536, telephone (202) 305–8010.

SUPPLEMENTARY INFORMATION:

What is an H–1B nonimmigrant?

An H–1B nonimmigrant is an alien employed in a specialty occupation or as a fashion model of distinguished merit and ability. A specialty occupation is an occupation that requires theoretical and practical application of a body of specialized knowledge and attainment of a bachelor's or higher degree in the specific specialty as a minimum for admission into the United States.

What is the cap or numerical limitation on the H–1B nonimmigrant classification?

Section 214(g) of the Immigration and Nationality Act (the Act) provides that the total number of aliens who may be issued H–1B visas or otherwise granted H–1B status during Fiscal Year 2000 may not exceed 115,000. As of February 29, 2000, the Service has recorded 74,300 petitions against the cap for Fiscal Year 2000. As of February 29, 2000, there are more than 45,000 H–1B cap petitions pending at the four Service Centers. Since on average the Service approved 90 percent (90%) of the H–1B petitions it receives, there now appears to be a sufficient number of H–1B petitions pending at the four Service Centers to reach the cap for this fiscal year. Therefore, as of [Date of publication in the **Federal Register**], the Service will reject any petitions requesting a start date prior to October 1, 2000.

What is the effect of this action?

This notice explains the Service's procedure for processing H–1B petitions for new employment that are filed by employers seeking to employ H–1B aliens during the remainder of this fiscal year, *i.e.*, through September 30, 2000. The process described in this notice is similar to the process the Service used in the fiscal Year 1999 for handling H–1B petitions after the cap had been reached.

The Service also published a proposed regulation at 64 FR 32149 on June 15, 1999, that described the method that it would use in handling H–1B petitions in subsequent fiscal years. This notice contains the same language as in the proposed rule.

Does this procedure apply to all H–1B petitions filed for this fiscal year?

No. The procedure described in this notice relates only to H–1B petitions filed for new employment to commence on or before September 30, 2000. A petition for new employment includes a petition where the alien beneficiary is outside the United States when the H–1B petition is approved or where the alien is already in the United States and is seeking a change of nonimmigrant status to an H–1B nonimmigrant alien.

Amended petitions and petitions for extension of stay are not affected by this procedure because these petitions do not count against the cap. Likewise, petitions for aliens in the United States who already hold H–1B status, *i.e.*, petitions filed on behalf of an H–1B alien by a new or additional employer, are not affected by this procedure. This procedure does not relate to petitions filed before October 1,2000, for employment to commence on or after October 1, 2000.

What is the Service's procedure for processing H–1B petitions for new employment during the remainder of this fiscal year?

This notice inform the public that there are a sufficient number of H–1B petitions pending at the four Service Centers to reach the cap of 115,000 for this fiscal year. The Service will not accept for adjudication any H–1B petition for new employment containing a request for a work start date prior to October 1, 2000. These petitions will be rejected and returned (along with the filing fee) to the petitioner according to 8 CFR 214.2(h)(8)(ii)(E). However, such petitioners are free to refile those petitions with a new starting date of October 1, 2000, or later.

The Service will not reject a pending petition when the Fiscal Year 2000 allotment of 115,000 H–1B numbers has been exhausted. Just as in Fiscal Year 1999, the Service will proceed to adjudicate the petition based on a presumption that the employer will accept October 1, 2000, as the date from which the approved petition is valid and the first date on which the alien beneficiary may begin employment as an H–1B worker.

It must be noted that the Service received favorable comments from the public on this procedure when it was first implemented in Fiscal Year 1999. In view of these favorable comments, the Service will continue to use the same process this fiscal year.

Each Service Center will coordinate their adjudication of pending H–1B petitions to ensure that all petitions will be processed in order of receipt by the Service Center irrespective of the place of filing. The Service is currently adjudicating H–1B petitions which were filed as late as January 20, 2000. Thereafter "pipeline" cases (petitions filed prior to the date the cap was reached) will be adjudicated in the order of receipt, but will be assigned a work start date of October 1 of the new fiscal year or later.

What should a petitioner do if the October 1 start date for employment is not acceptable?

If the petitioner is unwilling to wait until the October 1 start date for employment of the H–1B alien and the Service has not yet adjudicated the petition, the petitioner should notify the Service in writing that he or she wishes to withdraw the petition. As noted below, the Service cannot refund the filing fee in such cases.

If the Service has approved a petition for work to begin as of October 1, 2000, and the petitioner determines that the date is not acceptable, the petitioner should notify the Service is writing immediately so that the Service can revoke the petition and recapture the number and return it to the pool of unused numbers of Fiscal Year 2001.

How should a petitioner notify the Service that it wishes to withdraw a petition?

If a petitioner wishes to withdraw a pending H–1B petition or an approved H–1B petition for new employment, the petitioner should fax a withdrawal request to the Immigration and Naturalization Service, Immigration Services Division, H–1B Withdrawal Section, Washington, DC, fax number: 202–514–2093. The request should be signed by the petitioner or authorized representative and include the filing receipt number and the names of both the petitioner and beneficiary. Employers seeking to request withdrawal of an H–1B petition should use this fax number and special procedure.

Does this process apply to H–1B petitions filed for employment to commence on or after October 1, 2000?

No. Those petitioners are not affected by the procedures described in this in this notice and will be adjudicated in the normal fashion, regardless of whether they are pending as of the date of this notice or filed after this year's cap is reached.

How will the Service process petitions that are revoked?

The Service will subtract revocations of any H–1B petitions for new employment from the total H–1B count in the fiscal year for which the new employment was approved. After the petition is revoked, the case number will be sent to the Immigration Services Division (ISD) where the number will be recaptured for use. The number will then be forwarded by ISD to a Service Center to be assigned to a pending petition. Priority will be given to approved petitions in the order they were received (e.g., petitions that were originally denied but subsequently ordered approved by the Administrative Appeals Office).

Will the Service refund a filing fee if a petition is withdrawn or revoked?

No, the Service will not refund either the $110 filing fee or the additional $500 filing fee imposed by the American Competitiveness and Workforce Improvement Act of 1998 when a petition is revoked. The provisions contained in 8 CFR 103.2(a)(1) preclude the refunding of filing fees on I–129 petitions in this situation. The Service will refund a filing fee only if the filing of the petition was a result of Service error.

Will the Service allow certain F and J nonimmigrant aliens who are the beneficiaries of H–1B petitions to remain in the United States until they can change their status to H–1B on or after October 1, 2000?

Yes. The Service published an interim rule in the **Federal Register** of June 15, 1999, at 64 FR 32146 that amended its regulations to expand the definition of duration of status for certain F and J nonimmigrant aliens whose employer has filed a timely H–1B petition and application for change of nonimmigrant classification.

The interim rule provided that the Commissioner may extend the duration of status, by notice in the **Federal Register**, of any F or J nonimmigrant alien whose employer has filed a timely petition for change of nonimmigrant status to that of an H–1B nonimmigrant as described in 8 CFR part 248,

provided the alien has not violated the terms of his or her admission to the United States, at any time the Commissioner determines that the H–1B cap will be reached prior to the end of the fiscal year. This extension shall continue for such time as is necessary for the Service to approve a petition changing the alien's status to H–1B in the following fiscal year. An alien whose duration of status has been extended by the Commissioner under these regulations (and who continues to adhere to the other terms of the alien's F and J status) is considered to be maintaining lawful nonimmigrant status for all purposes under the Act.

When will the Commissioner exercise her authority to extend duration of status for this fiscal year?

This notice informs the public that the Commissioner has exercised her discretionary authority under 8 CFR 214.2(f)(5)(vi) and 8 CFR (j)(1)(vi) for this fiscal year. Accordingly, any F or J nonimmigrant whose employer has filed a timely request for change of nonimmigrant status to that of an H–1B nonimmigrant alien whose petition was filed or will be filed before October 1, 2000, is considered to be in a valid nonimmigrant status until October 1, 2000, or until the date the Service adjudicates the change of status application. Pursuant to 8 CFR 248.1(b) and 214.1(c)(4), the term "timely filed" refers to an application for a change of nonimmigrant status filed prior to the expiration of the alien's period of authorized stay in the United States. This provision also applies to the dependents of the affected F and J nonimmigrant aliens. An alien affected by this provision may not work for the petitioning employer or otherwise engage in activities inconsistent with the terms and conditions of the alien's nonimmigrant classification prior to the date for which the Service approves the request for a change of status.

May an F or J nonimmigrant whose stay is extended under this provision accept a hiring bonus before October 1, 2000?

Yes. An F–1 or J–1 nonimmigrant alien may receive a signing bonus before the validity date of the H–1B petition. A signing bonus does not represent a salary or a reimbursement for services rendered and, as a result, may be accepted by the alien.

Does the Fiscal Year 2000 cap include the cases that the Service approved in excess of the cap in Fiscal Year 1999?

No. Any cases that the Service may have approved in excess of the Fiscal Year 1999 cap were not counted against the Fiscal Year 2000 cap. While the numerical cap for the H–1B visa category was exceeded in Fiscal Year 1999, the Service has not yet conclusively determined the exact amount of that discrepancy. The Service will publish a future notice in the **Federal Register** addressing how these cases will be treated once the exact amount of the H–1B discrepancy in Fiscal Year 1999 has been determined.

Dated: March 14, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–7074 Filed 3–17–00; 2:20 pm]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 13, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov)

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Mine Safety and Health Administration.

Title: Qualification and Certification Program.

OMB Number: 1219–0069 Extension.

Frequency: On Occasion.

Affected Public: Business or other for-profit.

Number of Respondents: 611.

Estimated Time Per Respondent:

Form	Total respondents	Estimated average time per respondent (in minutes)	Burden hours
5000–4	578	21	202
5000–7	33	19	11
Total	611	20	213

Total Burden Hours: 213.

Total Annualized Capital/startup Costs: $0.

Total Annual (operating/maintaining): $202.

Description: Persons performing tasks and certain required examinations at coal mines which are related to miner safety and health, and which require specialized experience, are required to be either "certified" or "qualified". Forms for Qualification and Certification may be downloaded in Portable Document Format (PDF) at: www.msha.gov.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–6966 Filed 3–20–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission of OMB Review; Comment Request

March 14, 2000.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 219–5096 ext. 151 or by E-Mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Employment Standards Administration.

Title: Optional Use Payroll Form Under the Davis-Bacon Act.

OMB Number: 1215–0149.

Frequency: Weekly.

Affected Public: Individuals or households; Business or other for-profit; Federal Government; and State, Local or Tribal Government

Number of Respondents: 106,960.

Estimated Time Per response: 56 minutes.

Total Burden Hours: 9,200,000.

Total Annualized capital/startup costs: $40.

Total annual costs (operating/maintaining systems or purchasing services): $354,000.

Description: Report is used by contractors to certify payrolls in accordance with requirements of Copeland and Davis-Bacon Acts, attesting that proper wage rates and fringe benefits were paid; reviewed by contracting agencies to verify that rates are legal and that employees are properly classified.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 00–6967 Filed 3–20–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

The Bureau of Labor Statistics is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

DATES: Written comments must be submitted to the office listed in the Addresses section of this notice on or before May 22, 2000.

ADDRESSES: Send comments to Sytrina D. Toon, BLS Clearance Officer, Division of Management Systems, Bureau of Labor Statistics, Room 3255, 2 Massachusetts Avenue, NE, Washington, DC 20212, telephone number 202–691–7628 (this is not a toll free number).

FOR FURTHER INFORMATION CONTACT: Sytrina D. Toon, BLS Clearance Officer, telephone number 202–691–7628. (See **ADDRESSES** section.)

SUPPLEMENTARY INFORMATION:

I. Proposed Collection

The Bureau of Labor Statistics (BLS) is soliciting comments concerning the proposed revision of the Consumer Price Index (CPI) Housing Survey Computer Assisted Data Collection (CADC). A copy of the proposed information collection request (ICR) can be obtained by contacting the individual listed in the **ADDRESSES** section of this notice.

II. Background

The Consumer Price Index (CPI) is the only index compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The CPI is most widely used as a measure of inflation, and serves as an indicator of the effectiveness of Government economic policy. It also is used as a deflator of other economic series, that is, to adjust other series for price changes and to translate these series into inflation-free dollars.

III. Current Actions

This request is for a three-year clearance of the collection of housing information based on 1990 Census data and new construction data on residential structures built in 1990 and later. In order to facilitate continuity and sufficiency of the housing indexes compiled through the collection of the CPI (CADC) Housing Survey, the survey will be collected through Calendar Year 2002.

Type of Review: REVISION.
Agency: The Bureau of Labor Statistics.
Title: Consumer Price Index Housing (CPI) Survey (CADC).
OMB Number: 1220—0163.
Affected Public: Individuals or Households; Business or other for-profit institutions.
Total Respondents: 128,081.
Frequency: Semi-annually.
Total Responses: 163,394.
Average Time Per Response: 5 minutes.
Estimated Total Burden Hours: 19,299 hours.
Total Burden Cost (capital/startup): $0.
Total Burden Cost (operating/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Signed at Washington, DC, this 13th day of March 2000.

W. Stuart Rust, Jr.

Chief, Division of Management Systems, Bureau of Labor Statistics.

[FR Doc. 00–6965 Filed 3–20–00; 8:45 am]

BILLING CODE 4510–24–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biological Infrastructure: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Advisory Panel for Biological Infrastructure (#1215).
Date and Time: May 1–2, 2000, 8:30 a.m.–5:00 p.m.
Place: National Science Foundation at 4201 Wilson Blvd., Arlington, VA 22230, Rm. 360.
Type of Meeting: Closed.
Contact Person: Greg Farber and Mary Jane Saunders, Program Directors, Biological Instrumentation and Instrument Development, National Science Foundation, Rm. 615, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1472.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposal for acquisition of Biological Instrumentation and Instrument Development for the Major Research Instrumentation (MRI) Program as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 16, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6937 Filed 3–20–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Biological Infrastructure: Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L 92–463, as amended), the National Science Foundation announces the following meeting:

Name and Committee Code: Advisory Panel for biological Infrastructure (#1215).
Date and Time: April 17–18, 2000, 8:30 a.m.–5:00 p.m.
Place: National Science Foundation at 4201 Wilson Blvd., Arlington, VA 22230, Rm. 360.
Type of Meeting: Closed.
Contact Persons: Greg Farber and Mary Jane Saunders, Program Directors, Biological Instrumentation and Instrument Development, National Science Foundation, Rm. 615, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1472.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposal for acquisition of biological Instrumentation and Instrument Development for the Major Research Instrumentation (MRI) Program as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information for a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 16, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6938 Filed 3–20–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Design, Manufacture, and Industrial Innovation; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Design, Manufacture, and Industrial Innovation—(1194).
Date and Time: April 12, 2000, 8 a.m.–5:30 p.m.
Place: Room 530, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Person: Dr. George Hazelrigg, Program Director, Design and Integration Engineering Program, (703) 306–1330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Agenda: To review and evaluate Major Research Instrumentation (MRI) proposals as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters that are exempt under 5 U.S.C. 522b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 16, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6942 Filed 3–20–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Electrical and Communications Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Electrical and Communications System (1196).
Date and Time: April 20–21, 2000: 8:30 a.m. to 5 p.m.
Place: Room 360, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.
Type of Meeting: Closed.
Contact Persons: Dr. Usha Varshney, Electronics, Photonics, and Device Technologies Program, Division of Electrical and Communications Systems, National Science Foundations, 4201 Wilson Boulevard, Room 675, Arlington, VA 22230. Telephone: (703) 306–1339.
Purpose: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate Major Research Instrumentation proposals in the Electronics, Photonics, and Device Technologies Program as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are within exemptions 4 and 6 of 5 U.S.C. 552 b(c), (4) and (6) the Government in the Sunshine Act.

Dated: March 16, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6943 Filed 3–20–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Experimental & Integrative Activities; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Experimental & Integrative Activities (1193).
Date/Time: April 17, 2000, 8:00 a.m.–5:00 p.m.
Place: Rooms 310, 330 & 380, National Science Foundation, 4201 Wilson Blvd., Arlington, VA.
Type of Meeting: Closed.
Contact Person: Dr. Dragana Brzzkovic, Research Infrastructure, Experimental and Integrative Activities, Room 1160, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230 Telephone: (703) 306–1981.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to the National Science Foundation for financial support.
Agenda: To review and evaluate CISE Digital Government proposals submitted in response to the program announcement (NSF 00–5).
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 16, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6939 Filed 3–20–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Mathematical Sciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Mathematical Sciences (1204).
Date/Time: May 11–12, 2000; 8:00 a.m.–5:30 p.m.
Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.
Type of Meeting: Closed.
Contact Person: Alvin I Thaler, Program Director, Infrastructure Program, Room 1025 National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1870.
Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.
Agenda: To review and evaluate proposals concerning Scientific Computing Research Environments for the Mathematical Sciences as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 16, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6940 Filed 3–20–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Methods, Cross-Directorate, and Science and Society; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Advisory Panel for Methods, Cross-Directorate, and Science and Society (1760).
Date/Time: April 6–7, 2000; 8:00 a.m.–5:00 p.m.
Place: National Science Foundation, 4201 Wilson Blvd., Room 390, Arlington, VA.
Type of Meeting: Closed.
Contact Person: Bonney H. Sheahan and Joseph L. Young, Program Directors for Cross Directorate Programs, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1733.
Purpose of Meeting: To provide advice and recommendations concerning support of research proposals submitted to the NSF for financial support.
Agenda: To review and evaluate Professional Opportunities for Women in Research & Education POWRE proposals for Cross Disciplinary Activities as part of the selection process for awards.
Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 16, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6941 Filed 3–20–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Physiology and Ethology (1160).

Date and Time: April 10, 11 and 12, 2000, 8:30 a.m.–6 p.m.

Place: NSF, Room 370, 4201 Wilson Blvd., Arlington, Virginia.

Type of Meeting: Part-Open.

Contact Person: Dr. Judith Verbeke, Program Director, Integrative Plant Biology, Division of Integrative Biology and Neuroscience, Room 685N, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1422.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 11, 2000, 4 p.m. to 5 p.m.—discussion on research trends, opportunities and assessment procedures in Integrative Plant Biology.

Closed Session: April 10, 2000, 8:30 a.m.–6 p.m.; April 11, 2000, 8:30 a.m. to 4 p.m. and 5 p.m. to 6 p.m.; and April 12, 2000, 8:30 a.m. to 6 p.m. To review and evaluate Integrative Plant Biology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 16, 2000.

Karen J. York,

Committee Meeting Officer.

[FR Doc. 00–6944 Filed 3–20–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 93–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Physiology and Ethology (1160).

Date and Time: April 27 and 28, 2000, 8:30 a.m.–6 p.m.

Place: NSF, Room 380, 4201 Wilson Blvd., Arlington, Virginia.

Type of Meeting: Part-Open.

Contact Person: Dr. Judith Verbeke, Program Director, Integrative Animal Biology, Division of Integrative Biology and Neuroscience, Room 685N, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1421.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact person listed above.

Agenda: Open Session: April 28, 2000, 1 p.m. to 2 p.m.—discussion on research trends, opportunities and assessment procedures in Integrative Animal Biology.

Closed Session: April 27, 2000, 8:30 a.m. to 6 p.m.; April 28, 2000, 8:30 a.m. to 1 p.m., and 2 p.m. to 6 p.m. To review and evaluate Integrative Animal Biology proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 16, 2000.

Karen J. York,

Committee Meeting Officer.

[FR Doc. 00–6945 Filed 3–20–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Omaha Public Power District (the licensee) to withdraw its March 18, 1998, application for proposed amendment to Facility Operating License No. DPR–40 for the Fort Calhoun Station, Unit 1, located in Washington County, Nebraska.

The proposed amendment would have revised Technical Specifications 2.15(4) and 2.15(5) to identify (1) all indication functions and control functions required for the alternate (remote) shutdown system (alternate shutdown panel and auxiliary feedwater panel), (2) panel locations of the functions, and (3) the number of channels required.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on February 9, 2000 (65 FR 6408). However, by letter dated March 1, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated March 18, 1998, and the licensee's letter dated March 1, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (*http://www.nrc.gov*).

NATIONAL SCIENCE FOUNDATION

Public Affairs Advisory Group; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Public Affairs Advisory Group (5292).

Date/Time: April 2, 2000; 6:00 p.m.—9:00 p.m.

Place: 2132 Florida Avenue, NW, Washington, DC 20008.

Type of Meeting: Open.

Contact Person: Mr. Michael Sieverts, Acting Director, Office of Legislative and Public Affairs, Room 1245, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. (703) 306–1070.

Purpose of Meeting: To provide advice and recommendations concerning NSF science and engineering outreach activities.

Agenda: Review of Outreach Programs and Initiatives; Strategic Planning for 2000 and Beyond.

Meeting Minutes: May be obtained from the contact person listed above.

Dated: March 16, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–6935 Filed 3–20–00; 8:45 am]

BILLING CODE 7555–01–M

Dated at Rockville, Maryland, this 15th day of March 2000.

For the Nuclear Regulatory Commission.

L. Raynard Wharton,

Project Manager, Section 2, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6915 Filed 3–20–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATE: Weeks of March 20, 27, April 3, 10, 17, and 24, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of March 20

Friday, March 24

9:25 a.m. Affirmation Session (Public Meeting) (if needed)

9:30 a.m. Briefing on Evaluation of the Requirement for Licensee to Update Their Inservice Inspection and Inservice Testing Program Every 120 Months (Public Meeting) (Contact: Tom Scarbrough, 301–415–2794)

Week of March 27—Tentative

Thursday, March 30

8:55 a.m. Affirmation/Discussion and Vote (Public Meeting) (If needed)

9:00 a.m. Briefing on EEO Program (Public Meeting) (Contact: Irene Little, 301–415–7380)

Friday, March 31

9:30 a.m. Briefing on Risk-Informed Regulation Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790)

Week of April 3—Tentative

There are no meetings scheduled for the Week of April 3.

Week of April 10—Tentative

There are no meetings scheduled for the Week of April 10.

Week of April 17—Tentative

There are no meetings scheduled for the Week of April 17.

Week of April 24—Tentative

There are no meetings scheduled for the Week of April 24.

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 17, 2000.

William M. Hill, Jr.,

Secretary, Tracking Officer, Office of the Secretary.

[FR Doc. 00–7090 Filed 3–17–00; 2:15 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Ancor Communications, Incorporated, Common Stock, Par Value $.01 per Share); File No. 1–12982

March 15, 2000.

Ancor Communications, Incorporated ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d)[2] thereunder, to withdraw the security described above ("Security") from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

In addition to being listed and registered on the PCX pursuant to section 12(b) of the Act,[3] the Security has been registered pursuant to section 12(g) of the Act[4] and has been designated for quotation on the Nasdaq Stock Market, Inc. ("Nasdaq"). On July 27, 1999, the Security began trading on the Nasdaq National Market. In explaining its decision to withdraw its Security from listing and registration on the PCX at this time, the Company cited both the Security's limited trading on the Exchange and the better exposure and more liquid market afforded to its Security by the Nasdaq National Market.

The Company has stated that it has complied with the Rules of the PCX governing the withdrawal of its Security from listing and registration on the PCX and that the Exchange in turn has indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the PCX and shall have no effect upon the Security's continued designation for quotation and trading on the Nasdaq National Market. By reason of section 12(g) of the Act[5] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission required by section 13 of the Act.[6]

Any interested person may, on or before April 5, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6950 Filed 3–20–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (e-SIM Ltd., Ordinary Shares, Par Value NIS .10 per Share); File No. 1–14842

March 15, 2000.

E–SIM Ltd. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] *Id.*

[6] 15 U.S.C. 78m.

[7] 17 CFR 200.30–3(a)(1).

("Act")[1] and Rule 12d2–2(d)[2] thereunder, to withdraw the security described above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Security has been listed on the Amex and registered pursuant to Section 12(b) of the Act[3] under a Registration Statement which became effective on July 7, 1998. Subsequently the Company has determined to transfer trading in its Security from the Amex to the Nasdaq stock Market, Inc. ("Nasdaq"). The Company has registered its Security pursuant to section 12(g) of the Act[4] under a Registration Statement on Form 8–A filed with the Commission on March 9, 2000. The Security became designated for quotation and began trading on the Nasdaq National Market on March 14, 2000.

In making the determination to transfer its Security from trading on the Amex to the Nasdaq National Market, the Company considered that the Security would benefit from better exposure and a more liquid market on the Nasdaq among other issuers whose primary business relates to Internet technology.

The Company has stated that it has complied with the Rules of the Amex governing the withdrawal of its Security from listing and registration on the Amex and that the Exchange in turn has indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued designation for quotation and trading on the Nasdaq National Market. By reason of section 12(g) of the Act[5] and the rules and regulations of the Commission thereunder, the company shall continue to be obligated to file reports with the Commission required by Section 13 of the Act.[6]

Any interested person may, on or before April 5, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–6949 Filed 3–20–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).
[2] 17 CFR 240.12d2–2(d).
[3] 15 U.S.C. 78*l*(b).
[4] 15 U.S.C. 78*l*(g).
[5] *Id.*
[6] 15 U.S.C. 78m.
[7] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42526; File No. SR–Amex–00–08]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 by American Stock Exchange LLC and Order Granting Accelerated Approval of the Proposed Rule Change as Amended, Relating To Establishing a Fee Structure To Provide Daily Share Volume and Other Reports Via AmexTrader.com

March 13, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 7, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 10, 2000, the Exchange filed Amendment No. 1 to the proposed rule change,[3] which supersedes and replaces entirely the initial proposal. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons, and to grant accelerated approval of the proposed rule change, as amended.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Amex proposes to establish a fee structure to provide daily share volume and other reports through the AmexTrader.com web site. Below is the text of the proposed rule change. All text is being added; there are no deletions.

* * * * *

Historical Research and Administrative Reports

The charge to be paid by the purchaser of separate Historical Research and Administrative Reports, shall be as follows:

(1) Daily Detailed Reports—$7 per day, per security and/or market participant for reports containing 15 fields or less. $15 per day, per security and/or market participant for reports exceeding 15 fields.

(2) Summary Level Activity Reports—$25 per report.

(3) Administrative Reports—$25 per user, per month.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Historical Research Reports

Amex proposes to establish a fee to provide to investors, upon request, historical research reports in electronic formats pertaining to Amex issues. Until recently, Amex has provided these reports exclusively on an *ad hoc* basis to customers requesting this information by telephone. Under the current system, investors contact an Amex staff member via telephone, describe the type of customized report desired, and arrange for an appropriate billing and delivery method before having the Amex staff member compile the report. Reports are issued in hard copy formats for a fee, ranging from $10–$575 depending on the number of pages the report consists of, and the amount of effort taken to prepare and process the report. The fees consist of an administration fee of $10–$150 depending on the number of pages in the report, a copy charge of $.25 per report page, and if the report is delivered via fax, a fax transmission fee of $.15 per page (faxed to one recipient) or $.40 per page (faxed to multiple recipients). The average report fee assessed is $20–$30. The Amex believes this is an inefficient and time-consuming arrangement that is both burdensome to Amex staff and an impediment to the accessibility of the information for the investor.

As the number of individual investors in today's market directing their own investment decisions has increased, the volume of requests for this information has also increased. To alleviate the demand upon staff resources and increase the quality, speed and availability of the information available to investors, Amex will develop an automated request and delivery system that will facilitate the delivery of these reports in a timely and systematic manner at a fixed price, based on a standardized pricing methodology. Investors will be able to access the reports via the Internet on the AmexTrader.com web site. Once at the proper location within the web site, the investor will choose from a list of standardized reports, input the necessary information pertaining to the desired security to market participant, and provide credit card information for payment.[4] Once completed, the report will be sent via e-mail directly to the investor.

Amex proposes to provide historical research reports that fall into two categories: "Daily Detailed Reports" and "Summary Level Activity Reports." Examples of Daily Detailed Reports include a Time and Sales Report (provides a record of media-reported trades in the selected security, indicating the reported time, price and share volume) and a Sales and Quotes Report (provides trade information and inside quote information at trade time). Summary Level Activity Reports would provide trade and/or quote information over a monthly or quarterly period.

Fees for the Daily Detailed Reports would be set on a two-tiered basis to reflect the amount of information provided and give Amex a level of flexibility in developing new reports and modifying those currently envisioned. Amex proposes to assess a fee of $7 for reports with 15 or fewer fields of information[5] for each trading day requested.[6] Those reports with more than 15 fields would cost $15 per trading day of information. Some reports may be available for purchase on a single-day basis, while others may be available only as multiple-day packages with a corresponding charge based on the number of days provided. Fees for Summary Level Activity Reports would be fixed at $25 per report.

Amex believes that this pricing structure is a suitable assessment method that will facilitate the creation of an inexpensive and effective service for investors.

Administrative Reports

This second category of reports, available through AmexTrader.com, termed "Administrative Reports", will be available to Amex member firms only.

Administrative Reports would serve to assist members in auditing their own internal systems, verifying back-end processing, and projecting monthly costs. Subscribing member firms would be charged a $25 fee per user, per month, for access to each administrative report.[7]

2. Statutory Basis

Amex believes that the proposed rule change is consistent with the provisions of sections 6(b)(4)[8] and 6(b)(5)[9] of the Act. Section 6(b)(4)[10] requires the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using its facilities. Section 6(b)(5)[11] requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Amex believes that this service involves the implementation of reasonable fees, assessed only to users utilizing the service, while providing beneficial information to subscribers on a non-discriminatory basis.

B. Self-Regulatory Organization's Statement on Burden on Competition

Amex does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate of the purposes of the Act, as amended.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW, Washington DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to file No. SR–Amex–00–08 and should be submitted by April 11, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Amex's proposed rule change, as amended, and finds, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act[12] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds that approval of the proposed rule change is consistent with Sections 6(b)(4)[13] and (5)[14] of the Act. Section 6(b)(4)[15] requires the equitable allocation of reasonable fees and charges among members and other users of facilities operated or controlled by an exchange. The Commission finds that the fees which Amex has proposed for the historical research and administrative

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] Amendment No. 1, which Amex filed pursuant to Section 19(b)(2) of the Act, replaces the initial proposal, which Amex filed pursuant to Section 19(b)(3)(A) of the Act. Because the fees which the Exchange intends to charge for historical research reports may be paid by non-members, the proposal is properly filed pursuant to Section 19(b)(2) of the Act. *See* 15 U.S.C. 78s(b)(1) and 15 U.S.C. 78s(b)(3)(A).

[4] Credit card information will be provided utilizing a secure web site connection.
[5] Examples of fields, depending on the type of report chosen, could include reported volume, reported price, reported time, inside bid/ask, short sale indicator, etc.
[6] For example, an investor requesting a report containing 12 fields of information for a three-trading-day period would be charged $21.
[7] After assessing the demand for this service, Amex may offer volume discounts to purchasers of multiple reports if such discounts are determined to be economically feasible.
[8] 15 U.S.C. 78f(b)(4).
[9] 15 U.S.C. 78f(b)(5).
[10] 15 U.S.C. 78f(b)(4).
[11] 15 U.S.C. 78f(b)(5).
[12] 15 U.S.C. 78f.
[13] 15 U.S.C. 78f(b)(4).
[14] 15 U.S.C. 78f(b)(5).
[15] 15 U.S.C. 78f(b)(4).

reports delineated in the proposal are reasonable, given the reliability and accessibility of the information.

Furthermore, Section 6(b)(5)[16] requires rules that foster cooperation and coordination with persons engaged in facilitating transactions in securities and that are not designed to permit unfair discrimination between customers, issuers, brokers or dealers. Because the fees which Amex proposes to charge for the specified historical research and administrative reports will be assessed only to users of the service, the Commission finds that the proposal is both non-discriminatory and reasonable. The Commission also believes that the proposal may help to foster cooperation and coordination with persons engaged in facilitating transactions in securities by providing beneficial information to subscribers on a non-discriminatory basis for a reasonable fee. In doing so, the proposal may boost investor confidence, while contributing to the integrity of the securities markets.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. Accelerated approval would afford investors the benefits to be realized under this proposal as soon as possible. Additionally, the Commission notes that the proposal is substantially similar to SR–NASD–99–70,[17] which was noticed for the full 21-day comment period, and for which no comments were received. The Commission finds, therefore, that good causes exists, consistent with Section 19(b)[18] and Section 6(b)[19] of the Act, to grant acclerated approval of the proposed rule change.

It is therefore ordered, pursuant Section 19(b)(2) of the Act,[20] that the proposed rule change be and hereby is approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–6951 Filed 3–20–00; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78f(b)(5).

[17] Securities Exchange Act Release No. 42341 (January 14, 2000), 65 FR 3513 (January 21, 2000).

[18] 15 U.S.C. 78s(b).

[19] 15 U.S.C. 78f(b).

[20] 15 U.S.C. 78s(b)(2).

[21] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice and Opinion; Certificate of Repossession of Encumbered Aircraft (AC Form 8050–4)

AGENCY: Federal Aviation Administration, DOT.

SUMMARY: This provides notice of a revised Certificate of Repossession of Encumbered Aircraft (AC Form 8050–4), and a legal opinion concerning certificates of repossession and their impact on aircraft registration.

FOR FURTHER INFORMATION CONTACT: Joseph R. Standell, Aeronautical Center Counsel (AMC–7), Post Office Box 25082, Oklahoma City, OK 73125 or telephone (405) 954–3296.

SUPPLEMENTARY INFORMATION: This is to provide notice of a revised Certificate of Repossession of Encumbered Aircraft (AC Form 8050–4) incorporating various changes and revisions to versions of the form dated 6/99 and earlier. A copy of the new form follows this opinion and is available to the public at http://registry.faa.gov/ or linked through http://www.mmac.jccbi.gov/MMAC/

The revised form dated 02–00, supersedes and replaces all previously dated versions of the form. Prior versions of the form will be accepted through the end of the regular business day on the 90th day after the date of publication of this Notice in the **Federal Register.**

The superseding form and the opinion cotnained herein are in response to general concerns about specific language contained in Certificate of Repossession of Encumbered Aircraft (AC Form 8050–4, 6/99 and earlier) and industry practices involving use of that form.

This opinion addresses the comments expressed by attorney John I. Karesh in a letter dated January 19, 1998, to Aeronautical Center Counsel.

This opinion also provides information concerning certificates of repossession and their impact on aircraft registration.

Although it is recognized that certain rights to repossess on default may exist in leases and other transactions, this opinion is limited to repossessions (whether physical or constructive to the extent permitted by applicable local law) and foreclosures which effect a change in ownership of an aircraft.

Opinion—Change of Ownership: An aircraft is eligible for registration only if, among other things, it is owned by a citizen of the United States (49 U.S.C. 44102(a)(1)(A)). Only the owner of an aircraft is eligible to make application for registration of that aircraft (49 U.S.C. 44103(a)).

Each person who submits an Aircraft Registration Application (AC Form 8050–1) must also submit evidence of ownership as required by § 47.11 of the Federal Aviation Regulations (14 CFR Part 47) (the Regulations). Where the applicant relies upon repossession as evidence of ownership, § 47.11(b) provides:

> The repossessor of an aircraft must submit—
>
> (1) A certificate of repossession on FAA Form 8050–4, or its equivalent, signed by the applicant and stating that the aircraft was repossessed or otherwise seized under the security agreement involved and applicable local law:
>
> (2) The security agreement (unless it is already recorded at the FAA Aircraft Registry), or a copy thereof certified as true under § 49.21 of this chapter; and
>
> (3) When repossession was through foreclosure proceedings resulting in sale, a bill of sale signed by the sheriff, auctioneer, or other authorized person who conducted the sale, and stating that the sale was made under applicable local law.

Based on information provided by the office of the National Conference of Commissioners on Uniform State Laws, it appears that all 50 states have adopted Article 9 of the Uniform Commercial Code (U.C.C.), albeit with some variations. Therefore, for purposes of this discussion, U.C.C. Article 9, as adopted, is cited as the applicable local law.

In his letter of January 19, 1998, Mr. Karesh states that "it is standard practice for the repossessing Lender to file for recordation with the FAA the certificate of repossession at the time of repossession, in order to vest title to the aircraft in the name of the Lender." This practice is referred to in the aviation legal practice as a "protective filing."

Apparently this protective filing practice stems from reliance upon the following language contained in the earlier versions of the Certificate of Repossession of Encumbered Aircraft (AC Form 8050–4) which is typically submitted by a repossessor to the Civil Aviation Registry:

> by virtue of such act of repossession he divested the said debtor, and any and all persons claiming by, through or under him, of any and all claims they hand or may have had, and now holds title to the aforesaid aircraft, free and clear * * *.

This language may be causing some confusion; therefore, FAA has revised the form. The revisions emphasize that it is repossession and foreclosure under the applicable local law not the filing of the Certificate of Repossession of Encumbered Aircraft and the Aircraft

Registration Application which vests ownership of the aircraft for purposes of registration.

In that regard, U.C.C. 9–503 provides that "unless otherwise agreed a secured party has on default the right to take possession of the collateral * * *" This right of repossession refers to the taking back of an item, not displacement of all legal rights in and to the collateral (see Official Comment, U.C.C. 9–503).

Section 47.41(a)(4) of the Regulations provides that "each Certificate of Aircraft Registration * * * is effective * * * until the date upon which ownership of the aircraft is transferred * * *."

Repossession alone does not effect a change in or transfer of ownership of the aircraft for purposes of § 47.41(a)(4) of the Regulations. A creditor or secured party who has merely repossessed an aircraft without effecting foreclosure is not the owner and is not eligible to make application for registration of the aircraft (see 49 U.S.C. 44103(a)).

On the other hand, foreclosure for aircraft registration purposes effects a change of ownership.

Foreclosure, the process by which the ownership rights of a debtor in the collateral are terminated, may generally be accomplished in two ways:

The first, sometimes referred to as strict foreclosure, U.C.C. 9–505(2), after due process as required by the applicable local law, allows retention of the collateral by the creditor as follows:

> (i)n any other case involving consumer goods or any other collateral a secured party in possession may, after default, propose to retain the collateral in satisfaction of the obligation.

The second, sometimes referred to as statutory foreclosure, U.C.C. 9–504(1), after due process as required by the applicable local law, allows foreclosure to be accomplished by sale of the collateral as follows:

> A secured party after default may sell, lease or otherwise dispose of any or all of the collateral in its then condition or following any commercially reasonable preparation or processing.

Either way, fully divesting the debtor's rights in collateral requires both repossession and foreclosure, either by retention of the collateral or by sale to a third party, thereby resulting in a change of ownership under § 47.41(a)(4) of the Regulations.

In both situations, the repossessor must certify that he or she "has performed all obligations imposed upon him by the terms of the financing agreement and all local laws * * *." (AC Form 8050–4, 6/92)

Evidence of Change in Ownership: When foreclosure has been accomplished by the repossessor's retention of the collateral, submission of a completed certificate of repossession or its equivalent, and an Aircraft Registration Application by the repossessor will support registration in the repossessor. FAA presumes that repossession and retention are in accordance with local law (*i.e.*, foreclosure by retention process described in U.C.C. 9–505(2) *et seq.*).

When foreclosure has been accomplished by sale of the collateral, submission of a completed certificate of repossession or its equivalent, a bill of sale stating that "the sale was made under applicable local law" (14 CFR 47.11(b)(3)), and an Aircraft Registration Application will support registration in the name of the buyer.

Dated: March 7, 2000.

Joseph R. Standell,

Aeronautical Center Counsel.

BILLING CODE 4910–13–M

AGENCY DISPLAY OF ESTIMATED BURDEN

The Federal Aviation Administration estimates that the average burden for this report is .5 hour per response. You may submit any comments concerning the accuracy of this burden estimate or any suggestions for reducing the burden to the Office of Management and Budget (OMB). You may also send comments to the Federal Aviation Administration, Civil Aviation Registry, P.O. Box 25504, Oklahoma City, OK 73125-0504, Attention: OMB number 2120-0042.

U.S. DEPARTMENT OF TRANSPORTATION FEDERAL AVIATION ADMINISTRATION

Aircraft Registration Branch
PO Box 25504
Oklahoma City, Oklahoma 73125-0504

CERTIFICATE OF REPOSSESSION OF ENCUMBERED AIRCRAFT

The undersigned hereby certifies that they are the true and lawful holder of a note or other evidence of indebtedness secured by a

_____ **on the following described aircraft:**
(Type of Security Agreement)

Aircraft Manufacturer and Model _____

Aircraft serial number _____ **FAA registration number** _____

Said Security agreement on the above aircraft bears the date of _____ **and was executed by**

_____ **to** _____.

and assigned to _____. **This Security**

agreement was recorded under Title 49, United States Code, Section 44107, on the _____ **day of** _____, _____,

and was entered in the Civil Aviation Registry as document no. _____.

On the _____ **day of** _____, _____, **the aforesaid** _____ **breached the**

obligations and promises contained in the Security agreement. The undersigned certifies that the secured party has performed all obligations imposed on the security agreement and applicable local laws; that in accordance with the terms of said security agreement, and pursuant to the pertinent laws of the state of _____, **the undersigned repossessed the aircraft described above and foreclosed on the** _____ **day of** _____, _____, **and that pursuant to local law, divested the said debtor, and any and all persons claiming by, through or under them, of any and all title they had or may have had, and the secured party now owns the aforesaid aircraft, or the aircraft has been sold.**

NOTE: **If the agreement involved was not recorded with the Aircraft Registration Branch, the original or certified true copy should accompany this certificate of repossession**

_____
NAME OF HOLDER OF SECURITY AGREEMENT

_____
SIGNATURE (IN INK)

_____
Title

ACKNOWLEDGMENT **(Not required for purposes of FAA recording; however, may be required by local law for validity of the instrument.)**

_____

AC Form 8050-4 (2-98) Supersedes previous editions

CERTIFICATE OF REPOSSESSION INFORMATION

PRIVACY ACT OF 1974(PL 93-579) requires that users of this form be informed of the authority which allows the solicitation of the information and whether disclosure of such information is mandatory or voluntary; the principal purpose of which the information is intended to be used; the routine uses which may be made of the information gathered; and the effects, if any, of not providing all or any part of the requested information.

This form is to be completed by the holder of an encumbrance and submitted with an application for aircraft registration and required fee and/or a bill of sale as appropriate. This form meets the recording requirements of 49 USC Chap. 441 and the Federal Aviation Regulations. In addition to meeting these requirements, the form, the repossession and foreclosure must comply with local law. This form may be reproduced.

The following routine uses are made of the information gathered:

(1) To support investigative efforts of investigation and law enforcement agencies of Federal, state, and foreign governments.

(2) To serve as a repository of legal documents used by individuals and title search companies to determine the legal ownership of an aircraft.

(3) To provide aircraft owners and operators information about potential mechanical defects or unsafe conditions of their aircraft in the form of airworthiness directives.

(4) To provide supportive information in court cases concerning liability of individual in law suits.

(5) To serve as a data source for management information for production of summary descriptive statistics and analytical studies in support of agency functions for which the records are collected and maintained.

(6) To respond to general requests from the aviation community or the public for statistical information under the Freedom of Information Act or to locate specific individuals or specific aircraft for accident investigation, violation, or other safety related requirements.

(7) To provide data for the automated aircraft registration master file.

(8) To provide documents for microfiche backup record.

(9) To provide data for development of the aircraft registration statistical system.

(10) To prepare an aircraft register in magnetic tape and publication form required by ICAO agreement containing information on aircraft owners by name, address, N-number, and type aircraft, used for internal FAA safety program purposes and also available to the public (individuals, aviation organizations, direct mail advertisers, state and local governments, etc.) upon payment of user charges reimbursing the Federal Government for its costs.

AVAILABILITY OF RECORDS

The aircraft records maintained by the Civil Aviation Registry are public records and are open for inspection in room 122 of the Registry Building, Mike Monroney Aeronautical Center, 6425 S Denning, Oklahoma City, Oklahoma. Individuals interested in such information may make a personal search of the records or may avail themselves of the services of a company or attorney.

The records are filed by aircraft N-number, but may and are quite frequently retrieved by name of the individual aircraft owners or operators.

PREPARATION

This is not a mandatory form. Therefore, an equivalent form meeting local law and the recording requirements of the Federal Aviation Regulations may be used. This form may be reproduced. See Section 47.11 of the Federal Aviation Regulations (14 CFR 47.11) for guidance.

Except for signatures, all data should be typewritten or printed. Signatures must be in ink. If the agreement involved was not recorded with the Civil Aviation Registry, the original or certified true copy should accompany this form.

When aircraft registration requirements are met by retention of the collateral by foreclosing party (sometimes referred to as strict foreclosure), an Application for Aircraft Registration (AC Form 8050-1) in the name of the foreclosing party should accompany this form.

When aircraft registration requirements are met by sale of the collateral (sometimes referred to as statutory foreclosure), a Bill of Sale and an Application For Aircraft Registration in the name of the buyer should accompany this form.

FEE: A $5 fee is required to issue a certificate of aircraft registration.

[FR Doc. 00–6702 Filed 3–20–00; 8:45 am]
BILLING CODE 4910–13–C

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–11]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemptions received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 11, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. ____, 800 Independence Avenue, SW., Washington, DC 20591.

Comments may also be sent electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW, Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, D.C., on March 16, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 29806.
Petitioner: Hawaiian Airlines, Inc.
Section of the FAR Affected: 14 CFR 47.49 and 91.203.
Description of Relief Sought: To permit Hawaiian to temporarily operate U.S.-registered aircraft to, from, and among the Hawaiian Islands without the registration or airworthiness certificates onboard.

Dispositions of Petitions

Docket No.: 29489.
Petitioner: Airline Training Center Arizona, Inc.
Section of the FAR Affected: 14 CFR 61.109(a)(2).
Description of Relief Sought/Disposition: To permit certain students of ATCA to obtain a private pilot certificate with an airplane category and single-engine class rating without accomplishing the night flight-training requirements of § 61.109(a)(2). These students would be issued private pilot certificates with night-flying limitations.

DENIAL, 12/22/99, Exemption No. 7100

Docket No.: 29850.
Petitioner: New WorldAir Holdings, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit New World to operate its Falcon 20 (Registration No. N164NW, Serial No. 164) under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

GRANT, 1/11/00, Exemption No. 7101

Docket No.: 26012.
Petitioner: Federal Express Corporation.
Section of the FAR Affected: 14 CFR 121.583(a).
Description of Relief Sought/Disposition: To permit Federal Express to transport medical personnel assigned to Project Orbis without complying with all the passenger-carrying requirements in §§ 121.291, 121.309(f), 121.310, and 121.391.

GRANT, 1/31/00, Exemption No. 5129E

Docket No.: 27118.
Petitioner: Air Logistics, L.L.C.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit ALG to operate under the provisions of part 135 without having a TSO–C112 (Mode S) transponder installed in its aircraft.

GRANT, 1/18/00, Exemption No. 6736A

Docket No.: 29821.
Petitioner: IHC Health Services, Inc.
Section of the FAR Affected: 14 CFR 135.299(a).
Description of Relief Sought/Disposition: To permit IHC pilots to accomplish a line operational evaluation in a Level C or Level D flight simulator in lieu of a line check in an aircraft.

DENIAL, 2/3/00, Exemption No. 7110

Docket No.: 29184.
Petitioner: Arctic Air Service, Inc.
Section of the FAR Affected: 14 CFR 135.152(a).
Description of Relief Sought/Disposition: To permit Arctic Air to operate its Sikorsky S–76A helicopter (Registration No. N347AA, Serial No. 760006) without an approved digital flight data recorder installed on the helicopter.

GRANT, 1/31/00, Exemption No. 6854A

Docket No.: 29800.
Petitioner: Associated Air Center.
Section of the FAR Affected: 14 CFR 25.813(e).
Description of Relief Sought/Disposition: To allow Associated Air Center to install interior doors between passenger compartments on Boeing Model 757–23A airplane s/n 24923 and Boeing Model 757–2J4 airplane s/n 25155.

PARTIAL GRANT, 1/25/00, Exemption No. 7107

Docket No.: 29583.
Petitioner: Dassault Aviation.
Section of the FAR Affected: 14 CFR 25.785(a).
Description of Relief Sought/Disposition: To exempt Dassault Aviation from the requirements of § 25.785(a) Amendment 25–64, for the general occupant protection requirements for occupants of multiple place side-facing seats that are occupied during takeoff and landing for Falcon 2000 airplanes manufactured prior to January 1, 2004.

PARTIAL GRANT, 1/18/00, Exemption No. 7104

[FR Doc. 00–7002 Filed 3–20–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development (R,E&D) Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. 2), notice is hereby given of a meeting of the FAA Researach, Engineering and Development (R,E&D) Advisory Committee.

Agency: Federal Aviation Administration.
Action: Notice of Meeting.
Name: Research, Engineering & Development Advisory Committee.
Time and Date: April 11—9 a.m.–4:30 p.m.; April 12—8 a.m.–5 p.m.; April 13—9 a.m.–12 noon.
Place: Holiday Inn Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209.
Purpose: the meeting agenda will include receiving guidance from the Committee for FAA's research and development investments in the areas of air traffic services, airports, aircraft safety, security, human factors and environment and energy. A joint session will be held on April 12 from 1:00 p.m. to 5:00 p.m. with NASA's Aero-Space Technology Advisory Committee. The agenda will include briefings on NASA's Icing Research, the Small Aircraft Transportation Systems (SATS) and a report from the Air Traffic Management Subcommittee.

Attendance is open to the interested public but limited to space available. Persons wishing to attend the meeting or obtain information should contact Lee Olson at the Federal Aviation Administration, AAR–200, 800 Independence Avenue, SW, Washington, DC 20591 (202) 267–7358. Please inform us if you are in need of assistance or require a reasonable accommodation for this meeting.

Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC on March 15, 2000.

Herman A. Rediess,

Director, Office of Aviation Research.

[FR Doc. 00–7003 Filed 3–20–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, INC.; "Government/Industry Certification Steering Committee;" Notice of Government/Industry Certification Steering Committee Meeting To Be Held March 17, 2000; Cancellation

AGENCY: Federal Aviation Administration.

ACTION: Cancellation.

SUMMARY: The Government/Industry Certification Steering Committee meeting scheduled to be held on March 17, 2000, announced in a notice published on page 11828 in the second column in the issue of March 6, 2000, volume 65, number 44, has been cancelled due to unforeseen circumstances. The meeting will be rescheduled. An announcement containing further details of the rescheduled meeting will be published within the next few days.

Issued in Washington, DC, on March 16, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–6971 Filed 3–16–00; 4:33 pm]

BILLING CODE 4810–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 00–02–C–00–LYH To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Lynchburg Regional Airport, Lynchburg, Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lynchburg Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before April 20, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Arthur Winder, Project Manager, Washington Airports District Office, P.O. Box 16780, Washington, DC 20041–6780.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mark F. Courtney, Airport Manager of the City of Lynchburg at the following address: Lynchburg Regional Airport, 4308 Wards Road, Suite 100, Lynchburg, Virginia 24502–3532.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Lynchburg under section 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Arthur Winder, Program Manager, Washington Airport District Office, P.O. Box 16780, Washington, DC 20041–6780, (703) 661–1363. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Lynchburg Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On March 14, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by City of Lynchburg was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 16, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–02–C–00–LYH.
Level of the proposed PFC: $3.00.
Proposed charge effective date: August 1, 2000.
Proposed charge expiration date: June 30, 2002.
Total estimated PFC revenue: $924,756.
Brief description of proposed project(s):
—Overlay General Aviation Apron.
—PFC Program Formulation and Annual Administrative Costs.
—Overlay Runway 3–21.
—Acquire Land for Runway 21 RPZ.
—Relocate State Route 758 to recover full ERSA to Runway 21 (Design Only).
—Construct Airport Service Road.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air taxi operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Fitzgerald Federal Building #111, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lynchburg Regional Airport.

Issued in Washington, DC, March 14, 2000.

Terry J. Page,

Manager, Washington Airports District Office.

[FR Doc. 00–7001 Filed 3–20–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement: Jemez Pueblo, Sandoval County, NM

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed transportation project near San Ysidro and the Jemez Pueblo in Sandoval County, New Mexico.

FOR FURTHER INFORMATION CONTACT: Gregory D. Rawlings, Environmental Specialist, Federal Highway Administration, 604 W. San Mateo Road, Santa Fe, New Mexico 8705, (505) 820–2027; or Craig Conley, Environmental Program Manager, New Mexico State Highway and Transportation Department, P.O. Box 1149, Santa Fe, New Mexico 87504, (505) 827–5233.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the New Mexico State Highway and Transportation Department (NMSHTD) will prepare an environmental impact statement (EIS), for proposed improvements to the New Mexico Highway 4 (NM 4) Corridor between New Mexico Highway 44 (NM 44) and New Mexico Highway 290 (NM 290), Sandoval County, New Mexico. The study area is approximately six miles long from the junction with NM 44 through the town of San Ysidro, the Jemez Pueblo, and the town of Jemez Pueblo to the vicinity of the junction with NM 290. The current road alignment and grade of this section of NM 4 was constructed in the 1930's with a design speed of 30 mph, 12-foot driving lanes, and no or variable width shoulders. NM 4 is a two-lane rural highway that runs from the junction with NM 44 in San Ysidro north and east through the Jemez Mountains to connect with NM 502 near Los Alamos, New Mexico. No other improvements to the remainder of NM 4 are currently under consideration.

Several transportation problems exist within the project area. These are: (1) This section of NM 4 does not does not meet current Federal and State standards for width, shoulders, access characteristics (turnouts/entrances), cross-section or geometry; (2) The bridge over the Vallecito Creek is in need of replacement; (3) traffic congestion within the town of Jemez Pueblo; (4) the Jemez Pueblo's inability to control access to the town area; and (5) no accommodation for use of the road by pedestrians, bicyclists, and equestrians.

This study will evaluate the need for improvements and evaluate potential transportation alternatives that address the need. Alternatives for consideration include (1) the improvement of the existing alignment; (2) various new alignments within the corridor, and (3) the No-Action option. Options for a new alignment include one approximately 0.25 miles east of the current alignment, two at the southern end of Jemez Pueblo and three at the northern end of the study area. The northern options include potential relocation of the Vallecito bridge and the junction with NM 290.

Informal scoping for the proposal has included comments solicited from residents and groups within the affected area. Concerns have been expressed for preservation and protection of cultural, historic, religious, environmental and community resources. Additional public information and formal scoping meetings will be held to discuss the EIS and provide opportunity for public and agency input to aid in preparation of the documentation. Letters describing the proposed action and soliciting comments will be sent to Federal and state agencies, Native American groups, local governments, and the general public. All interested parties are encouraged to participate in this process and to submit written comments or suggestions. An agency scoping meeting is anticipated in the spring 2000. Additional meetings for the Jemez Pueblo and other local residents will take place in the same time frame. These and subsequent meetings throughout the development of the EIS will be announced via direct mail, locally-posted flyers, and advertisements in local media.

The availability of the Draft EIS will be announced in the **Federal Register**, local news media, and through direct contact with interested parties. To ensure that the full range of issues to this proposed action are addressed, comments or questions concerning this action and the EIS should be directed to the FHWA and NMSHTD at the address provided above.

(Catalogue of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities and 23 U.S.C. 315; 49 CFR 1.48 apply to this program.)

Issued on: March 15, 2000.

Gregory D. Rawlings,

Environmental Specialist, Santa Fe, New Mexico.

[FR Doc. 00–6910 Filed 3–20–00; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7075]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel CALEDONIA.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 20, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7075.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S. Build Requirement

(1) Name of vessel and owner for which waiver is requested: CALEDONIA, USCG Documentation No. 679530 owner: Hydeman Boat Leasing Company, LLC.

(2) Size, capacity and tonnage of vessel: Documented length: 84.9 feet, actual length: 98 feet, breadth: 18.6 feet, capacity 6 passengers. The tonnage of the CALEDONIA is measured pursuant to 46 U.S.C. 14502. The U.S.C.G. documented tonnage is Gross 99 and Net 67.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The CALEDONIA will continue to offer crewed charter service departing from a port in the San Juan Islands of Washington State traveling to the Canadian Gulf Islands and Desolation Sound, British Columbia. Currently, service is either round-trip to the same point of departure or one way to a Canadian destination. New service will offer guests the opportunity to board at one port in the San Juan Islands and to depart at another port in the Islands. Typically the CALEDONIA is contracted to one individual with a party of no more than six for a minimum of seven (7) days. The average cost of a seven (7) day charter is $25,000 including expenses. Charters are offered in this region from June 1st to September 15th. The CALEDONIA offers charters in Mexico during the remaining months of the year."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1973. Place of original construction: Bergen Op Zoom, Netherlands and was reconstructed/rebuilt in Marina Del Rey, California in 1996.

Name	Length	Rate/Week	Pax	Region
Jamal	74	$19,500	6	Seattle, San Juan Islands, British Columbia, Alaska.
Phantom	71	18,500 plus expenses	6	San Juan Islands, British Columbia.
Westward	86	15,000	6	Seattle, San Juan Islands, British Columbia.
Olympus	97	28,000	8	Seattle, San Juan Islands, British Columbia.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This waiver will have minimal impact on other commercial vessel operators in the region. The CALEDONIA has offered charters in this region for 5 years at near capacity during the operating season. The charters currently offered in this region operate in the waters of the San Juan Islands and most spend a portion of a seven (7) day charter in British Columbia. The only benefit of this waiver will be one of convenience in arranging departing floatplane and ferry arrangements for CALEDONIA's passengers. This waiver will not substantially change the service offered by the CALEDONIA and will not affect the competition in the charter market in this region.

The tourist industry in this region is significant yet only five vessels offer multi-day private charters. Two of these spend a significant portion of the season operating outside the area directly affected by this waiver. In addition, despite the increased interest in water-based travel and the need for more charter companies, there are no cruise ship operations in this region except for small certified passenger ships cruising in the area in late spring on the way to Alaska. The other four charter vessels offered for service in this region and market are:

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This waiver will not have a negative impact on U.S. shipyards. In fact, the $950,000 spent in the 1996 re-construction of the CALEDONIA in California exceeded the $760,000 purchase price and greatly benefited a U.S. shipyard. Further such benefits will be reaped by U.S. shipyards as the CALEDONIA repaired and re-fitted while engaging in coastwise trade.

Moreover, a U.S.-built vessel of this type would be difficult to obtain on the West Coast and prohibitively expensive. Most U.S. builders of this type of vessel are located on the East Coast or have recently moved production facilities to the Far East. Thus, with production low and demand high for a U.S. vessel, it would be too expensive for a charter operation of this type in the region of the San Juan Islands to acquire a U.S. built vessel."

By Order of the Maritime Administrator.

Dated: March 15, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–6894 Filed 3–20–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7071]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the coastwise trade laws for the vessel GAFIA.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is

authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 20, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7071.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: Name of vessel: GAFIA Owner: Donald A. Depoy.

(2) Size, capacity and tonnage of vessel: Size: 30'8" LOA, beam 9'7" draft 5'0". Capacity and tonnage: measured by title 46 U.S.C. Sub-part E 69.207–209 Simplified Measurement System: 14.6 tons.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Carry passenger for hire (6-pack) in the coastal waters of Maine, specifically the Penobscot and Frenchman Bay Region."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1973, place of construction: Nortessund Shipyard, Orust, Sweden.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This waiver will have little if any impact on the existing passenger vessel operators in the region. The vessel's port of call, Belfast, Maine has no passenger vessel operations of any type at the time of this application. Passengers using the services of this vessel will be departing from and returning to Belfast, Maine. The vessel will be used for 3-daily, 3-hour cruises and an occasional overnight passages beginning and ending in Belfast."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "It is inconceivable that there would be any impact on any U.S. shipyard. The vessel was built in 1973 and had a 1999 purchase cost of less than $25,000. No U.S. ship builder offers such a vessel at this price."

By Order of the Maritime Administrator.

Dated: March 15, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–6895 Filed 3–20–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—The Connecticut Surety Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 17 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–7102.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to The Connecticut Surety Company, of Hartford, Connecticut, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 64 FR 35871, July 1, 1999.

With respect to any bonds currently in force with The Connecticut Surety Company, bond-approving officers should secure new bonds with acceptable sureties in those instances where a significant amount of liability remains outstanding. In addition, bonds that are continuous in nature should not be renewed.

The Treasury Department Circular 570 may be viewed and downloaded through the Internet (http://www.fms.treas.gov/c570/index.html). A hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048–000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 9, 2000.

Judith R. Tillman,

Assistant Commissioner, Financial Operations, Financial Management Service.

[FR Doc. 00–6881 Filed 3–20–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable On Federal Bonds: Safety National Casualty Corporation

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 16 to the Treasury Department Circular 570; 1999 revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6905.

SUPPLEMENTARY INFORMATION: A Certificate of Authority as an acceptable surety on Federal bonds is hereby issued to the following Company under 31 U.S.C. 9304 to 9308. Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 Revision, on page 35887 to reflect this addition:

COMPANY NAME Safety National Casualty Corporation. BUSINESS ADDRESS: 2043 Woodland Parkway, Suite 200, St. Louis, Missouri 63146. PHONE: (314) 995–5300. UNDERWRITING LIMITATION b/: $13,387,000. SURETY LICENSES c/: AL, AK, AS, AZ, AR, CA, CO, CT, DE, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MD, MA, MI, MN, MS, MO, MT, NE, NV, NH, NJ, NM, NY, NC, ND, OH, OK, OR, PA, RI, SC, SD, TN, TX, UT, VT, VA, WA, WV, WI, WY. INCORPORATED IN: Missouri.

Certificates of Authority expire on June 30 each year, unless revoked prior to that date. The certificates are subject to subsequent annual renewal as long as the companies remain qualified (31 CFR part 223). A list of qualified companies is published annually as of July 1 in Treasury Department Circular 570, with details as to underwriting limitations, areas in which licensed to transact surety business and other information.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html. A hard copy may be purchased from the Government Printing Office (GPO) Subscription Service, Washington, DC, Telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this Notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782.

Dated: March 8, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–6880 Filed 3–20–00; 8:45 am]

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Federal Register

Tuesday,
March 21, 2000

Part II

The President

Proclamation 7281—National Poison Prevention Week, 2000

Federal Register
Vol. 65, No. 55
Tuesday, March 21, 2000

Presidential Documents

Title 3—

The President

Proclamation 7281 of March 17, 2000

National Poison Prevention Week, 2000

By the President of the United States of America

A Proclamation

Children face many dangers growing up, including some which we cannot foresee or prevent. But the danger of accidental poisoning from medicines, household chemicals, or other substances used routinely in the home is something we can—and must—stop. Each year during National Poison Prevention Week, we assess our progress in saving lives and reaffirm our national commitment to preventing injuries or deaths from poisoning.

We have indeed made progress in the nearly 4 decades since the Congress first authorized this annual observance. In 1962, almost 450 children died of poisoning after swallowing medicines or household chemicals. By 1996, that tragic statistic had been reduced to 47. Our goal is to reduce it to zero.

The first and most effective means to achieving this goal is the proper use of child-resistant packaging, which the Consumer Product Safety Commission requires for many medicines and household chemicals. While this special packaging is child-resistant, however, it is not childproof; therefore, it is essential that adults keep potentially poisonous substances locked away from children.

Our second line of defense is America's poison control centers, where life-saving information is only a phone call away. If a poisoning does occur, parents or other caregivers can call one of these centers and immediately learn the appropriate actions to take to mitigate the poison's effects. Last month, I was proud to sign into law the Poison Control Center Enhancement and Awareness Act, which authorizes $140 million over the next 5 years to fund our Nation's poison control centers, to carry out a national public awareness campaign, and to establish a national toll-free poison control hotline. Each year, more than 2 million poisonings are reported, a million of which involve children, and this new funding will ensure that callers have immediate access to the vital services and information they need to save lives.

I thank the Poison Prevention Week Council, which brings together 35 national organizations to distribute poison prevention information to pharmacies, public health departments, and safety organizations nationwide, for its vital role in the progress Americans have made in reducing accidental poisonings. By following its lead, properly using child-resistant packaging, keeping poisonous substances locked away from children, and keeping the number of a poison prevention center close by the telephone, we can greatly reduce accidental poisonings.

To encourage the American people to learn more about the dangers of accidental poisonings and to take responsible preventive measures, the Congress, by joint resolution approved September 26, 1961 (75 Stat. 681), has authorized and requested the President to issue a proclamation designating the third week of March of each year as "National Poison Prevention Week."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week beginning March 19, 2000, as National Poison Prevention Week. I call upon all Americans to observe

this week by participating in appropriate programs and activities and by learning how to protect our children from poisonous substances.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of March, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–7183
Filed 3–20–00; 11:31 am]
Billing code 3195–01–P

Reader Aids

Federal Register
Vol. 65, No. 55
Tuesday, March 21, 2000

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FEDERAL REGISTER PAGES AND DATE, MARCH

10931–11196	1
11197–11454	2
11455–11734	3
11735–11858	6
11859–12060	7
12061–12426	8
12427–12904	9
12905–13234	10
13235–13658	13
13659–13864	14
13865–14206	15
14207–14430	16
14431–14780	17
14781–15052	20
15053–15202	21

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7276 11197
7277 11199
7278 11455
7279 11733
7280 12903
7281 15201

Executive Orders:
12170 (See Notice of March 13, 2000) 13863
12957 (Continued by Notice of March 13, 2000) 13863
12959 (See Notice of March 13, 2000) 13863
13059 (See Notice of March 13, 2000) 13863
13146 11201
13147 13233

Administrative Orders:
Presidential Determinations:
No. 2000-15 of February 24, 2000 10931
Notices:
March 13, 2000 13863

5 CFR

213 14431
315 14431
335 14431
792 13659

Proposed Rules:
3 14477
213 14477
315 14477

7 CFR

2 12427
205 13512
210 12429
215 12429
220 12429
225 12429
226 12429
301 11203
457 11457
600 14781
601 14781
761 14432
762 14432
993 12061
955 12442
1421 13865
1427 13865
1464 10933
1710 ..... 14207, 14785
1721 10933
3019 14406

Proposed Rules:
6 14478
20 11483
27 10979
28 ..... 10979, 12140
29 13915
57 14652
97 13917
201 12952
360 14926
1140 10981
1160 14484
1205 12146
1210 14485
1306 12141
1307 12141
1309 12141
1710 12952
1717 12952
1718 12952

8 CFR

212 14774
214 14774
248 14774
278A 14774

9 CFR

78 12064

Proposed Rules:
71 11485
77 ..... 11485, 11912
78 11485
93 12486
98 12486
113 12151
130 12486
317 14486
318 ..... 14486, 14489
319 ..... 144867, 14489
327 14489
381 14486
590 11486

10 CFR

72 ..... 11458, 12444, 14790
170 11204
600 14406

Proposed Rules:
21 11488
50 11488
52 11488
54 11488
100 11488
430 14128
431 10984
960 11755
963 11755
Ch. XVIII 13700

12 CFR

5 12905
204 12916
208 ..... 14810, 15050
225 ..... 14433, 14440, 15053
340 14816

724.....10933
745.....10933
925.....13866
950.....13866
Ch. IX.....13663
1510 .....12064, 14819, 15050

Proposed Rules:
3.....12320
8.....15111
208.....12320
225.....12320
325.....12320
567.....12320
614.....14491
620.....14494
709.....11250
716.....10988
741.....10988
1750.....13251

13 CFR

Proposed Rules:
124.....12955

14 CFR

25.....13666
39.....10934, 10937, 10938, 11204, 11459, 11859, 11861, 12071, 12072, 12073, 12075, 12077, 12080, 12081, 12082, 12084, 12085, 12460, 12462, 12463, 13668, 13871, 13875, 13877, 14207, 14209, 14822, 14826, 14827, 14831, 14834, 14838, 14844, 14846, 14847, 14849, 14852
71 .....11369, 11461, 11866, 12630, 12917, 12918, 14344, 14855, 14856, 14857
95.....14442
97 .....13669, 13671, 13673
1260.....14406

Proposed Rules:
25.....13703
39 .....11006, 11505, 11940, 11942, 12489, 12957, 13251, 13919, 13921, 13923, 14216, 14218
71 .....12153, 12957, 13704, 13705, 13707, 14497
255.....11009
108.....15113
109.....15113
111.....15113
129.....15113
191.....15113

15 CFR

14.....14406
734.....12919
736.....14858
738.....12919, 14857
740.....12919, 14857
742.....12919, 14857
743.....12919
744.....12919, 14444
748.....12919
756.....14857, 14861
762.....14858
766.....14862
770.....14857
774 .....12919, 13879, 14862

16 CFR

1615.....12924
1616.....12924
1630.....12929
1631.....12929
1632.....12935

Proposed Rules:
307.....11944
312.....11947
313.....11174

17 CFR

15.....14452
16.....14452
17.....14452
1.....12466
4.....10939, 12938
200.....12469
240.....13235
242.....13235

Proposed Rules:
4.....11253, 12318
228.....11507, 15043
229.....11507
230.....11507
232.....11507
239.....11507
240.....11507
248.....12354
249.....11507
250.....11507
259.....11507
260.....11507
269.....11507
270.....11507
274.....11507

18 CFR

35.....12088
157.....11461, 12115

19 CFR

12.....12470
24.....13880
111.....13880
178.....13880

20 CFR

220.....14458
322.....14459
404.....11866
416.....11866

21 CFR

20.....11881
101.....11205
176.....13675
177.....15057
524.....13904
558.....11888
640.....13678
868.....11464
870.....11465
1301.....13235
1308.....13235

Proposed Rules:
101.....14219
314.....12154

22 CFR

22.....14211
23.....14211
41.....14768
51.....14211
139.....14764
145.....14406
226.....14406

Proposed Rules:
22.....13253

23 CFR

1340.....13679

24 CFR

200.....15043
905.....14422

Proposed Rules:
81.....12632
990.....11525

25 CFR

290.....14461

26 CFR

1 .....11205, 11467, 12471
301.....11211, 11215
602 .....11205, 11211, 11215

Proposed Rules:
1.....11012, 11269
301.....11271, 11272

27 CFR

4.....11889
5.....11889
7.....11889
16.....11889
75.....15058

Proposed Rules:
4.....12490
00.....15115
70.....15115
75.....15115
90.....15115

28 CFR

70.....14406

29 CFR

95.....14406
4022.....14752, 14753
4044.....13905, 14752
4050.....14752

Proposed Rules:
1614.....11019
1910.....11948, 13254

30 CFR

202.....11467
206.....11467, 14022
250.....14469

Proposed Rules:
914.....11950, 12492

31 CFR

103.....13683

32 CFR

22.....14406
32.....14406
668.....13906
776.....15059

33 CFR

26.....14863
95.....14223
110.....11892
117.....11893, 12943
127.....10943
140.....14226
141.....14226
142.....14226
143.....14226
144.....14226
145.....14226
146.....14226
147.....14226
154.....10943
155.....10943, 14470
159.....10943
161.....14863
164.....10943
165.....14864
167.....12944
177.....14223
183.....10943

Proposed Rules:
100 .....11274, 13926, 14498
110.....13926, 14498
165 .....13926, 14498, 14501, 14502
175.....11410
177.....11410
179.....11410
181.....11410
183.....11410

34 CFR

74.....14406
1100.....11894

Proposed Rules:
606.....15115
607.....15115
608.....15115

36 CFR

1.....15077
3.....15077
13.....15077
Ch. XV 14760
701.....11735, 11736
1210.....14406

Proposed Rules:
212.....11680
261.....11680
295.....11680
1190.....12493
1191.....12493

37 CFR

1.....14864

Proposed Rules:
201.....14227, 14505

38 CFR

3.....12116
19.....14471
20.....14471
21.....12117, 13893

Proposed Rules:
3.....13254

39 CFR

111.....12946

Proposed Rules:
20.....11023
111.....13258
913.....14229
952.....13707

40 CFR

9.....15090
30.....14406
51.....11222
52 .....10944, 11468, 12118, 12472, 12474, 12476, 12481, 12948, 13239, 13694, 14212, 14873
60.....13242
63.....11231

68.....13243
86.....11898
136.....14344
141.....11372
148.....14472
180 .....10946, 11234, 11243, 11736, 12122, 12129
261.....14472
262.....12378
268.....14472
271.....14472
300.....13697, 14475
302.....14472
431.....15091
445.....14344

Proposed Rules:
51.....11024
52 .....11027, 11275, 11524, 12494, 12495, 12499, 12958, 13260, 13709, 14506, 14510, 14930
63.....11278
81.....14510
141.....11372
438.....11755
503.....11278

42 CFR

405.....13911
410.....13911

Proposed Rules:
410.....13082
493.....14510

43 CFR

12.....14406
3500.....11475

45 CFR

74.....14406
612.....11740
613.....11740

46 CFR

28.....10943
30.....10943
32.....10943
34.....10943
35.....10943
38.....10943
39.....10943
54.....10943
56.....10943
58.....10943
61.....10943
63.....10943
76.....10943
77.....10943
78.....10943
91.....11904
92.....10943
95.....10943
96.....10943
97.....10943
105.....10943
108.....10943
109.....10943
110.....10943
111.....10943
114.....10943
115.....11904
119.....10943
125.....10943
132.....11904
133.....11904
134.....11904
151.....10943
153.....10943
154.....10943
160.....10943
161.....10943
162.....10943
163.....10943
164.....10943
170.....10943
174.....10943
175.....10943
182.....10943
189.....11904
190.....10943
193.....10943
195.....10943
199.....10943, 11904

Proposed Rules:
2.....11410
10.....11410
15.....11410
24.....11410
25.....11410
26.....11410
28.....11410
30.....11410
70.....11410
90.....11410
114.....11410
169.....11410
175.....11410
188.....11410
199.....11410

47 CFR

1.....14476
24.....14213
27.....12483
54.....12135
73 .....11476, 11477, 11750, 13250
76.....12135

Proposed Rules:
1.....13933
2.....14230
26.....14230
27.....14230
54.....13933
61.....13933
69.....13933
73 .....11537, 11538, 11539, 11540, 11541, 11955, 12155, 13260, 13261

48 CFR

Ch. 2.....14380
Ch. 5.....11246
202.....14397
204.....14397
207.....14397
208.....14397, 14400
212.....14400
222.....14397, 14402
244.....14400
247.....14400
252 .....14397, 14400, 14402
1806.....12484
1808.....12484
1811.....12484
1813.....12484
1815.....12484
1825.....12484
1835.....12484
1837.....12484
1842.....12484
1848.....12484
1851.....12484
2409.....12950

Proposed Rules:
Ch. 9.....13416

49 CFR

19.....14406
193.....10950
350.....15092
355.....15092
385.....11904
571.....11751
572.....10961

Proposed Rules:
Ch I.....11541
40.....13261, 15118
171.....11028
172.....11028
173.....11028
174.....11028
175.....11028
176.....11028
177.....11028
178.....11028
179.....11028
180.....11028

50 CFR

17 .....14876, 14886, 14896
300.....14907
648 .....11478, 11909, 15110
660.....11480
622.....12136
679 .....10978, 11247, 11481, 11909, 12137, 12138, 13698, 14918, 14924

Proposed Rules:
16.....11756
17 .....12155, 12181, 13262, 13935, 14513, 14931, 14935
216.....11542
223.....12959
224.....12959, 13935
300.....13284
600.....11956
622.....11028, 14518
648 .....11029, 11956, 14519
679 .....11756, 11973, 12500

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 21, 2000

DEFENSE DEPARTMENT
Navy Department
Attorneys practicing under cognizance and supervision of Judge Advocate General; professional conduct; published 3-21-00

ENVIRONMENTAL PROTECTION AGENCY
Reporting and recordkeeping requirements; published 3-21-00
Water pollution; effluent guidelines for point source categories:
Builders' paper and board mills; published 3-21-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Polymers—
Polyphenylene sulfone resins; published 3-21-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Eurocopter France; published 2-15-00

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcohol, tobacco, and other excise taxes:
Tobacco products—
Tobacco product importers qualification and technical miscellaneous amendmentss; correction; published 3-21-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Upland cotton; official color grade determination; comments due by 3-31-00; published 3-1-00
Raisins produced from grapes grown in—
California; comments due by 3-31-00; published 1-31-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Canine and equine semen from Canada; comments due by 3-27-00; published 1-26-00

AGRICULTURE DEPARTMENT
Forest Service
Alaska National Interest Lands Conservation Act:
Title VII implementation (subsistence priority)
Kenai Peninsula determination; comments due by 3-31-00; published 2-22-00
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; subsistence taking; comments due by 3-27-00; published 2-2-00

COMMERCE DEPARTMENT
Anticybersquatting Consumer Protection Act; abusive domain registrations involving personal names; resolution issues; comments due by 3-30-00; published 2-29-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Deep-sea red crab; comments due by 3-31-00; published 3-1-00
Deep-sea red crab; correction; comments due by 3-31-00; published 3-17-00

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Energy conservation:
Weatherization assistance program for low-income persons; comments due by 3-27-00; published 1-26-00

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Essential-use allowances ; allocation; comments due by 3-27-00; published 2-25-00
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Georgia; comments due by 3-27-00; published 2-25-00
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 3-29-00; published 3-14-00
New Mexico; comments due by 3-29-00; published 2-28-00
Hazardous waste program authorizations:
Louisiana; comments due by 3-29-00; published 2-28-00
Missouri; comments due by 3-29-00; published 2-28-00

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Local exchange carriers, low-volume long distance users, and Federal-State Joint Board on Universal Service—
Access charge reform and price cap performance review; comments due by 3-30-00; published 3-15-00
Radio stations; table of assignments:
Alabama and Florida; comments due by 3-27-00; published 2-16-00
Texas; comments due by 3-27-00; published 2-16-00
Television broadcasting:
Broadcast licensees; public interest obligations; comments due by 3-27-00; published 1-26-00

FEDERAL DEPOSIT INSURANCE CORPORATION
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

FEDERAL RESERVE SYSTEM
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

FEDERAL TRADE COMMISSION
Consumer financial information; privacy requirements; comments due by 3-31-00; published 3-1-00

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act:
Fish and wildlife resources on public lands; preference for subsistence use—
Kenai Peninsula; comments due by 3-31-00; published 2-22-00
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; subsistence taking; comments due by 3-27-00; published 2-2-00
Endangered and threatened species:
Columbian sharp-tailed grouse; status review; comments due by 3-27-00; published 1-24-00
Tidewater goby; comments due by 3-31-00; published 2-15-00

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 3-31-00; published 3-17-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Consumer financial information; privacy requirements; comments due by 3-31-00; published 3-1-00

PERSONNEL MANAGEMENT OFFICE
Absence and leave:
Sick leave for family care purposes; comments due by 3-27-00; published 2-9-00
Prevailing rate systems; comments due by 3-30-00; published 2-29-00

POSTAL SERVICE
International Mail Manual:
International surface mail; postal rate changes; comments due by 3-31-00; published 3-1-00

SECURITIES AND EXCHANGE COMMISSION
Practice and procedure:
Market information fees and revenues; public dissemination; comments due by 3-31-00; published 12-17-99
Privacy of Consumer Financial Information (Regulation S-P); comments due by 3-31-00; published 3-8-00
Securities:
Selective disclosure and insider trading; comments due by 3-29-00; published 12-28-99

SMALL BUSINESS ADMINISTRATION
Small business size standards:
Compliance with other agency programs; comments due by 3-27-00; published 1-26-00

TRANSPORTATION DEPARTMENT
Coast Guard
Merchant marine officers and seamen:
Manning requirements—
Federal pilotage for foreign-trade vessels in Maryland; comments due by 4-1-00; published 2-9-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; comments due by 3-27-00; published 1-26-00
Airbus; comments due by 3-27-00; published 2-24-00
Alexander Schleicher Segelflugzeugbau; comments due by 3-31-00; published 3-1-00
Empresa Brasileira de Aeronautica S.A.; comments due by 3-27-00; published 2-24-00
Eurocopter Deutschland GMBH; comments due by 3-27-00; published 1-25-00
Airworthiness standards:
Special conditions—
McDonnell Douglas Model MD-10-10/10F and MD10-30/30F airplanes; comments due by 3-27-00; published 2-25-00
Transport airplane fuel tank system design review, flammability reduction, and maintenance and inspection requirements; comments due by 3-27-00; published 2-16-00

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Compatibility with International Atomic Energy Agency regulations; comments due by 3-29-00; published 12-28-99

TREASURY DEPARTMENT
Comptroller of the Currency
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

TREASURY DEPARTMENT
Customs Service
Country of origin marking; comments due by 3-27-00; published 1-26-00

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Source of compensation for labor or personal services; comments due by 3-29-00; published 1-21-00
Procedure and administration:
Combat zone service and Presidentially declared disaster; tax-related deadline relief; comments due by 3-30-00; published 12-30-99

TREASURY DEPARTMENT
Thrift Supervision Office
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

LIST OF PUBLIC LAWS

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S. 376/P.L. 106–180

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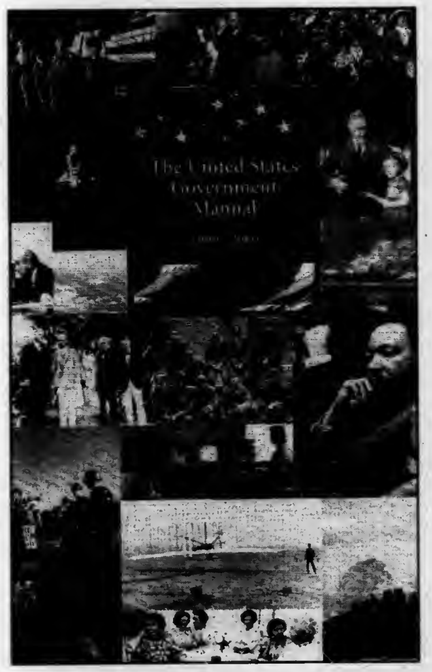
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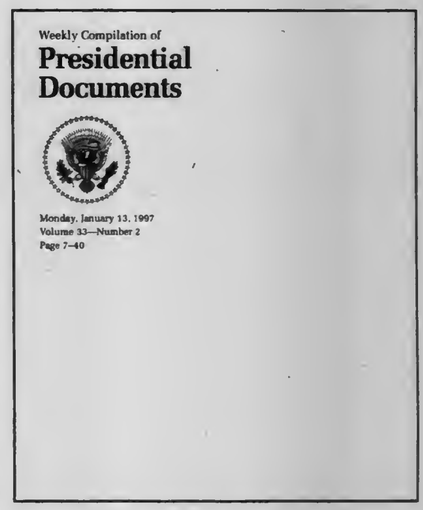
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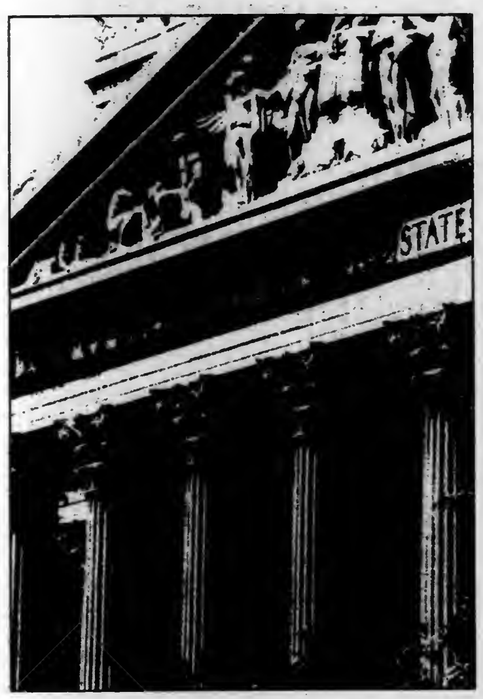
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Contents

Federal Register
Vol. 65, No. 56
Wednesday, March 22, 2000

Agricultural Marketing Service
RULES
Avocados grown in—
Florida, 15203–15205
Nectarines and peaches grown in—
California, 15205–15214
Raisins produced from grapes grown in—
California, 15214–15216

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farm Service Agency
See Forest Service
See Rural Business-Cooperative Service
See Rural Utilities Service
NOTICES
Meetings:
21st Century Production Agriculture Commission, 15299

Animal and Plant Health Inspection Service
RULES
Interstate transportation of animals and animal products (quarantine):
Land tortoises, 15216–15218
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15299–15300

Children and Families Administration
See Refugee Resettlement Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Head Start—
National Head Start Fellows Program, 15336–15337
State Developmental Disabilities Councils and Protection and Advocacy Programs; Federal allotments, 15338–15340

Coast Guard
RULES
Drawbridge operations:
Michigan, 15238–15240
PROPOSED RULES
Ports and waterways safety:
Naval Station Newport, RI; safety zone, 15285–15286
Newport, RI; safety zone, 15283–15285

Commerce Department
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Belarus, 15315–15316

Commodity Credit Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15300

Corporation for National and Community Service
NOTICES
Grants and cooperative agreements; availability, etc.:
AmeriCorps* VISTA programs—
Indian Tribal needs, 15316–15318

Defense Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15319
Defense Production Act:
Defense trade offsets; reducing or eliminating adverse effects; information request, 15318–15319

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15319–15320
Submission for OMB review; comment request, 15320–15321

Employment and Training Administration
NOTICES
Adjustment assistance:
Energy Knits Co. et al., 15356–15357
Tony Lama Boot Co., 15357
Agency information collection activities:
Proposed collection; comment request, 15357–15358
Federal-State unemployment compensation program:
Extended benefit periods; changes, 15358
NAFTA transitional adjustment assistance:
Levi Strauss & Co., 15359–15360
Nocona Boot Co., 15360
Ritvik Holdings, Inc., 15360
Todd Products Corp., 15358–15359
Tony Lama Boot Co., 15360

Energy Department
See Federal Energy Regulatory Commission
RULES
Nuclear activities; procedural rules; general statement of enforcement policy, 15218–15221
NOTICES
Grants and cooperative agreements; availability, etc.:
Tribal Colleges and Universities; Potential Applications of Renewable Energy Technologies; Feasibility Studies, 15321

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 15240–15244
Oregon, 15244–15248
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cucurbitacins, 15248–15252
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 15286–15290
Oregon, 15287

NOTICES
Grants and cooperative agreements; availability, etc.:
Regional Pesticide Environmental Stewardship Program, 15328–15330
State and Tribal Assistance Grants, 15330
Reports and guidance documents; availability, etc.:
Food Quality Protection Act; science policy issues—
Choosing Percentile of Acute Dietary Exposure as Threshold of Regulatory Concern, 15330–15333

Farm Service Agency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15300–15301

Federal Aviation Administration
RULES
Airworthiness directives:
Aerospatiale, 15226–15230
British Aerospace, 15230–15232
Cessna, 15232–15234
PROPOSED RULES
Airworthiness directives:
Raytheon, 15278–15280
Sikorsky, 15280–15282
Class E airspace, 15282–15283
NOTICES
Exemption petitions; summary and disposition, 15404

Federal Deposit Insurance Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15333–15334

Federal Election Commission
RULES
Reports by political committees:
Campaign finance reports and statements; copies filed with State officers; transmittal to Congress, 15221–15224
PROPOSED RULES
Presidential primary and general election candidates; public financing:
Eligibility requirements and funding expenditure and repayment procedures; termination, 15273–15275

Federal Energy Regulatory Commission
RULES
Natural gas companies (Natural Gas Act):
Landowner notification, expanded categorical exclusions, and other environmental filing requirements, 15234–15238
NOTICES
Electric rate and corporate regulation filings:
Louisiana Generating LLC et al., 15325–15327
North Hartland, LLC, et al., 15327–15328
Environmental statements; notice of intent:
S.D. Warren Co., 15324
Hydroelectric applications, 15323
Applications, hearings, determinations, etc.:
Eastern Shore Natural Gas Co., 15321–15322
Guardian Pipeline, L.L.C., 15322
Gulf States Transmission Corp., 15322
Koch Gateway Pipeline Co., 15322
Northern Natural Gas Co., 15322–15323
Portland General Electric Co. et al., 15323–15324
Statoil Energy Trading, Inc., et al., 15324
Transcontinental Gas Pipe Line Corp., 15324–15325
Wyoming Interstate Co., Ltd., 15325

Federal Maritime Commission
RULES
Ocean transportation intermediaries; individual contemporaneously acting as qualifying individual for ocean freight forwarder and non-vessel common carrier, 15252–15254
NOTICES
Ocean transportation intermediary licenses:
Global Total Logistics, LLC, 15334

Federal Railroad Administration
PROPOSED RULES
Railroad safety:
Locomotive horns use at highway-rail grade crossings; requirement for sounding
Hearings, 15298

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 15334

Food and Drug Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15340–15343
Submission for OMB review; comment request, 15343–15345
Meetings:
Arthritis Advisory Committee, 15344
Pharmaceutical Science Advisory Committee, 15344

Foreign Claims Settlement Commission
NOTICES
Meetings; Sunshine Act, 15354

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Florida
Coastal Fuels Marketing, Inc.; fuel distribution terminal, 15304–15305
Washington
Tesoro Petroleum Corp.; oil refinery complex, 15305

Forest Service
NOTICES
Environmental statements; notice of intent:
Allgeheny National Forest, PA, 15301
Idaho Panhandle National Forests, ID, 15301–15303
National Forest System lands:
Ski area permit actions; categorical exclusion, 15303

General Accounting Office
RULES
Personnel Appeals Board; procedural rules, 15203
NOTICES
Meetings:
Federal Accounting Standards Advisory Board, 15334–15335

General Services Administration
NOTICES
Environmental statements; notice of intent:
Washington, DC; Transportation Department; lease acquisition of new or renovated headquarters, 15335–15336

Health and Human Services Department
See Children and Families Administration
See Food and Drug Administration
See National Institutes of Health
See Refugee Resettlement Office
See Substance Abuse and Mental Health Services Administration
RULES
Health resources development:
Organ procurement and transplantation network; operation and performance goals; response to comments, 15252

Housing and Urban Development Department
RULES
Low income housing:
Housing assistance payments (Section 8)—
Multifamily housing mortgage and housing assistance restructuring program (mark-to-market program), 15452–15498

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15354–15356

Interior Department
See Land Management Bureau
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Oil country tubular goods from—
Japan, 15305–15307

International Trade Commission
NOTICES
Import investigations:
Ammonium nitrate from—
Russia, 15353
Uranium from—
Various countries, 15353
Security procedures for persons delivering/picking up packages and documents, 15353–15354

Justice Department
See Foreign Claims Settlement Commission
See Immigration and Naturalization Service

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Meetings:
Colorado wild horse management; helicopter and motor vehicle use; public hearing [Editorial Note: This document, published at 65 FR 13987 in the **[Federal Register** of March 15, 2000, was incorrectly listed as "Wyoming wild horse management..." in that issue's table of contents.]
Closure of public lands:
Nevada, 15350

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council task forces, 15370

National Archives and Records Administration
NOTICES
Agency records schedules; availability, 15370–15373

National Credit Union Administration
RULES
Credit unions:
Organization and operations—
Overdraft policy, 15224–15226
PROPOSED RULES
Credit unions:
Regulatory flexibility and exemption program, 15275–15278

National Highway Traffic Safety Administration
RULES
Anthropomorphic test devices:
Occupant crash protection—
Hybrid III test dummies; 3-year-old child dummy; design and performance specifications, 15254–15271

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
National Cancer Institute—
Steroid derivatives with paclitaxel-like activity, 15347–15348
Targeted screening for inhibitors of human herpesvirus 8 DNA polymerase activity, 15345–15347
Meetings:
National Institute of Diabetes and Digestive and Kidney Diseases, 15348
National Institute of General Medical Sciences, 15349
National Institute of Mental Health, 15348–15349

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock, 15271–15272
NOTICES
Grants and cooperative agreements; availability, etc.:
Chesapeake Bay stock assessments to encourage research projects for improvement in Chesapeake Bay fishery stock conditions, 15307–15312
Permits
Endangered and threatened species, 15312–15315

National Park Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Glacier Bay National Park, AK; Dungeness crab commercial fishery crewmember interim compensation program, 15350–15351

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15373
Export and import license applications for nuclear facilities and materials:
Poco Graphite, Inc., 15373

Meetings:
Standard Review Plan; stakeholders, 15374–15375
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 15375–15397
Regulatory guides; issuance, availability, and withdrawal, 15397–15398
Applications, hearings, determinations, etc.:
Tennessee Valley Authority, 15373–15374

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; prohibited transaction exemptions:
Standard & Poor's et al., 15360–15370

Public Health Service
See Food and Drug Administration
See National Institutes of Health
See Substance Abuse and Mental Health Services Administration

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Republican River basin, NE and KS; long-term water supply contracts; renewal, 15351–15352
Meetings:
Bay-Delta Advisory Council, 15352–15353

Refugee Resettlement Office
RULES
Refugee resettlement program:
Public/private partnership program; refugee cash and medical assistance; requirements, 15410–15450

Research and Special Programs Administration
PROPOSED RULES
Pipeline safety:
Safety regulations; periodic updates, 15290–15297
NOTICES
Meetings:
Pipeline Safety Advisory Committees, 15404–15405

Rural Business-Cooperative Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15303–15304

Rural Utilities Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15304

Securities and Exchange Commission
PROPOSED RULES
Securities and investment companies:
Mutual fund after-tax returns; disclosure, 15500–15519
NOTICES
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 15398–15399
Municipal Securities Rulemaking Board, 15399–15401
National Association of Securities Dealers, Inc., 15401–15403

State Department
NOTICES
Art objects; importation for exhibition:
Michelangelo to Picasso: Master Drawings from the Collection of the Albertina, Vienna, 15403–15404

Substance Abuse and Mental Health Services Administration
NOTICES
Meetings:
Women's Services Advisory Committee, 15349–15350

Surface Transportation Board
NOTICES
Agreements under sections 5a and 5b; applications for approval, etc.:
Household Goods Carriers Bureau Committee; correction, 15405

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Twenty-First Century Workforce Commission
NOTICES
Hearings, 15406–15407

Separate Parts In This Issue

Part II
Department of Health and Human Services, Refugee Resettlement Office, 15409–15450

Part III
Department of Housing and Urban Development, 15451–15498

Part IV
Securities and Exchange Commission, 15499–15519

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

4 CFR
27 15203
28 15203

7 CFR
915 15203
916 15205
917 15205
989 15214

9 CFR
74 15216
93 15216

10 CFR
820 15218

11 CFR
108 15221
Proposed Rules:
9038 15273

12 CFR
701 15224
Proposed Rules:
742 15275

14 CFR
39 (3 documents) 15226, 15230, 15232
Proposed Rules:
39 (2 documents) 15278, 15280
71 15282

17 CFR
Proposed Rules:
230 15500
239 15500
270 15500
274 15500

18 CFR
157 15234
380 15234

24 CFR
401 15452
402 15452

33 CFR
117 15238
Proposed Rules:
165 (2 documents) 15283, 15285

40 CFR
52 (2 documents) 15240, 15244
180 15248
Proposed Rules:
52 (3 documents) 15286, 15287

42 CFR
121 15252

45 CFR
400 15410
401 15410

46 CFR
515 15252

49 CFR
572 15254
Proposed Rules:
190 15290
191 15290
192 15290
195 15290
222 15298
229 15298

50 CFR
679 (2 documents) 15271, 15272

Rules and Regulations

Federal Register
Vol. 65, No. 56
Wednesday, March 22, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD

4 CFR Parts 27 and 28

Procedural Rules

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Final rule.

SUMMARY: The General Accounting Office Personnel Appeals Board (PAB) has authority with respect to employment practices within the General Accounting Office (GAO or agency), pursuant to the General Accounting Office Personnel Act of 1980 (GAOPA). The PAB hereby finalizes its regulations to explain that a quorum of three members of the Board may exercise all the powers of the Board, and that a majority of a quorum may act in any matter requiring consideration by the full Board.

DATES: These regulations are effective March 22, 2000.

FOR FURTHER INFORMATION CONTACT: Beth Don, Executive Director, 202–512–6137.

SUPPLEMENTARY INFORMATION: The General Accounting Office Personnel Appeals Board on Tuesday, March 30, 1999, published an interim rule with request for comments by June 1, 1999, amending the PAB regulations. The interim rule conformed the regulations to Board policy recognizing that a quorum of three members of the Board may exercise all the powers of the Board, and that a majority of a quorum may act in any matter requiring consideration by the full Board. No comments on the interim rule were received by the Board.

List of Subjects in 4 CFR Parts 27 and 28

Administrative practice and procedures, Equal employment opportunity, Government employees, Labor-management relations.

For the reasons set forth in the preamble, the General Accounting Office Personnel Appeals Board amends 4 CFR Chapter I, Subchapter B as follows:

PARTS 27 AND 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES APPLICABLE TO CLAIMS CONCERNING EMPLOYMENT PRACTICES AT THE GENERAL ACCOUNTING OFFICE

The interim rule amending 4 CFR parts 27 and 28 which was published at 64 FR 15125 on March 30, 1999, is adopted as a final rule without change.

Michael Wolf,

Chair, Personnel Appeals Board, U.S. General Accounting Office.

[FR Doc. 00–7128 Filed 3–21–00; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV00–915–1 FIR]

Avocados Grown in South Florida; Relaxation of Container and Pack Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting, as a final rule, with minor editorial changes, the provisions of an interim final rule changing the container and pack requirements prescribed under the Florida avocado marketing order (order). The marketing order regulates the handling of avocados grown in South Florida and is administered locally by the Avocado Administrative Committee (Committee). This rule continues in effect the removal of the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. This change will provide greater flexibility in avocado packing operations.

EFFECTIVE DATE: April 21, 2000.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883; telephone: (863) 299–4770, Fax: (863) 299–5169; or Anne Dec, Team Leader, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202)720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Marketing Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal

place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the terms of the order, fresh market shipments of Florida avocados are required to be inspected and are subject to grade, size, maturity, and pack and container requirements. Pack and container requirements outline the designated net weight of the containers used to pack avocados and the minimum weight of the avocados packed in the containers.

This rule continues in effect the removal of the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. This change provides greater flexibility in avocado packing operations. The Committee met on September 8, 1999, and unanimously recommended this change.

Section 915.51 of the order provides authority to issue regulations establishing specific pack and container requirements. Section 915.52 further authorizes the Committee to make recommendations to the Secretary to modify, suspend, or terminate regulations, including pack and container requirements. The pack and container requirements are specified under sections 915.305 and 915.306. These sections specify, in part, container weight and other applicable requirements, including the minimum weight of the avocados packed in the containers. Current regulations authorize the use of 33-pound, 31-pound, 24-pound, and 12-pound containers, and 8.5-pound containers for export shipments only.

Before the interim final rule became effective, the requirements of section 915.305(a)(1) specified that avocados packed in 33-pound containers must weigh at least 16 ounces. Avocados weighing less than 16 ounces were to be packed in smaller containers. The Committee has determined that retailers prefer shipments of avocados packed in larger containers. The size of the fruit is not a concern to retailers. By allowing smaller fruit to be packed in the larger containers, the retailer is able to offer avocados to the consumer in a variety of sizes. The larger containers are ideal for displaying the fruit. Upon receipt of the avocado shipment, the retailer can remove the lid from the larger container. Without removing the fruit from the box, fruit can be offered for consumers to purchase. This is time saving for retailers.

Removing the requirement that avocados packed in 33-pound containers weigh at least 16 ounces gives handlers the flexibility to pack both large and small avocados in one container. California avocado handlers have already adopted the practice of shipping smaller avocados in larger containers with a great deal of success. Florida avocado handlers would like to remain competitive with other avocado growing areas. In order to meet the needs of the customer and remain competitive with other avocado handlers, this rule continues the removal of the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. The avocados must meet all other requirements of the marketing order, including maturity requirements.

In addition, the flexibility to pack both large and small avocados in one container allows handlers to use the smaller avocados to create a tighter pack with less open space inside the containers. The tighter pack restricts movement of the avocados during shipment which prevents damage to the fruit. This improves the quality of the fruit reaching the consumer, saves handling costs, and provides greater returns to the grower.

Section 8e of the Act provides that when certain domestically produced commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, and maturity requirements. This rule changes the pack and container requirements currently in effect which do not apply to imports. Therefore, no change is necessary in the avocado import regulations.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 141 avocado producers in the production area and approximately 49 avocado handlers subject to regulation under the marketing order. Small agricultural service firms have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000.

The average price for fresh avocados during the 1998–99 season was $17.90 per 55-pound bushel box equivalent for all domestic shipments and the total shipments were 890,859 bushels. Many avocado handlers ship other tropical fruit and vegetable products which are not included in the Committee's data but would contribute further to handler receipts. Using these prices, about 90 percent of avocado handlers could be considered small businesses under the SBA definition. The majority of Florida avocado producers and handlers may be classified as small entities.

Under sections 915.51 and 915.52 of the marketing order for avocados grown in South Florida, the Committee has the authority to recommend to the Secretary changes to the pack and container requirements for avocados handled under the order. Current pack and container requirements outline the designated net weight of the containers used to pack avocados and the minimum weight of the avocados packed in the containers. Current regulations authorize the use of 33-pound, 31-pound, 24-pound, and 12-pound containers, and 8.5-pound containers for export shipments only.

This rule continues to change section 915.305(a)(1) of the rules and regulations concerning the pack and container requirements for avocados. This rule continues to remove the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. The avocados must meet all other requirements, including maturity requirements. This change will continue to provide greater flexibility in avocado packing operations.

This rule will have a positive impact on affected entities. The change was recommended to provide additional flexibility in packing avocados. None of the changes are expected to increase costs associated with the pack and container requirements. This rule may, in fact, reduce costs associated with the pack and container requirements.

The Committee believes this change will benefit both large and small packing operations. It is particularly beneficial to small handlers since a single container can be used to ship avocados to retail customers. This reduces the need to maintain a large inventory of smaller containers. Further, the Committee has determined that retailers prefer the larger containers; the size of the fruit in those containers is of lesser concern to the retailer. By allowing smaller fruit to be packed in the larger containers, the retailer is able to offer avocados to the consumer in a variety of sizes. The larger containers are ideal for displaying the fruit. Upon receipt of the avocado shipment, the retailer can remove the lid from the larger container and, without removing the fruit from the box, fruit can be offered for consumers to purchase. This is time saving for retailers.

Removing the requirement that avocados packed in 33-pound containers weigh at least 16 ounces will continue to give handlers the flexibility to pack both large and small avocados in one container. Florida avocado handlers would like to continue to remain competitive with other avocado growing areas. For example, California avocado handlers have already adopted the practice of shipping smaller avocados in larger containers with a great deal of success. In order to meet the needs of the customer and remain competitive with other avocado handlers, this rule continues to remove the requirement that avocados packed in 33-pound containers must weigh at least 16 ounces. The avocados must meet all other requirements of the marketing order, including maturity requirements.

In addition, the flexibility to pack both large and small avocados in one container allows handlers to use the smaller avocados to create a tighter pack with less open space inside the containers. The tighter pack restricts movement of the avocados during shipment which prevents damage to the fruit. This continues to save handling costs and provides greater returns to the grower.

Other alternatives to the action were considered by the Committee prior to making the recommendation. One alternative discussed by the Committee was to continue to require that avocados packed in 33-pound containers weigh at least 16 ounces. The Committee believed that this alternative provided little benefit and would still limit flexibility.

This rule will not impose any additional reporting or recordkeeping requirements on either small or large avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. In addition, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

Further, the Committee's meeting was widely publicized throughout the avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations. Like all Committee meetings, the September 8, 1999, meeting was a public meeting and all entities, both large and small, were able to express their views on this issue. The Committee itself is composed of 10 members, of which 5 are growers, 4 are handlers, and one is a public member. Finally, interested persons were invited to submit information on the regulatory and informational impacts of this action on small business.

An interim final rule concerning this action was published in the Federal Register on December 13, 1999. Copies of the rule were mailed by the Committee's staff to all Committee members and avocado handlers. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended February 11, 2000. No comments were received.

Changes to the interim final rule have been made to correct some typographical errors. Editorial changes have also been made to make the language easier to understand.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the Committee's recommendation, and other information, it is found that finalizing the interim final rule, with changes, as published in the **Federal Register** (64 FR 69380, December 13, 1999) will tend to effectuate the declared policy of the Act.

List of Subjects 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

Accordingly, the interim final rule amending 7 CFR part 915 which was published at 64 FR 69380 on December 13, 1999, is adopted as a final rule with the following changes:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In Sec. 915.305, paragraph (a)(1) is revised to read as follows:

§ 915.305 Florida Avocado Container Regulation 5.

(a) * * *

(1) Containers shall not contain less than 33 pounds net weight of avocados, except that for avocados of unnamed varieties, which are avocados that have not been given varietal names, and for Booth 1, Fuchs, and Trapp varieties, such weight shall be not less than 31 pounds. Not more than 10 percent, by count, of the individual containers in any lot may fail to meet the applicable specified weight. No container in any lot may contain a net weight of avocados exceeding 2 pounds less than the specified net weight; or

* * * * *

Dated: March 16, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–7085 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 916 and 917

[Docket No. FV00–916–1 IFR]

Nectarines and Peaches Grown in California; Revision of Handling Requirements for Fresh Nectarines and Peaches

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule revises the handling requirements for California nectarines and peaches by modifying the grade, size, maturity, and container marking requirements for fresh shipments of these fruits, beginning with 2000 season shipments. This rule also modifies the requirements for placement of Federal-State Inspection Service lot stamps for the 2000 season only. The marketing orders regulate the handling of nectarines and peaches grown in California and are administered locally by the Nectarine Administrative and Peach Commodity Committees (committees). This rule enables handlers to continue shipping fresh nectarines and peaches meeting consumer needs in the interest of producers, handlers, and consumers of these fruits.

DATES: Effective April 1, 2000; comments received by May 22, 2000, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are

handler subject to an order may file

similar in size and characteristics to the

markings that are permanently affixed to

U.S. No. 1 grade. Specifically,

(calyx basin) cracks during

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection at the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Terry Vawter, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901, Fax: (209) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreements Nos. 124 and 85, and Marketing Order Nos. 916 and 917 (7 CFR parts 916 and 917) regulating the handling of nectarines and peaches grown in California, respectively, hereinafter referred to as the "orders." The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

Under the orders, lot stamping, grade, size, maturity, container, and pack requirements are established for fresh shipments of California nectarines and peaches. Such requirements are in effect on a continuing basis. The Nectarine Administrative Committee (NAC) and the Peach Commodity Committee (PCC), which are responsible for local administration of the orders, met on November 30, 1999, and unanimously recommended that these handling requirements be revised for the 2000 season, which begins April 1. The changes: (1) Revise the lot stamping requirements for the 2000 season only; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2000 season; (3) eliminate the minimum letter height of maturity marking requirements for all containers; (4) provide a tolerance for the "Peento" or "donut" types of peaches for healed, non-serious, blossom-end growth cracks; and (5) revise varietal maturity, quality, and size requirements to reflect recent changes in growing conditions.

The committees meet prior to and during each season to review the rules and regulations effective on a continuing basis for California nectarines and peaches under the orders. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the rules and regulations would tend to effectuate the declared policy of the Act.

No official crop estimate was available at the time of the committees' meetings because the nectarine and peach trees were dormant. The committees will recommend a crop estimate at their meetings in early spring. However, preliminary estimates indicate that the 2000 crop will be similar in size and characteristics to the 1999 crop which totaled 20,405,000 boxes of nectarines and 20,460,000 boxes of peaches.

Lot Stamping Requirements

Sections 916.55 and 917.45 of the orders require inspection and certification of nectarines and peaches, respectively, handled by handlers. Sections 916.115 and 917.150 of the nectarine and peach orders' rules and regulations, respectively, require that all exposed or outside containers of nectarines and peaches, and at least 75 percent of the total containers on a pallet, be stamped with the Federal-State Inspection Service (inspection service) lot stamp number after inspection and prior to shipment to show that the fruit has been inspected. These requirements apply except for containers that are loaded directly onto railway cars, or exempted, or mailed directly to consumers in consumer packages.

Lot stamp numbers are assigned to each handler by the inspection service, and are used to identify the handler and the date on which the container was packed. The lot stamp number is also used by the inspection service to identify and locate the corresponding inspector's working papers or notes. Working papers are the documents each inspector completes while performing an inspection on a lot of nectarines or peaches. Information contained in the working papers supports the grade levels certified by the inspector at the time of inspection.

The lot stamp number has value for the industries, as well. The committees utilize the lot stamp numbers and date codes to trace fruit in the container back to the orchard where harvested. This information is essential in providing quick information for a crisis management program instituted by the industries. Without the lot stamp information on each container, the "trace-back" effort, as it is called, would be jeopardized.

Recently, several new containers have been introduced for use by nectarine and peach handlers. The boxes are returnable plastic containers which retailers send back to a central clearinghouse after use. Use of these boxes may represent substantial savings to retailers for storage and disposal, as well as for handlers who do not have to pay for traditional containers. Fruit is packed in the boxes by the handler, delivered to the retailer, emptied, and returned to the clearinghouse for cleaning and redistribution. However, because they were designed to be reused, these boxes do not support

markings that are permanently affixed to the container. All markings must be printed on cards which slip into tabs on the front or sides of the containers. The cards are easily inserted and removed, and further contribute to the efficient use of the container.

The cards are a concern for the inspection service and the industries, however. Because of their unique portability, there is some concern that the cards on pallets of inspected containers could easily be moved to pallets of uninspected containers, thus permitting a handler to avoid inspection on a lot or lots of nectarines or peaches. This would also jeopardize the use of the lot stamp numbers for the industries' "trace back" program.

To address this concern, the committees have recommended that pallets of inspected fruit be identified with a USDA-approved pallet tag containing the lot stamp number, in addition to the lot stamp number printed on the card on the container. In this way, an audit trail is created, confirming that the lot stamp number on the containers on each pallet correspond to the lot stamp number on the pallet tag.

The inspection service and the committees have presented their concerns to the manufacturers of these types of boxes. One manufacturer has indicated a willingness to address the problem by offering an area on the principle display panel where the container markings will adhere to the box, which will meet the needs of the industries, the inspection service, and the manufacturer. However, the manufacturer believes that this change may not be available in time for the 2000 season. For that reason, the committees further recommended that the proposed modification of the lot stamping requirements be put into place for the 2000 season only.

Thus, §§ 916.115 and 917.150 will be amended to require the lot stamp number to be adhered to a USDA-approved pallet tag, in addition to the requirement that the number be applied to cards on all exposed or outside containers, and not less than 75 percent of the total containers on a pallet.

A conforming change is made to § 917.150 by changing the word "but" to "and," making the language in this section similar to that in § 916.115.

Grade and Quality Requirements

Sections 916.52 and 917.41 of the orders authorize the establishment of grade and quality requirements for nectarines and peaches, respectively. Prior to the 1996 season, § 916.356 required nectarines to meet a modified U.S. No. 1 grade. Specifically, nectarines were required to meet U.S. No. 1 grade requirements, except there was a slightly tighter requirement for scarring and a more liberal allowance for misshapen fruit. Prior to the 1996 season, § 917.459 required peaches to meet the requirements of a U.S. No. 1 grade, except for a more liberal allowance for open sutures that were not "serious damage."

This rule revises § 916.350, § 916.356, § 917.442, and § 917.459 to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2000 season. ("CA Utility" fruit is lower in quality than that meeting the modified U.S. No. 1 grade requirements.) Shipments of nectarines and peaches meeting "CA Utility" quality requirements were permitted during the 1996 and 1997 seasons, and also during the 1998 and 1999 seasons with slight modifications.

Studies conducted by the NAC and PCC indicate that some consumers, retailers, and foreign importers found the lower quality fruit acceptable in some markets. When shipments of "CA Utility" nectarines were first permitted in 1996, they only represented 1.1 percent of all nectarine shipments, or approximately 210,000 boxes. Shipments of "CA Utility" peaches represented 1.9 percent of all peach shipments, or 366,000 boxes. By 1998 and 1999, shipments of "CA Utility" nectarines represented 4.5 percent and 4.0 percent, respectively, of all nectarine shipments; or approximately 760,000 boxes and 819,600 boxes, respectively. In 1998 and 1999, shipments of "CA Utility" peaches represented 3.3 percent and 3.4 percent, respectively, of all peach shipments; or approximately 602,000 boxes and 689,800 boxes, respectively.

For these reasons, the committees unanimously recommended that shipments of "CA Utility" quality nectarines and peaches be permitted for the 2000 season with a continuing in-house statistical review. Paragraphs (d) of §§ 916.350 and 917.442, and paragraphs (a)(1) of §§ 916.356 and 917.459 are revised to permit shipments of nectarines and peaches meeting "CA Utility" quality requirements during the 2000 season, on the same basis as last season.

In addition, paragraph (a)(1) of § 917.459 is revised to provide a 10 percent tolerance for healed, non-serious, blossom-end growth cracks for the "Peento" or "donut" varieties of peaches, such as the "Saturn" and "Jupiter" varieties.

These varieties of peaches characteristically suffer blossom-end (calyx basin) cracks during development. These cracks heal as the growth continues and as the fruit gains size. Generally, the cracks are completely healed by harvest. Peaches with unhealed or serious blossom-end growth cracks at the time of inspection would not be included in U.S. No. 1 or "CA Utility" packages. Such a relaxation will permit handlers of the Peento type of peaches to utilize more of these fruit in boxes of U.S. No. 1 peaches, benefitting both handlers and growers of these varieties.

The PCC unanimously recommended this additional tolerance of 10 percent for healed, non-serious, blossom-end growth cracks for the Peento type of peaches, beginning in the 2000 season.

Container Marking Requirements

Sections 916.52 and 917.41 of the nectarine and peach orders, respectively, authorize container marking requirements. Requirements for container markings are specified in §§ 916.350 and 917.442 of the orders' rules and regulations. Container marking requirements include marking of the commodity and variety (*e.g.*, Fay Elberta peaches), the size of the fruit in the box (*e.g.*, 88 size), the net weight, and the maturity (either U.S. Mature (US MAT) or California Well Matured (CA WELL MAT)), on each container of nectarines or peaches.

As innovative containers enter the marketplace, especially those preferred by retailers, the configuration of display panels changes. This is true for both retail and consumer-size containers. As a result, handlers are forced to make adjustments in their container markings to accommodate the differences in display panels. Some containers, such as those intended for purchase by individual consumers, are smaller and have less display-panel surface area, and meeting all the minimum size labeling requirements is difficult. Some handlers requested a relaxation in the container labeling requirements with regard to the fruit maturity marking, and the committees agreed that a modification would be appropriate. This relaxation will eliminate the minimum lettering height in favor of a requirement that fruit maturity markings be clear and legible. Therefore, paragraphs (a)(3) of §§ 916.350 and 917.442 are so modified.

Maturity Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish maturity requirements for nectarines and peaches, respectively. The minimum maturity level currently specified for nectarines and peaches is "mature" as defined in the standards. Additionally,

both orders' rules and regulations provide for a higher, "well matured" classification. For most varieties, "well-matured" fruit determinations are made using maturity guides (*e.g.*, color chips). These maturity guides are reviewed each year by the Shipping Point Inspection Service (SPI) to determine whether they need to be changed based on the most recent information available on the individual characteristics of each variety.

These maturity guides established under the handling regulations of the California tree fruit marketing orders have been codified in the Code of Federal Regulations as TABLE 1 in §§ 916.356 and 917.459, for nectarines and peaches, respectively.

The requirements in the 2000 handling regulation are the same as those that appeared in the 1999 handling regulation with a few exceptions. Those exceptions are explained in this rule.

Nectarines: Requirements for "well-matured" nectarines are specified in § 916.356 of the order's rules and regulations. While SPI made no recommendation with regard to changes to the NAC regarding maturity guides, the committee recommended removal of several varieties of nectarines from the maturity guides.

This rule revises TABLE 1 of paragraph (a)(1)(iv) of § 916.356 to remove 12 nectarine varieties which are no longer in production. The NAC routinely reviews the status of nectarine varieties listed in these maturity guides. The most recent review revealed that 12 of the nectarine varieties currently listed in the maturity guide have not been in production since the 1997 season. Typically, the NAC recommends removing a variety after non-production for three seasons, or if trees of that variety are known to have been pulled out, because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the Apache, Arm King, Bob Grand, Flavor Grand, Flavortop I, Maybelle, Mike Grand, Pacific Star, Son Red, Summer Star, Sunfre, and Tasty Gold nectarine varieties.

Peaches: Section 917.459 of the order's rules and regulations specifies maturity requirements for fresh peaches being inspected and certified as being "well matured."

This rule revises TABLE 1 of paragraph (a)(1)(iv) of § 917.459 to add maturity guides for 2 peach varieties and revise the maturity guide for 1 variety. Specifically, SPI recommended adding the maturity guides for the Earli Rich peach variety to be regulated at the H maturity guide, and the Late Ito Red peach variety to be regulated at the L maturity guide. SPI also recommended a modification to the current maturity guide for the Autumn Rose peach variety, changing the maturity guide from the I to the H maturity guide.

This rule also corrects the reference to the Ambercrest peach variety listed in TABLE 1 of paragraph (a)(1)(iv). The correct name of the variety is "Amber Crest."

The PCC recommended these maturity requirements based on SPI's continuing review of individual maturity characteristics and identification of the appropriate maturity guide corresponding to the "well-matured" level of maturity for peach varieties in production.

TABLE 1 of paragraph (a)(1)(iv) of § 917.459 is also revised to remove 15 peach varieties which are no longer in production. The PCC routinely reviews the status of peach varieties listed in these maturity guides. The most-recent review revealed that 15 of the peach varieties currently listed in the maturity guide have not been in production since the 1997 season. Typically, the PCC recommends removing a variety after non-production for three seasons, or if trees of that variety are known to have been pulled out, because a maturity guide for an obsolete variety is no longer needed. The varieties removed include the August Sun, Autumn Crest, Belmont(Fairmont), Berenda Sun, Fayette, Golden Crest, Golden Lady, June Sun, Mary Anne, Parade, Pat's Pride, Prima Lady, Red Cal, Scarlet Lady, and Springold peach varieties.

Size Requirements

Both orders provide (in §§ 916.52 and 917.41) authority to establish size requirements. Size regulations cause producers to leave fruit on the tree longer. This increased growing time not only improves the size of the fruit, but also increases its maturity. In addition, increased size results in an increased number of packed boxes of nectarines or peaches per acre. Acceptable size fruit also provides greater consumer satisfaction and more repeat purchases, and, therefore, increases returns to producers and handlers. Varieties recommended for specific size regulation have been reviewed and such recommendations are based on the specific characteristics of each variety. The NAC and PCC conduct studies each season on the range of sizes reached by the regulated varieties and determine whether revisions in the size requirements are appropriate.

Nectarines: Section 916.356 of the order's rules and regulations specifies minimum size requirements for fresh nectarines in paragraphs (a)(2) through (a)(9). This rule revises § 916.356 to establish variety-specific minimum size requirements for 14 nectarine varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1999 season. This rule also removes the variety-specific minimum size requirements for 6 varieties of nectarines whose shipments fell below 5,000 packages during the 1999 season.

For example, one of the varieties recommended for addition to the variety-specific minimum size requirements is the Diamond Jewel nectarine variety. Studies of the size ranges attained by the Diamond Jewel variety revealed all but one box of that variety met minimum sizes 50, 60, 70, and 80 during the 1999 season. The one box reportedly met a minimum size 88. While the size distribution peaked on the size 70, 100 percent of the fruit sized at a minimum of size 88.

A review of other varieties with the same harvesting period indicated that Diamond Jewel was also comparable to those varieties in its size ranges for that time period. Discussions with handlers known to handle the variety confirmed this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Diamond Jewel nectarine variety in the variety-specific size regulation at a size 88 is appropriate.

Historical variety data such as this provides the NAC with the information necessary to recommend the appropriate sizes at which to regulate various nectarine varieties. In addition, producers and handlers of the varieties affected are personally invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both NAC and subcommittee meetings when such comments are received by the staff.

For reasons similar to those discussed in the preceding paragraph, the introductory text of paragraph (a)(4) of § 916.356 is revised to include the Diamond Jewel, Kay Sweet, and White Sun nectarine varieties; and the introductory text of paragraph (a)(6) in § 916.356 is revised to include the Arctic Blaze, Arctic Gold, Arctic Jay, Cole Red, Fire Sweet, Honey Blaze, Kay Bright, Prima Diamond XVIII, Regal Pearl, Ruby Sweet, and White September nectarine varieties.

This rule also revises the introductory text of paragraph (a)(4) of § 916.356 to remove 2 nectarine varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1999 season. Thus, the introductory text of paragraph (a)(4) is revised to remove the Early May and Prima Diamond VI nectarine varieties.

This rule also revises the introductory text of paragraph (a)(6) of § 916.356 to remove 4 nectarine varieties from the variety-specific minimum size requirements specified in the section because less than 5,000 packages of each of these varieties were produced during the 1999 season. Thus, the introductory text of paragraph (a)(6) is revised to remove the Flavortop, Flavortop I, How Red (Sunectnineteen) and the 491–48 nectarine varieties.

The Gran Sun nectarine variety had 1999 shipments of 2,939 packages, but was not recommended for removal from variety-specific size requirements because the variety is expected to increase in commercial significance during the 2000 season. Inclement weather, including the cool spring and frost damage, is considered to be a factor in the decreased production during the 1999 season.

Nectarine varieties removed from the nectarine variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (a)(7), (a)(8), and (a)(9) of § 916.356.

The NAC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these nectarine varieties, and consumer acceptance levels for various sizes of fruit. This rule is designed to establish minimum size requirements for fresh nectarines consistent with expected crop and market conditions.

Peaches: Section 917.459 of the order's rules and regulations specifies minimum size requirements for fresh peaches in paragraphs (a)(2) through (a)(6), and paragraphs (b) and (c). This rule revises § 917.459 to establish variety-specific minimum size requirements for 16 peach varieties that were produced in commercially-significant quantities of more than 10,000 packages for the first time during the 1999 season. This rule also removes the variety-specific minimum size requirements for 4 varieties of peaches whose shipments fell below 5,000 packages during the 1999 season.

One of the varieties recommended for addition to the variety-specific size requirements is the Brittany Lane variety. Studies of the size ranges attained by the Brittany Lane variety revealed that while the size distribution peaked on size 50, all of the boxes of that variety met at least the size 80 requirement.

A review of other varieties of the same harvesting period indicated that Brittany Lane was also comparable to those varieties in its size ranges. Discussions with handlers known to handle the variety confirmed this information regarding minimum size and harvesting period, as well. Thus, the recommendation to place the Brittany Lane variety in the variety-specific size regulation at a size 80 is appropriate.

Historical variety data such as this provides the PCC with the information necessary to recommend the appropriate sizes at which to regulate various peach varieties. In addition, producers of the affected varieties are invited to comment when such size recommendations are deliberated. Producer and handler comments are also considered at both PCC and subcommittee meetings when such comments are received by the staff.

In § 917.459 of the order's rules and regulations, the introductory text of paragraph (a)(5) is revised to include the Brittany Lane, Snow Prince, Zee Diamond, 012–094, and 172LE White Peach (Crimson Snow/Sunny Snow) peach varieties; and the introductory text of paragraph (a)(6) is revised to include the Country Sweet, Earli Rich, Full Moon, Late September Snow, N117, Queen Lady, Red Sun, Sierra Gem, Snow Blaze, Sweet Kay, and Sweet September peach varieties.

This rule also revises § 917.459 to remove 4 peach varieties from the variety-specific size requirements specified in that section, because less than 5,000 packages of this variety were produced during the 1999 season. In § 917.459, the introductory text of paragraph (a)(5) is revised to remove the Golden Crest (Supechthree) peach variety and the introductory text of paragraph (a)(6) of § 917.459 is revised to remove the Snow Diamond, Sparkle, and 1–01–505 peach varieties.

The Super Rich peach variety had 1999 shipments of 3,941 packages, but was not recommended for removal from variety-specific size requirements because the variety is expected to increase in commercial significance during the 2000 season. Inclement weather, including the cool spring and frost damage, is considered to be a factor in the decreased production during the 1999 season.

Peach varieties removed from the variety-specific list become subject to the non-listed variety size requirements specified in paragraphs (b) and (c) of § 917.459.

The PCC recommended these changes in the minimum size requirements based on a continuing review of the sizing and maturity relationships for these peach varieties, and the consumer acceptance levels for various fruit sizes. This rule is designed to establish minimum size requirements for fresh peaches consistent with expected crop and market conditions.

This rule reflects the committees' and the Department's appraisal of the need to revise the handling requirements for California nectarines and peaches, as specified. The Department has determined that this rule will have a beneficial impact on producers, handlers, and consumers of California nectarines and peaches.

This rule establishes handling requirements for fresh California nectarines and peaches consistent with expected crop and market conditions, and will help ensure that all shipments of these fruits made each season will meet acceptable handling requirements established under each of these orders. This rule will also help the California nectarine and peach industries provide fruit desired by consumers. This rule is designed to establish and maintain orderly marketing conditions for these fruits in the interest of producers, handlers, and consumers.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 300 California nectarine and peach handlers subject to regulation under the orders covering nectarines and peaches grown in California, and about 1,800 producers of these fruits in California. Small agricultural service firms, which includes handlers, are defined as those whose annual receipts are less than $5,000,000. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.201] as those having annual receipts of less than $500,000. A majority of these handlers and producers may be classified as small entities.

The committees' staff have estimated that there are less than 20 handlers in the industry who could be defined as

other than small entities. If the average handler price received were $9.00 per box or box equivalent of nectarines or peaches, a handler would have to ship at least 555,000 boxes to have annual receipts of $5,000,000. Small handlers represent approximately 94 percent of the handlers within the industry. If the average producer price received were $6.00 per box or box equivalent for nectarines and $5.65 per box or box equivalent for peaches, producers would have to produce approximately 84,000 boxes or box equivalents of nectarines and approximately 89,000 boxes or box equivalents of peaches to have annual receipts of $500,000. Therefore, small producer entities are estimated to represent approximately 78 percent of the producers within the industry. For those reasons, a majority of the handler and producers may be classified as small entities.

Under §§ 916.52 and 917.41 of the orders, lot stamping, grade, size, maturity, and container and pack requirements are established for fresh shipments of California nectarines and peaches, respectively. Such requirements are in effect on a continuing basis. This rule revises current requirements to: (1) Revise the lot stamping requirements for the 2000 season only; (2) authorize shipments of "CA Utility" quality fruit to continue during the 2000 season; (3) eliminate the minimum size of maturity marking requirements for all containers; (4) provide a tolerance for the "Peento" or "donut" types of peaches for healed, non-serious, blossom-end growth cracks; and (5) revise varietal maturity, quality, and size requirements to reflect recent changes in growing conditions.

In §§ 916.115 and 917.150 of the orders' rules and regulations, respectively, handlers are required to stamp containers of nectarines and peaches with the Federal-State Inspection Service lot stamp number after inspection and prior to shipment. New, returnable containers, which do not support permanent markings, utilize printed cards which contain the lot stamp number, date codes, and other container marking requirements. The printed cards are easily inserted into tabs on the front or sides of the containers. The ease of portability of these cards creates problems for both the inspection service and the industries in tracking the containers. Cards on a pallet of inspected fruit could be easily moved to a pallet of uninspected fruit, thus permitting a handler to circumvent inspection requirements. The inspection service and the committees have recommended that each pallet of inspected nectarines and peaches be marked with a pallet tag containing the lot stamp number, in addition to the lot stamp number provided on the card on the containers.

The committees believe that this recommendation should be limited to the 2000 season only, since at least one manufacturer anticipates the availability of an area on the principle display panel where the container markings will adhere to the box, which will meet the needs of the industries, inspection service, and the manufacturer. However, the manufacturer believes that this change may not be available in time for the 2000 season. For that reason, the committees further recommended that the proposed modification of the lot stamping requirements be put into place for the 2000 season only.

In 1996, §§ 916.350 and 917.442 were revised to permit shipments of lower-quality nectarines and peaches, known as "CA Utility," as an experiment for the 1996 season only. Such authorization was continued during the 1997, 1998, and 1999 seasons. This rule permits the continued use of "CA Utility" quality fruit for the 2000 season with a continued in-house statistical review to be conducted by the NAC and PCC. During the 1996 season, the Department authorized the shipment of nectarines and peaches which were of a lower quality than the minimum permitted for previous seasons. During 1996, there were 210,443 boxes of nectarines and 365,761 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.9 percent of fresh shipments, respectively. During 1997, there were 230,275 boxes of nectarines and 216,562 boxes of peaches packed as "CA Utility," or 1.1 percent and 1.0 percent of fresh shipments, respectively. In 1998, there were 760,000 boxes of nectarines and 602,000 boxes of peaches packed as "CA Utility," or 4.5 percent and 3.3 percent of fresh shipments, respectively. In 1999, there were 819,600 boxes of nectarines and 689,800 boxes of peaches packed as "CA Utility," or 4.0 percent and 3.4 percent of fresh shipments, respectively.

Continued availability of "CA Utility" quality fruit is expected to have a positive impact on producers, handlers, and consumers by permitting more nectarines and peaches to be shipped into fresh market channels, without adversely impacting the market for higher quality fruit.

Sections 916.356 and 917.442 establish minimum maturity levels. This rule makes annual adjustments to the maturity requirements for several varieties of nectarines and peaches. Maturity requirements are based on maturity measurements generally using maturity guides (*e.g.*, color chips), as reviewed by SPI. Such maturity guides provide producers, handlers, and SPI with objective tools for measuring the maturity of different varieties of nectarines and peaches. Such maturity guides are reviewed annually by SPI to determine the appropriate guide for each nectarine and peach variety. These annual adjustments reflect changes in the maturity patterns of nectarines and peaches as experienced over the previous seasons' inspections. Adjustments in the guides ensure that fruit has met an acceptable level of maturity, thus ensuring consumer satisfaction while benefitting nectarine and peach producers and handlers.

Currently, in § 916.356 of the order's rules and regulations for nectarines and § 917.459 of the order's rules and regulations for peaches, minimum sizes for various varieties of nectarines and peaches are established. This rule makes adjustments to the minimum sizes authorized for various varieties of nectarines and peaches for the 2000 season. Minimum size regulations are put in place to allow fruit to stay on the tree for a greater length of time. This increased growing time not only improves maturity, but also improves fruit size. Increased fruit size increases the number of packed boxes per acre. Increased fruit size and maturity also provide greater consumer satisfaction and, therefore, more repeat purchases by consumers. Repeat purchases and consumer satisfaction benefit producers and handlers alike. Such adjustments to minimum sizes of nectarines and peaches are recommended each year by the NAC and PCC based upon historical data, and producer and handler information regarding sizes which the different varieties attain.

The recommendations with regard to maturity markings on containers, continuation of authority to ship nectarines and peaches which meet the "CA Utility" quality requirements, and an increased tolerance for Peento type of peaches, are relaxations. These regulations are intended to provide increased flexibility for handlers of nectarines and peaches.

The committees made recommendations regarding these revisions in handling requirements after considering all available information, including comments of persons at three subcommittee meetings. The Grade and Size Subcommittee met on November 9, 1999, the Management Services Committee met on November 17, 1999, and the Returnable Plastic Container Task Force met on November 23, 1999. At the meetings, the impact of and

alternatives to these recommendations were discussed.

At the Grade and Size Subcommittee, the members discussed recommendations of SPI with regard to maturity guides, and recommendations of staff with regard varietal sizing and grades. SPI recommended maturity guides for two varieties of peaches and also recommended a change in maturity guides for an established variety. SPI made no recommendations to add or change any maturity guides for nectarines. The staff made recommendations to remove varieties of nectarines and peaches from the maturity listings which are no longer in commercial production.

The staff also made recommendations to add nectarine and peach varieties to the variety specific size requirements, based upon internal studies of the sizing characteristics of those nectarines and peaches. These nectarine and peach varieties were packed in commercially-significant quantities of 10,000 packages or more during the 1999 season. Also, the staff made recommendations to remove nectarine and peach varieties from the variety specific sizing requirements, based upon information indicating that less than 5,000 packages of those varieties were packed in the 1999 season and that the shipments of those varieties are expected to continue to decline in commercial significance. The committees routinely review their regulations and add varieties of which more than 10,000 packages are packed in a season; or remove varieties of which less than 5,000 packages are packed in a season. The alternative to these requirements would be for the more popular varieties to be subject to the less precise general sizing regulations. This alternative was rejected since it would ultimately increase the amount of less acceptable fruit being marketed to consumers. Such a result would be contrary to the long-term interests of producers, handlers, and consumers.

At the Grade and Size Subcommittee meeting, a handler recommended eliminating the required minimum letter height for maturity markings for all types of containers. The handler noted that some boxes preferred by retailers have limited amounts of space on the display panels, especially consumer boxes. He suggested that the lettering height minimum for the maturity markings be eliminated in favor of clear and legible markings. Any alternatives, he noted, would fall short of the need to provide handlers the necessary maturity marking flexibility. He added that with all the required markings for variety, commodity, etc., very little room is left on the display panel and markings may nearly overlap. His recommendation and those of SPI and the staff were approved unanimously.

At the Returnable Plastic Container Task Force meeting, the participants discussed the most expedient method to ensure that lot stamp numbers and date codes could be affixed to containers of nectarines and peaches to allow such containers to be adequately tracked, which would meet the needs of the inspection service and the industries. The members also met with a manufacturer of one of the returnable boxes, who expressed a willingness to cooperate with the industries in finding a solution to the problem of the highly-portable cards on the containers.

Alternatives offered included leaving container marking requirements unchanged, eliminating lot stamp numbers as a required marking, and permitting shipments of nectarines and peaches in these containers without restrictions on the cards. By leaving container marking requirements unchanged, handlers would be precluded from providing nectarines and peaches in containers advocated by receiving retailers. Eliminating lot stamp numbers as a required marking is unacceptable to both the inspection service and the industry. Allowing returnable, plastic containers to be shipped with the highly portable cards is also unacceptable since the portability of the cards could enable a handler to evade inspection on a lot or lots of nectarines or peaches by moving the cards to uninspected containers, and could jeopardize the industries' "trace back" program. All of these alternatives were, therefore, rejected.

At the Management Services Committee meeting, the members reviewed all subcommittee recommendations available to them. The members of the Management Services Committee include the chairpersons and vice-chairpersons of the committees, who generally have many years experience working in the industries. They, too, discussed recommendations of subcommittees and were free to make alternative recommendations or revise recommendations to the committees, as they reviewed such recommendations.

Like committee meetings, subcommittee meetings are open to the public and comments are widely solicited.

This rule does not impose any additional reporting and recordkeeping requirements on either small or large handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule. However, as previously stated, nectarines and peaches under the orders have to meet certain requirements set forth in the standards issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). Standards issued under the Agricultural Marketing Act of 1946 are otherwise voluntary.

In addition, the committees' meetings were widely publicized throughout the nectarine and peach industries and all interested parties were invited to attend the meetings and participate in committee deliberations on all issues. These meetings are held annually during the last week of November or first week of December. Like all committee meetings, the November 30, 1999, meetings were public meetings and all entities, both large and small, were able to express views on these issues. The committees themselves are composed of producers. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matters presented, the information and recommendations submitted by the committees, and other information, it is found that this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a change to the handling requirements currently prescribed under the marketing orders for California fresh nectarines and peaches. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) California nectarine and peach producers and handlers should be apprised of this rule as soon as possible,

since early shipments of these fruits are

(3) Each package or container of

Utility" quality requirements. The term

TABLE 1—Continued

Jim, Brite Pearl, Cole Red, Crystal Rose,

for Grades of Peaches (7 CFR 51.1210

since early shipments of these fruits are expected to begin about April 1; (2) this rule relaxes grade requirements for nectarines and peaches and size requirements for several nectarine and peach varieties; (3) this rule relaxes container marking requirements for all containers; and (4) the committees unanimously recommended these changes at a public meeting and interested persons had an opportunity to provide input; and (5) the rule provides a 60-day comment period, and any written comments received will be considered prior to any finalization of this interim final rule.

List of Subjects

7 CFR Part 916

Marketing agreements, Nectarines, Reporting and recordkeeping requirements.

7 CFR Part 917

Marketing agreements, Peaches, Pears, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 916 and 917 are amended as follows:

1. The authority citation for 7 CFR parts 916 and 917 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 916—NECTARINES GROWN IN CALIFORNIA

2. Section 916.115 is revised to read as follows:

§ 916.115 Lot stamping.

Except when loaded directly into railway cars, exempted under § 916.110, or for nectarines mailed directly to consumers in consumer packages, all exposed or outside containers of nectarines, and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 916.55: *Provided*, That for the period April 1 to October 31, 2000, pallets of returnable plastic containers shall have the lot stamp numbers affixed to each pallet with a USDA-approved pallet tag, in addition to the lot stamp numbers and other required information on cards on the individual containers.

3. Section 916.350 is amended by:

a. Revising paragraphs (a)(3) and

b. Revising paragraph (d) to read as follows:

§ 916.350 California nectarine container and pack regulation.

(a) * * *

(3) Each package or container of nectarines, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end clearly and legibly in plain sight and in plain letters the words "U.S. Mature" or "US MAT" if such nectarines are mature as defined in the United States Standards for Grades of Nectarines (7 CFR 51.3145 through 51.3160); or may instead bear on one outside end clearly and legibly in plain sight and in plain letters the words "California Well Matured" or "CA WELL MAT" if such nectarines are well matured as defined in § 916.356.

* * * * *

(d) During the period April 1 through October 31, 2000, each container or package when packed with nectarines meeting the "CA Utility" quality requirements, shall bear the words "CA Utility," along with all other required container markings, in letters at least 3/8 inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as "CA Utility," along with other required markings, in letters at least 3/8 inch in height.

* * * * *

4. Section 916.356 is amended by:

a. Revising the introductory text of paragraph (a)(1);

b. Revising TABLE 1 of paragraph (a)(1)(iv); and,

c. Revising the introductory text of paragraphs (a)(3), (a)(4) and (a)(6), to read as follows:

§ 916.356 California nectarine grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of nectarines unless such nectarines meet the requirements of U.S. No. 1 grade: *Provided*, That nectarines 2 inches in diameter or smaller, shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle 3/8 inch in diameter, and nectarines larger than 2 inches in diameter shall not have fairly light-colored, fairly smooth scars which exceed an aggregate area of a circle 1/2 inch in diameter: *Provided further*, That an additional tolerance of 25 percent shall be permitted for fruit that is not well formed but not badly misshapen: *Provided further*, That all varieties of nectarines which fail to meet the U.S. No. 1 grade only on account of lack of blush or red color due to varietal characteristics shall be considered as meeting the requirements of this subpart: *Provided further*, That during the period April 1 through October 31, 2000, any handler may handle nectarines if such nectarines meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the nectarines in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the nectarines in any container meet or exceed the requirements of U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Nectarines; and that such nectarines are mature and are:

* * * * *

(iv) * * *

TABLE 1

Column A variety	Column B maturity guide
Alshir Red	J
April Glo	H
August Glo	L
August Lion	J
August Red	J
Aurelio Grand	F
Autumn Delight	L
Autumn Grand	L
Big Jim	J
Diamond Jewel	L
Diamond Ray	L
Earliglo	I
Early Diamond	J
Early May	F
Early May Grand	H
Early Red Jim	J
Early Sungrand	H
Fairlane	L
Fantasia	J
Firebrite	H
Flamekist	L
Flaming Red	K
Flavortop	J
Grand Diamond	L
Independence	H
July Red	L
June Brite	I
Juneglo	H
Kay Diamond	L
King Jim	L
Kism Grand	J
Late Le Grand	L
Late Red Jim	J
May Diamond	I
May Fire	H
Mayglo	H
May Grand	H
May Jim	I
May Kist	H
May Lion	J
Mid Glo	L
Moon Grand	L
Niagara Grand	H
P-R Red	L
Red Diamond	L
Red Delight	I
Red Fred	J
Red Free	L
Red Glen	J

TABLE 1—Continued

Column A variety	Column B maturity guide
Red Glo	I
Red Grand	H
Red Jim	L
Red May	J
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Grand	J
Ruby Sun	J
Scarlet Red	K
September Grand	L
September Red	L
Sheri Red	J
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Red	H
Star Brite	J
Summer Beaut	H
Summer Blush	J
Summer Bright	J
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Lion	L
Summer Red	L
Sunburst	J
Sun Diamond	I
Sun Grand	G
Super Star	G
Tom Grand	L
Zee Glo	J
Zee Grand	I

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(3) Any package or container of Mayglo variety of nectarines on or after May 6 of each year, or Earliglo, Early Diamond, Johnny's Delight, May Jim, or May Kist variety nectarines unless:

* * * * *

(4) Any package or container of Arctic Glo, Arctic Rose, Arctic Star, Diamond Bright, Diamond Jewel, Juneglo, June Pearl, Kay Glo, Kay Sweet, May Diamond, May Grand, May Lion, Prima Diamond IV, Prima Diamond 13, Prince Jim, Red Delight, Red Glo, Rose Diamond, Royal Glo, Sparkling May, Star Brite, White Sun, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of Alshir Red, Alta Red, Arctic Blaze, Arctic Gold, Arctic Jay, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Glo, August Lion, August Red, August Snow, Autumn Delight, Big Jim, Brite Pearl, Cole Red, Crystal Rose, Diamond Ray, Early Red Jim, Fairlane, Fantasia, Firebrite, Fire Pearl, Fire Sweet, Flame Glo, Flaming Red, Grand Diamond, Grand Pearl, Honey Blaze, Honey Kist, July Red, Kay Bright, Kay Diamond, King Jim, Late Red Jim, Mid Glo, Niagara Grand, P–R Red, Prima Diamond IX, Prima Diamond XVI, Prima Diamond XVIII, Prima Diamond XIX, Prima Diamond XXIV, Red Diamond, Red Glen, Red Jim, Regal Pearl, Rio Red, Royal Giant, Ruby Diamond, Ruby Pearl, Ruby Sweet, Scarlet Red, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Diamond, Spring Red, Summer Beaut, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Lion, Summer Red, Sunburst, Sun Diamond, Sunny Red, Super Star, Terra White, White September, or Zee Glo variety nectarines unless:

* * * * *

PART 917—FRESH PEARS AND PEACHES GROWN IN CALIFORNIA

5. Section 917.150 is revised to read as follows:

§ 917.150 Lot stamping.

Except when loaded directly into railway cars, exempted under § 917.143, or for peaches mailed directly to consumers in consumer packages, all exposed or outside containers of peaches, and not less than 75 percent of the total containers on a pallet, shall be plainly stamped, prior to shipment, with a Federal-State Inspection Service lot stamp number, assigned by such Service, showing that such fruit has been USDA inspected in accordance with § 917.45: *Provided:* That for the period April 1 to November 23, 2000, pallets of returnable plastic containers shall have the lot stamp numbers affixed to each pallet with a USDA-approved pallet tag, in addition to the lot stamp numbers and other required information on cards on the individual containers.

6. Section 917.442 is amended by:

a. Revising paragraphs (a)(3); and

b. Revising paragraph (d) to read as follows:

§ 917.442 California peach container and pack regulation.

(a) * * *

(3) Each package or container of peaches, except for consumer packages in master containers and consumer packages mailed directly to consumers, shall bear on one outside end clearly and legibly in plain sight and in plain letters the words "U.S. Mature" or "US MAT" if such peaches are mature as defined in the United States Standards for Grades of Peaches (7 CFR 51.1210 through 51.1223); or may instead bear on one outside end clearly and legibly in plain sight and in plain letters the words "California Well Matured" or "CA WELL MAT" if such peaches are well matured as defined in § 917.459.

* * * * *

(d) During the period April 1 through November 23, 2000, each container or package when packed with peaches meeting the "CA Utility" quality requirements, shall bear the words "CA Utility," along with all other required container markings, in letters at least 3/8 inch in height on the visible display panel. Consumer bags or packages must also be clearly marked on the consumer bags or packages as "CA Utility," along with other required markings, in letters at least 3/8 inch in height.

* * * * *

7. Section 917.459 is amended by:

a. Revising the introductory text of paragraph (a)(1);

b. Revising TABLE 1 of paragraph (a)(1)(iv); and

c. Revising the introductory text of paragraphs (a)(5) and (a)(6) to read as follows:

§ 917.459 California peach grade and size regulation.

(a) * * *

(1) Any lot or package or container of any variety of peaches unless such peaches meet the requirements of U.S. No. 1 grade: *Provided*, That an additional 25 percent tolerance shall be permitted for fruit with open sutures which are damaged, but not seriously damaged: *Provided Further*, That peaches of the Peento type shall be permitted a 10 percent tolerance for healed, non-serious, blossom-end growth cracks: *Provided further*, That during the period April 1 through November 23, 2000, any handler may handle peaches if such peaches meet "CA Utility" quality requirements. The term "CA Utility" means that not more than 40 percent of the peaches in any container meet or exceed the requirements of the U.S. No. 1 grade, except that when more than 30 percent of the peaches in any container meet or exceed the requirements of U.S. No. 1 grade, the additional 10 percent shall have non-scoreable blemishes as determined when applying the U.S. Standards for Grades of Peaches; and that such peaches are mature and are:

* * * * *

(iv) * * *

TABLE 1—Continued

Column A variety	Column B maturity guide
Red Glo	I
Red Grand	H
Red Jim	L
Red May	J
Rio Red	L
Rose Diamond	J
Royal Delight	F
Royal Giant	I
Royal Glo	I
Ruby Diamond	L
Ruby Grand	J
Ruby Sun	J
Scarlet Red	K
September Grand	L
September Red	L
Sheri Red	J
Sparkling June	L
Sparkling May	J
Sparkling Red	L
Spring Bright	L
Spring Diamond	L
Spring Red	H
Star Brite	J
Summer Beaut	H
Summer Blush	J
Summer Bright	J
Summer Diamond	L
Summer Fire	L
Summer Grand	L
Summer Lion	L
Summer Red	L
Sunburst	J
Sun Diamond	I
Sun Grand	G
Super Star	G
Tom Grand	L
Zee Glo	J
Zee Grand	I

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(3) Any package or container of Mayglo variety of nectarines on or after May 6 of each year, or Earliglo, Early Diamond, Johnny's Delight, May Jim, or May Kist variety nectarines unless:

* * * * *

(4) Any package or container of Arctic Glo, Arctic Rose, Arctic Star, Diamond Bright, Diamond Jewel, Juneglo, June Pearl, Kay Glo, Kay Sweet, May Diamond, May Grand, May Lion, Prima Diamond IV, Prima Diamond 13, Prince Jim, Red Delight, Red Glo, Rose Diamond, Royal Glo, Sparkling May, Star Brite, White Sun, or Zee Grand variety nectarines unless:

* * * * *

(6) Any package or container of Alshir Red, Alta Red, Arctic Blaze, Arctic Gold, Arctic Jay, Arctic Pride, Arctic Queen, Arctic Snow (White Jewel), Arctic Sweet, August Glo, August Lion, August Red, August Snow, Autumn Delight, Big Jim, Brite Pearl, Cole Red, Crystal Rose, Diamond Ray, Early Red Jim, Fairlane, Fantasia, Firebrite, Fire Pearl, Fire Sweet, Flame Glo, Flaming Red, Grand Diamond, Grand Pearl, Honey Blaze, Honey Kist, July Red, Kay Bright, Kay Diamond, King Jim, Late Red Jim, Mid Glo, Niagara Grand, P–R Red, Prima Diamond IX, Prima Diamond XVI, Prima Diamond XVIII, Prima Diamond XIX, Prima Diamond XXIV, Red Diamond, Red Glen, Red Jim, Regal Pearl, Rio Red, Royal Giant, Ruby Diamond, Ruby Pearl, Ruby Sweet, Scarlet Red, September Red, Sparkling June, Sparkling Red, Spring Bright, Spring Diamond, Spring Red, Summer Beaut, Summer Blush, Summer Bright, Summer Diamond, Summer Fire, Summer Grand, Summer Lion, Summer Red, Sunburst, Sun Diamond, Sunny Red, Super Star, Terra White, White September, or Zee Glo variety nectarines unless:

* * * * *

Dated: March 16, 2000.

its powers and perform its duties.

due to the Committee on the eighth day

SUPPLEMENTARY INFORMATION: This final

TABLE 1

Column A variety	Column B maturity guide
Amber Crest	G
Angelus	I
August Lady	L
Autumn Gem	I
Autumn Lady	H
Autumn Rose	H
Blum's Beauty	G
Cal Red	I
Carnival	I
Cassie	H
Coronet	E
Crimson Lady	J
Crown Princess	J
David Sun	I
Diamond Princess	J
Earli Rich	H
Early Delight	H
Early Elegant Lady	L
Early May Crest	H
Early O'Henry	I
Early Top	G
Elberta	B
Elegant Lady	L
Fairtime	G
Fancy Lady	J
Fay Elberta	C
Fire Red	I
First Lady	D
Flamecrest	I
Flavorcrest	G
Flavor Queen	H
Flavor Red	G
Franciscan	G
Goldcrest	H
Honey Red	G
John Henry	J
July Elberta	C
June Lady	G
June Pride	J
Kern Sun	H
Kingscrest	H
Kings Lady	I
Kings Red	I
Lacey	I
Lady Sue	L
Late Ito Red	L
May Crest	G
May Sun	I
Merrill Gem	G
Merrill Gemfree	G
O'Henry	I
Pacifica	G
Prima Gattie 8	L
Queencrest	G
Ray Crest	G
Red Dancer (Red Boy)	I
Redhaven	G
Red Lady	G
Redtop	G
Regina	G
Rich Lady	J
Rich May	H
Rich Mike	H
Rio Oso Gem	I
Royal Lady	J
Royal May	G
Ruby May	H
Ryan Sun	I
September Sun	I
Sierra Crest	H
Sierra Lady	I
Sparkle	I
Springcrest	G
Spring Lady	H
Sugar Lady	J
Summer Lady	L
Summerset	I
Suncrest	G
Sweet Scarlet	J
Topcrest	H
Tra Zee	J
Willie Red	G
Zee Lady	L

Note: Consult with the Federal or Federal-State Inspection Service Supervisor for the maturity guides applicable to the varieties not listed above.

* * * * *

(5) Any package or container of Babcock, Brittany Lane, Crimson Lady, Crown Princess, David Sun, Early May Crest, Flavorcrest, June Lady, Kern Sun, May Crest, May Sun, Merrill Gemfree, Pink Rose, Prima Peach IV, Queencrest, Ray Crest, Redtop, Rich May, Rich Mike, Snow Brite, Snow Prince, Springcrest, Spring Lady, Spring Snow, Sugar May, Sweet Scarlet, White Dream, Zee Diamond, 012–094, or 172LE White Peach (Crimson Snow/Sunny Snow) variety of peaches unless:

* * * * *

(6) Any package or container of Amber Crest, August Lady, Autumn Flame, Autumn Lady, Autumn Rose, Cal Red, Carnival, Cassie, Champagne, Country Sweet, Diamond Princess, Earli Rich, Early Elegant Lady, Early O'Henry, Elegant Lady, Fairtime, Fancy Lady, Fay Elberta, Flamecrest, Full Moon, John Henry, June Pride, Kaweah, Kings Lady, Lacey, Late Ito Red, Late September Snow, Madonna Sun, Morning Lord, N117, O'Henry, Prima Gattie, Prima Peach 13, Prima Peach 20, Prima Peach 23, Queen Lady, Red Dancer, Red Sun, Rich Lady, Royal Lady, Ryan Sun, Saturn (Donut), Scarlet Snow, September Snow, September Sun, Sierra Gem, Sierra Lady, Snow Blaze, Snow Giant, Snow King, Sprague Last Chance, Sugar Giant, Sugar Lady, Summer Lady, Summer Sweet, Summer Zee, Suncrest, Sweet Kay, Sweet September, Tra Zee, Vista, White Lady, Yukon King, or Zee Lady variety of peaches unless:

* * * * *

Dated: March 16, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–7086 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV00–989–1 FR]

Raisins Produced From Grapes Grown in California; Changes in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the reporting requirements specified under the administrative rules and regulations of the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (Committee). This rule makes minor changes to two reports submitted by handlers regarding the receipt and disposition of non-California raisins (raisins produced from grapes grown outside California). These changes will reduce the reporting burden on handlers and provide the Committee with better information on non-California raisins.

EFFECTIVE DATE: August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, or Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule changes the reporting requirements specified under the order. This rule makes minor modifications to two reports submitted by handlers regarding the receipt and disposition of non-California raisins. The Committee collects these reports to track non-California raisins and help ensure that only California raisins are used in programs authorized under the order. These changes reduce the reporting burden on handlers and provide the Committee with better information on non-California raisins. This action was unanimously recommended by the Committee at a meeting on November 10, 1999.

Section 989.73(d) of the order provides authority for the Committee, with the approval of the Secretary, to request handlers to furnish to the Committee such other information as may be necessary to enable it to exercise its powers and perform its duties. Handlers are required to submit various reports regarding California raisins, including receipts, disposition, transfers to other handlers, and the like. This information is used by the Committee in making various program decisions such as those regarding volume regulation and the handler assessment rate for funding program activities.

In addition, § 989.173 requires handlers to report to the Committee their receipt and disposition of raisins produced from grapes grown outside the State of California. Authority to collect information on raisins other than those produced in California was added to the regulations in 1990 to help ensure that only California raisins are used in various programs operated under the order.

For example, an export program is authorized under the order to promote the sale of California raisins in export markets. This program is usually in effect when volume regulation is implemented under the order. When volume regulation is in effect, a certain percentage of the crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (or reserve) for the account of the Committee. Under the export program, handlers may receive raisins, at a reduced price, or cash back from the reserve pool to blend down the cost of the exported raisins, allowing handlers to be price competitive in export markets (prices in export markets are generally lower than the domestic market). The Committee wants to ensure that only California raisins are utilized in this program.

Paragraph (b)(7) of § 989.173 requires handlers to report receipts of non-California raisins. This information is reported on Form No. 500 and is due to the Committee on the eighth day of each month. Currently, handlers must categorize the net weight (pounds) of such raisins received as either natural condition (raw product) or packed (processed raisins) for the current month as well as a cumulative quantity from August 1, the beginning of the crop year.

The Committee recommended that such receipts not be categorized as natural condition or packed. This information is contained within other supporting documentation that handlers must also submit with their receipt report. Thus, the Committee would like to eliminate this duplication.

Paragraph (c)(3) of § 989.173 requires handlers to report the disposition of non-California raisins. This information is reported on Form No. 501 and is also due to the Committee on the eighth day of each month. Currently, handlers must report whether such raisins were disposed of in cartons, bags, or as bulk raisins. However, Committee staff has not found these categories useful in tracking non-California raisins. Thus, the Committee recommended eliminating this requirement.

In addition, the Committee recommended adding the requirement that handlers report the area of origin (country or state) of non-California raisins on the disposition report. Area of origin will help Committee staff match the disposition reports with the receipt reports, which already ask for area of origin. The Committee will thus be better able to track the inventory of non-California raisins.

These minor changes recommended by the Committee will reduce the reporting burden on handlers receiving and disposing of non-California raisins. Requiring handlers to report on their disposition form the origin of non-California raisins will allow the Committee to better track the inventory of such raisins. Accordingly, appropriate changes are made to paragraphs (b)(7) and (c)(3)(iv) of § 989.173.

Final Regulatory Flexibility Analysis and the Paperwork Reduction Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less

than $5,000,000, excluding receipts

In addition, the Committee held an

cumulative quantity from August 1; and

room hours are 8 a.m. to 4:30 p.m.,

disease. Heartwater disease is an acute

we find good cause under 5 U.S.C. 553

than $5,000,000, excluding receipts from any other sources. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This final rule changes the reporting requirements specified in paragraphs (b) and (c) of § 989.173 regarding the receipt and disposition, respectively, of raisins produced from grapes grown outside the State of California. Handlers will no longer have to report to the Committee whether such raisins were received as natural condition or packed raisins, nor will handlers have to report whether such raisins were disposed of in cartons, bags or as bulk raisins. Handlers will have to report additional information, specifically, the area of origin (country or state) of such raisins on their disposition reports. Authority for these changes is provided in § 989.73(d) of the order.

Regarding the impact of this action on affected entities, this action will reduce, in the aggregate, the reporting and recordkeeping burden on handlers who receive and dispose of non-California raisins. The Committee estimates that 11 handlers receive and dispose of non-California raisins each year. It is estimated that it will take each handler about 4 minutes to complete each revised receipt report (1 minute less than that required for the current receipt report). The total annual burden for such receipt reports will be reduced from 11 hours to about 8.8 hours. Furthermore, it is estimated that it will take each handler about 5 minutes to complete each revised disposition report (the same as required for the current disposition report). The total annual burden for such disposition reports will remain at about 11 hours.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection requirements contained in this final rule have been approved by the Office of Management and Budget. Existing requirements have been assigned OMB No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, the Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

An alternative to this action would be to not make the recommended reporting changes. However, the Committee determined that it was best to proceed with its recommendation to reduce the reporting burden on handlers and obtain better information on tracking non-California raisins.

In addition, the Committee held an Administrative Issues Subcommittee meeting on November 9, 1999, where this issue was deliberated. This meeting and the Committee's meeting on November 10, 1999, were public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations.

A proposed rule concerning this action was published in the **Federal Register** on December 10, 1999 (64 FR 69204). Copies of the rule were mailed by the Committee staff to all Committee members and alternates, the Raisin Bargaining Association, handlers, and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register. That rule provided for a 60-day comment period which ended February 8, 2000. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. In § 989.173, the second sentence in paragraph (b)(7) and paragraph (c)(3)(iv) are revised to read as follows:

§ 989.173 Reports.

* * * * *

(b) * * *

(7) * * * This report shall include: The varietal type of raisins received; the net weight (pounds) of raisins received for the current month as well as a cumulative quantity from August 1; and the state or country where the raisins were produced. * * *

(c) * * *

(3) * * *

(iv) The area of origin (state or country) of the raisins shipped.

* * * * *

Dated: March 16, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–7084 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 74 and 93

[Docket No. 00–016–1]

Importation and Interstate Movement of Certain Land Tortoises

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are prohibiting, until further notice, the importation into the United States of certain land tortoises. We are also prohibiting, until further notice, the interstate movement of these land tortoises. These actions are necessary to prevent the introduction and spread of exotic ticks known to be vectors of heartwater disease, an acute infectious disease of ruminants. These actions will provide protection against an outbreak of heartwater disease in domestic and wild populations of ruminants in the United States.

DATES: This interim rule is effective March 22, 2000. However, this rule does not apply to importations that are en route to the United States. We invite you to comment on this docket. We will consider all comments that we receive by May 22, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–016–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 00–016–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. D. D. Wilson, Senior Staff Entomologist, Emergency Programs, VS, APHIS, 4700 River Road Unit 41, Riverdale, MD 20737–1231; (301) 734–8073.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 93 (referred to below as the animal import regulations) prohibit or restrict the importation of certain animals and birds into the United States to prevent the introduction of communicable diseases of livestock and poultry. The regulations in 9 CFR chapter I, subchapter C (referred to below as the interstate movement regulations), prohibit or restrict the interstate movement of certain animals and birds to prevent the spread of communicable diseases of livestock and poultry within the United States.

We are amending the animal import regulations to prohibit, until further notice, the importation of the following tortoises into the United States: All species and subspecies of leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), and Bell's hingeback tortoise (*Kinixys belliana*). Tortoises that are en route to the United States at the time of the publication of this interim rule will be allowed to be imported for humanitarian reasons. Refusing entry of tortoises already en route to the United States upon publication of the rule would be detrimental to the health of the tortoises and could be fatal.

In addition, we are amending the interstate movement regulations to prohibit, until further notice, the interstate movement of all species and subspecies of these land tortoises.

These actions are necessary because these tortoises, which are regularly imported into the United States and are common in the U.S. pet trade, have been found to harbor the tropical bont tick (*Amblyomma variegatum*), the African tortoise tick (*Amblyomma marmoreum*), and ticks of the species *Amblyomma sparsum*. All of these exotic ticks are known to be vectors of heartwater disease. Heartwater disease is an acute infectious disease of ruminants, including cattle, sheep, goats, white-tailed deer, and antelope. This disease has a 60 percent or greater mortality rate in livestock and a 90 percent or greater mortality rate in white-tailed deer.

In December 1999, it was reported that evidence indicating the presence of nucleic acid from the causative agent of heartwater disease or a related agent might have been present in *Amblyomma sparsum* collected from leopard tortoises imported into Florida. Subsequently, in February 2000, leopard tortoises from premises known to be infested with the African tortoise tick were moved interstate to noninfested premises. Though these incidents involve only leopard tortoises, we are also prohibiting the importation and interstate movement of African spurred tortoise and Bell's hingeback tortoise because interception records from 1995–1999 report that 90 percent of the tropical bont ticks, African tortoise ticks, and ticks of the species *Amblyomma sparsum* found on reptiles entering the United States occurred on these three species of land tortoise.

We are working to establish effective treatment and biosecurity protocols for tortoises and other reptiles. Effective treatment and biosecurity protocols will allow us to ensure that all tortoises and other reptiles entering the United States, as well as tortoises and other reptiles already in the United States, can be effectively treated for exotic ticks and that all exotic ticks can be eradicated from infested premises. When we have established such protocols, and when tortoises and other reptiles already in the United States have been effectively treated for exotic ticks and all exotic ticks eradicated from infested premises, the ban on importation of these tortoises from Africa, as well as the ban on interstate movement of these tortoises, will be lifted. Until that time, however, these actions will provide protection against an outbreak of heartwater disease in domestic and wild populations of ruminants in the United States.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent an outbreak of heartwater disease in the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make this action effective less than 30 days after publication. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform.

This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) Has no retroactive effect; and (3) Does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 74

Animal diseases, Livestock, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products,

former position with back pay, and award compensatory damages, including attorney fees. 29 CFR part 24, could result in civil penalties, the DOL whistleblower proceedings were not an alternative to Part 708. Accordingly, the management involved in the alleged retaliation and the specificity of the acts of retaliation.

9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR chapter I as follows:

1. In subchapter C, a new part 74 is added to read as follows:

PART 74—PROHIBITION OF INTERSTATE MOVEMENT OF LAND TORTOISES

Sec.
74.1 General prohibition.

Authority: 21 U.S.C. 111–113, 114a, 115, 117, 120, 122–126, 134b, 134f; 7 CFR 2.22, 2.80, and 371.2(d).

§ 74.1 General prohibition.

The interstate movement of leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), and Bell's hingeback tortoise (*Kinixys belliana*) is prohibited.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

2. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

3. In § 93.701, a new paragraph (c) is added to read as follows:

§ 93.701 Prohibitions.

* * * * *

(c) No person may import leopard tortoise (*Geochelone pardalis*), African spurred tortoise (*Geochelone sulcata*), or Bell's hingeback tortoise (*Kinixys belliana*) into the United States.

Done in Washington, DC, this 16th day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–7014 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF ENERGY

10 CFR Part 820

Procedural Rules for DOE Nuclear Activities; General Statement of Enforcement Policy

AGENCY: Department of Energy.

ACTION: Final rule; amendment of enforcement policy statement and confirmation of interim rule.

SUMMARY: The Department of Energy (DOE) is amending its General Statement of Enforcement Policy, which is in an Appendix to the Procedural Rules for DOE Nuclear Activities, to state that DOE may use information collected by DOE and the Department of Labor (DOL) concerning whistleblower proceedings as a basis for enforcement actions and civil penalties under the Procedural Rules for DOE Nuclear Activities if the retaliation against DOE contractor employees relates to matters of nuclear safety in connection with a DOE nuclear activity. DOE also confirms the interim amendments to the enforcement policy statement published October 8, 1997.

DATES: This amended Policy and confirmation of the interim rule published October 8, 1997 as final takes effect on April 21, 2000.

FOR FURTHER INFORMATION CONTACT:
Keith Christopher, U. S. Department of Energy, Office of Investigation and Enforcement, EH–10, 19901 Germantown Road, Germantown, MD 20874 (301) 903–0100.
Ben McRae, U. S. Department of Energy, Office of General Counsel, GC–52, 1000 Independence Avenue, SW, Washington, DC 20585 (202) 586–6975.

SUPPLEMENTARY INFORMATION:

I. Background
II. Basis for Amendment of Enforcement Policy
III. Procedural Requirements
A. Review Under Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 13132
F. Review Under Executive Order 12988
G. Review Under the Unfunded Mandates Reform Act of 1995
H. Congressional Notification

I. Background

The Department of Energy (DOE) has adopted procedural rules in 10 CFR part 820 (Part 820) to provide for the enforcement of violations of DOE Nuclear Safety Requirements for which civil and criminal penalties can be imposed under the Price-Anderson Amendments Act of 1988 (Pub. L. 100–408, August 20, 1988) (PAAA). 56 FR 64290 (proposed Dec. 9, 1991), 58 FR 43680 (final Aug. 17, 1993). Appended to the rule is a General Statement of Enforcement Policy (Enforcement Policy). The Enforcement Policy sets forth the general framework through which DOE would seek to enforce compliance with DOE's nuclear safety rules, regulations and orders by a DOE contractor, subcontractor, or a supplier (hereinafter referred to collectively as "contractor"). Following that promulgation, DOE amended the Enforcement Policy with an opportunity for comment. 62 FR 52479 (Oct. 8, 1997). No comments were received and the amendments are made final today.

DOE's whistleblower regulations, 10 CFR part 708 (Department of Energy Contractor Employee Protection Program) (Part 708), establish requirements prohibiting retaliation against DOE contractor employees who have undertaken certain whistleblower actions. DOE's Office of Hearings and Appeals (OHA) has responsibility for resolution of whistleblower complaints under Part 708. The regulations provide criteria and procedures to protect employees of DOE contractors who believe they have suffered retaliation for disclosing information concerning danger to public health or safety, substantial violations of law, fraud or gross mismanagement; for participating in congressional proceedings; or for refusing to participate in dangerous activities. If an act of retaliation has occurred, OHA may order reinstatement, transfer preference, back pay, reimbursements of costs and expenses, or other remedies necessary to abate the violation. 10 CFR part 708, 57 FR 7533 (final March 3,1992), 61 FR 55230 (notice Oct. 25, 1996), 64 FR 12862 (interim final March 15, 1999), 64 FR 37396 (interim final rule and amendment July 12, 1999), 65 FR 6314 (final Feb. 9, 2000), 65 FR 9201 (correction Feb. 24, 2000).

In late 1992, Congress amended the Energy Reorganization Act, 42 U.S.C. 5801, *et seq.* (ERA), to prohibit any employer, including a DOE contractor indemnified under section 170.d. of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011, *et seq.* (AEA), from discriminating against any employee with respect to his or her compensation, terms, conditions or privileges of employment because the employee assisted or participated, or is about to assist or participate in any manner, in any action to carry out the purposes of the ERA or the AEA. 42 U.S.C. 5851 (ERA Sec. 211). The Department of Labor (DOL) has the responsibility under Sec. 211 to investigate employee complaints of discrimination and may, after an investigation and opportunity for hearing, order a violator to take affirmative action to abate the violation, reinstate the complainant to his or her former position with back pay, and award compensatory damages, including attorney fees. 29 CFR part 24, 59 FR 12506 (proposed March 16, 1994), 63 FR 6614 (final Feb. 9, 1998).

Before Part 820 was finalized and before § 211 of the ERA was enacted, DOE published a Notice of Clarification (Clarification) of proposed Part 820 to clarify the intended scope of the proposed definition of "DOE Nuclear Safety Requirements" as a basis for civil penalties, and to clarify the relationship between proposed Part 820 and Part 708. 57 FR 20796 (May 15, 1992). This Clarification established that the regulations prohibiting contractor retaliation in Part 708 could constitute DOE Nuclear Safety Requirements if the retaliation resulted from the employee's involvement in matters of nuclear safety in connection with a DOE nuclear activity. Such retaliation against DOE contractor employees would, therefore, be subject to the investigatory and adjudicatory procedures of Part 820, and could lead to the imposition of civil penalties under Part 820.

II. Basis for Amendment of Enforcement Policy

DOE's 1992 Clarification indicated that the provisions of the DOE whistleblower rule in Part 708 could constitute DOE Nuclear Safety Requirements. DOE imposed an affirmative duty on DOE contractors to protect the public, workers, and the environment in matters of nuclear safety relating to DOE nuclear activities by subjecting the contractors to enforcement for retaliation against contractor employees. In particular, if DOE found that a contractor retaliated in response to a worker raising or disclosing legitimate nuclear safety-related information or concerns, the Clarification stated that a violation of Part 820 could exist. 57 FR at 20797, 58 FR at 43681.

Any deterrent to the flow of that information can potentially constitute a violation of DOE Nuclear Safety Requirements that are imposed through the DOE whistleblower protection provisions. This is consistent with the NRC enforcement policy, which subjects licensees to possible civil penalties if they discriminate against employees raising safety issues or otherwise engaging in protected whistleblower activities under the ERA or the AEA. See, *e.g.*, 10 CFR 50.7, 58 FR 52410 (Oct. 8, 1993), 60 FR 24551 (amended May 9, 1995), 61 FR 6765 (amended Feb. 22, 1996).

When DOE put its contractors on notice in 1992 that a violation of the whistleblower provisions of Part 708 could result in civil penalties, the DOL whistleblower proceedings were not an alternative to Part 708. Accordingly, the Clarification did not indicate that information collected by DOL in a whistleblower proceeding could be used as the basis for issuance of a Preliminary Notice of Violation (PNOV) by DOE. Based on experience with DOL proceedings since the Clarification, DOE believes that DOL proceedings serve the same function as a Part 708 proceeding in determining whether a contractor has retaliated against an employee.

DOE is therefore amending the General Statement of Enforcement Policy appended to Part 820 to provide that the Director of the Office of Investigation and Enforcement (Director) may use information that DOL collects in a § 211 proceeding as a basis for enforcement action under Part 820. Specifically, the Director may use this information as the basis for initiating enforcement action by issuing a PNOV. In determining whether to initiate action under Part 820 with respect to an alleged retaliation, the Director would review the report of the investigation, the adjudicative record, and any other relevant material associated with the proceeding to determine if an adequate basis exists to issue a PNOV.

The Director may also use DOL information to support the determination that a contractor has violated or is continuing to violate the nuclear safety requirements against contractor retaliation and to issue civil penalties or other appropriate remedy in a Final Notice of Violation (FNOV). 10 CFR 820.24–820.25.

The Director will have discretion to give appropriate weight to information collected in DOL and in OHA investigations and proceedings. In deciding whether additional investigation or information is needed, the Director will consider the extent to which the facts in the proceedings have been adjudicated as well as any information presented by the contractor.

DOE has a policy of encouraging its contractors to cooperate in resolving whistleblower complaints raised by contractor employees. Accordingly, in deciding whether to initiate an enforcement action, the Director will take into account the extent to which a contractor cooperated in a Part 708 or § 211 proceeding, and, in particular, whether the contractor resolved the matter promptly without the need for an adjudication proceeding.

In considering whether to initiate an enforcement action and, if so, what remedy is appropriate, the Director will also consider the egregiousness of the particular case including the level of management involved in the alleged retaliation and the specificity of the acts of retaliation.

Normally, the Director will await the completion of the DOL or OHA investigation and related deliberative processes before deciding whether to take any enforcement action in order to avoid duplication of investigative effort. A Part 708 or Sec. 211 proceeding would be considered completed when there is either a final decision or a settlement of the retaliation complaint, or no additional administrative action is available. In egregious cases outlined in the Clarification and included in paragraph 7 of Section XIII, DOE may initiate an investigation and bring an enforcement action before the other proceedings are completed.

It should be noted, however, that any enforcement action in which the Director cites a violation of the whistleblower regulations is separate and distinct from violations arising from the substantive nuclear safety rules in 10 CFR part 830 (nuclear safety management), 10 CFR part 835 (occupational radiation protection), and 10 CFR 820.11 (information accuracy requirements). The Director may begin investigations of noncompliances of these nuclear safety rules at any time based on the underlying nuclear safety concerns raised by the employee regardless of the status of any related whistleblower retaliation proceedings.

III. Procedural Requirements

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be "a significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, Oct. 4, 1993). Accordingly, this action was not subject to review under that Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget (OMB).

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule will not have a "significant economic impact on a substantial number of small entities." DOE is not required by the Administrative Procedures Act (5 U.S.C. 553) or any other law to propose this policy statement for public comment. Accordingly, the Regulatory Flexibility Act requirements do not apply to this

rulemaking, and no regulatory flexibility

1996), imposes on Federal agencies the

contain any federal mandate, so these

Enforcement (Director) to support issuance of

warrant criminal referrals to the U.S.

file campaign finance reports and

rulemaking, and no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No additional information or record keeping requirements are imposed by this policy statement. Accordingly, no OMB clearance is required under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

D. Review Under the National Environmental Policy Act

The Department determined that this policy statement is not a major federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.*, and does not require preparation of an environmental impact statement or an environmental assessment. This policy statement amendment clarifies that DOE may use information generated in certain whistleblower proceedings involving DOE contractor employees as the basis for enforcement under procedures applicable to DOE Nuclear Safety Requirements. This action is covered under the Categorical Exclusion found at paragraph A.5. of Appendix A to Subpart D, 10 CFR part 1021, which applies to rulemakings that do not change the environmental effect of the rule being amended.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, Aug. 10, 1999) requires agencies to develop an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications. "Policies that have federalism implications" is defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. This amendment of DOE's enforcement policy would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), imposes on Federal agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, this policy statement meets the relevant standards of Executive Order 12988.

G. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) requires each federal agency to prepare a written assessment of the effects of any federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. The Act also requires a federal agency to develop an effective process to permit timely input by elected officers of State, local, and tribal governments on a proposed "significant intergovernmental mandate," and requires an agency plan for giving notice and opportunity to timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect small governments. DOE's intergovernmental consultation process under the Unfunded Mandates Reform Act of 1995 is described in a statement of policy published by the Office of General Counsel on March 18, 1997 (62 FR 12820). The policy statement amendment published today does not contain any federal mandate, so these requirements do not apply.

H. Congressional Notification

As required by 5 U.S.C. 801, DOE will report to Congress promulgation of this policy statement amendment prior to its effective date. The report will state that it has been determined that the amendment is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects 10 CFR Part 820

Government contracts, Nuclear safety, Whistleblowing

Issued in Washington, DC, on March 14, 2000.

David Michaels,

Assistant Secretary for Environment, Safety and Health.

For the reason set forth in the preamble, Part 820 of Title 10 of the Code of Federal Regulations is amended as set forth below:

PART 820—PROCEDURAL RULES FOR DOE NUCLEAR ACTIVITIES

1. The authority citation for Part 820 continues to read as follows:

Authority: 42 U.S.C. 2201, 2282(a), 7191; 28 U.S.C. 2461 note.

2. Appendix A to Part 820 as amended on October 8, 1997 (62 FR 52479), is adopted as final without change.

3. Appendix A to Part 820 is amended by adding a new Section XIII to read as follows:

Appendix A to Part 820—General Statement of Enforcement Policy

* * * * *

XIII. Whistleblower Enforcement Policy

a. DOE contractors may not retaliate against any employee because the employee has disclosed information, participated in activities or refused to participate in activities listed in 10 CFR 708.5 (a)–(c) as provided by 10 CFR 708.43. DOE contractor employees may seek remedial relief for allegations of retaliation from the DOE Office of Hearings and Appeals (OHA) under 10 CFR part 708 (Part 708) or from the Department of Labor (DOL) under sec. 211 of the Energy Reorganization Act (sec. 211), implemented in 29 CFR part 24.

b. An act of retaliation by a DOE contractor, proscribed under 10 CFR 708.43, that results from a DOE contractor employee's involvement in an activity listed in 10 CFR 708.5(a)–(c) concerning nuclear safety in connection with a DOE nuclear activity, may constitute a violation of a DOE Nuclear Safety Requirement under 10 CFR part 820 (Part 820). The retaliation may be subject to the investigatory and adjudicatory procedures of both Part 820 and Part 708. The same facts that support remedial relief to employees under Part 708 may be used by the Director of the Office of Investigation and Enforcement (Director) to support issuance of a Preliminary Notice of Violation (PNOV), a Final Notice of Violation (FNOV), and assessment of civil penalties. 10 CFR 820.24–820.25.

c. When an employee files a complaint with DOL under sec. 211 and DOL collects information relating to allegations of DOE contractor retaliation against a contractor employee for actions taken concerning nuclear safety, the Director may use this information as a basis for initiating enforcement action by issuing a PNOV. 10 CFR 820.24. DOE may consider information collected in the DOL proceedings to determine whether the retaliation may be related to a contractor employee's action concerning a DOE nuclear activity.

d. The Director may also use DOL information to support the determination that a contractor has violated or is continuing to violate the nuclear safety requirements against contractor retaliation and to issue civil penalties or other appropriate remedy in a FNOV. 10 CFR 820.25.

e. The Director will have discretion to give appropriate weight to information collected in DOL and OHA investigations and proceedings. In deciding whether additional investigation or information is needed, the Director will consider the extent to which the facts in the proceedings have been adjudicated as well as any information presented by the contractor. In general, the Director may initiate an enforcement action without additional investigation or information.

f. Normally, the Director will await the completion of a Part 708 proceeding before OHA or a sec. 211 proceeding at DOL before deciding whether to take any action, including an investigation under Part 820 with respect to alleged retaliation. A Part 708 or sec. 211 proceeding would be considered completed when there is either a final decision or a settlement of the retaliation complaint, or no additional administrative action is available.

g. DOE encourages its contractors to cooperate in resolving whistleblower complaints raised by contractor employees in a prompt and equitable manner. Accordingly, in deciding whether to initiate an enforcement action, the Director will take into account the extent to which a contractor cooperated in a Part 708 or sec. 211 proceeding, and, in particular, whether the contractor resolved the matter promptly without the need for an adjudication hearing.

h. In considering whether to initiate an enforcement action and, if so, what remedy is appropriate, the Director will also consider the egregiousness of the particular case including the level of management involved in the alleged retaliation and the specificity of the acts of retaliation.

i. In egregious cases, the Director has the discretion to proceed with an enforcement action, including an investigation with respect to alleged retaliation irrespective of the completion status of the Part 708 or sec. 211 proceeding. Egregious cases would include: (1) Cases involving credible allegations for willful or intentional violations of DOE rules, regulations, orders or Federal statutes which, if proven, would warrant criminal referrals to the U.S. Department of Justice for prosecutorial review; and (2) cases where an alleged retaliation suggests widespread, high-level managerial involvement and raises significant public health and safety concerns.

j. When the Director undertakes an investigation of an allegation of DOE contractor retaliation against an employee under Part 820, the Director will apprise persons interviewed and interested parties that the investigative activity is being taken pursuant to the nuclear safety procedures of Part 820 and not pursuant to the procedures of Part 708.

k. At any time, the Director may begin an investigation of a noncompliance of the substantive nuclear safety rules based on the underlying nuclear safety concerns raised by the employee regardless of the status of completion of any related whistleblower retaliation proceedings. The nuclear safety rules include: 10 CFR part 830 (nuclear safety management); 10 CFR part 835 (occupational radiation protection); and 10 CFR part 820.11 (information accuracy requirements).

[FR Doc. 00–6916 Filed 3–21–00; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 108

[Notice 2000–4]

Filing Copies of Campaign Finance Reports and Statements With State Officers

AGENCY: Federal Election Commission.

ACTION: Final rules; transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its regulations that govern filing of campaign finance reports with State officers and the duties of State officers concerning the reports. The revisions implement amendments to the Federal Election Campaign Act that exempt States meeting certain criteria from these requirements.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Campaign Act ("FECA" or the "Act"), 2 U.S.C. 431 *et seq.*, at 2 U.S.C. 439(a) requires all persons who file campaign finance reports and statements under the Act to file copies of these documents with the Secretary of State, or the officer charged by state law with maintaining state election campaign reports, in each State where contributions were received or expenditures made on behalf of a Federal candidate or candidates appearing on that State's ballot. Under 2 U.S.C. 439(b), these officers must receive and maintain the documents for two years after their date of receipt, and must make them available for public inspection and copying during regular business hours.

In 1995, Congress enacted 2 U.S.C. 439(c), which exempts from these receipt and maintenance requirements any State that the Commission determines to have in place a system that permits electronic access to and duplication of reports and statements that are filed with the Commission. Pub. L. 104–79, 109 Stat. 791, section 2. If the Commission does not make this determination, the State remains obligated to maintain copies of the statements and disclosure reports that have been filed with it. These new rules revise the Commission's regulations at 11 CFR Part 108 to reflect this statutory change.

In September 1997, the Commission published a Notice of Proposed Rulemaking ("NPRM") that proposed a number of revisions to the Commission's recordkeeping and reporting requirements, including those addressed in this document, and corresponding changes to the relevant disclosure forms. 62 FR 50708 (Sept. 26, 1997). The Commission received three written comments in response to the NPRM, two of which addressed the state filing issues: one from the Secretary of State of South Dakota, and one from David S. Addington, Esq. In addition, the Internal Revenue Service submitted a comment in which it said that the proposed rules were not inconsistent with their regulations or the Internal Revenue Code. On February 11, 1998, the Commission held a public hearing on the NPRM at which one witness testified but did not discuss waivers of state filing requirements. One further comment was submitted in response to the announcement of the hearing.

The Commission has decided to proceed separately with this portion of the rulemaking, both because these issues are more straightforward than those addressed in other parts of the NPRM, and because the Commission is in the process of granting waivers pursuant to section 439(c) to States that meet certain requirements.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on March 17, 2000.

Explanation and Justification

Part 108—Filing Copies of Reports and Statements with State Officers

Section 108.1 Filing Requirements

Section 11 CFR 108.1, which sets out the general filing requirements for statements and reports, is being divided into two paragraphs. Paragraph (a) generally follows the previous rule setting out the requirement for filing with the appropriate State offices, and references the new statutory exception. New paragraph (b) tracks the language of 2 U.S.C. 439(c), stating that the filing requirements and duties of State officers under 11 CFR part 108 shall not apply to a State if the Commission has determined that the State maintains a system that can electronically receive and duplicate reports and statements that are filed with the Commission. In addition, the Commission is exempting from these requirements reports and statements that are not filed with the Commission, but which can nevertheless be accessed electronically from the Commission's site on the World Wide Web, www.fec.gov.

On October 14, 1999, the Commission approved a State filing waiver program to implement this provision of the Act. In order to qualify for the waiver, a State must certify that it has a system in place that ensures public Internet access to the FEC's web site, where visitors can view and copy reports and statements. The system must include at least one computer terminal that can electronically access the Commission's web page, with at least one printer, connected either directly or through a network. The State must also certify that it will, to the greatest extent possible, allow anyone requesting Federal campaign finance data to use the computer terminal at any time during regular business hours.

Each State that wishes to obtain a waiver of the section 439 receipt and maintenance requirements must submit a written certification to the Commission that describes its system for electronically receiving and duplicating reports from the Commission, and the extent to which that system is available to the public. If the system satisfies the above criteria, the Commission will so notify the State. It will also publish this information in the FEC *Record*, and place it on the Commission's web site. If a State fails to submit a such a certification, the Commission will be unable to make the requisite determination, and the State will remain subject to the section 439(a) and (b) receipt and maintenance requirements. A number of States have already obtained waivers through this process, and further requests are pending.

Both commenters who addressed this issue objected to this portion of the proposed rule. They specifically questioned the NPRM's proposal to continue the obligation of a State to maintain duplicate reports if the Commission does not make the determination described above and, thus, the State does not meet the statutory requirements to be released from these duties. These commenters asserted that the provision is unconstitutional because the Federal Government cannot impose duties on State officers to execute Federal laws. *Printz* v. *United States*, 117 S. Ct. 2365, 2384 (1997) (invalidating the Brady Handgun Violence Prevention Act's requirement at 18 U.S.C. 922(s)(2) that the States' chief law enforcement officers conduct background checks on prospective handgun purchasers as an unconstitutional obligation on State officers to execute Federal laws); *see also United States* v. *New York*, 505 U.S. 144 (1992) (invalidating provisions of the Low-Level Radioactive Waste Policy Act that required States to accept ownership of waste or to regulate it according to congressional instructions). They suggested that the Commission change the proposed rule to request, but not require, State offices to discharge the filing and maintenance duties set out in the statute and in the NPRM.

While the Supreme Court has invalidated a number of Federal statutes imposing burdens on the States, the Commission believes that 2 U.S.C. 439 would pass constitutional muster under Congress' authority to regulate the time, place and manner of holding Federal elections. U.S. Const., Art. I, sec. 4, cl. 1. *See Foster* v. *Love*, 118 S.Ct. 464 (1997) (holding Louisiana's open primary system to violate 2 U.S.C. 1, 7 (which imposes a uniform national election day), which was enacted pursuant to the Elections Clause); *Smiley* v. *Holm*, 285 U.S. 335, 366–67 (1932) (Elections Clause encompasses congressional power to prevent "corrupt practices"); *Ex Parte Siebold*, 100 U.S. 371, 392 (1879) ("(T)he (Elections Clause) contemplates such co-operation (between the States and the Federal government) whenever Congress deems it expedient to alter or *add to* existing regulations of the State" (emphasis added)); *Condon* v. *Reno*, 913 F.Supp. 946 (D. S.C. 1995) (holding as valid under the Elections Clause imposition upon States of National Voter Registration Act).

As explained above, the Commission is not planning to force unwilling States to seek exemptions from the records receipt and maintenance requirements. Rather, the Commission is granting waivers from these requirements only to those States that request them. Moreover, the Commission has actively worked with the States to insure that the procedures to obtain a waiver are reasonable and not unduly burdensome.

The Commission also considered whether the new regulations would trigger the requirements of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48. *See* 2 U.S.C. 658(1). That Act prohibits federal agencies from imposing costly new burdens on State governments unless certain procedures are followed. These include consulting State and local governments that would be affected by the new rules, and checking to determine whether Federal funds might be available to help with the cost of their implementation.

The Commission believes the new rules do not trigger that Act, since the cost of implementation should fall far short of the $100,000,000 figure cited as the threshold for coverage. *See* 2 U.S.C. 1532(a). Also, as part of the waiver program, the Commission is offering to provide participating offices with free computer equipment and free Internet access for the remainder of the 2000 election cycle, provided that the State agrees to provide the access effective March 1, 2001, at its own expense. The Commission is also providing staff training and assistance with state efforts to publicize this program, to those States that request this.

The final rules at part 108 are also consistent with Executive Order ("E.O.") 13132, "Federalism," which was issued on August 4, 1999 and took effect on November 2, 1999. 64 FR 43255 (Aug. 10, 1999). The Commission is not subject to this Executive Order, which at section 1(c) incorporates the definition of agency found in the Paperwork Reduction Act at 44 U.S.C. 3502(1). That definition specifically excludes the Commission, at 44 U.S.C. 3502(1)(B). However, the procedures the Commission has adopted to implement the waiver program are consistent with the Executive Order's emphasis on cooperation between the States and the

Federal Government in addressing matters of mutual concern.

Please note that certain candidates and political committees do not file their reports directly with the Commission. Candidates for nomination for election or election to the office of United States Senator; authorized committees supporting such candidates; other political committees that support only Senate candidates; and the National Republican Senatorial Committee ("NRSC") and the Democratic Senatorial Campaign Committees ("DSCC") file their reports with the Secretary of the Senate, who in turn provides copies to the Commission. 2 U.S.C. 432(g)(1); 11 CFR 105.2.

At its current level of technology, the Secretary of the Senate is unable to provide to the Commission copies of reports from Senate candidates and most unauthorized committees supporting Senate candidates in a form that can be reproduced on the Internet. Thus, these reports cannot currently be accessed electronically by State offices. Therefore, for the time being, copies of these reports must continue to be filed with the appropriate State office(s), and those offices must continue to maintain them and make them available to the public.

However, the Commission now receives copies of reports filed by the NRSC and the DSCC in a format that can be reproduced over the Internet, so these reports are available on the Commission's web site. The Commission anticipates that, over time, reports filed by Senate candidates and other committees that support them will also become available on the web site. As this occurs, and as more States are certified to be eligible for a waiver, the responsibility of State offices to receive and maintain paper copies of these reports will diminish.

Section 108.2 Filing Copies of Reports and Statements in Connection with the Campaign of any Candidate Seeking Nomination for Election to the Office of President or Vice-President

The Commission is adding a cross reference to new 11 CFR 108.1(b), the records receipt and maintenance exception, to the first sentence of this section.

Section 108.3 Filing Copies of Reports and Statements in Connection With the Campaign of any Congressional Candidate

This section has been restructured to reflect the potential exemption. New paragraph (a) addresses Senate candidates, their authorized committees, committees that support only Senate candidates, and the NRSC and the DSCC, who must continue to file duplicate copies of reports with State officers, unless such reports are available on the Commission's web site, and the State has received a waiver pursuant to these rules. Paragraph (b) notes that other candidates and committees need not file duplicate reports in those States that have obtained a waiver pursuant to 2 U.S.C. 439(c). New paragraph (c) retains the language in the current rule stating that, for committees other than authorized committees, where reports cover activity in more than one State, the committees need file, and State offices retain, only those portions of reports that are applicable to candidates seeking election in that State. Please note that this applies only to States that have not obtained a waiver.

Section 108.4 Filing Copies of Reports by Committees Other Than Principal Campaign Committees

The Commission has added a cross reference to new paragraph 11 CFR 108.1(b) to this section, which requires unauthorized committees that file reports and statements in connection with Presidential elections to file copies with the State officer(s) of the State(s) in which both the recipient and the contributing committees have their headquarters. The Commission has also slightly reworded this section for clarity.

Section 108.6 Duties of State Officers

The Commission has added a cross reference to new paragraph 11 CFR 108.1(b) to this section, which provides guidance to State officers on how to organize, preserve and make available for public copying and inspection the reports and statements filed with those offices. It is also revising paragraph (b) to provide that paper or microfilm copies of documents that are available electronically from the Commission need not be kept for two years. This is consistent with the language at 2 U.S.C. 439(b)(2), which states that covered documents must be kept for two years "either in original filed form or in facsimile copy by microfilm or otherwise" (emphasis added). The Commission interprets this to cover reports that it makes available through its web site, and its practice is to make electronic copies available for more than two years.

The Commission is also adding a new paragraph (e) to this section, which allows States that obtain waivers to charge reasonable fees to those who access and copy campaign finance documents electronically. The new paragraph is consistent with paragraph (c) of this section, which allows States to charge reasonable fees to those making copies of paper or microfilm documents.

The Commission is also correcting the reference in the introductory material to read "108.6(a) through (e)".

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached rules will not have a significant economic impact on a substantial number of small entities. The new rules conform to statutory amendments, and also reduce the reporting burden of affected entities. Therefore, these rules will not have a significant economic effect on a substantial number of small entities.

List of Subjects in 11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Subchapter A of Chapter I, Title 11 of the *Code of Federal Regulations* is amended to read as follows:

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)

1. The authority citation for Part 108 continues to read as follows:

Authority: 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

2. Section 108.1 is amended by redesignating the text as paragraph (a), revising the first sentence of newly redesignated paragraph (a), and adding new paragraph (b) to read as follows:

§ 108.1 Filing Requirements (2 U.S.C. 439(a)(1)).

(a) Except as provided in paragraph (b) of this section, a copy of each report and statement required to be filed by any person under the Act shall be filed either with the Secretary of State of the appropriate State or with the State officer who is charged by State law with maintaining state election campaign reports. * * *

(b) The filing requirements and duties of State officers under this part 108 shall not apply to a State if the Commission has determined that the State maintains a system that can electronically receive and duplicate reports and statements filed with the Commission. Once a State has obtained a waiver pursuant to this paragraph, the waiver shall apply to all reports that can be electronically accessed and duplicated from the Commission, regardless of whether the

report or statement was originally filed with the Commission.

3. Section 108.2 is amended by revising the first sentence to read as follows:

§ 108.2 Filing copies of reports and statements in connection with the campaign of any candidate seeking nomination for election to the Office of President or Vice-President (2 U.S.C. 439(a)(2)).

Except as provided in § 108.1(b), a copy of each report and statement required to be filed under the Act (including 11 CFR part 104) by a Presidential or Vice Presidential candidate's principal campaign committee, or under 11 CFR 104.4 or part 109 by any other person making independent expenditures, in connection with a candidate seeking nomination for election to the office of President or Vice-President, shall be filed with the State officer of each State in which an expenditure is made in connection with the campaign of a candidate seeking nomination for election to the office of President or Vice-President. * * *

4. Section 108.3 is revised to read as follows:

§ 108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidate (2 U.S.C. 439(a)(2)).

(a) Except as provided in § 108.1(b), a copy of each report and statement required to be filed under 11 CFR part 104 by candidates, and the authorized committees of candidates, for nomination for election or election to the office of Senator; by other committees that support only such candidates; and by the National Republican Senatorial Committee and the Democratic Senatorial Campaign Committees shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(b) Except as provided in § 108.1(b), a copy of each report and statement required to be filed under 11 CFR part 104 by candidates, and authorized committees of candidates, for nomination for election or election to the office of Representative in, Delegate or Resident Commissioner to the Congress, or by unauthorized committees, or by any other person under 11 CFR part 109, in connection with these campaigns shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(c) Unauthorized committees that file reports pursuant to paragraph (b) of this section are required to file, and the Secretary of State is required to retain, only that portion of the report applicable to candidates seeking election in that State.

5. Section 108.4 is revised to read as follows:

§ 108.4 Filing copies of reports by committees other than principal campaign committees (2 U.S.C. 439(a)(2)).

Except as provided in § 108.1(b), any unauthorized committee that makes contributions in connection with a Presidential election and that is required to file a report(s) and statement(s) under the Act shall file a copy of such report(s) and statement(s) with the State officer of the State in which both the recipient and contributing committees have their headquarters.

6. Section 108.6 is amended by revising the introductory text and paragraph (b), by removing the period and adding "; and" at the end of paragraph (d), and by adding new paragraph (e), to read as follows:

§ 108.6 Duties of State officers (2 U.S.C. 439(b)).

Except as provided in § 108.1(b), the Secretary of State, or the equivalent State officer, shall carry out the duties set forth in paragraphs (a) through (e) of this section:

* * * * *

(b) Preserve such reports and statements (either in original form or in facsimile copy by microfilm or otherwise) filed under the Act for a period of 2 years from the date of receipt, except that reports and statements that can be accessed and duplicated electronically from the Commission need not be so preserved;

* * * * *

(d) * * * ; and

(e) If the State has received a waiver of these filing requirements pursuant to § 108.1(b), allow access to and duplication of reports and statements covered by that waiver, except that such access and duplication shall be at the expense of the person making the request and at a reasonable fee.

Dated: March 17, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–7109 Filed 3–21–00; 8:45 am]

BILLING CODE 6715–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 701

Organization and Operations of Federal Credit Unions

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: NCUA is amending its lending regulation to permit federal credit unions to advance money to members to cover account deficits without having a credit application from the member on file if the credit union has a written overdraft policy. The change will enable credit unions to offer this service without subjecting credit unions to undue risk.

DATES: This rule is effective July 1, 2000.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, or Regina M. Metz, Staff Attorney, in the Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

A. Background

The Federal Credit Union Act does not specifically address a federal credit union's (FCU's) authority to pay or honor a share draft that will result in an overdrawn account. NCUA's longstanding position has been that an overdraft, as a financial accommodation to a member, constitutes a loan or line of credit to a member.

A number of FCUs and trade associations contended that FCUs are at a competitive disadvantage because they are unable to cover a member's overdraft absent a prearranged, written agreement for the extension of credit. The NCUA Board believed this argument had merit although there might be some safety and soundness concerns with extending credit to a member without a written lending agreement. Therefore, on September 16, 1999, the NCUA Board issued a proposed amendment to its general lending regulation with a sixty-day comment period (64 FR 52694 September 30, 1999).

The proposed amendment to section 701.21(c)(3) provided that a credit union could advance money to a member to cover his or her account deficit without having a credit application on file if the credit union had a written overdraft policy. Specifically, the NCUA Board proposed that a credit union's written overdraft policy must: (1) Address how the credit union will honor overdrafts; (2) set a cap on the total dollar amount of all overdrafts the credit union will honor; (3) establish a time limit, not to exceed ten business days, for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft; (4) limit the number and dollar amount of overdrafts the credit union will honor per member; and (5) establish the fee and interest rate, if any, the credit union will charge members for honoring overdrafts.

B. Comments

The comment period ended on November 29, 1999. Twenty-four comments were received. Comments were received from fourteen federal credit unions, eight state leagues, and two national credit union trade associations. The commenters were generally supportive of permitting payment of overdrafts without credit applications on file, but most commenters suggested modifications.

Two commenters completely supported NCUA's proposal. Five commenters generally supported the proposal. Eight commenters supported requiring credit unions to have overdraft policies; however, seven of these eight commenters opposed NCUA mandating what should be included in the overdraft policy. Seven of the twenty-four commenters stated that an overdraft is not a loan and this regulation is unnecessary. These commenters believe that credit unions have the ability to engage in this activity without regulatory authorization. The NCUA Board disagrees. The NCUA Board believes an overdraft is a loan, and, in order for a federal credit union to advance funds to cover an overdraft without first having a written application in place as required by NCUA's lending regulation, a regulatory change is in order. The NCUA Board also continues to believe that a written overdraft policy will offset safety and soundness concerns and prevent insider abuses.

We received comment on the following issues:

Should the policy address how the credit union will honor overdrafts?

One commenter requested clarification on what NCUA is seeking to cover with this requirement. After further review, the NCUA Board believes stating how the overdraft is covered is superfluous because of the other specific items the policy must address. The NCUA Board has deleted this requirement from the final amendment.

Should the policy set a cap on the total dollar amount of all overdrafts the credit union will honor?

Two commenters approved of setting a dollar cap in the policy. Three commenters opposed setting such a limit. Eight commenters stated that the written policy should address this issue, but that NCUA should not establish the limit. The NCUA Board did not suggest a specific dollar cap in the proposal. The NCUA Board has decided that the policy must set a cap and the credit union should establish the dollar amount.

Should the overdraft policy establish a time limit not to exceed ten business days for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft?

Two commenters supported the ten-day time limit. Eight commenters stated that the credit union, not NCUA, should establish the time limit for the member to either deposit funds or obtain an approved loan from the credit union. Three commenters suggested a 30-day time limit and two commenters suggested a 90-day time limit. Three commenters suggested other time limits. The NCUA Board believes that a time limit is necessary for safety and soundness reasons. A ten-day time limit may not be sufficient for the member in all cases; therefore, the rule provides that a credit union's policy must establish a time limit, not to exceed forty-five days. This should be sufficient time for any prudent individual to cover the overdraft or apply for a loan.

One commenter asked whether the time limit begins to run at the time the credit union advances the overdraft protection to cover the member's account deficit or from the date the member receives notice of the overdraft. The time limit starts to run the day the credit union advances the overdraft protection.

Should the overdraft policy require a credit union to write off any overdraft for which the member has not either repaid the credit union or obtained an approved loan?

One commenter stated that NCUA should set a time limit after which the credit union must write off the loan. One commenter suggested 30 days. Eight commenters stated that the credit union, not NCUA, should set the time limit to write off the loan. The NCUA Board did not propose to establish when a credit union needs to write off an overdraft for which the member has not either repaid the credit union or obtained an approved loan. In the final rule, to maintain maximum flexibility for credit unions, the NCUA Board is not setting a time limit. Each credit union should establish its own requirement for when it will write off an overdraft consistent with its lending policies.

Should the policy limit the number and dollar amount of overdrafts the credit union will honor per member?

Four commenters stated that the credit union, not NCUA, should establish this limit in the policy. One commenter stated that a credit union's management, not the board of directors, should set the limit on the dollar amount of overdrafts the credit union will honor per member. Three commenters would eliminate a limit on the number of overdrafts the credit union will honor per member. These commenters believe that the number of overdrafts have no bearing on risk and the reference to the "number of overdrafts" should be removed from the rule. These commenters would also go farther and eliminate the limit on the dollar amount per member from the written overdraft policy.

In the proposal, the NCUA Board did not establish a number and dollar limit but rather proposed that each credit union should establish its own limit. However, the NCUA Board agrees with those commenters who stated that the number of overdrafts a member incurs may have no bearing on risk. The NCUA Board continues to believe that the dollar amount per member does raise significant safety and soundness concerns. Therefore, the final rule simply requires that the credit union's own policy set forth the dollar amount of overdrafts the credit union will honor per member. As in the proposed rule, to provide maximum flexibility to credit unions, it is up to the credit union, not NCUA, to establish this dollar amount. This dollar amount should be consistent with the credit union's ability to absorb losses and manage risk.

Should the policy establish the fee and interest rate, if any, the credit union will charge members for honoring overdrafts?

One commenter stated the policy itself need not contain the amount of the overdraft fee and interest rate, but simply should require that such fee and interest rate be established and disclosed. The NCUA Board continues to believe that, if a credit union is going to engage in this activity, the fee and interest rate, if any, should be set forth in the policy. The NCUA Board believes this is a matter of prudent internal control and sound judgment.

Should the rule impose additional restrictions on overdrafts by credit union employees or officials?

Eight commenters opposed any additional restrictions. These commenters believe that additional regulatory restrictions are not necessary. Two commenters would impose additional restrictions on overdrafts by credit union employees or officials but provided no persuasive rationale on why the rule should treat them differently than other credit union members. NCUA's regulations on loans to officials and nonpreferential treatment provide sufficient regulatory protection against any impropriety or appearance of impropriety. *See* 12 CFR 701.21(d).

C. Regulatory Procedures

Regulatory Flexibility Act

The Regulatory Flexibility Act requires NCUA to prepare an analysis to describe any significant economic impact any final regulation may have on a substantial number of small entities (primarily those under $1 million in assets). For purposes of this analysis, credit unions under $1 million in assets will be considered small entities. As of June 30, 1999, there were 1,690 such entities with a total of $807.3 million in assets, with an average asset size of $0.5 million. These small entities make up 15.6 percent of all credit unions, but only 0.2 percent of all credit union assets.

The final amendment permits federal credit unions to advance money to members to cover account deficits without having a credit application from the member on file if the credit union has a written overdraft policy. The NCUA Board does not believe that the final amendment will impose reporting or recordkeeping burdens that require specialized professional skills not available to them.

The NCUA Board has determined and certifies that this final amendment, if adopted, will not have a significant economic impact on a substantial number of small credit unions.

Paperwork Reduction Act

The reporting requirements in section 701.21(c)(3) have been submitted to and approved by the Office of Management and Budget under OMB control number 3133–0139. Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB number. The control number is displayed in the table at 12 CFR part 795.

Executive Order 13132

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory action on state and local interests. NCUA, an independent regulatory agency as defined in 44 U.S.C 3502(5), voluntarily adheres to the fundamental federalism principles addressed by the executive order. This final amendment will only apply to federal credit unions. This final rule makes no changes with respect to state credit unions and therefore, will not impact state and local interests.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121) provides generally for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has determined that this is not a major rule.

D. Agency Regulatory Goal

NCUA's goal is clear, understandable regulations that impose a minimal regulatory burden. We requested comments on whether the proposed amendment were understandable and minimally intrusive if implemented as proposed. We received no specific comment on this issue.

List of Subjects in 12 CFR Part 701

Credit, Credit unions, Reporting and recordkeeping requirements.

By the National Credit Union Administration Board on March 16, 2000.

Becky Baker,

Secretary of the Board.

For the reasons set forth in the preamble, the National Credit Union Administration is amending 12 CFR part 701 as follows:

PART 701—ORGANIZATION AND OPERATION OF FEDERAL CREDIT UNIONS

1. The authority citation continues to read as follows:

Authority: 12 U.S.C. 1752(5), 1755, 1756, 1757, 1759, 1761a, 1761b, 1766, 1767, 1782, 1784, 1787, and 1789.

Section 701.6 is also authorized by 15 U.S.C. 3717.

Section 701.31 is also authorized by 15 U.S.C. 1601 *et seq.*; 42 U.S.C. 1981 and 3601–3610.

Section 701.35 is also authorized by 42 U.S.C. 4311–4312.

2. Amend § 701.21 by revising paragraph (c)(3) to read as follows:

§ 701.21 Loans to members and lines of credit to members.

* * * * *

(c) * * *

(3) *Credit applications and overdrafts.* Consistent with policies established by the board of directors, the credit committee or loan officer shall ensure that a credit application is kept on file for each borrower supporting the decision to make a loan or establish a line of credit. A credit union may advance money to a member to cover an account deficit without having a credit application from the borrower on file if the credit union has a written overdraft policy. The policy must: set a cap on the total dollar amount of all overdrafts the credit union will honor consistent with the credit union's ability to absorb losses; establish a time limit not to exceed forty-five calendar days for a member either to deposit funds or obtain an approved loan from the credit union to cover each overdraft; limit the dollar amount of overdrafts the credit union will honor per member; and establish the fee and interest rate, if any, the credit union will charge members for honoring overdrafts.

* * * * *

[FR Doc. 00–7039 Filed 3–21–00; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–94–AD; Amendment 39–11636; AD 2000–05–26]

RIN 2120–AA64

Airworthiness Directives; Aerospatiale Model ATR42–200, ATR42–300, and ATR42–320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, that currently requires inspections to determine the proper installation of rivets in certain key holes and to detect cracks in the area of the key holes where rivets are missing; and correction of discrepancies. This amendment increases the compliance time for the existing requirements and expands the applicability of the existing AD to include additional airplanes. This action also requires various inspections of the subject area for discrepancies, and corrective actions, if necessary; and replacement of certain cargo door hinges with new hinges. For certain airplanes, this action also requires replacement of friction plates, stop fittings, and bolts with new parts. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent fatigue cracks of the cargo door skin, certain frames, and entry door stop fittings and friction plates, which could result in reduced structural integrity of the airplane.

DATES: Effective April 26, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 26, 2000.

The incorporation by reference of Avions de Transport Regionale (ATR) Service Bulletin ATR42–53–0070, Revision 2, dated March 22, 1993, was approved previously by the Director of the Federal Register as of November 18, 1993 (58 FR 53853, October 19, 1993).

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding 93–18–04, amendment 39–8689 (58 FR 53853, October 19, 1993), which is applicable to certain Aerospatiale Model ATR42–300 and ATR42–320 series airplanes, was published in the **Federal Register** on October 25, 1999 (64 FR 57409). The action proposed to increase the compliance time for the existing requirements and expand the applicability of the existing AD to include additional airplanes. The action also proposed to require various inspections of the subject area for discrepancies, and corrective actions, if necessary; and replacement of certain cargo door hinges with new hinges. For certain airplanes, the action also proposed to require replacement of friction plates, stop fittings, and bolts with new parts.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Approved Repairs

One commenter, an operator, expresses concern that paragraphs (c) and (d)(2)(ii) of the proposed AD mandate that any repairs, previously conducted through Aerospatiale, now must be approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA; or the Direction Génrale de l'Aviation Civile (DGAC) (or its delegated agent). The commenter is concerned that, if the only resources for repair approvals are those mentioned here, any repair approval process will not be responsive on a timely basis. The commenter states that notification to the Manager, ANM–116, of damage found and the repair method used, following embodiment, would be more appropriate.

The FAA infers that the commenter is requesting that the AD be revised to allow repair approvals through Aerospatiale, with subsequent notification to the Manager, ANM–116. The FAA does not concur. To specify within an AD that repairs are to be accomplished in accordance with the manufacturer would be delegating the FAA's rulemaking authority to the manufacturer. Since the referenced service information does not provide appropriate repair procedures, the FAA must require that operators accomplish necessary repairs in accordance with a method approved by the FAA or the DGAC (or its delegated agent). The FAA notes that, if Aerospatiale has been designated by the DGAC as a delegated agent for repair approvals, such approvals by Aerospatiale would be acceptable for compliance with this AD. No change to the AD is necessary.

Prior Repairs

The same commenter notes that there should be some consideration for airplanes on which the modification has already been accomplished with some form of repair (prior to the effective date of the AD). As written, the AD would require that any such repair be "reapproved" by the FAA or DGAC.

The FAA does not concur. As noted in the FAA's response to the previous comment, repairs approved by Aerospatiale may be acceptable for compliance with this AD, if Aerospatiale is a delegated agent of the DGAC for such repairs. If this is the case, no "reapproval" is necessary, since such approved repairs would be acceptable for compliance with the requirements of this AD. Further, sufficient time is provided prior to the compliance thresholds of this AD to allow operators to determine if approvals must be obtained for previously accomplished repairs, and to obtain such approvals, if necessary. No change to the AD is necessary.

Service Bulletin Revisions

The same commenter requests that the proposed AD be revised to include later revisions of two service bulletins, and notes that the changes made do not affect the technical content of either bulletin. The commenter states that ATR Service Bulletin ATR42–53–0070, Revision 3, dated February 19, 1999, is the most current version and should be included in paragraph (a) of the AD. The commenter also states that ATR Service Bulletin ATR42–53–0076, Revision 3, dated February 19, 1999, has been released and should be included in paragraph (d) of the AD. Revision 2 of each of these service bulletins was cited as the appropriate source of service information in the referenced paragraph of the proposed AD.

The FAA concurs. The FAA has reviewed the referenced service bulletins and agrees that equivalent technical information is contained in the later revisions of the service bulletins. The FAA has revised paragraphs (a) and (d) of the final rule to include these revisions as appropriate sources of service information.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 106 airplanes of U.S. registry that will be affected by this AD.

The general visual inspection of fuselage frames 25 and 27 that is required by this AD will take approximately 3 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection required by this AD on U.S.

operators is estimated to be $180 per airplane.

The cargo door hinge and skin replacement that is required by this AD will take approximately 250 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $9,880 per airplane. Based on these figures, the cost impact of the door structure replacement required by this AD on U.S. operators is estimated to be $24,880 per airplane.

The general visual inspection of the key and tooling holes that is required by this AD will take approximately 100 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection required by this AD on U.S. operators is estimated to be $6,000 per airplane.

The eddy current and detailed visual inspections of the forward entry door stop fitting and friction plate that are required by this AD will take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of this inspection required by this AD on U.S. operators is estimated to be $120 per airplane.

The replacement of the forward entry door stop fitting, friction plate, and upper door corner that is required in this AD action will take approximately 50 work hours per airplane to accomplish. The manufacturer has committed previously to its customers that it will bear the cost of replacement parts. As a result, the cost of those parts is not attributable to this AD. Based on this figure, the cost impact of the replacement required by this AD on U.S. operators is estimated to be $3,000 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8689 (58 FR 53853, October 19, 1993), and by adding a new airworthiness directive (AD), amendment 39–11636, to read as follows:

2000–05–26 Aerospatiale: Amendment 39–11636. Docket 98-NM–94-AD. Supersedes AD 93–18–04, Amendment 39–8689.

Applicability: All Model ATR42–200, ATR42–300, and ATR42–320 series airplanes; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks of the cargo door skin, certain frames, entry door stop fittings, or friction plates, which could result in reduced structural integrity of the airplane, accomplish the following:

Frame 25 and 27 Inspection

(a) For airplanes having serial numbers 005 through 016 inclusive, 018 through 030 inclusive, 032 through 036 inclusive, 038, 040, 042, 043, 048 through 062 inclusive, 064 through 090 inclusive, 092 through 094 inclusive, and 096 through 228 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later, conduct a general visual inspection of fuselage frames 25 and 27 to verify the proper installation of a rivet in each of the key holes, in accordance with Avions de Transport Regional (ATR) Service Bulletin ATR42–53–0070, Revision 2, dated March 22, 1993, or Revision 3, dated February 19, 1999.

Note 2: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being check."

Note 3: Inspection of fuselage frames 25 and 27 accomplished prior to the effective date of this AD in accordance with ATR Service Bulletin ATR42–53–0070, dated June 10, 1991, or Revision 1, dated June 12, 1992, is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(1) If a rivet is installed in each of the key holes, no further action is required by this paragraph.

(2) If a rivet is not installed in each of the key holes, prior to further flight, perform an eddy current inspection of each open key hole to detect cracks, in accordance with the service bulletin.

(i) If no crack is found during the eddy current inspection, prior to further flight, install a rivet in the open key hole in accordance with the service bulletin. After such installation, no further action is required by this paragraph for that key hole.

(ii) If any crack is found during the eddy current inspection, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Inspection and Modification of Cargo Door Structure

(b) For airplanes equipped with a cargo compartment door on which Aerospatiale Modification 3191 has not been accomplished: Prior to the accumulation of 27,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later, except as provided by paragraph (c) of this AD, replace the hinges on the cargo compartment door and fuselage (including inspections for fastener type and tolerances, hole diameters, or cracking, and repair; as applicable) with new improved hinges, in accordance with paragraph 2. of the Accomplishment Instructions of ATR Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995.

(c) Where the instructions in ATR Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995, specify that ATR is to be contacted for a repair, prior to further flight, repair in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Frame Inspection

(d) For airplanes having serial numbers 003 through 208 inclusive: Prior to the accumulation of 36,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later, conduct a general visual inspection of the identified fuselage frames for proper installation of a rivet in each of the tooling and key holes, in accordance with ATR Service Bulletin ATR42–53–0076, Revision 2, dated October 15, 1996, or Revision 3, dated February 19, 1999.

(1) If a rivet is installed in each of the tooling or key holes, no further action is required by this paragraph.

(2) If a rivet is not installed in each of the tooling and key holes, prior to further flight, perform a detailed visual inspection of each open tooling or key hole to detect cracks, in accordance with the service bulletin.

Note 4: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc. may be used. Surface cleaning and elaborate access procedures may be required."

(i) If no crack is found during the detailed visual inspection required by paragraph (d)(2) of this AD, prior to further flight, install a rivet in the open hole in accordance with the service bulletin.

(ii) If any crack is found during the visual inspection required by paragraph (d)(2) of this AD, prior to further flight, repair the crack in accordance with a method approved by the Manager, International Branch, ANM–116, or the DGAC (or its delegated agent).

Inspection and/or Replacement of Entry Door Structure

(e) For Model ATR42–300 series airplanes having serial numbers listed in ATR Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993: Except as provided by paragraph (f) of this AD, prior to the accumulation of 10,000 total flight cycles, or within 90 days after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (e)(1) and (e)(2) of this AD.

(1) Perform an eddy current inspection of the forward entry door stop holes to detect cracking, in accordance with the service bulletin. If any cracking is detected, prior to further flight, replace any cracked forward entry door stop fitting with a new fitting, in accordance with the service bulletin.

(2) Perform a detailed visual inspection of the forward entry door friction plates for wear, in accordance with the service bulletin. If wear is found on any friction plate, and the wear has a depth equal to or greater than 0.8mm (0.0315 in.), prior to further flight, replace the friction plate with a new or serviceable part in accordance with the service bulletin.

(f) For Model ATR42–300 series airplanes listed in ATR Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993, accomplishment of the requirements of paragraph (g) of this AD at the time specified in paragraph (e) of this AD constitutes terminating action for the requirements of paragraph (e) of this AD.

(g) For Model ATR42–300 series airplanes listed in ATR Service Bulletin ATR42–52–0059, dated February 16, 1995: Prior to the accumulation of 18,000 total flight cycles, or within 180 days after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (g)(1), (g)(2), and (g)(3) of this AD in accordance with the service bulletin.

(1) Replace the forward entry door friction plates with improved friction plates.

(2) Replace the upper corners of the forward entry door surround structure with improved door surround corners.

(3) Replace the forward entry door stop fittings and bolts with improved fittings and bolts.

Alternative Methods of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(j) Except as required by paragraphs (a)(2)(ii), (c), and (d)(2)(ii) of this AD, the actions shall be done in accordance with the following Avions de Transport Regionale service bulletins, as applicable:

Service bulletin referenced and date	Page number	Revision level shown on page	Date shown on page
ATR42–53–0070, Revision 2, March 22, 1993	1, 2, 9	2	March 22, 1993.
	3–7, 10–12	1	June 12, 1992.
	8, 13	Original	June 10, 1991.
ATR42–53–0070, Revision 3, February 19, 1999.	1–6, 9	3	February 19, 1999
	7, 10–12	1	June 12, 1992.
	8, 13	Original	June 10, 1991.
ATR42–52–0058, Revision 1, March 1, 1995.	1–117	1	March 1, 1995
	39–99	(These pages are not used).	
ATR42–53–0076, Revision 2, October 15, 1996.	1–6	2	October 15, 1996
	7, 8, 11, 12, 17–19	1	November 4, 1994.
	9, 10, 13–16	Original	May 13, 1993.
ATR42–53–0076, Revision 3, February 19, 1999.	1–6	3	February 19, 1999
	7, 8, 11, 12, 17–19	1	November 4, 1994.
	9, 10, 13–16	Original	May 13, 1993.
ATR42–52–0052, Revision 1, March 2, 1993.	1–4, 9, 10	1	March 2, 1993
	5–8, 11–17	Original	January 11, 1991.
ATR42–52–0059, February 16, 1995	1–43	Original	February 16, 1995.

(1) The incorporation by reference of Avions de Transport Regionale Service Bulletin ATR42–53–0070, Revision 3, dated February 19, 1999; Avions de Transport Regionale Service Bulletin ATR42–52–0058, Revision 1, dated March 1, 1995; Avions de Transport Regionale Service Bulletin ATR42–53–0076, Revision 2, dated October 15, 1996; Avions de Transport Regionale Service Bulletin ATR42–53–0076, Revision 3, dated February 19, 1999; Avions de Transport Regionale Service Bulletin ATR42–52–0052, Revision 1, dated March 2, 1993; and Avions de Transport Regionale Service Bulletin ATR42–52–0059, dated February 16, 1995; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Avions de Transport Regionale Service Bulletin ATR42–53–0070, Revision 2, dated March 22, 1993, was approved previously by the Director of the Federal Registeras of November 18, 1993 (58 FR 53853, October 19, 1993).

(3) Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 6: The subject of this AD is addressed in French airworthiness directive 92–044–046(B)R2, dated November 5, 1997.

(k) This amendment becomes effective on April 26, 2000.

Issued in Renton, Washington, on March 9, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6328 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–347–AD; Amendment 39–11638; AD 2000–05–28]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes, that requires a one-time inspection to detect cracking or corrosion of the forward attachment bolts of the engine pylon to wing interface, and corrective action, if necessary. It also requires re-installation with re-protected and sealed bolts torqued to a lower level. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to detect and correct cracking or corrosion of the forward attachment bolts of the engine pylon to wing interface, which could result in reduced structural integrity of the engine pylon attachment.

DATES: Effective April 26, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 26, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to all British Aerospace Model BAe 146 and Avro 146–RJ series airplanes was published in the **Federal Register** on December 15, 1999 (64 FR 69967). That action proposed to require a one-time inspection to detect cracking or corrosion of the forward attachment bolts of the engine pylon to wing interface, and corrective action, if necessary. That action also proposed to require re-installation with re-protected and sealed bolts torqued to a lower level.

Comments Received

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request to Revise Cost Impact Information

One commenter, an operator, requests that the cost impact information in the proposed AD be increased from "20 work hours (including removal and reinstallation of the engines)" to 112 work hours. The commenter states that, as an experienced operator, it estimates the time necessary to remove and replace just one engine is approximately 8 to 10 work hours. The commenter suggests that an appropriate estimate for all actions required by the AD is approximately 112 work hours, including hours for removal and replacement of four engines and the pylon attachment bolts, as well as inspection of the bolts and removal of corrosion.

The FAA partially concurs. The estimate of 20 work hours provided in the AD was based on the estimate of work hours specified in British Aerospace Service Bulletin SB.54–10, dated September 16, 1999 (which was referenced in the proposed AD and cited in this final rule as the appropriate source of service information). However, the FAA has determined that such an estimate includes only the time required to accomplish the inspections required by this AD, and does not include the time necessary for removal and reinstallation of all four engines or the time for accomplishment of corrective actions if corrosion is found. The FAA has revised the cost impact information, below, by removing the parenthetical statement indicating that the 20 work hours includes engine removal and reinstallation. However, because the economic analysis of the AD is limited to the cost of actions actually required by the rule, it does not typically include the costs of "indirect" or "on-condition" actions, such as hours necessary for access and close, or for repairs. Therefore, no further change to the cost impact information is necessary.

Request for Alternative Method of Compliance

The same commenter requests that the proposed AD include a provision for the replacement of the pylon attachment bolts with new bolts as an alternative to performing the inspection. The commenter notes that such a provision is not specified in the referenced service bulletin or in the proposed AD, but states that this option should be available at the operator's discretion as an alternative method of compliance.

The FAA concurs. The FAA has reviewed the acceptability of the proposed alternative method of compliance with the manufacturer and with the Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, Based on that input, the FAA has determined that replacement of all pylon attachments bolts with new bolts is an acceptable alternative to performing the inspection required by this AD, provided that the installation methods specified in the service bulletin are followed. Such installation methods include retorquing the new bolts to a lower level, and applying sealant to the bolts. A new paragraph (b) has been added to the final rule to provide this alternative as an acceptable means of complying with the requirements of this AD.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per airplane to accomplish the required inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the AD on U.S. operators is estimated to be $42,000, or $1,200 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–28 British Aerospace Regional Aircraft (Formerly British Aerospace Regional Aircraft Limited, Avro International Aerospace Division; British Aerospace, PLC; British Aerospace Commercial Aircraft Limited): Amendment 39–11638. Docket 99–NM–347–AD.

Applicability: All Model BAe 146 and Avro 146–RJ series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking or corrosion of the forward attachment bolts of the engine pylon to wing interface, which could result in reduced structural integrity of the engine pylon attachment, accomplish the following:

Inspection and Corrective Action

(a) Within 4 years since date of manufacture, or within 2,000 flight cycles after the effective date of this AD, whichever occurs later: Except as provided by paragraph (b) of this AD, perform applicable inspections (dye penetrant, magnetic particle, and detailed visual) to detect discrepancies (including damage, cracking, and corrosion) of the forward attachment bolts of the engine pylon to wing interface on each engine, in accordance with British Aerospace Service Bulletin SB.54–10, dated September 16, 1999. If any discrepancy is detected, prior to further flight, perform applicable corrective actions in accordance with the service bulletin.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) Replacement of all bolts with new bolts in accordance with British Aerospace Service Bulletin SB.54–10, dated September 16, 1999, within the compliance time specified in paragraph (a) of this AD, is an acceptable alternative for compliance with the requirements of paragraph (a), provided all installation methods (including retorquing the bolts at a lower level, and applying sealant to the bolts) specified in the service bulletin are followed.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199)

to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(e) The actions shall be done in accordance with British Aerospace Service Bulletin SB.54–10, dated September 16, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 4: The subject of this AD is addressed in British airworthiness directive 006–09–99.

(f) This amendment becomes effective on April 26, 2000.

Issued in Renton, Washington, on March 9, 2000.

Franklin Tiangsing,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6330 Filed 3–21–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–CE–114–AD; Amendment 39–11641; AD 2000–06–01]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company 150, 152, 172, 177, 180, 182, 185, 188, 206, 207, 210, and 337 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to Cessna Aircraft Company (Cessna) 150, 152, 172, 177, 180, 182, 185, 188, 206, 207, 210, and 337 series airplanes. This AD requires measuring the visible length of standpipe (tube) in the top assembly of the fuel strainer assembly for the correct length, and replacing any fuel strainer assembly that does not have the correct length of standpipe. This AD is the result of reports that the fuel strainer assemblies on the affected airplanes were manufactured with the fuel standpipes incorrectly installed in the assembly housing top. The actions specified by this AD are intended to prevent foreign material from entering the fuel system and engine, which could result in loss of engine power or complete engine stoppage during flight.

DATES: Effective May 5, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of May 5, 2000.

ADDRESSES: Service information that applies to this AD may be obtained from the Cessna Aircraft Company, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 941–7550; facsimile: (316) 942–9008. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–CE–114–AD, Room 506, 901 Locust, Kansas City, Missouri 64106; or at the Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul O. Pendleton, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: (316) 946–4143; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to Cessna 150, 152, 172, 177, 180, 182, 185, 188, 206, 207, 210, and 337 series airplanes was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on July 22, 1998 (63 FR 39244). The NPRM proposed to require measuring the fuel strainer assembly standpipe, and replacing any fuel strainer assembly that does not have a standpipe of the correct measurement. Accomplishment of the proposed action as specified in the NPRM would be required in accordance with Cessna Service Bulletins SEB97–9, dated November 17, 1997, and MEB97–12, dated November 17, 1997.

The NPRM was the result of reports that the fuel strainer assemblies on the affected airplanes were manufactured with the fuel standpipes incorrectly installed in the assembly housing top.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from six different entities.

Comment Disposition

All six commenters request that the FAA include a provision for the owners/operators of the affected airplanes to check the logbook to determine whether one of the affected fuel strainer assemblies is installed. This would reduce the impact of the AD by not requiring operators who do not have the affected fuel strainer assemblies installed to have their airplanes unnecessarily inspected.

The FAA concurs. Cessna part number (P/N) 0756005-2 top assemblies, Cessna P/N 0756005–8 fuel strainer assemblies, or Cessna P/N 0756005–9 fuel strainer assemblies, that were shipped between December 12, 1996, and September 5, 1997, may have been manufactured with an internal tube installed to a depth less than specified. These parts may become loose and dislodge from the strainer top assembly. If the owner/operator can make the determination by checking the logbooks that one of these parts is not installed or was installed prior to December 12, 1996, the measurement and possible replacement requirements of paragraphs (a) and (b) of this AD would not apply and the owner/operator must make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). This final rule has been changed to reflect this provision.

The FAA's Determination

After careful review of all available information related to the subject presented above including the comments discussed, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the addition of the provision to check the logbooks and minor editorial corrections. The FAA has determined that this addition and the minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

The FAA estimates that 50,000 airplanes in the U.S. registry will be affected by this AD.

The measurement required by this AD is estimated to take 1 workhour per airplane with the average labor rate at approximately $60 an hour. The total cost impact to accomplish the inspection will be $3,000,000 for the U.S. fleet, or $60 per airplane.

The replacement of the fuel strainer assembly is estimated to take 2 workhours per airplane with an average labor rate of approximately $60 per hour. Approximately 300 of the affected parts are thought to have been manufactured. The cost of parts is approximately $180 per airplane. Therefore, based on these figures, the total cost impact to accomplish the replacement, if applicable, on U.S. operators is estimated to be $90,000, or $300 per airplane.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–06–01 Cessna Aircraft Company: Amendment 39–11641; Docket No. 97–CE–114–AD.

Applicability: All serial numbers of the following airplane models, certificated in any category, including those manufactured in France that have a capital "F" or "FR" prefix on the model number: Models 150F, 150G, 150H, 150J, 150K, 150L, 150M, A150K, A150L, A150M, A–150L, A–A150L, F150F, F150G, F150H, F150J, F150K, F150L, F150M, FA150K, FA150L, FA150M, FRA150L, FRA150M, 152, A152, F152, FA152, 172F, 172G, 172H, 172I, 172K, 172L, 172M, 172N, 172P, 172Q, R172E (T41), R172F (T41), R172G (T41), R172H (T41), R172J, R172K, 172RG, F172F, F172G, F172H, F172K, F172L, F172M, F172N, F172P, FR172E, FR172F, FR172G, FR172H, FR172J, FR172K, 177, 177A, 177B, 177RG, F177RG, 180H, 180J, 180K, 182H, 182J, 182K, 182L, 182M, 182N, 182P, 182Q, 182R/T182, 182R, R182, R182/TR182, A182J, A182K, A182L, A182N, F182P, F182Q, FR182, 185D, 185E, A185E, A185F, 188, A188, 188A, A188A, 188B, A188B, T188C, A–A188B, U206, U206A, TU206A, U206B/TU206B, U206C/TU206C, U206D/TU206D, U206E/TU206E, U206F/TU206F, U206G/TU206G, P206, P206A, TP206A, P206B/TP206B, P206C/TP206C, P206D/TP206D, P206E/TP206E, 207/T207, 207A/T207A, 210E, 210F, 210G, 210H, 210J, 210K/T210K, 210L/T210L, 210M/T210M, 210N/T210N, T210F, T210G, T210H, T210J, P210N, 337, 337A, 337B/T337B, M337B, 337C/T337C, 337D/T337D, 337E/T337E, 337F, T337F, 337G, 337H/T337H, T337H–SP, T337G, P337H, F337E/FT337E, F337F/FT337F, F337G, F337H, FTB337, FT337GP, and FT337HP.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated in the body of this AD.

To prevent foreign material from entering the fuel system and engine, which could result in loss of engine power or complete engine stoppage during flight, accomplish the following:

Note 2: This AD allows the aircraft owner or pilot to check the maintenance records to determine whether a Cessna part number (P/N) 0756005–2 top assembly, Cessna P/N 0756005–8 fuel strainer assembly, or a Cessna P/N 0756005–9 fuel strainer assembly was installed after December 12, 1996. Those parts that were shipped between December 12, 1996, and September 5, 1997, may have been manufactured with an internal tube installed to a depth less than specified and may become loose and dislodge from the strainer top assembly. See paragraph (c) of this AD for authorization.

(a) Within the next 12 calendar months after the effective date of this AD, unless already accomplished, measure the standpipe in the fuel strainer assembly (tube in the filter strainer top assembly) for a visible maximum length of 1.68 inches, in accordance with the ACCOMPLISHMENT INSTRUCTIONS section and Detail A in Cessna Single Engine Service Bulletin (SB) No. SEB97–9, dated November 17, 1997; or Cessna Multi-engine SB No. MEB97–12, dated November 17, 1997, whichever is applicable.

(b) If the standpipe does not measure a maximum length of 1.68 inches, prior to further flight, replace the filter strainer top assembly in accordance with the ACCOMPLISHMENT INSTRUCTIONS section in Cessna Single Engine SB No. SEB97–9, dated November 17, 1997; or Cessna Multi-engine SB No. MEB97–12, dated November 17, 1997, whichever is applicable.

(c) The owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7) may check the maintenance records to determine whether a Cessna part number (P/N) 0756005–2 top assembly, Cessna P/N 0756005–8 fuel strainer assembly, or a Cessna P/N 0756005–9 fuel strainer assembly was installed after December 12, 1996. Those parts that were shipped between December 12, 1996, and September 5, 1997, may have been manufactured with an internal tube installed to a depth less than specified and may become loose and dislodge from the strainer top assembly. If, by checking the maintenance records, the owner/operator can make an absolute determination that one of these parts is not installed or was installed prior to December 12, 1996, the requirements of paragraphs (a) and (b) of this AD do not apply. The owner/operator must make an entry into the aircraft records showing compliance with this portion of the AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(d) As of the effective date of this AD, no person may install, on any of the affected Cessna airplanes, a fuel filter assembly where the maximum length of the standpipe does not measure 1.68 inches.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, FAA, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this

AD, if any, may be obtained from the Wichita ACO.

(g) The measurement and replacement required by this AD shall be done in

accordance with Cessna Single Engine Service Bulletin (SB) No. SEB97–9, dated November 17, 1997, or Cessna Multi-engine SB No. MEB97–12, dated November 17, 1997. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Cessna Aircraft Company, P. O. Box 7706, Wichita, Kansas 67277. Copies may be inspected at the FAA, Central Region, Office of the Regional Counsel, Room 506, 901 Locust, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(h) This amendment becomes effective on May 5, 2000.

Issued in Kansas City, Missouri, on March 10, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6615 Filed 3–21–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 157 and 380

[Docket No. RM98–17–001; Order No. 609–A]

Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements

Issued March 16, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule; Order on Rehearing.

SUMMARY: On rehearing the Federal Energy Regulatory Commission (Commission) reaffirms its basic determinations in Order 609 and modifies and clarifies certain aspects of the Final Rule. Order 609 added certain early landowner notification requirements to its regulations under the Natural Gas Act (NGA) that will ensure that landowners who may be affected by a pipeline's proposal to construct natural gas pipeline facilities have sufficient opportunity to participate in the Commission's certificate process. The Final Rule also amended certain areas of its regulations to provide pipelines with greater flexibility and to further expedite the certificate process, including: expanding the list of activities categorically excluded from the need for an Environmental Assessment under the Commission's regulations; expanding the types of events that allow pipelines to rearrange facilities under their blanket construction certificates; and adding certain other environmental requirements.

DATES: The revisions to the regulations in this order on rehearing become effective April 21, 2000.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426.

FOR FURTHER INFORMATION CONTACT:

John S. Leiss, Office of Energy Projects, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, (202) 208–1106

Carolyn Van Der Jagt, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–2246.

SUPPLEMENTARY INFORMATION:

I. Introduction

In this order the Federal Energy Regulatory Commission (Commission) is modifying and clarifying certain aspects of the Final Rule issued in Order No. 609.[1] Generally, this order: (1) Requires that the Commission's notice of application and information on how to intervene be included in the notification to affected landowners; (2) Expands the definition of "affected landowner" to include owners of residences within 50 feet of the proposed construction work area; (3) Clarifies the requirements for the newspaper notice; (4) Explains how the notice requirement pertains to storage fields; (5) Denies a request to eliminate the requirement to provide an explanation of state eminent domain laws; (6) Allows a waiver of the 30-day notice requirement for blanket activities when the landowner agrees to the waiver and/or when the landowner requests the service/facility; (7) Requires no notification for non-ground disturbing projects; and (8) Clarifies that new injection/withdrawal wells cannot be constructed under § 2.55 of the Commission's regulations or under a pipeline's blanket certificate authorization.

II. Background

On October 13, 1999, the Commission issued a Final Rule in Order No. 609. The Final Rule: (1) Provided for earlier and more informed landowner involvement in natural gas projects; (2) Streamlined the regulation process by categorically excluding certain types of activities from the need to have an Environmental Assessment prepared for them; and (3) Updated the environmental requirements for projects under the Natural Gas Act (NGA).

The Commission received rehearing/clarification requests from three parties including Columbia Gas Transmission Corporation (Columbia), Interstate Natural Gas Association of America (INGAA), and Williston Basin Interstate Pipeline Company (Williston Basin). Travis Kenneth Bynum filed a "Motion to Deny Rehearing," alleging that the motions of the other parties failed to establish error on the part of the Commission. We address each of the requests for rehearing/clarification below, granting or denying them as discussed herein.

III. Discussion

A. Landowner Notification

In the Final Rule, the Commission required in § 157.6(d) that all applicants seeking authorization under Part 157 of the Commission's regulations notify all affected landowners of record, as indicated in the most recent tax rolls, of their application by certified or first class mail (or by hand) within three (3) business days following the date a docket number is assigned to the filed application.

1. Notification of Intervention Deadline

The intent of the Commission in implementing § 157.6(d) was to ensure that landowners who may be affected by a pipeline's proposal to construct natural gas pipeline facilities have sufficient opportunity to participate in the Commission's certificate process. In the Final Rule, we required that the notice mailed by applicants to affected landowners include, among other information: (1) The docket number of the filing; (2) The most recent edition of the Commission's pamphlet explaining the Commission's certificate process; and (3) A brief summary of what rights the landowner has at FERC. However, we did not require that the notice include the deadline for interested parties to file timely requests to intervene in the Commission's proceedings on the application.

The reason for that omission is that § 157.6(d) requires notice to be sent within three business days of the date a docket number is assigned to the filed application, whereas the Commission's notice establishing the intervention deadline may not be issued for up to ten days after the date the application is filed. Currently, the Commission's notice is published in the **Federal Register** and is available to the public electronically on the Commission's Internet web site, but is not sent directly

[1] Landowner Notification, Expanded Categorical Exclusions, and Other Environmental Filing Requirements, Order No. 609, 64 FR 57374, (Oct. 25,1999), FERC Stats. and Regs. ¶31,082 (Oct. 13, 1999).

to any party. Thus, after receiving notice of an application from the applicant, affected landowners will generally know *how* to get involved in the proceedings before the Commission, but will not know, without further effort on their part, by *when* they must act to do so in a timely manner. Further, while the Commission has, and will continue to liberally exercise its discretion in granting late-intervenor status to requesting landowners and other interested parties, many landowners resent having to request what they see as special permission to participate.[2]

To rectify this situation, we will modify the requirements of § 157.6(d)(3) to require that the notice mailed to affected landowners include a copy of the Commission's notice of the application, specifically stating the date by which timely motions to intervene are due, together with the Commission's information sheet on how to intervene in Commission proceedings. This sheet is available on the Commission's Internet Website at *http://www.ferc.fed.us/public/intervene.htm.* To make the inclusion of these documents possible, we will also modify § 157.6(1)(i) to require that the notice be sent within three days of the date the Commission notice is issued, rather than the date a docket number is assigned. Finally, we will require that the notice be mailed not only to affected landowners, but also to all towns, communities, and local, state and federal government agencies involved in the project. This expanded mailing list corresponds to those entities generally receiving the Commission's Notice of Intent to prepare an environmental assessment of a project.

2. Affected Landowners

Section 157.6(d)(2)(ii) defines "affected landowner" to include owners whose property "abuts either side of an existing right-of-way or facility site owned in fee by any utility company, or abuts the edge of a proposed right-of-way which runs along a property line in the area in which the facilities would be constructed." However, there may be instances where there is a residence in close proximity to the proposed right-of-way, but located on a parcel of land which does not abut the proposed right-of-way. Such property owners would clearly be affected by the proposed construction, but would not receive direct notification of the proposal under the requirement as stated above. Therefore, we will modify § 157.6(d)(2)(ii) to include owners of residences within 50 feet of the proposed construction work area.

3. Newspaper Notification

Section 157.6(d)(1)(iii) requires that the applicant include a notice of the project in a newspaper(s) of general circulation in the project area within a week of the filing. Pursuant to the provisions of § 157.6(d)(3), this notice must include: (1) The docket number of the filing; (2) A description of the applicant and the proposed project, the project's location (including a map), its purpose, and proposed timing; (3) A general description of what the pipeline will need from the landowner if the project is approved; (4) How to contact the applicant for further information; (5) A brief summary of what rights a person has at the Commission and their rights under the eminent domain rules in the relevant state; and (6) Information on how to get a copy of the application from the applicant or where copies of the application may be located for public review.

Comment

On rehearing, INGAA states that as the regulation is currently written, the entire list of items that must be included in the landowner notification letter also must be included in the newspaper notification. INGAA asserts that this is a substantial amount of information to be printed in the newspaper. It suggests that the newspaper notice should only include the fact that an application has been filed at the Commission, the docket number, a general description of the route of the project, identification of a company contact person, and where copies of the application may be accessed. It also suggests that the newspaper notice only identify the other items that are listed in § 157.6(d)(3) and allow the reader to contact the applicant if they wish more detailed information. It says this would avoid the lengthier and costlier newspaper notice that is currently required.

Commission Response

Generally, INGAA's suggestion includes most of the items required for the landowner notice. The items INGAA proposes be omitted from the published notice include (1) A description of the company, (2) The project's purpose and timing, (3) A general description of what will be needed from landowners if the project is approved, (4) A general location map, and (5) A summary of the landowner's rights at the Commission and in eminent domain proceedings.

First, we note that items (1), (2), and (3) should not involve a substantial amount of text and are basic to the purpose of the notification. Accordingly, that information should be printed in the newspaper to ensure the public can quickly judge whether or not the project is of interest to them. Similarly, including a general location map complements the project description and has the advantage of reducing inquiries from people who might otherwise be unsure of their physical relationship to the project's location. Therefore, those items should continue to be part of the newspaper notification.

However, we find that at least a portion of (5) may be unnecessary for the published newspaper notice. While affected landowners, as defined by the regulations, have a need for basic information regarding eminent domain, the general public may not, since there is little chance that persons not meeting the regulation's definition of "affected landowner" will be subject to condemnation. In addition, we believe that publishing the Commission's Internet Website address and the telephone number for the Commission's Office of External Affairs will provide sufficient information to enable those members of the general public who desire to become involved in the Commission's proceeding to do so. We will modify § 157.6(d)(3)(v) accordingly. We will also modify § 157.6(d)(3)(ii) to clarify that while pipelines are not required to include the Commission's pamphlet in the published notice, they should provide the title of the pamphlet and indicate its availability at the Commission's Internet address.

Finally, we note that the regulations are silent as to the length of time the notice needs to be published in the newspaper. We will clarify that the newspaper notice must be published twice in a daily or weekly newspaper of general circulation in each county in which the project is located. This is consistent with the Commission's regulations under the Federal Power Act in § 4.32(b)(6) of the Commission's regulations. We will modify § 157.6(d)(1)(iii) accordingly.

4. Storage Fields

As adopted in the Final Rule, § 157.6(d)(2)(iv) defines affected landowners subject to the notice requirement as landowners whose land is "within the area of new storage fields or expansions of storage fields, including any applicable buffer zone."

[2] We note that pursuant to § 380.10 of the Commission's regulations, interested persons may have subsequent opportunities to file timely interventions on environmental issues.

Comment

INGAA and Williston Basin contend that the discussion of this section in the Final Rule is unclear and may imply a broader notification requirement than is intended in the codified § 157.6(d)(2)(iv). They request that the Commission clarify that pipelines are only required to notify surface and subsurface owners when proposing to develop and operate new storage fields or when expanding the boundaries of existing storage fields. They assert that storage fields encompass thousands of acres and have potentially hundreds of surface and subsurface property owners and that it would be burdensome and costly to notify all property interest owners within the entire certificated storage boundaries when a pipeline is replacing facilities under its blanket authority. Columbia makes a similar argument.

Commission Response

Under § 157.6(d)(2)(iv), if a new storage field is proposed, all owners of surface and subsurface property within the boundaries of the field and its buffer zone need to be notified of the project. If an existing storage field is proposed for expansion, all the surface and subsurface owners of property within the area between the existing certificate boundary and the proposed new certificate boundary of the field and its buffer zone need to be notified. If new facilities are being added within the existing certificate boundaries of an existing storage field and there is no change to the certificated boundaries, then § 157.6(d)(2)(iv) does not apply. However, in the latter case, §§ 157.6(d)(2)(i) through (ii) would apply.

5. Eminent Domain Proceedings and Landowner Rights

In the Final Rule, § 157.6(d)(3)(v) requires the notice to include a description of the rights a landowner has in proceedings at the Commission and in eminent domain proceedings in state court.

Comments

INGAA states that the requirement to summarize state eminent domain laws is unreasonable. Specifically, INGAA contends that this notice requirement could result in landowners claiming that they have been given legal advice. INGAA claims that pipelines should not be required to provide any legal opinion as to what a landowner's rights are under the eminent domain rules of the state because any omissions or mistaken statements could expose the pipeline to unnecessary litigation. INGAA requests that the Commission eliminate this requirement. In the alternative, INGAA requests that the Commission clarify that a pipeline will have sufficiently complied with this section if it cites the state statutes, as of the date of the filing of the application, related to eminent domain.

Further, INGAA requests that the Commission clarify that since the Commission's pamphlet explains a landowner's rights at the Commission, § 157.6(d)(3)(v) is satisfied by the applicant's providing the Commission's pamphlet. It asserts that requiring the pipeline to separately summarize a landowner's rights at the Commission would be duplicative and may cause confusion if the pipeline's phrasing is different from the pamphlet's phrasing.

Commission Response

We believe that the applicant should provide landowners with some basic information concerning what is involved in the eminent domain process. The general public is probably not greatly informed on these matters and may need to invest significant time and money just to get a basic understanding. We do not believe that providing this information would put the applicant at risk for unnecessary litigation, especially if the applicant prefaces its explanation with a disclaimer statement.

Guardian Pipeline's (Guardian) Landowner Rights summary, filed in Docket No. CP00–36–000 and provided to affected landowners in that proceeding (and also posted on its Internet Website at www.guardianpipeline.com), is a good example of what the Commission expects the applicant to provide to the landowners. It starts with a disclaimer statement and recommends that if the individual has any questions about their rights, they should seek the advice of an attorney. Next, it refers to the Commission's pamphlet and gives a short summary of the landowners' rights at the Commission. After this summary, it refers readers to the Commission's Office of External Affairs for further information. It then briefly summarizes the pipeline's general right to eminent domain and summarizes the eminent domain laws in Wisconsin and Illinois. Finally, it refers readers to the Wisconsin Department of Commerce and the Illinois Attorney General, respectively, for further information on the individual state laws. We believe this format meets the requirements of our regulations without subjecting the applicant to any legal liability.

6. Blanket Projects.

In the Final Rule, § 157.203(d)(1) requires that the pipeline notify any affected landowner of a project which is automatically approved under the blanket certificate program of Subpart F of Part 157 of the Commission's regulations. The notification must be provided at least 30 days prior to the beginning of construction activities or at the time easement negotiations begin, whichever is earlier.

Comments

INGAA and Williston Basin request that the Commission allow landowners to waive the 30-day notice period when the landowner is provided notification of a proposed project. They contend that if the landowner agrees to waive the 30-day notice period the pipeline should be able to proceed with construction without the Commission requiring approval of the waiver from the Director of the Office of Energy Projects.

INGAA also requests that the Commission clarify that landowner notice is not required for minor blanket projects that do not impact a landowner's property. This would include projects that are completely within the boundaries of an existing facility site or building, do not result in ground disturbance or, in the case of compression, do not increase air or noise emissions.

Additionally, Williston Basin argues that no notification should be required for blanket activities involving construction within existing rights-of-way pursuant to existing easements. It asserts that the landowner has already given an easement and as long as the pipeline's use is consistent with that easement there is no reason for the landowner to be notified that the pipeline is performing activities allowed by that easement. Further, it claims that it is inconsistent for the Commission to treat identical facilities installed under § 157.211 (*e.g.*, farm taps) and § 2.55(b) differently. It argues that activities performed under the two provisions have similar effects on landowners.

Commission Response

First, we agree that the landowners should be allowed to specifically waive the 30-day notice period in writing, as long as they are provided the notice. We have modified § 157.203(d)(1) accordingly. We note that on January 5, 2000, Reliant Energy Gas Transmission Company (Reliant) filed an application in Docket No. CP00–66–000 seeking a general waiver of the 30-day notice requirement when the construction has been requested by the landowner, only that landowner's property will be affected by the construction, and the landowner has waived the 30-day period. We believe that there is no need to require any landowner notification in this circumstance. Therefore, we are providing an exception in § 157.6(d)(3)(iii) which makes notification unnecessary under these circumstances. This action will moot Reliant's request and we will issue a separate order dismissing that proceeding.

With respect to minor, non-ground disturbing projects, we agree that no landowner notification is required as long as projects do not materially change the appearance of the site. We have modified § 157.203(d)(3)(iv) accordingly.

Finally, as stated in Order No. 609, the Commission wants the opportunity to hear and act on landowners' concerns when the pipeline conducts an activity subject to the Commission's jurisdiction. Facilities constructed under § 2.55 are exempt from the Commission's jurisdiction, whereas activities performed under the pipelines' blanket certificates are subject to the Commission's jurisdiction. Further, facilities which may be constructed under §§ 157.211 or 157.208 are different from those constructed under § 2.55. In the latter case, an existing facility is being replaced by the same kind of facility, in the same location, entirely within an existing easement. Facilities constructed under blanket authority (either under § 157.211 or § 157.208) are usually at least partially outside of existing easements and are new. It is appropriate for the landowner to receive advance notice of such construction, even when it is anticipated by the existing easement. A signed easement agreement does not limit the right of a landowner to express concerns regarding additional uses of the land to the Commission, or to the company itself. The notice provides the landowner the opportunity to contact the pipeline or the Commission and to express such concerns.

7. Prior Notice Projects

In the Final Rule, § 157.203(d)(2) requires that the pipeline notify any affected landowner within three days of making the prior notice filing or at the time easement negotiations begin, whichever is earlier.

Comment

INGAA requests that the Commission revise this section to require notification "within 3 business days following the date that a docket number is assigned to the application or at the time the pipeline initiates easement negotiations, whichever is earlier", to be consistent with the case-specific requirement.

Commission Response

We agree and have modified § 157.203(d)(2) accordingly.

B. Observation Wells

In the Final Rule, the Commission stated that observation wells can be constructed under § 2.55 of the Commission's regulations. The Final Rule also clarified that replacement wells can be constructed under § 2.55(b) if the wells fit the requirements of that section.

Comment

On rehearing, INGAA and Williston Basin request that the Commission clarify that the restrictions in § 2.55 that require that the replacement facilities be "in the same right-of-way or on the same site" do not apply to replacement wells. They contend that replacement wells are usually in close proximity, but are generally not in the same exact location, as the original facility. Accordingly, they request that the Commission either clarify that the site restrictions in § 2.55(b)(1)(ii) are not applicable to replacement wells or that replacements wells that do not qualify under § 2.55(b) because of the site restriction can be drilled under the pipeline's blanket certificate as long as those wells do not alter the certificated deliverability, capacity, or boundary of the field.

Commission Response

It was the Commission's intent that only replacement facilities which are in the same right-of-way or on the same site as the original facilities be constructed under § 2.55(b). Therefore, we cannot clarify the provision as proposed by the commenters. Moreover, as stated in Order Nos. 603–A, 603–B, and 609, the Commission does not believe that blanket certificate authorization provides adequate oversight of the construction of new injection/withdrawal wells, including those intended to replace existing wells, but constructed at a different site. Despite the fact that they are only intended to replace existing facilities, such wells may inherently alter the daily or seasonal deliverability, volumetric capacity, or boundary of a storage reservoir. Accordingly, separate NGA section 7(c) authorization is necessary prior to the drilling of replacement injection/withdrawal wells that are not on the site of the original facilities.

C. Other Clarifications

Finally, we have made a few typographical corrections to the minimum filing requirements in Appendix A to Part 380.

IV. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc.fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects

18 CFR Part 157

Administrative practice and procedure, Natural gas, Reporting and Record keeping requirements.

18 CFR Part 380

Environmental impact statements, Reporting and recordkeeping requirements.

By the Commission.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission amends Parts 157 and 380, Chapter I, Title 18, *Code of Federal Regulations*, as follows.

PART 157—APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY AND FOR ORDERS PERMITTING AND APPROVING ABANDONMENT UNDER SECTION 7 OF THE NATURAL GAS ACT

1. The authority citation for Part 157 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 157.6, paragraphs (d)(1) introductory text, (d)(1)(i) and (d)(1)(iii), (d)(2)(ii) and (d)(2)(iv), the last sentence of paragraph (d)(3)(ii) and paragraph (d)(3)(v) are revised; and a new paragraph (d)(3)(vii) is added to read as follows:

§ 157.6 Applications; general requirements.

* * * * *

(d) * * *

(1) For all applications filed under this subpart which include construction of facilities or abandonment of facilities (except for abandonment by sale or transfer where the easement will continue to be used for transportation of natural gas), the applicant shall make a good faith effort to notify all affected landowners and towns, communities, and local, state and federal governments and agencies involved in the project:

(i) By certified or first class mail, sent within 3 business days following the date the Commission issues a notice of the application; or

(ii) * * *

(iii) By publishing notice twice of the filing of the application, no later than 14 days after the date that a docket number is assigned to the application, in a daily or weekly newspaper of general circulation in each county in which the project is located.

(2) * * *

(ii) Abuts either side of an existing right-of-way or facility site owned in fee by any utility company, or abuts the edge of a proposed facility site or right-of-way which runs along a property line in the area in which the facilities would be constructed, or contains a residence within 50 feet of the proposed construction work area;

* * * * *

(iv) Is within the area of proposed new storage fields or proposed expansions of storage fields, including any applicable buffer zone.

(3) * * *

(ii) * * * Except: pipelines are not required to include the pamphlet in notifications of abandonments or in the published newspaper notice. Instead, they should provide the title of the pamphlet and indicate its availability at the Commission's Internet address;

* * * * *

(v) A brief summary of what rights the landowner has at the Commission and in proceedings under the eminent domain rules of the relevant state. Except: pipelines are not required to include this information in the published newspaper notice. Instead, the newspaper notice should provide the Commission's Internet address and the telephone number for the Commission's Office of External Affairs; and

* * * * *

(vii) A copy of the Commission's notice of application, specifically stating the date by which timely motions to intervene are due, together with the Commission's information sheet on how to intervene in Commission proceedings. Except: pipelines are not required to include the notice of application and information sheet in the published newspaper notice. Instead, the newspaper notice should indicate that a separate notice is to be mailed to affected landowners and governmental entities.

* * * * *

3. In § 157.203, paragraphs (d)(1) introductory text and (d)(2) introductory text are revised and new paragraphs (d)(3)(iii) and (d)(3)(iv) are added to read as follows:

§ 157.203 Blanket certification.

* * * * *

(d) * * *

(1) Except as identified in paragraph (d)(3) of this section, no activity described in paragraph (b) of this section is authorized unless the company makes a good faith effort to notify all affected landowners, as defined in § 157.6(d)(2), at least 30 days prior to commencing construction or at the time it initiates easement negotiations, whichever is earlier. A landowner may waive the 30-day prior notice requirement in writing as long as the notice has been provided. The notification shall include at least:

* * * * *

(2) For activities described in paragraph (c) of this section, the company shall make a good faith effort to notify all affected landowners, as defined in § 157.6(d)(2), within at least three business days following the date that a docket number is assigned to the application or at the time it initiates easement negotiations, whichever is earlier. The notice should include at least:

* * * * *

(3) * * *

(iii) No landowner notice is required if there is only one landowner and that landowner has requested the service or facilities.

(iv) No landowner notice is required for activities that do not involve ground disturbance or changes to operational air and noise emissions.

PART 380—[AMENDED]

4. In Appendix A to Part 380:

a. The reference to "(§§ 380.12 (a)(4) and (c)(10))" in paragraph number 8 under Resource Report 1—General Project Description is revised to read "(§ 380.12(c)(10))";

b. The reference to "(§ 380.12 (f)(1)(ii) & (2))" in paragraph number 1 under Resource Report 4—Cultural Resources is revised to read "(§ 380.12 (f)(1)(i) & (2))";

c. The reference to "(§ 380.12 (f)(1)(iii) & (2))" in paragraph number 2 under Resource Report 4 is revised to read "(§ 380.12 (f)(1)(ii) & (2))"; and

d. The reference to "(§ 380.12 (l)(3))" in paragraphs number 4 and 5 under Resource Report 10—Alternatives is revised to read "(§ 380.12 (l)(2)(ii))".

[FR Doc. 00–7062 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR part 117

[CGD09–00–001]

RIN–2115–AE47

Drawbridge Operation Regulations; Pine River (Charlevoix), MI

AGENCY: Coast Guard, DOT.

ACTION: Direct final rule.

SUMMARY: By this direct final rule, Commander, Ninth Coast Guard District, is changing the regulations governing the U.S. Route 31 lift bridge, mile 0.3 over Pine River in Charlevoix, Michigan. Currently, the bridge is required to open twice an hour between 6 a.m. and 6 p.m. for recreational vessels all year long. This rule will allow the bridge to open for recreational vessels twice an hour between 6 a.m. and 10 p.m., April 1 through October 31, and require a 12-hour notice from all vessels for openings between January 1 and March 31.

DATES: This rule is effective June 20, 2000, unless the Coast Guard receives written adverse comments or written notice of intent to submit adverse comments on or before May 22, 2000. If adverse comment is received, the Coast Guard will publish a timely withdrawal or this rule in the **Federal Register**.

ADDRESSES: Comments may be mailed or delivered to: Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Room 2019, Cleveland, OH 44199–2060 between 6:30 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (216) 902–6084.

The District Commander maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Ninth Coast Guard District Bridge Branch, at (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments for or against this rule. Persons submitting comments should include names and addresses, identify the rulemaking [CGD09–00–001] and the specific section of this rule to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Regulatory Information

The Coast Guard is publishing a direct final rule, the procedures of which are outlined in 33 CFR 1.05–55, because no adverse comments are anticipated. If no adverse comments or any written notice of intent to submit adverse comment are received within the specified comment period, this rule will become effective as stated in the **DATES** section. In that case, prior to the effective date, the Coast Guard will public a document in the **Federal Register** stating that no adverse comment was received and announcing confirmation that this rule will become effective as scheduled. However, if the Coast Guard receives written adverse comment, the Coast Guard will publish in the final rule section of the **Federal Register** a timely withdrawal of this rule. If the Coast Guard decides to proceed with a rulemaking, a separate Notice of Proposed Rulemaking (NPRM) will be published and a new opportunity for comment provided.

A comment is considered "adverse" if the comment explains why this rule would be inappropriate, including a challenge to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change.

Background and Purpose

The owner of the bridge, Michigan Department of Transportation (M–DOT), requested the Coast Guard approve a modified schedule for the bridge to reduce vehicular traffic delays in Charlevoix, MI, during the peak tourist season and to establish a permanent winter operating schedule. The bridge is currently required to open on signal for recreational vessels from three minutes before to three minutes after the hour and half-hour between the hours of 6 a.m. and 6 p.m. throughout the year. M–DOT has secured voluntary participation from local boaters since 1991 to extend the scheduled twice-an-hour openings between 6 p.m. and 10 p.m. on an annual basis. Additionally, the City of Charlevoix receives a large influx of tourist traffic between April and November, and has endorsed this schedule as a means to reduce vehicular traffic back-ups during their peak tourist season. Under the provisions of 33 CFR 117.45, M–DOT has requested, and received, permission from Commander, Ninth Coast Guard District, to operate the bridge with 12-hour advance notice from vessels between January 1 and March 31 since 1991. The Coast Guard has not received any user complaints concerning the voluntary schedule or winter operating schedule since it's inception in 1991.

Under this rule, the bridge will be required to open on signal for recreational vessels only from three minutes before to three minutes after the hour and half-hour between the hours of 6 a.m. and 10 p.m., 7 days a week, from April 1 until October 31. The bridge will open on signal for all vessels between 10 p.m. and 6 a.m. during this period, and at all times between November 1 and December 31. The bridge will open at all times for public vessels of the United States, state and local vessels used in public safety, commercial vessels, vessels seeking shelter from severe weather, and vessels in distress where a delay would endanger life or property. Between January 1 and March 31, the bridge will open on signal if at least 12 hours advance notice is provided by vessels prior to their intended time of passage.

The vehicular traffic count and bridge opening data provided by M–DOT indicated (during a 2-week sample period between August 16 and August 29, 1998) that requests for bridge openings averaged 1.4 times per day between the hours of 10 p.m. and 6 a.m., with 30.6 openings per day between the hours of 6 a.m. and 10 p.m. During this same sample period, 230.5 vehicles per hour crossed the bridge between the hours of 10 p.m. and 6 a.m., and 1186 vehicles per hour crossed between 6 a.m. and 10 p.m. Between 10 p.m. and 6 a.m., the fewest number of vehicles recorded (60) crossed between the 3 a.m. to 4 a.m. hour, while the largest number of vehicles (660) crossed between the 11 p.m. to 12 a.m. hour. Between 6 a.m. and 10 p.m., the fewest number of vehicles recorded (333) crossed during the 6 .a.m. to 7 a.m. hour, while the largest number of vehicles (1572) crossed during the 2 p.m. to 3 p.m. hour. The bridge opening logs showed 221 opening in the month of October 1998 with a mixture of recreational and commercial (or public) vessels. In November 1998, 81 openings were recorded, with only 8 of the 81 specifically for recreational vessels. Only 32 openings were recorded in December 1998 (none for recreational vessels), with 2 openings logged in both January and February, 1999. There were 8 openings logged for March 1999, and 105 openings for April 1999, including a large number of recreational vessels.

The Coast Guard concludes that the dates and times requested by M–DOT for this rule will adequately provide for the reasonable needs of navigation and help reduce vehicular traffic congestion during the peak tourist season in Charlevoix.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential cost and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under

paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the fact that this rule only modestly changes the existing regulation, and passage through the bridge is available year-round, with few requested openings recorded during the winter months.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

This rule simply extends the hours (6 p.m. to 10 p.m.) that the bridge owner may limit openings for recreational vessels. Passage through the bridge is not restricted for commercial or public vessels. The 12-hour advance notice requirement during winter months is an accepted practice and only affects one known entity operating during those months.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule does not provide for a collection-of-information requirement under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive order 13132, and determined that this rule does not have federalism implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a state, local, or tribal government or the private sector to incur direct costs without the federal government having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a talking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this rule is categorically excluded from further environmental documentation. This rule changes a drawbridge regulation which has been found not to have a significant effect on the environment. A "Categorical Exclusion Determination" is not required.

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard amends Part 117 of title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. Revise § 117.641 to red as follows:

§ 117.641 Pine River (Charlevoix).

(a) The draw of the U.S. 31 bridge, mile 0.3 at Charlevoix, shall be operated as follows:

(1) From April 1 through December 31, the draw shall open on signal; except from 6 a.m. to 10 p.m., April 1 to October 31, the draw need open only from three minutes before to three minutes after the hour and half-hour for recreational vessels. Public vessels of the United States, state or local vessels used for public safety, commercial vessels, vessels in distress, and vessels seeking shelter from severe weather shall be passed through the draw as soon as possible.

(2) From January 1, through March 31, the draw shall open on signal if at least 12 hours advance notice is provided prior to a vessel's intended time of passage.

(b) The owner of the bridge shall provide and keep in good legible condition two board gauges painted white with black figures not less than six inches high to indicate the vertical clearance under the closed draw at all water levels. The gages shall be placed on the bridge so that they are plainly visible to operators of vessels approaching the bridge either up or downstream.

Dated: March 14, 2000.

James D. Hull,

Rear Admiral, U.S. Coast Guard Commander, Ninth Coast Guard District.

[FR Doc. 00–7103 Filed 3–21–00; 8:45 am]

BILLING CODE 4910–15–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 224–0213a; FRL–6549–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Monterey Bay Unified Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, Santa Barbara County Air Pollution Control District, South Coast Air Quality Air Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan. The revisions concern rules from the following districts: Monterey Bay Unified Air Pollution Control District, San Joaquin Valley Unified Air Pollution Control District, Santa Barbara County Air Pollution Control District, and South Coast Air Quality Air Management District. This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from the coating of wood products and wood flat stock. Thus, EPA is finalizing the approval of these

revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on May 22, 2000 without further notice, unless EPA receives adverse comments by April 21, 2000. If EPA receives such comment, it will publish a timely withdrawal **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105;

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, D.C. 20460;

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812;

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940;

San Joaquin Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721;

Santa Barbara County Air Pollution Control District 26 Castilian Drive, Suite B–23, Goleta, CA 93117; and,

South Coast Air Quality Management District, 218 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 429—Applications of Nonarchitectural Coatings; San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4606—Wood Products Coating Operations; Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 351—Surface Coating of Wood Products; South Coast Air Quality Management District(SCAQMD) Rule 1104—Wood Flat Stock Coating Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on these respective dates: March 23, 1988; February 16, 1999; May 13, 1999; and, October 29, 1999.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Monterey Bay, San Joaquin Valley, Santa Barbara County, and the South Coast air basin. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre-amended section 172(b) as interpreted in pre-amendment guidance.[1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The nonattainment areas subject to this rulemaking were classified as follows: Monterey Bay—moderate; San Joaquin Valley and Santa Barbara—serious; and South Coast—extreme.[2] Therefore, these areas are subject to the RACT fix-up requirement and the May 15, 1991 deadline. The Monterey Bay Area was redesignated as an attainment area for the ozone standard on January 17, 1997 (see 62 FR 2597.)

Along with many other revised RACT rules, the State of California submitted the rules being acted on in this document for incorporation into its SIP on the following dates: March 23, 1988 (MBUAPCD Rule 429); February 16, 1999 (SJVUAPCD Rule 4606); May 13, 1999 (SBCAPCD Rule 351); and October 29, 1999 (SCAQMD Rule 1104.) MBUAPCD adopted Rule 429 on September 16, 1987, prior to EPA's promulgation of its completeness criteria for SIP submittals. SJVUAPCD adopted Rule 4606 on December 17, 1998. SBCAPCD adopted Rule 351 on August 20, 1998. SCAQMD adopted Rule 1104 on August 13, 1999. These submitted rules were found to be complete on April 23, 1999 (SJVUAPCD Rule 4606), June 10, 1999 (SBCAPCD Rule 351), and December 16, 1999 (SCAQMD Rule 1104), pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V[3] and are being finalized for approval into the SIP. This document addresses EPA's direct-final action for MBUAPCD Rule 429—Applications of Nonarchitectural Coatings; SJVUAPCD Rule 4606—Wood Products Coating Operations; SBCAPCD Rule 351—Surface Coating of Wood Products; SCAQMD Rule 1104—Wood Flat Stock Coating Operations.

SJVUAPCD Rule 4606, SBCAPCD Rule 351, and SCAQMD Rule 1104 regulate the VOC content of various coatings applied to wood products such as furniture, cabinets, and interior and exterior wood paneling. VOCs contribute to the production of ground level ozone and smog. MBUAPCD Rule 429 regulates spray gun work practices. These rules were adopted originally as part of each air district's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. EPA's evaluation and final action for these four rules follow below.

III. EPA Evaluation and Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed Post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Monterey Bay, San Joaquin Valley, Santa Barbara County and South Coast nonattainment areas retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA.

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote one. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SJVUAPCD Rule 4606 and SBCAPCD Rule 351 is the following: "Guideline Series: Control of Volatile Organic Compound Emissions from Wood Furniture Manufacturing Operations," USEPA, April, 1996. The CTG applicable to SCAQMD Rule 1104 is the following: "Guideline Series: Control of Volatile Organic Compound Emissions from Existing Stationary Sources Volume VII: Factory Surface Coating of Flatwood Panelling;" USEPA, June 1978; EPA–450/2–78–032.

Further interpretations of EPA policy are found in the Blue Book, referred to in footnote one. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP. Each of the subject rules within this action will now be reviewed briefly.

There is no version of MBUAPCD Rule 429—Applications of Nonarchitectural Coatings in the SIP. The submitted rule includes the following provisions:

—Applicability;
—Definitions of terms used within the rule; and,
—Spray application requirements.

EPA has evaluated the submitted MBUAPCD Rule 429 and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, MBUAPCD Rule 429—Applications of Nonarchitectural Coatings is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

There is no version of SJVUAPCD Rule 4606—Wood Products Coating Operations in the SIP. The submitted rule includes the following provisions:

—A statement of purpose;
—Applicability;
—Definitions of terms used within the rule;
—Exemptions from the rule;
—Requirements concerning VOC (volatile organic compounds) content of coatings, application equipment, prohibition of specification, and storage of ROC containing materials;
—Recordkeeping to demonstrate compliance with the rule;
—Test methods for determining compliance with the rule; and,
—Compliance schedules.

EPA has evaluated the submitted SJVUAPCD Rule 4606 and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SJVUAPCD Rule 4606—Wood Products Coating Operations is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

There is no version of SBCAPCD Rule 351—Surface Coating of Wood Products in the SIP. The submitted rule includes the following provisions:

—Applicability;
—Exemptions from the rule;
—Definitions of terms used within the rule;
—Requirements concerning ROC (reactive organic compounds) content of coatings, transfer efficiency, prohibition of specification, and storage of ROC containing materials;
—Test methods for determining compliance with the rule; and,
—Recordkeeping to demonstrate compliance with the rule.

EPA has evaluated the submitted rule and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SBCAPCD Rule 351—Surface Coating of Wood Products is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

On June 23, 1994 (see 59 FR 32354), EPA approved into the SIP a version of Rule SCAQMD Rule 1104—Wood Flat Stock Coating Operations adopted by the SCAQMD on March 1, 1991. SCAQMD's submitted Rule 1104 includes the following significant changes from the current SIP-approved rule:

—The allowable VOC content for inks is reduced from 300 grams/liter (gr/l) to 250 gr/l;
—The allowable VOC content for exterior siding coatings is reduced from 300 gr/l to 250 gr/l; and,
—The exempt compounds and volatile organic compound definitions were deleted and SCAQMD Rule 102—Definitions is referenced in their place.

The modified VOC content limits within submitted Rule 1104 do not interfere with reasonable further progress or attainment of the NAAQS, because the VOC content limits have been lowered. The changes to Rule 1104 increase VOC emission reductions compared to the 1991 version of the rule within the SIP. SCAQMD calculated that VOC emissions are reduced by an additional 7.9 pounds per day. For these reasons, the changes within submitted Rule 1104 are consistent with the requirements of section 110(l) of the CAA.

EPA has evaluated the submitted SCAQMD Rule 1104 and has determined that it is consistent with the CAA, EPA regulations, and EPA policy. Therefore, SCAQMD Rule 1104—Wood Flat Stock Coating Operations is being approved under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rulemaking without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 22, 2000 without further notice unless the Agency receives adverse comments by April 21, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on May 22, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule

cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: February 15, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(176)(i)(D), (c)(262)(i)(D), (c)(263)(i)(B)(*2*), and (c)(270)(i)(c)(*2*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(176) * * *

(i) * * *

(D) Monterey Bay Unified Air Pollution Control District.

(*1*) Rule 429 adopted on September 16, 1987.

* * * * *

(262) * * *

(i) * * *

(D) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4606 adopted on December 19, 1991 and amended on December 17, 1998.

* * * * *

(263) * * *

(i) * * *

(B) * * *

(*2*) Rule 351 adopted on August 24, 1993 and amended on August 20, 1998.

* * * * *

(270) * * *

(i) * * *

(C) * * *

(*2*) Rule 1104 adopted on April 7, 1978 and amended on August 13, 1999.

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[FR Doc. 00–6972 Filed 3–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR–73–7288–a; FRL–6544–2]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency.

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) approves various revisions to Oregon's State Implementation Plan (SIP). This revision to the SIP was submitted to EPA, dated October 8, 1998.

The revised regulations include Transportation Conformity (OAR 340–020–710 through 340–020–1080) and General Conformity (OAR–020–1500 through 340–020–1590).

DATES: This direct final rule is effective on May 22, 2000 without further notice, unless EPA receives adverse comment by April 21, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be addressed to: Ms. Christine Lemmé, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

Documents which are incorporated by reference are available for public inspection at the Air and Radiation Docket and Information Center, Environmental Protection Agency, Ariel Rios Building 1200 Pennsylvania Avenue, N.W. Washington, D.C. 20460. Copies of material submitted to EPA may be examined during normal business hours at the following locations: EPA, Region 10, Office of Air Quality, 1200 Sixth Avenue (OAQ–107), Seattle, Washington 98101, and the Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Wayne Elson, Office of Air Quality (OAQ–107), EPA, Seattle, Washington 98101, (206) 553-1463.

SUPPLEMENTARY INFORMATION: The information in this section is organized as follows:

A. What SIP amendments are EPA approving?
B. What is Transportation Conformity?
C. How does Transportation Conformity work?
D. Why must the State have a Transportation Conformity SIP?
E. What is EPA approving today for Transportation Conformity and Why?
F. Why did the State Exclude the Grace Period for New Nonattainment Areas (40 CFR 93.102(d))?
G. What parts of the Transportation Conformity Rule are Excluded?
H. What is General Conformity?
I. What is EPA approving today for General Conformity and Why?

A. What SIP Amendments Are EPA Approving?

The following table outlines the submittals EPA received and is approving in this action:

Date of submittal to EPA	Items revised
10–8–98	Transportation Conformity Rules.
10–8–98	General Conformity Rules.

B. What is Transportation Conformity?

Conformity first appeared in the Act's 1977 amendments (Public Law 95–95). Although the Act did not define conformity, it stated that no Federal department could engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which did not conform to a SIP which has been approved or promulgated. The Act's 1990 Amendments expanded the scope and content of the conformity concept by applying conformity to state implementation plans. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

C. How Does Transportation Conformity Work?

The Federal or State Transportation Conformity Rule applies to all nonattainment and maintenance areas in the State. The Metropolitan Planning Organizations (MPO), the State Departments of Transportation (in absence of a MPO), and U.S. Department of Transportation make conformity determinations. These agencies make conformity determinations on programs and plans such as transportation improvement programs, transportation plans, and projects. These agencies calculate the projected emissions for the transportation plans and programs and compare those calculated emissions to the motor vehicle emissions ceiling established in the SIP. The calculated emissions must be smaller than the motor vehicle emissions ceiling for showing a positive conformity with the SIP.

D. Why Must the State Have a Transportation Conformity SIP?

EPA was required to issue criteria and procedures for determining conformity of transportation plans, programs, and projects to a SIP by section 176(c) of the Act. The Act also required the procedure to include a requirement that each State submit a revision to its SIP including conformity criteria and procedures. EPA published the first transportation conformity rule in the November 24, 1993, **Federal Register** (FR), and it was codified at 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. EPA required the States and local agencies to adopt and submit a transportation conformity SIP revision by November 25, 1994. The State of Oregon sent a transportation conformity SIP on April 17, 1995, and EPA approved this SIP on May 16, 1996 (61 FR 24709). EPA revised the transportation conformity rule on August 7, 1995 (60 FR 40098), November 14, 1995 (60 FR 57179), August 15, 1997 (62 FR 43780), and it was codified under 40 CFR part 51, subpart T and 40 CFR part 93, subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Laws (62 FR 43780). EPA's action of August 15, 1997, required the States to change their rules and send a SIP revision by August 15, 1998.

E. What Is EPA Approving Today for Transportation Conformity and Why?

EPA is approving the modified Oregon Transportation Conformity Rules OAR 340–020–710 through 340–020–1080 that the ODEQ submitted on October 8, 1998 except for the sections OAR 340–020–730(3), OAR 340–020–750(4), OAR 340–020–750(4)(b), OAR 340–020–800(3)–(6), OAR 340–020–890(5), OAR 340–020–900(6)(c), OAR 340–020–910(1)(b), OAR 340–020–1000(1)(a) and (2), and OAR 340–020–1030(2). The rationale for exclusion of these sections is discussed in Question G.

The Federal Transportation Conformity Rule required the states to adopt the majority of the Federal rules in verbatim form with a few exceptions. The States cannot make their rules more stringent than the Federal rules unless the State's rules apply equally to non-federal entities as well as Federal entities. The Oregon Transportation Conformity Rule is different from the Federal rule in several areas. These differences were discussed in the May 16, 1996 EPA approval. The State has made no additional changes or modifications, with the exception to the changes required by the revisions to the Federal Transportation Conformity Rule, August 15, 1997 (62 FR 43780). EPA has evaluated this SIP revision and has determined that the State has fully adopted the Federal Transportation Conformity rules as described in 40 CFR part 51, subpart T and 40 CFR part 93, subpart A. Also, the ODEQ has completed and satisfied the public participation and comprehensive interagency consultations during development and adoption of these rules at the local level. Therefore, EPA is approving this SIP revision.

F. Why Did the State Exclude the Grace Period for New Nonattainment Areas (40 CFR 93.102(d))?

The State excluded 40 CFR 93.102(d) of the Federal Transportation Conformity Rule from its State rule. Section 93.102(d) allows up to 12 months for newly designated nonattainment areas to complete their conformity determination. The Sierra Club challenged this section of the rule arguing that allowing a 12-month grace period was unlawful under the Act. On November 4, 1997, the United States Court of Appeals for the District of Columbia Circuit held in *Sierra Club* v. *Environmental Protection Agency*, No. 96–1007, cited EPA's grace period violates the plain terms of the Act and, therefore, is unlawful. Based on this court action, the State has excluded this section from its rule. We agree with the State's action, and exclusion of 40 CFR 93.102(d) will not prevent us from approving the State transportation conformity SIP.

G. What Parts of the Transportation Conformity Rule Are Excluded?

On March 2, 1999, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Environmental Defense Fund* v. *Environmental Protection Agency*, No. 97–1637. The Court granted the environmental group's petition for review and ruled that 40 CFR 93.102(c)(1), 93.121(a)(1), and 93.124(b) are unlawful and remanded 40 CFR 93.118(e) and 93.120(a)(2) to EPA for revision to harmonize these provisions with the requirements of the Act for an affirmative determination the Federal actions will not cause or increase violations or delay attainment. The sections that were included in this decision were: (a) 40 CFR 93.102(c)(1) which allowed certain projects for which the National Environmental Policy Act (NEPA) process has been completed by the DOT to proceed toward implementation without further conformity determinations during a conformity lapse, (b) 40 CFR 93.118(e) which allowed use of motor vehicle emissions budgets (MVEB) in the submitted SIPs after 45 days if EPA had not declared them inadequate, (c) 40 CFR 93.120(a)(2) which allowed use of the MVEB in a disapproved SIP for 120 days after disapproval, (d) 40 CFR 93.121(a)(1) which allowed the non-federally funded projects to be approved if included in the first three years of the most recently conforming transportation plan and transportation improvement programs, even if conformity status is currently lapsed, and (e) 40 CFR 93.124(b) which allowed areas to use a submitted SIP that allocated portions of a safety margin to transportation activities for conformity purposes before EPA approval. Since the States were required to submit transportation conformity SIPs not later than August

15, 1998, and include those provisions in verbatim form, the State's SIP revision includes all those sections which the Court ruled unlawful or remanded for consistency with the Act. The EPA can not approve these sections. EPA believes that ODEQ has complied with the SIP requirements and has adopted the Federal rules which were in effect at the time that the transportation conformity SIP was due to EPA. If the court had issued its ruling before adoption and SIP submittal by the ODEQ, we believe the ODEQ would have removed these sections from their rule. The ODEQ has expended its resources and time in preparing this SIP and meeting the Act's statutory deadline, and EPA acknowledges the agency's good faith effort in submitting the transportation conformity SIP on time. ODEQ will be required to submit a SIP revision in the future when EPA revises its rule to comply with the court decision. Because the court decision has invalidated these provisions, EPA believes that it is reasonable to exclude the corresponding sections of the state rules from this SIP approval action. As a result, we are not taking any action on the relevant sections in: OAR 340–020–730(3), OAR 340–020–750(4), OAR 340–020-750(4)(b), OAR 340–020–800(3)-(6), OAR 340–020–890(5), OAR 340–020-900(6)(c), OAR 340–020–910(1)(b), OAR 340–020–1000(1)(a) and (2), and OAR 340–020–1030(2) of the modified Oregon Transportation Conformity Rules. The conformity determinations affected by these sections should comply with the relevant requirements of the statutory provisions of the Act underlying the court's decision on these issues. The EPA will be issuing guidance on how to implement these provisions in the interim prior to EPA amendment of the federal transportation conformity rules. Once these Federal rules have been revised, conformity determinations in Oregon should comply with the requirements of the revised Federal rule until corresponding provisions of the Oregon conformity SIP have been approved by EPA.

H. What Is General Conformity?

General Conformity is similar to Transportation Conformity and also derived from section 176(c) of the CAA. The Act's 1990 Amendments expanded the scope and content of the conformity concept by applying conformity to state implementation plans. Section 176(c) of the Act defines conformity as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards. Also, the Act states that no Federal activity will: (1) cause or contribute to any new violation of any standard in any area, (2) increase the frequency or severity of any existing violation of any standard in any area, or (3) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area. General Conformity, however applies to federal actions where Transportation Conformity does not apply. Examples are ski resorts on public land, and airport improvements. Also General Conformity is only carried out on project by project basis.

I. What Is EPA Approving Today for General Conformity and Why?

General Conformity requires that activities on federal lands (such as prescribed burning by the Forest Service) align with the air quality goals set in the Oregon SIP. Oregon's current General Conformity rules apply to all areas of the state. Since they were adopted, however, the U.S. Congress clarified that General Conformity pertains only to nonattainment and maintenance areas. The rule is changed to remove the applicability of the rule for federal actions involving prescribed burning in attainment or unclassifiable areas and remove all references to prescribed burning. These revisions will have no effect on existing prescribed burning practices, as implementation of the General Conformity requirements in attainment areas was delayed pending the outcome of a federal determination of applicability. The Oregon Smoke Management Plan will continue to provide statewide guidelines for state and federal land managers to minimize smoke impacts from prescribed burning.

Summary of Action

EPA approves and takes no action on certain Oregon Administrative Rules (as noted in section I): "Conformity to State or Federal Implementation Plans to Transportation Plans, Programs, and Projects Developed and Funded Under Title 23 U.S.C. or Federal Transit Laws" found in:

340–20–710 Purpose.
340–20–720 Definitions.
340–20–730 Applicability.
340–20–750 Frequency of Conformity Determinations.
340–20–760 Consultation.
340–20–770 Content of Transportation Plans.
340–20–780 Relationship of Transportation Plan and TIP Conformity with the NEPA Process.
340–20–790 Fiscal Constraints for Transportation Plans.
340–20–800 Criteria and Procedures for Determining Conformity of Transportation Plans, Programs, and Projects: General.
340–20–810 Criteria and Procedures: Latest Planning Assumptions.
340–20–820 Criteria and Procedures: Latest Emissions Model.
340–20–830 Criteria and Procedures: Consultation.
340–20–840 Criteria and Procedures: Timely Implementation of TCMs.
340–20–850 Criteria and Procedures: Currently Conforming Transportation Plan and TIP.
340–20–860 Criteria and Procedures: Projects from a Plan and TIP.
340–20–870 Criteria and Procedures: Localized CO and PM–10 Violations (Hot spots).
340–20–880 Criteria and Procedures: Compliance with PM–10 Control Measures.
340–20–890 Criteria and Procedures: Motor Vehicle Emissions Budget.
340–20–900 Criteria and Procedures: Emissions Reductions in Areas Without Motor Vehicle Emissions Budgets.
340–20–910 Consequences of Control Strategy Implementation Plan Failures.
340–20–1000 Requirements for Adoption or Approval of Projects by Other Recipients of Funds Designated under title 23 U.S.C. or the Federal Transit Laws.
340–20–1010 Procedures for Determining Regional Transportation-Related Emissions.
340–20–1020 Procedures for Determining Localized CO and PM–10 Concentrations (Hot-Spot Analysis).
340–20–1030 Using the Motor Vehicle Emissions Budget in the Applicable Implementation Plan (or Implementation Plan Submission).
340–20–1040 Enforceability of Design Concept and Scope and Project-Level Mitigation and Control Measures.
340–20–1050 Exempt Projects.
340–20–1060 Projects Exempt from Regional Emissions Analyses.
340–20–1070 Traffic Signal Synchronization Projects.

EPA approves the changes made to certain sections of the Oregon Administrative Rules: "Determining Conformity of General Federal Actions to State and Federal Implementation Plans" found in:

340–020–1510 Definitions.
340–020–1520 Applicability.
340–020–1530 Conformity Analysis.
340–020–1570 Criteria for Determining Conformity of General Federal Actions.
340–020–1580 Procedures for Conformity Determinations of General Federal Actions.
340–020–1590 Procedures Mitigation of Air Quality Impacts

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective May 22, 2000 without further notice unless the Agency receives adverse comments by April 21, 2000.

If the EPA receives such comments, then EPA will publish a notice withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 22, 2000 and no further action will be taken on the proposed rule.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 22, 2000 unless EPA receives adverse written comments by April 21, 2000.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 22, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: February 22, 2000.

Chuck Findley,

Acting Regional Administrator, Region 10.

PART 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1.The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart MM—Oregon

2. Section 52.1970 is amended by adding paragraph (c) (129) to read as follows:

§ 52.1970 Identification of plan.

* * * * *

(c) * * *

(129) The Environmental Protection Agency (EPA) approves various amendments to the Oregon State Air Quality Control Plan contained in a submittal to EPA, dated October 8, 1997.

(i) Incorporation by reference.

(A) EPA is approving or taking no action on the modified Oregon Transportation Conformity Rules submitted on October 8, 1998. EPA is approving: OAR 340–20–710, 340–20–720, 340–20–730, 340–20–750, 340–20–760 340–20–770, 340–20–780, 340–20–790, 340–20–800, 340–20–810, 340–20–820, 340–20–830, 340–20–840, 340–20–850, 340–20–860 340–20–870, 340–20–880, 340–20–890, 340–20–900, 340–20–910 340–20–1000, 340–20–1010, 340–20–1020, 340–20–1030, 340–20–1040, 340–20–1050, 340–20–1060 and 340–20–1070, effective September 23, 1998.

(B) EPA is taking no action on sections OAR 340–020–730(3), 340-020–

chemical residue, including all

effects are expected to occur. Neither

contains 0.00139 grams of cucurbitacin

750(4), 340–020–750(4)(b), 340–020–800(3)-(6), 340–020–890(5), 340–020–900(6)(c), 340–020–910(1)(b), 340–020–1000(1)(a) and (2), and 340–020–1030(2).

(C) EPA approves the changes made to certain sections of the Oregon Administrative Rules: "Determining Conformity of General Federal Actions to State and Federal Implementation Plans' found in: OAR 340–020–1510, 340–020–1520, 340–020–1530, 340–020–1570, 340–020–1580, and 340–020–1590, effective September 23, 1998.

[FR Doc. 00–6969 Filed 3–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300965; FRL–6485–3]

RIN 2070–AB78

Cucurbitacins; Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of cucurbitacins from the powders and juices of the Hawkesbury melon *Citrullus lanatus* on various food commodities when applied/used as an inert (other) ingredient (gustatory stimulant) in pesticides applied to growing crops only. Agricultural Research Services, United States Department of Agriculture submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of cucurbitacins from Hawkesbury melon.

DATES: This regulation is effective March 22, 2000. Objections and requests for hearings, identified by docket control number OPP–300965, must be received by EPA on or before May 22, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–300965 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Vera Soltero, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–9359; and e-mail address: soltero.vera@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**-Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300965. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of September 1, 1999 (64 FR 47788) (FRL–6098–6), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, as amended by the Food Quality Protection Act (FQPA) (Public Law 104–170) announcing the filing of a pesticide tolerance petition by, Agricultural Research Services, United States Department of Agriculture, Agricultural Research Center, Beltsville, MD 20705. This notice included a summary of the petition prepared by the petitioner United States Department of Agriculture. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(d) be amended by establishing an exemption from the requirement of a tolerance for residues of cucurbitacins derived from the Hawkesbury melon *Citrullus lanatus*. The petitioner noted that the Agency had previously established exemptions from the requirement of a tolerance for the use of buffalo gourd and zucchini juice, as sources of the inert ingredient cucurbitacin (57 FR 40128, September 2, 1992 and 63 FR 43085, August 12, 1998), and is seeking to add the Hawkesbury melon *Citrullus lanatus* as an additional source of cucurbitacins.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *"

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by cucurbitacins are discussed in this unit.

The Agency in a previous **Federal Register** notice reviewed mammalian toxicity data submitted on zucchini juice and buffalo gourd root powder as part of the establishment of an exemption from the requirement of a tolerance for residues of zucchini juice when used as an alternative source of the inert ingredient gustatory stimulant cucurbitacin (63 FR 43085). A summary of the comparative toxicology data showed a more favorable toxicological profile for the zucchini juice, as compared to the buffalo gourd root powder, as a cucurbit source of cucurbitacins. Zucchini juice was shown to be practically non-toxic to mammals. The acute oral, acute dermal, acute inhalation, primary eye, and skin irritation were all toxicity category IV. No acute systemic toxicity, irritation or dermal sensitization was exhibited in the studies performed with the zucchini juice.

Due to the low levels of cucurbitacins used in the field no acute effects are expected to occur. In addition, due to their rapid degradation, no chronic effects are expected to occur. Neither cucurbitacins nor their metabolites are known or expected to have any effect on the immune or the endocrine systems. These chemicals are not known to be carcinogenic.

According to information supplied by USDA, the Hawkesbury watermelon contains cucurbitacin E-glycoside at levels in the same order of magnitude those found in buffalo gourd root powder, 0.76 milligrams (mg) cucurbitacin E-glycoside/grams (gm) of melon compared to 0.59 mg cucurbitacin E-glycoside/gm of root powder. The Hawkesbury melon does not contain cucurbitacin I. Cucurbitacin I is considered to be more toxic than cucurbitacin E-glycoside (LD_{50} of 40 milligrams/kilograms (mg/kg) to 5 mg/kg). Thus, Hawkesbury melon is also likely to exhibit lower toxicity than buffalo gourd root powder, providing an additional margin of safety.

IV. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other nonoccupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

A. Dietary Exposure

Species of the family *Cucurbitaceae*, such as melons, pumpkins and squash, are commonly used as fruits and vegetables throughout the world, they are naturally occurring and widely available. Seeds of several species are used as sources of flavorings in bakery goods or for oils and proteins. All of these species contain some assortment of naturally occurring cucurbitacins in varying concentrations.

1. *Food.* In the **Federal Register** notice published on August 12, 1998 (63 FR 43085), the Agency reviewed available data on the dietary exposure to cucurbitacins. The use to control corn rootworm is given as an example. Assuming that the maximum permitted level of 3.4 gm/acre/season is applied, with no loss either in the field or during processing, and that all the material is concentrated in the grain, the following exposure would result. The average yield of corn in the United States is 120–130 bushels per acre. At 56 pounds of corn per bushel, the minimum yield is 6,720 pounds per acre and the level of cucurbitacin would be 0.000506 grams of cucurbitacin per pound of corn. A gram of "straightneck" squash contains 0.00139 grams of cucurbitacin. Thus, even under these worst case assumptions, consumption of a pound of treated corn would add less cucurbitacin to the diet than a gram serving of squash. At the allowable rate of application the proposed use of these compounds as inert ingredients would result in a negligible increase in exposure to cucurbitacins over those levels which would occur naturally as the result of ingestion of various cucurbit commodities.

2. *Drinking water exposure.* The Agency review cited in the August 12, 1998, **Federal Register** notice, established that most cucurbitacins are insoluble in water and transfer of these cucurbitacins to ground water is unlikely. The more water soluble glycosylated forms of cucurbitacins are less toxic to humans. No uses are registered for application to bodies of water.

B. Other Non-Occupational Exposure

There are no cucurbitacin-containing products with residential uses as all uses are for agricultural crop production only.

V. Cumulative Effects

Section 408 (b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify or revoke a tolerance or tolerance exemption, the Agency consider "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." The Agency has not made any conclusions as to whether or not cucurbitacins share a common mechanism of toxicity with other chemicals. However, the Hawkesbury melon juice is expected to be practically non toxic to mammals. Due to the expected lack of toxicity, a cumulative risk assessment is not necessary.

VI. Determination of Safety for U.S. Population, Infants and Children

Cucurbitacins are present in varying amounts in many plants regularly consumed by the general public, such as squash, gourds and watermelon. Information available to the Agency indicates that the maximum projected additional exposure to these compounds is significantly less than that from a normal serving of these plants, as previously discussed in section IV(A)(1). The residual amount of cucurbitacins in a pound of corn, for example, is an order of magnitude less than the naturally occurring levels of these substances in a single serving of squash. Dietary exposure to —

cucurbitacins through food is not likely to significantly increase due to their use as inert ingredients applied to agricultural commodities. These chemicals are not likely to be found in water. In addition, the use sites of the cucurbitacins are all agricultural for the control of Diabriticine beetles (corn rootworm and cucumber beetles). Therefore, non-dietary exposure to infants and children is not expected.

The Agency had previously established in the **Federal Register** notice published on August 12, 1998 (63 FR 43085) that cucurbitacins contained in zucchini juice were practically non toxic to mammals. Cucurbitacins in Hawkesbury melon are expected to be of similar toxicity. Because of this, the Agency did not use the safety factor analysis in evaluating the risk posed by the compound. This lack of toxicity also supported not applying an additional tenfold safety factor to protect infants and children. In conclusion, the Agency is reasonaly certain that no harm will result to infants and children, or to the general population from a minimally increased exposure to residues of cucurbitacins. Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues. Accordingly, EPA finds that exempting cucurbitacin residues from the requirement of a tolerance will be safe.

VII. Other Considerations

A. Endocrine Disruptors

FQPA requires EPA to develop a screening program to determine whether certain substances, including pesticides and inert ingredients, "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect...." The Agency has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing the inert ingredient cucurbitacin for endocrine effects may be required. At this moment, there is no evidence that cucurbitacins are endocrine disruptors.

B. Analytical Method(s)

The Agency is establishing an exemption from the requirement of a tolerance without any change in the previously established limits of no more than 2.5 pounds/acre/season (3.4 grams cucurbitacin/acre/season). Therefore, the Agency has concluded that an analytical method is not required for enforcement purposes of cucurbitacins from the Hawkesbury melon.

C. Existing Tolerances

Prior EPA findings include a temporary exemption for the requirements of a tolerance for residues of the buffalo gourd, *Cucurbita foetidissima*, root powder as a source of cucurbitacins in or on the raw agricultural commodity fields corn for the control of adult corn rootworms (55 FR 49700, November 30, 1990). In addition, the Agency established a permanent exemption from the requirement of a tolerance for the residues of buffalo gourd root powder when used as an inert ingredient (gustatory stimulant) in pesticide formulations applied to growing crops only (57 FR 40128, September 2, 1992). In 1998, the Agency amended the permanent exemption from the requirement of a tolerance to add the residues of zucchini juice, Cucurbita pepo, to the list of inert ingredients (63 FR 43085, August 12, 1998).

D. International Tolerances

There are no international tolerances or tolerance exemptions for cucurbitacins.

E. Conclusion

Therefore, based on the information and the data considered, as well as previous tolerance exemptions granted to cucurbitacins from buffalo gourd root powder and zucchini juice, EPA is establishing an exemption from the requirement of a tolerance for residues of cucurbitacins from the Hawkesbury melon.

VIII. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need To Do To File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300965 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 22, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300965, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

IX. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19,1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

X. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register.** This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 7, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 371.

2. In § 180.1001, the table in paragraph (d), is amended by adding "or Hawkesbury melon *Citrullus lanatus*" to the end of the entry for "Buffalo gourd root powder" to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance

* * * * *

(d)* * *

Inert Ingredients	Limits	Uses
* * * * * * *		
Buffalo gourd root powder (*Cucurbita foetidissima* root powder), Zucchini juice (Cucur bita pepo juice) or Hawkesbury melon *Citrullus lanatus.*	* * * * * *	
* * * * * * *		

* * * * *

[FR Doc. 00–6863 Filed 3–21–00; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

42 CFR Part 121

Organ Procurement and Transplantation Network; Response to Comment Period

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Final rule; response to comments.

SUMMARY: Section 413 of the Ticket to Work and Work Incentives Improvement Act of 1999, signed into law by the President on December 17, 1999, provided that the Organ Procurement and Transplantation Network (OPTN) Final Rule published on April 2, 1998, together with the amendments published on October 20, 1999, was not to become effective before March 16, 2000. The Department published a notice in the **Federal Register** on December 21, 1999, announcing the stay of the Final Rule and informing the public of the opportunity to submit comments on the Final Rule, as amended, for a 60-day period. After considering the comments submitted, the Department has determined that no further amendments to the Final Rule are warranted at this time.

DATES: The Final Rule published on April 2, 1998 (63 FR 16296) and amended on October 20, 1999 (64 FR 56650) became effective on March 16, 2000.

FOR FURTHER INFORMATION CONTACT: Lynn Rothberg Wegman, Director, Division of Transplantation, Office of Special Programs, HRSA, 5600 Fishers Lane, Room 7C–22, Rockville, Maryland 20857. Telephone: 301–443–7577.

SUPPLEMENTARY INFORMATION: In response to the **Federal Register** notice of December 21, 1999 (64 FR 71626), the Department received 2,561 public comments. Of these, 2,205 were form letters. All of the form letters and a majority of the individual comments opposed some provisions of the Final Rule. However, after reviewing these comments, the Department has concluded that the comments raised no significant issues not addressed previously in the history of this rulemaking. Indeed, the comments raised issues which were addressed in the amendments published on October 20, 1999 (64 FR 56650), and in explanatory language in the preamble to those amendments.

For these reasons, the Department has determined that no further amendments to the Final Rule are warranted by the most recent public comments at this time.

Dated: March 17, 2000.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

Approved: March 17, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–7177 Filed 3–20–00; 12:19 pm]

BILLING CODE 4160–15–P

FEDERAL MARITIME COMMISSION

46 CFR Part 515

[Docket No. 99–23]

In the Matter of a Single Individual Contemporaneously Acting as the Qualifying Individual for Both an Ocean Freight Forwarder and a Non-Vessel-Operating Common Carrier

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission amends its regulations pertaining to the licensing requirements of ocean transportation intermediaries in accordance with the Shipping Act of 1984, as amended by The Ocean Shipping Reform Act of 1998. We are also republishing a certification process pertaining to drug convictions that was previously omitted.

DATES: This rule becomes effective March 22, 2000.

FOR FURTHER INFORMATION CONTACT:
Sandra L. Kusumoto, Director, Bureau of Consumer Complaints and Licensing, Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573–0001; (202) 523–5788
Thomas Panebianco, General Counsel, Federal Maritime Commission, 800 North Capitol St., NW, Washington, DC 20573–0001; (202) 523–5740

SUPPLEMENTARY INFORMATION: On February 14, 2000, the Federal Maritime Commission ("FMC" or "Commission") published a proposed rule to amend 46 CFR 515.11(c) to allow affiliated companies to have the same qualifying individual to obtain a license under this part. 65 FR 7335. The proceeding was initiated in response to a petition filed with the Commission by the National Customs Brokers & Forwarders Association of America ("NCBFAA") which sought the issuance of a declaratory order confirming, pursuant to 46 CFR 515.11(c) (1999), that a single individual can act contemporaneously as the qualifying individual for both an ocean freight forwarder and a non-vessel-operating common carrier ("NVOCC"), as long as they are affiliated entities. In the alternative, NCBFAA sought a rulemaking to amend § 515.11(c) to achieve the same result. As discussed in the notice of proposed rulemaking, the Commission denied NCBFAA's petition for a declaratory order, and opted to address its concerns through a rulemaking.

Although not addressed in NCBFAA's petition, the Commission also proposed to amend the definition of "branch office" at 46 CFR 515.2(c), by removing the last sentence of the definition, which states that the term does not include a separately incorporated branch office. We explained that the Commission has recognized separately incorporated branch offices elsewhere in part 515, particularly with respect to the licensing and financial responsibility requirements, and that the proposed modification should remove any potential confusion.

Finally, we noted that in promulgating the rules to implement the Ocean Shipping Reform Act of 1998, Pub. L. 105–258, 112 Stat. 1902, in Docket No. 98–28, *Licensing, Financial Responsibility Requirements and General Duties for Ocean*

Transportation Intermediaries, we inadvertently failed to carry over § 510.12(a)(2) into part 515. That section was a certification process to effect the requirements of 21 U.S.C. 862, which provides that Federal benefits shall be withheld in certain circumstances from individuals who have been convicted of drug distribution or possession in Federal or state courts.

For the reasons set forth below, the Commission adopts the rules as proposed.

First, the Commission received one comment in response to the notice of proposed rulemaking from NCBFAA, who finds the Commission's proposal to amend § 515.11(c) sufficiently broad to remedy and eliminate the problems identified by NCBFAA in its petition. In addition, NCBFAA notes that it agrees with the Commission that the proposal will reduce unnecessary regulatory burdens and provide savings to those companies that would have been otherwise forced to modify their business structures. NCBFAA asserts that the proposal will not serve to diminish the professionalism and responsibility of ocean transportation intermediaries ("OTIs"), because the entities will be supervised by a person possessing the requisite expertise in accordance with the Commission's licensing requirements. Finally, NCBFAA declares that it fully supports the proposal, believing it to be in the public interest, and requests that the Commission issue a final rule in the proposed form at the earliest date.

We appreciate NCBFAA's comments and accordingly adopt as final the amendment to § 515.11(c).

In addition, no comments were submitted with respect to either the proposed modification to the definition of branch office or the republication of the certification required by 21 U.S.C. 862. Therefore, the proposed modifications are carried forward in the final rule.

Final Regulatory Flexibility Analysis

Need for and Objective of the Rule

In response to a petition filed by the NCBFAA, the FMC is amending 46 CFR 515.11(c) to allow affiliated ocean freight forwarder and NVOCC entities to have the same qualifying individual in order to obtain a license under this part.

Summary of the Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analysis

No public comments were received in response to the initial regulatory flexibility analysis.

Description and an Estimate of the Number of Small Businesses to Which the Rule Will Apply

The Commission believes that the final rule will benefit OTIs by allowing affiliated ocean freight forwarders and NVOCCs to have the same qualifying individual in order to obtain a license under this part. At present, there are approximately 600 OTIs with affiliated ocean freight forwarder and NVOCC operations affected by the proposed rulemaking, including approximately 20 sole proprietorships.

Entities affected by the current rule, particularly sole proprietorships, could have been required to modify their existing business structures, either by: (1) Merging their affiliated ocean freight forwarder and NVOCC operations; (2) creating a branch office; or (3) hiring another qualifying individual to oversee their operations. However, the Commission's Bureau of Consumer Complaints and Licensing (formerly the Bureau of Tariffs, Certification and Licensing) has refrained from denying licenses on this basis pending the conclusion of this proceeding.

Description of the Projected Reporting, Recordkeeping and Other Compliance Requirements of the Rule, Including an Estimate of the Classes of Small Entities That Will Be Subject to the Requirement and the Types of Professional Skills Necessary for the Preparation of the Report or Record

The Commission is not aware of any additional reporting, recordkeeping or other compliance requirements as a result of the proposed rulemaking. Rather, the Commission believes that the impact of the new rule will be primarily to benefit sole proprietorship OTIs by permitting affiliated entities to have the same qualifying individual to satisfy the licensing requirements of this part.

The benefit of the final rulemaking can be measured primarily as the savings to sole proprietorships of not having to modify their business structures as described above. Moreover, it will benefit corporations and partnerships with affiliated freight forwarder and NVOCC operations by giving them greater flexibility in selecting a single qualifying individual for both organizations. However, it is not feasible to specifically quantify these benefits because individual OTI operations vary dramatically in scope and overhead.

The Chairman cannot certify that the final rulemaking will not have a significant economic impact on a substantial number of small entities. However, the Commission believes that the new rule will have no adverse impact on small entities, and further, that the impact will be to benefit OTIs by allowing affiliated entities to have the same qualifying individual to obtain an OTI license.

Steps the FMC Has Taken To Minimize the Significant Economic Impact on Small Entities Consistent With the Stated Objectives of Applicable Statutes, Including a Statement of the Factual, Policy and Legal Reasons for Selecting the Alternative in the Final Rule, and the Reasons for Rejecting Each of the Other Significant Alternatives

The Commission invited comments to the initial regulatory flexibility analysis from all interested parties. However, as stated above, no public comments were received in response to the initial regulatory flexibility analysis. The Commission believes that the only significant impact of the rulemaking will be to benefit OTIs by allowing affiliated ocean freight forwarders and NVOCCs to have the same qualifying individual.

The modifications to the proposed rule, the reasons for selecting alternative approaches, and the reasons for rejecting initial proposals, if any, are each thoroughly described in the Supplementary Information to the final rule.

Relevant Federal Rules That May Duplicate, Overlap, or Conflict With the New Rule

The Commission is not aware of any other federal rules that duplicate, overlap, or conflict with the final rulemaking.

List of Subjects in 46 CFR Part 515

Exports, Freight forwarders, Non-vessel-operating common carriers, Ocean transportation intermediaries, Licensing requirements, Financial responsibility requirements, Reports and recordkeeping requirements.

For the reasons stated in the preamble, the Federal Maritime Commission amends 46 CFR chapter IV, subchapter B, as set forth below:

PART 515—LICENSING, FINANCIAL RESPONSIBILITY REQUIREMENTS, AND GENERAL DUTIES OF OCEAN TRANSPORTATION INTERMEDIARIES

1. The authority citation is amended to read as follows:

Authority: 5 U.S.C. 553; 31 U.S.C. 9701; 46 U.S.C. app. 1702, 1707, 1709, 1710, 1712, 1714, 1716, and 1718; Pub. L. 105–383, 112 Stat. 3411; 21 U.S.C. 862.

2. In § 515.2, revise paragraph (c) to read as follows:

§ 515.2 Definitions.

* * * * *

(c) Branch office means any office in the United States established by or maintained by or under the control of a licensee for the purpose of rendering intermediary services, which office is located at an address different from that of the licensee's designated home office.

* * * * *

3. In § 515.11, revise paragraph (c) to read as follows:

§ 515.11 Basic requirements for licensing; eligibility.

* * * * *

(c) *Affiliates of intermediaries.* An independently qualified applicant may be granted a separate license to carry on the business of providing ocean transportation intermediary services even though it is associated with, under common control with, or otherwise related to another ocean transportation intermediary through stock ownership or common directors or officers, if such applicant submits: a separate application and fee, and a valid instrument of financial responsibility in the form and amount prescribed under § 515.21. The qualifying individual of one active licensee shall not also be designated as the qualifying individual of an applicant for another ocean transportation intermediary license, unless both entities are commonly owned or where one directly controls the other.

* * * * *

4. In § 515.12, revise paragraph (a) to read as follows:

§ 515.12 Application for license.

(a) Application and forms.

(1) Any person who wishes to obtain a license to operate as an ocean transportation intermediary shall submit, in duplicate, to the Director of the Commission's Bureau of Tariffs, Certification and Licensing, a completed application Form FMC–18 Rev. ("Application for a License as an Ocean Transportation Intermediary") accompanied by the fee required under § 515.5(b). All applicants will be assigned an application number, and each applicant will be notified of the number assigned to its application. Notice of filing of such application shall be published in the **Federal Register** and shall state the name and address of the applicant and the name and address of the qualifying individual. If the applicant is a corporation or partnership, the names of the officers or partners thereof shall be published.

(2) An individual who is applying for a license in his or her own name must complete the following certification:

I, _____ (Name), _____, certify under penalty of perjury under the laws of the United States, that I have not been convicted, after September 1, 1989, of any Federal or state offense involving the distribution or possession of a controlled substance, or that if I have been so convicted, I am not ineligible to receive Federal benefits, either by court order or operation of law, pursuant to 21 U.S.C. 862.

* * * * *

By the Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–7097 Filed 3–21–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–2000–7051]

RIN 2127–AG 77

Anthropomorphic Test Devices; 3-Year-Old Child Crash Test Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document amends our regulation for Anthropomorphic Test Devices by adding a new, more advanced 3-year-old child dummy. The new dummy, part of the family of Hybrid III test dummies, is more representative of humans than the existing Subpart C 3-year-old child dummy in our regulation. Adding the dummy to our regulation is a step toward using the dummy in the tests we conduct to determine compliance with our safety standards. The use of the dummy in our compliance tests will be addressed in separate rulemaking proceedings.

DATES: The amendment is effective on May 22, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 22, 2000.

Petitions for reconsideration of the final rule must be received by May 8, 2000.

ADDRESSES: Petitions for reconsideration should refer to the docket number of this document and be submitted to: Administrator, Room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Stan Backaitis, Office of Crashworthiness Standards (telephone: 202–366–4912). For legal issues: Deirdre R. Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION: This document amends our regulation for Anthropomorphic Test Devices (49 CFR part 572) by adding a new, more advanced 3-year-old child dummy. The new dummy, part of the family of Hybrid III test dummies, is more representative of humans than the existing 3-year-old child test dummy in part 572, and allows the assessment of the potential for more types of injuries in automotive crashes. The new dummy can be used to evaluate the effects of air bag deployment on out-of-position children, and can provide a fuller evaluation of the performance of child restraint systems in protecting young children.

NHTSA has already specified a number of child test dummies in part 572, including a 3-year-old child dummy (the specifications for which are set forth in subpart C of part 572). That dummy, along with dummies representing a newborn infant, a 9-month-old and a 6-year-old child, are used to test child restraint systems to the requirements of Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213). These test devices enable NHTSA to evaluate motor vehicle safety systems dynamically, in a manner that is both measurable and repeatable.

Today's final rule is part of NHTSA's effort to add improved child test dummies in part 572. We recently amended part 572 to add a new, more advanced, Hybrid III type 6-year-old child test dummy. We will soon issue a final rule adding a 12-month-old (CRABI 12) child test dummy. Together with the dummy adopted today, the new child test dummies would be used in tests we have proposed in our occupant crash protection standard (49 CFR 571.208) to assess the risks of air bag deployment for children, particularly unrestrained or improperly restrained children. The new child test dummies could also be incorporated into Standard No. 213 for use in compliance testing of child restraint systems. (Today's final rule only concerns adding the new 3-year-old test dummy to part 572. Issues relating to whether this or the other new dummies should be incorporated into the compliance tests for Standards Nos. 208 or 213, or into other standards, will be decided in separate rulemaking actions.)

Summary of Final Rule

The specifications for the Hybrid III type 3-year-old test dummy (hereinafter referred to as the H–III3C dummy) consist of a drawing package that shows the component parts, the subassemblies, and the assembly of the complete dummy. The drawing package also defines materials and material treatment processes for all the dummy's component parts, and specifies the dummy's instrumentation and instrument installation methods. In addition, there is a manual containing disassembly, inspection, and assembly procedures, and a dummy parts list. These drawings and specifications ensure that the dummies will vary little from each other in their construction and are capable of consistent and repeatable response in the impact environment. The parts list and drawings are available for inspection in NHTSA's docket (room 5220, 400 Seventh St., SW., Washington, DC 20590, telephone (202) 366–4949). (We are using NHTSA's docket because the drawings cannot be electronically scanned into the DOT Docket Management System.) Copies may also be obtained from Reprographic Technologies, 9000 Virginia Manor Road, Beltsville, MD 20705; Telephone: (301) 210–5600.

NHTSA is specifying impact performance criteria to serve as calibration checks and to further assure the kinematic uniformity of the dummy and the absence of structural damage and functional deficiency from previous use. The tests address head, neck, and thorax impact responses and assess the resistance of the lumbar spine-abdomen region to upper torso flexion motion.

The agency has adopted generic specifications for all of the dummy-based sensors. For most earlier dummies, the agency specified sensors by make and model. However, we believe that approach is unnecessarily restrictive and limits innovation and competition. Accordingly, the specifications adopted today reflect performance characteristics of the sensors used in our evaluation tests of the dummy, that are identified by make and model in a NHTSA technical report "Development and Evaluation of the Hybrid III 3-year-old Child Dummy" (December 1998). A copy of this report is in the docket for the notice of proposed rulemaking that we published for this final rule (Docket No. 99–5032). Those sensor characteristics were also the basis for our discussions with a special task force of the Society of Automotive Engineers (SAE) J–211 Instrumentation Committee concerning our work on the dummy.

Background

The need for the H–III3C dummy arose as it became evident that air bags posed risks for out-of-position children. Experience in using the existing 3-year-old dummy in part 572 (Subpart C) showed it to be adequate for the purpose of evaluating the ability of child restraints to protect against the risk of injury under the test conditions specified by Standard No. 213. However, that dummy's injury assessment is limited to head and chest measurements; it is not adequate for evaluating the safety of an air bag environment.

For example, neck injury is one of the primary causes of air bag-related fatalities to out-of-position children. Thus, to evaluate the effects of air bag deployment, a dummy must have a high degree of biofidelity in kinematics and impact responses during neck flexion and extension. However, because the neck of the existing dummy does not have a multi-segment design, it has limited biofidelity in these areas.

By contrast, the more advanced H–III3C dummy provides a more human-like impact response than the existing 3-year-old child dummy, as well as a broader selection of instruments to assess the injury potential to child occupants. Of particular significance are the multi-segmented neck, multi-rib thorax, and the ability to monitor submarining tendencies that could be related to abdominal loading. Because of the greater biofidelity and extended measurement capability of the H–III3C dummy, it can be used to evaluate the safety of children in a much wider array of environments than the existing dummy, including assessing the effects of air bag deployment on out-of-position children.

The H–III3C dummy is part of a family of Hybrid III-type dummies. The first Hybrid III dummy was a 50th percentile male dummy. NHTSA has specified use of this dummy for compliance testing under Standard No. 208, *Occupant Crash Protection,* since 1986, initially for optional use, and more recently on a mandatory basis. The need for a family of Hybrid III-type dummies, having considerably improved biofidelity and anthropometry, was recognized by the Centers for Disease Control and Prevention (CDC) in 1987 when it awarded a contract to Ohio State University under the title "Development for Multi-sized Hybrid III Based Dummy Family." At that time, the funding covered only the development of dummies representing a small female adult and a large male adult. Development of a Hybrid III 3-year-old dummy began in 1992 when the SAE Small Female, Large Male and Six-Year-Old Child Dummies Task Group [1] identified a need for a new dummy equipped with sufficient instrumentation capable of assessing a child's interaction with both air bags and child restraints. The task group noted that the dummy should be suitable for use in sitting, kneeling and standing postures. After a preliminary design was conceived and reviewed, a prototype dummy was developed and evaluated by the task group from 1995 to 1997.

In May 1997, NHTSA initiated a thorough test and evaluation program of the dummy. On completion of our evaluation in the fall of 1998, we tentatively concluded that it was ready for incorporation into part 572. On January 28, 1999, we published an NPRM proposing to incorporate the H–III3C dummy into part 572 as subpart P, and invited comments (64 FR 4385).

Comments on the NPRM

We received comments from eight organizations: Robert A. Denton, Inc. (Denton), General Motors North America (GM), Advocates for Highway and Auto Safety (Advocates), Toyota Motor Corporation (Toyota), National Transportation Safety Board (NTSB), Mitsubishi Motors R & D of America, Inc. (Mitsubishi), the Alliance of Automobile Manufacturers (Alliance), and the SAE Dummy Testing Equipment Subcommittee (SAE).

No commenter opposed adding the H–III3C dummy to part 572. Advocates, Toyota and NTSB expressly supported the incorporation of the H–III3C test dummy. GM, based on its experience with the H–III3C dummy, believes the test dummy is generally suitable for use in crash testing. GM supported the proposal with suggested changes to correct or clarify various specifications in the NPRM for the dummy.[2] Denton (which manufactures load cells used in crash dummies), Mitsubishi and Toyota also had technical comments on various aspects of the proposal. In general, commenters addressed the following issues: calibration procedures and

[1] The task group has been renamed the "Hybrid III Dummy Family Task Group". Minutes of the task groups meetings are available for review in the NHTS docket (Docket no. NHTSA98–4283)

[2] The Alliance's comment consisted of a letter fully endorsing the docket comments submitted by GM.

specifications for the head, neck flexion and extension, thorax, and torso flexion; instrumentation specifications; dimensional changes to dummy drawings; and the dummy's user's manual.

Calibration Procedures and Specifications

Head

For calibration, the agency proposed a head drop test in which the head response must not be less than 250 g or more than 280 g. The only comment we received on the proposed corridor was from GM, which agrees with it. The commenter states that the corridor is consistent with available data reviewed by the SAE. In view of the comment received, we have adopted the corridor as proposed in the NPRM.

In the proposed head drop test, the head assembly is suspended for forehead impact from a specified height at an angle of 62±1 degrees between plane D (*i.e.*, the reference surface plane of the head) and the plane of the impact surface. Mitsubishi said that the H–III3C dummy's head is smaller than that of the 50th percentile dummy and thus the surface defining plane D on the neck load mass simulator is too small to correctly insert an angle meter. The commenter states that this makes it very difficult to set up the angle between the lower surface plane of the neck load mass simulator and the plane of impact surface to the required 62±1 degrees. Mitsubishi feels that the angle for the head drop test can be more easily determined and set if an angle of 28 degrees is taken from the transverse plane of the skull cap to skull interface with the skull cap removed. Mitsubishi also recommends using a concave shaped setting jig to hold the dummy head when the angle is measured.

We agree with Mitsubishi's observation that in the head test procedure, it would be easier to set the head orientation relative to the skull/skull cap interface. However, we believe it would be more convenient for test purposes to establish a reference "D plane" perpendicular to the skull/skull cap interface. This is because we could use the same "D plane" definition for head drop tests and neck pendulum tests in which a headform is used. Further, it is the same D plane definition as used for Hybrid III 6-year-old child and 5th percentile female adult test dummies. As the "D plane" is defined to be perpendicular to the skull/skull cap interface, there would not be a need to remove the skull cap or to use a setting jig. With respect to Mitsubishi's suggestion to use a concave-shaped setting jig to hold the head while the angle is set, we do not see a need for requiring such a tool. However, we would not object to its use as long as the final setup of the head orientation does not change once the jig is removed and the skull cap is reattached.

Neck Flexion and Extension

For calibration, the agency proposed a pendulum-mounted headform-neck assembly impact test and corresponding neck flexion and extension performance requirements.

For flexion:

(1) Plane D of the headform must rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline not less than 70 degrees and not more than 82 degrees occurring between 45 milliseconds (ms) and 60 ms from time zero, and (2) the peak moment about the occipital condyles must not be less than 44 Newton meters (N-m) and not more than 56 N-m occurring within the minimum and maximum rotation interval and (3) the positive moment shall decay for the first time to 10 N-m in the time frame between 60 ms and 80 ms.

For extension:

(1) Plane D of the headform must rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline not less than 80 degrees and not more than 90 degrees occurring between 50 ms and 65 ms from time zero, and (2) the peak negative moment about the occipital condyles must have a value not less than −42 N-m and not more than −53 N-m occurring within the minimum and maximum rotation interval and the negative moment shall decay for the first time to −10 N-m in the time frame between 60 and 80 ms.

The regulatory text proposed for the H–III3C dummy states in § 572.143(c)(3)(i), "The moment and rotation data channels are defined to be zero when the longitudinal centerline of the neck and pendulum are parallel." Section 572.143(c)(4)(i) states that time-zero is defined as the time of initial contact between the pendulum striker plate and the honeycomb material. The pendulum accelerometer data channel shall be at the zero level at this time.

Toyota suggests that all data channels for the neck extension and flexion tests be at the zero level at time zero, rather than only the pendulum accelerometer data channel. We disagree. Our tests indicate that the H–III3C dummy neck is much more flexible than those of the Hybrid III 6-year-old and 5th percentile female adult dummies. As a result, the head-neck complex of the H–III3C dummy experiences some pre-impact kinematic lag as the inclined pendulum accelerates downward towards the vertical. If all data channels, including rotation and moment channels, were made zero at impact, as Toyota suggests, the pre-impact neck rotation lag would not be accounted for in the total rotation of the neck, which would not be in line with the method by which biomechanical corridors were established.

The neck biomechanical response corridors were based on "flexion" and "extension," or forward and backward bending of the neck, respectively, due to inertial forces of the head from its neutral position. In order to measure true flexion and extension during calibration tests, the zero level of the data channels must be established prior to initiation of the drop test, when the longitudinal centerline of the neck and pendulum are parallel with respect to each other, *i.e.*, when the pendulum hangs down in a vertical position. With regard to the pendulum accelerometer data channel, that channel must be zeroed at time zero in order to get the correct integrated velocity curve from which the velocity pulse readings are taken at specific time intervals. Accordingly, as proposed in the NPRM, the final rule will retain the time zero setting procedure for the pendulum data channel, but not for the neck channels.

Neck Flexion

GM states that according to SAE-compiled data from necks produced by First Technology Safety Systems (FTSS), a dummy manufacturer, we should adjust the peak moment corridor from the proposed 44–56 N-m range to 40–53 N-m. The proposed range was based on an average of 50 N-m, while the suggested adjusted corridor is based on an average of 46.5 N-m. GM agrees with the rest of the neck flexion performance requirements and the pendulum pulse specifications in NPRM.

We agree that the corridor should be adjusted, but not to the extent suggested by GM. Our analysis of the recommended corridor for the neck flexion moment, based on a complete database consisting of all data submitted by the SAE and additional test data from NHTSA's Vehicle Research and Test Center, indicates that the average peak moment is at 46.6 N-m with a standard deviation (s.d.) of 3.3. Two standard deviations about the mean yield a corridor width of ±14.2%. While GM is correct that narrowed calibration corridors reduce the probability that a complying test dummy can be produced, a wide corridor of this magnitude could permit the manufacture of necks with a degree of variability that could complicate enforcement efforts. It is accepted practice in the biomechanics community to judge the adequacy of a component's variability in subsystems tests as 0–5% being in the excellent range, 5–8% good, 8–10 % marginally acceptable and above 10% not acceptable. The values proposed by GM would lie outside the acceptable range of variability. Using the 10% value as the maximum allowable variability, we are revising the corridor for neck flexion to a value of 42 N-m minimum and 53 N-m maximum. The above specification will have minimal effects on dummy users, but dummy manufacturers will have to produce necks to lower levels of variability than is indicated in test data generated by dummy manufacturer FTSS. Because FTSS has produced necks with a lower variability, achieving the range is practicable.

Neck Extension

GM notes that SAE compiled data suggest a need to shift the peak rotation corridor in extension from 80–90 degrees to 83–93 degrees. This suggested revision does not increase the width of the corridor proposed in the NPRM, but raises the mean value from 85 degrees to 88 degrees. Also, GM believes that the data indicate a need to widen the peak negative extension moment corridor from the range of −42 N-m to −53 N-m to a range of −41 N-m to −56 N-m as a reflection of a slightly larger spread of the SAE data base. The revised peak moment corridor has nearly the same average (–48 N-m), but is 4% larger in spread than that proposed in the NPRM (15.5% vs. 11.5%). GM agrees with the rest of the neck extension performance corridor requirements and pendulum pulse specifications in NPRM.

We have examined all of the available extension calibration data. The data indicate that the mean peak rotation is 88 degrees with a s.d. at ±2.2. degrees. Accordingly, we agree with GM that the peak rotation corridor should be adjusted to the recommended 83–93 degrees range. As for peak negative moment, we agree with GM's recommended mean value of −48.5 N-m but do not agree with the recommended corridor range of ±15.5%. The available data yields a s.d. of 3.7 which corresponds to the ±15% response corridor at 2 s.d. As explained above in the discussion of neck flexion requirements, the desirable dispersion range for consistency in repeatability should be below 8%, but should not exceed 10%. Applying the 10% limit value yields a peak force response corridor between −43.7 N-m and −53.3 N-m. The revised range is particularly important to assure that the variability of the critical extension moment is not the cause of contention in vehicle compliance tests. As noted in the above discussion, improvements in quality control of necks in production would achieve the desired repeatability in response.

Neck-Headform Flexion/Extension Rotation

The NPRM proposed headform rotation versus time requirements in flexion and extension, in 572.143(b)(1)(i) and 572.143(b)(2)(i), that were identical to the requirements for the existing 3-year-old child dummy specified in subpart C. When the Subpart C dummy was adopted into part 572 in 1979, a means of measuring the peak moment of the neck was not available, so the rotation-displacement specifications were needed. Since 1979, however, the moment-measuring load cell became available for this purpose. With the use of a six-axis load cell on the H–III3C dummy, the timing of the peak moment can be measured and more precisely expressed than when using a headform rotation plot. We believe that specifying a minimum-maximum peak moment within a maximum headform rotation window is sufficient to control the dynamic properties of the neck (to control head kinematics) without having also headform rotation in time requirements. A six-axis load cell simplifies the procedure and removes the need for a redundant requirement for measuring head translation/rotation versus time characteristics.

Accordingly, this final rule does not adopt proposed sections 572.143(b)(1)(i) and 572.143(b)(2)(i) of the NPRM.

Thorax

For calibration, the agency proposed the following impactor probe test and performance requirements: (1) The maximum sternum displacement relative to the spine must be not less than 32 mm and not more than 38 mm, and (2) during this displacement interval, the peak force measured by the probe must be not less than 600 N and not more than 800 N.

Mitsubishi is concerned about the NPRM's lack of dimensional tolerance for the 50.8 mm diameter of the thorax impact test probe. The commenter recommends the probe diameter at 50.8±0.25 mm. We have added the suggested dimensional tolerance along with other modifications involving the development of generic specifications for all impactors.

GM indicates agreement with most of the thorax performance requirements and probe specifications in the NPRM, with the exception of the peak force corridor. GM suggests, based on SAE data, that the corridor should be shifted upward from the proposed range of 600–800 N to 650–850 N. GM's suggested corridor is based on an average of 750 N, and therefore its percentage is slightly lower in width (by approximately 1% (13 % vs. 14%)).

We examined all of the thorax impact data available to us, which includes the SAE data supplied in docket comments and our data generated at VRTC. The combined data sets yield an average impact response of 746 N with s.d. of 32 N, indicating that the NPRM corridor needs adjustment in both the mean response value and the corridor's width. The data suggest that the response corridor's width can be set at ±2 s.d. while remaining just above the 8% good to marginal acceptability norm. Accordingly, this final rule adjusts the thorax response corridor to a new range between 680 N minimum and 810 N maximum, which is within but slightly narrower than the response range recommended by GM.

This final rule also adjusts the limit in § 572.144(b)(1) of the NPRM that the peak force measured during the sternum-to-spine displacement interval must not be more than 800 N at any time. In its comment on the NPRM for the Hybrid III 5th percentile female dummy, TRC suggested that an inertial data spike at the beginning of the test should not be subject to this limit. The agency determined that the initial force spike is an artifact of the inertial mass interaction between the impactor and the dummy, has no biomechanical significance, and is not an indicator of a bad rib set. The final rule for the 5th percentile female adult dummy accommodated the existence of the initial data spike by limiting peak force measurements only to a specified sternum displacement after the initial force spike has occurred. Today's final rule for the Hybrid III 3-year-old child dummy uses the same approach in accommodating the initial data spike, and accordingly excludes force data from the first 12.5 mm of sternum compression.

Thus, this final rule limits peak forces that occur in what we term a "transition compression zone" prior to reaching the specified sternum compression corridor limit. The transition compression zone starts at 12.5 mm and ends at 32 mm. We selected 12.5 mm as the beginning of the zone based on available force-compression data which indicate that the initial inertial force spikes occur

between 6 to 8 mm of compression. Thereafter, the force diminishes and does not begin to rise again well after the sternum reaches 12.5 mm of compression.

Unlike the initial force spikes, forces within the transition compression zone should be limited because excessively large force spikes are indicative of deficiencies in the chest structure. Biomechanical response corridors indicate that high peaks in the transition compression zone would not be humanlike and not likely to occur in a well functioning physical spring-mass system, which is representative of the dummy's rib cage. An excessively high peak force occurring in the transition compression zone would indicate a mechanical deficiency within the rib cage structure, even though the peak force requirement within the specified compression corridor is met. Accordingly, an additional upper force peak limit prior to the specified displacement corridor would provide significant assurance that the dummy's rib cage has human-like response and adequate structural integrity. Limiting force peaks in the transition zone is consistent with the specifications for the Hybrid III 6-year-old child and 5th percentile female adult dummies.

We have analyzed the H–III3C dummy's thorax response and found that statistically the peak force of a well-functioning dummy in the transition compression zone could be as high as 860 N. Accordingly, we are including in § 572.144 (b)(1) a 860 N peak force limit for a compression zone bounded between 12.5 mm and 32 mm.

We have also expanded § 572.144(b)(2) to include an explanation of how internal hysteresis of the rib cage is to be measured and included in subsection (c) a more precise description of the clothing that is used on this dummy during the thorax impact test.

Torso

For calibration, the agency proposed the following torso flexion test and performance requirements: (1) When the torso is flexed 45 degrees from vertical by an applied force vector at 62 degrees to 65 degrees from horizontal, the resistance force must not be less than 130 N and not more than 180 N, and (2) upon removal of the force, the upper torso assembly returns to within 10 degrees of its initial position.

Mitsubishi believes the 0.75 kg mass for the loading adapter bracket that holds the torso is proportionally too large considering the dummy's relatively small mass and its soft spine with respect to the larger size Hybrid III dummies. The commenter also believes that a better definition of the loading adapter bracket is needed to avoid possible interference with the dummy during this test. Mitsubishi recommends specifying a ±0.02 kg tolerance to the 0.75 kg weight of the loading adapter bracket.

We agree with Mitsubishi that the mass of the loading bracket should be reduced. In light of the comment, we have reviewed the masses involved in the system that flexes the dummy. As a result of this review, we are revising the specification of mass associated with the pull test to a maximum of 0.70 kg. This mass includes all of the dummy-based attachments and hardware, ⅓ of the pulling wire, and the load cell that is used to measure the pull load. Inasmuch as the same load cell is being used for tests of other size dummies, there is little flexibility to reduce its weight short of designing a new one, which would unnecessarily delay this rulemaking. Because we are specifying a maximum weight for the entire system, test facilities will have some flexibility in selecting the weight of individual components of the system, such as the loading adaptor bracket. Thus, a weight tolerance for the loading adaptor bracket is not needed.

We have clarified section S572.145(c), which specifies the installation of the loading bracket, its design, the attachment of the pulling mechanism and the sequence of applying and releasing of the pull forces. Figure P5 contains considerable additional detail regarding the loading bracket, its installation on the dummy, and alignment of the point of load application with respect to the occipital condyle.

Toyota suggests removal of the upper and lower arms for the calibration test, which is consistent with the procedure for the 50th percentile male dummy in subpart B of part 572. Toyota believes that the applied load will vary due to interference between the lower arm and femur and a flat rigid seating surface. As the mass-moment of the upper body of the dummy will be reduced by the removal of the upper and lower arms, Toyota requests the agency to review the test condition for the load application.

We have reviewed data from our tests and found that the procedure specified in our calibration tests has not generated any interference problems by the arms as Toyota suggests. We do not believe our test procedure will cause the problem described by the commenter. Accordingly, this aspect of the proposed test procedure is unchanged.

Toyota requests that the pull force angle be applied perpendicular to the posterior surface of the spine box, *i.e.*, 45 degrees from the horizontal, rather than at an angle of 62–65 degrees from horizontal. Toyota believes that the applied pull force at the 62–65 degree angle produces not only a flexion moment, but also a compression force on the lumbar spine. Toyota states that applying the force perpendicular to the posterior surface of the spine box is a more reasonable method to evaluate flexion characteristics of the lumbar spine, since it will minimize compression. Toyota notes that the lumbar flexion procedure for the Hybrid III 6-year-old dummy specifies the applied force angle perpendicular to the thoracic spine box instrumentation cavity mating surface.

We do not share Toyota's concern about compression forces on the lumbar spine during the flexion test. The compressive force on the lumbar spine is of little consequence since it is always of the same magnitude from test to test if the dummy conforms to specified pull force requirements. We also note that in any flexion test, compression forces within the lumbar spine are unavoidable. However, in line with Toyota's suggestion, the H–III3C torso flexion calibration procedure has been revised to be consistent with the new Hybrid III 6-year-old child dummy and 5th percentile adult female adult dummy, in that the pulling force is applied perpendicularly to the thoracic spine box instrumentation cavities' rearmost surface. This location does not remove the vertical forces on the lumbar spine as Toyota has suggested, but it does clarify the orientation of the pull force relative to the torso.

Toyota recommends specification of recovery time between repeated tests to enable the dummy skin to recover and thereby increase the likelihood of repeatable calibration tests. The commenter suggests a thirty-minute waiting (recovery) period, to be consistent with specifications in part 572 for the Hybrid III 50th percentile male dummy. We had included a thirty-minute period in the NPRM, see proposed § 572.146(p), and have adopted it in this final rule.

GM objects to the proposed requirement of the torso flexion test as a calibration test. The commenter believes that the dummy's torso flexion performance can be adequately controlled by specifying lumbar spine and abdominal insert designs, and that periodic inspections would be adequate to assure dummy performance rather than a calibration test. GM also states that the proposed injury measurements from out-of-position (OOP) tests with air bags are not expected to be affected by

the lumbar spine-abdomen region of the dummy, because typically in OOP tests maximum loading of the dummy occurs well before gross motion of the upper torso. The commenter also believes that with regard to the use of the dummy in testing child restraint systems, the dummy would be expected to be reasonably well restrained, which would limit the flexion of the upper torso. For these reasons, GM believes the calibration test is not critical for incorporation of the dummy into part 572 and should not be required. Alternatively, GM suggests, if we were to mandate this test, the 10-degree torso return angle requirement should be removed because GM believes it is not needed to evaluate the bending stiffness of the lumbar spine/upper torso assembly.

We disagree with GM that the torso flexion calibration tests should not be required. During a crash test, the dummy's parts interact with each other as a system. This type of interaction can be best controlled or verified by a test that exercises all of the interacting parts. Further, we believe that the dummy's torso flexion stiffness also affects the kinematics of the head, neck, and upper torso with respect to the lower torso. The torso stiffness will thus influence, for example, how far and at what velocity the dummy's head or other parts will move, and will partly determine the orientation of the dummy's upper body half when encountering a deploying air bag. Accordingly, it is important that the torso flexion calibration test for this dummy be included to validate the dummy prior to a dynamic test.

Inasmuch as there were no comments opposing the proposed requirement that the torso's resistance force must be from 130 N to 180 N force when flexed 45 degrees from vertical, we are adopting the proposed specification. We are also adopting the 10-degree torso return angle requirement, as proposed in the NPRM. GM suggests in its comment that "* * * the proposed torso return angle requirement (§ 572.145(b)(2)) (should) be removed, because it is not needed to evaluate the bending stiffness of the lumbar spine/upper torso assembly." We believe there will be a substantial difference in overall torso kinematics between a seated dummy that can and a seated dummy that cannot return its upper torso half from a flexed position to an upright posture, particularly after full flexion has occurred. Without return, the flexion is substantially plastic, while evidence of a specific return would be indicative of the torso mid-section having certain elastic, more human-like properties. Evidence of consistent return would indicate that the forces of restitution are intact, while no or indefinite return would indicate a substantial change within the internal mechanisms of the mid-torso structure, such as failure of the lumbar spine, abdomen, or a substantial shift between interfacing body segments within the abdominal cavity.

Other Issues Relating to Calibration Requirements and Procedures

GM suggests that the specifications for the H–III3C dummy should include a requirement that the dummy must meet calibration specifications following a NHTSA compliance test. The commenter states that part 572 has such a requirement for dummies adopted previously, while the rulemaking proposals on the new Hybrid III 6-year-old, 5th percentile female adult, and on the CRABI 12-month-old infant have not included such a requirement. GM believes that the post-test dummy state of compliance is very important because non-complying compliance test results may be dummy-related. Without post-test dummy verification (calibration), GM claims, no one can determine with reasonable certainty whether a non-compliance is due to a test dummy anomaly or to a real vehicle issue.

We disagree. The pre-test calibration should adequately address the suitability of the dummy for testing. We are concerned that the post-test calibration requirement could handicap and delay our ability to resolve a potential vehicle or motor vehicle equipment test failure solely because the post-test dummy might have experienced a component failure and might no longer conform to all of the specifications. On several occasions during the past few years, a dummy has been damaged during a compliance test such that it could not satisfy all of the post-test calibration requirements. Yet the damage to the dummy at the time it occurred did not affect the dummy's ability to accurately measure the performance requirements of the standard. We are also concerned that the interaction between the vehicle or equipment and the dummy could be directly responsible for the dummy's inability to meet calibration requirements. In such an instance, the failure of the test dummy should not preclude the agency from seeking compliance action. Thus, we conclude that a post-calibration requirement would not be in the public interest, since it could impede our proceeding with a compliance investigation in those cases where the test data indicate that the dummy measurements were not markedly affected by the dummy damage or that some aspect of vehicle or equipment design was responsible for the dummy failure.[3]

Instrumentation

The agency proposed generic specifications for all of the dummy-based sensors, which included—

(1) The accelerometer designated as SA572–S4;
(2) Force and/or moment transducers:
(a) Anterior-superior iliac spine load cell SA572–S17,
(b) Pubic load cell SA572–S18,
(c) Neck SA572–S19,
(d) Lumbar spine SA572–S20,
(e) Shoulder load cell SA572–S21, and
(f) Acetabulum load cell SA572–S22; and
(3) The thorax based chest deflection potentiometer SA572–S50.

Comments on proposed generic sensors were received from Denton and GM.

Load Cell Sensitivity (Output)

Denton notes that the load cell sensitivity specification was unnecessarily restrictive without notable benefit. Denton argues that input/output specifications were not needed because future technology may produce systems that could change their definition. Accordingly, Denton requests that all references to the type of output be removed from drawings SA572–S17, –S18, –S19, –S20, –S21, and –S22.

We do not agree with Denton that output specifications are not needed. A sensor is only good if it is capable of generating some kind of a controlled output for a given input. Accordingly, we are retaining input/output requirements for all of the specified generic sensors.

Bridge Resistance Specifications

Denton suggests that bridge resistance specifications, shown in drawings SA572–S18, –S19 and –S21, are not needed and should be removed. The commenter believes that some test facilities may prefer using other bridge resistances than those shown on the draft drawings due to their particular data acquisition systems. However, their ability to use those transducers would be necessarily curtailed because of the restrictive specification in the drawings, even though different bridge resistances may give identical performance. We agree with this suggestion and have removed the bridge resistance

[3] We issued our final rules on the Hybrid III-type 6-year-old child and 5th percentile adult female dummies since the date of the Alliance's comment. Consistent with today's rule, those final rules do not include a post-test calibration requirement.

specifications from the revised generic sensor drawings.

Load Cell Free Air Resonant Frequency and Weight Specifications

Denton suggests that the assignment of free air resonant frequencies (the first order ringing frequency of a freely suspended load cell) should be consistent with those for the new 6-year-old dummy and a new 5th percentile female adult dummy. Denton also believes that several drawings should indicate a maximum weight, and not a nominal weight. We concur with these suggestions. While we would prefer to establish nominal weights for the load cells,[4] there is no acceptable method of weighing the load cells, particularly those containing integral cables. Because of this, weight tolerances for the load cells could not be established. Until an acceptable weighing procedure is developed, dummy manufacturers must take into account the variabilities of load cell weights to assure that each subsystem weight specification, as shown in sheet 6 of drawing 210–0000, is met. Accordingly, we have specified in the sensor drawings only maximum weights and minimum free air resonant frequencies. They are as follows:

—Drawing SA572–S17 (ASIS)—0.20 kg (0.44 lb) maximum each side and 2000 Hz minimum free air resonant frequency;
—Drawing SA572–S18 (pubic load cell)—0.24 kg (0.53 lb) maximum and 2000 Hz minimum free air resonant frequency;
—Drawing SA572–S19 (neck load cell)—0.24 kg (0.52 lb) maximum and 3000 Hz minimum free air resonant frequency;
—Drawing SA572–S20 (lumbar load cell)—0.26 kg (0.58 lb) maximum and 3000 Hz minimum free air resonant frequency;
—Drawing SA572–S21 (shoulder load cell)—0.09 kg (0.19 lb) maximum and 2000 Hz minimum free air resonant frequency; and
—Drawing SA572–S22 (acetabulum load cell)—0.19 kg (0.42 lb) maximum and 5000 Hz minimum free air resonant frequency.

Denton also suggests that the load cell weight specifications should clarify that the specified weight does not include any cable or mounting hardware, except as noted. The commenter states that drawing S19 should indicate that the weight includes the head washer and four 10–24 × ¾″ flat head cap screws. All of the agency specifications for accelerometers and load cells indicate what is considered as part of the load cell. We have modified drawing S19 to include the head washer and four 10–24 × ¾″ head cap screws.

Accelerometer Specifications

GM supports generic specification for sensors to reduce the restrictive nature of instrumentation specifications seen in the past. However, GM believes that the sensor specifications included in the NPRM are not sufficiently generic. GM notes that the accelerometer specified in drawing SA572–S4 limits the users to only two models, based on ability to meet the seismic mass and hole pattern requirements. The commenter states that other accelerometers might be acceptable but can not be used under the proposed specification. GM feels a more functional description is needed that would define, by dimensions and tolerances, an intersection location of the triaxial accelerometer sensing masses.

We are aware of at least two manufacturers that have in the past or are now marketing accelerometers that match the specifications listed in drawing SA572–S4. As to the specific hole patterns and associated mounting platforms, they are needed for mounting the accelerometers. Since the same accelerometer specifications apply to all other dummies, the accelerometer must be attachable to the new Hybrid III 6-year-old and the 5th percentile female adult as well as to the CRABI 12-month-old dummies, all of which use the common hole pattern for attachment. Although the sensing mass of each accelerometer is defined relative to reference surfaces of the accelerometer structure, hole patterns and mounting platforms need also to be known to assure existence and compatibility of space and mating surfaces and methods of attachment in the areas that they are to be mounted. In addition, the mounting surfaces and attachments must have appropriate structural integrity for vibration control purposes. The defined structure and methods of attachment assure that this is met. The concept, as GM suggests, of defining a location in space for the intersection center of seismic masses of several accelerometers rather than specifying it in design parameters is an attractive concept and warrants further consideration, as this approach could allow greater use of equivalent alternatives. However, none of the commenters offered a model to further this concept and not enough is known at this time on the consequences of the suggested approach were it to be adopted in this final rule.

Accelerometer Frequency Response

GM requested clarification as to what it means for a piece of instrumentation to meet SAE J211 CFC 1000 specifications. GM stated that most accelerometers do not fully meet the roll-off specification and no damped accelerometers can meet any of the roll-off requirements. Denton, in its comments on frequency response for the 5th percentile dummy (Docket No NHTSA–1998–4283–10), suggested adding a note on each of the sensor drawings indicating "* * * what CFC channel class should be used for recording data with that type of transducer." This is a reasonable suggestion, since the SAE J211 clearly deals with the entire data channel and not with a particular sensor within the data channel. Accordingly, a note has been added to the SA572–S4 drawing saying that "Signal output must be compatible with and recordable in the data channel defined by SAE J211."

Optional Transducers

GM believes pelvis accelerometers should be optional as they are not required for any proposed injury measurement requirement. GM suggests changing the NPRM language from "(these accelerometers) are to be mounted" to "(these accelerometers) are allowed to be mounted * * *" We agree with the GM comment and have revised § 572.146(k) to indicate optional use of pelvis accelerometers and § 572.146(c) to indicate optional use of the neck load cell at the lower neck transducer location.

Dimensional Changes to Dummy Drawings

Denton requests that drawing 210–4512 be revised to correct the location of the 1.880 inch dimension. Denton also noted that additional specifications are needed in drawing 210–4510 to assure a fit of the load cell on the mounting surfaces. Denton suggests adding further dimensions on drawing 210–4512 to allow for machining after welding, and a specification to drawing 210–4510 to require that a region at least 1.300 inch from center on each side of the part (total width 2.600 inch) must be flat within 0.005 in. We agree with the recommended changes and have revised the drawings as suggested.

Title and Features of the Users Manual

The NPRM noted in §§ 572.140(a)(2) and 572.141(a)(2) that the final rule package will contain a "User's Manual" for the H–III3C dummy. The manual would contain identified procedures on how to inspect, assemble and disassemble the dummy, similar to procedures published for other part 572 dummies. Responding to the NPRM, the SAE notes that it has developed a User's Manual for this dummy and suggests its incorporation by reference into part 572. We have reviewed its content, but decline to reference it for several reasons.

Our review found the SAE's manual containing, besides inspection and assembly procedures, several calibration procedures and response requirements. Calibration procedures and response requirements are set forth by this final rule in part 572. It is not advisable to establish requirements in a separate document, which could contain calibration procedures and response requirements that are inconsistent or in conflict with the part 572 requirements. Further, while the SAE manual appears to be reasonably well developed and well suited for research use, it has a number of redundancies and ambiguities which render it less suited for regulation and compliance testing purposes. Further, the SAE User's Manual is copyrighted by both the SAE and FTSS, which restrict its use and distribution as a public document.

Because we concluded that the SAE manual should not be incorporated into part 572, we generated and incorporated into part 572 our own document addressing procedures for inspection, assembly and disassembly of the H–III3C dummy. We have titled the document *Procedures for Assembly, Disassembly and Inspection (PADI), subpart P, Hybrid III 3-year-old Child Crash Test Dummy (H–III3C, Alpha version), February 2000.* Our incorporation of the PADI does not in itself prohibit anyone from using the procedures contained in the SAE User's Manual. However, persons using the SAE document in tests assuring compliance with our safety standards are responsible for ensuring that the test dummies they use meet the specifications adopted today and are suitable for compliance testing.

Nomenclature

The H–III3C dummy is incorporated into part 572 as subpart P. Today's final rule designates the dummy adopted today as alpha version. Further notable changes to the dummy will be designated as beta, gamma, etc., to assure that modifications can be easily tracked and identified.

[4] Load cell weights with only "maximum" weight designations could vary considerably. While not specifying a minimum load cell weight may not matter much for larger adult test dummies, lack of such a specification poses a potentially larger problem for the smaller child test dummies.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

This document amends 49 CFR part 572 by adding design and performance specifications for a new 3-year-old child dummy that the agency may later incorporate into Federal motor vehicle safety standards. This rule indirectly imposes requirements on only those businesses which choose to manufacture or test with the dummy, in that the agency will only use dummies for compliance testing that meet all of the criteria specified in this rule. It may affect vehicle and air bag manufacturers if it is incorporated by reference into the advanced air bag rulemaking, and may affect child restraint manufacturers if it is incorporated into the child restraint system standard.

The cost of an uninstrumented 3-year-old dummy is approximately $30,000. Instrumentation would add $15,000 to $50,000 to the cost, depending on the amount of instrumentation the user chooses to add.

Because the economic impacts of this final rule are minimal, no further regulatory evaluation is necessary.

Executive Order 13132

We have analyzed this rule in accordance with Executive Order 13132 ("Federalism"). We have determined that this rule does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. It also does not involve decisions based on health risks that disproportionately affect children.

Executive Order 12778

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this rule will have any retroactive effect. This rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it does preempt a state regulation that is in actual conflict with the federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the federal statute.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) and certify that this rule will not have a significant economic impact on a substantial number of small entities. The rule does not impose or rescind any requirements for anyone. The Regulatory Flexibility Act does not, therefore, require a regulatory flexibility analysis.

National Environmental Policy Act

We have analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not have any new information collection requirements.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The H–III3C dummy that is the subject of this document was developed under the auspices of the SAE. All relevant SAE standards were reviewed as part of the development process. The following voluntary consensus standards have been used in developing the dummy: SAE Recommended Practice J211, Rev. Mar95 "Instrumentation for Impact Tests"; and SAE J1733 of 1994–12 "Sign Convention for Vehicle Crash Testing."

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule does not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule does not meet the definition of a Federal mandate because it does not impose requirements on anyone. Further, it will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 572

Motor vehicle safety, Incorporation by reference.

In consideration of the foregoing, NHTSA amends 49 CFR Part 572 as follows:

PART 572—ANTHROPOMORPHIC TEST DUMMIES

1. The authority citation for Part 572 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. 49 CFR part 572 is amended by adding a new subpart P consisting of §§ 572.140–572.146, to read as follows:

Subpart P—Hybrid III 3-Year-Old Child Crash Test Dummy, Alpha Version

Sec.

572.140 Incorporation by reference.
572.141 General description.
572.142 Head assembly and test procedure.
572.143 Neck-headform assembly and test procedure.
572.144 Thorax assembly and test procedure.
572.145 Upper and lower torso assemblies and torso flexion test procedure.
572.146 Test condition and instrumentation.

Subpart P—3-year-Old Child Crash Test Dummy, Alpha Version

§ 572.140 Incorporation by reference.

(a) The following materials are hereby incorporated in this subpart P by reference:

(1) A drawings and specifications package entitled "Parts List and Drawings, Subpart P Hybrid III 3-year-old child crash test dummy, (H–III3C, Alpha version) February 2000", incorporated by reference in § 572.141 and consisting of :

(i) Drawing No. 210–1000, Head Assembly, incorporated by reference in §§ 572.141, 572.142, 572.144, 572.145, and 572.146;

(ii) Drawing No. 210–2001, Neck Assembly, incorporated by reference in §§ 572.141, 572.143, 572.144, 572.145, and 572.146;

(iii) Drawing No. TE–208–000, Headform, incorporated by reference in §§ 572.141, and 572.143;

(iv) Drawing No. 210–3000, Upper/Lower Torso Assembly, incorporated by reference in §§ 572.141, 572.144, 572.145, and 572.146;

(v) Drawing No. 210–5000–1(L), –2(R), Leg Assembly, incorporated by reference in §§ 572.141, 572.144, 572.145 as part of a complete dummy assembly;

(vi) Drawing No. 210–6000–1(L), –2(R), Arm Assembly, incorporated by reference in §§ 572.141, 572.144, and 572.145 as part of the complete dummy assembly;

(2) A procedures manual entitled "Procedures for Assembly, Disassembly and Inspection (PADI), Subpart P, Hybrid III 3-year-old Child Crash Test Dummy, (H–III3C, Alpha Version) February 2000", incorporated by reference in § 572.141;

(3) SAE Recommended Practice J211/1, Rev. Mar 95 "Instrumentation for Impact Tests—Part 1-Electronic Instrumentation", incorporated by reference in § 572.146;

(4) SAE J1733 1994–12 "Sign Convention for Vehicle Crash Testing" incorporated by reference in § 572.146.

(5) The Director of the Federal Register approved those materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the materials may be inspected at NHTSA's Docket Section, 400 Seventh Street SW, room 5109, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(b) The incorporated materials are available as follows:

(1) The drawings and specifications package referred to in paragraph (a)(1) of this section and the PADI document referred to in paragraph (a)(2) of this section are available from Reprographic Technologies, 9000 Virginia Manor Road, Beltsville, MD 20705 (301) 419–5070.

(2) The SAE materials referred to in paragraphs (a)(3) and (a)(4) of this section are available from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096.

§ 572.141 General description

(a) The Hybrid III 3-year-old child dummy is described by the following materials:

(1) Technical drawings and specifications package 210–0000 (refer to § 572.140(a)(1)), the titles of which are listed in Table A of this section;

(2) Procedures for Assembly, Disassembly and Inspection document (PADI) (refer to § 572.140(a)(2)).

(b) The dummy is made up of the component assemblies set out in the following Table A of this section:

TABLE A

Component assembly	Drawing No.
Head Assembly	210–1000
Neck Assembly (complete)	210–2001
Upper/Lower Torso Assembly	210–3000
Leg Assembly	210–5000–1(L), –2(R)
Arm Assembly	210–6000–1(L), –2(R)

(c) Adjacent segments are joined in a manner such that except for contacts existing under static conditions, there is no contact between metallic elements throughout the range of motion or under simulated crash impact conditions.

(d) The structural properties of the dummy are such that the dummy conforms to this part in every respect only before use in any test similar to those specified in Standard 208, *Occupant Crash Protection*, and Standard 213, *Child Restraint Systems*.

§ 572.142 Head assembly and test procedure.

(a) The head assembly (refer to § 572.140(a)(1)(i)) for this test consists of the head (drawing 210–1000), adapter plate (drawing ATD 6259), accelerometer mounting block (drawing SA 572–S80), structural replacement of ½ mass of the neck load transducer (drawing TE–107–001), head mounting washer (drawing ATD 6262), one ½–20x1″ flat head cap screw (FHCS) (drawing 9000150), and 3 accelerometers (drawing SA–572–S4).

(b) When the head assembly in paragraph (a) of this section is dropped from a height of 376.0+/−1.0 mm (14.8+/−0.04 in) in accordance with paragraph (c) of this section, the peak resultant acceleration at the location of the accelerometers at the head CG shall not be less than 250 g or more than 280 g. The resultant acceleration versus time history curve shall be unimodal, and the oscillations occurring after the main pulse shall be less than 10 percent of the peak resultant acceleration. The lateral acceleration shall not exceed +/−15 G (zero to peak).

(c) Head test procedure. The test procedure for the head is as follows:

(1) Soak the head assembly in a controlled environment at any temperature between 18.9 and 25.6 °C (66 and 78 °F) and at any relative humidity between 10 and 70 percent for at least four hours prior to a test.

(2) Prior to the test, clean the impact surface of the head skin and the steel impact plate surface with isopropyl alcohol, trichlorethane, or an equivalent. Both impact surfaces must be clean and dry for testing.

(3) Suspend the head assembly with its midsagittal plane in vertical orientation as shown in Figure P1 of this subpart. The lowest point on the forehead is 376.0±1.0 mm (14.76±0.04 in) from the steel impact surface. The 3.3 mm (0.13 in) diameter holes, located on either side of the dummy's head in transverse alignment with the CG, shall be used to ensure that the head transverse plane is level with respect to the impact surface.

(4) Drop the head assembly from the specified height by a means that ensures a smooth, instant release onto a rigidly supported flat horizontal steel plate which is 50.8 mm (2 in) thick and 610 mm (24 in) square. The impact surface shall be clean, dry and have a finish of not less than 203.2×10^{-6} mm (8 micro inches) (RMS) and not more than 2032.0×10^{-6} mm (80 micro inches) (RMS).

(5) Allow at least 2 hours between successive tests on the same head.

§ 572.143 Neck-headform assembly and test procedure.

(a) The neck and headform assembly (refer to §§ 572.140(a)(1)(ii) and 572.140(a)(1)(iii)) for the purposes of this test, as shown in Figures P2 and P3 of this subpart, consists of the neck molded assembly (drawing 210–2015), neck cable (drawing 210–2040), nylon shoulder bushing (drawing 9001373), upper mount plate insert (drawing 910420–048), bib simulator (drawing TE–208–050), urethane washer (drawing 210–2050), neck mounting plate (drawing TE–250–021), two jam nuts (drawing 9001336), load-moment transducer (drawing SA 572–S19), and headform (drawing TE–208–000).

(b) When the neck and headform assembly, as defined in § 572.143(a), is tested according to the test procedure in paragraph (c) of this section, it shall have the following characteristics:

(1) Flexion.

(i) Plane D, referenced in Figure P2 of this subpart, shall rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline between 70 degrees and 82 degrees. Within this specified rotation corridor, the peak moment about the occipital condyle may not be less than 42 N-m and not more than 53 N-m.

(ii) The positive moment shall decay for the first time to 10 N-m between 60 ms and 80 ms after time zero.

(iii) The moment and rotation data channels are defined to be zero when the longitudinal centerline of the neck and pendulum are parallel.

(2) Extension.

(i) Plane D referenced in Figure P3 of this subpart shall rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline between 83 degrees and 93 degrees. Within this specified rotation corridor, the peak moment about the occipital condyle may be not more than −43.7 N-m and not less than −53.3 N-m.

(ii) The negative moment shall decay for the first time to −10 N-m between 60 and 80 ms after time zero.

(iii) The moment and rotation data channels are defined to be zero when the longitudinal centerline of the neck and pendulum are parallel.

(c) Test Procedure

(1) Soak the neck assembly in a controlled environment at any temperature between 20.6 and 22.2 °C (69 and 72 F) and a relative humidity between 10 and 70 percent for at least four hours prior to a test.

(2) Torque the jam nut (drawing 9001336) on the neck cable (drawing 210–2040) between 0.2 N-m and 0.3 N-m.

(3) Mount the neck-headform assembly, defined in paragraph (a) of this section, on the pendulum so the midsagittal plane of the headform is vertical and coincides with the plane of motion of the pendulum as shown in Figure P2 of this subpart for flexion and Figure P3 of this subpart for extension tests.

(4) Release the pendulum and allow it to fall freely to achieve an impact velocity of 5.50±0.10 m/s (18.05 + 0.40 ft/s) for flexion and 3.65±0.1 m/s (11.98±0.40 ft/s) for extension tests, measured by an accelerometer mounted on the pendulum as shown in Figure 22 of this part 572 at time zero.

(i) The test shall be conducted without inducing any torsion twisting of the neck.

(ii) Stop the pendulum from the initial velocity with an acceleration vs. time pulse which meets the velocity change as specified in Table B of this section. Integrate the pendulum acceleration data channel to obtain the velocity vs. time curve as indicated in Table B of this section.

(iii) Time-zero is defined as the time of initial contact between the pendulum striker plate and the honeycomb material. The pendulum data channel shall be zero at this time.

TABLE B.—PENDULUM PULSE

Time	Flexion		Time	Extension	
ms	m/s	ft/s	ms	m/s	ft/s
10	2.0–2.7	6.6–8.9	6	1.0–1.4	3.3–4.6
15	3.0–4.0	9.8–13.1	10	1.9–2.5	6.2–8.2
20	4.0–5.1	13.1–16.7	14	2.8–3.5	9.2–11.5

§ 572.144 Thorax assembly and test procedure.

(a) Thorax (Upper Torso) Assembly (refer to § 572.140(a)(1)(iv)). The thorax consists of the upper part of the torso assembly shown in drawing 210–3000.

(b) When the anterior surface of the thorax of a completely assembled dummy (drawing 210–0000) is impacted by a test probe conforming to § 572.146(a) at 6.0±0.1 m/s (19.7±0.3 ft/s) according to the test procedure in paragraph (c) of this section.

(1) Maximum sternum displacement (compression) relative to the spine, measured with the chest deflection transducer (SA–572–S50), must not be less than 32mm (1.3 in) and not more than 38mm (1.5 in). Within this specified compression corridor, the peak force, measured by the probe-mounted accelerometer as defined in paragraph § 572.146(a) and calculated in accordance with paragraph (b)(3) of this section, shall be not less than 680 N and not more than 810 N. The peak force after 12.5 mm of sternum compression but before reaching the minimum required 32.0 mm sternum compression shall not exceed 860 N.

(2) The internal hysteresis of the ribcage in each impact, as determined from the force vs. deflection curve, shall be not less than 65 percent and not more than 85 percent. The hysteresis shall be calculated by determining the ratio of the area between the loading and unloading portions of the force deflection curve to the area under the loading portion of the curve.

(3) The force shall be calculated by the product of the impactor mass and its deceleration.

(c) Test procedure. The test procedure for the thorax assembly is as follows:

(1) The test dummy is clothed in cotton-polyester-based tight-fitting shirt with long sleeves and ankle-length pants whose combined weight is not more than 0.25 kg (0.55 lbs)

(2) Soak the dummy in a controlled environment at any temperature between 20.6 and 22.2 °C (69 and 72 °F) and at any relative humidity between 10 and 70 percent for at least four hours prior to a test.

(3) Seat and orient the dummy on a seating surface without back support as shown in Figure P4, with the lower limbs extended horizontally and forward, the upper arms parallel to the torso and the lower arms extended horizontally and forward, parallel to the midsagittal plane, the midsagittal plane being vertical within ±1 degree and the ribs level in the anterior-posterior and lateral directions within ±0.5 degrees.

(4) Establish the impact point at the chest midsagittal plane so that the impact point of the longitudinal centerline of the probe coincides with the dummy's mid-sagittal plane and is centered on the center of No. 2 rib within ±2.5 mm (0.1 in.) and 0.5 degrees of a horizontal plane.

(5) Impact the thorax with the test probe so that at the moment of contact the probe's longitudinal center line is within 2 degrees of a horizontal line in the dummy's midsagittal plane.

(6) Guide the test probe during impact so that there is no significant lateral, vertical or rotational movement.

§ 572.145 Upper and lower torso assemblies and torso flexion test procedure.

(a) The test objective is to determine the resistance of the lumbar spine and abdomen of a fully assembled dummy (drawing 210–0000) to flexion articulation between upper and lower halves of the torso assembly (refer to § 572.140(a)(1)(iv)).

(b)(1) When the upper half of the torso assembly of a seated dummy is subjected to a force continuously applied at the occipital condyle level through the rigidly attached adaptor bracket in accordance with the test procedure set out in paragraph (c) of this section, the lumbar spine-abdomen assembly shall flex by an amount that permits the upper half of the torso, as measured at the posterior surface of the torso reference plane shown in Figure P5 of this subpart, to translate in angular motion in the midsagittal plane 45±0.5 degrees relative to the vertical transverse plane, at which time the pulling force applied must not be less than 130 N (28.8 lbf) and not more than 180 N (41.2 lbf), and

(2) Upon removal of the force, the upper torso assembly returns to within 10 degrees of its initial position.

(c) Test procedure. The test procedure is as follows:

(1) Soak the dummy in a controlled environment at any temperature between 18.9° and 25.6 °C (66 and 78 °F) and at any relative humidity between 10 and 70 percent for at least 4 hours prior to a test.

(2) Assemble the complete dummy (with or without the lower legs) and seat it on a rigid flat-surface table, as shown in Figure P5 of this subpart.

(i) Unzip the torso jacket and remove the four ¼–20×¾" bolts which attach the lumbar load transducer or its structural replacement to the pelvis weldment (drawing 210–4510) as shown in Figure P5 of this subpart.

(ii) Position the matching end of the rigid pelvis attachment fixture around the lumbar spine and align it over the four bolt holes.

(iii) Secure the fixture to the dummy with the four ¼–20×¾" bolts and attach the fixture to the table. Tighten the mountings so that the pelvis-lumbar joining surface is horizontal within ±1 deg and the buttocks and upper legs of the seated dummy are in contact with the test surface.

(iv) Attach the loading adapter bracket to the upper part of the torso as shown in Figure P5 of this subpart and zip up the torso jacket.

(v) Point the upper arms vertically downward and the lower arms forward.

(3)(i) Flex the thorax forward three times from vertical until the torso reference plane reaches 30±2 degrees from vertical. The torso reference plane, as shown in figure P5 of this subpart, is defined by the transverse plane tangent to the posterior surface of the upper backplate of the spine box weldment (drawing 210–8020).

(ii) Remove all externally applied flexion forces and support the upper torso half in a vertical orientation for 30 minutes to prevent it from drooping.

(4) Remove the external support and after two minutes measure the initial orientation angle of the upper torso reference plane of the seated, unsupported dummy as shown in Figure P5 of this subpart. The initial orientation of the torso reference plane may not exceed 15 degrees.

(5) Attach the pull cable at the point of load application on the adaptor bracket while maintaining the initial torso orientation. Apply a pulling force in the midsagittal plane, as shown in Figure P5 of this subpart, at any upper torso flexion rate between 0.5 and 1.5 degrees per second, until the torso reference plane reaches 45±0.5 degrees of flexion relative to the vertical transverse plane.

(6) Continue to apply a force sufficient to maintain 45±0.5 degrees of flexion for 10 seconds, and record the highest applied force during the 10-second period.

(8) Release all force at the loading adaptor bracket as rapidly as possible and measure the return angle with respect to the initial angle reference plane as defined in paragraph (c)(4) of this section 3 to 4 minutes after the release.

572.146 Test conditions and instrumentation.

(a) The test probe for thoracic impacts shall be of rigid metallic construction, concentric in shape, and symmetric about its longitudinal axis. It shall have a mass of 1.70±.01 kg (3.75±0.02 lb) and a minimum mass moment of inertia 283 kg-cm*2 (0.25 lb-in-sec*2) in yaw and pitch about the CG of the probe. ⅓ of the weight of suspension cables and their attachments to the impact probe must be included in the calculation of mass and such components may not exceed five percent of the total weight of the test probe. The impacting end of the probe, perpendicular to and concentric with the longitudinal axis, is at least 25 mm (1.0 in) in length, has a flat, continuous, and non-deformable 50.8±0.2 mm (2.00±0.01 inch) diameter face with a maximum edge radius of 12.7 mm (0.5 in). The probe's end opposite to the impact face has provisions for mounting an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. No concentric portions of the impact probe may exceed the diameter of the impact face. The impact probe has a free air resonant frequency not less than 1000 Hz.

(b) Head accelerometers shall have the dimensions, response characteristics, and sensitive mass locations specified in drawing SA 572–S4 and be mounted in the head as shown in drawing 210–0000.

(c) The neck force-moment transducer shall have the dimensions, response characteristics, and sensitive axis locations specified in drawing SA 572–S19 and be mounted at the upper neck transducer location as shown in drawing 210–0000. A lower neck transducer as specified in drawing SA 572–S19 is allowed to be mounted as optional instrumentation in place of part No. ATD6204, as shown in drawing 210–0000.

(d) The shoulder force transducers shall have the dimensions and response characteristics specified in drawing SA 572–S21 and be allowed to be mounted as optional instrumentation in place of part No. 210–3800 in the torso assembly as shown in drawing 210–0000.

(e) The thorax accelerometers shall have the dimensions, response characteristics, and sensitive mass locations specified in drawing SA 572–S4 and be mounted in the torso assembly in triaxial configuration at the T4 location, as shown in drawing 210–0000. Triaxial accelerometers may be mounted as optional instrumentation at T1, and T12, and in uniaxial configuration on the sternum at the midpoint level of ribs No. 1 and No. 3 and on the spine coinciding with the midpoint level of No. 3 rib, as shown in drawing 210–0000. If used, the accelerometers must conform to SA–572–S4.

(f) The chest deflection potentiometer shall have the dimensions and response characteristics specified in drawing SA–572–S50 and be mounted in the torso assembly as shown drawing 210–0000.

(g) The lumbar spine force/moment transducer may be mounted in the torso assembly as shown in drawing 210–0000 as optional instrumentation in place of part No. 210–4150. If used, the transducer shall have the dimensions and response characteristics specified in drawing SA–572–S20.

(h) The pubic force transducer may be mounted in the torso assembly as shown in drawing 210–0000 as optional instrumentation in place of part No. 921–0022–036. If used, the transducer shall have the dimensions and response characteristics specified in drawing SA–572–S18.

(i) The acetabulum force transducers may be mounted in the torso assembly as shown in drawing 210–0000 as optional instrumentation in place of part No. 210–4522. If used, the transducer shall have the dimensions and response characteristics specified in drawing SA–572–S22.

(j) The anterior-superior iliac spine transducers may be mounted in the torso assembly as shown in drawing 210–0000 as optional instrumentation in place of part No. 210–4540–1, –2. If used, the transducers shall have the dimensions and response characteristics specified in drawing SA–572–S17.

(k) The pelvis accelerometers may be mounted in the pelvis in triaxial configuration as shown in drawing 210–0000 as optional instrumentation. If used, the accelerometers shall have the dimensions and response characteristics specified in drawing SA–572–S4.

(l) The outputs of acceleration and force-sensing devices installed in the dummy and in the test apparatus specified by this part shall be recorded in individual data channels that conform to the requirements of SAE Recommended Practice J211/1, Rev. Mar 95 "Instrumentation for Impact Tests—Part 1-Electronic Instrumentation" (refer to § 572.140(a)(3)), with channel classes as follows:

(1) Head acceleration—Class 1000
(2) Neck
(i) force—Class 1000
(ii) moments—Class 600
(iii) pendulum acceleration—Class 180
(3) Thorax:
(i) rib/sternum acceleration—Class 1000
(ii) spine and pendulum accelerations—Class 180
(iii) sternum deflection—Class 600
(iv) shoulder force—Class 180
(4) Lumbar:
(i) forces—Class 1000
(ii) moments—Class 600
(iii) torso flexion pulling force—Class 60 if data channel is used
(5) Pelvis
(i) accelerations—Class 1000
(ii) acetabulum, pubic symphysis—Class 1000,
(iii) iliac wing forces—Class 180

(m) Coordinate signs for instrumentation polarity shall conform to the Sign Convention For Vehicle Crash Testing, Surface Vehicle Information Report, SAE J1733, 1994–12 (refer to § 572.140(a)(4)).

(n) The mountings for sensing devices shall have no resonance frequency less than 3 times the frequency range of the applicable channel class.

(o) Limb joints shall be set at lG, barely restraining the weight of the limbs when they are extended horizontally. The force required to move a limb segment shall not exceed 2G throughout the range of limb motion.

(p) Performance tests of the same component, segment, assembly, or fully assembled dummy shall be separated in time by a period of not less than 30 minutes unless otherwise noted.

(q) Surfaces of dummy components are not painted except as specified in this part or in drawings subtended by this part.

BILLING CODE 4910–59–P

Figure P1
HEAD DROP TEST SET-UP SPECIFICATIONS

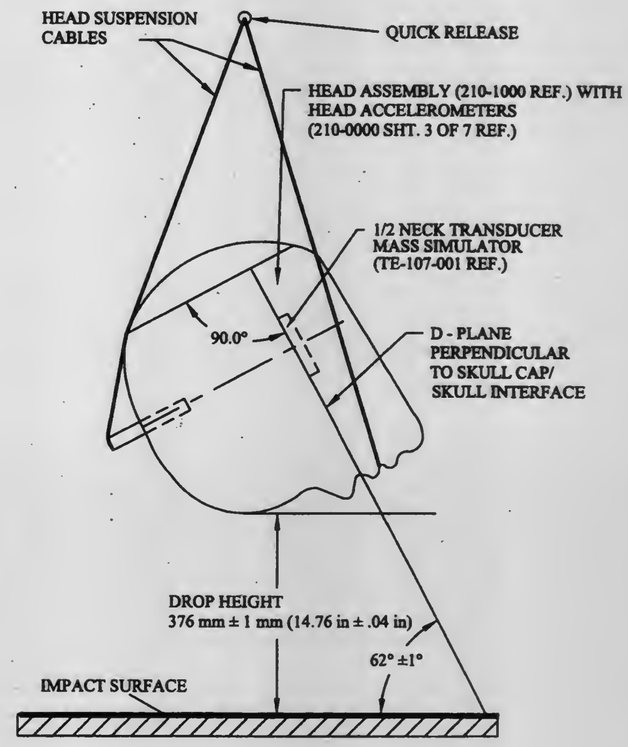
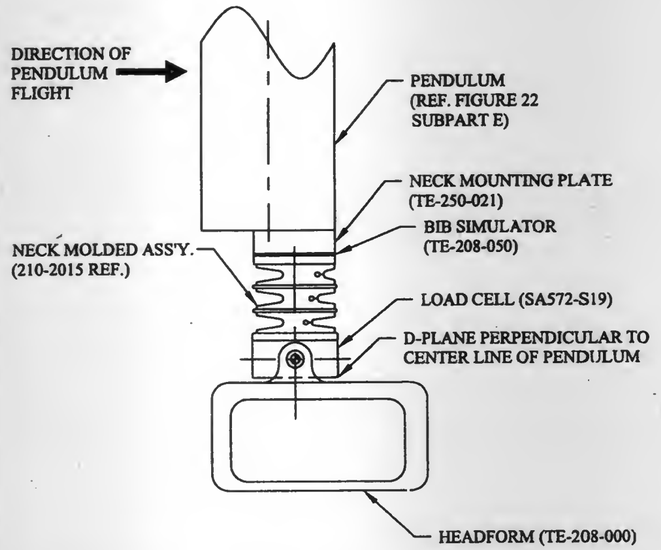
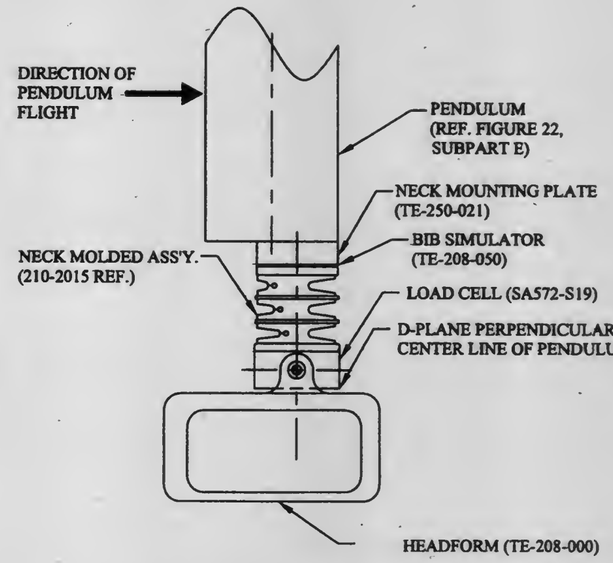


Figure P2
NECK FLEXION TEST SET-UP SPECIFICATIONS



NOTE: MOUNT NECK AT LEADING EDGE OF PENDULUM TO AVOID INTERFERENCE WITH HEADFORM MOTION.
PENDULUM SHOWN IN VERTICAL ORIENTATION.

Figure P3
NECK EXTENSION TEST SET-UP SPECIFICATIONS



NOTE: MOUNT NECK AT LEADING EDGE OF PENDULUM TO AVOID INTERFERENCE WITH HEADFORM MOTION.
PENDULUM SHOWN IN VERTICAL ORIENTATION.

Figure P4

THORAX IMPACT TEST SET-UP SPECIFICATIONS

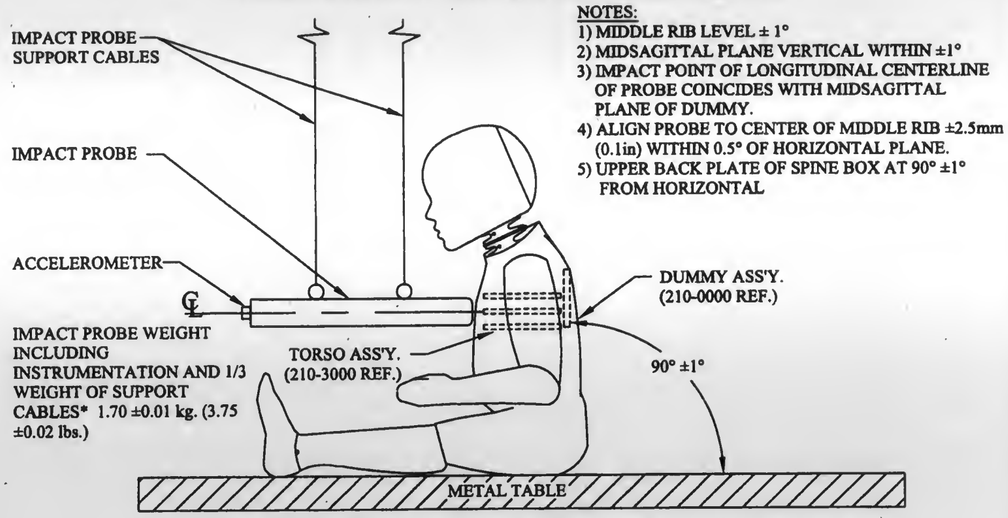
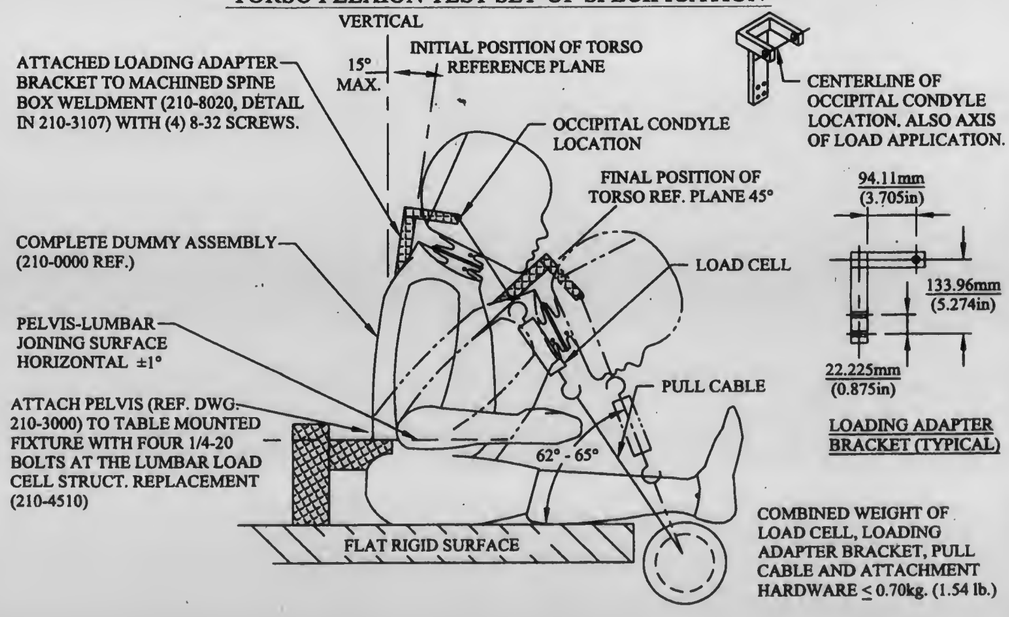


Figure P5

TORSO FLEXION TEST SET-UP SPECIFICATION



BILLING CODE 4910–59–C

Issued: March 7, 2000.

Rosalyn G. Millman,

Acting Administrator.

[FR Doc. 00–6253 Filed 3–21–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 031600A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 630 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 630 outside the Shelikof Strait conservation area in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 630 outside the Shelikof Strait conservation area.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 17, 2000, until 1200 hrs, A.l.t., August 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the B season allowance of the pollock TAC in Statistical Area 630 outside the Shelikof Strait conservation area is 2,662 metric tons (mt) as established by the Final 2000 Harvest Specifications for Groundfish (65 FR 8298, February 18, 2000) and subsequent correction (65 FR 11909, March 7, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the B season allowance of the pollock TAC in Statistical Area 630 outside the Shelikof Strait conservation area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,162 mt, and is setting aside the remaining 500 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 630 outside the Shelikof Strait conservation area in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the seasonal allocation of pollock in Statistical Area 630 outside the Shelikof Strait conservation area. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et. seq.*

Dated: March 17, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7073 Filed 3–17–00; 3:59 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 031700A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in Statistical Area 610 of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for Statistical Area 610 of the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 18, 2000, until 1200 hrs, A.l.t., August 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–581–2062.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the B season allowance of the pollock TAC in Statistical Area 610 is 3,749 metric tons (mt) established by the Final 2000 Harvest Specification for Groundfish (65 FR 8298, February 18, 2000) and subsequent correction (65 FR 11909, March 7, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the B season allowance of the pollock TAC in Statistical Area 610 will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 3,549 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in Statistical Area 610 of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the seasonal allocation of pollock in Statistical Area 610 of the GOA. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 17, 2000.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7072 Filed 3–17–00; 3:59 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 56
Wednesday, March 22, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Part 9038

[Notice 2000–5]

Public Funding of Presidential Primary Candidates—Repayments

AGENCY: Federal Election Commission.

ACTION: Notice of disposition; Termination of rulemaking.

SUMMARY: On December 16, 1998, the Commission issued a Notice of Proposed Rulemaking in which it sought public comments on deleting one section of its regulations governing the public financing of presidential primary election campaigns. These rules implement the Presidential Primary Matching Payment Account Act ("Matching Payment Act"), which indicates how funds received under the public financing system may be spent. In addition, the Matching Payment Act requires the Commission to seek repayment from publicly financed campaigns under certain conditions. The rule in question addresses the repayment of federal funds when candidates exceed the limits on either state-by-state or overall spending. The Commission is making no changes to this regulation at this time. Further information is provided in the supplementary information that follows.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission has been considering whether to revise its regulations at 11 CFR 9038.2(b) governing repayments of matching funds in situations where primary candidates exceed the spending limits set forth in section 441a(b) of the Federal Election Campaign Act, 2 U.S.C. 441a(b) ("FECA"). These regulations implement 26 U.S.C. 9038. For the reasons explained below, the Commission is making no changes at this time to 11 CFR 9038.2(b).

On December 16, 1998, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations, as well as on a number of other aspects of the Commission's public funding regulations. 63 FR 69524 (Dec. 16, 1998). In response to the NPRM, written comments addressing the repayment issue were received from Common Cause and Democracy 21 (joint comment); and Lyn Utrecht, Eric Kleinfeld, and Patricia Fiori (joint comment). The Internal Revenue Service stated that it has reviewed the NPRM and finds no conflict with the Internal Revenue Code or regulations thereunder. Subsequently, the Commission reopened the comment period and held a public hearing on March 24, 1999, at which the following witnesses presented testimony on the Commission's ability to seek repayments: Lyn Utrecht (Ryan, Phillips, Utrecht & MacKinnon), Joseph E. Sandler (Democratic National Committee), and Thomas J. Josefiak (Republican National Committee).

Please note that the Commission has already published separately several sets of final rules regarding other aspects of the public funding system. For a summary of these other provisions, *see* Explanation and Justification, 64 FR 49355 (Sept. 13, 1999), and Explanation and Justification, 64 FR 61777 (Nov. 15, 1999).

1. Alternatives Presented in the NPRM

The NPRM raised the issue of whether to delete paragraph (b)(2)(ii)(A) of section 9038.2 from the Commission's regulations. Under this provision, the Commission has in the past required the repayment of primary matching funds based on a determination that a candidate or authorized committee has made expenditures in excess of the primary spending limits. The NPRM raised the argument that this provision is without statutory basis, and that the reading implied in the current regulation is effectively prohibited by the statute. The NPRM noted that this issue has ramifications for excessive expenditures made directly by the candidate's campaign committee from its own funds, as well as excessive expenditures stemming from the campaign committee's acceptance of in-kind contributions, and excessive expenditures arising from primary campaign activities coordinated with the candidate's party committee.

Section 9038 of the Matching Payment Act (26 U.S.C. 9038) provides three bases for determining repayments of primary matching funds: (1) payments in excess of entitlement; (2) payments used for other than qualified campaign expenses; and (3) excess funds remaining six months after the end of the matching payment period. In contrast, section 9007 of the Presidential Election Campaign Fund Act (26 U.S.C 9007) ("Fund Act") provides four bases for determining repayments of general election funds: (1) Payments in excess of entitlement; (2) an amount equal to any excess qualified campaign expenses; (3) an amount equal to any contributions accepted; and (4) payments used for other than qualified campaign expenses.

The provisions on "payments in excess of entitlement" and "other than qualified campaign expenses" are nearly identical between the two chapters. Inasmuch as Congress specified "excess expenses" as a repayment basis separate from "other than qualified campaign expenditures" in the general election statute, an argument exists that the nearly identical provision on "other than qualified campaign expenses" in the primary statute cannot reasonably be read to include excess expenses.

The argument against treating "excess" campaign expenditures as "nonqualified" is buttressed by the text of the "qualified campaign expense limitation" (26 U.S.C. 9035) itself, which prohibits candidates from "knowingly incur[ring] qualified campaign expenses in excess of the expenditure limitation applicable under section 441a(b)(1)(A) of title 2." First, one can argue that it is impossible to read this section other than as treating "excess" spending as "qualified." Second, this provision states that violation of the primary spending limits is a Title 2 violation, which would be addressed in the FEC's enforcement process, rather than a Title 26 violation, which could be addressed in the audit/repayment process.

The NPRM also set out countervailing arguments in support of retaining 11 CFR 9038.2(b)(2)(ii)(A). While section 9007(b)(2) of the Fund Act clearly states that repayments can be sought from general election candidates who incur

expenses in excess of the aggregate payments to which they are entitled, the Matching Payment Act can be interpreted to set forth repayment requirements for primary candidates that are the equivalent of that general election provision.

A qualified campaign expense of a primary election committee is an expense where "neither the incurring nor payment * * * constitutes a violation of any law of the United States * * *." 26 U.S.C. 9032(9). A Presidential primary candidate who exceeds the expenditure limitations violates two laws, 26 U.S.C. 9035 and 2 U.S.C. 441a(b)(1)(A). Section 9035 of the Matching Payment Act states that "no candidate shall knowingly incur qualified campaign expenses in excess of the expenditure limitations applicable under section 441a(b)(1)(A) of title 2 * * *." Section 441a(b)(1) of the FECA states that "no candidate for the Office of President who is eligible" to receive public funds may make expenditures in excess of the statutorily prescribed limitations. 2 U.S.C. 441a(b)(1). Thus, one reading of this language is that expenses in excess of expenditure limitations for publicly funded primary candidates are non-qualified because they violate the law. Consequently, it can be argued that they are repayable under 26 U.S.C. 9038(b)(2). The answer to the argument that the language of section 9035 specifically contemplates that amounts spent in excess of the expenditure limitations can constitute qualified campaign expenses is that the two statutes must be read together, and section 9035 may mean that candidates shall not incur expenses that would otherwise be qualified except for the fact that they exceed the section 441a expenditure limitations.

Additionally, there is a countervailing argument that the Fund Act and the Matching Payment Act mandate identical results—namely, the repayment of expenditures exceeding the spending limits—albeit in slightly different ways. Arguably, there is no provision in the general election Fund Act corresponding to section 9035 of the Matching Payment Act. Consequently, it can be argued that this may be why 26 U.S.C. 9007(b)(2) specifically mandates repayments from general election committees for spending amounts that exceed their entitlements. Under this interpretation, language corresponding to section 9007(b)(2) is not needed in the Matching Payment Act because repayments are already required when primary election committees make non-qualified campaign expenses by violating the law, which they do whenever they exceed the spending limits set forth in 2 U.S.C. 441a(b)(1) and 26 U.S.C. 9035. This reading of the two statutes avoids the anomalous situation that would result if spending limit violations involving candidates who accepted public funding for their primary elections were treated entirely differently than spending limit violations involving the very same candidates during their general election campaigns.

This argument is supported by the court decision in *John Glenn Presidential Committee v. FEC*, 822 F.2d 1097 (D.C. Cir. 1987) (upholding the Commission's repayment determination against a publicly funded primary election candidate for exceeding the state-by-state expenditure limitations in the face of a constitutional challenge). The *Glenn* opinion stated that "campaign expenses are not 'qualified' if they exceed the limits Congress set, including the limits on spending in each state. 26 U.S.C. 9035(a)." *Id.* at 1099. *See also, Kennedy for President Committee v. FEC*, 734 F.2d 1558, 1560 n. 1 (D.C. Cir. 1984) (holding that "[u]nder 26 U.S.C. 9035, campaign expenditures are not 'qualified' if they exceed certain spending limits, including limitations on spending in each state during the presidential primaries"). The state-by-state spending limits at issue in these two cases are in section 441a(b)(1)(A) and (g) of the FECA. These court decisions arguably require the Commission to order repayments of matching funds used for unqualified purposes. *Glenn* at 1099, *Kennedy* at 1561.

With regard to alleged in-kind contributions by third parties such as political party committees, it can be argued that the *Glenn* and *Kennedy* cases are not dispositive because they did not involve third party expenditures, and that these amounts are not necessarily in the same pool of funds from which a publicly funded campaign makes expenditures. The *Glenn* court indicated that it was not ruling on a repayment determination involving private funds. *Glenn* at 1098. However, on the other hand, in-kind contributions to candidates are simultaneously treated as expenditures by those candidates under section 431(8)(A)(i) and (9)(A)(i) of the FECA, and must be reported as both contributions and expenditures under 11 CFR 104.13. In the past, the Commission has considered in-kind contributions to be commingled with a publicly financed candidate's other expenditures and subject to the candidate's expenditure limitations.

2. Public Comments

Two written comments addressing the Commission's statutory authority to seek repayment from Presidential primary committees that exceed the spending limits were received from Common Cause and Democracy 21 (joint comment); and Lyn Utrecht, Eric Kleinfeld, and Patricia Fiori (joint comment). The witnesses who presented testimony on this issue were Lyn Utrecht (Ryan, Phillips, Utrecht & MacKinnon), Joseph E. Sandler (DNC), and Thomas J. Josefiak (RNC).

The bipartisan comments and testimony supported the Commission's authority to obtain repayments for excessive spending by primary candidates' campaign committees using their own funds to exceed the limits. However, two witnesses indicated that they did not believe the Commission has the authority to require a repayment from a Presidential campaign committee based on expenditures made by a party committee, or based on contributors' in-kind contributions, where these expenses were not incurred or accepted by the candidate's campaign committee. One of these witnesses observed that both sections 9002(11) and 9032(9) of Title 26 define "qualified campaign expense" to mean an expense "incurred" by the candidate or the candidate's authorized committee. Thus, the witness' comment argued that expenditures made by other individuals or entities are not "qualified campaign expenses" and cannot form the basis for a repayment determination.

3. Additional Alternative—Repayment of Funds Exceeding Entitlement

After the close of the comment period and the hearing, the Commission considered whether repayments can be required under paragraph (b)(1) of 26 U.S.C. 9038, which addresses the repayment of funds received in excess of the aggregate amount of payments to which the candidate is entitled. The rationale for this approach would be that, since presidential primary candidates and their committees do not receive these matching funds until after they meet or exceed either the state-by-state or the overall spending limits, the campaigns were not entitled to receive these funds in the first place, and therefore must repay these amounts to the Treasury. None of the public comments or testimony addressed the payments-in-excess-of-entitlement theory for repayments under 26 U.S.C. 9038(b)(1) because this approach was not specifically included in the December 1998 NPRM.

4. Conclusion

The Commission has decided to make no changes to the regulation at 11 CFR 9038.2(b), which currently requires publicly funded Presidential primary campaigns to make repayments on the basis of exceeding the Congressionally-mandated spending limits. The current rule is not being changed at this time because there is no consensus in favor of changing the regulation.

Dated: March 17, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–7108 Filed 3–21–00; 8:45 am]

BILLING CODE 6715–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 742

Regulatory Flexibility and Exemption Program

AGENCY: National Credit Union Administration (NCUA).

ACTION: Advance Notice of proposed rulemaking.

SUMMARY: NCUA is soliciting public comment on whether, and under what circumstances, NCUA should adopt a regulation that would permit credit unions with advanced levels of net worth and consistently strong CAMEL ratings to be exempt, in whole or in part, from certain NCUA regulations that are not specifically required by statute. Comments are also requested on whether the adoption of such a regulation would reduce regulatory burden without adversely affecting safety and soundness. Information from interested parties will assist NCUA in determining whether and in what form to issue a proposed rule on regulatory flexibility.

DATES: The NCUA must receive comments on or before May 22, 2000.

ADDRESSES: Direct comments to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428, or you may fax comments to (703) 518–6319. *Please send comments by one method only.*

FOR FURTHER INFORMATION CONTACT: Michael J. McKenna, Senior Staff Attorney, Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518–6540 or Herb Yolles, Deputy Director, Office of Examination and Insurance, at the above address or telephone: (703) 518–6360.

SUPPLEMENTARY INFORMATION:

A. Background

NCUA is considering a policy for exempting qualifying credit unions from certain regulatory provisions. The regulatory provisions under consideration are those which are not specifically required by statute and the exemption from which would permit these credit unions greater flexibility in managing their operations. NCUA staff has reviewed agency regulations and has listed, in this advanced notice of proposed rulemaking (ANPR), those regulations which the NCUA Board believes may meet these criteria. The purpose of this ANPR is to elicit public comment on whether the proposed exemptions would in fact be of such benefit and to find out if there are any other regulations or NCUA requirements which credit unions believe should be considered in this proposal.

The NCUA Board believes that safe and sound credit unions with a proven record of effective risk management, as demonstrated by advanced levels of net worth and consistently high CAMEL ratings, may be reasonable candidates for greater regulatory flexibility from certain NCUA regulations which are not specifically required by statute and which have minimal safety and soundness ramifications when applied to federal credit unions with proven risk management records.

In considering this advance notice of proposed rulemaking, the NCUA Board did not include any current regulation which is statutorily imposed and therefore must continue to be implemented by NCUA in a form consistent with the manner specified for implementation when passed by Congress. Likewise, the NCUA Board did not consider a number of other regulations which, although not specifically required by statute, are nonetheless rooted in overriding concern for the overall safety and soundness of the credit union system and, therefore, would not be appropriate for inclusion in a formal regulatory flexibility proposal.

However, internal agency research and evaluation has produced examples of certain specified regulatory restrictions that are not specifically required by statute and may be unnecessary to apply equally to all credit unions based on their individual safety and soundness circumstances, because the regulations, although appropriate for some credit unions, have limited safety and soundness ramifications when applied to federal credit unions with advanced levels of net worth and ongoing strong management performance verified through the examination process and resulting high CAMEL ratings.

The NCUA Board is interested in receiving comments on whether credit unions with a proven track record of favorable performance should be allowed additional regulatory flexibility since their demonstrated ability mitigates the predominance of what limited safety and soundness concerns, if any, might arise from a reduction of certain specified regulatory requirements. Examples of mitigating factors include, but are not limited to, additional capital, strong management and consistent earnings. It is believed that a healthy risk management infrastructure strengthens capital adequacy and diminishes risk to the National Credit Union Share Insurance Fund (NCUSIF).

The NCUA Board is also interested in receiving comment on whether a flexible regulatory approach which results in the removal of selected regulatory obstacles for those credit unions with strong records of safety and soundness and effective risk management will encourage them to strive to maintain and enhance those levels of financial performance as well as to better enable them to remain competitive in the financial marketplace, foster innovation in member service and extend credit to the underserved.

The NCUA Board is interested in whether providing additional flexibility in selected regulatory requirements to credit unions that meet RegFlex triggers might result in a reduction in service within a credit union's field of membership for fear that with additional risk taking, delinquencies might increase and jeopardize the credit union maintaining their CAMEL 1 and 2 ratings.

Would establishing this special class of credit unions to receive different regulatory treatment provide a competitive advantage to RegFlex credit unions over non RegFlex eligible credit unions.

The proposal the NCUA Board is considering would involve an exemption process for qualifying federal credit unions, rather than a regulatory forbearance program available to all federal credit unions. Those federal credit unions that qualify must demonstrate, based on their CAMEL ratings and strong capital positions, that they are capable of managing the additional risks that these regulatory flexibilities may pose. NCUA believes that the proposed qualification and exemption process will effectively

mitigate any additional risk to the NCUSIF.

B. The Regulatory Flexibility (RegFlex) Proposal

The first of the two criteria for eligibility under this proposal, for which comments are requested, is that credit unions must have been rated as CAMEL code 1 or code 2 for two consecutive exams (with a Camel code 1 or 2 in management). NCUA has a decreased safety and soundness concern for these credit unions because it has been suggested that such credit unions are characterized by:

- Performance that consistently provides for safe and sound operations;
- Positive historical and projected key performance measures; and
- The ability to withstand business fluctuations.

The second criterion for this proposal is that a credit union must have net worth of 9% or greater, and is determined to be well-capitalized under Part 702 of NCUA's regulations. It has been suggested that generally, this indicates that a credit union has both demonstrated the ability to build capital and has accumulated at least a 200-basis point cushion over the minimum level to be classified as well-capitalized under the NCUA's recently adopted prompt corrective action regulation. This cushion of 200 basis points or greater represents a significant decrease in risk to both the credit union and the NCUSIF. The NCUA Board is also requesting comment on whether the capital trigger for complex credit unions should be different and if so, what criteria should be used.

It is assumed that credit unions which qualify for this proposal clearly represent a reduced safety and soundness risk. They have a proven track record that mitigates safety and soundness concerns and have capital levels that decrease any minimal additional risk this regulatory flexibility proposal may present. Is this an assumption upon which the RegFlex proposal should be based?

For the reasons discussed above, the NCUA Board is requesting comment on a proposed regulation that would exempt credit unions that have maintained a CAMEL 1 or 2 and a net worth of 9% for two consecutive exams from all or part of certain NCUA regulations. The NCUA Board is requesting comment on two approaches for granting this authority. The first option is that any credit union that meets this criteria will automatically be exempt from all or specified parts of the identified regulatory provisions in the proposed RegFlex regulation. All of the affected NCUA regulations or specific provisions of regulations would be set forth in the RegFlex regulation. The second option is for a formal approval and designation process by the region before the credit union could engage in these RegFlex activities. As part of the application process the credit union would need to note if there had been any recent changes in senior management. In addition, if a credit union is approved for RegFlex it would have to notify the region whenever there is a subsequent change in senior management or a material financial event that impacts capital.

It is proposed that a regional director, in his or her sole discretion, for substantive and documented safety and soundness reasons, would be authorized to revoke the RegFlex authority in whole or in part at any time and without advance notice. In such cases, the credit union would be able to appeal such a determination to NCUA's Supervisory Review Committee within 60 days of the regional director's determination. NCUA realizes that if this proposal is adopted it will have to modify the interpretive ruling and policy statement regarding the Supervisory Review Committee.

C. Potential Regulations NCUA Has Initially Identified as Part of the Proposal

(1) Section 701.36—FCU Ownership of Fixed Assets

NCUA originally proposed a fixed asset rule in 1979. The regulation was intended to ensure that the officials of FCUs had considered all relevant factors prior to committing large sums of members' funds to the acquisition of fixed assets. The final regulation attempted to accomplish this by requiring credit unions to seek the written approval of NCUA before investing in fixed assets in excess of 5% of their assets. The approval process was established so that the form and content of the request would contain sufficient information to establish the need for and the feasibility of the request and to determine the impact of the proposal on the credit union's operations. When the rule was revised in 1984, NCUA cited some ongoing concerns at that time about potential credit union losses if credit unions with insufficient capital were to invest in fixed assets disproportionate to their restricted capital position. Therefore, the requirement that a credit union receive NCUA approval if it wishes to invest in an aggregate total of fixed assets that exceeds 5 percent of shares and retained earnings was incorporated in the 1984 revision.

Since that time losses have been negligible and credit union capital positions have increased from an average capital ratio of 6.8% in December 1984 to 11.7% in December 1999. However, many credit unions have been required to seek NCUA approval to exceed the regulatory limit in order to more effectively serve their field of membership or to extend the level of service to underserved areas. Such approvals have been granted on a regular basis to credit unions with strong capital ratios and proven records of risk management. Although often granted to credit unions who are willing to go through the time-consuming advance approval process, it is likely that some credit unions may have been deterred from extending their service to some within their field of membership or to underserved areas because of this advance waiver regulatory requirement. Since capital position and CAMEL rating are among the key indices used to evaluate a credit union's application in making such an advance waiver request, it seems that this regulatory requirement would be an ideal candidate to streamline for those credit unions who meet the capital and CAMEL based RegFlex criteria. It is the view of the NCUA Board that some exemption from the fixed asset rule for credit unions who have proven their ability to adequately manage a higher level of investment in fixed assets would serve to better enable those credit unions to serve their members more effectively and extend service to underserved areas.

Should a credit union not have to apply for a waiver provided for in Section 701.36(c) if they meet the requirements of the RegFlex proposal? Should a credit union's investment in fixed assets have no regulatory cap? Should credit unions as a sound business practice have in their written business plan their own fixed asset limit? As an impact of such an exemption, it should be noted that, some of the restrictions on purchasing a building and leasing a portion of the property, until it was fully utilized by the credit union, would also be lifted. However, this would not authorize a credit union to engage in long-term commercial leasing. For safety and soundness reasons and legal reasons the credit union would still need to have a reasonable plan to fully utilize the property. Is this a reasonable application of the RegFlex exemption?

(2) Part 703—Investment and Deposit Activities

NCUA is considering whether to include various sections of Part 703, Investment and Deposit Activities, in

the proposal. Part 703, effective January 1, 1998, recognized that advances in modeling and measuring risk factors permitted institutions to better understand and manage their risk profile. NCUA shifted the regulatory focus from emphasis on specific investments to the characteristics that affect risk management of investment activity, including credit union board and staff understanding of the potential risk associated with the credit union's investment activities. The rule established parameters for risk assessment and permits credit union operating flexibility within those parameters. At the same time, it minimized the regulatory burden on those credit unions that choose to maintain a simple portfolio of investments.

In October, 1998, the NCUA Board approved, as Interpretive Ruling and Policy Statement No. 98–2, the FFIEC Policy Statement on Investment Securities and End-User Derivative Activities. This statement emphasizes sound business practices for managing the risks of investment activities. Board and senior management oversight is an integral part of an effective risk management program. An effective risk management system also includes: (1) Policies, procedures, and limits; (2) the identification, measurement, and reporting of risk exposures; and (3) a system of internal controls. This policy statement eliminated the FFIEC High Risk Security Test for CMOs as a supervision tool and recognized that institutions should be valuing the price sensitivity of their investments prior to purchase and on an ongoing basis.

Technology continues to improve a credit union's ability to measure risk. The regulatory focus continues to migrate toward risk assessment of internal controls and evaluation of management processes. Those institutions that have developed sound business practices in their risk management processes can assume a higher risk profile. The NCUA Board is requesting comment on whether the investment requirements should be modified for credit unions that meet the criteria set forth in this proposal and demonstrate the ability to manage the increased risk, or should Part 703 be modified to allow all credit unions the authority to have increased flexibility, or should NCUA make no regulatory changes?

Section 703.90 requires quarterly stress testing (300 basis point shock) of individual complex securities if the total sum of complex securities, as defined by the investment regulation, exceed net capital. For those credit unions that measure the impact of interest rate changes on their entire balance sheet, should NCUA waive or modify this regulatory requirement?

Section 703.40(c)(6) limits the discretionary delegation of investments to third parties to 100 percent of net capital. Should NCUA waive or modify the 100 percent limitation and permit credit unions to set the limit by board policy for credit unions?

Section 703.110(d) limits zero coupon investments to under 10 years from settlement date. Should NCUA extend this maturity? If so, what limitations should be set, if any? How should credit unions assess this risk?

Section 703.110 prohibits stripped, mortgage-backed securities, residual interests in CMOs/REMICS, mortgage servicing rights, commercial mortgage-related securities, or small business related securities. NCUA is interested in comments on whether this section should be part of the proposal or otherwise modified. If so, would these vehicles play an active role in your portfolio? Are there specific risks that need to be addressed? If authorized, should NCUA limit this activity in relation to capital?

The investment area is of particular concern for safety and soundness reasons. If the eligibility for expanded investment authority is limited to credit unions meeting the RegFlex criteria, should that authority be automatic or should an application and approval process be required of those credit unions which desire such expanded investment authority? Are there any other provisions of Part 703 that NCUA should consider for this proposal?

(3) Section 701.25—Charitable Donations

The original requirements on charitable donations were set forth in Interpretive Ruling and Policy Statement (IRPS) 79–6. The original requirements were imposed to provide guidance regarding charitable donations since there were many questions about what was permissible. In 1999, the NCUA Board incorporated the IRPS into NCUA's regulation and substantially deregulated the requirements. The current rule limits recipients of charitable donations to organizations located in or conducting activities in a community in which the FCU has a place of business. Furthermore, the board of directors must approve charitable contributions, and the approval must be based on a determination by the board of directors that the contributions are in the best interests of the federal credit union and are reasonable given the size and financial condition of the federal credit union. Should credit unions meeting the RegFlex criteria be completely exempt from the requirements of this regulation?

(4) Section 722.3(a)(1)—Appraisals

The appraisal regulation was mandated for all federal financial institution regulatory agencies by FIRREA in 1989. NCUA adopted its final regulation in 1990. NCUA's current regulation is more restrictive than the other financial institution regulators because of the unique nature of credit unions. However, experience has demonstrated that certain credit unions are able to adequately manage a higher degree of risk in making loans without an appraisal. Therefore, should credit unions meeting the RegFlex criteria be allowed to increase the dollar threshold from $100,000 to $250,000 for when an appraisal is required? Such an increase would be consistent with the regulatory authority set forth by the appropriate agencies regulating banks and thrifts. Furthermore, the threshold for an appraisal for a member business loan would be increased to $250,000 if it involves real estate. However, in both loan categories, the loan must still be supported by a written estimate of market value as set forth in Section 723.3(d) of NCUA's regulation. Finally, are there any other provisions in Part 722 that NCUA should consider for this proposal?

(5) Section 701.32 (b) and (c)—Payment on Shares by Public Unit and Nonmembers

The limitation on public unit and nonmember shares was adopted by the NCUA Board in 1989 because of abuses by certain credit unions and significant losses suffered by the NCUSIF. In 1994, the NCUA Board increased the dollar thresholds in these types of shares. The current regulation limits the maximum amount of all public unit and nonmember shares to 20% of total shares of the federal credit union or $1.5 million, whichever is greater. Recent experience indicates that certain credit unions may be able to adequately manage the increased risks posed by these type of shares. Therefore, should credit unions meeting the RegFlex criteria be exempt from the regulatory restrictions on public unit funds and nonmember shares (nonmember shares may be accepted by low-income credit unions)?

(6) Section 701.23—Purchase, Sale and Pledge of Eligible Obligations

The NCUA Board seeks comment on whether it should permit credit unions

that meet the RegFlex criteria to purchase any auto loan, credit card loan, member business loan, student loan or mortgage loan from any other credit union as long as they are loans the purchasing credit union is empowered to grant. If authorized, should the purchasing credit union be permitted to keep these loans in their portfolios? Should this change be applicable to all credit unions? Finally, are there any other issues in managing a loan portfolio that should be addressed in this section or section 701.21?

D. Request for Comment on Related Issues

Should the asset base of a credit union which expands into a low-income or underserved area be frozen for the calculation of the operating fee. If so, for what amount of time? Should there be some minimum threshold on the size of the underserved area in order for the credit union to be eligible for this treatment? If the credit union subsequently adds another underserved area, after the specified time, to its field of membership, should its assets be readjusted and frozen for another period of time in the calculation for the credit union's operating fee?

The NCUA Board also seeks comment on whether the regulatory flexibility outlined in this proposal should be used as an incentive to encourage eligible credit unions to continue serving low-income individuals within their field of membership or to add an underserved area or low-income groups to their field of membership. This could be accomplished by including low-income or underserved area as one of the basic eligibility criteria under the proposal. The NCUA Board is also requesting comment on whether there are any other incentives or areas of regulatory flexibility that may be granted to federal credit unions to encourage them to expand into underserved areas.

The NCUA Board recently issued an advance notice of proposed rulemaking at the November Board meeting. 64 FR 66413 (November 26, 1999). The Board stated that it is considering expanding its view of the incidental powers of a federal credit union. *Id.* at 66414. The Board may consider it necessary to limit or restrict some activities that may be permissible as an incidental power because of safety and soundness concerns. In connection with RegFlex, the Board believes it may be appropriate to permit federal credit unions meeting the RegFlex criteria to engage in incidental power activities without the restrictions that would be generally applicable to other federal credit unions. However, since a proposed rule for Part 721 is presently scheduled to be issued this summer, further details on how the revised rule may be incorporated, if appropriate, into the RegFlex approach will be set forth in the proposed RegFlex rule.

Proposed Part 714 on leasing was issued by the NCUA Board in the fall of 1999. 64 FR 55866 (October 15, 1999). The NCUA Board expects a final rule will be presented at the May Board meeting. In connection with RegFlex, the Board requests comment on whether it may be appropriate to permit federal credit unions meeting the RegFlex criteria to engage in certain leasing activities without the restrictions that would be generally applicable to other federal credit unions but that are not legally required.

The NCUA Board is also requesting comment on what changes, if any, might be considered to NCUA's supervision and examination program for credit unions meeting the RegFlex criteria. Possible areas of consideration are a different type of exam for RegFlex credit unions or a revised examination schedule for RegFlex credit unions.

What guidance should the NCUA Board provide to examiners to ensure that credit unions are not discouraged from responsibly managing additional risk in an effort to provide credit to a broader range of its members? For instance, should peer comparisons be dropped? Should delinquency and charge-off rates be more liberally approached during examinations? If so, is there a numerical rate that should be considered acceptable?

The NCUA Board is also requesting comment on any other regulatory or supervisory issues that might be good candidates for RegFlex. Please do not comment on regulations which are statutory or provisions that are mandated by statutory requirements. These cannot and will not be included in any final RegFlex regulation approved by the NCUA Board. Among others, examples of such statutory regulations and provisions include Truth-In-Savings (Part 707), the aggregate loan limit in the member business loan rule (Part 723) or the 1% loan and investment limit in the CUSO rule (Part 712). Furthermore, please do not comment on regulations that NCUA does not issue or control such as Regulation B or Regulation Z which are issued by the Board of Governors of the Federal Reserve System.

By the National Credit Union Administration Board on March 16, 2000.

Becky Baker,

Secretary of the Board.

[FR Doc. 00–7040 Filed 3–21–00; 8:45 am]

BILLING CODE 7535–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–02–AD]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Models 1900C, 1900C (C–12J), and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Raytheon Aircraft Company (Raytheon) Beech Models 1900C, 1900C (C–12J), and 1900D airplanes. The proposed AD would require you to install a spiral wrap around the wing fuel quantity wiring harness and apply an adhesive sealant to the Wiggins couplings on the internal fuel tank wiring carry-through conduit. The proposed AD results from reports of chafed or shorted wing fuel quantity harness wires on the affected airplanes. These occurrences were found during regular maintenance inspections. The actions specified by the proposed AD are intended to:

—prevent chafing between the wing fuel quantity wiring harness and the internal wing harness supports at each wing rib location, which could cause the fuel quantity indication to become unreliable. This could leave the flight crew without an indication of the amount of fuel the airplane has during flight; and

—prevent fuel from leaking through the wiring carry-through conduit and into the wing tip or wheel well area, which could lead to a fire or explosion.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before May 19, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000-CE–02–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

You may get the service information referenced in the proposed AD from the Raytheon Aircraft Company, PO Box 85, Wichita, Kansas 67201–0085; telephone: (800) 625–7043 or (316) 676–4556. You may examine this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Jeff Pretz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites comments on the proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date specified above, before taking action on the proposed rule. We may change the proposals contained in this notice in light of the comments received.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1; 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might necessitate a need to modify the proposed rule. You may examine all comments we receive before and after the closing date for comments in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this proposal.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–02–AD." We will date stamp and mail the postcard back to you.

Availability of NPRMs

You may obtain a copy of this NPRM by submitting a written request to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–02–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

Discussion

What events have caused the proposed rule? Several operators of Raytheon Beech Models 1900C and 1900D airplanes have reported chafing of the wing fuel quantity wiring harness against the wing fuel quantity wiring harness supports (located at the wing wiring harness lighting hole mounts). The condition is also conducive to the Model 1900C (C–12J) airplanes.

The lightning hole mounts at each wing rib support the wing fuel quantity wiring harness. The following could occur and cause the above-referenced condition:

—Vibration and fuel movement cause the insulation on the wiring harness to chafe on the tie straps used to secure the harness to the lightning hole mounts; and

—Exposed conductors of the wiring harness could then contact each other and result in an incorrect fuel quantity indication or the indicator reading zero.

In addition to the above condition on the Raytheon Beech Models 1900C, 1900C (C–12J), and 1900D airplanes, the O-rings in Wiggins couplings that join the electrical conduit internal to the wing fuel tanks could leak and allow fuel to enter the conduit. This could result in a fire or explosion.

What are the consequences if the conditions are not corrected? If not corrected in a timely manner, the above-referenced conditions could result in the following:

—Chafing between the wing fuel quantity wiring harness and the internal wing harness supports at each wing rib location could cause the fuel quantity indication to become unreliable. This could leave the flight crew without an indication of the amount of fuel in the airplane during flight; and

—Fuel leaking through the wiring carry-through conduit and into the wing tip or wheel well area could lead to a fire or explosion.

Relevant Service Information

Is there service information that applies to this subject? Yes. Raytheon has issued Mandatory Service Bulletin No. SB 28–3299, Issued: December, 1999.

What are the provisions of this service bulletin? The service bulletin includes procedures for:

—Installing a spiral wrap around the wing fuel quantity wiring harness; and

—Applying an adhesive sealant to the Wiggins couplings on the internal fuel tank wiring carry-through conduit.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has the FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, including the relevant service information, FAA has determined that:

—An unsafe condition is likely to exist or develop in other Raytheon Beech Models 1900C, 1900C (C–12J), and 1900D airplanes of the same type design;

—The actions of the above-referenced service bulletin should be accomplished on the affected airplanes; and

—AD action should be taken to prevent the above-referenced conditions from occurring.

What would the proposed AD require? The proposed AD would require you to:

—Install a spiral wrap around the wing fuel quantity wiring harness; and

—Apply an adhesive sealant to the Wiggins couplings on the internal fuel tank wiring carry-through conduit.

Compliance Time of This Proposed AD

What is the compliance time of this proposed AD? The compliance time in the proposed AD is whichever of the following that occurs first:

—Within the next 3 months after the effective date of this AD; or

—Within the next 600 hours time-in-service (TIS) after the effective date of this AD.

Why is the compliance time in both calendar time and hours TIS? Chafing damage is a direct result of airplane usage; however, the fuel leakage problem could result regardless of whether the airplane is utilized. Therefore, to assure that both problems are address in a timely manner without inadvertently grounding any of the affected airplanes, we are utilizing a compliance based upon both hours TIS and calendar time.

Cost Impact

How many airplanes does this proposed AD impact? The FAA estimates that 303 airplanes in the U.S. registry would be affected by the proposed AD.

What is the cost impact of the affected airplanes on the U.S. Register? We estimate that it would take approximately 10 workhours per airplane to accomplish the proposed actions, and that the average labor rate is approximately $60 an hour. There is no cost for parts to accomplish the proposed actions.

Based on these figures, we estimate the total cost impact of the proposed AD on U.S. operators to be $181,800, or $600 per airplane.

Regulatory Impact

These proposed regulations would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA determines that this proposed rule would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA has placed a copy of the draft regulatory evaluation prepared for this action in the Rules Docket. You may contact the Rules Docket (at the location provided under the caption **ADDRESSES**) to get a copy of this evaluation.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends Section 39.13 by adding a new airworthiness directive (AD) to read as follows:

Raytheon Aircraft Company (Type Certificate No. A24CE formerly held by the Beech Aircraft Corporation):

Docket No. 2000–CE–02–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following airplanes, certificated in any category:

(1) Part I of this AD: Wing fuel quantity wiring harness attachment improvement.

Model	Serial No.
1900C	UC–1 through UC–174.
1900C (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–331.

(2) Part II of this AD: Wiggins coupling adhesive sealing.

Model	Serial No.
1900C	UC–1 through UC–174.
1900C (C–12J)	UD–1 through UD–6.
1900D	UE–1 through UE–354.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the following:

(1) Part I of this AD: chafing between the wing fuel quantity wiring harness and the internal wing harness supports at each wing rib location, which could cause the fuel quantity indication to become unreliable. This could leave the flight crew without an indication of the amount of fuel the airplane has during flight; and

(2) Part II of this AD: fuel from leaking through the wiring carry-through conduit and into the wing tip or wheel well area, which could lead to a fire or explosion.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

(1) Part I of this AD: Install a spiral wrap around the wing fuel quantity wiring harness; and

(2) Part II of this AD: Apply an adhesive sealant to the Wiggins couplings on the internal fuel tank wiring carry-through conduit.

(e) *What is the compliance time of all actions of this AD?* You must accomplish all actions of this AD at whichever of the following times that occurs first:

(1) Within the next 3 calendar months after the effective date of this AD; or

(2) Within the next 600 hours time-in-service (TIS) after the effective date of this AD.

(f) *What procedures must I use to accomplish the actions required in this AD?* You must use the procedures in Raytheon Mandatory Service Bulletin No. SB 28–3299, Issued: December, 1999, to accomplish the actions of this AD.

(g) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(h) *Where can I get information about any already-approved alternative methods of compliance?* Contact Jeff Pretz, Aerospace Engineer, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4153; facsimile: (316) 946–4407.

(i) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(j) *Who should I contact if I have questions regarding the service information?* Questions or technical information related to Raytheon Mandatory Service Bulletin No. SB 28–3299, Issued: December, 1999, should be directed to Raytheon Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This service information may be examined at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on March 14, 2000.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7091 Filed 3–21–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–37–AD]

Airworthiness Directives; Sikorsky Aircraft Corporation (Sikorsky) Model S–76A Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes adopting a new airworthiness directive (AD) applicable to Sikorsky Model S–76A helicopters. The AD would require inspecting at specified intervals until installing a soft-start assembly retrofit kit on the air conditioning system to prevent a continuous flow of current through the soft-start resistor. This proposal is prompted by a report of overheating of the soft-start assembly. The actions specified by the proposed AD are intended to prevent overheating of the air conditioning soft-start assembly, damage in the lower tailcone, an electrical fire, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–37–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9:00 am and 3:00 pm, Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Sikorsky Aircraft Corporation, Attn: Manager, Commercial Tech Support, 6900 Main Street, P.O. Box 9729, Stratford, Connecticut 06615–9129, phone (203) 386–7860, fax (203) 386–4703. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7155, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–37–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–37–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes adopting a new AD applicable to Sikorsky Model S–76A helicopters. The AD would require inspecting the soft-start assembly at intervals not to exceed 25 hours time-in-service until installing a soft-start assembly retrofit kit on the Aero Aire Air Conditioning System, part number (P/N) S–76A–1–2, in 120 calendar days to prevent a continuous flow of current through the soft-start resistor. This proposal is prompted by a report of overheating of the air conditioning soft-start assembly. This condition, if not corrected, could cause serious secondary damage in the lower tailcone, an electrical fire, and subsequent loss of control of the helicopter.

The FAA has reviewed Sikorsky Alert Service Bulletin 76–21–4A, dated February 24, 1998 (ASB). The ASB refers operators to procedures in Aero Aire Corp. Service Bulletins 970001, Revision A, dated September 18, 1997, for inspecting the soft-start assembly, and 970002, dated December 18, 1997, for installing a soft-start assembly retrofit kit, P/N 76SB001, on the Aero Aire Air Conditioning System, P/N S–76A–1–2, on Sikorsky Model S–76A helicopters. The ASB states the procedures are necessary to prevent overheating of the air conditioning soft-start assembly that could cause serious secondary damage in the lower tailcone.

Since an unsafe condition has been identified that is likely to exist or develop on other Sikorsky Model S–76A helicopters of the same type designs, the proposed AD would require inspecting the soft start assembly at intervals not to exceed 25 hours time-in-service until installing a soft-start control assembly retrofit kit on the Aero Aire Air Conditioning System, P/N A–76A–1–2, within 120 calendar days. The actions would be required to be accomplished in accordance with the Aero Aire service bulletins described previously.

The FAA estimates that 9 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Aero Aire Service Bulletin No. 97002 states that the retrofit kit will be provided at no charge. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1620.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

THE PAPER AND INK USED IN THE ORIGINAL PUBLICATION MAY AFFECT THE QUALITY OF THE MICROFORM EDITION.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Sikorsky Aircraft Corporation:
Docket No. 99–SW–37–AD.

Applicability: Model S–76A helicopters with Aero Aire Air Conditioning System, part number (P/N) S–76A–1–2, modified in accordance with Supplemental Type Certificate SH4680SW, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the air conditioning soft-start control assembly, damage in the lower tailcone, a fire, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 25 hours time-in-service (TIS) and thereafter at intervals not to exceed 25 hours TIS, inspect the soft-start control assembly in accordance with the Accomplishment Instruction, Section III, of Aero Aire Corporation Service Bulletin No. 970001, Revision A, dated September 18, 1997, except neither contact nor return of the soft-start controller unit is required.

(b) Within 120 calendar days, install a soft start assembly retrofit kit (kit), P/N 76SB001, in accordance with the Accomplishment Instructions, Section III, of Aero Aire Corporation Service Bulletin 970002, dated December 18, 1997. Installing the kit is terminating action for the requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on March 15, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–7112 Filed 3–21–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–AWP–1]

Proposed Modification of Class E Airspace; Willits, CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to modify the Class E airspace area at Willits, CA. A revision of Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP) to Runway (RWY) 16 and RWY 34 at Ells Field-Willits Municipal Airport has made this proposal necessary. Additionally controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing the GPS RWY 16 and RWY 34 SIAP to Ells Field-Willits Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Ells Field-Willits Municipal Airport, Willits, CA.

DATES: Comments must be received on or before April 17, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace Branch, AWP–520, Docket No. 00–AWP–1, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261.

The official docket may be examined in the Office of Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6007, 15000 Aviation Boulevard, Lawndale, California 90261.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT: Larry Tonish, Air Traffic Airspace Specialist, Airspace Branch, AWP–520, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (310) 725–6539.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed below. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with the comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 00–AWP–1." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Airspace Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace Branch, 15000 Aviation Boulevard, Lawndale, California 90261. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedures.

The Proposal

The FAA is considering an amendment to 14 CFR part 71 by modifying the Class E airspace area at Willits, CA. A revisions to the GPS RWY 16 and RWY 34 SIAP at Ells Field-Willits Municipal Airport has made this proposal necessary. Additional controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing these GPS approach procedures at Ells Field-Willits Municipal Airport. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the GPS RWY 16 and RWY 34 SIAP at Ells Field-Willits Municipal Airport, Willits, CA. Class E airspace designations are published in paragraph 6005 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1 The Class E airspace designation listed in this document would be published subsequently in this Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11035; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this proposed rule would not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AWP CA E5 Willits, CA (Revised)

Ells Field-Willits Municipal Airport, CA
[Lat. 39°27′03″N, long. 123°22′12″W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Ells Field-Willits Municipal Airport and that airspace bounded by a line beginning at lat. 39°28′00″N, long. 123°30′15″W; to lat. 39°48′30″N, long 123°42′00″W; to lat. 39°53′30″W, long. 123°28′30″W; to lat. 39°25′53″N, long. 123°14′13″W, thence clockwise along the 6.3-mile radius of the Ells Field-Willits Municipal Airport, to the point of beginning.

* * * * *

Issued in Los Angeles, California, on February 15, 200.

Dawna J. Vicars,

Assistant Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 00–7000 Filed 3–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–198]

RIN 2115–AA97

Safety Zone: Parade of Tall Ships Newport 2000, Newport, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary moving safety zone around vessels participating in the Newport, RI, parade of Tall Ships on July 2, 2000. The proposed moving safety zone will extend two hundred (200) yards ahead of the lead vessel to two hundred (200) yards astern of the last vessel in the parade, and two hundred (200) yards abeam of each parading vessel along the designated parade route. The safety zone is needed to protect each of the Tall Ships, which will have limited maneuverability, from damage as well as protect passing and spectator vessels. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

DATES: Comments and related material must reach the Coast Guard on or before May 8, 2000.

ADDRESSES: You may mail comments and related material to Marine Safety Office Providence, 20 Risho Avenue, East Providence, Rhode Island 02914. The Prevention Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Providence between 8 am and 3 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO John W. Winter at Marine Safety Office Providence, (401) 435–2335.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01 99–198), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Providence at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

There will be numerous Tall Ships and other smaller sailing vessels participating in a parade of sail on Sunday, July 2, 2000, for the Tall Ships Newport 2000 celebration. The entire parade event is scheduled to last approximately six hours, beginning at 10 a.m. and ending at 4 p.m. The parading vessels will transit outbound from Newport Harbor, then north through the East Passage, Narragansett Bay, underneath the Newport Bridge, westward around Gould Island, and then southbound out to sea.

Discussion of Proposed Rule

The Coast Guard proposes this rule to protect spectator craft, mariners and the Tall Ships themselves from possible collision while the Tall Ships are making way under sail and have limited mobility in the channel during the parade. The entire parade event is scheduled to last approximately six hours, beginning at 10 am and ending at 4 pm. The parading vessels will transit outbound from Newport Harbor, then north through the East Passage, Narragansett Bay, underneath the Newport Bridge, westward around Gould Island, and then southbound out to sea. The parade of sail route extends through the East Passage of Narragansett Bay and passes through the following points: (see NOAA Charts(s) #13218, 13221, 13223).

Latitude	Longitude
41.30'18" N	71.20'58" W
41.31'43" N	71.20'00" W
41.33'29" N	71.19'14" W
41.33'29" N	71.20'55" W
41.32'19" N	71.21'12" W
41.28'45" N	71.20'45" W
41.27'44" N	71.22'24" W

We feel this proposed rule would give the Coast Guard the authority to ensure the safety of all vessels participating in the parade event as well as spectator craft enjoying the event.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This safety zone involves only the southeast portion of Narragansett Bay and would shut down the East passage to commercial and recreation traffic during the event. The effect of this regulation will not be significant because this rule would be in effect for only approximately 6 hours, recreational vessel traffic could pass safely around the safety zone through the West passage, and maritime advisories will be made well in advance allowing large commercial traffic to schedule around the event.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a small portion of Narragansett Bay for approximately six hours between the hours of 10 am and 4 pm on July 2, 2000.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only approximately 6 hours. Recreational vessel traffic could pass safely around the safety zone through the West passage. Before the effective period, we would issue maritime advisories widely available to users of the bay, and this will allow large commercial traffic ample time to schedule around the event.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO John W. Winter, telephone (401) 435–2335.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of implementing this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–198 to read as follows:

§ 165.T01–198 Safety Zone: Parade of Tall Ships Newport 2000, Rhode Island, Lower Narragansett Bay, East Passage.

(a) *Location.* A moving safety zone 200 yards ahead of the lead vessel in the parade, 200 yards astern of the last vessel in the parade, and 200 yards abeam of each vessel participating in the Tall Ships Newport 2000 parade of sail. The parade of sail route extends through the East Passage of Narragansett Bay and passes through the following points: (see NOAA Charts(s) #13218, 13221, 13223)

Latitude	Longitude
41.30'18" N	71.20'58" W
41.31'43" N	71.20'00" W
41.33'29" N	71.19'14" W
41.33'29" N	71.20'55" W
41.32'19" N	71.21'12" W
41.28'45" N	71.20'45" W
41.27'44" N	71.22'24" W

(b) *Effective period.* Paragraph (a) of this section is effective between 10 a.m. and 4 p.m. on Sunday, July 2, 2000. Departure time is dependent on the tide, weather and granting of authority for departure by the Captain of the Port, Providence.

(c) *Regulations.* (1) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene-patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by siren, radio, flashing light, or other means, the operator of the vessel shall process as directed.

Dated: March 6, 2000.

Peter A. Popko,

Captain, U.S. Coast Guard, Captain of the Port, Marine Safety Office Providence.

[FR Doc. 00–7104 Filed 3–21–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–99–197]

RIN 2115–AA97

Safety Zone: Fireworks Display, Naval Station Newport, Newport, RI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a safety zone within a five hundred (500) yard radius of the fireworks launching site at Naval Station Newport, Newport, RI on June 30, 2000. The safety zone is needed to safeguard the public from possible hazards associated with a fireworks display. Entry into this zone will be prohibited unless authorized by the Captain of the Port, Providence, Rhode Island.

DATES: Comments and related material must reach the Coast Guard on or before May 8, 2000.

ADDRESSES: You may mail comments and related material to Marine Safety Office Providence, 20 Risho Avenue, East Providence, Rhode Island 02914. The Prevention Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Providence between 8 am and 3 pm, Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: CWO John W. Winter at Marine Safety Office Providence, (401) 435–2335.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01 99–197), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. The comment period for this proposed rule is 45 days. This time period is adequate to allow input because the event is highly publicized, and the shortened comment period will allow the full 30 day publication requirement prior to the final rule becoming effective. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. However, you may submit a request for a meeting by writing to Marine Safety Office Providence at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The safety zone is needed to protect the public from debris and other hazards associated with fireworks display at Naval station Newport, starting at 8 p.m. on June 30. The event will last approximately 3 hours.

Discussion of Proposed Rule

The Coast Guard proposes this rule to protect mariners and spectator crafts from falling debris and possible fire hazards related to fireworks displays. The event is scheduled to start at 8 p.m. and last approximately 3 hours. This proposed rule would give the Coast Guard the authority to ensure the safety of all spectator vessels enjoying the event.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This safety zone involves a very small area of Narragansett Bay. The effect of this regulation will not be significant due to the lateness of the hour; all vessel traffic may safely transit around this safety zone; and the extensive maritime advisories that will be made.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in a portion of Narragansett Bay from 8 p.m. to 11 p.m. on June 30, 2000.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons. This rule would be in effect for only three hours and vessel traffic could pass safely around the safety zone. Before the effective period, we would issue maritime advisories widely available to users of Narragansett Bay.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact CWO John W. Winter, telephone (401)435–2335.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of implementing this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reports and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

2. Add temporary § 165.T01–197 to read as follows:

§ 165.T01–197 Safety Zone: Fireworks Display, Naval Station Newport, Newport, Rhode Island.

(a) *Location.* All waters within a five hundred (500) yard radius of the fireworks launching platform located approximately 300 yards off shore from Coasters Island, Naval Station Newport, Newport, Rhode Island.

(b) *Effective Period.* This section is effective from 8 p.m. until 11 p.m. on June 30, 2000, unless extended or terminated sooner by the Captain of the Port Providence.

(c) *Regulations.* (1) The general regulations governing safety zones contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by a U.S. Coast Guard vessel by siren, radio, flashing light, or other means, the operator of a vessel shall proceed as directed.

Dated: March 6, 2000.

Peter A. Popko,

Captain, U.S. Coast Guard, Captain of the Port, Marine Safety Office Providence.

[FR Doc. 00–7060 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 224–0213b; FRL–6549–8]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Monterey Bay Unified Air Pollution Control District, San Joaquin Unified Air Pollution Control District, Santa Barbara County Air Pollution Control District, South Coast Air Quality Air Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from wood product and wood panelling coating operations.

The intended effect of this action is to regulate emissions of VOCs according to the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by April 21, 2000.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Divison, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812;

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940;

San Joaquin Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721;

Santa Barbara County Air Pollution Control District 26 Castilian Drive, Suite B–23, Goleta, CA 93117; and,

South Coast Air Quality Management District, 218 East Copley Drive, Diamond Bar, CA 91765.

FOR FURTHER INFORMATION CONTACT: Jerald S. Wamsley, Rulemaking Office, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1226.

SUPPLEMENTARY INFORMATION: This document concerns the following local district rules: Monterey Bay Unified Air Pollution Control District (MBUAPCD) Rule 429—Applications of Nonarchitectural Coatings; San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) Rule 4606—Wood Products Coating Operations; Santa Barbara County Air Pollution Control District (SBCAPCD) Rule 351—Surface Coating of Wood Products; South Coast Air Quality Management District (SCAQMD) Rule 1104—Wood Flat Stock Coating Operations. These rules were submitted by the California Air Resources Board (CARB) to EPA on these respective dates: March 23, 1988; February 16, 1999; May 13, 1999; and, October 29, 1999.

For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: February 15, 2000.

Laura Yoshii,

Acting Regionol Administrator, Region IX.

[FR Doc. 00–6973 Filed 3–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OR73–7288–b; FRL–6544–5]

Approval and Promulgation of State Implementation Plans: Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The Environmental Protection Agency (EPA) approves various revisions to Oregon's State Implementation Plan (SIP). This revision to the SIP was submitted to EPA, dated October 8, 1998.

The revised regulations include Transportation Conformity (OAR 340–020–710 through 340–020–1080) and General Conformity OAR–020–1500 through 340–020–1590). In the Final Rules section of this **Federal Register**, the EPA is approving the State's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal amendment and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If the EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received in writing by April 21, 2000.

ADDRESSES: Written comments should be addressed to Christine Lemme (OAQ–107), Office of Air Quality, at the EPA Regional Office listed below. Copies of the state submittal are available at the following addresses for inspection during normal business hours. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day. Environmental Protection Agency, Region 10, Office of Air Quality, 1200 6th Avenue, Seattle, WA 98101 and the Oregon Department of Environmental Quality, 811 SW Sixth Avenue, Portland, Oregon 97204–1390.

FOR FURTHER INFORMATION CONTACT: Wayne Elson, Office of Air Quality, (OAQ–107), EPA, 1200 6th Avenue, Seattle, WA 98101, (206) 553–1463.

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final rule which is located in the Rules section of this **Federal Register**.

Dated: February 22, 2000.

Chuck Findley,

Acting Regional Administrator, Region 10.

[FR Doc. 00–6970 Filed 3–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 214–0191; FRL–6563–2]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Kern County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval and a simultaneous limited disapproval of revisions to the California State Implementation Plan (SIP) for the Kern County Air Pollution Control District (KCAPCD). The revisions concern Rule 427, stationary piston engines, for the control of oxides of nitrogen (NO_X) emissions.

The intended effect of proposing limited approval and a simultaneous limited disapproval of the rule is to regulate emissions of NO_X in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on the proposed rule will incorporate the rule into the federally approved SIP. EPA has evaluated the rule and is proposing a limited approval and a simultaneous limited disapproval under

provisions of the CAA regarding EPA action on SIP submittals and general rulemaking authority because these revisions do not fully meet the CAA provisions regarding plan submissions and requirements for nonattainment areas.

DATES: Comments must be received on or before April 21, 2000.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule and EPA's evaluation report of the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule is also available for inspection at the following locations:

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Kern County Air Pollution Control District, 2700 "M" Street, Suite 302, Bakersfield, CA 93301

FOR FURTHER INFORMATION CONTACT: Ed Addison, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1160.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule being proposed for limited approval and a simultaneous limited disapproval into the California SIP is Kern County Air Pollution Control District (KCAPCD) Rule 427, Stationary Piston Engines (Oxides of Nitrogen). Rule 427 was submitted by the State of California to EPA on August 21, 1998.

II. Background

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. The air quality planning requirements for the reduction of NO_X emissions through reasonably available control technology (RACT) are set out in section 182(f) of the Clean Air Act.

On November 25, 1992, EPA published a proposed rule entitled, "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement) which describes and provides preliminary guidance on the requirements of section 182(f). The November 25, 1992, action should be referred to for further information on the NO_X requirements.

Section 182(f) of the Clean Air Act requires States to apply the same requirements to major stationary sources of NO_X ("major" as defined in section 302 and sections 182(c), (d), and (e)) as are applied to major stationary sources of volatile organic compounds (VOCs), in moderate or above ozone nonattainment areas. KCAPCD is classified as serious;[1] therefore this area is subject to the RACT requirements of section 182(b)(2) and the November 15, 1992 deadline cited below.

Section 182(b)(2) requires submittal of RACT rules for major stationary sources of VOC (and NO_X) emissions (not covered by a pre-enactment control technologies guidelines (CTG) document or a post-enactment CTG document) by November 15, 1992. There were no NO_X CTGs issued before enactment and EPA has not issued a CTG document for any NO_X sources since enactment of the CAA. The RACT rule covering NO_X sources and submitted as SIP revisions require final installation of the actual NO_X controls as expeditiously as practicable, but no later than May 31, 1995.

This document addresses EPA's proposed action for Kern County Air Pollution Control District (KCAPCD), Rule 427, Stationary Piston Engines (Oxides of Nitrogen), adopted by the KCAPCD, on July 2, 1998. The State of California submitted Rule 427 to EPA on August 21, 1998. Rule 427 was found to be complete on October 2, 1998, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[2]

NO_X emissions contribute to the production of ground level ozone and smog. KCAPCD Rule 427 specifies NO_X emission standards and was originally adopted as part of KCAPCD's effort to achieve the National Ambient Air Quality Standard (NAAQS) for ozone, and in response to the CAA requirements cited above. The following is EPA's evaluation and proposed action for the rule.

[1] KCAPCD retained its designation of nonattainment and was classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 6, 1991).

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

III. EPA Evaluation and Proposed Action

In determining the approvability of a NO_X rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). Among those provisions is the requirement that a NO_X rule must, at a minimum, provide for the implementation of RACT for stationary sources of NO_X emissions. The EPA interpretation of these requirements, which forms the basis for today's action, appears in the NO_X Supplement (57 FR 55620) and various other EPA policy guidance documents.[3]

For the purpose of assisting State and local agencies in developing NO_X RACT rules, EPA prepared the NO_X Supplement to the General Preamble. In the NO_X Supplement, EPA provides preliminary guidance on how RACT will be determined for stationary sources of NO_X emissions. While most of the guidance issued by EPA on what constitutes RACT for stationary sources has been directed towards application for VOC sources, much of the guidance is also applicable to RACT for stationary sources of NO_X (see section 4.5 of the NO_X Supplement). In addition, pursuant to section 183(c), EPA is issuing alternative control technique documents (ACTs), that identify alternative controls for all categories of stationary sources of NO_X. The ACT documents will provide information on control technology for stationary sources that emit or have the potential to emit 25 tons per year or more of NO_X. However, the ACTs will not establish a presumptive norm for what is considered RACT for stationary sources of NO_X.

In addition, the California Air Resources Board (CARB) is developing a guidance document entitled, "Proposed Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Stationary Internal Combustion Engines," Dec. 3, 1997. EPA has used CARB's proposed RACT Determination, dated Dec. 3, 1997, in evaluating Rule 427, for consistency with the CAA's RACT requirements while awaiting a final determination. In general, the guidance documents cited above, as well as other relevant and applicable guidance documents, have been set forth to ensure that submitted NO_X RACT rules meet Federal RACT requirements and are fully enforceable and strengthen or maintain the SIP.

[3] "Issues Relating to VOC regulation Cutpoints, Deficiencies, and Deviation, Clarification to Appendix D of November 24, 1987 **Federal Register** document" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988).

There is currently a January 25, 1996, version of Rule 427, Stationary Piston Engines (Oxides of Nitrogen), in the SIP.

Submitted Rule 427 includes the following provisions:

- General provisions including applicability, exemptions, and definitions.
- Exhaust emissions standards for oxides of nitrogen (NO_X).
- Compliance and monitoring requirements including compliance schedule, reporting requirements, monitoring and recordkeeping, and test methods.

Submitted Rule 427 contains the following significant modifications from the 1996 version:

- Exempts low use rate engines.
- Allows and clarifies representative engine testing.
- Clarifies recordkeeping requirements.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP and must conform with EPA policy in order to be approved by EPA. When reviewing rules for SIP approvability, EPA evaluates enforceability elements such as test methods, recordkeeping, and compliance testing in addition to RACT guidance regarding emission limits.

EPA has evaluated Kern County Air Pollution Control District Rule 427 for consistency with the CAA, EPA regulations, and EPA policy and has found that KCAPCD Rule 427 contains the following deficiencies, which must be corrected pursuant to the section 182(a)(2)(A) requirement of part D of the CAA.

Section V: Engines between 50 and 250 bhp are not subject to NO_X emission limits or testing requirements. Since such engines can easily emit at least 25 tons per year of NO_X (the major source threshold for KACPCD), this rule does not fulfill the CAA section 182 requirement to implement RACT for all major sources. Although a similar version of section V was previously approved into the SIP, it needs to be modified to implement RACT. Emission limits should be included for engines larger than 50 bhp (as exist, for example, in analogous rules in other California Districts) and groups of smaller engines that total 25 tons per year of NO_X emissions. Annual NO_X emission tests and operational non-resettable totalizing time or fuel meters should also be required.

Section VIII:

C.1: The extended compliance test schedule: Allows for once every two years instead of annual source testing. To ensure enforceability of the emission limits and early identification of violations, the frequency of source testing should be increased to once every 8760 hours of operation or every two years, whichever is shorter, as recommended in the proposed CARB RACT Determination.

C.2.d: Group testing of engines: This provision relaxes the general requirement to annually test each affected engine by allowing testing of a representative sample of engines. Such representative sampling provisions must be carefully designed to assure consistency with RACT and enforceability requirements of the Act. We believe that addition of the following elements to the representative sampling requirements of the rule would assure consistency with enforceability and RACT requirements.

- The EPA policy provisions require, among other things, a 10 percent (%) or greater reduction in emissions for each individual engine beyond the emission limits established in compliance with section V.
- The number of engines tested should be the greater of either one engine, or one third of all identical engines in the group. The engines must be rotated in such a way that all engines are tested in a three year period.

A detailed discussion of these deficiencies can be found in the Technical Support Document for Rule 427, dated December 1, 1999, which is available from the U.S. EPA, Region IX office. Because of these deficiencies, EPA cannot grant approval of the rule under section 110(k)(3) and part D. In order to strengthen the SIP, EPA is proposing a limited approval and a simultaneous limited disapproval of KCAPCD's submitted Rule 427 under sections 110(k)(3) and 301(a) of the CAA because it contains deficiencies which must be corrected in order to fully meet the requirements of sections 182(a)(2), 182(b)(2), 182(f), of part D of the CAA. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin on the effective date of EPA's final disapproval. Moreover, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). It should be noted that the rule covered by this document has been adopted by the Kern County Air Pollution Control District and is currently in effect in the Kern County Air Pollution Control District. EPA's final disapproval action will not prevent the Kern County Air Pollution Control District or EPA from enforcing the rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 12875

Under Executive Order 12875, Enhancing the Intergovernmental Partnership, EPA may not issue a regulation that is not required by statute and that creates a mandate upon a State, local or tribal government, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by those governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 12875 requires EPA to provide to the Office of Management and Budget a description of the extent of EPA's prior consultation with representatives of affected State, local and tribal governments, the nature of their concerns, copies of any written communications from the governments, and a statement supporting the need to issue the regulation. In addition, Executive Order 12875 requires EPA to develop an effective process permitting elected officials and other representatives of State, local and tribal governments "to provide meaningful and timely input in the development of regulatory proposals containing significant unfunded mandates." Today's rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of Executive Order 12875 does not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a

disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. The proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Oxides of nitrogen Ozone, Reporting and record-keeping requirements, Volatile organic compounds.

Authority:

42 U.S.C. 7401 *et seq.*

Dated: March 10, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–7125 Filed 3–21–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 190, 191, 192, and 195

[Docket No. RSPA–99–6106]

RIN 2137–AD35

Pipeline Safety: Periodic Updates to Pipeline Safety Regulations (1999)

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule is part of a periodic effort by RSPA to revise and update the pipeline safety regulations to improve clarity, ensure consistency, and remove unnecessary requirements on the regulated pipeline community. Revisions include incorporation by reference of the most recent editions of voluntary consensus standards and specifications to enable pipeline operators to utilize current technology, materials, and practices. This document also proposes to increase the pressure limitation for new thermoplastic pipe, to allow plastic pipe on bridges, to clarify welding requirements, to revise the definition of hazardous liquid pipeline accident, and to make numerous minor clarifications.

DATES: Comments on the subject of this proposed rule must be received on or before May 22, 2000.

ADDRESSES: Comments should reference Docket No. RSPA–99–6106, and be mailed to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. You should submit the original and one copy. If you wish to receive confirmation of receipt of your comments, you must include a stamped, self-addressed postcard. The Dockets Facility is open from 10:00 a.m. to 5:00 p.m., Monday through Friday, except on Federal holidays. The public may also submit or review comments in this docket by accessing the Dockets Management System's home page at http://dms.dot.gov. An electronic copy of any rulemaking document or comment may be downloaded from the OPS home page at http://ops.dot.gov or from the Government Printing Office Electronic Bulletin Board Service at (202) 512–1661.

FOR FURTHER INFORMATION CONTACT: Richard D. Huriaux by telephone at (202) 366–4565, by fax at (202) 366–4566, by e-mail at richard.huriaux@rspa.dot.gov, or by mail at U.S. Department of Transportation, RSPA/Office of Pipeline Safety, Room 7128, 400 Seventh Street, SW, Washington, DC 20590–0001. Copies of this document or other material in the docket can be reviewed by accessing the Docket Management System's home page at http://dms.dot.gov. General information on the pipeline safety program is available at the Office of Pipeline Safety web site at http://ops.dot.gov.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking is a periodic update of the pipeline safety regulations to ensure that the pipeline safety regulations incorporate the most current technical standards and specifications, to improve clarity, consistency, and accuracy, and to reduce unnecessary burdens on the regulated community.

In a March 1995 memorandum, President Clinton directed Federal regulatory agencies to, among other things, conduct a page-by-page review of all agency regulations, cutting or revising those that were obsolete, intrusive, or better handled by parties other than the Federal government (i.e., private business, State, or local government). In response to the President's directive, RSPA issued a final rule on May 24, 1996 (61 FR 26121) that updated references to voluntary specifications and standards. Subsequently, RSPA issued another periodic update on February 17, 1998, to incorporate by reference the latest editions of voluntary consensus standards and to make corrections and clarifications. RSPA intends to issue future periodic updates to ensure that the pipeline safety regulations reflect current practice and to improve compliance by the pipeline industry with safety standards.

Standards Incorporated by Reference

The "National Technology Transfer and Advancement Act of 1995" (Public Law 104–113) directs Federal agencies to use voluntary consensus standards in lieu of government-written standards whenever possible. Voluntary consensus standards are standards developed or adopted by voluntary bodies that develop, establish, or coordinate technical standards using agreed-upon procedures.

RSPA's Office of Pipeline safety participates in more than 25 national voluntary consensus standards committees. RPSA's policy is to adopt voluntary consensus standards when they are applicable. In recent years, RSPA has adopted dozens of voluntary consensus standards into its gas pipeline, hazardous liquid pipeline, and liquefied natural gas (LNG) regulations. RSPA has not adopted a government-written standard in lieu of a voluntary consensus standard and does not plan to do so in the future.

RSPA has reviewed the voluntary consensus standards currently referred to in the pipeline safety regulations and in its appendices, and proposes to adopt the latest editions of the standards that are incorporated by reference in 49 CFR Parts 192 and 195. The organizations responsible for producing these standards often update or revise them to incorporate the most current technology.

Parts 192 and 195 incorporate by reference all or portions of over 60 standards and specifications developed and published by technical organizations, including the American Petroleum Institute, American Gas Association, American Society of Mechanical Engineers, American Society for Testing and Materials, Manufacturers Standardization Society of the Valve and Fittings Industry, National Fire Protection Association, and Plastics Pipe Institute. The most recent editions of these documents represent a consensus on the best current practice and modern technology in the pipeline industry.

OPS proposes to adopt the most recent editions of the standards into the pipeline safety regulations. These are set forth by name and date in the proposed amendments to appendices A and B of Part 192 and § 195.3 of Part 195. The order and appearance in the CFR of the consensus standards has also been updated and clarified. In general, the only substantive change is reference the new edition and year of publication.

One entirely new standard is proposed for incorporation by reference in the gas pipeline safety regulations. We propose to adopt the Plastics Pipe Institute, Inc.'s technical recommendation, "Policies and Procedures for Developing Hydrostatic Design Bases (HDB), Pressure Design Bases (PDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials" (PPI TR–3/2000). This standard would be referenced in the gas pipeline safety regulations at § 192.121, Design of plastic pipe. It will provide a method for determining hydrostatic design basis (HDB) for pipelines operating at any operating temperature by using the arithmetic interpolation procedure in Part E, Policy for determining long term strength (LTHS) by temperature interpolation, of PPI TR–3/2000. This will provide gas distribution pipeline operators with the flexibility to design safe plastic pipeline systems at any operating temperature.

In addition, RSPA proposes to update the addresses for each of the standards' organizations, to correct the numbering system, and to edit for clarity and typographical errors.

Petition to Limit Pressure of Thermoplastic Gas Pipe to a Maximum of 125 p.s.i.g.

On December 10, 1998 and November 23, 1999, the American Gas Association (AGA) petitioned RSPA to amend § 192.123 to allow the design pressure for thermoplastic pipe to be determined by its dimensions and the material's long-term strength as represented by the HDB in accordance with § 192.121 and to be limited to a maximum of 862 kPa (125 p.s.i.g.) instead of the current limitation of 689 kPa (100 p.s.i.g.). AGA stated that this increase in the pressure limitation for thermoplastic pipe used in gas distribution systems is clearly supported by the proven performance of modern polyethylene pipe and the successful operation of pipe at greater than 100 p.s.i.g. under the authority of waivers granted by state pipeline regulators. Further, their position is supported by laboratory and field analysis of the long-term hydrostatic strength of these piping materials. Copies of the AGA petitions are included in the docket.

This proposal would apply only to plastic pipe produced after the effective date of this rule. Existing pipes would continue to be limited to operation at the 689 kPa (100 p.s.i.g.). RSPA proposes to increase the pressure limitation for thermoplastic pipe to 862 kPa (125 p.s.i.g.).

Petition for Rule Change to Allow the Installation of Plastic Gas Pipe on Bridges

In 1993, the Gas Piping Technology Committee (GPTC) petitioned RSPA to allow the installation of plastic pipe on bridges. GPTC is designated as an American National Standards Institute standards committee for the purpose of developing and publishing the "Guide for Gas Transmission and Distribution Piping Systems", to assist natural gas pipeline operators in efforts to comply with Part 192, to comment on proposed amendments to Part 192, and to propose amendments to Part 192. RSPA's Office

of Pipeline Safety is represented on this committee.

GPTC requested that § 192.321 be amended to allow the use of plastic pipe on bridges provided that the plastic pipe is:

(1) Protected from mechanical damage, such as by installation in a metallic casing.

(2) Installed so that the temperature of the pipe will not exceed the limits specified in § 192.321.

(3) Protected from ultraviolet radiation.

In support of its petition the GPTC provided a technical report on *Installation of Plastic Gas Pipeline Across Bridges*, which is available in this docket.

Since 1993, RSPA has granted a number of waivers incorporating the GPTC conditions for installation of plastic pipe across bridges. There is no record of failure of plastic pipe that has been installed under these waivers. In addition, continued progress in the design, manufacture, and installation of plastic pipe have rendered it ever more fit for broad application in gas pipeline systems.

RSPA proposes to revise § 192.321 to allow the routine installation of plastic pipe on bridges subject to the conditions suggested by GPTC.

Confirmation or Revision of MAOP After a Change in Class Location

Section 192.611(d) allows 18 months for a gas pipeline operator to confirm or revise the maximum allowable operating pressure of a pipeline after a change in Class Location. A change is Class Location occurs when new buildings along a pipeline are ready for occupancy, not when the operator discovers that there are new buildings or completes its review. The time it takes for the operator to determine that the area has changed its Class Location and the time it takes to obtain the required environmental and land-use permits to complete the pressure testing to confirm a new MAOP may exhaust the current 18 month allowance. In addition, the internal budget process of the pipeline operators may cause further delay.

In light of these constraints on operators and the fact that there have been no pressure-related failures following class location changes, we propose to increase the allowable time to confirm or revise MAOP after a Class Location change from 18 months to 24 months.

Updates in Response to Recommendations on Welding in the SIRRC Report

In October 1997 the National Association of Pipeline Safety Representatives (NAPSR), the American Public Gas Association (APGA), and the American Gas Association (AGA) formed the State Industry Regulatory Review Committee (SIRRC), to discuss differences of opinion on NAPSR's proposed gas pipeline safety rule changes in Docket No. PS–124. AGA and APGA had proposed to coordinate discussions between the industry and NAPSR in an attempt to resolve those differences, as well as other items of mutual interest. NAPSR welcomed the opportunity to work with the industry, and passed a resolution in May of 1997 authorizing the NAPSR Liaison Committee to work with the industry representatives on these issues. The committee held four formal meetings on this initiative. At each meeting, the proposed PS–124 recommendations were discussed in-depth to ensure that representatives on both sides understood the issues from each of their perspectives. Members of the SIRRC agreed on many of the issues in the proposal (or subsequent modifications to the proposal), and agreed to disagree with some of the proposals. A copy of the *SIRRC Summary Report (April 26, 1999)* is available in this docket.

Although all 39 recommendations in the SIRRC report will be addressed in a subsequent rulemaking in Docket No. PS–124, several of the welding recommendations appear to be noncontroversial and will be dealt with in this periodic update docket. Specifically, SIRRC reached a consensus that § 192.255(a) should be amended to specify that welders must be qualified under "welding procedures qualified under American Petroleum Institute (API), American Society of Mechanical Engineers (ASME), or other accepted pipeline welding standards." RSPA agrees that the specific references to the two widely accepted pipeline industry welding standards will make clear that operators should be using accepted welding standards in pipeline construction and repair. However, we are not aware of any "other accepted pipeline welding standards" that could be relied on by an operator for pipeline welding. In addition, we believe a more specific citation to the API and ASME standards is appropriate.

Therefore, RSPA proposes to amend § 192.255(a) to read "(a) Except as provided in paragraph (b) of this section, each welder must be qualified in accordance with Section 6 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code. However, a welder qualified under an earlier edition than listed in Appendix A of this part may weld but may not requalify under that earlier edition." RSPA commits to updating these references to accepted welding standards in periodic updates of the regulations, including the inclusion of additional pipeline welding standards as necessary.

SIRRC also proposed that § 192.241 be amended to make clear that visual inspection of welding must be conducted "by an inspector qualified by appropriate training and experience." RSPA agrees and is proposing that this change be included in the pipeline safety rules.

Definition of Injury in Part 195

The hazardous liquid pipeline safety regulations at § 195.50 require an accident report for any event that includes a release of hazardous liquid from a pipeline with:

(1) An explosion or fire not intentionally set by the operator.

(2) Loss of 50 or more barrels of hazardous liquid.

(3) Escape to the atmosphere of more than 5 barrels a day of highly volatile liquids.

(4) Death of any person.

(5) Bodily harm to any person in one or more of the following:

—Loss of consciousness.

—Necessity to carry the person from the scene.

—Necessity for medical treatment.

—Disability which prevents the discharge of normal duties or the pursuit of normal activities beyond the day of the accident.

This means that even the most minor injury during a pipeline event can result in the entire accident being reportable if the person receives any "medical treatment". The lack of a definition of medical treatment means that any kind of treatment, even a bandage applied at the scene or out-patient services received at a local clinic could make the accident reportable, even if it does not meet any of the other requirements for reportability.

In contrast, the gas pipeline safety regulations define a reportable gas pipeline event as one that includes a release of gas from a pipeline with

(1) A death or personal injury requiring in-patient hospitalization,

(2) Estimated property damage of $50,000 or more, or

(3) Any event that is significant in the judgment of the operator.

For gas pipelines, an injury treated at the scene or at a local clinic would not result in the incident being reportable, unless it meets one of the other requirements.

RSPA proposes to eliminate the reporting criteria discrepancy between Parts 192 and 195 to ensure that accident reporting is uniform for both gas and hazardous liquid pipelines. The reporting language in Part 192 was adopted before the language in Part 195 and embodies the original intent relative to the injury criteria for reportability of pipeline accidents. We do not believe that this change would cause any reportable hazardous liquid pipeline accidents to become non-reportable. For example, the 1994 San Jacinto River accident would still have been reportable based on product loss and property damage.

Therefore, RSPA proposes to revise § 195.50 by deleting the existing language in paragraph (e) and substituting the same language used for gas pipeline events, i.e., "[a] personal injury necessitating in-patient hospitalization."

Petition of the GPTC on Strength Test Requirements for Flanges

In a November 27, 1996 letter the GPTC noted that most gas operators "have assumed that flange manufacturers test a prototype as described in 192.505(d)(2)." This turns out to be incorrect. Rather, most manufacturers meet the requirements by use of ASME/ANSI B16.5, B16.47, or MSS SP44, which contain standard pressure ratings. In addition, flange manufacturers have developed ratings of nonstandard flanges through unit stress calculations as described in § 192.143.

GPTC stated that each part of a pipeline must be able to stand the internal gas pressures and other mechanical loadings without impairment of serviceability with unit stresses equivalent to those allowed for comparable material in the pipe. If a design based on unit stresses is impractical for a particular pipeline component, GPTC suggests that design be based on a pressure rating established by pressure testing that component or a prototype of the component.

To clarify this situation and ensure that flanges and other components of a pipeline system can safely contain anticipated pressures and loadings, GPTC urges that we add the following paragraph to 192.505(d): (3) Flanges and components carrying a pressure rating established through ASME/ANSI, MSS specification, or by unit strength calculations as described in 192.143, General Requirements, do not require a strength test."

The proposed language incorporates this language as a new paragraph § 192.505(d)(3) to ensure that flanges and other components of pipeline systems can safely contain the pressures to which they are subjected in the course of pipeline operations.

Clarifications, Corrections, and Edits

This document revises the pipeline safety regulations to correct language or clarify meaning in a number of sections, including:

1. § 190.11—The telephone number for Office of Pipeline Safety information and assistance would be changed to (202) 366–4431.

2. § 190.233—The title of § 190.233 would be corrected to read "Corrective action orders."

3, § 191.7—The address for written reports would be changed to Room 7128.

4. § 192.3—The definition of *Transmission line* would be clarified by inserting a new paragraph in subsection (c) to make clear that the sentence, "A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants; and institutional users of gas", is a general comment on the entire definition, and not a modifier of only item (c).

5. § 195.58—The address for written reports would be revised to correct the room number to Room 7128.

6. § 195.440—The paragraph would be revised to indicate that the education program required by this section includes reporting of hazardous liquid pipeline emergencies to qualified one-call centers, as well as "the operator or the fire, police, or other appropriate public officials."

Rulemaking Analyses

Executive Order 12866

This final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 (58 FR 51735) and, therefore, was not subject to review by the Office of Management and Budget (OMB). The final rule is not significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034).

Executive Order 13132

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This proposed rule does not propose any regulation that:

(1) Has substantial direct effected on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government;

(2) Imposes substantial direct compliance costs on State and local governments; or

(3) Preempts state law.

Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

Executive Order 13084

The proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13084, "Consultation and Coordination with Indian Tribal Governments." Because the proposed rules would not significantly or uniquely affect the Indian tribal governments, the funding and consultation requirements of Executive Order 13084 do not apply.

Regulatory Flexibility Act

This rulemaking will not impose additional requirements on pipeline operators, including small entities that operate regulated pipelines. Rather, the proposed rule clarifies parts of the pipeline safety regulations, incorporates the most recent editions of voluntary consensus standards, and provides additional operating flexibility to gas and hazardous liquid pipeline companies. Thus, this rulemaking may reduce costs to operators, including small entities. Based on the facts available about the expected impact of this rulemaking, I certify, under Section 605 of the Regulatory Flexibility Act (5 U.S.C. 605), that this rulemaking will not have a significant economic impact on a substantial number of small entities.

National Environmental Policy Act

We have analyzed the proposed rule changes for purposes of the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). Because the changes would require that alternative repair methods be as safe as the methods now allowed, we have preliminarily determined that the proposed changes would not significantly affect the quality of the human environment. An environmental assessment document is available for review in the docket.

Paperwork Reduction Act

There are no new information collection requirements in this final rule.

Impact on Business Processes and Computer Systems

We do not want to impose new requirements that would mandate business process changes when the

resources necessary to implement those

§ 190.233	Corrective action orders.	higher temperature may be used in

the ASME Boiler and Pressure Vessel	§ 192.287	Plastic pipe: Inspection of joints.
§ 192.614	Damage prevention program.	

resources necessary to implement those requirements would otherwise be applied to "Y2K" or related computer problems. This proposed rule would not mandate business process changes or require modifications to computer systems. Because this proposed rule would not affect organizations' ability to respond to those problems, we are not proposing to delay the effectiveness of the requirements.

Unfunded Mandates Reform Act of 1995

This rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

List of Subjects

49 CFR Part 190

Administrative practice and procedures, Penalties, Pipeline safety.

49 CFR Part 191

Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 192

Incorporation by reference, Natural gas, Pipeline safety, Reporting and recordkeeping requirements.

49 CFR Part 195

Anhydrous ammonia, Carbon dioxide, Incorporation by reference, Petroleum, Pipeline safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, RSPA proposes to amend 49 CFR Parts 190, 191, 192, and 195 as follows:

PART 190—[AMENDED]

1. The authority citation for part 190 continues to read as follows:

Authority: 33 U.S.C. 1321; 49 U.S.C. 5101–5127, 60101 *et seq.*; Sec. 212–213, Pub. L. 104–121, 110 Stat. 857; 49 CFR 1.53.

2. Paragraph (a)(1) of § 190.11 would be amended by revising the last sentence to read as follows:

§ 190.11 Availability of informal guidance and interpretive assistance.

(a) *Availability of telephonic and Internet assistance.* (1) * * * The telephone number for OPS information is (202) 366–4431 and the OPS website can be accessed via the Internet at http://ops.dot.gov.

* * * * *

3. The heading of § 190.233 would be revised to read as follows:

§ 190.233 Corrective action orders.

* * * * *

PART 191— [AMENDED]

1. The authority citation for part 191 continues to read as follows:

Authority: 49 U.S.C. 5121, 60102, 60103, 60104, 60108, 60117, 60118, and 60124; and 49 CFR 1.53

2. Section 191.7 would be amended by revising the first sentence to read as follows:

§ 191.7 Addressee for written reports.

Each written report required by this part must be made to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW, Washington, DC 20590. * * *

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60110, 60113, and 60118; and 49 CFR 1.53.

2. The definition of *Transmission line* in § 192.3 would be revised to read as follows:

§ 192.3 Definitions.

* * * * *

Transmission line means:

(1) A pipeline, other than a gathering line, that:

(i) Transports gas from a gathering line or storage facility to a distribution center, storage facility, or large volume customer that is not downstream from a distribution center;

(ii) Operates at a hoop stress of 20 percent or more of SMYS; or

(iii) Transports gas within a storage field.

(2) A large volume customer may receive similar volumes of gas as a distribution center, and includes factories, power plants, and institutional users of gas.

* * * * *

3. Section 192.121 would be amended by revising the definition for "S" following the equation to read as follows:

§ 192.121 Design of plastic pipe.

* * * * *

Where:

* * * * *

S=For thermoplastic pipe, the HDB determined in accordance with the listed specification at a temperature equal to 73°F (23 °C), 100°F (38°C), 120°F (49°C), or 140°F (60°C). In the absence an HDB established at the specified temperature, the HDB of a higher temperature may be used in determining a design pressure rating at the specified temperature by arithmetic interpolation using the procedure in Part E, Policy for determining long term strength (LTHS) by temperature interpolation, of PPI TR–3/2000. For reinforced thermosetting plastic pipe, 11,000 psi (75,842 kPa).

* * * * *

4. Section 192.123 would be amended by revising paragraphs (a) introductory text and (b)(2)(i) and adding paragraph (e) to read as follows:

§ 192.123 Design limitations for plastic pipe.

(a) Except as provided in paragraph (e) of this section, the design pressure may not exceed a gauge pressure of 689 kPa (100 p.s.i.g.) for plastic pipe used in:

* * * * *

(b) * * *

(2) * * *

(i) For thermoplastic pipe, the temperature at which the HDB used in the design formula under § 192.121 is determined. However, if the pipe was manufactured before May 18, 1978, and its HDB was determined at 73°F (23°C), it may be used at temperatures up to 100°F (38°C).

* * * * *

(e) The design pressure for thermoplastic pipe produced after **[effective date of final rule]** may exceed a gauge pressure of 689 kPa (100 p.s.i.g.) provided that:

(1) The design pressure does not exceed 862 kPa (125 p.s.i.g.);

(2) The material is a PE2406 or a PE3408 as specified within ASTM D2513;

(3) The pipe size is nominal pipe size (IPS) 12 or less; and

(4) The design pressure is determined in accordance with the design equation defined in § 192.121.

5. Paragraph (a) of § 192.145 would be revised to read as follows:

§ 192.145 Valves.

(a) Except for cast iron and plastic valves, each valve must meet the minimum requirements of API 6D. A valve may not be used under operating conditions that exceed the applicable pressure-temperature ratings contained in those requirements.

* * * * *

6. Section 192.225 would be amended by revising the section heading and paragraph (a) to read as follows:

§ 192.225 Welding procedures.

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under Section 5 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code. The quality of the test welds used to qualify the procedure shall be determined by destructive testing.

* * * * *

7. Paragraph (a) of § 192.227 would be revised to read as follows:

§ 192.227 Qualification of welders.

(a) Except as provided in paragraph (b) of this section, each welder must be qualified in accordance with Section 6 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code. However, a welder qualified under an earlier edition than listed in Appendix A of this part may weld but may not requalify under that earlier edition.

* * * * *

8. Paragraph (c)(1) of § 192.229 would be revised to read as follows:

§ 192.229 Limitations on welders.

* * * * *

(c) * * *

(1) May not weld on pipe to be operated at a pressure that produces a hoop stress of 20 percent or more of SMYS unless within the preceding 7½ calendar months, but at least twice each calendar year, the welder has had one weld tested and found acceptable under section 6 or 9 of API 1104, except that a welder qualified under an earlier edition previously listed in Appendix A of this part may weld but may not requalify under that earlier edition; and

* * * * *

9. Section 192.241 would be amended by revising paragraph (a) introductory text and the last sentence of paragraph (c) to read as follows:

§ 192.241 Inspection and test of welds.

(a) Visual inspection of welding must be conducted by an inspector qualified by appropriate training and experience to ensure that:

* * * * *

(c) * * * However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if Appendix A to API 1104 applies to the weld, the acceptability of the weld may be further determined under that appendix.

10. The heading of § 192.283 would be revised to read as follows:

§ 192.283 Plastic pipe: Qualifying joining procedures.

* * * * *

11. The heading of § 192.285 would be revised to read as follows:

§ 192.285 Plastic pipe: Qualifying persons to make joints.

* * * * *

12. The heading of § 192.287 would be revised to read as follows:

§ 192.287 Plastic pipe: Inspection of joints.

* * * * *

13. Section 192.321 would be amended by revising paragraph (a) and adding paragraph (h) to read as follows:

§ 192.321 Installation of plastic pipe.

(a) Plastic pipe must be installed below ground level except as provided by paragraphs (g) and (h) of this section.

* * * * *

(h) Plastic pipe may be installed on bridges provided that it is:

(1) Installed with protection from mechanical damage, such as installation in a metallic casing;

(2) Protected from ultraviolet radiation; and

(3) Not allowed to exceed the pipe temperature limits specified in § 192.123.

14. Section 192.505 would be amended by revising paragraphs (d)(1), (d)(2), and (d)(3) to read as follows:

§ 192.505 Strength test requirements for steel pipeline to operate at a hoop stress of 30 percent or more of SMYS.

* * * * *

(d) * * *

(1) The component was tested to at least the pressure required for the pipeline to which it is being added;

(2) The component was manufactured under a quality control system that ensures that each item manufactured is at least equal in strength to a prototype and that the prototype was tested to at least the pressure required for the pipeline to which it is being added; or

(3) The component carries a pressure rating established through ASME/ANSI, MSS specification, or a pressure rating established by unit strength calculations as described in § 192.143.

* * * * *

15. Paragraph (d) of § 192.611 would be revised to read as follows:

§ 192.611 Change in class location: Confirmation or revision of maximum allowable operating pressure.

* * * * *

(d) Confirmation or revision of the maximum allowable operating pressure that is required as a result of a study under § 192.609 must be completed within 24 months of the change in class location. Pressure reduction under paragraph (a) (1) or (2) of this section within the 24-month period does not preclude establishing a maximum allowable operating pressure under paragraph (a)(3) of this section at a later date.

16. Section 192.614 would be amended by republishing paragraph (d) introductory text and revising paragraphs (c)(5), (d)(1), (d)(2), and (e) introductory text to read as follows:

§ 192.614 Damage prevention program.

* * * * *

(c) * * *

(5) Provide for temporary marking of buried pipelines in the area of excavation activity before the activity begins, except in emergencies.

* * * * *

(d) A damage prevention program under this section is not required for the following pipelines:

(1) Pipelines located offshore.

(2) Pipelines to which access is physically controlled by the operators.

* * * * *

(e) Pipelines operated by persons other than municipalities (including operators of master meter systems) whose primary activity does not include the transportation of gas need not comply with the following:

* * * * *

17. Paragraph (b)(2) of § 192.723 would be revised to read as follows:

§ 192.723 Distribution systems: Leakage surveys.

* * * * *

(b) * * *

(2) A leakage survey with leak detector equipment must be conducted outside of business districts as frequently as necessary at intervals not exceeding 63 months, but at least once every 5 calendar years. However, for cathodically unprotected distribution lines subject to § 192.465(e) on which electrical surveys for corrosion are impractical, leakage surveys must be conducted at intervals not exceeding 39 months, but at least once every 3 calendar years.

18. Appendix A of Part 192 would be revised to read as follows:

Appendix A to Part 192—Incorporated by Reference

I. List of Organizations and Addresses

A. American Gas Association (AGA), 400 North Capitol Street, NW, Washington, DC 20001.

B. American Petroleum Institute (API), 1220 L Street, NW, Washington, DC 20005.

C. American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.

D. American Society of Mechanical Engineers (ASME), 3 Park Avenue, New York, NY 10016-5990.

E. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Part Street, NW, Vienna, VA 22180.

F. National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.

G. Plastics Pipe Institute, Inc. (PPI), 1825 Connecticut Avenue, NW, Suite 680, Washington, DC 20009.

II. Documents Incorporated by Reference (Numbers in Parentheses Indicate Applicable Editions)

A. American Gas Association (AGA):
(1) AGA Pipeline Research Committee, Project PR–3–805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 22, 1989).
B. American Petroleum Institute (API):
(1) API Specification 5L "Specification for Line Pipe" (42nd edition, 2000)
(2) API Recommended Practice 5L1 "Recommended Practice for Railroad Transportation of Line Pipe" (4th edition, 1990).
(3) API Specification 6D "Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)" (21st edition, 1994).
(4) API 1104 "Welding of Pipelines and Related Facilities" (19th edition, 1999).
C. American Society for Testing and Materials (ASTM):
(1) ASTM Designation: A 53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated, Welded and Seamless" (A53–99).
(2) ASTM Designation: A106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106–99).
(3) ASTM Designation: A333/A333M "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service" (A333/A333M–99).
(4) ASTM Designation: A372/A372M "Standard Specification for Carbon and Alloy Steel Forgings for Thin-Walled Pressure Vessels" (A372/A372M–99).
(5) ASTM Designation: A381 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (A381–96).
(6) ASTM Designation: A671 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A671–96).
(7) ASTM Designation: A672 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A672–96).
(8) ASTM Designation: A691 "Standard Specification for Carbon and Alloy Steel Pipe, Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (A691–98).
(9) ASTM Designation: D638 "Standard Test Method for Tensile Properties of Plastics" (D638–97).
(10) ASTM Designation: D2513 "Standard Specification for Thermoplastic Gas Pressure Pipe, Tubing, and Fittings" (D2513–87 edition for § 192.63(a)(1), otherwise D2513–98).
(11) ASTM Designation: D 2517 "Standard Specification for Reinforced Epoxy Resin Gas Pressure Pipe and Fittings" (D2517–98)
(12) ASTM Designation: F1055 "Standard Specification for Electrofusion Type Polyethylene Fittings for Outside Diameter Controlled Polyethylene Pipe and Tubing" (F1055–98).
D. The American Society of Mechanical Engineers (ASME):
(1) ASME/ANSI B16.1 "Cast Iron Pipe Flanges and Flanged Fittings" (1998).
(2) ASME/ANSI B16.5 "Pipe Flanges and Flanged Fittings" (1996, includes 1998 Addenda).
(3) ASME/ANSI B31G "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991).
(4) ASME/ANSI B31.8 "Gas Transmission and Distribution Piping systems" (1995).
(5) ASME Boiler and Pressure Vessel Code, Section I "Power Boilers" (1998).
(6) ASME Boiler and Pressure Vessel Code, Section VIII, Division 1 "Pressure Vessels" (1998).
(7) ASME Boiler and Pressure Vessel Code, Section VIII, Division 2 "Pressure Vessels: Alternative Rules" (1998).
(8) ASME Boiler and Pressure Vessel Code, Section IX "Welding and Brazing Qualifications" (1998).
E. Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):
(1) MSS SP44–96 "Steel Pipe Line Flanges" (includes 1996 errata) (1996).
(2) [Reserved]
F. National Fire Protection Association (NFPA):
(1) NFPA 30 "Flammable and Combustible Liquids Code" (1996).
(2) ANSI/NFPA 58 "Standard for the Storage and Handling of Liquefied Petroleum Gases" (1998).
(3) ANSI/NFPA 59 "Standard for the storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants" (1998).
(4) ANSI/NFPA 70 "National Electrical Code" (1999).
G. Plastics Pipe Institute, Inc. (PPI):
(1) PPI TR–3/2000 "Policies and Procedures for Developing Hydrostatic Design Bases (HDB), Pressure Design Bases (PDB), and Minimum Required Strength (MRS) Ratings for Thermoplastic Piping Materials" (2000).

19. Appendix B to Part 192 would be amended by revising part I and the heading of part II.A. to read as follows:

Appendix B to Part 192—Qualification of Pipe

I. Listed Pipe Specifications (Numbers in Parentheses Indicate Applicable Editions)

API 5L—Steel pipe (2000)
ASTM A 53–Steel pipe (A 53–99).
ASTM A 106—Steel pipe (A 106–99)
ASTM A 333/A 333M—Steel pipe (A 333/A 333M–99)
ASTM A 381—Steel pipe (A 381–96)
ASTM D 671—Steel pipe (A 671–96)
ASTM D 672—Steel pipe (A 672–96)
ASTM D 691—Steel pipe (A 691–98)
ASTM D 2513—Thermoplastic pipe and tubing (D 2513–98)
ASTM D 2517—Thermosetting plastic pipe and tubing (D 2517–98)

II. Steel Pipe of Unknown or Unlisted Specification

A. *Bending properties.* * * *

* * * * *

PART 195—[AMENDED]

1. The authority citation for part 195 continues to read as follows:

Authority: 49 U.S.C. 5103, 60102, 60104, 60108, 60109, 60118; and 49 CFR 1.53

2. Section 195.2 would be amended by adding a definition in alphabetical order to read as follows:

§ 195.2 Definitions.

* * * * *

Maximum operating pressure (MOP) means the maximum pressure at which a pipeline or segment of a pipeline may be normally operated under this part.

* * * * *

3. Section 195.3 would be amended by revising paragraphs (b) and (c) to read as follows:

§ 195.3 Matter incorporated by reference.

* * * * *

(b) All incorporated materials are available for inspection in the Research and Special Programs Administration, 400 Seventh Street, SW., Washington, DC, and at the office of the Federal Register, 800 North Capitol Street, NW., Suite 700, Washington, DC. These materials have been approved for incorporation by reference by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. In addition, materials incorporated by reference are available as follows:
(1) American Gas Association (AGA), 400 North Capitol Street, NW, Washington, DC 20001.
(2) American Petroleum Institute (API), 1220 L Street, NW, Washington, DC 20005.
(3) American Society of Mechanical Engineers (ASME), 3 Park Avenue, New York, NY 10016-5990.
(4) Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS), 127 Part Street, NW, Vienna, VA 22180.
(5) American Society for Testing and Materials (ASTM), 100 Barr Harbor Drive, West Conshohocken, PA 19428.
(6) National Fire Protection Association (NFPA), 1 Batterymarch Park, P.O. Box 9101, Quincy, MA 02269–9101.
(c) The full titles of publications incorporated by reference wholly or partially in this part are as follows. Numbers in parentheses indicate applicable editions:
(1) American Gas Association (AGA):
(i) AGA Pipeline Research Committee, Project PR–3–805, "A Modified Criterion for Evaluating the Remaining Strength of Corroded Pipe" (December 22, 1989). The RSTRENG program may be used for calculating remaining strength.
(ii) [Reserved]
(2) American Petroleum Institute (API):

(i) API Specification 5L "Specification for Line Pipe" (42nd edition, 2000)
(ii) API Specification 6D "Specification for Pipeline Valves (Gate, Plug, Ball, and Check Valves)" (21st edition, 1994).
(iii) API Specification 12F "Specification for Shop Welded Tanks for Storage of Production Liquids" (11th edition, November 1994).
(iv) API 510 "Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration" (8th edition, June 1997).
(v) API Standard 620 "Design and Construction of Large, Welded, Low-Pressure Storage Tanks" (8th edition, 1990).
(vi) API 650 "Welded Steel Tanks for Oil Storage" (1998).
(vii) API Recommended Practice 651 "Cathodic Protection of Aboveground Petroleum Storage Tanks" (2nd edition, December 1997).
(viii) API Recommended Practice 652 "Lining of Aboveground Petroleum Storage Tank Bottoms" (2nd edition, December 1997).
(ix) API Standard 653 "Tank Inspection, Repair, Alteration, and Reconstruction" (2nd edition, December 1995, including Addenda 1, December 1996).
(x) API 1104 "Welding of Pipelines and Related Facilities" (19th edition, 1999).
(xi) API Standard 2000 "Venting Atmospheric and Low-Pressure Storage Tanks" (4th edition, September 1992).
(xii) API Recommended Practice 2003 "Protection Against Ignitions Arising out of Static, Lightning, and Stray Currents" (6th edition, December 1998).
(xiii) API Publication 2026 "Safe Access/Egress Involving Floating Roofs of Storage Tanks in Petroleum Service" (2nd edition, April 1998).
(xiv) API Recommended Practice 2350 "Overfill Protection for Storage Tanks In Petroleum Facilities" (2nd edition, January 1996).
(xv) API Standard 2510 "Design and Construction of LPG Installations" (7th edition, May 1995).
(3) American Society of Mechanical Engineers (ASME):
(i) ASME/ANSI B16.9 "Factory-Made Wrought Steel Buttwelding Fittings" (1993).
(ii) ASME/ANSI B31.4 "Pipeline Transportation Systems for Liquid Hydrocarbons and Other Liquids" (1998).
(iii) ASME/ANSI B31.8 "Gas Transmission and Distribution Piping Systems" (1995).
(iv) ASME/ANSI B31G "Manual for Determining the Remaining Strength of Corroded Pipelines" (1991).
(v) ASME Boiler and Pressure Vessel Code, Section VIII "Pressure Vessels," Divisions 1 and 2 (1998).
(vi) ASME Boiler and Pressure Vessel Code, Section IX "Welding and Brazing Qualifications" (1998).
(4) Manufacturers Standardization Society of the Valve and Fittings Industry, Inc. (MSS):
(i) MSS SP–75 "Specification for High Test Wrought Butt Welding Fittings" (1993).
(ii) [Reserved]
(5) American Society for Testing and Materials (ASTM):
(i) ASTM Designation: A53 "Standard Specification for Pipe, Steel, Black and Hot-Dipped, Zinc-Coated Welded and Seamless" (A53–99).
(ii) ASTM Designation: A106 "Standard Specification for Seamless Carbon Steel Pipe for High-Temperature Service" (A106–99).
(iii) ASTM Designation: A 333/A 333M "Standard Specification for Seamless and Welded Steel Pipe for Low-Temperature Service" (A 333/A 333M–99).
(iv) ASTM Designation: A 381 "Standard Specification for Metal-Arc-Welded Steel Pipe for Use With High-Pressure Transmission Systems" (A 381–96).
(v) ASTM Designation: A 671 "Standard Specification for Electric-Fusion-Welded Steel Pipe for Atmospheric and Lower Temperatures" (A 671–96).
(vi) ASTM Designation: A 672 "Standard Specification for Electric-Fusion-Welded Steel Pipe for High-Pressure Service at Moderate Temperatures" (A 672–96).
(vii) ASTM Designation: A 691 "Standard Specification for Carbon and Alloy Steel Pipe Electric-Fusion-Welded for High-Pressure Service at High Temperatures" (A 691–98).
(6) National Fire Protection Association (NFPA):
(i) ANSI/NFPA 30 "Flammable and Combustible Liquids Code" (1996).
(ii) [Reserved]

4. Paragraph (e) of § 195.50 would be revised to read as follows:

§ 195.50 Reporting accidents.

* * * * *

(e) A personal injury necessitating in-patient hospitalization.

* * * * *

5. Section 195.58 would be amended by revising the first sentence to read as follows:

§ 195.58 Address for written reports.

Each written report required by this subpart must be made to the Information Resources Manager, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, Room 7128, 400 Seventh Street, SW., Washington, DC 20590. * * *

6. Section 195.214 would be amended by revising the section heading and paragraph (a) to read as follows:

§ 195.214 Welding procedures.

(a) Welding must be performed by a qualified welder in accordance with welding procedures qualified under Section 5 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code. The quality of the test welds used to qualify the procedure shall be determined by destructive testing.

* * * * *

7. Section 195.222 would be revised to read follows:

§ 195.222 Welders: Qualification of welders.

Each welder must be qualified in accordance with Section 6 of API 1104 or Section IX of the ASME Boiler and Pressure Vessel Code, except that a welder qualified under an earlier edition than listed in 195.3 may weld but may not requalify under that earlier edition.

8. Paragraph (b) of § 195.228 would be revised to read as follows:

§ 195.228 Welds and welding inspection: Standards of acceptability.

* * * * *

(b) The acceptability of a weld is determined according to the standards in Section 9 of API 1104. However, if a girth weld is unacceptable under those standards for a reason other than a crack, and if Appendix A to API 1104 applies to the weld, the acceptability of the weld may be determined under that appendix.

9. Section 195.440 would be amended by revising the first sentence to read as follows:

§ 195.440 Public education.

Each operator shall establish a continuing education program to enable the public, appropriate government organizations and persons engaged in excavation-related activities to recognize a hazardous liquid or a carbon dioxide pipeline emergency and to report it to the qualified one-call system, the operator, or the fire, police, or other appropriate public officials. * * *

Issued in Washington, DC on March 8, 2000.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–6353 Filed 3–21–00; 8:45 am]
BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 222 and 229

[Docket No. FRA–1999–6439, Notice No. 3; Docket No. FRA–1999–6440]

RIN 2130–AA71

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public hearings.

SUMMARY: On January 13, 2000 (65 FR 2230), FRA published a Notice of Proposed Rulemaking (NPRM) on the Use of Locomotive Horns at Highway-Rail Grade Crossings (Docket No. FRA–1999–6439). On the same date FRA released a Draft Environmental Assessment (DEIS) (Docket No. FRA–1999–6440) pertaining to the proposals contained in the NPRM. In both documents, FRA stated that public hearings would be held in a number of locations throughout the country. On February 15, 2000 (65 FR 7483), FRA published in the **Federal Register** a document regarding hearings to be held, combined hearings on the NPRM and DEIS to be held in: Washington, D.C.; Los Angeles, California; Pendleton, Oregon; Ft. Lauderdale, Florida; and Salem, Massachusetts. FRA stated that a further document will be published and posted on FRA's web site *(http://fra.dot.gov)* regarding hearings to be held in the remaining locations listed in the NPRM: Berea, Ohio; South Bend, Indiana; and Chicago, Illinois. This document provides information pertaining to those hearings as well as repeating the information contained in the original hearing document. At this time, although hearing dates have been established, specific hearing sites in Chicago, South Bend, and Berea have not been finalized. When final site arrangements have been made, FRA will publish a document in the **Federal Register** and post the additional information on its web site.

DATES: *Public Hearings:* Public hearings will be held in:

1. Washington, D.C. on March 6, 2000, beginning at 9 a.m.;
2. Los Angeles area, California on March 15, 2000, beginning at 9 a.m.;
3. Pendleton, Oregon on March 17, 2000, beginning at 9 a.m.;
4. Ft. Lauderdale, Florida on March 28, 2000, beginning at 9 a.m.;
5. Salem, Massachusetts on April 3, 2000, beginning at 9 a.m.;
6. South Bend, Indiana on April 10, 2000, beginning at 9 a.m.;
7. Chicago, Illinois area on—April 25, 2000, times to be determined,
   April 26, 2000, times to be determined,
   April 27, 2000; times to be determined; and
8. Berea, Ohio on May 1, 2000, times to be determined.

Please see Supplementary Information below for further information concerning participation in the public hearings.

ADDRESSES: *Public Hearings:* Public hearings will be held at the following locations:

1. *Washington DC:* Federal Aviation Administration Auditorium, Third Floor, Federal Office Building 10A, 800 Independence Avenue, S.W., Washington, D.C. 20591;
2. *Los Angeles area:* Doubletree Hotel, Catalina II Room, 3050 Bristol Street, Costa Mesa, CA 92626;
3. *Pendleton, Oregon:* City Council Chambers, Pendleton City Hall, 500 Southwest Dorian Avenue, Pendleton, OR 97801;
4. *Ft. Lauderdale, Florida:* Doubletree Oceanfront Hotel, 440 Seabreeze Blvd, Fort Lauderdale, FL 33316;
5. *Salem, Massachusetts:* National Park Service Visitor Center—Auditorium, 2 New Liberty Street, Salem, MA 01970;
6. *South Bend, Indiana:* Specific location to be determined;
7. *Chicago, Illinois:* Specific locations to be determined; and
8. *Berea, Ohio:* Specific location to be determined.

FRA Docket Clerk: Docket Clerk, Office of Chief Counsel, Mail Stop 10, FRA, 1120 Vermont Avenue, NW, Washington, D.C. 20590. E-mail address for the FRA Docket Clerk is renee.bridgers@fra.dot.gov.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, S.W., Washington, D.C. 20590 (telephone: 202–493–6299); or Mark Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, S.W., Washington, D.C. 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION: Any person wishing to provide testimony at one of the public hearings should notify FRA's Docket Clerk at the address above at least three working days prior to the date of the hearing. The notification should also provide either a telephone number or e-mail address at which the person may be contacted. If a participant will be representing an organization, please indicate the name of the organization.

FRA will attempt to accommodate all persons wishing to provide testimony, however depending on the number of people wishing to participate, FRA may find it necessary to limit the length of oral comments to accommodate as many people as possible. Participants may wish to submit a complete written statement for inclusion in the record, while orally summarizing the points made in that statement.

Issued in Washington, D.C. on March 10, 2000.

Michael T. Haley,

Deputy Chief Counsel, Federal Railroad Administration.

[FR Doc. 00–6445 Filed 3–21–00; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 65, No. 56

Wednesday, March 22, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Commission on 21st Century Production Agriculture

ACTION: Notice of meeting.

SUMMARY: The U.S. Department of Agriculture (USDA) has established the Commission on 21st Century Production Agriculture. In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (FACA), notice is hereby given of a meeting in April of the Commission on 21st Century Production Agriculture. The purpose of this meeting on April 10 will be to address issues regarding dairy policy. On April 11–12, coordination of and issues regarding the final report will be discussed. This meeting is open to the public.

PLACE, DATE, AND TIME OF MEETING: This meeting will be held April 10, 2000 from 1:00 pm–5:00 pm EST in Room 108–A, Whitten Building; April 11, 2000 from 9:00 am–5:00 pm EST in Room 108–A, Whitten Building; April 12, 2000 from 9:00 am–3:00 pm EST in Room 108–A, Whitten Building.

FOR FURTHER INFORMATION CONTACT: Mickey Paggi on (202–720–3139), Director, Commission on 21st Century Production Agriculture, Room 3702 South Building, 1400 Independence Avenue, SW, Washington, DC 20250–0524.

Keith J. Collins,

Chief Economist.

[FR Doc. 00–7036 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 00–018–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of the Karnal bunt regulations.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by May 22, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 00–018–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 00–018–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: For information regarding the Karnal bunt regulations, contact Dr. Vedpal S. Malik, National Karnal Bunt Coordinator, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–6774. For copies of more detailed information on the information collection, contact Ms. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Karnal Bunt.

OMB Number: 0579–0121.

Expiration Date of Approval: April 30, 2000.

Type of Request: Extension of approval of an information collection.

Abstract: We have regulations in place to prevent the interstate spread of Karnal bunt, a fungal disease of wheat. These regulations restrict the interstate movement of wheat plants and plant parts (including grain, seed, and straw) from areas where Karnal bunt has been detected. The regulations concerning interstate movements require the use of limited permits, certificates, compliance agreements, and other documents that are needed to inform the public of our requirements and authorize the interstate movement of regulated articles.

In addition, our regulations have offered compensation as part of our Karnal bunt regulatory program since the 1995–1996 crop season. We pay this compensation to reduce the economic effects of our Karnal bunt quarantine on wheat producers and other individuals and to help obtain their cooperation in our Karnal bunt eradication efforts. Our regulations regarding compensation require program participants to engage in several information collection activities (including the completion of a Karnal bunt compensation worksheet and compensation form) that are necessary for us to run an effective compensation program.

We are asking the Office of Management and Budget (OMB) to approve, for an additional 3 years, our use of these information collections in connection with our regulations.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning this information collection activity. We need this outside input to help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our Agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as, through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses).

Estimate of burden: The public reporting burden for this collection of information is estimated to average .1818 hours per response.

Respondents: Wheat growers, handlers, owners of grain storage facilities, flour millers, seed companies, and Farm Service Administration personnel.

Estimated annual number of-respondents: 1,261.

Estimated annual number of responses per respondent: 9.26407.

Estimated annual number of responses: 11,682.

Estimated total annual burden on respondents: 2,124 hours. (Due to rounding, the total annual burden hours may not equal the product of the annual number of responses multiplied by the average reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 16th day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–7015 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Commodity Credit Corporation's (CCC) intention to request an extension for and revision to currently approved information collections in support of the CCC's Export Enhancement Program (EEP) and the CCC's Dairy Export Incentive Program (DEIP) based on re-estimates.

DATES: Comments on this notice must be received by May 22, 2000, to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Merle Brown, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1031, Washington, DC 20250–1031, telephone (202) 720–3573. Persons with disabilities who require an alternative means for communication of information (Braille, large print, audiotape, etc.) should contact USDA's Target Center at (202) 720–2600 (voice and TDD).

SUPPLEMENTARY INFORMATION: *Title:* CCC's Export Enhancement Program (EEP) and CCC's Dairy Export Incentive Program (DEIP).

OMB Numbers: 0551–0028 (EEP) and 0551–0029 (DEIP). These will be combined into OMB Number 0551–0028 if this request is approved.

Expiration Date of Approval: July 31, 2000.

Type of Request: Extension and revision of currently approved information collections, with change to combine 0551–0028 (CCC's Export Enhancement Program) and 0551–0029 (CCC's Dairy Export Incentive Program).

Abstract: The major objective of the EEP and DEIP is to expand U.S. agricultural exports by paying cash to exporters as bonuses, allowing them to sell U.S. agricultural products in targeted countries at competitive prices. Currently, 120 countries and 3 country regions are targeted export destinations and 820 exporters are eligible to participate under either or both programs. Under 7 CFR part 1494, exporters are required to submit the following: (1) information required for program participation (section 1494.301), (2) performance security (section 1494.401), (3) export sales information in connection with applying for a CCC bonus (section 1494.501), and (4) evidence of export and related information (section 1494.701). In addition, each exporter must maintain accurate records showing sales and deliveries of the eligible commodity exported in connection with an agreement made under the EEP or DEIP as outlined in section 1494.1001. The information collected is used by CCC to manage, plan for, evaluate the use of, and account for Government resources. The reports and records are required to ensure the proper and judicious use of public funds.

Estimate of Burden: The public reporting burden for these collections is estimated to average 0.45 hours per response.

Respondents: Exporters of U.S. agricultural commodities, banks or other financial institutions, producer associations, export trade associations, and U.S. Government agencies.

Estimated Number of Respondents: 40 per annum.

Estimated Number of Responses per Respondent: 90 per annum.

Estimated Total Annual Burden of Respondents: 1,636 hours.

Copies of this information collection can be obtained from Kimberly Chisley, the Agency Information Collection Coordinator, at (202) 720–2568.

Requests for Comments

Send comments regarding (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Merle Brown, Director, Program Administration Division, Foreign Agricultural Service, U.S. Department of Agriculture, AgBox 1031, Washington, DC 20250–1031, or to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

All responses to this notice will be summarized and included in the request for OMB approval.

All comments will also become a matter of public record.

Signed at Washington, D.C. on March 16, 2000.

Richard Fritz,

General Sales Manager, Foreign Agricultural Service, and Vice President, Commodity Credit Corporation.

[FR Doc. 00–7038 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–10–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Notice of Request for Revision and Extension of Currently Approved Information Collection

AGENCY: Farm Service Agency, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the intent of the Farm Service Agency (FSA) to request revision and extension of currently approved information collections used in support of FSA's Farm Loan Programs (FLP). The renewal includes revisions to information collections resulting from the new Low-Documentation Direct Operating Loan application process which will be published under a separate **Federal Register** publication titled, "Implementation of Lo-Documentation Direct Operating Loan (Lo-Doc) Regulations." Lo-Doc makes the Direct Operating Loan program application process more consistent with the guaranteed loan program and standard industry practices. Loan processing will be more efficient and less time consuming.

DATES: Comments on this notice must be received on or before May 22, 2000 to be assured consideration.

FOR FURTHER INFORMATION CONTACT: Cathy Quayle, Senior Loan Officer, USDA, Farm Service Agency, Loan Making Division, 1400 Independence Avenue, SW, STOP 0522, Washington, D.C. 20250–0522; Telephone (202) 690–4018; Electronic mail: cquayle@wdc.fsa.usda.gov.

SUPPLEMENTARY INFORMATION: *Title:* Receiving and Processing Applications.

OMB Control Number: 0560–0178.

Expiration Date of Approval: April 30, 2000.

Type of Request: Revision and Extension of Currently Approved Information Collection.

Abstract: The information collected under OMB Control Number 0560–0178 is used in processing applications for direct FLP loans. Specifically, the Agency uses the information in making eligibility and financial feasibility determinations for direct operating, farm ownership, and emergency loans, as authorized under the Consolidated Farm and Rural Development Act. The specific information collected is business and entity supporting documentation on organizational structure and financial information, documentation of farm experience and training, verification that the applicant is unable to obtain credit elsewhere, historical financial and production records, and copies of any lease agreements or legal descriptions of real estate they own. Regulations are being revised under a separate **Federal Register** publication to implement a Lo-Doc application process which will decrease collections required from applicants requesting operating loans of $50,000 or less, or recurring annual operating loans. Lo-Doc will decrease the burden on both FSA employees and customers. Specifically, for Lo-Doc application processing only the entity supporting documentation information from this collection may be required.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 4.2 hours per response.

Respondents: Individuals or households, businesses or others for profit, and farms.

Estimated Number of Respondents: 34,970.

Estimated Number of Responses per Respondent: 5.03.

Estimated Total Annual Burden on Respondents: 147,551.

Comments are sought on these requirements including: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility, (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collections techniques or other forms of information technology.

These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 and to Cathy Quayle, USDA, FSA, Farm Loan Programs, Loan Making Division, 1400 Independence Avenue, SW, STOP 0522, Washington D.C. 20250–0522. Copies of the information collection may be obtained from Cathy Quayle at the above address.

Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection. All comments will also become a matter of public record.

Signed in Washington, D.C., on March 13, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–7037 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

East Side Project, McKean, Elk and Forest Counties, PA

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: Reference is made to our notice of intent to prepare an environmental impact statement for the East Side Project (FR Document 98–10895 filed 4/23/98) published in the **Federal Register**, Volume 63, No. 79, Friday, April 24, 1998, pages 20368–69.

In accordance with Forest Service Environmental Policy and Procedures handbook 1909.15, part 21.2—*Revision of Notices of Intent*, we are revising the date that the Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency and be available for public review and comment to April 10, 2000. Subsequently, the date the final EIS is scheduled to be completed is revised to be August 1, 2000.

FOR FURTHER INFORMATION CONTACT: Gary W. Kell, Allegheny National Forest at P.O. Box 847, Warren, PA 16365 or by telephone at 814/723–5150.

Dated: March 14, 2000.

John E. Palmer,

Forest Supervisor.

[FR Doc. 00–7018 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Hidden Cedar Project, ID; Panhandle National Forests, Shoshone County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The St. Joe Ranger District of the Idaho Panhandle National Forest is considering vegetation, watershed restoration, and access management activities in the Hidden Cedar Project. The project area is located approximately 26 miles south of the town of St. Maries on the St. Maries River.

The proposed action was designed to meet the primary objectives listed below. The interdisciplinary team reviewed the Natural Resource Agenda, the Interior Columbia Basin Ecosystem Management Project, the Idaho Panhandle Forest Plan, and the St. Joe

Geographic Assessment. Using these

confidentiality may be granted in only

to Read 765A; County Line Road 765A,

The comment period on the draft

To file a complaint, write the

1125), P. O. Box 96090, Washington, DC

Geographic Assessment. Using these documents and information specific to the project area, the interdisciplinary team completed an Ecosystem Analysis at the Watershed Scale for the Hidden Cedar Project Area (located in the project file) to document resource conditions and note where activities were needed to improve them. The following needs for the Hidden Cedar area were derived from the Ecosystem Analysis: (1) Improve soil conditions; (2) Reduce sedimentation from past activities, which have caused streambank instability, channel erosion and increased sedimentation; (3) Provide or improve wildlife security; (4) Reduce the impacts of existing roads such as influences on hydrologic properties, fish migration barriers (culverts), while providing adequate and appropriate access for management, recreation and adjacent landowners; (5) Move vegetation toward historical conditions in terms of species composition and size where feasible and acceptable to other resources, and (5) Reduce fuel build-up where it poses a risk to human uses in the project area.

DATE: Comments should be postmarked by April 15, 2000. Please include your name and address and the name of the project on which you are commenting.

ADDRESSES: For your comments to be most useful, they should be as specific as possible to the project area and the Proposed Action.

Submit written comments and suggestions on the proposed management activities or request to be places on project mailing list to: George M. Bain, District Ranger, St. Joe Ranger District, PO Box 407, St. Maries, ID 83861. Forest Supervisor, Idaho Panhandle National Forests, 3815 Schreiber Way, Coeur d'Alene, ID 83814 is the Responsible Official.

FOR FURTHER INFORMATION CONTACT: Cameo Flood, Project Team Leader, St. Joe Ranger District, (208) 245–4517.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR Parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Persons requesting such confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 10 days.

SUPPLEMENTARY INFORMATION: Vegetation management under this proposal is designed to meet several needs, including providing timber products to local markets, protecting and enhancing wildlife habitat needs, providing for long term growth and yield as directed in the Idaho Panhandle National Forest Plan, increasing fire resiliency, reducing fire hazards, and moving the vegetation to the conditions the area historically had in terms of tree species composition and density.

Treatments include approximately 1768 acres of commercial timber harvesting including commercial thinning, shelterwood preparation and seed cuttings, group shelterwoods, irregular group shelterwoods, and clearcuts with reserves.

Stream Channel and Fish Habitat Restoration

The NEPA analysis will consider possible riparian road relocation and/or obliteration in the proposed action or alternatives. Segments of Roads 498 (Hidden Creek), 341 (Wood Creek) and 3340 (Mazie Creek) have been identified for possible relocation or obliteration that could be included in the analysis. An unnamed drainage north of the Clarkia Work Center also contains several riparian and/or other primitive roads that could be put into long term storage or obliterated. Other unclassified roads throughout the project area will be evaluated if they should be placed on the Forest Development Road (FDR) system or if additional treatment is needed such as decompaction, revegetation, culvert removal or some degree of recontouring.

As a minimum, for the proposed action, the following Forest Development Roads will be managed as unrestricted routes, available for all motorized vehicle use: East Elk Road 1451 (Staples Creek), from SH3 to Road 1491; Christmas Creek Road 3321, from County Road to the end of road; Anthony Peak Road 1486, from the County Road to Road 3685; Bluebell Road 3685, from Road 1486 to the "four way saddle;" Cats Spur Road 361, from Road 1486 to Road 1450; Log Creek Road 1450, from Road 361 to Road 1480; Keeler Connection Road 764, from SH3 to Read 765A; County Line Road 765A, from Road 765 to SH3; Hidden Creek Road 498, from Road 765 to the "forks of Hidden Cr"; Wood Creek Road 341, from SH3 to Road 3340; Clarkia Emerald Creek Road 504, from SH3 to Road 447; Bechtel Mountain Road 3478, from Road 504 to the top of Bechtel Mountain; Anthony Peak Road 1486, segment I, from the County Road to Road 3685; Anthony Peak Road 1486, segment III, from Road 3685 to Road 3686; Bluebell Road 3685, from Road 1486 to Road 3685C; and Bobcat Road 3554, from Road 1450 to Road 3554A.

These roads are in addition to the general public access provided by State Highway 3 and other landowners in the area.

Access Management

Approximately 9.7 miles of road construction would be needed to access timber harvesting units.

Adjacent landowners (Potlatch Corporation and the Idaho Department of Lands) have indicated that in the near future, they will be requesting access across National Forest System Lands in the project area to reach their lands. The federal government is required to allow reasonable access the adjacent lands after the appropriate analysis and consultation. The amount of additional road access (new road construction) associated with these access requests is estimated at between two and five miles.

Preliminary Issues

We expect issues and concerns with this project to include the impacts on wildlife, fish, water quality, and recreation, as well as road construction, clearcutting and economic feasibility. Issues will be developed and analyzed based on public comment and the interdisciplinary team's analysis of effects on resources. Alternatives will be developed to modify or eliminate the impacts from proposed activities and still meet the purpose for this project.

Additionally, some of the vegetation treatment may result in opening of over 60 acres, which requires a 60 day comment period. While we would like comments that would affect alternatives early, comments on the size of openings and their effects should be received by May 15, 2000.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in September 2000. The final environmental impact statement is expected to be completed in February 2001.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**,

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental statement stage but that are not raised until after completion of the final environmental statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concern on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It also helpful if comments refer to specific pages of chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviews may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The United States Department of Agriculture (USDA) prohibits discrimination in its programs on the basis of race, color, national origin, sex, religion, age, disability, political beliefs, and marital or familial status. (Not all prohibited bases apply to all programs.) Persons with disabilities who require alternative means of communication of program information (braille, large print, audiotape, etc.) should contact USDA's TARGET Center ad (202) 720–2600 (voice and TDD).

To file a complaint, write the Secretary of Agriculture, U.S. Department of Agriculture, Washington, DC 20250, or call 1–800–245–6340 (voice) or 202–720–1127 (TDD). USDA is an equal employment opportunity employer.

Dated: March 6, 2000.

George Bain,

St. Joe District Ranger.

[FR Doc. 00–7017 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Categorical Exclusion for Certain Ski Area Permit Actions

AGENCY: Forest Service, USDA.

ACTION: Notice of availability; reissuance of interim directive.

SUMMARY: The Forest Service is reissuing an interim directive to guide its employees in complying with the National Environmental Policy Act when issuance of a ski area permit is a purely ministerial action and no changes are proposed in permitted activities or facilities. The interim directive implements a provision of the Omnibus Parks and Public Lands Management Act of 1996, which states that reissuance of a ski area permit for activities similar in nature and amount to the activities authorized under the previous permit shall not constitute a major Federal action. This interim directive, numbered ID 1909.15–2000–1, reissues without change the interim direction previously issued to Forest Service Handbook 1909.15, Environmental Policy and Procedures Handbook, in ID 1909.15–98–1, which was published in the **Federal Register** on September 9, 1998, and was issued effective September 24, 1998. The proposed interim directive was previously published for notice and comment in the **Federal Register** on October 27, 1997 (62 FR 55571).

DATES: Interim directive (ID) 1909.15–2000–1 is effective March 24, 2000, and expires September 24, 2001, unless the direction in the ID is incorporated in an amendment to Forest Service Handbook 1909.15 before the expiration date.

ADDRESSES: Copies of interim directive 1909.15–2000–1 are available electronically from the Forest Service via the World Wide Web/Internet at http://www.fs.fed.us/im/directives/fsh/1909.15/id__1909.15__2000__1.txt or by contacting the Forest Service, USDA, Recreation, Heritage, and Wilderness Resources Management Staff (Mail Stop 1125), P. O. Box 96090, Washington, DC 20090–6090 (telephone 202–205–1706).

FOR FURTHER INFORMATION CONTACT: Ken Karkula, Recreation, Heritage, and Wilderness Resources Management Staff (202-205–1426).

Dated: March 16, 2000.

Paul Brouha,

Acting Deputy Chief for National Forest System.

[FR Doc. 00–7041 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Proposed collection; comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business—Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR Part 1942–G Rural Business Enterprise Grants and Television Demonstration Grants.

DATES: Comments on this notice must be received by May 22, 2000 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Carole Boyko, Rural Development Loan Specialist, Rural Business—Cooperative Service, USDA, Specialty Lenders Division, Stop 3325, 1400 Independence Avenue SW, Washington, DC 20250–3325. Telephone: (202) 720–0661.

SUPPLEMENTARY INFORMATION:

Title: RBS/Rural Business Enterprise Grants and Television Demonstration Grants.

OMB Number: 0570–0132.

Expiration Date of Approval: May 31, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the RBEG program is to facilitate the development of small and emerging private businesses in rural areas. This purpose is achieved through grants made by RBS to public bodies and nonprofit corporations. Television Demonstration grants are available to private nonprofit public television systems to provide information on agriculture and other issues of importance to farmers and the

rural residents. The regulations contain various requirements for information from the grantees, and some requirements may cause the grantees to require information from other parties. The information requested is vital for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information used to determine eligibility; the specific purposes for which grant funds will be used; timeframes; who will be carrying out the grant purposes; project priority; applicant experience; employment improvement; and mitigation of economic distress.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.95 hours per response.

Respondents: Non-profit corporations, public bodies.

Estimated Number of Respondents: 720.

Estimated Number of Responses per Respondent: 28.94.

Estimated Total Annual Burden on Respondents: 40,650 hours.

Copies of this information collection can be obtained from Jean Mosley, Regulations and Paperwork Management Branch at (202) 692–0041.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Business—Cooperative Service, including whether the information will have practical utility; (b) the accuracy of Rural Business—Cooperative Service estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosley, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 14, 2000.

Dayton J. Watkins,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 00–7035 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–XY–P

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

Information Collection Activity; Comment Request

AGENCY: Rural Utilities Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended), the Rural Utilities Service (RUS) invites comments on this information collection for which RUS intends to request approval from the Office of Management and Budget (OMB).

DATES: Comments on this notice must be received by May 22, 2000.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Program Development & Regulatory Analysis, Rural Utilities Service, USDA, 1400 Independence Ave., SW., STOP 1522, Room 4034 South Building, Washington, DC 20250–1522. Telephone: (202) 720–0736. FAX: (202) 720–4120.

SUPPLEMENTARY INFORMATION:

Title: State Telecommunications Modernization Plan.

OMB Control Number: 0572–0104.

Type of Request: Reinstatement of a previously approved collection with change.

Abstract: This information collection requirement stems from passage of the Rural Electrification Loan Restructuring Act (RELRA, P.L. 103–129) on November 1, 1993, which amended the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (the RE Act). RELRA requires that a State Telecommunications Modernization Plan (STMP), covering at a minimum the Rural Utilities Service (RUS) borrowers in the state, be established in a state or RUS cannot make hardship or concurrent cost-of-money and Rural Telephone Bank (RTB) loans for construction in that state. It is the policy of RUS that every State have a Modernization Plan which provides for the improvement of the State's telecommunications network. A proposed Modernization Plan must be submitted to RUS for approval. RUS will approve a proposed Modernization Plan if it conforms to the provisions of 7 CFR part 1751, subpart B.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 350 hours per response.

Respondents: Not-for-profit institutions and other businesses.

Estimated Number of Respondents: 1.

Estimated Number of Responses per Respondent: 1.

Estimate Total Annual Burden on Respondents: 350 hours.

Copies of this information collection can be obtained from Bob Turner, Program Development and Regulatory Analysis, Rural Utilities Service at (202) 720–0696.

Comments are invited on (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumption used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques on other forms of information technology. Comments may be sent to F. Lamont Heppe, Jr., Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Ave. SW, Stop 1522, Room 4034 South Building, Washington, DC 20250–1522.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 14, 2000.

Christopher A. McLean,

Acting Administrator, Rural Utilities Service.

[FR Doc. 00–7087 Filed 3–21–00; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[DOCKET 9–2000]

Foreign-Trade Zone 25—Broward County, FL; Application for Subzone Status, Coastal Fuels Marketing, Inc. (Fuel Terminal), Port Everglades, FL

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Broward County, Florida, grantee of FTZ 25, requesting special-purpose subzone status for the fuel distribution terminal of Coastal Fuel Marketing, Inc. (Coastal), located in Port Everglades, Florida. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 15, 2000.

The Coastal facilities (56.5 acres) are located at 2401 Eisenhower Boulevard, Port Everglades, Florida. The terminal facilities (72 employees), are used for the receipt, storage, blending and distribution of jet fuel, gasoline, crude oil, asphalt, distillates, residual fuels and motor fuel blending stocks for the domestic and foreign markets. Some of the products will be sourced from abroad, or from U.S. refineries under FTZ procedures.

Zone procedures would exempt Coastal from Customs duties and federal excise taxes on exports and on foreign status jet fuel used for international flights. On domestic sales, the company would be able to defer Customs duty payments until the products leave the facility. The application indicates that the savings from FTZ procedures will help improve the facility's international competitiveness.

No specific manufacturing request is being made at this time. Such a request would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 22, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 5, 2000.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 200 E. las Olas Blvd. (Sun Sentinel Building), Suite 1600, Ft. Lauderdale, Florida 33301–2284

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Pennsylvania Avenue, NW, Washington, DC 20230

Dated: March 16, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–7093 Filed 3–21–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 10–2000]

Foreign-Trade Zone 86—Tacoma, WA; Application for Subzone, Tesoro Petroleum Corporation, Anacortes, WA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Port of Tacoma, grantee of FTZ 86, requesting special-purpose subzone status for the oil refinery complex of Tesoro Petroleum Corporation, located in Anacortes, Washington. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on March 15, 2000.

The refinery complex (903 acres, 300 employees) is located on West March Point Road in Anacortes, Washington (Skagit County), some 100 miles north of Tacoma. The refinery (108,200 BPD) is used to produce fuels and liquid petroleum gases, including gasoline, jet fuel, distillates, residual fuels, naphthas, motor fuel blendstocks, liquefied natural gas, butane, isobutane, and propane. Refinery by-products include petroleum coke, asphalt and sulfur. Some 68 percent of the crude oil (96 percent of inputs), and some naphthas, virgin gas oil and field butanes are sourced abroad. Zone procedures would exempt the refinery from Customs duty payments on the foreign products used in its exports. On domestic sales, the company would be able to choose the Customs duty rates that apply to certain petrochemical feedstocks and refinery by-products (duty-free) by admitting incoming foreign crude oil in non-privileged foreign status. The duty rates on inputs range from 5.25 cents/barrel to 10.5 cents/barrel. The application indicates that the savings from zone procedures would help improve the refinery's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 22, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to June 5, 2000.

A copy of the application and the accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, Export Assistance Center, 2001 Sixth Ave., Suite 650, Seattle, WA 98121

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th and Pennsylvania Avenue, N.W., Washington, D.C. 20230

Dated: March 16, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–7094 Filed 3–21–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–835]

Oil Country Tubular Goods From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On September 7, 1999, the Department of Commerce (the Department) published the preliminary results of administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Japan (64 FR 48589). The merchandise covered by this order is hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). The review covers one manufacturer. The period of review is August 1, 1997 through July 31, 1998.

Based on our analysis of the comments received, we have made changes in the margin calculations. The final weighted-average dumping margin for the reviewed firm is listed below in the section entitled "Final Results of the Review."

EFFECTIVE DATE: March 22, 2000

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EFFECTIVE DATE: March 22, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Gilgunn or Mark Hoadley, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, D.C. 20230; telephone: (202) 482–0648 and (202) 482–0666, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (1999).

Background

On September 7, 1999, the Department published the preliminary results of administrative review of the antidumping duty order on OCTG from Japan (64 FR 48589). We invited parties to comment on our preliminary results of review. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of Review

The merchandise covered by this order consists of oil country tubular goods, hollow steel products of circular cross-section, including oil well casing, tubing, and drill pipe, of iron (other than cast iron) or steel (both carbon and alloy), whether seamless or welded, whether or not conforming to American Petroleum Institute (API) or non-API specifications, whether finished or unfinished (including green tubes and limited service OCTG products). This scope does not cover casing, tubing, or drill pipe containing 10.5 percent or more of chromium. The products subject to this order are currently classified in the Harmonized Tariff Schedule of the United States (HTSUS) under item numbers: 7304.21.30.00, 7304.21.60.30, 7304.21.60.45, 7304.21.60.60, 7304.29.10.10, 7304.29.10.20, 7304.29.10.30, 7304.29.10.40, 7304.29.10.50, 7304.29.10.60, 7304.29.10.80, 7304.29.20.10, 7304.29.20.20, 7304.29.20.30, 7304.29.20.40, 7304.29.20.50, 7304.29.20.60, 7304.29.20.80, 7304.29.30.10, 7304.29.30.20, 7304.29.30.30, 7304.29.30.40, 7304.29.30.50, 7304.29.30.60, 7304.29.30.80, 7304.29.40.10, 7304.29.40.20, 7304.29.40.30, 7304.29.40.40, 7304.29.40.50, 7304.29.40.60, 7304.29.40.80, 7304.29.50.15, 7304.29.50.30, 7304.29.50.45, 7304.29.50.60, 7304.29.50.75, 7304.29.60.15, 7304.29.60.30, 7304.29.60.45, 7304.29.60.60, 7304.29.60.75, 7305.20.20.00, 7305.20.40.00, 7305.20.60.00, 7305.20.80.00, 7306.20.10.30, 7306.20.10.90, 7306.20.20.00, 7306.20.30.00, 7306.20.40.00, 7306.20.60.10, 7306.20.60.50, 7306.20.80.10, and 7306.20.80.50. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this review is dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the "Issues and Decision Memorandum" (Decision Memo) from Joseph A. Spetrini, Deputy Assistant Secretary, Import Administration, to Robert S. LaRussa, Assistant Secretary for Import Administration, dated March 6, 2000, which is hereby adopted and incorporated by reference into this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, located in room B–099 of the main Department of Commerce Building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our analysis of comments received, we have made certain changes in the margin calculations. We have also corrected certain programming and clerical errors in our preliminary results, where applicable. Any alleged programming or clerical errors with which we do not agree are discussed in the relevant sections of the "Decision Memorandum," accessible in B–099 and on the Web at www.ita.doc.gov/import_admin/records/frn/.

Final Results of Review

We determine that the following percentage weighted-average margins exist for the period August 1, 1997 through July 31, 1998:

Manufacturer/exporter	Margin (percent)
Sumitomo Metal Industries	0.00

Cash Deposit Requirements

The following deposit requirements will be effective upon publication of this notice of final results of administrative review for all shipments of oil country tubular goods from Japan entered, or withdrawn from warehouse, for consumption on or after the date of publication, as provided by section 751(a)(1) of the Act: (1) The cash deposit rates for the reviewed companies will be the rates shown above except that, for firms whose weighted-average margins are less than 0.5 percent and therefore *de minimis*, the Department shall require no deposit of estimated antidumping duties; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 44.2 percent. This rate is the "All Others" rate from the LTFV investigation.

These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305. Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

We are issuing and publishing this determination and notice in accordance with sections section 751(a)(1) and 777(i) of the Act.

Dated: March 6, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

Appendix—List of Issues

1. Bona Fide Sale
2. Discounts and Rebates
3. Credit and Warranty Expenses
4. CEP Profit
5. Clerical Errors

[FR Doc. 00–7092 Filed 3–21–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000301055–0055–01; I.D. 012400A]

RIN: 0648–ZA81

Financial Assistance for Chesapeake Bay Stock Assessments to Encourage Research Projects for Improvement in the Stock Conditions of the Chesapeake Bay Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: A total of up to $540,000 in Fiscal Year (FY) 2000 funds is available through the NOAA/NMFS Chesapeake Bay Office to assist interested state fishery agencies, academic institutions, and other nonprofit organizations relating to cooperative research units, in carrying out research projects to provide information for Chesapeake Bay Stock Assessments through cooperative agreements. About $285,000 of the base amount are available to initiate new projects in FY 2000, as described in this announcement. In addition, it is anticipated that supplemental FY 2000 funds, up to $500,000, will be provided to investigate multispecies management and research in Chesapeake Bay. NMFS issues this notice describing the conditions under which eligible applications will be accepted and how NMFS will determine which applications will be selected for funding.

DATES: Applications for funding under this program must be received by 5 p.m. eastern standard time on April 21, 2000. Applications received after that time will not be considered for funding. No applications will be accepted by facsimile machine submission.

Successful applicants generally will be selected approximately 90 days after the date of publication in the *Federal Register* of this notice. The earliest date for awards will be approximately 180 days after the date of publication in the *Federal Register* of this notice.

ADDRESSES: Send applications to: Derek Orner, National Marine Fisheries Service, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403.

FOR FURTHER INFORMATION CONTACT: Derek Orner, 410/267–5660; or e-mail: derek.orner@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. *Authority.* The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753 (a), authorizes the Secretary of Commerce (Secretary), for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several states, and with non-profit organizations relating to cooperative research units. The Departments of Commerce (DOC), Justice, State, the Judiciary, and Related Agencies Appropriations Act of 2000 makes funds available to the Secretary.

B. *Catalog of Federal Assistance.* The research to be funded is in support of the Chesapeake Bay Studies (CFDA 11.457), under the Chesapeake Bay Stock Assessment Committee (CBSAC).

C. *Program Description.* CBSAC was established in 1985 to plan and review Bay-wide resource assessments, coordinate relevant actions of state and Federal agencies, report on fisheries status and trends, and determine, fund and review research projects. The program implements a Bay-wide plan for the assessment of commercially, recreationally, and selected ecologically important species in the Chesapeake Bay. In 1988, CBSAC developed a Bay-wide Stock Assessment Plan, in response to provisions in the Chesapeake Bay Agreement of 1987. The Plan identified that key obstacles to assessing Bay stocks was the lack of consistent, Bay-wide, fishery-dependent and fishery-independent data. Research projects funded since 1988 have focused on developing and improving fishery-independent surveys and catch statistics for key Bay species, such as striped bass, oysters, blue crabs and alosids. Stock assessment research is essential, given the recent declines in harvest and apparent stock condition for many of the important species of the Chesapeake Bay.

D. *Funding Availability.* (1) This solicitation announces that funding of up to $285,000 will be available for new initiatives in FY00 for research projects providing regional information required for stock assessments. (2) This solicitation also announces that funding of up to $500,000 is anticipated to be available for projects providing information on multispecies management or research in Chesapeake Bay.

II. Areas of Special Emphasis

A. Proposals should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multi-disciplinary. Coordinated efforts involving multiple eligible applicants or persons are encouraged. Eligible women and minority owned and operated non-profit organizations are encouraged to apply. (See Section III.A.)

(1) *Stock Assessment Research* - Consideration for funding will be given to applications that address the following stock assessment research and management priorities for the Chesapeake Bay. These priorities are not listed in any implied order:

(a) Conduct assessments of the abundance, productivity, and distribution of important Chesapeake Bay finfish and shellfish resources together with the patterns of their exploitation. Successful proposals may include research on life history characteristics, stock-recruitment relationships, and schedules of vital rates. Descriptions of stock structure, demographics and spatial distribution would also be appropriate. It is hoped that proposals would combine analyses of existing fishery-dependent and fishery-independent data. Proposals focusing on hard clams are particularly encouraged.

(b) Design of a method/survey to estimate the Baywide abundance of oysters in Chesapeake Bay. The purpose of this survey will be to track progress towards achieving the Chesapeake Bay Program goal of increasing the oyster population in Chesapeake Bay ten-fold by the year 2010. The investigators should take into consideration existing state surveys that already fill various data needs.

(c) Blue Crab Recreational Survey—A substantial blue crab recreational fishery exists in the Chesapeake Bay which has never been fully assessed. Recent work includes the development of methods for conducting a Baywide recreational

priorities, application procedures, and

continuation. Publication of this notice

described in the application.

survey for the blue crab. Projects should:

(i) Review the work previously conducted and begin implementation on a Baywide scale based on earlier work;

(ii) Provide reliable estimates of recreational catch, fishing effort, catch rates, size composition, and sex ratios for all components of the blue crab recreational fisheries.

(d) Improvement or implementation of the collection of fishery-dependent data within Chesapeake Bay. Projects can involve either the commercial and/or recreational components of the fishery. Projects should focus on collecting biological data (size, sex, age, diet), and catch and effort data from Bay-wide harvests of significant finfish and shellfish fisheries to provide accurate, statistically representative information on the spatial and temporal characteristics of the harvest. Proposals may involve designs for port-sampling of landings, or on-board anaysis of the catch, analysis of intercepts and telephone surveys. Proposals that document information on by-catch would be relevant.

The proposals should recognize current efforts to collect biological data from Bay fisheries and attempt to define the optimal, regional (Maryland, Potomac River Fisheries Commission, and Virginia jurisdictions) sampling program. Proposals focusing on the blue crab commercial fishery are particularly encouraged.

(2) *Multispecies Management or Research* - The Chesapeake Bay is a complex and dynamic ecosystem that supports many fisheries that are economically important both regionally and nationally. To date, these resources have been managed on a single species basis. This single species approach has served us well; however, the existence of both biological and technical (by-catch) interactions in most of Chesapeake Bay fisheries point to the need to move toward a wider, multispecies perspective. This viewpoint was wholeheartedly endorsed at a workshop of regional, national and international scientists held to address the potential utility of multispecies approaches to fisheries management in the Chesapeake Bay (STAC Publication 98–002, *www.chesapeake.org*). The ultimate objective of this research and monitoring is to lead to the development of an ecosystem plan for Chesapeake Bay fisheries, within which the rational exploitation of individual species can be determined.

Consideration for funding will be given to applications that address the following multispecies management and research priorities for the Chesapeake Bay. It should be realized that certain priorities may require a larger funding commitment, although the priorities are not listed in any implied order:

(a) Fishery-independent Surveys. CBSAC seeks proposals to plan, develop and initiate coordinated Baywide surveys to regularly estimate species abundances, trends and biological characteristics (e.g., age/size structure, recruitments, growth and mortality rates, food habitats) for economically and ecologically important key species. Proposals within this task may:

(i) Review and assess existing fishery independent sampling programs conducted by regional agencies to evaluate their potential applicability to the Chesapeake Bay. This may include evaluation of the use of fixed and random sampling protocols, with or without stratification, and the sampling characteristics of different gear types.

(ii) Develop and initiate a Baywide, coordinated, fishery-independent survey that may include multiple gear, such as benthic and midwater trawling, and hydroacoustics to characterize the status and trends in the abundance, distribution and characteristics of key Chesapeake Bay finfish and shellfish.

(b) Retrospective Analyzes. CBSAC seeks proposals to document and quantify multispecies interactions among economically and ecologically important finfish and shellfish within the Chesapeake Bay. The proposed work should lead to the identification of the πstrong' interactions within the Chesapeake Bay fisheries system. Work may involve analysis of commercial and recreational catch and effort data, the analysis of the patterns of diets and energy flows within the fisheries system, or multivariate analyzes of abundance relationships within the fisheries system and their relationship to environmental and habitat characteristics.

(c) Multispecies Assessment. CBSAC seeks proposals to apply and assess alternative multispecies fisheries models to the Chesapeake Bay fisheries systems. Examples of possible approaches include multispecies biomass dynamic, multispecies yield per recruit, multispecies bioenergetics, and multispecies simulation models. Model approaches should seek to predict constraints and patterns in the fisheries production of the Chesapeake Bay system.

(d) Technical Interactions (By-catch). CBSAC seeks proposals to quantify and assess the importance of technical interactions, e.g., by-catch within the Chesapeake Bay fishery. Proposals should quantify the species involved, the distribution and magnitude of by-catch by species, gear, location and season.

(e) Design and develop an integrated, Baywide blue crab mark and recapture study that will provide information on growth, natural mortality, fishing mortality, size selectivity, catchability, reporting rates and the distribution of harvest among the fisheries. Results should also be informative with respect to the reproductive frequency of female crabs, and longevity. Recognizing the scope of this project, subcomponents that will help in contributing to the development of a Baywide framework for this project will be accepted.

(f) Improvement or implementation of the collection of fishery-dependent data within Chesapeake Bay. Projects can involve either the commercial and/or recreational components of the fishery. Baywide Projects should focus on collecting biological data (size, sex, age, diet), and catch and effort data from harvests of significant finfish and shellfish fisheries to provide accurate, statistically representative information on the spatial and temporal characteristics of the harvest. Proposals may involve designs for port-sampling of landings, or on-board anaysis of the catch, analysis of intercepts and telephone surveys. Proposals that document information on by-catch would be relevant.

The proposals should recognize current efforts to collect biological data from Bay fisheries and attempt to define the optimal, regional (Maryland, Potomac River Fisheries Commission, and Virginia jurisdictions) sampling program. Proposals focusing on the blue crab commercial fishery and its effect on the Chesapeake Bay ecosystem are encouraged.

B. Applications addressing the priorities should build upon, or take into account, any related past or current work.

III. How to Apply

A. *Eligible applicants.* Applications for cooperative agreements under the Chesapeake Bay Studies Program may be submitted, in accordance with the procedures set forth in this notice, by any state game and fish department, college or university, or other nonprofit organizations relating to cooperative research units. Other Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

DOC/NOAA/NMFS employees, including full-time, part-time and intermittent personnel are not eligible to submit an application under this solicitation or aid in the preparation of an application, except to provide information on program goals, funding

priorities, application procedures, and completion of application forms. Since this is a competitive program, assistance will not be provided in conceptualizing, developing, or structuring proposals.

Eligible applicants outside the Chesapeake Bay region may submit proposals, as long as their objectives support the technical and management priorities of the Chesapeake Bay, as defined in section II.A. All solicited proposals received by the closing date will be considered by NMFS.

Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal financial assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

B. *Duration and terms of funding.* Under this solicitation, NMFS will fund Chesapeake Bay Stock Assessment Research Projects for 1-year cooperative agreements. The cooperative agreement has been determined as the appropriate funding instrument because of the substantial involvement of NMFS in:

1. Developing program research priorities;

2. Evaluating the performance of the program for effectiveness in meeting regional goals for Chesapeake Bay stock assessments;

3. Monitoring the progress of each funded project;

4. Holding periodic workshops with investigators; and

5. Working with recipients in preparation of annual reports summarizing current accomplishments of the Chesapeake Bay Stock Assessment Committee. Project dates should be scheduled to begin no later than 1 October 2000. Cooperative agreements are approved on an annual basis but may be considered eligible for continuation beyond the first project and budget period subject to the approved scope of work, satisfactory progress, and availability of funds at the total discretion of NMFS. However, there are no assurances for such continuation. Publication of this notice does not obligate NMFS to award any specific cooperative agreement or to obligate any part of the entire amount of funds available.

C. *Cost-Sharing requirements.* Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost sharing is not required under the Chesapeake Bay Stock Assessment Research Program. However, cost sharing is encouraged to enhance the value of a project, and in case of a tie in considering proposals for funding, cost-sharing may affect the final decision. The appropriateness of all cost-sharing will be determined on the basis of guidance provided in applicable Federal cost principles. If an applicant chooses to share cost, and if that application is selected for funding, the applicants will be bound by the percentage of cost sharing reflected in the award documents.

The non-Federal share may include funds received from private sources or from state or local governments or the value of in-kind contributions. Federal funds may not be used to meet the non-Federal share of matching funds, except as provided by Federal statute. In-kind contributions may be in the form of, but are not limited to, personal services rendered in carrying out functions related to the project, and permission to use real or personal property owned by others (for which consideration is not required) in carrying out the project. To support the budget, the applicant must describe briefly the basis for estimating the value of the non-Federal funds derived from in-kind contributions.

The total cost of a project begins on the effective date of a cooperative agreement between the applicant and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, the time expended and costs incurred in either the development of a project or the financial assistance application, or in any subsequent discussions or negotiations prior to the award, are neither reimbursable nor recognizable as part of the recipient's cost share.

D. *Format.* 1. Applications for project funding must be complete. Applicants must identify the specific research priority or priorities to which they are responding. For applications containing more than one project, each project component must be identified individually using the format specified in this section. If an application is not in response to a priority, it should be so stated. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application. Applications are not to be bound in any manner and should be one-sided. All incomplete applications will be returned to the applicant. Applicants must submit one signed original and two copies of the complete application.

2. Applications must be submitted in the following format:

(a) *Cover sheet*: An applicant must use OMB Standard Form 424 (revised 4/92) as the cover sheet for each project. Applicants may obtain copies of these forms from the NOAA Grants Management Division, the NOAA Chesapeake Bay Office (see **ADDRESSES**) or from the NOAA Grants website, *http://www.rdc.noaa.gov/grants/*.

(b) *Project summary*: Each proposal must contain a summary of not more than one page that provides the following:

(1) Project title.

(2) Project status (new).

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal Investigator(s).

(6) Project objectives.

(7) Summary of work to be performed.

(8) Total Federal funds requested.

(9) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.

(10) Total project cost.

(c) *Project description*: Each project must be completely and accurately described. Each project description may be up to 15 pages in length. If an application is awarded, NMFS will make all portions of the project description available to the public for review; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

(1) *Identification of problem(s)*: Describe the specific problem to be addressed (see section II).

(2) *Project objectives*: This is one of the most important parts of the Project Proposal. Use the following guidelines for stating the objective of the project.

(a) Keep it simple and easily understandable.

(b) Be as specific and quantitative as possible.

(c) Specify the "what and when;" avoid the "how and why."

(d) Keep it attainable within the time, money, and human resources available.

(e) Use action verbs that are accomplishment oriented.

(3) *Need for Government financial assistance*: Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(4) *Benefits or results expected*: Identify and document the results or benefits to be derived from the proposed activities.

(5) *Project statement of work*: The Statement of Work is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective(s). If the work described in this section does not contain sufficient detail to allow for proper technical evaluation, NMFS will not consider the application for funding and will return it to the applicant.

Investigators submitting proposals in response to this announcement are strongly encouraged to develop inter-institutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. Such collaborative efforts will be factored into the final funding decision.

Each Statement of Work must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the Statement of Work.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. Devise a detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures (from item III.D.2.c(5)(d)) that are to be attained in each project month covered by the Statement of Work. Table format should follow sequential month rather than calendar month (i.e., Project period Month 1, Month 2, versus October, November).

(6) *Federal, state and local government activities*: List any programs (Federal, state, or local government or activities, including Sea Grant, state Coastal Zone Management Programs, NOAA Oyster Disease Research Program, the state/Federal Chesapeake Bay Program, etc.) this project would affect and describe the relationship between the project and those plans or activities.

(7) *Project management*: Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

(8) *Monitoring of project performance*: Identify who will participate in monitoring the project.

(9) *Project impacts*: Describe how these products or services will be made available to the fisheries and management communities.

(10) *Evaluation of project*: The applicant is required to provide an evaluation of project accomplishments at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical feasibility, or to quantify the results of the project in promoting increased production, product quality and safety, management effectiveness, or other measurable factors.

(11) *Total project costs*: Total project costs is the amount of funds required to accomplish what is proposed in the Statement of Work, and includes contributions and donations. All costs must be shown in a detailed budget. A standard budget form (SF–424A) is available from the offices listed and on the internet (see **ADDRESSES**). NMFS will not consider fees or profits as allowable costs for grantees. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. The date, period covered, and findings for the most recent financial audit performed, as well as the name of the audit firm, the contact person, and phone number and address, must be also provided.

(d) *Supporting documentation*: Provide any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

IV. Review Process and Criteria

A. *Initial Evaluation of Applications.* Applications will be reviewed by NOAA to assure that they meet all requirements of this announcement, including eligibility and relevance to the Chesapeake Bay Stock Assessment Research Program.

B. *Consultation with Experts in the Field of Stock Assessment Research.* For applications meeting the requirements of this solicitation, NMFS will conduct a technical evaluation of each project prior to any other review. This review normally will involve experts from both non-NOAA and NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. Reviewers will be asked to comment on the following evaluation criteria:

1. Problem description and conceptual approach for resolution, especially the applicant's comprehension of the problem(s), familiarity with related work that is completed or ongoing, and the overall concept proposed to resolve the problem(s) (30 points).

2. Soundness of project design/technical approach, especially whether the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and weaknesses of the technical design proposed for problem resolution (35 points).

3. Project management and experience and qualifications of personnel, including organization and management of the project, and the personnel experience and qualifications (15 points).

4. Justification and allocation of the budget in terms of the work to be performed (20 points).

C. *Review Panel.* NMFS will convene a review panel consisting of at least three regionally recognized experts in the scientific and management aspects of stock assessment research who will conduct reviews as follows:

1. Evaluate technical reviews.

2. Provide independent review based on the same criteria as the technical review.

3. Discuss all review comments as a panel.

4. Provide individual panelist scores and suggestions for modifications (i.e., budget, personnel, technical approach, etc.).

D. *Funding Decision.* 1. Applications will be ranked by NMFS into two groups: (a) Recommended, and (b) not recommended.

2. After projects have been evaluated and ranked for funding, the Chief of the NOAA/NMFS Chesapeake Bay Office, in consultation with the Assistant Administrator (AA) for Fisheries, NOAA, will determine the projects to be recommended for funding based upon the technical evaluations, panel review and the evaluation factors, and determine the amount of funds available for the program. Numeric ranking will be the major consideration for deciding which of the "recommended" proposals will be selected for funding. In making the final selections, NOAA/NMFS may consider costs, geographical distribution and duplication with other federally funded projects. The Chief of the NOAA/NMFS Chesapeake Bay Office will prepare a written justification for any recommendations for funding that fall outside the ranking order, or for any cost adjustments. Awards are not necessarily made to the highest ranked applications. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, the Grants Office, and the NOAA/NMFS Chesapeake Bay Office staff.

V. Administrative Requirements

A. *Obligations of the Applicant.* 1. *Deliverables*—In addition to periodic status and budget reports, recipients must submit up to an eight page summary of project work and results that will be compiled in an annual report of Chesapeake Bay Stock Assessment Research Program results.

2. *Periodic Workshops*—Investigators will be expected to attend one or two workshops with other Stock Assessment Research Program researchers to encourage interdisciplinary dialogue and forge synthesis of results.

3. *Primary applicant certifications*—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(a) *Nonprocurement debarment and suspension*—Prospective participants (as defined at 15 CFR 26.105) are subject to 15 CFR 26, "Nonprocurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

(b) *Drug-free workplace*—Grantees (as defined at 15 CFR 26.605) are subject to 15 CFR 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)," and the related section of the certification form prescribed above applies;

(c) *Anti-lobbying*—Persons (as defined at 15 CFR 28.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions, and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(d) *Anti-lobbying disclosure*—Any applicant who has paid or will pay for lobbying using any funds must submit an SF-LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

4. *Lower Tier Certifications*—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form SF-LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. An SF-LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document. B. *Other requirements.* 1. *Federal policies and procedures*—Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

2. *Indirect Cost rates*—The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. The total dollar amount of the indirect costs proposed in the application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs. Applicants with indirect cost rates above 25 percent may use the amount above the 25–percent level as part of the non-Federal share. Information must be included with the application of the current, approved, negotiated Indirect Cost Agreement with the Federal Government by indicating a web site address or by providing a current copy, if no web site is available.

3. *Past Performance*—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding. In addition, any recipient and/or researcher who is past due for submitting acceptable progress reports on any previous project funded under this program may be ineligible to be considered for new awards until the delinquent reports are received, reviewed and deemed acceptable by NMFS.

4. *Financial Management Certifications/preaward accounting survey*—Successful applicants, at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable OMB Circulars prior to execution of the award. Any first-time applicant for Federal grant funds may be subject to a preaward accounting survey by the DOC specified in the applicable OMB Circulars/Code of Federal Regulations prior to execution of the award.

5. *Delinquent Federal debts*—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

a. The delinquent account is paid in full;

b. A negotiated repayment schedule is established and at least one payment is received; or

c. Other arrangements satisfactory to DOC are made.

6. *Name checks*—Potential recipients may be required to submit an "Identification-Application for Funding Assistance" (Form CD–346), which is used to ascertain background information on key individuals associated with the potential recipient. All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing, criminal charges such as fraud, theft, perjury, or other matters that significantly reflect on the applicant's management honesty or financial integrity. Applicants will also be subject to credit check reviews.

7. *False statements*—A false statement on the application is grounds for denial

or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

8. *Preaward activities*—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

9. *Purchase of American-made equipment and products*—Applicants are hereby notified that they will be encouraged, to the greatest extent practible, to purchase American-made equipment and products with funding provided under this program in accordance with Congressional intent as set forth in the resolution contained in Pub.L 103–317, sections 607(a) and (b).

10. *Other*—If an application is selected for funding, DOC has no obligation to provide any additional funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

Cooperative agreements awarded pursuant to pertinent statutes shall be in accordance with the Fisheries Research Plan (comprehensive program of fisheries research) in effect on the date of the award.

Classification

This action has been determined to be "not significant" for purposes of Executive Order 12866.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Prior notice and an opportunity for public comment are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This notice contains collections of information subject to the Paperwork Reduction Act, which have been approved by OMB under OMB control number 0648–0044.

Dated: March 15, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 00–7075 Filed 3–21–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031400F]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Receipt of an application for a scientific research permit (1246); receipt of applications to modify permits (900, 1056, 1119, 1140, 1203); issuance of a scientific research permit (1203) and modifications to existing permits (1036, 1102, 1114, 1115, 1212).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement: NMFS has received a permit application from Douglas County Public Utility District No. 1 at East Wenatchee, WA (DCPUD)(1246); NMFS has received applications for permit modifications from: Northwest Fisheries Science Center, NMFS at Seattle, WA (900, 1056, 1140), U.S. Fish and Wildlife Service at Leavenworth, WA (USFWS)(1119), and Washington Department of Fish and Wildlife at Olympia, WA (WDFW-O)(1203); NMFS has issued a scientific research permit to WDFW-O (1203); and NMFS has issued modifications to permits to: U.S. Geological Survey at Cook, WA (USGS)(1036), Washington Department of Fish and Wildlife at Vancouver, WA (WDFW-V)(1102), WDFW-O (1114), Chelan County Public Utility District No 1(CCPUD)(1115), and Northwest Fisheries Science Center, NMFS at Seattle, WA (NWFSC)(1212).

DATES: Comments or requests for a public hearing on any of the new applications or modification requests must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00 pm Pacific daylight time on April 21, 2000.

ADDRESSES: Written comments on any of the new applications or modification requests should be sent to Protected Resources Division, F/NWO3, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503–230–5400). Comments may also be sent via fax to 503–230–5435. Comments will not be accepted if submitted via e-mail or the internet.

Documents may also be reviewed by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT:

For permits 900, 1056, and 1140: Leslie Schaeffer, Portland, OR (ph: 503–230–5433, fax: 503–230–5435, e-mail: Leslie.Schaeffer@noaa.gov).

For permits 1036, 1102, 1114, 1115, 1119, 1203, 1212, and 1246: Robert Koch, Portland, OR (ph: 503–230–5424, fax: 503–230–5435, e-mail: Robert.Koch@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on an application listed in this notice should set out the specific reasons why a hearing on that application would be appropriate (see **ADDRESSES**). The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in This Notice

The following species and evolutionarily significant units (ESU's) are covered in this notice:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SnR) fall, threatened SnR spring/summer, endangered upper Columbia River (UCR) spring, threatened lower Columbia River (LCR), threatened Puget Sound (PS), threatened Upper Willamette (UW).

Chum Salmon (*O. keta*): threatened Columbia River (CR).

Coho salmon (*O. kisutch*): threatened Southern Oregon/Northern California Coast (SONCC).

Sockeye salmon (*O. nerka*): endangered SnR

Steelhead (*O. mykiss*): endangered UCR, threatened SnR, threatened middle Columbia River (MCR), threatened UW.

To date, final protective regulations for threatened LCR, PS, and UW chinook salmon, CR chum salmon, and SnR, MCR, and UW steelhead under section 4(d) of the ESA have not been promulgated by NMFS. Protective regulations are currently proposed for LCR, PS, and UW chinook salmon and CR chum (65 FR 169, January 3, 2000) and SnR, MCR, and UW steelhead (64 FR 73479, December 30, 1999). This notice of receipt of applications is issued as a precaution in the event that NMFS issues final protective regulations that prohibit takes of these species. The initiation of a 30-day public comment period on the applications, including their proposed takes of LCR, PS, and UW chinook salmon, CR chum, and SnR, MCR, and UW steelhead does not presuppose the contents of the eventual protective regulations.

New Application Received

DCPUD (1246) requests a 5-year scientific research permit to authorize annual takes of juvenile naturally produced and artificially propagated UCR spring chinook salmon and steelhead associated with a study designed to determine if the spring chinook salmon released from the Methow River Fish Hatchery, a mitigation hatchery for losses of juvenile salmon at Wells Dam, interact adversely with natural salmonid production in the Methow River Basin. DCPUD proposes to conduct a monitoring program that will determine if hatchery produced returning adults stray excessively and interbreed with other genetically distinct stocks, if hatchery produced juveniles released from acclimation ponds impact naturally rearing salmon and steelhead, and if the natural production in the donor population is diminished when hatchery reared salmon return to spawn in the natural habitat. The scientific research will provide information on the success of the hatchery program and the potential deleterious impacts to the recovery of ESA-listed chinook salmon and steelhead in the Methow River. ESA-listed juvenile fish are proposed to be captured using beach seines or screw traps, sampled for biological information and/or marked with fin clips, and released. ESA-listed juvenile fish indirect mortalities associated with the research are also requested. DCPUD also requests to collect ESA-listed adult fish carcasses in the basin and sample them for coded wire tags and tissues.

Modification Requests Received

NWFSC requests a modification to permit 900, which authorizes annual takes of juvenile SnR sockeye salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, juvenile naturally produced and artificially propagated UCR steelhead, and juvenile naturally produced and artificially propagated UCR spring chinook salmon associated with a study designed to determine the relative survival of migrating juvenile salmonids at The Dalles Dam on the Columbia River in the Pacific Northwest. For the modification, NWFSC requests an annual take of juvenile MCR steelhead and an increase in the annual take of juvenile naturally produced UCR steelhead associated with the research. The additional take is requested because steelhead stock abundance estimates in the Snake River and the upper- and mid-Columbia River have recently been revised. ESA-listed juvenile fish are proposed to be collected from the juvenile bypass system at John Day Dam, held for a period of time (up to six hours), anesthetized, tagged with Passive Integrated Transponders (PIT) or allowed to recover from the anesthetic and released. PIT tagged fish will be allowed to recover from the anesthetic, transported and held for one day, and then released in front of The Dalles Dam spillway, sluiceway, turbines, or downstream from the dam. PIT-tag interrogations made at Bonneville Dam and Rice Island under separate authorizations will be used to estimate relative survival of the release groups. ESA-listed juvenile steelhead indirect mortalities associated with the research are also requested. The modification is requested to be valid for the duration of permit 900, which expires on December 31, 2000.

NWFSC requests a modification to permit 1056, which authorizes annual takes of adult and juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon associated with two studies designed to monitor wild salmon smolt migration timing, genetic change, and population structure over time. For the modification, NWFSC requests an annual take of juvenile MCR steelhead and an expansion of work locations associated with a new study designed to investigate marine derived nutrients in freshwater streams. New methods for taking fish (dip-netting, minnow-trapping, and angling) are also requested. A lethal take of juvenile MCR steelhead is also requested. Juvenile chinook salmon and steelhead are proposed to be taken from various locations in the Snake and John Day River Basins and analyzed for the presence of marine derived nutrients. Salmon and steelhead abundance and average body size will be determined by snorkel surveys or electrofishing sampling. ESA-listed juvenile steelhead indirect mortalities associated with the research are also requested. The modification is requested to be valid for the duration of permit 1056, which expires on December 31, 2001.

USFWS requests a modification to permit 1119, which authorizes annual takes of adult and juvenile UCR spring chinook salmon and steelhead associated with four studies in the UCR Basin. The purpose of Study 1 is to gather data on emerging juvenile salmon and steelhead in the Entiat River Basin. The purpose of Study 2 is to conduct snorkel surveys in various watersheds as part of inventory and artificial structure monitoring projects. The data obtained from both studies will be used to determine the survival and contribution of salmonids released from USFWS mitigation hatchery programs in central WA and to provide technical assistance to the agencies, Tribes, and interest groups that are using and/or managing aquatic resources in the mid-to UCR Basin. Study 3 involves spawning ground surveys in the Entiat River Basin designed to estimate the numbers of adult salmonids utilizing the basin. Study 4 is designed to evaluate the feasibility of restoring endangered UCR steelhead above barriers in Icicle Creek, a tributary to the Wenatchee River. For the modification, USFWS requests an increase in the ESA-listed juvenile steelhead take associated with Study 1. USFWS determined that the current level of steelhead take for Study 1 in Permit 1119 is not enough to conduct a statistically valid assessment of the juvenile steelhead emigration from the Entiat River throughout the annual outmigration season. ESA-listed juvenile steelhead are proposed to be captured with a rotary-screw trap, sampled for biological information, and released. The modification is requested to be valid for the duration of permit 1119, which expires on December 31, 2002.

NWFSC requests a modification to permit 1140, which authorizes annual takes of juvenile SnR sockeye salmon, juvenile SnR fall chinook salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SONCC coho salmon, juvenile naturally produced and artificially propagated UCR steelhead, and juvenile naturally produced and artificially propagated UCR spring chinook salmon associated with a research study designed to assess the relationship between environmental

variables, selected anthropogenic stresses, and bacterial and parasitic pathogens on disease-induced mortality of juvenile salmon in selected coastal estuaries in Oregon and Washington. The results of the study will benefit ESA-listed species by providing a better understanding of how environmental factors influence disease. For the modification, NWFSC requests annual takes of juvenile PS chinook salmon, juvenile UW chinook salmon, juvenile LCR chinook salmon, juvenile CR chum salmon, juvenile UW steelhead, and juvenile MCR steelhead associated with the research. ESA-listed juvenile fish are proposed to be taken with seines, purse seines, and/or fyke nets in selected coastal estuaries in Oregon and Washington and analyzed for pathogen prevalence and intensity, chemical analyses, histopathology, and stomach contents. A lethal take of PS chinook salmon is requested and ESA-listed juvenile fish indirect mortalities associated with the research are also requested. The modification is requested to be valid for the duration of permit 1140, which expires on December 31, 2002.

WDFW requests a modification to permit 1203, which authorizes annual takes of adult and juvenile naturally produced and artificially propagated UCR spring chinook salmon and steelhead associated with five research studies in the tributaries and mainstem of the UCR. The purpose of Study 1 is to evaluate the annual production of emigrating juvenile salmonid populations. The purpose of Study 2 is to assess the annual escapement of adult salmonids in the UCR Basin. The purpose of Study 3 is to conduct spawning ground surveys to evaluate annual salmonid reproductive success in the UCR Basin. The purpose of Study 4 is to document the presence or absence of salmonids throughout the UCR Basin to determine salmonid distribution and habitat utilization. The purpose of Study 5 is to conduct stream habitat and salmonid presence/absence surveys throughout the UCR Basin to determine the potential impacts on, or benefits to, fish and fish habitat resulting from proposed hydraulic projects. For the modification, WDFW requests an increase in the annual takes of ESA-listed juvenile salmon and steelhead associated with a new anadromous fish production monitoring and assessment project. WDFW proposes to use a rotary screw trap in the lower Wenatchee River to monitor the natural freshwater production of salmonid species and collect life history information. The annual production data will become a key indicator of salmonid recovery in the Wenatchee River Basin. ESA-listed juvenile fish are proposed to be captured, sampled for biological information, and released or captured, marked with fin clips, and released. Increases in ESA-listed juvenile fish indirect mortalities associated with the research are also requested. The modification is requested to be valid for the duration of permit 1203, which expires on December 31, 2003.

Permits and Modifications Issued

Notice was published on February 11, 1999 (64 FR 6880), that USGS had applied for a modification to scientific research permit 1036. Modification 2 to permit 1036 was issued on March 10, 2000, and authorizes annual takes of adult and juvenile UCR spring chinook salmon in the Hanford Reach of the Columbia River to predict the effects of reservoir drawdown on juvenile salmonids and their predators in free-flowing river reaches and to compare the effects with a similar study in the Hells Canyon Reach of the Snake River. Modification 2 also authorizes USGS to change the location of fish sampling for a race and residualism study. ESA-listed juvenile fish indirect mortalities are also authorized. Modification 2 to permit 1036 is valid for the duration of the permit, which expires on December 31, 2001.

Notice was published on April 26, 1999 (64 FR 20266), that WDFW-V had applied for a modification to scientific research permit 1102. Permit 1102 authorizes WDFW-V annual takes of adult UCR steelhead; adult SnR spring/summer chinook salmon; and adult SnR fall chinook salmon associated with two scientific research studies. The purpose of Study 1 is to determine the number and timing of wild and hatchery steelhead adults that pass Bonneville Dam on the Columbia River. The purpose of Study 2 is to determine the genetic stock identification of anadromous adult fish harvested in Columbia River fisheries, including fisheries conducted by Native Americans. Data will be used to determine the fishery impacts to ESA-listed stocks and if possible, to shape fisheries to reduce impacts to ESA-listed or depressed stocks while focusing harvest on healthy stocks. Modification 1 to permit 1102 was issued on March 10, 2000, and designates the Columbia River Inter-Tribal Fish Commission (CRITFC) as an agent of WDFW-V under Permit 1102. WDFW-V and CRITFC work cooperatively at Bonneville Dam for much of the research sampling season for Study 1. The take of ESA-listed adult chinook salmon that WDFW-V requested in March 1999 for Study 1 will be included in CRITFC's scientific research Permit 1134, since CRITFC is targeting adult chinook salmon at Bonneville Dam and requested the identical take as WDFW in 1999. Modification 1 also authorizes WDFW-V to collect tissue samples and scales from adult UCR spring chinook salmon that are harvested incidental to treaty and non-treaty fisheries in the Columbia River Basin (Study 2). Modification 1 to permit 1102 is valid for the duration of the permit, which expires on January 31, 2003.

Notice was published on March 9, 1999 (64 FR 11444), that WDFW-O had applied for a modification to scientific research permit 1114. Modification 2 to permit 1114 was issued on March 10, 2000, and authorizes takes of juvenile UCR spring chinook salmon associated with research designed to collect information on adult and juvenile fish migration timing, survival, travel timing, and general fish health. Indirect mortalities of juvenile naturally produced and artificially propagated UCR spring chinook salmon associated with Study 1 are also authorized. Modification 2 to permit 1114 is valid for the duration of the permit, which expires on January 31, 2003.

Notice was published on January 15, 1998 (63 FR 2364), that CCPUD had applied for a scientific research permit. Permit 1115 was issued on April 10, 1998, and authorized the annual take of juvenile naturally produced and artificially propagated UCR steelhead associated with research to evaluate the juvenile fish bypass system installed at Rocky Reach Dam and monitor juvenile fish gas bubble trauma at Rocky Reach and Rock Island Dams on the Columbia River. NMFS issued an amendment to permit 1115 on March 10, 2000, which authorizes CCPUD annual direct takes of adult and juvenile naturally produced and artificially propagated UCR spring chinook salmon associated with the research. An associated indirect mortality of juvenile naturally produced and artificially propagated UCR spring chinook salmon is also authorized. The amendment to permit 1115 is valid for the duration of the permit, which expires on December 31, 2002.

Notice was published on March 9, 1999 (64 FR 11444), that WDFW-O had applied for a scientific research permit to authorize takes of adult and juvenile UCR spring chinook salmon. On June 3, 1999 (64 FR 29839), a notice was published that WDFW-O had requested authorization to add takes of adult and juvenile UCR steelhead to the original request. Permit 1203 was issued on March 10, 2000, and authorizes WDFW-O takes of these species associated with five research studies in the UCR tributaries and the mainstem river. In Study 1, WDFW-O will assess migrating juvenile salmonid populations. In Study 2, WDFW-O will trap returning adults at fish ladders, record biological information, and release them upstream. In Study 3, WDFW-O will survey spawning grounds to identify redds and collect biological data from carcasses. Tissue samples taken from the carcasses will be deposited at the WDFW Laboratory in Olympia, WA for analysis. In Study 4, WDFW-O will assess the capacity of salmonid habitat. In Study 5, WDFW-O will conduct presence/absence studies by using electrofishers to determine the distribution of salmonids in various watersheds. Data from these five studies will provide managers valuable information that will be used to assess the survival of migrating juvenile salmonids, the abundance of adults on spawning grounds, the annual success of spawners, and the relative abundance of salmonids in the available habitat. Indirect mortalities of adult and juvenile ESA-listed fish are also authorized. Permit 1203 expires on December 31, 2003.

Notice was published on March 25, 1999 (64 FR 14432), that NWFSC had applied for a scientific research permit. Permit 1212 was issued on May 26, 1999, and authorized the annual take of juvenile SnR sockeye salmon, juvenile naturally produced and artificially propagated SnR spring/summer chinook salmon, juvenile SnR fall chinook salmon, and juvenile naturally produced and artificially propagated UCR steelhead associated with four studies at hydropower dams on the Snake and Columbia Rivers in the Pacific Northwest. NMFS issued an amendment to permit 1212 on March 10, 2000, which authorizes NWFSC annual direct takes of juvenile naturally produced and artificially propagated UCR spring chinook salmon in study 1 as well as an associated indirect mortality of juvenile naturally produced and artificially propagated UCR spring chinook salmon. The amendment to permit 1212 is valid for the duration of the permit, which expires on December 31, 2003.

Dated: March 16, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00-7076 Filed 3-21-00; 8:45 am]

BILLING CODE 3510-22-F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Settlement of a Call and Establishment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in Belarus

March 16, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs settling a call and establishing a limit.

EFFECTIVE DATE: March 23, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927-5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482-3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

A notice published in the **Federal Register** on December 22, 1999 (64 FR 71982) established a twelve-month limit of 6,480,552 square meters for glass fiber fabric in Category 622, produced or manufactured in Belarus and exported to the United States during the twelve-month period which began on September 17, 1999 and extends through September 16, 2000.

In the Memorandum of Understanding (MOU) between the Governments of the United States and Belarus, dated February 17, 2000, the governments agreed to establish a new limit for Category 622 of 11,500,000 square meters, effective for the period January 1, 2000 through December 31, 2000.

In addition, both governments agreed to establish a sublimit of 1,000,000 square meters for the entry for consumption and withdrawal from warehouse for consumption of glass fiber fabric in Category 622-L weighing 185 grams or less per square meter. The Category 622-L limit is not currently being implemented but will be in the near future; import charges for this category will be provided to the U.S. Customs service at a later date after the necessary statistical breakouts have been established.

This limit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999; this notice precedes the Belarus notice in the same issue of the **Federal Register**).

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 16, 2000

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive cancels and supersedes the directive issued to you on December 17, 1999. That directive concerns imports of certain man-made fiber textile products, produced or manufactured in Belarus and exported during the twelve-month period which began on September 17, 1999 and extends through September 16, 2000.

Pursuant to section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, effective on March 23, 2000, you are directed to prohibit entry into the United States for consumption and withdrawal from warehouse for consumption of glass fiber fabric products in Category 622, produced or manufactured in Belarus and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000, in excess of 11,500,000 square meters [1].

Textile products in Category 622 which have been exported to the United States prior to January 1, 2000 shall not be subject to the limit established in this directive.

This limit may be revised if Belarus becomes a member of the World Trade Organization (WTO) and the United States applies the WTO agreement to Belarus.

You are directed to keep all current charges, but deduct 2,864,349 square meters from the charges for goods in Category 622 exported during the period September 17, 1999 through December 31, 1999.

[1] The limit has not been adjusted to account for any imports exported after December 31, 1999.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.00–7095 Filed 3–21–00; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Availability of Funds for AmeriCorps*VISTA Tribal Grants and Placements of AmeriCorps*VISTA Members

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds.

SUMMARY: The Corporation for National and Community Service (hereinafter "the Corporation") announces the availability of funds for fiscal year 2000 for new AmeriCorps*VISTA (Volunteers in Service to America) program grants and placements focusing on meeting the needs of Indian tribes. The Corporation is soliciting applications from Indian tribes and Native American non-profit organizations to accomplish such grants and placements. Approximately five to seven grants/projects, supporting about 50 AmeriCorps*VISTA members, are expected to be awarded in June, 2000.

DATES: Applications must be received by 5 p.m. May 22, 2000.

ADDRESSES: Background information, including project applications, are available from the Corporation for National and Community Service, AmeriCorps*VISTA, 1201 New York Ave., NW, Washington, DC 20525; (202) 606–5000, ext. 134; TDD (202) 565–2799, or TTY via the Federal Information Relay Service at (800) 877–8339. One signed original and two copies of the application should be submitted to the Corporation for National and Community Service, 1201 New York Avenue, NW, Attn: Cynthia Johnson, Washington, DC 20525. The Corporation will not accept applications that are submitted via facsimile or e-mail transmission. Applications submitted via overnight mail that arrive after the closing date will be accepted if they are postmarked at least two days prior to the closing date. Otherwise, late applications will not be accepted.

FOR FURTHER INFORMATION CONTACT: For further information, contact Cynthia Johnson, at 202–606–5000, ext. 541.

SUPPLEMENTARY INFORMATION:

A. Background

The Corporation is a federal government corporation that encourages Americans of all ages and backgrounds to engage in community-based service. This service addresses the nation's educational, public safety, environmental and other human needs to achieve direct and demonstrable results. In doing so, we strive to foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service. We support a range of national service programs, including AmeriCorps, Learn and Serve America, and the National Senior Service Corps.

AmeriCorps*VISTA, a component of AmeriCorps, is authorized under the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113). The statutory mandate of AmeriCorps*VISTA is "to strengthen and supplement efforts to eliminate and alleviate poverty and poverty-related problems in the United States by encouraging and enabling persons from all walks of life, all geographical areas, and all age groups * * * (to) assist in the solution of poverty and poverty-related problems, and * * * to generate the commitment of private sector resources, to encourage volunteer service at the local level, and to strengthen local agencies and organizations to carry out the purpose (of the program)." (42 U.S.C. 4951)

AmeriCorps*VISTA carries out its legislative mandate by assigning individuals 18 years and older, on a full-time, year-long basis, to public and private non-profit organizations whose goals are in accord with AmeriCorps*VISTA's legislative mission. Each AmeriCorps*VISTA project must focus on the mobilization of community resources, the transference of skills to community residents, and the expansion of the capacity of community-based organizations to solve local problems. Programming should encourage permanent, long-term solutions to problems confronting low-income communities rather than short-term approaches for handling emergency needs.

AmeriCorps*VISTA project sponsors must actively elicit the support and/or participation of local public and private sector elements in order to enhance the chances of a project's success as well as to make the activities undertaken by AmeriCorps*VISTA members self-sustaining when the Corporation no longer provides resources.

B. Purpose of This Announcement

The United States has a unique legal relationship with Indian tribal governments as set forth in the Constitution of the United States, treaties, statutes, Executive orders, and court decisions. In treaties, our Nation has guaranteed the right of Indian tribes to self-government. As domestic dependent nations, Indian tribes exercise inherent sovereign powers over their members and territory. The United States continues to work with Indian tribes on a government-to-government basis to address issues concerning Indian tribal self-government, trust resources, and Indian tribal treaty and other rights.

Under the National and Community Service Act of 1990, as amended, American Indian Tribes receive funding directly from the Corporation for National Service through a 1% set-aside of the overall funding for AmeriCorps programs, and a 3% set-aside in Learn and Serve America. There is no set-aside for Indian tribes under the Domestic Volunteer Service Act. Although many AmeriCorps*VISTA members serve in programs in Indian country, this notice provides a unique opportunity to enter into formal arrangements with Indian tribes as sovereign entities and to increase the number of Native Americans serving in AmeriCorps*VISTA.

Proposals are sought that make appropriate use of AmeriCorps*VISTA members to accomplish the goals set forth in authorizing legislation.

In particular, the following proposals are sought under this announcement: (a) Economic development in conjunction with tribal development plans, including welfare to work; (b) literacy, mentoring, and other assistance designed to meet the education needs of young Indians; and (c) efforts to bridge the technology gap among Native American populations.

C. Eligible Applicants

Indian tribes and Native-run non-profit organizations are eligible applicants under this announcement. An Indian tribe is defined as follows: A federally-recognized Indian Tribe, band, nation, or other organized group or community, including any Native village, Regional corporation, or Village Corporation, as defined under the

Alaska Native Claims Settlement Act (43 U.S.C. 1602), that the United States Government determines is eligible for special programs and services provided under federal law to Indians because of their status as Indians. Indian Tribes also include any tribal organization controlled, sanctioned, or chartered by one of the entities described above. We will also consider applications from Indian tribes that are state-recognized, or in the process of seeking federal recognition.

A non-profit organization, to be eligible to apply under this announcement, must be recognized and approved by the Indian tribe(s) being served as the entity with authority to carry out the project. Documentation of such recognition and approval must be included in the application.

D. Scope of Grant and Project

It is anticipated that each grant will support between 5–15 AmeriCorps*VISTA members on a full-time basis for one year of service and that each non-grant project approved for placement of members will support between 2–5 members. Technical assistance will be provided by the Corporation in order to enable those tribes selected under this announcement to complete project applications, including detailed budgets.

Each grant will include funds for the grantee to pay: a monthly subsistence allowance for AmeriCorps*VISTA members that is commensurate with the cost-of-living of the assignment area and covers the cost of food, housing, utilities, and incidental expenses; an end-of-service cash stipend payment, accrued at the rate of $100 per month, for those members not selecting the AmeriCorps education award of $4,725; and relocation expenses for those AmeriCorps*VISTA members who must relocate in order to serve. The grant will also include funds for member in-service training, member supervision, and member/supervisor job-related transportation.

Grant applicants should demonstrate their commitment to matching the Federal contribution toward the operation of the AmeriCorps*VISTA program grant by offsetting all, or part of, the costs of member supervision, transportation, and training, as well as the basic costs of the program itself (*e.g.*, space, telephone, etc.). This support can be achieved through cash or in-kind contributions.

Further, grantees are encouraged to share in the costs of the program, including paying for a specified number of AmeriCorps*VISTA positions, to include all costs except for the education award and health care, which will be paid by the Corporation.

Grants will be awarded, and projects approved, on a twelve-month basis with a renewal option subject to need, satisfactory performance, and the availability of Corporation resources.

Some projects may not be awarded a grant but may be approved for the placement of AmeriCorps*VISTA members. These will typically be projects that can benefit from only a few members.

Publication of this announcement does not obligate the Corporation to award any specific number of grants or to obligate the entire amount of funds available, or any part thereof, for grants under the AmeriCorps*VISTA program, or to approve any specific number of non-grant projects for the placement of AmeriCorps*VISTA members.

E. Responsibilities of Grantee

Applicant organizations must have: The existing capacity and experience needed to monitor and support a project; demonstrated strong institutional commitment of personnel, resources, training and technical expertise; and a strong and well-coordinated project rather than loosely tying together several unrelated activities.

After selection, the Corporation State Office will work with the local Indian tribe or non-profit organization to finalize Part A (CNS Form 1421A) (OMB Control Number 3045–0039) of the application, develop Part B (CNS Form 1421B) (OMB Control Number 3045–0038) of the project application, assist in recruiting tribal members to serve as AmeriCorps*VISTA members, and discuss various implementation issues including in-service training and technical assistance for the members. The Corporation State Office also provides training to AmeriCorps*VISTA supervisors through periodic site visits and meetings with supervisors. A Project Progress Report (CNS Form 1433) (OMB Control Number 3045–0043) is submitted to the Corporation State Office on a quarterly basis.

F. Submission Requirements

To be considered for funding, applicants must submit one signed original and two copies, of Part A of the AmeriCorps*VISTA application that contains the material requested in that application, including the following:

1. A one-page narrative summary description, single-spaced, single-sided, of the proposed AmeriCorps*VISTA project including the name, address, telephone number, and contact person for the applicant organization. The summary should include the major objectives and expected outcomes of the project. The summary will be used as a project abstract to provide reviewers with an introduction to the substantive parts of the application. Therefore, care should be taken to produce a summary that accurately and concisely reflects the proposal.

2. A description of the project to be performed, including specific outcomes over the length of the project. These outcomes must be specified over the length of the project, as well as during the first year of the project.

3. A description of the AmeriCorps*VISTA members' assignments, that is, what specifically members will be doing.

4. Current resume of potential AmeriCorps*VISTA supervisor(s), if available, or resume of the director of the applicant organization.

5. Organizational chart illustrating the location of the AmeriCorps*VISTA project within the overall applicant organization.

6. Documentation from organizations and/or individuals that will be collaborating in the overall project effort.

G. Criteria for Project Selection

All of the following elements will be used in judging the applications:

a. Getting Things Done

The proposed project must:

1. Address the needs of low-income communities and otherwise comply with the provisions of the Domestic Volunteer Service Act of 1973, as amended (42 U.S.C. 4951 *et seq.*) applicable to AmeriCorps*VISTA and all applicable published regulations, guidelines, and Corporation policies.

2. Contain clear and measurable objectives/outcomes in the project application for a 12-month period that address the overall objectives of the initiative. Proposed projects must show how the activities of the AmeriCorps*VISTA members contribute to specific outcomes related to increased opportunity for low-income people. It is expected that outcome objectives will reflect the evolution of the project over the 12-month period.

3. Indicate how the proposed project complements and/or enhances activities already underway in, or planned for, the community(ies) which will be served by the project. To the extent possible, projects should seek out opportunities to collaborate with other Corporation programs, as well as with other community partners, including the business sector.

4. Describe how the number of AmeriCorps*VISTA members requested is appropriate for the project goals/objectives, and how the skills requested are appropriate for the assignment(s).

b. Strengthening Communities

The proposed project must:

1. Describe how the project will develop a sustainable capacity in the local community to effectively support the long-term self-sufficiency of the community. Project services should provide assistance oriented towards long-term solutions.

2. Demonstrate collaboration with organizations which provide supportive services to enhance project outcomes.

3. Be designed to generate public and/or private sector resources, and to promote local, part-time volunteer service at the community level.

4. Describe in measurable terms the anticipated self-sufficiency outcomes at the conclusion of the project, including outcomes related to the sustainability of the project activities.

c. Member Development

The proposed project must:

1. Clearly state how AmeriCorps*VISTA members will be trained, supervised, and supported to ensure the achievement of program goals and objectives as stated in the project work plan.

2. Describe how AmeriCorps*VISTA assignments are designed to utilize the full-time AmeriCorps*VISTA members' time to the maximum extent.

II. Organizational Capacity

The proposed project must:

1. Ensure that resources needed to achieve project goals and objectives are available.

2. Have the management and technical capability to implement the project successfully.

3. Have a track record or experience in dealing with the issues addressed by the proposed project.

4. Have systems for the evaluation and monitoring of project activities. Applicants must describe the methods that will be used to track progress toward the stated objectives, and the procedures that will provide the feedback needed to make adjustments and improve program quality.

III. Budget/Cost-Effectiveness

The proposed project must:

1. Include a budget that adequately supports the program design.

2. Include a budget that adheres to budget guidance provided with the application.

3. Describe how the applicant organization is committing resources necessary for program implementation.

H. Application Review

Proposal Evaluation

To ensure fairness to all applicants, the Corporation reserves the right to take action, up to and including disqualification, in the event that an application fails to comply with any requirements specified in this Notice.

The following weights will be used in judging the elements described above.

1. Program Design (60%) in the following order of importance:

a. Responsiveness to Strengthening Communities Criteria

b. Responsiveness to Getting Things Done Criteria

c. Responsiveness to Member Development Criteria

2. Organizational Capacity (25%).

3. Budget (15%).

I. Geographic Diversity

After evaluating the overall quality of the proposal and its responsiveness to the criteria noted above, the Corporation will take into consideration whether funded projects are in areas of high concentration of low-income residents, including for example those in empowerment zones, and enterprise communities.

J. Technical Assistance

An informal, technical assistance conference call will be scheduled on Monday, April 10, 2000, at 4 p.m. E.S.T. All applicants must pre-register by faxing the names, organization and phone number of up to two members planning to participate. This information should be faxed to Michael Wagner at 202–565–2789. Questions may be submitted in advance of the meeting via fax to the above number.

K. Program Authority

Corporation authority to make these grants and approve projects is authorized under Title I, Part A of the Domestic Volunteer Service Act of 1973, as amended (Pub. L. 93–113).

Dated: March 17, 2000.

Gary Kowalczyk,

Coordinator of National Service Programs, Corporation for National and Community Service.

[FR Doc. 00–7107 Filed 3–21–00; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Offsets in Defense Trade

AGENCY: Department of Defense.

ACTION: Request for public comments.

SUMMARY: The Interagency Offset Steering Committee is seeking information that will assist the Committee in developing strategies for discussions/consultations with other countries on reducing or eliminating the adverse effects of offsets in defense trade. Offsets by their nature are market distorting and result in inefficient business practices. Interested parties are involved to submit written comments, opinions, data, information, or recommendations relative to this objective, including information that will help the Committee more accurately assess the effects of offsets in defense trade. If sufficient interest is demonstrated, a public hearing might be scheduled in the future.

DATES: Comments must be received no later than May 8, 2000.

ADDRESSES: Send all comments to Domenico C. Cipicchio, Deputy Director, Defense Procurement, Foreign Contracting, OUSD (AT&L), 3060 Defense Pentagon, Washington, DC 20301–3060.

FOR FURTHER INFORMATION CONTACT: Susan M. Hildner, Procurement Analyst, Defense Procurement, Foreign Contracting, OUSD(AT&L), 3060 Defense Pentagon, Washington, DC 20301–3060, (703) 697–9352.

SUPPLEMENTARY INFORMATION: In accordance with Section 123 of the Defense Production Act as amended in 1992 (Public Law 102–588, October 28, 1992), an Interagency Offset Steering Committee has been conducting a series of discussions with its allies on defense offsets. The Committee is chaired by the Department of Defense and includes representatives from the Departments of Commerce, State and Labor and the Office of the United States Trade Representative. The Committee plans to hold discussions with all 21 countries with which we have a reciprocal procurement Memorandum of Understanding. These countries include: Australia, Austria, Belgium, Canada, Denmark, Egypt, Finland, France, Federal Republic of Germany, Greece, Israel, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, Turkey, and the United Kingdom. The Committee is interested in data and recommendations that will support these discussions and aid in strategy development with respect to reducing or eliminating offsets in defense trade. Interested parties are invited to submit written comments to assist the Committee in its deliberations and discussions.

All materials should be submitted with 5 copies. Material that is business confidential information will be exempted from public disclosure as provided for by 5 U.S.C. 552(b)(4) (Freedom of Information Act (FOIA) rules). Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission, which can be placed in the public file. Comments not marked business confidential may be subject to disclosure under FOIA.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–7065 Filed 3–21–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

[OMB Control Number 0704–0216]

Information Collection Requirement; Defense Federal Acquisition Regulation Supplement; Bonds and Insurance

AGENCY: Department of Defense (DoD).

ACTION: Notice and request for comments regarding a proposed extension of an approved information collection requirement.

SUMMARY: In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), DoD announces the proposed extension of a public information collection requirement and seeks public comment on the provisions thereof. DoD invites comments on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of DoD, including whether the information will have practical utility; (b) the accuracy of the estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology. The Office of Management and Budget (OMB) has approved this information collection for use through May 31, 2001. DoD proposes that OMB approve an extension of the information collection requirement, to expire 3 years after the approval date.

DATES: DoD will consider all comments received by May 22, 2000.

ADDRESSES: Interested parties should submit written comments and recommendations on the proposed information collection to: Defense Acquisition Regulations Council, Attn: Ms. Amy Williams, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax (703) 602–0350.

E-mail comments submitted via the Internet should be addressed to: dfar@acq.osd.mil.

Please cite OMB Control Number 0704–0216 in all correspondence related to this issue. E-mail comments should cite OMB Control Number 0704–0216 in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Amy Williams, (703) 602–0288. The information collection requirement addressed in this notice is available electronically via the Internet at: http://www.acq.osd.mil/dp/dars/dfars.html.

Paper copies are available from Ms. Amy Williams, PDUSD (AT&L) DP (DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062.

SUPPLEMENTARY INFORMATION:

Title, Associated Form, and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 228, Bonds and Insurance, and related clauses at 252.228; OMB Control Number 0704–0216.

Needs and Uses: DoD uses the information obtained through this collection to determine the allowability of a contractor's costs of providing war-hazard benefits to its employees; to determine the need for an investigation regarding an accident the occurs in connection with a contract; and to determine whether a contractor performing a service or construction contract in Spain has adequate insurance coverage.

Affected Public: Businesses or other for-profit and not-for-profit institutions.

Annual Burden Hours: 859.

Number of Respondents: 49.

Responses Per Respondents: 1.

Annual Responses: 49.

Average Burden Per Response: 17.53 hours.

Frequency: On occasion.

Summary of Information Collection

The clause at DFARS 252.228–7000, Reimbursement for War-Hazard Losses, requires the contractor to provide notice and supporting documentation to the contracting officer regarding claims or potential claims for costs of providing war-hazard benefits to contractor employees.

The clause at DFARS 252.228–7005, Accident Reporting and Investigation Involving Aircraft, Missiles, and Space Launch Vehicles, requires the contractor to report promptly to the administrative contracting officer all pertinent facts relating to each accident involving an aircraft, missile, or space launch vehicle being manufactured, modified, repaired, or overhauled in connection with the contract.

The clause at DFARS 252.228–7006, Compliance with Spanish Laws and Insurance, requires the contractor to provide the contracting officer with a written representation that the contractor has obtained the required types of insurance in the minimum amounts specified in the clause, when performing a service or construction contract in Spain.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 00–7066 Filed 3–21–00; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 22, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4)

description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department? (2) Will this information be processed and used in a timely manner? (3) Is the estimate of burden accurate? (4) How might the Department enhance the quality, utility, and clarity of the information to be collected? and (5) How might the Department minimize the burden of this collection on the respondents, including through the use of information technology?

Dated: March 16, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision.

Title: Student Aid Internet Gateway (SAIG) Enrollment Document.

Frequency: On occasion.

Affected Public: Individuals or households; not-for-profit institutions; Federal, State, Local, or Tribal Government SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 4,660 Burden Hours: 2,151.

Abstract: The Student Aid Internet Gateway (SAIG) Enrollment Form will be used by postsecondary institutions, third-party, software providers, lenders, guaranty agencies, and state scholarship programs. This will allow participants to have electronic access, to recieve and transmit, view and update student financial aid data. The Department will use this information on the enrollment form to assign customers a Title IV WAN ID and associate Title IV services selected by the customer. Since the original clearance of this system last summer, Education has discovered a number of suggestions for improvements. We hope to receive your ideas in 50 days so that we can have the necessary time to properly evaluate them.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7052 Filed 3–21–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 21, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 16, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Vocational and Adult Education

Type of Review: New.

Title: Carl D. Perkins Vocational and Technical Education Act—Occupational and Employment Information State Grants (Section 118, PL 105–332).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Individuals or households; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 59 Burden Hours: 2,124.

Abstract: Section 118 of the Carl D. Perkins Vocational and Technical Education authorizes grants to designated entities in the States, the District of Columbia, and outlying areas to promote improved career and education decision-making by individuals.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7053 Filed 3–21–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Golden Field Office; Supplemental Announcement to the Broad Based Solicitation for Financial Assistance Applications Involving Research, Development and Demonstration for the Office of Energy Efficiency and Renewable Energy; Feasibility Studies of Potential Applications of Renewable Energy Technologies at Tribal Colleges and Universities

AGENCY: U.S. Department of Energy.

ACTION: Supplemental Announcement 07 to the Broad Based Solicitation for Financial Assistance Applications DE–PS36–00GO10482.

SUMMARY: The U.S. Department of Energy (DOE), pursuant to the DOE Financial Assistance Rules, 10 CFR 600.8, is announcing its intention to solicit applications for Feasibility Studies of Potential Applications of Renewable Energy Technologies at Tribal Colleges and Universities. Financial assistance awards issued under this Supplemental Announcement will be cooperative agreements.

DATES: The solicitation will be issued on or about March 21, 1999.

ADDRESSES: Copies of the Solicitation once issued, can be obtained from the Golden Field Office Home page at http://www.eren.doe.gov/golden/solicitations.html. DOE will issue written copies of the solicitation upon request.

SUPPLEMENTARY INFORMATION: Under this Supplemental Announcement, DOE is soliciting Applications from tribal colleges and universities to conduct feasibility and planning studies for the development and installation of renewable energy technology hardware on or adjacent to their campuses, and integrated with educational programs and science curricula. Eligible technologies include: photovoltaics (PV), wind, biomass power, hydro, concentrating solar power, solar thermal systems (*i.e.*, active or passive solar technologies for space or water heating, or power generation technologies), geothermal electricity generation, geothermal resources for direct heating applications, and other renewable hybrid systems. Applications may include, but are not limited to, the use of renewable power for direct electrical generation, building uses, water pumping, or other grid connected or off-grid power systems. Successful applications should demonstrate the potential for replicability, as well as the educational, economic, and environmental benefits.

DOE will only consider applications from tribal colleges and universities as the prime applicant. A letter of commitment from an authorized representative (preferably the President) of the tribal college or university, as well as from each major participant is required as a part of the application (see Section I.C. Technical Volume Structure).

The overall objective of this program is the installation of renewable energy technologies at tribal colleges and universities. A secondary objective is the development and implementation of educational programs, with an emphasis on experiential teaching at the tribal colleges and universities to educate students and their communities on the use and benefits of these technologies. The program is planned for two phases. This initial solicitation (Phase I) is to support feasibility studies conducted by tribal colleges and universities and their selected partners and subcontractors to determine the most appropriate renewable energy technologies to be implemented and how it will be integrated with an educational program. Phase II will focus on the renewable energy hardware installation and implementation of the related educational program. It is anticipated that Phase II implementation will begin in FY 2001, if funding is appropriated. At the end of Phase I, an additional selection process will be used to determine eventual Phase II awards. Only Phase I recipients will be eligible to compete for 2 to 8 Phase II awards. All Phase I recipients will be required to submit a feasibility study report, including findings.

Awards under this Supplemental Announcement will be Cooperative Agreements, with a term of twelve months for the Phase I feasibility study. Subject to funding availability, the total DOE funding available for all Phase I studies under this Supplemental Announcement will be approximately $700,000. DOE anticipates selecting 5 to 12 applications for award under this Supplemental Announcement. As part of the Phase I deliverables, and subject to availability of FY 2001 funds, each Phase I recipient may submit an application for Phase II (FY 2001) funding.

No minimum cost share is required in order to be considered for award under this Phase I solicitation.

Solicitation Number DE–PS36–00GO10482, in conjunction with this Supplemental Announcement 07, will include complete information on the program including technical aspects, funding, application preparation instructions, application evaluation criteria, and other factors that will be considered when selecting projects for funding. Issuance of the solicitation is planned for March 21, 2000. Questions should be submitted in writing to: Ruth E. Adams, DOE Golden Field Office, 1617 Cole Boulevard, Golden, CO 80401–3393; transmitted via facsimile to Ruth E. Adams at (303) 275–4788; or electronically to *ruth_adams@nrel.gov*. The solicitation, once issued can be obtained from the Golden Field Office Home Page at http://www.eren.doe.gov/golden/solicitations.html. All responsible sources may submit an application and all timely applications will be considered.

FOR FURTHER INFORMATION CONTACT: Ruth E. Adams, Contracting Officer, at 303–275–4722, e-mail ruth_adams@nrel.gov.

Issued in Golden, Colorado, on March 14, 2000.

Ruth E. Adams,

Contracting Officer.

[FR Doc. 00–7069 Filed 3–21–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–216–000]

Eastern Shore Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

March 16, 2000.

Take notice that on March 13, 2000, Eastern Shore Natural Gas Company (ESNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, certain revised tariff sheets in the above captioned docket, with a proposed effective date of April 1, 2000.

ESNG states that the purpose of this instant filing is to track rate changes attributable to a storage service purchased from Transcontinental Gas Pipe Line Corporation (Transco) under its Rate Schedule GSS. The costs of the above referenced storage service comprise the rates and charges payable under ESNG's Rate Schedule GSS. This tracking filing is being made pursuant to Section 3 of ESNG's Rate Schedule GSS.

ESNG states that copies of the filing have been served upon its jurisdictional

customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7025 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–36–00]

Guardian Pipeline, L.L.C.; Notice of Site Visit

March 16, 2000

On March 29 and 30, 2000 the Commission's Office of Energy Projects (OEP) staff will conduct an inspection of the pipeline route proposed by Guardian Pipeline, L.L.C. (Guardian) for the Guardian Pipeline Project. The proposed route, crossing portions of Wisconsin and Illinois, will be inspected by helicopter. The aerial inspection will begin at Milwaukee's General Mitchell International Airport on the morning of March 29. If weather conditions preclude an overflight, the inspection will be conducted by automobile from a location to be determined. The inspection will continue along the route southward from Ixonia, Wisconsin to Joliet, Illinois. Representatives of Guardian will accompany the OEP staff.

All interested parties may attend, although those planning to attend must provide their own transportation.

For further information, please contact Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 00–7032 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–434–002]

Gulf States Transmission Corporation; Notice of Compliance Filing

March 15, 2000.

Take notice that on March 10, 2000, Gulf States Transmission Corporation (Gulf States) tendered for filing certain revised tariff sheets for inclusion in Gulf States' FERC Gas Tariff, Original Volume No. 1.

Gulf Sates that it is filing these tariff sheets to comply with the Commission's February 22, 2000 Letter Order in the above-referenced docket (February 22 Letter Order). In accordance with the February 22 Letter Order, Gulf States requests that these tariff sheets be deemed effective August 1, 1999.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7023 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–320–029]

Koch Gateway Pipeline Company; Notice of Technical Conference

March 16, 2000.

In the Commission's order issued on March 1, 2000, (90 FERC ¶ 61,227 (2000)), the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Thursday April 6, 2000, at 10 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

David P. Boergers,

Secretary.

[FR Doc. 00–7029 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–164–001]

Northern Natural Gas Company; Notice of Compliance Filing

March 16, 2000.

Take notice that on March 13, 2000 Northern Natural Gas company (Northern), tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective April 13, 2000:

Substitute Third Revised Sheet No. 146

Northern states that the purpose of the filing is to comply with the Commission's February 10, 2000 Order Accepting and Suspending Tariff Sheet Subject to Refund and Conditions.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7027 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Transfer of License and Soliciting Comments, Motions to Intervene, and Protests

March 16, 2000.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Transfer of License.

b. *Project No.:* 2056–018.

c. *Date Filed:* March 8, 2000.

d. *Applicants:* Northern States Power Company and Northern Power Corporation.

e. *Name and Location of Project:* The St. Anthony Falls Hydroelectric Project is on the Mississippi River within the City of Minneapolis in Hennepin County, Minnesota. The project does not occupy Federal or Tribal land.

f. *Filed Pursuont to:* Federal Power Act, 16 U.S.C. 791(a)–825(r)

g. *Applicant Contacts:* Mr. Earle O'Donnell, Dewey Ballantine LLP, 1775 Pennsylvania Ave., NW, Washington, DC 20006, (202) 429–2327; Mr. William J. Madden, Jr., Winston & Strawn, 1400 L Street, NW, Washington, DC 20005, (202) 371–5715; Mr. Scott M. Wilensky, Northern States Power Company, 414 Nicollet Mall, 5th Floor, Minneapolis, MN 55401–1993, e-mail: *scott.wilensky@nspco.com;* Mr. Mark H. Holmberg, Northern States Power Company, (612) 330–6568.

h. *FERC Contact:* Any questions on this notice should be addressed to James Hunter at (202) 219–2839, or e-mail address: james.hunter@ferc.fed.us.

i. *Deadline for filing comments and or motions:* April 11, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2056–018) on any comments or motions filed.

j. Description of Proposal: The applicants propose a transfer of the license for the St. Anthony Falls Project from Northern States Power Company (NSP) to Northern Power Corporation, a wholly-owned subsidiary of NSP. The transfer is being sought in connection with the merger between NSP and New Century Energies, Inc.

The transfer application was filed within five years of the expiration of the license, which is the subject of a pending relicense application for Project No. 2056–016. In Hydroelectric Relicensing Regulations Under the Federal Power Act (54 Fed. Reg. 23,756; FERC Stats. and Regs., Regs. Preambles 1986–1990 30,854 at p. 31,437), the Commission declined to forbid all license transfers during the last five years of an existing license, and instead indicated that it would scrutinize all such transfer requests to determine if the transfer's primary purpose was to give the transferee an advantage in relicensing (id. at p. 31,438 n. 318). Substitution of Northern Power Corporation for NSP as the applicant in the relicensing proceeding will be publicly noticed and handled in a separate proceeding.

k. Locations of the application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item g above.

l. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–7031 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 203–031 and 11832–000]

Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon; Notice of Meeting

March 16, 2000.

At the request of Portland General Electric Company and the Confederated Tribes of the Warm Springs Reservation of Oregon, the Commission's staff will hold a meeting on April 4, 2000, at 3:00 p.m. in room 62–26, 888 First Street NE, Washington, DC. The purpose of the meeting is to discuss issues arising from the pending Global Settlement between PGE and the Tribes to resolve the competitive proceeding.

Other interested parties wishing to attend and participate in the meeting are welcome. Questions on the meeting should be directed to Héctor M. Pérez on

(202) 219–2843, *hector.perez@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 00–7024 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos: 2942–005, 2931–002, 2941–002, 2932–003, and 2897–003—Maine Dundee, Gambo, Little Falls, Mallison Falls, and Saccarappa Projects]

S.D. Warren Company; Notice of Intent To Prepare an Environmental Impact Statement

March 16, 2000.

The Federal Energy Regulatory Commission (Commission) received applications for new licenses for the continued operation and maintenance of the existing Dundee Project, FERC No. 2942–005; Gambo Project, FERC No. 2931–002, Little Falls Project, FERC No. 2941–002; Mallison Falls Project, FERC No. 2932–003; and Saccarappa Project, FERC No. 2897–003, henceforth known as the Presumpscot River Projects, on January 22, 1999. The Presumpscot River Projects are located on the Presumpscot River, in Cumberland County, Maine and would have a combined installed capacity of 7.45 magawatts.

Following the public scoping process, the Commission staff determined that licensing of the Presumpscot River Projects could constitute a major federal action significantly affecting the quality of the human environment. Therefore the staff intends to prepare an Environmental Impact Statement (EIS) for the Presumpscot River Projects in accordance with the National Environmental Policy Act (NEPA).

The staff's EIS will objectively consider both site-specific and cumulative environmental impacts of the projects and reasonable alternatives, and will include economic and engineering analyses.

A draft EIS (DEIS) will be issued and circulated for review by all interested parties. All comments filed on the DEIS will be analyzed by the staff and considered in the final EIS (FEIS). The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decisions.

This notice informs all interested individuals, organizations and agencies with environmental expertise and concerns, that: (1) The Commission staff has decided to prepare an EIS; (2) the scoping conducted on the Presumpscot River Projects for the Environmental Assessment (EA)—scoping meetings held August 25 and 26, 1999, in Windham, Maine, and comments filed with the Commission by September 26, 1999—still apply; and (3) additional comments for the Presumpscot River Projects that may result from the change from an EA to an EIS may be filed with the Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, within 30 days from the date of this notice.

All written correspondence should clearly show the following caption on the first page:

Dundee Project, FERC No. 2942–0005; Little Falls Project, FERC No. 2941–002; Mallison Falls Project, FERC No. 2932–003; Gambo Prject, FERC No. 2931–002; and Saccarappa Project, FERC No. 2897–003

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list.[1] Further, if a party or intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Any questions regarding this notice may be directed to Bob Easton, Environmental Coordinator, at (202) 219–2782 or Robert.Easton@ferc.fed.us.

David P. Boergers,

Secretary.

[FR Doc. 00–7030 Filed 3–21–00; 8:45am]

BILLING CODE 6717–01–M

[1] The official service list can be obtained by calling the Office of the Secretary, Dockets Branch, at (202) 208–2020.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–62–000]

Statoil Energy Trading, Inc.; Statoil Energy Services, Inc. and Amerada Hess Corporation; Notice Shortening Answer Period

March 16, 2000.

On March 8, 2000, the Commission issued a Notice of Filing, published March 16, 2000 (65 FR 14268), in the above-captioned proceeding. By this notice, the date for filing interventions and protests is hereby shortened to and including March 29, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–7033 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–209–001]

Transcontinental Gas Pipe Line Corporation; Notice of Tariff Filing

March 16, 2000.

Take notice that on March 10, 2000 Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Thirteenth Revised Sheet No. 44. The proposed effective date of the enclosed tariff sheet is April 1, 2000.

Transco states that the purpose of the instant filing is to supplement Transco's Fuel Tracker Filing of March 1, 2000 (March 1 Filing), which inadvertently reflected an incorrect Deferred GRO Amount for March, 99 in Appendix B, Page 2, attached to the filing. Transco is submitting revised workpapers to correct the Deferred GRO Amount reflected in the March 1 Filing. The result of the revised Deferred GRO Amount is a reduction in the System Transportation fuel retention percentage in Zone 4 from 1.91% to 1.90%.

Transco states that is serving copies of the instant filing to its affected customers, State Commissions and other interested parties.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filings are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7026 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–381–000]

Wyoming Interstate Company, Ltd.; Notice of Informal Settlement Conference

March 16, 2000.

Take notice that an informal settlement conference will be convened in this proceeding commencing at 10:00 a.m. on Thursday, March 23, 2000, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, for the purposes of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, please contact Arnold H. Meltz at (202) 208–2161, or Michael D. Cotleur at (202) 208–1076.

David P. Boergers,

Secretary.

[FR Doc. 00–7028 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–89–000, et al.]

Louisiana Generating LLC, et al.; Electric Rate and Corporate Regulation Filings

March 15, 2000.

Take notice that the following filings have been made with the Commission:

1. Louisiana Generating LLC

[Docket No. EG00–89–000]

Take notice that on March 15, 2000, Louisiana Generating LLC filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status, which was filed on February 3, 2000 in the above-referenced proceeding.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. South Eastern Generating Corporation

[Docket No. EG00–111–000]

Take notice that on March 7, 2000, South Eastern Generating Corporation (South Eastern) filed an amendment to their Application for Determination of Exempt Wholesale Generator Status filed with the Federal Energy Regulatory Commission (Commission) on March 3, 2000.

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. South Carolina Electric & Gas Company, SCANA Energy Marketing, Inc.

[Docket Nos. ER96–1085–005 and ER96–1086–016]

Take notice that on March 9, 2000, South Carolina Electric & Gas Company and SCANA Energy Marketing, Inc., tendered for filing an updated market analysis in connection with their market-based rate authority.

Comment date: March 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Oceanside Energy, Inc.

[Docket No. ER97–181–007]

Take notice that on March 6, 2000, Oceanside Energy, Inc. filed a quarterly report for information only.

5. ECONnergy Energy Co., Inc.

[Docket Nos. ER98–2553–005, ER98–2553–006 and ER98–2553–007]

Take notice that on March 3, 2000, the above-mentioned power marketer filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

6. Calvert Cliffs, Inc.

[Docket No. ES00–20–000]

Take notice that on March 10, 2000, Calvert Cliffs, Inc. (Applicant) submitted an application pursuant to Section 204 of the Federal Power Act. Applicant seeks authorization to: (a) Assume up to $47 million of tax exempt debt, (b) issue up to $600 million of unsecured promissory notes, (c) issue 5,000 shares of common stock, (d) execute an intercompany credit agreement and note of up to $100 million, and (e) execute a master demand note of up to $150 million.

Applicant also requests a waiver of the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Constellation Generation, Inc.

[Docket No. ES00–21–000]

Take notice that on March 10, 2000, Constellation Generation, Inc. (Applicant) submitted an application pursuant to Section 204 of the Federal Power Act. Applicant seeks authorization to: (a) Assume up to $232 million of tax exempt debt, (b) issue up to $550 million of unsecured promissory notes, (c) issue 5,000 shares of common stock, and (d) execute a master demand note of up to $150 million.

Applicant also requests a waiver of the Commission's competitive bidding and negotiated placement requirements of 18 CFR 34.2.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Central Maine Power Company

[Docket No. ER00–605–001]

Take notice that on March 8, 2000, Central Maine Power Company (CMP), tendered for filing the "First Amendment to Hydro Quebec Entitlement Agreement" (First Amendment), in compliance with the letter order dated February 23, 2000 (Letter Order), in Central Maine Power Company, Docket No. ER00–605–000, by the Commission's Office of Markets, Tariffs and Rates. The First Amendment deletes from the Hydro Quebec

Entitlement Agreement, dated November 1, 1999, Subsections a, c and d of Section 15.17, as directed by the Letter Order.

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. ISO New England Inc.

[Docket No. ER00–749–001]

Take notice that on March 10, 2000, ISO New England Inc., tendered for filing a notice of compliance regarding the confirmation of Revisions to New England Power Pool (NEPOOL) Market Rule 15 and Appendix 15–A by the NEPOOL Participants Committee.

Copies of said filing have been served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Central Maine Power Company

[Docket No. ER00–982–001]

Take notice that on March 8, 2000, Central Maine Power Company (CMP), tendered for filing revised page 171 of CMP's Open Access Transmission Tariff (Revised Page 171) in compliance with Central Maine Power Company, 90 FERC ¶61,214 (2000) (February 28th Order). The February 28th Order directed CMP to remove revisions to its Open Access Transmission Tariff (OATT) that provide for recovery from unbundled retail customers for local distribution and retail stranded costs. Accordingly, the Revised Page 171 removes such revisions from exception number 7 of CMP's OATT.

Comment date: March 29, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Central Maine Power Company

[Docket No. ER00–1638–001]

Take notice that on March 9, 2000, Central Maine Power Company (CMP), tendered for filing an executed Interconnection Agreement (IA) with Boralex Athens Energy Inc., (Boralex). This IA supersedes the unexecuted version of the IA that CMP filed with FERC on February 17, 2000.

Among other changes made to reflect the final agreement of the parties, the executed version of the IA has been modified to correct a typographical error as to the dates when it will be effective. Consistent with the actual data upon which service to Boralex commenced, CMP requests that the IA become effective on January 18, 2000.

Copies of this filing have been served upon the Maine Public Utilities Commission and Boralex.

Comment date: March 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. North American Electric Reliability Council

[Docket No. ER00–1666–000]

Take notice that on March 10, 2000, the North American Electric Reliability Council (NERC) tendered for filing in this docket a blacklined version of the proposed revisions to NERC's Transmission Loading Relief Procedures.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. New England Power Company

[Docket No. ER00–1698–000]

Take notice that on March 10, 2000, New England Power Company amended its February 25, 2000, filing in this proceeding.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Energy Service Corporation, on behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1859–000]

Take notice that on March 10, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Notices of Cancellation for Sonat Power Marketing Inc. and Sonat Power Marketing L.P., a customer under Allegheny Power's Open Access Transmission Service Tariff.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1860–000]

Take notice that on March 13, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 73 to add Cargill-Alliant, LLC to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is March 10, 2000 or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: April 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1861–000]

Take notice that on March 13, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), tendered for filing Supplement No. 72 to add Allegheny Energy Supply Company, LLC to Allegheny Power's Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreements is March 10, 2000, or a date ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: April 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Maine Public Service Company

[Docket No. ER00–1862–000]

Take notice that on March 13, 2000, Maine Public Service Company (Maine Public), tendered for filing an executed Service Agreement for Network Integration Transmission Service under Maine Public's open access transmission tariff with Eastern Maine Electric Cooperative, Inc.

Comment date: April 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7064 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–27–000, et al.]

North Hartland, LLC, *et al.*; Electric Rate and Corporate Regulation Filings

March 14, 2000.

Take notice that the following filings have been made with the Commission:

1. AmerGen Energy Company, L.L.C.

[Docket No. EG00–27–000]

Take notice that on March 9, 2000, AmerGen Energy Company, L.L.C., submitted a supplement to its application for exempt wholesale generator status.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Panda Oneta Power, L.P.

[Docket No. EG00–114–000]

Take notice that on March 10, 2000, Panda Oneta Power, L.P. (Panda Oneta), with its principal offices at 4100 Spring Valley Road, Suite 1001, Dallas, Texas 75244, filed with the Federal Energy Regulatory Commission, an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935, as amended, and Part 365 of the Commission's regulations.

Panda Oneta is a Delaware limited partnership, which will construct, own and operate a nominal 1000 MW natural gas-fired generating facility within the region governed by the Southwest Power Pool and sell electricity at wholesale.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Northern Maine Independent System Administrator, Inc.

[Docket No. EL00–51–000]

Take notice that on March 8, 2000, Northern Maine Independent System Administrator, Inc. (Northern Maine ISA) tendered for filing with the Commission a Request for Partial Waiver of the Requirements Part 45 of the Commission Regulations.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Little Bay Power Corporation

[Docket No. ER00–1843–000]

Take notice that on March 9, 2000, Little Bay Power Corporation filed a quarterly report for the quarter ending December 31, 1999.

Comment date: April 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Lamar Power Partners, LP

[Docket No. ER00–1844–000]

Take notice that on March 9, 2000, Lamar Power Partners, LP (Lamar), tendered for filing pursuant to Rules 204 and 205 an application for waivers and blanket approvals under various regulations of the Commission and for an order accepting its FERC Electric Rates Schedule No. 1, to be effective May 8, 2000, for wholesale sales to customers located outside of the ERCOT region of Texas, and to accept the rates thereunder as just and reasonable under Section 205(a) of the Federal Power Act, 16 U.S.C. § 824d(a). Lamar is a limited partnership that proposes to engage in the wholesale sale of electric power in the state of Texas and is headquartered in Florida.

Comment date: March 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Citizens Power Sales

[Docket No. ER00–1845–000]

Take notice that on March 9, 2000, Citizens Power Sales filed a Notice of Succession. Effective March 1, 2000, Citizens Power Sales converted from a general partnership to a limited liability company and changed its name to Citizens Power Sales LLC.

Comment date: March 30, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Jersey Central Power & Light Company; Metropolitan Edison Company and Pennsylvania Electric Company

[Docket No. ER00–1848–000]

Take notice that on March 10, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (d/b/a GPU Energy), filed an executed Service Agreement between GPU Energy and Public Service Electric and Gas Company (PSE&G), dated March 6, 2000. This Service Agreement specifies that PSE&G has agreed to the rates, terms and conditions of GPU Energy's Market-Based Sales Tariff (Sales Tariff) designated as FERC Electric Rate Schedule, Second Revised Volume No. 5. The Sales Tariff allows GPU Energy and PSE&G to enter into separately scheduled transactions under which GPU Energy will make available for sale, surplus capacity and/or energy.

GPU Energy requests a waiver of the Commission's notice requirements for good cause shown and an effective date of March 6, 2000 for the Service Agreement.

GPU Energy has served copies of the filing on regulatory agencies in New Jersey and Pennsylvania.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. PJM Interconnection, L.L.C.

[Docket No. ER00–1849–000]

Take notice that on March 10, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing revised pages to the PJM Open Access Transmission Tariff and the Amended and Restated Operating Agreement of PJM Interconnection, L.L.C. setting forth procedures for a two-settlement system.

PJM requests an effective date of May 31, 2000.

Copies of this filing were served upon all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company

[Docket No. ER00–1850–000]

Take notice that on March 10, 2000, Jersey Central Power & Light Company, Metropolitan Edison Company and Pennsylvania Electric Company (doing business and hereinafter referred to as "GPU Energy") submitted for filing revised Schedule 9.02 to the GPU Power Pooling Agreement. Schedule 9.02 has been revised to reflect the fact the GPU Energy has sold the Three Mile Island Unit No. 1 Nuclear Generating Station to AmerGen Energy Company, LLC.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Pleasant Hill Marketing, LLC

[Docket No. ER00–1851–000]

Take notice that on March 10, 2000, Pleasant Hill Marketing, LLC, an indirect wholly owned subsidiary of UtiliCorp United Inc., tendered for filing a rate schedule to engage in sales at market-based rates. Pleasant Hill included in its filing a proposed code of conduct.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Southern Indiana Gas and Electric Company

[Docket No. ER00–1852–000]

Take notice that on March 10, 2000, Southern Indiana Gas and Electric Company (SIGECO) tendered for filing the following agreement concerning the provision of electric service to British Columbia Power Exchange Corporation, as a umbrella service agreement under its market-based Wholesale Power Sales Tariff:

Wholesale Energy Service Agreement dated February 24, 2000, by and between Southern Indiana Gas and Electric Company and British Columbia Power Exchange Corporation.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Cleco Utility Group Inc.

[Docket No. ER00–1854–000]

Take notice that on March 10, 2000, Cleco Utility Group Inc., tendered for filing an Interconnection and Operating Agreement between itself and Acadia Power Partners, LLC in connection with Acadia Power Partner LLC's proposed construction of a new generating facility in Acadia Parish, Louisiana.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Metropolitan Edison Company

[Docket No. ER00–1855–000]

Take notice that on March 10, 2000, Metropolitan Edison Company (d/b/a GPU Energy) tendered for filing a Generation Facility Transmission Interconnection Agreement between GPU Energy and Calpine Construction Finance Company, L.P.

GPU Energy requests an effective date of March 11, 2000, for the agreement.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. PECO Energy Company

[Docket No. ER00–1856–000]

Take notice that on March 10, 2000, PECO Energy Company (PECO), tendered for filing under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated February 29, 2000 with Delmarva Power & Light Company (DELMARVA) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of March 1, 2000, for the Agreement.

PECO states that copies of this filing have been supplied to Delaware Power & Light Company and to the Pennsylvania Public Utility Commission.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Split Rock Energy LLC and Minnesota Power, Inc.

[Docket No. ER00–1857–000]

Take notice that on March 10, 2000, Split Rock Energy LLC (Split Rock), filed an application for an order authorizing Split Rock to make wholesales sales of electric power at market-based rates. Concurrent with Split Rock's filing, Minnesota Power, Inc. (MP), tendered for filing proposed revisions to its Wholesale Coordination Service Tariff No. 2 (WCS–2 Tariff), designated as FERC Electric Tariff Original Volume No. 5. MP's revisions revise the WCS–2 Tariff to provide that MP may make sales of power under the WCS–2 Tariff, to Split Rock at market-based rates.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. New Hampshire Electric Cooperative, Inc.

[Docket No. ER00–1858–000]

Take notice that on March 10, 2000, New Hampshire Electric Cooperative, Inc. (NHEC), petitioned the Commission for acceptance of NHEC Rate Schedule; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

NHEC intends to engage in wholesale electric power and energy sales as a marketer. NHEC is a consumer-owned electric generation and distribution cooperative that provides electric service to 65,000 customers in New Hampshire.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7063 Filed 3–21–00; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00650; FRL–6499–6]

Notice of Availability of Regional Environmental Stewardship Program Grants

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the availability of approximately $498 thousand in fiscal year 2000 grant/cooperative agreement funds under section 20 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, (the Act), for grants to States and federally recognized Native American Tribes for research, public education, training, monitoring, demonstrations, and studies. For convenience, the term "State" in this notice refers to all eligible applicants.

DATES: In order to be considered for funding during the FY 00 award cycle, all applications must be received by the appropriate EPA regional office on or before May 22, 2000. EPA will make its award decisions by June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Your EPA Regional Pesticide Environmental Stewardship Program Coordinator. Contact names for the coordinators are listed under Unit V of this document.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to eligible applicants for purposes of funding under this grant program to include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities, and all Federally recognized Native American tribes. For further information contact the Regional PESP coordinator listed under Unit V.

II. Availability of FY'00 Funds

With this publication, EPA is announcing the availability of approximately $498 thousand in grant/cooperative agreement funds for FY'00. The Agency has delegated grant making authority to the EPA Regional Offices. Regional offices are responsible for the solicitation of interest, the screening of proposals, and the selection of projects. Grant guidance will be provided to all applicants along with any supplementary information the Regions may wish to provide. All applicants must address the criteria listed under Unit IV B. of this document. In addition, applicants may be required to meet any supplemental Regional criteria. Interested applicants should contact their Regional PESP coordinator listed under Unit V of this document for more information.

III. Eligible Applicants

In accordance with the Act ". . . Federal agencies, universities, or others as may be necessary to carry out the purposes of the act, . . ." are eligible to receive a grant; however, because of restrictions associated with the funds appropriated for this program, the eligible applicants are limited. Eligible applicants for purposes of funding under this grant program include the 50 States, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the United States, any agency or instrumentality of a State including State universities, and all federally recognized Native American Tribes. For convenience, the term "State" in this notice refers to all eligible applicants. Local governments, private universities, private nonprofit entities, private businesses, and individuals are not eligible. The organizations excluded from applying directly are encouraged to work with eligible applicants in developing proposals that include them as participants in the projects. Contact your EPA Regional PESP coordinator for assistance in identifying and contacting eligible applicants. EPA strongly encourages this type of cooperative arrangement.

IV. Activities and Criteria

A. General

The goal of PESP is to reduce the risks associated with pesticide use in agricultural and non-agricultural settings in the United States. The purpose of the grant program is to support the establishment and expansion of Integrated Pest Management (IPM) as a tool to be used to accomplish the goals of PESP. Projects that address the risk reduction goals of the PESP, pesticide pollution prevention, Integrated Pest Management (IPM), IPM in Schools, children's health issues related to pesticides, or those research methods for documenting the trends toward the adoption of IPM or the reduction of risks associated with pesticide use will receive priority consideration. Other projects will be considered as they complement these goals through public education, training monitoring, demonstrations and studies and other activities. EPA specifically seeks to build State and local IPM capacities or to evaluate the economic feasibility of new IPM approaches at the state level (i.e., innovative approaches and methodologies that use application or other strategies to reduce the risks associated with pesticide use). Funds awarded under the grant program should be sued to support the goal of reducing the risk/use of pesticides. State projects might focus on, for example:

- Researching the effectiveness of multimedia communication activities for, including but not limited to: promoting local IPM activities, providing technical assistance to pesticide users; collecting and analyzing data to target outreach and technical assistance opportunities; developing measures to determine and document progress in pollution prevention; and identifying regulatory and non-regulatory barriers or incentives to pollution prevention.
- Researching methods for establishing IPM as an environmental management priority, establishing prevention goals, developing strategies to meet those goals, and integrating the ethic within both governmental and non-governmental institutions of the State or region.
- Initiating research or other projects that test and support: innovative techniques for reducing pesticide risk or using pesticides in a way to reduce risk, innovative application techniques to reduce worker and environmental exposure, various approaches and methodologies to measure progress towards meeting the goal of 75% implementation of IPM by the year 2000.

A list of projects funded in FY'99 may be obtained from the internet at URL http://www.epa.gov/oppbppd1/PESP/grants.htm or from the Regional PESP coordinator listed under Unit V. of this document.

B. Criteria

Proposals will be evaluated based on the following criteria:

1. Qualifications and experience of the applicant relative to the proposed project.
   - Does the applicant demonstrate experience in the field of the proposed activity?
   - Does the applicant have the properly trained staff, facilities, or infrastructure in place to conduct the project?
2. Consistency of applicant's proposed project with the risk reduction goals of the PESP.
3. Provision for a quantitative or qualitative evaluation of the project's success at achieving the stated goals.
   - Is the project designed in such a way that it is possible to measure and document the results quantitatively and qualitatively?
   - Does the applicant identify the method that will be used to measure and document the project's results quantitatively and qualitatively?
   - Will the project assess or suggest a means for measuring progress in reducing risk/use of pesticides in the United States?
4. Likelihood the project can be replicated to benefit other communities or the product may have broad utility to a widespread audience. Can this project, taking into account typical staff and financial restraints, be replicated by

similar organizations in different locations to address the same or similar problem?

C. Program Management

Awards of FY'00 funds will be managed through the EPA Regional Offices.

D. Contacts

A generic request for proposal may be available on EPA's PESP web site on or before March 22, 2000, at http://www.epa.gov/oppbppd1/PESP/grants.htm. Interested applicants must also contact the appropriate EPA Regional PESP coordinator listed under Unit V of this document to obtain specific instructions, regional criteria, and guidance for submitting proposals.

V. Regional Pesticide Environmental Stewardship Program Contacts

Region I: (Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont), Robert Koethe, (CPT), 1 Congress St., Boston, MA 02203, Telephone: (617) 918–1535, koethe.robert@epa.gov.

Region II: (New Jersey, New York, Puerto Rico, Virgin Islands), Audrey Moore, (MS–500), 2890 Woodbridge Ave., Edison, NJ 08837, Telephone: (732) 906–6809, moore.audrey@epa.gov.

Region III: (Delaware, Maryland, Pennsylvania, Virginia, West Virginia, District of Columbia), Racine Davis, (3WC32), 1650 Arch St., Philadelphia, PA 19103, Telephone: (215) 814–5797, davis.racine@epa.gov.

Region IV: (Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee), Lora Lee Schroeder, 12th Floor, Atlanta Federal Center, 61 Forsyth St., SW., Atlanta, GA 30303–3104, Telephone: (404) 562–9015, schroeder.lora@epa.gov.

Region V: (Illinois, Indiana, Michigan, Minnesota, Ohio, Wisconsin), David Macarus, (DT–8J), 77 West Jackson Blvd., Chicago, IL 60604, Telephone: (312) 353–5814, macarus.david@epa.gov.

Region VI: (Arkansas, Louisiana, New Mexico, Oklahoma, Texas), Jerry Collins, (6PD–P), 1445 Ross Ave., Suite 1200, Dallas, TX 75202, Telephone: (214) 665–7562, collins.jerry@epa.gov.

Region VII: (Iowa, Kansas, Missouri, Nebraska), Jamie Green, 901 N. 5th St., Kansas City, KS 66101, Telephone: (913) 551–7139, green.jamie@epa.gov.

Region VIII: (Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming), Debbie Kovacs, (8P2–TX), 999 18th St., Suite 500, Denver, CO 80202–2466, Telephone: (303) 312–6417, kovacs.debbie@epa.gov.

Region IX: (Arizona, California, Hawaii, Nevada, American Samoa, Guam), Roccena Lawatch, (CMD4–3), 75 Hawthorne St., San Francisco, CA 94105, Telephone: (415) 744–1068, lawatch.roccena@epa.gov.

Region X: (Alaska, Idaho, Oregon, Washington), Karl Arne, Sandy Halstead (ECO–084), 1200 Sixth Ave., Seattle, WA 98101, Telephone: (206) 553–2576, arne.karl@epa.gov halstead.sandra@epa.gov.

List of Subjects

Environmental protection.

Dated: March 16, 2000.

Phillip Hutton,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 00–7127 Filed 3–21–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6563–7]

Availability of "Award of Grants for the Special Projects and Programs Authorized by this Agency's FY 2000 Appropriations Act"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled "Award of Grants for the Special Projects and Programs Authorized by this Agency's FY 2000 Appropriations Act." This memorandum, dated March 14, 2000, provides information and guidelines on how EPA will award and administer grants for the special projects and programs identified in the State and Tribal Assistance Grants (STAG) account of the Agency's fiscal year (FY) 2000 Appropriations Act (Public Law 106–74). The STAG account provides budget authority for funding 200 identified water, wastewater and groundwater infrastructure projects, as well as budget authority for funding the United States-Mexico Border program and the Alaska Rural and Native Villages program. Each grant recipient will receive a copy of this document from EPA.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for electronic access of the guidance memorandum.

FOR FURTHER INFORMATION CONTACT: Valerie G. Martin, (202) 260-7259 or martin.valerie@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from EPA's homepage, http://www.epa.gov/owm/mab/owm0315.pdf.

Dated: March 16, 2000.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 00–7124 Filed 3–21–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00593A; FRL–6484–5]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of the revised version of the pesticide science policy document entitled "Choosing a Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern." This notice is the fifteenth in a series concerning science policy documents related to Food Quality Protection Act and developed through the Tolerance Reassessment Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Kathleen Martin, Environmental Protection Agency (7509C), 401 M St., SW., Washington, DC 20460; telephone number: (703) 308–2857; fax number: (703) 305–5147; e-mail address: martin.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes

have been provided to assist you and others in determining whether or not this action affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, the revised science policy document, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs' Home Page select "FQPA" and then look up the entry for this document under "Science Policies." You can also go directly to the listings at the EPA Home page at http://www.epa.gov. On the Home Page select "Laws and Regulations" and then look up the entry to this document under "**Federal Register**--Environmental Documents." You can go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. The document entitled "Responses to Public Comments on the Office of Pesticide Program's Draft Science Policy Document" is available on EPA's Home Page with the **Federal Register** document at the above web site.

2. *Fax on demand.* You may request a faxed copy of the revised science policy document, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6046 for the document entitled "Choosing a Percentile of Acute Dietary Exposure as a Threshold of Regulatory Concern." You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00593A. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00557. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background for the Tolerance Reassessment Advisory Committee (TRAC)

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs. The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to the Office of Pesticide Programs (OPP).

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the TRAC, chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprises more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC has met seven times as a full committee from May 27, 1998 through October 21, 1999.

The Agency has been working with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC is the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas it believes were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038), EPA is announcing through the **Federal Register** the availability of a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. After receiving and reviewing comments from the public and others, EPA is also issuing revised science policy documents which reflect changes made in response to comments. In addition to comments received in response to these **Federal Register** notices, EPA will consider comments received during the TRAC meetings. Each of these issues is evolving and in a different stage of refinement. Accordingly, as the issues are further refined by EPA in consultation with USDA and others, they may also be presented to the SAP.

III. Summary of Revised Science Policy Guidance Document

EPA is responsible for regulating the nature and amount of pesticide residues in food under FFDCA. FFDCA section 408 authorizes EPA to set a tolerance or

an exemption from the requirement of a tolerance if the Agency determines that the residues would be "safe." The Agency performs various types of risk assessments to evaluate the safety of pesticides in food, including analyses to determine the nature and the amounts of pesticides that people might be exposed to over a single day. This science policy document discusses how EPA generally applies the statutory safety standard to acute dietary risk assessments as to pesticide residues in foods.

The Environmental Protection Agency's Office of Pesticide Programs previously announced that, on an interim basis, it intended to use the 99.9th percentile of the distribution of estimated acute dietary food exposures for calculating a threshold of concern when probabilistic assessment techniques are used to model the distribution. OPP stated that it would compare this percentile of estimated exposure to the Population Adjusted Dose (PAD), a value that reflects an amount of a pesticide to which a person may safely be exposed in one day. The Agency published a notice in the **Federal Register** on April 7, 1999 (64 FR 16962) (FRL–6074–7), citing the availability of an interim policy and requested public comment so that the views of all interested parties would be considered (US EPA, 1999a).

Based in part on the comments received, this science policy document was revised and is now being issued in its revised format. This revised document explains OPP's policy and details some of the various concerns that have been raised, additional associated public health-related issues, as well as OPP's plans for further evaluation and implementation. This policy has broad applicability to many pesticides and a potentially significant impact on the assessment of these pesticides.

OPP's current approach with respect to assessing and regulating the food uses of pesticides, when using a probabilistic method of estimating acute dietary exposure, is as follows:

If the 99.9th percentile of acute exposure from food, as estimated by probabilistic (e.g., Monte Carlo) analysis, is equal to or less than the acute Population Adjusted Dose (aPAD) for the pesticide, then OPP would generally consider its threshold of concern in applying that the safety standard of FFDCA section 408(B)(2)(A) not to be exceeded with respect to acute risk from food. However, if the analysis indicates that estimated exposure at the 99.9th percentile exceeds the PAD, OPP would generally conduct a sensitivity analysis to determine to what extent the estimated exposures at the high-end percentiles may be affected by unusually high food consumption or residue values. To the extent that one or a few values from the input data sets seem to "drive" the exposure estimates at the high end of exposure, OPP would consider whether these values are representative and should be used as the primary basis for regulatory decision making. In either scenario, EPA would consider submissions by interested parties that question the appropriateness of the use of the 99.9th percentile in calculating the threshold of concern for the particular risk assessment in question or question its use generally.

It is important to note here that the above position refers to the 99.9th percentile of exposure and not consumption. The 99.9th percentile of exposure represents the joining of each individual's consumption data set with randomly selected residue values from the residue data set. The consumption values associated with the 99.9th percentile of exposure do not necessarily represent the 99.9th percentile of consumption since it is both the selected consumption value and residue concentration which is responsible for determining exposure.

At this time, OPP's current policy is used only with daily exposures to a single chemical through the food pathway only. Estimates of exposure through drinking water and residential uses are not sufficiently developed to warrant inclusion in a probabilistic assessment. Establishing the threshold of concern for the food pathway using the 99.9th percentile of exposure is considered to be a "first step" toward regulation of exposures on an aggregate, and then cumulative, basis.

OPP recognizes that different types of risk assessments will generally be needed for aggregate and cumulative evaluations and that these assessments might also be associated with different regulatory thresholds. Although OPP is moving toward regulating on the basis of probabilistic aggregate and cumulative exposure assessments, a decision has not yet been made regarding how the appropriate threshold of concern should be calculated for these types of assessments. When exposures through drinking water and residential uses are sufficiently refined to be incorporated into probabilistic evaluations, they will be aggregated and assessed, and may use a different population percentile.

Section I of this provides an overview of OPP's present practice for acute dietary risk assessment for residues in food. It describes the statutory, regulatory, and policy framework for this policy, as well as prior reviews and comments. In addition, this section provides background information on dietary risk assessment in general and explains how the previous system (DRES—Dietary Risk Evaluation System) and the current system (DEEM—Dietary Exposure Evaluation Model) work, as well as what input data sources are used and how.

Section II addresses some of the specific issues and concerns raised about using exposures at the estimated 99.9th percentile in calculating the threshold of concern. One issue is whether the nature of the data bases available (i.e., robustness, adequacy, etc.) should preclude the use of the estimated 99.9th percentile for regulatory purposes since some consider the uncertainties associated with this population percentile to be too great. Examples of data used are USDA's food consumption survey data, registrant crop field trials, USDA Pesticide Data Program (PDP) data, FDA monitoring data, market basket surveys, etc. Other issues include the treatment of data "outliers," representativeness and adequacy of the data bases, and the impact of Agency default values on exposure estimates. Concerns, therefore, exist about whether the estimates of the 99.9th percentile of exposure are sufficiently representative of actual exposure to be meaningful. This science policy document summarizes these concerns and how OPP has addressed them.

Section III addresses the issue of protectiveness of the estimated 99.9th percentile of exposure with respect to the general public health. One view is that using the estimated 99.9th percentile of exposure is insufficiently conservative because very large numbers of people could be exposed every day to pesticide intakes which are estimated to exceed the Agency's "level of concern." This section also explores the contrary view that the policy is over-protective because of the conservative assumptions used in the estimation methods and the retention of potentially unrepresentative values in the data base. The section discusses as well the view that, whether it over-estimates or under-estimates actual exposure, the estimated 99.9th percentile of exposure is simply too uncertain to be used in risk management decisions.

Section III also explains that OPP weighs a number of factors in considering which percentile to use: The size of the exposed population and the proportion that might receive daily doses above the benchmark of safety,

the aPAD; the level of confidence OPP has in its exposure estimates; and the extent to which such estimates may overstate potential exposure because they incorporate conservative assumptions or rely on atypical and unrealistic data. Further, to the extent understood, OPP considers by how much individual exposures would be estimated to exceed the aPAD.

Section IV briefly addresses the issues associated with exploratory analysis conducted by OPP with the DEEM software and the 99.9th percentile issue. Further details and specifics of this analysis are provided in the associated response to public comments.

Section V provides a list of the documents referenced in this science policy document.

The Appendix, entitled "Primer on Interpretation of Exposure Distribution Curves," is a "plain English" guide to Monte Carlo analysis and interpretation of its results.

IV. Issues Raised in Comments

EPA published a draft version of the document described in Unit III. under **SUPPLEMENTARY INFORMATION** on April 7, 1999 (64 FR 16962) and comments were filed in docket control number OPP–00593. The public comment period ended on June 7, 1999. The Agency received comments from numerous different organizations. All comments were considered by the Agency in revising the document.

Many of the comments were similar in content, and pertained to general issues concerning the proposed policy or specific sections within the draft document. The comments addressed a broad range of issues and, in many instances, provided no general consensus. The Agency grouped the comments according to the nature of the comment and the issue or section of the document which they addressed. For the substantive comments that follow, contrasting opinions are presented, along with EPA's response. The full text of the Agency's response to the comments is available as described in Units I.B.1. and I.B.2. under **SUPPLEMENTARY INFORMATION.**

V. Policies Not Rules

The revised science policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 16, 2000

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–7126 Filed 3–21–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Fair Housing Lending Monitoring System; (2) Application for Federal Deposit Insurance; (3) Foreign Banks and (4) Foreign Branch Report of Condition.

DATES: Comments must be submitted on or before May 22, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: comments @ fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION: Proposal to Renew the Following Currently Approved Collections of Information

1. *Title:* Fair Housing Lending Monitoring System.
OMB Number: 3064–0046.
Frequency of Response: Annually.
Affected Public: Insured state nonmember banks.
Estimated Number of Respondents: 2,000.
Estimated Number of Loan Applications: 1,000,000.
Estimated Time per Response: 5 minutes.
Estimated Total Annual Burden: 83,333 hours.
General Description of Collection: In order to permit the FDIC to detect discrimination in residential mortgage lending, certain insured state nonmember banks are required by FDIC regulation 12 CFR 338 to maintain various data on home loan applicants.

2. *Title:* Application for Federal Deposit Insurance.
OMB Number: 3064–0001.
Form Number: 6200/05.
Frequency of Response: On occasion.
Affected Public: All financial institutions.
Estimated Number of Respondents: 200.
Estimated Time per Response: 250 hours.
Estimated Total Annual Burden: 50,000 hours.
General Description of Collection: The Federal Deposit Insurance Act requires a proposed bank or savings institution to apply to the FDIC in order to obtain federal deposit insurance. The form provides the information necessary for the FDIC to make a determination.

3. *Title:* Foreign Banks.
OMB Number: 3064–0114.
Frequency of Response: On occasion.
Affected Public: Insured branches of foreign banks in the United States.
Estimated Number of Respondents: 418.
Estimated Time per Response: ranges from ¼ hour to 120 hours.
Estimated Total Annual Burden: 4,398 hours.
General Description of Collection: The collection of information consists of (a) applications to operate as a noninsured state-licensed branch of a foreign bank; (b) applications from an insured state-

licensed branch of a foreign bank to conduct activities which are not permissible for a federally-licensed branch; (c) internal recordkeeping by insured branches of foreign banks; and (d) reporting requirements relating to an insured branch's pledge of assets to the FDIC.

4. *Title:* Foreign Branch Report of Condition.

OMB Number: 3064–0011.

Form Number: FFIEC 030.

Frequency of Response: Quarterly/Annually.

Affected Public: Foreign branches of insured banks.

Estimated Number of Respondents: 41.

Estimated Time per Response: 3.25 hours.

Estimated Total Annual Burden: 146 hours.

General Description of Collection: The Foreign Branch Report of Condition, Form FFIEC 030, contains asset and liability information along with data on certain off balance sheet items for foreign branches of insured banks.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, DC, this 16th day of March, 2000.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–7042 Filed 3–21–00; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License

Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicant

Global Total Logistics, LLC, 3885 Meadow Park Lane, Torrance, CA 90505, Officers: David Chiang, Manager (Qualifying Individual), Sumadi Kusuma, Manager.

Dated: March 17, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–7096 Filed 3–21–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 14, 2000.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Burton Bancshares, Inc., Burton, Texas, Burton Holdings, Inc., Wilmington, Delaware, and Burton Holdings, Inc., Burton, Texas; to become bank holding companies by acquiring 100 percent of the voting shares of Burton State Bank, Burton, Texas.

B. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. EarthBank Corporation, San Mateo, California; to become a bank holding company by acquiring 100 percent of the voting shares of Monument Bancshares, Inc., Poland, Ohio, and thereby indirectly acquire Monument National Bank, Ridgecrest, California.

Board of Governors of the Federal Reserve System, March 16, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7016 Filed 3–21–00; 8:45 am]

BILLING CODE 6210–01–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of meeting on April 13–14, 2000.

Board Meeting Summary: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the Federal Accounting Standards Advisory Board will hold a meeting on Thursday, April 13, from 1 to 4 and Friday, April 14, from 9 to 3:30 p.m. room 7C13, the Elmer Staats Briefing Room, of the General Accounting Office building, 441 G St., NW, Washington, DC.

The purpose of the meeting is to:

- Approve procedures for Technical Bulletins
- Discuss the FASAB Technical Agenda
- Discuss Supplementary Stewardship reporting
- Review the draft Implementation Guide

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Wendy Comes, Executive Director, 441 G St., NW, Room 6814, Washington, DC 20548, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: March 17, 2000.

Wendy M. Comes,

Executive Director.

[FR Doc. 00–7129 Filed 3–21–00; 8:45 am]

BILLING CODE 1610–01–M

GENERAL SERVICES ADMINISTRATION

Notice of Second Public Scoping Meeting for an Environmental Impact Statement and the Announcement of Alternative Sites

AGENCY: General Services Administration, National Capital Region; Department of Transportation.

ACTION: Proposed lease acquisition of a new or renovated headquarters for the Department of Transportation in the Central Employment Area (CEA) of Washington, DC.

SUMMARY: The General Services Administration (GSA), which previously announced its intent to prepare an Environmental Impact Statement (EIS) for the lease acquisition of a new or renovated headquarters for the Department of Transportation (DOT) to be located in the CEA of Washington, DC, at this time announces its intent to conduct a second public scoping meeting to discuss the proposed action pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as implemented by the Council of Environmental Quality regulations (40 CFR Parts 1500–1508), Section 106 of the National Historic Preservation Act of 1966, as amended, and in accordance with the Environmental Policies and Procedures implemented by GSA.

Background Information

DOT seeks to update its facilities, maximize efficiency, and reorganize and consolidate its operations. To this end, Congress has authorized GSA, acting on behalf of DOT, to acquire up to 1.35 million rentable square feet of space under an operating lease for a term not to exceed twenty years. This procurement is designed to establish a competitive process to obtain a new or renovated headquarters for DOT.

The DOT's headquarters operations are currently housed primarily in two leased locations: the Nassif Building at 400 7th Street, SW, Washington, DC, and the Transpoint Building at 2100 2nd Street, SW, Washington, DC. In addition, DOT occupies smaller blocks of leased space in other buildings in Washington, DC. All of these locations are proposed to be consolidated into the new headquarters. DOT also utilizes FOB 10A as the headquarters for the Federal Aviation Administration, but these operations are not proposed as part of this consolidation.

DOT first occupied the Nassif Building under a 20-year lease that commenced on January 2, 1970. A 10-year renewal commenced April 1, 1990 and expires on March 31, 2000. The Transpoint Building was first occupied by DOT in 1973. The current lease expires in May 15th, 2003.

Consolidation in a new or renovated headquarters will produce significant operating efficiencies in support of DOT's mission. This procurement is the result of a three-year collaborative effort by the DOT, GSA, the Executive Branch, and Congress.

The lease acquisition for a DOT headquarters complex is being conducted in accordance with all applicable laws and regulations pertaining to GSA's acquisition of lease space. These laws and regulations include, but are not limited to, NEPA, the Competition in Contracting Act, the National Historic Preservation Act, the General Services Acquisition Regulations, and, where applicable, the Federal Acquisition Regulation. The Government is conducting this procurement as a negotiated, best value source selection. Under this approach, a panel of Government officials will select the proposal that satisfies all of the Government's minimum requirements as stated in the Solicitation For Offers (SFO), and presents the greatest overall value to the Government, considering price and technical factors stated in the SFO.

Public Scoping

GSA and DOT determined that a comprehensive EIS is the appropriate means of identifying the potential adverse impacts from this proposed Federal action. A Notice of Intent to prepare an EIS and conduct an initial public scoping meeting was issued on June 30, 1999. The initial public scoping meeting was held on July 29, 1999 to assist GSA in determining the significant issues related to this project prior to the submittal of offers. The subject of this notice is a second public scoping meeting that will be held to solicit input from agencies and the public relating to the alternative site locations that will be included in the EIS.

This second public scoping will be held at 7 pm on Tuesday, April 11, 2000, at the Ronald Reagan Building and International Trade Center. The meeting will be advertised in local and regional newspapers as the date of the meeting approaches. At the meeting, a short formal presentation will precede the request for public comments. GSA representatives will be available to receive comments from the public regarding issues of concern, including comments on the potential impacts of the proposed project, means of mitigating those impacts, and project alternatives. It is important that Federal, regional, state and local agencies, and interested individuals and groups take this opportunity to identify environmental concerns that should be addressed during the preparation of the Draft EIS. In the interest of available time, each speaker will be asked to limit oral comments to five (5) minutes. A document summarizing the written and oral comments received will be prepared and made publicly available.

Agencies and the general public are encouraged to provide written comments on the scoping issues in addition to, or in lieu of, presenting oral comments at the public meeting. Environmental review/scoping comments should clearly describe specific issues or topics that the community believes the EIS should address.

Written comments will be accepted through April 24, 2000. The comments received during the scoping process will be considered in preparing the Draft EIS. The public is encouraged to provide additional comments after the Draft EIS is released. GSA anticipates that the Draft EIS will be released in the Spring of 2000.

Topics for environmental analysis include the short-term impacts of construction and the long-term impacts of site operations and maintenance on land use, historic resources, visual resources, physical and biological resources, public transportation, traffic and parking, public services and utilities, and socio-economic conditions. The environmental analysis

will also address cumulative impacts associated with this and other future projects in the CEA of the District of Columbia.

Project Information

An informational packet regarding this project will be available for review at the April 11, 2000 public scoping meeting or upon request to the GSA contact identified below. The informational packet and other information regarding this project will also be made available on the Internet.

The five (5) action alternative under consideration by GSA as possible locations for the consolidated DOT headquarters complex include the following:

Alt. #1—801 New Jersey Avenue, NW

Alt. #2—400 7th Street, SW

Alt. #3—1200 Maryland Avenue, SW

Alt. #4—Southeast Federal Center Site, Option A

Alt. #5—Southeast Federal Center Site, Option B

TIME AND LOCATION OF MEETING: The public meeting will be held: At 7:00 p.m., Tuesday, April 11, 2000 at the Ronald Reagan Building and International Trade Center Horizon Ballroom, (Ground Level, 13½ Street Entrance), 13th Street and Pennsylvania Avenue, NW, Washington, DC 20004.

DATES: Written comments regarding environmental review of the proposed DOT headquarters project must be postmarked no later than April 24, 2000, to the following address: General Services Administration, Attn: Mr. John Simeon, Portfolio Development Division (WPC), 7th and D Streets, SW., Suite 2002, Washington, DC 20407.

FOR FURTHER INFORMATION PLEASE CONTACT: Mr. John Simeon, General Services Administration, (202) 260–9586.

Dated: March 17, 2000.

Anthony E. Costa,

Assistant Regional Administrator Public Buildings Service.

[FR Doc. 00–7059 Filed 3–21–00; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. ACYF–PA–HS–2000–5]

Fiscal Year 2000 Discretionary Announcement for the Head Start Fellow Program; Availability of Funds and Request for Applications

AGENCY: Administration on Children, Youth and Families, ACF, DHHS.

ACTION: Fiscal Year 2000 Discretionary Announcement for the Head Start Fellows Program; Availability of Funds and Request for Applications.

Statutory Authority 42 U.S.C. 9801, *et seq.*, The Head Start Act, as amended.

Catalog of Federal Domestic Assistance (CFDA): 93.600 Head Start Act as amended.

SUMMARY: The Administration for Children and Families, Administration on Children, Youth and Families announces the availability of $1 million in funds to design and implement the National Head Start Fellow Program. We are seeking a partner with whom to enter into a cooperative agreement. A cooperative agreement is a form of Federal financial assistance that allows substantial Federal involvement in the activities for which funds awarded.

Note: In order to satisfactorily compete under this announcement, it will be necessary for potential applicants to read the full announcement which is available through the Head Start Bureau's website: *www2.acf.dhhs.gov/programs/hsb/announce/index.htm*. Hard copies of the application may be obtained by writing or calling the ACYF Operations Center or sending an E-mail to: hsf@lcgnet.com.

DATES: The closing date and time for the receipt of applications is 5 p.m. (Eastern Time Zone) on May 22, 2000. Mailed or handcarried applications received after the closing date will be classified as late.

ADDRESSES: Mail applications to: ACYF Operations Center, Attention: Head Start Fellows Application, 1815 North Fort Myers Drive, Suite 300, Arlington, VA 22209 (1–800–351–2293). Prior to preparing and submitting an application, in order to satisfactorily compete under this announcement, it will be necessary for potential applicants to read the full announcement which is available through the Head Start Bureau's website: *www2.acf.dhhs.gov/programs/hsb/announce/index.htm*

FOR FURTHER INFORMATION CONTACT: ACYF Operations Center at: 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209 (1–800–351–2292) or Donnell Savage at: 330 C Street, SW., Washington, DC 20447 (202) 205–8420 *dsavage@acf.dhhs.gov*

Eligible Applicants

Universities, colleges, foundations, professional organizations, public and private non-profit and for-profit agencies and organizations.

SUPPLEMENTARY INFORMATION: The purpose of this announcement is to request applications for the design and implementation of a National Head Start Fellows Program as envisioned in the Head Start reauthorization of 1998. The purpose of this National Head Start Fellows Program is to identify individuals with outstanding leadership potential and to involve them in a high quality developmental experience which will provide them with a variety of perspectives and experiences to help them develop their potential as the next generation of leaders for the early childhood and family services field. The result of this initiative will be to improve the quality and effectiveness of Head Start and other early childhood development programs nationwide.

Federal Share of Project Costs: The maximum Federal share is to exceed $1 million for the first 12-month budget period and $1 million for each succeeding 12-month period.

Matching Requirements: Non-Federal match is not required.

Anticipated Number of Projects to be funded: It is anticipated that one project will be funded.

Evaluation Criteria

Applications received by the due date will be reviewed and scored competitively. Experts in the field, generally persons from outside the Federal government, will use the evaluation criteria listed below.

a. Organization Profiles (40 points)

The extent to which the applicant provides a vitae on the project director/principal investigator and key project staff including resumes (name, address, training, most relevant educational background and other qualifying experiences) and a short description of their responsibilities or contribution to the applicant's work plan. The extent to which the applicant's ability to effectively and efficiently administer a project like the one proposed is described. The extent to which the mission of the organization is described as it relates to leadership development within the early childhood and family service fields and how this project fits within that mission. Applicant provides the assurance that the project director or another appropriate staff member will attend six meetings annually in Washington, D.C. to meet with federal staff to discuss issues related to the Fellows Program implementation.

b. Approach (20 points)

The extent to which the applicant outlines an acceptable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished.

The extent to which the applicant describes the proposed approach and strategies that will be taken to design the program, to recruit potential participants, to support the implementation and maintenance of the Fellows Program and to evaluate the program's effectiveness.

The extent to which the applicant describes its understanding of the goals and purposes for the Fellows program and its relationship to developing leadership potential for the individuals in the field and for improving the quality of early childhood programs.

c. Objectives and Need for Assistance (15 points)

The extent to which the applicant identifies and documents any relevant economic, social, financial institutional or other problems requiring a solution; demonstrates the need for the assistance; and states the principal and subordinate objectives of the project. Supporting documentation or other testimonies from concerned interests other than the applicant on the need for assistance may be used.

If the proposed approach and strategies require the technical assistance of other colleges, universities, or nonprofit agencies, the proposal should include letters of commitment assuring their willingness to participate and indicating the roles they would play in the project.

d. Results or Benefits Expected (15 points)

The extent to which the applicant identifies the evaluation methodology that will be used to determine the specific and measurable results and benefits to be derived which are consistent with the objectives of the proposal, and indicates the anticipated contributions to policy, practice and/or theory.

e. Budget and Budget Justification (10 points)

The extent to which the project's costs are reasonable in view of the activities to be carried out and the anticipated outcomes. Provide a budget that delineates the project administration costs versus those expenses that will directly support the Fellows individually and as a group. The budget should include stipends to Fellows. The stipend should be tiered to accommodate a range of education and experience and would parallel the Federal General Schedule 12–14 pay range. Stipends should include funds to support fringe benefits. The average stipend and total amount of the $1 million of the budget that will be used for stipends for the Fellows must be delineated. It is anticipated that the major portion of the budget will be used for stipends and direct costs of the Fellows. The other expenses to support the participation of the Fellows should also be described and budgeted within the $1 million.

State Single Point of Contact (SPOC)

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own process for reviewing and commenting on proposed Federal assistance under covered programs.

Note: State territory participation in the intergovernmental review process does not signify applicant eligibility for financial assistance under a program. A potential applicant must meet the eligibility requirements of the program for which it is applying prior to submitting an application to its SPOC, if Applicable, or to ACF.

The following jurisdictions have elected not to participate in the Executive Order process: Alabama, Alaska, Colorado, Connecticut, Hawaii, Idaho, Kansas, Louisiana, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, American Samoa and Palau. Applicants from these jurisdictions or for projects administered by federally-recognized Indian Tribes need take no action in regard to E.O. 12372. Although the jurisdictions listed above no longer participate in the process, entities which have met the eligibility requirements of the program are still eligible to apply for a grant even if a State, Territory, Commonwealth, etc. does not have a SPOC. All remaining jurisdictions participate in the Executive Order process and have established SPOCs. Applicants from participating jurisdictions should contact their SPOC as soon as possible to alert them of the prospective applications and receive instructions.

Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. The applicant must submit all required materials, if any, to the SPOC and indicate the date of this submittal (or the date of contact if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule. A list of the Single State Point of Contacts for each State and Territory can be found on the following website: *http://www.whitehouse.gov/omb/grants/spoc.html*

When comments are submitted directly to ACF, they should be addressed to: William Wilson, Head Start Bureau, Office of Grants Management, 330 C. St. SW, Washington, DC 20447. ATTN: Head Start Fellows Program.

Reminder: In order to satisfactorily compete under this announcement, it will be necessary for potential applicants to read the full announcement which is available through the Head Start Bureau's website: *www2.acf.dhhs.gov/programs/hsb/announce/index.htm*. Mail applications to: ACYF Operations Center, Attention: Head Start Fellows Application, 1815 North Fort Myers Drive, Suite 300, Arlington, VA 22209 (1–800–351–2293).

Dated: March 15, 2000.

Patricia Montoya,

Commissioner, Administration on Children, Youth and Families.

[FR Doc. 00–7020 Filed 3–21–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Federal Allotments to State Developmental Disabilities Councils (DDC) and Protection and Advocacy (P&A) Formula Grant Programs for Fiscal Year 2001.

AGENCY: Administration on Developmental Disabilities (ADD), Administration for Children and Families, Department of Health and Human Services.

ACTION: Notification of Fiscal Year 2001 Federal Allotments to State Developmental Disabilities Councils and Protection and Advocacy Formula Grant Programs.

SUMMARY: This notice sets forth Fiscal Year (FY) 2001 individual allotments and percentages to States administering the State Developmental Disabilities Councils and Protection and Advocacy programs, pursuant to Section 125 and Section 142 of the Developmental Disabilities Assistance and Bill of Rights Act (Act). The allotment amounts are based upon the FY 2000 Budget Request and are contingent upon congressional appropriations for FY 2001. If Congress enacts and the President approves a different appropriation amount, the allotments will be adjusted accordingly. The individual allotments will be available April 1, 2000 on the ADD homepage on the Internet: *http://www.acf.dhhs.gov/programs/add/*

EFFECTIVE DATE: October 1, 2000. Future notification of allotments for DDC and P&A will no longer be published in the **Federal Register**, but will be available on the Internet address given above by April 1st of each year.

FOR FURTHER INFORMATION CONTACT: Doris Lee, Grants Fiscal Management Specialist, Office of Management Services, Administration for Children, Youth and Families, telephone (202) 205–4626.

SUPPLEMENTARY INFORMATION: Section 125 (a)(2) of the Act requires that adjustments in the amounts of State allotments shall be made not more often than annually and that States are to be notified no less than six (6) months before the beginning of the fiscal year in which such adjustment is to take effect. In relation to the State DDC allotments, the description of service needs were reviewed in the State plans and are consistent with the results obtained from the data elements and projected formula amounts for each State (Section 125(a)(5)).

The Administration on Developmental Disabilities has updated the following data elements for issuance of Fiscal Year 2001 allotments for the Developmental Disabilities formula grant programs.

A. The number of beneficiaries in each State and Territory under the Childhood Disabilities Beneficiary Program are from Table 5.J10 of the "Annual Statistical Supplement, 1999 to the Social Security Bulletin" issued by the Social Security Administration;

B. State data on Average Per Capita Income are from Table 1—Personal Income and Per Capita Personal Income by State and Region, 1993–98 of the "Survey of Current Business," May, 1999, issued by the Bureau of Economic Analysis, U.S. Department of Commerce; comparable data for the Territories also were obtained from the Department of Commerce September, 1999; and

C. State data on Total Population and Working Population (ages 18–64) as of July 1, 1998, are from the "Estimate of Resident Population of the U.S. by Selected Age Groups and Sex," issued by the Bureau of the Census, U.S. Department of Commerce. Total population estimates for the Territories, as of 1997, were issued May, 1998 under press release CB98–80. The Territories working population was issued in the Bureau of Census report, "General Characteristics Report: 1980," which is the most recent data available from the Bureau.

TABLE 1.—FY 2001 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES

	Developmental Disabilities Councils	Percentage
Alabama	$1,280,704	1.947839
Alaska	408,984	.622029
Arizona	864,880	1.315407
Arkansas	747,603	1.137039
California	5,658,558	8.606172
Colorado	712,785	1.084084
Connecticut	645,893	.982347
Delaware	408,984	.622029
District of Columbia	408,984	.622029
Florida	2,778,080	4.225217
Georgia	1,612,070	2.451817
Hawaii	408,984	.622029
Idaho	408,984	.622029
Illinois	2,584,071	3.930146
Indiana	1,425,566	2.168161
Iowa	774,177	1.177456
Kansas	594,253	.903807
Kentucky	1,184,933	1.802179
Louisiana	1,375,723	2.092354
Maine	408,984	.622029
Maryland	901,119	1.370523
Massachusetts	1,250,543	1.901966
Michigan	2,293,461	3.488154
Minnesota	980,322	1.490984
Mississippi	912,473	1.387792
Missouri	1,290,019	1.962006
Montana	408,984	.622029
Nebraska	414,312	.630132
Nevada	408,984	.622029

TABLE 1.—FY 2001 ALLOTMENTS ADMINISTRATION ON DEVELOPMENTAL DISABILITIES—Continued

	Developmental Disabilities Councils	Percentage
New Hampshire	408,984	.622029
New Jersey	1,452,791	2.209568
New Mexico	449,515	.683673
New York	4,036,228	6.138750
North Carolina	1,767,777	2.688634
North Dakota	408,984	.622029
Ohio	2,791,669	4.245884
Oklahoma	887,831	1.350313
Oregon	683,935	1.040205
Pennsylvania	3,026,521	4.603074
Rhode Island	408,984	.622029
South Carolina	1,030,500	1.567300
South Dakota	408,984	.622029
Tennessee	1,404,358	2.135906
Texas	4,173,299	6.347223
Utah	507,501	.771865
Vermont	408,984	.622029
Virginia	1,337,203	2.033769
Washington	1,037,010	1.577201
West Virginia	739,342	1.124475
Wisconsin	1,249,657	1.900619
Wyoming	408,984	.622029
American Samoa	214,718	.326567
Guam	214,718	.326567
Northern Mariana Islands	214,718	.326567
Puerto Rico	2,308,670	3.511285
Virgin Islands	214,718	.326567
Total	65,750,000 [1]	100.000000

[1] Allocations are computed based on the requirements of Section 125(a)(3)(B), Reduction of Allotment of the Act.

TABLE 2.—FY 2001 ALLOTMENTS ADMINISTRATION ON DEVELOPMENT DISABILITIES

	Protection and advocacy	Percentage
Alabama	$465,705	1.690534
Alaska	267,768	.972012
Arizona	388,730	1.411111
Arkansas	277,337	1.006748
California	2,347,035	8.519864
Colorado	294,498	1.069044
Connecticut	276,697	1.004425
Delaware	267,768	.972012
District of Columbia	267,768	.972012
Florida	1,188,948	4.315945
Georgia	653,949	2.373870
Hawaii	267,768	.972012
Idaho	267,768	.972012
Illinois	951,104	3.452559
Indiana	536,953	1.949168
Iowa	273,978	.994555
Kansas	267,768	.972012
Kentucky	435,383	1.580464
Louisiana	478,649	1.737522
Maine	267,768	.972012
Maryland	364,046	1.321507
Massachusetts	466,490	1.693384
Michigan	893,221	3.242440
Minnesota	378,784	1.375006
Mississippi	332,243	1.206060
Missouri	490,603	1.780915
Montana	267,768	.972012
Nebraska	267,768	.972012
Nevada	267,768	.972012
New Hampshire	267,768	.972012
New Jersey	551,995	2.003772
New Mexico	267,768	.972012
New York	1,423,590	5.167708

TABLE 2.—FY 2001 ALLOTMENTS ADMINISTRATION ON DEVELOPMENT DISABILITIES—Continued

	Protection and advocacy	Percentage
North Carolina	690,481	2.506483
North Dakota	267,768	.972012
Ohio	1,037,007	3.764391
Oklahoma	329,068	1.194536
Oregon	281,919	1.023382
Pennsylvania	1,073,080	3.895338
Rhode Island	267,768	.972012
South Carolina	395,715	1.436467
South Dakota	267,768	.972012
Tennessee	525,514	1.907644
Texas	1,594,404	5.787773
Utah	267,768	.972012
Vermont	267,768	.972012
Virginia	543,539	1.973076
Washington	413,862	1.502341
West Virginia	289,650	1.051446
Wisconsin	470,485	1.707886
Wyoming	267,768	.972012
American Samoa	143,255	.520024
Guam	143,255	.520024
Northern Mariana Islands	143,255	.520024
Puerto Rico	897,039	3.256300
Virgin Islands	143,255	.520024
DNA People Legal Services[2]	143,255	.520024
Total	$27,547,800[1]	100.000000 4

[1] In accordance with Public Law 104–183, Section 142(c)(5), $562,200 has been withheld to fund technical assistance. The statute provides for spending up to two percent (2%) of the amount appropriated under Section 143 for this purpose. Unused funds will be reallotted in accordance with Section 142(c)(1) of the Act.

[2] American Indian Consortiums are eligible to receive an allotment under Section 142(c)(1)(A)(I) of the Act.

Dated: March 13, 2000

Sue E. Swenson,

Commissioner, Administration on Developmental Disabilities.

[FR Doc. 00–7019 Filed 3–21–00; 8:45 am]

BILLING CODE 4184–01–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0914]

Agency Information Collection Activities; Proposed Collection; Comment Request; Importer's Entry Notice; Extension

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the electronic collection of data by FDA regarding FDA-regulated products of foreign origin that are being offered for import into the United States.

DATES: Submit written comments on the collection of information by May 22, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques,

when appropriate, and other forms of information technology.

Importer's Entry Notice (OMB Control Number 0910–0046)—Extension

Section 801 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 381) charges FDA with the following responsibilities: (1) Ensuring that foreign-origin FDA-regulated foods, drugs, cosmetics, medical devices, and radiological health products offered for import into the United States meet the same requirements of the act as do domestic products; and (2) preventing shipments from entering the country if they are not in compliance.

The information collected by FDA consists of the following: (1) Product code, an alpha-numeric series of characters that identifies each product FDA regulates; (2) FDA country of origin, the country where the FDA-registered or FDA-responsible firm is located; (3) FDA manufacturer, the party who manufactured, grew, assembled, or otherwise processed the goods (if more than one, the last party who substantially transformed the product); (4) shipper, the party responsible for packing, consolidating, or arranging the shipment of the goods to their final destination; (5) quantity and value of the shipment; and (6) if appropriate, affirmation of compliance, a code that conveys specific FDA information, such as registration number, foreign government certification, etc. This information is collected electronically by the entry filer via the U.S. Customs Service's Automated Commercial System at the same time he/she files an entry for import with the U.S. Customs Service. FDA uses the information to make admissibility decisions about FDA-regulated products offered for import into the United States.

The annual reporting burden is derived from the basic processes and procedures used in fiscal year (FY) 1995. The total number of entries submitted to the automated system in FY 1999 was 5,077,493. The total number of entries less the disclaimed entries will represent the total FDA products entered into the automated system. A total of 51 percent of all entries entered into the automated system were entries dealing with FDA-regulated products. The number of respondents is a count of filers who submit entry data for foreign-origin FDA-regulated products. The estimated reporting burden is based on information obtained by FDA contacting some potential respondents. Disclaimed entries are not FDA commodities.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
3,886	652	2,533,355	.14	354,669

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 15, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–7010 Filed 3–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–0928]

Agency Information Collection Activities; Proposed Collection; Comment Request; Request for Samples and Protocols

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on the information collection provisions relating to the regulations which state that protocols for samples of biological products must be submitted to the agency.

DATES: Submit written comments on the collection of information by May 22, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques,

when appropriate, and other forms of information technology.

Request for Samples and Protocols (OMB Control No. 0910–0206)—Extension

Under section 351 of the Public Health Service Act (42 U.S.C. 262), FDA has the responsibility to issue regulations that prescribe standards designed to ensure the safety, purity, and potency of biological products and to ensure that licenses for such products are only issued when a product meets the prescribed standards. Under § 610.2 (21 CFR 610.2), FDA may at any time require manufacturers of licensed biological products to submit to FDA samples of any lot along with the protocols showing the results of applicable tests prior to marketing the lot of the product. In addition to § 610.2, there are other regulations that require the submission of samples and protocols for specific licensed biological products as follows: Sections 640.101(f) (21 CFR 640.101(f)) (Immune Globulin (Human)), 660.6 (21 CFR 660.6) (Antibody to Hepatitis B Surface Antigen), 660.36 (21 CFR 660.36) (Reagent Red Blood Cells), and 660.46 (21 CFR 660.46) (Hepatitis B Surface Antigen).

Section 640.101(f)(2) requires for each lot of Immune Globulin (Human) product, the submission of all protocols relating to the history of the product and all results of all tests prescribed in the additional standards for the product.

Section 660.6(a) provides requirements for the frequency of submission of samples from each lot of Antibody to Hepatitis B Surface Antigen product, and § 660.6(b) provides the requirements for the submission of a protocol containing specific information along with each required sample. For § 660.6 products subject to official release by FDA, one sample from each filling of each lot is required to be submitted along with a protocol consisting of a summary of the history or manufacture of the product, including all results of each test for which test results are requested by the Center for Biologics Evaluation and Research (CBER). After official release is no longer required, one sample along with a protocol is required to be submitted at an interval of 90 days. In addition, samples, which must be accompanied by a protocol, may at any time be required to be submitted to FDA if continued evaluation is deemed necessary.

Section 660.36(a) requires, after each routine establishment inspection by FDA, the submission of samples from a lot of final Reagent Red Blood Cell product along with a protocol containing specific information. Section 660.36(a)(2) requires a protocol containing information including, but not limited to, manufacturing records, test records, and test results. Section 660.36(b) requires a copy of the antigenic constitution matrix specifying the antigens present or absent to be submitted to FDA at the time of initial distribution of each lot.

Section 660.46(a) provides requirements for the frequency of submission of samples from each lot of Hepatitis B surface antigen product, and § 660.46(b) provides the requirements for the submission of a protocol containing specific information along with each required sample. For § 660.46 products subject to official release by FDA, one sample from each filling of each lot is required to be submitted along with a protocol consisting of a summary of the history or manufacture of the product, including all results of each test for which test results are requested by CBER. After notification of official release is received, one sample along with a protocol is required to be submitted at an interval of 90 days. In addition, samples, which must be accompanied by a protocol, may at any time be required to be submitted to FDA if continued evaluation is deemed necessary.

Samples and protocols are required by FDA to help ensure the safety, purity, or potency of the product because of the potential lot-to-lot variability of a product produced from living organisms. In cases of certain biological products (e.g., Albumin, Plasma Protein Fraction, and specified biotechnology and specified synthetic biological products) that are known to have lot-to-lot consistency, official lot release is not normally required. However, submissions of samples and protocols of these products may still be required for surveillance, licensing, and export purposes, or in the event that FDA obtains information that the manufacturing process may not result in consistent quality of the product.

The following burden estimate is for protocols required to be submitted with each sample. The collection of samples is not a collection of information under 5 CFR 1320.3(h)(2). Respondents to the collection of information under § 610.2 are manufacturers of any licensed biological product. Respondents to the collection of information under §§ 640.101(f)(2), 660.6(b), 660.36(a)(2) and (b), and 660.46(b) are manufacturers of the specific products referenced previously. The estimated number of respondents for each regulation is based on the annual number of manufacturers that submitted samples and protocols for biological products, including submissions for lot release, surveillance, licensing, or export. There are an estimated 350 manufacturers of licensed biological products, however, based on information obtained from FDA's data base system, approximately 100 manufacturers submitted samples and protocols in 1998, under the regulations cited previously. FDA estimates that approximately 86 manufacturers submitted protocols under § 610.2 and 14 manufacturers submitted protocols under the regulations for the specific products. FDA had previously estimated 80, instead of 90, manufacturers would submit samples and protocols annually under all the regulations cited previously to account for biotechnology firms that are exempt from lot release requirements. Because biotechnology firms may still be required to submit samples and protocols for purposes other than lot release, as explained previously, the number of respondents for § 610.2 in this estimate includes them. The slight increase in the total estimated number of respondents (100) is due to a normal variation in annual submissions.

The total annual responses are based on FDA's final actions completed in fiscal year 1998, which totaled 7,221, for the various submission requirements of samples and protocols for biological products. The rate of final actions is not expected to change significantly in the next few years. The hours per response are based on information provided by industry. The burden estimates provided by industry ranged from 1 to 5.5 hours. Under § 610.2, the hours per response are based on the average of these estimates and rounded to 3 hours. Under the remaining regulations, the hours per response are based on the higher end of the estimate (rounded to 5 or 6 hours) since more information is generally required to be submitted in the protocol than under § 610.2.

FDA estimates the burden of this collection of information as follows:

TABLE1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
610.2	86	82.72	7,114	3	21,342
640.101(f)(2)	5	4.40	22	5	110
660.6(b)	6	11.33	68	5	340
660.36(a)(2) and (b)	1	1	1	6	6
660.46(b)	2	8	16	5	80
Total					21,878

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 15, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–7012 Filed 3–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–5325]

Agency Information Collection Activities; Submission for OMB Review; Irradiation in the Production, Processing, and Handling of Food

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by April 21, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Irradiation in the Production, Processing, and Handling of Food—21CFR Part 179 (OMB Control Number 0910–0186—Extension)

Under sections 201(s) and 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(s) and 348), food irradiation is subject to regulation as a food additive. The regulations providing for uses of irradiation in the production, processing, and handling of food are found in part 179 (21 CFR part 179).

To assure safe use of radiation source, § 179.21(b)(1) requires that the label of sources bear appropriate and accurate information identifying the source of radiation and the maximum energy of radiation emitted by X-ray tube sources. Section 179.21(b)(2)(i) requires that the label or accompanying labeling bear adequate directions for installation and use.

Section 179.25(e) requires that food processors who treat food with radiation make and retain, for 1 year past the expected shelf life of the products up to a maximum of 3 years, specified records relating to the irradiation process (e.g., the food treated, lot identification, scheduled process, etc.).

The records required by § 179.25(e) are used by FDA inspectors to assess compliance with the regulation that establishes limits within which radiation may be safely used to treat food. The agency cannot ensure safe use without a method to assess compliance with the dose limits, and there are no practicable methods for analyzing most foods to determine whether they have been treated with ionizing radiation and are within the limitations set forth in part 179. Records inspection is the only way to determine whether firms are complying with the regulations for treatment of foods with ionizing radiation.

In the **Federal Register** of December 29, 1999 (64 FR 73054), the agency requested comments on the proposed collections of information (hereinafter referred to as the 60-day notice). No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE1.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
179.25(e)	3	120	360	1	360

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The number of firms who process food using irradiation is extremely limited. FDA estimates that there is a single irradiation plant whose business is devoted primarily (i.e., approximately 100 percent) to irradiation of food and other agricultural products. Two other firms also irradiate small quantities of food (mainly spices). FDA estimates that this irradiation accounts for no more than 10 percent of the business for each of these firms. Although recent FDA rulemaking has authorized the irradiation of red meat, the United States Department of Agriculture/Food Safety and Inspection Service (USDA/FSIS) has yet to issue a rule regarding meat irradiation. Actual implementation of meat irradiation cannot take place until USDA/FSIS final regulations are in place, which may not take place until later this fiscal year. At this time, FDA has no basis for estimating the extent of changes in the food irradiation business

as a result of future USDA/FSIS actions. Therefore, the average estimated burden is based on the following: (1) A facility devoting 100 percent of its business (or 300 hours for recordkeeping annually) to food irradiation; and (2) facilities devoting 10 percent of their business or 60 hours (2 x 30 hours) for recordkeeping annually, to food irradiation or (300 + 60)/3 = 120 x 3 firms x 1 hour = 360 hours annually.

As stated in the 60-day notice, no burden was estimated for the labeling requirements in §§ 179.21(b)(2)(i) and (b)(2)(ii) and 179.26(c) because the information to be disclosed is information that has been supplied by FDA. Under 5 CFR 1320.3(c)(2), the public disclosure of information originally supplied by the Federal Government to the recipient for the purpose of disclosure to the public is not a collection of information. Therefore in this notice, table 1 from the 60-day notice (64 FR 73054 at 73055) estimated annual reporting burden is not included.

Dated: March 16, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–7008 Filed 3–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Arthritis Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). At least one portion of the meeting will be closed.

Name of Committee: Arthritis Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 11, 2000, 8 a.m. to 5 p.m.

Location: Holiday Inn, Walker and Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: Kathleen R. Reedy or LaNise S. Giles, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: reedyk@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12532. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committee will discuss biologics license application 99–0884, Enbrel™ (etanercept, Immunex), for an indication in patients with early rheumatoid arthritis.

Procedure: The meeting is open to the public from 8 a.m. to 2:30 p.m. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 3, 2000. Oral presentations from the public will be scheduled between approximately 10:30 a.m. and 11:30 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 3, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Closed Committee Deliberations: The meeting will be closed from 2:30 p.m. to 5 p.m. to permit discussion and review of trade secret and/or confidential information (5 U.S.C. 552b(c)(4)).

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 15, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–7006 Filed 3–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Orally Inhaled and Nasal Drug Products Subcommittee of the Advisory Committee for Pharmaceutical Science; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Orally Inhaled and Nasal Drug Products Subcommittee of the Advisory Committee for Pharmaceutical Science.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 26, 2000, 8:30 a.m. to 5:30 p.m.

Location: 5630 Fishers Lane, Center for Drug Evaluation and Research Advisory Committee conference room 1066, Rockville, MD.

Contact Person: Kimberly Littleton Topper, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7001, e-mail: TOPPERK@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12539. Please call the Information Line for up-to-date information on this meeting.

Agenda: The subcommittee will discuss specific scientific issues where the additional expertise of the subcommittee is needed to aid the agency in refining draft guidances for orally inhaled and nasal drug products in the areas of: (1) Chemistry, manufacturing, and controls; and (2) in vitro and in vivo bioavailability/bioequivalence.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by April 19, 2000. Oral presentations from the public will be scheduled between approximately 1 p.m. to 2 p.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before April 19, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 14, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–7007 Filed 3–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–4933]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; FDA Safety Alert/Public Health Advisory Readership Survey

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by April 21, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

FDA Safety Alert/Public Health Advisory Readership Survey (OMB Control No. 0910–0341—Extension)

Section 705(b) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 375(b)) authorizes FDA to disseminate information concerning imminent danger to public health by any regulated product. The Center for Devices and Radiological Health (CDRH) communicates these risks to user communities through two publications: (1) The FDA Safety Alert and (2) the Public Health Advisory. Safety alerts and advisories are sent to organizations such as hospitals, nursing homes, hospices, home health care agencies, manufacturers, retail pharmacies, and other health care providers. Subjects of previous alerts included spontaneous combustion risks in large quantities of patient examination gloves, hazards associated with the use of electric heating pads, and retinal photic injuries from operating microscopes during cataract surgery.

Section 1701(a)(4) of the Public Health Service Act (42 U.S.C. 300u(a)(4)) authorizes FDA to conduct research relating to health information. FDA seeks to evaluate the clarity, timeliness, and impact of safety alerts and public health advisories by surveying a sample of recipients. Subjects will receive a questionnaire to be completed and returned to FDA. The information to be collected will address how clearly actions for reducing risk are explained, the timeliness of the information, and whether the reader has taken any action to eliminate or reduce risk as a result of information in the alert. Subjects will also be asked whether they wish to receive future alerts electronically, as well as how the safety alert program might be improved.

The information collected will be used to shape FDA's editorial policy for the safety alerts and public health advisories. Understanding how target audiences view these publications will aid in deciding what changes should be considered in their content, format, and method of dissemination.

In the **Federal Register** of November 26, 1999 (64 FR 66479), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
308	3	924	.17[2]	157

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

[2] Due to a clerical error, the reporting burden hours for "Hours per Response" that appeared in the FEDERAL REGISTER of November 26, 1999 (64 FR 66480) were incorrect. Table 1 of this document contains the correct information.

Based on the history of the safety alert and the public health advisory program, it is estimated that an average of three collections will be conducted a year. The total burden of response time is estimated at 10 minutes per survey. This was derived by CDRH staff completing the survey and through discussions with the contacts in trade organizations.

Dated: March 15, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–7009 Filed 3–21–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Targeted Screening for Inhibitors of Human Herpesvirus 8 DNA Polymerase Activity

Opportunities for Cooperative Research and Development Agreements (CRADAs) are available for collaborations with the Screening Technologies Branch (STB), Developmental Therapeutics Program (DTP), National Cancer Institute (NCI) to discover and develop inhibitors of human herpesvirus 8 (HHV8) DNA polymerase. Collaborative project will focus upon the inhibition of HHV8 as it relates to the disease processes of cancers which occur in patients with AIDS. This has been identified as an area of high national and international priority.

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice of opportunities for Cooperative Research and Development Agreements (CRADAs).

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks one or more Cooperative Research and Development Agreements (CRADAs) with pharmaceutical or chemical companies to discover and develop new potential antiviral (HHV8) drug leads. The CRADA would have an expected duration of one (1) to five (5) years. The goals of the CRADA include the rapid publication of research results and timely commercialization of products, methods of treatment or prevention that may result from the research. The CRADA Collaborator will have an option to negotiate the terms of an exclusive or non-exclusive commercialization license to subject inventions arising under the CRADA

and which are subject of the CRADA Research Plan.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Dr. Bjarne Gabrielsen, Technology Development & Commercialization Branch, National Cancer Institute-Frederick Cancer Research & Development Center, Fairview Center, Room 502, Frederick, MD 21701 (phone: 301–846–5465, fax: 301–846–6820).

Scientific inquires should be submitted to Dr. Robert Shoemaker, Chief, Screening Technologies Branch, National Cancer Institute-Frederick Cancer Research & Development Center, Bldg. 431A, P.O. Box B, Frederick MD, 21702–1201 [phone: (301)–846–5432; Fax: (301)–846–6844; e-mail shoemaker@dtpax2.ncifcrf.gov .

EFFECTIVE DATE: Inquiries regarding CRADA proposals and scientific matters may be forwarded at any time. Confidential, preliminary CRADA proposals, preferably two pages or less, must be submitted to the NCI within 30 days from date of this publication. Guidelines for preparing final CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

SUPPLEMENTARY INFORMATION:

Technology Available

The Screening Technologies Branch (STB) of the Developmental Therapeutics Program is an NCI extramural research activity dedicated to the discovery of new potential lead molecules for antitumor, antiviral, or antimicrobial drug development. General background and contact information for the DTP are available on the Internet at http://www.dtp.nci.nih.gov. The STB comprises an interdisciplinary research team, and appropriate resources, expertise and experience, to carry out all essential aspects of lead-discovery, including high-throughput screening (HTS), cell-based bioassays, chemical isolation, purification and structural determinations.

STB's principal lead-discovery strategy employs high-throughput screening (HTS) to identify bioactive molecules. The sought-for bioactivity is defined by the specific type(s) of assay and/or target(s) employed in the primary screen(s) used for bioassay support of the process. In the current solicitation, CRADA partners are sought for discovery efforts targeted to the DNA polymerase and processivity factor of human herpesvirus 8. This target was cloned and characterized in the laboratory of Dr. Robert Ricciardi and is proprietary to the University of Pennsylvania. STB is implementing HTS against this target in collaboration with Dr. Ricciardi. Therefore, it is anticipated that the University of Pennsylvania will either be a third party to this CRADA collaboration or the potential CRADA collaborator would obtain rights to the target under a separate agreement with the University of Pennsylvania.

Technology Sought

STB now seeks potential collaborators with novel or distinctive pure compound collections suitable for high-throughput screening and medicinal and synthetic chemical expertise and resources for follow-up and optimization of antiviral drug leads. Primary consideration will be given to collaborators with large well-characterized chemical libraries available as individual compounds in multiwell plates. Availability of bulk compound for "hit" confirmation and characterization and ability to rapidly perform synthetic work to optimize lead compounds will also be major factors in consideration of potential CRADA partners.

Collaborators Sought

Accordingly, DHHS now seeks collaborative arrangements for the joint STB and collaborator discovery research and development of novel, clinically useful, antiviral (HHV8) drugs of high public health priority. For collaborations with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide for equitable distribution of intellectual property rights developed under the CRADA. CRADA aims will include rapid publication of research results as well as full and timely exploitation of any commercial opportunities.

As a minimum, the successful Collaborator should either possess broad experience in most, if not all, of the following areas; or possess highly specialized, unique expertise in one or more of the following areas, as particularly pertinent to drug lead-discovery and development: (a) creation of chemical libraries for use in high-throughput drug screening; (b) ability to carry out or direct chemical synthetic studies supporting lead-optimization, drug candidate selection and development.

NCI will provide no funding to the Collaborator in as much as financial contributions by the U.S. Government to non-Federal parties under a CRADA are not authorized under the Federal Technology Transfer Act [15 U.S.C. 3710(a)(d)(1)].

NCI and Collaborator Responsibilities

The role of the National Cancer Institute in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the Collaborator with screening and test data for evaluation.
3. Planning research studies and interpreting research results.
4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Providing chemical libraries for use in high-throughput screening and synthetic compounds necessary for follow-up and optimization of leads identified by screening.
3. Planning research studies and interpreting research results.
4. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on research and development of this technology involving lead discovery/optimization and biological evaluation. This ability can be demonstrated through experience, expertise, and the ability to contribute intellectually in this or related areas of drug discovery research and development.
2. The demonstration of adequate resources to perform the research, development and commercialization of this lead discovery/optimization and biological evaluation technology (e.g. facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
3. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology as defined above.
4. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
5. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
6. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or non-exclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: March 7, 2000.

Kathleen Sybert,

Chief, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 00–7050 Filed 3–21–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Steroid Derivatives with Paclitaxel-Like Activity

An opportunity is available for a Cooperative Research and Development Agreement (CRADA) for the purpose of collaborating with the Screening Technology Branch, National Cancer Institute (STB, NCI) on further research and development of U.S. government-owned technology encompassed within U.S. Provisional Patent Application Serial No. 60/161,533, entitled "B-Homoestra-1,3,5(10)-trienes as Modulators of Tubulin Polymerization."

AGENCY: National Cancer Institute, National Institutes of Health, PHS, DHHS.

ACTION: Notice of opportunity for cooperative research and development (CRADA).

SUMMARY: Pursuant to the Federal Technology Transfer Act of 1986 (FTTA, 15 U.S.C. 3710; and Executive Order 12591 of April 10, 1987, as amended by the National Technology Transfer and Advancement Act of 1995), the National Cancer Institute (NCI) of the National Institutes of Health (NIH) of the Public Health Service (PHS) of the Department of Health and Human Services (DHHS) seeks a Cooperative Research and Development Agreement (CRADA) with a pharmaceutical or biotechnology company to develop new drugs and therapeutic methods based on screening pre-existing steroid libraries from the collaborator for paclitaxel-like activities and/or screening steroid derivatives from a directed synthetic effort by the collaborator to produce more active paclitaxel-like compounds. The CRADA would have an expected duration of one (1) to five (5) years. The goals of the CRADA include the rapid publication of research results and timely commercialization of products or methods of treatment that may result from the research. The CRADA Collaborator will have an option to negotiate the terms of an exclusive or non-exclusive commercialization license to subject inventions arising under the CRADA and which are subject of the CRADA Research Plan, and can apply for background licenses to the existing patent described above, subject to any pre-existing licenses already issued for other fields of use. Dr. Mark Cushman of Purdue University is a co-inventor on the U.S. Provisional Patent Application Serial No. 60/161,533, entitled "B-Homoestra-1,3,5(10)-trienes as Modulators of Tubulin Polymerization." Therefore, it is anticipated that negotiations with Purdue University regarding their interest in the original patent application would be required if the potential CRADA collaborator required exclusive rights to the technology encompassed by this patent.

ADDRESSES: Proposals and questions about this CRADA opportunity may be addressed to Dr. Bjarne Gabrielsen, Technology Development & Commercialization Branch, National Cancer Institute-Frederick Cancer Research & Development Center, Fairview Center, Room 502, Frederick, MD 21701 (phone: 301–846–5465, fax: 301–846–6820).

Scientific inquiries should be directed to Dr. Ernest Hamel, Senior Investigator, Screening Technology Branch, National Cancer Institute-Frederick Cancer Research & Development Center, Bldg. 469, Rm. 237, Frederick, MD 21702–1201 [phone: (301)-846–1678; fax: (301)-846–6014]; e-mail: *hamele@dc37a.nci.nih.gov*

EFFECTIVE DATE: Inquiries regarding CRADA proposals and scientific matters may be forwarded at any time. Confidential preliminary CRADA proposals, preferably two pages or less, must be submitted to the NCI on or before June 20, 2000. Guidelines for preparing final CRADA proposals will be communicated shortly thereafter to all respondents with whom initial confidential discussions will have established sufficient mutual interest.

SUPPLEMENTARY INFORMATION:

Technology Available

DHHS scientists within the STB, NCI, in a collaboration with the laboratory of Dr. Mark Cushman, Purdue University, relating to steroid molecules that interact with tubulin, have discovered a subgroup of steroid derivatives that have paclitaxel-like effects on tubulin. Instead of inhibiting tubulin assembly, the new class induces formation of hyperstable microtubules and hypernucleates tubulin assembly. However, the most active molecules so far discovered are considerably less active than paclitaxel and have limited cytotoxicity. Details are in U.S. Provisional Patent Application Serial No. 60/161,533 available under an appropriate Confidential Disclosure Agreement.

Technology Sought

Accordingly, DHHS now seeks collaborative arrangements for the screening, joint elucidation, evaluation and development of novel compounds and methods to produce more active paclitaxel-like compounds. For collaboration with the commercial sector, a Cooperative Research and Development Agreement (CRADA) will be established to provide for equitable distribution of intellectual property rights developed under the CRADA. CRADA aims will include rapid publication of research results as well as full and timely exploitation of any commercial opportunities.

NCI and Collaborator Responsibilities

The role of the laboratory of Dr. Hamel, STB, NCI in this CRADA will include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Undertake evaluation of compounds in their interactions with purified tubulin and examination of effects of promising compounds on cell growth and morphology. It is anticipated that such screening efforts would also reveal compounds that inhibit tubulin assembly and that have significant inhibitory effects on angiogenesis.
3. Planning research studies and interpreting research results.
4. Publishing research results.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project such as lead optimization, organic synthetic efforts directed toward new analogs, derivatives.
2. Planning research studies and interpreting research results.
3. Providing technical expertise and/or financial support for CRADA-related research as outlined in the CRADA Research Plan.
4. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. The ability to collaborate with NCI on further research and development of this technology. This ability can be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to on-going research and development.

2. Expertise and experience in the following areas: preclinical research and drug development of steroidal, paclitaxel-like compounds; ability to perform appropriate chemical synthetic efforts to support structure/activity (SAR) studies, lead-optimization, drug candidate selection and development.

3. The demonstration of adequate resources to perform the research, development and commercialization of this technology (*e.g.*, facilities, personnel and expertise) and accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

4. The willingness to commit best effort and demonstrated resources to the research, development and commercialization of this technology.

5. The demonstration of expertise in the commercial development, production, marketing and sales of products related to this area of technology.

6. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

7. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.

8. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the equitable distribution of patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or non-exclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: March 7, 2000.

Kathleen Sybert,

Chief, Technology Development & Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 00–7051 Filed 3–21–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, [ZDK1–GRB–1 (M3)P].

Date: April 10–11, 2000.

Time: 7 pm to 5 pm.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 3899 Jefferson Davis Highway, Arlington, VA 22202, (703) 549–3434.

Contact Person: Carolyn Miles, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK Natcher Building, Room 6AS–43A National Institutes of Health Bethesda, MD 20892, (301) 594–7791.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: March 14, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7045 Filed 3–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Institute of Mental Health Special Emphasis Panel, February 18, 2000, 11 AM to February 18, 2000, 1 PM, Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD, 20892 which was published in the **Federal Register** on February 9, 2000, 65 FR 6387.

The meeting will now be held on March 24, 2000 at the same place from 11:30 AM to 1:30 PM. The meeting is closed to the public.

Dated: March 15, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7046 Filed 3–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 29, 2000.

Time: 10:00 a.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jerry Cott, PHD, Scientific Review Administrator, National Institute of Mental Health, NIH, 6001 Executive Blvd., Room 7160, MSC 9635, Bethesda, MD 20892–9635, (301) 443–1185.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 4, 2000.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jerry Colt, PHD, Scientific Review Administrator, National Institute of Mental Health, NIH, 6001 Executive Blvd., Room 7160, MSC 9635, Bethesda, MD 20892–9635, (301) 443–1185.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 6, 2000.

Time: 9:00 a.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Chevy Chase Holiday Inn, 5520 Wisconsin Ave., Chevy Chase, MD 20815.

Contact Person: Sheila O'Malley, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6138, MSC 9606, Bethesda, MD 20892–9606, (301) 443–6470.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 15, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7047 Filed 3–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Trauma and Burn.

Date: April 4–6, 2000.

Time: 8 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Wyndham Garden Hotel, Pittsburgh University Place, 3454 Forbes Avenue, Pittsburgh, PA 15213.

Contact Person: Michael A. Sesma, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, Natcher Building, Room 1AS19H, 45 Center Drive, Bethesda, MD 20892, (301) 594–2048, sesmam@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 15, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7048 Filed 3–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 21, 2000.

Time: 1:30 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 29, 2000.

Time: 1:30 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9606, 301–443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 15, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7049 Filed 3–21–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Office for Women's Services; Notice of Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) on March 30, 2000.

The meeting of the Advisory Committee for Women's Services will include a discussion of policy and program issues relating to women's substance abuse and mental health service needs; the SAMHSA fiscal year 2000 budget; resolutions adopted at the Committee's November meeting; specific Committee goals for the current year, consideration of November meeting minutes; and other policy issues.

A summary of the meeting and/or a roster of committee members may be obtained from: Nancy P. Brady, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–8964.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date(s): March 30, 2000.

Meeting Time: 10 a.m.–Noon.

Place: Room 12–94, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Open: March 30, 2000.

Contact: Nancy P. Brady, Room 13–99, Parklawn Building, Telephone: (301) 443–8964.

This notice is being published less than 15 days prior to the meeting due to the urgent need to meet timing limitations imposed by the review and funding cycle.

Dated: March 15, 2000.

Coral Sweeney,

Review Specialist, SAMHSA.

[FR Doc. 00–7013 Filed 3–21–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–055–1232–HB]

Temporary Closure of the Red Rock Canyon Visitors Center, Las Vegas, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: The Acting Field Manager, Las Vegas Field Office, Las Vegas, Nevada, announces a temporary closure of the Red Rock National Conservation Area, Visitors Center, in Las Vegas, Nevada. The Red Rock Visitors Center needs urgent repair and replacement of a hot tar roof. The Scenic Drive at the Red Rock Canyon will remain open.

EFFECTIVE DATES: The closure will go into effect March 27, 2000 through March 31, 2000. The Visitors Center will reopen on April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Sheree Fisher at (702) 647–5142 or Bob Dunn at (702) 647–5103.

Dated: March 15, 2000.

James R. Dunn,

Acting Field Manager.

[FR Doc. 00–7089 Filed 3–21–00; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Glacier Bay National Park, Alaska; Dungeness Crab Commercial Fishery Crewmember Interim Compensation Program

AGENCY: National Park Service, Interior.

ACTION: Glacier Bay National Park application procedures for the Dungeness crab commercial fishery crewmember interim compensation program.

SUMMARY: Section 123 (c) of the Omnibus Consolidated and Emergency Supplemental Appropriations Act for FY 1999 ("the Act"), as amended by section 501 of the 1999 Emergency Supplemental Appropriations Act, Public Law 106–31 (05/21/99), authorizes compensation for fish processors, fishing vessel crewmembers, communities and others negatively affected by congressionally directed restrictions on commercial fishing in the marine waters of Glacier Bay National Park. The National Park Service (NPS) and the state of Alaska are currently working to develop and implement a compensation program broadly envisioned by Congress in the Act; completion of this compensation program is expected to require one to two years. This is a separate compensation program from that specifically authorized for valid Dungeness crab commercial fishing permit holders by Section 123(b) of the DOI & Related Agencies Approp. Act, 1999, (section 101(e) of division A of P.L. 105–277, as amended). NPS has largely completed that specific compensation program and eight Dungeness crab fishermen/permit holders were determined to be eligible and have been compensated as required by the Act. More recently, NPS, with concurrence of the state of Alaska, responded to a congressional request and established an interim compensation program for Dungeness crab processors similarly qualified and similarly effected by the 1999 closure of designated wilderness to commercial Dungeness crab fishing (See 64 FR 41134 [July 29, 1999.]) NPS, with concurrence of the state of Alaska, now responds to another congressional request and will provide interim compensation for crewmembers who fished with any of the eight Dungeness crab fishermen compensated to date under provisions of section (b) of the Act. Applicants for this interim Dungeness crab commercial fishery crewmember compensation program must meet eligibility and application requirements described in this **Federal Register** notice to qualify for payment. This interim payment is intended to mitigate 1999 income losses for qualifying Dungeness crab fishery crewmembers until the compensation program under section (c) of the Act—and appropriate eligibility criteria, priorities and levels of compensation for crewmembers in the effected commercial fisheries—can be developed and implemented. The amount of this interim compensation payment will not exceed $10,000 per qualifying individual. This **Federal Register** notice serves to provide application instructions for Dungeness crab fishery crewmembers who believe they qualify for interim compensation. Applications must be provided to the Compensation Program Manager, Glacier Bay National Park and Preserve, within 60 days of the publication date of this notice.

DATES: Applications for the Dungeness crab commercial fishery crewmember interim compensation program will be accepted on or before May 22, 2000.

ADDRESSES: Applications for the Dungeness crab commercial fishery crewmember interim compensation program should be submitted to the Compensation Program Manager, Glacier Bay National Park and Preserve, 2770 Sherwood Lane, Suite I, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: For information regarding the Dungeness crab commercial fishery compensation program, please contact Clark Millett, Compensation Program Manager, Glacier Bay National Park and Preserve, 2770 Sherwood Lane, Suite I, Juneau, Alaska 99801. Phone: (907) 586–7047.

SUPPLEMENTARY INFORMATION: The Act, as amended, required Dungeness crab fishermen to provide certain information sufficient to determine their eligibility for compensation. NPS will require similar corroborating documentation from Dungeness crab fishery crewmembers making application for 1999 interim compensation as described in this notice. Dungeness crab fishery crewmembers must provide the following information to the NPS Compensation Program Manager: (1) Full name, mailing address, and a contact phone number. (2) A sworn and notarized personal affidavit attesting to the applicant's history of participation in the Dungeness crab commercial fishery as a crewmember for one or more of the eight Dungeness crab fishermen already compensated, including any two of three years during the interim qualifying period, 1996–1998. The applicant must also attest that they intended to continue working as a crewmember in the Dungeness crab commercial fishery in 1999. (3) A sworn and notarized affidavit, from each of the qualifying fishermen they worked for during the interim qualifying period, 1996—1998, attesting to the applicant's participation in each of those interim qualifying years as a crewmember in the commercial Dungeness crab fishery within either Beardslee Island or Dundas Bay wilderness areas. (4) Documentation from the Alaska Department of Fish and Game detailing the applicant's history as a state licensed commercial fisheries crewmember. (5) Copy of IRS Form 1099–MISC documenting income as a crewmember for qualifying Dungeness crab commercial fishermen for each year worked during the 1996–1998 interim qualifying period. Where crewmember income from other fisheries is included in the IRS Form 1099–MISC this must be noted and the amount attributable only to the Dungeness crab fishery specified. (5) Any other available corroborating information that can assist in a determination of eligibility for interim compensation. The superintendent will make a written determination on eligibility for compensation based on the documentation provided by the applicant. The superintendent will also make a written determination on the amount of 1999 interim compensation to be paid to an eligible applicant. The amount of interim compensation will be based on the applicant's average annual pre-tax income as a crewmember in the Dungeness crab commercial fishery during the 3-year interim qualifying period, 1996—1998, not to exceed $10,000. NPS intends to complete payment of interim compensation to a crewmember meeting the above eligibility criteria within 45 days of receipt of a complete application. If an application for interim compensation is denied the superintendent will provide the applicant the reasons for the denial in writing. Any applicant adversely affected by the superintendent's determination may appeal to the regional director, Alaska region, within 60 days. Applicants must substantiate the basis of their disagreement with the superintendent's determination. The regional director will provide an opportunity for an informal oral hearing, either in Anchorage or by teleconference. After consideration of written materials and oral hearing, if any, and within a reasonable time, the regional director will affirm, reverse, or modify the superintendent's determination and set forth in writing the basis for the decision. A copy of the decision will be forwarded promptly to the applicant and will constitute final agency action. Denial or receipt of interim compensation as a Dungeness crab fishery crewmember will not affect an applicant's consideration for future compensation as a crewmember as part of a final compensation plan established under the Act, as amended.

Dated: March 6, 2000.

Robert D. Barbee,

Regional Director, Alaska.

[FR Doc. 00–7021 Filed 3–21–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bostwick Division, Frenchman-Cambridge Division, and Kanaska Division, Almena Unit INT–DEIS–99–39

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice to reopen comment period for draft environmental impact statement (DEIS) and announce schedule for public workshop and public meeting.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, the Department of the Interior, Bureau of Reclamation (Reclamation), prepared a DEIS for the renewal of long-term water supply contracts for continued delivery of irrigation water from Federal projects in the Republican River basin in Nebraska and Kansas. The DEIS described five alternatives, including no action and a preferred alternative, and evaluated the environmental consequences of renewing the long-term water supply contracts and of modifications to reservoir operations. Public hearings were held in Nebraska and Kansas to receive public comment on the DEIS.

The Corps of Engineers (Corps), along with other Federal, State, and local entities, is a cooperating agency in the water supply contract renewal process. Harlan County Lake in Nebraska is owned by the United States and managed by the Corps. Following completion of the initial 60-day public review and comment period, Reclamation and the Corps continued to receive public comment concerning alternative operations at Harlan County Lake. The magnitude of these comments prompted Reclamation and the Corps to allow additional time for all interested parties to provide comments on the water supply contract renewal process.

DATES: A 30-day public review and comment period commences with the publication of this notice. Written comments on the DEIS or the Corps' technical report should be submitted by April 21, 2000.

Written comments from interested parties unable to attend the hearing, those not wanting to make oral presentations, or those wishing to supplement their oral presentations at the public hearing should be transmitted to the Nebraska-Kansas Area Office by April 21, 2000, for inclusion in the public record.

A joint Reclamation/Corps public meeting has been scheduled to begin at 7 p.m. on April 12, 2000. An informal public workshop has also been scheduled from 10 a.m. to 4 p.m.

ADDRESSES: The meeting and workshop will be held at the Johnson Community Center, 509 Main Street, in Alma, Nebraska.

Written comments on Reclamation's DEIS should be submitted to the Area Manager (Attention: Judy O'Sullivan), Nebraska-Kansas Area Office, P.O. Box 1607, Grand Island NE 68802. Written comments on the Corps' technical report should be submitted to District Engineer, U.S. Army Corps of Engineers, Kansas City District, 700 Federal Building, 601 East Twelfth Street, Kansas City MO 64106–2896.

You may request a Summary of the DEIS, the entire DEIS (with appendices) in printed copy or on computer disk, or the Corps' technical report. Copies may be obtained from the above address or by telephone (308) 389–4622 x211. The DEIS and technical report is available for public inspection and review on Reclamation's Internet site at "www.gp.usbr.gov" in the "Current Activities" section under "Environmental Activities." In addition, the technical report can be viewed at the two Corps' Internet sites "www.nwk.usace.army.mil" and "www.nwk.usace.army.mil/haco/harlan_home.htm"

See Supplementary Information section for additional addresses where the DEIS and/or technical report are available for public inspection and review.

FOR FURTHER INFORMATION CONTACT: Jill Manring, Basin Study Coordinator, Nebraska-Kansas Area Office, P.O. Box 1607, Grand Island NE 68802—telephone (308) 389–4622 x214; or Maria Chastain-Brand, Project Manager-Harlan County Lake Study, U.S. Army Corps of Engineers, Kansas City District, 700 Federal Building, 601 East Twelfth

Street, Kansas City MO 64106–2896—telephone (816) 983-3107.

SUPPLEMENTARY INFORMATION: Reclamation has revised the preferred alternative by modifying minimum reservoir surface elevations at Reclamation reservoirs and by implementing an agreement with the Corps on the operation of Harlan County Lake. A description of the revised preferred alternative is being distributed in the Republican River Roundup newsletter. Reclamation will not prepare a revised DEIS because the impacts associated with the modified minimum reservoir surface elevations on Reclamation reservoirs and the Harlan County Lake agreement fall within the range of those evaluated in the No Action Alternative and Reclamation's Preferred Alternative in the DEIS.

The Corps has developed a technical report addressing the potential impacts of the revised preferred alternative on Harlan County Lake. The Corps' technical report is being distributed to the contract renewal mailing list on March 22, 2000, and will be incorporated into Reclamation's Final EIS. The Corps, as a cooperating agency, will consider comments on the effects of the preferred alternative on Harlan County Lake. In addition, the Corps will prepare a separate Record of Decision (ROD) concerning the relationship of the preferred alternative to the Corps' Harlan County Lake water control manual. Both Reclamation's revised preferred alternative and the Corps' technical report can be reviewed at the locations listed below.

DEIS and Technical Report Public Inspection and Review Locations

Offices

- Bureau of Reclamation, Nebraska-Kansas Area Office, 203 West Second Street, Grand Island NE 68801—telephone (308) 389–4622.
- Bureau of Reclamation, Great Plains Regional Office, 316 North 26th Street, Billings MT 59101—telephone (406) 247–7638.
- Bureau of Reclamation, Reclamation Service Center Library, Building 67, Room 167, Denver Federal Center, Sixth and Kipling, Denver CO 80225—telephone (303) 445–2072.
- Bureau of Reclamation, Office of Policy, Room 7456, 1849 C Street NW, Washington DC 20240—telephone (202) 208–4662.
- Corps of Engineers, Kansas City District, 700 Federal Building, 601 East Twelfth Street, Kansas City, MO 64106–2896—telephone (816) 983–3107.
- Corps of Engineers, Attention: Jim Bowen, Operations Manager, Harlan County Lake, Route 1, Box 123A, Republican City NE 68971—telephone (308) 799–2105.
- Bostwick Irrigation District in Nebraska, Red Cloud NE.
- Kansas Bostwick Irrigation District No. 2, Courtland KS.
- Frenchman-Cambridge Irrigation District, Cambridge NE.
- Frenchman Valley and H&RW Irrigation District, Culbertson NE.
- Almena Irrigation District, Almena KS.

Libraries

- Alma Public Library, West Second Street, Alma NE 68920–3378.
- Blue Hill Public Library, 317 West Gage Street, Blue Hill NE 68930–2068.
- Butler Memorial Library, 621 Pennsylvania, Cambridge NE 69022.
- Franklin Public Library, 1502 P Street, Franklin NE 68939–1200.
- Hastings Public Library, 517 West Fourth Street, Hastings NE 68901–7560.
- Imperial Public Library, 703 Broadway Street, Imperial NE 69033–4017.
- Kearney Public Library, 2020 First Avenue, Kearney NE 68847–5306.
- McCook Library, 802 Norris Avenue, McCook NE 69001–3143.
- Nelson Public Library, 10 West Third Street, Nelson NE 68961–1246.
- Red Cloud Public Library, 537 North Webster Street, Red Cloud NE 68970–2421.
- Carnegie Public Library, 449 North Kansas Street, Superior NE 68978–1852.
- Trenton Village Library, 406 East First Street, Trenton NE 69044.
- Wauneta City Library, 319 North Tecumseh, Wauneta NE 69045–2011.
- Almena Public Library, 415 Main, Almena KS 67622.
- Belleville Public Library, 1327 Nineteenth Street, Belleville KS 66935.
- Courtland City Library, 403 Main Street, Courtland KS 66939.
- Northwest Kansas Library System, 2 Washington Square, Norton KS 67654.

Meeting Information

Please notify Judy O'Sullivan, Reclamation (308–389–4622, x211) or Jim Bowen, Corps, (308–799–2105) at least 1 week in advance of the scheduled hearing if you require special needs in order to participate in the public hearing. Those having special needs should contact Judy O'Sullivan at (308) 389–4622 x211 or through the Federal Relay System at (800) 877–8339 or via e-mail at "josullivan@gp.usbr.gov" or jim.d.bowen@usace.army.mil. Smoking will be prohibited in the hearing room and surrounding area.

Dated: March 16, 2000.

Fred R. Ore,

Area Manager, Nebraska-Kansas Area Office.

[FR Doc. 00–7055 Filed 3–21–00; 8:45 am]

BILLING CODE 4310–94–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Bay-Delta Advisory Council Meeting

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The Bay-Delta Advisory Council (BDAC) will meet on April 13, 2000 to discuss CALFED Preferred Program Alternative Recommendation, Governance, Water Management Strategy, Ecosystem Restoration and Updates. These meetings are open to the public. Interested persons may make oral statements to BDAC, or may file written statements for consideration.

DATES: The BDAC meeting will be held from 9 a.m. to 5 p.m. on Thursday, April 13, 2000.

ADDRESSES: The BDAC will meet at the Sterling Hotel Ballroom, 1300 H Street, Sacramento, CA (916) 448–1300.

FOR FURTHER INFORMATION CONTACT: Eugenia Laychak, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. A group of citizen advisors representing California's agricultural, environmental, urban, business, fishing, and other interests who have a stake in finding long-term solutions for the problems affecting the Bay-Delta system has been chartered under the Federal Advisory Committee Act (FACA). The BDAC provides advice to CALFED on the program mission, problems to be addressed, and objectives for the Program. BDAC provides a forum to help ensure public participation, and will review reports and other materials prepared by CALFED staff.

Minutes of the meeting will be maintained by the Program, Suite 1155, 1416 Ninth Street, Sacramento, CA 95814, and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: March 16, 2000.

Lester A. Snow,

Regional Director, Mid-Pacific Region.

[FR Doc. 00–7054 Filed 3–21–00; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Investigation No. 731–1TA–856 (Final)

Ammonium Nitrate from Russia

AGENCY: International Trade Commission.

ACTION: Revised schedule for the subject investigation.

EFFECTIVE DATE: March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Karen Taylor (202–708–4101), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION: On January 7, 2000, the Commission established a schedule for the conduct of the final phase of the subject investigation (65 FR 2643. January 18, 2000). On March 1, 2000, the Commission published a notice in the **Federal Register** revising this schedule (65 FR 11080). This revised schedule provided for a public hearing to be held on May 24, 2000.

The Commission now is revising the date of the hearing to May 25, 2000; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. No other scheduled dates relative to this investigation are being revised.

For further information concerning this investigation see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: March 15, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7078 Filed 3–21–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–539–C, E and F (Review)]

Uranium from Russia, Ukraine and Uzbekistan

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject 5-year reviews.

EFFECTIVE DATE: March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On January 14, 2000, the Commission established a schedule for the conduct of the subject 5-year reviews (**Federal Register** 65 FR 3737, January 24, 2000). The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B), and is hereby revising its schedule.

The Commission's new schedule for the reviews is as follows: requests to appear at the hearing must be filed with the Secretary to the Commission not later than June 2, 2000; the prehearing conference will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 7, 2000; the prehearing staff report will be placed in the nonpublic record on May 25, 2000; the deadline for filing prehearing briefs is June 5, 2000; the hearing will be held at the U.S. International Trade Commission Building at 9:30 a.m. on June 13, 2000; the deadline for filing posthearing briefs is June 22, 2000; the Commission will make its final release of information on July 14, 2000; and final party comments are due on July 18.

For further information concerning the reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

By order of the Commission.

Issued: March 15, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7077 Filed 3–21–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Security Procedures for Persons Delivering/Picking Up Packages and Documents

AGENCY: United States International Trade Commission.

ACTION: Security Procedures—Persons Delivering/Picking Up Packages and Documents.

SUMMARY: Effective immediately, all persons delivering and picking up packages and documents to USITC offices and employees must report to the mailroom, room 119 or the Office of the Secretary, suite 112.

Between the hours of 8:45 a.m. to 5:15 p.m., Monday through Friday, excluding weekends, holidays, and other days in which the agency is closed, such persons are ONLY allowed to deliver packages and documents to the mailroom, room 119 and the Office of the Secretary, suite 112.

During workdays prior to 8:45 a.m. and after 5:15 p.m. and all hours on weekends, holidays and other days in which the agency is closed, such persons will report to the guards desk in the lobby. The guard will call the intended recipient and request that they come to the main lobby and pick up the delivered material. If the guard's calls are not answered, the guard will leave a voice mail message stating that a package has been left in the USITC depository box located on the first floor center stairwell.

EFFECTIVE DATE: March 16, 2000.

FOR FURTHER INFORMATION CONTACT: Jonathan Brown (202–205–2745), Office of Facilities Management, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

Issued: March 16, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7079 Filed 3–21–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

[F.C.S.C. Meeting Notice No. 1–00]

Sunshine Act Meeting

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504) and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time: Monday, April 3, 2000, 9:30 am.

Subject Matter: Consideration of Proposed Decisions on claims against Albania.

Status: Open.

All meetings are held at the Foreign Claims Settlement Commission, 600 E Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe an open meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 600 E Street, NW., Room 6002, Washington, DC 20579. Telephone: (202) 616–6988.

Dated at Washington, DC, March 20, 2000.

David E. Bradley,

Chief Counsel.

[FR Doc. 00–7234 Filed 3–20–00; 2:19 pm]

BILLING CODE 4410–BA–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; Application for certificate of citizenship.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 22, 2000.

Written comments and suggestion from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *Title of the form collection:* Application for Certificate of Citizenship.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–600. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This form is provided by the Service as a uniform format for obtaining essential data necessary to determine the applicant's eligibility for the requested immigration benefit.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 52,113 responses at 1 hour response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 52,113 annual burden hours.

If you have additional comments, suggestions or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW, Washington, DC 20530.

Dated: March 15, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–7080 Filed 3–21–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; Application for certificate of citizenship in behalf of an adopted child.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 22, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *Title of the form/collection:* Application for Certificate of Citizenship in Behalf of an Adopted Child.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–643. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. This information collection allows United States citizen parents to apply for a certificate of citizenship on behalf of their adopted alien children.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 12,390 responses at 1 hour per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 12,390 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Mr. Roberts B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW, Washington DC 20530.

Dated: March 16, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–7081 Filed 3–21–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of information collection under review; Affidavit of Support.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 22, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of information collection:* Extension of currently approved collection.

(2) *Title of the form collection:* Affidavit of Support.

(3) *Agency from number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–134. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information collected is used to determine whether the applicant for benefit will become a public charge if admitted to the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 44,000 responses at 20 minutes (.333) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 14,652 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard S. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street NW, Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated

public burden and associated response time may also be directed by Mr. Richard A. Sloan.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street NW, Washington, DC 20530.

Dated: March 16, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–7082 Filed 3–21–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request.

ACTION: Notice of information collection under review; Application to preserve residence for naturalization.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until [Insert date of the 60th day from the date that this notice is published in the Federal Register].

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application to Preserve Residence for Naturalization.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form N–470. Office of Naturalization Operations, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or households. The information furnished on this form will be used to determine whether an alien who intends to be absent from the United States for a period of one year or more is eligible to preserve residence for naturalization purposes.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 375 responses at 15 minutes (.25) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 94 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 16, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–7083 Filed 3–21–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 3, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 3, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue. N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 14th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX

[Petitions instituted on 02/14/2000]

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,327	Energy Knits (Co.)	Denver, PA	02/03/2000	Greige Knitted Fabrics.
37,328	Thaw Corporation (Co.)	Wenatchee, WA	01/28/2000	Fleece Outerwear and Thermal Underwear.
37,329	Crown Yarn (UNITE)	So. Attleboro, MA	02/02/2000	Dyed Yarn.
37,330	Cadillac Curtain Corp. (Co.)	Dyer, TN	02/02/2000	Swag Sets.
37,331	Vesuvius Premier (USWA)	Washington, PA	01/31/2000	Firebrick for Industrial Furnaces.
37,332	Shelby Yard (Co.)	Shelby, NC	01/25/2000	Synthetic and Cotton Spun Yarns.
37,333	S. Bent and Brothers (IUE)	Gardner, MA	01/26/2000	Wooden Chairs, Tables.
37,334	Calgon Corporation (PACE)	Pasadena, TX	02/01/2000	Water Treating Chemicals.
37,335	Calvin Klein (UNITE)	New York, NY	02/01/2000	Ladies' Sportswear.
37,336	ISA Cutting Room Service (UNITE)	El Paso, TX	02/04/2000	Pants and Slacks.
37,337	G and M Cutting Room (UNITE)	El Paso, TX	02/03/2000	Patterns—Jeans and Pants.
37,338	Johnstown Knitting Mill (Co.)	Johnstown, NY	02/08/2000	Men, Women and Children's Activewear.
37,339	Cominco Ltd. (Co.)	Riddle, OR	01/26/2000	Ferronickel.
37,340	Alltex Laminating Corp. (Co.)	Mt. Vernon, NY	01/19/2000	Process Synthetic Knitted Fabrics.
37,341A	Komag, Inc (Comp)	Santa Clara, CA	01/19/2000	Disks for Computer Disk Drivers.
37,341	Komag, Inc. (Co.)	San Jose, CA	01/19/2000	Disks for Computer Disk Drivers.
37,342	Assemble USA (Wkrs)	Marion, MO	02/03/2000	Coaster Cards.
37,343	Ro An Jewelry Co., Inc (Wkrs)	Johnston, RI	02/02/2000	Costume Jewelry.
37,344	Monoa Wire Corp (Wkrs)	Greenwood, MS	01/25/2000	Wire Hamesses.
37,345	Sause Brothers (Wkrs)	Coos Bay, OR	01/11/2000	Repair Ocean-Going Hauling Vessels.
37,346	Enaid Sportswear, Inc (Wkrs)	New York, NY	01/27/2000	Sportswear and Skirts.
37,347	Devro Tee Pak, Inc (Wkrs)	Danville, IL	01/29/2000	Plastic and Cellulose Meat Casings.
37,348	McQuay International (Wkrs)	Staunton, VA	01/27/2000	Industrial Air Conditioning Equipment.
37,349	RNV Apparel (Wkrs)	Shade Gap, PA	02/01/2000	Garments.
37,350	Scotts Hill Leisurewear (Wkrs)	Scotts Hill, TN	01/26/2000	Ladies' Robes and Loungewear.
37,351	B. Braun Medical, Inc (Wkrs)	St. Clair, PA	02/03/2000	Design I.V. Sets.
37,352	Cranston Print Works (Co.)	Cranston, RI	01/26/2000	Provides Printed Cloth Sampling.
37,353	Danskin, Inc (Wkrs)	New York, NY	02/01/2000	Women's Tights, Leotards, Bra Tops.
37,354	ITW Signode Metals (Wkrs)	Weirton, WV	02/02/2000	Steel Strapping and Metal Seals.
37,355	Medtronic Perfusion (Wkrs)	Minneapolis, MN	01/28/2000	Arterial Filter.
37,356	U.S. Electrical Motors (Wkrs)	Philadelphia, MS	01/31/2000	Electrical Motors.

[FR Doc. 00–7121 Filed 3–21–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,472]

Tony Lama Boot Company, Justin Boot Company/Justin Management Company, El Paso, TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 11, 1999 applicable to all workers of Tony Lama Boot Company located in El Paso, Texas. The notice was published in the **Federal Register** on April 6, 1999 (64 FR 16753).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of boots. New information shows that some workers separated from employment at Tony Lama Boot Company had their wages reported under a separate unemployment insurance (UI) tax account for Justin Boot Company/Justin Management Company.

The intent of the Department's certification is to include all workers of Tony Lama Boot Company who were adversely affected by increased imports.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–35,472 is hereby issued as follows:

All workers of Tony Lama Boot Company, Justin Boot Company/Justin Management Company, El Paso, Texas who became totally or partially separated from employment on or after December 21, 1997 through March 11, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C. this 14th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7120 Filed 3–21–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Petition for Trade Adjustment Assistance

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995

(PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed extension of the information collection of the Petition for Trade Adjustment Assistance, ETA 8560, and its Spanish translation, Solicitud De Asistencia Para Ajuste, ETA 8559.

A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice

DATES: Written comments must be submitted on or before May 22, 2000. Written comments should evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

ADDRESSES: Edward A. Tomchick, Division of Trade Adjustment Assistance, Employment and Training Administration, Department of Labor, Room C–4318, 200 Constitution Avenue, NW., Washington, DC 20210, 202–219–5555 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Section 221 (a) of Title II, Chapter 2 of the Trade Act of 1974, as amended, authorizes the Secretary of Labor to accept petitions for certification of eligibility to apply for adjustment assistance. The petitions may be filed by workers or their certified or recognized union or duly authorized representative. ETA Form 8560, Petition for Trade Adjustment Assistance, and its Spanish translation, ETA Form 8559, Solicitud De Asistencia Para Ajuste, establish a format which may be used for filing such petitions.

II. Current Actions

This is a request for OMB approval under [the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(A)] for an extension of collection of information previously approved and assigned OMB Control No. 1205–0192. There is no change in burden.

Type of Review: Extension without change.

Agency: Employment and Training Administration, Labor.

Title: Petition for Trade Adjustment Assistance; Solicitud De Asistencia Para Ajuste.

OMB Number: 1205–0192.

Frequency: On occasion.

Affected Public: Individuals or households.

Number of Respondents: Estimated 1,400.

Estimated Time Per Respondent: 15 minutes per response.

Total Estimated Cost: $1,750.

Total Burden Hours: 350.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintaining): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 15, 2000.

Edward A. Tomchick,

Director, Division of Trade Adjustment Assistance.

[FR Doc. 00–7115 Filed 3–21–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of a Change in Status of an Extended Benefit (EB) Period for Alaska

This notice announces a change in benefit period eligibility under the EB Program for Alaska.

SUMMARY: The following change has occurred since the publication of the last notice regarding the State's EB status:

- February 27, 2000—Alaska triggered "on" EB. Alaska's 13-week insured unemployment rate rose above the 6.0 percent threshold necessary to be triggered "on" to EB for the week ending February 12, 2000.

Information for Claimants

The duration of benefits payable in the EB Program, and the terms and conditions on which they are payable, are governed by the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and the operating instructions issued to the States by the U.S. Department of Labor. In the case of a State beginning an EB period, the State employment security agency will furnish a written notice of potential entitlement to each individual who has exhausted all rights to regular benefits and is potentially eligible for EB (20 CFR 15.13(c)(1)).

Persons who believe they may be entitled to EB, or who wish to inquire about their rights under the program, should contact the nearest State employment service office or unemployment compensation claims office in their locality.

Signed at Washington, DC on March 9, 2000.

Raymond Bramucci,

Assistant Secretary of Labor for Employment and Training.

[FR Doc. 00–7123 Filed 3–21–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02634]

Condor DC Power Supplies, Inc., The Todd Products Group, Brentwood, New York; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on November 9, 1998, applicable to all workers of Todd Products Corporation located in Brentwood, New York. The notice was published in the **Federal Register** on December 4, 1998 (63 FR 67141).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electronic power supply devices. New information received from the company shows that in July, 1999, Condor DC Power Supplies, Inc., purchased Todd Products Corporation and became know as Condor DC Power Supplies, Inc., The Todd Products Group. Information also shows that workers separated from employment at Todd Products Corporation had their wages reported under a separate unemployment insurance (UI) tax account for Condor DC Power Supplies, Inc., The Todd Products Group.

Accordingly, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Todd Products Corporation who were adversely affected by the shift of production to Mexico.

The amended notice applicable to NAFTA—02634 is hereby issued as follows:

"All workers of Condor DC Power Supplies, Inc., The Todd Products Group, Brentwood, New York who became totally or partially separated from employment on or after September 15, 1997 through November 9, 2000 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974."

Signed at Washington, DC this 10th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7116 Filed 3–21–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–03325]

Levi Strauss & Company; Amended Certification Regarding Eligibility To Apply for NAFTA Transitional Adjustment Assistance

Texas,
- NAFTA–03325A, Harlingen Plant and Texas Commission for the Blind, Harlingen, TX 78550
- NAFTA–03325B, Cypress Plant and Judy's Cafeteria, El Paso, TX 79905
- NAFTA–03325C, McAllen Plant and Texas Commission for the Blind, McAllen, TX 78504
- NAFTA–03325H, Kastrin Plant, including El Paso Digital Imaging Graphics of the El Paso Regional Office, El Paso, TX 79907
- NAFTA–03325I, Brownsville Plant, Brownsville, TX 78521
- NAFTA–03325J, San Benito Plant, San Benito, TX 78586
- NAFTA–03325K, San Antonio Sewing Plant, San Antonio, TX 78227
- NAFTA–03325L, San Antonio Finishing Plant including San Antonio Credit Union, San Antonio Finishing Plant, San Antonio, TX 78227
- NAFTA–03325P, Richardson Technology Center, Richardson, TX 75081
- NAFTA–03325Q, Westlake Data Center, Westlake, TX 76262
- NAFTA–03325R, Dallas Customer Fulfillment Regional Office, Dallas, TX 75252
- NAFTA–03325Z, Amarillo Finishing Facility, Amarillo, TX 79107

Tennessee
- NAFTA–03325D, Johnson City Plant including TRI-Cities Maid (Gary, TN), Johnson City, TN 37605
- NAFTA–03325E, Mountain City Plant including Diversco (Spartanburg, SC) and Aramark (Mountain City, TN), Mountain City, TN 37683
- NAFTA–03325M, Powell Plant, Powell, TN
- NAFTA–03325S, Knoxville Regional Office including Global Fulfillment Services Center and Knoxville Digital Imaging Graphics Department, 1700 Cherry Street, Knoxville, TN 37917

California
- NAFTA–03325N, Valencia Sweing Facility, San Francisco, CA 94103
- NAFTA–03325T, Levi Strauss & Company Corporate Headquarters, San Francisco, CA 94111

Georgia
- NAFTA–033250, Blue Ridge Plant, Blue Ridge, GA 31503

Florida
- NAFTA–03325U, Weston Customer Fulfillment Regional Office, Weston, FL 33331

Kentucky
- NAFTA–03325V, Florence Customer Service Center, Florence, KY 41042
- NAFTA–03325W, Hebron Customer Service Center, Hebron, KY 41048

Mississippi
- NAFTA–03325X, Canton Customer Service Center, Canton, MS 39046

Nevada
- NAFTA–03325Y, Sky Harbor CSC, Henderson, NV 89012

In accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974, as amended (19 USC 2273), the Department of Labor issued a Certification of Eligibility to Apply for NAFTA Transitional Adjustment Assistance on August 7, 1997, applicable to workers of Levi Strauss and Company, located in El Paso, Texas. The notice was published in the **Federal Register** on September 29, 1999 (64 FR 52543). In addition, the Department denied eligibility for an additional eight Levi Strauss & Company facilities in Texas, Tennessee, and California because there had not been threats of employment loss at those facilities. The notice was also published in the **Federal Register** on September 29, 1999 (64 FR 52542).

The company requested that the seven of the eight facilities (NAFTA–03325H through NAFTA–03325L, and NAFTA–03325N and O) which were previously denied be certified because of reduced work hours at each facility and provided information to indicate that workers had their work hours reduced by at least 20 percent. In addition, the company requested that contractors working full-time at all of the facilities also be included in the certification. The company also requested that an additional eleven facilities and work sites in seven states (Texas, Tennessee, California, Florida, Kentucky, Mississippi, and Nevada) be included as a result of additional layoff announcements.

The intent of the Department's certification is to include all workers of Levi Strauss and Company, including full time contractors working at the identified facilities, who were adversely affected by increased imports of denim and Docker apparel from Mexico.

The amended notice applicable to NAFTA–03325 is hereby issued as follows:

All workers of the following Levi Strauss & Company facilities who became totally or partially separated from employment on or after August 8, 1999 through August 11, 2001 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974:

NAFTA–03325 Wichita Falls Plant, Wichita Falls, Texas 76303
NAFTA–03325A Harlingen Plant, including Texas Commission for the Blind, Harlingen, Texas 78550
NAFTA–03325B Cypress Plant, including Judy's Cafeteria, El Paso, Texas 79905
NAFTA–03325C McAllen Plant, including Texas Commission for the Blind, McAllen, Texas 78504
NAFTA–03325D Johnson City Plant, including Tri-Cities Maid (Gary, TN), Johnson City, Tennessee 37605
NAFTA–03325D Johnson City Plant, including Tri-Cities Maid (Gary, TN), Johnson City, Tennessee 37605
NAFTA–03325E Mountain City Plan, including Diversco (Spartanburg, SC) and Aramark Mountain City, Tennessee 37683
NAFTA–03325F Warsaw Plant, Warsaw, Virginia 22572
NAFTA–03325G Valdosta Plant, Valdosta, Georgia 31601
NAFTA–03325H Kastrin Plant, Kastrin, Texas 79907
NAFTA–03325I Brownsville Plant, Brownsville, Texas 78521
NAFTA–03325J San Benito Plant, San Benito, Texas 78586
NAFTA–03325K San Antonio Sewing Plant, San Antonio, Texas 78227
NAFTA–03325L San Antonio Finishing Plant, including San Antonio Credit Union, San Antonio Finishing Plant, San Antonio, Texas 78227
NAFTA–03325M Powell Plant, Powell, Tennessee
NAFTA–03325N Valencia Sewing Facility, San Francisco, California 94103
NAFTA–03325O Blue Ridge Plant, Blue Ridge, Georgia 31503
NAFTA–03325P Richardson Technology Center, Richardson, Texas 75081
NAFTA–03325Q Westlake Data Center, Westlake, Texas 76262
NAFTA–03325R Dallas Customer Fulfillment Regional Office, Dallas, Texas 75252
NAFTA–03325S Knoxville Regional Office, including Global Fulfillment Services Center and Knoxville Digital Imaging Graphics Department, 1700 Cherry Street, Knoxville, Tennessee 37917

NAFTA–03325T Levi Strauss & Company Corporate Headquarters, San Francisco, California 94111
NAFTA–03325U Weston Customer Fulfillment Regional Office, Weston, Florida 33331
NAFTA–03325V Florence Customer Service Center, Florence, Kentucky 41042
NAFTA–03325W Hebron Customer Service Center, Hebron, Kentucky 41048
NAFTA–03325X Canton Customer Service Center, Canton, Mississippi 39046
NAFTA–03325Y Sky Harbor CSC, Henderson, Nevada 89012
NAFTA–03325Z Amarillo Finishing Facility, Amarillo, Texas 79107.

Signed in Washington, DC this 1st day of February 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7117 Filed 3–21–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA—02447]

Nocona Boot Company, Justin Boot Company/Justin Management Company, Nocona, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on June 26, 1998, applicable to workers of Nocona Boot Company, Nocona, Texas. The notice was published in the **Federal Register** on July 31, 1998 (63 FR 40936).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of western boots. Findings show that some workers separated from employment Nocona Boot Company had their wages reported under a separate unemployment insurance (UI) tax account for Justin Boot Company/Justin Management Company.

The intent of the Department's certification is to include all workers of Nocona Boot Company who were adversely affected by increased imports from Mexico.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to NAFTA–02447 is hereby issued as follows:

All workers of Nocona Boot Company, Justin Boot Company/Justin Management Company, Nocona, Texas who became totally or partially separated from employment on or after April 25, 1997 through June 26, 2000 are eligible to apply for NAFTA—TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. this 14th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7119 Filed 3–21–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3624]

Ritvik Holdings, Inc., Lakeville, MA; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on December 16, 1999, in response to a worker petition which was filed on behalf of workers at Ritvik Holdings, Inc., Lakeville, Massachusetts.

The Corporation for Business, Work, and Learning (CBWL Trade Unit) of Boston, Massachusetts has determined that the subject firm is a Canadian corporation, located in Canada and doing business in Canada, and therefor its workers are not eligible for NAFTA Transitional Adjustment Assistance under the Trade Act of 1974.

Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 14th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7122 Filed 3–21–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–02821]

Tony Lama Boot Company, Justin Boot Company, Justin Management Company, El Paso, TX; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, title II, of the Trade Act of 1974 (19 U.S.C. 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on March 11, 1999, applicable to all workers of Tony Lama Boot Company located in El Paso, Texas. The notice was published in the **Federal Register** on April 27, 1999 (64 FR 22649).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of boots. New information shows that some workers separated from employment at Tony Lama Boot Company had their wages reported under a separate unemployment insurance (UI) tax account for Justin Boot Company, Justin Management Company.

Based on these findings, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of Tony Lama Boot Company who were adversely affected by imports from Mexico.

The amended notice applicable to NAFTA–02821 is hereby issued as follows:

All workers of Tony Lama Boot Company, Justin Boot Company, Justin Management Company, El Paso, Texas who became totally or partially separated from employment on or after December 28, 1997 through March 11, 201 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, D.C. This 14th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7118 Filed 3–21–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D–10720, et al.]

Proposed Exemptions: Standard & Poor's (S&P), Standard and Poor's Investment Advisory Service, LLC (SPIAS)

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and requests for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request; and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, D.C. 20210. Attention: Application No.____, stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5638, 200 Constitution Avenue, NW, Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978, 5 U.S.C. App. 1 (1996), transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Standard & Poor's (S&P), Standard and Poor's Investment Advisory Services, LLC (SPIAS), Located in New York, New York

[Exemption Application No.: D–10720]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (F) of the Code, shall not apply to the provision of asset allocation services (the Service) by SPIAS to plan participants and the receipt of fees by SPIAS from Service Providers in connection with the provision of such asset allocation services, provided that the following conditions are met.

I. General Conditions

A. The retention of SPIAS to provide the Service will be expressly authorized in writing by an independent fiduciary of each Plan.

B. SPIAS shall provide the independent fiduciary of each Plan with the following, in writing:

(1) Prior to authorization, a complete description of the Service and disclosures of all fees and expenses associated with the Service.

(2) Any other reasonably available information regarding the Service that the independent fiduciary requests.

(3) A contract for the provision of the Service which defines the relationship between SPIAS, the Service Providers and the Plan sponsor, and the obligations thereunder. Such contract shall be accompanied by a termination form with instructions on the use of the form. The termination form must expressly state that a Plan may terminate its participation in the Service without penalty at any time. However, a Plan which terminates its participation in the Service before the expiration of the contract will pay its pro-rata share of the fees that it would otherwise owe for the Service under the contract and, if applicable, any direct costs actually incurred by SPIAS which would have been recovered from the Plan by SPIAS but for the termination of the contract, including any direct setup expenses not previously recovered. Thereafter, the termination form shall be provided no less than annually.

(4) At least 45 days prior to the implementation of any material change to the Service or increase in fees or expenses charged for the Service, notification of the change and an explanation of the nature and the amount of the change in the Service or increase in fees or expenses.

(5) A copy of the proposed and final exemption, if granted, as published in the **Federal Register**.

(6) An annual report of Plan activity which summarizes the performance of the Service and asset allocation recommendations and provides a breakdown of all fees and expenses paid by the Plan or participants for the year. Such reports shall be provided no more than 45 days after the period to which it relates. Upon the independent fiduciary's or Plan sponsor's request, such report may be provided more frequently.

C. SPIAS will provide each Plan participant with the following:

(1) Written notice that the Service is available and provided by SPIAS, an entity independent of the Service Provider and the Plan sponsor.

(2) Prior to using the Service, full written disclosures that will include information about SPIAS and a description of the Service.

(3) Access to SPIAS's website or paper-based communications which will clearly indicate that the Plan participant is receiving the Service from SPIAS, and that SPIAS is independent of the Service Provider.

(4) A risk tolerance questionnaire which must be completed prior to utilization of the Service.

D. Any investment advice given to a Plan participant by SPIAS under the Service will be based solely on the responses provided by the Plan participants through the Service's interactive computer program or through a paper or telephone interview and will be based on the application of an objective methodology developed by S&P Financial Information Service (S&P FIS) and the S&P Investment Committee.

E. Any investment advice given to a Plan participant will be implemented

only at the express direction of the Plan participant.

F. The total fees paid to SPIAS and a Service Provider, in connection with the provision of the Service, by each Plan does not exceed "reasonable compensation" within the meaning of section 408(b)(2) of the Act.

G. The only fees which are payable to SPIAS in connection with the provision of the Service include, subject to negotiation, one or more of the following:

(1) An annual flat fee based on a fixed dollar amount per Plan participant for the Service. This fee may be paid by the Plan, Plan sponsor, Plan participant or the Service Provider.

(2) A technology licensing fee payable by the Service Provider in the first year that the Service is provided to a Plan. The fee will be a fixed dollar amount based on the number of Plan participants and beneficiaries contained on the Service Provider's record-keeping system. Each time the number of Plan participants and beneficiaries on the Service Provider's record-keeping system increases by 10%, an additional fixed dollar amount based on the increase in Plan participants and beneficiaries will be assessed and charged to the Service Provider for the new participants and beneficiaries (the Revised Technology Fee).

(3) For subsequent years, SPIAS will charge the Service Provider an annual technology maintenance fee equal to 20% of the technology licensing fee charged to the Service Provider in the first year plus 20% of the Revised Technology Fee.

(4) SPIAS will charge the Plan or Plan sponsor an Internet customization fee where a Plan sponsor contracts directly with SPIAS for the provision of the Service. This flat fee will be based on the time spent by SPIAS personnel on its customization of the Service for the particular Plan.

(5) For those Plan sponsors electing to receive a Plan analysis report, an annual flat fee based on a fixed dollar amount per Plan investment analysis report. This fee will be paid by the Plan sponsor or Service Provider.

H. No portion of any fee or other consideration payable by the Plans or the Plan sponsor to S&P or SPIAS in connection with the Service will be received or shared with a Service Provider.

I. Neither the fees charged nor the compensation received by SPIAS will be affected by the investment elections or the decisions made by the Plan participants and beneficiaries regarding investment of the assets in their accounts.

J. All dealings between the Service Provider and the Plans participating in the Service are on a basis no less favorable to the Plans than dealings with other investors of the Service Provider.

K. All asset allocations are reviewed and approved by the S&P Investment Policy Committee (IPC) before they are made available to the Plan.

L. No Service Provider will at any time own any interest, by vote or value in SPIAS, and neither SPIAS nor any affiliate will own any interest, by vote or value in a Service Provider.

M. The annual revenues derived by SPIAS from any one Service Provider shall not constitute more than 5% of the annual revenues of S&P FIS.

N. S&P will guarantee the payment of any liabilities of SPIAS that may arise by reason of a breach of a fiduciary duty described in section 404 of the Act or a violation of the prohibited transaction provisions in section 406 of the Act and 4975 of the Code.

O. SPIAS will maintain for a period of six years, the records necessary to enable the persons described in paragraph (P) of this section to determine whether the conditions of the exemption are met, including records of the recommendations made to Plan participants and beneficiaries and their investment choices, except that—

(1) A prohibited transaction will not be considered to have occurred if, due to circumstances beyond the control of SPIAS, the records are lost or destroyed prior to the end of the six year period.

(2) No party in interest, other than SPIAS shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or the taxes imposed by section 4975(a) and (b) of the Code if records are not maintained or not available for examination as required by this paragraph and paragraph P(1) below.

P. (1) Except as provided in subparagraph (2) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of Section 504 of the Act, the records referred to paragraph (O) of this section are unconditionally available at their customary location for examination during normal business hours by—

(a) Any duly authorized employee or representative of the Department of Labor, the Internal Revenue Service, or the Securities and Exchange Commission;

(b) Any fiduciary of a participating Plan or any duly authorized representative of such fiduciary;

(c) Any contributing employer to any participating Plan, any duly authorized representative of such employer or an employee organization whose members are participants and beneficiaries of a participating Plan; or

(d) Any Plan participant or beneficiary of any participating Plan or any duly authorized representative of such Plan participant or beneficiary.

(2) None of the persons described in paragraph (1)(b)–(d) of this paragraph (P) shall be authorized to examine trade secrets of SPIAS, or commercial or financial information which is privileged or confidential.

II. Definitions

A. The term "Service" means the asset allocation service provided by SPIAS to Plans which is accessed through computer software and other written communications in order to provide personalized recommendations to Plan participants regarding the allocation of their investments among the options offered under their Plan.

B. The term "Service Provider" means an entity that has been in the financial services business for at least three years, and during such period, has not been found liable or guilty by a court of law, or has not been a party to a settlement agreement with the IRS or the Department related to any matter concerning an employee benefit plan, and which is described in one of the following categories:

(1) A bank, savings and loan association, insurance company or registered investment adviser which meets the definition of a "qualified professional asset manager" (QPAM) set forth in section V(a) of Prohibited Transaction Exemption 84–14 (49 Fed. Reg. 9494 (Mar. 13, 1984), as corrected at 50 Fed. Reg. 41430 (Oct. 10, 1985) and in addition, has, as of the last day of its most recent fiscal year, total client assets under management and control in an amount not less than $250 million; or

(2) A broker dealer registered under the Securities Exchange Act of 1934, which has, as of the last day of its most recent fiscal year, $1 million in shareholders' or partners' equity, and total client assets under management and control in an amount not less than $250 million.

C. The term "independent fiduciary" means a Plan fiduciary which is independent of SPIAS and its affiliates and independent of the Service Provider and its affiliates.

D. The term "affiliate" includes:

(1) Any person directly or indirectly through one or more intermediaries, controlling, controlled by, or under common control with the person;

(2) Any officer, director, employee, relative, or partner in any such person and

(3) Any corporation or partnership of which such person is an officer, director partner or employee.

E. The term "control" means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Summary of Facts and Representations

1. McGraw-Hill Companies (McGraw-Hill) is a New York Stock Exchange registered company with a market capitalization of approximately $11 billion. Standard & Poors (S&P), a division of the McGraw-Hill Companies has provided the public with investment information and guidance for more than 130 years. Investors rely on Standard & Poor's Marketscope, Stock Reports, Stock Guide, Industry Surveys and other services for independent and accurate information. S&P is comprised of S&P Financial Information Services (S&P FIS) and S&P's Ratings Services. In 1998, S&P Ratings Services and S&P FIS had, in the aggregate, revenues of approximately $1.1 billion.

2. S&P Ratings Services provides timely, objective credit analysis and information, and has been rating conventional-term debt and general obligation corporate and municipal bonds since 1916. S&P Ratings Services serves more than 60 countries through a global office network staffed by local analysts from the world's major capital markets.

3. S&P FIS provides financial data, information and analysis on various domestic and foreign financial markets to individual investors, brokerage firms, investment advisors, money managers and other investment professionals. S&P FIS is also responsible for maintaining market indices such as the S&P 500 and provides various other products and services to the investment community.

4. McGraw-Hill established Standard & Poors Investment Advisory Services, LLC (SPIAS), a wholly-owned subsidiary in 1995. SPIAS was created as part of S&P FIS's expansion into the provision of personalized investment advice and related investment advisory activities, and is a registered investment adviser under the Investment Advisers Act of 1940. SPIAS furnishes a variety of services which can be broadly characterized as: (1) Internet-based personal advisory services; (2) advisory services aimed at enabling market professionals to provide services to retail clients; (3) asset allocation advisory services; (4) advisory consulting services; and (5) management of investment companies. The services that SPIAS operates include: S&P's Personal Wealth and S&P's Bank Investment Center. SPIAS has also been retained by the independent distributor of the product known as "WEBS" to provide investment and economic research describing prevailing international economic and currency related trends and their impact on investments in several countries.

SPIAS's income is included with S&P FIS for financial reporting purposes. In 1998, S&P FIS contributed approximately $600 million to McGraw-Hill's total $3.7 billion in revenues. Most employees of SPIAS are also employed by S&P FIS business units. To the extent that SPIAS's employees derive a portion of their compensation based on the financial performance of a business unit, the compensation is based on the overall performance of S&P FIS and or the relevant S&P FIS business unit.

5. The Applicant represents that the Service will be beneficial to Plan participants because the Service will integrate retirement planning recommendations and fund allocation recommendations, including current Plan savings, other retirement savings, personal retirement income goals, tolerance for risk, time horizon to retirement, and the fund choices specifically available in a participant's Plan.

The Applicant represents that the Service entails the provision of personalized asset allocation advice to Plan participants (see paragraph 7). Before a Plan's independent fiduciary may authorize the Plan's participation in the Service, SPIAS must provide the fiduciary with a complete description of the Service, written disclosures of all fees and expenses associated with the Service, and a written contract for the provision of the Service which defines the relationship between SPIAS, the Service Provider and the Plan sponsor and the obligations thereunder.[1] Such contract will be renewable annually and will include: (a) A provision under which the Plan shall have 45 days notice prior to implementation of any material change to the Service or any fee or expense increases in connection with the provision of the Service by SPIAS; and (b) a provision which states that a Plan may terminate its participation in the Service at any time without penalty. However, a Plan which terminates the Service before the expiration of the contract will be responsible for paying its pro-rata share of the fees otherwise owed under the contract as of the date of termination, and, if applicable, any direct costs actually incurred by SPIAS which would have been recovered from the Plan by SPIAS but for the termination of the contract, including any direct setup expenses not previously recovered. In addition, SPIAS shall provide such fiduciary with a copy of the proposed and the final exemption, if granted, as published in the **Federal Register**.

6. SPIAS will provide the Service either directly to Plan participants through an agreement with the Plan sponsor or through an agreement with the Service Providers sponsoring the investment vehicles offered to Plan participants.[2] Where the Service is contracted for directly with the Plan sponsor, SPIAS anticipates that these Plan sponsors will be predominately Fortune 500 companies, and SPIAS will customize the Service for each Plan. In many instances, SPIAS will need to coordinate with the Plan's record-keeper or another service provider in offering the Service to a Plan's participants.

[1] In this regard, the Department notes that the fiduciary responsibility provisions of the Act apply to the decision of a Plan's independent fiduciary to authorize the Plan's participation in the Service. Section 404 of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries. Accordingly, the Plan's independent fiduciary must act prudently when deciding to participate in the Service, and in considering the fees associated with the Service. The Department expects the Plan's independent fiduciary, prior to authorizing the Plan's participation in the Service, to understand fully the operation of the Service, and the compensation paid thereunder, following disclosure by SPIAS of all relevant information pertaining to the Service.

[2] The provision of investment advisory services to plans would be exempt from the prohibitions of section 406(a) of ERISA if the conditions of section 408(b)(2) are met. Section 2550.408b–2(e) of the Department's regulations provides that section 408(b)(2) of the Act exempts from the prohibitions of section 406(a), payment by a Plan to a party in interest, including a fiduciary for * * * any service (or combination of services) if (1) such * * * service is necessary for the establishment or operation of the Plan; (2) such * * * service is furnished under a contract or arrangement which is reasonable; and (3) no more than reasonable compensation is paid for such * * * service. The regulation also provides that section 408(b)(2) does not contain an exemption from acts described in section 406(b) even if such act occurs in connection with a provision of services that is exempt under section 408(b)(2). Section 2550.408b–2(e)(1) further provides that a fiduciary does not engage in an act described in section 406(b)(1) of the Act if the fiduciary does not use any of the authority, control or responsibility which makes such person a fiduciary to cause the Plan to pay additional fees for a service furnished by such fiduciary or to pay a fee for a service furnished by a person in which the fiduciary has an interest which may affect the exercise of such fiduciary's best judgement as a fiduciary. In general, whether a violation of section 406(b) occurs during the operation of an investment advisory program is an inherently factual matter. See Advisory Opinion 84–04 (January 4, 1984).

Such entities will be independent of SPIAS. All fees for the Service will be paid by the Plan sponsor or the Plan to SPIAS.

In the second situation, SPIAS will provide the Service to Plan participants pursuant to a contract that the Plan sponsor enters into with a Service Provider. In these instances, the fees for the Service will be based on a flat dollar amount per participant which will be paid to SPIAS by the Service Provider, the Plan, Plan sponsor or Plan participants. In addition, SPIAS will enter into a written agreement with the Plan sponsor defining the relationship of the Plan sponsor, SPIAS and the Service Provider.

7. The Applicant states that, once a Plan fiduciary has authorized its Plan's participation in the Service, Plan participants will receive notice that the Service is available and provided by SPIAS, an entity which is independent of the Service Provider. This notice will also state that when using the Service, a Plan participant is receiving services separate and apart from those provided by the Service Provider. Prior to utilizing the Service, Plan participants will receive full disclosures about SPIAS and the Service.

Plan participants will access the Service through the Internet, by written materials or by telephone interview. Each Plan participant will receive a risk tolerance questionnaire which must be completed prior to utilization of the Service. A Plan participant will answer a questionnaire which consists of ten to fifteen questions with three or four multiple choice answers per question. These questions enable a Plan participant to quantify his or her time horizon and risk tolerance. This questionnaire has been developed by S&P over the last five years based on actual use in 401(k) plans and similar investment programs. For those Plan participants who elect to receive their advice in paper form, the questionnaire will be provided via the human resources department of the plan sponsor. If the plan sponsor elects to use a telephone voice response unit, Plan participants will receive their questionnaire over the phone. The paper-based and telephone versions of the questionnaire will be scored by the Plan participant by categorizing his/her answers (as discussed below).

If a Plan participant elects to receive his/her advice through the Internet, the Plan participant will first access a website provided by the Service Provider or the Plan sponsor. There will be an electronic link from the Plan sponsor's or Service Provider's website to SPIAS's website where the questionnaire and investment advice is housed. In certain situations, this data may be housed on servers owned and operated by the Service Provider. The Applicant represents that SPIAS will always retain sole control over the content of the Service and the advice contained therein. SPIAS will regularly monitor the contents of the Service and the advice contained therein to ensure that it remains the product of the objective methodology developed by S&P FIS and the S&P Investment Committee (discussed below). It will be apparent to the Plan participant that SPIAS is the sole-provider of such advice.

For those Plan participants using the Internet, the completed questionnaire is scored by computer. For those Plan participants using the paper based or telephone based questionnaires, the scoring is done by the Plan participants using materials and instructions provided by SPIAS. Based on the score, the Plan participant is categorized into one of six investment recommendations. Each recommendation contains a description of the investor profile associated with such recommendation which a Plan participant can review to see if he or she feels that he or she has been correctly classified.

The advice provided to a Plan participant through the Service may only be implemented if it is expressly authorized in writing by the Plan participant. Plan participants are advised that the investment advice is valid for one year and that they need to repeat the questionnaire process in future years in order to receive updated recommendations. In this regard, Plan participants are informed that if they experience major life changes, they may need to repeat the questionnaire process more often than once a year. In connection with the Plan sponsor's annual renewal of the Service, Plan participants are strongly encouraged by SPIAS to complete a new questionnaire. SPIAS has built in an annual reminder that will be sent to all Plan participants concerning the need for them to update their Plan investment allocations. Plan participants are also notified if SPIAS' recommendations change during the year, and notified of the possible need to update their Plan investment allocations.

The Applicant states that the advice provided to Plan participants will be based on the application of an objective methodology, developed by S&P FIS and the S&P Investment Committee, in accordance with generally accepted investment theories. SPIAS will apply this methodology to the investment options offered by a plan and to the participant's investor profile classification which is based on his responses to the questionnaire.

8. The Applicant represents that its role in performing the Service on behalf of a Plan, includes gathering information about the investment options offered in a particular Plan, and developing a recommended portfolio for each investor type. The Applicant states that the analysis is based on modern portfolio theory and related work in economics and finance. S&P and SPIAS use the concept of efficient portfolios in developing asset allocation recommendations. This concept is based on the premise that the only way to achieve higher returns is to accept more risk and the only way to reduce risk is to accept lower potential returns. SPIAS states that in any set of investments, there is always a group of efficient portfolios, and an investor who holds an inefficient portfolio can improve his or her situation by moving to an efficient one.

SPIAS states that some analysts use market indexes rather than specific investment options because there is historical data available for most widely used market indexes. While a long historic record is always welcome, SPIAS believes that it is usually more important to know how a specific investment performed over the last 3, 5 or 10 years rather than how the market index performed. Accordingly, SPIAS develops its recommendations using the specific investment options wherever possible because Plan participants will be investing in these funds, not in an index or other measure.

9. In order to evaluate a specific investment option, SPIAS requires that a minimum of three years of monthly total return data be available. If this data is not available, SPIAS will work with the Plan sponsor to identify alternative data to assist SPIAS in its analysis. However, if there is no reasonable applicable data, SPIAS will not include the investment option in its recommendations. SPIAS may, however, include discussions and analysis of the investment option and its characteristics in separate supplemental materials provided to Plan participants and the Plan sponsor as part of the Service.

S&P and SPIAS will use the following standards to evaluate the investment options offered by the Plans which might use the Service:

(A) Evaluation at the Plan Level:

(1) *Sufficient Number of Funds:* If a Plan has more than five investment options that meet the requirements for investment options described below, the Plan satisfies this requirement. If there are three, four or five investment options, S&P FIS and SPIAS will advise the Plan sponsor that consideration should be given to adding more investment options. If there are fewer than three acceptable investment options, S&P and SPIAS will decline to provide the Service to the Plan. If a Plan offers employer stock as an investment option, S&P and SPIAS will not consider this option in applying this test, nor in applying the other Plan level tests described in 2 and 3 below.

(2) *Diversity of Funds:* SPIAS's minimum building block for asset class coverage will be cash/bonds/stocks. This means that the minimal mix should include a money market fund, an investment grade bond fund and a diversified equity fund. A stable value fund or a GIC fund may be substituted for one of the fixed income funds. If these are present, S&P will permit a range of allocations where the lowest volatility allocation is equivalent to investing 90% of the funds in the money market fund and where the highest volatility allocation is equivalent to investing 90% of the funds in equities. If this range cannot be achieved, S&P and SPIAS will advise the Plan sponsor that adjustments should be made to widen the range of available allocations.

(3) *Limits on Timing and Investment Transfers:* The only limits on a Plan participant's ability to transfer funds among investment options should be those necessary to protect all Plan participants from excessive Plan expenses. In particular, Plan participants must be able to move funds from one investment option to another at least four times a year on no more than ten business days notice. If this is not possible, S&P and SPIAS will decline to provide the Service to the Plan. Second, there should be no restrictions on transferring funds from an investment option in one asset class to an investment option in another asset class. If this is not permitted, S&P and SPIAS will advise the Plan sponsor that these rules should be reviewed, and will decline to provide the Service under such circumstances.

(B) *Evaluation At the Fund Level:* S&P and SPIAS will review each fund in terms of the investment's return history, prospectus and size as described below.

(1) SPIAS will require three years of monthly total return history. If the investment option is a private fund with quarterly data, then five years of history will be required. All fund performances will be calculated according to industry standard procedures prescribed by the National Association of Securities Dealers and the Securities and Exchange Commission. Private fund performance will be calculated according to these procedures or according to Association for Investment Management and Research guidelines. Private funds with less than this amount of historical data will not be considered by S&P and SPIAS. If the investment option is an "index fund," SPIAS may accept less performance data provided that sufficient information on fees is available to use the return data on the index to develop pro forma data on the fund. If the index is less than three years old, the index data cannot be used.

(2) A prospectus or written investment policy statement must be available to S&P and SPIAS.

(3) An investment fund's total net assets must be greater than $25 million for all share classes of the fund combined. If the investment option is a private fund offered by a money management firm, the firm must have at least $25 million in assets under management. Further, the firm must be at least three years old.

(4) If a Plan includes synthetic funds, such as a so-called "funds of funds," that do not have the requisite performance history, S&P and SPIAS would apply its standard criteria as described above with respect to each fund component. Each fund component would have to satisfy the criteria in order for S&P and SPIAS to provide advice with respect to such synthetic fund.

(5) If the Plan includes employer stock, the stock may be included in the recommended allocations, subject to the policy on investing in employer stock approved by the IPC.

All data is entered into a computer program developed by SPIAS that estimates the efficient frontier and calculates various statistics that describe alternative asset allocations. Based on the results of this computer-based analysis, SPIAS will develop a series of at least six recommendations covering a range of risks.[3] In developing these allocations, the general guidelines that SPIAS uses include the following: Higher risk funds, such as equity sector funds, international funds or small cap stock funds are usually limited to the two or three riskiest portfolios. Employer stock may only be included in the riskiest or two riskiest portfolios, and may not have an allocation greater than 20% in any portfolio. SPIAS will not include employer stock if S&P's separately published recommendation on the stock has consistently been "avoid or sell."

If an investment option's performance declines or fails to meet expectations since the date of SPIAS's prior review, this will be recognized and considered by SPIAS in its updated annual review. As part of its annual review, SPIAS will initiate discussions with the Plan sponsor about replacing or adding an investment option if the circumstances warrant. If a Plan sponsor chooses not to drop an investment option or add options, SPIAS will not include the poorly performing investment option in its asset allocation advice or may decline to continue providing the Service to the Plan.

10. The Applicant represents that S&P's experience and expertise will be an integral part of the Service, and S&P will stand behind the investment advice provided by SPIAS through the Service, and will guarantee the payment of any liability of SPIAS that may arise by reason of a breach by SPIAS of a fiduciary duty described in section 404 of the Act or a violation of the prohibited transaction provisions of section 406 of the Act or section 4975 of the Code. The content of the advice contained in the Service is produced by S&P FIS's equity analytical department, and as described below, reviewed by the S&P Investment Policy Committee (IPC), (see representation number 11). The equity analytical department and the IPC operate independently of SPIAS and produce investment recommendations independent of any business relationships between S&P and its clients.

11. All asset allocation recommendations are reviewed by the IPC. The IPC is a senior committee responsible for oversight on all investment recommendations provided through all of S&P's products and services. Membership on the IPC includes the Senior Vice President for the S&P Investment Advisory Services unit (who is also the President of SPIAS), the Director of Equity Research, the Chief Economist, the Senior Sector Strategist, the Chief Technical Analyst, the Editor of S&P's *The Outlook* and senior analysts from the Portfolio Services and Quantitative Services departments of S&P. The IPC meets weekly to discuss current financial market conditions and the economy. Asset allocation plans are reviewed at the regular weekly meeting. Only after the analysis is completed and the recommendations have been reviewed by the IPC, or a subcommittee thereof, will the recommendations be considered as final and delivered to the Plan.

[3] Each Plan participant who completes the risk-tolerance questionnaire will be categorized, based on his/her score, into one of these six recommendations as discussed in paragraph 7.

Once the IPC completes its analysis and review, the recommendations are delivered to the Plan, and the Plan-specific asset allocation analysis is considered valid for one year. After a year, SPIAS will review and re-do the analysis and provide the Plan sponsor with revised recommendations. If the Plan sponsor does not continue its relationship with SPIAS, the recommendations will be withdrawn and will be unavailable to Plan participants. In those instances where Plan sponsors want the analysis reviewed more frequently than once per year, SPIAS and the Plan sponsor will negotiate a review schedule.

12. The Applicant represents that potential Service Providers will include banks and trust companies, mutual fund companies, brokerage firms and insurance companies. They will be required to meet minimum standards prior to participating in the provision of the Service. To qualify as a Service Provider, the entity must either be: (a) A commercial bank or trust company, savings and loan association, insurance company, or registered investment adviser which meets the definition of a "qualified professional asset manager" (QPAM) as set forth in Part V(a) of Prohibited Transaction Exemption 84–14 and has, as of the last day of its most recent fiscal year, total client assets under management and control in an amount of not less than $250 million; or (b) a broker-dealer regulated under the Securities Exchange Act of 1934 which had, as of the last day of its most recent fiscal year, $1 million in shareholders' or partners' equity, and total client assets under management and control in an amount of not less than $250 million.

In addition, the Applicant will evaluate each candidate and consider: (1) The availability of multiple investment options across a number of asset classes; (2) whether there are adequate service capabilities and service performance standards; with an ongoing adherence to those standards; (3) whether providing a bundled product[4] for defined contribution Plans is not the only financial service business in which the entity is involved; and (4) whether the entity, in SPIAS's view, has a high level of professionalism and accountability.

Further, the entity must have been in the financial services business for three years, and during such period, must not have been found liable or guilty by a court of law in any litigation, concerning an employee benefit plan, brought by the IRS or the Department, or a party to a settlement agreement with the IRS or the Department on any matter concerning an employee benefit plan.

13. The fees which are payable to SPIAS in connection with providing the Service, subject to negotiation, are limited to one or more of the following fees. A technology licensing fee will be charged to the Service Provider. This fee is a one-time fee charged in the first year the Service is provided to a Plan based on the number of Plan participants contained on a Service Provider's record-keeping system. Each time the number of Plan participants and beneficiaries on the Service Provider's record-keeping system increases by 10%, an additional amount based on a flat dollar per Plan participant will be assessed and charged to the Service Provider for the new participants (the Revised Technology Fee). For subsequent years, SPIAS will charge a Service Provider a technology maintenance fee equaling 20% of the first year's technology licensing fee plus 20% of the Revised Technology Fee.

Where a Plan sponsor contracts directly with SPIAS to customize the Service to its particular Plan, SPIAS will charge an Internet customization fee to the Plan or the Service Provider. This flat fee is based on the time spent by SPIAS personnel on its customization of the Service to a particular Plan. In addition, SPIAS will charge an annual flat fee based on a fixed dollar amount per Plan participant which may be paid by the Plan, Plan sponsor, the Plan participants or the Service Provider.

Finally, SPIAS will also offer a Plan investment analysis report to Plan sponsors. This report is separate from the investment analysis advice provided to Plan participants and is optional. SPIAS will analyze the Plan and its investment options comparing the rates of return earned by the Plan's investment options relative to other available funds. For those Plan sponsors who elect to receive a Plan investment analysis by SPIAS, SPIAS will charge a Plan investment analysis fee based on a flat dollar amount per year. This fee may be paid by the Plan, Plan sponsor or the Service Provider.

14. In summary, it is represented that the proposed transaction will satisfy the statutory criteria for an exemption under section 408(a) of the Act because:

(a) Participation in the Service will be expressly authorized in writing by an independent fiduciary.

(b) SPIAS will provide the independent fiduciary of each Plan with, written disclosures describing the Service and all fees and expenses associated with the Service, a written contract for the provision of the Service, a copy of the proposed and final exemption, if granted, and a summary of annual Plan activity and expense reports.

(c) SPIAS will furnish the Plan participants with the following: notice that the Service is provided by SPIAS, an entity that is independent from the Service Provider and the Plan sponsor; and full disclosure about the Service and SPIAS; and a risk tolerance questionnaire.

(d) Any investment advice given to Plan participants will be based on the Plan participants' responses to the questionnaire and any investment advice will only be implemented at the express direction of the Plan participant.

(e) The total fees paid to SPIAS and a Service Provider by each Plan participant participating in the Service does not exceed reasonable compensation within the meaning of section 408(b)(2) of the Act.

(f) No portion of any fee or other consideration paid to SPIAS or S&P in connection with the Service will be shared or received by a Service Provider.

(g) Neither the fees charged nor the compensation received by SPIAS will be affected by the investment elections of Plan participants.

(h) Participation in the Service will not cause the Plan to pay any additional fees or commissions with respect to acquisition or disposition of investments offered under the Plan.

(i) All asset allocations are reviewed and approved by the IPC before they are delivered to the Plan.

(j) No Service Provider will own any interest in SPIAS, and neither SPIAS nor any affiliate will own any interest in a Service Provider.

(k) The annual revenues derived by SPIAS from any one Service Provider shall not be more than 5% of the annual revenues of S&P FIS.

(l) S&P will guarantee the payment of any liability of SPIAS that may arise by reason of a breach of a fiduciary duty described in section 404 of the Act or a violation of the prohibited transaction provisions in section 406 of the Act or section 4975 of the Code.

Notice to Interested Persons

The Applicant represents that because potentially interested Plan participants and beneficiaries cannot be identified at this time, the only practical means of notifying such Plan participants and beneficiaries of this proposed exemption is by publication in the

[4] Bundled products provide employers with record-keeping, legal, administrative, trust, educational, investment, *etc.*, service with respect to establishing and maintaining a plan.

Federal Register. Therefore, comments and requests for a hearing must be received by the Department not later than April 21, 2000.

FOR FURTHER INFORMATION CONTACT: Allison Padams Lavigne, U.S. Department of Labor, (202) 219–8971. (This is not a toll free number.)

Texas Iron Workers and Employers Apprenticeship Training and Journeyman Upgrading Fund (the Plan), Located in San Antonio, Texas

[Application No. D–10777]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act shall not apply to the purchase of a classroom/office building (the Classroom Building) and a shop building (the Shop Building; together, the Buildings) and an adjacent lot (the Adjacent Lot) by the Plan from Local Union No. 66 of the International Association of Bridge, Structural, Ornamental and Reinforcing Iron Workers (the Union), for $63,000, provided that: (a) The purchase is a one-time transaction for cash, and no commissions are paid by the Plan with respect to the transaction; (b) the Plan pays a price for the Buildings and the Adjacent Lot (collectively, the Properties) that is no more than the fair market value of the Properties at the time of the transaction, as determined by a qualified, independent appraiser; (c) the Plan's independent fiduciary has determined that the transaction is appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries; and (d) the Plan's independent fiduciary monitors the purchase of the Properties by the Plan and takes whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries.

Summary of Facts and Representations

1. The Plan is a multi-employer apprenticeship plan with approximately 300 participants and beneficiaries. It is a state-wide training program for training apprentice iron workers and upgrading the skills of experienced iron workers. The Plan has three Union trustees and three management trustees. As of March 31, 1999, the Plan had total assets with an estimated fair market value of $1,197,307.

2. The Properties consist of a land parcel of approximately 21,750 square feet, located at 4318 Clark Avenue, San Antonio, Texas, containing the Buildings—the Classroom Building and the Shop Building. The Shop Building is a one-story, steel-frame structure on a concrete slab containing 2,420 square feet. The Shop Building was built in 1971. The Classroom Building is also a one-story, steel-frame structure on a concrete slab containing 4,004 square feet. It contains four classrooms, two offices, a storage room, a reception area and bathrooms, and was completed in 1972–1973. The Plan incurred approximately $45,000 of costs relating to the construction of the Classroom Building. The Union has maintained ownership of the Properties and has paid all property taxes associated therewith. The Plan has been responsible for maintaining the Classroom Building, including the landscaping, plumbing and security.

3. The Properties are part of a larger parcel (the Property), which has been owned by the Union since 1966. In addition to the Classroom and the Shop Buildings, the Property contains the Union headquarters building at the front of the Property and five empty lots at the rear.

4. The Union has decided to relocate its headquarters to a larger building with more office space and sell the subject Properties. However, the Plan's Trustees do not wish to relocate the San Antonio training operations provided for under the terms of the Plan. Therefore, the Plan would like to purchase the Buildings for training purposes and the Adjacent Lot for additional parking. This transaction will allow the Plan to continue its apprenticeship and training programs at their current location. The applicants have requested an exemption to permit only the sale of the Adjacent Lot and the Shop Building by the Union to the Plan.[5] In this regard, the transaction will also formally recognize that the Plan is and has been the formal owner of the Classroom Building since it was constructed in 1973. The applicants represent that the Plan is the equitable owner of the Classroom Building because it incurred the costs of constructing and maintaining the Classroom Building as described in Representation 2, above.

5. The Plan retained Courtland Partners, Ltd. (Courtland) of Cleveland, Ohio to review the subject transaction. With respect to Courtland's qualifications to review the subject transaction, Courtland represents that it is a registered investment adviser under the Investment Advisers Act of 1940 and currently manages over $100 million of real estate investments on behalf of its pension fund clients. Additionally, Courtland has retainer relationships with pension fund clients with real estate investments exceeding well over $1 billion. Mr. Michael J. Humphrey (Mr. Humphrey) is the principal officer at Courtland responsible for the review of the subject transaction. Mr. Humphrey represents that he has personally evaluated well over $400 million of acquisitions and dispositions as an adviser/fiduciary on behalf of pension fund clients. Mr. Humphrey further represents that Courtland had no prior relationship or arrangement with either the Union or the Plan before being retained to perform its review function for the Plan with respect to the subject transaction.

[5] The applicants previously sought relief for the transaction which is the subject of this proposed exemption, but that request was denied by the Department because, among other reasons, the Plan had not been represented by an independent fiduciary at the time the sale transaction took place. The applicants represent that they have paid the civil sanction for such transaction under section 502(i) of the Act as agreed upon with the Department, reversed the transaction, and have now re-applied for the relief proposed herein.

6. Mr. Adolph A. Ramirez (Mr. Ramirez), an independent real estate appraiser in San Antonio, Texas, has appraised the Adjacent Lot and the Shop Building as having a fair market value of $63,000, as of October 20, 1998. Mr. Ramirez's appraisal relied primarily on the market approach to value the Adjacent Lot and the Shop Building, with an analysis of recent sales of similar properties.

Mr. Humphrey represents that Courtland has reviewed all of the terms and conditions of the proposed purchase of the Shop Building and the Adjacent Lot by the Plan, has considered the history of the arrangements made between the Union and the Plan, and the appraisal of the Properties completed by Mr. Ramirez. Mr. Humphrey states that Mr. Ramirez's appraisal has considered all of the factors necessary to accurately determine the fair market value of the Shop Building and the Adjacent Lot. Mr. Humphrey has determined, as of May 7, 1999, that the purchase price of $63,000 for the Adjacent Lot and the Shop Building is reasonable. Furthermore, Courtland believes that the Classroom Building's value should not be included in the sales price for determining the appropriate consideration to be paid by the Plan since the understanding of the parties was that the Classroom Building was already effectively owned by the Plan (see Representation 2, above).

7. The Plan has retained Mr. Thomas W. Hatfield (Mr. Hatfield), a Certified Public Accountant (CPA) in North Richland Hills, Texas, to act as an independent fiduciary with respect to the proposed transaction. Mr. Hatfield has served as an auditor and adviser to the Plan since its inception. Mr. Hatfield represents that he does not perform any accounting or other work for the Union and is not related to, or affiliated with, any person who is a party in interest with respect to the Plan. Mr. Hatfield states that he has been a CPA since 1978 and has concentrated on audits of not-for-profit organizations during his career. Mr. Hatfield states that he will obtain, if necessary, expert advice from an experienced ERISA counsel as to what is required to properly execute the duties of an independent fiduciary for the Plan. Mr. Hatfield acknowledges and accepts his duties, responsibilities and liabilities as a fiduciary under the Act.

After consideration of the proposed transaction, Mr. Hatfield has determined that the proposed transaction would be appropriate for the Plan and in the best interests of the Plan's participants and beneficiaries. As the Plan's independent fiduciary, Mr. Hatfield will monitor the parties' compliance with the terms and conditions of the proposed transaction. Mr. Hatfield represents that he will take whatever action is necessary to safeguard the interests of the Plan and its participants and beneficiaries. In this regard, Mr. Hatfield will ensure that the sales price paid by the Plan for the Shop Building and the Adjacent Lot will in no way reflect any additional consideration for the Classroom Building. In addition, Mr. Hatfield will ensure that the current appraisal of the Shop Building and the Adjacent Lot is updated at the time of the transaction and that the Plan pays no more

than the fair market value of such Properties at that time.

8. Mr. Hatfield represents that the Plan's acquisition of the Shop Building and the Adjacent Lot for $63,000 in cash will not adversely affect the Plan's ability to meet all of its current expenses after the proposed transaction. Thus, Mr. Hatfield states that the transaction will not adversely affect the Plan's liquidity needs.

Mr. Hatfield states further that the Properties are suitable facilities for the Plan to continue carrying out its apprenticeship and training programs. Accordingly, Mr. Hatfield concludes that the purchase of the Properties by the Plan would be a prudent transaction, and in the best interest of the Plan, since the Plan needs to continue to use this site as a training facility.

9. In summary, the applicants represent that the proposed transaction satisfies the criteria of section 408(a) of the Act because: (a) The sale is a one-time transaction for cash, and no commissions will be paid by the Plan with respect to the sale; (b) the fair market value of the Properties being acquired by the Plan represent approximately 5% of the Plan's total assets; (c) the fair market value of the Adjacent Lot and the Shop Building have been determined by Mr. Ramirez, a qualified, independent appraiser, and such appraisal will be updated at the time of the transaction to ensure that the Plan pays no more than the fair market value for the Properties; (d) Courtland, an independent expert, has reviewed the terms of the proposed transaction and the most recent appraisal of the Properties, and has determined that such terms and appraisal are reasonable; (e) Mr. Hatfield, the Plan's independent fiduciary for purposes of the proposed transaction, has reviewed the terms and conditions of the proposed transaction and has determined that the transaction would be appropriate for the Plan and in the best interests of the Plan and its participants and beneficiaries; and (f) Mr. Hatfield will monitor the transaction, as the Plan's independent fiduciary, and will take whatever action is necessary to protect the interests of the Plan and its participants and beneficiaries.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Taylor M. Cole IRA Rollover (the IRA) Located in Deerfield, VA

[Application No. D–10859]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 C.F.R. Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990.) If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale of certain unimproved property (the Property) by the IRA to Taylor M. Cole, the IRA participant and a disqualified person with respect to the IRA;[6] provided that the following conditions are met:

(a) the sale is a one-time cash transaction;

(b) the IRA receives the current fair market value for Property, as established at the time of the sale by an independent qualified appraiser; and (c) the IRA pays no commissions or other expenses associated with the sale.

Summary of Facts and Representations

1. The IRA is an individual retirement account, as described in section 408(a) of the Code, which was established by Taylor M. Cole (Mr. Cole) on June 27, 1998. As of January, 2000, the IRA had approximately $261,165 in total assets. The Tredegar Trust Company, located in Richmond, Virginia, is the custodian of the IRA.

2. On July 27, 1998, the IRA purchased the Property from Richard and Ruth Mansfield, who were unrelated third parties, for $200,000 in cash. The Property represents over 80% of the IRA's total assets. The Property is adjacent to Mr. Cole's personal residence. It is represented that Mr. Cole made the decision to purchase the Property as a investment for the IRA.[7]

3. The Property is an approximately 176 acre parcel of unimproved land, located at 1352 Marble Valley Road, Deerfield, Virginia. The applicant represents that since the acquisition of the Property by the IRA, the Property has not been leased to or used by anyone, including any disqualified persons, as defined under section 4975(e)(2) of the Code. In addition, the Property has not generated any income for the IRA since its acquisition.[8]

4. The Property was appraised on March 25, 1999 (the Appraisal). The Appraisal was prepared by James H. Woods, RM (Mr. Woods), who is an independent Virginia state licensed real estate appraiser. Mr. Woods is with Blue Ridge Appraisal Company L.L.C.., which has offices in Staunton, Virginia and Winchester, Virginia. Mr. Woods relied primarily on the market approach, with an analysis of recent sales of similar properties in the geographic area. Mr. Woods determined that the Property had a fair market value of approximately $212,350, as of March 25, 1999.

Mr. Woods updated the Appraisal on February 22, 2000 (the Update). In the Update, Mr. Woods considered more recent sales of similar properties located near or adjacent to the Property as well as other circumstances relating to the proposed sale of the Property to Mr. Cole. Specifically, because the Property is adjacent to other property owned by Mr. Cole, Mr. Woods considered whether the adjacency factor merits a premium above fair market value in a sale of the Property to Mr. Cole. Mr. Woods states that the Property has no road frontage, no access easement or right of way, and can be accessed only by crossing over other property. Based on the Property's location, size and other factors, Mr. Woods concludes that combining the Property with property already owned by Mr. Cole will have no effect on the Property's fair market value. Therefore, Mr. Woods states that the fair market value of the Property remains at approximately $212,350, as of February 22, 2000.

5. The applicant proposes that Mr. Cole purchase the Property from the IRA in a one-time cash transaction. The applicant represents that the proposed transaction would be in the best interest and protective of the IRA because the IRA will be able to dispose of the Property at its fair market value and will not pay any commissions or expenses associated with the sale. In this regard, Mr. Cole will pay the IRA an amount in cash equal to the current fair market value at the time of the transaction, based on a further update of the Appraisal. The sale of the Property will increase the liquidity of the IRA's portfolio, will enable the trustees to diversify the assets of the IRA, and will enable the IRA to sell an illiquid non-income producing asset.

6. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 4975(c)(2) of the Code because:

(a) the sale will be a one-time cash transaction;

(b) the IRA will receive the current fair market value for the Property, as established at the time of the sale by an independent qualified appraiser;

(c) the IRA will pay no commissions or other expenses associated with the sale; and

(d) the sale will provide the IRA with more liquidity, will enable the IRA to diversify its assets, and will allow the IRA to reinvest the proceeds of the sale in other investments that potentially could yield greater returns.

Notice to Interested Persons

Because Mr. Cole is the sole participant of the IRA, it has been determined that there is no need to distribute the notice of proposed exemption to interested persons. Comments and requests for a hearing are due thirty (30) days from the date of publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department at (202) 219–8883. (This is not a toll-free number.)

Foodcraft, Inc. Defined Benefit Plan (the Plan), Located in Los Angeles, California

[Exemption Application No. D–10864]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32826, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a) and 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the cash sale (the Sale) of certain improved real property (the Property) by the Plan to the trustees of the Plan, Ernest Lieblich and Caryl Lieblich (collectively, the Trustees), parties in interest and disqualified persons with respect to the Plan, provided that the following conditions are met:

(a) All terms and conditions of the Sale are no less favorable to the Plan than those which the Plan could obtain in an arm's length transaction with an unrelated party;

(b) The Trustees will purchase the Property from the Plan for the greater of $315,000 or the Property's fair market value as of the date of the transaction as determined by a qualified, independent appraiser;

(c) The Sale will be a one-time transaction for cash; and

(d) The Plan will pay no fees or commissions in connection with the Sale.

Summary of Facts and Representations

1. Foodcraft, Inc. (Foodcraft), a California corporation, is the sponsor of the Plan which is a defined benefit plan located in Los Angeles, California. The Plan has forty seven (47) participants, and approximately $3,582,286 in total assets as of January 1, 1998. The trustees of the Plan are Ernest Lieblich and Caryl Lieblich (collectively, the Trustees).

2. The Property, located at 1625 Riverside Drive, consists of lots 184 & 206 and those portions of lots 185, 186, 204 & 205 of tract 5963 in Los Angeles, California.

3. The Property was acquired by the Plan from the Trustees for $165,000 on February 29, 1984. On November 3, 1982, an appraisal of the Property was performed by an independent appraiser, Gail A. Anderson, which determined that the fair market value of the Property, exclusive of improvements, was $303,220. The acquisition of the Property was executed pursuant to an exemption granted by the Department, Prohibited Transaction Exemption (PTE) 83–159 (48 FR 44948, September 30, 1983).

4. The Property has generated rental income (the Rental Income) for the Plan as a result of leasing said Property to the Trustees, who in turn, subleased it to Foodcraft from November 8, 1983 until November 8, 2013.[9] In this regard, the Plan has received Rental Income totaling $496,521. The applicants represent that the Plan has not incurred any expenses as a result of the Plan's ownership of the Property.

5. The applicants represent that the Plan was audited by the Internal Revenue Service (IRS) in 1992. The audit disclosed the Trustees' failure to obtain periodic appraisals of the Property and requisite rent adjustments as mandated by PTE 83–159.[10] The IRS noted that prohibited transactions occurred and that they have been corrected. Accordingly, Form 5330 excise tax returns were filed by the Trustees and the excise tax was remitted to the IRS.

Furthermore, the Department conducted its own investigation of the prohibited transactions. In this regard, on November 24, 1992, Foodcraft reimbursed the Plan $45,000 for five years of adjusted rent and $4,500 in interest. By letter dated April 19, 1993, the Department concluded that the prohibited transactions have been corrected and the funds restored to the Plan. A subsequent audit by the IRS was conducted in 1997. In that audit, the IRS concluded that the Trustees complied with the exemption.[11]

6. The Property was appraised on April 5, 1999 by Ronald L. Macksoud (Mr. Macksoud) for Babcock Abelmann & Associates, an appraisal company independent of the Plan and the Trustees. Mr. Macksoud, a California certified real estate appraiser, used the direct sales comparison approach to evaluate the fair market value of the Property. Based on this approach, Mr. Macksoud represents that the fair market value of the Property, as of April 5, 1999, was $315,000.

7. The Trustees propose to purchase the Property for a cash price of $315,000. It is represented that the Sale is administratively feasible in that it will be a one-time transaction for cash in which the Plan will pay no fees or commissions. It is also represented that the Sale is in the best interest of the Plan since it allows the Plan to disgorge an illiquid asset to be replaced by conventional investments, e.g. money instruments and securities. This would improve the Plan's liquidity and ability to meet its obligation for payment of benefits. In addition, the Plan will no longer be involved in the enforcement of its leasehold interest under the lease, which sets forth the rights of the parties for the next fourteen years.

8. In summary, the Trustees represent that the proposed transaction meets the statutory criteria of section 408(a) of the Act because:

(a) The terms and conditions of the Sale are at least as favorable to the Plan as those obtainable in an arm's length transaction with an unrelated party;

(b) The Trustees will purchase the Property from the Plan for the greater of $315,000 or the Property's fair market value as of the date of the transaction as

[6] Pursuant to CFR 2510.3–2(d), there is no jurisdiction with respect to the IRA under Title I of the Act. However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

[7] The Department notes that section 4975(c)(1) (D) and (E) of the Code prohibits the use by or for the benefit of a disqualified person of the assets of a plan and prohibits a fiduciary from dealing with the assets of a plan in his own interest or for his own account. Accordingly, to the extent there were violations of section 4975(c)(1) (D) and (E) of the Code with respect to the decision to purchase the Property for the IRA, the Department notes that this proposed exemption is providing no relief for such transaction.

[8] The Department notes that the Internal Revenue Service has taken the position that a lack of diversification of investments in a qualified plan may raise questions in regard to the exclusive benefit rule under section 401(a) of the Code. See, e.g., Rev. Rul. 73–532, 1973–2 C.B. 128. The Department further notes that section 408(a) of the Code, which describes tax qualifications provisions for IRAs, mandates that an IRA trust be created for the exclusive benefit of an individual and his or her beneficiaries. However, the Department is expressing no opinion in this proposed exemption regarding whether any violations of the Code have taken place with respect to the acquisition and holding of the Property by the IRA.

[9] PTE 83–159 also provided exemptive relief for the subsequent lease of the Property by the Plan to the Trustees.

[10] Specifically, in the Proposal to PTE 83–159, 48 FR 35740 (August 5, 1983), line item "3." of the "Summary of Facts and Representations," provides that, "[t]he rental rent will be adjusted periodically, but at a minimum of every three years, as determined by an independent appraiser, to the greater of 10% of the fair market value of the property, or the fair market rental value of the property." (48 FR at 35741).

[11] In this regard, the Department is not offering any opinion as to the continued availability of PTE 83–159 for the period beginning 1992, when the Trustees' failed to obtain an appraisal of the Property to determine the fair market rental value, to the present.

determined by a qualified, independent appraiser;

(c) The proposed transaction is a one-time transaction for cash; and

(d) The Plan will pay no fees or commissions associated with the proposed Sale.

FOR FURTHER INFORMATION CONTACT: J. Martin Jara, U.S. Department of Labor, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which, among other things, require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and (4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 17th day of March, 2000.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 00–7113 Filed 3–21–00; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–027)]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92–463, as amended, the National Aeronautics and Space Administration announces an open meeting of the NAC Task Force on International Space Station Operational Readiness (IOR).

DATES: Wednesday, April 5, 2000, 12 p.m.–1 p.m. Eastern Standard Time.

ADDRESSES: NASA Headquarters, 300 E Street, SW, Room 7W31, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the readiness of the Shuttle (STS–101) Mission (ISS assembly flight 2A.2A).

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: March 15, 2000.

Mathew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–7056 Filed 3–21–00; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before May 8, 2000. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301)713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape,

and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too, includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Office of the Inspector General (N1–509–00–6, 15 items, 15 temporary items). Correspondence files relating to administration, planning and management, auditing, investigations, and inspections. Also included are electronic copies of documents created using word processing and electronic mail.

2. Department of Defense, Defense Logistics Agency (N1–361–98–3, 5 items, 4 temporary items). Records relating to organization and functions evaluations, including Department of Defense Inspector General evaluation and audit records, General Accounting Office reports, and other evaluation records. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of master sets of evaluation policy development and implementation records are proposed for permanent retention.

3. Department of Energy, Pittsburgh Naval Reactors Office (N1–434–99–3, 18 items, 18 temporary items). Paper, electronic, and microform records relating to naval nuclear reactor research and the shipment of nuclear reactor materiel. Included are reports, correspondence, test records, bills of lading, escort logs, and radiological surveys. Also included are electronic copies of records created using electronic mail and word processing. Records relating to significant research and development projects were previously approved for permanent retention.

4. Department of Housing and Urban Development, Agency-wide (N1–207–99–1, 9 items, 3 temporary items). Audit case files, including correspondence, memoranda, work papers, and electronic copies of records created using electronic mail and word processing. Significant audit files will be evaluated for permanent retention on a case by case basis. Records proposed for permanent retention date from the period 1954–1977 and include files that relate to such matters as projects in small towns, equal housing opportunity programs, new community programs, and metropolitan and suburban development.

5. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–1, 23 items, 22 temporary items). Records accumulated by the Office of Information Technology. Included are such records as electronic records systems used to maintain information concerning agency files in all media, information security program files, chronological files of correspondence with the Federal National Mortgage Association, financial submissions in paper and electronic formats from government-sponsored enterprises, files relating to the operation of agency local area networks, and an electronic system containing data on assets and liabilities of government-sponsored enterprises. Also included are electronic copies of records created using electronic mail and word processing. Agency directives, operating manuals, and other procedural issuances are proposed for permanent retention.

6. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–2, 10 items, 7 temporary items). Records of the Office of General Counsel. Included are such records as an electronic tracking system used to check the status of ongoing projects and cases, legal opinions and subject files relating to routine or inconsequential matters, and electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of significant legal opinions, subject files pertaining to substantive matters, and public rulemaking files are proposed for permanent retention.

7. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–3, 2 items, 2 temporary items). Assessment calculation files relating to semi-annual assessments of government-sponsored enterprises for funds appropriated to the agency from Congress. Included are electronic copies of documents created using electronic mail and word processing.

8. Department of Housing and Urban Development, Office of Federal Housing Enterprise Oversight (N1–543–00–4, 7 items, 5 temporary items). Records of the Office of Policy Analysis and Research relating to the compensation received by government-supported enterprise executives and to requests for information concerning agency Notices of Proposed Rulemaking. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of subject files and quarterly reports to the Department of Housing and Urban Development are proposed for permanent retention.

9. Department of Justice, Federal Bureau of Prisons (N1–129–00–2, 4 items, 4 temporary items). Special Investigative Supervisor program records. Included are files on inmates requiring close observation, memoranda documenting incidental staff contact with released inmates, photographs of inmates, and electronic copies of documents created using electronic mail and word processing.

10. Department of Justice, Federal Bureau of Prisons (N1–129–00–6, 9 items, 9 temporary items). Case management records that include such files as inmate monitoring logs, paper and electronic pay records, telephone system records, listings of inmates housed separately from the general population, staff meeting minutes, and

victim and witness logs. Also included are electronic copies of documents created using electronic mail and word processing.

11. Department of Justice, Federal Bureau of Prisons (N1–129–00–9, 5 items, 5 temporary items). Records relating to health services, including documentation of staff exposure to blood-borne pathogens, information regarding continuing staff medical education, and data tracking the cost of medical care provided both inside and outside of the correctional facility. Also included are electronic copies of documents created using electronic mail and word processing.

12. Department of Justice, Federal Bureau of Prisons (N1–129–00–10, 3 items, 3 temporary items). Records relating to employee development consisting of files documenting instructors' teaching qualifications and memoranda of understanding relating to cooperative agreements with other Federal agencies and local or state governmental bodies. Also included are electronic copies of documents created using electronic mail and word processing.

13. Department of Justice, Federal Bureau of Prisons (N1–129–00–11, 13 items, 13 temporary items). Records relating to food service programs. Included are such records as menus, nutrition reports, staff meeting minutes, survey reports, training reports, work orders, requisitions, inspection forms, and meal receipts. Also included are electronic copies of documents created using electronic mail and word processing.

14. Department of Justice, Immigration and Naturalization Service (N1–85–99–3, 5 items, 1 temporary item). Draft decisions from 1954 released for public review prior to their adoption that do not reflect final decisions and do not include public comments. Proposed for permanent retention are such records as policy/subject correspondence files, 1957–1974, correspondence pertaining to agency policy, 1929–1944, and files relating to Hungarian refugee programs, 1956–1957.

15. Department of the Treasury, Office of the Assistant Secretary for Enforcement (N1–56–00–1, 2 items, 2 temporary items). Electronic copies of records created using word processing and electronic mail that are associated with intelligence reports that relate to the agency's Financial Crimes Enforcement Network. This schedule also increases the retention period for recordkeeping copies of these files, which were previously approved for disposal.

16. Department of the Treasury, Office of the Inspector General (N1–56–00–2, 20 items, 16 temporary items). Investigative and audit case files, legal opinion background files, litigation case files, Office of Counsel subject files, Inspector General subject files, and tracking systems for case files. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of legal opinions and significant investigative and audit case files are proposed for permanent retention.

17. Department of the Treasury, Office of the Comptroller of the Currency (N1–101–97–2, 8 items, 6 temporary items). Electronic systems relating to bank supervision activities. Included are inputs, outputs, master files, and system documentation for the Corporate Activities Information System, the Fair Housing Loan Data System, and the Shared National Credit System. The Institution Database, a centralized electronic information system relating to national banks, and the related system documentation are proposed for permanent retention.

18. Department of the Treasury, Bureau of the Public Debt (N1–53–00–1, 5 items, 5 temporary items). Records relating to personnel matters, including on-the-spot awards, personnel listings, Combined Federal Campaign authorizations, and applications for outstanding scholar programs. Also included are electronic copies of documents created using word processing and electronic mail.

19. Department of the Treasury, Bureau of the Public Debt (N1–53–00–2, 1 item, 1 temporary item). Employee exit clearance forms that pertain to staff separating from the agency.

20. Department of the Treasury, Bureau of the Public Debt (N1–53–00–3, 4 items, 3 temporary items). Records of the Office of the Commissioner relating to savings bonds, including correspondence, circulars, internal memorandums, and specimen security receipts. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping copies of significant program files, including official issuances, press releases, and legal opinions, are proposed for permanent retention.

21. Environmental Protection Agency, Pesticides Program (N1–412–00–3, 3 items, 1 temporary item). Software associated with the Compliance Activity Tracking System (CATS). This electronic system contains data concerning state inspections of businesses that produce, sell, or use pesticides. The master data file for CATS and the supporting documentation for the system are proposed for permanent retention.

22. Federal Communications Commission, Compliance and Information Bureau (N1–173–98–7, 3 items, 3 temporary items). Records relating to public inquiries received by the agency's telephone call center and the responses given, including statistical reports.

23. Federal Communications Commission, Offices of the Chairman and Commissioners (N1–173–98–8, 11 items, 7 temporary items). Routine correspondence files including invitations and reference materials, staff calendars, travel schedules, working files, biographies, photographs, and speeches. Substantive correspondence and subject files of the Chairman and Commissioners and their calendars are proposed for permanent retention.

24. National Archives and Records Administration, Office of the Inspector General (N1–64–00–4, 5 items, 5 temporary items). Audit case files and investigative case files relating to agency programs, operations, procedures, external audits of contractors and grantees, and employee and Hotline complaints. Included are audit reports, correspondence, memoranda, investigative reports, notes, attachments, working papers, and electronic copies of documents created using electronic mail and word processing. Significant investigative case files will be evaluated for permanent retention on a case by case basis.

25. Tennessee Valley Authority, Offices of the Chairman and Board of Directors (N1–142–99–2, 4 items, 2 temporary items). Paper copies of records of the Chairman and Directors for which optical images have been created. Information that has been converted to optical images is proposed for permanent retention and will be transferred to the National Archives in a format that meets the requirements for archival records in effect at the time of transfer.

26. Tennessee Valley Authority, Office of the Inspector General (N1–142–99–5, 9 items, 7 temporary items). Records generated during audits of agency operations and investigations of alleged violations of regulations and laws and of fraud, waste, and abuse are proposed for disposal. Also included are electronic copies of documents created using electronic mail and word processing. Recordkeeping files pertaining to significant investigations and final reports of significant audits are proposed for permanent retention.

Dated: March 15, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–7057 Filed 3–21–00; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements: Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR part 110—Rules and Regulations for the Export and Import of Nuclear Equipment and Material.

3. The form number, if applicable: 3150–0036.

4. How often the collection is required: On occasion.

5. Who is required or asked to report: Any person in the U.S. who wishes to export or import nuclear material and equipment subject to the requirements of 10 CFR 110 or to export incidental radioactive material that is a contaminant of shipments of more than 100 kilograms of non-waste material using existing NRC general licenses.

6. An estimate of the number of responses: 100.

7. The estimated number of annual respondents: 125.

8. An estimate of the total hours needed annually to complete the requirement or request: reporting, 130 hours (1.3 hours per response); recordkeeping, 150 hours (1.2 hours per respondent). The total burden is 280 hours.

9. An indication of whether Section 3507(d), Pub. L. 104–13 applies: Not applicable.

10. Abstract: 10 CFR 110 provides application, reporting, and recordkeeping requirements for exports and imports of nuclear material and equipment subject to the requirements of a specific license or a general license and exports of incidental radioactive material. The information collected and maintained pursuant to 10 CFR 110 enables the NRC to authorize only imports and exports which are not inimical to U.S. common defense and security and which meet applicable statutory, regulatory, and policy requirements.

A copy of the supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street NW, (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by April 21, 2000.

Erik Godwin, Office of Information and Regulatory Affairs (3150–0036), NEOB–10202, Office of Management and Budget, Washington, D.C. 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 15th day of March, 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer

[FR Doc. 00–7099 Filed 3–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Applications for Licenses to Export Nuclear Material

Pursuant to 10 CFR 110.70 (b)(3) "Public notice of receipt of an application", please take notice that the Nuclear Regulatory Commission has received the following application for an export license. Copies of the application are available electronically through ADAMS and can be accessed through the Public Electronic Reading Room (PERR) link <*http://www.nrc.gov/NRC/ADAMS/index.html*> at the NRC Homepage.

A request for a hearing or petition for leave to intervene may be filed within 30 days after publication of this notice in the **Federal Register**. Any request for hearing or petition for leave to intervene shall be served by the requestor or petitioner upon the applicant, the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555; the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555; and the Executive Secretary, U.S. Department of State, Washington, DC 20520.

In its review of the applications for licenses to export deuterium oxide (heavy water) as defined in 10 CFR part 110 and noticed herein, the Commission does not evaluate the health, safety or environmental effects in the recipient nation of the material to be exported. The information concerning the application follows.

NRC EXPORT LICENSE APPLICATION

Name of applicant date of application date received application No.	Description of material to be exported	Country of destination
Poco Graphite, Inc., 12/03/99; 01/18/00; XMAT0400.	Nuclear grade graphite, 680,385 kilograms for commercial, non-nuclear end use.	Various.

Dated this 16th day of March 2000 at Rockville, Maryland.

For the Nuclear Regulatory Commission.

Ronald D. Hauber,

Deputy Director, Office of International Programs.

[FR Doc. 00–7098 Filed 3–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–260, 50–296]

Tennessee Valley Authority; (Browns Ferry Nuclear Plant Units 2 and 3; Exemption

I

The Tennessee Valley Authority (TVA or the licensee) is the holder of Facility Operating License No. DPR–52 for operation of the Browns Ferry Nuclear Plant Unit 2 (BFN–2) and DPR–68 for Unit 3 (BFN–3). The licenses provide, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (Commission or NRC) now or hereafter in effect.

BFN–2 and BFN–3 are boiling-water reactors located in Limestone County, Alabama.

II

Title 10 of the *Code of Federal Regulations* (10 CFR), Section 50.54(o), requires that primary reactor containments for water-cooled power reactors be subject to the requirements of Appendix J to 10 CFR Part 50.

Appendix J specifies the leakage test requirements, schedules, and acceptance criteria for tests of the leak tight integrity of the primary reactor containment and systems and components which penetrate the containment. Option B, Section III.A requires that the overall integrated leak rate must not exceed the allowable leakage (La) with margin, as specified in the Technical Specifications (TS). The overall integrated leak rate, as specified in the 10 CFR Part 50, Appendix J definitions, includes the contribution from main steam isolation valve (MSIV) leakage. By letter dated September 28, 1999, as supplemented by letter dated February 4, 2000, the licensee has requested exemption from Option B, Section III.A, requirements to permit exclusion of MSIV leakage from the overall integrated leak rate test measurement.

Option B, Section III.B of 10 CFR Part 50, Appendix J requires that the sum of the leakage rates of all Type B and Type C local leak rate tests be less than the performance criterion (La) with margin, as specified in the TS. The licensee also requests exemption from this requirement, to permit exclusion of the MSIV contribution to the sum of the Type B and Type C tests.

The MSIV leakage effluent has a different pathway to the environment. It is not directed into the secondary containment and filtered through the standby gas treatment system as is other containment leakage. Instead, the MSIV leakage is directed through the main steam drain piping into the condenser and is released to the environment as an unfiltered ground level effluent. The licensee analyzed the MSIV leakage pathway for the increased leakage (from 46 scfh to 168 scfh), and the containment leakage pathway separately in a dose consequences analysis. The calculated radiological consequences of the combined leakages were found to be within the criteria of 10 CFR part 100 and GDC–19. The staff reviewed the licensee's analyses and found them acceptable as described in a safety analysis accompanying amendments to be issued concurrently with this exemption. By separating the MSIV leakage acceptance criteria from the overall integrated leak rate test criteria, and from the Type B and C leakage sum limitation, the BFN–2 and BFN–3 containment leakage testing program will be made more consistent with the limiting assumptions used in the associated accident consequences analyses. The amendments associated with this exemption will revise Technical Specification Surveillance Requirement 3.6.1.3.10 to limit the maximum allowable combined MSIV leakage to 150 scfm, which is less than the analytical limit of 168 scfm. Therefore, the staff finds the proposed exemptions from Appendix J to separate MSIV leakage from other containment leakage to be acceptable.

III

Pursuant to 10 CFR 50.12, the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of 10 CFR Part 50 when (1) The exemptions are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security, and (2) When special circumstances are present. Special circumstances are present whenever, according to 10 CFR part 50.12(a)(2)(ii), "Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule * * *"

The licensee's exemption request was submitted in conjunction with a TS amendment application to increase the allowable leak rate for MSIVs. (The proposed amendment will be issued concurrently with this exemption.) The exemption and amendments together would implement the recommendations of Topical Report NEDC–31858, "BWR Report for Increasing MSIV Leakage Rate Limits and Elimination of Leakage Control Systems." The topical report was evaluated by the staff and accepted in a safety evaluation dated March 3, 1999. The special circumstances associated with MSIV leakage testing are fully described in the topical report. These circumstances relate to the monetary costs and personnel radiation exposure involved with maintaining MSIV leakage limits more restrictive than necessary to meet offsite dose criteria and control room habitability criteria.

The underlying purpose of the rule which implements Appendix J (*i.e.*, 10 CFR 50.54(o)) is to assure that containment leak tight integrity is maintained (a) As tight as reasonably achievable and (b) Sufficiently tight so as to limit effluent release to values bounded by the analyses of radiological consequences of design basis accidents. The staff has determined that the intent of the rule is not compromised by the proposed action.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR part 50.12, an exemption is authorized by law and will not present an undue risk to the public health and safety, and that there are special circumstances present, as specified in 10 CFR 50.12(a)(2). An exemption is hereby granted from the requirements of Sections III.A and III.B of Option B of Appendix J to 10 CFR part 50. The exemption allows exclusion of MSIV leakage from the overall integrated leak rate test measurement and from the sum of Type B and C test measurements used to determine compliance with TS surveillance requirements for containment integrity.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (65 FR 10844).

This exemption is effective upon issuance and will be implemented prior to startup of Cycle 12 for Browns Ferry Unit 2 and prior to startup of Cycle 10 for Browns Ferry Unit 3.

Dated at Rockville, Maryland this 14th day of March 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7100 Filed 3–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMSSION

Public Meeting on 10 CFR Part 70; Standard Review Plan

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of Meeting.

SUMMARY: NRC will host a public meeting in Rockville, Maryland. The meeting will provide an opportunity for discussion of stakeholder comments on the revised Standard Review Plan (SRP) chapters that were made available during March and April 2000. The revised chapters can be reviewed on the internet at the following website: *http://techconf.llnl.gov/cgi-bin/library/=*&library=*

PURPOSE: This meeting will provide an opportunity to discuss any comments on the staff's recently revised SRP chapters.

DATES: The meeting is scheduled for Tuesday through Wednesday, April 18 and 19, 2000, from 9 A.M. to 4 P.M. The meeting is open to the public.

ADDRESSES: NRC's Auditorium at Two White Flint North, 11545 Rockville Pike, Rockville, Maryland. Visitor parking around the NRC building is limited; however, the meeting site is located adjacent to the White Flint Station on the Metro Red Line.

FOR FURTHER INFORMATION CONTACT: Theodore S. Sherr, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 415–7190, e-mail tss@nrc.gov.

Dated at Rockville, Maryland this 16th day of March, 2000.

For the Nuclear Regulatory Commission.

Theodore S. Sherr,

Chief, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, NMSS.

[FR Doc. 00–7102 Filed 3–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from February 26, 2000, through March 10, 2000. The last biweekly notice was published on March 8, 2000 (65 FR 12286).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By April 21, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the

bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Commonwealth Edison Company, Docket No. 50–237, Dresden Nuclear Power Station, Unit 2, Grundy County, Illinois

Date of amendment request: April 30, 1999.

Description of amendment request: The proposed amendment would revise the expiration date of the operating license to allow 40 years of operation from the original date of issuance.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The programs to detect incipient failures or degraded performance such as Inservice Inspection, Inservice Testing, and Environmental Qualification programs, for example, remain in place and unchanged. The thermal cycles and reactor vessel toughness are within the 40-year design margin and will remain within those margins for the total operating period proposed by the amendment. No equipment is added, modified, or removed as a result of this amendment. Therefore there is no increase in the probability of an occurrence. No changes are made to the assumptions on which the UFSAR accident and transient analyses are based. Therefore, there is no reason for an increase in the consequences of any of the analyzed conditions which could lead to an increase in Onsite or Offsite dose consequences.

Therefore, this proposed amendment does not involve a significant increase in the probability of occurrence of consequences of an accident previously evaluated.

Does the change create [the] possibility of a new or different kind of accident from any previously evaluated?

No systems, structures, or components are changed by this amendment. No procedures that operate, maintain, or surveil them are changed. No provisions of the license or the technical specifications are modified or relaxed.

Therefore, the proposed amendment does nor create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in the margin of safety?

No assumptions are changed for any analysis as a result of this amendment. No system, structure, or component is changed by this amendment. This amendment does not change the results of accident and transient analyses previously evaluated.

Therefore, the proposed amendment does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendment involves no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: February 21, 2000.

Description of amendment request: The proposed amendments would change the condensate storage tank (CST) low level setpoint to prevent entrainment of air in the high pressure coolant injection (HPCI) pump suction line when taking suction from the CST. The amendments would also revise the surveillance requirements for the CST level instruments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The Condensate Storage Tank (CST) water level and the installation of new pressure type switches are not precursors to accidents or transients described in the Updated Final Safety Analysis Report (UFSAR). The proposed changes will maintain the operability of the High Pressure Coolant Injection (HPCI) system, thus the HPCI system will continue to function as designed. Any failure of the new switches will still cause realignment of the HPCI suction from the CST to the Torus as currently designed. Therefore, the proposed changes in water level and the installation of a new type switch will not result in a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

For a system to create the possibility of a new and different accident, the proposed changes would have to require the system to operate in a mode or configuration that is different from the original design. The installation of the new switches does not alter the current logic configuration. The new switches will continue to function and initiate a transfer from the CSTs to the Torus as the suction source as originally designed. The proposed changes to the Technical Specifications (TS) will ensure that the HPCI suction transfer will occur before any air is entrained into the pump suction line. This is accomplished by ensuring that the water level in the CSTs does not reach the vortex limit before the transfer of the HPCI pump suction from the CSTs to the Torus is complete. No new functional failure modes will be introduced upon implementation of the proposed changes. Therefore, the possibility of a new or different kind of accident has not been created.

Does the change involve a significant reduction in a margin of safety?

The proposed changes to the CST Level-Low trip setpoint and installation of the new pressure switches provide assurance that air entrainment and vortexing will be prevented during HPCI operation. By maintaining an increased volume in the CSTs, the probability of a HPCI system malfunction due to air entrainment or vortexing is decreased. The installation of the new pressure type switches does not change the current logic configuration. The new switches will be calibrated at a frequency to ensure that the probability of unacceptable instrument drift is maintained at an acceptable level. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: February 28, 2000.

Description of amendment request: The proposed amendments would increase the Technical Specification safety limit for the Minimum Critical Power Ratio from 1.08 for two loop operation and 1.09 for single loop operation to 1.11 and 1.12 respectively. The revised safety limits will conservatively bound the current LaSalle Unit 2 operating cycle for an anticipated 5 percent power uprate.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes increase the two loop operation Minimum Critical Power Ratio (MCPR) Safety Limit from 1.08 to 1.11 and the single loop operation MCPR Safety Limit from 1.09 to 1.12. MCPR Safety Limits have been established consistent with NRC-approved methods to ensure that fuel performance is acceptable. These changes do not affect the operability of plant systems, nor do they compromise any fuel performance limits. Therefore, the probability of an accident will not be changed based on these proposed changes.

The MCPR Safety Limit is set such that no fuel damage is calculated to occur if the limit is not violated. A larger value for the MCPR Safety Limit is conservative and bounding for the current LaSalle County Station, Unit 2, Cycle 8 core at the current licensed power level, because compliance with an MCPR Safety Limit equal to or greater than the calculated value will ensure that less than 0.1% of the fuel rods experience boiling transition. The MCPR Safety Limit does not impact the source term or pathways assumed in accidents previously evaluated. Therefore, these proposed changes do not increase the consequences of an accident previously evaluated.

Additionally, operational MCPR limits will be applied that will ensure the MCPR Safety Limit is not violated during all modes of operation and anticipated operational occurrences in accordance with the Core Operating Limits Report (COLR), which will be implemented prior to operation at uprated power. The MCPR Safety Limit ensures that less than 0.1% of the fuel rods in the core are expected to experience boiling transition. Therefore, the probability or consequences of an accident will not increase.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. Changing the MCPR Safety Limit does not alter or add any new equipment or change modes of operation. The MCPR Safety Limit is established to ensure that 99.9% of the fuel rods avoid boiling transition.

The MCPR Safety Limit is changing for LaSalle County Station, Unit 2 to support Cycle 8 operation at uprated power conditions. Changing the MCPR Safety Limit does not introduce any physical changes to the plant, alter the processes used to operate the plant, or change allowable modes of operation. Therefore, no new or different kind of accident is created that is different from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

The MCPR Safety Limit provides a margin of safety by ensuring that less than 0.1% of the fuel rods are predicted to be in boiling transition. The proposed changes increase the two loop operation MCPR Safety Limit from 1.08 to 1.11 and the single loop operation MCPR Safety Limit from 1.09 to 1.12. A larger value for the MCPR Safety Limit is conservative and bounding for the current LaSalle County Station, Unit 2 Cycle 8 core at the current licensed power level, because compliance with a MCPR Safety Limit equal to or greater than what is calculated will ensure that less than 0.1% of the fuel rods experience boiling transition. Additionally, the proposed changes are being submitted prior to completion of the detailed calculations for Cycle 8 power uprate. However, based on preliminary calculations, these revised limits are anticipated to bound Unit 2 Cycle 8 operation at uprated conditions.

Therefore, the margin of safety will not be reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 23, 1999.

Description of amendment request: The proposed amendments would revise Technical Specification 5.5.11—Ventilation Filter Testing Program, which provides the test requirements for charcoal filters, to assure compliance with the requirements of American Society for Testing and Materials (ASTM) D3803–1989.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the

licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes will ensure that the Technical Specification 5.5.11, Section c, required testing of charcoal filters in McGuire ventilation systems designed to meet the guidance provided in Regulatory Guide 1.52, Revision 2, are performed as per ASTM D3803–1989. This will ensure that these filters are capable of performing their design function to maintain offsite and control room operator doses within the limits of 10 CFR 100, Subpart A and 10 CFR 50, Appendix A, GDC [General Design Criteria] 19, following a LOCA [Loss-of-Coolant Accident] or a postulated fuel handling accident. Consequently, the proposed changes only deal with the performance of these systems during an accident and have no impact on accident probabilities. In addition, since the proposed changes help ensure the capability of the subject ventilation systems to perform their design function, there will be no reduction in the ability of these systems to minimize the consequences of a previously evaluated accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes only help ensure the performance of the subject ventilation systems during an accident and have no impact on accident possibilities. No changes are being made to actual plant hardware or the way in which the plant is being operated. Therefore, no new accident causal mechanisms will be generated. Consequently, plant accident analyses will not be affected by these changes.

3. Does this change involve a significant reduction in a margin of safety?

No. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these barriers will not be degraded by the proposed changes. In addition, the proposed changes to the maximum methyl iodide requirements to accommodate planned changes in filter efficiencies will not result in any degradation in the capability of the affected charcoal filters to perform their design function. As a result of the above, plant safety analyses will not be affected by the changes proposed in this LAR [License Amendment Request].

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard L. Emch, Jr.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: January 6, 2000.

Description of amendment request: The proposed amendments would revise Technical Specifications (TS) 3.3.1—Reactor Trip System (RTS) Instrumentation, TS 3.3.2—Engineered Safety Feature Actuation System (ESFAS) Instrumentation, TS 3.3.5—Loss of Power Diesel Generator Start (LOP) Instrumentation, and TS 3.3.6—Containment Purge and Exhaust Isolation (VP) Instrumentation. The proposed revisions will facilitate treatment of the applicable RTS, ESFAS, LOP, and VP Instrumentation TS Trip Setpoints as nominal values. In addition, proposed changes to the applicable TS Bases further define the TS Trip Setpoints as nominal values.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes are consistent with the current licensing basis for the McGuire Nuclear Station, the setpoint methodologies used to develop the Trip Setpoints, the McGuire Safety Analyses, and current station calibration procedures and practices. The Reactor Trip System and Engineered Safety Features Actuation System are not accident initiating systems; they are accident mitigating systems. Therefore, these proposed changes will have no impact on any accident probabilities. Accident consequences will not be affected, as no changes are being made to the plant which will involve a reduction in reliability of these systems. Consequently, any previous evaluations associated with accidents will not be affected by these changes.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes are consistent with the current licensing basis for the McGuire Nuclear Station, the setpoint methodologies used to develop the Trip Setpoints, the McGuire Safety Analyses, and current station calibration procedures and practices. No changes are being made to actual plant hardware which will result in any new accident causal mechanisms. Also, no changes are being made to the way in which the plant is being operated. Therefore, no new accident causal mechanisms will be generated. Consequently, plant accident analyses will not be affected by these changes.

3. Does this change involve a significant reduction in a margin of safety?

No. The proposed changes are consistent with the current licensing basis for the McGuire Nuclear Station, the setpoint methodologies used to develop the Trip Setpoints, the McGuire Safety Analyses, and current station calibration procedures and practices. Margin of safety is related to the confidence in the ability of the fission product barriers to perform their design functions during and following accident conditions. These barriers include the fuel cladding, the reactor coolant system, and the containment system. The performance of these barriers will not be degraded by the proposed changes. Consequently, plant safety analyses will not be affected by these changes.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: Richard L. Emch, Jr.

Entergy Operations, Inc., Docket No. 50–313, Arkansas Nuclear One, Unit No. 1, Pope County, Arkansas

Date of amendment request: November 23, 1999, as supplemented by letter dated February 24, 2000

Description of amendment request: The proposed amendment would incorporate the use of American Society for Testing and Materials (ASTM) D3803–1989, "Standard Test Method for Nuclear-Grade Activated Carbon," into the Technical Specifications (TSs). Entergy Operations, Inc. (the licensee) is submitting this proposed amendment as a complete response to Nuclear Regulatory Commission (NRC) Generic Letter (GL) 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal." The February 24, 2000, supplement proposes additional changes to the TSs to ensure that ventilation system velocity requirements are established in accordance with the standards of ASTM D3803–1989. This application was previously noticed in the **Federal Register** on March 8, 2000 (65 FR 12291).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Deleting portions of applicable ANO–1 [Arkansas Nuclear One, Unit 1] TSs that reference system design velocity criteria for activated charcoal medium testing requires no physical change to plant design. NRC GL 99–02, in support of the ASTM D3803–1989 standard, requires licensees to utilize charcoal testing methods that will ensure the current license basis, as it relates to General Design Criterion (GDC) 19, is maintained. The existing criterion within the affected ANO–1 TSs is less restrictive than that of ASTM D3803–1989 standard and, therefore, is being proposed for deletion. The testing of charcoal mediums has no impact on the probability of an accident occuring. However, the charcoal mediums do act to reduce radioiodines released to the environment during and following an accident. Testing the charcoal mediums to a more restrictive standard, however, does not increase the consequences of an accident since such testing ensures the current analyses remain valid.

Therefore, the proposed changes do not involve a signficant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

As stated previously, the proposed changes to the ANO–1 TSs do not result in any physical change to plant design, nor does the testing of charcoal mediums act to create a new or different accident than that previously analyzed. The existing criterion within the affected ANO–1 TSs is less restrictive than that of ASTM D3803–1989 standard and, therefore, is being proposed for deletion. Testing criteria governing the operability of charcoal mediums is not considered an accident initiator of new, different, or previously analyzed accidents. The charcoal mediums act solely to reduce radioiodines released to the environment during and following accident scenarios.

Therefore, the proposed changes do not create the possiblity of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

Testing of charcoal mediums to more restrictive criteria acts to better ensure that these mediums will perform their design function during and following accidents that result in a release of radioiodines. No reduction in the margin to safety can be construed based on the new testing criteria. The charcoal mediums will continue to remove radioiodines as originally designed and approved by the NRC during and following accidents involving radioactive release.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: January 27, 2000.

Description of amendment request: The proposed amendment would revise the Arkansas Nuclear One, Unit 2 (ANO–2) technical specifications (TS) by providing actions associated with inoperable control room emergency ventilation or cooling systems during movement of irradiated fuel during shutdown modes of operation, when allowed outage times associated with these systems are not met.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The inclusion of additional actions within the ANO–2 TSs associated with the control room emergency ventilation and air conditioning systems during the handling of irradiated fuel does not require any physical modification to plant components or systems. Implementing the proposed actions act to ensure the operability of the remaining system, eliminate the reliance on automatic actuation where applicable, and ensure that any active failure will be readily detected. The proposed changes, therefore, act to ensure [that] the consequences of a fuel handling accident are mitigated and have no impact on the probability [of] a fuel handling accident occurring. The proposed actions are in addition to those currently required by the ANO–2 TSs and, therefore, are more restrictive.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The inclusion of additional actions within the ANO–2 TSs associated with the control room emergency ventilation and air conditioning systems during the handling of irradiated fuel does not require any physical modification to plant components or systems. Implementing the proposed actions act to ensure the operability of the remaining system, eliminate the reliance on automatic actuation where applicable, and ensure that any active failure will be readily detected. The proposed changes, therefore, are not relevant to creating new or different kinds of accidents than those previously evaluated. The proposed actions are in addition to those currently required by the ANO–2 TSs.

Therefore, this change does not create the possibility or a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

The inclusion of additional actions within the ANO–2 TSs associated with the control room emergency ventilation and air conditioning systems during the handling of irradiated fuel act to ensure the operability of the remaining system, eliminate the reliance on automatic actuation where applicable, and ensure that any active failure will be readily detected. The proposed changes, therefore, act to maintain the margin of safety by ensuring the operability of redundant equipment that is required to protect control room personnel in the event of a fuel handling accident. The proposed actions are in addition to those currently required by the ANO–2 TSs and, therefore, are more restrictive.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: February 24, 2000.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 4.4.11 on reactor coolant system vent flow verification, TS 4.6.1.1.a on containment penetration closure verification (non-automatic), and TS 4.6.3.1.2 on containment isolation valve actuation verification. These TS surveillances require testing to be performed during Modes 5 and/or 6. The proposed change will eliminate unnecessary mode restrictions on these surveillance requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1—Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

Current regulation requires the licensee to responsibly plan, schedule, and perform testing of station equipment. Furthermore, the philosophies of the RSTS [Revised Standard Technical Specifications] do not restrict surveillance performance to specific modes of operation or other plant conditions. Deletion of the mode restrictions will not relinquish licensee responsibility from prudent planning, scheduling, and performance of testing activities and may provide the licensee lower-risk periods of opportunity for test performance. Because of this, the proposed changes are considered to be administrative in nature and do not significantly affect the plant or personnel safety. Modes in which surveillances are performed are not analyzed in association with accident probability or the consequences of an accident. The proposed changes reduce unnecessary restrictions on the licensee and provide consistency with the philosophies of the RSTS.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2—Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The licensee will continue to be accountable for proper and prudent planning, scheduling, and performance of surveillance activities in the absence of the aforementioned mode restrictions proposed for deletion. Therefore, the proposed changes are considered to be administrative in nature and do not significantly affect the plant or personnel safety. The probability of a new or different kind of accident being created remains unchanged since the licensee currently is required to properly plan and execute surveillance tests, even within specific modes of operation. Other activities presently ongoing during the currently specified operational modes could result in an unexpected or unforseen transient or condition if surveillance testing is not properly planned and executed given the other activities in progress and current plant conditions. Since the responsibility of the licensee in these matters remains unchanged by the proposed changes, the possibility of a new or different kind of accident being created also remains unchanged.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3—Does Not Involve a Significant Reduction in the Margin of Safety

The licensee will continue to be accountable for proper and prudent planning, scheduling, and performance of surveillance activities in the absence of the aforementioned mode restrictions proposed for deletion. Therefore, the proposed changes are considered to be administrative in nature and do not significantly affect the plant or personnel safety. The margin to safety remains unchanged since the licensee currently is required to properly plan and execute surveillance tests, even within specific modes of operation. Other activities presently ongoing during the currently specified operational modes could result in an unexpected or unforseen transient or condition if surveillance testing is not properly planned and executed given the other activities in progress and current plant conditions. Since the responsibility of the licensee in these matters remains unchanged by the proposed changes, no significant reduction in the margin to safety is evident.

Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: January 21, 2000.

Description of amendment request: Entergy Operations, Inc. requests revision of the Grand Gulf Nuclear Station licensing basis and Technical Specifications to utilize the alternative accident source term described in NUREG–1465.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

This proposed amendment to the Grand Gulf Nuclear Station (GGNS) Technical Specifications (TS) revises those specifications affected by the implementation of the alternative source term concepts in accordance with NUREG–1465. In addition, based on the alternative source term, changes are proposed to selected specifications associated with handling irradiated fuel in the primary or secondary containment and CORE ALTERATIONS. Specifically, the proposal uses a new term to describe irradiated fuel that contains sufficient fission products to require operability of accident mitigation systems to meet the accident analysis assumptions. The alternative source term changes affect the definitions and the specifications for the Control Room Fresh Air System, MSIV [main steam isolation valve] leakage surveillance, Standby Gas Treatment System surveillance, and revises a license condition to increase the allowable control room inleakage. The specifications affected by the relaxation of the shutdown controls include those for the Control Room HVAC [heating, ventilation, and air conditioning] system, and the electrical AC [alternating current] Sources, DC [direct current] Sources and Distribution Systems during shutdown.

The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10CFR50.92(c). A proposed amendment to an operating license involves a no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Entergy Operations, Inc. has evaluated the no significant hazards considerations in its request for a license amendment. In accordance with 10CFR50.91(a), Entergy Operations, Inc. is providing the analysis of the proposed amendment against the three standards in 10CFR50.92(c). A description of the no significant hazards considerations determination follows:

1. The proposed changes do not significantly increase the probability or consequences of an accident previously evaluated.

The alternative source term does not affect the design or operation of the facility; rather, once the occurrence of an accident has been postulated the new source term is an input to evaluate the consequences. The implementation of the alternative source term has been evaluated in revisions to the analyses of the limiting design basis accidents at Grand Gulf Nuclear Station. Based on the results of these analyses, it has been demonstrated that, even with the requested Technical Specification and Operating License changes, the dose consequences of these limiting events are within the regulatory guidance currently proposed by the NRC [Nuclear Regulatory Commission] for use with the alternative source term. This guidance is presented in NUREG–1465, in the draft rulemaking for 10CFR50.67, and in the associated draft Regulatory Guide DG–1081.

A new term to describe irradiated fuel is used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analysis. Because the equipment affected by the revised operational conditions is not considered an initiator to any previously analyzed accident, inoperability of the equipment cannot increase the probability of any previously evaluated accident. The proposed requirements bound the conditions of the current design basis fuel handling accident analysis which concludes that the radiological consequences are within the acceptance criteria of NUREG–0800, Section 15.7.4 and General Design Criteria [GDC] 19. As noted above, with the alternative source term implementation, the acceptance criteria are also being revised. The results of the revised Fuel Handling Accident demonstrate that the dose consequences are within the currently proposed NRC regulatory guidance. This guidance is presented in NUREG–1465, in the draft rulemaking for 10CFR50.67, and in the associated draft Regulatory Guide DG–1081.

Therefore, the proposed changes do not significantly increase the probability or consequences of any previously evaluated accident.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previous[ly] analyzed.

The alternative source term does not affect the design, functional performance, or operation of the facility or of any equipment within the facility. Similarly, it does not affect the design or operation of any equipment or systems involved in the mitigation of any accidents. The proposed changes to the Technical Specifications and the Operating License, while they revise certain performance requirements, do not involve any physical modifications to the plant. Therefore, the proposed changes associated with the alternative source term do not create the possibility of a new or different kind of accident from any previous[ly] analyzed.

The new term to describe irradiated fuel is used to establish operational conditions where specific activities represent situations where significant radioactive releases can be postulated. These operational conditions are consistent with the design basis analyses. The relaxation of selected shut down controls has been modeled in revised analyses. The proposed changes do not introduce any new modes of plant operation and do not involve physical modifications to the plant. Therefore, the proposed changes related to shutdown controls based on the alternative source term do not create the possibility of a new or different kind of accident from any previous[ly] analyzed.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed changes do not involve a significant reduction in a margin of safety.

The changes above are basically associated with the implementation of a new licensing basis for Grand Gulf Nuclear Station. Approval of the basis change from the original source term in accordance with TID–14844 to the new alternative source term of NUREG–1465 is requested by this submittal. The results of the accident analyses revised in support of this submittal, and considering the requested Technical Specification and Operating License changes, are subject to revised acceptance criteria. These analyses have been performed using conservative methodologies as outlined in the currently proposed regulatory guidance. Safety margins and analytical conservatisms have been evaluated and are well understood. The analyzed events have been carefully selected and margin has been retained to ensure that the analyses adequately bound all postulated event scenarios. The dose consequences of these limiting events are within the acceptance criteria also found in the latest regulatory guidance. This guidance is presented in NUREG–1465, in the approved rulemaking for 10CFR50.67, and in the associated draft Regulatory Guide DG–1081.

The proposed changes continue to ensure that the doses at the exclusion area and low population zone boundaries as well as control room, are within the corresponding regulatory limit. In a similar way, the results of the existing analyses demonstrated that the dose consequences were within the applicable NRC-specified regulatory limit. Specifically, the margin of safety for these accidents is considered to be that provided by meeting the applicable regulatory limit, which, for most events, is conservatively set below the 10CFR100 limit. With respect to the control room personnel doses, the margin of safety is the difference between the 10CFR100 limits and the regulatory limit defined by 10CFR50, Appendix A, Criterion 19 (GDC 19).

Therefore, because the proposed changes continue to result in dose consequences within the applicable regulatory limits, they are considered to not result in a significant reduction in a margin of safety.

Based on the above evaluation, operation in accordance with the proposed amendment involves no significant hazards considerations.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of amendment request: January 24, 2000.

Description of amendment request: Entergy Operations, Inc. requests revisions to the Grand Gulf Nuclear Station Technical Specifications which specify the minimum useable fuel oil inventories to be maintained in the Division 1, 2, and 3 Diesel Generator Fuel Oil Storage Tanks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Entergy has evaluated this proposed Technical Specification change and has determined that it involves no significant hazards consideration. This determination has been performed in accordance with the criteria set forth in 10CFR50.92. The following evaluation is provided for the three categories of the significant hazards consideration standards:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

This change would require additional fuel oil to be stored in each of the Division 1, 2, and 3 Diesel Generator Fuel Oil Storage Tanks. The amount of diesel fuel required to be kept in the storage tanks, which has been determined by Calculation MC–Q1P75–90190 Revision 2 and Calculation MC–Q1P81–90188 Revision 2, is well within the maximum capacity of the Diesel Generator Fuel Oil Storage Tanks. As stated in UFSAR [Updated Final Safety Analysis Report] Section 9.5.4.3 (Safety Evaluation for the diesel fuel storage subsystem) '* * * the tank level will be above the "seven-day capacity" required level and will be kept as near the top as practical." Other fuel oil storage subsystem components, such as the transfer pumps, are similarly designed, as a minimum, for the storage tanks being filled to maximum capacity. The Diesel Generator Fuel Oil Storage Tanks continue to meet the original design requirements as described in the UFSAR. The proposed change will provide adequate fuel for diesel generator operation at the Technical Specification surveillance testing capacity for Division 1 and 2 Diesel Generators, 5740 KW, and the nameplate rating for Division 3 Diesel Generator, 3300 KW, rather than the lower post-LOCA [loss-of-coolant accident] load profiles previously assumed. Therefore, increasing the quantity of fuel oil required to be maintained, will not increase the probability of the diesel generators becoming an initiator for any previously evaluated accident. Furthermore, since the proposed change increases the fuel oil inventory it should enhance the ability of the diesel generators to respond to an accident and as such the change does not increase the consequences of any previously analyzed accident.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The Diesel Generator Fuel Oil subsystem design and operation will not change except for the incorporation of increased fuel oil inventory requirements. This proposed increase remains within the maximum capacity of the Diesel Generator Fuel Oil Storage Tanks. Existing analyses and evaluations, concerning the fuel oil storage tanks, are not adversely impacted by this increase in the required fuel oil inventory. Other fuel oil storage subsystem components, such as the transfer pumps, are similarly designed, as a minimum, for the storage tanks being filled to maximum capacity. The subsystem continues to meet the original design requirements. The proposed increased fuel oil inventory cannot adversely affect any other equipment. Therefore, since the proposed change only increases the fuel oil

inventory requirements and does not result in any change in the response of any equipment to an accident, the proposed change does not create the possibility of a new or different kind of accident from any previously analyzed accident.

3. Does this change involve a significant reduction in a margin of safety?

Existing Technical Specification 3.8.3 bases state the Diesel Generator Fuel Oil Storage Tank minimum level is sufficient to operate the respective Diesel Generator for seven days while supplying maximum post-LOCA demands. The proposed change increases the quantity of fuel oil required to be maintained in each of the Division 1, 2, and 3 Diesel Generator Fuel Oil Storage Tanks. The proposed change will provide adequate fuel for diesel generator operation at the Technical Specification surveillance testing capacity for Division 1 and 2 Diesel Generators, 5740 KW, and the nameplate rating for Division 3 Diesel Generator, 3300 KW, rather than the lower post-LOCA load profiles previously assumed. The amount of diesel fuel required to be kept in the storage tanks, which has been determined by Calculation MC–Q1P75–90190 Revision 2 and Calculation MC–Q1P81–90188 Revision 2, is well within the maximum capacity of the Diesel Generator Fuel Oil Storage Tanks. Therefore, since the proposed change increases the fuel oil inventory it should enhance the ability of the diesel generators to respond to an accident and as such the change does not decrease any margin of safety previously assumed.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., 12th Floor, Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of amendment request: January 27, 2000.

Description of amendment request: The proposed amendment would allow operation of the facility for a period of up to 12 hours with the temperature of the ultimate heat sink (UHS) between 75 and 77°F, provided water temperature is verified below 77°F at least once per hour. Currently the temperature limit is 75°F and is verified at least once per 6 hours when the temperature is above 70°F, or once per 24 hours below 70°F.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with 10 CFR 50.92 NNECO [Northeast Nuclear Energy Company] has reviewed the proposed change and has concluded that it does not involve a significant hazards consideration (SHC). The basis for this conclusion is that the three criteria of 10 CFR 50.92(c) are not compromised. The proposed change does not involve a SHC because the change would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change will allow plant operation to continue for an additional 12 hours with the temperature of the UHS up to 2°F above the Technical Specification limit of 75°F. This increase in UHS temperature will not affect the normal operation of the plant to the extent which would make any accident more likely to occur. In addition, there exists adequate margin in the safety systems and heat exchangers to assure the safety functions are met at the higher temperature. An evaluation has confirmed that safe shutdown will be achieved and maintained for a loss of coolant accident (LOCA) with a loss of normal power (LNP) and a single active failure with an UHS water temperature as high as 77°F.

The proposed change will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design basis accidents will not change. In addition, the proposed change can not cause an accident. Therefore, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change will allow plant operation to continue for an additional 12 hours with the temperature of the UHS up to 2°F above the Technical Specification limit of 75°F. This will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The proposed change will not alter the way any structure, system or component functions and will not significantly alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment. The proposed change does not introduce any new failure modes. Also, the response of the plant and the operators following these accidents is unaffected by the change. In addition, the UHS is not an accident initiator. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

The proposed change will allow plant operation to continue for an additional 12 hours with the temperature of the UHS up to 2°F above the Technical Specification limit of 75°F. An evaluation has been performed which demonstrates that the safety systems have adequate margin to ensure their safety functions can be met with an ultimate heat sink water temperature of 77°F. In addition, safe shutdown capability has been demonstrated for an UHS water temperature as high as 77°F.

The proposed change will have no adverse effect on plant operation or equipment important to safety. The plant response to the design basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design basis accident analysis. Therefore, there will be no significant reduction in a margin of safety.

The proposed change does not alter the design, function, or operation of the equipment involved. The impact of the proposed change has been analyzed, and it has been determined it does not involve a significant increase in the probability or consequences of an accident previously evaluated, does not create the possibility of a new or different kind of accident from any accident previously evaluated, and does not involve a significant reduction in a margin of safety. Therefore, NNECO has concluded the proposed change does not involve a SHC.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, Connecticut.

NRC Section Chief: James W. Clifford.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: May 26, 1999.

Description of amendment request: The proposed amendments would relocate Technical Specification (TS) Surveillance Requirement 4.1.3.5.b, regarding the performance of channel functional test and channel calibration of certain control rod scram accumulator instrumentation, to the Updated Final Safety Analysis Report and would revise TS 3.1.3.5 to allow an alternate method for verifying whether a control rod drive pump is operating.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The first proposed change relocates control rod drive (CRD) instrumentation requirements from the TS to the UFSAR and plant procedures. The second proposed change adds an alternate method for verifying operation of a control rod drive pump in the TS action statement.

Regarding the first proposed change, operability of the accumulators is determined by verifying that the pressure in each accumulator is greater than or equal to 955 psig. TS 4.1.3.5.a requires weekly verification of accumulator pressure. The local pressure indicator for each accumulator is the normal means of satisfying this surveillance. This proposed change does not affect or alter the requirements associated with this instrumentation. If the local pressure indicator is not functioning or pressure is less than 955 psig, the accumulator will still be declared inoperable.

Operability of the accumulator pressure or water level alarm and indication function provided by the Reactor Manual Control System (RMCS) is not critical to the ability to insert control rods because:

(1) The rods can be inserted with normal charging water pressure if the accumulator is inoperable;

(2) A controlled shutdown or scram would occur before the accumulator would lose its full capability to insert the control rod, if it is found that no control rod drive pumps are operating according to existing procedural and TS controls placed on the plant; and

(3) The subject instruments' alarm and indication function are part of routine operational monitoring and are not considered in the plant safety analysis.

[Therefore, the removal of the accumulator pressure or level indication does not impact the consequences or probability of an accident previously evaluated. The operational monitoring of the accumulator alarms and indication system affords operating personnel the status of system condition and the opportunity to initiate appropriate actions if deemed necessary.]

The second proposed change simply adds an alternate method for verifying operation of a control rod drive pump. This check provides an equivalent method of verifying that inoperable control rod accumulators were not caused by a control rod drive pump trip. In addition:

(1) The assumed control rod reactivity insertion rate is not changed;

(2) The maximum number of inoperable accumulators and control rods is not changed;

(3) The TS actions to be taken in the event that a control rod drive pump is not operating remain unchanged; and

(4) The instrumentation for accumulator leakage a pressure detection will continue to be maintained and calibrated.

A RMCS failure does not change the failure modes or the reliability of the control rod function as described and evaluated in the UFSAR. The CRD system will continue to be available to safely shutdown the plant as described and evaluated in the UFSAR.

Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Neither the mechanism for initiating nor for carrying out a scram is modified by either of these proposed changes. These proposed changes do not:

(1) Create a means by which the scram function could be impeded or prevented.

(2) Involve a physical plant alteration or change the methods governing normal plant operation.

(3) Impose or eliminate any requirements or change the controls for maintaining the requirements.

There are no other malfunctions that need to be considered since failure of a significant number of control rods to scram is analyzed in Section 15.8 of the UFSAR. This is the bounding analysis for multiple control rod malfunctions or severe degradation of control rod scram performance. This event is mitigated by safety systems not directly related to the CRD system including the scram accumulators.

Therefore, these proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The first proposed change relocates CRD instrumentation requirements from TS to the UFSAR and plant procedures. The proposed change will not reduce a margin of safety, because it has no impact on any safety analysis. * * * [Therefore, the proposed change does not involve a significant reduction in a margin of safety.]

The second proposed change adds an alternate method for verifying operation of a control rod drive pump in the TS action statement. This proposed change does not reduce a margin of safety because the proposed change does not:

(1) Affect the maximum allowable control rod scram times,

(2) Change the maximum allowable number or minimum separation of inoperable control rods, or

(3) Modify any of the instrument setpoints or functions.

The proposed change will either maintain the present margin of safety or increase it, by reducing the need for unnecessary challenges to the Reactor Protection System (RPS) and resulting plant shutdown, while still maintaining the capability to complete a reactor scram.

Therefore, these proposed TS changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, PA 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V.P. and General Counsel, PECO Energy Company, 2301 Market Street, Philadelphia, PA 19101.

NRC Section Chief: James W. Clifford.

Power Authority of the State of New York, Docket No. 50–333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: February 3, 2000.

Description of amendment request: The proposed amendment would change the Technical Specifications (TSs) by revising the reactor water level setpoint for the Anticipated Transient Without Scram Recirculation Pump Trip (ATWS–RPT) function and the Alternate Rod Injection (ARI) functions (Table 3.2–7).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change deals only with an instrumentation setpoint which initiates the ATWS–RPT/ARI function. The system is intended to provide a mitigation function during a postulated ATWS event and does not provide any other plant control function. However, if the ATWS–RPT/ARI system were to fail, the result would be a trip of the recirculation pumps, or reactor scram, both of which are currently evaluated. The design of the system includes a one-out-of-two-twice logic, which ensures that a single failure in the system cannot cause or inhibit the ATWS–RPT/ARI function. Therefore, the probability of an inadvertent recirculation pump trip or inadvertent reactor scram is not changed from the event as currently described in the JAFNPP UFSAR [James A. FitzPatrick Nuclear Power Plant Updated Final Safety Analysis Report].

FitzPatrick specific analyses were performed by General Electric Company with NRC approved methods for postulated ATWS events (Reference 1 ["James A. FitzPatrick Nuclear Power Plant Anticipated Transient Without Scram Analysis, for Recirculation Pump Trip Setpoint Changes," General Electric Company, NEDC–32616P, July 18, 1996, Previously Docketed with NRC]). The specific events evaluated include the Main Steamline Isolation Valve closure event, Inadvertent Opening of a Relief Valve, and the Loss of Feedwater. For these events, the following acceptance criteria were established:

Peak Reactor Pressure (maximum 1 SRV out of service)—< 1500 psig

Peak Suppression Pool Temperature—< 190°F

Fuel Remains Cooled—Coolant Level > TAF [Top of Active Fuel]

The analyses demonstrate that all criteria were adequately met with the proposed TS change implemented, further ensuring no increase in the consequences of the postulated events.

The basis for changing the ARI initiation setpoint on reactor level to be consistent with that proposed for the ATWS RPT is documented in Reference 2 [JAF–ICD–NBI–;03998, Rev. 0—Alternate Rod Insertion Setpoint (an internal FitzPatrick interface document)]. The ARI initiation point is not specified in the Technical Specification.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS change deals only with a reactor water level instrumentation setpoint, which initiates the ATWS–RPT/ARI function. The existing level transmitters and wiring will be used, and new analog trip units will be incorporated which are identical to existing low-low reactor water level trip units currently shared with HPCI [High Pressure Coolant Injection] and RCIC [Reactor Core Isolation Cooling] initiation. These new analog trip units are of a different design (General Electric) than those used in the Reactor Protection System (Rosemount) and therefore, the diversity requirement of 10 CFR 50.62 (c)(3) remain[s] satisfied. This allows the HPCI and RCIC setpoints to remain the same while only lowering the ATWS–RPT/ARI setpoint. The sensing, logic and actuation of the ATWS–RPT/ARI design is not modified. This includes the use of the existing one-out-of-two-twice logic, which ensures that a single failure in the circuit will not cause or inhibit the ATWS–RPT/ARI function. There are no new signals required as input, and the trip function is accomplished with the existing RPT breakers and existing scram pilot air header solenoid valves. The system does not provide input to any other plant function. The plant will not operate in any new mode nor are there any new operational requirements as a result of the proposed change. Therefore, it is not considered possible for the ATWS–RPT/ARI system to fail in any new or different way from those events currently evaluated in the JAFNPP UFSAR.

3. Involve a significant reduction in a margin of safety.

The ATWS–RPT/ARI function protects the fuel, reactor and containment from failure during a postulated ATWS event. The fuel cladding barrier is protected via adequate cooling, provided by ensuring that the core remains covered throughout the entire event. The reactor coolant system boundary is protected by ensuring compliance with the ASME [American Society of Mechanical Engineers] emergency class pressure limit of 120% of design pressure. The containment is protected by ensuring the suppression pool temperature limits are met.

FitzPatrick specific ATWS analyses were performed by postulating events that challenge each of these limits (Reference 1). With the proposed TS change considered, each of these limits were met without a need for any reduction in the margin of safety established in the JAFNPP UFSAR for the primary fission product barriers.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David E. Blabey, 1633 Broadway, New York, New York 10019.

NRC Section Chief: Marsha Gamberoni, Acting.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: February 24, 2000.

Description of amendment request: The proposed amendment would approve a revision to the Hope Creek Generating Station Updated Final Safety Analysis Report (UFSAR) to reflect the use of the Mechanical Vacuum Pumps (MVPs) to evacuate the condenser during plant startup at power levels less than or equal to 5%. These revisions are required to make the UFSAR accident analyses associated with a Control Rod Drop Accident (CRDA) consistent with actual plant operation. Public Service Electric and Gas Company (PSE&G) has performed an engineering calculation that demonstrates that there is an increase in the radiological consequences of a CRDA coincident with MVP operation. Nuclear Regulatory Commission (NRC) approval of the proposed UFSAR changes is required, in accordance with Title 10 of the *Code of Federal Regulations* (10 CFR) Section 50.59, since these changes involve an unreviewed safety question.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The Condenser Air Removal System has no safety-related function and its failure does not jeopardize the function of any safety-related system or component or prevent a safe shutdown of the plant. Neither the MVPs, nor other components associated with the Condenser Air Removal, Gaseous Radwaste Off-Gas, Process Radiation Monitoring, or Turbine Building HVAC [Heating, Ventilation, and Air Conditioning] systems or the South Plant Vent are design basis accident initiators. The operation of mechanical vacuum pump at power levels ≤ 5% will not increase the probability of occurrence of a main condenser air removal system leak or failure of the line leading to the steam jet air ejector (SJAE) near the main condenser. Additionally, the design and operation of the condenser off-gas system is not impacted. Moreover, MVP operation will not increase the probability of occurrence of a CRDA or any other design basis accident. Consequently, this proposal does not increase the probability of an accident previously evaluated.

The engineering calculation performed to assess the impact of the use of the MVPs demonstrated that the radiological consequences of a CRDA coincident with MVP operation increase but remain well within the 10CFR100 guidelines and meet SRP [Standard Review Plan] Section 15.4.9, Appendix A, acceptance criteria. Additionally, the calculation demonstrated that the radiological consequences of a CRDA coincident with MVP operation are within the GDC [General Design Criterion] 19 guidelines for control room personnel and plant operators and remain bounded by the loss of coolant accident analysis for on-site personnel. Therefore, although the proposal does increase the consequences of a CRDA, the proposal does not significantly increase the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposal involves crediting manual action to trip the MVPs; however, PSE&G has evaluated this operator action against the criteria in NRC Information Notice 97–78 and has concluded that adequate controls are in place to ensure that the subject manual action is taken. In addition, the proposal does not change monitor setpoints, affect equipment qualification, or otherwise create an accident initiator not previously considered. Consequently, this proposal does not create the possibility of an accident of a different type from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The Condenser Air Removal System has no safety-related function. Failure of the system does not jeopardize the function of any safety-related system or component or prevent a safe shutdown of the plant.

The radiological activity evaluated in this proposal does not result in scenarios that could impact 10 CFR 50 Appendix I, 10 CFR 20, or 40 CFR 190 release criteria. Post-scram shutdown or startup condition MVP operation in accordance with plant operating procedures will not degrade the original design for the Condenser Air Removal System.

An engineering calculation was prepared that demonstrated that the radiological consequences of a CRDA coincident with MVP operation remain well within the 10 CFR 100 guidelines and that the consequences meet SRP Section 15.4.9, Appendix A, acceptance criteria. Additionally, the engineering calculation demonstrated that the radiological consequences of a CRDA coincident with MVP operation are within GDC 19 guidelines for control room personnel and plant operators and remain bounded by the loss of coolant accident analysis for on-site personnel.

Since no design bases are degraded, the Technical Specifications operating limits, that provide sufficient operating range such that the acceptance limits are not exceeded during plant operations and analyzed transients, are not [ ] affected. Since the acceptance limits are not exceeded, implementation of this proposal does not reduce the margin of safety as described in the basis for any Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038. *NRC Section Chief:* James W. Clifford.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of amendment requests: February 23, 2000 (PCN 508).

Description of amendment requests: The amendment application is a request to allow an option regarding the methodology for measuring the reactivity worth of control element assembly (CEA) groups for San Onofre Nuclear Generating Station (SONGS) Units 2 and 3 during low-power physics testing following a refueling. The proposed option involves measuring the worth of approximately three-fourths of the full-length CEA groups each refueling cycle rather than the present methodology, which measures the worth of all full-length CEA groups each refueling cycle. Measured CEA groups would be rotated such that each full-length group would be measured at least every other refueling. The licensee has determined this change to involve an unreviewed safety question.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Does the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed option to the Low Power Physics Test (LPPT) program will involve performance of rod worth measurements of typically six of eight full-length control element assembly (CEA) groups each refueling, rather than performance of rod worth measurements of all eight CEA groups each refueling. Thus, the LPPT option will result in a reduction in the number of plant manipulations required for LPPT. Inverse Boron Worth (IBW) is not required in the proposed LPPT program option, but it may be determined during the performance of a boration or dilution, which is already a part of the present LPPT program. The manipulations which will be performed are a subset of the evolutions which are performed in the existing test sequence. Therefore, the LPPT testing option does not carry any increased risk of any accident evaluated in Chapter 15 of the Updated Final Safety Analysis Report (UFSAR). Since the number and duration of manipulations are reduced, there would actually be a small reduction in accident potential.

The proposed test program option will not compromise the technical objectives of the LPPT program. Fuel fabrication, core and reactor internals reassembly, CEA worths, mechanical integrity and reliability, performance of core physics design codes and consistency with design and safety analysis expectations will remain validated with the same effectiveness as is achieved in the current program. In addition, the reduced duration of operation in the LPPT Special Test Exception of the Technical Specifications has a positive impact on nuclear safety.

Therefore, the proposed LPPT program option does not involve a significant increase in the probability of an accident previously evaluated.

The proposed test program option will eliminate CEA exchange measurements and determine CEA worth by dilution/boration measurements. Measurement of CEA worth by the dilution/boration methods achieves typically higher quality results than the CEA Exchange method.

The proposed LPPT program option does not include the requirement to measure inverse boron worth. However, a measured initial critical boron concentration and measured CEA group worths that match predicted values within acceptance criteria are sufficient to verify adequate core physics modeling without a separate IBW measurement.

Since the proposed test sequence option continues to ensure that core operation and reactivity control are consistent with design expectations, the proposed LPPT option will not involve a significant increase in the consequences of an accident previously evaluated.

Therefore, the proposed LPPT program option does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the amendment request create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed LPPT program option does not create any plant condition or manipulation which is materially different from those of the existing program. Furthermore, the number of manipulations and duration of Special Test Exceptions are significantly reduced. The proposed LPPT program option relies entirely on conventional boration and dilution rod worth measurement test methods which have been industry standards. The methodology used to measure IBW, if performed, does not introduce any new evolutions during LPPT and cannot create a new or different type of accident.

Therefore, the proposed LPPT program option does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does this amendment request involve a significant reduction in a margin of safety?

No. The proposed LPPT program option fully achieves objectives of the reload test program by validating fuel fabrication, core reassembly, CEA worths, mechanical integrity and reliability, performance of physics design codes and consistency with design and safety analysis expectations with the same effectiveness as is achieved in the current program. As a result, all assumptions made in support of UFSAR Chapter 15 Safety Analyses regarding CEA performance remain valid.

The effectiveness of the SONGS 2 & 3 Reload Test program, including LPPT and Power Ascension Testing, has been evaluated and shown to be uncompromised by the proposed LPPT option. Specific testing requirements imposed by the Nuclear Regulatory Commission are captured in Technical Specification Surveillance Requirements. The proposed LPPT program option is fully compliant with existing Technical Specification Surveillance Requirements and validates the core physics models regarding core performance, reactivity control and proper core reassembly to an extent equivalent to that of the present program.

The proposed LPPT program option is also consistent with the recently modified ANSI/ANS 19.6.1–1997 standard for Pressurized Water Reactor reload testing, with the exception of the requirement and methodology to determine IBW. The ANSI/ANS standard was developed with participation from industry and NRC representatives and represents an expert panel assessment of what is appropriate for an LPPT program. A measured initial critical boron concentration and measured CEA group worths that match predicted values within acceptance criteria are sufficient to verify adequate core physics modeling, and infer that the IBW value is within standard acceptance critieria, without a separate IBW measurement.

Therefore, the proposed LPPT program option does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: Douglas K. Porter, Esquire, Southern California Edison Company, 2244 Walnut Grove Avenue, Rosemead, California 91770.

NRC Section Chief: Stephen Dembek.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: August 24, 1999, as supplemented on December 29, 1999.

Description of amendment request: The proposed amendments would revise the Technical Specifications (TS) 3.3.2 "Engineered Safety Feature Actuation System (ESFAS) Instrumentation" to relax the slave relay test frequency from quarterly to a refueling frequency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The results of WCAP–13878 demonstrate that slave relays are highly reliable. WCAP–13878 also provides guidance to assure that slave relays remain highly reliable. The aging assessment concludes that the age/temperature-related degradation of all ND relays, and NE relays produced after 1992, is sufficiently slow such that a refueling frequency surveillance interval will not significantly increase the probability of slave relay failures. Finally, the evaluation of the auxiliary relays actuated during slave relay testing has concluded that based on the tests of the auxiliary relays performed during other equipment testing, reasonable assurance is provided that failures will be identified if the associated slave relays are tested on a refueling frequency.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not alter the performance of the ESFAS mitigation systems assumed in the plant safety analysis. Changing the interval for periodically verifying ESFAS slave relays (assuring equipment operability) will not create any new accident initiators or scenarios.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated for VEGP.

3. Does the change involve a significant reduction in a margin of safety?

The proposed changes do not affect the total ESFAS response assumed in the safety analysis since the reliability of the slave relays will not be significantly affected by the decreased surveillance frequency.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2216.

NRC Section Chief: Richard L. Emch, Jr.

STP Nuclear Operating Company, Docket No. 50–499, South Texas Project, Unit 2, Matagorda County, Texas

Date of amendment request: February 21, 2000.

Description of amendment request: STP Nuclear Operating Company proposes to amend the South Texas Project (STP), Unit 2 technical specifications (TS) so that steam generator tube eddy-current inspection indications of less than or equal to 3.0 volts can be left in service if found at intersections of tube hot-leg tube-support-plates C through M (3.0-volt alternate repair criteria). The new alternate repair criteria would apply only until the Unit 2 Model E steam generators are replaced during the outage currently scheduled to commence in fall of 2002. STP Nuclear Operating Company also proposes to amend the STP, Unit 2 TS to make an editorial correction to Note 1 and Note 2, on page 3/4–16a to align the notes with the preceding paragraph. STP Nuclear Operating Company also provided, for information only, changes to the Bases for TS 3/4.4.5 to provide the structural margins and Westinghouse topical report references used as the bases for the use of the 3.0-volt alternate repair criteria.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the criteria set forth in 10 CFR 50.92, the STP Nuclear Operating Company (STPNOC) has evaluated these proposed Technical Specification changes and determined they do not represent a significant hazards consideration. Conformance of the proposed amendment to the standards for a determination of no significant hazard as defined by the criteria set forth in 10 CFR 50.92 is shown in the following discussions addressed to each criterion:

(1) Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

During the limiting design-basis steam-line-break (SLB) event, South Texas Project (STP) Unit 2 steam generator tube burst criteria are inherently satisfied for marginally degraded (primarily axially-oriented ODSCC [outer diameter stress corrosion cracking]) tube spans at certain tube support plate (TSP) intersections.

Steam generator tubes pass through holes drilled in the TSP. The inside diameter (ID) of the drilled holes closely approximates the outside diameter (OD) of the tubes. Generally, the TSP precludes those tube spans within the drilled holes from deforming beyond the diameters of the drilled holes, thus, precluding tube burst in the restrained regions. However, design basis SLB events may vertically displace a TSP, removing its support from the tube spans passing through it. For TSP C through M, maximum displacement during a postulated SLB event is less than 0.15 inch. Because TSP C through M remain essentially stationary during all conditions, tube spans included within the drilled holes are restrained during the limiting SLB event. Thus, the tube burst margin for intersections of tube hot-legs and TSP C through M is independent of voltage related growth rates and the proposed 3-volt ARC [alternate repair criteria] is compliant with RG [Regulatory Guide] 1.121 [Bases for Plugging Degraded PWR Steam Generator Tubes] criteria.

Given a TSP displacement of < 0.15 inch, tube hot-leg spans enclosed within TSP C through M have a negligible tube burst probability of less than 10^{-10} for a single tube. This is eight orders of magnitude less than the 10^{-2} probability-of-burst criterion specified by GL [Generic Letter] 95–05 [Voltage-Based Repair Criteria for Westinghouse Steam Generator Tubes Affected by Outside Diameter Stress Corrosion Cracking] and represents negligible axial tube burst probabilities for tube hot-leg spans intersecting TSP C through M. Thus, repair limits to preclude burst are not needed and tube repair limits may be based primarily on limiting leakage to acceptable levels during accident conditions.

Cracks that include cellular corrosion may yield to axial loads, resulting in tensile tearing of the tube at that location. A tensile load requirement to prevent this establishes a structural limit for the tube expansion based plugging criterion. In order to establish a lower bound for the structural limit, tensile tests were used to measure the force required to separate a tube that exhibits cellular corrosion. Additionally, pulled tubes with cellular and/or inter-granular attack (IGA) tube wall degradation were evaluated and the tensile strength of the tube conservatively calculated from the remaining non-corroded cross-section of the tube. This calculation assumes that the degraded portions contribute nothing to the axial load carrying ability of the tube. Data from these tests shows that circumferential cracks exhibiting bobbin-coil-probe-indication-voltages greater than 35 volts require tube-pressure-differentials well above the operating limit of 3-times-normal differential pressure in order to produce circumferential ruptures (i.e., axial separation at the plane of the crack). This proposal specifies a structural limit of 17 volts (safety factor of 2) to ensure conservative results for repairs at intersections of tubes with TSP C through M.

GL 95–05 states that licensees must perform SLB leak rate and tube burst probability analyses before returning to power from outages during which they perform steam generator inspections. Licensees must include the results in a report to the NRC within 90 days after restart. If an analysis reveals that leak-rate or burst-probability exceeds limits, the licensee must report it to the NRC and assess the safety significance of this finding. Model E steam generator SLB leak rates are calculated for indications found at intersections of tube hot-legs and TSP. Both SLB leak rate and tube burst probability are calculated for tube hot-leg intersections with FDB [flow distribution baffles], hot-leg intersections with TSP N through R, and indications found at intersections of tube cold-legs with any TSP.

It has been established that the design basis main SLB outside of containment and upstream of the MSIV [main steam isolation valves] produces the limiting radiological consequence from any tube leakage that may be postulated to exist at the initiation of an accident. With use of 3-volt ARC, STPNOC [STP Nuclear Operating Company] will calculate the maximum primary-to-secondary leakage for the last day of the coming steam generator service-cycle and use this value to calculate the radiological consequence of the limiting SLB event. This methodology will ensure that site boundary doses for this accident remain within an acceptable fraction of the 10 CFR 100 guidelines and that doses to the control room operators remain within GDC 19 [10 CFR Part 50, Appendix A, General Design Criterion] limits.

Based on the above, STPNOC concludes that operation of South Texas Project Unit 2 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Use of the proposed steam generator tube 3-volt ARC does not significantly change circumstances or conclusions assumed by the plant design basis. Application of the 3-volt ARC does not significantly increase the probability of either single or multiple tube ruptures. Steam generator tube integrity remains adequate for all plant operating conditions.

STPNOC has confirmed that the allowed post-accident primary-to-secondary leakage rate for SLB events results in the limiting offsite and control room doses for South Texas Project Unit 2. A projected SLB leak rate of 15.4 gpm is calculated to produce doses 90% of the currently licensed South Texas Project Unit 2 dose limits (Reference 2 [STPNOC letter dated July 15, 1998, NOC–AE–000228, Response to NRC Request for Additional Information related to STP Unit 2 Amendment No. 83]). STPNOC TS impose a normal leak rate limit of 150 gpd (0.1 gpm) per steam generator to minimize the potential for excessive leakage during all plant conditions. The 150 gpd limit provides added margin to accommodate contingent leakage should a stress corrosion crack grow at a greater than expected rate or extend outside the TSP. Leakage trending consistent with EPRI Report TR–04788, "PWR Primary-to-Secondary Leak Guidelines" has been established for South Texas Project Unit 2.

Since steam generator tube integrity will meet GL 95–05 requirements and be confirmed through in-service inspection and primary-to-secondary leakage monitoring, the proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does this change involve a significant reduction in a margin of safety?

RG 1.121 describes a method for meeting GDC 14, 15, 31, and 32 by reducing the probability or consequences of steam-generator tube-rupture through application of criteria for removing degraded tubes from service. These criteria set limits of degradation for steam generator tubing through in-service inspection. Analyses show that tube integrity will remain consistent with the criteria of Regulatory Guide 1.121 after implementation of the proposed 3-volt ARC. Even under the worst case ODSCC occurrence at TSP elevations, 3-volt ARC will not cause or significantly increase [the] probability of a steam-generator tube-rupture event.

In addressing combined LOCA [loss-of-coolant accident] + SSE [safe-shutdown earthquake] effects on steam generator components as required by GDC 2, analysis has shown that tube collapse may occur in certain regions of the steam generators of some plants. This collapse is caused by TSP plastic deformation in the region of the TSP wedge supports. Plastic deformation occurs when TSP experience large lateral loads concentrated at wedge support points on the periphery of a TSP undergoing combined loading effects of a LOCA rarefaction wave and SSE. Deformation impinges on TSP apertures through which tubes pass, deflecting tube walls inward. The resulting pressure differential across deformed tube walls may cause some tubes to collapse.

There are two issues associated with steam generator tube collapse. First, collapse of steam generator tubing reduces RCS [reactor coolant system] flow. RCS flow reduction increases resistance to heat flow from the core during a LOCA, increasing Peak Clad Temperature (PCT). Second, partial through-wall tube-cracks could become full through-wall tube-cracks during tube deformation or collapse. Tubes in regions affected by this phenomenon are usually excluded from evaluation under 3-volt ARC. STP Model E steam generator design does not produce this plastic deformation, thus is not subject to tube collapse. No STP Unit 2 tubes are excluded, for this reason, from application of the proposed 3-volt ARC.

End of Cycle (EOC) distribution of crack indications at affected TSP elevations will be confirmed to allow no more than the acceptable primary-to-secondary leakage rate during all plant conditions and not adversely affect radiological dose consequences. For the limiting SLB event, STPNOC will calculate leak rates as free-span leakage for ODSCC indications at tube and TSP intersections. The calculations will use GL 95–05 leak rate methods with an additional component for potentially overpressurized indications [discussed in detail in the Safety Evaluation section of the licensee's February 21, 2000, application under the heading "SLB Leak Rate and Tube Burst Probability Considerations"].

Inspections conducted in accordance with RG 1.83, Rev. 1 [In Service Inspection of Pressurized Water Reactor Steam Generator Tubes], using 3-volt ARC for intersections of tube hot-legs with TSP C through M, and using 1-volt ARC at remaining hot-leg and cold-leg intersections will be supplemented by:

(1) enhanced eddy current inspection procedures to achieve consistency in voltage normalization,

(2) eddy current inspection of 100% of tubes found, using inspection of a 20% tube sample, to have ODSCC at intersections with TSP, and

(3) a required RPC [rotating pancake coil] inspection of the larger indications to confirm that the principal degradation mechanism continues to be ODSCC.

Plugging steam generator tubes reduces RCS flow margin. As previously noted, increasing repair limits for indications found at TSP intersections will reduce the number of tubes that must be plugged. Thus, 3-volt ARC will conserve RCS flow margin, preserving operational and safety benefits that would otherwise be reduced by unnecessary plugging.

Therefore, the proposed license amendment does not result in a significant increase in dose consequences represented in the current licensing basis, and does not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the standards of 10 CFR 50.92(c) are satisfied. The staff also reviewed the proposed editorial change for no significant hazards consideration. The proposed editorial correction does not affect the design or operation of the facility and satisfies the three standards of 10 CFR 50.92(c). Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Attorney for licensee: Jack R. Newman, Esq., Morgan, Lewis & Bockius, 1800 M Street, NW., Washington, DC 20036–5869.

NRC Section Chief: Robert A. Gramm.

Virginia Electric and Power Company, Docket Nos. 50–280 and 50–281, Surry Power Station, Units No. 1 and No. 2, Surry County, Virginia

Date of amendment request: November 29, 1999.

Description of amendment request: The proposed changes will modify the Technical Specifications (TS) in Section 3.23 for the Main Control Room and Emergency Switchgear Room Ventilation and Air Conditioning Systems; TS Surveillance Requirement Sections 4.20, Basis 4.20.A.7, and 4.20.B.4 for the Control Room Air Filtration System; and TS Surveillance Requirement Sections 4.12.A.6, 4.12.A.7, 4.12.A.8, 4.12.B.7, and 4.12 Basis for the Auxiliary Ventilation Exhaust Filter Trains. The proposed changes will revise the above Surveillance Requirements for the laboratory testing of the carbon samples for methyl iodide removal efficiency to be consistent with American Society for Testing and Materials (ASTM) Standard D3803–1989, "Standard Test Method for Nuclear-Graded Activated Carbon," with qualification, as the laboratory testing standard for both new and used charcoal adsorbent used in the ventilation system.

Basis for proposed no significant hazards consideration determination: In 10 CFR 50.92, three criteria are provided to determine whether a proposed license amendment involves a significant hazards consideration. No significant hazards consideration is involved if operation of the facility with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Virginia Electric and Power Company has reviewed the requirements of 10 CFR 50.92 as they relate to the proposed changes for Surry Units 1 and 2 and determined that a significant hazards consideration is not involved. The proposed Technical Specification changes adopt the nuclear-grade charcoal testing requirements of ASTM D3803–1989, with qualification, for methyl iodide removal efficiency and the requirements of ASTM D3803–1979, with qualification, for elemental iodine removal efficiency. The method of testing nuclear-grade activated charcoal does not affect the design or operation of the plant. The changes also do not involve any physical modification to the plant or result in a change in a method of system operation. The adoption of the 1989 edition of ASTM D3803 for methyl iodide testing conforms with approved guidance for testing of nuclear-grade activated charcoal. This provides assurance that testing of ventilation systems is being performed with a suitable standard to ensure that charcoal adsorbers are capable of performing their required safety function and that the regulatory requirements regarding onsite and offsite dose consequences continue to be satisfied. The changes do not create an unreviewed safety question.

(a) The proposed changes modify surveillance testing requirements and do not affect plant systems or operation and therefore do not increase the probability or the consequences of an accident previously evaluated. The proposed surveillance requirements adopt ASTM D3803–1989, with qualification, as the laboratory method for testing samples of the charcoal adsorber for methyl iodide removal efficiency in response to NRC's Generic Letter 99–02. This method of testing charcoal adsorbers has been approved by the NRC as an acceptable method for determining methyl iodide removal efficiency. Since the charcoal adsorbers are used to mitigate the consequences of an accident, the more accurate the test, the better assurance we have that we remain within our accident analysis assumptions. Testing of the charcoal adsorbers' efficiency for removing elemental iodine is performed in accordance with the 1979 version of ASTM D3803 since the 1989 version does not address elemental iodine removal efficiencies. The laboratory test acceptance criteria contain a safety factor to ensure that the efficiency assumed in the accident analysis is still valid at the end of the operating cycle. There is no change in the method of plant operation or system design.

(b) The proposed changes modify surveillance testing requirements and do not impact plant systems or operations and therefore do not create the possibility of an accident or malfunction of a different type than evaluated previously. The proposed surveillance requirements adopt ASTM D3803–1989, with qualification, as the laboratory method for testing samples of the charcoal adsorber for methyl iodide removal efficiency. This change is in response to NRC's request in Generic Letter 99–02. Testing of the charcoal adsorbers' efficiency for removing elemental iodine is performed in accordance with the 1979 version of ASTM D3803 since the 1989 version does not address elemental iodine removal efficiencies. There is no change in the method of plant operation or system design. There are no new or different accident scenarios, transient precursors, nor failure mechanisms that will be introduced.

(c) The proposed changes modify surveillance test requirements and do not impact plant systems or operations and therefore do not significantly reduce the margin of safety. The revised surveillance requirements adopt ASTM D3803–1989, with qualification, as the laboratory method for testing samples of the charcoal adsorber for methyl iodide removal efficiency. The 1989 edition of this standard imposes very stringent requirements for establishing the capability of new and used activated carbon to remove methyl iodide from air and gas streams. The results of this test provide a more conservative estimate of the performance of nuclear-graded activated carbon used in nuclear power plant HVAC [heating, ventilation, and air conditioning] systems for the removal of methyl iodide. Testing of the charcoal adsorbers' efficiency for removing elemental iodine is performed in accordance with the 1979 version of ASTM D3803 since the 1989 version does not address elemental iodine removal efficiencies. The laboratory test acceptance criteria contain a safety factor to ensure that the efficiency assumed in the accident analysis is still valid at the end of the operating cycle.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. Donald P. Irwin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Section Chief: Richard L. Emch, Jr.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: February 18, 2000.

Brief description of amendment request: The amendment changes current Technical Specification (TS) 4.9a.2 and improved TS 3.7.5 and its associated bases to remove requirements associated with the backup steam supply to turbine-driven auxiliary feedwater pump P–8B.

*Date of publication of individual notice in **Federal Register:*** March 1, 2000 (65 FR 11089)

Expiration date of individual notice: Comment period expired March 14, 2000; Notice period expires March 31, 2000.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendments: February 25, 2000.

Brief description of amendments: The amendment revises Technical Specification Table 3.3.2–1, "Engineered Safety Feature Actuation System Instrumentation" to provide a one-time exception, until the next time the turbine is removed from service, from the requirement to perform response time testing for the solenoid valve 1–FSV–47–027.

*Date of publication of individual notice in the **Federal Register:*** March 2, 2000.

Expiration date of individual notice: March 16, 2000.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: January 14, 2000, as supplemented by letter dated February 17, 2000 (ULNRC–04172 and –04187).

Brief description of amendment request: The amendment would revise several sections of the improved Technical Specification (ITSs) to correct 14 editorial errors made in either (1) the application dated May 15, 1997, (and supplementary letters) for the ITSs, or (2) the certified copy of the ITSs that was submitted in the licensee's letters of May 27 and 28, 1999. The ITSs were issued as Amendment No. 133 by the staff in its letter of May 28, 1999, and will be implemented by the licensee to replace the current TSs by April 30, 2000.

*Date of publication of individual notice in **Federal Register:*** February 25, 2000 (65 FR 10118).

Expiration date of individual notice: March 27, 2000.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: March 1, 1999.

Brief description of amendment: The amendment approves changes to the Updated Safety Analysis Report concerning design requirements for physical protection from tornado missiles.

Date of issuance: February 29, 2000.

Effective date: February 29, 2000.

Amendment No.: 124.

Facility Operating License No. NPF–62: The amendment allows a change to the Updated Safety Analyis Report concerning tornado missile protection.

*Date of initial notice in **Federal Register:*** April 21, 1999 (64 FR 19558).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 29, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Co., LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: June 4, 1999, as supplemented December 13, 1999.

Brief description of amendment: The amendment modified the limiting conditions for operation in the Technical Specifications (TSs) under which a reduction in the number of means of decay heat removal (DHR) capability may occur by deleting two of these conditions. The amendment also makes related Bases changes and clarifies the DHR requirements for redundancy.

Date of issuance: February 28, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 220.

Facility Operating License No. DPR–50. This amendment revised the Technical Specifications.

*Date of initial notice in **Federal Register:*** June 30, 1999 (64 FR 35207). The December 13, 1999, letter withdrew a Bases change of the June 4, 1999, application and did not change the initial proposed no significant hazards consideration determination or expand the amendment beyond the scope of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1 (TMI–1), Dauphin County, Pennsylvania

Date of application for amendment: May 26, 1999.

Brief description of amendment: The amendment authorized changes to Chapters 5 and 14 of the Updated Final Safety Analysis Report (UFSAR). The changes reflect the use of an Electric Power Research Institute-developed Conservative Deterministic Failure Margin methodology for seismic analysis of the portions of the nonsafety-related auxiliary steam line piping located in the Auxiliary, Control, and Fuel Handling buildings at TMI–1.

Date of issuance: March 10, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 221.

Facility Operating License No. DPR–50. Amendment authorizes changes to the UFSAR.

Date of initial notice in ***Federal Register:*** June 30, 1999 (64 FR 35207). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 10, 2000.

No significant hazards consideration comments received: No.

Arizona Public Service Company, et al., Docket Nos. STN 50–528, STN 50–529, and STN 50–530, Palo Verde Nuclear Generating Station, Units Nos. 1, 2, and 3, Maricopa County, Arizona

Date of application for amendments: June 8, 1999, as supplemented July 20 and November 24, 1999.

Brief description of amendments: The amendments revise the Technical Specifications to increase the storage capacity of spent fuel in the fuel storage pools by allowing credit for soluble boron and decay time in the safety analysis, and to increase the maximum radially averaged fuel enrichment from 4.3 weight percent to 4.8 weight percent.

Date of issuance: March 2, 2000.

Effective date: March 2, 2000.

Amendment Nos.: Unit 1–125, Unit 2–125, Unit 3–125.

Facility Operating License Nos. NPF–41, NPF–51, and NPF–74: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 20, 1999 (64 FR 50835). The July 20 and November 24, 1999, letters provided additional clarifying information that was within the scope of the original application and **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 2000.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: September 28, 1999.

Brief description of amendment: The amendment changes the Technical Specifications (TS) in response to your submittal dated September 28, 1999. The amendment revises TS 2.1.1.2, "Reactor Core Safety Limits," and TS 5.6.5, "Core Operating Limits Report," by removing safety limit restrictions which are no longer applicable.

Date of issuance: March 1, 2000.

Effective date: March 1, 2000.

Amendment No.: 207.

Facility Operating License No. DPR–71: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 3, 1999 (64 FR 59797).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 2000.

No significant hazards consideration comments received: No.

Carolina Power & Light Company, et al., Docket No. 50–325, Brunswick Steam Electric Plant, Unit 1, Brunswick County, North Carolina

Date of amendment request: November 17, 1999.

Brief description of amendment: The amendment changes the Technical Specifications (TS) in response to the licensee's submittal dated September 28, 1999. The amendment revises TS 2.1.1.2, "Reactor Core Safety Limits," by changing the Minimum Critical Power Ratio.

Date of issuance: March 1, 2000.

Effective date: March 1, 2000.

Amendment No.: 208.

Facility Operating License No. DPR–71: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70080).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: March 23, 1999, as supplemented on October 21, 1999, and December 15, 1999.

Brief description of amendments: The amendments approved the installation of new Boral high density spent fuel storage racks at Byron and Braidwood stations. The amendments also approved an increase in the spent fuel pool storage capacity from 2,870 assemblies to 2,984 assemblies at each station.

Date of issuance: March 1, 2000.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 112 and 105.

Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 16, 1999 (64 FR 32280). The October 21 and December 15, 1999, supplements did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: October 12, 1999.

Brief description of amendments: The amendments revised Technical Specification (TS) 2.2, "Limiting Safety System Settings," and TS 3/4.1.A, "Reactor Protection System," to remove an anticipatory reactor scram signal, the turbine electro-hydraulic control (EHC) low oil pressure trip, from the reactor protection system trip function requirements.

Date of issuance: January 28, 2000.

Effective date: Immediately, to be implemented within 30 days.

Amendment Nos.: 193 & 189.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 1, 1999 (64 FR 67331).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 28, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 16, 1999.

Brief description of amendments: The amendments change Technical Specification Table 4.1.A–1, "Reactor Protection System Instrumentation Surveillance Requirements," to modify the surveillance requirements for Functional Unit 3, "Reactor Vessel Steam Dome Pressure—High," to reflect replacement of the pressure switches with analog trip units.

Date of issuance: January 28, 2000.

Effective date: Immediately, to be implemented before startup from Refueling Outage 16 for Unit 1 and before startup from Refueling Outage 15 for Unit 2.

Amendment Nos.: 194 & 190.

Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70082).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated January 28, 2000.

No significant hazards consideration comments received: No.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: June 2, 1999, as supplemented August 25, 1999.

Brief description of amendment: The amendment allows for the relocation of the Quality Assurance related administrative controls to the Quality Assurance Program Description in accordance with NRC Administrative Letter 95–06, "Relocation of Technical Specification Administrative Controls Related to Quality Assurance."

Date of issuance: February 25, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 206.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 3, 1999 (64 FR 59799).

The August 25, 1999, letter provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 25, 2000.

No significant hazards consideration comments received: No.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: February 29, 2000.

Brief description of amendment: The amendment revises Technical Specification (TS) 3.7.D.1 to correct an editorial error, TS 6.2.2 to change the senior reactor operator license requirement for the Operations Manager, and TS 6.3.1 to modify the qualification requirement for the Operations Manager.

Date of issuance: February 29, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 207.

Facility Operating License No. DPR–26: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 7, 1999 (64 FR 17023).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 29, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: June 24, 1999, as supplemented by letter dated November 24, 1999.

Brief description of amendments: The amendments revised the Technical Specifications by revising the minimum reactor coolant system (RCS) flow rate limit, the reactor coolant average temperature, and the pressurizer pressure limits, and by restricting operation to a RCS flow deficit of no more than one percent.

Date of issuance: March 1, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—184; Unit 2—176.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 11, 1999 (64 FR 43770).

The November 24,1999, letter provided clarifying information that did not change the scope of the June 24, 1999, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 2000.

No significant hazards consideration comments received: No

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: June 24, 1999, as supplemented by letter dated November 24, 1999.

Brief description of amendments: The amendments revise the minimum reactor coolant system (RCS) flow rate limit, reduce the reactor coolant average temperature and pressurizer pressure limits, restrict operation to a RCS flow deficit of no more than one percent, and change the low RCS flow reactor trip setpoint.

Date of issuance: March 2, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1—191; Unit 2—172.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** August 11, 1999 (64 FR 43772).

The November 24, 1999, supplemental letter did not expand the scope of the application initially noticed or change the proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 2000.

No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, WNP–2, Benton County, Washington

Date of application for amendment: October 13, 1999.

Brief description of amendment: The amendment removes footnote (d) from Function 5, "RHR [residual heat removal] SDC [shut down cooling] System Isolation" of Technical Specification (TS) Table 3.3.6.1–1, "Primary Containment Isolation Instrumentation." Footnote (d) states, "Only the inboard trip system is required in Modes 1, 2, and 3, as applicable, when the outboard valve control is transferred to the alternate remote shutdown panel and the outboard valve is closed." The outboard suction trip system valve, RHR–V–8, is no longer transferred to the alternate remote shutdown panel and is now required during Modes 1, 2 and 3. Therefore, footnote (d) is no longer needed. Footnote (e) is relettered as footnote (d) for consistency.

Date of issuance: March 9, 2000.

Effective date: March 9, 2000, to be implemented within 30 days of issuance.

Amendment No.: 161.

Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70082).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 2000.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: December 16, 1999.

Brief description of amendment: The amendment authorizes the licensee to revise fuel handling accident (FHA) dose calculations for three scenarios described in the River Bend Station, Unit 1, Updated Safety Analysis Report. The first is an FHA in the fuel building, assumed to occur 24 hours post-shutdown. A second FHA analysis was prepared to support Amendment 35 to RBS Technical Specifications (TS) which assumed an FHA occurs in the primary containment 80 hours post-shutdown during local leakage rate testing (LLRT). A third analysis was prepared in support of Amendment 85 to the River Bend Station Technical Specifications which assumed the containment is open at 11 days. These analyses are being updated to account for several changes that were determined by the licensee to involve an unreviewed safety question in accordance with Title 10 of the *Code of Federal Regulations*, Section 50.59(a)(2)(i).

Date of issuance: March 2, 2000.

Effective date: The license amendment is effective as of its date of issuance and shall be implemented in the next periodic update to the USAR in accordance with 10 CFR 50.71(e). Implementation of the amendment is the incorporation into the USAR update, the changes to the description of the facility as described in the licensee's application dated December 16, 1999, and evaluated in the staff's Safety Evaluation attached to this amendment.

Amendment No.: 110.

Facility Operating License No. NPF–47: The amendment authorized changes to the Updated Safety Analysis Report.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4272).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket Nos. 50–313 and 50–368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Date of amendment request: September 17, 1999.

Brief description of amendments: The amendments modify TS 3.25.2, "Radioactive Gas Storage Tanks," at Arkansas Nuclear One, Unit 1 (ANO–1) and TS 3/4.11.2, "Gas Storage Tanks," at Arkansas Nuclear One, Unit 2 (ANO–2). This change will reduce the limiting condition for operation for the maximum quantity of stored radioactivity per tank from 300,000 curies of noble gases as Xenon–133 (Xe–133) equivalent to 78,782 curies of noble gases as Xe–133 equivalent at ANO–1, and 82,400 curies of noble gases as Xe–133 equivalent at ANO–2.

Date of issuance: February 18, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: ANO–1—204; ANO–2—211.

Facility Operating License Nos. DPR–51 and NPF–6: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 12, 2000 (65 FR 1921).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 18, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., Docket No. 50–382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: July 29, 1998, as supplemented by letters dated July 29, October 28, and November 11, 1999

Brief description of amendment: The amendment replaces the existing reference to the Asea Brown Boveri-Combustion Engineering, Inc. small break loss-of-coolant accident emergency core cooling system performance evaluation model with the revised model described in the topical report CENPD–137, Supplement 2, P–A, April 1998.

Date of issuance: March 7, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days from the date of issuance.

Amendment No.: 158.

Facility Operating License No. NPF–38: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70085).

The July 29, October 28, and November 11, 1999, letters provided additional information that did not change the scope of the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendments: March 16, 1999.

Brief description of amendments: This amendment revised TS 3/4.7.1.3 and associated Bases for the Primary Plant Demineralized Water (PPDW) system to clarify that the minimum specified volume of water in the PPDW Storage Tank is a usable volume. Additionally, the minimum usable volume of wate n the PPDW Storage Tank is increased, and a clarifying footnote that the specified value is an analysis value is added. Finally, several editorial and administrative changes, such as revision of action statement wording, addition of license number to TS page, and addition of clarifying information to the TS Bases regarding analysis assumptions are made.

Date of issuance: February 28, 2000.

Effective date: As of the date of issuance and shall be implemented within 60 days.

Amendment Nos.: 106.

Facility Operating License No. NPF–73: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** April 21, 1999, (64 FR 19556).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: May 27, 1999.

Brief description of amendments: The amendments relocate the seismic monitoring instrumentation requirements contained in Technical Specification (TS) 3/4.3.3.3 to the Licensing Requirements Manual (LRM) based on the guidance provided in Generic Letter 95–10, "Relocation of Selected Technical Specifications Requirements Related to Instrumentation." The Bases section for Specification 3/4.3.3.3 is also relocated to the LRM. The appropriate Index pages, Table Index page (Unit No. 1 only), TS pages and Bases pages are revised to reflect the removal of the seismic monitoring instrumentation specification from the TSs. An additional TS page is added to reflect that TS Number 3/4.3.3.4 is not used.

This additional page also denotes the number of the following page. Finally, the Bases section is modified to denote that TS Number 3/4.3.3.4 is not used.

Date of issuance: February 28, 2000.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 228 and 107.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 30, 1999 (64 FR 35203).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, et al., Docket Nos. 50–334 and 50–412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: May 27, 1999.

Brief description of amendments: The amendments (1) revised the frequency for performing the CHANNEL FUNCTIONAL TEST of the manual initiation functional units specified in the Beaver Valley Power Station, Unit Nos. 1 and 2, Engineered Safety Features Actuation System (ESFAS) Instrumentation Technical Specifications (TSs) from monthly, with an accompanying footnote which allows the manual initiation to be tested on a refueling interval, to each refueling interval; (2) revise footnotes associated with TS ESFAS tables; (3) revise associated TS Bases.

Date of issuance: February 28, 2000.

Effective date: As of date of issuance and shall be implemented within 60 days.

Amendment Nos.: 229 and 108.

Facility Operating License Nos. DPR–66 and NPF–73: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 30, 1999 (64 FR 35205).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: May 21, 1999, as supplemented by submittals dated December 1, 1999, and January 28, 2000.

Brief description of amendment: This amendment revises the Technical Specifications to expand the present spent fuel storage capability by 289 storage locations by allowing the use of spent fuel racks in the cask pit area adjacent to the spent fuel pool.

Date of issuance: February 29, 2000.

Effective date: February 29, 2000.

Amendment No.: 237.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 8, 1999 (64 FR 36933).

The supplemental information contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 29, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket No. 50–389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of application for amendment: August 18, 1999.

Brief description of amendment: This amendment decreases the surveillance frequency, listed in the updated Final Safety Analysis Report (UFSAR), for cycling steam valves in the turbine overspeed protection system from monthly to quarterly.

Date of Issuance: February 28, 2000.

Effective Date: As of the date of its issuance, to be incorporated into the UFSAR at the time of its next update.

Amendment No.: 108.

Facility Operating License No. NPF–16: Amendment revised the UFSAR.

Date of initial notice in ***Federal Register:*** September 22, 1999 (64 FR 51345).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 28, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida

Date of application for amendments: December 1, 1999, as supplemented December 15, 1999.

Breif description of amendments: The amendments revised License Condition 3.L for Turkey Point, Units 3 and 4, Operating Licenses DPR–31 and DPR–41 to reflect the December 1, 1999, date of the last revision to the Physical Security Plan. Also, the phrase "Turkey Point Plant, Units 3 and 4 Security Plan" was revised to "Turkey Point Physical Security Plan."

Date of issuance: February 28, 2000.

Effective date: February 28, 2000.

Amendment Nos.: 204 and 198.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the Operating Licenses.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73092).

The Commssion's related evaluation of the amendments is contained in a Safety Evaluation dated February 28, 2000.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: October 12, 1999.

Brief description of amendment: The amendment revises the Technical Specifications, Appendix B, "Environmental Protection Plan (Non-Radiological)" to incorporate the reasonable and prudent measures, and the terms and conditions, of the Incidental Take Statement in the Biological Opinion issued by the National Marine Fisheries Service.

Date of issuance: February 29, 2000.

Effective date: February 29, 2000.

Amendment No.: 190.

Facility Operating License No. DPR–31: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70090).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 29, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: December 22, 1999.

Brief description of amendments: The amendments delete Technical Specification 5.4.2, "Reactor Coolant System Volume," regarding the reactor coolant system (RCS) volume information. Information concerning the RCS volume is included in the D. C. Cook Updated Final Safety Analyses Report (UFSAR), and any changes to the information are controlled in accordance with 10 CFR 50.59.

Date of issuance: March 1, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 241 and 222.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 13, 2000 (65 FR 2199).

The Commssion's related evaluation of the amendments is contained in a Safety Evaluation dated March 1, 2000.

No significant hazards consideration comments received: No.

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: October 6, 1999, as supplemented February 9, 2000.

Brief description of amendment: The amendment addresses the following changes to the Technical Specifications: (1) provisions for implementation of 10 CFR Part 50, Appendix J, Option B, (Technical Specification Task Force (TSTF) Change 52, Revision 2) (2) extension of the required surveillance interval for the containment air lock interlock mechanism from 18 to 24 months (TSTF Change 17, Revision 1), (3) clarification of the valve types requiring isolation time testing (TSTF Change 46, Revision 1), and (4) provisions for use of administrative means for verification of isolation devices that are locked, sealed or otherwise secured (TSTF Change 269, Revision 2).

Date of issuance: March 3, 2000.

Effective date: March 3, 2000, to be implemented within 30 days.

Amendment No.: 180.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73092). The February 9, 2000, supplement provided clarifying information that was within the scope of the October 6, 1999, application and the staff's original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commssion's related evaluation of the amendment is contained in a Safety Evaluation dated March 3, 2000.

No significant hazards consideration comments received: No.

Niagara Mohawk Power Corporation, Docket No. 50–220, Nine Mile Point Nuclear Station, Unit 1, Oswego County, New York

Date of application for amendment: August 26, 1999, as supplemented December 17, 1999.

Brief description of amendment: The amendment changes Technical Specification 3.2.3, "Coolant Chemistry," to support the implementation of noble metal chemical addition.

Date of issuance: March 8, 2000.

Effective date: As of the date of issuance to be implemented before the licensee first performs the noble metal chemical addition.

Amendment No.: 169.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 22, 1999 (64 FR 51347).

The licensee's supplemental letter dated December 17, 1999, did not change the Commission's finding of no significant hazards consideration.

The Commssion's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 2000.

No significant hazards consideration comments received: No.

Niagara Mohawk Power Corporation, Docket No. 50–410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: October 25, 1999, as supplemented on February 2 and 7, 2000.

Brief description of amendment: The amended Technical Specifications permit use of the already-installed Oscillation Power Range Monitor system.

Date of issuance: March 2, 2000.

Effective date: As of the date of issuance to be implemented before activation of the Oscillation Power Range Monitor System, but no later than August 31, 2000.

Amendment No.: 92.

Facility Operating License No. NPF–69: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 1, 1999 (64 FR 67336).

The February 2 and 7, 2000, letters provided clarifying information that did not change the initial proposed no significant hazards consideration.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 2, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–245, Millstone Nuclear Power Station, Unit No. 1, New London County, Connecticut

Date of application for amendments: April 19, 1999, as supplemented August 25, October 14, November 3, December 20, 1999, and February 29, 2000.

Brief description of amendments: The amendment replaces the current Technical Specifications for fuel storage pool water lever, crane operability, and crane travel with a spent fuel cask with new Technical Specifications to reflect the permanently defueled status of the plant.

Date of Issuance: March 7, 2000.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment No.: 107.

Facility Operating License No. DPR–21: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 30, 1999, (64 FR 35208).

The August 25, October 14, November 3, December 20, 1999, and February 29, 2000, letters provided clarifying information that did not change the scope of the original application and proposed no hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket Nos. 50–336 and 50–423, Millstone Nuclear Power Station, Unit Nos. 2 and 3, New London County, Connecticut

Date of application for amendment: November 23, 1999.

Brief description of amendment: The amendment changes Technical Specification (TS) 4.0.5, "Limiting Conditions for Operation and Surveillance Requirements" by adding a biennial or 2-year surveillance interval and incorporating a required frequency for performing inservice testing activities of once per 731 days.

Date of issuance: March 8, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 241 and 178.

Facility Operating License Nos. DPR–65 and NPF–49: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4286).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 2000.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: March 2, 1998, supplemented on January 21, 2000.

Brief description of amendments: The amendments change the second paragraph of Technical Specification 3.8.D, "Spent Fuel Pool Special Ventilation System," to clarify restrictions on movement of loads in the spent fuel pool enclosure with one train of spent fuel pool special ventilation system inoperable.

Date of issuance: February 17, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 147 and 138.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 20, 1998 (63 FR 27763).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 17, 2000.

No significant hazards consideration comments received: No.

Northern States Power Company, Docket Nos. 50–282 and 50–306, Prairie Island Nuclear Generating Plant, Units 1 and 2, Goodhue County, Minnesota

Date of application for amendments: November 6, 1996, supplemented April 10 and October 1, 1997, and March 4, 1998.

Brief description of amendments: The amendments revise Technical Specification Section 5.0, "DESIGN FEATURES," by relocating certain portions of the design features information to the Updated Safety Analysis Report, consistent with NUREG–1431, "Standard Technical Specifications, Westinghouse Plants," Revision 1.

Date of issuance: February 29, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 148 and 139.

Facility Operating License Nos. DPR–42 and DPR–60: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 29, 1997 (62 FR 4338).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 29, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: August 26, 1999.

Brief description of amendment: This amendment raises the condensate storage tank (CST) low level setpoint and the corresponding allowable value in Technical Specification Tables 3.3.3–2 and 3.3.5–2. The subject setpoint is associated with the automatic transfer of the High Pressure Coolant Injection (HPCI) and Reactor Core Isolation Cooling (RCIC) pump suctions from the CST to the suppression pool in the event of low CST level. These changes are being made to address concerns regarding potential vortexing in the HPCI and RCIC suction flowpaths.

Date of issuance: March 6, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment No.: 124.

Facility Operating License No. NPF–57: This amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 22, 1999 (64 FR 51348).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 6, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: July 29, 1999, as supplemented November 30, 1999.

Brief description of amendments: The amendments revise Technical Specifications Surveillance Requirement 4.6.1.1 to clarify when verification of primary containment integrity may be performed by administrative means and to change the surveillance interval for verification of manual valves and blind flanges inside of containment.

Date of issuance: February 29, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 227 and 208.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** September 22, 1999 (64 FR 51349).

The November 30, 1999, letter provided clarifying information that did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 29, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: April 11, 1996 (PCN 460), as supplemented April 6, 1998, and March 22 and July 29, 1999.

Brief description of amendments: The amendments revise Technical Specification 3.6.3, "Containment Isolation Valves," to specify that the completion time for required action for certain containment isolation valves be in accordance with the applicable limiting condition for operation pertaining to the engineered safety features system in which they are installed.

Date of issuance: March 9, 2000.

Effective date: March 9, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2–165; Unit 3–156.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 19, 2000 (65 FR 2993), as corrected January 26, 2000 (65 FR 4265).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 9, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: December 13, 1999, as supplemented February 24, 2000 (PCN–507).

Brief description of amendments: The amendments revise the license expiration dates for San Onofre Unit 2 to February 16, 2022, and for San Onofre Unit 3 to November 15, 2022, thus extending the units' periods of operation to the full 40-year design-basis lifetime.

Date of issuance: March 9, 2000.

Effective date: March 9, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—166; Unit 3—157.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Operating Licenses.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73098).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 9, 2000.

No significant hazards consideration comments received: No

STP Nuclear Operating Company, Docket Nos. 50–498 and 50–499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: September 30, 1998, as supplemented May 14 and October 21, 1999.

Brief description of amendments: The amendments revise the South Texas Project, Units 1 and 2, offsite dose licensing bases to account for (1) operation of the existing steam generators at reduced feedwater inlet temperatures and (2) operation with the new replacement steam generators, also at a reduced feedwater temperature. The changes revised calculated offsite doses for four existing Updated Final Safety Analysis Report (UFSAR) Chapter 15 accidents and added a discussion in Chapter 15 of the radiological analysis for the voltage-based criteria for steam generator tubes.

Date of issuance: March 2, 2000.

Effective date: March 2, 2000, to be implemented within 30 days.

Amendment Nos.: Unit 1—124; Unit 2—112

Facility Operating License Nos. NPF–76 and NPF–80: Amendments authorize revisions to the UFSAR.

Date of initial notice in ***Federal Register:*** November 18, 1998 (63 FR 64124).

The May 14 and October 21, 1999, supplemental letters provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 2, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: August 30, 1999, as supplemented January 13, 2000.

Brief description of amendments: The amendments revise the Technical Specifications (TS) to delete the necessity for time response testing various instrument transmitters based on historical records indicating satisfactory time responses in the past.

Date of issuance: February 29, 2000.

Effective date: February 29, 2000.

Amendment Nos.: Unit 1—251; Unit 2—242.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TS.

Date of initial notice in ***Federal Register:*** October 6, 1999 (64 FR 54381). The supplemental letter of January 13, 2000, did not expand the scope of the initial amendment request or change the NRC staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated February 29, 2000.

No significant hazards consideration comments received: No

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: October 14, 1999 as supplemented February 23 and March 2, 2000.

Brief description of amendments: Revise Section 4.4 of the Technical Specification (TS) surveillance testing requirements and their associated Bases to incorporate an alternate repair criteria for axial primary water stress corrosion cracking at dented tube support plate intersections.

Date of issuance: March 8, 2000.

Effective date: March 8, 2000.

Amendment Nos.: Unit 1—252; Unit 2—243.

Facility Operating License Nos. DPR–77 and DPR–79: Amendments revise the TS.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73100). The supplemental letters dated February 23, and March 2, 2000, did not expand the scope of the original amendment request or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 8, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: June 25, 1999, as supplemented December 17, 1999.

Brief description of amendment: The amendment revises the main steam safety valve Technical Specification (TS) Section 3.7.1 to provide a new requirement to reduce the power range neutron flux-high reactor trip setpoints when two or more main steam safety valves (MSSVs) per steam generator are inoperable.

Date of issuance: March 7, 2000.

Effective date: March 7, 2000.

Amendment No.: 19.

Facility Operating License No. NPF–90: Amendment revises the TSs.

Date of initial notice in ***Federal Register:*** August 11, 1999 (64 FR 43781). The letter dated December 17, 1999 provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 7, 2000.

No significant hazards consideration comments received: No

TXU Electric, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment request: February 11, 1999, as supplemented by letters dated September 3 and December 20, 1999.

Brief description of amendments: The amendments change the Technical Specifications to authorize an increase in the allowable spent fuel storage capacity and the crediting of soluble boron, in the spent fuel pool, for spent fuel reactivity control.

Date of issuance: February 24, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 74.

Facility Operating License Nos. NPF–87 and NPF–89: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 12, 1999 (64 FR 25522).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated February 24, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: January 20, 2000.

Brief description of amendment: The amendment redefines the functional testing criteria for the noble gas activity monitor instrumentation in the Augmented Off-Gas system.

Date of Issuance: March 6, 2000.

Effective date: As of its date of issuance, and shall be implemented within 30 days.

Amendment No.: 184.

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 2, 2000 (65 FR 4999).

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated March 6, 2000.

No significant hazards consideration comments received: No.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of application for amendment: February 11, 2000.

Brief description of amendment: The amendment deletes the requirement to exercise the main steam isolation valves (MSIVs) twice weekly by partial closure and subsequent re-opening. Testing of the MSIVs to demonstrate their safety function will continue to be performed on a quarterly basis in accordance with the Vermont Yankee Inservice Testing program, Technical Specifications (TSs), and applicable provisions of Section XI of the ASME Boiler and Pressure Vessel Code. The TS change is issued as a follow-up amendment to NOED 00–06–01, which was orally granted on February 10, 2000.

Date of Issuance: March 9, 2000

Effective date: As of the date of issuance, and shall be implemented prior to March 25, 2000.

Amendment No.: 185

Facility Operating License No. DPR–28: Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards considerations: Yes (65 FR 8749) February 22, 2000. That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 23, 2000, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 9, 2000.

No significant hazards consideration comments received: No

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: May 6, 1999, as supplemented June 22 and December 16, 1999.

Brief description of amendments: The amendments revise the Technical Specifications Sections 3.3.1.1; 4.3.1.1.1; 4.3.1.1.2; 4.3.1.1.3; 3.3.2.1; 4.3.2.1.1; 4.3.2.1.2; 4.3.2.1.3; 3/4.3.1; 3/4.3.2 and 6.8.4.9 and Tables 3.3–1; 4.3–1; 3.3–3 and 4.3–2 for Unit 1, and Sections 3.3.1.1; 4.3.1.1.1; 4.3.1.1.2; 4.3.1.1.3; 3.3.2.1; 4.3.2.1.1; 4.3.2.1.2; 4.3.2.1.3; 3/4.3.1; 3/4.3.2 and 6.8.4.9 and Tables 3.3–1; 4.3–1; 3.3–3 and 4.3–2 for Unit 2, to revise the surveillance frequency for the Reactor Trip System (RTS) and the Engineered Safety Features Actuation System (ESFAS) analog instrumentation channels. In addition, the allowed outage time and action times for the RTS and ESFAS analog instrumentation and the actuation logic are being modified.

Date of issuance: March 9, 2000

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 221 and 202.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 16, 1999 (64 FR 32291). The letters of June 22 and December 16, 1999, contained clarifying information only, and did not change the initial no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 9, 2000.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 15, 1999.

Brief description of amendment: The amendment modified the improved technical specifications (ITS) that were issued in Amendment No. 123 on March 31, 1999, and implemented on December 18, 1999. The changes expand the region of acceptable reactor coolant pump (RCP) seal injection flow to each RCP in Figure 3.5.5–1 and provides 10 editorial changes to the ITS.

Date of issuance: March 1, 2000.

Effective date: March 1, 2000, to be implemented within 60 days of the date of issuance.

Amendment No.: 132.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4292).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 1, 2000.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 15th day of March 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–6913 Filed 3–21–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG–1075 (which should be mentioned in all correspondence concerning this draft guide), is titled "Emergency Planning and Preparedness for Nuclear Power Reactors." This guide is being developed to propose guidance on methods acceptable to the NRC staff for complying with the NRC's regulations for emergency response plans and preparedness at nuclear power reactors.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC. Comments will be most helpful if received by May 22, 2000.

You may also provide comments via the NRC's interactive rulemaking

website through the NRC home page (http://www.nrc.gov). This site provides the availability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking website, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about the draft guide and the related documents, contact Mr. R.L. Sullivan at (301) 415–1123; e-mail RXS3@NRC.GOV.

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by fax to (301) 415–2289, or by e-mail to <DISTRIBUTION@NRC.GOV>. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a)).

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 14th day of March 2000.

Charles E. Ader,

Director, Program Management, Policy, Development & Analysis Staff, Office of Nuclear Regulatory Research.

[FR Doc. 00–7101 Filed 3–21–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42527; File No. SR–CBOE–00–05]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Option Trading Permit Auction Procedures

March 14, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 2, 2000, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to amend the procedure through which it auctions Option Trading Permits ("Permits") from the Permit lease pool. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Items II below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Holders of Option Trading Permits have specified limited trading rights set forth in CBOE Rule 3.27. Section (a)(3) of Rule 3.27 provides for the creation of a Permit lease pool to be administered by the Exchange. The procedures for the administration of this lease pool were previously filed with and approved by the Commission.[3] Under these procedures, the Exchange conducts an auction every six months during which members and non-members who have qualified for membership may submit bids equal to the monthly rent that the bidder is willing to pay for a month-to-month Permit lease. Upon the close of the bidding period, Permits in the lease pool are awarded to the highest bidders in a number equal to the total number of Permits in the lease pool at that time.[4]

Last year, certain amendments to these procedures were filed with and approved by the Commission.[5] The most important of these amendments established a procedure for Permit bidding that is known as a "Dutch auction." Under the Dutch auction procedure, each successful bidder pays the price of the lowest successful bid. Following each Dutch auction, the Exchange continues to accept bids, with a minimum bid established at the price set in the most recent Dutch auction. Permit lease payments received by the Exchange are distributed to certain previous holders of NYSE option trading rights, as provided in Rule 3.27(a)(3). The Exchange adopted the Dutch auction to promote fairer and more equitable lease payments by having everyone in the auction pay the same price.

The first Dutch auction under these new procedures was held on September 29, 1999. The auction was publicized through various means, and the submitted bids ranged from $50 to $5,000 per month, with all but six of the bids being for at least $1,300 per month. However, due to an unexpectedly low number of bidders (only 28 bids were received for the 28 available Permits), the $50 per month bid was successful. Under the existing Dutch auction rules, this resulted in a $50 monthly lease rate for all 28 successful bidders. This undervalued the trading rights conferred by the Permits, based upon the fact that the median of the bids received last September 29 was $2,750, and the average of all the bids was $2,525.

To address this situation, the Exchange proposes to amend the Permit Dutch auction process by establishing a minimum bid level in all Dutch auctions at $1,000. The Exchange believes that this level is below the fair value of the Permits, as reflected by the median and average of the bids just noted, and that this minimum bid amount is needed to ensure that the price determined by the Dutch auction is fair and equitable.

2. Statutory Basis

The Exchange believes that the revised Dutch auction procedure for the Permit lease pool will more effectively ensure that the amounts paid for Permits by each successful bidder are fair and equitable. As such, the Exchange believes that the proposed rule change is consistent with Section 6(b)(4)[6] of the Act in that is it designed to provide for the equitable allocation of reasonable dues, fees, and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–00–05 and should be submitted by April 12, 2000.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The procedures for the administration of the Permit lease pool were filed with the Commission in SR–CBOE–97–14. This filing provided for the issuance of Permits in connection with the transfer of the options business of the New York Stock Exchange, Inc. ("NYSE") to CBOE and defined the rights and obligations associated with Permits. *See* Securities Exchange Act Release No. 38541 (April 23, 1997), 62 FR 23516 (April 30, 1997). The CBOE later amended the procedures for administering the Permit lease pool in SR–CBOE–97–47, which amended the manner in which the CBOE assesses the fee that is charged when a person submits a bid to receive a Permit. *See* Securities Exchange Act Release No. 39179 (October 1, 1997), 62 FR 52602 (October 8, 1997).

[4] *Id.*

[5] *See* Securities Exchange Act Release No. 41912 (September 24, 1999), 64 FR 53757 (October 4, 1999).

[6] 15 U.S.C. 78f(b)(4).

IV. Commission's Findings and Other Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b)(4),[7] because the proposed rule change provides for the equitable allocation of reasonable dues, fees, and other charges.

CBOE Rule 3.27 provides for a Permit lease pool to distribute Permits originating from the transfer of the options business of the NYSE to CBOE. Lease payments on the Permits are paid to persons identified by the NYSE. Under the existing Dutch auction rules, there is no limit on the monthly bid for a Permit. Consequently, a low bid can, and did, succeed as the lease amount for all Permits, even if the average of the bids is significantly higher (indicating a higher market value for the Permits). The proposed rule change establishes a minimum bid level of $1,000 for the Permits. The Commission finds that establishing this minimum bid is a reasonable and appropriate measure to attempt to prevent undervaluing the trading rights conferred by the Permits.

CBOE has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice in the **Federal Register**. Specifically, the Exchange requests that the Commission accelerate the operative date of the proposed rule change so the Exchange can employ the revised Dutch auction procedures in the next scheduled auction, that of March 15, 2000. The Exchange believes that accelerating approval of the proposed rule change will enable the Exchange to implement a procedure that more fairly and equitably allocates the cost of the lease pool Permits for the benefit of the lease payment recipient.[8] The Commission believes that permitting the Exchange to use the revised procedures in the next Dutch auction would ensure that the Permits were not significantly undervalued at another auction. Accordingly, the Commission finds good cause, consistent with Sections 6(b)(5) and 19(b)(2) of the Act,[9] to approve the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof in the **Federal Register**.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–00–05) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7068 Filed 3–21–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42533; File No. SR–MSRB–00–04]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Interpretation of Rule G–37 on Political Contributions and Prohibitions on Municipal Securities Business

March 15, 2000.

On March 2, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder.[2] The proposed rule change is described in Items, I, II, and III below, which Items have been prepared by the Board. The purpose of the proposed rule change is to provide interpretive guidance concerning Rule G–37, on political contributions and prohibitions on municipal securities business. The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Board under Section 19(b)(3)(A) of the Act,[3] which renders the proposed rule change effective upon receipt of this filing by the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[7] 15 U.S.C. 78f(b)(4).

[8] Telephone conversation between Chris Hill, Attorney, CBOE, and Heather Traeger, Attorney, Division of Market Regulations, SEC, on March 7, 2000.

[9] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board has filed a proposed rule change consisting of a notice of interpretation, in question-and-answer format, concerning Rule G–37 (hereafter referred to as "the proposed rule change"). The proposed rule change is as follows in *italic:*

SCOPE OF WAIVER PROVISION IN RULE G–37(i)

Q: If an enforcement agency grants an exemption from a ban on municipal securities business pursuant to Rule G–37(i), may this exemption be applied retroactively so that any municipal securities business engaged in after the ban had gone into effect but prior to the date on which the exemption was granted would not be viewed as a Rule G–37 violation?

A: Rule G–37(i) allows the enforcement agencies to exempt a dealer from a ban on municipal securities business. It is the Board's view that such an exemption is only effective as of the date of the exemption. Rule G–37(i) does not contain a provision allowing for the retroactive application of the exemption. Thus, a dealer would violate Rule G–37 if, prior to the date of the exemption, the dealer engaged in municipal securities business with an issuer while subject to a ban with this issuer because of a political contribution. As with any violation of a Board rule, the enforcement agencies have discretion in determining the type and extent of enforcement action appropriate for such violation, in light of the specific facts and circumstances. If an enforcement agency has granted an exemption to a dealer from the ban on municipal securities business, the facts and circumstances considered by such agency in granting the exemption could appropriately also be considered (together with any other relevant facts and circumstances) in determining what, if any, enforcement action should be taken against such dealer if it had engaged in municipal securities business after the ban on such business became effective but prior to the date on which the exemption was granted.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Board included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The Board has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On April 7, 1994, the Commission approved Board Rule G–37, on political contributions and prohibitions on municipal securities business.[4] Since that time, the Board has received numerous inquiries concerning the application of the rule. In order to assist the municipal securities industry and, in particular, brokers, dealers, and municipal securities dealers in understanding and complying with the provisions of the rule, the Board published nine prior notices of interpretation which set forth, in question-and-answer format, general guidance on Rule G–37.[5] In prior filings with the Commission, the Board stated that it will continue to monitor the application of Rule G–37 and, from time to time, will publish additional notices of interpretations, as necessary.[6] Recently, the Board was asked about the scope of the waiver provision in Rule G–37(i). Accordingly, the Board is publishing this tenth set of questions and answers.

2. Basis

The Board believes that the proposed rule change is consistent with Section 15B(b)(2)(C) of the Act,[7] which requires, in pertinent part, that the Board's rules shall:

be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in municipal securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Board does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the proposes of the Act since it applies equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Board has designated this proposed rule change as constituting a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing Board rule under Section 19(b)(3)(A) of the Act,[8] which renders the proposed rule change effective upon receipt of this filing by the Commission.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's principal offices. All submissions should refer to File No. SR–MSRB–00–04 and should be submitted by April 12, 2000.

[4] Securities Exchange Act Release No. 33868, 59 FR 17621 (April 13, 1994). The rule applies to contributions made on and after April 25, 1994.

[5] *See MSRB Reports,* Vol. 14, No. 3 (June 1994) at 11–16; Vol. 14, No. 4 (Aug. 1994) at 27–31; Vol. 14, No. 5 (Dec. 1994) at 8; Vol. 15, No. 1 (April 1995) at 21; Vol. 15, No. 2 (July 1995) at 3–4; Vol. 16, No. 1 (Jan. 1996) at 31; Vol. 16, No. 3 (Sept. 1996) at 35–36; Vol. 17, No. 3 (Oct. 1997) at 11–12; and Vol. 18, No. 2 (Aug. 1998) at 11–12. *See also MSRB Rule Book* (January 1, 2000) at 195–204.

[6] *See* Securities Exchange Act Release No. 34161 (June 6, 1994, 59 FR 30379 (June 13, 1994) (File No. SR–MSRB–94–6) and Securities Exchange Act Release No. 34603 (August 25, 1994), 59 FR 45049 (August 31, 1994) (File No. SR–MSRB–94–15).

[7] 15 U.S.C. 78o–4(b)(2)(C).

[8] 15 U.S.C. 78s(b)(3)(A).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7034 Filed 3–21–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42536; File No. SR–NASD–99–75]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change Relating to ECN and ATS Participation in the ITS/CAES System

March 16, 2000.

I. Introduction

On December 27, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act" or "Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to permit Electronic Communication Networks ("ECNs") and Alternative Trading Systems ("ATSs")[3] to register as market makers in listed securities using Nasdaq quotation and trading facilities.

The proposed rule change was published for comment in the **Federal Register** on February 1, 2000.[4] One comment was received on the proposal.[5] This order approves the proposed rule change.

II. Description

Nasdaq operates a trading system known as the Computer Assisted Execution System ("CAES"), which allows NASD member firms to direct orders in Consolidated Quotation System ("CQS") securities ("*i.e.*, listed securities) to market makers for execution. Through CAES, NASD order-entry firms and market makers can participate in the "third market"[6] by entering market and limit orders in exchange-listed securities to be executed against other market makers quoting in those securities. CAES also serves as the NASD's interface with the Intermarket Trading System ("ITS"), which links the national securities exchanges.[7]

Traditional market makers actively make markets in a large number of New York Stock Exchange and American Stock Exchange listed stocks in the third market. While many NASD member firms act as third market makers today, Nasdaq believes that certain enhancements to CAES could provide additional benefits to all NASD members. The enhancements would allow CAES Market Makers to compete more effectively with all markets by providing the best possible executions for investors, thereby improving the national market system.

Accordingly, Nasdaq proposes to allow ECNs and ATSs to choose to be ITS/CAES Market Makers by amending NASD Rules 5210(e), 5220 and 6320, to include ECNs and ATSs within the definition of "ITS/CAES Market Maker" and "CQS Market Maker," and to require the execution of an ECN and ATS addendum to the ITS/CAES Market Maker application agreement. These changes would allow ECNs and ATSs to compete on an equal basis with other market makers, yet also require ECNs and ATSs to assume the additional obligations and restrictions imposed upon ITS/CAES Market Makers by the ITS Plan and NASD rules. An ECN or ATS that chooses to exercise this option of registration, consequently, would be required to post two-sided quotations, be firm for the price and size of those quotations, and participate in CAES on the same terms as other ITS/CAES Market Makers.[8] This selection would also impose the additional compliance duties traditionally required of market makers participating in ITS/CAES, including, for example, the rules concerning pre-opening application, trade through, locked and crossed markets, and block transactions.[9] ECNs and ATSs would assume the added responsibility for implementing all technological and programming modifications to their internal systems to demonstrate compliance with these requirements.

In registering as ITS/CAES Market Makers, ECNs and ATSs will be required to operate on terms that are the same as traditional CAES Market Makers. In particular, within the ITS/CAES market, there will be an absolute prohibition against quote access fees. Nasdaq believes that, because of the CAES interface with ITS, the implementation on quote access fees would be infeasible within CAES and would not be consistent with the terms of the ITS Plan.

In addition, as discussed above, the NASD intends to modify the operation of CAES to accommodate ECN and ATS participation. In the current CAES environment, all orders are executed against market makers through an automatic executive process. The system delivers a report of a completed execution at the market maker's quoted price and size when another CAES market maker or exchange chooses to access that market maker's quote. Because ECNs and ATSs are reluctant to participate within the current automatic execution environment, Nasdaq is working on modifications to CAES to facilitate order delivery interaction for any ITS/CAES Market Maker that chooses to operate in an order delivery mode (with an automated response to the delivered orders). The change would make it clear that all ITS/CAES Market Makers could receive the delivery of an order (as opposed to an execution report), and immediately accept or decline that delivery by automated

[9] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The term ECN is defined, with certain exceptions, as any electronic system that widely disseminates to third parties orders entered into the ECN by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part. *See* Exchange Act Rule 11Ac1–1(a)(8). The term ATS is defined more broadly as any organization, association, person, group of persons, or system: (1) That constitutes, maintains, or provides a market place or facilities for bringing together purchasers and sellers of securities or for otherwise performing with respect to securities the functions commonly performed by a stock exchange within the meaning of Exchange Act Rule 3b–16; and (2) that does not: (i) Set rules governing the conduct of subscribers other than the conduct of such subscribers' trading on such organization, association, person, group of persons, or system; or (ii) discipline subscribers other than by exclusion from trading. *See* Regulation ATS, Sec. 242.300(a). Essentially, an ECN is a type of ATS.

[4] *See* Securities Exchange Act Release No. 42353 (January 20, 2000), 65 FR 4857.

[5] *See* letter to Jonathan G. Katz, Secretary, Commission, from Sam Scott Miller, Orrick, Herrington & Sutcliffe, LLP, on behalf of MarketXT, dated March 3, 2000 ("MarketXT Letter").

[6] The third market refers to over-the-counter trading of exchange-listed securities.

[7] ITS is a communications network designed to facilitate intermarket trading in exchange-listed securities by linking the NASD and the national securities exchanges. Operation of ITS is governed by a national market system plan known as the "Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage Pursuant to Section 11A(a)(3)(B) of the Securities Exchange Act of 1934" ("ITS Plan").

[8] With respect to the two-sided quotation obligation, ECN and ATS ITS/CAES Market Makers will be permitted to auto-quote in 100 share lots away from the national best bid and offer ("NBBO") to the extent that a particular ECN or ATS does not have a customer order to represent. If an ECN or ATS ITS/CAES Market Maker quotation is accessed because such quotation becomes the NBBO or is subject to another rule requiring its execution, the ECN or ATS ITS/CAES Market Maker will be required to assume a proprietary position in that security.

[9] NASD Rules 5240, 5262, 5263, and 5264, respectively.

means.[10] A decline would be permissible only if it were consistent with the Commission's and the NASD's firm quote rules.

Nasdaq contends that this modification will allow market makers to operate effectively and rapidly in fast moving markets. In comparing the proposed CAES order delivery system with the ITS configuration, Nasdaq anticipates that CAES order delivery market makers will be capable of responding to CAES and ITS orders in approximately 2–5 seconds.[11]

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the Association, and, in particular, with the requirements of Section 15A(b)(6).[12] Section 15A(b)(6) requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and the rules are not designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

In addition, the Commission believes that the proposed rule change is consistent with the provisions of Sections 11A(a)(1)(C), 11A(a)(1)(D), and 11A(a)(2) of the Exchange Act. Section 11A(a)(1)(C) provides that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure: (1) Economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer. Section 11A(a)(1)(D) states that the linking of all markets for qualified securities through communications and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers and investors, facilitate the offsetting of investor's orders, and contribute the best execution of such orders. Section 11A(a)(2) directs the Commission to facilitate the establishment of a national market system for qualified securities. Overall, the Commission believes that the proposed rule promotes the objectives of these sections of the Exchange Act by encouraging participation in the national market system for listed securities and providing fair access for all NASD members, ultimately benefiting investors and the public interest.

Because ITS remains the primary link between the registered exchanges and Nasdaq for listed securities, ECN and ATS access to ITS is an important Commission goal. Specifically, the Commission seeks to make information non prices, volume, and quotes for securities in *all* markets available to *all* investors, so that buyers and sellers of securities, wherever located, can make informed investment decisions and not pay more than the lowest price at which someone is willing to sell, and not sell for less than the highest price a buyer is prepared to offer. The Commission notes, however, that information alone is not enough. There must be an avenue for accessing markets disseminating market information. Integrating ECNs and ATSs into ITS provides access from other ITS/CAES Market Makers and other markets to the quotes displayed by the ECNs and ATSs.[13]

The number of ECNs and ATSs has increased significantly over the past several years, as has their share of the market in Nasdaq securities. This increased competition has benefited the marketplace in many ways—among other things, it has encouraged the existing exchanges to improve their services, and has given institutional investors additional venues in which to trade. In addition, ECNs have helped to contribute to narrower spreads to the benefit of investors, including retail investors, who have enjoyed significant cost savings when trading Nasdaq securities. While these benefits have accrued to Nasdaq securities, ECNs have not traded in great measures in securities listed on traditional exchanges.

Linking ECNs and ATSs to ITS by permitting them to register as ITS/CAES Market Makers will improve investors' ability to obtain best execution of their orders in listed stocks. Furthermore, the Commission believes that ECN and ATS participation in CAES should have a positive impact upon the third market, as well as trading in listed securities overall, by adding new competitive quoting vehicles, thereby contributing to a more dynamic and competitive market.

The Commission believes it is appropriate to require ECNs and ATSs that register as ITS/CAES Market Makers to fulfill the same intermarket obligations as are required of traditional market makers. The Commission expects the NASD to ensure that ECN and ATS ITS/CAES Market Makers (as well as non-ECN and non-ATS ITS/CAES Market Makers) carry our necessary technical and programming modifications to their internal systems to demonstrate an ability to comply with these obligations.

ECNs and ATSs that register as ITS/CAES Market Makers will be required to post and maintain two-sided quotations, as well as be firm for the price and size of those quotations, as required in the ITS Plan. In addition, ECN and ATS ITS/CAES Market Makers will be permitted to autoquote in 100 share lots away from the NBBO when they do not have a customer order to represent. The Commission finds it consistent with the Exchange Act to require ECNs and ATSs that participate in ITS/CAES to display two-sided quotes at all times and to be firm for their displayed quotes, including those quotes that do not represent customers orders. In the Commission's view, it is reasonable to permit an ECN or ATS ITS/CAES Market Maker to autoquote in 100 share lots away from the NBBO when it does not have a customer order to represent because ECNs and ATSs typically do not take proprietary positions. An ECN or ATS ITS/CAES Market Maker, however, will be required to be firm for its displayed quote, in accordance with Commission and NASD firm quote rules for any orders that seek to trade with that quote. ECNs and ATSs could reduce the likelihood of an execution at that quote by quoting away from the best market price. Although ECNs and ATSs do not generally assume proprietary positions in the securities they trade, the Commission believes it is appropriate to require them to comply with the same ITS requirements as other market makers if they voluntary choose to register as an ITS/CAES Market Makers.

The Commission notes that ECN and ATS ITS/CAES Market Makers will also be required to follow the NASD's rules, as well as the terms of the ITS Plan, concerning the pre-opening application, trade throughs, locked and crossed markets, and block transactions.[14] These market integrity provisions provide for continuity of transaction among the various market centers.

The Commission also believes it is appropriate to prohibit ECNs and ATSs that choose to register as ITS/CAES Market Makers from charging quote access fees for trades effected through CAES. Market Makers are prohibited under NASD rules from charging access fees when trading through CAES. Moreover, trades in ITS between markets are not subject to market fees, even though these markets charge fees to their members for executing trades on that market.[15]

The Commission also believes it is not inconsistent with the Exchange Act to allow the CAES functionality to operate in order delivery mode, as opposed to automatic execution mode, in accessing an ITS/CAES Market Maker's quote. ECNs, which, to date, have functioned only within order delivery systems (*e.g.*, SelectNet for Nasdaq securities), have been reluctant to participate in CAES due to the automatic execution feature. The proposed rule change will allow all ITS/CAES Market Makers, including ECNs and ATSs that choose to register as such, to operate in CAES in either order delivery mode or automatic execution mode. The Commission believes that requiring ITS/CAES Market Makers that choose to operate in order delivery mode to have an automated response to an incoming order should ensure that transactions done through CAES, as well as those done through the ITS/CAES interface, are executed efficiently. The ability of an ITS/CAES Market Maker to select the mode of operation in which it receives orders of ITS commitments addresses the ECNs' concerns over exposure to double executions.[16] Specifically, allowing an ITS/CAES Market Maker to operate in order delivery mode will permit it to suspend acceptance of orders when it is in the process of updating its quote, providing such action is in compliance with the Commission's and NASD's firm quote rules.

Finally, the Commission believes that the proposed rule change is not inconsistent with the terms of the ITS Plan. Specifically, under the proposed rule change, ITS/CAES Market Makers will continue to be required to provide automated responses to all ITS commitments sent by other exchange participants to the third market. The Commission notes that, although the proposed rule change may affect the operation of the ITS pre-opening application,[17] no amendment to the ITS Plan is technically required. Specifically, the ITS Plan defines "ITS/CAES Market Maker" as an "NASD member that is registered as a market maker with the NASD * * * with respect to one or more specified ITS/CAES securities." Thus, the NASD's proposed definition of "ITS/CAES Market Maker" does not conflict with or violate the ITS Plan. Furthermore, nothing in the ITS Plan requires that ITS/CAES Market Maker automatically execute commitments received through ITS.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[18] that the proposed rule change (SR–NASD–99–75) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[19]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7067 Filed 3–21–00; 8:45 am]

BILLING CODE 8010–01–M

[10] If order delivery is selected, the ITS/CAES Market Maker (ECN or non-ECN) would be required to demonstrate to Nasdaq its ability to conform to system specifications, which would mandate an automated and immediate acceptance or rejection, consistent with Commission and NASD firm quote obligations.

[11] The ITS Plan does not have any requirement related to response times. In fact, in ITS, when one participant forwards a commitment to another, the commitment has a life of one minute or two minutes. The obligation to respond to an ITS commitment comes from the Commission Firm Quote Rule. 17 CFR 240.11Ac1–1.

[12] 15 U.S.C. 780–3(b)(6).

[13] ECNs also are accessible through becoming a subscriber to the system, and by telephone.

[14] A trade through occurs when a transaction is effected at a price below the best prevailing bid, or above the best prevailing offer. The NASD's rules and the ITS Plan require price protection among the various markets by ensuring that the best national bids and offers are provided opportunities to trade with other markets effecting trades outside the best national quote. The NASD's rules and the ITS Plan also contain a block trade policy that provides special rights to any market displaying the best national bid or offer when block-size transactions are occurring in another market.

[15] The Commission received one comment letter from an ECN regarding the proposed rule change. *See* MarketXT Letter. MarketXT believes that ECNs should be permitted to charge fees in the ITS/CAES market because Nasdaq has proposed a rule change that would permit market makers to charge an access fee for agency quotes in the Nasdaq market. *See* Securities Exchange Act Release No. 41343 (April 28, 1999), 64 FR 24430 (May 6, 1999) (File No. SR–NASD–99–16). ECN fees have been permitted in the Nasdaq market since ECNs were first linked to that market in 1997. The Commission has stated that it is considering options to reduce or eliminate ECN fees in the Nasdaq market. The Commission does not believe that investors' interests are best served by permitting ECN fees in the ITS market, where fees are not permitted among existing participants.

[16] Double execution could occur if an ECN displays a customer order to buy and an order to sell comes in through ITS, while another order to sell comes into the ECN at the same time. Automatic execution would force the ECN to honor both sell orders.

[17] Generally, under ITS rules, an exchange specialist is required to accept those pre-opening responses sent to the exchange by market makers from other participant markets prior to the opening of their markets for trading in the security. If, however, one or more market makers from other participant markets have already opened trading in a security, the exchange specialist is not required to (but may in his discretion) accept pre-opening responses from the other participant market for the purpose of including them in the opening transaction. Because a pre-opening response from the ITS/CAES market is sent in aggregate form—that is, pre-opening third market buy and sell interest from all third market makers—is sent as one response, it is possible that an ECN and ATS ITS/CAES Market Maker trading a security before the opening will trigger the exception to the requirement that the exchange specialist accept a pre-opening response from the third market. The same procedure applies of re-openings following trading halts. *See* Exhibit A of the ITS Plan, "Pre-Opening Application rule," Sec. (b)(iii)(B).

[18] 15 U.S.C. 78s(b)(2).

[19] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3260]

Culturally Significant Objects Imported for Exhibition Determinations: "Michelangelo to Picasso: Master Drawings From the Collection of the Albertina, Vienna"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [*112 Stat. 2681 et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999, as amended by Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that the objects to be included in the exhibit, "Michelangelo to Picasso: Master Drawings from the Collection of the Albertina, Vienna," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the exhibit objects at the Frick Collection, New York, NY, from on or about April 17, 2000, to on or about June 18, 2000, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W.

Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: March 15, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–7105 Filed 3–21–00; 8:45 am]

BILLING CODE 4710–28–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–10]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 11, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC. 20591.

Comments may also be sent to electronically to the following internet address: 9-NPRM-cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC., on March 16, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 26183.
Petitioner: Air Transport Association of America.
Section of the FAR Affected: 14 CFR appendix H to part 121.
Description of Relief Sought/ Disposition: To permit member airlines of the ATA and other similarly situated part 121 certificate holders to continue to use Level C simulators for pilot-in-command initial and upgrade training and checking.

Grant, 01/31/2000, Exemption No. 54000

Docket No.: 27202.
Petitioner: Skydive Arizona, Inc.
Section of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/ Disposition: To permit SAI to allow nonstudent foreign nationals to participate in SAI-sponsored parachute jumping events without complying with the parachute equipment and packing requirements of § 105.43(a).

Grant, 01/21/2000, Exemption No. 7106

Docket No.: 29076.
Petitioner: RR Investments, Inc., d.b.a. Million Air Dallas.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Million Air Dallas to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on each aircraft.

Grant, 01/28/2000 Exemption No. 6718A

Docket No.: 29776.
Petitioner: Pomona Valley Pilots Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit the PVPA to conduct local sightseeing flights for the 25th annual Pomona Valley Air Fair at Cable Airport, Upland, California, on January 8 and 9, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 01/05/2000, Exemption No. 7094

Docket No.: 29795.
Petitioner: Western North Carolina Pilots Association, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit the WNCPA to conduct local sightseeing flights at the Asheville Regional Airport for fall scenic rides on October 23 and 24, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.

Grant, 10/22/1999, Exemption No. 7049

Docket No.: 29846.
Petitioner: Air Cargo Carriers, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Air Cargo to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft.

Grant, 01/11/2000, Exemption No. 7124

Docket No.: 29879.
Petitioner: Santoku Aviation Electric, Inc.
Section of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit SAE to substitute the calibration standards of the National Research Laboratory of Metrology and the Electrotechnical Laboratory, Japan's national standards organizations, for the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment.

Grant, 01/14/2000, Exemption No. 7105

[FR Doc. 00–7043 Filed 3–21–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–98–4470]

Pipeline Safety: Meetings of Pipeline Safety Advisory Committees

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. 1) notice is hereby given of the following meetings of the Technical Pipeline Safety Standards Committee (TPSSC) and the Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC). The TPSSC and the THLPSSC are statutorily mandated advisory committees that assist RSPA's Office of Pipeline Safety in its consideration of proposed safety regulations, risk assessments, and safety policies for natural gas and hazardous liquid pipelines. Each committee has an authorized membership of 15 persons, five each from government, industry, and the public. The committees meet in May and November of each year. Each Committee meeting, as well as a joint session of the two Committees, is held at the Department of Transportation, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590. The May 3–4, 2000, meetings will be held in room 2230.

ADDRESSES: Comments on these meetings should be sent to the Dockets Facility, U.S. Department of Transportation, Plaza 401, 400 Seventh Street, SW, Washington, DC 20590–0001. Alternatively, comments may be e-mailed to ops.comments@rspa.dot.gov. All comments must reference Docket No. RSPA–98–4470. The Dockets Facility is located on the plaza level of the Nassif Building in Room 401, 400 Seventh Street, SW, Washington, DC. The Dockets Facility is open from 10 a.m. to 5 p.m., Monday through Friday, except on Federal holidays.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meeting, contact Jenny Donohue at (202) 366–4046.

FOR FURTHER INFORMATION CONTACT: Mary Jo Cooney, OPS, (202) 366-4774 or Richard Huriaux, OPS, (202) 366–4565, regarding the subject matter of this notice.

SUPPLEMENTARY INFORMATION: On May 3, 2000, at 9 a.m., the Technical Pipeline Safety Standards Committee (the natural gas advisory committee) will meet in room 2230 of the Nassif Building. The preliminary agenda includes:

1. Update on Plastic Pipe Research
2. Proposal for "Class 0" Class Location
3. Gas Gathering Line Definition
4. Gas Pipeline Safety Standards
5. Risk Management: Local Distribution Company Initiative

On May 3, 2000, at 1 p.m., the TPSSC will be joined by members of the THLPSSC for a joint session. The preliminary agenda includes:

1. RSPA Updates and Welcome from Administrator
2. Pipeline Safety Program Reauthorization
3. Budget/Appropriations
4. Community Right-to-Know
4. Producer-operated Outer Continental Shelf Pipelines (Vote)
5. Pipeline Integrity Management in High Consequence Areas
6. National Pipeline Mapping System (NPMS)

The joint session continues on May 4, 2000, at 9 a.m. in room 2230:

7. Periodic Updates to Pipeline Safety Regulations (Vote)
8. Status Report on Path Forward and Dig Safely Initiatives
9. NTSB Recommendations
10. OPS Response Plan Update

On May 4, 2000, at 12:30 p.m., the THLPSSC will meet in room 2230 of the Nassif Building. The preliminary agenda includes:

1. Pipeline Integrity Management in High Consequence Areas (Vote)
2. Corrosion Control on Hazardous Liquid Pipelines (Vote)
3. Unusually Sensitive Areas (USA) Project (Vote)
4. Spill Data Presentation
5. Pressure Testing of Older Pipelines in Terminal
6. Oil Pollution Act Developments

All three meetings will be open to the public. Members of the public will have an opportunity to make short statements on the topics under discussion. Anyone wishing to make an oral statement must notify Jenny Donohue, Room 7128, Department of Transportation, Nassif Building, 400 Seventh Street, SW, Washington, DC 20590, telephone (202) 366–4046, not later than April 21, 2000, on the topic of the statement and the time requested for presentation. The presiding officer at each meeting may deny any request to present an oral statement and may limit the time of any presentation.

Authority: 49 U.S.C. 60102, 60115.

Issued in Washington, DC on March 16, 2000.

Richard B. Felder,

Associate Administrator for Pipeline Safety.

[FR Doc. 00–7061 Filed 3–21–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[Section 5a Application No. 1 (Sub–No. 10)]

Household Goods Carriers Bureau Committee—Agreement

AGENCY: Surface Transportation Board.

ACTION: Extension of time to file comments and replies; correction of prior notice.

SUMMARY: The Surface Transportation Board (Board) is (1) extending the time to file comments and replies in this proceeding and (2) announcing a correction to its prior notice published in the **Federal Register**.

DATES: Comments are now due by April 24, 2000; replies are now due by May 8, 2000.

ADDRESSES: Send an original and 10 copies of comments and replies, referring to "Section 5a Application No. 1 (Sub-No. 10)" to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: On February 11, 2000 at 65 FR 7098–99, we published a notice in the **Federal Register** requesting comments and replies from interested parties in this proceeding. Copies of the version of this notice served on the same date are available on the Board's website at "WWW.STB.DOT.GOV." By petition received via FAX on March 10, 2000, the Household Goods Carriers' Bureau Committee requests an extension of time to file comments to April 24, 2000. By this notice, we are granting this request, for all participants, and are simultaneously extending the deadline for filing replies to May 8, 2000.

Our prior notice mistakenly inverted the dates for filing comments and replies. In view of the extension that we are granting herein, the dates in our prior notice are obsolete.

Decided: March 16, 2000.

By the Board.

Vernon A. Williams,

Secretary.

[FR Doc. 00–7088 Filed 3–21–00; 8:45 am]

BILLING CODE 4915–00–P

TWENTY-FIRST CENTURY WORKFORCE COMMISSION

Notice of Public Information Hearing

AGENCY: Twenty-First Century Workforce Commission.

ACTION: Notice of public information hearing.

SUMMARY: This notice is to announce a public information hearing on Wednesday, March 29, 2000. Members of the public are invited to attend the hearing. Several witnesses have been invited by the Commissioners to testify and to address the questions identified by the agenda set forth below.

The purpose of the hearing is for Commissioners to learn how Northern Virginia companies, educational institutions, community organizations, and governments are working together so more of its residents gain the skills and knowledge necessary to be part of the Information Technology (IT) workforce.

DATES: The Public Information Hearing will be held on Wednesday, March 29, 2000, from 9:00 am to approximately 4:00 p.m. Registration is from 9:00 am to 10:00 am. The dates, locations and times for subsequent meetings will be announced in advance in the **Federal Register.**

ADDRESSES: George Mason University, Fairfax Campus is located at 4400 University Drive, Fairfax, VA 22030. Main Phone: (703) 993–1000. The hearing will be held at the Egan Research building. For information, call (617) 373–2000. (TTY) (617) 373–3768. Web-based directions can be found at: http://coyote.gmu.edu/map/. All interested parties are invited to attend this Information Hearing. Seating may be limited and will be available on a first-come, first-serve basis.

FOR FURTHER INFORMATION CONTACT: Mr. Hans Meeder, Executive Director, Twenty-First Century Workforce Commission, 1201 New York Avenue, NW, Suite 700, Washington, DC 20005. (Telephone (202–289–2939. TTY (202) 289–2977) These are not toll-free numbers. Email: *Workforce21@nab.com.*

SUPPLEMENTARY INFORMATION: Establishment of the Twenty-First Century Workforce Commission was mandated by Subtitle C of Title III of the Workforce Investment Act, Sec. 331 of Pub. L. 105–220, 112 Stat. 1087–1091, (29 U.S.C. 2701 note), signed into law on August 7, 1998. The 15 voting member Twenty-First Century Workforce Commission is charged with studying all aspects of the information technology workforce in the United States. Notice is hereby given of the second Public Information Hearing of the Twenty-First Century Workforce Commission.

The Workforce Investment Act (Pub. L. 105–220), signed into law on August 7, 1998, established the Twenty-First Century Workforce Commission. The Commission is charged with carrying out a study of the information technology workforce in the U.S., including the examination of the following issues:

1. What skills are currently required to enter the information technology workforce? What technical skills will be demanded in the near future?
2. How can the United States expand its number of skilled information technology workers?
3. How do information technology education programs in the United States compare with other countries in effectively training information technology workers? [The Commission study should place particular emphasis upon contrasting secondary, non-and-post-baccalaureate degree education programs available within the U.S. and foreign countries.]

The Workforce Investment Act directs the Commission to issue recommendations to the President and Congress within six months. The Commission first met on November 16, 1999, and will issue its recommendations by May 16, 2000.

AGENDA: At the Fairfax, Virginia hearing, the Commission working group conducting the hearing will emphasize the following issues: (1) How will information technology advances continue to change Northern Virginia's economy in coming years, and what skills will individuals need to participate in the IT workforce? (2) How are Northern Virginia companies, educational institutions, community organizations, state and local governments partnering to provide educational and training opportunities for individuals who want to enter the IT workforce? (3) What particular barriers face Northern Virginia in building and strengthening the IT workforce, and how are under-represented populations being reached for participation in the IT workforce?

COMMISSION MEMBERSHIP: The Workforce Investment Act mandates that 15 voting members be appointed by the President, Majority Leader of the Senate, and Speaker of the House (5 members each), including 3 educators, 3 state and local government representatives, 8 business representatives and 1 labor representative. The Act also mandates that the President appoint 2 ex-officio members, one each from the Departments of Labor and Education.

The Commissioners are: Chairman Lawrence Perlman, Ceridian Corporation, Minneapolis, MN; Vice Chair, Katherine K. Clark, Landmark Systems Corporation, Reston, VA; Susan Auld, Capitol Strategies, Ltd., Montpelier, VT; Morton Bahr, Communication Workers of America, Washington, DC; Patricia Gallup, PC Communications, Inc., Merrimack, NH; Dr. Bobby Garvin, Mississippi Delta Community College, Moorhead, MS; Susan M. Green (ex officio), U.S. Department of Labor, Washington, DC; Randel Johnson, U.S. Chamber of Commerce, Washington, DC; Roger Knutsen, National Council for Higher Education, Auburn, WA; Patricia McNeil (ex officio), U.S. Department of Education, Washington, DC; The Honorable Mark Morial, Mayor, City of New Orleans, LA; Thomas Murrin, Duquesne University, Pittsburgh, PA; Leo Reynolds, Electronic Systems, Inc., Sioux Falls, SD; The Honorable Frank Riggs, National Homebuilders Institute, Washington, DC; The Honorable Frank Roberts, Mayor, City of Lancaster, California; Kenneth Saxe, Stambaugh-Ness, York, PA; David L. Steward, World Wide Technology, Inc., St. Louis, MO; Hans K. Meeder, Executive Director, Washington, DC.

PUBLIC PARTICIPATION: Members of the public are invited to attend this hearing. Several witnesses have been invited to testify by the Commissioners to address the questions identified on the Agenda. In addition, members of the public wishing to present oral statements to the Twenty-First Century Workforce Commission should forward their requests to Mr. Hans Meeder, Executive Director, as soon as possible and at least four days before the meeting. Requests should be made by email, fax machine, or telephone, as shown above.

Time permitting, the Commissioners will attempt to accommodate requests for oral presentations. Each member of the public who is selected to testify will be allotted a three minute period to present their oral remarks. Members of the public must limit oral statements to three minutes, but extended written statements may be submitted for the record. Members of the public may also submit written statements for distribution to the Commissioners and inclusion in the public record without presenting oral statements. Such written statements should be sent to Mr. Hans Meeder, as shown above, or may be submitted at the hearing site.

The Commission has established a web site, *www.workforce21.org.* Any written comments regarding documents published on this web site should be directed to Mr. Hans Meeder, as shown above.

SPECIAL ACCOMMODATIONS: Reasonable accommodations will be available. Persons needing any special assistance such as sign language interpretation, or other special accommodation, are invited to contact Mr. Hans Meeder, as shown above. Requests for accommodations must be made four days in advance of the hearing.

Due to difficulties of scheduling the members we are unable to provide a full 15-day advance notice of this meeting.

Signed at Washington, DC this 16th day of March, 2000.

Hans K. Meeder,

Executive Director, Twenty-First Century Workforce Commission.

[FR Doc. 00–7114 Filed 3–21–00; 8:45 am]

BILLING CODE 4510–23–P

Federal Register

Wednesday,
March 22, 2000

Part II

Department of Health and Human Services

Office of Refugee Resettlement

45 CFR Parts 400 and 401

Refugee Resettlement Program: Requirements for Refugee Cash Assistance; and Refugee Medical Assistance; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Refugee Resettlement

45 CFR Part 400 and Part 401

RIN 0970–AB83

Refugee Resettlement Program; Requirements for Refugee Cash Assistance; and Refugee Medical Assistance

AGENCY: Office of Refugee Resettlement, Administration for Children and Families (ACF), HHS.

ACTION: Final rule.

SUMMARY: This rule amends current requirements governing refugee cash assistance and refugee medical assistance and provides States the option to establish the refugee cash assistance program as a public/private partnership between States and local resettlement agencies or to continue the refugee cash assistance program as a publicly-administered program.

A proposed rule was published in the **Federal Register** on January 8, 1999 (64 FR 1159). Some changes have been made and clarifications provided in this final regulation after consideration of the written comments received.

EFFECTIVE DATE: Effective April 21, 2000, except the amendments to 45 CFR 400.100 through 400.104 which are effective June 20, 2000.

FOR FURTHER INFORMATION CONTACT: Gayle Smith, (202) 205–3590.

SUPPLEMENTARY INFORMATION:

Background

The Refugee Act of 1980 amended the Immigration and Nationality Act (INA) to create a domestic refugee resettlement program to provide assistance and services to refugees resettling in the United States. With the enactment of this legislation, the Office of Refugee Resettlement (ORR) issued a series of regulations, at 45 CFR part 400, to establish comprehensive requirements for a State-administered Refugee Resettlement Program (RRP), beginning with the publication on September 9, 1980 (45 FR 59318) of a regulation governing State plan and reporting requirements. Subsequent regulations covered cash and medical assistance (CMA) and Federal funding, published March 12, 1982 (47 FR 10841); grants to States, child welfare services (including services to unaccompanied minors), and Federal funding for State expenditures, published January 30, 1986 (51 FR 3904); cash and medical assistance, requirements for employability services, job search, and employment, and refugee social services published February 3, 1989 (54 FR 5463); and requirements for employability services, job search, employment, refugee medical assistance (RMA), refugee social services, targeted assistance services, and Federal funding for administrative costs, published June 28, 1995 (60 FR 33584).

Discussion of Major Changes

The changes made in this final regulation, as compared with the proposed rule published on January 8, 1999, are as follows:

1. The proposal to require States to enter into a public/private partnership with local resettlement agencies has been revised. States will have the flexibility to establish a public/private refugee cash assistance (RCA) program with local resettlement agencies, operate a publicly-administered RCA program modeled after a State's Temporary Assistance for Needy Families (TANF) program, or establish an alternative approach under the existing Wilson/Fish program, which is authorized by section 412(e)(7) of the Immigration and Nationality Act (INA) (8 U.S.C. 1522(e)(7)).

2. Under § 400.57, States that elect to establish a public/private RCA program are only required to include counties and national voluntary agencies that resettle refugees in that State in the planning and consultation process. The requirement for public comments has been withdrawn.

3. Under § 400.60, States and local resettlement agencies that operate a public/private RCA program may combine RCA payments with employment incentives that exceed the monthly payment ceiling as long as the total combined payments to a refugee do not exceed the Federal monthly ceiling multiplied by the allowable number of months of RCA eligibility.

4. Under § 400.61, States will be able to contract with or award grants to any service provider for the provision of services to participants in the public/private RCA program. States will not be required to only contract with or award grants to local resettlement agencies to provide these services.

5. States must notify ORR within 6 months of the date of publication of the final rule as to whether they intend to establish a public/private RCA program. The due date for submission of a public/private RCA plan, however, has been extended to no later than 12 months after the date of publication of the final rule. States are to include in the RCA plan a proposed date for implementation of the public/private RCA program, not to exceed 24 months after the date of publication of the final rule.

6. The section on monitoring has been withdrawn.

7. The requirements in the current regulation that prohibit States from considering any resources remaining in the applicant's country of origin or from considering a sponsor's income and resources when determining eligibility for RCA have been restored. In addition, we have added a requirement that prohibits States from considering any cash grant provided to a refugee under the Department of State or Department of Justice Reception and Placement (R & P) programs when determining eligibility for RCA. These requirements will apply to both the public/private RCA program as well as publicly-administered RCA programs.

8. The proposed requirement for requesting an exception to the public/private RCA program has been withdrawn. A State that chooses to operate a publicly-administered RCA program modeled after its TANF program must submit an amendment to its State Plan to the Office of Refugee Resettlement for approval no later than 6 months after the date of publication of the final rule, describing the elements of its TANF program that will be used in its RCA program.

9. Under § 400.100(a), whether a refugee has been denied, or terminated from, refugee cash assistance may no longer be used as a criterion for determining that an applicant is ineligible for RMA.

10. Section 400.101 has been amended to extend to all States the option to establish an RMA financial eligibility standard at up to 200% of the national poverty level.

11. Section 400.102 has been amended by requiring that any cash assistance payments that a refugee receives may not be considered in determining eligibility for RMA.

12. Section 400.104 has been amended by making the transfer from Medicaid to RMA mandatory for refugees who lose Medicaid eligibility due to early employment.

13. Under § 400.152(b), citizenship and naturalization services are exempt from the 60-month limitation on services.

14. Section 400.55 has been amended to clarify that translations of written policies, notices, and determinations in refugee languages must be provided to recipients in both public/private RCA programs and publicly-administered RCA programs. We have amended this requirement in accordance with the Department of Justice's regulations

regarding compliance with title VI of the Civil Rights Act of 1964. This section now requires that agency policies, notices of eligibility and of adverse action, and determinations must be provided to refugees in English and in appropriate languages where a significant number or proportion of the recipient population needs information in a particular language. For refugee language groups that constitute a small number or proportion of the refugee recipient population, these provisions require States, or local resettlement agencies in the case of a public/private RCA program, to use an alternative method such as a verbal translation in a refugee's native language, to ensure that the content of the written policy or notice is effectively communicated.

15. The proposed amendment to 400.13(d) which would have allowed certain case management costs to be charged to CMA has been withdrawn.

Description of the Regulation

This rule provides States with options in designing a refugee cash assistance (RCA) program for those refugees not eligible for Temporary Assistance for Needy Families (TANF) or Supplemental Security Income (SSI), changes the procedure for determining the financial eligibility of refugees for receipt of refugee medical assistance (RMA), and amends other policies.

During the period following World War II until the passage of the Refugee Act of 1980, a variety of programs were funded by Congress and/or the private sector to assist newly arriving refugee groups. In authorizing and funding these programs for refugees, Congress continually demonstrated its recognition that special programs were needed to help refugees restart their lives in the U.S.

It is important to note that resettlement in the U.S. is the last stage of a much larger, world-wide humanitarian effort to aid victims of oppression and war. The U.S. participates and exercises its leadership in this effort by contributing to international relief and protection efforts, and also by offering resettlement to some refugees who have no other durable solution and who qualify for admission to the U.S. These refugees arrive from diverse backgrounds and parts of the world. However, what they all have in common, in addition to having had to seek refuge, is that they arrive with virtually no worldly possessions.

With the passage of the Refugee Act, Congress further underscored its belief that refugees need special assistance by authorizing an on-going program for providing assistance and services to all refugees after their arrival in the U.S. However, unlike U.S. welfare programs which assist the needy, the Refugee Act does not require that an income standard be met in order to receive this special refugee cash assistance, only that refugees register for and participate in programs to help them find employment. Congress provided the Office of Refugee Resettlement (ORR) the latitude to structure the refugee program in accordance with the refugee situation at that time.

After passage of the Refugee Act of 1980, ORR chose to establish direct ties to the State-administered Aid to Families with Dependent Children (AFDC) program in order to ensure that cash assistance was available to newly-arrived refugees not categorically eligible for that program. ORR established the refugee cash assistance program and required States to use the AFDC need and payment standards for the provision of RCA. The AFDC welfare system provided a nationally accessible structure which ensured that cash assistance was available to all refugees in a timely and equitable manner. ORR also established the refugee medical assistance program modeled on the Medicaid program.

At that time, ORR received sufficient appropriations to allow States to provide needy refugees with refugee cash assistance and refugee medical assistance during a refugee's first 36 months in the U.S. In addition, some portion of the refugee population received assistance under the mainstream AFDC and Medicaid programs. ORR also reimbursed the State share of AFDC and Medicaid costs during a refugee's first 36 months.

In the intervening years, due to declining appropriations, ORR reduced the period of availability of RCA and RMA to refugees. At the present time, ORR reimburses States for 100 percent of their RCA and RMA costs during a refugee's first eight months. Refugees eligible for the TANF and Medicaid programs receive assistance under those programs; the costs of providing TANF and Medicaid to refugee recipients are not included in the refugee appropriation.

With the passage of welfare reform legislation in 1996, two things have occurred which caused ORR to review the current system for providing RCA: (1) More refugee families have qualified for assistance through the TANF program than had previously qualified under the AFDC program; resulting in a smaller RCA program; and (2) States have expressed concerns about the administrative difficulties of maintaining a separate system based upon former AFDC rules to provide cash assistance for only 8 months to a small population of refugees.

With these two considerations in mind, ORR conducted eight consultations around the country and two teleconferences to discuss whether and how States, voluntary agencies, service providers, and refugee organizations would like to see the regulations changed. These consultations were attended by 35 State Refugee Coordinators, ten national voluntary agencies, more than one hundred local voluntary agency affiliates, representatives from State and local TANF agencies, local service providers, refugee mutual assistance agencies, unions, and national advocacy groups. The consultations were useful in helping us to identify certain issues and to gauge whether there was a general willingness and a suitable climate across the country in which to change the program.

We have concluded, based upon the consultations, that it is an opportune time to provide States the flexibility to separate the link between the RCA program and the welfare/TANF system for the following reasons: (1) The current period of time for provision of cash assistance is shorter, requiring a simple, more integrated and direct approach to resettlement; and (2) the RCA population, comprised almost entirely of singles and couples without children or with adult children, is a smaller, more distinct population to serve.

The Refugee Act acknowledged the roles of both States and private voluntary agencies in resettlement and authorized the Director of ORR "to provide assistance, reimbursement to States, and grants to, and contracts with, public or private nonprofit agencies for 100 per centum of the cash assistance and medical assistance provided to any refugee * * *." This language provided ORR with statutory flexibility to deliver assistance through public or private means. We believe that the public/private program described in this regulation more closely follows what Congress intended in passing the Refugee Act. The addition of a public/private program also provides States increased flexibility by offering another option for administering the RCA program.

In addition to the public/private program, this rule also provides States the option to establish the refugee cash assistance program as a publicly-administered RCA program modeled after their TANF program in regard to determination of eligibility, treatment of

income and resources, benefit levels, and budgeting methods.

This rule provides States that elect to establish the refugee cash assistance program as a public/private partnership the option to enter into contracts with or award grants to local resettlement agencies to administer the provision of cash assistance or to administer both the provision of cash assistance and services needed to help RCA recipients become employed and self-sufficient within the RCA eligibility period. The RMA program will continue to be administered by the States and will not be included in the public/private partnership program. In addition, assistance and services to refugees eligible for TANF will not be affected by the public/private RCA program.

We believe that giving States an option of operating a combined assistance and services program, administered outside the welfare system, makes programmatic sense for the RCA population. Placing responsibility for cash assistance and services with the resettlement agencies will result in a continuity of assistance to RCA-eligible refugees from initial resettlement to self-sufficiency. Currently, resettlement agencies are responsible, under contract with the Department of State (DOS), for providing refugees with initial housing, food, clothes, and shelter for the first 30 days after arrival in the U.S. However, in order to receive cash assistance, refugees must apply to the local welfare office where they become engaged in a service delivery system which, in many States, may not include their local resettlement agency.

We believe a public/private RCA program will more firmly unite the two key players—States and resettlement agencies—into a partnership that will best utilize their respective strengths. States will maintain the important role of administering the program and providing financial management and policy oversight, while the resettlement agencies will have an enhanced role in the longer-term resettlement of refugees they place in the State. Under the public/private RCA program, States and voluntary agencies will have the flexibility to design programs to deliver refugee cash assistance in a manner that more fully integrates and supports resettlement. In order to accommodate resettlement in communities across the U.S. with different cost-of-living conditions, ORR is establishing payment ceilings which may be provided to refugees. Within these ceilings, a State and the resettlement agencies in that State will have the opportunity to develop a resettlement plan which incorporates the features, such as sliding scale payments or incentives, that they believe are best suited to achieving early self-sufficiency and to enriching the quality of life for refugees placed in their State. In addition, States and resettlement agencies will have the flexibility to establish the income-eligibility standard for RCA that they believe would best enable most newly arriving refugees to qualify for RCA and which would encourage early employment.

States and the agencies responsible for providing services to recipients in the public/private RCA program will be responsible for moving refugees to economic and social self-sufficiency within the RCA eligibility period by placing them in full-time employment.

This rule will allow States under § 400.207 to claim reasonable and necessary administrative costs incurred by resettlement agencies in the administration of the public/private RCA program.

We expect States that opt to establish a public/private RCA program, when developing their annual social services plan, to cover the costs of services in the new RCA program within their regular social services budget. We also expect States to link the new RCA program with the existing State refugee social services system in order to enhance the coordination of services. We recognize that there may be additional service costs to fully implement the service component of the new RCA program while maintaining the State's regular refugee social services program for non-RCA refugees who have been in the U.S. for less than 5 years. For this reason, subject to the availability of funds, ORR plans to make available to States a portion of the non-formula funds that are reserved for the Director's discretionary use each year. These non-formula funds would be used during the initial start-up years to enable States to establish a viable public/private RCA program without compromising their existing social services program.

States that elect to establish a public/private RCA program will be required to engage in a planning and consultation process with the national voluntary and local resettlement agencies and with other agencies, such as mutual assistance associations (MAAs), that serve refugees in the State to design the public/private RCA program. From that process, States and resettlement agencies will develop a public/private RCA plan for submission to ORR no later than 12 months after publication of the final rule.

While a public/private RCA program is ORR's preferred approach, we fully recognize that this approach may not be the best choice in all States. Therefore, under the final rule, States will have the option to establish a publicly-administered RCA program modeled after their TANF program. States that conclude that neither a public/private RCA program nor a publicly-administered RCA program would be the best way to serve refugees in their State may pursue a third option—an alternative program funded under the standing Wilson/Fish announcement. The Wilson/Fish program provides States and public and private non-profit agencies the opportunity to develop innovative approaches to providing cash assistance, social services, and case management as an alternative to the regular State-administered refugee program.

The final rule contains a number of provisions to ensure that refugee rights and protections are safeguarded in the RCA program. While we have no interest in having resettlement agencies adopt the full range of rules and regulations of a government bureaucracy, it is essential to have adequate client protections in place to ensure due process and equitable treatment.

We have added three changes to the refugee medical assistance program to enable certain groups of refugees currently without medical coverage, such as newly arrived refugees who become employed within the first few weeks of arrival, to be eligible for RMA. First, States will be required to determine RMA eligibility on the basis of a refugee applicant's income and resources on the date of application, rather than averaging income over the application processing period. Second, States will be given the option of using a higher financial eligibility standard of up to 200% of the national poverty level for determination of RMA eligibility. Third, refugees residing in the U.S. less than 8 months, who lose their eligibility for Medicaid because of earnings from employment, will be transferred to RMA without an eligibility determination. We believe these changes in RMA eligibility are important to ensure that most newly arriving refugees, many of whom arrive with medical problems resulting from war-related trauma, have medical coverage during their first 8 months in the U.S.

Consistent with the preceding actions, 45 CFR 400.2, 400.5, 400.11, 400.13, 400.23, 400.27, 400.43, 400.44, Subpart E, 400.70, 400.71, 400.72, 400.75, 400.76, 400.77, 400.78, 400.79, 400.80, 400.81, 400.82, 400.83, 400.93, 400.94, 400.100, 400.101, 400.102, 400.103, 400.104, 400.107, 400.152, 400.154, 400.155, 400.203, 400.207, 400.208, 400.209, 400.210, 400.211, 400.301, and 401.12 are being amended or removed. Some of these changes are technical in nature and are not discussed in the preamble.

Subpart A—Introduction

Section 400.2 is amended by replacing all references to the AFDC program with references to the TANF program, by adding a definition of an RCA Plan, designee, economic self-sufficiency, and a family unit, and by adding separate definitions of a national voluntary agency and a local resettlement agency.

Subpart B—Grants to States for Refugee Resettlement

Section 400.5 is amended by reinserting paragraph (i) which was inadvertently removed when 45 CFR Part 400 was last codified in 1995.

Section 400.13 is amended by adding a new paragraph (e) which would allow States to charge administrative costs incurred by local resettlement agencies in the administration of the public/private RCA program (*i.e.*, administrative costs of providing cash assistance) to the CMA grant. Administrative costs of managing the services component of the RCA program must continue to be charged to the social services grant.

Administrative costs of providing cash assistance may include: (1) The salary costs of staff responsible for eligibility determinations and other administrative functions associated with the provision of cash payments; and (2) the portion of the local resettlement agency Director's time spent on managing the cash assistance component.

Subpart C—General Administration

Section 400.23 (Hearings) is amended by clarifying that the public assistance hearing regulation at 45 CFR 205.10(a) applies to assistance and services provided to refugees unless otherwise specified in ORR regulations.

Section 400.27 (Safeguarding and sharing of information) is amended by adding language to paragraph (b) to enable States that have established a public/private RCA program to obtain client information from local resettlement agencies without a signed consent from clients, and by removing paragraph (c) which references an AFDC regulation. It should be noted that § 400.58 requires that a State's public/private RCA plan contain a description of the procedures to be used to safeguard the disclosure of information regarding refugee clients.

Subpart D—Immigration Status and Identification of Refugees

Section 400.43 is amended by removing the following obsolete alien statuses for purposes of the refugee program: "Admitted as a conditional entrant under section 203(a)(7) of the Act" and "Admitted with an immigration status that entitled the individual to refugee assistance prior to enactment of the Refugee Act of 1980, as specified by the Director" and by adding Cuban and Haitian entrants in accordance with requirements in Part 401; and Amerasian immigrants to this section.

Section 400.44 is amended by clarifying that applicants for asylum are not eligible for assistance under the refugee program unless otherwise provided by Federal law, as is the case with Cuban and Haitian asylum applicants under section 501 of the Refugee Education Assistance Act of 1980.

Subpart E—Refugee Cash Assistance

The sections of Subpart E that pertain specifically to AFDC requirements have been retained and modified under a new § 400.45. For example, we have dropped the prohibition against applying a $30 and ⅓ earned income disregard; any reception and placement cash received by a refugee may not be considered in determining income eligibility; and the State agency may use the date of application as the date RCA begins. These requirements must be followed by States until they have implemented a new public/private RCA program or a publicly-administered RCA program modeled after TANF. These requirements also apply to those States that obtain an approved waiver from ORR to continue an AFDC-type RCA program.

Subpart E is revised by providing States the flexibility to establish a new public/private partnership program in which States would contract with or award grants to local resettlement agencies to provide transitional cash assistance and services to RCA-eligible refugees as described below, or to operate a publicly-administered RCA program modeled after the TANF program.

General

The following general sections apply to both the public/private RCA program and publicly-administered RCA programs, including RCA programs currently modeled after AFDC unless otherwise noted in § 400.45.

Section 400.50 (Basis and scope) is retained without changes and redesignated as § 400.48.

Section 400.51 (Definitions) is removed.

Section 400.52 (Recovery of overpayments and correction of underpayments) is redesignated as § 400.49 and amended by removing references to AFDC requirements.

Section 400.55 (Opportunity to apply for cash assistance) is redesignated as § 400.50 and amended by removing (b)(1), which references AFDC requirements, by amending (b)(2), and by removing (b)(3), (b)(4), and (c), which require States to contact sponsoring resettlement agencies regarding financial assistance and offers of employment to refugees. Paragraph (b)(4) and (c) have been moved to § 400.68. Paragraph (d) has been removed and moved to § 400.54.

This section is amended by adding a requirement that an eligibility determination must be made as promptly as possible within no more than 30 days from the date of application and that applicants must be informed of their rights and responsibilities.

Section 400.56 (Determination of eligibility under other programs) is redesignated as § 400.51 and is amended by removing paragraphs (a)(1) and (a)(2) and redesignating paragraph (a)(3) as (a).

Section 400.57 (Emergency cash assistance to refugees) is redesignated as § 400.52.

Section 400.53 (General eligibility requirements) replaces § 400.60 and establishes the following eligibility requirements for the RCA program. To be eligible for the RCA program, a refugee must: (1) Be a new arrival who has resided in the U.S. less than the RCA eligibility period determined by the ORR Director in accordance with § 400.211; (2) be ineligible for TANF and SSI; (3) have the proper immigration status and documentation for eligibility for benefits under the refugee program; (4) not be a full-time student in an institution of higher education; and (5) meet the income eligibility standard established by the State.

Section 400.54 (Eligibility redeterminations in States with residency requirements) has been removed and a new § 400.54 (Notice and hearings) has been added. This section describes timely and adequate notice and certain hearing requirements necessary in the administration of public/private and publicly-administered RCA programs (*See* the comment and response sections to §§ 400.82 and 400.83 for further discussion).

Section 400.55 (Availability of agency policies) requires a State or the

agency(s) responsible for the provision of RCA to make available to refugees the written policies of the public/private RCA program, including all notices and all agency policies regarding eligibility standards, the duration and amount of cash assistance payments, the requirements for participation in services, the penalties for non-cooperation, and client rights and responsibilities to ensure that refugees understand what they are eligible for, what is expected of them, and what protections are available to them. The State or the agency(s) responsible for the provision of RCA must ensure that agency policy materials and notices, including notices required in §§ 400.54, 400.82, and 400.83 are made available to refugee clients in English and in appropriate languages where a significant number or proportion of the recipient population needs information in a particular language.

Public/Private Partnership RCA Program

Section 400.56 (Structure) provides States the option of entering into a partnership with local resettlement agencies for the provision of cash assistance through a public/private RCA program. This section provides States the flexibility to enter into a public/private partnership by administering the RCA program through contracts or grants with the local resettlement agencies that resettle refugees in the State. We define local resettlement agencies in § 400.2 as local affiliate agencies which provide initial reception and placement services to refugees under a cooperative agreement with the Department of State.

We believe that giving the local resettlement agencies that are responsible for the initial placement of refugees the additional responsibility of providing cash assistance to those refugees will result in more effective and better quality resettlement. At the same time, we fully recognize the policy and administrative oversight capacity that States are able to contribute to the resettlement process. This public/private structure is a way to more firmly unite the two sectors into a partnership to help refugees.

We expect States to implement a public/private RCA program statewide. It is intended that all resettlement agencies placing refugees in a State will participate in the public/private RCA program to the extent possible.

However, if it is not feasible to operate a statewide public/private RCA program, States may propose a geographically split program for the delivery of RCA. We recognize that in some places the statewide public/private model may not be a reasonable approach. For example, in a State with a major urban area that receives 75% of the State's newly arriving refugees, the State and resettlement agencies may wish to operate a public/private RCA program in the urban area only, while choosing to operate a publicly-administered RCA program through the State welfare agency in the balance of the State where the geographic dispersion of refugees may hinder resettlement agency delivery of benefits.

ORR will not consider a plan where the State proposes having both a public/private RCA program and a publicly-administered RCA program in the same location. Such an arrangement would not be programmatically wise because it would cause confusion for refugees and would create unnecessary duplication.

We recognize that some local resettlement agencies sponsor refugees in States other than where they have an office, e.g., in States bordering and in close proximity to their local office such as occurs in Kansas/Missouri and in the District of Columbia/Maryland/Virginia metropolitan area. ORR intends, where possible, that these resettlement agencies also be involved in the planning of the public/private RCA plan of the bordering State. However, if that is not feasible (some States, for example, may not be able to enter into contracts or grants outside of the State), ORR expects States, in conjunction with the local resettlement agencies, to make appropriate provisions for eligible refugees resettled by agencies not located within State boundaries. Examples of appropriate provisions may include the establishment of an office by the sponsoring resettlement agency in the State where they are placing refugees or co-locating staff with a resettlement agency that already has a presence in the State.

We recognize that some States may not have the staff or administrative support to contract with and manage numerous local agency contracts or grants. We also recognize that some local resettlement agencies may not have the administrative and fiscal capacity to manage a cash assistance program. Therefore, under the public/private RCA plan, States and local resettlement agencies may consider different types of arrangements such as: (1) An agency-contained model where the local resettlement agency performs all fiscal and eligibility functions including the determination of eligibility, authorization of the RCA payment amount, the cutting of the checks, and the provision of payments to refugees; (2) a lead agency approach in which one resettlement agency assumes responsibility for managing the cash assistance component of the program for all the resettlement agencies; or (3) a model where the State acts as the fiscal agent, cutting benefit checks and managing cash flow, while the local resettlement agency determines eligibility, calculates the payment amount, and provides payments to refugees.

States and resettlement agencies that choose to implement the public/private RCA program will have 24 months from the date of publication of the final rule to implement the new program.

Section 400.57 (Planning and consultation) requires a State that wishes to establish a public/private RCA program to engage in a planning and consultation process with local resettlement agencies to develop a public/private RCA plan, the content of which is described in § 400.58. Primary participants in the planning process must include representatives of the State and each local agency that resettles refugees in the State. In addition, representatives of refugee mutual assistance associations (MAAs), counties, local community services agencies, national voluntary agencies, representatives of each refugee ethnic group, and other agencies that serve refugees must be given the opportunity to participate in the discussion during the development period. We believe that full participation by MAAs and other community agencies throughout the planning process is essential to the development of a workable public/private RCA program. To facilitate this participation, it is permissible for States to charge to their CMA grant reasonable travel and per diem costs for MAAs and other agencies, as needed, to enable these agencies to more easily participate in the consultation process.

This section requires local resettlement agencies to keep their respective national voluntary resettlement agencies fully informed of the details of the public/private RCA program as the program is developed. Local resettlement agencies will be responsible for obtaining a letter of agreement from their national agency stating that the national agency supports the public/private RCA plan and will continue to place refugees in the State under the new public/private program.

Section 400.58 (Development of a public/private RCA plan) establishes the requirements for the development of a public/private RCA plan which describes how the State and local resettlement agencies will administer and deliver RCA to eligible refugees. The plan must describe the agreed-upon public/private RCA system including:

(1) The proposed income standards for RCA eligibility; (2) proposed payment levels to be used to provide cash assistance to eligible refugees; (3) assurance that the payment levels established are not lower than the State TANF amount; (4) a detailed description of how benefit payments will be structured, including the employment incentives and/or income disregards to be used, if any, as well as methods of payment; (5) a description of how all refugees residing in the State will have reasonable access to cash assistance and services; (6) a description of the procedures to be used to ensure appropriate protections and due process for refugees, such as notice of adverse action and the right to mediation, a pre-termination hearing, and an appeal to an independent entity; (7) a description of proposed exemptions from participation in employability services; (8) a description of the employment and self-sufficiency services that will be provided to RCA recipients; (9) procedures for providing RCA to eligible secondary migrants who move to the State, including secondary migrants who were sponsored by a resettlement agency that does not have a presence in the receiving State; (10) if applicable, provisions for providing assistance to refugees resettling in the State who are sponsored by a resettlement agency in a bordering State which does not have an office in the State of resettlement; (11) a description of the procedures to be used to safeguard the disclosure of information on refugee clients; (12) letters of agreement from the national voluntary resettlement agencies indicating support for the public/private RCA program and that refugee placements in the State will continue under the public/private RCA program; (13) a breakdown of the proposed program and administrative costs of both the cash assistance and service components of the public/private RCA program, including per capita caps on administrative costs only if a State proposes to use such caps; and (14) a proposed implementation date for the public/private RCA program.

The plan must be signed by the Governor or his or her designee and must be submitted to the ORR Director for review and approval no later than 12 months after the date of publication of the final rule. A State must, however, notify the ORR Director of its intent to establish a public/private RCA program no later than 6 months after the date of publication of the final rule.

RCA plan amendments must be developed in consultation with the local resettlement agencies to reflect any changes in policy and submitted to ORR in accordance with § 400.8.

Section 400.59 (Eligibility for the public/private RCA program) establishes that to be eligible for the public/private RCA program, a refugee must meet the income eligibility standard jointly established by the State and local resettlement agencies in the State. This section also states that any resources remaining in the applicant's country of origin or a sponsor's income and resources may not be considered in determining income eligibility. Any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement programs also may not be considered in determining income eligibility since such a grant is intended to cover the initial costs of resettlement, not ongoing living expenses.

In establishing an income eligibility standard for the public/private RCA program, States and resettlement agencies may wish to set a standard, for example, at 150% of the poverty level, that will allow refugees who are employed part-time in a low wage job to also be eligible for some level of cash assistance. States may wish to consider such a need standard in order to provide a more solid economic foundation for refugees during their first 8 months in the U.S. to better ensure continued self-sufficiency.

Section 400.60 (Cash payment levels) establishes allowable cash payment levels under the public/private RCA program. This section requires monthly cash assistance payments to be made to eligible refugees using a payment level that does not exceed the following payment ceilings, except in cases where the State TANF payment level is higher or a State wishes to provide early employment incentives as described below.

Size of family unit	Monthly payment ceiling
1 person	$335
2 persons	450
3 persons	570
4 persons	685

These ceiling payment levels are based on 50% of the 1998 HHS Poverty Guidelines for each family size, divided by 12 months, except as noted below.

For family units greater than 4 persons, the payment ceiling may be increased by $70 for each additional person.

If the ORR Director determines that the payment ceilings need to be adjusted for inflation, ORR will issue revised payment ceilings through a notice in the **Federal Register**.

We expect that most refugees eligible for RCA will be one-person or two-person family units, singles and childless couples. We expect that most refugee families with dependent children will be eligible for TANF and, therefore, will not need to access the RCA program.

Payments to refugees may not be lower than the State TANF payment for the same sized family unit. States, therefore, that have TANF payment levels that are higher than the ceilings indicated above, must provide payment levels under the new public/private RCA program that are comparable to the State TANF payment levels. ORR will reimburse States at the higher TANF payment levels in such instances.

We encourage States and local resettlement agencies to use the flexibility provided in the payment ceilings to include income disregards or other incentives such as employment bonuses, that will encourage early employment and self-sufficiency. This flexibility would allow States and local resettlement agencies to provide continued cash support while moving refugees into early employment. States and local resettlement agencies may design whatever combination of assistance payments and incentives they believe would be effective, as long as the total combined payments to a refugee do not exceed the monthly ceiling multiplied by the allowable number of months of RCA eligibility. States and local resettlement agencies that plan to exceed the monthly payment ceilings in order to provide employment incentives must budget their resources carefully to ensure that sufficient RCA funds are available to cover a refugee's cash assistance needs in the latter months of a refugee's eligibility period, if needed.

We encourage States and local resettlement agencies to look at different approaches and to be creative in designing a program that will help refugees to establish a good economic foundation during the 8-month RCA period. We encourage States and local resettlement agencies to design an RCA program that takes into account that refugees arrive in the U.S. with little or no financial resources and that 8 months of cash assistance provides a limited period of time to gain a degree of financial stability.

One approach might be to permit the total of earned income and cash assistance of refugees who become employed full-time to exceed the cash assistance only payments made to refugees who are not employed. Another

approach, currently being used in one State, provides an incentive to employed refugees through monthly reimbursements for work-related expenses such as tools, uniforms, work-related transportation expenses, medical insurance co-payments, or the cost of additional work-related training. The State has found this to be an effective incentive for early employment.

Section 400.61 (Services in the public/private RCA program) establishes that services provided to recipients of refugee cash assistance in the public/private program may be provided by the local resettlement agencies that administer the public/private RCA program or by other refugee service agencies. It will be important not only to place refugees in employment at wages that will enable self-support, but to ensure that refugees receive the skills, such as English language acquisition and basic living skills, needed to live successfully in this country. We plan to work with States and resettlement agencies to develop appropriate social self-sufficiency and English acquisition outcome measures.

This section also establishes that in public/private RCA programs where local resettlement agencies are responsible for administering both cash assistance and services, States and local resettlement agencies must maintain ongoing coordination with refugee mutual assistance associations and other ethnic representatives that represent or serve the ethnic populations that are being resettled in the U.S. to ensure that the services provided under the public/private RCA program: (1) Are appropriate to the linguistic and cultural needs of the incoming populations; and (2) are coordinated with the longer-term resettlement services frequently provided by ethnic community organizations after the 8-month RCA period.

In public/private RCA programs where the agencies responsible for providing services to RCA recipients are not the same agencies that administer the cash assistance program, States must: (1) Establish procedures to ensure close coordination between the local resettlement agencies that provide cash assistance and the agencies that provide services to RCA recipients; and (2) set up a system of accountability that identifies the responsibilities of each participating agency and holds these agencies accountable for the results of the program components for which they are responsible.

Allowable services under the public/private program are limited to those services described under §§ 400.154 and 400.155.

Section 400.62 (Coverage of secondary migrants, asylees, and Cuban/Haitian entrants) provides that the State and local resettlement agencies must ensure that there is a system in place which is accessible to eligible secondary migrant refugees, asylees, and Cuban/Haitian entrants who want to apply for assistance. In developing these procedures, consideration must be given to how to ensure coverage of eligible secondary migrants and other eligible applicants who were sponsored by a resettlement agency which does not have a presence in the State or who were not sponsored by any agency.

Section 400.63 (Preparation of local resettlement agencies) requires national voluntary agencies to be responsible, in concert with the States, in preparing local resettlement agencies for their new responsibilities under the public/private RCA program during a period of transition. In light of the ongoing relationship of the national voluntary agencies with their local affiliates under the Department of State cooperative agreements for initial Reception and Placement services, we believe the national agencies should share in the responsibility with the States for ensuring that their affiliate agencies have the capacity and structure to effectively handle the cash assistance and service needs of refugees over an 8-month period.

The States and national voluntary agencies will develop a plan for: (1) Determining the training needed to enable local resettlement agencies to achieve a smooth transition into their expanded role; and (2) providing the training in a uniform way to ensure that all local resettlement agencies in the State will implement the new program in a consistent manner. Part of this training should involve helping the local resettlement agencies to change how they view their role—from a short-term initial resettlement role to a longer-term commitment to the economic self-sufficiency and social integration of the refugees they resettle. The national voluntary agencies should also be instrumental in helping the local resettlement agencies to establish a smooth linkage between Reception and Placement services and services under the RCA program and in facilitating the development of consortia among affiliates. States may also wish to call upon the national voluntary agencies to assist in providing remedial assistance and training to poorly performing affiliate agencies before contract or grant sanctions are applied.

ORR intends to use a portion of its non-formula social services funding, subject to the availability of appropriated funds, to support the national voluntary agencies in these training activities during a transition period ending two years after publication of the final rule.

Publicly-Administered RCA Programs

Section 400.65 (Continuation of a publicly-administered RCA program) provides a State that does not elect to establish a public/private RCA program the option of operating its RCA program consistent with its TANF program. A State that chooses to operate a TANF-type RCA program must submit an amendment to its State Plan no later than 6 months after publication of the final rule, describing the elements of its TANF program that will be used in its RCA program.

Section 400.66 (Eligibility and payment levels in a publicly-administered RCA program) establishes that in administering an RCA program modeled after TANF, the State agency must operate its refugee cash assistance program consistent with the provisions of its TANF program in regard to: (1) The determination of initial and on-going eligibility (treatment of income and resources, budgeting methods, need standard); (2) the determination of benefit amounts (payment levels based on size of the assistance unit, income disregards); (3) proration of shelter, utilities, and similar needs; and (4) any other State TANF rules relating to financial eligibility and payments.

This section retains the requirements that a State agency may not consider any resources remaining in the applicant's country of origin or a sponsor's income and resources in determining income eligibility. This section contains an additional requirement that a State agency may not consider any cash grant provided to the applicant under the Department of State or Department of Justice Reception and Placement programs in determining income eligibility. This section also permits States to use the date of application as the date refugee cash assistance begins, instead of the date used in the States' TANF program.

Section 400.67 (Non-applicable TANF requirements) establishes that a State that chooses to model its RCA program after its TANF program *may not* apply certain TANF requirements to refugee cash assistance applicants or recipients as follows: Instead of TANF work requirements, States must apply the requirements in § 400.75 which requires RCA recipients, as a condition of receipt of assistance, to participate in employment services within 30 days of receipt of aid, and Subpart I of 45 CFR Part 400 with respect to the provision of services for RCA recipients. The requirements and expectations for employment and participation in employment services in the refugee program are no less serious than the requirements in the TANF program. The requirements in the refugee program are simply different from TANF requirements in that the types of activities allowed in the refugee program are designed for the needs of newly-arrived refugees who typically arrive with little or no English language skills. Thus, in the refugee program, refugees participate extensively in English language training, assisted job search, and other employment-related activities that are designed to help limited-English speaking refugees to become self-sufficient within 8 months.

Section 400.68 (Notification of resettlement agencies) requires States: (a) To notify the local agency that was responsible for the initial resettlement of a refugee whenever the refugee applies for refugee cash assistance under a publicly-administered RCA program; and (b) to contact the applicant's sponsor or resettlement agency to inquire whether the applicant has voluntarily quit employment or has refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application, in accordance with § 400.77.

Section 400.69 (Alternative RCA programs) provides States, that determine that neither a public/private RCA program nor a publicly-administered program modeled after its TANF program is the best approach for their State, the option to establish an alternative approach under the Wilson/Fish program, authorized by section 412(e)(7) of the INA. Applications for the Wilson/Fish program may be submitted under the standing Wilson/Fish grant announcement published in the **Federal Register** on April 22, 1999 (64 FR 19793).

Subpart F—Requirements for Employability Services and Employment

Section 400.70 (Basis and scope) is amended to clarify that Subpart F applies to applicants and recipients of both a public/private RCA program and a publicly-administered RCA program.

Section 400.72 (Arrangements for employability services) is amended to clarify that the requirements in paragraphs (a) and (b) of this section apply equally to States that operate a public/private RCA program through contracts or grants with local resettlement agencies and to States that operate a publicly-administered RCA program, while paragraph (c) applies only to a publicly-administered RCA program.

Section 400.76 (Exemptions) is revised by removing the list of individuals who may be exempt from participation in employment services. States agencies may determine what specific exemptions, if any, are appropriate for recipients of a time-limited RCA program in their State. Given the short duration of the RCA program, however, and the need for refugees to become self-sufficient within this limited time frame, we would expect States to require most RCA recipients to participate in employment services, with few exceptions.

Section 400.78 (Service requirements for employed recipients of refugee cash assistance), which requires an RCA recipient who is employed less than 30 hours a week to participate in part-time employment services, as a condition of continued receipt of refugee cash assistance, is removed and reserved. We leave it to States and local resettlement agencies to determine how best to design a program that moves refugees to full-time employment in a reasonable period of time.

Section 400.80 (Job search requirements), which requires job search where appropriate, is removed and reserved. Again, we leave it to the judgement of States and local resettlement agencies to decide the types of employment services that are the most effective in placing refugees in jobs.

Section 400.81(a) (Criteria for appropriate employability services and employment) is amended by replacing the reference to AFDC with a reference to TANF.

Section 400.81(b) is amended by limiting professional refresher training and other recertification services only to individuals who are working.

Section 400.82 (Failure or refusal to accept employability services or employment) is revised to specify requirements for timely and adequate notice of intended termination under both a public/private RCA program and a publicly-administered RCA program.

Section 400.83 (Conciliation and fair hearings) is revised by establishing requirements for mediation and fair hearings in the public/private RCA program and requiring that States specify the public agency mediation/conciliation and fair hearings procedures to be used in cases where a State operates a publicly-administered RCA program. Under this requirement, hearings must meet the due process standards set forth in the U.S. Supreme Court decision in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970).

Subpart G—Refugee Medical Assistance

This subpart is amended in several places to clarify that refugee medical assistance is only available to refugees who are ineligible for Medicaid or SCHIP, regardless of how the State has administratively implemented its SCHIP program. Without these clarifying amendments, the regulations as currently drafted would only require States to determine SCHIP eligibility prior to RMA eligibility if the State has administratively implemented SCHIP as an expansion of benefits under the State's Medicaid Plan under title XIX of the Social Security Act. As currently written, the RMA regulations do not require States to make SCHIP eligibility determinations prior to RMA eligibility determinations for refugee children, if the State has chosen to implement its SCHIP program as a separate State SCHIP Program pursuant to title XXI of the SSA.

Section 400.93 (Opportunity to apply for medical assistance) is amended to clarify that the notice indicating that assistance has been authorized, denied or terminated must clearly distinguish between RMA, Medicaid and SCHIP.

Section 400.94 (Determination of eligibility for Medicaid) is amended to clarify that refugee medical assistance is only available to refugees who are ineligible for Medicaid or SCHIP.

Section 400.100(a) (General eligibility requirements) is amended by removing the prohibition against the provision of RMA to refugees who have been denied, or terminated from, refugee cash assistance.

Sections 400.100(a)(1) and (d) (General eligibility requirements) are amended by clarifying that refugee medical assistance is only available to refugees who are ineligible for Medicaid or SCHIP.

Section 400.101 (Financial eligibility standards) is amended by giving all States the option of increasing the financial eligibility standard for RMA eligibility determination to up to 200% of the national poverty level by family size. Our intent in allowing States this new option is to ensure that States have the flexibility to broaden financial eligibility for refugee medical assistance, while receiving 100% Federal reimbursement of costs, in order to extend coverage to certain groups of new arrivals who are currently not covered under RMA. Refugees currently without medical coverage who would be affected by this provision include: (1) Refugees who are ineligible for transitional Medicaid because they were not considered eligible to receive AFDC assistance in at least 3 of the last 6

months due to hours of or income from employment; and (2) refugee spouses who arrive in the U.S. a number of months after their spouse who preceded them, and are not eligible for RMA because their employed spouse's income renders them ineligible for RMA.

Section 400.101(b) is amended with respect to States without a medically needy program by clarifying that references to AFDC refer to the AFDC payment standards and methodologies in effect as of July 16, 1996, including any modifications elected by the State under Section 1931(b)(2) of the Social Security Act (SSA). This is in keeping with the amendments made by section 114 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) to Section 1931 of the SSA.

Section 400.102 (Consideration of income and resources) is revised to clarify that determination of eligibility for refugee medical assistance (RMA) must be based on the applicant's income and resources on the date of application, rather than on a refugee's income averaged prospectively over the RMA application processing period.

The purpose of this revision is to ensure that refugees who enter employment within the first few weeks after arrival in the U.S. are not penalized for accepting early employment by denial of refugee medical assistance. Refugees arrive in the U.S. with no income, and generally apply for refugee medical assistance very soon after arrival. With this revision, a newly arrived refugee who applies for refugee medical assistance soon after arrival and becomes employed within the first 30 days in the U.S. subsequent to filing the RMA application, would not lose RMA eligibility.

Section 400.102 is also amended to prohibit the consideration of any cash assistance payments received by a refugee in determining a refugee's eligibility for RMA.

Section 400.102 is amended to remove references to the AFDC program which no longer apply due to changes in Medicaid eligibility determinations contained in PRWORA as described above.

Section 400.103 (Coverage of refugees who spend down to State financial eligibility standards) is amended to clarify that all States must allow applicants of RMA who do not meet the financial eligibility standards elected in § 400.101 to spend down to the elected standard.

Section 400.104 (Continued coverage of recipients who receive increased earnings from employment) is amended to require refugees residing in the U.S. less than 8 months, who lose their eligibility for Medicaid because of earnings from employment, to be transferred to refugee medical assistance without an RMA eligibility determination. This amendment will allow refugees who lose Medicaid eligibility because they obtain early employment to maintain medical coverage under RMA during the remainder of their first 8 months in the U.S. The purpose of this amendment is to encourage early economic self-sufficiency by ensuring that refugees receive continued medical assistance while employed and by ensuring that refugees are not discouraged from early employment by the potential loss of medical coverage.

Subpart I—Refugee Social Services

Section 400.152(b) (Limitations on eligibility for services) is amended by adding citizenship and naturalization services to the services that are exempt from the 60-month limitation.

Sections 400.154 (Employability services) is amended by adding assistance in obtaining employment authorization documents (EADs) as an allowable employability service under the social services and targeted assistance formula programs. This provision will allow States to use service funds to cover the cost of refugee provider staff time to help asylees or refugees obtain EADs. Social services and targeted assistance funds, however, may not be used to pay for the cost of EADs.

Section 400.155 (Other services) is amended by adding citizenship and naturalization services as allowable services under the social services and targeted assistance formula programs. Citizenship and naturalization services may include such services as English language training and civics instruction to prepare refugees for citizenship, application assistance for adjustment to legal permanent resident status and citizenship status, assistance to disabled refugees in obtaining disability waivers from English and civics requirements for naturalization, and the provision of interpreter services for the citizenship interview, as needed.

Subpart J—Federal Funding

Section 400.207 (Federal funding for administrative costs) is amended by clarifying that a State may claim reasonable and necessary administrative costs incurred by local resettlement agencies in the administration of a public/private RCA program.

Section 400.210 (Time limits for obligating and expending funds and for filing State claims) is amended by revising § 400.210(b)(2) to extend the due date for a State's final financial report of expenditures of social services and targeted assistance formula grants to no later than 90 days after the end of the two-year expenditure period. This section clarifies that States must expend their social services and targeted assistance funds no later than two years after the end of the Federal fiscal year in which the Department awarded the grant. Thus, under this revision, States must have expended social services and targeted assistance funds awarded to them in FY 1999, for example, by no later than September 30, 2001, and a State's final financial report must be *received* no later than December 31, 2001. If, at that time, a State's final financial report has not been received, the Department will deobligate any unexpended funds, including any unliquidated obligations, on the basis of a State's last submitted financial report.

This revision is in response to requests from several States needing a full 2-year period to expend social services and targeted assistance funds from the end of the Federal fiscal year in which the funds are awarded.

Section 211(a) (Methodology to be used to determine time-eligibility of refugees) is amended to clarify that after making a determination of the RCA/RMA eligibility period as soon as possible after funds are appropriated for the refugee program, the Director will make redeterminations at subsequent points during the year only if a reduction in the eligibility period appears indicated.

Subpart K—Waivers and Withdrawals

Section 400.301 (Withdrawal from the refugee program) is amended by removing the words "only under extraordinary circumstances and" in § 400.301(b). This would allow the ORR Director greater discretion to approve cases in which a State wishes to retain responsibility for only part of the refugee program if it is in the best interest of the Government, without requiring extraordinary circumstances. For example, when a State with a small refugee population wishes to drop out of the refugee program, but is willing to retain responsibility for administering just the RMA program, it would be in the best interest of the Government to approve such an arrangement without other constraints.

Section 400.301(c) is amended by clarifying that a replacement designee must adhere to the regulations regarding the targeted assistance formula program under Subpart L if the State wishing to drop out of the refugee program authorizes the replacement designee appointed by the ORR Director to act as the State's agent in applying for and receiving targeted assistance funds.

Discussion of Comments Received

We received one hundred and thirty-six letters of comments in response to the notice of proposed rulemaking published in the **Federal Register** on January 8, 1999. The commenters included State and local governments, national and local voluntary agencies, refugee mutual assistance organizations, refugee service providers, advocacy organizations, national unions, national government organizations, and national public policy organizations. We took these comments into consideration in the development of the final rule. We have summarized and responded to the comments below. Some of the comments addressed existing provisions of the regulations that were not included in the NPRM for change. While we have reviewed these comments as well, we have included a discussion of comments only on those provisions outside of the NPRM that we have decided to change as a result of the comments.

Comments on Subport A—Introduction

Section 400.2

Comment: Three commenters recommended defining TANF assistance as TANF cash assistance since there are other types of assistance which States may provide with TANF funds. One commenter recommended that the definition of TANF should include a reference to title IV–A of the Social Security Act.

One commenter recommended that the final rule define the term "family unit" to ensure consistency of interpretation for cash assistance payment cases. The issue of whether adult children are considered part of their parents' "family unit" or as separate family units or whether two unmarried adults living together are considered to be one or two family units needs clarification.

One commenter suggested adding a definition of economic self-sufficiency to § 400.2. The commenter recommended defining economic self-sufficiency on the basis of total household income in relation to a percentage of the Federal poverty standard. The commenter felt that the measure of hours of work per week should be eliminated as a measure of self-sufficiency and that agency performance should not be evaluated on the basis of whether each refugee meets the hours of work per week standard.

Response: The final rule includes the technical changes to the definition of TANF that were recommended by the commenters. We have included a definition of family unit as requested. We define a family unit as an individual adult, married individuals without children, or parents, or custodial relatives, with minor children who are not eligible for TANF. With respect to the question of whether two unmarried adults living together are considered to be one or two family units, we regard such a living arrangement to constitute two family units. We have also included a definition of economic self-sufficiency which we have defined as earning a total family income at a level that enables a family unit to support itself without receipt of a cash assistance grant. Regarding the elimination of hours worked per week as a measure of self-sufficiency, we view hours worked per week as a useful measure of employment, not self-sufficiency, which should not be eliminated. We require States and other major grantees to report client outcomes that include self-sufficiency (sufficient earnings to terminate cash assistance), which is the ultimate measure, and full-time and part-time employment, which are interim measures leading to self-sufficiency. These measures are important in tracking refugee progress towards economic self-sufficiency.

Comments on Subpart B—Grants to States for Refugee Resettlement

Section 400.8

Comment: One commenter asked for clarification on the relationship between the State Plan and amendments to the public/private RCA plan.

Response: The public/private RCA plan, once it is reviewed and approved by ORR, becomes part of the larger State Plan that is required in § 400.4 and replaces the existing RCA section of the State Plan. An amendment to the public/private RCA plan should be treated as an amendment to the State Plan.

Section 400.11

Comment: One commenter felt this section should be amended to include a new subsection that provides for cash advances to resettlement agencies, through either the States or directly from ORR.

Response: A State's contracting and grant-making rules govern whether cash advances may be provided to State contractors and grantees. This is an issue that local resettlement agencies should discuss with their State during the public/private RCA consultation. Federal rules would not apply since local resettlement agencies participating in the public/private RCA program would not be our direct grantees.

Section 400.13

Comment: One commenter felt that the new rule will impose new limitations on RCA which will not allow States to claim most case management costs. The commenter expressed concern that the proposed limitations may be a precursor to future funding restrictions particularly regarding the administrative portion of the RCA allocation. The same commenter felt that the proposed case management rule would increase the burden on service providers to track each client by public assistance category.

Two commenters requested clarification on what types of case management services are chargeable to CMA. One of the commenters asked whether administrative costs related to employment-related case management are chargeable to CMA. Another commenter requested confirmation that case management services related to ESL, VESL, skills training, and on-the-job training may be charged to CMA. Two commenters stated that activities such as job referral, job readiness instruction, assisted job search, job development and placement, and post-placement services appear to be case management functions under the proposed rule. One commenter asked whether 100% of staff time is billable to the CMA grant in cases where staff have multiple functions.

Another commenter wondered what services funds are to be used for and whether administrative funds for service activities are to be added to services costs. One commenter suggested eliminating the requirement that administrative costs related to the provision of social services must be charged to the social services grant. The commenter felt that this requirement forces States to allocate social services funds to resettlement agencies that otherwise might not have received funding through a competitive social service grant process.

One commenter requested the extension of case management as a chargeable expense to CMA to allow for 90 days of post-placement follow-up to ensure real self-sufficiency. Another commenter felt that there is a disparity between ORR's requirement to provide employment services to refugee TANF recipients and the lack of funding for case management of these services since

only case management costs targeted to RCA recipients may be chargeable as CMA administrative costs. The commenter complained that this places a State in a position where it may only provide case management as an employability service to TANF recipients as an unfunded option.

One commenter requested that ORR provide parameters for the allocation of administrative costs and recommended that private agencies should have the same percentage of administrative overhead allowed in their contracts as States.

Response: We have decided to withdraw the provision which would have allowed certain case management costs for RCA eligible recipients to be charged to CMA. The comments suggest to us that there exists a broad range of understanding regarding case management which could result in costs charged inappropriately to CMA and/or an inappropriate increase in administrative costs charged for tracking and allocating of those costs. Based on the comments, we were uncertain whether this provision would have resulted in sufficient benefit to refugees to justify the change. Therefore, we believe that further review and discussion is needed before case management costs can be charged to CMA. Thus, the provision at 45 CFR 400.13(d), which prohibits the charging of case management service costs to the CMA grant, remains unchanged.

Regarding the commenter's concern about the administrative cost provision at § 400.13(e), it is our view that whether private agencies should have the same percentage of administrative overhead allowed in their contracts as States is an issue that is up to the States to negotiate with their contractors in the refugee program.

Comments on Subpart C—General Administration

Section 400.23

Comment: Two commenters felt that the RMA hearing process used should be the same as the process used in the State's Medicaid program. One of the commenters recommended that § 400.23 should conform with § 400.93(b) in existing regulations which requires that RMA hearings be the same as those required for Medicaid. One commenter recommended that each State should be allowed to specify in its State plan what hearing process it intends to use in an excepted RCA program. A State may prefer to use the Food Stamp/Medical Assistance fair hearing procedures in order to simplify procedures since an RCA recipient is likely to be a Food Stamp/Medical Assistance recipient but will not be a TANF recipient. One commenter questioned whether it was feasible for local resettlement agencies to use the same hearing procedures as are used in the TANF program. Another commenter felt that replicating the local district fair hearing process for one or more local contractors would not be cost-effective and would not make administrative sense. The commenter felt that the State would have to insist that RCA hearing procedures be consistent with TANF and general assistance hearing procedures and that small contractors would not have the resources to implement such a hearing process. The commenter felt that the proposed rule may already contain the flexibility to allow for private agencies to use the public process.

Response: In keeping with commenters' suggestions, we have revised this section by removing reference to the RMA program since § 400.93(b) requires the RMA hearing process to conform with the State's Medicaid program, and we have revised § 400.54(b) to require a State to specify in its State plan what hearing process it intends to use in a publicly-administered RCA program. In regard to whether it is feasible for local resettlement agencies operating a public/private RCA program to refer hearing requests to the State hearing process used in the TANF program or some other public agency hearing process, yes it is feasible as long as the State agrees to such an arrangement. There is no restriction in this rule that prohibits States from designing public/private RCA programs that utilize public agency hearing procedures such as the TANF hearing procedure.

We have revised this section to make clear that the public assistance hearing procedures at 45 CFR 205.10(a) continue to apply to all assistance and services provided under the refugee program, unless otherwise specified by regulations in this part. For example, in the determination of eligibility for RMA in accordance with § 400.93(b), the State must use the Medicaid fair hearing procedures. In providing RCA, the final rule at § 400.54(b) specifies that States must describe the public agency hearing procedures they intend to use in the RCA program. All RCA hearings must comport with the constitutional requirements of *Goldberg* v. *Kelly*, 397 U.S. 254 (1970). *See* the Comment and Response section at § 400.83 for further discussion of the hearing requirements for adverse RCA determinations.

Section 400.27

Comment: One commenter recommended adding the words "or by a voluntary resettlement agency to a State" in § 400.27(b) to enable a State that has established a public/private RCA program to monitor the provision of cash assistance provided by a local resettlement agency without individual client signed consent.

Response: We have amended this section to incorporate the commenter's suggestion.

Comments on Subpart D—Immigration Status and Identification of Refugees

Section 400.43

Comment: One commenter complained that the NPRM does not remedy the inequitable treatment of asylees. Current policy provides 8 months of RCA/RMA eligibility to asylees from their date of arrival in the U.S., the same as refugees. However, since it may take up to 6 months or more for an asylum applicant to be granted asylum, the actual period of RCA/RMA eligibility that is available for asylees is usually 2 months or less. The commenter recommended amending the regulations to allow asylees RCA/RMA eligibility for 8 months from the date that asylum is granted as opposed to 8 months from the date of arrival. Another commenter pointed out that the current regulation and the proposed rule do not describe how and when asylees may access Federal benefits and recommended that the final rule address this serious omission.

Response: ORR's policy on asylee eligibility for refugee program assistance, issued in a policy notice in 1982, defines the time-eligibility of an asylee as beginning with the first month in which an asylee has entered the United States, in accordance with sections 412(d)(2)(A) and 412(e)(1) of the Immigration and Nationality Act. Thus asylees, like refugees, are eligible for RCA and RMA during their first 8 months in the U.S. and are eligible for social services during their first 5 years in the U.S. We recognize that as a result of the time it takes for an asylum applicant to be granted asylum, an asylee often has few months of eligibility remaining for RCA and RMA. We will examine this issue further to determine from a policy and operational perspective whether the existing policy may be modified.

Comments on Subpart E—Refugee Cash and Medical Assistance

Section 400.50 (§ 400.51 in the NPRM)

Comment: One commenter recommended that the definitions of

filing unit and household in § 400.51 of existing regulations be retained and that States be required to define the members of the filing unit in their State.

Another commenter pointed out that by removing references to AFDC requirements in this section, the proposed rule omits key client protections which should not be omitted, such as requirements that applications must be processed promptly, that applicants must be informed of their rights and responsibilities, and that once an individual has been found eligible, he or she remains eligible until determined ineligible. The commenter also recommended that the regulations should retain the requirement that benefits be provided to all eligible persons. The commenter stated that this section should specify that notice to an RCA applicant that cash assistance has been authorized or denied must include an explanation of the reasons for the decisions and of the right to request a hearing to appeal the decision. The commenter felt that this is an essential element of due process and must be addressed.

Another commenter recommended that if an RCA recipient is notified of termination because of time-ineligibility, the local resettlement agency must be required to ensure that the recipient is assisted in applying to the appropriate State agency for other cash assistance programs and that the State must be required to determine eligibility for TANF and general assistance.

Response: Since we have included a definition of "family unit" in § 400.2, we do not see the need to retain the terms "filing unit" or "household".

We have amended this section to include the requirement that eligibility must be determined as promptly as possible within no more than 30 days from the date of application and that applicants must be informed of their rights and responsibilities. In regard to the comment that a notice to an RCA applicant indicating authorization or denial of cash assistance must include an explanation of the reasons for the decisions and of the right to request a hearing to appeal the decision, we have added a new § 400.54(a) which includes this information. It should be noted that these notices must be translated into appropriate languages as required by § 400.55. Section 400.54(a) includes a requirement that a State or its designee, such as local resettlement agencies, must review the case of an RCA recipient who is terminated because of time-ineligibility to determine possible eligibility for TANF or GA. We believe that the regulation implicitly requires that all eligible persons will receive RCA until they are no longer eligible. *See, e.g.,* § 400.60(a).

Section 400.51 (§ 400.52 in the NPRM)

Comment: Four commenters recommended adding a provision to this section that would allow refugee families to receive RCA until eligibility for TANF is determined. One of the commenters also recommended requiring States to reimburse local resettlement agencies for the amount of RCA provided during the period of TANF eligibility determination. The same commenter recommended that local resettlement agencies should be required to ensure that potentially eligible refugees are assisted in applying in a timely manner for TANF and SSI. Another commenter asked for clarification on the process to be used to determine TANF eligibility through the State public assistance offices prior to accessing RCA. Another commenter requested clarification on whether refugees may be determined ineligible for TANF without necessarily being processed through the States' public assistance offices.

Four commenters expressed concern that refugees under the public/private RCA program will be less likely to access other support and benefit programs. Three commenters recommended adding a provision that would require local resettlement agencies to refer refugees to Medicaid, RMA, or Food Stamps so that RCA applicants would be informed of their rights to other government benefits and services. Two commenters suggested that ORR address the benefits of co-location of State and private eligibility staff. One commenter felt that one of the outcome measures that must be used for the public/private RCA program is the percentage of refugees that are referred to and receive RMA and Medicaid.

Response: While we allow refugees to receive RCA until eligibility for SSI is determined because the time frame between application and receipt of the first SSI payment is frequently long, we do not see a compelling reason to allow the same coverage for refugee families who are waiting for TANF eligibility to be determined. We have not received reports of refugee TANF applicants having to wait a significantly longer period of time for eligibility determination than RCA applicants.

Regarding eligibility determination for other cash assistance programs, § 400.50 (§ 400.51 in the NPRM) includes a requirement that States and their designee agencies must refer refugees or other cash assistance programs for eligibility determinations. We have amended this provision to indicate that such referrals must be made promptly. In designing a public/private RCA program, it is the responsibility of States to develop a procedure that ensures that refugees are properly referred to other benefit programs, in accordance with § 400.50(c) (§ 400.51(b) in the NPRM). We believe that States, in consultation with local agencies, will adequately address how to ensure that refugees are able to access other public benefit programs for which they may be eligible. The ORR Matching Grant Program has been operated for many years by voluntary agencies and referral to other programs has not been an issue for refugees.

We support the co-location of State and private eligibility staff and encourage States to consider this arrangement in their public/private RCA program. Some of our programs, particularly the Wilson/Fish alternative programs, have very effectively co-located public eligibility workers at refugee provider agencies to ensure that refugee eligibility for other cash assistance programs and other benefits is determined in a timely manner.

In regard to tracking the percentage of refugees that are referred to and receive RMA and Medicaid as an outcome measure, we already have a system for tracking the number of refugees who access RMA. States are required to report the number of RMA recipients to ORR on a quarterly basis. Since Medicaid is not under the jurisdiction of the refugee program and we no longer reimburse States for refugee Medicaid costs, we do not require States to report on refugee Medicaid use. ORR's annual national refugee telephone survey, however, provides data on the percentage of refugees in the household survey who report receiving Medicaid. The annual survey includes telephone interviews with a large sample of refugee households that have been in the U.S. 5 years or less.

Section 400.52 (§ 400.53 in the NPRM)

Comment: One commenter expressed concern that, in the absence of any other prompt processing requirement, this provision seems to suggest that a State or agency only is required to process applications as quickly as possible if there is a determination of urgent need. The commenter felt that a general requirement for processing all applications promptly should be added.

Response: We have added language regarding prompt eligibility determinations to § 400.50 (§ 400.51 in the NPRM).

Section 400.53 (§ 400.54 in the NPRM)

Comment: Three commenters noted that the proposed rule would eliminate the existing eligibility exception for full-time students in the current regulations which allows RCA eligibility for full-time students in higher education if such enrollment is approved by the State, or its designee, as part of an individual employability plan for a refugee. The commenters stated that RCA recipients with professional skills can benefit from full-time enrollment in higher education to obtain certification to practice their profession in the U.S. The commenters recommended restoration of this eligibility exception.

Another commenter expressed concern that by restricting eligibility for RCA to refugees who are ineligible for TANF, SSI, OAA, AB, and APTD, all newly arrived refugees will not be able to benefit from the refugee-specific transitional assistance to be provided through the new public/private RCA program. The commenter recommended deleting this subsection.

Response: Section 412(e)(2)(B) of the INA prohibits refugees who are full-time students in institutions of higher education from receiving cash assistance. The refugee program emphasizes early employment by requiring refugees to become employed and self-sufficient within 8 months. We do think it's consistent with ORR's program goal for an RCA recipient to become employed and then enroll in a professional refresher training or recertification program at refugee program expense as allowed under § 400.81.

It is not possible to include TANF-eligible and SSI-eligible newly arrived refugees in the public/private RCA program because the costs would far exceed ORR's level of appropriated funding.

Section 400.55 in the NPRM

Comment: Two commenters noted that the proposed rule concerning eligibility redeterminations in States with TANF residency requirements inaccurately assumes that these residency requirements may legitimately be applied to refugees. One commenter pointed out that Congress, in enacting the welfare reform law, did not intend for the durational residency requirements to apply to newly arrived refugees from overseas, only to interstate migrants. The purpose was to prevent secondary migration across States and was not intended to preclude newly arrived refugees from accessing TANF benefits. One commenter recommended amending this section to state that the statutory authority for States to impose residency requirements does not preclude TANF eligibility for arriving refugees.

Response: While it may not have been Congress' intent to apply residency requirements to newly arrived refugees from overseas, there were a few States that, under State law, were applying the State's TANF residency requirement to newly arrived refugees, thereby denying TANF eligibility to these refugees and placing them on RCA for the 8-month RCA eligibility period. With the recent Supreme Court ruling in *Saenz* v. *Roe,* 119 S. Ct. 1518 (May 17, 1999), which makes the application of residency requirements to any TANF applicant who moves into a State unconstitutional, States must change their laws and practices. Given this ruling, we are removing this requirement.

Section 400.55 (§ 400.63 in the NPRM)

Comments: Three commenters objected that the proposed requirement to provide agency policy materials to refugees in both English and their native language would be a significant burden that would be cost prohibitive. One commenter suggested that States be given an option to provide a notice in English and provide a verbal translation of the notice to refugees. Another commenter recommended amending this provision to indicate that local contracts should demonstrate reasonable and practical methods to assist clients to understand agency policies in their own languages. In contrast, one commenter recommended that the required list of written policies in this section should be more comprehensive to include good cause criteria, procedures for an appeal of an adverse determination, including appeal procedures outside of the resettlement agency. The commenter went on to recommend that the resettlement agencies should provide written notice in the refugee's native language of the availability of the more detailed written policies. Two commenters recommended that the final rule clarify that the local resettlement agencies are the entities that should provide written translated policies and procedures to individual refugees, not the State. Two commenters indicated that local resettlement agencies would need to be given administrative funds to pay for a lot of translators to translate agency policies and procedures into refugee languages.

Response: By law, entities receiving federal financial assistance have an obligation to ensure that limited-English speaking people have meaningful access to their services. Section 601 of title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d *et seq.* states that "[n]o person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." Language barriers experienced by persons with limited English proficiency can result in exclusions, delays or denials that may constitute discrimination on the basis of national origin, in violation of title VI. Department of Justice (DOJ) regulations at 28 CFR 42.405(d)(1) address the circumstances in which agencies that administer Federal financial assistance must make available language assistance, in written form, to persons with limited English proficiency. Based on this DOJ provision, we are requiring States or the agency(s) responsible for the provision of RCA, to ensure that reasonable steps are taken to provide written information in appropriate languages where a significant number or proportion of the population eligible to be served needs information in a particular language. Although this principle has never been expressly stated in ORR regulations, it is a restatement of current obligations under title VI and would apply in the RCA program, regardless of whether the RCA program is a public/private program or a program that mirrors the TANF program. Therefore we are moving this provision from the public/private RCA section of the regulations to the general RCA section and redesignating the section as § 400.55.

It is essential that States and/or local resettlement agencies ensure that every RCA recipient understands any and all policies that will have an effect on a recipient's cash assistance payment. This requirement includes all notices to refugees regarding eligibility, payment adjustments, or terminations. Regarding refugee language groups that constitute a small number or proportion of the RCA recipient population served, the State or the agency(s) responsible for the provision of RCA is not required to provide written information in the native language of the refugee ethnic group. However, States and/or local resettlement agencies must use an alternative method to effectively communicate agency policies to a limited English-speaking recipient such as the use of a verbal translation in the refugee's native language, to ensure that the content of the agency's policies is effectively communicated to each refugee. We do not have a particular

position on whether local resettlement agencies or the State should produce the written translated policies for recipients in the public/private RCA program. This issue should be worked out in the development of the public/private RCA plan. The preparation of written RCA policies in refugee languages and the use of interpreter/translators to explain agency RCA policy may be charged as an administrative cost to a State's CMA grant.

Section 400.56(a)

Comment: Twenty-nine commenters wrote in support of the public/private RCA program, 10 commenters stated they could not fully endorse the new program as proposed, and 70 commenters opposed the new program. Of the commenters who supported the program, 8 commenters supported the separation of RCA from the TANF program, while 17 commenters endorsed the flexibility that the new program would allow. Four commenters expressed support for strengthening a public/private partnership, while two commenters felt that the new program would firmly unite States and resettlement agencies into a partnership that will best utilize their respective strengths. Of those commenters who indicated they could not fully endorse the new program, two commenters stated that unless important components regarding resettlement agency capacity, flexibility, and legal protections from liability are put into place, they had serious doubts about the new program's likelihood of success. Of the commenters who opposed the establishment of the public/private RCA program, 49 commenters felt that the existing program has already demonstrated a high rate of success in achieving self-sufficiency and questioned the need to change the existing program. Seven commenters felt that the new program would not be in the best interests of refugees and would not benefit refugees.

Five commenters felt that the administration of RCA by private agencies should be an option, not a mandate. One commenter recommended letting States develop their own program design instead of mandating a certain approach.

Three commenters expressed concern that the addition of cash assistance administration to the responsibilities of local resettlement agencies would not necessarily result in greater self-sufficiency outcomes for clients who only have 8 months of assistance. One commenter expressed concern that the distribution of cash assistance would place an increased burden on the agency's administrative and accounting staff and would detract from the agency's primary focus of preparing clients for early employment. Two commenters were concerned that the establishment of the new program would result in trading a known system for an unknown and untried system. Two commenters had concerns about the additional burden on local resettlement agencies that developing a new program for a small portion of clients will create, while another commenter expressed concern about the additional burden the new program will place on States.

One commenter expressed the opinion that the public/private program as outlined in the NPRM is not practical if a State has a minimal number of refugees receiving RCA and/or those refugees are geographically dispersed across the State making implementation of a public/private partnership inefficient and costly.

Nineteen commenters made the point that the proposed RCA program would only benefit a small portion of the refugee arrival population and recommended that the public/private program should be offered to all newly arriving refugees, particularly TANF-eligible refugee families, if possible. Five commenters expressed concern about the inequity of refugees under the new RCA program being treated better than refugee families with minor children under TANF. Three commenters recommended that ORR pursue alternatives to TANF for families with minor children. One of the commenters proposed shifting funds from TANF funding to create a unified refugee resettlement program that includes TANF-type refugee families. Since the proposed rule specified that a family that becomes ineligible for Medicaid may be transferred to RMA, one commenter asked why the ORR regulations could not also specify that families with minor children, who terminate TANF because they are unable to meet the conditions of eligibility, may be transferred to RCA.

Eight commenters objected to restricting participation in the public/private RCA program only to local resettlement agencies. One commenter suggested that it would be more judicious, before mandating a specific type of agency, if ORR tested the capabilities of local resettlement agencies in handling the public/private program through a pilot. A second commenter felt that it was inconceivable to propose that States contract out several hundreds of million dollars annually in Federal funds without a required procedure to consider whether local resettlement agencies have the capacity to administer and deliver cash assistance and services before the program is initiated. Another commenter expressed concern that by limiting who the State may contract with, ORR's proposed rule represents a step back from the flexibility provided to States through welfare reform. The commenter felt that ORR regulations should allow flexibility that is equal to, or greater than, the flexibility allowed in TANF regulations. One commenter expressed concern that the new RCA program will require States to contract with agencies limited in experience in providing income maintenance.

Six commenters recommended that opportunity be given to refugee mutual assistance associations and other community-based organizations, in addition to local resettlement agencies, to administer the RCA program. Two of these commenters felt that the NPRM reflected unfairness to MAAs. Two commenters recommended amending this section to allow the greatest flexibility in program design by allowing public/private RCA partnerships with "local resettlement agencies or other private non-profit partners providing refugee-specific services."

Thirty-two commenters expressed concern that the new RCA program will increase administrative costs and questioned the cost-effectiveness of the proposed program. Of these, 12 commenters were particularly concerned about the level of administrative costs needed to implement the new program, in light of the relatively small number of refugees to be served. Five commenters felt that contracting with local resettlement agencies to administer RCA would cost considerably more than the existing State system. Three commenters predicted that there would be no savings in State agency costs that could be used to offset resettlement agency costs because there would be no reduction in State agency staffing or State responsibilities such as RMA administration, confirmation of TANF ineligibility, and notification of ineligibility to refugee clients and resettlement agencies. One commenter expressed concern about the risks in managing the funding level for the new RCA program if local resettlement agencies overspend RCA or have other difficulties in meeting a budget.

Four commenters expressed the opinion that increased levels of administrative costs will not result in improved employment outcomes. Two commenters expressed concern that replicating existing systems for the

provision of cash assistance with each agency will duplicate bureaucracy and multiply costs beyond reason. One commenter complained that the private eligibility determination and case management functions would duplicate responsibilities remaining with the State agency and would substantially increase costs. Another commenter stated that ORR should not force a more costly program on States.

One commenter felt that although the new program will result in additional costs initially, the new program, over time, will not cost more than the current program.

Five commenters raised questions about funding for the administrative costs of the new RCA program. Of these, one commenter asked how a State is to know how much is available for administrative costs. Another commenter asked if discretionary grant funds will be made available to States to cover private agency administrative costs. Another commenter asked if additional funding would be added to social service formula allocations to States to fund RCA administration. One commenter asked ORR to clarify its intent to cover administrative costs in the out years of the program, after initial start-up. The commenter felt that the NPRM was unclear about a State's responsibility for administrative costs.

Twelve commenters expressed concern that an increase in administrative costs to operate the new RCA program could force a reduction in the RCA eligibility period.

Twelve commenters felt that the due date for implementation of the new public/private RCA program of one year after publication of the final rule is unrealistic. The commenters indicated that many States may need more than 6 months after an RCA plan has been submitted to implement the plan to allow adequate time to negotiate contracts with participating agencies and to develop written policy. One commenter stated that it would take a year to simply amend administrative rules to accommodate the new program. Two commenters recommended an 18-month deadline with at least 12 of those months devoted to implementation. One commenter suggested having the implementation date coincide with the beginning of a fiscal year even if this extends the deadline beyond one year. Three commenters recommended requiring States to include a proposed implementation date in their public/private RCA plans, rather than setting a national due date. Three commenters supported an implementation date of October 1, 2000, or one year after the publication of the final rule and felt that the date for implementation should not be extended. One commenter recommended that more than 6 months within that one-year time frame be devoted to planning and consultation and less time for implementation, if necessary.

Response: We have given these comments, as well as the comments that appear in response to other sections of the proposed rule, a great deal of thought and have concluded, given the wide variance of views on the public/private RCA program, that it would be in the best interests of refugees and the refugee program to offer the public/private RCA program as an option, not as a requirement, to States. We found particularly compelling the argument from many commenters that the program in its current form has been very successful in helping refugees to achieve self-sufficiency and should not be changed. Equally compelling were the concerns expressed by a number of local resettlement agencies about the increased administrative burden of managing a cash assistance program and adhering to client protection and due process requirements, as well as concerns about having legal protection from liability. Also persuasive were commenters' concerns that the increased costs of administering the new program might not improve results for refugees.

The totality of comments gave us the view that the public/private RCA program would be eagerly pursued in some States as the right approach for the circumstances in those States, while in other States, such an approach would not necessarily result in the best program for newly arriving refugees and, therefore, would not be welcomed in those States.

Although we have not changed our belief that this is an opportune time to remove the refugee program from the public welfare system and move it towards a greater public/private partnership, we have no interest in forcing a public/private approach upon reluctant participants. Instead our principal goal is to provide greater flexibility to the program and its participants. Therefore, as this final rule describes, instead of requiring States to establish a public/private RCA program, we have decided to offer States the option of choosing this approach if they believe such an approach will work in their State. States that choose to pursue this option in concert with local resettlement agencies in their State must follow the regulations that specifically apply to the public/private RCA program in §§ 400.56, 400.57, 400.58, 400.59, 400.60, 400.61, 400.62, and 400.63.

In regard to the comments on expanding the public/private RCA program to include TANF-eligible families, while it would be ideal to place all newly arriving refugees in a special resettlement program for an initial period, it is not financially feasible to do so within the refugee program's appropriation level. The program's appropriation level has not been sufficient to reimburse States for the costs of refugee AFDC recipient costs since FY 1991. Regarding the recommendation to shift TANF funds to create a unified refugee program that includes TANF-type refugees, given the block grant nature of TANF funding, any decision to use TANF funds in the refugee program in ways that are consistent with a TANF purpose would rest with States.

With respect to limiting participation in the public/private RCA program only to local resettlement agencies, we have designated the same agencies that are responsible for the initial resettlement of refugees under the R & P program to maintain a continuity of assistance for newly arriving refugees. Many of these agencies have an experienced record of providing cash assistance to refugees through the Matching Grant program and, to a lesser extent, through the Wilson/Fish alternative program. Those refugee community-based organizations, including mutual assistance associations, who have a subcontract with a national voluntary agency to provide R & P services and meet the definition of a local resettlement agency at § 400.2 may participate in the public private refugee cash assistance program. These agencies would have had similar experience in administering cash assistance and would offer the continuity of assistance we are seeking.

In regard to comments about funding, discretionary funds will not be made available to States to cover private agency administrative costs. As described in § 400.13(e), a State may charge local resettlement agencies' administrative costs related to providing cash assistance to a State's CMA (cash, medical, and administrative) grant. With regard to how a State knows how much is available for administrative costs, States are not given a set amount or ceiling for administrative costs. In accordance with § 400.207, States may submit claims for reasonable and necessary identifiable administrative costs to ORR, using ORR's cost allocation guidelines. Since the refugee program began, States have been reimbursed 100% for their administrative claims.

The administrative costs of managing the services component of the public/private RCA program, regardless of the type of agency, must be charged to a State's formula social services grant. In response to another comment, ORR intends to make discretionary funds available during the initial years of start-up to help States pay for services to refugees in the public/private RCA program, particularly if a State's program design plans for a different group of agencies to provide services to public/private RCA recipients than the State's regular social service providers. A State may use a portion of these additional social service funds for social service administrative costs, but not for RCA administrative costs.

Regarding the coverage of administrative costs for the public/private program after the initial start-up years, States may continue to charge the public/private program's RCA administrative costs to CMA, while the public/private program's social service administrative costs may be paid for with a State's formula social services funds, just as the social service administrative costs of a State's regular social service program are paid for with formula social services funds, in accordance with § 400.206. With regard to concerns about a reduction in the RCA eligibility period as a result of an increase in costs to operate the public/private RCA program, ORR's first priority is to maintain the current RCA eligibility period.

Regarding the deadline for implementation of a public/private RCA program, we agree with the suggestion to allow States to include a proposed implementation date in their public/private RCA plans, and have added such a provision to the public/private RCA plan at § 400.58(a)(14). A State's proposed implementation date, however, may not be any later than 24 months after the date of publication of the final rule.

Section 400.56(b)

Comment: Four commenters expressed the need to have the flexibility to arrange consortia of providers in order to provide cash assistance and services to refugee clients of agencies too small to enter into direct contracts. These commenters pointed out that without achieving economies of scale through collaboration, States will not be able to enter into contracts at a reasonable administrative cost. The commenters also felt that if a State and the resettlement agencies handling the majority of resettlement in an area are able to arrive at a consensus which provides services to all refugees in the area, they must be able to proceed even if a minor agency is not willing or able to join the consortium.

Four commenters were concerned that States may, in the interest of administrative expediency, strive for uniformity in local program design and unintentionally undermine private sector diversity by excluding the smaller church-based agencies. Six commenters expressed concern that States will choose a lead agency or limit the number of resettlement agencies to contract with in order to limit the administrative burden of administering multiple contracts. These commenters recommended the inclusion of safeguards to prevent any interested resettlement agency from being excluded from full participation in the public/private RCA program.

One commenter recommended adding language to the final rule that would exempt States from Federal competitive procurement requirements when a lead agency is agreed upon through the planning process. Another commenter suggested expanding the language to allow States to contract with or make grants to local resettlement agencies since the ability in some States to make a grant to a non-profit is easier than contracting with a non-profit.

Fourteen commenters expressed concern about cash flow problems that many local resettlement agencies would experience if they are under contract to administer the new RCA program without cash advances. Several of the commenters pointed out that States generally use cost reimbursement contracts and do not provide cash advances. The lack of cash up front would pose a serious operating problem for most resettlement agencies. Eight commenters requested that ORR include a provision in the final rule that would provide advance funding to local resettlement agencies either through the States or directly from ORR. One commenter pointed out that it will be essential for ORR to permit the obligation of CMA to pay for the issuance of cash assistance checks to refugees in the early months of each fiscal year until the first quarter CMA award is made to States.

One commenter asked whether the final rule will require local resettlement agencies to notify the State of refugees who have become recipients of RCA, in order to reduce the risk of State offices enrolling these refugees in some other cash assistance program such as General Assistance or SSI.

Response: We have no objections to States arranging consortia of providers to provide cash assistance and services to RCA recipients in order to achieve greater cost-effectiveness. While we strongly encourage States that are planning to establish a public/private RCA program to consider including all local resettlement agencies that are interested in participating in the new program, we also believe that States must take financial and administrative considerations into account, as well as the capability of each agency, when making contracting decisions. Regarding whether a State and the local resettlement agencies handling the majority of resettlement in an area may proceed with a public/private program when a smaller agency is not willing or able to participate, this is a decision which the State may make. While we require consultation with all local resettlement agencies as well as other refugee providers in the planning of the public/private RCA program, final decision-making is in the purview of the State. However, all eligible refugees must have RCA available to them. We expect that where a local resettlement agency cannot or does not wish to participate and the State and other local resettlement agencies decide to implement a public/private RCA program, that appropriate provisions for referral and access to RCA will be made for the refugees who are resettled by the non-participating agency. The Director of ORR may also elect to implement the placement authority provided by the Refugee Act, should it appear necessary.

We have amended the language in this section to allow States to make grants, as well as contracts, to local resettlement agencies as one commenter recommended. In regard to exemption from Federal competitive procurement requirements, the regulations at 45 CFR Part 74 that require open and free competition would not be applicable to the public/private RCA program since our regulations require States that choose to establish a public/private RCA program to enter into contracts or grants with local resettlement agencies or a lead resettlement agency.

With the exception of a portion of the first quarter of each fiscal year, ORR currently provides advance CMA funding to States through quarterly CMA allocations at the beginning of each quarter to cover anticipated costs in that quarter. We cannot provide advance funding directly to local resettlement agencies that participate in the public/private RCA program because they are not our direct grantees; they are the State's grantees or contractors. Therefore, whether cash advances may be provided to local resettlement agencies is a State contracting or grant matter to resolve. Regarding obligation of CMA funds in the early months of the

fiscal year, we now have a way to permit States to obligate CMA funds early in each fiscal year to cover the costs of cash assistance payments to refugees in the public/private RCA program. The President's FY 2000 budget request to Congress included multi-year spending authority for the refugee program to allow funds appropriated in FY 1998 and FY 1999 to be available through FY 2001. Congress granted ORR this spending authority in its FY 2000 appropriation which will allow funds to pay for RCA costs in the early months of the new fiscal year.

Regarding whether local resettlement agencies will be required to notify States of refugees who have become recipients of RCA, States will have to require local resettlement agencies to provide them with timely information on RCA recipients since States are required to report RCA recipient numbers to ORR on a quarterly basis. We assume that each State that enters into a public/private RCA program will require in their contracts that local resettlement agencies must provide them with information on who is receiving RCA. States will need this information to monitor time-eligibility and duplication of assistance as well as to carry out their responsibilities under § 400.49. We do not believe this issue needs to be addressed further in our regulations.

Section 400.56(c)

Comment: Five commenters expressed concern that local resettlement agencies will not have the capacity to provide adequate statewide coverage and protection to new arrivals. These commenters predicted that the geographic dispersion of refugees in their States would result in refugees who reside in remote pockets of a State having difficulty accessing assistance and services. Another commenter was concerned that if an area of the State chooses to opt out of the new RCA program, this situation could be inequitable for refugees since the flexibility and incentives provided to refugees in the parts of the State where the public/private RCA program is operating may not exist in the sections of the State where a publicly-administered RCA program is operating. One commenter felt that a State must have complete discretion to choose those areas of the State in which a public/private program may be implemented and should not be bound by a need to reach agreement on this issue with a small local resettlement agency.

Response: Concerns about reaching refugees who reside in remote pockets within a State can be addressed by either choosing to provide RCA through the State welfare system in remote parts of the State and through a public/private RCA program in the populated areas of the State or by deciding that a public/private RCA program may not be appropriate for the State if the refugee population is small and is dispersed throughout the State. If a State is concerned about inequities between incentives that a refugee receives through the State's public/private RCA program and what a refugee receives through a TANF-type RCA program elsewhere in the State, the State has the latitude to minimize inequities through its program design of the public/private program. States, after consultations, do have the discretion to choose the areas of their State where they wish to implement a public/private program and whether they still wish to establish a public/private program.

Section 400.56(d)

Comment: Six commenters expressed the view that the eligibility determination function is an essential function of government that must be performed by public sector employees in order to ensure fair, unbiased and impartial eligibility determinations. Two commenters argued that the determination of eligibility by public sector employees avoids conflicts of interest such as potential cost or contract savings that may affect decision-making by private agencies. Two commenters stated that the proposed rule inappropriately empowers private organizations with decision-making and policy-setting authority for Federal funding for which States are ultimately responsible. Another commenter recommended that ORR amend this provision from "must be responsible for determining eligibility * * *" to "may be responsible for determining eligibility * * *" to allow more flexibility for an alternative division of tasks between the resettlement agencies and the States. One commenter recommended that States and local resettlement agencies should have the flexibility to allow eligibility determination by either party.

Eleven commenters expressed concerns about liability. The commenters pointed out that local resettlement agencies administering cash assistance could be sued by a refugee who disagrees with a decision. Even if an agency is proven to be right, the cost of staff time and legal fees would be very high. These commenters requested that the final rule include a provision to indemnify local agencies in disputes. One commenter asked for clarity on what responsibility local resettlement agencies would have for repaying ORR for unallowable expenses or for payments made to a refugee in error.

Response: Section 412(e)(1) of the INA (8 U.S.C. 1522(e)(1)) expressly authorizes private non-profit agencies to provide cash and medical assistance to newly arrived refugees. Public sector employees therefore are not required by law to make RCA eligibility determinations. Furthermore, ORR has implemented 13 projects under the Wilson/Fish authority where the eligibility determination function has been successfully performed by private sector agencies. We have, however, changed the language by replacing the word "must" with the word "may" in the sentence: "Local resettlement agencies may be responsible for determining eligibility, and authorizing and providing payments to eligible refugees." We have made this change to provide as much flexibility to States as possible in deciding which of the fiscal and eligibility functions of the RCA program the State wishes to assign to the local resettlement agencies and which of these functions the State wishes to retain.

Regarding the appropriateness of giving private organizations decision-making authority over Federally-funded programs for which States are responsible, we are aware of no legal barrier to the kind of public/private partnership that is described in this regulation. Although the regulations call for joint planning between States and local resettlement agencies to design and implement a public/private RCA program, clearly, final decision-making authority in regard to the public/private program's policies rests solely with the State as our direct grantee.

Regarding protections from liability, we cannot provide local resettlement agencies with protection from liability. No agency, public or private, is free of liability. Clients have a right to take legal action if they feel they have been treated unfairly or discriminated against. In regard to the question about repayment of unallowable expenses to ORR under the public/private RCA program, since States are ORR's grantees, States, as the recipients of the funds, would be responsible for repaying the Federal government for improper expenditures. Local resettlement agencies, as subrecipients, would be accountable to the State, not to ORR.

Section 400.56(e)

Comment: One commenter expressed the opinion that the prohibition against operating both a public/private RCA program and a State-excepted program in the same geographic location presents a barrier to implementing a public/private program where there are multiple resettlement agencies. Since a State cannot compel local resettlement agencies to participate in a private RCA program, a State would have to maintain the current RCA program in areas where only some local resettlement agencies chose to participate in the new program.

Response: We see no justifiable rationale for operating both a public/private RCA program and a publicly-administered RCA program in the same geographic location. This would not be programmatically wise; it would be duplicative, expensive, and confusing. In cases where not all local resettlement agencies are interested in participating in the public/private program, the State has the latitude to decide to establish a public/private RCA program in which all RCA-eligible refugees are served only by those local resettlement agencies that are interested in participating in the program. There would be no need to operate a publicly-administered RCA program in the same locale just because some of the local resettlement agencies do not want to participate in the public/private program. The deciding factors, in our view, would be the number of resettlement agencies that are not interested in participating and the proportion of new arrivals to the area that these agencies have resettled. If these agencies represent the majority of new arrivals resettled in the area, this would argue against establishing a public/private program.

Section 400.57(a)

Comment: Nine commenters expressed the view that national voluntary agencies must be included in the planning, development, and oversight of the public/private partnership. One of the commenters further stated that the involvement of the national agencies should entail establishing national standards to guide program design, assisting affiliates in developing program models and performance measurements, and encouraging and facilitating consultations. Two commenters suggested that the planning and consultation process, in addition to the local resettlement agencies, should include only MAAs and community service agencies that represent current and anticipated refugee groups. Two commenters wrote in support of the importance of MAA participation in the planning and consultation process.

One commenter felt that it is important to ensure that recent arrivals who are represented through local churches, such as Bosnians and populations from the former Soviet Union, have equal representation in the same manner as an established non-church MAA. One commenter suggested that States should look at the last 3 years of refugee arrivals in their respective States to determine the appropriate proportion of representatives from each refugee group that should be included in the decision-making. Two commenters noted that counties are not included in the planning process and should be. The commenters expressed concern that the new RCA program will be administered without the leadership and experience of the California counties. Two commenters suggested that the final rule should contain language that reflects ORR's commitment to making the RCA plan a joint effort on the part of States and local resettlement agencies. The commenters felt that States should negotiate the new RCA program with local resettlement agencies first, as primary participants, before consulting with others.

Two commenters cautioned that setting eligibility policies for the public/private RCA program should not be a negotiation or joint decision-making process with private agencies. One commenter pointed out that a government agency can be required to consult with private agencies on the policies, but should not be required to have the resettlement agencies participate in the final decision-making. One commenter recommended that the final rule should make clear that the final decision on the policy elements of the public/private RCA plan is the sole responsibility of the State agency.

Response: We agree that national voluntary agencies should be involved in the planning and development of a public/private RCA program. We have amended § 400.57(a) accordingly to include national voluntary agencies in the planning and consultation process.

With regard to limiting participation in the planning and consultation process only to MAAs and other organizations that represent current and anticipated refugee groups, we do not agree with this limitation. We believe MAAs and other agencies that serve refugees, but are not representatives of these refugees in the sense of being of the same ethnic group, are important organizations to include in the planning and consultation process because of their experience as refugee service providers and because they are likely to be affected by the establishment of a public/private RCA program. We agree that States should make sure that each refugee population group is given the opportunity to participate in the planning and consultation process. We do not feel, however, that States need to be so precise as to follow a 3-year arrival population ethnic breakdown to determine the degree of representation of each ethnic group at the consultations.

In regard to participation by counties, we agree and have amended this section to include counties. The participation of counties is particularly crucial in States such as California where the refugee program is a county-administered program.

As we indicated in our response to comments relating to § 400.56(d), we agree that final decision-making on policies for the public/private RCA program is the ultimate responsibility of the State as our grantee. However, we see nothing in this section that is inappropriate.

Section 400.57(b)

Comment: Two commenters questioned the need for a public comment period, with one commenter suggesting that this provision appeared unnecessary, redundant, and of little usefulness. This commenter also suggested that a longer planning period would be necessary in part because of this requirement. Two other commenters recommended that a description of the public comment process be included in the State's public/private RCA plan, including a list of participants and a summary of comments received.

Response: We have reconsidered our proposed requirement for public comment on the public/private RCA plan and have decided that this requirement is not essential enough to justify the additional time and burden that implementation of this requirement would place on States. We have, therefore, removed this requirement. We believe the comments of agencies and individuals involved in refugee resettlement will provide the necessary input that States will need to develop a public/private RCA program. However, States still have the option of soliciting public comment.

Section 400.57(c) (§ 400.57(b) in the Final Rule)

Comment: Five commenters expressed concern about this provision that would require a local resettlement agency to inform its national voluntary agency of the proposed public/private RCA program and obtain a written agreement that the national voluntary agency would continue to place refugees in the State under the public/private

RCA program. Four commenters felt that the role of the national voluntary agencies in the public/private program should be clarified. Two commenters recommended that documentation be included that the national agencies endorse the plan. One commenter said that agreement by the national agencies to continue resettling refugees in the State is an important provision. However, this commenter wondered if it is allowable for a national voluntary agency and a State to agree that the local affiliate agency will not be participating in an RCA contract but will be resettling refugees. The same commenter asked if a national voluntary agency would be prohibited from continuing to resettle in an area if the national voluntary agency and State could not agree on an RCA contract. The commenter also questioned whether letters had to be received from every national voluntary agency, even if only a few place refugees in the State. One commenter suggested that the letters of agreement from national voluntary agencies should include an assurance that refugee placements in the State will continue when the planning process determines that a public/private RCA program is not feasible and an excepted RCA program or Wilson/Fish program is selected.

Response: We agree that national voluntary agencies should have the opportunity to register their support or endorsement of a State's proposed public/private RCA plan. We have, therefore, amended this provision to require that letters from national voluntary agencies should indicate that the national agency supports the plan and intends to continue resettling refugees in the area. Letters from only those national agencies resettling refugees in the area need to be solicited. It is permissible for a State and a national voluntary agency (and the local affiliate) to agree that the local affiliate agency will not be participating in a public/private RCA contract or grant but will continue to resettle refugees in the State. Similarly, a national voluntary agency would not be prohibited from continuing to resettle refugees in a State if the national voluntary agency (and local affiliate) and the State cannot agree on an RCA contract or grant, provided that arrangements are included in the State plan to ensure that refugees resettled by the non-participating agency will be referred to the participating agency or agencies for services and assistance.

We do not agree with the suggestion that letters of agreement from national voluntary agencies should include an assurance that refugee placements will continue to a State that does not decide to establish a public/private RCA program. We do not see the necessity of such a requirement; voluntary agencies have been resettling refugees in States with publicly-administered RCA programs for years. The structure of the RCA program is only one factor to be considered in placement decisions in conjunction with other factors such as family reunification, available employment opportunities, and suitable resettlement conditions.

Section 400.58

Comment: One commenter asked if States only have a one-time opportunity to participate in the public/private RCA program and if States that opt to do the new RCA program have the latitude to later choose to opt out of the public/private program.

Response: States are not limited to a one-time opportunity to participate in the public/private RCA program, nor are States prohibited from opting out of a public/private program at a later date. States are expected to make their initial decision within 6 months and to implement whatever RCA option they choose—a public/private RCA program, a publicly-administered TANF-type RCA program, or a Wilson/Fish alternative—no later than 24 months after the date of publication of the final rule. If, in the future, a State that implemented a publicly-administered RCA program decides it wishes to switch to a public/private RCA program, the State may do so by following the requirements in §§ 400.57 and 400.58 and submitting a public/private RCA plan as an amendment to the State Plan for ORR review and approval. Similarly, if a State that originally implemented a public/private RCA program decides it would be better to change to a publicly-administered RCA program, the State may do so by submitting a State Plan amendment to ORR for approval.

Section 400.58(a)

Comment: Ten commenters expressed concern regarding the degree of program and budget information required in the public/private RCA plan. Five commenters felt that the level of detail regarding budgets and other program details required is unrealistic and inappropriate to include in the RCA plan since it will likely change regularly. One of the commenters suggested it would be more appropriate to include detailed budget information in the annual budget estimate that States are required submit to ORR under an existing provision in § 400.11(b)(1).

One commenter felt that a general service description should be required rather than a detailed description. The commenter pointed out that a detailed plan would have to be changed annually since ethnic groups, community needs, and available resources vary annually. In contrast, another commenter felt that the proposed plan does not require sufficient detail of the program policies and procedures to be established in a State's public/private RCA program. Two commenters opposed requiring an RCA plan that is separate from the State Plan that States are required to submit to ORR under § 400.4. One commenter recommended amending § 400.58(a)(4) to read: "including a description of employment incentives and/or income disregards to be used, if any, as well as methods of payment, i.e., direct cash, vendor payments, etc."

Three commenters objected to the words "easy access" in § 400.58(a)(5) as too vague. Two of the commenters felt that ORR should set minimum access requirements that the public/private RCA program must meet. One commenter recommended at a minimum that the final rule require that refugees have access during normal business hours and not be required to travel more than two hours round trip to access any benefits or services. Another commenter was concerned that the use of a vague term such as "easy access" could produce a standard for access to benefits that will result in litigation. One commenter recommended revising this provision to require RCA benefits administered under the public/private RCA program to be provided in as timely manner as under the current system.

Four commenters felt that the plan requirements regarding client protections and due process should be strengthened. One of the commenters felt that the due process requirement in the plan is insufficient and that a detailed description of the procedures that the public/private RCA program will follow should be required. The commenter recommended that the final rule should require that all services and notice be provided in the refugee's native language and that the RCA plan describe how this requirement will be met. Three commenters felt that the RCA plan should include a listing of good cause criteria for non-compliance with work activities. Another commenter recommended that certain due process elements should be required in the RCA plan: that refugees cannot be subject to any eligibility criteria that are not set forth in the public/private plan; that applications be processed promptly; that an applicant be informed of rights and responsibilities, and that an individual

retain eligibility for the duration of the benefit period unless affirmatively determined ineligible. Two commenters recommended that the RCA plan include a description of the means by which an individual can bring a problem to the attention of the State and obtain intervention, whether through an ombudsman or State Refugee Coordinator. Two commenters expressed concern that the client protection and due process requirements of the RCA plan will require local agencies to fully replicate the welfare system, particularly in regard to sanctions and appeals, fraud control, case composition, employability standards, and medical exams relating to employability. Another commenter asked what requirements of the public system would not be required of the private system.

Five commenters specifically objected to the language in § 400.58(a)(13) which requires a breakdown of costs "including per capita caps on administrative costs." The commenters recommended deleting the reference to per capita caps on administrative costs, stating that per capita or percentage caps on administrative costs would make it difficult to maintain small programs, would limit case management capacity, and would limit a local agency's capacity to participate in the public/private RCA program. One commenter asked ORR to cite the authority for requiring a cap on administrative costs.

Three commenters suggested adding new elements to the RCA plan. The commenters recommended adding a § 400.58(a)(14) that would require a description of the public comments process used, including a listing of the participants and a summary of comments received in the RCA plan. One commenter recommended adding a § 400.58(a)(15) that would require a description of the performance standards and measures upon which the new program will be monitored.

Two commenters expressed concern that the proposed public/private RCA plan requirements add substantially to existing reporting requirements. One of the commenters felt that the requirement for a detailed budget specific to the public/private program without eliminating any other plans and reports already required, adds to the administrative burden and to the cost.

Twenty-four commenters felt that a 6-month period to develop a public/private RCA plan is too short, while one commenter felt that 6 months was an adequate time frame. Two commenters recommended allowing 9 to 12 months for planning, another commenter recommended one year for planning and one year for implementation, while one commenter recommended a planning period of 12 to 18 months after publication of the final rule. One commenter recommended that ORR be flexible with due dates to allow planners sufficient time to handle unexpected contingencies and to make changes to the plan during its development.

Response: We believe it is essential for the public/private RCA plan to include the details this section requires. Each of the items in the plan is important to address and thoroughly consider in order to successfully implement the new program. Given that a shift to an RCA program administered by private agencies represents a major change in the refugee program, we need to see the details of the proposed program in order to make a responsible decision regarding approval. Regarding budget, we require a breakdown of proposed program and administrative costs in order to assess the cost effectiveness of various program designs. It is essential that States provide the required budget breakdown as part of the public/private RCA plan. However, in subsequent years, after the new program is implemented, it makes sense, per one commenter's suggestion, to include budget information on the public/private RCA program in a State's annual budget estimate to ORR.

In regard to the requirement that the budget breakdown include per capita caps on administrative costs, we want to clarify that we do not intend to impose caps or ceilings on administrative costs, nor are we authorized to do so in our statute. The intent of the language on administrative caps is simply to require, in a case where a State decides to set an administrative cap in its contracts or grants with local resettlement agencies in an effort to contain costs, that the State include this information in its budget breakdown. We have amended the language in this provision to clarify that information on administrative caps should be included only when a State proposes to use a cap on administrative costs.

In response to a commenter's suggestion, we have added language to § 400.58(a)(4) that requires information on methods of payment, in addition to employment incentives. We have decided, however, not to add any new elements to the RCA plan, other than the inclusion at § 400.58(a)(14) of a proposed implementation date.

In regard to comments that client protections and due process requirements should be strengthened in the RCA plan, we have added language to § 400.50 requiring States and local resettlement agencies to process applications as promptly as possible within no more than 30 days from the date of application and to inform applicants of their rights and responsibilities. Such requirements do not need to be addressed in the RCA plan; they need to be described in the public/private program's procedural and policy manuals. We believe the other recommendations regarding client protections are excessive or are unnecessary because they are adequately addressed in other sections of the regulations.

Regarding concerns that the client protection and due process requirements for the public/private RCA program will turn local resettlement agencies into mini-welfare systems, the reality is that private agencies that administer the RCA program are subject to the due process requirements contained in the U.S. Supreme Court decision in *Goldberg* v. *Kelly* the same as public agencies. In States that elect to establish a public/private RCA program, it will be important for local resettlement agencies that are concerned about taking on due process responsibilities to work with their State in delineating the due process responsibilities that the State may be willing to retain, such as the hearing process, and those responsibilities that the private agencies may have to exercise, such as notifying applicants or recipients in a timely fashion that benefits have been denied or terminated and explaining the reasons for the action and how the decision can be appealed.

Regarding the words "easy access", we have decided that a more appropriate term to use is "reasonable access" and have amended this provision accordingly. Rather than prescribing what reasonable access means, we prefer to allow States to define reasonable access in keeping with circumstances in their particular State. States may define reasonable access in terms of the length of time it takes a recipient to reach the local resettlement agency, such as the example provided by the commenter, or in terms of the distance between the location where a recipient resides and the location of the agency.

In response to comments about the due date for submission of the public/private RCA plan, we have changed the due date for the plan to no later than 12 months after the date of publication of the final rule. A State that chooses to establish a public/private RCA program, however, must notify the ORR Director

of its choice no later than 6 months after the final rule is published. As stated in response to the prior comment, States that initially decide to implement a public/private RCA program must do so within 24 months of the date of publication of the final rule.

Section 400.58(d)

Comment: Two commenters objected to ORR prior approval of the public/private RCA plan. One of the commenters recommended deleting the prior approval requirement and the 45 days for the plan to be approved.

Response: We believe that ORR review and approval of the public/private RCA plan is essential, as is our review and approval of all elements of the State Plan.

Section 400.58(e)

Comment: One commenter recommended deleting this provision that requires that any amendments to the public/private RCA plan be developed in consultation with local resettlement agencies and submitted to ORR. Another commenter felt the proposed amendment process was too cumbersome and recommended that only a major change in providers and eligibility and benefit amounts should require a plan amendment. One commenter recommended amending this provision to require that any amendments to the RCA plan must be developed in consultation with the national voluntary agencies, as well as local resettlement agencies. One commenter recommended that any amendment to the public/private RCA plan should include consultation beyond the local resettlement agencies, to include MAAs, refugee service organizations, and the public.

Response: We have not made any changes to this provision. We believe each of the items listed in § 400.58(a) is sufficiently major to require that amendments to these items be submitted to ORR for review and approval, since changes to these items will have an effect on RCA recipients. In regard to suggestions that consultations on plan amendments should include a broader range of agencies, including national voluntary agencies, MAAs, and the general public, we believe such a requirement would be excessive and unnecessary.

Section 400.59

Comment: Three commenters recommended adding language that would prohibit States and local resettlement agencies from considering any resources remaining in the applicant's country of origin or from considering a sponsor's income and resources when determining eligibility for RCA.

Response: We have amended this section, as well as § 400.66, in keeping with the commenters' suggestion.

Section 400.60(a)

Comment: Six commenters felt that the payment ceilings were inadequate. Another commenter concurred, but stated that the payment ceilings should be increased to the extent that the appropriation permits without reducing the eligibility period. Another commenter suggested that the final rule should include payment ceilings that are based on the most recent Federal poverty level depending on when the final rule is published. Another commenter wants an assurance in the final rule that refugees will not be tied to State standards for TANF, which the commenter describes as inadequate. Another commenter did not support the establishment of a national payment ceiling. Instead, this commenter suggested that States and local resettlement agencies make cash payments to refugees at a level they agree is best suited to achieving early self-sufficiency and to enriching the quality of life. One commenter felt that it would be better to use funds to extend the RMA eligibility period instead of increasing RCA benefit levels.

Seven commenters expressed concern that public/private RCA payment rates could be higher in a given State than the TANF payments, creating an inequity for participants in the two programs. Two of the commenters felt that consistency across programs, especially if the State operated a public/private program for RCA recipients in major resettlement areas and a State excepted program in the balance of the State, is important to maintain. The commenters recommended adding language to this section that would allow States to reserve the difference between the TANF payment level and the higher RCA payment level for non-direct cash purposes such as first and last month's rent, a Job Access loan to cover tools, etc.

One commenter stated that ORR is erroneously assuming that few families with minor children are relying on RCA because they are eligible for TANF in most States. The commenter believed that significant numbers of families will need to rely on RCA rather than TANF since in nearly half the States, two-parent families are not eligible for TANF unless they meet certain requirements regarding work history or current unemployment.

Two commenters suggested that ORR advise States to consider the possible impact of increased benefit levels on eligibility for RMA and consider the use of indirect payments or non-cash payments to avoid adverse effects.

Response: In order to ensure that ORR has adequate funding from appropriations to meet cash assistance costs, it is necessary to balance the desire for higher payment ceilings, or no payment ceilings, against the need to accurately forecast costs. A payment ceiling serves as a budget forecasting tool used by ORR to estimate cash assistance payments. ORR has set the payment ceilings at a level that represents what ORR estimates it can provide to meet each refugee's basic needs from appropriated funds without lowering the RCA eligibility period, based on the most recent data available regarding the number of RCA refugee arrivals. In fact, the ORR payment ceilings are higher than many State TANF payment levels. The payment ceilings are based on the 1998 HHS Poverty Guidelines. As stated in the NPRM, if the Director determines that the payment ceilings need to be adjusted for inflation, ORR will issue revised payment ceilings through a notice in the **Federal Register**.

In States where the public/private RCA payment ceilings are higher than a State's TANF payment level, if a State is concerned about maintaining uniformity in the payment levels of both programs for the sake of equity, States have the flexibility to set the public/private RCA payment equal with the TANF payment or to use the difference between the TANF payment level and the higher public/private RCA payment level for purposes such as one-time direct cash incentives for early employment and self-sufficiency, or non-direct cash purposes such as rent or a loan to cover the cost of tools as one commenter recommended. We see no need to amend this section to allow this type of flexibility; the flexibility already exists in the proposed rule.

With respect to the possible impact of increased benefit levels on RMA eligibility, we have removed the possibility of adverse effects on RMA eligibility by adding a requirement under § 400.102 that any cash assistance payments received by a refugee may not be considered in a determination of RMA eligibility, including RCA or any cash grants received by a refugee under the Matching Grant program and the Department of State or Department of Justice Reception and Placement programs.

Regarding one commenter's belief that significant numbers of refugee families with dependent children will need to rely on RCA, ORR's RCA participation data do not support the commenter's assertion. To the contrary, we have experienced a steady and significant national decline in the RCA participation rate since the inception of State TANF programs, particularly in States where refugee families with dependent children were historically served in the RCA program because they did not meet the AFDC work history requirements for two-parent families. We have seen a major shift of refugee families with children from the RCA program to the TANF program.

Section 400.60(b)

Comment: Two commenters concluded that the NPRM seems to limit reimbursements to States to no more than the ORR payment ceiling so that States with a TANF rate higher than the RCA ceiling would have to absorb the difference between the two payment rates with no ORR reimbursement. Another commenter asked whether refugees will receive less than 8 months of payments in States where the TANF payment level is higher than the RCA ceiling.

Response: We do not intend to limit reimbursements to States to the public/private RCA payment ceiling in situations where RCA is paid at a higher TANF payment rate. In States where the TANF payment is higher than the RCA payment rate, we will reimburse States for RCA costs at the higher TANF payment rate. In States where the TANF payment level is higher than the RCA ceiling, a refugee's RCA eligibility period will not be affected by the higher payment rates.

Section 400.60(c)

Comment: Eight commenters recommended allowing States to offer bonuses or other incentives that exceed the monthly ceiling as long as the total combined payment to refugees does not exceed the monthly ceiling times the total number of months in the eligibility period. The commenters felt this type of flexibility would allow States and local resettlement agencies to design a program that rewards early employment. Two commenters wanted to use varying levels of cash assistance and other incentives throughout the 8-month period instead of providing equal monthly payments in the belief that this type of approach would most effectively encourage early employment. Another commenter expressed concern that the ceiling limits the flexibility to support work by providing stipends or incentives up front since the NPRM would not allow a work expense stipend and work incentive bonus before the earnings are received if this amount plus the cash payment exceeds the monthly ceiling. The same commenter also stated that the NPRM seems to preclude one-time payments for work-related expenses such as tools or uniforms in states where the RCA monthly payment is near the ceiling level.

One commenter asked whether cash payments may continue to be given after a refugee becomes employed. The commenter also wondered whether each local resettlement agency would be free to give different employment incentives/bonuses as is done in the Matching Grant program or whether all resettlement agencies would have to give identical assistance.

One commenter stated that the NPRM seems to make it beneficial to clients to access cash assistance before job placement which may delay the goal of self-sufficiency and increase dependence on cash assistance. This may pose a problem in States where the goal is to place refugees in jobs right away before accessing cash assistance. The commenter suggested providing incentives to those States and local resettlement agencies that obtain immediate job placements for refugees.

Response: We have revised this section to allow States and their public/private RCA agencies the flexibility to exceed the monthly payment ceiling in order to provide incentives to encourage early employment as long as the total payment to a refugee does not exceed the ORR monthly ceiling times the total number of months in the RCA eligibility period. We will allow this flexibility in the monthly payment ceiling with one stipulation: States and local resettlement agencies must ensure that RCA funds for any refugee are not used up before the end of the 8-month period in a way that would jeopardize a refugee who might need cash assistance in the latter part of the 8-month eligibility period. In other words, we do not want to see a total of 8 months of RCA funds given to a refugee early in the eligibility period such that there are no RCA funds left for that refugee should he/she need assistance in the latter months of the 8-month eligibility period.

Cash payments may continue to be provided after a refugee becomes employed as long as a State's public/private RCA program design permits cash payments after employment. Whether each local resettlement agency will be able to provide different employment incentives instead of a uniform incentive again will depend on a State's public/private RCA program design. These are not issues that ORR intends to regulate.

In regard to States where the focus is on placing refugees into early employment to limit the need to access cash assistance, such States, in order to maintain this focus, could choose to design their public/private RCA program as a cash assistance diversion program where newly arriving refugees would be given a one-time payment for not accessing RCA. It is important to emphasize that with this final rule, States will have a great deal of flexibility to design a public/private RCA program as they choose.

Section 400.61

Comment: Twelve commenters objected to limiting the contracting of services under the public/private RCA program to local resettlement agencies, thereby excluding many experienced MAAs and community-based organizations from providing services to public/private RCA recipients. These commenters expressed particular concern that refugee providers that have been the primary employment service providers in a number of States, and have a successful record of moving refugees to self-sufficiency, would now be excluded from receiving service contracts under the public/private program, resulting in a loss of expertise offered by these organizations. One commenter made the point that the proposed rule would duplicate or replace services that are already successfully operating. Five commenters were concerned that local resettlement agencies in many States may not have the experience or capability to offer effective employment services to refugees. One of the commenters worried that those resettlement agencies that are inexperienced in providing employment services will require a long period of time to achieve the level of expertise held by existing service providers, thereby creating a gap in services. Another commenter felt that the final rule should require local resettlement agencies to maintain subcontracts with existing qualified service providers. One commenter raised the point that some States now provide services directly, a role that ORR is proposing to give to local resettlement agencies.

Three commenters felt that the exclusion of MAAs violates the principle of equal opportunity by discriminating against MAAs. One commenter observed that the proposed exclusion of MAAs and community-based organizations appears to run counter to ORR's emphasis on empowering communities because it

disempowers the very community-based organizations that were founded by refugee communities.

Three commenters stated that the proposed program is in conflict with California law (AB 3245) which places responsibility for refugee employment service programs with the counties.

Nine commenters recommended that the services contracted to local resettlement agencies under the public/private program should be limited only to those employment services designated in the State Plan. Twelve commenters felt that services such as ESL, health screening, mental health services, and vocational training are more efficiently contracted by the State for the total refugee population and should not be fragmented through local resettlement agency administration for the public/private RCA recipient population.

One commenter observed that separate service programs for RCA clients are unworkable and if mandated, will greatly increase costs.

Five commenters felt that post-RCA services should not be restricted to ethnic community providers and that the current array of eligible providers should be maintained. Three commenters asked whether refugees who become self-sufficient and no longer receive cash assistance will continue to be eligible to receive social services. Two commenters asked whether service dollars would have to go through the lead agency and then be subcontracted out to other resettlement agencies in cases where a lead agency is used to administer the public/private program. One commenter asked whether a local resettlement agency could provide social services if the agency is not providing cash assistance. Another commenter wanted clarification on whether an RCA client returns to the local resettlement agency for services if the client becomes employed before 8 months of services are up and then becomes unemployed, thereby needing more services.

Ten commenters had comments about program outcomes in the new program. Four commenters felt that the final rule needs to provide more specific guidance on what the outcome measures and criteria will be for evaluating the success of the new program. One commenter cautioned that the public/private program may result in higher job placement costs because service providers that have had experience in providing job placements at low cost will, in some cases, be replaced by less experienced providers. Three commenters viewed the establishment of another set of outcome measures as redundant and unnecessary, given the existing Government Performance and Results Act (GPRA) measures that ORR already requires of States and Matching Grant agencies, as well as the Department of State's Reception and Placement standards and local TANF standards. If separate standards must be established for the new public/private program, the commenters argued for designing the measures at the local level, not the national level.

While one commenter indicated support for designing outcome measures that assess more than employment outcomes, the commenter cautioned that measures such as language outcomes require more sophisticated means of assessment. The commenter recommended that ORR needs to consider for the final rule the outcome expectations that are most appropriate within the limits of an 8-month program. One commenter took issue with the language that ORR is looking to the resettlement agencies "to ensure that refugees receive the skills, such as English language acquisition * * *." The commenter noted that no one can ensure this and felt that it doesn't make sense to add this as an outcome because it doesn't involve any measurable result, other than a process outcome.

Three commenters felt that the difference in performance measures followed by the Department of State and ORR should be made into a uniform set of measures where both agencies are using the same measures and the same time frames for looking at outcomes.

Response: While philosophically we believe in the wisdom of having the same agencies that are responsible for the placement of refugees in a State to also be accountable for what happens to these refugees in regard to economic and social self-sufficiency, we are persuaded by the comments that in terms of the provision of services, it would not make sense to require States to contract or award grants for services only with local resettlement agencies under the public/private RCA program. In States where local resettlement agencies are the major providers of employment services, it would make eminent sense for a public/private RCA program to contract with the resettlement agencies for both the provision of cash assistance and services. But we recognize that in States where MAAs and other community-based organizations have been the primary providers of employment services, it would not be in refugees' best interests to divert RCA refugees away from the established refugee social service network to agencies that may be new to employment services. Therefore, while we would encourage States that choose to establish a public/private RCA program to contract or award grants for services, whenever programmatically wise, with the same agencies that administer the cash assistance program, we have decided not to mandate States to do so. We will leave it to the States to select the service agencies that can most effectively help refugees in the public/private RCA program become employed and self-sufficient.

In public/private RCA programs in which local resettlement agencies are responsible for both the provision of cash assistance and services, the locus of accountability will rest with these agencies for the achievement of resettlement and self-sufficiency outcomes, as well as for the provision of proper and timely cash payments to refugees. In the case of public/private RCA programs where States choose to contract or award grants for services with different agencies than the local resettlement agencies that are administering the cash assistance program, States will be required to: (1) Establish procedures to ensure close coordination between the local resettlement agencies providing cash assistance and the agencies providing services to RCA recipients; and (2) set up a system of accountability that identifies the responsibilities of the different participating agencies and holds these agencies accountable for the results of the program components they are responsible for.

In regard to commenters' recommendations that the services that public/private RCA agencies provide should be limited to employment services, our position is that the range of services that agencies, be they local resettlement agencies, MAAs, or other agencies, are contracted to provide under the public/private program is a State decision. The only stipulations are that the services must be among the allowable services listed in §§ 400.154 and 400.155 and the service agencies must be held accountable for employment and self-sufficiency outcomes. We agree that services such as ESL, health screening, mental health services, and vocational training do not have to be provided by the public/private RCA service agencies and may be more effectively provided by other agencies.

With respect to the provision of post-RCA services, we did not intend to imply that post-RCA services may only be provided by ethnic community providers. Services provided to refugees after their 8-month participation in the public/private RCA program may be provided by any provider that a State decides to contract with. We stated in the NPRM that States and local resettlement agencies must maintain ongoing coordination with MAAs and other ethnic representatives to ensure that services provided under the public/private program are coordinated with longer-term resettlement services that are frequently provided by ethnic community organizations after the 8-month RCA period. This statement was not meant to suggest that MAAs and other ethnic organizations are the only providers of post-RCA services.

In cases where a lead agency is used to administer the public/private program, whether service funds must go through the lead agency to other resettlement agencies through subcontracts is up to States to decide as part of their program design. ORR is not requiring a particular approach when a lead agency is used. In response to another comment, a local resettlement agency could provide social services even if the agency is not providing cash assistance. A client in the public/private RCA program who loses a job before the end of the 8-month period and needs additional services should return to the same service agency that was providing the client with services before he or she got the job.

With respect to comments on program outcomes, we do not believe that detailed guidance on program outcomes for the public/private RCA program should be regulated. We intend to issue guidance on outcome measures for the public/private program at a later date through a State Letter just as we have done in regard to outcome measures for the social services and targeted assistance programs, under the Government Performance and Results Act. The commenters' concerns about the potential redundancy of establishing another set of outcome measures in addition to what States are already required to report under GPRA is a point well-taken. We will make every effort to dovetail outcome requirements to minimize redundancy and reporting burden as we consider, in collaboration with States, outcome measures for the new public/private RCA program. Regarding measures of English language acquisition and basic living skills, we do not intend to include process outcomes, such as classroom enrollment, in our consideration of appropriate measures for skill acquisition.

Regarding commenters' requests that the Department of State and ORR use a uniform set of measures and time frames, we are working with our DOS colleagues to reduce differences in the outcome measures that each agency uses and will continue to work with DOS on this issue.

Section 400.62

Comment: One commenter asked how local resettlement agencies will be given their fair share of secondary migrant cases that are resettled through national voluntary agencies that do not have affiliates in the local area. The commenter wondered if ORR intends each resettlement agency to be assigned all secondary migrants who were resettled through their national office. Another commenter wondered how the program will be equitably managed by the State if secondary migrants resettle in areas without representation by local resettlement agencies. One commenter suggested that in the case of secondary migrants who are not affiliated with a local resettlement agency, it might make sense to allow a refugee service provider that has contact with the secondary migrant to be responsible for eligibility determinations and the provision of cash assistance and services under the public/private RCA program. Another commenter requested ORR guidance on the impact of secondary migration on outcome measures, particularly secondary migrants who arrive late in the 8-month eligibility period.

Response: The arrangement used to serve secondary migrants will be determined by States. In States that plan to establish a public/private RCA program, commenters should take up their concerns about the assignment and handling of secondary migrants with their State during the planning and consultation process.

Section 400.63 (§ 400.64 in the NPRM)

Comment: Fourteen commenters provided comments on this provision. Seven commenters opposed the use of national voluntary agencies in training local resettlement agencies for the new RCA program either because they questioned how a national organization could meaningfully provide training to local affiliates on a plan jointly developed by States and local agencies or because they felt the use of discretionary social services funds for this purpose could not be justified, given the need to address long-term social adjustment issues with these funds.

Four commenters felt that national voluntary agencies could play a useful role in providing technical assistance and monitoring to local affiliates. One of the commenters, a State, suggested that the national agencies could be helpful in assisting local affiliates to develop the capacity to manage cash transfer systems and in advising States on their local affiliates' ability to manage cash transfer. Three commenters were concerned that the funding to support national voluntary agency participation was not clearly identified in the NPRM. One of these commenters stated that the funding mechanism to support the national voluntary agencies' role should be embodied in the regulations and not left to the availability of discretionary funds. Three commenters suggested that more clarity is needed on which training responsibilities rest with States and which with the national voluntary agencies. One commenter felt that this provision was too vague and suggested that national agencies should be required to provide certification that the training of all relevant staff has been conducted prior to the start of the project. One commenter, a local resettlement agency, felt that the role of the national voluntary agencies should be limited to training and technical assistance and only when it is requested at the local level. Two commenters suggested that the States were in a better position to train local agencies.

Response: Since national voluntary agencies have had a long-term oversight relationship with their affiliate agencies in regard to both the R & P program and the Matching Grant program, we believe it is appropriate and useful for national voluntary agencies to share in the responsibility of preparing local resettlement agencies for their new role in implementing the public/private RCA program. In States that choose the public/private RCA option, we would expect the State and the relevant national voluntary agencies to work out the details of the training together and delineate precisely which training responsibilities will be carried out by the State and which responsibilities will be carried out by the national agencies. We do not feel that the details of the training should be prescribed in regulation. States that elect to establish a public/private RCA program are likely to develop different program designs that will vary in terms of local resettlement agency responsibilities, requiring customized training, not a national, regulated delineation of training responsibilities between States and national voluntary agencies.

Regarding funding to support national voluntary agency participation in training, we do not believe that it is appropriate or necessary to regulate the funding mechanism to be used to pay for national voluntary agency participation in the public/private program. We believe the use of non-formula discretionary funds will be the best way to support national voluntary agency participation.

Section 400.65 in the NPRM

Comment: Three commenters thought that monitoring needs to begin immediately after implementation. One commenter thought that use of discretionary funds for monitoring is unacceptable and that funding to support this activity must be integral to the program and part of the final rule. One commenter felt that the monitoring by ORR, the State, and the national agencies as proposed in the NPRM is not reasonable and that monitoring by just one entity would be sufficient. Another commenter thought that local agencies and States can develop their own responses to training and monitoring needs. Two commenters suggested that the final rule should have specific performance measures by which the new program will be evaluated. One of the commenters felt that the regulations require compliance monitoring, but do not require States to take any action against agencies based upon findings. Another commenter said that the regulations should empower the state agencies to terminate a private agency's ability and right to participate in a public/private partnership at any time for mismanagement. Two commenters supported joint monitoring but thought that arrangements, particularly dates, times, and content need to be negotiable and planned cooperatively in advance.

Response: We have decided to remove this section. Now that the public/private RCA program will be optional, it does not make sense to regulate a particular monitoring approach for the public/private program. If a number of States choose the public/private option and are interested in a joint monitoring approach that involves the national voluntary agencies, we will explore ways to support that collaboration.

Regarding the suggestion that the final rule should contain language that empowers States to terminate a local resettlement agency's participation in the public/private program for mismanagement, States already have this authority through State grant and contract rules.

Section 400.65 (§ 400.66 in the NPRM)

Comment: Eight commenters stated that States should not have to go through a cumbersome waiver process to opt to continue a public sector RCA program. Two of these commenters felt that the public sector program should be the requirement, with the public/private RCA program being the exception. Three commenters objected in particular to having to go through an elaborate, time-consuming consultation process in order to choose the excepted program. One commenter indicated that requiring States to show that they have made a "good faith effort to reach an agreement" as a condition of receiving approval from ORR for an excepted RCA program is inappropriate. One commenter recommended that the requirements and criteria for an exception be deleted and this section be amended to allow a State to choose the proposed program structure that meets the needs of refugees in the State. The commenter also recommended adding language that gives the Governor of a State the latitude to elect to operate its public RCA program consistent with the State's TANF program, without ORR review. This flexibility would allow States to operate the RCA program in a manner that is least divisive for the States.

Thirteen commenters recommended making it harder for States to opt out of a public/private RCA program. Seven commenters recommended requiring Governors to obtain concurrence from resettlement agencies in States that decline to participate in the public/private program. Two commenters recommended that ORR require a full explanation and accompanying documentation before granting an exception. Two commenters recommended requiring public hearings as part of the exception process. One commenter recommended adding additional criteria for seeking an excepted program to make it harder for States to opt for the status quo. Two commenters questioned what guarantees are there that States will act in good faith in negotiating with voluntary agencies. Two commenters recommended that the Governor of a State must make a good faith effort through meetings with local resettlement agencies and other organizations, prior to making a decision to request an exception.

Two commenters suggested that States should have the option to continue operating the RCA program using old AFDC rules rather than the State's TANF rules. One of the commenters stated that his State did not see it as a burden to maintain a separate system based on former AFDC rules. One commenter recommended that in the case of a State that has an excepted program as well as a public/private program operating in the State, the State should be allowed the option to use the same payment levels, eligibility standard, etc. in the RCA excepted program as in the State's public/private program, instead of being required to mirror TANF. The commenter pointed out that without this flexibility, States would either have to make the public/private program identical to TANF, or have refugees in different parts of the State receiving different benefits.

Seven commenters recommended expanding the alternatives in States that determine that neither a public/private RCA program nor an excepted program are the best approach for their State. Four commenters recommended including a voluntary agency model as an option under this provision, while three commenters specifically recommended the Matching Grant program as a viable alternative that should be added under this provision. One commenter recommended adding a model of direct contracting between ORR and national voluntary agencies as an alternative. Two commenters recommended that currently funded comprehensive alternative projects would be acceptable alternatives under this subsection.

Response: In keeping with our decision to allow States the flexibility to choose among different options for the RCA program, we have removed the proposed section and replaced it with a provision that allows States the option of modeling their RCA program after their State TANF program. States will be required to submit an amendment to their State Plan describing the elements of their TANF program that will be used in their RCA program pursuant to the procedure described in § 400.8 no later than 6 months after the publication of the final rule. A publicly-administered TANF-type RCA program must be implemented no later than 24 months after the date of the publication of the final rules. Those States that wish to maintain their current AFDC-type RCA program, instead of changing to a TANF-type RCA program, may submit a request for a waiver to the ORR Director under § 400.300. The ORR regulations that govern an AFDC-type RCA program have been retained for this purpose under § 400.45.

In regard to the comments that argued for making it harder for States to opt out of a public/private RCA program, we do not believe that such a course of action would benefit the refugee program and would only serve to foster an adversarial climate between States and local resettlement agencies. In addition, it is unrealistic and inappropriate to require a Governor to obtain concurrence from resettlement agencies to opt out of a public/private RCA program. A Governor does not have to obtain concurrence from service agencies before making a decision on a program.

We have no objections to the recommendation that States that choose to operate both a public/private RCA program and a TANF-type RCA program in their State should be allowed the option of using the same payment levels and eligibility standards in the TANF-type RCA program as in the public/private RCA program. If, for some reason, a State wishes to, and is able to, set up such an arrangement, we have no problems with such an approach.

Regarding comments on alternative RCA options, neither the Matching Grant program nor another direct contracting arrangement between ORR and national voluntary agencies would be an appropriate alternative for the State-administered RCA program because these models involve direct grants from ORR rather than contracts or grants administered by States. Any alternative that a State chooses would have to allow State management of the alternative. However, outside the context of this regulation, the Wilson/Fish authority at § 412(e)(7)of the INA allows non-profit agencies to be direct grantees of ORR.

Section 400.66 (§ 400.67 in the NPRM)

Comment: One commenter recommended that States operating an excepted RCA program should be allowed to make the beginning date for RCA cash assistance payments to be the date of application even if cash assistance payments are started later under the State's TANF program. The commenter felt that the short RCA eligibility period justifies avoiding any delays in payment. One commenter felt that the final rule should make clear that adherence to other TANF rules is only required with respect to financial eligibility and clearly state that the full range of non-financial eligibility policies and procedures under TANF do not apply to RCA.

Response: After considering the commenter's suggestion, we have amended this section to allow States that have elected to operate a publicly-administered RCA program to use the date of application as the beginning date for RCA payments, in lieu of the TANF beginning date for cash assistance payments, if they so choose. We agree that States should have the flexibility to choose the earlier start date for cash assistance payments in light of the short eligibility period for RCA recipients.

We have amended § 400.66(a)(4) (§ 400.67(e) in the NPRM) by adding the word "financial" before the word "eligibility."

Section 400.67 (§ 400.68 in the NPRM)

Comment: One commenter indicated that the language in the proposed regulation, that identifies TANF work requirements as hours of participation and allowable work activities, creates confusion by only referring to certain aspects of the TANF work requirements, thereby implying that other aspects of the TANF work requirements would apply to the State-excepted RCA program. The parenthetical reference to hours and allowable activities should either be deleted or comprehensively expanded.

Response: We agree with the commenter and have deleted the words "hours of participation and allowable work activities."

Comments on Subpart F—Requirements for Employability Services and Employment

Section 400.75(a)

Comment: One commenter recommended adding a new item (7) to this subsection that would require refugee RCA recipients who are also Food Stamp recipients, if they live in a geographic area where there are no refugee service providers, to participate in the Food Stamp Employment and Training (FSET) program as a condition of receipt of RCA.

Response: If an RCA recipient lives in an area where there are no refugee providers, the recipient may participate in the FSET program or any other employment and training program to satisfy the requirement at § 400.75(a)(1) that an RCA recipient must participate in employment services within 30 days of receipt of RCA.

Section 400.76

Comment: Two commenters indicated their support for removal of Federal requirements for exemptions from employability services, while one commenter felt that the regulations should retain certain exemptions such as persons over 65 who are incapacitated or are needed in the home to care for an incapacitated family member. The commenter also felt that the regulations should exempt victims of domestic violence from work activities under certain circumstances. Two commenters recommended that the final rule should permit States to add additional exemptions from the work requirements.

Response: We are leaving it up to the States to determine the exemptions they believe are necessary for the RCA program. States are as capable, if not more capable, of making decisions on exemptions as we are. We trust the States to make intelligent decisions on when and under what circumstances to exempt victims of domestic violence and elderly persons.

Section 400.81

Comment: One commenter pointed out that § 400.81(c)(2) in existing regulations should be removed since it conflicts with proposed revisions to § 400.81(b) which limits full-time professional recertification services to individuals who are working. Another commenter argued that the proposed rule to restrict full-time professional recertification training to refugees who are employed should be withdrawn. The commenter felt that it should be up to each State's RCA program to decide whether such training may be available to a refugee who is not employed.

Response: Our thanks to the commenter for pointing out the problem with § 400.81(c)(2). We have removed this subsection. We continue to hold to our view that full-time professional recertification training is an appropriate use of our funds for employed refugees, but not unemployed refugees. We do not believe that this type of full-time training, which generally is not short-term in duration, is appropriate for unemployed refugees in a program that emphasizes early employment and has a short period of cash assistance.

Section 400.82

Comment: Five commenters expressed concern that the proposed rule does not adequately ensure the constitutional due process rights of RCA applicants and recipients. One commenter cautioned that ORR cannot give resettlement agencies flexibility to decide what due process must be provided. The commenter further cautioned that providing inadequate guidance on due process issues would handicap local resettlement agencies from understanding what is expected of them under the law and would increase the likelihood of violating the constitutional rights of refugees.

One commenter felt that it is essential that the regulations govern all adverse actions and hearings for both the public/private RCA program and the excepted RCA program. The commenter noted that the language in this section regarding the public/private RCA program appears to apply to all adverse actions and hearings, while the language regarding the excepted RCA program seems to limit adequate notice and an opportunity for a hearing to work-related sanctions. In addition, there is no requirement that notice must be in the refugee's native language or that good cause criteria be provided in writing in the excepted RCA program. The commenter also noted that the proposed rule requires that local resettlement agencies provide timely

and adequate notice of any determination but does not define these terms. The commenter pointed out that the Supreme Court decision in *Goldberg* v. *Kelly* contains considerable detail on what constitutional due process requires with regard to timely and adequate notice. These details should be included in the final rule to prevent local resettlement agencies from inadvertently implementing inadequate standards, thereby risking litigation.

Another commenter felt that while safeguards are necessary to protect clients, it would be highly counterproductive if standards were limited to the complex standards of the public assistance system. The regulations should allow the development of standards more appropriate to private service providers. Two commenters were concerned that the requirement to provide written notice in a refugee's native language would be extremely costly and burdensome. One of the commenters suggested giving States the option of providing notice in English with a verbal translation of the notice.

One commenter asked whether a sanction implies loss of service as well as loss of cash assistance. One commenter suggested requiring States to specify in their State Plan what sanction process it will use. The commenter felt that States should be allowed to choose either the Food Stamp Employment and Training (FSET) or TANF sanction process because an RCA recipient is more likely to be an FSET recipient than a TANF recipient. Three commenters indicated that it would be essential to allow reversals of sanctions in the case of administrative error or changes in a client's circumstances that warrant a reversal of decision.

Response: This section of the NPRM described actions that private agencies administering the public/private RCA program must take to meet due process requirements and did not provide the same level of detail with respect to a publicly-administered program because we believe that State TANF programs must follow the due process requirements established by the Supreme Court in *Goldberg* v. *Kelly*, 397 U.S. 254 (1970). However, we have, nonetheless, added a new § 400.54 that governs all notices and hearings in both the public/private and publicly-administered RCA programs. Section 400.54 defines "timely" and "adequate". We have also made clear in § 400.55 of the final rule that written notice in refugee languages applies to publicly-administered RCA programs as well as the public/private RCA program. In regard to commenters' concerns about the cost and burden of providing written notice in a refugee's language, as we said earlier in response to similar comments on § 400.55 (§ 400.63 in the NPRM), agencies that administer Federal financial assistance are required under title VI of the Civil Rights Act of 1964 to provide written information in appropriate languages where a significant number or proportion of the eligible population requires the information in a particular language in order to fully understand the content of the information. In regard to refugee language groups that constitute a small proportion of the recipient population served, agencies must use an alternative method, such as verbal translation into the refugee's language, to effectively communicate the content of the notice of adverse action to the recipient.

It is important to clarify that the due process standards that agencies must follow are not standards derived from the public assistance program, as one commenter suggested; they are standards prescribed by constitutional law. Regarding whether a sanction implies loss of service as well as loss of cash assistance, ORR's definition is that sanction implies loss of cash assistance only. Reversals of sanctions in the case of administrative error, without question, are not only allowed, but are required.

Section 400.83

Comment: One commenter felt that the NPRM does not adequately ensure compliance with due process principles because the proposed rule includes only selected due process requirements instead of fully incorporating the due process provisions of the existing ORR regulations which cite 45 CFR 205.10(a) of the AFDC regulations.

Two commenters were concerned that the proposed rule does not specify any time frames for completion of the mediation and hearing process and recommended language specifying time periods and automatic referral of adverse determinations to an independent State entity. Both commenters felt this was particularly crucial because of the short duration of the RCA eligibility period. The timeliness of the process should be responsive to the refugee's need for a quick resolution.

One commenter asked whether an independent mediator on contract with a local resettlement agency would be an acceptable approach and if so, where would funding come from to pay for such a mediator. One commenter opposed contracting out the adjudication of appeals to any private entity. The commenter expressed the opinion that local resettlement agencies do not have the structure to administer an appeals process. The commenter felt that the entire appeals process should remain in the public agency where an adjudicatory structure and necessary safeguards exist to protect client rights. Two commenters recommended that hearings be conducted by an impartial official outside of the local resettlement agency. One of the commenters specified that the independent outside entity must be a State or local hearing authority. Three commenters felt that the final arbiter of disputes should be the State. One commenter recommended that States be given the option of choosing to have all hearings, including the initial hearing, conducted outside of the local resettlement agency. Two commenters felt that the final rule should explicitly indicate that the final hearing by an independent outside entity must be conducted prior to termination of benefits. The final rule should specify that aid must be paid pending this independent hearing.

One commenter recommended that States be required to specify the hearing process to be used in their State Plan. The commenter felt that States should have the option to elect the Food Stamp administrative hearing process rather than the TANF process since RCA recipients are also likely to be Food Stamp recipients and the same action would result in a sanction in both programs.

One commenter was concerned that a non-centralized fair hearing system may increase the possibility of non-uniform treatment of refugees in the appeals process. Six commenters expressed concern that local resettlement agencies will be required to fully replicate the welfare system functions to meet client protection requirements. Three commenters urged ORR to allow some flexibility in the design of due process protections and suggested that the Matching Grant program be looked at as a model.

Response: We have created a new § 400.54 that provides more detail about the appeals process resulting from any adverse action in the RCA program, including sanctions. While we recognize that local resettlement agencies may find it burdensome to put into place required due process procedures, the due process requirements set forth in the U.S. Supreme Court decision in *Goldberg* v. *Kelly* must, by law, be met. Publicly-administered RCA programs may use the TANF hearing procedures, Food Stamp hearing procedures, or any other public agency hearing procedures in accordance with § 400.54(b)(2) as long as they meet the due process standards in *Goldberg* v. *Kelly* and as long as the sanction requirements under § 400.82(c)(2), which are required by statute, are followed. In keeping with the commenter's suggestion, States are required under § 400.54(b)(2) to indicate in their State Plan the hearing process to be used. In developing a public/private RCA program, States and local resettlement agencies may decide, as several commenters suggested, that the best arrangement would be for all hearing requests to be referred to a State-administered hearing process, such as the TANF hearing process or some other public agency hearing process. States and local resettlement agencies may decide, however, not to use a pre-existing State-administered process. We wish to note that the courts have never stated that due process and, in particular, fair hearings, must be provided by a governmental agency. In fact, the Supreme Court affirmed a prior Medicare Part B process which required final, non-reviewable decisions to be made by hearing officers appointed by private insurance companies. *See Schweiker* v *McClure*, 456 U.S. 188 (1982).

Although the AFDC rules did not permit aid to be paid to the claimant pending an administrative appeal of an adverse evidentiary decision, we agree with the recommendation that a refugee's RCA benefits should not be terminated until after a final administrative action has been taken. We have included this requirement in the final rule at § 400.54(b)(4). Of course, if the agency action is upheld, the assistance must be repaid.

In response to the comment on mediation, it would be an acceptable approach for a local resettlement agency to contract with an independent mediator, if the State agrees to this approach. This type of service is administrative in nature and could be claimed against the State's CMA grant.

The comments regarding the need for time frames is well-taken. We have added specific time frames for completion of the mediation and hearing process in the public/private RCA program as follows: In accordance with § 400.83(a)(1), mediation must begin no later than 10 days following the date of failure or refusal to participate, and may continue for a period not to exceed 30 days. This is the same time frame we required for conciliation in prior ORR regulations. Regarding a time frame for completion of the hearing process, we have decided in § 400.54(b)(1)(iii) to require that final and definitive administrative action must be taken within 60 days from the date of a request for a hearing in the case of a public/private RCA program where a pre-existing State-administered hearing process is not used.

Comments on Subpart G—Refugee Medical Assistance

Section 400.100

Comment: Two commenters suggested that § 400.100(a)(4) be deleted or revisited because mandatory termination of medical benefits for clients sanctioned under either the public/private or public RCA program should not occur. One of the commenters noted that the refugee program statute does not authorize or mandate denial of eligibility for RMA if a refugee has lost RCA eligibility due to a sanction. Another commenter pointed out that States have the option to terminate medical benefits for clients receiving TANF who are sanctioned. One of the commenters recommended that, at a minimum, States should be given the option as to whether to have a policy that denies RMA to refugees in RCA sanction status and/or be allowed to align their RCA/RMA sanction policy with their TANF/Medicaid sanction policy.

One commenter felt the use of the term "filing unit" is technically more correct and consistent with Medicaid eligibility requirements and should be maintained.

Response: We agree with the commenters that § 400.100(a)(4) which limits eligibility for RMA to refugees who have not been denied or terminated from RCA should be removed. We have done so. We have been advised that the more correct term to use, in keeping with Medicaid terminology, is "assistance unit". We have changed the term accordingly.

Section 400.101

Comment: Four commenters strongly supported the provision for increased flexibility for RMA eligibility determinations. Several commenters expressed concern that the ability to set higher financial eligibility standards only seemed to apply to States with medically needy programs under Medicaid and does not apply to refugees in States without medically needy programs. The commenters recommended coverage as well in States without a medically needy program in order to allow more refugees to remain eligible if they have earnings and to allow more late arriving spouses to be eligible. One commenter said that there is no apparent legal or policy reason to restrict either the Section 1931 financial eligibility option or the 200% of the Federal poverty level option, therefore the regulations should be changed to provide all States with as much flexibility as possible to use a higher financial eligibility standard.

One commenter recommended that if the final rule continues the requirement that States without a medically needy program must use their section 1931 methodologies in their RMA program, the final rule should be revised to at least allow a State to use the methodologies that a State currently has in place in their Section 1931 category, rather than require States to use the July 16, 1996, methodologies.

One commenter recommended eliminating § 400.101(b) so that obsolete AFDC need standards do not have to be applied to RMA. The commenter felt that this subsection is repetitive with the following section.

Response: After considering the comments, we have revised this section to extend the 200% of the Federal poverty level eligibility standard option to RMA programs in all States. We have also amended § 400.101(b) to allow a State to use the section 1931 methodologies that a State currently has in place.

Section 400.102

Comment: Four commenters supported RMA eligibility being determined on the basis of income on the date of application. Two commenters recommended that the final rule indicate that cash assistance provided through the public/private partnership should not be determined as either income or asset for purposes of RMA eligibility. The commenters hoped that this revision would eliminate the need for spend-down which is a hardship on newly arrived refugees and is hard to administer. One commenter felt that ORR should use the term "methodologies" wherever the word "standards" is currently used in this section to be consistent with the terminology used in the Medicaid statute.

Response: In considering the comments, we have decided to add a requirement that cash assistance payments may not be considered in determining eligibility for RMA. This would apply to cash assistance payments made under the publicly-administered RCA program, the Department of State's Reception and Placement program, the Matching Grant program, a Wilson/Fish alternative project, and the public/private RCA program. This change will ensure that cash assistance payment levels such as those in the public/private RCA program will not jeopardize RMA eligibility.

We have added the word "methodologies" to this section.

Section 400.103

Comment: One commenter indicated that some States do not have spend down programs and, instead, use their own state-funded medical assistance programs. The commenter recommended deleting this section or amending it to allow States to use a substitute methodology appropriate for their State. Another commenter recommended changing this provision to allow refugees with medical expenses to spend down to the financial eligibility standards that are used in the State's RMA program.

Response: We have clarified this section so it is clear now that States with a medically needy program and States without a medically needy program must allow RMA applicants to spend down to the requisite financial eligibility standard used in their State. The provision has been amended to require States to allow applicants for RMA who do not meet the financial eligibility standards used by the State to spend down to such a standard using an appropriate method for deducting incurred medical expenses. The State can use the methods set forth in 42 CFR 435.831(d) or a reasonable substitute methodology.

Section 400.104

Comment: Six commenters wrote in support of the provision to allow refugees who lose eligibility for Medicaid due to early employment to be transferred to RMA. Two commenters recommended that this provision be revised to make the transfer from Medicaid to RMA without an eligibility determination mandatory. One commenter suggested that the provision be revised to ensure that a refugee who is receiving Medicaid and has been residing in the U.S. less than the time eligibility for RMA, is transferred to RMA without an eligibility redetermination "for the duration of the 8-month eligibility period."

Response: We have amended this provision by making the transfer from Medicaid to RMA without an eligibility determination mandatory.

Comments on Subpart I—Refugee Social Services

Section 400.152

Comment: Twenty commenters suggested that ORR add citizenship/naturalization services to the list of allowable services for refugees who have been in the U.S. more than 60 months. Two commenters said that the term "referral and interpreter services" should be defined, questioning whether translation services are included in interpreter services and whether information can be provided, or only referral. This commenter asked whether emergency services and community education of the elderly, youth gang intervention, resolving intergenerational conflict and similar services are to be provided only to refugees who have been in the U.S. less than 5 years. This commenter recommends that more expensive employability related services and ESL be provided for the under 5-year population while the occasional emergency and other community services be provided without regard to time in country.

Response: We agree with the commenters that citizenship/naturalization services should be available to refugees who have been in the U.S. more than 5 years as well as refugees who have in the country less than 5 years. We have amended § 400.152 accordingly. We define referral and interpreter services to include translation services as well as the provision of information about services to which a refugee will be referred. We also consider referral and interpreter services to include assistance to refugees to apply for the referred service or benefit and following up to ensure that refugees receive the service.

Services such as emergency services, community education of the elderly, youth gang intervention, conflict resolution, and other community services may not be provided to refugees in the U.S. over 5 years unless these services are funded by ORR non-formula social services or non-formula targeted assistance funds.

Section 400.155

Comment: Thirty-four commenters expressed support for the inclusion of citizenship services as an allowable service under the social services and targeted assistance formula programs. One commenter suggested that ORR consider allowing voluntary agencies to be reimbursed for the costs of assisting refugees to obtain employment authorization documents. This commenter also suggested that ORR allow the cost of assisting refugees to apply for adjustment of status to legal permanent resident. Another commenter suggested that ORR clarify that funds can be used to assist disabled refugees in obtaining N–648 disability waivers from English and civics requirements for naturalization.

Response: To clarify, we do consider citizenship services to include the cost of assisting refugees to apply for adjustment to legal permanent resident status and the cost of assisting disabled refugees to obtain N–648 disability waivers from English and civics requirements for naturalization. Agency assistance to help asylees to obtain employment authorization documents (EADs) is not a citizenship service. However, we see it as an employability service and have added assistance to obtain EADs as an allowable service under § 400.154. Assistance to obtain EADs, as an allowable service for which ORR funds may be used, must be limited to the agency staff time used to assist an asylee or refugee to obtain an EAD and does not include paying the fee for EADs.

Comments on Subpart J—Federal Funding

Section 400.207

Comment: One commenter said that the regulation does not address how administrative costs will be determined, especially for States with very low refugee numbers. One commenter asked whether a State could limit voluntary agency administrative costs. Two commenters asked for clarification as to what constitutes reasonable cost and who makes that determination. One commenter asked whether there is a guaranty that all CMA administrative costs will be reimbursed by ORR.

Response: It is up to a State to determine its administrative costs for the public/private RCA program; ORR does not determine a State's administrative cost needs. In answer to the second comment, a State may limit the administrative costs of participating resettlement agencies. Regarding reimbursement of CMA administrative costs, we will reimburse 100% of a State's reasonable and necessary identifiable administrative costs, including the administrative costs of the public/private RCA program, to the extent available appropriated funds allow. To date, since the inception of the refugee program in 1980, ORR has been able to reimburse States each year for 100% of their administrative costs with available appropriated funds.

In regard to what constitutes reasonable cost and who makes that determination, we refer commenters to ORR's cost allocation guidelines which were issued to States in 1985 and continue in effect. *See* Transmittal No. 85–137 (June 18, 1985). These guidelines describe the kinds of administrative costs that States may claim and the allocation of these different types of administrative costs to different ORR funding sources. These guidelines, however, do not prescribe a dollar amount to each type of administrative cost. States are currently allowed to claim 100% of their actual administrative costs as long as these costs are for the kinds of administrative activities listed in the ORR cost allocation guidelines. Thus ORR, as the ACF office responsible for issuing refugee program cost allocation guidelines, and States, which are responsible for setting the cost of different administrative activities, are both responsible for making the determination as to what constitutes reasonable administrative costs in the refugee program.

Section 400.210

Comment: Nine commenters expressed support for the proposed change to extend the due date for a State's final financial report for social services and targeted assistance formula grants. Two of these commenters indicated that 90 days for closeout may not be long enough, with one commenter suggesting 120 days for closeout. One commenter stated that ORR's prohibition against obligating cash and medical assistance beyond the current fiscal year presents a procedural problem for the public/private partnership, which will have to operate on a contractual basis.

Response: The due date for a State's final financial report for social services and targeted assistance formula grants will remain at no later than 90 days after the end of the two-year expenditure period. We do not believe a longer close-out period is warranted.

Section 400.211

Comment: One commenter asked what ORR will do when there is excess money, given the proposed change to § 400.211. The commenter suggested that excess funds be passed on to States for their uncovered costs and unfunded mandates of resettling refugees.

Response: The purpose of the proposed change to this section is to avoid a situation where ORR would be required by its regulation to increase the RCA/RMA eligibility period mid-way through the fiscal year because a redetermination is made at that time that indicates sufficient funds are available to raise the RCA/RMA eligibility period for the remainder of the fiscal year. Raising the eligibility period to 9 months for the balance of the fiscal year and then reducing it back to the current 8-month eligibility period at the beginning of the next fiscal year, due to insufficient funds to sustain the higher eligibility period, would not be in the best interests of either refugee recipients or the States that have to administer RCA and RMA. Regarding our use of excess funds, in budgeting our funds, we reserve some unspent funds to cover late CMA claims that States have a year to submit after the end of the fiscal year in which the funds were awarded. Beyond that, we have used statutory carry-forward language contained in recent appropriation laws to provide surplus CMA funds to States for social services or to help cover the resettlement costs of emergency arrivals such as the Kurds in FY 1997, and more recently, the Kosovars.

Other Comments

Comment: Nineteen commenters expressed concern that it would not be in the best interests of refugees to reduce available funding levels for formula and discretionary refugee social services to pay for high administrative costs to run the new program. One commenter adamantly opposed the use of social service funds to cover administrative costs in the new program. Another commenter noted that even States that choose not to operate a public/private program would be hurt to the extent that the increased costs for start-up, training, and monitoring in the new RCA program in participating States would result in the availability of less non-formula social service funding for other States.

Four commenters expressed the opinion that refugees will be penalized after the initial years of start-up because the increased administrative costs needed to run the new program will have to be paid with social services funding or a reduction in the RCA eligibility period. Two commenters expressed concern that ultimately the cost of administration for the new program will be at the expense of essential refugee services. Two commenters stated that ORR non-formula funds should be used to assist long-term refugee TANF recipients to become self-sufficient, not to pay for start-up costs. Another commenter stated that the use of discretionary social services funds to supplement formula funds may result in curtailing some discretionary projects that are in place, which will compromise services now and doubly so at the end of the grace period. One commenter would welcome additional social services funds in lieu of the program changes. Another commenter stated that the costs of the new program would further erode refugee social services, which have steadily declined on a per capita basis over the past 12 years.

Response: The administrative costs of the new public/private RCA program will be covered by CMA funds, not social service funds. During the initial years of start-up, we intend to supplement States' formula social services allocations with non-formula social services funds to cover the services component of the new RCA program, not the administrative component of the new program. These funds will not be used to cover the program's administrative costs, except for the administrative costs of providing social services. After the initial years of start-up, the service component of the new program will be covered by a State's formula social services funds, while the program's administrative costs will continue to be claimed against CMA funds. Regarding the concern that the use of non-formula social service funds to supplement State formula social services could result in curtailing some discretionary projects now in place, ORR's non-formula social service funding has been sufficient over the years to cover continuation projects as well as new funding uses. We do not agree with the assertion that refugee social services funds have steadily declined on a per capita basis over the past 12 years. To the contrary, refugee formula social services funds have increased somewhat over the 12-year period, while non-formula social services have increased dramatically over recent years. Since FY 1995, refugee arrivals have declined, thereby increasing the per capita amount for services.

Comment: Sixteen commenters expressed concern about how the establishment of the new public/private RCA program would affect the continued operation of the Matching Grant program and wondered how the two programs would be synchronized. The commenters were concerned that the use of the Matching Grant program would be diminished.

Response: We do not intend to reduce the use of the Matching Grant program. The Matching Grant program is an important alternative program for moving refugees to early self-sufficiency and we remain committed to the program. As State plans for establishing a public/private RCA program emerge, we will work with the Matching Grant agencies to determine in what ways the Matching Grant program should be modified, if at all, to ensure that the public/private program in a State and a Matching Grant program in the same State are working in concert to avoid duplication.

Comment: Four commenters felt that the final rule should provide adequate transition rules between the old and new RCA programs. Two commenters stated that ORR should fund an overlap

period to ensure that refugees in the old program experience no interruption of benefits.

Response: We would anticipate that States which decide to establish a public/private RCA program would plan to have an overlap period where refugees currently on RCA would continue in the old RCA program until their eligibility expires, while refugees who arrive in the State after a certain date would enter the new public/private program. We intend to reimburse States for the RCA costs in both programs during the overlap period.

Comment: Two commenters made the point that employment services under the new RCA program should be coordinated with Food Stamp employment and training activities (E&T), noting that able-bodied refugee Food Stamp recipients must meet Food Stamp employment and training participation requirements in order to receive more than 3 months of Food Stamps. One of the commenters asked if the final rule would give the States the authority to pass on to private agencies any financial penalties that result from the agencies' RCA/Food Stamp recipients not participating in the required E&T services.

Response: We received guidance from the Food Stamp Program on November 11, 1997, which clarified that refugee employability services approved, funded, or operated by ORR are federally recognized training programs for the purposes of Food Stamp eligibility. Therefore, refugees participating at least half-time in programs approved or funded by ORR are exempt from Food Stamp work requirements and time limits. We transmitted this information to States, national voluntary agencies, ORR discretionary grantees, and other interested parties through ORR State Letter 97–28 on December 5, 1997. The exemption from Food Stamp employment and training participation would apply to RCA recipients participating in the public/private RCA program.

Comment: One commenter said that the final regulation should address the need for changes to voluntary agency placement policy and require both consultation with States as to their capacity and the resettlement of free cases in areas not already highly impacted.

Response: We are engaged in ongoing discussions with the Department of State (DOS) and the national voluntary agencies on placement policy, including the issues raised by the commenter.

Comment: Several commenters expressed concern about how the public/private RCA program would be coordinated with the Department of State Reception and Placement (R&P) program. Two commenters felt that States would need to recognize the requirements for employment under the R&P program so that local resettlement agencies would be able to maintain their ability to place free cases in the State. Another commenter asked whether the provision for free case employment will be maintained. One commenter said that RCA handled by the local resettlement agencies would enable more refugees to receive RCA, thereby providing a more viable bridge between reception and placement support and earned income. One commenter asked how existing agreements between the voluntary agencies and the State Department would be changed and asked about the role of the State Department in the public private partnership. One commenter asked whether services to refugees resettled by a voluntary agency in an adjoining state are to take the place of State Department reception and placement services. One commenter noted that § 400.51 appears to allow RCA during the first 30 days, which is contrary to DOS reception and placement provisions.

Response: We agree that the relationship between the State Department's R&sP program and the public/private RCA program is important. We will work in partnership with the State Department to ensure that the two programs work well together to achieve the goal of seamless and coordinated services for RCA recipients. We intend to address the issues raised by the commenters in discussions with the Department of State, States, and the voluntary agencies soon after publication of the final rule.

Regarding the comment about RCA eligibility during a refugee's first 30 days in the U.S., ORR regulations have never precluded a refugee from accessing RCA during his/her first 30 days in the U.S. If a refugee who is receiving assistance and services under the DOS Reception and Placement program wishes to apply for RCA, under § 400.50(a), a State agency must provide that refugee the opportunity to apply for RCA and determine the eligibility of that applicant, the same as any other applicant.

Comment: Three commenters stated that the new public/private RCA program appears to be in conflict with the national move to co-locate employment and training services in a coordinated one-stop system. One commenter felt that the proposed program would remove refugees and refugee services from the one-stop system potentially hindering refugee utilization of other programs.

Response: The refugee service system in most States is a separate network of resettlement and employment services that are not co-located in a one-stop shop system. The establishment of a new public/private RCA program would not alter this arrangement. Because of the unique nature of the refugee resettlement program, Congress did not intend for refugee program services to be merged into a one-stop shop system with employment and training services for the general population. To the extent that services are offered at a one-stop shop that are appropriate to the needs of refugees, we encourage refugee providers to help refugees to access those services.

Comment: One commenter recommended an immediate effective date for the RMA changes and the inclusion of citizenship services as an allowable service.

Response: The general effective date in this rule is 30 days from the date of publication of the final rule, as required by the Administrative Procedure Act, 5 U.S.C. § 553(d). However, we recognize that States vary in the amount of time required to revise RMA policy instructions and implement the changes in RMA and that some States may not be able to implement these changes within the 30-day time frame. Therefore, while we expect States to implement the RMA changes as quickly as possible, we will allow States that need extra time to implement the RMA provisions no later than 90 days after the date of publication of the final rule. The 90-day effective date for the RMA provisions is indicated in the Effective Date section of this rule.

Regulatory Impact Analyses

A. Executive Order 12866

Executive Order 12866 requires that regulations be drafted to ensure that they are consistent with the priorities and principles set forth in the Executive Order. The Department has determined that this final rule is consistent with these priorities and principles. This final rule implements statutory authority based on broad consultation and coordination.

The Executive Order encourages agencies, as appropriate, to provide the public with meaningful participation in the regulatory process. As described elsewhere in the preamble, ORR conducted eight consultations around the country and two teleconferences to discuss whether and how States, voluntary agencies, service providers, and refugee organizations would like to see the regulations changed. These meetings were attended by close to 500 participants representing the broad resettlement network. We also consulted with representatives of States, Washington-based interest groups, refugee mutual assistance associations, and national voluntary agencies in follow-up sessions in Washington, D.C. to discuss what we learned from the initial round of consultations and to obtain feedback on our possible regulatory changes. We received additional feedback after group representatives consulted more broadly within their networks following the last round of meetings. The input we received is reflected in these regulations to a considerable degree.

These rules represent a renewed, more flexible stage in the refugee program State/Federal partnership. Rather than requiring that one national program fit all local situations, ORR has provided States the option to establish a public/private RCA program with local resettlement agencies or continue a publicly-administered RCA program modeled after their TANF program. If a State chooses to establish a public/private RCA program, the State has the flexibility to determine that the public/private RCA partnership would work well in only one community, and propose to implement a geographically split model.

Under the public/private RCA program, we have also given States and local resettlement agencies broad flexibility to design a program which they believe will best serve refugees in their community. Rather than prescribing certain elements, we have given States and resettlement agencies the flexibility to determine: The income standard for receipt of RCA in their State; the benefit level within a broad range of benefit levels; whether employment incentives should be provided, and if so, how those incentives should be provided; the services to be provided; and the procedures States and local resettlement agencies will put in place to ensure due process and protections for refugees. States are also given the option to set a higher need standard for refugee medical assistance. And within the proposed public/private RCA plan structure, there are several administrative models which may be considered by States and local resettlement agencies.

One of our key goals in drafting the regulations was to recognize, encourage, and enhance the partnerships that Congress intended with the passage of the Refugee Act. Although we have drafted regulations for a federally-funded program, this rule is intended to reflect our recognition that resettlement takes place at the local level and works best when all parties work together. In the final rule, we have tried to support the different, but equally important, contributions that the public and private sectors are able to bring to the refugee resettlement process. We hope that the final rule will serve to foster better and stronger partnerships at all levels, including those among local resettlement agencies and service providers, which will result in good resettlement.

We estimate that the regulatory changes in the final rule could result in increased costs of approximately $8 million annually due to added administrative costs of local resettlement agencies in States that elect to establish a public/private program, $8 million annually for expanded refugee eligibility for refugee medical assistance, and $1 million for RCA payment ceilings. We believe that the number of States that will choose the public/private program option, however, may be limited.

This rule is considered significant and has been reviewed by OMB.

B. Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. Ch. 6) requires the Federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses and other small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This rule will affect 46 participating States and the District of Columbia, and local resettlement agencies that agree to assume responsibility for providing cash assistance and services to newly arrived refugees in States that elect to establish the new public/private RCA program. Local resettlement agencies are non-profit private organizations that are responsible for the initial resettlement of refugees in the U.S. under cooperative agreements with the Department of State. Participation of these local agencies in the public/private RCA program to be established by this regulation will be strictly voluntary. In addition, local resettlement agencies that choose to assume responsibility for the new RCA program will be fully funded with Federal refugee program funds. These rules will only have an impact on those small entities (local resettlement agencies) that voluntarily elect to participate in the public/private RCA program. Thus, a regulatory flexibility analysis is not required.

C. Paperwork Reduction Act of 1995

The following sections contain information collection, third party reporting, or recordkeeping requirements that are subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)): §§ 400.50(b), 400.54, 400.55, 400.57(b), 400.58, 400.65, and 400.68(b). The Administration for Children and Families has submitted a copy of these sections to the Office of Management and Budget (OMB) for its review.

Section 400.54(a) requires that States or their designees provide notice to applicants or recipients to indicate that assistance has been authorized, denied, or terminated and the program under which that determination was made. Section 400.54(b) requires States to specify in their State Plans the hearing procedures to be followed in the RCA program and requires that the written notice of any hearing determination adequately explains the basis for the decision and any further appeal rights. Section 400.55 requires that States or their designee agency(s) make available to refugees the written policies and all notices in English and in appropriate languages where a significant number or proportion of the recipient population requires information in a particular language, in accordance with Department of Justice regulations at 28 CFR 42.405(d)(1) regarding compliance with title VI of the Civil Rights Act of 1964. Section 400.57(b) requires that each local voluntary agency resettling in a State inform its national resettlement agency of the proposed public/private RCA program and obtain a letter of agreement from the national agency. Section 400.58 requires that States submit a public/private RCA plan for ORR review and approval before the State implements the plan. Section 400.65 requires States that elect to operate a publicly-administered RCA program to submit an amendment to their State Plan describing the elements of their TANF program that will be used in their RCA program.

The information in these plans is needed to carry out ORR's oversight responsibilities under section 412 of the Immigration and Nationality Act. Additionally, certain information is typically necessary to respond to Congressional and other inquiries about the program.

The effect of these information collection, reporting, or third-party notification requirements will be

limited to the 46 States and the District of Columbia that participate in the refugee program, and 2–3 non-profit agencies that administer the program in States that no longer participate in the refugee program. We anticipate that a limited number of States will elect to operate a public/private RCA program; those States that choose not to operate such a program will not have to submit a public/private RCA plan. Those States that choose to implement a public/private RCA program will have to submit a public/private RCA plan only once. Additional submissions will only be necessary if the plan is modified in the future. The average burden per response for the preparation of an RCA plan is estimated to be 24 hours. The total maximum annual reporting and recordkeeping burden that will result from this collection of information is an estimated 1,176 hours if all States elect to implement a public/private RCA program. States that wish to operate a publicly-administered RCA program will have to submit an amendment to their State Plan once. The average burden per response for the preparation of a State Plan amendment is estimated to be 3 hours. The total maximum annual reporting and recordkeeping burden that will result from this collection of information is an estimated 147 hours if all States elect to operate a publicly-administered RCA program. Other requirements, such as the State plan (§ 400.5), are not changed. States receiving refugee program funds have a plan on file at ORR. We estimate the number of hours required to amend the plan to be a maximum of 1 hour annually. The total maximum annual reporting and recordkeeping burden that will result from this collection of information is estimated to be no more than 47 hours if all States amend their plan in a given year. We estimate the average burden for other sections as follows: § 400.54 will be 1,200 hours annually; § 400.57(c) will be 200 hours the first year; § 400.55 will be 1,000 hours the first year and 300 hours annually thereafter.

D. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) requires that a covered agency prepare a budgetary impact statement before promulgating a rule that includes any Federal mandate that may result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year.

If a covered agency must prepare a budgetary impact statement, section 205 further requires that it select the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule and is consistent with the statutory requirements. In addition, section 203 requires a plan for informing and advising any small government that may be significantly or uniquely impacted by the proposed rule.

We have determined that this final rule will not impose a mandate that will result in the expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year. Accordingly, we have not prepared a budgetary impact statement, specifically addressed the regulatory alternatives considered, or prepared a plan for informing and advising any significantly or uniquely impacted small government.

E. Family Well-Being Impact

As required by Section 654 of the Treasury and General Government Appropriations Act of 1999, we have assessed the impact of this final rule on family well-being. The final rule implements new provisions for RCA and RMA, programs which serve primarily single refugees, childless couples, or couples with adult children. We believe that the provisions contained in this rule promote better, more timely support for refugees. We expect this to strengthen families as they will receive a better economic start in the U.S. and move toward self-sufficiency in a more supportive environment.

F. Executive Order 13132

Executive Order 13132 on Federalism applies to policies that have federalism implications, defined as "regulations, legislative comments or proposed legislation, and other policy statements or actions that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This rule does not have federalism implications as defined in the Executive Order. The impact of this rule is not substantial as defined in the Executive Order. Rather, this rule provides States increased options for administering refugee resettlement programs.

G. Congressional Review of Rulemaking

This rule is not a "major" rule as defined in chapter 8 of 5 U.S.C.

Statutory Authority

Section 412(a)(9) of the Immigration and Nationality Act, 8 U.S.C. 1522(a)(9), authorizes the Secretary of HHS to issue regulations needed to carry out the program.

(Catalogue of Federal Domestic Programs: 93.566, Refugee and Entrant Assistance—State-Administered Programs)

List of Subjects

45 CFR Part 400

Grant programs-Social programs, Health care, Public assistance programs, Refugees, Reporting and recordkeeping requirements.

45 CFR Part 401

Cuba, Grant programs-Social programs, Haiti, Health care, Public assistance programs, Refugees.

Dated: October 14, 1999.

Olivia A. Golden,

Assistant Secretary for Children and Families.

Approved: November 22, 1999.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For reasons set forth in the preamble, 45 CFR Parts 400 and 401 are amended as follows:

PART 400—REFUGEE RESETTLEMENT PROGRAM

1. The authority citation for part 400 continues to read as follows:

Authority: Section 412(a)(9), Immigration and Nationality Act (8 U.S.C. 1522(a)(9)).

2. Section 400.2 is amended as follows:

a.–b. Removing the word "AFDC" wherever it appears in this section and adding in its place the word "TANF";

c. Removing the word "to" after the word "refer", in the definition of *case management services;*

d. Removing the definitions of *AFDC* and *Voluntary resettlement agency;* and

e. Adding in alphabetical order definitions of *Designee, Economic self-sufficiency, Family unit, Local resettlement agency, National voluntary agency, RCA Plan and TANF* to read as follows:

§ 400.2 Definitions

* * * * *

Designee, when referring to the State agency's designee, means an agency designated by the State agency for the purpose of carrying out the requirements of this part.

* * * * *

Economic self-sufficiency means earning a total family income at a level that enables a family unit to support itself without receipt of a cash assistance grant.

* * * * *

Family unit means an individual adult, married individuals without children, or parents, or custodial relatives, with minor children who are not eligible for TANF, who live in the same household.

* * * * *

Local resettlement agency means a local affiliate or subcontractor of a national voluntary agency that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate Federal agency to provide for the reception and initial placement of refugees in the United States.

* * * * *

National voluntary agency means one of the national resettlement agencies or a State or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate Federal agency to provide for the reception and initial placement of refugees in the United States.

* * * * *

RCA Plan means a written description of the public/private RCA program administered by local resettlement agencies under contract or grant with a State.

* * * * *

TANF means temporary assistnace for needy families under title IV–A of the Social Security Act.

* * * * *

3.–10. Section 400.5 is amended in paragraph (h) by removing the words "local affiliates of voluntary resettlement agencies" and adding in their place the words "local resettlement agencies", and by adding paragraph (i) to read as follows:

§ 400.5 Content of the plan.

* * * * *

(i) Provide that the State will:

(1) Comply with the provisions of title IV, Chapter 2, of the Act and official issuances of the Director;

(2) Meet the requirements in this part;

(3) Comply with all other applicable Federal statutes and regulations in effect during the time that it is receiving grant funding; and

(4) Amend the plan as needed to comply with standards, goals, and priorities established by the Director.

§ 400.11 [Amended]

11.–12. Section 400.11 is amended in paragraph (a)(1) by removing the words "aid to families with dependent children (AFDC)" and adding in their place the words "temporary assistance for needy families (TANF)", and by revising in paragraph (b)(1) the word "then" to read "than".

13.–14. Section 400.13 is amended by adding a new paragraph (e) that reads as follows:

§ 400.13 Cost allocation.

* * * * *

(e) Administrative costs incurred by local resettlement agencies in the administration of the public/private RCA program (i.e., administrative costs of providing cash assistance) may be charged to the CMA grant. Administrative costs of managing the services component of the RCA program must be charged to the social services grant.

§ 400.23 [Amended]

15. Section 400.23 is amended in paragraph (a) by adding the words "unless otherwise specified in this part" after the word "programs", and in paragraph (b) by adding the words "or its designee" after the word "State".

§ 400.27 [Amended]

16.–17. Section 400.27 is amended in paragraph (b) by removing the words "voluntary resettlement agency, as defined in § 400.2" and adding in their place the words "local resettlement agency or by a local resettlement agency to a State", and by removing paragraph (c).

18.–19. Section 400.43 is amended by removing paragraphs (a) (2) and (5) and by redesignating paragraphs (a)(3) and (4) as paragraphs (a)(2) and (3) respectively; and by adding new paragraphs (a)(4) and (5) that read as follows:

§ 400.43 Requirements for documentation of refugee status.

(a) * * *

(4) Cuban and Haitian entrants, in accordance with requirements in 45 CFR part 401;

(5) Certain Amerasians from Vietnam who are admitted to the U.S. as immigrants pursuant to section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1988 (as contained in section 101(e) of Public Law 100–202 and amended by the 9th proviso under Migration and Refugee Assistance in title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Public Law 100–461 as amended)); or

* * * * *

§ 400.44 [Amended]

20. Section 400.44 is amended by adding the words "unless otherwise provided by Federal law" after the word "Act" at the end of the sentence.

21. Subpart E is revised to read as follows:

Subpart E—Refugee Cash Assistance

Sec.
400.45 Requirements for the operation of an AFDC-type RCA program.
400.48 Basis and scope.
400. 49 Recovery of overpayments and correction of underpayments.
400.50 Opportunity to apply for cash assistance.
400.51 Determination of eligibility under other programs.
400.52 Emergency cash assistance to refugees.
400.53 General eligibility requirements.
400.54 Notice and Hearings.
400.55 Availability of agency policies.

Public/Private RCA Program

400.56 Structure.
400.57 Planning and consultation process.
400.58 Content and submission of public/private RCA plan.
400.59 Eligibility for the public/private RCA program.
400.60 Payment levels.
400.61 Services to public/private RCA recipients.
400.62 Treatment of eligible secondary migrants, asylees, and Cuban/Haitian entrants.
400.63 Preparation of local resettlement agencies.

Publicly-Administered RCA Programs

400.65 Continuation of a public-administered RCA program.
400.66 Eligibility and payment levels in a publicly-administered RCA program.
400.67 Non-applicable TANF requirements.
400.68 Notification to local resettlement agency.
400.69 Alternative RCA programs.

Subpart E—Refugee Cash Assistance

§ 400.45 Requirements for the operation of an AFDC-type RCA program.

This section applies to a State's RCA program that follows the State's rules under the Aid to Families with Dependent Children (AFDC) program under title IV–A of the Social Security Act, prior to amendment by Public Law 104–33. A State must continue to apply these rules to its RCA program until it implements a new RCA program under § 400.56 or § 400.65. A State that receives an approved waiver under § 400.300 to continue an AFDC-type RCA program must follow the rules in this section.

(a) *Recovery of overpayments and correction of underpayments* —The State agency must comply with regulations at § 233.20(a)(13) of this title governing recovery of overpayments and correction of underpayments in the AFDC program.

(b) *Opportunity to apply for cash assistance.* (1) A State must provide any individual wishing to do so, an opportunity to apply for cash assistance and must determine the eligibility of each applicant.

(2) In determining eligibility for cash assistance, the State must—

(i) Comply with the regulations at part 206 of this title governing applications, determinations of eligibility, and furnishing assistance under public assistance programs, as applicable to the AFDC program;

(ii) Determine eligibility for other cash assistance programs in accordance with § 400.51; and

(iii) Comply with regulations at § 400.54(a)(3) and 400.68.

(c) *Emergency cash assistance to refugees*—A State must comply with the regulations at § 400.52.

(d) *General eligibility requirements*—A State must comply with the regulations at § 400.53.

(e) *Consideration of income and resources.* In considering the income and resources of applicants for and recipients of refugee cash assistance, the State agency must:

(1) Apply the regulations at § 233.20(a)(3) through (2) of this title for considering income and resources of AFDC applicants; and

(2) Apply the regulations at § 400.66(b) through (d).

(f) *Need standards and payment levels.* (1) In determining need for refugee cash assistance, a State agency must use the State's AFDC need standards established under § 233.20(a)(1) and (2) of this title.

(2) In determining the amount of the refugee cash assistance payment to an eligible refugee who meets the standards in paragraph (f)(1) of this section and applying the consideration of income and resources in paragraph (e) of this section and in § 400.66(b) through (d), a State must pay 100 percent of the payment level which would be appropriate for an eligible filing unit of the same size under the AFDC program.

(3) The State agency may use the date of application as the date refugee cash assistance begins in order to provide payments quickly to newly arrived refugees.

(g) *Proration of shelter, utilities, and similar needs*—If a State prorated allowances for shelter, utilities, and similar needs in its AFDC program under § 233.20(a)(5) of this title, it must prorate such allowances in the same manner in its refugee assistance programs.

(h) *Other AFDC requirements applicable to refugee cash assistance*—In administering the program of refugee cash assistance, the State agency must also apply the following AFDC regulations in this title:

233.31 Budgeting methods for AFDC.

233.32 Payment and budget months (AFDC).

233.33 Determining eligibility prospectively for all payment months (AFDC).

233.34 Computing the assistance payment in the initial one or two months (AFDC).

233.35 Computing the assistance payment under retrospective budgeting after the initial one or two months (AFDC).

233.36 Monthly reporting (AFDC)—which shall apply to recipients of refugee cash assistance who have been in the United States more than 6 months.

233.37 How monthly reports are treated and what notices are required (AFDC).

235.110 Fraud.

General

§ 400.48 Basis and scope.

This subpart sets forth requirements concerning grants to States under section 412(e) of the Act for refugee cash assistance (RCA). Sections 400.48 through 400.55 apply to both public/private RCA programs and publicly-administered RCA programs.

§ 400.49 Recovery of overpayments and correction of underpayments.

The State agency or its designee agency(s) must maintain a procedure to ensure recovery of overpayments and correction of underpayments in the RCA program.

§ 400.50 Opportunity to apply for cash assistance.

(a) A State or its designee agency(s) must provide any individual wishing to do so, an opportunity to apply for cash assistance and must determine the eligibility of each applicant as promptly as possible within no more than 30 days from the date of application.

(b) A State or its designee agency(s) must inform applicants about the eligibility requirements and the rights and responsibilities of applicants and recipients under the program.

(c) In determining eligibility for cash assistance, the State or its designee agency(s) must promptly refer elderly or disabled refugees and refugees with dependent children to other cash assistance programs to apply for assistance in accordance with § 400.51.

§ 400.51 Determination of eligibility under other programs.

(a) TANF. For refugees determined ineligible for cash assistance under the TANF program, the State or its designee must determine eligibility for refugee cash assistance in accordance with §§ 400.53 and 400.59 in the case of the public/private RCA program or §§ 400.53 and 400.66 in the case of a publicly-administered RCA program.

(b) Cash assistance to the aged, blind, and disabled. (1) SSI. (i) The State agency or its designee must refer refugees who are 65 years of age or older, or who are blind or disabled, promptly to the Social Security Administration to apply for cash assistance under the SSI program.

(ii) If the State agency or its designee determines that a refugee who is 65 years of age or older, or blind or disabled, is eligible for refugee cash assistance, it must furnish such assistance until eligibility for cash assistance under the SSI program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

(2) OAA, AB, APTD, or AABD. In Guam, Puerto Rico, and the Virgin Islands —

(i) Eligibility for cash assistance under the OAA, AB, APTD, or AABD program must be determined for refugees who are 65 years or older, or who are blind or disabled; and

(ii) If a refugee who is 65 years of age or older, or blind or disabled, is determined to be eligible for refugee cash assistance, such assistance must be furnished until eligibility for cash assistance under the OAA, AB, APTD, or AABD program is determined, provided the conditions of eligibility for refugee cash assistance continue to be met.

§ 400.52 Emergency cash assistance to refugees.

If the State agency or its designee determines that a refugee has an urgent need for cash assistance, it should process the application for cash assistance as quickly as possible and issue the initial payment to the refugee on an emergency basis.

§ 400.53 General eligibility requirements.

(a) Eligibility for refugee cash assistance is limited to those who—

(1) Are new arrivals who have resided in the U.S. less than the RCA eligibility period determined by the ORR Director in accordance with § 400.211;

(2) Are ineligible for TANF, SSI, OAA, AB, APTD, and AABD programs;

(3) Meet immigration status and identification requirements in subpart D of this part or are the dependent children of, and part of the same family unit as, individuals who meet the requirements in subpart D, subject to the limitation in § 400.208 with respect to nonrefugee children; and

(4) Are not full-time students in institutions of higher education, as defined by the Director.

(b) A refugee may be eligible for refugee cash assistance under this subpart during a period to be determined by the Director in accordance with § 400.211.

§ 400.54 Notice and hearings.

(a) *Timely and adequate notice.* (1) A written notice must be sent or provided to a recipient at least 10 days before the date upon which refugee cash assistance will be reduced, suspended, or terminated.

(2) In providing notice to an applicant or recipient to indicate that assistance has been authorized, denied, reduced, suspended, or terminated, the written notice must clearly state the action that will be taken, the reasons for the action, and the right to request a hearing.

(3) In providing notice to an applicant or recipient to indicate that assistance has been authorized, denied, reduced, suspended, or terminated, the State or its designee agency(s) must specify the program(s) to which the notice applies, clearly distinguishing between RCA and other assistance programs. For example, in the case of a publicly-administered program, if a refugee applies for assistance and is determined ineligible for TANF but eligible for refugee cash assistance, the notice to the applicant must specify clearly the determinations with respect both to TANF and to refugee cash assistance. When a recipient of refugee cash assistance is notified of termination because of reaching the time limit on such assistance, the State or its designee must review the case file to determine possible eligibility for TANF or GA due to changed circumstances and the notice to the recipient must indicate the result of that determination as well as the termination of RCA.

(b) *Hearings.* All applicants for and recipients of refugee cash assistance must be provided an opportunity for a hearing to contest adverse determinations. States must ensure that hearings meet the due process standards in *Goldberg* v. *Kelly,* 397 U.S. 254 (1970).

(1) *Public/private RCA programs.* The State must specify in the public/private RCA plan the hearing procedures to be used in the RCA program. The plan may specify that the local resettlement agency(s) will refer all hearing requests to a State-administered hearing process. If the plan does not specify the use of a State-administered hearing process, then the procedures to be followed must include:

(i) The State or local resettlement agency(s) responsible for the provision of RCA must provide an applicant for or recipient of refugee cash assistance an opportunity for an oral hearing to contest adverse determinations. Hearings must be conducted by an impartial official or designee of the State or local resettlement agency who has not been involved directly in the initial determination of the action in question.

(ii) The State must ensure that procedures are established to provide refugees a right of final appeal for an in-person hearing provided by an impartial, independent entity outside of the local resettlement agency.

(iii) Final administrative action must be taken within 60 days from the date of a request for a hearing.

(2) *Publicly-administered RCA programs.* The State must specify in the State Plan referenced in § 400.4 the public agency hearing procedures it intends to use in the RCA program.

(3) In both a public/private RCA program and a publicly-administered RCA program, the written notice of any hearing determination must adequately explain the basis for the decision and the refugee's right to request any further administrative or judicial review.

(4) In both a public/private RCA program and a publicly-administered RCA program, a refugee's benefits may not be terminated prior to completion of final administrative action, but are subject to recovery by the agency if the action is sustained.

(5) In both a public/private RCA program and a publicly-administered RCA program, a hearing need not be granted when Federal law requires automatic grant adjustments for classes of recipients unless the reason for an individual appeal is an incorrect grant computation.

(6) In both a public/private RCA program and a publicly-administered RCA program, a hearing need not be granted when assistance is terminated because the eligibility time period imposed by law has been reached, unless there is a disputed issue of fact that is unresolved by the process in § 400.23.

§ 400.55 Availability of agency policies.

A State, or the agency(s) responsible for the provision of RCA, must make available to refugees the written policies of the RCA program, including agency policies regarding eligibility standards, the duration and amount of cash assistance payments, the requirements for participation in services, the penalties for non-cooperation, and client rights and responsibilities to ensure that refugees understand what they are eligible for, what is expected of them, and what protections are available to them. The State, or the agency(s) responsible for the provision of RCA, must ensure that agency policy materials and all notices required in §§ 400.54, 400.82, and 400.83, are made available in written form in English and in appropriate languages where a significant number or proportion of the recipient population needs information in a particular language. In regard to refugee language groups that constitute a small number or proportion of the recipient population, the State, or the agency(s) responsible for the provision of RCA, at a minimum, must use an alternative method, such as verbal translation in the refugee's native language, to ensure that the content of the agency's policies is effectively communicated to each refugee.

Public/Private RCA Program

§ 400.56 Structure.

(a) States may choose to enter into a partnership agreement with local resettlement agencies for the operation of a public/private RCA program. Sections 400.56 through 400.63 apply to the public/private RCA program.

(b) The public/private RCA program must be administered by the State through contracts or grants with local resettlement agencies or a lead resettlement agency that provides initial resettlement services under the terms of the Department of State Cooperative Agreement for Reception and Placement.

(c) The public/private RCA program must be statewide, unless the State determines that it is not in the best interests of refugees to provide a public/private RCA program in a particular area of the State.

(d) Local resettlement agencies may be responsible for determining eligibility, and authorizing and providing payments to eligible refugees.

(e) States and local resettlement agencies may not propose to operate a public/private RCA program and a publicly-administered RCA program in the same geographic location.

(f) States must ensure the provision of RCA assistance to eligible refugees in the State who are sponsored by local resettlement agencies in bordering states, where applicable.

§ 400.57 Planning and consultation process.

A State that wishes to establish a public/private RCA program must engage in a planning and consultation process with the local agencies that resettle refugees in the State to develop a public/private RCA plan in accordance with the requirements under § 400.58.

(a) Primary participants in the planning process must include representatives of the State and each local agency that resettles refugees in the State. During the planning process, the State must fully consult with representatives of counties, refugee mutual assistance associations (MAAs), local community services agencies, national voluntary agencies that resettle refugees in the State, representatives of each refugee ethnic group, and other agencies that serve refugees.

(b) Each local resettlement agency that resettles refugees in the State must inform its national resettlement agency of the proposed public/private RCA program and must obtain a letter of agreement from the national agency that indicates that the national agency supports the public/private RCA plan and will continue to place refugees in the State under the public/private RCA program.

§ 400.58 Content and submission of public/private RCA plan.

(a) States and local resettlement agencies must develop a public/private RCA plan which describes how the State and local resettlement agencies will administer and provide refugee cash assistance to eligible refugees. The plan must describe the agreed-upon public/private RCA program including:

(1) The proposed income standard to be used to determine RCA eligibility;

(2) The proposed payment levels to be used to provide cash assistance to eligible refugees;

(3) Assurance that the payment levels established are not lower than the comparable State TANF amounts;

(4) A detailed description of how benefit payments will be structured, including a description of employment incentives and/or income disregards to be used, if any, as well as methods of payment to be used, such as direct cash or vendor payments;

(5) A description of how all RCA eligible refugees residing in the State will have reasonable access to cash assistance and services;

(6) A description of the procedures to be used to ensure appropriate protections and due process for refugees, such as the correction of underpayments, notice of adverse action and the right to mediation, a pre-termination hearing, and an appeal to an independent entity;

(7) A description of proposed exemptions from participation in employability services;

(8) A description of the employment and self-sufficiency services to be provided to RCA recipients by—

(i) Local resettlement agencies under contract or grant, and/or

(ii) Other refugee services providers;

(9) Procedures for providing RCA to eligible secondary migrants who move to the State, including secondary migrants who were sponsored by a local resettlement agency that does not have a presence in the receiving State;

(10) If applicable, provisions for providing assistance to refugees resettling in the State who are sponsored by a local resettlement agency in a bordering State which does not have an office in the State of resettlement;

(11) A description of the procedures to be used to safeguard the disclosure of information regarding refugee clients;

(12) Letters of agreement from the national voluntary resettlement agencies that indicate support for the proposed public/private RCA program and indicate that refugee placements in the State will continue under the public/private RCA program;

(13) A breakdown of the proposed program and administrative costs of both the cash assistance and service components of the public/private RCA program, including any per capita caps on administrative costs only if a State proposes to use such caps; and

(14) The proposed implementation date for the State's public/private RCA program;

(b) In cases where the State, after consultation with the local resettlement agencies in the State, determines that a public/private RCA program is not feasible statewide and proposes to implement a public/private RCA program in only a portion of the State and to operate a publicly-administered RCA program in the balance of the State, the State's RCA plan must include the information required in § 400.65(b).

(c) The plan must be signed by the Governor or his or her designee.

(d) The Director of ORR will follow the procedures in § 400.8 for the approval of public/private RCA plans. An approved public/private RCA plan will be incorporated into the refugee program State Plan.

(e) Any amendments to the public/private RCA plan must be developed in consultation with the local resettlement agencies and must be submitted to ORR in accordance with § 400.8. The Director of ORR will follow the procedures in § 400.8 for approval of amendments to public/private RCA plans.

§ 400.59 Eligibility for the public/private RCA program.

(a) Eligibility for refugee cash assistance under the public/private program is limited to those who meet the income eligibility standard established by the State after consultation with local resettlement agencies in the State.

(b) Any resources remaining in the applicant's country of origin may not be considered in determining income eligibility.

(c) A sponsor's income and resources may not be considered to be accessible to a refugee solely because the person is serving as a sponsor.

(d) Any cash grant received by a refugee under the Department of State or Department of Justice Reception and Placement programs may not be considered in determining income eligibility.

§ 400.60 Payment levels.

(a) Under the public/private RCA program, States and the local resettlement agencies contracted or awarded grants to administer the RCA program must make monthly cash assistance payments to eligible refugees that do not exceed the following payment ceilings, according to the number of persons in the family unit, except as noted in paragraphs (b) and (c) of this section. For family units greater than 4 persons, the payment ceiling may be increased by $70 for each additional person.

Size of family unit	Monthly payment ceiling
1 person	$335
2 persons	450
3 persons	570
4 persons	685

(b) States and local resettlement agencies may not make payments to refugees that are lower than the State's TANF payment for the same sized family unit. In States that have TANF payment levels that are higher than the ceilings established in this section, States and local resettlement agencies must provide payment levels under the public/private RCA program that are comparable to the State's TANF payment levels.

(c) Income disregards and other incentives. (1) States and local resettlement agencies may design an assistance program that combines RCA payments with income disregards or other incentives such as employment bonuses, or graduated payments in order to encourage early employment and self-sufficiency, as long as the total combined payments to a refugee do not exceed the ORR monthly ceilings established in this section multiplied by the allowable number of months of RCA eligibility.

(2) States that elect to exceed monthly payment ceilings in order to provide employment incentives must budget their resources to ensure that sufficient RCA funds are available to cover a refugee's cash assistance needs in the latter months of a refugee's eligibility period, if needed.

(d) If the Director determines that the payment ceilings need to be adjusted for inflation, the Director will publish a document in the **Federal Register** announcing the new payment ceilings.

§ 400.61 Services to public/private RCA recipients.

(a) Services provided to recipients of refugee cash assistance in the public/private RCA program may be provided by the local resettlement agencies that administer the public/private RCA program or by other refugee service agencies.

(b) Allowable services under the public/private program are limited to those services described in §§ 400.154 and 400.155 and are to be funded in accordance with § 400.206.

(c) In public/private programs in which local resettlement agencies are responsible for administering both cash assistance and services, States and local resettlement agencies must coordinate on a regular basis with refugee mutual assistance associations and other ethnic representatives that represent or serve the ethnic populations that are being resettled in the U.S. to ensure that the services provided under the public/private RCA program:

(1) Are appropriate to the linguistic and cultural needs of the incoming populations; and

(2) Are coordinated with the longer-term resettlement services frequently provided by ethnic community organizations after the end of the time-limited RCA eligibility period.

(d) In public/private programs in which the agencies responsible for providing services to RCA recipients are not the same agencies that administer the cash assistance program, the State must:

(1) Establish procedures to ensure close coordination between the local resettlement agencies that provide cash assistance and the agencies that provide services to RCA recipients; and

(2) Set up a system of accountability that identifies the responsibilities of each participating agency and holds these agencies accountable for the results of the program components for which they are responsible.

§ 400.62 Treatment of eligible secondary migrants, asylees, and Cuban/Haitian entrants.

The State and local resettlement agencies must establish procedures to ensure that eligible secondary migrant refugees, asylees, and Cuban/Haitian entrants have access to public/private RCA assistance if they wish to apply. In developing these procedures, consideration must be given to ensuring coverage of eligible secondary migrants and other eligible applicants who were sponsored by a resettlement agency which does not have a presence in the State or who were not sponsored by any agency.

§ 400.63 Preparation of local resettlement agencies.

The State and the national voluntary agencies whose affiliate agencies will be responsible for implementing the public/private RCA program:

(a) Must determine the training needed to enable local resettlement agencies to achieve a smooth implementation of the RCA program; and

(b) Must provide the training in a uniform way to ensure that all local resettlement agencies in the State will implement the public/private RCA program in a consistent manner.

Publicly-Administered RCA Programs

§ 400.65 Continuation of a publicly-administered RCA program.

Sections 400.65 through 400.69 apply to publicly-administered RCA programs. If a State chooses to operate a publicly-administered RCA program:

(a) The State may operate its refugee cash assistance program consistent with its TANF program.

(b) The State must submit an amendment to its State Plan, describing the elements of its TANF program that will be used in its refugee cash assistance program.

§ 400.66 Eligibility and payment levels in a publicly-administered RCA program.

(a) In administering a publicly-administered refugee cash assistance program, the State agency must operate its refugee cash assistance program consistent with the provisions of its TANF program in regard to:

(1) The determination of initial and on-going eligibility (treatment of income and resources, budgeting methods, need standard);

(2) The determination of benefit amounts (payment levels based on size of the assistance unit, income disregards);

(3) Proration of shelter, utilities, and similar needs; and

(4) Any other State TANF rules relating to financial eligibility and payments.

(b) The State agency may not consider any resources remaining in the applicant's country of origin in determining income eligibility.

(c) The State agency may not consider a sponsor's income and resources to be accessible to a refugee solely because the person is serving as a sponsor.

(d) The State agency may not consider any cash grant received by the applicant under the Department of State or Department of Justice Reception and Placement programs.

(e) The State agency may use the date of application as the date refugee cash assistance begins in order to provide payments quickly to newly arrived refugees.

§ 400.67 Non-applicable TANF requirements.

States that choose to operate an RCA program modeled after TANF may not apply certain TANF requirements to refugee cash assistance applicants or recipients as follows: TANF work requirements may not apply to RCA applicants or recipients, and States must meet the requirements in subpart I of this part with respect to the provision of services for RCA recipients.

§ 400.68 Notification to local resettlement agency.

(a) The State must notify promptly the local resettlement agency which provided for the initial resettlement of a refugee whenever the refugee applies for refugee cash assistance under a publicly-administered RCA program.

(b) The State must contact the applicant's sponsor or the local resettlement agency concerning offers of employment and inquire whether the applicant has voluntarily quit employment or has refused to accept an offer of employment within 30 consecutive days immediately prior to the date of application, in accordance with § 400.77(a).

§ 400.69 Alternative RCA programs.

A State that determines that a public/private RCA program or a publicly-administered program modeled after its TANF program is not the best approach for the State may choose instead to establish an alternative approach under the Wilson/Fish program, authorized by section 412(e)(7) of the INA.

§ 400.70 [Amended]

22. Section 400.70 is amended by adding the words "under both the public/private RCA program and the publicly-administered RCA program" after the word "assistance" and before the word "concerning".

§ 400.71 [Amended]

23. Section 400.71 is amended by removing the definition of the term Designee.

24. Section 400.72 is amended by adding introductory text to read as follows:

§ 400.72 Arrangements for employability services.

Paragraphs (a) and (b) of this section apply equally to States that operate a public/private RCA program and to States that operate a publicly-administered RCA program. Paragraph (c) applies only to publicly-administered RCA programs.

* * * * *

§ 400.75 [Amended]

25. Section 400.75 is amended by adding in paragraph (a)(6)(i) the word "local" before the words "resettlement agency", and by adding in paragraph (b) the words "or its designee" after the words "State agency".

26.–27. Section 400.76 is revised to read as follows:

§ 400.76 Criteria for exemption from registration for employment services, participation in employability service programs, and acceptance of appropriate offers of employment.

States and local resettlement agencies operating a public/private RCA program, as well as States operating a publicly-administered RCA program, may determine what specific exemptions, if any, are appropriate for recipients of a time-limited RCA program in their State.

§ 400.77 [Amended]

28. Section 400.77(a) is amended by removing the words "§ 400.82(b)(3)(ii)" and adding in their place the words "§ 400.82(c)(2)."

§ 400.78 [Removed]

29. Section 400.78 is removed.

§ 400.79 [Amended]

30. Section 400.79 is amended as follows:

a. By removing in paragraph (a) the word "filing" and adding in its place the word "family" before the word "unit";

b. By adding in paragraph (b) the word "local" before the words "resettlement agency"; and

c. By adding the word "and" at the end of the paragraph (c)(1) and by removing the semicolon and the word "and" at the end of paragraph (c)(2) and adding in their place a period.

§ 400.80 [Removed]

31.–33. Section 400.80 and the undesignated centerhead immediately preceding it are removed.

34. Section 400.81 is amended as follows:

a. By removing the word "AFDC" and adding in its place the word "TANF" in paragraphs (a) introductory text and (a)(4);

b. By adding a sentence at the end of paragraph (b) that reads: "This training may only be made available to individuals who are employed."; and

c. By revising paragraph (c) to read as follows:

§ 400.81 Criteria for appropriate employability services and employment.

* * * * *

(c) A job offered, if determined appropriate under the requirements of this subpart, is required to be accepted by the refugee without regard to whether such job would interrupt a program of services planned or in progress unless the refugee is currently participating in a program *in progress* of on-the-job training (as described in § 400.154(c)) or vocational training (as described in § 400.154(e)) which meets the requirements of this part and which is being carried out as part of an approved employability plan.

34.–38. Section 400.82 is amended by redesignating paragraph (b)(3) as (c) and by redesignating paragraphs (b)(3)(i) and (ii) as (c)(1) and (2) respectively, and by revising paragraphs (a) and (b) to read as follows:

§ 400.82 Failure or refusal to accept employability services or employment.

(a) *Termination of assistance.* When, without good cause, an employable non-exempt recipient of refugee cash assistance under the public/private RCA program or under a publicly-administered RCA program has failed or refused to meet the requirements of § 400.75(a) or has voluntarily quit a job, the State, or the agency(s) responsible for the provision of RCA, must terminate assistance in accordance with paragraphs (b) and (c) of this section.

(b) *Notice of intended termination*—(1) In cases of proposed action to reduce, suspend, or terminate assistance, the State or the agency(s) responsible for the provision of RCA, must give timely and adequate notice, in accordance with adverse action procedures required at § 400.54.

(2) The State, or the agency(s) responsible for the provision of RCA, must provide written procedures in English and in appropriate languages, in accordance with requirements in § 400.55, for the determination of good cause, the sanctioning of refugees who do not comply with the requirements of the program, and for the filing of appeals by refugees.

(3) In addition to the requirements in § 400.54, the written notice must include—

(i) An explanation of the reason for the action and the proposed adverse consequences; and

(ii) Notice of the recipient's right to mediation and a hearing under § 400.83.

(4) A written notice in English and a written translated notice, or a verbal translation of the notice, in accordance with the requirements in § 400.55, must be sent or provided to a refugee at least 10 days before the date upon which the action is to become effective.

* * * * *

40. Section 400.83 is revised to read as follows:

§ 400.83 Mediation and fair hearings.

(a) *Mediation.* (1) *Public/private RCA program.* The State must ensure that a mediation period prior to imposition of sanctions is provided to refugees by local resettlement agencies under the public/private RCA program. Mediation shall begin as soon as possible, but no later than 10 days following the date of failure or refusal to participate, and may continue for a period not to exceed 30 days. Either the State (or local resettlement agency(s) responsible for the provision of RCA) or the recipient may terminate this period sooner when either believes that the dispute cannot be resolved by mediation.

(2) *Publicly-administered RCA programs.* Under a publicly-administered RCA program, the State must use the same procedures for mediation/conciliation as those used in its TANF program, if available.

(b) *Hearings.* The State or local resettlement agency(s) responsible for the provision of RCA must provide an applicant for, or recipient of, refugee cash assistance an opportunity for a hearing, using the same procedures and standards set forth in § 400.54, to contest a determination concerning employability, or failure or refusal to carry out job search or to accept an appropriate offer of employability services or employment, resulting in denial or termination of assistance.

§ 400.93 [Amended]

41. Section 400.93(d) is amended to add the words "or the State Children's Health Insurance Program (SCHIP)" after the word "Medicaid" each time it appears.

§ 400.94 [Amended]

42. Section 400.94 is amended:

a. By adding in paragraph (a) the words "and SCHIP" before the word "eligibility" and by removing the words "State plan" and adding in their place the words "and SCHIP State plans";

b. By adding in paragraph (c) the words "and SCHIP" after the word "Medicaid"; by removing the word "program" and adding in its place the word "programs"; and by removing the word "plan" and adding in its place the word "plans"; and

c. By adding in paragraph (d) the words "or SCHIP" after the word "Medicaid" and by deleting the word "plan" and adding in its place the word "plans".

§ 400.100 [Amended]

43–45. Section 400.100 is amended:

a. By adding in paragraph (a)(i) the words "or SCHIP" after the word "Medicaid";

b. By removing in paragraph (a)(2) the word "filing" and adding in its place the word "assistance" before the word "unit";

c. By removing paragraph (a)(4) and redesignating paragraphs (a)(5) and (a)(6) as (a)(4) and (a)(5) respectively; and

d. By adding in paragraph (d) the words "or SCHIP" after the word "Medicaid".

46–49. Section 400.101 is amended by revising paragraphs (a) and (b) to read as follows:

§ 400.101 Financial eligibility standards.

* * * * *

(a) In States with medically needy programs under 42 CFR part 435, subpart D:

(1) The State's medically needy financial eligibility standards established under 42 CFR part 435, subpart I, and as reflected in the State's approved title XIX State Medicaid plan; or

(2) A financial eligibility standard established at up to 200% of the national poverty level; and

(b) In States without a medically needy program:

(1) The State's AFDC payment standards and methodologies in effect as of July 16, 1996, including any modifications elected by the State under section 1931(b)(2) of the Social Security Act; or

(2) A financial eligibility standard established at up to 200% of the national poverty level.

50. Section 400.102 is revised to read as follows:

§ 400.102 Consideration of income and resources.

(a) Except as specified in paragraphs (b), (c), and (d) of this section, in considering financial eligibility of applicants for refugee medical assistance, the State agency must—

(1) In States with medically needy programs, use the standards governing determination of income eligibility in 42 CFR 435.831, and as reflected in the State's approved title XIX State Medicaid plan.

(2) In States without medically needy programs, use the standards and methodologies governing consideration of income and resources of AFDC applicants in effect as of July 16, 1996, including any modifications elected by the State under section 1931(b)(2) of the Social Security Act.

(b) The State may not consider in-kind services and shelter provided to an applicant by a sponsor or local resettlement agency in determining eligibility for and receipt of refugee medical assistance.

(c) The State may not consider any cash assistance payments provided to an applicant in determining eligibility for and receipt of refugee medical assistance.

(d) The State must base eligibility for refugee medical assistance on the applicant's income and resources on the date of application. The State agency may not use the practice of averaging income prospectively over the application processing period in determining income eligibility for refugee medical assistance.

51. Section 400.103 is revised to read as follows:

§ 400.103 Coverage of refugees who spend down to State financial eligibility standards.

States must allow applicants for RMA who do not meet the financial eligibility standards elected in § 400.101 to spend down to such standard using an appropriate method for deducting incurred medical expenses.

52. Section 400.104 is revised to read as follows:

§ 400.104 Continued coverage of recipients who receive increased earnings from employment.

(a) If a refugee who is receiving refugee medical assistance receives earnings from employment, the earnings shall not affect the refugee's continued medical assistance eligibility.

(b) If a refugee, who is receiving Medicaid and has been residing in the U.S. less than the time-eligibility period for refugee medical assistance, becomes ineligible for Medicaid because of earnings from employment, the refugee must be transferred to refugee medical assistance without an RMA eligibility determination.

(c) Under paragraphs (a) and (b) of this section, a refugee shall continue to receive refugee medical assistance until he/she reaches the end of his or her time-eligibility period for refugee medical assistance, in accordance with § 400.100(b).

(d) In cases where a refugee is covered by employer-provided health insurance, any payment of RMA for that individual must be reduced by the amount of the third party payment.

§ 400.107 [Amended]

53. Section 400.107(b) is amended by removing the word "assessment" and adding in its place the word "screening".

§ 400.152 [Amended]

54. Section 400.152(b) is amended by adding the words "citizenship and naturalization preparation services and" after the words "except for" and by placing a period after the words "60 months" and removing the rest of the sentence.

55. Section 400.154 is amended by removing in paragraph (j) the word "AFDC" and adding in its place the word "TANF" and by adding a new paragraph (k) to read as follows:

§ 400.154 Employability services.

* * * * *

(k) Assistance in obtaining Employment Authorization Documents (EADs).

§ 400.155 [Amended]

56–57. Section 400.155 is amended by adding a new paragraph (i) that reads as follows:

§ 400.155 Other services.

* * * * *

(i) Citizenship and naturalization preparation services, including English language training and civics instruction to prepare refugees for citizenship, application assistance for adjustment to legal permanent resident status and citizenship status, assistance to disabled refugees in obtaining disability waivers from English and civics requirements for naturalization, and the provision of interpreter services for the citizenship interview.

§ 400.203 [Amended]

58. Section 400.203(a)(1) is amended by removing the word "AFDC" and adding in its place the word "TANF".

§ 400.207 [Amended]

59. Section 400.207 is amended by adding a sentence after the word "Families" that reads: "Such costs may include reasonable and necessary administrative costs incurred by local resettlement agencies in providing assistance and services under a public/private RCA program." and by removing the word "Such" in the last sentence and adding in its place the word "Administrative".

§ 400.208 [Amended]

60. Section 400.208 is amended by removing the word "filing" whenever it appears and adding in its place the word "family" before the word "unit".

§ 400.209 [Amended]

61. Section 400.209 is amended by removing the word "filing" wherever it appears and by adding in its place the word "family" before the word "unit" and by removing the word "AFDC" in paragraph (a) and adding in its place the word "TANF".

62. Section 400.210 is amended by revising paragraph (b)(2) to read as follows:

§ 400.210 Time limits for obligating and expending funds and for filing State claims.

* * * * *

(b) * * *

(2) A State must expend its social service and targeted assistance grants no later than two years after the end of the FFY in which the Department awards the grant. A State's final financial report on expenditures of social services and targeted assistance grants must be received no later than 90 days after the end of the two-year expenditure period. At that time, if a State's final financial expenditure report has not been received, the Department will deobligate any unexpended funds, including any unliquidated obligations, based on a State's last submitted financial report.

§ 400.211 [Amended]

63. Section 400.211(a) is amended:

a. By removing in paragraph (a) introductory text the word "necessary" and adding in its place the words "a reduction in the eligibility period is indicated" after the word "if";

b. By removing in paragraph (a)(2) the word "member" and adding in its place the word "number" after the word "annual";

c. By removing in paragraph (a)(3) the word "AFDC" wherever it appears; and

d. By removing in paragraph (b) the word "impleting" and adding in its place the word "implementing".

§ 400.301 [Amended]

64.–67. Section 400.301 is amended:

a. By removing in paragraph (b) the words "only under extraordinary circumstances and" after the word "granted";

b. By adding in paragraph (c) the following sentence after the words "subpart L": "Replacement designees must also adhere to the Subpart L regulations regarding formula allocation grants for targeted assistance, if the State authorized the replacement designee appointed by the Director to act as its agent in applying for and receiving targeted assistance funds"; and

c. By removing in paragraph (c) the words "400.55(b)(2), 400.56(a)(1), 400.56(a)(2), 400.56(b)(2)(i)" and adding in their place the words "400.51 (b)(2)(i) and 400.58(c)".

PART 401—CUBAN/HAITIAN ENTRANT PROGRAM

1. The authority citation for Part 401 continues to read as follows:

Authority: Section 501(a), Pub. L. 96–422, 94 Stat. 1810 (8 U.S.C. 1522 note); Executive Order 12341 (January 21, 1982).

§ 401.12 [Amended]

2. Section 401.12(a) is amended by removing the word "§ 400.62" and adding in its place the words "subparts E and G of part 400 of this title".

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Part III

Department of Housing and Urban Development

24 CFR Parts 401 and 402
Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market); Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 401 and 402

[Docket No. FR–4298–F–07]

RIN 2502–AH09

Multifamily Housing Mortgage and Housing Assistance Restructuring Program (Mark-to-Market)

AGENCY: Office of Multifamily Housing Assistance Restructuring, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements the Mark-to-Market Program through which section 8 rents for multifamily projects with HUD-insured or HUD-held mortgages will be reduced. Currently, the Program is operating under the authority of an interim rule that took effect on October 11, 1998. The purpose of the Program is to preserve low-income rental housing affordability while reducing the long-term costs of Federal rental assistance, including project-based assistance, and minimizing the adverse effect on the FHA insurance funds. A separate final rule will be published for those sections of the interim rule that govern renewal of section 8 project-based assistance contracts for projects outside of the Mark-to-Market Program.

EFFECTIVE DATE: April 21, 2000.

FOR FURTHER INFORMATION CONTACT: Dan Sullivan, Public Policy Analyst, Office of Multifamily Assistance Restructuring, Department of Housing and Urban Development, 1280 Maryland Ave., Suite 4000, Washington DC 20024, 202–708–0001. (This is not a toll-free number.) For hearing-and speech-impaired persons, this number may be accessed via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments Received on Part 401
III. Changes Made to Part 401 in Final Rule
IV. Findings and Certifications

I. Background

A. Mark-to-Market

HUD issued an interim rule on September 11, 1998 (63 FR 48926) to implement subtitles A and D of MAHRA (the Multifamily Assisted Housing Reform and Affordability Act of 1997, title V of Pub. L. 105–65 (approved October 27, 1997), 42 U.S.C. 1437f note.

MAHRA authorized a new Mark-to-Market Program designed to preserve low-income rental housing affordability while reducing the long-term costs of Federal rental assistance, including project-based assistance from HUD, for certain multifamily rental projects. The projects involved are projects with: (1) HUD-insured or HUD-held mortgages; and (2) contracts for project-based rental assistance from HUD, primarily through the section 8 program, for which the average rents for assisted units exceed the rent of comparable properties. The program objectives will be accomplished by (1) reducing project rents to no more than comparable market rents (with certain exceptions discussed below), (2) restructuring the HUD-insured or HUD-held financing so that the monthly payments on the first mortgage can be paid from the reduced rental levels, (3) performing any needed rehabilitation of the project, and (4) ensuring competent management of the project. The restructured project will be subject to long-term use and affordability restrictions.

MAHRA is intended to provide a long-term solution to the rapidly growing cost to the Federal Government of assisting affordable rental housing. Over 900,000 housing units in approximately 10,000 multifamily projects have been financed with FHA-insured mortgages and supported by project-based section 8 housing assistance payment (HAP) contracts. In many cases, these HAP contracts currently provide for rents for assisted units that substantially exceed the rents for comparable unassisted units in the local market. Starting in Fiscal Year 1996, those contracts began to expire, and Congress and the Administration began providing 1-year extensions of expiring contracts. While annual HAP contract extensions for these projects maintained an important affordable housing resource, they came at great expense. Every year more contracts expired, compounding the cost of annual extensions.

To begin to address this growing problem, Congress authorized demonstration programs beginning with section 210 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1996 (see HUD notices regarding the demonstrations published at 61 FR 34664 (July 2, 1996), 61 FR 28757 (July 25, 1996), 62 FR 3566, (January 23, 1997) and 63 FR 36130, (July 1, 1998)). MAHRA builds on the demonstration programs with similar objectives and many similar provisions, but also some significant differences.

Organizationally, MAHRA established within HUD a new Office of Multifamily Housing Assistance Restructuring (OMHAR) to develop and actively manage, administer, and oversee the Mark-to-Market Program through a decentralized structure of Participating Administrative Entities (PAEs). OMHAR has established the framework of the Program through an interim rule, this final rule, and an Operating Procedures Guide, and is managing the program by selecting and monitoring Participating Administrative Entities (PAEs). In recognition of limited HUD resources, MAHRA gives PAEs the role of negotiating with the owners of individual projects and developing the Mortgage Restructuring and Rental Sufficiency Plans (Restructuring Plans) that will establish the future responsibilities of the owner, the PAE and HUD for projects that are marked-to-market. MAHRA also contains substantive differences from the previous demonstrations. For example, it includes projects with HUD-held mortgages in addition to HUD-insured mortgages and requires a second mortgage with deferred payment from net cash flow after accounting for all project expenses.

The preamble to the interim rule outlined implementation steps taken through September 11, 1998. Since then, the Senate confirmed President Clinton's appointment of Ira G. Peppercorn as the Director of OMHAR. OMHAR is currently hiring staff, and has established its Headquarters at 1280 Maryland Avenue SW, Suite 4000, Washington D.C. 20024. OMHAR Regional Offices have been established in New York, Chicago, and San Francisco. A Regional Office co-located in OMHAR Headquarters has full responsibility for the Southeast.

Before publication of this final rule, HUD was required to conduct at least three public forums at which organizations representing various groups may express views concerning HUD's proposed disposition of recommendations from those groups (specifically, the recommendations for certain provisions of MAHRA that were implemented in §§ 401.200, 401.201, and 401.420 of the interim rule.) The Department conducted these forums in New York, Chicago, and San Francisco on October 1, 1998. Forum participants representing a variety of interests made presentations that expanded and clarified written comments on both the matters covered in the section identified above, and other topics related to the Department's implementation of the Mark-to-Market Program. The vast majority of the issues discussed at the forums have been raised in one or more written public comments and will be addressed in the context of the written submissions. Thus, the issues raised at the public forums will not be independently addressed in the preamble to this final rule. Written public comments in response to the Interim Rule were due October 26, 1998. In addition to the public forums, OMHAR convened a focus group on November 18, 1998, in Washington D.C. This meeting was helpful to OMHAR in hearing discussion and debate between commenters concerning several controversial policy issues contained in the regulations.

HUD issued a Request for Qualifications (RFQ) for eligible entities interested in being Participating Administrative Entities, 63 FR 44102, August 17, 1998. A bidders conference was held August 27, 1998, and submissions were due September 16, 1998. OMHAR identified 52 Public Entity applicants and 11 Non-Public applicants as meeting the PAE technical qualifications. All Public Entity applicants were informed by January 19, 1999, and all Non-Public applicants were informed by July 2, 1999. OMHAR provided an initial technical assistance briefing for potential PAEs on January 12, and 13, 1999. OMHAR has conducted an orientation session for each PAE after its Portfolio Restructuring Agreement (PRA) was signed. Each PAE also participated in one of five 2-day technical assistance sessions addressing underwriting issues. OMHAR will conduct additional training for PAEs in the upcoming months. OMHAR is continuing to negotiate PRAs with the public PAEs that have not yet executed a PRA. OMHAR expects each asset submitted by an owner for restructuring to be allocated to a PAE by the end of 1999.

MAHRA authorizes $10 million per year of technical assistance funding to tenant and non-profit groups, and public entities. These funds will be used to build tenant capacity to participate meaningfully in the Mark-to-Market program by organizing and training (OTAG grants), and to provide technical assistance to tenants of specific Mark to Market properties (ITAG grants). The initial funding for FY 1999 was awarded through the Department's SuperNOFA process, and grant agreements were executed in January 1999. OMHAR conducted training for the ITAG and OTAG grantees on November 30, December 1, and 2, 1998.

A general brochure explaining the basic program features is being prepared and will be distributed to tenant groups and other interested stakeholders. Once published, copies may be obtained by calling the Multifamily Housing Clearinghouse at 1–800–685–8470, or downloaded from OMHAR's Webpage at http://www.hud.gov/omhar. OMHAR and the Office of Housing conducted a distance learning seesion on September 21, 1999. In addition to the training already conducted, OMHAR will be conducting distance learning and on-site training for PAEs, HUD Field Offices, and other interested parties in the upcoming months.

The Mark-to-Market Program Operating Procedures Guide has been completed and made available to the public. OMHAR will make additional information on the Mark-to-Market Program available on its Webpage. Among other information, OMHAR has provided a list of addresses of OMHAR Regional Offices with jurisdiction over the Program, a list of PAEs that have been selected, the list of assets assigned to PAEs, and a list of Intermediary Technical Assistance Grant (ITAG) and Outreach and Training Grant (OTAG) providers and contact persons for technical assistance grants related to Mark-to-Market Program restructuring.

B. Renewing Section 8 Project-Based Assistance Without Mark-to-Market Restructuring

Section 524 of MAHRA and part 402 of the interim rule authorize renewal of expiring section 8 project-based assistance contracts for projects without Restructuring Plans under the Mark-to-Market Program, including projects that are not eligible for Plans and eligible projects for which the owners request contract renewals without Plans. At this final rule stage, we are separating parts 401 and 402. Minor changes are made in this final rule to §§ 402.1, 402.4, and 402.6. The rest of interim part 402 continues in effect until other changes to part 402 are published later as a separate final rule.

C. Changes in Legislation

After MAHRA became law, Congress enacted the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998) and the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 2000 (Pub. L. 106–74, approved October 20, 1999). The first law amended the underlying statutory authorization for some provisions in the interim rule. HUD issued two corrections to the interim rule, on October 15, 1998 (63 FR 55333) and December 28, 1998 (63 FR 71372). The second correction included one change to part 402 to incorporate a provision of Pub. L. 105–276. Other changes needed to reflect Pub. L. 105–276 are included in this final rule and discussed in Section III of this preamble.

Pub. L. 106–74 also changed the underlying statutory authorization for some provisions in the interim rule. The most extensive changes affect provisions in part 402 and will be dealt with in separate rulemaking. Statutory changes related to part 401 are included in this final rule, as discussed in part III of this preamble, to the extent possible in a final rule.

In deciding what statutory changes can and should be reflected in this final rule, HUD considered its general rulemaking procedures in 24 CFR part 10, the provisions of section 502 and section 503 of Pub. L. 106–74, and the provisions of section 522 of MAHRA. Section 503 makes the new changes to section 524 of MAHRA effective immediately upon enactment (October 20, 1999) and states that the authority to issue regulations (*e.g.*, in section 502) may not be construed to affect the effectiveness or applicability of provisions such as section 524. The newly-effective section 524(g) of MAHRA applies the amended section 524 to all contract expirations or terminations on October 1, 1999 or afterwards. Thus, HUD must promptly take appropriate action that recognizes that some of the matters covered in interim part 402 have changed.

Section 502, however, requires that any implementing regulations that the Secretary determines "may or will affect tenants of federally assisted housing" may be issued only after notice and comment rulemaking. Ordinarily, HUD has the discretion under 24 CFR part 10 to issue substantive changes to regulations for effect, without notice and comment rulemaking (*i.e.*, through an interim or final rule), if HUD determines that a public comment period before effectiveness is unnecessary, impracticable, or contrary to the public interest. Section 502 limits this discretion.

Finally, section 522 of MAHRA (enacted in 1997), which directed HUD to implement section 524 of MAHRA by interim and then final rule, was not expressly amended. HUD is already overdue in issuing the final rule required by that section. But HUD cannot now proceed to replace the interim rule with a final rule without recognizing the intervening changes to section 524 that are now in effect but are inconsistent with various provisions of the interim rule.

There is no clear guidance in the statutes on how to reconcile the later instructions on rulemaking procedure in section 502—which apply not only to

MAHRA changes, but to many unrelated programs such as the section 202 and section 811 assisted housing programs—with earlier instructions on rulemaking procedure that apply to specific provisions of MAHRA. In this final rule, HUD has reconciled those sections by applying the following five principles:

1. HUD should continue to honor Congressional intent for rapid final implementation of the Mark-to-Market Program, in accordance with section 522 of MAHRA, by publishing part 401 in final form as soon as feasible.

2. Provisions in the interim part 401 that conflict with later amendments to MAHRA should not be published in final form without making conforming changes, to avoid confusion and facial conflict with current statutory provisions.

3. Conforming changes that simply reproduce or paraphrase new statutory language do not "affect" tenants within the meaning of section 502, since any effect derives from the statute rather HUD's rulemaking. Thus, section 502 does not require a new proposed rule for such changes.

4. Conforming changes that simply reproduce or paraphrase new statutory language also do not have substantive effect on tenants, owners or others that would require prior notice and comment rulemaking under 24 CFR part 10. Such procedure is properly regarded as both unnecessary and contrary to the public interest.

5. Any changes to the interim rule that are made in response to new statutory language but that make substantive additions to the statutory provisions should be made only through a separate notice and comment rulemaking procedure commencing with a proposed rule—in accord with 24 CFR part 10 and (to the extent the substantive additions may affect tenants) section 502. Thus, no such changes should be included in this final rule.

D. Other Background Information

This final part 401 is based on HUD's consideration of: (1) Public comments received on the September 11, 1998, interim rule; (2) discussions at the public forums; (3) the initial development of working relationships with PAEs; and (4) certain provisions in Pub. L. 105–276 and Pub. L. 106–74 as mentioned above. HUD has also refined certain policies due to further consideration when preparing and revising the Mark-to-Market Program Operating Procedures Guide (called the "Operating Procedures Guide" in this preamble.)

The interim rule was signed by Secretary Andrew Cuomo in the absence of an OMHAR Director. OMHAR has now begun operations, and OMHAR Director Ira Peppercorn has statutory authority to sign this final rule because it is limited to part 401 and projects eligible for the Mark-to-Market program. As required by section 573(b) of MAHRA, this rule is issued with the approval of Secretary Cuomo.

II. Comments Received on Part 401

We received 61 comments that are included in the docket file for the interim rule. We disregarded five comments as not pertinent to the interim rule. The discussion in this section of this preamble summarizes the other comments and HUD's responses to them, except that a comment that pertained solely to part 402 of the interim rule, and HUD's response, will appear when part 402 is published as a separate final rule. In this section, we have grouped the sections of interim part 401 into major areas of related subject matter, as shown in the outline set forth below. Discussion is generally in the order in which the areas are first covered in interim part 401. We have not listed the sections that received no public comments.

A. §§ 401.2, 401.99 and 401.100, Generol provisions and eligibility.

1. Definitions (§ 401.2).
   a. Eligible project.
   b. Eligible project costs.
   c. Priority purchaser.
   d. Tenant organization.
2. Actions needed to request a renewal of project-based assistance (§ 401.99).
3. Projects eligible for a Restructuring Plan (§ 401.100).
   a. 236/202 projects.
   b. Preservation projects.

B. §§ 401.101 and 401.403, Rejection of project or owner.

1. Designation as "bad" project.
2. Designation as "bad" owner.
3. Treatment of civil rights violations.
4. Project transfers to "good" owners.

C. §§ 401.200, 401.200 and 401.304, PAE selection and compensation.

1. Civil rights violations.
2. PAE compensation.
   a. Incentives.
   b. Timing of HUD payments.
   c. Same fee schedule for public and private PAEs.
   d. Environmental review responsibilities.

D. §§ 401.303, 401.309, 401.310, and 401.314, Other provisions of PRA.

1. Indemnification of non-public PAEs (§ 401.303).
2. PRA term and termination provisions (§ 401.309).
   a. Term should be longer than 1 year.
   b. PRA terminations.
3. Conflicts of interest (§ 401.310).
   a. General.
   b. Contested matters.
4. Environmental review responsibilities (§ 401.314).

E. § 401.402, Cooperation with owner and qualified mortgagee in Restructuring Plan development.

F. §§ 401.405–.406, Restructuring Commitment.

G. § 401.408, Affordability and use restrictions required.

1. Use restrictions and partially-assisted projects.
2. Use Agreements should last "exactly" 30 years—not "at least" 30 years.
3. If no section 8 funds are available, owners should be required to charge restructured rents or below-market LIHTC rents.
4. There should be no below-market rents.
5. Enforceability of Use Agreements and notice.
6. Pre-existing Use Agreements should be preserved.
7. Use Agreement should be subordinate to conventional loan.
8. Renewal contract terms must remain materially the same.

H. §§ 401.410–.412, Determining and adjusting rents under restructuring with project-based assistance.

1. Difficulties in determining comparable market rents.
2. "Blended" rents considering unassisted but restricted units.
3. Objections to "NOI project" and "positive social asset" requirements for exception rents.
4. Exception rents should be alternative to FMR.
5. Limitation of exception rents to 120 percent of FMR.
6. Need to define "community".
7. Other factors to be included in expenses.
8. Determination of OCAF.
   a. General.
   b. Excluding debt service.
9. Negative OCAF.
10. Appeals of OCAF.

I. §§ 401.420–.421, Project-based assistance or tenant-based assistance.

1. What vacancies should be considered in determining the presence of a tight market?
2. Effect of sale to cooperative.
3. Limit conversion approvals to public body PAEs.
4. Requirement for semi-annual reporting in § 401.421(d).
5. How should the final rule handle/present factors to be considered in the Rental Assistance Assessment Plan?
6. Must all units be assisted under a Restructuring Plan?

J. § 401.450–.453, Physical condition of project.

1. Use of FNMA PNA Guidelines should not be eliminated.
2. The final rule should make clear that third party expenses for physical condition evaluation are eligible expenses:
3. Lead hazards.

4. Reserve account deposit.
5. Concern about cost-effectiveness determination in § 401.451(c).
6. PAE certification.
7. Property standards for rehabilitation.
8. HQS should not apply to non-assisted market rent units.

K. §§ 401.460–.471, Mortgage restructuring and payment of claims.

1. How should net operating income available to pay the first mortgage be determined?
   a. Expenses.
   b. Sizing the first mortgage.
2. First mortgage terms and conditions.
3. Refinancing.
4. Second mortgage terms and conditions.
   a. Interest rate.
   b. Other terms and conditions.
5. Forgiveness/modification of second mortgage.
6. Return to owner.
7. Third mortgage.
8. Claims.

L. §§ 401.472–.473, Funding of rehabilitation.

1. Opposition to 20 percent owner contribution requirement.
2. Opposition to limit on funding from governmental resources.
3. Other comments regarding 20 percent requirement.
4. Comments regarding use of project accounts for rehabilitation.
5. Section 236(s) rehabilitation grants.
6. Funding of rehabilitation through claim amount.

M. § 401.480, Sale or transfer of project.

1. HUD should be responsible for sale of projects.
2. Preference for priority purchasers.
3. Priority purchasers and competitive sales.

N. §§ 401.481-.484, Other requirements of Restructuring Plan.

1. Subsidy layering limitations on HUD funds (§ 401.481).
2. Leasing units to voucher holders (§ 401.483).
3. Property management standards (§ 401.484).
   a. General comments on changes needed.
   b. Suggestions for language changes.
4. Management fees.

O. §§ 401.500–.501, Participation by tenants, community and local government.

1. General.
2. Involve others in Rental Assistance Assessment Plan.
3. Intermediaries administering technical assistance grants should receive notice.
4. Notices in other languages.
5. Notice to all tenants and posted in project.
6. Right to organize.
7. Tenant role in PAE selection.
8. Rent levels.
9. Use Agreement changes.
10. Monitoring and compliance activities.
11. Transfer of properties and tenant participation.
12. Tenant involvement for projects not restructured.
13. Access to information.

P. §§ 401.550–.554, Implementation of the Restructuring Plan after closing.

1. Inspections.
2. PAE matters.
3. Role of lender.
4. Servicing of second mortgage.
5. Section 8 contract administration.
6. Enforcement.

Q. § 401.595. Contract provisions.

R. § 401.601 of interim rule and § 402.4(a)(2) of final rule, Consideration of an owner's request to renew an expiring contract without a Restructuring Plan.

1. Determination/verification of rent comparability.
2. Determining adequacy of DSC at market comparable rents.

S. § 401.602, Tenant protection if an expiring contract is not renewed.

1. Is tenant-based assistance mandatory?
2. Notice issues.
   a. 6-month notice of non-renewal.
   b. When is notice required?
3. Rent levels for tenant-based assistance.
4. Timing of tenant-based assistance.

T. § 401.606, Tenant-based ossistance provisions for displaced tenants.

U. §§ 401.645 and 401.651, Owner dispute of rejection and administrative appeals.

1. Tenant appeals.
2. PAE appeals of rejections under § 401.405.
3. Time for owner to dispute approved plan.
4. Owner appeals.

V. § 401.600, Will a contract be extended if it would expire while an owner's request for a Restructuring Plan is pending?

W. Miscellaneous comments.

A. Sections 401.2, 401.99 and 401.100, General Provisions and Eligibility

Summary of Sections

Section 401.2 identifies the terms that are defined in MAHRA and used in the rule, and defines additional terms that are used in the rule. Section 401.99 explains three procedures to be followed by owners who request renewals of section 8 project-based assistance contracts. First, an owner of an eligible project who requests a Restructuring Plan must, at least 3 months before the project-based assistance contract expires, certify to HUD that, to the best of the owner's knowledge, project rents exceed comparable market rents and neither the owner nor any affiliate is suspended or debarred (or that the owner proposes a voluntary sale of the project). Second, an owner of an eligible project who does not request a Restructuring Plan must submit to HUD the certification described above in the same time frame, with the additional items that will permit the PAE to consider the request in accordance with § 401.601 of the interim rule (§ 402.4(a)(2) in this final rule) to determine whether the contract should be renewed under § 402.4. Finally, because part 401 is limited to projects eligible for a Restructuring Plan, this section of the interim rule refers the owner to § 402.5 if the project is not eligible for restructuring but the owner wants project-based assistance renewed.

Section 401.100 of the interim rule (merged with the definition of "eligible project" in the final rule) incorporates the statutory requirements in section 512(2) of MAHRA for an eligible project by providing that project rent exceeds the rent of comparable properties, as required by section 512(2)(A), if the gross potential rent revenue (*i.e.*, at 100 percent occupancy) for the project-based assisted units in the project at current gross rents exceeds the gross potential rent for those units (at 100 percent occupancy) using comparable market rents.

Summary of Comments

1. Definitions (§ 401.2).

a. Eligible project. Two commenters felt that the definition of "eligible project" in the interim rule would require restructuring for projects whose aggregate rents might not exceed comparable market rents, contrary to Congressional intent, because rent levels for non-assisted units would not be considered in preservation projects or similar projects with unassisted below-market units and above-market section 8 units.

HUD response: Preservation projects are discussed in the response under Section II.A.3.b. They are no longer eligible for the Mark-to-Market Program.

b. Eligible project costs. One commenter felt that eligible project costs should include the costs to owners of hiring advisors such as accountants, appraisers, attorneys, real estate specialists, or tax advisors. The commenter argued that many owners are confused and uninformed about the details and impact of MAHRA and that they have limited funds to seek advice.

HUD response: Such transaction costs can be included in the mortgage restructuring to the extent reasonable and necessary and supportable within a refinancing first mortgage (though not in a modification of the existing first mortgage). If the refinancing mortgage is insured by FHA, normal FHA criteria would be applied. Generally, OMHAR will recognize 50 percent of such costs to the extent they are customary, reasonably necessary, and to the extent they are otherwise acceptable under the terms of the new restructured first mortgage. The owner's share of such costs could only be recognized as

project operating expenses to the extent there was sufficient cash flow in the fiscal year during which the restructuring took place and then only with written approval from the HUD Multifamily Hub or Program Center.

c. Priority purchaser. Three commenters were concerned about the definition of "priority purchaser". One felt that the definition should include non-tenant based nonprofit organizations and non-community based nonprofit organizations because many of these groups possessed considerable experience with low-income housing and would be important resources in preserving low-income housing. Two commenters suggested that the final rule clarify that a tenant organization or tenant-endorsed community-based nonprofit or public agency can, as a controlling general partner in a limited partnership formed to raise tax credit equity, retain its priority purchaser status through the partnership, as well as the related ability to qualify for second mortgage forgiveness.

HUD response: HUD agrees that a limited partnership with a sole general partner that is a tenant organization or tenant-endorsed community-based non-profit organization or public body may be viewed as a priority purchaser for purposes of § 401.461(b)(5) (possible forgiveness or modification of HUD-held second mortgage upon sale of project to priority purchaser) and § 401.480 (preference for sale to priority purchaser when current owner found ineligible for restructuring). HUD does not agree with the suggestion that priority purchasers should include national non-profit organizations without a local community base. There are national groups that can bring experience, but they should either partner with a local group, or else need to compete with other potential purchasers after the period reserved for marketing exclusively to priority purchasers, which will initially be set at 4 months. The applicable statutory provisions (sections 516(e) and 517(a)(5) of MAHRA) clearly show a Congressional desire for community-basing in this context.

d. Tenant organization. One commenter suggested that the definition of "tenant organization" in the final rule should clarify the details of the election of tenant organization officers to avoid future disputes as to whether an organization is a tenant organization entitled to recognition.

HUD response: This level of detail is inappropriate and unnecessary for a rule. HUD will address organizational details as needed in the Operating Procedures Guide or subsequent guidance.

2. Actions needed to request a renewal of project-based assistance (§ 401.99).

One commenter pointed out that ordinarily a project has 60 days to complete the annual financial statement and that requiring the statement during this period may cause difficulties for owners. The commenter suggested that, in such instances, the preceding year's financial statement should be acceptable. The same commenter suggested that the reference in § 401.99(c) to § 402.5 should be expanded to include § 402.4 because a project can have its contract extended under § 402.4 if the owner desires. One commenter said that notice of intent to restructure should be given to mortgagees.

HUD response: The most recently required financial statement must be provided. If the renewal request and expiration is within the 60 day period following the end of the project's fiscal year, the previous year's statement will be accepted. We have added the suggested reference to § 402.5. A project owner must give notice to mortgagees of intent to restructure. This is stated in the interim rule's preamble discussion of § 401.99, and is clearly required in the Operating Procedures Guide. We consider such notice part of the owner cooperation required by § 401.402.

3. Projects eligible for a Restructuring Plan (§ 401.100).

a. 236/202 projects. One commenter requested clarification of whether the class of "236/202" projects are eligible under MAHRA. (These projects were originally processed under the section 202 program but converted to the section 236 program after its creation in 1968.)

HUD response: Section 236/202 projects are eligible in the same manner as other section 236 projects.

b. Preservation projects. One commenter argued that MAHRA should be interpreted to exclude from eligibility preservation projects with plans of action (under ELIHPA or LIHPRHA). The commenter pointed out difficulties in reconciling MAHRA's requirements for restructuring with promises made to owners in ELIHPA/LIHPRHA plans of action, such as the short term use agreements and the unrestricted return to owner approved by HUD under ELIHPA. (Other comments related to preservation projects are mentioned in the summaries in Sections II.A.1.a., II.H.2., II.H.7., and II.K.1 of this preamble, and the response below applies to those comments as well).

HUD response: Section 531(b) of Pub. L. 106–74 amended MAHRA to make preservation projects with plans of action ineligible for the Mark-to-Market program. This statutory change automatically excludes these projects from the "eligible projects" definition in the interim rule. No change in rule language is needed to make the final rule comply with the statutory change.

B. Sections 401.101 and 401.403, Rejection of Owner or Project

Summary of Sections

These sections implement section 516(a) of MAHRA, which permits HUD to elect to not consider a restructuring plan or a request for contract renewal on the basis of certain actions or omissions by an owner or purchaser of the project or an affiliate, or if the PAE determines that the poor condition of the project cannot be remedied in a cost-effective manner. Under § 401.101, HUD and PAEs will not consider the request of an owner of an eligible project for a Restructuring Plan if the owner or an affiliate is debarred or suspended by HUD unless a sale or transfer of the property is proposed in accordance with § 401.480. The final rule makes a change to § 401.101 regarding affiliates, consistent with the § 401.403 change discussed below.

Under § 401.403 of the interim rule, the PAE is responsible for a further more complete and ongoing assessment of owner and project eligibility while a Restructuring Plan is developed. The PAE must inform OMHAR if: (1) The owner or an affiliate is debarred or suspended; (2) the owner or an affiliate has engaged in material adverse financial or managerial actions or omissions as described in section 516(a) of MAHRA, which may include actions that have resulted in imposition of a Limited Denial of Participation (LDP) or a proposed debarment under 24 CFR part 25, or outstanding violations of civil rights laws; or (3) the PAE determines that the project does not meet the physical condition standards in § 401.453 and cannot be rehabilitated to meet such standards in a cost-effective manner. Under the interim rule, HUD may reject an owner's request for a Restructuring Plan for any of these reasons. In the final rule, debarment or suspension of an owner are automatic grounds for rejection under § 401.403 unless an acceptable sale is proposed. We revised the rule to give HUD discretion whether to accept or reject an owner request for restructuring if an affiliate of the owner is suspended or debarred. When rejection is discretionary, HUD may advise the PAE to continue processing (under part 401) or decide to continue processing itself (under part 402).

Summary of Comments

1. Designation as "bad" project.

One commenter suggested that the rejection of a "bad project" because of poor condition that cannot be remedied in cost-effective manner needs to be guided by an objective standard of cost-effectiveness (the commenter suggested a standard).

HUD response: HUD does not agree with this commenter that an objective elaboration on the cost-effectiveness requirement is feasible for inclusion in the final rule. The specific facts and circumstances must be considered by the PAE and OMHAR. The appeal process provided in subpart F is available if there is a dispute.

2. Designation as "bad" owner.

HUD should not reject an owner for a suspension/debarment if the owner's appeal is not yet adjudicated, argued two commenters. One of these commenters also objected to basing a "bad owner" rejection on a limited denial of participation (LDP) or proposed debarment alone because such actions might not be "material" within the meaning of section 516(a) of MAHRA). The commenter suggested that a PAE should examine the facts behind a LDP/proposed debarment and reach its own conclusion regarding materiality.

HUD response: The rule is consistent with these comments. "Bad owner" determinations are made on the basis of "material adverse financial or managerial actions or omissions" identified in section 516(a)(2) of MAHRA. In the final rule, the Department has decided that an actual suspension or debarment will always be material for purposes of eligibility for a Restructuring Plan. HUD and PAEs are required to make a determination of materiality before rejecting an owner if a debarment or suspension decision has not already been made by HUD.

3. Treatment of civil rights violations.

Two commenters wanted civil rights violations to be considered in a "bad owner" determination only if they have been finally adjudicated and have not been substantially cured. One of these commenters commented on a need to clarify which violations are disqualifying civil rights violations.

HUD response: Civil rights violations will be addressed by OMHAR after consultation with HUD's Office of Fair Housing and Equal Opportunity. The Operating Procedures Guide details the decision-making process regarding owner eligibility for a Restructuring Plan, including the point at which an apparent outstanding civil rights violation will constitute a bar to further consideration of a Restructuring Plan for the owner. The Operating Procedures Guide provides further information on the civil rights legal authorities that will be considered when making a determination of owner eligibility.

4. Project transfers to "good" owners.

Four commenters thought that the rule was deficient in its treatment of project transfers after "bad owner" determinations. One labelled the interim rule's provisions providing for rejection of certain owners a "misguided policy of forced voucherization" and wanted the final rule to reiterate that contract termination is a last resort and that transfer to a priority purchaser is preferable to conversion. Two others cited a statement by Senator Bond regarding the need for alternative solutions for projects when an owner is disqualified.

HUD response: The commenters who thought that the rule was deficient did not suggest specific improvements to the rule. The determination to deny a restructuring or to not renew the project-based assistance will be made on a case-by-case basis. The PAE and HUD will consider the impact on tenants, the potential to transfer the project to priority purchasers, and other remedies. The PAE will invite tenant and local community participation and solicit comments in accordance with §§ 401.500 and .501 of the final rule.

C. Sections 401.200, 401.201 and 401.304, PAE Selection and Compensation

Summary of Sections

Section 512(10) of MAHRA, referenced in § 401.200, permits a public agency, a nonprofit organization, or a for-profit entity, to be a PAE. Under § 401.200, the PAE may not have any outstanding violations of civil rights laws, determined in accordance with criteria in use by HUD. Section 401.201 explains that HUD will select PAEs in accordance with the statutory selection criteria and additional selection criteria established by HUD. The selection method will be determined by HUD and may be through a request for qualifications (RFQ). Section 401.304 provides that the PRA will contain provisions on compensation to the PAE regarding a base fee and reimbursement of expenses, and may provide for incentive fees.

Summary of Comments

1. Civil Rights violations.

One commenter had due process concerns with requiring that a potential PAE have no outstanding violations of civil rights laws. This commenter recommended that potential PAEs should not be disqualified unless the civil rights violations are material and the result of a final adjudication. In addition, this commenter felt that violations that have been substantially cured should not become grounds for disqualification.

HUD response: Please see HUD's response under Section II.B.3. on a similar point.

2. PAE compensation.

a. Incentives. One commenter felt that it was important to have full and early public disclosure of incentives to PAEs in order to ensure public confidence in the fairness and objectivity of the restructuring process. Three commenters felt that PAE incentives should reflect the statutory intent that economic and non-economic objectives be balanced. One of these commenters suggested incentives similar to those offered PAEs in the Portfolio Reengineering demonstration programs.

HUD response: The specific details of PAE compensation will be included in the PRA. They are not appropriate for inclusion in regulations since compensation will be subject to revision from time to time. The details of the PAE compensation package will be fully disclosed when the ongoing negotiations with the remaining PAEs without PRAs are concluded. The compensation for private PAEs is determined through a competitive bidding process. The incentive section of the compensation package has been set up to balance the preservation and cost savings goals of the Mark-to-Market Program. The compensation package of the demonstration program is being carefully considered as OMHAR finalizes the PAE compensation package for the permanent program.

b. Timing of HUD payments. One commenter urged HUD to provide PAEs with a significant portion of their fees early in the restructuring process.

HUD response: We do not agree that this would be necessary or appropriate. Funds for fees and reimbursable expenses will be released commensurate with completion of work.

c. Same fee schedule for public and private PAEs. One commenter was concerned about differing fee schedules for public and private PAEs. This commenter felt that a differing fee schedule might lead HUD to choose private PAEs in order to save money, thus contradicting the Congressional mandate to utilize public agencies whenever possible to protect the public interest.

HUD response: The statute, the regulations, and HUD's implementation of the program have all been consistent with expressed Congressional intent that public entities have a priority in OMHAR's selection process for a PAE within a geographic jurisdiction.

d. Environmental review expenses. Two commenters noted that the interim rule indicated that the PAE may be expected to assist HUD in complying with HUD's environmental review responsibilities by completing certain forms or checklists. Both commenters suggested that HUD should clarify that any outside expense incurred by PAEs in completing these forms should be considered a reimbursable expense.

HUD response: Such expenses will be reimbursable subject to the terms of the PRA.

D. Sections 401.303, 401.309, 401.310 and 401.314, Other Provisions of PRA

Summary of Sections

Section 401.303 implements section 513(a)(2)(G) of MAHRA, which requires HUD to provide a PAE indemnity against lawsuits and penalties for action taken by a PAE pursuant to the PRA (except for willful misconduct or negligence) if the PAE is a State housing finance agency or a local housing agency. Under § 401.309, the PRA will have a term of 1 year, to be renewed for successive terms of 1 year with the mutual agreement of both parties. A PRA will be subject to termination by HUD at any time.

Section 401.310 addresses conflicts of interest for a PAE and related persons defined in the section as "restricted persons". A conflict of interest exists when a PAE or restricted person either: (1) Has personal, business, or financial interests or relationships that would lead a reasonable and knowledgeable person to question the integrity or impartiality of those acting for the PAE; or (2) in a lawsuit, is an adverse party either to HUD or to the owner of a project under the PAE's PRA. In general, HUD will avoid dealing with a PAE with a conflict of interest.

Section 401.314 states that HUD is legally required to retain any environmental review responsibilities under 24 CFR part 50, and that any required environmental review will occur before HUD executes a Restructuring Commitment (see § 401.405). Without delegating any decision-making authority to the PAE, OMHAR has included in the PRA a provision for PAE completion of forms and/or checklists to assist HUD in complying with its requirements under environmental regulations.

Summary of Comments

1. Indemnification of non-public PAEs (§ 401.303).

One commenter felt that HUD should indemnify non-public PAEs. The commenter argued that while section 513(a)(2)(G) of MAHRA specifically requires HUD to indemnify public PAEs, section 517(b)(5) gives HUD broad authority to provide indemnification to non-public PAEs as well. This commenter asserted that the same policy reasons that justify indemnification of public PAEs argued in favor of indemnifying non-public PAEs. Finally, the commenter thought that HUD should make clear in the final regulation that a PAE may indemnify a non-public team partner, if it so chooses.

HUD response: HUD will indemnify only public entity PAEs. Although PAEs may choose to indemnify teaming partners, such indemnification will not be a reimbursable expense and PAEs may not pass on this cost to OMHAR or HUD. There is no prohibition in MAHRA against PAEs indemnifying teaming partners or subcontractors and, accordingly, this will not be addressed in the final rule.

2. PRA term and termination provisions (§ 401.309).

a. Terms should be longer than 1 year. One commenter pointed out that preparing an application to become a PAE takes considerable time and effort, and that learning and becoming expert at fulfilling the requirements of the PRA requires significant additional effort. The commenter felt that 1 year would not provide an adequate opportunity for HUD to determine the PAE's capacity. Another commenter felt that the short term would interfere with owner ability to develop long-term relationships with a PAE. The commenter suggested that the terms should be indefinite after the first year. A third commenter had two concerns about the PAE renewal process: that yearly PRA renewals would lead to another burdensome and unnecessary PAE selection process, and that HUD might use the annual review process to replace HFAs with non-public entities because the one-time priority for public entities would not apply after the initial selection. The commenter argued that Congress did not intend for HUD to use public agencies as PAEs only for the first year, and discouraged HUD from trying to circumvent Congress' intent by creating a new PAE selection process in the later years of the program.

HUD response: If 1 year is not adequate to determine a PAE's capacity, HUD will extend the contract for an additional year. Except in the presumably unusual cases where a PRA was terminated and the assets reassigned to another PAE or to OMHAR itself, the PAE will continue to process the particular projects agreed upon by HUD and the PAE. A 1-year contract term is appropriate both in order to revise provisions as necessary based on experience, and as an administrative convenience for the Department. OMHAR's intent is to renew PRAs with PAEs unless there are performance or capacity problems or there is mutual agreement not to continue.

b. PRA terminations. One commenter felt that the rule appeared to allow termination with or without cause, and that terminations without cause would cause PAEs to adopt a short-term perspective detrimental to restructuring. This commenter suggested only allowing termination for cause and providing appropriate due process protection. Another commenter agreed that termination should only be for cause and "only in extraordinary circumstances". One commenter was concerned that HUD could terminate a PRA at any time for cause but that a PAE could not, and that rights to termination for cause should be mutual because Congress intended HUD and PAEs to be partners.

HUD response: The PRA includes a bilateral right to termination for convenience and is therefore in keeping with the partnership goal. Were OMHAR to exercise this right the PAE would be paid, at a minimum, for services rendered to the point of the termination. We do not believe that the termination for convenience provision of the rule will reasonably affect the PAE's perspective on the PRA or restructuring work.

3. Conflicts of interest (§ 401.310).

a. General. A number of commenters expressed concerns about the conflict of interest rules. One commenter felt that HUD should be able to waive a conflict involving a potential PAE who is taking an adverse position to an owner, if the owner consents, because it is the owner who is at risk of being damaged. One commenter felt that the conflicts of interest rule was overbroad. This commenter argued that HFAs often work with the same principals in different roles and that an HFA should not be penalized for having legitimate business contacts that do not interfere with their objectivity as a PAE. This commenter suggested that HUD narrow the scope of the conflict of interest provisions so that they apply only to specific properties undergoing restructuring. This commenter also felt that the conflict of interest provisions would make it difficult for a PAE to provide an owner with other available resources, such as Low Income Housing Tax Credits, HOME funds, and risk-sharing loans, which is unnecessary because HFAs utilize strict, objective allocation plans for these resources.

HUD response: The conflict of interest provisions are drafted to protect OMHAR and the public interest while allowing flexibility to accommodate varying factual situations. In order to prevent unfairness in particular cases and to allow PAEs to provide owners with other available resources, all waiver requests will be considered carefully. As deemed appropriate on a case-by-case basis, OMHAR will seek information from outside sources when considering conflict of interest determinations and waiver requests.

b. Contested matters. Two commenters felt that any lawsuit in which a PAE and an owner were adversaries should automatically be considered a conflict of interest and the PAE should automatically be disqualified from exercising any responsibilities under the regulations with regard to that owner. One of these commenters also felt that the final rule should allow owners and other interested parties to seek HUD review of potential conflicts of interest, in addition to the PAE. One commenter asked whether and why a disqualifying conflict of interest would apply, not only to a party to a lawsuit or contested matter, but also to any legal counsel representing such a party. This commenter also felt that the final rule should more fully define the scope of the terms "administrative proceeding or other contested matter" and "adverse to HUD."

HUD response: Any lawsuit in which a PAE and an owner are adversaries will be considered a conflict of interest. It will trigger scrutiny and will necessitate a waiver prior to the PAE beginning or continuing work on a Restructuring Plan. OMHAR will carefully investigate conflict of interest allegations or disclosures that are raised by any source. The Operating Procedures Guide and OMHAR's Internet Website provide more information on the specifics of OMHAR's conflict of interest requirements, including affected parties and definitions of terms.

4. Environmental review responsibilities (§ 401.314).

One commenter felt that, if the restructured first mortgage is refinanced with a conventional loan, then HUD should delegate all required environmental reviews to the conventional lender.

HUD response: Current law does not permit HUD to delegate environmental review responsibilities to a lender.

E. Section 401.402, Cooperation with Owner and Qualified Mortgagee in Restructuring Plan Development

Summary of Section

This section provides guidance for implementation of the requirement in section 514(a)(2) of MAHRA for cooperation among the PAE, project owner and mortgage servicer. The owner must actively work with the PAE and other necessary third parties, including the mortgage servicer, to develop a Restructuring Plan. If the owner fails to cooperate to the satisfaction of the PAE, and HUD agrees, the PAE will not continue with development of a Restructuring Plan.

Summary of Comments

One commenter asked HUD to clarify that an owner who is viewed as insufficiently "cooperative" in helping a PAE develop a restructuring plan that differs from the approach suggested by the owner will not become ineligible under § 402.7 for section 8 contract renewal without restructuring. Another commenter said that HUD should make it easier for servicers to "cooperate" with respect to first mortgages that are too small (before or after a partial claim) to attract servicers. This commenter mentioned such matters as difficulty in getting the consent of securitizers (including Ginnie Mae) or whole-loan investors, a need for an increased FHA servicing fee, reducing the costs of servicing (specifically, not requiring a mortgagee inspection if the PAE inspects), allowing financing costs to include reasonable administrative fees, considering an additional escrow account for servicing fees, and considering rebate of part of FHA premium such as the section 221(g)(4) put for Interest Enhancement Payment.

HUD Response: We will address the comment on eligibiity under § 402.7 when part 402 is published in final form. Inability of a mortgagee or servicer to obtain investor consent to modify, or their determination that the size of the restructured loan was not financially feasible to originate and/or service, is not considered a lack of cooperation for purposes of § 401.402. As noted in section III of this preamble under § 401.550, the final rule clarifies that HUD will accept an inspection by a PAE in lieu of an inspection by the mortgagee or servicer.

F. Sections 401.405–.406, Restructuring Commitment

Summary of Sections

These sections provide for HUD to approve a Restructuring Plan as submitted by a PAE, require changes as a condition for approval, or reject the Plan. HUD will inform the PAE of the reasons for rejection and the subpart F dispute and appeal procedure will apply. The PAE will deliver to the owner, for execution, a proposed Restructuring Commitment as the final element of a HUD-approved Restructuring Plan.

Summary of Comments

Two commenters said that HUD should be required to approve/disapprove a proposed Restructuring Commitment within a specified period after PAE submission; one of them suggested 10 days.

HUD response: OMHAR anticipates a standard processing time of 15 days for review of conforming transactions. Conforming transactions are those in which there is limited financial impact or risk to the Federal Government. Specific criteria will be defined in the Operating Procedures Guide and the PRA. The standard processing time for review of non-conforming transactions is anticipated to be 30 days.

G. Section 401.408, Affordability and Use Restrictions Required

Summary of Section

Section 401.408 of the interim rule implements section 514(e)(6) of MAHRA, which requires the Restructuring Plan to provide for affordability and use restrictions on the project for a term of at least 30 years, consistent with the long-term physical and financial viability and character of the project as affordable housing. During a period when at least 20 percent of the units in a project receive project-based assistance, this section provides that the affordability restrictions applicable to such assistance will apply in lieu of other restrictions required to be in the recorded Use Agreement. Otherwise, the Use Agreement will require conformance to the rent and tenant income profile used in the Low Income Housing Tax Credit Program (LIHTC) for any project that is restructured (*i.e.*, either rents set for 20 percent of the units at 30 percent of 50 percent of median income or for 40 percent of the units at 30 percent of 60 percent of median income.) The Use Agreement will specify which interested parties, in addition to HUD and the PAE, will have rights of enforcement.

Summary of Comments

1. Use restrictions and partially-assisted projects.

Two commenters expressed concern that § 401.408 makes use restrictions applicable to an entire project even when that project is only partially-assisted. Both commenters suggested that use restriction agreements should apply only to formerly-assisted units within a partially-assisted project. One commenter thought that a failure to make this exception would cause owners of partially-assisted projects to opt out of the section 8 program, which in turn would decrease the stock of affordable housing.

HUD response: HUD does not share the concerns of these commenters. Use restrictions run with the land because the entire project benefits from a debt restructuring. To the extent owners can opt out from further project-based assistance, they do not need the restructuring (and would not be subject to the Use Agreement).

2. Use Agreements should last "exactly" 30 years—not "at least" 30 years.

Four commenters were concerned about the requirement that the Use Agreement be in effect for "at least" 30 years. These commenters recommended that the final rule require the Use Agreement to be in effect for "exactly" 30 years because the interim rule language might allow PAEs to specify terms greater than 30 years indiscriminately. One commenter thought all Use Agreements should last for 30 years except where unusual conditions specified in the Operating Procedures Guide are present and the PAE decides that a longer term is consistent with statutory intent. Another commenter felt that a PAE's discretion to use terms longer than 30 years should be tightly overseen by HUD.

HUD response: MAHRA requires a Use Agreement term of at least 30 years. The decision to require a longer term should be left to the PAE as the party most familiar with particular circumstances that may make longer restriction periods appropriate.

3. If no section 8 funds are available, owners should be required to charge restructured rents or below-market LIHTC rents.

Two commenters felt that owners should be required to charge the lesser of restructured rents or Low Income Housing Tax Credit (LIHTC) rents (which may be below-market) in the event that section 8 funds are not available in the future.

HUD response: The owners of properties subject to Use Agreements will be limited to rents at the lesser of market or below-market LIHTC rents in the event that section 8 funds are not available in the future. Since market conditions will more likely improve or worsen rather than stay static, the market rents the units will command at that time will probably not be the restructured rents.

4. There should be no below-market level rents.

One commenter felt that the rule contemplated establishing below-market rents when fewer than 20 percent of the units in a project receive project-based assistance. This commenter was concerned about adverse tax consequences and strongly recommended that no project be required to reduce its rents below market level. Another commenter felt the final rule should indicate that owners will not be required to accept project-based or tenant-based assistance if the final rule does not allow for payment to the owner of market rents. This commenter also argued that, because LIHTC restrictions are not imposed by MAHRA, imposing such restrictions could cause owners to evict tenants with higher incomes or hold units vacant for unreasonable time periods. The commenter suggested less restrictive affordability requirements. If LIHTC requirements are maintained, this commenter felt that owners should have the choice of affordability mix options.

HUD response: When fewer than 20 percent of the units in a project receive project-based assistance, the Use Agreement will have the practical effect of requiring the lesser of market rents (as a result of the operation of the local rental market) or the LIHTC rents (as specified in the Use Agreement). Further, the owner has the option of selecting the tax credit standard (20 percent of the units with rents affordable at 50 percent of median income, or 40 percent of the units with rents affordable at 60 percent of median income) which yields the highest net operating income. For the inventory of projects with above-market section 8 rents, the LIHTC rents are often greater than market rents. In cases where the LIHTC rents are less than market rents, the impact on the supportable secured debt (and thus the tax consequences of the restructuring) will typically be nominal. A less restrictive affordability requirement is not appropriate.

5. Enforceability of Use Agreements and notice.

Two commenters felt that tenants and tenant organizers should always be given the right to enforce Use Agreements, which the interim rule did not seem to demand. Another commenter felt that third parties should not be allowed to challenge matters that both the PAE and the owner agree upon, or without prior written permission from the PAE. This commenter also felt that the rule should make clear that the owner should receive notice of any enforcement actions as well as a reasonable opportunity to cure any problems. One commenter felt that the right of parties to enforce a Use Agreement should be tightly controlled. One commenter felt that HUD should identify the specific remedies provided each party that may enforce a Use Agreement. This commenter also felt that HUD should, at a minimum, indicate that all enforcement actions must be initiated by HUD/PAE and that HUD/PAE will have sole responsibility for determining what steps an owner must take to cure any violations.

HUD response: Section 401.408(i) of the final rule makes it clear that Use Agreements will include the parties listed in that paragraph as third party beneficiaries. Further, a Use Agreement must require the party bringing enforcement action to give the owner notice and a reasonable opportunity to cure any violations. The PAE or HUD will typically be the entity bringing enforcement action, but this provision has been specifically crafted to allow other parties to bring action. This will ensure that other interested parties such as tenants are able to protect their interests in cases where a project is not covered by a PRA, or where HUD or the PAE is unable or unwilling to take action. In the rare case where HUD perceives clear abuse by a third party that is not exercising enforcement rights in good faith, HUD may exercise its right to modify a Use Agreement to require the third party to obtain prior HUD approval for any enforcement action concerning the Use Agreement.

6. Pre-existing Use Agreements should be preserved.

Two commenters suggested that a Mark-to-Market Use Agreement should be subject to any pre-existing Use Agreements, which should be preserved. One of these commenters felt that the final rule should make clear that the restructuring process should not be used to lessen any previous affordability restrictions.

HUD response: Restructuring under the Mark-to-Market Program will not automatically relieve a project of any existing Use Agreements and affordability restrictions. If an owner considers that existing agreements and affordability restrictions are based on section 8 terms and policies no longer authorized by Congress, or will interfere with achieving the objectives of a proposed Restructuring Plan, the owner should bring this concern to the PAE's attention so that the PAE can consider proposing appropriate changes for HUD's approval.

7. Use Agreement should be subordinate to conventional loan.

One commenter felt that if the restructured first loan is refinanced with a conventional loan, then the Use Agreement should be subordinate to this loan (*i.e.* the Use Agreement should not survive foreclosure). This commenter argued that most conventional lenders will refuse to refinance mortgages subject to Use Agreements if the agreements survive foreclosure.

HUD response: Section 514(e)(6) of MAHRA requires a Use Agreement to apply for at least 30 years and any subordination that could lead to termination of the Use Agreement upon foreclosure of a conventional loan would conflict with this MAHRA requirement.

8. Renewal contract terms must remain materially the same.

Five commenters said that renewals of project-based contracts should be required to contain terms that are materially similar to the initial post-restructuring contract. Two commenters argued that unless this is done, general partners will have difficulty recommending the restructuring transaction to limited partner investors. One commenter suggested that the final rule make it "crystal clear that HUD cannot decrease the benefits to the owner upon subsequent renewal offers." Another commenter felt that Use Agreements should contain conditions for automatic expiration of the agreement should there be changes to the agreement that are detrimental to the original terms and conditions of the restructuring plan. One commenter felt that an owner's obligation to renew section 8 assistance should terminate if HUD/PAE fails to renew for any year. The same commenter felt that under the final rule there should be no circumstances, other than unavailability of funds or HQS violations by the owner, under which HUD/PAE may refuse to renew project-based section 8 assistance. Another commenter felt that HUD should guarantee that section 8 funds would be available in the future as long as necessary to assure affordability. This commenter felt that imposing use restrictions would be meaningless without a guarantee of section 8 funds for the project.

HUD response: Under section 515(a) of MAHRA, either the Secretary or a PAE acting under a contract with the Secretary is required to offer to renew or extend an expiring contract, subject to the availability of amounts provided in advance in appropriations Acts. In addition, Pub. L. 106–74 amended section 524 of MAHRA (which applies to contract renewals after a Restructuring Plan is in place) to make renewals mandatory upon owner request, also subject to appropriations. MAHRA does not expressly require that the offer be in accord with the contract renewal terms provided in the approved Restructuring Plan and implies that the level of appropriations may not always permit such an offer to be made. There is no guarantee of, and the Department does not have the authority to obligate, section 8 funds unless Congress appropriates the funds. Section 515(a) protects the owner by only requiring the owner to accept the renewal offer if the offer in "in accordance with the terms and conditions specified in" the Restructuring Plan. If the section 8 contract terms are offered under terms less favorable than those which would result by application of the OCAF as provided in the Restructuring Plan (to the extent, if any, permitted by MAHRA section 524), the owner will not be required to accept the renewal offer, but the project will remain subject to the Use Agreement for the remainder of its term.

H. Sections 401.410–.412, Determining and Adjusting Rents Under Restructuring With Project-Based Assistance

Summary of Sections

Section 401.410 provides guidance to the PAE for determining comparable market rents, as well as for an owner making a preliminary determination of eligibility under § 401.99(a)(1). Comparable market rents are rents charged for "comparable properties" as defined in section 512(1) of MAHRA. The determination of whether rents in a project are comparable to market rents considers only the rents for units in the project that receive project-based assistance.

Section 401.411 provides for budget-based "exception rents" (not to exceed 120 percent of Fair Market Rent without a HUD waiver), instead of comparable market rents, if the PAE determines that the housing needs of the tenants and the community cannot be adequately addressed through a Restructuring Plan that provides for comparable market rents, and if the project would be a negative Net Operating Income (NOI) project at comparable market rents. The preamble to the interim rule—but not the rule itself—stated that in order to receive exception rents, projects must meet the following test (which we will call the "positive social assets" test in the following discussion):

> [The projects] must be determined by the PAE to be positive social assets in the community whose operating expense levels and lack of debt service capacity are not a function of bad management. They should be unique, appropriately situated, and affordable housing, with no other comparable housing alternatives available in the submarket.

Exception rents are based on the factors listed in section 514(g)(3) of MAHRA. They include debt service (allowed in the interim rule only on the second mortgage under § 401.461 or to support a rehabilitation loan included in the Restructuring Plan), project operating expenses, a PAE-determined allowance for a reasonable rate of return to the owner, contributions to adequate reserves, and other necessary project operating expenses as determined by the PAE.

Section 401.412 concerns adjustment of restructured rents by an operating cost adjustment factor (OCAF) as required by section 514(e)(2) of MAHRA. A Restructuring Plan will provide for adjustments using OCAF under this section, but this section will not prevent HUD from offering renewal with rent levels higher than those resulting from OCAF adjustments, if legally authorized.

Summary of Comments

1. Difficulties in determining comparable market rents.

One commenter noted that there are unlikely to be comparable unassisted projects in low-income areas. Another noted that, for projects with special needs populations (elderly, disabled), comparisons must take special features and services into account.

HUD response: HUD agrees that determining comparable market rents will be problematic in some cases. Section 401.410 (both the final rule text and the interim rule preamble explanation) address this issue with a methodology consistent with express Congressional intent that assisted projects not be used for rent comparables.

2. "Blended" rents considering unassisted but restricted units.

Three commenters wanted the final rule to clarify the treatment of projects for which unassisted units with long-term affordability restrictions (such as in ELIHPA/LIHPRHA preservation projects) considered together with assisted units with above-market rents would result in a "blended" average rent not exceeding market comparable rents. The commenters argued that such

projects should qualify as projects with rents not exceeding market comparable rents and, therefore, should be eligible for contract renewal as exception projects under § 402.5(a)(2). This could enable the projects to achieve sufficient net operating income to achieve owner returns anticipated in preservation program Plans of Action.

HUD response: HUD will only consider units assisted under the expiring section 8 contract in determining whether the aggregate rents are higher or lower than market. Preservation projects with approved plans of action under ELIHPA or LIHPHRA are no longer eligible for the Mark-to-Market program. Please see the related response under Section II.A.3.b. of this preamble.

3. Objections to "negative NOI project" and "positive social asset" requirements for exception rents.

Many commenters objected to either § 401.411 concerning when to use exception rents, or to preamble discussion supplementing that section regarding negative NOI projects and the "positive social assets" test. One commenter objected to the limitation of exception rents to negative NOI projects, stating that Congress included exception rents for cases such as rural projects and inner cities or special populations needing budget-based rents and that requiring no debt service would make the "rate of return" factor in section 514(g)(3) of MAHRA a "nullity". One commenter stated that exception rents must have a second mortgage debt service component adequate to support "reasonable likelihood of repayment" requirement to avoid adverse tax consequences to the project owner, while another suggested that all LIHPRHA projects with Plans of Action should be treated as exception rent projects, even without negative NOI, if the statutory test is met.

Eleven commenters objected to the positive social asset test in its entirety on grounds that it is unnecessary and not provided for in MAHRA. Two of these commenters also objected specifically to the statement that exception rents should not derive from bad management. Another commenter who objected to the positive social asset test said that, if it were to be included, there must be clear guidance and objective standards in the Operating Procedures Guide on how it would be applied. Another objected to routine application of the test but felt it could be appropriate for a determination about waiving the 120 percent limit.

HUD response: HUD gave particular consideration to this issue in light of the volume of comments received from a broad spectrum of interest groups, and convened a focus group on November 18, 1998, in part to discuss the matter. We are concerned that there appears to have been widespread confusion regarding HUD's intent in including the "positive social assets" test in the interim rule preamble. By including the language in the preamble, and not in the rule itself, HUD tried to provide additional help to the PAEs that must apply the actual statutory test for exception rents (which also appears in the rule itself): that "the housing needs of the tenants and the community cannot be adequately addressed" through comparable market rents. In other words, if housing needs can be adequately addressed through a Restructuring Plan with comparable market rents, the PAE may not consider exception rents.

But equally important, exception rents also cannot be approved if a Restructuring Plan with exception rents would not adequately address tenant and community housing needs. The statute demands more than simply a negative test regarding use of comparable market rents: the PAE must be convinced that (rent issues aside) the project is worthy of restructuring in lieu of some other approach to meeting tenant and community needs. As we attempted to suggest in the interim rule preamble, this necessarily requires that a project have certain positive attributes that justify continued approval of rents that exceed the market. Since many commenters viewed the interim rule preamble as an attempt to graft onto MAHRA new considerations that were foreign to the statutory provisions, we consider it advisable not to repeat the "positive social assets" test as stated in that preamble. PAEs must, however, be aware of the need for meeting all aspects of the statutory objective that we have discussed above.

In particular, PAEs must recognize that exception rents should never be approved if the project would otherwise be rejected for restructuring under section 516 of MAHRA because of serious ownership or physical condition problems that cannot be remedied. A PAE's recommendation of exception rents for a project presumes that, at a minimum, the project and owner have been determined and confirmed eligible for restructuring as required by § 401.403. Thus, exception rents should not be approved for projects that are determined by the PAE to have an irreversible detrimental impact in the community, for reasons such as unacceptable management practices that adversely impact the community, or are deemed ineligible for a mortgage restructuring due to the poor condition of the project. In order to receive exception rents, the PAE must make a determination that the housing needs of the tenants and the community cannot otherwise be adequately addressed. In making this determination, the PAE should ensure there are inadequate comparable housing alternatives available in the sub-market, so that the outcome without project restructuring at exception rents would be displacement of those tenants who would experience difficulty in finding comparable housing, such as the elderly, persons with disabilities, and large families.

We agree that rural and inner city projects in certain jurisdictions will be more likely to need above-market exception rents, due to typically low market rents relative to operating expenses. The rule makes provision for PAEs to request a waiver (based on special need) of the limitations on the number of units that can receive such rents. Restricting exception rents to projects with negative NOI, or rehabilitation needs in excess of that which can be supported by new financing at market rents, is consistent with MAHRA.

The final rule provides for exception rents adequate to pay debt service on the second mortgage and the other items detailed in section 514(g)(3) of MAHRA. Because of a recent amendment to MAHRA in Pub. L. 106–74 that authorizes full payment of claims, there is no longer any need for a Restructuring Plan to provide for any nominal restructured first mortgages. Also, see Section II.K.6. of this preamble for a separate discussion of how return to owner is considered in determining exception rents. The Operating Procedures Guide specifies that the rents should be set to estimate the owner return that would be realized if there were a positive but nominal NOI, and to make payments on the new second mortgage. The second mortgage will be sized based on the amount that can reasonably be expected to be amortized by 75 percent of the anticipated net cash flow (*i.e.,* three times the owner's estimated return). A third mortgage may be required to the extent the claim paid by HUD under § 401.471 exceeds the amount of the second mortgage.

4. Exception rents should be alternative to FMR.

One commenter said that the rule should let a PAE choose exception rents under § 401.411 instead of using 90 percent of fair market rents (FMRs), which the rule identifies as a last resort under § 401.411(d). The commenter felt that FMRs are often not useful.

HUD response: To the extent the PAE is unable to develop a comparable rent using the methodology outlined in § 401.410, 90 percent FMR may be used (as a last resort) as a proxy for comparable rent as provided by statute. Exception rents for projects undergoing Mark-to-Market restructuring are limited by statute to cases where the comparable rent (or 90 percent FMR) is inadequate to meet expenses with no debt service or where the supportable debt is insufficient to fund short term rehabilitation needs.

5. Limitation of exception rents to 120 percent of FMR.

A commenter characterized this 120 percent limit as "arbitrary" and said that "waivers may become the rule".

HUD response: This limit is specified by section 514(g)(2)(A) of MAHRA.

6. Need to define "community".

One commenter focused on the definition of the "community" impacted by a failure to allow exception rents, and urged HUD to consider supply of affordable housing in an entire jurisdiction, not just a neighborhood.

HUD response: HUD will rely on the PAE's judgment to make this determination.

7. Other factors to be included in expenses.

Commenters had suggestions for expenses to consider when determining the budget-based exception rents. In addition to the comments noted above regarding mortgage debt and return to owners, two commenters stated that the return to an owner anticipated in a LIHPRHA Plan of Action should be factored into exception rents, and one commenter suggested expenses should include health and social services for elderly/handicapped projects.

HUD response: Project operating expenses may include social services (such as for elderly/handicapped service coordinators, or other Departmental initiatives such as Neighborhood Networks) to the extent they have been approved by the Department, and/or have been determined by the PAE to be efficiently managed and unique and necessary for the project's continued operation as an affordable housing resource. LIHPRHA projects with approved plans of action are no longer eligible for the Mark-to-Market Program.

8. Determination of OCAF.

a. General. Three commenters said that HUD should base OCAF on inflation indicators published outside of HUD; while another commenter "applauded" HUD for restricting increases to documented operating cost increases. Two others noticed that the geographical area considered when determining OCAF is left undefined in the rule. They remarked that it should not be too large to pick up local fluctuations in taxes, utilities, *etc.*

HUD response: A HUD analysis of operating cost data for FHA-insured projects showed that their expenses could be grouped into nine categories—wages, employee benefits, property taxes, insurance, supplies and equipment, fuel oil, electricity, natural gas, water and sewer. States are the lowest level of geographical aggregation at which there are enough projects to permit statistical analysis. Operating expense-related data on a more localized basis are not available on a current or consistent basis. HUD's OCAF calculations use data series prepared by the U.S. Bureau of Labor Statistics, the Bureau of the Census, and the Department of Energy. Owners may apply for a budget-based rent review in the presumably unusual case that application of the OCAF does not address unexpected project specific fluctuations. We expect, however, that such fluctuations and other temporary constraints on net operating income will be covered by excess debt service coverage.

b. Excluding debt service. Two commenters objected to excluding debt service from the expenses to be adjusted by OCAF. One said the exclusion will make projects increasingly vulnerable to periods of low occupancy and less likely to support a second mortgage, requiring some other means to boost rents; another said the exclusion will decrease attractiveness of the project to investors who want increase over time in debt service coverage.

HUD response: Congress' use of the term "Operating Cost Adjustment Factor" (OCAF), which has historically been applied only to operating expenses, rather than the term "Annual Adjustment Factor" (AAF) suggests that Congress expected the Department to not apply the increase to the entire rent. Debt service payments remain constant, so it is not appropriate to apply an inflation factor to the debt service. The debt service component of the effective gross income is the only portion that will not be inflated by the OCAF; the Reserve for Replacement deposits and the portion of the debt service coverage estimates for owner return will increase and presumably remain constant with inflation.

9. Negative OCAF.

Three other commenters objected to the reduction of rents by using negative OCAF. Two of them questioned the legality of rent reductions in light of section 8(c)(2) of the United States Housing Act of 1937.

HUD response: We have removed the reference to negative OCAF in response to section 531(a) of Pub. L. 106–74.

10. Appeals of OCAF.

One commenter wanted an owner right to appeal OCAF determinations.

HUD response: OCAF is not determined on a case-by-case basis and adjustment of OCAF through appeal for a particular project is not appropriate. However, the commenter probably was interested in the ability to appeal the rent adjustment that resulted from use of OCAF. OCAF is used for rent adjustments for projects with and without Restructuring Plans, but HUD retains the discretion to use a budget-based rent adjustment instead at the request of the owner. The statutory reference to using OCAF in Restructuring Plans, and the corresponding regulatory provision in § 401.412, does not preclude HUD from approving a larger budget-based increase when appropriate even though a project is under a Restructuring Plan.

An owner may request a budget-based rent adjustment if the owner can demonstrate that available operating revenues are insufficient to maintain a project. The published OCAF factors are based on independently produced estimates of changes in major costs items, and should prove adequate in most projects. If rent adjustments through use of OCAF are inadequate, however, budget-based review provides the most relevant basis for reviewing the adequacy of overall project funding.

I. Sections 401.420–.421, Project-Based Assistance or Tenant-Based Assistance?

Summary of Sections

These sections implement section 515(c) of MAHRA, which: (1) Provides for mandatory renewal of project-based assistance in a Restructuring Plan for projects in tight rental markets and elderly or cooperative housing projects; and (2) requires the PAE to develop a Rental Assistance Assessment Plan for any other project to determine whether assistance should be renewed as project-based assistance or whether some or all of the assisted units should be converted to tenant-based assistance. The Plan is developed by assessing the impact on eight specific areas described in section 515(c)(2)(B) of MAHRA. Section 515(c)(2)(C) of MAHRA requires periodic reporting by the PAE to HUD on certain matters concerning the form of assistance; this requirement is also included in the rule.

Summary of Comments

1. What vacancies should be considered in determining the presence of a tight market?

Six commenters objected to a PAE considering all kinds of vacant units when determining the presence of a tight market. These commenters felt that a PAE should consider only vacancies in comparable units in standard condition (neither luxury nor substandard) with rents not exceeding the payment standard for tenant-based assistance. Four commenters objected to considering vacant units in the entire market only and indicated that a PAE should determine whether the vacancy rate in the sub-market or neighborhood is at or below six percent. Another commenter said that in determining whether a project was predominantly elderly, individual phases should be considered if the project was developed in phases.

HUD response: Consistent with Congressional intent, as indicated in the Conference Report accompanying MAHRA, the tight market "safe harbor" for project-based assistance will be applied to metropolitan areas with vacancy rates less than or equal to 6 percent. HUD agrees that comparable units in the relevant affordable housing sub-market should be considered by the PAE in the context of the Rental Assistance Assessment Plan developed under § 401.421. The PAE has flexibility in this decision on a project-by-project basis, and is expected to apply its knowledge of the local market and use its judgment in recommending the type of rental assistance.

2. Effect of sale to cooperative.

One commenter inquired whether project-based assistance was mandated if a sale of the project to a cooperative is planned.

HUD response: Yes, project-based assistance is mandated if the project is sold to a "nonprofit cooperative ownership housing corporation or nonprofit cooperative housing trust" (pursuant to section 515(c)(1)(C) of MAHRA, referenced in § 401.420(a)).

3. Limit conversion approvals to public body PAEs.

A commenter suggested that only PAEs that are public bodies should be able to approve Restructuring Plans with conversion to tenant-based assistance.

HUD response: All PAEs are permitted to develop Restructuring Plans with conversion, if conversion is consistent with the final rule. OMHAR will be required to approve all Restructuring Plans, including the type of rental assistance, regardless of the category of PAE. Particular attention will be paid during review of project specific transaction, and through the reporting requirements of § 401.421(d), to projects converting to tenant-based assistance and projects that retain project-based assistance despite the general support by the tenants to convert to tenant-based assistance. Under § 401.200 of the final rule, non-public PAEs will be required to form a partnership relationship with HUD if no other public entity is involved. (Note that the final rule omits the requirement in interim rule § 401.200 that the partnership relationship meet all legal requirements for a partnership.)

4. Requirement for semi-annual reporting in § 401.421(d).

One commenter objected to what the commenter saw as a requirement for "continuous" reporting rather than "one-time". Another asked how much data gathering/tracking of tenants is required by the PAE, and at what cost?

HUD response: The reporting requirement is for semi-annual reports and is not continuous. The amount of data gathered by the PAE from the tenants will be detailed in the Operating Procedures Guide. Reimbursement of costs for gathering such information from tenants will be addressed in the PRA.

5. How should the final rule handle/present factors to be considered in the Rental Assistance Assessment Plan?

Four commenters wanted HUD to clarify the weighting of the statutory factors and to give more guidance to the PAEs. Three commenters said that all statutory factors should be set forth in full in the final rule, instead of only stating the factor regarding cost comparison. Two commenters felt that the rule should state a presumption in favor of project-based assistance in order to recognize the cost to tenants of conversion. One commenter indicated that the factor regarding ability of tenants to find housing in the local market should focus on the ability to use tenant-based assistance effectively in the neighborhood. One commenter felt that HUD should specify the criteria that will be applied to determine whether a project will receive project or tenant-based assistance. One commenter suggested that conversion to tenant-based assistance should be approved only if rehabilitation needs are so extreme that restructuring is not feasible.

HUD response: The statute and regulations are both neutral with regard to the type of assistance to be provided, assuming the project does not meet the criteria of section 515(c)(1) of MAHRA. The interim rule's specific mention of the comparative cost of project-based versus tenant-based assistance as one of the required considerations was not an indication that this criterion should be weighed more heavily than the other items detailed in section 515(c)(2)(B) of MAHRA. Consistent with the Conference Report for MAHRA, the PAE should apply its knowledge of the local market conditions, and consider the various factors, with no one factor weighted more heavily than others except to the extent appropriate on a project-by-project basis. We agree with the commenters that there may be a benefit from full presentation of the statutory items to be considered in a Rental Assistance Assessment Plan, and we have made this change in the final rule. (See Section II.W.5. of this preamble for a general discussion of including statutory language in the final rule.)

6. Must all units be assisted under a Restructuring Plan?

One commenter said the interim rule was ambiguous on whether a Restructuring Plan must commit an owner to putting 100 percent of the units in a project under project-based or tenant-based assistance, and suggested that 20 percent of the units could be reserved for unassisted "market rate" tenants.

HUD response: Tenants residing in all previously-assisted units will have the opportunity to receive either tenant-based or project-based assistance. Unassisted market rate tenants may be served to the extent a project converts to tenant-based assistance and tenants move out, subject to (1) the Use Agreement requirements that the minimum number of units be reserved to meet low income housing tax credit rent and income requirements and (2) the prohibition in § 401.556 of the final rule (§ 401.483 of the interim rule) against refusal to lease units to prospective tenants solely on the basis of their status as section 8 voucher holders.

J. Sections 401.450–401.453, Physical Condition of Project

Summary of Sections

The Restructuring Plan must provide for rehabilitation of the project necessary to achieve the property standards set forth in § 401.452. (In this preamble and in the final rule itself, the term "rehabilitation" is being used in a broad sense—comparable to the broad use of the term in section 531 of MAHRA—that includes nonrecurring maintenance (repairs) and payment into project replacement reserves.) The first step is an owner evaluation of the physical condition and rehabilitation needs of the project (including consideration of appropriate measures to ensure accessibility). The PAE is then responsible for an independent

evaluation of the rehabilitation needs (a Physical Condition Analysis, or PCA) of the project, and for reviewing and certifying to the accuracy of the owner's evaluation (which may be modified to address deficiencies identified by the PAE.) Based on the completed PCA, the PAE must consider rejecting a request for a Restructuring Plan if the PAE cannot determine that proceeding with restructuring involving rehabilitation is more cost-effective in terms of Federal resources than rejecting the request and providing tenant-based assistance for displaced tenants. Any such consideration must be made in light of the need to minimize displacement of tenants and to ensure that there are alternative housing options available in the community.

As provided in section 517(b)(7)(A) of MAHRA and § 401.452, the standard for rehabilitation to be performed upon approval of restructuring is a non-luxury standard adequate for the rental market intended at the original approval of the project-based assistance. The physical needs identified should be those necessary for the project to retain its original market position as an affordable project in decent, safe and sanitary condition (including those improvements the project requires to achieve any rentals in the non-subsidized market), resulting in a marketable project that competes on rent rather than on amenities and that meets accessibility requirements. Over the long term, the owner must maintain the project in a decent, safe, and sanitary condition based on the housing quality standards identified in § 401.558 of the final rule (§ 401.453(a) of the interim rule). For a project receiving project-based assistance, the applicable standards will be HUD's Uniform Physical Condition Standards. Otherwise, local codes will serve as the standards as long as local codes are as strict as HUD standards and do not severely restrict housing choice in the view of the PAE. In addition, any unit in which the tenant receives tenant-based assistance must comply with the housing quality standards of the section 8 tenant-based programs.

Summary of Comments

1. Use of FNMA PNA guidelines should not be eliminated.

One commenter strongly believed that the elimination of an assessment presentation format for the owner under § 401.450 would lead to unnecessary and costly disputes in processing transactions. This commenter's experience in the demonstration program led the commenter to conclude that failure to prescribe an assessment presentation format would cause a high probability of frequent disputes that focus on presentation issues rather than substantive issues.

HUD response: Based on our experience in the demonstration program, we do not believe the format of an owner's assessment of the physical condition of the property will result in delays or disputes. The information specified in Section 401.450 must be presented in a form acceptable to the PAE. The owner may update and submit previously-prepared physical inspections. The PAE is required to independently evaluate the condition of the property. The Operating Procedures Guide contains more specific information.

2. The final rule should make clear that third-party expenses for physical condition evaluation are eligible project expenses.

Two commenters suggested that the final rule should make clear that third-party expenses for the owner's physical condition evaluation are eligible project expenses. One of these commenters pointed out that a customary fee for a physical condition evaluation is in the $5,000 range.

HUD response: Third party expenses for physical condition assessments are eligible project expenses if cash flow is sufficient to support such an expense. If cash flow is not sufficient, the expense is not an eligible project expense and will not accrue or carry over.

3. Lead hazards.

One commenter felt that the final rule should explicitly require a lead hazards analysis as part of the physical conditions evaluation.

HUD response: Inspection for lead-based paint will be part of both the owner's evaluation and the PAE's PCA. This requirement is set out more fully in the Operating Procedures Guide. If such paint is found in a family project in a peeling condition on chewable surfaces, it must be remedied. If found, but not posing immediate risk, the owner will be required to submit a "Maintenance Plan" to prepare for any future risks/remediation. Effective September 15, 2000, all projects with section 8 project-based assistance will be subject to HUD's revised lead-based paint regulations published on September 15, 1999 (64 FR 50140).

4. Reserve account deposit.

One commenter felt that owners should be permitted to assume that their section 8 contract will be renewed for 20 years when calculating the amount of deposit to the reserve account.

HUD response: No assumptions should, or need to, be made regarding the continued availability of section 8 assistance in determining the reserve for replacement accounts. The regulatory agreement will be modified to require the monthly deposit requirement to be adjusted annually by the OCAF.

5. Concern about cost-effectiveness determination in § 401.451(c).

Numerous commenters were concerned about the cost-effectiveness determination required by § 401.451(c). Six commenters were concerned that the cost-effectiveness determination was not consistent with statutory intent. Three of these commenters asserted that it was Congress' intent that all properties that met statutory criteria and whose owners were willing to restructure should be restructured, and expressed concern that the interim rule placed cost-effectiveness above all other considerations. At least five commenters said that § 401.451(c) should be removed from the rule.

One commenter felt that the standards and methodologies used to disqualify a project based on cost-effectiveness should be published for public comment. Another commenter felt that the rule was ambiguous and that, without clearly articulated standards in the Operating Procedures Guide, PAEs would be faced with a difficult decision regarding what represented cost-effective use of Federal resources. Another commenter stated that the cost-effectiveness determination needed to be guided by an objective standard. One commenter suggested that the PAE should be given other factors to consider before concluding that a project was cost prohibitive, and that there should be a clear presumption in favor of preserving the housing stock and maintaining the project-based rental assistance. Another commenter felt that "non-economic objectives should take precedence" as long as a project met tenant and community housing needs. Another commenter felt that the rule must make clear that the impact on tenants and the community is an integral part of the cost-effectiveness determination and not "some minor, peripheral consideration."

HUD response: HUD discussed implementation of the "cost-effectiveness" test with a broad variety of interest groups at the focus group meeting on November 18, 1998. While PAEs are required to ensure that all repair items are cost-effective, the determination required by this section is intended to ensure particular scrutiny by the PAE of those projects that have significant rehabilitation needs so that other less costly approaches (either in the scope of work or by recommending rejection of the Restructuring Plan) are considered. We expect the PAE to

exercise judgment in balancing the competing economic and social objectives in every case rather than relying on an "objective" standard set by HUD.

6. PAE certification.

One commenter felt that it would not be possible for a PAE to certify the accuracy and completeness of an owner's evaluation of a project's physical condition. The commenter was concerned that requiring a PAE to certify the owner's evaluation would put the PAE in an untenable position because physical condition assessment is often complex and "ultimately not empirical." The commenter suggested that the PAE merely "confirm that the owner's plan reasonably reflects their own findings and they believe the needs are addressed cost-effectively."

HUD response: The rule and MAHRA both require a PAE to certify an owner's evaluation of project physical condition. The PAE should give the owner the opportunity to revise the owner's evaluation after consultation regarding any disputed work items or costs. Alternatively, the PAE must recommend rejecting the Restructuring Plan. OMHAR will be responsive to PAE questions concerning rehabilitation standards; however, it is a PAE's responsibility to bring its professional judgment to bear as it evaluates the owner's proposal, the PAE's independent third party report, and tenant and local community input when developing the Restructuring Plan.

7. Property standards for rehabilitation.

One commenter felt that "lowering the bar to modest competition" by effectively accepting diminished physical conditions would have a negative impact on quality-of-life and public relations because eligible projects—while not luxurious—may compare favorably to other conventional properties in the area. Another commenter suggested that this "non-luxury" standard be removed from the final rule because it is not effective guidance (amenities affect rent and vice versa and what is an amenity in one market is a marketing necessity in another) and the standard would be cited to discourage rehabilitation to a level that might attract a mixed-income occupancy. Another commenter felt that the standard might not be consistent with the legislative goal of assuring that projects be able to function in the marketplace without assistance.

One commenter felt that calling for the "least costly rehabilitation plan" may cause owners to purposefully underestimate their physical condition assessments in order to avoid disqualification. This commenter suggested that rehabilitation standards should be based on actual need determined with tenant assistance. One commenter suggested that the final rule reference the physical condition standards prescribed in § 401.453 of the interim rule if a project's Restructuring Plan is to provide for continued project-based assistance. The commenter recommended that rehabilitation for these projects should be sufficient to meet the Uniform Physical Conditions Standards in 24 CFR § 5.703. One commenter felt that a lender who refinanced the first mortgage a conventional loan should be able to require whatever rehabilitation the lender considers appropriate. In addition, this commenter felt that HUD should indicate whether rehabilitation is supposed to address issues raised in the PCA or satisfy the physical conditions standards in § 401.453 of the interim rule.

HUD response: The final rule requires restoration suitable for the market for which the project was originally approved. Thus, materially diminished physical standards would not be acceptable as part of a Restructuring Plan. The PAE's inspector must ensure that the project meets the applicable physical condition standards, but immediate threats to health and safety are not eligible work items that may be deferred until completion of the Restructuring Plan. Rather, they must be corrected immediately and, since the existence of these matters violates the Regulatory Agreement, the PAE must evaluate the project's eligibility in accordance with § 401.403(b)(2)(ii). The repair work items should address the issues raised in the PCA. The rehabilitation standard requires a project that can compete in the marketplace. To the extent the market requires a particular amenity, it should be added to enable the project to compete on the basis of rent. We expect the PAE to exercise professional judgment and to apply their knowledge of local conditions in determining if the lack of an amenity would render a property unmarketable. The PAE is required to independently evaluate the physical condition of the project, including evaluating the accessiblity of the project to persons with disabilities, and to solicit tenant and local community comments. The PAE can recommend that OMHAR approve lender rehabilitation requirements so long as they are consistent with the requirements of the Restructuring Plan.

8. Physical condition standards should not apply to non-assisted market rent units.

One commenter argued that section 8 units (both project-based and tenant-based assistance) are already covered by physical condition standards by virtue of HAP contracts so that the only effect of § 401.453 of the interim rule would be to make the standards applicable to non-assisted market rent units. This commenter suggested that the final rule should provide that HQS will be applicable to assisted units in restructured properties through the terms of assistance contracts and that the local housing code should be the applicable standard for non-assisted units.

HUD response: Section 514(e)(5) of MAHRA does not permit non-assisted units to be excluded from the physical condition standards. This is a reasonable result because the entire project benefits from a mortgage restructuring. In keeping with 24 CFR parts 5.703 and related changes in other regulations, this rule recognizes that the separate section 8 HQS has been eliminated for projects with project-based assistance.

K. Sections 401.460–401.471, Mortgage Restructuring and Payment of Claims

Summary of Sections

Section 401.460 explains the standards for restructuring with a modified or refinanced first mortgage. The first mortgage will be a fully amortizing, level payment mortgage with a principal amount sustainable at rent levels that do not exceed the lower of section 8 rents allowed under the Mark-to-Market Program or rents permitted under the Use Agreement under § 401.408. The PAE should take into account any need for financing needed rehabilitation when sizing the first mortgage and determining the appropriate amount of mortgage insurance payment by HUD. The monthly payment for the first mortgage under the Mark-to-Market Program will not exceed the current first mortgage payment. Interest rates and other terms must be competitive in the market, with any fees and costs above normal processing fees to be paid by the owner from non-project sources. Due to the significant potential for conflicts of interest if the PAE provides the first mortgage financing, HUD will apply an exceptionally high level of review whenever this is proposed as part of the Restructuring Plan, with special HUD approval needed for any PAE risk-sharing under 24 CFR part 266 for a refinanced first mortgage. HUD will approve risk-sharing when appropriate in accordance with Pub. L. 106–74.

Section 401.461 provides standards for the new HUD-held second mortgage which is needed whenever the insured or HUD-held mortgage debt is written down through payment of a section 541(b) mortgage insurance payment by HUD. The second mortgage is limited to an amount that the PAE reasonably expects to be repaid by the owner, and may not exceed the difference between the first mortgage before restructuring and the modified or refinanced first mortgage after restructuring. HUD may require a HUD-held third mortgage if the amount of a partial claim under § 401.471 exceeds the principal amount of the second mortgage. The second mortgage will bear simple interest of at least 1 percent, but no more than the applicable Federal rate determined by the Department of the Treasury. The term will be concurrent with the term of the modified or refinanced first mortgage or, if the existing first mortgage is completely paid off, the term will be set by HUD. The mortgage will become due and payable as provided in § 401.461(b)(3). At least 75 percent of the project's net cash flow after payment of first mortgage debt service and operating expenses must be used to pay principal and interest on the second mortgage. The rest of the cash flow may be paid to an owner who meets certain property management and physical condition standards. HUD will consider modification or forgiveness of the second mortgage if: (1) The project has been sold or transferred to a priority purchaser under § 401.480; and (2) HUD determines that modification or forgiveness is necessary for recapitalization to preserve the project as affordable housing.

Summary of Comments

1. How should net operating income available to pay the first mortgage be determined?

a. Expenses. Commenters offered ideas about the expenses to be paid from operating income before determining "net" operating income for this section. One commenter listed a number of lender-required costs that should be allowed in the case of conventional refinancing. Three commenters felt that a reasonable rate of return to the owner needed to be considered; one of them said it should not be below the return already allowed. Three commenters said that the owner compensation provided under a plan of action for preservation projects needed to be considered.

HUD response: Reasonable expenses to meet requirements of the lender (whether the first mortgage is FHA-insured, HFA-originated with risk-sharing, or conventional debt) will be acceptable so long as the financing is competitive. See the discussion of return to owner at Section II.K.6. Preservation projects are no longer eligible for the Mark-to-Market Program.

b. Sizing the first mortgage. We received other comments relating to sizing the first mortgage. Two commenters objected to sizing on the basis of LiHTC rent levels if lower than comparable market rents. Two others wanted HUD to state a debt service coverage ratio (DSC) in the rule: One suggested 1.20, the other suggested at least 1.25 for conventional loans. Another said the DSC should be adequate to permit sale of the mortgage at or very near "par". A commenter said that a restructuring plan for a project with an existing insured second should write the second mortgage off completely before any restructuring of the insured first mortgage.

HUD response: To the extent the LIHTC rents are lower than comparable market rents, the first mortgage should be sized accordingly. While the section 8 assistance remains in place, all extra net cash flow will be applied to payment of the second mortgage so that the owner does not benefit unduly from this sizing of the first mortgage based on LIHTC rents. The owner or PAE could (with lender approval) request a waiver to allow a compensating decrease in the debt service coverage ratio in such cases. A specific DSC is not appropriate for the final rule; guidelines are contained in the Mark-to-Market Program Operating Procedures Guide. Generally we would expect a DSC of 1.2 but a higher ratio may be appropriate for smaller loans or to facilitate conventional financing.

2. First mortgage terms and conditions.

We received the following miscellaneous comments on first mortgage terms and conditions:

- The interest rate and DSC should be adequate to permit sale at or very near "par".
- "Normal processing costs" needs to be clarified (with examples of costs that should be included).
- The PAE should be able to continue with existing above-market terms if the lender requires this as a condition of accepting a partial claim or if the PAE thinks this is the best approach.
- A PAE certification of "competitive" terms should be conclusive, or a mortgagee certification should be conclusive absent bad faith or manifest error.
- HUD should allow balloon loans as conventional loans and base competitiveness of rates, processing fees, *etc.*, for conventional loans on the conventional market.

HUD response:

- The interest rate and other terms of any refinancing are expected to be competitive.
- Processing costs must be reasonable and customary as determined by the PAE (and the lender of any new financing); examples include title and closing costs, and loan origination fees.
- It is unlikely that OMHAR will approve above-market terms for any financing. To the extent the existing lender is unable to provide competitive terms, the owner should pursue alternative financing sources.
- The Operating Procedures Guide requires documentation that the terms are competitive within a reasonable range.
- Balloon payments are not acceptable. The modified or refinanced first mortgage must be fully amortizing through level monthly payment). The PAE may consider shorter amortization periods if warranted by the condition of the property and availability of financing.

3. Refinancing.

One commenter said that the existing lender must be given a reasonable opportunity to refinance before another lender is involved. Two other commenters urged HUD to support the use of the section 223(a)(7) program; suggestions included allowing OMHAR rather than FHA to handle processing and providing priority or incentives for section 223(a)(7) refinancing to finance rehabilitation. Two commenters object to requiring special HUD approval for PAE risk-sharing as unnecessary and leading to delays. Finally, a commenter said that a small (under $300 thousand) first mortgage, even if supportable by rents, would be difficult to obtain on competitive terms so that a refinancing of a small first mortgage should not be required to take out the lender who will not accept a partial payment of claim.

HUD response: The final rule requires the owner to contact the mortgagee prior to seeking other sources of funding for the Restructuring Plan. This issue is addressed in more depth in the Operating Procedures Guide and other guidance from OMHAR. The issues raised by the suggestion supporting the use of the section 223(a)(7) program involves delegations of authority within HUD and will be addressed in the Operating Procedures Guide. We are neutral as to the source of new financing so long as the terms are competitive, except to the extent that section 219 of Pub. L. 106–74 requires HUD to use risk-sharing. Questions involving PAE risk-sharing raise conflict of interest

issues to be decided on a case-by-case basis after expeditious but thorough technical reviews. We anticipate the market will set the terms of new financing, in part dependent on the size of the loan, and acknowledge that a good faith effort by the owner to obtain new financing on reasonable terms may not succeed. A PAE then may consider a Restructuring Plan with full payment by HUD of a section 541(b) claim and an increased second mortgage. However, it is not acceptable to allow above-market rents to support the existing debt due to a perceived difficulty in refinancing.

4. Second mortgage terms and conditions.

a. Interest rate. We received the following suggestions regarding interest on the second mortgage:

- Clarify in the Operating Procedures Guide that the interest rate should be low enough so that an owner is clearly likely to repay; the interest rate should be 1 percent unless HUD requests otherwise (or 0 percent if the aggregate loan amount exceeds 100 percent of value).
- Permit a 0 percent rate since it is not ruled out by the Revenue Ruling.
- Set standard at 0 percent except when that would lead to payoff of the HUD-held second and third mortgage in less than 10 years.

HUD response: For interrelated legal and policy reasons, we have elected to retain the 1 percent minimum interest rate. Our interpretation of section 517(a)(2) of MAHRA is that some interest is required to be charged on the second mortgage. The minimum rate that we have selected is nominal and should not cause undue burden on the mortgagor. Additionally, the factual premise of IRS Revenue Ruling 98–34 includes a statement that the new second mortgage "provides for interest".

b. Other second mortgage terms and conditions. We received the following miscellaneous comments on second mortgage terms and conditions:

- Set the term "concurrent" rather than "concomitant" with the term of the first.
- Acceleration for violation of HUD requirement should be only for material violation of a material HUD requirement, and should be allowed only after written notice to owner of the violation.
- HUD should ask for a statutory change allowing for longer terms.
- Use a standard form.
- HUD should specify conditions to be in second mortgage, consistent with first mortgage.
- We agree that the term "concurrent" is preferable.
- There are adequate safeguards in the final rule to guard against unfair acceleration of a second mortgage. Safeguards include a requirement of materiality for violations (now included expressly), and notice and an opportunity to cure prior to acceleration of a second mortgage. Additionally, the rule provides an administrative dispute and appeal procedure for any acceleration decision (unless acceleration is based on payment or termination of the first mortgage, or unauthorized sale and assumption, as provided in MAHRA).
- Alteration of the second mortgage term would require an amendment of the statute. HUD has no basis for seeking such an amendment at this time.
- The Operating Procedures Guide will provide a standard form for second mortgages. The terms of the second mortgage are largely set by MAHRA and are detailed in the final rule and the Operating Procedures Guide. The second mortgage is different in nature from the first mortgage and will not be identical to the first mortgage.

HUD response:

5. Forgiveness/modification of second mortgage.

Two commenters said that forgiveness/modification should be available for a priority purchaser whether or not the property has been disqualified for restructuring under existing ownership. One commenter argued that forgiveness should also be allowed for a limited partnership purchaser controlled by priority purchaser.

HUD response: Section 401.461(b)(5) of the final rule allows modification or forgiveness of the second mortgage if certain conditions are met. This availability of modification or forgiveness is not dependent on the existing owners being disqualified from restructuring. See Section II.A.1.c. of this preamble for a discussion of a limited partnership controlled by a public body.

6. Return to owner.

One commenter opposed allowing the PAE to set the owner's share of net cash flow below 25 percent, arguing that a lower share will discourage owners from restructuring. Another commenter said that an owner right to 25 percent may be incentive for owners to neglect upkeep of project (*i.e.*, in order to reduce expenses and boost net cash flow) and that tenants should be involved in determining if a project meets the property management standards as a precondition to paying the owner share.

HUD response: HUD is sensitive to the fact that restructured projects (particularly those with large decreases in rents) will have tighter operating budgets and thus will require larger debt service coverage ratios to compensate. Section 517(a)(3) of MAHRA restricts the owner's return to a maximum of 25 percent of Net Cash Flow. There is no statutory provision for additional return to an owner, even for exception rent projects or other projects that may previously had an approved rate of return that would permit larger payments to the owner. Section 514(g)(3)(D) of MAHRA provides for an allowance for a reasonable rate of return to the owner when determining the level of exception rents, but we do not consider this an allowance for an additional owner return beyond that permitted for non-exception rent projects. The setting of rents above market will provide for the return permitted by section 517(a)(3) (assuming the owner's operation of the project is efficient so that Net Cash Flow meets or exceeds the underwriting estimate.)

While the typical return permitted by a Restructuring Plan will not be less than 25 percent of the Net Cash Flow, the PAE will retain discretion to negotiate the amount on a case-by-case basis. Further, to the extent the potential for LIHTC rents in the absence of project-based assistance constrains net operating income for underwriting purposes, the project will effectively be oversubsidized during the time project-based section 8 assistance is provided. The portion of Net Cash Flow to pay the second mortgage must be increased accordingly. HUD or the PAE will require the project meet management and physical condition standards as a condition of distribution of the owner's portion of the net cash flow. Tenants (and other interested parties) can address their concerns to HUD or the PAE.

7. Third mortgage.

Four commenters opposed the possibility of a HUD-held third mortgage as provided in the interim rule. One said it would lead to "overleveraging" a project; two others said a third mortgage should be limited to an amount reasonably likely to be repaid that was excluded from the second only because of statutory limitations on the aggregate of the first and second mortgages. Another commenter suggested using budget-based exception rents whenever a third mortgage would otherwise be needed. Another commenter asked when a HUD-held third mortgage would be forgivable.

HUD response: A third mortgage, when necessary, would not "overleverage" a project. First, it would require no payments on principal or interest until the second mortgage is satisfied. Second, a third mortgage would accrue only nominal interest and this interest will not compound. Third, the final rule allows a PAE to negotiate a reduction of the maximum third mortgage amount that would otherwise be required initially under a Restructuring Plan, within limits set by HUD, in order to recognize the imputed tax consequences to the owner of the restructuring. The Operating Procedures Guide will initially allow the PAE to negotiate a reduction of the initial mortgage amount by up to 30 percent. Finally, the final rule permits HUD to forgive or modify the third mortgage on the same conditions as apply to a second mortgage under § 401.461(b)(5). Exception rents are designed to address specific housing needs of tenants and communities and may not be used solely to prevent a section 541(b) claim. Accordingly, we have rejected the suggestion to use budget-based exception rents whenever a third mortgage is required.

8. Claims.

One commenter said the rule should include in the partial claim amount accrued interest on the mortgage amount to be prepaid by the claim at the note rate up to the date of prepayment. Another commenter concluded that payment only of a partial rather than a full claim would mean that exception rents would never be allowed under § 401.411(b) because that provision makes no allowance for payment of any first mortgage debt remaining after a claim payment. A commenter said that HUD should clarify in the final rule that a servicer incurs no obligation to Ginnie Mae security holders for accepting a "compelled" partial payment from HUD, and HUD should indemnify the lender.

HUD response: When HUD pays an insurance claim for a mortgage that is in default, the claim includes an amount for the unpaid interest that would have been included in the defaulted payments. There is no similar need to compensate the mortgagee through a section 541(b) claim, which is made only for a mortgage that is not in default. The commenter is correct that HUD will restrict debt service paid from exception rents to payments on the second mortgage for negative Net Operating Income projects or to payments on a new rehabilitation loan, but exception rents will be needed only for projects which also require a full payment of claim and which, thus, will not continue the existing first mortgage even at a nominal level. We have no legal authority, or program interest, in becoming involved in a lender's relationships with Ginnie Mae security holders. Moreover, the commenter's concern about "compelled" partial claim payments is unfounded. Under the final rule, OMHAR or FHA will not compel a lender to accept a partial claim payment. If the lender is not able to obtain approvals from investors, such as Ginnie Mae security holders, needed to accept a partial claim payment, the owner must refinance the first mortgage with a lender willing to make a new loan that will pay off the first mortgage amount in excess of the partial claim payment.

L. Sections 401.472–.473, Funding of Rehabilitation

Summary of Sections

Section 517(b)(7) of MAHRA and § 401.472 identify some potential sources for funding needed for rehabilitation of the project. The interim rule includes the requirement of section 517(b)(7)(B) of MAHRA that an owner contribute from non-project funds at least 20 percent of the total cost of rehabilitation. The preamble to the interim rule stated that a reasonable proportion of the owner's contribution must come from non-governmental resources, which we estimate would be a minimum of 3 percent of the total cost of rehabilitation. One of the potential Governmental sources of rehabilitation funding is the grants authorized by section 236(s) of the National Housing Act. Section 401.473 addresses the use of these grants in connection with restructuring.

Summary of Comments

1. Opposition to 20 percent owner contribution requirement.

Three commenters wanted HUD to exempt nonprofit owners from the requirement for a contribution of 20 percent of rehabilitation expenses. One commenter observed generally that owners of all types are unlikely to contribute 20 percent. Four others opposed the requirement without an incentive to make the contribution. These commenters suggested treating the contribution as a self-amortizing market-rate loan to the project that would be repayable as project expense, or providing some type of priority return or some set rate of return.

HUD response: The owner contribution is required by section 517(b)(7) of MAHRA and the return to the owner is constrained by section 517(a)(3) of MAHRA. Other than the exemption permitted by statute for housing cooperatives, nonprofit owners cannot be exempted from the owner contribution requirement without a statutory change. Eighty percent of the rehabilitation costs will come from sources other than owner contributions, and the interim rule preamble and Operating Procedures Guide both allow the owner to include any available funds from other government sources to meet their contribution requirements, except as discussed in the following topic.

2. Opposition to limit on funding from governmental resources.

One commenter opposed a limitation on funding from nongovernmental sources while another said that any such limitation needed to be in the rule. Five commenters said that all nonprofit owners should be exempt from the limitation, while two others said the PAE should be able to waive it for nonprofit owners. Two commenters asked HUD to clarify that equity raised by syndicating Low-Income Housing Tax Credits (LIHTC) is a non-governmental source of funding.

HUD response: The preamble to the interim rule contained two points of elaboration on the 20 percent owner contribution requirement that appears in MAHRA and in the interim rule. The preamble stated that a "reasonable proportion" must come from non-governmental sources, and estimated that this proportion would be set at a minimum of 3 percent. We continue to believe that it is reasonable to expect each owner to contribute towards the cost of rehabilitation from the owner's own resources, because the owner will benefit from the resulting increase in project value. We recognize that owners of restructured projects may have severe limitations on the ability to make additional investment in the project, but in cases where other public funds are available, owners will cover only a small part of the costs from their own resources. The commenters did not provide convincing evidence that these preamble requirements would prevent PAEs from developing Restructuring Plans with all necessary and cost-effective rehabilitation—whether for for-profit or non-profit owners. Because of the substantive impact of our decision to require owners to use their own resources toward partial implementation of the statutory requirement for an owner contribution, we have decided that the matter properly belongs in the text of the final rule itself. The precise level of required non-governmental resources, however, will continue to be set in the Operating Procedures Guide.

PAEs will have limited ability to request waivers of this regulatory requirement in exceptional cases (*e.g.* to facilitate the transfer of a troubled project to a priority purchaser), but no waiver is possible for the statutory 20 percent requirement. As stated above, MAHRA permits housing cooperatives to be exempted from the owner contribution requirement. Broadening this exemption option would require a statutory change. Equity contributions from the syndication of LIHTC will be considered a non-governmental source of funding for rehabilitation funding purposes, but will trigger a thorough technical review of the Restructuring Plan.

3. Other comments regarding 20 percent requirement.

One commenter wanted HUD to clarify that non-Federal government funding such as State/local grants or loans will be counted in the 20 percent owner contribution. Three commenters asked about borrowed funds as part of the contribution; one of them specifically mentioned insured section 223(a)(7) or 223(f) refinancing loans secured by the project and another mentioned conventional refinancing of the project. One commenter wanted the rule to specify conditions for a PAE requirement for a contribution of more than 20 percent.

HUD response: FHA-insured loans (or conventional secured debt that is not subordinate to the § 401.461 second and third mortgages) are considered project resources and may not be used to fund the owner's contribution. The PAE has discretion to negotiate a larger owner contribution. State/local grants or loans can be used to meet most of the owner's contribution. OMHAR has provided further guidance in its Operating Procedures Guide concerning the source of funds that an owner may utilize toward rehabilitation financing.

4. Comments regarding use of project accounts for rehabilitation.

One commenter cautioned against violating an owner's contract right under the regulatory agreement to distribution of surplus cash. Another commenter suggested that the lender for a conventional refinanced first mortgage should be able to use funds in project accounts to establish escrows and reserves required by the lender's usual underwriting standards.

HUD response: Section 517(a)(3) of MAHRA changes the distribution of surplus cash. The first and second mortgages for a project restructured under the Mark-to-Market Program will reflect the statutory change. As part of a closing, owners will be required to execute a Modification of Regulatory Agreement. It will modify the terms of an old or new FHA Regulatory Agreement, reference the Restructuring Plan documents as controlling the owner's distribution, and specifically delete the requirement of a residual receipts account as long as the second or third mortgages are in place. In a non-FHA refinancing the existing Regulatory Agreement is canceled.

Section 517(b)(6) of MAHRA authorizes use of project accounts in connection with restructuring but does not preclude a PAE (as part of a Restructuring Plan involving conventional financing) from recommending the use of existing project account balances to fund the initial deposit to a new reserve for replacement account or to fund tax and insurance escrows.

5. Section 236(s) rehabilitation grants.

Three commenters said that HUD should target rehabilitation grants to new priority purchasers as well as existing nonprofit owners for projects undergoing restructuring; two of them also said that section 236(s) grants should be available on a preferential basis to nonprofit owners or below-market projects renewing under part 402 without restructuring. Two commenters pointed out that treating section 236(s) grants in a rule only for projects undergoing restructuring (*i.e.*, part 401) puts exception projects seeking grant money at a disadvantage; one of them asked that HUD add a new section to part 402 on section 236(s) grants. Finally, one commenter asked whether section 236(s) grants can be structured as loans to avoid adverse tax consequences to owners.

HUD response: As noted in the preamble to the interim rule, HUD is pursuing a separate rulemaking procedure regarding use of the section 236(s) grant authority outside of the Mark-to-Market program. To the extent a Mark-to-Market restructuring generates Interest Reduction Payment (IRP) recaptures, those funds will be used to assist with rehabilitation financing for the restructured property, or for other properties through procedures to be defined in the separate rulemaking.

6. Funding of rehabilitation through claim amount.

A commenter suggested that HUD's intent behind § 401.472(a)(2) regarding facilitating rehabilitation through the claim amount was to permit the claim to be large enough to reduce the first mortgage debt so the project rents could support a refinanced first mortgage that paid off remaining debt and financed rehabilitation. Another commenter suggested that it would be simpler to pay rehabilitation costs directly from the FHA insurance fund instead of through a larger partial claim/smaller first mortgage.

HUD response: The first commenter has correctly interpreted HUD's intent in § 401.472(a)(2). Unlike the demonstration program, the Mark-to-Market Program does not include HUD authority to directly fund rehabilitation through a payment from the FHA insurance fund as suggested.

M. Section 401.480 Sale or Transfer of Project

Summary of Section

This section covers the sale or transfer of a project undergoing restructuring at the owner's initiative (*i.e.*, a voluntary sale) or following a determination that the current owner is ineligible for restructuring (*i.e.*, an involuntary sale). A PAE will develop a Restructuring Plan with an involuntary sale only if, within 30 days of notice of rejection, the owner notifies HUD or the PAE of the owner's intent to transfer the property. The owner must also provide a notice to potential purchasers that describes the project and the procedure for submitting purchaser offers; the notice is subject to review and approval by HUD or the PAE. The owner must distribute and publish an approved notice as required by HUD. This section gives a preference to certain "priority purchaser" groups, defined as tenant organizations, tenant-endorsed community-based nonprofit organizations, and tenant-endorsed public agency purchasers. The owner must inform the PAE of any intention to accept a purchase offer. An eligible owner desiring to sell or transfer a project through a voluntary sale should provide notice as part of its initial request for a Restructuring Plan or at any later time when it is still feasible to develop a Restructuring Plan involving sale or transfer, but the owner is not otherwise subject to the requirements of this section. All project sales are subject to PAE approval and HUD approval of the Restructuring Plan.

Summary of Comments

1. HUD should be responsible for sale of projects.

Three commenters felt that, in order to better protect the interests of tenants, HUD should maintain overall responsibility for the sale of projects.

HUD response: OMHAR will maintain overall responsibility for all aspects of the Mark-to-Market program, including approval of the sale of projects. We will carefully review PAE recommendations and input from tenant and local

community groups, whenever a project is proposed for sale or transfer.

2. Preferences for priority purchasers.

Four commenters were concerned about preferences for priority purchasers. One commenter argued that the interim rule improperly creates an absolute priority instead of the preference provided in MAHRA. The commenter further argued that, in the case of voluntary sales unrelated to disqualification, MAHRA does not support even a preference for priority purchasers and the owner should have sole discretion to choose the project purchaser. Three commenters questioned the rationale for granting a preference to priority purchasers because tenant and community-based groups are not necessarily better at maintaining a project as decent, safe, and affordable housing than other nonprofit or for-profit groups. According to the commenters, qualified nonprofit or for-profit groups could include organizations that would not meet the definition of priority purchaser because of a city-wide mandate or a tenant-endorsed non-profit housing group with a demonstrated track record.

HUD response: In the event of an involuntary sale or transfer of a project, the Operating Procedures Guide will permit offers to be accepted only from priority purchasers during a reasonable period (to be determined by HUD, currently 4 months) after notice of sale or transfer. After that period there are no restrictions on sale or transfer of the project. The rule also states that voluntary sales or transfers do not have any priority purchaser requirements. The preference for priority purchasers in the event of involuntary sale or transfer is based on the requirements of MAHRA and HUD's goal of maintaining safe and affordable housing for low income individuals and families. Priority purchaser offers will be subject to substantive review by both the PAE and OMHAR. Offers will be rejected if not in the best interest of the community and HUD. MAHRA requires priority purchasers to have a local community or tenant base. Otherwise-capable non-profits can partner with such groups to obtain this preference.

3. Priority purchasers and competitive sales.

Four commenters were concerned about the effect of the preference for priority purchasers on an owner's ability to demand competitive offers. Two commenters suggested that the final rule should clarify how long an owner must hold a property exclusively for sale to priority purchasers and what actions an owner must take to demonstrate a good faith effort to sell to a priority purchaser. One of these commenters felt that PAEs should not be required to withhold approval of a sale to a non-priority purchaser for an unreasonably long period of time. One commenter felt that the final rule should give wide discretion to the PAE to approve non-priority purchasers and that the PAE should be able to waive the requirement for tenant approval if approval is unreasonably withheld.

HUD response: Priority purchasers will have a preference only in the event of an involuntary sale or transfer of a project, and then only for a limited period of time. This preference should have a minimal impact on an owner's ability to demand competitive offers because the Operating Procedures Guide requires that priority (and all) purchaser offers be reviewed carefully by both the PAE and OMHAR. The Operating Procedures Guide also requires that the PAE must attempt to mitigate losses to the Government while not placing sole priority on purchase price. In the event the PAE believes tenant approval is being unreasonably withheld, OMHAR should be consulted on a case-by-case basis.

N. Sections 401.481–.484, Other Requirements of Restructuring Plan

Summary of Sections

Section 401.481 explains the subsidy layering certification that a PAE must make under section 514(e)(7) of MAHRA. The purpose of the subsidy layering certification procedure is to ensure that any HUD assistance provided to the owner of a project under the Restructuring Plan is no more than is necessary to permit the project to continue to house a tenant mix that is comparable in income to the tenant income mix of the project before the Restructuring Plan is implemented—after taking into account other Federal, State, or local governmental assistance of any kind such as grants, loans, guarantees, or tax credits or other tax benefits. HUD may rely on the PAE's certification if HUD has already approved the PAE to do subsidy layering certifications for other purposes.

Section 514(e)(9) of MAHRA prohibits refusal to lease a "reasonable number" of units to section 8 voucher holders because of their status as voucher holders. Under § 401.483 of the interim rule (§ 401.556 of the final rule), the Restructuring Plan will not permit an owner to reject any prospective tenants solely because of their status as voucher holders. (Note that title V of Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999, merged the voucher and certificate programs into a consolidated voucher program. HUD has proposed to Congress technical corrective legislation that will conform MAHRA to this change. The final rule refers solely to vouchers to carry out clear Congressional intent, but the term "vouchers" is defined to include any tenant-based assistance under the definition in MAHRA, which is also the section 8 definition.)

Section 401.484 of the interim rule (§ 401.560 of the final rule) implements part of section 518 of MAHRA, which requires a PAE to establish management standards for a project pursuant to HUD guidelines and consistent with industry standards.

Summary of Comments

1. Subsidy layering limitations on HUD funds.

One commenter was "pleased" that HUD allows PAEs with delegated authority for subsidy layering to serve that function under MAHRA. Another commenter questioned the interim rule's reference to limiting assistance to that needed to continue housing "tenants with an income mix comparable to the income mix of the project" before restructuring. The commenter asked how this could be reconciled with a possible need to reconfigure project (*e.g.*, convert efficiencies to 1-bedroom units).

HUD response: We do not intend to limit the ability of owners to reconfigure projects and we thank this commenter for pointing out this potential misunderstanding. We have amended language in § 401.481 to address this issue.

2. Leasing units to voucher holders.

Among commenters favorable to this section, one generally supported it, another wanted the 100 percent requirement to be in a recorded instrument as well as in the Restructuring Plan, and the third wanted HUD to require an owner to "seek and accept" tenant-based assistance for units without project-based assistance. Two commenters opposed the section, stating that it is unreasonable to require 100 percent of units to have tenant-based assistance and that HUD should encourage mixed-income projects. One of them specifically objected to requiring an owner to accept tenant-based assistance that does not permit the owner to realize market rents. One commenter said that the rule needs to specify the term during which this section applies. Three commenters suggested that owners should not be under an obligation to

renew tenant-based contracts unless the tenant is lease-compliant. One commenter was concerned that this section could establish an unconditional renewable lease.

HUD response: We agree with the comment that the non-discrimination provision of § 401.483 of the interim rule (§ 401.556 of the final rule) should be included in the recorded Use Agreement and we have amended § 401.408 accordingly. The final rule does not require an owner to renew contracts with non-compliant lease holders and HUD will not require owners to "seek and accept" tenants with tenant-based assistance. The final rule merely prohibits the owner from discriminating solely on the basis of the tenant's (or potential tenant's) status as the holder of a section 8 voucher. The rule does not require the owner to rent to tenants who are unable to pay the rent or are otherwise not in compliance with the terms of a lease.

3. Property management standards.

a. Need uniform standards. One commenter urged HUD to establish uniform standards that reflect expected outcomes.

HUD response: The final rule reflects the statutory requirement that the PAE establish management standards consistent with industry standards and with minimum general requirements from HUD (section 518 of MAHRA). More specific guidance on reporting and compliance is in the Operating Procedures Guide. Projects with FHA mortgage insurance or a HUD-held mortgage after restructuring will be required to comply with the Regulatory Agreement and all relevant HUD Handbooks and Directives (including the HUD Real Estate Assessment Center's procedures), except to the extent specifically modified by the Restructuring Plan, the Operating Procedures Guide, the final rule, or MAHRA.

b. Suggestions for language changes. Two commenters urged HUD to make the requirement for a manager to maintain good relations with tenants more objective (*e.g.*, it should relate to tenants' opportunity to comment and respect for tenants' rights, not the level of tenant satisfaction with manager). One of these commenters also said that a reference in the preamble to less than "satisfactory" HUD review should apply only if a PAE agrees with HUD findings and the findings are not cured in reasonable period after notice. The same commenter suggested the following specific language changes:

- Add to paragraph (b) an express requirement for HUD's guidelines to be consistent with industry standards.
- Strike "through preventative maintenance, repair or replacement" from paragraph (b)(1) to avoid unproductive arguments over methods of achieving goal.
- Delete an unclear reference in (b)(2) to routine cleaning—which the commenter said duplicates provisions of the physical condition standards.
- Add a provision that a management agreement should permit the PAE to terminate the manager for cause.

HUD response: In our opinion, the commenter's suggested language regarding tenant relations is less, not more, objective. Adding "consistent with industry standards" to paragraph (b) is redundant since it is already specified in paragraph (a). The language regarding "preventative maintenance, repair or replacement" is necessarily more specific than just requiring maintenance of the long term physical integrity of the property. The requirement for routine cleaning, while admittedly duplicative, is appropriate for an explicit statement in this context. HUD does not at this time contemplate delegating the authority to require new management; the Regulatory Agreement/Management Certification contains a provision permitting HUD to require the owner terminate the management agreement.

c. Management fees.

Two commenters wanted HUD to ensure a management fee system that provides adequate compensation and removes the link to (possibly falling) rent levels or that carries forth current method with higher percentage of rent to reflect drop in restructured rents. Another commenter asked HUD to clarify that allowable management fees will not be reduced as a result of restructuring.

HUD response: Underwriting standards for management fees (and other operating expenses) are detailed in the Operating Procedures Guide. While management fees may well be reduced as a result of restructuring, the fee should be adequate to competently manage the property as an affordable housing resource. To the extent the fee has been based on a percentage of the gross rent and will be inadequate after reducing the rents as a result of restructuring, the percentage yield will be recalculated based on an adjusted comparable market fee and adjusted with the OCAF.

O. Sections 401.500–401.501, Participation by Tenants, Community, and Local Government

Summary of Sections

Under §§ 401.500 and 401.501, a PAE must solicit and document the consideration of tenant and local community comments. These sections (and the related new §§ 401.502 and 401.503 in the final rule) describe the minimum procedures for ensuring that third parties affected by the restructuring of a project through the Mark-to-Market Program are kept informed and provided the opportunity to provide comments at crucial stages of the process, including required notices and public meetings at which the PAE will hear presentations and receive comments on the desired contents of a Restructuring Plan and a Rental Assistance Assessment Plan (if one is required), and on any proposed transfer of the project.

Summary of Comments

In the following summary we have included all comments relating to participation by tenants in the restructuring, implementation and contract renewal process, even if the comments were specifically directed to a subject covered in a different section of part 401 or part 402.

1. General.

A significant percentage of commenters (approximately 26 commenters) were dissatisfied with the level of tenant, community, and local government participation guaranteed by §§ 401.500 and 401.501 of the interim rule. These commenters all felt that tenants, and the community and local government, needed to be given the opportunity for broad participation in the entire restructuring process.

Almost all of the commenters argued that broad tenant and community participation was vital for the success of the Mark-to-Market Program. A few commenters also argued that the interim rule failed to follow both the letter and the intent of MAHRA by not providing tenants with the ability to offer "timely and meaningful" input at the various stages of the restructuring process. Some commenters specifically cited section 514(f)(2)(c) of MAHRA as requiring that tenants be consulted on the completed rental assistance assessment plan.

The following table summarizes the general suggestions made by commenters (a number of more specific subject areas are discussed later):

Suggestion	Number of commenters
Tenants should participate fully in PAE selection	6
Tenants should participate in decisions to find an owner ineligible for restructuring or section 8 renewals	2
Tenants/community should have right to have access to relevant documents and information, before they are final, in order to be able to give meaningful input to documents and the overall process. For example, right to access to draft appraisals, physical condition analyses, rental assistance assessment plans, capital needs assessments, management reviews, comparable market rent analyses, proposed restructuring plan, data used in making any decisions about the need for project versus tenant-based assistance, cost-effectiveness of rehabilitations, or disqualification of the owner, and other information necessary for meaningful tenant input	10
Funds should be provided either to PAE or tenant groups to support tenant participation activities	4
Tenants/community should be given notice of and allowed to participate fully in all aspects of restructuring process. For example, in developing and/or reviewing rehabilitation analysis restructuring plan, cost-effectiveness determination under § 401.451(c), any proposed transfer of property, eligibility/disqualification decisions, restructuring/renewal decisions, development of PRA, negotiation of Restructuring Plans, conversions to tenant-based assistance, formulation of rehabilitation and management assessments, Restructuring Commitments	18
Tenant participation and notice in monitoring of PAE's actions under PRA, and further participation of tenants in future implementation and enforcement of the Restructuring Plan, is needed	7
Many more meetings should be required and public comments accepted throughout entire restructuring process	6

HUD response: HUD recognizes the importance of providing opportunities for full and informed involvement in all aspects of project restructuring. Such opportunities, however, must be provided in a manner that permits efficient and timely development of a Restructuring Plan that responds not only to tenant needs but also to wider community and local government needs, the needs of project owners, and the social and financial goals of the Federal Government reflected in MAHRA. HUD considers the tenant participation opportunities provided in the interim rule as consistent with the express minimum demands of MAHRA, but we agree with the commenters that the final rule should require more in order to implement the spirit of the statute. While it is important to streamline the restructuring process and to allow the PAEs flexibility to respond to local conditions, we share the commenters' concerns that the interim rule was not prescriptive enough to guarantee that the tenants and local community groups would be provided adequate opportunity for meaningful participation in every case.

In the interests of providing even greater opportunities, we have concluded that a second consultation meeting should be mandated as an opportunity for tenants and local community groups to review and comment on the PAE's proposed Restructuring Plan (including plans for future section 8 assistance) before the PAE submits the Restructuring Plan to OMHAR. As a minimum, the PAE will be required to conduct two (rather than just one) public meetings. Section 401.500(c) and (d) now require public access to the draft Restructuring Plan and a second meeting no later than 10 days prior to submission to OMHAR. The PAE must document and provide a brief narrative explanation of the disposition of all tenant and local community comments.

This revised procedure will not only ensure appropriate early input into the development of the Restructuring Plan, but also will provide a safeguard against inadequate consideration or misunderstanding of tenant and community concerns by the PAE, without unduly hampering timely and efficient completion of the Restructuring Plan. Persons given the opportunity to comment on a proposed Restructuring Plan will not have appeal rights under subpart F. HUD emphasizes that the tenant and community participation procedures mandated by the final rule are minimum procedures that may be supplemented by a PAE to the extent consistent with the objectives of MAHRA and the local circumstances. Other changes intended to strengthen HUD's collaborative efforts with tenants and local communities are detailed in the following sections.

2. Involve others in Rental Assistance Assessment Plan.

Two commenters said that the PAE needed to consult with tenants, the locality, the PHA and the owner before developing this plan, and specifically with regard to the tenants' ability to use tenant-based assistance. Five commenters said that tenants should have a right to comment on the plan after it was developed, with some commenters arguing that this is required by section 515(f)(2)(C) of MAHRA. One commenter suggested that any conversion to tenant-based assistance should require the approval of ⅔ of the tenants.

HUD response: The initial consultation meeting required by the interim rule provides the opportunity requested by commenters for input prior to the development of the Rental Assistance Assessment Plan. HUD does not interpret section 515(f)(2)(C) as requiring an additional opportunity for tenant comment after that plan is completed, but will provide such opportunity as part of the second consultation meeting to be held upon completion of the draft Restructuring Plan as described above.

3. Intermediaries administering technical assistance grants should receive notice.

One commenter suggested that Intermediaries administering technical assistance grants for the Mark-to-Market Program should be recognized as "affected parties" for the purpose of receiving notices. This commenter felt that this information was required for Intermediaries to perform their functions in a timely and efficient manner.

HUD response: HUD agrees that this requirement is appropriate.

4. Notices in other languages.

One commenter suggested that notices be provided in other languages.

HUD response: HUD will publish general information brochures in various languages. While the PAE and the owner should make every effort to provide notices (or translation services) to reach non-English speaking tenants and local community groups, it is impractical to require this by regulation.

5. Notice to all tenants and posted in project.

A number of commenters felt that all notices should be delivered to each tenant and tenant organization, as well as posted in each project.

HUD response: HUD agrees with this comment.

6. Right to organize.

Tenants should be able to organize in projects that have been restructured through the Mark-to-Market Program.

HUD response: As explained in HUD's corrective rule published on

December 28, 1998 at 63 FR 71373, section 599 of Pub. L. 105–276 amended section 202 of the Housing and Community Amendments of 1978, concerning tenant participation in certain multifamily housing projects, to apply that section to all projects with project-based assistance or enhanced ("sticky") vouchers under the Mark-to-Market Program. Tenant participation under section 202 (including the right to organize) is the subject of 24 CFR part 245. We issued a separate proposed rule to amend part 245 to reflect section 599 and to make other changes (64 FR 32781, June 17, 1999). A final rule is being developed.

7. Tenant role in PAE selection.

Three commenters were concerned that tenants were not given any role in selecting PAEs. Two commenters also felt that tenants should have a role in the negotiation and renewal of PAE agreements. One commenter pointed out that since PAEs would be making decisions about the future of tenants' homes, it would be vital for tenants to have a say in their selection.

HUD response: We encourage tenants to work with the PAEs. Experience working with the tenants has been a threshold criterion in selecting the PAEs. OMHAR will take appropriate action if justified complaints against a PAE are received from tenants.

8. Rent levels.

One commenter said that PAEs will not be able to adequately review an owner's initial market rent determination, so that HUD must let tenants/community advocates review and comment. Three commenters argued that tenants should have the right to comment on or appeal proposed rent increases or petition for decreases to match cost decreases.

HUD response: The PAEs' market knowledge and ability to manage the independent third party review appraisal function were threshold criteria in selecting the PAEs. The PAE is, however, required to solicit tenant and local community comment on this and other issues in the context of developing the Restructuring Plan. While tenants and other interested parties may comment on rent adjustments, they will not have an appeal right.

9. Use Agreement changes.

A commenter felt that tenants and tenant organizations should be notified of any changes to the Use Agreement.

HUD response: HUD agrees with this comment.

10. Monitoring and compliance activities.

A number of commenters were concerned that tenant participation was not sufficient in monitoring and compliance activities. One commenter felt that the final rule should give tenants and the community the right to enforce the Restructuring Plan to achieve compliance. Another commenter felt that tenants and other affected third parties should be given notice of all monitoring and compliance visits.

HUD response: Tenants and other groups are specifically listed as third party beneficiaries of the Use Agreement in § 401.408(i) of the final rule. Appropriate notice of monitoring and compliance inspections will be provided.

11. Transfer of properties and tenant participation.

Three commenters emphasized that the final rule should require more tenant participation in the transfer process. One of these commenters felt that the final rule should require that the PAE work with tenant and community groups and local governments to facilitate the transfer of properties to priority purchasers. Another commenter was concerned that the requirement for an ineligible owner to respond to a notice of rejection within 30 days with a notice of intent to sell would lead to HUD foreclosures when owners fail to respond within 30 days. In light of the adverse impact of foreclosure on tenants, the commenter wanted a final rule that requires community and tenant participation and places primary responsibility on the regulatory agencies to develop a proper solution using all available enforcement tools. Another commenter felt that HUD/PAEs should be obligated early in the disqualification process to explore transfer options with owners, tenants, and potential priority purchasers because reliance on end-stage notices by largely unmotivated owners would be neither adequate nor timely.

HUD response: The final rule requires extensive tenant participation in the involuntary sale or transfer process when the sale or transfer is to a priority purchaser. The potential priority purchaser must show evidence of tenant support and tenant endorsement prior to approval of the sale or transfer. If an owner is determined to be ineligible, HUD will make all efforts to prevent foreclosure and to facilitate sale or transfer of the project to an eligible owner. To the extent an owner is not responsive within the 30-day notice period, HUD's Office of Housing will make the determination of whether to terminate the section 8 contract or to renew at market rents. In all cases the impact on the tenants and local community will be carefully considered. These efforts will be coordinated with HUD's Enforcement Center and other offices within HUD. We agree with the commenter that it is vital for the PAE to determine if a transfer is appropriate (whether voluntary, or involuntary in the case of rejected owners) early in the process.

12. Tenant involvement for projects not restructured.

Eight commenters wanted the final rule to provide for tenant involvement in contract renewal decisions, including determinations of owner ineligibility, for projects not undergoing restructuring under the Mark-to-Market Program.

HUD response: Some of these comments concerned projects that were eligible for restructuring but with owners that requested a contract renewal without restructuring. As regards those projects, HUD agrees with this comment and has provided a new notice requirement and opportunity for comment in the new § 401.502. HUD's response regarding ineligible projects will be published with the final part 402.

13. Access to information.

Ten commenters thought that tenants and/or the community should have a right of access to relevant documents and information, before restructuring is final, in order to be able to give meaningful input to documents and the overall process. Documents/information mentioned included draft appraisals, physical condition analyses, rental assistance assessment plans, capital needs assessments, management reviews, comparable market rent analyses, proposed restructuring plan, data used in making any decisions about the need for project versus tenant-based assistance, cost-effectiveness of rehabilitations, or disqualification of the owner, and other information necessary for meaningful tenant input.

HUD response: Effective participation by tenants and the community depends on access to basic project information. This is recognized in MAHRA section 514(f)(1), which requires HUD to establish an opportunity for participation that must include "appropriate access to relevant information about restructuring activities". Many commenters felt that the interim rule was not adequately specific in emphasizing the right to such access. The interim rule generally requires the PAE to solicit tenant and local community comments at an early stage. By expressly designating the PAE as the key player under the interim rule, HUD expected that the PAE would make available in an appropriate manner the types of information that would make such a solicitation meaningful. The

interim rule did not attempt to list the specific types of documents or information that would need to be made available, or state precisely where and when they would be available, but instead focused on ensuring that a formal procedure was available to receive informed input from tenants and the community.

In response to a broadly-felt desire for an explicit statement in the final rule regarding access to information, the final rule includes both a general statement of the PAE's responsibilities in this regard and a specific listing of certain types of information that a PAE otherwise might be reluctant to disclose publicly because of potential owner assertions of proprietary or confidentiality rights to such information. By clearly listing such information in a rule, HUD will make clearer HUD's understanding that compliance with the statutory mandate for tenant and community participation necessarily means that an owner requesting restructuring must give up some rights to confidentiality that would ordinarily prevail.

We are not listing in the final rule all information items for which a PAE is expected to, or may find it appropriate to, provide public access. For example, business information of a type routinely submitted to HUD that would be released in response to a proper information request under the Freedom of Information Act is not listed. We are not listing items that are a matter of public record. We will not expect a PAE to make public information obtained from an owner that is clearly confidential, or propriety business information of a type that HUD would normally decline to make available, in the absence of a specific rule requiring disclosure. OMHAR is considering a separate proposed rulemaking procedure that will cover in more detail the issue of public access to owner-provided information in the context of Restructuring Plan development, and OMHAR welcomes all ideas on that subject.

P. Sections 401.550–.554, Implementation of the Restructuring Plan After Closing

Summary of Sections

Section 401.550 implements section 519 of MAHRA by providing for periodic PAE monitoring (including on-site inspections) and by generally requiring PAEs to ensure that owners comply with approved Restructuring Plans, including execution and recording of a Use Agreement. As long as there is a PAE for the project that is qualified to be a section 8 administrator (*i.e.*, a State or local housing agency), the PAE will be responsible for monitoring and enforcement; if not, HUD will perform those functions. HUD or its designee will be responsible for servicing the second mortgage including the determination of the amount of the net cash flow receivable by the owner. HUD may designate the PAE as servicer with consent of the PAE. Section 401.554 requires HUD to offer to any PAE qualified to be the section 8 contract administrator the opportunity to serve as contract administrator. The term "qualified" is intended to indicate that a contract administrator must meet both statutory requirements of the United States Housing Act of 1937 (*e.g.*, be a public housing agency) and any additional requirements of HUD established under the applicable section 8 program by the responsible HUD officials. As contract administrator, the PAE must offer to renew section 8 contracts in accordance with the Restructuring Plan as provided in section 515(a) of MAHRA.

Summary of Comments

1. Inspections.

Two commenters were concerned about inspections required under § 401.550(b). One commenter pointed out that properties subject to FHA-insured mortgages would be subject to two inspections, contrary to the HUD 2020 goal of requiring one inspection per property per year. Both commenters were concerned about the cost of the required inspection and the possibility that the loan servicing fee would not cover the servicing lender's costs. One suggested eliminating the mortgagee inspection requirement for small loans; the other suggested requiring the PAE to submit inspection results to the servicing lender in lieu of a mortgagee inspection.

HUD response: HUD agrees that duplicate inspections are not desirable and they are not required under the final rule. All inspection requirements for restructured projects will be consistent with the HUD Real Estate Assessment Center (REAC) protocols.

2. PAE matters.

One commenter recommended that PAEs receive additional compensation for conducting loan servicing, compliance monitoring, and section 8 contract administration. This commenter also recommended that HUD clarify all the long-term responsibilities of the PAE in the Operating Procedures Guide and the final rule. Another commenter suggested that HUD/PAE should identify the specific type of monitoring and inspection contemplated.

HUD response: The PAE's long-term responsibilities will vary according to its willingness and ability to perform these functions. The possible responsibilities are discussed in Subpart D. These matters, and appropriate compensation, will be addressed in the PRA and the Operating Procedures Guide. OMHAR is currently drafting a PRA amendment to recognize the long-term compliance monitoring functions.

3. Role of lender.

One commenter felt that if the first mortgage is refinanced with a conventional loan, then the conventional lender should have primary project monitoring and inspection authority.

HUD response: Consistent with section 519 of MAHRA, the PAE (or HUD if the project is no longer covered by a PRA with a public PAE) is responsible under the final rule for long-term monitoring and compliance with the Restructuring Plan and Use Agreement. This does not prevent the lender—whether the first mortgage is modified or refinanced with FHA-insured or conventional financing—from undertaking other monitoring or inspections that it considers appropriate, at its own expense.

4. Servicing of second mortgage.

Two commenters were concerned about the servicing of second mortgages. One of these commenters felt that the Mark-to-Market program would operate more efficiently if a servicer of a first mortgage were given the opportunity to service the second mortgage. The other commenter argued that because Mark-to-Market second mortgages will be cash flow mortgages, an important criteria for servicing them will be financial statement analysis. The commenter recommended that HUD test interest for a national solicitation for contractors who could provide the necessary expertise in analyzing financial statements.

HUD response: HUD agrees that the servicer of the second mortgage must have skill in financial statement analysis. As noted in § 401.552 of the final rule, HUD or its designee (which could include either the PAE or another contracted entity) will service the second mortgages.

5. Section 8 contract administration.

A commenter urged HUD not to attempt to undermine Congress' intent that qualified HFAs, serving as PAEs, be utilized as contract administrators for properties that complete restructuring. The commenter was concerned about the interim rule adding additional requirements for contract administrators

beyond those contained in the United States Housing Act of 1937.

HUD response: Section 401.554 implements the requirement in Section 519 of MAHRA that PAEs who are qualified to be Section 8 contract administrators be offered the opportunity to serve in this capacity. "Qualified" is used in the sense of both technically eligibile under the 1937 Act, and capable as determined by the responsible HUD official. HUD, or a public body PAE designated as contract administrator, must offer to renew section 8 contracts, subject to the availability of appropriations.

6. Enforcement.

A commenter asked: What will be the enforcement mechanism to enforce compliance with management standards?

HUD response: Under section 519(a)(1)(A) of MAHRA, a PAE has responsibility for enforcement of the management standards (as well as other MAHRA requirements). HUD will not shun an enforcement role, however, but will be actively involved in ensuring full compliance with program requirements. HUD and/or the PAE will apply a variety of enforcement tools in cooperation with HUD's Enforcement Center, when appropriate on a case-by-case basis. Notes, mortgages, Regulatory Agreements, Use Agreements and section 8 HAP contracts will all provide legally binding requirements upon which HUD or (to some extent) a PAE can bring enforcement action. Specific circumstances such as status of the property's financing, type and level of section 8 assistance and past PAE experiences with enforcement under Mark-to-Market and other programs will dictate the appropriate enforcement mechanism. Additionally, in every case, the recorded Use Agreement will provide recourse for the various beneficiaries.

Q. Section 401.595, Contract Provisions

Summary of Section

This section provides that the provisions of 24 CFR chapter VIII (*i.e.*, other section 8 program requirements) will apply to contracts renewed under part 401 only to the extent, if any, provided in the section 8 contract.

Summary of Comments

One commenter wanted an explanation of the section which the commenter thought was unclear. The commenter asked whether the rule referred only to regulations not required by section 8 itself, and whether HUD intended the contract to substitute for regulations governing management and operations of projects under renewed project-based assistance contracts.

HUD response: The intent of this section is to permit HUD to identify, through the contract, those section 8 regulations that are appropriately applied when renewal is under the authority of part 401. This applies only to the initial renewal under part 401. Subsequent renewals will be governed by part 402. Some matters (*e.g.*, setting initial rent levels for project-based assistance and adjusting them) are fully covered in part 401 and other section 8 regulations directly pertaining to these matters will not be applied to part 401 renewals. For some other matters, other sections of part 401 indicate the applicability of usual section 8 requirements—*e.g.*, § 401.558 indicates when the physical conditions standards in 24 CFR 5.703 (which usually apply to section 8 projects pursuant to sections such as 24 CFR 880.201 and 881.201) will apply to Mark-to-Market properties. In general, section 8 regulations on matters that are not in conflict with, or otherwise addressed by, part 401 will be made applicable in contracts renewed under that part. However, HUD considers it necessary to reserve to the contract drafting and revision process the final detailed decisions on the applicability of section 8 requirements.

R. Section 401.601 of Interim Rule and § 402.4(a)(2) of Final Rule, Consideration of an Owner's Request To Renew an Expiring Contract Without a Restructuring Plan

Summary of Section

This section provides a procedure for considering an eligible owner's request for renewal of an expiring contract without requesting a Restructuring Plan. Rents would be reduced to comparable market rents. HUD or the PAE will determine whether renewal under § 402.4 at comparable market rents would be sufficient to maintain an adequate debt service coverage ratio on the first mortgage and necessary project reserves. If so, the contract renewal will be processed under § 402.4. If not, a Restructuring Plan must be developed by a PAE before further consideration of the owner's request.

In the final rule, this section is moved without substantive change to § 402.4(a)(2), so that part 402 will contain all requirements for contract renewals under the authority of section 524 of MAHRA. When the complete part 402 is published in final form, HUD will make any further changes to § 402.4(a)(2) that are needed to reflect HUD's final resolution of the comments on this section. All of the HUD responses below relate to HUD's position pending publication of the complete final part 402.

Summary of Comments

1. Determination/verification of rent comparability.

One commenter wanted the final rule to clarify that verification of rent comparison is a responsibility of a PAE and not HUD but another said verification must be by HUD and not the PAE (arguing that a PAE has a bias to restructure). Another commenter wanted market comparable rents for projects with current rents above market to be determined by an appraiser on both an "as-is" and "as-repaired" basis, with "as-is" basis to be used when reserves are determined to be inadequate for repairs.

HUD response: HUD's Office of Housing will retain responsibility for renewal of below-market contracts. OMHAR will delegate the rent comparability review for above-market projects to PAEs, but will retain responsibility for the final decision. The compensation structure and assignment of these projects to PAEs for contact administration regardless of whether or not the projects are restructured will remove the basis for any perceived bias on the part of the PAE. The rents for these projects will be analyzed on an "as is" basis, unless the repairs will be accomplished through full restructuring with a rehabilitation escrow fully funded at closing, or as otherwise specified in the Operating Procedures Guide.

2. Determining adequacy of DSC at comparable market rents.

According to one commenter, this section should only provide for verification of the owner's determination of market rents with no underwriting (which would encourage owner opt-outs from project-based assistance contracts.) Two other commenters, however, asked for an independent HUD/PAE assessment of capital and project operating needs. Another commenter questioned the statutory basis for reviewing the adequacy of debt service coverage at comparable market rents.

HUD response: OMHAR will make a determination (on the basis of the PAE's review) that renewal with rents reduced to market rents with no debt restructuring will not jeopardize the long term financial and physical integrity of the property. Debt service coverage (at reduced rents with expected operating expenses), the adequacy of the reserves for replacement, and the physical condition of the property will be analyzed prior to the Secretary's discretionary renewal pursuant to section 524(a).

S. Section 401.602, Tenant Protection if an Expiring Contract Is Not Renewed

Summary of Section

An owner of an eligible project is not required to request renewal of an expiring contract, but the owner must give advance notice of non-renewal as required by statute. (The underlying statutory provisions have changed since the interim rule took effect, as discussed in Section I.B. of this preamble.) In determining the application of the notice provisions of section 514(d) of MAHRA and section 8(c)(9) of the 1937 Act, as they existed when the interim rule took effect, § 401.602 of the interim rule distinguished between an owner of an eligible project who requested restructuring (considered subject to section 514(d) notice requirement) and an owner of an eligible project who did not request restructuring or who was rejected by HUD or the PAE (considered subject to the section 8(c)(9) notice requirement.) The interim rule also provided that an owner of an eligible project who does not give the proper notice must continue to permit tenants to stay in their units without increasing the tenant portion of the rent for a specified period beginning on the earlier of the date proper notice was given or the date the contract expires.

Section 401.602 of the interim rule also required HUD to make tenant-based assistance available to tenants in two circumstances: (1) To all tenants residing in units assisted under the expiring contract if the owner of an eligible project chooses not to extend or renew project-based assistance (as provided in section 514(d) of MAHRA) and (2) to all tenants residing in a project who are low-income families or are receiving tenant-based assistance at the time HUD or the PAE reject an owner of an eligible project for restructuring (as provided in section 516(d) of MAHRA). Section 401.606 of the interim rule required tenant-based assistance to be offered to each assisted family residing in a project at the time it is restructured with a conversion to tenant-based assistance. The interim rule did not address the availability of tenant-based assistance in other situations of non-renewal of project-based assistance.

Summary of Comments

1. Is tenant-based assistance discretionary or mandatory if project-based assistance is not renewed?

One commenter asked HUD to make clear in the rule that HUD expects appropriations for tenant-based assistance to protect displaced.

HUD response: Owners are required to provide adequate notice to tenants and HUD if they intend to discontinue the provision of project-based assistance, so that tenant-based assistance will be available for the tenants when the project-based assistance expires. As recently amended by section 535 of Pub. L. 106–74, section 8(o)(8)(A) of the United States Housing Act of 1937 requires the owner's notice to state that "in the event of termination [of project-based assistance] the Department of Housing and Urban Development will provide tenant-based assistance to all eligible residents, enabling them to choose the place they wish to rent, which is likely to include the dwelling unit in which they currently reside."

2. Notice issues.

a. 6-month notice of non-renewal. Some comments on notice to tenants addressed the interim rule provisions providing for 6-month notice in some cases and 12-month notice in others, based on HUD's interpretation of statutory provisions in effect when the interim rule was published. Subsequent legislation has changed the 6-month notice provision to a 12-month notice.

HUD response: HUD has made changes in the final rule corresponding to statutory changes and therefore comments on the 6-month notice provision are no longer germane.

b. When is notice required? Three commenters said that a failure to renew because HUD found the owner ineligible for contract renewal should not require a notice to tenants. Similarly, one commenter felt notice was not required if an owner refuses to accept a restructuring plan approved by HUD. Two others wanted tenant notice in all opt-out or non-renewal situations, including owner ineligibility and conversion to tenant-based assistance under a restructuring plan. One commenter felt that any notice requirement in connection with an "interim" contract renewal at existing rents under section 514(c) pending restructuring should be satisfied by notice given when the contract is approved.

HUD response: One-year notice is now required by statute regardless of the reason for termination of the contract. Additionally, new § 401.602(a)(1)(ii) of the final rule reflects the new statutory requirement (section 549(c) of Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999) that owners of projects eligible for Mark-to-Market restructuring must also give a 120 day notice of their intent to opt out.

3. Rent levels for tenant-based assistance.

One commenter questioned the lack of guidance on rent levels for enhanced vouchers for opt-outs. Two commenters said the rule should guarantee that the vouchers provided through a Restructuring Plan are "enhanced" or "sticky", and another commenter wanted the final rule to clarify whether such vouchers are enhanced. Two commenters also wanted vouchers to be enhanced whenever an owner is rejected for renewal and where an owner opts out. One commenter cited section 405(a) of the Balanced Budget Downpayment Act, I and language in appropriations Act as authority for permitting rents under some tenant-based assistance that exceed the levels of "enhanced" vouchers under section 515(c)(4), and relocation costs.

HUD response: Section 538 of Pub. L. 106–74 now provides uniform guidance for enhanced vouchers. It is reflected in this final rule.

4. Timing of tenant-based assistance.

Two commenters said that tenant-based assistance should be available sufficiently early prior to termination/expiration so that tenants can relocate or have assistance in place in time; one suggested 4 months. Another commenter wanted HUD to provide a short-term extension of project-based assistance to provide necessary time for tenants to prepare when an owner is rejected only a short time before the project-based assistance expires.

HUD response: These comments are generally consistent with existing HUD policy to provide adequate time for tenants to find alternative housing.

T. Section 401.606, Tenant-Based Assistance Provisions for Displaced Tenants

Summary of Section

Section 401.606 complies with section 515(c) of MAHRA by providing that, if the Restructuring Plan provides for tenant-based assistance, assistance under 24 CFR part 982 will be offered to each eligible family assisted under the section 8 project-based assistance contract on the date of expiration.

Summary of Comments

One commenter said the rule should provide that "reasonable rent" for section 515(c)(4) vouchers is the restructured rent in the Restructuring Plan which must be pegged to actual market rents, and that the payment

standard for the vouchers must continue to be the "reasonable rent" for all renewals of tenant-based assistance as long as the tenant stays in the project. Three other commenters said that since section 515(c)(4) of MAHRA is merely referenced in the interim rule, § 401.606 should expressly state that the "reasonable rent" shall be at comparable market rents (instead of merely not exceeding market, as stated in the statute).

HUD response: Section 538 of Pub. L. 106–74 revised the vouchers provisions of MAHRA to provide for enhanced vouchers on the same terms as enhanced vouchers authorized by other statutes. The final rule reflects this statutory change.

U. Sections 401.645 and 401.651 Owner Dispute of Rejection and Administrative Appeals

Summary of Sections

Section 401.645 provides the owner an opportunity to dispute if any of the following occur: (1) A request for a Restructuring Plan is rejected; (2) a request for a section 8 contract renewal is rejected; (3) a PAE cannot continue with a Restructuring Plan because of lack of owner cooperation under § 401.402; or (4) HUD rejects a proposed Restructuring Commitment submitted by a PAE. HUD or the PAE will notify the owner of the reasons for a rejection and provide a 30-day period to submit written objections or cure the problem. If an objection is submitted, HUD or the PAE will send the owner a final decision affirming, modifying, or reversing the initial rejection with reasons for the decision. This final decision may be appealed within 10 days through the procedures in § 401.651, which permit an owner to make a presentation (written, oral, and/or through a representative) at a conference with an official of HUD who was not involved in making the decision under appeal. The HUD or PAE official who issued the decision under appeal may also participate.

Summary of Comments

1. Tenant appeals.

Three commenters felt that the dispute and appeals procedures should be extended to tenants.

HUD response: Tenant input into administrative procedures will be welcomed whenever appropriate. Information that may give rise to the administrative proceedings referenced above will always be welcomed from all interested parties. While tenant and local community input is critical to the success of specific Restructuring Plans and to the program in general, the statute does not contemplate tenant access to the dispute and appeals procedures.

2. PAE appeals of rejections under § 401.405.

One commenter suggested that PAEs should have the right to object to HUD's rejection of a restructuring plan, given that PAEs have statutory responsibility for developing the plan. In addition, the commenter suggested that because objection and appeal by a PAE is not encompassed by section 516(b) of MAHRA, HUD is without authority to extend a final determination on the PAE's objection that is exempt from judicial review under MAHRA section 516(c).

HUD response: There is no statutory requirement to provide the PRA with a specific administrative dispute and appeal right independent of the owner, nor is the PAE likely to have any standing to pursue a judicial challenge (for which the final rule's dispute and appeals right serves as a substitute in the case of an owner). HUD feels that the legal interests that should be protected by guaranteed access to a specific administrative dispute/appeal procedure are those of the project owner who may end up in mortgage default if the mortgage is not restructured and future section 8 project-based assistance is decreased or denied. This is in keeping with MAHRA.

HUD will, of course, be open to further discussion with a PAE if a PAE is convinced that rejection of a particular proposed Restructuring Plan is not in the best interests of the project or the public, and that the Plan cannot be modified to respond to HUD's objections. The Operating Procedures Guide provides a 10-day PAE comment period for this purpose, but HUD reserves the right to modify or dispense with this procedure in the future without rulemaking.

3. Time for owner to dispute approved plan.

One commenter said that an owner needs more than 10 days to decide how to respond to an approved Restructuring Plan under § 401.405, and suggested 30 days.

HUD response: Owners will receive a draft of the Restructuring Plan at least 10 days before the Plan is given to HUD for review and will have the Plan to review throughout HUD's review period. Accordingly, the additional 10-day period for owners to review the Plan after HUD approval provides ample time for thorough owner review.

4. Owner appeals.

One commenter felt that the administrative appeals procedure in the interim rule was "sorely" lacking in due process and said that it was unreasonable to limit review of adverse decisions to an informal review, given the possible severe economic consequences of such decisions. The commenter suggested using HUD's established procedures for dealing with administrative appeals. The other commenter suggested requiring that the official conducting the appeal should be knowledgeable about the Mark-to-Market program. This commenter also suggested that the official conducting the appeal should not be involved in any adverse action with the affected owner, in order to avoid a conflict of interest.

HUD response: The appeals procedure strikes a balance between the need for expeditious resolution of cases and the need to provide substantial notice and opportunity to be heard. The procedures detailed in the final rule provide adequate protection for owners. The final rule requires notice and an opportunity to be heard, and an appeal right in the event of an unfavorable decision. All cases will be handled carefully by knowledgeable and responsible OMHAR officials.

V. Section 401.600, Will a Section 8 Contract Be Extended if It Would Expire While an Owner's Request for a Restructuring Plan Is Pending?

Summary of Section

Under § 401.600, an owner who has requested development of a Restructuring Plan may receive a section 8 contract extension at current rents for the shortest reasonable period needed for the PAE to complete a Restructuring Plan for the project. Any extension of the contract beyond 1 year pending closing on the Restructuring Plan would be at comparable market rents or exception rents.

Summary of Comments

One commenter said that a delay in restructuring due to reasons outside the control of an owner should not lead to rent reduction. Another warned about the need to be sensitive to tenant displacement difficulties, saying that HUD should extend or renew a contract during any administrative appeal period for a determination of ineligibility and for long enough for vouchers to be issued.

HUD response: Delays in the restructuring process (unless clearly the result of a lack of cooperation by the owner) will not lead to a rent reduction prior to 12 months. Regardless of the cause of delay, the rents will in every case be reduced after 12 months, though

the project will remain eligible to continue with the restructuring. (OMHAR will consider a waiver if assignment of a project to a PAE was delayed through no fault of the owner.) We note that the restructuring process will begin at least 90 days prior to the original expiration and we urge owners concerned about this issue to exercise their option of entering the program early. HUD is sensitive to tenant displacement issues and will provide tenant vouchers in a timely manner.

W. Miscellaneous Comments on Part 401

The following miscellaneous comments on part 401 were made by at least one commenter:

1. When do contract rents need to be adjusted under a Restructuring Plan when an owner applies in advance of the contact expiration date?

HUD response: The contract rents would be adjusted upon restructuring.

2. Can Mark-to-Market restructuring use a structure from the Portfolio Reengineering demonstration programs under which short-term tax-exempt bonds were amortized through "excess" section 8 rents prior to expiration of existing contract?

HUD response: This will be addressed in a revision to the Operating Procedures Guide. The structure is likely to be acceptable for cases in which the expiration date is after the termination date of the Mark-to-Market Program.

3. Any "guidance" that may lead to ineligibility if not followed should be in the rule—and to the extent matters are not included in the rule, HUD must acknowledge that guidance is non-binding.

HUD response: The Operating Procedures Guide will be used as a vehicle for explaining and elaborating upon the detailed application of substantive requirements in the final rule, as well as addressing procedural and organizational matters that are not required to be included in regulations. The Guide will not be a means of introducing new substantive requirements that are properly the subject of a regulation.

4. HUD must give priority to affordable housing built in suburbs that expands fair housing choice.

HUD response: The PAEs are responsible for balancing the competing social and financial objectives in the Restructuring Plan for each of the projects assigned in their respective PRAs, regardless of location.

5. HUD needs to repeat more of MAHRA's language instead of cross-referencing (one commenter specifically mentioned § 401.420, while three mentioned § 401.421(b)).

HUD response: As part of our continuing effort to streamline rules, HUD's general approach to drafting rules now concentrates on the additional policy guidance needed to fill the gaps in matters expressly covered by statutory language, while minimizing repetition of statutory language that is already clear and that is not amplified in a rule. In response to these concerns of commenters, however, we carefully reviewed the places where the interim rule referenced statutory language to reconsider whether there would any benefit of added clarity or readability that would outweigh the disadvantage of more language added to an already long and complex rule. As a result of this review, we have added more of the statutory language in §§ 401.411(b), 401.420(a) and 401.421(b).

6. Lenders should be compensated for restructuring expenses and time and should be considered compensable third parties under section 517(b)(5) of MAHRA.

HUD response: Lenders may charge the owners reasonable fees for agreeing to modify existing first mortgages. Reasonable and customary loan origination fees may be recognized to the extent they are supported in the amount of a new refinancing loan (as opposed to a modificiation of the existing first mortgage).

7. The Paperwork Reduction Act burden-hour estimates are low.

HUD response: We have reconsidered these estimates and have revised them accordingly. We will pursue approval of our revised estimates through established procedures.

8. FHA's allowable servicing fees should be raised because the size of first mortgage will go down through restructuring.

HUD response: FHA servicing fees are not governed by this final rule.

III. Changes Made to Part 401 of Interim Rule

References are to the section number of the interim rule.

401.1 What Is the Purpose of Part 401?

We removed a sentence that stated that part 401 contains the regulations for the renewal of project-based assistance for eligible projects without restructuring under the Mark-to-Market Program, to recognize that § 401.601 (regarding the "OMHAR Lite" procedure) has been redesignated as § 402.4(a)(2).

401.2 What Special Definitions Apply to This Part?

- In the definition of eligible project, we added material from § 401.100 of the interim rule, which was titled "Which projects are eligible for a Restructuring Plan under this part?" This avoids duplication, and recognizes that the term "eligible project" is used in parts 401 and 402 in a manner that is intended to include the provisions that were in § 401.100 of the interim rule. Section 401.100 is removed in the final rule. We also added that an eligible project must have a first mortgage that has not been restructured under part 401 or under a demonstration program to reflect our understanding of statutory intent.

Some projects under demonstration programs received restructuring of rents to budget-based levels without debt restructuring. Under HUD's interpretation of MAHRA as originlly enacted, all such projects were eligible for Mark-to-Market restructuring, while projects with debt restructured under the demonstration programs were exeption projects. Section 531(b) of Pub. L. 106–74 amended MAHRA to exclude from eligible projects all demonstration projects for which HUD "determines that rent restructuring is inappropriate". No change to the rule language is needed to accomplish this result, since the language as drafted automatically picks up the relevant statutory change. (The same is true of preservation projects described in section 531(b)). Similarly, section 531(c) of the new law has the effect under current rule language of automatically including some State-financed projects (those with FHA insurance and an absence of conflict between debt restructuring and applicable State law or financing agreements) as intended by Congress.

- In the definition of priority purchaser, we clarified that a general partnership with a sole general partner that itself is a priority purchaser will be regarded as a priority purchaser.
- We added a definition of OMHAR.
- We defined voucher to mean any tenant-based assistance (as defined in section 8(f) of the United States Housing Act of 1937; see section 512(15) of MAHRA)). This definition was added to make clear that use of the term voucher in the final rule, in contexts where the interim rule referred to vouchers and certificates, is a non-substantive change that reflects the statutory merger of the section 8 voucher and certificate programs.
- We added a new paragraph (d) referencing other definitions in the

conflict of interest sections of the final rule.

401.3 Who May Waive Provisions in This Part?

This section, not in the interim rule, clarifies that waivers of part 401 are made by the Director of OMHAR subject to the HUD regulations implementing section 106 of the HUD Reform Act of 1989. Ordinarily the Secretary delegates both the authority to waive and issue rules to the Assistant Secretary or equivalent responsible for administering a program. Because the OMHAR Director's authority to issue part 401 derives directly from statute, rather than from authority delegated by the Secretary, this section is advisable to clarify that the OMHAR Director's statutory authority to issue rules encompasses the power to waive them. The section implements an interpretation that OMHAR rules are "regulations of the Department" within the meaning of section 106, so that a waiver must be in writing, state the grounds for the waiver, and be included in the Secretary's periodic **Federal Register** notice of waivers.

401.99 How Does an Owner Request a Section 8 Contract Renewal? [Revised Title]

We removed the interim provision that permitted an owner to submit a request for contract renewal less than 90 days before the contract expiration date if that date was before January 13, 1999. That provision is no longer needed. We added language recognizing that an owner eligible to request renewal under § 402.5 may instead request renewal under § 402.4. We removed language that duplicated § 402.6 for owners of eligible projects seeking renewal without a Restructuring Plan, and substituted a cross-reference to § 402.6. We removed a reference to affiliates due to a change to § 401.101.

Finally, the final rule requires the owner to certify that neither it nor an affiliate has received notice from HUD of a pending suspension, debarment or other enforcement action (unless voluntary sale or transfer is proposed). If the owner is unable to make this certification but does not consider that the subject of the pending suspension or debarment action is grounds for rejection under the standards of section 516 of MAHRA, the owner should submit the rest of the certification with an explanation of the disagreement. HUD will consider this explanation when determining whether to exercise its discretion to reject a request under § 401.101 (revised as discussed below). The final rule thus does not require HUD to accept a request for restructuring if HUD expects to immediately reject the application under § 401.403 based on information about the owner or an affiliate that HUD has already developed. In many cases it will be more efficient to address a problem with an owner or affiliate at the earliest possible stage, so that other approaches (such as project sale) can be explored promptly. Later rejection under § 401.403 could still be possible if review under § 401.101 does not lead to immediate rejection. Owners have the same appeal and dispute rights whether rejection is under § 401.101 or § 401.403 and thus are not adversely affected by this refinement in the final rule.

401.100 Which Projects Are Eligible for a Restructuring Plan Under this Part?

We removed this section and combined it with the definition of "eligible project" in § 401.2(c).

401.101 Which Owners Are Ineligible To Request a Restructuring Plan? [Revised Title]

As explained above, if there is a pending HUD enforcement action against the owner or an affiliate that is based on an action that is grounds for rejection under section 516 of MAHRA, HUD may decide initially not to accept a request for restructuring instead of waiting to reject the request under § 401.403. We added a sentence to § 401.101 to clarify this point. We also revised this section so that rejection of an owner is no longer always required when an affiliate of the owner, but not the owner itself, has already been debarred or suspended. Rejection in that situation will be discretionary with HUD, based on a consideration of the specific facts and circumstances. We made the same change to section 401.403.

401.200 Who May Be a PAE?

Although we have retained the requirement that each non-public PAE must form a partnership with a public purpose entity, as required by section 513(b)(7)(A) of MAHRA, we have omitted the requirement that such a partnership meet all legal requirements for a partnership. This will provide some flexibility to accommodate legal limitations that may restrict some public purpose entities from entering into an arrangement that qualifies as a partnership under applicable State law, if the arrangement otherwise meets the purposes of this requirement of MAHRA. HUD will assist individual non-public PAEs as needed in determining whether their proposed partnership arrangement meets the requirements of MAHRA and this section of the final rule.

401.300 What Is a PRA?

New language recognizes that a PRA may incorporate by reference certain required matters that are adequately addressed in other documents.

401.301 Partnership Arrangements [Revised Title]

The revised title describes the subject of this section more precisely.

401.304 PRA Provisions on PAE Compensation

In the preamble to the interim rule, HUD stated its intention to include more specific provisions on PAE compensation in the final rule, after negotiating arrangements for the initial PAEs and refining the precise duties of PAEs in the initial PRA development process. The final rule contains some additions to § 401.304 based on experience to date. Regarding base fees, HUD will use an annual survey of the market price for the work to determine compensation for public PAEs, and a competitive bid process to determine fees for private PAEs. HUD will set a uniform per-project base fee for each public PAE. The individual components of incentive packages may vary, but the total per-project incentive payment will be uniform for all PAEs, whether public or private. HUD will establish annual limits for reimbursement of expenses for each project, with the possibility of waivers for high-cost areas. The Director of OMHAR must approve all fee schedules. OMHAR's Internet website will contain the standard form of PRA and compensation package, with annual updating.

401.307 On-Going Responsibility of PAE

We have deleted this section because it did not add any specific substantive requirement. This subject is addressed in an expanded subpart D in the final rule.

401.309 PRA Term and Termination Provisions; Other Remedies

We have added an express provision for termination of the PRA for the convenience of the Federal Government similar to the standard arrangement used when the Federal Government contracts for procurement of services. Although the PRA is not a procurement contract, the underlying need of the Federal Government for a termination for convenience provision is also present for a PRA. The termination for convenience provision was generally authorized by § 401.300 of the interim rule that provided for a PRA to contain "other terms and conditions required by HUD" but HUD is choosing to address the matter expressly in the final rule.

401.310 Conflicts of Interest

We narrowed the provision in paragraph (a)(1)(i) on PAE financial interests to focus more precisely on likely areas of conflict. We added language to paragraph (d)(1)(ii) to clarify that a potential PAE that notifies HUD, after a request for selection but before selection, of a conflict of interest must provide a detailed description of the conflict.

401.312 Confidentiality of Information

We added language recognizing that the tenant/community participation procedures in §§ 401.500 through 401.503 of the final rule require some exceptions to the PAE's general obligation to safeguard confidential project and owner information.

401.313 Consequences of PAE Violations; Finality of HUD Determination

We have simplified the language regarding liability of PAEs to HUD for damages resulting from violations of the rules on conflicts of interest, standards of conduct and confidentiality of information. We made several minor editorial changes.

401.314 Environmental Review Responsibilities

The interim rule requires HUD to complete any required environmental review under 24 CFR part 50 before HUD executes a Restructuring Commitment. The final rule clarifies that HUD will complete all actions required for compliance with part 50 (including consideration of any environmental review and consideration of rejection or modification based on any adverse environmental impacts) before HUD executes a Restructuring Commitment.

401.402 Cooperation With Owner and Qualified Mortgagee in Restructuring Plan Development

We added language to clarify that owner cooperation will be demonstrated by reasonable progress in development of a Restructuring Plan.

401.403 Rejection of a Request for a Restructuring Plan Because of Actions or Omissions of Owner or Affiliate or Project Condition

We added language to clarify that HUD and the PAE will refuse to consider restructuring when the current owner is ineligible, because of debarment or suspension or for other reasons that result in a discretionary determination of ineligibility, unless the owner proposes to sell or transfer the property to an eligible purchaser. Also, we added language clarifying that rejection under section 516(a)(4) of MAHRA and this section due to poor condition of the project may be under § 401.451(c) or otherwise. Section 401.451(c) provides an early formal step, upon completion of the Physical Condition Analysis for the project, at which the PAE must consider whether continuing with rehabilitation through a Restructuring Plan will be a cost-effective means of ensuring affordable housing for the tenants. HUD and the PAE will continue to have the right to reject a project in poor condition even if it is not rejected at this early stage. For example, tenant and community input might lead HUD or the PAE to consider the matter further. Finally, we made a change regarding rejection based on suspension or debarment of an affiliate of the owner that is explained in the discussion above under section 401.101, where the same change was made.

401.404 Proposed Restructuring Commitment

The final rule adds a reference to the public meeting required by § 401.500(c) of the final rule. That meeting must be held at least 10 days before the Restructuring Plan and proposed Restructuring Commitment are submitted to HUD under this section. We also specify in the final rule that the Restructuring Commitment must state all consideration that the PAE or related parties receives other than from HUD, in order to identify for OMHAR an area of potential bias or conflict of interest.

401.405 Restructuring Commitment Review and Approval by HUD

New language in the final rule makes it clear that a PAE must inform the owner when HUD rejects a Restructuring Commitment proposed by the PRA, so that the owner can decide whether to dispute the rejection under the subpart F procedures.

401.408 Affordability and Use Restrictions Required

Under new paragraph (e) of the final rule, the recorded Use Agreement must require that the owner comply with § 401.556 of the final rule (§ 401.483 of the interim rule) regarding nondiscrimination against voucher holders in leasing. Under new paragraph (f) of the final rule, the Use Agreement must contain remedies for a breach of the Use Agreement. The remedies must include monetary damages for non-compliance with the affordability restrictions or the physical condition standards in § 401.558 of the final rule. Under new paragraph (g) of the final rule, the Use Agreement must contain a requirement for maintaining the property in compliance with the physical condition standards.

We made a technical change to paragraph (a) to reflect the movement of paragraph (e) of the interim rule (now paragraph (k) of the final rule) and the addition of new paragraphs. These changes clarify that an owner's obligation to renew project-based assistance is not a matter for the recorded Use Agreement, but derives directly from MAHRA and this rule and will be implemented by a rider to the section 8 HAP contract. In what is now paragraph (i), we clarified that the listed interested parties will have rights to enforce the Use Agreement (subject to modification as previously discussed) with the possibility that a particular Use Agreement could specify additional enforcing parties, and added a requirement for the enforcing party to give the owner notice and a reasonable opportunity to cure any violations. In what is now paragraph (j), the final rule requires the owner to post on project property notice of any modifications to the Use Agreement approved by HUD. In what is now paragraph (k), we removed a reference to owner acceptance of tenant-based assistance because it was inaccurate. (Note that new § 401.554 accurately describes the availability of tenant-based assistance required by a Restructuring Plan, consistent with section 515(a)(2) of MAHRA.)

401.410 Standards for Determining Comparable Market Rents

In paragraph (a)(1), we clarified that the MAHRA comparable market rent standard only applies to project-based assistance. Any tenant-based assistance provided under a Restructuring Plan will be subject to the similar "rent reasonableness" standard of section 8(o)(10)(A) of the United State Housing Act of 1937, which applies both to enhanced and regular vouchers. We clarified that section 202/811 projects are not comparable properties for purposes of determining market comparable rents.

We added general language permitting the PAE to make appropriate adjustments when needed to ensure comparison of comparable through comparison with comparable properties. Examples of appropriate adjustments would be adjustments needed due to the non-luxury standard for Mark-to-Market projects (as discussed in the interim rule

preamble) and adjustments needed for utility allowances or to reflect the value of any non-section 8 subsidy provided to the project with the expiring section 8 contract (as mentioned in new section 524(a)(5) of MAHRA). This section is also incorporated into part 402 and applied to projects that are not undergoing debt restructuring. For such projects, the references to the PAE should be treated as references to HUD.

401.411 Guidelines for Determining Exception Rents

We have included some statutory text that was cross-referenced in the interim rule, clarified that exception rents only apply to project-based assistance.

401.412 Adjustment of Rents With Operating Cost Adjustment Factor (OCAF)

We clarified that under this rule OCAF applies only to project-based assistance. We removed the reference to negative OCAF. We redesignated paragraphs (a) and (b) of the interim rule as paragraphs (a)(1) and (a)(2) and added a new paragraph (b) explaining the availability of budget-based adjustments upon request of the owner, subject to the approval of the Secretary, as provided in Pub. L. 106–74.

401.420 When Must the Restructuring Plan Require Project-Based Assistance?

We have included some statutory text that was cross-referenced in the interim rule.

401.421 Rental Assistance Assessment Plan

We have included some statutory text that was cross-referenced in the interim rule.

401.450 Owner Evaluation of Physical Condition

In paragraph (a)(1), we clarified that the owner's list of work items needed to bring the project to the property standard for rehabilitation that is stated in the rule and MAHRA (non-luxury standard adequate for the rental market for which the project was originally approved) should include any work items needed to ensure compliance with applicable requirements of 24 CFR part 8 concerning accessibility to persons with disabilities. The interim and final rules permit rehabilitation to include improvements to meet current standards if the non-luxury standard has changed over time. Accessibility measures are an example of how standards have evolved since original project approval. The addition to paragraph (a)(1) is consistent with § 401.452, which makes it clear that there is no exemption from applicable part 8 requirements simply because rehabilitation is through the Mark-to-Market Program.

We added a new paragraph (b) permitting the owner to submit an up-to-date Comprehensive Needs Assessment (CA) in place of a new evaluation, if all requirements of paragraph (a) are met. Cans must be prepared following procedures outlined in HUD Notice H 97–02 or in subsequent administrative guidance from HUD.

401.451 PAE Physical Condition Analysis (PCA)

We have revised the heading of paragraph (c) to emphasize that it permits rejection of projects in such poor condition that restructuring with rehabilitation is not a cost-effective way of continuing to ensure affordable housing for tenants, as provided in section 516(a)(4) of MAHRA. We added language clarifying that a PAE can only recommend rejection, with HUD making the final decision.

401.452 Property Standards for Rehabilitation

We added an express requirement for the PAE to consider marketability when planning rehabilitation.

401.453 Reserves [New Title]

Because paragraph (a) of this section of the interim rule contains the standards that must be maintained while the Restructuring Plan is in effect, we moved it to subpart D ("Implementation of the Restructuring Plan After Closing"). It is § 401.558 in the final rule under a revised title. We revised the title of this section to reflect its narrowed scope in the final rule.

401.460 Modification or Refinancing of First Mortgage

We added language to paragraph (e) to require the owner to discuss mortgage modification with the existing first mortgagee before considering other sources of first mortgage financing under the Restructuring Plan. We also added language to paragraph (a) to clarify that the size of the first mortgage and monthly payments may not increase through mortgage modification but may increase through refinancing (*e.g.*, a refinancing mortgage that includes rehabilitation financing). Finally, the final rule acknowledges section 219 of Pub.L. 106–74, which gives priority to risk-sharing financing in a Restructuring Plan if it is the best available financing in terms of financial savings and will reduce the Federal Government's risk of loss.

401.461 HUD-Held Second Mortgage

We reorganized paragraph (a) and added language on the following points:

- To clarify that HUD may allow a PAE to negotiate an additional (*e.g.*, third) mortgage for less than the maximum amount permitted by the final rule. Additional guidance for PAEs is included in the Operating Procedures Guide.
- To clarify the owner's right to appeal acceleration of the second mortgage does not apply when acceleration is pursuant to grounds for acceleration that are specified in section 517(a)(4)(A) and (B) of MAHRA, since they do not involve the type of complex legal or factual questions for which an administrative appeals procedure may help to avoid unnecessary litigation. (The grounds are termination or payment in full of the first mortgage and unauthorized project sale/second mortgage assumption.)
- To clarify that, upon payment of the second mortgage in full, any additional (*i.e.*, third) mortgage under this section is not automatically accelerated but is then payable upon demand by HUD or as otherwise agreed by HUD (*e.g.*, under an approved payment schedule).
- To recognize circumstances under which the new HUD-held mortgage may be a first mortgage, in response to sec. 213 of Pub.L. 106–74.

401.472 Rehabilitation Funding

We have included in the final rule a requirement that appeared only in the preamble for the interim rule: That the owner contribution include a reasonable proportion of the rehabilitation cost from nongovernmental resources. HUD will provide additional guidance in the Operating Procedures Guide regarding standards for determining a "reasonable proportion".

HUD 401.473 HUD Grants for Rehabilitation Under Section 236(s) of NA

The final rule inserts language that was inadvertently omitted during printing of the interim rule. As printed, the interim rule permitted delegation of grant administration responsibility only if grant funding were available to pay for grant administration. Nothing in section 236(s)(5)(A) of the National Housing Act prevents a PAE from agreeing to accept delegation without reimbursement of costs. HUD did not intend to prevent it by regulation.

401.474 Project Accounts

We added language to paragraph (b) to clarify that it is the actual release of funds to the owner under this section that must be delayed until after

completion of rehabilitation, not the determination of the amount of funds to be released.

401.480 Sale or Transfer of Project [Revised Title]

We have removed "voluntary" from the title of this section because it was potentially misleading. Although all projects sales will be voluntary in the sense that owners must agree to them, some project sales may be considered involuntary in the sense that no Restructuring Plan will be approved under current project ownership. We have also revised the section to clarify that purchasers defined in the rule as "priority purchasers" do not have a right to priority consideration for involuntary sales indefinitely, but only for a reasonable period that OMHAR will determine. By definition, priority purchasers will have tenant support. The final rule clarifies that other purchasers will also be required to provide evidence of tenant support.

401.481 Subsidy Layering Limitations on HUD Funds

Additional language clarifies that the subsidy layering certification does not preclude a Restructuring Plan that includes project reconfiguration needed to meet the needs of the community.

401.483 Leasing Units to Voucher Holders

Because this section concerns leasing of units while the Restructuring Plan is in effect, we moved it to Subpart D ("Implementation of the Restructuring Plan After Closing"). It is § 401.556 in the final rule.

401.484 Property Management Standards

Because this section concerns property management standards while the Restructuring Plan is in effect, we also moved it to Subpart D. It is § 401.560 in the final rule.

401.500 Required Notices to Third Parties and Meetings With Third Parties [Revised Title]

In paragraph (b)(2) of the final rule, notice of the initial public meeting is now required no more than 40 days before the meeting, instead of 60 days as in the interim rule. New paragraphs (c) and (d) cover a new requirement for public notice and comment on a substantively completed Restructuring Plan before the PAE submits the Plan to OMHAR. A second public meeting is also now required by new paragraph (d).

New paragraph (f) (a revision of paragraph (c) of the interim rule) ensures that the PAE will document and provide to HUD all public comments on the proposed Restructuring Plan. Paragraph (f) clarifies that notice is required whenever the PAE determines that the Restructuring Plan will not move forward, for any reason, after the owner has requested that a Plan be developed or after a Plan is determined to be necessary under § 402.4(a)(2). The interim rule language was ambigous on whether notice was required in the absence of an OMHAR rejection. As revised, the final rule notice requirement also applies whenever an owner does not take the necessary actions to complete the restructuring process, including withdrawal of the request to restructure or failure to execute an approved Restructuring Commitment.

401.501 Delivery of Notices and Recipients of Notices [Revised Title]

The final rule requires notice to tenants and tenant organizations, directly and through posting, instead of permitting notice to a tenant organization alone to suffice as tenant notice as under the interim rule. Notice also must now be given to the ITAG and OTAG grantees serving the jurisdiction in which the property is located.

401.502 Notice Requirement When Debt Restructuring Will Not Occur

This new section provides that persons who would have received notice of a Restructuring Plan request under §§ 401.500–.501 will receive notice if the owner of an eligible project requests section 8 contract renewals without debt restructuring. HUD or the PAE must make publicly available basic project identified in § 401.500(b)(1)(i), (ii) and (iv), and the Owner Evaluation of Physical Condition and comparative market rent analysis that are required in connection with the renewal request (without expense or profit/loss information). The PAE must announce a procedure to accept public comments on this information. The PAE must consider the comments and document the consideration for HUD.

401.503 Access to Information

This new section explicitly recognizes that a PAE, in fulfilling its responsibilities to provide for tenant and community participating in developing a Restructuring Plan, will need to make available information about the project and the owner. In general, the PAE is not expected to make public confidential or proprietary information obtained from the owner. This section does require the PAE to make public the Owner Evaluation of Physical Condition and the owner-prepared 1-year project rent analysis (without expense or profit/loss information) even if the owner asserts confidentiality/proprietary rights. The PAE is never required to disclose expense, property valuation, or profit/loss information without owner consent.

401.550 Monitoring and Compliance Agreements

This section requires PAE inspections of projects that have undergone restructuring in accordance with section 519(b)(2) of MAHRA, subject to HUD's uniform inspections procedures in 24 CFR part 5, subpart G. To avoid duplicative inspections under such procedures (such as by the mortgagee if the mortgage continues to be insured, as provided in 24 CFR 207.260), the final rule adds a clarification that HUD will accept an inspection by a PAE that complies with the uniform inspection procedures in lieu of an inspection under those procedures required by any other party. We have also added a sentence to make explicit what was implicit in the interim rule—that the provisions of subpart D apply as long as the Use Agreement is in effect. Finally, we added a new paragraph (d) to this section requiring HUD to regulate the mortgagor through a regulatory agreement as long the Secretary holds the second or additional (third) mortgage under this rule. This would be in addition to any regulatory agreement required in connection with FHA mortgage insurance.

401.554 Contract Renewal and Administration [Revised Title]

We added language corresponding to section 515(a) of MAHRA, under which HUD or a public body PAE designated as contract administrator must offer to renew section 8 contracts as provided in a Restructuring Plan, subject to the availability of appropriations and subject to the renewal authority available at the time of each contract expiration. Section 524 of MAHRA (as amended by Pub. L. 106–74) will be the renewal authority.

401.556 Leasing Units to Voucher Holders

This redesignated section was § 401.483 of the interim rule under a slightly different title.

401.558 Physical Condition Standards

This redesignated section was § 401.453(a) of the interim rule under a different title. We removed language regarding duration of the requirement in the section because it duplicates new language added to § 401.550 in the final rule.

401.560 Property Management Standards

This redesignated section was § 401.484 of the interim rule.

Subpart E—Section 8 Requirements for Restructured Projects

401.595 Contract and Regulatory Provisions

Section 401.607 of the interim rule is combined with this section of the final rule. The section is expressly limited to project-based assistance because the scope is intended to be identical with § 402.3.

401.600 Will a Section 8 Contract Be Extended if It Would Expire While an Owner's Request for a Restructuring Plan Is Pending?

In the preamble to the interim rule, HUD indicated that it would typically exercise its discretion under this section to provide a contract extension at existing rents for up to 1 year by initially providing an extension of no more than 9 months. Upon further consideration, HUD currently expects to initially extend a contract at existing rents for 1 year, subject to the rule provision permitting contract termination for an owner who is uncooperative or who is rejected for Mark-to-Market restructuring. We expect to make an exception for an owner that executed a Restructuring Commitment under a demonstration program but failed to proceed. Although such an owner is eligible to request a Restructuring Plan under part 401 and a contract extension under this section, the owner will usually be given an extension at existing rents for a period that is substantially shorter than a full additional year. There is no change in the actual rule language for this section.

401.601 Consideration of an Owner's Request To Renew an Expiring Contract for an Eligible Project Without a Restructuring Plan

We redesignated this section as § 402.4(a)(2) but made no substantive revisions except as follows. We added language that ensures that a HUD or a PAE will take into account tenant and community comments received under new § 401.502 about whether contract renewal without a Restructuring Plan would be sufficient to maintain both adequate debt service coverage and necessary replacement reserves. The final rule also makes it clear that HUD, not the PAE, will make the final decision to require a Restructuring Plan. A conforming change was made to § 402.1 to reflect the section redesignation.

401.602 Tenant Protection if an Expiring Contract Is Not Renewed

Paragraphs (a) and (b) of this section have been amended to reflect changes in the underlying statutory provisions. Specifically, Pub. L. 105–276 repealed a notice requirement of former section 8(c)(8) of the United States Housing Act of 1937, and corresponding provisions of the interim rule have therefore been removed. The notice requirement of former section 8(c)(9) of the 1937 Act (now redesignated as section 8(c)(8)) was amended by both Pub. L. 105–276 and Pub. L. 106–74, so that corresponding changes have been made in the corresponding interim rule provisions of this section. Also, Pub. L. 105–276 added an additional 120-day notice requirement for contract terminations by owner who chose to pursue restructuring, with restrictions on rent increase and evictions during the notice period, and this section of the final rule reflects those provisions.

We also added language in paragraph (a) specifying that required notice to HUD is to be sent instead to the contract administrator if there is one, reflecting established practice. We made a change to clarify that an owner cannot give notice under paragraph (a) while simultaneously pursuing a Restructuring Plan and contract renewal.

We added language to paragraph (c) to clarify two points: (1) HUD's statutory obligation to make tenant-based assistance available in certain circumstances described in paragraphs (c)(1) and (c)(2) (corresponding to sections 514(d) and 516(d) of MAHRA) is subject to the usual eligibility requirements in the tenant-based assistance program regulations, and (2) tenant-based assistance is available pursuant to this section only when project-based assistance is not renewed. Pub. L. 106–74 provides for enhanced vouchers to certain tenants when project-based assistance is not continued, and this is reflected in a revision to paragragh (c).

We added cross-references to rejection under § 401.451 for poor project condition to supplement existing cross-references to rejection for that reason under § 401.403. Finally, we deleted a sentence of § 401.602(b) of the interim rule that stated that the period during which rents may not be raised begins on the earlier of the date of actual notice to tenants or the date of contract expiration. HUD's intent in including this language in the interim rule was to provide an express regulatory basis for language restricting rent increases that had previously been included in contracts to implement statutory notification requirements. However, the sentence being deleted went beyond what has been stated in actual contract language and thus was not necessary to accomplish HUD's intent. In addition, the sentence being deleted may be inconsistent with the new statutory 120-day notice requirement mentioned above. The amendment to section 514(d) of MAHRA adding the 120-day notice specifically addresses the rent increase question, as follows: If the notice is not provided, "the owner may not evict the tenants or increase the tenants" rent payment until such time as the owner has provided the 120-day notice and such period has elapsed." This appears to require both actual notice and passage of time before an owner may increase rents.

401.605 Project-Based Assistance Provisions

We added language to clarify that this section applies to the initial rents upon restructuring and not to subsequent contract renewals.

401.606 Tenant-Based Assistance Provisions

We added language similar to the addition to § 401.602(c) described above regarding eligibility under tenant-based assistance program regulations. We also revised the second sentence to conform to section 538 of Pub. L. 106–74 of enhanced vouchers.

401.607 Contract Term

This section of the interim rule is removed and its language is added to § 401.595 of the final rule.

401.650 When May the Owner Make an Administrative Appeal of a Final Decision Under This Subpart?

We made a conforming change to reflect the change to § 401.461(b)(4) regarding appeal of acceleration of the second mortgage.

401.651 Appeal Procedures

We added language to paragraph (c) to clarify that a HUD official is disqualified from considering an appeal only of a matter that the official (or someone the official reports to) was directly involved in, not every matter that falls within the official's general area of responsibility.

IV. Findings and Certifications

Paperwork Reduction Act

The information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB approval number 2502–0531. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

A Finding of No Significant Impact (FONSI) with respect to the environment for the interim rule was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410. That FONSI continues to apply for this final rule.

Executive Order 12866

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" (but not economically significant) as defined in section 3(f) of the Order. The final rule will have effects outside the government, such as rehabilitation costs and associated benefits of improved housing. Based on experience under earlier demonstration authority, HUD has estimated that these effects outside of the Government do not total more than $100 million annually.

Any changes made in this final rule subsequent to its submission to OMB are identified in the docket file. The docket file is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this final rule before publication and by approving it certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements legislation that created a Mark-to-Market Program through which section 8 rents for multifamily projects with HUD-insured or HUD-held mortgages will be reduced in order to preserve low-income rental housing affordability while reducing the long-term costs of project-based rental assistance and minimizing the adverse effect on the FHA insurance funds. As the preamble to the rule explains, section 8 assistance is costly to the Federal Government and the cost is rising. To preserve affordable housing, Congress determined that reduction of section 8 assistance was necessary. Reduction or elimination of section 8 assistance without some type of transition or conversion process may mean that current projects assisted by section 8 may be unable to meet their financial obligations including operating expenses, current and future capital needs, and debt service payments—particularly payments on FHA-insured mortgages. To avoid this situation, the authorizing legislation and this final rule provides for a mortgage restructuring program.

In this final rule, the Department strives to provide flexible requirements in order to reduce any burden on small entities. Owners of eligible projects that are small entities, who might otherwise be unable to meet their monthly mortgage payments after HUD reduces section 8 rents to comparable market rents as mandated by law, are provided an opportunity to receive a reduction in monthly mortgage payments if they request a mortgage restructuring under the rule. As conditions of the mortgage restructuring the owners will be required to rehabilitate the project so that it meets minimum standards of housing quality and to provide for competent management. These are not new economic burdens on owners, but are project matters which owners already have a responsibility to address and should be addressing even without mortgage restructuring. The only actions required of the owner are those needed to ensure that a project provide decent and safe housing to those intended to benefit from the Federal programs involved (FHA mortgage insurance and section 8 housing assistance payments.) Again, under existing HUD regulations and contracts, owners are now subject to a decent, safe, and sanitary standard or a good repair standard. Owners choosing to request a mortgage restructuring under this final rule will continue to serve the same tenant income mix as before and will not be required to provide additional affordable housing.

Some of the Participating Administrative Entities (PAEs) selected under the final rule, such as nonprofit organizations and for-profit entities, may be small entities. In the final rule HUD has chosen to preserve for the PAE substantial discretion, within the limits of the statute, to choose the most cost-effective way of undertaking the mortgage restructuring of projects assigned to the PAE. No more projects will be assigned to a PAE than a PAE is able and willing to deal with. Each nonprofit and for-profit PAE will partner with a public entity to provide additional resources and reduce the burden of undertaking restructuring. Nothing in the final rule imposes a disproportionate burden on a small entity.

Executive Order 13132, Federalism

This final rule does not have Federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and the private sector. This rule does not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the UMRA.

List of Subjects

24 CFR Part 401

Grant programs-housing and community development, Housing, Housing assistance payments, Housing standards, Insured loans, Loan programs-housing and community development, Low and moderate income housing, Mortgage insurance, Mortgages, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 402

Housing, Housing assistance payments, Low and moderate income housing, Rent subsidies.

For the reasons set forth in the preamble, 24 CFR Chapter IV is amended to read as follows:

1. The chapter heading is revised to read as follows:

CHAPTER IV—OFFICE OF HOUSING AND OFFICE OF MULTIFAMILY HOUSING ASSISTANCE RESTRUCTURING, DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

2. Part 401 is revised to read as follows:

PART 401— MULTIFAMILY HOUSING MORTGAGE AND HOUSING ASSISTANCE RESTRUCTURING PROGRAM (MARK-TO-MARKET)

Subpart A—General Provisions; Eligibility

Sec.
401.1 What is the purpose of part 401?
401.2 What special definitions apply to this part?
401.3 Who may waive provisions in this part?
401.99 How does an owner request a section 8 contract renewal?
401.101 Which owners are ineligible to request Restructuring Plans?

Subpart B—Participating Administrative Entity (PAE) and Portfolio Restructuring Agreement (PRA)

401.200 Who may be a PAE?
401.201 How does HUD select PAEs?
401.300 What is a PRA?
401.301 Partnership arrangements.
401.302 PRA administrative requirements.
401.303 PRA indemnity provisions for SHFAs and HAs.
401.304 PRA provisions on PAE compensation.
401.309 PRA term and termination provisions; other remedies.
401.310 Conflicts of interest.
401.311 Standards of conduct.
401.312 Confidentiality of information.
401.313 Consequences of PAE violations; finality of HUD determination.
401.314 Environmental review responsibilities.

Subpart C—Restructuring Plan

401.400 Required elements of a Restructuring Plan.
401.401 Consolidated Plans.
401.402 Cooperation with owner and qualified mortgagee in Restructuring Plan development.
401.403 Rejection of a request for a Restructuring Plan because of actions or omissions of owner or affiliate or project condition.
401.404 Proposed Restructuring Commitment.
401.405 Restructuring Commitment review and approval by HUD.
401.406 Execution of Restructuring Commitment.
401.407 Closing conducted by PAE.
401.408 Affordability and use restrictions required.
401.410 Standards for determining comparable market rents.
401.411 Guidelines for determining exception rents.
401.412 Adjustment of rents based on operating cost adjustment factor (OCAF) or budget.
401.420 When must the Restructuring Plan require project-based assistance?
401.421 Rental Assistance Assessment Plan.
401.450 Owner evaluation of physical condition.
401.451 PAE Physical Condition Analysis (PCA).
401.452 Property standards for rehabilitation.
401.453 Reserves.
401.460 Modification or refinancing of first mortgage.
401.461 HUD-held second mortgage.
401.471 HUD payment of a section 541(b) claim.
401.472 Rehabilitation funding.
401.473 HUD grants for rehabilitation under section 236(s) of NHA.
401.474 Project accounts.
401.480 Sale or transfer of project.
401.481 Subsidy layering limitations on HUD funds.
401.500 Required notices to third parties and meetings with third parties.
401.501 Delivery of notices and recipients of notices.
401.502 Notice requirement when debt restructuring will not occur.
401.503 Access to information.

Subpart D—Implementation of the Restructuring Plan after Closing

401.550 Monitoring and compliance agreements.
401.552 Servicing of second mortgage.
401.554 Contract renewal and administration.
401.556 Leasing units to voucher holders.
401.558 Physical condition standards.
401.560 Property management standards.

Subpart E—Section 8 Requirements for Restructured Projects

401.595 Contract and regulatory provisions.
401.600 Will a section 8 contract be extended if it would expire while an owner's request for a Restructuring Plan is pending?
401.601 [Reserved]
401.602 Tenant protections if an expiring contract is not renewed.
401.605 Project-based assistance provisions.
401.606 Tenant-based assistance provisions.

Subpart F—Owner Dispute of Rejection and Administrative Appeal

401.645 How does the owner dispute a notice of rejection?
401.650 When may the owner make an administrative appeal of a final decision under this subpart?
401.651 Appeal procedures.
401.652 No judicial review.

Authority: 12 U.S.C. 1715z–1 and 1735f–19(b); 42 U.S.C. 1437f note and 3535(d).

Subpart A—General Provisions; Eligibility

§ 401.1 What is the purpose of part 401?

This part contains the regulations implementing the authority in the Multifamily Assisted Housing Reform and Affordability Act of 1997 (MAHRA) for the Mark-to-Market Program. Section 511(b) of MAHRA details the purposes, and section 512(2) details the scope, of the Program.

§ 401.2 What special definitions apply to this part?

(a) *MAHRA* means the Multifamily Assisted Housing Reform and Affordability Act of 1997, title V of Pub. L. 105–65, 42 U.S.C. 1437f note.

(b) *Statutory terms.* Terms defined in section 512 of MAHRA are used in this part in accordance with their statutory meaning. These terms are: comparable properties, expiring contract, expiration date, fair market rent, mortgage restructuring and rental assistance sufficiency plan, nonprofit organization, qualified mortgagee, portfolio restructuring agreement, participating administrative entity, project-based assistance, renewal, State, tenant-based assistance, and unit of general local government.

(c) *Other terms.* As used in this part, the term—

Affiliate means an "affiliate of the owner" or an "affiliate of the purchaser", as such terms are defined in section 516(a) of MAHRA.

Applicable Federal rate has the meaning given in section 1274(d) of the Internal Revenue Code of 1986, 26 U.S.C. 1274(d).

Community-based nonprofit organization means a nonprofit organization that maintains at least one-third of its governing board's membership for low-income tenants from the local community, or for elected representatives of community organizations that represent low-income tenants.

Comparable market rents has the meaning given in § 401.410(b).

Disabled family has the meaning given in § 5.403(b) of this title.

Elderly family has the meaning given in § 5.403(b) of this title.

Eligible project means a project that:

(1) Has a mortgage insured or held by HUD;

(2) Receives project-based assistance expiring on or after October 1, 1998;

(3) Has current gross potential rent for the project-based assisted units that exceeds the gross potential rent for the project based assisted units using comparable market rents;

(4) Has a first mortgage that has not previously been restructured under this part or under a Reengineering demonstration program;

(5) Is not described in section 514(h) of MAHRA; and

(6) Otherwise meets the definition of "eligible multifamily housing project" in section 512(2) of MAHRA.

HUD means the Director of OMHAR or a HUD official authorized to act in lieu of the Director, when used in reference to provisions of MAHRA that give responsibilities to the Director, and otherwise has the meaning given in § 5.100 of this title.

NA means the National Housing Act, 12 U.S.C. 1702 *et seq.*

OMHAR means the Office of Multifamily Housing Assistance Restructuring.

Owner means the owner of a project and any purchaser of the project.

PAE means a participating administrative entity as defined in section 512(10) of MAHRA, or HUD when appropriate in accordance with section 513(b)(4) of MAHRA.

PCA means a physical condition assessment of a project prepared by a PAE under § 401.451.

PRA means a portfolio restructuring agreement as defined in section 512(9) of MAHRA.

Priority purchaser means a purchaser of a project, meeting qualifications established by HUD, that is:

(1) A tenant organization;

(2) A tenant-endorsed community-based nonprofit organization or public agency; or

(3) A limited partnership with a sole general partner that itself is a priority purchaser under this definition.

Rental Assistance Assessment Plan means the plan described in section 515(c)(2) of MAHRA.

Restructured rent means the rent determined at the time of restructuring in accordance with section 514(g) of MAHRA.

Restructuring Plan or *Plan* means the Mortgage Restructuring and Rental Assistance Sufficiency Plan described in section 514 of MAHRA.

Section 8 means section 8 of the United States Housing Act of 1937, 42 U.S.C. 1437f.

Section 541(b) claim means a claim paid by HUD under an insurance contract under authority of section 541(b) of the National Housing Act, 12 U.S.C. 1735f–19(b).

Tenant organization of a project means an organization that meets regularly, whose officers are elected by a majority of heads of households of occupied units in the project, and whose membership is open to all tenants of the project.

Unit of local government means the smallest unit of general local government in which the project is located.

Voucher means any tenant-based assistance.

(d) *Conflicts of interest.* Additional definitions applicable to §§ 401.310 through 401.313 appear in § 401.310.

§ 401.3 Who may waive provisions in this part?

The Director of OMHAR may waive any provision of this part, subject to § 5.110 of this title.

§ 401.99 How does an owner request a section 8 contract renewal?

(a) *Requesting Restructuring Plan.* An owner may request a section 8 contract renewal as part of a Restructuring Plan by, at least 3 months before the expiration date of any project-based assistance, certifying to HUD that to the best of the owner's knowledge:

(1) Project rents are above comparable market rents; and

(2) The owner is not suspended or debarred or has been notified by HUD of any pending suspension or debarment or other enforcement action, or, if so, a voluntary sale transfer of the property is proposed in accordance with § 401.480.

(b) *Eligible but not requesting Restructuring Plan.* If an owner is eligible for a Restructuring Plan but requests a renewal of project-based assistance without a Plan, in accordance with the applicable requirements in § 402.6 of this chapter, HUD will consider the request in accordance with § 402.4(a)(2) of this chapter.

(c) *Not eligible for Restructuring Plan.* Section 402.5 of this chapter addresses renewal of project-based assistance for a project not eligible for a Restructuring Plan. An owner of such a project may also request renewal under § 402.4.

§ 401.101 Which owners are ineligible to request Restructuring Plans?

(a) *Mandatory rejection.* The request of an owner of an eligible project will not be considered for a Restructuring Plan if the owner is debarred or suspended under part 24 of this title.

(b) *Discretion to reject.* HUD may also decide not to accept a request for a Restructuring Plan if:

(1) An affiliate is debarred or suspended under part 24 of this title; or

(2) HUD notifies the owner that HUD is engaged in a pending suspension, debarment or other enforcement action against an owner or affiliate, and the grounds for the pending action are included in § 401.403(b)(2)(ii).

(c) *Exception for sale.* This section does not apply if a sale or transfer of the property is proposed in accordance with § 401.480.

Subpart B—Participating Administrative Entity (PAE) and Portfolio Restructuring Agreement (PRA)

§ 401.200 Who may be a PAE?

A PAE must qualify under the definition in section 512(10) of MAHRA. It must not have any outstanding violations of civil rights laws, determined in accordance with criteria in use by HUD. If the PAE is a private entity, whether nonprofit or for-profit, it must enter into a partnership with a public purpose entity, which may include HUD. A PAE may delegate responsibilities only as agreed in the PRA.

§ 401.201 How does HUD select PAEs?

(a) *Selection of PAE.* HUD will select qualified PAEs in accordance with the criteria established in 513(b) of MAHRA and criteria established by HUD. The selection method is within HUD's discretion, including but not limited to a request for qualifications.

(b) *Priority for public agencies.* HUD will provide a one-time priority period for State housing finance agencies and local housing agencies to qualify as the PAEs for their jurisdictions. If more than one agency qualifies for the same jurisdiction, HUD will provide an opportunity for the agencies to allocate responsibility for projects in the jurisdiction. If the agencies are unable to agree, HUD will choose a PAE in accordance with section 513(b)(2) of MAHRA.

(c) *Qualification for PAE by nonprofit and for-profit entities.* After the priority period expires, HUD will consider other eligible entities as PAEs for jurisdictions in which no public agency has qualified as the PAE, or for projects that have not been assigned to a qualified public agency.

(d) *No PAE for project.* If HUD does not select a PAE for a project, HUD may perform the functions of the PAE, or contract with other qualified entities to perform those functions.

§ 401.300 What is a PRA?

A PRA is an agreement between HUD and a PAE that delineates rights and responsibilities in connection with development and implementation of a Restructuring Plan. The PRA must contain or incorporate by reference the matters required by section 513(a)(2) of MAHRA and §§ 401.301 through 401.314, as well as other terms and conditions required by HUD.

§ 401.301 Partnership arrangements.

If the PAE is in a partnership, the PRA must specify the following:

(a) The responsibilities of each partner regarding the Restructuring Plan;

(b) The resources each partner will provide to accomplish its designated responsibilities; and

(c) All compensation to each partner, whether direct or indirect.

§ 401.302 PRA administrative requirements.

(a) *Inapplicability of certain requirements.* Parts 84 and 85 of this title and contract procurement requirements do not apply to a PRA.

(b) *Recordkeeping.* The PAE must keep complete and accurate records of all activities related to the PAE's performance under the PRA. The PAE must retain the records for at least 3 years after the PRA terminates.

(c) *Inspection of records and audit.* Upon reasonable notice, the PAE must

permit the Comptroller General of the United States and HUD (including representatives of the HUD Office of Inspector General) to inspect, audit, and copy any records required to be retained under this section.

§ 401.303 PRA indemnity provisions for SHFAs and HAs.

When a PRA requires HUD to indemnify a PAE in accordance with section 513(a)(2)(G) of MAHRA, any payment under this indemnity is contingent upon the availability of funds that are permitted by law to be used for this purpose.

§ 401.304 PRA provisions on PAE compensation.

(a) *Base fee.* (1) The PRA will provide for base fees to be paid by HUD.

(2) HUD will conduct an annual survey of the market price for the scope of work. The results of each survey will be used to establish a uniform baseline for public entities. The base fee for a PAE will be adjusted if necessary after the first term of the PRA.

(3) Private PAEs will be compensated based on the results of a competitive bid process which evaluates bidders' capability, timeliness, ability to work with tenant and community groups, and cost.

(b) *Incentives.* The PRA may provide for incentives to be paid by HUD. While individual components may vary between PAEs (both public and private), the total amount payable under the incentive package will be uniform. Objectives will include maximizing savings to the Federal Government, timely performance, tenant satisfaction with the PAE's performance, the infusion of public funds from non-HUD sources, and other benchmarks that HUD considers appropriate.

(c) *Expenses.* The PRA will identify expenses incurred by the PAE that will qualify for reimbursement by HUD. Limits on these expenses will be established annually by HUD, but HUD may waive the limits for high-cost areas.

(d) *Other matters.* The Director of OMHAR will retain the right of final approval of any fee schedule on behalf of HUD. HUD will publish the standard form of PRA and the compensation package annually on its Internet website.

§ 401.309 PRA term and termination provisions; other remedies.

(a) *1-year term with renewals.* The PRA will have a term of 1 year, to be renewed for successive terms of 1 year with the mutual agreement of both parties. The PRA will provide for HUD to pay final compensation to the PAE and to assign responsibility for continuing activities if the PRA is not renewed.

(b) *Termination for cause or convenience of Federal Government.* (1) *Termination for cause.* HUD may terminate a PRA at any time for cause, with payment required by HUD as provided in the PRA only for matters authorized by the PRA and performed by the PAE to the date of termination. HUD will retain the right of set-off against any payments due as well as such other rights afforded at law and in equity.

(2) *Termination for convenience of Federal Government.* HUD may terminate a PRA at any time in accordance with the PRA or applicable law regardless of whether the PAE is in default of any of its obligations under the PRA if such termination is in the best interests of the Federal Government. The PRA will provide for payment to the PAE of a specified percentage of the base fee authorized by § 401.304(a) and amounts for reimbursement of third-party vendors to the PAE authorized by § 401.304(c).

(3) *Transfer to another PAE; temporary waiver of rights.* If a PRA is terminated:

(i) HUD may order an immediate transfer of some or all of the PAE's duties to another PAE designated by HUD; and

(ii) HUD may temporarily waive its right of immediate termination in order to allow an orderly transfer of duties and responsibilities under a PRA, without waiving the right of termination after the transfer has been completed to HUD's satisfaction.

(c) *Liability for damages.* During the term of a PRA, or notwithstanding any termination of a PRA, HUD may seek its actual, direct, and consequential damages from any PAE failure to comply with its obligations under the PRA.

(d) *Cumulative remedies.* The remedies under this section are cumulative and in addition to any other remedies or rights HUD may have under the terms of the PRA, at law, or otherwise.

§ 401.310 Conflicts of interest.

(a) *Definitions.*—(1) *Conflict of interest* means a situation in which a PAE or other restricted person:

(i) Has a financial interest, direct or indirect, that prevents or may prevent the PAE or other restricted person from acting at all times in the best interests of HUD;

(ii) Has one or more personal, business, or financial interests or relationships that would cause a reasonable person with knowledge of the relevant facts to question the integrity or impartiality of those who are or will be acting under the PRA; or

(iii) Is taking an adverse position to HUD or to an owner whose project is covered by a PRA in a lawsuit, administrative proceeding, or other contested matter.

(2) *Control* means the power to vote, directly or indirectly, 25 percent or more of any class of the voting stock of a company; the ability to direct in any manner the election of a majority of a company (or other entity's) directors or trustees; or the ability to exercise a controlling influence over the company or entity's management and policies. For purposes of this definition, a general partner of a limited partnership is presumed to be in control of that partnership.

(3) *Restricted person* means a PAE; any management official of the PAE; any legal entity that is under the control of the PAE, is in control of the PAE, or is under common control with the PAE; or any employee, agent or contractor of the PAE, or employee of such agent or contractor, who will perform or has performed services under a PRA with HUD.

(b) *General prohibitions.* (1) The PAE may not permit conflicts of interest to exist without obtaining a waiver in accordance with this section.

(2) The PAE must establish procedures to identify conflicts of interest and to ensure that conflicts of interest do not arise or continue, subject to waiver under paragraph (c) of this section.

(3) HUD will not enter into PRAs with potential PAEs who have conflicts of interest associated with a particular project, or permit PAEs to continue performance under existing PRAs when such PAEs have conflicts of interest, unless such conflicts have been eliminated to HUD's satisfaction by the PAE or potential PAE or are waived by HUD.

(4) The PAE has a continuing obligation to take all action necessary to identify whether it or any other restricted person has a conflict of interest.

(c) *Waivers.* HUD will waive conflicts of interest only when, in light of all relevant circumstances, the interests of HUD in the PAE's or another restricted persons's participation outweigh the concern that a reasonable person may question the integrity of HUD's operations.

(d) *Conflicts of interest arising prior to PAE selection.*—(1) *Request for review of conflicts of interest.* (i) A potential PAE, with its request to HUD for consideration for selection as a PAE, must identify existing conflicts of interest and may make a written request for a determination as to the existence of a conflict of interest, may request that the conflict of interest, if any, be waived, or may propose how it could eliminate the conflict.

(ii) If, after submitting a request but prior to selection, a potential PAE discovers that it has a conflict, it must notify HUD in writing within 10 days of submitting the request or prior to selection, whichever is earlier. Such notification must contain a detailed description of the conflict. The potential PAE may, with its notices, request that the conflict be waived or may propose how it may eliminate the conflict. The potential PAE may also request a determination as to the existence of the conflict.

(2) *Review by HUD.* Subject to the restrictions set forth in this section, HUD in its sole discretion may determine whether a conflict of interest exists, may waive the conflict of interest, or may approve in writing a PAE's proposal to eliminate a conflict of interest.

(e) *Conflicts of interest that arise or are discovered after PAE selection.* (1) A PAE must notify HUD in writing within 10 days after discovering that it or another restricted person has a conflict of interest. Such notification must contain a detailed description of the conflict of interest and state how the PAE intends to eliminate the conflict. The PAE may also request a determination as to the existence of a conflict.

(2) HUD will, after receipt of such notification or other discovery of the PAE's conflict or potential conflict of interest, take such action as it determines is in its best interests, which may involve proceeding under § 401.313 or as provided in the following sentences. HUD may notify the PAE in writing of its findings as to whether a conflict of interest exists and the basis for such determination, whether or not a waiver will be granted, or whether corrective actions may be taken in order to eliminate the conflict of interest. Corrective action must be completed by the PAE not later than 30 days after notification is mailed by HUD unless HUD, at its sole discretion, determines that it is in its best interests to grant the PAE an extension in which to complete the corrective action.

(f) *Reconsideration of decisions.* Decisions issued pursuant to this section may be reconsidered by HUD upon application by the PAE. Such requests must be in writing and must contain the basis for the request. HUD may, at its discretion and after determining that it is in its best interests, stay any corrective or other actions previously ordered pending reconsideration of a decision.

§ 401.311 Standards of conduct.

(a) *Minimum ethical standards for PAEs.* In connection with the performance of any PRA and during the term of such PRA, a PAE or other restricted person (as defined in § 401.310) may not:

(1) Solicit for itself or others favors, gifts, or other items of monetary value from any person who is seeking official action from HUD or the PAE in connection with the PRA or has interests that may be substantially affected by the restricted person's performance or nonperformance of duties to HUD;

(2) Use improperly (or allow the improper use of) HUD property or property over which the restricted person has supervision or charge by reason of the PRA;

(3) Use its status as PAE for its own benefit, or the financial or business benefit of a third party, except as contemplated by the PRA; or

(4) Make any unauthorized promise or commitment on behalf of HUD.

(b) *18 U.S.C. 201.* Pursuant to 18 U.S.C. 201, whoever acts for or on behalf of HUD in connection with the matters covered by this part is deemed to be a public official. Public officials are prohibited from soliciting or accepting anything of value in return for being influenced in the performance of official actions. Violators are subject to criminal sanctions.

(c) *18 U.S.C. 1001.* Pursuant to 18 U.S.C. 1001, whoever knowingly and willingly falsifies a material fact, makes a false statement or utilizes a false writing in connection with a PRA is subject to criminal sanctions. Other Federal civil statutes also apply to making false statements to the United States.

(d) *18 U.S.C. 207.* Former Federal Government employees are subject to the prohibitions in 18 U.S.C. 207.

§ 401.312 Confidentiality of information.

A PAE and every other restricted person (as defined in § 401.310) has a duty to protect confidential information, except as provided in §§ 401.500 through 401.503, and to prevent its use to further a private interest other than as contemplated by the PRA. As used in this section, confidential information means information that a PAE or other restricted person obtains from or on behalf of HUD or a third party in connection with a PRA but does not include information generally available to the public unless the information becomes available to the public as a result of unauthorized disclosure by the PAE or another restricted person.

§ 401.313 Consequences of PAE violations; finality of HUD determination.

(a) *Effect on PRA.* If a PAE, potential PAE or other restricted person (as defined in § 401.310) violates §§ 401.310, 410.311, or 401.312, HUD may:

(1) Find the potential PAE unqualified to enter into a PRA;

(2) Find the PAE unqualified to receive additional projects for restructuring under an existing PRA;

(3) Find the PAE in default under an existing PRA with the right of termination for cause under § 401.309; or

(4) Seek from a PAE or other restricted person HUD's actual, direct, and consequential damages resulting from the violation.

(b) *Cumulative remedies.* The remedies under this section are cumulative and in addition to any other remedies or rights HUD may have under the terms of the PRA, at law, or otherwise.

(c) *Finality of determination.* Any determination made by HUD pursuant to this section is at HUD's sole discretion and is not subject to further administrative review.

§ 401.314 Environmental review responsibilities.

HUD will retain all responsibility for environmental review under part 50 of this title. Compliance with part 50 of this title will be completed before any HUD approval of the Restructuring Commitment under § 401.405.

Subpart C—Restructuring Plan

§ 401.400 Required elements of a Restructuring Plan.

(a) *General.* A PAE is responsible for the development of a Restructuring Plan for each project included in its PRA.

(b) *Required elements.* The Restructuring Plan must contain a narrative that fully describes the restructuring transaction. The Restructuring Plan must include the elements required by section 514(e) of MAHRA. The Restructuring Plan must describe the use of any restructuring tools listed at sections 517(a) and (b) of MAHRA, and must contain other requirements as determined by HUD.

§ 401.401 Consolidated Plans.

A PAE may request HUD to approve a Consolidated Restructuring Plan that presents an overall strategy for more than one project included in the PRA.

HUD will consider approval of a Consolidated Restructuring Plan for projects having common ownership, geographic proximity, common mortgagee or servicer, or other factors that contribute to more efficient use of the PAE's resources. Notwithstanding the more efficient use of a PAE's resources, HUD will not approve any Consolidated Restructuring Plans that have a detrimental effect on tenants or the community, or a higher cost to the Federal Government.

§ 401.402 Cooperation with owner and qualified mortgagee in Restructuring Plan development.

A PAE must comply with section 514(a)(2) of MAHRA by using its best efforts to seek the cooperation of the owner and qualified mortgagee or its designee in the development of the Restructuring Plan. If the owner fails to cooperate (as demonstrated by reasonable progress in development of a Restructuring Plan) to the satisfaction of the PAE and HUD agrees, the PAE must notify the owner that the PAE will not develop a Restructuring Plan. This notice will be subject to dispute and administrative appeal under subpart F of this part. If the qualified mortgagee does not cooperate in modifying the mortgage, the PAE and owner may continue to develop a Restructuring Plan to restructure the loan using alternative financing.

§ 401.403 Rejection of a request for a Restructuring Plan because of actions or omissions of owner or affiliate or project condition.

(a) *Ongoing determination of owner and project eligibility.* Notwithstanding an initial determination to accept the owner's request for a Restructuring Plan, the PAE is responsible for a further more complete and ongoing assessment of the eligibility of the owner and project while the Restructuring Plan is developed. The PAE must advise HUD if at any time any of the grounds for rejection listed in paragraph (b) of this section exist.

(b) *Grounds for rejection.*—(1) *Suspension or debarment.* Neither a PAE nor HUD will continue to develop or consider a Restructuring Plan if, at any time before a closing under § 401.407, the owner is debarred or suspended under part 24 of this title.

(2) *Other grounds.* HUD may elect not to permit continued consideration of the Restructuring Plan at any time before closing under § 401.407, if:

(i) An affiliate is debarred or suspended under part 24 of this title;

(ii) HUD or the PAE determines that the owner or an affiliate has engaged in material adverse financial or managerial actions or omissions as described in section 516(a) of MAHRA, including any outstanding violations of civil rights laws in connection with any project of the owner or affiliate; or

(iii) HUD or the PAE determines (under § 401.451(c) or otherwise) that the project does not meet the housing quality standards in § 401.558 and that the poor condition of the project is not likely to be remedied in a cost-effective manner through the Restructuring Plan.

(3) *Exception for sale.* This paragraph does not apply (except (2)(iii)) if a sale or transfer is proposed under § 401.480.

(c) *Dispute and appeal.* An owner may dispute a rejection under this section and seek administrative review under the procedures in subpart F of this part.

§ 401.404 Proposed Restructuring Commitment.

A PAE must submit a Restructuring Plan and a proposed Restructuring Commitment to HUD for approval, prior to submitting the Commitment to the owner for execution. The submission may not occur earlier than 10 days after the public meeting required by § 401.500(d). The proposed Restructuring Commitment must be in a form approved by HUD, incorporate the Restructuring Plan, and include the following:

(a) The lender, loan amount, interest rate, and term of any mortgages or unsecured financing for the mortgage restructuring and rehabilitation, and any credit enhancement;

(b) The amount of any payment of a section 541(b) claim;

(c) The type of section 8 assistance and the section 8 restructured rents;

(d) The rehabilitation required, the source of the owner contribution, and escrow arrangements;

(e) The uses for project accounts;

(f) The terms of any sale or transfer of the project;

(g) A schedule setting forth all sources and uses of funds to implement the Restructuring Plan, including setting forth the balances of project accounts before and after restructuring;

(h) All consideration, direct or indirect, received or to be received by the PAE or a related party, if known, in connection with any matter addressed in the Restructuring Commitment, except amounts paid or to be paid by HUD; and

(i) Other terms and conditions prescribed by HUD.

§ 401.405 Restructuring Commitment review and approval by HUD.

HUD will either approve the Restructuring Commitment as submitted, require changes as a condition for approval, or reject the Plan. If the Plan is rejected, HUD will inform the PAE of the reasons for rejection, and the PAE will inform the owner. HUD's rejection of the Plan is subject to the dispute and administrative appeal provisions of subpart F of this part.

§ 401.406 Execution of Restructuring Commitment.

When HUD approves the Restructuring Commitment, the PAE will deliver the Restructuring Commitment to the owner for execution. The Restructuring Commitment becomes binding upon execution by the owner. An owner who does not execute the Restructuring Commitment may appeal its terms and seek modification under subpart F of this part.

§ 401.407 Closing conducted by PAE.

After the owner has executed the Restructuring Commitment, the PAE must arrange for a closing to execute all documents necessary for implementation of the Restructuring Plan. The PAE must use standard documents approved by HUD, with modifications only as necessary to comply with applicable State or local laws, or such other modifications as are approved in writing by HUD.

§ 401.408 Affordability and use restrictions required.

(a) *General.* The Restructuring Plan must provide that the project will be subject to affordability and use restrictions in a Use Agreement acceptable to HUD. The Use Agreement must be recorded and in effect for at least 30 years. It must include at least the provisions required by paragraphs (b) through (j) of this section.

(b) *Use restriction.* The project must continue to be used for residential use with no reduction in the number of residential units without prior HUD approval.

(c) *Affordability restrictions.* Except during a period when at least 20 percent of the units in a project receive project-based assistance:

(1) At least 20 percent of the units in the project must be leased to families whose adjusted income does not exceed 50 percent of the area median income as determined by HUD, with adjustments for household size, at rents no greater than 30 percent of 50 percent of the area median income; or

(2) At least 40 percent of the units in the project must be leased to families whose adjusted income does not exceed 60 percent of the area median income as determined by HUD, with adjustments

for household size, at rents no greater than 30 percent of 60 percent of the area median income.

(d) *Comparable configuration.* The type and size of the units that satisfy the affordability restrictions of paragraph (c) of this section must be comparable to the type and size of the units for the project as a whole.

(e) *Nondiscrimination against voucher holders.* An owner must comply with the nondiscrimination provisions of § 401.556.

(f) *Enforcement.* The Use Agreement must contain remedies for breach of the Use Agreement, including monetary damages for non-compliance with paragraphs (c) and (g) of this section.

(g) *Compliance with physical condition standards.* The Use Agreement must require that the property be maintained in compliance with the requirements of § 401.558.

(h) *Reporting.* The Use Agreement must contain appropriate financial and other reporting requirements for the owner. These reports must comply with the Real Estate Assessment Center protocol or subsequent standards required by HUD.

(i) *Enforcement and amendment.* The Use Agreement will be enforceable by interested parties to be specified in the Agreement, which will include HUD, the PAE, project tenants, organizations representing project tenants, and the unit of local government. The Use Agreement must require the party bringing enforcement action to give the owner notice and a reasonable opportunity to cure any violations.

(j) *Modifications.* HUD will retain the right to approve modifications of the Use Agreement agreed to by the owner without the consent of any other party, including those having the right of enforcement. The owner must post prominently on project property notice of any modifications approved by HUD.

(k) *Owner obligation to accept project-based assistance.* Subject to the availability of appropriated funds, the owner of the project must accept any offer of renewal or extension of project-based assistance if the offer is in accordance with the terms and conditions specified in the Restructuring Plan.

§ 401.410 Standards for determining comparable market rents.

(a) *When are comparable market rents required?* The Restructuring Plan must establish restructured rents for project-based assistance at comparable market rents unless the PAE finds that exception rents are necessary under § 401.411.

(b) *Comparable market rents defined.* Comparable market rents are the rents charged for properties that the PAE determines to be comparable properties (as defined in section 512(1) of MAHRA, but also excluding section 202 or section 811 projects assisted under part 891 of this title). For purposes of section 512(1), other relevant characteristics include any applicable rent control and other characteristics determined by the PAE. The PAE may make appropriate adjustments when needed to ensure comparability of properties.

(c) *Methodology for determining comparable market rents.* If the PAE is unable to identify at least three comparable properties within the local market, the PAE may:

(1) Use non-comparable housing stock within that market from which adjustments can be made; or

(2) If necessary to go outside the market, use comparable properties as far outside the local market as it finds reasonable, from which adjustments can be made.

(d) *Using FMR as last resort.* If the PAE is unable to identify enough properties under paragraph (c) of this section, comparable market rents must be set at 90 percent of the Fair Market Rents for the relevant market area.

§ 401.411 Guidelines for determining exception rents.

(a) *When do exception rents apply?* (1) The Restructuring Plan may provide for exception rents established under section 514(g)(2) of MAHRA for project-based assistance if the PAE determines that project income under the rent levels established under § 401.410 would be inadequate to meet the costs of operating the project as described in paragraph (b) of this section and that the housing needs of the tenants and the community could not be adequately addressed.

(2) In any fiscal year, the PAE may not request HUD to approve Restructuring Plans with exception rents for more than 20 percent of all units covered by the PRA, except that HUD may approve a waiver of this 20 percent limitation based on the PAE's narrative explanation of special need.

(b) *How are exception rents calculated?* (1) Exception rents must be set at a level sufficient to support the costs of operating the project. The PAE must take into account the following cost items:

(i) Debt service on the second mortgage under § 401.461(a) or a rehabilitation loan included in the Restructuring Plan;

(ii) The operating expenses of the project, as determined by the PAE, including:

(A) Contributions to adequate reserves for replacement;

(B) The costs of maintenance and necessary rehabilitation;

(C) Other eligible costs permitted under the section 8 program;

(iii) An adequate allowance for potential operating losses due to vacancies and failure to collect rents, as determined by the PAE;

(iv) A return to the owner to the extent permitted by § 401.461(b)(3)(ii)(A); and

(v) Other expenses determined by the PAE to be necessary for the operation of the project.

(2) The exception rent must not exceed 120 percent of the Fair Market Rent for the market area, except that HUD may approve an exception rent greater than 120 percent of Fair Market Rent, based on a narrative explanation of special need submitted by the PAE, subject to the 5 percent limitation in section 514(g)(2)(A) of MAHRA.

§ 401.412 Adjustment of rents based on operating cost adjustment factor (OCAF) or budget.

(a) *OCAF.* (1) The Restructuring Plan must provide for annual adjustment of the restructured rents for project-based assistance by an OCAF determined by HUD.

(2) *Application of OCAF.* HUD will apply the OCAF to the previous year's contract rent less the portion of that rent paid for debt service. This paragraph applies to renewals of contracts in subsequent years which receive restructured rents under either section 514(g)(1) or (2) of MAHRA.

(b) *Budget-based.* Rents will be adjusted on a budget basis instead of OCAF only upon owner request, subject to HUD approval.

§ 401.420 When must the Restructuring Plan require project-based assistance?

The Restructuring Plan must provide for the section 8 contract to be renewed as project-based assistance, subject to the availability of funds for this purpose, if:

(a) The PAE determines there is a market-wide vacancy rate of 6 percent or less;

(b) At least 50 percent of the units in the project are occupied by elderly families, disabled families, or elderly and disabled families; or

(c) The project is held by a nonprofit cooperative ownership housing corporation or nonprofit cooperative housing trust.

§ 401.421 Rental Assistance Assessment Plan.

(a) *Plan required.* For any project not subject to mandatory project-based assistance under § 401.420, the PAE must develop a Rental Assistance Assessment Plan in accordance with section 515(c)(2) of MAHRA to determine whether assistance should be renewed as project-based assistance or whether some or all of the assisted units should be converted to tenant-based assistance.

(b) *Matters to be assessed.* The PAE must include an assessment of the impact of converting to tenant-based assistance and the impact of extending project-based assistance on:

(1) The ability of the tenants to find adequate, available, decent, comparable, and affordable housing in the local market;

(2) The types of tenants residing in the project (such as elderly families, disabled families, large families, and cooperative homeowners);

(3) The local housing needs identified in the applicable Consolidated Plan developed under part 91 of this title;

(4) The cost of providing assistance, comparing the applicable payment standard to the rent levels permitted by §§ 401.410 and 401.411;

(5) The long-term financial stability of the project;

(6) The ability of residents to make reasonable choices about their individual living situations;

(7) The quality of the neighborhood in which the tenants would reside; and

(8) The project's ability to compete in the marketplace.

(c) *Conversion may be phased in.* Any conversion from project-based assistance to tenant-based assistance may occur over a period of not more than 5 years if the PAE decides the transition period is needed for the financial viability of the project.

(d) *Reports to HUD.* The PAE must report to HUD on the matters specified in section 515(c)(2)(C) of MAHRA at least semi-annually.

§ 401.450 Owner evaluation of physical condition.

(a) *Initial evaluation.* The owner must evaluate the physical condition of the project and provide the following information to the PAE in a form acceptable to the PAE:

(1) All work items required to bring the project to the standard in § 401.452, including any work items needed to ensure compliance with applicable requirements of part 8 of this title concerning accessibility to persons with disabilities;

(2) The capital repair or replacement items that will be necessary to maintain the long-term physical integrity of the property;

(3) A plan for funding the rehabilitation work included in paragraph (a)(1) of this section, which work must be completed in a timely manner after closing the restructuring transaction, that identifies the source of the required owner contribution of non-project funds; and

(4) An estimate of the initial deposit, if any, and the estimated monthly deposit to the reserve for replacement account for the next 20 years.

(b) *Use of CA.* An owner may comply with paragraph (a) of this section by submitting a comprehensive needs assessment in accordance with Title IV of the Housing and Community Development Act of 1992 (12 U.S.C. 1715z–1a note) if the CA:

(1) Was completed or updated within 1 year; and

(2) Contains all of the matters required by paragraph (a) of this section.

(c) *Reconsideration and modification of evaluation.* If the PAE, after its independent review under § 401.451, determines that the owner's evaluation either fails to address specific necessary work items or fails to propose a cost-effective approach to rehabilitation, the owner may modify its evaluation to satisfy the concerns of the PAE.

§ 401.451 PAE Physical Condition Analysis (PCA).

(a) *Review and certification of owner evaluation.* (1) The PAE must independently evaluate the physical condition of the project by means of a PCA. If the PAE finds any immediate threats to health and safety, the owner must complete those work items immediately, or the PAE must evaluate the project's eligibility in accordance with § 401.403(b)(2)(iii).

(2) After consultation with the owner and an opportunity for the owner to modify its evaluation performed under § 401.450, the PAE must either certify to the accuracy and completeness of the owner's evaluation performed under § 401.450 for each project covered by the PRA, or state that the evaluation fails to address certain items or does not propose a cost effective approach.

(b) *Rejection due to inaccurate or incomplete owner evaluation.* If the PAE cannot certify to the accuracy and completeness of the owner's evaluation due to its failure to address specific work items or because it does not propose a cost effective approach, the PAE must notify HUD. If HUD agrees with the PAE's determination, the PAE must notify the owner that the request for a Restructuring Plan is rejected.

(c) *Rejection due to poor condition of the project.* Based on the completed PCA, the PAE must determine whether proceeding with a Restructuring Plan with necessary rehabilitation is more cost-effective in terms of Federal resources than rejecting the Request for a Restructuring Plan under § 401.403(b)(2)(iii) and providing tenant-based assistance for displaced tenants under § 401.602. HUD will provide guidance to PAEs for making the determination. If the PAE concludes that a request for a Restructuring Plan should be rejected because of lack of cost-effectiveness due to poor condition of the project, it must also consider the effect on tenants and the community and advise HUD of the effect. HUD will make the final decision after considering the PAE's recommendation.

(d) *Dispute and appeal of rejection.* The dispute and appeal provisions of subpart F of this part apply to rejections under paragraphs (b) and (c) of this section.

§ 401.452 Property standards for rehabilitation.

The Restructuring Plan must provide for the level of rehabilitation needed to restore the property to the non-luxury standard adequate for the rental market for which the project was originally approved. If the standard has changed over time, the rehabilitation may include improvements to meet current standards. The result of the rehabilitation should be a project that can attract non-subsidized tenants but competes on rent rather than on amenities. When a range of options exists for satisfying the rehabilitation standard or the plan for capital replacement, the PAE must choose the least costly option considering both capital and operating costs and taking into account the marketability of the property and the remaining useful life of all building systems. Nothing in this part exempts rehabilitation from the requirements of part 8 of this title concerning accessibility to persons with disabilities.

§ 401.453 Reserves.

The Restructuring Plan must provide for reserves for capital replacement sufficient to ensure the property's long-term structural integrity so that the property can be maintained as affordable housing in decent, safe, and sanitary condition meeting the standards of § 401.558.

§ 401.460 Modification or refinancing of first mortgage.

(a) *Principal amount.* As part of the Restructuring Plan, the PAE will determine the size of the restructured first mortgage that will result from the modification or refinancing of the existing FHA-insured or HUD-held first mortgage. The restructured first mortgage must be in the amount that can be supported by net operating income based on the lower of the restructured section 8 rents or the rents allowed by the Use Agreement under § 401.408. Neither the outstanding principal balance of the existing first mortgage, nor the monthly principal and interest payments on that debt, may be increased through modification under the Restructuring Plan. The debt service coverage used by the PAE must be adequate for purposes of the Restructuring Plan and for the requirements of any refinancing.

(b) *Fully amortizing.* The modified or refinanced first mortgage must be fully amortizing through level monthly payments.

(c) *Rates and other terms.* Interest rates and other terms of the modified or refinanced first mortgage must be competitive in the market.

(d) *Fees.* Any fees or costs associated with mortgage modification or refinancing determined by the PAE to be above normal processing fees must be paid by the owner from non-project funds and must not be included in the modified or refinanced first mortgage.

(e) *Refinancing.* (1) The owner must contact the mortgagee to determine the mortgagee's willingness to consider a modification and re-amortization of the existing first mortgage through a Restructuring Plan before considering any other source of first mortgage financing. If the mortgagee does not agree to modify and re-amortize in accordance with the Restructuring Plan, the loan must be refinanced.

(2) The refinancing may be either without credit enhancement or with credit enhancement under one of the following:

(i) *FHA mortgage insurance.* If the Restructuring Plan provides for FHA mortgage insurance for the refinanced first mortgage, the insurance will be provided in accordance with all usually applicable FHA legal requirements except that insurance will be documented as provided in section 517(b)(2) of MAHRA. HUD will issue the commitment for mortgage insurance but may adapt its procedures as necessary to facilitate development and implementation of a Restructuring Plan.

(ii) *Other FHA credit enhancement.* If FHA credit enhancement, including risk-sharing, is provided under part 266 of this title, the credit enhancement will be provided in accordance with all usually-applicable FHA legal requirements under part 266 of this title, except that special approval from HUD will be required before the PAE engages in risk-sharing with FHA under part 266 of this title. HUD will approve risk-sharing financing that complies with part 266 whenever required by section 517(b)(3) of MAHRA.

(iii) *Credit enhancement from non-FHA sources.* If credit enhancement is to be provided by a non-FHA source under section 517(b)(4) of MAHRA, HUD will consider waiver of any non-statutory provision in this part only if the waiver will not materially impair achievement of the purposes of MAHRA and if the waiver is essential to meet the legitimate business or legal requirements of the provider of credit enhancement.

§ 401.461 HUD-held second mortgage.

(a) *Amount.* (1) The Restructuring Plan must provide for a second mortgage to HUD whenever the Plan provides for either payment of a section 541(b) claim or the modification or refinancing of a HUD-held first mortgage that results in a first mortgage with a lower principal amount. The term "second mortgage" in this section also includes a new HUD-held first mortage (not a refinancing mortgage) if a full payment of claim is made under § 401.471, or if § 401.460(a) does not permit a restructured first mortgage in any amount.

(2) The second mortgage must be in a principal amount that does not exceed the lesser of:

(i) The amount the PAE reasonably expects to be repaid based on objective criteria such as the amount of anticipated net cash flow, trending assumptions, amortization provisions, and expected residual value of the property; and

(ii) The difference between the unpaid balance on the first mortgage immediately before and after the restructuring.

(b) *Terms and conditions.* (1) The second mortgage must have an interest rate of at least 1 percent, but not more than the applicable Federal rate. Interest will accrue but not compound.

(2) The second mortgage must have a term concurrent with the modified or refinanced first mortgage, if any. HUD may provide that if there is no first mortgage, the second mortgage may continue for a term established by HUD.

(3)(i) Principal and interest on the second mortgage is payable only out of net cash flow during its term. "Net cash flow" means that portion of project income that remains after the payment of all required debt service payments on the modified or refinanced first mortgage, if any, including payment of any past due principal or interest, and payment of all reasonable and necessary operating expenses (including deposits to the reserve for replacement account) and any other expenditure approved by HUD.

(ii) The priority and distribution of net cash flow is as follows:

(A) HUD or the PAE may approve the payment to the owner of up to 25 percent of net cash flow based on consideration of relevant conditions and circumstances including, but not limited to, compliance with the management standards prescribed in § 401.560 and the physical condition standards prescribed in § 401.558; and

(B) All remaining net cash flow will be applied to the principal and interest on the second mortgage, until paid in full, and then to any additional subordinate mortgage under § 401.461(c).

(4) HUD may cause the second mortgage to be immediately due and payable on the grounds provided in section 517(a)(4) of MAHRA, including an assumption of the mortgage in violation of HUD standards for approval of transfers of physical assets (if applicable), or if the owner materially fails to comply with other material HUD requirements after a reasonable opportunity for the owner to cure such failure. A decision by HUD in this regard is subject to the administrative appeals procedure in subpart F of this part, unless HUD acts on the basis of the grounds specified in sections 517(a)(4)(A) or (B) of MAHRA.

(5) HUD will consider modification or forgiveness of all or part of the second mortgage only if the project has been sold or transferred to a priority purchaser under § 401.480 and HUD determines that modification or forgiveness is necessary to recapitalize the project in order to preserve it as affordable housing.

(c) *Additional mortgage to HUD.* A Restructuring Plan may require the owner to give an additional mortgage on the project to HUD in an amount that does not exceed the difference between the amount of a section 541(b) claim paid under § 401.471 and the principal amount of the second mortgage. HUD will provide guidance to PAEs regarding the circumstances under which a Plan may be negotiated that provides for less than the full difference to be payable under the additional mortgage. This additional mortgage must be junior in priority to the second mortgage required by paragraph (a) of this section, bear interest at the same rate, which will accrue but not compound, and require no payment until the second mortgage is satisfied, when it will be payable

upon demand of the Secretary or as otherwise agreed by the Secretary.

§ 401.471 HUD payment of a section 541(b) claim.

HUD will pay a section 541(b) claim from the appropriate insurance fund to the insured mortgagee on behalf of the mortgagor. The mortgagee must use the claim payment to prepay the principal balance of the insured mortgage, in whole or in part, as provided in the Restructuring Plan. All section 541(b) claims will be paid in cash. Part 207 of this title and sections 207(g) and 541(a) of the NA do not apply to a section 541(b) claim.

§ 401.472 Rehabilitation funding.

(a) *Sources of funds.*—(1) *Project accounts.* The Restructuring Plan for funding rehabilitation must include funds from the project's residual receipts account, surplus cash account, replacement reserve account, and other project accounts, to the extent the PAE determines that those accounts will not be needed for the initial deposit to the reserves.

(2) *Debt restructuring.* The Restructuring Plan may provide for funding of rehabilitation through a new first mortgage in conjunction with a payment of a section 541(b) claim. The payment of claim may be in an amount necessary to facilitate the funding of the rehabilitation, by reducing the existing first mortgage debt to make refinancing proceeds available to fund rehabilitation.

(3) *Section 236(s) rehabilitation grant.* The Restructuring Plan may include a direct grant from HUD under section 236(s) of the NA made in accordance with § 401.473, to the extent that HUD has determined that funding is available for such a grant.

(4) *Section 8 budget authority increase.* The Restructuring Plan may include funding of rehabilitation from budget authority provided to HUD for increases in section 8 contracts, to the extent that HUD has determined that funding from this source is available.

(b) *Statutory restrictions.* Any rehabilitation funded from the sources described in paragraph (a) of this section is subject to the requirements in section 517(b)(7) of MAHRA for an owner contribution. The required owner contribution will be calculated as 20 percent of the total cost of rehabilitation, unless HUD or the PAE determines that a higher percentage is required. The owner contribution must include a reasonable proportion (as determined by HUD) of the total cost of rehabilitation from non-governmental resources. The PAE may exempt housing cooperatives from the owner contribution requirement.

(c) *Escrow agent.* The Restructuring Plan must provide for progress payments for rehabilitation, which must be disbursed by an acceptable escrow agent subject to PAE oversight or as otherwise provided by HUD.

§ 401.473 HUD grants for rehabilitation under section 236(s) of NA.

HUD will consider a direct grant for rehabilitation under section 236(s) of the NA only if the owner provides an acceptable work schedule and cost-analysis that is consistent with the owner's evaluation of physical condition under § 401.450, as certified by the PAE. The owner must execute a grant agreement with terms and conditions acceptable to HUD. If the PAE is a State or local government, or an agency or instrumentality of such a government, the PAE and HUD may agree that the PAE will be delegated the responsibility for the administration of any grant made under this section. HUD may make grant funding available for the cost of administration if HUD has determined that such funding is available.

§ 401.474 Project accounts.

(a) *Accounts from other projects.* The accounts listed in § 401.472(a)(1) may be used for other eligible projects only if:

(1) The projects are included in a Consolidated Restructuring Plan under § 401.401; and

(2) The funds are used for rehabilitation or to reduce a section 541(b) claim paid by HUD under § 401.471.

(b) *Distribution to owner.* The Restructuring Plan may provide for a one-time distribution to the owner, not to exceed 10 percent of the excess funds in project accounts, to be released after completion of the rehabilitation required by the Restructuring Plan.

§ 401.480 Sale or transfer of project.

(a) *May the owner request a Restructuring Plan that includes a sale or transfer of the property?* The owner may request a Restructuring Plan that includes a condition that the property be sold or transferred to a purchaser acceptable to HUD in a reasonable period needed to consummate the transaction. The failure to consummate a sale or transfer of the property requested under paragraph (a) of this section will neither adversely affect an owner's eligibility for a Restructuring Plan nor exempt the owner from the requirements of § 401.600. There are no priority purchaser requirements for a voluntary sale or transfer by an owner that is eligible for a Restructuring Plan.

(b) *When must the Restructuring Plan include a sale or transfer of the property?* If the owner is determined ineligible pursuant to § 401.101 or § 401.403, the Restructuring Plan must include a condition that the owner sell or transfer the property to a purchaser acceptable to HUD in accordance with paragraph (c) of this section.

(c) *Owner's notice of intent to sell or transfer.* (1) The owner must provide notice to the PAE affirming the owner's intent to sell or transfer the property. This notice must be received by the PAE no later than 30 days after a notice of rejection under § 401.101 or § 401.403 has become a final determination under subpart F of this part.

(2) The owner must cooperate in selling or transferring the property. Failure to do so will result in the PAE's determination to reject the owner's request for a Restructuring Plan. The owner must distribute and publish, in an appropriate publication, a notice to potential purchasers that describes the property, proposed terms of sale, and procedures for submitting an purchase offer. The notice in form and substance must be acceptable to HUD, and must inform potential offerors of a preference for priority purchasers.

(3) During a period to be determined by HUD that begins when the owner gives notice of intent to sell or transfer, an owner may accept an offer only from a priority purchaser.

(4) No sale or transfer to a non-priority purchaser will be approved without evidence of tenant support.

(d) *Informing PAE; approval required.* The owner must inform the PAE of any offer to purchase the property and the owner must advise the PAE of the substance and on-going status of the owner's discussions with any prospective purchaser. The owner's acceptance of the offer must be subject to PAE approval, and HUD approval of the Restructuring Plan.

§ 401.481 Subsidy layering limitations on HUD funds.

(a) *PAE subsidy layering certification required for Restructuring Plan.* The PAE must certify to HUD that any Restructuring Plan for which it submits a proposed Restructuring Commitment meets the requirements of either paragraph (d) or (e) of this section.

(b) *Purpose of subsidy layering certification.* The purpose of the subsidy layering certification is to ensure that any HUD assistance provided to the owner of a project pursuant to a Restructuring Plan is no more than is necessary to permit the project to continue to house tenants with an income mix comparable to the income

mix of the project before the Restructuring Plan is implemented, after taking into account other Government assistance described in section 102(b)(1) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(b)(1)). This section does not limit a PAE from presenting for approval a Restructuring Plan that includes project reconfiguration (*e.g.*, conversion of efficiency units to one-bedroom units) where necessary to meet the needs of the community, provided the conditions of § 401.452 are also met.

(c) *Relationship to section 102(d) of HUD Reform Act.* HUD is not required to perform a separate subsidy layering analysis under section 102(d) of the Department of Housing and Urban Development Reform Act of 1989 (42 U.S.C. 3545(d)), section 911 of the Housing and Community Development Act of 1992 (42 U.S.C. 3545 note), or § 4.13 of this title for any HUD assistance that is included in the Restructuring Plan. HUD will adopt the PAE certification under this section if a HUD certification otherwise would be required under section 102(d).

(d) *Certification under existing HUD guidelines.* If the PAE has delegated authority from HUD to make section 102(d) subsidy layering certifications in accordance with section 911 of the Housing and Community Development Act of 1992, the PAE may comply with this section by using a procedure substantially similar to the procedure described in the Administrative Guidelines published on December 15, 1994 (59 FR 64748), or any subsequent procedure adopted by HUD to implement section 911.

(e) *Other procedures.* If the PAE does not have the delegated authority described in paragraph (d) of this section, the PAE must submit to HUD for approval proposed procedures for making the subsidy layering certification under this section. Any procedures must conform to the procedures described in paragraph (d) of this section to the extent feasible and appropriate.

§ 401.500 Required notices to third parties and meeting with third parties.

(a) *General.* The PAE must solicit, and document the consideration of, tenant and local community comments. As a minimum, the notices described in paragraphs (b), (c) and (f) of this section, in form and substance acceptable to HUD, must be provided. The PAE may require the owner to give the notices if permitted by HUD.

(b) *Notice of intent to restructure and consultation meeting.* (1) This notice must include at a minimum:

(i) The project, including its name and FHA Project Number;

(ii) The responsible PAE and contact person, including the address and telephone number;

(iii) The owner's notice of intent to restructure through the Mark-to-Market Program; and

(iv) The date of expiration of the project-based assistance.

(2) This notice must state how comments may be provided to the PAE regarding any of the following: the physical condition of the property, whether the rental assistance should be tenant-based or project-based, any proposed sale or transfer of the property, and other matters regarding the property and its management. The notice must establish the date, time, and place for a public meeting to be held no sooner than 20 days and no later than 40 days following the date of this notice. The public may provide written comments up to the date of the meeting.

(c) *Access to Restructuring Plan.* (1) The PAE must make the Restructuring Plan available to the parties identified in § 401.501 at least 20 days before the PAE submits the Restructuring Plan to HUD (subject to any Federal, State, or local laws restricting access to any information in the Plan or related documents).

(2) As soon as the PAE determines that the Restructuring Plan is substantively complete and ready for submission to HUD, notice of the following must be provided:

(i) The location of the Plan for inspection and copying; and

(ii) The date, time, and place of a public meeting to be held at least 10 days before the PAE submits the Plan to HUD.

(3) When the PAE gives notice under this section, it must make the Plan available during normal business hours at the management office of the project, or if there is no such office, at another location specified by the PAE that is convenient to the tenants.

(d) *Meeting to discuss the Restructuring Plan.* After the PAE has given notice under this section and at least 10 days before the PAE submits the Plan to HUD, the PAE must conduct a public meeting to obtain comments on the substantively completed Plan. The PAE must accept written comments through the date of the meeting.

(e) *Disposition of comments.* The PAE must document and provide to HUD with the Restructuring Plan a summary of the disposition of all public comments.

(f) *Notice of completion of Restructuring Plan.* (1) Within 10 days after the owner executes the Restructuring Commitment, notice must be provided that describes the completed Restructuring Plan and Restructuring Commitment. The PAE must make the completed Restructuring Plan and Restructuring Commitment available during normal business hours to the public at a place described in paragraph (c)(3) of this section, subject to Federal, State, or local laws restricting access to any information in any of these documents.

(2) Within 10 days after the PAE determines that the Restructuring Plan will not move forward for any reason, notice must be provided that describes the reasons for the failure to move forward and the availability of tenant-based assistance to tenants under § 401.602(c) if project-based assistance is not renewed.

§ 401.501 Delivery of notices and recipients of notices.

(a) *Whom must the owner or PAE notify?* The PAE must notify, or ensure that the owner notifies, each tenant and any tenant organization for the project, and post a notice in the project, for all notices required by §§ 401.500 and 401.502.

(b) *Whom must the PAE notify?* The PAE must notify:

(1) The Chief Executive Officer of the unit of local government and the Executive Director of the Public Housing Authority with jurisdiction over the project location;

(2) The recipient of any Outreach and Training Grant (OTAG); or Intermediary Technical Assistance Grant (ITAG) for the project location; and

(3) Other appropriate neighborhood representatives and other affected parties.

§ 401.502 Notice requirement when debt restructuring will not occur.

(a) *PAE responsibility.* If an owner of an eligible project requests a renewal of a section 8 contract without a Restructuring Plan under § 402.4, HUD or the PAE must notify, or ensure that the owner notifies, all parties identified in § 401.501 of the request and of:

(1) The availability (as provided in § 401.500(c)(3) of the following information:

(i) The owner evaluation of physical condition (OEPC) required by § 402.6(a)(3);

(ii) The comparable market rent analysis required by § 402.6(a)(2), but without addresses (or other specific information indicating location) for comparable properties; and

(iii) The items identified in § 400.500(b)(1)(i), (ii) and (iv); and

(2) A procedure for submitting public comments regarding this information.

(b) *Expense and profit/loss information.* The PAE should remove project expense, property valuation, and profit and loss information before disclosing any information obtained by the PAE directly from an owner or project manager, unless the owner has given written consent to disclosure with that information included.

(c) *Consideration of comments.* The PAE must consider written public comments on the information listed in paragraph (a) of this section, if the comments are submitted within 30 days after giving notice under paragraph (a), and document the consideration for HUD. No public meeting is required.

§ 401.503 Access to information.

(a) *PAE responsibilities.* The PAE must provide to parties entitled to notice under § 401.501 access to information obtained by the PAE about the project and its management if the PAE determines that such information is reasonably likely to contribute to effective participation by those parties in the restructuring process; or if HUD requires the PAE to provide access to the information. The PAE is not required to make public any information received from the owner or manager that the PAE reasonably characterizes as confidential or proprietary information that would not ordinarily be made public, except:

(1) Owner evaluation of physical condition (OEPC), or a comprehensive needs assessment (CA) if used instead of an OEPC, as required by § 401.450;

(2) Owner-prepared 1-year project rent analysis; and

(3) As directed by HUD.

(b) *Information on expenses and profit/loss.* Before disclosing any information, the PAE must remove any information obtained by the PAE directly from the owner or project manager that is related to project expenses, property valuation, or profit and loss, unless the owner gives written consent to disclosure with that information.

Subpart D—Implementation of the Restructuring Plan After Closing

§ 401.550 Monitoring and compliance agreements.

(a) *Compliance agreements.* The PAE must ensure long-term compliance by the owner with MAHRA, this part, and the Restructuring Plan. As part of this responsibility, the PAE must require each owner with an approved Restructuring Plan to execute and record a Use Agreement that satisfies the requirements of § 401.408. All provisions of this subpart apply as long as the Use Agreement is in effect.

(b) *Periodic monitoring and inspection.* At least once a year, a PAE must review the status of each project for which it developed an approved Restructuring Plan. Monitoring must include on-site inspections. HUD will accept an inspection by a PAE that complies with subpart G of part 5 of this title in lieu of an inspection required by any other party under that subpart.

(c) *HUD acting instead of PAE.* HUD will perform, or contract with other parties to perform, the PAE's functions under this section if:

(1) The project is subject to a PRA with a PAE that is not qualified to be a section 8 contract administrator; or

(2) The project is not currently subject to a PRA.

(d) *Regulatory agreement.* As long as the Secretary is the holder of a second mortgage or an additional mortgage under § 401.461, HUD will regulate the operations of the mortgagor through a regulatory agreement providing terms, conditions, and standards established by HUD, which may be in addition to any regulatory agreement otherwise required in connection with mortgage insurance programs. The regulatory agreement must contain remedies for breach, including monetary damages in the event of non-compliance.

§ 401.552 Servicing of second mortgage.

HUD or its designee will be responsible for servicing the second mortgage, including determining the amounts receivable by the owner under § 401.461(b)(3)(ii)(A). HUD may designate the PAE, with the PAE's consent, as servicer for the second mortgage.

§ 401.554 Contract renewal and administration.

HUD will offer to renew or extend section 8 contracts as provided in each Restructuring Plan, subject to the availability of appropriations and subject to the renewal authority available at the time of each contract expiration (§ 402.5 of this chapter or another appropriate renewal authority). The offer will be made by HUD directly or through a PAE that has contracted with HUD to be a contract administrator for such contracts. HUD will offer to any PAE that is qualified to be the section 8 contract administrator the opportunity to serve as the section 8 contract administrator for a project restructured under a Restructuring Plan developed by the PAE under the Mark-to-Market Program. Qualifications will be determined under both statutory requirements and requirements issued by the appropriate office within HUD, depending on the type of section 8 assistance that is provided.

§ 401.556 Leasing units to voucher holders.

A Restructuring Plan must prohibit any refusal of the owner to lease a unit solely because of the status of the prospective tenant as a section 8 voucher holder.

§ 401.558 Physical condition standards.

The Restructuring Plan must require the owner to maintain the project, in a decent and safe condition that meets the applicable standards under this section. As long as project-based assistance is provided, the applicable standards are the physical conditions standards for HUD housing in § 5.703 of this title. At any other time, the applicable standards are the local housing codes or codes adopted by the public housing agency if such codes meet or exceed the standards in § 5.703 of this title and do not severely restrict housing choice or, if there are no such local housing codes or codes adopted by the public housing agency, the standards in § 5.703 of this title will apply. In addition, any unit in which the tenant receives tenant-based assistance must comply with the housing quality standards of the section 8 tenant-based programs.

§ 401.560 Property management standards.

(a) *General.* Each PAE is required by section 518 of MAHRA to establish management standards consistent with industry standards and HUD guidelines. The management standards must be included or referenced in the Restructuring Plan.

(b) *HUD guidelines.* At a minimum, the PAE's management standards must require the project management to:

(1) Protect the physical integrity of the property over the long term through preventative maintenance, repair, or replacement;

(2) Ensure that the building and grounds are routinely cleaned;

(3) Maintain good relations with the tenants;

(4) Protect the financial integrity of the project by operating the property with competitive and reasonable costs and maintaining appropriate property and liability insurance at all times;

(5) Take all necessary measures to ensure the tenants' physical safety; and

(6) Comply with other provisions that are required by HUD, including termination of the management agent for cause.

(c) *Conflicts of interest.* The PAE management standards must also conform to any guidelines established by HUD, and industry standards, governing conflicts of interest between owners, managers, and contractors.

Subpart E—Section 8 Requirements for Restructured Projects

§ 401.595 Contract and regulatory provisions.

The provisions of chapter VIII of this title will apply to a renewal of section 8 project-based assistance contract under this part only to the extent, if any, provided in the contract. Part 983 of this title will not apply. The term of the initial and subsequent contract renewals under this part will be determined by the appropriate HUD official.

§ 401.600 Will a section 8 contract be extended if it would expire while an owner's request for a Restructuring Plan is pending?

If a section 8 contract for an eligible project would expire before a Restructuring Plan is implemented, the contract may be extended at rents not exceeding current rents for up to the earlier of 1 year or closing on the Restructuring Plan under § 401.407. HUD may terminate the contract earlier if the PAE or HUD determines that an owner is not cooperative under § 401.402 or if an owner's request is rejected under § 401.403 or § 401.405. Any extension of the contract beyond 1 year for a pending Plan must be at comparable market rents or exception rents. An extension at comparable market rents or exception rents under this section will not affect a project's eligibility for the Mark-to-Market Program once it has been initially established under this part.

§ 401.601 [Reserved]

§ 401.602 Tenant protections if an expiring contract is not renewed.

(a) *Required notices.* (1)(i) The owner of an eligible project who has requested a Restructuring Plan and contract renewal must provide a 12-month notice as provided in section 514(d) of MAHRA if the owner later decides not to extend or renew an expiring contract (except due to a rejection under §§ 401.101. 401.403, 401.405, or 401.451. If the owner gives such 12-month notice, the owner is not required to give a separate notice under section 8(c)(8) of the United States Housing Act of 1937.

(ii) An owner who gives the 12-month notice required by paragraph (a)(1)(i) of this section and who determines not to renew a contract must give additional notice not less than 120 days before the contract expiration.

(2) The owner of an eligible project who has not requested a Restructuring Plan, or an owner who requested a Restructuring Plan but who has been rejected under §§ 401.101, 401.403, 401.405, or 401.451, must provide 12 month's advance notice under section 8(c)(8)(A) of the United States Housing Act of 1937 (or notice as otherwise provided in section 8(c)(8)(C) of such Act), unless project-based assistance is renewed under § 402.4.

(3) Notices required by this paragraph must be provided to tenants and to HUD or the contract administrator. HUD will prescribe the form of notices under this paragraph, to the extent that the form is not prescribed by section 8(c)(8) of the United States Housing Act of 1937.

(b) *If owner does not give notice.* If an owner described in paragraph (a)(1) or (a)(2) of this section does not give timely notice of non-renewal or termination, the owner must permit the tenants in assisted units to remain in their units for the required notice period with no increase in the tenant portion of their rent, and with no eviction due to inability to collect an increased tenant portion of rent.

(c) *Availability of tenant-based assistance.* (1) Subject to the availability of amounts provided in advance in appropriations and the eligibility requirements of the tenant-based assistance program regulations, HUD will make tenant-based assistance available under the following circumstances:

(i) If the owner of an eligible project does not extend or renew the project-based assistance, any eligible tenant residing in a unit assisted under the expiring contract on the date of expiration will be eligible to receive assistance on the later of the date of expiration or the date the owner's obligations under paragraph (b) of this section expire; and

(ii) If a request for a Restructuring Plan is rejected under § 401.101, § 401.403, § 401.405, or 401.451, and project-based assistance is not otherwise renewed, any eligible tenant who is a low-income family or who resides in a project-based assisted unit on the date of Plan rejection will be eligible to receive assistance on the later of the date the Restructuring Plan is rejected, or the date the owner's obligations under paragraph (b) of this section expire.

(2) If the tenant was assisted under the expiring contract, assistance under this paragraph will be in the form of enhanced vouchers as provided in section 8(t) of the United States Housing Act of 1937.

§ 401.605 Project-based assistance provisions.

The project-based assistance rents for a restructured project must be the restructured rents determined under the Restructuring Plan in accordance with §§ 401.410 or 401.411.

§ 401.606 Tenant-based assistance provisions.

If the Restructuring Plan provides for tenant-based assistance, each assisted family residing in a unit assisted under the expiring project-based assistance contract when the contract terminates will be offered tenant-based assistance if the family meets the eligibility requirements under part 982. Whenever permitted by section 515(c)(4) of MAHRA, the tenant-based assistance will be in the form of enhanced vouchers as provided in section 8(t) of the United States Housing Act of 1937.

Subpart F—Owner Dispute of Rejection and Administrative Appeal

§ 401.645 How does the owner dispute a notice of rejection?

(a) *Notice of rejection.* HUD will notify the owner of the reasons for a rejection under §§ 401.101, 401.402, 401.403, 401.405, 401.451, or § 402.7 of this chapter. An owner will have 30 days from receipt of this notice to provide written objections or to cure the underlying basis for the objections. If the owner does not submit written objections or cure the underlying basis for the objections during that period, the decision will become a final determination under section 516(c) of MAHRA and is not subject to judicial review.

(b) *Final decision after objection; right to administrative review.* If an owner submits written objections or asserts that the underlying basis for the objections is cured, after consideration of the matter HUD will send the owner a final decision affirming, modifying, or reversing the rejection and setting forth the rationale for the final decision.

§ 401.650 When may the owner make an administrative appeal of a final decision under this subpart?

The owner has a right to make an administrative appeal of the following:

(a) A final decision by HUD under § 401.645(b);

(b) A decision by HUD and the PAE to offer a proposed Restructuring Commitment that the owner does not execute; and

(c) A decision by HUD to accelerate the second mortgage under § 401.461(b)(4), to the extent provided that section.

§ 401.651 Appeal procedures.

(a) *How to appeal.* An owner may submit a written appeal to HUD, within 10 days of receipt of written notice of the decision described in § 401.650, contesting the decision and requesting a conference with HUD. At the conference, the owner may submit (in person, in writing, or through a representative) its reasons for appealing the decision. The HUD or PAE official who issued the decision under appeal may participate in the conference and submit (in person, in writing, or through a representative) the basis for the decision.

(b) *Written decision.* Within 20 days after the conference, or 20 days after any agreed-upon extension of time for submission of additional materials by or on behalf of the owner, HUD will advise the owner in writing of the decision to terminate, modify, or affirm the original decision.

(c) *Who is responsible for reviewing appeals?* HUD will designate an official to review any appeal, conduct the conference, and issue the written decision. The official designated must be one who was neither directly involved in, nor reports to another directly involved in, making the decision being appealed.

§ 401.652 No judicial review.

The reviewing official's decision under § 401.651 is a final determination for purposes of section 516(c) of MAHRA and is not subject to judicial review.

PART 402—PROJECT-BASED SECTION 8 CONTRACT RENEWAL WITHOUT RESTRUCTURING (UNDER SECTION 524(a) OF MAHRA)

3. The authority citation for part 402 continues to read as follows:

Authority: 42 U.S.C. 1437f note and 3535(d).

4. Section 402.1 is revised to read as follows:

§ 402.1 What is the purpose of part 402?

This part sets out the terms and conditions under which HUD will renew project-based section 8 contracts under the authority provided in section 524(a)(1) or (2) of MAHRA. This part permits renewal notwithstanding part 24 of this title, but subject to section 516 of MAHRA (see § 402.7).

5. Section 402.4 is revised to read as follows:

§ 402.4 Contract renewals under section 524(a)(1) of MAHRA.

(a) *Initial renewal.* (1) HUD may renew any expiring section 8 project-based assistance contract at initial rents that do not exceed comparable market rents.

(2)(i) If HUD or a Participating Administrative Entity (PAE) determines that renewal of an expiring contract under this section for an eligible project would be sufficient to maintain both adequate debt service coverage on the HUD-insured or HUD-held mortgage and necessary replacement reserves to ensure the long-term physical integrity of the project, taking into account any comments received under § 401.502(c) of this chapter, HUD will renew the contract under this section without developing a Restructuring Plan, subject to § 402.7.

(ii) If HUD or the PAE determines that paragraph (a)(2)(i) of this section does not apply for an eligible project, HUD or the PAE may require a Restructuring Plan before the owner's request for renewal of an expiring section 8 contract will be given further consideration. If HUD or the PAE determines that the project's continued operation without a Restructuring Plan is not feasible and the owner does not cooperate in the development of an acceptable Restructuring Plan, HUD will pursue whatever administrative actions it considers necessary.

(b) [Reserved].

6. Section 402.6 is amended by revising paragraph (a)(3) to read as follows:

§ 402.6 What actions must an owner take to request section 8 contract renewal under this part?

(a) * * *

(3) If an owner of a project eligible for restructuring under part 401 is seeking contract renewal under § 402.4, the most recent required fiscal year audited financial statement for the project and an owner's evaluation of physical condition as provided in § 401.450 of this chapter, and such other documents as HUD or the PAE may require.

* * * * *

Dated: March 13, 2000.

Ira Peppercorn,

Director, Office of Multifamily Housing Assistance Restructuring.

[FR Doc. 00–6728 Filed 3–21–00; 8:45 am]

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Federal Register

Wednesday,
March 22, 2000

Part IV

Securities and Exchange Commission

17 CFR Part 230 et al.
Disclosure of Mutual Fund After-Tax Returns; Proposed Rule

("Commission") is proposing for

suggest that more than two and one-half

fund's underlying portfolio securities at

addition, several fund groups have

consequences of increased portfolio

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 239, 270, and 274

[Release Nos. 33–7809; 34–42528; IC–24339; File No. S7–09–00]

RIN: 3235–AH77

Disclosure of Mutual Fund After-Tax Returns

AGENCY: Securities and Exchange Commission

ACTION: Proposed rule

SUMMARY: The Securities and Exchange Commission is proposing rule and form amendments under the Securities Act of 1933 and the Investment Company Act of 1940 to improve disclosure to investors of the effect of taxes on the performance of open-end management investment companies ("mutual funds" or "funds"). Under the proposed amendments, mutual funds would be required to disclose after-tax returns based on standardized formulas comparable to the formula currently used to calculate before-tax average annual total returns. The proposals also would require funds that include after-tax returns in advertisements and other sales materials to include standardized after-tax returns.

DATES: Comments must be received on or before June 30, 2000.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609. Comments also may be submitted electronically at the following E-mail address: rule-comments@sec.gov. All comment letters should refer to File No. S7–09–00; this file number should be included on the subject line if E-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, N.W., Washington, D.C. 20549–0102. Electronically submitted comment letters will be posted on the Commission's Internet site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Maura S. McNulty, Senior Counsel, Martha B. Peterson, Special Counsel, or Kimberly Dopkin Rasevic, Assistant Director, (202) 942–0721, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission ("Commission") is proposing for comment amendments to Form N–1A [17 CFR 239.15A and 274.11A], the registration form used by mutual funds to register under the Investment Company Act of 1940 [15 U.S.C. 80a–1 *et seq.*] ("Investment Company Act") and to offer their shares under the Securities Act of 1933 [15 U.S.C. 77a *et seq.*] ("Securities Act"). The Commission also is proposing amendments to rule 482 under the Securities Act [17 CFR 230.482] and rule 34b–1 under the Investment Company Act [17 CFR 270.34b–1].

Table of Contents

I. Introduction
II. Discussion
A. Requirement to Disclose After-Tax Return
B. Location of Required Disclosure
C. Format of Disclosure
D. Exemptions from the Disclosure Requirement
E. Advertisements and Other Sales Literature
F. Formulas for Computing After-Tax Return
1. Tax Bracket
2. Historical versus Current Tax Rates
3. Calendar versus Fiscal Year Measurement Period
4. State and Local Tax Liability
5. Federal Alternative Minimum Tax and Phaseout Adjustments
6. Timing and Method of Tax Payment
7. Tax Treatment of Distributions
8. Capital Gains and Losses Upon a Sale of Fund Shares
G. Narrative Disclosure
H. Alternatives to Disclosure of After-Tax Return
I. Technical and Conforming Amendments
J. Compliance Date
III. General Request For Comments
IV. Cost/Benefit Analysis
V. Summary Of Initial Regulatory Flexibility Analysis
VI. Paperwork Reduction Act
VII. Statutory Authority
Text Of Proposed Rules And Forms

I. Introduction

Taxes are one of the most significant costs of investing in mutual funds through taxable accounts. In 1998, mutual funds distributed approximately $166 billion in capital gains and $134 billion in taxable dividends.[1] Shareholders investing in stock and bond funds paid an estimated $34 billion in taxes in 1997 on distributions by their funds.[2] Recent estimates suggest that more than two and one-half percentage points of the average stock fund's total return is lost each year to taxes.[3] Moreover, in the last five years, it is estimated that investors in diversified U.S. stock funds surrendered an average of 15 percent of their annual gains to taxes.[4]

Despite the tax dollars at stake, many investors lack a clear understanding of the impact of taxes on their mutual fund investments.[5] Generally, a mutual fund shareholder is taxed when he or she receives income or capital gains distributions from the fund and when the shareholder redeems fund shares at a gain.[6] The tax consequences of distributions are a particular source of surprise to many investors when they discover that they can owe substantial taxes on their mutual fund investments that appear to be unrelated to the performance of the fund. Even if the value of a fund has declined during the year, a shareholder can owe taxes on capital gains distributions if the portfolio manager sold some of the

[1] Investment Company Institute ("ICI"), MUTUAL FUND FACT BOOK 56 (1999) ("1999 MUTUAL FUND FACT BOOK") (distributions of taxable dividends included $81.9 billion on equity, hybrid, and bond funds and $52.1 billion on money market funds).

[2] Liberty Funds Distributor, *Mutual Fund "Tax Pain Index" Rises Again Despite Capital Gains Rate Cut* (visited Feb. 1, 2000) <http://www.libertyfunds.com/liberty/lf/scripts/inTheNews.jsp?BV_SessionID=@@@@0115467702.0949422874@@@@&BV_EngineID=calglgclfhhbfdmckgcfjicil. 0> (estimate of the tax burden based on net capital gains realized on mutual funds other than money market funds, and net investment income on equity, bond, and income funds).

[3] KPMG Peat Marwick LLP, An Educational Analysis of Tax-Managed Mutual Funds and the Taxable Investor ("KPMG Study"), at 14.

[4] Jonathan Clements, *Fund Distributions are a Taxing Problem; How the Tax Man Dines on Your Funds*, THE WALL STREET JOURNAL, Aug. 31, 1999, at C1.

[5] In a recent telephone survey, 1,000 mutual fund investors were asked about their tax knowledge. Eighty-five percent of respondents claimed taxes play an important role in investment decisions, but only thirty-three percent felt that they were very knowledgeable about the tax implications of investing. Eighty-two percent were unable to identify the maximum rate for long-term capital gains. The Dreyfus Corporation, *Dreyfus' 1999 Tax Informed Investing Study* (visited Jan. 14, 2000) <http://www.dreyfus.com/>. In another survey, 1,555 mutual fund investors were asked a variety of questions to test their knowledge about mutual funds. Only 60 percent correctly answered a question asking them to identify factors that may influence after-tax returns. Brill's Mutual Funds Interactive, *Humberto Cruz: Take the Investor Literacy Test* (visited Jan. 31, 2000) <http://www.fundsinteractive.com/features/crz07991.html>.

[6] I.R.C. 61(a)(3) and (7) (providing that an individual's gross income includes dividends and gains derived from dealings in property); I.R.C. 852(b)(3)(8) (capital gain dividend from a mutual fund treated as gain from sale or exchange of capital asset held for more than one year); I.R.C. 1001 (gain from sale or other disposition of property is excess of amount realized over adjusted basis, and loss is excess of the adjusted basis over amount realized). *See* IRS Publication 564, *Mutual Fund Distributions* (1999), at 2–4 (explaining tax treatment of distributions of income and capital gains by mutual funds to their shareholders).

fund's underlying portfolio securities at a gain.[7]

The tax impact of mutual funds on investors can vary significantly from fund to fund. For example, the amount and character of a fund's taxable distributions are affected by its investment strategies, including the extent of a fund's investments in securities that generate dividend and other current income, the rate of portfolio turnover and the extent to which portfolio trading results in realized gains, and the degree to which portfolio losses are used to offset realized gains. One recent study reported that the annual impact of taxes on the performance of stock funds varied from zero, for the most tax-efficient funds, to 5.6 percentage points, for the least tax-efficient.[8] While the tax-efficiency of a mutual fund is of little consequence to investors in 401(k) plans or other tax-deferred vehicles, it can be very important to an investor in a taxable account, particularly a long-term investor whose tax position may be significantly enhanced by minimizing current distributions of income and capital gains.

Recently, there have been increasing calls for improvement in the disclosure of the tax consequences of mutual fund investments. Mutual funds, as well as third party providers that furnish information to mutual fund shareholders, are responding to this growing investor demand by providing after-tax returns, calculators that investors can use to compute after-tax returns, and other tax information.[9] In addition, several fund groups have created new funds promoting the use of more tax-efficient portfolio management strategies.[10] At the same time, a bill has been introduced in Congress that would require the Commission to revise its regulations to require improved disclosure of mutual fund after-tax returns.[11] Many press commenters also have highlighted the need for improvements in mutual fund tax disclosure.[12]

Currently, the Commission requires mutual funds to disclose significant information about taxes to investors. In its prospectus, a mutual fund is required to disclose (i) the tax consequences of buying, holding, exchanging, and selling fund shares, including the tax consequences of fund distributions; and (ii) whether the fund may engage in active and frequent portfolio trading to achieve its principal investment strategies, and, if so, the tax consequences of increased portfolio turnover and how this may affect fund performance.[13] A fund also must disclose in its prospectus and annual report the portfolio turnover rate and dividends and capital gains distributions per share for each of the last five fiscal years.[14] While we believe this disclosure is useful, we are persuaded that funds can more effectively communicate to investors the tax consequences of investing. We are therefore proposing for public comment amendments to our rules and to Form N–1A, the registration form for mutual funds, that would require disclosure of standardized mutual fund after-tax returns.

This is the latest Commission action in our continuing effort to improve the quality of mutual fund disclosure in order to help investors make better-informed decisions. In 1998, for example, we adopted comprehensive amendments to Form N–1A in order to focus the disclosure in a fund's prospectus on essential information that will assist investors in deciding whether to invest in the fund.[15] We also permitted the use of a new short-form document, the fund "profile," which summarizes key information about a mutual fund.[16]

Over the years, we have implemented a number of initiatives to improve fund disclosure of costs and performance. We standardized before-tax fund performance in advertisements and sales literature in order to prevent misleading performance claims by funds and to permit investors to make meaningful comparisons among funds.[17] We introduced a uniform fee table in the prospectus [18] and required that a fund discuss its performance over the past year in its prospectus or annual report to shareholders.[19]

More recently, we have increased our efforts to educate investors about mutual fund costs and how those costs

[7] This is attributable, in part, to the fact that a mutual fund generally must distribute substantially all of its net investment income and realized capital gains to its shareholders in order to qualify for favorable tax treatment as a "regulated investment company" ("RIC"). I.R.C. 852 and 4982(b). As a RIC, a mutual fund is generally entitled to deduct dividends paid to shareholders, resulting in its shareholders being subject to only one level of taxation on the income and gains distributed to them. I.R.C. 851 (circumstances under which an investment company may be treated as a RIC) and 852(b)(2) (calculation of taxable income of a RIC).

See, e.g., Year-End Tax Tips, Bob Edwards (National Public Radio, Morning Edition radio broadcast, Dec. 28, 1999) (describing tax consequences of mutual fund distributions as a "shock" to investors).

[8] KPMG study, *supra* note 3, at 14 (reporting the impact of taxes on performance of 496 stock funds for the ten-year period ending December 31, 1997).

[9] For example, Eaton Vance Management and The Vanguard Group have recently announced plans to begin reporting after-tax returns to shareholders. *Eaton Vance to Disclose After-Tax Returns*, FUND ACTION, Dec. 20, 1999, Vol. X/No. 51, at 6; Access Vanguard, *Vanguard to Publish After-Tax Returns in Equity and Balanced Fund Reports (Oct. 11, 1999)* (visited Feb. 1, 2000) <http://www.vanguard.com/cgi-bin/pressroom/PRPrevious.html>. Fidelity Investments and Charles Schwab & Co. also have begun offering Internet tools that feature after-tax returns of funds offered in their fund supermarkets. Fidelity Investments, *Track After-Tax Fund Performance On-Line* (visited February 8, 2000) <http://personal300.fidelity.com/global/whatsnew/content/94689.html.tvsr> (after-tax returns for most equity funds sold through the fund supermarket); *Short Takes: Schwab Offering On-Line Research Access*, THE AMERICAN BANKER, Jan. 5, 2000, at 6 (after-tax returns for funds listed by Morningstar, Inc.).

Further, Morningstar, Inc., and *Forbes* report mutual fund after-tax returns. Morningstar, MUTUAL FUND 500 (1999 ed.); *Fund Survey*, FORBES, Feb. 7, 2000, at 166.

On-line tax calculators that calculate after-tax returns are also available. *Andrew Tobias' Mutual Fund Cost Calculator*, (visited Jan. 14, 2000) <http://www.personalfund.com/cgibon/calculate.cgi> (cost calculator includes a feature that calculates after-tax returns); Access Vanguard, *After-Tax Returns Calculator* (visited Jan. 19, 2000) <http://majestic3.vanguard.com/FP/DA/0.1.vgi__FundAfterTaxSim/ 212820070619150300?AFTER__TAX__CALC=SIMPLE>.

[10] The many fund groups offering funds labeled as "tax-managed" or "tax-efficient" include American Century, Eaton Vance, Liberty Funds, Paine Webber, Prudential, T. Rowe Price, and Voyager. Morningstar, Inc., currently tracks 42 tax-managed funds, as compared to 12 such funds only three years ago. Morningstar.com, *Tax-Managed Funds Keep Uncle Sam at Bay* (visited Feb. 23, 2000) <http://news.morningstar.com/news/ms/taxingissues/000125taxes.html>.

[11] The Mutual Fund Tax Awareness Act of 1999, H.R. 1089, 106th Cong., 1st Sess. (1999) (introduced by Congressman Paul Gillmor). *See also* H.R. 1089: The Mutual Fund Tax Awareness Act of 1999: Hearings Before the Subcomm. on Finance and Hazardous Materials of the House Comm. on Commerce, 106th Cong., 1st Sess. (Oct. 29, 1999) (Statement of the U.S. Securities and Exchange Commission Concerning Disclosure of the Tax Consequences of Mutual Fund Investments and Charitable Contributions).

[12] *See, e.g.*, Karen Damato, *Funds' Tally of IRS Bite Can Be Tricky*, THE WALL STREET JOURNAL, Nov. 3, 1999, at C1; Paul J. Lim, *Your Money: Funds and 401(k)s; As Stock Market Returns Shrink, After-Tax Results Gain Importance*, LOS ANGELES TIMES, Oct. 17, 1999, at C3; Charles A. Jaffe, *Mutual Fund Gains Create Interesting Tax Issues Later*, THE KANSAS CITY STAR, Mar. 23, 1999, at D19.

[13] Item 7(e) of Form N–1A; Instruction 7 to Item 4 of Form N–1A.

[14] Items 9(a) and 22(b)(2) of Form N–1A. These items also require funds to show net realized and unrealized gain or loss on investments on a per share basis for each of the fund's last five fiscal years.

[15] Investment Company Act Release No. 23064 (Mar. 13, 1998) [63 FR 13916 (Mar. 23, 1998)] ("Form N–1A Adopting Release"), at 13917.

[16] Investment Company Act Release No. 23065 (Mar. 13, 1998) [63 FR 13968 (Mar. 23, 1998)], at 13969.

[17] Investment Company Act Release No. 16245 (Feb. 2, 1988) [53 FR 3868 (Feb. 10, 1988)], at 3869.

[18] Item 3 of Form N–1A; Investment Company Act Release No. 16244 (Feb. 1, 1988) [53 FR 3192 (Feb. 4, 1988)].

[19] Item 5(a) of Form N–1A; Investment Company Act Release No. 19382 (Apr. 6, 1993) [58 FR 19050 (Apr. 12, 1993)] ("MDFP Release").

affect performance.[20] Just last year, we introduced a "Mutual Fund Cost Calculator" to assist investors in determining how fund fees and charges affect their mutual fund returns.[21]

Today's proposal represents another significant step in these efforts. Taxes are one of the largest costs associated with a mutual fund investment, having a dramatic impact on the return an investor realizes from a fund. Our proposal will help investors to understand the magnitude of tax costs and compare the impact of taxes on the performance of different funds.

While the Commission recognizes that a significant amount of mutual fund assets are held through tax-deferred arrangements, such as 401(k) plans or individual retirement accounts ("IRAs"), approximately half of non-money market fund assets held by individuals are held in taxable accounts.[22] We are concerned that the millions of mutual fund investors who are subject to current taxation may not fully appreciate the impact of taxes on their fund investments because mutual funds are required to report their performance on a before-tax basis only.[23] Although performance is only one of many factors that an investor should consider in deciding whether to invest in a particular fund, many investors consider performance one of the most significant factors when selecting or evaluating a fund.[24] As a result, we believe it would be beneficial for funds to provide their after-tax performance in order to allow investors to make better-informed decisions.

Our proposals would require a fund to disclose its standardized after-tax returns for 1-, 5-, and 10-year periods. After-tax returns, which would accompany before-tax returns in fund prospectuses and annual reports, would be presented in two ways: (i) assuming the shareholder continued to hold his or her shares at the end of the period; and (ii) assuming the shareholder sold his or her shares at the end of the period, realizing taxable gain or loss on the sale. Although after-tax returns would not be required in fund advertisements and sales literature, any fund choosing to include after-tax returns in these materials would be required to include after-tax returns computed according to our standardized formula.

II. Discussion

A. Requirement to Disclose After-Tax Return

The Commission is proposing to require that mutual funds disclose after-tax return, a measure of a fund's performance adjusted to reflect taxes that would be paid by an investor in the fund. The proposal would require after-tax return information to be included in the risk/return summary of the prospectus and in Management's Discussion of Fund Performance ("MDFP"), which is typically contained in the annual report.[25] Funds would not be required to include after-tax returns in advertisements or other sales materials, although funds choosing to include after-tax returns in sales materials would be required to include after-tax returns computed according to a standardized formula.[26]

We considered whether, in lieu of requiring after-tax returns to be included in prospectuses and annual reports, we should simply require that funds voluntarily choosing to include after-tax returns in any materials (prospectus, annual report, or sales materials) also include after-tax returns computed according to a standardized formula. We concluded that this approach would not achieve our basic goal of providing investors in all mutual funds with better disclosure of the tax consequences of their investments. Permitting funds to choose whether to disclose after-tax returns could leave investors without the information required to compare after-tax returns for each fund they were considering and could leave funds with the latitude to disclose this information only when it is favorable.

Funds would calculate after-tax return by using a standardized formula similar to the formula presently used to calculate before-tax average annual total return.[27] The proposal would require funds to disclose after-tax return for 1-, 5-, and 10-year periods on both a "pre-liquidation" and "post-liquidation" basis. Pre-liquidation after-tax return assumes that the investor continues to hold fund shares at the end of the measurement period, and, as a result, reflects the effect of taxable distributions by a fund to its shareholders but not any taxable gain or loss that would be realized by a shareholder upon the sale of fund shares.[28] Post-liquidation after-tax return assumes that the investor sells his or her fund shares at the end of the measurement period, and, as a result, reflects the effect of both taxable distributions by a fund to its shareholders and any taxable gain or loss realized by the shareholder upon the sale of fund shares.[29] Pre-liquidation after-tax return reflects the tax effects on shareholders of the portfolio manager's purchases and sales of portfolio securities, while post-liquidation after-tax return also reflects the tax effects of a shareholder's individual decision to sell fund shares.

The Commission proposes to require the presentation of both pre-and post-liquidation after-tax returns in order to provide investors with a more complete understanding of the impact of taxes on

[20] *See, e.g.*, Securities and Exchange Commission, *Mutual Fund Investing: Look at More Than a Fund's Past Performance* (last modified Jan. 24, 2000) <http://www.sec.gov/consumer/mperf.htm>; Securities and Exchange Commission, *Invest Wisely: An Introduction To Mutual Funds* (last modified Oct. 21, 1996) <http://www.sec.gov/consumer/inws.htm>; "Common Sense Investing in the 21st Century Marketplace," Remarks by Arthur Levitt, Chairman, SEC, Investors Town Meeting, Albuquerque, NM (Nov. 20, 1999); "Financial Self-Defense: Tips From an SEC Insider," Remarks by Arthur Levitt, Boston Globe "Moneymatters" Personal Finance Conference, Boston, MA (Oct. 16, 1999); Transparency in the United States Debt Market and Mutual Fund Fees and Expenses: Hearings Before the Subcomm. on Finance and Hazardous Materials of the House Comm. on Commerce, 105th Cong., 2nd Sess. (Sept. 29, 1998) (Statement of Arthur Levitt, Chairman, U.S. Securities and Exchange Commission).

[21] Securities and Exchange Commission, *The SEC Mutual Fund Cost Calculator* (last modified December 6, 1999) <http://www.sec.gov/mfcc/mfcc-int.htm>.

[22] As of year end 1998, seventy-eight percent of mutual fund assets ($4.3 trillion) were held by individuals. 1999 MUTUAL FUND FACT BOOK, *supra* note 1, at 41. At the end of 1998, mutual fund assets held in retirement accounts stood at $1.9 trillion. 1999 MUTUAL FUND FACT BOOK, at 47. Mutual fund assets held by individuals in money market funds stood at $714 billion. 1999 MUTUAL FUND FACT BOOK, at 90, 100. Thus, 47 percent of non-money market fund assets held by individuals ($1.7 trillion) were held in taxable accounts.

An investor is not taxed on his or her investments in IRAs, 401(k) plans, and other qualified retirement plans until the investor receives a distribution from the plan. I.R.C. 401 *et seq. See* IRS Publication 564, *Mutual Fund Distributions* (1999), at 2 (explaining tax treatment of mutual funds held in retirement vehicles).

[23] *See* Items 2, 5, 9, and 22(b)(2) of Form N–1A.

[24] We recently posted a bulletin for mutual fund investors on our website, in which we cautioned investors to look beyond performance when evaluating mutual funds and to consider the costs relating to a mutual fund investment, including fees, expenses, and the impact of taxes on their investment. Securities and Exchange Commission, *Mutual Fund Investing: Look at More Than a Fund's Past Performance* (last modified Jan. 24, 2000) <http://www.sec.gov/consumer/mperf.htm/>.

See ICI, *Understanding Shareholders' Use of Information and Advisers* (Spring 1997), at 21 and 24. (Total return information was frequently considered by investors before a purchase, second only to the level of risk of the fund. Eighty-eight percent of fund investors surveyed said that they considered total return before their most recent purchase of a mutual fund. Eighty percent of fund owners surveyed reported that they followed a fund's rate of return at least four times per year.).

[25] Proposed Items 2(c)(2)(i) and (iii) and 5(b)(2) of Form N–1A.

[26] Proposed rules 482(e)(4), 482(e)(5)(iii), and 34b–1(b)(1)(iii)(B).

[27] *See* Item 21(b)(1) of Form N–1A.

[28] Proposed Item 21(b)(3) of Form N–1A.

[29] Proposed Item 21(b)(4) of Form N–1A.

a fund's performance. The relative value of these two measures of after-tax performance is the subject of ongoing debate among industry participants. Those who support the use of pre-liquidation after-tax return argue that pre-liquidation after-tax return provides the most relevant information for analyzing the tax impact of decisions by the portfolio manager.[30] Others argue that this measure of after-tax return, taken alone, tends to overstate the benefits of tax deferral on shareholder gains.[31]

We believe that pre-liquidation after-tax return is important because it provides information about the tax-efficiency of portfolio management decisions. We also believe, however, that it is important for shareholders, many of whom hold shares for a relatively brief period, to understand the full impact that taxes have on a mutual fund investment that has been sold.[32] Therefore, we are proposing to require funds to disclose both measures of after-tax return.

We are proposing that funds reflect the deduction of any fees and charges payable upon a sale of fund shares, such as sales charges or redemption fees, in post-liquidation after-tax returns but not in pre-liquidation after-tax returns.[33] This is consistent with the fact that post-liquidation after-tax returns assume a sale of fund shares by the investor, while pre-liquidation after-tax returns do not. Funds are currently required to disclose before-tax returns reflecting the deduction of any fees and charges payable upon a sale of fund shares.[34] These before-tax returns may usefully be compared to the post-liquidation after-tax return measure that we are proposing (because both types of returns reflect fees and charges payable upon a sale of fund shares), but they may not usefully be compared to the pre-liquidation after-tax return measure that we are proposing (which does not reflect fees and charges payable upon sale of fund shares).

We are therefore proposing to require that funds also disclose before-tax returns that do not reflect the deduction of fees and charges payable upon a sale of fund shares. This would provide investors with a before-tax return measure that can be compared with the pre-liquidation after-tax return measure that we are proposing.[35] In the alternative, we considered requiring that pre-liquidation after-tax return reflect the deduction of any fees and charges payable upon a sale of fund shares. Pre-liquidation after-tax return computed in this way could usefully be compared to the before-tax return that is currently required to be disclosed, but we were concerned that investors would be confused by a pre-liquidation after-tax return measure that assumed no sale of fund shares for purposes of computing tax consequences but nonetheless reflected fees and charges payable upon a sale of fund shares.

Commenters are requested to discuss whether we should require disclosure of after-tax returns. Is this information useful to, and understandable by, investors? Commenters are asked to address the relative merits of requiring disclosure of after-tax returns versus standardizing the computation of after-tax returns for funds that choose to disclose after-tax returns. Should disclosure be mandatory only for funds that hold themselves out as "tax-managed" or otherwise managed with a view to shareholder tax consequences?

Should we require disclosure of both pre-liquidation and post-liquidation after-tax returns or is disclosure of one of these measures sufficient? Commenters also are requested to discuss how we should address the issue of providing a useful comparison for pre-liquidation after-tax returns. Should we, as proposed, require the disclosure of before-tax return that does not reflect the deduction of any fees and charges payable upon a sale of fund shares? Or should we require funds to reflect the deduction of any fees and charges payable upon a sale of fund shares in pre-liquidation after-tax returns or take some other approach? Finally, commenters are asked to address whether we should require disclosure of after-tax returns for an index or a peer group of funds.

B. Location of Required Disclosure

The proposal would require mutual funds to disclose after-tax returns in the performance table contained in the risk/return summary of the prospectus and in the MDFP, which is typically contained in the annual report.[36] The proposal also would have the effect of requiring the inclusion of after-tax returns in any fund profile because a profile must include the prospectus risk/return summary.[37]

We are proposing to require that after-tax returns be included in the prospectus because, for the overwhelming majority of prospective investors who base their investment decision, in part, on past performance, after-tax returns can be useful in understanding past performance.[38] Including after-tax returns in the performance table of the risk/return summary would assist prospective investors in their investment decisions by making after-tax returns easy to find and easy to compare with before-tax returns, which are currently presented in this location.[39]

We are proposing to include after-tax returns in the MDFP because, for existing shareholders, after-tax returns are an important element to consider when evaluating fund performance.[40]

[30] *See* H.R. 1089: The Mutual Fund Tax Awareness Act of 1999: Hearings Before the Subcomm. on Finance and Hazardous Materials of the House Comm. on Commerce, 106th Cong., 1st Sess. (Oct. 29, 1999) (Statement of Joel M. Dickson, Principal, The Vanguard Group, Inc.) (stating that "the primary advantage of the pre-liquidation calculation is that it isolates the effects on all shareholders of the taxes resulting from the portfolio manager's investment decisions").

[31] *See* H.R. 1089: The Mutual Fund Tax Awareness Act of 1999: Hearings Before the Subcomm. on Finance and Hazardous Materials of the House Comm. on Commerce, 106th Cong., 1st Sess. (Oct. 29, 1999) (Statement of David B. Jones, Vice President, Fidelity Management & Research Co.) (stating that "pre-liquidation returns risk fostering the impression that taxes can be deferred indefinitely, which is not the case for most investors; and tend to exaggerate the benefits of tax deferral").

[32] A recent report estimates that over the past decade the average holding period of mutual funds has decreased from over 10 years to about 3 years. Steve Galbraith, Mary Medley, Sean Yu, The Apotheosis of Stuart—Lighting the Candle in U.S. Equities, Bernstein Research Call, Sanford C. Bernstein & Co., Jan. 10, 2000.

[33] Instruction 6 to proposed Item 21(b)(4) and Instruction 6 to proposed Item 21(b)(3) of Form N–1A.

[34] Instruction 4 to Item 21(b)(1) of Form N–1A.

[35] Proposed Items 2(c)(2)(iii)(A), 5(b)(2)(i), and 21(b)(1) of Form N–1A.

[36] Proposed Items 2(c)(2)(iii) and 5(b)(2) of Form N–1A.

[37] Rule 498(c)(2)(iii) under the Securities Act (17 CFR 230.498(c)(2)(iii)). In addition, after-tax returns would be required in registration statements filed on Form N–14 (17 CFR 239.23), the registration form used by mutual funds to register securities to be issued in mergers and other business combinations under the Securities Act. *See* Items 5(a) and 6(a) of Form N–14 (cross-referencing Items 2 and 5 of Form N–1A).

[38] An estimated 88 percent of mutual fund shareholders considered the total return of the fund before their most recent fund purchase. Seventy-five percent of mutual fund shareholders considered the fund's performance relative to similar funds. ICI, UNDERSTANDING SHAREHOLDERS' USE OF INFORMATION AND ADVISERS (Spring 1997), at 21.

[39] Item 2(c)(2)(iii) of Form N–1A.

[40] Eighty percent of mutual fund shareholders monitor the performance of their fund holdings at least four times per year. ICI, UNDERSTANDING SHAREHOLDERS' USE OF INFORMATION AND ADVISERS (Spring 1997), at 24.

Form N–1A requires that the prospectus include the MDFP unless the information is included in the fund's latest annual report to shareholders and the fund provides a copy of the annual report, upon request and without charge, to each person to whom a prospectus is delivered. Item 5 of Form N–1A. A significant majority of funds currently include the MDFP in their annual reports to shareholders. The Commission has directed the Division of Investment Management to draft proposed amendments to fund periodic reporting requirements, and has asked that, in connection

Continued

The Commission added the MDFP requirement in response to investor concerns that mutual funds did not provide sufficient information to permit investors readily to evaluate fund investment results.[41] Including after-tax returns as part of the MDFP presentation will enhance its usefulness.

We have considered alternative locations for disclosure of after-tax returns, including: (i) The bar chart in the risk/return summary; (ii) the section of the prospectus describing the tax consequences to shareholders of buying, holding, exchanging, and selling fund shares; and (iii) the financial highlights table, which appears in both prospectuses and annual reports.[42] Each of these other locations, however, presents some drawbacks that resulted in our decision not to propose it as the location for after-tax returns.

The bar chart is prominently located in the prospectus, but it is intended to reflect fund volatility, not overall fund performance.[43] In addition, the performance shown in the bar chart does not reflect the deduction of sales loads or account fees and is presented for only a single class of a multiple class fund.[44] Although the tax section of the prospectus could provide a centralized location for tax information, inclusion of after-tax returns in this section would make them far less prominent than the before-tax returns included in the risk/return summary. The financial highlights table contains other tax information, such as dividends, capital gain distributions, and portfolio turnover rate.[45] On the other hand, the financial highlights table is not as prominently located in the prospectus as the risk/return summary. Further, the information presented in the financial highlights table is presented on a year-by-year basis, rather than on the average annual return basis over 1-, 5-, and 10-year periods that is used in computing standardized before-tax returns.

We also have considered vehicles other than the prospectus and annual reports for the disclosure of after-tax returns, including:

- Requiring disclosure of after-tax returns in the Statement of Additional Information ("SAI");
- Providing funds with the option of disclosing after-tax returns on their Internet website in lieu of including after-tax returns in the prospectus or annual report; and
- Permitting funds to provide after-tax returns upon shareholder request only.

We determined not to propose any of these approaches because each would place the burden of obtaining after-tax return information on the investor, which could greatly reduce investors' receipt of this useful information.

Comment is requested on the appropriate location for disclosure of after-tax returns and how best to convey this information to both existing and prospective investors. Should this information be included in the prospectus, annual report, profile, or elsewhere? Commenters are asked to address the specific location in any document where this information should be included (*e.g.*, risk/return summary, MDFP) and the advantages and disadvantages of the suggested location. Commenters should address the locations discussed in this release and any other locations that they believe would be appropriate.

C. Format of Disclosure

We are proposing that before and after-tax returns be presented in a standardized tabular format as follows:[46]

AVERAGE ANNUAL TOTAL RETURNS

[For the periods ended ——]

	1 year	5 years	10 years
If You Continue to Hold Your Shares at End of Period:			
Before-Tax Return	__%	__%	__%
After-Tax Return	__%	__%	__%
If You Sell Your Shares at End of Period:			
Before-Tax Return	__%	__%	__%
After-Tax Return	__%	__%	__%
Index (reflects no deduction for fees, expenses, or taxes)	__%	__%	__%

Before-and after-tax returns would be required to be presented in the order specified, using the captions provided by Form N–1A.[47] The table of returns would be required for each class of a fund offered in the prospectus. The four types of return for each class would be required to be presented adjacent to one another and not interspersed with the returns of other classes or funds.[48] This should facilitate comparisons among the returns shown.

We considered giving funds flexibility to create different formats for presenting the required information. We elected not to propose this alternative because of potential investor confusion. We believe that it would be easier for shareholders both to compare funds and to understand the differences among the different measures of return for any particular fund if all funds present this information in the same manner, using the same captions. Commenters are requested to address whether the Commission should require that before-and after-tax return information be presented in a specific format, using required captions. Does the proposed table present before-and after-tax return information in a clear and understandable way? Do the proposed captions adequately describe the information presented? Will investors be able to understand the presentation for funds with multiple classes and multiple portfolios? Is there a more

with such a proposal, the Division consider whether the MDFP would be more useful to investors in shareholder reports. Form N–1A Adopting Release, *supra* note 15, at 13929.

[41] MDFP Release, *supra* note 19, at 19052.

[42] Items 2(c)(2), 7(e), and 9 of Form N–1A.

[43] Item 2(c)(2)(i) of Form N–1A; Form N–1A Adopting Release, *supra* note 15, at 13922.

[44] Instructions 1 and 3 to Item 2(c)(2) of Form N–1A.

[45] Item 9 of Form N–1A.

[46] Proposed Items 2(c)(2)(iii) and 5(b)(2) of Form N–1A.

Although the proposed performance table in the prospectus risk/return summary includes the return of a broad-based securities market index as shown in the text, the table required in the MDFP does not. The MDFP includes the performance of a broad-based securities market index in the line graph that accompanies the table. *See* proposed Item 2(c)(2)(iii) of Form N–1A; Item 5(b)(1) of Form N–1A.

[47] Proposed Items 2(c)(2)(iii) and 5(b)(2) of Form N–1A.

[48] Instruction 3(c) to proposed Item 2 and Instruction 12 to proposed Item 5 of Form N–1A.

effective way to present after-tax returns for these funds?

D. Exemptions from the Disclosure Requirement

We are proposing to exempt money market funds from the requirement to disclose after-tax returns.[49] We are also proposing to permit a fund that is offered as an investment option in a participant-directed defined contribution plan or variable insurance contract to omit the after-tax return information in a prospectus for use by participants in the plan or owners of the contract.[50]

Money market funds typically do not accumulate or distribute capital gains and their returns are generally in the form of income distributions, which are taxable on a current basis. As a result, the tax consequences of investing in different money market funds should be similar, *i.e.*, current taxation on income distributions. For this reason, requiring money market funds to disclose after-tax returns would not significantly assist an investor in comparing different money market funds. In addition, it could place money market funds at a competitive disadvantage vis-à-vis competing financial products, such as bank savings accounts and certificates of deposit, that are not required to disclose after-tax returns. For these reasons, we have determined not to extend to money market funds the requirement to disclose after-tax returns.

We also are proposing to permit a fund to omit the after-tax return information in a prospectus used exclusively to offer fund shares as investment options for:

- A defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code ("Code");
- A tax-deferred arrangement under section 403(b) or 457 of the Code;
- A variable insurance contract as defined in section 817(d) of the Code, if covered in a separate account prospectus; or
- A similar plan or arrangement pursuant to which an investor is not taxed on his or her investment in the fund until the investment is sold.[51]

The proposed after-tax return information would largely be irrelevant to investors in those arrangements because they are not subject to current taxation on fund distributions and their tax consequences on a sale of fund shares are different than those experienced by investors in taxable accounts.[52]

The Commission considered whether to exclude tax-exempt funds from the requirement to disclose after-tax returns.[53] While most, if not all, income distributed by a tax-exempt mutual fund generally will be tax-exempt, a tax-exempt mutual fund may also make capital gains distributions that are taxable and an investor is taxable on gains from the sale of fund shares.[54] As a result, the performance of a tax-exempt fund may be affected by taxes and taxes may have a greater or lesser impact on different tax-exempt funds. Therefore, we have not proposed to exclude tax-exempt funds from the required disclosure.[55]

We request that commenters discuss whether the proposed exemptions from the after-tax return disclosure requirements are appropriate. Should tax-exempt funds or any other types of funds be exempted from the requirements?

E. Advertisements and Other Sales Literature

The Commission is proposing to require that all fund advertisements and sales literature that include after-tax performance information also include after-tax returns computed according to the standardized formulas prescribed in Form N–1A for computation of after-tax returns in the risk/return summary and MDFP.[56] Any quotation of non-standardized after-tax return also would be subject to the same conditions currently applicable to quotations of non-standardized performance that are included in fund advertisements and sales literature.[57] Requiring advertisements and sales literature that include after-tax returns also to include standardized pre-and post-liquidation after-tax returns is intended to prevent advertisements and sales literature from being misleading and to permit shareholders to compare claims about after-tax performance.

Comment is requested regarding the inclusion of after-tax returns in fund advertisements and other sales literature. Is the proposed requirement to disclose standardized after-tax returns in any advertisement or other sales literature containing after-tax

[49] Proposed Item 2(c)(2)(iii) of Form N–1A. Money market funds are already exempted from the requirements of Item 5 of Form N–1A.

[50] Proposed General Instruction C.3(d)(i) of Form N–1A. The proposed instruction would permit a fund to omit from its prospectus the information required by Items 2(c)(2)(iii)(A), (B), and (D), and 2(c)(2)(iv), 5(b)(2)(i), (ii), and (iv), and 5(b)(3) if the fund's prospectus will be used exclusively to offer fund shares as investment options in specified types of plans.

[51] *Id.* We propose expanding the types of prospectuses that may omit or modify certain information required by Form N–1A to include prospectuses used to offer fund shares as investment options for plans or arrangements similar to those currently enumerated in General Instruction C.3.(d)(i) of Form N–1A. Proposed General Instruction C.3(d)(i)(D) of Form N–1A. We are proposing this change in order to accommodate future changes in the tax law that may permit new types of plans or arrangements similar to those currently enumerated in the instruction.

[52] *See* IRS Publication 575, *Pension and Annuity Income* (1999), at 4 (explaining tax treatment of earnings under a variable annuity contract) and 8–19 (explaining tax treatment of distributions from retirement plans); IRS Publication 525, *Taxable and Non-Taxable Income* (1999), at 3 (explaining tax treatment of contributions to a retirement plan) and 22 (explaining tax treatment of proceeds of a life insurance contract); IRS Publication 575, *Pension and Annuity Income* (1999), at 4 (tax treatment of Section 457 Deferred Compensation Plan); IRS Publication 571, *Tax Sheltered Annuity Programs for Employees of Public Schools and Certain Tax-Exempt Organizations* (1999), at 2 (explaining tax treatment of Section 403(b) tax sheltered annuities).

[53] The Division of Investment Management has taken the position that an investment company with a name that implies that its income distributions will be exempt from federal income taxation should have a fundamental policy requiring that during periods of normal market conditions (i) the fund will have at least 80 percent of its net assets in tax-exempt securities or (ii) the fund's assets will be invested so that at least 80 percent of the income will be tax-exempt. The Commission has proposed to codify this position. Investment Company Act Release No. 22530 (Feb. 27, 1997) [62 FR 10955 (Mar. 10, 1997)], correction [62 FR 24161 (May 2, 1997)], at 10958.

[54] Interest on any state or local bond is excluded from gross income. However, there is no exclusion for capital gains resulting from the sale of such bonds. *See* I.R.C. 103(a); IRS Publication 564, *Mutual Fund Distributions* (1999), at 2 (describing tax treatment of tax-exempt mutual funds).

[55] A tax-exempt fund, like any other fund, may assume, when calculating after-tax returns, that no taxes are due on the portions of any distribution that would not result in federal income tax on an individual. Instruction 3 to proposed Item 21(b)(3) and Instruction 3 to proposed Item 21(b)(4) of Form N–1A.

[56] Proposed rule 482(e)(4) would permit the standardized after-tax returns for 1-; 5-; and 10-year periods to be contained in an advertisement, provided that the standardized after-tax returns (i) are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication; (ii) are accompanied by quotations of standardized before-tax return; (iii) include both pre-and post-liquidation standardized after-tax returns; (iv) are set out with equal prominence to one another and in no greater prominence than the required quotations of standardized before-tax return; and (v) identify the length of and the last day of the 1-, 5-, and 10-year periods.

Any other measures of after-tax return could be included in advertisements if accompanied by the standardized measures of after-tax return. Proposed rule 482(e)(5)(iii). Similarly, measures of after-tax return could be included in other sales materials if accompanied by the standardized measures of after-tax return. Proposed rule 34b–1(b)(1)(iii)(B).

[57] Specifically, any measure of after-tax return in a rule 482 advertisement would have to reflect all elements of return and could be set out in no greater prominence than the required quotations of standardized before-tax and after-tax returns. The advertisement would have to identify the length of and the last day of the period for which performance is measured. Proposed rule 482(e)(5)(i), (iv), and (v).

In addition, any sales literature that contains a quotation of performance that has been adjusted to reflect the effect of taxes would remain subject to the other requirements of rule 34b–1.

returns appropriate? Should any funds

tax returns, including the proposed

mutual fund investors.[63] We decided

in place at the time. In addition, if

would effectively change every time the

the most recent ten complete calendar

returns appropriate? Should any funds be exempted from this requirement? Commenters are also requested to address whether the Commission should require that all fund advertisements and sales literature that include any quotation of performance, including before-tax performance, include standardized after-tax returns.

F. Formulas for Computing After-Tax Return

Our proposals would require that funds compute after-tax returns using standardized formulas that are based largely on the current standardized formula for computing before-tax average annual total return.[58] After-tax returns would be computed assuming a hypothetical $1,000 one-time initial investment and the deduction of the maximum sales load and other charges from the initial $1,000 payment.[59] Also, after-tax average annual total returns would be calculated for 1-;, 5-;, and 10-year periods.[60]

The computation of after-tax return depends on several assumptions, such as tax bracket, that vary from investor to investor. As a result, the proposed standardized after-tax return measures are not intended as precise computations of any individual investor's after-tax returns from a fund, but as guides to understanding the effect of taxes on the fund's performance. In this regard, the proposed standardized after-tax return measures are similar to the standardized before-tax returns, which also are dependent on assumptions such as the purchase and sale date of fund shares, and do not precisely measure an individual investor's before-tax returns. The Commission believes that the presentation of standardized after-tax returns, coupled with the presentation of standardized before-tax returns, will provide investors with a more complete and accurate picture of a fund's performance than the before-tax returns standing alone.

The assumptions that the Commission proposes to require funds to use in calculating after-tax returns are described in this section. Commenters are asked to discuss any aspect of the proposed formulas for computing after-tax returns, including the proposed assumptions and whether other assumptions would be more appropriate. Commenters are asked to quantify the significance of different assumptions.

1. Tax Bracket

We are proposing that standardized after-tax returns be calculated assuming that distributions and gains on a sale of fund shares are taxed at the highest applicable individual federal income tax rate.[61] Computing after-tax returns with maximum tax rates will provide investors with the "worst-case" federal income tax scenario. Coupled with before-tax returns that reflect the imposition of taxes at a 0% rate, this "worst-case" scenario will effectively provide investors with the full range of historical after-tax returns. Short of providing investors with after-tax returns computed at each tax rate, which we have decided not to propose because of the complexity of the resulting disclosure, we believe that providing investors with the full range of federal income tax outcomes (0% and maximum rate) would provide investors the most complete information. In reaching this conclusion, we looked for guidance to current industry practice. Both funds and third party providers of information that provide after-tax performance information to investors frequently use the highest tax rates when calculating after-tax return.[62]

We considered proposing that after-tax returns be presented using intermediate tax rates in order to approximate the rates paid by typical mutual fund investors.[63] We decided not to propose this approach because it would not provide information regarding the maximum impact that federal income taxes could have on a fund's return and because of the complexity of determining the appropriate intermediate rate from one year to the next as tax brackets and tax rates change. We also considered proposing that after-tax returns be presented using multiple rates, but rejected this approach because it would result in a fairly complex table of returns that could be overwhelming.

We request comment on our proposal to use maximum tax rates to compute after-tax returns. Are there preferable alternatives? Commenters who believe that maximum tax rates should not be used because they are higher than the rates paid by typical mutual fund investors are asked to address whether their concerns are mitigated by our decision not to reflect state and local taxes, which will tend to result in an understated overall tax burden.[64] Commenters are asked to address whether the after-tax performance rankings of funds relative to each other depend on the tax rates used to compute returns and, if so, to indicate how this should affect the rate adopted by the Commission for the computation of after-tax returns. Commenters who favor the use of an intermediate rate should specify how the rate should be selected and how the rate should be established each year. Commenters who favor the use of multiple rates should suggest a format for presenting the resulting table of returns.

2. Historical versus Current Tax Rates

The Commission is proposing to require funds to calculate after-tax returns for 1-, 5-, and 10-year periods using the historical tax rates that were in effect during these periods, rather than the rates that are in effect at the time the computation is performed.[65] The use of historical rates will more accurately reflect a fund's actual after-tax returns. Moreover, to the extent that a fund has been managed in response to the then-current tax environment, it seems most appropriate to judge the effectiveness of the management strategy by applying tax rates that were in place at the time. In addition, if current rates were used, the historical after-tax returns for previous periods would effectively change every time the current rates change.

Under our proposal, the rates to be used for computing after-tax returns for the most recent ten complete calendar years and the current calendar year would be as follows:

MAXIMUM INDIVIDUAL INCOME TAX RATES
[1990–2000]

Year	Long-term gains[66] (Percent)	Mid-term gains	Short-term gains/ordinary income (Percent)
2000	20		39.6
1999	20		39.6
1998	20		39.6
7/29/97–12/31/97	20	28	39.6
5/7/97–7/28/97	20		39.6
1/1/97–5/6/97	28		39.6
1996	28		39.6
1995	28		39.6
1994	28		39.6
1993	28		39.6
1992	28		31
1991	28		31
1990	28		33

We request comment on the advantages and disadvantages of using historical or current tax rates in computing after-tax return. We also request comment on whether the above table accurately states the highest tax rates for the periods and categories specified. The Commission anticipates that, if we adopt a rule requiring disclosure of after-tax returns using maximum historical rates, it will not be necessary for the Commission to publish the rates for future years. Is there any reason why it would be necessary for us to publish those rates?

3. Calendar versus Fiscal Year Measurement Period

Under the proposal, after-tax returns that appear in a fund's performance table in the risk/return summary would be calculated based on calendar-year periods, consistent with the before-tax return disclosure that currently appears in the risk/return summary.[67] After-tax returns that appear in the MDFP would be calculated on a fiscal year basis, consistent with the before-tax return disclosure that currently appears in the MDFP.[68] We believe that this presentation would facilitate investor comparisons of before-tax and after-tax returns.

Comment is requested on our proposal to require calendar year after-tax returns in the risk/return summary and fiscal year after-tax returns in the MDFP. Commenters who believe the proposal should be modified should address whether similar modifications should be made in the presentation of before-tax returns. Will the use of either the fiscal year or the calendar year encourage funds to "time" distributions or portfolio transactions in any way to artificially enhance the after-tax returns presented?

4. State and Local Tax Liability

In order to simplify the computation and presentation of after-tax returns, we propose to exclude state and local tax liability although this will tend to result in after-tax returns that are somewhat overstated.[69] State and local tax rates vary widely, and there is no single tax rate that could serve as a reasonable proxy for the state and local tax burden.[70] Presentation of separate after-tax returns for all 50 states and the District of Columbia would be overwhelming for investors and burdensome for funds.

We request comment on whether the after-tax return calculations should reflect the effect of state and local taxes. Commenters who support adjusting after-tax returns for state and local taxes should address how that should be done. Commenters also should address alternative means, such as narrative disclosure, by which funds can convey to investors the impact of state and local taxes.

5. Federal Alternative Minimum Tax and Phaseout Adjustments

Tax law provides favored treatment to certain kinds of income and expenses. Taxpayers who benefit from this special treatment may be subject to at least a minimum amount of tax through the "alternative minimum tax."[71] In addition, certain tax credits, exemptions, and deductions are phased out for taxpayers whose adjusted gross

[58] Item 21(b)(1) of Form N–1A. Under the proposal, before-and after-tax returns included in the risk/return summary and the MDFP would be calculated as provided in proposed Item 21(b)(1)–(4) of Form N–1A. Instruction 2(a) to proposed Item 2 and proposed Item 5(b)(2) of Form N–1A.

[59] Proposed Items 21(b)(3) and 21(b)(4) of Form N–1A; Instruction 1 to proposed Item 21(b)(3) and Instruction 1 to proposed Item 21(b)(4) of Form N–1A.

[60] Proposed Items 21(b)(3) and 21(b)(4) of Form N–1A.

[61] Instruction 4 to proposed Item 21(b)(3) of Form N–1A; Instructions 4 and 7(d) to proposed Item 21(b)(4) of Form N–1A.

Currently, the highest individual marginal income tax rate imposed on ordinary income is 39.6%, and the highest rate imposed on long-term capital gains is 20%. I.R.C. 1(a)–(d), (h).

[62] *See, e.g.*, Access *Vanguard, Vanguard to Publish After-Tax Returns in Equity and Balanced Fund Reports (Oct. 11, 1999)* (visited Feb. 1, 2000) <http://www.vanguard.com/cgi-bin/pressroom/PRPrevious.html>; Fidelity Investments, *Track After-Tax Fund Performance On-Line* (visited Feb. 1, 2000) <http://personal400.fidelity.com/global/whatsnew/content/94689.html.tvsr/>; Morningstar, MUTUAL FUND 500 (1999 ed.); Catherine Voss Sanders, *Making April Less Taxing*, 5 MORNINGSTAR INVESTOR, Feb. 1997; Association for Investment Management and Research, AIMR PERFORMANCE PRESENTATIONS STANDARDS HANDBOOK (2d ed. 1997), at 59; *Mutual Fund Scoreboard*, Business Week, Feb. 1, 1999. *But see The Ultimate Mutual Fund Guide 2000*, MONEY, Feb. 2000, at 64 (reporting mutual fund tax-efficiency calculated based on the return of an investor in the 28 percent federal tax bracket); *Fund Survey*, FORBES, Feb. 7, 2000, at 166 (reporting after-tax returns reflecting "the tax liability of an upper-middle income investor").

[63] The median income of mutual fund shareholders is approximately $ 55,000. ICI, 1998 *Profile of Mutual Fund Investors* (Summer 1999). An individual taxpayer with taxable income over $25,750 but not over $62,450 is taxed at a marginal rate of 28 percent.I.R.C. 1(c).

[64] See discussion below at II.F.4 (State and Local Tax Liability).

[65] Instruction 4 to proposed Item 21(b)(3) and Instructions 4 and 7 to proposed Item 21(b)(4) of Form N–1A.

[66] I.R.C. 1; Standard Federal Tax Reports, 99 Index (CCH) 144, ¶601.

The holding period for long-term gains is more than 12 months, except for the period from July 29, 1997, through December 31, 1997, when it was more than 18 months. During that period, a "mid-term" capital gains rate applied if property was held more than 12 months but not more than 18 months. *See* I.R.C. 1222 (defining short-and long-term capital gain); IRS Publication 564, *Mutual Fund Distributions* (1997), at 9; IRS Publication 564, *Mutual Fund Distributions* (1998), at 1 (describing changes in holding periods in 1997).

[67] Proposed Item 2(c)(2)(iii) of Form N–1A; Item 2(c)(2)(iii) of Form N–1A (calendar-year disclosure of before-tax returns in risk/return summary).

[68] Proposed Item 5(b)(2) of Form N–1A; Item 5(b)(2) of Form N–1A (fiscal year disclosure of before-tax returns in MDFP).

[69] Instruction 4 to proposed Item 21(b)(3) and Instruction 4 to proposed Item 21(b)(4) of Form N–1A.

In general, funds and third parties that provide investors with information regarding after-tax returns do not reflect the effect of state and local taxes on return. *See, e.g.* Access Vanguard, *Vanguard to Publish After-Tax Returns in Equity and Balanced Fund Reports (Oct. 11, 1999)* (visited Feb. 1, 2000) <http://www.vanguard.com/cgi-bin/pressroom/PRPrevious.html>; Fidelity Investments, *Track After-Tax Fund Performance On-Line* (visited Feb. 1, 2000) <http://personal400.fidelity.com/global/whatsnew/content/94689.html.tvsr>; Association for Investment Management and Research, AIMR PERFORMANCE PRESENTATIONS STANDARDS HANDBOOK (2d ed. 1997) at 59; Morningstar, MUTUAL FUND 500 (1999 ed.); *Fund Survey*, FORBES, Feb. 7, 2000, at 166.

[70] Some states, such as Alaska, Florida, and Nevada, charge no personal income tax, while other states impose taxes at rates as high as 12%. *See* Federation of Tax Administrators, *State Individual Income Tax Rates*, (visited Jan. 14, 2000) <http://www.taxadmin.org/fta /rate/ind__inc.html>.

[71] I.R.C. 55. *See* IRS Publication 17, *Your Federal Income Tax* (1999), at 203 (explaining the effect of the alternative minimum tax).

income is above a specified amount.[72] The proposed after-tax return formulas would not take into account the effect of either the alternative minimum income tax or phaseouts.[73]

We believe that adjusting after-tax returns to reflect the impact of these provisions of tax law would complicate the after-tax return calculations without providing a commensurate benefit to a significant number of investors. Comment is requested regarding whether the after-tax return formulas should reflect the impact of the alternative minimum tax, the phaseouts, or any other taxes or adjustments not reflected in the proposed formulas.

6. Timing and Method of Tax Payment

The proposed after-tax return calculations would assume that any taxes due on a distribution are paid out of that distribution at the time the distribution is reinvested and would reduce the amount reinvested.[74] We have chosen this method to simplify the calculations, although we recognize that many investors do not pay income taxes out of the corresponding distributions. For example, a taxpayer might pay his or her taxes out of a bank account, either on estimated tax payment due dates or on April 15 of the year following the tax year. Or a taxpayer might pay taxes by redeeming fund shares at the time a tax payment is due. We request comment on how the after-tax return formulas should reflect the timing and method of tax payment. Commenters favoring methods other than that proposed should specify in detail how the proposed formula should be modified to reflect those methods.

7. Tax Treatment of Distributions

The proposed after-tax return formulas would require that the taxable amount and tax character (*e.g.*, ordinary income, short-term capital gain, long-term capital gain) of each distribution be as specified by the fund on the dividend declaration date, adjusted to reflect subsequent recharacterizations. Tax-exempt interest and non-taxable returns of capital would be assumed to result in no taxes.[75]

We have not proposed to specify in detail the tax consequences of fund distributions or other features having more complicated tax characteristics (*e.g.*, distributions derived from REIT income, distributions derived from commodities gains, foreign tax credits or deductions that pass through with respect to foreign source income). Funds should determine the tax consequences of such distributions or features by applying the tax law in effect on the date the distribution is reinvested. Commenters are requested to address whether the formula for calculating after-tax returns should be more specific in any way.

8. Capital Gains and Losses Upon a Sale of Fund Shares

The proposal would require that post-liquidation after-tax return be computed assuming a complete sale of fund shares at the end of the 1-, 5-, or 10-year measurement period, resulting in capital gains taxes or a tax benefit from any resulting capital losses.[76] In computing the taxes from any gain or the tax benefit from any loss, the rate used would be required to correspond to the tax character of the capital gain or loss (*e.g.*, short-term or long-term). The tax character of the capital gain or loss would be determined by the length of the measurement period (1, 5, or 10 years) in the case of the initial $1,000 investment and the length of the period between the reinvestment and the end of the measurement period in the case of reinvested distributions.[77] A fund would therefore be required to track the actual holding periods of reinvested distributions and could not assume that they have the same holding period as the initial $1,000 investment.[78]

The tax laws limit the extent to which a fund shareholder may deduct capital losses when the taxpayer does not have offsetting gains.[79] In order to simplify the computation of post-liquidation after-tax returns, we are proposing to allow funds to assume that a taxpayer has sufficient capital gains of the same character to offset any capital losses upon a sale of fund shares and therefore that the taxpayer may deduct the entire capital loss.[80]

Commenters are requested to discuss the proposed computation of capital gains taxes and the tax benefits from capital losses on a sale of fund shares. Should funds be required to track the actual holding periods of reinvested distributions, as proposed, or should they be permitted to assume that reinvested distributions have the same holding period as the initial $1,000 investment? Should capital losses on a sale of fund shares be permitted to be deducted in full, or should the deduction be limited in some way?

G. Narrative Disclosure

The proposal would require funds to include a short, explanatory narrative adjacent to the performance table in the risk/return summary and the MDFP.[81] This is intended to facilitate investor

[72] *E.g.*, I.R.C. 151(d)(3) (phaseout of personal exemptions). *See* IRS Publication 501, *Exemptions, Standard Deduction and Filing Information* (1999).

[73] Proposed Instruction 4 to Item 21(b)(3) and proposed Instruction 4 to Item 21(b)(4) of Form N–1A.

[74] Instruction 2 to proposed Item 21(b)(3) and Instruction 2 to proposed Item 21(b)(4) of Form N–1A.

This methodology is generally consistent with that used by industry participants. *See, e.g.*, Morningstar, MUTUAL FUND 500 (1999 ed.); Fidelity Investments, *Track After-Tax Fund Performance On-Line* (visited Feb. 1, 2000) <http://personal400.fidelity.com/global/whatsnew/content/94689.html.tvsr>; Access Vanguard, *Vanguard After-Tax Return Calculator* (visited Feb. 1, 2000) <http://majestic2.vanguard.com/FP/DA/0.1.vgi__Fund After Tax Sim/092110731601095233?AFTER__TAX__CALC=SIMPLE>.

[75] Instruction 3 to proposed Item 21(b)(3) and Instruction 3 to proposed Item 21(b)(4) of Form N–1A.

[76] Instructions 6 and 7 to proposed Item 21(b)(4) of Form N–1A.

The capital gain or loss on the sale of fund shares would be computed by subtracting the tax basis from the redemption proceeds. Instruction 7(a) to proposed Item 21(b)(4) of Form N–1A. The tax basis would include the $1,000 initial payment and reinvested distributions, net of taxes assumed paid from the distributions, but not net of any sales loads imposed upon reinvestment. In addition, the tax basis would be adjusted for any distributions representing returns of capital and any other tax basis adjustments applicable to an individual taxpayer. Instruction 7(b) to proposed Item 21(b)(4) of Form N–1A.

[77] Instruction 7(d) to proposed Item 21(b)(4) of Form N–1A.

We note that, in computing post-liquidation returns for a one-year period, all gains realized upon a sale of fund shares at the end of the one-year period would be short-term. *See* I.R.C. 1222(1) (providing that the term "short-term capital gain" means "gain from the sale or exchange of a capital asset held for not more than 1 year, if and to the extent such gain is taken into account in computing gross income").

[78] Instruction 7(c) to proposed Item 21(b)(4) of Form N–1A.

[79] Under the Code, when calculating taxable income, an investor may fully offset short-term capital gains with short-term capital losses and fully offset long-term capital gains with long-term capital losses. Net short-term capital gain or loss may then be offset against net long-term capital gain or loss. If capital gains exceed capital losses, the investor is taxed on the difference at a rate that is determined by whether the net gain is short-or long-term. If capital losses exceed capital gains, the difference may be deducted from ordinary income, subject to a yearly limit of $3,000. I.R.C. 1211(b)(2) (providing that in the case of a taxpayer other than a corporation, losses from sales or exchanges of capital assets shall be allowed only to the extent of the gains from such sales or exchanges, plus (if such losses exceed such gains) the lower of $3,000 ($1,500 in the case of a married individual filing a separate return) or the excess of such losses over such gains.) *See* IRS Publication 544, *Sales and Dispositions of Assets* (1999), at 30 (explaining tax treatment of capital gains and losses).

[80] Instruction 7(d) to proposed Item 21(b)(4) of Form N–1A.

[81] Proposed Items 2(c)(2)(iv) and 5(b)(3) of Form N–1A.

The line graph in the MDFP also would be required to be accompanied by a statement to the effect that the account value shown in the graph does not reflect the taxes that a shareholder would pay on fund distributions or the redemption of fund shares. Proposed Item 5(b)(2) of Form N–1A.

understanding of the table. The narrative would be required to be in plain English, but we are not proposing to mandate that specific language be used.[82] The proposal would require the following information to be included in the narrative disclosure:[83]

- The differences among the four types of return presented, including whether the returns reflect redemption and the charges and taxes associated with redemption;
- Before-tax returns assume that all distributions are reinvested;
- The assumptions used in calculating after-tax returns, including (i) the use of the historical highest individual federal marginal income tax rates; (ii) the assumption that taxes are paid out of fund distributions and that distributions, less taxes, are reinvested; (iii) the exclusion of state and local taxes; and (iv) if post-liquidation after-tax returns are higher than before-tax returns net of fees and charges payable upon sale of fund shares, the reason for this result, including the assumption that a shareholder has sufficient gains from other sources to offset all losses from the redemption of fund shares;
- Actual after-tax returns depend on an investor's tax situation and may differ from those shown;
- The after-tax returns shown are not relevant to investors who hold their fund shares through tax-deferred arrangements, such as 401(k) plans or individual retirement accounts; and
- After-tax returns reflect past tax effects and are not predictive of future tax effects.

Comment is requested on the proposed narrative disclosure. Should any of the proposed items be eliminated? Should any other items be added? Should the narrative disclosure be specifically required to precede or follow the performance table? Should it appear in another location? Should funds have the flexibility to craft their own narrative disclosure, as proposed, or should the Commission require specific language for part or all of the explanation?

We are not proposing to require that specific items of narrative disclosure be included in fund advertisements and other sales materials that present after-tax performance. Should we require any narrative disclosure in advertisements and sales literature and, if so, what should it be?

H. Alternatives to Disclosure of After-Tax Return

We considered other possible methods for improving the disclosure of the tax consequences of mutual fund investments, including tax-efficiency ratios and potential capital gains exposure.

Tax-Efficiency Ratios. A tax-efficiency ratio is a ratio of after-tax and before-tax returns that measures the proportion of before-tax return that remains after taxes.[84] We are not proposing to require funds to disclose tax-efficiency ratios because we believe that these ratios may be more difficult for investors to interpret than after-tax returns. In any event, tax-efficiency ratios may be readily derived from before- and after-tax returns by taking the quotient of these two numbers.

Potential Capital Gains Exposure. When the securities in a mutual fund portfolio appreciate in value, the tax liability is deferred until the securities are sold by the fund and the gains are distributed. An investor who invests in a mutual fund with large amounts of unrealized capital gain, or capital gains that have been realized but not distributed, can potentially have significantly greater tax liability in the future than an investor in a similar fund that has less unrealized or undistributed gain. We considered requiring funds to include in their prospectuses a measure of capital gains exposure that shows the percentage of a fund's assets that represents unrealized and realized but undistributed capital gains.[85] While we believe that this measure could provide useful information, it would not provide information about the historical tax consequences of a fund's distributions. We believe that pre- and post-liquidation after-tax returns, taken together, would provide a more complete picture.

We request comment on these and other measures that could provide investors with enhanced information about the tax consequences of mutual fund investments. Are any measures preferable to after-tax returns? We also request comment on whether, and how, narrative disclosure in this area should be improved. For example, should the prospectus be required to describe the potential tax consequences to an investor of purchasing fund shares shortly before a dividend declaration date (*i.e.*, "buying the dividend") or purchasing shares in a fund that has significant amounts of unrealized gain in its portfolio securities?[86] Should shareholder reports be required to describe the tax management strategies the fund used in the most recent period?

I. Technical and Conforming Amendments

We are proposing to amend Rule 482(e)(3) under the Securities Act in order to clarify that the average annual total returns that are required to be shown in any performance advertisement are before-tax returns net of fees and charges payable upon a sale of fund shares.[87] This clarification is necessary because we have added other types of return to Form N–1A.

We also are proposing to amend rule 34b–1(b)(3) under the Investment Company Act, which excludes performance information contained in periodic reports to shareholders from the updating requirements of rule 34b–1. The proposed amendment extends the exclusion to standardized after-tax return information contained in periodic reports to shareholders.[88]

We also are proposing to delete an instruction contained in Form N–1A that provides that total return information in a mutual fund prospectus need only be current to the end of the fund's most recent fiscal year.[89] The instruction is unnecessary because the items of Form N–1A that require funds to include total returns in the prospectus have explicit instructions about how current the total return information must be.[90]

J. Compliance Date

If we adopt the proposed disclosure requirements, we expect to require all

[82] *See* rule 421(b) and (d) under the Securities Act [17 CFR 230.421(b) and (d)](requiring that all information in the prospectus be presented in clear, concise, and understandable fashion and that registrants use plain English principles in the organization, language, and design of the summary and risk factors sections of their prospectuses); General Instruction C.1 to Form N–1A (fund prospectus should be easy to understand and promote effective communication); Item 2 of Form N–1A (requiring that the response to Item 2 be stated in plain English).

[83] Proposed Items 2(c)(2)(iv) and 5(b)(3) of Form N–1A.

[84] *See* Morningstar, MUTUAL FUND 500 (1999 ed.) (reporting mutual fund tax-efficiency ratios); *The Ultimate Mutual Fund Guide 2000*, MONEY, Feb. 2000, at 64 (reporting mutual fund tax-efficiency).

[85] Both Morningstar, Inc., and *Business Week* publish measures of capital gains exposure. Morningstar, MUTUAL FUND 500 (1999 ed.); *Mutual Fund Scoreboard*, BUSINESS WEEK, Feb. 1, 1999.

[86] When a fund makes a distribution to its shareholders, the net asset value of the shares declines by the amount of the distribution. Thus, a person who makes a taxable investment in a mutual fund shortly before a distribution may have part of his or her initial investment returned in the form of a taxable distribution.

[87] 17 CFR 230.482(e)(3).

[88] 17 CFR 270.34b–1(b)(3)(iii)(B).

[89] Instruction 6 to Item 21(b)(1) of Form N–1A.

[90] Item 2(c)(2)(iii) of Form N–1A (providing that total returns included in the risk/return summary must be current to the end of the most recently completed calendar year); Item 5(b)(2) of Form N–1A (providing that total return in the MDFP must be as of the end of the last day of the most recent fiscal year).

new registration statements, post-effective amendments that are annual updates to effective registration statements, reports to shareholders, and profiles filed six months or more after the effective date of the amendments to comply with the proposed amendments. The Commission requests comment on this proposed compliance date.

III. General Request For Comments

The Commission requests comment on the amendments proposed in this Release, suggestions for additional provisions or changes to existing rules or forms, and comments on other matters that might have an effect on the proposals contained in this Release. We also request comment on whether the proposals, if adopted, would promote efficiency, competition, and capital formation. We will consider those comments in satisfying our responsibilities under section 2(c) of the Investment Company Act, section 2(b) of the Securities Act, and section 3(f) of the Exchange Act.[91] For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996,[92] the Commission also requests information regarding the potential effect of the proposals on the U.S. economy on an annual basis. Commenters are requested to provide empirical data to support their views.

IV. Cost/Benefit Analysis

The Commission is sensitive to the costs and benefits imposed by its rules.

The proposed rule and form changes would require a fund to disclose its standardized after-tax returns for 1-, 5-, and 10-year periods. After-tax returns would accompany before-tax returns in the risk/return summary of fund prospectuses and in the MDFP, which is typically contained in fund annual reports. Funds would be required to include a short, explanatory narrative adjacent to the performance table in the risk/return summary and the MDFP. After-tax returns would be presented in two ways:

(i) assuming the shareholder continued to hold his or her shares at the end of the period; and (ii) assuming the shareholder sold his or her shares at the end of the period, realizing taxable gain or loss on the sale. The before- and after-tax returns would be required to be presented in a standardized tabular format. Although after-tax returns would not be required in fund advertisements and sales literature, any fund choosing to include after-tax returns in these materials would be required to include after-tax returns computed according to our standardized formula.

A. Benefits

Taxes are one of the most significant costs of investing in mutual funds through taxable accounts. Currently, the Commission requires mutual funds to disclose significant information about taxes to investors.[93] While this disclosure is useful, we believe funds can more effectively communicate to investors the tax consequences of investing. Therefore, the Commission is proposing amendments to Form N–1A and rules 482 and 34b–1 that would require disclosure of standardized mutual fund after-tax returns.

By requiring all funds to report after-tax performance pursuant to a standardized formula, the proposed amendments would allow investors to compare after-tax performance among funds. This could affect investor decisions relating to the purchase or sale of fund shares. This could have secondary benefits, such as the creation of new funds designed to maximize after-tax performance or causing existing funds to alter their investment strategies to invest in a more tax-efficient manner.

Requiring standardized after-tax performance in the prospectus, annual report, and fund advertisements and sales literature also should help prevent confusing and misleading after-tax performance claims by funds. Currently, fund advertisements and sales literature may contain tax-adjusted performance calculated according to non-standardized methods. In addition to making it difficult to compare after-tax performance measures among different funds, the lack of a standardized method for computing after-tax returns creates the possibility that after-tax performance information as currently reported could be misleading or confusing to investors.

The proposed amendments should also increase the amount of after-tax performance information available to investors. With the exception of the few funds that publish after-tax performance information, investors currently must rely on third party providers to obtain information regarding a fund's after-tax performance.

Moreover, by providing investors with information regarding a fund's after-tax performance, our proposal will help investors understand the magnitude of tax costs and how they affect fund performance. Increased understanding should have the beneficial effect of enhancing investor confidence in the fund industry.

B. Costs

Funds affected by the proposed after-tax requirements will incur costs in complying with the new disclosure. Funds would have to compute the after-tax returns using a standardized method prescribed by Form N–1A. The costs associated with computing the proposed after-tax performance would include the costs of purchasing or developing software, implementing a new system for computing the proposed returns, analyzing data for inclusion in the standardized formula, and training fund employees. In addition, funds would incur costs in incorporating the new disclosure in their prospectuses, annual reports to shareholders, advertisements, and sales literature. Funds could also incur costs in responding to questions from investors regarding the proposed after-tax returns.

It is anticipated that the costs of implementing new systems to compute the standardized after-tax performance will largely consist of one-time expenses. In addition, the software development and implementation costs may be reduced if software vendors begin to offer "off-the-shelf" programs for computing the proposed standardized after-tax performance data.[94] Also, the costs of analyzing data for inclusion in the standardized formula would be substantially greater in connection with a fund's first-time compliance with the proposed amendments than it would be in subsequent disclosures. Likewise, the costs of revising fund prospectuses, annual reports, advertisements, and sales literature to incorporate the new disclosure should decrease after the first disclosures complying with the proposed amendments have been made. Although the costs of updating the proposed disclosure in fund prospectuses, annual reports, advertisements, and sales literature would be ongoing, the costs incurred in subsequent disclosures should be less than the costs associated with the initial computations and disclosures because neither the formula for calculating performance nor the format for the disclosure is expected to change from year to year.

Because funds filing initial registration statements would not have any performance information to report, the proposed after-tax performance requirements would not impose any additional costs on the preparation and filing of an initial registration statement on Form N–1A. The disclosure required by the proposed amendments would appear in the first post-effective amendment that is required to include the after-tax return disclosure. The costs associated with including the proposed disclosure in this first post-effective amendment would consist of the costs required for developing a system for performing the standardized calculations and the costs of revising the prospectus to incorporate the new disclosure. Because the standardized after-tax disclosure that would be required in a fund's annual report would be very similar to the proposed standardized after-tax disclosure in the prospectus, the cost of including the proposed disclosure in the annual report would largely be limited to the cost of revising the report to incorporate the new disclosure. Moreover, because the proposals require that performance be presented in a standardized tabular format in the prospectus and annual report, the cost of revising these documents should be reduced. The costs incurred by funds choosing to include after-tax returns in fund advertisements and sales literature would be limited to the cost of revising the advertisements and sales literature to incorporate the same proposed standardized after-tax returns that would be required to appear in fund prospectuses.

As discussed above, the proposed amendments could result in the creation of new funds designed to maximize after-tax performance. The proposed amendments could also cause existing funds to alter their investment strategies to invest in a more tax-efficient manner. It is possible that funds could incur costs as a result of these potential consequences.

To assist in the evaluation of the costs and benefits that may result from these proposed rule amendments, the Commission requests that commenters provide views and data relating to any costs and benefits associated with these proposals.

V. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("Analysis") in accordance with 5 U.S.C. 603. The Analysis relates to the proposed amendments to Form N–1A and rules 482 and 34b–1. The following summarizes the Analysis.

The Analysis sets forth the statutory authority for the proposed amendments. The Analysis explains that the proposed form and rule changes would require a fund to disclose its standardized after-tax returns for 1-, 5-, and 10-year periods. The proposal would require after-tax return information to be included in the risk/return summary of the prospectus and in Management's Discussion of Fund Performance ("MDFP"), which is typically contained in the annual report. Funds would be required to include a short, explanatory narrative adjacent to the performance table in the risk/return summary and the MDFP. After-tax returns, which would accompany before-tax returns in fund prospectuses and annual reports, would be presented in two ways: (i) assuming the shareholder continued to hold his or her shares at the end of the period; and (ii) assuming the shareholder sold his or her shares at the end of the period, realizing taxable gain or loss on the sale. The proposed after-tax returns would be required to be presented in a standardized tabular format. Although after-tax returns would not be required in fund advertisements and sales literature, any fund choosing to include after-tax returns in these materials would be required to include after-tax returns computed according to our standardized formula.

The Analysis discusses the impact of the proposed amendments on small entities. For purposes of the Regulatory Flexibility Act, a fund is considered a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[95]

The Analysis notes that as of December 1999, there were approximately 2,900 open-end management investment companies that may be affected by one or more of the proposed amendments, including 150 that are small entities.

The Analysis also discusses the reporting and other compliance requirements associated with the proposals contained in this Release. The proposed amendments to Form N–1A would require funds subject to the amendments to disclose standardized after-tax returns in prospectuses and annual reports to shareholders. The proposed amendments to rules 482 and 34b–1 would require funds to include standardized after-tax returns in fund advertisements and sales literature when funds voluntarily choose to include after-tax performance information in their advertisements and sales literature.

As explained in the Analysis, after assessing the proposed amendments in light of the current reporting requirements and consulting with industry representatives, we evaluated the effect that the proposed amendments would have on the preparation of registration statements, annual reports to shareholders, advertisements, and sales literature. We estimate that it will take approximately 18 additional hours per portfolio to prepare post-effective amendments to the registration statement on Form N–1A.[98] The Commission estimates that it will take approximately 7.5 additional hours per management investment company registered on Form N–1A to prepare annual reports to shareholders pursuant to rule 30d–1 if the investment company elects to include the MDFP in the annual report.[97] The Commission estimates that the proposed amendments to rule 482 will impose approximately .5 additional hours per portfolio on those funds that elect to include after-tax performance information in their advertisements and are therefore required to comply with the proposed amendments to rule 482.[98]

[91] Section 2(c) of the Investment Company Act [15 U.S.C. 80a–2(c)], section 2(b) of the Securities Act [15 U.S.C. 77b(b)], and section 3(f) of the Exchange Act [15 U.S.C. 78c(f)] require the Commission, when determining whether a rule is consistent with the public interest, to consider, in addition to the protection of investors, whether the action will promote efficiency, competition, and capital formation.

[92] Pub. L. No. 104–21, Title II, 110 Stat. 857 (1996).

[93] In its prospectus, a mutual fund is required to disclose (i) the tax consequences of buying, holding, exchanging, and selling fund shares, including the tax consequences of fund distributions; and (ii) whether the fund may engage in active and frequent portfolio trading to achieve its principal investment strategies, and, if so, the tax consequences of increased portfolio turnover and how this may affect fund performance. *See* Item 7(e) of Form N–1A; Instruction 7 to Item 4 of Form N–1A. A fund also must disclose in its prospectus and annual report the portfolio turnover rate and dividends and capital gains distributions per share for each of the last five fiscal years. *See* Items 9(a) and 22(b)(2) of Form N–1A. These items also require funds to show net realized and unrealized gain or loss on investments on a per share basis for each of the fund's last five fiscal years.

[94] A service provider that compiles and disseminates fund pricing and performance information recently announced that it will offer to calculate and publish after-tax returns for its fund clients. *See* Daly, *Program Lets Fund Companies Offer After-Tax Returns* (*Dec. 29, 1999*) (visited Feb. 9, 2000) <http://www.ignites.com/>.

[95] 17 C.F.R. 270.0–10.

[98] As discussed more fully in Section VI, *infra*, the hour burden associated with rule 482 is included in Form N–1A. This estimate is based upon staff assessment of the proposed amendments

Continued

[96] Since an investment company filing an initial registration statement on Form N–1A has no performance history to disclose, the proposed amendments would not affect such initial filings. This estimate is based upon staff assessment of the proposed amendments in light of the current hour burden and current reporting requirements.

[97] Form N–1A requires that the prospectus include the MDFP unless the information is included in the fund's latest annual report to shareholders and the fund provides a copy of the annual report, upon request and without charge, to each person to whom a prospectus is delivered. This estimate is based upon staff assessment of the proposed amendments in light of the current hour burden and current reporting requirements.

We also estimate that an additional .5 hours per response will be imposed by the proposed amendments to rule 34b–1 on those funds that choose to include after-tax performance information in their sales literature.[99]

As stated in the Analysis, the Commission considered several alternatives to the proposed amendments, including establishing different compliance or reporting requirements for small entities or exempting them from all or part of the proposed amendments. The Commission believes that establishing different requirements applicable specifically to small entities is inconsistent with the protection of investors. We note that mutual funds that qualify as small entities are already required to disclose standardized performance. The Commission also believes that adjusting the proposals to establish different compliance requirements for small entities could undercut the purpose of the proposed amendments: to emphasize to investors the impact of taxes on a fund's return and to enable investors to make effective comparisons among various fund performance claims.

The Commission encourages the submission of written comments on matters discussed in the Analysis. Comment specifically is requested on the number of small entities that would be affected by the proposed amendments and the impact of such proposals on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be placed in the same public comment file as comments on the proposals. A copy of the Analysis may be obtained by contacting Maura S. McNulty, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0506.

VI. Paperwork Reduction Act

Certain provisions of the proposed amendments contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501, *et seq.*], and the Commission has submitted the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (1) "Form N–1A under the Investment Company Act of 1940 and Securities Act of 1933, Registration Statement of Open-End Management Investment Companies;" (2) "Rule 30d-1 under the Investment Company Act of 1940, Reports to Stockholders of Management Companies;" (3) "Registration Statements—Regulation C;"[100] and (4) "Rule 34b–1 of the Investment Company Act of 1940, Sales Literature Deemed to Be Misleading." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Form N–1A (OMB Control No. 3235–0307) was adopted pursuant to section 8(a) of the Investment Company Act [15 U.S.C. 80a–8] and section 5 of the Securities Act [15 U.S.C. 77e]. Rule 30d–1 (OMB Control No. 3235–0025) was adopted pursuant to Section 30(e) of the Investment Company Act [15 U.S.C. 80a–29]. Rule 482 of Regulation C (OMB Control No. 3235–0074) was adopted pursuant to section 10(b) of the Securities Act [15 U.S.C. 77j(b)]. Rule 34b–1 (OMB Control No. 3235–0346) was adopted pursuant to section 34(b) of the Investment Company Act [15 U.S.C. 80a–33(b)].

Because taxes are one of the largest costs associated with a mutual fund investment, the Commission is proposing form and rule amendments to Form N–1A, rule 482, and rule 34b–1 to help investors understand the magnitude of tax costs and how they affect fund performance.

Our proposals would require a fund to disclose its standardized after-tax returns for 1-, 5-, and 10-year periods. The proposal would require after-tax return information to be included in the risk/return summary of the prospectus and in Management's Discussion of Fund Performance ("MDFP"), which is typically contained in the annual report. Funds would be required to include a short, explanatory narrative adjacent to the performance table in the risk/return summary and the MDFP. After-tax returns, which would accompany before-tax returns in fund prospectuses and annual reports, would be presented in two ways: (i) Assuming the shareholder continued to hold his or her shares at the end of the period; and (ii) assuming the shareholder sold his or her shares at the end of the period, realizing taxable gain or loss on the sale. The before- and after-tax returns would be required to be presented in a standardized tabular format. Although after-tax returns would not be required in fund advertisements and sales literature, the Commission is also proposing amendments to rules 482 and 34b–1 that would require any fund choosing to include after-tax returns in these materials to include after-tax returns computed according to our standardized formula.

The information required by the proposed amendments is primarily for the use and benefit of investors. The Commission is concerned that mutual fund investors who are subject to current taxation may not fully appreciate the impact of taxes on their fund investments because mutual funds are currently required to report their performance on a before-tax basis only. Many investors consider performance one of the most significant factors when selecting or evaluating a fund, and we believe that requiring funds to disclose their after-tax performance would allow investors to make better-informed decisions. The information required to be filed with the Commission pursuant to the information collections also permits the verification of compliance with securities law requirements and assures the public availability and dissemination of the information.

Form N–1A

Form N–1A, including the proposed amendments, contains collection of information requirements. The purpose of Form N–1A is to meet the registration and disclosure requirements of the Securities Act and the Investment Company Act and to enable funds to provide investors with information necessary to evaluate an investment in the fund. The likely respondents to this information collection are open-end funds registering with the Commission on Form N–1A.

We estimate that 170 initial registration statements are filed annually on Form N–1A, registering 298 portfolios, and that the current hour burden per portfolio per filing is 824 hours, for a total annual hour burden of 245,552 hours.[101] We estimate that 4,500 post-effective amendments to registration statements are filed annually on Form N–1A, for 7,875 portfolios, and that the current hour burden per portfolio per post-effective amendment filing is 104 hours, for an annual burden of 819,000 hours.[102] Thus, we estimate a current total annual hour burden of 1,064,552 hours for the preparation and filing of Form N–1A and post-effective amendments on Form N–1A.

The proposed amendments would not affect the hour burden of an initial filing of a registration statement on Form N–1A since an investment company filing such an initial form would have no performance history to disclose. Post-effective amendments to such registration statements, however, would contain performance figures and thus be affected by the proposed amendments. We estimate that the proposed amendments would increase the hour burden per portfolio per filing of a post-effective amendment by 18 hours.[103] Of the 7,875 funds referenced in post-effective amendments, 1,040 are money market funds, which would be exempted from the proposed after-tax disclosure requirements. An additional 1,575 funds are used as investment vehicles for variable insurance contracts, which would be permitted to omit the after-tax information. Thus, approximately 5,260 of the 7,875 funds referenced in post-effective amendments would be affected by the proposed amendments.[104] The Commission estimates that if the proposed amendments to Form N–1A are adopted, the total annual hour burden for all funds for preparation and filing of initial registration statements and post-effective amendments on Form N–1A would be 1,159,311 hours.[105]

Compliance with the disclosure requirements of Form N–1A is mandatory. Responses to the disclosure requirements will not be kept confidential.

Rule 30d–1 Shareholder Reports

Rule 30d–1, including the proposed amendments, contains collection of information requirements.[106] Section 30(e) and rule 30d–1 require registered management investment companies to transmit to shareholders, at least semi-annually, reports containing financial statements and certain other information. The reports are intended to apprise current shareholders of the operational and financial condition of the fund.

There are approximately 3,490 management investment companies subject to rule 30d–1.[107] The Commission estimates that of those 3,490 management investment companies, approximately 2,280 would be subject to the after-tax disclosure requirements.[108] We estimate that the current hour burden for preparing and filing shareholder reports in compliance with rule 30d–1 is 202.5 hours. With the proposed amendments, we estimate that the hour burden will be increased by 7.5 hours[109] to 210 hours, for a total annual hour burden to the industry of 723,825.[110]

Compliance with the disclosure requirements of rule 30d–1 is mandatory. Responses to the disclosure requirements will not be kept confidential.

Rule 482

Rule 482, including the proposed amendments, contains collection of information requirements. The rule is a safe harbor that permits a fund to advertise information the "substance of which" is contained in its statutory prospectus, subject to the requirements of the rule. Rule 482 limits performance information to standardized quotations of yield and total return and other measures of performance that reflect all elements of return.

The increased burden associated with the proposed amendments to rule 482 is included in the investment company registration statement forms.[111] Thus, the proposed amendments to rule 482 will affect the burden hours for Form N–1A, the registration form for open-end investment companies that currently may advertise pursuant to rule 482. As described above, there are approximately 5,260 funds filing post-effective amendments that would be affected by the proposed amendments. The Commission further estimates that three percent of these funds would elect to advertise after-tax performance and therefore be required to comply with the proposed amendments to rule 482.[112] We estimate that the additional hour burden required to comply with the proposed amendments to rule 482 is .5 hours.[113]

Compliance with Rule 482 is mandatory for every registered fund that issues advertisements. Responses to the disclosure requirements will not be kept confidential.

Rule 34b–1

Rule 34b–1, including the proposed amendments, contains collection of information requirements. The rule

in light of the current hour burden and current reporting requirements.

[99] This estimate is based upon staff assessment of the proposed amendments in light of the current hour burden and current reporting requirements.

[100] The proposed amendments would modify rule 482, which is part of Regulation C under the Securities Act of 1933. Regulation C describes the disclosure that must appear in registration statements under the Securities Act and Investment Company Act. The PRA burden associated with rule 482, however, is included in the investment company registration statement form, not in Regulation C. In this case, the proposed amendments to rule 482 will affect the burden hours for Form N–1A, the registration form for open-end investment companies that currently advertise pursuant to rule 482. We estimate that the burden associated with Regulation C will not change with the amendments to rule 482.

[101] These estimates are based on filings received in calendar year 1999. The currently approved hour burden per portfolio for an initial Form N–1A is 824 hours.

[102] These estimates are based on filings received in calendar year 1999. The currently approved hour burden per portfolio for post-effective amendments to Form N–1A is 104 hours.

[103] This estimate is based on the staff's consultations with industry representatives.

[104] The number of funds referenced in post-effective amendments that would be affected by the proposed amendments is computed by subtracting those funds that are exempt from or permitted to omit the proposed after-tax disclosure from the number of funds referenced in post-effective amendments (7,875 – 1,040 – 1,575, or 5,260). For purposes of our analysis, we have not excluded certain funds that also would be permitted to omit the after-tax return disclosure, such as funds that distribute prospectuses for use by investors in 401(k) plans or other similar tax-deferred arrangements. While these funds would be permitted to omit the after-tax return disclosure in prospectuses distributed to investors in these tax-deferred arrangements, they would still incur a burden from including the disclosure in prospectuses distributed to all other investors.

[105] This total annual hour burden is calculated by adding the total annual hour burden for initial registration statements and the total annual hour burden for post-effective amendments, including the additional burden imposed by the proposed amendments. As explained, the hour burden per portfolio for an initial filing would remain at 824 hours, for a total burden of 245,552 hours. The hour burden per portfolio for a post-effective amendment would be 122 hours (104 + 18), with a burden of 104 hours imposed on all 7,875 portfolios (104 × 7,875, or 819,000) and the additional 18 hours affecting 5,260 portfolios (18 × 5,260, or 94,680). Moreover, since the burden associated with rule 482 is included in Form N–1A (as discussed in note 100, *supra*), the Form N–1A burden would include the estimated rule 482 burden of .5 hours (the rule 482 burden is discussed below) that would be imposed on the three percent of funds that we estimate would advertise after-tax returns [.5 × (5,260 × 3%), or 79]. Thus, the total annual hour burden for all funds for the preparation and filing of initial registration statements and post-effective amendments on Form N–1A, including the proposed amendments would be 1,159,311 hours (245,552 + 819,000 + 94,680 + 79).

[106] The proposed amendments to Form N–1A require that if a fund elects to include the MDFP in its annual report, it must include the after-tax return information in its annual report.

[107] These estimates are based on filings received in calendar year 1999. The currently approved hour burden per registered management investment company subject to rule 30d–1 is 202.5 hours.

[108] The Commission estimates that 2,900 of the 3,490 investment companies subject to rule 30d–1 are registered on Form N–1A and therefore would be subject to the proposed amendments. Of these 2,900 investment companies, the Commission estimates that approximately 200 offer only money market funds and would therefore be exempt from the proposed amendments, and that approximately 300 other investment companies would also be exempt because they serve as investment options for variable insurance contracts. Moreover, the Commission estimates that approximately five percent of funds do not elect to locate the MDFP in their annual reports and therefore would not incur any additional burden in including the proposed disclosure in their annual reports. Thus, the number of investment companies that would be subject to the after-tax requirements is 2,280 [(2,900 – 200 – 300) x 95%].

[109] This estimate is based on the staff's consultations with industry representatives.

[110] The total annual hour burden is computed by adding the current total annual burden (3,490 x 202.5, or 706,725) to the total additional annual burden imposed by the proposed amendments (2,280 x 7.5, or 17,100).

[111] *See* note 100, *supra*.

[112] This estimate is based on the assumption that tax-managed funds and index funds would be most likely to advertise after-tax performance.

[113] This estimate is based on the staff's consultations with industry representatives.

governs sales material that is accompanied or preceded by the delivery of a statutory prospectus and requires the inclusion of standardized performance data and certain legend disclosure in sales material that includes performance data.

We estimate that approximately 8,495 respondents file approximately 4.35 responses annually pursuant to rule 34b–1.[114] Of these respondents, we estimate that 1,040 are money market funds that would be exempted from the proposed amendments and that an additional 620 funds and unit investment trusts ("UITs") registered on Forms N–3 and N–4 would not be affected by the proposed amendments. We estimate that an additional 1,575 funds registered on Form N–1A and subject to rule 34b–1 are used as underlying portfolios for variable insurance contracts and would not advertise after-tax performance due to their unique tax-deferred nature. Thus, 5,260 respondents subject to rule 34b–1 would also be subject to the proposed after-tax disclosure.[115] We further estimate that three percent of respondents subject to rule 34b–1 would elect to include after-tax performance and therefore be subject to the proposed amendments.[116] The burden for rule 34b–1 requires approximately 2.4 hours per response resulting from creating the information required by rule 34b–1. We estimate that rule 34b–1 imposes a current total annual reporting burden of 88,800 hours on the industry.[117] We estimate that the additional hour burden required to comply with the proposed amendments to rule 34b–1 is .5 hours, for a total burden per response of 2.9 hours and a total annual burden on the industry of 89,143 hours.[118]

Compliance with rule 34b–1 is mandatory for every registered investment company that issues sales literature. Responses to the disclosure requirements will not be kept confidential.

Request for Comments

We request your comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of burden of the proposed collection of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons submitting comments on the collection of information requirements should direct the comments to the Office of Management and Budget, Attention: Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 3208, New Executive Office Building, Washington, D.C. 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609, with reference to File No. S7–09–00. OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this release. Consequently, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release.

VII. Statutory Authority

The Commission is proposing amendments to Form N–1A pursuant to authority set forth in sections 5, 6, 7, 10, and 19(a) of the Securities Act [15 U.S.C. 77e, 77f, 77g, 77j, 77s(a)] and sections 8, 24(a), 30, and 38 of the Investment Company Act [15 U.S.C. 80a–8, 80a–24(a), 80a–29, 80a–37]. The Commission is proposing amendments to rule 482 pursuant to authority set forth in sections 5, 10(b), and 19(a) of the Securities Act [15 U.S.C. 77e, 77j(b), and 77s(a)]. The Commission is proposing amendments to rule 34b–1 pursuant to authority set forth in sections 34(b) and 38(a) of the Investment Company Act [15 U.S.C. 80a–33(b) and 80a–37(a)].

List of Subjects

17 CFR Part 230

Advertising, Investment companies, Reporting and recordkeeping requirements, Securities.

17 CFR Part 239

Reporting and recordkeeping requirements, Securities.

17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Proposed Rules and Forms

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

1. The authority citation for part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77r, 77s, 77z–3, 77sss, 78c, 78d, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79t, 80a–8, 80a–24, 80a–28, 80a–29, 80a–30, and 80a–37, unless otherwise noted.

* * * * *

2. Section 230.482 is amended by:

a. revising the introductory text of paragraph (e)(3);

b. removing "; and" at the end of paragraph (e)(3)(iv) and in its place adding a period;

c. redesignating paragraph (e)(4) as paragraph (e)(5);

d. adding new paragraph (e)(4); and

e. revising newly redesignated paragraph (e)(5) to read as follows:

§ 230.482 Advertising by an investment company as satisfying requirements of section 10.

* * * * *

(e) * * *

(3) Before-tax average annual total return (with redemption) for one, five, and ten year periods; *Provided,* That if the company's registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed; and *Provided further,* That such quotations:

* * * * *

(4) For an open-end management investment company, after-tax average annual total return (with and without redemption) for one, five, and ten year periods; *Provided,* That if the company's registration statement under the Securities Act of 1933 (15 U.S.C. 77a *et seq.*) has been in effect for less than one, five, or ten years, the time period during which the registration statement was in effect is substituted for the period(s) otherwise prescribed; and *Provided further,* That such quotations:

(i) Are based on the methods of computation prescribed in Form N–1A;

(ii) Are current to the most recent calendar quarter ended prior to the submission of the advertisement for publication;

(iii) Are accompanied by quotations of total return as provided for in paragraph (e)(3) of this section;

(iv) Include both after-tax average annual total return (with redemption) and after-tax average annual total return (without redemption);

(v) Are set out with equal prominence and are set out in no greater prominence than the required quotations of total return; and

(vi) Identify the length of and the last day of the one, five, and ten year periods; and

(5) Any other historical measure of company performance (not subject to any prescribed method of computation) if such measurement:

(i) Reflects all elements of return;

(ii) Is accompanied by quotations of total return as provided for in paragraph (e)(3) of this section;

(iii) In the case of any measure of performance adjusted to reflect the effect of taxes, is accompanied by quotations of total return as provided for in paragraph (e)(4) of this section;

(iv) Is set out in no greater prominence than the required quotations of total return; and

(v) Identifies the length of and the last day of the period for which performance is measured.

* * * * *

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

3. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39 unless otherwise noted:

* * * * *

4. Section 270.34b–1 is amended by:

a. redesignating paragraphs (b)(1)(iii) (B) and (C) as paragraphs (b)(1)(iii) (C) and (D);

b. adding new paragraph (b)(1)(iii)(B); and

c. revising paragraph (b)(3) to read as follows:

§ 270.34b–1 Sales literature deemed to be misleading.

* * * * *

(b)(1) * * *

(iii) * * *

(B) Accompany any quotation of performance adjusted to reflect the effect of taxes with the quotations of total return specified by paragraph (e)(4) of § 230.482 of this chapter;

* * * * *

(3) The requirements specified in paragraph (b)(1) of this section shall not apply to any quarterly, semi-annual, or annual report to shareholders under Section 30 of the Act (15 U.S.C. 80a–29) containing performance data for a period commencing no earlier than the first day of the period covered by the report; nor shall the requirements of paragraphs (e)(3)(ii), (e)(4)(ii), and (f) of § 230.482 of this chapter apply to any such periodic report containing any other performance data.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for part 239 continues to read, in part, as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77z–2, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78u–5, 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–24, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

6. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

Note: The text of Form N–1A does not and these amendments will not appear in the *Code of Federal Regulations.*

7. General Instruction C to Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. revising the introductory text of paragraph 3.(d)(i);

b. republishing paragraph 3.(d)(i)(A);

c. republishing paragraph 3.(d)(i)(B) except for removing "and" at the end of the paragraph;

d. republishing paragraph 3.(d)(i)(C) except for removing the period at the end of the paragraph and adding in its place "; and"; and

e. adding paragraph 3.(d)(i)(D) to read as follows:

Form N–1A

* * * * *

General Instructions

* * * * *

C. Preparation of the Registration Statement

* * * * *

3. Additional Matters:

* * * * *

(d) *Modified Prospectuses for Certain Funds.*

(i) A Fund may omit the information required by Items 2(c)(2)(iii)(A), (B), and (D), 2(c)(2)(iv), 5(b)(2)(i), (ii), and (iv), and 5(b)(3), and a Fund may modify or omit, if inapplicable, the information required by Items 7(b)–(d) and 8(a)(2), if the Fund's prospectus will be used exclusively to offer Fund shares as investment options for:

(A) A defined contribution plan that meets the requirements for qualification under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k));

(B) A tax-deferred arrangement under sections 403(b) or 457 of the Internal Revenue Code (26 U.S.C. 403(b) and 457);

(C) A variable contract as defined in section 817(d) of the Internal Revenue Code (26 U.S.C. 817(d)), if covered in a separate account prospectus; and

(D) A similar plan or arrangement pursuant to which an investor is not taxed on his or her investment in the Fund until the investment is sold.

* * * * *

8. Item 2 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. revising paragraph (c)(2)(iii);

b. adding paragraph (c)(2)(iv);

c. revising paragraph (a) of Instruction 2; and

d. revising paragraph (c) of Instruction 3 to read as follows:

Form N–1A

* * * * *

Item 2. Risk/Return Summary: Investments, Risks, and Performance

* * * * *

(c) * * *

(2) * * *

(iii) If the Fund has annual returns for at least one calendar year, provide a table showing the Fund's (A) before-tax average annual total return (without redemption); (B) after-tax average annual total return (without redemption); (C) before-tax average annual total return (with redemption); and (D) after-tax average annual total return (with redemption). A Money Market Fund should show only the returns described in clause (C) of the preceding sentence. All returns should be shown for 1-, 5-, and 10-calendar year periods ending on the date of the most recently completed calendar year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. The table also should show

[114] These estimates are based on filings received in calendar year 1999. The currently approved hour burden per response for rule 34b–1 is 2.4 hours.

[115] This number is computed by subtracting from the number of respondents filing rule 34b–1 sales material the number of money market funds, the number of funds and UITs registered on Forms N–3 and N–4, and the number of funds used as underlying portfolios for variable insurance contracts (8,495 – 1,040 – 620 – 1,575, or 5,260).

[116] This estimate is based on the assumption that tax-managed funds and index funds would be most likely to advertise after-tax performance.

[117] The current total annual hour burden is computed by multiplying the number of responses filed annually under rule 34b–1 by the current hour burden (37,000 x 2.4). The total annual hour burden for the industry has increased significantly from previous estimates because we have reevaluated the number of respondents subject to rule 34b–1.

[118] The total annual burden is computed by adding the current burden (2.4 x 37,000, or 88,800) to the additional burden imposed by the proposed amendments [.5 x (8,495 – 1,040 – 620 – 1,575) x 4.35 x 3%, or 343].

the returns of an appropriate broad-based securities market index as defined in Instruction 5 to Item 5(b) for the same periods. A Fund that has been in existence for more than 10 years also may include average annual total returns for the life of the Fund. A Money Market Fund may provide the Fund's 7-day yield ending on the date of the most recent calendar year or disclose a toll-free (or collect) telephone number that investors can use to obtain the Fund's current 7-day yield. For a Fund (other than a Money Market Fund or a Fund described in General Instruction C.3.(d)(i)), provide the information in the following table with the specified captions:

AVERAGE ANNUAL TOTAL RETURNS

[For the periods ended December 31, ——]

	1 year	5 years	10 years
If You Continue to Hold Your Shares at End of Period:			
Before-Tax Return	__%	__%	__%
After-Tax Return	__%	__%	__%
If You Sell Your Shares at End of Period:			
Before-Tax Return	__%	__%	__%
After-Tax Return	__%	__%	__%
Index (reflects no deduction for fees, expenses, or taxes)	__%	__%	__%

(iv) Adjacent to the table required by paragraph (c)(2)(iii) of this Item, provide a brief explanation of the following:

(A) The differences among the four types of return presented, including whether the returns reflect redemption and the charges and taxes associated with redemption;

(B) That before-tax returns assume that all distributions are reinvested;

(C) The assumptions used in calculating after-tax returns, including (*1*) the use of the historical highest individual federal marginal income tax rates; (*2*) the assumption that taxes are paid out of fund distributions and that distributions, less taxes, are reinvested; (*3*) the exclusion of state and local taxes; and (*4*) if after-tax returns (with redemption) are higher than before-tax returns (with redemption), explain the reason for this result, including the assumption that a shareholder has sufficient gains from other sources to offset all losses from the redemption of fund shares;

(D) Actual after-tax returns depend on an investor's tax situation and may differ from those shown;

(E) The after-tax returns shown are not relevant to investors who hold their Fund shares through tax-deferred arrangements, such as 401(k) plans or individual retirement accounts; and

(F) After-tax returns reflect past tax effects and are not predictive of future tax effects.

Instructions

* * * * *

2. Table.

(a) Calculate a Money Market Fund's 7-day yield under Item 21(a); the Fund's before-tax average annual total return (without redemption) and before-tax average annual total return (with redemption) under Items 21(b)(1) and (2), respectively; and the Fund's after-tax average annual total return (without redemption) and after-tax average annual total return (with redemption) under Items 21(b)(3) and (4), respectively.

* * * * *

3. Multiple Class Funds.

* * * * *

(c) Provide average annual total returns in the table for each Class offered in the prospectus. The four types of return for each Class required under Item 2(c)(2)(iii)(A), (B), (C), and (D) should be adjacent and should not be interspersed with the returns of other Classes.

* * * * *

9. Item 5 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. revising paragraph (b)(2);

b. adding paragraph (b)(3); and

c. adding Instruction 12 to read as follows:

AVERAGE ANNUAL TOTAL RETURNS

[For the Fiscal Year ended]

	1 year	5 years	10 years
If You Continue to Hold Your Shares at End of Period:			
Before-Tax Return	__%	__%	__%
After-Tax Return	__%	__%	__%
If You Sell Your Shares at End of Period:			

Form N–1A

* * * * *

Item 5. Management's Discussion of Fund Performance

* * * * *

(b)(1) * * *

(2) Include a statement accompanying the graph to the effect that past performance does not predict future performance and that account value does not reflect the taxes that a shareholder would pay on fund distributions or the redemption of fund shares. In a table placed within or next to the graph, provide the Fund's (i) before-tax average annual total return (without redemption); (ii) after-tax average annual total return (without redemption); (iii) before-tax average annual total return (with redemption); and (iv) after-tax average annual total return (with redemption). All returns should be shown for the 1-, 5-, and 10-year periods as of the end of the last day of the most recent fiscal year (or for the life of the Fund, if shorter), but only for periods subsequent to the effective date of the Fund's registration statement. All returns should be computed in accordance with Items 21(b)(1), (b)(2), (b)(3), and (b)(4). For a Fund other than a Fund described in General Instruction C.3.(d)(i), provide the information in the following table with the specified captions:

AVERAGE ANNUAL TOTAL RETURNS—Continued

[For the Fiscal Year ended]

	1 year	5 years	10 years
Before-Tax Return	__%	__%	__%
After-Tax Return	__%	__%	__%

(3) Adjacent to the table required by paragraph (b)(2) of this Item, provide a brief explanation of the following:

(i) The differences among the four types of return presented, including whether the returns reflect redemption and the charges and taxes associated with redemption;

(ii) That before-tax returns assume that all distributions are reinvested;

(iii) The assumptions used in calculating after-tax returns, including (A) the use of the historical highest individual federal marginal income tax rates; (B) the assumption that taxes are paid out of fund distributions and that distributions, less taxes, are reinvested; (C) the exclusion of state and local taxes; and (D) if after-tax returns (with redemption) are higher than before-tax returns (with redemption), explain the reason for this result, including the assumption that a shareholder has sufficient gains from other sources to offset all losses from the redemption of fund shares;

(iv) Actual after-tax returns depend on an investor's tax situation and may differ from those shown;

(v) The after-tax returns shown are not relevant to investors who hold their Fund shares through tax-deferred arrangements, such as 401(k) plans or individual retirement accounts; and

(vi) After-tax returns reflect past tax effects and are not predictive of future tax effects.

Instructions

* * * * *

12. Table for Multiple Class Funds. Provide average annual total returns in the table for each Class of a Multiple Class Fund that is offered in the prospectus or covered by the annual report. The four types of return for each Class required under Item 5(b)(2)(i), (ii), (iii), and (iv) should be adjacent and should not be interspersed with the returns of other Classes.

* * * * *

10. Item 21 of Form N–1A (referenced in §§ 239.15A and 274.11A) is amended by:

a. revising the phrase "(b)(1)–(4)" to read "(b)(1)–(7)" in the introductory text of paragraph (b);

b. redesignating paragraphs (b)(1), (2), (3), (4), and (5) as paragraphs (b)(2), (5), (6), (7), and (8), respectively;

c. adding new paragraphs (b)(1), (b)(3), and (b)(4); and

d. revising newly redesignated paragraph (b)(2) to read as follows:

Form N–1A

* * * * *

Item 21. Calculation of Performance Data

* * * * *

(b) * * *

(1) *Before-Tax Average Annual Total Return (Without Redemption) Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's before-tax average annual total return (without redemption) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$P(1+T)^n = ERV_{NR}$

Where:

P = a hypothetical initial payment of $1,000.

T = before-tax average annual total return (without redemption).

n = number of years.

ERV_{NR} = ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion) assuming no redemption of the account.

Instructions

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

4. Determine the ending redeemable value by assuming no redemption at the end of the 1-, 5-, or 10-year periods. Deduct any charges that are deducted at the end of each period assuming no redemption. Do not deduct nonrecurring charges deducted only on redemption, such as deferred sales loads or redemption fees.

5. State the before-tax average annual total return (without redemption) quotation to the nearest hundredth of one percent.

(2) *Before-Tax Average Annual Total Return (With Redemption) Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's before-tax average annual total return (with redemption) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the ending redeemable value, according to the following formula:

$P(1+T)^n = ERV_R$

Where:

P = a hypothetical initial payment of $1,000.

T = before-tax average annual total return (with redemption).

n = number of years.

ERV_R = ending redeemable value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion), assuming the account is redeemed at the end of the last day of the measurement period.

Instructions

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund are reinvested at the price stated

in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

4. Determine the ending redeemable value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

5. State the before-tax average annual total return (with redemption) quotation to the nearest hundredth of one percent.

(3) *After-Tax Average Annual Total Return (Without Redemption) Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's after-tax average annual total return (without redemption) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the after-tax ending value, according to the following formula:

$P(1+T)^n = ATV_{NR}$

Where:

P = a hypothetical initial payment of $1,000.

T = after-tax average annual total return (without redemption).

n = number of years.

ATV_{NR} = ending after-tax value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion), assuming no redemption of the account.

Instructions

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund, less the taxes due on such distributions, are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

4. Determine the ending redeemable value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

5. State the before-tax average annual total return (with redemption) quotation to the nearest hundredth of one percent.

(3) *After-Tax Average Annual Total Return (Without Redemption) Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's after-tax average annual total return (without redemption) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the after-tax ending value, according to the following formula:

$P(1+T)^n = ATV_{NR}$

Where:

P = a hypothetical initial payment of $1,000.

T = after-tax average annual total return (without redemption).

n = number of years.

ATV_{NR} = ending after-tax value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion), assuming no redemption of the account.

Instructions

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund, less the taxes due on such distributions, are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Calculate the taxes due on any distributions by the Fund by applying the tax rate specified in Instruction 4 to each component of the distributions on the reinvestment date (*e.g.*, ordinary income, short-term capital gain, long-term capital gain). The taxable amount and tax character of each distribution should be as specified by the Fund on the dividend declaration date, but may be adjusted to reflect subsequent recharacterizations of distributions. Distributions should be adjusted to reflect the federal tax impact the distribution would have on an individual taxpayer on the reinvestment date. For example, assume no taxes are due on the portions of any distribution that would not result in federal income tax on an individual, *e.g.*, tax-exempt interest or non-taxable returns of capital.

4. Calculate the taxes due using the highest individual marginal federal income tax rate in effect on the reinvestment date. The rate used should correspond to the tax character of each component of the distributions (*e.g.*, ordinary income rates for ordinary income distributions, short-term capital gain rates for short-term capital gain distributions, long-term capital gain rates for long-term capital gain distributions). Note that the required tax rates may vary over the measurement period. Disregard any potential tax liabilities other than federal tax liabilities (*e.g.*, state and local taxes); the effect of phaseouts of certain exemptions, deductions, and credits at various income levels; and the impact of the federal alternative minimum tax.

5. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Assume that no additional taxes or tax credits result from any redemption of shares required to pay such fees. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

6. Determine the ending after-tax value by assuming no redemption at the end of the 1-, 5-, or 10-year periods. Deduct any charges that are deducted at the end of each period assuming no redemption. Do not deduct nonrecurring charges deducted only on redemption, such as deferred sales loads or redemption fees.

7. State the after-tax average annual total return (without redemption) quotation to the nearest hundredth of one percent.

(4) *After-Tax Average Annual Total Return (With Redemption) Quotation.* For the 1-, 5-, and 10-year periods ended on the date of the most recent balance sheet included in the registration statement (or for the periods the Fund has been in operation), calculate the Fund's after-tax average annual total return (with redemption) by finding the average annual compounded rates of return over the 1-, 5-, and 10-year periods (or for the periods of the Fund's operations) that would equate the initial amount invested to the after-tax ending value, according to the following formula:

$P(1+T)n = ATV_R$

Where:

P = a hypothetical initial payment of $1,000.

T = after-tax average annual total return (with redemption).

n = number of years.

ATV_R = ending after-tax value of a hypothetical $1,000 payment made at the beginning of the 1-, 5-, or 10-year periods at the end of the 1-, 5-, or 10-year periods (or fractional portion), assuming the account is redeemed at the end of the last day of the measurement period.

Instructions

1. Assume the maximum sales load (or other charges deducted from payments) is deducted from the initial $1,000 payment.

2. Assume all distributions by the Fund, less the taxes due on such distributions, are reinvested at the price stated in the prospectus (including any sales load imposed upon reinvestment of dividends) on the reinvestment dates during the period.

3. Calculate the taxes due on any distributions by the Fund by applying the tax rate specified in Instruction 4 to each component of the distributions on the reinvestment date (*e.g.*, ordinary income, short-term capital gain, long-term capital gain). The taxable amount and tax character of each distribution should be as specified by the Fund on the dividend declaration date, but may be adjusted to reflect subsequent recharacterizations of distributions. Distributions should be adjusted to reflect the federal tax impact the distribution would have on an individual taxpayer on the reinvestment date. For example, assume no taxes are due on the portions of any distributions that would not result in federal income tax on an individual, *e.g.*, tax-exempt interest or non-taxable returns of capital.

4. Calculate the taxes due using the highest individual marginal federal income tax rate in effect on the reinvestment date. The rate used should correspond to the tax character of each component of the distributions (*e.g.*, ordinary income rates for ordinary income distributions, short-term capital gain rates for short-term capital gain distributions, long-term capital gain rates for long-term capital gain distributions). Note that the required tax rates may vary over the measurement period. Disregard any potential tax liabilities other than federal tax liabilities (*e.g.*, state and local taxes); the effect of phaseouts of certain exemptions, deductions, and credits at various income levels; and the impact of the federal alternative minimum tax.

5. Include all recurring fees that are charged to all shareholder accounts. For any account fees that vary with the size of the account, assume an account size equal to the Fund's mean (or median) account size. Assume that no additional taxes or tax credits result from any redemption of shares required to pay such fees. Reflect, as appropriate, any recurring fees charged to shareholder accounts that are paid other than by redemption of the Fund's shares.

6. Determine the ending after-tax value by assuming a complete redemption at the end of the 1-, 5-, or 10-year periods and the deduction of all nonrecurring charges deducted at the end of each period. If shareholders are assessed a deferred sales load, assume the maximum deferred sales load is deducted at the times, in the amounts, and under the terms disclosed in the prospectus.

7. Determine ending after-tax value by subtracting capital gains taxes resulting from the redemption and adding the tax benefit from capital losses resulting from the redemption.

(a) Calculate the capital gain or loss upon redemption by subtracting the tax basis from the redemption proceeds (after deducting any nonrecurring charges as specified by Instruction 6).

(b) In determining the tax basis, include the initial $1,000 payment and reinvested distributions (net of taxes assumed paid from the distributions, but not net of any sales loads imposed upon reinvestment). Also, adjust the tax basis for any distributions representing returns of capital and any other tax basis adjustments that would apply to an individual taxpayer.

(c) When determining the character of capital gain or loss upon redemption, the Fund should track the actual holding periods of reinvested distributions. That is, the Fund should not assume that shares acquired through reinvestment of distributions have the same holding period as the initial $1,000 investment.

(d) Calculate the capital gains taxes (or the benefit resulting from tax losses) by multiplying the amount of the capital gain (loss) by the highest federal individual capital gains tax rate in effect on the redemption date. The rate used should correspond to the tax character of the capital gains (*e.g.*, short-term or long-term), which is determined by the length of the measurement period in the case of the initial $1,000 investment and the length of the period between reinvestment and the end of the measurement period in the case of reinvested distributions.

8. State the after-tax average annual total return quotation (with redemption) to the nearest hundredth of one percent.

* * * * *

By the Commission.

Dated: March 15, 2000.

Margaret H. McFarland,

Deputy Secretary.

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Federal Register

Vol. 65, No. 56

Wednesday, March 22, 2000

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FEDERAL REGISTER PAGES AND DATE, MARCH

10931–11196	1
11197–11454	2
11455–11734	3
11735–11858	6
11859–12060	7
12061–12426	8
12427–12904	9
12905–13234	10
13235–13658	13
13659–13864	14
13865–14206	15
14207–14430	16
14431–14780	17
14781–15052	20
15053–15202	21
15203–15520	22

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7276 11197
7277 11199
7278 11455
7279 11733
7280 12903
7281 15201

Executive Orders:
12170 (See Notice of March 13, 2000) 13863
12957 (Continued by Notice of March 13, 2000) 13863
12959 (See Notice of March 13, 2000) 13863
13059 (See Notice of March 13, 2000) 13863
13146 11201
13147 13233

Administrative Orders:
Presidential Determinations:
No. 2000-15 of February 24, 2000 10931
Notices:
March 13, 2000 13863

4 CFR

27 15203
28 15203

5 CFR

213 14431
315 14431
335 14431
792 13659

Proposed Rules:
3 14477
213 14477
315 14477

7 CFR

2 12427
205 13512
210 12429
215 12429
220 12429
225 12429
226 12429
301 11203
457 11457
600 14781
601 14781
761 14432
762 14432
915 15203
916 15205
917 15205
993 12061
955 12442
989 15214
1421 13865
1427 13865
1464 10933
1710 ..... 14207, 14785
1721 10933
3019 14406

Proposed Rules:
6 14478
20 11483
27 10979
28 ..... 10979, 12140
29 13915
57 14652
97 13917
201 12952
360 14926
1140 10981
1160 14484
1205 12146
1210 14485
1306 12141
1307 12141
1309 12141
1710 12952
1717 12952
1718 12952

8 CFR

212 14774
214 14774
248 14774
278A 14774

9 CFR

74 15216
78 12064
93 15216

Proposed Rules:
71 11485
77 ..... 11485, 11912
78 11485
93 12486
98 12486
113 12151
130 12486
317 14486
318 ..... 14486, 14489
319 ..... 144867, 14489
327 14489
381 14486
590 11486

10 CFR

72 ..... 11458, 12444, 14790
170 11204
600 14406
820 15218

Proposed Rules:
21 11488
50 11488
52 11488
54 11488
100 11488
430 14128

431.....10984
960.....11755
963.....11755
Ch. XVIII.....13700

11 CFR

108.....15221

Proposed Rules:

9038.....15273

12 CFR

5.....12905
204.....12916
208.....14810, 15050
225.....14433, 14440, 15053
340.....14816
701.....15224
724.....10933
745.....10933
925.....13866
950.....13866
Ch. IX.....13663
1510.....12064, 14819, 15050

Proposed Rules:

3.....12320
8.....15111
208.....12320
225.....12320
325.....12320
567.....12320
614.....14491
620.....14494
709.....11250
716.....10988
741.....10988
742.....15275
1750.....13251

13 CFR

Proposed Rules:

124.....12955

14 CFR

25.....13666
39.....10934, 10937, 10938, 11204, 11459, 11859, 11861, 12071, 12072, 12073, 12075, 12077, 12080, 12081, 12082, 12084, 12085, 12460, 12462, 12463, 13668, 13871, 13875, 13877, 14207, 14209, 14822, 14826, 14827, 14831, 14834, 14838, 14844, 14846, 14847, 14849, 14852, 15226, 15230, 15232
71.....11369, 11461, 11866, 12630, 12917, 12918, 14344, 14855, 14856, 14857
95.....14442
97.....13669, 13671, 13673
1260.....14406

Proposed Rules:

25.....13703
39.....11006, 11505, 11940, 11942, 12489, 12957, 13251, 13919, 13921, 13923, 14216, 14218, 15278, 15280
71.....12153, 12957, 13704, 13705, 13707, 14497, 15282
255.....11009
108.....15113
109.....15113
111.....15113
129.....15113
191.....15113

15 CFR

14.....14406
734.....12919
736.....14858
738.....12919, 14857
740.....12919, 14857
742.....12919, 14857
743.....12919
744.....12919, 14444
748.....12919
756.....14857, 14861
762.....14858
766.....14862
770.....14857
774.....12919, 13879, 14862

16 CFR

1615.....12924
1616.....12924
1630.....12929
1631.....12929
1632.....12935

Proposed Rules:

307.....11944
312.....11947
313.....11174

17 CFR

15.....14452
16.....14452
17.....14452
1.....12466
4.....10939, 12938
200.....12469
240.....13235
242.....13235

Proposed Rules:

4.....11253, 12318
228.....11507, 15043
229.....11507
230.....11507, 15500
232.....11507
239.....11507, 15500
240.....11507
248.....12354
249.....11507
250.....11507
259.....11507
260.....11507
269.....11507
270.....11507, 15500
274.....11507, 15500

18 CFR

35.....12088
157.....11461, 12115, 15234
380.....15234

19 CFR

12.....12470
24.....13880
111.....13880
178.....13880

20 CFR

220.....14458
322.....14459
404.....11866
416.....11866

21 CFR

20.....11881
101.....11205
176.....13675
177.....15057
524.....13904
558.....11888
640.....13678
868.....11464
870.....11465
1301.....13235
1308.....13235

Proposed Rules:

101.....14219
314.....12154

22 CFR

22.....14211
23.....14211
41.....14768
51.....14211
139.....14764
145.....14406
226.....14406

Proposed Rules:

22.....13253

23 CFR

1340.....13679

24 CFR

200.....15043
401.....15452
402.....15452
905.....14422

Proposed Rules:

81.....12632
990.....11525

25 CFR

290.....14461

26 CFR

1.....11205, 11467, 12471
301.....11211, 11215
602.....11205, 11211, 11215

Proposed Rules:

1.....11012, 11269
301.....11271, 11272

27 CFR

4.....11889
5.....11889
7.....11889
16.....11889
75.....15058

Proposed Rules:

4.....12490
00.....15115
70.....15115
75.....15115
90.....15115

28 CFR

70.....14406

29 CFR

95.....14406
4022.....14752, 14753
4044.....13905, 14752
4050.....14752

Proposed Rules:

1614.....11019
1910.....11948, 13254

30 CFR

202.....11467
206.....11467, 14022
250.....14469

Proposed Rules:

914.....11950, 12492

31 CFR

103.....13683

32 CFR

22.....14406
32.....14406
668.....13906
776.....15059

33 CFR

26.....14863
95.....14223
110.....11892
117.....11893, 12943, 15238
127.....10943
140.....14226
141.....14226
142.....14226
143.....14226
144.....14226
145.....14226
146.....14226
147.....14226
154.....10943
155.....10943, 14470
159.....10943
161.....14863
164.....10943
165.....14864
167.....12944
177.....14223
183.....10943

Proposed Rules:

100.....11274, 13926, 14498
110.....13926, 14498
165.....13926, 14498, 14501, 14502, 15283, 15285
175.....11410
177.....11410
179.....11410
181.....11410
183.....11410

34 CFR

74.....14406
1100.....11894

Proposed Rules:

606.....15115
607.....15115
608.....15115

36 CFR

1.....15077
3.....15077
13.....15077
Ch. XV.....14760
701.....11735, 11736
1210.....14406

Proposed Rules:

212.....11680
261.....11680
295.....11680
1190.....12493
1191.....12493

37 CFR

1.....14864

Proposed Rules:

201.....14227, 14505

38 CFR

3.....12116
19.....14471
20.....14471
21.....12117, 13893

Proposed Rules:

3.....13254

39 CFR

111.....12946

Proposed Rules:

20.....11023
111.....13258
913.....14229
952.....13707

40 CFR

9.....15090
30.....14406
51.....11222
52.....10944, 11468, 12118, 12472, 12474, 12476, 12481, 12948, 13239, 13694, 14212, 14873, 15240, 15244
60.....13242
63.....11231
68.....13243
86.....11898
136.....14344
141.....11372
148.....14472
180.....10946, 11234, 11243, 11736, 12122, 12129, 15248
261.....14472
262.....12378
268.....14472
271.....14472
300.....13697, 14475
302.....14472
431.....15091
445.....14344

Proposed Rules:

51.....11024
52.....11027, 11275, 11524, 12494, 12495, 12499, 12958, 13260, 13709, 14506, 14510, 14930, 15286, 15287
63.....11278
81.....14510
141.....11372
438.....11755
503.....11278

42 CFR

121.....15252
405.....13911
410.....13911

Proposed Rules:

410.....13082
493.....14510

43 CFR

12.....14406
3500.....11475

45 CFR

74.....14406
400.....15410
401.....15410
612.....11740
613.....11740

46 CFR

28.....10943
30.....10943
32.....10943
34.....10943
35.....10943
38.....10943
39.....10943
54.....10943
56.....10943
58.....10943
61.....10943
63.....10943
76.....10943
77.....10943
78.....10943
91.....11904
92.....10943
95.....10943
96.....10943
97.....10943
105.....10943
108.....10943
109.....10943
110.....10943
111.....10943
114.....10943
115.....11904
119.....10943
125.....10943
132.....11904
133.....11904
134.....11904
151.....10943
153.....10943
154.....10943
160.....10943
161.....10943
162.....10943
163.....10943
164.....10943
170.....10943
174.....10943
175.....10943
182.....10943
189.....11904
190.....10943
193.....10943
195.....10943
199.....10943, 11904
515.....15252

Proposed Rules:

2.....11410
10.....11410
15.....11410
24.....11410
25.....11410
26.....11410
28.....11410
30.....11410
70.....11410
90.....11410
114.....11410
169.....11410
175.....11410
188.....11410
199.....11410

47 CFR

1.....14476
24.....14213
27.....12483
54.....12135
73.....11476, 11477, 11750, 13250
76.....12135

Proposed Rules:

1.....13933
2.....14230
26.....14230
27.....14230
54.....13933
61.....13933
69.....13933
73.....11537, 11538, 11539, 11540, 11541, 11955, 12155, 13260, 13261

48 CFR

Ch. 2.....14380
Ch. 5.....11246
202.....14397
204.....14397
207.....14397
208.....14397, 14400
212.....14400
222.....14397, 14402
244.....14400
247.....14400
252.....14397, 14400, 14402
1806.....12484
1808.....12484
1811.....12484
1813.....12484
1815.....12484
1825.....12484
1835.....12484
1837.....12484
1842.....12484
1848.....12484
1851.....12484
2409.....12950

Proposed Rules:

Ch. 9.....13416

49 CFR

19.....14406
193.....10950
350.....15092
355.....15092
385.....11904
571.....11751
572.....10961, 15254

Proposed Rules:

Ch I.....11541
40.....13261, 15118
171.....11028
172.....11028
173.....11028
174.....11028
175.....11028
176.....11028
177.....11028
178.....11028
179.....11028
180.....11028
190.....15290
191.....15290
192.....15290
195.....15290
222.....15298
229.....15298

50 CFR

17.....14876, 14886, 14896
300.....14907
648.....11478, 11909, 15110
660.....11480
622.....12136
679.....10978, 11247, 11481, 11909, 12137, 12138, 13698, 14918, 14924, 15271, 15272

Proposed Rules:

16.....11756
17.....12155, 12181, 13262, 13935, 14513, 14931, 14935
216.....11542
223.....12959
224.....12959, 13935
300.....13284
600.....11956
622.....11028, 14518
648.....11029, 11956, 14519
679.....11756, 11973, 12500

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 22, 2000

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
African spurred tortoise etc.; published 3-22-00

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Cucurbitacins; published 3-22-00

FEDERAL TRADE COMMISSION
Appliances, consumer; energy consumption and water use information in labeling and advertising:
Comparability ranges—
Oil-fired instantaneous water heaters and compact dishwashers; published 12-20-99

GENERAL ACCOUNTING OFFICE
Personnel Appeals Board; procedural rules; published 3-22-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 3-7-00
Dornier; published 3-7-00
McDonnell Douglas; published 2-16-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Upland cotton; official color grade determination; comments due by 3-31-00; published 3-1-00
Raisins produced from grapes grown in—
California; comments due by 3-31-00; published 1-31-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Canine and equine semen from Canada; comments due by 3-27-00; published 1-26-00

AGRICULTURE DEPARTMENT
Forest Service
Alaska National Interest Lands Conservation Act:
Title VII implementation (subsistence priority)
Kenai Peninsula determination; comments due by 3-31-00; published 2-22-00
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; subsistence taking; comments due by 3-27-00; published 2-2-00

COMMERCE DEPARTMENT
Anticybersquatting Consumer Protection Act; abusive domain registrations involving personal names; resolution issues; comments due by 3-30-00; published 2-29-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Deep-sea red crab; comments due by 3-31-00; published 3-1-00
Deep-sea red crab; correction; comments due by 3-31-00; published 3-17-00

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Energy conservation:
Weatherization assistance program for low-income persons; comments due by 3-27-00; published 1-26-00

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Essential-use allowances ; allocation; comments due by 3-27-00; published 2-25-00
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Georgia; comments due by 3-27-00; published 2-25-00
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 3-29-00; published 3-14-00
New Mexico; comments due by 3-29-00; published 2-28-00
Hazardous waste program authorizations:
Louisiana; comments due by 3-29-00; published 2-28-00
Missouri; comments due by 3-29-00; published 2-28-00

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Local exchange carriers, low-volume long distance users, and Federal-State Joint Board on Universal Service—
Access charge reform and price cap performance review; comments due by 3-30-00; published 3-15-00
Radio stations; table of assignments:
Alabama and Florida; comments due by 3-27-00; published 2-16-00
Texas; comments due by 3-27-00; published 2-16-00
Television broadcasting:
Broadcast licensees; public interest obligations; comments due by 3-27-00; published 1-26-00

FEDERAL DEPOSIT INSURANCE CORPORATION
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

FEDERAL RESERVE SYSTEM
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

FEDERAL TRADE COMMISSION
Consumer financial information; privacy requirements; comments due by 3-31-00; published 3-1-00

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act:
Fish and wildlife resources on public lands; preference for subsistence use—
Kenai Peninsula; comments due by 3-31-00; published 2-22-00
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; subsistence taking; comments due by 3-27-00; published 2-2-00
Endangered and threatened species:
Columbian sharp-tailed grouse; status review; comments due by 3-27-00; published 1-24-00
Tidewater goby; comments due by 3-31-00; published 2-15-00

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 3-31-00; published 3-17-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Consumer financial information; privacy requirements; comments due by 3-31-00; published 3-1-00

PERSONNEL MANAGEMENT OFFICE
Absence and leave:
Sick leave for family care purposes; comments due by 3-27-00; published 2-9-00
Prevailing rate systems; comments due by 3-30-00; published 2-29-00

POSTAL SERVICE
International Mail Manual:
International surface mail; postal rate changes; comments due by 3-31-00; published 3-1-00

SECURITIES AND EXCHANGE COMMISSION
Practice and procedure:
Market information fees and revenues; public dissemination; comments due by 3-31-00; published 12-17-99
Privacy of Consumer Financial Information (Regulation S-P); comments due by 3-31-00; published 3-8-00
Securities:
Selective disclosure and insider trading; comments due by 3-29-00; published 12-28-99

SMALL BUSINESS ADMINISTRATION
Small business size standards:
Compliance with other agency programs; comments due by 3-27-00; published 1-26-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; comments due by 3-27-00; published 1-26-00
Airbus; comments due by 3-27-00; published 2-24-00
Alexander Schleicher Segelflugzeugbau; comments due by 3-31-00; published 3-1-00
Empresa Brasileira de Aeronautica S.A.; comments due by 3-27-00; published 2-24-00
Eurocopter Deutschland GMBH; comments due by 3-27-00; published 1-25-00
Airworthiness standards:
Special conditions—
McDonnell Douglas Model MD-10-10/10F and MD10-30/30F airplanes; comments due by 3-27-00; published 2-25-00
Transport airplane fuel tank system design review, flammability reduction, and maintenance and inspection requirements; comments due by 3-27-00; published 2-16-00

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Compatibility with International Atomic Energy Agency regulations; comments due by 3-29-00; published 12-28-99

TREASURY DEPARTMENT
Comptroller of the Currency
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

TREASURY DEPARTMENT
Customs Service
Country of origin marking; comments due by 3-27-00; published 1-26-00

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Source of compensation for labor or personal services; comments due by 3-29-00; published 1-21-00
Procedure and administration:
Combat zone service and Presidentially declared disaster; tax-related deadline relief; comments due by 3-30-00; published 12-30-99

TREASURY DEPARTMENT
Thrift Supervision Office
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

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S. 376/P.L. 106–180
Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

Last List March 16, 2000

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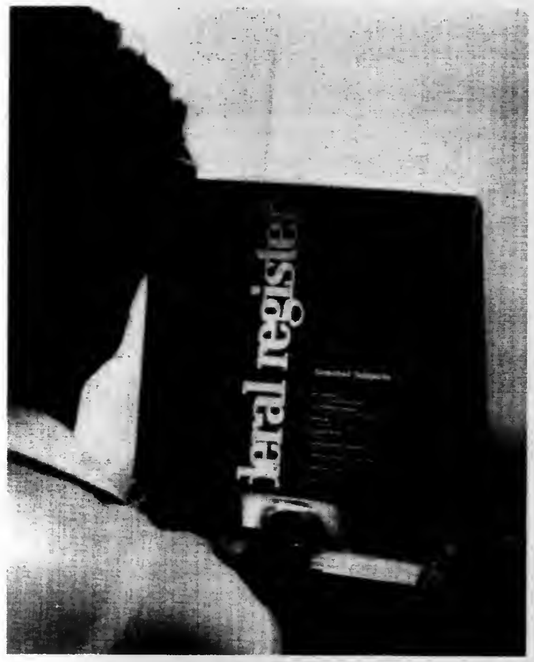
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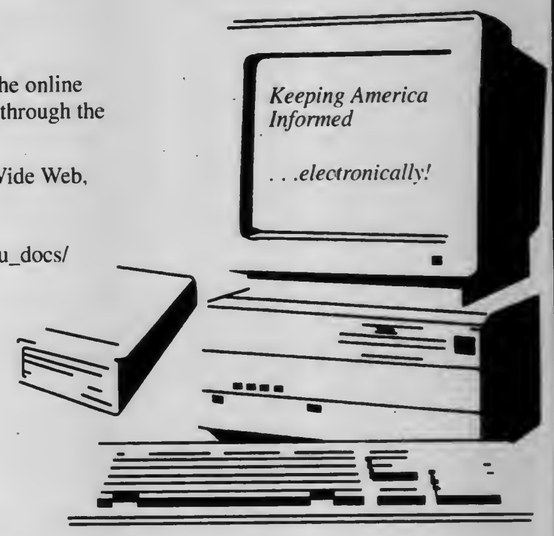
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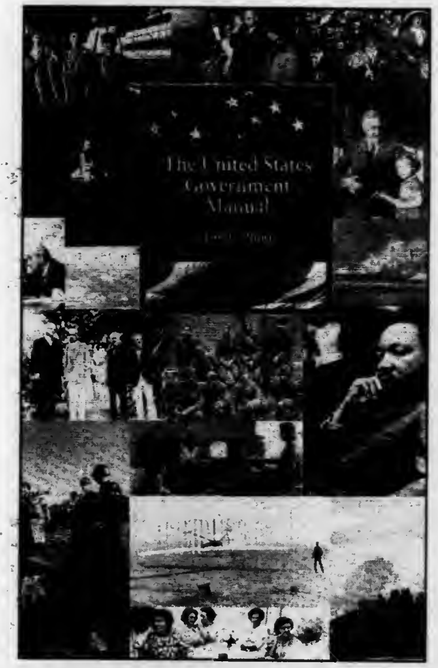
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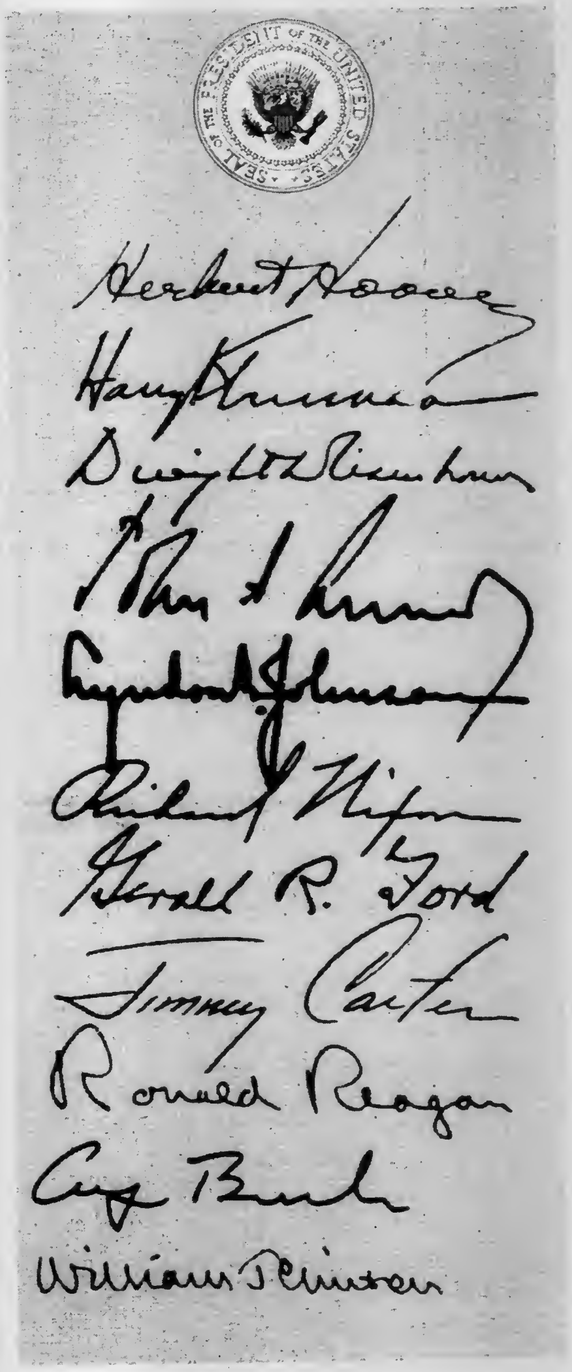
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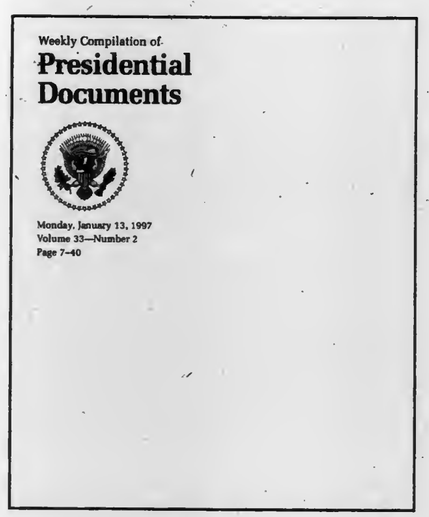
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ISS
56
MR
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Vol. 65 No. 57 Mar. 23, 2000
Pages 15521–15822

Federal Register

Contents

Federal Register

VOL
65
ISS
57
MR
23
2000
UMI

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Contents

Federal Register
Vol. 65, No. 57
Thursday, March 23, 2000

Agricultural Marketing Service
PROPOSED RULES
Cherries (tart) grown in—
Michigan et al., 15580–15584
National Organic Program:
Organic production and handling of aquatic animals to be labeled as organic, 15579–15580

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15612–15613

Animal and Plant Health Inspection Service
RULES
Exportation and importation of animals and animal products:
Poultry meats and other poultry products from Mexico; relief of certain import restrictions, 15521–15526

Centers for Disease Control and Prevention
NOTICES
Grants and cooperative agreements; availability, etc.:
National Academic Centers of Excellence on Youth Violence Prevention, 15642–15645

Coast Guard
RULES
Regattas and marine parades:
Safety at Sea Seminar, 15558
NOTICES
Meetings:
National Offshore Safety Advisory Committee, 15680

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15613

Customs Service
NOTICES
Customhouse broker license cancellation, suspension, etc.:
Charlton, Joseph; retraction, 15685
Customs brokerage, cartage, and lighterage districts; geographic boundaries; correction, 15686–15687

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15619–15620
Grants and cooperative agreements; availability, etc.:
Leveraging Educational Assistance Partnership Program et al., 15620–15621

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Electricity export and import authorizations, permits, etc.:
Sempra Energy Trading Corp., 15621
Meetings:
Environmental Management Site-Specific Advisory Board—
Nevada Test Site, NV, 15621–15622
Oak Ridge Reservation, TN, 15622–15623
Rocky Flats, CO, 15622
Powerplant and industrial fuel use; new electric powerplant coal capability:
Self-certification filings—
Reliant Energy Desert, LLC, et al., 15623

Environmental Protection Agency
RULES
Air pollutants, hazardous; national emission standards:
Secondary aluminum production, 15690–15737
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15633
Committees; establishment, renewal, termination, etc.:
Environmental Financial Advisory Board, 15633–15634
Meetings:
National Drinking Water Advisory Council, 15634
Pesticide registration, cancellation, etc.:
CYTEC Industries Inc., 15634–15635
Toxic and hazardous substances control:
New chemicals; receipt and status information, 15635–15640

Executive Office of the President
See Presidential Documents
See Trade Representative, Office of United States

Export Administration Bureau
NOTICES
National Defense Stockpile; market impact of proposed disposal of excess commodities, 15613–15615

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 15534–15536
AlliedSignal Inc., 15531–15534
General Electric Co.; correction, 15536–15537
New Piper Aircraft, Inc., 15537–15540
Standard instrument approach procedures, 15540–15545
PROPOSED RULES
Airworthiness directives:
Rolls-Royce plc, 15584–15586
Jet routes, 15586–15587
NOTICES
Exemption petitions; summary and disposition, 15680–15681
Passenger facility charges; applications, etc.:
Altoona-Blair County Airport, PA, 15681–15682

Federal Communications Commission
RULES
Radio services, special:
Mobile services; regulatory treatment; reconsideration petitions, 15559

VOL
65
ISS
57
MR
23
2000
UMI

Television broadcasting:
Satellite Home Viewer Improvement Act; implementation—
Retransmission consent issues; good faith negotiation and exclusivity, 15559–15576
PROPOSED RULES
Common carrier services:
Wireless telecommunications services—
Specialized mobile radio (SMR) systems in 800 MHz frequency band; future development facilitation, 15599–15600
Television broadcasting:
Digital television conversion; rules and policies, 15600–15611
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc.; correction, 15640
Television broadcasting:
New analog television stations; applications and allotment petitions; window filing opportunity, 15640

Federal Deposit Insurance Corporation
RULES
Insured State banks; activities and investments, 15526–15531
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15640–15641

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Delmarva Power & Light Co. et al., 15627–15629
Louisiana Generating, LLC, et al., 15629–15630
Environmental statements; notice of intent:
CNG Transmission Corp., 15630–15632
Hydroelectric applications, 15632–15633
Applications, hearings, determinations, etc.:
AIM Pipeline Co., 15623
Colorado Interstate Gas Co., 15624
Louisiana Generating, LLC, et al., 15624
National Fuel Gas Supply Corp., 15624
Overland Trail Transmission Co., 15624–15625
Southern Natural Gas Co. et al., 15625–15626
Trunkline Gas Co., 15626
Williams Energy Marketing & Trading Co., 15626
Wyoming Interstate Co., Ltd., 15626

Federal Maritime Commission
NOTICES
Ocean transportation intermediary licenses:
Samskip, Inc., 15641

Federal Mine Safety and Health Review Commission
NOTICES
Meetings; Sunshine Act, 15653–15654

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 15641–15642

Fish and Wildlife Service
NOTICES
Endangered and threatened species permit applications, 15645–15646
Environmental statements; availability, etc.:
Pacific Flyway; swan hunting seasons continuation, 15646

Food and Drug Administration
RULES
Food additives:
Adjuvants, production aids, and sanitizers—
Methyltin-2-mercaptoethyloleate sulfide, 15545–15547
NOTICES
Food additive petitions:
Procter & Gamble Co.; correction, 15645

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
NOTICES
Meetings:
National Bioethics Advisory Commission, 15642

Housing and Urban Development Department
NOTICES
Reports and guidance documents; availability, etc.:
Model building codes; HUD review; policy statement and final report, 15740–15794

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Business expenses; substantiation
Correction, 15547
Cafeteria plans; tax treatment, 15548–15553
PROPOSED RULES
Income taxes:
Cafeteria plans; tax treatment, 15587–15591

International Trade Administration
NOTICES
Antidumping:
Heavy forged hand tools from—
China, 15615
Export trade certificates of review, 15615–15617

International Trade Commission
NOTICES
Meetings; Sunshine Act, 15649

Justice Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15650

Labor Department
See Occupational Safety and Health Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Committees; establishment, renewal, termination, etc.:
Northwest and Front Range Resource Advisory Councils, 15646

Meetings:
Resource Advisory Councils—
Eastern Montana, 15647
New Mexico, 15646–15647
Motor vehicle use restrictions:
Colorado, 15647–15648
Public land orders:
California, 15648
Survey plat filings:
New Mexico, 15648

Mine Safety and Health Federal Review Commission
See Federal Mine Safety and Health Review Commission

National Archives and Records Administration
PROPOSED RULES
NARA facilities:
Public use; miscellaneous amendments, 15592–15599

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
American Fisheries Act; emergency implementation; correction, 15577–15578
Northeastern United States fisheries—
Northeast skates; overfished fisheries, 15576–15577
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15617–15618
Meetings:
Marine Fisheries Advisory Committee, 15618
Mid-Atlantic Fishery Management Council, 15618–15619

National Park Service
NOTICES
Meetings:
Kaloko-Honokohau National Historical Park Advisory Commission, 15648–15649

National Science Foundation
NOTICES
Meetings:
Computer and Information Science and Engineering Advisory Committee, 15654
Geosciences Special Emphasis Panel, 15654
Physics Special Emphasis Panel, 15654
Physiology and Ethology Advisory Panel, 15654–15655

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Duke Energy Corp., 15659–15660
Entergy Operations, Inc., 15660–15661
Southern Nuclear Operating Co., 15661–15663
Senior Executive Service:
Performance Review Boards; membership, 15663–15664
Applications, hearings, determinations, etc.:
Carolina Power & Light Co., 15655
Commonwealth Edison Co. et al., 15655–15656
FirstEnergy Nuclear Operating Co., 15656–15657
Maine Yankee Atomic Power Co. et al., 15657
Public Service Electric & Gas Co., 15657–15659

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15650–15652–15653

Office of United States Trade Representative
See Trade Representative, Office of United States

Pension and Welfare Benefits Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15653

Personnel Management Office
RULES
Prevailing rate systems, 15521
NOTICES
Excepted service:
Schedules A, B, and C; positions placed or revoked—
Update, 15664–15665

Presidential Documents
ADMINISTRATIVE ORDERS
Africa, southern; drawdown for emergency disaster assistance (Presidential Determination No. 2000-17 of March 2, 2000), 15797–15819
Narcotics; certification of major illicit drug producing and transit countries (Presidential Determination No. 2000-16 of February 29, 2000), 15821

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration

Reclamation Bureau
NOTICES
Environmental statements; availability, etc.:
Orange County, CA; groundwater replenishment system establishment, 15649

Research and Special Programs Administration
NOTICES
Hazardous materials:
Applications; exemptions, renewals, etc., 15682–15683

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 15672–15675
Municipal Securities Rulemaking Board, 15675–15678
National Association of Securities Dealers, Inc., 15678–15679
Applications, hearings, determinations, etc.:
Bankers Trust Co. et al., 15665–15667
Morgan Stanley Capital Investors, L.P., et al., 15667–15671

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
South Pacific Scholarship Program, 15679

Surface Mining Reclamation and Enforcement Office
RULES
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania, 15553–15558

Trade Representative, Office of United States
NOTICES
Meetings:
Trade and Environment Policy Advisory Committee, 15679–15680

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Research and Special Programs Administration

Treasury Department
See Customs Service
See Internal Revenue Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15683–15685
Meetings:
International Child Labor Enforcement Advisory Committee, 15685

Separate Parts In This Issue

Part II
Environmental Protection Agency, 15689–15737

Part III
Department of Housing and Urban Development, 15739–15794

Part IV
The President, 15795–15821

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Presidential Determination:
No. 2000–16 of February 29, 2000 15797
Presidential Determination:
No. 2000–17 of March 2, 2000 15821

5 CFR
532 15521

7 CFR
Proposed Rules:
205 15579
930 15580

9 CFR
94 15521

12 CFR
303 15526
362 15526

14 CFR
39 (4 documents) 15531, 15534, 15536, 15537
97 (3 documents) 15540, 15541, 15544
Proposed Rules:
39 15584
71 15586

21 CFR
178 15545

26 CFR
1 (2 documents) 15547, 15548
Proposed Rules:
1 15587

30 CFR
938 15553

33 CFR
100 15558

36 CFR
Proposed Rules:
1280 15592

40 CFR
63 15690

47 CFR
20 15559
22 15559
24 15559
76 15559
80 15559
90 15559
99 15559
Proposed Rules:
Ch. I 15599
73 15600

50 CFR
648 15576
679 15577

Rules and Regulations

Rules and Regulations

Federal Register
Vol. 65, No. 57
Thursday, March 23, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AJ05

Prevailing Rate Systems; Change in the Survey Cycle for the Orleans, LA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim rule that will change the timing of local wage surveys in the Orleans, Louisiana, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. This change will help even out the local wage survey workload for the Department of Defense and improve the amount and quality of data it collects during local annual wage surveys in the Orleans wage area.

DATES: This interim rule is effective on April 24, 2000. The Office of Personnel must receive comments by April 24, 2000.

ADDRESSES: Send or deliver comments to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200, or FAX: (202) 606–4264.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins, (202) 606–2848, FAX: (202) 606–0824, or email jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: The Department of Defense (DOD) requested that the Office of Personnel Management (OPM) change the timing of local wage surveys in the Orleans, LA, nonappropriated fund (NAF) Federal Wage System (FWS) wage area. Full-scale wage surveys currently begin in February of each odd-numbered fiscal year. Full-scale wage surveys will begin in the future in June of each even-numbered fiscal year. Under section 532.207 of title 5, Code of Federal Regulations, the scheduling of wage surveys takes into consideration the best timing in relation to wage adjustments in the principal local private enterprise establishments, reasonable distribution of workload of the lead agency, timing of surveys for nearby or selected wage areas, and scheduling relationships with other pay surveys.

DOD asked OPM to change the starting time for local wage surveys in the Orleans wage area to June of even fiscal years to help spread out its survey workload. In addition, this change will avoid annual Mardi Gras festivities in New Orleans during the month of February. DOD will next conduct a full-scale wage survey in the Orleans wage area in June 2000. DOD will update the data collected in the full-scale wage survey during a "wage change" survey in June 2001.

The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, recommended by consensus that we change the full-scale survey cycle for the Orleans NAF wage area from February of odd-numbered fiscal years to June of even-numbered fiscal years.

Waiver of Notice of Proposed Rulemaking and Delayed Effective Date

Under 5 U.S.C. 553(b)(3)(B), I find good cause to waive the general notice of proposed rulemaking. DOD and the local wage survey committee must begin preparations for the Orleans, LA, NAF wage area before a full-scale wage survey begins in June 2000.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

U.S. Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, the Office of Personnel Management is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix A to Subpart B of Part 532 [Amended]

2. Appendix B to Subpart B is amended by revising under the State of Louisiana the listing of beginning month of survey from "February" to "June" and the listing of fiscal year of full-scale survey from "odd" to "even" for the Orleans NAF wage area.

[FR Doc. 00–7141 Filed 3–22–00; 8:45 am]
BILLING CODE 6325–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 98–034–2]

RIN 0579–AA96

Importation of Poultry Meat and Other Poultry Products From Sinaloa and Sonora, Mexico

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning the importation of animal products to relieve certain restrictions on the importation of poultry meat and other poultry products from the Mexican States of Sinaloa and Sonora. Because of the existence of exotic Newcastle disease in Mexico, we have required poultry meat and other poultry products from Sinaloa and Sonora to be cooked, sealed, and packaged to certain specifications to be eligible for entry into the United States. This rule establishes new, less restrictive conditions for the

importation of poultry meat and other poultry products from Sinaloa and Sonora into the United States. This action is based on a risk assessment indicating that such importations will present a negligible risk of introducing exotic Newcastle disease into the United States.

EFFECTIVE DATE: April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Michael David, Senior Staff Veterinarian, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737; (301) 734–5034.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture (USDA) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

The regulations in part 94 pertain to, among other things, the importation of meat and other animal products into the United States. Section 94.6 of the regulations governs the importation of carcasses, or parts or products of carcasses, of poultry, game birds, or other birds from regions where exotic Newcastle disease (END) is considered to exist. Specifically, the regulations allow poultry carcasses, or parts or products of poultry carcasses, to be imported for consumption from regions where END is considered to exist if: (1) The poultry is packed in hermetically sealed containers and cooked by a commercial method after such packing to produce articles that are shelf stable without refrigeration; (2) the poultry is thoroughly cooked and appears to have a thoroughly cooked appearance throughout upon APHIS inspection at the port of arrival; or (3) the poultry is imported under permit after APHIS determines the importation as such will not constitute a risk of introducing or disseminating END into the United States.

On May 21, 1999, we published in the **Federal Register** (64 FR 27711–27717, Docket No. 98–034–1) a proposal to establish a new § 94.22 to allow the importation of poultry meat and other poultry products from the States of Sinaloa and Sonora, Mexico, under conditions less restrictive than provided in § 94.6. We based our proposed rule on information presented to APHIS by the Mexican Government in 1994 in a request to recognize the Mexican States of Sinaloa and Sonora as free of END, and on a site visit that APHIS officials made to Mexico in 1997 to verify that Sinaloa and Sonora had the veterinary infrastructure, disease control programs, diagnostic capabilities, and surveillance programs necessary to diagnose and prevent an introduction of END. Following the site visit, we performed a qualitative risk assessment on the importation of poultry meat and other poultry products from federally inspected slaughtering and processing plants in Sinaloa and Sonora. The qualitative risk assessment indicated that such importations would present a negligible risk of introducing END into the United States.

Based on the finding of negligible risk, we proposed to relieve restrictions on the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico. However, we proposed to allow the poultry meat and other poultry products to be imported only under certain conditions, to help prevent the possibility that poultry meat and other poultry products from poultry raised in regions of Mexico other than Sinaloa or Sonora could be exported to the United States via Sinaloa or Sonora. We wanted to prevent the following possibilities: That poultry from regions of Mexico other than Sinaloa or Sonora could be moved to Sinaloa or Sonora for slaughter, processing, and export to the United States; that poultry meat or other poultry products from other regions could be moved to Sinaloa or Sonora for export to the United States; or that, once leaving Sinaloa or Sonora, poultry meat or other poultry products from Sinaloa or Sonora could be commingled with poultry meat or other poultry products from other regions of Mexico in transit to the United States. We stated our belief that the proposed import conditions would provide a higher degree of safety against the occurrence of any of these scenarios.

In the proposed rule, we set forth (1) our reasons for believing that the importation of poultry meat and other poultry products from Sinaloa and Sonora could be accomplished safely under certain conditions; (2) the proposed import conditions for poultry meat and other poultry products from Sinaloa and Sonora; and (3) our basis for the proposed import conditions. The proposed import conditions follow:

1. The poultry meat or other poultry products must be derived from poultry that were born and raised in Sinaloa or Sonora and slaughtered in Sinaloa or Sonora at a federally inspected slaughter plant under the direct supervision of a full-time salaried veterinarian of the Government of Mexico, and the slaughter plant must be approved to export poultry meat and other poultry products to the United States in accordance with 9 CFR 381.196.

2. If processed in any manner, the poultry meat or other poultry products must be processed at a federally inspected processing plant in Sinaloa or Sonora under the direct supervision of a full-time salaried veterinarian of the Government of Mexico.

3. The poultry meat or other poultry products may not have been in contact with poultry from any State in Mexico other than Sinaloa and Sonora or from any other region not listed in § 94.6 as a region where END is not known to exist.

4. The foreign meat inspection certificate for the poultry meat or other poultry products (required by the Food Safety and Inspection Service, USDA, under 9 CFR 381.197) must be signed by a full-time salaried veterinarian of the Government of Mexico. The certificate must include statements that certify the above conditions have been met. The certificate must also show the seal number on the shipping container if a seal is required (see below).

5. In addition, if the poultry meat or other poultry products are going to transit any State in Mexico other than Sinaloa or Sonora, or any other region not listed in § 94.6 as a region where END is not known to exist, en route to the United States, a full-time salaried veterinarian of the Government of Mexico must apply serially numbered seals to the containers carrying the poultry meat or other poultry products at the federally inspected slaughter or processing plant in Sinaloa or Sonora, and the seal numbers must be recorded on the foreign meat inspection certificate.

6. Prior to its arrival in the United States, the shipment of poultry meat or other poultry products may not have been in any State in Mexico other than Sinaloa or Sonora or in any other region not listed in § 94.6 unless the poultry meat or poultry products have remained under seal until arrival at the U.S. port and either (1) the numbers on the seals match the numbers on the foreign meat inspection certificate or (2) if the numbers on the seals do not match the numbers on the foreign meat inspection certificate, an APHIS representative at the port of arrival is satisfied that the poultry meat or poultry products were not contaminated during movement to the United States.

We solicited comments concerning our proposal for 60 days ending July 20, 1999. We received 14 comments by that date. They were from an association representing U.S. veterinarians, three associations representing the U.S. poultry industry, several associations representing the Mexican poultry industry, and one individual. The comments are discussed below by topic.

Eggs and Egg Products

Nine commenters supported the proposed rule but requested that APHIS clarify under what conditions eggs and egg products from Sinaloa and Sonora are eligible for importation into the United States. They also asked if the proposed rule relieved restrictions on the importation of eggs and egg products from Sinaloa and Sonora. One commenter requested that we include new conditions for importing eggs and egg products from Mexico in our proposal.

The proposed rule did not alter or otherwise affect the restrictions currently in place for eggs and egg products from Mexico. While our use of the term "poultry meat and other poultry products" in our proposal could be construed to include eggs and egg products, it was not our intent to allow eggs and egg products to be imported from Sinaloa and Sonora under conditions less restrictive than those currently in place. Further, our risk assessment did not take into account the risk associated with eggs and egg products, nor did we develop any new conditions specific to the importation of eggs and eggs products for this rule.

Because *Salmonella enteriditis* phage-type 4 is considered to exist in Mexico, eggs from any Mexican State, including Sinaloa and Sonora, may only be imported into the United States in accordance with the conditions contained in § 94.6(d) of the regulations. We are currently reviewing our *S. enteriditis* regulations, and should we determine that changes are warranted, we will publish a proposed rule in the **Federal Register** for comment.

Food Safety and Oversaturation of the U.S. Poultry Market

One commenter opposed the proposed rule based on concerns about food safety and the potential for oversaturating the U.S. poultry market. He cited concern about the potential for poultry meat and other poultry products from Sinaloa and Sonora to carry Salmonella, Listeria spp., and Campylobacter. The commenter suggested that poultry from Mexico should be clearly labeled in stores so it is not confused with poultry raised in the United States. The commenter also stated that there is little need for imports of poultry and eggs from Mexico, considering that the United States is experiencing an egg surplus and spent fowl with little or no market.

APHIS regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. Our chief responsibility is to safeguard American agriculture from foreign animal diseases. However, no poultry meat or other poultry products from Sinaloa or Sonora are eligible to enter into U.S. commerce until USDA's Food Safety and Inspection Service (FSIS) has approved such imports. Issues related to food safety and poultry imports from Mexico will be addressed by FSIS if and when FSIS approves such imports. Product labeling also falls under the jurisdiction of FSIS.

As stated earlier, we are not amending the restrictions currently in place for eggs from Mexico in this rule. Further, by amending the regulations regarding the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, as requested by the Government of Mexico, APHIS has acted in accordance with trade agreements entered into by the United States, including the North American Free Trade Agreement and the Uruguay Round of the General Agreement on Tariffs and Trade. APHIS is bound under these agreements to relieve restrictions on foreign imports of animals and animal products, if requested to do so, if we determine that decreased restrictions on imports will not result in a significant risk of introducing foreign animal diseases into the United States, regardless of the domestic need for such imports.

Compliance With the Regulations

Four commenters supported our proposal provided we could ensure compliance with the proposed regulations. In addition, one commenter stated that if APHIS amends the regulations to allow poultry meat and other poultry products from Sinaloa and Sonora to be imported into the United States under the conditions described in our proposal, APHIS should conduct an ongoing monitoring, evaluation, and verification program to ensure compliance with the regulations.

We will inspect shipments of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, upon arrival in the United States to review the foreign meat inspection certificate and to check the seals on containers. However, we do not intend to conduct a more rigorous monitoring, evaluation, and verification program because, as stated in our proposal and in this document, we believe both Sinaloa and Sonora have the veterinary infrastructure, disease control programs, diagnostic capabilities, and surveillance programs necessary to diagnose and prevent an introduction of END. It is in both States' interest to take measures necessary to prevent an outbreak of END and to comply with APHIS regulations. Should APHIS determine that poultry meat or other poultry products from Sinaloa or Sonora have not met all the conditions of this rule, the poultry meat or other poultry products will be refused entry into the United States.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with 5 U.S.C. 604, we have performed a final regulatory flexibility analysis regarding the economic effect of this rule on small entities. This analysis also provides a cost-benefit analysis.

In accordance with 21 U.S.C. 111, the Secretary of Agriculture is authorized to promulgate regulations to prevent the introduction or dissemination of the contagion of any contagious, infectious, or communicable disease of animals from a foreign country into the United States.

This final rule relieves certain restrictions on the importation of poultry meat and other poultry products from the States of Sinaloa and Sonora, Mexico, by establishing new conditions for the importation of poultry meat and other poultry products from Sinaloa and Sonora into the United States.

Currently, no poultry slaughter facilities in the States of Sinaloa or Sonora are approved by the Food Safety and Inspection Service (FSIS) of the U.S. Department of Agriculture to export poultry meat or other poultry products to the United States. Poultry processing facilities in Sinaloa and Sonora will need FSIS approval prior to exporting poultry meat or other poultry products to the United States. Further, based on the following analysis, we anticipate that, if and when Mexican facilities receive FSIS approval to export poultry meat or other poultry products to the United States, the economic effect

of those imports on U.S. producers and processors will be minimal.

As part of our analysis, we compared the expected benefits of importing poultry meat and other poultry products from Sinaloa and Sonora to the expected costs resulting from a possible disease outbreak. A qualitative risk assessment prepared by APHIS indicates that the expected costs of disease introduction are likely to be zero, as the imports pose a low probability of causing an outbreak of exotic Newcastle disease (END) in the United States.

The benefits of allowing poultry imports from Sinaloa and Sonora under less restrictive conditions are calculated as the net change in consumer and producer surplus that results from the estimated volume of trade. Assuming that, among other things, poultry meat and other poultry products from Sinaloa and Sonora will be a perfect substitute for domestic poultry meat and other poultry products, it is estimated that the net benefits of the imports will be positive. Allowing importations of poultry meat and other poultry products from Sinaloa and Sonora will cause U.S. farm gate prices to decrease marginally, benefiting U.S. consumers.

Our economic analysis examines the potential economic effects of such imports under low- (100 metric tons per year), medium- (1,000 metric tons per year), and high- (5,000 metric tons per year) volume scenarios. We chose these levels because 5,000 metric tons is the highest volume of poultry meat Mexico has ever exported to the world. Further, recently, there have been years when Mexico has exported no poultry meat. Therefore, we used the above import level scenarios based on Mexico's poultry export history.

For the low-volume scenario, consumer surplus is estimated to increase by $67,172 (1996 dollars) and producer surplus would decrease by $67,166, resulting in a net annual benefit of $6. The price of poultry would fall by $0.006 per metric ton. The medium-volume scenario shows an increase in consumer surplus of $671,734, a decrease in producer surplus of $671,645, and a net benefit of $89. The price of poultry would decrease by $0.063 per metric ton. Under the high-volume scenario, consumer surplus would rise by $3,358,942, and producer surplus would fall by $3,357,902, for a net benefit of $1,040. Poultry prices would decrease by $0.30 per metric ton. It is apparent that expected economic effects are very small for each of the scenarios.

The United States Poultry Market

Since the mid-1960s, there have been dramatic changes in the market structure, production technology, and retail marketing of broiler products. Production efficiency has been increased by continuing improvements in genetics, nutrition, housing, equipment, disease control, and management. Improved production efficiency is demonstrated in the reduction of feed and time required for producing a broiler chicken. Growing a 4.5 lb. broiler in 1940 required 14 weeks and 4 pounds of feed per pound of live bird. Today, the same size bird can be produced in 6.5 weeks with less than 2 pounds of feed per pound of bird.

Managerial decisionmaking has shifted from single proprietorship farming operations to vertically integrated poultry producing-processing-marketing firms, in which production and marketing decisions are centralized in a single entity that is either owned directly or controlled through contracts.

Improvement in poultry house technology enables producers to raise chickens in large confinement units throughout the year, resulting in increased production efficiency and consequent reductions in production cost. By 1995, almost all (99 percent) broilers were produced by vertically integrated companies. In 1978, in the United States, the four largest broiler companies controlled 21.4 percent of national production, and the eight largest broiler companies controlled 36 percent. By 1998 the four largest companies produced approximately 47 percent of national production, while the eight largest companies produced about 63 percent.

The potential economic effects of the importation of poultry meat and other poultry products from the Mexican States of Sinaloa and Sonora on national, regional, and local poultry producers are dependent on a number of factors, such as where the products will be consumed in the United States. While it is currently unknown exactly how poultry meat and other poultry products from Sinaloa and Sonora will enter U.S. marketing and distribution channels and where they would ultimately be consumed, it is likely that they will be shipped by truck through Nogales, AZ. Other U.S. States in the region that could receive poultry from Sinaloa and Sonora are California, New Mexico, and Texas. It is unclear whether poultry from Sinaloa and Sonora will be consumed only in these four States. If poultry from Sinaloa and Sonora were purchased by a local retail chain or wholesaler, it would likely be consumed regionally. If it were purchased by a national wholesaler, it could be consumed anywhere in the United States. The effect on small producers will be more pronounced if Sinaloa and Sonora imports affect only California, Arizona, New Mexico, and Texas producers. For the purpose of this analysis, we examined both the possibility that poultry meat and other poultry products from Sinaloa and Sonora will be consumed locally in these four southwestern States and also the possibility that they will enter national distribution channels.

The Small Business Administration (SBA) defines small poultry farms (Standard Industrial Code 0251) as those earning less than $500,000 in annual sales, except for sales of chicken eggs. Industry experts suggest that only those poultry operations producing in excess of 270,000 broiler chickens earn $500,000 or more in sales annually.

According to the SBA definition, at least 99 percent of poultry farms in Arizona, New Mexico, and Texas and 97 percent of poultry farms in California are small entities. There were 1,241 small poultry farms in the four States in 1997; and only 4 farms with estimated annual revenues greater than $500,000. For the United States as a whole, in 1997, there were an estimated 10,289 small poultry farms. Although some structural changes may have occurred among broiler producers since the 1997 Census of Agriculture, it can be assumed that poultry farms remain predominantly small entities.

According to the Census of Agriculture, in 1997, Texas' average sales by small poultry farms ($75,294) were higher than the national average ($62,714), while sales in California were lower ($46,855). There are no comparable data for Arizona's and New Mexico's poultry farmers.

Whether we consider the United States as a whole or only selected southwestern States, the overwhelming majority of poultry farms are small entities. It is reasonable to conclude that, if U.S. poultry producers are affected by this rule, a substantial number will be small entities.

Economic Effects on Small Entities

There is no general rule that sets threshold or trigger levels for "significant economic impact;" however, it has been suggested that an economic effect that equals a small business' profit margin—5 to 10 percent of annual sales—could be considered significant.[1]

[1] Verkuil, *Duke Law Journal*, 1982.

We used estimated changes in producer surplus together with the 1997 Census of Agriculture data on poultry inventories and poultry sales to develop very rough estimates of the economic effects of this rule on small poultry farmers across the United States and in selected southwestern States. To do this, we assumed that losses in producer surplus are shared equally among all poultry farms in the geographic area under consideration (either the entire United States or selected southwestern States). We then compared per farm changes in producer surplus with small farms' annual sales to determine whether the economic effects approached the 5–10 percent threshold.

If poultry meat and other poultry products from Sinaloa and Sonora enter national distribution channels and, therefore, economic effects are shared by all U.S. producers, there will not be a significant economic effects on small entities no matter which level (low, medium, or high volume) of imports is assumed. Producer surplus losses per U.S. poultry farm will range from $2 to $103 per year, and these amounts are substantially less than 1 percent of the typical small poultry farmer's annual sales in every scenario.

If, under the high-volume scenario, the maximum 5,000 metric tons are imported annually from Sinaloa and Sonora and consumed locally in Arizona, California, New Mexico, and Texas, there likely will not be a significant economic effect on small entities no matter which level (low, medium, or high volume) of imports is assumed. Producer surplus losses per poultry farm in the selected southwestern States will range from $10 to $488 per year, and these amounts are less than 1 percent of the typical small California or Texas poultry farmer's annual sales in every scenario. Since we have no data available on sales in Arizona and New Mexico, we cannot determine the effect of this rule on producers in those States.

A substantial number (99 percent) of U.S. broiler farms meet the SBA size criteria for designation as small entities. However, this rule is not likely to have a significant economic effect on them. Even under the high-volume import assumption, there will not be a significant economic effect on small U.S. poultry farms, no matter where the Mexican poultry is imported and consumed. Under the most extreme assumptions (imports of 5,000 metric tons and limited geographic area affected), small poultry producers in California and Texas will experience losses in producer surplus equaling less than 1 percent of annual sales, which does not meet the suggested criteria for significant economic effect. Further, we expect that this action will have a similar effect on small poultry producers in Arizona and New Mexico, though we do not have the data to confirm this.

It is very unlikely that a volume of 5,000 metric tons of poultry meat or other poultry products will be exported from Sinaloa and Sonora to the United States since Mexico is not a major exporter of poultry meat or other poultry products. Mexico had yearly world exports of 5,000 metric tons of poultry meat and poultry products in 1990, 1991, and 1992. However, in 1993, 1994, 1995, Mexico exported no poultry meat and other poultry products, and since 1996 has exported less than 1,000 metric tons of poultry meat and other poultry products annually.

Further, even under the high-volume scenario (5,000 metric tons), Mexico's exports to the United States represent less than .05 percent of total U.S. poultry production (over 14 million metric tons in 1997).

Alternatives Considered

In developing this rule, we considered: (1) Making no changes to the existing regulations governing the importation of poultry meat and other poultry products from Sinaloa or Sonora, Mexico; (2) allowing the importation of poultry meat and other poultry products from Sinaloa and Sonora under conditions different from those set forth in this document; or (3) allowing the importation of poultry and poultry products from Sinaloa and Sonora under the conditions set forth in this document.

We rejected the first alternative because poultry meat and other poultry products from Sinaloa and Sonora appear to present little risk of introducing END into the United States, and taking no action would not be scientifically defensible and would be contrary to trade agreements entered into by the United States. We also rejected the second alternative, which would allow the importation of poultry meat and other poultry products from Sinaloa and Sonora under conditions other than those set forth in this document. In developing the criteria for the importation of such poultry meat and other poultry products, we determined that conditions less stringent than those set forth would present a risk of the introduction of END into the United States via poultry meat or other poultry products from regions of Mexico other than Sinaloa or Sonora. We further concluded that more stringent conditions would be unnecessarily restrictive.

We consider the conditions set forth by this rule to be both effective and necessary in ensuring that the risk of END introduction via poultry meat and other poultry product imports from Sinaloa and Sonora remains at a negligible level.

This rule contains various recordkeeping requirements, which were described in our proposed rule, and which have been approved by the Office of Management and Budget.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico, under the conditions specified in this rule will not present a significant risk of introducing or disseminating END into the United States and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969, as amended (NEPA) (42 U.S.C. 4321 *et seq.*), (2) regulations of the Council on Environmental Quality for implementing the procedural provisions of NEPA (40 CFR parts 1500–1508), (3) USDA regulations implementing NEPA (7 CFR part 1b), and (4) APHIS' NEPA Implementing Procedures (7 CFR part 372).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect copies are requested to call ahead on (202) 690–2817 to facilitate entry into the reading room. In

addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB) under OMB control number 0579–0144.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.2(d).

2. A new § 94.22 is added to read as follows:

§ 94.22 Importation of poultry meat and other poultry products from Sinaloa and Sonora, Mexico.

Notwithstanding any other provisions of this part, poultry meat and other poultry products from the States of Sinaloa and Sonora, Mexico, may be imported into the United States under the following conditions:

(a) The poultry meat or other poultry products are derived from poultry born and raised in Sinaloa or Sonora and slaughtered in Sinaloa or Sonora at a federally inspected slaughter plant under the direct supervision of a full-time salaried veterinarian of the Government of Mexico, and the slaughter plant must be approved to export poultry meat and other poultry products to the United States in accordance with 9 CFR 381.196.

(b) If processed, the poultry meat or other poultry products were processed in either Sinaloa or Sonora, Mexico, in a federally inspected processing plant that is under the direct supervision of a full-time salaried veterinarian of the Government of Mexico.

(c) The poultry meat or other poultry products have not been in contact with poultry from any State in Mexico other than Sinaloa or Sonora or with poultry from any other region not listed in § 94.6 as a region where exotic Newcastle disease is not known to exist.

(d) The foreign meat inspection certificate accompanying the poultry meat or other poultry products (required by 9 CFR 381.197) includes statements certifying that the requirements in paragraphs (a), (b), and (c) of this section have been met and, if applicable, listing the numbers of the seals required by paragraph (e)(1) of this section.

(e) The shipment of poultry meat or other poultry products has not been in any State in Mexico other than Sinaloa or Sonora or in any other region not listed in § 94.6 as a region where exotic Newcastle disease is not known to exist, unless:

(1) The poultry meat or other poultry products arrive at the U.S. port of entry in shipping containers bearing intact, serially numbered seals that were applied at the federally inspected slaughter plant by a full-time salaried veterinarian of the Government of Mexico, and the seal numbers correspond with the seal numbers listed on the foreign meat inspection certificate; or

(2) The poultry meat or other poultry products arrive at the U.S. port of entry in shipping containers bearing seals that have different numbers than the seal numbers on the foreign meat inspection certificate, but, upon inspection of the hold, compartment, or container and all accompanying documentation, an APHIS representative is satisfied that the poultry containers were opened and resealed en route by an appropriate official of the Government of Mexico and the poultry meat or other poultry products were not contaminated or exposed to contamination during movement from Sinaloa or Sonora to the United States.

Done in Washington, DC, this 20th day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–7211 Filed 3–22–00; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303 and 362

RIN 3064–AC38

Activities and Investments of Insured State Banks

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Interim final rule; request for comment.

SUMMARY: The FDIC is adopting a rule on an interim basis to implement certain provisions of the Gramm-Leach-Bliley Act. The interim final rule impacts the FDIC's rules and regulations governing activities and investments of insured state banks. Under the rule, FDIC insured state nonmember banks must file a notice before they may conduct activities as principal through a subsidiary that a national bank can conduct only in a financial subsidiary. State nonmember banks must comply with four requirements to carry out these activities. Also, state nonmember banks along with their insured depository institution affiliates must have received a rating of not less than satisfactory under the Community Reinvestment Act. Under the rule, the FDIC may impose standards and prudential safeguards to insulate the bank from liability for activities of the subsidiary.

DATES: The interim final rule is effective March 11, 2000. Comments must be received by May 22, 2000.

ADDRESSES: Send written comments to Robert E. Feldman, Executive Secretary, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. Fax number (202) 898–3838; Internet Address: comments @fdic.gov. Comments may be inspected and photocopied in the FDIC Public Information Center, Room 100, 801 17th Street, N.W., Washington, D.C. 20429, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Curtis Vaughn, Examination Specialist ((202) 898–6759), Division of Supervision; Linda L. Stamp, Counsel ((202) 898–7310) or Janet V. Norcom, Counsel ((202) 898–8886), Legal Division, FDIC, 550 17th Street, N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Financial Subsidiary Activities

On November 12, 1999, President Clinton signed the Gramm-Leach-Bliley Act (G–L–B Act) (Pub. L. 106–102) into law. Section 121(d) of the G–L–B Act amended the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1811 *et seq.*) by adding a new section 46 (12 U.S.C. 1831w). New section 46(a) of the FDI Act provides that an insured state bank may control or hold an interest in a subsidiary that engages as principal in activities that would be permissible for a national bank to conduct only through a "financial subsidiary," subject to certain conditions.

A financial subsidiary is a new type of subsidiary for national banks, governed by new section 5136A of the Revised Statutes as created under section 121(a) of the G–L–B Act. Section 5136A permits a financial subsidiary to engage in specified, newly authorized activities that are financial in nature and in activities that are incidental to financial activities if the bank and the subsidiary meet certain requirements and comply with stated safeguards. A financial subsidiary also may combine these financial subsidiary activities with activities that are permissible for national banks to engage in directly. The financial subsidiary activities include many of the activities which are authorized for the new "financial holding companies" as laid out in new section 4(k) of the Bank Holding Company Act (BHCA) (12 U.S.C. 1841 *et seq.*) as created by section 103(a) of the G–L–B Act. Section 5136A also permits the Secretary of the Treasury (in consultation with the Board of Governors of the Federal Reserve System) to determine that additional activities are authorized for a financial subsidiary.

A state bank seeking to engage as principal in a financial subsidiary activity under section 46(a) must comply with four conditions listed in section 46(a) itself. In addition, section 103(a) of the G–L–B Act added a new subsection (4)(l)(2) to the BHCA (12 U.S.C. 1843(l)(2)), which contains a mandatory Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) requirement enforceable by the FDIC. This differs from the situation before enactment of the G–L–B Act, when some of these activities were impermissible for a national bank and the FDIC reviewed such activities under section 24 of the FDI Act (12 U.S.C. 1831a) as implemented in part 362 of the FDIC's rules and regulations. Among other things, section 24 provides that a state bank subsidiary may not engage as principal in activities which are not permissible for a subsidiary of a national bank, unless the state bank meets its applicable capital requirements and the FDIC determines that the activity does not pose a significant risk to the appropriate deposit insurance fund.

Certain activities which the FDIC has addressed under subpart A of part 362, such as general securities underwriting, are now authorized for a financial subsidiary of a national bank. This means such activities will now be analyzed under section 46(a), and the restrictions the FDIC previously outlined in subpart A of part 362 will not apply to new state bank subsidiaries (or to existing state bank subsidiaries engaging in new financial activities). Existing state bank subsidiaries are grandfathered by section 46(b). 12 U.S.C. 1831w(b).

Where section 5136A of the Revised Statutes specifically prohibits financial subsidiaries from engaging in certain activities as principal, such as real estate development or investment, these activities are outside the scope of section 46(a) and will continue to be dealt with under section 24 and subpart A of part 362. Also, as the Secretary of the Treasury exercises his or her authority in the future to determine that additional activities are authorized for a financial subsidiary, such activities will cease being governed by section 24 or subpart A of part 362, and will begin being governed by section 46(a).

II. Status of Rulemakings Addressing State Bank Activities

Among other things, subpart B of part 362 creates safety and soundness guidelines for an insured state nonmember bank subsidiary which engages in real estate investment activities that would be permissible for a subsidiary of a national bank but not permissible for a national bank directly. On December 1, 1998, the FDIC proposed an amendment to subpart B that would have added safety and soundness guidelines to govern an insured state nonmember bank subsidiary which engages in the public sale, distribution or underwriting of stocks, bonds, debentures, notes or other securities activity that would be permissible for a subsidiary of a national bank but not permissible for a national bank directly.[1] These real estate and securities provisions were intended to address pending or approved applications under regulations issued by the Office of the Comptroller of the Currency (OCC) which permitted national banks to request OCC approval to engage in certain activities through subsidiaries, even though the activities were not permissible for the national bank itself.[2] In an effort to be proactive in terms of future approvals of activities by the OCC under these regulations, the FDIC also sought comment on a requirement that a notice be filed with the FDIC before an insured state nonmember bank subsidiary engages in any other activity permissible for a subsidiary of a national bank that is not permissible for the parent national bank directly. Now that the OCC is proposing to eliminate its regulations and the G–L–B Act, through section 5136A and section 46(a), has established a new analytical framework, the FDIC will not be pursuing these amendments to subpart B.

The FDIC's December 1, 1998 proposal to amend subpart B also included a proposal to consolidate the remaining provisions of the FDIC's securities activities regulation, § 337.4, into subpart B. In light of the changes made as a result of the G–L–B Act, these revisions will be technical in nature. The FDIC will deal with those aspects of its proposal when the FDIC finalizes the interim final rule adopted in this rulemaking, or at a later time.

The interim final rule adopted in this rulemaking establishes conditions and procedures that apply when a subsidiary of a state nonmember bank seeks to engage as principal in financial activities as authorized under section 46(a). The interim rule contains a general provision advising state nonmember banks of the inapplicability of subpart A of part 362, but the FDIC has not published revised regulatory text modifying subpart A provisions addressing those financial activities which are now addressed by section 46(a). When the FDIC adopts a final version of the interim final rule proposed in this rulemaking, the FDIC will revise current subpart A of part 362 to modify treatment of those activities, such as securities underwriting, which will now be treated under section 46(a) rather than section 24 and subpart A. Also, the real estate provisions of subpart B of part 362 are no longer of any effect, and will be removed. The FDIC invites public comment on such revisions.

[1] 63 FR 66339 (December 1, 1998).

[2] Part 5 of the OCC's regulations governs operating subsidiaries. Section 5.34(f), which confirmed that there could be activities not permissible for a national bank itself that could be conducted by an operating subsidiary, has been superseded. The OCC is currently proposing to eliminate that section of its rule. 65 FR 3157 (January 20, 2000).

III. Description of the Interim Final Rule

The implementation of section 46(a) is lodged in a new subpart E of part 362. Section 362.16 sets out the purpose and scope of the subpart, including the scope of the activities covered. Subpart E will apply to any "financial subsidiary activity," which is defined as an activity which has been authorized for a financial subsidiary of a national bank under section 5136A of the Revised Statutes and which may be conducted by a national bank only through a financial subsidiary. Similar to subpart A of part 362, the purpose and scope section also clarifies what is meant by "as principal" activities, and specifies that the financial subsidiary activity also must be in conformance with other applicable state and federal law.

Sections 362.18(a)–(c) reiterate the four statutory conditions applicable to financial subsidiary activities under section 46(a) as well as the mandatory CRA requirement under section 4(l) of the BHCA. Section 362.18(a) also provides the FDIC with a mechanism which gives the FDIC an opportunity to impose safety and soundness constraints or prudential safeguards on insured state nonmember bank subsidiaries that engage in financial subsidiary activities as principal. If a bank meeting the statuory requirements chooses to engage in such activities, then the bank must file a notice with the FDIC 30 days before the bank's subsidiary may engage in such activities. If the FDIC does not object, the bank's subsidiary may commence the activity. This 30-day advance notice is designed to allow the FDIC time to review the activity and consider whether safety and soundness considerations make it prudent that additional conditions be placed on the conduct of the activity.

The four statutory conditions contained in section 46(a) and reiterated in § 362.18(a) are:

- Each insured depository institution affiliate of the state bank must be well capitalized, and the state bank must be well capitalized after deducting the bank's investment, including retained earnings, in all subsidiaries engaged in financial subsidiary activities as principal.
- The state bank must disclose the capital deduction and the separate assets and liabilities of the subsidiary in any published financial statement.
- The state bank must comply with the financial and operational safeguards required by section 5136A(d) of the Revised Statutes of the United States, which require operational safeguards to separate the bank from the risks of the subsidiary.
- The state bank must comply with sections 23A and 23B of the Federal Reserve Act as amended by section 121(b) of the G–L–B Act, requiring certain transactional restrictions to be observed.

Section 362.18(b) provides that the bank must comply with the above requirements at the time of filing of its notice and continue to comply with these four requirements as long as the bank's subsidiary is engaged in the financial activity. In addition, as specified in § 362.18(c), a subsidiary of an insured state nonmember bank may not commence any financial subsidiary activity as principal if the state bank or any of the state bank's insured depository institution affiliates has received at each one's most recent examination a CRA rating of less than a satisfactory record of meeting community credit needs.[3]

The prior notice procedure under § 362.18 will give the FDIC an opportunity to review a state nonmember bank's proposal and, if necessary, impose additional prudential safeguards to insulate the bank from liability for the activities of the subsidiary. The FDIC holds authority to impose such safeguards under the FDIC's supervisory authority in section 8 of the FDI Act (12 U.S.C. 1818). In addition, section 114(c) of the G–L–B Act (12 U.S.C. 1828a(c)) confirms the FDIC's prudential authority to govern the relationships or transactions between a state nonmember bank and its subsidiaries. Although one of the four conditions imposed by section 46(a) itself requires the bank to have financial and operational safeguards to separate the bank from risks of the subsidiary, the FDIC believes that it is still necessary that the FDIC review the activities that state nonmember banks propose to undertake to evaluate whether the bank's financial and operational safeguards are sufficient. The financial and operational safeguard requirement in section 46(a) cross-references to the same requirement as imposed on financial subsidiaries of national banks under section 5136A(d) of the Revised Statutes, but the OCC has not released any guidance or interpretations of these financial and operational safeguards. The FDIC's review is likely to be especially important in the area of securities underwriting. The FDIC has a long history of imposing prudential safeguards to protect the bank from liability from subsidiaries and affiliates that engage in securities underwriting.[4]

Section 362.18(d) incorporates the grandfather provided under section 46(b), permitting insured state banks to retain their interests in subsidiaries lawfully held before the date of enactment of the G–L–B Act. Section 362.18(d) also clearly states that state banks may not apply to the FDIC under section 24 or subpart A of part 362 (as well as § 337.4 of the FDIC's rules) for approval to engage in a financial subsidiary activity subject to restrictions different than are contemplated under section 46.

The FDIC also has amended its notice processing rules at 303.122(a) to add a reference to the new notices required by the interim final rule.

IV. Administrative Procedure Act

The FDIC will make this interim final rule effective on March 11, 2000 without first reviewing public comments. Pursuant to 5 U.S.C. 553, the FDIC finds that it is impracticable to review public comments prior to the effective date of the interim final rule, and that there is good cause to make the interim rule effective on March 11, 2000, due to the fact that the rule sets forth procedures to implement statutory changes that will become effective on March 11, 2000. The FDIC is seeking public comment on all aspects of the interim final rule and will amend the rule as appropriate after reviewing the comments. The FDIC is specifically seeking comment on whether the FDIC should set forth specific standards applicable to activities conducted under the new section 46 of the FDI Act as it has done in subpart A with respect to activities conducted under section 24 of the FDI Act.

V. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the FDIC may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collection of information contained in this rule has been submitted to OMB for review. OMB will take action within 60 days of this **Federal Register** publication. The FDIC will publish notice if OMB takes an action other than approval of the collection. The FDIC invites comment on:

(1) Whether the collection of information contained in the regulation is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility;

(2) The accuracy of the estimate of the burden of the information collection;

(3) Ways to enhance the quality, utility, and clarity of the information to be collected;

(4) Ways to minimize the burden of the information collections on respondents, including the use of automated collection techniques or other forms of information technology; and

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

For further information on the Paperwork Reduction Act aspect of this rule, contact Steven F. Hanft at FDIC Clearance Officer, Office of the Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, N.W., Washington, D.C. 20429, (202) 898–3907.

Title of the collection: The interim final rule modifies an information collection previously approved by OMB titled "Activities and Investments of Insured State Banks" under control number 3064–0111.

Summary of the collection: Generally, the collection includes the description of the activity in which an insured state bank or its subsidiary proposes to engage that would be impermissible absent the FDIC's consent or nonobjection, and information about the relationship of the activity to the bank's and/or subsidiary's operation and compliance with applicable laws and regulations.

Need and Use of the information: The FDIC uses the information to determine whether to grant consent or provide a nonobjection for the insured state bank or its subsidiary to engage in the activity that otherwise would be impermissible. The FDIC's uses its authority under section 8 of the FDI Act and 12 CFR part 362.

Changes to the collection: The interim final rule will modify the collection by adding at § 362.18(a) the requirement of a notice to the FDIC before the state nonmember bank engages through a subsidiary in activities that are authorized for a financial subsidiary of a national bank under section 5136A of the Revised Statutes but are not permissible for the national bank itself. The contents of the notice are described at § 303.121(b).

Respondents: Banks or their subsidiaries desiring to engage in activities that would be impermissible absent the FDIC's consent or nonobjection.

Estimated annual burden resulting from this rulemaking:

Frequency of response: Occasional.

Number of responses: 1.

Average number of hours to prepare a response: 8 hours.

Total annual burden: 8 hours.

VI. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the FDIC certifies that this interim final rule will not have a significant economic impact on a substantial number of small entities. As noted above in connection with the Paperwork Reduction Act, the FDIC estimates that the incidences in which insured state nonmember banks will be required to file a notice under the rule will be infrequent and will not require significant time to complete. Furthermore, the interim final rule streamlines requirements for insured state nonmember banks. It simplifies the requirements that apply when insured state nonmember banks conduct certain activities through subsidiaries. Whenever possible, the interim final rule clarifies the expectations of the FDIC when it requires notices or applications to consent to activities by insured state banks. The interim final rule also will make it easier for small insured state banks to locate the rules that apply to their investments.

VII. Assessment of Impact of Federal Regulation on Families

The FDIC has determined that this regulation will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Pub. L. 105–277, 112 Stat. 2681).

VIII. Congressional Review Act

The OMB has determined that this interim final rule is not a "major rule" within the meaning of the Congressional Review Act (5 U.S.C. 801 *et seq.*). The FDIC will file the appropriate reports with Congress and the General Accounting Office so that this interim final rule can be reviewed.

List of Subjects

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Banks, banking, Bank deposit insurance, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 362

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, banking, Insured depository institutions, Investments, Reporting and record keeping requirements, Savings associations.

For the reasons set forth above and under the authority of 12 U.S.C. 1819(a)(Tenth), the FDIC Board of Directors hereby amends 12 CFR chapter III as follows:

PART 303—FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817, 1818, 1819 (Seventh and Tenth), 1820, 1823, 1828, 1828a, 1831a, 1831e, 1831o, 1831p-1, 1831w, 1835a, 1843(l), 3104, 3105, 3108; 3207; 15 U.S.C. 1601–1607.

2. Section 303.120 is revised to read as follows:

§ 303.120 Scope.

This subpart sets forth procedures for complying with notice and application requirements contained in subpart A of part 362 of this chapter, governing insured state banks and their subsidiaries engaging in activities which are not permissible for national banks and their subsidiaries. This subpart sets forth procedures for complying with notice and application requirements contained in subpart B of part 362 of this chapter, governing certain activities of insured state nonmember banks, their subsidiaries, and certain affiliates. This subpart also sets forth procedures for complying with the notice requirements contained in subpart E of part 362 of this chapter, governing subsidiaries of insured state nonmember banks engaging in certain financial activities.

3. Section 303.121 is revised to read as follows:

§ 303.121 Filing procedures.

(a) *Where to file.* A notice or application required by subparts A, B or E of part 362 of this chapter shall be submitted in writing to the appropriate regional director (DOS).

(b) *Contents of filing.* A complete letter notice or letter application shall include the following information:

(1) *Filings generally.*—(i) A brief description of the activity and the manner in which it will be conducted;

(ii) The amount of the bank's existing or proposed direct or indirect investment in the activity as well as calculations sufficient to indicate compliance with any specific capital ratio or investment percentage

[3] This prohibition is required by section 4(l)(2) of the BHCA as enacted in section 103(a) of the G–L–B Act which is to be codified at 12 U.S.C. 1843(l)(2).

[4] See 12 CFR 337.4.

limitation detailed in subparts A, B or E of part 362 of this chapter;

(iii) A copy of the bank's business plan regarding the conduct of the activity;

(iv) A citation to the state statutory or regulatory authority for the conduct of the activity;

(v) A copy of the order or other document from the appropriate regulatory authority granting approval for the bank to conduct the activity if such approval is necessary and has already been granted;

(vi) A brief description of the bank's policy and practice with regard to any anticipated involvement in the activity by a director, executive office or principal shareholder of the bank or any related interest of such a person; and

(vii) A description of the bank's expertise in the activity.

(2) [Reserved]

(3) *Copy of application or notice filed with another agency.* If an insured state bank has filed an application or notice with another federal or state regulatory authority which contains all of the information required by paragraph (b)(1) of this section, the insured state bank may submit a copy to the FDIC in lieu of a separate filing.

(4) *Additional information.* The appropriate regional director (DOS) may request additional information to complete processing.

4. In § 303.122, the first sentence of paragraph (a) is revised to read as follows:

§ 303.122 Processing.

(a) *Expedited processing.* A notice filed by an insured state bank seeking to commence or continue an activity under § 362.4(b)(3)(i), § 362.4(b)(5), § 362.8, or § 362.18(a) of this chapter will be acknowledged in writing by the FDIC and will receive expedited processing, unless the applicant is notified in writing to the contrary and provided a basis for that decision. * * *

* * * * *

5. In § 303.123, paragraph (b) is revised to read as follows:

§ 303.123 Delegations of authority.

* * * * *

(b) *Other applications, notices, and actions.* The authority to review and act upon applications and notices filed pursuant to this subpart G and to take any other action authorized by this subpart G or subparts A, B and E of part 362 of this chapter is delegated to the Director (DOS), and except as limited by paragraph (a) of this section, to the Deputy Director and where confirmed in writing by the Director to an associate director and the appropriate regional director and deputy regional director.

PART 362—ACTIVITIES OF INSURED STATE BANKS AND INSURED SAVINGS ASSOCIATIONS

6. The authority citation for part 362 is revised to read as follows:

Authority: 12 U.S.C. 1816, 1818, 1819(a) (Tenth), 1828(m), 1828a, 1831a, 1831e, 1831w, 1843(l) .

7. A new subpart E is added as follows:

Subpart E—Financial Subsidiary Activities of Insured State Nonmember Banks

Sec.

326.16 Purpose and scope.
326.17 Definitions.
326.18 Restrictions on financial subsidiary activities of insured state nonmember bank subsidiaries.

Subpart E—Financial Subsidiary Activities of Insured State Nonmember Banks

§ 362.16 Purpose and scope.

(a) This subpart, along with the notice procedures in subpart G of part 303 of this chapter apply to certain banking practices that may have adverse effects on the safety and soundness of insured state nonmember banks. This subpart implements section 46 of the Federal Deposit Insurance Act (12 U.S.C. 1831w) and requires that notices be filed with the FDIC before subsidiaries of insured state nonmember banks conduct financial subsidiary activities. The phrase "financial subsidiary activity" means an activity which has been authorized for a financial subsidiary of a national bank under section 5136A of the Revised Statutes (12 U.S.C. 24 A) and which may be conducted by a national bank only through a financial subsidiary. Under this subpart, the FDIC may impose standards and prudential safeguards when subsidiaries of insured state nonmember banks engage in financial subsidiary activities. This subpart also implements the statutory Community Reinvestment Act (CRA) (12 U.S.C. 2901 *et seq.*) requirement applicable to these financial subsidiary activities.

(b) This subpart does not cover activities conducted other than "as principal", defined for purposes of this subpart as activities conducted as agent for a customer, conducted in a brokerage, custodial, advisory, or administrative capacity, or conducted as trustee, or in any substantially similar capacity. For example, this subpart does not cover acting solely as agent for the sale of insurance, securities, real estate, or travel services; nor does it cover acting as trustee, providing personal financial planning advice, or safekeeping services.

(c) The FDIC intends to allow insured state nonmember bank subsidiaries to undertake only safe and sound activities and investments that would not present a significant risk to the deposit insurance fund and that are consistent with the purposes of federal deposit insurance and other applicable law. This subpart does not authorize any insured state nonmember bank subsidiary to conduct activities that are not authorized or that are prohibited by either state or federal law.

§ 362.17 Definitions.

For the purposes of this subpart, the following definitions will apply:

(a) *Activity, company, control, insured depository institution, insured state bank, insured state nonmember bank,* and *subsidiary* have the same meaning as provided in subpart A of this part.

(b) *Affiliate* has the same meaning contained in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813).

§ 362.18 Restrictions on financial subsidiary activities of insured state nonmember bank subsidiaries.

(a) *Financial subsidiary activities.* The FDIC Board of Directors has found that depending on the facts and circumstances of a particular case, the conduct of a financial subsidiary activity as principal in a subsidiary of an insured state nonmember bank may have adverse effects on the safety and soundness of the insured state nonmember bank. The FDIC Board of Directors has found that the FDIC cannot make a determination whether there are adverse effects on the safety and soundness of an insured state nonmember bank engaging in such activities through a subsidiary and whether additional prudential safeguards are necessary, unless the FDIC has had an opportunity for prior review of the activities. Therefore, an insured state nonmember bank may not establish, acquire or hold a subsidiary that engages in financial subsidiary activities as principal or commence any such new activity pursuant to section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) unless:

(1) The insured state nonmember bank submits a notice under § 303.121 of this chapter and the FDIC processes the notice without objection under § 303.122(a) of this chapter. Consent only will be given if the FDIC determines the activity poses no adverse effects on the safety and soundness of the insured state nonmember bank. Approvals granted under § 303.122(a) may be made subject to any conditions or restrictions found by the FDIC to be necessary to protect the deposit insurance funds from risk, prevent unsafe or unsound banking practices, and/or ensure that the activity is consistent with the purposes of federal deposit insurance and other applicable law.

(2) The insured state nonmember bank and the subsidiary comply with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c and 371c–1), as if the subsidiary were a financial subsidiary within the meaning of section 23A(e)(1).

(3) All insured depository institution affiliates of the insured state nonmember bank are well-capitalized as defined in the appropriate capital regulation and guidance of each institution's primary federal regulator, and the insured state nonmember bank complies with the capital deduction requirement in accordance with § 362.4(e)(1) through (3), discloses that capital separation in any published financial statements and does not consolidate the subsidiary's assets and liabilities with those of the insured state bank in any published financial statements.

(4) The insured state nonmember bank and the subsidiary meet the financial and operational safeguards applicable to a financial subsidiary of a national bank conducting the same activities as provided in section 5136A(d) of the Revised Statutes of the United States (12 U.S.C. 24A(d)).

(b) *Time of compliance.* Any insured state nonmember bank that files a notice under paragraph (a) of this section to which the FDIC does not object must, at the time of the filing of such notice and as long as the insured state nonmember bank's subsidiary is engaged in the financial subsidiary activity, comply with the requirements of paragraphs (a)(2), (a)(3), and (a)(4) of this section.

(c) *Community Reinvestment Act (CRA).* An insured state nonmember bank may not commence any new financial subsidiary activity through a subsidiary as principal or directly or indirectly establish or acquire control of a company engaged in any such activity pursuant to paragraph (a) of this section, if the bank or any of its insured depository institution affiliates received a CRA rating of less than "satisfactory record of meeting community credit needs" on its most recent CRA examination prior to when the bank files a notice under this section.

(d) *Coordination with section 24 of the Federal Deposit Insurance Act.* (1) *Grandfathered subsidiaries.* Notwithstanding paragraphs (a) through (c) of this section, an insured state bank may retain its interest in any subsidiary that:

(i) Was conducting the financial subsidiary activity as principal before November 12, 1999;

(ii) With authorization in accordance with section 24 of the Federal Deposit Insurance Act (12 USC 1831a) and its implementing regulation found in subpart A of this part 362; and

(iii) Which continues to meet the conditions and restrictions of the part 362 order or regulation approving the activity as well as other applicable law.

(2) *New financial subsidiary activities.* Notwithstanding subpart A of this part 362 or § 337.4 of this chapter, an insured state bank may not, on or after November 12, 1999, establish, acquire or hold a subsidiary that engages in financial subsidiary activities as principal or commence any such new activity other than as provided in this section.

By order of the Board of Directors.

Dated at Washington, D.C. this 9th day of March, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–7161 Filed 3–22–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 96–ANE–36–AD; Amendment 39–11624; AD 2000–05–14]

RIN 2120–AA64

Airworthiness Directives; AlliedSignal Inc. ALF502 and LF507 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes two existing airworthiness directives (AD's), applicable to AlliedSignal Inc. ALF502 and LF507 series turbofan engines, that require rework or replacement of No. 4 and 5 bearing oil system hardware, initial and repetitive inspections of the oil system, optional installation of an improved oil filter bypass valve, and repetitive inspection of No. 4 and 5 bearing oil inlet tube, to ensure the integrity of the reduction gear system and overspeed protection system. This action would require replacement of the existing power turbine bearing housing assembly with a new, improved power turbine bearing housing assembly, and installation of a reworked or modified fourth turbine rotor disk assembly as a part of a design change to the new No. 4 bearing configuration that eliminates the requirement for repetitive inspections of oil system and No. 4 and 5 bearing oil inlet tube assembly. This amendment is prompted by one report of a contained power turbine rotor shaft separation forward of the Stage 4 low pressure turbine (LPT) rotor on an AlliedSignal Inc. ALF502R–5 engine. The LPT failure was caused by improper inspection of the engine oil system required by AD 97–05–11 R1.

The actions specified by this AD are intended to prevent a No. 4 and 5 duplex bearing failure, which can result in a Stage 4 LPT rotor failure, an uncontained engine failure, and damage to the airplane.

DATES: Effective date April 27, 2000.

The incorporation by reference of SB ALF 502R–72–0160, revision 2, dated May 26, 1987; ALF 502R–72–0160, revision 1, dated March 23, 1987; SB ALF502R 79–9 revision 1, dated November 27, 1996; SB ALF502L 79–0171, revision 1, dated November 27, 1996; SB ALF502R–79–0162, revision 2, dated September 8, 1987; SB ALF502R–79–0162, revision 1, dated May 26,1987; SB ALF502R–79–0162, dated March 23,1987; SB LF507–1F–79–5, revision 1, dated November 27, 1996; and SB LF507–1H 79–5, revision 1, dated November 27, 1996, was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of April 16, 1997 (62 FR 15378).

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. This information may be examined at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate,

3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone 562–627–5245; fax 562–627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 80–22–53, Amendment 39–3995 (45 FR 83202, December 18, 1980) and AD 97–05–11 R1, Amendment 39–10091 (62 FR 41262, August 1, 1997) which are applicable to AlliedSignal Inc. ALF502 and LF507 series turbofan engines was published in the **Federal Register** on October 14, 1998 (63 FR 55056). That action proposed to require rework or replacement of No. 4 and 5 bearing oil system hardware, initial and repetitive inspections of the oil system, optional installation of an improved oil filter bypass valve, a more stringent oil system inspection of the full flow chip detector, oil filter impending bypass button, oil acid number, oil color, and oil quantity.

Manufacturer Service Information

The FAA has reviewed and approved the technical contents of the accomplishment instruction paragraphs of AlliedSignal Inc. Service Bulletin (SB) No. ALF/LF 72–1030, Revision 2, dated December 14, 1998, and AlliedSignal Inc. SB No. ALF/LF 72–1040, Revision 1, dated December 14, 1998, that describe procedures for installation of a reworked or modified fourth turbine rotor disk assembly, and that describes procedures for replacement of the existing power turbine bearing housing assembly with a new, improved power turbine bearing housing assembly.

Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, this AD supersedes AD's 80–22–53 and 97–05–11 R1 to require replacement of the existing power turbine bearing housing assembly with a new, improved power turbine bearing housing assembly, and installation of a reworked or modified fourth turbine rotor disk assembly as a part of design change to the new No. 4 bearing configuration, that eliminates the requirements for repetitive inspections of oil system and No. 4 and 5 bearing oil inlet tube assembly.

Correction to Note 2

Reference to Avco Lycoming Textron SB No. ALF 502R–72–0160, Revision 2, dated May 26, 1987, which was inadvertently omitted from the NPRM and has been added to Note 2. Revision 2 to SB No. ALF 502R–72–0160, dated May 26, 1987, was an editorial change to the SB and does not affect the technical content of the SB.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule with the changes described previously.

Economic Cost Analysis

There are approximately 1,500 AlliedSignal Inc. ALF502 and LF507 series turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 300 engines installed on airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 work hours per engine to accomplish the required actions, and that the average labor rate is $60 per work hour. Required parts will cost approximately $30,000 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $9,540,000.

Regulatory Impact

This final rule does not have federalism implications, as defined in Executive Order 13132, because it does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–3995 (45 FR 83202, December 18, 1980), and Amendment 39–10091 (62 FR 41262, August 1, 1997) and by adding a new airworthiness directive to read as follows:

2000–05–14 AlliedSignal Inc.: Amendment 39–11624. Docket 96–ANE–36–AD Supersedes AD 80–22–53, Amendment 39–3995, and AD 97–05–11 R1, Amendment 39–10091.

Applicability: Allied Signal Inc. (formerly Textron Lycoming and Avco Lycoming) ALF502 and LF507 series turbofan engines, installed on but not limited to British Aerospace BAe 146–100A, BAe 146–200A, BAe 146–300A, AVRO 146–RJ70A, AVRO 146–RJ85A, AVRO 146–RJ100A, and Canadair Model CL–600–1A11 series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (h) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously. To prevent a No. 4 and 5 duplex bearing failure, which can result in a Stage 4 low pressure turbine (LPT) rotor failure, an uncontained engine failure, and damage to the airplane, accomplish the following:

Replacement or Rework of the No. 4 and 5 Bearing Inlet Assembly

(a) For AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) ALF502L and ALF502L2 series engines, prior to further flight, rework or replace the following parts and reassemble in accordance with Avco Lycoming Service Bulletin (SB) No. ALF502–72–0008, Revision 1, dated October 14, 1980, and SB No. ALF502–72–0010, dated October 14, 1980:

(1) Remove No. 4 and 5 bearing inlet tube assembly, part number (PN) 2–141–380–07/–08/–11/–12 and replace with PN 2–141–380–13/–14.

(2) Remove adapter assembly, PN 2–141–640–01 and replace with PN 2–141–640–02.

(3) If not previously incorporated, install Bracket, PN 2–143–049–01, spacer PN 2–143–051–01, two bolts PN STD3061–11, Clamp PN TA1501H05, Bolt PN MS9565–06, Nut PN STD3073–3, and Washer PN STD3035C2.

(4) Rework fourth stage turbine nozzle, PN 2–141–150–38, to PN 2–141–150–42, or PN 2–141–150–39 to PN 2–141–150–41 in accordance with SB No. ALF502–72–0010.

(5) Rework upper half of fire shield, PN 2–163–990–04 to 2–163–990–07, or PN 2–163–990–05 to 2–163–990–08 in accordance with SB No. ALF502–72–0010.

(6) Install: Washer, PN 2–163–585–01, and Spring PN 2–163–586–01, and Retainer PN 2–163–584–01.

(7) Remove oil feed line, PN 2–173–240–02 and replace with PN 2–303–377–01.

(8) Remove jam nut, PN R44118P05W. (The function of the jam nut is accomplished by the parts in paragraphs (a)(6) and (a)(7) of this AD.)

(9) Remove oil inlet support bracket, PN 2–141–335–02 and replace with PN 2–141–335–03.

(b) After replacement of the No. 4 and 5 bearing oil inlet tube and associated hardware in accordance with paragraph (a) of this AD, inspect the No. 4 and 5 bearing oil inlet tube at intervals not to exceed 100 hours time in service (TIS) since last inspection for chafing, in accordance with Avco Lycoming SB No. ALF502–72–0008, Revision 1, dated October 14, 1980. Prior to further flight, replace oil inlet tubes that exhibit chafing in excess of 0.010 inch deep with serviceable parts.

Inspection of Oil Filter Bypass Valve

(c) For ALF502R series engines equipped with oil filter bypass valve, PN 2–303–432–01, accomplish the following:

(1) Inspect the engine oil filter bypass valve for leakage within the next 25 hours TIS or 25 flights in service, whichever occurs first, from the effective date of this AD, in accordance with Avco Lycoming Textron SB No. ALF 502R–79–0162, Original, dated March 23, 1987, or Revision 1, dated May 26, 1987. Prior to further flight, remove from service oil filters exhibiting any leakage and replace with serviceable parts.

(2) Thereafter, inspect the oil filter bypass valve for any leakage in accordance with Avco Lycoming Textron SB No. ALF 502R–79–0162, Original, dated March 23, 1987, or Revision 1, dated May 26, 1987, at intervals not to exceed 50 hours TIS or 50 flights in service since last inspection, whichever occurs first, and at the same time accomplish the following:

(i) Visually inspect the following engine chip detectors for metal contamination:

(A) For engines with a full flow chip detector installed, inspect the full flow chip detector.

(B) For engines without a full flow chip detector installed, inspect the chip detectors located in the accessory gearbox, Number 2 bearing scavenge line, and No. 4 and 5 bearing scavenge line.

(ii) For engines with engine chip detectors exhibiting Condition 3, or Condition 2, or Condition 1 where the oil filter bypass indicator is extended, prior to further flight, remove oil filter bypass valves exhibiting any leakage and replace with a serviceable part.

Note 2: Chip detector conditions are described in Figures 1, 2 and 3 of Avco Lycoming Textron SB No. ALF 502R–72–0160, Revision 1, dated March 23, 1987, or Revision 2, dated May 26, 1987.

(3) At the next engine shop visit, or within 2,500 hours TIS after the effective date of this AD, whichever occurs first, conduct the oil filter bypass valve spring compression force check, in accordance with Avco Lycoming Textron SB No. ALF 502R–79–0162, Original, dated March 23, 1987. Oil filter bypass valves that do not comply with the spring compression force limits contained in Avco Lycoming Textron SB No. ALF502R–79–0162, Original, dated March 23, 1987, must be removed and replaced with oil filter bypass valve, PN 2–303–432–02. Replacement of oil filter bypass valve, PN 2–303–432–01, with the improved oil filter bypass valve, PN 2–303–432–02, constitutes terminating action for the inspection requirements of paragraphs (c)(1) and (c)(2) of this AD.

Definition of a Shop Visit

(4) For the purpose of this AD, an engine shop visit is defined as engine maintenance that entails any of the following:

(i) Separation of a major engine flange (lettered or numbered) other than flanges mating with major sections of the nacelle reverser. Separation of flanges purely for purposes of shipment, without subsequent internal maintenance, is not a "shop visit."

(ii) Removal of a disk, hub, or spool.

(iii) Removal of the fuel nozzles.

(d) For ALF502R, ALF502L, LF507–1F, and LF507–1H series engines, equipped with the No. 4 and 5 duplex bearing assembly numbers 2–141–930–01, 2–141–930–02, or 2–141–930–03, perform the repetitive oil system maintenance and inspections in accordance with the intervals and procedures described in the Accomplishment Instructions paragraphs of the applicable AlliedSignal Inc. SBs referenced in paragraphs (d)(1), (d)(2), (d)(3); and (d)(4) of this AD, within the next 25 hours TIS or 25 flights in service, whichever occurs first, from the effective date of this AD.

(1) For ALF502R series engines, in accordance with AlliedSignal Inc. SB No. ALF502R 79–9, Revision 1, dated November 27, 1996.

(2) For ALF502L series engines, in accordance with AlliedSignal Inc. SB No. ALF502L 79–0171, Revision 1, dated November 27, 1996.

(3) For LF507–1F series engines, in accordance with AlliedSignal Inc. SB No. LF507–1F–79–5, Revision 1, dated November 27, 1996.

(4) For LF507–1H series engines, in accordance with AlliedSignal SB No. LF507–1H–79–5, Revision 1, dated November 27, 1996.

Modification of the No. 4 and 5 Duplex Bearing Assembly

(e) Modify the fourth turbine rotor disk assembly at the next access to the No. 4 and 5 duplex bearing assembly during the engine shop visit not to exceed 6,000 cycles in service (CIS) or 6,000 hours TIS, whichever occurs first, from the effective date of this AD, in accordance with the accomplishment instructions paragraph of AlliedSignal Inc. SB No. ALF/LF 72–1030, Revision 2, dated December 14, 1998.

(f) Modify the power turbine bearing housing assembly at the next access to the No. 4 and 5 duplex bearing assembly during the engine shop visit not to exceed 6,000 CIS or 6,000 hours TIS, whichever occurs first, from the effective date of this AD, in accordance with the accomplishment instructions paragraph of AlliedSignal Inc. SB No. ALF/LF 72–1040, Revision 1, dated December 14, 1998.

(g) Performance of the modifications described in paragraphs (e) and (f) of this AD constitutes terminating action to the rework and replacement requirements of paragraph (a), and the repetitive inspection requirements of paragraphs (b), (c), and (d) of this AD.

Note 3: Installation of a reworked or modified fourth turbine rotor disk assembly as a part of a design change to the new No. 4 bearing configuration that eliminates the requirements for repetitive inspections of oil system does not relieve the operators from accomplishment of the engine oil system inspection in accordance with the engine manufacturer's applicable maintenance documents.

Alternative Method of Compliance

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note 4: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

Special Flight Permits

(i) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Manufacturer Service Bulletins

(j)(1) The inspections, modifications, and rework shall be done in accordance with the following AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) service bulletins:

Document No.	Pages	Revision	Date;
ALF502–72–0008	All	1	October 14, 1980.
Total Pages: 6			
ALF502–72–0010	All	Original	October 14, 1980.
Total Pages: 8			
ALF/LF 72–1030	1–2	2	December 14, 1998.
	3	1	February 23, 1998.
	4	2	December 14, 1998.
	5	1	February 23, 1998.
	6–7	2	December 14, 1998.
	8–9	1	February 23, 1998.
	10	2	December 14, 1998.
	11–14	1	February 23, 1998.
	15	2	December 14, 1998.
	16–17	1	February 23, 1998.
	18–55	2	December 14, 1998.
	56 (blank)		
Total pages: 56			
ALF/LF 72–1040	1–3	1	December 14, 1998.
	4–13	Original	October 20, 1997.
	14–46	1	December 14, 1998.
Total pages: 46			

(2) The incorporation by reference of AlliedSignal Inc. (formerly Textron Lycoming and Avco Lycoming) service bulletins listed in paragraph (j)(1) of this AD was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(k) The incorporation by reference of SB ALF 502R–72–0160, revision 2, dated May 26, 1987; ALF 502R–72–0160, revision 1, dated March 23, 1987; SB ALF502R 79–9 revision 1, dated November 27, 1996; SB ALF502L 79–0171, revision 1, dated November 27, 1996; SB ALF502R–79–0162, revision 2, dated September 8, 1987; SB ALF502R–79–0162, revision 1, dated May 26,1987; SB ALF502R–79–0162, dated March 23,1987; SB LF507–1F–79–5, revision 1, dated November 27, 1996; SB LF507–1H 79–5, revision 1, dated November 27, 1996, was previously approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of April 16, 1997 (62 FR 15378).

Address for Obtaining Referenced Service Bulletins

(l) Copies may be obtained from AlliedSignal Aerospace, Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2493, fax (602) 365–5577. Copies may be inspected at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(m) This amendment becomes effective on April 27, 2000.

Issued in Burlington, Massachusetts, on March 6, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–6033 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–349–AD; Amendment 39–11631; AD 2000–05–21]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, A321, A330, and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A319, A320, A321, A330, and A340 series airplanes, that requires revising the Airplane Flight Manual to provide the flight crew with certain instructions associated with the Global Positioning System (GPS). This amendment also requires modification of the Global Positioning System Signal Unit (GPSSU) of the satellite navigational system. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent position and altitude errors due to bad oscillator warm-up characteristics of the GPSSU, which could result in navigational errors that may exceed 0.5 nautical mile.

DATES: Effective April 27, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 27, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A319, A320, A321, A330, and A340 series airplanes was published in the **Federal Register** on January 10, 2000 (65 FR 1350). That action proposed to require revising the Airplane Flight Manual to provide the flight crew with certain instructions associated with the Global Positioning System (GPS). That action also proposed to require modification of the Global Positioning System Signal Unit (GPSSU) of the satellite navigational system.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Explanation of Change Made

Paragraphs (b)(3) and (b)(3)(i) of this AD have been changed to correct typographical errors that resulted in references to an incorrect service bulletin number. Paragraph (b)(3) of the proposed rule references "Airbus Service Bulletin A30–34–4089, Revision 01, dated September 28, 1999" as the appropriate source of service information for accomplishment of the modification required by paragraph (b) of the AD. Paragraph (b)(3)(i) of the proposed rule incorrectly references "Airbus Service Bulletin A330–34–4089, Revision 01, dated September 28, 1999." This AD references the appropriate service bulletin as "Airbus Service Bulletin A340–34–4089, Revision 01, dated September 28, 1999, for accomplishment of the modification required by paragraph (b) of this AD.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

The FAA estimates that 1 airplane of U.S. registry will be affected by this AD.

It will take approximately 1 work hour per airplane to accomplish the required Airplane Flight Manual (AFM) revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision required by this AD on U.S. operators is estimated to be $60, or $60 per airplane.

It will take approximately 1 work hour per airplane to accomplish the required modification, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $60, or $60 per airplane.

It will take between 3 to 14 work hours per airplane to accomplish the additional modifications required to be accomplished prior to or concurrent with the required modification, at an average labor rate of $60 per work. Required parts will be provided by the vendor or manufacturer at no cost to the operators. Based on these figures, the cost impact of the additional modifications required by this AD on U.S. operators is estimated to be between $180 to $840 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–21 Airbus Industrie: Amendment 39–11631. Docket 99–NM–349–AD.

Applicability: Model A319, A320, A321, A330, and A340 series airplanes, certificated in any category, as follows:

1. Model A319, A320, and A321 series airplanes on which Airbus Modification 28578 (Airbus Service Bulletin A320–34–1191, dated July 12, 1999), or Airbus Modification 28579 (Airbus Service Bulletin A320–34–1196, dated July 15) has not been accomplished; equipped with a LITTON Global Positioning Satellite Signal Unit (GPSSU) having Part Number (P/N) 465205–0302–0303 installed in accordance with Airbus Service Bulletin A320–34–1119 (Airbus Modification 23885).

2. Model A330 series airplanes on which Airbus Modification 46961 (Airbus Service Bulletin A330–34–3082, Revision 01, dated September 28, 1999), or Airbus Modification 47327 (Airbus Service Bulletin A330–34–3086, Revision 01, dated September 28, 1999) has not been accomplished; equipped with a LITTON GPSSU having P/N 465205–0302–0302 or 465205–0302–0303.

3. Model A340 series airplanes on which Airbus Modification 46961 (Airbus Service Bulletin A340–34–4089, Revision 01, dated September 28, 1999), or Airbus Modification 47327 (Airbus Service Bulletin A340–34–4092, Revision 01, dated September 28, 1999) has not been accomplished; equipped with a LITTON GPSSU having P/N 465205–0302–0302 or 465205–0302–0303.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent position and altitude errors due to bad oscillator warm-up characteristics of the GPSSU, which could result in navigational errors that may exceed 0.5 nautical mile, accomplish the following:

AFM Revision

(a) Within 10 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following procedures. This may be accomplished by inserting a copy of this AD in the AFM.

"Operation:

—GPS Stand-alone and GPS overlay non-precision approaches are not allowed.

—The GPS must be deselected before non-precision approach.

—The GPS must be deselected for the remainder of the flight if 'NAV FM/GPS POS DISAGREE' ECAM warning is triggered (in all phases of flight).

Dispatch:

—If one GPS is inoperative, GPS must be deselected."

Note 2: The AFM revision may be accomplished by inserting a copy of Airbus Temporary Revision (TR) 2.05.00/40 (for Model A319, A320, and A321 series airplanes); TR 2.05.00/38 (for Model A330 series airplanes); or TR2.05.00/47 (for A340 series airplanes); into the applicable AFM.

Modification

(b) Within 2 months after the effective date of this AD, modify the GPSSU of the satellite navigational system, in accordance with (b)(1), (b)(2), or (b)(3) of this AD, as applicable. After accomplishment of the modification, the AFM revision required by paragraph (a) of this AD may be removed from the AFM.

(1) For Model A319, A320, and A321 series airplanes: Modify the GPSSU in accordance with either Airbus Service Bulletin A320–34–1191, dated July 12, 1999, or Airbus Service Bulletin A320–34–1196, dated July 15, 1999.

(i) If modification of the GPSSU is accomplished in accordance with Airbus Service Bulletin A320–34–1191, prior to or concurrent with accomplishment of the modification, accomplish either Airbus Service Bulletin A320–34–1119, Revision 02, dated April 30, 1997, or A320–34–1196, dated July 15, 1999.

(ii) If modification of the GPSSU is accomplished in accordance with Airbus Service Bulletin A320–34–1196, prior to or concurrent with accomplishment of the modification, accomplish Airbus Service Bulletin A320–34–1119, Revision 02, dated April 30, 1997.

(2) For Model A330 series airplanes: Modify the GPSSU in accordance with either Airbus Service Bulletin A330–34–3082, Revision 01, dated September 28, 1999, or Airbus Service Bulletin A330–34–3086, Revision 01, dated September 28, 1999.

(i) If modification of the GPSSU is accomplished in accordance with Airbus Service Bulletin A330–34–3082, Revision 01, prior to or concurrent with accomplishment of the modification, accomplish either Airbus Service Bulletin A330–34–3015, dated April 3, 1995, or Airbus Service Bulletin A330–34–3086, Revision 01, dated September 28, 1999.

(ii) If modification of the GPSSU is accomplished in accordance with Airbus Service Bulletin A330–34–3086, Revision 01, prior to or concurrent with accomplishment of the modification, accomplish Airbus Service Bulletin A330–34–3015, dated April 3, 1995.

(3) For Model A340 series airplanes: Modify the GPSSU in accordance with either Airbus Service Bulletin A340–34–4089, Revision 01, dated September 28, 1999, or Airbus Service Bulletin A340–34–4092, Revision 01, dated September 28, 1999.

(i) If modification of the GPSSU is accomplished in accordance with Airbus Service Bulletin A340–34–4089, Revision 01, prior to or concurrent with accomplishment of the modification, accomplish either Airbus Service Bulletin A340–34–4022, dated April 3, 1995, or Airbus Service Bulletin A340–34–4092, Revision 01, dated September 28, 1999.

(ii) If modification of the GPSSU is accomplished in accordance with Airbus Service Bulletin A340–34–4092, Revision 01, prior to or concurrent with accomplishment of the modification, accomplish either Airbus Service Bulletin A340–34–4022, dated April 3, 1995, or Airbus Service Bulletin A340–34–4078, Revision 01, dated November 26, 1999, including Appendix 01, dated November 26, 1999.

Note 3: The Airbus service bulletins reference LITTON Service Bulletin 2001–34–13, dated July 8, 1999, and LITTON Service Bulletin 2001–34–14, dated July 5, 1999, as additional sources of service information for modifying the GPSSU.

(c) As of the effective date of this AD, no person shall install on any airplane a GPSSU having P/N 465205–0302–0302 or 465205–0302–0303.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance and Operations Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) Except as provided by paragraph (a) of this AD, the actions shall be done in accordance with Airbus Service Bulletin A320–34–1191, dated July 12, 1999; Airbus Service Bulletin A320–34–1196, dated July 15, 1999; Airbus Service Bulletin A320–34–1119, Revision 02, dated April 30, 1997; Airbus Service Bulletin A330–34–3082, Revision 01, dated September 28, 1999; Airbus Service Bulletin A330–34–3086, Revision 01, dated September 28, 1999; Airbus Service Bulletin A330–34–3015, dated April 3, 1995; Airbus Service Bulletin A340–34–4089, Revision 01, dated September 28, 1999; Airbus Service Bulletin A340–34–4022, dated April 3, 1995; Airbus Service Bulletin A340–34–4092, Revision 01, dated September 28, 1999; or Airbus Service Bulletin A340–34–4078, Revision 01, including Appendix 01, dated November 26, 1999; as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in French airworthiness directives 1999–361–138(B), dated September 8, 1999; 1999–354–101(B), dated September 8, 1999; and 1999–355–123(B), dated September 8, 1999; in order to assure the continued airworthiness of these airplanes in France.

(g) This amendment becomes effective on April 27, 2000.

Issued in Renton, Washington, on March 8, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–6160 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–49–AD; Amendment 39–11560; AD 2000–03–03]

RIN 2120–AA64

Airworthiness Directives; General Electric Company (GE) CF34 Series Turbofan Engines; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document makes a correction to Airworthiness Directive (AD) 2000–03–03 that is applicable to certain General Electric Company CF34 series turbofan engines that was published in the **Federal Register** on February 7, 2000 (65 FR 5759). Two subpart names and two mandatory inspections were inadvertently omitted from the Mandatory Inspection Requirements of Table 804. This document corrects this Table by adding the subparts and inspections.

EFFECTIVE DATE: March 23, 2000.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7743, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A final rule airworthiness directive applicable to General Electric Company CF34 series turbofan engines, was published in the **Federal Register** on February 7, 2000 (65 FR 5759). In the compliance section, an omission was made in Table 804 of the Mandatory Inspection Requirements. This correction adds necessary subpart names and inspections to the mandatory inspection requirements:

§ 39.13 [Corrected]

1. On page 5760, in AD 2000–03–03, table 804 is corrected to read as follows:

* * * * *

TABLE 804.—MANDATORY INSPECTION REQUIREMENTS

Part name/part No.	Chapter/section subject	Mandatory inspection
Fan Disk (all)	72–21–00, INSPECTION	All Areas (FPI) [1] Bores (ECI) [2]
Stage 1 HPT Rotor Disk (all)	72–46–00, INSPECTION	All Areas (FPI) [1] Bores (ECI) [2] Boltholes (ECI) [2] Air Holes (ECI) [2]
Stage 2 HPT Rotor Disk (all)	72–46–00, INSPECTION	All Areas (FPI) [1] Bores (ECI) [2]
(a) Boltless Rim Configuration		Boltholes (FPI) [1] Air Holes (FPI) [1] Boltholes (ECI) [2] Air Holes (ECI) [2]
(b) Bolted Rim Configuration		
HPT Rotor Outer Torque Coupling (all)	72–46–00, INSPECTION	All Areas (FPI) [1] Bores (ECI) [2]

[1] FPI = Fluorescent Penetrant Inspection Method.
[2] ECI = Eddy Current Inspection Method.

* * * * *

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–6489 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–CE–49–AD; Amendment 39–11646; AD 2000–06–06]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA–31 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This document adopts a new airworthiness directive (AD) that applies to all The New Piper Aircraft, Inc. PA–31 series airplanes that are equipped with pneumatic deicing boots. This AD requires revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by this AD are intended to assure that flightcrews activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. This action will prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

EFFECTIVE DATE: May 5, 2000.

ADDRESSES: You may examine information related to this AD at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–CE–49–AD, 901 Locust, Room 506, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 506, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Events Leading to the Issuance of This AD

What caused this AD? This AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated.

What is the potential impact if the FAA took no action? The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

Has the FAA taken any action to this point? Yes. We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply all Piper PA–31 series airplanes that are equipped with pneumatic deicing boots. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on October 12, 1999 (64 FR 55204). The NPRM proposed to require revising the Limitations Section of the AFM to include requirements for activating the pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Was the public invited to comment? Yes. Interested persons were afforded an opportunity to participate in the making of this amendment. The following paragraphs present the comments received on the NPRM. Also included is the FAA's response to each comment, including any changes incorporated into the final rule based on the comments.

Comment Issue No. 1: Coordinate With Original Equipment Manufacturer

What is the Commenter's Concern? One commenter states that the FAA should coordinate with the original equipment manufacturer before issuing the AD.

What is the FAA's Response to the Concern? We concur. The FAA coordinates and will continue to coordinate with the manufacturer of any affected airplanes before issuing an AD.

Is it Necessary to Change the AD? No.

Comment Issue No. 2: Provide the Criteria for Determining Acceptable Stall Warning Margins

What is the Commenter's Concern? One commenter requests that the FAA provide the criteria for determining whether an airplane has an acceptable stall warning margin. The commenter references recent NPRM AD withdrawals in the FAA's Transport Airplane Directorate.

What is the FAA's Response to the Concern? We cannot provide such information because no regulatory basis exists for determining or applying a mandatory stall margin with contamination. We can review manufacturer-provided data to determine what testing was conducted, and then determine the effects of ice

accretion on the stall angle and the handling characteristics in the roll axis. This would include reviewing the service history of each airplane. With all of this information, we could determine whether the stall warning margin was acceptable and if the AD action could be withdrawn.

Such was the case with the NPRM withdrawals in the FAA's Transport Airplane Directorate. The airplanes affected were Cessna Models 500, 501, 550, 551, and 560 series airplanes, and British Aerospace Jetstream Model 4101 airplanes. You may find the specific justification for each of these withdrawals in the **Federal Register** through the following citations:

—For the Cessna airplanes: 64 FR 62995, November 18, 1999; and
—For the Jetstream airplanes: 64 FR 62990, November 18, 1999.

No specific information was submitted for the Piper PA–31 series airplanes.

Is it Necessary to Change the AD? No.

Comment Issue No. 3: Define the Term "Modern" Pneumatic Boot Systems

What is the Commenters' Concern? Two commenters request explanation on the use of the term "modern" in a similar AD action that the FAA's Transport Airplane Directorate initiated.

What is the FAA's Response to the Concern? The FAA's Transport Airplane Directorate addressed the issue of "modern" versus "older" pneumatic boot systems in a recent AD action. That information, in its entirety, follows:

"Several commenters request that the difference between the "older" and "modern" boot systems be explained. These commenters express concern that although both systems are addressed in the proposal, there may not be a sound technical reason to apply the requirements of the proposal to both types of boot systems.

The FAA acknowledges that definitions of "older" and "modern" pneumatic boot systems should be provided. Therefore, for the purposes of this AD, "modern" pneumatic boot systems may be characterized by short segmented, small diameter tubes, which are operated at relatively high pressures [18–23 pounds per square inch (psi)] by excess bleed air that is provided by turbine engines. "Older" pneumatic boot systems may be characterized by long, uninterrupted, large diameter tubes, which were operated at low pressures by engine driven pneumatic pumps whose pressure varied with engine revolutions per minute (rpm). This low pressure coupled with long and large diameter tubes caused early deice systems to have very lengthy inflation and deflation cycles and dwell times. (Dwell time is the period of time that the boot remains fully expanded following the completion of the inflation cycle until the beginning of the deflation cycle.)"

Is it Necessary to Change the AD? No.

Comment Issue No. 4: No Justification for This AD

What is the Commenter's Concerns? One commenter cites reasons why the proposed AD is not justified. These consist of the following:

1. The original equipment manufacturer installs pneumatic airframe components based on ice impingement and accretion analysis and best engineering judgement. The pneumatic boot manufacturer performed ice tunnel testing of deicers representative of those installed on PA–31 series airplanes and has issued operating instructions for its components. The original equipment manufacturer performs flight test in natural icing conditions where the operating instructions on specific installations (with unique geometry, speeds, etc.) without flight testing to substantiate those procedures. This would seem to violate the current FAA rationale for testing for flight into known icing; and

2. There is no data in the NPRM that pertains to the Piper PA–31 series airplanes to justify AD action.

What is the FAA's Response to the Concerns? We do not concur that the AD is not justified. Our response to each concern is as follows:

1. While the information the commenter presents is accurate, the intent of this AD is to mandate when the pneumatic deicing boots should be activated. As the commenter discusses, the original equipment manufacturer tests the components and issues operating instructions for its components. The type certificate holder works with the original equipment manufacturer to assure that the operating instructions adhere to the original design configuration of the affected airplanes. This AD only provides the information for and mandates when the pneumatic deicing system is activated; and

2. The AD is based upon reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. Although Piper PA–31 series airplanes were not among those in the reports, these airplanes incorporate a similar type design. Therefore, the unsafe condition could exist on the Piper PA–31 series airplanes and AD action is appropriate.

Is it Necessary to Change the AD? No.

Comment Issue No. 5: Pneumatic Deicing Boot Manufacturer Should Issue Operating Instructions

What is the Commenter's Concern? One commenter states that the deice boot manufacturer should issue any change in the operating instructions of the pneumatic deicing system.

What is the FAA's Response to the Concern? We do not concur that the deice boot manufacturer is responsible for developing the operating instructions for a specific airplane. The original equipment manufacturer or airplane manufacturer should issue changes in the operating instructions of the pneumatic deicing system. As discussed in the previous comment, the original equipment manufacturer tests the components and issues operating instructions for its components. The type certificate holder works with the original equipment manufacturer to assure that the operating instructions adhere to the original design configuration of the affected airplanes. This AD only provides the information for and mandates when the pneumatic deicing system is activated.

Is it Necessary to Change the AD? No.

Comment Issue No. 6: The AD Should Also Apply to Other Airplane Models

What is the Commenter's Concern? One commenter suggests that the AD apply to other Piper airplanes that are of a similar type design. The commenter states that the AD should also apply to the following airplane models: PA–31T, PA–31T1, PA–31T2, PA–31T3, PA–42, PA–42–720, PA–42–720R, and PA–42–1000.

What is the FAA's Response to the Concern? We concur that all of these airplane models are of a similar type design and AD action should be taken to address the safety issues. However, the Models PA–31T1, PA–31T2, and PA–31T3 airplanes were included in the NPRM. Rather than hold up the AD, we will initiate a separate AD action (NPRM) for the Piper Models PA–42, PA–42–720, PA–42–720R, and PA–42–1000 airplanes.

Is it Necessary to Change the AD? No. However, as discussed above, we will initiate a separate AD action (NPRM) for the Piper Models PA–42, PA–42–720, PA–42–720R, and PA–42–1000 airplanes.

Comment Issue No. 7: Limit the AFM Change to Approach and Hold Phases of Flight

What is the Commenter's Concern? One commenter requests that the FAA limit the AFM change of operating the boots at the first sign of ice accretion to the approach and hold phases of flight. This commenter references the work that the Ice Protection Harmonization Working Group (IPHWP) is currently doing. The commenter states that the IPHWP believes that the only phases of flight that demonstrate a safety concern are holding patterns and various approach segments. Since these operations occur at lower speeds, ice accumulating on the wing and tail surfaces could cause instability.

What is the FAA's Response to the Concern? We do not concur to limiting the AFM change to the holding and approach phases of flight. We acknowledge that the IPHWG is working on a proposed operations rule. The IPHWG continues to work on this proposed rule and has not reached technical agreement. We have records of in-flight roll upsets in icing during the climb and cruise phases of flight on small airplanes that are of a similar type design to the Piper PA–31 series airplanes.

We concur that the ice protection system should not be operated at times when no ice is accreting. We have changed the description of the atmospheric conditions that the deicing boots must be operated from "icing conditions" to "known or observed/detected icing that the flight crew visually observed on the aircraft or was identified by the on-board sensors." *Is it Necessary to Change the AD?* Yes. We have made the change described above in the final rule.

Comment Issue No. 8: Require Action To Reduce Adhesion Characteristics

What is the Commenter's Concern? In response to previous NPRM's on this subject, a commenter has requested that the FAA mandate actions to minimize or reduce the ice adhesion characteristics of boot material. The commenter stated that one reason flightcrews see large amounts of residual ice is because residual ice sticks to the boot surface as the boot ages. This may increase if the adhesion qualities of the boot material are not maintained. The commenter suggested the use of certain compounds, such as ICEX™ (an ice-phobic chemical spray), to reduce ice adhesion.

What is the FAA's Response to the Concern? We concur that materials such as ICEX™ could reduce ice adhesion. However, factors such as normal wear and tear, patching, and oxidation of boot material, prevent us from establishing an effective level of application or adequate intervals of application. We included a **Note** in previous AD's to recommend regular treatment of deicing boots with use of approved ice release agents. This is in addition to the required actions.

Is it Necessary to Change the AD? No. However, as discussed above, the FAA included a **Note** in previous AD's to recommend regular treatment of deicing boots with use of approved ice release agents. We are including this **Note** in this AD also.

The FAA's Determination

What is the FAA's final determination on this issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for the following:

—The change in the description of the atmospheric conditions that the deicing boots must be operated;
—The addition of the NOTE to recommend regular treatment of deicing boots with use of approved ice release agents; and
—Minor editorial corrections.

How does the change, addition, and corrections affect the AD? We have determined that the change, addition, and minor corrections will not change the meaning of the AD and will not add any additional burden upon the public than was already proposed.

Cost Impact

How many airplanes does this AD impact? We estimate that 2,314 airplanes in the U.S. registry will be affected.

What is the cost impact of the affected airplanes on the U.S. Register? There is no dollar cost impact. We estimate that to accomplish the AFM revision it will take you less than 1 workhour. You can accomplish this action if you hold at least a private pilot certificate as authorized by § 43.7 of the Federal Aviation Regulations (14 CFR 43.7). You must make an entry into the aircraft records that shows compliance with this AD, in accordance with § 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of this AD is the time it will take you to insert the information into the AFM.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

2000–06–06 The New Piper Aircraft, Inc.: Amendment 39–11646; Docket No. 99–CE–49–AD.

(a) *What airplanes are affected by this AD?* PA–31, PA–31–300, PA–31–325, PA–31–350, PA–31P, PA–31T, PA–31T1, PA–31T2, PA–31T3, and PA–31P–350 airplanes, all serial numbers, that are:

(1) equipped with pneumatic deicing boots; and

(2) certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic de-icing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to

include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (e.g., take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after:

—leaving known or observed/detected icing that the flight crew has visually observed on the aircraft or was identified by the on-board sensors; and

—after the airplane is determined to be clear of ice."

Note: The FAA recommends periodic treatment of deicing boots with approved ice release agents, such as ICEX™, in accordance with the manufacturer's application instructions.

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4121; facsimile: (816) 329–4091.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(i) *When does this amendment become effective?* This amendment becomes effective on May 5, 2000.

Issued in Kansas City, Missouri, on March 17, 2000.

Carolanne L. Cabrini,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7224 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29960; Amdt. No. 1983]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAP's) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAP's mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAP's. The complete regualtory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and 14 CFR 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Form 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAP's, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment, state the

affected CFR sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. The SIAP's contained in this amendment are based on the criteria contained in the United States Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports.

The FAA has determined through testing that current non-localizer type, non-precision instrument approaches developed using the TERPS criteria can be flown by aircraft equipped with a Global Positioning System (GPS) and or Flight Management System (FMS) equipment. In consideration of the above, the applicable SIAP's will be altered to include "or GPS or FMS" in the title without otherwise reviewing or modifying the procedure. (Once a stand alone GPS or FMS procedure is developed, the procedure title will be altered to remove "or GPS or FMS" from these non-localizer, non-precision instrument approach procedure titles.)

The FAA has determined through extensive analysis that current SIAP's intended for use by Area Navigation (RNAV) equipped aircraft can be flown by aircraft utilizing various other types of navigational equipment. In consideration of the above, those SIAP's currently designated as "RNAV" will be redesignated as "VOR/DME RNAV" without otherwise reviewing or modifying the SIAP's.

Because of the close and immediate relationship between these SIAP's and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are, impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 17, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of The Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113–40114, 40120, 44502, 44514, 44701, 44719, 44721–44722.

§§ 97.23, 97.27, 97.33 and 97.35 [Amended]

2. Amend 97.23, 97.27, 97.33 and 97.35, as appropriate, by adding, revising, or removing the following SIAP's, effective at 0901 UTC on the dates specified:

** * * Effective April 20, 2000*

Oklahoma City, OK, Sundance Airpark, VOR or GPS RWY 17, Orig-A, CANCELLED
Oklahoma City, OK, Sundance Airpark, VOR RWY 17, Orig-A
Oklahoma City, OK, Sundance Airpark, VOR/DME RNAV or GPS RWY 35, Amdt 1, CANCELLED
Oklahoma City, OK, Sundance Airpark, VOR/DME RNAV RWY 35, Amdt 1
Eastland, TX, Eastland Muni, NDB or GPS RWY 35, Amdt 2, CANCELLED
Eastland, TX, Eastland Muni, NDB RWY 35, Amdt 2

[FR Doc. 00–7195 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 29959; Amdt. No. 1982]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the **Federal Register** on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Administration (14 CFR part

97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation's Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAMs for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been canceled.

The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPS criteria were applied to only these specific conditions existing at the affected airports. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the TERPS. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control, Airports, Navigation (Air).

Issued in Washington, DC on March 17, 2000.

L. Nicholas Lacey,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 40103, 40113, 40120, 44701; 49 U.S.C. 106(g); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective Upon Publication*

FDC date	State	City	Airport	FDC No.	SIAP
02/07/00	NJ	Newark	Newark Intl	0/1238	ILS Rwy 4L Amdt 12... This Corrects FDC 0/1238 in TL 00–06.
02/11/00	CA	Burbank	Burbank-Glendale-Pasadena	0/1433	ILS Rwy 8 Amdt 35... This corrects FDC 01/1433 in TL00–06.
02/24/00	VT	Rutland	Rutland State	0/1782	LOC Rwy 19; Orig... This corrects FDC 0/1782 in TL00–07.
03/01/00	CA	Monterey	Monterey Pennisula	0/2080	GPS Rwy 28L Amdt 1... This corrects FDC 0/2080 in TL 00–07.
03/01/00	CO	Akron	Akron-Washington County	0/2061	VOR Rwy 29, Orig...
03/01/00	CO	Fort Collins	Fort Collins-Loveland Muni	0/2056	VOR/DME RNAV Rwy 15, Amdt 4B...
03/01/00	CO	Rifle	Garfield County Regional	0/2063	GPS Rwy 8, Orig...
03/01/00	CO	Rifle	Garfield County Regional	0/2064	GPS Rwy 26, Orig...
03/01/00	FL	Tallahassee	Tallahassee Regional	0/2089	GPS Rwy 27, Orig...

FDC date	State	City	Airport	FDC No.	SIAP
03/01/00	IL	Bloomington/Normal	Central IL Regl Arpt at Bloomington-Normal.	0/2058	VOR Rwy 11, Amdt 12A...
03/01/00	IL	Bloomington/Normal	Central IL Regl Arpt at Bloomington-Normal.	0/2059	LOC BC Rwy 11, Amdt 8...
03/01/00	OR	Salem	McNary Field	0/2054	LOC BC Rwy 13 Amdt 6A...
03/02/00	CA	Monterey	Monterey Peninsula	0/2121	LOC/DME Rwy 28L Amdt 3B...
03/02/00	CA	Monterey	Monterey Peninsula	0/2139	GPS Rwy 10R, Amdt 1...
03/02/00	CO	Colorado Springs	City of Colorado Springs Muni	0/2130	GPS Rwy 35R Orig...
03/02/00	CO	Cortez	Cortez, Muni	0/2129	GPS Rwy 3 Amdt 1...
03/02/00	CO	Lamar	Lamar Muni	0/2126	VOR Rwy 18 Amdt 10...
03/02/00	CO	Lamar	Lamar Muni	0/2127	GPS Rwy 36 Amdt 1...
03/02/00	CT	Oxford	Waterbury-Oxford	0/2141	GPS Rwy 36 Orig...
03/02/00	MA	Bedford	Laurence G. Hanscom Field	0/2145	NDB Rwy 11, Amdt 21...
03/02/00	MA	Bedford	Laurence G. Hanscom Field	0/2146	VOR Rwy 23, Amdt 8B...
03/02/00	MA	Bedford	Laurence G. Hanscom Field	0/2147	ILS Rwy 11, Amdt 24...
03/02/00	MA	Bedford	Laurence G. Hanscom Field	0/2149	NDB or GPS Rwy 29, Amdt 6...
03/02/00	MA	Bedford	Laurence G. Hanscom Field	0/2150	ILS Rwy 29, Amdt 4...
03/02/00	MA	Bedford	Laurence G. Hanscom Field	0/2162	GPS Rwy 23, Orig-A...
03/02/00	MD	Mitchellville	Freeway	0/2155	VOR or GPS Rwy 36 Orig...
03/02/00	MI	Detroit	Detroit Metropolitan Wayne County	0/2173	ILS Rwy 21R, Amdt 26A...
03/02/00	MI	Detroit	Detroit Metropolitan Wayne County	0/2174	ILS Rwy 21L, Amdt 8B...
03/02/00	NY	Monticello	Sullivan County Intl	0/2144	NDB or GPS Rwy 15 Amdt 6...
03/02/00	OR	Portland	Portland Intl	0/2163	ILS Rwy 28L, Orig...
03/03/00	SD	Madison	Madison Muni	0/2181	GPS Rwy 33 Orig...
03/03/00	VT	Barre-Montpelier	Edward F. Knapp State	0/2198	VOR/DME Rwy 35 Amdt 1...
03/03/00	VT	Barre-Montpelier	Edward F. Knapp State	0/2199	VOR Rwy 35 Amdt 3...
03/03/00	VT	Barre-Montpelier	Edward F. Knapp State	0/2200	GPS Rwy 35 Orig...
03/06/00	CA	Carlsbad	McClellan-Palomar	0/2248	ILS Rwy 24, Amdt 8...
03/06/00	CA	Palo Alto	Palo Alto Airport of Santa Clara County.	0/2244	GPS Rwy 30, Amdt 1...
03/06/00	FL	Orlando	Orlando Executive	0/2247	VOR/DME Rwy 7, Orig...
03/06/00	FL	Orlando	Orlando Executive	0/2249	NDB Rwy 7, Amdt 15...
03/06/00	NY	Farmingdale	Republic	0/2237	GPS Rwy 14 Orig...
03/06/00	SC	Greer	Greenville-Spartanburg Intl	0/2240	ILS Rwy 22, Amdt 3A...
03/06/00	TX	Houston	George Bush Intercontinental Airport/Houston.	0/2256	ILS Rwy 27, Amdt 3 (CAT I, II, III)...
03/07/00	OR	North Bend	North Bend Muni	0/2296	NDB or GPS Rwy 4 Amdt 4...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2286	ILS Rwy 17C (CAT I, II, III), Amdt 7A...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2288	GPS Rwy 35L, Orig...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2289	GPS Rwy 35C, Orig...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2290	NDB Rwy 35C, Amdt 10...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2291	ILS Rwy 35L, Amdt 2A...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2293	ILS Rwy 35C, Amdt 6C...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2294	Converging ILS Rwy 35, Amdt 4B...
03/07/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2300	Converging ILS Rwy 35L, Amdt...
03/08/00	IN	Terre Haute	Terre Haute International-Hulman Field	0/2322	ILS Rwy 5, Amdt 22B...
03/08/00	IN	Terre Haute	Terre Haute International-Hulman Field	0/2323	LOC BC Rwy 23, Amdt 18A...
03/08/00	IN	Terre Haute	Terre Haute International-Hulman Field	0/2327	VOR/DME Rwy 5, Amdt 17...
03/08/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2314	Converging, ILS Rwy 17C, Amdt 4B...
03/08/00	TX	Dallas-Fort Worth	Dallas-Fort Worth Intl	0/2342	Converging ILS Rwy 36R, Amdt 1C...
03/09/00	AMD	CA VOR/DME Rwy 2	Arcata-Eureka	0/2355	7...
03/09/00	CA	Crescent City	Jack McNamara Field	0/2356	VOR/DME Rwy 35, Amdt 10...
03/09/00	GA	Thomson	Thomson-McDuffie County	0/2363	NDB or GPS Rwy 28 Orig... GPS Rwy 28 Orig...
03/09/00	OH	Lebanon	Lebanon-Warren County	0/2372	RNAV Rwy 1 Orig...
03/09/00	OH	Lebanon	Lebanon-Warren County	0/2373	RNAV Rwy 19 Orig...
03/10/00	AK	Kalskag	Kalskag	0/2386	GPS Rwy 6, Orig...
03/10/00	AK	Kalskag	Kalskag	0/2387	GPS Rwy 24, Orig...
03/10/00	AK	Koliganek	Koliganek	0/2383	GPS Rwy 9, Orig...
03/10/00	AK	Koliganek	Koliganek	0/2384	GPS Rwy 27, Orig...
03/10/00	AK	Mountain Village	Mountain Village	0/2388	GPS Rwy 20, Orig...
03/10/00	AK	Mountain Village	Mountain Village	0/2389	GPS Rwy 2, Orig...
03/10/00	FL	Melbourne	Melbourne Intl	0/2385	GPS Rwy 9L, Orig-B...
03/10/00	GA	Thomson	Thomson-McDuffie County	0/2381	VOR/DME or GPS–A, Amdt 3...
03/13/00	GA	Jekyll Island	Jekyll Island	0/2512	GPS Rwy 36 Orig-A...
03/13/00	GA	Jekyll Island	Jekyll Island	0/2513	VOR or GPS–A Amdt 9A...
03/13/00	OH	Middletown	Hook Field Muni	0/2482	NDB or GPS Rwy 23, Amdt 8B...
03/14/00	LA	New Orleans	New Orleans Intl (Moisant Field)	0/2498	ILS Rwy 28, Amdt 4...
03/14/00	NE	Wayne	Wayne Muni	0/2530	NDB or GPS Rwy 22, Amdt 3...
03/15/00	OH	Middletown	Hook Field Muni	0/2569	LOC Rwy 23, Amdt 7C...

[FR Doc. 00–7194 Filed 3–22–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No.29958; Amdt. No.1981]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Area Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment is part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (NFDC) Notice to Airmen (NTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Procedures (TERPS). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are impracticable and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Navigation (Air).

L. Nicholas Lacey,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 is revised to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44701; and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

** * * Effective April 20, 2000*

Salisbury, NC, Rowan County, VOR OR GPS RWY 2, Amdt 5B, CANCELLED
Salisbury, NC, Rowan County, VOR OR GPS RWY 20, Amdt 1B CANCELLED
Salisbury, NC, Rowan County, VOR OR GPS–A, Amdt 7A, CANCELLED
Wallops Island, VA, Wallops Flight Facility, VOR/DME OR TACAN RWY 10, Amdt 5

** * * Effective May 18, 2000*

Grinnell, IA, Grinnell Regional, NDB RWY 31, Amdt 2
Grinnell, IA, Grinnell Regional, GPS RWY 31 Orig
Claremore, OK, Clarmore Muni, VOR/DME OR GPS–B, Amdt 1
Llano, TX, Llano Muni, VOR OR GPS–A, Amdt 3
Marlin, TX, Marlin, VOR/DME OR GPS–A, Amdt 7

** * * Effective June 15, 2000*

Mobile, Al, Mobile Downtown, VOR OR GPS RWY 14, Amdt 6
Anchorage, AK, Anchorage Intl, LOC RWY 6L, Amdt 9A, CANCELLED
Homer, AK, Homer, LOC/DME BC RWY 21, Amdt 4B
Homer, AK Homer, GPS RWY 21, Orig-B
Jacksonville, FL, Cecil Field, RADAR-1, Orig
Jacksonville, FL, Craig Muni, VOR OR GPS RWY 14, Amdt 3
Dodge City, KS Dodge City Regional, VOR RWY 14, Amdt 18A
Dodge City, KS, Dodge City Regional, VOR/DME OR GPS RWY 32, Amdt 4A
Hays, KS, Hays Muni, VOR/DME RWY 16, Amdt 3B
Hays, KS, Hays Muni, NDB OR GPS RWY 34, Amdt 2B
Hays, KS, Hays Muni, GPS RWY 16, Orig-B
Independence, KS, Independence Muni, ILS RWY 35, Amdt 1
Liberal, KS, Liberal Muni, VOR/DME OR GPS RWY 17, Amdt 3A
Liberal, KS, Liberal Muni, NDB RWY 35, Amdt 3A
Owensboro, KY, Owensboro-Daviess County, NDB OR GPS RWY 36, Amdt 8A
Alexandria, LA, Alexandria Intl, VOR OR GPS RWY 14, Amdt 1
Cameron, MO, Cameron Memorial, NDB RWY 35, Amdt 2
Cameron, MO, Cameron Memorial, RNAV RWY 17, Orig
Cameron, MO, Cameron Memorial, RNAV RWY 35, Orig
Jefferson City, MO, Jefferson City Memorial, NDB RWY 30, Orig-A
Albion, NE, Albion Muni, NDB RWY 33, Amdt 1
Albion, NE, Albion Muni, RNAV RWY 15, Orig
Albion, NE, Albion Muni, RNAV RWY 33, Orig
Albuquerque, NM, Albuquerque Intl Sunport, NDB OR GPS RWY 35, Amdt 7A
Carlsbad, NM, Cavern City Air Terminal, VOR OR GPS RWY 32L, Amdt 5A
Farmington, NM, Four Corners Regional, VOR RWY 25, Amdt 8B
Las Cruces, NM, Las Cruces International, NDB RWY 30, Orig-A
Roswell, NM, Roswell Industrial Air Center, NDB RWY 21, Amdt 16A
Hickory, NC, Hickory Regional, NDB RWY 24, Amdt 5A
Raleigh-Durham, NC, Raleigh-Durham International, NDB OR GPS RWY 5R, Amdt 20A
Raleigh-Durham, NC, Raleigh-Durham International, NDB OR GPS RWY 23L, Amdt 4B
Bismarck, ND, Bismarck Muni, NDB OR GPS RWY 31, Amdt 30B
Fargo, ND, Hector Intl, VOR/DME OR TACAN OR GPS RWY 17, Orig-C
Fargo, ND, Hector Intl, NDB RWY 17, Amdt 14C
Grand Forks, ND, Grand Forks Intl, VOR OR GPS RWY 17R, Amdt 5B
Grand Forks, ND, Grand Forks Intl, LOC BC RWY 17R, Amdt 12C
Grand Forks, ND, Grand Forks Intl, GPS RWY 26, Orig-B
Jamestown, ND, Jamestown Muni, NDB RWY 31, Amdt 6C
Minot, ND, Minot Intl, LOC BC RWY 13, Amdt 6B
Columbus, OH, Ohio State University, NDB RWY 9R, Amdt 2B
Columbus, OH, Port Columbus Intl, NDB OR GPS RWY 10R, Amdt 7A
Columbus, OH, Port Columbus Intl, NDB RWY 28R, Orig-C
Columbus, OH, Port Columbus Intl, NDB OR GPS RWY 28L, Amdt 13A
Oklahoma City, OK, Sundance Airpark, RNAV RWY 17, Orig
Oklahoma City, OK, Sundance Airpark, RNAV RWY 35, Orig
Oklahoma City, OK, Wiley Post, VOR RWY 35R, Amdt 3
Oklahoma City, OK, Wiley Post, ULS RWY 17L, Amdt 10
Erie, PA, Erie International, VOR OR GPS RWY 6, Amdt 15B
Erie, PA, Erie International, NDB RWY 24, Amdt 17B
Erie, PA, Erie International, VOR/DME OR GPS RWY 24, Amdt 11B
Aberdeen, SD, Aberdeen Regional, LOC/DME BC RWY 13, Amdt 10A
Aberdeen, SD, Aberdeen Regional, NDB RWY 31, Amdt 10A
Aberdeen, SD, Aberdeen Regional, GPS RWY 35, Orig-A
Huron, SD, Huron Regional, NDB RWY 12, Amdt 20B
Pierre, SD, Pierre Regional, VOR/DME OR TACAN OR GPS RWY 7, Amdt 4B
Rapid City, SD, Rapid City Regional, NDB RWY 32, Amdt 3B
Eastland, TX, Eastland Muni, RNAV RWY 35, Orig
Falfurrias, TX, Brooks County, GPS RWY 17, Orig-A
Falfurrias, TX, Brooks County, GPS RWY 35, Orig-A
Hebbronville, TX, Jim Hogg County, GPS RWY 13, Amdt 1A
Kingsville, TX, Kleberg County, NDB RWY 13, Amdt 5A
Kingsville, TX, Kleberg County, GPS RWY 13, Orig-A
Lockhart, TX, Lockhart Muni, GPS RWY 36, Orig-A
Robstown, TX, Nueces County, GPS RWY 12, Orig-B
Uvalde, TX, Garner Field, NDB RWY 33, Amdt 2
Uvalde, TX, Garner Field, RNAV RWY 33, Orig
Ogden, UT, Ogden-Hickley, GPS RWY 7, Orig-B
Richmond, VA, Chesterfield County, VOR/DME OR GPS RWY 15, Orig-B
Richmond, VA, Chesterfield County, NDB OR GPS RWY 33, Amdt 7C

[FR Doc. 00–7193 Filed 3–22–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 94F–0334]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of methyltin-2-mercaptoethyloleate sulfide used alone or in combination with several optional substances as a heat stabilizer for use in rigid poly(vinyl chloride) (PVC) and rigid vinyl chloride copolymers intended for use in the manufacture of pipes and pipe fittings that will contact water in food processing plants. This action is in response to a petition filed by Morton International, Inc.

DATES: This rule is effective March 23, 2000. Submit written objections and requests for a hearing by April 24, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 21, 1994 (59 FR 53193), FDA announced that a food additive petition (FAP 4B4430) had been filed by Morton International, Inc., 2000 West St., Cincinnati, OH 45215. The petition proposed to amend the food additive regulations in § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) to provide for the safe use of methyltin-2-mercaptoethyloleate sulfide mixtures as heat stabilizers for use in PVC pipes intended for transporting water for food contact.

Subsequent to the filing of the petition, FDA determined that methyltin-2-mercaptoethyloleate sulfide is a complex mixture. In addition, FDA determined that the petition also proposed that methyltin-2-mercaptoethyloleate sulfide may be used in combination with certain optional substances. Therefore, in a notice published in the **Federal Register** of September 7, 1999 (64 FR 48655), FDA announced that it was amending the filing notice of October 21, 1994, to indicate that the petitioner requests that the food additive regulations be amended to provide for the safe use of methyltin-2-mercaptoethyloleate sulfide as a heat stabilizer for use in rigid PVC and rigid vinyl chloride copolymers, complying with §§ 177.1950 and 177.1980 (21 CFR 177.1950 and 177.1980), respectively, intended for use in the manufacture of pipes and pipe fittings that will contact water in food processing plants. For these purposes, methyltin-2-mercaptoethyloleate sulfide is defined as one or more of the following:

1. 9-Octadecenoic acid (Z)-, 2-mercaptoethyl ester, reaction products with dichlorodimethylstannane, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 68442–12–6); or
2. Fatty acids, tall oil, 2-mercaptoethyl esters, reaction products with dichlorodimethylstannane, 2-mercaptoethyl decanoate, 2-mercaptoethyl octanoate, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 151436–98–5); or
3. Fatty acids, tall oil, 2-mercaptoethyl esters, reaction products with dichlorodimethylstannane, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 201687–57–2).

In addition, FDA announced in the September 7, 1999, notice that it was amending the filing notice of October 21, 1994, to indicate that the petitioner requested that the food additive regulations be amended to provide for the safe use of methyltin-2-mercaptoethyloleate sulfide as a heat stabilizer for use in rigid PVC and rigid vinyl chloride copolymers, complying with §§ 177.1950 and 177.1980, respectively, intended for use in the manufacture of pipes and pipe fittings that will contact water in food processing plants, in combination with the following optional substances:

1. 2-Mercaptoethyl oleate (CAS Reg. No. 59118–78–4), or 2-mercaptoethyl tallate (CAS Reg. No. 68440–24–4), or 2-mercaptoethyl octanoate (CAS Reg. No. 57813–59–9), or 2-mercaptoethyl decanoate (CAS Reg. No. 68928–33–6), alone or in combination;
2. 2-Mercaptoethanol (CAS Reg. No. 60–24–2);
3. Mineral oil (CAS Reg. No. 8012–95–1); or
4. Butylated hydroxytoluene (CAS Reg. No. 128–37–0).

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in 21 CFR 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 4B4430 (64 FR 48655). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 24, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
• • • • •	• • • • •
Methyltin-2-mercaptoethyloleate sulfide, which is defined as one or more of the following: 1. 9-Octadecenoic acid (Z)-, 2-mercaptoethyl ester, reaction products with dichlorodime thylstannane, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 68442–12–6); 2. Fatty acids, tall oil, 2-mercaptoethyl esters, reaction products with dichlorodimethylstannane, 2-mercaptoethyl decanoate, 2-mercaptoethyl octanoate, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 151436–98–5); or 3. Fatty acids, tall oil, 2-mercaptoethyl esters, reaction products with dichlorodimethylstannane, sodium sulfide, and trichloromethylstannane (CAS Reg. No. 201687–57–2);and which has the following specifications: Tin content (as Sn) 5 to 21 percent by weight; mercaptosulfur content 5 to 13 percent by weight; acid value no greater than 4. Methyltin-2-Mercaptoethyloleate sulfide may also be used with one or more of the following optional substances: 1.1a 2-Mercaptoethyl oleate (CAS Reg. No. 59118–78–4), 1.1b 2-Mercaptoethyl tallate (CAS Reg. No. 68440–24–4), 1.1c 2-Mercaptoethyl octanoate (CAS Reg. No. 57813–59–9), 1.1d 2-Mercaptoethyl decanoate (CAS Reg. No. 68928–33–6), alone or in combination; not to exceed 40 percent by weight of the stabilizer formulation; 2.1 2-Mercaptoethanol (CAS Reg. No. 60–24–2): Not to exceed 2 percent by weight of the stabilizer formulation. 3.1 Mineral oil (CAS Reg. No. 8012–95–1): Not to exceed 40 percent by weight of the stabilizer formulation. 4.1 Butylated hydroxytoluene (CAS Reg. No. 128–37–0): Not to exceed 5 percent by weight of the stabilizer formulation. The total of the optional substances (1.1a through 4.1) shall not exceed 60 percent by weight of the stabilizer formulation.	For use only in rigid poly(vinyl chloride) and rigid vinyl chloride copolymers complying with §§ 177.1950 and 177.1980 of this chapter, respectively, used in the manufacture of pipes and pipe fittings intended for contact with water in food processing plants, at levels not to exceed: 1. 1.0 percent by weight in pipes, and 2. 2.0 percent by weight in pipe fittings.
• • • • •	• • • • •

Dated: February 29, 2000.

L. Robert Lake,

Director, Office of Policy, Planning and Strategic Initiatives, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7011 Filed 3–22–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8864]

RIN 1545–AV87; 1545–AT97

Substantiation of Business Expenses; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This correction relates to final regulations which were published on Wednesday, January 26, 2000 (65 FR 4121), relating to certain business expenses under section 274 of the Internal Revenue Code affecting individuals and other taxpayers who claim or reimburse certain business expenses.

DATES: This correction is effective January 26, 2000.

FOR FURTHER INFORMATION CONTACT: Edwin B. Cleverdon at (202) 622–4920 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 274 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8864) contain an omission in need of correction.

Correction of Publication

Accordingly, the publication of the final regulations in TD 8864, which were the subject of FR Doc. 00–1382, is corrected as follows:

§ 1.274–5 [Corrected]

1. On page 4123, column 1, in § 1.274–5(c), add paragraphs (c)(3) through (7) to read as follows:

§ 1.274–5 Substantiation requirements.

* * * * *

(c) * * *

(3) through (7) [Reserved]. For further guidance, see § 1.274–5T(c)(3) through (7).

* * * * *

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5240 Filed 3–22–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8878]

RIN 1545–AU61

Tax Treatment of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to section 125 cafeteria plans. The final regulations clarify the circumstances under which a section 125 cafeteria plan election may be changed. The final regulations permit an employer to allow a section 125 cafeteria plan participant to revoke an existing election and make a new election during a period of coverage for accident or health coverage or group-term life insurance coverage.

DATES: *Effective Date:* These regulations are effective March 23, 2000.

Applicability Date: These regulations are applicable for cafeteria plan years beginning on or after January 1, 2001. See the **Scope of Regulations and Effective Date** portion of this preamble.

FOR FURTHER INFORMATION CONTACT: Janet A. Laufer or Christine L. Keller at (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under section 125. Section 125 generally provides that an employee in a cafeteria plan will not have an amount included in gross income solely because the employee may choose among two or more benefits consisting of cash and "qualified benefits." A qualified benefit generally is any benefit that is excludable from gross income under an express provision of the Internal Revenue Code, including coverage under an employer-provided accident or health plan under sections 105 and 106, group-term life insurance under section 79, elective contributions under a qualified cash or deferred arrangement within the meaning of section 401(k), dependent care assistance under section 129, and adoption assistance under section 137.[1] Qualified benefits can be provided under a cafeteria plan either through insured arrangements or arrangements that are not insured.

In 1984 and 1989, proposed regulations were published relating to the administration of cafeteria plans.[2] In general, the 1984 and 1989 proposed regulations require that for benefits to be provided on a pre-tax basis under section 125, an employee may make changes during a plan year only in certain circumstances.[3] Specifically, Q&A–8 of § 1.125–1 and Q&A–6(b), (c), and (d) of § 1.125–2 permit participants to make benefit election changes during a plan year pursuant to changes in cost or coverage, changes in family status, and separation from service.

In 1997, temporary and proposed regulations were issued addressing the standards under which a cafeteria plan may permit a participant to change his or her group health coverage election during a period of coverage to conform with the special enrollment rights under section 9801(f) (added to the Internal Revenue Code by the Health Insurance Portability and Accountability Act of 1996 (HIPAA)) and to change his or her group health or group-term life insurance coverage in a variety of change in status situations.[4]

These final regulations, which replace the 1997 temporary regulations, clarify the circumstances under which a cafeteria plan may permit an employee to revoke an existing election with respect to accident or health coverage, or group-term life insurance coverage, and make a new election during a period of coverage.

Explanation of Provisions

A. Summary

These regulations clarify the circumstances under which a cafeteria plan may permit an employee to change his or her cafeteria plan election with respect to accident or health coverage or group-term life insurance coverage during the plan year. The regulations generally follow the existing temporary regulations, and include a variety of examples illustrating how the rules apply in specific situations.

The final regulations include two principal changes that have been made in response to public comments. First, the regulations differ from the 1997 regulations with respect to change in status events resulting from a change in employment. Commentators requested a loosening of the rules regarding when a cafeteria plan election can be changed. In response, the final rules incorporate a more flexible rule under which any change in the employment status of the employee (or a spouse or dependent of the employee) that affects that individual's eligibility under a cafeteria plan or qualified benefits plan constitutes a change in status for purposes of permitting a mid-year election change. Second, in the event of a change in an employee's marital status or the employment status of the employee's spouse or dependent, the final regulations permit the employee to elect either to increase group-term life insurance coverage or to decrease group-term life insurance coverage. A similar rule applies with respect to disability income plans.

These final regulations were developed as part of an integrated package with proposed regulations that are being published elsewhere in this issue of the **Federal Register**. Those proposed regulations provide guidance on election changes on account of changes in status with respect to dependent care assistance and adoption assistance and provide guidance on election changes on account of changes in cost or coverage with respect to dependent care assistance, adoption assistance, accident or health coverage, and group-term life insurance coverage. The integrated package of final and proposed regulations is intended to provide clear standards for plan administration and for administration of the tax law. The standards are designed to accommodate the most common types of events of independent significance that do not occur on a regular, periodic basis and that are likely to affect an employee's decisions with respect to qualified benefits coverage.

B. Changes in Status

Commentators on the 1997 temporary and proposed regulations requested that the description of changes in status be expanded to include work-related changes of an employee, the employee's spouse, or the employee's dependent in addition to termination or commencement of employment or change in worksite. In response to these comments, the description of changes in

[1] The following are not qualified benefits: products advertised, marketed, or offered as long-term care insurance; medical savings accounts under section 106(b); qualified scholarships under section 117; educational assistance programs under section 127; and fringe benefits under section 132.

[2] 49 FR 19321 (May 7, 1984) and 54 FR 9460 (March 7, 1989), respectively.

[3] Those proposed regulations contain special rules with respect to flexible spending arrangements. A flexible spending arrangement (FSA) is defined in section 106(c)(2). Under section 106(c)(2), an FSA is generally a benefit program under which the maximum reimbursement reasonably available for coverage is less than 500% of the value of the coverage.

[4] 62 FR 60196 (November 7, 1997) and 62 FR 60165 (November 7, 1997), respectively. IRS Announcement 98–105 (1998–49 I.R.B. 21 (November 23, 1998)) states that the Service will amend the effective date of those proposed and temporary regulations so that they will not be effective before plan years beginning at least 120 days after further guidance is issued.

status has been broadened to include a strike or lockout, and a commencement of or return from an unpaid leave of absence. In addition, the final rules incorporate a more flexible rule for other change in employment status events. Specifically, if there is a change in the employment status of the employee (or a spouse or dependent of the employee) that affects that individual's eligibility under a cafeteria plan or qualified benefits plan, then that change constitutes a change in status. For example, if an employee switches from salaried to hourly-paid status, resulting in the employee ceasing to be eligible for coverage under the plan, then that change constitutes a change in status.

Some commentators expressed concern that the 1997 temporary and proposed regulations did not permit an employee to make an election change to cover additional individuals under an accident or health plan when an employer changed its policy (e.g., to permit coverage for a parent or for a domestic partner pursuant to local law requirements). Under the 1997 temporary and proposed regulations, a change in status includes an event that causes an employee's dependent to satisfy or cease to satisfy the eligibility requirements for coverage under a plan. Thus, if an individual who is a dependent of an employee becomes eligible for coverage under the employer's health plan as a result of an amendment made to the plan during the year, that is a change in status event and, accordingly, the cafeteria plan may permit an election change by the employee to cover the individual. These final regulations retain the rule from the 1997 temporary and proposed regulations.

These final regulations do not address when a bona fide termination of employment occurs. However, these regulations retain the example (*Example 8* under paragraph (c)(4) of these final regulations) from the 1997 temporary and proposed regulations addressing the situation in which an employee terminates and resumes employment within 30 days. The effect of this example is to provide a practical safe harbor that generally may be applied by cafeteria plans without regard to other facts and circumstances. Under this example, if an employee terminates and resumes employment within 30 days and the cafeteria plan provides that the employee's election is automatically reinstated, the employer is not required to determine whether a bona fide change in status has occurred with respect to termination of employment. Conversely, the cafeteria plan may permit an employee who resumes employment more than 30 days following termination to be automatically reinstated to the prior election or to make a new election.[5]

C. Consistency Rule

As under the 1997 temporary and proposed regulations, the final regulations require that an election change as a result of a change in status also satisfy a consistency requirement. In response to comments, the final regulations expand and clarify the consistency requirement with respect to change in status events for group-term life insurance. Under the 1997 regulations, in the case of a commencement of employment, marriage, birth, adoption, or placement for adoption, an employee could elect to increase (but not decrease) group-term life insurance coverage. The 1997 regulations also permitted an employee to elect to decrease (but not to increase) group-term life insurance coverage in the case of divorce, legal separation, annulment, or death of a spouse or dependent. Commentators suggested that these rules were too restrictive. For example, in the case of divorce, an employee may reasonably seek to increase coverage because the employee may become the sole wage-earner for the family unit as a result of the divorce. Accordingly, the final regulations provide flexibility by stating that, in the event of a change in an employee's marital status or the employment status of the employee's spouse or dependent, an employee may elect either to increase group-term life insurance coverage or to decrease group-term life insurance coverage. Also, in response to comments, a similar rule has been added that applies to election changes made with respect to disability income coverage (i.e., accident or health coverage that is neither for medical care as defined under section 213(d) nor for payments described in section 105(c)).

D. Other Changes

Some commentators requested that the regulations prescribe a period of time by which election changes, as a result of a change in status, should be made. Consistent with the approach taken in the 1997 regulations and in the interest of providing employers and plan administrators flexibility, the final regulations do not prescribe such a period. However, nothing in the final regulations would prevent a cafeteria plan by its terms from requiring that any election change (other than those made in connection with rights for which there are specific minimum election periods, such as under section 9801 (as added by HIPAA) and section 4980B (relating to COBRA coverage)), must be made within a specified period after a change in status event. The consistency rule in the final regulations does require that an election change made pursuant to a change in status be "on account of" a gain or loss of eligibility for coverage. This requirement follows the "on account of" language contained in the 1989 proposed regulations under § 1.125–2, Q&A–6(c), and is intended to add a general condition that the election change not be made so long after the event permitting the election change that the election is not on account of the event.

In accordance with comments, examples in the regulations clarify that if, in accordance with special enrollment rights provided by HIPAA , an employee, spouse, or new dependent is entitled to enroll in a group health plan, a cafeteria plan may permit the employee to elect to enroll pre-existing dependents in the underlying group health plan.[6] Likewise, the examples clarify that if, in accordance with the change in status rules relating to a new spouse or dependent, an employee is entitled to elect family coverage under a group health plan, then other family members are permitted to become covered under the family coverage as a result of the election change.[7]

In response to comments, the final regulations also clarify that, in the event of a loss of Medicare or Medicaid entitlement by an employee or by the employee's spouse or dependent, a cafeteria plan may permit the employee to add health coverage under the employer's accident or health plan (and may permit cancellation or reduction in coverage if an employee, spouse, or dependent who is enrolled in an accident or health plan becomes entitled to Medicare or Medicaid).

Scope of Regulations and Effective Date

These final regulations address all of the changes in status for which a cafeteria plan may permit election

[5] Alternatively, the cafeteria plan may prohibit an employee from participating in the cafeteria plan for that plan year upon reemployment.

[6] No inference is intended from these or any other examples in the final regulations concerning the interpretation of special enrollment rights under section 9801(f).

[7] Provisions in paragraph (b) of the final regulation allowing election changes in connection with special enrollment under section 9801(f) may overlap the provisions in paragraphs (c) through (e) of the final regulations permitting election changes in other circumstances. Thus, no inference is intended that an election change permitted under paragraphs (c) through (e) is not also permitted under paragraph (b).

changes with respect to an accident or health plan or group-term life insurance plan. However, future guidance under the cost or coverage change provision (reserved at paragraph (f) of these final regulations and included in paragraph (f) of the proposed regulations being published elsewhere in this issue of the **Federal Register**), rather than the change in status rules, would determine whether a cafeteria plan may permit affected employees to elect a new HMO option that is made available during a period of coverage. Similarly, election changes may be made under the special rules relating to changes in elections by employees taking leave under the Family and Medical Leave Act of 1993 (Public Law 103–3)[a] (as referenced at paragraph (g) of these final regulations).

Finally, these regulations do not override other cafeteria plan requirements. For example, although an employee's termination of employment is a change in status, some election changes made with respect to coverage under a health FSA on account of the termination of employment would fail to be consistent with the requirement that the operation of such arrangements exhibit the risk-shifting and risk-distribution characteristics of insurance under § 1.125–1, Q&A–17 and § 1.125–2, Q&A–7 of the proposed regulations. Thus, a cafeteria plan could not permit individuals terminating employment to change their health FSA elections to match the amount of premiums paid prior to termination (i.e., stop paying premiums), and continue to receive health FSA reimbursements with respect to the remainder of the period of coverage.

These regulations are applicable for cafeteria plan years beginning on or after January 1, 2001. Until the beginning of the first plan year beginning on or after January 1, 2001, taxpayers may rely on these regulations. In addition, until the beginning of the first plan year beginning on or after January 1, 2001, taxpayers may continue to rely on the change in status rules in the 1997 regulations, as well as the change in family status rules in the pre-1997 proposed regulations.

Pursuant to section 7805(e), the 1997 temporary regulations § 1.125–4T will expire within three years of the date of issuance (November 7, 2000). This Treasury decision amends the 1997 temporary regulations to add this expiration in the text of the regulations (§ 1.125–4T(l)).

[a] See § 1.125.3, published as a proposed rule at 60 FR (December 21, 1995).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information: The principal authors of these regulations are Janet A. Laufer and Christine L. Keller, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. § 1.125–4 is added to read as follows:

§ 1.125–4 Permitted election changes.

(a) *Election changes.* A cafeteria plan may permit an employee to revoke an election during a period of coverage and to make a new election only as provided in paragraphs (b) through (g) of this section. Section 125 does not require a cafeteria plan to permit any of these changes. See paragraph (h) of this section for special provisions relating to qualified cash or deferred arrangements, and paragraph (i) of this section for special definitions used in this section.

(b) *Special enrollment rights*—(1) *In general.* A cafeteria plan may permit an employee to revoke an election for coverage under a group health plan during a period of coverage and make a new election that corresponds with the special enrollment rights provided in section 9801(f).

(2) *Examples.* The following examples illustrate the application of this paragraph (b):

Example 1. (i) Employer *M* provides health coverage for its employees pursuant to a plan that is subject to section 9801(f). Under the plan, employees may elect either employee-only coverage or family coverage. *M* also maintains a calendar year cafeteria plan under which qualified benefits, including health coverage, are funded through salary reduction. *M*'s employee, *A*, is married to *B* and they have a child, *C*. In accordance with *M*'s cafeteria plan, Employee *A* elects employee-only health coverage before the beginning of the calendar year. During the year, *A* and *B* adopt a child, *D*. Within 30 days thereafter, *A* wants to revoke *A*'s election for employee-only health coverage and obtain family health coverage for *A*'s spouse, *C*, and *D* as of the date of *D*'s adoption. Employee *A* satisfies the conditions for special enrollment of an employee with a new dependent under section 9801(f)(2), so that *A* may enroll in family coverage under *M*'s accident or health plan in order to provide coverage effective as of the date of *D*'s adoption.

(ii) *M*'s cafeteria plan may permit *A* to change *A*'s salary reduction election to family coverage for salary not yet currently available. The increased salary reduction is permitted to reflect the cost of family coverage from the date of adoption. (*A*'s adoption of *D* is also a change in status, and the election of family coverage is consistent with that change in status. Thus, under paragraph (c) of this section, *M*'s cafeteria plan could permit *A* to elect family coverage prospectively in order to cover *B*, *C*, and *D* for the remaining portion of the period of coverage.)

Example 2. (i) The employer plans and permissible coverage are the same as in *Example 1*. Before the beginning of the calendar year, Employee *E* elects employee-only health coverage under *M*'s cafeteria plan. Employee *E* marries *F* during the plan year. *F*'s employer, *N*, offers health coverage to *N*'s employees, and, prior to the marriage, *F* had elected employee-only coverage. Employee *E* wants to revoke the election for employee-only coverage under *M*'s cafeteria plan, and is considering electing family health coverage under *M*'s plan or obtaining family health coverage under *N*'s plan.

(ii) *M*'s cafeteria plan may permit *E* to change *E*'s salary reduction election to reflect the change to family coverage under *M*'s group health plan because the marriage would result in special enrollment rights under section 9801(f), pursuant to which an election of family coverage under *M*'s group health plan would be required to be effective no later than the first day of the first calendar month beginning after the completed request for enrollment is received by the plan. (*E*'s marriage to *F* is also a change in status under paragraph (c) of this section, as illustrated in *Example 1* of paragraph (c)(4) of this section.)

(c) *Changes in status*—(1) *In general*—(i) *Change in status rule.* A cafeteria plan may permit an employee to revoke an election during a period of coverage with respect to a qualified benefits plan

to which this paragraph (c) applies and make a new election for the remaining portion of the period (referred to in this section as an election change) if, under the facts and circumstances—

(A) A change in status described in paragraph (c)(2) of this section occurs; and

(B) The election change satisfies the consistency rule of paragraph (c)(3) of this section.

(ii) *Application to accident or health plans and group-term life insurance plans.* This paragraph (c) applies to plans providing accident or health coverage and plans providing group-term life insurance coverage.

(iii) *Application to other qualified benefits.* [Reserved]

(2) *Change in status events.* The following events are changes in status for purposes of this paragraph (c):

(i) *Legal marital status.* Events that change an employee's legal marital status, including the following: marriage; death of spouse; divorce; legal separation; and annulment.

(ii) *Number of dependents.* Events that change an employee's number of dependents, including the following: birth; death; adoption; and placement for adoption.

(iii) *Employment status.* Any of the following events that change the employment status of the employee, the employee's spouse, or the employee's dependent: a termination or commencement of employment; a strike or lockout; a commencement of or return from an unpaid leave of absence; and a change in worksite. In addition, if the eligibility conditions of the cafeteria plan or other employee benefit plan of the employer of the employee, spouse, or dependent depend on the employment status of that individual and there is a change in that individual's employment status with the consequence that the individual becomes (or ceases to be) eligible under the plan, then that change constitutes a change in employment under this paragraph (c) (*e.g.*, if a plan only applies to salaried employees and an employee switches from salaried to hourly-paid with the consequence that the employee ceases to be eligible for the plan, then that change constitutes a change in employment status under this paragraph (c)(2)(iii)).

(iv) *Dependent satisfies or ceases to satisfy eligibility requirements.* Events that cause an employee's dependent to satisfy or cease to satisfy eligibility requirements for coverage on account of attainment of age, student status, or any similar circumstance.

(v) *Residence.* A change in the place of residence of the employee, spouse, or dependent.

(3) *Consistency rule*—(i) *Application to accident or health coverage and group-term life insurance.* An election change satisfies the requirements of this paragraph (c)(3) with respect to accident or health coverage or group-term life insurance only if the election change is on account of and corresponds with a change in status that affects eligibility for coverage under an employer's plan.

(ii) *Application to other qualified benefits.* [Reserved]

(iii) *Application of consistency rule.* If the change in status is the employee's divorce, annulment or legal separation from a spouse, the death of a spouse or dependent, or a dependent ceasing to satisfy the eligibility requirements for coverage, an employee's election under the cafeteria plan to cancel accident or health insurance coverage for any individual other than the spouse involved in the divorce, annulment or legal separation, the deceased spouse or dependent, or the dependent that ceased to satisfy the eligibility requirements for coverage, respectively, fails to correspond with that change in status. Thus, if a dependent dies or ceases to satisfy the eligibility requirements for coverage, the employee's election to cancel accident or health coverage for any other dependent, for the employee, or for the employee's spouse fails to correspond with that change in status. In addition, if an employee, spouse, or dependent gains eligibility for coverage under a family member plan (as defined in paragraph (i)(5) of this section) as a result of a change in marital status under paragraph (c)(2)(i) of this section or a change in employment status under paragraph (c)(2)(iii) of this section, an employee's election under the cafeteria plan to cease or decrease coverage for that individual under the cafeteria plan corresponds with that change in status only if coverage for that individual becomes applicable or is increased under the family member plan. However, if the change in status is a change in the employee's marital status under paragraph (c)(2)(i) of this section or a change in the employment status of the employee's spouse or dependents under paragraph (c)(2)(iii) of this section, an election to increase, or an election to decrease, group-term life insurance or disability income coverage corresponds with that change in status.

(iv) *Exception for COBRA.* If the employee, spouse, or dependent becomes eligible for continuation coverage under the group health plan of the employee's employer as provided in section 4980B or any similar state law, a cafeteria plan may permit the employee to elect to increase payments under the employer's cafeteria plan in order to pay for the continuation coverage.

(4) *Examples.* The following examples illustrate the application of this paragraph (c):

Example 1. (i) Employer *M* provides health coverage (including a health FSA) for its employees through its cafeteria plan. Before the beginning of the calendar year, Employee *A* elects employee-only health coverage under *M*'s cafeteria plan and elects salary reduction contributions to fund coverage under the health FSA. Employee *A* marries *B* during the year. Employee *B*'s employer, *N*, offers health coverage to *N*'s employees (but not including any health FSA), and, prior to the marriage, *B* had elected employee-only coverage. Employee *A* wants to revoke the election for employee-only coverage, and is considering electing family health coverage under *M*'s plan or obtaining family health coverage under *N*'s plan.

(ii) Employee *A*'s marriage to *B* is a change in status under paragraph (c)(2)(i) of this section, pursuant to which *B* has become eligible for coverage under *M*'s health plan under paragraph (c)(3)(i) of this section. Two possible election changes by *A* correspond with the change in status: Employee *A* may elect family health coverage under *M*'s plan to cover *A* and *B*; or *A* may cancel coverage under *M*'s plan, if *B* elects family health coverage under *N*'s plan to cover *A* and *B*. Thus, *M*'s cafeteria plan may permit *A* to make either election change.

(iii) Employee *A* may also increase salary reduction contributions to fund coverage for *B* under the health FSA.

Example 2. (i) Employee *C*, a single parent, elects family health coverage under a calendar year cafeteria plan maintained by Employer *O*. Employee *C* and *C*'s 21-year old child, *D*, are covered under *O*'s health plan. During the year, *D* graduates from college. Under the terms of the health plan, dependents over the age of 19 must be full-time students to receive coverage. Employee *C* wants to revoke *C*'s election for family health coverage and obtain employee-only coverage under *O*'s cafeteria plan.

(ii) *D*'s loss of eligibility for coverage under the terms of the health plan is a change in status under paragraph (c)(2)(iv) of this section. A revocation of *C*'s election for family coverage and new election for employee-only coverage corresponds with the change in status. Thus, *O*'s cafeteria plan may permit *C* to elect employee-only coverage.

Example 3. (i) Employee *E* is married to *F* and they have one child, *G*. Employee *E* is employed by Employer *P*, and *P* maintains a calendar year cafeteria plan that allows employees to elect no health coverage, employee-only coverage, employee-plus-one-dependent coverage, or family coverage. Under the plan, before the beginning of the calendar year, *E* elects family health coverage for *E*, *F*, and *G*. *E* and *F* divorce during the year and *F* loses eligibility for coverage under *P*'s plan. *G* does not lose eligibility for health coverage under *P*'s plan upon the divorce. *E*

now wants to revoke *E*'s election under the cafeteria plan and elect no coverage.

(ii) The divorce is a change in status under paragraph (c)(2)(i). A change in the cafeteria plan election to cancel health coverage for *F* is consistent with that change in status. However, an election change to cancel *E*'s or *G*'s health coverage does not satisfy the consistency rule under paragraph (c)(3)(iii) of this section regarding cancellation of coverage for an employee's other dependents in the event of divorce. Therefore, the cafeteria plan may not permit *E* to elect no coverage. However, an election to change to employee-plus-one-dependent health coverage would correspond with the change in status, and thus the cafeteria plan may permit *E* to elect employee-plus-one-dependent health coverage.

Example 4. (i) Employer *R* maintains a calendar year cafeteria plan under which full-time employees may elect coverage under one of three benefit package options provided under an accident or health plan: an indemnity option or either of two HMO options for employees who work in the respective service areas of the two HMOs. Employee *A*, who works in the service area of HMO #1, elects the HMO #1 option. During the year, *A* is transferred to another work location which is outside the HMO #1 service area and inside the HMO #2 service area.

(ii) The transfer is a change in status under paragraph (c)(2)(iii) of this section (relating to a change in worksite), and, under the consistency rule in paragraph (c)(3) of this section, the cafeteria plan may permit *A* to make an election change to either the indemnity option or HMO #2.

Example 5. (i) Employer *S* maintains a calendar year cafeteria plan that allows employees to elect coverage under an accident or health plan providing indemnity coverage and coverage under a health FSA. Prior to the beginning of the calendar year, Employee *B* elects employee-only indemnity coverage, and elects salary reduction contributions of $600 during the year to fund coverage under the health FSA for up to $600 of reimbursements for the year. Employee *B*'s spouse, *C*, has employee-only coverage under an accident or health plan maintained by *C*'s employer. During the year, *C* terminates employment and loses coverage under that plan. *B* now wants to elect family coverage under *S*'s accident or health plan and increase *B*'s FSA election.

(ii) *C*'s termination of employment is a change in status under paragraph (c)(2)(iii) of this section, and the election change satisfies the consistency rule of paragraph (c)(3) of this section. Therefore, the cafeteria plan may permit *B* to elect family coverage under *S*'s accident or health plan and to increase *B*'s FSA coverage.

Example 6. (i) Employer *T* provides group-term life insurance coverage as described under section 79. Under *T*'s plan, an employee may elect life insurance coverage in an amount up to $50,000. *T* also maintains a calendar year cafeteria plan under which qualified benefits, including the group-term life insurance coverage, are funded through salary reduction. Employee *D* has a spouse and a child. Before the beginning of the year, *D* elects $10,000 of group-term life insurance coverage. During the year, *D* is divorced.

(ii) The divorce is a change in status under paragraph (c)(2)(i) of this section. Under paragraph (c)(3)(iii) of this section, either an increase or a decrease in coverage is consistent with this change in status. Thus, *T*'s cafeteria plan may permit *D* to increase or to decrease *D*'s group-term life insurance coverage.

Example 7. (i) Employee *E* is married to F and they have one child, *G*. Employee *E*'s employer, *U*, maintains a cafeteria plan under which employees may elect no coverage, employee-only coverage, or family coverage under a group health plan maintained by *U*, and may make a separate vision coverage election under the plan. Before the beginning of the calendar year, *E* elects family health coverage and no vision coverage under *U*'s cafeteria plan. Employee *F*'s employer, *V*, maintains a cafeteria plan under which employees may elect no coverage, employee-only coverage, or family coverage under a group health plan maintained by *V*, and may make a separate vision coverage election under the plan. Before the beginning of the calendar year, *F* elects no health coverage and employee-only vision coverage under *V*'s plan. During the year, *F* terminates employment with *V* and loses vision coverage under *V*'s plan. Employee *E* now wants to elect family vision coverage under *U*'s group health plan.

(ii) *F*'s termination of employment is a change in status under paragraph (c)(2)(iii) of this section, and the election change satisfies the consistency rule of paragraph (c)(3) of this section. Therefore, *U*'s cafeteria plan may permit *E* to elect family vision coverage (covering *E* and *G* as well as *F*) under *U*'s group health plan.

Example 8. (i) Before the beginning of the year, Employee *H* elects to participate in a cafeteria plan maintained by *H*'s employer, *W*. However, in order to change the election during the year so as to cancel coverage, and by prior understanding with *W*, *H* terminates employment and resumes employment one week later.

(ii) In this *Example 8*, under the facts and circumstances, a principal purpose of the termination of employment was to alter the election, and reinstatement of employment was understood at the time of termination. Accordingly, *H* does not have a change in status under paragraph (c)(2)(iii) of this section.

(iii) However, *H*'s termination of employment would constitute a change in status, permitting a cancellation of coverage during the period of unemployment, if *H*'s original cafeteria plan election for the period of coverage was reinstated upon resumption of employment (for example, if *W*'s cafeteria plan contains a provision requiring an employee who resumes employment within 30 days, without any other intervening event that would permit a change in election, to return to the election in effect prior to termination of employment).

(iv) If, instead, *H* terminates employment and cancels coverage during a period of unemployment, and then returns to work more than 30 days following termination of employment, the cafeteria plan may permit *H* the option of returning to the election in effect prior to termination of employment or making a new election under the plan. Alternatively, the cafeteria plan may prohibit *H* from returning to the plan during that plan year.

(d) *Judgment, decree, or order*—(1) *Conforming election change.* This paragraph (d) applies to a judgment, decree, or order (order) resulting from a divorce, legal separation, annulment, or change in legal custody (including a qualified medical child support order as defined in section 609 of the Employee Retirement Income Security Act of 1974 (Public Law 93–406 (88 Stat. 829))) that requires accident or health coverage for an employee's child or for a foster child who is a dependent of the employee. A cafeteria plan will not fail to satisfy section 125 if it—

(i) Changes the employee's election to provide coverage for the child if the order requires coverage for the child under the employee's plan; or

(ii) Permits the employee to make an election change to cancel coverage for the child if the order requires the spouse, former spouse, or other individual to provide coverage for the child.

(2) *Example.* The following example illustrates the application of this paragraph (d):

Example. (i) Employer *M* maintains a calendar year cafeteria plan that allows employees to elect no health coverage, employee-only coverage, employee-plus-one-dependent coverage, or family coverage. *M*'s employee, *A*, is married to *B* and they have one child, *C*. Before the beginning of the year, *A* elects employee-only health coverage. Employee *A* divorces *B* during the year and, pursuant to *A*'s divorce agreement with *B*, *M*'s health plan receives a qualified medical child support order (as defined in section 609 of the Employee Retirement Income Security Act of 1974) during the plan year. The order requires *M*'s health plan to cover *C*.

(ii) Under this paragraph (d), *M*'s cafeteria plan may change *A*'s election from employee-only health coverage to employee-plus-one-dependent coverage in order to cover *C*.

(e) *Entitlement to Medicare or Medicaid.* If an employee, spouse, or dependent who is enrolled in an accident or health plan of the employer becomes entitled to coverage (i.e., becomes enrolled) under Part A or Part B of Title XVIII of the Social Security Act (Medicare) (Public Law 89–97 (79 Stat. 291)) or Title XIX of the Social Security Act (Medicaid) (Public Law 89–97 (79 Stat. 343)), other than coverage consisting solely of benefits under section 1928 of the Social Security Act (the program for distribution of pediatric vaccines), a cafeteria plan may permit the employee to make a prospective election change to cancel or reduce coverage of that employee, spouse, or dependent under the accident or health plan. In addition, if an employee, spouse, or dependent who has been entitled to such coverage under Medicare or Medicaid loses eligibility for such coverage, the cafeteria plan may permit the employee to make a prospective election to commence or increase coverage of that employee, spouse, or dependent under the accident or health plan.

(f) *Significant cost or coverage changes.* [Reserved]

(g) *Special requirements relating to the Family and Medical Leave Act.* An employee taking leave under the Family and Medical Leave Act (FMLA) (Public Law 102–530 (88 Stat. 829)) may revoke an existing election of group health plan coverage and make such other election for the remaining portion of the period of coverage as may be provided for under the FMLA.

(h) *Elective contributions under a qualified cash or deferred arrangement.* The provisions of this section do not apply with respect to elective contributions under a qualified cash or deferred arrangement (within the meaning of section 401(k)) or employee contributions subject to section 401(m). Thus, a cafeteria plan may permit an employee to modify or revoke elections in accordance with section 401(k) and (m) and the regulations thereunder.

(i) *Definitions.* Unless otherwise provided, the definitions in paragraphs (i)(1) though (8) of this section apply for purposes of this section.

(1) *Accident or health coverage.* Accident or health coverage means coverage under an accident or health plan as defined in regulations under section 105.

(2) *Benefit package option.* A benefit package option means a qualified benefit under section 125(f) that is offered under a cafeteria plan, or an option for coverage under an underlying accident or health plan (such as an indemnity option, an HMO option, or a PPO option under an accident or health plan).

(3) *Dependent.* A dependent means a dependent as defined in section 152, except that, for purposes of accident or health coverage, any child to whom section 152(e) applies is treated as a dependent of both parents.

(4) *Disability income coverage.* Disability income coverage means coverage under an accident or health plan that provides benefits due to personal injury or sickness, but does not reimburse expenses incurred for medical care (as defined in section 213(d)) of the employee or the employee's spouse and dependents, and does not provide for payments described in section 105(c).

(5) *Family member plan.* A family member plan means a cafeteria plan or qualified benefit plan sponsored by the employer of the employee's spouse or the employee's dependent.

(6) *FSA, health FSA.* An FSA means a qualified benefits plan that is a flexible spending arrangement as defined in section 106(c)(2) . A health FSA means a health or accident plan that is an FSA.

(7) *Placement for adoption.* Placement for adoption means placement for adoption as defined in regulations under section 9801.

(8) *Qualified benefits plan.* A qualified benefits plan means an employee benefit plan governing the provision of one or more benefits that are qualified benefits under section 125(f).

(j) *Effective date.* This section is applicable for cafeteria plan years beginning on or after January 1, 2001.

Par. 3. § 1.125–4T is amended by revising paragraph (l) to read as follows:

§1.125–4T Permitted election changes (temporary).

* * * * *

(l) *Effective date.* This section is applicable for plan years beginning after December 31, 1998, and on or before November 6, 2000.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: February 23, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 00–5817 Filed 3–22–00; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 938

[PA–127–FOR]

Pennsylvania Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM).

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving, with certain exceptions, a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment revises the Pennsylvania program to incorporate changes made by Pennsylvania regarding administration of the Small Operators Assistance Program (SOAP).

EFFECTIVE DATE: March 23, 2000.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggi, Director, Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782–4036.

SUPPLEMENTARY INFORMATION:

I. Background on the Pennsylvania Program.
II. Submission of the Amendment.
III. Director's Findings.
IV. Summary and Disposition of Comments.
V. Director's Decision.
VI. Procedural Determinations.

I. Background on the Pennsylvania Program

On July 30, 1982, the Secretary of the Interior conditionally approved the Pennsylvania program. Background information on the Pennsylvania program including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, **Federal Register** (47 FR 33050). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.16.

II. Submission of the Amendment

By letter dated November 8, 1999, (Administrative Record Number PA 846.02), Pennsylvania submitted an amendment to the Pennsylvania program. The amendment resulted from regulations the Pennsylvania Department of Environmental Protection (PADEP) published in the Pennsylvania Bulletin (28 Pa. B. 15, January 3, 1998). The regulations were published to revise Pennsylvania's existing SOAP regulations to be consistent with the federal SOAP revisions and because of the Department's Regulatory Basics Initiative (RBI). Under the RBI, regulations are revised because they were considered unclear, unnecessary or were more stringent than the corresponding federal regulations. Pennsylvania also published the regulations to address an amendment required by OSM [see 30 CFR 938.16(ooo)].

The proposed amendment was published in the **Federal Register** (64

FR 66598, November 29, 1999), and in the same notice, OSM opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The comment period closed on December 29, 1999. No public hearings were requested or held.

III. Director's Findings

Set forth below, pursuant to SMCRA and the federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Pennsylvania program.

A. 25 PA Code 86.80. Definitions

The definition of the phrase, "qualified consultant and qualified laboratory" was moved to this newly created section from 25 PA Code 86.91. There was only a slight wording change when it was moved. The use of the term "qualified consultant" was discussed and approved in a previous Pennsylvania amendment regarding SOAP (60 FR 16789 and 16791, April 3, 1995). In approving that amendment, the Director found that use of the term "qualified consultant" was consistent with the intent of the federal regulations and did not render the Pennsylvania program less effective than the counterpart regulations at 30 CFR part 795. With regard to the current amendment, the Director finds that moving of the definition and the slight wording change to the definition of "qualified consultant and qualified laboratory" is no less effective than the federal definition found at 30 CFR 795.3.

B. 25 PA Code 86.81, Program Services

The first change proposed to 25 PA Code 86.81 is the deletion of the phrase "for qualified small operators who request assistance" in subsection (a) when describing the Department's duties. A new subsection (1) which requires the Department to, "Review requests for assistance" is proposed to be added. While there is no direct federal counterpart to this regulation, the Director finds the amendment to be consistent with 30 CFR 795.9 regarding administration of the SOAP program and data requirements and therefore approves the change.

PADEP further changed this section by moving the referenced regulations of subsection (a)(1)(iii) to newly created subsections (a)(2)(iii)(A), (B), and (C) and by stating that the Department will select and pay a qualified consultant to provide a description of the existing resources within and adjacent to the proposed permit area in accordance with one of those subsections. In moving the referenced regulations, PADEP dropped references to 25 PA Code §§ 87.48, 87.49, 87.52, 87.53, 88.28, 88.29, 88.30, 88.32, 88.33, 89.37, 89.38, 89.71, 89.72, 89.73, 89.102, 89.121, 89.122, 89.141, and 89.142(a). The remaining references are: (A) Sections 87.41–87.47, 87.50 and 87.54, (B) 88.21–88.27 and 88.31, and (C) 89.33–89.36, 89.38 and 89.74. The cross references listed in (C) that in 1995 (60 FR 16788) were approved previously remain approved except as noted later in the discussion regarding § 89.34.

Similarly, the Department changed subsection (a)(1)(iv) by moving referenced regulations to newly created subsections (a)(2)(iv)(A), (B), and (C) and by stating that the Department will select and pay a qualified consultant to provide a detailed description, to include maps, plans, and cross sections, of the proposed coal mining activities showing the manner in which the proposed permit area will be mined and reclaimed in accordance with one of those subsections. In moving the referenced regulations, PADEP dropped references to 25 PA Code §§ 87.68, 87.70–87.76 (inclusive), and 87.78–87.83 (inclusive), 88.41–88.44 (inclusive), 88.46, 88.48, 88.50–88.55 (inclusive), 88.57–88.61 (inclusive). The remaining references are: (A) Sections 87.69, 87.77 and 87.84 and (B) Sections 88.49, 88.56 and 88.62.

For Chapter 89 references to subsection (a)(2)(iv)(C), PADEP added §§ 89.33, 89.34, and 89.35 while deleting references to §§ 89.31, 89.32, 89.37, 89.71–89.73 (inclusive), 89.102, 89.122(b), 89.141, and 89.142(a). Two of the added Chapter 89 references (§§ 89.33 and 89.35) deal with geology and prediction of the hydrologic consequences for underground mines and coal preparation facilities. The information required by these sections will be used to determine the probable hydrologic consequences and the geology information as provided for in 30 CFR 795.9(b)(1) and (2). Therefore, the Director finds the addition of these references makes this portion of the amendment to be no less effective than the federal rule and approves the change.

The third Chapter 89 reference, § 89.34, deals with hydrology for underground mines and coal preparation facilities. Subsections (a)(1)(i)and (ii), (a)(2)(i), and (b) deal with collection of groundwater and surface water information for the proposed permit and adjacent areas. The information required by these subsections will be used to determine the probable hydrologic consequences information as provided for in 30 CFR 795.9(b)(1). However, subsections (a)(1)(iii) and (a)(2)(ii) deal respectively with groundwater and surface water monitoring plans. The information required by these subsections is not of the nature that would be funded under federal SOAP guidelines. In 1995, OSM had inadvertently approved in 86.81 (a)(1)(iii), the cross reference to § 89.34(a)(1)(iii) and (a)(2)(ii). Now, however, the Director is approving incorporation of the reference to § 89.34 at 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) to the extent that Pennsylvania implements this provision consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(A) and the implementing regulations at 30 CFR 795.9(b)(1). The Director is not approving the incorporation of this references into subsections 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(A) of SMCRA or 30 CFR 795.9(b)(1).

PADEP changed the references to the regulations at 86.81(a)(2)(iii) and 86.81(a)(2)(iv) in response to OSM's comments to Pennsylvania's previous SOAP amendment (60 FR 16788). In reviewing that amendment, OSM required PADEP to correct regulatory citations that are beyond the scope of services authorized by 30 CFR 795. While PADEP deleted most of the regulatory citations OSM felt were beyond the scope of services authorized by 30 CFR 795, there are still several that remain including references in 25 PA Code 86.81(a)(2)(iii)(A) and (B) to §§ 87.41, 87.42(1), 88.21, and 88.22(1). Sections 25 PA Code 87.41 and 88.21 correspond to 30 CFR 779.11, (description in permit application of existing, premining environmental resources that may be affected or impacted) and 25 PA Code 87.42(1) and 88.22(1) correspond to 30 CFR 779.12(a) (description and identification of lands, etc.). Neither the requirements noted in 30 CFR 779.11 nor 779.12(a) are referenced in federal regulations as being authorized for payment under the SOAP program. The Director is approving subsections 86.81(a)(2)(iii)(A) and (B) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c) and the implementing regulations at 30 CFR 795.9(b). The Director is not approving proposed subsections 86.81(a)(2)(iii)(A) and (B) to the extent that the proposed

subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

In the 1995 SOAP amendment, OSM also noted that the permitting requirements at 25 PA Code 87.77, 88.56 and 89.38 are not authorized for SOAP funding to the extent that they apply to public parks (60 FR 16790). The references to public parks remain in subsections 86.81(a)(2)(iv)(A), (B) and (C). The Director is approving the reference of §§ 87.77, 88.56 and 89.38 in subsections 86.81(a)(2)(iv)(A), (B) and (C) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(D) and the implementing regulations at 30 CFR 795.9(b)(4). The Director is not approving the incorporation of these references into subsections 86.81(a)(2)(iv)(A), (B) and (C) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(D) of SMCRA or 30 CFR 795.9(b)(4).

Finally, PADEP added subsection (b) which provides that the applicant is responsible for costs exceeding the amount of funds allocated for the services to the applicant. This requirement was moved from 25 PA Code 86.94(c). While there is no direct federal counterpart to subsection (b), the Director finds this proposal is consistent with the federal requirements at 30 CFR 795.11(b) regarding allocation of funds and approves this change.

C. 25 PA Code 86.82, Responsibilities

This subsection removes language that states the Department will review requests for assistance and determine qualified operators. This change does not significantly impact the Department's procedures and does not diminish the duties of the program administrator as required in 30 CFR §§ 795.8 and 795.9 since the authority by the Department to approve or deny an application for assistance is still provided for in 25 PA Code 86.85. Accordingly, the Director finds that the deletion does not render the Pennsylvania program less effective than the federal program and therefore approves this change.

D. 25 PA Code 86.83, Eligibility for Assistance

The previous language of this section read that an applicant is eligible for assistance if the probable total and attributed production from the applicant's operations during the 12-month period immediately following the date on which the applicant is issued the mining activities permit will not exceed 300,000 tons. Subsection 25 PA Code 86.83(a)(2) now reads, "establishes that the probable total attributed annual production from all locations on which the applicant is issued the mining activities permit will not exceed 300,000 tons." PADEP included the phrase "all locations" in this subsection to make clear the extent of operations to be included in the tonnage requirements.

A second change was made to this subsection to address a program amendment required by OSM in the 1995 SOAP approval (60 FR 16790). The required regulatory program amendment at 30 CFR 938.16(ooo) required Pennsylvania to amend 25 PA Code 86.83(a)(2) to provide that the applicant must establish that the operator's probable total attributed annual production following permit issuance will remain under 300,000 tons for all years, not just the first year. The current proposed amendment removed the phrase, "the applicant's operations during the 12-month period immediately following the date." This removal makes it clear that the 300,000 ton limit as required by the federal regulations now applies in Pennsylvania for all years following permit issuance. The Director finds that the changes are no less effective than the federal requirements of 30 CFR 795.6(a)(2) and can be approved. The required regulatory program amendment at 30 CFR 938.16 (ooo) is removed and reserved.

The final change to 25 PA Code 86.83 is the addition of subsection (c) which states, "For the purpose of this subchapter, measurement of coal production will be based on the production reported to the Office of Surface Mining Reclamation and Enforcement for the purpose of the reclamation fee payment." This section was formerly located in 25 PA Code 86.95 which was previously approved by OSM. There were no substantive changes in the language. Therefore, the Director finds that this section is no less effective than the federal regulations and approves the change.

E. 25 PA Code 86.84, Applications for Assistance

Pennsylvania proposed to delete subsection (a) which provides, "Persons wishing to receive assistance shall file a Small Operator Assistance Program application with the Department at any time after initiation of the program." Former subsection (b) is now designated as subsection (a).

Subsection (b)(2)(iii) which required applicants for SOAP benefits to submit a surface mining operator's license as part of the application was also deleted. The requirement to submit information regarding a mine operator's license was added as subsection (a)(7). This subsection requires the mine operator's license number to be submitted as part of the application.

The final change to this subsection was made to former subsection (c) which is now designated as subsection (b). Previously, this subsection required two copies of the application for assistance to be submitted, one of which was to be attested by a notary public or district justice. The subsection now reads, "The application shall be attested by a notary public or district justice."

There are no specific federal counterparts to the deleted language. The deletions do not render the Pennsylvania program less effective than the federal requirements and therefore are approved.

F. 25 PA Code 86.85, Application approval and notice

This section was amended by adding subsection (a)(3) which requires PADEP to provide the applicant a copy of the contract or other appropriate work order for the qualified consultant's services and the consultants' report within 15 Days of the Department's final approval. Subsection (c) was added which requires the Department to inform the applicant in writing of a decision to deny the application with 45 days of receipt of an application for assistance. The regulations require the Department to state the reason for the denial.

The federal rules at 30 CFR 795.8 require written notification to the applicant when the program administrator finds the applicant either eligible or ineligible for assistance. They do not specify how many days before a decision must be made on the application for assistance. The Director finds 45 days is a reasonable time period and finds that these subsections are no less effective than the federal regulations at 30 CFR 795.8 (a) and (b) and can be approved.

Subsection (b) was modified to make it clear that granting of assistance under the SOAP program does not imply that the Department will approve a subsequent permit action. While there is no federal counterpart to this requirement, the Director finds that this change is not inconsistent with SMCRA and the federal regulations.

G. 25 PA Code 86.86, Notice

This provision is being deleted in its entirety. The provisions requiring the Department to notify the applicant of decisions regarding the application are now found in 25 PA Code 86.85(a) and (c).

The Director finds that this proposed deletion does not render the Pennsylvania program less effective than the federal program and approves the deletion.

H. 25 PA Code 86.87, Determination of data requirements

Subsection (a) was rewritten by moving a phrase to clarify the section. No language was deleted or added. This section provides that the Department will determine the data collection requirements to meet the objectives of the program. Development of information on environmental resources, operation plans and reclamation plans may proceed concurrently with data collection and analyses required for the determination of the probable hydrologic consequences of the proposed mining activities if specifically authorized by the Department in an approved work order.

While there is no direct counterpart in the federal regulations, the Director finds the provision is consistent with the SOAP provision at 30 CFR 795.9(c) which allow data collection and analysis to proceed concurrently with the development of mining and reclamation plans and approves the change.

I. 25 PA Code 86.91, Definitions and Responsibilities

This provision is being deleted in its entirety. This section contained the definitions for the terms "qualified consultant" and "qualified laboratory." These definitions are found in the newly created section 25 PA Code 86.80.

Subsection (b) contained the procedures people who desired to be included in the list of qualified consultants or qualified laboratories must follow. These requirements are now found at newly created 25 PA Code 86.92(c).

Finally, subsection (c) which required the Department to designate and maintain a list of qualified consultant and qualified laboratories is eliminated. There is no federal requirement that a list of qualified consultants or laboratories be maintained by Pennsylvania. Pursuant to 25 PA Code 86.92, Pennsylvania still determines which laboratories or consultants can provide services under the SOAP program.

The Director finds that the moving of subsections (a) and (b) and the deletion of subsection (c) does not render the Pennsylvania program less effective than the federal regulations and approves the changes.

J. 25 PA Code 86.92, Basic Qualifications

As stated in the discussion regarding 25 PA Code 86.91 above, subsection (c) was added to define the procedures people must follow to be included in PADEP's list of qualified consultants or qualified laboratories.

This requirement was formerly found at 25 PA Code 86.91(b) which was previously approved by OSM. There were no substantive changes in the language of the requirement. Therefore, the Director finds that this section is no less effective than the federal regulations and approves the change.

K. 25 PA Code 86.94, Applicant Liability

Subsection (a) describes the circumstances under which an operator will be liable for reimbursing the cost of services performed. One of those circumstances as found in Subsection (a)(3) was changed from failing to mine within three years after obtaining a permit to failure to commence mining within three years after obtaining a permit.

The federal regulation at 30 CFR 795.12 does not specify what stage of mining an operator must be in before he or she is liable for reimbursement to the SOAP program. Pursuant to 30 CFR 773.19(e) and 25 PA Code 86.40(b), a permit is terminated for failing to start mining within three years of permit issuance. Accordingly, it is a reasonable interpretation that the SOAP program should be reimbursed for any funds distributed to that terminated permit. Thus, the Director finds that this subsection is consistent with the federal regulations at 30 CFR 795.12 and can be approved.

Subsection (c) was deleted and moved to 25 PA Code 86.81(b). This subsection provided that the applicant was responsible for costs exceeding the amount of funds allocated for the services to the applicant. The Director finds that moving this subsection does not render the Pennsylvania program less effective than the federal regulations and therefore approves the change.

L. 86.95, Measurement

This section was deleted in its entirety. The requirement to use coal production as reported to the Office of Surface Mining Reclamation and Enforcement for fee payment purposes also for eligibility for participating in SOAP was moved to 86.83(c). The Director finds that deletion of this subsection does not render the Pennsylvania program less effective than the federal requirements and is approved.

IV. Summary and Disposition of Comments

Federal Agency Comments

Pursuant to 503(b) of SMCRA and 30 CFR 732.17(h)(11)(i), the Director solicited comments on the proposed amendment from various federal agencies with an actual or potential interest in the Pennsylvania program.

The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) commented that the word "either" after the phrase "in accordance with" found at 86.81(a)(2)(iii) should be deleted. The Director agrees that this typographical error should be deleted but its inclusion does not render the program less effective nor does it cause confusion. MSHA also commented that the agency reference at 86.84(a)(3)(ii) to "Mining Enforcement and Safety Administration" should be replaced with the "Mine Safety and Health Administration." The Director agrees that this is an incorrect reference. However, subsection 86.84(a)(3)(ii) is outside the scope of the amendment since it was not amended by the proposed submission. Pennsylvania should correct this reference in future amendments.

Public Comments

A public comment period and opportunity to request a public hearing was announced in the November 29, 1999, **Federal Register** (64 FR 66598). The comment period closed on December 29, 1999. No one requested an opportunity to testify at a public hearing, so no hearing was held.

The only written comments received were from the Pennsylvania Historical and Museum Commission. The Commission stated that it will continue to assist operators qualifying under the SOAP program to identify impacts to cultural resources within the proposed project areas.

The proposed amendment does not modify this relationship and therefore the Commission had no substantive comments about the amendment.

Environmental Protection Agency

Pursuant to 30 CFR 732.17(h)(11)(ii), OSM is required to obtain the written concurrence of the EPA with respect to those provisions of the proposed program amendment that relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*).

On November 16, 1999, OSM solicited EPA's concurrence and comments on the proposed amendment (Administrative Record No. PA–864.03). EPA responded on November 29, 1999, (Administrative Record No. PA 846.05) by stating it had no specific comments.

V. Director's Decision

Based on the findings above the Director is approving, except as noted below, Pennsylvania's SOAP amendment as submitted by Pennsylvania on November 8, 1999.

As noted in section III. B. above, the Director is approving incorporation of the reference to § 89.34 at 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) concerning fundable program services to the extent that Pennsylvania implements this provision consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(A) and the implementing regulations at 30 CFR 795.9(b)(1). The Director is not approving the incorporation of this references into subsections 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(A) of SMCRA or 30 CFR 795.9(b)(1).

Also noted in III. B. above there are several regulatory citations in the 1995 SOAP approval that OSM felt were beyond the scope of services authorized by 30 CFR 795 that still remain in this amendment including: 25 PA Code §§ 87.41, 87.42(1), 88.21, and 88.22(1). These requirements are not referenced in federal regulations as being authorized for payment under the SOAP program. The Director is approving subsections 86.81(a)(2)(iii)(A) and (B) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c) and the implementing regulations at 30 CFR 795.9(b). The Director is not approving proposed subsections 86.81(a)(2)(iii)(A) and (B) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1) of SMCRA or 30 CFR 795.9(b).

Finally, also discussed in III. B. above, OSM noted in the 1995 SOAP amendment approval that the permitting requirements at 25 PA Code 87.77, 88.56 and 89.38 are not authorized for SOAP funding to the extent that they apply to public parks. The references to public parks remain in subsections 86.81(a)(2)(iv)(A), (B) and (C). The Director is approving the reference of §§ 87.77, 88.56 and 89.38 into subsections 86.81(a)(2)(iv)(A), (B) and (C) to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(D) and the implementing regulations at 30 CFR 795.9(b)(4). The Director is not approving the incorporation of these references into subsections 86.81(a)(2)(iv)(A), (B) and (C) to the extent that the proposed subsections would authorize the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(D) of SMCRA or 30 CFR 795.9(b)(4).

The Federal regulations at 30 CFR 938 codifying decisions concerning the Pennsylvania program are being amended to implement this decision. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not enforceable until approved by OSM. The federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In oversight of the Pennsylvania program, the Director will recognize only the statutes, regulations and other materials approved by OSM, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Pennsylvania of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget [*19820] (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon corresponding federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic

impact, the Department relied upon the date and assumptions for the corresponding federal regulations.

Unfunded Mandates

This rule will not impose a cost of $ 100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 938

Intergovernmental relations, Surface mining, Underground mining.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 938—PENNSYLVANIA

1. The authority citation for Part 938 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 938.15 is amended in the table by adding a new entry in chronological order by "Date of Final Publication" to read as follows:

§ 938.15—Approval of Pennsylvania regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
November 8, 1999	March 23, 2000	25 PA Code §§ 86.80, 86.81, 86.82, 86.83, 86.84, 86.85, 86.86 (deleted), 86.87, 86.91 (deleted), 86.92, 86.94, 86.95 (deleted). Note: The incorporation of the reference to § 89.34 at 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) is approved to the extent that Pennsylvania implements this provision consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(A) and the implementing regulations at 30 CFR 795.9(b)(1). The incorporation of this reference into subsections 86.81(a)(2)(iii)(C) and 86.81(a)(2)(iv)(C) is not approved to the extent that the proposed subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(A) of SMCRA or 30 CFR 795.9(b)(1). 25 PA Code 86.81(a)(2)(iii) is approved to the extent that the SOAP funds are not used to fund the activities required under 25 PA Code §§ 87.41 and 87.42(1) or §§ 88.21 and 88.22(1). The reference of §§ 87.77, 88.56 and 89.38 (regarding archaeological and historic information) into subsections 86.81(a)(2)(iv)(A), (B) and (C) is approved to the extent that Pennsylvania implements these provisions consistent with the SOAP funding provisions of SMCRA section 507(c)(1)(D) and the implementing regulations at 30 CFR 795.9(b)(4). The incorporation of these references (regarding public parks) into subsections 86.81(a)(2)(iv)(A), (B) and (C) is not approved to the extent that the proposed subsections would authorized the expenditure of Pennsylvania SOAP funds under the subsections listed above for services that are not fundable under section 507(c)(1)(D) of SMCRA or 30 CFR 795.9(b)(4).

§ 938.16 [Amended]

3. Section 938.16 is amended by removing and reserving paragraph (000).

[FR Doc. 00–7207 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05–00–005]

RIN 2115–AE46

Special Local Regulations for Marine Events; Approaches to Annapolis Harbor, Spa Creek, and Severn River, Annapolis, Maryland

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation

SUMMARY: The Coast Guard is implementing the special local regulations at 33 CFR 100.511 for the 21st Annual Safety at Sea Seminar, a marine event to be held March 25, 2000, on the waters of Spa Creek and the Severn River at Annapolis, Maryland. These special local regulations are necessary to control vessel traffic due to the confined nature of the waterway and expected vessel congestion during the event. The effect will be to restrict general navigation in the regulated area for the safety of spectators and vessels transiting the event area.

DATES: 33 CFR 100.511 is effective from 11:30 a.m. to 3 p.m. on March 25, 2000.

FOR FURTHER INFORMATION CONTACT: Chief Warrant Officer R.L. Houck, Marine Events Coordinator, Commander, Coast Guard Activities Baltimore, 2401 Hawkins Point Road, Baltimore, MD 21226–1971, (410) 576–2674.

SUPPLEMENTARY INFORMATION: The U.S. Naval Academy Sailing Squadron will sponsor the 21st Annual Safety at Sea Seminar on the waters of the Severn River and Spa Creek at Annapolis, Maryland. Waterborne activities will include demonstrations of life rafts, pyrotechnics, man overboard procedures, and a helicopter rescue. In order to ensure the safety of participants, spectators and transiting vessels, 33 CFR 100.511 will be in effect for the duration of the event. Under provisions of 33 CFR 100.511, vessels may not enter the regulated area without permission from the Coast Guard Patrol Commander. Spectator vessels may anchor outside the regulated area but may not block a navigable channel. Because these restrictions will only be in effect for a limited period, they should not result in a significant disruption of maritime traffic.

Dated: March 10, 2000.

J.E. Shkor,

Vice Admiral, Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 00–7206 Filed 3–21–00; 9:38 am]

BILLING CODE 4910–15–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 20, 22, 24, 80, 90, 99

[GN Docket No. 93–252; FCC 00–66]

Petitions for Reconsideration; Regulation of Mobile Radio Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: This document denies petitions for reconsideration of the Second Report and Order (Second R&O) in this proceeding, regarding regulatory treatment of mobile services. Some of the petitions are dismissed because they provide no new information warranting reconsideration of the Second R&O, and others are dismissed because the issues raised are either moot or beyond the scope of this proceeding.

FOR FURTHER INFORMATION CONTACT: Jane Phillips, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in GN Docket No. 93–252, FCC 00–66, adopted February 25, 2000, and released March 10, 2000. The complete text of this document is available on the Commission's Internet site, at *www.fcc.gov*. It is also available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and may be purchased from the Commission's copy contractor, International Transcription Services, Inc., CY–B400, 445 12th Street, SW, Washington, DC.

Synopsis of the Order

1. On February 3, 1994, the Commission adopted the CMRS Second Report and Order (59 FR 18493, April 19, 1994), which implemented revisions to sections 3(n) and 332 of the Communications Act of 1934, which were enacted in the Omnibus Budget Reconciliation Act of 1993. These revisions created a comprehensive framework for the regulation of mobile radio services, including existing common carrier mobile services, private land mobile services, and new services such as Personal Communications Services. Between May 19 and July 1, 1994, the Commission received 15 petitions for reconsideration of the CMRS Second Report and Order, 19 oppositions, and 12 reply comments addressing a broad range of issues. (A list of parties filing petitions for reconsideration, oppositions and comments, and reply comments to the oppositions may be found in Appendix A of the full text of this Order.)

2. Some issues raised by petitioners on reconsideration are outside the scope of the CMRS Second Report and Order and are dismissed on that basis. (see, for example, footnote 3 of the full text of the Order.) Many of the issues raised on reconsideration have subsequently given rise to, or been addressed in, separate proceedings. (see footnote 4 of the full text of the Order.) Still others, including several requests for clarification, have been rendered moot by other subsequent events or Commission actions. (See footnote 5 of the full text of the Order.) The Commission in the CMRS Second Report and Order addressed several of the remaining issues previously. Because none of the petitioners has presented new information or argument that would warrant reversal, the Commission denies these petitions.

3. The two remaining issues, raised by McCaw Cellular Communications, Inc., concern requests that the Commission preempt states from requiring CMRS providers to file informational tariffs and from imposing their own interconnection requirements on CMRS providers. In the absence of evidence in the record that states are attempting to exercise jurisdiction with respect to informational tariffs and CMRS interconnection requirements, there appears to be neither a reason to address these issues nor a record sufficient to support substantive decisions with respect to them. Consequently, the Commission denies this petition.

Ordering Clause

4. The petitions for reconsideration, or portions thereof, filed by the American Mobile Telecommunications Association, McCaw Cellular Communications, Inc., MCI Telecommunications Corporation, the Personal Communications Industry Association, and the National Cellular Resellers Association with respect to the CMRS Second Report and Order in GN Docket No. 93–252 are denied on the merits. The remaining petitions, or portions thereof, filed by the American Mobile Telecommunications Association, Ameritech, CUE Network Corporation, GTE Service Corporation, McCaw Cellular Communications, Inc., MCI Telecommunications Corporation, the National Association of Regulatory Utility Commissioners, the National Cellular Resellers Association, the New York Department of Public Service, Pacific Bell, the Pennsylvania Public Utility Commission, SEIKO Telecommunications Systems, Inc., and the Waterway Communications System, Inc. are dismissed because the issues raised are either moot or beyond the scope of this proceeding.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7131 Filed 3–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[CS Docket No. 99–363; FCC 00–99]

Implementation of the Satellite Home Viewer Improvement Act of 1999, Retransmission Consent Issues: Good Faith Negotiation and Exclusivity

AGENCY: Federal Communications Commission.

ACTION: Final rule; procedures.

SUMMARY: This document implements aspects of the Satellite Home Viewer Improvement Act of 1999, enacted on November 29, 1999, and adopts regulations and procedures governing the negotiation of agreements in connection with the retransmission of television broadcast station signals by multichannel video programming distributors ("MVPDs"), including satellite carriers and cable systems. It establishes the standards for implementing a good faith negotiation requirement of broadcasters to MVPDs to ensure that negotiations are conducted in an atmosphere of honesty, purpose and clarity of process. This proceeding also adopts implementing rules and provides clarification regarding the prohibition against exclusive retransmission consent agreements. In addition, this document provides that voluntary mediation is an option that can be utilized by parties in protracted negotiations to aid in facilitating retransmission consent. We also establish that existing Commission complaint procedures provide an appropriate framework for parties alleging violations of the good faith negotiation requirement and the prohibition against exclusive agreements. Pursuant to the provisions of section 325(b)(3)(C) of the Communications Act, this document also concludes that the prohibitions on exclusive retransmission consent agreements and the good faith negotiation requirement terminate on January 1, 2006.

DATES: Effective March 23, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW,

Washington, DC 20554. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 12th Street, SW, Washington DC 20554, or via the Internet at *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: Steve Broeckaert at (202) 418–7200 or via internet at *sbroecka@fcc.gov*. For additional information concerning the information collection(s) contained in this document, contact Judy Boley at (202) 418–0214, or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, FCC 00–99, adopted March 14, 2000; released March 16, 2000. The full text of the Commission's First Report and Order is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY-A257) at its headquarters, 445 12th Street, SW, Washington DC 20554, or may be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036, or may be reviewed via Internet at *http://www.fcc.gov/csb/*.

Synopsis of the First Report and Order

I. Introduction

1. In this First Report and Order ("Order"), we adopt rules implementing certain aspects of the Satellite Home Viewer Improvement Act of 1999 ("SHVIA"). SHVIA authorizes satellite carriers to add more local and national broadcast programming to their offerings, and to make that programming available to subscribers who previously have been prohibited from receiving broadcast fare via satellite under compulsory licensing provisions of the copyright law. The legislation generally seeks to place satellite carriers on an equal footing with local cable operators when it comes to the availability of broadcast programming, and thus give consumers more and better choices in selecting a multichannel video program distributor ("MVPD").

2. Among other things, section 325(b)(3)(C) of the Communications Act requires satellite carriers to obtain retransmission consent for the local broadcast signals they carry, requires broadcasters, until 2006, to negotiate in good faith with satellite carriers and other MVPDs with respect to their retransmission of the broadcasters' signals, and prohibits broadcasters from entering into exclusive retransmission consent agreements. Section 325(b)(3)(C) required the Commission to commence a rulemaking within 45 days of the enactment of SHVIA and to complete all actions necessary to prescribe regulations within 1 year after such date of enactment. The Commission issued a Notice of Proposed Rulemaking ("Notice") on December 22, 1999 (64 FR 72985). The Commission received numerous comments and reply comments to the Notice. We conclude the good faith negotiation and exclusivity portion of this rulemaking well ahead of our statutory deadlines for doing so because of the importance of implementing these provisions to MVPD competition and the growth of satellite service.

II. Background

3. In 1988, Congress passed the Satellite Home Viewer Act ("1988 SHVA") in order to provide people in unserved areas of the country with access to broadcast programming via satellite. The 1988 SHVA enabled satellite carriers to provide broadcast programming to those satellite subscribers who were unable to obtain broadcast network programming over-the-air. As a general matter, however, the 1988 SHVA did not permit satellite carriers to retransmit local broadcast television signals directly to consumers.

4. The Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") amended the Communications Act, *inter alia*, to include section 325, which provides television stations with certain carriage rights on local market cable television systems. Within local market areas, commercial television stations may elect cable carriage under either the retransmission consent or mandatory carriage requirements. Section 325 as initially enacted contained no standards pursuant to which broadcasters were required to negotiate with MVPDs. The Commission established rules related to the retransmission/mandatory carriage election cycle, but did not adopt rules governing the negotiation process of retransmission consent.

5. SHVIA revises the 1988 SHVA and reflects changes not only involving the satellite industry and subscribers, but television broadcast stations and terrestrial MVPDs. SHVIA adopts changes in several areas, including retransmission consent, must-carry, and retransmission of local broadcast signals. In particular, SHVIA addresses several limitations previously placed on satellite carriers, including the issue of satellite carrier retransmission of local broadcast programming.

III. Summary of Decision

6. The Order determines that the statute does not intend to subject retransmission consent negotiation to detailed substantive oversight by the Commission. Instead, the order concludes that Congress intended that the Commission follow established precedent, particularly in the field of labor law, in implementing the good faith retransmission consent negotiation requirement. Consistent with this conclusion, the Order adopts a two-part test for good faith. The first part of the test consists of a brief, objective list of negotiation standards. First, a broadcaster may not refuse to negotiate with an MVPD regarding retransmission consent. Second, a broadcaster must appoint a negotiating representative with authority to bargain on retransmission consent issues. Third, a broadcaster must agree to meet at reasonable times and locations and cannot act in a manner that would unduly delay the course of negotiations. Fourth, a broadcaster may not put forth a single, unilateral proposal. Fifth, a broadcaster, in responding to an offer proposed by an MVPD, must provide considered reasons for rejecting any aspects of the MVPD's offer. Sixth, a broadcaster is prohibited from entering into an agreement with any party conditioned upon denying retransmission consent to any MVPD. Finally, a broadcaster must agree to execute a written retransmission consent agreement that sets forth the full agreement between the broadcaster and the MVPD.

7. The second part of the good faith test is based on a totality of the circumstances standard. Under this standard, an MVPD may present facts to the Commission which, even though they do not allege a violation of the specific standards enumerated above, given the totality of the circumstances constitute a failure to negotiate in good faith.

8. The Order concludes that it is not practicably possible to discern objective competitive marketplace factors that broadcasters must discover and base any negotiations and offers on, and that it is the retransmission consent negotiations that take place that are the market through which the relative benefits and costs to the broadcaster and MVPD are established. The Order provides examples of negotiation proposals that presumptively are consistent and inconsistent with "competitive marketplace considerations." At the same time, the Order provides that it is implicit in section 325(b)(3)(C) that any effort to further anti-competitive ends through the negotiation process would not meet the good faith negotiation requirement. Considerations that are designed to frustrate the functioning of a competitive market are not "competitive marketplace considerations." Conduct that is violative of national policies favoring competition—that is, for example, intended to gain or sustain a monopoly, is an agreement not to compete or to fix prices, or involves the exercise of market power in one market in order to foreclose competitors from participation in another market—is not within the competitive marketplace considerations standard included in the statute. The Commission's rules regarding the good faith negotiation requirement sunset on January 1, 2006.

9. As for the prohibition on exclusivity, the Order interprets the phrase "engaging in" broadly. Thus, the Order would prohibit not only entering into exclusive retransmission consent agreements, but also negotiating exclusive agreements that would take effect after the sunset of the prohibition. The Commission's rules regarding exclusive retransmission consent agreements sunset on January 1, 2006.

10. An MVPD believing itself to be aggrieved under section 325(b)(3)(C) may file a complaint with the Commission. The Order provides that the procedural provisions of 47 CFR 76.7 will govern good faith and exclusivity complaints. The Order directs Commission staff to expedite resolution of good faith and exclusivity complaints. The Order provides that the burden of proof with regard to such complaints is on the MVPD complainant.

IV. Good Faith Negotiation Requirement

A. Congressional Intent in Amending Section 325 of the Communications Act

11. In SHVIA, Congress amended section 325(b) of the Communications Act, requiring the Commission to revise its regulations so that they shall:

* * * until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from * * * failing to negotiate in good faith, and it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations.

The Joint Explanatory Statement of the Committee of Conference ("Conference Report") does not explain or clarify the statutory language, merely stating that:

> The regulations would, until January 1, 2006, prohibit a television broadcast station from * * * refusing to negotiate in good faith regarding retransmission consent agreements. A television station may generally offer different retransmission consent terms or conditions, including price terms, to different distributors. The [Commission] may determine that such different terms represent a failure to negotiate in good faith only if they are not based on competitive marketplace considerations.

The Notice sought comment on the correct interpretation of the good faith negotiation requirement of section 325(b)(3)(C).

12. At the outset of our discussion, we note that section 325(b)(2)(E) of the Communications Act grants satellite carriers a six-month period during which they may retransmit the signals of local broadcasters without a broadcaster's express retransmission consent. As discussed in further detail below, section 325 also requires strict enforcement of, and severe penalties for, satellite carrier retransmission of local broadcast signals without consent after this six-month period expires. We have adopted these rules before the end of the six-month period provided by section 325(b)(2)(E) so that MVPDs, particularly satellite carriers, and broadcasters understand their rights and obligations under section 325(b)(3)(C) before that period expires. These rules will provide a framework under which broadcasters and satellite carriers can achieve retransmission consent before the expiration of the six-month period set forth in section 325(b)(2)(E) so as to avoid the highly undesirable interruption of local broadcast signals that satellite carriers have begun to provide to their subscribers in many cities across the nation. On an ongoing basis, we intend these rules to govern the negotiation of retransmission consent between broadcasters and all MVPDs.

13. The statute does not appear to contemplate an intrusive role for the Commission with regard to retransmission consent. Section 325(b)(3)(C) instructs the Commission to "revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent under this subsection. . . ." The fact that Congress instructed the Commission to "revise" its existing retransmission consent regulations, coupled with the determinedly brief discussion of section 325(b)(3)(C) in the Conference Report, leads us to conclude that, in addition to the guidance that can be gleaned from SHVIA, we should also look for guidance in the legislative history of the retransmission consent provisions of the 1992 Cable Act. When Congress first applied retransmission consent to MVPDs in 1992, it stated that "it is the Committee's intention to *establish a marketplace* for the disposition of the rights to retransmit broadcast signals; it is not the Committee's intention in this bill to *dictate the outcome of the ensuing marketplace negotiations.*"

14. Based on this language, the Commission concluded in the *Broadcast Signal Carriage Order* that Congress did not intend that the Commission should intrude in the negotiation of retransmission consent. We do not interpret the good faith requirement of SHVIA to alter this settled course and require that the Commission assume a substantive role in the negotiation of the terms and conditions of retransmission consent. We note that Congress considered and explicitly rejected a comprehensive regime that required the Commission to:

> prohibit television broadcast stations that provide retransmission consent from engaging in discriminatory practices, understandings, arrangements, and activities, including exclusive contracts for carriage, that prevent a multichannel video programming distributor from obtaining retransmission consent from such stations.

Where Congress expressly considers and rejects such an approach, the rules of statutory construction do not favor interpreting a subsequent statutory provision to require the rejected alternative. Given the express congressional rejection of this anti-discrimination provision, we will not adopt rules to recreate this provision by regulation.

15. In support of the position that intrusive Commission action is unnecessary to implement the good faith negotiation requirement, commenters point to the fact that thousands of retransmission consent agreements have been successfully concluded between local broadcasters and MVPDs since adoption of the 1992 Cable Act. In addition, commenters note that within days after enactment of SHVIA, DIRECTV and EchoStar announced that they had entered into retransmission consent agreements with the owned-and-operated affiliates of several of the major television networks. As a result, these commenters argue that it would be wholly inappropriate to impose "shotgun wedding" style regulations on a marketplace that is already functioning. DIRECTV, however, argues that the existence of

these agreements does not ensure that agreements that have yet to be completed will progress as smoothly.

16. One commenter maintains that the purpose of the good faith requirement is merely to bring the parties to the bargaining table, stating that "Congress signaled its desire only that broadcasters, having once made the decision to provide retransmission consent, should be required to negotiate with all interested MVPDs and not engage in an outright refusal to deal." Several broadcast commenters assert that Congress merely intended the Commission to revise its existing regulations to account for retransmission consent agreements between broadcasters and satellite carriers that now qualify for compulsory copyright license to provide local television stations to satellite subscribers.

17. ALTV advises the Commission to focus on Congress' overarching purpose in enacting section 325 in the 1992 Cable Act—assuring broadcasters the opportunity to secure compensation for the value of the retransmission of their signals by MVPDs. Conversely, other commenters assert that Congress intended the Commission to begin with the premise that television broadcast programming is an indispensable component of any MVPD's service package and that alternative MVPDs cannot compete effectively with incumbent cable operators if they are denied full and fair access to that programming in local markets.

18. We find instructive the legislative history of a previous version of SHVIA that was considered, but not enacted, by Congress. During the consideration of the House version of SHVIA, Representative Tauzin explained to Representative Dingell that the House bill, which included a detailed, anti-discrimination provision, would permit:

> [A] broadcast station * * * for example, [to] negotiate a cash payment from one video distributor for retransmission consent and reach an agreement with other distributors operating in the same market that contains different prices or other terms * * * [Indeed], as long as a station does not refuse to deal with any particular distributor, a station's insistence on different terms and conditions in retransmission agreements based on marketplace considerations is not intended to be prohibited by this bill * * * if a station negotiates in good faith with a distributor, the failure to reach an agreement with that distributor would not constitute a discriminatory act that is intended to be barred by this section.

In discussing this same previous version of SHVIA, Representative Berman echoed a similar sentiment stating "[W]hile it is important that MVPDs have the opportunity to negotiate for retransmission consent, we do not in this bill subject the prices or other terms and conditions of nonexclusive retransmission consent agreements to [Commission] scrutiny." Again, these statements reflect consideration of the more onerous House version of SHVIA and its anti-discrimination requirement. We find it difficult to reconcile commenters arguments that SHVIA as enacted contains a broad grant of Commission authority to analyze and prohibit the substantive terms of retransmission consent with these statements.

19. Commenters argue that the statutory imposition of a good faith negotiation requirement is in derogation of the long-standing common law right to contract and therefore the duty, though statutorily imposed, must be narrowly construed. Commenters assert that even a statutory duty to negotiate in good faith does not require parties to do anything contrary to their own self-interest or make any particular concessions. Accordingly, argues Disney, the Commission is not empowered to become involved in the substance of retransmission consent negotiations.

20. We agree with those commenters that assert that section 325(b)(3)(C) should be narrowly construed. As commenters indicate, congressional language in derogation of the common law should be interpreted to implement the express directives of Congress and no further. The United States Supreme Court has reiterated this rule of statutory construction on several occasions, holding that [s]tatutes which invade the common law* * * are to be read with a presumption favoring the retention of long-established and familiar principles, except when a statutory purpose to the contrary is evident." In addition, the Court has stated that, when a statutory provision does derogate from the common law, it "must be strictly construed for no statute is to be construed as altering the common law, farther [sic] than its words import."

21. Commenters state that, in other contexts, the good faith standard has a well understood meaning that Congress must be presumed to have intended, particularly, where, as here, nothing in the statute or the legislative history suggests that Congress intended the Commission to develop its own definition of good faith. These commenters argue that SHVIA cannot be read to grant the Commission new, wholesale authority to define good faith or engage in a detailed case-by-case review of the retransmission terms offered to one MVPD as compared to another. These commenters assert that the most appropriate statutory example to follow is that of the good faith requirement of section 8(d) of the Taft-Hartley Act.

22. Given the dearth of guidance in the statute and legislative history, we believe that Congress signaled that the good faith negotiation requirement adopted in section 325(b)(3)(C) was sufficiently well understood that further explication was unnecessary. In such situations, we believe that Congress intends the Commission look to analogous statutory standards from which to draw guidance. While commenters offer various sources on which to rely, we agree with those commenters suggesting that the good faith bargaining requirement of section 8(d) of the Taft-Hartley Act is the most appropriate source of guidance. Section 8(d) of the Taft-Hartley Act details the collective bargaining duty of both employers and labor representatives, providing that:

> To bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment* * * but such obligation does not compel either party to agree to a proposal or require the making of a concession.

There are significant parallels between the congressional policy goal of good faith negotiation underlying both section 325(b)(3)(C) and section 8(d) of the Taft-Hartley Act. In this regard, there is substantial National Labor Relations Board ("NLRB") precedent that the good faith negotiation requirement applies solely to the process of the negotiations and does not permit the NLRB to require agreement or impose terms or conditions on collective bargaining agreements. The Supreme Court has made this determination with force and clarity, stating that:

> It was recognized from the beginning that agreement might be impossible, and it was never intended that the Government would in such cases step in, become a party to the negotiations and impose its own views of a desirable settlement.

23. Congress clearly did not intend the Commission to sit in judgement of the terms of every retransmission consent agreement executed between a broadcaster and an MVPD. Even if the Commission had the resources to accomplish such a delegation, we can divine no intent in either the statute or its legislative history to achieve such a result. As commenters indicated, when Congress intends the Commission to

directly insert itself in the marketplace for video programming, it does so with specificity. Despite the arguments of the satellite industry and other MVPDs, we find nothing supporting a construction of section 325(b)(3)(C) that would grant the Commission authority to impose a complex and intrusive regulatory regime similar to the program access provisions or the interconnection requirements of section 251 of the Communications Act. While the Commission generally will not intrude into the substance of particular retransmission consent negotiations and agreements, we note that section 325(b)(3)(C) sanctions only those retransmission consent agreements containing different terms and conditions, including price terms, with different MVPDs if such different terms and conditions are based upon competitive marketplace considerations.

24. Having reached this conclusion, we do not interpret section 325(b)(3)(C) as "largely hortatory" as suggested by some commenters. As we stated in the Notice, "Congress has signaled its intention to impose some heightened duty of negotiation on broadcasters in the retransmission consent process." In other words, Congress intended that the parties to retransmission consent have negotiation obligations greater than those under common law. Absent fraudulent intent, common law imposes no obligation on parties to negotiate in good faith prior to the formation of a contract. We believe that, by imposing the good faith obligation, Congress intended that the Commission develop and enforce a process that ensures that broadcasters and MVPDs meet to negotiate retransmission consent and that such negotiations are conducted in an atmosphere of honesty, purpose and clarity of process.

B. Mutual Good Faith Negotiation Requirement

25. As a preliminary matter, we must determine to whom the "good faith" negotiation obligation applies. The Notice requested comment on whether the duty of good faith negotiation applies equally to the broadcaster and MVPD negotiating a retransmission consent agreement. Several commenters assert that the good faith negotiation requirement is a mutual obligation and that the Commission must consider and weigh the conduct of the MVPD in assessing whether the broadcaster has failed to satisfy the good faith negotiation requirement. Only DIRECTV asserts that the good faith negotiation requirement applies solely to broadcasters. DIRECTV argues that the language of section 325(b)(3)(C) applies solely to "broadcast television stations" and in no way, express or implied, is imposed on MVPDs.

26. We agree with DIRECTV that the language of section 325(b)(3)(C) on its face applies only to "television broadcast station[s]." To read the provision as a mutual obligation would contradict the express language of the statute and controvert Congress' intent. Moreover, Congress has demonstrated its ability to expressly impose a good faith negotiation obligation on both parties in other provisions of the Communications Act. Accordingly, we conclude that the good faith negotiation requirement in section 325(b)(3)(C) was intended to apply only to broadcasters. However, we caution MVPDs that seek retransmission consent that their conduct is relevant in determining whether a broadcaster has complied with its obligation to negotiate retransmission consent in good faith. Insistence by an MVPD on unreasonable terms and conditions or negotiating procedures will be taken into account by the Commission in assessing a broadcaster's observance of its good faith negotiation obligations.

C. Definition of Good Faith

27. The Notice sought comment on the criteria that should be employed to define "good faith" and sought comment on whether the Commission should explicitly define what constitutes good faith under section 325(b)(3)(C). The Notice requested comment on whether to adopt a two-part test for good faith similar to that embraced by the NLRB and by the Commission pursuant to section 251 of the Communications Act. The Commission also sought comment on any other specific legal precedent upon which we should rely and any other regulatory approach that might appropriately implement the good faith negotiation requirement of section 325(b)(3)(C) of the Communications Act.

28. Several commenters argue that both the NLRB and the section 251 good faith negotiation regimes are based upon the premise that one party to the negotiation may not have an interest in reaching an agreement. These commenters argue that, because broadcasters want their programming transmitted to the widest possible audience to increase advertising revenue and MVPDs desire valuable broadcast programming, both broadcasters and MVPDs have strong incentives for reaching retransmission consent. Several commenters support a two-part test to determine good faith similar to that suggested in the Notice. Fox asserts that, if the Commission adopts a two-part test for determining good faith, the specific actions that would constitute lack of good faith should be "narrowly drawn to encompass only the most obvious and egregious breaches of good faith negotiating practices, and the Commission should always examine the factual context in which each alleged prohibition occurred."

29. Time Warner proposes that the Commission adopt a "zone of reasonableness" standard for good faith in which, even if the broadcaster satisfies all of the procedural indicia of good faith, the Commission could determine that it violated its duty to negotiate in good faith "if it insists [on] a level of consideration that is so plainly uneconomic that an MVPD would suffer greater financial harm from accepting the broadcaster's terms than from refusing to carry the station." NBC maintains that the Commission should contrive no standards before the fact. Instead, to the extent standards are appropriate, they should be developed out of actual experience in adjudicated controversies. Several commenters argue that the Commission should judge the conduct of the parties only by examining the totality of the circumstances.

30. We will adopt a two part test for good faith negotiation as proposed in the Notice. We believe that this test best implements Congress' intent in adopting the good faith negotiation requirement. A two-part test follows well established precedent in the field of labor law. In addition, the Commission has used a similar test in implementing its statutory obligations under section 251 of the Communications Act. Through the objective standards, this approach gives immediate guidance to the parties to retransmission consent negotiations that certain conduct will not be tolerated. Through the broader, totality of the circumstances test, the Commission will have the ability to prohibit conduct that, while not constituting a failure of good faith in all circumstances, does violate the good faith negotiation requirement in the context of a given negotiation. The totality of the circumstances test will also enable the Commission to continue refining and clarifying the responsibilities of parties to retransmission consent negotiations.

31. The first part of the test will consist of a brief, objective list of negotiation standards. Because the list consists of *per se* standards, of necessity, the standards must be concise, clear and constitute a violation of the good faith standard in all possible instances. Should an MVPD demonstrate to the Commission that a

broadcaster, in the conduct of a retransmission consent negotiation, has engaged in actions violative of an objective negotiation standard, the Commission would find that the broadcaster has breached its duty to negotiate in good faith. We disagree with those commenters who assert that the Commission should only define violations on a prospective adjudicatory basis. Given the short, six-month, period in which satellite carriers have to negotiate retransmission consent before expiration of the compulsory license of section 325(b)(2)(E), we believe it incumbent upon us to provide as much initial guidance as possible through which the parties may pursue negotiations.

32. The second part of the test is a totality of the circumstances standard. Under this standard, an MVPD may present facts to the Commission which, even though they do not allege a violation of the objective standards, given the totality of the circumstances reflect an absence of a sincere desire to reach an agreement that is acceptable to both parties and thus constitute a failure to negotiate in good faith. We do not intend the totality of the circumstances test to serve as a "back door" inquiry into the substantive terms negotiated between the parties. While the Commission will not ordinarily address the substance of proposed terms and conditions or the terms of actual retransmission consent agreements, we will entertain complaints under the totality of the circumstances test alleging that specific retransmission consent proposals are sufficiently outrageous, or evidence that differences among MVPD agreements are not based on competitive marketplace considerations, as to breach a broadcaster's good faith negotiation obligation. However, complaints which merely reflect commonplace disagreements encountered by negotiating parties in the everyday business world will be promptly dismissed by the Commission.

33. The Commission sought comment on specific actions or practices that would constitute *per se* violations of the duty to negotiate in good faith in accordance with section 325(b)(3)(C). In addition to any other actions or practices, the Commission asked commenters to address whether it would be appropriate to include in any such list provisions similar to the violations of the obligation to negotiate interconnection agreements in good faith set forth in 47 CFR 51.301. The Commission acknowledged, however, that the good faith standard of SHVIA is different in significant respects to that contained in 47 CFR 51.301.

34. Commenters proposed numerous standards that the Commission should consider in adopting rules to enforce the good faith negotiation requirement. Broadcasters generally argue that, to the extent it does anything, the Commission should adopt streamlined rules that apply only to the process of the negotiations between broadcasters and MVPDs. The other group, consisting of satellite carriers, small cable operators and alternative MVPDs, argues that the only way the Commission can effectively enforce the good faith negotiation requirement is to involve itself in the substantive terms of retransmission consent agreements as well as the process of negotiations. These commenters propose that the Commission adopt an extensive list of substantive terms and conditions that should be prohibited as violations of the obligation to negotiate retransmission consent agreements in good faith.

35. Broadcast commenters propose several standards based on experience gathered in the NLRB field, the absence of which indicates a lack of good faith, including: (1) a party must have a sincere desire to reach agreement, (2) a party's negotiator must have authority to conclude a deal, (3) a party must offer to meet at reasonable times and convenient places, and (4) a party must agree to execute a written agreement once all terms have been agreed on. NBC proposes that extrinsic evidence that a party never intended to reach agreement, or extrinsic evidence of an understanding with a third party that the negotiating party will not enter into a retransmission consent agreement, should also evidence violations of the good faith negotiation requirement. Other commenters would prohibit a broadcaster from insisting on terms so unreasonable that they are tantamount to a refusal to deal. EchoStar argues that such procedural violations are meaningless because "no bad faith actor would be so inept or so artless as to display its bad faith by not agreeing to a convenient time and place to meet, not appointing a representative to negotiate, and not committing to writing a retransmission agreement once a deal has been reached."

36. DIRECTV proposes the following list of good faith negotiation standards based upon examples from labor law precedent, the Commission's program access rules, the interconnection provisions of the 1996 Act, and recognized marketplace dynamics. DIRECTV, supported by other commenters, proposes that, during the negotiation of a retransmission consent agreement, a broadcaster may not:

(a) Intentionally seek to mislead or coerce the MVPD into reaching an agreement it would not otherwise have made;

(b) Unreasonably obstruct or delay negotiations or resolutions of disputes;

(c) Refuse to designate a representative with authority to make binding representations if such refusal significantly delays resolution of issues;

(d) Refuse to negotiate in fact;

(e) Refuse to provide the satellite carrier with a high quality, direct feed of the broadcast signal;

(f) Engage in discrimination in the price, terms or conditions of retransmission consent afforded an MVPD relative to any other MVPD, unless such discrimination is related to "competitive marketplace conditions" as defined by the Commission * * *;

(g) Offer unreasonable positions, including, but not limited to:

1. a unilateral requirement that retransmission consent for a given broadcast station be conditioned on carriage under retransmission consent of another broadcast station, either in the same or a different geographic market;

2. A unilateral requirement that retransmission consent be conditioned on the exclusion of carriage under retransmission consent of other broadcast channels in a given market;

3. A unilateral requirement that retransmission consent be conditioned on a broadcaster obtaining channel positioning rights on the satellite carrier's system;

4. A unilateral requirement that the satellite carrier (i) commit to purchase advertising on the broadcast station or broadcaster affiliated media, or (ii) that a specified share of advertising dollars spent in a broadcaster's market be spent on that broadcaster;

5. A unilateral requirement that retransmission consent be conditioned on a satellite carrier not retransmitting distant network signals to qualified subscribers in the market, or a satellite carrier "capping" the number of qualified subscribers in the market who may receive distant network signals, thus depriving eligible subscribers of their statutory right to subscribe to distant network signals;

6. A unilateral requirement that retransmission consent be conditioned on the satellite carrier's carriage of digital signals.

To this list EchoStar; would add: (i) Insisting on an unreasonably short contract duration; (ii) threatening to run anti-satellite advertising; and (iii) refusal to deal, whether explicit or disguised under requests for

extortionate terms. Several commenters would include the imposition of non-optional tying arrangements requiring an MVPD to carry the affiliated programming of the broadcaster in exchange for retransmission consent. Other commenters suggest a standard requiring parties to provide information necessary to reach agreement.

37. Several commenters propose a standard prohibiting instances in which a broadcaster seeks higher consideration from an MVPD for any affiliated cable network programming in exchange for retransmission consent than it obtains from the incumbent cable operator, unless the broadcaster justifies that such higher consideration is cost-based or does not produce anti-competitive market conditions. In addition, BellSouth urges the Commission to find a violation when a broadcaster ties retransmission consent to minimum subscriber penetration levels. Another commenter would also brand as a good faith violation a demand of a nondisclosure agreement, a demand that the MVPD attest that the agreement complies with all applicable laws, or the refusal to include a provision permitting the agreement to be amended to reflect subsequent changes in the law.

38. Several broadcast commenters assert that the list of violations proposed by DIRECTV, EchoStar and others is so extensive and one-sided as to render any notion of equality at the bargaining table meaningless. Other commenters assert that, since the adoption of the 1992 Cable Act, carriage of additional programming as compensation for retransmission consent is most often the compensation agreed upon by broadcasters and MVPDs in their retransmission consent agreements. Disney argues that the legislative history of the 1992 Cable Act expressly endorsed such compensation and that, had Congress wished to prohibit the practice, it would have done so expressly. Disney further argues that no commenter offers a sustainable legal basis for presuming on a blanket basis that a request for additional programming carriage as consideration for retransmission consent would be illegal under current law or anti-competitive.

39. Consistent with our determination that Congress intended that the Commission should enforce the process of good faith negotiation and that the substance of the agreements generally should be left to the market, we will not adopt the suggestions of certain commenters that we prohibit proposals of certain substantive terms, such as offering retransmission consent in exchange for the carriage of other programming such as a cable channel, another broadcast signal, or a broadcaster's digital signal. Instead, we believe that the good faith negotiation requirement of SHVIA is best implemented through the following standards derived from NLRB precedent, commenter's proposals and the section 251 interconnection requirements. These standards are intended to identify those situations in which a broadcaster did not enter into negotiations with the sincere intent of trying to reach an agreement acceptable to both parties.

40. First, a broadcaster may not refuse to negotiate with an MVPD regarding retransmission consent. Section 325(b)(3)(C) affirmatively requires that broadcasters negotiate retransmission consent in good faith. This requirement goes to the very heart of Congress' purpose in enacting the good faith negotiation requirement. Outright refusal to negotiate clearly violates the requirement of section 325(b)(3)(C). Broadcasters must participate in retransmission consent negotiations with the intent of reaching agreement. Provided that the parties negotiate in good faith in accordance with the Commission's standards, failure to reach agreement does not violate section 325(b)(3)(C). Given the economic incentive for each side to reach agreement, we are hopeful that such impasses will be rare and short-lived.

41. Second, a broadcaster must appoint a negotiating representative with authority to bargain on retransmission consent issues. Failure to appoint a negotiating representative vested with authority to bargain on retransmission consent issues indicates that a broadcaster is not interested in reaching an agreement. This standard is the norm in NLRB precedent as well as our interconnection rules implementing section 251. This requirement does not empower MVPDs to demand that specific officers or directors of a broadcaster attend negotiation sessions. Provided that a negotiating representative is vested with the authority to make offers on behalf of the broadcaster and respond to counteroffers made by MVPDs to the broadcaster, this standard is satisfied.

42. Third, a broadcaster must agree to meet at reasonable times and locations and cannot act in a manner that would unduly delay the course of negotiations. Refusal to meet at reasonable times and locations belies a good faith intent to negotiate. This requirement does not preclude negotiations conducted via telephone, facsimile, or by letter. Reasonable response times and unreasonable delays will be gauged by the breadth and complexity of the issues contained in an offer. The Commission is aware that, in many cases, time will be of the essence in retransmission consent negotiations, particularly as we approach the end of the six-month period provided for in section 325(b)(2)(E)—May 29, 2000. We advise broadcasters that, in examining violations of this standard, we will consider the proximity of the termination of retransmission consent and the consequent service disruptions to consumers. At the same time, we caution MVPDs that waiting until the eleventh hour to initiate negotiations will also be taken into account in enforcing this standard.

43. Fourth, a broadcaster may not put forth a single, unilateral proposal and refuse to discuss alternate terms or counter-proposals. "Take it, or leave it" bargaining is not consistent with an affirmative obligation to negotiate in good faith. For example, a broadcaster might initially propose that, in exchange for carriage of its signal, an MVPD carry a cable channel owned by, or affiliated with, the broadcaster. The MVPD might reject such offer on the reasonable grounds that it has no vacant channel capacity and request to compensate the broadcaster in some other way. Good faith negotiation requires that the broadcaster at least consider some form of consideration other than carriage of affiliated programming. This standard does not, in any way, require a broadcaster to reduce the amount of consideration it desires for carriage of its signal. This standard only requires that broadcasters be open to discussing more than one form of consideration in seeking compensation for retransmission of its signal by MVPDs.

44. Fifth, a broadcaster, in responding to an offer proposed by an MVPD, must provide reasons for rejecting any aspects of the MVPD's offer. Blanket rejection of an offer without explaining the reasons for such rejection does not constitute good faith negotiation. This provision merely ensures that MVPDs are not negotiating in a vacuum and understand why certain terms are unacceptable to the broadcaster so that the MVPD can respond to the broadcaster's concerns. We reiterate that good faith negotiation requires a broadcaster's affirmative participation. However, this standard is not intended as an information sharing or discovery mechanism. Broadcasters are not required to justify their explanations by document or evidence.

45. Sixth, a broadcaster is prohibited from entering into an agreement with any party a condition of which is to deny retransmission consent to any MVPD. For example, Broadcaster A is

prohibited from agreeing with MVPD B that it will not reach retransmission consent with MVPD C. It is impossible for a broadcaster to engage in good faith negotiation with an MVPD regarding retransmission consent when it has a contractual obligation not to reach agreement with that MVPD.

46. Finally, once the parties reach agreement on the terms of retransmission consent, the broadcaster must agree to execute a written retransmission consent agreement that sets forth the full agreement. Because the Commission may be called upon in certain instances to determine whether the totality of the circumstances involved in the negotiation of a particular retransmission consent agreement complies with section 325(b)(3)(C), it is vital that the parties reduce their entire agreement to writing. In addition, this requirement also minimizes subsequent misunderstandings between the parties related to their respective obligations.

47. We do not believe that we should at this time adopt further objective standards as proposed by the commenters. In appropriate instances, we will consider the conduct at the heart of such proposed standards when we examine a particular retransmission consent negotiation under the totality of the circumstances test.

48. The Notice further observed that section 325(b)(3)(C) provides that: it shall not be a failure to negotiate in good faith if the television broadcast station enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations.

The Notice sought comment on what constitutes a competitive marketplace consideration. The Notice also observed that the Commission has adopted non-discrimination standards in both the program access and open video system contexts and sought comment on the relevance, if any, of these standards to what constitutes a "competitive market consideration." In addition, the Notice sought comment on any other factors or approaches to determining what constitutes competitive marketplace considerations under section 325(b)(3)(C).

49. A number of commenting parties urge that the competitive marketplace considerations language be interpreted as a requirement that the Commission judge the good faith of all retransmission consent offers based on whether they are based on "competitive marketplace considerations." DIRECTV and EchoStar, for example, claim that competitive marketplace considerations would permit a broadcaster to discriminate between providers only in scenarios where Congress and the Commission have recognized that certain variance in price, terms or conditions correspond to legitimate behavior that may occur in the marketplace for video programming.

50. EchoStar asserts that, generally where a broadcaster has received any consideration for retransmission consent, it has been non-monetary, carriage of cable networks affiliated with the broadcaster, and argues that:

> The general rule, therefore, should be that broadcaster demands deviating from that formula, such as demands for money, demands for carriage of additional cable networks beyond those involved in the retransmission-for-carriage agreements with cable operators, or demands for retransmission of additional broadcast stations (beyond those owned and operated by the same network), should be presumptively viewed as not based on competitive marketplace considerations.

51. NAB argues that satellite carriers are not nascent businesses that need government protection, but instead are well-financed, powerfully-backed competitors in the multichannel marketplace. Commenters argue that satellite companies not only use local stations to increase the attractiveness of their overall product, but also sell the stations to viewers at substantial prices. One commenter notes that the fact that satellite carriers are able to charge a fee for retransmitted local signals demonstrates that these signals have value for which broadcasters must be compensated. EchoStar counters that "the only reason * * * consumers purchase a satellite carrier's local signal offering is for value that the satellite carrier provides, including increased quality, convenience, and aesthetics (*i.e.*, lack of off-air antenna)."

52. Commenters assert that, in the early 1990s, when the retransmission consent provisions of the 1992 Cable Act first became effective, cable systems were effectively the only distributors from whom broadcasters could seek consideration through retransmission consent. Broadcasters assert that they were at a tremendous disadvantage because only a single buyer was prepared to bid for their product. Broadcast commenters state that, today, the existence of multiple MVPDs in at least some markets creates a more competitive marketplace for the sale of retransmission rights, and one that provides more opportunity for stations seeking to obtain compensation for granting these valuable rights. NAB states that the existence of multiple buyers is obviously a very important competitive marketplace consideration in this market, as in any market. EchoStar counters that multiple competitors in a market only serve to increase a broadcaster's ability to play one MVPD distributor against another in retransmission negotiations, an ability Congress sought to restrain by imposing the good faith and competitive marketplace considerations requirements on retransmission consent.

53. As discussed above, we do not believe, as a general matter, that section 325(b)(3)(C) was intended to subject retransmission consent negotiation to detailed substantive oversight by the Commission or indeed that there exist objective competitive marketplace factors that broadcasters must ascertain and base any negotiations and offers on. Indeed, in the aggregate, retransmission consent negotiations are the market through which the relative benefits and costs to the broadcaster and MVPD are established. Although some parties earnestly suggest, for example, that broadcasters should be entitled to zero compensation in return for retransmission consent or that the forms of compensation for carriage should be otherwise limited, this seems to us precisely the judgment that Congress generally intended the parties to resolve through their own interactions and through the efforts of each to advance its own economic self interest.

54. EchoStar suggests an economic paradigm against which retransmission terms might be compared to determine if they are based on "competitive marketplace considerations." It suggests that in the ideal competitive market setting, revenues will be just sufficient to compensate providers for the costs of program creation, duplication, and distribution so that all participants are earning a fair rate of return. Further, having already noted that the marketplace may be distorted through the exercise of market power by cable operators, EchoStar urges that retransmission consent term outcomes for the cable industry provide a benchmark or threshold that should not be exceeded in the case of satellite carriage of broadcast signals. Further, it asserts that considerations extracted from certain cable operators (for example carriage of digital signals) would be inappropriate and not based on competitive marketplace consideration if they were significantly costlier to accede to for satellite carriers.

55. In our view this type of regulatory analysis and comparison is not what was intended through the enactment of section 325(b)(3)(C). It is both internally inconsistent and not capable of administration in any reasonably timely fashion. The proposal is internally inconsistent in that it acknowledges that among the market participants, cable operators might be the most likely to have market power. If this were the case, using their negotiations as a proxy for a competitive market setting would not be logical. Under this analysis, broadcasters, already the hypothesized victims of an exercise of market power, would be obligated to continue in that role with other participants in the market. Further, EchoStar finds one of the most common features of these agreements—payment for carriage through the devotion of channel capacity to other affiliated services—presumptively a measure of bad faith. Acceptance of the cash rate but not the other currency of the negotiation could hardly be a replication of a competitive market. Even if these problems could be overcome, however, it seems unlikely that the data needed to measure a transaction against the economic model proposed would be available either to the parties in the course of their negotiations or to the Commission in the course of trying to judge their compliance with the standard of review proposed.

56. We also believe that to arbitrarily limit the range or type of proposals that the parties may raise in the context of retransmission consent will make it more difficult for broadcasters and MVPDs to reach agreement. By allowing the greatest number of avenues to agreement, we give the parties latitude to craft solutions to the problem of reaching retransmission consent. The comments filed in this proceeding have called into question the legitimacy of a number of bargaining proposals as reflecting a failure of good faith or as presumptively not based on competitive marketplace considerations. As discussed, it is important that we provide the parties with as much initial guidance as possible. We believe that the following examples of bargaining proposals presumptively are consistent with competitive marketplace considerations and the good faith negotiation requirement:

1. Proposals for compensation above that agreed to with other MVPDs in the same market;

2. Proposals for compensation that are different from the compensation offered by other broadcasters in the same market;

3. Proposals for carriage conditioned on carriage of any other programming, such as a broadcaster's digital signals, an affiliated cable programming service, or another broadcast station either in the same or a different market;

4. Proposals for carriage conditioned on a broadcaster obtaining channel positioning or tier placement rights;

5. Proposals for compensation in the form of commitments to purchase advertising on the broadcast station or broadcast-affiliated media; and 6. Proposals that allow termination of retransmission consent agreement based on the occurrence of a specific event, such as implementation of SHVIA's satellite must carry requirements.

Each of the proposals reflect presumptively legitimate terms and conditions or forms of consideration that broadcasters may find impart value in exchange for the grant of retransmission consent to an MVPD. We do not find anything to suggest that, for example, requesting an MVPD to carry an affiliated channel, another broadcast signal in the same or another market, or digital broadcast signals is impermissible or other than a competitive marketplace consideration. Prior to passage of the 1992 Cable Act, the compensation paid by MVPDs for broadcast signal programming carriage was established under the copyright laws through a governmental adjudicatory process. After passage of the 1992 Cable Act, Congress left the negotiation of retransmission consent to the give and take of the competitive marketplace. In SHVIA, absent conduct that is violative of national policies favoring competition, we believe Congress intended this same give and take to govern retransmission consent. In addition, we point out that these are bargaining proposals which an MVPD is free to accept, reject or counter with a proposal of its own.

57. We find it more difficult to develop a similar list of proposals that indicate an automatic absence of competitive marketplace considerations. Because the size and relative bargaining power of broadcasters and MVPDs range from satellite master antenna television ("SMATV") operators and low power television broadcast stations to national cable entities and major-market, network affiliate broadcast television stations, the dynamics of specific retransmission consent negotiations will span a considerable spectrum. In these instances, we will generally rely on the totality of the circumstances test to determine compliance with section 325(b)(3)(C).

58. At the same time, it is implicit in section 325(b)(3)(C) that any effort to stifle competition through the negotiation process would not meet the good faith negotiation requirement. Considerations that are designed to frustrate the functioning of a competitive market are not "competitive marketplace considerations." Conduct that is violative of national policies favoring competition—that is, for example, intended to gain or sustain a monopoly, is an agreement not to compete or to fix prices, or involves the exercise of market power in one market in order to foreclose competitors from participation in another market—is not within the competitive marketplace considerations standard included in the statute. Following this reasoning, we believe that the following examples of bargaining proposals presumptively are not consistent with competitive marketplace considerations and the good faith negotiation requirement:

1. Proposals that specifically foreclose carriage of other programming services by the MVPD that do not substantially duplicate the proposing broadcaster's programming;

2. Proposals involving compensation or carriage terms that result from an exercise of market power by a broadcast station or that result from an exercise of market power by other participants in the market (*e.g.*, other MVPDs) the effect of which is to hinder significantly or foreclose MVPD competition;

3. Proposals that result from agreements not to compete or to fix prices; and

4. Proposals for contract terms that would foreclose the filing of complaints with the Commission.

D. Carriage While a Complaint is Pending

59. Several MVPD commenters argue that where a MVPD shows a willingness to negotiate for continued carriage of a local broadcast station, the station should have an affirmative duty to negotiate terms for such carriage and should not be permitted to withhold retransmission consent while such negotiations are pending. Other commenters assert that the Commission should prohibit a broadcaster from withdrawing existing retransmission consent given to an MVPD until an exclusivity or good faith complaint is denied by the Cable Services Bureau and, if reconsideration is requested, the full Commission. These commenters note that local television stations enjoy similar protection when a cable operator seeks to drop the broadcaster via the Commission's market modification process. NAB and Network Affiliates assert that Congress expressly rejected this approach in SHVIA by requiring that upon the expiration of the six-month grace period outlined in section 325(b)(2)(E), satellite carriers must obtain consent prior to retransmitting

any programming or face stiff penalties, including mandatory civil liability of $25,000 per station, per day.

60. Two equally unambiguous provisions of SHVIA foreclose the approach advanced by MVPD commenters. First, section 325(b)(1) of the Communications Act provides that "No cable system or other multichannel video programming distributor shall retransmit the signal of the broadcasting station, or any part thereof, except * * * with the express authority of the originating station * * * ." This language clearly prohibits an MVPD, except during the six-month period allowed under section 325(b)(2)(E), from retransmitting a broadcasters signal if it has not obtained express retransmission consent. Second, section 325(e) of the Communications Act establishes a streamlined complaint procedure through which broadcasters may seek redress for allegedly illegal retransmission of local broadcast signals by satellite carriers. The procedures established by section 325(e) provide only four defenses that a satellite carrier may raise: (1) the satellite carrier did not retransmit the broadcaster's signal to any person in the local market of the broadcaster during the time period specified in the complaint; (2) the broadcaster had in writing expressly allowed the satellite carrier to retransmit the broadcaster's signal to the broadcaster's local market for the entire period specified in the complaint; (3) the retransmission was made after January 1, 2002 and the broadcaster elected to assert the right to must carry against the satellite carrier under section 338 for the entire period specified in the complaint; and (4) the station being retransmitted is a noncommercial television broadcast station. Against the backdrop of the express language of these provisions, we see no latitude for the Commission to adopt regulations permitting retransmission during good faith negotiation or while a good faith or exclusivity complaint is pending before the Commission where the broadcaster has not consented to such retransmission.

61. Having reached this conclusion, we must also express our concern regarding the service disruptions and consumer outrage that will inevitably result should MVPDs that are entitled to retransmit local signals subsequently lose such authorization. Because the market has functioned adequately since the advent of retransmission consent in the early 1990's, we expect such instances to be the exception, rather than the norm. We are encouraged by the retransmission consent agreements that have been reached between broadcasters and satellite carriers prior to the enactment of our rules. In addition, we strongly encourage that broadcasters and MVPDs that are engaged in protracted retransmission consent negotiations agree to short-term retransmission consent extensions so that consumers' access to broadcast stations will not be interrupted while the parties continue their negotiations.

E. Existing and Subsequent Retransmission Consent Agreements

62. In the Notice, the Commission acknowledged the existence of retransmission consent agreements between satellite carriers and television broadcast stations that predate enactment of section 325(b)(3)(C). In addition, the Notice acknowledged that agreements have been executed since the enactment of SHVIA. The Notice sought comment on the impact of these agreements on the duty to negotiate in good faith.

63. Network Affiliates state that the fact that broadcasters and satellite carriers have already reached arms length retransmission consent agreements is an indication that they were negotiated in good faith. Otherwise, in the face of impending legislation and Commission action, they assert the parties would not have finalized such agreements. Another commenter argues that the rules adopted by the Commission should have prospective effect applying only to retransmission consent negotiations that occur after the effective date of the Commission's rules. One commenter urges the Commission to give its rules retroactive application to preexisting retransmission consent agreements.

64. We will not apply the rules adopted herein to retransmission consent agreements that predate the effective date of this Order. Section 325(b)(3)(C) provides that:

> Within 45 days after the date of the enactment of [SHVIA], the Commission shall commence a rulemaking proceeding to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent under this subsection, and such other regulations as are necessary to administer the limitations contained in paragraph (2) * * * Such regulations shall * * * until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts for carriage or failing to negotiate in good faith * * * .

As the quoted language indicates, section 325 is not a self-effectuating provision. It has substance and structure only after the Commission has concluded its rulemaking to implement the good faith and exclusivity limitations of section 325(b)(3)(C). Moreover, we need not apply SHVIA retroactively to ensure that such preexisting agreements do not contain impermissible exclusivity provisions. 47 CFR 76.64(m) has been in effect since 1993 and expressly prohibits exclusive retransmission consent agreements. If any MVPD believes that a broadcaster and an MVPD entered into a prohibited exclusive retransmission consent agreement prior to adoption of SHVIA, that party may file a petition for special relief alleging that a broadcaster and MVPD have violated 47 CFR 76.64(m). Accordingly, the rules applicable to good faith and exclusivity adopted herein will apply only to retransmission consent agreements adopted after the effective date of this Order.

V. Exclusive Retransmission Consent Agreements

65. SHVIA amends section 325(b) of the Communications Act by directing the Commission to promulgate rules that would

> until January 1, 2006, prohibit a television broadcast station that provides retransmission consent from engaging in exclusive contracts * * * .

The accompanying Joint Explanatory Statement of the Committee of Conference contains no language to clarify or explain the prohibition, stating only that:

> The regulations would, until January 1, 2006, prohibit a television broadcast station from entering into an exclusive retransmission consent agreement with a multichannel video programming distributor * * *

The Commission, by rule, established a similar prohibition following passage of the 1992 Cable Act. There, the Commission was directed by Congress to establish regulations governing the right of television broadcast stations to grant retransmission consent. The Commission found that exclusive retransmission consent arrangements between a television broadcast station and any multichannel video programming distributor were contrary to the intent of the 1992 Cable Act.

66. In the Notice, we sought to determine what activities would constitute "engaging in exclusive contracts." We also sought to determine whether there was significance to the difference between the language in the statute (prohibiting "engaging in") and the language in the Conference Report (prohibiting "entering into"). We sought to determine whether parties were prohibited from negotiating exclusive contracts that would take effect after the date of January 1, 2006. We also sought comment on whether any such contracts already existed, and if so, what effect the statute would have on such contracts. Finally, we sought comment on how to effectively enforce such a prohibition, and how to determine whether such agreements existed.

67. SHVIA prohibits a television broadcast station that provides retransmission consent from "engaging in" exclusive contracts until January 1, 2006. The Conference Report refers to a prohibition on "entering into" exclusive retransmission consent agreements. Several commentators argue that the phrases "entering into" and "engaging in" are synonymous. Representatives of the satellite industry argue that the Commission should rely on the broader language of the statute ("engaging in") rather than the arguably narrower Conference Report language. Commenters supporting this interpretation posit that the use of the language "engaging in" demonstrates an intent to prohibit a broad range of practices. SBCA believes that the use of the phrase "engaging in" prohibits "both express and implied, *de jure* and *de facto*, exclusionary conduct, including literal or effective refusals to deal with a particular MVPD distributor." Two other commenters argue that broadcasters can impose unaffordable demands on smaller MVPDs, and that these demands can result in prohibited *de facto* exclusivity. Thus, according to this argument, the Commission should expand its prohibition to explicitly forbid these types of arrangements. LTVS supports an expansive definition of exclusive practices and argues that a broad range of actions should be prohibited.

68. While the satellite industry supports a broad reading of the statute, broadcast commenters argue that Congress intended to prohibit exclusive contracts, not "undefined exclusive 'exercise practices' nor . . . of any *de facto* exclusivity." Network Affiliates assert that the use of the phrase "engaging in" does not demonstrate Congressional intent to "increase the number of prohibited activities." Indeed, these commenters argue that by using the phrase "engaging in" as opposed to the phrase "entering in," Congress "intended to allow parties to negotiate and enter into exclusive retransmission consent agreements as long as those agreements are not effective until after the sunset of this prohibition on January 1, 2006." Under this theory, the statute only prohibits "engaging in exclusive contracts." Thus, according to broadcasting representatives, SHVIA does not prohibit undefined exclusive practices or the exercise of *de facto* exclusivity.

69. In determining the intended scope of the prohibition on exclusive retransmission consent agreements, we believe that Congress intended that all activity associated with exclusive retransmission consent agreements be prohibited until January 1, 2006. Absent such a comprehensive prohibition, marketplace distortions could occur that would adversely influence the continuing development of a competitive marketplace for multichannel video programming services. For example, if an MVPD negotiates an exclusive retransmission consent agreement with a television broadcaster that will take effect after January 1, 2006, such MVPD undoubtedly would use that agreement in advertising or marketing strategies during the prohibition on exclusive retransmission consent agreements. The MVPD could market its services by stating that it will be the only MVPD providing a particular television broadcast station or stations after January 1, 2006. Given the overall pro-competitive mandate of SHVIA, we believe that Congress did not intend that we permit this type of market distortion while the section 325(b)(3)(C) prohibitions are in effect. As such, we interpret the phrase "engaging in" to proscribe not only entering into exclusive agreements, but also negotiation and execution of agreements granting exclusive retransmission consent after the prohibition expires.

70. As for the exercise of *de facto* exclusivity, we believe that the statute's good faith requirement sufficiently addresses concerns voiced by commenters. The good faith requirements of the statute and the Commission's rules adopted in this Order should adequately address behavior that would lead to *de facto* exclusivity.

71. On its face, the prohibition on exclusive retransmission consent agreements appears to have immediate effect. The Commission sought comment on the existence of exclusive satellite carrier retransmission consent agreements that either predate the enactment of SHVIA or under the Commission's rules implementing section 325(b)(3)(C)(ii). One commenter argues that the Commission should nullify any exclusive retransmission consent agreements that existed prior to SHVIA. The commenter suggests that the Commission's authority to nullify any such agreements stems from the requirements of the Commission's rules. Another commenter argues that the Commission should apply rules implementing the SHVIA prohibition on exclusive retransmission consent agreements retroactively. Some commenters from the broadcasting industry argue that any such agreements that were in existence prior to the enactment of SHVIA should be grandfathered.

72. Prior to the enactment of SHVIA, 47 CFR 76.64(m) prohibited all exclusive retransmission consent agreements. After its enactment, SHVIA prohibits all exclusive retransmission consent agreements prior to January 1, 2006. Thus, to the extent that any prohibited exclusive retransmission consent agreements exist between television broadcast stations and MVPDs, such agreements are prohibited either by Commission rule prior to SHVIA, or by SHVIA's express terms thereafter.

VI. Retransmission Consent and Exclusivity Complaint Procedures

A. Voluntary Mediation

73. The Notice sought comment on whether there are circumstances in which the use of alternative dispute resolution ("ADR") services would assist in determining whether a television broadcast station negotiated in good faith as defined by section 325(b)(3)(C) and the Commission's rules adopted thereunder. Several commenters argue that a dispute resolution mechanism is not necessary and contrary to the goal of swift resolution of such complaints. By contrast, Time Warner supports a mediation requirement that must be satisfied prior to the filing of a complaint with the Commission. Under Time Warner's proposal, the parties would have 60 days to negotiate in good faith. If an agreement has not been reached 30 days or less prior to the termination of retransmission consent, either party can require that the matter be submitted to mediation.

74. We will not, at this time, adopt Time Warner's mandatory mediation proposal. There has not been a sufficient demonstration that such a measure is necessary to implement the good faith provision of section 325(b)(3)(C). We believe, however, that voluntary mediation can play an important part in the facilitation of retransmission consent and encourage parties involved in protracted retransmission consent negotiations to pursue mediation on a voluntary basis. The Commission would favorably consider a broadcaster's willingness to participate in a mediation procedure in determining whether such broadcaster complied with its good faith negotiation obligations. We emphasize,

however, that refusal to engage in voluntary mediation will not be considered probative of a failure to negotiate in good faith. We will revisit the issue of mandatory retransmission consent mediation if our experience in enforcing the good faith provision indicates that such a measure is necessary.

B. Commission Procedures

75. The Notice sought comment on what procedures the Commission should employ to enforce the provisions adopted pursuant to section 325(b)(3)(C). We asked commenters to state whether the same set of enforcement procedures should apply to both the exclusivity prohibition and the good faith negotiation requirement, or whether the Commission should adopt different procedures tailored to each prohibition. Specifically, we sought comment regarding whether special relief procedures of the type found in 47 CFR 76.7 provide an appropriate framework for addressing issues arising under section 325(b)(3)(C).

76. There is general consensus among the commenters that the general pleading provisions of 47 CFR 76.7 provide appropriate procedural rules for good faith and exclusivity complaints. No commenters justified a departure from the Commission's general pleading rules for matters filed with the Cable Services Bureau. We agree with these commenters urging the use of the 47 CFR 76.7 provisions and direct complainants to follow these provisions in filing retransmission consent complaints. Consistent with the requirements of 47 CFR 76.7, complaints alleging violations of the prohibition on exclusive retransmission consent agreements should: (1) identify the broadcaster and MVPD alleged to be parties to the prohibited exclusive agreement; (2) provide evidence that the complainant can or does serve the area of availability, or portions thereof, of the signal of the broadcaster named in the complaint; and (3) provide evidence that the complainant has requested retransmission consent to which the broadcaster has refused or failed to respond. Following the filing of a complaint, the defendant broadcaster must file an answer that specifically admits or denies the complainants allegation of the existence of an exclusive retransmission consent agreement.

77. We agree with those commenters who argue that some aspects of the program access procedural rules would assist the Commission in effectively processing and resolving retransmission consent complaints. We believe that it is necessary to impose a limitations period on the filing of retransmission consent complaints. In the program access, program carriage and open video system contexts, the Commission has established a one-year limitations period within which an aggrieved party must file a complaint with the Commission. Given that retransmission consent complaints are likely to be highly fact-specific and dependent on individual recollection, a similar limitations period is fair and appropriate with regard to retransmission consent complaints. Moreover, a limitations period lends finality and certainty to retransmission consent agreements after affording MVPDs an appropriate interval to challenge alleged violations of section 325(b)(3)(C). Accordingly, a complaint filed pursuant to section 325(b)(3)(C) must be filed within one year of the date any of the following occur: (a) a complainant MVPD enters into a retransmission consent agreement with a broadcaster that the complainant MVPD alleges violate one or more of the rules adopted herein; or (b) a broadcaster engages in retransmission consent negotiations with a complainant MVPD that the complainant MVPD alleges violate one or more of the rules adopted herein, and such negotiation is unrelated to any existing contract between the complainant MVPD and the broadcaster; or (c) the complainant MVPD has notified the broadcaster that it intends to file a complaint with the Commission based on a request to negotiate retransmission consent that has been denied, unreasonably delayed, or unacknowledged in violation of one or more of the rules adopted herein.

C. Discovery

78. Several commenters urge the Commission to provide discovery as-of-right in retransmission consent complaint proceedings. Disney observes that since there is no automatic right to discovery in the more procedurally complex program access regime—a fortiori there should be no discovery in the context of retransmission consent proceedings. One commenter asserts that retransmission consent agreements and the negotiations surrounding them constitute confidential business information that must be protected by strong nondisclosure agreements if subject to Commission-directed discovery procedures. This commenter offers three limitations on Commission-directed discovery: (1) the complainant must have made a *prima facie* showing of evidence supporting its claim that a violation has taken place; (2) the Commission's discovery order must be narrowly-tailored to avoid fishing expeditions; and (3) the Commission must permit mutual discovery.

79. We decline the invitation of several commenters to apply discovery as-of-right to the retransmission complaint procedures. Interested parties should not interpret our decision as meaning that discovery will play no part in the section 325 complaint process. Because MVPDs will be present at negotiations, we generally anticipate that evidence of a violation of the good faith standard will be accessible by the MVPD complainant. Where complainants can demonstrate that such information is not available (*e.g.*, agreements entered into with other MVPDs) and that discovery is necessary to the proper conduct and resolution of a proceeding, the Commission will consider, where necessary, the imposition of discovery to develop a more complete record and resolve complaints. In this regard, parties are free to raise appropriate discovery requests in their pleadings. We will protect proprietary information, where necessary, pursuant to 47 CFR 76.9. Accordingly, we will employ Commission-controlled discovery as contemplated in the 47 CFR 76.7 procedures.

D. Remedies

80. With regard to the appropriate measures for the Commission to take after a finding that a broadcaster has violated the good faith negotiation requirement, several commenters argue that the sole remedy is a Commission directive to engage in further negotiation consistent with the Commission's decision. In this regard, other commenters note that, in the labor law context, the Supreme Court has determined that the NLRB has no power to order parties to enter into a particular agreement, or even agree to individual terms. EchoStar argues that this is not the limit of the Commission's remedial authority and that the Commission should order a broadcaster that has been found to violate the Commission's prohibitions to conclude a retransmission consent agreement that "does not include any discriminatory terms not based on competitive marketplace considerations." Other commenters argue that the Commission should adopt a liberal policy of allowing damages, both as a deterrent to unlawful conduct and as compensation to injured parties. Commenters opposing the imposition of damages note that, while Congress granted the Commission express authority to order appropriate remedies in the program access context, Congress did not grant such express authority in the context of the good faith negotiation requirement.

81. Congress did not empower the Commission to sit in judgement of the substantive terms and conditions of retransmission consent agreements. Therefore, in situations in which a broadcaster is determined to have failed to negotiate in good faith, the Commission will instruct the parties to renegotiate the agreement in accordance with the Commission's rules and section 325(b)(3)(C). We reiterate, however, that the Commission will not require any party to a retransmission consent agreement to offer or accept a specific term or condition or even to reach agreement as part of such renegotiation.

82. Although several commenters strongly favor the imposition of damages for adjudicated violations of section 325(b)(3)(C), we can divine no statutory grant of authority to take such action. Congress instructed the Commission to revise its regulations governing retransmission consent to prohibit exclusive agreements and require good faith negotiation. We can divine no intent in section 325(b)(3)(C) to impose damages for violations thereof. This is especially true where later in the same statutory provision, Congress expressly granted the District Courts of the United States the authority to impose statutory damages of up to $25,000 per violation, per day following a Commission determination of a retransmission consent violation by a satellite carrier. Commenters' reliance on the program access provisions as support for a damages remedy in this context is misplaced. The Commission's authority to impose damages for program access violations is based upon a statutory grant of authority. We note, however, that, as with all violations of the Communications Act or the Commission's rules, the Commission has the authority to impose forfeitures for violations of section 325(b)(3)(C).

E. Expedited Resolution

83. The Notice requested comment on whether expedited procedures are necessary to the appropriate resolution of either exclusivity or good faith proceedings. Several commenters argue that, in section 325(e) of the Communications Act, Congress expressly required expedited processing of broadcasters' complaints that satellite carriers have illegally retransmitted local broadcaster signals without consent. Given this express directive by Congress, these commenters argue that the lack of an express directive to expedite good faith negotiation complaints indicates Congress' decision that such complaints should not receive expedited treatment. U S West, however, notes that the Commission has wide discretion to manage its procedures "as will best conduce to the proper dispatch of business and to the ends of justice." Disney asserts that the Commission must ensure that good faith negotiation complaints are resolved expeditiously. In this regard, several commenters suggest various time limits within which the Commission should resolve complaints related to the good faith negotiation requirement and the exclusivity prohibition.

84. Commenters generally favor expedited action by the Commission regarding complaints filed pursuant to section 325(b)(3)(C). Because we conclude that, upon expiration of an MVPD's carriage rights under the section 325(b)(2)(E) six-month compulsory license period or an existing retransmission consent agreement, an MVPD may not continue carriage of a broadcaster's signal while a retransmission consent complaint is pending at the Commission, it is incumbent upon the Commission to expedite the resolution of these claims. We are mindful that Congress has imposed no express time limits for Commission resolution of retransmission consent complaints, whereas it has done so in other provisions of SHVIA and the Communications Act. We believe, however, that expeditious resolution of section 325(b)(3)(C) complaints is entirely consistent with Congress' statutory scheme. We believe that, to ensure efficient functioning of the retransmission consent process, and to avoid protracted loss of service to subscribers, expedited action on these claims is necessary.

85. While commenters propose various time periods within which the Commission should resolve retransmission consent complaints, we believe the spectrum of issues that may be involved in these proceedings does not lend itself to selecting one time period by which the Commission should resolve all complaints brought under section 325(b)(3)(C). For example, it would be inefficient and arbitrary to apply the same time period to a clear violation, such as outright refusal to negotiate, and a violation of the test involving analysis of the totality of the circumstances. Bearing in mind that the Commission must give maximum priority to matters involving statutory time limits, we instruct Commission staff to give priority to section 325(b)(3)(C) complaints and resolve them in an expeditious manner, considering the complexity of the issues raised. We will monitor the resolution times of individual retransmission consent complaints and, if necessary, we will revisit this issue in the future.

F. Burden of Proof

86. The Notice sought comment on how the burden of proof should be allocated. In this regard, we asked for comment on whether the burden should rest with the complaining party until it has made a *prima facie* showing and then shift to the defending party and what would constitute a *prima facie* showing sufficient to shift the burden to the defending party.

87. Arguing that, consistent with NLRB cases in which the party claiming bad faith bears the burden of proof, several commenters counsel the Commission to provide that the burden of proof should always be on the MVPD complainant. Indeed, several commenters assert that the Commission should adopt procedural rules that permit it to dismiss retransmission consent complaints summarily if the MVPD fails to satisfy a specified threshold standard.

88. Other commenters support a shifting of the burden of proof after a *prima facie* demonstration. Commenters assert that such a shifting is appropriate because of the difficulty of conclusively establishing the existence of an exclusive agreement or lack of good faith. For exclusivity complaints, DIRECTV and EchoStar suggest that a complaining party only provide affidavits or other documentary evidence to support its belief that a prohibited exclusive contract exists, and the burden of proof then shifts to the defendant to refute the existence of such agreement. For good faith complaints, DIRECTV and EchoStar suggest that the complaining party should provide a description of the conduct complained of, including conduct alleged to violate any of the good faith negotiation standards supported by any documentary evidence or an affidavit signed by an officer of the complaining MVPD setting forth the basis for the complainant's allegations. After the burden has shifted to the broadcaster, commenters urge the Commission to require the broadcaster to include with its answer a copy of any retransmission consent agreement the complainant alleges to contain unlawfully different terms and conditions, subject to Commission confidentiality protections. Several commenters maintain that the Commission should impose sanctions against filers of frivolous complaints. Network Affiliates argue that the adoption of a shifting burden mechanism will encourage the filing of frivolous complaints during the

negotiation period in order to intimidate broadcasters.

89. Commenters advance cogent arguments both for and against shifting the burden to the broadcaster after a *prima facie* showing by a complaining MVPD. However, as in labor law context, we believe the burden should rest with the MVPD complainant to establish a violation of section 325(b)(3)(C). This conclusion is also consistent with our belief that generally the evidence of a violation of the good faith standard will be accessible by the complainant. This should not be interpreted as permitting a broadcaster to remain mute in the face of allegations of a section 325(b)(3)(C) violation. After service of a complaint, a broadcaster must file an answer as required by 47 CFR 76.7, which advises the parties and the Commission fully and completely of any and all defenses, responds specifically to all material allegations of the complaint, and admits or denies the averments on which the party relies. In addition, where necessary, the Commission has discretion to impose discovery requests on a defendant to a section 325(b)(3)(C) complaint. However, in the end, the complainant must bear the burden of proving that a violation occurred.

G. Sunset of Rules

90. Section 325(b)(3)(C) directs that the regulations adopted by the Commission prohibit exclusive carriage agreements and require good faith negotiation of retransmission consent agreements "until January 1, 2006." The Commission sought comment on whether the Commission's rules regarding exclusive carriage agreements and good faith negotiation should automatically sunset on this date. On its face, this provision would seem to sunset the prohibition on exclusive retransmission consent agreements and good faith negotiation for all MVPDs. Under this reading of the statute, the Commission's rule prohibiting exclusive retransmission consent agreements for cable operators would be deemed abrogated as of January 1, 2006.

91. The broadcast industry argues that this is the correct interpretation of SHVIA. One commenter states that "[b]ecause the statutory language is plain on its face, and because Congress acted with knowledge of the existing regulatory prohibition, it is clear that Congress intended to abrogate the Commission's existing rule prohibiting exclusive retransmission consent agreements with cable operators." This commenter additionally argues that the prohibition on exclusive retransmission consent agreements was meant to correct imbalances in the marketplace, and thus was established as a temporary solution.

92. The satellite industry and other MVPD representatives disagree with this interpretation of the statute. Two commenters argue that the date set out in the statute establishes a minimum time frame on the prohibition of exclusive retransmission consent agreements and the good faith negotiation requirement. Others state that interpreting the statute as sunsetting the Commission's prohibitions on exclusive retransmission consent agreements runs contrary to the intent of Congress. Specifically, they argue that nothing in the legislative history demonstrates an intent to sunset section 325(b)(3)(C), and without an affirmative statement of intent, no such intent may be inferred. Commenters argue that to sunset the prohibition would result in anti-competitive behavior, and would thus undermine the goals of SHVIA. Finally, many commenters from the satellite industry and the MVPD industry argue that the Commission has authority to extend the prohibition on exclusive retransmission consent agreements beyond January 1, 2006, if the Commission determines that such an extension would be in the public interest.

93. A third approach to this issue is advanced by some representatives of the satellite industry and the cable industry. Time Warner argues that the Commission should make no determination at this point over whether to sunset the prohibition, but rather should make a decision closer to the expiration date set out in the statute.

94. We believe that the statute is clear on its face, and that the correct interpretation of the language "until January 1, 2006" is that the prohibitions on exclusive retransmission consent agreements and the good faith negotiation requirement terminate on that date. We agree with commentators who argue that the provisions of section 325(b)(3)(C) are meant to foster competition. However, in the absence of guidance from Congress as to the Commission's authority after this date, we can not assume that Congress was establishing a minimum time frame and that the Commission has authority to promulgate rules prohibiting exclusive retransmission consent agreements and requiring good faith negotiation beyond January 1, 2006. Congress has demonstrated its ability to craft legislation that established a sunset date which the Commission has express authority to extend. Such language is not contained in SHVIA. The statute clearly states that the provisions would last "until January 1, 2006." The legislative history does not express any intent to extend such provisions. Thus, we must interpret section 325(b)(3)(C) as written and that January 1, 2006 is meant to be the sunset date for the prohibition of exclusive retransmission consent agreements and the rules on good faith retransmission consent negotiations.

VII. Administrative Matters

95. *Final Regulatory Flexibility Analysis.* As required by the Regulatory Flexibility Act ("RFA"), see 5 U.S.C. 603, an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Notice. The Commission sought written public comments on the possible significant economic impact of the proposed policies and rules on small entities in the Notice, including comments on the IRFA. Pursuant to the RFA, see 5 U.S.C. 604, a Final Regulatory Flexibility Analysis is contained in this document.

96. *Paperwork Reduction Act of 1995 Analysis.* The actions herein have been analyzed with respect to the Paperwork Reduction Act of 1995 and found to impose no new or modified reporting and recordkeeping requirements or burdens on the public.

97. *Effective Date.* As discussed, section 325(b)(2)(E) of the Communications Act grants satellite carriers a six-month period during which they may retransmit the signals of local broadcasters without a broadcaster's express retransmission consent. We have adopted these rules before the end of the six-month period provided by section 325(b)(2)(E) so that MVPDs, particularly satellite carriers, and broadcasters understand their rights and obligations under section 325(b)(3)(C) before that period expires. To afford parties the maximum amount of time to negotiate retransmission consent in good faith and to file complaints pursuant to section 325(b)(3)(C) before the expiration of the six-month period, this First Report and Order will be effective upon publication in the **Federal Register**. We find good cause exists under the Administrative Procedure Act ("APA") to have the rules adopted in this First Report and Order be effective March 23, 2000 pursuant to section 553(d)(3) of the APA. Prompt effectiveness of these rules will provide a framework under which broadcasters and satellite carriers can achieve retransmission consent before the expiration of the six-month period set forth in section 325(b)(2)(E).

Final Regulatory Flexibility Analysis

a. As required by the Regulatory Flexibility Act ("RFA"), an Initial Regulatory Flexibility Analysis ("IRFA") was incorporated in the Notice of Proposed Rulemaking ("Notice") in CS Docket No. 99–363, FCC 99–406. The Commission sought written public comments on the proposals in the Notice, including comment on the IRFA. This Final Regulatory Flexibility Analysis ("FRFA") conforms to the RFA.

b. *Need for, and Objectives of, this Report and Order.* Section 1009 of the Satellite Home Viewer Improvement Act ("SHVIA"), codified as section 325 of the Communications Act of 1934, as amended ("Act"), 47 U.S.C. 325, instructs the Commission to revise the regulations governing the exercise by television broadcast stations of the right to grant retransmission consent. Congress directed the Commission to devise regulations, procedures, and standards implementing a good faith requirement in the negotiation of agreements in connection with the transmission of television broadcast station signals by multichannel video programming distributors ("MVPDs"). This Report and Order adopts rules governing negotiation of retransmission consent between broadcasters and all MVPDs which will help to ensure that negotiations are conducted in an atmosphere of honesty, clarity of process and good faith. In particular, this proceeding provides a clear framework under which broadcasters and satellite carriers can achieve retransmission consent before expiration and interruption of local broadcast signals that satellite carriers have begun to provide their subscribers in many cities across the nation since the enactment of the SHVIA. Further, pursuant to the SHVIA, this proceeding also addresses implementing rules prohibiting exclusive retransmission consent agreements. Finally, the Report and Order adopts a complaint process to assist the Commission in enforcing the statutory obligations related to section 325(b)(3)(C).

c. *Summary of Significant Issues Raised by Public Comments in Response to the IRFA.* We received one comment in direct response to the IRFA. The American Cable Association ("ACA") argues that smaller cable systems play an important role in the distribution of local signals in rural America and smaller communities and that competitive imbalances from broadcaster abuses relating to retransmission consent threatens this role. In particular, ACA states that the "IFRA remains devoid of any meaningful analysis of how any retransmission consent rules that may result would impact smaller cable businesses and their systems, nor does it propose alternative relief to accommodate the unique needs of those businesses. Instead, the Commission generally believes that entity size has no bearing on the issues raised in the Notice." We note, however, that in the IFRA we discussed the retransmission consent election process and the possibility that differences among MVPDs might justify different election schemes. We stated that we had not proposed to treat small entities differently in this regard, but sought comment on the possibility. We also sought comment on four specific alternatives that might lessen the compliance burden on small entities: (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards: and (4) an exemption from coverage of the rule, or any part thereof, for small entities. None of the other parties in this proceeding filed comments on how issues raised in the Notice would impact small entities. Below, in the section of the FRFA titled, "Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered," we discuss further ACA's comment concerning the possible impact on small entities.

d. *Description and Estimate of the Number of Small Entities To Which the Rules Will Apply.* The RFA directs the Commission to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules. The RFA defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under Section 3 of the Small Business Act. Under the Small Business Act, a small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration ("SBA"). The rules we adopt as a result of the Report and Order will affect television station licensees, cable operators, and other MVPDs.

e. *Television Stations.* The Small Business Administration defines a television broadcasting station that has no more than $10.5 million in annual receipts as a small business. Television broadcasting stations consist of establishments primarily engaged in broadcasting visual programs by television to the public, except cable and other pay television services. Included in this industry are commercial, religious, educational, and other television stations. Also included are establishments primarily engaged in television broadcasting and which produce taped television program materials. Separate establishments primarily engaged in producing taped television program materials are classified under another SIC number. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,579 operating full power television broadcasting stations in the nation as of May 31, 1998.

f. Thus, the rules will affect many of the approximately 1,579 television stations; approximately 1,200 of those stations are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

g. In addition to owners of operating television stations, any entity that seeks or desires to obtain a television broadcast license may be affected by the rules contained in this item. The number of entities that may seek to obtain a television broadcast license is unknown.

h. *Small MVPDs:* SBA has developed a definition of small entities for cable and other pay television services, which includes all such companies generating $11 million or less in annual receipts. This definition includes cable system operators, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau data from 1992, there were 1,758 total cable and other pay television services and 1,423 had less than $11 million in revenue. We address below services individually to provide a more precise estimate of small entities.

i. *Cable Systems:* The SBA has developed a definition of small entities for cable and other pay television services under Standard Industrial Classification 4841 (SIC 4841), which covers subscription television services, which includes all such companies with annual gross revenues of $11 million or less. This definition includes cable systems operators, closed circuit

television services, direct broadcast satellite services, multipoint distribution systems, satellite master antenna systems and subscription television services. According to the Census Bureau, there were 1,323 such cable and other pay television services generating less than $11 million in revenue that were in operation for at least one year at the end of 1992.

j. The Commission has developed, with SBA's approval, its own definition of a small cable system operator for the purposes of rate regulation. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. The Commission's rules also define a "small system," for the purposes of cable rate regulation, as a cable system with 15,000 or fewer subscribers. We do not request nor do we collect information concerning cable systems serving 15,000 or fewer subscribers and thus are unable to estimate at this time the number of small cable systems nationwide.

k. The Communications Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenues in the aggregate exceed $250,000,000." The Commission has determined that there are 61,700,000 subscribers in the United States. Therefore, an operator serving fewer than 617,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 617,000 subscribers or less totals approximately 1450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Communications Act. It should be further noted that recent industry estimates project that there will be a total 64,000,000 subscribers and we have based our fee revenue estimates on that figure.

l. *Open Video System* ("OVS"): The Commission has certified eleven OVS operators. Of these eleven, only two are providing service. Affiliates of Residential Communications Network, Inc. ("RCN") received approval to operate OVS systems in New York City, Boston, Washington, D.C. and other areas. RCN has sufficient revenues to assure us that they do not qualify as small business entities. Little financial information is available for the other entities authorized to provide OVS that are not yet operational. Given that other entities have been authorized to provide OVS service but have not yet begun to generate revenues, we conclude that at least some of the OVS operators qualify as small entities.

m. *Multichannel Multipoint Distribution Service* ("MMDS"): The Commission refined the definition of "small entity" for the auction of MMDS as an entity that together with its affiliates has average gross annual revenues that are not more than $40 million for the proceeding three calendar years. This definition of a small entity in the context of the Commission's Report and Order concerning MMDS auctions that has been approved by the SBA.

n. The Commission completed its MMDS auction in March, 1996 for authorizations in 493 basic trading areas ("BTAs"). Of 67 winning bidders, 61 qualified as small entities. Five bidders indicated that they were minority-owned and four winners indicated that they were women-owned businesses. MMDS is an especially competitive service, with approximately 1,573 previously authorized and proposed MMDS facilities. Information available to us indicates that no MDS facility generates revenue in excess of $11 million annually. We conclude that there are approximately 1,634 small MMDS providers as defined by the SBA and the Commission's auction rules.

o. *DBS:* There are four licenses of DBS services under part 100 of the Commission's Rules. Three of those licensees are currently operational. Two of the licensees which are operational have annual revenues which may be in excess of the threshold for a small business. The Commission, however, does not collect annual revenue data for DBS and, therefore, is unable to ascertain the number of small DBS licensees that could be impacted by these proposed rules. DBS service requires a great investment of capital for operation, and we acknowledge that there are entrants in this field that may not yet have generated $11 million in annual receipts, and therefore may be categorized as a small business, if independently owned and operated.

p. *HSD:* The market for HSD service is difficult to quantify. Indeed, the service itself bears little resemblance to other MVPDs. HSD owners have access to more than 265 channels of programming placed on C-band satellites by programmers for receipt and distribution by MVPDs, of which 115 channels are scrambled and approximately 150 are unscrambled. HSD owners can watch unscrambled channels without paying a subscription fee. To receive scrambled channels, however, an HSD owner must purchase an integrated receiver-decoder from an equipment dealer and pay a subscription fee to an HSD programming package. Thus, HSD users include: (1) viewers who subscribe to a packaged programming service, which affords them access to most of the same programming provided to subscribers of other MVPDs; (2) viewers who receive only non-subscription programming; and (3) viewers who receive satellite programming services illegally without subscribing. Because scrambled packages of programming are most specifically intended for retail consumers, these are the services most relevant to this discussion.

q. According to the most recently available information, there are approximately 30 program packages nationwide offering packages of scrambled programming to retail consumers. These program packages provide subscriptions to approximately 2,314,900 subscribers nationwide. This is an average of about 77,163 subscribers per program package. This is substantially smaller than the 400,000 subscribers used in the commission's definition of a small MSO. Furthermore, because this is an average, it is likely that some program packages may be substantially smaller.

r. *SMATVs:* Industry sources estimate that approximately 5,200 SMATV operators were providing service as of December, 1995. Other estimates indicate that SMATV operators serve approximately 1.05 million residential subscribers as of September, 1996. The ten largest SMATV operators together pass 815,740 units. If we assume that these SMATV operators serve 50% of the units passed, the ten largest SMATV operators serve approximately 40% of the total number of SMATV subscribers. Because these operators are not rate regulated, they are not required to file financial data with the Commission. Furthermore, we are not aware of any privately published financial information regarding these operators. Based on the estimated number of operators and the estimated number of units served by the largest ten SMATVs, we tentatively conclude that a substantial number of SMATV operators qualify as small entities.

s. *Description of Projected Reporting, Recordkeeping and other Compliance Requirements.* This Report and Order establishes a series of rules implementing good faith guidelines in connection with retransmission consent agreements between television broadcast stations and all MVPDs. The good faith negotiation requirement applies only to broadcasters, however the conduct of MVPDs that seek retransmission consent is not irrelevant to the Commission in determining whether a broadcaster has complied with its obligation to negotiate retransmission consent in good faith. During the process of developing and negotiating retransmission consent, parties will be guided by the principles and provisions established in this Report and Order. While the substance of the agreements should be left to the market, the Commission is responsible for enforcing the process of good faith negotiation. We have established standards, practices, and conduct, derived principally from NLRB precedent, that will be applicable to all retransmission consent negotiations. First among the negotiation standards is that a broadcaster may not refuse to negotiate with an MVPD regarding retransmission consent. Additional standards outline broadcaster conduct required to meet the good faith standard in retransmission consent negotiation.

t. Pursuant to the directive by Congress, this proceeding also describes and explains the limits relating to exclusivity agreements and implements rules in that regard. Specifically, the SHVIA prohibits all exclusive retransmission agreements for television broadcast stations and MVPDs prior to January 1, 2006. We interpret the phrase "engaging in" to proscribe not only entering into exclusive agreements, but also negotiation and execution of agreements granting exclusive retransmission consent. The Commission also establishes complaint procedures and sets forth the requirements of complainants to address situations where there is evidence of exclusive retransmission consent agreements.

u. In the event that the good faith negotiation obligation provisions are not adhered to, enforcement procedures also have been established to report concerns and complaints and address disputes between parties. An MVPD believing itself aggrieved, may file a complaint with the Commission. Based upon pleadings filed, a determination will be made by the Commission on the issue of good faith.

v. *Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered.* In this Report and Order, of major importance is the principle of sustaining an environment where there will be fairness, fair dealings, and true competition between parties in the process of developing agreements on retransmission consent. This proceeding develops a definite framework for retransmission consent agreements so that television broadcast stations and MVPDs are aware of their rights and obligations under section 325(b)(3)(C).

w. As noted, American Cable Association ("ACA") asserts that because retransmission consent agreements have been largely unrestricted, broadcasters have tried to extract unreasonable concessions in return for retransmission consent from smaller cable systems and will continue to do so. It states that the Commission must establish sufficient safeguards to protect individual smaller cable businesses. ACA suggests that the Commission should articulate its expectations regarding good faith negotiations and extend those obligations to all retransmission consent negotiations, including cable. We do not believe it necessary to develop specific rules for particular subsets of the MVPD market. The good faith negotiation requirement applies to a broadcaster's negotiations with all MVPDs, including small cable operators. The Report and Order adopts rules to implement this obligation with regard to all broadcaster negotiations with all MVPDs. For example, we set forth good faith negotiations standards, which proscribe the actions or practices that would violate a broadcast television station's duty to negotiate retransmission consent agreements in good faith. Further, procedures to address exclusivity complaints are also established. Small businesses are subject to these provisions and will benefit from the protection provided. We believe this sufficiently ameliorates ACA's concerns.

x. *Report to Congress:* The Commission will send a copy of this Report and Order, including this FRFA, in a report to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801(a)(1)(A). A copy of this Report and Order and FRFA (or summary thereof) will also be published in the **Federal Register**, pursuant to 5 U.S.C. 604(b), and will be sent to the Chief Counsel for Advocacy of the Small Business Administration.

VIII. Ordering Clauses

98. Pursuant to authority found in sections 4(i) 4(j), 303(r) and 325 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), 303(r) and 325, the Commission's rules are hereby amended as set forth.

99. The rule amendments set forth will become effective March 23, 2000.

100. The Consumer Information Bureau, Reference Information Center shall send this First Report and Order, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 76 Cable Television Service.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 76 as follows:

PART 76—MULTICHANNEL VIDEO AND CABLE TELEVISION SERVICE

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 151, 152, 153, 154, 301, 302, 303, 303a, 307, 308, 309, 312, 315, 317, 325, 503, 521, 522, 531, 532, 533, 534, 535, 536, 537, 543, 544, 544a, 545, 548, 549, 552, 554, 556, 558, 560, 561, 571, 572, 573.

2. In § 76.64 paragraph (m) is revised to read as follows:

§ 76.64 Retransmission Consent.

* * * * *

(m) Exclusive retransmission consent agreements are prohibited. No television broadcast station shall make or negotiate and agreement with one multichannel video programming distributor for carriage to the exclusion of other multichannel video programming distributors. This paragraph shall terminate at midnight on December 31, 2005.

* * * * *

3. Section 76.65 is added to Subpart D to read as follows:

§ 76.65 Good faith and exclusive retransmission consent complaints.

(a) *Duty to negotiate in good faith.* Television broadcast stations that provide retransmission consent shall negotiate in good faith the terms and conditions of such agreements to fulfill the duties established by section

325(b)(3)(C) of the Communciations Act 47 U.S.C. 325; provided, however, that it shall not be a failure to negotiate in good faith if the television broadcast station proposes or enters into retransmission consent agreements containing different terms and conditions, including price terms, with different multichannel video programming distributors if such different terms and conditions are based on competitive marketplace considerations. If a television broadcast station negotiates with multichannel video programming distributors in accordance with the rules and procedures set forth in this section, failure to reach an agreement is not an indication of a failure to negotiate in good faith.

(b) *Good faith negotiation.*—(1) *Standards.* The following actions or practices violate a broadcast television station's duty to negotiate retransmission consent agreements in good faith:

(i) Refusal by a television broadcast station to negotiate retransmission consent with any multichannel video programming distributor;

(ii) Refusal by a television broadcast station to designate a representative with authority make binding representations on retransmission consent;

(iii) Refusal by a television broadcast station to meet and negotiate retransmission consent at reasonable times and locations, or acting in a manner that unreasonably delays retransmission consent negotiations;

(iv) Refusal by a television broadcast station to put forth more than a single, unilateral proposal.

(v) Failure of a television broadcast station to respond to a retransmission consent proposal of a multichannel video programming distributor, including the reasons for the rejection of any such proposal;

(vi) Execution by a television broadcast station of an agreement with any party, a term or condition of which, requires that such television broadcast station not enter into a retransmission consent agreement with any multichannel video programming distributor; and

(vii) Refusal by a television broadcast station to execute a written retransmission consent agreement that sets forth the full understanding of the television broadcast station and the multichannel video programming distributor.

(2) *Totality of the circumstances.* In addition to the standards set forth in section 76.65(b)(1), a multichannel video programming distributor may demonstrate, based on the totality of the circumstances of a particular retransmission consent negotiation, that a television broadcast station breached its duty to negotiate in good faith as set forth in section 76.65(a).

(c) *Good faith negotiation and exclusivity complaints.* Any multichannel video programming distributor aggrieved by conduct that it believes constitutes a violation of the regulations set forth in this § 76.64(m) may commence an adjudicatory proceeding at the Commission to obtain enforcement of the rules through the filing of a complaint. The complaint shall be filed and responded to in accordance with the procedures specified in § 76.7.

(d) *Burden of proof.* In any complaint proceeding brought under this section, the burden of proof as to the existence of a violation shall be on the complainant.

(e) *Time limit on filing of complaints.* Any complaint filed pursuant to this subsection must be filed within one year of the date on which one of the following events occurs:

(1) A complainant multichannel video programming provider enters into a retransmission consent agreement with a television broadcast station that the complainant alleges to violate one or more of the rules contained in this subpart; or

(2) A television broadcast station engages in retransmission consent negotiations with a complainant that the complainant alleges to violate one or more of the rules contained in this subpart, and such negotiation is unrelated to any existing contract between the complainant and the television broadcast station; or

(3) The complainant has notified the television broadcast station that it intends to file a complaint with the Commission based on a request to negotiate retransmission consent that has been denied, unreasonably delayed, or unacknowledged in violation of one or more of the rules contained in this subpart.

(f) *Termination of rules.* This section shall terminate at midnight on December 31, 2005.

[FR Doc. 00–7163 Filed 3–22–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[I.D. 022800D]

Fisheries of the Northeastern United States; Magnuson-Stevens Act Provisions; Northeast Skates; Overfished Fisheries

ACTION: Designation of Council responsibilities for the Northeast skate fisheries; determination of overfished fisheries.

SUMMARY: NMFS announces that the Assistant Administrator for Fisheries, on behalf of the Secretary of Commerce (Secretary), has designated the New England Fishery Management Council (NEFMC) as the Regional Fishery Management Council (Council) responsible for developing a fishery management plan (FMP) for seven species of skate (barndoor, clearnose, little, rosette, smooth, thorny, and winter skate) found in Federal waters off the coast of the New England and Mid-Atlantic states. NMFS also informs the public of its determination that four of the species comprising the Northeast skate fisheries (barndoor, smooth, thorny, and winter skate) are overfished.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104.

SUPPLEMENTARY INFORMATION:

Background

Soon after the passage of the Fishery Conservation and Management Act in 1976, the Secretary designated species-specific management responsibilities to the Councils. The skate species were not among those designated for management. In April 1999, the NEFMC requested the Secretary to grant the NEFMC sole authority to manage seven species of skate found in the Northeast—namely the barndoor, clearnose, little, rosette, smooth, thorny, and winter skate. In August 1999, the Mid-Atlantic Fishery Management Council agreed that it would be appropriate for the NEFMC to manage the Northeast skate fisheries. On March 14, 2000, NMFS informed the NEFMC that the Assistant Administrator for Fisheries, NMFS, on behalf of the Secretary, designated the NEFMC as the Council responsible for developing an FMP for seven species of skate found in Federal waters off the coast of the New England and Mid-Atlantic states.

Determination of Overfished Fisheries

The determination of the status of a stock relative to overfishing and overfished condition is based on both the rate of removal of fish from the population through fishing (the exploitation rate) and the current stock size. When the exploitation rate jeopardizes the capacity of a stock to produce its maximum sustainable yield (MSY) on a continuing basis, overfishing is occurring. Exploitation rates are usually expressed in terms of an instantaneous fishing mortality rate (F).

Another important factor for classifying the status of a resource is the current stock level. If a stock's biomass falls below its minimum biomass threshold, the capacity of the stock to produce MSY on a continuing basis is jeopardized and the stock is said to be in an overfished condition.

NMFS' Northeast Fisheries Science Center assessed the Northeast skate stocks at the 30th Northeast Regional Stock Assessment Workshop (SAW 30), in January 2000. Results of SAW 30 indicate that barndoor, smooth, thorny, and winter skate are overfished as discussed below.

Barndoor skate (Raja laevis)

The abundance of barndoor skate declined continuously through the 1960s to historic lows during the early 1980s. Since 1990, the abundance of barndoor skate has increased slightly on Georges Bank, the western Scotian Shelf, and in southern New England. However, the 1999 NEFMC autumn survey biomass index was less than 5 percent of the peak observed in 1963. F could not be estimated for the stock, nor could an F reference point be determined. However, the 1996–98 NEFMC autumn survey biomass index of 0.08 kg/tow was below the proposed biomass threshold of 0.81 kg/tow. Therefore, barndoor skate is overfished.

Smooth skate (Raja senta)

The abundance of smooth skate was highest during the early 1960s and late 1970s. F could not be estimated for the stock, nor could an F reference point be determined. However, the 1996–1998 NEFMC autumn survey biomass index of 0.15 kg/tow was below the proposed biomass threshold of 0.16 kg/tow. Therefore, smooth skate is overfished.

Thorny skate (Raja radiata)

The abundance of thorny skate has declined to historic lows. Current abundance is about 10–15 percent of the peak observed in the late 1960s and early 1970s. F could not be estimated for the stock, nor could an F reference point be determined. However, the 1996–1998 NEFSC autumn surgery biomass index of 0.77 kg/tow was below the proposed biomass threshold of 2.20 kg/tow. Therefore, thorny skate is overfished.

Winter skate (Raja ocellata)

Winter skate abundance is currently about the same as in the early 1970s, at about 25 percent of the peak observed during the mid-1980s. Comparison of the current F(0.39), based on the NEFSC spring survey, to the proposed threshold F(0.1) indicates that overfishing is occurring. The 1996–1998 NEFSC autumn survey biomass index average of 2.83 kg/tow was below the proposed biomass threshold of 3.23 kg/tow. Therefore, winter skate is also overfished.

Section 304(e) of the Magnuson-Stevens Fishery Conservation and Management Act requires that within 1 year of being notified of the identification of a stock as being overfished, the affected Council must develop measures to end overfishing and rebuild the stock. On March 14, 2000, the NEFMC was informed that it had been designated as the Council having responsibility for the management of the Northeast skate fisheries and was notified of the overfished status of the barndoor, winter, thorny, and smooth skate stocks. The letter to the NEFMC reads as follows:

March 14, 2000
Mr. Thomas Hill
Chairman
New England Fishery Management Council
50 Water Street - Mill 2
Newburyport, Massachusetts 01950–2866
Dear Chairman Hill:

I am pleased to inform you that, on behalf of Secretary Daley, I have approved your request to designate the New England Fishery Management Council (NEFMC) as the responsible body for the development and management of the Northeast skate fisheries. Your responsibilities will include the management of seven species of skate found in the Northeast—barndoor, clearnose, little, rosette, smooth, thorny, and winter skate.

The Mid-Atlantic Fishery Management Council (MAFMC), at its August 1999 meeting, passed a motion to support the NEFMC's request to initiate skate management. The MAFMC made clear its desire to be an active participant with the NEFMC in the development of a fishery management plan for Northeast skates. The MAFMC also expressed the desire to place at least three voting members on the NEFMC's skate committee and to appoint at least three industry advisors to the NEFMC's skate advisory panel or its equivalent.

The National Marine Fisheries Service Northeast Fisheries Science Center undertook an assessment of the Northeast skate fisheries at the 30th Northeast Regional Stock Assessment Workshop (SAW 30), which was completed in January 2000. Results of SAW 30 indicate that barndoor, smooth, thorny, and winter skate are overfished. The date of this letter will begin the 1-year period specified in the Magnuson-Stevens Fishery Conservation and Management Act for development of measures to address overfishing. A notice announcing the addition of these species to the list of overfished stocks will be published in the **Federal Register**.

I am pleased that you will begin work on management measures for these fisheries. If you have any questions, please do not hesitate to contact me.

Sincerely,
Andrew A. Rosenberg
Acting Assistant Administrator
for Fisheries

Dated: March 15, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7218 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352–0012–02; I.D. 011100D]

RIN 0648–AM83

Fisheries of the Exclusive Economic Zone Off Alaska; Emergency Interim Rule To Implement Major Provisions of the American Fisheries Act; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule; revisions to 2000 harvest specifications; sideboard directed fishing closures; correction.

SUMMARY: This document corrects the emergency interim rule, which implements major provisions of the American Fisheries Act (AFA) and revises interim 2000 harvest specifications and sideboard directed fishing closures. This correction is being made to clarify that AFA crab processing sideboard limits do not apply to the processing of Community Development Quota (CDQ) crab.

DATES: Effective January 21, 2000 through July 20, 2000.

FOR FURTHER INFORMATION CONTACT: Kent Lind, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Need for Correction

corrections are made in the regulatory

(d) *Conversion of crab processing*

Proposed Rules

Need for Correction

The emergency interim rule that implemented major provisions of the American Fisheries Act (65 FR 4520, January 28, 2000) established AFA inshore processor and AFA mothership crab processing sideboard limits at § 679.64. NMFS did not intend for these crab processing sideboard limits to be applicable to the processing of CDQ crab. The AFA contains language that would cap crab processing in the directed crab fisheries, under the authority of the North Pacific Fishery Management Council, but does not contain language as to whether CDQ crab is part of the directed crab fisheries. To include the CDQ crab counts toward the cap would be highly disruptive to this entity because the CDQ crab fishery is not a directed fishery and comes after the open access crab fisheries. Therefore, NMFS has made a policy judgement to exclude CDQ crab from the processing caps and is correcting the AFA emergency rule by incorporating its interpretation of this policy in the emergency rule.

Correction

In the emergency interim rule To Implement Major Provisions of the American Fisheries Act, published in the **Federal Register** on January 28, 2000 (65 FR 4520), the following corrections are made in the regulatory text.

1. On page 4544, in § 679.64, paragraphs (a) and (b), the first sentence of paragraph (d), and paragraph (e) are corrected to read as follows:

§ 679.64 AFA inshore processor and AFA mothership crab processing sideboard limits.

(a) *Applicability.* The crab processing limits in this section apply to non-CDQ crab processed by any AFA inshore or mothership entity that receives pollock harvested in the BSAI directed pollock fishery by a fishery cooperative established under § 679.60 or § 679.61.

(b) *Calculation of crab processing sideboard limits.* Upon receipt of an application for a cooperative processing endorsement from the owners of an AFA mothership or AFA inshore processor, the Regional Administrator will calculate a crab processing cap percentage for the associated AFA inshore or mothership entity. The crab processing cap percentage for each BSAI king or Tanner crab species will be equal to the percentage of the non-CDQ total catch of each BSAI king or Tanner crab species that the AFA crab facilities associated with the AFA inshore or mothership entity processed in the aggregate, on average, in 1995, 1996, and 1997.

* * * * *

(d) *Conversion of crab processing sideboard percentages and notification of crab processing sideboard poundage caps.* Prior to the start of each BSAI king or Tanner crab fishery, NMFS will convert each AFA inshore or mothership entity's crab processing sideboard percentage to a poundage cap by multiplying the crab processing sideboard percentage by the non-CDQ (open access) pre-season guideline harvest level (GHL) established for that crab fishery by ADF&G. * * *

(e) *Overages.* In the event that the actual harvest of a BSAI crab species during a non-CDQ crab fishery exceeds the non-CDQ pre-season GHL announced for that species, an AFA inshore or mothership entity may exceed its crab processing cap without penalty up to an amount equal to the AFA inshore or mothership entity's crab processing percentage multiplied by the final official harvest amount of that crab species as determined by the ADF&G and announced by NMFS on the NMFS-Alaska Region world wide web home page (http://www.fakr.noaa.gov).

Dated: March 16, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7219 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 57
Thursday, March 23, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 205

[Docket Number: TM–00–03]

National Organic Programs; Organic Production and Handling of Aquatic Animals To Be Labeled as Organic

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The USDA Agricultural Marketing Service (AMS) plans to hold three public meetings to discuss issues related to the organic production and handling of aquatic animals to be labeled as organic.

DATES: The meetings are scheduled as follows:

1. April 10, 2000, from 6 p.m. to 9 p.m., Mobile, Alabama.
2. April 12, 2000, from 9 a.m. to 1 p.m., Anchorage, Alaska.
3. May 3, 2000, from 6 p.m. to 9 p.m., Providence, Rhode Island.

Comment Date: Written and electronic comments must be submitted on or before May 17, 2000.

ADDRESSES: The meetings will be held at the following locations:

1. Alabama—Mobile Convention Center, 1 South Water Street, Room 201, Mobile, AL.
2. Alaska—Anchorage Hilton, 500 West Third Avenue, Anchorage, AK.
3. Rhode Island—Providence Biltmore, 11 Dorrance Street, Providence, RI.

Comment Address: Send written and electronic comments to: Mark Keating, National Organic Program, USDA–AMS–TMP–NOP, Room 2510–South, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Mark Keating: Telephone: (202) 720–7804; Fax: (202) 205–7808.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Organic Foods Production Act (OFPA) as amended (7 U.S.C. 6501 *et seq.*) requires that livestock that is to be slaughtered and sold or labeled as organically produced shall be raised in accordance with the OFPA. Section 2103 (7 U.S.C. 6502) of the OFPA defines livestock as any cattle, sheep, goats, swine, poultry, equine animals used for food or in the production of food, fish used for food, wild or domesticated game, or other nonplant life. Therefore, any fish used for food that is to be sold or labeled as organic must be raised in accordance with the requirements of the OFPA. The term "fish" encompasses all aquatic animals used for food including shell fish and fin fish. AMS believes that the term "fish" may be interpreted not only to encompass aquatic animals propagated and raised in a controlled or selected environment ("aquaculture"), but also fish harvested from Federally regulated but free roaming marine and fresh water populations ("wild harvest"). AMS is conducting three public meetings to solicit information regarding organic production and handling standards for operations producing aquatic animals.

What Is the Purpose of the National Organic Program?

As set forth in Section 2102 (7 U.S.C. 6501), the OFPA is intended to: (1) Establish national standards governing the marketing of certain agricultural products as organically produced products; (2) assure consumers that organically produced products meet a consistent standard; and (3) facilitate commerce in fresh and processed food that is organically produced. The National Organic Program (NOP) is the entity within AMS responsible for implementing the OFPA. Pursuant to section 2119 of the OFPA (7 U.S.C. 6518), the Secretary has established the National Organic Standards Board (NOSB) to provide assistance in the development of organic standards. The members of the NOSB represent distinct disciplines from within the organic community and are authorized to propose recommendations to the Secretary on the creation and revision of production and handling standards for organically managed operations.

The NOSB received public testimony and engaged in discussion of certification standards for aquaculture and wild-harvest aquatic animal operations at meetings in July 1998, October 1998, February 1999, July 1999 and October 1999. The NOP staff will evaluate the testimony and discussion from those meetings, consider any subsequent recommendations proposed by the NOSB, evaluate any information developed at the public national meetings announced in this document, and publish for comment in the **Federal Register** proposed organic standards for operations that produce aquatic animals.

What Are the Current Regulations for the Production and Harvesting of Aquatic Animals?

Multiple Federal entities share regulatory authority for the production and marketing of aquatic animals. The National Marine Fisheries Service (NMFS) within the National Oceanic and Atmospheric Administration (NOAA) of the U.S. Department of Commerce provides services and products to support domestic and international fisheries management operations, fisheries development, trade and industry assistance activities, enforcement, protected species and habitat conservation operations, and the scientific and technical aspects of NOAA's marine fisheries program. The Fish and Wildlife Service of the U.S. Department of the Interior fulfills multiple functions including managing interjurisdictional fisheries, restoration of aquatic ecosystems, and recovery of listed and candidate aquatic species. The Animal and Plant Health Inspection Service (APHIS) of USDA has a role in both plant and animal aquaculture, especially involving disease and pest prevention and wildlife damage management. The Food and Drug Administration of the U.S. Department of Health and Human Services operates an oversight compliance program for the safety, wholesomeness, identity, and economic integrity of marketed seafood products. In considering the development of organic production and handling standards for operations producing aquatic animals, AMS will consult with all Federal entities that share regulatory responsibility for such operations.

How Will the Meetings Be Conducted?

A representative of AMS will preside at each of the three public meetings. Any interested person may appear and be heard in person or through a

representative. All public comment will be recorded and will be made part of the meeting record. We request that anyone who makes an oral comment also submit a written statement to the AMS representative at the meeting.

How Can Interested Persons Participate?

1. *In person.* Anyone may attend and comment at a meeting. If you wish to make a comment, you should register with AMS as soon as possible but prior to the meeting date. You may register by calling the NOP at (202) 720–3252, at which time you will be requested to submit your name, the topic of the comment, and the meeting location where you will make the comment. Registration will help ensure that you will be able to present your comment during the meeting. You also may register to make a comment by sending an e-mail message to NOP.Register@usda.gov. If you are unable to register prior to the meetings, you will be able to sign up at each location on the day of the meeting. Late registrants may submit comments on a first-come, first-served basis following the completion of comments from pre-registered individuals. Oral comments will be limited to 5 minutes to enable the greatest number of presenters an opportunity to speak.

2. *Written comments.* Written comments may be mailed to Mark Keating, National Organic Program USDA–AMS–TMP–NOP, P.O. Box 96456, Room 2510—South, Washington, DC 20090–6456; Telephone: (202) 720–3252; Fax: (202) 205–7808.

3. *Electronically.* Comments also may be submitted electronically via the Internet through Aquatic.Comment@usda.gov.

What Topics Should Comments Address?

General

1. How would the introduction of organic production and handling standards for aquatic animal operations affect consumer perception and acceptance of the organic certification process for other types of operations?

2. How would an organic label impact the marketing of aquatic animals?

3. What types of certification programs other than organic could provide consumers with useful information on the harvesting and processing of aquatic animals?

4. How would AMS organic standards for the production and handling of aquatic animals relate to international regulation?

Aquatic Animal Operations

1. Which components of organic certification for crops and livestock are compatible with or similar to operations that produce aquatic animals?

2. How can aquatic animal operations comply with the requirements of the OFPA which include:

— an organic system plan,
— wildcrop harvesting,
— origin of slaughter stock,
— health care practices,
— living conditions,
— allowed and prohibited substances,
— feed requirements,
— post-harvest processing,
— identification and record keeping systems.

Wild Harvested Operations

1. What should be the criteria for determining the suitability of a wild harvest site for the production of organic aquatic animals? How should prevailing environmental factors such as water quality, the presence of prohibited substances, and human activity be incorporated into the site inspection and approval? How should the potential impact of the operation on the target species, non-target species, and the environment be addressed in the certification process?

2. How can the population dynamics of the targeted species, including age distribution, reproductive capacity, and sustainable catch limits, be cumulatively addressed by the organic system plans of multiple operations?

3. How can producers anticipate and certifying agents verify site conditions over time and across the production site in which wild harvest operations function?

4. How can the management practices of a fish hatchery that contributes to a wild harvest population of aquatic animals be incorporated into the organic system plan?

Aquaculture Operations

1. What should the criteria be for evaluating the suitability of a production site for an organic aquaculture operation? Specifically, how can standards be developed for the site of production to address nutrient concentration, the emergence and transfer of disease, the escape of captive species to the wild, and detrimental impacts on indigenous species?

2. What characteristics of fish meal are pertinent to the requirement in the OFPA that producers supply livestock with organically produced feed that meets the requirements of the OFPA?

3. What guidelines are needed to ensure that the predator control practices used in aquaculture operations are consistent with organic principles?

4. Should the induction of triploidy in fish species be classified as an allowed or prohibited practice?

5. How should standards address the origin of livestock requirement for aquaculture operations that obtain stock or fry from wild populations?

Dated: March 17, 2000.

Sharon Bomer Lauritsen,

Acting Deputy Administrator, Transportation and Marketing.

[FR Doc. 00–7144 Filed 3–22–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AO–370–A7; FV00–930–1]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin; Hearing on Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of hearing on proposed rulemaking.

SUMMARY: Notice is hereby given of a public hearing to consider amending Marketing Agreement and Order No. 930, hereinafter referred to as the "order." The order regulates the handling of tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The purpose of the hearing is to receive evidence on a number of amendments proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. Major proposals include making all districts subject to volume regulations, rather than only those districts producing more than 15 million pounds per year; making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; making all cherry shipments subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products.

DATES: The hearing dates are:

1. March 27, 2000, 12:00 p.m. to 5:00 p.m., and continuing on March 28, 2000, at 9:00 a.m., if necessary, Rochester, New York.

2. March 29, 2000, 10:00 a.m. to 5:00 p.m.; March 30, 2000, 9:00 a.m. to 5:00 p.m.; and continuing on March 31, 2000 at 9:00 a.m., if necessary; Grand Rapids, Michigan.

3. April 4, 2000, 9:00 a.m. to 5:00 p.m. and continuing on April 5, 2000 at 9:00 a.m., if necessary, Kennewick, Washington.

4. April 6, 2000, 10:00 a.m. to 5:00 p.m., and continuing on April 7, 2000, if necessary, Salt Lake City, Utah.

ADDRESSES: The hearing locations are:

1. Rochester—Radisson Hotel Rochester Airport, 175 Jeffferson Road, Rochester, New York 14623.

2. Grand Rapids—Courtyard by Marriott Downtown, 11 Monroe Avenue, Grand Rapids, Michigan 49503.

3. Kennewick—Cavannaugh's at Columbia Center, 1101 W. Columbia Center Boulevard, Kennewick, Washington 99336.

4. Salt Lake City—Utah Department of Agriculture and Food (Conference Room), 350 North Redwood Road, Salt Lake City, Utah 84116.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632. Small businesses may request information on this proceeding by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525-S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 205–6632.

SUPPLEMENTARY INFORMATION: This administrative action is instituted pursuant to the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act." This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) seeks to ensure that within the statutory authority of a program, the regulatory and informational requirements are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearing on the possible regulatory and informational impacts of the proposals on small businesses.

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposals.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The hearing is called pursuant to the provisions of the Act and the applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Board proposes to revise seven areas of program operations. The proposed amendments are summarized below.

1. Make all districts in the production area subject to volume regulations rather than applying such regulations only to districts with annual production of 15 million pounds or more.

2. Allocate Board membership among districts based on each district's level of production. This would provide more flexibility than the order's current provisions which set a definite number of member seats for each district.

A related change is proposed in quorum requirements. Since the number of Board members could vary over time, at least two-thirds of the Board members must be present at any Board meeting. The order currently provides that 12 of 18 members constitutes a quorum.

3. If both a Board member and alternate are unable to attend a meeting, allow the Board to designate another alternate to act in his or her stead. Currently, only a member's designated alternate may serve in that member's stead.

4. Revise order diversion and exemption provisions in six ways:

Provide for diversion credit for shipments of cherry juice and juice concentrate to established diversion markets. The order currently prohibits juice and juice concentrate from receiving diversion credit.

Add specific authority to exempt or provide diversion credit for cherries exported to designated markets.

Add specific authority for the transfer of diversion credits among handlers.

Provide that grower diversions that take place in districts that are subsequently exempt from volume regulation still qualify for diversion credit.

Clarify diversion and exemption provisions of the order by eliminating cross references among those provisions, and specify that exemptions would not be entitled to receive diversion credit.

Further clarify § 930.59 by adding a paragraph indicating that the Secretary's rulemaking authority extends to all the provisions of that section.

5. Revise § 930.54 to make it clear that cherries in the inventory reserve may be released either for use in any market, or for use in only certain designated markets, depending on prevailing conditions.

6. Make two changes in § 930.41 pertaining to assessments:

Provide that assessments must be paid on all cherries handled, except for those that are diverted by destruction at a handler's facilities or are covered by grower diversion certificates. Currently, all cherries used in outlets eligible for diversion credit or exemption are exempt from assessments.

Provide that a uniform assessment rate apply to all cherries handled, unless the Board recommends differential rates to compensate for differences in the number of pounds used for various products or for the relative market values of such products. The order currently requires differential rates to be established, unless there is a compelling reason to do otherwise.

7. Make two changes to § 930.50, Marketing policy:

In recommending volume regulations, allow the Board to use a crop estimate other than the official USDA crop estimate. Currently, the Board is required to use the USDA estimate.

Provide that the 10 percent reserve release provided for market expansion only apply during years when restricted percentages are in effect. Currently, the release is being made whether or not volume regulations are in place.

The Board works with the Department in administering the order. These proposals have not received the approval of the Secretary of Agriculture.

The Board believes that the proposed changes would improve the administration, operation, and functioning of the order.

Also, the Fruit and Vegetable Programs of the Agricultural Marketing Service (AMS) proposes to allow such conforming changes to the order which

may be necessary as a result of the hearing.

The public hearing is held for the purpose of: (i) Receiving evidence about the economic and marketing conditions which relate to the proposed amendments of the order; (ii) determining whether there is a need for the proposed amendments to the order; and (iii) determining whether the proposed amendments or appropriate modifications thereof will tend to effectuate the declared policy of the Act.

Testimony is invited at the hearing on all the proposals and recommendations contained in this notice, as well as any appropriate modifications or alternatives.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time the notice of hearing is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an *ex parte* basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units: Office of the Secretary of Agriculture; Office of the Administrator, AMS; Office of the General Counsel, except any designated employees of the General Counsel assigned to represent the Board in this rulemaking proceeding; and the Fruit and Vegetable Programs, AMS.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

List of Subjects in 7 CFR Part 930

Marketing agreements, Tart cherries, Reporting and recordkeeping requirements.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Testimony is invited on the following proposals or appropriate alternatives or modifications to such proposals.

Proposals submitted by the Cherry Industry Administrative Board:

Proposal No. 1

Amend § 930.52 by revising paragraph (a); removing paragraph (c); redesignating current paragraphs (d) and (e) as paragraphs (c) and (d), respectively; and revising paragraph (c) to read as follows:

§ 930.52 Establishment of districts subject to volume regulation.

(a) All districts within the production area, as defined in § 930.14, shall be subject to any volume regulations implemented in accordance with this part. The production of any cherries within a district shall cause that district to continue to be subject to any volume regulations implemented in accordance with this part unless the district is otherwise exempted from regulations under § 930.52(c).

(b) * * *

(c) Any district producing a crop which falls below 50 percent of the average annual processed production in that district in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established.

* * * * *

Proposal No. 2

Amend § 930.20 by revising paragraphs (a), (b), (d) and (e); adding a new paragraph (f); and redesignating current paragraphs (f) and (g) as (g) and (h), respectively, to read as follows:

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board, the members of which shall be calculated in accordance with paragraph (b) of this section. The number of Board members may vary, depending upon the production levels of the districts. All but one of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. One member of the Board shall be a public member who, along with his or her alternate, shall be elected by the Board from the general public.

(b) District representation on the Board shall be based upon the previous three year average production in the district and shall be established as follows:

(1) Up to and including 10 million pounds shall have 1 member;

(2) Greater than 10 and up to and including 40 million pounds shall have 2 members;

(3) Greater than 40 and up to and including 80 million pounds shall have 3 members; and

(4) Greater than 80 million pounds shall have 4 members.

Allocation of the seats in each district shall be as follows but subject to the provisions of paragraphs (d), (e) and (f) of this section:

District type	Grower members		Handler members
Up to and including 10 million pounds	1	Or	1
More than 10 and up to 40 million pounds	1		1
More than 40 and up to 80 million pounds	1		2
More than 80 million pounds	2		2

(c) * * *

(d) The ratio of grower to handler representation in districts with three members shall alternate each time the term of a Board member from the representative group having two seats expires. During the initial period of the order, the ratio shall be as designated in paragraph (b) of this section.

(e) Board members from districts with one seat may be either grower or handlers members and will be nominated and elected as outlined in § 930.23.

(f) If the 3-year average production of a district changes so that a different number of seats should be allocated to a district, then the Board shall be reestablished by the Secretary, and such seats shall be filled according to the applicable provisions of this part.

* * * * *

Amend § 930.32 by revising paragraph (a) to read as follows:

§ 930.32 Procedure.

(a) Two-thirds of the members of the Board, including alternates acting for absent members, shall constitute a quorum. For any action of the Board to pass, at least two-thirds of the entire Board must vote in support of such action.

* * * * *

Proposal No. 3

Revise § 930.28 to read as follow:

§ 930.28 Alternate members.

An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event a member and his or her alternate are absent from a meeting of the Board, such member or alternate, in that order, may designate, in writing and prior to the meeting, an alternate from another district to act in his or her place. If neither a member nor his or her alternate has designated an alternate as his or her replacement, or if such designated alternate is unable to serve as the replacement, the chairperson may, with the concurrence of a majority of the members including alternates acting as members, designate an alternate, who is present at the meeting and is not acting as a member, to act in the place and stead of the absent member. In the event of the death, removal, resignation or disqualification of a member, the alternate shall act for the member until a successor is appointed and has qualified.

Proposal No. 4

Amend § 930.59 by revising paragraphs (a), (b) and (c), removing paragraph (d), revising paragraph (e) and redesignating it as paragraph (d), and adding new paragraphs (e) and (f) to read as follows:

§ 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon voluntary diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any form which the Board, with the approval of the Secretary, may designate. Such forms may include, but are not limited to:

(1) Contribution to a Board-approved food bank or other approved charitable organization;

(2) Use for new product and new market development;

(3) Export to designated destinations; or

(4) Other uses or disposition, including destruction of the cherries at the handler's facilities.

(c) *Notification.* The handler electing to divert cherries through means authorized under this section shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision may be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) of this section as may be necessary to assure that the cherries are diverted as authorized. After the diversion has been completed, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

(e) *Transfer of certificates.* Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer, a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers. The Board must be notified in writing whenever such transfers take place during a crop year.

(f) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

Revise § 930.62 to read as follows:

§ 930.62 Exempt uses.

(a) The Board, with the approval of the Secretary, may exempt from the provisions of § 930.41, § 930.44, § 940.51, § 930.53, and § 930.55 through § 930.57 cherries for designated uses. Such uses may include, but are not limited to:

(1) New product and new market development;

(2) Export to designated destinations;

(3) Experimental purposes; or

(4) For any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

(b) The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

(c) Diversion certificates shall not be issued for cherries which are used for exempt purposes.

Proposal No. 5

Revise § 930.54 to read as follows:

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

Cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.55, or § 930.57 shall not be used or disposed of by any handler or any other person except as provided in § 930.50 or in paragraph (a) or (b) of this section. (a) If the Board determines that the total available supplies for use in commercial outlets are less than the amount needed to meet the demand in such outlets, the Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for such use.

(b) The Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for sale in certain designated markets.

Proposal No. 6

Amend § 930.41 by revising paragraphs (c) and (f) to read as follows:

§ 930.41 Assessments.

(a) * * *

(b) * * *

(c) As a pro rata share of the administrative, inspection, research, development, and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board

during a fiscal period, each handler

(d) * * *

(e) * * *

Availability of NPRMs

airworthiness agreement. Pursuant to

List of Subjects in 14 CFR Part 39

during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided*, a handler shall be exempt from any assessment only on the tonnage of handled cherries that either are diverted by destruction at the handler's facilities according to § 930.59 or are cherries represented by grower diversion certificates issued pursuant to § 930.58(b) and acquired by handlers as described in § 930.59.

(d) * * *

(e) * * *

(f) Assessments shall be uniform and calculated on the basis of pounds of cherries handled, unless the Board adopts a formula, approved by the Secretary, for determining the rate(s) of assessment which may compensate:

(1) for differences in the number of pounds of cherries utilized for various cherry products; or

(2) for the relative market values of such cherry products; or

(3) for both of these factors.

* * * * *

Proposal No. 7

Amend § 930.50 by revising paragraphs (b) and (g) to read as follows:

§ 930.50 Marketing policy.

(a) * * *

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: from the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carryin inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be subtracted from the current year USDA crop forecast or by an average of such other crop estimates the Board votes to use. If the resulting number is positive, this would represent the estimated over-production which would be the restricted tonnage. This restricted tonnage would then be divided by the sum of the crop forecast(s) for the regulated districts to obtain a preliminary restricted percentage, rounded to the nearest whole number, for the regulated districts. If subtracting the current crop year requirement, computed in the first sentence from the current crop forecast, results in a negative number, the Board shall establish a preliminary free market tonnage percentage of 100 percent with a preliminary restricted percentage of zero. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

(c) * * *

(d) * * *

(e) * * *

(f) * * *

(g) *Additional tonnage to sell as free tonnage.* In addition, the Board, in years when restricted percentages are established, shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years, as defined in paragraph (a) of this section, for market expansion.

* * * * *

The Fruit and Vegetable Programs, Agricultural Marketing Service, submitted the following proposal:

Proposal No. 8

Make such changes as may be necessary to the order to conform with any amendment thereto that may result from the hearing.

Dated: March 17, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–7160 Filed 3–22–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–04–AD]

RIN 2120–AA64

Airworthiness Directives; Rolls-Royce plc RB211–535 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Rolls-Royce plc RB211–535 series turbofan engines. This proposal would remove from service suspect radial drive steady bearings with certain serial number prefixes, and replace them with serviceable parts. Reports of a number of radial drive steady bearing failures from distinct batches of parts prompted this proposal. The actions specified by the proposed AD are intended to prevent radial drive steady bearing failure, which could result in an in-flight engine shutdown and smoke and fumes in the cabin.

DATES: Comments must be received by April 24, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–04–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be submitted to the Rules Docket by using the following Internet address: "9-ane-adcomment@faa.gov". Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Rolls-Royce plc, PO Box 31, Derby, England; telephone: International Access Code 011, Country Code 44, 1332–249428, fax International Access Code 011, Country Code 44, 1332–249223. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Jason Yang, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone 781–238–7747, fax 781–238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NE–04–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–NE–04–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom (UK), recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce plc (R–R) RB211–535 series turbofan engines. The CAA advises that it has received reports of radial drive steady bearing failures. The investigation revealed several failure modes, e.g., grinding abuse, ball and raceway fatigue, cage pocket spalling, loose rivets, and cage lapping. There has been an increase in the rate of radial drive steady bearing failures at low life since December 1998. These failures have been confined to five distinct batches of bearings manufactured between July 1998 and December 1998. The five affected batches are identified by the outer race serial number prefixes: DLJO, DLJP, DLOQ, DLSK, and DMBA. The manufacturer subsequently introduced additional quality checks and improved assembly procedures in June 1999, and there have been no reported bearing failures on parts manufactured since then. Affected engines are those that have had a new bearing fitted at overhaul, were new production engines, or had a bearing changed in service between July 26, 1998, and September 30, 1999. This condition, if not corrected, could result in radial drive steady bearing failure, which could result in an in-flight engine shutdown and smoke and fumes in the cabin.

Service Information

R–R has issued Service Bulletin (SB) No. RB.211–72–C930, dated December 22, 1999, that identifies the suspect bearings by manufacturing time frame, and specifies references for removing and installing the bearings. The CAA classified this SB as mandatory and issued airworthiness directive (AD) 004–12–1999 in order to ensure the airworthiness of these R–R engines in the UK.

Bilateral Airworthiness Agreement

This engine model is manufactured in the UK and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other engines of the same type design registered in the United States, the proposed AD would remove from service defective radial drive steady bearings manufactured during certain dates and replace them with serviceable parts.

Economic Analysis

There are approximately 1,000 engines of the affected design in the worldwide fleet. The FAA estimates that 400 engines installed on aircraft of US registry would be affected by this proposed AD, that it would take approximately 4 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $160 per engine. Based on these figures, the total cost impact of the proposed AD on US operators is estimated to be $160,000 .

Regulatory Impact

This proposal does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce plc: Docket No. 2000–NE–04–AD.

Applicability: Rolls-Royce plc RB211–535 series turbofan engines, with radial drive steady bearings with outer race serial number (S/N) prefixes: DLJO, DLJP, DLOQ, DLSK, and DMBA, installed. Affected engines are those that have had a new bearing fitted at overhaul, were new production engines, or had a bearing changed in service between July 26, 1998, and September 30, 1999. These engines are installed on but not limited to Boeing 757 series aircraft and Tupolev Tu204 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent radial drive steady bearing failure, which could result in an in-flight engine shutdown and smoke and fumes in the cabin, accomplish the following:

Remove Suspect Bearings

(a) Remove from service radial drive steady bearings identified in the applicability paragraph of this AD and replace with serviceable parts as follows:

(1) For engines that had the suspect radial drive steady bearings installed during a shop visit or on-wing, remove from service before accumulating 1,500 hours time-in-service-since-new (TSN), but no later than September 30, 2000.

(2) For engines that had the suspect radial drive steady bearings installed in factory production, remove from service before accumulating 2,400 hours TSN, but no later than December 31, 2000.

Do Not Install Suspect Bearings

(b) As of the effective date of this AD, accomplish the following:

(1) Do not install radial drive steady bearings from the five affected batches listed in the applicability paragraph of this AD at overhaul, in service, or at new production.

(2) If performing an engine change, do not allow two engines that have bearings from any of the five affected batches listed in the applicability paragraph of this AD to be installed on the same airplane.

Serviceable Parts

(3) For the purpose of this AD, serviceable bearings are those which are not listed in the applicability paragraph of this AD. Current outer race S/N prefix DPSF or alphabetically subsequent prefix is considered serviceable.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Ferry Flights

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on March 15, 2000.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–7226 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASO–12]

Proposed Realignment of Jet Route J–151

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to realign a segment of Jet Route 151 (J–151) between the Farmington, MO, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) and the Vulcan, AL, VORTAC. Specifically, the FAA is proposing to realign J–151 as a direct route between the Vulcan and Farmington VORTACs The FAA is proposing this realignment because the current route segment between the Farmington VORTAC and the Candu navigational fix is unusable for navigation due to frequency interference.

DATES: Comments must be received on or before May 10, 2000.

ADDRESSES: Send comments on this proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Docket No. 99–ASO–12, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division, Federal Aviation Administration, P.O. Box 30636, Atlanta, GA 30320.

FOR FURTHER INFORMATION CONTACT: Paul Gallant, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ASO–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the Government Printing Office's electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov or the Superintendent of Documents' webpage at http://www.access.gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Air Traffic Airspace Management, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–8783. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should call the FAA's Office of Rulemaking, (202) 267–9677, for a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Background

Currently, J–151 is unusable between the Farmington, MO, VORTAC and the Candu navigational fix. Flight inspection revealed that this segment experiences co-channel radio frequency interference from another navigational aid that uses the same frequency. The proposed amendment would change the alignment of J–151 between the Farmington and Vulcan VORTACs from the current intersection of the Vulcan 335° and the Farmington 139° radials, to a direct route between the Vulcan and Farmington VORTACs. This amendment would restore the use of J–151 for flights serving destinations between Florida and the mid-west.

The Proposal

The FAA is proposing to amend 14 CFR part 71 to realign a segment of J–151. Currently, the segment of J–151 between the Farmington VORTAC and the Candu navigational fix has been found to be unusable for navigation due to frequency interference. The FAA has issued Flight Data Center Notices to Airmen advising users of this problem. To correct this problem, it is necessary to realign J–151 between the Farmington VORTAC and the Vulcan VORTAC as a direct route.

Jet routes are published in paragraph 2004 of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The jet route listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this proposed regulation: (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–151 [Revised]

From Cross City, FL; Vulcan, AL; Farmington, MO; St Louis, MO; Des Moines, IA; O'Neill, NE; Rapid City, SD; Billings, MT; INT Billings 266° and Whitehall, MT, 103° radials; to Whitehall.

* * * * *

Issued in Washington, DC, on March 15, 2000.

Steve Rohring,

Acting Manager, Airspace and Rules Division.

[FR Doc. 00–7191 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–117162–99]

RIN 1545–AX59

Tax Treatment of Cafeteria Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking; amendment to notice of proposed rulemaking; and notice of proposed rulemaking.

SUMMARY: This document withdraws portions of the notice of proposed rulemaking published in the **Federal Register** on March 7, 1989 and amends proposed regulations under section 125. These proposed regulations clarify the circumstances under which a section 125 cafeteria plan election may be changed. The proposed regulations permit an employer to allow a section 125 cafeteria plan participant to revoke an existing election and make a new election during a period of coverage for accident or health coverage, group-term life insurance coverage, dependent care assistance, and adoption assistance.

DATES: Written and electronic comments and requests for a public hearing must be received by June 21, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–117162–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 am and 5 pm to: CC:DOM:CORP:R (REG–117162–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.gov/tax_regs/regslist.html.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Janet A. Laufer or Christine L. Keller at (202) 622–6080; concerning submissions or to request a public hearing, LaNita Van Dyke at (202) 622–7180. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 125 [1] permits an employer to offer employees the choice between taxable income and certain nontaxable or "qualified benefits" [2] through a cafeteria plan, without the employees having to recognize the taxable income. In 1984 and 1989, proposed regulations were published relating to the administration of cafeteria plans.[3] In general, the 1984 and 1989 proposed regulations require that for benefits to be provided on a pre-tax basis under section 125, an employee may make changes during a plan year only in certain circumstances.[4] Specifically, §§ 1.125–1, Q&A–8 and 1.125–2, Q&A–

[1] Revenue Act of 1978, Public Law 95–600 (November 6, 1978); Sen. Rep. 95–1263, 95th Cong., 2d Sess., 74–78, 186–187 (October 1, 1978); H.R. Rep. No. 95–1445, 95th Cong. 2d Sess., 63–66 (August 4, 1978); H.R. Rep. No. 95–250, 96th Cong., 2d Sess., 206–207, 253–254 (October 15, 1978).

[2] "Qualified benefits" are generally any benefits excluded from income, including coverage under an employer-provided accident or health plan under sections 105 and 106; group-term life insurance under section 79; elective contributions under a qualified cash or deferred arrangement within the meaning of section 401(k); dependent care assistance under section 129; and adoption assistance under section 137. The following are not qualified benefits: products advertised, marketed, or offered as long-term care insurance; medical savings accounts under section 106(b); qualified scholarships under section 117; educational assistance programs under section 127; and fringe benefits under section 132. Qualified benefits can be provided under a cafeteria plan either through insured arrangements or arrangements that are not insured.

[3] 49 FR 19321 (May 7, 1984) and 54 FR 9460 (March 7, 1989), respectively.

[4] Those proposed regulations contain special rules with respect to flexible spending arrangements. A flexible spending arrangement (FSA) is defined in section 106(c)(2). Under section 106(c)(2), and FSA is generally a benefit program under which the maximum reimbursement reasonably available for coverage is less than 500% of the value of the coverage.

6(b), (c) and (d) permit participants to

is made under a plan of the employer

1989 proposed regulations at § 1.125–2,

election change in the event that a

this type of event) and, if so, the types

Drafting Information: The principal

6(b), (c) and (d) permit participants to make benefit election changes during a plan year pursuant to changes in cost or coverage, changes in family status, and separation from service.

In 1997, temporary and proposed regulations were issued addressing the standards under which a cafeteria plan may permit a participant to change his or her group health coverage election during a period of coverage to conform with the special enrollment rights under section 9801(f) (added to the Internal Revenue Code by the Health Insurance Portability and Accountability Act of 1996 (HIPAA)) and to change his or her group health or group-term life insurance coverage in a variety of change in status situations.[5] The 1997 regulations are being published as final regulations elsewhere in this issue of the **Federal Register**.

Explanation of Provisions

A. Summary

The proposed regulations being published in this notice of proposed rulemaking were developed as part of an integrated package with the final regulations that are being published at the same time. These proposed regulations supplement the final regulations by permitting a mid-year cafeteria plan election change in connection with dependent care assistance and adoption assistance under change in status standards that are the same as the standards in the final regulations for accident or health plans and for group-term life insurance, and by adding change in status standards that are specific to dependent care and adoption assistance. These proposed regulations also refine and expand upon the approach adopted in the 1989 proposed regulations (at § 1.125–2, Q&A–6(b)) by providing that a cafeteria plan may permit employees to make mid-year election changes with respect to group-term life insurance, dependent care assistance, and adoption assistance as well as accident or health coverage, on account of changes in cost or coverage. This expansion of the cost or coverage rules would also allow employees to make election changes if, during a period of coverage, (1) a new benefit package option is offered, or a benefit package option is eliminated, under the plan or (2) a coverage change is made under a plan of the employer of an employee's spouse or dependent. These proposed regulations include a variety of examples illustrating how the rules apply in specific situations.

B. Change in Status

The proposed regulations published in this notice of proposed rulemaking complement the final regulations being published elsewhere in this issue of the **Federal Register** with respect to special enrollment rights and changes in status for accident or health coverage and group-term life insurance coverage. These proposed regulations take into account comments received on the 1997 temporary and proposed regulations, including comments suggesting the desirability of uniformity in the rules for different types of qualified benefits to the extent appropriate given the nature of the benefits.

In response to comments, the new proposed regulations address circumstances under which a cafeteria plan may permit an employee to change an election for dependent care assistance under section 129 and adoption assistance under section 137 during a plan year. The proposed change in status rules for dependent care assistance and adoption assistance parallel the change in status rules for accident or health coverage and group-term life insurance coverage contained in the final regulations, with some additional rules specific to dependent care and adoption assistance. For example, while a change in the number of dependents is a status change for other types of qualified benefits, a change in the number of qualifying individuals, as defined in section 21(b)(1), is a change in status for purposes of dependent care assistance. Likewise, these proposed regulations allow an additional change in status event for adoption assistance (the commencement or termination of an adoption proceeding). The consistency rule in the proposed regulations is the same as the consistency rule in the final regulations, with certain provisions that are specific to dependent care and adoption assistance changes.[6]

C. Change in Cost or Coverage

The new proposed regulations also address election changes to reflect significant cost and coverage changes for all types of qualified benefits provided under a cafeteria plan. The new proposed regulations refine and expand upon the approach taken in the 1989 proposed regulations at § 1.125–2, Q&A–6 with respect to changes in cost or coverage under the plan. For example, in response to comments, the new proposed regulations provide that if a plan adds a new benefit package option (such as a new HMO option), the cafeteria plan may permit affected participants to elect that option and make a corresponding election change with respect to other benefit package options during a period of coverage.

The new proposed regulations also generally extend the cost or coverage rules under § 1.125–2, Q&A–6(b) to permit election changes for self-insured accident or health plans, group-term life insurance, dependent care assistance and adoption assistance coverage under a cafeteria plan. Thus, for example, if the cost of a self-insured accident or health plan increases, a plan may automatically make a corresponding change in the salary reduction charge. In addition, the new proposed regulations treat a change of dependent care provider as similar to the addition of a new HMO option under an accident or health plan, with the result that a corresponding election change can be made when one dependent care provider is replaced by another. While the coverage change rules apply to dependent care regardless of whether the dependent care provider is related to the employee, the cost change rules do not apply to dependent care if the dependent care provider is a relative of the employee making the election.

Commentators on the 1997 temporary and proposed regulations also raised a concern that when the plan of the employer of a spouse conducts annual open enrollment for group health benefits beginning at a different time of the year than the annual open enrollment for group health benefits offered by the employee's employer, the employee is unnecessarily restricted from making election changes that correspond with elections made by the employee's spouse. These commentators suggested that if one spouse makes an election change during an open enrollment period, a corresponding change should be permitted for the other spouse. In response to these comments, the new proposed regulations provide that a cafeteria plan may permit an employee to make an election change, during a period of coverage, corresponding with an open enrollment period change made by a spouse or dependent when the plan of that individual's employer has a different period of coverage.

In addition, the new proposed regulations provide that a cafeteria plan may permit an employee to make an

[5] 62 FR 60196 (November 7, 1997) and 62 FR 60165 (November 7, 1997), respectively. IRS announcement 98–105 (1998–49 I.R.B. 21 (November 23, 1998)) states that the Service will amend the effective date of these temporary regulations (§ 1.125–4T) and proposed regulations (§ 1.125–4) so that they will not be effective before plan years beginning at least 120 days after further guidence is issued.

[6] Conforming changes have also been made to Q&A–8 of the 1984 proposed regulations under § 1.125–1.

election change in the event that a spouse or dependent makes an election change under a cafeteria plan (or qualified benefits plan) maintained by that individual's employer, provided that the spouse or dependent's election change satisfies the election change rules under the proposed regulation. For example, under this provision, if the plan of a spouse's employer adds a new HMO option to its group health plan, and the spouse elects to enroll the family in that new option, a cafeteria plan may permit the employee to drop family coverage. These new rules apply only if the change made by the employee is on account of and corresponds with the change made under the other employer's plan. This expansion of the existing cost or coverage change rules permits employees to make election changes to ensure consistent coverage of family members and eliminate duplicate coverage.

The cost or coverage rules in the new proposed regulations have not been extended to health flexible spending arrangements. This ensures that those arrangements will not permit election changes in a manner that is inconsistent with the requirement, under §§ 1.125–1, Q&A–17 and 1.125–2, Q&A–7 of the existing proposed regulations, that such arrangements exhibit the risk-shifting and risk-distribution characteristics of insurance.

Although the final regulations being published elsewhere in this issue of the **Federal Register** permit election changes in the event an individual becomes eligible (or loses eligibility) for Medicare or Medicaid, these proposed regulations do not address election changes to reflect an individual's eligibility for other government programs that pay for or subsidize health coverage.[7] For example, the new rules do not address the possibility that an employee's child may cease to be eligible for coverage under a state's children's health insurance program (CHIP) designed in accordance with Title XXI of the Social Security Act.[8] Comments are requested on whether eligibility or ineligibility for such a government program should be added to the types of events that allow a cafeteria plan election change (including any special administrative difficulties that employers might have in identifying this type of event) and, if so, the types of government programs that should be permitted to be taken into account.

D. Effective Date and Reliance

The new proposed regulations do not specify a proposed effective date. Any effective date will be prospective, and comments are requested on the extent of lead time necessary for employers to be able to implement the new proposed regulations after they are adopted as final regulations.

Until the effective date of further guidance, taxpayers may rely on the new proposed regulations. In addition, until the effective date of further guidance, taxpayers may continue to rely on the change in family status rules in the existing proposed regulations (at § 1.125–2, Q&A–6(c)) with respect to benefits other than accident and health coverage and group-term life insurance coverage, and on the cost or coverage change rules in the existing proposed regulations (at § 1.125–2, Q&A–6(b)) with respect to all types of qualified benefits.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) do not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written and electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information: The principal authors of these proposed regulations are Janet A: Laufer and Christine L. Keller, Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Partial Withdrawal of Notice of Proposed Rulemaking

Under the authority of 26 U.S.C. 7805, § 1.125 Q&A–6(c) and (d) in the notice of proposed rulemaking that was published on March 7, 1989 (54 FR 9460) is withdrawn.

Amendments to Previously Proposed Rules

The proposed rules published on May 7, 1984 (49 FR 19321) and March 7, 1989 (54 FR 9460), and amended on November 7, 1997 (62 FR 60196), are amended as set forth below.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.125–1, as proposed to be added on May 7, 1984 (49 FR 19322), in Q&A–8, Q–8 is republished and A–8 is amended by adding two sentences at the end of the answer to read as follows:

§ 1.125–1 Questions and answers relating to cafeteria plans.

* * * * *

Q–8: What requirements apply to participants' elections under a cafeteria plan?

A–8: * * * For benefit elections relating to accident or health plans and group-term life insurance coverage, a cafeteria plan may permit a participant to revoke a benefit election after the period of coverage has commenced and to make a new election with respect to the remainder of the period of coverage under the rules set forth in § 1.125–4 pertaining to permitted election changes. For additional rules governing benefit elections, see § 1.125–4.

* * * * *

Par. 3. In § 1.125–2, as proposed to be added on March 7, 1989 (54 FR 9500) and amended November 7, 1997 (62 FR

[7] The loss of coverage under a government program may give rise to a special enrollment right under section 9801(f) and, thus, the issue addressed here is relevant only in cases in which the special enrollment rules do not apply.

[8] Added to the Social Security Act by section 4901 of the Balanced Budget Act of 1997, Public Law 105–33 (August 5, 1997).

60197), in Q&A–6, Q–6 is republished

if the election change is on account of

(ii) *Significant cost increases.* If the

corresponds with a change made under the plan of the spouse's, former spouse's

(ii) Under paragraph (f)(4)(ii) of this section, *N*'s cafeteria plan may permit *A* to

(whether the new provider is a household employee or family member of *A* or *B* or a

60197), in Q&A–6, Q–6 is republished and A–6 is amended by:

1. Adding a sentence at the end of paragraph (b)(2).

2. Revising the last sentence of paragraph (c).

3. Revising the last sentence of paragraph (d).

The additions and revisions read as follows:

§ 1.125–2 Miscellaneous cafeteria plan questions and answers.

* * * * *

Q–6: In what circumstance may participants revoke existing elections and make new elections under a cafeteria plan?

A–6: * * *

(b) * * *

(2) * * * For additional rules governing cafeteria plan election changes in connection with a significant cost or coverage change, see § 1.125–4.

(c) *Certain changes in family status.* * * * For additional rules governing cafeteria plan election changes in connection with certain changes in status, see § 1.125–4.

(d) *Separation from service.* * * * For additional rules governing cafeteria plan election changes in connection with an employee's separation from service, see § 1.125–4.

* * * * *

Par. 4. § 1.125–4 is amended as follows:

1. Paragraph (c) is amended as follows:

a. Revising paragraph (c)(1)(iii).

b. Adding paragraph (c)(2)(vi).

c. Revising paragraph (c)(3)(ii).

d. Adding paragraphs (c)(4)*Example 3*(iii) and (c)(4)*Example 9*.

2. Revising paragraph (f).

3. Revising paragraph (g).

4. Revising paragraph (i)(3).

The additions and revisions read as follows:

§ 1.125–4 Permitted election changes.

* * * * *

(c) * * * (1) * * *

(iii) *Application to other qualified benefits.* This paragraph (c) applies to plans providing qualified benefits other than those listed in paragraph (c)(1)(ii) of this section.

(2) * * *

(vi) *Adoption assistance.* For purposes of adoption assistance provided through a cafeteria plan, the commencement or termination of an adoption proceeding.

(3) * * *

(ii) *Application to other qualified benefits.* An election change satisfies the requirements of this paragraph (c)(3) with respect to other qualified benefits if the election change is on account of and corresponds with a change in status that affects eligibility for coverage under an employer's plan. An election change also satisfies the requirements of this paragraph (c)(3) if the election change is on account of and corresponds with a change in status that affects expenses described in section 129 (including employment-related expenses as defined in section 21(b)(2)) with respect to dependent care assistance, or expenses described in section 137 (including qualified adoption expenses as defined in section 137(d)) with respect to adoption assistance.

* * * * *

(4) * * *

Example 3. * * *

(iii) In addition, under paragraph (f)(4) of this section, if *F* makes an election change to cover *G* under *F's* employer's plan, then *E* may make a corresponding change to elect employee-only coverage under *F*'s cafeteria plan.

* * * * *

Example 9. (i) Employee *A* has one child, *B*. Employee *A*'s employer, *X*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Prior to the beginning of the calendar year, *A* elects salary reduction contributions of $4,000 during the year to fund coverage under the dependent care FSA for up to $4,000 of reimbursements for the year. During the year, *B* reaches the age of 13, and *A* wants to cancel coverage under the dependent care FSA.

(ii) When *B* turns 13, *B* ceases to satisfy the definition of "qualifying individual" under section 21(b)(1) of the Internal Revenue Code. Accordingly, *B*'s attainment of age 13 is a change in status under paragraph (c)(2)(iv) of this section that affects A's employment-related expenses as defined in section 21(b)(2). Therefore, A may make a corresponding change under *X*'s cafeteria plan to cancel coverage under the dependent care FSA.

* * * * *

(f) *Significant cost or coverage changes*—(1) *In general.* Paragraphs (f)(2) through (5) of this section set forth rules for election changes as a result of changes in cost or coverage. This paragraph (f) does not apply to an election change with respect to a health FSA (or on account of a change in cost or coverage under a health FSA).

(2) *Cost changes*—(i) *Automatic changes.* If the cost of a qualified benefits plan increases (or decreases) during a period of coverage and, under the terms of the plan, employees are required to make a corresponding change in their payments, the cafeteria plan may, on a reasonable and consistent basis, automatically make a prospective increase (or decrease) in affected employees' elective contributions for the plan.

(ii) *Significant cost increases.* If the cost of a benefit package option (as defined in paragraph (i)(2) of this section) significantly increases during a period of coverage, the cafeteria plan may permit employees either to make a corresponding prospective increase in their payments, or to revoke their elections and, in lieu thereof, to receive on a prospective basis coverage under another benefit package option providing similar coverage. For example, if the cost of an indemnity option under an accident or health plan significantly increases during a period of coverage, employees who are covered by the indemnity option may make a corresponding prospective increase in their payments or may instead elect to revoke their election for the indemnity option and, in lieu thereof, elect coverage under an HMO option.

(iii) *Application to dependent care.* This paragraph (f)(2) applies in the case of a dependent care assistance plan only if the cost change is imposed by a dependent care provider who is not a relative of the employee. For this purpose, a relative is an individual who is related as described in section 152(a)(1) through (8), incorporating the rules of section 152(b)(1) and (2).

(3) *Coverage changes*—(i) *Significant curtailment.* If the coverage under a plan is significantly curtailed or ceases during a period of coverage, the cafeteria plan may permit affected employees to revoke their elections under the plan. In that case, each affected employee may make a new election on a prospective basis for coverage under another benefit package option providing similar coverage. Coverage under an accident or health plan is significantly curtailed only if there is an overall reduction in coverage provided to participants under the plan so as to constitute reduced coverage to participants generally.

(ii) *Addition (or elimination) of benefit package option providing similar coverage.* If during a period of coverage a plan adds a new benefit package option or other coverage option (or eliminates an existing benefit package option or other coverage option) the cafeteria plan may permit affected employees to elect the newly-added option (or elect another option if an option has been eliminated) prospectively on a pre-tax basis and make corresponding election changes with respect to other benefit package options providing similar coverage.

(4) *Change in coverage of spouse or dependent under other employer's plan.* A cafeteria plan may permit an employee to make a prospective election change that is on account of and corresponds with a change made under the plan of the spouse's, former spouse's or dependent's employer if—

(i) A cafeteria plan or qualified benefits plan of the spouse's, former spouse's, or dependent's employer permits participants to make an election change that would be permitted under paragraphs (b) through (g) of this section (disregarding this paragraph (f)(4)); or

(ii) The cafeteria plan permits participants to make an election for a period of coverage that is different from the period of coverage under the cafeteria plan or qualified benefits plan of the spouse's, former spouse's, or dependent's employer.

(5) *Examples.* The following examples illustrate the application of this paragraph (f):

Example 1. (i) A calendar year cafeteria plan is maintained pursuant to a collective bargaining agreement for the benefit of Employer *M*'s employees. The cafeteria plan offers various benefits, including indemnity health insurance and a health FSA. As a result of mid-year negotiations, premiums for the indemnity health insurance are reduced in the middle of the year, insurance co-payments for office visits are reduced under the indemnity plan, and an HMO option is added.

(ii) Under these facts, the reduction in health insurance premiums is a reduction in cost. Accordingly, under paragraph (f)(2)(i) of this section, the cafeteria plan may automatically decrease the amount of salary reduction contributions of affected participants by an amount that corresponds to the premium change. However, the plan may not permit employees to change their health FSA elections to reflect the mid-year change in copayments under the indemnity plan.

(iii) Also, the addition of the HMO option is an addition of a benefit package option. Accordingly, under paragraph (f)(3)(ii) of this section, the cafeteria plan may permit affected participants to make an election change to elect the new HMO option. However, the plan may not permit employees to change their health FSA elections to reflect differences in copayments under the HMO option.

Example 2. (i) Employer *N* sponsors a group health plan under which employees may elect either employee-only coverage or family health coverage. The 12-month period of coverage under *N*'s cafeteria plan begins January 1, 2001. *N*'s employee, *A*, is married to *B*. Employee *A* elects employee-only coverage under *N*'s plan. *B*'s employer, *O*, offers health coverage to *O*'s employees under its group health plan under which employees may elect either employee-only coverage or family coverage. *O*'s plan has a 12-month period of coverage beginning September 1, 2001. *B* maintains individual coverage under *O*'s plan at the time *A* elects coverage under *N*'s plan, and wants to elect no coverage for the plan year beginning on September 1, 2001, which is the next period of coverage under *O*'s group health plan.

(ii) Under paragraph (f)(4)(ii) of this section, *N*'s cafeteria plan may permit *A* to change *A*'s election prospectively to family coverage under that plan effective September 1, 2001 if *B* actually elects no coverage under *O*'s group health plan for the plan year beginning on September 1, 2001.

Example 3. (i) Employer *P* sponsors a calendar year cafeteria plan under which employees may elect either employee-only or family health coverage. Before the beginning of the year, *P*'s employee, *C*, elects family coverage under *P*'s cafeteria plan. *C* also elects coverage under the health FSA for up to $200 of reimbursements for the year to be funded by salary reduction contributions of $200 during the year. *C* is married to *D*, who is employed by Employer *Q*. *Q* does not maintain a cafeteria plan, but does maintain a group health plan providing its employees with employee-only coverage. During the calendar year, *Q* adds family coverage as an option under its health plan. *D* elects family coverage under *Q*'s plan, and *C* wants to revoke *C*'s election for health coverage and elect no health coverage under *P*'s cafeteria plan for the remainder of the year.

(ii) *Q*'s addition of family coverage as an option under its health plan constitutes a new coverage option described in paragraph (f)(3)(ii) of this section. Accordingly, pursuant to paragraph (f)(4)(i) of this section, *P*'s cafeteria plan may permit *C* to revoke *C*'s health coverage election if *D* actually elects family health coverage under *Q*'s group health plan. Employer *P*'s plan may not permit *C* to change *C*'s health FSA election.

Example 4. (i) Employer *R* maintains a cafeteria plan under which employees may elect accident or health coverage under either an indemnity plan or an HMO. Before the beginning of the year, *R*'s employee, *E* elects coverage under the HMO at a premium cost of $100 per month. During the year, *E* decides to switch to the indemnity plan, which charges a premium of $140 per month.

(ii) *E*'s change from the HMO to indemnity plan is not a change in cost or coverage under this paragraph (f), and none of the other election change rules under paragraphs (b) through (e) of this section apply. While *R*'s health plan may permit *E* to make the change from the HMO to the indemnity plan, *R*'s cafeteria plan may not permit *E* to make an election change to reflect the increased premium. Accordingly, if *E* switches from the HMO to the indemnity plan, *E* may pay the $40 per month additional cost on an after-tax basis.

Example 5. (i) Employee *A* is married to Employee *B* and they have one child, *C*. Employee *A*'s employer, *M*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *C* attends *X*'s on site child care center at an annual cost of $3,000. Prior to the beginning of the year, *A* elects salary reduction contributions of $3,000 during the year to fund coverage under the dependent care FSA for up to $3,000 of reimbursements for the year. Employee *A* now wants to revoke *A*'s election of coverage under the dependent care FSA, because *A* has found a new child care provider.

(ii) The availability of dependent care services from the new child care provider (whether the new provider is a household employee or family member of *A* or *B* or a person who is independent of *A* and *B*) is a significant change in coverage similar to a benefit package option becoming available. Thus, *M*'s cafeteria plan may permit *A* to elect to revoke *A*'s previous election of coverage under the dependent care FSA, and make a corresponding new election to reflect the cost of the new child care provider.

Example 6. (i) Employee *D* is married to Employee *E* and they have one child, *F*. Employee *D*'s employer, *N*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *F* is cared for by *Y*, *D*'s household employee, who provides child care services five days a week from 9 a.m. to 6 p.m. at an annual cost in excess of $5,000. Prior to the beginning of the year, *D* elects salary reduction contributions of $5,000 during the year to fund coverage under the dependent care FSA for up to $5,000 of reimbursements for the year. During the year, *F* begins school and, as a result, *Y*'s regular hours of work are changed to five days a week from 3 p.m. to 6 p.m. Employee *D* now wants to revoke *D*'s election under the dependent care FSA, and make a new election under the dependent care FSA to an annual cost of $4,000 to reflect a reduced cost of child care due to *Y*'s reduced hours.

(ii) The change in the number of hours of work performed by *Y* is a change in coverage. Thus, *N*'s cafeteria plan may permit *D* to reduce *D*'s previous election under the dependent care FSA to $4,000.

Example 7. (i) Employee *G* is married to Employee *H* and they have one child, *J*. Employee *G*'s employer, *O*, maintains a calendar year cafeteria plan that allows employees to elect coverage under a dependent care FSA. Child *J* is cared for by *Z*, *G*'s household employee, who is not a relative of *G* and who provides child care services at an annual cost of $4,000. Prior to the beginning of the year, *G* elects salary reduction contributions of $4,000 during the year to fund coverage under the dependent care FSA for up to $4,000 of reimbursements for the year. During the year, *G* raises *Z*'s salary. Employee *G* now wants to revoke *G*'s election under the dependent care FSA, and make a new election under the dependent care FSA to an annual amount of $4,500 to reflect the raise.

(ii) The raise in *Z*'s salary is a significant increase in cost under paragraph (f)(2)(ii) of this section, and an increase in election to reflect the raise corresponds with that change in status. Thus, *O*'s cafeteria plan may permit *G* to elect to increase *G*'s election under the dependent care FSA.

(g) *Special requirements relating to the Family and Medical Leave Act.* [Reserved]

* * * * *

(i) * * *

(3) *Dependent.* A dependent means a dependent as defined in section 152, except that, for purposes of accident or health coverage, any child to whom section 152(e) applies is treated as a

dependent of both parents, and, for purposes of dependent care assistance provided through a cafeteria plan, a dependent means a qualifying individual (as defined in section 21(b)(1)) with respect to the employee.

* * * * *

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.
[FR Doc. 00–5818 Filed 3–22–00; 8:45 am]
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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1280

RIN 3095–AA06

Public Use of NARA Facilities

AGENCY: National Archives and Records Administration.

ACTION: Proposed rule.

SUMMARY: NARA proposes to revise its regulations for use of its facilities. This proposal entirely rewrites and reorganizes this portion of NARA's regulations to incorporate several changes, and also to clarify it using plain language. The regulation has been updated to include new rules for public use of the National Archives at College Park, MD, and procedures for using the Exhibition Hall of the National Archives Building in Washington, DC, for a private event. It also lowers the age at which an unaccompanied child can visit a NARA facility from 16 to 14 years old. This change conforms with an earlier revision of 36 CFR part 1254 that lowered the age at which an individual can conduct research in NARA facilities to 14 years old. This revised regulation will govern the public's activity while on NARA property; however, it does not contain rules for conducting research at NARA facilities. Those rules are found in 36 CFR part 1254.

DATES: Comments must be received on or before May 22, 2000.

ADDRESSES: Send comments to Regulation Comment Desk, NPLN, Room 4100, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001. You may also fax comments to (301) 713–7270.

Comments on the information collections contained in this proposed rule should also be sent to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: NARA Desk Officer, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Nancy Allard or Shawn Morton at (301) 713–7360.

SUPPLEMENTARY INFORMATION: Following is a discussion of substantive changes contained in this proposed rule. Additional nonsubstantive changes have been made and the proposed regulation has been written in plain language in accordance with the Presidential Memorandum of June 1, 1998, Plain Language in Government Writing.

We are reorganizing Subpart A for clarity and making some policy changes in this subpart. Section 1280.12(a), which defines what property is under control of the Archivist of the United States, has been moved and redesignated as § 1280.2 in this proposed rule. We expanded this definition to include the National Archives at College Park and the Presidential Libraries. We want to clarify that the definition of NARA property applies to the entire regulation, and not just to the section on photography where it is currently located.

The provisions of the current § 1280.2 are moved to proposed § 1280.4, and we have lowered the age that an unaccompanied child may be admitted to a NARA facility to 14 years old. This change conforms with a May 1999 change to 36 CFR Part 1254, Researcher Registration and Research Room Procedures, that lowers the minimum age at which an individual may be granted full research privileges to 14 years old.

In the proposed § 1280.10 (currently § 1280.4), concerning vehicular and pedestrian traffic, we added a provision which states that NARA may deny any vehicle access to NARA property for public safety or security reasons. We specify in this section that NARA may tow, at the owner's expense, any vehicle that is illegally parked. We also added a new section, § 1280.12, which explains parking at NARA facilities. The National Archives Building has no onsite parking. The National Archives at College Park does have limited parking, as do most of the regional records services facilities. All of the Presidential libraries have onsite parking for researchers and museum visitors. We are also adding a new § 1280.14 that defines NARA's rules for use of the shuttle bus that travels between the National Archives Building in Washington, DC, and the National Archives at College Park. This shuttle service is intended for the use of NARA employees who are on official business. Other government employees and researchers may use the shuttle if space is available.

We are adding a new § 1280.24, which bans smoking inside all NARA facilities. You may smoke only in designated outdoor areas. This policy is based on Executive Order 13058 that prohibits, with limited exceptions, smoking of tobacco products in all Federal buildings.

The proposed Subpart B clarifies the rules for filming, videotaping, or taking photographs in NARA facilities. This new subpart is an expansion of the current §§ 1280.12 through 1280.18 and has been revised to include the National Archives at College Park and the Presidential Libraries. We have removed all references to the Pickett Street Annex that NARA no longer leases. We are rewriting this subpart primarily to clarify the differences between photographing or filming for personal use, and photographing or filming for news purposes. Filming, videotaping, and photographing on NARA property for commercial purposes continues to be prohibited. You do not need prior permission to film, photograph, or videotape inside or outside NARA facilities for personal use as long as you observe the rules in § 1280.46. When applying to film, photograph, or videotape for news purposes, the proposed § 1280.48(c) specifies that you must supply the name of the company you represent, the areas you wish to film, photograph, or videotape, and the nature of the project that the film, photographs, or videotape will be used for. The proposed § 1280.52(b) allows you, subject to the approval of the NARA Public Affairs Officer, to film, photograph, or videotape for news purposes in records storage (stack) areas containing unclassified records. This is not allowed under the current regulation.

The proposed Subpart C sets forth additional rules for using the National Archives Building in Washington, DC, and the National Archives at College Park, MD. The proposed §§ 1280.60 and 1280.66 will replace the current §§ 1280.10 and 1280.20 respectively. The proposed § 1280.64 designates the public and delivery entrances of the National Archives at College Park. The proposed § 1280.68 explains that the cafeteria at the National Archives at College Park is open to the general public.

The proposed Subpart D explains how an organization or other Federal agency can request to use NARA's Washington, DC, area facilities for events. This subpart covers §§ 1280.22 through 1280.28 in the current Subpart B. We revised this subpart to include

procedures for using public areas in the National Archives at College Park, and we are reorganizing it to standardize the application procedures for requesting use of all public areas in the National Archives at College Park and the National Archives Building. The Exhibition Hall is the ceremonial center of NARA and it houses the Charters of Freedom—the Declaration of Independence, the Constitution, and the Bill of Rights. Therefore we require that any requests to use the Exhibition Hall be submitted 120 days in advance as opposed to 30 days for requests to use other areas. In addition, requests to use the Exhibition Hall must be approved by the Archivist of the United States.

We are redesignating the current Subpart C, Facilities in Presidential Libraries, as Subpart E and rewriting it in plain language. We are incorporating the current § 1280.48 on photographing documents into the proposed Subpart B on filming or photographing in NARA facilities. We have updated the references to the facilities and made other minor clarifications.

The current Subpart D, Federal Records Centers and National Archives Field Branches, will become Subpart F in this proposal. It is updated to reflect current organizational titles.

Information Collections Subject to the Paperwork Reduction Act

The information collections in §§ 1280.48 and 1280.74 are subject to the Paperwork Reduction Act. Under this Act, no persons are required to respond to a collection of information unless it displays a valid OMB control number. NARA invites the general public and other Federal agencies to comment on the proposed information collections. Comments should be addressed to NARA and OMB (see **ADDRESSES**).

The information collection in § 1280.48 is designed to assist NARA in determining whether or not to approve a request to film, photograph, or videotape at a NARA facility for news purposes. The affected publics are persons, businesses, or news organizations that would like to film, photograph, or videotape at any NARA facility for news purposes. We estimate that we will receive 660 requests per year from 37 respondents and that the respondent burden to provide the information will be 10 minutes per request, for a total burden of 110 hours.

The information collection in § 1280.74 is designed to assist NARA in determining whether or not to approve a request to hold an event in a NARA facility in the Washington, DC, area. The affected publics are organizations and other Federal agencies that would like to use a NARA public space for an event. We estimate that we will receive 52 requests per year from non-Federal respondents and that the respondent burden to provide the information will be 30 minutes per request, for a total burden of 26 hours.

This proposed rule is not a significant regulatory action for the purposes of Executive Order 12866; it has been submitted to the Office of Management and Budget for review of the information collections subject to the Paperwork Reduction Act. As required by the Regulatory Flexibility Act, it is hereby certified that this proposed rule will not have a significant impact on a substantial number of small entities because this regulation will affect individuals wishing to visit a NARA facility, a small number of news organizations wishing to film, and organizations wishing to use NARA public areas for events. This proposed rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1280

Archives and records, Federal buildings and facilities, Reports and recordkeeping requirements.

For the reasons stated in the preamble, the National Archives and Records Administration proposes to revise 36 CFR Part 1280 to read as follows:

PART 1280—PUBLIC USE OF NARA FACILITIES

Subpart A—What Are the General Rules of Conduct on NARA Property?

General Information on Using NARA Facilities

Sec.
1280.1 What is the purpose of this part?
1280.2 What property is under the control of the Archivist of the United States?
1280.4 Can children under the age of 14 use NARA facilities?
1280.6 May I bring a seeing-eye dog or other assistance animal?
1280.8 Will my belongings be searched?
1280.10 Are there special rules for driving on NARA property?
1280.12 Is parking available?
1280.14 May I use the shuttle bus to travel to the National Archives at College Park or to the National Archives Building in Washington, DC?
1280.16 Are there additional rules posted?

Prohibited Activities

1280.18 May I bring guns or other weapons onto NARA property?
1280.20 What is your policy on illegal drugs and alcohol?
1280.22 Is gambling allowed on NARA property?
1280.24 Is smoking allowed on NARA property?
1280.26 May I pass out fliers on NARA property?
1280.28 Where can I eat and drink on NARA property?
1280.30 Are soliciting, vending, and debt collection allowed on NARA property?
1280.32 What other behavior is not permitted?

Subpart B—What Are the Rules for Filming, Photographing, or Videotaping on NARA Property?

1280.40 Definitions.
1280.42 When do the rules in this subpart apply?
1280.44 May I film, photograph, or videotape on NARA property for commercial purposes?
1280.46 What are the rules for filming, photographing, or videotaping on NARA property for personal use?
1280.48 How do I apply to film, photograph, or videotape on NARA property for news purposes?
1280.50 What will I be allowed to film, photograph, or videotape for news purposes?
1280.52 What are the rules for filming, photographing, or videotaping on NARA property for news purposes?

Subpart C—What Are the Additional Rules for Using NARA Facilities in the Washington, DC, Area?

1280.60 Where do I enter the National Archives Building in Washington, DC?
1280.62 When is the Exhibition Hall open?
1280.64 What entrance should I use to enter the National Archives at College Park?
1280.66 May I use the National Archives Library?
1280.68 May I use the cafeteria at the National Archives at College Park?

Subpart D—How Do I Request to Use Washington, DC, Area NARA Facilities for an Event?

1280.70 When does NARA allow other groups to use its public areas for events?
1280.72 What are the general rules for using NARA public areas?
1280.74 How do I apply to use NARA public areas in Washington, DC, area facilities?
1280.76 What will I have to pay to use a NARA public area for an event?
1280.78 How will NARA handle my request to use a lecture room, the auditorium, the Theater, or the Archivist's Reception Room?
1280.80 How will NARA handle my request to use the Exhibition Hall?

Subpart E—What Additional Rules Apply for Use of Facilities in Presidential Libraries?

1280.90 What are the rules of conduct while visiting the Presidential libraries?
1280.92 When are the Presidential library museums open to the public?
1280.94 When do Presidential libraries allow other groups to use their public areas for events?
1280.96 Supplemental rules.

Subpart F—What Additional Rules Apply for Use of Public Areas at Regional Records Services Facilities?

1280.100 What are the rules of conduct at NARA regional records services facilities?
1280.102 When do NARA regional records services facilities allow other groups to use their public areas for events?

Authority: 44 U.S.C. 2104(a).

Subpart A—What Are the General Rules of Conduct on NARA Property?

General Information on Using NARA Facilities

§ 1280.1 What is the purpose of this part?

(a) This part tells you what rules you must follow when you use property under the control of the Archivist of the United States (the National Archives Building, the National Archives at College Park, and the Presidential libraries).

(b) When you are using other NARA facilities, the General Services Administration (GSA) regulations, Conduct on Federal Property, at 41 CFR subpart 101–20.3 apply to you. These facilities are the NARA regional records services facilities, the Washington National Records Center in Suitland, MD, and the National Personnel Records Center in St. Louis, MO. The rules in Subpart B of this part also apply to you if you wish to film, take photographs, or make videotapes. The rules in Subpart F of this part also apply to you if you wish to use the NARA-assigned conference rooms in those facilities.

(c) If you are using records in a NARA research room in a NARA facility, you must also follow the rules in 36 CFR part 1254.

§ 1280.2 What property is under the control of the Archivist of the United States?

The following property is under the control of the Archivist of the United States and is defined as "NARA property" in this part 1280:

(a) The National Archives Building. Property under the control of the Archivist includes:

(1) The Pennsylvania Avenue, NW, entrance between 7th and 9th Streets including the area within the retaining walls on either side of the entrance, inclusive of the statues, and the steps and ramps leading up to the entrance of the building;

(2) On the 7th Street, 9th Street, and Constitution Avenue, NW, sides of the building, all property between the National Archives Building and the curb line of the street, including the sidewalks and other grounds, the steps leading up to the Constitution Avenue entrance, the Constitution Avenue entrance, and the portico area between the steps and the Constitution Avenue entrance.

(3) The National Park Service controls the areas on the Pennsylvania Avenue side of the National Archives Building that are not under the control of the Archivist of the United States.

(b) The National Archives at College Park. Property under control of the Archivist includes approximately 37 acres bounded:

(1) On the west by Adelphi Road;

(2) On the north by the Potomac Electric Power Company right-of-way;

(3) On the east by Metzerott Road; and

(4) On the south by the University of Maryland.

(c) The Presidential Libraries. Property under control of the Archivist includes the Presidential Libraries and Museums that are listed in 36 CFR 1253.3.

§ 1280.4 Can children under the age of 14 use NARA facilities?

Children under the age of 14 will be admitted to NARA facilities only if they are accompanied by an adult who will supervise them at all times while on NARA property. The director of a NARA facility may authorize a lower age limit for admission of unaccompanied children to meet special circumstances (*e.g.*, students who have been given permission to conduct research without adult supervision).

§ 1280.6 May I bring a seeing-eye dog or other assistance animal?

Yes, persons with disabilities may bring guide dogs or other animals used for guidance and assistance onto NARA property. You may not bring any other animals into a NARA facility except for official purposes.

§ 1280.8 Will my belongings be searched?

Yes, at any time NARA may inspect all packages, briefcases, and other containers that you bring onto NARA property, including when you are entering or exiting NARA property.

§ 1280.10 Are there special rules for driving on NARA property?

(a) You must obey speed limits, posted signs, and other traffic laws, and park only in designated spaces.

(b) NARA will tow, at the owner's expense, any vehicle that is parked illegally. Except in emergencies, you may not park in spaces reserved for holders of NARA parking permits. If an emergency forces you to leave your vehicle in an illegal area, you must notify the security guards at that NARA facility as soon as possible. We will not tow your illegally parked car if you have notified a security guard of an emergency unless it is creating a hazard or blocking an entrance or an exit.

(c) We may deny any vehicle access to NARA property for public safety or security reasons.

§ 1280.12 Is parking available?

(a) The National Archives Building. There is no parking available for researchers or visitors to the National Archives Building. However, this building is easily accessible by bus or subway and there are several commercial parking lots located near the building.

(b) The National Archives at College Park. The National Archives at College Park has limited public parking space. The garage is open to the public on a first-come, first-served basis during the hours the research rooms are open. There is public bus service to this building. Individuals and groups visiting the National Archives at College Park are encouraged to use public transportation or car pool to get to the building as the parking lot is often full during our busiest hours.

(c) Regional records services facilities. Most regional records services facilities have onsite parking available for researchers. Parking at these facilities and at the Washington National Records Center is governed by GSA regulations, Management of Buildings and Grounds, found at 41 CFR Part 101–20. The regional archives on Market Street in Philadelphia and the regional archives in New York City do not have onsite parking. However, there is ample parking in commercial parking garages near these facilities.

(d) Presidential Libraries. All of the Presidential Libraries have onsite parking for researchers and museum visitors. Some of the spaces are reserved for staff and for security reasons.

§ 1280.14 May I use the shuttle bus to travel to the National Archives at College Park or to the National Archives Building in Washington, DC?

The NARA shuttle, which travels concurrently each hour between the National Archives Building and the National Archives at College Park, is intended for NARA employees. Other Government employees on official business or researchers may also use the shuttle if space is available. The shu[illegible] operates Monday through Friday, excluding Federal holidays, 8:00 a.m. to 5:00 p.m.

§ 1280.16 Are there additional rules posted?

Yes, there are additional rules posted on NARA property. You must, at all times while on NARA property, comply with official NARA signs and with the directions of the guards and NARA staff.

Prohibited Activities

§ 1280.18 May I bring guns or other weapons onto NARA property?

No, you may not bring firearms or other dangerous or deadly weapons either openly or concealed onto NARA property except for official business. You also may not bring explosives, or items intended to be used to fabricate an explosive or incendiary device, onto NARA property. State-issued concealed-carry permits are not valid on NARA property.

§ 1280.20 What is your policy on illegal drugs and alcohol?

You may not use or be in possession of illegal drugs on NARA property. You also may not enter NARA property while under the influence of illegal drugs or alcohol. Using alcoholic beverages on NARA property is prohibited except for occasions when the Archivist of the United States or his/her designee has granted an exemption in writing.

§ 1280.22 Is gambling allowed on NARA property?

(a) No, you may not participate in any type of gambling while on NARA property. This includes:

(1) Participating in games for money or other personal property;

(2) Operating gambling devices;

(3) Conducting a lottery or pool; or

(4) Selling or purchasing numbers tickets.

(b) This rule does not apply to licensed blind operators of vending facilities who are selling chances for any lottery set forth in a State law and conducted by an agency of a State as authorized by section 2(a)(5) of the Randolph-Sheppard Act (20 U.S.C. 107, *et seq.*).

§ 1280.24 Is smoking allowed on NARA property?

Smoking is not allowed inside any NARA facility.

§ 1280.26 May I pass out fliers on NARA property?

No, you may not distribute or post handbills, fliers, pamphlets or other materials on bulletin boards or elsewhere on NARA property, except in those spaces designated by NARA as public forums. This prohibition does not apply to displays or notices distributed as part of authorized Government activities or bulletin boards used by employees to post personal notices.

§ 1280.28 Where can I eat and drink on NARA property?

You may only eat and drink in designated areas in NARA facilities. Eating and drinking is prohibited in the research, records storage, and museum areas unless specifically authorized by the Archivist or designee.

§ 1280.30 Are soliciting, vending, and debt collection allowed on NARA property?

(a) No, on NARA property you may not:

(1) Solicit for personal, charitable, or commercial causes;

(2) Sell any products;

(3) Display or distribute commercial advertising; or

(4) Collect private debts.

(b) If you are a NARA employee or contractor, you may participate in national or local drives for funds for welfare, health or other purposes that are authorized by the Office of Personnel Management and/or approved by NARA (e.g. the Combined Federal Campaign). Also, nothing in this section prohibits employees from activities permitted under the Standards of Ethical Conduct and Office of Government Ethics rules.

§ 1280.32 What other behavior is not permitted?

We reserve the right to remove anyone from NARA property who is:

(a) Stealing NARA property;

(b) Willfully damaging or destroying NARA property;

(c) Creating any hazard to persons or things;

(d) Throwing anything from or at a NARA building;

(e) Improperly disposing of rubbish.

(f) Acting in a disorderly fashion;

(g) Acting in a manner that creates a loud or unusual noise or a nuisance;

(h) Acting in a manner that unreasonably obstructs the usual use of NARA facilities:

(i) Acting in a manner that otherwise impedes or disrupts the performance of official duties by Government and contract employees;

(j) Acting in a manner that prevents the general public from obtaining NARA-provided services in a timely manner; or

(k) Loitering.

Subpart B—What Are the Rules for Filming, Photographing, or Videotaping on NARA Property?

§ 1280.40 Definitions.

(a) Filming, photographing, or videotaping for commercial purposes. Any filming, photographing, or videotaping to promote commercial enterprises or commodities.

(b) News filming, photographing, or videotaping. Any filming, photographing, or videotaping done by a commercial or non-profit news organization that is intended for use in a television or radio news broadcast, newspaper, or periodical.

(c) Personal use filming, photographing, or videotaping. Any filming, photographing, or videotaping intended solely for personal use that will not be commercially distributed.

§ 1280.42 When do the rules in this subpart apply?

(a) These rules apply to anyone who is filming, photographing, or videotaping inside any NARA-run facility and while on NARA property.

(b) Filming, photographing, and videotaping on the grounds of any NARA regional records services facility, or on the grounds surrounding the Washington National Records Center are governed by GSA regulations, Management of Buildings and Grounds, found at 41 CFR Part 101–20, and must be approved by a GSA official.

§ 1280.44 May I film, photograph, or videotape on NARA property for commercial purposes?

No, filming, photographing, and videotaping on NARA property for commercial purposes is prohibited.

§ 1280.46 What are the rules for filming, photographing, or videotaping on NARA property for personal use?

(a) You may film, photograph, or videotape outside a NARA facility so long as you do not impede vehicular or pedestrian traffic.

(b) You may film, photograph, or videotape inside a NARA facility during regular business hours in public areas, including research rooms and exhibition areas, under the following conditions:

(1) You may not use a flash or other supplemental lighting;

(2) You may not use a tripod or similar equipment; and

(3) You may not film, photograph, or videotape while on the interior steps or ramp leading to the Declaration of Independence, the Constitution, and the Bill of Rights in the Exhibition Hall of the National Archives Building.

§ 1280.48 How do I apply to film, photograph, or videotape on NARA property for news purposes?

(a) If you wish to film, photograph, or videotape for news purposes at the National Archives Building, the National Archives at College Park, or the Washington National Records Center, you must request permission from the NARA Public Affairs Officer, 8601 Adelphi Road, College Park, Maryland, 20740–6001.

(b) If you wish to film, photograph, or

(c) We will not grant you permission

in connection with official business.

must be made at the loading dock which

research and cultural institution as

(2) You must include the Archivist

(b) If you wish to film, photograph, or videotape for news purposes at a Presidential library or at a regional records services facility, you must contact the director of the library (see 36 CFR 1253.3 for contact information) or regional records services facility (see 36 CFR 1253.6 for contact information) to request permission.

(c) Your request for permission to film, photograph, or videotape for news purposes must contain the following information:

(1) The name of the organization you are working for;

(2) Areas you wish to film, photograph, or videotape;

(3) Documents, if any, you wish to film;

(4) The purpose of the project you are working on;

(5) What you intend to do with the film, photograph, or videotape; and

(6) How long you will need to complete your work on NARA property.

(d) You must request permission at least one week in advance of your desired filming date. If you make a request within a shorter time period, we may not be able to accommodate your request.

(e) OMB control number 3095–00xx has been assigned to the information collection contained in this section.

(f) This section does not apply to you if you have permission to use your own microfilming equipment to film archival records and donated historical materials under the provisions of 36 CFR 1254.90 through 1254.102. You must follow the procedures in 36 CFR Part 1254 for permission to film archival records and donated materials for research purposes or for microfilm publications.

§ 1280.50 What will I be allowed to film, photograph, or videotape for news purposes?

(a) NARA will permit you to film, photograph, or videotape sections of the interior or exterior of any NARA facility only for stories about:

(1) NARA programs;

(2) NARA exhibits;

(3) NARA holdings;

(4) NARA services;

(5) A former President;

(6) A researcher who has made or is making use of NARA holdings (provided that the researcher also approves your request); or

(7) Any other NARA-related activity approved by the appropriate NARA representative.

(b) NARA reserves the right to reject any request that does not meet the criteria set forth in 36 CFR 1280.50(a) and (c) or because of scheduling or staffing constraints.

(c) We will not grant you permission to film, photograph, or videotape if you intend to use the film, photographs, or videotape for commercial, partisan political, sectarian, or similar activities.

§ 1280.52 What are the rules for filming, photographing, or videotaping on NARA property for news purposes?

The following conditions and restrictions apply to anyone that has been granted permission to film, photograph, or videotape for news purposes under Subpart B:

(a) NARA may limit or prohibit use of artificial light in connection with the filming, photographing, or videotaping of documents for news purposes. You may not use any supplemental lighting devices while filming, photographing, or videotaping inside a NARA facility in the Washington, DC, area without the prior permission of the NARA Public Affairs Officer. If the Public Affairs Officer approves your use of artificial lighting in the Exhibition Hall, NARA will use facsimiles in place of the Declaration of Independence, the Constitution, and the Bill of Rights. If NARA approves your use of high intensity lighting, NARA will cover or replace with facsimiles all other exhibited documents that fall within the boundaries of such illumination. You may not use any supplemental lighting devices at the Presidential Libraries and the regional records services facilities without permission from a NARA representative at that facility.

(b) On a case-by-case basis, the Public Affairs Officer or other appropriate NARA representative may grant you permission to film, photograph, or videotape in stack areas containing unclassified records.

(c) While filming, photographing, or videotaping, you are liable for injuries to people or property that result from your activities on NARA property.

(d) At all times while on NARA property, you must conduct your activities in accordance with all applicable NARA regulations contained in this part.

(e) Your filming, photographing, or videotaping activity may not impede people who are entering or exiting any NARA facility unless otherwise authorized by the facility's director, or by the NARA Public Affairs Officer for Washington, DC, area facilities.

(f) You must be accompanied by a NARA staff member when filming, photographing, or videotaping the interior of any NARA facility.

(g) NARA will approve your request to do press interviews of NARA personnel on NARA property only when such employees are being interviewed in connection with official business. Interviews with NARA staff and researchers may take place only in areas designated by the NARA Public Affairs Officer for Washington, DC, area facilities, or by the appropriate NARA representative at other NARA facilities.

(h) You may film and photograph documents only in those areas which the NARA Public Affairs Staff designates in the National Archives Building, the National Archives at College Park, or the Washington National Records Center or in those areas designated as appropriate by the staff liaison at other NARA facilities.

(i) We will limit your film and photography sessions to two hours.

(j) You may not state or imply that NARA approves of or will sponsor:

(1) Your activities or views; or

(2) The uses to which you put images depicting any NARA facility.

Subpart C—What Are the Additional Rules for Using NARA Facilities in the Washington, DC, Area?

§ 1280.60 Where do I enter the National Archives Building in Washington, DC?

(a) To conduct research or official business, you must enter the Pennsylvania Avenue entrance of the National Archives Building.

(b) To visit the Exhibition Hall of the National Archives Building, you must enter through the Constitution Avenue entrance. However, the guards are authorized to admit through the Pennsylvania Avenue entrance and the Main Floor gates visitors who:

(1) Are using wheelchairs or other medical appliances;

(2) Are pushing strollers; or

(3) Have other medical or physical conditions that preclude using the steps at the Constitution Avenue entrance.

§ 1280.62 When is the Exhibition Hall open?

You may enter the Exhibition Hall from 10 a.m. to 9 p.m. except during winter months (the day after Labor Day through March 31) when the Exhibition Hall closes at 5:30 p.m. The Archivist of the United States reserves the authority to close the Exhibition Hall to the public at any time for special events or other purposes. The building is closed on December 25.

§ 1280.64 What entrance should I use to enter the National Archives at College Park?

You may enter the National Archives at College Park facility only through the main entrance on Adelphi Road. This entrance will be open to visitors during normal business hours described in 36 CFR 1253.2. Commercial deliveries must be made at the loading dock which is accessible only from Metzerott Road.

§ 1280.66 May I use the National Archives Library?

The National Archives Library facilities in the National Archives Building and in the National Archives at College Park are operated to meet the needs of researchers and NARA staff members. If you are not conducting research in archival materials at NARA, NARA Library staff will refer you to public libraries and other possible sources for such published materials.

§ 1280.68 May I use the cafeteria at the National Archives at College Park?

Yes, the cafeteria at the National Archives at College Park is open to the public during normal business hours.

Subpart D—How Do I Request to Use Washington, DC, Area NARA Facilities for an Event?

§ 1280.70 When does NARA allow other groups to use its public areas for events?

(a) All public areas in NARA facilities are intended for official NARA functions. However, if NARA does not have an event scheduled in a particular area, we may allow the use of that area for an event sponsored by another Federal agency or private group. The event must comply with the conditions in this subpart.

(b) In the National Archives Building, you may request to use the following areas:

Area	Capacity
Theater	216 persons.
Exhibition Hall	100–300 persons.
Archivist's Reception Room.	70 to 150 persons.
Conference Rooms	30 to 70 persons.

(c) In the National Archives at College Park, you may request to use the following areas:

Area	Capacity
Auditorium	332 persons.
Lecture Rooms	30 to 70 persons (or up to 300 with all dividers removed).

§ 1280.72 What are the general rules for using NARA public areas?

(a) You must adhere to the following rules when using any NARA facility for an event:

(1) Any use of NARA public areas for an event must be for the benefit of or in connection with the archival and records activities administered by NARA and must be consistent with the public perception of NARA as a research and cultural institution as articulated in our Strategic Plan.

(2) The event must be sponsored, cosponsored, or authorized by NARA.

(3) You are not allowed to charge an admission fee or make any indirect assessment for admission, and you may not otherwise collect money at the event unless specifically authorized by the Archivist of the United States for special not-for-profit events which are held by organizations sponsored by NARA. Commercial advertising or the sale of any items is not permitted.

(4) No areas on NARA property may be used to promote commercial enterprises or products or for partisan political, sectarian, or similar purposes.

(5) Use of NARA public areas will not be authorized for any organization or group that engages in discriminatory practices proscribed by the Civil Rights Act of 1964, as amended.

(6) You must not misrepresent your identity to the public nor conduct any activities in a misleading or fraudulent manner.

(7) You must ensure that no Government property is destroyed, displaced, or damaged during your use of NARA public areas. You must take prompt action to replace, return, restore, repair or repay NARA for any damage caused to Government property during the use of NARA facilities.

(8) Most areas are available from 8:00 a.m. until 9:30 p.m., Monday through Friday, and from 9:00 a.m. until 4:30 p.m. on Saturday. A NARA staff member must be present at all times when the NARA facility is in use. If the facilities and staff are available, NARA may approve requests for events that would be held before or after these hours.

(9) You must provide support people as needed to register guests, distribute approved literature, name tags, and other material; and

(10) NARA must approve any item that you plan to distribute or display at the event, and any notice or advertisement that mentions NARA, the National Archives Trust Fund Board, or incorporates any of the seals described in 36 CFR 1200.2.

(b) Events in the Exhibition Hall must be consistent with the mission of NARA as a research and cultural institution as articulated in its Strategic Plan. In addition to the rules listed in 36 CFR 1280.72(a), the following rules apply to the use of the Exhibition Hall in the National Archives Building:

(1) You must include NARA as a cosponsor of your event and place the Archivist or his/her designee on the program to welcome guests;

(2) You must include the Archivist and appropriate members of the NARA staff, as identified by NARA, on the invitation list;

(3) You must ensure that no food or beverage is held or consumed near any records on display in the Exhibition Hall. NARA will provide stanchions to ensure protection of the records in the Exhibition Hall.

§ 1280.74 How do I apply to use NARA public areas in Washington, DC, area facilities?

(a) How do I request to use a NARA public space for an event? To request the use of a NARA public space in the Washington, DC, area, you must complete NA Form 16008, Application for Use of Space. OMB control number 3095–00xx has been assigned to the information collection contained in this section. Copies of the form are available from the Facilities and Materiel Management Services Division, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001. Completed forms must be sent to this address.

(b) When do I need to submit my request? You must submit requests to use the Exhibition Hall at least 120 calendar days before the proposed event is to occur. You must submit requests for use of other NARA public areas at least 30 calendar days before the proposed event is to occur.

§ 1280.76 What will I have to pay to use a NARA public area for an event?

(a) Non-Federal organizations will be required to make a contribution to the National Archives Trust Fund to maintain the public area and to cover the cost of additional cleaning, guard and other required services. NARA will determine how much your contribution will be, based upon the level of NARA-provided services for your event. If you wish to hold an event in the Exhibition Hall, in addition to the contribution to the National Archives Trust Fund, you must make a contribution to the Foundation for the National Archives. This contribution will be used to further the programs and activities of the Foundation for the National Archives for the benefit of NARA.

(b) Federal agencies using these spaces for official government functions must reimburse NARA only for the cost of additional cleaning, security, and other staff services.

(c) An estimate of the costs can be obtained by contacting the Facilities and Materiel Management Services Division, National Archives and Records Administration, 8601 Adelphi Road, College Park, Maryland, 20740–6001.

§ 1280.78 How will NARA handle my

(g) You will be assigned a point of

(2) Commercial advertising and sales;

(1) Profit making;

FOR FURTHER INFORMATION CONTACT: Dou

based) for wide-area SMR licensees that

§ 1280.78 How will NARA handle my request to use a lecture room, the auditorium, the Theater, or the Archivist's Reception Room?

(a) When you request use of a NARA lecture room, auditorium, the Theater, or the Archivist's Reception Room, the Facilities and Materiel Management Services Division will review your request:

(1) To ensure that it meets all of the provisions in this subpart;

(2) To determine if the room you have requested is available on the date and time you have requested; and

(3) To determine the cost of the event.

(b) When the Facilities and Materiel Management Services Division has completed this review, they will notify you of their decision. They may ask for additional information before deciding whether or not to approve your event.

(c) NARA reserves the right to reject or require changes in any material, activity, or caterer you intend to use for the event.

§ 1280.80 How will NARA handle my request to use the Exhibition Hall?

(a) Upon receiving your request, the Facilities and Materiel Management Services Division will review your request to determine if it meets the requirements of this subpart and to determine the costs.

(b) You will be contacted by the NARA Development Staff to discuss your contribution to the Foundation for the National Archives.

(c) The Development Staff will submit a recommendation to the Archivist of the United States based on their discussion with you and on the review of your request by the Facilities and Materiel Management Services Division. The Archivist will decide whether to approve or deny your request.

(d) The Development Staff will notify you at least 60 calendar days before the event whether your request has been approved or denied. If your request is denied, you may appeal in writing directly to the Archivist of the United States within 10 calendar days after being notified that your request is denied.

(e) After your request is approved, you must work with the Development Staff to create all literature or posters to be distributed or exhibited during the event, including all written information that mentions NARA, the National Archives Trust Fund Board, the Foundation for the National Archives, or incorporates any of the NARA seals in 36 CFR 1200.2.

(f) NARA reserves the right to reject or require changes in the guest list, any printed material, any activity, or the caterer you intend to use for the event.

(g) You will be assigned a point of contact in Facilities and Materiel Management Services Division and in the Development Staff to arrange the event.

Subpart E—What Additional Rules Apply for Use of Facilities in Presidential Libraries?

§ 1280.90 What are the rules of conduct while visiting the Presidential libraries?

In addition to the rules in Subpart A, when visiting the museums of the Presidential Libraries, you may be required to check all of your parcels and luggage in areas designated by Library staff.

§ 1280.92 When are the Presidential library museums open to the public?

(a) The hours of operation at Presidential Library museums vary. Please contact the individual facility you wish to visit for the hours of operation. See 36 CFR 1253.3 for Presidential Library contact information. All Presidential Library museums are closed on Thanksgiving, December 25, and January 1, with the exception of the Lyndon Baines Johnson Library Museum, which is closed only on December 25.

(b) See 36 CFR 1253.3 for the operating hours of the research rooms of the Presidential Libraries.

§ 1280.94 When do Presidential libraries allow other groups to use their public areas for events?

(a) Although Presidential Library buildings and grounds are intended primarily for the libraries' use in carrying out their programs, you may request the use of Presidential Library facilities when the proposed activity is:

(1) Sponsored, cosponsored, or authorized by the library;

(2) Conducted to further the library's interests; and

(3) Scheduled so as not to interfere with the normal operation of the library.

(b) Your event at the library must be for the benefit of or in connection with the mission and programs of the library and must be consistent with the public perception of the library as a research and cultural institution.

(c) To request the use of a library area, you must apply in writing to the library director (see 36 CFR 1253.3 for the address) and complete NA Form 16011, Application for Use of Space in Presidential Libraries. OMB control number 3095–0024 has been assigned to the information collection contained in this section.

(d) You may not use library facilities for any activities that involve:

(1) Profit making;

(2) Commercial advertising and sales;

(3) Partisan political activities;

(4) Sectarian activities, or other similar activities; or

(5) Any use inconsistent with those authorized in this section.

(e) You may not charge admission fees, indirect assessment, or take any other kind of monetary collection at the event. NARA will charge normal admission fees to the museum if that area is used for the event.

(f) You will be assessed additional charges by the library director to reimburse the Government for expenses incurred as a result of your use of the library facility.

§ 1280.96 Supplemental rules.

Library directors may establish appropriate supplemental rules governing use of Presidential libraries and adjacent buildings and areas under NARA control.

Subpart F—What Additional Rules Apply for Use of Public Areas at Regional Records Services Facilities?

§ 1280.100 What are the rules of conduct at NARA regional records services facilities?

While at any NARA regional records services facility, you are subject to the GSA regulations, Conduct on Federal Property (41 CFR subpart 101–20.3).

§ 1280.102 When do NARA regional records services facilities allow other groups to use their public areas for events?

(a) Although NARA regional records services facility auditoriums and other public spaces in the facility buildings and the facility grounds are intended primarily for the use of the NARA regional records services facility in carrying out its programs, you may request to use one of these areas for lectures, seminars, meetings, and similar activities when these activities are:

(1) Sponsored, cosponsored, or authorized by the NARA regional records services facility;

(2) To further NARA's interests; and

(3) Scheduled so as not to interfere with the normal operation of the NARA regional records services facility.

(b) Your event at the NARA regional records services facility must be for the benefit of or in connection with the mission and programs of NARA.

(c) You must ask permission to use a public area at a NARA regional records services facility from the director of that facility (see 36 CFR 1253.6 for a list of addresses).

(d) NARA regional records services facilities will not allow use of any auditoriums or other public spaces for any activities that involve:

(1) Profit making;

(2) Commercial advertising and sales;

(3) Partisan political activities;

(4) Sectarian activities, or other similar activities; or

(5) Any use inconsistent with those authorized in this section.

(e) You may not charge admission fees, indirect assessment, or take any other kind of monetary collection at the event.

(f) You will be assessed a charge by the facility director to reimburse the Government for expenses incurred as a result of the your use of the facility.

Dated: March 17, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–7209 Filed 3–22–00; 8:45 am]

BILLING CODE 7515–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter I

[PR Docket No. 93–144; FCC 00–95]

Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band

AGENCY: Federal Communications Commission.

ACTION: Request for comments.

SUMMARY: In this document, the Commission requests comment on the construction requirements that the Commission should impose on 800 MHz Specialized Mobile Radio (SMR) commercial licensees that are part of a wide area system ("wide-area licensees") operating on non-SMR channels (*e.g.*, Business and Industrial /Land Transportation (BI/LT) channels) through inter-category sharing. Comment is sought based on the Commission's decision in its *Memorandum Opinion and Order on Remand (Remand Order)* responding to the decision of the U.S. Court of Appeals for the District of Columbia Circuit (Court) in *Fresno Mobile Radio, Inc.* v. *FCC (Fresno)*. The Commission has decided to determine the construction status of BI/LT frequencies authorized for SMR use through inter-category sharing by separate order in the *Fresno Remand* proceeding. Interested parties may file comments on or before March 27, 2000. Parties interested in submitting reply comments must do so on or before April 6, 2000.

DATES: Comments due March 27, 2000 and Reply Comments due April 6, 2000.

FOR FURTHER INFORMATION CONTACT: Don Johnson, Wireless Telecommunications Bureau, at (202) 418–7240.

SUPPLEMENTARY INFORMATION: This *Public Notice* in PR Docket No. 93–144, adopted and released March 10, 2000 is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW, Washington, DC 20036 (202) 857–3800. The document is also available via the internet at *http://www.fcc.gov/Bureaus/Wireless/Public Notice/1999/index2.html.*

Synopsis of Public Notice

The Commission requests comment on the construction requirements that the Commission should impose on 800 MHz Specialized Mobile Radio (SMR) commercial licensees that are part of a wide area system ("wide-area licensees") operating on non-SMR channels (*e.g.*, Business and Industrial /Land Transportation (BI/LT) channels) through inter-category sharing. In the *Remand Order*, the Commission stated that it would allow incumbent wide-area 800 MHz SMR licensees, who were within their construction periods at the time of the *Fresno* decision, to elect to satisfy either: (1) Construction requirements similar to those given to Economic Area (EA) licensees in the 800 MHz band; or (2) the original construction requirements outlined in the *800 MHz Rejustification Order*. The *Remand Order* stated that the construction status of BI/LT frequencies authorized for SMR use through inter-category sharing was beyond the scope of the proceeding and would be considered in the context of the Commission's rulemaking proceeding to implement the Balanced Budget Act of 1997 (BBA proceeding).

The Commission has decided to determine the construction status of BI/LT frequencies authorized for SMR use through inter-category sharing by separate order in the *Fresno Remand* proceeding rather than in the BBA proceeding. Therefore, we seek comment on whether the Commission should adopt construction rules for these incumbent wide-area licensees operating on BI/LT frequencies similar to those adopted in the *Remand Order* for wide-area licensees operating on SMR frequencies. The Commission also requests further comment on the applicable construction requirements (*e.g.*, substantial service or population-based) for wide-area SMR licensees that operate on BI/LT frequencies through inter-category sharing. This request is limited to comments on the construction status of BI/LT frequencies authorized for SMR use through inter-category sharing. We do not seek comment on any issues relating to construction requirements for Private Mobile Radio Service (PMRS) licensees.

The Commission notes that, regardless of its decision in this matter, we intend to allow the affected SMR licensees on BI/LT channels six months after the adoption of a final order in this proceeding to complete buildout, unless a longer period is specified in that order. We note that the Bureau has already granted extensions to the Southern Company and to Nextel Communications, Inc., of the extended implementation period for construction of their Business and Industrial/Land Transportation channels, until final rules regarding licensing of the BI/LT frequencies in the context of the Commission's rulemaking proceeding to implement the Balanced Budget Act of 1997 take effect. By this Public Notice, the Commission modifies the term of each of these two waivers to expire six months after the adoption of a final order in the instant proceeding.

Interested parties may file comments on or before March 27, 2000. Parties interested in submitting reply comments must do so on or before April 6, 2000. All comments should reference PR Docket No. 93–144 and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, SW, Room TW–B204, Washington, DC 20554. A copy of each filing should be sent to International Transcription Services, Inc. (ITS), 1231 20th Street, NW, Washington, DC 20036. In addition, parties should send two copies each to:

(1) Don Johnson, Federal Communications Commission, Wireless Telecommunications Bureau, Commercial Wireless Division, Policy and Rules Branch, 445 Twelfth Street, SW, Room 4A–332, Washington, DC 20554; and

(2) Jennifer Mock, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, SW, Room 3–C400, Washington, DC 20554.

Copies of the comments and reply comments will be available for inspection and duplication during regular business hours in the Public Reference Room, 445 Twelfth Street,

SW, Room CY–8257, Washington, DC. Services (202) 857–3800, 1231 20th St.,

and none would be recommended over

required to complete construction by

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and takes comments and ideas from the

SW, Room CY–8257, Washington, DC 20554. Copies also may be obtained from ITS, 1231 20th Street, NW, Washington, DC 20036; (202) 857–3800.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7164 Filed 3–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 00–39; FCC 00–83]

Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document, the Commission invites comment on a number of issues that it believes require resolution to ensure that the digital televison (DTV) conversion progresses and that potential sources of delay are eliminated. Among these are: first, whether to adopt a service replication requirement and to require enhanced service to the DTV station's city of license; second, whether to adopt a requirement that DTV stations elect their post-transition DTV channel by a certain date; and third, how to resolve mutually exclusive DTV and DTV/NTSC applications. Comment is also requested on a number of other issues related to the transition to digital television.

DATES: Comments are due on or before May 17, 2000; reply comments are due on or before June 16, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, Room TW–A306, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Gordon Godfrey, Policy and Rules Division, Mass Media Bureau at (202) 418–2190, or Keith A. Larson, Office of the Bureau Chief, Mass Media Bureau at (202) 418–2600.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rulemaking* (*"NPRM"*), FCC 00–83, adopted March 6, 2000; released March 8, 2000. The full text of the Commission's *NPRM* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room TW–A306), 445 12 St. S.W., Washington, D.C. The complete text of this *NPRM* may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857–3800, 1231 20th St., N.W., Washington, D.C. 20036.

Synopsis of Notice of Proposed Rulemaking

I. Introduction

1. With this *NPRM*, we commence our first periodic review of the progress of the conversion of our nation's television system from analog technology to digital television ("DTV"). In the *Fifth Report and Order* in MM Docket No. 87–268 (63 FR 13546, May 20, 1998), we stated that we would conduct a review every two years to "ensure that the introduction of digital television and the recovery of spectrum at the end of the transition fully serves the public interest." For the most part, this conversion is progressing, and television stations are working hard to convert to digital television pursuant to the construction schedule we established in the *Fifth Report and Order*. In this *NPRM*, we invite comment on a number of issues that we believe require resolution to ensure that this progress continues and that potential sources of delay are eliminated. Specifically, we invite comment on: (1) Whether to adopt a service replication requirement and to require enhanced service to the DTV stations' city of license; (2) whether to adopt a requirement that DTV stations elect their post-transition DTV channel by a certain date; and (3) how to resolve mutually exclusive DTV and DTV/NTSC applications.

II. Background

2. Our efforts to convert our nation's television system to digital television began in 1987, when we issued our first inquiry into the potential for advanced television ("ATV") services (52 FR 34259, September 10, 1987). The ensuing proceeding lasted a decade, during which we had the benefit of numerous comments and participation by broadcasters, equipment manufacturers, public interest groups, and the public. As the proceeding progressed, all-digital advanced television systems were developed and we began to refer to advanced television as digital television ("DTV"), recognizing that technological developments meant that any ATV system was certain to be digital. In February of 1993, the Advisory Committee on Advanced Television Service (the "Advisory Committee") reported that a digital HDTV system was achievable, but that all four competing digital systems then under consideration would benefit significantly from further development and none would be recommended over the others at that time. In May of 1993, seven companies and institutions that had been proponents of the four tested digital ATV systems, joined together in a "Grand Alliance" to develop a final digital ATV system for the standard. Over the next two-and-a-half years, that system was developed, extensively tested, and is documented in the ATSC DTV Standard. On November 28, 1995, the Advisory Committee voted to recommend the Commission's adoption of the ATSC DTV Standard. In 1996, the Commission adopted a standard for the transmission of digital television based on the ATSC DTV Standard with minor modifications. *Fourth Report and Order* in MM Docket No. 87–268 (62 FR 14006, March 25, 1997).

3. In 1997, in the *Fifth Report and Order*, the Commission adopted rules to implement the Telecommunications Act of 1996 ("1996 Act"), which provided that initial eligibility for any advanced television licenses issued by the Commission should be limited to existing broadcasters, conditioned on the eventual return of either the current 6 MHz channel or the new digital channel. The Commission issued initial licenses for DTV, established service rules, including a requirement that broadcasters continue to provide free, over-the-air television service, and set an aggressive but reasonable construction schedule and a target date of 2006 for the completion of the transition. The Commission adopted a simulcasting requirement phased in at the end of the transition period. The Commission also recognized that digital broadcasters remain public trustees of the nation's airwaves and have a responsibility to serve the public interest. In the *Sixth Report and Order* (63 FR 15774, April 1, 1998), the Commission adopted a DTV Table of Allotments. After the adoption of the *Fifth Report and Order*, Congress made the 2006 reversion date statutory, in enacting the Balanced Budget Act of 1997, which provides that "[a] broadcast license that authorizes analog television service may not be renewed to authorize such service for a period that extends beyond December 31, 2006" unless the Commission grants an extension based on specific criteria enumerated in the statute. 47 U.S.C. 309(j)(14). With this *NPRM*, we commence our first periodic review in our continuing effort to assure that the transition goes smoothly for American consumers, broadcasters, and other interested parties.

III. Progress Report

4. Affiliates of the top four networks in the top ten television markets were required to complete construction by May 1, 1999; top four network affiliates in markets 11–30 by November 1, 1999; all remaining commercial television stations by May 1, 2002; and all noncommercial television stations by May 1, 2003. 47 CFR 73.624(d). Construction permit applications are required to be filed before the mid-point in a particular applicant's required construction period. Thus, all commercial television stations subject to the May 1, 2002 buildout deadline were required to file their DTV construction permit applications by November 1, 1999, and all noncommercial television stations are required to file their construction permit applications by May 1, 2000.

5. As of February 23, 2000, a total of 1376 television stations in all markets (amounting to 81% of all stations) have filed DTV construction permit applications, regardless of whether they were required to file by November 1, 1999. Applications have been received from approximately 97% of the 1314 commercial TV stations that were required to file by November 1, 1999. Requests for extensions of the filing deadline filed by stations that are not included in this 97% category generally indicated that they had pending rule making petitions requesting changes to their DTV channel, tower site problems or that their consulting engineer was unable to complete studies by the deadline. A total of 316 of all of these applicants have been granted construction permits; and 92 of those stations are on the air pursuant to those permits. Twenty-seven other stations are on the air with special or experimental DTV authority. The remaining pending applications are either awaiting additional information or Mexican, Canadian or other clearances or are technically more difficult to process because they require an interference analysis (applications that do not meet the "checklist" criteria for streamlined processing). Thirty-three of the 40 stations in the top ten markets required to complete construction by May 1, 1999, are on the air, and 6 others have been granted construction permits to build. In each of these markets, there is at least one DTV facility on the air pursuant to its permit and in six of these markets, the four affiliates of the largest commercial networks are all on the air. In markets 11–30, 78 of the 79 stations required to file construction permit applications by August 3, 1998 have filed these applications. The one remaining station that has not yet filed a construction permit application is Station WTVJ, Miami, which has not done so because it has an outstanding rule making petition pending to change its DTV channel. Seventy-two of these stations have been granted a construction permit and three others have been granted special temporary authority to operate while action on their application is pending. Forty-two stations are on the air pursuant to their permits, and 34 stations have requested extensions of time to complete construction and go on the air. Of these 34 stations requesting extensions, all but seven are facing practical and easily resolvable delays, according to the licensees. Examples of factors causing these delays are untimely delivery of equipment, bad weather and unavailability of tower crews. Most of these stations expect to be on the air early in 2000.

6. Initial evidence indicates that stations are facing relatively few technical problems in building digital facilities. Some stations are facing problems with tower availability and/or local zoning issues, but these problems do not seem to be widespread at this time, and, while some cases may be problematic, it appears that many cases are being worked out. Indeed, the Commission has helped broadcasters remedy such local problems in a number of ways, including creating, in May, 1998, a DTV Tower Strike Force, chaired by Commissioner Susan Ness to target potential problems in the implementation of DTV and to work with local authorities and broadcasters to expedite implementation of DTV. The Strike Force makes Commission staff available to aid local authorities and broadcasters by providing expedited answers to questions related to the process of assessing tower modification or construction and to facilitate the deliberations of reviewing entities. The DTV Strike Force has, for example, assisted local and county governments in understanding the FCC's Radio-frequency Radiation (RFR) requirements as they relate to the implementation of DTV and the related construction of towers. In one instance, the Strike Force sent technical experts to make RFR measurements with county engineers and to testify in an effort to assure these officials that radiation harmful to humans would not result from the proposed DTV construction. Commissioner Ness and the Strike Force also regularly participate in the meetings of the FCC Local and State Government Advisory Committee (LSGAC). The Strike Force presents the current facts regarding the DTV rollout and related tower construction issues and takes comments and ideas from the Committee under advisement.

IV. Issue Analysis

7. In the *Fifth Report and Order*, we concluded that we should undertake a periodic review every two years until the cessation of analog service to help the Commission ensure that the introduction of digital television and the recovery of spectrum at the end of the transition fully serves the public interest. We noted that, during these reviews, we would "address any new issues raised by technological developments, necessary alterations in our rules, or other changes necessitated by unforeseen circumstances." We invite commenters to provide us with information not previously presented to the Commission raising issues that must be resolved in order to assure a smooth transition. Our goal is to assure an open proceeding that will allow us to resolve any impediments to a complete and rapid transition. Aside from regulatory benchmarks, is the digital transition proceeding in such a way as to serve the public interest? Are there factors such as the pace of DTV receiver sales or the availability of financing for digital facilities that reflect the state of the digital transition?

8. Concerns have arisen in a number of areas, including tower siting, copy protection, and cable compatibility. We invite comment on the critical unresolved issues in these areas and how they affect the progress of the digital transition. Are broadcasters able to secure necessary tower locations and construction resources? To what extent do zoning disputes, private negotiations with tower owners, and the availability of tower construction resources affect the transition?

9. With respect to cable compatibility, a recent agreement between the Consumer Electronics Association ("CEA") and the National Cable Television Association ("NCTA") should permit introduction of cable-compatible television receivers in the near term. While the agreement covers a number of technical specifications, including on-screen program guides, the agreement does not cover labeling of digital receivers. While we favor allowing the affected industries to reach agreement on this issue, industry failure to reach such agreement on a timely basis may necessitate further Commission action in the form of initiating a rule making proceeding. To what extent would a failure to reach agreement on the labeling of digital receivers hinder the transition?

10. In addition, the agreement does not cover the copy protection issues. We

also seek comment on the extent to which a failure to reach agreement on copy protection technology licensing and related issues would hinder the transition.

11. Concerns also have arisen regarding the DTV transmission standard. We adopted the DTV Standard in the *Fourth Report and Order* in the digital television proceeding after extensive testing and with the participation of the affected industries and the public. While we continue to believe that NTSC service replication is achievable by DTV operations using the 8–VSB standard, we recognize that some in the industry have raised various issues with respect to that standard. For example, Sinclair Broadcasting Group filed a Petition for Expedited Rulemaking urging the Commission to modify its rules to permit the use of COFDM modulation in addition to the 8-VSB standard. Sinclair argued that the COFDM standard offered easier reception with simple antennas and would enable broadcasters to provide fixed, mobile and portable video services with greater capacity for technological improvement. We dismissed that petition, indicating that concerns about 8-VSB, such as those raised in the Petition, were better addressed in the context of this proceeding.

12. We invite comment on the current status of the 8–VSB DTV standard. We are particularly interested in the progress being made to improve indoor DTV reception under the existing transmission standard and manufacturers' efforts to implement DTV design or chip improvements. We also ask the industry to submit information regarding any additional studies that may have been conducted regarding NTSC replication using the 8–VSB standard.

13. Some broadcasters have recommended that the Commission address over-the-air signal reception by setting receiver standards, which we understand to mean performance thresholds (like the UHF noise figure requirement), as opposed to mandatory technology specifications (like the ATSC digital standard itself). Accordingly, we ask for comment first on whether we have the authority to set minimum performance levels for DTV receivers. This issue was pleaded several years ago by various parties in response to the Commission's *Fourth and Fifth Further Notices of Proposed Rule Making* (60 FR 42130, August 15, 1995 and 61 FR 26864, May 29, 1996) in the DTV proceeding, and comments in this proceeding should take account of these earlier submissions. Second, we request comment on the desirability of adopting minimum performance levels. And, third, comments should address how these requirements should be structured, including timing considerations.

14. Some additional issues pertain to the transition, such as the issue of digital broadcast signal carriage on cable systems, and are the subject of their own separate proceedings. *Notice of Proposed Rule Making* in CS Docket No. 98–120 (63 FR 42330, August 7, 1998). While we intend for this proceeding to be a broad and open proceeding, it would not be constructive, as a general matter, to unduly burden this proceeding with issues that are the subject of their own proceedings or with requests for reconsideration of issues that have already been decided, or where the standard set out in the *Fifth Report and Order* is not met. Some of the issues that are outside the scope of this proceeding include: fee issues; eligibility issues; issues relating to public television, (*Notice of Proposed Rulemaking*, MM Docket No. 98–203, (63 FR 68722, December 14, 1998); and channel allotment or change requests. In addition, we believe that it is too early in the transition to address a number of issues referenced in the *Fifth Report and Order*, as issues we would handle in our periodic reviews. These issues include reconsidering the flexible approach to ancillary or supplementary services, the proper application of the simulcast requirement, and the special needs of noncommercial stations in converting to digital television beyond the accommodation granted them by allowing them to complete construction a year after the last category of commercial broadcasters. The issue of the appropriateness of 2006 as a target recovery date, also referenced in the *Fifth Report and Order*, is inappropriate for this review as Congress has, in the Balanced Budget Act of 1997, confirmed December 31, 2006 as the date for completion of the transition and established a procedure and standards for stations to seek an extension of that date. 47 U.S.C. 309(j)(14). Other issues referenced on reconsideration that we will not review here include: minimum programming hours, tower space issues for noncommercial FM stations, and adopting an immediate transition. We believe it is too early in the transition to consider increasing the number of required digital programming hours and to consider adopting an immediate transition. Moreover, it does not appear that noncommercial FM stations are having difficulties based on the loss of tower space to digital stations.

15. In addition to inviting general comment on the progress of the transition, we invite specific comments on the areas discussed.

A. Full-Replication and Principal Community Coverage

16. *Replication.* In the DTV *Sixth Report and Order*, we established "replication" as a goal in the creation of the initial DTV Table of Allotments. Our replication goal means that each DTV channel allotment was chosen to best allow its DTV service to match the Grade B service of the NTSC station with which it was paired. Implicit in our use of this criterion in creating the initial DTV Table is an expectation that DTV stations will eventually be constructed with "full-replication" facilities. Full-replication facilities would entail a combination of transmitter site, effective radiated power, directional antenna characteristics and antenna height that is adequate to cover at least the same area as is served by the NTSC station.

17. While expecting eventual use of full-replication facilities by each station, we recognized that there initially would be few DTV receivers on which DTV stations could be viewed. Thus, early DTV broadcasts would reach very few viewers and present negligible opportunity for revenue to offset the DTV construction costs that were expected to exceed one million dollars per station. Accordingly, we granted the flexibility for DTV stations to build initial facilities that would cover a significantly smaller area than full-replication facilities, provided that the predicted DTV service contour covered the station's city of license. We did not, therefore, in previous DTV proceedings, adopt an explicit replication requirement or a requirement that DTV stations provide a higher level of service than Grade B to their city of license. Nevertheless, we are presently protecting the full replicated service areas based on the engineering parameters associated with the DTV allotment table. As discussed, we are concerned that the lack of an explicit replication requirement and a city-grade service requirement may encourage some licensees to locate their proposed DTV facilities at a substantial distance from their NTSC facilities and their communities of license. This may have negative consequences for the transition to digital television.

18. We expected that some stations would build their DTV station at a different site from their authorized NTSC site. In particular, we encouraged stations in a market to explore development of a common site where

that was feasible. We also allowed the flexibility to move within a 5-kilometer radius of the DTV Table reference coordinates with a streamlined "checklist" application. While anticipating some movement and allowing small initial DTV facilities, we expected that most stations would build their DTV facilities at or near their NTSC sites. We did not focus on stations that operate from "fringe" sites, such as those licensed to smaller communities near the edge of their market or those that are site restricted and required to broadcast from a site that does not serve their market as well as other stations with which they compete. Nor did we consider that some small market stations operate adjacent to a larger market. These fringe area stations often would prefer to operate from a central location or in the larger market where they can potentially serve a larger population and achieve higher revenues.

19. Most of the DTV applications that have been filed and granted thus far are for locations at or near their current NTSC antenna sites. However, in conformance with the rules we established, several licensees have sought authority to move their DTV station to a more central location in their market or toward a larger market. Others have filed petitions for rule making to change their DTV allotment, including their assumed transmitter site and/or technical facilities.

20. These situations pose a problem with respect to our expectation that licensees will eventually replicate their NTSC facilities. Licensees that build DTV facilities that do not cover the same area as their NTSC stations may present problems at the end of the transition. If these stations choose to, and are able to, remain on their DTV channel at the end of the transition, people within the NTSC service area but outside of the DTV service area will lose service. We question whether this loss of service would serve the public interest. Similarly, the goals of our requirement that the NTSC programming be simulcast on the DTV channel near the end of the transition would be undermined if the DTV coverage does not approximate or encompass the NTSC coverage area. In addition, a large scale move of DTV stations to larger urban markets would pose a problem under 47 U.S.C. 307(b), as it might represent a *de facto* reallotment from smaller, more rural and underserved areas to larger well-served urban areas and might undermine our allotment decisions.

21. *Request for Comments.* We believe it is important now to consider what requirements are appropriate for eventual replication so that stations can take account of these requirements as they plan and construct their DTV facilities. We seek comment on whether we should establish a replication requirement and, if so, how we should frame it, when it should become effective, and what consequences should follow for stations that fail to meet it.

22. If we decide to adopt a replication requirement, we must decide how to determine whether a DTV station is replicating its NTSC facilities. One possible approach would be to require essentially the same service as is provided by the NTSC facilities. In order to implement this approach, we would need to decide whether to depict NTSC and DTV service using coverage contours or using the Longley-Rice propagation model in accordance with OET Bulletin 69 (July 2, 1997). *See* 47 CFR 73.622(e). We would also need to decide whether the replication requirement should be based on the population or the area served. We note that our rules for determining interference between DTV stations are based on population. *See* 47 CFR 73.623(c). Finally, we would need to address the question of what percentage of the NTSC Grade B service must be replicated. While conceptually straightforward, this approach may be difficult to implement, with many circumstances needing individual interpretations or exceptions. For example, how would replication be determined if the NTSC station's authorized coverage has changed or if it has both licensed facilities and facilities authorized by a construction permit and those facilities would cover different areas?

23. A possible alternative is the use of a DTV principal community service requirement as discussed. Such a requirement might be easier to implement than a service replication requirement, but the extent to which replication would actually be achieved could vary significantly and for some stations it may leave more people unserved. A requirement for a stronger signal to cover a station's city of license would effectively ensure that the DTV service contour would extend some distance beyond the city of license. The field strengths suggested would be based on the differences between NTSC Grade B and principal community service. We believe that the resulting DTV coverage would extend past the DTV principal community service contour to an extent that would approximate NTSC Grade B service. We invite comment on these proposals and invite commenters to offer their own additional or alternative proposals as to how we might assure eventual full replication by DTV licensees of their NTSC facilities.

24. We also seek comment on when we should implement a replication requirement. While many of the DTV applications that have been filed propose facilities that would serve a high percentage of the station's analog Grade B contour, and some have sought to maximize facilities in a manner that would expand their DTV coverage, there are also a large number of applicants that have chosen to "start small." Construction of most of these stations is not required to be completed until May 1, 2002. Noncommercial educational DTV stations do not need to complete construction until May 1, 2003. In order to allow stations a reasonable period to operate with smaller facilities, it seems appropriate to delay a replication requirement until at least May 1, 2004. Other possible choices include requiring full replication by the planned end date of the transition, which is December 31, 2006, or by the date the transition actually ends for the stations in each particular market, whether or not that date is extended beyond December 31, 2006 pursuant to the statute. It is possible that delaying the replication requirement for too long could undermine the broad availability of digital service and thus forestall the transition itself by blunting the incentive for digital set penetration. One alternative that might mitigate this effect would be to require each DTV station to achieve replication by one year after the date it is required to complete construction pursuant to the DTV construction schedule. We invite comment on these alternatives. The appropriate date by which we should require full replication may also depend on how strictly replication is required and on the consequences of not complying. Another factor in our decision as to when to institute a replication requirement is the timing and options available for licensees choosing which of their two channels they want to operate their DTV station on after the transition. We invite comment on these issues.

25. We presume that licensees will follow all applicable FCC rules as a matter of course. Moreover, with respect to any replication rule we might adopt, we note that it would be in a licensee's best interest to comply with a replication rule in order to maximize potential audiences. Nonetheless, we propose that any station's failure to comply with the proposed replication rule would result in the loss of

protection of the station's full-replication allotment facilities. We also invite comment on what, if any, other consequences we might impose for a station's failure to replicate.

26. We note that we have proposed as a possible consequence for failing to meet a replication requirement, the loss of protection of the full allotted DTV facility. We invite comment as to whether regardless of what other consequence we impose for failure to replicate, or even in the event that we do not adopt a full-replication requirement, we should, by a certain date, place an end to our current policy of protecting the full replication facility regardless of the parameters and service contour a DTV station provides. Such a policy would foster spectrum efficiency. It would allow increased opportunities for new DTV service by new entrants and would allow other existing stations to maximize their service on what would otherwise be fallow or wasted spectrum, in that it is being protected but not used. If we adopt such a policy, when should we stop protecting a station's DTV facilities beyond the actual service contour?

27. *DTV Principal Community Coverage.* Although we referred to the provision we made for allowing DTV stations to operate initially with limited minimum DTV facilities as a requirement for coverage of a station's principal community, it is actually inconsistent with the NTSC principal community coverage requirement, as the city-grade coverage requirement for NTSC stations is stronger than a Grade B signal. For NTSC stations, the principal community requirement is a significantly stronger signal level than the Grade B service standard. For DTV stations, the initial required signal over the community of license is the same as the DTV service contour standard. A signal that meets the principal community coverage standard ("city grade signal") is commonly considered to be one that produces a better picture quality than a Grade B signal. While it is true for NTSC that service can be described as a picture quality that gets better as the median signal level increases, it can also be described in terms of an "acceptable" picture quality being available for a larger percentage of the time as the median signal level increases.

28. In DTV, there are virtually no gradations in picture quality that are dependent on signal strength. The signal must reach a certain minimum threshold for a picture to occur; it does not matter how little or much the signal exceeds that threshold requirement, the picture quality will not change. When the signal is insufficient, the picture screen will freeze or go blue. Thus, DTV levels of service can be described in terms of the percentage of the time that the picture is available. An individual's subjective determination of "acceptable" DTV service would be based on their tolerance for interruptions to the programming (picture freezing or going to a blue screen). Some viewers may find DTV service acceptable, even if lost for a minute or two each hour (two to three percent of the time). Others may find service to be unacceptable if disruptions exceed 10 or 20 seconds in an average hour (less than one half percent of the time).

29. For the most part, we believe DTV stations that replicate their NTSC service will effectively provide city grade service to their community of license. Such DTV stations would provide a signal level over their city of license that is stronger than the signal level we established for the DTV service contour by an amount comparable to the difference between NTSC city grade and Grade B service contour values. Also, where a DTV station is paired with an NTSC station, its DTV allotment is protected, which maintains its ability to replicate to a great extent and therefore protects its ability to provide a stronger signal level over its city of license. Thus, in these instances, sufficient signal strength will be available to maintain reliable reception. However, we have been presented with proposals that do not involve replication. In such situations, a DTV licensee might seek to locate its station so that its city of license is barely within its service contour, which may result in service that is less reliable or available to a smaller percentage of locations than usually expected for "city grade service."

30. *Request for Comments.* In most respects, the planning factors for the DTV service contour correspond to the planning factors for the NTSC TV Grade B service contour. Applications to change the power, antenna height or location of other DTV stations are permitted to cause interference, as long as the interference is "*de minimis*" (reducing the population served by a station by no more than 2%, not to exceed 10% for all interfering sources). Reception near the edge of the DTV service contour is not protected from interference. A similar situation occurs among NTSC stations where a new or modified NTSC facility is permitted to cause interference within another station's Grade B contour, as long as the minimum distance spacing requirements are met. Accordingly, we invite comment as to how to define adequate DTV service to the city of license.

31. How to define adequate service to the city of license also is an issue for DTV stations that do not have a paired NTSC channel. In the *Fifth MO&O* (63 FR 13546, March 20, 1998), we afforded applicants for NTSC stations whose construction permit applications were not granted as of the date of adoption of the *Fifth Report and Order* (and who therefore were not eligible for initial paired DTV licenses) the opportunity to construct a DTV station immediately on their single 6 MHz NTSC channel provided that the proposed DTV facility protected all DTV and NTSC stations by complying with all applicable DTV technical rules. Alternatively, if they chose first to construct an NTSC station, they would be allowed to convert it to a DTV station, upon application to the Commission, at any time during the transition (and they would be required to convert to DTV at the end of the transition, when NTSC broadcasting ceases). In the *DTV Second MO&O* (64 FR 4322, January 28, 1999), we clarified that the pending NTSC applicants could convert to DTV without first being granted an NTSC construction permit. We seek comment on the appropriate level of principal community service for these DTV stations. We also seek comment on the appropriate level of principal community service for those DTV stations that have changed their DTV channel (and authorized facilities) pursuant to rule making, where there is no longer a correspondence between NTSC and DTV service areas.

32. In order to address the foregoing concerns while minimizing the impact on DTV broadcasters, we propose to require that a DTV principal community be served by a stronger signal than that specified for the general DTV service contour. By requiring that DTV broadcasters provide a minimum, higher, level of service over their community of license, we would limit the extent to which DTV broadcasters can migrate from their current service contour. A stronger principal community coverage requirement would improve the availability and reliability of DTV service in the city of license. It would also provide an extra measure of protection from interference to DTV service in the city of license. Finally, it would provide a method of requiring improved replication performance that can be determined by relatively simple and straightforward methods that are well established in the NTSC service. We note that NTSC broadcasters must provide a signal over their city of license that is stronger than the signal strength defined for their Grade B service contour. *See* 47 CFR 73.685(a). We invite comment on this approach of requiring DTV stations to provide a similarly stronger signal. Would it resolve the problems that we have identified? Would it create undue difficulties for DTV broadcasters to accomplish, and, if so, would these difficulties be so severe as to delay the transition?

33. We invite comment as to the signal level that we should require to be placed over the DTV station's principal community, should we adopt such a requirement for DTV. One approach to resolving this issue is to use a set of field strength values that corresponds to the current principal community signal requirements for NTSC stations. We note that the required principal community service contours for NTSC stations are 27, 21 and 16 dB higher than the Grade B service contours for channels 2–6, 7–13 and 14–69 respectively. *See* 47 CFR 73.685(a). The stronger NTSC principal community contours are based on an assumed receiving antenna with less gain, urban noise, and greater probability of locations receiving service (90%). Adding the same amounts to the DTV service field strength values results in the following table:

Channels	Field strength (dBu)
2–6	55
7–13	57
14–69	57

Even though these signal intensities are defined as discrete values measured in dBu's, the intensity of broadcast signals at particular locations and at particular times cannot be precisely determined, regardless of the predictive method used. Signal strength varies randomly over location and time, so signal propagation must be considered on a statistical basis. Most prediction methods, including the Commission's propagation curves, predict the occurrence of median signal strengths (i.e., signal strengths expected to be exceeded at 50% of the locations in a particular area at least 50% of the time). Under this approach, "location" and "time" variability factors are added to the signal level so that the desired statistical reliability is achieved. The values chosen for the principal community signal intensity account for this variability. Therefore, assuming the use of a receiving antenna with 0 dB gain relative to a half-wave dipole, the values predict that at least 90% of the locations along principal community contour will receive an acceptable picture 90% of the time. We invite comment on whether this required signal coverage to the community of license is an appropriate one to adopt for DTV stations. Could it be accomplished readily? Would the economic costs of adopting the proposed level of principal community service outweigh the benefits that we seek to achieve? If so, we invite commenters to address whether we should adopt an alternative minimum level of principal community service and to justify that alternative proposed level.

34. We tentatively believe that we can minimize any increased difficulties such a requirement might place on DTV broadcasters by delaying its implementation. Accordingly, we seek comment on when any such requirement should be made effective. We tentatively propose that DTV stations that are paired with NTSC stations be required to meet the new principal community requirement by May 1, 2004. Alternatively, we invite comment as to whether we should tie the city-grade service requirement to the construction schedule, with the requirement imposed within a certain period, a year, for example, after construction is scheduled to be completed. For licensees with paired DTV and NTSC stations that intend to operate with DTV on their current NTSC channel after the transition, we propose that they be required to file a DTV application reflecting that decision by that date. For NTSC stations that do not have a paired DTV station, we propose that the stronger DTV principal community service be required when they seek to switch to DTV operation. For petitioners seeking a DTV channel change, we propose to require a showing that the principal community service requirement can be met with the proposed DTV allotment facilities or a commitment to elect their NTSC channel for their post-transition DTV operation. The 2004 date is two years before the end of the transition, and by that point DTV broadcasters should be able to build out their permanent facilities. That date is at least one year after the deadline for all broadcasters, including noncommercial broadcasters, to complete construction, and commercial broadcasters by that date will have been on the air for at least two years. For these reasons we believe that it would not be unduly onerous to implement a requirement for a higher principal community service contour at this date. We invite comment on these proposals and ask commenters to address whether other measures are necessary in addition to or as an alternative to these proposals to address our concerns.

B. Channel Election

35. In the DTV *Sixth MO&O* (63 FR 15774, April 1, 1998), the Commission decided that the DTV service after the transition will be limited to core spectrum, comprised of current TV channels 2 through 51. We had minimized the number of out-of-core DTV channel allotments and made a special effort to designate a DTV channel in the core for each station that had its NTSC channel outside of the core. In this way, at the end of the transition, whichever channel (DTV or NTSC) was in the core could become the station's permanent DTV channel. There are currently 17 stations that have both their NTSC and their DTV channels outside of the core. We indicated that once the transition ended and one of the two channels each broadcaster is temporarily authorized to use is recovered, there will be adequate spectrum to ensure that all stations with initial out-of-core DTV allotments can be provided with new channels within core spectrum between channels 2–51

36. On reconsideration of the DTV *Sixth Report and Order,* some broadcasters asked that we require stations with both channels in the core to immediately choose the channel they intend to keep following the transition. We declined to require early channel election at that time based on the small number of situations with both NTSC and DTV on out-of-core channels and the lack of needed experience with DTV operation, which would prevent many broadcasters with both channels in the core from making an appropriate decision.

37. Changed circumstances suggest that it would be helpful now to adopt a deadline for channel election. We believe that there will be more out of core stations that must be accommodated with a core channel than we initially anticipated. As discussed, new applicants will be allowed to convert their single NTSC channels to DTV operation and those on channels outside the core will be provided a post-transition channel inside the core. There are a number of such "new applicant" NTSC stations authorized on channels outside the core, and dozens more could be authorized under procedures announced in the recent filing window Public Notice (64 FR 67267, December 1, 1999). The problem of finding a core channel for these stations is exacerbated because there are more stations currently occupying core channels than

DTV stations enough time to gain

minimize expense and inconvenience to

second application is filed, the second

the application must be filed. Another

we initially planned on. Pursuant to the window filing Public Notice, some of those pending applications and rule making petitions could also be granted on core channels, if they can adequately protect NTSC and DTV stations from interference. Further, recent legislation requires the establishment of a new category of primary, "Class A" TV stations, which also may limit availability of core channels in some areas. Community Broadcasters Protection Act of 1999, Section 5008 of Public Law 106–113, 113 Stat. 1501 (1999), *Appendix I, codified at* 47 U.S.C. 336(f). The Community Broadcasters Protection Act was enacted as part of the Intellectual Property and Communications Omnibus Reform Act of 1999, which itself is part of a larger consolidated omnibus appropriations bill, entitled, "Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes." *See Order and Notice of Proposed Rule Making* in MM Docket Nos. 00–10 & 99–292 (64 FR 56999, October 22, 1999), In the Matter of Establishment of a Class A Television Service. In addition, maximized DTV facilities that operate on channels within the core might complicate the problem of finding a core channel for out-of-core stations because these maximized stations are more difficult to protect.

38. *Request for Comments.* We tentatively conclude that it is now time to begin setting up a process to assure early election by DTV stations of their post-transition channel. Stations making the channel conversion at the end of the transition will need time to plan facilities, order equipment and arrange for construction. Ideally, they would turn on their DTV station on their new core channel the day after the transition ends and other broadcasters turn off their second channel. With the target date for the end of the transition set for December 31, 2006, it seems reasonable to identify the channels these stations will be moving to not later than 2004. To accomplish this, we could require DTV licensees to make a binding decision and elect one of their two core channels by early 2004, at the latest. One possibility is to impose May 1, 2004 as the deadline for election. This date would allow at least one year of DTV operation pursuant to our staggered construction schedule (with noncommercial educational TV stations provided the longest time to construct and required to complete construction by May 1, 2003). We seek comment on whether this date represents the proper balance between the goals of allowing DTV stations enough time to gain experience with DTV operation and allowing stations that must move enough time to plan for their DTV channel conversion. We note that the recently adopted Community Broadcasters Protection Act of 1999 requires the Commission, within 18 months of the Act's enactment, to identify by channel, location, and applicable technical parameters, the 175 additional DTV channels that were referenced in paragraph 45 of the Commission's "February 23, 1998, *Memorandum Opinion and Order* on Reconsideration of the *Sixth Report and Order.*" 47 U.S.C. 336(f)(6)(B). In that Order, the *Sixth MO&O*, the Commission expanded the DTV core spectrum to include all channels 2–51, and noted that this expansion would add approximately 175 additional DTV channels. We invite comment as to whether, based on the new obligations imposed by this recent legislation, we are required to impose an earlier election date than May 1, 2004. We note that in *Order and Notice of Proposed Rule Making* in MM Docket Nos. 00–10 & 99–292, we invited comment on aspects of this new DTV channel identification requirement.

39. We also seek comment on the appropriate criteria for determining who is allowed to participate in this process, whether any category of participants should have blanket priority over other participants, and which channels are available. Should all stations with an out-of-core DTV channel and a core NTSC channel be required to use their NTSC channel, as opposed to being permitted to seek an alternative in-core DTV channel? Additional stations may want to become involved in changing their DTV channels at the end of the transition in order to improve their replication or decrease interference. Some stations with both channels in the core may not want to remain on either channel. Should stations that must move to a new channel have the highest priority (first selection of channels that are returned)? We also seek comment on whether particular channels should be off limits as we explore the possibilities of alternative uses. For example, should channel 6 or another channel or channels be cleared for other broadcast purposes, such as is being considered in our terrestrial digital audio broadcasting proceeding? *See Notice of Proposed Rule Making* in MM Docket No. 99–325 (64 FR 61054, November 9, 1999), Digital Audio Broadcasting Systems and Their Impact on Terrestrial Radio Broadcast Service. Should new use of channels 3 and 4 be avoided to minimize expense and inconvenience to cable subscribers whose cable boxes are wired for output on one of those channels? We also invite comment on whether the FCC should select the final channels in order to allow us to maximize efficiency of broadcast allotments. Assuming we do allow broadcasters to elect their channel, of course, under our authority to manage the spectrum, we would review the stations' channel elections to be sure that the use of spectrum is efficient and serves the public interest.

C. Mutually Exclusive Applications

40. We also wish to use this proceeding to examine some DTV application processing procedures. In particular, we invite comment on (1) whether to establish DTV application cut-off procedures; (2) how we should resolve conflicts between DTV applications to implement "initial" allotments; and (3) the order of priority between DTV applications and NTSC applications.

41. DTV applications must protect DTV allotments from predicted interference as indicated in the *Sixth Report and Order* and § 73.623 of our rules. In general, DTV applications that do not expand the coverage area of their DTV allotment also do not increase the interference that the applied-for station would be predicted to cause. In this respect, these applications are treated like "checklist" applications, which conform to their allotment and accordingly are subject to streamlined processing that allows them to be granted without analysis of predicted interference. In addition, the protection afforded facilities authorized pursuant to such applications is based on the required protection of their DTV allotment.

42. Applications for the paired DTV allotments in the initial DTV table (whether the first application for a construction permit (CP), a subsequent application to modify a DTV CP, or an application for a CP to change a licensed DTV facility) generally may request facilities that would expand their coverage area, subject to not exceeding the maximum facilities permitted by the rules. As indicated, such an area-expanding application must protect DTV stations, including DTV allotments and authorized (CP or licensed) DTV stations. Where two DTV applications seek to expand their allotment coverage area and one or both would cause prohibited interference with the facilities specified in the other application, such applications are mutually exclusive (MX). If the first-filed application is granted before the second application is filed, the second application must protect the first, which would then be an authorized DTV facility. If the second application is filed before the first is granted, the two conflicting applications would be mutually exclusive. We wish to explore several options for resolving such MX cases.

43. *Request for Comments.* As a primary matter, we seek comment on whether to adopt a cut-off procedure for such DTV area-expansion applications to minimize the number of mutual exclusivities and to facilitate applicants' planning with respect to their proposals. A cut-off process could minimize the number of MX situations that develop by requiring conflicting applications filed after a cut-off date to protect the earlier-filed, cut-off application. In the past, the Commission has managed the processing of some other categories of broadcast service applications by publishing "cut-off" notices that established a date after which competing or otherwise mutually exclusive applications were not allowed to be filed. NTSC minor change applications have not been subject to cut-off procedures, so such applications can become MX until the day they are granted. We have previously indicated that we would treat an initially eligible station's DTV construction permit application as a "minor change." Minor change status meant that we did not consider these initial applications to be requests for new stations but rather a modification of facilities. Under current processing procedures, we do announce the acceptance of these DTV applications without establishing a cut-off date. With respect to DTV service area-expansion applications (service area-expansion includes "maximization" applications that increase power and site or facilities change applications that increase a station's DTV service area in one or more directions beyond the area resulting from the station's allotment parameters), we could augment this public notice by including a cut-off date provision, which would announce that MX applications must be filed within a period of time. Under such an approach, conflicting applications filed after that time has passed would not be considered MX, but would have to protect the earlier-filed application. We seek comment on an appropriate duration for a cut-off period should we adopt such an approach. This approach could be similar to the process established for DTV "maximization" applications, where we allow a thirty day period during which oppositions to the application must be filed. Another option would be to consider such applications cut-off as of the close of business on the date they are filed. We would be concerned that such a day-to-day cut-off could prompt an initial surge of area-expansion applications on the first day it became effective. However, after that day, such an approach would minimize the number of MX situations. We invite comment on whether we should adopt a cut-off process and if so, on the appropriate duration. On January 4, 2000, Fox Television Stations, Inc., filed a letter with respect to DTV application cut-off procedures and other DTV maximization application processing issues. We incorporate the letter in the record of this proceeding and seek comment on the issues raised therein.

44. Next, we seek comment on how to resolve mutual exclusivities that arise. There are a number of alternative methods we could use, and we invite comment on these as well as others that commenters may wish to propose. Under one possible approach, where two or more DTV area-expansion applications are MX, we could grant all such applications regardless of the interference that could be caused in areas beyond the DTV allotment service area. Such an approach would facilitate Commission action on applications, resulting in an early resolution of contested cases and more rapid grant of construction permits. This option might prove to be an effective system to provide DTV service to the public at the earliest date. We anticipate that where each application proposal protects the other DTV allotment and any authorized DTV service area, but their mutual expansion efforts result in a prohibited amount of interference, the loss of service would be to areas that would not have been served by the original allotments, anyway. If we adopt such an approach and grant all applications in such a situation, we would encourage the stations to negotiate and seek engineering solutions to minimize the loss of service in a mutually agreeable manner. It appears that if both stations begin transmissions with their proposed facilities at the same time, the people subject to interference will not be suffering a loss of service as they will not have had sufficient signal for service prior to the interfering power increases. Instead, they simply will never gain the service they might have had if only one of the stations had sought to expand its coverage. We invite comment on this view.

45. As an alternative to the foregoing approach, we invite comment as to whether we should consider MX DTV area-expansion applications using a DTV new station application procedure. Using such an approach, we would encourage pending mutually exclusive new DTV applications (or modifications involving area expansion) to resolve their mutual exclusivity by engineering solutions or by settlements. We note the statutory directive to "use engineering solutions * * * and other means" to resolve competing applications. 47 U.S.C. 309(j)(6)(E). We invite comment on this approach for resolving MX situations involving new DTV station applications, as well as situations involving only DTV area-expansion applications. Where such mutual exclusivities cannot be resolved by negotiation, we invite comment as to whether these applications should be dismissed or, alternatively, whether spectrum auctions are legally permitted and, if so, to what extent, and whether they are an appropriate approach. We note that section 309(j) of the Communications Act of 1934, as amended ("the Act"), 47 U.S.C. 309(j), added by the Balanced Budget Act of 1997, provided for competitive bidding to resolve mutually exclusive applications for "any initial license or construction permit," but specifically excludes from competitive bidding, "initial licenses or construction permits for digital television service given to existing terrestrial broadcast licensees to replace their analog television service licenses.* * *" 47 U.S.C. 309(j)(2)(B). Thus, by its terms, section 309(j) would permit us to use competitive bidding to resolve mutual exclusivities for DTV applications for new facilities that are not intended to replace analog stations.

46. We invite comment as to whether we could use competitive bidding to resolve mutually exclusive applications from initial DTV licensees involving area expansion beyond the full-replication facility. In the *First Report and Order* in MM Docket No. 97–234, GC Docket No. 92–2, and GEN Docket No. 90–264, (63 FR 48615, September 11, 1998), we concluded that the Commission is not precluded by the language of section 309(j) from auctioning mutually exclusive analog modification applications. As we noted, "applications proposing major changes to existing facilities are, in our view, analogous to applications for construction permits for new stations." The Commission also noted that "subjecting a modification application to competitive bidding may also be particularly appropriate where it is mutually exclusive with one (or more) initial applications, as section 309(j) mandates the use of auctions where

mutually exclusive applications are accepted for "*any* initial license or construction permit." The Commission was there speaking about analog applications. To what extent, if any, do the considerations involving digital area-expansion applications dictate a different result? We note that we are precluded by section 309(j) from auctioning initial DTV replacement licenses (or the accompanying construction permits), but it does not appear that a digital area-expansion application would constitute such a replacement. We seek comment, however, on whether grant of such area-expansion applications is properly viewed as merely a component of the replacement of the analog television service license, or whether it should be classified as an extension of the analog authorization outside the statutory exclusion from competitive bidding. We also invite comment as to how to resolve mutually exclusive applications where one applicant is seeking a new DTV facility, which conflicts with an area-expansion request by an initial DTV licensee.

47. The *First Auction R&O* decided that competitive bidding would not be used to resolve mutually exclusive minor change applications submitted for analog TV stations. We invite comment as to whether the same conclusion would apply in the context of DTV. The *First Auction R&O* noted that analog minor modification applications are infrequently mutually exclusive and involve less significant changes than major modifications. Thus, the Commission held that there would be greater utility in expecting parties to work together to resolve the mutual exclusivity in the rare instances in which minor modification applications become mutually exclusive. NTSC minor change applications only become MX if they involve a site change and become short-spaced with another application. In the case of DTV, MX situations may arise in more cases. Use of engineering criteria to determine interference protection can result in MX situations where stations seek to increase their power or antenna height, even if they do not seek to change their site. With the large number of DTV applications being filed, we do expect that there will be numerous mutual exclusivities involving area-expansion applications.

48. If commenters oppose use of competitive bidding, we invite them to suggest alternative approaches to resolving mutual exclusitivities. Would these alternative methods be permitted under the Balanced Budget Act? Finally, in the event we hold auctions, we propose to use the auction techniques established in the *First Auction R&O*. We invite comment on this approach.

49. *Application Processing/Protection Priority*. We invite comment on what processing priorities we should establish as between DTV area-expansion applications and NTSC applications and rule making petitions. We have determined and reiterated several times that the future of television is DTV. For that reason, in 1996, the Commission decided to stop accepting petitions to add new NTSC channels and applications for new NTSC stations. *See Sixth Further Notice of Proposed Rule Making* in MM Docket No. 87–268 (61 FR 43209, August 21, 1996). Those pending applications for new NTSC stations that were not subject to the TV application freeze were protected by the initial DTV table of allotments. *See Order*, RM–5811 (52 FR 28346, July 29, 1987). Applications for new NTSC stations in the areas subject to the TV freeze and rule making petitions to add new NTSC channels were not protected or otherwise accommodated in the development of the initial DTV table of allotments or subsequent amendments to that initial table. Similarly, NTSC applications for minor changes in existing or authorized stations were not protected or otherwise considered when the DTV table was developed, adopted or amended.

50. The Commission addressed the need for new NTSC station construction permit applications that sought a waiver of the TV application freeze in major markets to amend or propose a substitute channel in the DTV *Second MO&O*. At that time, we decided that those NTSC applications must protect all DTV stations, including authorized DTV stations, facilities requested in DTV station applications, DTV allotments, and rule making proposals to change or add a DTV channel allotment. A recent Public Notice opened a window for amendments or channel change proposals to be submitted for such NTSC freeze-area applications, as well as new NTSC station applications that had not been subject to the freeze, but requested an allotment in the range of channels 60 to 69 and pending petitions for rule making seeking to add an NTSC channel allotment. *See Public Notice* (64 FR 67267, December 1, 1999), Mass Media Bureau Announces Window Filing Opportunity For Certain Pending Applications and Allotment Petitions for New Analog TV Stations. In that processing Public Notice, we also clarified that rule making petitions seeking to add an NTSC channel allotment must protect all DTV stations (including allotments, applications and rule making proposals as listed). NTSC applications for minor changes in authorized stations also must protect all such DTV stations.

51. We have not clarified the extent to which these NTSC petitions and applications could have protection from later-filed DTV applications and at what point such protection should be afforded. It is important to specify such a priority to allow orderly processing and reasonable certainty that an NTSC applicant or petitioner's grant is valid.

52. We note that Congress recently enacted new legislation to provide for Class A TV stations. This legislation establishes the priority such stations would have with respect to DTV and NTSC stations. Public Law 106–113, 113 Stat. 1501 (1999) Making consolidated appropriations for the fiscal year ending September 30, 2000, and for other purposes. Community Broadcasters Protection Act of 1999, section 5008 of Title V of S. 1948, the "Intellectual Property and Communications Omnibus Reform Act of 1999. In order to receive a Class A license, the applicant must show interference protection to:

(i) The predicted Grade B contour (as of the date of enactment of the Community Broadcasters Protection Act of 1999, or November 1, 1999, whichever is later, or as proposed in a change application filed on or before such date) of any television station transmitting in analog format; or

(ii)(A) the digital television service areas provided in the DTV Table of Allotments; (B) the areas protected in the Commission's digital television regulations (47 CFR 73.622(e) and (f)); (C) the digital television service areas of stations subsequently granted by the Commission prior to the filing of a class A application; and (D) stations seeking to maximize power under the Commission's rules, if such station has complied with the notification requirements in paragraph (1)(D)* * *. 47 U.S.C. 336(f)(7)(A). We do not herein discuss the provisions with respect to protection of low power television stations or low power television translator stations as these are not pertinent.

This legislation would thus require Class A stations to protect: (1) TV stations "transmitting in analog format" as of the enactment date, November 29, 1999, or "change" applications filed as of that date; (2) DTV service areas provided by the DTV allotment Table, including DTV service authorized before the filing of a Class A application; and (3) DTV stations seeking to "maximize" their service areas, provided they notify the Commission by December 31, 1999, of their intent to maximize and file their maximization applications by May 1, 2000. In the *Class A NPRM*, we invite comment as to the interpretation and implementation of this priority scheme. The *Class A NPRM*, notes that we are inclined to include among the NTSC facilities that Class A stations must protect stations that are transmitting and stations that are authorized to construct facilities.

53. We invite comment as to whether a similar priority scheme should be adopted as between DTV and NTSC stations, and, if so, what the priorities should be as between DTV and NTSC applications and stations. There are a number of pending new NTSC station and NTSC minor change applications. Some of the pending new NTSC station applications were the subject of competitive bidding in the Commission's broadcast auction this past fall. Should we follow an analogous priority scheme to that established in the new Class A legislation in prioritizing between DTV and NTSC applications? If so, should the reliance interest of the applicants that have participated in the auction and won change the result for these particular applicants? If we should not follow an analogous scheme, what priority scheme should be established and what, if any, cut-off protection should be established to protect new NTSC station applications from last-minute DTV applications and allow NTSC applicants to participate in auctions and plan their facilities? What processing priorities should apply between applications for minor changes in authorized NTSC stations and DTV area-expansion applications?

V. Administrative Matters

54. *Initial Paperwork Reduction Act of 1995 Analysis*. This *NPRM* may contain either proposed or modified information collections. As part of our continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget ("OMB") to take this opportunity to comment on the information collection that might be required, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this *NPRM* (*i.e.*, May 17, 2000); OMB comments are also due May 17, 2000. Comments should address: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room C–1804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov and to Edward C. Springer, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, N.W., Room 10236, NEOB, Washington, DC 20503 or via the Internet to Edward.Springer@omb.eop.gov.

55. *Filing of Comments and Reply Comments*. Pursuant to 47 CFR 1.415, 1.419, interested parties may file comments on or before May 17, 2000, and reply comments on or before June 16, 2000. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings* (63 FR 24121, May 1, 1998).

56. Comments filed through ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment via e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

57. Parties who choose to file by paper must file an original and four copies of each filing. All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW–A325, Washington, D.C. 20554.

58. Parties who choose to file paper should also submit their comments on diskette. These diskettes should be addressed to: Wanda Hardy, Paralegal Specialist, Mass Media Bureau, Policy and Rules Division, Federal Communications Commission, 445 Twelfth Street, S.W., 2–C221, Washington, D.C. 20554. Such a submission should be on a 3.5 inch diskette formatted in an IBM compatible format using Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case (MM Docket No. 00–39), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must sent diskette copies to the Commission's copy contractor, International Transcription Service, Inc., 445 Twelfth Street, S.W., CY–B402, Washington, D.C. 20554.

59. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center, Federal Communications Commission, 445 Twelfth Street, S.W., CY–A257, Washington, D.C. 20554. Persons with disabilities who need assistance in the FCC Reference Center may contact Bill Cline at (202) 418–0270, (202) 418–2555 TTY, or *bcline@fcc.gov*.

60. *Ex Parte Rules*. This proceeding will be treated as a "permit-but-disclose" proceeding subject to the "permit-but-disclose" requirements under § 1.1206(b) of the rules. 47 CFR 1.1206(b), as revised. Ex parte presentations are permissible if disclosed in accordance with Commission rules, except during the Sunshine Agenda period when presentations, ex parte or otherwise, are generally prohibited. Persons making oral ex parte presentations are reminded that a memorandum summarizing a presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. *See* 47 CFR 1.1206(b)(2), as revised. Additional rules pertaining to oral and written presentations are set forth in § 1.1206(b).

61. *Initial Regulatory Flexibility Analysis*. With respect to this *NPRM*, an Initial Regulatory Flexibility Analysis ("IRFA") is contained. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603, the Commission has prepared an IRFA of the possible economic impact on small entities of the proposals contained in this *NPRM*. Written public comments are requested on the IFRA. In order to fulfill the

mandate of the Contract with America

Description and Estimate of the Number

or how many are independently owned

NTSC service replication is achievable

which we expect to lessen small entity

equipment and arrange for construction.

mandate of the Contract with America Advancement Act of 1996 regarding the Final Regulatory Flexibility Analysis, we ask a number of questions in our IRFA regarding the prevalence of small businesses in the television broadcasting industry. Comments on the IRFA must be filed in accordance with the same filing deadlines as comments on the *NPRM*, and must have a distinct heading designating them as a response to the IRFA. The Reference Information Center, Consumer Information Bureau, will send a copy of this *NPRM*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981), as amended.

VI. Ordering Clause

62. Accordingly, pursuant to the authority contained in 47 U.S.C. 4(i) & (j), 303(r), 307, 309, and 336, this *Notice of Proposed Rule Making* is adopted.

63. The Commission's Consumer Information Bureau, Reference Information Center, SHALL SEND a copy of this *Notice of Proposed Rule Making*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

VII. Initial Regulatory Flexibility Analysis

Need for, and Objectives of, the Proposed Rules

65. As required by the Regulatory Flexibility Act, *see* 5 U.S.C. 603 ("RFA"), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible economic impact on small entities by the policies and rules proposed in this Notice of Proposed Rulemaking ("NPRM"). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *NPRM* provided. The Commission will send a copy of the *NPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration. *See* 5 U.S.C. 603(a). In addition, the *NPRM* and the IRFA (or summaries thereof) will be published in the **Federal Register**. *See id.*

Legal Basis

66. This *NPRM* is adopted pursuant to sections 4(i) & (j), 303(r), 307, 309, and 336 of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) & (j), 303(r), 307, 309, and 336.

Description and Estimate of the Number of Small Entities To Which the Proposed Rules Will Apply

67. The RFA directs agencies to provide a description of, and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The Regulatory Flexibility Act defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small business concern" under section 3 of the Small Business Act. A small business concern is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA. This action concerns TV broadcast stations.

68. *Small TV Broadcast Stations.* The SBA defines small television broadcasting stations as television broadcasting stations with $10.5 million or less in annual receipts. There were 1,509 television stations operating in the nation in 1992. That number has remained fairly constant as indicated by the approximately 1,616 operating television broadcasting stations in the nation as of September 1999. For 1992, the number of television stations that produced less than $10.0 million in revenue was 1,155 establishments. Thus, the proposed rule changes will affect approximately 1,616 television stations, approximately 1,244 of which are considered small businesses. These estimates may overstate the number of small entities since the revenue figures on which they are based do not include or aggregate revenues from non-television affiliated companies.

69. *Television Equipment Manufacturers:* Since the Commission had not developed a definition of small entities applicable to manufacturers of television equipment, it decided in its *6th R&O*, to utilize the SBA definition of manufacturers of Radio and Television Broadcasting and Communications Equipment. We will again take that approach here. According to the SBA's regulations, a TV equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 858 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 778 of these firms have fewer than 750 employees and would be classified as small entities. The Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment or how many are independently owned and operated. We conclude that there are approximately 778 small manufacturers of radio and television equipment.

70. *Household/Consumer Television Equipment:* Since the Commission had not developed a definition of small entities applicable to manufacturers of television equipment used by consumers as compared to industrial use by television licensees and related businesses, it decided in its *6th R&O*, to utilize the SBA definition applicable to manufacturers of Household Audio and Visual Equipment. We will again take that approach here. According to the SBA's regulations, a household audio and visual equipment manufacturer must have 750 or fewer employees in order to qualify as a small business concern. Census Bureau data indicates that there are 410 U.S. firms that manufacture radio and television broadcasting and communications equipment, and that 386 of these firms have fewer than 500 employees and would be classified as small entities. The remaining 24 firms have 500 or more employees; however, we are unable to determine how many of those have fewer than 750 employees and therefore, also qualify as small entities under the SBA definition. Furthermore, the Census Bureau category is very broad, and specific figures are not available as to how many of these firms are exclusive manufacturers of television equipment for consumers or how many are independently owned and operated. We conclude that there are approximately 386 small manufacturers of television equipment for consumer/household use.

Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

71. Comments are sought as to whether to explicitly require DTV stations to replicate the coverage areas of their paired analog stations, whether to require enhanced signal strength to the DTV station's city of license, whether to require that broadcasters elect which of their channels will be the DTV channel after the transition at an early date, and how to resolve mutually exclusive DTV and DTV/NTSC applications. The *NPRM* also invites comment on other issues that must be resolved in order to assure a smooth transition, including critical unresolved issues relating to tower siting, copy protection, and cable compatibility and how they affect the progress of the digital transition. With respect to the DTV transmission standard, while the Commission continues to believe that NTSC service replication is achievable by DTV operations using the 8–VSB standard, we recognize that some in the industry, including Sinclair Broadcasting Group, have raised various issues with respect to that standard. Comments are sought on the current status of the 8–VSB DTV standard. We are particularly interested in the progress being made to improve indoor DTV reception under the existing transmission standard and manufacturers' efforts to implement DTV design or chip improvements.

72. Some broadcasters have recommended that the Commission address over-the-air signal reception by setting receiver standards, which we understand to mean performance thresholds (like the UHF noise figure requirement), as opposed to mandatory technology specifications (like the ATSC digital standard itself). Accordingly, comment is sought first on whether we have the authority to set minimum performance levels for DTV receivers. Comment is also sought on the desirability of adopting minimum performance levels, and comments are asked to address how these requirements should be structured, including timing considerations.

Steps Taken to Minimize Significant Impact on Small Entities, and Significant Alternatives Considered

73. We have described various proposals (with alternatives considered) that we believe will accrue to the benefit of the described licensees, including small entity licensees. We seek comment on whether, to further benefit small entity licensees while remaining consistent with the stated objectives of this proceeding, we should utilize some of the alternatives described, or perhaps utilize others that commenters might provide.

74. In order to allow stations a reasonable period to operate with smaller facilities and thus minimize potential burdens, the *NPRM* states that it seems appropriate to delay a replication requirement until at least May 1, 2004, a year after the last stations are required to complete construction. Other options referenced by the *NPRM* as to the date for any required replication include December 31, 2006, or the date the transition actually ends in the station's market, or one year after the station is required to complete construction pursuant to the DTV construction schedule. We seek small entity comments on these alternatives, which we expect to lessen small entity burdens.

75. The *NPRM* states the Commission's tentative belief that it can minimize any increased difficulties that might result from a city grade signal requirement by delaying its implementation. The *NPRM* tentatively proposes that DTV stations that are paired with NTSC stations be required to meet the new principal community requirement by May 1, 2004. As an alternative, the *NPRM* invites comment as to whether the city-grade service requirement should be tied to the construction schedule, with the requirement imposed within a certain period—a year, for example, after construction is scheduled to be completed. For licensees with paired DTV and NTSC stations that intend to operate with DTV on their current NTSC channel after the transition, the *NPRM* proposes that they be required to file a DTV application reflecting that decision by that date. For NTSC stations that do not have a paired DTV station, the *NPRM* proposes that the stronger DTV principal community service be required when they seek to switch to DTV operation. For petitioners seeking a DTV channel change, the *NPRM* proposes to require a showing that the principal community service requirement can be met with the proposed DTV allotment facilities or a commitment to elect their NTSC channel for their post-transition DTV operation. The 2004 date is two years before the end of the transition, and by that point DTV broadcasters should be able to achieve their permanent facilities. That date is at least one year after the deadline for all broadcasters, including noncommercial broadcasters, to complete construction, and commercial broadcasters by that date will have been on the air for at least two years. For these reasons the Commission believes that it would not be unduly onerous to implement a requirement for a higher principal community service contour at this date. The *NPRM* invites comment on these proposals and asks commenters to address whether other measures are necessary in addition to or as an alternative to these proposals to address the Commission's concerns.

76. The *NPRM* tentatively concludes that it is now time to begin setting up a process to assure early election by DTV stations of their post-transition channel. Stations making the channel conversion at the end of the transition will need time to plan facilities, order equipment and arrange for construction. The *NPRM* states that, with the target date for the end of the transition set for December 31, 2006, it seems reasonable to identify the channels these stations will be moving to not later than 2004. To accomplish this, the *NPRM* states that we could require DTV licensees to make a binding decision and elect one of their two core channels by early 2004, at the latest and suggests imposing May 1, 2004 as the deadline for election. This date would allow at least one year of DTV operation pursuant to our staggered construction schedule (with noncommercial educational TV stations provided the longest time to construct and required to complete construction by May 1, 2003). The *NPRM* seeks comment on whether this date represents the proper balance between the goals of allowing DTV stations enough time to gain experience with DTV operation and allowing stations that must move enough time to plan for their DTV channel conversion. The *NPRM* invites comment as to whether we are required to impose an earlier date based on recent legislation requiring identification of 175 additional DTV channels within 18 months of the law's enactment.

77. To the extent the Commission may adopt performance thresholds for DTV receivers, the Commission has requested comment on timing considerations, which will enable it to take into account potential burdens that may otherwise be placed on small entity manufacturers of these receivers. In contrast, any action taken with respect to the DTV transmission standard (specifically in connection with the 8–VSB standard) will have only an indirect effect on manufacturers of television equipment designed for use by the industry. Nevertheless, the comment sought in the *NPRM* is broad enough to provide the Commission with sufficient opportunity to address this issue.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

78. None.

List of Subjects in 47 CFR Part 73.

Television broadcasting.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7130 Filed 3–22–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

account information for direct deposit

due to flooding during the 1990

Affected Public: Individuals or

Notices

Federal Register
Vol. 65, No. 57
Thursday, March 23, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 17, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Animal and Plant Health Inspection Service

Title: Scrapie Flock Certification, Animal Identification, and Indemnification Procedures.

OMB Control Number: 0579–0101.

Summary of Collection: Title 21, U.S.C. authorizes sections 111, 114, 114a, 114–1, 115, 120, 121, 125, 126, 134a, 134C, 134f, and 134g, of 21 U.S.C. These authorities permit the Secretary to prevent, control and eliminate domestic diseases such as scrapie, and other domestic diseases, as well as to take actions to prevent and to manage exotic diseases such as hog cholera, African swine fever, and other foreign diseases. Disease prevention is the most effective method for maintaining a healthy animal population and enhancing our ability to compete in exporting animals and animal products. Scrapie is a progressive degenerative disease of the central nervous system of sheep and goats. The disease develops slowly, with an incubation period lasting from months to years. The Animal and Plant Health Inspection Service (APHIS) will collect information using forms VS 5–18, 5–21, 5–22, and 5–23.

Need and Use of the Information: APHIS will collect information from flock owners that include the following: flock owner's name, address, telephone, location of flock, number of flock, animals identification, and destination or origin. The information will help in identifying and eliminating infected animals or herds in order to prevent the disease from spreading. If the information is not collected the Scrapie Flock Certification Program could not be conducted and this could cause the disease to spread throughout the United States.

Description of Respondents: Farms; business or other for-profit; Federal Government; State, Local or Tribal Government.

Number of Respondents: 1,081.

Frequency of Responses: Recordkeeping; Reporting; On occasion.

Total Burden Hours: 15,846.

Farm Service Agency

Title: ELS Cotton Competitiveness Payment Program.

OMB Control Number: 0560–NEW.

Summary of Collection: The Consolidated Appropriations Act for FY 2001 (Pub. L. 106–113) authorized the ELS Cotton Competitiveness Payment Program. The objective of Congress in authorizing ELS cotton competitiveness payments was to help ensure the U.S. grown ELS cotton would remain competitive in world trade, particularly in the face of subsidies being offered by other producing countries. The program is designed so that competitiveness payments would trigger in response to deterioration in the competitive position of U.S. grown ELS cotton in relation to foreign ELS cotton growths. The Farm Service Agency (FSA) will collect information using forms CCC–1045A and CCC–1045–2.

Need and Use of the Information: FSA will collect the name of exporter, address or recordkeeping office, and taxpayer I.D. The information will be collected to determine the eligibility of the manufacture to receive payment, the eligibility of the cotton on which a claim for payment is based, the appropriate payment rate and the value of the payment. If the information is not payment inaccuracies could occur.

Description of Respondents: Business or other for-profit.

Number of Respondents: 40.

Frequency of Responses: Reporting: Weekly.

Total Burden Hours: 780.

Agency is requesting an emergency approval by 3/27/00.

Farm Service Agency

Title: Cottonseed Payment Program Application/Certification.

OMB Control Number: 0560–NEW.

Summary of Collection: The Consolidated Appropriation Act for FY 2000 provides authority for the Secretary of Agriculture to provide assistance to producers or first handlers of the 1999 crop of cottonseed. This authority is being used to implement a new program because of the continuing low prices of cottonseed that, in some cases, have been passed along to cotton producers in the form of increased ginning fees. The application form for which approval is requested, CCC Cotton A–6, will identify potential payment recipients and serve as their request for payments.

Need and Use of the Information: FSA will collect the following information: (1) Applicant name, address, and a contact person and phone; (2) bank account information for direct deposit payment (account name, number, routing number); (3) the gin 5-digit identifying code; (4) the numbers of bales of cotton ginned from the 1999 cotton crop according to the Agricultural Marketing Service (AMS) and certified as correct by the applicant; and (5) the weight (in pounds) of cotton lint of the reported bales for which payment is requested. The proposed information collection is the application and certification form to be used by cotton gins to request payments under the Cottonseed Payment Program. The information will be used to determine the national payment rate and to compute individual program payment amounts for each applicant.

Description of Respondents: Business or other for-profit.

Number of Respondents: 1100.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 733.

Agency is requesting an emergency approval by 3/17/00.

Farm Service Agency

Title: Emergency Assistance for Harney County, Oregon—7 CFR 1478.

OMB Control Number: 0560–NEW.

Summary of Collection: On November 29, 1999, the President signed H.R. 3194, Pub. L. 106–113 (113 Stat. 1501) (Act), which provides under Section 207 of this Act, the Secretary of Agriculture discretionary authority to use not more than $1,090,000 to provide for losses to producers who suffered flood-related crop and forage during 1999. The program will provide compensation to approximately 40 producers whose land was inaccessible for incapable of crop production, grazing, or haying at any time during the 1999 calendar year. The Farm Service Agency (FSA) will collect information using form CCC–454.

Need and Use of the Information: FSA will collect information to determine if: (1) Producers incurred crop, forage, and grazing losses during the 1999 calendar year; (2) producers were under obligation due to a binding lease to make a fair market value rental payment for flooded land for crop year 1999; (3) producers had land that was inaccessible or incapable of crop production, haying, or grazing due to flooding during the 1990 calendar year.

The information collected will be used by the County Committee to determine whether flooding causing loss of production and/or grazing during the 1999 calendar year. If the producer does not provide the information to accurately substantiate that the flooded land has been inaccessible or incapable of crop production, haying, or grazing due to flooding during the 1990 calendar year, the producers will not be able to receive assistance under the program.

Description of Respondents: Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 40.

Frequency of Responses: Reporting: Other (one-time).

Total Burden Hours: 80.

Agency is requesting an emergency approval by 3/31/00.

William McAndrew,

Departmental Clearance Officer.

[FR Doc. 00–7159 Filed 3–22–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census 2000 Content Reinterview Survey.

Form Number(s): D–1010.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 20,000 hours.

Number of Respondents: 30,000.

Avg. Hours Per Response: 20 minutes.

Needs and Uses: As part of its plan to evaluate the quality of data collected in the Census 2000, the Census Bureau plans to conduct the Census 2000 Content Reinterview Survey (CRS). The evaluation of the quality of data collected in the Census 2000 is important for both data users and census planners. Data users must have knowledge of the accuracy and reliability of the data in order to make informed decisions about how errors in the data may affect the conclusions they draw from analyzing the data. Census planners require similar information to develop and test methods to improve the overall quality of the data produced in future censuses.

The purpose of the CRS is twofold. First, it will be used to estimate response variance for most items on the census long form. To measure response variance, the reinterview will re-ask the same set of questions applying, to the extent possible, similar survey procedures and replicating a similar set of conditions. Secondly, the reinterview will be used to make historical comparisons to previous studies of census content error.

Affected Public: Individuals or households.

Frequency: One-time.

Respondent's Obligation: Mandatory.

Legal Authority: Title 13 U.S.C., Sections 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 16, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–7136 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration

National Defense Stockpile Market Impact Committee Request for Public Comments

AGENCY: Office of Strategic Industries and Economic Security, Bureau of Export Administration, Department of Commerce.

ACTION: Notice of request for public comment on the potential market impact of proposed disposal of excess commodities currently held in the National Defense Stockpile.

SUMMARY: This notice is to advise the public that the National Defense Stockpile Market Impact Committee (co-chaired by the Departments of Commerce and State) is seeking public comment on the potential market impact of the Department of Defense proposed revisions to the disposal levels for Columbium Concentrates, Mica (All Forms), Palladium, Sebacic Acid, and Tantalum Minerals under the Fiscal Year 2000 and proposed Fiscal Year 2001 Annual Materials Plans (AMPs).

DATES: Comments must be received by April 24, 2000.

ADDRESSES: Written comments should be sent to Richard V. Meyers, Co-Chair, Stockpile Market Impact Committee, Office of Strategic Industries and Economic Security, Room 3876, U.S.

Department of Commerce, 14th Street

The FY 1993 NDAA directs the

impact of the sale of these commodities,

[FR Doc. 00–7249 Filed 3–22–00; 8:45 am]

Corporation (FMEC) and Shandong Machinery Import and Export

we are amending our final results of

Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; FAX (202) 482–5650.

FOR FURTHER INFORMATION CONTACT: Richard V. Meyers, Office of Strategic Industries and Economic Security, U.S. Department of Commerce, (202) 482–3634; or Stephen H. Muller, Office of International Energy and Commodity Policy, U.S. Department of State, (202) 647–3423; co-chairs of the National Defense Stockpile Market Impact Committee.

SUPPLEMENTARY INFORMATION: Under the authority of the Strategic and Critical Materials Stock Piling Act of 1979, as amended, (50 U.S.C. 98 *et seq.*), the Department of Defense (DOD), as National Defense Stockpile Manager, maintains a stockpile of strategic and critical materials to supply the military, industrial, and essential civilian needs of the United States for national defense.

Section 3314 of the Fiscal Year (FY) 1993 National Defense Authorization Act (NDAA) (50 U.S.C. 98h7–1) formally established a Market Impact Committee (the Committee) to "advise the National Defense Stockpile Manager on the projected domestic and foreign economic effects of all acquisitions and disposal of materials from the stockpile * * * ". The Committee must also balance market impact concerns with the statutory requirement to protect the Government against avoidable loss.

The Committee is comprised of representatives from the Departments of Commerce, State, Agriculture, Defense, Energy, Interior, Treasury, and the Federal Emergency Management Agency, and is co-chaired by the Departments of Commerce and State.

The FY 1993 NDAA directs the Committee to "consult from time to time with representatives of producers, processors and consumers of the types of materials stored in the stockpile."

The Committee is now considering the DOD proposed revisions to the disposal levels of Columbium Concentrates, Mica (All Forms), Palladium, Sebacic Acid, and Tantalum Minerals in the FY 2000 and proposed FY 2001 AMPs as set forth in Attachment 1 to this Notice. In order for the Committee to obtain sufficient information to prepare its recommendations to DOD on these proposed revisions, the Committee requests that interested parties provide comment on the potential market impact of the proposed revisions.

The quantities of each material listed in Attachment 1 are not sales target disposal quantities. They are only a statement of the proposed maximum disposal quantity of each listed material that may be sold in a particular fiscal year. The quantity of each material that will actually be offered for sale will depend on the market for the material at the time, as well as on the quantity of material approved for disposal by Congress.

The Committee requests that interested parties provide written comments, supporting data and documentation, and any other relevant information on the potential market impact of the sale of these commodities. Although comments in response to this Notice must be received by April 24, 2000, to ensure full consideration by the Committee, interested parties are encouraged to submit additional comments and supporting information at any time thereafter to keep the Committee informed as to the market impact of the sale of these commodities. Public comment is an important element of the Committee's market impact review process.

Public comments received will be made available at the Department of Commerce for public inspection and copying. Information that is national security classified or business confidential will be exempted from public disclosure. Anyone submitting business confidential information should clearly identify the business confidential portion of the submission and also provide a non-confidential submission that can be placed in the public file. Communications from agencies of the United States Government will not be made available for public inspection.

The public record concerning this notice will be maintained in the Bureau of Export Administration's Records Inspection Facility, Room 4525, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230, telephone (202) 482–5653. The records in this facility may be inspected and copied in accordance with the regulations published in Part 4 of Title 15 of the Code of Federal Regulations (15 CFR 4.1 *et seq.*).

Information about the inspection and copying of records at the facility may be obtained from Ms. Margaret Cornejo, the Bureau of Export Administration's Freedom of Information Officer, at the above address and telephone number.

Dated: March 20, 2000.

R. Roger Majak,

Assistant Secretary for Export Administration.

Attachment

Material	Units	Current FY 2000 and proposed FY 2001 quantity	Revised FY 2000 and proposed FY 2001 quantity
Columbium Concentrates	LB Cb	FY 2000, 200,000. FY 2001, 250,000.	375,000
Mica (All Forms)	LB	2,260,000	4,000,000
Palladium	TR Oz	200,000	300,000
Sebacic Acid	LB	400,000	600,000
Tantalum Minerals	LA Ta	200,000	300,000

[FR Doc. 00–7249 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

A–570–803

Heavy Forged Hand Tools From the People's Republic of China; Amended Final Results of Antidumping Duty Administrative Reviews in Accordance with Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of amended final results of antidumping duty administrative reviews in accordance with court decision.

SUMMARY: On February 17, 1999, the Court of International Trade (CIT) affirmed the second remand determination of the Department of Commerce (the Department) arising from the administrative reviews of the antidumping duty orders on heavy forged hand tools (HFHTs) from the People's Republic of China (PRC). *See Olympia Industrial, Inc.*, v. *United States*, Slip Op. 99–18, 36 F. Supp. 2d 414 (CIT 1999). As there is now a final and conclusive court decision in this segment, we are amending the final results of reviews in this matter and will instruct the U.S. Customs Service to liquidate entries subject to these amended final results.

EFFECTIVE DATE: March 23, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Strollo or Maureen Flannery, Antidumping/Countervailing Duty Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–5255 and (202) 482–3020, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 1, 1991, the Department issued antidumping duty orders on HFHTs from the PRC. *See Antidumping Duty Orders: Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles from the People's Republic of China*, 56 FR 6622 (February 19, 1991) (*Antidumping Duty Orders*). On September 22, 1995, the Department published its final results of the second administrative reviews of HFHTs for two PRC exporters, Fujian Machinery and Equipment Import and Export Corporation (FMEC) and Shandong Machinery Import and Export Corporation (SMC). *See Heavy Forged Hand Tools from the People's Republic of China; Final Results of Antidumping Duty Administrative Reviews*, 60 FR 49251 (September 22, 1995) (*Final Results*).

On April 10, 1997, the CIT issued an order remanding these final results to the Department. *See Olympia Indus., Inc.* v. *United States*, Slip Op. 97–44, 1999 Ct. Int'l Trade Lexis 43 (April 10, 1997). The CIT instructed the Department to (1) assess the reliability of PRC trading company data for valuing steel inputs used to produce HFHTs during the period of review (POR) and (2) calculate inland freight expenses based on the longest distance between input suppliers to the factory.

On July 21, 1997, in accordance with the CIT's remand order, the Department filed its final results pursuant to remand. *See Final Results of Redetermination Pursuant to Court Remand* (July 21, 1997). In considering the Department's remand determination, the CIT sustained Commerce's recalculation of inland freight expenses. The CIT, however, found unreasonable the Department's rejection of the PRC import data without having assessed its reliability. As a result, the CIT again remanded the results so that the Department might consider whether the PRC trading companies' steel input data was the best information available to value the factors of production. *Olympia Industrial, Inc.* v. *United States*, Slip Op. 98–49, 7 F. Supp. 2d 997 (CIT 1998).

On August 31, 1998, in accordance with the CIT's second remand order, the Department filed its second final results pursuant to remand. *See Final Results of Redetermination Pursuant to Court Remand, Olympia Indus., Inc.* v. *United States* (August 31, 1998). In this redetermination, the Department first examined the pricing data regarding steel inputs imported into the PRC. The Department determined that the prices paid by the trading company for these imported steel inputs were aberrationally low. Therefore, the Department determined that the PRC trading company pricing data were unreliable and, hence, unacceptable for purposes of valuing the steel inputs used to produce the HFHTs. On February 17, 1999, the CIT upheld the Department's second redetermination on remand. *Olympia Industrial, Inc.* v. *United States*, 36 F. Supp. 2d 414. Neither party appealed the CIT's decision.

There is now a final and conclusive court decision in this action; therefore, we are amending our final results of review for the period February 1, 1992 through January 31, 1993. We recalculated margins on each product category for FMEC and SMC. The revised weighted average margins are as follows:

Manufacturer/Exporter	Margin (percent)
Fujian Machinery & Equipment Import & Export Corp.:	
Axes/Adzes	14.23
Bars/Wedges	47.88
Hammers/Sledges	27.71
Picks/Mattocks	89.70
Shandong Machinery Import & Export Corp.:	
Axes/adzes	14.23
Bars/Wedges	33.87
Hammers/Sledges	22.44
Picks/Mattocks	36.62

Accordingly, the Department will determine, and the Customs Service will assess, anticumping duites on all entries of subject merchandise from FMEC and SMC in accordance with these amended final results. For assessment purposes, we have calcualted importer-specific duty assessment rates for each class or kind of merchandise based on the ratio of the total amount of anticumping duties calculated for the examined sales furing the POR to the total quantity of sales examined during the POR. The Department will issue appraisement instructions directly to Customs. The above rate will not affect FMEC or SMC's cash deposit rates currently in effect, which continue to be based on the margins found to exist in the most recent completed review.

This notice is published in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 351.221.

Dated: March 15, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–7236 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application to amend certificate.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application to amend an Export Trade Certificate of Review

("Certificate"). This notice summarizes the proposed amendment and requests comments relevant to whether the amended Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration by phone at (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether an amended Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice in writing to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, D.C. 20230, or transmitted by E-mail to oetca@ita.doc.gov. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 97–3A003."

The Association for the Administration of Rice Quotas, Inc. ("AARQ") original Certificate was issued on January 21, 1998 (63 FR 4223, January 28, 1998) and lastly amended on September 4, 1998 (63 FR 53013 October 2, 1998). A summary of the application for an amendment follows.

Summary of the Application

Applicant: The Association for the Allocation of Rice Quotas, Inc. ("AARQ"), c/o Thomas Ferrara, AC HUMKO CORP., 7171 Goodlett Farms Parkway, Cordova, Tennessee 38018–4909.

Contact: M. Jean Anderson, Esquire; Telephone: (202) 682–7217.

Application No.: 97–3A003.

Date Deemed Submitted: March 10, 2000.

Proposed Amendment: AARQ seeks to amend its Certificate to:

1. Add the following companies as new "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): ADM Latin, Inc., Decatur, Illinois, and ADM Rice, Inc., Tarrytown, New York (subsidiaries of Archer Daniels Midland Company); AFE (USA), Inc., Houston, Texas; California Commodity Traders, LLC, Sacramento, California; California Pacific Rice Milling, Ltd., Arbuckle, California; Family & Sons, Inc., Miami, Florida; Far West Rice, Inc., Durham, California; Glencore Ltd., Stamford, Connecticut (a subsidiary of Glencore International AG), for the activities of Glencore Grain Division and Glencore Ltd.'s subsidiary, LaGrain International Inc., Baton Rouge, Louisiana; Incomar Texas, Ltd. and its subsidiary, Gulf Rice Arkansas, LLC, Houston, Texas; International Grain Brokerage, LLC, Yuba City, California; JFC International Inc., San Francisco, California (a subsidiary of Kikkoman Corp.); Kitoku America, Inc., Davis, California (a subsidiary of Kitoku Co., Ltd.); Mermentau Rice, Inc., Mermentau, Louisiana; Nishimoto Trading Company, Ltd., Los Angeles, California (a subsidiary of Nishimoto Trading Company, Ltd. (Japan)); PS International, Ltd., Durham, North Carolina; Texana Rice, Inc., Houston, Texas; Wehah Farm, Inc., dba Lundberg Family Farms, Richvale, California;

2. Delete the following companies as "Members" of the Certificate within the meaning of section 325.2(1) of the Regulations (15 CFR 325.2(1)): Broussard Rice Mill, Inc.; Cargill, Inc., for the activities of its division, Cargill Rice Milling; Cargill Rice, Inc.; and Gulf Rice Arkansas, Inc.;

3. Change the listings of the current Members as follows: "AC HUMKO, Corp. for the activities of AC HUMKO Rice Specialties, Brinkley Rice Milling Company, and El Campo Rice Milling Company, Dallas, Texas" should be amended to read "AC HUMKO Corp., Cordova, Tennessee;" "Busch Agricultural Resources, Inc., St. Louis, Missouri" and "Pacific International Rice Mills, Inc., Woodland, California" should be amended to read "Busch Agricultural Resources, Inc., St. Louis, Missouri, and its subsidiary, Pacific International Rice Mills, Inc., Woodland, California;" "Continental Grain Company, New York, New York" should be amended to read "ContiGroup Companies, Inc., New York, New York;" "Gulf Rice Milling, Inc." and "Gulf Pacific Rice Co., Inc." should be amended to read "Gulf Pacific, Inc., and its subsidiaries, Gulf Pacific Rice Co., Inc., and Gulf Rice Milling, Inc., Houston, Texas;" and "The Connell Company for the activities of Connell Rice & Sugar Co. and Connell International Co." should be amended to read "The Connell Company, Westfield, New Jersey."; and

4. Amend the portion of its Certificate entitled "Export Markets" to reflect that, because of the dissolution of the Trust Territory of the Pacific Islands and the formation of several independent nations therefrom, export markets that will serve as the basis for distribution of bid proceeds may include the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

Dated: March 20, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–7233 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs ("OETCA"), International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Morton Schnabel, Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482–5131 (this is not a toll-free number) or E-mail at oetca@ita.doc.gov.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001–21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. If the comments include any privileged or confidential business information, it must be clearly marked and a nonconfidential version of the comments (identified as such) should be included. Any comments not marked privileged or confidential business information will be deemed to be nonconfidential. An original and five copies, plus two copies of the nonconfidential version, should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1104H, Washington, D.C. 20230, or transmit by E-mail at oetca@ita.doc.gov. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). However, nonconfidential versions of the comments will be made available to the applicant if necessary for determining whether or not to issue the Certificate. Comments should refer to this application as "Export Trade Certificate of Review, application number 00–00001." A summary of the application follows.

Summary of the Application

Applicant: North America Export Trading, LLC ("NAXT"), 28746 Calle Vista, Laguna Niguel, California 92677. Contact: Sharleen Maldonado, President, Telephone: (562) 434–5408.

Application No.: 00–00001.

Date Deemed Submitted: March 13, 2000.

Members (in addition to applicant): None.

North America Export Trading, LLC seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. *Products*—All products.
2. *Services*—All services.
3. *Technology Rights*—Technology Rights, including, but not limited to, patents, trademarks, copyrights and trade secrets that relate to Products and Services.
4. *Export Trade Facilitation Services (as they Relate to the Export of Products, Services and Technology Rights)*—Export Trade Facilitation Services, including, but not limited to: professional services in the areas of government relations and assistance with state and federal export programs; foreign trade and business protocol; consulting; market research and analysis; collection of information on trade opportunities; marketing; negotiations; joint ventures; shipping and export management; export licensing; advertising; grantsmanship; documentation and services related to compliance with customs requirements; insurance and financing; bonding; warehousing; export trade promotion; trade show exhibitions and organization; organizational development; management and labor strategies; transfer of technology; transportation; and facilitating the formation of shippers' associations.

Export Markets

The Export Markets include all parts of the world except the United States, (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

The proposed Export Trade Certificate of Review would extend antitrust protection to NAXT to conduct the following export trade activities:

1. Provide and/or arrange for the provision of Export Trade Facilitation Services;
2. Engage in promotion and marketing activities and collect and distribute information on trade opportunities in Mexico, Latin America, and all other Export Markets allowable;
3. Enter into exclusive and/or non-exclusive agreements with distributors, foreign buyers, and/or sales representatives in Export Markets;
4. Enter into exclusive or non-exclusive sales agreements with Suppliers, Export Intermediaries, or other persons for the sale of Products, and Services;
5. Enter into exclusive or non-exclusive licensing agreements with Suppliers, Export Intermediaries, or other persons for licensing Technology Rights in Export Markets;
6. Allocate export orders among Suppliers;
7. Allocate the sales, export order and/or divide Export Markets, among Suppliers, Export Intermediaries, or other persons for the sale and maintenance of Products and Services;
8. Allocate the licensing of Technology Rights among Suppliers, Export Intermediaries, or other persons;
9. Establish the price of Products and Services for sale in Export Markets;
10. Establish the fee for licensing of Technology Rights in Export Markets, as well as maintenance and financing commitments;
11. Negotiate, enter into, and/or manage licensing agreements and long-term purchase arrangements involving the export of Technology;
12. Provide extensive intergovernmental services to facilitate the grants and funding involvement of public and nongovernmental funding sources for private sector benefits in term of export activity for goods and services.

Dated: March 20, 2000.

Morton Schnabel,

Director, Office of Export Trading Company Affairs.

[FR Doc. 00–7235 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032000B]

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Northwest Region Federal Fisheries Permits.

Agency Form Number(s): None.

OMB Approval Number: 0648–0203.

Type of Request: Revision of a currently approved collection.

Burden Hours: 605.

Number of Respondents: 796.

Average Hours Per Response: Ranges between 20 minutes and 1 hour depending on the requirement.

Needs and Uses: This submission supports a request for renewal of the

Northwest region Federal Fisheries Permits. Under the Fishery Management Plan, there are three (3) types of permits issued for the groundfish fishery off the states of Washington, Oregon, and California. These include the experimental fishing permits; limited entry permits; and at sea-processors. In addition, there is a permit requirement for mothership processing vessels over 125 feet. The information requested in the permit application form is used by several offices of the National Marine Fisheries Service (NMFS), and the U.S. Coast Guard and state fishery enforcement agencies under contract to NMFS. This information may be used in developing management measures and to control fishing effort.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: March 16, 2000.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–7216 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.031400C]

Marine Fisheries Advisory Committee; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: Notice is hereby given of meetings of the Marine Fisheries Advisory Committee (MAFAC) from April 18 - 20, 2000.

DATES: The meetings are scheduled as follows:

1. April 18, 2000, 8:00 a.m. - 5:00 p.m.
2. April 19, 2000, 8:00 a.m. - 5:00 p.m.
3. April 20, 2000, 8:00 a.m. - 3:00 p.m.

ADDRESSES: The meetings will be held at The Westin Francis Marion Hotel, 387 King Street, Charleston, South Carolina. Requests for special accommodations may be directed to MAFAC, Office of Operations, Management and Information, NMFS, 1315 East-West Highway, Silver Spring, Maryland 20910.

FOR FURTHER INFORMATION CONTACT: Elizabeth Lu Cano, Designated Federal Officer; telephone: (301) 713–2252.

SUPPLEMENTARY INFORMATION: As required by section 10(a) (2) of the Federal Advisory Committee Act, 5 U.S.C. App. (1982), notice is hereby given of meetings of MAFAC and MAFAC Subcommittees. MAFAC was established by the Secretary of Commerce (Secretary) on February 17, 1972, to advise the Secretary on all living marine resource matters that are the responsibility of the Department of Commerce. This Committee ensures that the living marine resource policies and programs of the Nation are adequate to meet the needs of commercial and recreational fisheries, and of environmental, state, consumer, academic, and other national interests.

Matters to Be Considered

April 18, 2000

Multi-Disciplinary Science, Legislative, Budget, and Fisheries Overcapacity Subcommittee Meetings

April 19, 2000

Outreach/Communications Work Group and Vessel Monitoring Work Group Meeting, Steering Committee Views Paper Scoping Meeting, and TEAMWARE: Quick Place Program Presentation

April 20, 2000

Steering, Budget, Legislative, Multi-Disciplinary Science and Fisheries Overcapacity Committees, and Vessel Monitoring Systems, and Outreach/Communications Work Groups Reports and Recommendations

Time will be set aside for public comment on agenda items.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to MAFAC (see **ADDRESSES**).

Dated: March 16, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator, National Marine Fisheries Service.

[FR Doc. 00–7217 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032000D]

Mid-Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and the Atlantic States Marine Fisheries Commission's Summer Flounder, Scup and Black Sea Bass Board will hold a public meeting.

DATES: The meeting will be held on Wednesday, April 5, 2000, from 1:00–4:00.

ADDRESSES: This meeting will be held at the Radisson Hotel, 901 N. Fairfax Street, Alexandria, VA; telephone: 703–683–6000.

Council address: Mid-Atlantic Fishery Management Council, 300 S. New Street, Dover, DE 19904; telephone: 302–674–2331.

FOR FURTHER INFORMATION CONTACT: Daniel T. Furlong, Executive Director, Mid-Atlantic Fishery Management Council; telephone: 302–674–2331, ext. 19.

SUPPLEMENTARY INFORMATION: The Council and Board will propose and address possible scup management measures for the summer 2000 fishery.

Although non-emergency issues not contained in this agenda may come before the Council and Commission for discussion, these issues can not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other

auxiliary aids should be directed to Joanna Davis at the Council (see ADDRESSES) at least 5 days prior to the meeting date.

Dated: March 20, 2000.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7250 Filed 3–22–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 24, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 17, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Department of Education

Type of Review: Reinstatement.

Title: Even Start Family Literacy Program for Federally Recognized Indian Tribes and Tribal Organizations.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 30. Burden Hours: 450.

Abstract: The Even Start Family Literacy program for federally recognized Indian tribes and tribal organizations is designed to help break the cycle of proverty by integrating early childhood education, adult literacy or adult basis education, and parenting education into a unified family literacy program for families with young children (ages 0 through seven) most-in-need of family literacy services. Program funds are awarded through competitive grant process. The agency needs the information in the application to determine which projects should be funded. Respondents are federally recognized Indian tribes and tribal organizations.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7165 Filed 3–22–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 24, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 17, 2000.

William Burrow,

Leader, Information Management GroupOffice of the Chief Information Officer.

Office Of Student Financial Assistance Programs.

Type of Review: Extension.

Title: Student Assistance General Provisions—Subpart K—Cash Management.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions; Individuals or households.

Reporting and Recordkeeping Hour Burden: Responses: 6,576. Burden Hours: 1,214,241.

Abstract: These regulations comprise the existing provisions of the Student Assistance General Provisions guidance regarding cash management. Information collection under these regulations relates to cash management requirements and practices for institutions participating in the Title IV, Higher Education Act (HEA) programs.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346.

Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7166 Filed 3–22–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.069]

Office of Student Financial Assistance; Leveraging Educational Assistance Partnership Program and Special Leveraging Educational Assistance Partnership Program

AGENCY: Department of Education.

ACTION: Notice of the closing date for receipt of State applications for fiscal year 2000.

SUMMARY: The Secretary of Education (Secretary) gives notice of the closing date for receipt of State applications for fiscal year 2000 funds under the Leveraging Educational Assistance Partnership (LEAP) and Special Leveraging Educational Assistance Partnership (SLEAP) programs. The LEAP Program, through matching formula grants to States, provides grant aid to students with substantial financial need to help them pay for their postsecondary education costs.

The SLEAP Program, through matching formula grants to States: (1) Provides aid to students with financial need to help them pay for their postsecondary education costs; or (2) helps the State to carry out service programs to strengthen the opportunities for elementary and secondary students with financial need to enter postsecondary education. Both the LEAP and SLEAP programs support Goals 2000, the President's strategy for moving the Nation toward the National Education Goals, by enhancing opportunities for postsecondary education. The National Education Goals call for increasing the rate at which students graduate from high school and pursue high quality postsecondary education.

Under section 415C(a) of the Higher Education Act of 1965, as amended (HEA), a State must submit an application to participate in the LEAP and SLEAP programs through the State agency that administered its LEAP Program as of July 1, 1985, unless the Governor of the State has subsequently designated, and the Secretary has approved, a different State agency to administer the LEAP Program.

The Secretary is authorized to accept applications from the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Virgin Islands.

Authority for the LEAP and SLEAP programs is contained in sections 415A through 415F of the HEA.

Closing Date for Transmittal of Applications: Applications for fiscal year 2000 LEAP and SLEAP funds must be mailed or hand-delivered by May 15, 2000.

Application Forms: The Office of Student Financial Assistance Programs mails the required application forms for receiving LEAP and SLEAP funds to officials of the appropriate State agency in each State or territory at least 30 days before the closing date.

Applications Delivered by Mail: An application sent by mail must be addressed to: Mr. Greg Gerrans, Financial Partners, U.S. Department of Education, Office of Student Financial Assistance Programs, 7th and D Streets, S.W., ROB–3, Room 4616, Washington, DC 20202.

The Secretary accepts the following proof of mailing

(1) A legibly dated U.S. Postal Service postmark;

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service;

(3) A dated shipping label, invoice, or receipt from a commercial carrier; or (4) Any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark; or

(2) A mail receipt that is not dated by the U.S. Postal Service.

The Department of Education encourages applicants to use certified or at least first-class mail.

A late applicant cannot be assured that its application will be considered for fiscal year 2000 funding.

Applications Delivered By Hand: Applications that are hand-delivered must be taken to Mr. Greg Gerrans, Financial Partners, U.S. Department of Education, Office of Student Financial Assistance Programs, 7th and D Streets, S.W., ROB–3, Room 4616, Washington, DC. Hand-delivered applications will be accepted between 8 a.m. and 4:30 p.m. daily (Eastern time), except Saturdays, Sundays, and Federal holidays.

Applications that are hand-delivered will not be accepted after 4:30 p.m. on the closing date and cannot be assured of consideration.

Program Information: Section 415C(a) of the HEA requires that an annual application be submitted for a State or territory to receive LEAP and SLEAP funds. In preparing the application, each State agency should be guided by the table of allotments provided in the application package. State allotments are determined according to the statutorily mandated formula under section 415B of the HEA and are not negotiable. A State may also request its share of reallotment, in addition to its basic allotment, which is contingent upon the availability of such additional funds.

In fiscal year 1999, 47 States, the District of Columbia, American Samoa, Guam, Northern Mariana Islands, Puerto Rico, the Trust Territory (Palau), and the Virgin Islands received funds under the LEAP Program.

Applicable Regulations: The following regulations are applicable to the LEAP Program:

(1) The LEAP Program regulations in 34 CFR part 692.

(2) The Student Assistance General Provisions in 34 CFR part 668.

And the following regulations are applicable to both the LEAP and SLEAP programs:

(3) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 75.60 through 75.62 (Ineligibility of Certain Individuals to Receive Assistance), part 76 (State-Administered Programs), part 77 (Definitions That Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), part 86 (Drug-Free Schools and Campuses) and parts 97, 98, and 99 (Protection of Human Subjects).

FOR FURTHER INFORMATION CONTACT: For further information contact Mr. Greg Gerrans, Program Specialist, Financial Partners, U.S. Department of Education, Office of Student Financial Assistance Programs, 7th and D Streets, S.W., ROB–3, Room 4616, Washington, DC 20202; telephone (202) 401–2280. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8393.

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(Authority: 20 U.S.C. 1070c *et seq.*)

Dated: March 17, 2000.

Greg Woods,

Chief Operating OfficerOffice of Student Financial Assistance Programs.

[FR Doc. 00–7253 Filed 3–22–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket Nos. EA–176–A]

Application to Export Electric Energy; Sempra Energy Trading Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Application.

SUMMARY: Sempra Energy Trading Corp. (SET) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 27, 2000.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On March 25, 1998, the Office of Fossil Energy (FE) of the Department of Energy issued Order No. EA–176 authorizing SET to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities owned and operated by San Diego Gas & Electric Company. That two-year authorization will expire on March 25, 2000.

On February 28, 2000, SET filed an application with FE for renewal of the export authority contained in Order No. EA–176. SET has requested that the authorization be issued for a five-year term and that the international transmission facilities of the El Paso Electric Company, Central Power and Light Company, and the Comision Federal de Electricidad, the national electric utility of Mexico, be added to the list of authorized export points.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on SET's request to export to Mexico should be clearly marked with Docket EA–176–A. Additional copies are to be filed directly with Michael A. Goldstein, Esq., Senior Vice President and General Counsel, Sempra Energy Trading Corp., 58 Commerce Road, Stamford, CT 06902.

DOE notes that the circumstances described in this application are virtually identical to that for which export authority had previously been granted in FE Order EA–176. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–176 proceeding.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Electricity" and then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on March 15, 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–7182 Filed 3–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Nevada

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory

Board (EM SSAB), Nevada Test Site. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 5, 2000: 6:00 p.m.–9:00 p.m.

ADDRESSES: U.S. Department of Energy, Nevada Operations Office, 232 Energy Way, North Las Vegas, Nevada.

FOR FURTHER INFORMATION CONTACT: Kevin Rohrer, U.S. Department of Energy, Office of Environmental Management, P.O. Box 98518, Las Vegas, Nevada 89193–8513, phone: 702–295–0197.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Advisory Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Discussion and review of Underground Testing Area issues

Copies of the final agenda will be available at the meeting.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Kevin Rohrer, at the telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that needed to be resolved.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Kevin Rohrer at the address listed above.

Issued at Washington, DC on March 20, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–7178 Filed 3–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Rocky Flats

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Rocky Flats. The Federal Advisory Committee Act (Pub. L. No. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Thursday, April 6, 2000: 6:00 p.m.–9:30 p.m.

ADDRESSES: Westminster City Hall, Lower-Level Multi-Purpose Room, 4800 West 92nd Avenue, Westminster, CO.

FOR FURTHER INFORMATION CONTACT: Ken Korkia, Board/Staff Coordinator, Rocky Flats Citizens Advisory Board, 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855; fax (303) 420–7579.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

Update from the Defense Nuclear Facilities Safety Board

Presentation and Discussion on Soil Action Levels

Committee Updates

Other Board business may be conducted as necessary

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Ken Korkia at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of five minutes to present their comments. This notice is being published less than 15 days before the date of the meeting due to programmatic issues that had to be resolved prior to publication.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday–Friday, except Federal holidays. Minutes will also be available at the Public Reading Room located at the Board's office at 9035 North Wadsworth Parkway, Suite 2250, Westminster, CO 80021; telephone (303) 420–7855. Hours of operation for the Public Reading Room are 9:00 a.m. to 4:00 p.m. Monday through Friday. Minutes will also be made available by writing or calling Deb Thompson at the address or telephone number listed above.

Issued at Washington, DC on March 20, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–7179 Filed 3–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Oak Ridge

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB) Oak Ridge Reservation. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATES: Wednesday, April 5, 2000: 6–9 p.m.

ADDRESSES: Roane State Community College, 701 Briarcliff Avenue, Oak Ridge, TN.

FOR FURTHER INFORMATION CONTACT: Theresa Perry, Federal Coordinator, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, (865) 576–8956.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda: The Oak Ridge SSAB Project Teams will discuss their current activities.

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Carol Davis at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting. This notice is being published less than 15 days in advance of the meeting due to programmatic issues that had to be resolved.

Minutes: Minutes of this meeting will be available for public review and copying at the Department of Energy's Information Resource Center at 105 Broadway, Oak Ridge, TN between 7:30 a.m. and 5:30 p.m. Monday through Friday, or by writing to Teresa Perry, Department of Energy Oak Ridge Operations Office, P.O. Box 2001, EM–90, Oak Ridge, TN 37831, or by calling her at (423) 576–8956.

Issued at Washington, DC on March 20, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–7180 Filed 3–22–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. FE C&E 00–03, C&E 00–04 and C&E 00–04 Certification Notice—185]

Office of Fossil Energy; Notice of Filings of Coal Capability of Reliant Energy Desert Basin, LLC, Tenaska Alabama Partners, L.P. and Liberty Generating Company, LLC Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Reliant Energy Desert Basin, LLC (Reliant), Tenaska Alabama Partners, L.P. and Liberty Generating Company, LLC submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Coal & Power Im/Ex, Fossil Energy, Room 4G–039, FE–27, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 *et seq.*), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) as of the date filed with the Department of Energy. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of the proposed new baseload powerplants have filed a self-certification in accordance with section 201(d).

Owner: Reliant (C&E 00–03).

Operator: Reliant Energy Power Generation, Inc.

Location: Casa Grande, Pinal County, Arizona.

Plant Configuration: Combined-cycle.

Capacity: 551 MW.

Fuel: Natural gas.

Purchasing Entities: Reliant Energy Services, Inc. or one of its affiliates.

In-Service Date: September 2001.

Owner: Tenaska Alabama Partners, L.P. (C&E 00–04).

Operator: Tenaska Alabama Partners, L.P.

Location: Autagua County near the town of Billingsly, Alabama.

Plant Configuration: Combined-cycle.

Capacity: 846 MW.

Fuel: Natural gas.

Purchasing Entities: Williams Energy Marketing & Trade Company.

In-Service Date: May, 2002.

Owner: Liberty Generating Company, LLC (C&E 00–05).

Operator: Liberty Generating Company.

Location: Linden, New Jersey.

Plant Configuration: Combined-cycle.

Capacity: 1090 MW.

Fuel: Natural gas.

Purchasing Entities: Competitive wholesale power market.

In-Service Date: Second quarter of 2003.

Dated: Issued in Washington, DC, March 2000.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power IM/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–7184 Filed 3–22–00; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–14–000]

AIM Pipeline Company; Notice of Petition for Rate Approval

March 17, 2000.

Take notice that on March 14, 2000, AIM Pipeline Company (AIM) filed pursuant to Section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a rate of $0.2565 per MMBtu for interruptible transportation services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

AIM states that it is an intrastate natural gas pipeline within the meaning of Section 2(16) of the NGPA, which operates wholly within the State of Mississippi.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the proposed rate of transportation services will be deemed to be fair and equitable. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentations of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before April 3, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7154 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP98–54–029]

Colorado Interstate Gas Company; Notice of Offer of Settlement

March 17, 2000.

Take notice that on March 8, 2000, Colorado Interstate Gas Company (CIG), The Public Service Company of Colorado (PSCo), Cheyenne Light Fuel and Power Company (Cheyenne) and Colorado Springs Utilities (Colorado Springs) (collectively called Sponsoring Parties) jointly filed an Offer of Settlement under Rule 602 of the Commission's Rules of Practice and Procedure in the captioned docket. Sponsoring Parties filed the Offer of Settlement relating to refunds of the Kansas ad valorem taxes to resolve for Consenting Working Interest Owners (as defined in the Offer) the issue of refunds due to CIG for reimbursements of the Kansas ad valorem taxes consistent with the requirements of *Public Service Company of Colorado* v. *FERC*[1] and the Commission's subsequent orders. A copy of the Offer of Settlement, is on file with the Commission and is available for public inspection in the Public Reference Room. The Offer of Settlement may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Under the Offer of Settlement, each Consenting Working Interest Owner's refund liability will be reduced by 12.5% which represents the typical landowners royalty share of the total refunds. In addition, each Consenting Working Interest Owner will receive an additional reduction in its refund liability of $10,000, except where a lesser amount will extinguish its liability in its entirety.

The Offer of Settlement, when approved, will eliminate substantially, if not entirely, the obligation of Consenting Working Interest Owners to pursue refund claims against their landowner royalty owners. This is accomplished through the 12.5% reduction in the total refund obligation otherwise owed by Consenting Working Interest Owners.

An estimated 600 or more working interest owners received the benefit of CIG's reimbursement of the Kansas ad valorem taxes. Many of those parties have small refund obligations. The Settlement will eliminate entirely the refund obligations of those Consenting Working Interest Owners whose remaining refund obligation after the 12.5% reduction discussed above is $10,000 or less. It is estimated that 400–450 working interest owners' refunds will be entirely eliminated under the Settlement.[2] Further, every other Consenting Working Interest Owner whose refund obligation, after the 12.5% reduction, exceeds $10,000 will have that refund obligation reduced by $10,000 under the Settlement. Thus the Settlement will reduce the collection and administrative burdens on the parties and the Commission while expediting the recovery of the refunds.

In accordance with Section 385.602(f), initial comments on the Offer of Settlement are due on March 28, 2000 and any reply comments are due on April 7, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–7157 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 91 F.3d 1478 (D.C. Cir., 1996), cert. denied 520 U.S. 1227 (1997).

[2] The Sponsoring Parties assert that the number and identity of the working interest owners who will have their refund obligation eliminated by the Settlement cannot be determined at this time since the Commission had required that the well operators—the parties to whom CIG made the tax reimbursements in the first place—provide working interest ownership data to CIG. Since a very large number of well operators have not provided that information to CIG, CIG, PSCo and Colorado Springs also filed a Complaint against those well operators in Docket No. RP00–213–000.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1259–000, EL00–38–000, and EC00–48–000]

Louisiana Generating, L.L.C. Cajun Electric Power Cooperative, Inc. Louisiana Generating, L.L.C.; Notice of Filing

March 17, 2000.

Take notice that on March 17, 2000, Louisiana Generating, L.L.C. (Generating, and Southwestern Electric Power Company (SWEPCO), tendered for filing a supplement to its January 13, 2000 power purchase agreement between SWEPCO and Cajun Electric Power Cooperative, Inc. (Cajun) in the above-referenced dockets.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 27, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestant parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http:www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7175 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR00–15–000]

Overland Trail Transmission Company; Notice of Petition for Rate Approval

March 17, 2000.

Take notice that on March 14, 2000, Overland Trail Transmission Company (OTTCO) filed pursuant to Section 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum system wide rate of $0.3948 per MMBtu for interruptible transportation services performed under Section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGP).

OTTCO states that it is an intrastate natural gas pipeline within the meaning of Section 2(16) of the NGPA, which operates wholly within the State of Wyoming.

Pursuant to Section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the proposed rate for transportation services will be deemed to be fair and equitable, The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentations of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All motions must be filed with the Secretary of the Commission on or before April 3, 2000. This petition for rate approval is on file with the Commission and is available for public inspection. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7155 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–91–000]

National Fuel Gas Supply Corporation; Notice of Site Visit

March 17, 2000.

On March 28 and 29, 2000, the Office of Energy Project's (OEP) staff will inspect National Fuel Gas Supply Corporation's (National Fuel) proposed Line AM–60 Replacement Project involving the construction and operation of facilities in Elk, McKean and Warren Counties, Pennsylvania. The areas will be inspected by automobile and on foot. Representatives of National Fuel will accompany the OEP staff. Anyone interested in participating in the site visits must provide their own transportation.

For additional information, contact Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7150 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–117–000 and CP00–117–001]

Southern Natural Gas Company; South Georgia Natural Gas Company; Notice of Joint Application

March 17, 2000.

Take notice that on March 10, 2000, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563 and South Georgia Natural Gas Company (South Georgia) Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP00–117–000 a joint application pursuant to Sections 7(c) and 7(b) of the Natural Gas Act (NGA) and part 157 of the Commission's regulations, for a certificate of public convenience and necessity for Southern to acquire facilities and authorization for South Georgia to abandon facilities all as more fully set forth in the application which is on file with the Commission and open to public inspection.[1] The filing may be viewed at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

Any questions regarding the application should be directed to Patrick Pope, General Counsel, Southern Natural Gas Company, Post Office Box 35202–2563, Birmingham, Alabama 35202–2563 or call (205) 325–7126.

Southern requests a certificate of public convenience and necessity pursuant to Section 7(c) of the NGA authorizing it to acquire the facilities of South Georgia, and South Georgia requests approval under Section 7(b) of the NGA to abandon all of its jurisdictional transmission facilities, operations, and certain services not subject to pre-granted abandonment. Southern and South Georgia state that the acquisition will be accomplished by a merger between Southern and South Georgia which is a wholly owned subsidiary of Southern. Further, they state that Southern will acquire South Georgia's assets at the original cost with the same accumulated depreciation and accumulated deferred income taxes as are currently reflected in South Georgia's books.

Southern avers that it will contact with the existing South Georgia customers to provide the same quality and type of service as South Georgia provides today, but under the terms and conditions of Southern's FERC Gas Tariff, as revised pursuant to this application and the Offer of Settlement. To implement the service, Southern and South Georgia seek: (1) Authorization for South Georgia to terminate Volumes I and II of its FERC Gas Tariff; (2) Authorization for Southern to revise its CSS–1, CSS–2, and STS Rate Schedules to incorporate the South Georgia ST–1 and ST–2 Rate Schedules into its First Revised Volume No. 2A of its FERC Gas Tariff; (3) Cancellation of South Georgia's Order No. 234 Blanket Certificate; and (4) Authorization for Southern to implement the changes to its tariff necessary to implement the terms of the certificate requested herein.

Southern and South Georgia state that the acquisition is part of an overall Offer of Settlement filed concurrently in Docket No. RP99–496–004 to resolve all outstanding issues in Southern's pending Section 4 rate proceeding and they request that the certificate application be processed concurrently with the Offer of Settlement. Southern and South Georgia request that the authorization requested herein take effect on August 1, 2000 and be conditioned upon the approval of the Offer of Settlement. If the settlement is not approved on terms acceptable to the parties thereto, Southern and South Georgia state that they will withdraw the certificate application.

Any person desiring to participate in the hearing process or to make any protest with reference to said application should on or before March 28, 2000, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. The Commission's rules require that protestors provide copies of their protests to the party or parties directly involved. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

[1] This application is also incorporated in the Offer of Settlement filed by Southern pursuant to Rule 602 of the Commission's regulations (§ 385.602) in Docket No. RP99–496–004. The portion of the Offer of Settlement relating to the transfer of South Georgia's facilities to Southern has been docketed as CP00–117–001. Pursuant to Rule 602(d)(2) Southern states that it has notified all parties in the rate proceeding as all other persons required by Rule 602(d)(1) that Comments and Reply Comments on the Offer of Settlement are due to be filed by March 28, 2000, and Reply Comments are due to be filed by April 7, 2000.

Under the procedure provided for, unless otherwise advised, it will be unnecessary for Southern or South Georgia to appear or be represented at the hearing.

David P. Boergers,

Secretary.

[FR Doc. 00–7152 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–129–010]

Trunkline Gas Company; Notice of Compliance Filing

March 17, 2000.

Take notice that on March 13, 2000, Trunkline Gas Company (Trunkline) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective May 1, 2000:

Second Revised Sheet No. 205
Original Sheet No. 205A

Trunkline states that the purpose of this filing is to comply with the Commission's Order Accepting Contested Settlement and Dismissing Request for Rehearing issued on February 1, 2000 in Docket No. RP96–129–005 (Phase I Remand), RP96–129–006 and RP96–129–007, 90 FERC ¶ 61,099 (2000). In accordance with the September 16, 1999 Stipulation and Agreement in the subject proceeding, the revised tariff sheets modify the General Terms and Conditions, Section 13, Quality, to provide that Shipper or Shipper's designee may elect to receive its retrograde condensate removed at the Terrebonne liquids separation facility commencing on May 1, 2000.

Trunkline states that copies of this filing are being served on all affected customers, applicable state regulatory agencies and parties to this proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7156 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GP00–1–000]

Williams Energy Marketing & Trading Co.; Notice of Petition for Declaratory Order

March 17, 2000.

Take notice that on March 14, 2000 William Energy Marketing & Trading Company (Williams) tendered for filing a petition for a declaratory order to remove uncertainty regarding the applicability of the Commission's "buy/sell" policy to offshore production area transactions. Specifically, Williams requests a declaratory order confirming that the buy/sell policy does not apply to Outer Continental Shelf production-area arrangements like those contemplated by Royalty-In-Kind pilot projects recently initiated by the U.S. Department of Interior's Minerals Management Service.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before April 15, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7153 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–381–004]

Wyoming Interstate Company, Ltd.; Notice of Compliance Filing

March 17, 2000.

Take notice that on March 14, 2000, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, the following tariff sheets, to become effective on January 1, 2000:

Sub Alternate Original Sheet No. 85A
Sub Alternate Original Sheet No. 85B

WIC asserts that the purpose of this filing is to comply with a Commission Order issued on February 29, 2000 (90 FERC ¶61,200), in Docket No. RP99–381 *et al.* Specifically, the filing reflects revised tariff language in General Terms and Conditions Section 33.4 that clarifies that WIC may in general rate cases seek a discount-type adjustment for negotiated discounts.

WIC states that a full copy of its filing is being served on each jurisdictional customer, interested state commission, and each party that has requested service as well as upon each party appearing on the Commission's official service list for Docket No. RP99–381.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on the file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7158 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–40–000, et al.]

Delmarva Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

March 16, 2000.

Take notice that the following filings have been made with the Commission:

1. Delmarva Power & Light Company and Atlantic City Electric Company

[Docket Nos. EC00–40–000 and EL00–52–000]

Take notice that on March 1, 2000, Delmarva Power & Light Company (Delmarva) and Atlantic City Electric Company (Atlantic) (collectively, Applicants), tendered for filing a request for approval regarding journal entries reflecting dividend payments out of paid-in capital related to the transfer of certain facilities from Delmarva and Atlantic to Conectiv Delmarva Generating, LLC (CDG) and Conectiv Atlantic Generating, LLC (CAG), respectively (Facility Transfer). Journal entries based on then available data reflecting such dividend payments were included in a December 17, 1999 application which Delmarva and Atlantic submitted to the Commission under Section 203 of the Federal Power Act in Docket No. EC00–40–000 to accomplish the Facility Transfer.

Delmarva and Atlantic request that the Commission approve the use of journal entries and the related accounting reflecting the payment of dividends out of paid-in capital in connection with the Facility Transfer. They have asked that the Commission take this action by May 1, 2000, which is the date that the Applicants hope to accomplish the Facility Transfer and undertake new power supply arrangements related to the Facility Transfer.

Copies of the filing were served upon Delmarva's wholesale requirements customers, and the Maryland People's Counsel, Maryland Public Service Commission, Delaware Public Service Commission, New Jersey Public Service Commission and the Virginia State Corporation Commission.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Commonwealth Edison Company, et al. and Midwest Independent Transmission System Operator

Docket Nos. EL00–25–001 and ER00–448–001]

Take notice that on March 10, 2000, the Midwest ISO Participants [1] tendered for filing revisions to Appendix I to the open access transmission tariff and related documents of the Midwest Independent Transmission System Operator, Inc., in compliance with the Commission's February 24, 2000 order in the proceedings captioned above. *Commonwealth Edison Company, et al.*; 90 FERC ¶ 61,192 (2000).

The Midwest ISO participants state that copies of this filing have been served on each person designated on the official service list compiled by the Secretary in these proceedings.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Horizon Energy Company and Central Maine Power Company

[Docket Nos. ER98–380–011 ER97–3390–002]

Take notice that on March 13, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

4. Frederick C. Bustard

[Docket No. ID–3464–000]

Take notice that on March 8, 2000, the above-named individual filed with the Federal Energy Regulatory Commission an application for authority to hold an interlocking position in Maine Public Service Company and Northern Maine Independent System Administrator, Inc.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Atlantic City Electric Company

[Docket No. ER97–3189–026]

Take notice that on March 13, 2000, Atlantic City Electric Company tendered a compliance report in the above dockets pursuant to the Commission's February 29, 2000, order (90 FERC ¶ 61,224).

Copies of the filing were served on the official service list in these dockets.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. MEP Pleasant Hill, LLC

[Docket No. ER99–2858–001]

Take notice that on March 10, 2000, MEP Pleasant Hill, LLC (MEPPH), tendered for filing a notice of change in status reflecting the sale of a 50-percent interest in MEPPH to CPN Pleasant Hill, LLC. MEPPH also tendered for filing a list of the current generation projects of Calpine Corporation.

Comment date: March 31, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Avista Corporation

[Docket No. ER00–1863–000]

Take notice that on March 13, 2000, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to Section 35.12 of the Commissions, 18 CFR part 35.12, an executed Amendment to a Mutual Netting Agreement with ConAgra Energy Services, Inc, previously filed with the FERC under Docket No. ER98–4413–000, Service Agreement No. 253, effective 8/1/98 changing billing and payment terms.

AVA requests waiver of the prior notice requirements and requests an effective date of March 1, 2000 for the amended terms for net billing of transactions.

Notice of the filing has been served upon ConAgra Energy Services, Inc.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. New York State Electric & Gas Corporation

[Docket No. ER00–1864–000]

Take notice that on March 13, 2000, New York State Electric & Gas Corporation (NYSEG), tendered for filing pursuant to Part 35 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35, a service agreement (the Service Agreement) under which NYSEG may provide capacity and/or energy to PP&L Electric Utilities Corporations d/b/a PPL Utilities, Inc. (PPL) in accordance with NYSEG's FERC Electric Tariff, Original Volume No. 3.

NYSEG has requested waiver of the notice requirements so that the Service Agreement becomes effective as of March 14, 2000.

NYSEG has served copies of the filing upon the New York State Public Service Commission and PPL.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

[1] The Midwest ISO Participants consist of Allegheny Energy, Ameren (which includes Central Illinois Public Service Company and Union Electric Company); Central Illinois Light Company; Cinergy (which includes PSO Energy and Cincinnati Gas & Electric Company); Commonwealth Edison; Hoosier Energy Rural Electric Cooperative; Illinois Power Company; Kentucky Utilities; Louisville Gas & Electric; Southern Indiana Gas and Electric Company; Wabash Valley Power Association; and Wisconsin Electric Power Company.

9. Allegheny Energy Service Corporation, on behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1865–000]

Take notice that on March 13, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply), tendered for filing Amendment No. 1 to Supplement No. 15 to the Market Rate Tariff to incorporate a Netting Agreement with Rainbow Energy Marketing Corporation into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make the Amendment effective as of February 14, 2000 or such other date as ordered by the Commission.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Energy Corporation

[Docket No. ER00–1866–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Duke Power, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Corporation

[Docket No. ER00–1867–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Commonwealth Edison Company, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy Corporation

[Docket No. ER00–1868–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Alabama Power Co., Georgia Power Co., Gulf Power Co., Mississippi Power Co., Savannah Electric and Power Co., and Southern Company Services, Inc. for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Energy Corporation

[Docket No. ER00–1869–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with American Electric Power Service Corp., for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Energy Corporation

[Docket No. ER00–1870–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Carolina Power & Light Company, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Energy Corporation

[Docket No. ER00–1871–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Virginia Electric and Power Corporation, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Energy Corporation

[Docket No. ER00–1872–000]

Take notice that on March 13, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Florida Power & Light Company, for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 16, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Consolidated Edison Company of New York, Inc.

[Docket No. ER00–1873–000]

Take notice that on March 13, 2000, Consolidated Edison Company of New York, Inc. (Con Edison), tendered for filing: (1) Revised tariff sheets amending Con Edison's Open Access Transmission Tariff, FERC Electric Rate Schedule No. 1; (2) a Notice of Cancellation of its Joint Open Access Transmission Tariff with Orange and Rockland Utilities, Inc.; and (3) a Notice of Cancellation of its Retail Access Sales Tariff. Con Edison states that the proposed tariff sheets amend the terms and conditions for transmission service to conform to (i) changes in Con Edison's Retail Access Program to be implemented during Phase 3 of that program and (ii) the commencement of operations by the New York Independent System Operator (NYISO). Specifically, the proposed tariff sheets would close the Con Edison OATT to new wholesale services, would delete schedules for ancillary services, and would amend the terms and conditions for retail transmission service that are contained in Attachments K and L of the tariff. Con Edison also states that the tariff cancellations conform with the commencement of NYISO operations and Con Edison's divestiture of its generating facilities.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7149 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–89–001, et al.]

Louisiana Generating, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 17, 2000.

Take notice that the following filings have been made with the Commission:

1. Louisiana Generating LLC

[Docket No. EG00–89–001]

Take notice that on March 15, 2000, Louisiana Generating LLC filed with the Federal Energy Regulatory Commission an amendment to its application for determination of exempt wholesale generator status, which was filed on February 3, 2000 in the above-referenced proceeding.

Comment date: March 27, 2000, in accordance with Standard Paragraph E at the end of this notice. The commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Engage Energy US, L.P.

[Docket No. ER97–654–015]

Take notice that on March 15, 2000, Engage Energy US, L.P. filed a quarterly report for information only.

3. Amerada Hess Corporation

[Docket No. ER97–2153–011]

Take notice that on March 13, 2000, Amerada Hess Corporation filed a quarterly report for information only.

4. ATCO Power Canada Ltd.

[Docket No. ER99–3282–003]

Take notice that on March 14, 2000, ATCO Power Canada Ltd. filed a quarterly report for information only.

5. J.T. Petillo

[Docket No. ID–3466–000]

Take notice that on March 13, 2000, J. T. Petillo filed an Application for Authority to Hold Interlocking Positions pursuant to 18 CFR 45.1, Section 305(b) of the Federal Power Act, 16 U.S.C. Section 825d(b) and the Federal Energy Regulatory Commission's (Commission) March 29, 1996 order in Docket No. ER96–939–000.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER98–441–017]

Take notice that on March 14, 2000, Williams Energy Marketing & Trading Company (Williams), tendered for filing a refund report as required by Commission Order issued January 31, 2000, in the above-captioned proceeding.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Ogden Martin Systems of Union, Inc.

[Docket No. ER00–1155–001]

Take notice that on March 14, 2000, Ogden Martin Systems of Union, Inc., tendered for filing a supplement to its Power Sales Agreement filed with the Commission in Docket No. ER00–1155–000.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Arizona Public Service Company

[Docket No. ER00–1875–000]

Take notice that on March 14, 2000, Arizona Public Service Company (APS), tendered for filing a revised Market Power Study for APS FERC Electric Tariff, Original Volume No. 3.

A copy of this filing has been served to all parties on the Service List.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Public Service Company of New Mexico

[Docket No. ER00–1876–000]

Take notice that on March 14, 2000, Public Service Company of New Mexico (PNM), tendered for filing executed service agreements, for point-to-point transmission service under the terms of PNM's Open Access Transmission Service Tariff, with Arizona Electric Power Cooperative, Inc. (2 agreements, for Non-Firm and Short-Term Firm Service, dated March 1, 2000). PNM's filing is available for public inspection at its offices in Albuquerque, New Mexico.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Duke Energy Corporation

[Docket No. ER00–1878–000]

Take notice that on March 14, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with El Paso Merchant Energy, L.P., for Non-Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 24, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Duke Energy Corporation

[Docket No. ER00–1879–000]

Take notice that on March 14, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Aquila Energy Marketing Corporation, for Firm Point-To-Point Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 24, 2000.

Duke states that this filing is in accordance with Part 35 of the

Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Energy Corporation

[Docket No. ER00–1880–000]

Take notice that on March 14, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with El Paso Merchant Energy, L.P., for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 24, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Energy Corporation

[Docket No. ER00–1881–000]

Take notice that on March 14, 2000, Duke Energy Corporation (Duke), tendered for filing a Service Agreement with Southern Company Energy Marketing L.P., for Firm Transmission Service under Duke's Open Access Transmission Tariff.

Duke requests that the proposed Service Agreement be permitted to become effective on February 24, 2000.

Duke states that this filing is in accordance with Part 35 of the Commission's Regulations and a copy has been served on the North Carolina Utilities Commission.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Entergy Services, Inc.

[Docket No. ER00–1882–000]

Take notice that on March 14, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), tendered for filing a Notice of Cancellation of the Electric Peaking Power Agreement between City of Thayer, Missouri and Entergy Arkansas.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. New England Power Pool

[Docket No. ER00–1874–000]

Take notice that on March 14, 2000, the New England Power Pool Participants Committee submitted changes to Market Rules and Procedures 2, 2–A, 3, 3–A, 3–E and 17.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Texas-New Mexico Power Company v. Public Service Company of New Mexico

[Docket No. EL00–53–000]

Take notice that on March 15, 2000, Texas-New Mexico Power Company (TNMP), tendered for filing a Complaint against Public Service Company of New Mexico (PNM). TNMP requests that the Commission: (1) Issue an injunction that releases 30MW of firm point-to-point transmission service from Four Corners to southern New Mexico to TNMP; and (2) establish a hearing to address the policy issues raised in this Complaint and ascertain the appropriate monetary damages to be awarded to TNMP.

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall also be fined on or before April 14, 2000.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7174 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–64–000]

CNG Transmission Corporation; Notice of Intent To Prepare an Environmental Assessment for the Proposed Capstone Project, Request for Comments on Environmental Issues, and Notice of Site Visit

March 17, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the Capstone Project involving construction and operation of facilities proposed by CNG Transmission Corporation (CNG) in Elk, Jefferson, Armstrong and Potter Counties, Pennsylvania, and in Montgomery County, New York.[1]

CNG would:

- Construct approximately 13.6 miles of 30-inch-diameter pipeline loop (the TL474x2 pipeline) and 800 feet of 30-inch-diameter connector pipeline in Armstrong County, Pennsylvania;
- Construct a 4,450-horsepower (hp) compressor at the Punxsutawney Compressor Station in Jefferson County, Pennsylvania;
- Construct two 3,200-hp compressors alongside the existing Little Greenlick Relay Station in Potter County, Pennsylvania;
- Construct a new 7,000-hp Brookman Corners Compressor Station in Montgomery County, New York;
- Upgrade the Ardell Compressor Station in Elk County, Pennsylvania by replacing a 12,600-hp engine with a 15,000-hp engine; and
- Abandon approximately 13 miles (11.2 miles in-place and 1.8 miles by removal) of the 12-inch-diameter LN–9 Pipeline in Armstrong County, Pennsylvania.

The facilities would allow CNG to provide service on CNG's system that is comparable to service currently provided under a contract with Tennessee Gas Pipeline Company.

Our EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner receiving this notice, you should have been contacted by the pipeline company about the

[1] CNG's application was filed with the Commission under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

acquisition of an easement to construct, operate, and maintain the proposed facilities. You should also have been contacted by CNG if you reside within ½ mile of a compressor station. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice CNG provided to landowners. This fact sheet addresses a number of typically asked questions, including the use of eminent domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

The location of the proposed project facilities is shown in appendix 1, figures 1 through 6.[2]

Land Requirements for Construction

Constructing the proposed pipeline would generally require a 75-foot-wide corridor. Approximately 5 miles of the route which crosses agricultural land would require an additional 25 feet to stockpile topsoil (a 100-foot-wide easement). The proposed pipeline would parallel existing pipelines for 11.8 miles and would make use of (overlap) 25 feet of existing maintained pipeline easement during construction and only require an additional 25 feet of permanent right-of-way to accommodate the new pipeline. The 1.9 miles of new right-of-way to accommodate the new pipeline. The 1.9 miles of new right-ow-way to accommodate the pipeline. The 1.9 miles of new right-of-way at the southern end of the pipeline would require a 50-foot-wide new permanent easement.

Pipeline construction would disturb approximately 140 acres. Following construction, the land disturbed by construction activities would be restored and allowed to revert to its former use. The project would require approximately 47 acres of new permanent pipeline easement (35.5 acres paralleling existing right-of-way and 11.5 acres of new corridor).

Construction at the proposed Little Greenlick Compressor Station would require about 22.21 acres and at the proposed Brookman Corners Compressor Station about 15.5 acres. After construction these areas would also be restored and revert to previous use except for 6.3 acres that would be maintained at each location as compressor station yards. Construction at the Punxsutawney and Ardell Compressor stations would occur within existing fenced compressor station yards and would involve an acre or less of ground disturbance.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this Notice of Intent, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

The EA will discuss impacts that would occur as a result of the construction and operation of the proposed project under these general headings:

- Geology and soils.
- Water resources, fisheries, and wetlands.
- Vegetation and wildlife.
- Endangered and threatened species.
- Land use.
- Cultural resources.
- Air quality and noise.
- Public safety.

We will also evaluate possible alternatives to the proposed or portions of the project, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will be in the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

To ensure your comments are considered, please carefully follow the instructions in the public participation section below.

Currently Identified Environmental Issues

We have already identified several issues that we think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by CNG. This preliminary list of issues may be changed based on your comments and our analysis.

1. Residences and Wells

—Impacts on 27 wells and 6 springs within 150 feet of the right-of-way.
—Impacts on four residences laying within 50 feet of the centerline of the new pipe; and another eight structures within 100 feet of the edge of the construction right-of-way.

2. Compressor Station Noise

Twenty-six residents near the Punxsutawney Compressor Station have expressed concern about existing noise levels and the potential for the project to result in further increases.

3. Geology and Soils Impacts

—Impacts on 3.3 miles of prime farmland soils.
—Impacts on 6.4 miles of erosion prone soils.

4. Water Resources and Wetlands

—Impacts to 3 perennial streams, 9 intermittent streams, and 10 drainage ways.
—Impacts to 19 wetlands.
—Impact to Crooked Creek from withdrawal of 2.5 million galls of water for hydrostatic testing of the pipeline.

5. Biological Resources

—Impacts on about 45 acres of deciduous forest.
—Impacts on the timber rattlesnake, *Crotalus horridus*, a Pennsylvania state candidate for the threatened and endangered list.
—Impacts on the Northern Harrier, *Circus cyaneus*, a New York state threatened species.

[2] The appendices referenced in this notice are not being printed in the **Federal Register**. Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

Public Participation

You can make a difference by

not need intervenor status to have your environmental comments considered.

Additional information about the

number (516–318) on any comments or motions filed. All documents (original and eight copies) should be filed with:

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be

FOR FURTHER INFORMATION CONTACT: Betty West, telephone number (202) 260–8486; Facsimile Number (202) 260–

collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal, and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., NE, Room 1A, Washington, DC 20426.
- Label one copy of the comments for the attention of the Gas Group 2, PJ–11.2.
- Reference Docket No. CP00–64–000.
- Mail your comments so that they will be received in Washington, DC on or before April 17, 2000.

On April 3 and 4, 2000, the Office of Energy Projects will conduct a precertification site visit of the pipeline route and compressor station sites. All parties may attend. Those planning to attend must provide their own transportation.

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor". Intervenors play a more formal role in the process. Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–7151 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Soliciting Comments

March 17, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Five-year Review and Update of Land Use and Shoreline Management Plan.

b. *Project No.:* 516–318.

c. *Date Filed:* February 1, 2000.

d. *Applicant:* South Carolina Electric & Gas Company.

e. *Name of Project:* Saluda.

f. *Location:* The project is located in Saluda, Lexington, Newberry and Richland Counties, SC.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Thomas G. Eppink, Esquire Senior Attorney, South Carolina Electric & Gas Company, Legal Department—130, Columbia, SC 29218, (803) 217–9448 or, Tommy Boozer, Lake Manager, (803) 217–9007.

i. *FERC contact:* John K. Hannula, (202) 219–0016.

j. *Deadline for filing comments, motions to intervene and protest:* 30 days from the issuance date of this notice. Please include the project number (516–318) on any comments or motions filed. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

k. *Description of the Application:* South Carolina Electric & Gas Company requests Commission approval of its 5-Year Review and Update of its Land Use and Shoreline Management Plan. The 5-year Review and Update considers recreational use, lake management, and land use management of the project shoreline. Specifically, the 5-year Review and Update addresses park improvements, dock policy, buffer zone and forest management, land sales and environmental resources.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on the web at www.ferc.fed.us/online/rims.htm (Call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the addresses in item h above.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7176 Filed 3–22–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6564–2]

Agency Information Collection Activities: Proposed Collection; Comment Request; Information Collection Request for the National Pollutant Discharge Elimination System (NPDES) Compliance Assessment Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): [Information Collection Request for the National Pollutant Discharge Elimination System (NPDES) Compliance Assessment Information, EPA ICR Number 1427.06, and OMB Control Number 2040–0110), expiring 09/30/00]. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 22, 2000.

ADDRESSES: All public comments shall be submitted to: Betty West, Office of Wastewater Management, Water Permits Division, MC 4203, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. Interested persons may obtain a copy of the proposed ICR without charge by calling or writing to Betty West at the Office of Wastewater Management, Water Permits Division, MC 4203, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone (202) 260–8486.

FOR FURTHER INFORMATION CONTACT: Betty West, telephone number (202) 260–8486; Facsimile Number (202) 260–1460; E-Mail address: west.betty@epa.gov.

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are those which are issued NPDES permits for the discharge of domestic wastewater, industrial wastewater, and storm water, and for the use and disposal of sewage sludge.

Title: Information Collection Agency Request for the National Pollutant Discharge Elimination System (NPDES) Compliance Assessment Information. (OMB Control No. 1040–0110; EPA ICR No.1427.06.) expiring 09/30/00.

Abstract: Pollutant discharge limits in a NPDES permit are designed to be protective of the environment and the public. Permitting authorities must assess whether the permittee is complying with these discharge limits on a consistent basis. Compliance is assessed by reviewing records, compliance schedule reports, and noncompliance reports for a bypass, upset, or maximum daily violation. Permittees must maintain such records, meet compliance schedules, and report violations as mandated in 40 CFR parts 122 and 501. The information that is collected can lead the permitting authority to follow through with informal discussions with the permittee (telephone and/or letters), permit modification, or enforcement action.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The information collection for compliance assessment and certification activities will involve an estimated 16,532 respondents per year with 2.15 total annual average responses per respondent. The time required for a response varies; the average burden hours per respondent is 6.6 hours. EPA estimates that the total annual cost is $19,161,763 for record keeping and $3,884,689 for reporting for a total respondent cost of $23,046,452. The total annual costs to respondents, recordkeepers, and government (excluding Federal government) is estimated to be $24,518,940. The compliance assessment and certification activities will entail an annual burden of 827,968 hours of recordkeeping and 147,207 hours of reporting for a total of 975,175 burden hours. These activities will also entail 51,089 burden hours for State governments as users of data.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 17, 2000.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 00–7230 Filed 3–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6564–3]

Environmental Financial Advisory Board

AGENCY: Environmental Protection Agency.

ACTION: Notice of charter renewal.

The charter for the Environmental Protection Agency's Environmental Financial Advisory Board (EFAB) will be renewed for an additional two-year

period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal

The CCL and 6-Year Review Working Group will develop specific protocols for making regulatory determinations

submitted by CYTEC Industries Inc, to conditionally register the pesticide product ECO2FUME containing a new

Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/

II. Did EPA Conditionally Approve the Application?

List of Subjects

Environmental protection, Pesticides

period, as a necessary committee which is in the public interest, in accordance with the provisions of the Federal Advisory Committee Act (FACA), 5 U.S.C. App 9(c). The purpose of EFAB is to provide advice and recommendations to the Administrator of EPA on issues associated with environmental financing.

It is determined that EFAB is in public interest in connection with the performance of duties imposed on the Agency by law.

Inquiries may be directed to Alecia Crichlow, EFAB Coordinator, U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Ave., NW, Washington, D.C. 20460 (Mailcode 2731R).

Dated: March 20, 2000.

Michael W.S. Ryan,

Acting Chief Financial Officer.

[FR Doc. 00–7321 Filed 3–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6563–8]

National Drinking Water Advisory Council; Contaminant Candidate List and 6-Year Review of Existing Regulations Working Group; Notice of Open Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice.

Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the Contaminant Candidate List (CCL) Regulatory Determination and 6-Year Review of Existing Regulations Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S. C. S300f *et seq.*), will be held on April 3–4, 2000 from 8:30 AM until 5 PM (approximate), 401 M Street, SW, Conference Room 3 North, Washington, DC 20460. The meeting is open to the public, but due to past experience, seating will be limited.

The purpose of this meeting is for the Working Group to develop and use robust and transparent protocols that can be used for making regulatory determinations from the CCL and for the periodic review of existing NPDWRs. The Working Group will provide specific recommendations for analyzing and presenting the available scientific data, and also recommend methods to identify and document the judgments made to arrive at a conclusion and the supporting rationale.

The CCL and 6-Year Review Working Group will develop specific protocols for making regulatory determinations and selecting existing NPDWRs for possible revision. The Working Group will provide specific recommendations for analyzing and presenting the available scientific data, and also recommend methods to identify and document the judgments made to arrive at a conclusion and the supporting rationale. Due to the statutory deadlines mandated by the SDWA's 1996 amendments, the Working Group will develop a protocol to support CCL regulatory determinations before beginning work on the protocol(s) for the 6-year review of existing NPDWRs.

For CCL regulatory determinations, the Working Group will develop protocols for both chemical and microbial contaminants that will be robust enough to apply to contaminants on the current and future CCLs. The Working Group will continue to evaluate the draft framework developed by the EPA for the first meeting.

The working group members will be asked to draft proposed position papers for deliberation by the advisory council, and provide advice and recommendations to the full National Drinking Water Advisory Council. The meeting is open to the public to observe and statements will be taken from the public as time allows.

For more information, contact Corry Westbrook, Designated Federal Officer, Contaminant Candidate List and Regulatory Determination and 6-Year Review of Existing Regulations Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4607), 401 M Street SW, Washington, DC 20460. The telephone number is 202–260–3228, fax 202-260–3762, and e-mail address westbrook.corry@epa.gov.

Dated: March 17, 2000.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 00–7229 Filed 3–22–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30482A; FRL–6496–4]

Pesticide Product Registrations; Conditional Approval

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by CYTEC Industries Inc, to conditionally register the pesticide product ECO2FUME containing a new active ingredient not included in any previously registered products pursuant to the provisions of section 3(c)(7)(C) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Dennis McNeilly, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–6742; and e-mail address: mcneilly.dennis@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 132532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access a fact sheet which provides more detail on this registration, go to the Home Page for the Office of Pesticide Programs at http://www.epa.gov/pesticides/, and select "fact sheet."

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30482A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label, the list of data references, the data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. Such requests should: Identify the product name and registration number and specify the data or information desired.

A paper copy of the fact sheet, which provides more detail on this registration, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

II. Did EPA Conditionally Approve the Application?

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest. The Agency has considered the available data on the risks associated with the proposed use of phosphine gas, and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature and its pattern of use (methyl bromide alternative), application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of phosphine gas during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

Consistent with section 3(c)(7)(C) of FIFRA, the Agency has determined that these conditional registrations are in the public interest. Use of the pesticides are of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticides will not result in unreasonable adverse effects to man and the environment.

III. Conditionally Approved Registrations

EPA issued a notice, published in the **Federal Register**, of October 20, 1999 (64 FR 56500) (FRL–6382–8), which announced that BOC Gases America, 575 Mountain Ava, Murray Hill, NJ 07424 had submitted an application to register ECO2FUME fumigation gas (EPA File Symbol 38719–T). The end-use product, ECO2FUME, is an insecticide containing the new active ingredient phosphine gas at 2% in carbon dioxide. ECO2FUME is registered to control numerous insects which infest nonfood commodities (including tobacco). This product was subsequently transferred (prior to registration) to Cytec Industries Inc., 5 Garret Mountain Plaza, West Paterson, NJ 07424, and was assigned a new file number and ultimately the registration number: 68387–7.

List of Subjects

Environmental protection, Pesticides and pests.

Dated: March 16, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–7232 Filed 3–22–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–51943; FRL–6497–6]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 14, 2000 to February 25, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51943 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Director, Office of Program Management, and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (202)

554–1404; e-mail address: TSCA-Hotline@epa.gov.

ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51943 and the

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following

information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity

554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at *http://www.epa.gov/*. On the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register** Environmental Documents." You can also go directly to the "**Federal Register**" listings at *http://www.epa.gov/fedrgstr/*.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–51943. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–51943 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–51943 and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this document.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from February 14, 2000 to February 25, 2000, consists of the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs and TMEs, both pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available.

In table I, EPA provides the following information (to the extent that such

information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 59 PREMANUFACTURE NOTICES RECEIVED FROM: 02/14/00 TO 02/25/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0502	02/15/00	05/15/00	Lambent Technologies Corporation	(S) Metalworking fluids (lubricants & coolant); machine lubricants; agricultural (emulsifier); lumber industry (emulsifier)	(S) Glycerides, C_{14-22} and C_{16-22} unsatd., ethoxylated propoxylated*
P–00–0503	02/15/00	05/15/00	Lambent Technologies Corporation	(S) Metalworking fluids (lubricants & coolant); machine lubricants; agricultural (emulsifier); lumber industry (emulsifier)	(S) Glycerides, C_{14-22} and C_{16-22} unsatd., ethoxylated*
P–00–0504	02/15/00	05/15/00	Lambent Technologies Corporation	(S) Metalworking fluids (lubricants & coolant); machine lubricants; agricultural (emulsifier); lumber industry (emulsifier)	(S) Glycerides, C_{14-22} and C_{16-22} unsatd., propoxylated*
P–00–0505	02/14/00	05/14/00	CBI	(G) Destructive use	(G) Substituted diphenyl imidazole
P–00–0506	02/14/00	05/14/00	CBI	(G) Intermediate	(G) Sodium salt of a naphthalene azo dyestuff
P–00–0507	02/15/00	05/15/00	Zeon Chemicals L.P.	(G) High molecular weight polyether polymer for electrical aplications	(S) Oxirane, methyl-, polymer with oxirane and [(2-propenyloxy)methyl]oxirane*
P–00–0508	02/15/00	05/15/00	CBI	(G) Destructive use	(G) Bis(halophenyl)-dialkoxyphenyl imidazole
P–00–0509	02/14/00	05/14/00	CBI	(S) Resin for inks	(G) Polyether polyurethane
P–00–0510	02/15/00	05/15/00	Reichhold, Inc.	(S) Wood coating	(G) Anionic oil modified polyurethane dispersion
P–00–0511	02/14/00	05/14/00	Shell Chemical Co.	(S) Coating for railcars; coating for marine vessels	(S) Formaldehyde, oligomeric reaction products with 4,4'-isopropylidenediphenol and m-phenylenebis(methylamine)*
P–00–0512	02/14/00	05/14/00	CBI	(G) Ink jet ink	(G) Mixed ammonium/sodium salt of naphthalene azo dyestuff
P–00–0513	02/14/00	05/14/00	CBI	(G) Dye for cotton	(G) Arylazo substituted sufonated naphthalene compound
P–00–0514	02/14/00	05/14/00	CBI	(G) Initiator, contained use	(G) Substituted diphenyl imidazolyl imidazole
P–00–0515	02/15/00	05/15/00	CIBA Specialty Chemicals Corporation	(S) Photoinitiator for uv-cured coatings and uv-cured printing inks	(G) Organoiodonium salt
P–00–0516	02/14/00	05/14/00	CBI	(G) Dye for cotton	(G) Sulfonated dioxazine compound
P–00–0517	02/14/00	05/14/00	CBI	(G) Dye for cotton	(G) Arylazo substituted sulfonated naphthalene compound
P–00–0518	02/16/00	05/16/00	CBI	(G) Chemical intermediate	(G) Perfluoroalkyl dicarboxylate
P–00–0519	02/16/00	05/16/00	CBI	(G) Ingredient for use in consumer products; highly dispersive use.	(G) Methyl carboxypentanoate
P–00–0520	02/16/00	05/16/00	CBI	(S) Chemical intermediate	(G) Perfluoroalkyl epoxide
P–00–0521	02/16/00	05/16/00	CBI	(G) Polymeric thickener for aqueous systems	(G) Hydrophobe modified ethoxylated polyurethane (heur)
P–00–0522	02/16/00	05/16/00	CBI	(G) Polymeric thickener for aqueous systems	(G) Hydrophobe modified ethoxylated polyurethane (heur)
P–00–0523	02/16/00	05/16/00	CBI	(G) Polymeric thickener for aqueous systems	(G) Hydrophobe modified ethoxylated polyurethane (heur)
P–00–0524	02/16/00	05/16/00	CBI	(G) Polymeric thickener for aqueous systems	(G) Hydrophobe modified ethoxylated polyurethane (heur)
P–00–0525	02/16/00	05/16/00	CBI	(G) Polymeric thickener for aqueous systems	(G) Hydrophobe modified ethoxylated polyurethane (heur)
P–00–0526	02/16/00	05/16/00	CBI	(G) Polymeric thickener for aqueous systems	(G) Hydrophobe modified ethoxylated polyurethane (heur)
P–00–0527	02/16/00	05/16/00	CBI	(G) Open non-dispersive use	(G) Polyester resin
P–00–0528	02/16/00	05/16/00	Elf Atochem North America, Inc.	(G) Metalworking lubricant	(G) Alkali salts of aryl carboxylates
P–00–0529	02/16/00	05/16/00	E.I. Du Pont De Nemours & Co.	(G) Polyamide additive	(G) Terpolyamide or copolyamide
P–00–0530	02/16/00	05/16/00	CBI	(S) Chemical Intermediate	(G) Perfluoroalkyl acrylate
P–00–0531	02/22/00	05/22/00	Wacker silicones corp.	(S) Catalyst for htv silicon rubbers	(G) 1,5-cyclooctadiene, platinum complex
P–00–0532	02/22/00	05/22/00	CBI	(G) Destructive use	(G) Alkoxy alkyl aluminum halide

I. 59 PREMANUFACTURE NOTICES RECEIVED FROM: 02/14/00 TO 02/25/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0533	02/18/00	05/18/00	Henkel Corp., Chemicals Group	(G) Dispersing agent	(S) Propanoic acid, 3-hydroxy-2-(hydroxymethyl)-2-methyl-, polymer with 2,2″-[1,4-butanediylbis (oxymethylene)]bis[oxirane], dihydro-3-(tetrapropenyl)-2,5-furandione and α-hydro-omega-hydroxypoly(oxy-1,2-ethanediyl)-compd. with 2-(dimethylamino)ethanol*
P–00–0534	02/22/00	05/22/00	CBI	(G) Coating component	(G) Copolymer of alkyl acrylates
P–00–0535	02/18/00	05/18/00	Condea Vista Company	(S) Feedstock for esterification	(S) 1-octadecanol, manuf. of distn. lights, fractionation heavies, distn. lights*
P–00–0536	02/18/00	05/18/00	U.S. Polymers Inc.	(S) A water soluble polyester for two component urethane coatings	(G) Reaction product of: polyoxyalkylene solution with trimethylolpropane, 1,4, cyclohexane dimethanol, cyclic aliphatic anhydrides, trimellitic anhydride and block copolymers of ethylene oxide + propylene oxide
P–00–0537	02/18/00	05/18/00	U.S. Polymers Inc.	(S) A water soluble polyester for two component urethane coatings	(G) Reaction product: polyoxyalkylene solution with trimethylolpropane, 1,4 cyclohexane dimethanol, cyclic aliphatic anhydrides and trimellitic anhydride
P–00–0538	02/22/00	05/22/00	CIBA Specialty Chemicals Corporation	(G) Isolated intermediate	(G) Piperidinol derivative
P–00–0539	02/22/00	05/22/00	CBI	(G) Open non-dispersive (resin)	(G) Blocked polyisocyanate
P–00–0540	02/22/00	05/22/00	CBI	(S) Processing aid for leather finishing	(G) Saturated dicarboxylic acid, polymer with polyester, polyamide and substituted carboxylic acids
P–00–0541	02/23/00	05/23/00	Eastman Chemical Company	(S) Chemical intermediate	(G) Chloro nitro phenyl ether
P–00–0542	02/22/00	05/22/00	Vianova Resins Incorporated	(S) Resin for can coatings;resin for tube coatings	(G) Modified phenol formaldehyde resin
P–00–0543	02/23/00	05/23/00	CBI	(G) Polymerization initiator	(S) Petanoic acid, 5,5′-dioxybis[5-oxo-]*
P–00–0544	02/22/00	05/22/00	3M Company	(S) Heat transfer;metal working;testing	(G) Hydrofluoroether
P–00–0545	02/22/00	05/22/00	CIBA Specialty Chemicals Corporation	(S) Light stabilizer for polyolefins	(G) Piperidinyl derivative
P–00–0546	02/23/00	05/23/00	CBI	(G) Dispersant/anti-agglomerant	(G) Alkyloxy-hydroxypropyl, trialkylamine, ammonium chloride
P–00–0547	02/23/00	05/23/00	CBI	(G) Precursor for dispersant/anti-agglomerant	(G) Alkyloxy-hydroxypropyl, dialkylamine
P–00–0548	02/23/00	05/23/00	CBI	(G) Additive for inks and coatings	(G) Polyurethane acrylate ester
P–00–0549	02/23/00	05/23/00	CBI	(G) Additive for inks and coatings	(G) Polyurethane acrylate ester
P–00–0550	02/23/00	05/23/00	CBI	(S) Chemical intermediate	(G) Acrylate ester
P–00–0551	02/23/00	05/23/00	CBI	(G) Polymerization initiator	(S) Butaneperoxoic acid, 2-ethyl-, 1,1-dimethylethyl ester*
P–00–0552	02/25/00	05/25/00	CBI	(G) Photocopying chemical	(G) Salicylic acid, zirconium salt
P–00–0553	02/25/00	05/25/00	Toagosei America Inc.	(S) Base material for acrylic coating	(S) 2-propenoic acid, 2-methyl-, 2-methylpropyl ester, telomer with 3-mercaptopropanoic acid, 2-hydroxy-3-[(2-methyl-1-oxo-2-propenyl)oxy]propyl ester*
P–00–0554	02/25/00	05/25/00	CBI	(G) Molded Parts Manufacture	(G)Diphenylmethane diisocyanate (mix of 4,4 isomers Terminated Polyester Poloyol*
P–00–0555	02/25/00	05/25/00	Wacker Silicones Corp.	(S) Plasters;building adhesive;hydrophobic coatings	(S) Neodecanoic acid, ethenyl ester, polymer with ethene and ethenyl acetate*
P–00–0556	02/25/00	05/25/00	CBI	(G) Open non-dispersive (thickening agent)	(G) Polyurethane
P–00–0560	02/25/00	05/25/00	CBI	(G) Thickening compound for aqueous systems	(G) Acrylic emulsion polymer
P–00–0561	02/25/00	05/25/00	CBI	(G) Thickening compound for aqueous systems	(G) Acrylic emulsion polymer

I. 59 PREMANUFACTURE NOTICES RECEIVED FROM: 02/14/00 TO 02/25/00—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–00–0562	02/25/00	05/25/00	CBI	(G) Thickening compound for aqueous systems	(G) Acrylic emulsion polymer
P–00–0563	02/25/00	05/25/00	CBI	(G) Thickening compound for aqueous systems	(G) Acrylic emulsion polymer

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the TMEs received:

II. 1 TEST MARKETING EXEMPTION NOTICE RECEIVED FROM: 02/14/00 TO 02/25/00

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
T–00–0002	02/14/00	03/30/00	Lonza Inc.	(G) Organic intermediate (destructive use)	(S) *N,N*′-(2,5-dimethyl-1,4-phenylene)-bis-(3-oxo)-butanamide*

In table III, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

III. 29 NOTICES OF COMMENCEMENT FROM: 02/14/00 TO 02/25/00

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0028	02/16/00	02/07/00	(G) Modified acrylic polymer
P–00–0046	02/15/00	01/29/00	(G) Aromatic substituted diurea
P–00–0062	02/22/00	01/25/00	(G) Metal complex tribromo tetrakis dimethyl methylethyl propoxy pthalocyanine derivative
P–00–0083	02/16/00	01/29/00	(G) Trimethylolpropane ester polymer
P–00–0120	02/18/00	02/09/00	(G) Hydroxy functional acrylic polymer
P–98–0524	02/14/00	02/02/00	(G) Hydrocy functional oligomer
P–99–0305	02/24/00	02/02/00	(G) Bisphenol a type polyester resin
P–99–0511	02/18/00	01/28/00	(G) Mixed metal oxide
P–99–0642	02/14/00	02/02/00	(G) Organomodified polysiloxane resin
P–99–0657	02/15/00	02/03/00	(G) Sodium alkoxide
P–99–0665	02/14/00	02/03/00	(G) Organomodified polysiloxane resin
P–99–0915	02/22/00	01/18/00	(G) Chromate, [[[(substituted)nitrophenyl] azo]naphthalenedisulfoanto] [[[(substituted)phenyl]azo]phenylbutanamidato]-, trisodium; chromate, bis [[[(substituted)nitrophenyl] azo]naphthalenedisulfoanto]-, pentasodium; chromate, bis [[[(substituted)phenyl]azo]phenylbutanamidato]-, sodium*
P–99–0928	02/15/00	02/01/00	(S) Ethanol, 2-[2-(C_{12-14}-alkyloxy) ethoxy] derivs., hydrogen sulfates, compds. with triisopropanolamine*
P–99–0982	02/22/00	01/18/00	(G) Chromate, bis[[[(substituted) (phenylamino)ethyl]azo](substituted) benzenedisulfonato]-, potassium tetrasodium
P–99–0984	02/18/00	01/14/00	(G) Urethane acrylate oligomer
P–99–0985	02/24/00	02/08/00	(G) 1,3,6-substitutednapthalene-7-[[4,5-dihydro-3-methyl-5-oxo-1-(4-substitutedphenyl)-1*H*-pyrazol-4-yl]azo]-, tetrasodium salt
P–99–0986	02/24/00	02/08/00	(G) 1,3,6-substitutednapthalene-7-[[4,5-dihydro-3-methyl-5-oxo-1-(4-substitutedphenyl)-1*H*-pyrazol-4-yl]azo]-, tetrapotassium salt
P–99–1008	02/23/00	02/16/00	(G) Polyimide precursor solution
P–99–1042	02/22/00	01/27/00	(G) Alkoxylated dimer fatty acid, tall oil fatty acid ester
P–99–1081	02/14/00	02/02/00	(G) Saturated dicarboxylic acid, polymer with polyester, polyamide and substituted carboxylic acids
P–99–1082	02/22/00	01/28/00	(G) Inorganic salt
P–99–1089	02/22/00	02/11/00	(G) Polyether carboxylate
P–99–1091	02/22/00	02/11/00	(G) Polyether carboxylate
P–99–1106	02/23/00	02/07/00	(G) Sulfinic acid derivative
P–99–1150	02/24/00	02/03/00	(G) Cuprate (3)[3-hydroxy xo)4-[[2-(hydroxy-xo) carbomonocycle] azo xn′] carbopolycycle
P–99–1247	02/14/00	02/04/00	(G) Polymonomeric polyurethane
P–99–1252	02/24/00	02/06/00	(G) Polyamine adducts
P–99–1322	02/24/00	02/10/00	(G) Vegetable oil, chlorosulfurized
P–99–1367	02/23/00	02/14/00	(G) Allphatic anionic polyurethane dispersion in water

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: March 16, 2000.

Deborah A. Williams,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 00–7248 Filed 3–22–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2392—Correction [1]]

Petition for Reconsideration of Action in Rulemaking Proceeding

March 16, 2000.

Petiton for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed on or before March 27, 2000, and replies to oppositions on or before April 6, 2000. See Section 1.4(b)(1) of the Commission's Rules (47 CFR 1.4(b)(1)). The Commission is hereby waiving the filing requirements' deadlines established in accordance with 47 CFR Section 1.106 (g) and (h). However, all other requirements established in 47 CFR Section 1.106 are applicable. In addition, this proceeding will continue to be a non-restricted proceeding in which *ex parte* presentations are permitted, provided they are disclosed in conformance with Commission *ex parte* rules. See Sections 1.1202 and 1.1206(a) of the Commission's rules (47 CFR 1.1202, 1.1206(a)).

Subject: Application by New York Telephone Company (d/b/a Bell Atlantic—New York), Bell Atlantic Communications, Inc., Nynex Long Distance Company and Bell Atlantic Global Networks, Inc. for Authorization to Provide In-Region, InterLATA Services in New York (CC Docket No. 99–295).

Number of Petitions filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7299 Filed 3–22–00; 8:45 am]

BILLING CODE 6712–01–M

[1] See 65 FR 12996 (March 10, 2000).

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–536]

Window Filing Opportunity for Certain Pending Applications and Allotment Petitions for New Analog TV Stations Extended to July 15, 2000

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the window filing opportunity to allow persons with certain pending requests for new analog (NTSC) television stations to modify their requests, if possible, to eliminate technical conflicts with digital television (DTV) stations and to move from channels 60 through 69 has been extended to July 15, 2000.

DATES: The window filing opportunity now closes July 15, 2000.

FOR FURTHER INFORMATION CONTACT: Shaun Maher, Video Services Division, Mass Media Bureau at (202) 418–1600.

SUPPLEMENTARY INFORMATION: This window is available for (1) amendments (other than channel changes) to pending applications for new full-service NTSC television stations on channel 2 through 59, (2) petitions for rule making seeking a new channel below channel 60 for those applicants with pending applications for new full-service NTSC television stations on channels 60 through 69 (in addition, authorized NTSC stations and DTV allotments on channels 60 through 69 can seek permission to relocate to a lower channel at any time, including during this filing window, if they can identify a suitable channel) (3) petitions for rule making seeking a new channel below channel 60 for those applicants with pending applications for new full-service NTSC television stations on channels 2 through 59 at locations inside of the "TV Freeze Areas" and (4) amendments to pending rule making petitions to amend the TV Table of Allotments to add NTSC television allotments.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7172 Filed 3–22–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Application Pursuant to Section 19 of the Federal Deposit Insurance Act; (2) Public Disclosure by Banks; (3) Certification of Eligibility Under the Affordable Housing Program; and (4) Mutual-to-Stock Conversions of State Savings Banks.

DATES: Comments must be submitted on or before May 22, 2000.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street N.W., Washington, D.C. 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7:00 a.m. and 5:00 p.m. [FAX number (202) 898–3838; Internet address: comments@fdic.gov].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Application Pursuant to Section 19 of the Federal Deposit Insurance Act.
   OMB Number: 3064–0018.
   Form Number: 6710/07.
   Response: On occasion.

   Affected Public: All financial institutions.
   Estimated Number of Respondents: 80.
   Estimated Time per Response: 16 hours.
   Estimated Total Annual Burden: 1,280 hours.
   General Description of Collection: Section 19 of the Federal Deposit Insurance Act requires insured depository institutions to obtain the FDIC's consent prior to any participation in their affairs by a person convicted of crimes involving dishonesty or breach of trust. Form 6710/07 is the vehicle for requesting FDIC consent.

2. *Title:* Public Disclosure by Banks.
   OMB Number: 3064–0090.
   Frequency of Response: Annually.
   Affected Public: All financial institutions.
   Estimated Number of Respondents: 6,374.
   Estimated Time per Response: .5 hours.
   Estimated Total Annual Burden: 3,187 hours.
   General Description of Collection: 12 CFR 350 requires a bank to notify the general public, and in some instances shareholders, that disclosure statements are available upon request. Required disclosures consist of financial reports for the current and preceding year which can be copied directly from the year-end Call Report.

3. *Title:* Certification of Eligibility Under the Affordable Housing Program.
   OMB Number: 3064–0116.
   Frequency of Response: On occasion.
   Affected Public: All financial institutions.
   Estimated Number of Respondents: 1,000.
   Estimated Time per Response: 1 hour.
   Estimated Total Annual Burden: 1,000 hours.
   General Description of Collection: The collection of information certifies income eligibility under the affordable housing program. This certification assists the FDIC in determining an individual's eligibility for purchasing affordable housing properties from the FDIC.

4. *Title:* Mutual-to-Stock Conversions of State Savings Banks.
   OMB Number: 3064–0117.
   Frequency of Response: On occasion.
   Affected Public: State savings banks.
   Estimated Number of Respondents: 25.
   Estimated Time per Response: 50 hours.
   Estimated Total Annual Burden: 1,250 hours.
   General Description of Collection: 12 CFR 303.15 and 333.4 require state savings banks that are not members of the Federal Reserve System to file with the FDIC a notice of intent to convert to stock form and provide copies of documents filed with state and federal banking and or securities regulators in connection with the proposed conversion.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of this collection. All comments will become a matter of public record.

Federal Deposit Insurance Corporation.

Dated at Washington, D.C., this 16th day of March, 2000.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–7252 Filed 3–22–00; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicant has filed with the Federal Maritime Commission an application for license as a Non-Vessel Operating Common Carrier—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicant should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, D.C. 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicant:

Samskip, Incorporated, 5365 Robin Hood Road, Suite A–2, Norfolk, VA 23513, Officers: Reynir Gislason, President (Qualifying Individual), Osk Gustafsdottir, Treasurer

Dated: March 20, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–7251 Filed 3–22–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 6, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Betty Ruth Womack (as trustee for the L.T. Womack Family Trust and the L.T. Womack Marital Trust) Litchfield Park, Arizona; to retain voting shares of Corn Belt Bancorporation, Lincoln, Nebraska, and thereby indirectly retain voting shares of Union National Bank, Anita, Iowa.

B. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Kelsoe Management Partnership, Ltd., Dallas, Texas; to acquire additional voting shares of WB&T Bancshares, Inc., Duncanville, Texas, and thereby indirectly acquire additional voting shares of Western Bank & Trust, Duncanville, Texas.

2. William Howard O'Brien, Amarillo, Texas; John Blake O'Brien, Amarillo, Texas; William Alexander O'Brien, Amarillo, Texas; Katherine O'Brien,

Wallin, Mountain View, California and Mary Fay Moore, Amarillo, Texas, to acquire additional voting shares of Grayco Bancshares, Inc., Mclean, Texas, and thereby indirectly acquire additional voting shares of Bank of Commerce, Mclean, Texas.

Board of Governors of the Federal Reserve System, March 17, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7134 Filed 3–22–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Notice of a Meeting of the National Bioethics Advisory Commission (NBAC)

SUMMARY: Pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is given of a meeting of the National Bioethics Advisory Commission. The Commission will discuss its ongoing project on ethical and policy issues in the oversight of human subjects research in the United States. Some Commission members may participate by telephone conference. The meeting is open to the public and opportunities for statements by the public will be provided on April 6 from 1:45–2:15 pm.

Dates/times	Location
April 6, 2000, 8:30 am–5:00 pm.	Loews L'Enfant Plaza Hotel, 480 L'Enfant Plaza, SW, Washington, DC.
April 7, 2000, 8:00 am–12:00 pm.	Same location as above.

SUPPLEMENTARY INFORMATION: The President established the National Bioethics Advisory Commission (NBAC) on October 3, 1999 by Executive Order 12975 as amended. The mission of the NBAC is to advise and make recommendations to the National Science and Technology Council, its Chair, the President, and other entities on bioethical issues arising from the research on human biology and behavior, and from the applications of that research.

Public Participation

The meeting is open to the public with attendance limited by the availability of space on a first come, first serve basis. Members of the public who wish to present oral statements should contact Ms. Jody Crank by telephone, fax machine, or mail as shown below as soon as possible, at least 4 days before the meeting. The Chair will reserve time for presentations by persons requesting to speak and asks that oral statements be limited to five minutes. The order of persons wanting to make a statement will be assigned in the order in which requests are received. Individuals unable to make oral presentations can mail or fax their written comments to the NBAC staff office at least five business days prior to the meeting for distribution to the Commission and inclusion in the public record. The Commission also accepts general comments at its website at bioethics.gov. Persons needing special assistance, such as sign language interpretation or other special accommodations, should contact NBAC staff at the address or telephone number listed below as soon as possible.

FOR FURTHER INFORMATION CONTACT: Ms. Jody Crank, National Bioethics Advisory Commission, 6100 Executive Boulevard, Suite 5B01, Rockville, Maryland 20892–7508, telephone 301–402–4242, fax number 301–480–6900.

Dated: March 17, 2000.

Eric M. Meslin,

Executive Director, National Bioethics Advisory Commission.

[FR Doc. 00–7162 Filed 3–22–00; 8:45 am]

BILLING CODE 4160–17–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 00043]

Grants for National Academic Centers of Excellence on Youth Violence Prevention; Notice of Availability of Funds for Fiscal Year 2000

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2000 funds for development of National Academic Centers of Excellence on Youth Violence Prevention (Centers). CDC is committed to achieving the health promotion and disease prevention objectives of "Healthy People 2010," a national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the focus areas of injury and violence prevention, and mental health and mental disorders. For the conference copy of "Healthy People 2010", visit the Internet site: <http://www.health.gov/healthypeople>.

The primary goals of this program are to: (1) Build the scientific infrastructure necessary to support the development and widespread application of effective youth violence interventions, (2) promote interdisciplinary research strategies to address the problem of youth violence (3) foster collaboration between academic researchers and communities, and (4) empower communities to address the problem of youth violence.

B. Eligible Applicants

Eligible applicants are academic health centers, defined as public and private nonprofit universities, colleges, and university-associated teaching hospitals.

Note: Effective January 1, 1996, Public Law 104–65 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible to receive Federal funds constituting an award, grant, contract, loan, or any other form.

C. Availability of Funds

Approximately $7,000,000 is available in FY 2000 to fund approximately seven to ten Centers. Applicants may apply for either a Developing Center or a Comprehensive Center, however, not for both.

Awards will begin on or about September 30, 2000, and will be made for a 12-month budget period. Developing Centers may be funded up to three years and Comprehensive Centers may be funded up to five years. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

Awards for Developing Centers are expected to average $400,000 per year with a project period not to exceed three years. Awards for Comprehensive Centers are expected to average $1,000,000 per year and may be made up to a total of $1,500,000 per year (total of direct and indirect costs) with a project period not to exceed five years. For Comprehensive Center research projects can be submitted under two themes, Developmental/Risk Factor (DRF) Research and Efficacy/Effectiveness (EE) Research. Comprehensive Center applicants must submit from one to three DRF research project proposals, and/or from one to three EE research project proposals. Applicants may also apply for both themes under one Center for a cost of $1.5 million.

Use of Funds

Core budget with justification for categories corresponding to core activities, to include funds for management functions, non research activities, small one-year pilot projects of less than $15,000. The core budget should include items for development and implementation of a community response plan for youth violence, and development and implementation of curricula for training of health professionals.

D. Program Requirements

The following are applicant requirements for Developing and Comprehensive Centers:

1. Demonstrated expertise in:

(a) Research in risk and protective factors for youth violence and/or development and evaluation of preventive interventions for youth violence;

(b) Capacity to develop and facilitate implementation of a multi-disciplinary and multi-organizational community response plan for youth violence;

2. Provide evidence of capacity to develop, deliver, and maintain a training curriculum for health care professionals.

3. Provide a director (Principal Investigator) who has specific authority and responsibility to carry out the project. The director must report to an appropriate institutional official, e.g., dean of a school, or vice president of a university. The director must have no less than 30 percent effort devoted solely to this project.

4. Provide evidence of working relationships with outside agencies and other entities which will allow for implementation of any proposed intervention activities.

5. Provide evidence of involvement of a multi-disciplinary and multi-organizational group of specialists or experts in primary care, behavioral, and/or preventive medicine, epidemiology, law and criminal justice, behavioral and social sciences, and/or public health as needed to complete the plans of the center.

6. Demonstrate through documentation that full working partners must have established curricula and graduate training programs in disciplines relevant to youth violence prevention (e.g., epidemiology, criminology, social sciences, and behavioral sciences).

7. Demonstrate an established relationship with youth violence prevention programs through letters of commitment. Also include, established or planned relationships with organizations/individual leaders in communities where youth violence related injuries occur at high rates. A letter of support from an appropriate public health agency for support of the proposed center is required.

The following are additional applicant requirements for Comprehensive Centers only:

1. Demonstrated experience in successfully conducting, evaluating, and publishing youth violence prevention research and/or designing, implementing, and evaluating youth violence prevention programs (to include self-directed violence among the young).

2. Demonstrated ongoing youth violence prevention research projects and/or projects to develop and evaluate youth violence prevention interventions.

3. Demonstrated the capacity to disseminate youth violence prevention research findings, translate them into interventions, and evaluate their effectiveness.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should not be more than 25 single-spaced pages, printed on one side, with one inch margins, and unreduced font. Applications should follow the PHS 398 (rev. 4/98) application and Errata sheet, and should include the following information.

1. Cover Letter Outlining type of Center (Developing or Comprehensive) applying for.

2. Core budget (required for Developing and Comprehensive Centers).

F. Submission and Deadline

Letter of Intent (LOI)

Potential applicants should submit a LOI to the Grants Management Specialist identified in the Where to Obtain Additional Information section. Submit the original and two copies of the (LOI) on or before April 24, 2000. It should include what type of Center (Developing or Comprehensive) they may be applying. If applying for Comprehensive Center, identify which research areas will be addressed in the application; *i.e*, Development/Risk Factor and/or Efficacy Effectiveness. The LOI must also include the name and telephone number, of a contact person from the applicant institution. LOI's are intended for planning purposes only and are not binding. Facsimiles and E-mails are not accepted.

Application

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit. On or before May 22, 2000, submit applications to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

Deadline: Applications shall be considered as meeting the deadline if they are received either:

(a) On or before the deadline date; or

(b) Sent on or before the deadline date, and received in time for submission to the Special Emphasis Panel. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late Applications: Applications which do not meet the criteria in (a) or (b) above are considered late applications, will not be considered, and will be returned to the applicant. Bound materials may not be included in any part of the application.

Each proposed research project requires an RO1-type application using Form PHS 398 (Rev. 4/98) (http://grants.nih.gov/grants/forms.htm). The guidelines and page limits set forth in the PHS 398 should be followed, and the project should be included as a separate and distinct part of the overall application. Appendices for research projects shall not exceed 15 pages.

Additionally, within the narrative of the research plan section, include a brief description of each project in the following format (not to exceed one page for each Project):

Title of Project,

Topic Area; *i.e.*, Developmental/Risk Factor and/or Efficacy/Effectiveness.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by a Special Emphasis Panel appointed by CDC. Applications which are complete and responsive will be subjected to a preliminary evaluation (triage) by a Special Emphasis Panel(SEP) to determine if the application is of sufficient technical and scientific merit to warrant further full review by the SEP. Those applications judged to be competitive will be further evaluated by a dual peer review process.

CDC will withdraw from further consideration of applications judged to

criminal/juvenile courts, legislators, public health specialists, and business

2. Review by the CDC Advisory Committee for Injury Prevention and

Send all reports to the Grants Management Specialist identified in the

Prevention, National Center for Injury Prevention and Control, Centers for

1. On page 11586, in the third

CDC will withdraw from further consideration of applications judged to be noncompetitive.

Priority scores will be assigned by the SEP to the core and Efficacy/Effectiveness (EE) and Developmental/Risk Factor (DRF)applications.

1. Review by the Special Emphasis Panel (SEP)

a. Initial peer review of the applications will be conducted by the SEP, which will either recommend or not recommend the application for further consideration for funding.

Factors to be considered by the SEP for Core funding include:

(a) The specific aims of the application, *e.g.*, the long-term objectives and intended accomplishments for the proposed Center in relation to the problem of preventing youth violence and self-directed violence among the young. If the aims of the application are achieved, how will prevention of youth violence be advanced? What will be the effect of the Center's activities on violence prevention efforts within the Center's target community or region?

(b) The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of stated objectives of the proposed Center.

(c) Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities. Project director: Is the proposed Center director appropriately trained and well-suited to carry out this work? Is the work proposed appropriate to the experience level of the proposed director and other key faculty and staff?

(d) Adequacy of institutional support and arrangements to ensure successful implementation of activities of the proposed Center; including arrangements for the Center director's time commitment and authority; and also including documentation of relationships and understanding of roles and responsibilities between partner institutions, and community organizations.

(e) Adequacy of plans to conduct pilot projects. Overall relevance of the project for the field of violence prevention. Adequacy of the setting and participants for the project. Relevance of outcome measurements, and expected results. Appropriateness of time lines, cost, and plans for translation/dissemination.

(f) Adequacy of plans and arrangements to develop and implement a community response to the problem of youth violence bringing together diverse perspectives (*i.e.* health and mental health professionals, educators, the media, parents, young people, police, criminal/juvenile courts, legislators, public health specialists, and business leaders. Documentation of agreements and clear understanding of roles and responsibilities of partner organizations.

(g) Adequacy of plans and arrangements to develop and implement curricula for training of health care professionals on violent behavior identification, assessment and intervention with high risk youth, and integrate this curriculum into medical, nursing, and other health professional training program.

(h) Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

(i) Does the applicant meet the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research?

Factors to be considered by the SEP in reviewing Developmental/Risk Factors and Efficacy/Effectiveness research projects include:

(a) Does this research project application address an important problem? If the aims of the application are achieved, how will scientific prevention knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field forward?

(b) Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the research project application? Does the applicant acknowledge potential problem areas and consider alternative tactics?

(c) Does the research project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the research project challenge existing paradigms or develop new methodologies or technologies?

(d) Is the investigator appropriately trained and well-suited to carry out this work? Is the work proposed appropriate to the experience level of the principal investigator and other researchers?

(e) Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed project take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support?

(f) Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

(g) Does the applicant meet the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research?

2. Review by the CDC Advisory Committee for Injury Prevention and Control (ACIPC)

Secondary review of applications will be conducted by the Science and Program Review Work Group (SPRWG) of the ACIPC. The SPRWG consists of ACIPC members, Federal ex officio participants, and organizational liaisons. The Federal ex officio participants will be responsible for identifying projects in overlapping areas of research interest so that unwarranted duplication in federally-funded research can be avoided. At the request of the SPRWG, the appropriate NCIPC divisional Associate Director for Science (ADS) or their designee may be invited to address the SPRWG during the secondary review to assure that research priorities of the announcement are understood and to provide background regarding current research activities. The SPRWG may reach over better ranked projects in order to assure maximal impact and balance of proposed research.

Factors to be considered by the ACIPC include:

a. The results of the peer (SEP) review.

b. The significance of the proposed activities as they relate to national program priorities and the achievement of national objectives.

c. National and NCIPC priority needs and geographic balance.

d. The significance of the proposed activities in relation to the priorities and objectives stated in Healthy People 2010.

e. Budgetary considerations.

SPRWG members will vote on funding recommendations. The SPRWG may vote to approve, disapprove, or modify the recommendations for funding.

These recommendations will be presented to the entire ACIPC in the form of a report by the Chairman of the SPRWG. The ACIPC can vote to approve, disapprove, or modify these recommendations for funding consideration. Recommendations are then presented to the Director, NCIPC, for funding decisions.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Progress reports (annual);
2. Financial status report, no more than 90 days after the end of the budget period; and
3. Final financial status report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each see Addendum 1 in the application kit.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–20 Conference Activities within Grants/Cooperative Agreements

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301, 391, 392, 393, and 394 of the Public Health Service Act, [42 U.S.C. 241, 280b, 280b-1, 280b-1a, and 280b-2] as amended. Program regulations are set forth in 42 CFR Part 52. The catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

For this announcement and other CDC program announcements see the CDC home page on the Internet: http://www.cdc.gov. To receive additional written information and to request an application kit, call 1–888-GRANTS4 (1–888–472–6874). You will be asked to leave you name and address and will be instructed to identify the number for the announcement of interest. A complete program description and information on application procedures are contained in the application package.

Please refer to Announcement 00043 when requesting information and submitting an application. If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Sheryl L. Heard, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number (770) 488–2723, Email address slh3@cdc.gov.

Programmatic technical assistance may be obtained from: Enrique Nieves, Jr., Project Officer, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., (K–60), Atlanta, GA 30341–3724, Telephone number (770) 488–1281, Internet address: exn2@cdc.gov.

Other Potential Sources of Funds

The National Institute of Mental Health (NIMH) of NIH has announced the availability of funds for research grants in prevention strategies for disruptive behavior disorders in children and adolescents. The purpose of the RFA (RFA No. MH–00–011) is to encourage research applications addressing implementation, replication, and deployment strategies for sustaining prevention programs targeted towards reducing risks for or the onset of disruptive behavior problems in youth. The NIMH program announcements are available at http://www.nimh.nih.gov/grants/index.cfm.

Dated: March 17, 2000.

Henry S. Cassell III,

Acting Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–7167 Filed 3–22–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00F–0792]

The Procter and Gamble Co.; Filing of Food Additive Petition; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of March 3, 2000 (65 FR 11585). The document announced that The Procter and Gamble Co. has filed a petition proposing that the food additive regulations regarding olestra be amended by removing the requirement for the label statement. A citation appeared incorrectly in the **SUPPLEMENTARY INFORMATION** section. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Mary D. Ditto, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3102.

SUPPLEMENTARY INFORMATION: In FR Doc. 00–5096, appearing on page 11585 in the **Federal Register** of Friday, March 3, 2000, the following correction is made:

1. On page 11586, in the third column, under the **SUPPLEMENTARY INFORMATION** section, in the last paragraph, line 2, "CFR 25.32(i)" is corrected to read "CFR 25.30(k)".

Dated: March 14, 2000.

Eugene C. Coleman,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7133 Filed 3–22–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

Endangered Species

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–012014
Applicant: Rare Feline Breeding Center, Center Hill, FL.

The applicant request a permit to sell in foreign commerce and export two males and two females tigers (*Panthera tigris*) to Bifengzia Ecological Zoo, Yaan City, China for the purpose of enhancement of the survival of the species through propagation and conservation education.

PRT–024236
Applicant: Richard A.Edlund, Muskegon, MI.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–023045
Applicant: Ann Cornell, Joplin, MO.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–023047
Applicant: Harry M. Cornell, Jr. Joplin, MO.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd

maintained under the management program of the Republic of South Africa, for the purpose of enhancement of the survival of the species.

PRT–022663

Applicant: Columbus Zoo and Aquarium, Powell, OH.

The applicant requests a permit to import two male and one female captive-born African cheetahs (*Acinonyx jubatus*) from the Toronto Zoo, Ontario, Canada for the purpose of enhancement of the species through captive propagation.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: March 17, 2000.

Kristen Nelson,

Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 00–7173 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Supplemental Environmental Assessment on the Continuation of General Swan Hunting Seasons in Parts of the Pacific Flyway

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This Notice advises the public that a Draft Supplemental Environmental Assessment on the Continuation of General Swan Hunting Seasons in Parts of the Pacific Flyway is available for public review. Comments and suggestions are requested.

DATES: You must submit comments on the Draft Environmental Assessment by May 22, 2000.

ADDRESSES: Copies of the Draft Environmental Assessment can be obtained by writing to Robert Trost, Pacific Flyway Representative, U.S. Fish and Wildlife Service, Office of Migratory Bird Management, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181. Written comments can be sent to the same address. All comments received, including names and addresses, will become part of the public record. You may inspect comments during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Robert Trost at: Pacific Flyway Representative, U.S. Fish and Wildlife Service, Office of Migratory Bird Management, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181, (503) 231–6162.

SUPPLEMENTARY INFORMATION: The Draft Supplemental Assessment includes a review of the past 5-year experimental general swan hunting seasons in parts of the Pacific Flyway and alternatives for establishment of future operational swan hunting seasons in the same area. The Supplemental Assessment was prompted by requests from individuals, States, and various conservation organizations for a thorough examination of alternatives for swan hunting in the Pacific Flyway in light of continuing concerns for the Rocky Mountain Population of trumpeter swans. The Assessment deals with establishment of an operational approach for swan hunting and related efforts to address status and distributional concerns regarding the Rocky Mountain Population of trumpeter swans. Four alternatives, including the proposed action, are considered.

Dated: March 13, 2000.

John G. Rogers,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 00–6933 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–220–1020XQ]

Call for Nominations for Northwest and Front Range Resource Advisory Councils (Colorado)

AGENCY: Bureau of Land Management, Interior.

ACTION: Extension of nomination period.

SUMMARY: The purpose of this notice is to extend the Nomination Period to fill positions which have recently been vacated on two Colorado, Bureau of Land Management (BLM), Resource Advisory Councils. The original notice calling for nominations appeared in the **Federal Register** on February 7, 2000 with the Nomination Period closing March 23, 2000. This Nomination Period has been extended to April 20, 2000.

The position to be filled on the Northwest Resource Advisory Council is "Public-at-Large" in Category 3.

The position on the Front Range Resource Advisory Council which is being filled is also "Public-at-Large" in Category 3.

DATES: Completed Nomination/Background Information Forms and any other necessary information should be received in the appropriate office by April 20.

ADDRESSES: Northwest Resource Advisory Council—Bureau of Land Management, Northwest Center, Attn: RAC Nomination, 2815 H Road, Grand Junction, Colorado 81506.

Front Range Resource Advisory Council—Bureau of Land Management, Front Range Center, Attn: RAC Nomination, 3170 East Main Street, Canon City, Colorado 81212.

FOR FURTHER INFORMATION CONTACT: Ken Smith, (719) 269–8553; for information about the Front Range Resource Advisory Council or Lynn Barclay, (970) 826–5096 for information about the Northwest Resource Advisory Council.

SUPPLEMENTARY INFORMATION: This Nomination Period has been extended to be consistent with the Bureau of Land Management's annual call for nominations to fill positions on the Councils whose terms expire each year.

Dated: March 14, 2000.

Donnie R. Sparks,

Center Manager.

[FR Doc. 00–7146 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–JB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–910–00–1020–PB]

New Mexico Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Council meeting.

SUMMARY: In accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972 (FACA), 5 U.S.C. Appendix 1, the Department of the Interior, Bureau of Land Management (BLM), announces a meeting of the New Mexico Resource Advisory Council (RAC). The meeting will be held on April 26–28, 2000, at the James H. Baxter Civic Center, 313 E. 4th Street, Lordsburg, NM 88055.

There is an optional all day field trip on Wednesday, April 26, 2000, to the Gray Ranch area to look at vegetation and on-the-ground events. The optional tour will start at the Holiday Inn Express in Lordsburg, NM, at 8 a.m. and end back in Lordsburg, NM, at about 5 p.m. Transportation will be provided for RAC members. Any visiting public are welcome but must provide their own four-wheel-drive transportation, foods, and refreshments.

The meeting on Thursday, April 27, 2000, starts at 8 a.m. and will end about 5 p.m. The three established RAC Subcommittees may have late afternoon or evening meetings on this day. The exact time and location of the Subcommittee meetings will be established by the Chairperson of each Subcommittee earlier in the day during the RAC meeting. The meeting on Friday, April 28, 2000, starts at 8 a.m. and will end about 3:30 p.m. The ending time of 3:30 p.m. for the meeting may be changed depending on the work remaining for the RAC. The draft agenda for the RAC meeting includes an agreement on the meeting agenda; any RAC comments on the draft minutes of the last RAC meeting on February 24, 25, and 26, 2000, in Roswell, NM; and a check-in from the RAC members.

(The following are planned presentations that also include discussions:) A Standards and Guidelines update presentation; an update on the Robledo Mountains WSA; a presentation on RS 2477 (roads); BLM Field Office Managers State of the Field Office presentations with emphasis on invasive plants; several presentations on invasive plants from representatives of the State of New Mexico, BLM, RAC members, NM State Highway Department and a County; RAC Subcommittee reports from the Urban/Lands Subcommittee, the Oil and Gas Subcommittee, and the Roads and Trails Subcommittee; a public comment period to the RAC, RAC discussions and any RAC recommendations, develop draft agenda items and select a location for the next RAC meeting, and a RAC assessment on the current meeting.

The time for the public to address the RAC is on Friday, April 28, 2000, from 10 a.m. to 12 noon. The RAC may reduce or extend the end time of 12 noon depending on the number of people wishing to address the RAC. Anyone wishing to address the RAC should be present at the 10 starting time.

The length of time available for each person to address the RAC will be established at the start of the public comment period and will depend on how many people there are that wish to address the RAC. At the completion of the public comments the RAC may continue discussion on its agenda items.

FOR FURTHER INFORMATION CONTACT: Bob Armstrong, New Mexico State Office, Planning and Policy Team, Bureau of Land Management, 1474 Rodeo Road, P.O. Box 27115, Santa Fe, NM 87502–0115; telephone (505) 438–7436.

SUPPLEMENTARY INFORMATION: The purpose of the Resource Advisory Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with the management of public lands. The Council's responsibilities include providing advice on long-range planning, establishing resource management priorities and assisting the BLM to identify State and regional standards for rangeland health and guidelines for grazing management.

Dated: March 17, 2000.

Richard A. Whitley,

Acting State Director.

[FR Doc. 00–7170 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–020–1020–DE]

Notice of Meeting

AGENCY: Bureau of Land Management (BLM), Montana, Billings and Miles City Field Offices, Interior.

ACTION: Notice of meeting.

SUMMARY: The Eastern Montana Resource Advisory Council will have a meeting April 27, 2000 at the Montana Fish, Wildlife, and Parks Conference Room west of Miles City starting at 8:00 a.m. Primary agenda topics include discussion on travel management, the BLM outfitter/guide program and updates on coalbed methane development, and the Pryor Mountain Wild Horse Herd Management Plan.

The meeting is open to the public and the public comment period is set for 11:00 a.m. on April 27. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marilyn Krause, Public Affairs Specialist, Miles City Field Office, 111 Garryowen Road, Miles City, Montana 59301, telephone (406) 233–2831.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: March 10, 2000.

Timothy M. Murphy,

Miles City Field Manager.

[FR Doc. 00–7212 Filed 3–22–00; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1651–DD]

Notice of Closure to Motorized Vehicles

AGENCY: Bureau of Land Management, Interior.

ACTION: Temporary Closure Order for Motorized Vehicle Travel.

SUMMARY: Notice is hereby given that effective March 3, 2000 certain public lands in Chaffee County, Colorado are closed to all types of motorized vehicle travel. The purpose of this closure is to prevent the development of unauthorized user-created trails, to prevent resource damage to soils and vegetation, and to prevent wildlife harassment. This closure is made under the authority of 43 CFR 8364.1.

EFFECTIVE DATES: This closure is effective March 3, 2000 and shall remain in effect until revised, revoked or amended.

ADDRESSES: Royal Gorge Field Office, 3170 East Main Street, Canon City, CO 81212; Telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Levi D. Deike, Associate Field Office Manager or James R. Cunio, Forester.

SUPPLEMENTARY INFORMATION: The public lands affected by this temporary closure are identified as follows:

Chaffee County, Colorado, Sixth Principal

Meridian: Cache Creek Area, located immediately west of Granite, Colorado; south of the Lake and Chaffee County boundary, north of Chaffee County Road 390 and west of U.S. Highway 24.
T.11S., R.79W. All public lands in that part of Section 31 lying west of the right-of-way of U.S. Highway 24.
T.11S., R.80W. All of the following described public lands lying south of the Chaffee and Lake County boundary, but not including those lands within the right of way for Chaffee County Roads 398, 398A, 398B, 398C or 398D.
Section 34 NE¼
Section 35 All
Section 36 All except the Granite Cemetary
T.12S., R.79W. All of the following described public lands lying west of the right-of-way of U.S. Highway 24 and north of Chaffee County Road 390.
Section 5 SW¼ except MS117
Section 6 All
Section 7 N½N½
Section 8 N½NW¼
T.12S., R.80W.
Section 1 All
Section 2 All except MS3615

This closure does not apply to emergency, law enforcement, and federal or other government vehicles while being used for official or emergency purposes, or to any vehicle whose use is expressly authorized or otherwise officially approved by BLM. Violation of this order is punishable by fine of up to $100,000 and/or imprisonment for up to one year as defined in 18 U.S.C. 3571. Notice of this closure and a detailed map will be posted at the Royal Gorge Field Office.

Donnie Sparks,
Royal Gorge Field Office Manager.
[FR Doc. 00–7143 Filed 3–22–00; 8:45 am]
BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–160–1430–ET; CACA 7820]

Public Land Order No. 7435; Revocation of Public Land Order No. 460; California

AGENCY: Bureau of Land Management, Interior.
ACTION: Public Land Order.

SUMMARY: This order revokes a public land order in its entirety as to the remaining 80 acres of land withdrawn in contemplation of inclusion into Naval Petroleum Reserve No. 1. The land is no longer needed for the purpose for which it was withdrawn. This action will open the 80 acres to surface entry, mining, and mineral leasing.
EFFECTIVE DATE: April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office (CA–931.4), 2800 Cottage Way, Sacramento, California 95825; 916–978–4675.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 460, which withdrew public land in contemplation of inclusion into Naval Petroleum Reserve No. 1, is hereby revoked in its entirety as it affects the following described land:

Mount Diablo Meridian

T. 31 S., R. 24 E.,
Sec. 14, N½W¼.

The area described contains 80 acres in Kern County.

2. At 10 a.m. on April 24, 2000, the land will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on April 24, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. At 10 a.m. on April 24, 2000, the land will be opened to location and entry under the United States mining laws and to the operation of the mineral leasing laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: March 10, 2000.

Kevin Gover,
Assistant Secretary of the Interior.
[FR Doc. 00–7213 Filed 3–22–00; 8:45 am]
BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–952–00–1420–BJ]

Notice of Filing of Plat of Survey; New Mexico

AGENCY: Bureau of Land Management, Interior.
ACTION: Notice.

SUMMARY: The plat of survey described below was officially filed in the New Mexico State Office, Bureau of Land Management, Santa Fe, New Mexico, on February 28, 2000.

New Mexico Principal Meridian, New Mexico

Cieneguilla Grant, approved February 10, 2000, for Group 970 NM.

A person or party who wishes to protest against this survey must file a written protest with the NM State Director, Bureau of Land Management, stating that they wish to protest.

A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the protest is filed. The above-listed plat represents original surveys.

This plat will be available for inspection in the New Mexico State Office, Bureau of Land Management, P.O. Box 27115, Santa Fe, NM 87502–0115. Copies may be obtained from this office upon payment of $1.10 per sheet.

Dated: March 14, 2000.

James D. Claflin,
Acting Chief Cadastral, Surveyor for New Mexico.
[FR Doc. 00–7215 Filed 3–22–00; 8:45 am]
BILLING CODE 4310–FB–M

DEPARTMENT OF THE INTERIOR

National Park Service

Kaloko-Honokohau National Historical Park Advisory Commission; Notice of Meeting

Notice is given in accordance with the Federal Advisory Committee Act that meeting of the Na Hoapili o Kaloko-Honokohau, Kaloko Honokohau National Historical Park Advisory Commission will be held at 7:00 p.m. to 9:00 p.m., May 5, 2000, at the King Kamehameha's Kona Beach Hotel, Kulana Hulihonua Room, Kailua-Kona, Hawaii.

The agenda will include the following: Status of vacancies and Commissioners' terms of appointments, budget update, and cultural center development. The Superintendent's and committee reports will also be presented.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript will be available after May 31, 2000. For copies of the minutes, contact the Kaloko-Honokohau National Historical Park Superintendent at (808) 329–6881.

Dated: March 15, 2000.

Geraldine K. Bell,
Superintendent, Kaloko-Honokohau National Historical Park.
[FR Doc. 00–7171 Filed 3–22–00; 8:45 am]
BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Development of a Groundwater Replenishment System

AGENCY: Bureau of Reclamation, Interior.
ACTION: Notice of availability of a Final Environmental Impact Report/ Environmental Impact Statement (FEIR/EIS) FES 00–10.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation), Orange County Water District, and Orange County Sanitation District have prepared a FEIR/EIS on potential impacts from the development of a Groundwater Replenishment System in Orange County, California. Reclamation's involvement stems from the possibility of the agency funding some of the project.

ADDRESSES: Copies of the FEIR/EIS are available for public inspection and review at the following locations:

Bureau of Reclamation, Program Analysis Office, Room 7456, 1849 C Street, NW., Washington, DC 20240; telephone: (202) 208–4662.
Bureau of Reclamation, Denver Office Library, Building 67, Room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone: (303)236–6963.
Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470: telephone: (702) 293–8698.
Orange County Water District, P.O. Box 8300, Fountain Valley, CA; telephone: (714) 378–3200.

FOR FURTHER INFORMATION CONTACT: Mr. Del Kidd, Bureau of Reclamation, Lower Colorado Region, P.O. Box 61470, Boulder City, NV 89006–1470, telephone: (702) 293–8698, or Ms. Debbie Burris, Orange County Water District, P.O. Box 8300, Fountain Valley, CA 92728–8300; telephone (714) 378–3200 ext. 4423.

SUPPLEMENTARY INFORMATION: The Groundwater Replenishment System is a proposal to take secondary, treated wastewater from the Orange County Sanitation District treatment plant in Fountain Valley, California, and further process this water to drinking water standards. The processed water will be used for groundwater recharge, for injection into a seawater intrusion barrier, and for landscape irrigation and industrial process water. Otherwise, the water would be discharged into the Pacific Ocean. The Groundwater Replenishment System would supplement existing water supplies. The System would provide a new, cost-effective and reliable source of water to recharge the Orange County Groundwater Basin, protect the Basin from further degradation due to seawater intrusion, and augment the supply of reclaimed water for irrigation and industrial use.

Review of the Draft EIR/EIS led to some modifications of the proposed project. These modifications do not substantially change the nature and significance of impacts of the proposal, nor do they substantially change the construction disturbances or project operations. They do require that all (100%) of the secondary effluent treated by the Groundwater Replenishment System treatment facilities would be routed through the micro filtration and reverse osmosis filtration process. (Under the original proposal there was to be blending of some of the water.)

This additional processing will improve the water quality to beyond Environmental Protection Agency's Drinking Water Standards and the processed water will be better than any other water used for replenishment in the Orange County Groundwater Basin today. The comment on the Draft also lead the Districts to commit to study expansion of the injection well system. In addition, the Districts committed to conducting a risk assessment.

The Draft EIR/EIS was issued on December 3, 1998. Comments received from interested organizations and individuals on the Draft EIR/EIS were addressed in the Final EIR/EIS. No decision will be made on the proposal until 30 days after the release of the Final EIR/EIS. After the 30 day waiting period, Reclamation will complete a Record of Decision. This document will present the action that will be implemented and will discuss all factors leading to the decision.

Dated: March 7, 2000.

William J. Leibhauser,
Manager, Environmental Compliance and Realty Group.
[FR Doc. 00–7210 Filed 3–22–00; 8:45 am]
BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.
TIME AND DATE: March 29, 2000 at 11:00 a.m.
PLACE: Room 101, 500 E Street SW., Washington, DC 20436, Telephone: (202) 205–2000.
STATUS: Open to the public.
MATTERS TO BE CONSIDERED: 1. Agenda for future meeting: None.

2. Minutes.

3. Ratification List.

4. Inv. Nos. 701–TA–269–270 and 731–TA–311–317 and 379–380 (Review) (Brass Sheet and Strip from Brazil, Canada, France, Germany, Italy, Japan, Korea, the Netherlands, and Sweden)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on April 12, 2000.)

5. Inv. Nos. 731–TA–367–370 (Review)(Color Picture Tubes from Canada, Japan, Korea, and Singapore)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on April 13, 2000.)

6. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 17, 2000.

Donna R. Koehnke,
Secretary.
[FR Doc. 00–7255 Filed 3–20–00; 4:12 pm]
BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

e.g., permitting electronic submission of responses.

DEPARTMENT OF LABOR

Transport Explosives—Inspection Certification is available for inspection

Title: Trucks used Underground to Transport Explosives—Inspection

example, by using automated electronic, mechanical, and other technological

DEPARTMENT OF JUSTICE

Office of Community Oriented Policing Services; Agency Information Collection Activities; Proposed Collection; Comment Request

ACTION: Notice of information collection under review; COPS crime analysis units survey.

Office of Management and Budget (OMB) approval is being sought for the information collection listed below. This proposed information collection was previously published in the Federal Register and allowed 60 days for public comment.

The purpose of this notice is to allow an additional 30 days for public comments from the date listed at the top of this page in the **Federal Register.** This process is conducted in accordance with 5 Code of Federal Regulation, Part 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the COPS Office, PPSE Division, 1110 Vermont Ave., NW, Washington, DC 20530–0001; attn: Karen Beckman.

Additionally, comments may be submitted to COPS via facsimile to 202–633–1386, attn: Karen Beckman. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suit 1220, 1331 Pennsylvania Avenue NW, Washington, DC, 20530.

Written comments and suggestions from the public and affected agencies should address one or more of the following points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency/component, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's/component's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

The proposed collection is listed below:

COPS Crime Analysis Units Survey

(1) *Type of information collection:* New Collection.

(2) *The title of the form/collection:* COPS Crime Analysis Units Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: COPS 034/01; Office of Community Oriented Policing Services, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Representatives from police agencies with over 100 sworn personnel will be asked to respond (approximately 800). The COPS Crime Analysis Units Survey will collect basic information about the nature, extent, and quality of recipient's crime analysis capabilities.

The COPS office will use the information collected to assess whether crime analysis units provide analytic support systems that efficiently and accurately process data that define problems and help promote solutions. Data from the surveys will be used to produce a final technical report assessing the nature of crime analysis units, a summary of the findings and an easy-to-read guidebook to aid in the development and enhancement of crime analysis units.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* Surveys will be administered by mail to approximately 800 law enforcement agencies with sworn forces over 100. Administrative preparation and survey completion will take approximately 0.75 hours per respondent (including record keeping).

(6) *An estimate of the total public burden (in hours) associated with the collection:* Approximately 600 hours.

Public comment on this proposed information collection is strongly encouraged. If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Pace, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Dated: March 16, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 00–7044 Filed 3–22–00; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR1218–0227(2000)]

Trucks Used Underground to Transport Explosives—Inspection Record; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information collection requirements contained in the standard on Trucks Used Underground to Transport Explosives (29 CFR 1926.903(e))—Inspection Certification.

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before May 22, 2000.

ADDRESSES: Submit comments to the Docket Office, Docket No. ICR1218–0227(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. You may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen Martinez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements on Trucks used Underground to Transport Explosives—Inspection Certification is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Kathleen Martinez at (202) 693–2444 or Todd Owen at (202) 693–2444. For electronic copies of the ICR on Trucks used Underground to Transport Explosives—Inspection Certification, contact OSHA on the Internet at *http://www.osha-slc.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and the impact of information collection requirements on respondents properly assessed. The Occupational Safety and Health Act of 1 970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

II. Proposed Action

The inspection certification required in 29 CFR 1926.903(e) is necessary to assure compliance with the requirement for inspection of the electrical system in trucks used for the underground transportation of explosives. The inspection assures that the truck have a weekly maintenance check of the electrical system to detect any failures which may constitute an electrical hazard. Employers must prepare and retain a certification record of the inspection.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Truck used Underground to Transport Explosives—Inspection Certification (29 CFR 1926.903(e)).

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Trucks used Underground to Transport Explosives—Inspection Certification (29 CFR 1926.903(e)).

OMB Number: 1218–0227.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 1.

Frequency: Weekly.

Average Time per Response: 10 minutes.

Estimated Total Burden Hours: 9 hours.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 11.

Signed at Washington, DC, this 17th day of March 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–7137 Filed 3–22–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR1218–0217(2000)]

Construction Records for Blasting Operations; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information collection requirements contained in the standard on Construction Records for Blasting Operations (29 CFR 1926.900(k)(3)(i)).

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before May 22, 2000.

ADDRESSES: Submit comments to the Docket Office, Docket No. ICR1218–0217(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. You may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen Martinez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3627, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements on Construction Records for Blasting Operations is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Kathleen Martinez at (202) 693–2444 or Todd Owen at (202) 693–2444. For electronic copies of the ICR Construction Records For Blasting Operations, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments is clearly understood, and the impact of information collection requirements on respondents can be properly assessed. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

II. Proposed Actions

DEPARTMENT OF LABOR

Average Time per Response: 15

Inspections of Personnel Hoists is available for inspection and copying in

Administration, 200 Constitution

- Minimize the burden of the

II. Proposed Actions

This provision requires employers to post a sign warning against the use of mobile radio transmitters on all roads within 1000 feet of blasting operations. When this requirement creates an "operational handicap", the employer must develop and implement an alternative method that will prevent the premature detonation of electronic blasting caps. The alternative method must be in writing, and a competent person must certify its adequacy.

OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Construction Records for Blasting Operations.

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Construction Records for Blasting Operations (29 CFR 1926.900(k)(3)(i)).

OMB Number: 1218–0217.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 160 work sites.

Frequency: Once per 160 work sites.

Average Time per Response: 8 hours.

Estimated Total Burden Hours: 1,280.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 11.

Signed at Washington, DC, this 17th day of March 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–7138 Filed 3–22–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR1218–023–0231(2000)]

Construction Records for Tests and Inspections of Personnel Hoists; Extension of the Office of Management and Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information collection requirements contained in the standard on Construction Records for Test and Inspections of Personnel Hoists (29 CFR 1926.552(c)(15)).

The Agency is particularly interested in comments on the following:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarity of the information collected; and
- Ways to minimize the burden on employers who must comply, for example, by using automated, electronic, mechanical, and other technological information and transmission collection techniques.

DATES: Submit written comments on or before May 22, 2000.

ADDRESSES: Submit comments to the Docket Office, Docket No. ICR1218–0231(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N–2625, 200 Constitution Avenue, NW., Washington, DC 20210; telephone: (202) 693–2350. You may transmit written comments 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Kathleen Martinez, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3605, 200 Constitution Avenue, NW., Washington, D.C. 20210; telephone: (202) 693–2444. A copy of the Agency's Information Collection Request (ICR) supporting the need for the information collection requirements on Construction Records for Tests and Inspections of Personnel Hoists is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Kathleen Martinez at (202) 693–2444 or Todd Owen at (202) 693–2444. For electronic copies of the ICR on Construction Records for Test and Inspection for Personnel Hoists, contact OSHA on the Internet at http://www.osha-slc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and the impact of information collection requirements on respondents properly assessed. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

II. Proposed Actions

The certification record required in 29 CFR 1926.552(c)(15) is necessary to assure compliance with the requirement for personnel hoists. It assures that the hoists have initial, periodic, and regular maintenance checks. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information collection requirements contained in the Construction Records for Test and Inspections of Personnel Hoists (29 CFR 1926.552(c)(15)).

Type of Review: Extension of currently approved information collection requirements.

Agency: Occupational Safety and Health Administration.

Title: Construction Records for Test and Inspections of Personal Hoists (29 CFR 1926.552(c)(15)).

OMB Number: 1218–0231.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 14,400.

Frequency: Every 3 months.

Average Time per Response: 15 minutes.

Estimated Total Burden Hours: 15,840.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506), Secretary of Labor's Order No. 6–96 (62 FR 111), and 29 CFR part 11.

Signed at Washington, D.C., this 17th day of March 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–7139 Filed 3–22–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

Proposed Extension of Information Collection; Comment Request; Prohibited Transaction Exemption 97–41

ACTION: Notice.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed extension of the information collection provisions of Prohibited Transaction Class Exemption 97–41. A copy of the Information Collection Request (ICR) may be obtained by contacting the office listed in the addresses section of this notice.

DATES: Written comments must be submitted to the office shown in the addresses section below on or before May 22, 2000.

ADDRESSES: Gerald B. Lindrew, Office of Policy and Research, U.S. Department of Labor, Pension and Welfare Benefits Administration, 200 Constitution Avenue, NW, Room N–5647, Washington, DC 20210. Telephone: (202) 219–4782; Fax: (202) 219–4745. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

I. Background

Prohibited Transaction Class Exemption 97–41 provides an exemption from the prohibited transaction provisions of the Employment Retirement Income Security Act of 1974 (ERISA) and from certain taxes imposed by the Internal Revenue Code of 1986 (Code). The exemption permits an employee benefit plan to purchase shares of one or more open-end management investment companies (Mutual Fund) registered under the Investment Advisers Act of 1940, and which also serves as a fiduciary of the plan, in exchange for plan assets transferred in-kind to the Mutual Fund from a collective investment fund (CIF) maintained by the bank or plan adviser, where the bank or plan adviser is both the investment adviser to the Mutual Fund and a fiduciary of the plan. The transfer and purchase must be in connection with a complete withdrawal of a plan's assets from the CIF. The exemption affects participants and beneficiaries of the plans that are involved in such transactions as well as the bank or plan adviser and the registered investment company.

In order to ensure that the exemption is not abused and that the rights of participants and beneficiaries are protected, the Department requires the bank to give the independent fiduciary notice of the in-kind transfer and full written disclosure of information concerning the registered investment company. Further , the bank or plan adviser must provide the independent fiduciary with certain ongoing disclosures.

II. Desired Focus of Comments

The Department is particularly interest in comment that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

III. Current Action

This existing information collection should be continued because without this exemption, plans would be unable to engage in transactions with banks and advisers of registered investment companies who maintain CIFs. For the Department to grant an exemption, however, it must ensure the participants and beneficiaries are protected. It, therefore, included certain conditions and disclosures to ensure that the independent fiduciary will have the information necessary to effectively monitor the registered investment company investments made by the plan.

Type of Review: Extension of a currently approved collection of information.

Agency: Pension and Welfare Benefits Administration, Department of Labor.

Titles: Prohibited Transaction Class Exemption 97–41.

OMB Number: 1210–0104.

Affected Public: Individuals or households; Business or other for-profit; Not-for-profit institutions.

Estimated Total Burden Hours: 1,767.

Respondents: 75.

Frequency of Response: On occasion.

Responses: 75.

Total Burden Cost (Operating and Maintenance): $119,250.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Dated: March 20, 2000.

Gerald B. Lindrew,

Deputy Director, Office of Policy and Research, Pension and Welfare Benefits Administration.

[FR Doc. 00–7246 Filed 3–22–00; 8:45 am]

BILLING CODE 4510–29–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

Sunshine Act Meeting

March 16, 2000.

TIME AND DATE: 2 p.m., Wednesday, March 15, 2000.

PLACE: Room 6005, 6th Floor, 1730 K Street, N.W., Washington, D.C.

Dated: March 20, 2000.

11, 2000, without the participation of

and the subsequent flooding, and the

STATUS: Closed [Pursuant to 5 U.S.C. § 552b(c)(10)].

MATTERS TO BE CONSIDERED: It was determined by a unanimous vote of the Commission that the Commission consider and act upon the following in closed session:

1. Secretary of Labor on behalf of Stahl v. A&K Earth Movers, Inc., Docket No. WEST 2000–145–DM.

No earlier announcement of the meeting was possible.

Any person attending an open meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR § 2706.150(a)(3) and § 2706.160(d).

CONTACT PERSON FOR MORE INFO: Jean Ellen, (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Jean H. Ellen,

Chief Docket Clerk.

[FR Doc. 00–7254 Filed 3–20–00; 4:13 pm]

BILLING CODE 6735–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering (115).

Date and Time: April 4, 2000; 8:30 am to 5:00 pm, April 5, 2000; 8:30 am to 2:00 pm.

Place: Radisson Barcelo Hotel, Washington, DC.

Type of Meeting: Open.

Contact Person: Gwen Barber-Blount, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, VA 22230. Telephone (703) 306–1900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community; to provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: Day 1—Discussion of Information Technology Research and CISE FY 2001 Budget. Day 2—Report from the Assistant Director and complete writing assignments on recommendations to the Director and Assistant Director.

Dated: March 20, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–7185 Filed 3–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Geosciences; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences (1756).

Date and Time: April 6–7, 2000; 8:00 am to 5:00 pm.

Place: National Science Foundation, 4201 Wilson Blvd, Room 770, Arlington, VA.

Type of Meeting: Closed.

Contact Person: Dr. Richard A. Behnke, Section Head, Upper Atmospheric Research Section, Division of Atmospheric Sciences, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230, Telephone (703) 306–1518.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the Space Weather proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 20, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–7188 Filed 3–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Physics (1208).

Date and Time: May 9–11, 2000, 8:00 am–5:00 pm.

Place: California Institute of Technology, Pasadena, CA.

Type of Meeting: Closed.

Contact Person: David Berley, Program Manager, Laser Interferometer Gravitational-Wave Observatory (LIGO), Physics Division, Room 1015, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1892.

Purpose of Meeting: To review progress on the LIGO project.

Agenda: Review the installation and commissioning of LIGO. Review the Data Analysis Acquisition Plan.

Reason for Closing: The LIGO II plans include information of a proprietary or confidential nature, including technical information, information on personnel and data for present and future subcontracts. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 20, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–7186 Filed 3–22–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Physiology and Ethology; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Physiology and Ethology (1160).

Date and Time: April 12, 13, 14, 2000, 8:30 am–5:00 pm.

Place: NSF, Room 340, 4201 Wilson Blvd., Arlington, VA.

Type of Meeting: Part-Open.

Contact Person: John A. Byers, Program Director, Animal Behavior, Division of Integrative Biology and Neuroscience, Suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1419.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Minutes: May be obtained from the contact persons listed above.

Agenda: Open Session: April 14th, 2000, 9:00 am to 10:00 am. Discussion on research trends, opportunities and assessment procedures in Physiology and Ethology.

Closed Session: April 14th, 2000, 8:30 am–5:00 pm; April 13th, 8:30 am to 6:00 pm; April 14th, 8:30 am–9:00 am and 10:00 am–5:00 pm. To review and evaluate the Animal Behavior proposals as part of the selection process for awards.

Reasons for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 20, 2000.

Karen J. York,

Committee Meeting Officer.

[FR Doc. 00–7187 Filed 3–22–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–400]

Carolina Power & Light Company (Shearon Harris Nuclear Power Plant, Unit 1); Exemption

I

Carolina Power & Light Company (CP&L or the licensee) is the holder of Facility Operating License No. NPF–63, which authorizes operation of the Shearon Harris Nuclear Power Plant, Unit 1 (HNP) at power levels not to exceed 2775 megawatts thermal. The facility consists of one pressurized-water reactor located at the licensee's site in Wake and Chatham Counties, North Carolina. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (NRC, the Commission) now or hereafter in effect.

II

Section IV.F.2.b of Appendix E to Title 10 of the Code of Federal Regulations (10 CFR) Part 50 requires each licensee at each site to conduct an exercise of its onsite emergency plan every 2 years and indicates the exercise may be included in the full-participation biennial exercise required by paragraph 2.c. Paragraph 2.c requires offsite plans for each site to be exercised biennially with full participation by each offsite authority having a role under the plan. During such biennial full-participation exercises, the NRC evaluates onsite emergency preparedness activities and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities. CP&L successfully conducted a full-participation exercise for HNP during the week of October 7, 1997. By letter dated December 7, 1999, the licensee requested an exemption from Sections IV.F.2.b and c of Appendix E regarding the conduct of a full-participation exercise originally scheduled for September 21, 1999. Specifically, the licensee proposed rescheduling the exercise originally scheduled for September 21, 1999, and completing the onsite and offsite exercise requirements in two parts. The licensee would use the onsite exercise conducted on January 11, 2000, without the participation of the State of North Carolina and local government response agencies, to meet the onsite requirement. The offsite portion of the exercise would be conducted on June 27, 2000, with the participation of the State of North Carolina and local government response agencies.

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR Part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

III

The licensee requests a one-time change in the schedule for the next full-participation exercise for HNP. Subsequent full-participation exercises for HNP would be scheduled at no greater than 2-year intervals in accordance with 10 CFR Part 50, Appendix E, Section IV.F.2.c. Accordingly, the exemption would provide only temporary relief from that regulation.

As indicated in the licensee's request for an exemption of December 7, 1999, the licensee had originally scheduled a full-participation exercise for September 21, 1999. As further set forth in that letter, however, due to the significant impact and damage from hurricane "Floyd," the State of North Carolina and the local emergency response agencies were occupied with responding to the natural disaster and were unable to participate in and could not support the exercise. In discussions on September 14, 1999, the NRC and FEMA indicated concurrence with rescheduling the exercise due to preparations and response to hurricane "Floyd." In a letter dated January 19, 2000, FEMA documented its support for rescheduling the exercise. Accordingly, the licensee made a good faith effort to comply with the schedule requirements of Appendix E for full-participation exercises.

The staff completed its evaluation of the licensee's request for an exemption. The staff, having considered the schedule and resource issues resulting from responding to hurricane "Floyd" and the subsequent flooding, and the fact that the licensee conducted the onsite portion of the exercise on January 11, 2000, only 3 months beyond the required interval, finds the request acceptable.

IV

The Commission has determined that, pursuant to 10 CFR Part 50, Appendix E, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Further, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(v) are applicable in that the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants the exemption from Section IV.F.2.b and c of Appendix E to 10 CFR Part 50.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (65 FR 14322).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 16th day of March 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7238 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Company and Midamerican Energy Company; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Commonwealth Edison Company (ComEd, or the licensee) to withdraw its August 31, 1998, application for proposed amendments to Facility Operating Licenses Nos. DPR–29 and DPR–30 for the Quad Cities Nuclear Power Station, Units 1 and 2, located in Rock Island County, Illinois.

The proposed amendment would have revised the maximum allowable Main Steam Isolation Valve leakage from 11.5 standard cubic feet per hour

(scfh) to 30.0 scfh when tested at 25 psig, in accordance with Technical Specification Surveillance Requirement 4.7.D.6.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on September 23, 1998 (63 FR 50935). However, by letter dated December 17, 1999, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated August 31, 1998, and the licensee's letter dated December 17, 1999, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW.,Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 17th day of March 2000.

For the Nuclear Regulatory Commission.

Stewart N. Bailey,

Project Manager, Section 2, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7240 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–346]

FirstEnergy Nuclear Operating Company (Davis-Besse Nuclear Power Station); Exemption

I

The FirstEnergy Nuclear Operating Company (FENOC, the licensee) is the holder of Facility Operating License No. NPF–3, which authorizes operation of the Davis-Besse Nuclear Power Station (DBNPS). The license provides, among other things, that the license is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The facility consists of a pressurized-water reactor at the licensee's site in Ottawa County, Ohio.

II

Section 50.44 of Title 10 of the Code of Federal Regulations, "Standard for Combustible Gas Control System in Light-Water-Cooled Power Reactors," requires, among other items, that each boiling or pressurized light-water nuclear power reactor fueled with oxide pellets within cylindrical zircaloy or ZIRLO cladding, must, as provided in paragraphs (b) through (d) of that section, include means for control of hydrogen gas that may be generated, following a postulated loss-of-coolant accident (LOCA) by—(1) Metal-water reaction involving the fuel cladding and the reactor coolant, (2) Radiolytic decomposition of the reactor coolant, and (3) Corrosion of metals.

Section 50.46 of Title 10 of the Code of Federal Regulations, "Acceptance Criteria for Emergency Core Cooling Systems for Light-Water Nuclear Power Reactors," requires, among other items, that each boiling or pressurized light-water nuclear power reactor fueled with uranium oxide pellets within cylindrical zircaloy or ZIRLO cladding must be provided with an emergency core cooling system (ECCS) that must be designed so that its calculated cooling performance following postulated LOCAs conform to the criteria set forth in paragraph (b) of that section. ECCS cooling performance must be calculated in accordance with an acceptable evaluation model and must be calculated for a number of postulated LOCAs of different sizes, locations, and other properties sufficient to provide assurance that the most severe postulated LOCAs are calculated.

Appendix K to Part 50 of Title 10 of the Code of Federal Regulations, "ECCS Evaluation Models," requires, among other items, that the rate of energy release, hydrogen generation, and cladding oxidation from the metal/water reaction shall be calculated using the Baker-Just equation.

10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K, make no provisions for use of fuel rods clad in a material other than Zircaloy or ZIRLO. The licensee has requested the use of Framatome Cogema Fuels (FCF) "M5" advanced alloy for fuel rod cladding for the DBNPS operating Cycle 13. The M5 alloy is a proprietary zirconium-based alloy comprised of primarily zirconium (~99 percent) and niobium (~1 percent). The elimination of tin has resulted in superior corrosion resistance and reduced irradiation induced growth relative to both standard Zircaloy (1.7% tin) and low-tin Zircaloy (1.2% tin). The addition of niobium increases ductility which is desirable to avoid brittle failures. Since the chemical composition of the M5 alloy differs from the specifications for Zircaloy or ZIRLO, a plant-specific exemption is required to allow the use of the M5 alloy as a cladding material at the DBNPS.

Section 50.12 of Title 10 of the Code of Federal Regulations, "Specific Exemptions," states, among other items, that the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present whenever application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

III

The underlying purpose of 10 CFR 50.46 is to ensure that facilities have adequate acceptance criteria for ECCS. In its topical report BAW–10227P, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel," Framatome Cogema Fuels (FCF) demonstrated that the effectiveness of the ECCS will not be affected by a change from Zircaloy fuel rod cladding to M5 fuel rod cladding. Analysis described in the topical report also demonstrates that the ECCS acceptance criteria applied to reactors fueled with Zircaloy clad fuel are also applicable to reactors fueled with M5 fuel rod cladding.

The underlying purposes of 10 CFR 50.44 and 10 CFR part 50, Appendix K, paragraph I.A.5, are to ensure that cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Specifically, Appendix K requires that the Baker-Just equation be used in the ECCS evaluation model to determine the rate of energy release, cladding oxidation, and hydrogen generation. In their topical report, FCF demonstrated that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of the M5 advanced alloy as a fuel rod cladding material, and that the amount of hydrogen generated in an M5-clad core during a LOCA will remain within the DBNPS design basis.

The staff has reviewed the FCF's advanced cladding and structural material, M5, for pressurized water reactor fuel mechanical designs as described in BAW–10227P. In a Safety Evaluation dated February 4, 2000, the staff concluded that, to the extent and limitations specified in the staff's evaluation, the M5 properties and mechanical design methodology are acceptable for referencing in fuel reload licensing applications. Therefore, since the underlying purposes of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K, paragraph I.A.5 are achieved through the use of the M5 advanced alloy as a fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of exemptions to 10 CFR 50.44 and 10 CFR part 50, Appendix K, paragraph I.A.5 exist.

IV

The Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Therefore, the Commission hereby grants FENOC an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR part 50, Appendix K.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the environment (65 FR 794).

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 15th day of March 2000.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7241 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–309]

Maine Yankee Atomic Power Company, et al., Maine Yankee Atomic Power Station; Notice of Receipt and Availability for Comment of License Termination Plan

The Nuclear Regulatory Commission (NRC) is in receipt of and is making available for public inspection and comment the License Termination Plan (LTP) for the Maine Yankee Atomic Power Station (MYAPS) located in Lincoln County, Maine.

Maine Yankee Atomic Power Company (MYAPC, or the licensee) announced permanent cessation of power operations of MYAPS on August 7, 1997. In accordance with NRC regulations, MYAPC submitted a Post-Shutdown Decommissioning Activities Report (PSDAR) for MYAPS to the NRC on August 27, 1997. The facility is undergoing active decontamination and dismantlement.

In accordance with 10 CFR 50.82(a)(9), all power reactor licensees must submit an application for termination of their license. The application for termination of license must be accompanied or preceded by an LTP to be submitted for NRC approval. If found acceptable by the NRC staff, the LTP is approved by license amendment, subject to such conditions and limitations as the NRC staff deems appropriate and necessary. MYAPC submitted the proposed LTP for MYAPS by application dated January 13, 2000. In accordance with 10 CFR 20.1405 and 10 CFR 50.82(a)(9)(iii), the NRC is providing notice to individuals in the vicinity of the site that the NRC is in receipt of the MYAPS LTP, and will accept comments from affected parties. In accordance with 10 CFR 50.82(a)(9)(iii), the NRC is also providing notice that the NRC staff will conduct a meeting to discuss the MYAPS LTP on Monday, May 15, 2000, at 7:00 p.m. at Wiscasset High School, Wiscasset, Maine.

The MYAPS LTP is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, N.W, Washington, DC 20037. An electronic version of the LTP may be viewed through the NRC ADAMS system, accession number ML003676560 or the Maine Yankee Atomic Power Company web site, www.maineyankee.com.

Comments regarding the MYAPS LTP may be submitted in writing and addressed to Mr. Michael Webb, Mail Stop O–11–D19, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–1347 or e-mail mkw@nrc.gov.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 16th day of March 2000.

Michael T. Masnik,

Chief, Decommissioning Section, Project Directorate IV and Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7242 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NO. 50–354]

Public Service Electric and Gas Company; Notice of Consideration of Issuance of Amendment to Facility Operating License No. NPF–57, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57 issued to Public Service Electric and Gas Company (the licensee) for operation of the Hope Creek Generating Station, located in Salem County. New Jersey.

The proposed amendment would change Technical Specification definition 1.7, CORE ALTERATION. The definition would be revised to be similar to the definition of CORE ALTERATION that is documented in NUREG–1433, Revision 1, "Standard Technical Specifications, General Electric Plants, BWR/4."

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS change does not involve any physical changes to plant structures, systems or components (SSC) and there is no direct effect on plant operation. The proposed changes do not affect any accident initiators or precursors and do not change or alter the design assumptions for systems or components used to mitigate the

consequences of an accident. The

The NRC staff has reviewed the

hearing. The petitioner must also

Commission, the presiding officer or the

Fuels (FCF) "M5" advanced alloy as a

consequences of an accident. The proposed changes do not impact the requirements for refueling evolutions associated with the shutdown margin, core monitoring and reactor protection system operability. There are no changes to parameters governing plant operation and no different or new types of equipment will be installed. These changes do not impact any accident previously evaluated in the Updated Final Safety Analysis Report (UFSAR). Therefore, no increases in the probability of an accident or consequences will result due to this change.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes do not involve any physical changes to the design of any plant SSC. There are no changes to the parameters governing plant operation and no different or new type of equipment will be installed. There is no change in any method by which a safety related system performs its function. No new type of equipment is being introduced and installed equipment is not being operated in a new or different manner. There are no setpoints affected by the proposed action. This proposed action will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. As such, no new failure modes are being introduced. There are no changes to assumptions in the accident analysis. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed changes contained in this submittal do not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. The initial conditions and methodologies used in the accident analyses remain unchanged. Therefore, accident analyses results are not impacted. There are no resulting effects on plant safety parameters or setpoints. The proposal does not involve a significant relaxation of the criteria used to establish safety limits, a significant relaxation of the bases for the limiting safety system settings, or a significant relaxation of the bases for the limiting conditions for operations. Therefore, these proposed changes do not cause a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 24, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by close of business on the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 15, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 16th day of March 2000.

For the Nuclear Regulatory Commission.

James W. Clifford,

Chief, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7244 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[DOCKET NOS. 50–269, 50–270, and 50–287]

Duke Energy Corporation; Oconee Nuclear Station, Units 1, 2, and 3 Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from certain requirements of Title 10 of the Code of Federal Regulations (10 CFR) Section 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K to the Duke Energy Corporation (the licensee/Duke) for operation of the Oconee Nuclear Station, Units 1, 2, and 3, Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, respectively, located in Oconee County, Seneca, South Carolina.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from certain requirements of 10 CFR 50.44, 10 CFR 50.46, and Appendix K of 10 CFR Part 50 to allow the use of Framatome Cogema Fuels (FCF) "M5" advanced alloy as a fuel rod cladding material.

The proposed action is in accordance with the licensee's application for an exemption dated September 15, 1999.

The Need for the Proposed Action

The proposed action is needed to allow the use of Framatome Cogema Fuels (FCF) "M5" advanced alloy as a fuel rod cladding material. The exemption is necessary since the chemical composition of M5 differs from the Zircaloy and ZIRLO cladding material specified in the regulations. The M5 alloy is a proprietary zirconium-based alloy, composed primarily of zirconium and niobium, that has demonstrated superior corrosion resistance and reduced irradiation growth relative to both standard and low-tin Zircaloy. Since the chemical composition of the M5 alloy differs from the specifications for Zircaloy or ZIRLO, an exemption is required for the use of the M5 alloy as a fuel cladding material at Oconee. The regulations set forth in 10 CFR 50.44, 10 CFR 50.46 and Appendix K to 10 CFR Part 50 contain acceptance and analytical criteria regarding the light water nuclear reactor system performance during and following a postulated loss-of-coolant accident. These regulations specify the use of only two types of fuel cladding material, Zircaloy and ZIRLO.

Environmental Impacts of the Proposed Action

The proposed action to implement the exemption described above is designed to enhance fuel rod performance characteristics over that of Zircaloy or ZIRLO clad fuel rods. The proposed action does not exempt the licensee from complying with the acceptance and analytical criteria of 10 CFR 50.44, 10 CFR 50.46 and Appendix K to 10 CFR Part 50 applicable to the M5 alloy cladding. The exemption solely allows the criteria set forth in these regulations to apply to the M5 cladding material. The staff has concluded that the proposed action will not significantly increase the probability or consequences of accidents, there are no changes being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure because this exemption will not change the criteria set forth in the present regulations, since the M5-clad fuel has been shown by the licensee to be capable of meeting this criteria. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological environmental impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that

NUCLEAR REGULATORY

approved under 10 CFR Part 72, Subpart

phenomena reported for the site and surrounding area. Postulated accidents

and store the BPRAs as low-level waste in separate containers.

Environmental Assessment

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Oconee Nuclear Station, Units 1, 2, and 3.

Agencies and Persons Consulted

In accordance with its stated policy, on March 14, 2000, the staff consulted with the South Carolina State official, Mr. Virgil L. Autry of the Division of Radiological Waste Management, Bureau of Land and Waste Management, Department of Health and Environmental Control, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated September 15, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records are accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 17th day of March 2000.

For the Nuclear Regulatory Commission.

Richard L. Emch, Jr.,

Section Chief, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7237 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 72–13]

Entergy Operations, Inc., Arkansas Nuclear One Power Plant; Issuance of Environmental Assessment and Finding of No Significant Impact Regarding the Proposed Exemption From Certain Requirements of 10 CFR Part 72

The U.S. Nuclear Regulatory Commission (NRC or Commission) is considering issuance of an exemption, pursuant to 10 CFR 72.7, from the provisions of 10 CFR 72.212(a)(2) and 72.214 to Entergy Operations, Inc. (Entergy). The exemption would allow Entergy to store burnable poison rod assemblies (BPRAs) in Ventilated Storage Cask–24 (VSC–24) systems at the Arkansas Nuclear One (ANO) Independent Spent Fuel Storage Installation (ISFSI).

Environmental Assessment (EA)

Identification of Proposed Action

By letter dated February 3, 2000, Entergy requested an extension to a previous exemption granted to Entergy by NRC on April 9, 1999, from the requirements of 10 CFR 72.12(a)(2) and 72.214 to store BPRAs in VSC–24s at the ANO ISFSI. NRC published an Environmental Assessment and Finding Of No Significant Impact for the previous exemption request in the **Federal Register** (64 FR 13611, March 19, 1999). The April 9, 1999, NRC letter placed conditions on the exemption, including that no more than four VSC–24s containing BPRAs could be loaded and the loading of these four VSC–24s would need to be accomplished prior to September 1999. These conditions were based on (1) ANO's request to load four casks prior to the September refuel outage to regain full core offload reserves in the Unit 1 spent fuel pool and (2) NRC's expectation of completion of a rulemaking, under 10 CFR 72.214 before the next ANO refueling outage, which would amend the Certificate of Compliance (CoC) for the VSC–24 cask to permit storage of spent fuel containing BPRAs (64 FR 51187, September 22, 1999).

The 10 CFR 72.124 rulemaking is not completed and the ANO, Unit 1, spent fuel pool has again lost full core offload reserves. ANO must load three VSC–24s with fuel containing BPRAs to regain full core offload reserves prior to the next refueling outage, scheduled for Spring 2000.

ANO is a general licensee, authorized by NRC to use spent fuel storage casks approved under 10 CFR Part 72, Subpart K. ANO is using the VSC–24 design approved by NRC under CoC No. 1007 to store spent fuel at the ISFSI. However, CoC No. 1007 does not authorize the storage of BPRAs.

The ISFSI is located 6 miles west-northwest of Russellville, Arkansas, on the ANO Power Plant site. The ANO ISFSI is an existing facility constructed for interim dry storage of spent ANO nuclear fuel.

By exempting ANO from 10 CFR 72.212(a)(2) and 72.214, ANO will be authorized to use its general license to store spent fuel with BPRAs in casks approved under part 72, as exempted, until the 10 CFR 72.214 rulemaking is complete. The proposed action before the Commission is whether to grant this exemption under 10 CFR 72.7.

On December 30, 1998, the cask designer, Sierra Nuclear Corporation (SNC), submitted a Certificate of Compliance amendment request to NRC to address the storage of Babcock and Wilcox (B&W) 15x15 fuel with BPRAs. The NRC staff has reviewed the application and determined that storing B&W 15x15 fuel with BPRAs in the VSC–24 would have minimal impact on the design basis and would not be inimical to public health and safety.

Need for the Proposed Action

ANO has lost full core offload reserves in the Unit 1 spent fuel pool and Unit 1 is scheduled for a refueling outage in Spring 2000. ANO must load three VSC–24s with fuel containing BPRAs to regain full core offload reserves.

Environmental Impacts of the Proposed Action

The potential environmental impact of using the VSC–24 system was initially presented in the EA for the Final Rule to add the VSC–24 to the list of approved spent fuel storage casks in 10 CFR 72.214 (58 FR 17948 (1993)). Furthermore, each general licensee must assess the environmental impacts of the specific ISFSI in accordance with the requirements of 10 CFR 72.212(b)(2)(iii). This section requires the general licensee to perform written evaluations to demonstrate compliance with the environmental requirements of 10 CFR 72.104, "Criteria for radioactive materials in effluents and direct radiation from an ISFSI or MRS [Monitored Retrievable Storage Installation]."

VSC–24s are designed to mitigate the effects of design basis accidents that could occur during storage. Design basis accidents account for human-induced events and the most severe natural phenomena reported for the site and surrounding area. Postulated accidents analyzed for an ISFSI include tornado winds and tornado generated missiles, design basis earthquake, design basis flood, accidental cask drop, lightening effects, fire, explosions, and other incidents.

Special cask design features include a double-closure welded steel multi-assembly sealed basket (MSB) made from SA–516 Gr 70 pressure vessel steel to contain the spent fuel. This MSB is up to 181-inches long, 62.5 inches in diameter, with 1.0-inch thick walls. The MSB is placed inside of a ventilated Concrete Cask (VCC) and positioned for storage on the concrete ISFSI pad. The VCC is up to 213-inches long, 132 inches in diameter, and 31.75-inches thick. The VCC wall consists of a 1.75-inch thick steel inner liner surrounded by reinforced concrete and steel ducts for a passive ventilation system.

Considering the specific design requirements for each accident condition, the design of the cask would prevent loss of containment, shielding, and criticality control. Without the loss of either containment, shielding, or criticality control, the risk to public health and safety is not compromised.

Storage of B&W 15x15 fuel containing BPRAs would increase the maximum potential cask does rates by no or than 13 percent at any location on a loaded VSC–24 system. For a VSC–24 loaded with fuel containing BPRAs, the highest dose would be found at the top center of the cask. This dose was calculated to increase from 30 mrem/hr without BPRAs to 32.2 mrem/hr with BPRAs. The occupational exposure is not significantly increased and off-site dose rates remain well within the 10 CFR Part 20 limits. Therefore, the proposed action now under consideration would not change the potential environmental effects assessed in the initial rulemaking (58 FR 17948).

Therefore, the staff has determined that there is no reduction in the safety margin nor significant environmental impacts as a result of storing B&W 15×15 fuel with BPRAs in the VSC–24 system.

Alternative to the Proposed Action

The staff evaluated other alternatives involving removal of the BPRAs from the fuel assemblies and found that these alternatives produced a greater occupational exposure and an increased environmental impact as a result of handling the BPRAs separately as low-level waste. The alternative to the proposed action would be to deny approval of the exemption and, therefore, require ANO to disassemble and store the BPRAs as low-level waste in separate containers.

Agencies and Persons Consulted

On February 11, 2000, Bernard Bevill from the Division of Radiation Control and Emergency Management, Arkansas Department of Health, was contacted about the EA for the proposed action and had no concerns.

Finding of No Significant Impact

The environmental impacts of the proposed action have been reviewed in accordance with the requirements set forth in 10 CFR part 51. Based upon the foregoing EA, the Commission finds that the proposed action of granting an exemption from 10 CFR 72.212(a)(2) and 72.214 so that ANO may store B&W 15x15 fuel containing BPRAs in VSC–24s will not significantly impact the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this exemption request, see the Entergy exemption request dated February 3, 2000, which is docketed under 10 CFR part 72, Docket No. 72–13. The exemption request is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW, Washington, DC, 20555 and accessible electronically through the "ADAMS" Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov/nrc/reference.html).

Dated at Rockville, Maryland, this 13th day of May 2000.

For the Nuclear Regulatory Commission.

E. William Brach,

Director, Spent Fuel Project Office, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–7243 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company; Edwin I. Hatch Nuclear Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of amendments to Facility Operating License Nos. DPR–57 and NFP–5, issued to Southern Nuclear Operating Company, Inc., *et al.* (the licensee), for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, located in Appling County, Georgia.

Environmental Assessment

Identification of the Proposed Action

The proposed action would allow an increase in the storage capacity of Unit 1's spent fuel pool (SFP) from 3181 to 3349 and of Unit 2's SFP from 2845 to 2933. This will be accomplished by placing a single high density storage rack containing 168 storage spaces in an 8 by 21 array in the Contaminated Equipment Storage Area (CESA) of each unit's pool where currently no racks exist. Accordingly, the Hatch 1 SFP licensed storage capacity will increase to a total of 3349 (3181 + 168) fuel assemblies. However, the Hatch 2 SFP licensed storage capacity will only increase to a total of 2933 (2845 + 88) fuel assemblies because the new Holtec rack will "replace" the four original standard type storage racks capable of storing 80 assemblies that were planned for installation in the Unit 2 CESA but they were, in fact, never installed.

The proposed action is in accordance with the licensee's application for amendment dated April 6, 1999.

The Need for the Proposed Action

Long term plans for spent fuel storage at Hatch include utilization of dry cask storage at a separate facility located on the plant site. However, due to uncertainties in cask fabrication and procurement and cask loading, the licensee is proposing to increase the storage capacity of the SFPs. The increased storage capacity of one SFP will allow a full core discharge from one unit after the next refueling outage. The increased storage capacity of the second SFP will allow a full core discharge of the second unit after its next refueling outage.

Environmental Impacts of the Proposed Action

Solid Radioactive Wastes

The necessity for pool filtration resin replacement is determined by the requirement for water clarity, and the resin is normally expected to be changed about once a year. The licensee does not expect the resin change-out frequency of the SFP purification system to be permanently increased as a result of the expanded storage capacity. Overall, the licensee concludes that the additional fuel storage made available by the increased storage capacity will not result in a significant change in the generation of solid radioactive waste.

Occupational Radiation Exposure

The licensee plans to utilize the Contaminated Equipment Storage Area in each unit's SFP where racks do not

currently exist. The licensee estimates that the collective dose associated with the proposed fuel rack installation is in the range of 2 to 4 person-rem. All of the operations involved in racking will utilize detailed procedures with the full consideration of ALARA (as low as reasonably achievable) principles. The Radiation Protection Department will prepare Radiation Work Permits (RWPs) for the various jobs associated with the SFP rack installation operation. These RWPs will instruct the project personnel in the areas of protective clothing, general dose rates, contamination levels and dosimetry requirements. Personnel will wear protective clothing and will be required to wear personnel monitoring equipment including alarming dosimeters.

Since the proposed license amendments do not involve the removal of any spent fuel racks, the licensee does not plan on using divers for this project. However, if it becomes necessary to utilize divers to remove any interference which may impede the installation of the new spent fuel racks, the licensee will equip each diver with the appropriate monitoring equipment. The licensee will monitor and control work, personnel traffic, and equipment movement in the SFP area to minimize contamination and to assure that exposure is maintained ALARA.

Therefore, the staff concludes that the SFP capacity can be increased in a manner that will ensure that doses to workers will be maintained ALARA.

Gaseous Radioactive Wastes

The storage of additional spent fuel assemblies in the pools is not expected to affect the releases of radioactive gases from the spent fuel pools. Gaseous fission products such as Krypton-85 and Iodine-131 are produced by the fuel in the core during reactor operation. A small percentage of these fission gases is released to the reactor coolant from the small number of fuel assemblies that are expected to develop leaks during reactor operation. During refueling operations, some of these fission products enter the pools and are subsequently released into the air. Since the frequency of refueling (and, therefore, the number of freshly offloaded spent fuel assemblies stored in the pools at any one time) will not increase, there will be no increase in the amounts of these types of fission products released to the atmosphere as a result of the increased pool fuel storage capacity.

The increased heat load on the pools from the storage of additional spent fuel assemblies will potentially result in an increase in the pools' evaporation rate. However, this increased evaporation rate is not expected to result in an increase in the amount of gaseous tritium released from the pool. The overall release of radioactive gases from the Edwin I. Hatch Nuclear Plant will remain a small fraction of the limits of 10 CFR 20.1301.

Liquid Radioactive Wastes

The release of radioactive liquids will not be affected directly as a result of the SFP modifications. The SFP ion exchanger resins remove soluble radioactive materials from the pool water. When the resins are replaced, the small amount of resin sluice water that is released is processed by the radwaste systems. As previously stated, the frequency of resin replacement may increase slightly during the installation of the new racks. However, the increase the amount of radioactive liquid released to the environment as a result of the proposed SFP expansion is expected to be negligible.

Accident Considerations

Because of the similarity between the new racks and the existing ones, and the small increase in the spent fuel capacity of the new racks, the major parameters and assumptions used in the fuel handling accident analysis are not changed and remain bounding. Therefore, staff concludes that the increases in the capacity of the SFPs will not be accompanied by an associated increase in the radiological consequences of fuel handling accidents.

Summary

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Shipping Fuel to a Permanent Federal Fuel Storage/Disposal Facility

Shipment of spent fuel to a high-level radioactive storage facility is an alternative to increasing the onsite spent fuel storage capacity. However, the U.S. Department of Energy's (DOE's) high-level radioactive waste repository is not expected to begin receiving spent fuel until approximately 2010, at the earliest. To date, no location has been identified and an interim federal storage facility has yet to be identified in advance of a decision on a permanent repository. Therefore, shipping the spent fuel to the DOE repository is not considered an alternative to increased onsite fuel storage capacity at this time.

Shipping Fuel to a Reprocessing Facility

Reprocessing of spent fuel from Hatch Units 1 and 2 is not a viable alternative since there are no operating commercial reprocessing facilities in the United States. Therefore, spent fuel would have to be shipped to an overseas facility for reprocessing. However, this approach has never been used and it would require approval by the Department of State as well as other entities. Additionally, as the cost of spent fuel reprocessing is not offset by the salvage value of the residual uranium, reprocessing represents an added cost.

Shipping the Fuel Offsite to Another Utility or Another Site in the Licensee's System

The shipment of fuel to another utility or transferring fuel to another of the licensee's facilities would provide short-term relief. The Nuclear Waste Policy Act of 1982, Subtitle B, Section 13(a)(1), however, clearly places the responsibility for the interim storage of spent fuel with each owner or operator of a nuclear plant. The SFPs at the other reactor sites were designed with capacity to accommodate spent fuel from those particular sites. Therefore, transferring spent fuel from Hatch to other sites would create storage capacity problems at those locations. The shipment of spent fuel to another site or transferring it to another Southern Nuclear site is not an acceptable alternative because no additional storage capacity would be created.

Alternative Creating Additional Storage Capacity

Alternative technologies that would create additional storage capacity include rod consolidation, dry cask storage, modular vault dry storage, and constructing a new pool. Rod consolidation involves disassembling the spent fuel assemblies and storing the fuel rods from two or more assemblies into a stainless steel canister that can be stored in the spent fuel racks. Industry experience with rod consolidation is currently limited, primarily due to concerns for potential gap activity release due to rod breakage, the potential for increased fuel cladding corrosion due to some of the protective oxide layer being scraped off, and because the prolonged consolidation activity could interfere with ongoing plant operations. Dry cask storage is a method of transferring spent fuel, after storage in the pool for several years, to high capacity casks with passive heat dissipation features. After loading, the casks are stored outdoors on a seismically qualified concrete pad. Concerns for dry cask storage include the need for special security provisions and high cost. Vault storage consists of storing spent fuel in shielded stainless steel cylinders in a horizontal configuration in a reinforced concrete vault. The concrete vault provides missile and earthquake protection and radiation shielding. Concerns for vault dry storage include security, land consumption, eventual decommissioning of the new vault, the potential for fuel or clad rupture due to high temperatures, and high cost. The alternative of constructing and licensing new spent fuel pools is not practical for Hatch because such an effort would require about 10 years to complete and would be an expensive alternative.

The alternative technologies that could create additional storage capacity involve additional fuel handling with an attendant opportunity for a fuel handling accident, involve higher cumulative dose to workers affecting the fuel transfers, require additional security measures that are significantly more expensive, and would not result in a significant improvement in environmental impacts compared to the proposed reracking modifications.

Reduction of Spent Fuel Generation

Generally, improved usage of the fuel and/or operation at a reduced power level would be an alternative that would decrease the amount of fuel being stored in the SFPs and, thus, increase the amount of time before the maximum storage capabilities of the SFPs are reached. However, operating the plant at a reduced power level would not make effective use of available resources, and would cause unnecessary economic hardship on the licensee and its customers. Therefore, reducing the amount of spent fuel generated by increasing burnup further or reducing power is not considered a practical alternative.

The No-Action Alternative

The NRC staff also considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no significant change in current environmental impacts. The environmental impacts of the proposed action and the alternative actions are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Edwin I. Hatch Nuclear Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on March 1, 2000, the staff consulted with the Georgia State official, Mr. James Setser of the Department of Natural Resources, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated April 6, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 17th day of March 2000.

For the Nuclear Regulatory Commission.

Leonard N. Olshan,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7239 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Appointments to Performance Review Boards for Senior Executive Service

AGENCY: Nuclear Regulatory Commission.

ACTION: Appointment to performance review boards for senior executive service.

SUMMARY: The Nuclear Regulatory Commission (NRC) has announced the following appointments to the NRC Performance Review Boards.

The following individuals are appointed as members of the NRC Performance Review Board (PRB) responsible for making recommendations to the appointing and awarding authorities on performance appraisal ratings and performance awards for Senior Executives and Senior Level Service members:

Patricia G. Norry, Deputy Executive Director for Management Services
Stephen G. Burns, Deputy General Counsel, Office of the General Counsel
Samuel J. Collins, Director, Office of Nuclear Reactor Regulation
Margaret V. Federline, Deputy Director, Office of Nuclear Regulatory Research
Jesse L. Funches, Chief Financial Officer
Jon R. Johnson, Associate Director for Inspection and Programs, Office of Nuclear Reactor Regulation
William F. Kane, Director, Office of Nuclear Material Safety and Safeguards
Arnold E. Levin, Director, Applications Development Division, Office of the Chief Information Officer
Paul H. Lohaus, Director, Office of State Programs
Hubert J. Miller, Regional Administrator, Region I
Carl J. Paperiello, Deputy Executive Director for Materials, Research and State Programs, Office of the Executive Director for Operations

The following individuals will serve as members of the NRC PRB Panel that was established to review appraisals and make recommendations to the appointing and awarding authorities for NRC PRB members:

Karen D. Cyr, General Counsel, Office of the General Counsel
Frank J. Miraglia, Jr., Deputy Executive Director for Regulatory Programs
Ashok C. Thadani, Director, Office of Nuclear Regulatory Research

All appointments are made pursuant to Section 4314 of Chapter 43 of Title 5 of the United States Code.

EFFECTIVE DATE: March 23, 2000.

FOR FURTHER INFORMATION CONTACT:

Department of Agriculture

Special Assistant for Regulatory Compliance to the Assistant Secretary

Farm Credit Administration

Special Assistant to the Member

generated from the securities lending transactions ("Pror Order").[1] The

SUPPLEMENTARY INFORMATION: The following is a summary of the

EFFECTIVE DATE: March 23, 2000.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Swanson, Secretary, Executive Resources Board, U.S. Nuclear Regulatory Commission, Washington, DC 20555, (301) 415–7530.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 16th day of March 2000.

Carolyn J. Swanson,

Secretary, Executive Resources Board.

[FR Doc. 00–7245 Filed 3–22–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

Excepted Service

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: This gives notice of positions placed or revoked under Schedules A and B, and placed under Schedule C in the excepted service, as required by Civil Service Rule VI, Exceptions from the Competitive Service.

FOR FURTHER INFORMATION CONTACT: Suzy Barker, Director Staffing Reinvention Office, Employment Service (202) 606–0830.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management published its last monthly notice updating appointing authorities established or revoked under the Excepted Service provisions of 5 CFR 213 on February 15, 2000 (65 FR 7577). Individual authorities established or revoked under Schedules A and B and established under Schedule C between January 1, 2000, and January 31, 2000, appear in the listing below. Future notices will be published on the fourth Tuesday of each month, or as soon as possible thereafter. A consolidated listing of all authorities as of June 30 will also be published.

Schedule A

No Schedule A authorities were established or revoked during January 2000.

Schedule B

No Schedule B authorities were established or revoked during January 2000.

Schedule C

The following Schedule C authorities were established during January 2000.

Consumer Product Safety Commission

Supervisory Public Affairs Specialist to the Executive Director. Effective January 21, 2000.

Department of Agriculture

Confidential Assistant to the Assistant Secretary for Congressional Relations. Effective January 7, 2000.

Staff Assistant to the Director, Office of Communications. Effective January 13, 2000.

Confidential Assistant to the Administrator, Animal and Plant Health Inspection Service. Effective January 13, 2000.

Special Assistant to the Chief, Natural Resources Conservation Service. Effective January 14, 2000.

Special Assistant to the Administrator, Foreign Agricultural Service. Effective January 21, 2000.

Confidential Assistant to the Administrator, Risk Management Agency. Effective January 27, 2000.

Department of the Army (DOD)

Speechwriter to the Secretary of the Army. Effective January 3, 2000.

Department of Commerce

Special Assistant to the Under Secretary of Commerce for Technology. Effective January 3, 2000.

Deputy Director to the Director, Office of External Affairs. Effective January 7, 2000.

Deputy Director for External Affairs and Director of Scheduling to the Director, Office of External Affairs. Effective January 7, 2000.

Deputy Director, Office of Business Liaison to the Director, Office of Business Liaision. Effective January 10, 2000.

Department of Defense

Defense Fellow to the Special Assistant to the Secretary of Defense. Effective January 27, 2000.

Staff Assistant to the Special Assistant to the Secretary of Defense for White House Liaison. Effective January 28, 2000.

Department of Energy

Special Assistant to the Director, Office of Public Affairs. Effective January 6, 2000.

Public Affairs Specialist to the Director, Office of Public Affairs. Effective January 10, 2000.

Special Assistant to the Chief Financial Officer. Effective January 14, 2000.

Executive Officer to the Assistant Secretary, Office of Fossil Energy. Effective January 21, 2000.

Special Assistant to the Assistant Secretary for Defense Program. Effective January 21, 2000.

Special Assistant to the Director, Office of Science. Effective January 27, 2000.

Special Assistant for Regulatory Compliance to the Assistant Secretary for Enviromental Management. Effective January 27, 2000.

Department of Housing and Urban Development

Staff Assistant to the Advisor for Management Reform and Operation. Effective January 10, 2000.

Deputy Assistant Secretary for Community Empowerment to the Assistant Secretary for Community Planning and Development. Effective January 21, 2000.

Department of Justice

Special Assistant to the Director, Bureau of Justice Assistance, Office of Justice Programs. Effective January 3, 2000.

Department of Labor

Special Assistant to the Director of the Womens's Bureau. Effective January 13, 2000.

Special Assistant to the Assistant Secretary, Employment Standards Administration. Effective January 31, 2000.

Special Assistant for Public Affairs to the Assistant Secretary, Employment Standards Administration. Effective January 31, 2000.

Department of State

Legislative Management Officer to the Deputy Assistant Secretary, Bureau of Legislative Affairs. Effective January 27, 2000.

Department of Transportation

Senior Advisor to the Administrator, Research and Special Programs Administration, Office of the Administrator. Effective January 24, 2000.

Department of the Treasury

Senior Advisor to the Under Secretary (Enforcement). Effective January 12, 2000.

Special Assistant to the Assistant Secretary Legislative Affairs and Public Liaison. Effective January 19, 2000.

Special Assistant to the Assistant Secretary, Legislative Affairs and Public Liaison. Effective January 19, 2000.

Special Assistant to the Assistant Secretary, Legislative Affairs and Public Liaison. Effective January 21, 2000.

Export-Import Bank of the United States

Administrative Assistant to the Director, a Member of the Bank Board of Directors. Effective January 7, 2000.

Farm Credit Administration

Special Assistant to the Member, Farm Credit Administration. Effective January 13, 2000.

Federal Maritime Commission

Counsel to the Commissioner. Effective January 14, 2000.

Counsel to the Commissioner. Effective January 14, 2000.

Federal Trade Commission

Director, Congressional Relations to the Chairman. Effective January 14, 2000.

Office of National Drug Control Policy

Staff Assistant (Scheduler) to the Director, Office of National Drug Control Policy. Effective January 7, 2000.

Special Assistant to the Chief of Staff. Effective January 7, 2000.

President's Commission on White House Fellowships

Special Assistant to the Director, Presidential Commission on White House Fellowships. Effective January 7, 2000.

Authority: 5 U.S.C. 3301 and 3302; E.O. 10577, 3 CFR 1954–1958 Comp., P.218

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–7142 Filed 3–22–00; 8:45 am]

BILLING CODE 6325–01–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24341; 812–12028]

Bankers Trust Company, et al.; Notice of Application

March 17, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of an application to amend a prior order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") granting an exemption from section 12(d)(1) of the Act, sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a) and 17(c) of the Act, and under section 17(d) of the Act and rule 17d–1 under the Act permitting certain joint transactions.

SUMMARY OF APPLICATION: Applicants seek to amend a prior order that permits certain registered management investment companies to participate in a securities lending program and to pay, and Bankers Trust Company ("Bankers Trust") as lending agent to accept, fees based on a share of the revenue generated from the securities lending transactions ("Pror Order").[1] The amended order ("Amended Order") would permit Deutsche Bank, A.G., and any person controlling, controlled by, or under common control with Deutsche Bank, A.G. ("Deutsche Bank") to rely on the Prior Order. The Amended Order also would modify a condition of the Prior Order.

Applicants: Bankers Trust, Deutsche Bank, BT Investment Portfolios and each of its subsequently created series (each a "Portfolio"), and BT Institutional Funds (the "Trust") and each of its subsequently created series. The Trust, with respect to the Institutional Daily Assets Fund (the "Money Fund"), a series of the Trust, and any subsequently established series of the Trust or other registered open-end management investment companies advised or sub-advised by a BT Entity (as defined below) established in connection with the investment of cash collateral from securities lending transactions are referred to as the "Investment Funds." All applicants, except Deutsche Bank, are the "Original Applicants."

Filing Dates: The application was filed on March 14, 2000.

Hearing or Notification of Hearing: An order granting the requested relief will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 pm on April 11, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, N.W., Washington, DC 20549–0609; Applicants: Deutsche Bank, 31 West 52nd Street, New York, New York 10019; Original Applicants, c/o Bankers Trust, 130 Liberty Street, New York, New York 1006.

FOR FURTHER INFORMATION CONTACT: J. Amanda Machen, Senior Counsel (202) 942–7120, or Mary Kay Frech, Branch Chief, (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. Bankers Trust, a New York banking corporation, serves as investment adviser to investment companies registered under the Act. Bankers Trust also operates one of the largest securities lending programs ("Program") in conjunction with providing institutional custody services. Deutsche Bank is a banking company organized under the laws of the Federal Republic of Germany. On June 4, 1999, Deutsche Bank acquired Bankers Trust. Deutsche Bank serves as securities lending agent to a wide variety of institutional clients.

2. On August 26, 1998, the SEC issued the Prior Order to the Original Applicants under sections 6(c) and 17(b) of the Act granting an exemption from sections 17(a) and 17(e) of the Act, under section 12(d)(1)(J) of the Act granting an exemption from section 12(d)(1) of the Act, and permitting, pursuant to rule 17d–1, certain joint transactions in accordance with section 17(d) of the Act and rule 17d–1 under the Act. The Prior Order permits: (a) any registered investment company advised or sub-advised, or that invests substantially all of its assets in a registered investment company advised or sub-advised by Bankers Trust or an entity controlling, controlled by or under common control with Bankers Trust (a "BT Entity") ("Affiliated Lending Fund") and (b) each other registered management investment company or series thereof that may participate from time to time as a lender in the Program ("Other Lending Fund" and, together with Affiliated Lending Fund, "Lending Funds") to pay, and Bankers Trust to accept, fees based on a share of the revenue generated from securities lending transactions. The Prior Order also permits the Lending Funds to purchase and redeem from the Trust, and the Trust to sell to and to redeem for the Lending Funds, shares in the Investment Funds ("Shares") in connection with the investment of cash collateral from securities lending transactions. Lastly, the Prior Order permits Bankers Trust or any BT Entity to receive fees or commissions from the Other Lending Funds for acting as broker or agent in connection with the purchase or sale of securities for the Other Lending Funds.

3. Deutsche Bank seeks to extend the exemptive relief granted under the Prior

[1] *Bankers Trust Company*, Investment Company Act Release Nos. 23370 (July 31, 1998) (notice) and 23401 (Aug. 26, 1998) (order).

Order to permit it to serve as lending agent for Affiliated Lending Funds and as sub-lending agent for Other Lending Funds. Deutsche Bank states that its personnel providing day-to-day lending agency services to Affiliated Lending Funds do not provide investment advisory services to those Funds, or participate in any way in the selection of portfolio securities or other aspects of the management of those Funds.

4. Applicants represent that each Affiliated Lending Fund will adopt the following procedures to ensure that the proposed fee arrangement and the other terms governing the relationship with Bankers Trust and Deutsche Bank, as lending agents, will be fair:

(a) In connection with the approval of Bankers Trust or Deutsche Bank as lending agent for an Affiliated Lending Fund and implementation of the proposed fee arrangement, a majority of the board of trustees of the Affiliated Lending Fund ("Board of Trustees") (including a majority of the trustees who are not "interested persons" of the Affiliated Lending Fund within the meaning of the Act (the "Independent Trustees")) will determine that: (i) The contract with Bankers Trust or Deutsche Bank is in the best interests of the Affiliated Lending Fund and its shareholders; (ii) the services to be performed by Bankers Trust or Deutsche Bank are appropriate for the Affiliated Lending Fund; (iii) the nature and quality of the services provided by Bankers Trust or Deutsche Bank are at least equal to those provided by others offering the same or similar services for similar compensation; and (iv) the fees for Bankers Trust's or Deutsche Bank's services are within the range of, but in any event no higher than, the fees charged by Bankers Trust or Deutsche Bank for services of the same nature and quality provided to unaffiliated parties.

(b) Each Affiliated Lending Fund's contract with Bankers Trust or Deutsche Bank for lending agent services will be reviewed annually and will be approved for continuation only if a majority of the Board of Trustees (including a majority of the Independent Trustees) makes the findings referred to in paragraph (a) above.

(c) In connection with the initial implementation of an arrangement whereby Bankers Trust or Deutsche Bank will be compensated as lending agent based on a percentage of the revenue generated by an Affiliated Lending Fund's participation in the Program, the Board of Trustees shall secure a certificate from Bankers Trust or Deutsche Bank attesting to the factual accuracy of clause (iv) in paragraph (a) above. In addition, the Board of Trustees will request and evaluate, and Bankers Trust or Deutsche Bank shall furnish, such information and materials as the Trustees, with and upon the advice of agents, consultants or counsel, determine to be appropriate in making the findings referred to in paragraph (a) above. Such information shall include, in any event, information concerning the fees charged by Bankers Trust or Deutsche Bank to other institutional investors for providing similar services.

(d) The Board of Trustees, including a majority of the Independent Trustees, will (i) at each regular quarterly meeting determine, on the basis of reports submitted by Bankers Trust or Deutsche Bank, that the loan transactions during the prior quarter were conducted in compliance with the conditions and procedures set forth herein and (ii) will review no less frequently than annually the conditions and procedures set forth herein for continuing appropriateness.

(e) Each Affiliated Lending Fund will (i) maintain and preserve permanently in an easily accessible place a written copy of the procedures and conditions (and modifications thereto) described herein or otherwise followed in connection with lending securities pursuant to the Program and (ii) maintain and preserve for a period of not less than six years from the end of the fiscal year in which any loan transaction pursuant to the Program occurred, the first two years in an easily accessible place, a written record of each loan transaction setting forth a description of the security loaned, the identify of the person on the other side of the loan transaction, and the terms of the loan transaction. In addition, each Affiliated Lending Fund will maintain all information or materials upon which a determination was made in accordance with the procedures set forth above and the conditions to the application.

5. Deutsche Bank consents to the conditions set forth below and agrees to be bound by the terms and provisions of the Prior Order to the same extent as the Original Applicants.

6. Condition 7 in the Prior Order provides that an Investment Fund will not acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act. Applicants seek to modify condition 7 to permit an Investment Fund to be structured as a feeder fund in a master-feeder arrangement, so that an Investment Fund would acquire shares of a registered open-end management investment company advised by a BT entity in excess of the limits contained in section 12(d)(1)(A) of the Act, but only to the extent permitted by section 12(d)(1)(E) of the Act. Applicants represent that an Investment Fund organized in a master-feeder structure will comply with all of the provisions of section 12(d)(1)(E).

Applicants' Conditions

Applicant(s) agree that the order granting the requested relief will be subject to the following conditions:

1. The securities lending program of each Lending Fund will comply with present and future applicable SEC and staff positions regarding securities lending arrangements.

2. The approval of the Affiliated Lending Fund's Board of Trustees, including a majority of the Independent Trustees, shall be required for the initial and subsequent approvals of Bankers Trust's or Deutsche Bank's service as lending agent for the Affiliated Lending Fund pursuant to the Program, for the institution of all procedures relating to the Program as it relates to the Affiliated Lending Fund, and for any periodic review of loan transactions for which Bankers Trust or Deutsche Bank acted as lending agent pursuant to the Program.

3. A majority of the Board of Trustees of each Affiliated Lending Fund (including a majority of the Independent Trustees of such Affiliated Lending Fund) will initially and at least annually thereunder determine that the investment of securities lending cash collateral in Shares of the Trust is in the best interest of the shareholders of the Lending Fund.

4. Investment in Shares of an Investment Fund by a particular Lending Fund will be consistent with such Lending Fund's objectives and policies. A Lending Fund that complies with rule 2a–7 under the Act will not invest in its cash collateral in an Investment Fund that does not comply with rule 2a–7.

5. Investment in Shares of an Investment Fund by a particular Lending Fund will be in accordance with the guidelines regarding the investment of securities lending cash collateral specified by the Lending Fund in the securities lending agreement. A Lending Fund's cash collateral will be invested in a particular Investment Fund only if that Investment Fund has been approved for investment by the Lending Fund and if that Investment Fund invests in the types of instruments that the Lending Fund has authorized for the investment of its cash collateral.

6. The Shares of an Investment Fund and any investment company in which an Investment Fund may invest pursuant to condition 7 below will not be subject to a sales load, redemption fee, any asset-based sales charge, or service fee (as defined in Rule 2830(b)(9) of the Conduct Rules of the National Association of Securities Dealers).

7. An Investment Fund will not acquire securities of any investment company in excess of the limits contained in section 12(d)(1)(A) of the Act, except securities of a registered open-end management company advised by a BT Entity to the extent otherwise permitted by section 12(d)(1)(E) of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7198 Filed 3–22–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24340; 813–246]

Morgan Stanley Capital Investors, L.P. and Morgan Stanley Dean Witter & Co.; Notice of Application

March 17, 2000.

AGENCY: Securities and Exchange Commission ("Commisson")

ACTION: Notice of an application for an order under sections 6(b) and 6(e) of the Investment Company Act of 1940 (the "Act") granting an exemption from all provisions of the Act, except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants request an order to exempt certain limited partnerships and limited liability companies ("Partnerships") formed for the benefit of key employees of Morgan Stanley Dean Witter & Co. ("MSDW & Co.") and certain of its affiliates from certain provisions of the Act. Each Partnership will be an "employees' securities company" as defined in section 2(a)(13) of the Act. The requested order would supersede an existing order.[1]

APPLICANTS: Morgan Stanley Capital Investors, L.P. (the "Initial Partnership") and MSDW & Co., on behalf of other Partnerships that have been or may in the future be formed under the terms and conditions of the application.

FILING DATE: The application was filed on March 10, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 11, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, 1221 Avenue of the Americas, New York, NY 10020.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. MSDW & Co. is a diversified financial services company engaged in three primary business—securities, asset management, and credit cards. Morgan Stanley & Co. Incorporated, a wholly-owned subsidiary of MSDW & Co., is a broker-dealer registered under the Securities Exchange Act of 1934 (the "Exchange Act") and an investment adviser registered under the Investment Advisers Act of 1940 (the "Advisers Act"). MSDW & Co. and any entity controlling, controlled by, or under common control with MSDW & Co. are referred to herein collectively as "MSDW" and individually as an "MSDW entity."

2. MSDW offers various investment programs for the benefit of certain key employees. These programs may be structured as different Partnerships, or as separate plans within a Partnership. Each Partnership will be a limited partnership or limited liability company formed as an "employees' securities company" within the meaning of section 2(a)(13) of the Act, and will operate a closed-end, non-diversified, management investment company.[2] The Partnerships will be established primarily for the benefit of highly compensated employees of MSDW as part of a program designed to create capital building opportunities that are competitive with those at other investment banking firms and to facilitate the recruitment of high caliber professionals. Participation in a Partnership will be voluntary.

3. MSCP III, L.P., a Delaware limited partnership, will act as the general partner of the Initial Partnership (together with any other MSDW entity that acts as a Partnership's general partner, the "General Partner"). Any MSDW entity that acts as the investment adviser to a Partnership will be registered as an investment adviser under the Advisers Act. The General Partner will manage, operate, and control each of the Partnerships. However, the General Partner will be authorized to delegate management responsibility to MSDW or to a committee of MSDW employees.

4. Limited partner interests in the Partnerships ("Interests") will be offered without registration in reliance on section 4(2) of the Securities Act of 1933 (the "Securities Act") or similar exemption and will be sold only to "Eligible Employees" and "Qualified Participants" (collectively,

[1] Morgan Stanley Capital Investors, L.P. and Morgan Stanley, Dean Witter, Discover & Co., Investment Company Act Release No. 23111 (April 14, 1998).

[2] Applicants also may implement a pretax plan arrangement ("Pretax Plan"). In this case, no investment vehicle will be formed with respect to such Pretax Plan. Pursuant to a Pretax Plan, MSDW will enter into arrangements with certain Eligible Employees, as later defined, of MSDW, which will generally provide that (a) an Eligible Employee will defer a portion of his or her compensation payable by MSDW; (b) such deferred compensation will be treated as having been notionally invested in investments designated for these purposes pursuant to the specific compensation plan; and (c) an Eligible Employee will be entitled to receive cash, securities, or other property at the times and in the amounts set forth in the specific compensation plan, where the aggregate amount received by such Eligible Employee would be based upon the investment performance of the investments designated for these purposes pursuant to such compensation plan. The Pretax Plan will not actually purchase or sell any securities. MSDW expects to offer, through Pretax Plans, economic benefits comparable to what would have been offered in an arrangement where an investment vehicle is formed. For purposes of the application, a Partnership will be deemed to be formed with respect to each Pretax Plan and each reference to "Partnership," "capital contribution," "General Partner," "Limited Partner," "loans," and "Interest" in the application will be deemed to refer to the Pretax Plan, the notional capital contribution to the Pretax Plan, MSDW, a participant of the Pretax Plan, national loans and participation rights in the Pretax Plan, respectively.

"Participants").[3] Prior to offering

broker may receive placement fees, advisory fees, or other compensation

specified by the Commission, will be applicable to the company and other

the Commission. Applicants request exemptive relief to permit affiliated

"Participants").[3] Prior to offering Interests to an Eligible Employee, the General Partner must reasonably believe that an Eligible Employee will be a sophisticated investor capable of understanding and evaluating the risks of participating in the Partnership without the benefit of regulatory safeguards. An Eligible Employee is (a) an individual who is a current or former employee, officer, director, or "Consultant" of MSDW and, except for certain individuals who manage the day-to-day affairs of the Partnership in question ("Managing Employees"), meets the standards of an accredited investor under rule 501(a)(6) of Regulation D ("Regulation D") under the Securities Act, or (b) an entity that is a current or former "Consultant" of MSDW and meets the standards of an accredited investor under rule 501(a) of Regulation D.[4] Eligible Employees will be experienced professionals in the investment banking and securities, investment management or credit card businesses, or in the related administrative, financial, accounting, legal, or operational activities.

5. Managing Employees will have primary responsibility for operating the Partnership. These responsibilities will include, among other things, identifying, investigating, structuring, negotiating, and monitoring investments for the Partnership, communicating with the limited partners of the Partnership, maintaining the books and records of the Partnership, and making recommendations with respect to investment decisions by the General Partner. Each Managing Employee will (a) be closely involved with, and knowledgeable with respect to, the Partnership's affairs and the status of the Partnership's investments, (b) be an officer or employee of MSDW, and (c) have reportable income from all sources (including any profit shares and bonuses) in the calendar year immediately preceding the employee's participation in the Partnership in excess of $120,000 and have a reasonable expectation of reportable income of at least $150,000 in the years in which the employee invests in a Partnership.

6. A Qualified Participant (a) is an Eligible Family Member or Qualified Entity (in each case as defined below) of an Eligible Employee, and (b) if the individual or entity is purchasing an Interest from a Partner or directly from the Partnership, comes within one of the categories of an "accredited investor" under rule 501(a) of Regulation D. An "Eligible Family Member" is a spouse, parent, child, spouse of child, brother, sister, or grandchild of an Eligible Employee. A "Qualified Entity" is (a) a trust of which the trustee, grantor, and/or beneficiary is an Eligible Employee; (b) a partnership, corporation, or other entity controlled by an Eligible Employee,[5] or (c) a trust or other entity established for the benefit of Eligible Family Members of an Eligible Employee.

7. The terms of a Partnership will be fully disclosed to each Eligible Employee and, if applicable, to a Qualified Participant of the Eligible Employee, at the time the Eligible Employee is invited to participate in the Partnership. Each Partnership will send audited financial statements to each Participant within 120 days or as soon as practicable after the end of its fiscal year.[6] In addition, each Participant will receive a copy of Schedule K–1 showing the Participant's share of income, credits, reductions, and other tax items.

8. Interests in a Partnership will be non-transferable except with the prior written consent of the General Partner.[7] No person will be admitted into a Partnership unless the person is an Eligible Employee, a Qualified Participant of an Eligible Employee, or an MSDW entity. No sales load will be charged in connection with the sale of a limited partnership interest.

9. An Eligible Employee's interest in a Partnership may be subject to repurchase or cancellation if (a) the Eligible Employee's relationship with MSDW is terminated for cause; (b) the Eligible Employee becomes a consultant to or joins any firm that the General Partner determines, in its reasonable discretion, is competitive with any business of MSDW; or (c) the Eligible Employee voluntarily resigns from employment with MSDW. Upon repurchase or cancellation, the General Partner will pay to the Eligible Employee at least the lesser of (a) the amount actually paid by the Eligible Employee to acquire the Interest (plus interest, as determined by the General Partner), or (b) the fair market value of the Interest as determined at the time of repurchase by the General partner. The terms of any repurchase or cancellation will apply equally to any Qualified Participant of an Eligible Employee.

10. Subject to the terms of the applicable limited partnership agreement, a Partnership will be permitted to enter into transactions involving (a) an MSDW entity; (b) a portfolio company, (c) any Partner or person or entity affiliated with a Partner, (d) an investment fund or separate account that is organized for the benefit of investors who are not affiliated with MSDW and over which an MSDW entity will exercise investment discretion (a "Third Party Fund"), or (e) any partner or other investor of a Third Party Fund that is not affiliated with MSDW (a "Third Party Investor"). These transactions may include a Partnership's purchase or sale of an investment or an interest from or to any MSDW entity or Third Party Fund, acting as principal. Prior to entering into these transactions, the General Partner must determine that the terms are fair to the Partners.

11. A Partnership will not invest more than 15% of its assets in securities issued by registered investment companies (with the exception of temporary investments in money market funds). A Partnership will not acquire any security issued by a registered investment company if immediately after the acquisition, the Partnership will own more than 3% of the outstanding voting stock of the registered investment company.

12. An MSDW entity (including the General Partner) acting as agent or broker may receive placement fees, advisory fees, or other compensation from a Partnership or portfolio company in connection with a Partnership's purchases or sale of securities, provided the placement fees, advisory fees, or other compensation are "usual or customary." Fees or other compensation will be deemed "usual and customary" only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds; (b) the fees or other compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including third Party Funds; and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. MSDW entities (including the General Partner) also may be compensated for services to entities in which the Partnerships invest and to entities that are competitors of these entities, and may otherwise engage in normal business activities that conflict with the interests of the Partnerships.

[3] If applicants implement a Pretax Plan, participation rights in the Pretax Plan will only be offered to Eligible Employees who are current employees or Consultants, as later defined, of MSDW.

[4] A "Consultant" is a person or entity whom MSDW has engaged on retainer to provide services and professional expertise on an ongoing basis as a regular consultant or as a business or legal adviser and who shares a community of interest with MSDW and MSDW employees.

[5] The inclusion of partnerships, corporations, or other entities controlled by an Eligible Employee in the definition of "Qualified Entities" is intended to enable Eligible Employees to make investments in the Partnerships through personal investment vehicles for the purpose of personal and family investment and estate planning objectives. Eligible Employees will exercise investment discretion or control over these investment vehicles, thereby creating a close nexus between MSDW and these investment vehicles. In the case of a partnership, corporation, or other entity controlled by a Consultant entity, individual participants will be limited to senior level employees, members, or partners of the Consultant who will be required to qualify as an "accredited investor" under rule 501(a)(6) of Regulation D and who will have access to the General Partner or MSDW.

[6] If applicants implement a Pretax Plan, Eligible Employees participating in such Pretax Plan will be furnished with a copy of the Pretax Plan, which will set forth at a minimum the same terms of the proposed investment program as those that would have been set forth in a limited partnership agreement for a Partnership. MSDW will prepare an audited informational statement with respect to the investments deemed to be made by such Pretax Plan, including, with respect to each investment, the name of the portfolio company and the amount deemed invested by such Pretax Plan in the portfolio company. MSDW will send each participant of such Pretax Plan a statement prepared based on the audited informational statement within 120 days after the end of the fiscal year of MSDW.

[7] If applicants implement a Pretax Plan, an Eligible Employee's participation rights in such plan may not be transferred, other than to a Qualified Participant in the event of the Eligible Employee's death.

Applicants' Legal Analysis

1. Section 6(b) of the Act provides, in part, that the Commission will exempt employees' securities companies from the provisions of the Act to the extent that the exemption is consistent with the protection of investors. Section 6(b) provides that the Commission will consider, in determining the provisions of the Act from which the company should be exempt, the company's form of organization and capital structure, the persons owning and controlling its securities, the price of the company's securities and the amount of any sales load, how the company's funds are invested, and the relationship between the company and the issuers of the securities in which it invests. Section 2(a)(13) defines an employees' securities company, in relevant part, as any investment company all of whose securities are beneficially owned (a) by current or former employees, or persons on retainer, of one or more affiliated employers, (b) by immediate family members of such persons, or (c) by such employer or employers together with any of the persons in (a) or (b).

2. Section 7 of the Act generally prohibits an investment company that is not registered under section 8 of the Act from selling or redeeming its securities. Section 6(e) provides that, in connection with any order exempting an investment company from any provision of section 7, certain provisions of the Act, as specified by the Commission, will be applicable to the company and other persons dealing with the company as though the company were registered under the Act. Applicants request an order under sections 6(b) and 6(e) of the Act for an exemption from all provisions of the Act except section 9, section 17 (other than certain provisions of paragraphs (a), (d), (e), (f), (g), and (j)), section 30 (other than certain provisions of paragraphs (a), (b), (e), and (h)), sections 36 through 53, and the rules and regulations thereunder.

3. Section 17(a) generally prohibits any affiliated person of a registered investment company, or any affiliated person of an affiliated person, acting as principal, from knowingly selling or purchasing any security or other property to or from the company. Applicants request an exemption from section 17(a) to permit 9(a) an MSDW entity or a Third Party Fund, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership; (b) any Partnership to invest in or engage in any transaction with any MSDW entity, acting as principal, (i) in which the Partnership, any company controlled by the Partnership, or any MSDW entity or Third Party Fund has invested or will invest, or (ii) with which the Partnership, any company controlled by the Partnership, or any MSDW entity or third Party Fund will become affiliated; and (c) a third Party Investor, acting as principal, to engage in any transaction directly or indirectly with any Partnership or any company controlled by the Partnership.

4. Applicants state that an exemption from section 17(a) is consistent with the protection of investors and is necessary to promote the purpose of the Partnerships. Applicants state that the Participants in each Partnership will be fully informed of the extent of the Partnership's dealings with MSDW. Applicants also state that, as professionals employed in the investment banking and financial services businesses, Participants will be able to understand and evaluate the attendant risks. Applicants assert that the community of interest among the Participants and MSDW will provide the best protection against any risk of abuse.

5. Section 17(d) and rule 17d–1 prohibit any affiliated person or principal underwriter of a registered investment company, or any affiliated person of such person or principal underwriter, acting as principal, from participating in any joint arrangement with the company unless authorized by the Commission. Applicants request exemptive relief to permit affiliated persons of each Partnership, or affiliated persons of any of these persons, to participate in any joint arrangement in which the Partnership or a company controlled by the Partnership is a participant.

6. Applicants submit that it is likely that suitable investments will be brought to the attention of a Partnership because of its affiliation with MSDW or MSDW's large capital resources, and its experience in structuring complex transactions. Applicants also submit that the types of investment opportunities considered by a Partnership often require each investor to make funds available in an amount that may be substantially greater than what a Partnership may make available on its own. Applicants contend that, as a result, the only way in which a Partnership may be able to participant in these opportunities may be to co-invest with other persons, including its affiliates. Applicants note that each Partnership will be primarily organized for the benefit of Eligible Employees as an incentive for them to remain with MSDW and for the generation and a maintenance of goodwill. Applicants believe that, if co-investments with MSDW are prohibited, the appeal of the Partnerships would be significantly diminished. Applicants assert that Eligible Employees wish to participate in co-investment opportunities because they believe that (a) the resources of MSDW enable it to analyze investment opportunities to an extent that individual employees would not be able to duplicate; (b) investments made by MSDW will not be generally available to investors even of the financial status of the Eligible Employees; and (c) Eligible Employees will be able to pool their investment resources, thus achieving greater diversification of their individual investment portfolios.

7. Applicants assert that the flexibility to structure co-investments and joint investments will not involve abuses of the type section 17(d) and rule 17d–1 were designed to prevent. Applicants state that the concern that permitting co-investments by MSDW and a Partnership might lead to less advantageous treatment of the Partnership will be mitigated by the community of interest among MSDW and the Participants, and the fact that senior officers and directors of MSDW entities will be investing in the Partnership. In addition, applicants assert that strict compliance with section 17(d) would cause the Partnership to forego investment opportunities simply because a

Participant or other affiliated person of the Partnership (or any affiliate of such person) made a similar investment. Finally, applicants contend that the possibility that a Partnership may be disadvantaged by the participation of an affiliate in a transaction will be minimized by compliance with the lockstep procedures described in condition 3 below. Applicants believe that this condition will ensure that a Partnership will co-invest side-by-side and pro rata with, and on at least as favorable terms as, an MSDW entity.

8. Co-investments with Third Party Funds, or by an MSDW entity pursuant to a contractual obligation to a Third Party Fund, will not be subject to condition 3. Applicants note that it is common for a Third Party Fund to require that MSDW invest its own capital in Third Party Fund investments, and that the MSDW investments be subject to substantially the same terms as those applicable to the Third Party Fund. Applicants believe it is important that the interests of the Third Party Fund take priority over the interests of the Partnerships, and that the Third Party Fund not be burdened or otherwise affected by activities of the Partnerships. In addition, applicants assert that the relationship of a Partnership to a Third Party Fund is fundamentally different from a Partnerships's relationship to MSDW. Applicants contend that the focus of, and the rationale for, the protections contained in the requested relief are to protect the Partnerships from any overreaching by MSDW in the employer/employee context, whereas the same concerns are not present with respect to the Partnerships *vis-à-vis* a Third Party Fund.

9. Section 17(e) and rule 17e–1 limit the compensation an affiliated person may receive when acting as agent or broker for a registered investment company. Applicants request an exemption from section 17(e) to permit an MSDW entity (including the General Partner), that acts as an agent or broker, to receive placement fees, advisory fees, or other compensation from a Partnership in connection with the purchase or sale by the Partnership of securities, provided that the fees or other compensation is deemed "usual and customary. Applicants state that for the purposes of the application, fees or other compensation that is charge or received by an MSDW entity will be deemed "usual and customary" only if (a) the Partnership is purchasing or selling securities with other unaffiliated third parties, including Third Party Funds; (b) the fees or compensation being charged to the Partnership are also being charged to the unaffiliated third parties, including Third Party Funds; and (c) the amount of securities being purchased or sold by the Partnership does not exceed 50% of the total amount of securities being purchased or sold by the Partnership and the unaffiliated third parties, including Third Party Funds. Applicants assert that, because MSDW does not wish it to appear as if it is favoring the Partnerships, compliance with section 17(e) would prevent a Partnership from participating in transactions where the Partnership is being charged lower fees than unaffiliated third parties. Applicants assert that the fees or other compensation paid by a Partnership to an MSDW entity will be the same as those negotiated at arm's length with unaffiliated third parties.

10. Rule 17e–1(b) requires that a majority of directors who are not "interested persons" (as defined in section 2(a)(19) of the Act) take actions and make approvals regarding commissions, fees, or other remuneration. Applicants request an exemption from rule 17e–1(b) to the extent necessary to permit each Partnership to comply with the rule without having a majority of the directors of the General Partner who are not interested persons take actions and make determinations as set forth in the rule. Applicants state that because all the directors of the General Partner will be affiliated persons, without the relief requested, a Partnership could not comply with rule 17e–1(b). Applicants state that each Partnership will comply with rule 17e–1(b) by having a majority of the directors of the Partnership take actions and make approvals as are set forth in rule 17e–1. Applicants state that each Partnership will comply with all other requirements of rule 17e–1 for transactions described above in the discussion of section 17(e).

11. Section 17(f) designates the entities that may act as investment company custodians, and rule 17f–1 imposes certain requirements when the custodian is a member of a national securities exchange. Applicants request an exemption from section 17(f) and rule 17f–1 to permit MSDW to act as custodian of Partnership assets without a written contract, as would be required by rule 17f–1(a). Applicants also request an exemption from the rule 17f–1(b)(4) requirement that an independent accountant periodically verify the assets held by the custodian. Applicants believe that, because of the community of interest between MSDW and the Partnerships and the existing requirement for an independent audit, compliance with these requirements would be unnecessarily burdensome and expensive. Applicants will comply with all other requirements of rule 17f–1.

12. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to its securities or funds. Rule 17g–1 requiries that a majority of directors who are not interested persons take certain actions and give certain approvals relating to fidelity bonding. Applicants request exemptive relief to permit the General Partner's officers and directors, who may be deemed interested persons, to take actions and make determinations set forth in the rule. Applicants state that, because all the directors of the General Partner will be affiliated persons, a Partnership could not comply with rule 17g–1 without the requested relief. Specifically, each Partnership will comply with rule 17g–1 by having a majority of the Partnerships' directors take actions and make determinations as are set forth in rule 17g–1. Applicants also state that each Partnership will comply with all other requirements of rule 17g–1.

13. Section 17(j) and paragraph (a) of rule 17j–1 make it unlawful or certain enumerated persons to engage in fraudulent or deceptive practices in connection with the purchase or sale of a security held or to be acquired by a registered investment company. Rule 17j–1 also requires that every registered investment company adopt a written code of ethics and that every access person of a registered investment company report personal securities transactions. Applicants request an exemption from the provisions of rule 17j–1, except for the anti-fraud provisions of paragraph (a), because they are unnecessarily burdensome as applied to the Partnerships.

14. Applicants request an exemption from the requirements in sections 30(a), 30(b), and 30(e), and the rules under those sections, that registered investment companies prepare and file with the Commission and mail to their shareholders certain periodic reports and financial statements. Applicants contend that the forms prescribed by the Commission for periodic reports have little relevance to the Partnerships and would entail administrative and legal costs that outweigh any benefit to the Participants. Applicants request exemptive relief to the extent necessary to permit each Partnership to report annually to its Participants. Applicants also request an exemption from section 30(h) to the extent necessary to exempt the General Partner of each Partnership and any other persons who may be deemed to be members of an advisory board of a Partnership from filing Forms 3, 4 and 5 under section 16(a) of the Exchange Act with respect to their ownership of Interests in the Partnership. Applicants assert that, because there will be no trading market and the transfers of Interests will be severely restricted, these filings are unnecessary for the protection of investors and burdensome to those required to make them.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 to which a Partnership is a party (the "Section 17 Transaction") will be effected only if the General Partner determines that: (a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the Partners of the Partnership and do not involve overreaching of the Partnership or its Participants on the part of any person concerned: and (b) the transaction is consistent with the interests of the Participants in the Partnership, and the Partnership's organizational documents and reports to its Participants. In addition, the General Partner of each Partnership will record and preserve a description of the Section 17 Transactions, the General Partner's findings, the information or materials upon which the General Partner's findings are based, and the basis for the findings. All records relating to an investment program will be maintained until the termination of the investment program and at least two years thereafter, and will be subject to examination by the Commission and its staff.[8]

2. In connection with the Section 17 Transactions, the General Partner of each partnership will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the Transaction of any affiliated person or promoter of or principal underwriter for the Partnership, or any affiliated person of an affiliated person, promoter, or principal underwriter.

3. The General Partner of each Partnership will not invest the funds of the Partnership in any investment in which a "Co-Investor" (as defined below) has acquired or proposes to acquire the same class of securities of the same issuer, if the investment involves a joint enterprise or other arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless the Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's notice of its intent to dispose of its investment; and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and pro rata with the Co-Investor. The term "Co-Investor" with respect to any Partnership means any person who is (a) an "affiliated person" (as defined in section 2(a)(3) of the Act) of the Partnership (other than a Third Party Fund); (b) MSDW; (c) an officer or director of MSDW; or (d) an entity (other than a Third Party Fund) in which the General Partner acts as a general partner or has a similar capacity to control the sale or other disposition of the entity's securities. The restrictions contained in this condition; however, will not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) to its direct or indirect wholly-owned subsidiary, to any company (a "Parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its Parent; (b) to immediate family members of the Co-Investor or a trust or other investment vehicle established for any immediate family member; (c) when the investment is comprised of securities that are listed on any exchange registered as a national securities exchange under section 6 of the Exchange Act; (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the Exchange Act and rule 11Aa2–1 under the Exchange Act; or (e) when the investment is comprised of securities that are listed or traded on any foreign securities exchange or board of trade that satisfies regulatory requirements under the law of jurisdiction in which the foreign securities exchange or board of trade is organized similar to those that apply to a national securities exchange or a national market system for securities.

4. Each Partnership and the General Partner will maintain and preserve, at for the life of the Partnership and a least two years thereafter, the accounts, books, and other documents that constitute the record forming the basis for the audited financial statements that are to be provided to the Participants in the Partnership, and each annual report of the Partnership required to be sent to Participants, and agree that these records will be subject to examination by the Commission and its staff.[9]

5. The General Partner of each Partnership will send to each Participant in the Partnership who had an interest in any capital account of the Partnership, at any time during the fiscal year then ended. Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partner will make a valuation or have a valuation made of all of the assets of the Partnership as of the fiscal year end in a manner consistent with customary practice with respect to the valuation of assets of the kind held by the Partnership. In addition, within 120 days after the end of each fiscal year of each Partnership or as soon as practicable thereafter, the General Partner of the Partnership will send a report to each person who was a participant in the Partnership at any time during the fiscal year then ended, setting forth the tax information necessary for the preparation by the Participant of federal and state income tax returns.

6. If purchases or sales are made by a Partnership from or to an entity affiliated with the Partnership by reason of a 5% or more investment in the entity by an MSDW director, officer, or employee, the individual will not participate in the Partnership's determination of whether or not to effect the purchase or sale.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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[8] Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

[9] Each Partnership will preserve the accounts, books, and other documents required to be maintained in an easily accessible place for the first two years.

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42539; File No. SR–Amex–99–39]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange LLC Amending Certain Listing Standards

March 17, 2000.

On September 28, 1999, the American Stock Exchange LLC ("Exchange" or "Amex" submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending certain of the Exchange's listing standards. The Exchange filed Amendments No. 1,[3] 2,[4] and 3[5] to the proposed rule change on December 14, 1999, January 4, 2000, and January 19, 2000, respectively. The proposed rule change, as amended, was published for comment in the **Federal Register** on February 10, 2000.[6] The Commission received no comments on the proposal. This order approves the proposal, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Michael Cavalier, Associate General Counsel, Legal & Regulatory Policy, Amex, to Jack P. Drogin, Assistant Director, Division of Market Regulation ("Division"), Commission, dated December 13, 1999 ("Amendment No. 1"). Amendment No. 1 revises section 1101 of the *Amex Company Guide* to add references to forms filed with the Commission by unit investment trusts and open-end management investment companies.

[4] Letter from Michael J. Ryan, Jr. Chief of Staff, Amex, to Jack P. Drogin, Assistant Director, Division, Commission, dated December 31, 1999 ("Amendment No. 2"). As originally filed, the proposed rule change eliminated the requirement to submit with an original listing application certain corporate documents and an opinion of counsel regarding the legality of the organization, existence of the issuer, and the validity of the securities to be issued. Amendment No. 2 reinstates the requirement to submit these documents. Amendment No. 2 also makes certain technical changes to the proposed rule change.

[5] Letter from Michael J. Ryan, Jr., Chief of Staff, Amex, to Jack P. Drogin, Assistant Director, Division, Commission, dated January 18, 2000 ("Amendment No. 3"). Amendment No. 3 eliminates the requirements to file certain documents with an original listing application, including an issuer's charter and by-laws, as well as an opinion of counsel. In lieu of requiring these documents, Amendment No. 3 states that the Exchange will ask issuers specific questions concerning quorum requirements, notice of record dates to shareholders and closing of transfer books. In addition, Amendment No. 3 states that the Exchange will require issuers to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, represent to the Exchange that they are duly and validly organized under the laws of their state of incorporation. Finally, Amendment No. 3 reinstates Section 125 of the *Amex Company Guide*, relating to remedies available to bondholders upon default.

[6] Securities Exchange Act Release No. 42378 (Feb. 2, 2000), 65 FR 6647.

II. Description of the Proposal

Due to the merger between the National Association of Securities Dealers ("NASD") and the Amex, the qualification functions for the Nasdaq Stock Market ("Nasdaq") and the Amex have been centralized in the Nasdaq-Amex Listing Qualifications Department ("Listing Qualifications"). As a result of this centralization, a number of Exchange rules have been reviewed with the goal of modernizing the Exchange's initial and continued listing process, creating consistent rules and processes across all the NASD's marketplaces, and reflecting the current business practices and procedures used by Listing Qualifications. This filing addresses those goals and makes other non-substantive changes to reflect changed job titles[7] and responsibilities following the merger, and clarifies the application of certain Exchange rules.

Application Process

Currently, Exchange rules encourage issuers to obtain an informal opinion from Amex staff, known as the Preliminary Listing Eligibility Opinion ("PLEO"), as to whether the issuer is eligible to list before formally applying to the Exchange. Because of the time involved for the issuer to prepare for this extra review and for staff to conduct this extra review, the PLEO process causes a delay in the time it takes for a final determination to be made on an issuer's application for listing on the Exchange. This process is also inconsistent with the Nasdaq process in which an application is filed at the outset of the process. As a result, when a issuer initially pursues listing on both markets, the issuer faces a delay in its ability to make a decision as to where to list. In order to streamline the application process, the Exchange proposes to eliminate the PLEO process. Accordingly, the Exchange proposes to delete sections 202 and 203 of the Listing Standards, Policies and Requirements and modify sections 101, 130, 201 and 211 to eliminate references to the PLEO process. Under the proposed revision, issuers will only file their completed listing application with the Exchange's staff.

In addition, Exchange rules currently require a number of documents to be submitted with an original listing application. The Exchange proposes to eliminate certain requirements, including the Exchange's Listing Form 2 (Certificate of Distribution), Charter, By-Laws, Specimen Certificates, Trustee Certificates, Form for Indenture, Board Resolutions and certain contracts. Many of these documents are electronically available through an Issuer's public filings, or they are generally available to Listing Qualifications through other means (or upon request by Exchange staff from the issuer). Therefore, the Exchange proposes to remove these general requirements and instead request specific documents as necessary.[8] Specifically, the Exchange proposes to modify sections 213, 216, 218, 305, 306, and 702 to reflect these changes.

Similarly, the Exchange proposes that issuers no longer be required to obtain an opinion of counsel which, among other things, relates to the legality of the organization and existence of the issuer and the validity of the securities to be listed. These rules were originally enacted to prevent unauthorized securities from entering into the market and to protect the Exchange from legal liability, which might arise from the listing and trading of such securities. Today, however, such concerns are addressed through other means. In particular, an issuer's independent auditor reviews the issuance of securities as part of its annual audit and, generally, legal comfort is provided to market participants with respect to most securities issuances, including public offerings. Furthermore, the Exchange is largely protected from legal claims against it by its status as a self-regulatory organization. Accordingly, the Exchange proposes to delete requirements related to opinions of counsel in sections 213, 216, 218, and 306 of the Listing Standards.[9]

[7] Changes to Part 4 of the Listing Standards reflect the elimination of the Corporate Relations Manager job function and the division of the responsibilities of the former Corporate Relations Manager among the Listing Qualifications, Stock Watch, and Issuer Service Department.

[8] In the standard comment letter that the Exchange sends issuers after Exchange staff has reviewed the issuer's listing application the Exchange will ask issuers specific questions concerning quorum requirements, notice of record dates to shareholders and closing of transfer books. Telephone call between Michael S. Emen, Vice President, Listing Qualifications, Amex, Rebekah Liu, Special Counsel, Division, Commission, and Sonia Patton, Attorney, Division, Commission, on January 27, 2000.

[9] Through its standard comment letter, the Exchange will require issuers to (i) furnish the Exchange with copies of opinions of counsel filed in connection with recent public offerings or private placements or (ii) if no opinions of counsel exist, represent to the Exchange that they are duly and validly organized under the laws of their state of incorporation. Telephone call between Michael S. Emen, Vice President, Listing Qualifications, Amex, Rebekah Liu, Special Counsel, Division, Commission, and Sonia Patton, Attorney, Division, Commission, on January 27, 2000.

The Exchange currently requires an application to be submitted by an issuer whenever a shareholder rights plan is established and the underlying rights are registered with the Commission. These rights, commonly known as "poison pills," technically constitute a separate security but trade in tandem with and as part of the issuer's common stock. Upon the occurrence of a "triggering event" such as the announcement of a hostile takeover or the acquisition of a specified percentage of the company's outstanding common stock, the rights would be detached from the common stock and become freely tradable as separate securities. At that point, under Exchange rules, the issuer is required to file a listing application with respect to those new securities. Given the listing application requirement upon the occurrence of a triggering event and the fact that until that time the securities are not traded as separate securities, the Exchange believes the requirements of section 343 are not necessary.

Criteria for Original Listing

Sections 104 and 105 of the Listing Standards allow the listing of debt and warrants on the Amex, but only if the issuer is listed on the Amex or the New York Stock Exchange ("NYSE"). The exclusion of Nasdaq National market securities from this standard is no longer necessary or appropriate, given the level of the listing standards on the Nasdaq National Market in comparison to those of the Amex and the NYSE. The Exchange therefore proposes to expand the issues which may be listed on Amex to include debt and warrants of issuers listed on the Nasdaq National Market.

Sections 112, 115, and 116 of the Listing Requirements impose more stringent standards on specific types of issuers: exploration and development companies, member corporations, and companies engaged in gaming operations. These rules arose when such companies generally remained private and the listing of companies in such sectors was fairly unusual. The Exchange proposes to eliminate these sector-specific sections because the listing of securities of issuers in these sectors is now fairly common across all markets and issuers in these sectors now operate in highly regulated environments. Specifically, with respect to exploration and development companies, the Exchange notes that detailed disclosures about the issuer's stage of development and prospects are provided to potential investors in required, publicly filed reports. Accordingly, the Exchange does not believe it is appropriate to discriminate against such exploration stage companies seeking to raise capital on the Exchange. With respect to member corporations, the Exchange notes that these issuers are regulated by both the Commission and the membership organization to which the issuer belongs. Finally, with respect to companies engaged in gaming operations, the Exchange notes that these issuers operate in a highly regulated environment and are subject to substantial state and/or federal regulation. Furthermore, the Exchange notes that under its discretionary authority over all issuers, pursuant to section 101, it has authority to deny listing to issuers based on sector-specific issues in appropriate situations. Accordingly, the Exchange does not believe that the specific rules relating to issuers in these sectors are necessary or appropriate.

The Exchange also proposes to clarify that the alternate listing guidelines contained in section 101 of the Listing Standards are not limited to issuers in certain sectors. The alternate guidelines were first adopted in 1977 and then modified in 1986 to allow a broader range of companies to qualify. The guidelines referenced as examples companies that were unable to satisfy the basic criteria due to significant research and development or other similar business development costs. The Exchange proposes changes to section 101 to clarify that the numerical aspects of the alternate guidelines apply to all issuers, regardless of industry. This change would be consistent with the approach used on Nasdaq, the Nasdaq SmallCap Market, and the NYSE, where alternative listing requirements are available to all issuers that meet the quantitative requirements.

Fees

Section 144 of the Listing Standards currently imposes a $250 non-refundable service charge that is subtracted from any refund otherwise due an issuer that is not approved for listing or that withdraws after completing the application process. Given the cost incurred by the Exchange in reviewing an application, the Exchange proposes to raise the non-refundable portion of the initial inclusion fee from $250 to $1,000 and to require the payment of this amount in advance of processing the application, in order to timely recoup such costs, especially in situations where these costs are incurred by the Exchange and the application is then withdrawn. The Exchange notes that this proposed change will not affect the listing fees paid by issuers who ultimately list on the Exchange and that this practice is consistent with that followed by Nasdaq. In addition, the Exchange notes that if an issuer applies for listing on both the Exchange and on Nasdaq, only a single $1,000 non-refundable fee would be collected for review of both applications.

The Exchange also proposes to modify the treatment of treasury shares for fee purposes Under existing section 141, Amex listing fees are based on all shares outstanding, including treasury shares. The Exchange proposes to modify section 141 to exclude treasury shares when calculating shares outstanding for fee purposes[10] and to clarify that annual fees billed based on shares outstanding information refers to information available on Exchange records as of December 31, and not shares outstanding information sent to the Exchange by issuers in February. This proposed rule change will result in a decrease in fees for issuers with treasury shares and will not affect other issuers.

Finally, as discussed above, because the Exchange proposes to eliminate section 343, requiring the submission of an application upon the creation of a shareholder rights plan, the Exchange also proposes to modify section 140, to eliminate the $1,000 fee associated with the shareholder rights plan application.

Schedule for Dividends

The Exchange proposes to eliminate several rules that require additional time between the declaration and dividend date for dividends of issuers that do not have transfer facilities in the New York City area. Given the current state of communication networks and electronic interaction between issuers, transfer agents and investors, these additional time periods are no longer necessary. Accordingly, the Exchange proposes to modify sections 502, 512, and 521 and to eliminate section 520 to implement this proposed change.

Transfer Facilities

Likewise, the Exchange proposes to remove a variety of rules concerning the qualification of Transfer Agents, Registrars, and Bond Trustees presently contained in sections 801–811. The Commission regulates the transfer agent industry and, since 1976, has imposed a series of rules over the industry[11] that make many of the Exchange's rules unnecessary. Other Exchange rules relating to transfer agents (as well as

[10] This is consistent with the approach taken on the Nasdaq, resulting in identical application across all of the NASD's marketplaces.

[11] *See* Exchange Act Rules 17Ad–1 through 17Ad–21T. 17 CFR 240.17Ad–1 through 17 CFR 240.17AD–21T.

Agents for Payment) are inappropriate, as they limit the ability of agents with physical locations outside of New York to perform these functions. The Exchange also proposes to eliminate the requirements relating to Trustees for Bond Issues in section 811. The Exchange has never experienced a problem with respect to the qualification of a Bond Trustee and believes that these matters are better left to the individual issuers and applicable state law. Accordingly, the Exchange proposes to delete section 801–811 and to make conforming change to other sections that refer to those sections.

Certificate Requirements

The Exchange also proposes to remove requirements relating to the form of securities and lost security holders. The rules relating to the form of securities are antiquated and may impede the use of innovations in this area, such as Depository Trust Corporation holdings and book entry methods. Furthermore, the Exchange notes that there are no comparable rules on Nasdaq. Accordingly, the Exchange proposed to delete existing sections 820 through 830, inclusive, and section 841 of the Listing Standards. Likewise, the Exchange rules governing the replacement of lost certificates in section 840 are no longer necessary in light of current practices followed by issuers and transfer agents.

Treasury Shares

Existing Exchange rules require an issuer to report changes in the number of treasury shares. Given the changes proposes to the fee calculation for issuers, resulting in the exclusion of treasury shares from the fee base, the Exchange no longer needs this information. Accordingly, the Exchange proposes to eliminate section 901 of the Listing Standards. Furthermore, section 903, on repurchases of listed company securities, is unnecessary because it does not impose any Exchange requirements, but merely refers issuers to federal securities laws. Finally, the Exchange notes that section 902 allows an issuer to redeem securities only in pro rata fashion or by lot. The Exchange notes that issuers are governed by state law requirements in the redemption of securities and that as a practical matter, one of these methods is invariably applied. Therefore, the Exchange believes that section 902 is unnecessary and proposes its deletion and conforming amendments to sections 103(d), 104, and 105(b).

Other Changes to the Exchange's Listing Requirements

The Exchange proposes certain changes to the listing requirements for issuers listed on the Amex. The Exchange proposes to change the definition of "public distribution" and "public shareholders" as defined in section 102. Currently, in determining the number of shares in the public, Exchange rules exclude concentrated holdings of 5% or greater. The comparable rules on Nasdaq, as well as the NYSE, only exclude holdings of 10% or greater. The Exchange believes that it is appropriate to exclude holdings of between 5% and 10% from the definition of public distribution and accordingly, proposes to modify section 102.

Next, the Exchange proposes to modify section 120, relating to conflicts of interest. The existing Exchange rule states that the Exchange will consider conflicts situations in connection with the original listing of an issuer. The Exchange believes that a broader, ongoing review of related party transactions is appropriate and that the issuer's Audit Committee (or a comparable body) is an appropriate body for conducting such a review. Furthermore, the Exchange notes that under the proposed change, as in all cases, it may review a transaction using the Exchange's general discretionary authority if a transaction involved a conflict that raised public interest concerns. Accordingly, the Exchange proposes to adopt this revised listing requirement to better protect investors.[12]

The Exchange also proposes to amend its rules relating to shareholder approval contained in section 713 to clarify that shareholder approval is required prior to issuance of a security that has the *potential* to result in the issuance of 20% of the pre-transaction common shares outstanding for less than the greater of book or market value of the stock. While the present language of the rule does not include the word potential, it is fairly implied and Exchange staff has consistently applied the rule to require approval in cases where an issuance may potentially exceed the stated threshold. Accordingly, the Exchange proposes to modify the existing rule to clarify that an issuance is not permissible without shareholder approval when there is the potential to issue more than 20% of the pre-transaction common shares outstanding for less than the greater of book or market value of the stock.

Emerging Company Marketplace

In May 1995, the Exchange determined to discontinue the listing of new companies on the Emerging Company Marketplace and subsequently received Commission approval.[13] Accordingly, the Exchange proposes to delete from the Supplement to the *Amex Company Guide* the criteria for new listing on the Emerging Company Marketplace. Furthermore, the Exchange proposes to delete from the Supplement the continued listing criteria with respect to all issues other than common stock because no existing issuers rely on these provisions and no new issuers can be listed that would rely on these provisions. This conforming change is consistent with the Commission's order approving the elimination of the Emerging Company Marketplace.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of Section 6(b)(5) of the Act[14] and the rules and regulations thereunder applicable to a national securities exchange, in that it is designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market.[15] The Commission believes that the Exchange has adequately addressed the concerns that arise from eliminating the requirement to file certain corporate documents and an opinion of counsel with an original listing application. In both instances, the Exchange will obtain the most pertinent information that was provided in the required documents directly from issuers. For example, the Exchange will obtain information regarding the issuer's quorum requirements, notice of record dates to shareholders, and closing of transfer books— previously available in the corporate documents filed by the issuer—via the Exchange's standard comment letter sent to issuers. With respect to the opinion of counsel previously required, the Exchange has similarly proposed procedures for eliciting the pertinent information regarding the legal status of the issuer and the validity of the securities to be listed. By instituting these alternative procedures, the Commission believes that eliminating the filing of certain corporate documents and an opinion of counsel is reasonable and will allow issuers to list their securities on the Exchange more quickly and less expensively. Additionally, the Commission notes that electronic access to many of the corporate documents previously required provides an additional safeguard and source of information for the Exchange and the public.

The Commission also believes that the proposed rule change will facilitate securities transactions and benefit investors by modernizing, simplifying, and conforming the Exchange's listing procedures to current business practices. For example, the Commission believes that the Exchange rules relating to the form of securities and lost security holders, limitations on transfer agents located outside of New York, and sector-specific listing requirements are no longer necessary, given technological advances and general developments in the capital markets. Similarly, eliminating the PLEO process simplifies the listing process significantly for issuers. Finally, changes to the rules relating to shareholder approval for the issuance of a security in certain circumstances (*e.g.*, Exchange Rule 713), conforms the Exchange's listing standards to common business practice.

Lastly, the Commission believes that the proposed rule change will facilitate securities transactions by creating consistent rules and processes governing the listing of securities on both Nasdaq and Amex. Because the listing qualifications of both Nasdaq and Amex are now handled by the Nasdaq-Amex Listing Qualifications Department, the Commission believes that consistent rules and practices between both marketplaces will enable issuers to list securities on the Exchange much more quickly and will enable the Exchange to more efficiently review and process listing applications.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[16] that the proposed rule change (SR-Amex–99–39), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7200 Filed 3–22–00; 8:45 am]

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[12] The Exchange notes that this proposed change is consistent with the rules relating to conflicts of interest that apply to Nasdaq issuers and NYSE issuers. *See* NASD Rules 4310(c)(25)(G) and 4460(h) and NYSE Listed Company Manual Section 307.00.

[13] *See* Securities Exchange Act Release No. 36079 (Aug. 9, 1995), 60 FR 42926 (Aug. 17, 1995) (SR–Amex–95–23). Companies that were listed at the time the Emerging Company Marketplace was discontinued were permitted to continue their listing, subject to all the rules applicable to issuers on that Emerging Company Marketplace.

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with section 3 of the Act. 15 U.S.C. 78c(f).

[16] 15 U.S.C. 78s(b)(2)

[17] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42538; File No. SR–MSRB–00–01]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Supervision of Correspondence With the Public

March 16, 2000.

I. Introduction

On January 7, 2000, the Municipal Securities Rulemaking Board ("Board" or "MSRB") submitted to the Securities and exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change amending MSRB Rules G–8, G–9, and G–27. The proposed rule change was published for comment in the **Federal Register** on February 10, 2000.[3] The Commission received no comments on the proposal. This order approves the proposal.

II. Description of the Proposal

The Board has filed proposed amendments to MSRB Rules G–8, on books and records, G–9, on record retention, and G–27, on supervision. The proposed rule change will revise the Board's supervision and record retention rules to provide dealers with flexibility in developing reasonable procedures for the review of correspondence with the public. The amendments also accommodate the growing use of correspondence sent and received in electronic format while still providing for effective supervision. The Board has also filed with the Commission a draft notice that will provide guidance to dealers on how to implement these rule changes. The proposed rule change and accompanying notice are modeled after and designed to conform to the rules and guidance of the National Association of Securities Dealers ("NASD").[4]

The Board has determined to adopt rules changes substantially similar to those of the NASD. The Board believes that conforming its rule language to the language in the NASD rules will help ensure a coordinated regulatory approach to the supervision of correspondence. In addition, in connection with Commission approval of the proposed rule change, the Board will issue a notice to provide guidance to dealers on implementing the proposed rule change. This guidance has been modeled after NASD Notices to Members 98–11 and 99–03 and is described below.

Supervision of Municipal Securities Representatives

The proposed amendments to MSRB Rule G–27(d), provide, among other things, that a dealer must establish procedures for the review by a designated principal of each municipal securities representative's incoming and outgoing written (*i.e.*, non-electronic) and electronic correspondence with the public relating to the municipal securities activities of such dealer. The procedures must be designed to provide reasonable supervision of each municipal securities representative and must be described in the dealer's written supervisory procedures. Implementation and execution of these procedures must be clearly evidenced, and the evidence must be maintained and be made available upon request to a registered securities association or the appropriate regulatory agency as defined in Section 3(a)(34)[5] of the Act.

Procedures for Review of Correspondence

Currently, MSRB Rule G–27(c)(vii)(C) requires each dealer to establish procedures for the review and written approval by a designated principal of all correspondence pertaining to the solicitation or execution of transactions in municipal securities. Under proposed Rule G–27(d)(ii), a review of each item of correspondence will no longer be required. Dealers will be given flexibility to develop procedures for the review of correspondence relating to the dealer's municipal securities activities—both incoming and outgoing, written or electronic—tailored to the nature and size of the dealer's business and customers.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42385 (Feb. 3, 2000), 65 FR 6669.

[4] *See* Securities Exchange Act Release No. 39510 (Dec. 31, 1997), 63 FR 1131 (Jan. 8, 1998); NASD Rule 3010; and NASD Notices to Members 98–11 and 99–03.

[5] 15 U.S.C. 78c(a)(34).

With respect to incoming written (*i.e.*, non-electronic) correspondence directed

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III. Discussion

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With respect to incoming written (*i.e.*, non-electronic) correspondence directed to municipal securities representatives and related to the municipal securities activities of the dealer, the proposal would require review of the correspondence to properly identify and handle customer complaints and to ensure that customer funds and securities are handled in accordance with the dealer's procedures. The proposed rule change does not require review of all correspondence prior to use or distribution. However, any dealer that does not conduct electronic or manual pre-use review of each item of correspondence will be required to regularly educate and train its associated persons as to the dealer's procedures governing review of correspondence, document such education and training, and monitor to ensure compliance with such procedures.

Retention of Correspondence

The proposed rule change includes amendments to MSRB Rules G–8(a)(xx), G–9(b)(viii) and (xiv), and G–27(d)(i), (ii), and (iii) requiring each dealer to preserve correspondence of municipal securities representatives relating to municipal securities activities and maintain the records of written supervisory procedures, education and training required under Rule G–27(c) and (d) for three years. The proposed rule change also requires the names of the persons who prepared and reviewed correspondence to be ascertainable from the retained records and the records must be made available, upon request, to the appropriate enforcement agency (*i.e.*, NASD or federal bank regulatory agency).

Draft Notice-Guidelines for Supervision and Review

The notice to dealers ("Notice to Dealers") will provide guidance on how to implement the proposed rule change. In particular, the Notice to Dealers states that in adopting review procedures pursuant to Rule G–27(d)(i), dealers must:

- Specify, in writing, the dealer's policies and procedures for reviewing different types of correspondence;
- Identify how supervisory reviews will be conducted and documented;
- Identify what types of correspondence will be pre- or post-reviewed;
- Identify the organizational position(s) responsible for conducting review of the different types of correspondence;
- Specify the minimum frequency of the reviews for each type of correspondence;
- Monitor the implementation of and compliance with the dealer's procedures for reviewing public correspondence; and
- Periodically re-evaluate the effectiveness of the dealer's procedures for reviewing public correspondence and consider any necessary revisions.

The Notice to Dealers also states that in conducting reviews, dealers may use reasonable sampling techniques. As an example of appropriate evidence of review, e-mail related to the dealer's municipal securities activities may be reviewed electronically and the evidence of review may be recorded electronically.

In developing supervisory procedures for the review of correspondence with the public pursuant to Rule G–27(d)(ii), the Notice to Dealers states that each dealer must consider its structure, the nature and size of its business, other pertinent characteristics, and the appropriateness of implementing uniform firm-wide procedures or tailored procedures (*i.e.*, by specific function, office/location, individual, or group of persons).

The Notice to Dealers also provides guidance on adopting review procedures pursuant to Rule G–27(d)(ii), and states that dealers must, at a minimum:

- Specify procedures for reviewing municipal securities representatives, recommendations to customers;
- Require supervisory review of some of each municipal securities representative's public correspondence, including recommendations to customers;
- Consider the complaint and overall disciplinary history, if any, of municipal securities representatives and other employees (with particular emphasis on complaints regarding written or oral communications with clients); and
- Consider the nature and extent of training provided municipal securities representatives and other employees, as well as their experience in using communications media (although a dealer's procedures may not eliminate or provide for minimal supervisory reviews based on an employee's training or level of experience in using communications media).

In addition, the Notice to Dealers provides that supervisory policy and procedures must also:

- Provide that all customer complaints, whether received via e-mail or in written form from the customer, are kept and maintained;
- Describe any dealer standards for the content of different types of correspondence; and
- Prohibit municipal securities representatives' and other employees' use of electronic correspondence to the public unless such communications are subject to supervisory and review procedures developed by the dealer. For example, the Board would expect dealers to prohibit correspondence with customers from employees' home computers or through third party systems unless the dealer is capable of monitoring such communications.

The Notice to Dealers also states that the method used for conducting reviews of incoming, written correspondence to identify customer complaints and funds may vary depending on the dealer's office structure. Where the office structure permits review of all correspondence, dealers should designate a municipal securities representative or other appropriate person to open and review correspondence prior to use or distribution to identify customer complaints and funds. The designated person must not be supervised or under the control of the municipal securities representative whose correspondence is opened and review. Unregistered persons who have received sufficient training to enable them to identify complaints and funds would be permitted to review correspondence.

Where the office structure does not permit the review of correspondence [6] prior to use or distribution, appropriate procedures that could be adopted include the following:

- Forwarding opened incoming, written correspondence related to the dealer's municipal securities activities to a designated office, or supervising branch office, for review on a weekly basis;
- Maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch office on a weekly basis;
- Communication to clients that they can contact the dealer directly for any matter, including the filing of a complaint, and providing them with an address and telephone number of a central office of the dealer for this purpose; and
- Branch examination verification that the procedures are being followed.

[6] Amended language per telephone conversation between Carolyn Walsh, Assistant General Counsel, MSRB, and Ira L. Brandriss, Staff Attorney, Commission, on February 3, 2000.

III. Discussion

The Commission believes that the proposed rule change is consistent with the requiremenets of the Act and the rules and regulations thereunder.[7] In particular, the Commission finds that the proposed rule change is consistent with Section 15B(b)(2)(C)[8] of the Act. Section 15B(b)(2)(C) of the Act requires, among other things, that the rules of the Board be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will provide dealers with flexibility in adopting procedures for reviewing municipal securities representatives' public correspondence while establishing minimum requirements, guidelines, and standards governing the supervisory procedures dealers may adopt. The Commission also believes that the proposal is consistent with the Act in allowing dealers to use new technology, such as e-mail and the internet, while still providing for appropriate supervision and review. Moreover, the Commission believes that the proposal will protect existing and prospective customers by ensuring that customer complaints, funds, and securities are handled properly.

a. New Rule G–27(d)(i)

New Rule G–27(d)(i) requires dealers to establish procedures for the review by a designated principal of the incoming and outgoing written and electronic correspondence of its municipal securities representatives with the public relating to the municipal securities activities of the dealer. The Commission believes that new Rule G–27(d)(i) will protect investors and the public interest by requiring designated principals to review some of each municipal securities representative's correspondence, regardless of the method used for the review of correspondence pursuant to new Rule G–27(d)(ii). In this regard, the Commission notes the proposal requires dealers to adopt procedures designed to reasonably supervise each municipal securities representative. The Commission believes this requirement should ensure that appropriate persons within the firm will undertake to supervise the activities of the firm's municipal securities representatives.

In addition, the Notice of Dealers provides guidance on adopting review procedures pursuant to Rule G–27(d)(i) and, at a minimum, requires dealers to: (i) specify, in writing, the dealer's policies and procedures for reviewing different types of correspondence; (ii) identify how supervisory reviews will be conducted and documented; (iii) identify what types of correspondence will be pre- or post-reviewed; (iv) identify the organizational position(s) responsible for conducting review of the different types of correspondence; (v) specify the minimum frequency of the reviews for each type of correspondence; (vi) monitor the implementation of and compliance with the dealer's procedures for reviewing public correspondence; and (vii) periodically re-evaluate the effectiveness of the dealer's procedures for reviewing public correspondence and consider any necessary revisions.

The Commission believes that these requirements will provide guidance to dealers in developing policies for supervising public correspondence and to municipal securities representatives in complying with the dealer's policies. The requirements should help to ensure that dealers carefully consider the supervisory procedures appropriate for different types of communications, closely monitor compliance with the dealer's policies, and periodically reevaluate their policies and procedures. The Commission expects dealers to monitor the effectiveness of their supervisory policies and procedures and to promptly make any necessary revisions.

b. New Rule G–27(d)(ii)

New Rule G–27(d)(ii) will require dealers to develop written policies and procedures that are appropriate for the dealer's business, size, structure, and customers for the review of all municipal securities representatives' incoming and outgoing written and electronic correspondence with the public relating to its business. The proposal also requires dealers to adopt review procedures specifically designed to identify and handle customer complaints and to ensure that customer funds and securities are handled properly. The Commission believes the proposal will provide dealers with flexibility in adopting and implementing supervisory procedures while establishing minimum requirements, guidelines, and standards governing the supervisory procedures a dealer may adopt.

The Commission believes that whenever practicable, prior review of incoming written correspondence to identify customer complaints, funds and securities should be mandated, to protect customer interests and possibly reduce dealers' potential liability. In some cases, however, prior review of incoming correspondence is not feasible. In such cases, the Commission believes that requiring dealers to employ alternative procedures reasonably designed to assure adequate handling of customer complaints, funds and securities is reasonable. The Commission believes that dealers that do not require prior review of all written correspondence should require, at a minimum, some combination of those alternatives provided by the MSRB as an example in the Notice to Dealers, or similar procedures, rather than relying on one alternative procedure. The Commission notes that under MSRB Rule G–27(d)(ii), a dealer that chooses not to require review of public correspondence prior to use or distribution must educate employees about the dealer's current correspondence procedures, document the employees' education and training, and ensure that the dealer's policies are implemented and followed.

The Notice to Dealers provides guidance on adopting review procedures pursuant to Rule G–27(d)(ii) and, at a minimum, requires dealers to: (i) Specify procedures for reviewing municipal securities representatives' recommendations to customers; (ii) require supervisory review of some of each municipal securities representative's public correspondence, including recommendations to customers; (iii) consider the complaint and overall disciplinary history, if any, of municipal securities representatives and other employees (with particular emphasis on complaints regarding written or oral communications with clients; (iv) consider the nature and extent of training provided municipal securities representatives and other employees, as well as their experience in using communications media (although a dealer's procedures may not eliminate or provide for minimal supervisory reviews based on an employee's training or level of experience in using communications media); (v) provide that all customer complaints, whether received via e-mail or in written form from the customer, are kept and maintained; and (vi) describe any dealer standards for the content of different types of correspondence.

As discussed above, the Notice to Dealers also provides alternative review

[7] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78o–4(b)(2)(C).

procedures to identify customer complaints and funds. These procedures include: (i) Forwarding opened incoming, written correspondence related to the dealer's municipal securities activities to a designated office, or supervising branch office, for review on a weekly basis; (ii) maintenance of a separate log for all checks received and securities products sold, which is forwarded to the supervising branch office on a weekly basis; (iii) communication to clients that they can contact the dealer directly for any matter, including the filing of a complaint, and providing them with an address and telephone number of a central office of the dealer for this purpose; and (iv) branch examination verification that the procedures are being followed.

The Commission believes that the standards and guidelines set forth in new Rule G–27(d)(ii) and the Notice to Dealers will help to ensure that dealers continue to provide appropriate supervision of the public correspondence of their municipal securities representatives and that customer complaints, funds, and securities are properly handled. For example, considering the complaint and the municipal securities representative's overall disciplinary history will help to ensure that dealers implement supervisory procedures appropriate for each representative. In this regard, the Commission would expect a dealer to consider providing heightened supervision for a representative with a history or pattern of customer complaints, disciplinary action, or arbitrations. Moreover, the Commission notes that the requirements in MSRB Rule G–27 and the Notice to Dealers are minimum requirements. The Commission expects each dealer to implement any additional procedures the dealer believes are necessary to provide appropriate supervision of all its municipal securities representatives and employees.

c. Electronic Correspondence

The Commission believes that the requirements specific to electronic communications both accommodate the growing use of correspondence sent and received in electronic format and help to ensure that dealers adopt appropriate supervisory procedures. In this regard, the Commission notes that the Notice to Dealers provides that a dealer's policies and procedures must prohibit municipal securities representatives' and other employees' use of electronic communications to the public unless those communications are subject to supervisory and review procedures developed by the dealer. The Notice to Dealers also states that the MSRB expects dealers to prohibit communications with the public from employees' home computers or through third party computer systems unless the dealer is capable of monitoring the communications.

d. Books and Records

The Commission believes that it is reasonable for the MSRB to amend MSRB Rules G–8 and G–9 to require firms to maintain and preserve for three years (i) all written and electronic communications received and sent relating to the dealer's conduct with respect to municipal securities and (ii) records of compliance with MSRB Rule G–27(c) and (d). The Commission believes that requiring dealers to maintain and make available to the appropriate regulatory agency evidence that supervisory procedures have been implemented and carried out will help to ensure that dealers comply with the new requirements of Rule G–27. Moreover, the Commission believes that requiring the names of the persons who prepared and reviewed the correspondence to be ascertainable from the retained records will help to ensure that only appropriate persons prepare and supervise public correspondence.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2)[9] of the Act, that the proposed rule change (SR–MSRB–00–01) is approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7202 Filed 3–22–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42537; File No. SR–NASD–99–77]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to the Mutual Fund Quotation Service

March 16, 2000.

I. Introduction

On January 4, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to change the annual listing fees for the Mutual Fund Quotation Service ("MFQS" or "Service").

The proposed rule change was published for comment in the **Federal Register** on February 9, 2000.;[3] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

In its proposed rule change, Nasdaq proposed amendments to Rule 7090 to change the annual listing fees for the MFQS, which collects and disseminates data pertaining to the value of open-end and closed-end funds. The MFQS disseminates the valuation data for over 11,000 funds. The Service facilities this process by providing for the automated entry, through a browser-based application, of pricing data by a fund and a fund's pricing agent.

Funds must meet minimum eligibility criteria in order to be included in the MFQS.[4] The MFQS has two "listss" in which a fund may be included—the News Media List and the Supplemental List—and each list has its own eligibility requirements.[5] If a fund qualifies for the News Media List, pricing information about the fund is eligible for inclusion in newspaper fund tables and is also eligible for dissemination over Nasdaq's Level 1 service,[6] which is distributed by market data vendors. If a fund qualifies for the Supplemental List, the pricing information about that fund generally is not included in newspaper fund tables, but is disseminated over Nasdaq's Level 1 Service. The Supplemental List, therefore, provides significant visibility for funds that do not otherwise qualify for inclusion in the News Media List. Each fund incurs an annual fee for inclusion in the Service.[7] At the time of this proposed rule change, funds included in the News Media List paid an annual fee of $275, and funds included in the Supplemental List paid an annual fee of $200.

According to Nasdaq, the original MFQS was built as a DOS-based application, but in recent years technology has progressed, and thus user needs for the MFQS have increased. Responding to requests made by users of the MFQS, the mutual fund industry, and the Investment Company Institute ("ICI"), Nasdaq performed market research to determine which enhancements MFQS users would prefer in a redesigned Service. In its proposal, Nasdaq represents that since the last fee increase in 1996,[8] the MFQS software application has been rewritten, and notable technology enhancements have been implemented to support the Service's functionality.

Specifically, in 1998, Nasdaq took the list of enhancements requested by MFQS users and developed and implemented an entirely new MFQS application that uses browser-based technology. The MFQS now permits funds included in the Service (or pricing agents designated by such funds) to use the browser-based technology to transmit directly to Nasdaq a multitude of pricing information, including information about a fund's net asset value, offer price, and closing market price. Nasdaq has incorporated 20 of the approximately 27 enhancements suggested by the mutual fund industry into the new MFQS application, and two more are scheduled for implementation in early 2000.

The browser-based MFQS upgrade became fully-operational in May 1999. In its proposal Nasdaq represents that, due to the significant costs for development, maintenance, and support of the new MFQS product, additional revenue was needed to (1) sustain the quality of the MFQS; and (2) make future product enhancements to the MFQS, to improve efficiency and accuracy of price reporting. In addition, the MFQS is operating at a yearly loss in light of the recent technology enhancements to the Service. Accordingly, Nasdaq proposes to increase its fees for the Supplemental List from $200 to $275 and for the News Media List from $275 to $400.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42376 (February 2, 2000), 65 FR 6340.

[4] *See* NASD Rule 6800.

[5] *Id.*

[6] Nasdaq Level 1 Service is a subscription-based data service that "includes the following data: (1) inside bid/ask quotations calculated for securities listed in the Nasdaq Stock Market and securities quoted in the OTC Bulletin Board (OTCBB) service; (2) the individual quotations or indications of interest of broker/dealers utilizing the OTCBB service; and (3) last sale information on securities classified as designated securities in the Rule 4630, 4640, and 4650 Series and securities classified as over-the-counter equity securities in the Rule 6600 Series." NASD Rule 7010(a).

[7] *See* NASD Rule 7090.

[8] *See* Securities Exchange Act Release No. 37014 (March 22, 1996), 61 FR 14182 (March 29, 1996) (File No. SR–NASD–96–05).

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities association, and in particular, with the requirements of Section 15A of the Act.[9] Specifically, the Commission finds that the proposal is consistent with Section 15A(b)(5)[10] of the Act.

Section 15A(b)(5)[11] of the Act requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls. The Commission believes that Nasdaq's proposed increase its user fees is a fair means of recovering the cost related to the development and maintenance of the enhanced MFQS. Moreover, the Commission believes that the increase in fees will support future improvements to the System that will improve efficiency and accuracy in the collection of pricing information. The Commission finds that the proposal is consistent with Section 15A(b)(5)[12] insofar as the fees will be imposed directly and only on those who requested and benefit from recent enhancements to the MFQS—users of the Service and the ICI. Consequently, the increased fees are reasonable and consistent with Section 15A(b)(5)[13] of the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (SR–NASD–99–77) be and hereby is approved.[15]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7201 Filed 3–22–00; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78*o*–3.

[10] 15 U.S.C. 78*o*–3(b)(5).

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] 15 U.S.C. 78s(b)(2).

[15] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[16] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3261]

Bureau of Educational and Cultural Affairs; Notice: Extension of Deadline for South Pacific Scholarship Program RFP

SUMMARY: The deadline for the South Pacific Scholarship RFP has been extended from April 7, 2000 to April 24, 2000. The RFP was originally published as Public Notice 3242 in the **Federal Register** on March 9, 2000 (65 FR 12609).

For further information, please contact Marianne Craven at mcraven@usia.gov 202/619–6409 (tel), or 202/205–2452 (fax).

Dated: March 15, 2000.

Evelyn S. Lieberman,

Under Secretary for Public Diplomacy and Public Affairs, Department of State.

[FR Doc. 00–7106 Filed 3–22–00; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Trade and Environment Policy Advisory Committee (TEPAC)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice that the April 4, 2000, meeting of the Trade and Environment Policy Advisory Committee will be held from 8:30 am to 12:00 noon. The meeting will be closed to the public from 8:30 am to 11:30 am and open to the public from 11:30 am to 12:00 noon.

SUMMARY: The Trade and Environment Policy Advisory Committee will hold a meeting on April 4, 2000 from 8:30 am to 12:00 noon. The meeting will be closed to the public from 8:30 am to 11:30 am. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of title 19 of the United States Code, I have determined that this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of any trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. The meeting will be open to the public and press from 11:30 am to 12:00 noon, when trade policy issues

will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

DATE: The meeting is scheduled for April 4, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the USTR ANNEX Building in Conference Rooms 1 and 2, located at 1724 F Street, NW, Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Christina Sevilla, Office of the United States Trade Representative, (202) 395–6120.

Charlene Barshefsky,

United States Trade Representative.

[FR Doc. 00–7140 Filed 3–22–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7081]

National Offshore Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Offshore Safety Advisory Committee (NOSAC) will meet to discuss various issues relating to offshore safety. The meeting will be open to the public.

DATES: NOSAC will meet on Thursday, April 20, 2000, from 9:00 a.m. to 3:00 p.m. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 6, 2000. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before April 6, 2000.

ADDRESSES: NOSAC will meet in rooms 6200–6204, of the NASSIF Building, 400 7th Street, SW, Washington, DC. Send written material and requests to make oral presentations to Captain P.A. Richardson, Commandant (G–MSO), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Captain P.A. Richardson, Executive Director of NOSAC, or Mr. Jim Magill, Assistant to the Executive Director, telephone 202–267–0214, fax 202–267–4570.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

National Offshore Safety Advisory Committee (NOSAC). The agenda includes the following:

(1) Report on development and implementation of STCW Convention for OSVs.

(2) Progress report from the Prevention Through People Subcommittee.

(3) Report on issues concerning the International Maritime Organization (IMO) and the International Organization of Standardization (ISO).

(4) Status report from Incident Reporting Subcommittee.

(5) Report from Platform/Ship Collision Avoidance Subcommittee.

(6) Progress report from the Subcommittee on Pipeline-Free Anchorages for Mobile Offshore Drilling Units, Liftboats and Vessels.

(7) Status reports on revision of 33 CFR Subchapter "N", Outer Continental Shelf Regulations, and new regulations for large offshore supply vessels and crewboats, (46 CFR Subchapter "L").

(8) Report on the USCG/MMS Memorandum of Understanding.

(9) Establish Subcommittee on Risk Assessment of Deepwater Activities.

(10) New Discussion items will include: 12-hour manning rule as it applies to OSVs; training of licensed OSV engineers; and, manning and fatigue issues on OSVs.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than April 6, 2000. Written material for distribution at the meeting should reach the Coast Guard no later than April 6, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 25 copies to the Executive Director no later than April 6, 2000.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 17, 2000.

P. A. Richardson,

Captain, Coast Guard, Acting Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–7247 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–12]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 12, 2000.

ADDRESSES: Send comments on any petition in triplicates to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Charie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Dated: Issued in Washington, D.C., on March 17, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 26183.
Petitioner: Air Transport Association of America.
Section of the FAR Affected: 14 CFR appendix H to part 121.
Description of Relief Sought/Disposition: To permit member airlines of the ATA and other similarly situated part 121 certificate holders to continue to use Level C simulators for pilot-in-command initial and upgrade training and checking. *Grant, 01/31/2000, Exemption No. 5400D.*

Docket No.: 27202.
Petitioner: Skydrive Arizona, Inc.
Section of the FAR Affected: 14 CFR 105.43(a).
Description of Relief Sought/Disposition: To permit SAI to allow nonstudent foreign nationals to participate in SAI-sponsored parachute jumping events without complying with the parachute equipment and packing requirements of § 105.43(a). *Grant, 01/21/2000, Exemption No. 7106.*

Docket No.: 29076.
Petitioner: RR Investments, Inc., d.b.a. Million Air Dallas.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Million Air Dallas to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on each aircraft. *Grant, 01/28/2000, Exemption No. 6718A.*

Docket No.: 29776.
Petitioner: Pomona Valley Pilots Association.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit the PVPA to conduct local sightseeing flights for the 25th annual Pomona Valley Air Fair at Cable Airport, Upland, California, on January 8 and 9, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 01/05/2000, Exemption No. 7094.*

Docket No.: 29795.
Petitioner: Western North Carolina Pilots Association, Inc.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/Disposition: To permit the WNCPA to conduct local sightseeing flights at the Asheville Regional Airport for fall scenic rides on October 23 and 24, 1999, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135. *Grant, 10/22/1999, Exemption No. 7049.*

Docket No.: 29846.
Petitioner: Air Cargo Carriers, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/Disposition: To permit Air Cargo to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in each aircraft. *Grant, 01/11/2000, Exemption No. 7124.*

Docket No.: 29879.
Petitioner: Santoku Aviation Electric, Inc.
Section of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/Disposition: To permit SAE to substitute the calibration standards of the National Research Laboratory of Metrology and the Electrotechnical Laboratory, Japan's national standards organizations, for the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment. *Grant, 01/14/2000, Exemption No. 7105.*

[FR Doc. 00–7197 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application 00–03–C–00–AOO to Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Altonna-Blair County Airport, Martinsburg, PA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Altoona-Blair County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On February 24, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Blair County Airport Authority was substantially complete within the requirements of 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than May 25, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–03–C–00–A00.
Level of the proposed PFC: $3.00.
Proposed charge effective date: August 1, 2003.
Proposed charge expiration date: August 1, 2003.
Total estimated PFC revenue: $240,239.00.

Brief description of proposed project(s):
—PFC Application Development
—Runway 12–30 and Taxiway D Lighting
—Security Fencing
—Avigation Easement Acquisition and Obstruction Removal

DATES: Comments must be received on or before April 24, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Ms. Roxane Wren, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1100, Camp Hill, PA 17011.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Charles E. Pillar, Jr., Airport Manager of the Blair County Airport Authority at the following address: Blair County Airport Authority, 2 Airport Drive, Martinsburg, PA 16662.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Blair County Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Roxane Wren, Program Specialist, Harrisburg Airports District Office, 3911 Hartzdale Drive, Suite 1100, Camp Hill, PA 17011, 717–730–2830. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Altoona-Blair County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

—Master Plan Update
—Land Acquisition
—Snow Removal Equipment
—Improve ARFF/SRE Building
—Runway 12–30 Rehabilitation
—Land Acquisition for Runway 12–30 Extension

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/ Commercial Operators

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional airports office located at: Fitzgeral Federal Building #111, Airports Division, AEA–610, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Blair County Airport Authority.

Issued in Camp Hill, PA on March 6, 2000.

Sharon A. Daboin,

Manager, Harrisburg ADO Eastern Region.

[FR Doc. 00–7196 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of Transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo aircraft only, 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before April 24, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs, Administration, Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications (see Docket Number) are available for inspection at the New Docket Management Facility, PL–401, at the U.S. Department of Transportation, Nassif Building, 400 7th Street, SW., Washington, DC 20590 or at http://dms.dot.gov.

This notice of receipt of applications for new exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 17, 2000.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

NEW EXEMPTIONS

Application No.	Docket No.	Applicant	Regulation(s) affedted	Nature of exemption thereof
12431–N	RSPA–2000–7049	TITEQ Corp., Palmdale, CA.	49 CFR 173.201, 173.202, 173.302, 173.304, 173.323, 175.3, 178.51.	To authorize the manufacture, marking, and sale of a reusable non-DOT specification, welded stainless steel cylinder for use in transportation of certain Division 2.2 materials. (Modes 1, 2, 4, 5.)
12432–N	RSPA–2000–7048	Toxco Inc., Anaheim, CA.	49 CFR 171.14(a)(1)	To authorize the transportation in commerce of Class 8 material in non-UN packaging after October 1, 2001 that was filled prior to October 1, 1991. (Mode 1.)
12433–N	RSPA–2000–7047	The Lighter Company, Inc., Miami, FL.	49 CFR 173.308(b)	To authorize the transportation and reclassification of lighters in limited quantities to be transported as ORM–D. (Mode 1.)
12434–N	RSPA–2000–7046	Salmon Air, Salmon, ID	49 CFR 172.101, 175.320.	To authorize the transportation of various hazardous materials to remote locations be excepted from certain regulations contained in the Hazardous Materials Regulations. (Mode 4.)
12437–N	RSPA–2000–7086	Stericycle, Inc., Atlanta, GA.	49 CFR 171.8, 172.101, 173.197.	To authorize the transportation in commerce of non-DOT specification steel roll-off containers as outer packagings for use in transporting medical waste in dual packaging. (Mode 1.)

Note: Correction to FR Vol. 65, No. 40, Monday, February 29, 2000, Page 10852 "List of Applications for Exemptions" Med-Flex, Inc. Docket No. should have read "RSPA–2000–6913" instead of "RSPA–2000–6813".

[FR Doc. 00–7189 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Applications for Modification of Exemption.

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (*e.g.*, to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "M" denote a modification request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before April 7, 2000.

ADDRESS COMMENTS TO: Records Center, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the application are available for inspection in the Records Center, Nassif Building, 400 7th Street SW, Washington, DC or at http://dms.dot.gov.

This notice of receipt of application for modification of exemptions is published in accordance with Part 107 of the Federal hazardous materials transportation law (49 U.S.C. 5117(b); 49 CFR 1.53(b)).

Issued in Washington, DC, on March 17, 2000.

J. Suzanne, Hedgepeth,

Director, Office of Hazardous Materials Exemptions and Approvals.

Application No.	Docket No.	Applicant	Modification of exemption
8723–M	.....	Austin Powder Company, Cleveland, OH (See Footnote 1)	8723
11691–M	.....	Caribbean Refrescos, Inc., Cidra, PR (See footnote 2)	11691
11725–M	.....	Swales Aerospace, Inc., Beltsville, MD (See Footnote 3)	11725
11749–M	.....	Union Tank Car Company, E. Chicago, IN (See Footnote 4)	11749
11761–M	.....	Westvaco Corporation, Richmond, VA (See Footnote 5)	11761
11798–M	.....	Anderson Development Company, Adrian, MI (See Footnote 6)	11798
11827–M	.....	Moses Lake Industries, Inc., Moses Lake, WA (See Footnote 7)	11827
12274–M	RSPA–1999–5707	SNOW PEAK USA, INC., Lake Oswego, OR (See Footnote 8)	12274

(1) To modify the exemption to allow for an additional tote bin packaging for the transportation in commerce of bulk shipments of certain blasting agents.
(2) To modify the exemption to allow for the transportation of an additional Class 3 material exempt from segregation requirements during vessel stowage.
(3) To modify the exemption to allow for the transportation of an additional Division 2.2 material, for domestic transport, in non-DOT specification containers.
(4) To modify the exemption to allow for the use acoustic emission for specific areas of a tank car in conjunction with other non-destructive test methods for structural integrity inspections.
(5) To modify the exemption to allow for the transportation of additional Class 8 materials in certain DOT specification and AAR specification tank cars; to allow relief from the marking requirements.
(6) To modify the exemption to allow for cargo aircraft only as an authorized mode of transportation for the transportation of Division 2.1 and 2.2 gases in DOT Specification 3A or 3AA cylinders; addition of a new provision to paragraph 8 of the exemption.
(7) To modify the exemption to allow for an additional Class 8 material in a DOT Specification IM 101 portable tank.
(8) To modify the exemption to allow for a reclassification of liquefied petroleum gas in certain metal receptacles to be shipped as an ORM–D GROUND.

[FR Doc. 00–7190 Filed 3–22–00; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 17, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, N.W., Washington, D.C. 20220.

DATES: Written comments should be received on or before April 24, 2000, to be assured of consideration.

Bureau of Engraving and Printing (BEP)

OMB Number: 1520–0003.

Form Number: BEP 5284.

Type of Review: Extension.

Title: Mutilated Currency Redemption Customer Service Survey.

Description: The Bureau of Engraving and Printing, Office of Currency Standards, conduct surveys to ascertain overall customer satisfaction with procedures employed and services rendered in the redemption of mutilated currency submitted by the public.

Respondents: Individuals or households, business or other for-profit, State, Local or Tribal Government.

Estimated Number of Respondents: 300.

Estimated Burden Hours Per Response: 3 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 15 hours.

OMB Number: 1520–0004.

Form Number: BEP 1882–1.

Type of Review: Extension.

Officer listed. Comments regarding this information collection should be

OMB Number: 1545–1516.

Form Number: IRS Form 8832.

Description: Form 706–CE is used by

Frequency of Response: Other (once

Assistant Secretary (Enforcement),

Form Number: BEP 1882–1.
Type of Review: Extension.
Title: Survey Card.
Description: The Bureau of Engraving and Printing solicits voluntary comments from the general public regarding displays at numismatic and philatelic shows and events at which it participates to receive feedback on content and quality for future improvement.
Respondents: Individuals or households, business or other for-profit.
Estimated Number of Recordkeepers: 100.
Estimated Burden Hours Per Recordkeeper: Varies.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 100 hours.

OMB Number: 1520–0005.
Form Number: BEP 1882–2.
Type of Review: Extension.
Title: Public Tour Survey Card.
Description: The Bureau of Engraving and Printing uses the information, suggestions and concerns from the cards to make changes to and adjustments of out free public tour.
Respondents: Individuals or households.
Estimated Number of Respondents: 400.
Estimated Burden Hours Per Response: Varies.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 4 hours.
Clearance Officer: Pam Corsini, (202) 874–2647, Bureau of Engraving and Printing, Room 3.2.C, Engraving and Printing Annex, 14th and C Streets, SW., Washington, DC 20228.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–7220 Filed 3–22–00; 8:45 am]
BILLING CODE 4840–01–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 14, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 24, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0132.
Form Number: IRS Form 1120X.
Type of Review: Extension.
Title: Amended U.S. Corporation Income Tax Return.
Description: Domestic corporations use Form 1120X to correct a previously filed Form 1120 or Form 1120–A. The data is used to determine if the correct tax liability has been reported.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 16,699.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—12 hr., 26 min.
Learning about the law or the form—1 hr., 26 min.
Preparing the form—3 hr., 34 min.
Copying, assembling, and sending the form to the IRS—32 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 300,081 hours.

OMB Number: 1545–1053.
Form Number: IRS Form 8709.
Type of Review: Extension.
Title: Exemption From Withholding on Investment Income of Foreign Governments and International Organizations.
Description: This form is used by foreign governments and international organizations, with certain types of investments in the United States, to file with withholding agents to obtain exemption from withholding under Code section 892. The withholding agent uses the information to determine the appropriate withholding, if any.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 3,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—13 min.
Learning about the law or the form—25 min.
Preparing the form—26 min.
Copying, assembling, and sending the form to the IRS—20 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 42,600 hours.

OMB Number: 1545–1516.
Form Number: IRS Form 8832.
Type of Review: Extension.
Title: Entity Classification Election.
Description: An eligible entity that chooses not to be classified under the default rules or that wishes to change its current classification must file Form 8832 to elect the classification.
Respondents: Business or other for-profit, Farms.
Estimated Number of Respondents/Recordkeepers: 5,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hr., 20 min.
Learning about the law or the form—1 hr., 41 min.
Preparing and sending the form to the IRS—17 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 16,500 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–7221 Filed 3–22–00; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 14, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 24, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0260.
Form Number: IRS Form 706–CE.
Type of Review: Extension.
Title: Certificate of Payment of Foreign Death Tax.

Description: Form 706–CE is used by the executors of estates to certify that foreign death taxes have been paid so that the estate may claim the foreign death tax credit by Internal Revenue Code (IRC) section 2014. The information is used by IRS to verify that the proper credit has been claimed.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 2,250.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—46 min.
Learning about the law or the form—5 min.
Preparing the form—25 min.
Copying, assembling, and sending the form to the IRS 8—2 min.
Frequency of Response: On occasion.
Estimated Total Reporting/Recordkeeping Burden: 3,893 hours.
OMB Number: 1545–0919.
Regulation Project Number: PS–105–75 Final.
Type of Review: Extension.
Title: Limitations on Percentage Depletion in the Case of Oil and Gas Wells.
Description: The regulations require each partner to separately keep records of his share of the adjusted basis of partnership oil and gas property and require each partnership, trusts, estates, and operator to provide information necessary to certain persons to compute depletion with respect to oil and gas.
Respondents: Business or other for-profit.
Estimated Number of Respondents/Recordkeepers: 1,500,000.
Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 1 hour.

OMB Number: 1545–1233.
Regulation Project Number: IA–14–91 Final.
Type of Review: Extension.
Title: Adjusted Current Earnings.
Description: This information is required by the IRS to ensure the proper application of section 1.56(g)–1 of the regulation. It will be used to verify that taxpayers have properly elected the benefits of section 1.56(g)–1(r) of the regulation.
Respondents: Business or other for-profit.
Estimated Number of Respondents: 1,000.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Other (once only).
Estimated Total Reporting Burden: 1,000 hours.
Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Alexander T. Hunt, (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 00–7222 Filed 3–22–00; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on International Child Labor Enforcement

AGENCY: Department Offices, Treasury.
ACTION: Notice of meeting.

SUMMARY: This notice announces the date, time, and location for the fourth meeting of the first term of the Committee and the provisional agenda for consideration by the Committee.

DATES: The next meeting of the Treasury Advisory Committee on International Child Labor Enforcement will be held on Friday April 7, 2000, at 9:30 a.m. in the State Room of the Governor's House Hotel, 1615 Rhode Island Avenue, NW, Washington, DC 20036. Tel.: (202) 296–2100 or 800–821–4367. The duration of the meeting will be approximately three and a half hours.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Under Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW, Washington, DC 20220. Tel.:(202) 622–0220. Final meeting details, including the meeting time, location, and agenda, can be confirmed by contacting the above number one week prior to the meeting date.

SUPPLEMENTARY INFORMATION:

Agenda

At the April 7, 2000 session, the Committee is expected to pursue the following agenda. This provisional agenda may be modified prior to the meeting.

1. Welcome and introductory remarks: Chairperson Elisabeth A. Bresee, Assistant Secretary (Enforcement), Raymond W. Kelly, Commissioner of Customs
2. Secretary's remarks: The Honorable Lawrence H. Summers, Secretary of the Treasury
3. White House perspective and review of budget initiatives
4. U.S. Customs Service Update
5. Business Outreach Subcommittee: status report and discussion of forced and indentured child labor "red flags"
6. Industry code briefing: Fair Labor Association
7. The role of verification firms

The meting is open to the public; however, participation in the Committee's deliberations is limited to private sector and ex officio Committee members, invited speakers, and Customs and Treasury Department staff. A person other than an Advisory Committee member who wishes to attend the meeting should give advance notice by contacting Theresa Manning at (202) 622–0220, no later than March 31, 2000.

Dated: March 17, 2000.

John P. Simpson,
Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).
[FR Doc. 00–7135 Filed 3–22–00; 8:45 am]
BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–19]

Retraction of Revocation Notice

AGENCY: U.S. Customs Service, Department of the Treasury.
ACTION: General notice.

SUMMARY: The following Customs broker license was erroneously included in a previously published list of revoked Customs brokers licenses in the **Federal Register**.

Port	Name	License No.
Miami	Joseph Charlton.	11009

License 11009 is valid.

Dated: March 9, 2000.

Raymond W. Kelly,
Commissioner.
[FR Doc. 00–7132 Filed 3–22–00; 8:45 am]
BILLING CODE 4820–02–P

Corrections

Federal Register
Vol. 65, No. 57
Thursday, March 23, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–18]

Geographic Boundaries of Customs Brokerage, Cartage, and Lighterage Districts

Correction.

In notice document 00–6263 beginning on page 14011 in the issue of Wednesday, March 15, 2000, make the following correction:

Due to several typesetting errors, page 14012 is being reprinted in its entirety.

Service ports	Ports of entry
Tucson.	
California	
Los Angeles	Los Angeles-Long Beach. LAX. Las Vegas, NV. Port Hueneme. Port San Luis.
San Diego	Andrade. Calexico. Tecate.
San Francisco	Eureka. Fresno. Reno, NV. San Francisco-Oakland.
District of Columbia	
Dulles	Alexandria, VA. Dulles, VA.
Florida	
Miami	Key West. Miami. Port Everglades. West Palm Beach.
Tampa	Boca Grande. Fernandina Beach. Jacksonville. Orlando. Panama City. Pensacola. Port Canaveral. Port Manatee. St. Petersburg. Tampa.
Georgia	
Savannah	Atlanta. Brunswick. Savannah.
Hawaii	
Honolulu	Hilo. Honolulu. Kahului Nawilliwili-Port Allen.
Illinois	
Chicago	Chicago. Davenport, IA-Moline and Rock Island. Des Moines, IA. Omaha NE. Peoria. Rockford.
Louisiana	
New Orleans	Baton Rouge. Chattanooga, TN. Gramercy. Greenville, MS. Knoxville, TN. Lake Charles. Little Rock-North Little Rock, AR. Memphis, TN. Morgan City. Nashville, TN. New Orleans. Shreveport-Bossier City. Vicksburg, MS.
Maine	
Portland	Bangor. Bar Harbor. Bath. Belfast. Bridgewater. Calais. Eastport. Fort Fairfield. Fort Kent. Houlton. Jackman. Jonesport. Limestone. Madawaska. Portland. Portsmouth, NH. Rockland. Van Buren. Vanceboro.
Maryland	
Baltimore	Annapolis. Baltimore. Cambridge.
Massachusetts	
Boston	Boston. Bridgeport, CT. Fall River. Gloucester. Hartford, CT. Lawrence. New Bedford. New Haven, CT. New London, CT. Plymouth. Salem. Springfield. Worcester.
Michigan	
Detroit	Battle Creek. Detroit. Grand Rapids. Muskegon. Port Huron. Saginaw-Bay City-Flint. Sault Ste. Marie.
Minnesota	
Duluth	Ashland, WI. Duluth and Superior, WI. Grand Portage. International Falls-Ranier.
Minneapolis	Minneapolis-St. Paul.
Missouri	
St. Louis	Kansas City Springfield. St. Joseph. St. Louis. St. Wichita.
Montana	
Great Falls	Butte. Del Bonita. Denver, CO. Eastport, ID. Great Falls. Morgan. Opheim. Piegan. Porthill, ID. Raymond. Roosville. Salt Lake City, UT. Scobey. Sweetgrass. Turner. Whitetail. Whitlash.
New York	
Buffalo	Buffalo-Niagara Falls. Oswego. Rochester. Sodus Point. Syracuse. Utica.
Champlain	Alexandria Bay. Cape Vincent. Champlain-Rouses Point. Clayton. Massena. Ogdensburg. Trout River.
JFK/New York/Newark.	Albany. New York/Newark, NJ. JFK. Perth Amboy, NJ.
North Carolina	
Charlotte	Beaufort-Morehead City.

[FR Doc. C0–6263 Filed 3–22–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Thursday,
March 23, 2000

Part II

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–6513–8]

RIN 2060–AE77

National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action promulgates national emission standards for hazardous air pollutants (NESHAP) for new and existing sources at secondary aluminum production facilities. Hazardous air pollutants (HAPs) emitted by the facilities that would be regulated by this final rule include organic HAPs, inorganic gaseous HAPs (hydrogen chloride, hydrogen fluoride, and chlorine), and particulate HAP metals. Some of these pollutants, including 2,3,7,8-tetrachlorodibenzo-p-dioxin, are known or suspected carcinogens and all can cause toxic effects in humans following sufficient exposure. Emissions of other pollutants include particulate matter and volatile organic compounds.

These standards implement section 112(d) of the Clean Air Act (CAA) and are based on the Administrator's determination that secondary aluminum production facilities are major sources of HAP emissions and emit several of the HAPs listed in section 112(b) of the CAA from the various process operations found within the industry. The final rule will provide protection to the public health by requiring secondary aluminum production facilities to meet emission standards reflecting application of the maximum achievable control technology (MACT). Secondary aluminum production facilities that are area sources would be subject to limitations on emissions of dioxins and furans (D/F) only. Implementation of this rule will reduce emissions of all identified pollutants by about 14,200 megagrams per year (Mg/yr) (15,600 tons per year (tpy)) and HAP emissions would be reduced by about 11,300 Mg/yr (12,400 tpy).

EFFECTIVE DATE: This regulation is effective March 23, 2000. The incorporation by reference of certain publications listed in the rule is approved by the Director of the Federal Register as of March 23, 2000.

ADDRESSES: Docket. Docket No. A–92–61, containing information considered by the EPA in development of the promulgated standards, is available for public inspection between 8 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays, at the following address: U.S. Environmental Protection Agency, Air and Radiation Docket and Information Center (6102), 401 M Street SW, Washington, DC 20460, telephone: (202) 260–7548. The docket is located at the above address in room M–1500, Waterside Mall (ground floor). A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: For further information concerning applicability and rule determinations, contact the appropriate State or local agency representative. If no State or local representative is available, contact the EPA Regional Office staff listed in the Supplementary Information section of this preamble. For information concerning the analyses performed in developing this rule, contact Mr. Juan Santiago, Minerals and Inorganic Chemicals Group, Emission Standards Division (MD–13), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone number (919) 541–1084, facsimile number (919) 541–5600, electronic mail address "santiago.juan@epamail.epa.gov."

SUPPLEMENTARY INFORMATION:

Regulated Entities

Entities potentially regulated by this action are secondary aluminum production facilities using clean charge, post-consumer scrap, aluminum scrap, ingots, foundry returns, dross, or molten metal as the raw material, and performing one or more of the following processes: aluminum scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (*i.e.*, melting, holding, refining, fluxing, or alloying), in-line fluxing, or dross cooling. The EPA identified an estimated 3,000 facilities potentially affected by the rule (including sweat furnaces, die casting facilities, and foundries) which include one or more of the designated affected sources, 86 of which are estimated to be major sources. Most establishments are included in NAICS 331314 (Secondary Smelting and Alloying of Aluminum), although others may fall in NAICS 331315 (Aluminum Sheet, Plate, and Foil Manufacturing), NAICS 331316 (Aluminum Extruded Product Manufacturing), NAICS 331319 (Other Aluminum Rolling and Drawing), NAICS 331521 (Aluminum Die-Castings), and NAICS 331524 (Aluminum Foundries). Affected sources at facilities that are major sources of HAPs are regulated under the final rule. In addition, emissions of dioxins and furans (D/F) from affected sources at facilities that are area sources of HAPs are also regulated.

The final rule does not apply to manufacturers of aluminum die castings, aluminum foundries, or aluminum extruders that melt no materials other than clean charge and materials generated within the facility and that also do not operate a thermal chip dryer, sweat furnace or scrap dryer/delacquering kiln/decoating kiln. Secondary aluminum production facilities that are collocated with primary aluminum production are regulated under today's final rule.

Regulated categories and entities include:

Category	NAICS code	SIC code	Examples of regulated entities
Industry	331314	3341	Secondary smelting and alloying of aluminum facilities.
			Secondary aluminum production facility affected sources that are collocated at:
	331312	3334	Primary aluminum production facilities.
	331315	3353	Aluminum sheet, plate, and foil manufacturing facilities.
	331316	3354	Aluminum extruded product manufacturing facilities.
	331319	3355	Other aluminum rolling and drawing facilities.
	331521	3363	Aluminum die casting facilities.
	331524	3365	Aluminum foundry facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that the Agency is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether your facility is regulated by this action, you should carefully examine the applicability criteria in § 63.1500 of the rule. If you have questions regarding the applicability of this action to a particular entity, consult the appropriate EPA Regional Office representative:

Region I—Janet Bowen, Office of Ecosystem Protection, U.S. EPA, Region I, CAP, JFK Federal Building, Boston, MA 02203, (617) 565–3595.

Region II—Kenneth Eng, Air Compliance Branch Chief, U.S. EPA, Region II, 290 Broadway, New York, NY 10007–1866, (212) 637–4000.

Region III—Bernard Turlinski, Air Enforcement Branch Chief, U.S. EPA, Region III (3AT10), 841 Chestnut Building, Philadelphia, PA 19107, (215) 566–2110.

Region IV—Lee Page, Air Enforcement Branch, U.S. EPA, Region IV, Atlanta Federal Center, 61 Forsyth Street, Atlanta, GA 30303–3104, (404) 562–9131.

Region V—George T. Czerniak, Jr., Air Enforcement Branch Chief, U.S. EPA, Region V (5AE–26), 77 West Jackson Street, Chicago, IL 60604, (312) 353–2088.

Region VI—John R. Hepola, Air Enforcement Branch Chief, U.S. EPA, Region VI, 1445 Ross Avenue, Suite 1200, Dallas, TX 75202–2733, (214) 665–7220.

Region VII—Donald Toensing, Chief, Air Permitting and Compliance Branch, U.S. EPA, Region VII, 726 Minnesota Avenue, Kansas City, KS 66101, (913) 551–7446.

Region VIII—Douglas M. Skie; Air and Technical Operations Branch Chief, U.S. EPA, Region VIII, 999 18th Street, Suite 500, Denver, CO 80202–2466, (303) 312–6432.

Region IX—Barbara Gross, Air Compliance Branch Chief, U.S. EPA, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1138.

Region X—Dan Meyer, Air and Radiation Branch Chief, U.S. EPA, Region X (OAQ–107), 1200 Sixth Avenue, Seattle, WA 98101–1128, (206) 553–4150.

Judicial Review

The NESHAP for secondary aluminum production was proposed on February 11, 1999 (63 FR 6946). Today's **Federal Register** action announces the EPA's final decision on the rule. Under section 307(b)(1) of the CAA, judicial review of the NESHAP is available by filing a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of today's publication of this final rule. Only those objections to this rule which were raised with reasonable specificity during the period for public comment may be raised during judicial review. Under section 307(b)(2) of the CAA, the requirements that are the subject of today's final rule may not be challenged later in civil or criminal proceedings brought by the EPA to enforce these requirements.

Technology Transfer Network (TTN)

In addition to being available in the docket, following promulgation, a copy of the rule will be posted at the TTN's policy and guidance page for newly proposed or promulgated rules (http://www.epa.gov/ttn/oarpg/t3pfpr.html). The TTN provides information from EPA in various areas of air pollution technology or policy. If more information on the TTN is needed, call the TTN help line at (919)541–5384.

Outline

The following outline is provided to aid in reading this preamble to the final rule.

I. Background and Public Participation
II. Summary of Final Rule
  A. Applicability and Definitions
  B. Emission Limits and Requirements
  C. Operating and Monitoring Requirements
  D. Reconsideration of Standard for Die Casters and Foundries
III. Summary of Responses to Major Comments
  A. Applicability
  B. Emission Standards and Operating Requirements
  C. Monitoring Requirements
  D. Impacts
IV. Summary of Changes Since Proposal
V. Summary of Impacts
  A. Air Quality Impacts
  B. Economic Impacts
  C. Non-Air Health and Environmental Impacts
  D. Energy Impacts
VI. Administrative Requirements
  A. Congressional Review Act
  B. Executive Order 12866—Regulatory Planning and Review
  C. Executive Order 13045—Protection of Children from Environmental Health Risks and Safety Risks
  D. Executive Order 13084—Consultation and Coordination with Indian Tribal Governments
  E. Executive Order 13132—Federalism
  F. Unfunded Mandates Reform Act
  G. Regulatory Flexibility Act
  H. Paperwork Reduction Act
  I. National Technology Transfer and Advancement Act

I. Background and Public Participation

The CAA (section 101(b)(1)) was created in part "to protect and enhance the quality of the Nation's air resources so as to promote the public health and welfare and the productive capacity of its population." Section 112(b), as revised in 61 FR 30816 (June 18, 1996), lists 188 HAPs believed to cause adverse health or environmental effects. Section 112(d) requires that emission standards be promulgated for all categories and subcategories of "major" sources of these HAP and for "area" sources listed for regulation, pursuant to section 112(c). Major sources are defined as those that emit or have the potential to emit (from all emission points in all source categories within the facility) at least 10 tpy of any single HAP or 25 tpy of any combination of HAPs. Area sources are stationary sources of HAPs that are not major sources.

The CAA requires the EPA to promulgate national emission standards for sources of HAPs. Section 112(d) provides that these standards must reflect:

> * * * the maximum degree of reduction in emissions of the HAP * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources in the category or subcategory to which such emission standard applies (42 U.S.C. § 7412(d)(2)).

This level of control is referred to as MACT. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" (section 112(d)(3)). Existing source standards shall be no less stringent than the average emission limitation achieved by the best performing 12 percent of the existing sources for source categories and subcategories with 30 or more sources, or the average emission limitation achieved by the best performing 5 sources for sources or subcategories with fewer than 30 sources (section 112(d)(3)). These two minimum levels of control define the MACT floor for new and existing sources.

On July 16, 1992 (57 FR 31576), the EPA published a list of categories of sources slated for regulation under section 112(c). This list included the secondary aluminum production source category regulated by the standards being promulgated today. The statute requires emissions standards for the listed source categories to be promulgated between November 1992 and November 2000. On June 4, 1996, the EPA published a schedule for promulgating these standards (61 FR 28197). Standards for the secondary aluminum production source category covered by this rule were proposed on February 11, 1999 (63 FR 6946).

As in the proposal, the final standards give existing sources 3 years from the date of promulgation to comply. New sources that begin construction or reconstruction after February 11, 1999 must comply with the standards by the date of promulgation or upon startup,

whichever is later. The EPA believes these standards to be achievable by affected sources within the time provided.

Emission limits, operating limits, methods for determining initial compliance, as well as monitoring, recordkeeping, and reporting requirements are included in the final rule. All of these components are necessary to ensure that sources will comply with the standards both initially and over time. However, the EPA has made every effort to simplify the requirements in the rule.

The preamble for the proposed standards described the rationale for the proposed standards. Public comments were solicited at the time of proposal. To provide interested individuals the opportunity for oral presentation of data, views, or arguments concerning the proposed standards, a public hearing was offered at proposal. However, the public did not request a hearing; therefore, one was not held. The public comment period was from February 11, 1999 to April 12, 1999. A total of 36 comment letters were received. Commenters included industry representatives, State and local agencies, and environmental groups. Today's final rule reflects the EPA's full consideration of all of the comments. Major public comments on the proposed rule along with the EPA's responses to these comments are summarized in this preamble. A more detailed discussion of public comments and the EPA's responses can be found in the Response to Comment Document (Docket No. A–92–61).

II. Summary of Final Rule

A. Applicability and Definitions

The rule applies to the following affected sources at secondary aluminum production facilities: each new, existing or reconstructed aluminum scrap shredder, thermal chip dryer, scrap dryer/delacquering kiln/decoating kiln, group 2 (*i.e.*, processing clean charge only and no reactive fluxing) furnace, sweat furnace, dross-only furnace, and rotary dross cooler; each existing secondary aluminum processing unit (composed of all existing group 1 (*i.e.*, processing other than clean charge and/or performing reactive fluxing) furnace emission units and all existing in-line fluxer emission units); and each new or reconstructed secondary aluminum processing unit (composed of all new or reconstructed group 1 furnace emission units and all new or reconstructed in-line fluxer emission units which are simultaneously constructed or reconstructed after February 11, 1999) located at a secondary aluminum production facility that is a major source of HAP. The rule also limits emissions of D/F from each new, existing or reconstructed thermal chip dryer, scrap dryer/delacquering kiln/decoating kiln, and sweat furnace; and from each new, existing or reconstructed secondary aluminum processing unit that contains one or more group 1 furnace(s) not processing clean charge, and that is located at a secondary aluminum production facility that is an area source. The rule also applies to secondary aluminum production processes designated as affected sources if they are collocated at a primary aluminum production facility.

The rule does not apply to facilities that are aluminum extruding, aluminum die casting, and aluminum foundry facilities that (1) only process clean charge and material generated within the facility, and (2) do not operate a thermal chip dryer, sweat furnace, or scrap dryer/delacquering kiln/decoating kiln. Those aluminum extruding, die casting, and foundry facilities that purchase or otherwise obtain materials other than "clean charge" and operate a group 1 furnace or operate a thermal chip dryer, sweat furnace, or scrap dryer/delacquering kiln/decoating kiln are considered secondary aluminum production facilities under this rule and as such are subject to the requirements of this rule.

The EPA categorized process furnaces into two classes. A group 1 furnace includes any furnace that melts, holds, or processes aluminum containing paint, lubricants, coatings, or other foreign materials with or without reactive fluxing, or processes clean charge with reactive fluxing. Reactive fluxing means the use of any gas, liquid, or solid flux, other than cover flux, (including but not limited to chlorine gas and magnesium chloride) that results in a HAP emission.

A group 2 (clean charge) furnace processes only molten aluminum, T-bar, sow, ingot, billet, pig, alloying elements; thermally dried unpainted aluminum chips, aluminum scrap dried at 343 °C (650 °F) or higher or delacquered/decoated at 482 °C (900 °F); oil- and lubricant-free unpainted/uncoated gates and risers; and oil- and lubricant-free unpainted/uncoated scrap, shapes, or products (*e.g.*, pistons) that have not undergone any process (*e.g.*, machining, coating, painting, etc.) that would cause contamination of the aluminum (with coatings, oils, lubricants, or paints); and internal runaround. A group 2 furnace performs no fluxing or performs fluxing using only nonreactive, non-HAP-containing/non-HAP-generating gases (such as argon and nitrogen) or agents.

This rule allows permitting authorities the discretion to defer Clean Air Act (CAA) title V operating permitting requirements until December 9, 2004, for area sources of air pollution subject to this NESHAP. This deferral is an option at the permitting authority's discretion under EPA-approved part 70 permit programs and not an automatic deferral that the source can invoke. Thus, Part 70 permitting authorities are free to require area sources subject to this NESHAP to obtain title V permits. In areas where no approved part 70 program is in effect, and the part 71 permitting program is administered by EPA, we will defer the requirement for title V permitting for these area sources until December 9, 2004. In a separate action, the Agency proposed final amendments on August 18, 1999 to extend title V operating permit deferrals for area sources in five source categories (64 FR 45116).

B. Emission Limits and Requirements

The rule applies to major sources. In addition, the following emission sources located at secondary aluminum production facilities that are area sources of HAPs are regulated for emissions of D/F: new and existing thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, sweat furnaces, and secondary aluminum processing units containing group 1 furnaces that process other than clean charge. The emission limits for these units are summarized in Table 1 to subpart RRR in the final rule.

The particulate matter (PM) emission limits apply to new, reconstructed and existing aluminum scrap shredders, scrap dryers/delacquering kilns/decoating kilns, dross-only furnaces, rotary dross coolers, and secondary aluminum processing units at secondary aluminum production facilities that are major sources. Controlling PM emissions also controls emissions of HAP metals. A surrogate approach to emission limits is used to allow easier and less expensive measurement and monitoring requirements.

The rule limits total hydrocarbon (THC) emissions from new and existing thermal chip dryers and from new and existing scrap dryers/delacquering kilns/decoating kilns at secondary aluminum production facilities that are major sources. The THC represents emissions of HAP organics. Hydrogen chloride (HCl) emission limits apply to new, reconstructed and existing scrap dryers/delacquering kilns/decoating kilns, and secondary aluminum processing units at secondary aluminum

production facilities that are major sources. The HCl is itself a HAP, and it also serves as a surrogate measure of HAP inorganics including hydrogen fluoride (HF) and chlorine (Cl_2) emissions. The rule limits emissions of D/F from new, reconstructed and existing thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns and sweat furnaces, and secondary aluminum processing units at secondary aluminum production facilities that are major or area sources. The D/F emission limit does not apply to facilities that are primarily die casting, extruding, or foundry facilities provided that they do not operate a thermal chip dryer, sweat furnace, or scrap dryer/delacquering kiln/decoating kiln, and do not process materials other than materials generated within the facility unless it is "clean charge" (defined in the rule). No surrogate is used for D/F emissions.

C. Operating and Monitoring Requirements

The rule includes operating and monitoring requirements for each affected source and emission unit within a secondary aluminum processing unit to ensure continuous compliance with the emissions standards. The rule incorporates all requirements of the NESHAP general provisions (40 CFR part 63, subpart A) except as provided in the appendix to the rule (Appendix A to subpart RRR). The operating and monitoring requirements are summarized in Table 2 to subpart RRR in the final rule.

D. Reconsideration of Standard for Die Casters and Foundries

EPA has based its MACT standard for aluminum die casting and aluminum foundries, as well as its assessment of the economic impacts on small businesses in these industries, on information on representative facility practices provided to EPA by these industries to date. However, affected facilities in these industries have expressed concern that the information and assumptions upon which EPA has relied may be incomplete or may not adequately represent the processes and emissions at such facilities. Accordingly, EPA has decided that it would be prudent to gather further information concerning facilities in the aluminum die casting and aluminum foundry industries and then to reevaluate MACT requirements and the economic impact on small businesses in these industries in light of this information.

Accordingly, EPA will issue within three months a proposed rule to remove the aluminum die casting and aluminum foundry industries from the present secondary aluminum standard, and a proposed rule to stay the applicability of the present standard to the aluminum die casting and aluminum foundry industries while EPA reevaluates the MACT requirements applicable to such facilities. EPA intends to take final action concerning the proposed stay as soon thereafter as practicable. EPA will also initiate a formal process to collect further information from the facilities in these industries on the activities in which they engage and the potential of these activities to contribute to HAP emissions. After evaluating this information, EPA will make a new determination concerning MACT requirements for both major facilities and area sources in these industries. EPA expects to adopt any alternative MACT standard applicable to these industries, and to take final action to remove the aluminum die casting and aluminum foundry industries from the current standard, within two years. Any alternative MACT standard adopted for these industries will provide three years from the date of promulgation for affected facilities to achieve compliance.

III. Summary of Responses to Major Comments

This section presents a summary of responses to selected comments. A more comprehensive comment summary and responses can be found in Docket No. A–92–61.

A. Applicability

Comment: Several commenters wanted to exempt unvented in-line flux boxes from testing and monitoring requirements and suggested regulating them via work practices based on the following statements:

- Emissions do not have the potential to exceed the emission limit because small amounts (< 0.2 lbs/ton) of chlorine gas flux are used;
- There is no acceptable method for sampling their fugitive emissions, so exclusion from testing and monitoring would improve the SAPU concept and substantially reduce costs; and
- Unvented in-line flux boxes are a pollution prevention design that operate within allowable OSHA limits and should be considered representative of the MACT floor when properly installed.

Response: Unvented in-line fluxers are capable of using and emitting chlorine and HCl in excess of the HCl emission standard for in-line fluxers, 0.04 lb/ton. One manufacturer of unvented in-line fluxers specifies a flux rate of 0.92 pounds chlorine per ton aluminum. The Agency has no reason to believe that fluxing at 0.2 to 0.9 lb/ton in an "unvented" in-line fluxer will meet the MACT floor level of emissions. Owner/operators can meet the emission limit by capturing and venting emissions to add-on controls or limiting the chlorine flux input to the fluxer. Limiting chlorine flux input to levels below the emission limit and monitoring flux addition is a work practice that would avoid the need for testing to demonstrate compliance. If testing is necessary, testing costs may be reduced through like-for-like testing allowed in the final rule, *i.e.*, with multiple uncontrolled flux boxes of same design and same operating practice, only one needs to be tested to demonstrate compliance.

The commenter's claim that such units cannot be tested is not valid. One unvented flux box at a facility that will be subject to this rule has been tested since proposal, and the results reported to the Agency. This particular unit was tested by measuring emissions at the point where fluxed metal exits the flux box. Another method of testing is to construct a temporary enclosure around the fluxer for the short duration of performance tests to capture fugitive emissions for measurement purposes (see Docket Item IV–A–1). Following the performance tests, flux usage must be monitored, and the flux box operating procedures must be maintained to ensure continuous compliance with the HCl standard.

With regard to "unvented" fluxers being a pollution prevention design that should be considered a MACT floor, commenters have referred to perceived lower emissions that presumably are achieved by lower and more efficient use of fluxing agents. The MACT floor technology for control of in-line flux boxes upon which the emission limit is based is a lime-injected fabric filter; this technology can achieve an emission limit of 0.04 lb/ton HCl. No data were provided by the commenters to demonstrate equal or lower emissions from "unvented" fluxers over the full range of input flux as compared to vented fluxers with the floor technology.

Comment: Several commenters opposed regulation of area manufacturing sources of D/F emissions, such as extrusion, die casting, and foundry facilities. Another commenter asserted that the EPA assumed area and major source D/F emitting processes emit at about equal rates per ton of feed, but data available to EPA for side-charge and roll top melters processing clean charge show those furnaces are not significant

sources of D/F as compared to furnaces charging dirty scrap. This commenter also contended the EPA assumption that 55 percent of all delacquering furnaces are located at area sources was the basis for regulating area sources. In comments on the Integrated Urban Air Toxics strategy, the commenter claimed there were inappropriate assumptions and errors in the inventories for sections 112(c)(6) and 112(k).

Response: The EPA acknowledges the error regarding delacquering furnaces in the inventory for the Integrated Urban Air Toxics strategy. The EPA recognizes that emissions of D/F from affected sources in secondary aluminum processing facilities are site-specific and depend on the type of materials (scrap) fed to the process, flux type, flux rate, and flux practices among other variables. For both major and area sources, the materials fed to the furnace and combustion processes contain varying amounts of oil (hydrocarbons) and coatings (hydrocarbons and chlorides). These compounds found in scrap containing oils and coatings, as well as some fluxes, are D/F precursors. Processes located at facilities that are area sources and using the same feed and flux materials as are used at major sources will emit D/F at levels equal to the same processes at major source facilities.

The EPA is not claiming that the total D/F emissions from affected sources located at facilities that are area sources are equal to the total D/F emissions from facilities that are major sources. However, there were also other commenters who mentioned large numbers of sweat furnaces in their States whose emissions were not counted, suggesting there are additional D/F emissions beyond those estimated in the national impacts at proposal. The EPA has developed an estimate of D/F emissions from sweat furnaces located at facilities that are area sources. That estimate is now included in the national impact calculations.

Comment: Numerous commenters representing aluminum extruders, aluminum die casters, and aluminum foundries stated that their facilities should not be regulated because they differ fundamentally from large secondary aluminum production facilities in emission potential, particularly D/F emissions. The commenters raised the following issues:

- Extruders encompass a broad spectrum of facilities and appear to fall within the broad definition of secondary aluminum production facilities, which range from relatively small facilities owned by large companies to facilities owned by independent business people, many of which the commenter claimed are small businesses.
- Some extruders, die casters, and foundries use no purchased scrap but do use internally generated scrap, while other facilities use small amounts of "clean" purchased scrap. Some are concerned that regulation may interfere with the effort to recycle at the plant, while others who purchase scrap see the regulation as creating a disincentive to recycle from outside the plant.
- Impurities in scrap are a principal source of D/F precursors. The commenters stated that extruders, die casters, and foundries cannot be large contributors to D/F emissions because they use or process only small amounts of higher quality scrap and do limited fluxing. One commenter argued that EPA should exclude extruders as small contributors to D/F emissions as in *Alabama Power* vs. *Costle,* 636 F.2d 323 (D.C. Cir. 1980) using the de minimis exception articulated in that case.
- Previous EPA publications support the distinction between die casters and secondary aluminum production facilities:
  - The Documentation for Developing the Initial Source Category List defines secondary aluminum production as facilities that smelt, and not including die casters;
  - An EPA new source review guidance memo (Treatment of Aluminum Die Casting Operations for the Purposes of New Source Review Applicability from, Thomas Curran, Director, Information Transfer and Program Integration Division, December 4, 1998) states "die casting facilities typically need not be considered secondary metal production plants" (the commenters argued that this memo acknowledges that die casters could engage in in-house recycling of castings and not be considered a secondary aluminum production facility); and
  - The Secondary Brass and Bronze New Source Performance Standard (NSPS) distinguishes between facilities that reclaim brass and bronze and those that create a finished product.

Applying the D/F standard to affected sources located at facilities that are area sources will subject facilities such as extruders, die casters, and foundries to the burden of title V permitting and MACT monitoring and reporting. One of these commenters stated that no environmental benefit will be gained from regulating area source aluminum production facilities since they already meet the emission limitation.

Response: The EPA has considered these issues and responds as follows to the points raised:

- With respect to the first issue, the EPA agrees that based on the definition of secondary aluminum production facility and current operations of some facilities that are extruders, those extruders would be subject to this rule. Numerous comments on the applicability section and definitions in the proposed rule were received and after consideration of those comments, the EPA has revised those sections of the final rule. As part of the revisions, the EPA has concluded that aluminum extruding, aluminum die casting, and aluminum foundry facilities that process no materials other than materials generated within the facility and "clean charge" (defined in the rule), and that do not operate a thermal chip dryer, sweat furnace, or scrap dryer/delacquering kiln/decoating kiln are not secondary aluminum production facilities and, therefore, are not subject to the requirements of the rule. Based on comments and information received in response to the proposal and subsequent meetings with the sources, the Agency believes that most small businesses will not fall under the definition of secondary aluminum production facility. Those aluminum extruding, die casting, and foundry facilities that do purchase or otherwise obtain materials other than "clean charge" and/or operate a thermal chip dryer, sweat furnace, or scrap dryer/delacquering kiln/decoating kiln are secondary aluminum production facilities and are subject to this rule.

The commenter's reference to some small facilities being owned by large companies is consistent with the EPA's knowledge that large companies in the secondary aluminum production industry engage in extruding operations. The commenter also claimed that some extruders are owned by independent businesses, many of which are small, however no specific quantitative data were provided to assist the Agency in assessing potential impacts.

- With regard to the second issue, the regulation discouraging recycling within the plant, the final rule does not prevent facilities that are area sources from using internally-generated scrap as charge to their group 1 furnaces. Regarding purchased scrap, although some extruders, die casters, and foundries use only small amounts of purchased scrap in their operations, other information provided to the EPA since proposal indicates that some of this type facility use more than half scrap (purchased and internally generated) as feed/charge in their operations (see Docket Item IV–E–2).

The issue with purchased scrap is the level of contamination with D/F emission precursors. The EPA worked with industry representatives during the regulatory development phase to establish definitions and specifications for purchased scrap that would yield lower HAP emissions. Data collected indicated that the percentage of oil and coatings in scrap (hydrocarbon and chloride content) varies over a large range. No concurrence was achieved on the levels of scrap oil and coatings content that would reliably limit the processing of D/F precursors from affected sources, nor was concurrence achieved on a way to measure these levels of oil and coatings. Further, a similar discussion with industry representatives failed to reach a consensus on how to define limited reactive fluxing, the other important aspect of D/F emission potential. The EPA has concluded that facilities in which aluminum scrap is processed, whether purchased or otherwise acquired from outside the facility, fall within the secondary aluminum production source category.

- With regard to the third issue, these commenters assert that these facilities are not large contributors to D/F emissions because they purchase only small amounts of scrap or "clean" scrap, thus limiting the availability of D/F precursors in the affected sources. However, three factors (the total quantity of scrap fed to processes, the percentage of oil and coatings contamination of the scrap, and the flux rate) are significant variables that affect generation of D/F precursors. As mentioned above, some facilities use significant amounts of purchased scrap.

Regarding the comment citing *Alabama Power* vs. *Costle,* 636 F.2d 323 (D.C. Cir. 1980), and requesting de minimis exemption for extruders, EPA notes that CAA Section 112(c)(6) requires EPA to regulate sources accounting in the aggregate for more than 90 percent of certain dioxin and furan emissions, and that EPA cannot use a de minimis rationale to exclude area sources from regulation if this would be inconsistent with this statutory mandate.

- With regard to the fourth issue, documentation for the Source Category Listing states that the secondary aluminum production source category includes "any facility engaged in the cleaning, melting, refining, alloying, and pouring of aluminum recovered from scrap, foundry returns, and dross, to form aluminum products such as alloy ingots, billets, notched bars, shot, hot metals, and hardeners." The documentation also states that the category includes pretreatment processes which include drying, burning, and sweating, among others. Although there can be differences in operations and products between secondary aluminum production facilities and those facilities that are primarily die casting, foundry, and extrusion facilities, for the purposes of this NESHAP, the Agency considers the die casting, foundry, and extrusion facilities that use aluminum scrap and other coated/painted aluminum bearing materials obtained from outside their facilities to be engaging in secondary aluminum production operations.

The EPA new source review guidance memo referenced by the commenter has, in addition to the commenter's quote, an extensive discussion of the fact that some facilities whose primary activity is die casting also perform secondary metals production from post-consumer scrap or unspecified aluminum scrap. This type of facility was identified in the memo as a "nested" secondary aluminum support facility. Such facilities also use processing equipment that is defined as an affected source under this rule. It is the acquisition of aluminum-bearing materials from outside the facility that are not "clean charge," and the presence of affected sources that subject the facility to this rule. The difference in products is not the determining factor.

The final rule clarifies that aluminum die casting, aluminum foundry, and aluminum extrusion facilities that process only clean charge (as distinct from scrap) are not secondary aluminum production facilities (regardless of the remelting of internally generated scrap), provided they do not operate thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, or sweat furnaces. Aluminum die casting, extruding, and foundry facilities that process aluminum scrap, etc., in the furnaces (i.e., materials that are not clean charge) from outside the facility are secondary aluminum production facilities and subject to the final rule.

- Regarding the fifth issue, the burden of title V permitting, monitoring, and reporting for area sources, the final rule has been changed to allow permitting authorities the discretion to defer the title V permitting requirements for secondary aluminum production area source facilities that are not otherwise subject to title V permitting requirements under other regulatory actions. A further change that will reduce the burden for area sources is that they will only be required to conduct an initial performance test to demonstrate compliance. The requirement to repeat the performance test every 5 years has been eliminated for area sources.

Facilities that use add-on controls will be required to monitor parameters in accordance with their approved site-specific OM&M plan. Facilities that are area sources which use purchased scrap, but meet the D/F emission limit without add-on controls, i.e., use work practices, will also be required to monitor in accordance with their site-specific OM&M plan. Their monitoring provisions will include a calculation method for determination of scrap contamination levels, or a scrap inspection program to demonstrate they are not exceeding the scrap quantity and oil and coatings contamination levels, and flux rate established during the initial performance test.

The environmental benefit of controlling D/F from these affected sources is reduction of emissions of an environmentally persistent HAP. The benefits of monitoring for those sources who meet the limit without add-on controls is continuing evidence that the operating practices used during the compliance tests are maintained and emissions remain at a level below the limit.

Comment: Commenters desired to allow new or reconstructed units into the SAPU and encourage EPA to do it with a discount applied to the new unit's allowed emissions. The commenters stated that:

- It will allow sources to take advantage of the more efficient fluxing achievable in new flux boxes, in particular the "unvented" flux boxes.
- It promotes pollution prevention and is consistent with common sense initiatives and project XL innovations that allow plantwide applicability limits.
- It is not standard avoidance, but a more effective way of complying.

Response: To allow new or reconstructed units into a SAPU consisting of existing units would involve averaging the emission reductions achieved by new and existing affected sources. Since new and existing sources are subject to separate standards and must individually demonstrate compliance, creation of a source which has both new and existing emission units is not permitted by the CAA. Therefore, EPA will not allow new units to become part of a SAPU comprised of existing units. In order for new units to have the same benefits available to existing emission units, the Agency has revised the rule to allow for a new SAPU, that is composed entirely of simultaneously constructed new sources and/or simultaneously reconstructed sources, in addition to the SAPU for existing emission units.

Comment: In comments on combining and treating emissions from existing sources with those from new sources in a single control system:

• One commenter asked to group an existing or new furnace with a new in-line fluxer as a separate affected source (outside the SAPU). The combined unit would have the same limits as the furnace by itself for PM, HCl, and D/F (*i.e.*, no emission increment for the new fluxer). The industry claimed a significant improvement in fluxing efficiency with much lower emissions is associated with moving fluxing from the furnace to in-line fluxers.

• Another commenter requested that the rule be expanded to affirm that new emission units may be ducted to existing control systems if capacity is available or can be expanded to accommodate the new source.

Response: The problem with combining a new affected source with an existing affected source is that the new source is required to meet the specified emission limits, but once combined, the new source emissions are not measurable separately from the emissions from the existing source. As noted in the response to the previous comment, there is no legal construct under the CAA that permits combining control requirements for existing and new sources, therefore, the combination of an existing furnace and new in-line fluxer is not permitted.

The revisions to the final rule do provide for the establishment of a SAPU composed entirely of simultaneously constructed new emission units. This will allow the combination of a new furnace and new in-line fluxer as a SAPU, but not allow combining a new furnace or in-line fluxer with an existing SAPU.

Comment: Several commenters were concerned about the applicability of the rule to sweat furnaces:

• One commenter, a manufacturer of sweat furnaces, expressed concern about economic impacts on small aluminum reclamation operators. This commenter estimated that there are at least several hundred sweat furnaces manufactured by them currently being used nationally with capacities considerably less than the model sweat furnace used in EPA's analysis of impacts (5,000 tons/year). All of their furnaces are equipped with integral afterburners. This commenter also submitted an afterburner performance test report showing 97.8 percent removal of PM by the afterburner and claimed, but did not have measurements, that D/F removal should be similar. The commenter stated that the preamble did not show D/F results upstream of the afterburners or what destruction efficiency was achieved.

• Another commenter attached a brochure from a manufacturer claiming to have distributed over 2,000 small sweat furnaces. This commenter states that the proposal underestimated the number of these sources. The commenter believes that testing and control costs will eliminate small businesses from the market and suggested that regulations for area sources be withdrawn until small business, health, and environmental impacts have been reassessed. Another manufacturer of sweat furnaces suggested a technology-based standard for area source sweat furnaces with no testing required.

Response: The EPA has no test data to support a comparison between PM and D/F removal efficiencies. The D/F emission limit in the proposed and final rules has been proven to be achievable with MACT floor technology.

Based on the information contained in these comments, the EPA requested additional information and data from sweat furnace manufacturers to further assess impacts of regulating D/F emissions from the furnaces. The large number of units reported to be manufactured suggested large numbers of these affected sources are currently in operation. The EPA's further investigation found that although one manufacturer who commented only sells sweat furnaces with integral afterburners for emission control; that is not the case for all domestic manufacturers.

Due to the large number of these sources and the types of scrap materials processed, their D/F emission potential is significant both individually and in the aggregate. Recognizing this, the EPA considered additional regulatory strategies for sweat furnaces and performed an economic analysis to examine the impacts of those strategies. The conclusion from this analysis is that the cost of measuring D/F emissions from sweat furnaces through a performance test is significant in comparison to the cost of the furnace and afterburner. Based on this analysis the EPA has revised the rule to add an alternative means of compliance. Owner/operators electing to install and operate an afterburner meeting the design criteria of operating temperature of at least 1600 °F and a 2 second residence time will not have to conduct performance tests. The final rule retains the numerical standard so that owner/operators with control equipment that does not meet the design criteria have the option to test to show that the D/F emissions are below the limit. These revisions to the proposed rule, combined with many anticipated State permitting authority decisions to exercise their discretion to defer the requirement for title V permits, will significantly reduce the burden for both large and small businesses operating sweat furnaces. The economic impact analysis conducted for this regulation reports minimal economic impacts to owners and operators of sweat furnaces.

B. Definitions

Comment: Numerous comments were received on the definition of "clean charge."

• One commenter stated that the definition should include as clean charge, outside runaround that is contractually ensured to be clean.

• Other commenters stated that they support inclusion of "non-coated runaround" scrap in the definition, which may have small amounts of lubricant, and that some runaround is returned from customers. These commenters stated that the rule should allow external, preconsumer, and non-coated runaround scrap in group 2 furnaces.

• Several commenters requested that EPA define non-coated runaround scrap or redefine clean charge to allow scrap covered with lubricants or substances low in materials that could generate D/F. Many die casters use scrap generated on-site (miscast material, defective parts, and cutoffs of excess aluminum) that may have inorganic agents (clay or talc) or die release agents (heavy waxes or high molecular weight oils) that do not generate D/F when burned.

• Commenters representing extruders also wanted to revise the definition to include purchased scrap low in materials that contribute to D/F generation.

• Other commenters noted the proposed definition of clean charge allows only pure aluminum (pure aluminum is an incorrect term) that cannot be cast in a die casting machine. They stated that the definition of clean charge also restricts the use of chips that have not been processed in a chip dryer and this is a disincentive for exploration of new technology (presses, centrifuges, and washers) alternatives to chip drying. Some facilities that do dry chips do not heat to 343 °C because it may oxidize the metal. The temperature to which chips must be heated to qualify as clean charge is arbitrary and was not considered with any input from foundries and die casters.

Response: In regard to the first four comments on "clean charge," EPA has reviewed and reconsidered the definition of clean charge. The definition of clean charge at proposal erroneously included non-coated runaround scrap which commenters wanted clarified to include runaround from outside the facility (*i.e.*, external, relatively "clean," preconsumer, non-coated runaround). The commenters acknowledged that the runaround may have "small" amounts of lubricant and coatings. Lubricants, oils, and coatings are D/F precursors. As explained in a previous response, the EPA worked with industry representatives during the regulatory development phase to establish definitions and specifications for purchased scrap that would yield consistently lower HAP emissions when charged to furnaces. Data collected indicated that the percentage of oil and coatings in scrap (hydrocarbon and chloride content) varies over a large range. No concurrence was achieved on the levels of scrap oil and coatings content, or a universal method of measuring the scrap content of oils/coatings, that would reliably limit the processing of D/F precursors from affected sources. Group 2 and those group 1 furnaces that are "clean charge" furnaces have no D/F emission limit. It is not consistent with the concept of clean charge furnaces to allow oil- and lubricant-bearing scrap purchased or otherwise obtained from outside the facility to be charged as clean charge. For this reason, the Agency has clarified that the definition of clean charge includes internally generated runaround. Internal runaround is defined in the final rule as scrap material generated on-site by aluminum extruding, rolling, scalping, forging, forming/stamping, cutting, and trimming operations that do not contain paint or solid coatings. Aluminum chips generated by turning, boring, milling, and similar machining operations that have not been dried at 343 °C (650 °F) or higher, or by an equivalent non-thermal drying process, are not considered internal runaround. Clean charge also does not include "runaround" scrap that is purchased or otherwise obtained from outside the facility.

Secondary aluminum production facilities may use painted and/or purchased runaround in group 2 furnaces by drying or delacquering it to meet the definition of clean charge, so as to eliminate the possibility of D/F formation in the furnace. Owner/operators may also charge painted and/or purchased runaround scrap to uncontrolled group 1 furnaces in a SAPU, provided they achieve an initial compliance demonstration and operate according to an OM&M plan approved by the permitting authority. For group 1 furnaces operated without add-on controls, the plan would likely include a site-specific scrap inspection or certification program of some type to indicate the contamination level and to define the percentage of scrap in the total furnace charge.

As noted in a response to a previous comment, facilities that are primarily aluminum die casters, foundries, and extruders that process only on-site materials or clean charge, and that do not operate a thermal chip dryer, scrap dryer/delacquering kiln/decoating kiln, or sweat furnace are not secondary aluminum production facilities and are not subject to this rule.

• With regard to the fifth comment, relating to the use of the term "pure aluminum" in the definition of "clean charge" in the proposed rule, the definition has been revised for the final rule to eliminate the word "pure" as a modifier of aluminum and instead describe it as oil- and lubricant-free uncoated/unpainted aluminum.

With respect to the issue of chip drying and the potential for oxidation of the aluminum, the final rule does not contain a minimum temperature requirement for thermal chip drying to make the chips "clean charge." With regard to other chip processing, the Agency is not precluding new technology such as presses, centrifuges, and washers that may be capable of producing chips with no oily residue, thus qualifying those processed chips as clean charge.

C. Emission Standards and Operating Requirements

Comment: One commenter urged EPA to review the application of fluoride and chlorine fluxes in the secondary aluminum industry and to verify the appropriateness of HCl as a surrogate.

Response: Emission limits for HCl were proposed because test data indicate that HCl is emitted when chlorine and reactive chloride fluxes are used, and the technology representing the MACT floor for HCl removal, which was determined to be lime injected fabric filters, also achieves MACT floor level removal of chlorine and HF. Although some fluoride fluxes are used by the industry, differences in flux properties, cost relative to chlorine/chloride fluxes, and occupational health considerations related to in-plant particulate levels limit the amounts used, thus limiting the potential for HF emissions.

Comment: One commenter stated that emission limits do not reflect limits achievable using currently available technology, and that neither the limits nor the selected MACT accurately reflect MACT. The commenter stated that the MACT floor emission levels violate section 112 of the CAA in that they are not based on the best-controlled sources for new sources and are not at least as stringent as the best performing 12 percent for existing sources. According to the commenter, EPA should consider, but did not, emission limits more stringent than the floor. In a related comment, another commenter disagrees with the dioxin emission standards and states that they are unsupported by emissions data. According to the commenter, the method of developing the limit is inconsistent with the CAA and fails to recognize the law of averages and, in the case of SAPUs, is illegal because it permits individual group 1 furnaces to emit dioxin at levels in excess of the MACT floor.

Response: The commenters argued that EPA did not properly consider the available emissions data in establishing the MACT floor emissions limits. In the case, *Sierra Club* v. *EPA* (March 2, 1999), the DC Circuit held that because MACT standards must be achievable in practice, EPA must assure that the standards are achievable "under most adverse circumstances which can reasonably be expected to recur" (assuming proper design and operation of control technology). The court further held that EPA can reasonably interpret the MACT floor methodology language so long as the Agency's methodology in a particular rule allows it to "make a reasonable estimate of the performance of the top 12 percent of units," that evaluating how a given MACT technology performs is a permissible means of estimating this performance, and that new source standards need not be based on performance of a single source. The court's decisions give EPA latitude in determining the MACT floor and the MACT floor emission limits. The EPA determined the MACT floor based on information available for each affected source and emission unit. At proposal, the EPA selected emission limits at the floor level of control, and the commenters provided no additional emissions data for any pollutant for EPA to consider. The emission standards are based on the emissions levels achieved through the application of MACT floor technologies and account for variation in the process and in the air pollution control device effectiveness.

Comment: Several commenters did not want an exceedance of an operating parameter to be a violation of an operating requirement. According to the commenters:

- The rule is not clear as to what constitutes a violation of the operating requirements.
- Operating parameters are only indicators of process and control performance, not a direct measure of excess emissions.
- An exceedance should not to be a violation until six exceedances occur in a 6-month period.
- No more than one violation should be counted per 24 hour period for any one parameter.
- The rule is not clear on whether a failure to take corrective action in response to an exceedance is a violation of the standard.
- A failure to initiate corrective action within 1 hour should constitute a violation.
- The rule should specify that if corrective action is begun within 1 hour and completed in accordance with the startup, shutdown, malfunction (SSM) plan, no violation has occurred.

Response: The EPA has considered the issue of a deviation being a violation and addresses the commenters' points as follows:

- With regard to the commenters' first point, the language in the final rule has been written to make clear that a deviation of an operating parameter is a violation of the operating standard. Each major source facility owner/operator is required to define the compliance parameters to be monitored in their OM&M plan. Then, during the initial performance tests, they are required to monitor and establish the value or range of the parameters. These values must be reported in the results of the test and notification of compliance status to the permitting authority and must be approved by the permitting authority. During subsequent operations, if the monitored parameters exceed the values or fall outside the range determined during the initial performance test, it is a violation of the operating requirements of the standard, unless it is the result of a malfunction to which the facility responds to in accordance with the SSM plan.
- Regarding the second point, the owner/operator may use continuous emission monitors (CEMs) as a direct measure of the emissions rather than using operating parameters if such CEMs can be demonstrated to the satisfaction of the permitting agency to reliably measure emissions.
- Regarding the third point, the EPA has no basis for allowing six deviations before considering the facility to be in violation. The owner/operator has ample opportunity to establish a range for the operating parameters and must thereafter operate within that range.
- Regarding the fourth point, any deviation of an operating parameter limit is a violation of the operating standard, regardless of when it occurs, unless it is the result of a malfunction to which the owner or operator responds in accordance with the SSM plan.
- Regarding the fifth and sixth points, the rule requires corrective action as a result of an operating parameter deviation or bag leak detector alarm. Corrective action must be conducted in accordance with the operations, maintenance and monitoring plan. Failure to take corrective action and to complete corrective action as expeditiously as practicable is a violation of the operating standard.
- Regarding the seventh point, a deviation that is the result of a malfunction, to which the facility responds in accordance to its SSM plan, is excluded as a violation.

Comment: Several commenters disagreed with the requirement that capture and collection systems meet the criteria established by the American Conference of Governmental Industrial Hygienists (ACGIH) for hooding and ventilation systems. The commenters claimed EPA has not shown that MACT floor facilities' hooding and ventilation systems met ACGIH criteria so that the requirement is arbitrary; EPA should show that the facilities met the ACGIH criteria. Several commenters stated that because EPA has no data to support the requirement for ACGIH criteria for capture and collection equipment for existing sources, they recommended the requirement apply only to new sources. Other commenters stated that although currently protecting work space air quality, most existing systems would not meet ACGIH criteria, meaning significant expenditures to upgrade those systems. The EPA likely did not account for these costs in their economic analysis; they agree with the commenters who stated that the requirement should be limited to new or modified sources.

Response: For affected sources and emission units that require an air pollution control device, a capture and control system meeting ACGIH criteria is necessary for occupational safety and to meet the emission standards. The emission standards are based on systems that effectively capture and contain emissions at the source (minimizing fugitives) and convey them to the control device for removal. In addition, a capture and control system meeting ACGIH criteria with good hooding design will result in a lower volume of exhaust air to be treated, and in many cases, a smaller, lower-cost control device. The EPA considers an ACGIH capture and collection system to be part of MACT floor technology for affected sources with add-on controls.

Comment: One commenter supported not counting false alarms of the bag leak detection system in the alarm time. Another commenter stated that the monitoring and reporting requirements are reasonable in order to confirm compliance, with the exception of bag leak detectors. The commenter stated that a facility should not be penalized for rapid response to an alarm and recommends that the actual time be counted and delete the 1-hour minimum alarm time.

Response: The rule has been clarified so that false alarms are not counted and a 1-hour minimum has been retained in the final rule to encourage proactive fabric filter maintenance.

Comment: Several commenters did not want the labeling requirement. They argued that, (1) The inspectors can get this information from the OM&M plan in the office before entering the plant; (2) the labels will be hard to maintain in a plant environment; (3) it creates opportunity for violation with no commensurate benefit and increases/duplicates regulatory paperwork; and (4) the labeling requirement generates safety concerns.

Response: The EPA believes that labeling requirements are necessary for enforcement and operating purposes and should be retained due to the complexity of the industry and the numerous possible facility configurations (and emission units that could be combined within a SAPU). Labeling will help prevent operators from charging the wrong materials or improperly operating the units and will help inspectors in identifying units and determining if the units are being properly operated. However, EPA understands industry's concerns over the implementation of the labeling requirements and has revised the proposed rule to require labeling only at those affected sources and emission units that can be operated in more than one mode and/or which are physically very similar, including group 1 furnaces with and without add-on controls, group 2 furnaces, scrap dryers/delacquering kilns/decoating kilns, and in-line fluxers. In addition, the final rule requires that labels contain only the identification of the unit and the applicable operational standards. These revisions respond to industry's concerns regarding increased regulatory paperwork with no commensurate benefits while maintaining enforceability of the standards since both operators and inspectors will

clearly know the operating standards/requirements of each emission unit.

Comment: Several commenters disagreed with the requirement to maintain the same flux injection schedule as used in performance tests. One commenter stated that they should be given flexibility to develop schedule procedures during performance tests subject to approval by the permitting authority. According to one commenter, the requirement to maintain the same flux injection schedule as used in performance tests, which would be done under worst case conditions, would result in an increase in HCL emissions and cause other negative environmental impacts. Another commenter stated that this requirement will cause increased HCL emissions for uncontrolled group 1 furnaces and will restrict work practices to minimize chlorine use. The commenter suggested a separate provision to maintain the same flux injection schedule for baghouses with semi-continuous lime feed systems.

One commenter wanted flux monitoring on a monthly basis and the schedule requirement eliminated. The rule could be interpreted to preclude a system with computerized monitoring of furnace operations/controls with correlated emissions and online continuous emissions calculations.

Response: Owners or operators are required to conduct performance tests under the highest load or capacity reasonably expected to occur. This is represented by the maximum reactive flux rate. The final rule provides that sources may flux (on a lb per ton of feed/charge basis), up to the limit established during a successful performance test, and does not require maintaining the same schedule. The rule also does not require owners or operators to use more flux than necessary to produce a saleable product. These requirements will not lead to increased HC1 emissions.

The standards for emission units performing reactive fluxing, all of which are included in the SAPU affected source, were developed using emissions data gathered during a complete cycle. Because of the difference in cycle times and schedules, the EPA recognized the need to develop emission limits for SAPUs that would account for overlapping cycles of the emission units included in the emissions calculation and a 3-day, 24-hour rolling average was selected as the maximum averaging time required. Reactive flux monitoring on a monthly basis is not acceptable in that it is inconsistent with the emission standards based on 3-day, 24-hour rolling average and the established monitoring parameter values or ranges derived during the performance test. Monitoring over a period consistent with the basis of the emission standards provides the necessary evidence of continuous compliance.

The issue of flux injection rate and schedule is related to lime injection practice for the fabric filter control systems. The final rule provides operating requirements for the floor technology, which is continuous lime injection systems with lime-injected fabric filters. Owners/operators who want to use intermittent lime feed systems (as opposed to continuous injection) must show compliance with the emission limits and must apply to the permitting authority for approval of an alternative lime addition monitoring procedure. The owners/operators must provide information as necessary to show that the applicable emission limits will be achieved on a continuous basis.

The rule does not preclude the use of computerized systems that correlate controls and operating practices with emissions and calculate emissions on a continuous basis once this approach is approved by the permitting authority and incorporated into the site-specific OM&M plan.

Comment: Several commenters disagreed with the +25 °F associated with the inlet temperature limit for fabric filters established during the initial performance test. According to two commenters, the operating temperature of these fabric filters will vary more than 25 °F due to changes in ambient temperatures. This creates an unnecessary risk of violation and provides no environmental benefit. Another commenter stated that instead of the temperature requirement, electrochemical HCl sensors for automatic lime feed adjustment and other automatic systems should be considered to allow greater operating flexibility. One commenter stated that in-line fluxers are not regulated for dioxin emissions and therefore do not need a temperature limit.

Response: The proposed rule has been changed to eliminate this requirement for fabric filters only controlling in-line fluxers since these units operate at temperatures that are close to ambient temperature. For other affected sources and emission units, or fluxers ducted to a device co-controlling other sources, the +25 °F limit is retained. Operators would be expected to add dilution air or water sprays as required to maintain the fabric filter inlet temperature within the range. Also, performance tests could be conducted at worst case conditions. For example, performance tests could be conducted so that the inlet temperature is much higher than the normal operating inlet temperature (450 °F vs 380 °F, for example, thus providing a larger operating range). Dioxin formation is strongly influenced by the temperature at the fabric filter inlet, and temperature control is the means of preventing D/F formation (and enhancing HCl removal) in the fabric filter. Temperature is also a parameter which is monitored to ensure continuous compliance between periodic performance tests. This is because it is an indicator of control device performance for D/F and HCl emissions.

Comment: According to one commenter, owners and operators could demonstrate compliance with the HCl emission limit by monitoring total chlorine input and showing it to be less than the emission limit.

Response: The EPA agrees that, for in-line fluxers and group 1 furnaces processing only clean charge, operators may demonstrate compliance (in lieu of performance tests) by demonstrating that reactive flux injection is limited to a rate which would not exceed the standard if emitted in its entirety.

D. Monitoring Requirements

Comment: Several comments were received that requested more flexibility in the monitoring requirements aimed at reducing the burden to the industry:

- One commenter stated that the operating and monitoring requirements of §§ 63.1506 and 63.1510 are too prescriptive and not consistent with preamble statements regarding flexibility.
- Several commenters stated that EPA should allow alternative site-specific monitoring and operating plans to improve feasibility and cost effectiveness.
- Another commenter stated that separate provisions should be included in each of §§ 63.1506 and 63.1510 allowing facilities to develop alternative procedures approvable by the applicable permitting agency.
- Two commenters claimed the provisions will result in burdensome, labor-intensive requirements without commensurate benefit to the environment.
- Another commenter with a rolling mill facility claimed their plant is operating at demonstrated low emission levels and seeks monitoring plan flexibility to allow their facility to continue in its present mode. Referring to this plant, another commenter stated that the plant has developed a correlation between opacity and PM which has been used for over a year, in accordance with a regulatory order. This monitoring has been approved by EPA

and the local agency and is federally enforceable.

Response: The final rule has been written to incorporate more flexibility in the monitoring requirements:

• With regard to the commenters' first, second, and third points, the final rule includes explicit provisions for obtaining approval to use alternative monitoring procedures and lists the types of information needed in the application. It includes data or information to justify the request such as technical or economic infeasibility, a description of the proposed alternative monitoring requirements including operating parameters and how the limit for SAPUs (if SAPUs are included in the application) will be calculated, and information as to how the alternative monitoring requirements would provide equivalent or better assurance of compliance with the standards.

In addition, in response to the numerous comments received regarding the proposed monitoring and operating provisions, the final rule has been written to provide more flexibility to individual facilities in developing their OM&M plans and for approval of site-specific monitoring and operating alternatives, within EPA guidelines, by the permitting authority. Additional comment responses below discuss some specific changes made in the final rule.

• Regarding the fourth point, the monitoring requirements are necessary to demonstrate continuous compliance and, as such, are environmentally beneficial. Most, if not all, of the monitoring data collection or logging can be computerized and, therefore, will not be labor intensive.

• Regarding the fifth point, specifically, the final rule allows the owner/operator of a plant to apply to the Administrator for alternative monitoring, if necessary, or document their current procedures in the facility OM&M plan. The OM&M plan is submitted to the permitting authority for review and approval. The final rule gives more flexibility, for example, through guidance for scrap inspections (used in operating limits and monitoring) that is less prescriptive and more options for lime injection monitoring.

Comment: Several commenters stated that the monitoring frequencies and data quality objectives are too restrictive and specific for application across a diverse industry and bear no relevance to the emission standards or ensuring proper operation of emission controls. Another commenter agreed with the selection of the monitoring parameters in the proposed rule, but stated that the monitoring intervals are too frequent.

Response: Monitoring frequency requirements are related to the need for evidence of continuous compliance, and frequent readings are essential to provide the demonstration. However, the final rule changes the frequency of recording monitored parameter values from that proposed. For example, the frequency of recording fluxing rates has been reduced by requiring readings only during periods when flux additions are occurring. Additional options included for monitoring free-flowing lime change those monitoring and frequency requirements and increase the monitoring options. Furthermore, the provisions for site-specific OM&M plans approved by permitting authorities allow opportunity for adjustment of monitoring, within EPA guidelines, to fit site-specific conditions. Comments dealing with data-quality objectives for specific monitored parameters are addressed in more detail below.

Comment: Several commenters argued that the requirements for accuracy of 1 percent when applied to feed/charge weight and flux injection rates are overly stringent and burdensome and create an unnecessary increment for a violation.

Response: The EPA has retained the 1 percent accuracy requirement in the final rule. However, the EPA recognizes there may be situations in which 1 percent accuracy for feed/charge weight and chlorine flux injection rate is not workable. An example of this may be operating at a very low flux injection rate. The final rule has been written to allow the permitting authority to approve alternative accuracy requirements for monitoring equipment, on a site-specific basis, in situations where the 1 percent accuracy requirement is not workable and where the owner/operator provides data/information to substantiate that emission standards will be achieved on a continuous basis.

Comment: In comments on accuracy of performance test measurements and feed/charge weight measurements:

• One commenter stated that the EPA reference methods are not better than 10 percent repeatable, so the requirement for 1 percent accuracy in charge weight is arbitrary and unnecessarily burdensome.

• Another commenter requested less stringency in the accuracy requirement for the sources whose emissions are well under the emission limit, noting that the expected accuracy of Methods 26A and 5 is 10 percent. This commenter suggested that the charge weight monitoring be restricted to only those sources having to comply with a lb/ton emission limit.

• An additional commenter stated that an aggregate accuracy of 5 percent is more representative of reproducible floor practice.

• Another commenter wanted the weight monitoring not to be required for each emission unit, but allowed to be aggregated across emission units.

Response: The EPA considered the measurement accuracy issue raised by the commenters and addresses their points as follows:

• With regard to the commenters' first, second, and third points concerning the test method accuracy, the EPA notes that the variability in the test methods, process, and control equipment is incorporated into the testing results upon which the emission limits are based. The limits have been established to accommodate that variability. Given that the emission limits are on a lb-of-emission/ton-of-feed (or charge) basis, it is also in the owner/operators best interest to make an accurate weight determination because inaccurate measurements could cause them to be out of compliance. As noted in the previous response, the final rule provides additional flexibility with regard to feed/charge measurement in situations where the 1 percent accuracy is not workable.

• Regarding the fourth point, weight monitoring is required because the emission limits are based on lb/ton of feed/charge or product. Under the site-specific OM&M plans, individual emission units of the same type may have different allowable emission rates based on the presence of add-on control devices, fluxing practice, and feed/charge practices. The only way to determine compliance is to monitor weights for individual emission units.

Comment: Commenters wanted the compliance date to be 3 years after promulgation rather than "on or after the date of the initial performance test." They argued that:

• Carrying out performance tests prior to the end of 3 years is essential to completing the monumental job; but they do not like having to comply "on and after the date of the initial performance test" which could be the emission test program for the SAPU.

• The submittal deadlines for the OM&M plan, the SAPU emission plan, and the site-specific test plan are inconsistent with each other; they wanted EPA to remove all the interim compliance requirements to give the necessary flexibility to evaluate and agree with the permitting agency on compliance requirements before the 3-year deadline.

Response: A facility must be in compliance on and after the date of the initial performance test. The date of that initial performance test, for existing sources, may be up to 3 years after the promulgation date of the standard. For existing SAPUs, the initial performance test is considered to be the date of approval of the OM&M plan by the permitting authority.

In response to the comments regarding the inconsistent plan requirements and dates for submittal, the EPA has revised and clarified those requirements. The final rule requires the owner/operator of a SAPU to perform tests that will define the operating modes of the controlled and uncontrolled emission units within the SAPU, and to define which parameters to monitor to demonstrate continuous compliance. These same tests can be used to measure the emission rates from the affected sources and emission units for performance test purposes. A site-specific test plan for this program must be submitted to the permitting authority for review and approval before the tests are conducted. The plan must identify the parameters to be monitored during the tests, the test methods to be used, the units to be tested, and planned operating modes for each unit during the tests. After the test plan has been approved by the permitting authority, the owner/operator is required to notify the Administrator of the test dates.

The results from this test program, including the emission rates measured, values of parameters monitored, monitoring parameters selected by the owner/operator for compliance demonstration, and values of the parameters to be used as operating limits must be submitted to the permitting authority for review and approval. As a result of the review, the permitting authority may request changes to selected monitoring parameters or values of the parameters used for compliance demonstration if it is determined the parameters or values do not provide an adequate means of demonstrating continuous compliance. When all of these elements are approved by the permitting authority, the owner/operator prepares an OM&M plan using the approved monitoring scheme and submits the OM&M plan to the permitting authority for approval. The compliance date is the approval date of the OM&M plan. The approved OM&M plan will be included by reference in the operating permit.

The latest date for an existing facility to achieve compliance is 3 years from the date the standard is promulgated. The OM&M plan must be submitted to the permitting authority for approval no later than 6 months before the planned compliance date. Given these conditions and lead times for preparing plans and conducting tests, it is clear that owner/operators must act expeditiously to develop test plans and execute the test programs.

Facilities that choose to comply by demonstrating that each emission unit in the SAPU meets the emission limit for that unit, and by monitoring the parameters as designated in the rule for each emission unit and control device, are also required to develop a test plan and notify the permitting authority of the test date(s).

Comment: One commenter stated that inspection of lime feed systems once per 8-hour shift and more frequently when found to be plugged may be difficult, arguing that visual inspection at silo and bin tops is dangerous. The commenter suggested alternate language that reduces the required checks from every 4 hours for 3 days, if plugged, to checks for only 2 consecutive 4-hour periods following restoration to free flow. Another commenter also disagreed with the requirement to inspect every 4 hours for 3 days, even if the problem is corrected earlier.

Response: Based on the comments received the final rule has been written to provide other options to demonstrate free-flowing lime. In addition to the option to perform visual checks to verify free-flowing lime, the owner/operator may use devices such as load cells to demonstrate this via weight changes in lime feed bins, use pressure sensors in pneumatic conveying systems to distinguish low or "no flow" conditions, continuously monitor lime feed rate, use an HCl monitoring device at the fabric filter outlet, or another method subject to approval by the permitting authority.

Comment: One commenter requested that lime feeder inspection requirements and corrective action requirements demonstrate compliance and that discovery and correction of a blockage or feeder setting drift not be an automatic violation. The commenter suggested that the rule be rewritten to require corrective action when necessary and not to make blockage or feeder setting drift a violation.

Response: As noted in the response to the previous comment, the final rule provides additional options for monitoring the lime system to maintain free-flowing lime. One of those options, the HCl monitor, provides a direct indication of continued effective operation of the control system which is the desired goal of any monitoring option selected. Other options that detect lime feeder blockages are not direct and immediate performance indicators, so the time until remedied is a critical variable. For this reason, EPA requires maintenance of free flowing lime in the feed hopper or silo at all times. Blockages that occur as a result of equipment breakage or failure would potentially fall under the malfunction provision, and if determined to be a malfunction, would be covered by the SSM plan and would not be a violation, if corrected in accordance with the SSM plan. However, continued and frequent blockages indicate a system design and operating problem rather than a malfunction.

Comment: Several commenters objected to the proposed regulatory requirements for scrap inspection programs. They stated that the requirements are too onerous, expensive, complex and overly prescriptive, and further, some provisions are not technically feasible or cannot be reasonably met. Three of the commenters suggested that the broadly stated scrap inspection requirements provided in the preamble to the proposed rule could be acceptable, and that approval of site-specific plans by the permitting authority would be a more acceptable requirement. Two commenters also stated that the scrap should not have to be inspected if the necessary control systems are in place. According to these commenters, inspection is only needed for control by work practices or pollution prevention. They stated that the EPA needs to be clearer as to which sources are covered; the preamble says all furnaces and the rule says uncontrolled group 1 furnaces.

Response: The scrap inspection program requirements apply only to those facilities that elect to use such a program as a monitoring technique to ensure the oil and coatings content of scrap charged to a group 1 furnace stays below levels established during the performance tests. Such a program could apply to facilities that have only uncontrolled group 1 furnaces, or facilities that have both add-on controlled and uncontrolled group 1 furnaces.

As a result of the numerous comments received regarding the scrap inspection program elements, the EPA has modified the proposed rule. The detailed requirements contained in the proposed rule have been deleted and the general scrap inspection guidelines provided in the proposal preamble have been adopted. This change will provide more flexibility to owner/operators to tailor the program to specific conditions for their facility. The scrap inspection program, if selected by the facility, will become part of the site-specific OM&M plan. The specific inspection program elements, which must be consistent

with guidance in the rule, will be approvable by the permitting authority as part of the site-specific OM&M plan and will be enforceable under the facility's permit.

Comment: Several commenters wanted EPA to allow testing one representative unit from a group of similar sources, that is one unit to represent similar furnaces or in-line fluxers, instead of having to test every emission unit. One of the commenters stated that this practice should be allowed for either controlled or uncontrolled units. Several commenters claim this approach is widely used under existing State permits and has been used by EPA in other NESHAPs. Commenters claimed that it would significantly reduce costs, provide flexibility, and provide more cost-effective test programs.

Response: Based on the comments received, the EPA is modifying the testing requirements to allow representative or similar uncontrolled emission units that use like charge and flux materials to be tested, instead of requiring each unit to be tested. Testing of representative or similar units may be used provided approval is obtained from the applicable permitting authority. The representative unit selected for testing must be subject to the same work practices and be of the same design as those emission units it is representing for test purposes. The representative unit must be tested under worst case conditions. It is up to the owner/operator to define the worst case scenario(s) for review and approval by the permitting authority. At least one of each different style unit must be tested. Each add-on control device controlling emissions from an affected source or emission unit must be tested.

E. Impacts

Comment: Several commenters disagreed with the results of EPA's regulatory impact analysis and believed that EPA underestimated the cost of the rule. The commenters identified the following as deficiencies in the impact analysis:

- The EPA underestimated the number of area sources that would be impacted as a result of the area source D/F standard. In particular, owners or operators of sweat furnaces, die casting facilities, foundries, and extruders were identified as potentially affected area sources that were either excluded or not adequately accounted for in the analysis. Furthermore, the commenters claimed that the proposed monitoring, recordkeeping, and reporting, and title V permit requirements would impose a significant burden on area sources.
- The EPA understated the number of small businesses that would be affected by the rule and, as a result, EPA's analysis of impacts on small entities was not adequate. According to several of the commenters, the small business impacts analysis underestimated small business impacts because it did not accurately account for sweat furnaces, die casting facilities, foundries, and extrusion facilities, many of which are small businesses and would be subject to the rule. The commenters also claimed that the proposed monitoring, recordkeeping, reporting, and title V permit requirements would impose significant burdens on these small businesses. They argued that the rule would have a significant impact on a substantial number of small entities and that EPA must, therefore, perform a regulatory flexibility analysis as required by the Regulatory Flexibility Act.
- Commenters took issue with the methods and assumptions used by EPA to estimate the costs and economic impacts of the rule, including failure to adequately account for the large number of affected area sources, title V permitting costs for area sources, and underestimating performance test costs due to the assumption of shared stacks. As a result, the commenters state that EPA's costs and economic impact estimates are too low. They argue that the annualized cost of the rule exceeds $100 million and is, therefore, a significant regulatory action under Executive Order 12866.

Response: Based on the numerous comments received regarding the regulatory impact analysis, the EPA has reviewed, revised, updated, and refined the analysis to address commenters' points:

- With regard to commenters' first point, for the proposed rule, the EPA used the information available on area sources of D/F emissions and requested additional information on the number of area sources, levels of emissions from these sources, the level of control currently employed, and the number of area sources that are also small businesses. In response to the comments on the proposed rule and using the information provided by commenters on sweat furnaces, die casting facilities and foundries, EPA has reassessed the cost of the rule on area sources (see Docket No. A–92–61). In addition, EPA has clarified and, in some cases, revised the proposed rule to address commenter concerns that the proposed rule will be overly burdensome for area sources. These changes include clarifications or revisions in the applicability of the rule, the performance testing requirements, the scrap inspection program, and giving the State permitting authorities the discretion to defer the requirements for a title V permit for area sources. On the basis of the information submitted to EPA during the public comment period and changes made to the proposed rule that narrow the applicability to facilities that are area sources, primarily aluminum extruders, die casters, and foundries, the EPA believes the number of those facilities subject to the rule to be small.
- Regarding the commenters' second point, after reviewing the comments on the small business impacts of the proposed rule and using the information on sweat furnaces, die casting facilities, and foundries provided by commenters, EPA has refined its small business impacts analysis (see Docket No. A–92–61). The analysis shows that the final rule will not have a significant impact on a substantial number of small businesses; therefore, no regulatory flexibility analysis is required. The small business impact analysis shows that the impact to small businesses operating sweat furnaces, and to small firms in the aluminum die casting and aluminum foundry industries is minimal.
- Regarding the commenters' third point, EPA considered the comments objecting to the costing methods and assumptions it used to estimate the impacts of the proposed rule. The EPA has reexamined its cost estimating procedures and believes that overall it has overstated the cost of the proposed rule. However, in view of the changes in the proposed rule and to incorporate revisions in the estimated number of affected area sources, EPA has updated its estimate of the cost of the rule (see Docket No. A–92–61). The revised cost of the rule is below the $100 million per year threshold, therefore, the rule is not a significant regulatory action as defined under Executive Order 12866.

IV. Summary of Changes Since Proposal

In response to comments received on the proposed rule and after further analysis, the following changes have been made:

Applicability. The applicability section has been clarified to distinguish the affected sources at major sources from those at area sources. Chip dryers and scrap shredders have been changed to "thermal chip dryers" and "aluminum scrap shredders" to more precisely define the type of equipment covered by the rule. A new secondary aluminum processing unit (SAPU) has been added to the list of affected sources; new group 1 furnaces and new in-line fluxers have been removed from the list of affected sources but are covered as emission units within new SAPUs. This change enables simultaneously constructed new emission units to meet emission standards on an analogous basis to existing SAPUs and does not affect the required level of control or continuous compliance. Subject to certain limitations, manufacturers of aluminum die castings, aluminum foundries, and aluminum extruders have been exempted from the rule. The final rule contains explicit language exempting research and development equipment.

The final rule also gives States the discretion to defer the requirement for secondary aluminum production area sources to obtain a title V permit. This discretion may reduce the burden of the rule on both area sources and States, without decreasing control requirements or increasing emissions.

The EPA's authority for establishing the deferrals is section 502(a) of the CAA, which allows EPA to exempt non-major sources from the permitting requirement if EPA finds that compliance with title V is impracticable, infeasible, or unnecessarily burdensome on the sources. The General Provisions implementing section 112 of the CAA provide that unless EPA explicitly exempts or defers area sources subject to a NESHAP from the title V permitting requirement, they are subject to permitting (40 CFR section 63.1(c)(2)(iii)). As a result, under 40 CFR sections 70.3(b)(2), 71.3(b)(2), and 63.1(c)(2), we are to determine whether area sources will be required to obtain title V permits when we adopt the underlying NESHAP. The EPA has previously allowed permitting authorities to defer permit applications for area sources in a series of rulemakings (60 FR 29484, June 5, 1995; 61 FR 27785, June 3, 1996; and 64 FR 37683, July 13, 1999).

When EPA initially established the ability of permitting authorities to defer area sources from title V, the Agency stated that it would decide whether to adopt permanent exemptions by the time deferrals expired, and that it would continue to evaluate permitting authorities' implementation and enforcement of the NESHAP requirements for area sources not covered by title V permits, the likely benefit of permitting such sources, and the costs and other burdens on such sources associated with obtaining title V permits. Many permitting authorities are struggling to issue in a timely fashion initial title V permits to major sources and other sources that have been subject to the permitting requirements since the beginning of the program, and we are concerned about the impact on permitting authorities of subjecting area sources to the permit application deadlines. Therefore, to be consistent with the previously allowed deferrals of permit applications for area sources by permitting authorities, the most reasonable approach is to defer the requirement for title V permitting for area sources in the secondary aluminum production source category until December 9, 2004.

As a result, today's action defers the requirement for title V permitting for area sources in the secondary aluminum production source category until December 9, 2004. The deferral is not an automatic benefit provided to the sources. Rather, permitting authorities may exercise their discretion to either defer the area sources, or to require them to apply for and obtain part 70 permits. Some permitting authorities may decide that area sources in the subject source category warrant permitting mechanisms (such as the use of general permits or "permits by rule") that minimize the burden on both the permitting authoring and the source.

For area sources that are not covered by an effective approved part 70 program and are subject to the EPA-administered part 71 permitting program, today's action also defers those area sources subject to the secondary aluminum production NESHAP from permitting under part 71 until December 9, 2004.

Definitions. The definitions of clean charge, fluxing, reactive fluxing, aluminum scrap shredder, secondary aluminum processing unit, secondary aluminum production facility and thermal chip dryer have been revised and clarified to reflect the meanings intended at proposal. Definitions of internal runaround and cover flux have been added to the final rule.

Emission standards. In response to comments from the regulated community, a standard for new SAPUs has been included in the final rule. Also, for sweat furnace operations, the final rule provides an alternative to the emission standard that does not require emission testing. The alternative is expressed in terms of design and operating parameters of afterburners that ensure the emission limit will be achieved.

Operating requirements. The compliance date for SAPUs has been clarified. Lime addition requirements have been specified only for continuous lime injection systems. Lime addition requirements for intermittent lime addition have been eliminated because the MACT floor control technology, upon which the emission standards are based, includes continuous lime injection. Provisions for obtaining approval for intermittent lime addition and establishing operating requirements have been added to the rule.

Labeling requirements have been redefined to include only the emission unit or affected source identification and the applicable operating requirements and pollution prevention parameters. In addition, the applicability of the labeling requirement has been narrowed to specific affected sources and emission units.

The final rule allows the option to demonstrate compliance for specific affected sources on the basis of aluminum production as opposed to feed/charge. Owners or operators of SAPUs that choose to demonstrate compliance on the basis of aluminum production as opposed to feed/charge must account for aluminum production on an emission unit by emission unit basis. This option will provide additional flexibility for existing measurement equipment and will not increase HAP emissions. The inlet temperature limit has been eliminated for fabric filters that control only in-line fluxers because these fabric filters typically operate at near-ambient temperatures.

Monitoring requirements. The final rule includes options for permitting authority approval of measuring devices of alternative accuracy in cases where the use of devices of specified accuracy is not workable, such as measurement of very low chlorine flow rates. Additional options for ascertaining the free flow of lime, including the use of load cells, flow sensors and HCl concentration sensors, have been added to the final rule. Specific temperature monitoring relative accuracy and calibration drift requirements have been eliminated because they are not necessary. The requirements for scrap inspection plans have been made less prescriptive to allow for a wider range of situations as experienced in the secondary aluminum production industry. Procedures for obtaining approval of alternative site-specific monitoring practices have been included to increase flexibility.

Performance testing. The final rule eliminates the requirement for repeat performance testing at area sources for cost and economic reasons, but maintains the operating, maintenance, and monitoring (OM&M) plan requirement to ensure continuous compliance through monitoring of appropriate parameters. Sweat furnaces equipped with afterburners meeting required design specifications are not

subject to performance testing requirements in the final rule. The rule has also been changed to reduce the cost of performance testing by allowing owners or operators to conduct worst case performance tests on a single affected source or emission unit that is not equipped with an add-on control device to represent the performance of other sources of the same design and operating characteristics.

V. Summary of Impacts

In response to comments that EPA's assessment of impacts was not adequate, and as a result of revisions made to the rule to provide more flexibility to affected sources and to minimize the burden on area sources, EPA reanalyzed the impacts of the rule.

A. Air Quality Impacts

At the current level of control, emissions of HAPs and other pollutants are estimated to be approximately 28,700 Mg/yr (31,600 tpy). Of these emissions, 16,400 Mg/yr (18,100 tpy) are HAPs. The EPA estimates that implementation of the NESHAP will reduce all pollutants by 14,200 Mg/yr (15,600 tpy) and HAP emissions would be reduced by about 11,300 Mg/yr (12,400 tpy). Baseline emissions and emission reductions are summarized by pollutant in Table 1 below.

TABLE 1.—NATIONWIDE ANNUAL BASELINE EMISSIONS AND EMISSIONS REDUCTIONS

Pollutant	Baseline emissions (Mg/yr)	Emissions reduction (Mg/yr)	Baseline emissions (tpy)	Emissions reduction (tpy)
THC[1]	3,782	0	4,169	0
D/F	0.54 kg/yr	0.43 kg/yr	1.19 lb/yr	0.94 lb/yr
HCl	15,365	11,224	16,902	12,372
Cl_2	996	NQ[2]	1,098	NQ
POM	37	9	41	10
HAP Metals	58	36	64	40
PM	8,508	2,889	9,379	3,185
Total:				
HAPs	16,425	11,269	18,106	12,422
PM	8,508	2,889	9,379	3,185
HAPS and other pollutants	28,657	14,158	31,589	15,607

[1] THC is a surrogate for organic HAPs.
[2] NQ Not quantified due to lack of emissions data.

There are no THC emission reductions expected because all sources with a THC emission limit are already equipped with the technology representative of the MACT-level of control.

The estimated emissions reductions represent the minimum that will be achieved by the final rule since they are based on a reduction in baseline emissions to a level equal to the promulgated emission limit. In reality, if emission control equipment is installed to achieve compliance with the rule, emissions will likely be reduced to a level below the emission limit and the actual emissions reductions will be larger than the estimates. In addition, emissions reductions are also expected for other pollutants for which there are no specific emission limits. Although these potential emissions reductions were not quantified, emission controls installed to reduce HCl emissions are likely to also reduce Cl_2 emissions, the lime added or injected to fabric filters would reduce fluoride as well as chloride emissions, and fabric filters installed to meet PM emission limits also would reduce HAP metal and polycyclic organic matter (POM) emissions. For example, emission test data indicate that a fabric filter will reduce HAP metal emissions by approximately the same percentage as PM emissions. If the same reduction (61.4 percent from the baseline, taking into account that some sources already have these controls) is applied to HAP metal emissions, emission reductions of about 39.5 tpy from the estimated baseline level of 64.4 tpy would be achieved.

B. Economic Impacts

EPA revised the economic impact analysis (EIA) to consider revised estimates of costs due to changes in the requirements of the rule between proposal and promulgation as well as additional information received concerning potential impacts of the regulation to owners of sweat furnaces, aluminum die casting facilities, and aluminum foundries. Due to the number of facilities and variety of processes used in the affected industries, model plants were developed to categorize facilities based on possible combinations of processes that are performed. These model plant categories were used to estimate applicable emission control costs, including the costs of monitoring, reporting, and record keeping (MRR). Sixteen model plants were created and annual compliance costs were calculated for each.

Estimates of total capital and total annualized costs for each model plant and nationwide are shown in Table 2. Total nationwide annualized costs for this regulation are estimated at $76.7 million. The model plant (1–8) control cost estimates include control device costs, auxiliary equipment, and direct and indirect installation costs, but do not include monitoring costs. The nationwide annual costs include costs for monitoring, reporting, and record keeping estimated at $9.2 million annually. (All values are shown in 1994 dollars.)

TABLE 2.—ESTIMATED CAPITAL AND ANNUALIZED COSTS BY MODEL PLANT
[Thousands of 1994 dollars]

Model plants	Per facility		Nationwide	
	Capital costs	Annual costs	Capital costs	Annual costs
Model Plant 1	$805	$380	$24,960	$11,766
Model Plant 2	950	362	9,500	3,621
Model Plant 3	1,833	702	12,832	4,911
Model Plant 4	2,944	1,203	26,492	10,829
Model Plant 5	1,441	851	14,409	8,510
Model Plant 6	976	671	6,833	4,696
Model Plant 7	198	134	1,188	807
Model Plant 8	0	0	0	0
MRR for Model Plants 1–8				3,885
Sweat Furnace 1	0	0	0	133
Sweat Furnace 2	0	0	0	299
Sweat Furnace 3	9	24	9,167	23,489
Die Casting 1	0	4	0	46
Die Casting 2	0	4	0	364
Die Casting 3	0	4	0	241
Foundry 1	0	4	0	2,489
Foundry 2	0	4	0	622
Nationwide Total			105,381	76,708

Firms producing products in SIC codes 3341 Secondary Smelting and Refining of Nonferrous Metals, 3353 Aluminum Sheet, Plate, and Foil, 3334 Primary Aluminum Production, 3354 Aluminum Extruded Product Manufacturing, 3363 Aluminum Die-Casting, 3365 Aluminum Foundries, 4953 Refuse Systems, 5093 Scrap and Waste Materials, and 5015 Motor Vehicle Parts—Used may be affected by this regulation.

A market impact analysis was completed for secondary aluminum producing firms. Table 3 presents primary and secondary market impacts estimated for the secondary aluminum market. Primary market impacts include estimated changes in price, domestic production, industry revenues, and potential facility closures. Secondary market impacts relate to potential employment losses, decreases in exports, and increases in imports.

TABLE 3.—SECONDARY ALUMINUM PRODUCTION PRIMARY AND SECONDARY MARKET IMPACTS

	Estimated impacts
Primary Market Impacts:	
Price Increase (Percent)	0.64
Production Decrease (Percent)	[0.40]
Industry Revenues—Increase in Value of Domestic Shipments (Percent)	0.24
Potential Facility Closures	0–1*
Secondary Market Impacts:	
Labor Market	
Potential Employee Reductions:	
Number of workers	94
Percent decrease	[0.40]
International Trade:	
Import increase (Percent)	1.51
Export decrease (Percent)	[0.22]

Decreases are shown in brackets [ ].
*Firm or facility closures are unlikely. However, if one makes a number of worst case assumptions, one facility or firm closure is possible.

In general, the economic impacts of this regulation are expected to be minimal to the secondary aluminum industry with price increases and production decreases of less than one percent. A market price increase of 0.64 percent and domestic production decrease of 0.40 percent are predicted. Revenues or the value of domestic shipments for the industry are expected to increase by 0.24 percent. Individual facilities or firms within the industry may experience revenue increases or decreases, but on average the industry revenues are anticipated to increase slightly with this regulation. Facility or firm closures are unlikely to occur as a result of this regulation. However, if a number of worst case assumptions are made, one could conclude that a single facility may close as a result of the regulation.

Approximately 94 workers may face employment displacement as a result of the regulation. This job loss estimate results from the decrease in production expected to result from the regulation and does not consider any employment increases that may occur relative to emission control. Exports of secondary aluminum products to other countries are expected to decline by 0.22 percent while imports of secondary aluminum are expected to increase 1.51 percent.

Since the impact of the regulation is anticipated to be minimal to firms owning sweat furnaces, aluminum die casters, aluminum foundries, and secondary aluminum dross reclamation facilities (categorized as model plants 7 and 8), a streamlined economic impact analysis was completed for these markets. This analysis computes the estimated cost of the regulation as a percentage of annual revenues. The cost to sales ratio refers to the change in annualized control costs divided by the sales revenues of a particular good or goods being produced in the process for which additional pollution control is required. It can be estimated for either individual firms or as an average for some set of firms such as affected small firms. While it has different significance for different market situations, it is a good rough gauge of potential impact. If costs for the individual (or group) of firms are completely passed on to the purchasers of the good(s) being produced, it is an estimate of the price change (in percentage form after

multiplying the ratio by 100). If costs are completely absorbed by the producer, it is an estimate of changes in pretax profits (in percentage form after multiplying the ratio by 100). The distribution of costs to sales ratios across the whole market, the competitiveness of the market, and profit to sales ratios are among the obvious factors that may influence the significance of any particular cost to sales ratio for an individual facility. This analysis was completed on a model plant basis using estimated annual revenues and for a sample of firms using actual company revenue data. A cost to sales ratio of 3 percent or above is an indicator of the potential for significant economic impact for firms in the industries affected by this rule. The results of these analyses are shown in Table 4.

As shown in Table 4, the cost to sales ratios using both model plant data and actual facility data are substantially below one percent for aluminum die casters, aluminum foundries, and firms operating sweat furnaces. This indicates that firms in these industries are not likely to incur significant economic impacts as a result of this regulation.

TABLE 4.—COST TO SALES RATIOS FOR ALUMINUM DIE CASTING, ALUMINUM FOUNDRIES, FIRMS OWNING SWEAT FURNACES, AND FIRMS OWNING ALUMINUM DROSS RECLAMATION FACILITIES

Description	Cost to sales ratios (%)
Firms Operating Sweat Furnaces Model Plant Data:	
Sweat Furnace 1	0.16
Sweat Furnace 2	0.06
Sweat Furnace 3	0.08
Average Actual Firm Data	0.01
Aluminum Die Casting Model Plant Data:	
Model Plant 1	<0.01
Model Plant 2	0.01
Model Plant 3	0.04
Average Actual Firm Data	0.04
Aluminum Foundries Model Plant Data:	
Model Plant 1	0.16
Model Plant 2	0.04
Average Actual Firm Data	0.03
Secondary Aluminum Dross Reclamation Facilities for Model Plants 7 and 8 Model Plant Data:	
Model Plant 7	1.08
Model Plant 8	0.07
Average Actual Firm Data:	
Model Plant 7	0.73
Model Plant 8	0.18

Cost to sales ratios for secondary aluminum dross reclamation facilities (model plants 7 and 8) approximate or are less than one percent on a model plant and actual firm data basis. These firms are also not anticipated to incur significant economic impacts as a result of this regulation. For further information, please see Economic Impact For the Secondary Aluminum NESHAP, Final Report, October 1999.

C. Non-Air Health and Environmental Impacts

As discussed in the preamble to the proposed rule, the NESHAP is based on air pollution control systems which are of the dry type (*e.g.*, afterburners and fabric filters), and there are no water pollution impacts resulting from their use. Solid waste generated by fabric filters in the form of particulate matter (including HAP metals and lime from fabric filters) is typically disposed of by landfilling. With the addition of fabric filters and lime conditioned fabric filters, the amount of solid waste is expected to increase by about 97,904 Mg/yr (107,921 tpy) nationwide. The increase in solid waste is estimated as the sum of the annual reduction in PM emissions and the annual increase in the use of lime in lime-injected fabric filters.

Implementation of the NESHAP will aid in reducing aerial deposition of D/F and HAP metals (lead, cadmium, and mercury), will substantially reduce ambient concentrations of HCl and Cl_2, and will reduce emissions.

D. Energy Impacts

Operating fabric filters and afterburners require the use of electrical energy to operate fans that move the gas stream. The additional electrical energy requirements are estimated at 78 million kilowatt hours per year (kWh/yr), or 282 terajoules per year (TJ/yr), over current requirements. Afterburners may also use natural gas as fuel. Approximately 325,500 kilocubic feet per year (kft^3/yr) or 322 billion British thermal units (Btu)/yr (340 TJ/yr) of additional natural gas will be required.

The increased energy requirements for facilities will result in an increase in utility emissions as more energy is generated. Nationwide emissions of PM, sulfur dioxide (SO_2), and nitrogen oxides (NO_X) from electric power plants are estimated to increase by 8.1 Mg/yr (8.9 tpy), 323 Mg/yr (356 tpy), and 161 Mg/yr (178 tpy), respectively.

VI. Administrative Requirements

A. Congressional Review Act

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

B. Executive Order 12866—Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

In response to comments that the rule as proposed would result in adverse impacts to sources in the secondary aluminum production industry as well as result in costs in excess of $100 million, EPA reexamined the cost of the rule. In view of the changes in the rule that have been made since proposal to clarify applicability as well as the requirements of the rule and to provide greater flexibility in the rule, EPA finds that the cost of the final rule is below $100 million. Because the projected annual costs (including monitoring) for this NESHAP are less than $100 million, a regulatory impact analysis has not been prepared. However, because of concerns expressed by affected facilities regarding the potential for adverse economic impacts, EPA submitted this final regulation to OMB for review. Any written comments are included in the docket listed under **ADDRESSES**.

C. Executive Order 13045—Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 applies to any rule that EPA determines (1) is "economically significant" as defined under Executive Order 12866, and (2) the environmental health or safety risk addressed by the rule has a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This final rule is not subject to E.O. 13045 because it is not an economically significant regulatory action as defined by Executive Order 12866, and it does not address an environmental health or safety risk that would have a disproportionate effect on children.

D. Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to the Office of Management and Budget (OMB), in a separately identified section of the preamble to the rule, a federalism summary impact statement (FSIS). The FSIS must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

This final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This determination has been made since none of the affected facilities under this final rule are owned or operated by State or local governments. Thus, the requirements of section 6 of the Executive Order do not apply to this rule. Although section 6 of Executive Order 13132 does not apply to this rule, EPA did consult with State and local officials in developing the proposed rule.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Pub. L. 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, the EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires the EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows the EPA to adopt an alternative other than the least costly, most cost-effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before the EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in aggregate, or the private sector in any 1 year, nor does the rule significantly or uniquely impact small governments because it contains no requirements that apply to such

governments or impose obligations upon them. Thus, the requirements of the UMRA do not apply to this rule.

G. Regulatory Flexibility Act

The EPA analyzed the potential impact of the proposed rule on small entities. The results of the analysis for the proposed rule and the method used by EPA to perform the analysis of impacts on small entities are discussed in the preamble to the proposed rule (64 FR 6946, February 11, 1999).

In response to comments on the proposed rule that EPA understated the number of small businesses that would be affected by the rule, EPA refined its small business impacts analysis to include information concerning sweat furnaces, aluminum die casting facilities, and aluminum foundries. The EPA has determined that it is not necessary to prepare a regulatory flexibility analysis in connection with this final rule. Based on the revised small business impacts analysis prepared concerning this final rule, EPA has also determined that the requirements in this rule will not have a significant impact on a substantial number of small entities.

The regulation will potentially impact firms producing products in SIC codes 3341 (secondary smelting and refining of nonferrous metals), 3353 (aluminum sheet, plate, and foil), 3334 (primary aluminum production), 3354 (aluminum extruded products), 3363 (aluminum die-casting), 3365 (aluminum foundries), 4953 (refuse systems—materials recovery facilities), 5093 (scrap and waste materials), and 5015 (motor vehicle parts-used). The Small Business Administration criteria for each affected industry are shown in Table 5.

TABLE 5.—SECONDARY ALUMINUM NESHAP AFFECTED INDUSTRIES AND SMALL BUSINESS CRITERIA

Standard industrial classification code	Small business criteria
3341 Secondary Smelting and Refining of Nonferrous Metals.	Less than 500 employees.
3353 Aluminum Sheet, Plate, and Foil.	Less than 750 employees.
3334 Primary Aluminum Production.	Less than 1,000 employees.
3354 Aluminum Extruded Products.	Less than 750 employees.
3363 Aluminum Die-Casting.	Less than 500 employees.
3365 Aluminum Foundries.	Less than 500 employees.
4953 Refuse Systems.	Less than $6 million in annual sales revenues.
5093 Scrap and Waste Materials.	Less than 100 employees.
5015 Motor Vehicle Parts—Used.	Less than 100 employees.

The EPA received responses to an information collection request from 135 secondary aluminum facilities producing products in SIC 3334, 3341, 3353 and 3355. To define the small business entities, the 135 facilities were matched with their parent companies. It was determined that 32 of these companies employ less than 750 employees and meet the Small Business Administration's definition of a small business entity. (Note the criterion of 750 employees was used for secondary aluminum producers, because it results in a larger number of small businesses. None of the affected firms in the data base producing principally primary aluminum products in SIC 3334 are small businesses.)

There are 320 aluminum die casting companies and approximately 1530 aluminum foundries currently operating domestically. The vast majority of these firms are small businesses employing less than 500 employees. No small businesses within aluminum die casting companies or aluminum foundries have been specifically identified that are impacted by the final rule under applicability as defined. Only large businesses have come forward with information regarding applicability of the standard(s) to their operations. Based on that information, we have performed a small business analysis based on a probable over estimate of the number of small businesses within these industry sectors that may be affected by the final rule. (Docket A–92–61).

It is estimated that around 1650 sweat furnaces are operated by businesses in the United States that will be subject to this rule. Firms owning sweat furnaces are primarily small businesses.

The analysis of small business impacts for these industries focused on a comparison of compliance costs as a percentage of sales (cost/sales ratio). When available, the analysis used actual firm sales data. However, actual firm data were unavailable for a number of small businesses. To estimate the impact for such firms, an analysis comparing model plant control cost estimates to model plant revenue data was conducted. As Table 6 shows, cost to sales ratios based on model plant revenue and cost data yield ratios of less than 1 percent for all model plants other than model plant 7. The cost to sales ratio for model plant 7 is 1.08 percent. For the affected industries, cost to sales ratios of 3 percent or greater are considered an indicator of the potential for significant economic impact. Based upon this criterion, the model plant analysis indicates that small business firms are not likely to experience significant economic impacts as a result of this regulation.

TABLE 6.—SECONDARY ALUMINUM NESHAP COST TO SALES RATIOS ASSUMING MODEL PLANT COST AND REVENUE DATA

Model plant	Model plant cost to sales ratio (percent)
1	0.70
2	0.35
3	0.82
4	0.71
5	0.13
6	0.07
7	1.08
8	0.07
Sweat Furnace 1	0.16
Sweat Furnace 2	0.06
Sweat Furnace 3	0.08
Die Casting 1	<0.01
Die Casting 2	0.01
Die Casting 3	0.04
Foundry 1	0.16
Foundry 2	0.04

A search for actual company revenue data for small businesses was completed. Data were located for 26 of the 32 small secondary aluminum firms (model plants 1–6) and aluminum dross fabricators (model plants 7 and 8) identified by the survey. Data were also collected for 53 small die casting firms, 22 small aluminum foundries, and for 65 small business that may potentially operate sweat furnaces. A summary of the cost to sales ratios for the small secondary aluminum producers using actual company sales data is shown in Table 7 below.

TABLE 7.—SECONDARY ALUMINUM NESHAP COMPANY SPECIFIC COST TO SALES RATIOS FOR AFFECTED SMALL BUSINESSES

Cost/sales ratio	Number of small companies in each cost to sales range
Secondary Aluminum Industry:	
0.00%–0.99%	19
1.00%–1.99%	5
2.00%–2.99%	2
Mean cost to sales ratio=0.74%	Total firms=26
Mean cost to sales ratio	**Number of small companies evaluated (firms)**
Aluminum Die Casting Industry: 0.04%	53
Aluminum Foundry Industry: 0.04%	22
Firms Owning Sweat Furnaces: 0.01%	65

As depicted in Table 7, the majority of small businesses modeled are anticipated to experience cost to sales ratios below 1 percent. Seven small companies show cost to sales ratios above 1 percent, but less than 3 percent. Since no company exhibits cost to sales above 3 percent and the majority of small businesses are expected to incur cost to sales ratios less than 1 percent, significant impacts to small entities are not expected. The results of the analyses conducted using both model plant data and actual small business firm data indicate that impacts from this regulation are not likely to be significant to small business firms. As previously stated, the analysis is based on a probable over estimate of the number of small businesses within these industry sectors that may be affected by the final rule. The EPA concludes that this regulation will not result in a significant economic impact for a substantial number of small entities. For more detailed information, please see Economic Impact Analysis for the Secondary Aluminum NESHAP Final Report, October 1999.

H. Paperwork Reduction Act

The information collection requirements in this final rule are being submitted for approval to OMB under the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1894.01), and a copy may be obtained from Sandy Farmer, OPPE Regulatory Division, U.S. Environmental Protection Agency (2136), 401 M Street SW, Washington, DC 20460, or by calling (202) 260–2740.

The promulgated information requirements include mandatory notifications, records, and reports required by the NESHAP General Provisions (40 CFR part 63, subpart A). These information requirements are needed to confirm the compliance status of major sources, to identify any nonmajor sources not subject to the standards and any new or reconstructed sources subject to the standards, to confirm that emission control devices are being properly operated and maintained, and to ensure that the standards are being achieved. Based on the recorded and reported information, EPA can decide which facilities, records, or processes should be inspected. These recordkeeping and reporting requirements are specifically authorized under section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA for which a claim of confidentiality is made will be safeguarded according to Agency policies in 40 CFR part 2, subpart B. (See 41 FR 36902, September 1, 1976; 43 FR 39999, September 28, 1978; 43 FR 42251, September 28, 1978; and 44 FR 17674, March 23, 1979.)

The EPA is required under section 112(d) of the Clean Air Act to regulate emissions of HAPs listed in section 112(b). The requested information is needed as part of the overall compliance and enforcement program. The ICR requires that secondary aluminum production facilities retain records of parameter and emissions monitoring data at facilities for a period of 5 years, which is consistent with the General Provisions to 40 CFR part 63 and the permit requirements under 40 CFR part 70. All major sources subject to this rule will be required to obtain operating permits either through the State-approved permitting program or, if one does not exist, in accordance with the provisions of 40 CFR part 71. Under this final rule, the approved state permitting program has the option to defer the requirement to obtain a title V permit for area sources affected by this rule.

The annual public reporting and recordkeeping burden for this collection of information (averaged over the first 3 years after the effective date of the rule) is estimated to total 148,000 labor hours per year at a total annual cost of $9.2 million. This estimate includes notifications; a performance test (with repeat tests for major sources); one-time preparation of a startup, shutdown, and malfunction plan with semiannual reports of any event where the procedures in the plan were not followed and an operation, maintenance, and monitoring plan; semiannual excess emissions reports; initial and semiannual furnace certifications; and recordkeeping. This estimate also includes one time preparation of emissions averaging plans and scrap sampling plans for some respondents. Total capital costs associated with monitoring requirements over the 3-year period of the ICR is estimated at $1.3 million; this estimate includes the capital and startup costs associated with installation of monitoring equipment.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purpose of collecting, validating, and verifying information; process and maintain information and disclose and provide information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to respond to a collection of information; search existing data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

I. National Technology Transfer and Advancement Act

Under section 12(d) of the National Technology Transfer and Advancement Act (NTTAA), the Agency is required to use voluntary consensus standards in its regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impracticable. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) which are developed or adopted by voluntary consensus bodies. Where available and potentially applicable voluntary consensus standards are not used by EPA, the CAA requires the Agency to provide Congress, through OMB, an explanation of the reasons for not using such standards. This section summarizes the EPA's response to the requirements of the NTTAA for the analytical test methods included in the final rule.

Consistent with the NTTAA, the EPA conducted a search to identify voluntary

consensus standards. However, no candidate consensus standards were identified for measuring emissions of the HAPs or surrogates subject to emission standards in the rule. The rule requires standard EPA methods well known to the industry and States. Approved alternative methods also may be used. The EPA, in coordination with the industry and States, have agreed on the use of these test methods in the rule.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Incorporation by reference, Reporting and recordkeeping requirements, Secondary aluminum production.

Dated: December 15, 1999.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, part 63 of title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. Part 63 is amended by adding subpart RRR to read as follows:

Subpart RRR—National Emission Standards for Hazardous Air Pollutants for Secondary Aluminum Production

Sec.

General

63.1500 Applicability.
63.1501 Dates.
63.1502 Incorporation by reference.
63.1503 Definitions.
63.1504 [Reserved]

Emission Standards and Operating Requirements

63.1505 Emission standards for affected sources and emission nits.
63.1506 Operating requirements.
63.1507–63.1509 [Reserved]

Monitoring and Compliance Provisions

63.1510 Monitoring requirements.
63.1511 Performance test/compliance demonstration general requirements.
63.1512 Performance test/compliance demonstration requirements and procedures.
63.1513 Equations for determining compliance.
63.1514 [Reserved]

Notifications, Reports, And Records

63.1515 Notifications.
63.1516 Reports.
63.1517 Records.

Other

63.1518 Applicability of general provisions.
63.1519 Delegation of authority.
63.1520 [Reserved]

Table 1 to Subpart RRR—Emission Standards for New and Existing Affected Sources

Table 2 to Subpart RRR—Summary of Operating Requirements for New and Existing Affected Sources and Emission Units

Table 3 to Subpart RRR—Summary of Monitoring Requirements for New and Existing Affected Sources and Emission Units Appendix A to Subpart RRR—General Provisions Applicability to Subpart RRR

General

§ 63.1500 Applicability.

(a) The requirements of this subpart apply to the owner or operator of each secondary aluminum production facility.

(b) The requirements of this subpart apply to the following affected sources, located at a secondary aluminum production facility that is a major source of hazardous air pollutants (HAPs) as defined in § 63.2:

(1) Each new and existing aluminum scrap shredder;

(2) Each new and existing thermal chip dryer;

(3) Each new and existing scrap dryer/delacquering kiln/decoating kiln;

(4) Each new and existing group 2 furnace;

(5) Each new and existing sweat furnace;

(6) Each new and existing dross-only furnace;

(7) Each new and existing rotary dross cooler; and

(8) Each new and existing secondary aluminum processing unit.

(c) The requirements of this subpart pertaining to dioxin and furan (D/F) emissions and associated operating, monitoring, reporting and recordkeeping requirements apply to the following affected sources, located at a secondary aluminum production facility that is an area source of HAPs as defined in § 63.2:

(1) Each new and existing thermal chip dryer;

(2) Each new and existing scrap dryer/delacquering kiln/decoating kiln;

(3) Each new and existing sweat furnace;

(4) Each new and existing secondary aluminum processing unit, containing one or more group 1 furnace emission units processing other than clean charge.

(d) The requirements of this subpart do not apply to manufacturers of aluminum die castings, aluminum foundries, or aluminum extruders that melt no materials other than clean charge and materials generated within the facility; and that also do not operate a thermal chip dryer, sweat furnace or scrap dryer/delacquering kiln/decoating kiln.

(e) The requirements of this subpart do not apply to facilities and equipment used for research and development that are not used to produce a saleable product.

(f) The owner or operator of a secondary aluminum production facility subject to the provisions of this subpart, is subject to the title V permitting requirements under 40 CFR parts 70 and 71, as applicable. The permitting authority may defer the affected facility from the title V permitting requirements until December 9, 2004, if the secondary aluminum production facility is not a major source and is not located at a major source as defined under 40 CFR 63.2, 70.2, or 71.2, and is not otherwise required to obtain a title V permit. If an affected facility receives a deferral from title V permitting requirements under this section, the source must submit a title V permit application by December 9, 2005. The affected facility must continue to comply with the provisions of this subpart applicable to area sources, even if a deferral from title V permitting requirements has been granted to the facility by the permitting authority.

§ 63.1501 Dates.

(a) The owner or operator of an existing affected source must comply with the requirements of this subpart by March 24, 2003.

(b) The owner or operator of a new affected source that commences construction or reconstruction after February 11, 1999 must comply with the requirements of this subpart by March 23, 2000 or upon startup, whichever is later.

§ 63.1502 Incorporation by reference.

(a) The following material is incorporated by reference in the corresponding sections noted. The incorporation by reference (IBR) of certain publications listed in the rule will be approved by the Director of the Office of the Federal Register as of the date of publication of the final rule in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This material is incorporated as it exists on the date of approval: (1) Chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice," American Conference of Governmental Industrial Hygienists, (23rd edition, 1998), IBR approved for § 63.1506(c), and (2)

"Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update" (EPA/625/3–89/016).

(b) The material incorporated by reference is available for inspection at the Office of the Federal Register, 800 North Capitol Street NW, Suite 700, Washington, DC; and at the Air and Radiation Docket and Information Center, U.S. EPA, 401 M Street SW, Washington, DC. The material is also available for purchase from the following addresses:

(1) Customer Service Department, American Conference of Governmental Industrial Hygienists (ACGIH), 1330 Kemper Meadow Drive, Cincinnati, OH 45240–1634, telephone number (513) 742–2020; and

(2) The National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA, NTIS no. PB 90–145756.

§ 63.1503 Definitions.

Terms used in this subpart are defined in the Clean Air Act as amended (CAA), in § 63.2, or in this section as follows:

Add-on air pollution control device means equipment installed on a process vent that reduces the quantity of a pollutant that is emitted to the air.

Afterburner means an air pollution control device that uses controlled flame combustion to convert combustible materials to noncombustible gases; also known as an incinerator or a thermal oxidizer.

Aluminum scrap shredder means a unit that crushes, grinds, or breaks aluminum scrap into a more uniform size prior to processing or charging to a *scrap dryer/delacquering kiln/decoating kiln*, or furnace. A bale breaker is not an *aluminum scrap shredder.*

Bag leak detection system means an instrument that is capable of monitoring particulate matter loadings in the exhaust of a fabric filter (*i.e.*, baghouse) in order to detect bag failures. A *bag leak detection system* includes, but is not limited to, an instrument that operates on triboelectric, light scattering, light transmittance, or other effect to monitor relative particulate matter loadings.

Chips means small, uniformly-sized, unpainted pieces of aluminum scrap, typically below 1¼ inches in any dimension, primarily generated by turning, milling, boring, and machining of aluminum parts.

Clean charge means furnace charge materials including molten aluminum; T-bar; sow; ingot; billet; pig; alloying elements; uncoated/unpainted thermally dried aluminum chips; aluminum scrap dried at 343 °C (650 °F) or higher; aluminum scrap delacquered/decoated at 482 °C (900 °F) or higher; other oil- and lubricant-free unpainted/uncoated gates and risers; oil-and lubricant-free unpainted/uncoated aluminum scrap, shapes, or products (*e.g.*, pistons) that have not undergone any process (*e.g.*, machining, coating, painting, etc.) that would cause contamination of the aluminum (with oils, lubricants, coatings, or paints); and internal runaround.

Cover flux means salt added to the surface of molten aluminum in a group 1 or group 2 furnace, without agitation of the molten aluminum, for the purpose of preventing oxidation.

D/F means dioxins and furans.

Dioxins and furans means tetra-, penta-, hexa-, and octachlorinated dibenzo dioxins and furans.

Dross means the slags and skimmings from aluminum melting and refining operations consisting of fluxing agent(s), impurities, and/or oxidized and non-oxidized aluminum, from scrap aluminum charged into the furnace.

Dross-only furnace means a furnace, typically of rotary barrel design, dedicated to the reclamation of aluminum from dross formed during melting, holding, fluxing, or alloying operations carried out in other process units. Dross and salt flux are the sole feedstocks to this type of furnace.

Emission unit means a *group 1 furnace* or *in-line fluxer* at a *secondary aluminum production facility.*

Fabric filter means an add-on air pollution control device used to capture particulate matter by filtering gas streams through filter media; also known as a baghouse.

Feed/charge means, for a furnace or other process unit that operates in batch mode, the total weight of material (including molten aluminum, T-bar, sow, ingot, etc.) and alloying agents that enter the furnace during an operating cycle. For a furnace or other process unit that operates continuously, *feed/charge* means the weight of material (including molten aluminum, T-bar, sow, ingot, etc.) and alloying agents that enter the process unit within a specified time period (*e.g.*, a time period equal to the performance test period). The *feed/charge* for a dross only furnace includes the total weight of dross and solid flux.

Fluxing means refining of molten aluminum to improve product quality, achieve product specifications, or reduce material loss, including the addition of solvents to remove impurities (solvent flux); and the injection of gases such as chlorine, or chlorine mixtures, to remove magnesium (demagging) or hydrogen bubbles (degassing). *Fluxing* may be performed in the furnace or outside the furnace by an *in-line fluxer.*

Furnace hearth means the combustion zone of a furnace in which the molten metal is contained.

Group 1 furnace means a furnace of any design that melts, holds, or processes aluminum that contains paint, lubricants, coatings, or other foreign materials with or without reactive fluxing, or processes *clean charge with reactive fluxing.*

Group 2 furnace means a furnace of any design that melts, holds, or processes only *clean charge* and that performs no *fluxing* or performs *fluxing* using only nonreactive, non-HAP-containing/non-HAP-generating gases or agents.

HCl means, for the purposes of this subpart, emissions of hydrogen chloride that serve as a surrogate measure of the total emissions of the HAPs hydrogen chloride, hydrogen fluoride and chlorine.

In-line fluxer means a device exterior to a furnace, located in a transfer line from a furnace, used to refine (flux) molten aluminum; also known as a flux box, degassing box, or demagging box.

Internal runaround means scrap material generated on-site by aluminum extruding, rolling, scalping, forging, forming/stamping, cutting, and trimming operations that do not contain paint or solid coatings. Aluminum chips generated by turning, boring, milling, and similar machining operations that have not been dried at 343 °C (650 °F) or higher, or by an equivalent non-thermal drying process, are not considered internal runaround.

Lime means calcium oxide or other alkaline reagent.

Lime-injection means the continuous addition of lime upstream of a *fabric filter.*

Melting/holding furnace, or melter/holder, means a *group 1 furnace* that processes only *clean charge*, performs melting, holding, and fluxing functions, and does not transfer molten aluminum to or from another furnace.

Operating cycle means for a batch process, the period beginning when the feed material is first charged to the operation and ending when all feed material charged to the operation has been processed. For a batch melting or holding furnace process, *operating cycle* means the period including the charging and melting of scrap aluminum and the fluxing, refining, alloying, and tapping of molten aluminum (the period from tap-to-tap).

PM means, for the purposes of this subpart, emissions of particulate matter that serve as a measure of total particulate emissions and as a surrogate for metal HAPs contained in the particulates, including but not limited to, antimony, arsenic, beryllium, cadmium, chromium, cobalt, lead, manganese, mercury, nickel, and selenium.

Pollution prevention means source reduction as defined under the Pollution Prevention Act of 1990 (*e.g.*, equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training, or inventory control), and other practices that reduce or eliminate the creation of pollutants through increased efficiency in the use of raw materials, energy, water, or other resources, or protection of natural resources by conservation.

Reactive fluxing means the use of any gas, liquid, or solid flux (other than cover flux) that results in a HAP emission. Argon and nitrogen are not reactive and do not produce HAPs.

Reconstruction means the replacement of components of an affected source or *emission unit* such that the fixed capital cost of the new components exceeds 50 percent of the fixed capital cost that would be required to construct a comparable new affected source, and it is technologically and economically feasible for the reconstructed source to meet relevant standard(s) established in this subpart. Replacement of the refractory in a furnace is routine maintenance and is not a *reconstruction*. The repair and replacement of *in-line fluxer* components (*e.g.*, rotors/shafts, burner tubes, refractory, warped steel) is considered to be routine maintenance and is not considered a *reconstruction*. *In-line fluxers* are typically removed to a maintenance/repair area and are replaced with repaired units. The replacement of an existing *in-line fluxer* with a repaired unit is not considered a *reconstruction*.

Residence time means, for an *afterburner*, the duration of time required for gases to pass through the *afterburner* combustion zone. *Residence time* is calculated by dividing the *afterburner* combustion zone volume in cubic feet by the volumetric flow rate of the gas stream in actual cubic feet per second.

Rotary dross cooler means a water-cooled rotary barrel device that accelerates cooling of dross.

Scrap dryer/delacquering kiln/decoating kiln means a unit used primarily to remove various organic contaminants such as oil, paint, lacquer, ink, plastic, and/or rubber from aluminum scrap (including used beverage containers) prior to melting.

Secondary aluminum processing unit (SAPU): an existing SAPU means all existing *group 1 furnaces* and all existing *in-line fluxers* within a *secondary aluminum production facility*. Each existing *group 1 furnace* or existing *in-line fluxer* is considered an *emission unit* within a *secondary aluminum processing unit*. A new *SAPU* means any combination of *group 1 furnaces* and *in-line fluxers* which are simultaneously constructed after February 11, 1999. Each of the *group 1 furnaces* or *in-line fluxers* within a new *SAPU* is considered an *emission unit* within that *secondary aluminum processing unit*.

Secondary aluminum production facility means any establishment using clean charge, post-consumer aluminum scrap, aluminum scrap, aluminum ingots, aluminum foundry returns, dross from aluminum production, or molten aluminum as the raw material and performing one or more of the following processes: scrap shredding, scrap drying/delacquering/decoating, thermal chip drying, furnace operations (*i.e.*, melting, holding, refining, fluxing, or alloying), in-line fluxing, or dross cooling. A *secondary aluminum production facility* may be independent or part of a primary aluminum production facility. A facility is a *secondary aluminum production facility* if it includes any of the affected sources listed in § 63.1500(b) or (c). Aluminum die casting facilities, aluminum foundries and aluminum extrusion facilities that process no materials other than materials generated within the facility, or clean charge purchased or otherwise obtained from outside the facility, and that do not operate sweat furnaces, thermal chip dryers, or scrap dryers/delacquering kilns/decoating kilns are not secondary aluminum production facilities.

Sidewell means an open well adjacent to the hearth of a furnace with connecting arches between the hearth and the open well through which molten aluminum is circulated between the hearth, where heat is applied by burners, and the open well, which is used for charging scrap and solid flux or salt to the furnace, injecting fluxing agents, and skimming dross.

Sweat furnace means a furnace used exclusively to reclaim aluminum from scrap that contains substantial quantities of iron by using heat to separate the low-melting point aluminum from the scrap while the higher melting-point iron remains in solid form.

TEQ means the international method of expressing toxicity equivalents for dioxins and furans as defined in "Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update" (EPA–625/3–89–016), available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, NTIS no. PB 90–145756.

THC means, for the purposes of this subpart, total hydrocarbon emissions that also serve as a surrogate for the emissions of organic HAP compounds.

Thermal chip dryer means a device that uses heat to evaporate water, oil, or oil/water mixtures from unpainted/uncoated aluminum chips.

Three-day, 24-hour rolling average means daily calculations of the average 24-hour emission rate (lbs/ton of feed/charge), over the 3 most recent consecutive 24-hour periods, for a *secondary aluminum processing unit*.

Total reactive chlorine flux injection rate means the sum of the total weight of chlorine in the gaseous or liquid reactive flux and the total weight of chlorine in the solid reactive chloride flux, divided by the total weight of feed/charge, as determined by the procedure in § 63.1512(o).

§ 63.1504 [Reserved]

Emission Standards and Operating Requirements

§ 63.1505 Emission standards for affected sources and emission units.

(a) *Summary.* The owner or operator of a new or existing affected source must comply with each applicable limit in this section. Table 1 to this subpart summarizes the emission standards for each type of source.

(b) *Aluminum scrap shredder.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator of an aluminum scrap shredder at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere:

(1) Emissions in excess of 0.023 grams (g) of PM per dry standard cubic meter (dscm) (0.010 grain (gr) of PM per dry standard cubic foot (dscf)); and

(2) Visible emissions (VE) in excess of 10 percent opacity from any PM add-on air pollution control device if a continuous opacity monitor (COM) or visible emissions monitoring is chosen as the monitoring option.

(c) *Thermal chip dryer.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator of a thermal chip dryer must not discharge or cause to be discharged to the atmosphere emissions in excess of:

(1) 0.40 kilogram (kg) of THC, as propane, per megagram (Mg) (0.80 lb of THC, as propane, per ton) of feed/charge from a thermal chip dryer at a secondary aluminum production facility that is a major source; and

(2) 2.50 micrograms (μg) of D/F TEQ per Mg (3.5×10^{-5} gr per ton) of feed/charge from a thermal chip dryer at a secondary aluminum production facility that is a major or area source.

(d) *Scrap dryer/delacquering kiln/decoating kiln.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier:

(1) The owner or operator of a scrap dryer/delacquering kiln/decoating kiln must not discharge or cause to be discharged to the atmosphere emissions in excess of:

(i) 0.03 kg of THC, as propane, per Mg (0.06 lb of THC, as propane, per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source;

(ii) 0.04 kg of PM per Mg (0.08 lb per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source;

(iii) 0.25 μg of D/F TEQ per Mg (3.5×10^{-6} gr of D/F TEQ per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major or area source; and

(iv) 0.40 kg of HCl per Mg (0.80 lb per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source.

(2) The owner or operator of a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(e) *Scrap dryer/delacquering kiln/decoating kiln: alternative limits.* The owner or operator of a scrap dryer/delacquering kiln/decoating kiln may choose to comply with the emission limits in this paragraph as an alternative to the limits in paragraph (d) of this section if the scrap dryer/delacquering kiln/decoating kiln is equipped with an afterburner having a design residence time of at least 1 second and the afterburner is operated at a temperature of at least 750 °C (1400 °F) at all times. On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier:

(1) The owner or operator of a scrap dryer/delacquering kiln/decoating kiln must not discharge or cause to be discharged to the atmosphere emissions in excess of:

(i) 0.10 kg of THC, as propane, per Mg (0.20 lb of THC, as propane, per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source;

(ii) 0.15 kg of PM per Mg (0.30 lb per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source;

(iii) 5.0 μg of D/F TEQ per Mg (7.0×10^{-5} gr of D/F TEQ per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major or area source; and

(iv) 0.75 kg of HCl per Mg (1.50 lb per ton) of feed/charge from a scrap dryer/delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source.

(2) The owner or operator of a scrap dryer/ delacquering kiln/decoating kiln at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(f) *Sweat furnace.* The owner or operator of a sweat furnace shall comply with the emission standard of paragraph (f)(2) of this section.

(1) The owner or operator is not required to conduct a performance test to demonstrate compliance with the emission standard of paragraph (f)(2) of this section, provided that, on and after the compliance date of this rule, the owner or operator operates and maintains an afterburner with a design residence time of two seconds or greater and an operating temperature of 1600 °F or greater.

(2) On and after the date the initial performance test is conducted or required to be conducted, or if no compliance test is required, on and after the compliance date of this rule, whichever date is earlier, the owner or operator of a sweat furnace at a secondary aluminum production facility that is a major or area source must not discharge or cause to be discharged to the atmosphere emissions in excess of 0.80 nanogram (ng) of D/F TEQ per dscm (3.5×10^{-10} gr per dscf) at 11 percent oxygen (O_2).

(g) *Dross-only furnace.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator of a dross-only furnace at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere:

(1) Emissions in excess of 0.15 kg of PM per Mg (0.30 lb of PM per ton) of feed/charge.

(2) Visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(h) *Rotary dross cooler.* On and after the date the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator of a rotary dross cooler at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere:

(1) Emissions in excess of 0.09 g of PM per dscm (0.04 gr per dscf).

(2) Visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(i) *Group 1 furnace.* The owner or operator of a group 1 furnace must use the limits in this paragraph to determine the emission standards for a SAPU.

(1) 0.20 kg of PM per Mg (0.40 lb of PM per ton) of feed/charge from a group 1 furnace, that is not a melting/holding furnace processing only clean charge, at a secondary aluminum production facility that is a major source;

(2) 0.40 kg of PM per Mg (0.80 lb of PM per ton) of feed/charge from a group 1 melting/holding furnace processing only clean charge at a secondary aluminum production facility that is a major source;

(3) 15 μg of D/F TEQ per Mg (2.1×10^{-4} gr of D/F TEQ per ton) of feed/charge from a group 1 furnace at a secondary aluminum production facility that is a major or area source. This limit does not apply if the furnace processes only clean charge; and

(4) 0.20 kg of HCl per Mg (0.40 lb of HCl per ton) of feed/charge or, if the furnace is equipped with an add-on air pollution control device, 10 percent of the uncontrolled HCl emissions, by weight, for a group 1 furnace at a secondary aluminum production facility that is a major source.

(5) The owner or operator of a group 1 furnace at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device if a COM is chosen as the monitoring option.

(6) The owner or operator may determine the emission standards for a SAPU by applying the group 1 furnace limits on the basis of the aluminum production weight in each group 1 furnace, rather than on the basis of feed/charge.

(7) The owner or operator of a sidewell group 1 furnace that conducts reactive fluxing (except for cover flux) in the hearth, or that conducts reactive fluxing in the sidewell at times when the level of molten metal falls below the top of the passage between the sidewell and the hearth, must comply with the emission limits of paragraphs (j)(1) through (j)(4) of this section on the basis of the combined emissions from the sidewell and the hearth.

(j) *In-line fluxer.* Except as provided in paragraph (j)(3) of this section for an in-line fluxer using no reactive flux material, the owner or operator of an in-line fluxer must use the limits in this paragraph to determine the emission standards for a SAPU.

(1) 0.02 kg of HCl per Mg (0.04 lb of HCl per ton) of feed/charge;

(2) 0.005 kg of PM per Mg (0.01 lb of PM per ton) of feed/charge.

(3) The emission limits in paragraphs (j)(1) and (j)(2) of this section do not apply to an in-line fluxer that uses no reactive flux materials.

(4) The owner or operator of an in-line fluxer at a secondary aluminum production facility that is a major source must not discharge or cause to be discharged to the atmosphere visible emissions in excess of 10 percent opacity from any PM add-on air pollution control device used to control emissions from the in-line fluxer, if a COM is chosen as the monitoring option.

(5) The owner or operator may determine the emission standards for a SAPU by applying the in-line fluxer limits on the basis of the aluminum production weight in each in-line fluxer, rather than on the basis of feed/charge.

(k) *Secondary aluminum processing unit.* On and after the date of approval of the operation, maintenance and monitoring (OM&M) plan, the owner or operator must comply with the emission limits calculated using the equations for PM and HCl in paragraphs (k)(1) and (k)(2) of this section for each secondary aluminum processing unit at a secondary aluminum production facility that is a major source. The owner or operator must comply with the emission limit calculated using the equation for D/F in paragraph (k)(3) of this section for each secondary aluminum processing unit at a secondary aluminum production facility that is a major or area source.

(1) The owner or operator must not discharge or allow to be discharged to the atmosphere any 3-day, 24-hour rolling average emissions of PM in excess of:

$$L_{C_{PM}} = \frac{\sum_{i=1}^{n}\left(L_{1i_{PM}} \times T_{1i}\right)}{\sum_{i=1}^{n}\left(T_{1i}\right)} \quad \text{(Eq. 1)}$$

Where,

L_{1iPM} = The PM emission limit for individual emission unit i in paragraph (i)(1) and (2) of this section for a group 1 furnace or in paragraph (j)(2) of this section for an in-line fluxer;

T_{1i} = The feed/charge rate for individual emission unit I; and

L_{cPM} = The PM emission limit for the secondary aluminum processing unit.

Note: In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the PM limit.

(2) The owner or operator must not discharge or allow to be discharged to the atmosphere any 3-day, 24-hour rolling average emissions of HCl in excess of:

$$L_{Cl_{HCl}} = \frac{\sum_{i=1}^{n}\left(L_{1i_{HCl}} \times T_{1i}\right)}{\sum_{i=1}^{n}\left(T_{1i}\right)} \quad \text{(Eq. 2)}$$

Where,

L_{1iHCl} = The HCl emission limit for individual emission unit i in paragraph (i)(4) of this section for a group 1 furnace or in paragraph (j)(1) of this section for an in-line fluxer; and

L_{cHCl} = The HCl emission limit for the secondary aluminum processing unit.

Note: In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the HCl limit.

(3) The owner or operator must not discharge or allow to be discharged to the atmosphere any 3-day, 24-hour rolling average emissions of D/F in excess of:

$$L_{C_{D/F}} = \frac{\sum_{i=1}^{n}\left(L_{1i_{D/F}} \times T_{1i}\right)}{\sum_{i=1}^{n}\left(T_{1i}\right)} \quad \text{(Eq. 3)}$$

Where,

$L_{1iD/F}$ = The D/F emission limit for individual emission unit i in paragraph (i)(3) of this section for a group 1 furnace; and

$L_{cD/F}$ = The D/F emission limit for the secondary aluminum processing unit.

Note: Clean charge furnaces cannot be included in this calculation since they are not subject to the D/F limit.

(4) The owner or operator of a SAPU at a secondary aluminum production facility that is a major source may demonstrate compliance with the emission limits of paragraphs (k)(1) through (3) of this section by demonstrating that each emission unit within the SAPU is in compliance with the applicable emission limits of paragraphs (i) and (j) of this section.

(5) The owner or operator of a SAPU at a secondary aluminum production facility that is an area source may demonstrate compliance with the emission limits of paragraph (k)(3) of this section by demonstrating that each emission unit within the SAPU is in compliance with the emission limit of paragraph (i)(3) of this section.

§ 63.1506 Operating requirements.

(a) *Summary.* (1) On and after the date on which the initial performance test is conducted or required to be conducted, whichever date is earlier, the owner or operator must operate all new and existing affected sources and control equipment according to the requirements in this section.

(2) The completion of the initial performance tests for SAPUs shall be considered to be the date of approval of the OM&M plan by the permitting authority.

(3) The owner or operator of an existing sweat furnace that meets the specifications of § 63.1505(f)(1) must operate the sweat furnace and control equipment according to the requirements of this section on and after the compliance date of this standard.

(4) The owner or operator of a new sweat furnace that meets the specifications of § 63.1505(f)(1) must operate the sweat furnace and control equipment according to the requirements of this section by March 23, 2000 or upon startup, whichever is later.

(5) Operating requirements are summarized in Table 2 to this subpart.

(b) *Labeling.* The owner or operator must provide and maintain easily visible labels posted at each group 1 furnace, group 2 furnace, in-line fluxer and scrap dryer/delacquering kiln/decoating kiln that identifies the applicable emission limits and means of compliance, including:

(1) The type of affected source or emission unit (*e.g.*, scrap dryer/delacquering kiln/decoating kiln, group 1 furnace, group 2 furnace, in-line fluxer).

(2) The applicable operational standard(s) and control method(s) (work practice or control device). This includes, but is not limited to, the type of charge to be used for a furnace (*e.g.*, clean scrap only, all scrap, etc.), flux materials and addition practices, and the applicable operating parameter ranges and requirements as incorporated in the OM&M plan.

(3) The afterburner operating temperature and design residence time for a scrap dryer/delacquering kiln/decoating kiln.

(c) *Capture/collection systems.* For each affected source or emission unit equipped with an add-on air pollution control device, the owner or operator must:

(1) Design and install a system for the capture and collection of emissions to meet the engineering standards for minimum exhaust rates as published by the American Conference of Governmental Industrial Hygienists in chapters 3 and 5 of "Industrial Ventilation: A Manual of Recommended Practice" (incorporated by reference in § 63.1502 of this subpart);

(2) Vent captured emissions through a closed system, except that dilution air may be added to emission streams for the purpose of controlling temperature at the inlet to a fabric filter; and

(3) Operate each capture/collection system according to the procedures and requirements in the OM&M plan.

(d) *Feed/charge weight.* The owner or operator of each affected source or emission unit subject to an emission limit in kg/Mg (lb/ton) of feed/charge must:

(1) Except as provided in paragraph (d)(3) of this section, install and operate a device that measures and records or otherwise determine the weight of feed/charge (or throughput) for each operating cycle or time period used in the performance test; and

(2) Operate each weight measurement system or other weight determination procedure in accordance with the OM&M plan.

(3) The owner or operator may chose to measure and record aluminum production weight from an affected source or emission unit rather than feed/charge weight to an affected source or emission unit, provided that:

(i) The aluminum production weight, rather than feed/charge weight is measured and recorded for all emission units within a SAPU; and

(ii) All calculations to demonstrate compliance with the emission limits for SAPUs are based on aluminum production weight rather than feed/charge weight.

(e) *Aluminum scrap shredder.* The owner or operator of a scrap shredder with emissions controlled by a fabric filter must operate a bag leak detection system, or a continuous opacity monitor, or conduct visible emissions observations.

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510, the owner or operator must:

(i) Initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the OM&M plan.

(ii) Operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, the owner or operator must initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the OM&M plan.

(3) If visible emission observations are used to meet the monitoring requirements in § 63.1510, the owner or operator must initiate corrective action within 1-hour of any observation of visible emissions during a daily visible emissions test and complete the corrective action procedures in accordance with the OM&M plan.

(f) *Thermal chip dryer.* The owner or operator of a thermal chip dryer with emissions controlled by an afterburner must:

(1) Maintain the 3-hour block average operating temperature of each afterburner at or above the average temperature established during the performance test.

(2) Operate each afterburner in accordance with the OM&M plan.

(3) Operate each thermal chip dryer using only unpainted aluminum chips as the feedstock.

(g) *Scrap dryer/delacquering kiln/decoating kiln.* The owner or operator of a scrap dryer/delacquering kiln/decoating kiln with emissions controlled by an afterburner and a lime-injected fabric filter must:

(1) For each afterburner,

(i) Maintain the 3-hour block average operating temperature of each afterburner at or above the average temperature established during the performance test.

(ii) Operate each afterburner in accordance with the OM&M plan.

(2) If a bag leak detection system is used to meet the fabric filter monitoring requirements in § 63.1510,

(i) Initiate corrective action within 1-hour of a bag leak detection system alarm and complete any necessary corrective action procedures in accordance with the OM&M plan.

(ii) Operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(3) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the OM&M plan.

(4) Maintain the 3-hour block average inlet temperature for each fabric filter at or below the average temperature established during the performance test, plus 14 °C (plus 25 °F).

(5) For a continuous injection device, maintain free-flowing lime in the hopper to the feed device at all times and maintain the lime feeder setting at the same level established during the performance test.

(h) *Sweat furnace.* The owner or operator of a sweat furnace with emissions controlled by an afterburner must:

(1) Maintain the 3-hour block average operating temperature of each afterburner at or above:

(i) The average temperature established during the performance test; or

(ii) 1600 °F if a performance test was not conducted, and the afterburner meets the specifications of § 63.1505(f)(1).

(2) Operate each afterburner in accordance with the OM&M plan.

(i) *Dross-only furnace.* The owner or operator of a dross-only furnace with emissions controlled by a fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510,

(i) Initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the OM&M plan.

(ii) Operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, initiate corrective action within 1-hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the OM&M plan.

(3) Operate each furnace using dross as the sole feedstock.

(j) *Rotary dross cooler.* The owner or operator of a rotary dross cooler with emissions controlled by a fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510,

(i) Initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the OM&M plan.

(ii) Operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, initiate corrective action within 1 hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the OM&M plan.

(3) For a continuous injection system, maintain free-flowing lime in the hopper to the feed device at all times and maintain the lime feeder setting at the same level established during the performance test.

(4) Maintain the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test at or below the average rate established during the performance test.

(k) *In-line fluxer.* The owner or operator of an in-line fluxer with emissions controlled by a lime-injected fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510,

(i) Initiate corrective action within 1-hour of a bag leak detection system alarm and complete the corrective action procedures in accordance with the OM&M plan.

(ii) Operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, initiate corrective action within 1 hour of any 6-minute average reading of 5 percent or more opacity and complete the corrective action procedures in accordance with the OM&M plan.

(3) Maintain the 3-hour block average inlet temperature for each fabric filter at or below the average temperature established during the performance test, plus 14 °C (plus 25 °F).

(4) For a continuous lime injection system, maintain free-flowing lime in the hopper to the feed device at all times and maintain the lime feeder setting at the same level established during the performance test.

(5) Maintain the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test at or below the average rate established during the performance test.

(6) Operate each sidewell furnace such that:

(i) The level of molten metal remains above the top of the passage between the side-well and hearth during reactive flux injection, unless the hearth also is equipped with an add-on control device.

(ii) Reactive flux is added only in the sidewell unless the hearth also is equipped with an add-on control device.

(l) *In-line fluxer using no reactive flux material.* The owner or operator of a new or existing in-line fluxer using no reactive flux materials must operate each in-line fluxer using no reactive flux materials.

(m) *Group 1 furnace with add-on air pollution control devices.* The owner or operator of a group 1 furnace with emissions controlled by a lime-injected fabric filter must:

(1) If a bag leak detection system is used to meet the monitoring requirements in § 63.1510, the owner or operator must:

(i) Initiate corrective action within 1 hour of a bag leak detection system alarm.

(ii) Complete the corrective action procedures in accordance with the OM&M plan.

(iii) Operate each fabric filter system such that the bag leak detection system alarm does not sound more than 5 percent of the operating time during a 6-month block reporting period. In calculating this operating time fraction, if inspection of the fabric filter demonstrates that no corrective action is required, no alarm time is counted. If corrective action is required, each alarm shall be counted as a minimum of 1 hour. If the owner or operator takes longer than 1 hour to initiate corrective action, the alarm time shall be counted as the actual amount of time taken by the owner or operator to initiate corrective action.

(2) If a continuous opacity monitoring system is used to meet the monitoring requirements in § 63.1510, the owner or operator must:

(i) Initiate corrective action within 1 hour of any 6-minute average reading of 5 percent or more opacity; and

(ii) Complete the corrective action procedures in accordance with the OM&M plan.

(3) Maintain the 3-hour block average inlet temperature for each fabric filter at or below the average temperature established during the performance test, plus 14 °C (plus 25 °F).

(4) For a continuous lime injection system, maintain free-flowing lime in the hopper to the feed device at all times and maintain the lime feeder setting at the same level established during the performance test.

(5) Maintain the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test at or below the average rate established during the performance test.

(6) Operate each sidewell furnace such that:

(i) The level of molten metal remains above the top of the passage between the side-well and hearth during reactive flux injection, unless the hearth also is equipped with an add-on control device.

(ii) Reactive flux is added only in the sidewell unless the hearth also is equipped with an add-on control device.

(n) *Group 1 furnace without add-on air pollution control devices.* The owner or operator of a group 1 furnace (including a group 1 furnace that is part of a secondary aluminum processing unit) without add-on air pollution control devices must:

(1) Maintain the total reactive chlorine flux injection rate for each operating cycle or time period used in the performance test at or below the average rate established during the performance test.

(2) Operate each furnace in accordance with the work practice/pollution prevention measures documented in the OM&M plan and within the parameter values or ranges established in the OM&M plan.

(3) Operate each group 1 melting/holding furnace subject to the emission standards in § 63.1505(i)(2) using only clean charge as the feedstock.

(o) *Group 2 furnace.* The owner or operator of a new or existing group 2 furnace must:

(1) Operate each furnace using only clean charge as the feedstock.

(2) Operate each furnace using no reactive flux.

(p) *Corrective action.* When a process parameter or add-on air pollution control device operating parameter deviates from the value or range established during the performance test and incorporated in the OM&M plan, the owner or operator must initiate corrective action. Corrective action must restore operation of the affected source or emission unit (including the process or control device) to its normal or usual mode of operation as expeditiously as practicable in accordance with good air pollution control practices for minimizing emissions. Corrective actions taken must include follow-up actions necessary to return the process or control device parameter level(s) to the value or range of values established during the performance test and steps to prevent the likely recurrence of the cause of a deviation.

§ 63.1507–§ 63.1509 [Reserved]

Monitoring and Compliance Requirements

§ 63.1510 Monitoring requirements.

(a) *Summary.* On and after the date the initial performance test is completed or required to be completed, whichever date is earlier, the owner or operator of a new or existing affected source or emission unit must monitor all control equipment and processes according to the requirements in this section. Monitoring requirements for each type of affected source and emission unit are summarized in Table 3 to this subpart.

(b) *Operation, maintenance, and monitoring (OM&M) plan.* The owner or operator must prepare and implement for each new or existing affected source and emission unit, a written operation, maintenance, and monitoring (OM&M) plan. The owner or operator must submit the plan to the applicable permitting authority for review and approval as part of the application for a part 70 or part 71 permit. Any subsequent changes to the plan must be submitted to the applicable permitting authority for review and approval. Pending approval by the applicable permitting authority of an initial or amended plan, the owner or operator must comply with the provisions of the submitted plan. Each plan must contain the following information:

(1) Process and control device parameters to be monitored to determine compliance, along with established operating levels or ranges, as applicable, for each process and control device.

(2) A monitoring schedule for each affected source and emission unit.

(3) Procedures for the proper operation and maintenance of each process unit and add-on control device used to meet the applicable emission limits or standards in § 63.1505.

(4) Procedures for the proper operation and maintenance of monitoring devices or systems used to determine compliance, including:

(i) Calibration and certification of accuracy of each monitoring device, at least once every 6 months, according to the manufacturer's instructions; and

(ii) Procedures for the quality control and quality assurance of continuous emission or opacity monitoring systems as required by the general provisions in subpart A of this part.

(5) Procedures for monitoring process and control device parameters, including procedures for annual inspections of afterburners, and if applicable, the procedure to be used for determining charge/feed (or throughput) weight if a measurement device is not used.

(6) Corrective actions to be taken when process or operating parameters or add-on control device parameters deviate from the value or range established in paragraph (b)(1) of this section, including:

(i) Procedures to determine and record the cause of an deviation or excursion, and the time the deviation or excursion began and ended; and

(ii) Procedures for recording the corrective action taken, the time corrective action was initiated, and the time/date corrective action was completed.

(7) A maintenance schedule for each process and control device that is consistent with the manufacturer's instructions and recommendations for routine and long-term maintenance.

(8) Documentation of the work practice and pollution prevention measures used to achieve compliance with the applicable emission limits and a site-specific monitoring plan as required in paragraph (o) of this section for each group 1 furnace not equipped with an add-on air pollution control device.

(c) *Labeling.* The owner or operator must inspect the labels for each group 1 furnace, group 2 furnace, in-line fluxer and scrap dryer/delacquering kiln/decoating kiln at least once per calendar month to confirm that posted labels as required by the operational standard in § 63.1506(b) are intact and legible.

(d) *Capture/collection system.* The owner or operator must:

(1) Install, operate, and maintain a capture/collection system for each affected source and emission unit equipped with an add-on air pollution control device; and

(2) Inspect each capture/collection and closed vent system at least once each calendar year to ensure that each system is operating in accordance with the operating requirements in § 63.1506(c) and record the results of each inspection.

(e) *Feed/charge weight.* The owner or operator of an affected source or emission unit subject to an emission limit in kg/Mg (lb/ton) or µg/Mg (gr/ton) of feed/charge must install, calibrate, operate, and maintain a device to measure and record the total weight of feed/charge to, or the aluminum production from, the affected source or emission unit over the same operating cycle or time period used in the performance test. Feed/charge or aluminum production within SAPUs must be measured and recorded on an emission unit-by-emission unit basis. As an alternative to a measurement device, the owner or operator may use a procedure acceptable to the applicable permitting authority to determine the total weight of feed/charge or aluminum production to the affected source or emission unit.

(1) The accuracy of the weight measurement device or procedure must

be ±1 percent of the weight being measured. The owner or operator may apply to the permitting agency for approval to use a device of alternative accuracy if the required accuracy cannot be achieved as a result of equipment layout or charging practices. A device of alternative accuracy will not be approved unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standard.

(2) The owner or operator must verify the calibration of the weight measurement device in accordance with the schedule specified by the manufacturer, or if no calibration schedule is specified, at least once every 6 months.

(f) *Fabric filters and lime-injected fabric filters.* The owner or operator of an affected source or emission unit using a fabric filter or lime-injected fabric filter to comply with the requirements of this subpart must install, calibrate, maintain, and continuously operate a bag leak detection system as required in paragraph (f)(1) of this section or a continuous opacity monitoring system as required in paragraph (f)(2) of this section. The owner or operator of an aluminum scrap shredder must install and operate a bag leak detection system as required in paragraph (f)(1) of this section, install and operate a continuous opacity monitoring system as required in paragraph (f)(2) of this section, or conduct visible emission observations as required in paragraph (f)(3) of this section.

(1) These requirements apply to the owner or operator of a new or existing affected source or existing emission unit using a bag leak detection system.

(i) The owner or operator must install and operate a bag leak detection system for each exhaust stack of a fabric filter.

(ii) Each triboelectric bag leak detection system must be installed, calibrated, operated, and maintained according to the "Fabric Filter Bag Leak Detection Guidance," (September 1997). This document is available from the U.S. Environmental Protection Agency; Office of Air Quality Planning and Standards; Emissions, Monitoring and Analysis Division; Emission Measurement Center (MD–19), Research Triangle Park, NC 27711. This document also is available on the Technology Transfer Network (TTN) under Emission Measurement Technical Information (EMTIC), Continuous Emission Monitoring. Other bag leak detection systems must be installed, operated, calibrated, and maintained in a manner consistent with the manufacturer's written specifications and recommendations.

(iii) The bag leak detection system must be certified by the manufacturer to be capable of detecting PM emissions at concentrations of 10 milligrams per actual cubic meter (0.0044 grains per actual cubic foot) or less.

(iv) The bag leak detection system sensor must provide output of relative or absolute PM loadings.

(v) The bag leak detection system must be equipped with a device to continuously record the output signal from the sensor.

(vi) The bag leak detection system must be equipped with an alarm system that will sound automatically when an increase in relative PM emissions over a preset level is detected. The alarm must be located where it is easily heard by plant operating personnel.

(vii) For positive pressure fabric filter systems, a bag leak detection system must be installed in each baghouse compartment or cell. For negative pressure or induced air fabric filters, the bag leak detector must be installed downstream of the fabric filter.

(viii) Where multiple detectors are required, the system's instrumentation and alarm may be shared among detectors.

(ix) The baseline output must be established by adjusting the range and the averaging period of the device and establishing the alarm set points and the alarm delay time.

(x) Following initial adjustment of the system, the owner or operator must not adjust the sensitivity or range, averaging period, alarm set points, or alarm delay time except as detailed in the OM&M plan. In no case may the sensitivity be increased by more than 100 percent or decreased more than 50 percent over a 365-day period unless such adjustment follows a complete fabric filter inspection which demonstrates that the fabric filter is in good operating condition.

(2) These requirements apply to the owner or operator of a new or existing affected source or an existing emission unit using a continuous opacity monitoring system.

(i) The owner or operator must install, calibrate, maintain, and operate a continuous opacity monitoring system to measure and record the opacity of emissions exiting each exhaust stack.

(ii) Each continuous opacity monitoring system must meet the design and installation requirements of Performance Specification 1 in appendix B to 40 CFR part 60.

(3) These requirements apply to the owner or operator of a new or existing aluminum scrap shredder who conducts visible emission observations. The owner or operator must:

(i) Perform a visible emissions test for each aluminum scrap shredder using a certified observer at least once a day according to the requirements of Method 9 in appendix A to 40 CFR part 60. Each Method 9 test must consist of five 6-minute observations in a 30-minute period; and

(ii) Record the results of each test.

(g) *Afterburner.* These requirements apply to the owner or operator of an affected source using an afterburner to comply with the requirements of this subpart.

(1) The owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the operating temperature of the afterburner consistent with the requirements for continuous monitoring systems in subpart A of this part.

(2) The temperature monitoring device must meet each of these performance and equipment specifications:

(i) The temperature monitoring device must be installed at the exit of the combustion zone of each afterburner.

(ii) The monitoring system must record the temperature in 15-minute block averages and determine and record the average temperature for each 3-hour block period.

(iii) The recorder response range must include zero and 1.5 times the average temperature established according to the requirements in § 63.1512(m).

(iv) The reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or alternate reference, subject to approval by the Administrator.

(3) The owner or operator must conduct an inspection of each afterburner at least once a year and record the results. At a minimum, an inspection must include:

(i) Inspection of all burners, pilot assemblies, and pilot sensing devices for proper operation and clean pilot sensor;

(ii) Inspection for proper adjustment of combustion air;

(iii) Inspection of internal structures (*e.g.*, baffles) to ensure structural integrity;

(iv) Inspection of dampers, fans, and blowers for proper operation;

(v) Inspection for proper sealing;

(vi) Inspection of motors for proper operation;

(vii) Inspection of combustion chamber refractory lining and clean and replace lining as necessary;

(viii) Inspection of afterburner shell for corrosion and/or hot spots;

(ix) Documentation, for the burn cycle that follows the inspection, that the afterburner is operating properly and any necessary adjustments have been made; and

(x) Verification that the equipment is maintained in good operating condition.

(xi) Following an equipment inspection, all necessary repairs must be completed in accordance with the requirements of the OM&M plan.

(h) *Fabric filter inlet temperature.* These requirements apply to the owner or operator of a scrap dryer/delacquering kiln/decoating kiln or a group 1 furnace using a lime-injected fabric filter to comply with the requirements of this subpart.

(1) The owner or operator must install, calibrate, maintain, and operate a device to continuously monitor and record the temperature of the fabric filter inlet gases consistent with the requirements for continuous monitoring systems in subpart A of this part.

(2) The temperature monitoring device must meet each of these performance and equipment specifications:

(i) The monitoring system must record the temperature in 15-minute block averages and calculate and record the average temperature for each 3-hour block period.

(ii) The recorder response range must include zero and 1.5 times the average temperature established according to the requirements in § 63.1512(n).

(iii) The reference method must be a National Institute of Standards and Technology calibrated reference thermocouple-potentiometer system or alternate reference, subject to approval by the Administrator.

(i) *Lime injection.* These requirements apply to the owner or operator of an affected source or emission unit using a lime-injected fabric filter to comply with the requirements of this subpart.

(1) The owner or operator of a continuous lime injection system must verify that lime is always free-flowing by either:

(i) Inspecting each feed hopper or silo at least once each 8-hour period and recording the results of each inspection. If lime is found not to be free-flowing during any of the 8-hour periods, the owner or operator must increase the frequency of inspections to at least once every 4-hour period for the next 3 days. The owner or operator may return to inspections at least once every 8 hour period if corrective action results in no further blockages of lime during the 3-day period; or

(ii) Subject to the approval of the permitting agency, installing, operating and maintaining a load cell, carrier gas/lime flow indicator, carrier gas pressure drop measurement system or other system to confirm that lime is free-flowing. If lime is found not to be free-flowing, the owner or operator must promptly initiate and complete corrective action, or

(iii) Subject to the approval of the permitting agency, installing, operating and maintaining a device to monitor the concentration of HCl at the outlet of the fabric filter. If an increase in the concentration of HCl indicates that the lime is not free-flowing, the owner or operator must promptly initiate and complete corrective action.

(2) The owner or operator of a continuous lime injection system must record the lime feeder setting once each day of operation.

(3) An owner or operator who intermittently adds lime to a lime coated fabric filter must obtain approval from the permitting authority for a lime addition monitoring procedure. The permitting authority will not approve a monitoring procedure unless data and information are submitted establishing that the procedure is adequate to ensure that relevant emission standards will be met on a continuous basis.

(j) *Total reactive flux injection rate.* These requirements apply to the owner or operator of a group 1 furnace (with or without add-on air pollution control devices) or in-line fluxer. The owner or operator must:

(1) Install, calibrate, operate, and maintain a device to continuously measure and record the weight of gaseous or liquid reactive flux injected to each affected source or emission unit.

(i) The monitoring system must record the weight for each 15-minute block period, during which reactive fluxing occurs, over the same operating cycle or time period used in the performance test.

(ii) The accuracy of the weight measurement device must be ±1 percent of the weight of the reactive component of the flux being measured. The owner or operator may apply to the permitting authority for permission to use a weight measurement device of alternative accuracy in cases where the reactive flux flow rates are so low as to make the use of a weight measurement device of ±1 percent impracticable. A device of alternative accuracy will not be approved unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standards.

(iii) The owner or operator must verify the calibration of the weight measurement device in accordance with the schedule specified by the manufacturer, or if no calibration schedule is specified, at least once every 6 months.

(2) Calculate and record the gaseous or liquid reactive flux injection rate (kg/Mg or lb/ton) for each operating cycle or time period used in the performance test using the procedure in § 63.1512(o).

(3) Record, for each 15-minute block period during each operating cycle or time period used in the performance test during which reactive fluxing occurs, the time, weight, and type of flux for each addition of:

(i) Gaseous or liquid reactive flux other than chlorine; and

(ii) Solid reactive flux.

(4) Calculate and record the total reactive flux injection rate for each operating cycle or time period used in the performance test using the procedure in § 63.1512(o).

(5) The owner or operator of a group 1 furnace or in-line fluxer performing reactive fluxing may apply to the Administrator for approval of an alternative method for monitoring and recording the total reactive flux addition rate based on monitoring the weight or quantity of reactive flux per ton of feed/charge for each operating cycle or time period used in the performance test. An alternative monitoring method will not be approved unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standards on a continuous basis.

(k) *Thermal chip dryer.* These requirements apply to the owner or operator of a thermal chip dryer with emissions controlled by an afterburner. The owner or operator must:

(1) Record the type of materials charged to the unit for each operating cycle or time period used in the performance test.

(2) Submit a certification of compliance with the applicable operational standard for charge materials in § 63.1506(f)(3) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(i).

(l) *Dross-only furnace.* These requirements apply to the owner or operator of a dross-only furnace. The owner or operator must:

(1) Record the materials charged to each unit for each operating cycle or time period used in the performance test.

(2) Submit a certification of compliance with the applicable operational standard for charge materials in § 63.1506(i)(3) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(ii).

(m) *In-line fluxers using no reactive flux.* The owner or operator of an in-line fluxer that uses no reactive flux

materials must submit a certification of compliance with the operational standard for no reactive flux materials in § 63.1506(l) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(vi).

(n) *Sidewell group 1 furnace with add-on air pollution control devices.* These requirements apply to the owner or operator of a sidewell group 1 furnace using add-on air pollution control devices. The owner or operator must:

(1) Record in an operating log for each charge of a sidewell furnace that the level of molten metal was above the top of the passage between the sidewell and hearth during reactive flux injection, unless the furnace hearth was also equipped with an add-on control device.

(2) Submit a certification of compliance with the operational standards in § 63.1506(m)(7) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(iii).

(o) *Group 1 furnace without add-on air pollution control devices.* These requirements apply to the owner or operator of a group 1 furnace that is not equipped with an add-on air pollution control device.

(1) The owner or operator must develop, in consultation with the applicable permitting authority, a written site-specific monitoring plan. The site-specific monitoring plan must be part of the OM&M plan that addresses monitoring and compliance requirements for PM, HCl, and D/F emissions.

(i) The owner or operator of an existing affected source must submit the site-specific monitoring plan to the applicable permitting authority for review at least 6 months prior to the compliance date.

(ii) The permitting authority will review and approve or disapprove a proposed plan, or request changes to a plan, based on whether the plan contains sufficient provisions to ensure continuing compliance with applicable emission limits and demonstrates, based on documented test results, the relationship between emissions of PM, HCl, and D/F and the proposed monitoring parameters for each pollutant. Test data must establish the highest level of PM, HCl, and D/F that will be emitted from the furnace. Subject to permitting agency approval of the OM&M plan, this may be determined by conducting performance tests and monitoring operating parameters while charging the furnace with feed/charge materials containing the highest anticipated levels of oils and coatings and fluxing at the highest anticipated rate.

(2) Each site-specific monitoring plan must document each work practice, equipment/design practice, pollution prevention practice, or other measure used to meet the applicable emission standards.

(3) Each site-specific monitoring plan must include provisions for unit labeling as required in paragraph (c) of this section, feed/charge weight measurement (or production weight measurement) as required in paragraph (e) of this section and flux weight measurement as required in paragraph (j) of this section.

(4) Each site-specific monitoring plan for a melting/holding furnace subject to the clean charge emission standard in § 63.1505(i)(3) must include these requirements:

(i) The owner or operator must record the type of feed/ charge (*e.g.*, ingot, thermally dried chips, dried scrap, etc.) for each operating cycle or time period used in the performance test; and

(ii) The owner or operator must submit a certification of compliance with the applicable operational standard for clean charge materials in § 63.1506(n)(3) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(iv).

(5) If a continuous emission monitoring system is included in a site-specific monitoring plan, the plan must include provisions for the installation, operation, and maintenance of the system to provide quality-assured measurements in accordance with all applicable requirements of the general provisions in subpart A of this part.

(6) If a continuous opacity monitoring system is included in a site-specific monitoring plan, the plan must include provisions for the installation, operation, and maintenance of the system to provide quality-assured measurements in accordance with all applicable requirements of this subpart.

(7) If a site-specific monitoring plan includes a scrap inspection program for monitoring the scrap contaminant level of furnace feed/charge materials, the plan must include provisions for the demonstration and implementation of the program in accordance with all applicable requirements in paragraph (p) of this section.

(8) If a site-specific monitoring plan includes a calculation method for monitoring the scrap contaminant level of furnace feed/charge materials, the plan must include provisions for the demonstration and implementation of the program in accordance with all applicable requirements in paragraph (q) of this section.

(p) *Scrap inspection program for group 1 furnace without add-on air pollution control devices.* A scrap inspection program must include:

(1) A proven method for collecting representative samples and measuring the oil and coatings content of scrap samples;

(2) A scrap inspector training program;

(3) An established correlation between visual inspection and physical measurement of oil and coatings content of scrap samples;

(4) Periodic physical measurements of oil and coatings content of randomly-selected scrap samples and comparison with visual inspection results;

(5) A system for assuring that only acceptable scrap is charged to an affected group 1 furnace; and

(6) Recordkeeping requirements to document conformance with plan requirements.

(q) *Monitoring of scrap contamination level by calculation method for group 1 furnace without add-on air pollution control devices.* The owner or operator of a group 1 furnace dedicated to processing a distinct type of furnace feed/charge composed of scrap with a uniform composition (such as rejected product from a manufacturing process for which the coating-to-scrap ratio can be documented) may include a program in the site-specific monitoring plan for determining, monitoring, and certifying the scrap contaminant level using a calculation method rather than a scrap inspection program. A scrap contaminant monitoring program using a calculation method must include:

(1) Procedures for the characterization and documentation of the contaminant level of the scrap prior to the performance test.

(2) Limitations on the furnace feed/ charge to scrap of the same composition as that used in the performance test. If the performance test was conducted with a mixture of scrap and clean charge, limitations on the proportion of scrap in the furnace feed/charge to no greater than the proportion used during the performance test.

(3) Operating, monitoring, recordkeeping, and reporting requirements to ensure that no scrap with a contaminant level higher than that used in the performance test is charged to the furnace.

(r) *Group 2 furnace.* These requirements apply to the owner or operator of a new or existing group 2 furnace. The owner or operator must:

(1) Record a description of the materials charged to each furnace,

including any nonreactive, non-HAP-containing/non-HAP-generating fluxing materials or agents.

(2) Submit a certification of compliance with the applicable operational standard for charge materials in § 63.1506(o) for each 6-month reporting period. Each certification must contain the information in § 63.1516(b)(2)(v).

(s) *Site-specific requirements for secondary aluminum processing units.* (1) An owner or operator of a secondary aluminum processing unit at a facility must include, within the OM&M plan prepared in accordance with § 63.1510(b), the following information:

(i) The identification of each emission unit in the secondary aluminum processing unit;

(ii) The specific control technology or pollution prevention measure to be used for each emission unit in the secondary aluminum processing unit and the date of its installation or application;

(iii) The emission limit calculated for each secondary aluminum processing unit and performance test results with supporting calculations demonstrating initial compliance with each applicable emission limit;

(iv) Information and data demonstrating compliance for each emission unit with all applicable design, equipment, work practice or operational standards of this subpart; and

(v) The monitoring requirements applicable to each emission unit in a secondary aluminum processing unit and the monitoring procedures for daily calculation of the 3-day, 24-hour rolling average using the procedure in § 63.1510(t).

(2) The SAPU compliance procedures within the OM&M plan may not contain any of the following provisions:

(i) Any averaging among emissions of differing pollutants;

(ii) The inclusion of any affected sources other than emission units in a secondary aluminum processing unit;

(iii) The inclusion of any emission unit while it is shutdown; or

(iv) The inclusion of any periods of startup, shutdown, or malfunction in emission calculations.

(3) To revise the SAPU compliance provisions within the OM&M plan prior to the end of the permit term, the owner or operator must submit a request to the applicable permitting authority containing the information required by paragraph (s)(1) of this section and obtain approval of the applicable permitting authority prior to implementing any revisions.

(t) *Secondary aluminum processing unit.* Except as provided in paragraph (u) of this section, the owner or operator must calculate and record the 3-day, 24-hour rolling average emissions of PM, HCl, and D/F for each secondary aluminum processing unit on a daily basis. To calculate the 3-day, 24-hour rolling average, the owner or operator must:

(1) Calculate and record the total weight of material charged to each emission unit in the secondary aluminum processing unit for each 24-hour day of operation using the feed/ charge weight information required in paragraph (e) of this section. If the owner or operator chooses to comply on the basis of weight of aluminum produced by the emission unit, rather than weight of material charged to the emission unit, all performance test emissions results and all calculations must be conducted on the aluminum production weight basis.

(2) Multiply the total feed/charge weight to the emission unit, or the weight of aluminum produced by the emission unit, for each emission unit for the 24-hour period by the emission rate (in lb/ton of feed/charge) for that emission unit (as determined during the performance test) to provide emissions for each emission unit for the 24-hour period, in pounds.

(3) Divide the total emissions for each SAPU for the 24-hour period by the total material charged to the SAPU, or the weight of aluminum produced by the SAPU over the 24-hour period to provide the daily emission rate for the SAPU.

(4) Compute the 24-hour daily emission rate using Equation 4:

$$E_{day} = \frac{\sum_{i=1}^{n} \left(T_i \times ER_i \right)}{\sum_{i=1}^{n} T_i} \qquad \text{(Eq. 4)}$$

Where,

E_{day} = The daily PM, HCl, or D/F emission rate for the secondary aluminum processing unit for the 24-hour period;

T_i = The total amount of feed, or aluminum produced, for emission unit i for the 24-hour period (tons);

ER_i = The measured emission rate for emission unit i as determined in the performance test (lb/ton or µg/Mg of feed/charge); and

n = The number of emission units in the secondary aluminum processing unit.

(5) Calculate and record the 3-day, 24-hour rolling average for each pollutant each day by summing the daily emission rates for each pollutant over the 3 most recent consecutive days and dividing by 3.

(u) *Secondary aluminum processing unit compliance by individual emission unit demonstration.* As an alternative to the procedures of paragraph (t) of this section, an owner or operator may demonstrate, through performance tests, that each individual emission unit within the secondary aluminum production unit is in compliance with the applicable emission limits for the emission unit.

(v) *Alternative monitoring method for lime addition.* The owner or operator of a lime-coated fabric filter that employs intermittent or noncontinuous lime addition may apply to the Administrator for approval of an alternative method for monitoring the lime addition schedule and rate based on monitoring the weight of lime added per ton of feed/charge for each operating cycle or time period used in the performance test. An alternative monitoring method will not be approved unless the owner or operator provides assurance through data and information that the affected source will meet the relevant emission standards on a continuous basis.

(w) *Alternative monitoring methods.* An owner or operator may submit an application to the Administrator for approval of alternate monitoring requirements to demonstrate compliance with the emission standards of this subpart, subject to the provisions of paragraphs (w)(1) through (6) of this section.

(1) The Administrator will not approve averaging periods other than those specified in this section.

(2) The owner or operator must continue to use the original monitoring requirement until necessary data are submitted and approval is received to use another monitoring procedure.

(3) The owner or operator shall submit the application for approval of alternate monitoring methods no later than the notification of the performance test. The application must contain the information specified in paragraphs (w)(3) (i) through (iii) of this section:

(i) Data or information justifying the request, such as the technical or economic infeasibility, or the impracticality of using the required approach;

(ii) A description of the proposed alternative monitoring requirements, including the operating parameters to be monitored, the monitoring approach and technique, and how the limit is to be calculated; and

(iii) Data and information documenting that the alternative monitoring requirement(s) would provide equivalent or better assurance of compliance with the relevant emission standard(s).

(4) The Administrator will not approve an alternate monitoring application unless it would provide equivalent or better assurance of compliance with the relevant emission standard(s). Before disapproving any alternate monitoring application, the Administrator will provide:

(i) Notice of the information and findings upon which the intended disapproval is based; and

(ii) Notice of opportunity for the owner or operator to present additional supporting information before final action is taken on the application. This notice will specify how much additional time is allowed for the owner or operator to provide additional supporting information.

(5) The owner or operator is responsible for submitting any supporting information in a timely manner to enable the Administrator to consider the application prior to the performance test. Neither submittal of an application nor the Administrator's failure to approve or disapprove the application relieves the owner or operator of the responsibility to comply with any provisions of this subpart.

(6) The Administrator may decide at any time, on a case-by-case basis, that additional or alternative operating limits, or alternative approaches to establishing operating limits, are necessary to demonstrate compliance with the emission standards of this subpart.

§ 63.1511 Performance test/compliance demonstration general requirements.

(a) *Site-specific test plan.* Prior to conducting a performance test required by this subpart, the owner or operator must prepare and submit a site-specific test plan meeting the requirements in § 63.7(c).

(b) *Initial performance test.* Following approval of the site-specific test plan, the owner or operator must demonstrate initial compliance with each applicable emission, equipment, work practice, or operational standard for each affected source and emission unit, and report the results in the notification of compliance status report as described in § 63.1515(b). The owner or operator must conduct each performance test according to the requirements of the general provisions in subpart A of this part and this subpart. Owners or operators of affected sources located at facilities which are area sources are subject only to those performance testing requirements pertaining to D/F. Owners or operators of sweat furnaces meeting the specifications of § 63.1505(f)(1) are not required to conduct a performance test.

(1) The owner or operator must conduct each test while the affected source or emission unit is operating at the highest production level with charge materials representative of the range of materials processed by the unit and, if applicable, at the highest reactive fluxing rate.

(2) Each performance test for a continuous process must consist of 3 separate runs; pollutant sampling for each run must be conducted for the time period specified in the applicable method or, in the absence of a specific time period in the test method, for a minimum of 3 hours.

(3) Each performance test for a batch process must consist of three separate runs; pollutant sampling for each run must be conducted over the entire process operating cycle.

(4) Where multiple affected sources or emission units are exhausted through a common stack, pollutant sampling for each run must be conducted over a period of time during which all affected sources or emission units complete at least 1 entire process operating cycle or for 24 hours, whichever is shorter.

(5) Initial compliance with an applicable emission limit or standard is demonstrated if the average of three runs conducted during the performance test is less than or equal to the applicable emission limit or standard.

(c) *Test methods.* The owner or operator must use the following methods in appendix A to 40 CFR part 60 to determine compliance with the applicable emission limits or standards:

(1) Method 1 for sample and velocity traverses.

(2) Method 2 for velocity and volumetric flow rate.

(3) Method 3 for gas analysis.

(4) Method 4 for moisture content of the stack gas.

(5) Method 5 for the concentration of PM.

(6) Method 9 for visible emission observations.

(7) Method 23 for the concentration of D/F.

(8) Method 25A for the concentration of THC, as propane.

(9) Method 26A for the concentration of HCl. Where a lime-injected fabric filter is used as the control device to comply with the 90 percent reduction standard, the owner or operator must measure the fabric filter inlet concentration of HCl at a point before lime is introduced to the system.

(d) *Alternative methods.* The owner or operator may use an alternative test method, subject to approval by the Administrator.

(e) *Repeat tests.* The owner or operator of new or existing affected sources and emission units located at secondary aluminum production facilities that are major sources must conduct a performance test every 5 years following the initial performance test.

(f) *Testing of representative emission units.* With the approval of the permitting authority, a single representative or similar group 1 furnace or in-line fluxer which is not controlled by an add-on control device may be tested to determine the emission rate of all like affected sources at a facility provided that:

(1) The tested emission unit must use identical feed/charge and flux materials in the same proportions as the emission units that it represents;

(2) The tested emission unit is subject to the same work practices and the emission units that it represents;

(3) The tested emission unit is of the same design as the emission units that it represents;

(4) The tested emission unit is tested under the highest load or capacity reasonably expected to occur for any of the emission units that it represents;

(5) At least one of each different style of emission unit at the facility is tested; and

(6) All add-on control devices are tested.

(g) *Establishment of monitoring and operating parameter values.* The owner or operator of new or existing affected sources and emission units must establish a minimum or maximum operating parameter value, or an operating parameter range for each parameter to be monitored as required by § 63.1510 that ensures compliance with the applicable emission limit or standard. To establish the minimum or maximum value or range, the owner or operator must use the appropriate procedures in this section and submit the information required by § 63.1515(b)(4) in the notification of compliance status report. The owner or operator may use existing data in addition to the results of performance tests to establish operating parameter values for compliance monitoring provided each of the following conditions are met to the satisfaction of the applicable permitting authority:

(1) The complete emission test report(s) used as the basis of the parameter(s) is submitted.

(2) The same test methods and procedures as required by this subpart were used in the test.

(3) The owner or operator certifies that no design or work practice changes have been made to the source, process, or emission control equipment since the time of the report.

(4) All process and control equipment operating parameters required to be monitored as required in this subpart and documented in the test report.

§ 63.1512 Performance test/compliance demonstration requirements and procedures.

(a) *Aluminum scrap shredder.* The owner or operator must conduct performance tests to measure PM emissions at the outlet of the control system. If visible emission observations is the selected monitoring option, the owner or operator must record visible emission observations from each exhaust stack for all consecutive 6-minute periods during the PM emission test according to the requirements of Method 9 in appendix A to 40 CFR part 60.

(b) *Thermal chip dryer.* The owner or operator must conduct a performance test to measure THC and D/F emissions at the outlet of the control device while the unit processes only unpainted aluminum chips.

(c) *Scrap dryer/delacquering kiln/decoating kiln.* The owner or operator must conduct performance tests to measure emissions of THC, D/F, HCl, and PM at the outlet of the control device.

(1) If the scrap dryer/delacquering kiln/decoating kiln is subject to the alternative emission limits in § 63.1505(e), the average afterburner operating temperature in each 3-hour block period must be maintained at or above 760 °C (1400 °F) for the test.

(2) The owner or operator of a scrap dryer/delacquering kiln/decoating kiln subject to the alternative limits in § 63.1505(e) must submit a written certification in the notification of compliance status report containing the information required by § 63.1515(b)(7).

(d) *Group 1 furnace with add-on air pollution control devices.* (1) The owner or operator of a group 1 furnace that processes scrap other than clean charge materials with emissions controlled by a lime-injected fabric filter must conduct performance tests to measure emissions of PM and D/F at the outlet of the control device and emissions of HCl at the outlet (for the emission limit) or the inlet and the outlet (for the percent reduction standard).

(2) The owner or operator of a group 1 furnace that processes only clean charge materials with emissions controlled by a lime-injected fabric filter must conduct performance tests to measure emissions of PM at the outlet of the control device and emissions of HCl at the outlet (for the emission limit) or the inlet and the outlet (for the percent reduction standard).

(3) The owner or operator may choose to determine the rate of reactive flux addition to the group 1 furnace and assume, for the purposes of demonstrating compliance with the SAPU emission limit, that all reactive flux added to the group 1 furnace is emitted. Under these circumstances, the owner or operator is not required to conduct an emission test for HCl.

(4) The owner or operator of a sidewell group 1 furnace that conducts reactive fluxing (except for cover flux) in the hearth, or that conducts reactive fluxing in the sidewell at times when the level of molten metal falls below the top of the passage between the sidewell and the hearth, must conduct the performance tests required by paragraph (d)(1) or (d)(2) of this section, to measure emissions from both the sidewell and the hearth.

(e) *Group 1 furnace (including melting holding furnaces) without add-on air pollution control devices.* In the site-specific monitoring plan required by § 63.1510(o), the owner or operator of a group 1 furnace (including a melting/holding furnaces) without add-on air pollution control devices must include data and information demonstrating compliance with the applicable emission limits.

(1) If the group 1 furnace processes other than clean charge material, the owner or operator must conduct emission tests to measure emissions of PM, HCl, and D/F at the furnace exhaust outlet.

(2) If the group 1 furnace processes only clean charge, the owner or operator must conduct emission tests to simultaneously measure emissions of PM and HCl at the furnace exhaust outlet. A D/F test is not required. Each test must be conducted while the group 1 furnace (including a melting/holding furnace) processes only clean charge.

(3) The owner or operator may choose to determine the rate of reactive flux addition to the group 1 furnace and assume, for the purposes of demonstrating compliance with the SAPU emission limit, that all reactive flux added to the group 1 furnace is emitted. Under these circumstances, the owner or operator is not required to conduct an emission test for HCl.

(f) *Sweat furnace.* Except as provided in § 63.1505(f)(1), the owner or operator must measure emissions of D/F from each sweat furnace at the outlet of the control device.

(g) *Dross-only furnace.* The owner or operator must conduct a performance test to measure emissions of PM from each dross-only furnace at the outlet of each control device while the unit processes only dross.

(h) *In-line fluxer.* (1) The owner or operator must conduct a performance test to measure emissions of HCl and PM. If the in-line fluxer is equipped with an add-on control device, the emissions must be measured at the outlet of the control device. If the in-line fluxer uses no reactive flux materials, emission tests for PM and HCl are not required.

(2) The owner or operator may choose to determine the rate of reactive flux addition to the in-line fluxer and assume, for the purposes of demonstrating compliance with the SAPU emission limit, that all reactive flux added to the in-line fluxer is emitted. Under these circumstances, the owner or operator is not required to conduct an emission test for HCl.

(i) *Rotary dross cooler.* The owner or operator must conduct a performance test to measure PM emissions at the outlet of the control device.

(j) *Secondary aluminum processing unit.* The owner or operator must conduct performance tests as described in paragraphs (j)(1) through (3) of this section. The results of the performance tests are used to establish emission rates in lb/ton of feed/charge for PM and HCl and µg TEQ/Mg of feed/charge for D/F emissions from each emission unit. These emission rates are used for compliance monitoring in the calculation of the 3-day, 24-hour rolling average emission rates using the equation in § 63.1510(t). A performance test is required for:

(1) Each group 1 furnace processing only clean charge to measure emissions of PM and either:

(i) Emissions of HCl (for the emission limit); or

(ii) The mass flow rate of HCl at the inlet to and outlet from the control device (for the percent reduction standard).

(2) Each group 1 furnace that processes scrap other than clean charge to measure emissions of PM and D/F and either:

(i) Emissions of HCl (for the emission limit); or

(ii) The mass flow rate of HCl at the inlet to and outlet from the control device (for the percent reduction standard).

(3) Each in-line fluxer to measure emissions of PM and HCl.

(k) *Feed/charge weight measurement.* During the emission test(s) conducted to determine compliance with emission limits in a kg/Mg (lb/ton) format, the owner or operator of an affected source or emission unit, subject to an emission limit in a kg/Mg (lb/ton) of feed/charge

format, must measure (or otherwise determine) and record the total weight of feed/charge to the affected source or emission unit for each of the three test runs and calculate and record the total weight. An owner or operator that chooses to demonstrate compliance on the basis of the aluminum production weight must measure the weight of aluminum produced by the emission unit or affected source instead of the feed/charge weight.

(l) *Continuous opacity monitoring system.* The owner or operator of an affected source or emission unit using a continuous opacity monitoring system must conduct a performance evaluation to demonstrate compliance with Performance Specification 1 in appendix B to 40 CFR part 60. Following the performance evaluation, the owner or operator must measure and record the opacity of emissions from each exhaust stack for all consecutive 6-minute periods during the PM emission test.

(m) *Afterburner.* These requirements apply to the owner or operator of an affected source using an afterburner to comply with the requirements of this subpart.

(1) Prior to the initial performance test, the owner or operator must conduct a performance evaluation for the temperature monitoring device according to the requirements of § 63.8.

(2) The owner or operator must use these procedures to establish an operating parameter value or range for the afterburner operating temperature.

(i) Continuously measure and record the operating temperature of each afterburner every 15 minutes during the THC and D/F performance tests;

(ii) Determine and record the 15-minute block average temperatures for the three test runs; and

(iii) Determine and record the 3-hour block average temperature measurements for the 3 test runs.

(n) *Inlet gas temperature.* The owner or operator of a scrap dryer/delacquering kiln/decoating kiln or a group 1 furnace using a lime-injected fabric filter must use these procedures to establish an operating parameter value or range for the inlet gas temperature.

(1) Continuously measure and record the temperature at the inlet to the lime-injected fabric filter every 15 minutes during the HCl and D/F performance tests;

(2) Determine and record the 15-minute block average temperatures for the 3 test runs; and

(3) Determine and record the 3-hour block average of the recorded temperature measurements for the 3 test runs.

(o) *Flux injection rate.* The owner or operator must use these procedures to establish an operating parameter value or range for the total reactive chlorine flux injection rate.

(1) Continuously measure and record the weight of gaseous or liquid reactive flux injected for each 15 minute period during the HCl and D/F tests, determine and record the 15-minute block average weights, and calculate and record the total weight of the gaseous or liquid reactive flux for the 3 test runs;

(2) Record the identity, composition, and total weight of each addition of solid reactive flux for the 3 test runs;

(3) Determine the total reactive chlorine flux injection rate by adding the recorded measurement of the total weight of chlorine in the gaseous or liquid reactive flux injected and the total weight of chlorine in the solid reactive flux using Equation 5:

$$W_t = F_1 W_1 + F_2 W_2 \qquad \text{(Eq. 5)}$$

Where,

W_t = Total chlorine usage, by weight;
F_1 = Fraction of gaseous or liquid flux that is chlorine;
W_1 = Weight of reactive flux gas injected;
F_2 = Fraction of solid reactive chloride flux that is chlorine (*e.g.*, F = 0.75 for magnesium chloride; and
W_2 = Weight of solid reactive flux;

(4) Divide the weight of total chlorine usage (W_t) for the 3 test runs by the recorded measurement of the total weight of feed for the 3 test runs; and

(5) If a solid reactive flux other than magnesium chloride is used, the owner or operator must derive the appropriate proportion factor subject to approval by the applicable permitting authority.

(p) *Lime injection.* The owner or operator of an affected source or emission unit using a lime-injected fabric filter system must use these procedures during the HCl and D/F tests to establish an operating parameter value for the feeder setting for each operating cycle or time period used in the performance test.

(1) For continuous lime injection systems, ensure that lime in the feed hopper or silo is free-flowing at all times; and

(2) Record the feeder setting for the 3 test runs. If the feed rate setting varies during the runs, determine and record the average feed rate from the 3 runs.

(q) *Bag leak detection system.* The owner or operator of an affected source or emission unit using a bag leak detection system must submit the information described in § 63.1515(b)(6) as part of the notification of compliance status report to document conformance with the specifications and requirements in § 63.1510(f).

(r) *Labeling.* The owner or operator of each scrap dryer/delacquering kiln/decoating kiln, group 1 furnace, group 2 furnace and in-line fluxer must submit the information described in § 63.1515(b)(3) as part of the notification of compliance status report to document conformance with the operational standard in § 63.1506(b).

(s) *Capture/collection system.* The owner or operator of a new or existing affected source or emission unit with an add-on control device must submit the information described in § 63.1515(b)(2) as part of the notification of compliance status report to document conformance with the operational standard in § 63.1506(c).

§ 63.1513 Equations for determining compliance.

(a) *THC emission limit.* Use Equation 6 to determine compliance with an emission limit for THC:

$$E = \frac{C \times MW \times Q \times K_1 \times K_2}{M_V \times P \times 10^6} \qquad \text{(Eq. 6)}$$

Where,

E = Emission rate of measured pollutant, kg/Mg (lb/ton) of feed;
C = Measured volume fraction of pollutant, ppmv;
MW = Molecular weight of measured pollutant, g/g-mole (lb/lb-mole): THC (as propane) = 44.11;
Q = Volumetric flow rate of exhaust gases, dscm/hr (dscf/hr);
K_1 = Conversion factor, 1 kg/1,000 g (1 lb/lb);
K_2 = Conversion factor, 1,000 L/m³ (1 ft³/ft³);
M_v = Molar volume, 24.45 L/g-mole (385.3 ft³/lb-mole); and
P = Production rate, Mg/hr (ton/hr).

(b) *PM, HCl and D/F emission limits.* Use Equation 7 to determine compliance with an emission limit for PM, HCl, and D/F:

$$E = \frac{C \times Q \times K_1}{P} \qquad \text{(Eq. 7)}$$

Where,

E = Emission rate of PM, HCl, or D/F, kg/Mg (lb/ton) of feed;
C = Concentration of PM, HCl, or D/F, g/dscm (gr/dscf);
Q = Volumetric flow rate of exhaust gases, dscm/hr (dscf/hr);
K_1 = Conversion factor, 1 kg/1,000 g (1 lb/7,000 gr); and
P = Production rate, Mg/hr (ton/hr).

(c) *HCl percent reduction standard.* Use Equation 8 to determine compliance with an HCl percent reduction standard:

$$\%R = \frac{L_i - L_o}{L_i} \times 100 \qquad \text{(Eq. 8)}$$

Where,

%R = Percent reduction of the control device;
L_i = Inlet loading of pollutant, kg/Mg (lb/ton); and
L_o = Outlet loading of pollutant, kg/Mg (lb/ton).

(d) *Conversion of D/F measurements to TEQ units.* To convert D/F measurements to TEQ units, the owner or operator must use the procedures and equations in "Interim Procedures for Estimating Risks Associated with Exposures to Mixtures of Chlorinated Dibenzo-p-Dioxins and -Dibenzofurans (CDDs and CDFs) and 1989 Update" (EPA–625/3–89–016), incorporated by reference in § 63.1502 of this subpart, available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia, NTIS no. PB 90–145756.

(e) *Secondary aluminum processing unit.* Use the procedures in paragraphs (e)(1), (2), and (3) or the procedure in paragraph (e)(4) of this section to determine compliance with emission limits for a secondary aluminum processing unit.

(1) Use Equation 9 to compute the mass-weighted PM emissions for a secondary aluminum processing unit. Compliance is achieved if the mass-weighted emissions for the secondary aluminum processing unit (E_{cPM}) is less than or equal to the emission limit for the secondary aluminum processing unit (L_{cPM}) calculated using Equation 1 in § 63.1505(k).

$$E_{C_{PM}} = \frac{\sum_{i=1}^{n}\left(E_{ti_{PM}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 9)}$$

Where,

E_{cPM} = The mass-weighted PM emissions for the secondary aluminum processing unit;
E_{tiPM} = Measured PM emissions for individual emission unit i;
T_{ti} = The average feed rate for individual emission unit i during the operating cycle or performance test period; and
n=The number of emission units in the secondary aluminum processing unit.

(2) Use Equation 10 to compute the aluminum mass-weighted HCl emissions for the secondary aluminum processing unit. Compliance is achieved if the mass-weighted emissions for the secondary aluminum processing unit (E_{cHCl}) calculated using Equation 2 in § 63.1505(k).

$$E_{C_{HCl}} = \frac{\sum_{i=1}^{n}\left(E_{ti_{HCl}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 10)}$$

Where,

E_{cHCl} = The mass-weighted HCl emissions for the secondary aluminum processing unit; and
E_{tiHCl} = Measured HCl emissions for individual emission unit i.

(3) Use Equation 11 to compute the aluminum mass-weighted D/F emissions for the secondary aluminum processing unit. Compliance is achieved if the mass-weighted emissions for the secondary aluminum processing unit is less than or equal to the emission limit for the secondary aluminum processing unit ($L_{cD/F}$) calculated using Equation 3 in § 63.1505(k).

$$E_{C_{D/F}} = \frac{\sum_{i=1}^{n}\left(E_{ti_{D/F}} \times T_{ti}\right)}{\sum_{i=1}^{n}\left(T_{ti}\right)} \qquad \text{(Eq. 11)}$$

Where,

$E_{cD/F}$ = The mass-weighted D/F emissions for the secondary aluminum processing unit; and
$E_{tiD/F}$ = Measured D/F emissions for individual emission unit i.

(4) As an alternative to using the equations in paragraphs (e)(1), (2), and (3) of this section, the owner or operator may demonstrate compliance for a secondary aluminum processing unit by demonstrating that each existing group 1 furnace is in compliance with the emission limits for a new group 1 furnace in § 63.1505(i) and that each existing in-line fluxer is in compliance with the emission limits for a new in-line fluxer in § 63.1505(j).

§ 63.1514 [Reserved]

Notifications, Reports, And Records

§ 63.1515 Notifications.

(a) *Initial notifications.* The owner or operator must submit initial notifications to the applicable permitting authority as described in paragraphs (a)(1) through (7) of this section.

(1) As required by § 63.9(b)(1), the owner or operator must provide notification for an area source that subsequently increases its emissions such that the source is a major source subject to the standard.

(2) As required by § 63.9(b)(3), the owner or operator of a new or reconstructed affected source, or a source that has been reconstructed such that it is an affected source, that has an initial startup after the effective date of this subpart and for which an application for approval of construction or reconstruction is not required under § 63.5(d), must provide notification that the source is subject to the standard.

(3) As required by § 63.9(b)(4), the owner or operator of a new or reconstructed major affected source that has an initial startup after the effective date of this subpart and for which an application for approval of construction or reconstruction is required by § 63.5(d) must provide the following notifications:

(i) Intention to construct a new major affected source, reconstruct a major source, or reconstruct a major source such that the source becomes a major affected source;

(ii) Date when construction or reconstruction was commenced (submitted simultaneously with the application for approval of construction or reconstruction if construction or reconstruction was commenced before the effective date of this subpart, or no later than 30 days after the date construction or reconstruction commenced if construction or reconstruction commenced after the effective date of this subpart);

(iii) Anticipated date of startup; and

(iv) Actual date of startup.

(4) As required by § 63.9(b)(5), after the effective date of this subpart, an owner or operator who intends to construct a new affected source or reconstruct an affected source subject to this subpart, or reconstruct a source such that it becomes an affected source subject to this subpart, must provide notification of the intended construction or reconstruction. The notification must include all the information required for an application for approval of construction or reconstruction as required by § 63.5(d). For major sources, the application for approval of construction or reconstruction may be used to fulfill these requirements.

(i) The application must be submitted as soon as practicable before the construction or reconstruction is planned to commence (but no sooner than the effective date) if the construction or reconstruction commences after the effective date of this subpart; or

(ii) The application must be submitted as soon as practicable before startup but no later than 90 days after the effective date of this subpart if the construction or reconstruction had commenced and

initial startup had not occurred before the effective date.

(5) As required by § 63.9(d), the owner or operator must provide notification of any special compliance obligations for a new source.

(6) As required by § 63.9(e) and (f), the owner or operator must provide notification of the anticipated date for conducting performance tests and visible emission observations. The owner or operator must notify the Administrator of the intent to conduct a performance test at least 60 days before the performance test is scheduled; notification of opacity or visible emission observations for a performance test must be provided at least 30 days before the observations are scheduled to take place.

(7) As required by § 63.9(g), the owner or operator must provide additional notifications for sources with continuous emission monitoring systems or continuous opacity monitoring systems.

(b) *Notification of compliance status report.* Each owner or operator must submit a notification of compliance status report within 60 days after the compliance dates specified in § 63.1501. The notification must be signed by the responsible official who must certify its accuracy. A complete notification of compliance status report must include the information specified in paragraphs (a)(1) through (10) of this section. The required information may be submitted in an operating permit application, in an amendment to an operating permit application, in a separate submittal, or in any combination. In a State with an approved operating permit program where delegation of authority under section 112(l) of the CAA has not been requested or approved, the owner or operator must provide duplicate notification to the applicable Regional Administrator. If an owner or operator submits the information specified in this section at different times or in different submittals, later submittals may refer to earlier submittals instead of duplicating and resubmitting the information previously submitted. A complete notification of compliance status report must include:

(1) All information required in § 63.9(b). The owner or operator must provide a complete performance test report for each affected source and emission unit for which a performance test is required. A complete performance test report includes all data, associated measurements, and calculations (including visible emission and opacity tests).

(2) The approved site-specific test plan and performance evaluation test results for each continuous monitoring system (including a continuous emission or opacity monitoring system).

(3) Unit labeling as described in § 63.1506(b), including process type or furnace classification and operating requirements.

(4) The compliant operating parameter value or range established for each affected source or emission unit with supporting documentation and a description of the procedure used to establish the value (*e.g.,* lime injection rate, total reactive chlorine flux injection rate, afterburner operating temperature, fabric filter inlet temperature), including the operating cycle or time period used in the performance test.

(5) Design information and analysis, with supporting documentation, demonstrating conformance with the requirements for capture/collection systems in § 63.1506(c).

(6) If applicable, analysis and supporting documentation demonstrating conformance with EPA guidance and specifications for bag leak detection systems in § 63.1510(f).

(7) Manufacturer's specification or analysis documenting the design residence time of no less than 1 second for each afterburner used to control emissions from a scrap dryer/delacquering kiln/decoating kiln subject to alternative emission standards in § 63.1505(e).

(8) Manufacturer's specification or analysis documenting the design residence time of no less than 2 seconds and design operating temperature of no less than 1600 °F for each afterburner used to control emissions from a sweat furnace that is not subject to a performance test.

(9) Approved OM&M plan (including site-specific monitoring plan for each group 1 furnace with no add-on air pollution control device).

(10) Startup, shutdown, and malfunction plan, with revisions.

§ 63.1516 Reports.

(a) *Startup, shutdown, and malfunction plan/reports.* The owner or operator must develop and implement a written plan as described in § 63.6(e)(3) that contains specific procedures to be followed for operating and maintaining the source during periods of startup, shutdown, and malfunction, and a program of corrective action for malfunctioning process and air pollution control equipment used to comply with the standard. The owner or operator shall also keep records of each event as required by § 63.10(b) and record and report if an action taken during a startup, shutdown, or malfunction is not consistent with the procedures in the plan as described in § 63.6(e)(3). In addition to the information required in § 63.6(e)(3), the plan must include:

(1) Procedures to determine and record the cause of the malfunction and the time the malfunction began and ended; and

(2) Corrective actions to be taken in the event of a malfunction of a process or control device, including procedures for recording the actions taken to correct the malfunction or minimize emissions.

(b) *Excess emissions/summary report.* As required by § 63.10(e)(3), the owner or operator must submit semiannual reports within 60 days after the end of each 6-month period. Each report must contain the information specified in § 63.10(c). When no deviations of parameters have occurred, the owner or operator must submit a report stating that no excess emissions occurred during the reporting period.

(1) A report must be submitted if any of these conditions occur during a 6-month reporting period:

(i) The corrective action specified in the OM&M plan for a bag leak detection system alarm was not initiated within 1 hour.

(ii) The corrective action specified in the OM&M plan for a continuous opacity monitoring deviation was not initiated within 1 hour.

(iii) The corrective action specified the OM&M plan for visible emissions from an aluminum scrap shredder was not initiated within 1 hour.

(iv) An excursion of a compliant process or operating parameter value or range (*e.g.,* lime injection rate or screw feeder setting, total reactive chlorine flux injection rate, afterburner operating temperature, fabric filter inlet temperature, definition of acceptable scrap, or other approved operating parameter).

(v) An action taken during a startup, shutdown, or malfunction was not consistent with the procedures in the plan as described in § 63.6(e)(3).

(vi) An affected source (including an emission unit in a secondary aluminum processing unit) was not operated according to the requirements of this subpart.

(vii) A deviation from the 3-day, 24-hour rolling average emission limit for a secondary aluminum processing unit.

(2) Each report must include each of these certifications, as applicable:

(i) For each thermal chip dryer: "Only unpainted aluminum chips were used as feedstock in any thermal chip dryer during this reporting period."

(ii) For each dross-only furnace: "Only dross was used as the charge material in any dross-only furnace during this reporting period."

(iii) For each sidewell group 1 furnace with add-on air pollution control devices: "Each furnace was operated such that the level of molten metal remained above the top of the passage between the sidewell and hearth during reactive fluxing, and reactive flux, except for cover flux, was added only to the sidewell or to a furnace hearth equipped with an add-on air pollution control device for PM, HCl, and D/F emissions during this reporting period."

(iv) For each group 1 melting/holding furnace without add-on air pollution control devices and using pollution prevention measures that processes only clean charge material: "Each group 1 furnace without add-on air pollution control devices subject to emission limits in § 63.1505(i)(2) processed only clean charge during this reporting period."

(v) For each group 2 furnace: "Only clean charge materials were processed in any group 2 furnace during this reporting period, and no fluxing was performed or all fluxing performed was conducted using only nonreactive, non-HAP-containing/non-HAP-generating fluxing gases or agents, except for cover fluxes, during this reporting period."

(vi) For each in-line fluxer using no reactive flux: "Only nonreactive, non-HAP-containing, non-HAP-generating flux gases, agents, or materials were used at any time during this reporting period."

(3) The owner or operator must submit the results of any performance test conducted during the reporting period, including one complete report documenting test methods and procedures, process operation, and monitoring parameter ranges or values for each test method used for a particular type of emission point tested.

(c) *Annual compliance certifications.* For the purpose of annual certifications of compliance required by 40 CFR part 70 or 71, the owner or operator must certify continuing compliance based upon, but not limited to, the following conditions:

(1) Any period of excess emissions, as defined in paragraph (b)(1) of this section, that occurred during the year were reported as required by this subpart; and

(2) All monitoring, recordkeeping, and reporting requirements were met during the year.

§ 63.1517 Records

(a) As required by § 63.10(b), the owner or operator shall maintain files of all information (including all reports and notifications) required by the general provisions and this subpart.

(1) The owner or operator must retain each record for at least 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record. The most recent 2 years of records must be retained at the facility. The remaining 3 years of records may be retained off site.

(2) The owner or operator may retain records on microfilm, computer disks, magnetic tape, or microfiche; and

(3) The owner or operator may report required information on paper or on a labeled computer disk using commonly available and EPA-compatible computer software.

(b) In addition to the general records required by § 63.10(b), the owner or operator of a new or existing affected source (including an emission unit in a secondary aluminum processing unit) must maintain records of:

(1) For each affected source and emission unit with emissions controlled by a fabric filter or a lime-injected fabric filter:

(i) If a bag leak detection system is used, the number of total operating hours for the affected source or emission unit during each 6-month reporting period, records of each alarm, the time of the alarm, the time corrective action was initiated and completed, and a brief description of the cause of the alarm and the corrective action(s) taken.

(ii) If a continuous opacity monitoring system is used, records of opacity measurement data, including records where the average opacity of any 6-minute period exceeds 5 percent, with a brief explanation of the cause of the emissions, the time the emissions occurred, the time corrective action was initiated and completed, and the corrective action taken.

(iii) If an aluminum scrap shredder is subject to visible emission observation requirements, records of all Method 9 observations, including records of any visible emissions during a 30-minute daily test, with a brief explanation of the cause of the emissions, the time the emissions occurred, the time corrective action was initiated and completed, and the corrective action taken.

(2) For each affected source with emissions controlled by an afterburner:

(i) Records of 15-minute block average afterburner operating temperature, including any period when the average temperature in any 3-hour block period falls below the compliant operating parameter value with a brief explanation of the cause of the excursion and the corrective action taken; and

(ii) Records of annual afterburner inspections.

(3) For each scrap dryer/delacquering kiln/decoating kiln and group 1 furnace, subject to D/F and HCl emission standards with emissions controlled by a lime-injected fabric filter, records of 15-minute block average inlet temperatures for each lime-injected fabric filter, including any period when the 3-hour block average temperature exceeds the compliant operating parameter value +14 °C (+25 °F), with a brief explanation of the cause of the excursion and the corrective action taken.

(4) For each affected source and emission unit with emissions controlled by a lime-injected fabric filter:

(i) Records of inspections at least once every 8-hour period verifying that lime is present in the feeder hopper or silo and flowing, including any inspection where blockage is found, with a brief explanation of the cause of the blockage and the corrective action taken, and records of inspections at least once every 4-hour period for the subsequent 3 days. If flow monitors, pressure drop sensors or load cells are used to verify that lime is present in the hopper and flowing, records of all monitor or sensor output including any event where blockage was found, with a brief explanation of the cause of the blockage and the corrective action taken;

(ii) If lime feeder setting is monitored, records of daily inspections of feeder setting, including records of any deviation of the feeder setting from the setting used in the performance test, with a brief explanation of the cause of the deviation and the corrective action taken.

(iii) If lime addition rate for a noncontinuous lime injection system is monitored pursuant to the approved alternative monitoring requirements in § 63.1510(v), records of the time and mass of each lime addition during each operating cycle or time period used in the performance test and calculations of the average lime addition rate (lb/ton of feed/charge).

(5) For each group 1 furnace (with or without add-on air pollution control devices) or in-line fluxer, records of 15-minute block average weights of gaseous or liquid reactive flux injection, total reactive flux injection rate and calculations (including records of the identity, composition, and weight of each addition of gaseous, liquid or solid reactive flux), including records of any period the rate exceeds the compliant operating parameter value and corrective action taken.

(6) For each continuous monitoring system, records required by § 63.10(c).

(7) For each affected source and emission unit subject to an emission

standard in kg/Mg (lb/ton) of feed/charge, records of feed/charge (or throughput) weights for each operating cycle or time period used in the performance test.

(8) Approved site-specific monitoring plan for a group 1 furnace without add-on air pollution control devices with records documenting conformance with the plan.

(9) Records of all charge materials for each thermal chip dryer, dross-only furnace, and group 1 melting/holding furnaces without air pollution control devices processing only clean charge.

(10) Operating logs for each group 1 sidewell furnace with add-on air pollution control devices documenting conformance with operating standards for maintaining the level of molten metal above the top of the passage between the sidewell and hearth during reactive flux injection and for adding reactive flux only to the sidewell or a furnace hearth equipped with a control device for PM, HCl, and D/F emissions.

(11) Operating logs for each in-line fluxer using no reactive flux materials documenting each flux gas, agent, or material used during each operating cycle.

(12) Records of all charge materials and fluxing materials or agents for a group 2 furnace.

(13) Records of monthly inspections for proper unit labeling for each affected source and emission unit subject to labeling requirements.

(14) Records of annual inspections of emission capture/collection and closed vent systems.

(15) Records for any approved alternative monitoring or test procedure.

(16) Current copy of all required plans, including any revisions, with records documenting conformance with the applicable plan, including:

(i) Startup, shutdown, and malfunction plan;

(ii) For major sources, OM&M plan; and

(iii) Site-specific secondary aluminum processing unit emission plan (if applicable).

(17) For each secondary aluminum processing unit, records of total charge weight, or if the owner or operator chooses to comply on the basis of aluminum production, total aluminum produced for each 24-hour period and calculations of 3-day, 24-hour rolling average emissions.

Other

§ 63.1518 Applicability of general provisions.

The requirements of the general provisions in subpart A of this part that are applicable to the owner or operator subject to the requirements of this subpart are shown in appendix A to this subpart.

§ 63.1519 Delegation of authority.

(a) In delegating implementation and enforcement authority to a State under section 112(d) of the CAA, the authorities contained in paragraph (b) of this section are retained by the Administrator and are not transferred to a State.

(b) Applicability determinations pursuant to § 63.1.

§ 63.1520 [Reserved]

BILLING CODE 6560-50-P

Table 1 to Subpart RRR--Emission Standards for New and Existing Affected Sources

Affected source/ Emission unit	Pollutant	Limit	Units
All new and existing affected sources and emission units that are controlled with a PM add-on control device and that choose to monitor with a COM; and all new and existing aluminum scrap shredders that choose to monitor with a COM or to monitor visible emissions	Opacity	10	percent
New and existing aluminum scrap shredder	PM	0.01	gr/dscf
New and existing thermal chip dryer	THC D/F[a]	0.80 2.50	lb/ton of feed μg TEQ/Mg of feed
New and existing scrap dryer/delacquering kiln/decoating kiln	PM HCl THC D/F[a]	0.08 0.80 0.06 0.25	lb/ton of feed lb/ton of feed lb/ton of feed μg TEQ/Mg of feed
Or			
Alternative limits if afterburner has a design residence time of at least 1 second and operates at a temperature of at least 1400 °F	PM HCl THC D/F[a]	0.30 1.50 0.20 5.0	lb/ton of feed lb/ton of feed lb/ton of feed μg TEQ/Mg of feed
New and existing sweat furnace	D/F[a]	0.80	ng TEQ/dscm @ 11% O_2[b]
New and existing dross-only furnace	PM	0.30	lb/ton of feed

New and existing in-line fluxer[c]	HCl PM	0.04 0.01	lb/ton of feed lb/ton of feed
New and existing in-line fluxer with no reactive fluxing		No limit	Work practice: no reactive fluxing
New and existing rotary dross cooler	PM	0.04	gr/dscf
New and existing clean furnace (Group 2)		No limit	Work practices: clean charge only and no reactive fluxing
New and existing group 1 melting/holding furnace (processing only clean charge)[c]	PM HCl	0.80 0.40 or 10	lb/ton of feed lb/ton of feed percent of the HCl upstream of an add-on control device
New and existing group 1 furnace[c]	PM HCl	0.40 0.40 or 10	lb/ton of feed lb/ton of feed percent of the HCl upstream of an add-on control device
	D/F[a]	15.0	µg TEQ/Mg of feed
New and existing group 1 furnace[c] with clean charge only	PM HCl	0.40 0.40 Or 10	lb/ton of feed lb/ton of feed percent of the HCl upstream of an add-on control device
	D/F[a]	No Limit	Clean charge only

New and existing secondary aluminum processing unit[a,d] (consists of all existing group 1 furnaces and existing in-line flux boxes at the facility, or all simultaneously constructed new group 1 furnaces and new in-line fluxers)	PM[e]	$L_{t_{PM}} = \frac{\sum_{i=1}^{n} (L_{i_{PM}} \times T_i)}{\sum_{i=1}^{n} (T_i)}$
	HCl[f]	$L_{t_{HCl}} = \frac{\sum_{i=1}^{n} (L_{i_{HCl}} \times T_i)}{\sum_{i=1}^{n} (T_i)}$
	D/F[g]	$L_{t_{D/F}} = \frac{\sum_{i=1}^{n} (L_{i_{D/F}} \times T_i)}{\sum_{i=1}^{n} (T_i)}$

[a] D/F limit applies to a unit at a major or area source.

[b] Sweat furnaces equipped with afterburners meeting the specifications of §63.1505(f)(1) are not required to conduct a performance test.

[c] These limits are also used to calculate the limits applicable to secondary aluminum processing units.

[d] Equation definitions: L_{iPM} = the PM emission limit for individual emission unit i in the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; T_i = the feed rate for individual emission unit i in the secondary aluminum processing unit; L_{tPM} = the overall PM emission limit for the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; L_{iHCl} = the HCl emission limit for individual emission unit i in the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; L_{tHCl} = the overall HCl emission limit for the secondary aluminum processing unit [kg/Mg (lb/ton) of feed]; $L_{iD/F}$ = the D/F emission limit for individual emission unit i [µg TEQ/Mg (gr TEQ/ton) of feed]; $L_{tD/F}$ = the overall D/F emission limit for the secondary aluminum processing unit [µg TEQ/Mg (gr TEQ/ton) of feed]; n = the number of units in the secondary aluminum processing unit.

[e] In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the PM limit.

[f] In-line fluxers using no reactive flux materials cannot be included in this calculation since they are not subject to the HCl limit.

[g] Clean charge furnaces cannot be included in this calculation since they are not subject to the D/F limit.

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TABLE 2 TO SUBPART RRR.—SUMMARY OF OPERATING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

Affected source/emission unit	Monitor type/operation/process	Operating requirements
All affected sources and emission units with an add-on air pollution control device.	Emission capture and collection system.	Design and install in accordance with Industrial Ventilation: A Handbook of Recommended Practice; operate in accordance with OM&M plan.[b]
All affected sources and emission units subject to production-based (lb/ton of feed) emission limits[a].	Charge/feed weight or Production weight.	Operate a device that records the weight of each charge; Operate in accordance with OM&M plan.[b]
Group 1 furnace, group 2 furnace, in-line fluxer and scrap dryer/delacquering kiln/decoating kiln.	Labeling	Identification, operating parameter ranges and operating requirements posted at affected sources and emission units; control device temperature and residence time requirements posted at scrap dryer/delacquering kiln/decoating kiln.
Aluminum scrap shredder with fabric filter.	Bag leak detector or	Initiate corrective action within 1-hr of alarm and complete in accordance with OM&M plan[b]; operate such that alarm does not sound more than 5% of operating time in 6-month period.
	COM or	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more and complete in accordance with OM&M plan.[b]
	VE	Initiate corrective action within 1-hr of any observed VE and complete in accordance with the OM&M plan.[b]
Thermal chip dryer with afterburner	Afterburner operating temperature	Maintain average temperature for each 3-hr period at or above average operating temperature during the performance test.
	Afterburner operation	Operate in accordance with OM&M plan.[b]
	Feed material	Operate using only unpainted aluminum chips.
Scrap dryer/delacquering kiln/decoating kiln with afterburner and lime-injected fabric filter.	Afterburner operating temperature	Maintain average temperature for each 3-hr period at or above average operating temperature during the performance test.
	Afterburner operation	Operate in accordance with OM&M plan.[b]
	Bag leak detector or	Initiate corrective action within 1-hr of alarm and complete in accordance with the OM&M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	COM	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more and complete in accordance with the OM&M plan.[b]
	Fabric filter inlet temperature	Maintain average fabric filter inlet temperature for each 3-hr period at or below average temperature during the performance test +14 °C (+25 °F).
	Lime injection rate	Maintain free-flowing lime in the feed hopper or silo at all times for continuous injection systems; maintain feeder setting at level established during the performance test for continuous injection systems.
Sweat furnace with afterburner	Afterburner operating temperature	If a performance test was conducted, maintain average temperature for each 3-hr period at or above average operating temperature during the performance test; if a performance test was not conducted, and afterburner meets specifications of §63.1505(f)(1), maintain average temperature for each 3-hr period at or above 1600 °F.
	Afterburner operation	Operate in accordance with OM&M plan.[b]
Dross-only furnace with fabric filter	Bag leak detector or	Initiate corrective action within 1-hr of alarm and complete in accordance with the OM&M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	COM	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more and complete in accordance with the OM&M plan.[b]
	Feed/charge material	Operate using only dross as the feed material.
Rotary dross cooler with fabric filter	Bag leak detector or	Initiate corrective action within 1-hr of alarm and complete in accordance with the OM&M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	COM	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more and complete in accordance with the OM&M plan.[b]
In-line fluxer with lime-injected fabric filter (including those that are part of a secondary aluminum processing unit).	Bag leak detector or	Initiate corrective action within 1-hr of alarm and complete in accordance with the OM&M plan;[b] operate such that alarm does not sound more than 5% of operating time in 6-month period.
	COM	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more and complete in accordance with the OM&M plan.[b]
	Lime injection rate	Maintain free-flowing lime in the feed hopper or silo at all times for continuous injection systems; maintain feeder setting at level established during performance test for continuous injection systems.

TABLE 2 TO SUBPART RRR.—SUMMARY OF OPERATING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/emission unit	Monitor type/operation/process	Operating requirements
	Reactive flux injection rate	Maintain reactive flux injection rate at or below rate used during the performance test for each operating cycle or time period used in the performance test.
In-line fluxer (using no reactive flux material).	Flux materials	Use no reactive flux.
Group 1 furnace with lime-injected fabric filter (including those that are part of a secondary aluminum processing unit).	Bag leak detector or	Initiate corrective action within 1-hr of alarm; operate such that alarm does not sound more than 5% of operating time in 6-month period; complete corrective action in accordance with the OM&M plan.[b]
	COM	Initiate corrective action within 1-hr of a 6-minute average opacity reading of 5% or more; complete corrective action in accordance with the OM&M plan.[b]
	Fabric filter inlet temperature	Maintain average fabric filter inlet temperature for each 3-hour period at or below average temperature during the performance test +14 &degC (+25 °F).
	Reactive flux injection rate	Maintain reactive flux injection rate (lb/hr) at or below rate used during the performance test for each furnace cycle.
	Lime injection rate	Maintain free-flowing lime in the feed hopper or silo at all times for continuous injection systems; maintain feeder setting at level established at performance test for continuous injection systems.
	Maintain molten aluminum level	Operate side-well furnaces such that the level of molten metal is above the top of the passage between sidewell and hearth during reactive flux injection, unless the hearth is also controlled.
	Fluxing in sidewell furnace hearth	Add reactive flux only to the sidewell of the furnace unless the hearth is also controlled.
Group 1 furnace without add-on controls (including those that are part of a secondary aluminum processing unit).	Reactive flux injection rate	Maintain reactive flux injection rate (lb/hr) at or below rate used during the performance test for each operating cycle or time period used in the performance test.
	Site-specific monitoring plan[c]	Operate furnace within the range of charge materials, contaminant levels, and parameter values established in the site-specific monitoring plan.
	Feed material (melting/holding furnace).	Use only clean charge.
Clean (group 2) furnace	Charge and flux materials	Use only clean charge. Use no reactive flux.

[a] Thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, dross-only furnaces, in-line fluxers and group 1 furnaces including melting/holding furnaces.
[b] OM&M plan—Operation, maintenance, and monitoring plan.
[c] Site-specific monitoring plan. Owner/operators of group 1 furnaces without control devices must include a section in their OM&M plan that documents work practice and pollution prevention measures, including procedures for scrap inspection, by which compliance is achieved with emission limits and process or feed parameter-based operating requirements. This plan and the testing to demonstrate adequacy of the monitoring plan must be developed in coordination with and approved by the permitting authority.

TABLE 3 TO SUBPART RRR.—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS

Affected source/Emission unit	Monitor type/Operation/Process	Monitoring requirements
All affected sources and emission units with an add-on air pollution control device.	Emission capture and collection system.	Annual inspection of all emission capture, collection, and transport systems to ensure that systems continue to operate in accordance with ACGIH standards.
All affected sources and emission units subject to production-based (lb/ton of feed/charge) emission limits[a].	Feed/charge weight	Record weight of each feed/charge, weight measurement device or other procedure accuracy of ±1%[b]; calibrate according to manufacturers specifications, or at least once every 6 months.
Group 1 furnace, group 2 furnace, in-line fluxer, and scrap dryer/delacquering kiln/decoating kiln.	Labeling	Check monthly to confirm that labels are intact and legible.
Aluminum scrap shredder with fabric filter.	Bag leak detector or	Install and operate in accordance with "Fabric Filter Bag Leak Detection Guidance"[c]; record voltage output from bag leak detector.
	COM or	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR part 63; determine and record 6-minute block averages.
	VE	Conduct and record results of 30-minute daily test in accordance with Method 9.
Thermal chip dryer with afterburner	Afterburner operating temperature	Continuous measurement device to meet specifications in §63.1510(g)(1); record average temperature for each 15-minute block; determine and record 3-hr block averages.
	Afterburner operation	Annual inspection of afterburner internal parts; complete repairs in accordance with the OM&M plan.

TABLE 3 TO SUBPART RRR.—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/Emission unit	Monitor type/Operation/Process	Monitoring requirements
	Feed/charge material	Record identity of each feed/charge; certify feed/charge materials every 6 months.
Scrap dryer/ delacquering kiln/ decoating kiln with afterburner and lime injected fabric filter.	Afterburner operating temperature	Continuous measurement device to meet specifications in §63.1510(g)(1); record temperatures in 15-minute block averages; determine and record 3-hr block averages.
	Afterburner operation	Annual inspection of afterburner internal parts; complete repairs in accordance with the OM&M plan.
	Bag leak detector or	Install and operate in accordance with "Fabric Filter Bag Leak Detection Guidance"[c]; record voltage output from bag leak detector.
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR part 63; determine and record 6-minute block averages.
	Lime injection rate	For continuous injection systems, inspect each feed hopper or silo every 8 hrs to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hrs for 3 days; return to 8-hr inspections if corrective action results in no further blockage during 3-day periode; record feeder setting daily.
	Fabric filter inlet temperature	Continuous measurement device to meet specifications in §63.1510(h)(2); record temperatures in 15-minute block averages; determine and record 3-hr block averages.
Sweat furnace with afterburner	Afterburner operating temperature	Continuous measurement device to meet specifications in §63.1510(g)(1); record temperatures in 15-minute block averages; determine and record 3-hr block averages.
	Afterburner operation	Annual inspection of afterburner internal parts; complete repairs in accordance with the OM&M plan.
Dross-only furnace with fabric filter	Bag leak detector or	Install and operate in accordance with "Fabric Filter Bag Leak Detection Guidance"[c]; record output voltage from bag leak detector.
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR part 63; determine and record 6-minute block averages.
	Feed/charge material	Record identity of each feed/charge; certify charge materials every 6 months.
Rotary dross cooler with fabric filter	Bag leak detector or	Install and operate in accordance with "Fabric Filter Bag Leak Detection Guidance"[c]; record output voltage from bag leak detector.
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR part 63; determine and record 6-minute block averages.
In-line fluxer with lime-injected fabric filter.	Bag leak detector or	Install and operate in accordance with "Fabric Filter Bag Leak Detection Guidance"[c]; record output voltage from bag leak detector.
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 CFR part 63; determine and record 6-minute block averages
	Reactive flux injection rate	Weight measurement device accuracy of ±1%[b]; calibrate according to manufacturer's specifications or at least once every 6 months; record time, weight and type of reactive flux added or injected for each 15-minute block period while reactive fluxing occurs; calculate and record total reactive flux injection rate for each operating cycle or time period used in performance test; or Alternative flux injection rate determination procedure per §63.1510(j)(5).
	Lime injection rate	For continuous injection systems, record feeder setting daily and inspect each feed hopper or silo every 8 hrs to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hrs for 3 days; return to 8-hour inspections if corrective action results in no further blockage during 3-day period.[d]
In-line fluxer using no reactive flux	Flux materials	Record flux materials; certify every 6 months for no reactive flux.
Group 1 furnace with lime-injected fabric filter.	Bag leak detector or	Install and operate in accordance with "Fabric Filter Bag Leak Detection Guidance"[c]; record output voltage from bag leak detector.
	COM	Design and install in accordance with PS–1; collect data in accordance with subpart A of 40 part CFR 63; determine and record 6-minute block averages.
	Lime injection rate	For continuous injection systems, record feeder setting daily and inspect each feed hopper or silo every 8 hours to verify that lime is free-flowing; record results of each inspection. If blockage occurs, inspect every 4 hours for 3 days; return to 8-hour inspections if corrective action results in no further blockage during 3-day period.[d]

TABLE 3 TO SUBPART RRR.—SUMMARY OF MONITORING REQUIREMENTS FOR NEW AND EXISTING AFFECTED SOURCES AND EMISSION UNITS—Continued

Affected source/Emission unit	Monitor type/Operation/Process	Monitoring requirements
	Reactive flux injection rate Weight measurement device accuracy of +1%b; calibrate every 3 months; record weight and type of reactive flux added or injected for each 15-minute block period while reactive fluxing occurs; calculate and record total reactive flux injection rate for each operating cycle or time period used in performance test; or. Alternative flux injection rate determination procedure per §63.1510(j)(5)..	
	Fabric filter inlet temperature	Continuous measurement device to meet specifications in §63.1510(h)(2); record temperatures in 15-minute block averages; determine and record 3-hour block averages.
	Maintain molten aluminum level in sidewell furnace.	Maintain aluminum level operating log; certify every 6 months.
Group 1 furnace without add-on controls.	Fluxing in sidewell furnace hearth	Maintain flux addition operating log; certify every 6 months.
	Reactive flux injection rate	Weight measurement device accuracy of +1%[b]; calibrate according to manufacturers specifications or at least once every six months; record weight and type of reactive flux added or injected for each 15-minute block period while reactive fluxing occurs; calculate and record total reactive flux injection rate for each operating cycle or time period used in performance test.
	OM&M plan (approved by permitting agency).	Demonstration of site-specific monitoring procedures to provide data and show correlation of emissions across the range of charge and flux materials and furnace operating parameters.
	Feed material (melting/holding furnace).	
Record type of permissible feed/ charge material; certify charge materials every 6 months..		
Clean (group 2) furnace	Charge and flux materials	Record charge and flux materials; certify every 6 months for clean charge and no reactive flux.

[a] Thermal chip dryers, scrap dryers/delacquering kilns/decoating kilns, dross-only furnaces, in-line fluxers and group 1 furnaces or melting/holding furnaces.

[b] Permitting agency may approve measurement devices of alternative accuracy, for example in cases where flux rates are very low and costs of meters of specified accuracy are prohibitive; or where feed/charge weighing devices of specified accuracy are not practicable due to equipment layout or charging practices.

[c] Non-triboelectric bag leak detectors must be installed and operated in accordance with manufacturers' specifications.

[d] Permitting agency may approve other alternatives including load cells for lime hopper weight, sensors for carrier gas pressure, or HCl monitoring devices at fabric filter outlet.

APPENDIX A TO SUBPART RRR.—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR

Citation	Requirement	Applies to RRR	Comment
§63.1(a)(1)–(4)	General Applicability	Yes.	
§63.1(a)(5)		No	[Reserved].
§63.1(a)(6)–(8)		Yes.	
§63.1(a)(9)		No	[Reserved].
§63.1(a) (10)–(14)		Yes.	
§63.1(b)	Initial Applicability Determination	Yes	EPA retains approval authority.
§63.1(c)(1)	Applicability After Standard Established	Yes.	
§63.1(c)(2)		Yes	States have option to exclude area sources from title V permit program.
§63.1(c)(3)		No	[Reserved].
§63.1(c)(4)–(5)		Yes.	
§63.1(d)		No	[Reserved].
§63.1(e)	Applicability of Permit Program	Yes.	
§63.2	Definitions	Yes	Additional definitions in §63.1503.
§63.3	Units and Abbreviations	Yes	
§63.4(a)(1)–(3)	Prohibited Activities	Yes.	
§63.4(a)(4)		No	[Reserved]
§63.4(a)(5)		Yes.	

APPENDIX A TO SUBPART RRR.—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR—Continued

Citation	Requirement	Applies to RRR	Comment
§ 63.4(b)–(c)	Circumvention/ Severability	Yes.	
§ 63.5(a)	Construction and Reconstruction—Applicability	Yes.	
§ 63.5(b)(1)	Existing, New, Reconstructed Sources—Requirements.	Yes.	
§ 63.5(b)(2)		No	[Reserved].
§ 63.5(b)(3)–(6)		Yes.	
§ 63.5(c)		No	[Reserved].
§ 63.5(d)	Application for Approval of Construction/ Reconstruction.	Yes.	
§ 63.5(e)	Approval of Construction/ Reconstruction	Yes.	
§ 63.5(f)	Approval of Construction/Reconstruction Based on State Review.	Yes.	
§ 63.6(a)	Compliance with Standards and Maintenance—Applicability.	Yes.	
§ 63.6(b)(1)–(5)	New and Reconstructed Sources—Dates	Yes.	
§ 63.6(b)(6)		No	[Reserved].
§ 63.6(b)(7)		Yes.	
§ 63.6(c)(1)	Existing Sources Dates	Yes	§ 63.1501 specifies dates.
§ 63.6(c)(2)		Yes.	
§ 63.6(c)(3)–(4)		No	[Reserved].
§ 63.6(c)(5)		Yes.	
§ 63.6(d)		No	[Reserved].
§ 63.6(e)(1)–(2)	Operation & Maintenance Requirements	Yes	§ 63.1510 requires plan.
§ 63.6(e)(3)	Startup, Shutdown, and Malfunction Plan	Yes.	
§ 63.6(f)	Compliance with Emission Standards	Yes.	
§ 63.6(g)	Alternative Standard	No	
§ 63.6(h)	Compliance with Opacity/VE Standards	Yes.	
§ 63.6(i)(1)–(14)	Extension of Compliance	Yes.	
§ 63.6(i)(15)		No	[Reserved].
§ 63.6(i)(16)		Yes.	
§ 63.6(j)	Exemption from Compliance	Yes.	
§ 63.7(a)–(h)	Performance Test Requirements—Applicability and Dates.	Yes	§ 63.1511 requires repeat tests every 5 years for major sources.
§ 63.7(b)	Notification	Yes.	
§ 63.7(c)	Quality Assurance/Test Plan	Yes.	
§ 63.7(d)	Testing Facilities	Yes.	
§ 63.7(e)	Conduct of Tests	Yes.	
§ 63.7(f)	Alternative Test Method	Yes.	
§ 63.7(g)	Data Analysis	Yes.	
§ 63.7(h)	Waiver of Tests	Yes.	
§ 63.8(a)(1)	Monitoring Requirements—Applicability	Yes.	
§ 63.8(a)(2)		Yes.	
§ 63.8(a)(3)		No	[Reserved]
§ 63.8(a)(4)		Yes	
§ 63.8(b)	Conduct of Monitoring	Yes.	
§ 63.8(c)(1)–(3)	CMS Operation and Maintenance	Yes.	
§ 63.8(c)(4)–(8)		Yes.	
§ 63.8(d)	Quality Control	Yes.	
§ 63.8(e)	CMS Performance Evaluation	Yes.	
§ 63.8(f)(1)–(5)	Alternative Monitoring Method	No	§ 63.1510(w) includes provisions for monitoring alternatives.
§ 63.8(f)(6)	Alternative to RATA Test	Yes.	
§ 63.8(g)(1)	Data Reduction	Yes.	
§ 63.8(g)(2)		No	§ 63.1512 requires five 6-minute averages for an aluminum scrap shredder.
§ 63.8(g)(3)–(5)		Yes.	
§ 63.9(a)	Notification Requirements—Applicability	Yes.	
§ 63.9(b)	Initial Notifications	Yes.	
§ 63.9(c)	Request for Compliance Extension	Yes.	
§ 63.9(d)	New Source Notification for Special Compliance Requirements.	Yes.	
63.9(e)	Notification of Performance Test	Yes.	
§ 63.9(f)	Notification of VE/Opacity Test	Yes.	
§ 63.9(g)	Additional CMS Notifications	Yes.	
§ 63.9(h)(1)–(3)	Notification of Compliance Status	Yes.	
§ 63.9(h)(4)		No	[Reserved].
§ 63.9(h)(5)–(6)		Yes.	
§ 63.9(i)	Adjustment of Deadlines	Yes.	
§ 63.9(j)	Change in Previous Information	Yes.	
§ 63.10(a)	Recordkeeping/Reporting—Applicability	Yes.	
§ 63.10(b)	General Requirements	Yes	§ 63.1517 includes additional requirements.

APPENDIX A TO SUBPART RRR.—GENERAL PROVISIONS APPLICABILITY TO SUBPART RRR—Continued

Citation	Requirement	Applies to RRR	Comment
§ 63.10(c)(1)	Additional CMS Recordkeeping	Yes.	
§ 63.10(c)(2)–(4)		No	[Reserved].
§ 63.10(c)(5)		Yes.	
§ 63.10(c)(6)		Yes.	
§ 63.10(c)(7)–(8)		Yes.	
§ 63.10(c)(9)		No	[Reserved].
§ 63.10(c) (10)–(13)		Yes.	
§ 63.10(c) (14)		Yes.	
§ 63.10(d)(1)	General Reporting Requirements	Yes.	
§ 63.10(d)(2)	Performance Test Results	Yes.	
§ 63.10(d)(3)	Opacity or VE Observations	Yes.	
§ 63.10(d)(4) –(5)	Progress Reports/Startup, Shutdown, and Malfunction Reports.	Yes.	
§ 63.10(e)(1)–(2)	Additional CMS Reports	Yes.	
§ 63.10(e)(3)	Excess Emissions/CMS Performance Reports	Yes.	
§ 63.10(e)(4)	COMS Data Reports	Yes.	
§ 63.10(f)	Recordkeeping/Reporting Waiver	Yes.	
§ 63.11(a)–(b)	Control Device Requirements	No	Flares not applicable.
§ 63.12(a)–(c)	State Authority and Delegations	Yes.	EPA retains authority for applicability determinations.
§ 63.13	Addresses	Yes.	
§ 63.14	Incorporation by Reference	Yes.	Chapters 3 and 5 of ACGIH Industrial Ventilation Manual for capture/collection systems.
§ 63.15	Availability of Information/Confidentiality	Yes.	

* * * * *

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Part III

Department of Housing and Urban Development

Final Report of HUD Review of Model Building Codes; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4554–N–01]

Final Report of HUD Review of Model Building Codes

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final report.

SUMMARY: The United States Department of Housing and Urban Development (HUD or the Department) issues a policy statement and Final Report of HUD Review of Model Building Codes (Final Report) that identifies the variances between the design and construction requirements of the Fair Housing Act (the Act) and the:

BOCA National Building Code (BNBC), Building Officials and Code Administrators International (BOCA) 1996 edition;

Uniform Building Code (UBC), International Conference of Building Officials (ICBO) 1997 edition;

Standard Building Code (SBC), Southern Building Code Congress International (SBCCI) 1997 edition; and

International Building Code First Draft (IBC), International Code Council (ICC) November 1997; Proposed International Building Code 2000, International Code Council (IBC–2000) Chapters 10 and 11, Appendix to Chapter 11, and Section 3407 (1999).

This Final Report also contains guidance on the Department's policy concerning the relationship between the requirements of the Act and its standards.

The U.S. House of Representatives Committee on Appropriations directed HUD to complete its review of a matrix that summarized the provisions of the four model codes and to issue a policy statement by December 31, 1999. H.R. Rep. No. 286, 106th Cong., 1st Sess. 34 (1999). This Final Report is intended to meet that Congressional mandate. This Final Report additionally is intended to provide technical assistance to other interested parties on this issue. The Department has not and does not intend to promulgate any new technical requirements or standards by way of this Final Report. The Department does not intend this Final Report to be considered an endorsement of any model building code.

The Department does not wish to suggest through the issuance of this report that it is shifting its responsibility to enforce the design and construction requirements of the Act to any model code organization or to state and local building officials. However, the Department recognizes that one important way to increase compliance with the design and construction requirements of the Act is to incorporate those requirements into state and local building codes.

This Final Report is divided into chapters as follows:

Chapter 1—Introduction and Response to Public Comments
Chapter 2—Policy Statement
Chapter 3—IBC Analysis
Chapter 4—UBC Analysis
Chapter 5—SBC Analysis
Chapter 6—BOCA Analysis

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Kent, Director, Program Compliance and Disability Rights Support Division, 451 Seventh Street, SW, Room 5240, Washington, DC 20410–0500, telephone (202) 708–2333, extension 7058. (This telephone number is not toll-free.) Hearing or speech-impaired individuals also may access this number via TTY by calling the Federal Information Relay Service at 1–800–877–8339.

This Final Report and the policy statement are also located at www.hud.gov/fhe/modelcodes. The Fair Housing Act, as amended in 1988, the regulations implementing the Act, and the Fair Housing Accessibility Guidelines can also be obtained through links provided at this web site. You may view the matrix or the updated matrix, or the chapters of the codes that the Department reviewed; or purchase copies of CABO/ANSI A117.1–1992 and ICC/ANSI A117.1–1998, at www.intlcode.org/fairhousing. ANSI A117.1–1986 is only available for purchase from Global Engineering Documents, 15 Inverness Way East, Englewood, Colorado 90112. However, copies of the 1986, 1992 and 1998 editions of ANSI A117.1 may be viewed at the HUD headquarters library at 451 Seventh Street, SW, Washington, DC 20410 and at HUD Fair Housing Offices in the following locations: Boston, Massachusetts; New York, New York; Philadelphia, Pennsylvania; Atlanta, Georgia; Chicago, Illinois; Fort Worth, Texas; Kansas City, Kansas; Denver, Colorado; San Francisco, California; and Seattle, Washington.

Copies of all of the relevant documents, including the ICC/ANSI A117.1–1998, the ANSI A117.1–1986, and the CABO/ANSI A117.1–1992 are also available for viewing at the HUD Library at 451 Seventh St., SW, Washington, DC 20410. To gain admission to the HUD Library you must present identification to the security guards and ask to visit the library. Photocopying in the HUD library is limited to 40 pages and all of the documents, with the exception of the HUD produced documents, are copyrighted and, therefore, not available for photocopying.

Dated: March 14, 2000.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

Chapter 1: Introduction and Response to Public Comments [1]

Background

Title VIII of the Civil Rights Act (the Fair Housing Act), 42 U.S.C. 3601 *et seq.*, prohibits discrimination in housing and housing related transactions based on race, color, religion, national origin, and sex. In 1988, Congress extended the protections of the Act to families with children and persons with disabilities. 42 U.S.C. 3604. (The Act refers to people with "handicaps." Subsequently, in the Americans with Disabilities Act of 1990 and other legislation, Congress adopted the term "persons with disabilities," or "disability," which is the preferred usage. Accordingly, this Final Report hereinafter uses the terms "persons with disabilities," "disability" or "disabled.") In response to the serious lack of accessible housing in the United States, Congress provided that all covered multifamily dwellings built for first occupancy after March 13, 1991, must include certain basic features of accessible and adaptive design. 42 U.S.C. 3604(f)(3)(C). These basic accessibility requirements are known as the Act's design and construction requirements. One of the underlying concepts of the design and construction requirements is the creation of housing that is accessible for persons with disabilities but that does not necessarily appear to be different from conventional housing.

The Act mandates that all covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed so that: (1) The public and common use portions of such dwellings are readily accessible to and usable by persons with disabilities; (2) All the doors designed to allow passage into and within all premises within such dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and (3) All premises within such dwellings contain the following features of adaptive design: (a) An accessible route into and through the dwelling; (b) Light switches, electrical outlets, thermostats, and other environmental controls in accessible locations; (c) Reinforcements in bathroom walls to allow later installation of grab bars; and (d) Usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. 3604(f)(3)(C).

[1] In this document, citation for the United States Code is U.S.C.; the citation for the Code of Federal Regulations is CFR; and the citation for **Federal Register** publication is FR.

The Act's design and construction requirements apply to "covered multifamily dwellings," which means "buildings consisting of 4 or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of 4 or more units." 42 U.S.C. 3604(f)(7). The Act's design and construction requirements apply to all covered multifamily dwellings built for first occupancy after March 13, 1991. The Act's design and construction requirements do not apply to alterations or renovations to multifamily dwelling units or to single family detached houses.

The Act does not set forth specific technical design criteria that have to be followed in order to comply with the design and construction requirements. It does provide, however, that compliance with the appropriate requirements of the American National Standard for buildings and facilities providing accessibility and usability for physically handicapped people, commonly referred to as ANSI A117.1, satisfies the Act's design and construction requirements for the interiors of dwelling units. 42 U.S.C. 3604(f)(4).

The Act states that Congress did not intend the Department to *require* states and units of local government to include the Act's accessibility requirements in their state and local procedures for the review and approval of newly constructed covered multifamily dwellings. 42 U.S.C. § 3604(f)(5)(C). However, Congress authorized the Department to encourage the inclusion of these requirements into their procedures. *Id.*

The Act also makes it clear that it does not invalidate or limit any other state or federal laws that require dwellings to be designed or constructed in a manner that affords persons with disabilities greater access than that required under the Act. 42 U.S.C. 3604(f)(8). Further, federally funded facilities and dwelling units covered by section 504 of the Rehabilitation Act of 1973 (Section 504), the Architectural Barriers Act (ABA), or, where applicable, the Americans with Disabilities Act (ADA), must also comply with their respective regulatory requirements, including the Uniform Federal Accessibility Standard (UFAS). For Section 504, these regulatory requirements may be found at 24 CFR part 8; for the ABA, 24 CFR part 40; and for the ADA, 28 CFR parts 35 and/or 36, as applicable.

In 1989, the Department issued its regulations implementing the design and construction requirements of the Act. 24 CFR 100.205. In the regulations, the Department specifically stated that compliance with the appropriate requirements of ANSI A117.1–1986 satisfies the requirements of the Act relating to interiors of dwelling units. 24 CFR 100.205(e).

Congress directed the Secretary of HUD to "provide technical assistance to states and units of local government and other persons to implement [the design and construction requirements]." 42 U.S.C. 3604(f)(5)(C). To this end, on March 6, 1991, the Department published the "Final Fair Housing Accessibility Guidelines," (the Guidelines) at 56 FR 9472–9515. The Guidelines set forth specific technical guidance for designing covered multifamily dwellings to be consistent with the Fair Housing Act.

Section I of the Guidelines states:

> These guidelines are not mandatory, nor do they prescribe specific requirements which must be met, and which, if not met, would constitute unlawful discrimination under the Fair Housing Act. Builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act. These guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act.

56 FR at 9499.

On June 24, 1994, the Department published its "Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers about the Guidelines," at 59 FR 33362–33368 (the Questions and Answers About the Guidelines). The Department published a Fair Housing Act Design Manual (Design Manual) in 1996 that was reissued in 1998 with minor changes.

In 1992, the Department was contacted by the Council of American Building Officials (CABO) and model building code organizations. CABO advised the Department of its interest in drafting building code language that would reflect the design and construction requirements of the Act, and asked the Department to provide technical assistance to its Board for Coordination of Model Codes (BCMC). The Department recognized that incorporation of building code requirements that are consistent with the Act's requirements would provide increased compliance. Therefore, in support of this effort, the Department agreed to provide technical assistance to BCMC and the building industry organizations during 1992 and 1993. Subsequently, the model building code organizations incorporated the results of their efforts into the model building codes.

The American National Standards Institute (ANSI) is responsible for establishing technical standards in many different areas. Among the standards addressed by the ANSI, through the A117 Committee, are technical standards for the design of housing and facilities that are accessible to persons with disabilities. BCMC recommended that the ANSI A117 Committee set up a Residential Task Force to develop technical criteria to address the Act's accessibility requirements. The Department is a member of the ANSI A117 Committee and served on the Residential Task Force. The focus of the ANSI Residential Task Force was to develop technical criteria to address the accessibility requirements for dwelling units that are covered by the Act. This effort was completed and included in the ICC/ANSI A117.1–1998. (The reference to ICC, International Code Council, reflects an organizational change in the ANSI only.) Because prior to 1998, ANSI A117.1 already included technical criteria for fully accessible dwelling units, the 1998 ICC/ANSI A117.1 refers to fully accessible dwelling units as "Type A dwelling units." Section 1003 of ICC/ANSI A117.1–1998 contains the technical criteria for "Type B dwelling units," which are intended to reflect the technical requirements for dwelling units required by the Act to be accessible.

In 1997, CABO, three model building code organizations, and several building industry organizations contacted the Department to discuss, among other items, the importance of assuring that the design and construction requirements of the Act were accurately reflected in the three model building codes and in the draft International Building Code (IBC), which was scheduled for completion in 2000. The Department met with representatives of these groups along with representatives of disability advocacy organizations and indicated its willingness to review the model building codes for consistency with the requirements of the Act, the regulations, and the Guidelines, and then convene a public meeting at a later date to share the results of that review.

In December 1997, CABO submitted to the Department a matrix that

compared four model building codes to the Act's design and construction requirements. In the fall of 1998, the Department awarded a contract to Steven Winter Associates, Inc. (SWA) to analyze the matrix and the model building codes and to identify those sections of the codes that did not meet the requirements of the Act, regulations, and the Guidelines. The Department also requested that SWA provide recommendations on how each identified variance could be revised to conform with the Act, the regulations, and the Guidelines.

The original matrix focused on the 1997 First Draft of the IBC. Because the IBC had progressed to a proposed IBC 2000 in 1999, the International Code Council (ICC) asked the Department to include in its review, to the greatest extent possible, the proposed IBC 2000. The Department also was asked to review the new 1999 edition of the National Building Code published by BOCA. The Department agreed to undertake a limited review of the proposed IBC 2000, but due to time constraints, was unable to review the 1999 BOCA National Building Code. To facilitate review of portions of the proposed IBC 2000, BOCA prepared an update to the matrix that compared the Guidelines with the First Draft IBC and the proposed IBC 2000. In addition, the Department was provided with copies of Chapters 10 and 11, Appendix to Chapter 11, Section 3407, and Appendix 34–2 of the proposed IBC 2000.

The Department formed a Model Code Working Group (Working Group) to work with its contractor, SWA, on the review of the model building codes. The Working Group consisted of staff from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel, and the Office of Housing. A representative of the U. S. Department of Justice (DOJ) also participated in the Working Group.

On October 26, 1999, the Department published a draft policy statement and draft report of four model building codes which identified the variances between these codes and the Act's design and construction requirements (the draft report). On November 10, 1999, the Department convened a public meeting to listen to comments on the draft report. Ten persons, many representing consolidated comments from various groups, presented oral comments at the public meeting. The Department also solicited and received written comments. The Department received 30 public comments, representing input from many organizations and individuals. Almost all of those who submitted comments focused on the draft report's discussion of the proposed IBC 2000.

Those who submitted comments included Acanthus Architecture and Planning PC (Arizona), the American Institute of Architects (AIA), the American Seniors Housing Association, the Arizona Center for Disability Law, the Bazelon Center for Mental Health Law, Paul Bishop (California architect), the Boston Office of Civil Rights, the Building Officials and Code Administrators International (BOCA), the Colorado Civil Rights Division, the Consortium of Citizens with Disabilities, the Disability Rights Action Coalition for Housing, the Disability Rights Action Committee, Disability Rights Inc., the Eastern Paralyzed Veterans Association (EPVA), Larry Field (Delaware accessibility consultant and codes enforcement expert), the International Code Council (ICC), the International Conference of Building Officials (ICBO), the Kansas Disability Rights Action Coalition for Housing, Marsha Mazz with the United States Access Board, Bruce McKarley (California building code official), the Monroe County Legal Assistance Corporation (Rochester, New York), the National Apartment Association (NAA), the National Association of Home Builders (NAHB), the National Fair Housing Alliance, the National Multi Housing Council (NMHC), the New Mexico Governor's Committee on Concerns of the Handicapped, the Paralyzed Veterans of America (PVA), Larry Perry (AIA), the Rochester Center for Independent Living, Emory Rodgers (an Arlington, Virginia building code official), the Southern Building Code Congress International (SBCCI), the Topeka Independent Living Resource Center, Wheelchair Access Now Today, Bill Wright (Oklahoma architect), and Leslie Young with the Center for Universal Design at NC State University.

The AIA, the BOCA International, the ICC, the ICBO, the NMHC, and Larry Perry, Architect, AIA, submitted one set of consolidated comments and later submitted specific recommended code language to address variances that the Department had identified in the draft report. The Department met with this group and others, including the NAHB and EPVA, to discuss the recommendations. In addition, HUD staff members had telephone conversations with some of the commenters in order to obtain clarification of their comments or solicit their technical knowledge of the issues raised in their comments.

General Comments on the Draft Report

Dialogue With Code Organizations

Comments

The overwhelming majority of the commenters praised or endorsed HUD's efforts to provide technical assistance to the model building code organizations to help ensure that the model codes meet the accessibility requirements of the Act. A number of commenters strongly urged HUD to continue to maintain a dialogue with the model code organizations to ensure that future updates to the International Building Code are consistent with the Act's accessibility requirements. Some commenters cautioned that no loopholes should weaken the scoping or technical requirements of the Act.

Response

The Department agrees with these comments and intends to be actively engaged in development of future editions of ANSI A117.1 through its participation on the ANSI A117 Committee. The Department also is available for consultation in the development of future editions of the International Building Code. In this Final Report, the Department recommends code language that may be used by model code organizations and states and localities that wish to modify their codes to be consistent with the Act. However, the Department believes that its recommendations are a continuing step in the dialogue needed to achieve consistency between the model codes, particularly the International Building Code, and the Act's design and construction requirements.

CABO/ANSI A117.1–1992 and ICC/ANSI A117.1–1998 As Safe Harbors

Comments

Many commenters commended the Department for recognizing ANSI A117.1–1998 as a safe harbor under the Fair Housing Act. Several commenters stated that ICC/ANSI A117.1–1998 is the basis for the accessibility provisions in the model codes and that in their view, HUD's acceptance of ANSI A117.1–1998 as a safe harbor resolves many of the concerns of the multifamily housing industry. One commenter also urged the Department to accept future editions of the ANSI A117.1 standard as being a safe harbor for complying with the Fair Housing Act.

As new editions of ANSI A117.1 have been developed, various organizations have encouraged HUD to acknowledge that compliance with those new editions constitutes safe harbors for compliance with the Act. For example, in 1998, one commenter wrote to HUD that:

"The ANSI standard has been revised * * * and a 1998 version is about to be published. It is logical to rely on the latest version of a standard, unless a statute specifically refers to a particular edition. In addition, there are sound policy reasons to rely on the latest version of the ANSI standard, since it reflects improvements in accessible design. Since the Fair Housing Act does not refer to a particular edition of the ANSI standard, it would be reasonable for the [HUD Design] Manual and the Guidelines to specifically permit the use of the current 1998 ANSI standard. The 1998 ANSI standard is currently used by local code officials around the country. Therefore, we urge HUD to clarify that the most recent version of ANSI meets the requirements of the Fair Housing Act."

Response

In response to the many commenters who have encouraged the Department to adopt the ICC/ANSI A117.1–1998, the Department will soon be publishing an interim rule, amending certain sections of 24 CFR 100.200 to state that compliance with the appropriate requirements of the 1986, 1992, or 1998 editions of ANSI A117.1 suffices to satisfy the Act's design and construction requirements for the interiors of dwellings and public and common use areas. Compliance with these versions of ANSI A117.1, the Guidelines, or the Design Manual are all safe harbors under the Act.

The Act explicitly states that compliance with the appropriate requirements of ANSI A117.1 suffices to satisfy the Act's design and construction requirements for the interiors of dwellings. 42 U.S.C. 3604(f)(4). However, Congress did not intend to limit the ways to comply with the requirements of the Act to the ANSI A117.1 standard. Congress specified the ANSI A117.1 standard in the Act in order to assure designers of new multifamily housing that if they follow the ANSI standard, they will have met the Act's adaptive design requirements. Congress also noted that its reference to ANSI was not intended to require "that designers follow this standard exclusively, for there may be other local or state standards with which compliance is required or there may be other creative methods of meeting these standards." H.R. Rep. No. 711, 100th Cong., 2d Sess., p.27. (1988).

In 1989, the Department issued its regulations implementing the design and construction requirements of the Act. 24 CFR 100.205. At the time Congress passed the Act, and the Department promulgated its regulations, the current edition of ANSI A117.1 was the 1986 edition. In response to concerns that an "open ended" reference to the ANSI standard constituted an unlawful delegation of the Department's rulemaking authority, the Department identified the 1986 ANSI A117.1 edition in its final rule implementing the Fair Housing Act, and stated its intent to review and, if appropriate, to adopt future editions as they were published.

It is important to note that ANSI A117.1 contains only technical criteria, whereas the Fair Housing Act, the implementing regulations, and the Accessibility Guidelines contain both "scoping" and technical criteria. Scoping criteria define when a building element or space must be accessible; technical criteria provide the technical specifications on how to make an element accessible. Thus, designers and builders who wish to follow ANSI A117.1 instead of the Accessibility Guidelines must still look to the Act and the Department's regulations to determine which buildings, dwelling units, and elements are covered by the Act.

Type A Units

Comment

A commenter stated that the HUD draft report does not point out that Type A units in ICC/ANSI A117.1–1998 exceed the Fair Housing Act Accessibility Guidelines and urged HUD to clarify that Type A units are not required under the Act.

Response

Since 1980, ANSI A117.1 has included technical criteria for fully accessible dwelling units. At the time the Act was passed, the only ANSI A117.1 standard for residential design were standards for a fully accessible dwelling unit. The ICC/ANSI A117.1–1998 now references two types of dwelling units, a "Type A dwelling unit," which is intended to be a fully accessible dwelling unit as has been traditionally provided for in ANSI A117.1, and a "Type B dwelling unit," which is intended to meet the Act's technical requirements for the interiors of dwellings.

The Department agrees that the Act does not require that private developers build new construction to the Type A standard, although a Type A unit will satisfy the Fair Housing Act requirements. Congress specifically recognized this when it stated that compliance with the appropriate requirements of ANSI A117.1 suffices as compliance with the Act.

Type B Units

Comment

One commenter disagreed with the draft report's conclusion that the ICC/ANSI A117.1–1998 standard is consistent with the Act's requirements. This commenter stated that there are numerous requirements in the ICC/ANSI A117.1 standard for Type B units that go beyond Fair Housing Act requirements, although Type B units are supposed to reflect the Fair Housing Act accessibility requirements. The commenter proffered that the draft report should have made an explicit comparison between the Act's requirements and Type B requirements in ICC/ANSI A117.1. This commenter subsequently submitted a list of eight areas where this commenter believes the requirements in the IBC exceed those in the Guidelines. These eight areas are: (1) The definition, scoping and requirements for Type A dwelling units; (2) Location of accessible routes; (3) Requirements for a minimum number of accessible entrances; (4) Technical provisions for security and intercom controls and exceptions for redundant controls; (5) Requirements for laundry equipment within dwelling units; (6) Exceptions for provisions for bath facilities; and (7) Dwelling units with accessible communication features; and (8) Exceptions to provisions for "lavatory."

Response

The Department will take the commenter's concerns under advisement and will work with this commenter and other interested organizations to review these areas of concern. In addition, the Department will continue to work with members of the Committee in the development and refinement of the ANSI A117.1 criteria. The Department will provide technical assistance to state and local governments that are considering adopting, either completely or with modification, model codes or other provisions in their building codes in order to reflect the requirements of the Act.

Further, the Department pledges to work with the model code organizations as they review and revise the International Building Code. The ICC plans to issue a "stand-alone" document containing the accessibility requirements found in the IBC 2000, incorporating its responses to the Department's recommendations in this Final Report. This "stand alone" document will contain the IBC provisions that meet or exceed the design and construction requirements of

the Fair Housing Act. The ICC and the National Association of Homebuilders (NAHB) are working on an appendix to the "stand alone" document to address the eight areas where they agree that the Type B dwelling unit exceeds the Fair Housing Accessibility Guidelines. The Department has agreed to review those documents and is committed to working with those organizations and others to arrive at a document in code language to serve as a safe harbor under the Fair Housing Act Amendments for persons who design and construct multifamily dwellings to its specifications.

By way of further explanation with respect to the Department's draft report, the purpose of the Department's review was to identify any instances where the technical criteria in the later versions of ANSI A117.1 did not provide the same level of accessibility as described in the Guidelines, the 1986 ANSI A117.1, or as mandated by the Act. The Department found no such instances where a difference in the technical criteria was inconsistent with the requirements of the Act.

The Act does not require that developers of covered multifamily housing build according to the ANSI A117.1 standard or to its Type B dwelling unit design criteria. Compliance with the ICC/ANSI A117.1 for Type B dwelling units is one of several ways to comply with the Act. As stated above, the Fair Housing Act's accessibility requirements can be achieved in a number of ways. However, a developer would be required to comply with a state or local code or law to which they are otherwise subject, that has adopted either a model code or accessibility standard that includes the Type B dwelling unit.

The Act recognized that many states and localities, as well as certain other federal laws, already had established stricter accessibility requirements than those provided for under the Act. The Act states that it shall not be construed to invalidate or limit any law that requires dwellings to be designed and constructed in a manner that affords persons with disabilities greater access than is required under the Act. 42 U.S.C. 3604(f)(8). To the extent that states and localities adopt ANSI A117.1 standards that go beyond the Act's minimum standards, the Department is without authority or desire to invalidate or limit this adoption.

The Accredited Standards Committee on Architectural Features and Site Design of Public Buildings and Residential Structures for Persons With Handicaps (A117) developed the A117.1 ANSI standards in 1986, 1992, and 1998. That Committee included this Department as well as other federal agencies, building and housing industry representatives, building code organizations, disability advocacy organizations, and many of the commenters on HUD's draft report. The American National Standards Institute which adopted the standards submitted by the Committee, requires that due process and consensus be met by the Committee. The ANSI Board of Standards Review considers that consensus has been met when "substantial agreement has been reached by directly and materially affected interests." Consensus means more than a simple majority but does not necessarily require unanimity, and requires that all points of view be heard.

Relationship Between the Act's Requirements and Other Accessibility Requirements and Standards

This Final Report addresses only the application of the requirements of the Act to covered multifamily dwellings. Certain of these dwellings, as well as certain public and common use areas of such dwellings, may also be covered by various other laws, such as the Architectural Barriers Act of 1968, 42 U.S.C. 4151–4157 (the ABA); Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794 (Section 504); and the Americans with Disabilities Act of 1990, 42 U.S.C. 12101–12213 (the ADA).

The ABA applies to certain buildings financed in whole or in part with federal funds. The Department's regulations for the ABA are found at 24 CFR parts 40 and 41. Section 504 applies to programs and activities receiving federal financial assistance, and programs and activities conducted by Executive agencies, including the Department. The Department's regulations for Section 504 are found at 24 CFR parts 8 and 9. The Fair Housing Act accessibility requirements apply to both private housing and to government-funded housing, including federally funded housing, which is also subject to the accessibility requirements of Section 504. HUD funded housing must be designed and constructed to meet the scoping and technical requirements of both the Fair Housing Act and Section 504, and in certain instances, the ABA.

The ADA is a broad civil rights law guaranteeing equal opportunity for individuals with disabilities in employment, public accommodations, transportation, state and local government services, and telecommunications. The Department of Justice (DOJ) is the lead federal agency for implementation of the ADA. HUD does not have the authority to review the model building code standards for compliance with the ADA.

Comments

A number of commenters expressed concern that the draft report included within the coverage of the Act types of occupancies and uses that are also covered under the ADA. They urged the Department to make it clear that the Act does not preempt any of the accessibility requirements of the ADA. One commenter requested that HUD coordinate with DOJ with respect to the Act and ADA accessibility standards as they apply to public and common use areas.

One commenter requested that the Department encourage architects and builders to follow design and construction concepts incorporated in standards for "universal design" of accessible housing.

Response

Although the Department's team which reviewed the model building codes included staff from DOJ, the focus of the review was the Fair Housing Act. In addition, as stated above, the Department does not have authority to review the model building codes for compliance with the ADA.

Title II of the ADA applies to housing that is designed and constructed by a state or local governmental entity (including a public housing authority). Because most government-constructed housing is constructed with federal funds, in the majority of circumstances, there will be overlapping coverage of that housing under the Act, Title II, and Section 504. In some cases a state or local government may develop housing without the use of federal funding. In those cases, the requirements of the Act and Title II of the ADA, but not Section 504, would apply to the housing.

Title III of the ADA, in relevant part, applies to commercial facilities and public accommodations. Inns, hotels, motels, and other places of lodging are public accommodations under Title III of the ADA, as are dormitories, homeless shelters, nursing homes, and some timeshares. *See* 28 CFR 36.104. In addition, the common areas for public use at "covered multifamily dwellings" under the Act must meet the ADA Standards for Accessible Design (ADA Standards). A rental office in a multifamily residential development, a convenience store located in that development, or a room in a home that is used as a day care center or medical office, would be covered under Title III of the ADA. 28 CFR 36.104. Common use areas that are for use only by the

residents and their guests would not be covered by the ADA.

The Department recognizes that the Act's design and construction requirements do not preempt the ADA and wishes to clarify that in those cases where a development is subject to more than one accessibility standard, the laws and the standards must be read together and followed together.

There are certain properties, or portions thereof, that are covered by both the Act and Title II and/or Title III of the ADA. These may include certain timeshares, dormitories, residential hotels, boarding houses, nursing homes, homeless shelters, congregate care facilities, public use portions of private multifamily dwellings, and public housing. These properties *must* be designed and built in accordance with the accessibility requirements of both the Act and the ADA. In addition, to the extent that the requirements of these various laws overlap, the more stringent requirements of each law must be met, in terms of both scoping and technical requirements.

In the preamble to its rule implementing Title III, DOJ discussed the relationship between the requirements of the Fair Housing Act and the ADA. The preamble noted that many facilities are mixed use facilities. For example, a hotel may allow both residential and short term stays. In that case, both the ADA and the Fair Housing Act may apply to the facility. The preamble to the Title III rule also stated that residential hotels, commonly known as "single room occupancies," may fall under the Fair Housing Act when operated or used as long term residences, but they are also considered "places of lodging" under the ADA when guests are free to use them on a short term basis. The preamble also discussed a similar analysis with respect to homeless shelters, nursing homes, residential care facilities, and other facilities where persons may reside for varying lengths of time. The preamble concluded that such facilities should be analyzed separately under both the Fair Housing Act and the ADA. 56 FR at 3551–52.

Enforcement of the Fair Housing Act

Comments

Many of the commenters specifically urged HUD to continue to vigorously enforce the Act's accessibility requirements. Several other commenters made clear that they see incorporation of the Act's requirements into the codes as a supplement to the enforcement methods currently available under the Act, not as a replacement for that enforcement. One commenter, a local building code official, stated that by adoption of codes that include the requirements of the Act, state and local jurisdictions will be assisting HUD in its enforcement efforts. Finally, several of the commenters indicated that once the Act's requirements are incorporated into a building code, the permitting and inspection process should not create a safe harbor for builders who receive permits, nor should it absolve housing industry professionals from their responsibilities under the Act.

Response

The Act is clear that while state and local building code officials are responsible for enforcing the building code standards adopted in their respective jurisdictions, 42 U.S.C. 3604(f)(5)(B); 24 CFR 100.205(g), the Department is responsible for enforcing the design and construction requirements of the Act. 42 U.S.C. 3604(f)(6)(A), 3610. If a jurisdiction adopts a model building code that HUD has determined conforms with the design and construction requirements of the Act, then covered residential buildings that are constructed in accordance with plans and specifications approved during the building permitting process will be in compliance with the requirements of the Act, unless the building code official has waived one or more of those requirements, or the building code official has incorrectly interpreted or applied the building code provisions.

However, the fact that a jurisdiction has adopted a code that conforms with the accessibility requirements of the Act, or that construction of a residential building was approved under a code, does not change the Department's statutory responsibility to conduct an investigation based on receipt of a complaint from an aggrieved person to determine whether the requirements of the Act have been met. 42 U.S.C. 3604(f)(6)(A); 24 CFR 100.205(h). Section 804 of the Act provides that "determinations by a State or unit of general local government under paragraphs 5(A) and (B) shall not be conclusive in enforcement proceedings under this title." 42 U.S.C. 3604(f)(6)(B). A full discussion of the Department's enforcement responsibilities may be found in the Department's policy statement connected with this Final Report.

Certification of Codes

Comments

Two commenters recommended that HUD consider certifying state and local building codes as meeting the accessibility requirements of the Fair Housing Act.

Response

There are over 40,000 state and local building code jurisdictions in the United States. The Act does not require the Department to certify codes. However, through its work with the model code organizations, and existing and planned activities to provide technical assistance to state and local building code officials, the Department intends to work with building code organizations to ensure that those codes incorporate the requirements of the Act.

Comments Related to the Model Code Reports

Definition of Dwelling Unit

In Draft Recommendation Number 1 in the draft report on the proposed IBC 2000, the Department suggested that the proposed IBC 2000 be revised to modify the definition of "dwelling unit," for purposes of the accessibility requirements of the proposed IBC 2000 at Section 1102.1, so that it covers all the residential structures that are covered by the Act, as follows:

> A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. For purposes of Chapter 11, sleeping accommodations intended for occupancy by a separate household in structures with shared cooking or toileting facilities shall be considered to be separate dwelling units.

Comments

A large number of commenters believed that the IBC's definition of "dwelling unit" should remain as it is. Two commenters pointed out that adopting Recommendation 1 would result in the inclusion of such buildings as hotels, hospitals and prisons that otherwise are neither R–2 properties nor covered by the Act's design and construction requirements. One commenter also noted that adoption of Recommendation 1 would require building officials to make a decision as to whether residents of a building with shared kitchens and bathrooms were separate households or a single "family." That commenter also stated that HUD's scoping recommendations may create confusion by suggesting that certain technical terms mean something different in Chapter 11 than they do in other chapters of the existing model codes and the proposed IBC.

One commenter specifically supported Recommendation 1. That commenter noted that the Act

recognizes that group homes that operate as a single housekeeping unit are indistinguishable (for land use purposes) from homes that house traditional families. In the clearest sense, then, according to the commenter, such group homes do not constitute "covered multifamily dwellings." The commenter noted further that, as a practical matter, most group homes are established in existing single family structures. Those few group homes that are newly constructed under HUD's Section 811 program are required to meet the accessibility requirements set forth in the Department's Section 504 regulations.

One commenter recommended that a new word or phrase should be used to ensure coverage of those situations in which sleeping rooms with shared kitchens or bathroom facilities are covered by the Act. Another commenter had a similar suggestion that, rather than revising the definitions of "dwelling unit" and the use groups, ICC should adopt one new term that describes all covered multifamily dwellings, including dormitories, timeshares, congregate care facilities, shared kitchens and bathrooms, and excludes such transient properties as hotels. In subsequent discussions with the Department, the ICC recommended adding a new term and definition for "sleeping unit," which captures covered units not now covered by the IBC. The ICC suggested, "Sleeping Unit—a room or space in which people sleep, which can also include permanent provisions for living, eating, and sanitation, but does not include permanent kitchen facilities." That term would be used in conjunction with the term dwelling unit where appropriate in the IBC.

Another commenter also suggested an alternate revision, specifically that the term "Dwelling Unit, Type B" be revised to include a single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation. The revised term would also include units with permanent provisions for living and sleeping with shared cooking or sanitation facilities outside the unit. The Type B unit would be designed and constructed in accordance with ICC/ANSI A117.1, intended to be consistent with the technical requirements of fair housing required by federal law.

Response

Rather than revising the definition of "dwelling unit," in new Recommendation Number 2, the Department recommends adding the term "sleeping accommodation intended as a residence" to Chapter 11 of the proposed IBC 2000.

The comments to the proposed IBC 2000 also apply, with variation, to the remaining three model building codes. In its Final Report on the UBC, the Department has recommended changes to appropriate sections of Chapter 11 covering "guestrooms" that are intended as a residence. In the Final Report on the BNBC and the SBC, the Department has recommended the addition of a new term, "sleeping unit," defined as a room in which people sleep intended to be occupied as a residence," and adding that term to the appropriate sections of Chapter 11 of BNBC and SBC.

However, the Department recognizes that there may be other approaches to resolving this variance that may be as or more effective. The Department will continue to work with the model code organizations and other interested members of the public on this issue.

It is the Department's position that detached single family dwellings occupied by persons who function as a single household, including group homes that function as a single household, are not "covered multifamily dwellings" for purposes of the design and construction requirements of the Act. However, the Department's regulations make it clear that all group homes are "dwelling units" for purposes of the Act's prohibitions on discrimination based on disability. *See* 24 CFR 100.201. The Department further recognizes that other accessibility standards, including accessibility requirements mandated under programs providing federal financial assistance, apply to detached single family group homes.

Recommended Revision to the Definition of "Dwelling Unit, Type B"

Section 1102 of the proposed IBC 2000 defines a "Dwelling Unit, Type B" as a dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1–1998, "intended to be consistent with the technical requirements of fair housing required by federal law." The Department did not discuss this definition in its draft report.

Response

In response to the comments concerning the definition of "dwelling unit," and the comments concerning the relationship between the requirements of the Fair Housing Act and other federal accessibility standards, the Department has added a new finding of a variance, and a new Recommendation Number 1, in the Final Report on the proposed IBC 2000 with respect to the definition of a "Dwelling unit, Type B." This Recommendation is intended to clarify that the Type B dwelling unit incorporates the requirements of the Fair Housing Act, but not necessarily the requirements of any other federal law.

Transient Housing

In Draft Recommendation 2 of its draft report on the proposed IBC 2000, HUD suggested that the proposed IBC 2000, and other model codes, be revised to make clear that certain types of housing that the model codes viewed as transient are dwellings subject to the requirements of the Fair Housing Act, including the design and construction requirements. This housing may include timeshares, residential hotels, or homeless shelters. Most of the model codes use a 30-day measure as the means to determine whether a building is for transient use and thus not a dwelling subject to their accessibility requirements for dwellings in Chapter 11.

It is the Department's position that a 30-day measure is inappropriate in determining whether a building is covered by the Act. As stated in its draft report, the Department's position on this issue is discussed in the Questions and Answers About the Guidelines. Thus, the draft report echoed the Questions and Answers when it noted that length of stay is only *one* factor in determining whether a building is a "covered multifamily dwelling." Other factors to be considered include: (1) Whether the rental rate for the unit will be calculated based on a daily, weekly, monthly or yearly basis; (2) Whether the terms and length of occupancy will be established through a lease or other written agreement; (3) What amenities will be included inside the unit, including kitchen facilities; (4) How the purpose of the property will be marketed to the public; (5) Whether the resident possesses the right to return to the property; and (6) Whether the resident has anywhere else to which to return.

Comments

Only one commenter supported the Department's recommendation, and that commenter encouraged HUD to provide a more detailed means to measure whether a residential occupancy is "primarily transient in nature" or "primarily permanent in nature."

Several commenters suggested that HUD should endorse the 30-day measure of transience used in the model codes, stating that length of stay is the most prevalent, substantive and reliable criteria.

With respect to timeshares specifically, one group of commenters suggested: (1) Deleting "vacation" because the reason for the timeshare is irrelevant, and (2) listing timeshares as R–1 occupancies, but scoping them in Chapter 11 with the same criteria as for R–2 occupancies. The Department agrees that the term "vacation" is unnecessary.

Response

After considering the comments, HUD agrees that revising the IBC's residential use groups, as reflected in Draft Recommendation 2, would not be the most appropriate way to ensure that timeshares, residential hotels, homeless shelters occupied as a residence, boarding houses, and similar short-term housing meet the accessibility requirements in Chapter 11 of the Code. However, the Department continues to believe that the 30-day test of transience used by the IBC is inappropriate. To endorse such a requirement would mislead designers, builders and other readers of the code because it would give the false impression that such housing need not meet the requirements of the Act. The Department endorses the factor analysis stated in the above response for determining whether a dwelling is not transient.

In promulgating the fair housing regulations and the Guidelines, HUD specified as dwellings covered by the Act and its design and construction requirements such short-term housing as time-sharing properties and homeless shelters. *See* 24 CFR 100.201; 56 FR at 9500; 54 FR at 3238 & 3244. Courts also have applied the Act's general requirements to various types of short-term housing, including timeshare units, *Louisiana Acorn Fair Housing* v. *Quarter House, Oak Ridge Park, Inc.*, 952 F. Supp. 352, 359 (E.D. La. 1997); housing for migrant farm workers, *Lauer Farms, Inc.* v. *Waushara County Board of Adjustment*, 986 F. Supp. 544, 559 (E.D. Wis. 1997), *Hernandez* v. *Ever Fresh Co.*, 923 F. Supp. 1305, 1308 (D. Ore. 1996), *Villegas v. Sandy Farms, Inc.*, 929 F. Supp. 1324, 1328 (D. Ore. 1996); nursing homes, *Hovsons, Inc.* v. *Township of Brick*, 89 F.3d 1096, 1102 (3d Cir. 1996), *United States* v. *Commonwealth of Puerto Rico*, 764 F. Supp. 220 (D.P.R. 1991); a facility for people with HIV, *Baxter* v. *City of Belleville*, 720 F. Supp. 720, 731 (S.D. Ill. 1989); homeless shelters, *Turning Point* v. *City of Caldwell*, 74 F.3d 941 (9th Cir. 1996), *Woods* v. *Foster*, 884 F. Supp. 1169, 1173 (N.D. Ill. 1995); a residential school for emotionally disturbed children, *United States* v. *Massachusetts Industrial Finance Agency*, 910 F. Supp. 21, 26 n.2 (D. Mass. 1996); and seasonal vacation bungalows, *United States* v. *Columbus Country Club*, 915 F.2d 877, 881 (3d Cir. 1990), *cert. denied*, 501 U.S. 1205 (1991).

In finding that these types of short-term residencies are subject to the Act's requirements, the courts have noted that length of stay is not the sole measure of whether the property is a "dwelling" under the Act. The courts have looked to various factors, including whether the resident possesses the right to return to the property, whether he or she has anywhere else to which to return, and the amenities at the property. *See, e.g., Louisiana Acorn Fair Housing*, 952 F. Supp. at 359; *Woods* v. *Foster*, 884 F. Supp. at 1173; *Baxter* v. *City of Belleville*, 720 F. Supp. at 731.

The factors that HUD set forth in the draft report seek to provide guidance on determining whether a property is a short-term dwelling covered by the Act or a transient property that is not covered by the Act. HUD continues to believe that these factors must be considered by owners, designers, builders, developers and architects in determining whether a building must be designed and constructed in accordance with the Act.

In sum, the Department cannot endorse the 30-day measure that the proposed IBC 2000 and other model codes use. Therefore, the Department is retaining its determination that three of the model codes do not meet the requirements of the Act in that regard. The UBC defines residential use groups differently than the other three model codes, and the Department did not find a variance with respect to that model code.

Accordingly, because the above-described types of housing which are subject to the Act are not required to meet IBC Chapter 11's requirements for dwelling units, the IBC is not consistent with the Act, the regulations and the Guidelines. At this time, the Department is uncertain how best to resolve this inconsistency between the IBC and the Department's regulations. Therefore, the Department is withdrawing Draft Recommendation Number 2. The Department will continue to work with ICC and other interested code, industry and advocacy organizations to develop language that appropriately conveys to builders and designers that certain residencies of less than 30 days must meet the Act's accessibility requirements. In the meantime, the Department believes the factors listed above must be considered by owners, builders, developers, designers and architects in determining whether the requirements of the Act apply to the design and construction of buildings with rooms for short term occupancy.

Assisted Living/Congregate Housing

In Draft Recommendation Number 3 on the proposed IBC 2000, the Department suggested that the definition of "dwelling unit" contained in Draft Recommendation Number 1 be adopted and that the proposed IBC 2000 be revised to modify the language of the charging paragraph of the proposed IBC 2000 Section 1107.5.4, Accessible dwelling units. Modification to the charging paragraph would require that in occupancies in Group R–2 and R–3, as applicable in Section 101.2, where there are four or more dwelling units in a single structure, every dwelling unit shall be a Type B dwelling unit. In occupancies in Group R–4 where there are four or more dwelling units in a single structure, at least one shall be Type A, and all other dwelling units shall be Type B dwelling units. In occupancies in Group I–1 where there are four or more dwelling units in a single structure, at least 4 percent, but not less than one, of the dwelling units shall be Type A, and all other dwelling units shall be Type B. In nursing homes of Group I–2, where there are four or more dwelling units in a single structure, at least 50 percent, but not less than one, of the dwelling units shall be Type A dwelling units, and all of the other dwelling units shall be Type B.

Comments

One group of commenters suggested that rather than adopting Draft Recommendation Number 3, the IBC should be revised to make it clear that all covered units must comply with the requirements for Type B dwelling units, in addition to the ADA Standards for accessible units.

Response

After consideration of all of the comments, the Department has decided to modify its Draft Recommendation Number 3 with a new Recommendation Number 2 in the Final Report on the proposed IBC 2000 which recommends new language to be included in Section 1107.5.4 that requires "sleeping accommodations intended to be occupied as a residence" to be Type B. In addition, under its new Recommendation Number 2, the Department recommends modifications to the charging paragraphs of Sections 1107.3.1 (Group I–1), 1107.3.2 (Group I–2), and 1107.5.7 (Group R–4) which require all sleeping accommodations intended to be occupied as a residence to be Type B. Additionally, since these

comments also apply to other model building codes reviewed, similar modifications have been made to each of those reports.

Definition of "Ground Floor"

In its draft report, the Department concluded that the IBC's scoping of Type B dwelling units does not adequately address situations where there may be more than one ground floor in a building. The Department's Draft Recommendation Number 4 for addressing this variance was that the proposed IBC 2000 define the term ground floor for purposes of Chapter 11 to match the regulations and the Guidelines and delete the definition of "dwelling unit, ground floor" from Section 1102.

Comments

One commenter believed that an exception may be needed for dwelling units in which the entry to the unit is on the ground floor, but the living and sleeping areas are on the second floor, and that in such case, the unit would not be required to meet the accessibility requirements of the Act.

A group of commenters stated that the proposed IBC 2000 is intended to be consistent with the Department's regulations and Guidelines, which state that a building may have more than one ground floor or may have ground floor dwelling units on different levels of a building. However, this group noted that it is not unreasonable to consider clarifying its intent by making it more evident in the code that there can be more than one ground floor or ground floor units on different levels of a building.

This group pointed out that any unit that meets the IBC's definition of "Dwelling unit, ground floor," is a ground floor unit, regardless on which floor or level of the building it is located. The IBC definition is:

> Dwelling unit, ground floor—a dwelling unit with a primary entrance and habitable space at grade.

The group added, however, that the Department's recommended language is not consistent with the language and style that is customary to building codes. The group concluded that the potential confusion can be eliminated and the intent of the Act achieved by requiring that at least one level containing dwelling units be provided with an entrance from the exterior (and thus have Type B dwelling units); and any other levels that have an entrance from the exterior and contain dwelling units have Type B dwelling units. The group, however, did not offer language to accomplish this recommendation.

Another commenter agreed that a definition of "ground floor" is needed in Chapter 11, since the exceptions in 1107.5.4 use the term, and it is not defined elsewhere in the code. This commenter also noted that the IBC definition of "Dwelling unit, ground floor" does not describe ground floor units that are on an accessible route that is above grade.

This commenter suggested that some of the wording in the Department's recommendation should be in the commentary section of the code. The commenter suggested that the definition of ground floor be: "Any floor of a building with an entrance on an accessible route." The commenter also stated that the provision in the Department's recommendation that states: "Where the first floor containing dwelling units in a structure is above grade, all units on that floor shall be served by an entrance on an accessible route," is a requirement, and should not be buried in a definition. The commenter recommended adding this language to the end of the charging paragraph of 1107.5.4, just before the exceptions.

In addition, during the review of the public comments, two new concerns arose: (1) whether or not the IBC scoping language, in combination with the definition of "dwelling unit, ground floor," makes it clear that there must be at least one ground floor in a building, and (2) whether the language of Exception 2 of 1107.5.4 results in requiring builders to make the lowest floor of a building containing dwelling units accessible even if it were more practical to make a different floor (such as the second or third floor) containing dwelling units accessible when that floor is closer to the grade, even if not "at grade."

Response

The Department carefully considered all comments received on this issue. The Department believes this is one of the more difficult issues to address because the Act is a civil rights law, and the language of the statute and the Department's regulations make it clear that covered multifamily dwellings must be designed and constructed in a manner that incorporates those features of accessible and adaptable design. The Department's regulatory definition of ground floor is also clear that a building may have one or more ground floors.

The Department is also mindful of the fact that the language in the Department's definition of ground floor is not couched in building code terminology. While some commenters offered alternative language, the Department does not believe the alternative language offered addresses the variances discussed above. Therefore, the Department is retaining its finding that the proposed IBC 2000 language, and the comparable language of the other three model codes, is not consistent with the requirements of the 1988 Act. The Department maintains that the IBC is not clear with respect to requiring additional ground floors to be accessible, and that the scoping language and exception discussed above creates another potential variance with respect to the fact that there must be at least one ground floor (unless it is impractical as provided in the Department's regulations and the Guidelines).

However, the Department is withdrawing its recommendation with respect to the proposed IBC 2000 and the other model codes that also contained a similar recommendation. The Department will work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction. In the meantime, builders, developers, owners, designers, architects and others involved in the design and construction of housing covered by the Act must apply the Department's definition of "ground floor" when making decisions about the applicability of the accessibility requirements of the Act.

First Level of Living

In its draft report on the UBC, the Department concluded that the language of Section 1103.1.9.3, Multi-unit dwellings, Exception 2, was ambiguous and could be interpreted to exclude the first floor of dwelling units in a building in which dwelling units are not on the floor at grade. Draft Recommendation Number 5 of the UBC analysis proposed to clear up the ambiguity by changing the language of Section 1103.1.9.3, as follows:

> Where no elevator service is provided in a structure and a floor at grade does not contain dwelling units, only those dwelling units located on the first floor containing dwelling units of either Group R, Division 1 apartment occupancies or Group R, Division 3 occupancies need comply with the requirements of this section.

Comments

A commenter that reviewed the draft report on the UBC commented that Draft Recommendation Number 5 to the UBC did not sufficiently clear up the ambiguity noted by the Department. This commenter suggested revising the Recommendation to read: * * * only

those dwelling units located on the first floor containing dwelling units *above the floor at grade.*"

Response

The Department has adopted the commenter's suggested language and revised the applicable recommendation in the UBC draft report, as well as in any other relevant model code report.

Definition of Building and Structure

In Draft Recommendation Number 5 to the IBC 2000 draft report, the Department recommended that the proposed IBC 2000 Exceptions in Section 1107.5.4 be modified by eliminating any reference to the term "building" and replacing it with the term "structure" to ensure that firewall criteria are eliminated for the purpose of scoping the accessibility requirements for Type B dwelling units.

Comments

Several commenters opposed Draft Recommendation Number 5. One commenter noted that replacing "building" with "structure" is unnecessary and may have unintended consequences. Another commenter believed that there is a better way of fixing the variance and proposed modifying the definition of a Type B unit to say that dwelling units separated by firewalls do not constitute separate buildings. A group of commenters suggested that changing the term "building" to "structure" would mean that, in a newly-built project, if one townhouse owner elected to have an elevator installed in his/her unit, all other units would then have to be constructed with elevators. The ICC also believed that changing "building" to "structure" could actually reduce the number of units required to be accessible.

Response

After re-examining the proposed IBC 2000, the Department believes that the proposed IBC 2000 is clear that dwelling units separated by firewalls do not constitute separated buildings and that the suggested revision to IBC is not needed. Thus, the Department has withdrawn this recommendation from the Final Report on the proposed IBC 2000. The Department also has made modifications to the reports on the other model codes as appropriate.

Breezeways

The Department noted in its draft report in Draft Recommendation Number 6 on the proposed IBC 2000 that in most cases two structures that are connected by a breezeway or stairway and share the same roof are considered one building. However, in cases where the breezeway or stairway that structurally connects both buildings does not provide the only means of egress and does not share the same roof as the two structures, whether or not this is one building must be determined under the IBC on a case by case basis. In addition, in some cases, the IBC considers walkways, breezeways, and stairways accessory structures and not integral to the building. If they are determined to be accessory structures, each building that they connect is examined separately. The Department, therefore, concluded that the IBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways, and recommended adding language to Section 3104.2 to make it clear that for purposes of accessibility under Chapter 11, buildings or structures structurally connected to other buildings or structures by pedestrian walkways, breezeways, or stairways shall be considered one structure.

Comments

A number of commenters thought that the Department's recommendation was incorrect and impractical. They pointed out that the word "structure" includes sidewalks and utility lines that link single family homes. Another pointed out that two unrelated buildings separated by a distance of more than "a few feet" but connected by a bridge could be considered to be a single building, when this may not have been the Department's intent.

Response

The Department has carefully considered all of these comments, but continues to believe that for purposes of calculating the total number of dwelling units required to be Type B dwelling units, buildings that are structurally connected and buildings with multiple wings are a single building and must be treated as such. In addition, Section 3104 of the proposed IBC 2000 applies specifically to connections between buildings such as pedestrian walkways or tunnels, located at, above, or below grade level, that are used as a means of travel by persons. The Department also disagrees with the conclusion that all of the structures referenced by some of the commenters would come into consideration, *i.e.*, pipes, gas lines, telephone poles, etc. The Department's recommendation specified what facilities would be deemed as being connecting, that is, pedestrian walkways, breezeways, or stairways.

On the other hand, the Department agrees with the concern that the reference to Chapter 11 in its recommendation is too broad. The Department notes that it did not intend to address two clearly separate structures that are joined only by a walkway or a tunnel of considerable distance. Therefore, the Department is revising its recommendation to state that for purposes of calculating the number of Type B dwelling units and Type B sleeping accommodations required by Chapter 11, structurally connected buildings and buildings with multiple wings shall be considered one structure. Similar modifications are being made to the reports concerning the other model codes.

Multistory Units

The Department concluded that the proposed IBC 2000's definition of "dwelling unit, multistory," which is a dwelling unit with habitable or bathroom space located on more than one story, could result in a unit being considered multistory if one level contains living or "habitable" space and the floor above or below contains only a bathroom. Therefore, the Department recommended in Draft Recommendation Number 7, that this definition be revised to delete the reference to bathroom space.

Comments

One group of commenters agreed with the Department's recommended definition of multistory units, but suggested that it be prefaced with the statement, "[f]or purposes of accessibility." Another commenter disagreed with the Department's recommendation and believed that bathroom space should be considered part of the living space.

Response

The Department disagrees with the contention that bathroom space is living space. The Department believes that the inclusion of bathroom space in the definition of "Dwelling unit, multistory" creates the possibility that a dwelling unit designed with a small "loft," or a ground floor with an entry foyer and a bathroom would be treated as a multistory dwelling unit and thereby not covered by the requirements of the Act.

However, the Department agrees with the suggestion that the language be prefaced, "For purposes of accessibility," and has revised the recommendation accordingly in the report on the proposed IBC 2000 and all other model code reports that discuss this issue.

Site Impracticality

In its draft report on the proposed IBC 2000, and in other model code reports, the Department noted that the model code language describing site impracticality due to site terrain, using the site analysis test set forth in the Guidelines, did not include language clarifying that all ground floor units in buildings with a common entrance, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. The reports also pointed out that the codes did not use the term "less than 10%" in the test. The reports also found that the model codes did not meet the provisions of the Guidelines because they failed to include language that, regardless of site considerations, an accessible entrance served by an accessible route is practical whenever an elevator connects parking with a ground floor, in which case all ground floor units are covered, or whenever an elevated walk with a slope no greater than 10% is planned between an entrance and a pedestrian or vehicular arrival point. The Department made several recommendations to address these inconsistencies under Draft Recommendation Number 8.

Comments

One commenter, in its review of the draft report on the UBC, agreed with the general intent of the recommendation, but thought that the use of the term "walkway" implies something actually constructed, and the Department should substitute the term "accessible route". The commenter stated that it had encountered a situation where the slope between a planned entrance and a vehicular or pedestrian arrival point was less than 8.33% but there was no "walkway" connecting the entrance and arrival point. The commenter discussed a specific situation where a development had been constructed on a steep site but all buildings on top of the site were on a completely flat area. However, there was always at least one step between the parking lot and each unit, and consequently there was no accessible route between the unit entrance and the parking lot. The commenter asked whether a builder could calculate the number of units that had to comply with the Act based on the total buildable area that has an existing natural grade of less than 10% slope only, excluding dwelling units that have a grade of less than 10% slope but lack an accessible route because of the imposition of a step along the route from the entrance to the planned arrival point.

Another commenter agreed with the strategy to incorporate an elevated walkway concept into the site analysis test. A group of commenters agreed with our recommendation with respect to the proposed IBC 2000, but restated the recommendation in code language and format.

Response

The Department believes that it is clear from the language of the regulations, and the language of the Guidelines, that the site impracticality exception cannot be applied to instances in which the lack of an accessible route is due to manmade barriers, such as the failure to provide a walkway or the construction of a step. The language of Exception 4, Section 1103.1.9.3 of the UBC refers to measurement of the slope of grades prior to development. The Department believes that this language adequately addresses the commenter's concern.

The Department has reviewed proposed language submitted by the ICC to address these issues, and has adopted these recommendations, with some modifications, in the Final Report on the proposed IBC 2000 as well as in the other model code reports. The Department believes these revisions also help to address the concerns raised by the commenter on the UBC.

Application of the Site Impracticality Test to Buildings With Elevators

The Department found that the language of the model codes did not adequately clarify that buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. The Department recommended language that addressed this variance, in Recommendation Number 9 of the proposed IBC 2000 and comparable recommendations in the reports on the other model codes.

The only comments received on this recommendation endorsed it. The Department's recommendation remains unchanged in the model code reports.

Sites With Unusual Characteristics

In Draft Recommendation Number 10 on the proposed IBC 2000, and in comparable recommendations in the other model code reports, the Department addressed its concern that the model code language describing the site impracticality test for sites with unusual characteristics did not contain the provision that an accessible entrance on an accessible route is impractical when the unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches AND 10 percent, measured between an entrance and ALL vehicular or pedestrian arrival points within 50 feet of the planned entrance, and if none, then between the closest vehicular or pedestrian arrival points. The Department believed that the omission of the words "AND" and "ALL" constituted a variance with the provisions of the Guidelines.

Comments

The only two organizations to comment on this recommendation agreed with the recommendation. However, one of the commenters pointed out that the term "all" is implied based on the construction of building code language, and therefore is unnecessary.

Response

The Department agrees with the commenter on this point and has revised its recommendation in all of the model code reports accordingly, while retaining its recommendation related to substitution of "and" for "or."

Vehicular Route as an Alternative to an Accessible Pedestrian Route

Proposed IBC 2000 Section 1107.5.5, and comparable sections of the other model codes, contain an Exception that is similar to the provision in the Guidelines that permits a vehicular route as an alternative to an accessible pedestrian route under certain circumstances. That Exception states:

> If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with parking at each accessible facility or building is permitted in place of the accessible route.

The Department concluded that the IBC does not include language making it clear that accessible parking and curb ramps must be available at each public or common use facility to which access is provided by a vehicular route.

Comments

According to one group of commenters, Recommendation Number 11 is not needed. This group believed that the IBC's current reference to "parking" under Exception 1 to Section 1107.5.5 is adequate. The group believed that there is no need to insert the term "accessible" before the term "parking" and the terms "spaces and curb ramps" after the term "parking" because it may create an "undesirable restriction of configurations". The group referred to Section 1106, which regulates parking and requires a certain percentage of parking spaces to be accessible, and 1106.5, which requires accessible parking spaces to be located on the shortest accessible route to an accessible entrance. The group indicated that curb ramps are needed only where curbs are provided. It stated that ANSI requires curb ramps to be provided where accessible routes cross curbs and that this is adequate.

This group of commenters further indicated that, in some cases, not all public and common use facilities are required to be accessible. They stated that the Department's recommendation would require accessible parking at non-accessible facilities. They indicated that inserting the terms "public or common use" in the Department's recommendation is not necessary because the charging paragraph applies to "exterior and interior spaces and facilities" that serve the accessible dwelling unit which includes the "public and common use" spaces.

Another commenter agreed with our recommendation and believes it adds clarity to the code.

Response

The Department agrees that the language of IBC Section 1107.5.5, together with the language of Section 1106, incorporate the technical requirements associated with the vehicular route exception. For purposes of clarity, the Department recommends that the language of the Exception to IBC Section 1107.5.5 be modified to add a reference to Section 1106. Similar revisions have been made to the other model code reports.

Subsection 1(d) of the section of Requirement 2 of the Guidelines that addresses accessible routes states: "Where site or legal constraints prevent a route accessible to wheelchair users between covered multifamily dwellings and public or common use facilities elsewhere on the site, an acceptable alternative is the provision of access via a vehicular route so long as there is accessible parking on an accessible route to at least 2% of covered dwelling units, and necessary site provisions such as parking and curb cuts are available at the public or common use facility." This language does not limit the requirement to provide accessible parking to accessible facilities. Similarly, subsection 4 of Requirement 2 of the Guidelines provides that, if provided at the site, there must be accessible parking at facilities that serve accessible buildings. The Department is not implying in this recommendation that each public or common use facility on a site must be accessible.

Headroom

In its draft report on the proposed IBC 2000, and in other model code reports, the Department noted that the code apparently did not include headroom requirements in its technical provisions for accessible routes. However, the IBC 2000 does include headroom requirements in the provisions for protruding objects. In Draft Recommendation Number 12 in the proposed IBC 2000, and in the other draft reports, the Department recommended a revision to the code language regarding accessible route.

Comments

While one commentator agreed with our recommendation, another pointed out that the IBC's requirement included all "circulation paths" and not just the means of egress as would the Department's recommendation.

Response

The Department has concluded that it is appropriate to delete Draft Recommendation Number 12 in the proposed IBC 2000 Final Report and in the other model code reports because similar language in the code addresses the Department's concerns.

Stairs

In its draft report on the proposed IBC 2000, and other model codes, the Department expressed concern that the requirements related to the accessibility provisions for stairs, because they were found in Chapter 10, Means of Egress, did not necessarily apply to stairs that connect levels not connected by an elevator if they are not part of a means of egress. The Guidelines state that accessibility should be provided on stairs located along routes connecting levels not connected by an elevator. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. In Draft Recommendation Number 13 to the proposed IBC 2000, and in comparable sections of the reports on other model codes, the Department proposed revised language to the codes addressing this issue.

Comments

Commenters suggested that accessible stair design should reference IBC Chapter 10 instead of the ICC/ANSI A117.1–1998 and that the Department's requirement would actually allow non-complying stairs where the two levels are served by an elevator. One organization commented that: "The IBC requires all stairs on a means of egress (except those within a dwelling unit) to meet requirements conforming to ICC/ANSI A117.1–1998. Essentially, all stairs except those in a dwelling unit will comply, and dwelling units with stairs will inevitably be multistory and therefore not covered by the requirements of the Act. The SWA proposal would actually reduce compliance by allowing levels served by elevators to be served by non-complying stairs. At any rate, the proposed change to Section 1108 would be overridden by the 'mainstreamed' requirements found in IBC Chapter 10." Another commenter stated: "We agree with the intent and recommendation, but think that to avoid inconsistency, the reference should be to Section 1003.3.3 in IBC chapter 10, rather than to ICC/ANSI A117.1–1998."

One group of commenters conceded that there were a few differences between the stairway requirements in the IBC 2000 and those in the ICC/ANSI A117.1. They also pointed out a recommended editorial revision to the reference to stairs along accessible routes connecting floor levels that are not connected by an elevator.

Response

The Department concurs with the group of commenters' editorial recommendation, and also concurs with the group of commenters that there are slight differences in the technical requirements for stairs in Chapter 10 from those in the ICC/ANSI A117.1–1998. There also appear to be some differences in the scoping provisions. For these reasons, the Department has modified its recommendation to address part of the group of commenters' recommendation but maintains its position regarding referencing of ICC/ANSI A117.1–1998.

Parking and Passenger Loading Zones

Section 1106 of the proposed IBC 2000 contains the scoping and technical criteria for parking and passenger loading zones. In its review of Section 1106, the Department noted few variances with the requirements of the Act. However, the Department did note variances with respect to several of the Guidelines' provisions for accessible parking, including: (1) Technical criteria to address accessibility of public and common use type single-car parking garages when such garages are made available for assignment or rental, (2) scoping requirements to assure that accessible parking is provided on the same terms and with the full range of choices as those provided to other residents, (3) if visitor parking is provided, accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and (4) where parking is

provided at facilities, accessible parking.

In Draft Recommendation Number 14 on the proposed IBC 2000, the Department made recommendations to address these identified variances.

Comments

The Department received a number of comments on this section of its draft report. One commenter stated that including garage provisions from the Questions and Answers About the Guidelines in our recommendation is not appropriate because they are not part of the Guidelines. This commenter also observed that the IBC applies the 2% rule to all the parking at the site and not just to the parking serving covered units; that accessible "visitor" parking is difficult to enforce unless there is a clear separation between parking for residents and parking for visitors; and that the parking provisions in the IBC are based on "where provided" because local zoning codes, not building codes, require parking. Commenters also stated that the term "sufficient" in HUD's recommendation may be less than required by IBC and the ADA Standards when parking also serves a public accommodation. The term "sufficient" also captures parking serving other use groups, shops on a ground floor, for example. The term "sufficient" is a problem because it is not building code terminology.

In addition, the commenters opined that HUD's recommendation is based on a false assumption that all types of parking are available to all residents. One group of commenters noted that the Act does not require parking where none is intended.

Another commenter stated that the parking requirements of the codes are conflicting. For example, the UBC requirement for accessible parking exceeds that of the FHA. One commenter stated that HUD should not accept any standard that does not specify that accessible parking must be close to an accessible entrance. The commenter noted that the 1986 version of ANSI A117.1 contained a provision that accessible parking spaces shall be located on the shortest possible accessible circulation route to an accessible entrance of the building. The commenter noted that this standard had been eliminated from the CABO ANSI A117.1–1992.

Response

The Guidelines provide:

> If provided at the site, designated accessible parking at the dwelling unit on request of residents with handicaps, on the same terms and with the full range of choices (e.g., surface parking or garage) that are provided for other residents of the project, with accessible parking on a route accessible to wheelchairs for at least 2% of the covered dwelling units; accessible visitor parking sufficient to provide access to grade-level entrances of covered multifamily dwellings; and accessible parking at facilities (e.g., swimming pools) that serve accessible buildings.

In addition to the above provisions of the Guidelines, the Questions and Answers About the Guidelines provide additional guidance on the requirements for parking related to technical criteria for accessible public and common use type single-car garages, and application of the 2% requirement when there is more than one type of parking. The Questions and Answers are a supplement to the Guidelines and the Department treats them as further interpretation of the Guidelines.

The Department has considered all of these comments, and made some revisions in its recommendations. The Department's identified variances are not intended to recommend that IBC or any of the other model codes revise any scoping requirements that are broader than those in the Guidelines. However, the Department continues to believe that those scoping provisions identified as variances are not consistent with the language in the Guidelines, and is maintaining these identified variances. The Department further notes, however, with respect to accessibility of public and common use single-car parking garages, that there may be other technical criteria that the codes could adopt that will constitute accessibility of such garages, such as by applying the accessibility requirements for van accessible parking spaces to the interiors of such garages, and providing another means of egress from the garage that connects to the accessible route and the entrances of covered dwelling units. The Department's recommendation is not intended to preclude the code organizations from developing alternative language to address this inconsistency. The Department is also willing to work with the code organizations and any other interested persons in developing language to address these variances. The Department is also clarifying the use of the term "sufficient" in its final recommendations.

The ANSI A117 Committee made a specific effort to remove all scoping language from the CABO/ANSI A117.1–1992. Similarly, ICC/ANSI A117.1–1998 removed scoping provisions. The requirement that accessible parking be located on the shortest possible route to an accessible building entrance is a scoping provision. All of the model building codes include this requirement in their code language.

Accessible Facilities/Recreational Facilities

In its review of the model codes, the Department did not identify any variances related to the number of accessible recreational facilities that must be provided at a site.

Comments

One commenter, reviewing the draft report on the UBC, commented that the Guidelines state that: "Where multiple recreational facilities, (e.g., tennis courts) are provided sufficient accessible facilities of each type should be provided to assure equal opportunity for use by persons with disabilities." However, Section 1103.9.1.1 of the UBC requires that at least 25%, but not less than one, of each type of each group of facilities be accessible. This provision also is found in the other model codes.

Response

The Department recognizes that the UBC's language in Section 1103.9.1.1 and equivalent language in other model codes differ from the provisions of the Guidelines. The Guidelines state that "[w]here multiple recreational facilities (e.g., tennis courts) are provided, sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps." As discussed in the preamble to the final Guidelines, several persons who were commenting on the Department's proposed Guidelines, suggested that the Department adopt the standard that is reflected in the model codes—a minimum of 25% (or at least one) of each type of recreational facility. The Department decided to retain the more flexible approach that the requirements of 24 CFR 100.205(c)(1) are met if "sufficient" accessible facilities are provided.

In many instances, compliance with the scoping requirement under the model codes for the provision of accessible recreational facilities when there are multiple recreational facilities of the same type on a site will constitute compliance with the Guidelines' provision for "sufficient accessible facilities to assure equitable opportunity for use * * *". However, there may be instances when, using the model code formula, there are not sufficient accessible recreational facilities to serve the accessible units at a site. Therefore, the Department has added a finding that the model codes that have expressed this formula do not comply with the provisions of the Guidelines. However, because this matter was not included in the draft reports, and there has not been an opportunity for public participation in a resolution of this matter, the Department is not including a recommendation to resolve this matter. The Department will work with all interested parties to address this matter.

Multistory Units Served by Elevators

The Department noted that the IBC does not state that where a multistory dwelling unit is provided with elevator service to only one floor, the story served by the elevator must be the primary entry to the unit. The Department recommended a change to Section 1107.5.4, Exception 3, to address this issue.

Comments

A group of commenters agreed that there is a need to clarify that the primary entrance be on the floor of elevator service where the elevator only serves one floor of a multistory unit. Another commenter agreed with Recommendation 15. One commenter seemed to interpret this recommendation to be saying that once an elevator is installed in one multistory unit, this would somehow require other units in a townhouse development to be required to be accessible.

Response

The Department's Draft Recommendation Number 15 was intended to address a concern with the language of Exception 3 to Section 1107.5.4 of the proposed IBC 2000, which the Department interprets to be addressing situations in which a multistory unit is located in a building that has one or more elevators, such as a mid-rise building where the top floor consists of multistory rather than single-story apartments. The Department's recommendation is not intended to require, with respect to a non-elevator building consisting of a row of multistory townhouses, that if one such townhouse is designed and constructed with an elevator, all other multistory units in that building must include an elevator. The Department discussed this issue in the preamble to its regulations, and concluded the multistory townhouses are not covered unless they have elevators. Thus, only the unit that is designed and constructed with an elevator, in a building of four or more dwelling units, would be covered. Therefore, the Department's recommendation on this issue remains the same.

Accessible Route and Special Design Features

The Department identified only one variance concerning the UBC language related to Requirement 4 of the Guidelines, Accessible route into and through the covered dwelling unit. That variance dealt with multistory dwelling units in elevator buildings, discussed above.

Comments

One commenter pointed out that the Guidelines state that where a covered dwelling unit has special design features, such as a raised or sunken living room, these areas must not interrupt the accessible route through the remainder of the dwelling unit. The commenter additionally noted that the Design Manual clarified that only one of these special design features is allowed and that no part of the kitchen or bathroom may be located in a raised or sunken area. The commenter believes that the UBC does not sufficiently address these limitations on the use of special design features.

Response

The charging paragraph of UBC Section 1106.2.1 states: "At least one accessible route complying with this section shall connect all spaces and elements that are a part of the dwelling unit. Where only one accessible route is provided, it shall not pass through bathrooms, closets or similar spaces." The Exception to that paragraph is that only one of either a sunken or raised living, dining, or sleeping room, or a mezzanine that does not have plumbing fixtures or enclosed habitable space is allowed. The Department believes that the language of Section 1106.2.1 is sufficiently clear and means that special design features may not interrupt an accessible route and that bathroom or kitchen space may not be located in a special design feature.

Chapter 2: Policy Statement

Introduction

This policy statement provides information on the design and construction requirements of the Fair Housing Act (the Act) with regard to new construction of residential housing built for first occupancy after March 13, 1991, and the U.S. Department of Housing and Urban Development's (HUD or the Department) administration and enforcement of these requirements. The policy statement, together with the Final Report of HUD Review of Model Building Codes (Final Report), provide technical assistance to building code organizations and officials regarding the accessibility provisions of four model building codes and identify variances between the model building codes and the requirements of the Act, the Department's implementing regulations at 24 CFR Part 14 *et al.* (the regulations), and the Fair Housing Accessibility Guidelines (the Guidelines).

This policy statement and the Final Report also provide guidance on the Department's policy concerning the relationship between the requirements of the Act and its enforcement by the Department and the model building codes and other accessibility laws and standards.

Further, this policy statement and Final Report responds to the House of Representatives Committee on Appropriations directive to HUD to complete its review of a matrix submitted by building and code organizations that compared the Guidelines with the accessibility provisions in the model building codes and to issue a policy statement by December 31, 1999. H.R. Rep. No. 298, 106th Cong., 1st Sess. 34 (1999).

Background

The Fair Housing Act mandates that all covered multifamily dwellings designed and constructed for first occupancy after March 13, 1991, must contain specified features of accessible and adaptable design. 42 U.S.C. 3604(f)(3)(C). In 1989, the Department issued its regulations implementing the Act's design and construction requirements. 24 CFR 100.205. Both the Act and the regulations state that compliance with the appropriate requirements of the American National Standards Institute (ANSI) A117.1 standard suffices to satisfy the Act's accessibility requirements. (The Act uses the term "handicap," however, in keeping with preferred terminology established in the Americans with Disabilities Act of 1990, this policy statement and Final Report uses the terms "persons with disabilities," "disability," or "disabled.")

On March 6, 1991, after consideration of extensive public comment from architects, developers, builders, persons with disabilities, and other interested groups, the Department published the "Fair Housing Accessibility Guidelines," which set forth specific guidelines for designing dwelling units consistent with the Act. 56 FR 9472–9515. In keeping with the Act and the regulations, the Guidelines are largely based on the ANSI A117.1 standard.

In 1992, the Department was contacted by the Council of American Building Officials (CABO), and the model building code organizations.

CABO advised the Department of its interest in drafting building code language that would reflect the design and construction requirements of the Act, and asked the Department to provide technical assistance to its Board for Coordination of Model Codes (BCMC) in this regard. The Department recognized that incorporation of building code requirements that are consistent with the Act's requirements would provide an increased measure of compliance. Therefore, in support of this effort, the Department agreed to provide technical assistance to BCMC and the building industry organizations, and did so during 1992 and 1993. The model building code organizations subsequently incorporated the results of their efforts into the model building codes.

The American National Standards Institute (ANSI) is responsible for establishing technical standards in many different areas. Among the standards addressed by the ANSI, through the A117 Committee, are technical standards for the design of housing and facilities that are accessible to persons with disabilities. BCMC recommended that the ANSI A117 Committee set up a Residential Task Force to develop technical criteria to address the Act's accessibility requirements. The Department is a member of the ANSI A117 Committee, and was asked to appoint representatives to serve on the Residential Task Force. The technical criteria developed by the ANSI Residential Task Force were included in the ICC/ANSI A117.1–1998. (The reference to ICC, International Code Council, reflects an organizational change in the ANSI only.)

Since 1961, ANSI A117.1 has been the accessibility standard used by the private industry, and, since 1980, has included technical criteria for fully accessible dwelling units. The 1998 ICC/ANSI A117.1 calls these fully accessible dwelling units "Type A dwelling units." The requirements for Type A dwelling units are found at Section 1002 of ICC/ANSI A117.1–1998. The 1998 ANSI also contains technical criteria for a "Type B dwelling unit." These criteria are found at Section 1003 of ICC/ANSI A117.1–1998 and are intended to reflect the technical requirements for dwelling units required to be accessible by the Act. Note, however, that the Act does not require that developers build new construction to the Type A standard in order to meet the requirements of the Act, although a Type A unit will satisfy the Act's requirements.

In 1997, CABO, three model building code organizations and several building industry organizations contacted the Department to discuss, among other items, the importance of assuring that the design and construction requirements of the Act were accurately reflected in the three model building codes and in the draft International Building Code (IBC), which was scheduled for completion in 2000. The Department met with representatives of these groups along with representatives of disability advocacy organizations and indicated its willingness to review these model building codes for consistency with the requirements of the Act, the regulations, and the Guidelines, and then convene a public meeting at a later date to share the results of that review.

In late December 1997, CABO submitted to the Department a matrix that compared model four building codes to the Fair Housing Act's design and construction requirements. In the fall of 1998, the Department awarded a contract to Steven Winter Associates, Inc., (SWA) to analyze the matrix and the model building codes and to identify those sections of the codes which did not meet the requirements of the Act, the regulations, and the Guidelines. The Department also requested that SWA draft recommendations on how each identified variance could be corrected in order to conform with the Act, the regulations, and the Guidelines. The four model building codes are as follows:

National Model Building Codes

National Building Code, Building Officials and Code Administrators International (BOCA), 1996 edition
Uniform Building Code, International Conference of Building Officials (ICBO), 1997 edition
Standard Building Code, Southern Building Code Congress International (SBCCI), 1997 edition

International Building Code

International Building Code, (First Draft) International Code Council (ICC) November 1997

Although the original matrix focused on the 1997 First Draft of the International Building Code (IBC), because the IBC had progressed to a proposed IBC 2000, the ICC asked the Department to include in its review, to the greatest extent possible, the proposed IBC 2000 and the new 1999 edition of the National Building Code published by BOCA. The Department agreed to undertake a limited review of the proposed IBC 2000, but due to time constraints, was unable to review the 1999 BOCA. To facilitate review of portions of the proposed IBC 2000, BOCA prepared an update to the December, 1997 matrix that compared the Guidelines with the First Draft IBC, and the proposed IBC 2000. In addition, the Department was provided with copies of Chapters 10 and 11, Appendix to Chapter 11, Section 3407, and Appendix 34–2 of the proposed IBC 2000.

The Department formed a Model Code Working Group (Working Group) to work with its contractor on the review of the model building codes. The Working Group consisted of staff from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel, and the Office of Housing. A representative of the U.S. Department of Justice (DOJ) also participated in the Working Group.

The Department published a draft report and policy statement on October 26, 1999. On November 10, 1999, the Department convened a public meeting to listen to comments on the draft report. The Department solicited written comments as well. The Department carefully considered all of the comments it received and has made revisions accordingly so that the policy statement and Final Report reflects the public comments.

The Final Report consists of an Introduction (preamble), this policy statement, and four reports on the model building codes. The four model building code reports were prepared by SWA and have been reviewed and adopted by the Department.

The Final Report serves solely to respond to CABO's request for technical assistance and to provide technical assistance to other interested parties on this issue. The Department has not and does not intend to promulgate any new technical requirements or standards by way of this Final Report. The Department does not intend this Final Report to be considered an endorsement of any model building code.

The Department is not attempting through the issuance of this Final Report to shift its responsibility to enforce the design and construction requirements of the Act to any model code organization or to state and local building code officials. However, the Department recognizes that an important way to increase compliance with the design and construction requirements of the Act is to incorporate those requirements into state and local building codes.

History of Fair Housing Act Design and Construction Requirements

In 1988, Congress extended the protections of the Fair Housing Act, 42 U.S.C. 3601 *et seq.*, the nation's primary housing civil rights law, to families with children and to persons with disabilities. 42 U.S.C. 3604. In response to the serious lack of accessible housing in the United States, Congress provided that all covered multifamily dwellings built for first occupancy after March 13, 1991, include certain basic features of accessible and adaptive design. 42 U.S.C. 3604(f)(3)(C). These basic accessibility requirements are known as the Act's design and construction requirements.

The Act mandates that all covered multifamily dwellings built for first occupancy after March 13, 1991, shall be designed and constructed so that:

(1) The public and common use areas are readily accessible to and usable by persons with disabilities;

(2) All doors designed to allow passage into and within all premises in covered dwellings are sufficiently wide to allow passage by persons using wheelchairs;

(3) All premises within dwellings contain the following features of adaptive design:

(a) An accessible route into and through the dwelling;
(b) Light switches, electrical outlets, thermostats and other environmental controls in accessible locations;
(c) Reinforcements in bathroom walls to allow later installation of grab bars; and
(d) Usable kitchens and bathroom such that an individual using a wheelchair can maneuver about the space.

42 U.S.C. 3604(f)(3)(C). These provisions were incorporated in the Department's Fair Housing Accessibility Guidelines as seven requirements. The underlying concept behind the design and construction requirements is to create housing that is accessible for persons with disabilities but which does not necessarily appear to be different from conventional housing.

The Act's design and construction requirements apply to "covered multifamily dwellings," which are buildings consisting of 4 or more units if such buildings have one or more elevators; and ground floor units in other buildings consisting of 4 or more units. The terms "dwelling unit," "ground floor," and "building" all have particular meanings that are set forth in the Act, the regulations, and the Guidelines. The Act's design and construction requirements apply to all covered multifamily dwellings built for first occupancy after March 13, 1991. The Act's design and construction requirements do not apply to alterations or renovations to multifamily dwelling units or to single-family detached houses.

The Act does not set forth specific technical design criteria that builders have to follow in order to comply with the design and construction requirements. It does provide, however, that compliance with the appropriate requirements of the American National Standard Accessible and Usable Buildings and Facilities (commonly referred to as ANSI A117.1) would satisfy the Act's design and construction requirements for the interiors of dwelling units. 42 U.S.C. 3604(f)(4).

In the Department's 1989 regulations implementing the design and construction requirements of the Fair Housing Act, the Department specifically stated that compliance with the appropriate requirements of ANSI A117.1–1986 suffices to satisfy the requirements of the Act relating to interiors of dwelling units. 24 CFR 100.205(e). The Department also references ANSI A117.1–1986 for the public and common use areas, in its definition of "accessible." At the time Congress passed the Act, and the Department promulgated its regulations, the current version of ANSI A117.1 was the 1986 edition.

The Act emphasizes that Congress did not intend the Department to require states and units of local government to include the Act's accessibility requirements in their state and local procedures for the review and approval of newly constructed covered multifamily dwellings. However, Congress authorized the Department to encourage the inclusion of these requirements into their procedures. 42 U.S.C. 3604(f)(5)(C).

The Act makes it clear that it does not invalidate or limit any other state or federal laws that require dwellings to be designed or constructed in a manner that affords persons with disabilities greater access than that required under the Act. 42 U.S.C. 3604(f)(8).

Congress charged the Secretary of HUD to "provide technical assistance to states and units of local government and other persons to implement the requirements of paragraph 3(C) [setting forth the design and construction requirements]." 42 U.S.C. 3604(f)(5)(C). To this end, in order to properly meet this obligation, on March 6, 1991, the Department published the "Fair Housing Accessibility Guidelines," (the Guidelines) published at 56 FR 9472–9515, which set forth specific guidelines for designing dwelling units consistent with the Fair Housing Act. On June 24, 1994, the Department published its "Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines," published at 59 FR 33362–33368 (the Questions and Answers About the Guidelines).

Section I of the Guidelines states:

> These guidelines are not mandatory, nor do they prescribe specific requirements which must be met, and which, if not met, would constitute unlawful discrimination under the Fair Housing Act. Builders and developers may choose to depart from these guidelines and seek alternate ways to demonstrate that they have met the requirements of the Fair Housing Act. These guidelines are intended to provide a safe harbor for compliance with the accessibility requirements of the Fair Housing Act. 56 FR at 9499.

The Department also published a Fair Housing Act Design Manual (Design Manual). In addition to describing the design and construction requirements of the Act, the Design Manual provides further technical guidance of a practical nature on the application of the Guidelines. The Design Manual also serves as a safe harbor for compliance.

CABO/ANSI A117.1–1992 and ICC/ANSI A117.1–1998 as Safe Harbors

Through its review of the SWA draft reports, the Department reviewed the technical standards in the CABO/ANSI A117.1–1992 and the ICC/ANSI A117.1–1998, particularly the latter's technical standards for the interiors of dwelling units, called Type B dwelling units, to determine whether these later editions of ANSI meet the requirements of the Act, the Guidelines, and the 1986 edition of ANSI A117.1. The 1992 and 1998 editions of ANSI A117.1 have been adopted by several of the model building code associations. Mindful of the language of the Act, and having now reviewed those technical standards, the Department believes that CABO/ANSI A117.1–1992 and ICC/ANSI A117.1–1998 are consistent with the Act and are additional safe harbors for compliance with the Act's technical accessibility requirements. Therefore, the Department will soon be publishing an interim rule amending certain sections of 24 CFR 100.200, to state that compliance with the appropriate requirements of ICC/ANSI A117.1–1998, ANSI A117.1–1986, and CABO/ANSI A117.1–1992 suffices to satisfy the requirements of the Act related to interiors of dwelling units and public and common use areas. Additionally, the Department maintains its position that compliance with its Fair Housing

Accessibility Guidelines also constitutes compliance with the Act. The Design Manual also serves as a safe harbor for compliance.

It is important to note that ANSI A117.1 contains only technical criteria, whereas the Fair Housing Act, the implementing regulations, and the Guidelines contain both "scoping" and technical criteria. Scoping criteria define when a building element or space must be accessible; technical criteria provide the technical specifications on how to make an element accessible. Therefore, designers and builders relying on ANSI A117.1 also need to consult the Act and the Department's regulations, or the Guidelines for the scoping criteria.

As a further note, the Department wishes to emphasize that the safe harbors for compliance outlined above apply only to the accessibility requirements of the Fair Housing Act, and do not constitute a safe harbor for compliance for Federally funded facilities and dwelling units covered by Section 504 of the Rehabilitation Act of 1973 (Section 504), 29 U.S.C. 794(a); 24 CFR 8 and 9; the Architectural Barriers Act of 1968 (ABA), 42 U.S.C. 4151–4157; 24 CFR 40 and 41, which must comply with their respective regulatory requirements, including the Uniform Federal Accessibility Standard (UFAS); and the Americans with Disabilities Act of 1990 (ADA), 42 U.S.C. 12101–12213. However, to the extent that the requirements of the Fair Housing Act overlaps with the requirements of Section 504, the ABA, or the ADA, it is necessary to read the laws together and meet the requirements of all applicable laws.

Enforcement of the Fair Housing Act Design and Construction Requirements Where a State Has Adopted a Building Code That Conforms to the Act

The Act makes it clear that while state and local building code officials are responsible for enforcing the building code standards adopted in their respective jurisdictions, 42 U.S.C. 3604 (f)(5)(B); 24 CFR 100.205(g), the Department is responsible for enforcing the design and construction requirements of the Fair Housing Act. 42 U.S.C. 3604(f)(6)(A), 3610. If a jurisdiction adopts a model building code that HUD has determined conforms with the design and construction requirements of the Act, then covered residential buildings that are constructed in accordance with plans and specifications approved during the building permitting process will be in compliance with the requirements of the Act, unless the building code official has waived one or more of those requirements, or the building code official has incorrectly interpreted or applied the building code provisions.

However, the fact that a jurisdiction has adopted a code that conforms with the accessibility requirements of the Act, or that construction of a residential building was approved under a code, does not change the Department's statutory responsibility to conduct an investigation based on receipt of a complaint from an aggrieved person to determine whether the requirements of the Act have been met. 42 U.S.C. 3604(f)(6)(A); 24 CFR 100.205(h). Section 804 of the Act provides that: "determinations by a State or unit of general local government under paragraphs 5(A) and (B) shall not be conclusive in enforcement proceedings under this title." 42 U.S.C. 3604(f)(6)(B).

Fair Housing Act Procedures When a Design and Construction Complaint is Filed

The Department is required to conduct investigations of housing discrimination in response to a complaint filed with the Department. 42 U.S.C. 3610; 24 CFR 103.200. Discrimination complaints may be filed by an individual or organization that is an "aggrieved person" under the Act. 42 U.S.C. 3602(i)–(j); 24 CFR 103.15. A discrimination complaint may also be filed by the Secretary or his designee, the Assistant Secretary for Fair Housing and Equal Opportunity. 42 U.S.C. 3610(a); 24 CFR 103.15.

When a complaint is filed with the Department, all of the parties to a complaint are notified of its receipt. 42 U.S.C. 3610(a)(1)(B)(i)(ii); 24 CFR 103.45 and 103.50. The Department then conducts an investigation to determine whether there is reasonable cause to believe that the allegations in the complaint are true. 42 U.S.C. 3610(a)(1(B)(iv); 24 CFR 103.200. The Department also attempts to resolve housing discrimination complaints through conciliation. 42 U.S.C. 3610(b)(1); 24 CFR 103.300. If the Department finds that there is reasonable cause to believe that the allegations of unlawful discrimination are true, and attempts to resolve the complaint through conciliation have failed, then the Department issues a charge of discrimination. 42 U.S.C. 3610(g)(1)–(2); 24 CFR 103.400(a)(2). The parties then have the right to elect to pursue litigation through the Department's administrative adjudicative process or in federal district court. 42 U.S.C. 3612(a); 24 CFR 103.410.

The Department refers to the appropriate administrative agency a complaint that arises in a jurisdiction that has been determined to have a state or local law that provides rights and remedies substantially equivalent to the Act, and which has a Cooperative Agreement with the Department to process housing discrimination complaints. 42 U.S.C. 3610(f); 24 CFR 103.100. Additionally, the United States Department of Justice (DOJ) has authority to commence litigation when it determines that there is a pattern or practice of discrimination. 42. U.S.C. 3614(a); 24 CFR 103.500.

When the Department receives a potential housing discrimination complaint alleging violations of the design and construction requirements of the Act, it first makes an initial determination whether it has jurisdiction to investigate the complaint. In making that determination, the Department examines whether: (1) The person or organization filing the complaint alleges an injury because of the fact that the property in question was not designed and constructed to meet the accessibility requirements of the Act; (2) The complaint was filed within one year of the date on which the alleged discrimination occurred or terminated; (3) The Department has jurisdiction over the owners, developers, architects and others involved in the design and construction who are named in the complaint (the respondents); and (4) The property is a "covered multifamily dwelling" under the Act that was designed and constructed for first occupancy after March 13, 1991.

An investigation of an accessibility discrimination complaint under the Act typically involves a review of building permits and certificates of occupancy, plans and specifications showing the design of the buildings and the site, and an on site inspection of the property. During the investigation, Department investigators or contractors takes measurements of relevant interior and exterior elements on the property. All parties to the complaint have an opportunity to present evidence concerning whether the Department has jurisdiction over the complaint, and whether the Act has been violated as alleged.

In making a determination whether the design and construction requirements of the Act have been violated, the Department uses the language of the Act, the regulations, the Guidelines, and the technical standards for the interiors of dwellings and for public and common use areas found in the ANSI A117.1–1986 standard. The

respondents to the complaint have an opportunity to demonstrate that the requirements of the Act have been met even if the standards in the Guidelines, the Design Manual, or ANSI A.117.1–1986 have not been met. Upon publication of an interim rule announcing the Department's position that ICC/ANSI A117.1–1998 and CABO/ANSI A117.1–1992 also constitute safe harbors for compliance, as explained earlier in this policy statement, the Department will also consider evidence provided by a respondent showing that the respondent has complied with either of those editions of ANSI A117.1.

When the Department or DOJ finds that the design and construction requirements of the Act have been violated, the Department or DOJ seek to remedy the violation, including appropriate remedies for the victim of discrimination. Where technically and otherwise feasible, the Department or DOJ seek to have the property retrofitted so that it meets the requirements of the Act. The requirement to retrofit applies even though a building code may not require properties to be altered in order to meet the requirements of the Act. Where it is not feasible to retrofit the property, the Department or DOJ explore with all parties other remedies that will provide accessible housing opportunities for persons with disabilities.

Other Accessibility Standards

Nothing in the Act precludes a jurisdiction from adopting accessibility standards that provide a greater degree of accessibility than is required under the Act. 42 U.S.C. 3604(f)(7). In addition, residential properties may be subject to more than one accessibility standard. For example, when a residential property receives federal financial assistance, it must comply with the accessibility requirements of Section 504, 24 CFR 8.1, *et seq.*; and may also be subject to the ABA.

The Americans with Disabilities Act (the ADA) also contains accessibility requirements, which have been incorporated in the Americans with Disabilities Act Standards for Accessible Design (ADA Standards), 28 CFR Part 36, Appendix A (1999). The requirements of Title II of the ADA, which prohibits discrimination on the basis of disability by public entities, apply, in relevant part, to housing that is designed and constructed by a state or local governmental entity (including a public housing authority). 42 U.S.C. 12131–12134. The requirements of Title III of the ADA, which prohibits discrimination by private owners or operators of public accommodations, apply, in relevant part, to commercial facilities and public accommodations in connection with housing. 42 U.S.C. 12181–12189.

The Department wishes to stress that developments may be subject to more than one accessibility requirement and all applicable laws must be read together. If the Fair Housing Act's accessibility requirements apply to a development that is also subject to the ADA, Section 504 or the ABA, the Fair Housing Act requirements do not preempt the ADA, Section 504 or ABA requirements.

Conclusion

Overall, the Final Report acknowledges that the model building codes reflect the majority of the technical requirements of the Act. In addition, the Final Report found that all four model building codes applied accessibility requirements to most, but not all, of the covered multifamily dwellings that are subject to the design and construction requirements of the Act. The Final Report identifies areas where the model building codes need to be revised in order to ensure that they are consistent with the requirements of the Act, and makes recommendations to assist the model building code organizations in developing model building codes that are consistent with the design and construction requirements of the Act.

Chapter 3: International Building Code Analysis

I. Purpose

The purpose of this report is to identify provisions of the International Building Code (IBC) First Draft and proposed Chapters 10, 11, Appendix to Chapter 11, and Section 3407 of the International Building Code 2000 (IBC 2000) that do not meet the requirements of the Fair Housing Act (the Act), the Department's regulations implementing the Act (the regulations), or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, recommendations are provided for how the IBC should be revised to meet the requirements of the Act, the regulations, or the Guidelines.

Where an IBC Section citation refers to "IBC 2000" in this report, it is for the purpose of reflecting revisions to substance or numbering of the Section that were made from the First Draft of the IBC to the proposed IBC 2000. If the citation does not include a reference to the proposed IBC 2000, it is SWA's understanding that there is no difference in substance between the IBC and the proposed IBC 2000. However, it should be noted that some chapters of the proposed IBC 2000, notably Chapter 3, were not available for review at the time of this report.

II. Methodology

The analysis of the IBC by the Department and Steven Winter Associates, Inc. (SWA), its contractor, consisted of the following:

—A review of the language of the Act, 42 U.S.C. 3604 (f)(3)(C), the regulations, 24 CFR 100.201 and 205, the Guidelines," 56 FR at 9472–9515 (March 6, 1991), and the "Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines," 59 FR 33362–33368 (June 28, 1994) (the Questions and Answers About the Guidelines).

—A review of the December 15, 1997, copyrighted comparative matrix developed by the International Code Council, Inc. (ICC), Building Officials & Code Administrators International, Inc. (BOCA), International Conference of Building Officials (ICBO), Southern Building Code Congress International, Inc. (SBCCI), and the Council of American Building Officials (CABO). The matrix consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the three national model building codes and the IBC. The analysis of the IBC began with a review of the column of the matrix that includes the IBC's accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent variances between IBC's accessibility requirements and those of the Act, the regulations, and Guidelines.

—A review of the accessibility provisions of the IBC, First Draft, November 1997, herein referred to as the IBC; and a review of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1–1986, which is referenced in the regulations, and ICC/ANSI A117.1–1998. The IBC, First Draft, November 1997, refers to CABO/ANSI A117.1–1992 for the technical provisions for accessibility. In the July 1998, Final Draft, the title of the referenced standard was editorially revised from CABO A117.1 to ICC/ANSI A117.1–1998 to reflect the change in the secretariat. Proposed changes to the Final Draft to be included in the IBC 2000 include changing the title of the referenced standard to ICC A117.1–1998. However, this standard is herein referred to as ICC/ANSI A117.1–1998. Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and the IBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.

—Interviews with Kim Paarlberg, BOCA Staff Architect and the liaison to the IBC Means of Egress/Accessibility Committee, to gain insight into how the ICC responds to

variances that were identified. SWA found it necessary to understand ICC's interpretations of its own requirements that may not be apparent when reviewing code text.

—A review of the August 23, 1999 update to the December 15, 1997 comparative matrix, prepared by BOCA. The updated matrix compared the Guidelines with the November 1997 First Draft International Building Code and the proposed IBC 2000. The updated matrix includes the final text of any changes to the first draft subject to final approval by ICC.

—A review of the proposed IBC 2000 Chapters 10 and 11, Section 3407, and the Appendix to Chapter 11. Hereafter, all references to IBC 2000 refer to these chapters only. They were used to cross check sections of the updated matrix that indicated changes to the first draft to be included in the IBC 2000. The updated matrix included "challenges," or proposed changes to the Final Draft, that were voted on during hearings on September 12–17, 1999. The analysis was completed based on information from ICC that the challenges did not pass.

The Department formed a Model Code Working Group consisting of representatives from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel, and the Office of Housing. A representative of the U.S. Department of Justice (DOJ) also participated in the Working Group. The Working Group conferred with SWA by conference call on September 15, 1999, asking questions and making comments and suggestions about the analysis. This meeting led to further conversations between SWA and Kim Paarlberg, and conversations between Department staff and other code staff.

The draft report was made available for public comment on October 26, 1999, and a public meeting on the draft report was held on November 10, 1999. In addition to oral testimony, and written testimony provided at the public meeting, the Department received 30 written comments on the report. These written comments included one set of consolidated comments from a group of organizations. All comments were reviewed and considered. The Final Report incorporates many of those comments and has been revised from the draft report.

III. The International Building Code

The International Code Council (ICC) is an umbrella organization created in 1994 to assist common code development. The International Building Code (IBC) represents an effort to bring national uniformity to building codes. Drafts of the proposed code were developed by representatives of the three national model code bodies: The Building Officials and Code Administrators International (BOCA), Inc., the International Conference of Building Officials (ICBO), and the Southern Building Code Congress International (SBCCI), Inc.

The IBC includes provisions for accessibility intended to reflect the intent of the Act, the regulations and the Guidelines. Chapter 11 of the Code, "Accessibility" addresses the accessibility provisions of the Act. Any jurisdiction that adopts the IBC 2000 code must follow these accessibility provisions.

A Working Draft of the IBC was published in May, 1997. This draft was revised to include approved changes and was published as the First Draft, November 1997. The first draft was revised to include approved changes and was published as the Final Draft, July 1998. Hearings on the proposed changes to the Final Draft were held in September, 1999. The IBC 2000 Edition is now scheduled to be published. The IBC 2000 consists of the IBC Final Draft plus all approved 1999 Cycle changes. (ICC has informed SWA that November 1, 1999, is the start of the next code development cycle, called the 2000 Cycle during which the ICC will address proposed changes to the 2000 Edition. The 2000 Cycle will end in September of 2000, and approved changes from that cycle, along with approved changes from the subsequent 2001 Cycle and a 2002 Cycles, will be incorporated and will constitute the 2003 Edition of the IBC.)

Unlike the Act, the IBC is a model building code and not a law. It provides minimum standards for public safety, health and welfare as they are affected by building construction. Compliance with the IBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as "model codes."

Historically, model building codes have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for accessibility that have been defined in versions of ANSI A117.1 prior to 1998. These dwelling units are referred to in the IBC in Section 1102 as a "Type A dwelling unit." ICC/ANSI A117.1–1998 is the first edition of ANSI A117.1 to include technical standards for what is referred to as a "Type B dwelling unit." The ICC/ANSI A117.1 does not define a Type B unit, however, Section 101 of the standard states: "Section 1003 of this standard provides technical criteria for Type B dwelling units. These criteria are intended to be consistent with the intent of only the technical requirements of the Federal Fair Housing Amendments Act Accessibility Guidelines. These Type B dwelling units are intended to supplement, not replace, accessible Type A dwelling units as specified in this standard." *See* ICC/ANSI A117.1–1998, Section 101. Therefore, the purpose of the ICC/ANSI A117.1–1998 technical criteria for Type B dwelling units is to incorporate technical provisions for the interiors of dwelling units, intended to be consistent with the Act, the regulations, and the Guidelines. It is important to note, however, that ICC/ANSI A117.1–1998 does not contain scoping provisions. The importance of this distinction is discussed below.

In the IBC 2000, Section 1102 defines Type B dwelling units as follows: "A dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1, intended to be consistent with the technical requirements of fair housing required by federal law."

As noted under "Methodology," above, the IBC references the ICC/ANSI A117.1–1998 standard, but in the code, the reference is to "ICC A117.1." The reference to "ANSI" has been dropped. While not a variance, the Department recommends that the IBC consider reinstating the use of "ANSI" in the title, since the Act itself references the ANSI A117.1 standard.

IV. Scoping Provisions

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure to which the technical standards are applied. The provisions in this second component are referred to as "scoping" provisions. This section of the analysis sets forth areas where the scoping provisions of the IBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, the regulations, or the Guidelines. This analysis of the scoping provisions of the IBC included an examination of the following:

IBC's definition of dwelling unit, building, structure, and ground floor dwelling unit;

IBC's classification of residential buildings according to use and occupancy; and IBC's scoping of dwelling units to which the accessibility provisions apply.

Based on the First Draft of the IBC, those chapters of the proposed IBC 2000 that were available for review, and

conversations with representatives of the ICC, the Department and SWA concludes in this analysis that the proposed IBC 2000 covers most of the same dwelling units, buildings and residential uses as do the Act, the regulations, and the Guidelines. For example, the Department and SWA concluded that, in buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single-story townhouses and modular units are covered; and additions of four or more dwelling units to existing buildings are included within the IBC's scoping requirements for Type B dwelling units.

However, the Department and SWA have concluded that the following provisions of the proposed IBC 2000 do not or may not include "covered multifamily dwellings" as they are defined in the Act, the regulations, and Guidelines.

Definition of "Dwelling Unit"—(Draft Recommendation #1)

The regulations define the term "dwelling unit" as:

A single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

24 CFR 100.201. It is clear from the discussion in the preamble to the regulations, 54 FR 3232–3317 (Jan. 23, 1989) (the preamble), that the Department intended that each sleeping room occupied by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are "covered multifamily dwelling units" for purposes of the Act. 54 FR at 3244.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by one household is not considered to be a "covered multifamily dwelling" under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a "covered multifamily dwelling." In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a "group home," would not be considered to be a "covered multifamily dwelling" for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of the Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

The IBC defines the term "dwelling unit" in Section 310.2, Definitions, as follows: "A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation." The IBC does not consider sleeping accommodations intended for occupancy by separate households in a building with shared toileting or kitchen facilities to be dwelling units.

In general, the IBC 2000 (1107.5.4) applies the accessibility requirements in a Type B dwelling unit to occupancies in Group R–2 containing four or more dwelling units and in occupancies in Group R–3 where there are four or more dwelling units in a single structure. The list of R–2 occupancies includes non-transient boarding houses and dormitories, as well as fraternity and sorority houses. Dormitories are listed in both the regulations and the Guidelines as being covered under the Act's accessibility requirements. Subsequent interviews with representatives of ICC have clarified that the IBC does not define a dormitory room whose occupants share kitchen or bathroom space with the other residents of that building as a "dwelling unit." According to ICC representatives, there is no circumstance in which the IBC considers a separate sleeping room to be "dwelling unit."

In its draft report, SWA proposed revising the IBC definition of "dwelling unit" to be consistent with the regulations, to include sleeping rooms occupied by separate households. In response to comments on the draft report, the Department determined that it would withdraw this recommendation. Instead, recommendations respecting the scoping requirements of Chapter 11 have been revised to add references to both dwelling units and "sleeping accommodations" as defined by the IBC in chapter 1. *See* Recommendation 2, below. Therefore, the former Recommendation Number 1 has been eliminated.

Dwelling Unit, Type B

The IBC 2000 (1102) defines "Dwelling Unit, Type B" as a dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1–1998, intended to be consistent with the technical requirements of fair housing required by federal law. The IBC 2000 (1102) also defines Dwelling Unit, Type A as a dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1–1998. The Department has determined that the difference in the definitions of Type A and Type B units is unclear. In addition, by referring to "fair housing required by federal law" in the definition of Dwelling Unit, Type B, it may be incorrectly inferred that this encompasses all federal laws, including, for example, the Americans with Disabilities Act (ADA) of 1990, and Section 504 of the Rehabilitation Act of 1973 (Section 504). Type B dwelling units are intended to be consistent with the federal Fair Housing Act only.

Recommendation Number 1

It is recommended that the proposed IBC 2000 be revised to include a modification of the definition of Dwelling Unit, Type B (1102) as follows:

Dwelling Unit, Type B: A dwelling unit designed and constructed for accessibility in accordance with ICC/ANSI A117.1–1998, intended to be consistent with the design and construction requirements of the federal Fair Housing Act.

Residential Care/Assisted Living Facilities—(Draft Recommendations Numbers 1 and 3)

The Act defines a "dwelling" as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families." 42 U.S.C. 3602 (b). Such a building may serve more than one purpose. Some buildings, known as continuing care facilities, residential care facilities, or assisted living facilities, serve both as a residence for their occupants and as a place where the occupants receive personal, medical or other support services.

The Questions and Answers About the Guidelines addressed the issue of whether the design and construction requirements of the Act apply to continuing care facilities which incorporate housing, health care and other types of services. That publication states:

The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least

one building with four or more dwelling units. Whether a facility is a "dwelling" under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case-by-case basis to determine whether it contains dwellings. 59 FR at 33364.

According to the IBC, most of these types of facilities, referred to by the IBC as Residential Care/Assisted Living facilities, are classified as R–4, I–1, or I–2 occupancies and are not required to comply with the proposed IBC 2000, Section 1107.5.4, Accessible dwelling units. According to the IBC, Section 310.2, Definitions, the term "Residential Care/Assisted Living Facilities" is defined as follows:

A building or part thereof housing a maximum of sixteen (16) or less persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care services. The occupants are mostly capable of responding to an emergency situation without physical assistance from staff. The classification shall include residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities. Residential Care/Assisted Living Facilities housing more than sixteen (16) persons shall be classified as a Group I–1.

If a Residential Care/Assisted Living Facility has between 6 and 16 occupants, it is classified as R–4, and not covered under the proposed IBC 2000 1107.5.4. In group R–4, at least one of the sleeping rooms and associated toilet and bathing facilities shall be accessible. (IBC 2000 Section 1107.5.7.)

The only instance where a Residential Care/Assisted Living Facility is required to comply with the proposed IBC 2000 Section 1107.5.4, Accessible dwelling units, is if the facility has five or less occupants, regardless of whether the occupants are capable of self preservation. Sections 308.2; 308.3. In that case, they are classified as R–3 occupancies, which are required to comply with the proposed IBC 2000 Section 1107.5.4, Accessible dwelling units, *if* they have four or more dwelling units as defined by the IBC.

If the same facility has more than 16 occupants who are mostly capable of responding to an emergency situation without physical assistance from staff, it is classified as I–1. Section 308.2, Group I–1, is defined by the IBC as follows:

This occupancy shall include a building or part thereof housing more than 16 persons, on a 24-hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment but which provides personal care services. The occupants are mostly capable of responding to an emergency situation without physical assistance from staff. Where accommodating persons of the above description, the following types of facilities shall be classified as I–1 facilities: residential board and care facilities, assisted living facilities, half-way houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug centers and convalescent facilities.

In occupancies classified as I–1, at least 4% of the sleeping rooms and their bathing and toilet facilities must be accessible. (IBC 2000 1107.3.1.)

If the occupants of a facility with more than five occupants are not capable of responding to an emergency situation without physical assistance from staff, the facility is classified as I–2. Section 308.3, Group I–2, is defined by the IBC as follows:

This occupancy shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of more than five persons who are not capable of self-preservation. Where accommodating persons of the above description, the following types of facilities shall be classified as I–2 facilities: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals and detoxification facilities. A facility such as the above with five or less persons shall be classified as a residential occupancy.

For nursing homes in Group I–2, at least 50% of the patient facilities and their bathing and toilet facilities must be accessible. (IBC 2000 1107.3.2).

The fact that a facility covered under R–4, or I–1, such as a group home, may be considered to be a "single family" residence for zoning and land use or other purposes, does not preclude its inclusion in the R–4 or I–1 classification of the IBC. Additionally, a group home or assisted living facility receiving federal financial assistance may be required under the applicable HUD program regulations to comply with the design and construction requirements of the Act, as well as the accessibility requirements of Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. 794(a), and, where appropriate, the accessibility requirements of the Americans with Disabilities Act of 1990, 42 U.S.C. 12101, *et seq.*

The scoping provisions of the IBC with respect to "Residential Care/Assisted Living" facilities do not meet the requirements of the Act, the regulations, or the Guidelines, because the classification of these facilities as R–4, I–1, or I–2 may exclude from coverage dwelling units within those facilities that would be covered by the Act, the regulations and the Guidelines.

Recommendation Number 2 (Draft Recommendation 1 and 3)

To ensure that the IBC covers the same dwelling units required to provide accessibility according to the Act, the regulations, and the Guidelines, it is recommended that the proposed IBC 2000 be revised as follows:

Modify Sections 1107.3, 1107.3.1, 1107.3.2, 1107.4, 1107.5.1, and 1107.5.7 as follows:

1107.3.1 Group I–1. In occupancies in Group I–1, at least 4 percent, but not less than one, of the residential sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, in residential board and care facilities, assisted living facilities, group homes, congregate care facilities, and convalescent facilities of Group I–1 occupancies, in structures with four or more sleeping accommodations intended to be occupied as a residence, every sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B dwelling units as required by Section 1107.5.4 with the same exceptions as provided for in Section 1107.5.4.

1107.3.2 Group I–2. In nursing homes of Group I–2, at least 50 percent, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, in nursing homes of Group I–2 in structures with four or more sleeping accommodations intended to be occupied as a residence every sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B sleeping accommodations required by Section 1107.5.4 with the same exceptions as provided for in Section 1107.5.4.

1107.4 Care facilities. Occupancies containing care facilities (Group E, I–2 and I–4) shall be accessible as provided in this chapter.

Exception: Where a care facility is part of a dwelling unit, only the portion of the structure utilized for the care facility is required to be accessible. In Nursing homes of Group I–2 where a care facility is part of a dwelling unit or sleeping accommodation intended to be occupied as a residence in structures with four or more dwelling units or sleeping accommodations intended to be occupied as a residence, every dwelling unit and sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B dwelling units and Type B sleeping accommodations required by Section 1107.5.4 with the same exceptions as provided in Section 1107.5.4.

1107.5.1 Accessible sleeping accommodations. In occupancies in Groups R–1 and R–2 with sleeping accommodations, accessible sleeping accommodations shall be provided in accordance with Table 1107.5.1. In addition, In Group R–1 occupancies intended to be occupied as a residence, R–2, R–3, and R–4 occupancies in structures with four or more sleeping accommodations intended to be occupied as a residence, every sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B sleeping accommodations as required by Section 1107.5.4 with the same exceptions as provided for in Section 1107.5.4.

Exception: Group homes intended to be occupied by a single household and detached single-family homes occupied by a single household.

Modify 1107.5.4, as follows:

1107.5.4 Accessible dwelling units. In occupancies in Group R–2 and R–3 where there are four or more dwelling units or sleeping accommodations intended to be occupied as a residence in a single structure, every dwelling unit and sleeping accommodation intended to be occupied as a residence shall be Type B. Dwelling units required to * * * (the rest of 1107.5.4 remains as it currently appears in the IBC).

Exceptions:

1. Where no elevator service is provided in a building, Type A and B dwelling units and Type B sleeping accommodations need not be provided on floors other than the ground floor * * *

2. Where no elevator service is provided in a building and the ground floor does not contain dwelling units or sleeping accommodations intended to be occupied as a residence, only those dwelling units and sleeping accommodations intended to be occupied as a residence located on the lowest floor containing dwelling units or sleeping accommodations intended to be occupied as a residence need comply with the requirements of this section.

3. A multistory dwelling unit * * *

4. The number of Type B dwelling units and Type B sleeping accommodations provided in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor dwelling units and sleeping accommodations intended to be occupied as a residence which is equal to the percentage of the entire site having grades, prior to development, which are less than 10 percent; but in no case shall the number of Type B dwelling units or Type B sleeping accommodations be less than 20 percent of the ground floor dwelling units or ground floor sleeping accommodations intended to be occupied as a residence on the entire site.

5. The required number of Type A and Type B dwelling units and Type B sleeping accommodations shall not apply. * * *

1107.5.7 Group R–4. In Group R–4, at least one of the sleeping rooms and associated toilet and bathing facilities shall be accessible. In addition, in R–4 occupancies in structures with four or more sleeping accommodations intended to be occupied as a residence, every sleeping accommodation intended to be occupied as a residence shall comply with the requirements for Type B sleeping accommodations required by Section 1107.5.4 with the same exceptions as provided for in Section 1107.5.4.

Note: See other changes to Exceptions 4 and 5 under new Recommendations 5, 6 and 7 later in this report.

Transient Housing—(Draft Recommendation Number 2)

In its Draft Recommendation 2, HUD proposed that the IBC be revised to make clear that certain types of housing that the IBC viewed as transient are dwellings subject to the requirements of the Fair Housing Act, including the design and construction requirements. This housing may include timeshares, residential hotels and motels, and homeless shelters. The IBC uses a 30-day measure as the means to determine whether a building is for transient use and thus not a dwelling subject to the Act or chapter 11.

A 30-day measure is inappropriate in determining whether a building is covered by the Act. The IBC's 30-day test of transience is inappropriate because it misleads designers, builders and other readers of the code that such housing need not meet the requirements of the Act. Length of stay is only one factor in determining whether a building is a "covered multifamily dwelling. Other factors to be considered include: (1) Whether the rental rate for the unit will be calculated based on a daily, weekly, monthly or yearly basis; (2) Whether the terms and length of occupancy will be established through a lease or other written agreement; (3) What amenities will be included inside the unit, including kitchen facilities; (4) How the purpose of the property is marketed to the public; (5) Whether the resident possesses the right to return to the property; and (6) Whether the resident has anywhere else to which to return.

Accordingly, because the above-described types of housing which are subject to the Act are not required to meet IBC Chapter 11 requirements for dwelling units, the IBC is not consistent with the Act, the regulations and the Guidelines. At this time, the Department is uncertain how best to resolve this inconsistency between the IBC and the Department's regulations. Therefore, the Department is withdrawing Draft Recommendation Number 2. The Department will continue to work with ICC and other interested organizations to develop language that appropriately conveys to builders and designers that certain residencies of less than 30 days must meet the Act's accessibility requirements. In the meantime, the Department believes the factors listed above must be considered by owners, builders, developers, designers and architects in determining whether the requirement of the Act apply to the design and construction of buildings with rooms for short term occupancy.

Ground Floor—(Draft Recommendation Number 4)

The regulations define "ground floor" as a "floor of a building with a building entrance on an accessible route. A building may have one or more ground floors." 24 CFR 100.202. The Guidelines further state: "Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor." 56 FR at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. See the Questions and Answers About the Guidelines question number 6. 59 FR at 33364.

The IBC defines a Dwelling Unit, Ground Floor as: "A dwelling unit with a primary entrance and habitable space at grade." (1102.1)

IBC 2000 Exception 1, Section 1107.5.4, Accessible dwelling units, states that where no elevator service is provided in a building, Type B dwelling units need not be provided on floors other than the ground floor. The IBC's definition of "dwelling unit, ground floor" does not specifically provide that a building can have more than one ground floor. For example, if a building is built into a hill, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. The proposed IBC 2000 is not clear that there may be more than

one ground floor or ground floor units on different levels of a building.

In its draft report for public comment, the Department offered a recommendation that the IBC 2000 define ground floor to match the regulations and the Guidelines, and delete the definition of "dwelling unit, ground floor" from Section 1102. In addition, the Department recommended that Exception 1 to Section 1107.5.4 be modified to recognize that there may be more than one ground floor. As the Department stated in the introduction to this report, it is mindful of the fact that the language in the regulations and the Guidelines is not couched in building code terminology. The Department is, therefore, withdrawing this recommendation. However, the Department maintains that the IBC is inconsistent with the Act, the regulations and the Guidelines with respect to requiring additional ground floors to be accessible. In addition, during review of the public comments, two additional concerns arose: (1) Whether or not the IBC scoping language, in combination with the definition of "dwelling unit, ground floor," makes it clear that there must be at least one ground floor, and (2) Whether the language at Exception 2 of 1107.5.4 results in requiring builders to make the lowest floor containing dwelling units of a building accessible even if it were more practical to make a different floor (such as the second floor) containing dwelling units accessible when that floor is closer to the grade, even if not "at grade."

The Department will, however, work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction. In the meantime, builders, developers, owners, designers, architects and others involved in the design and construction of housing covered by the Act must apply the Department's definition of "ground floor" when making decisions about the applicability of the accessibility requirements of the Act.

Definition of Building and Structure—(Draft Recommendation Number 5)

In this recommendation, the Department recommended that the Exceptions to Section 1107.5.4 use the term "structure" instead of "building." This was recommended both for consistency with the charging paragraph, and in order to ensure that the intent of the code, that, for purposes of accessibility, IBC treats dwelling units in buildings separated by firewalls as a single structure. Based on the comments the Department received on this recommendation, the Department has withdrawn this recommendation.

Buildings Connected by Breezeways or Stairways—(Draft Recommendation Number 6)

The regulations define a building as "a structure, facility or portion thereof that contains or serves one or more dwelling units." 24 CFR 100.201. Based on that definition, a structure with three dwelling units that is structurally connected to another structure with three units, by a stairway or breezeway, for example, is considered one covered multifamily dwelling with six dwelling units.

In most cases, under the IBC, two structures that are connected by a breezeway or stairway and share the same roof as the breezeway or stairway are also considered one building. As a result, if the total units in both structures equals four or more, then the building must comply with the IBC's accessibility provisions.

It appears, however, that in cases where the breezeway or stairway that structurally connects both buildings does not provide the only means of egress and does not share the same roof as the two structures, whether or not this design is considered one building must be determined under the IBC on a case-by-case basis. In addition, in some cases, the IBC considers walkways, breezeways, and stairways accessory structures and not integral to the building. If they are determined to be accessory structures, each building that they connect is examined separately. As a result, the IBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways.

Recommendation Number 3 (Draft Recommendation 6)

It is recommended that the proposed IBC 2000 be modified to include a revision to Section 3104.2, Separate structures, as follows:

3104.2. Separate structures. Connected buildings shall be considered to be separate structures. For purposes of calculating the number of Type B dwelling units and Type B sleeping accommodations required by Chapter 11, structurally connected buildings and buildings with multiple wings shall be considered one structure.

Multistory Dwelling Units—Draft Recommendation Number 7

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a "covered multifamily dwelling" because the entire unit is not on the ground floor. 54 FR at 3244. The Guidelines define a "multistory dwelling unit" as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 FR at 9500. A "single-story dwelling unit" is defined as a dwelling unit with all finished living space located on one floor. 56 FR at 9501.

The IBC defines "Dwelling Unit, multistory" as a dwelling unit with habitable or bathroom space located on more than one story. IBC 1102.1. The IBC defines "habitable space" as a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet rooms, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces. The IBC does not define the term "single-story dwelling unit." IBC 202.8.

According to the IBC's definition of "dwelling unit, multistory", a unit would be considered multistory if one level contains living or "habitable" space and the floor next above or below contains only a bathroom. According to the definitions in the Guidelines, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. Bathroom space alone does not constitute living space, nor does bathroom and storage space. 56 FR at 9500–01. The IBC's definition of "dwelling unit, multistory" does not meet the Department's interpretation of what constitutes a "multistory dwelling unit" under the Act, the regulations and the Guidelines.

Recommendation Number 4 (Draft Recommendation 7)

It is recommended that the reference to "or bathroom space" in the IBC's definition of "multistory dwelling unit" be deleted as follows:

Section 1102, Definitions—Dwelling unit, multistory: For purposes of accessibility, this term shall mean a dwelling unit with habitable space located on more than one story.

V. Seven Specific Design and Construction Requirements

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. At the time the Act was passed and the

Guidelines were written, ANSI A117.1–1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The proposed IBC 2000 utilizes the technical criteria contained in ICC/ANSI A117.1–1998. As stated in the Department's policy statement and the Introduction to this final report, the Department reviewed the technical standards in the CABO/ANSI A117.1–1992 and the ICC/ANSI A117.1–1998 for consistency with the requirements of the Act, the regulations, the Guidelines, and the 1986 edition of ANSI A117.1. The Department recognizes that the 1992 and 1993 editions of ANSI have been adopted by several of the model code organizations, and under many building codes. The purpose of the Department's review was to identify any instances where the technical criteria in the later editions of ANSI A117.1 did not provide the same level of accessibility described in the Guidelines, or as mandated under the Act, so that the Department could conclude whether the model codes that adopted the ANSI A117.1 technical criteria were consistent with the Act. In this review, the Department was mindful that the Act states that compliance with the ANSI A117.1 standards constitutes compliance with the Act. The Department found no such instances where a difference between ANSI A117.1–1992 or 1998 standard was inconsistent with the Guidelines or the Act.

Requirement 1: Accessible Building Entrance on an Accessible Route

The Guidelines set forth specifications to implement the requirements of 24 CFR 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 FR at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route, and explains that the requirements apply to a single building on a site and to multiple buildings on a site. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics; however, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, regardless of terrain or unusual characteristics of the site. 56 FR at 9504.

The IBC's provisions relating to the requirement of an accessible building entrance on an accessible route are consistent with the Act, the regulations, and the Guidelines except as follows:

Site Impracticality Due to Terrain

The Guidelines set forth two tests to assess site impracticality due to terrain—the individual building test and the site analysis test. 56 FR at 9503.

Individual Building Test—This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 FR 9503.

Site Analysis Test—May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 FR at 9503–04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 FR at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A). 56 FR at 9504.

Step C requires that in addition, all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 FR at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance on an accessible route. In addition, according to Step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route.

Variance Related to Site Analysis Test—(Draft Recommendation Number 8)

Section 1107.5.4, Exception 4, of the proposed IBC 2000 provides that the number of Type B dwelling units in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units which is equal to the percentage of the entire site having grades, prior to development, which are 10% or less; but in no case shall the number of Type B units be less than 20% of the ground floor dwelling units on the entire site.

This Exception corresponds to Steps A and B of the site analysis test, except that the Guidelines require the grades to be "less than 10%". In addition, the Exception fails to provide equivalent language to Step C, i.e., it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 FR at 9504. Therefore, the IBC does not meet this aspect of the Guidelines.

Moreover, according to the Guidelines, regardless of site considerations, an accessible entrance served by an accessible route is practical whenever an elevator connects parking with a ground floor, in which case all ground floor units are covered, or whenever an elevated walk with a slope no greater than 10% is planned between an entrance and a pedestrian or vehicular arrival point. 56 FR at 9504. The IBC does not include any language that reflects these requirements. As a result, the IBC does not meet these provisions of the Guidelines.

Recommendation Number 5 (Draft Recommendation 8)

In order to address these inconsistencies, we recommend the following modification to 1107.5.4, Exception 4:

The number of Type B dwelling units and Type B sleeping accommodations provided in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units and sleeping accommodations intended to be occupied as a residence which is equal to the percentage of the entire site

having grades, prior to development, which are less than 10%; but in no case shall the number of Type B dwelling units and Type B sleeping accommodations be less than 20 percent of the ground floor dwelling units and ground floor sleeping accommodations intended to be occupied as a residence on the entire site. In addition to the percentage established, all ground floor units and ground floor sleeping accommodations intended to be occupied as a residence in a building, or ground floor units and ground floor sleeping accommodations intended to be occupied as a residence served by a particular entrance shall be Type B if any one of the following applies:

4.1 The slope between the entrance to the units and the sleeping accommodations intended to be occupied as a residence and a pedestrian or vehicular arrival point is no greater than 8.33%; or 4.2 An elevator provides access to the ground floor only; or 4.3 An elevated walkway with a slope not exceeding 10 percent is planned between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.33%.

Variance Related to Buildings with Elevators—(Draft Recommendation Number 9)

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 FR at 9503. The IBC 2000 does not reflect this requirement in Section 1107.5.4, Exception 5.

Recommendation Number 6 (Draft Recommendation 9)

It is recommended that Exception 5, Section 1107.5.4 be modified to exempt buildings with elevators from site impracticality as follows:

The required number of Type A and Type B dwelling units and Type B sleeping accommodations shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings are required to be at or above the base floor elevation resulting in * * *

Variance Related to Sites with Unusual Characteristics—(Draft Recommendation Number 10)

The criteria in the Guidelines for determining site impracticality for sites having unusual characteristics specifies that an accessible entrance on an accessible route is impractical when the unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches AND 10 percent, measured between an entrance and ALL vehicular or pedestrian arrival points within 50 feet of the planned entrance, and if none, then between the closest vehicular or pedestrian arrival point. 56 FR at 9504.

The IBC's corresponding provision at Section 1107.5.4, Exception 5, states that the accessibility requirements shall not apply to a site where the lowest floor or the lowest structural building members is required to be at or above the base flood elevation resulting in a difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet exceeding 30 inches, OR a slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet. The Guidelines specify that the difference in finished grade elevation must be both 30 inches and 10 percent.

Recommendation Number 7 (Draft Recommendation 10)

It is recommended that Section 1107.5.4, Exception 5, paragraph 5.1, be revised as follows:

5.1. A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm), AND * * *

Requirement 2: Accessible and Usable Public and Common Use Areas

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to, and usable by, people with disabilities. 42 U.S.C. 3604 (f)(3)(C)(i); 24 CFR 100.205 (c)(1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1–1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the specifications including modifications to the referenced Standard. 56 FR at 9505. Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

Accessible routes, Protruding objects, Ground and floor surface treatments, Parking and passenger loading zones, Curb ramps, Ramps, Stairs, Elevators, Platform lifts, Drinking fountains and water coolers, Toilet rooms and bathing facilities, Seating, tables, or work surfaces, Places of assembly, Common-use spaces and facilities, Laundry rooms.

56 FR at 9505. When a variance is identified in the IBC that does not meet the requirements of the Guidelines for each of the 15 elements or spaces above, it is noted below.

Accessible Route(s)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 FR at 9504.

Vehicular Route—(Draft Recommendation Number 11)

IBC 2000 Section 1107.5.5 contains language that is comparable to the Guidelines with one exception. That section states:

If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with parking at each accessible facility or building is permitted in place of the accessible route.

The IBC does not include language making it clear that accessible parking must be available at each public or common use facility if access is provided by a vehicular route.

Recommendation Number 8 (Draft Recommendation 11)

It is recommended that the proposed IBC 2000 1107.5.5, Accessible route, be modified to include the following language:

If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with accessible parking in accordance with 1106, at each public or common use facility or building is permitted in place of the accessible route.

Headroom—(Draft Recommendation Number 12)

Based on the public comments received, the Department has determined that the IBC adequately addresses this issue.

Stairs—(Draft Recommendation Number 13)

The Guidelines require that accessibility be provided on stairs located along accessible routes connecting levels not connected by an elevator. 56 FR at 9505. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. The stairs in this case are required to meet the ANSI A117.1 specification, since they will be used by people with disabilities for whom stairs are more usable than ramps. However, stairs are not a component of an accessible route.

Since stairs are not parts of accessible routes and they are not specifically referenced in Chapter 11, Accessibility, of the proposed IBC 2000, one must refer to Chapter 10, Means of Egress, for stair provisions. However, the Chapter 10 requirements do not necessarily apply to stairs that connect levels not connected by an elevator if they are not a part of a means of egress. There are variances between the proposed IBC 2000 and the Guidelines' requirements for stairs located along accessible routes not connected by an elevator.

Recommendation Number 9 (Draft Recommendation 13)

It is recommended that the IBC include a provision for stairways under Section 1108, Other Features and Facilities as follows:

Stairways

Stairways located along accessible routes connecting floor levels that are not connected by an elevator shall be designed and constructed to comply with ICC/ANSI A117.1–1998.

Parking and Passenger Loading Zones—(Draft Recommendation Number 14)

The Questions and Answers About the Guidelines (Question and Answer 14c) states that where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14′2″ wide and have a vehicular door at least 10′ wide. 59 FR at 33366. This requirement assumes that garage parking is the only type of parking provided at the site.

Question and Answer 14c provides the minimum requirement for the width of accessible garages and garage doors. The minimum widths provide enough space for an automobile to enter the garage, and for a passenger or driver using a wheelchair to exit through the garage door without interference by the automobile. However, the minimum requirements do not preclude a garage design that provides equivalent or greater accessibility. For example, a designer may choose to design a garage with a door that is 8 feet wide, but provides a separate accessible exit door through which the driver or the passenger may exit, provided that it connects to the accessible route to the entrance of the unit.

The IBC does not provide minimum requirements for these garages, and therefore, does not meet this provision of the Guidelines.

The Guidelines provide that if provided at the site, there be * * * *accessible visitor parking sufficient to provide access to grade-level entrances of covered multifamily dwellings*, and *accessible parking at facilities*. The Guidelines also require accessible parking on the same terms and with the full range of choices (e.g., surface parking or garage) that are provided to other residents of the project. 56 FR at 9505.

In addition, the Questions and Answers About the Guidelines provide further clarification of the parking requirements at Q&A 14(b) which clarifies that when more than one type of parking is provided, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

The Department is not recommending that the IBC revise any of its broader scoping requirements for parking. However, the IBC does not include comparable language in Section 1106, Parking and Passenger Loading Facilities, with respect to the above variances. Therefore, the IBC does not meet the provisions of the Guidelines with respect to these issues.

Recommendation Number 10 (Draft Recommendation 14)

In order to address these inconsistencies, it is recommended that the proposed IBC 2000 add the following language to Section 1106.2, Group R–2 and R–3.

Where there are several individual garages grouped together, either in a separate area of a structure or in a detached structure, for assignment or rental to residents, at least 2% of parking garages provided for Type B dwelling units and Type B sleeping accommodations must be at least 14′2″ wide and have a vehicular door at least 10′ wide * * *

* * * Where accessible parking spaces are provided, at least one of each type (surface parking, carports, or garage) shall be provided.

* * * Where visitor parking is provided, at least one accessible visitor parking space shall be provided.

* * * Where parking is provided at public and common use facilities that serve accessible buildings, at least one accessible parking space shall be provided.

Recreational Facilities

The Guidelines, in Requirement 2, state that: "If provided in the facility or at the site; (a) where multiple recreational facilities (e.g., tennis courts) are provided sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps" shall be provided. These facilities must be connected by an accessible route to the covered dwelling units or a vehicular route if an accessible route is not possible. The IBC Section 1108.14.1 requires 25%, but not less than one, of recreational facilities of each type in each occupancy group to be accessible.

The Department concludes that the Guidelines may be interpreted to be stricter than the requirements of the model codes with respect to the requirement for accessible recreational facilities because an interpretation of "sufficient to provide equitable opportunity for use" may result in determinations that recreational facilities that serve different buildings containing accessible dwelling units must be accessible, even if this means making all of the same type of recreational facility accessible (such as two swimming pools on a large site, each serving different buildings on the site).

For example, one out of four recreational facilities of the same type serving a specific residential use group is code compliant (25% but not less than one), but may not be considered "sufficient" by the Department if the facilities of the same type are widely spread across a large site serving one building, or spread across a site on which there are multiple buildings.

However, because this matter was not included in the draft reports, and there has not been an opportunity for public participation in a resolution of this matter, the Department is not including a recommendation to resolve this matter. The Department will work with all interested parties to address this matter.

Requirement 3: Usable Doors

The Act and the regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. § 3604

(f)(3)(C)(ii); 24 CFR 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. 56 FR at 9506. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 FR at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and

Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement.

56 FR at 9506. The Department has determined that the IBC meets the requirements of the Act, the regulations, and the Guidelines for usable doors.

Requirement 4: Accessible Route Into and Through the Covered Dwelling Unit

The Act and the regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. § 3604 (f)(3)(C)(iii)(I); 24 CFR 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement. 56 FR at 9509–10. The proposed IBC 2000 meets the provisions of the Act, the regulations, and Guidelines with respect to Requirement 4, except the following:

Multistory Units Served by Elevators—(Draft Recommendation Number 15)

Among the criteria for Requirement 4 is the requirement that in multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator is the primary entry to the unit. 56 FR at 9507.

The IBC does not mention that where a multistory dwelling unit is provided with elevator service, the story served by the elevator must be the primary entry to the unit. As a result, the IBC does not meet the requirements of the Guidelines in terms of the exceptions for multistory units in buildings served by elevators.

Recommendation Number 11 (Draft Recommendation 15)

It is recommended that the IBC modify Section 1107.5.4, Exception 3 as follows:

A multistory dwelling unit which is not provided with elevator service is not required to comply with the requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided.

Requirement 5: Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations

The Act and the regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. § 3604 (f)(3)(C)(iii)(II); 24 CFR 100.205(c)(3)(ii). Requirement 5 of the Guidelines sets forth criteria to meet these requirements. 56 FR at 9507. The IBC meets the provisions of the Act, the regulations, and Guidelines with respect to Requirement 5.

Requirement 6: Reinforced Walls for Grab Bars

Requirement 6 of the Guidelines sets forth technical specifications to meet the requirements of the Act at 42 U.S.C. § 3604 (f)(3)(C)(iii)(III) and the regulations at 24 CFR 100.205(c)(3)(iii), which specify that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided. 56 FR at 9509–10. The proposed IBC 2000 provisions meet the requirements of the Act, the regulations, and the Guidelines.

Requirement 7: Usable Kitchens and Bathrooms

The Act and the regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. § 3604 (f)(3)(C)(iii)(IV); 24 CFR 100.205(c)(3)(iv). Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 FR at 9511–15. The proposed IBC 2000 provisions meet the requirements of the Act, the regulations, and Guidelines.

Chapter 4: Uniform Building Code Analysis

I. Purpose

The purpose of this report is to identify provisions of the 1997 edition of the Uniform Building Code (UBC), published by the International Conference of Building Officials (ICBO) that do not meet the requirements of the Fair Housing Act (the Act), the regulations implementing the 1988 Amendments to the Act (the regulations), or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, the Department recommends how they may be revised to meet the requirements of the Act, the regulations, or the Guidelines.

II. Methodology

The analysis of the UBC by the Department and Steven Winter Associates, Inc. SWA, its contractor, consisted of the following:

—A review of the language of the Act, 42 U.S.C. 3604 (f)(3)(C), the regulations at 24 CFR 100.201 and 205, the Guidelines, 56 FR at 9472–9515, and the June 28, 1994 "Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines," 59 FR 12 33362–33368 (the Questions and Answers About the Guidelines).

—A review of the December 15, 1997 copyrighted comparative matrix developed by the International Code Council (ICC), Buildings Officials & Code Administrators International (BOCA), International Conference of Building Officials (ICBO), Southern Building Code Congress International (SBCCI), and the Council of American Building Officials (CABO). The matrix, which was included with HUD's Request for Quotations for this analysis, consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the three model building codes and the UBC. SWA began its analysis of the UBC by reviewing the column of the matrix that includes the UBC's accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent variances between the UBC's accessibility requirements and those of the Act, regulations, and Guidelines.

—A review of the accessibility provisions of the UBC, 1997 edition and a review of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1–1986, which is referenced in the regulations, and CABO/ANSI A117.1–1992. Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and the UBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.

—Interviews with Paul Armstrong, ICBO Senior Staff Engineer, to gain insight into how the UBC responds to variances that SWA identified. SWA found it necessary to understand ICBO's interpretations of its own requirements that may not be apparent when reviewing code text.

The Department formed a Model Code Working Group consisting of representatives from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel, and the Office of Housing. A representative of the U.S. Department of Justice also participated on the Working Group. The Working Group met with SWA on September 29, 1999, asked questions and made comments and suggestions about the analysis.

The draft report was published for public comment on October 26, 1999, and a public meeting on the draft reports was held on November 10, 1999. Written comments on the report were received. All comments were reviewed and considered. This final report incorporates many of those comments and has been revised from the draft report.

III. The Uniform Building Code

The ICBO administers the UBC series of model regulatory construction codes.

Unlike the Fair Housing Act, the UBC is a model building code and not a law. It provides minimum standards for public safety, health, and welfare as they are affected by building construction. Compliance with the UBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as "model codes."

The 1997 UBC, published January 1, 1997, includes provisions for accessibility intended to reflect the intent of the Guidelines. Previous editions of the code include provisions for accessibility, but not as required by the Act. The 1997 UBC, Chapter 11, Accessibility, is the first attempt at codifying the accessibility provisions of the Act. Any jurisdiction that adopts the 1997 UBC code must follow these accessibility provisions.

In the past, some model building codes, including the UBC, have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for full accessibility as defined by ANSI A117.1. These dwelling units are referred to in the UBC in Section 1102 as a "Type A dwelling unit." It is important to note, however, that CABO/ANSI A117.1–1992, adopted by the UBC, does not contain scoping provisions, discussed below. The UBC also includes scoping and technical provisions for a "Type B dwelling unit," which is intended to reflect the requirements of the Act, the regulations, and the Guidelines, in Section 1106.

It is the Department's understanding that ICBO will no longer publish subsequent updates to the latest version of the UBC. The four model code organizations have joined with the ICC to produce one international building code under the ICC, the first of which will be published as the International Building Code 2000 early in the year 2000.

IV. Scoping Provisions

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure to which the technical standards are applied. The provisions in this second component are referred to as "scoping" provisions. This section of the analysis sets forth areas where the scoping provisions of the UBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, regulations, or the Guidelines. This analysis of the scoping provisions of the UBC included an examination of the following:

UBC's definition of dwelling unit, building, structure, and ground floor dwelling unit;

UBC's classification of residential buildings according to use and occupancy; and

UBC's scoping of dwelling units to which the accessibility provisions apply.

This analysis concludes that the UBC covers most of the same dwelling units, buildings and residential uses as the Act, regulations, and Guidelines. For example, the Department has concluded that, with respect to buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single story townhouses, and modular units are covered. Additions of four or more units to existing buildings are also included within the UBC's scoping requirements for Type B dwelling units. However, the Department has concluded that the following provisions of the UBC do not or may not include "covered multifamily dwellings" as they are defined in the Act, regulations or Guidelines.

UBC Classification of Residential Use Groups

The UBC Section 310.1 defines residential occupancies (Group R occupancies) as follows:

Division 1: Hotels and apartment houses. Congregate residences (each accommodating more than 10 persons). Section 204, Chapter 2, defines congregate residences as follows: any building or portion thereof that contains facilities for living, sleeping and sanitation, as required by this code, and may include facilities for eating and cooking, for occupancy by other than a family. A congregate residence may be a shelter, convent, monastery, dormitory, fraternity or sorority house, but does not include jails, hospitals, nursing homes, hotels or lodging houses.

Division 2: Not used.

Division 3: Dwellings and lodging houses. Congregate residences (each accommodating 10 persons or less). Includes detached one- and two-family dwellings.

The reference to "detached one- and two-family dwellings" under Division 3 refers to structures that are physically detached.

The UBC requires that in Group R, Division 1 occupancy apartments containing four or more dwelling units, and in Group R, Division 3 occupancies where there are four or more dwelling units in a single structure, all dwelling units shall be Type B dwelling units. Section 1103.1.9. In Section 1102, Type B dwelling units are defined as units that are designed and constructed for accessibility in accordance with Section 1106. Section 1106 provides the design and construction requirements for Type B units.

Congregate Residences—(Draft Recommendation Numbers 1 and 2)

The regulations define the term "dwelling unit" as:

A single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons. 24 CFR 100.201.

It is clear from the discussion in the preamble to the regulations, found at 54 FR at 3244 (Jan. 23, 1989), that the Department intended that each sleeping room intended for occupancy by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are "covered multifamily dwelling units" for purposes of the Act.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by one household is not considered to be a "covered multifamily dwelling" under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a covered multifamily dwelling. In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a "group home," would not be considered to be a "covered multifamily dwelling" for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of this Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

The UBC defines the term "dwelling unit" in Section 205, Chapter 2, Definitions and Abbreviations, as follows:

Dwelling Unit is any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, as required by this code, for not more than one family, or a congregate residence for 10 or less persons.

According to Section 1103.1.9.3, Multi-unit dwellings, the UBC's accessibility provisions apply to Group R, Division 1 and 3 occupancies. In order to determine whether or not dwelling units covered by the regulations are covered in the same way by the UBC, one must examine the UBC's classification of each type of unit.

According to Section 310.1 of the UBC, Group R, Division 1 occupancies include hotels, apartment houses, including residential condominiums, and congregate residences accommodating more than 10 persons. Group R, Division 3 occupancies include dwellings, lodging houses (containing not more than five guest rooms where rent is paid in money, goods, labor, or otherwise), and congregate residences accommodating 10 persons or less.

The accessibility requirements for congregate residences are covered under UBC Section 1103.1.9.2, hotels, lodging houses, and congregate residences as follows:

In hotels, lodging houses and congregate residence occupancies containing six or more guest rooms, multi-bed rooms or spaces for more than six occupants, one for the first 30 guest rooms or spaces and one additional for each additional 100 guest rooms or space, or fraction thereof, shall be accessible. In hotels with more than 50 sleeping rooms or suites, roll-in-type showers shall be provided in one half, but not less than one, of the required accessible sleeping rooms or suites.

Congregate residences that accommodate less than six guest rooms for less than six occupants are required to provide accessibility according to 1103.1.9.3, Multi-unit dwellings. However, if a congregate residence accommodates between six and nine occupants, it can be covered by either Sections 1103.1.9.3, Multi-unit dwellings or Section 1103.1.9.2, Hotels, lodging houses and congregate residences. According to ICBO staff interviews, in these cases the UBC requires that the stricter provision apply.

To the extent that the UBC does not require in congregate residences that all ground floor sleeping rooms occupied by a separate household in buildings without an elevator, or all sleeping rooms occupied by a separate household in elevator buildings, meet the requirements of a Type B dwelling unit, it does not meet the requirements of the regulations.

Continuing Care Facilities—(Draft Recommendation Number 3)

Continuing care facilities are covered by the Act. 59 FR at 33364. The UBC Section 308.1 classifies these types of facilities as Group I, Division 1.1 and 2 occupancies. These occupancies are defined as follows:

Group I, Division 1.1: Nurseries for the full-time care of children under the age of six (each accommodating more than five children). Hospitals, sanitariums, nursing homes with nonambulatory patients and similar buildings (each accommodating more than five patients).

Group I, Division 2: Nursing homes for ambulatory patients, homes for children six years of age or over (each accommodating more than five patients or children).

The UBC's accessibility provisions for Group R occupancies of four or more dwelling units do not apply to UBC's Group I occupancies. However, they are required to provide accessibility as follows:

Section 1103.1.7 Group I Occupancies. Group I occupancies shall be accessible in public-use, common-use and employee-use areas, and shall have accessible patient rooms, cells, and treatment or examination rooms as follows:

In Group I, Division 1.1 and 2 nursing homes and long-term care facilities, at least one in every two patient rooms, or fraction thereof, including associated toilet rooms and bathing rooms.

Under the definition of "dwelling unit" contained in the regulations, a sleeping room in a nursing home or a home for juveniles occupied by an individual as a residence in a building with four or more such dwelling units would be covered under the accessibility requirements of the Act. To the extent therefore that sleeping rooms in Group I, Division 1.2 occupancies are not covered under the requirements for Type B dwelling units under the UBC, the UBC does not meet the requirements of the Act.

Recommendation Number 1 (Draft Recommendation Numbers 1, 2 and 3)

To ensure that the UBC covers the same dwelling units and sleeping rooms required to provide accessibility according to the Act, it is recommended that the UBC be revised to modify Sections 1103.1.7, 1103.1.9.2, and 1103.1.9.3. 1103.1.7 Group I Occupancies. Group I Occupancies shall be accessible in public-use, common-use and employee-use areas, and shall have accessible patient rooms, cells, and treatment or examination rooms as follows:

3. In Group I, Divisions 1.1 and 2 nursing homes and long-term care facilities, at least one in every two patient rooms, or fraction thereof, including associated toilet rooms and bathrooms. In addition, in structures with four or more patient rooms intended to be occupied as a residence, all patient rooms intended to be occupied as a residence shall comply with the requirements for Type B dwelling units required by 1103.1.9.3 with the same exceptions as provided for in Section 1103.1.9.3.

Section 1103.9.2 Hotels, lodging houses and congregate residences.

In addition to the accessible guest rooms required above, and in addition to the accessible guest rooms for persons with hearing impairments required above, in congregate residences in structures with four or more guest rooms intended to be occupied as a residence, all guest rooms intended to be occupied as a residence shall comply with the requirements for Type B dwelling units required by 1103.1.9.3 with the same exceptions as provided for in Section 1103.1.9.3. Section 1103.1.9.3 Multi-unit dwellings.

In Group R, Division 1 Occupancy apartments, and guest rooms intended to be occupied as a residence containing four or more dwelling units or guest rooms intended to be occupied as a residence, and Group R, Division 3 Occupancies where there are four or more dwelling units in a single structure, or where there are four or more guest rooms intended to be occupied as a residence, all dwelling units and guest rooms intended to be occupied as a residence shall be Type B. In Group R, Division 1 apartment occupancies containing more than 20 dwelling units, at least 2 percent, but not less than one, of the dwelling units shall be Type A dwelling units. All dwelling units on a site shall be considered to determine the total number of accessible dwelling units. All guest rooms intended to be occupied as a residence shall be considered to determine the total number of accessible guest rooms intended to be occupied as a residence on the entire site.

Exceptions:

1. Where no elevator service is provided in a building, Type B dwelling units and Type B guest rooms intended to be occupied as a residence need not be provided on floors other than the ground floor.

2. Where no elevator service is provided in a building and the ground floor does not contain dwelling units or guest rooms intended to be occupied as a residence, only those dwelling units and guest rooms intended to be occupied as a residence located on the first floor containing dwelling units or guest rooms intended to be occupied as a residence above the floor at grade of either Group R, Division 1 apartment occupancies or guest rooms intended to be occupied as a residence, or Group R, Division 3 Occupancies need comply with the requirements of this section.

3. A multistory dwelling unit not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided on that floor.

4. The number of Type B dwelling units and Type B guest rooms provided in multiple non-elevator buildings on a single site may be reduced to a percentage of the ground floor dwelling units and ground floor guest rooms intended to be occupied as a residence, that is equal to the percentage of the entire site having grades, prior to development, that are less than 10%; but in no case shall the number of Type B dwelling units or Type B guest rooms be less than 20% of the ground floor dwelling units or ground floor guest rooms intended to be occupied as a residence, on the entire site. In addition to the percentage established, all ground floor units and ground floor guest rooms intended to be occupied as a residence in a structure, or ground floor dwelling units or ground floor guest rooms intended to be occupied as a residence served by a particular entrance shall be Type B if any one of the following applies:

4.1 The slope between the entrance to the units or guest rooms intended to be occupied as a residence, and a pedestrian or vehicular arrival point is no greater than 8.33%; or

4.2 An elevator provides access to the ground floor only; or

4.3 An elevated walkway with a slope not exceeding 10 percent is planned between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.3%.

5. The required number of Type A and Type B dwelling units and Type B guest rooms shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings is required to be at or above the base floor elevation resulting in:

5.1 NO CHANGE

5.2 NO CHANGE

6. Single family detached houses with four or more sleeping rooms occupied by a single household of related or unrelated persons.

Note: See Recommendations later in this report regarding explanations for modifications made to some of the exceptions to 1103.1.9.3 above.

Ground Floor Dwelling Unit—(Draft Recommendation Number 4)

The regulations define "ground floor" as a "floor of a building with a building entrance on an accessible route. A building may have one or more ground floors." 24 CFR 100.202. The Guidelines further state: "Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor." 56 FR at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. 59 FR at 3364.

Since, according to the example above, both levels of the building have entrances to dwelling units at grade, the UBC requires accessibility to these units.

In Section 1102, the UBC defines Ground Floor Dwelling Unit as "a dwelling unit with a primary entrance and habitable space at grade." However, it is unclear from the UBC's definition of "ground floor dwelling unit" that there can be more than one ground floor, or ground floor units on different levels of a building. Exception 1, Section 1103.1.9.3, Multi-unit dwellings, states that where no elevator service is provided in a building, Type B dwelling units need not be provided on floors other than the ground floor.

In its draft report for public comment, the Department offered a recommendation that the UBC define ground floor to match the regulations and the Guidelines, and delete the definition of "ground floor dwelling unit" from Section 1102 (Draft Recommendation Number 4). In addition, the Department recommended that Exception 1 to Section 1103.1.9.3 be modified to recognize that there may be more than one ground floor. As the Department stated in the introduction to this report, it is mindful of the fact that the language in the regulations and the Guidelines is not couched in building code terminology. The Department is, therefore, withdrawing this recommendation. However, the Department maintains that the UBC is

inconsistent with the Act, the regulations and the Guidelines with respect to requiring additional ground floors to be accessible. In addition, during review of the public comments, two additional concerns arose: (1) Whether or not the UBC scoping language, in combination with the definition of "ground floor dwelling unit," makes it clear that there must be at least one ground floor, and (2) Whether the language at Exception 2 of 1103.1.9.3 results in requiring builders to make the lowest floor containing dwelling units of a building accessible even if it were more practical to make a different floor (such as the second floor) containing dwelling units accessible when that floor is closer to the grade, even if not "at grade." The Department will, however, work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction.

In the meantime, the Department believes that owners, builders, developers, designers, architects and others involved in the design and construction of housing covered by the Act must apply the Department's definition of "ground floor" when making decisions about the applicability of the accessibility requirements of the Act.

First Level of Living—(Draft Recommendation Number 5)

The Department considers the first level of dwelling units above retail, parking, commercial space, etc. in buildings without elevators as the ground floor and all units on that floor must be designed with an accessible entrance on an accessible route. 56 FR at 9500. The UBC intends on covering these same units by stating the following in Exception 2, Section 1103.1.9.3, Multi-unit dwellings:

Where no elevator service is provided in a building and the ground floor does not contain dwelling units, only those dwelling units located on the first floor of either Group R, Division 1 apartment occupancies or Group R, Division 3 occupancies need comply with the requirements of this section.

The reference to "first floor" in Exception 2 above may be misleading because floor numbers can vary from one building to the next. For example, what is considered the first floor in one building may be considered the second floor in another. Although the UBC intends on covering the first level of living above retail, parking, commercial space, or private garages if the level at grade does not contain dwelling units, its intention can be made more clear.

Recommendation Number 2 (Draft Recommendation 5)

It is recommended that 1103.1.9.3, Exception 2 be modified as follows:

1103.1.9.3 Multi-unit dwellings:

Exception: 2 Where no elevator service is provided in a building and the ground floor does not contain dwelling units or guest rooms intended to be occupied as a residence, only those dwelling units and guest rooms intended to be occupied as a residence located on the first floor containing dwelling units or guest rooms intended to be occupied as a residence above the floor at grade of either Group R, Division 1 apartment occupancies or guest rooms intended to be occupied as a residence, or Group R, Division 3 Occupancies need comply with the requirements of this section.

Multistory Dwelling Units—(Draft Recommendation Number 6)

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a "covered multifamily dwelling" because the entire unit is not on the ground floor. 54 FR at 3244. The Guidelines define a "multistory dwelling unit" as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 FR at 9500. A "single-story dwelling unit" is defined as a dwelling unit with all finished living space located on one floor. 56 FR at 9501.

The UBC Defines "Multistory dwelling unit" as a dwelling unit with habitable or bathroom space located on more than one story. (UBC Chapter 11, Section 1102.) The UBC defines "habitable space" as a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas, are not considered habitable spaces. (UBC 209)

According to the UBC's definition of "multistory dwelling unit," a unit is considered multistory if one level contains living or "habitable" space and the floor next above or below contains only a bathroom. According to the definitions in the Guidelines, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. Bathroom space alone does not constitute living space, nor does bathroom and storage space.

Therefore, the UBC's definition of "multistory dwelling unit" does not meet the Department's interpretation of the Act, the regulations and the Guidelines of what constitutes a "multistory dwelling unit."

Recommendation Number 3 (Draft Recommendation 6)

It is recommended that the reference to "or bathroom space" in the UBC's definition of "multistory dwelling unit" be deleted as follows:

Section 1102, Definitions:

Multistory dwelling unit: For application of the accessibility requirements, this term shall mean a dwelling unit with habitable space located on more than one story.

Definition of Building and Structure—(Draft Recommendation Number 7)

In this recommendation, the Department recommended that the Exceptions to 1103.1.9.3 be modified to eliminate any reference to the term "building" and replacing it with the term "structure." This was recommended both for consistency with the charging paragraph, and in order to ensure that the intent of the code, that, for purposes of accessibility, UBC treats dwelling units in buildings separated by firewalls as a single structure. Based on the comments the Department received on this recommendation, the Department has withdrawn this recommendation.

V. Seven Specific Design and Construction Requirements

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. As discussed in the Department's policy statement, at the time the Act was passed and the Guidelines were written, ANSI A117.1–1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The Department believes that compliance with either of these newer editions of the ANSI A117.1 constitutes an additional safe harbor in terms of demonstrating compliance with the technical provisions of the Act's accessibility requirements. It is, of course, still necessary to refer to the Act and the regulations, or the Guidelines, for implementing the scoping requirements. The Department believes that code officials may rely on the edition of ANSI A117.1 that has been adopted by the model code organization or state or local jurisdiction, if it has been adopted without modifications and is uniformly enforced.

The UBC utilizes the technical criteria contained in CABO/ANSI A 117.1–1992. Therefore, the Department has determined that there is no variance between the requirements of the Act and the model code provision if the model code provision is based on CABO/ANSI A117.1–1992, even where those criteria differ from the ANSI A117.1–1986 criteria or the Guidelines.

Requirement 1: Accessible Building Entrance on an Accessible Route

The Guidelines set forth specifications to implement the requirements of 24 CFR 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 FR at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route and explains that the requirements apply to a single building on a site and to multiple buildings on a site. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics. However, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, *regardless* of terrain or unusual characteristics of the site.

The UBC's provisions are consistent with the Act, the regulations, and the Guidelines, except as follows:

Site Impracticality Due to Terrain

The Guidelines set forth two tests to assess site impracticality due to terrain—the individual building test and the site analysis test. 56 FR at 9503.

Individual Building Test—This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 FR at 9503.

Site Analysis Test—May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 FR at 9503–04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 FR at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A) 56 FR at 9504.

Step C requires that in addition, all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 FR at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance on an accessible route. In addition, according to step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route.

Variance Related to Site Analysis Test—(Draft Recommendation Number 8)

Section 1103.1.9.3, Exception 4, of the UBC provides that the number of Type B dwelling units in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units which is equal to the percentage of the entire site having grades, prior to development, which are 10% or less; but in no case shall the number of Type B units be less than 20% of the ground floor dwelling units on the entire site.

This Exception corresponds to Steps A and B of the site analysis test, except that the Guidelines require the grades to be "less than 10%". 56 FR at 9504. In addition, the Exception fails to provide equivalent language to Step C—*i.e.*, it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 FR at 9504. Therefore, the UBC does not meet this aspect of the Guidelines.

In addition, according to the Guidelines, regardless of site considerations, an accessible entrance served by an accessible route is practical whenever an elevator connects parking with a ground floor, in which case all ground floor units are covered, or whenever an elevated walk with a slope no greater than 10% is planned between an entrance and a pedestrian or vehicular arrival point. 56 FR at 9504. The UBC does not include any language that reflects these requirements. As a result, the UBC does not meet these provisions of the Guidelines.

In order to address these inconsistencies, it is recommended the UBC include a modification to Section 1103.1.9.3, Exception 4 as follows:

Recommendation Number 4 (Draft Recommendation 8)

1103.1.9.3 Multi-unit dwellings:

Exception 4: The number of Type B dwelling units and Type B guest rooms provided in multiple non-elevator buildings on a single site may be reduced to a percentage of the ground floor dwelling units and ground floor guest rooms intended to be occupied as a residence, that is equal to the percentage of the entire site having grades, prior to development, that are less than 10%; but in no case shall the number of Type B dwelling units or Type B guest rooms be less than 20 percent of the ground floor dwelling units or ground floor guest rooms intended to be occupied as a residence on the entire site. In addition to the percentage established, all ground floor units and ground floor guest rooms intended to be occupied as a residence, in a structure, or ground floor dwelling units or ground floor guest rooms intended to be occupied as a residence served by a particular entrance shall be Type B if any one of the following applies:

4.1 The slope between the entrance to the units or guest rooms intended to be occupied as a residence and a pedestrian or vehicular arrival point is no greater than 8.33%; or

4.2 An elevator provides access to the ground floor only; or

4.3 An elevated walkway with a slope not exceeding 10 percent is planned

between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.3%.

Variance Related to Buildings with Elevators—(Draft Recommendation Number 9)

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 FR at 9503.

The UBC, Exception 5, Section 1103.1.9.3, states in relevant part that:

The required number of Type A and Type B dwelling units shall not apply to a site where the lowest floor or the lowest structural building members is required to be at or above the base floor elevation resulting in * * *

Recommendation Number 5 (Draft Recommendation 9)

It is recommended that Section 1103.1.9.3, Exception 5 be modified to exempt buildings with elevators from site impracticality as follows:

Section 1103.1.9.3 Multi-unit dwellings:
Exception 5. The required number of Type A and Type B dwelling units and Type B guest rooms shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings is required to be at or above the base floor elevation resulting in * * *

Variance Related to Sites with Unusual Characteristics—(Draft Recommendation Number 10)

The criteria in the Guidelines for determining site impracticality for sites having unusual characteristics specifies that an accessible entrance on an accessible route is impractical when the unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches AND 10 percent, measured between an entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance, and if none, then between the closest vehicular or pedestrian arrival point. 56 FR at 9504.

The UBC does not reflect this requirement in Section 1103.1.9.3 Exception 5. The UBC's corresponding provision states that the accessibility requirements shall not apply to a site where the lowest floor or the lowest structural building members is required to be at or above the base flood elevation resulting in a difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet exceeding 30 inches, OR a slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet. The Guidelines specify that the difference in finished grade elevation must be both 30 inches and 10 percent.

Recommendation Number 6 (Draft Recommendation 10)

It is recommended that Section 1103.1.9.3, Exception 5, be modified as follows:

5.1 A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm), AND * * *

Requirement 2: Accessible and Usable Public and Common Use Areas

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to and usable by people with disabilities. 42 U.S.C. 3604 (f)(3)(C)(i); 24 CFR 100.205(c)(1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1–1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the specifications including modifications to the referenced Standard. 56 FR at 9505.

Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

Accessible routes
Protruding objects
Ground and floor surface treatments
Parking and passenger loading zones
Curb ramps
Ramps
Stairs
Elevators
Platform lifts
Drinking fountains and water coolers
Toilet rooms and bathing facilities
Seating, tables, or work surfaces
Places of assembly
Common-use spaces and facilities
Laundry rooms

56 FR at 9505. When a variance is identified in the UBC that does not meet the requirements of the Guidelines for each of the 15 elements or spaces above, it is noted below.

Preliminarily, it is noted that Section 1103.1.9.1, General, provides that rooms and spaces available to the general public and spaces available for the use of residents that serve Group R, Division 1 occupancy accessible dwelling units shall be accessible. This section does not require accessibility in rooms and spaces available to the general public in Group R, Division 3 occupancies which are covered by Section 1103.1.9.3, Multi-unit dwellings. This is not equivalent to the accessibility provisions of the Guidelines.

Recommendation Number 7 (Draft Recommendation 11)

It is recommended that the UBC modify Section 1103.1.9.1, General, by including Group R, Division 3 occupancies as follows:

Section 1103.1.9.1, General:
Group R Occupancies shall be accessible as provided in this chapter. Rooms and spaces available to the general public and spaces available for the use of the residents that serve accessible dwelling units and accessible guest rooms in Group R, Division 1 and Division 3 occupancies shall be accessible.

Accessible Route(s)

Vehicular Route—(Draft Recommendation Number 12)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 FR at 9504.

The UBC Section 1103.2.2 contains language which is comparable to the Guidelines with one exception. That section states:

For Group R, Division 1 apartment occupancies, when the slope of the finished grade between accessible buildings and facilities exceeds 1 unit vertical in 12 units horizontal (8.33% slope), or when physical barriers of the site prevent the installation of an accessible route, a vehicular route with parking at each accessible building or facility may be provided in place of the accessible route.

The UBC does not include language making it clear that accessible parking must be available at the accessible facility if access is provided by a vehicular route.

Recommendation Number 8 (Draft Recommendation 12)

It is recommended that the UBC Section 1103.2.2, Accessible route, be modified to include the following language:

If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with accessible parking spaces in accordance with Appendix Chapter 11 at each public or common use facility or building is permitted in place of the accessible route.

Headroom—(Draft Recommendation Number 13)

Based on the public comments received, the Department has determined that the UBC adequately addresses this issue.

Parking and Passenger Loading Zones—(Draft Recommendation Numbers 14, 15 and 16)

Division I of Appendix Chapter 11 includes the only provisions for accessible parking and passenger loading zones. These provisions do not apply if the appendix is not specifically adopted. Therefore, a jurisdiction that adopted the UBC 1997 without the Appendix would not meet the accessibility requirements of the Act, regulations and Guidelines.

Recommendation Number 9 (Draft Recommendation 14)

It is recommended that Appendix Chapter 11 be automatically adopted by a jurisdiction that adopts UBC 1997.

The Questions and Answers About the Guidelines (Question and Answer 14c) state that where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14′2″ wide and have a vehicular door at least 10′ wide. 59 FR at 33366. This requirement assumes that garage parking is the only type of parking provided at the site.

Question and Answer 14c provides the minimum requirement for the width of accessible garages and garage doors. The minimum widths provide enough space for an automobile to enter the garage, and for a passenger or driver using a wheelchair to exit through the garage door without interference by the automobile. However, the minimum requirements do not preclude a garage design that provides equivalent or greater accessibility. For example, a designer may choose to design a garage with a door that is 8 feet wide, but include a separate accessible exit door through which the driver or the passenger may exit, provided that it connects to the accessible route to the entrance of the unit.

The UBC does not provide minimum requirements for these garages, and therefore, does not meet provision of the Guidelines.

The Guidelines provide that if provided at the site, there must be accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and accessible parking at facilities. The Guidelines also require accessible parking on the same terms and with the full range of choices (*e.g.*, surface parking or garage) that are provided to other residents of the project. 56 FR at 9505.

In addition, the Questions and Answers About the Guidelines provide further clarification of the parking requirements at Q&A 14(b) by stating that when more than one type of parking is provided, at least one space for each type of parking should be made accessible even if this number exceeds 2%.

The Department is not recommending that the UBC revise any of its broader scoping requirements for parking. However, the UBC does not include comparable language in Appendix Chapter 11 with respect to the above variances. Therefore, the UBC does not meet the provisions of the Guidelines with respect to these issues.

Recommendation Number 10 (Draft Recommendation 15)

In order to address the inconsistencies outlined above, it is recommended that the UBC add the following language to Section 1108:

At least 2% of parking garages provided for R–2 and R–3 occupancies required to have Type B dwelling units or Type B guest rooms, where there are several individual garages grouped together, either in a separate area of a building or in a detached building, for assignment or rental to residents, must be at least 14′2″ wide and have a vehicular door at least 10′ wide.

Where accessible parking spaces are provided, at least one of each type (surface parking, carports, or garage) shall be provided. Where visitor parking is provided, at least one accessible visitor parking space shall be provided.

Where parking is provided at public and common use facilities that serve accessible buildings, at least one accessible parking space shall be provided.

and modify the third provision under Section 1108 as follows:

3. For Group R, Division 1 and Group R, Division 3 occupancies containing accessible or adaptable dwelling units or guest rooms intended to be occupied as a residence, where parking is provided, 2 percent of the parking spaces shall be accessible * * *

In addition, Section 1108.3, Signs, provides an exception which states that accessible parking space signs need not be provided in parking garages or parking facilities that have five or less total parking space. This exception does not meet the requirements of the Guidelines which requires signage at all accessible parking space.

Recommendation Number 11 (Draft Recommendation 16)

It is recommended that the UBC delete this exception. If this exception is deleted from the charging paragraph, then signs will be required at all accessible parking spaces.

Elevators—(Draft Recommendation Numbers 17 and 18)

The Guidelines require that elevators on accessible routes be accessible according to the technical specifications of ANSI A117.1, Section 4.10, Elevators. 56 FR at 9505. Section 1105.3 of the UBC, Elevators and Stairway and Platform Lifts, states that elevators on an accessible route shall be accessible. It also states that elevators required to be accessible shall be designed and constructed to comply with CABO/ANSI A117.1–1992. The technical specifications for elevators required by both the Guidelines and the UBC are equivalent.

However, the UBC provides an exception to Section 1105.3 which states that private elevators serving only one dwelling unit need not be accessible. This does not meet the requirements of the Guidelines because elevators within multistory units must provide accessibility.

Recommendation Number 12 (Draft Recommendation 17)

It is recommended that the exception under Section 1105.3 be deleted.

The UBC provides an exception to Section 1104.1.3, Elevators, which states that elevators need not be provided to floors provided with a horizontal exit and located at or above the level of exit discharge in fully sprinklered buildings. This exception does not meet the requirements of the Guidelines that requires elevators, if provided to units other than the ground floor, provide access to all floors.

Recommendation Number 13 (Draft Recommendation 18)

It is recommended that the exception under Section 1104.1.3 be deleted.

Laundry Rooms—(Draft Recommendation Number 19)

The Guidelines state that if provided in the facility or at the site, at least one of each type of appliance provided in each laundry area shall be accessible.

UBC Section 1103.1.9.1, General, states that Group R Occupancies shall be accessible as provided in Chapter 11. Rooms and spaces available to the general public and spaces available for the use of residents that serve Group R, Division 1 Occupancy accessible dwelling units, which includes laundry facilities, shall be accessible. The UBC does not include Group R, Division 3 occupancies in Section 1103.1.9.1, which does not meet the requirements of the Guidelines.

Recommendation Number 14 (Draft Recommendation Number 19)

It is recommended that Section 1103.1.9.1 be modified to include Group R, Division 3 occupancies.

Recreational Facilities

The Guidelines, in Requirement 2, state that: "If provided in the facility or at the site; (a) where multiple recreational facilities (*e.g.*, tennis courts) are provided sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps' shall be provided. These facilities must be connected by an accessible route to the covered dwelling units or a vehicular route if an accessible route is not possible." The UBC Section 1103.1.9.1 requires 25%, but not less than one, of recreational facilities of each type in each group to be accessible.

The Department concludes that the Guidelines may be interpreted to be stricter than the requirements of the UBC with respect to the requirement for accessible recreational facilities because an interpretation of "sufficient to provide equitable opportunity for use" may result in determinations that recreational facilities that serve different buildings containing accessible dwelling units must be accessible, even if this means making all of the same type of recreational facility accessible (such as two swimming pools on a large site, each of which serves different buildings on the site).

For example, one out of four recreational facilities of the same type serving a specific residential use group is code compliant (25% but not less than one), but may not be considered "sufficient" by the Department if the facilities of the same type are widely spread across a large site serving one building, or spread across a site on which there are multiple buildings.

However, because this matter was not included in the draft reports, and there has not been an opportunity for public participation in a resolution of this matter, the Department is not including a recommendation to resolve this matter. The Department will work with all interested parties to address this matter.

Requirement 3: Usable Doors

The Act and regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. § 3604 (f)(3)(C)(ii); 24 CFR 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 FR at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and

Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement.

The Department has determined that the UBC meets the requirements of the Act, regulations, and the Guidelines for usable doors.

Requirement 4: Accessible Route Into and Through the Covered Dwelling Unit

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. § 3604 (f)(3)(C)(iii)(I); 24 CFR 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement. 56 FR at 9509–10. The UBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 4, except the following.

Multistory Units Served by Elevators—(Draft Recommendation Number 20)

Among the criteria for Requirement 4 is the provision that in multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator is the primary entry to the unit. 56 FR at 9507.

One of the UBC's exceptions to the requirement for Type B units provides, in Section 1103.1.9.3, as follows:

> A multistory dwelling unit not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided on that floor.

The UBC does not mention in this exception that where a multistory dwelling unit is provided with elevator service, the story served by the elevator must be the primary entry to the unit. As a result, the UBC does not meet the requirements of the Guidelines in terms of the exceptions for multistory units in buildings served by elevators.

Recommendation Number 15 (Draft Recommendation 20)

It is recommended that the UBC modify Section 1103.1.9.3, Exception 3 as follows:

> 1103.1.9.3 Multi-unit dwelling: A multistory dwelling unit not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a Type B dwelling unit, and a toilet facility shall be provided on that floor.

Requirement 5: Light Switches, Electrical Outlets, Thermostats, and Other Environmental Controls in Accessible Locations

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. § 3604 (f)(3)(C)(iii)(II); 24 CFR 100.205. Requirement 5 of the Guidelines sets forth criteria to meet these requirements. The UBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 5.

Requirement 6: Reinforced Walls for Grab Bars

Requirement 6 of the Guidelines sets forth technical specifications to meet the requirements of the Act at 42 U.S.C. 3604 (f)(3)(C)(iii)(III) and the regulations at 24 CFR 100.205(c)(3)(iii), which specifies that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided. 56 FR at 9509–10.

Although it is the intent of the UBC at Section 1106.6.3 to require grab bar reinforcement at fixtures located away from walls, sunken or raised tubs for example, the UBC is not clear on this issue.

Recommendation Number 16 (Draft Recommendation 21)

It is recommended that the UBC modify Section 1106.6.3, Toilet and bathing fixtures by adding the following:

Where fixtures are located away from walls alternative reinforcement complying with CABO/ANSI A117.1 4.24.2.5 and 4.24.3 shall be provided for the mounting of grab bars.

Requirement 7: Usable Kitchens and Bathrooms

The Act and regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. § 3604 (f)(3)(C)(iii)(IV); 24 CFR 100.205. Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 FR at 9511–15.

Usable Kitchens—(Draft Recommendation Number 22)

The Guidelines address a parallel approach to kitchen sinks in Requirement 7 at 56 FR at 9511. The parallel approach to the sink is addressed in Figure 7(c). 56 FR at 9514. The ANSI A117.1–1986 standard requires, with respect to sinks and lavatories, a forward approach with clear floor space below, and illustrates the forward approach centered on the sink/lavatory. (ANSI A117.1 1986, Fig.32 on page 50.) The Department's Guidelines allowed a departure from the ANSI standard. 56 FR at 9511–12. The Guidelines permit the clear floor space to be designed for a parallel position. While the Guidelines only show the clear floor space centered on the lavatory [Fig. 7 (c)], it is equally applicable to the sink.

UBC Section 1106.5.2, Clear floor space, requires that a 30-inch-by-48-inch minimum clear floor space be provided at the sink and at each appliance. Provision 1, under Section 1106.5.2, states that the clear floor space at the sink shall be positioned for a parallel approach which must extend 15 inches minimum from each side of the sink centerline. This does not meet the requirements of the Guidelines. The Guidelines require the centering of the parallel approach on the sink.

Recommendation Number 17 (Draft Recommendation 22)

It is recommended that the UBC delete the 15-inch offset requirement and modify Provision 1, Section 1106.5.2, Clear floor space as follows:

1. The clear floor space at the sink shall be positioned for a parallel approach. The clear floor space shall be centered on the sink.

Usable Bathrooms—(Draft Recommendation Number 23)

The Guidelines provide two options for designing accessible bathrooms. The first option requires a minimal level of accessibility. This option requires that walls be reinforced for grab bars and sufficient maneuvering space be provided within the bathroom for a person using a wheelchair or other mobility aid to enter, close the door, use the fixtures, reopen the door and exit. 56 FR at 9511.

The second option for designing accessible bathrooms provides a greater level of accessibility than that provided by the first option. The second option requires that they have reinforced walls for grab bars, clear space at specific locations within the bathroom to permit use of the fixtures, and specific clearances for fixtures. 56 FR at 9511.

According to the Guidelines, for covered multistory dwellings in elevator buildings, only bathrooms on the accessible level are subject to the requirements. If a powder room is the only facility provided on the accessible level of a multistory dwelling unit, it must comply with the first or second option for designing accessible bathrooms and have reinforcement for grab bars.

As discussed in reference to kitchens above, the Guidelines require the centering of the parallel approach on the lavatory. 56 FR at 9512. The UBC requires an offset of 15 inches which does not meet the Guidelines' requirement.

Recommendation Number 18 (Draft Recommendation 23)

It is recommended that the reference to 15 inches be deleted from Sections 1106.6.4.1.1, Lavatory, and Section 1106.6.4.2.1, Lavatory, and replaced with the following:

* * * Clear floor space positioned for a parallel approach shall be centered on the lavatory.

Chapter 5: Standard Building Code Analysis

I. Purpose

The purpose of this report is to identify provisions of the 1997 edition of the Standard Building Code (SBC), published by the Southern Building Code Congress International (SBCCI) that do not meet the requirements of the Fair Housing Act (Act), the Fair Housing Act regulations, or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, Steven Winter Associates, Inc. (SWA) recommends how they may be revised to meet the requirements of the Act, the Fair Housing Act regulations, or the Guidelines. The 1999 edition of the SBC was published on January 29, 1999. A review of the 1999 edition of the SBC is not part of the scope of the following analysis.

II. Methodology

The analysis of the SBC consisted of the following:

—A review of the language of the Act, 42 U.S.C. 3604 (f)(3)(C), the Fair Housing Act regulations at 24 CFR 100.201 and 205, the Fair Housing Accessibility Guidelines, 56 FR at 9472–9515, and the June 28, 1994 Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines, 59 FR at 33362–33368 (the Questions and Answers About the Guidelines);

—A review of the December 15, 1997 copyrighted comparative matrix developed by the International Code Council (ICC), Building Officials & Code Administrators International (BOCA), International Conference of Building Officials (ICBO), Southern Building Code Congress International (SBCCI), and the Council of American Building Officials (CABO). The matrix, which was included with HUD's Request for Quotations for this analysis consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the three model building codes and the SBC. SWA began its analysis of the SBC by reviewing the column of the matrix that includes the SBC's accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent variances between SBC's accessibility requirements and those of the Act, regulations, and Guidelines.

— A review of the accessibility provisions of the 1997 edition of the Standard Building Code (herein referred to as the SBC); and a review

of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1–1986, which is referenced in the regulations, and CABO/ANSI A117.1–1992, the title of the standard referenced by the SBC. Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and the SBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.

—Interviews with John Battles, Vice-President, Technical Services, to gain insight into how the SBC responds to variances that SWA identified. SWA found it necessary to understand SBCCI's interpretations of its own requirements that may not be apparent when reviewing code text.

The original analysis of the SBC was submitted to HUD on September 27, 1999. HUD formed a Model Code Working Group consisting of representatives from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel; and the Office of Housing. A representative of the U.S. Department of Justice also participated on the Working Group. The Working Group met with SWA on September 29, 1999, and asked questions and made comments and suggestions about the analysis.

The draft report was made available for public comment on October 26, 1999, and a public meeting on the draft reports was held on November 10, 1999. Written comments on the report were received. All comments were reviewed and considered. This final report incorporates many of those comments and has been revised from the draft report.

III. The Standard Building Code

The SBCCI administers the SBC series of model regulatory construction codes. Compliance with the SBC model building code is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body.

The 1997 SBC includes provisions for accessibility intended to reflect the intent of the Guidelines. The 1994 SBC was the first attempt at codifying the Fair Housing Act accessibility requirements. Type B dwelling units accessibility criteria was codified in the 1997 SBC.

Unlike the Fair Housing Act, the SBC is a model building code and not a law. It provides minimum standards for public safety, health and welfare as they are affected by building construction. Compliance with the SBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as "model codes."

Historically, model building codes have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for full accessibility as defined by ANSI A117.1. These dwelling units are referred to in the SBC in Section 202 as a "Type A dwelling unit." A "Type B dwelling unit," which is defined in Section 202 as "a dwelling unit designed and constructed for accessibility in accordance with 1110" is an attempt to incorporate the requirements of the design and construction requirements of the Act, the regulations, and the Guidelines. The SBC refers to CABO/ANSI A117.1–1992 for the technical provisions for Type B units.

It is the Department's understanding that SBCCI will no longer publish subsequent updates to the latest version of the SBC. The four model code organizations have joined with the ICC to produce one international building code under the ICC, the first of which will be published as the International Building Code 2000 early in the year 2000.

IV. Scoping Provisions

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure to which the technical standards are applied. The provisions in this second component are referred to as "scoping" provisions. This section of the analysis sets forth areas where the scoping provisions of the SBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, the regulations, or the Guidelines. This analysis of the scoping provisions of the SBC included an examination of the following:

SBC's definition of dwelling unit, building, structure, and ground floor dwelling unit;

SBC's classification of residential buildings according to use and occupancy; and

SBC's scoping of dwelling units to which the accessibility provisions apply.

This analysis concludes that the SBC covers most of the same dwelling units, buildings and residential uses as the Act, regulations, and Guidelines. For example, SWA concluded that, in buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single story townhouses, and modular units are covered. Additions of four or more units to existing buildings are included within the SBC's scoping requirements for Type B dwelling units. However, the Department has concluded that the following provisions of the SBC do not or may not include "covered multifamily dwellings" as they are defined in the Act, regulations, or Guidelines. 42 U.S.C. § 3604 (f)(7); 24 CFR 100.201; 56 FR at 9500.

SBC Classification of Residential Use Groups

The SBC defines residential occupancies (Group R occupancies), in section 311.2 of the code, as follows:

R1: Residential occupancies where the occupants are primarily transient in nature including:
- Boarding houses (transient)
- Hotels
- Motels

R2: Multiple dwellings where the occupants are primarily permanent in nature, including:
- Apartment houses
- Convents
- Dormitory facilities which accommodate six or more persons of more than 2½ years of age who stay more than 24 hours
- Fraternities
- Monasteries
- Rectories
- Rooming houses (not transient)

R3: Residential occupancies including the following:
- Child care facilities which accommodate five or less children of any age for any time period
- One and two family dwellings where the occupants are primarily permanent in nature and not classified as R1, R2, or I
- Rooming houses (transient)

R4: Residential Care/Assisted Living Facilities housing six or more occupants on a 24 hour bases; these occupancies include the following:
- Alcohol and drug abuse centers
- Assisted living facilities
- Congregate care facilities
- Convalescent facilities
- Halfway houses
- Group homes
- Residential board and care facilities
- Social rehabilitation facilities

According the SBC, Group R2 occupancies containing four or more dwelling units and Group R3 occupancies where there are four or more dwelling units in a single structure, all dwelling units shall be Type B dwelling units. Type B dwelling units are defined as units that are designed and constructed for accessibility in accordance with Section 1110, Chapter 11, Accessibility. Section 1110, Type B dwelling units provides the design and construction requirements for Type B units.

Definition of Dwelling Unit—(Draft Recommendation Number 1)

The regulations define the term "dwelling unit" as:

> a single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons.

24 CFR 100.201.

It is clear from the discussion in the Preamble to the Regulations, found at 54 FR at 3244, that the Department intended that each sleeping room intended for occupancy by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are "covered multifamily dwelling units" for purposes of the Act.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by *one* household is *not* considered to be a "covered multifamily dwelling" under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a covered multifamily dwelling. In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a "group home" would not be considered to be a "covered multifamily dwelling" for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of the Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

The SBC defines the term "dwelling unit" in Chapter 2, Definitions, as follows:

> A single unit providing complete, independent living facilities for one or more persons including permanent provisions for living, sleeping, eating, cooking and sanitation.

As a result, many of the examples of R2 and R3 residences provided by the SBC are not covered by the accessibility provisions in Section 1105.4.2 because they do not fall under the SBC's definition of "dwelling unit." A dwelling unit, according to interviews with John Battles, Vice-President, Technical Services at SBCCI, cannot have sleeping rooms with shared common facilities. For example, the SBC lists convents, dormitory facilities which accommodate six or more people who stay more than 24 hours, fraternities, sororities, monasteries, rectories, and rooming houses (not transient), as examples of R2 occupancies. However, if these uses are composed of sleeping rooms with shared toileting or cooking, they do not fall under the SBC's definition of "dwelling unit." Mr. Battles confirmed that the only occupancy examples that fall under the SBC's definition of "dwelling unit" are apartment houses (R2) and one and two family dwellings (R3).

In its draft report, SWA proposed revising the SBC definition of "dwelling unit" to be consistent with the regulations, to include sleeping rooms occupied by separate households. In response to comments on the draft report, the Department has determined that it would withdraw this recommendation. Instead, the Department proposes that the SBC be revised to include a new term; "sleeping unit." The scoping requirements of Chapter 11 have been revised to add references to both dwelling and sleeping units. Therefore, the former Recommendation Number 1 has been eliminated.

Recommendation Number 1 (Draft Recommendation Number 1)

It is recommended that the SBC be revised to add a definition to 202 as follows:

> Sleeping unit: A room in which people sleep intended to be occupied as a residence.

Transient Housing—(Draft Recommendation Number 2)

In Draft Recommendation 2, it was recommended that the SBC be revised to make clear that certain types of housing that may be viewed as transient are dwellings subject to the requirements of the Fair Housing Act, including the design and construction requirements. This housing may include timeshares, residential hotels and motels, boarding houses, and homeless shelters. The SBC does not define what "transient" means, though it uses this term in specifying what occupancies come within the R1 Use Group. According to Section 1105.4.2, the SBC accessibility provisions apply to Group R2 and R3 occupancies, but not Group R1. Since transient boarding houses and non-transient hotels and motels are classified as R1, they are not covered by Chapter 11. The SBC classifies transient rooming houses as R2 but classifies transient boarding houses as R1. The basis for this distinction in the code is unclear. However, according to Mr. Battles, hotels and boarding houses would not be covered under the provisions of Section 1105.4.2, apparently under any circumstances. Therefore, the SBC does not meet the requirements of the Act, the regulations, or the Guidelines. To make clear that boarding houses, hotels and motels that are not transient are subject to the Act's design and construction requirements and should meet chapter 11's requirements as well, it was suggested that the SBC be revised. Accordingly, draft Recommendation 2 suggested that these three occupancies and non-transient homeless shelters be added to the list of occupancies in the R2 Use Group.

Factors that should be considered in determining whether an occupancy is transient or not are: (1) Length of stay; (2) Whether the rental rate for the unit will be calculated based on a daily, weekly, monthly or yearly basis; (3) Whether the terms and length of occupancy will be established through a lease or other written agreement; (4) What amenities will be included inside the unit, including kitchen facilities; (5) How the purpose of the property is marketed to the public; (6) Whether the resident possesses the right to return to the property; and (7) Whether the resident has anywhere else to which to return.

Accordingly, because the above-described types of housing which are subject to the Act are not required to meet the SBC's Chapter 11 requirements, the SBC is not consistent with the Act, its regulations and the

Guidelines. At this time, the Department is uncertain how best to resolve this inconsistency between the SBC and the Department's regulations. Therefore, the Department is withdrawing its draft recommendation on this issue. However, HUD will continue to work with the SBC and other interested code organizations to develop language that appropriately conveys to builders and designers that certain short-term residencies must meet the Act's accessibility requirements. In the meantime, the Department believes the above factors must be considered by owners, builders, and architects in determining whether the requirements of the Act apply to the design and construction of buildings with rooms for short term occupancy.

Continuing Care Facilities—(Draft Recommendation Number 3)

The Act defines a "dwelling" as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families* * *". 42 U.S.C. 3602 (b). Such a building may serve more than one purpose. Some buildings, known as continuing care facilities, residential care facilities, or assisted living facilities, serve both as a residence for their occupants and as a place where the occupants receive personal, medical or other support services.

As mentioned in the discussion of transient residential uses above, the Questions and Answers About the Guidelines addressed the issue of whether the design and construction requirements of the Act apply to continuing care facilities which incorporate housing, health care and other types of services. That publication states:

> The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least one building with four or more dwelling units. Whether a facility is a "dwelling" under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case by-case basis to determine whether it contains dwellings. Factors that the Department will consider in making such an examination include, but are not limited to: (1) The length of time persons stay in the project; (2) whether policies are in effect at the project that are designed and intended to encourage or discourage occupants from forming an expectation and intent to continue to occupy space at the project; and (3) the nature of the services provided by or at the project.

59 FR at 33364.

As a result of the application of these factors, and the regulations' definition of "dwelling unit," the Department considers that residential care/assisted living facilities with four or more dwelling units, including sleeping rooms occupied by separate households with shared toileting or kitchen facilities, and nursing homes, to be "covered multifamily dwellings" for purposes of the accessibility requirements of the Act.

The SBC classifies residential care/assisted living facilities as R4 residential uses. Section 202 of the Code defines Residential Care/Assisted Living Occupancies as follows:

> A building or part thereof housing six or more persons, on a 24 hour basis, who because of age, mental disability or other reasons, live in a supervised residential environment which provides personal care and supportive services. The occupants are mostly capable of responding to an emergency situation without assistance from staff. And this occupancy subclassification shall include residential board and care facilities, assisted living facilities, halfway houses, group homes, congregate care facilities, social rehabilitation facilities, alcohol and drug abuse centers and convalescent facilities.

There are no scoping provisions in Chapter 11 related to the R4 classification. R4 occupancies are not covered under Section 1105.4.2. It is unclear whether this is an oversight, or whether all R4 occupancies are covered under some other accessibility standard.

Recommendation Number 2 (Draft Recommendation Number 2)

It is recommended that the definition of "sleeping unit" contained in Recommendation Number 1 be adopted and Section 1105.4 be modified to add a new section, that provides the following, in addition to any other applicable accessibility criteria under Section 504 of the Rehabilitation Act of 1973 and the Americans with Disabilities Act of 1990:

> In R4 occupancies, all ground floor dwelling and sleeping units in structures of four or more dwelling or sleeping units that are not served by elevators, and all dwelling and sleeping units in structures of four or more dwelling and sleeping units served by elevators shall be Type B.

Nursing homes occupied by six or more persons (both intermediate care facilities and skilled nursing facilities) are classified in section 309.1 of the code as Group I Unrestrained Occupancy. This classification is defined below:

> Group I Unrestrained Occupancy. Group I Unrestrained included buildings or portions thereof used for medical, surgical, psychiatric, nursing, or custodial care on a 24 hour basis of six or more persons who are not capable of self-preservation. Facilities with five or less persons not ancillary to other uses are classified as a residential occupancy.

The relevant accessibility standards required for Group I (Unrestrained, Section 1105.3.3, 1105.3.5) are as follows:

> Group I Institutional
>
> 1105.3.3: In Group I Unrestrained nursing homes, at least 50%, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible.
>
> 1105.3.5: In Group I Unrestrained occupancies, at least one accessible entrance shall include a passenger loading zone complying with CABO/ANSI A117.1–1992.

Recommendation Number 3 (Draft Recommendation Number 4)

To ensure that the SBC covers the same dwelling units required to provide accessibility according to the Act, the regulations, and the Guidelines, it is recommended that the SBC be revised as follows:

> Modify Sections 1105.3.3, 1105.4.1, 1105.4.2, 1105.4.3 as follows:
>
> 1105.3.3: Group I Unrestrained nursing homes, at least 50%, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, in unrestrained nursing homes of Group I, in structures with four or more sleeping units, sleeping units shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.
>
> 1105.4.1: In Group R1 occupancies containing 6 or more guest rooms, one for the first 30 guest rooms and one additional for each additional 100 guest rooms or fraction thereof shall be accessible. In hotels with more than 50 sleeping rooms or suites, roll-in type showers shall be provided in one-half, but not less than one, of the required accessible sleeping rooms or suites. In addition, in Group R1 occupancies in structures with four or more sleeping units, sleeping units shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.
>
> 1105.4.2: In Group R2 occupancies containing four or more dwelling or sleeping units and Group R3 occupancies where there are four or more dwelling or sleeping units in a single structure, all dwelling and sleeping units shall be Type B. In Group R2 occupancies containing more than 20 dwelling units, at least 2%, but not less than one, of the dwelling units shall be Type A dwelling units. All dwelling and sleeping units on a site shall be considered to determine the total number of accessible dwelling and sleeping units.
>
> 1. Requirements for Type B dwelling and sleeping units shall not apply to dwelling or sleeping units that are both located above the first level containing dwelling or sleeping units and that are not provided with elevator access thereto.
>
> 2. A multistory dwelling unit * * *
>
> 3. The required number of Type B dwelling and sleeping units provided in multiple nonelevator buildings on a single site is allowed to be reduced to a percentage of the ground floor dwelling units which is equal to the percentage of the entire site having grades, prior to development, which are less than 10 percent, but in no case shall the number of Type B dwelling and sleeping units be less than 20% of the ground floor dwelling and sleeping units on the entire site.
>
> 4. The required number of Type A and Type B dwelling and sleeping units * * *
>
> 1105.4.3 Rooms and spaces available for the use of residents and which serve accessible dwelling or sleeping units shall be accessible. Exception: Group homes intended to be occupied by a single household and detached single-family homes occupied by a single household.
>
> **Note:** See other changes to Exceptions 2, 3, and 4 under new recommendations 6, 7, 8, and 14 later in this report.

Definition of Building and Structure—(Draft Recommendation Number 5)

In this recommendation, the Department recommended that the Exceptions to Section 1105.4 use the term "structure" instead of "building." This was recommended both for consistency with the charging paragraph, and in order to ensure that the intent of the code, that, for purposes of accessibility, SBC treats dwelling units in buildings separated by firewalls as a single structure. Based on the comments received on this recommendation, the Department has withdrawn its recommendation.

Ground Floor—(Draft Recommendation Number 6)

The Fair Housing Act regulations define "ground floor" as a "floor of a building with a building entrance on an accessible route. A building may have one or more ground floors." 24 CFR 100.202. The Guidelines further state: "Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor." 56 FR at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. See the Questions and Answers About the Guidelines, question number 6. 59 FR at 33364.

Exception 1, Section 1105.4.2, states that the requirements for Type B dwelling units shall not apply to dwelling units that are both located above the first level containing dwelling units and that are not provided with elevator access thereto. This implies that if a building is built into a hill, for example, and the front and the back of the building have entrances at grade but at different elevations, the first level containing dwelling units could be considered the level at the lowest elevation. Since a ground floor is a floor of a building with a building entrance on an accessible route and there can be more than one ground floor, it is clear in the example above that both levels of that building built into the hill are considered "ground floors" and must comply with the Guidelines.

The SBC defines the term "ground floor dwelling unit" in Chapter 2 as a dwelling unit with a primary entrance and habitable space at grade. However, the SBC does not refer to the term in its provisions for accessible dwelling units (Section 1105.4.2). The definition of "ground floor dwelling unit" does not indicate that there can be more than one ground or grade levels and therefore more than one level of ground floor dwelling units. According to the SBC, in the example given above, the level at the lowest elevation is the only level required to have accessible dwelling units. Therefore, the SBC definition of "ground floor dwelling unit" does not meet the requirements of the Act, regulations, and the Guidelines.

In its draft report for public comment, the Department offered a recommendation that the SBC define ground floor to match the regulations and the Guidelines, and delete the definition of "dwelling unit, ground floor" from Section 1102. As the Department stated in the preamble to this report, it is mindful of the fact that the language in the regulations and the Guidelines is not couched in building code terminology. The Department is, therefore, withdrawing this recommendation. However, the Department maintains that the SBC is inconsistent with the Act, the regulations and the Guidelines with respect to requiring additional ground floors to be accessible. In addition, during review of the public comments, two additional concerns arose: (1) Whether or not the SBC's scoping language, in combination with the definition of "dwelling unit, ground floor," makes it clear that there must be at least one ground floor, and (2) whether the language at Exception 1 of 1105.4.2 results in requiring builders to make the lowest floor containing dwelling units of a building accessible even if it were more practical to make a different floor (such as the second floor) containing dwelling units accessible when that floor is closer to the grade, even if not "at grade." The Department will, however, work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction.

In the meantime, the Department believes that owners, builders, developers, designers, architects and others involved in the design and construction of housing covered by the Act must apply the Department's definition of "ground floor" when making determinations whether dwelling units or sleeping units in a non-elevator building with four or more such units are required to comply with the Act.

Buildings Connected by Breezeways or Stairways—(Draft Recommendation Number 7)

The regulations define a building as "a structure, facility or portion thereof that contains or serves one or more dwelling units." 24 CFR 100.201. Based on that definition, a structure with three dwelling units that is structurally connected to another structure with three units, by a stairway or breezeway, for example, is considered one covered multifamily dwelling with six dwelling units.

According to the SBC, buildings that are structurally connected by a breezeway or stairway are considered two separate buildings. However, there are instances when two buildings connected by a stairway that provides the only means of egress to dwelling units are considered one building. However, this must be determined on a case-by-case. As a result, the SBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways.

Recommendation Number 4 (Draft Recommendation Number 7)

It is recommended that the SBC be modified to include an additional provision under Section 3104, Covered and Enclosed Walkways and Tunnels, as follows:

> 3104.2.1. Separate structures. For purposes of calculating the number of Type B dwelling and sleeping units required by Chapter 11, structurally connected buildings and buildings with multiple wings shall be considered one structure.

Multistory Dwelling Units—(Draft Recommendation Number 8)

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a "covered multifamily dwelling" because the entire unit is not on the ground floor. 54 FR at 3244. The Guidelines define a "multistory dwelling unit" as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 FR at 9500. A "single-story dwelling unit" is defined as a dwelling unit with all finished living space located on one floor. 56 FR at 9501.

The SBC defines "multistory dwelling units" as a dwelling unit with habitable or bathroom space located on more than one story. The SBC defines "habitable space (room)" as a space in structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility space, and similar areas, are not considered habitable space.

According to the SBC's definition of "multistory dwelling unit", a unit would be considered multistory if one level contains living or "habitable" space and the floor next above or below contained only a bathroom. According to the definitions in the Guidelines, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. Bathroom space alone does not constitute living space, nor does bathroom and storage space. The SBC's definition of "dwelling unit, multistory" does not meet the Department's interpretation of the Act, the regulations and the Guidelines of what constitutes a "multistory dwelling unit."

Recommendation Number 5 (Draft Recommendation Number 8)

It is recommended that the reference to "or bathroom space" in the SBC's definition of "multistory dwelling unit" be deleted as follows:

Section 1102, Definitions:
Dwelling unit, multistory: For application of the accessibility requirements, this term shall mean a dwelling unit with habitable space located on more than one story.

V. Seven Specific Design and Construction Requirements

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. As discussed in the Department's policy statement, at the time the Act was passed and the Guidelines were written, ANSI A117.1–1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The Department believes that compliance with either of these newer versions of the ANSI–A117.1 constitutes an additional safe harbor in terms of demonstrating compliance with the technical provisions of the Act's accessibility requirements. It is, of course, still necessary to refer to the Act and the regulations, or the Guidelines, for implementing the scoping requirements. The Department believes that Code officials may rely on the edition of ANSI A117.1 that has been adopted by the code organization or State or local jurisdiction, if it has been adopted without modifications and is uniformly enforced.

The SBC utilizes the technical criteria contained in CABO/ANSI A117.1–1992. Therefore, the Department has determined that there is no variance between the requirements of the Act and the model code provision if the model code provision is based on CABO/ANSI A117.1–1992, even where those criteria differ from the ANSI A117.1–1986 criteria or the Guidelines.

Requirement 1: Accessible Building Entrance on an Accessible Route

The Guidelines set forth specifications to implement the requirements of 24 CFR 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 FR at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route, and explains that the requirements apply to a single building on a site and to multiple buildings on a site. 56 FR at 9503. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics. 56 FR at 9503. However, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, *regardless* of terrain or unusual characteristics of the site. 56 FR at 9504.

The SBC's provision related to Requirement 1 are consistent with the Act, the regulations, and the Guidelines, except as follows:

Site Impracticality Due to Terrain

The Guidelines set forth two tests to assess site impracticality due to terrain—the individual building test and the site analysis test. 56 FR at 9503.

Individual Building Test—This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 FR at 9503.

Site Analysis Test—May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 FR at 9503–04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 FR at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A). 56 FR at 9504.

Step C requires that in addition, all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 FR at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance on an accessible route. In addition, according to step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance shall be made accessible if the entrance to the units is on an accessible route.

Variances Related to Site Analysis Test—(Draft Recommendation Number 9)

Section 1105.4.2, Exception 3, of the SBC provides that the number of Type B dwelling units in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor units which is equal to the percentage of the entire site having grades, prior to development, which are 10% or less; but in no case shall the number of Type B units be less than 20% of the ground floor dwelling units on the entire site.

This Exception corresponds to Steps A and B of the site analysis test, except that the Guidelines requires the grades to be "less than 10%". 56 FR at 9504. In addition, the Exception fails to provide equivalent language to Step C, *i.e.*, it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 FR at 9504. Therefore, the SBC does not meet this aspect of the Guidelines.

In addition, according to the Guidelines, regardless of site considerations, an accessible entrance served by an accessible route is practical whenever an elevator connects parking with a ground floor, in which case all ground floor units are covered, or whenever an elevated walk with a slope no greater than 10% is planned between an entrance and a pedestrian or vehicular arrival point. 56 FR at 9504. The SBC does not include any language that reflects these requirements. As a result, the SBC does not meet these provisions of the Guidelines.

Recommendation Number 6 (Draft Recommendation Number 9)

In order to address these inconsistencies, we therefore recommend the following changes and additions to Section 1105.4.2, Exception 3, of the SBC:

The number of Type B dwelling and sleeping units provided in multiple non-elevator buildings on a single site is allowed to be reduced to a percentage of the ground floor dwelling and sleeping units which is equal to the percentage of the entire site having grades, prior to development, which are less than 10%; but in no case shall the number of Type B dwelling and sleeping units be less than 20 percent of the ground floor dwelling and sleeping units on the entire site. In addition to the percentage established, all ground floor dwelling and sleeping units in a building, or ground floor dwelling and sleeping units served by a particular entrance shall be Type B if any one of the following applies:

3.1 The slope between the entrance to the dwelling and sleeping units and a pedestrian or vehicular arrival point is no greater than 8.33%; or

3.2 An elevator provides access to the ground floor only; or

3.3 An elevated walkway with a slope not exceeding 10 percent is planned between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.33%.

Variances Related to Buildings With Elevators—(Draft Recommendation Number 10)

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 FR at 9503.

The SBC does not reflect this requirement in Section 1105.4.2, Exception 4.

Recommendation Number 7 (Draft Recommendation Number 10)

It is recommended that Exception 4, Section 1105.4.2 be modified to exempt buildings with elevators from site impracticality as follows:

The required number of Type A and Type B dwelling units and Type B sleeping units shall not apply to a site where the lowest floor or the lowest structural member of a structure not provided with elevator service is required to be at or above the base floor elevation resulting in * * *.

Variance Related to Sites With Unusual Characteristics—(Draft Recommendation Number 11)

In addition, the criteria in the Guidelines for determining site impracticality for sites having unusual characteristics specifies that an accessible entrance on an accessible route is impractical when the unusual site characteristics result in a difference in finished grade elevation exceeding 30 inches AND 10 percent, measured between an entrance and all vehicular or pedestrian arrival points within 50 feet of the planned entrance, and if none, then between the closest vehicular or pedestrian arrival point. 56 FR 9504.

The SBC does not reflect this requirement in Section 1105.4.2, Exception 4. The SBC's corresponding provision states that the accessibility requirements shall not apply to a site where the lowest floor or the lowest structural building member is required to be at or above the base flood elevation resulting in a difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet exceeding 30 inches, OR a slope exceeding 10 percent between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet. The Guidelines specify that the difference in finished grade elevation must be both 30 inches and 10 percent.

Recommendation Number 8 (Draft Recommendation Number 11)

It is further recommended that Section 1105.4.2, Exception 4, be modified to read:

1. A difference in elevation between the minimum required floor elevation at the primary entrances and vehicular and pedestrian arrival points within 50 feet (15 240 mm) exceeding 30 inches (762 mm), AND * * *.

Requirement 2: Accessible and Usable Public and Common Use Areas

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to and usable by people with disabilities. 42 U.S.C. 3604 (f)(3)(c)(i); 24 CFR 100.205(c)(1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1–1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the specifications including modifications to the referenced Standard. 56 FR at 9505. Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

Accessible routes
Protruding objects
Ground and floor surface treatments
Parking and passenger loading zones
Curb ramps
Ramps
Stairs
Elevators
Platform lifts
Drinking fountains and water coolers
Toilet rooms and bathing facilities
Seating, tables, or work surfaces
Places of assembly
Common-use spaces and facilities
Laundry rooms

5656 FR at 9505

When a variance is identified in the SBC that does not meet or exceed the

requirements of the Guidelines for each of the 15 elements or spaces above, they are noted below.

Accessible Route(s)

Vehicular Route—(Draft Recommendation Number 12)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 FR at 9504.

The Exception in SBC Section 1105.4.4 contains language which is comparable to the Guidelines with two omissions. That section states:

If the slope of the finished grade between accessible facilities and buildings exceeds 1:12, or where physical barriers prevent the installation of an accessible route, a vehicular route with parking at each accessible facility or building is permitted in place of the accessible route.

The SBC does not include language making it clear that accessible parking and curb ramps must be available at the accessible facility if access if provided by a vehicular route.

Recommendation Number 9 (Draft Recommendation Number 12)

It is recommended that SBC, Section 1105.4.4, Exception, be modified to include the following language:

If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with accessible parking , in accordance with 1104, at each public or common use facility or building is permitted in place of the accessible route.

Headroom—(Draft Recommendation Number 13)

Based on the public comments received, the Department has determined that the SBC adequately addresses this issue.

Stairs—(Draft Recommendation Number 14)

The Guidelines require that accessibility be provided on stairs located along accessible routes connecting levels not connected by an elevator. 56 FR at 9505. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. The stairs in this case are required to meet the ANSI A117.1 specification, since they will be used by people with disabilities for whom stairs are more usable than ramps. However, stairs are not a component of an accessible route.

Since stairs are not parts of accessible routes and they are not specifically referenced in Chapter 11, Accessibility, of the SBC, one must refer to Chapter 10, Means of Egress, for stair provisions. However, the Chapter 10 requirements do not necessarily apply to stairs that connect levels not connected by an elevator if they are not a part of a means of egress. There are variances between the SBC and the Guidelines' requirements for stairs along accessible routes regarding handrail extensions and projections, for example.

Recommendation Number 10 (Draft Recommendation Number 14)

It is recommended that the SBC include a provision for stairways under Section 1106, other Features and Facilities as follows:

Stairways.

Stairways located along accessible routes connecting floor levels that are not connected by an elevator shall be designed and constructed to comply with CABO/ANSI A117.1–1992.

Elevators—(Draft Recommendation Number 15)

The Guidelines require that elevators on accessible routes be accessible according to the technical specifications of ANSI A117.1–1986, Section 4.10, Elevators. 56 FR at 9505. This applies to elevators located within multistory dwellings. SBC section 1106.3, Elevators, Lifts, states that all passenger elevators on an accessible route shall be accessible. However, the SBC provides an exception to Section 1106.3 which states that elevators within a dwelling unit are not required to be accessible. This does not meet the requirements of the Guidelines because elevators within multistory units must provide accessibility.

Recommendation Number 11: (Draft Recommendation Number 15)

It is recommended that this exception be deleted.

Parking and Passenger LoadinG Zones—(Draft Recommendation Numbers 16 and 17)

The Questions and Answers About the Guidelines (Question and Answer 14c) state that where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14′2″ wide and have a vehicular door at least 10′ wide. 59 FR at 33366. This requirement assumes that garage parking is the only type of parking provided at the site.

Question and Answer 14c provides the minimum requirement for the width of accessible garages and garage doors. The minimum widths provide enough space for an automobile to enter the garage, and for a passenger or driver using a wheelchair to exit through the garage door without interference by the automobile. However, the minimum requirements do not preclude a garage design that provides equivalent or greater accessibility. For example, a designer may choose to design a garage with a door that is 8 feet wide, but provides a separate accessible exit door through which the driver or the passenger may exit, provided that it connects to the accessible route to the entrance of the unit.

The SBC does not provide minimum requirements for these garages, and therefore, does not meet this provision of the Guidelines.

The Guidelines provide that if provided at the site, there be accessible visitor parking sufficient to provide access to grade-level entrances of covered multifamily dwellings, and accessible parking at facilities. The Guidelines also require accessible parking on the same terms and with the full range of choices (*e.g.*, surface parking or garage) that are provided to other residents of the project. 56 FR at 9505.

In addition, the Questions and Answers About the Guidelines provide further clarification of the parking requirements at Q&A 14(b) which clarified that when more than one type of parking is provided, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

The Department does not recommend that the SBC revise any of its broader scoping requirements for parking. However, the SBC does not include comparable language in Section 1104, Parking Facilities, with respect to the above variances. Therefore, the SBC does not meet the provisions of the Guidelines with respect to these issues.

Recommendation Number 12 (Draft Recommendation Number 16):

In order to address these inconsistencies, it is recommended that

the SBC add the following language to Section 1104.1:

Two percent of parking spaces provided for R2 and R3 occupancies required to have accessible/adaptable dwelling or sleeping units shall be accessible * * *

At least 2% of parking garages provided for R2 and R3 occupancies required to have accessible dwelling or sleeping units where there are several individual garages grouped together, either in a separate area of a structure or in a detached structure, for assignment or rental to residents, must be at least 14′2″ wide and have a vehicular door at least 10′ wide * * *

Where accessible parking spaces are provided, at least one of each type (surface parking, carports, or garage) shall be provided.

* * * Where visitor parking is provided, at least one accessible visitor parking space shall be provided.

* * * Where parking is provided at public and common use facilities that serve accessible buildings, at least one accessible parking space shall be provided.

In order to ensure that passenger loading zones comply with the requirements of the Guidelines, it is recommended that SBC add a provision under Section 1104 which states the following:

When provided, passenger loading zones shall be located on an accessible route. Passenger loading zones shall be designed and constructed in accordance with CABO/ANSI A117.1–1992.

Table 1104.3, Accessible Parking Spaces includes a note that states "the accessible space shall be provided but need not be designated as reserved for the physically disabled." In addition, Section 1107, Signs, indicates that elements shall be identified by the International Symbol of Accessibility at four locations, the first of which states that it is required at accessible parking spaces required by 1104.1 (Parking Facilities) but not where the total parking spaces provided are five or less. This does not meet the requirements of the Guidelines that requires signage at all accessible parking space.

Recommendation Number 13 (Draft Recommendation Number 17)

It is recommended that this language from provision 1 under Section 1107.1, Signs, be deleted.

Recreational Facilities

The Guidelines, in Requirement 2, state that: "If provided in the facility or at the site; (a) where multiple recreational facilities (e.g., tennis courts) are provided sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps" shall be provided. These facilities must be connected by an accessible route to the covered dwelling units or a vehicular route if an accessible route is not possible. The SBC Section 1105.4.5 requires 25%, but not less than one, of recreational facilities of each type in each occupancy group to be accessible.

The Department concludes that the Guidelines may be interpreted to be stricter than the requirements of the model codes with respect to the requirement for accessible recreational facilities because an interpretation of "sufficient to provide equitable opportunity for use" may result in determinations that recreational facilities that serve different buildings containing accessible dwelling units must be accessible, even if this means making all of the same type of recreational facility accessible (such as two swimming pools on a large site, each which serves different buildings on the site).

For example, one out of four recreational facilities of the same type serving a specific residential use group is code compliant (25% but not less than one), but may not be considered "sufficient" by the Department if the facilities of the same type are widely spread across a large site serving one building, or spread across a site on which there are multiple buildings.

However, because this matter was not included in the draft reports, and there has not been an opportunity for public participation in a resolution of this matter, the Department is not including a recommendation to resolve this matter. The Department will work with all interested parties to address this matter.

Requirement 3: Usable Doors

The Act and regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. 3604 (f)(3)(C)(ii); 24 CFR 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 FR at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and

Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement. 56 FR at 9506.

The Department has determined that the SBC meets the requirements of the Act, the regulations, and the Guidelines with respect to usable doors.

Requirement 4: Accessible Route Into and Through the Covered Dwelling Unit

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. 3604(f)(3)(C)(iii)(I), 24 CFR 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement 56 FR at 9509–10. The SBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 4, except the following.

Multistory Units Served by Elevators—(Draft Recommendation Number 18)

Among the criteria for Requirement 4 is the provision that in multistory dwelling units in buildings with elevators, the story of the unit that is served by the building elevator is the primary entry to the unit. 56 FR at 9507.

The SBC provides the following exceptions to the requirement for Type B units as follows (Section 1105.4.2):

A multistory dwelling unit which is not provided with elevator service is not required to comply with requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with the elevator service shall comply with the requirements for a Type B dwelling unit and a toilet facility shall be provided.

The SBC does not mention that where a multistory dwelling unit is provided with elevator service, the story served by the elevator must be the primary entry to the unit. As a result, the SBC does not meet the requirements of the Guidelines in terms of the exceptions for multistory units in buildings served by elevators.

Recommendation Number 14 (Draft Recommendation Number 18)

It is recommended that the SBC modify Section 1105.4.2, Exception 2 as follows:

A multistory dwelling unit which is not provided with elevator service is not required to comply with the requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for a

Type B dwelling unit, and a toilet facility shall be provided.

Requirement 5: Light Switches, Electrical Outlets, Thermostats and Other Environmental Controls in Accessible Locations

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. 3604(f)(3)(C)(iii)(II); 24 CFR 100.205. Requirement 5 of the Guidelines sets forth criteria to meet these requirements. The SBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 5.

Requirement 6: Reinforced Walls for Grab Bars—(Draft Recommendation Number 19)

Requirement 6 of the Guidelines sets forth technical specifications to meet the requirements of the Act at 42 U.S.C. § 3604 (f)(3)(C)(iii)(III) and the regulations at 24 CFR 100.205(c)(3)(iii), which specifies that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided. 56 FR at 9509–10.

The SBC Section 1110.9.3, Grab bar and seat reinforcement, states that where walls are located so as to permit installation of grab bars and seats complying with Section 4.17.4, 4.21.4, 4.22.4, 4.23.3, of CABO/ANSI A117.1–1992, reinforcement shall be provided for the installation of grab bars and seats meeting those requirements. The SBC does not include any provisions for the installation of grab bars for fixtures, sunken or raised tubs for example, that are located away from walls, which does not meet the requirements of the Guidelines.

Recommendation Number 15 (Draft Recommendation Number 19)

It is recommended that the SBC modify Section 1110.9.4, Toilet and bathing fixtures, as follows:

Section 1110.9.4 Toilet and bathing fixtures:

Toilet and bathing fixtures shall comply with either Section 1110.9.4.1 Option A or 1110.9.4.2 Option B. Where fixtures are located away from walls alternative reinforcement complying with CABO/ANSI A117.1 4.24.2.5 and 4.24.3 shall be provided for the mounting of grab bars.

Requirement 7: Usable Kitchens and Bathrooms

Usable Kitchens—(Draft Recommendation Number 20)

The Act and regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. 3604 (f)(3)(C)(iii)(IV); 24 CFR 100.205. Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 FR at 9511–15.

The Guidelines address a parallel approach to kitchen sinks in Requirement 7. The parallel approach to the sink is addressed in Figure 7(c). 56 FR at 9511. The ANSI A117.1–1986 standard requires, with respect to sinks and lavatories, a forward approach with clear floor space below, and illustrates the forward approach centered on the sink/lavatory. (ANSI A117.1–1986, Fig. 32 on page 50.) The Department's Guidelines allowed a departure from the ANSI standard. The Guidelines permit the clear floor space to be designed for a parallel position. 56 FR at 9511–12. While the Guidelines only show the clear floor space centered on the lavatory [Fig. 7 (c)], it is equally applicable to the sink.

SBC, Section 1110.8.2.2, states that the clear floor space at the sink shall be positioned for a parallel approach. The offset of the centerline of the clear floor space and sink is required to be 9 inches which does not meet the requirements of the Guidelines. The Guidelines require the centering of the parallel approach on the sink.

Recommendation Number 16 (Draft Recommendation Number 20)

It is recommended that the SBC delete the 9-inch offset requirement and modify, Section 1110.8.2.2, Clear floor space, as follows:

Section 1110.8.2.2 Clear floor space:

The clear floor space at the sink positioned for a parallel approach shall be centered on the sink.

Usable Bathrooms—(Draft Recommendation Numbers 21 and 22):

The Guidelines provide two options for designing accessible bathrooms. 56 FR at 9511. The first option requires a minimal level of accessibility. This option requires that walls be reinforced for grab bars and sufficient maneuvering space be provided within the bathroom for a person using a wheelchair or other mobility aid to enter, close the door, use the fixtures, reopen the doors and exit. 56 FR at 9511. The second option for designing accessible bathrooms provides a greater level of accessibility than that provided by the first option.

The second option for designing accessible bathrooms requires that they have reinforced walls for grab bars, clear space at specific locations within the bathroom to permit use of the fixtures, and specific clearances for fixtures. 56 FR at 9511.

According to the Guidelines, for covered multifamily dwelling units in elevator buildings, only bathrooms on the accessible level are subject to the requirements. If a powder room is the only facility provided on the accessible level of a multistory dwelling unit; it must comply with the first or second option for designing accessible bathrooms and have reinforcement for grab bars.

As discussed in reference to kitchens above, the Guidelines require the centering of the parallel approach on the lavatory. 56 FR at 9512. The SBC clear floor space requirements for lavatories under Option A, Section 1110.9.4.1.1, does not require centering of the clear floor space on the lavatory which does not meet the requirements of the Guidelines.

Recommendation Number 17 (Draft Recommendation Number 21)

It is recommended that Section 1110.9.4.1.1 be modified as follows:

Section 1110.9.4.1.1 Lavatory:

A 30 inch by 48 inch minimum clear floor space positioned for a parallel approach shall be provided and centered on the lavatory.

Section 1110.9.4.2.1, Lavatory, under Option B provisions requires a 9-inch maximum offset of the centerline of the clear floor space and lavatory that does not meet the requirements of the Guidelines.

Recommendation No. 18 (Draft Recommendation Number 22)

It is recommended that Section 1119.9.4.2.1, Lavatory, be modified as follows:

Section 1110.4.2.1 Lavatory:

A 30 inch by 48 inch minimum clear floor space positioned for parallel approach shall be centered on the lavatory.

Chapter 6: BOCA National Building Code Analysis

I. Purpose

The purpose of this report is to identify provisions of the 1996 edition of the National Building Code (herein referred to as BNBC), published by the Building Officials & Code Administrators International (BOCA)

that do not meet the requirements of the Fair Housing Act (the Act), the regulations implementing the 1988 Amendments to the Act (the regulations), or the Fair Housing Accessibility Guidelines (the Guidelines). Where variances are identified, the Department recommends how they may be revised to meet the requirements of the Act, the regulations, or the Guidelines. The 1999 edition of the BNBC was published in January, 1999. A review of the 1999 edition of BNBC is not part of the scope of the following analysis.

II. Methodology

The analysis of the BNBC by the Department and its contractor, Steven Winter Associates, Inc., consisted of the following:

—A review of the language of the Act, 42 U.S.C. § 3604 (f)(3)(C), the regulations at 24 CFR 100.201 and 205, the Fair Housing Accessibility Guidelines, 56 FR at 9472–9515, and the June 28, 1994 Supplement to Notice of Fair Housing Accessibility Guidelines: Questions and Answers About the Guidelines," 59 FR at 33362–33368 (the Questions and Answers About the Guidelines).

—A review of the December 15, 1997 copyrighted comparative matrix developed by the International Code Council (ICC), BOCA, International Conference of Building Officials (ICBO), Southern Building Code Congress International (SBCCI), and the Council of American Building Officials (CABO). The matrix, which was included with HUD's Request for Quotations for this analysis consists of a side-by-side comparison of the Guidelines with the corresponding accessibility provisions of the model building codes. The analysis of BNBC began by a review of the column of the matrix that includes BNBC's accessibility requirements and comparing them with the column that includes the provisions of the Guidelines. The matrix review was conducted to identify apparent variances between BNBC's accessibility requirements and those of the Act, regulations, and Guidelines.

—A review of the accessibility provisions of the 1996 edition of BNBC; and a review of applicable referenced codes and standards, including: American National Standards Institute (ANSI) A117.1–1986, which is referenced in the regulations, and CABO/ANSI A117.1–1992, and the International Plumbing Code—1995, which are referenced by BNBC. Because the matrix did not include full text of the technical provisions, it was necessary to use these standards as companion documents in assessing the matrix, the Guidelines, and BNBC. They were reviewed to identify any variances from the Act, regulations, or Guidelines in the technical provisions required by each.

—Interviews with Kim Paarlberg, BOCA Staff Architect and the liaison to the IBC Means of Egress/Accessibility Committee, to gain insight into how the BOCA responds to variances identified by SWA. SWA found it necessary to understand BOCA's interpretations of its own requirements that may not be apparent when reviewing code text.

The original analysis of the BNBC was submitted to the Department by SWA on August 5, 1999. The Department formed a Model Code Working Group consisting of representatives from the Office of Fair Housing and Equal Opportunity, the Office of General Counsel; and the Office of Housing. A representative of the U.S. Department of Justice also participated in the Working Group. The Working Group met with SWA on September 8, 1999, and asked questions and made comments and suggestions about the analysis. This meeting led to further conversations between SWA and Kim Paarlberg, and conversations between HUD staff and BOCA staff.

The draft report was published for public comment on October 26, 1999, and a public meeting on the draft reports was held on November 10, 1999. Written comments on the report were received. All comments were reviewed and considered. This final report incorporates many of those comments and has been revised from the draft report.

III. The BOCA National Building Code

The Building Officials & Code Administrators International (BOCA), Inc., is a nonprofit organization that administers the BNBC series of model regulatory construction codes. The code provides minimum standards for public safety, health and welfare as they are affected by building construction. Compliance with the BOCA model building code is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body.

The 1996 BNBC, Thirteenth Edition, published January 1, 1996, includes provisions for accessibility intended to reflect the intent of the Act. Previous editions of the code include provisions for accessibility, but not as required by the Act. The 1996 BNBC, Chapter 11, Accessibility, is the first attempt at codifying the accessibility provisions of the Act. Any jurisdiction that adopts the 1996 BNBC must follow these accessibility provisions.

Unlike the Fair Housing Act, BNBC is a model building code and not a law. It provides minimum standards for public safety, health and welfare as they are affected by building construction. Compliance with BNBC is not required unless adopted by reference by a jurisdiction's board, council, or other authoritative governing body. Jurisdictions may adopt a model building code in its entirety or with modifications; hence, the building codes are referred to as "model codes."

In the past, some model building codes have required that a certain percentage or number of dwelling units in defined residential uses meet the standards for full accessibility as defined by ANSI A117. These dwelling units are referred to in BNBC, 1107.4.2, and defined in Section 1102, as a "Type A dwelling unit." Section 1107.4.2 of the code, adopts standards for a "Type B dwelling unit." A "Type B dwelling unit" is defined in Section 1102 as a dwelling unit that is designed and constructed to provide a minimal level of accessibility in accordance with the applicable provisions of Chapter 11 and CABO/ANSI A117.1 listed in Chapter 35. The purpose of the Type B dwelling unit is to incorporate the requirements of the design and construction requirements of the Act, the regulations, and the Guidelines. BOCA adopts CABO/ANSI A117.1–1992 and refers to the International Plumbing Code (IPC) for the technical provisions for toileting and bathing facilities, kitchens, and bathrooms. It is important to note, however, that neither CABO/ANSI–A117.1–1992 nor the IPC contain scoping provisions, as discussed below.

It is the Department's understanding that BOCA will no longer publish subsequent updates to the latest version of the BNBC. The four model code organizations have joined with the ICC to produce one international building code under the ICC, the first of which will be published as the International Building Code 2000 early in the year 2000.

IV. Scoping Provisions

Building codes have two major components that are relevant to this analysis. One component describes the technical standards that should be applied during the design and construction or alteration of a building or structure or elements within a structure. The other component is a description of the types of buildings or structures or elements within a structure

to which the technical standards are applied. The provisions in this second component are referred to as "scoping" provisions. This section of the analysis sets forth areas where the scoping provisions of the BNBC do not include all of the dwelling units, buildings, or uses that are covered by the Act, the regulations, or the Guidelines. This analysis of the scoping provisions of BNBC included an examination of the following:

BNBC's definition of dwelling unit, building, structure, and ground floor dwelling unit;

BNBC's classification of residential buildings according to use and occupancy; and

BNBC's scoping of dwelling units to which the accessibility provisions apply.

This analysis concludes that BNBC covers most of the same dwelling units, buildings and residential uses as the Act, regulations, and Guidelines. For example, the Department concluded that, in buildings with four or more dwelling units, apartments, custom-designed condominiums, multistory units with internal elevators, single story townhouses, modular units are covered, and additions of four or more units to existing buildings, are included within BNBC's scoping requirements for Type B dwelling units. However, the Department has concluded that the following provisions of BNBC do not or may not include "covered multifamily dwellings" as they are defined in the Act, regulations, or Guidelines.

BNBC Classification of Residential Use Groups

BNBC stipulates that all structures in which sleeping accommodations are provided, excluding those that are classified as institutional occupancies, shall be classified as Use Group R–1, R–2, R–3, or R–4 and defined as follows (Section 310.0):

—Use Group R–1 structures include hotels, motels, boarding houses and similar buildings arranged for shelter and sleeping accommodations for more than five occupants who are primarily transient in nature, occupying the facilities for a period of less than 30 days.

—Use Group R–2 structures include all multiple-family dwellings having more than two dwelling units, except as provided for under Use Group R–3 structures, and shall also include all boarding houses and similar buildings arranged for shelter and sleeping accommodations in which the occupants are primarily not transient in nature.

—Use Group R–3 structures include all buildings arranged for occupancy as one-or two-family dwelling units, including not more than five lodgers or boarders per family and multiple single-family dwellings where each unit has an independent means of egress and is separated by a 2-hour fire separation assembly.

—Use Group R–4 structures include all detached one-and two-family dwellings not more than three stories in height, and the accessory structures as indicated in the one-and two-family dwelling code.

The reference to "detached one-and two-family dwellings" under Use Group R–4 refers to structures that are physically detached. According to BNBC, buildings separated by firewalls are not considered separate structures (see the discussion about BNBC's definition of "building" and "structure" below).

Definition of "Dwelling Unit"—(Draft Recommendation Number 1 and 2)

The regulations define the term "dwelling unit" as: "a single unit of residence for a family of one or more persons. Examples of dwelling units include: a single family home; an apartment unit within an apartment building; and in other types of dwellings in which sleeping accommodations are provided but toileting or cooking facilities are shared by occupants of more than one room or portion of the dwelling, rooms in which people sleep. Examples of the latter include dormitory rooms and sleeping accommodations in shelters intended for occupancy as a residence for homeless persons."

24 CFR.100.201.

It is clear from the discussion in the Preamble to the regulations, found at 54 FR 3244 (Jan. 23, 1989), that the Department intended that each sleeping room intended for occupancy by a separate household in a building with shared toileting or kitchen facilities would be considered a separate dwelling unit, and that buildings with four or more of these sleeping accommodations are "covered multifamily dwelling units" for purposes of the Act.

Of course, a detached building that has four or more sleeping rooms with shared toileting or kitchen facilities and that is intended for occupancy by *one* household is *not* considered to be a "covered multifamily dwelling" under the Act. For example, a detached single family house with four bedrooms occupied by four or more persons related by birth or marriage is not a covered multifamily dwelling. In addition, a single family house occupied by four or more unrelated persons that functions as one distinct household, such as what is commonly referred to as a "group home" would not be considered to be a "covered multifamily dwelling" for purposes of the application of the design and construction requirements of the Act. This latter example is consistent with case precedent and the position of the Department and the Department of Justice with respect to the application of zoning and land use restrictions to single family group homes.

BNBC defines the term "dwelling unit" in Section 310.2, Definitions, as follows:

A single unit providing complete, independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

In general, BNBC (1107.4.2) applies the accessibility requirements in a Type B dwelling unit to occupancies in Group R–2 containing four or more dwelling units and in occupancies in Group R–3 where there are four or more dwelling units in a single structure. According to BOCA representatives, there is no circumstance in which BNBC includes a separate sleeping room as a "dwelling unit."

Because sleeping accommodations for separate households in a structure are not covered under BNBC's definition of "dwelling unit," BNBC's scoping provisions do not meet the requirements of the Act, the regulations, or the Guidelines because they do not include all of the dwelling units or residential structures that are covered under the Act, the regulations and Guidelines.

In its draft report, SWA recommended that the definition of dwelling unit be modified in the BNBC. Based on public comments received on the SWA draft report on the BNBC, the Department is withdrawing this recommendation. Instead, SWA recommends that the BNBC adopt a new definition of "sleeping unit" as stated below, and add that language as appropriate to the scoping provisions of Chapter 11, as reflected in subsequent recommendations.

Recommendation Number 1 (Draft Recommendation Number 1 and 2)

It is recommended that BNBC be revised to add a definition to 310.2 as follows:

Sleeping unit: A room in which people sleep intended to be occupied as a residence.

BNBC does not require that common use spaces that serve accessible sleeping units must be accessible.

Recommendation Number 2 (New Recommendation)

It is recommended that BNBC add the following provision to 1107.4:

Rooms and spaces available for the use of the residents of accessible sleeping units shall be accessible. Accessible spaces shall include toilet and bathing rooms, kitchen, living and dining areas and any exterior spaces, including patios, terraces and balconies.

Transient Housing—(Draft Recommendation Number 3)

In Draft Recommendation 3, SWA proposed that the BNBC be revised to make clear that certain types of housing that the BNBC viewed as transient are dwellings subject to the requirements of the Act, including the design and construction requirements. This housing may include timeshares, residential hotels and motels, boarding houses, dormitories, and homeless shelters. The BNBC uses a 30-day measure as the means to determine whether a building is for transient use and thus not a dwelling subject to the Act or Chapter 11.

A 30-day measure is inappropriate in determining whether a building is covered by the Act. The BNBC's 30-day test of transience is inappropriate because it misleads designers, builders and other readers of the code that such housing need not meet the requirements of the Act. Length of stay is only *one* factor in determining whether a building is a "covered multifamily dwelling." Other factors to be considered include: (1) whether the rental rate for the unit will be calculated based on a daily, weekly, monthly or yearly basis; (2) whether the terms and length of occupancy will be established through a lease or other written agreement; (3) what amenities will be included inside the unit, including kitchen facilities; (4) how the purpose of the property is marketed to the public; (5) whether the resident possesses the right to return to the property; and (6) whether the resident has anywhere else to which to return.

Accordingly, because the above-described types of housing which are subject to the Act are not required to meet BNBC's Chapter 11 requirements, the BNBC is not consistent with the Act, its regulations and Guidelines. At this time, the Department is uncertain how best to resolve this inconsistency between the BNBC and the Department's regulations. Accordingly, the Department is withdrawing Draft Recommendation 3. The Department will continue to work with BOCA and other interested code organizations to develop language that appropriately conveys to builders and designers that certain residencies of less than 30 days must meet the Act's accessibility requirements. In the meantime, the Department believes the factors listed above must be considered by owners, builders, and architects in determining whether the requirements of the Act apply to the design and construction of buildings with rooms for short term occupancy.

Continuing Care Facilities—(Draft Recommendation Number 4)

The Act defines a "dwelling" as "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families." 42 U.S.C. 3602(b). Such a building may serve more than one purpose. Some buildings, known as continuing care facilities, residential care facilities, or assisted living facilities, serve both as a residence for their occupants and as a place where the occupants receive personal, medical or other support services.

The Questions and Answers About the Guidelines addressed the issue of whether the design and construction requirements of the Act apply to continuing care facilities which incorporate housing, health care and other types of services. That publication states in part:

The new construction requirements of the Fair Housing Act would apply to continuing care facilities if the facility includes at least one building with four or more dwelling units. Whether a facility is a "dwelling" under the Act depends on whether the facility is to be used as a residence for more than a brief period of time. As a result, the operation of each continuing care facility must be examined on a case-by-case basis to determine whether it contains dwellings.

59 FR at 33364.

According to BNBC, continuing care facilities may fall under Use Group I if they have more than five occupants. As a result, they may not be covered under Section 1107.4.2, Accessible dwelling unit, of the BNBC.

Section 308.2, Use Group I–1, is defined by BNBC as follows:

This use group shall include buildings and structures which house six or more individuals who, because of age, mental disability or other reasons, must live in a supervised environment but who are physically capable of responding to an emergency situation without personal assistance. Where accommodating persons of the above description, the following types of facilities shall be classified as I–1 facilities: board and care facilities, half-way houses, group homes, social rehabilitation facilities, alcohol and drug centers and convalescent facilities. A facility such as the above with five or less occupants shall be classified as a residential use group.

Section 308.3, Use Group I–2, is defined by BNBC as follows:

This use group shall include buildings and structures used for medical, surgical, psychiatric, nursing or custodial care on a 24-hour basis of six or more persons who are not capable of self-preservation. Where accommodating persons of the above description, the following types of facilities shall be classified as I–2 facilities: hospitals, nursing homes (both intermediate care facilities and skilled nursing facilities), mental hospitals and detoxification facilities. A facility such as the above with five or less occupants shall be classified as a residential use group.

Recommendation Number 3 (Draft Recommendation 4)

To ensure that the BNBC covers the same dwelling and sleeping units required to provide accessibility according to the Act, the regulations, and the Guidelines, it is recommended that the definition of "*sleeping unit*" contained in Recommendation Number 1 be adopted and that BNBC be revised as follows:

Modify Sections 1107.3.1, 1107.3.2, 1107.4.1.1 AND 1107.4.2 as follows:

1107.3.1 Use Group I–1: In occupancies in Use Group I–1, at least 4 percent, but not less than one, of the resident sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, board and care facilities, group homes, and convalescent facilities of Group I–1 occupancies with four or more sleeping units shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.

1107.3.2 Use Group I–2: In nursing homes of Use Group I–2, at least 50 percent, but not less than one, of the patient sleeping rooms and their bathing and toilet facilities shall be accessible. In addition, in nursing homes of Group I–2 in structures with four or more sleeping units, all sleeping units shall comply with the requirements for Type B sleeping units required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.

1107.4.1 Accessible guestrooms: In occupancies in Use Group R–1 containing six or more guestrooms, not less than one accessible guestroom for the first 30 guestrooms shall be provided, and one additional accessible guestroom for each additional 100 guestrooms or fraction thereof shall be provided. In hotels with more than 50 guestrooms, roll-in type showers shall be provided in one-half, but not less than one, of the required accessible guestrooms. In addition, in occupancies in Use Group R–1 sleeping units in structures with four or more sleeping units, sleeping units shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.

1107.4.1.1 Boarding houses: Lodging houses and congregate residences with multiple bedrooms or spaces for more than six occupants shall be provided with the minimum number of accessible guestrooms as required by Section 1107.4.1. The guestrooms shall be accessible in accordance with CABO A117.1 listed in Chapter 35. In addition, lodging houses and congregate residences with four or more sleeping units for more than six occupants shall comply with the requirements for Type B sleeping units as required by 1107.4.2 with the same exceptions as provided for in Section 1107.4.2.

1107.4.2 Accessible dwelling and sleeping units: In occupancies in Use Group R–2 containing four or more dwelling or sleeping units and in occupancies in Use Group R–3 where there are four or more dwelling or sleeping units in a single structure, all dwelling and sleeping units shall be Type B. In occupancies in Use Group R–2 containing more than 20 dwelling units, at least 2 percent, but not less than one, of the dwelling units shall be Type A dwelling units in accordance with CABO A117.1 listed in Chapter 35. In occupancies in Use Group R–2 and R–3, all rooms and spaces available to the general public and all such spaces available for the use of the residents serving accessible dwelling and sleeping units shall be accessible.

Exceptions:

1. In buildings without elevators, multistory dwelling units are not required to comply with the requirements for Type B dwelling units.

2. The requirement for Type B dwelling and sleeping units shall not apply to dwelling or sleeping units that are both located above the first level containing dwelling or sleeping units and that are not provided with elevator access thereto.

3. Where multiple buildings on a site are each not equipped with elevators, the percentage of required ground floor Type B dwelling and sleeping units shall be equal to the percentage of buildings on the entire site having grades of less than 10 percent. The site grade shall be based on the site conditions prior to development. In no case shall the number of Type B dwelling or sleeping units be less than 20 percent of the ground floor dwelling or sleeping units on the entire site.

4. In areas where buildings are required to be constructed in accordance with Section 3107.0, the required number of Type A and Type B dwelling units and Type B sleeping units shall not apply * * *

5. Recreational facilities in accordance * * *

6. Dwelling and sleeping units required to be Type B dwelling or sleeping units shall be permitted to be designed and constructed as Type A dwelling units.

7. Group homes intended to be occupied by a single household and detached single family homes occupied by a single household.

Note: See other changes to 1107.4.2 including Exceptions 1, 3, and 4 below under Recommendation numbers 7, 8, 9, and 17.

Definition of Building and Structure—(Draft Recommendation Number 5)

In this recommendation, the Department recommended that the Exceptions to Section 1107.4.2 use the term "structure" instead of "building." This was recommended both for consistency with the charging paragraph, and in order to ensure that the intent of the code, that, for purposes of accessibility, BNBC treats dwelling units in buildings separated by firewalls as a single structure. Based on the public comments the Department received on this recommendation, the Department has withdrawn this recommendation.

Ground Floor—(Draft Recommendation Number 6)

BNBC defines Ground Floor Dwelling Unit as follows:

Ground Floor Dwelling Unit (Section 1102.0)—For application of the accessibility requirements, a ground floor dwelling unit is a dwelling unit with a primary entrance and habitable space at ground level or the lowest floor containing dwelling units, whether that floor is at or above grade.

The regulations define "ground floor" as a "floor of a building with a building entrance on an accessible route. A building may have one or more ground floors." 24 CFR 100.202. The Guidelines further state: "Where the first floor containing dwelling units in a building is above grade, all units on that floor must be served by a building entrance on an accessible route. This floor will be considered to be a ground floor. 56 FR at 9500.

If a building is built into a hill, for example, and the front and the back of the building have entrances to dwelling units at grade, but at different elevations, the ground floor dwelling units on both levels are covered under the Guidelines. See the Questions and Answers About the Guidelines question number 6. 59 FR at 33364.

In Section 1107.4.2, BNBC requires that all dwelling units in Use Group R–2 containing four or more dwelling units, and in Use Group R–3 where there are four or more dwelling units in a single structure be Type B dwelling units. However, this section provides the following exception to this requirement:

The requirement for Type B dwelling units shall not apply to dwelling units that are both located above the first level containing dwelling units and that are not provided with elevator access.

According to BNBC, in the example above, the level at the lowest elevation is the only level required to have accessible dwelling units. Because the Guidelines clearly state that a ground floor is a floor of a building with a building entrance on an accessible route and that there can be more than one ground floor, it is clear in the example above that both levels of that building built into the hill are considered "ground floors" and must comply with the Guidelines.

BNBC, Section 1102, defines the term "ground floor dwelling unit" as a dwelling unit with a primary entrance and habitable space at ground level or the lowest floor containing dwelling units, whether that floor is at or above grade. However, BNBC does not refer to the term in its provisions for accessible dwelling units (Section 1107.4.2, Accessible dwelling units). It is clear that ground floor units can be at or above grade, but it is unclear that there can be more than one ground floor, or ground floor units on different levels of a building.

In its draft report, the Department offered a recommendation that the BNBC modify its definition of "ground floor dwelling unit" and refer to the revised term "ground floor" in Exception 2, Section 1107.4.2, Accessible dwelling units. As the Department stated in the introduction to this report, it is mindful of the fact that the language in the regulations and the Guidelines is not couched in building code terminology. The Department is, therefore, withdrawing this recommendation. However, the Department maintains that the BNBC is inconsistent with the Act, the regulations and the Guidelines with respect to requiring additional ground floors to be accessible. The Department will work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction.

In addition, during review of the public comments, two additional concerns arose: (1) Whether or not the BNBC scoping language, in combination with the definition of "ground floor dwelling unit," makes it clear that there must be at least one ground floor, and (2) whether the language at Exception 2 of 1107.4.2 results in requiring builders to make the first level containing dwelling units of a building accessible even if it were more practical to make a different floor (such as the second floor) containing dwelling units accessible when that floor is closer to the grade, even if not "at grade." The Department will, however, work with the model code organizations, and any other interested persons, to develop alternative language that will address this issue to the Department's satisfaction.

In the meantime, the Department believes that owners, builders, developers, designers, architects and others involved in the design and construction of housing covered by the Act must apply the Department's definition of "ground floor" when making determinations whether dwelling units or sleeping units in a non-elevator building with four or more such units are required to comply with the Act.

Buildings Connected by Breezeways or Stairways—(Draft Recommendation Number 7)

The regulations define a building as "a structure, facility or portion thereof that contains or serves one or more dwelling units." 24 CFR 100.201. Based on that definition, a structure with three dwelling units that is structurally connected to another structure with three units, by a stairway or breezeway, for example, is considered one covered multifamily dwelling with six dwelling units.

In most cases, under BNBC, two structures that are connected by a breezeway or stairway, for example, and share the same roof as the breezeway or stairway are also considered one building. As a result, if the total units in both structures equals four or more, then the building must comply with the BNBC's accessibility provisions.

It appears, however, that in cases where the breezeway or stairway that structurally connects both buildings does not provide the only means of egress and does not share the same roof as the two structures, whether or not it is considered one building must be determined by BOCA on a case-by-case basis. In addition, in some cases, BOCA considers walkways, breezeways, and stairways accessory structures and not integral to the building. If they are determined to be accessory structures, each building that they connect is examined separately. As a result, BNBC may not meet the requirements of the Guidelines in terms of covered units connected by breezeways or stairways.

Recommendation Number 4 (Draft Recommendation 7)

It is recommended that BNBC be modified to include a revision to Section 3106.1.1, Separate structures, as follows:

3106.1.1 Separate structures. Connected buildings shall be considered to be separate structures. For purposes of calculating the number of Type B dwelling and sleeping units as required by Chapter 11, structurally connected buildings and buildings with multiple wings shall be considered one structure.

Multistory Dwelling Units—(Draft Recommendation Number 8)

The regulations determined that a multistory dwelling unit that does not have an elevator internal to the unit that is located in a building that does not have an elevator is not a "covered multifamily dwelling" because the entire unit is not on the ground floor. 54 FR at 3244. The Guidelines define a "multistory dwelling unit" as a dwelling unit with finished living space located on one floor and the floor or floors immediately above or below it. 56 FR at 9500. A "single-story dwelling unit is defined as a dwelling unit with all finished living space located on one floor. 56 FR at 9501.

BNBC includes the following definitions in Section 1102.1:

Multistory dwelling unit. For application of the accessibility requirements, this term shall mean a dwelling unit with habitable or bathroom space located on more than one story.

BNBC defines "habitable space" (Section 1202) as a space in a structure for living, sleeping, eating or cooking. Bathrooms, toilet compartments, closets, halls, storage or utility spaces and similar areas are not considered habitable spaces.

According to BNBC's definition of "multistory dwelling unit," a unit is considered multistory if one level contains living or "habitable" space and the floor next above or below contains only a bathroom. According to the definitions in the Guidelines, and the factors outlined above that the Department would consider in making a determination as to whether or not the unit is a multistory unit, a two-level unit with only a bathroom, or only a bathroom and storage space on one level, is not a multistory dwelling unit because finished living space must be located on both floors. 56 FR at 9500–01. Neither bathroom space alone nor a combination of bathroom space and storage space constitute living space. BNBC's definition of "multistory dwelling unit" does not meet the Act, regulations or Guidelines.

Recommendation Number 5 (Draft Recommendation 8)

As a result, it is recommended that the reference to "or bathroom space" in the BNBC's definition of "multistory dwelling unit" be deleted as follows:

Section 1102, Definitions:

Multistory dwelling unit: For application of the accessibility requirements, this term shall mean a dwelling unit with habitable space located on more than one story.

Single-Story Unit With a Loft/Mezzanine—(Draft Recommendation Number 9)

Under Requirement 4 of the Guidelines, a single-story unit may have a loft without the requirement that there be an accessible route to the loft; *provided that all other parts of the dwelling unit are on an accessible route.* 56 FR at 9507. Only one loft, or raised or sunken area, can be provided within a room and it cannot interrupt the accessible route throughout the remainder of the dwelling unit. These "special design features" cannot contain toilet facilities. 56 FR at 9507.

BNBC does not define or use the term loft, and instead uses the term "mezzanine," and defines this term as follows:

Section 502: "Mezzanine" means an intermediate level or levels between the floor and ceiling of any story with an aggregate floor area of not more than one-third of the area of the room in which the level or levels are located.

BNBC Section 1107.4.3, Accessible route, includes an exception that states that mezzanines, and raised or sunken floors in Type B dwelling units are not required to be accessible provided they do not contain or interrupt the accessible route to the only bathing facility, lavatory, water closet or living,

eating, sleeping or cooking areas in the dwelling unit. This provision implies that if there are two bathrooms or sleeping areas within a Type B unit, a mezzanine or raised or sunken area is permitted to interrupt the route to one bathroom or sleeping area, which does not meet the Guidelines.

BNBC does not state that only one of these "special design features" is permitted within a room in a Type B dwelling unit, and does not require that if a mezzanine has an enclosed area or a toilet or bathing facility then it must be located on an accessible route.

Recommendation Number 6 (Draft Recommendation 9)

To address these inconsistencies it is recommended that BNBC delete Exception 2, Section 1107.4.3 as currently written and replace it with the following language:

Within Type B dwelling units one of the following is not required to be on an accessible route:

1. A raised floor area in a portion of a living, dining, or sleeping room; or
2. A sunken floor area in a portion of a living, dining, or sleeping room; or
3. A mezzanine that does not have plumbing fixtures or an enclosed habitable space.

V. Seven Specific Design and Construction Requirements

The Guidelines specify seven requirements relating to accessibility which reflect the language of the Act and the regulations. Compliance with the provisions of the Guidelines constitutes a safe harbor for compliance with the requirements of the Act. The Act itself references the ANSI A117.1 standard as a means for meeting the technical requirements of the Act. As discussed in the Department's policy statement, at the time the Act was passed and the Guidelines were written, ANSI A117.1–1986 was in effect. Since that time, there have been two additional editions of ANSI A117.1 published, the CABO/ANSI A117.1 in 1992 and the ICC/ANSI A117.1 in 1998.

The Department believes that compliance with either of these newer editions of the ANSI–A117.1 constitutes an additional safe harbor in terms of demonstrating compliance with the technical provisions of the Act's accessibility requirements. It is, of course, still necessary to refer to the Act and the regulations, or the Guidelines, for implementing the scoping requirements. The Department believes that code officials may rely on the edition of ANSI A117.1 that has been adopted by the code organization or state or local jurisdiction, if it has been adopted without modifications and is uniformly enforced.

BNBC utilizes the technical criteria contained in CABO/ANSI A117.1–1992, and thus, HUD considers any BNBC requirements that reflect that criteria to meet the requirements of the Act, even where they differ in small part from the ANSI–1986 criteria.

Requirement 1: Accessible Building Entrance on an Accessible Route

The Guidelines set forth specifications to implement the requirements of 24 CFR 100.205(a) that all covered multifamily dwellings shall be designed and constructed to have at least one building entrance on an accessible route, unless it is impractical to do so because of terrain or unusual characteristics of the site. 56 FR at 9503.

Requirement 1 of the Guidelines includes specifications for providing an accessible entrance on an accessible route, and explains that the requirements apply to a single building on a site and to multiple buildings on a site. In addition, Requirement 1 includes specifications for determining site impracticality based on terrain and unusual site characteristics. 56 FR at 9503–04. However, the Guidelines specify that covered multifamily dwellings with elevators shall be designed and constructed to provide at least one accessible entrance on an accessible route, regardless of terrain or unusual characteristics of the site. 56 FR at 9504.

BNBC's provisions relating to an accessible building entrance on an accessible route are consistent with the Guidelines with the following exceptions.

Site Impracticality Due to Terrain

The Guidelines set forth two tests to assess site impracticality due to terrain—the individual building test and the site analysis test. 56 FR at 9503–04.

Individual Building Test—This test may be used for all sites, but must be used for sites with a single building having a common entrance for all units. 56 FR at 9503–04.

Site Analysis Test—May be used for all sites, including those with multiple buildings and single buildings with multiple entrances serving individual dwelling units or clusters of dwelling units except sites with a single building having a common entrance for all units. This test has three steps. 56 FR at 9503–04.

Step A requires the calculation of the percentage of total buildable area of the undisturbed site with a natural slope of less than 10%. A professional licensed engineer, landscape architect, architect or surveyor must certify the analysis of the slope. 56 FR at 9504.

Step B states that the percentage of ground floor units that must be made accessible should be equal to the total buildable area of the undisturbed site (not including floodplains, wetlands, or other restricted areas) that has an existing natural grade of less than 10% slope (previously determined in Step A). 56 FR at 9504.

Step C requires that in addition, all ground floor units in a building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route, defined as a walkway with a slope between the planned entrance and a pedestrian or vehicular arrival point that is no greater than 8.33%. In some cases, application of Step C will result in a greater number of accessible units being required. 56 FR at 9504.

For example, according to the Guidelines' site analysis test for determining impracticality due to terrain, if 60% of the total area of an undisturbed site has an existing natural grade of less than 10% slope, then 60% of the ground floor units are required to be served by an accessible entrance on an accessible route. If we construct two buildings not served by elevators on that site, each with 20 ground floor units for a total of 40 ground floor dwelling units on the entire site, then 24 ground floor dwelling units (60% of ground floor units) must have an accessible entrance on an accessible route. In addition, according to step C of the site analysis test, all ground floor units in the building, or ground floor units served by a particular entrance, shall be made accessible if the entrance to the units is on an accessible route.

Variances Related to the Site Analysis Test—(Draft Recommendation Number 10)

Section 1107.4.2, Exception 3, attempts to correspond to Steps A and B of the site analysis test. However, it provides that where multiple buildings on a site are each not equipped with elevators, the percentage of required ground floor Type B dwelling units shall be equal to the percentage of buildings on the entire site having site grades of 10 percent or less, and not the percentage of buildable area having site grade of less than 10 percent which is required by the Guidelines. 56 FR at 9504. Thus, BNBC does not meet the specifications of the Guidelines.

BNBC also fails to provide equivalent language to Step C—*i.e.*, it does not require that, in addition to the percentage of ground floor units required to be accessible, all ground floor units in buildings, or ground floor units served by a particular entrance, must be made accessible if the entrance to the units is on an accessible route. 56 FR at 9504. Therefore, BNBC does not meet this aspect of the Guidelines.

In addition, according to the Guidelines, regardless of site considerations, an accessible entrance served by an accessible route is practical whenever an elevator connects parking with a ground floor, in which case all ground floor units are covered, or whenever an elevated walk with a slope no greater than 10% is planned between an entrance and a pedestrian or vehicular arrival point. 56 FR at 9504. BNBC does not include any language that reflects these requirements. As a result, BNBC does not meet the provisions of the Guidelines on these issues as well.

Recommendation Number 7 (Draft Recommendation 10)

In order to address these inconsistencies, it is recommended that Exception 3, Section 1107.4.2 be revised as follows:

Where multiple structures on a site are each not equipped with elevators, the percentage of required ground floor Type B dwelling and sleeping units shall be equal to the percentage of the entire site having grades, prior to development, which are less than 10%; but in no case shall the number of Type B dwelling and sleeping units be less than 20 percent of the ground floor dwelling and sleeping units on the entire site. In addition to the percentage established, all ground floor dwelling and sleeping units in a structure, or ground floor dwelling and sleeping units served by a particular entrance shall be Type B if any one of the following applies:

3.1 The slope between the entrance to the dwelling or sleeping units and a pedestrian or vehicular arrival point is no greater than 8.33%; or

3.2 An elevator provides access to the ground floor only; or

3.3 An elevated walkway with a slope not exceeding 10 percent is planned between an entrance and a pedestrian or vehicular arrival point. The slope of the walkway, in such cases shall be reduced to no greater than 8.33%.

Variance Related to Buildings With Elevators—(Draft Recommendation Number 11)

According to the Guidelines, buildings with elevators must provide an accessible entrance on an accessible route regardless of site impracticality. 56 FR at 9504. BNBC does not reflect this requirement in Section 1107.4.2, Exception 4.

Recommendation Number 8 (Draft Recommendation 11)

It is recommended that Exception 4, Section 1107.4.2 be modified so that the Exception does not apply to buildings with elevators.

In areas where buildings are required to be constructed in accordance with Section 3107.0, the required number of Type A and Type B dwelling units and Type B sleeping units shall not apply to a site where the lowest floor or the lowest structural building members of non-elevator buildings is required to be at or above the base flood elevation resulting in * * *

Requirement 2: Accessible and Usable Public and Common Use Areas

The Act and the regulations provide that covered multifamily dwellings with a building entrance on an accessible route be designed and constructed in a manner so that the public and common use areas are readily accessible to and usable by people with disabilities. 42 U.S.C. 3604 (f)(3)(C)(i); 24 CFR 100.205 (c)(1). The Guidelines' Requirement 2 cites the appropriate section of the ANSI A117.1–1986 Standard for the technical provisions for 15 accessible elements or spaces, and describes the application of the specifications including modifications to the referenced standard. 56 FR at 9505. Following are the 15 basic elements or spaces for accessible and usable public and common use areas or facilities:

Accessible routes,
Protruding objects,
Ground and floor surface treatments,
Parking and passenger loading zones,
Curb ramps,
Ramps,
Stairs,
Elevators,
Platform lifts,
Drinking fountains and water coolers,
Toilet rooms and bathing facilities,
Seating, tables, or work surfaces,
Places of assembly,
Common-use spaces and facilities,
Laundry rooms.

56 FR at 9505

When a variance is identified in the BNBC that does not meet the requirements of the Guidelines for each of the 15 elements or spaces above, they are noted below.

Scoping of Accessibility Requirements for Public and Common Use Facilities—(Draft Recommendation Number 12)

As stated above, the Act, regulations, and Guidelines require accessible public and common use areas for all covered multifamily dwellings. 42 U.S.C. § 3604 (f)(3)(c)(i); 24 CFR 100.205 (c) (1); Section 1107.4.2 of the BNBC states that in occupancies in Use Group R–2, all rooms and spaces available to the general public and all such spaces available for the use of the residents serving accessible dwelling units shall be accessible. This provision does not include Use Group R–3 in that sentence. However, in Section 1107.4.3, Accessible Route, BNBC states the following:

In occupancies in Use Group R–2 and R–3, at least one accessible route shall connect accessible building or facility entrances with all accessible dwelling units within the building or facility and with those exterior and interior spaces and facilities that serve the accessible dwelling units.

It is clear from Section 1107.4.3 that accessible routes to public and common areas are intended to be required in both Use Groups R–3 and R–2.

Recommendation Number 9 (Draft Recommendation 12)

For clarity, it is recommended that Section 1107.4.2 be modified to include Use Group R–3 as follows:

Section 1107.4.2, Accessible dwelling units:

In occupancies in Use Group R–2 and R–3, all rooms and spaces available to the general public and all such spaces available for the use of the residents serving accessible dwelling and sleeping units shall be accessible.

Accessible Route(s)—(Draft Recommendation Number 13)

Requirement 1, paragraph (5) of the Guidelines states that if the slope of the finished grade between covered multifamily dwellings and a public or common use facility exceeds 8.33%, or where other physical barriers or legal restrictions, all of which are outside the control of the owner, prevent the installation of an accessible pedestrian route, an acceptable alternative is to provide access via a vehicular route, so long as necessary site provisions such as parking spaces and curb ramps are provided at the public or common use facility. 56 FR at 9504.

BNBC, Section 1107.4.3 contains language that is comparable to the Guidelines with one exception. That section states:

If the slope of the finished ground level between accessible facilities and buildings exceeds one unit vertical in 12 units horizontal, or where physical barriers prevent the installation of an accessible route, a vehicular route with parking at each accessible facility or building is permitted in place of the accessible route.

BNBC does not include language making it clear that accessible parking must be available at the accessible

facility if access is provided by a vehicular route. In addition, reference must be made to "structures" and not "buildings" (see discussion of the definition of "building" above.)

Recommendation Number 10 (Draft Recommendation 13)

It is recommended that BNBC, Section 1107.4.3, Exception 1, be modified to include the following language:

If the slope of the finished ground level between accessible facilities and structures exceeds one unit vertical in 12 units horizontal (1:12), or where physical barriers prevent the installation of an accessible route, a vehicular route with accessible parking in accordance with Section 1105 at each public and common use facility is permitted in place of the accessible route.

Headroom—(Draft Recommendation Number 14)

Based on the public comments received, the Department has determined that the BNBC adequately addresses this issue.

Parking and Passenger Loading Zones—(Draft Recommendation Numbers 15, 16, 17 and 18)

The Guidelines provide that accessible parking on a route accessible to persons in wheelchairs be provided for at least 2% of the covered dwelling units, and that there be accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and accessible parking at facilities. 56 FR at 9505.

Section 1105, Parking Facilities, of the BNBC requires that, where parking is provided, accessible parking spaces complying with CABO/ANSI A117.1 be provided in compliance with Table 1105.1, except as required by Sections 1105.2 and 1105.3.

Section 1105.2, Use Group R–2, of Section 1105, Parking Facilities, requires that 2% of parking spaces provided for occupancies in use Group R–2 which are required to have accessible dwelling units shall be accessible. Section 1105.3 does not apply to Use Groups R–2 or R–3 and is not applicable. Table 1105.1 stipulates the minimum number of accessible spaces required according to the total number of parking spaces provided. Since 1105.2 clearly applies to Use Group R–2 and not R–3, one must refer to Table 1101.1 for the required minimum number of accessible spaces required for Use Group R–3.

Recommendation Number 11 (Draft Recommendation 15)

It is recommended that Section 1105.2, Use Group R–2, be modified to include R–3 occupancies, as follows:

Section 1105.2, Use Group R–2 and R–3

Two percent of parking spaces provided for occupancies in Use Group R–2 and Use Group R–3 which are required to have accessible dwelling or sleeping units shall be accessible.

Section 1105.1, Required, should be modified to:

Where parking is provided, accessible parking spaces complying with CABO/ANSI A117.1–1992 listed in Chapter 35 shall be provided in compliance with Sections 1105.2 and 1105.3.

By modifying Section 1105.2 to include the reference to the R–3 Use Group, Table 1105.1 (required minimum number of accessible spaces for R–3 dwellings) and any reference to it may be eliminated.

The Questions and Answers About the Guidelines (Question and Answer 14c) states that where there are several individual parking garages grouped together either in a separate area of the building (such as at one end of the building, or in a detached building), for assignment or rental to residents, at least 2% of the garages must be at least 14′2″ wide and have a vehicular door at least 10′ wide. 59 FR at 33366. This assumes that garage parking is the only type of parking provided at the site.

Question and Answer 14c provides the minimum requirement for the width of accessible garages and garage doors. The minimum widths provide enough space for an automobile to enter the garage, and for a passenger or driver using a wheelchair to exit through the garage door without interference by the automobile. However, the minimum requirements do not preclude a garage design that provides equivalent or greater accessibility. For example, a designer may choose to design a garage with a door that is 8 feet wide, but provides a separate accessible exit door through which the driver or the passenger may exit, provided that it connects to the accessible route to the entrance of the unit.

The BNBC does not provide minimum requirements for these garages, and therefore, does not meet this provision of the Guidelines.

The Guidelines provide that if provided at the site, accessible visitor parking sufficient to provide access to grade level entrances of covered multifamily dwellings, and accessible parking at facilities must be provided. The Guidelines also require accessible parking on the same terms and with the full range of choices (e.g., surface parking or garage) that are provided to other residents of the project. 56 FR at 9505.

In addition, the Questions and Answers About the Guidelines provide further clarification of the parking requirements at Q&A 14(b), which clarified that when more than one type of parking is provided, at least one space for each type of parking should be made accessible even if this number exceeds two percent.

The Department is not recommending that the BNBC revise any of its broader scoping requirements for parking. However, the BNBC does not include comparable language in Section 1105, Parking Facilities, with respect to the above variances. Therefore, the BNBC does not meet the provisions of the Guidelines with respect to these issues.

Recommendation Number 12 (Draft Recommendation 16)

In order to address these two inconsistencies, it is recommended that BNBC include a reference to R–3 in Section 1105.2, Group R–2, as indicated in Recommendation 11 above, and modify that Section as follows:

At least 2% of parking garages provided for R–2 and R–3 occupancies required to have accessible dwelling or sleeping units where there are several individual garages grouped together, either in a separate area of a building or in a detached building, for assignment or rental to residents, must be at least 14′2″ wide and have a vehicular door at least 10′ wide. * * *

* * * Where accessible parking spaces are provided, at least one of each type (surface parking, carports, or garage) shall be provided.

* * * Where visitor parking is provided, at least one accessible visitor parking space shall be provided.

* * * Where parking is provided at public and common use facilities that serve accessible buildings, at least one accessible parking space shall be provided.

It is not clear in BNBC whether passenger loading zones are required to comply with the requirements of the Guidelines.

Recommendation Number 13 (Draft Recommendation 17)

In order to ensure that passenger loading zones comply with the requirements of the Guidelines, it is recommended that BNBC add a provision under Section 1105 which states the following:

When provided, passenger loading zones shall be located on an accessible route. Passenger loading zones shall be designed and constructed in accordance with CABO/ANSI A117.1–1992.

Table 1105.1, Accessible Parking Spaces includes a note that states "the accessible space shall be provided but is not required to be designated as reserved for physically disabled." In addition, Section 1109.2, Signs, indicates that elements shall be identified by the International Symbol of Accessibility at four locations, the first of which states that it is required at accessible parking spaces required by 1105.1 (Parking Facilities) except where the total parking spaces provided are five or less. This does not meet the requirements of the Guidelines which require signage at all accessible parking spaces.

Recommendation Number 14 (Draft Recommendation 18)

It is recommended that BNBC delete this language from provision 1 under Section 1109.2. If deleted, the note in Table 1105.1 will no longer apply.

Stairs—(Draft Recommendation Number 19)

The Guidelines require that accessibility be provided on stairs located along accessible routes connecting levels not connected by an elevator. 56 FR at 9505. For example, a ground floor entry might have steps up to a bank of mailboxes, with a ramp located beside the steps. The stairs in this case are required to meet the ANSI A117.1 specification, since they will be used by people with disabilities for whom stairs are more usable than ramps. However, stairs are not a component of an accessible route.

There are variances between the provisions of BNBC and the Guidelines' requirements for stairs along accessible routes regarding tread and riser measures, and handrails for example.

Recommendation Number 15 (Draft Recommendation 19)

It is recommended that BNBC include a provision for stairways under Section 1108, Building Features and Facilities as follows:

Stairways

Stairways located along accessible routes connecting floor levels that are not connected by an elevator shall be designed and constructed to comply with CABO/ANSI A117.1–1992.

Alternatively, the Department recommends that BOCA consider adopting the technical requirements for residential elevators found in ICC/ANSI A117.1–1998.

Elevators—(Draft Recommendation Number 20)

The Guidelines require that elevators on accessible routes be accessible according to the technical specifications of ANSI A117.1, Section 4.10, Elevators. Section 1108.4 of BNBC, Elevators and Stairway and Platform Lifts, states that all passenger elevators on an accessible route shall be accessible. It also states that elevators required to be accessible shall be designed and constructed to comply with Section 3006 which references conformance with CABO/ANSI A117.1–1992.

The technical specifications for elevators required by both the Guidelines and BNBC are equivalent. However, BNBC provides an exception to Section 1108.4, Elevators, that exempts elevators within dwelling units from being accessible. This does not meet the requirements of the Guidelines because elevators within multistory units must provide accessibility.

Recommendation Number 16 (Draft Recommendation 20)

It is recommended that the exception to 1108.4 be eliminated.

Recreational Facilities

The Guidelines, in Requirement 2, state that: "If provided in the facility or at the site; (a) where multiple recreational facilities (e.g., tennis courts) are provided sufficient accessible facilities of each type to assure equitable opportunity for use by persons with handicaps" shall be provided. These facilities must be connected by an accessible route to the covered dwelling units or a vehicular route if an accessible route is not possible. The BNBC Section 1107.4.4 requires 25%, but not less than one, of recreational facilities of each type in each occupancy group to be accessible.

The Department concludes that the Guidelines may be interpreted to be stricter than the requirements of the model codes with respect to the requirement for accessible recreational facilities because an interpretation of "sufficient to provide equitable opportunity for use" may result in determinations that recreational facilities that serve different buildings containing accessible dwelling units must be accessible, even if this means making all of the same type of recreational facility accessible (such as two swimming pools on a large site, each which serves different buildings on the site).

For example, one out of four recreational facilities of the same type serving a specific residential use group is code compliant (25% but not less than one), but may not be considered "sufficient" by the Department if the facilities of the same type are widely spread across a large site serving one building, or spread across a site on which there are multiple buildings.

However, because this matter was not included in the draft reports, and there has not been an opportunity for public participation in a resolution of this matter, the Department is not including a recommendation to resolve this matter. The Department will work with all interested parties to address this matter.

Requirement 3: Usable Doors

The Act and regulations require that all doors designed to allow passage into and within a covered dwelling unit be sufficiently wide to allow passage by persons in wheelchairs. 42 U.S.C. § 3604 (f)(3)(C)(ii); 24 CFR 100.205(c)(2). The Guidelines set forth criteria to meet this requirement. The Guidelines also set forth additional guidance regarding doors that are a part of an accessible route in the public and common use areas of multifamily dwellings and to doors into and within individual dwelling units. 56 FR at 9506.

The Guidelines provide the following:

On accessible routes in public and common use areas, and for primary entry doors to covered units, doors that comply with ANSI A117.1 4.13 will meet the Act's requirements for usable doors; and Within individual dwelling units, doors intended for user passage through the unit which have a clear opening of at least 32 inches nominal width when the door is open 90 degrees, measured between the face of the door and the stop, would meet the Act's requirement.

The Department has determined that BNBC meets the requirements of the Act, regulations, and the Guidelines for usable doors.

Requirement 4: Accessible Route into and Through the Covered Dwelling Unit

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed in such a manner that all premises within covered multifamily dwelling units contain an accessible route into and through the covered dwelling unit. 42 U.S.C. § 3604 (f)(3)(C)(iii)(I); 24 CFR 100.205 (c)(3)(i). Requirement 4 of the Guidelines sets forth criteria to meet this requirement. 56 FR at 9509–10. BNBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 4, except the following:

Multistory Units in Elevator Buildings—(Draft Recommendation Number 21)

Among the criteria in Requirement 4 is the requirement that in multistory dwelling units in buildings with elevators, the story of the unit that is

served by the building elevator is the primary entry to the unit. 56 FR at 9507.

BNBC, Section 1107.4.2, provides the following exceptions to the requirement for Type B units as follows:

In buildings without elevators, multistory dwelling units are not required to comply with the requirements for Type B units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall comply with the requirements for a Type B dwelling unit and a toilet facility shall be provided on that floor.

Recommendation Number 17 (Draft Recommendation 21)

It is recommended that BNBC modify Section 1107.4.2, Exception 1, as follows:

In buildings without elevators, multistory dwelling units are not required to comply with the requirements for Type B dwelling units. Where a multistory dwelling unit is provided with elevator service to only one floor, the floor provided with elevator service shall be the primary entry to the unit, shall comply with the requirements for Type B dwelling units and a toilet facility shall be provided on that floor.

Requirement 5: Light Switches, Electrical Outlets, Thermostats and Other Environmental Controls in Accessible Locations

The Act and regulations require that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain light switches, electrical outlets, thermostats, and other environmental controls in accessible locations. 42 U.S.C. 3604 (f)(3)(C)(iii)(II); 24 CFR 100.205(c)(3)(ii). Requirement 5 of the Guidelines sets forth criteria to meet these requirements. 56 FR at 9507. BNBC meets the provisions of the Act, regulations, and Guidelines with respect to Requirement 5.

Requirement 6: Reinforced Walls for Grab Bars—(Draft Recommendation Number 22)

Requirement 6 of the Guidelines sets forth technical specifications to meet 42 U.S.C. 3604(f)(3)(C)(iii)(III), 24 CFR 100.205(c)(3)(iii) which specifies that all covered multifamily dwellings with a building entrance on an accessible route shall be designed and constructed so that all premises within the covered units contain reinforcements in bathroom walls to allow later installation of grab bars around toilet, tub, shower stall and shower seat, where such facilities are provided. 56 FR at 9509–10. BNBC refers to the International Plumbing Code, 1995, for the technical specifications for reinforcement in walls for grab bars.

Although it is the intent of the International Plumbing Code, 1995, to require grab bar reinforcement at fixtures located away from walls, sunken or raised tubs for example, one cannot make that clear determination.

Recommendation Number 18 (Draft Recommendation 22)

It is recommended that BNBC add an exception under section 1108.2, Toilet and bathing facilities as follows:

Section 1108.2 Toilet and bathing facilities: Within dwelling and sleeping units required by 1107.4.2 to be accessible, alternative reinforcement complying with CABO/ANSI A117.1–1992 4.24 2.5 and 4.24.3 shall be provided for the mounting of grab bars where fixtures are located away from walls.

Requirement 7: Usable Kitchens and Bathrooms

The Act and regulations provide that all covered multifamily dwellings with a building entrance on an accessible route shall be designed to have usable kitchens and bathrooms such that an individual in a wheelchair can maneuver about the space. 42 U.S.C. 3604 (f)(3)(C)(iii)(IV); 24 CFR 100.205 (c)(3)(iv). Requirement 7 of the Guidelines sets forth technical criteria to meet those requirements. 56 FR at 9511–15.

Usable Kitchens—(Draft Recommendation Number 23)

The Guidelines address a parallel approach to kitchen sinks in Requirement 7 at 56 FR 9511. The parallel approach to the sink is addressed in Figure 7(c). 56 FR at 9514. The ANSI A117.1–1986 standard requires, with respect to sinks and lavatories, a forward approach with clear floor space below, and illustrates the forward approach centered on the sink/lavatory. (ANSI A117.1–1986, Fig.32 on page 50). The Department's Guidelines allowed a departure from the ANSI standard. The Guidelines permit the clear floor space to be designed for a parallel position. 56 FR at 9511–12. While the Guidelines only show the clear floor space centered on the lavatory [Fig. 7 (c)], it is equally applicable to the sink.

The International Plumbing Code, 1995 which provides the technical provisions for Type B kitchens does not require that the parallel approach to sinks shall be centered on the sink which does not meet the requirements of the Guidelines.

Recommendation Number 19 (Draft Recommendation 23)

It is recommended that BNBC add an exception to Section 1108.3, Kitchens, as follows:

Exception: If a parallel approach is provided at the sink, it shall be centered on the sink.

Usable Bathrooms—(Draft Recommendation Number 24)

The Guidelines provide two options for designing accessible bathrooms. 56 FR at 9511. The first option requires a minimal level of accessibility. This option requires that walls be reinforced for grab bars and sufficient maneuvering space be provided within the bathroom for a person using a wheelchair or other mobility aid to enter, close the door, use the fixtures, reopen the doors and exit. 56 FR at 9511.

The second option for designing accessible bathrooms provides a greater level of accessibility than that provided by the first option. 56 FR at 9511. The second option requires reinforced walls for grab bars, clear space at specific locations within the bathroom to permit use of the fixtures, and specific clearances for fixtures.

According to the Guidelines, only bathrooms on the accessible level are subject to the requirements. If a powder room is the only facility provided on the accessible level of a multistory dwelling unit; it must comply with the first or second option for designing accessible bathrooms and have reinforcement for grab bars. 56 FR at 9511.

As discussed in reference to kitchens above, the Guidelines require the centering of the parallel approach on the lavatory. 56 FR at 9512. The International Plumbing Code, 1995, does not require the centering of the parallel approach on the lavatory basin which does not meet the requirements of the Guidelines.

Recommendation Number 20 (Draft Recommendation 24)

It is recommended that BNBC add an exception under Section 1108.2 as follows:

Exception: If a parallel approach is provided at the lavatory, it shall be centered on the lavatory.

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Part IV

The President

Presidential Determination No. 2000–16 of February 29, 2000—Presidential Determination on Major Illicit Drug Producing and Drug Transit Countries

Presidential Determination No. 2000–17 of March 2, 2000—Drawdown Under Section 506(a)(2) of the Foreign Assistance Act of 1961, as Amended, To Provide Emergency Disaster Assistance in Southern Africa

Federal Register
Vol. 65, No. 57
Thursday, March 23, 2000

Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–16 of February 29, 2000

Presidential Determination on Major Illicit Drug Producing and Drug Transit Countries

Memorandum for the Secretary of State

By virtue of the authority vested in me by section 490(b)(1)(A) of the Foreign Assistance Act of 1961, as amended (the "Act"), I hereby determine and certify that the following major illicit drug producing and/or major illicit drug transit countries (and certain jurisdictions) have cooperated fully with the United States, or have taken adequate steps on their own, to achieve full compliance with the goals and objectives of the 1988 United Nations Convention Against Illicit Traffic in Narcotic Drugs and Psychotropic Substances:

The Bahamas, Bolivia, Brazil, China, Colombia, Dominican Republic, Ecuador, Guatemala, Hong Kong, India, Jamaica, Laos, Mexico, Pakistan, Panama, Peru, Taiwan, Thailand, Venezuela, and Vietnam.

By virtue of the authority vested in me by section 490(b)(1)(B) of the Act, I hereby determine that it is in the vital national interests of the United States to certify the following major illicit drug producing and/or major illicit drug transit countries:

Cambodia, Haiti, Nigeria, and Paraguay.

I have determined that the following major illicit drug producing and/or major illicit drug transit countries do not meet the standards set forth in section 490(b) for certification:

Afghanistan, Burma.

In making these determinations, I have considered the factors set forth in section 490 of the Act, based on the information contained in the International Narcotics Control Strategy Report of 2000. Analysis of the relevant U.S. vital national interests, as required under section 490(b)(3) of the Act in the case of the countries certified on this basis, is attached. Given that the performance of all of these countries/jurisdictions has differed, I have also attached an explanatory statement for each of the other countries/jurisdictions subject to this determination.

You are hereby authorized and directed to publish this determination in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, February 29, 2000.

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Statements of Explanation

Afghanistan

In 1999 Afghanistan cultivated a larger opium poppy crop and harvested more opium gum than any other country by a wide margin. U.S. sources estimate a 23 percent increase in the opium harvest, while United Nations Drug Control Program (UNDCP) data point to a more dramatic 70 percent increase. There were also increases in the refining of opium into heroin and in drug trafficking from Afghanistan into neighboring countries. The largest of Afghanistan's factions, the Taliban, which controls 85–90 percent of Afghanistan and 97 percent of the area where opium is cultivated, derives significant income from every phase of drug production and trafficking. In spite of its own 1997 ban on the cultivation of opium poppy, the Taliban acknowledge they tax the crop at about 10 percent, and allow it to be sold in open bazaars. Crop taxation imparts legitimacy to opium cultivation and distribution, and means that the Taliban benefits directly from the entire opium business. The Taliban also receives payments directly from traffickers.

The United States Government (USG) has spoken about the drug problem directly with Taliban officials and indirectly through the UNDCP. We have repeatedly urged the Taliban to enforce its 1997 ban on opium poppy cultivation. The Taliban response was at least a 23 percent increase in opium production over 1998. We also urged the Taliban to honor its commitments to reduce poppy cultivation in exchange for the delivery of alternative development assistance. But in a Non-Governmental Organization (NGO) project area receiving generous USG funding, poppy cultivation surged 68 percent, according to a UNDCP survey. Heroin labs are proliferating throughout Afghanistan, particularly near international borders.

The Taliban claims success for some counter-drug measures. According to the UNDCP, the Taliban destroyed 34 drug laboratories. The Taliban also has made unverified claims of seizures of 500 kg of opium, 70 kg of heroin, and 1200 liters of acetic anhydride and other heroin production chemicals. The Taliban Leader, Mullah Omar, who promulgated the 1997 ban on opium cultivation, ordered a one-third nation-wide reduction in poppy cultivation for the 1999–2000 growing season but, as noted, past commitments were not honored.

Overall, there was a sharp increase in poppy cultivation, in refining of opium into heroin, and in trafficking of illicit opiates in Afghanistan. There is a growing body of evidence that the largest of Afghanistan's factions, the Taliban, is fully complicit in every phase of drug production and trafficking. Sharp increases in large-scale opium cultivation and trafficking in Afghanistan, plus the failure of the authorities to initiate an appropriate law enforcement response, preclude a determination that Afghanistan has taken adequate steps on its own or that it has sufficiently cooperated with USG counter-drug efforts to meet the goals and objectives of the UN 1988 Drug Convention, to which Afghanistan is a party. In the absence of verifiable and unambiguous steps by the Taliban to stop the promotion of poppy cultivation (such as an end to the opium crop tax), the United States and other concerned countries are compelled to redirect their counter-drug efforts to interdiction and border control strategies in surrounding countries.

The Bahamas

The Bahamas is a major transit country for drugs en route to the United States from South America and the Caribbean. The Government of the Commonwealth of The Bahamas (GCOB) and the USG continue to enjoy a productive counter-drug working relationship.

The Bahamas is a party to the 1988 UN Drug Convention, and the GCOB works to meet its goals and objectives as well as those of U.S.-Bahamas bilateral drug control agreements. The GCOB places a high priority on combating drug transshipments through its archipelago and works closely with

the USG on Operation Bahamas and Turks and Caicos (OPBAT). The USG looks forward to assisting The Bahamas to improve its maritime end-game capability, without which sustained drug interdiction, arrest and conviction of traffickers, and the forfeiting of their assets is improbable. Given the volume of commercial shipping through The Bahamas, the GCOB needs to rigorously implement its chemical control laws to prevent illegal diversion of precursor and essential chemicals.

Bahamian authorities continue monitoring bank compliance and investigating suspicious financial transactions under the 1996 money laundering law. Increased supervision of the offshore banking sector and training of all financial sector employees, however, will be necessary in order to increase the number of suspicious activity reports, which is still very small given the size of The Bahamas financial services sector. Despite several public statements of commitment, the GCOB has not established a financial intelligence unit (FIU) or to seek membership in the Egmont Group. In 1999, the GCOB passed legislation which allows designation of the United States under Bahamian asset forfeiture laws, based on reciprocity. This will allow Bahamian courts to enforce U.S. forfeiture orders in many cases.

The GCOB took further steps in 1999 to strengthen its judicial system, with USG assistance. Despite these efforts, no major Bahamian drug trafficker has been convicted in The Bahamas and sent to prison, due largely to continuing delays in the courts. In addition, weak bail laws allow arrested drug traffickers to obtain bail and continue transshipping drugs while awaiting trail. Notwithstanding committed and talented judicial leadership, The Bahamas needs to improve the effectiveness of its court system and its Attorney General's office in gaining convictions against major drug traffickers. The Bahamas also needs to improve its responsiveness to U.S. requests under the mutual legal assistance treaty (MLAT) and to speed the processing of extradition cases.

In October 1999, for the first time in recent history, a Bahamian law enforcement official was assassinated, allegedly by Bahamian drug dealers in retaliation for his stand against a corrupt official or to prevent his testimony. The GCOB should ratify the Inter-American Convention against Corruption and assure that corrupt public officials are effectively prosecuted. Finally, the GCOB needs to move quickly to complete and adopt a comprehensive national drug strategy containing goals and objectives as well as measures of effectiveness.

Bolivia

Exceeding the schedule of its own five year plan to eliminate all illicit coca from Bolivia, in 1999 the Banzer administration eradicated an unprecedented 16,999 hectares of coca, for a net reduction of 43 percent.

Although Bolivia remains the world's third largest producer of cocaine, with the ability to produce a potential 70 metric tons, Bolivian cocaine became less marketable in 1999 due to a very successful law enforcement effort to prevent precursor chemicals from being smuggled in from neighboring countries. As a result of significant law enforcement pressure, Bolivian cocaine producers were forced to use less efficient means of processing with substitute or recycled chemicals, and cutting agents, such as manitol. The purity of finished Bolivian cocaine hydrochloride (HCl) dropped to as low as 47 percent, causing Brazilian and other traffickers to buy only Bolivian cocaine base and finish the processing in Brazil.

The GOB began preparations for an eradication program in the Yungas in 2000 to eliminate the coca exceeding the legally allowable 12,000 hectares. There is evidence that Yungas coca is being diverted to the illicit market for conversion to cocaine products.

Despite a slight downturn in the Bolivian export sector in 1999, export volumes of nearly all alternative development crops improved. Banana exports to Chile and Argentina increased 20 percent over 1998. Demand for

alternative development assistance by former coca farmers, however, is exceeding supply.

In 1999, the Bolivian legislature enacted the final portion of the judicial reform package, the new code of criminal procedures. It establishes an accusatory, adversarial, oral, public criminal trial system that may also help to diminish corruption and improve the credibility of the judicial system. The new code permits the police to use undercover agents and to make controlled deliveries of illicit drugs and other contraband. The Judicial Council, created in 1998 to depoliticize the selection of judges and to serve as a mechanism for disciplining members of the judiciary, had some of its powers to administratively remove corrupt judges diminished by the Constitutional Tribunal, which ruled that members of the judiciary can only be removed subsequent to a final judgement by a criminal court.

For the third year since the passage of the anti-money laundering law, no action was taken against money laundering. The legal ambiguities regarding asset seizure and forfeiture have not been resolved, and the system remains inefficient.

Brazil

Brazil is a significant transit country for illicit drugs en route to the United States, and a major producer of precursor chemicals and synthetic drugs. Since taking office in 1995, the administration of President Fernando Enrique Cardoso has demonstrated a firm commitment to countering the flow of illegal drugs through Brazilian territory, and to establishing an effective law enforcement infrastructure capable of taking action against the domestic and international criminal syndicates engaged in drug trafficking. In 1999, the Government of Brazil (GOB) worked closely with regional neighbors and U.S. law enforcement agencies in pursuit of mutual counter-drug objectives, achieving particularly impressive results against corruption and money laundering.

The most visible initiative in 1999 was the formation in April of the Congressional Panel of Inquiry (CPI) on drug trafficking. The Panel's high-profile investigations into the country's organized drug networks have led to over 115 arrests, including many tainted government officials. Through its actions, the CPI has illustrated the drug trade's corrosive effect on public institutions and energized previously isolated voices against corruption and trafficker impunity.

Criminal interests have long exploited Brazil's highly developed financial sector, particularly as a haven for illicit-drug profits. In 1999 the GOB demonstrated a firm commitment to fighting the problem of money laundering, and implemented regulations to increase the effectiveness of Brazil's anti-money laundering regime. The Brazilian Central Bank created a special internal agency to trace money laundering, and Brazil joined the Financial Action Task Force (FATF) and the Egmont Group, two international bodies charged with improving anti-money laundering efforts.

Brazilian authorities seized more cocaine in 1999 than in 1998, and cannabis seizures increased by six-fold. As in past years, Brazilian authorities identified no opium or coca production in 1999. The GOB acted vigorously against cannabis production in the country's northeast, eradicating over three times as many hectares as in 1998.

Burma

Burma is the world's second largest source of illicit opium and heroin, exceeded only by Afghanistan, and currently accounts for approximately 80 percent of the total production of Southeast Asian opium. Largely due to severe drought conditions in poppy growing areas, production and cultivation continued to decline significantly in 1999 for the third year in a row. In 1999 there were an estimated 89,500 hectares under opium poppy cultivation, down 31 percent from 1998. This hectarage yielded a maximum of 1,090 metric tons of opium gum, 38 percent lower than in 1998 and less

than half the average production during the last decade. The Government of Burma (GOB) maintained most of its opium crop-eradication efforts and expanded the program to an additional 9,800 acres.

Seizures of methamphetamine in 1999 exceeded 1998's record figures, although opium and heroin seizures were well below 1998 levels. Burma made its first airport seizures of illicit drugs in 1999. While there were cases of drug interdiction and arrests of members of some cease-fire groups for drug trafficking, the GOB has been unwilling or unable to take on the most powerful groups directly. Cease-fire agreements with insurgent ethnic groups dependent on the drug trade implicitly tolerate continued involvement in drug trafficking for varying periods of time. The ethnic armies, such as the United Wa State Army and the Myanmar National Democratic Alliance Army, remain armed and heavily involved in the heroin trade.

The GOB expressed support for eradication efforts, crop substitution, and development assistance, but allocated few resources to such projects. GOB policy is to force the leaders in the ethnic areas to spend their own revenues, including from the drug trade, on social and physical infrastructure. The approach limits the GOB's ability to continue or expand its counter-drug efforts.

Burma's 1993 Narcotic Drugs and Psychotropic Substances Law conforms to the 1988 UN Drug Convention and contains useful legal tools for addressing money laundering, seizing drug-related assets, and prosecuting drug conspiracy cases. GOB officials, claiming they lack sufficient expertise, have been slow to implement the law, targeting few, if any, major traffickers and their drug-related assets. Money laundering in Burma and the return of drug profits laundered elsewhere are thought to be significant factors in the overall Burmese economy, although the extent of this problem is impossible to measure accurately. The cease-fire agreements condone money laundering, as the government encouraged these groups to invest in "legitimate" businesses as an alternative to trafficking, thus extending to them the opportunity to sanitize past illicit proceeds with investments in hotels and construction companies, for example.

The Burmese continued to refuse to render drug lord Chang Qifu on grounds that he had not violated his 1996 surrender agreement. The 1988 UN Drug convention obligates parties, including Burma, to prosecute such traffickers.

The GOB's counter-drug efforts in 1999 showed progress in a number of areas: methamphetamine and ephedrine seizures increased; crop eradication continued with modest expansion; anti-drug forces conducted more vigorous law-enforcement efforts; and members of some cease-fire groups were arrested for drug trafficking. Such efforts must be stepped up, however, if they are to have a significant impact on the overall trafficking problem.

On balance, the USG remains concerned that Burma's efforts are not commensurate with the extent of the drug problem within its borders. Large-scale poppy cultivation and opium production continue, decreasing in the last few years largely because of severe drought conditions rather than eradication programs. The GOB's effective toleration of money laundering, its unwillingness to implement its drug laws, and its failure to render notorious traffickers under indictment in the United States all continue to be serious concerns.

Cambodia

In view of Cambodia's geographic location and general state of lawlessness, it is likely that drugs transited Cambodia en route the West, including the United States. For that reason, Cambodia was designated a major drug transit country in 1999. Political turmoil in Cambodia has effectively precluded a fully credible anti-drug effort for the last two years. Although Cambodia has taken some positive steps to improve drug enforcement in 1999, these steps were insufficient to qualify for full certification.

Steps forward included increased emphasis on eradication of illicit marijuana plantations. Prime Minister Hun Sen and others have publicly threatened provincial governors with dismissal if they tolerate marijuana cultivation. At least one large (160 hectare, or about 400 acre) plantation was eradicated as the deadline for certification approached. There were also several first-time drug seizures at Phnom Penh's international airport. The President and the Chief Prosecutor of the Phnom Penh Municipal Court were removed for corruption; other judges are under investigation. A police commander, suspected of dealing in illicit drugs was removed, and Cambodia reorganized a supervisory coordinating agency called the National Drug Policy Board, replacing officials generally viewed as ineffective with more respected officials. High level government officials made statements emphasizing their opposition to synthetic drug production in Cambodia, and pressed efforts to confiscate unauthorized weapons, both positive steps in countering a drift towards lawlessness. Cooperation with the U.S. Drug Enforcement Administration (DEA) was excellent.

Corruption remains an endemic problem in Cambodia, however, and this problem adversely affects drug law enforcement. Poorly paid and ill-trained police and judicial officials have frequently looked the other way in drug and other criminal cases. Cambodia remains a refuge for criminal elements because enforcement is ineffective and corrupt officials can be paid to release those that may be apprehended. The combination of incompetence and venality, even at high levels in government and the police, pose an ongoing challenge to improved drug law enforcement. In short, there has been no fundamental institutional reform to meet the law enforcement challenge Cambodia faces from drug traffickers and other lawless elements. Thus, despite some improvements, Cambodia still failed to meet the legal standards for full certification.

A vital national interests certification is necessary this year in order to protect U.S. vital national interests in Cambodia, including promoting democracy in Cambodia and stability in the region. Democracy in Cambodia is not yet firmly established. The democratically-elected coalition government, which came to power in Cambodia last year continues to face enormous challenges on all fronts, including the formation of an international tribunal to try former leaders of the Khmer Rouge. Cambodia also remains vulnerable to drug trafficking and other crime upsurges. Should counter-drug sanctions be imposed, it would not be possible for the United States to provide strategically-placed assistance to respond to potential crises or to strengthen Cambodia's economic and institutional bases for a democratic system. On balance, the risks to U.S. interests in promoting democracy and stability in the region if counter-drug sanctions were imposed would outweigh the risks posed by Cambodia's failure to fully implement effective drug control.

Colombia

Colombia remains the world's largest cocaine producer: over three-quarters of the world's cocaine hydrochloride is processed in Colombia. Still, Colombia met the certification criteria in 1999 due to important strides made in combating illicit drugs and its full cooperation with USG counter-drug efforts. The Pastrana administration has demonstrated a clear commitment to combating the illegal drug industry in Colombia. That commitment led to a number of very concrete achievements in 1999.

In September, the Government of Colombia (GOC) unveiled its "Plan Colombia," a comprehensive strategy to address the many interrelated challenges facing the country. The USG supports the work of the GOC in formulating and beginning to implement this comprehensive strategy. Importantly, both "Plan Colombia" and the Pastrana administration's National Drug Control Strategy couple alternative development with aerial eradication of illicit crops.

Colombian authorities continued to cooperate with the USG on a variety of specific projects. In October, Operation Millennium, a coordinated operation among Colombian, Mexican and U.S. law enforcement agencies, resulted in the arrest of more than 30 suspects.

The Colombian National Police (CNP) continued its outstanding counter-drug tradition. The CNP received increased support from the Colombian armed services and is poised to begin joint operations in southern Colombia with the army's first special counter-drug battalion. Such joint operations are vital for the future of the program due to the threat to counter-drug operations from heavily armed traffickers and other illegal armed groups that are involved in many aspects of drug trafficking.

The GOC made particularly strong advances in combating maritime trafficking. A port security program is now operating in all of the nation's major ports, and in the past year resulted in the seizure of 16 metric tons of cocaine. In September, a standing interdiction operations plan was signed to augment an existing maritime agreement, leading to three U.S.-Colombian combined maritime interdiction patrols. Also in September, U.S. and Colombian authorities reached an accommodation concerning the volume of evidence required by Colombian prosecutors and other evidentiary concerns.

GOC efforts have also focused on drug trafficking by air. The percentage of successful Colombian Air Force (FAC) interdiction attempts has increased from 25 percent in 1997 to nearly 40 percent in 1999. At the same time, the number of suspicious aircraft which radar has detected flying to or from Colombia has fallen from 231 in 1997 to fewer than 100 in 1999. The CNP's civil aviation registration program inspected 343 aircraft in 1999, seizing 50 of these for violations.

The aerial eradication program succeeded in treating more than 50,000 hectares of illicit crops in 1999, although totals were less than last year's record level. The CNP also had a strong year in terms of seizures, totaling 30 metric tons of cocaine hydrochloride and base, 140 metric tons of coca leaf, and 644 kilos of heroin, morphine and opium.

The level of cooperation between the Colombian military and police continued to improve in 1999. Information sharing advanced to a higher level with the inclusion of both military and CNP personnel at the Joint Intelligence Center (JIC), while interdiction and eradication efforts both received a boost with the creation of the new counter-drug battalion. Created to work hand-in-glove with the CNP's anti-drug units, the battalion will provide the police with needed support as operations move into high-risk, coca-rich areas such as Putumayo Department.

In November, the GOC extradited alleged heroin trafficker Jaime Orlando Lara Nausa, the first Colombian citizen extradited to the United States in nine years. Behind the very public leadership of President Pastrana, Colombian officials proceeded despite drug traffickers' attempted legal roadblocks and bombings possibly linked to the extraditions. This commitment demonstrated the GOC's willingness to send drug traffickers to justice in the United States regardless of citizenship.

GOC officials also enacted important institutional changes in 1999. The National Judicial Police Council adopted a unified training curriculum and made it mandatory for all Colombian investigators after January 2000. For the first time, all Colombian law enforcement investigators will receive the same training.

Overall, Colombian counter-drug efforts continued to improve in 1999, demonstrating the true commitment of the Pastrana administration to cooperate fully with the United States in combating the illegal traffic in drugs.

Dominican Republic

The Dominican Republic is a significant transit country for South American drugs, mostly cocaine, moving to the United States. Drugs are transported

into the Dominican Republic by air, sea, and across the land border with Haiti. They are then moved onward by air and sea to Puerto Rico and mainland United States.

During 1999, the Government of the Dominican Republic (GODR) continued to cooperate fully with the USG on counter-drug goals and objectives.

The GODR extradited nine Dominicans to the United States in 1999, and kept several other fugitives in custody awaiting decisions on extradition requests. The National Drug Council (CND) drafted a National Drug Strategy. A group of private attorneys energetically promoted the passage of a newly drafted anti-money laundering bill modeled on current Organization of American States (OAS) standards. The GODR began the process of developing an anti-corruption bill. The draft strategy and both bills are scheduled for submission to congress in 2000.

A ministerial-level bilateral meeting with Haiti achieved historic border control accords, which were subsequently approved at the highest levels of the GODR. In 1999, the GODR activated a fourth border control unit, deployed its drug detection dog unit to the Haitian border, and took steps to double the size of the dog unit in 2000.

Dominican forces participated in combined operations under the bilateral Maritime Counter-drug Interdiction Agreement. The GODR extended for one-year temporary overflight authority for USG anti-drug aircraft and vessels. In cooperation with the U.S. military, the Dominican Navy and Army engaged in joint counter-drug exercises.

The National Drug Control Directorate (DNCD) worked closely with its counterpart, the DEA, on drug, fugitive, and special investigations, drug operations, and border interdiction during 1999. DNCD has begun to require its special unit personnel to take polygraphs, and has also initiated pre-employment and periodic random drug testing for its employees.

For the first time, the GODR authorized wiretaps for use in drug prosecutions. It also arrested and jailed on passport fraud charges the top money manager for the Coneo family, the dominant Colombian drug trafficking organization operating on Hispaniola.

We will continue to encourage the Dominican Republic to regularize its extradition process. GODR should also: act on a pending amendment to enhance the bilateral maritime agreement; increase cocaine seizures, which amounted to less than half the amount seized in 1998; and strengthen its weak judicial system, which continues to hamper law enforcement efforts.

Ecuador

Ecuador continues to serve as a major transit route for cocaine destined for the United States, and for precursor chemicals destined for drug processing labs in Colombia and Peru. Despite suffering under the effects of the country's worst economic crisis in seventy years, the Government of Ecuador (GOE) pursued an active counter-drug agenda in 1999 to considerable effect, and cooperation between the GOE and the USG was excellent.

The Ecuadorian National Police (ENP) seized a record 10 metric tons of cocaine and coca base in 1999, more than doubling 1998's total of 3.9 metric tons. Heroin seizures also increased significantly, from 58 kilograms in 1998 to 81 kilograms in 1999. The ENP also seized a record amount of methyl ethyl ketone (MEK) and other precursor chemicals.

Along with these tactical successes, the GOE implemented structural reforms to their judicial system and law enforcement agencies that have the potential to enhance the country's law enforcement infrastructure. A unified anti-drug division was established within the ENP, consolidating various specialized interdiction units into a coherent organization for the first time. The customs service was privatized to maximize efficiency and bolster interdiction efforts. In November 1999, the Ecuadorian Congress passed a new criminal procedural code, intended to alter the country's criminal justice system from a secretive, inquisitorial to an open, accusatorial system similar to the U.S. model. In addition, the GOE published a five-year counter-drug strategy which clearly identifies the roles and responsibilities of relevant GOE agencies in the fight against international drug trafficking.

The GOE also increased its commitment to regional interdiction efforts, most visibly in November 1999 when the GOE and the USG completed a 10-year agreement permitting U.S. regional counter-drug detection and monitoring missions to operate from an Ecuadorian air force base in Manta. The GOE also completed a Joint Information Coordination Center (JICC) in Guayaquil, and plans to integrate this center with the national anti-drug division headquarters.

Guatemala

In 1999, President Arzu continued to implement the peace accords that ended 36 years of internal conflict. Government of Guatemala (GOG) efforts are now focused on combating violent crime, organized crime and other domestic problems. The GOG fully cooperated with the United States in combating counter-drug trafficking in Guatemala and elsewhere in the region. Guatemala has taken steps to implement, at the operational level, the provisions of the 1988 UN Drug convention. However, legislative support for ratification of a full maritime counter-drug agreement and adoption of money laundering legislation has not yet been obtained.

Guatemala's location, scarce law enforcement resources, and a weak judiciary and penal system permitted its continued use by traffickers as a transshipment and storage point for cocaine destined for the United States via Mexico. Along with increased use of motor vehicle and container shipments, there has been an increase in airdrops of illicit drugs over Guatemalan territory for consolidation and transshipment. With USG assistance, the Department of Anti-Narcotics Police (DOAN) has stepped up training to develop air interdiction and related capabilities. The expanding self-funded port security program and the trained DOAN agents have made impressive seizures in the past year.

The consolidation of the National Civilian Police (PNC) continues on track with full integration of the DOAN. The USG-trained DOAN seized over 10 metric tons of cocaine in 1999. This year the drug prosecutor assistance program maintained its 90 percent conviction rate, with some traffickers receiving sentences of up to 20 years. Somewhat disturbing, however, were several cases in which judges released suspected drug traffickers on questionable grounds. The new drug prosecutor's field office opened this year in Quetzaltenango accounted for 110 successful prosecutions in 1999.

Guatemala is a party to the 1988 UN Drug Convention, and most GOG law enforcement activities are fully consistent with its goals and objectives. However, some of the convention's provisions have not been codified into law and regulations, including provisions on extradition and money laundering. The GOG does not encourage or facilitate illicit production or distribution of illicit drugs or controlled substances.

In 1999 the GOG began implementation of its national drug policy, the anti-drug master plan and national strategy which incorporates both demand and supply reduction objectives to be accomplished by specified ministries. The GOG provided additional funding to the plan's implementers to attack the alarming increase in drug abuse documented last year. The GOG also took major steps in implementing assets seizure and precursor chemicals regulations.

Haiti

Haiti is a significant transshipment point for drugs, primarily cocaine, moving through the Caribbean from South America to the United States. The USG cannot certify Haiti as having fully cooperated with the United States on drug control, or as having taken adequate steps on its own, to

meet the goals and objectives of the 1988 UN Drug Convention, to which Haiti is a party. However, U.S. vital national interests require that foreign assistance continue to be provided to Haiti.

The USG recognizes that because Haiti had no Parliament during 1999, no legislation could be enacted or international agreements ratified. However, Haiti failed to make sufficient progress on many anti-drug objectives that did not require parliamentary action, but only implementation by the Government of Haiti (GOH). The GOH failed to: draft or update any pending anti-money laundering or anti-corruption legislation; revise and implement the draft national drug control strategy; create mechanisms to enforce standards of conduct and liabilities for GOH officials in accordance with the Declaration of Principles signed by Haiti at the 1997 Bridgetown Summit; vigorously investigate and prosecute drug-related corruption involving GOH officials; resolve and report on the "450 kilo affair" in which policemen were allegedly involved in the 1998 theft of a large cocaine shipment; set up a special financial analysis unit to combat money laundering; and join the Caribbean Financial Action Task Force (CFATF).

Haiti also failed to make sufficient progress in the area of law enforcement. Part of its overall lack of success in this area is due to Haiti's inadequate judicial system; the still limited capabilities of the five-year-old Haitian National Police (HNP); and the inexperience of the three-year-old police anti-drug unit (BLTS). In addition, the HNP currently does not have the ability to intercept drug airdrops. The GOH failed to increase its drug seizure rate over 1998's performance; the amount of cocaine seized in 1999 was one-third that of 1998, although the estimated flow of cocaine increased by nearly one-quarter. The GOH also failed to double the size of the BLTS as planned, or to enforce interagency cooperation between the HNP and the customs and immigration services. This lack of cooperation continues to impede counter-drug efforts inside the customs control areas at the airport and other ports of entry in Haiti.

GOH's international cooperation in 1999 was significant, including ongoing implementation of the 1997 U.S.-Haiti maritime counter-drug interdiction agreement even though parliamentary action to bring the agreement into force has not yet been accomplished. GOH cooperated with several international counter-drug operations, one of which resulted in the arrest and expulsion from Haiti of two key members of a major international drug operation. Haitian authorities also continued to work with their counter-drug counterparts in the Dominican Republic to stem the flow of illicit drugs over the land border.

U.S. vital national interests require that Haiti be certified. A cutoff of bilateral assistance mandated by denial of certification would threaten security and democratic stability in Haiti, both of which bear immediately and directly on U.S. ability to disrupt the flow of both illicit drugs and undocumented Haitian migrants into the United States. A cutoff would require termination of important USG initiatives, including programs targeting electoral support, police development, economic growth, education, social stability, hunger and environmental degradation. These programs attack the roots of Haitian poverty and hopelessness, chief catalysts for Haitian involvement in the drug trade and illegal immigration into the United States. The programs also address the underlying problems in the Haitian law enforcement and judicial system, especially endemic corruption and the lack of a strong professional tradition, both of which contribute to weak counter-drug performance. If critical U.S. aid is withdrawn, and U.S. support for the electoral process and public security is curtailed, assistance to illicit traffickers of drugs and migrants will be an unintended consequence.

The risks posed to U.S. vital national interests by a cutoff of bilateral assistance outweigh the risks posed by Haiti's failure to cooperate fully with the USG, or to take adequate steps on its own, to combat the illicit drugs. Accordingly, Haiti is granted a vital national interests certification.

Hong Kong

Although the USG continued to view Hong Kong as a major drug transit center in 1999 because of its location and developed infrastructure, Hong Kong's role as a major transit/staging area for the shipment of heroin and methamphetamine to the United States appears to have diminished over the last three years.

In 1999 Hong Kong continued its exemplary efforts to stop illicit drugs from being trafficked across its border with China and through its port. Through October 1999, Hong Kong officials seized 205 kilograms of heroin (nearly the amount seized in all of 1998), 35.8 kilograms of cannabis, 16.7 kilograms of cocaine, and 9,811 kilograms of methamphetamine. In the same period, 7,620 individuals were arrested for drug-related offenses. Drug-detection capabilities were enhanced in several important areas: the number of drug-sniffing dogs at the border and airport increased from 124 to 133; and high-tech equipment was procured to detect illicit drugs in packages, facilitate the inspection of baggage and cargo, and use in clearing air and sea cargo.

With respect to precursor chemicals, Hong Kong amended legislation to tighten control of the transshipment, removal, and storage of potassium permanganate and to require a license from the Commissioner of Customs and Excise before potassium permanganate can be imported, exported, or manufactured. Control of several additional chemicals was also tightened in 1999 in response to resolutions passed by the UN Commission on Narcotic Drugs. The legislature also began working to amend legislation to enhance control of norephedrine.

Hong Kong also introduced new legislation to strengthen the anti-money-laundering regime and laws affecting drug profits and organized crime. New reporting requirements for financial transactions went into effect, and sentences for money laundering have been lengthened.

Hong Kong and U.S. law enforcement agencies continued to cooperate effectively on investigations into the movement of illegal drugs and on money-laundering cases. The Mutual Legal Assistance Agreement received legislative approval in Hong Kong and will enter into force in early 2000. The Transfer of Sentenced Persons Agreement with the United States and with Sri Lanka came into force. Hong Kong also concluded similar agreements with other countries and the European Union.

In 1999 Hong Kong continued to implement new initiatives to strengthen its already outstanding counter-drug efforts, and Hong Kong authorities at all levels continued their close cooperation with the United States and other countries to defeat drug trafficking.

India

India is the world's largest producer of licit opium. Located between Afghanistan and Burma, the two primary world sources of illicitly grown opium, India also is a transit point for heroin, generally destined for Europe. Heroin is produced in and trafficked through India, but evidence to indicate that significant quantities of heroin from India reach the United States is scant. The Government of India (GOI) has a cooperative working relationship with DEA, and India is a party to the 1988 UN Drug Convention.

The GOI uncovered a trafficking network operating in several Indian cities to ship locally-produced heroin to Sri Lanka, and seized a related heroin lab and over 100 kg of heroin. The GOI also broke up and arrested an international trafficking operation routing Afghan heroin to North America and seized 77 kilograms of heroin. Overall, heroin seizures rose 7 percent. More importantly, two well-organized trafficking operations were disrupted.

The GOI tightened controls on the precursor ephedrine hydrochloride by listing it as a controlled substance under its Narcotic Drugs and Psychotropic Substance Act. The GOI traced 9 tons of acetic anhydride intended

for Afghanistan and had it seized in Dubai. The GOI enacted money-laundering legislation at the end of 1999.

The GOI annually takes forceful steps to prevent illicit cultivation and production. The GOI appears to have had genuine success in reducing illicit poppy cultivation, which in 1999 was just a fraction of what it was five years ago. India met formally with Pakistan in 1999 to discuss drug matters and is committed to continuing the process and to developing practical results, which have been limited to date. In 1999 India also met with Burmese officials to discuss cross-border counter-drug issues.

Production and stockpile of licit opium in India has clearly not exceeded licit demand. On the contrary, India's stockpile has been barely adequate for some time. The GOI did not make as much progress as hoped for this year in rebuilding its depleted buffer stock of licit opium. With excellent weather, the harvest should have been 1300 metric tons, but at least in part due to some diversion from licit production, the harvest was only 971 tons, too small to rebuild stocks to levels recommended by the International Narcotics Control Board (INCB). The GOI did boost opium production from 260 to 971 metric tons, sufficient to satisfy international demand for licit opium, even if carry-over stocks remain inadequate.

India is the only licit opium producing country with a notable diversion problem. However, the exact extent of this diversion is unclear. India has had an elaborate and expensive-to-maintain system in place to counter this threat of diversion for years, and India took important additional steps to avert diversion this year. For example, to discourage diversion of licit opium, the GOI raised prices paid to farmers, and added other incentives for higher yields. The GOI also threatened stiff penalties for those convicted of diversion. Licit opium diversion controls expanded in 1998–1999 and have been continued in 1999–2000. Still, credible reports suggest that diversion may have increased during the 1998–1999 growing season despite GOI actions. Although India is taking adequate steps to prevent significant diversion, there are additional measures India could take to improve its control regime. The GOI has not yet agreed to USG suggestions to undertake a comprehensive joint licit opium yield survey, which would provide a firmer scientific basis for the GOI to set Minimum Qualifying Yields (MQY) for farmers. Setting these yields correctly, by region, helps limit diversion.

Jamaica

Jamaica is a major transit point for South American cocaine en route to the United States as well as the largest Caribbean producer and exporter of marijuana. During 1999, the Government of Jamaica (GOJ) made progress towards meeting the goals and objectives of the 1988 UN Drug Convention. At regional meetings, GOJ officials actively supported counter-drug initiatives. Bilateral counter-drug cooperation is good and improving. In the area of maritime law enforcement, Jamaican forces continued to participate in combined operations under the U.S.-Jamaica bilateral maritime agreement.

In March 1999, Jamaica took an important step in its effort to create an anti-money laundering regime which meets international standards by amending the 1996 Money Laundering Act to require the reporting of suspicious transactions. However, further amendment to the law is required to address the critical issue of money laundering in relation to the proceeds of other serious crime. The GOJ has stated that, as a first step, it has drafted amendments to the money-laundering act that will add fraud and firearms offenses as predicate offenses. The GOJ is in the process of establishing a financial analysis unit to identify money-laundering activities, but has not yet provided staff for the unit. Jamaica's current asset forfeiture regime does not permit the GOJ to take full advantage of the forfeiture mechanism to augment the resources of its anti-drug agencies and deprive criminals of the proceeds of their crime. Current law requires the conviction of a criminal drug defendant prior to commencing a forfeiture action. In

1999, Parliament passed legislation permitting the GOJ to enter into agreements with other governments to share assets confiscated from drug traffickers and other criminals. The GOJ enacted a Precursor Chemicals Act and has budgeted for implementation of chemical controls. In late 1999, the GOJ introduced a bill in Parliament establishing drug courts; the bill passed both houses and now awaits the Governor General's signature.

Transparency International and other organizations have reported that corruption is viewed as a grave problem in Jamaica—drug trafficking adds to the problem. The GOJ's anti-corruption legislation, introduced in Parliament in 1998, passed the House and Senate in different versions; a compromise bill is currently being crafted by a joint select committee of Parliament. The GOJ's position is that passage of the Anti-Corruption Act must occur before it can ratify the Inter-American Convention Against Corruption, which Jamaica signed in March 1996. The GOJ has a policy of investigating credible reports of police corruption, including those related to drugs, but more needs to be done to root out corruption in the public sector.

The GOJ extradited four people to the United States in 1999; there are sixteen active pending extradition requests. In 1999, the GOJ developed, with USG assistance, a special fugitive apprehension team to target and apprehend fugitives from justice. The team has thus far located three fugitives and provided information for several U.S.-based investigations. The GOJ arrested 6,718 drug offenders in 1999. Nevertheless, no major drug traffickers were arrested or convicted during 1999, and they continue to operate with apparent impunity. The GOJ agreed in 1998 to develop a vetted special investigative unit to target drug kingpins, but the unit is not yet in existence. While the GOJ has stated its intention to enact wiretap legislation, the proposal for such legislation is still under discussion in the Cabinet.

The GOJ exceeded the marijuana eradication goal of 800 hectares set out in the Fiscal Year 1998 Letter of Agreement (LOA) with the USG. In addition, the GOJ agreed in the LOA to pay a share of the marijuana eradication teams' salaries, currently funded by the USG, beginning in June 2000. While the GOJ made some progress in implementing the recommendations contained in a 1997 assessment, security at Jamaica's ports remains a concern. The GOJ needs to take steps to improve security at its ports, including implementation of the remaining recommendations from the 1997 assessment. Additionally, the GOJ should consider providing the means to admit evidence obtained by ion scan technology in Jamaican courts. The GOJ has in place a national drug control strategy that covers both supply and demand reduction; the GOJ should add to its strategy specific goals and objectives and measures of effectiveness. Jamaica is a party to the 1988 UN Drug Convention.

Laos

Laos is a major drug-producing country; it remains the world's third largest producer of illicit opium, behind Afghanistan and Burma. Although opium cultivation fell 16 percent in 1999, the USG estimates Laos' opium production for that year at 140 metric tons, identical to the 1998 estimate. Somewhat improved weather conditions increased estimated average yields, allowing total production to remain unchanged. Crop substitution project areas funded by the USG continued to show no commercial opium cultivation, only low level production sufficient for some local addict consumption.

Laos cooperates with the USG and the UNDCP on crop control/substitution projects designed to eliminate opium cultivation. The administration of Phongsali Province is providing enthusiastic support for the new USG-funded project there. The province administration assigned support personnel, held a meeting of district directors from throughout the province, and is expressing full support for the project to village headmen. In May 1999, the Government of Laos (GOL) agreed to a joint goal with the UNDCP to eliminate opium cultivation in Laos within six years; efforts to raise the estimated $80 million needed to reach this goal are underway. The highland farmers who grow opium now have no other viable option. Even if the farmers understood

how to grow other crops and had the wherewithal to do so (neither of which is the case) they would lack accessible markets for their products. An ambitious project, requiring years of careful planning and implementation, is essential to create an alternative to opium. Such a plan would need alternative development, law enforcement, and demand reduction elements. Once developed, the plan would replace the previous GOL counter-drug master plan, which dates from 1993 and was also developed with UNDCP assistance.

Law enforcement efforts continue. USG-funded counter-drug offices law enforcement offices were opened in two more provinces. These offices, now in six provinces, along with other provincial police offices, reported 143 drug-related criminal cases in 1999, resulting in the arrests of 348 suspects (including 10 foreign nationals). Most arrests were of small-scale traffickers. These cases involved the seizure of 14.7 kilograms of heroin, 225.8 kilograms of opium, 806,700 methamphetamine tablets, and 2.2 metric tons of marijuana. Opium and heroin seizures fell significantly from record 1998 levels, as there was no case to match the 1998 destruction of a heroin laboratory. The number of arrests and quantity of opium seized are roughly equal to last year's totals, but the quantity of heroin seized has fallen significantly from the past two years. Methamphetamine seizures rose slightly. The quantity of heroin has dropped, in part, because none of the seizures was a very large shipment. Furthermore, it is believed traffickers have changed their routes and methods. For example, seizures in the United States of opium-filled parcels from Laos have jumped.

The GOL works very closely with its foreign assistance partners to combat drug trafficking and has registered steady progress this past year. The GOL also continues its important efforts to address the socio-economic problems underlying poppy cultivation. Corruption and inefficiency remain significant challenges to Lao counter-drug efforts. The GOL should continue to work with its foreign assistance partners to improve the administration of justice and to find alternatives to growing poppy.

Mexico

In 1999, the Government of Mexico (GOM) made substantial efforts to confront the major threats to public health and democratic institutions posed by transnational drug-trafficking organizations. Agreement on unprecedented, bilaterally negotiated Performance Measures of Effectiveness (PMEs) enhanced maritime cooperation, and performance improvements in the interdiction/eradication realm were encouraging. Corruption and judicial obstacles to the swift extradition of fugitives, however, remained impediments to a more productive counter-drug relationship.

A new $500 million public security plan, including establishment of the new Federal Preventative Police, complemented close bilateral counter-drug cooperation in 1999. That undertaking, which will take several years to implement fully, restructures several existing law enforcement agencies, and has already begun to improve police coverage and crime investigation. Steps are underway to acquire new technology, such as aerial radar platforms and upgraded telecommunications, and redistribute land, air, and maritime assets to improve coverage of priority areas. An interagency interdiction operation disrupted a major cartel's operations on the Yucatan Peninsula as part of a broad-based effort to reduce the flow of drugs into Mexico from Central and South America.

Marijuana eradication was up 39 percent over 1998 and net production down 19 percent for the year. Eradication of opium poppy, while down 10 percent from 1998, combined with reduced cultivation to yield a more than 25 percent drop in net opium gum production. The GOM made over 8,000 drug-related arrests, including: major cartel co-founder Juan Quintero Payan and key associates Oscar Benjamin Garcia Davila and Jaime Aguilar Gastelum. The Mexican Congress passed a new law codifying the use of seized/forfeited assets and creating a new office in the treasury ministry to manage these assets.

Mexico's achievements continued to be undermined by chronic institutional weaknesses, particularly drug-related corruption. The GOM has taken steps to strengthen internal controls, including expanding the mandate of the Attorney General's Office's (PGR) confidence control center and investigating numerous individual cases of suspected corruption. One such investigation implicated former Quintana Roo Governor Mario Villanueva, currently a fugitive from justice. President Zedillo has made combating corruption a national priority, but he acknowledged success will take time.

The USG and GOM cooperated closely on a wide range of law enforcement and drug abuse prevention efforts in 1999, guided by a National Drug Strategy agreed to in 1998 and accompanying PMEs. The first formal evaluation of the PMEs was completed in December 1999. Significant maritime seizures in the final seven months of year demonstrated enhanced U.S.-Mexican cooperation, as did agreement by the two countries in November to establish a new interdiction working group under the binational High-Level Contact Group on Drug Control (HLCG). The USG provided technical and material support and training to Mexican agencies in furtherance of the GOM's justice sector modernization initiative, demand reduction programs and other efforts.

In 1999, the USG and GOM continued to work closely on fugitive issues. The GOM extradited 14 fugitives to the United States, including two Mexican national drug traffickers, one of whom was also sought for the murder of a U.S. Border Patrol agent. In keeping with its historic 1996 decision to begin approving Mexican nationals for extradition in appropriate cases, the GOM appealed, with mixed results, several Mexican appellate court decisions barring extradition. The GOM has appealed to the Mexican Supreme Court a case which could resolve conflicting decisions by lower appellate courts and, thus, expedite delivery of fugitives in the future. Regrettably, Mexico has yet to extradite a major Mexican national drug trafficker.

The USG and GOM are committed at the highest levels to continued cooperation in efforts to defeat and dismantle heavily armed and well-financed trans-border drug trafficking organizations. In recent years, the two governments have constructed an unprecedented framework for coordination, a mechanism for evaluation, and fora for regular consultation on counter-drug issues. Through daily working-level interaction between counterpart agencies, policy-level discussions in the HLCG and other bilateral entities, and collaboration in multilateral groups, the two governments are finding increasingly productive ways to work together against the formidable threat drug trafficking poses to both nations.

Nigeria

Nigeria has failed to fully meet the criteria for cooperation with the United States on counter-drug matters and has not taken adequate steps on its own to meet the goals of the 1988 UN Drug Convention. U.S. vital national interests, however, require that Nigeria be certified so that the assistance that would otherwise be withheld remains available to support the continuing transition to democratic civilian rule and the increased efforts to improve cooperation on drug and other crime issues evident under the democratic government.

Nigeria remains the hub of African drug trafficking. Nigerian poly-crime organizations operate extensive global trafficking networks, dominate the Sub-Saharan drug markets, and account for a large part of the heroin imported into the United States. They also transport South American cocaine to Europe, Asia and elsewhere in Africa, especially South Africa, and export marijuana to Europe and West Africa.

The counter-drug efforts of the Government of Nigeria (GON) remain unfocused and lacking in material support. The new democratic government of President Obasanjo's strong public denunciation of drug trafficking and financial crimes is a welcome change from the high-level indifference that characterized most of Nigerian military rule. However, there have been no new actions or policies to bring about change.

The year 1999 saw the continuation of efforts limited largely to interdiction of low-level couriers and destruction of cannabis crops. Although the new government signaled its willingness to work with the USG on extradition issues, Nigeria did not extradite anyone in response to outstanding U.S. extradition requests. Well-drafted counter-drug legislation is already on the books, but remains largely un-enforced.

Nigerian law enforcement agencies did not significantly improve their counter-drug performance in 1999. There were no major trafficker prosecutions or arrests by the National Drug Law Enforcement Agency (NDLEA) in 1999. Total heroin seizures increased, due primarily to a large seizure at Kano Airport. The NDLEA has signaled a willingness to increase its professional expertise, but institutional limitations make it difficult for Nigerian law enforcement officials to make progress against increasingly sophisticated criminals. Asset seizures did not become a useful counter-drug tool. Awareness of the local drug abuse problem is growing, but demand reduction efforts have been limited in scope and success.

Nigerian money launderers operate sophisticated global networks to repatriate illicit proceeds from drug trafficking, financial fraud, and other crimes. In 1995, the GON enacted a decree to combat illicit drug-derived money laundering, but enforcement has been uneven, yielding few seizures and no convictions. Nigeria is a party to the 1988 UN Drug Convention.

Newly-elected President Obasanjo retired 143 military officers tainted by positions they held during the military government. Anti-corruption legislation has been proposed, but is stalled in the senate. Sporadic progress against corruption within the NDLEA contributed to its reputation as Nigeria's most professional law enforcement body. The NDLEA made regular arrests of individual drug couriers in 1999, but did not arrest or prosecute any major traffickers. Assets have been seized, but no forfeitures, which require convictions, have been made. The NDLEA chairman was briefly held in contempt for refusing to release several hundred thousand dollars worth of vehicles while their owner's case proceeds slowly through the legal system. The DEA received good cooperation from the NDLEA, but rampant corruption prevents sharing of sensitive information. NDLEA actions at airports, including breaking up a ring that involved airline and government employees, have made trafficking through airports more risky. There is an active cannabis eradication program, but figures are not available and supply easily meets demand. NDLEA has opened well-publicized anti-drug clubs at the universities, supplying them with anti-drug literature and videos.

Nigeria is one of the most important countries in Africa. What happens in Nigeria politically and economically will, to a large degree, determine whether there is stability and progress toward democracy and economic reform in West Africa. If Nigeria's ongoing transition fails, the result might easily be an implosion of government and the collapse of the economy, triggering a humanitarian disaster in Africa's most populous country (over 100 million people) and a destabilizing exodus of Nigerians to neighboring states. Such an upheaval could also disrupt the movement of high-quality Nigerian oil, which accounts for more than seven percent of total U.S. petroleum imports.

If, on the other hand, Nigeria's transition succeeds, it will be an example to all of Africa, and that success has the potential to promote economic growth and greater transparency in government. Nigeria could become an engine for growth in West Africa. A stable and democratic Nigeria will permit greater cooperation between law enforcement agencies, and the opportunity to reduce the impact of the Nigerian criminals who prey on the American people.

The military's acceptance of its appropriate role in a functioning democracy, and the new civilian government's ability to govern, will be critically impaired if Nigeria is deprived of the full range of USG support. Building a political consensus and meeting the challenges of a collapsing economy will also depend in no small part on outside assistance and expertise.

Denial of certification would block assistance the new democratically-elected government needs to meet these challenges, seriously damaging the prospects for success of stable, transparent democracy in Nigeria. U.S. vital national interests require providing humanitarian, economic and security assistance to Nigeria as well as counter-drug assistance from all sources. The risk of not doing so now would jeopardize not only Nigeria's fledgling democracy, but also Nigeria's attempts to reinvigorate its failing economy and support for democracy and peacekeeping throughout the region. Further, any new civilian government's ability to work with the USG on all issues, including counter-drug and other law enforcement, will depend on its access to multilateral lending and U.S. technical and economic assistance. The risks posed by the cutoff of assistance clearly outweigh the risks associated with GON's inadequate counter-drug performance over the past year.

Pakistan

In 1999, Pakistan made progress towards eliminating opium production by the year 2000 by reducing poppy cultivation by 48 percent. The poppy crop fell to a record-low of 1570 hectares. Cooperation on drug control with the USG has been excellent and the formation with DEA assistance of a Special Investigative Cell (SIC) within the Anti-Narcotics Force (ANF) was a major achievement. The overall record on drug interdiction was encouraging, with heroin seizures up 57 percent and several arrests of high-profile traffickers. The resolve of the Government of Pakistan (GOP) to prevent the reemergence of heroin/morphine laboratories remained firm. Pakistan extradited four drug fugitives to the United States and arrested six others, a significant improvement on previous years. Efforts to extend application of the Control of Narcotic Substances Act (CNSA) and the Anti-Narcotics Force Act (ANFA) to tribal areas in North West Frontier Province (NWFP) are continuing.

Pakistan's cabinet approved the drug control master plan in early 1999, but implementation has been slowed by a lack of funds. The GOP's counter-drug policies and cooperation with the USG were unaffected by the October 1999 coup. Pakistan is a party to the 1988 UN Drug Convention.

Pakistani law enforcement tripled opium seizures from 3.65 to 11.50 metric tons, and increased heroin seizures by 57 percent, from 2.36 to 3.90 metric tons. Pakistan's illicit drug seizures were up significantly compared to the same period in 1998. The ANF is Pakistan's principal drug law enforcement agency. In 1999 the GOP began to examine ways to strengthen the institutional capacity and performance of the ANF. With DEA assistance, the ANF formed a vetted unit, or Special Investigative Cell, thereby improving intelligence collection and investigative capacity, and took steps toward recruiting new personnel. The ANF also arrested two politically powerful traffickers, one a prominent journalist and influential politician, the other a member of the then-ruling party, leading to the break-up of a gang of corrupt officials posted at Islamabad airport. All are awaiting trial.

1999 was a record setting year for ANF seizures of heroin and opium recovered in individual raids (a 213 percent increase in heroin seizures), with ANF Baluchistan making major contributions. Particularly noteworthy were a 760 kilogram heroin seizure in Kharan District of Baluchistan and a seizure in Turbat District of Baluchistan of 2951 kilograms of opium, 2580 kilograms of hashish and 111 kilograms of heroin. Apart from the ANF, the law enforcement agencies most actively engaged in drug seizures include the police, customs and the Frontier Corps.

In a major improvement over previous years, in 1999 the GOP arrested six drug fugitives and extradited four defendants to the United States. There are 15 pending extradition requests. In Baluchistan the ANF and Frontier Corps detected and challenged a number of Afghan convoys, resulting in firefights and seizures of 5.8 metric tons of opium, 1.1 tons of heroin, and seven vehicles. The killing of three traffickers and serious wounding of one ANF soldier may reflect the increased challenges posed by well-armed traffickers.

There were no convictions of major drug traffickers in 1999. Prosecution continued to drag out in the courts. However, the GOP has funded the establishment of five special drug courts to process drug cases more efficiently. Chemical controls are adequate, but there is still diversion of acetic anhydride from licit imports. Pakistan is not a major money laundering country, but, given the level of drug trafficking, smuggling, and official corruption, money laundering almost certainly occurs, mostly by means of unofficial, traditional money transfer facilities, known as "hawala."

The USG believes that Pakistan made an excellent contribution to international drug control efforts. We will support GOP efforts to target major heroin trafficking organizations and increase seizures of large shipments of opiates and precursor chemicals.

Panama

The Government of Panama (GOP) continues to demonstrate its willingness to combat transnational drug trafficking. The GOP seized significant amounts of illicit drugs in 1999, despite apparent changes in trafficking routes. The new Mireya Moscoso administration has demonstrated its commitment to combat drug trafficking, money laundering, and other transnational crimes. Immediately after taking office, the new administration set up an anti-corruption unit in the Ministry of Economy and Finance. Panama's law enforcement agencies continue to maintain excellent relations with their U.S. counterparts.

Panama is a major transshipment point for illicit drugs smuggled from Colombia. Cocaine is stockpiled in Panama prior to being repackaged for passage to the United States and Europe. Panama's location, largely unpatrolled coastlines, advanced infrastructure, underdeveloped judicial system, and well-developed financial services sector make it a crossroads for transnational crime, such as drug trafficking, money laundering, illicit arms sales and alien smuggling. According to USG statistics, GOP agencies seized 2,576 kilograms of cocaine, 1,558 kilograms of marijuana, 46 kilograms of heroin, and 600 liters of acetic anhydride; they also made 131 arrests for international drug-related offenses in 1999.

The GOP continued to implement its own national counter-drug plan, the "National Drug Strategy 1996–2001." Panama also made significant progress in implementing its comprehensive chemical control program.

The highest U.S. priorities in the coming year will be signing a full six-part bilateral counter-drug maritime agreement, expanding anti-money laundering legislation, increasing efforts to control the Black Market Peso Exchange, and improving prosecutions of money launderers and drug traffickers. Other U.S. priorities in Panama include: supporting the GOP's efforts to build a highly-professional, interagency, counter-drug task force; developing the capabilities to control sea lanes, rivers, island and coastal regions, and the Canal area; and limiting cross-border criminal influence. With the seriousness and commitment of the new Moscoso administration, the USG is hopeful that there will be measurable progress in these areas in 2000.

Paraguay

Paraguay is a major drug-transit country for significant amounts of largely Bolivian cocaine and is also a major money-laundering center in Latin America (although it remains unclear what portion of money laundering can be attributed to drug trafficking).

USG experts estimate that between 15 and 30 metric tons of cocaine may transit Paraguay annually en route to Argentina, Brazil, the United States and Europe. Of this estimated amount, only 95 kilos of cocaine were seized in 1999; moreover, only 211 arrests of low-level marijuana and cocaine traffickers were effected, mostly prior to April 1999. Paraguay is a source country for high-quality marijuana. Although none of it enters the United States, the Government of Paraguay (GOP) seized record amounts of marijuana and eradicated 900 of the estimated 2,500 hectares of marijuana fields.

In July 1999, a new penal code was enacted that criminalizes conspiracy. This will allow the prosecution of those who benefit from criminal activity, but who are not the material perpetrators of the crime. However, extensive training of prosecutors and judges will be required before this new law can be fully implemented. One major Brazilian trafficker, arrested in 1997, was extradited to Brazil. The legislature approved the bilateral extradition treaty signed in 1998.

However, the GOP failed to accomplish the majority of counter-drug goals for 1999 in a manner sufficient for full certification. Since 1995, legislation has been pending to provide police and prosecutors with modern legal tools, such as use of informants, controlled deliveries, and undercover investigations. The Gonzalez Macchi administration submitted another draft of the legislation to the Paraguayan Congress, but it is the third administration to do so without the legislation being passed. The GOP did not investigate, arrest or prosecute any major drug traffickers, nor did it take sufficient measures to prevent or punish public corruption in general, or specifically with respect to drug trafficking. The GOP did not implement the 1996 money laundering law by arresting or prosecuting violators. Furthermore, the GOP did not provide operational funding or adequate resources for the anti-money laundering secretariat, SEPRELAD, to enable it to function as an independent organization (although in December 1999 a budget was approved for 2000). The GOP also failed to show progress toward development of an effective anti-drug and organized crime investigative and operational capability for the border regions.

Denial of certification would, however, cut off civilian and military assistance programs designed to strengthen Paraguay's democratic institutions and promote modern civil-military relations. Strengthening democracy in Paraguay is a U.S. vital national interest, and failure in this effort would affect negatively all other U.S. interests, including cooperation with respect to illicit drugs, terrorism, intellectual-property piracy, and environmental preservation. The events of 1999—which included defiance by then-President Cubas of the Supreme Court, the assassination of Vice President Argaña, the killing of student demonstrators, the impeachment and resignation of Cubas, drought, rural unrest, and the reported presence of fugitive former general and coup plotter Lino Oviedo—demonstrate the many challenges facing Paraguayan democracy. They also contributed to the GOP's unsatisfactory counter-drug performance. Denial of certification would undermine the U.S. ability to strengthen Paraguay's democratic institutions and would put at risk all other U.S. vital national interests.

The risks posed to the totality of U.S. interests (e.g., promotion of democracy and transnational crime cooperation) by a cutoff of bilateral assistance outweigh at this point the risks posed by the GOP's failure to cooperate fully with the USG, or to take fully adequate steps on its own, to achieve the goals and objectives of the 1988 UN Drug Convention.

In 2000, the GOP needs to translate its oft-stated political will into concrete action against major drug traffickers, money laundering, and official corruption.

People's Republic of China

The People's Republic of China (PRC) continued to take strong, effective steps to combat the use and trafficking of illicit drugs in 1999. Although preliminary figures indicate that seizures of heroin declined significantly from 1998's record level (possibly because of a decline in production in Burma), China's heroin seizures still accounted for the great majority of heroin seized in all of Asia. Seizures of methamphetamine and other amphetamine-type stimulants soared, while those of precursor chemicals and opium remained at previous years' levels. China cooperated with the United States and other countries in providing pre-export notification of dual-use precursor chemicals. Government officials estimate that more than ten percent of China's 1.3 billion citizens viewed a nationwide anti-drug exhibition. DEA

opened an office in Beijing. China continues to cooperate actively on operational issues with U.S. drug-enforcement officials. Domestically, China began a "Drug Free Communities" program to eliminate drug trafficking and abuse as well as drug-related crime.

During 1999, China cooperated with the UNDCP and regional states on a number of projects to reduce demand for illicit drugs. China also supported effective crop-substitution programs in Burma and Laos.

The United States and the PRC signed a Customs Mutual Assistance Agreement that will enhance communications and accelerate the flow of counter-drug-related intelligence. China is a party to the 1988 UN Drug Convention as well as to the 1961 UN Single Convention and its 1972 Protocol, and the 1971 Convention on Psychotropic Substances.

U.S.-PRC cooperative law enforcement has advanced over the last two years, but China frequently does not respond to USG requests for information, and when it does, the responses often arrive too late to be of operational value. China has also failed to enforce vigorously and to strengthen anti-money-laundering legislation. For a number of reasons, China has also continued its non-engagement in the Asia-Pacific Group on Money Laundering and did not pursue membership in the Financial Crimes Task Force.

Despite those shortcomings, the PRC has acted forcefully to stop the production, trafficking in, and use of illicit drugs within its borders and within the region, and is committed to achieving the goals and objectives of the 1988 UN Drug Convention.

Peru

In 1999, the Government of Peru (GOP) made excellent progress in achieving its goal of eliminating illegal coca cultivation. Despite the rehabilitation of some previously abandoned coca fields, an additional 24 percent of coca cultivation was eliminated in 1999, for an overall reduction of 66 percent over the last four years. Contributing to this reduction was a 1999 manual coca cultivation eradication total of 15,000 hectares. The GOP counter-drug alternative development program, working through 103 local governments, almost 700 communities, and more than 15,000 farmers, significantly strengthened social and economic infrastructure in these areas and helped shift the economic balance in favor of licit activities. In January 2000, the GOP held a conference in Paris to promote alternative development support among major donor countries.

However, there is also increasing evidence that traffickers are processing cocaine hydrochloride within Peru's borders, setting up laboratories near the borders with Brazil, Colombia, and/or Bolivia, so that they can leave the country quickly without risk of interception. There were no interceptions or forcedowns of trafficker aircraft by the Peruvian Air Force (FAP) airbridge denial program in 1999—a tribute to the strong deterrent effect this program has had on the aerial transport of drugs. Recent seizures provide evidence that drug traffickers are using maritime shipment of cocaine from Callao and other Peruvian ports, riverine transport, and overland transport to move drugs out of Peru to evade aerial interdiction of trafficking aircraft. Private shipping companies, encouraged by the GOP, monitored sea cargo container activities during 1999, which led to the seizure by the Peruvian National Police of over five tons of cocaine base and cocaine hydrochloride bound for Europe.

Reliable reports and eradication campaigns indicate that Peru has an emerging opium poppy cultivation problem. Cultivation of opium poppy is illegal in Peru; whenever such plantings are identified, the GOP takes prompt action to destroy them. Reliable reports indicate that 55 kilograms of latex gum were seized in 1999, and 34,000 plants were eradicated.

In December, the Peruvian National Police arrested major drug trafficker Segundo Cachique Rivera. The Peruvian National Police chemical control unit conducted over 1,500 regulatory and criminal investigations of suspect

businesses in 1999, making 58 arrests and seizing over 112 tons of controlled chemicals and two chemical companies. The GOP also passed new legislation to enhance the control of precursor chemicals.

Peru's significant reduction of coca under cultivation proves that its strategy is working. However, with higher prices being paid for coca, many farmers will be tempted to abandon licit crops. It is essential that manual eradication of illegal coca crops, counter-drug related alternative development, reinvigoration of the airbridge denial program, and land and maritime/riverine interdiction all continue as complementary programs. The GOP should also refine relevant laws, especially as they pertain to money laundering, asset seizure, and chemical controls.

Taiwan

The United States considers Taiwan a major transit point for drugs affecting the United States due to its geographic location, its role as a regional transportation/shipping hub, and the activities of organized crime groups. Taiwan in 1999 continued its aggressive domestic counter-drug program and its effective cooperation with the United States, through the American Institute in Taiwan (AIT). Through October 1999, Taiwan authorities investigated 68,612 new drug cases, an increase of 48.9 percent over the same time period in 1998. The authorities seized more illicit drugs, primarily methamphetamine-type stimulants, in the first ten months of 1999 than all of 1998. Although indictments and convictions for drug-related offenses on Taiwan continued to fall in 1999, the decline reflects the first full year in which a law, allowing first-time addicts to participate in drug treatment programs in lieu of imprisonment, has been in force.

Taiwan cannot be a signatory to the 1988 Drug Convention because it is not a UN member. Taiwan authorities, nonetheless, have passed and implemented laws bringing Taiwan into compliance with the Convention's goals and objectives. Taiwan also continued to expand counter-drug cooperation with U.S. law enforcement agencies, through AIT.

Encouraged by AIT and DEA, Taiwan authorities passed two key drug laws to control both the manufacture and sale of phenylpropanolamine (PPA). The laws allow pre-export notification on shipments of PPA to other countries and establishes a new agency to monitor the production, use, and sale of drugs. Taiwan has continued to strengthen its efforts to stop drug trafficking and is addressing domestically and in conjunction with the international community the problem of money laundering.

Through AIT, Taiwan and U.S. law-enforcement agencies cooperated closely on investigations and joint operations concerning drug trafficking and related crimes. Taiwan authorities worked with the United States and other countries on anti-money laundering efforts. Taiwan is an active participant in the Asia-Pacific Group on Money Laundering and the Egmont Group.

Thailand

At the time that the List of Major Drug Producing and Transiting Countries was prepared at the end of last year, information then available indicated that in excess of 1000 metric tons of opium was cultivated in Thailand. However, success with eradication programs during the current crop year seems to have reduced cultivation to well under that figure. Thailand remains a major drug transit country as a significant amount of heroin transits Thailand on its way to the United States. Indeed, Thai authorities recently made a number of large seizures of heroin headed for the United States.

Thailand continued its long tradition of cooperation with the United States and the international community in anti-drug programs. The Royal Thai Government (RTG) added to its leadership role in transnational crime issues by co-managing the International Law Enforcement Academy (ILEA) with the USG in Bangkok. Thailand is one of the top three countries in the world in cooperating with the United States on extradition requests. Additional defendants arrested in 1994's operation "Tiger Trap" were extradited and extensive cooperative law enforcement programs continued to bear fruit.

Thailand has one of the most effective crop substitution and opium eradication operations in the world. 1999 poppy cultivation was down 38 percent from 1998 and opium production was down 62 percent. Eradication destroyed 50 percent of the crop leaving an estimated 6 metric tons remaining. Cultivated acreage has been slashed 91 percent since the onset of the eradication program in 1984. With DEA support, the Royal Thai Police (RTP) established the second in a series of specially-trained drug law enforcement units to target major trafficking groups. Overall, RTG efforts to target trafficking organizations have proceeded well, with numerous cases involving organizations with trafficking links opened in 1999.

More elements of the new Constitution came into force further strengthening rule of law and the judicial system, and providing a firm basis for further modernization and institutionalization of Thai society. Thai civil society is developing rapidly and a press with few restraints and the plethora of NGOs bring increasingly strong public attention to official corruption. A significant number of low and middle-ranked officers in the military and police were disciplined for corruption, although arrests for corruption continued to focus on lower-ranking officers and officials.

The RTG is close to deciding whether to accede to the 1988 UN Drug Convention. Passage of money laundering legislation was the last main requirement. Passage is expected in the March 2000 parliamentary session.

The USG considers Thailand an important ally in combating the production and flow of illicit drugs. Our two countries have been working together to fight production and trafficking of narcotics with great success for over three decades, and DEA considers its cooperation with Thailand to be one of its most successful overseas partnerships anywhere in the world.

Venezuela

By some estimates, over 100 metric tons of cocaine transit Venezuela annually en route to destinations in the United States and Europe. Venezuela is also a transit route for precursor chemicals used in the production of illicit drugs in the Andean source countries, and its financial sector is a prime destination for laundering proceeds from Colombian cocaine trafficking organizations.

Venezuelan law enforcement agencies had increased success in drug interdiction in 1999, particularly on land and at major ports. Cocaine seizures rose to 13.1 metric tons from 8.6 metric tons in 1998. This improvement reflects both the increase in drug transshipment through the country in 1999 and the high level of tactical cooperation between Venezuelan and U.S. law enforcement agencies. The Government of Venezuela (GOV) also augmented its efforts to interdict chemical precursors, after establishing in 1998 a set of regulations to track the diversion of chemicals used in drug production. Working closely in conjunction with DEA, Venezuelan law enforcement officials seized over 110 tons of potassium permanganate, a prime chemical used in the production of cocaine, and signed an agreement with the Government of Colombia to exchange information on chemical precursor movements.

Corruption has traditionally hampered the effectiveness of Venezuela's law enforcement and judicial institutions. The GOV took concrete steps against corruption in 1999, initiating investigations of corrupt officials and overseeing the implementation of a new criminal code which has the potential to provide a more efficient, transparent system of justice.

To consolidate these important advances, the GOV should take certain measures to improve its performance, specifically: pass needed anti-organized crime legislation; reenter negotiations with the USG on a comprehensive maritime agreement; take the necessary steps to permit the extradition of Venezuelan nationals accused of drug-related crimes or organized crime activity; and continue to enhance and refine multilateral counter-drug interdiction cooperation.

Vietnam

As a national priority in Vietnam, the fight against illicit drugs is second only to poverty reduction. In 1999 Vietnam fought on two fronts: against the production and use of drugs as well as against cross-border trafficking of drugs. Vietnam, with 2,100 hectares under poppy cultivation and a potential of 11 metric tons of opium production, intensified efforts to eradicate poppy crops. Authorities also successfully eradicated 860 of an estimated total of 1,000 hectares used for cannabis cultivation in 1999.

The Government of Vietnam (GOV) instituted an augmented prevention campaign to reduce domestic drug use and abuse. Also in 1999 Vietnam stiffened law-enforcement campaigns against drug traffickers and toughened prosecution to achieve a record number of arrests and convictions. Authorities prosecuted 3,310 drug-related cases involving 4,952 defendants. Of cases brought to trial, 35 received a death sentence and 21 were sentenced to life imprisonment. A high-profile anti-corruption campaign was implemented and included public trials of high-ranking government and party officials involved in illicit drug and other smuggling.

Due, in part, to its location so close to the "Golden Triangle," Vietnam is a major transit point for opium and heroin. To address this problem, the GOV set up special task force units to combat drug trafficking along the borders, and police, customs and border forces arrested 19,010 drug criminals, an increase in arrests of 31 percent over last year. Drug interdictions increased by 32 percent, with seizures of 51.8 kilograms of heroin, 314 kilograms of opium, and 369 kilograms of cannabis. In its first year of operation (September 1998–September 1999), the marine police force began patrols to detect drug trafficking. Vietnam also tightened oversight and control of precursor chemicals, transferring responsibility for monitoring to the Ministry of Public Security, Ministry of Public Health, and Department of Customs, and set up a Precursor Chemical Control Force in the Ministry of Health.

In 1999 GOV began work on preparing draft counter-drug legislation to modernize organized-crime statutes and techniques, enhance law-enforcement efforts, and strengthen compliance with the 1988 UN Drug Convention, to which Vietnam is a party. Vietnam is negotiating counter-drug agreements with China and several EU countries, has cooperated with Interpol, and has worked closely with U.S. law-enforcement agencies. In April 1999 the Vietnamese Police joined the ASEANOPOL Criminal Information System. UNDCP is assisting Vietnam revise its Master Plan against drugs and craft its new counter-drug legislation. Vietnam supports UNDCP projects targeting demand reduction, crop substitution and suppression of drug trafficking.

The United States and Vietnam have not yet concluded a counter-drug agreement. The GOV has not fully eradicated poppy crops, and farmers reverted to poppy cultivation in some high-poverty rural areas, bringing an additional 645 hectares under cultivation in 1999 and increasing the total to 2,100 hectares devoted to poppy crops. Vietnam's National Assembly approved penal code revisions that criminalize money laundering for the first time. The provisions will take effect on July 1, 2000. Vietnam is working with the World Bank to develop a money-laundering section in draft banking legislation.

Despite some notable shortcomings, Vietnam has made a vigorous effort to combat drug production and trafficking. There is no question that the GOV at the highest levels fully realizes the threat drugs present to their own people and society and is doing everything possible to counter the availability and use of illicit drugs.

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Filed 3–22–00; 10:39 am]
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Presidential Documents

Presidential Determination No. 2000–17 of March 2, 2000

Drawdown Under Section 506(a)(2) of the Foreign Assistance Act of 1961, as Amended, To Provide Emergency Disaster Assistance in Southern Africa

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 506(a)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(2) (the "Act"), I hereby determine that it is in the national interest of the United States to draw down articles and services from the inventory and resources of the Department of Defense, for the purpose of providing international disaster assistance to Southern Africa, including Mozambique, South Africa, Zimbabwe, and Botswana.

Therefore, I direct the drawdown of up to $37.6 million of articles and services from the inventory and resources of the Department of Defense for Southern Africa, including Mozambique, South Africa, Zimbabwe, and Botswana for the purposes and under the authorities of chapter 9 of part I of the Act.

The Secretary of State is authorized and directed to report this determination to the Congress immediately and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, March 2, 2000.

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Billing code 4710–10–M

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Federal Register

Vol. 65, No. 57

Thursday, March 23, 2000

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FEDERAL REGISTER PAGES AND DATE, MARCH

10931–11196	1
11197–11454	2
11455–11734	3
11735–11858	6
11859–12060	7
12061–12426	8
12427–12904	9
12905–13234	10
13235–13658	13
13659–13864	14
13865–14206	15
14207–14430	16
14431–14780	17
14781–15052	20
15053–15202	21
15203–15520	22
15521–15822	23

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7276 11197
7277 11199
7278 11455
7279 11733
7280 12903
7281 15201

Executive Orders:
12170 (See Notice of March 13, 2000) 13863
12957 (Continued by Notice of March 13, 2000) 13863
12959 (See Notice of March 13, 2000) 13863
13059 (See Notice of March 13, 2000) 13863
13146 11201
13147 13233

Administrative Orders:
Presidential Determinations:
No. 2000-15 of February 24, 2000 10931
No. 2000-16 of February 29, 2000 15797
No. 2000-17 of March 2, 2000 15821
Notices:
March 13, 2000 13863

4 CFR

27 15203
28 15203

5 CFR

213 14431
315 14431
335 14431
532 15521
792 13659

Proposed Rules:
3 14477
213 14477
315 14477

7 CFR

2 12427
205 13512
210 12429
215 12429
220 12429
225 12429
226 12429
301 11203
457 11457
600 14781
601 14781
761 14432
762 14432
915 15203
916 15205
917 15205
993 12061
955 12442
989 15214
1421 13865
1427 13865
1464 10933
1710 ..... 14207, 14785
1721 10933
3019 14406

Proposed Rules:
6 14478
20 11483
27 10979
28 ..... 10979, 12140
29 13915
57 14652
97 13917
201 12952
205 15579
360 14926
930 15580
1140 10981
1160 14484
1205 12146
1210 14485
1306 12141
1307 12141
1309 12141
1710 12952
1717 12952
1718 12952

8 CFR

212 14774
214 14774
248 14774
278A 14774

9 CFR

74 15216
78 12064
93 15216
94 15521

Proposed Rules:
71 11485
77 ..... 11485, 11912
78 11485
93 12486
98 12486
113 12151
130 12486
317 14486
318 ..... 14486, 14489
319 ..... 144867, 14489
327 14489
381 14486
590 11486

10 CFR

72 ..... 11458, 12444, 14790
170 11204
600 14406

820.....15218
Proposed Rules:
Ch. XVIII.....13700
21.....11488
50.....11488
52.....11488
54.....11488
100.....11488
430.....14128
431.....10984
960.....11755
963.....11755

11 CFR

108.....15221
Proposed Rules:
9038.....15273

12 CFR

5.....12905
204.....12916
208.....14810, 15050
225.....14433, 14440, 15053
303.....15526
340.....14816
362.....15526
701.....15224
724.....10933
745.....10933
Ch. IX.....13663
925.....13866
950.....13866
1510.....12064, 14819, 15050
Proposed Rules:
3.....12320
8.....15111
208.....12320
225.....12320
325.....12320
567.....12320
614.....14491
620.....14494
709.....11250
716.....10988
741.....10988
742.....15275
1750.....13251

13 CFR

Proposed Rules:
124.....12955

14 CFR

25.....13666
39.....10934, 10937, 10938, 11204, 11459, 11859, 11861, 12071, 12072, 12073, 12075, 12077, 12080, 12081, 12082, 12084, 12085, 12460, 12462, 12463, 13668, 13871, 13875, 13877, 14207, 14209, 14822, 14826, 14827, 14831, 14834, 14838, 14844, 14846, 14847, 14849, 14852, 15226, 15230, 15232, 15531, 15534, 15536, 15537
71.....11369, 11461, 11866, 12630, 12917, 12918, 14344, 14855, 14856, 14857
95.....14442
97.....13669, 13671, 13673, 15540, 15541, 15544
1260.....14406
Proposed Rules:
25.....13703
39.....11006, 11505, 11940, 11942, 12489, 12957, 13251, 13919, 13921, 13923, 14216, 14218, 15278, 15280, 15584
71.....12153, 12957, 13704, 13705, 13707, 14497, 15282, 15586
108.....15113
109.....15113
111.....15113
129.....15113
191.....15113
255.....11009

15 CFR

14.....14406
734.....12919
736.....14858
738.....12919, 14857
740.....12919, 14857
742.....12919, 14857
743.....12919
744.....12919, 14444
748.....12919
756.....14857, 14861
762.....14858
766.....14862
770.....14857
774.....12919, 13879, 14862

16 CFR

1615.....12924
1616.....12924
1630.....12929
1631.....12929
1632.....12935
Proposed Rules:
307.....11944
312.....11947
313.....11174

17 CFR

1.....12466
4.....10939, 12938
15.....14452
16.....14452
17.....14452
200.....12469
240.....13235
242.....13235
Proposed Rules:
4.....11253, 12318
228.....11507, 15043
229.....11507
230.....11507, 15500
232.....11507
239.....11507, 15500
240.....11507
248.....12354
249.....11507
250.....11507
259.....11507
260.....11507
269.....11507
270.....11507, 15500
274.....11507, 15500

18 CFR

35.....12088
157.....11461, 12115, 15234
380.....15234

19 CFR

12.....12470
24.....13880
111.....13880
178.....13880

20 CFR

220.....14458
322.....14459
404.....11866
416.....11866

21 CFR

20.....11881
101.....11205
176.....13675
177.....15057
178.....15545
524.....13904
558.....11888
640.....13678
868.....11464
870.....11465
1301.....13235
1308.....13235
Proposed Rules:
101.....14219
314.....12154

22 CFR

22.....14211
23.....14211
41.....14768
51.....14211
139.....14764
145.....14406
226.....14406
Proposed Rules:
22.....13253

23 CFR

1340.....13679

24 CFR

200.....15043
401.....15452
402.....15452
905.....14422
Proposed Rules:
81.....12632
990.....11525

25 CFR

290.....14461

26 CFR

1.....11205, 11467, 12471, 15547, 15548
301.....11211, 11215
602.....11205, 11211, 11215
Proposed Rules:
1.....11012, 11269, 15587
301.....11271, 11272

27 CFR

4.....11889
5.....11889
7.....11889
16.....11889
75.....15058
Proposed Rules:
00.....15115
4.....12490
70.....15115
75.....15115
90.....15115

28 CFR

70.....14406

29 CFR

95.....14406
4022.....14752, 14753
4044.....13905, 14752
4050.....14752
Proposed Rules:
1614.....11019
1910.....11948, 13254

30 CFR

202.....11467
206.....11467, 14022
250.....14469
938.....15553
Proposed Rules:
914.....11950, 12492

31 CFR

103.....13683

32 CFR

22.....14406
32.....14406
668.....13906
776.....15059

33 CFR

26.....14863
95.....14223
100.....15558
110.....11892
117.....11893, 12943, 15238
127.....10943
140.....14226
141.....14226
142.....14226
143.....14226
144.....14226
145.....14226
146.....14226
147.....14226
154.....10943
155.....10943, 14470
159.....10943
161.....14863
164.....10943
165.....14864
167.....12944
177.....14223
183.....10943
Proposed Rules:
100.....11274, 13926, 14498
110.....13926, 14498
165.....13926, 14498, 14501, 14502, 15283, 15285
175.....11410
177.....11410
179.....11410
181.....11410
183.....11410

34 CFR

74.....14406
1100.....11894
Proposed Rules:
606.....15115
607.....15115
608.....15115

36 CFR

Ch. XV.....14 0
1.....15077
3.....15077
13.....15077
701.....11735, 11736
1210.....14406
Proposed Rules:
212.....11680

261.....11680
295.....11680
1190.....12493
1191.....12493
1280.....15592

37 CFR

1.....14864
Proposed Rules:
201.....14227, 14505

38 CFR

3.....12116
19.....14471
20.....14471
21.....12117, 13893
Proposed Rules:
3.....13254

39 CFR

111.....12946
Proposed Rules:
20.....11023
111.....13258
913.....14229
952.....13707

40 CFR

9.....15090
30.....14406
51.....11222
52.....10944, 11468, 12118, 12472, 12474, 12476, 12481, 12948, 13239, 13694, 14212, 14873, 15240, 15244
60.....13242
63.....11231, 15690
68.....13243
86.....11898
136.....14344
141.....11372
148.....14472
180.....10946, 11234, 11243, 11736, 12122, 12129, 15248
261.....14472
262.....12378
268.....14472
271.....14472
300.....13697, 14475
302.....14472
431.....15091
445.....14344
Proposed Rules:
51.....11024
52.....11027, 11275, 11524, 12494, 12495, 12499, 12958, 13260, 13709, 14506, 14510, 14930, 15286, 15287
63.....11278
81.....14510
141.....11372
438.....11755
503.....11278

42 CFR

121.....15252
405.....13911
410.....13911
Proposed Rules:
410.....13082
493.....14510

43 CFR

12.....14406
3500.....11475

45 CFR

74.....14406
400.....15410
401.....15410
612.....11740
613.....11740

46 CFR

28.....10943
30.....10943
32.....10943
34.....10943
35.....10943
38.....10943
39.....10943
54.....10943
56.....10943
58.....10943
61.....10943
63.....10943
76.....10943
77.....10943
78.....10943
91.....11904
92.....10943
95.....10943
96.....10943
97.....10943
105.....10943
108.....10943
109.....10943
110.....10943
111.....10943
114.....10943
115.....11904
119.....10943
125.....10943
132.....11904
133.....11904
134.....11904
151.....10943
153.....10943
154.....10943
160.....10943
161.....10943
162.....10943
163.....10943
164.....10943
170.....10943
174.....10943
175.....10943
182.....10943
189.....11904
190.....10943
193.....10943
195.....10943
199.....10943, 11904
515.....15252
Proposed Rules:
2.....11410
10.....11410
15.....11410
24.....11410
25.....11410
26.....11410
28.....11410
30.....11410
70.....11410
90.....11410
114.....11410
169.....11410
175.....11410
188.....11410
199.....11410

47 CFR

1.....14476
20.....15559
22.....15559
24.....14213, 15559
27.....12483
54.....12135
73.....11476, 11477, 11750, 13250
76.....12135, 15559
80.....15559
90.....15559
99.....15559
Proposed Rules:
Ch. I.....15599
1.....13933
2.....14230
26.....14230
27.....14230
54.....13933
61.....13933
69.....13933
73.....11537, 11538, 11539, 11540, 11541, 11955, 12155, 13260, 13261, 15600

48 CFR

Ch. 2.....14380
Ch. 5.....11246
202.....14397
204.....14397
207.....14397
208.....14397, 14400
212.....14400
222.....14397, 14402
244.....14400
247.....14400
252.....14397, 14400, 14402
1806.....12484
1808.....12484
1811.....12484
1813.....12484
1815.....12484
1825.....12484
1835.....12484
1837.....12484
1842.....12484
1848.....12484
1851.....12484
2409.....12950
Proposed Rules:
Ch. 9.....13416

49 CFR

19.....14406
193.....10950
350.....15092
355.....15092
385.....11904
571.....11751
572.....10961, 15254
Proposed Rules:
Ch I.....11541
40.....13261, 15118
171.....11028
172.....11028
173.....11028
174.....11028
175.....11028
176.....11028
177.....11028
178.....11028
179.....11028
180.....11028
190.....15290
191.....15290
192.....15290
195.....15290
222.....15298
229.....15298

50 CFR

17.....14876, 14886, 14896
300.....14907
622.....12136
648.....11478, 11909, 15110, 15576
660.....11480
679.....10978, 11247, 11481, 11909, 12137, 12138, 13698, 14918, 14924, 15271, 15272, 15577
Proposed Rules:
16.....11756
17.....12155, 12181, 13262, 13935, 14513, 14931, 14935
216.....11542
223.....12959
224.....12959, 13935
300.....13284
600.....11956
622.....11028, 14518
648.....11029, 11956, 14519
679.....11756, 11973, 12500

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 23, 2000

ENVIRONMENTAL PROTECTION AGENCY
Air pollutants, hazardous; national emission standards:
Secondary aluminum production; published 3-23-00
FEDERAL COMMUNICATIONS COMMISSION
Television broadcasting:
Satellite Home Viewer Improvement Act; implementation—
Retransmission consent issues; good faith negotation and exclusivity; published 3-23-00
HEALTH AND HUMAN SERVICES DEPARTMENT
Health Care Financing Administration
Medicare:
Payment amount if customery charges are less than reasonable costs; published 2-22-00
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Pennsylvania; published 3-23-00
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Fairchild; published 2-17-00
General Electric; published 3-23-00
McDonnell Douglas; published 2-17-00
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Tax treatment of cafeteria plans; published 3-23-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Upland cotton; official color grade determination; comments due by 3-31-00; published 3-1-00
Raisins produced from grapes grown in—
California; comments due by 3-31-00; published 1-31-00
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Canine and equine semen from Canada; comments due by 3-27-00; published 1-26-00
AGRICULTURE DEPARTMENT
Forest Service
Alaska National Interest Lands Conservation Act:
Title VII implementation (subsistence priority)
Kenai Peninsula determination; comments due by 3-31-00; published 2-22-00
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; subsistence taking; comments due by 3-27-00; published 2-2-00
COMMERCE DEPARTMENT
Anticybersquatting Consumer Protection Act; abusive domain registrations involving personal names; resolution issues; comments due by 3-30-00; published 2-29-00
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Deep-sea red crab; comments due by 3-31-00; published 3-1-00
Deep-sea red crab; correction; comments due by 3-31-00; published 3-17-00
DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00
ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Energy conservation:
Weatherization assistance program for low-income persons; comments due by 3-27-00; published 1-26-00
ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Essential-use allowances ; allocation; comments due by 3-27-00; published 2-25-00
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Georgia; comments due by 3-27-00; published 2-25-00
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 3-29-00; published 3-14-00
New Mexico; comments due by 3-29-00; published 2-28-00
Hazardous waste program authorizations:
Louisiana; comments due by 3-29-00; published 2-28-00
Missouri; comments due by 3-29-00; published 2-28-00
FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Local exchange carriers, low-volume long distance users, and Federal-State Joint Board on Universal Service—
Access charge reform and price cap performance review; comments due by 3-30-00; published 3-15-00
Wireless telecommunications services—
Specialized mobile radio (SMR) systems in 800 MHz frequency band; future development facilitation; comments due by 3-27-00; published 3-23-00
Radio stations; table of assignments:
Alabama and Florida; comments due by 3-27-00; published 2-16-00
Texas; comments due by 3-27-00; published 2-16-00
Television broadcasting:
Broadcast licensees; public interest obligations; comments due by 3-27-00; published 1-26-00
FEDERAL DEPOSIT INSURANCE CORPORATION
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00
FEDERAL RESERVE SYSTEM
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00
FEDERAL TRADE COMMISSION
Consumer financial information; privacy requirements; comments due by 3-31-00; published 3-1-00
GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00
INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act:
Fish and wildlife resources on public lands; preference for subsistence use—
Kenai Peninsula; comments due by 3-31-00; published 2-22-00
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; subsistence taking; comments due by 3-27-00; published 2-2-00
Endangered and threatened species:
Columbian sharp-tailed grouse; status review; comments due by 3-27-00; published 1-24-00
Tidewater goby; comments due by 3-31-00; published 2-15-00
LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 3-31-00; published 3-17-00
NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00
NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Consumer financial information; privacy requirements; comments due by 3-31-00; published 3-1-00
PERSONNEL MANAGEMENT OFFICE
Absence and leave:
Sick leave for family care purposes; comments due by 3-27-00; published 2-9-00
Prevailing rate systems; comments due by 3-30-00; published 2-29-00
POSTAL SERVICE
International Mail Manual:
International surface mail; postal rate changes; comments due by 3-31-00; published 3-1-00
SECURITIES AND EXCHANGE COMMISSION
Practice and procedure:
Market information fees and revenues; public dissemination; comments due by 3-31-00; published 12-17-99
Privacy of Consumer Financial Information (Regulation S-P); comments due by 3-31-00; published 3-8-00
Securities:
Selective disclosure and insider trading; comments due by 3-29-00; published 12-28-99
SMALL BUSINESS ADMINISTRATION
Small business size standards:
Compliance with other agency programs; comments due by 3-27-00; published 1-26-00
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; comments due by 3-27-00; published 1-26-00
Airbus; comments due by 3-27-00; published 2-24-00
Alexander Schleicher Segelflugzeugbau; comments due by 3-31-00; published 3-1-00
Empresa Brasileira de Aeronautica S.A.; comments due by 3-27-00; published 2-24-00
Eurocopter Deutschland GMBH; comments due by 3-27-00; published 1-25-00
Airworthiness standards:
Special conditions—
McDonnell Douglas Model MD-10-10/10F and MD10-30/30F airplanes; comments due by 3-27-00; published 2-25-00
Transport airplane fuel tank system design review, flammability reduction, and maintenance and inspection requirements; comments due by 3-27-00; published 2-16-00
TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Compatibility with International Atomic Energy Agency regulations; comments due by 3-29-00; published 12-28-99
TREASURY DEPARTMENT
Comptroller of the Currency
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00
TREASURY DEPARTMENT
Customs Service
Country of origin marking; comments due by 3-27-00; published 1-26-00
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Source of compensation for labor or personal services; comments due by 3-29-00; published 1-21-00
Procedure and administration:
Combat zone service and Presidentially declared disaster; tax-related deadline relief; comments due by 3-30-00; published 12-30-99
TREASURY DEPARTMENT
Thrift Supervision Office
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

LIST OF PUBLIC LAWS

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S. 376/P.L. 106–180
Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

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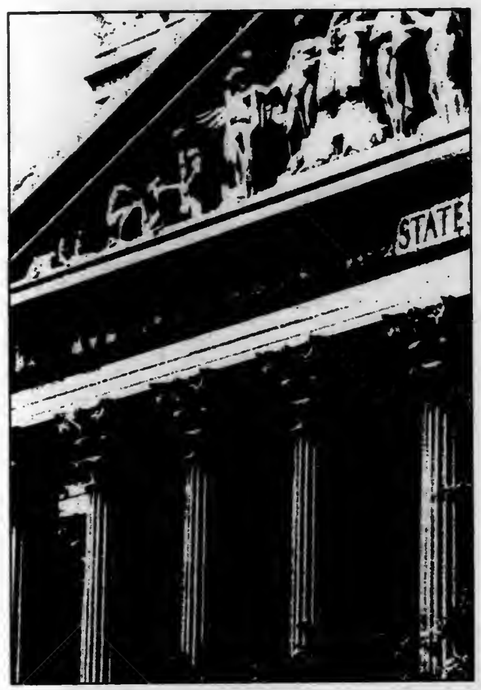
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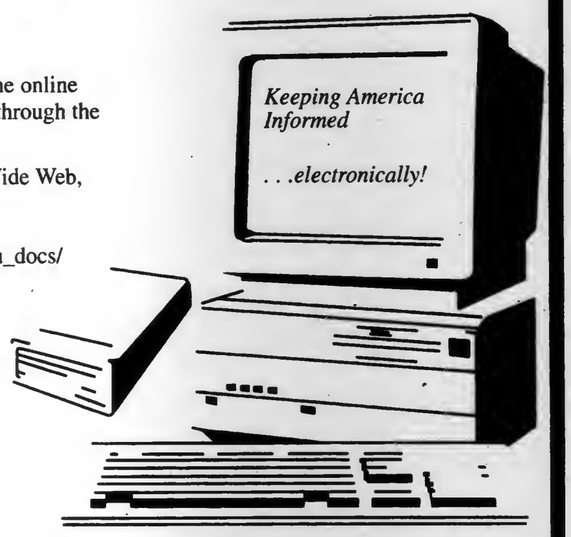
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Vol. 65 No. 58 Mar. 24, 2000
Pages 15823–16116

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Contents

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Friday, March 24, 2000

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RESERVATIONS: 202–523–4538

Contents

Federal Register
Vol. 65, No. 58
Friday, March 24, 2000

Agricultural Marketing Service
RULES
Federal seed testing and certification services; fee increases, 15830–15832
Spearmint oil produced in—
Far West, 15832–15835
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15888–15889

Agriculture Department
See Agricultural Marketing Service
See Animal and Plant Health Inspection Service
See Commodity Credit Corporation
See Farm Service Agency
See Forest Service
RULES
Supplemental standards of ethical conduct for Agriculture Department employees, 15825–15830

Animal and Plant Health Inspection Service
PROPOSED RULES
Interstate transportation of animals and animal products (quarantine):
Tuberculosis in cattle, bison, goats, and captive cervids—
State and zone designations; correction, 15877–15878

Antitrust Division
NOTICES
Competitive impact statements and proposed consent judgments:
Cargill, Inc., and Continental Grain Co., 15982–16033

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
NOTICES
Electronic commerce; laws or regulations posing barriers, 15898

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 15896–15897

Commodity Credit Corporation
NOTICES
Cotton import quotas, special; announcements, 15889–15890

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 15898

Defense Department
See Navy Department

Education Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Elementary and secondary education—
Safe and Drug-Free Schools and Communities National Programs, 16088–16091

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 15926–15927

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Hybrid power systems, 15899–15900

Environmental Protection Agency
RULES
Air programs:
Outer Continental Shelf regulations—
California; consistency update, 15867–15873
Air quality implementation plans; approval and promulgation; various States:
California, 15864–15867
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 15883–15884
Pesticide programs:
Pesticides and ground water strategy; State management plan regulation; metolachlor and S-metalachlor equivalency, 15884–15885
Toxic substances:
Methyl Tertiary Butyl Ether (MTBE); elimination or limitation as a fuel additive in gasoline, 16094–16109
NOTICES
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 15903
Weekly receipts, 15903–15904
Reports and guidance documents; availability, etc.:
Resource Conservation and Recovery Act cleanup reforms; corrective action guidance documents; schedule and comment request, 15904–15906
Superfund; response and remedial actions, proposed settlements, etc.:
Colorado School of Mines Research Institute Site, CO, 15904

Equal Employment Opportunity Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15907

Executive Office of the President
See Presidential Documents

Farm Service Agency
NOTICES
Meetings:
Beginning Farmers and Ranchers Advisory Committee, 15890

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Serbia-Montenegro; flights within territory and airspace; prohibition removed (SFAR No. 84), 16112
Special visual flight rules, 16114–16116
Airworthiness directives:
Eurocopter Deutschland, 15858–15859
Eurocopter France, 15857–15858
Class D airspace, 15859
Class D and Class E airspace, 15860–15861
Class E airspace, 15861
PROPOSED RULES
Airworthiness directives:
Bell, 15882–15883
Eurocopter France, 15880–15882
Pratt & Whitney, 15878–15880

Federal Bureau of Investigation
NOTICES
Meetings:
Criminal Justice Information Services Advisory Policy Board, 15923

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Nevada, 15885
Pennsylvania, 15886–15887
Washington, 15886
NOTICES
Rulemaking proceedings; petitions filed, granted, denied, etc., 15907–15908

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 15908

Federal Emergency Management Agency
NOTICES
Disaster and emergency areas:
Kentucky, 15908
Virginia, 15908

Federal Energy Regulatory Commission
NOTICES
Meetings:
Regional transmission organizations; regional collaborative workshops, 15902–15903
Applications, hearings, determinations, etc.:
Aquila Power Corp., 15900
Commonwealth Edison Co. et al., 15900–15901
El Paso Natural Gas Co., 15901
First Electric Cooperative Corp., 15901–15902
Gleason Power I, L.L.C., et al., 15902

Federal Highway Administration
NOTICES
Transportation Equity Act for 21st Century; implementation:
Congestion Mitigation and Air Quality Improvement Program; correction, 15931–15932

Federal Reserve System
NOTICES
Agency information collection activities:
Reporting and recordkeeping requirements, 15908–15910
Banks and bank holding companies:
Formations, acquisitions, and mergers, 15910
Permissible nonbanking activities, 15910–15911
Meetings; Sunshine Act, 15911

Federal Trade Commission
NOTICES
Meetings:
Slotting allowances and other grocery marketing practices; antitrust concerns; workshop, 15911–15912

Federal Transit Administration
NOTICES
Transportation Equity Act for 21st Century; implementation:
Congestion Mitigation and Air Quality Improvement Program; correction, 15931–15932

Fish and Wildlife Service
RULES
Endangered and threatened species:
Canada lynx, 16052–16086
PROPOSED RULES
Endangered and threatened species:
California tiger salamander; Santa Barbara distinct population, 15887
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Orange County, CA; coastal California gnatcatcher, 15914–15916
Natural resource restoration plans:
Saegertown Industrial Area Superfund Site, PA, 15916

Forest Service
NOTICES
Boundary establishment, descriptions, etc.:
East Fork of Jemez Wild and Scenic River, Santa Fe National Forest, NM, 15890–15891
Peco Wild and Scenic River, Santa Fe National Forest, NM, 15891
Environmental statements; notice of intent:
Caribou-Targhee National Forest, ID, 15891–15892
Kootenai National Forest, MT, 15892–15895
Rogue River National Forest, OR, 15895
Tongass National Forest, AK, 15895–15896

Health and Human Services Department
See Health Care Financing Administration

Health Care Financing Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15912

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15912–15913
Submission for OMB review; comment request, 15913–15914
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 16036–16049

Immigration and Naturalization Service
RULES
Immigration:
Haitian nationals; status adjustment, 15835–15846
Nicaraguan and Cuban nationals; status adjustment, 15846–15857
NOTICES
Organization, functions, and authority delegations:
Director of Nebraska Service Center, 15924–15925

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Income taxes:
Passive foreign investment companies—
Marketable stock definition; correction, 15862
Procedural rules:
Penalty mail use in location and recovery of missing children; correction, 15862

International Trade Administration
NOTICES
Meetings:
Africa Advisory Committee, 15898

International Trade Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 15922

Justice Department
See Antitrust Division
See Federal Bureau of Investigation
See Immigration and Naturalization Service
See Parole Commission
NOTICES
Pollution control; consent judgments:
Apex Engineering et al., 15922–15923
Sorenson Engineering, Inc., 15923

Labor Department
See Employment Standards Administration

Land Management Bureau
NOTICES
Environmental statements; notice of intent:
Caribou-Targhee National Forest, ID, 15891–15892
Public land orders:
Colorado, 15917
Idaho, 15917–15918
Montana, 15918–15919
Oregon, 15920
Oregon; correction, 15919
Washington, 15919
Wyoming, 15920
Realty actions; sales, leases, etc.:
California; correction, 15920–15921

Minerals Management Service
RULES
Outer Continental Shelf; oil, gas, and sulphur operations:
Documents incorporated by reference; update; technical amendment, 15862–15864

National Foundation on the Arts and the Humanities
NOTICES
Meetings:
Humanities Panel, 15927–15928

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Atlantic highly migratory species—
Swordfish, 15873–15874

National Park Service
NOTICES
Meetings:
Concessions Management Advisory Board, 15921

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 15898–15899
Meetings:
Chief of Naval Operations Executive Panel, 15899
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Ford Motor Co., 15899

Nuclear Regulatory Commission
NOTICES
Applications, hearings, determinations, etc.:
Commonwealth Edison Co.; correction, 15933

Parole Commission
NOTICES
Meetings; Sunshine Act, 15925–15926

Personnel Management Office
PROPOSED RULES
Pay administration:
Locality-based comparability payments, 15875–15877

Presidential Documents
ADMINISTRATIVE ORDERS
Computers, high-performance, exports to China; delegation of authority under National Defense Authorization Act for Fiscal Year 2000 (Memorandum of January 5, 2000), 15823

Securities and Exchange Commission
RULES
Investment companies:
Personal investment activities fraud prevention; adoption of policies and codes of ethics; correction, 15933
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 15928–15929
Submission for OMB review; comment request; correction, 15933
Investment Company Act of 1940:
Order applications—
Medallion Financial Corp., 15929–15930
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc.; correction, 15933
Applications, hearings, determinations, etc.:
Public utility holding company filings; correction, 15933

Small Business Administration
NOTICES
Disaster loan areas:
Ohio, 15930–15931
Meetings; district and regional advisory councils:
Florida, 15931
Hawaii, 15931

State Department
NOTICES
Gifts to Federal employees from foreign governments; list, 15936–15979

Surface Mining Reclamation and Enforcement Office
NOTICES
Environmental statements; availability, etc.:
Fall Creek Falls State Park and Natural Area, TN; unsuitability for mining operations, 15921–15922

Surface Transportation Board
NOTICES
Rail carriers:
Cost recovery procedures—
Adjustment factor, 15932

Transportation Department
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service

Separate Parts in This Issue

Part II
Department of State, 15935–15979

Part III
Department of Justice, Antitrust Division, 15981–16033

Part IV
Department of Housing and Urban Development, 16035–16049

Part V
Department of the Interior, Fish and Wildlife Service, 16051–16086

Part VI
Department of Education, 16087–16091

Part VII
Environmental Protection Agency, 16093–16109

Part VIII
Department of Transportation, Federal Aviation Administration, 16111–16112

Part IX
Department of Transportation, Federal Aviation Administration, 16113–16116

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Administrative Orders:
Memorandum of
January 5, 2000 15823

5 CFR
Ch. LXXIII 15825
Proposed Rules:
531 15875

7 CFR
75 15830
985 15832

8 CFR
3 (2 documents) 15835, 15846
212 (2 documents) 15835, 15846
240 (2 documents) 15835, 15846
245 (2 documents) 15835, 15846
274a (2 documents) 15835, 15846
299 (2 documents) 15835, 15846

9 CFR
Proposed Rules:
77 15877

14 CFR
39 (2 documents) 15857, 15858
71 (4 documents) 15859, 15860, 15861
91 (2 documents) 16112, 16114
Proposed Rules:
39 (3 documents) 15878, 15880, 15882

26 CFR
1 15862
601 15862

30 CFR
250 15862

40 CFR
52 15864
55 15867
Proposed Rules:
52 15883
152 15884
156 15884
755 16094

47 CFR
Proposed Rules:
73 (3 documents) 15885, 15886

50 CFR
17 16052
635 15873
Proposed Rules:
17 15887

Federal Register
Vol. 65, No. 58
Friday, March 24, 2000

Presidential Documents

Title 3—

The President

Memorandum of January 5, 2000

Delegation of Authority Under Section 1406 of the National Defense Authorization Act for Fiscal Year 2000 (Public Law 106–65)

Memorandum for the Secretary of Energy

By the authority vested in me by the Constitution and laws of the United States, including section 301 of title 3, United States Code, I hereby delegate to the Secretary of Energy and the Secretary of Defense the duties and responsibilities vested in the President by section 1406 of the National Defense Authorization Act for Fiscal Year 2000 ("the Act") (Public Law 106–65).

The Departments of Energy and Defense shall jointly prepare a report with the assistance of the Department of State, the Department of Commerce, and the Director of Central Intelligence. The Departments of Defense and Energy shall obtain concurrence on the report from the following agencies: the Department of State, the Department of Commerce, and the Director of Central Intelligence on behalf of the Intelligence Community prior to submission to the Congress.

Any reference in this memorandum to the provisions of any Act shall be deemed to be a reference to such Act or its provisions as may be amended from time to time.

You are authorized and directed to publish this memorandum in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 5, 2000.

[FR Doc. 00–7426
Filed 3–23–00; 8:45 am]
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Rules and Regulations

Federal Register
Vol. 65, No. 58
Friday, March 24, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

5 CFR Chapter LXXIII

RIN 3209–AA15

Supplemental Standards of Ethical Conduct for Employees of the Department of Agriculture

AGENCY: Department of Agriculture (Department or USDA).

ACTION: Interim rule.

SUMMARY: The Department of Agriculture (Department or USDA), with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for Department employees that supplement the Standards of Ethical Conduct for Employees of the Executive Branch (Standards), as issued by OGE. The regulations set forth both a general requirement for certain Department employees to obtain prior approval before engaging in outside employment and separate, more-extensive prior approval requirements for employees of the USDA Farm Service Agency (FSA), Food Safety and Inspection Service (FSIS), Office of the General Counsel (OGC), and Office of Inspector General (OIG). They also contain certain restrictions on financial interests applicable to FSA employees.

DATES: These regulations are effective March 24, 2000. Comments must be received or postmarked on or before April 24, 2000.

ADDRESSES: Comments should be submitted to the Office of Ethics, U.S. Department of Agriculture, Room 348–W—Stop 0122, 1400 Independence Avenue, SW., Washington, DC 20250–0122, telephone (202) 720–2251, Attention: John C. Surina, Director, Office of Ethics, or by e-mail at the following address: daeo.ethics@usda.gov.

FOR FURTHER INFORMATION CONTACT: John C. Surina, Director, Office of Ethics, U.S. Department of Agriculture, Room 348–W—Stop 0122, 1400 Independence Avenue, SW., Washington, DC 20250–0122, telephone (202) 720–2251.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, OGE published the new Standards, which became effective on February 3, 1993. The standards, as corrected and amended, are codified at 5 CFR part 2635. On October 3, 1997, the Department's Employee Conduct and Responsibilities regulations were removed. *See* 62 FR 51759–51760.

5 CFR 2635.105 authorizes agencies, with the concurrence of OGE, to publish agency-specific supplemental regulations that are necessary to implement their respective ethics programs. The Department, with OGE concurrence, has determined that the following interim supplemental rules being codified in a new chapter LXXIII of 5 CFR, consisting of part 8301, are necessary to the success of its ethics program.

II. Analysis of the Regulations

Section 8301.101 General

Section 8301.101 explains that the regulations apply to all Department employees and supplement the executive branchwide Standards. In addition, this section notes that employees of the Department are also subject to the Standards at 5 CFR part 2635, the executive branch financial disclosure regulations at 5 CFR part 2634, and additional regulations on employee responsibilities and conduct at 5 CFR part 735. This section also notes that agencies and components of the Department, with concurrence of the Designated Agency Ethics Official (DAEO), may issue explanatory guidance, internal procedures, and delegations of authority consistent with 5 CFR 2635.105. Finally, to facilitate agency employees, across the Department, in accessing and utilizing applicable agency-specific guidance and procedures, the section provides that the Deputy Ethics Official for each USDA agency or component shall retain copies of all such guidance issued by that agency or component.

Section 8301.102 General Prior Approval Requirement for Outside Employment

The Standards, at 5 CFR 2635.803, specifically recognize that an agency may find it necessary or desirable to issue a supplemental regulation requiring its employees, or any category of employees, to obtain approval before engaging in outside employment. Department employees, pursuant to the Department's Employee Conduct and Responsibilities regulations at 7 CFR part 0, long had been required to seek prior approval before engaging in outside employment. This regulatory requirement lapsed after November 1, 1996, upon the expiration of the last grace period extension granted by OGE for agency prior approval requirements and agency prohibitions on holding or acquiring financial interests in effect prior to the effective date of the Standards.

The Department found its prior approval requirement particularly useful in ensuring that the outside employment of USDA employees conformed with all applicable laws and regulations. At the same time, the former requirement for universal prior approval had been viewed as unnecessarily burdensome and intrusive, particularly in those instances in which the employee's outside employment posed little danger to the interests of USDA and its agencies, or where there was little or no nexus between the employee's official duties and his or her outside employment.

In accordance with 5 CFR 2635.803, USDA has determined that it is necessary to the administration of its departmentwide ethics program to again require certain of its employees to seek approval before engaging in any outside employment. The Department has determined that all USDA employees who file either a public or confidential financial disclosure report (SF 278 or OGE Form 450), or an alternative form of reporting approved by OGE, must seek approval before engaging in any outside employment. Financial disclosure report filers occupy high level positions or otherwise hold positions that have a direct and substantial effect on the interests of non-Federal entities. Accordingly, prior approval of these employees' outside employment is warranted. Approval, however, merely constitutes an

assessment that the employment, as described on the submission, generally does not appear likely to violate any criminal statutes or other ethics rules. It is not a determination that a criminal or ethical conflict could not arise. Thus, Department employees should remain sensitive to ethics issues and seek further ethics guidance should their outside work circumstances or official duties significantly change.

Included within the definition of employment, for purposes of this regulation, is participation in teaching, speaking, writing or editing that, irrespective of compensation, either relates to the employee's official duties or is undertaken pursuant to an invitation extended by any person who is a prohibited source to any employee of USDA. The Department is obligated, under numerous statutes, to protect from release to the public various types of information regarding its programs. For example, numerous statutes restrict the premature release of various types of information concerning the many different commodities regulated by USDA. Premature release of such information, or of other information from which such information could reasonably be derived, could result in misuse of position through unfair speculation in those commodity markets. The Department believes that its statutory interests in avoiding this result may be protected, with a minimum of interference to its employees, through the imposition of a prior approval requirement limited solely to those situations where there is a heightened potential for risk to USDA—where an employee engages in outside speaking, teaching, writing, or editing that may result in the release of protected information or where the invitation to engage in the outside employment comes from one who has an interest in obtaining such protected information.

In addition to the foregoing, departmentwide requirement for prior approval of outside employment, other USDA component offices and agencies have determined that prior approval is required for their employees not covered under the departmentwide requirement. The Department has determined that it is necessary to the administration of its ethics program to implement the additional component-specific requirements for obtaining prior approval for outside employment specified in paragraph (f) of § 8301.103, and in §§ 8301.104 through 8301.106.

Section 8301.103 Additional Rules for Employees of the Farm Service Agency

The Farm Service Agency has determined that certain additional rules are necessary in order to protect the integrity of its programs. Many FSA programs, particularly farm loan programs, are administered in a highly decentralized manner. Many FSA employees reside in the same small communities as the FSA loan applicants, borrowers, and program participants they serve. At the same time, many FSA employees and/or their family members are themselves farmers. Farm Service Agency employees often are part of the very farm community being serviced by the local FSA office. Given the opportunity and, in many cases, the need for regular, non-official interaction between FSA employees and those persons in their communities serviced by FSA, there is a need to establish for FSA employees certain limitations upon outside employment and to prohibit FSA employees from obtaining certain financial holdings.

Paragraph (a) of § 8301.103 specifies that the additional rules in the section apply solely to FSA personnel who are Federal employees within the meaning of 5 U.S.C. 2105. This specification is necessary to distinguish that FSA community committee members, county committee members, and county office personnel, who serve either by election, or by being employed by a committee or county office, under 16 U.S.C. 590h, are not covered by the additional rules in this section. Such personnel consistently have been deemed by Federal courts not to be Federal employees under 5 U.S.C. 2105. *See Hedman* v. *Department of Agriculture*, 915 F. 2d 1552 (Fed. Cir. 1990); *Hamlet* v. *United States*, 14 Cl. Ct. 62 (1988), vacated and remanded, 873 F.2d 1414 (Fed. Cir. 1989); *Hargens* v. *U.S. Department of Agriculture*, 865 F. Supp. 1314, 1320 (N.D. Iowa 1994). Also contained in this paragraph is a cross-reference to rules that do apply to FSA community committee members, county committee members, and county office personnel, at 7 CFR part 7.

Paragraph (b) defines the phrase "FSA program participant" to include any person who is, or is an applicant to become, an FSA borrower, FSA grantee, or recipient of any other form of FSA financial assistance available under any farm credit, payment or other program administered by FSA.

Section 8103.103 contains two prohibitions on FSA employees acquiring certain financial interests. Paragraph (c) generally prohibits an employee, or a spouse or minor child of an FSA employee, from directly or indirectly obtaining FSA direct loans. Paragraph (d) generally prohibits an employee, or a spouse or minor child of an FSA employee, from directly or indirectly purchasing certain FSA-related real properties. These prophylactic prohibitions reinstate similar provisions that existed before the executive branchwide Standards regulation superseded agency-specific rules.

Under 5 CFR 2635.403(a), an agency may, by supplemental regulation prohibit or restrict the acquisition or holding by its employees of financial interests that the agency determines would cause a reasonable person to question the impartiality or objectivity with which agency programs are administered. Many FSA farm loan borrowers are recipients of FSA direct loans which involve FSA as a "lender-of-last-resort." Similarly, many FSA employees are themselves farmers. The Farm Service Agency has found that permitting its employees to obtain FSA direct loans creates a high-risk ethics environment for FSA employees. The Department must shield the administration of the loan program against self-dealing and a lack of impartiality. Moreover, the close proximity of FSA employees to FSA program participants, generally, and the dependence of FSA program participants on FSA, especially FSA loan applicants, also warrant supplemental safeguards against any FSA employee in a position to secure private gain for himself or herself, or for any other person, by virtue of the public position he or she holds. Further, the restrictions will avoid the potential for disqualification of critical employees from official duties which might result in FSA being unable to fulfill its mission.

The prohibitions under paragraphs (c) and (d) apply whether the prohibited financial interest involved is obtained directly or indirectly. Thus, for example, an FSA employee would violate paragraph (c) should he or she obtain FSA direct loan funds through an agreement with another person under which the other party poses as a "front" for the FSA employee (*e.g.*, by applying for an FSA loan knowing that a portion of the loan funds will be provided by him or her to the FSA employee for the employee's personal use). The same would be true for utilizing a "front" for the purchase of otherwise prohibited property.

Because application of the prohibitions in paragraphs (c) and (d) may result in undue financial hardship to various FSA employees in certain instances, the prohibitions are tempered in application by the inclusion of various exceptions and waiver provisions. Paragraph (c) is subject to an exception permitting retention of direct loans secured by FSA employees either prior to the effective date of this regulation, March 24, 2000, or secured after such date, but prior to the FSA employee being appointed to, or nominated for appointment to an FSA position. Also, this prohibition may be waived for FSA State Committee members where the conditions stated in paragraph (c)(3) have been met. As State Committee members are special Government employees, application of the prohibition under paragraph (c) would result in an undue financial hardship to those State Committee members who are farmers by occupation. The exception for pre-existing loans and the waiver for State Committee members are available for use by a relatively small number of employees, to whom application of the prohibition would pose an inordinate financial hardship when compared to any perceived ethical dangers that they are likely to encounter through having an FSA direct loan.

The prohibition under paragraph (d) is subject to waiver based on a determination made by the FSA State Executive Director, in response to a written waiver request submitted jointly to the FSA State Executive Director by both the FSA employee and FSA program participant, that the purchase is not inconsistent with part 2635 of this title; that it is not otherwise prohibited by law, including, 7 U.S.C. 1986; and that, under the circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality, nor otherwise needed to ensure confidence in the impartiality and objectivity with which agency programs are administered. FSA has chosen to employ a broad standard for exemption to this prohibition because there exist numerous situations in which the primary benefit from the exemption accrues not to the FSA employee but rather to the FSA program participant. For example, in many small farming communities, an FSA borrower may have difficulty in finding a buyer for his or her property. Since flat application of this prohibition could result in significant financial harm to the very persons whom FSA programs are intended to serve, FSA believes that an effective and fair solution involves a waiver procedure under which the FSA State Executive Director would make a determination balancing ethical considerations against the potential financial hardship to the FSA program participant. This process provides flexibility and fairness while raising the level of decision making visibility and accountability.

Paragraph (e) of this section sets forth a general prohibition against an FSA employee and a spouse or minor child of an FSA employee engaging in certain transactions with persons whom the FSA employee knows or reasonably should know to be a FSA program participant directly affected by decisions made by the employee's FSA office, unless certain exceptions apply. The transactions covered by this general prohibition include sales of real property, leases of real or personal property, the sale or purchase of personal property, and engaging for personal services. The prohibition does not apply to transactions involving goods available to the general public at posted prices that are customary and usual within the community (*e.g.*, sale of a tractor through placing an advertisement in the local newspaper) or to transactions involving the purchase or sale of property pursuant to a public auction. The prohibition also does not apply where a transaction is determined in advance by the appropriate FSA State Executive Director, after consulting with the FSA Headquarters ethics advisor, to be consistent with the Standards and otherwise not prohibited by law. This general prohibition reflects, in large part, a similar requirement that existed within those current segments of FSA that formerly were part of Farmers Home Administration and which lapsed upon publication of the Standards as a final rule.

Since farm leases and other transactions between FSA employees and FSA program participants are so prevalent within the farming community, FSA has determined that a prohibition without providing FSA employees the opportunity to obtain an advance determination that the transaction would be consistent with ethics requirements would work an undue financial hardship upon both the FSA employees, their spouses and minor children, and the FSA program participants. Requiring requests for advance determinations to be submitted to the FSA State Executive Director pursuant to the exception provides for the agency's need to have control over these interactions without imposing undue financial hardship. As a result, approved transactions will have the visibility and accountability addressed previously with regard to the prohibition in paragraph (d). Further, the determination of the FSA State Executive Director is to be based upon the same standard employed in paragraph (d).

Paragraph (f) of § 8301.103 requires an FSA employee, not otherwise required to do so under § 8301.102, to obtain prior approval from the agency before engaging in outside employment with a person whom the FSA employee knows, or reasonably should know, to be an FSA program participant directly affected by decisions made by the particular FSA office in which the FSA employee serves. This requirement reflects, in large part, a similar requirement that existed within those segments of FSA that formerly were part of Farmers Home Administration and which lapsed on November 1, 1996. While outside interaction is vital to the FSA employees and to the community in which they live, the potential for outside employment opportunities to lead to favoritism and a loss of impartiality is significant enough to justify agency concerns. Thus, FSA has determined that it is necessary to require approval before *any* of its employees may engage in any outside employment involving an FSA program participant directly affected by decisions made by the office in which the FSA employees serves.

Section 8301.104 Additional Rules for Employees of the Food Safety and Inspection Service

The Food Safety and Inspection Service has determined that it is necessary to require prior approval before *any* of its employees, not otherwise required to do so under section 8301.102, may engage in any outside employment. The implementation of Hazard Analysis and Critical Control Points (HACCP) systems within the regulated industry, as well as the anticipated creation of Consumer Safety Officer positions, means that FSIS employees of all pay levels will be involved in ensuring food safety and, therefore, will be facing increased exposure to the food industry. Given the vital importance to public health of maintaining high standards of food safety in light of the changing nature of FSIS responsibilities through HACCP, FSIS believes that its long-standing requirement of universal prior approval for outside employment is even more necessary.

Section 8301.105 Additional Rules for Employees of the Office of the General Counsel

The USDA Office of the General Counsel previously has required lawyers serving within that office to

obtain prior approval before engaging in the outside practice of law. Given the fiduciary duties performed for the Department by OGC, such a requirement has been particularly useful in ensuring that the outside practice of law does not interfere or conflict with the official duties of attorneys within that Office. Accordingly, the Department has determined that it is necessary to require that all attorneys serving in OGC seek prior approval before engaging in outside employment involving the practice of law.

Section 8301.106 Additional Rules for Employees of the Office of Inspector General

The Office of Inspector General has determined that it is necessary to require prior approval before any of its employees may engage in outside employment involving law enforcement, investigation, security, firearms training, defensive tactics training, protective services, auditing, accounting, tax preparation, practice of law, and employment involving personnel, procurement, budget, computer, or equal employment opportunity services. The OIG had long relied upon the departmental prior approval requirement. The OIG has a wide range of responsibilities for investigation and auditing of departmental operations. These mission activities are of a highly sensitive nature. The aforementioned types of outside employment involve duties that, under certain circumstances, are similar to the mission activities of OIG, and therefore are more likely to create an actual or apparent conflict of interest. The Department has determined that it is necessary to the administration of its ethics program to require prior approval for the identified types of outside employment that pose a potential for OIG employees to engage in conduct that might violate applicable laws and regulations.

III. Matters of Regulatory Procedure

Administrative Procedure Act

The Department has found that good cause exists under 5 U.S.C. 553(b) and (d) for waiving, as unnecessary and contrary to public interest, the general notice of proposed rulemaking, opportunity for comment and the 30-day delay in effectiveness as to this interim rule. This rulemaking contains statements of policy, interpretive rules, and conduct regulations related solely to Department personnel and, in significant part, reissues in revised form the outside employment rules previously published in 7 CFR part 0. Delaying the effectiveness of this rule could also result in an effort by some employees likely to be affected by the rules on outside employment and prohibited financial interests to engage in covered outside employment or to obtain covered financial interests prior to the effective date of this rule.

However, because this rule may be improved, comments may be submitted on or before April 24, 2000. All comments will be analyzed and any appropriate changes to the rule will be incorporated in the subsequent publication of the final rule.

Congressional Review

The Department has found that this rulemaking is not a rule as defined in 5 U.S.C. 804, and, thus, does not require review by Congress. This rulemaking is related to Department personnel.

Executive Orders Nos. 12866 and 12988

Since this rule relates to Department personnel, it is exempt from the provisions of Executive Orders Nos. 12866 and 12988.

Regulatory Flexibility Act

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Department employees.

Paperwork Reduction Act

The Department has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

Environmental Impact

This decision will not have a significant impact upon the quality of the human environment or the conservation of energy resources.

List of Subjects in 5 CFR Part 8301

Conflict of interests, Executive branch standards of conduct, Government employees.

Dated: March 16, 2000.

Dan Glickman,

Secretary of Agriculture.

Approved: March 17, 2000.

Stephen D. Potts,

Director, Office of Government Ethics.

For the reasons set forth in the preamble, the Department of Agriculture, with the concurrence of the Office of Government Ethics, is amending Title 5 of the Code of Federal Regulations by adding a new chapter LXXIII, consisting of Part 8301, to read as follows:

CHAPTER LXXIII—DEPARTMENT OF AGRICULTURE

PART 8301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE

Sec.

8301.101 General.
8301.102 Prior approval for outside employment.
8301.103 Additional rules for employees of the Farm Service Agency.
8301.104 Additional rules for employees of the Food Safety and Inspection Service.
8301.105 Additional rules for employees of the Office of the General Counsel.
8301.106 Additional rules for employees of the Office of Inspector General.

Authority: 5 U.S.C. 301, 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105, 2635.403(a), 2635.803, 2635.807(a)(2)(ii).

§ 8301.101 General.

(a) In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the Department of Agriculture (Department or USDA) and supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) In addition to 5 CFR part 2635 and this part, employees also are required to comply with the executive branch financial disclosure regulations at 5 CFR part 2634, the regulations on responsibilities and conduct contained in 5 CFR part 735, and Department guidance and procedures established pursuant to paragraph (c) of this section.

(c) With the concurrence of the Designated Agency Ethics Official (DAEO), agencies and components of the Department may, in accordance with 5 CFR 2635.105(c), issue explanatory guidance for their employees and establish procedures necessary to implement this part and part 2635 of this title. The Deputy Ethics Official for each agency or component shall retain copies of all such guidance issued by that agency or component.

§ 8301.102 Prior approval for outside employment.

(a) *Prior approval requirement.* An employee, other than a special Government employee, who is required to file either a public or confidential financial disclosure report (SF 278 or OGE Form 450), or an alternative form of reporting approved by the Office of Government Ethics, shall, before

engaging in outside employment, obtain written approval in accordance with the procedures set forth in paragraph (c) of this section.

(b) *Definition of employment.* For purposes of this section, "employment" means any form of non-Federal employment or business relationship or activity involving the provision of personal services by the employee for direct, indirect, or deferred compensation other than reimbursement of actual and necessary expenses. It also includes, irrespective of compensation, the following outside activities:

(1) Providing personal services as a consultant or professional, including service as an expert witness or as an attorney;

(2) Engaging in teaching, speaking, writing, or editing that:

(i) Relates to the employee's official duties within the meaning of 5 CFR 2635.807(a)(2)(i)(B) through (E); or

(ii) Would be undertaken as a result of an invitation to engage in the activity that was extended by a person who is a prohibited source within the meaning of 5 CFR 2635.203(d); and

(3) Providing personal services to a non-Federal entity as an officer, director, employee, agent, attorney, consultant, contractor, general partner, or trustee, which involves decision making or policymaking for the non-Federal entity, or the provision of advice, counsel, consultation, unless such personal services are provided:

(i) To a political, religious, employee, social, fraternal, or recreational organization; and (ii) Without compensation other than reimbursement of expenses.

(c) *Submission of requests for approval.* An employee seeking to engage in employment for which advance approval is required shall submit a written request for approval to the employee's supervisor a reasonable time before the employee proposes to begin the employment. Upon a significant change in the nature of the outside employment or in the employee's official position, the employee shall submit a revised request for approval. The supervisor will forward written requests for approval to the agency designee, or to the DAEO where no agency designee exists, through normal supervisory channels. All requests for prior approval shall include the following information:

(1) The employee's name, organizational location, occupational title, grade, and salary;

(2) The nature of the proposed outside employment, including a full description of the specific duties or services to be performed;

(3) A description of the employee's official duties that relate in any way to the proposed employment;

(4) The name and address of the person or organization for whom or with which the employee is to be employed, including the location where the services will be performed;

(5) The estimated total time that will be devoted to the outside employment. If the proposed outside employment is to be performed on a continuing basis, a statement of the estimated number of hours per year; for other employment, a statement of the anticipated beginning and ending dates;

(6) A statement as to whether the work can be performed entirely outside of the employee's regular duty hours and, if not, the estimated number of hours of absence from work that will be required;

(7) The method or basis of any compensation (*e.g.*, fee, per diem, honorarium, royalties, stock options, travel and expenses, or other);

(8) A statement as to whether the compensation is derived from a USDA grant, contract, cooperative agreement, or other source of USDA funding;

(9) For employment involving the provision of consultative or professional services, a statement indicating whether the client, employer, or other person on whose behalf the services are performed is receiving, or intends to seek, a USDA grant, contract, cooperative agreement, or other funding relationship; and

(10) For employment involving teaching, speaking, writing or editing, the proposed text of any disclaimer required by 5 CFR 2635.807(b).

(d) *Standard for approval.* Approval shall be granted by the agency designee (or the DAEO, when there is not an agency designee) unless it is determined that the outside employment is expected to involve conduct prohibited by statute or Federal regulation, including 5 CFR part 2635 or this part.

(e) *Responsibilities of the Designated Agency Ethics Official and component agencies.* (1) The DAEO or, with the concurrence of the DAEO, each separate agency or component of USDA may issue an instruction or manual issuance exempting categories of employment from a requirement of prior written approval based on a determination that employment within those categories would generally be approved and is not likely to involve conduct prohibited by Federal statutes or regulations, including 5 CFR part 2635 and this part.

(2) Department components may specify internal procedures governing the submission of prior approval requests and designate appropriate officials to act on such requests. The instructions or manual issuances may include examples of outside employment that are permissible or impermissible consistent with 5 CFR part 2635 and this part. With respect to employment involving teaching, speaking, writing, or editing, the instructions or manual issuances may specify pre-clearance procedures and/or require disclaimers indicating that the views expressed do not necessarily represent the views of the agency, USDA or the United States.

(3) The officials within the respective USDA agencies or components responsible for the administrative aspects of these regulations and the maintenance of records shall make provisions for the filing and retention of requests for approval of outside employment and copies of the notification of approval or disapproval.

§ 8301.103 Additional rules for employees of the Farm Service Agency.

(a) *Application.* This section applies only to Farm Service Agency (FSA) personnel who are Federal employees within the meaning of 5 U.S.C. 2105. This section does not apply to FSA community committee members, county committee members, and county office personnel, who are either elected to their positions or are employees of community or county committees established under 16 U.S.C. 590h. For rules applicable to FSA community committee members, county committee members, and county office personnel, see 7 CFR part 7.

(b) *Definition of FSA program participant.* For purposes of this section, the phrase "FSA program participant," includes any person who is, or is an applicant to become, an FSA borrower, FSA grantee, or recipient of any other form of FSA financial assistance available under any farm credit, payment or other program administered by FSA.

(c) *Prohibited borrowing.* (1) No FSA employee, or spouse or minor child of an FSA employee, may directly or indirectly seek or obtain a "direct loan" under paragraph (a)(9) of section 343 of the Consolidated Farm and Rural Development Act, 7 U.S.C. 1991(a)(9).

(2) Nothing in this section bars an FSA employee, or spouse or minor child of an FSA employee, from retaining a direct loan secured prior to March 24, 2000 or, if subsequent to March 24, 2000, such direct loan is secured prior to the FSA employee being appointed to, or nominated for appointment to an FSA position. Any FSA employee who either personally has such a pre-existing loan, or whose spouse or minor child has such a pre-existing loan, must

submit a written disqualification from taking any official action on any such loan. Other than through the application of normal FSA loan servicing options set forth under FSA regulations, the terms of any such pre-existing loans shall remain fixed and shall not be subject to renegotiation or renewal unless pursuant to policy decision(s) made by the USDA Secretary or the FSA Administrator.

(3) *Waiver for FSA State Committee members.* A request for an exception to the general prohibition of paragraph (c)(1) of this section may be submitted by an FSA State Committee member (whether on his or her own behalf, or on behalf the FSA State Committee member's spouse or minor child), to the FSA Deputy Administrator for Farm Loans. The Deputy Administrator for Farm Loans may grant a written waiver from this prohibition based on a determination made with the concurrence of the DAEO and the FSA headquarters ethics advisor that:

(i) The applicant is a current FSA State Committee member or the spouse or minor child of a current FSA State Committee member;

(ii) The applicant meets the statutory qualification requirements for obtaining a direct loan; and

(iii) A waiver is not inconsistent with part 2635 of this title nor 7 U.S.C. 1986 nor otherwise prohibited by law, and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position, including the appearance of misuse of non-public information, or loss of impartiality, or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered.

(d) *Prohibited real estate purchases.* (1) No FSA employee, or spouse or minor child of an FSA employee, may directly or indirectly purchase real estate held in the FSA inventory, for sale under forfeiture to FSA, or from an FSA program participant.

(2) *Waiver.* A request for an exception to the prohibition found in paragraph (l)(1) of this section may be submitted jointly by the FSA program participant and FSA employee (whether on his or her own behalf, or on behalf of the employee's own spouse or minor child), to the FSA State Executive Director. The FSA State Executive Director may grant a written waiver from this prohibition based on a determination made with the advice and clearance of the DAEO and the FSA headquarters ethics advisor that the waiver is not inconsistent with part 2635 of this title nor 7 U.S.C. 1986 nor otherwise prohibited by law and that, under the particular circumstances, application of the prohibition is not necessary to avoid the appearance of misuse of position or loss of impartiality or otherwise to ensure confidence in the impartiality and objectivity with which agency programs are administered. A waiver under this paragraph may impose appropriate conditions, such as requiring execution of a written disqualification.

(e) *Prohibited transactions with FSA program participants.* (1) Except as provided in paragraph (e)(2) of this section, no FSA employee or spouse or minor child of an FSA employee may directly or indirectly: Sell real property to; lease real property to or from; sell to, lease to or from, or purchase personal property from; or employ for compensation a person whom the FSA employee knows or reasonably should know is an FSA program participant directly affected by decisions of the particular FSA office in which the FSA employee serves.

(2) *Exceptions.* Paragraph (e)(1) of this section does not apply to:

(i) A sale, lease, or purchase of personal property, if it involves:

(A) Goods available to the general public at posted prices that are customary and usual within the community; or

(B) Property obtained pursuant to public auction; or

(ii) Transactions listed in paragraph (e)(1) of this section determined in advance by the appropriate FSA State Executive Director, after consulting with the FSA Headquarters ethics advisor, to be consistent with part 2635 of this title and otherwise not prohibited by law.

(f) *Additional prior approval requirement for outside employment.* Any FSA employee not otherwise required to obtain approval for outside employment under § 8301.102 shall obtain written approval in accordance with the procedures set forth in paragraph (c) of § 8301.102 before engaging in outside employment, as that term is defined by paragraph (b) of § 8301.102, with or for a person:

(1) Whom the FSA employee knows, or reasonably should know, is an FSA program participant; and

(2) Who is directly affected by decisions made by the particular FSA office in which the FSA employee serves.

§ 8301.104 Additional rules for employees of the Food Safety and Inspection Service.

Any employee of the Food Safety and Inspection Service not otherwise required to obtain approval for outside employment under § 8301.102, shall, before engaging in any form of outside employment, obtain written approval in accordance with the procedures set forth in paragraph (c) of § 8301.102.

§ 8301.105 Additional rules for employees of the Office of the General Counsel.

Any attorney serving within the Office of the General Counsel, not otherwise required to obtain approval for outside employment under § 8301.102, shall obtain written approval, in accordance with the procedures set forth in paragraph (c) of § 8301.102, before engaging in the outside practice of law, whether compensated or not.

§ 8301.106 Additional rules for employees of the Office of Inspector General.

Any employee of the Office of Inspector General, not otherwise required to obtain approval for outside employment under § 8301.102, shall obtain written approval, in accordance with the procedures set forth in paragraph (c) of § 8301.102, before engaging in any form of outside employment that involves the following:

(a) Law enforcement, investigation, security, firearms training, defensive tactics training, and protective services;

(b) Auditing, accounting, bookkeeping, tax preparation, and other services involving the analysis, use, or interpretation of financial records;

(c) The practice of law, whether compensated or not; or

(d) Employment involving personnel, procurement, budget, computer, or equal employment opportunity services.

[FR Doc. 00–7275 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 75

[Docket Number LS–99–06]

Increase in Fees for Federal Seed Testing and Certification Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is increasing the hourly fee rate charged for voluntary Federal seed testing and certification services. The fee rate is increased to cover increases in salaries of Federal employees, rent, supplies, replacement equipment, and other increased Agency costs.

EFFECTIVE DATE: Effective April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Richard C. Payne, Chief, Seed Regulatory and Testing Branch, Livestock and Seed Program, AMS, Room 209, Building 306, BARC–E., Beltsville, Maryland 20705–2325, Telephone (301) 504–9430, FAX (301) 504–8098.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be "not significant" for purposes of Executive Order 12866, and therefore, has not been reviewed by the Office of Management and Budget (OMB).

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have a retroactive effect. The rule will not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule.

There are no administrative procedures that must be exhausted prior to judicial challenge to the provision of this rule.

Regulatory Flexibility Act and Paperwork Reduction Act

The Administrator, AMS, has certified that this action will not have a significant impact on a substantial number of small entities as defined in the Regulatory Flexibility Act.

The AMS provides, under the authority of the Agricultural Marketing Act (AMA) of 1946, a voluntary, user-fee funded seed testing and certification service to approximately 65 businesses per year. Many of the users of the testing and certification services would be considered small businesses under the criteria established by the Small Business Administration (13 CFR 121.601). Over ninety percent of the samples tested in this program represent seed and grain scheduled for export. Grain is examined for the presence of specified weed and crop seeds upon request of the Department's Grain Inspection, Packers and Stockyards Administration. A Federal Seed Analysis Certificate, containing purity, germination, noxious-weed seed examination, and other test results is issued upon completion of the testing. The Federal Seed Analysis Certificate is required documentation for shipments of seed and grain from the United States entering certain countries.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate. The most recent review determined that the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. Without a fee increase, FY 2000 revenues for seed testing and certification services are projected at $104,000, costs are projected at $108,000, and the trust fund balance would be $78,000. With a fee increase, FY 2000 revenues are projected at $114,000, costs are projected at $113,000, and the trust fund balance would be $83,000.

This action will raise the hourly rate charged to users of the seed testing and certification services. The AMS estimates that this proposed rule will yield an additional $10,000 during FY 2000. The hourly rate for seed testing and certification services will increase by approximately 9.9 percent. The costs to entities will be proportional to their use of the service, so that costs are shared equitably by all users. The increase in costs to individual firms will be, on average, approximately $6.70 per Federal Seed Analysis Certificate issued. There will also be an increase of $1.10 for each duplicate certificate issued.

This action will result in no increase to the previously approved information collection requirements for the voluntary Federal seed testing and certification service. The information collection requirements that appear in Part 75 of the regulations have been previously approved by OMB and assigned OMB Control Number 0581–0140 under the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Background

The Secretary of Agriculture is authorized by the AMA of 1946, as amended, 7 U.S.C. 1621 *et seq.*, to provide voluntary Federal seed testing and certification services to facilitate the orderly marketing of seed and grain and to enable consumers to obtain the quality of seed and grain they desire. The AMA provides that reasonable fees be collected from users of the program services to cover, as nearly as practicable, the costs of services rendered.

The AMS regularly reviews its user fee financed programs to determine if the fees are adequate and if costs are reasonable. This action will increase the hourly fee rate and changes for voluntary seed testing and certification services provided to the seed and grain industries to reflect the costs currently associated with providing the services.

A recent review of the current hourly fee rate, effective October 1, 1998, revealed that anticipated revenue will not cover increased program costs. Without a fee increase FY 2000 revenues for seed testing and certification services are projected at $104,000, costs are projected at $108,000, and the trust fund balance would be $78,000. With a fee increase, FY 2000 revenues are projected at $114,000, costs are projected at $113,000, and the trust fund balance would be $83,000.

The hourly fee for service is established by distributing the projected annual program operating costs over the estimated hours of service—revenue hours—provided to users of the service. Revenue hours include the time spent conducting tests, keeping sample logs, preparing Federal Seed Analysis Certificates and storing samples. As program operating costs continue to rise, the hourly fees must be adjusted to enable the program to remain financially self-supporting as required by law. Program operating costs include salaries and fringe benefits of seed analysts, supervision, training, and all administrative costs of operating the program.

Employee salaries and benefits account for approximately 90 percent of the total budget. A general and locality salary increase of 3.68 percent for Federal employees involved in the seed testing and certification service became effective in January 1999 and has materially affected program costs. Another general and locality salary increase of 4.94 percent became effective in January 2000.

This fee increase is necessary to offset increased program operating costs resulting from: (1) salary increases for all Federal employees for 1999 and 2000, (2) increases in rent, (3) increases in costs of supplies needed for testing samples, and (4) purchases of replacement equipment needed to provide the service.

In view of these increases in costs, the Agency is increasing the hourly rate charged to applicants for the service, including the issuance of Federal Seed Analysis Certificates from $40.40 to $44.40. The fee for issuing additional duplicate certificates will increase from $10.10 to $11.10.

The action will fully recover all costs associated with providing the voluntary testing service to the seed and grain industry. Although the user-fee increase will increase costs to individual firms, the cost for providing the seed testing and certification services will increase by an average of only $6.70 per Federal Seed Analysis Certificate and $1.10 for each duplicate certificate. It is estimated that the total revenue generated will increase by approximately $10,000 annually.

Summary of Public Comment

A notice of proposed rulemaking was published in the **Federal Register** (64 FR 58358) on October 29, 1998. Interested persons were invited to submit comments until December 28, 1999. No comments were received.

List of Subjects in 7 CFR Part 75

Administrative practice and procedure, Agricultural commodities, Reporting and record keeping requirements, Seeds, Vegetables.

For the reasons set forth in the preamble, 7 CFR Part 75 is amended as follows:

PART 75—REGULATIONS FOR INSPECTION AND CERTIFICATION OF QUALITY OF AGRICULTURAL AND VEGETABLE SEEDS

1. The authority citation for Part 75 continues to read as follows:

Authority: 7 U.S.C. 1622 and 1624.

§ 75.41 [Amended]

2. In § 75.41, "$40.40" is removed and "$44.40" is added in its place.

§ 75.47 [Amended]

3. In § 75.47, "$10.10" is removed and "$11.10" is added in its place.

Dated: March 20, 2000.

Barry L. Carpenter,

Deputy Administrator, Livestock ond Seed Program.

[FR Doc. 00–7276 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV00–985–3 IFR–A]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Revision of the Salable Quantity and Allotment Percentage for Class 3 (Native) Spearmint Oil for the 1999–2000 Marketing Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule amends a prior interim final rule that increased the quantity of Class 3 (Native) spearmint oil produced in the Far West that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year. The prior interim final rule increased the Native spearmint oil salable quantity by 102,311 pounds from 1,125,755 pounds to 1,228,066 pounds, and the allotment percentage by 5 percent from 55 percent to 60 percent. This rule increases the Native spearmint oil salable quantity by an additional 81,849 pounds from 1,228,066 to 1,309,915 pounds, and the allotment percentage by an additional 4 percent from 60 percent to 64 percent. The Spearmint Oil Administrative Committee (Committee), the agency responsible for local administration of the marketing order for spearmint oil produced in the Far West, recommended this rule to avoid extreme fluctuations in supplies and prices, and, thus, help to maintain stability in the Far West spearmint oil market.

DATES: Effective on March 25, 2000 through May 31, 2000; comments received by April 24, 2000 will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204–2807; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–2491; Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985 (7 CFR Part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada, and Utah), hereinafter referred to as the "order." This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the provisions of the marketing order now in effect, salable quantities and allotment percentages may be established for classes of spearmint oil produced in the Far West. This rule increases the quantity of Native spearmint oil produced in the Far West that may be purchased from or handled for producers by handlers during the 1999–2000 marketing year, which ends on May 31, 2000. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

The U.S. production of spearmint oil is concentrated in the Far West, primarily Washington, Idaho, and Oregon (part of the area covered by the order). Spearmint oil is also produced in the Midwest. The production area covered by the order normally accounts for approximately 63 percent of the annual U.S. production of Scotch spearmint oil and approximately 93 percent of the annual U.S. production of Native spearmint oil.

This rule amends an interim final rule that was published in the **Federal Register** on February 10, 2000 (65 FR 6528). That rule, which was based on a unanimous Committee recommendation made at a meeting on January 13, 2000, increased the quantity of Native spearmint oil that handlers may purchase from, or handle for, producers during the 1999–2000 marketing year, which ends on May 31, 2000. Specifically, that rule increased the salable quantity by 102,311 pounds from 1,125,755 pounds to 1,228,066 pounds, and the allotment percentage by 5 percent from 55 percent to 60 percent.

This amended interim final rule, which is based on a unanimous Committee recommendation made at a meeting on February 23, 2000, increases the salable quantity an additional 81,849 pounds from 1,228,066 pounds to 1,309,915 pounds, and the allotment percentage an additional 4 percent from 60 percent to 64 percent for Native spearmint oil for the 1999–2000 marketing year.

The initial salable quantity and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year were recommended by the Committee at its October 7, 1998, meeting. The Committee recommended salable quantities of 1,199,190 pounds and 1,125,755 pounds, and allotment percentages of 65 percent and 55 percent, respectively, for Scotch and Native spearmint oils. A proposed rule was published in the November 17, 1998, issue of the **Federal Register** (63 FR 63804). A final rule establishing the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year was published in the January 19, 1999, issue of the **Federal Register** (64 FR 2799).

The salable quantity is the total quantity of each class of oil that handlers may purchase from, or handle for, producers during a marketing year. The salable quantity calculated by the Committee is based on the estimated trade demand. The total salable quantity is divided by the total industry allotment base to determine an allotment percentage. Each producer is allotted a share of the salable quantity by applying the allotment percentage to the producer's individual allotment base for the applicable class of spearmint oil.

Sections 985.50, 985.51, and 985.52 provide the Committee authorization to consider and recommend salable quantities and allotment percentages for each class of spearmint oil for an ensuing marketing year. Section 985.51(b) provides the authority for the Committee to recommend that an increase in the salable quantity and allotment percentage for either or both classes of oil be considered.

Taking into consideration the following discussion on adjustments to the Native spearmint oil salable quantity, the revised 1999–2000 marketing year salable quantity of 1,228,066 pounds will, therefore, be increased to 1,309,915 pounds.

The original total industry allotment base for Native spearmint oil for the 1999–2000 marketing year was established at 2,046,828 pounds and was revised during the year to 2,046,214 pounds to reflect a loss of 614 pounds of base due to non-production of some producers' total annual allotments. The Committee has used this revised allotment base in computing the increases to the Native spearmint oil salable quantity.

By increasing the salable quantity and allotment percentage from 1,228,066 pounds to 1,309,915 pounds, this amended interim final rule makes an additional amount of Native spearmint oil available by releasing such oil from the reserve pool. When applied to each individual producer, the additional 4 percent allotment percentage increase allows each producer to take up to an amount equal to 4 percent of their allotment base from their Native spearmint oil reserve. If a producer does not have any reserve pool oil, or has less than 4 percent of their allotment base in the reserve pool, the increase in allotment percentage will actually make less than such amount available to the market. Currently, producers receiving 8,304 pounds of additional allotment through this increase do not have any Native spearmint oil in reserve. Thus, rather than the computed 81,849 additional pounds, this action effectively makes an additional 73,545 pounds of Native spearmint oil available to the market.

The following summarizes the Committee recommendation: Factors Affecting the Amended Native Spearmint Oil Salable Quantity and Allotment Percentage

(A) Estimated 1999–2000 Allotment Base—2,046,828 pounds. This is the figure the original 1999–2000 salable quantities and allotment percentages for both classes of spearmint oil were based on.

(B) Revised 1999–2000 Allotment Base—2,046,214 pounds. This is 614 pounds less than the estimated allotment base of 2,046,828 pounds. This is less because some producers failed to produce all of their previous year's allotment.

(C) Initial 1999–2000 Allotment Percentage—55 percent. This was recommended by the Committee on October 7, 1998.

(D) Initial 1999–2000 Salable Quantity—1,125,755 pounds. This figure is 55 percent of the estimated allotment base of 2,046,828 pounds.

(E) Initial Increase in Allotment Percentage—5 percent. This was recommended by the Committee on January 13, 2000.

(F) Initial Revision of the 1999–2000 Allotment Percentage—60 percent. This figure was derived by adding the initial increase in the allotment percentage of 5 percent to the initial 1999–2000 allotment percentage of 55 percent and was effective on February 11, 2000.

(H) Initial Computed Increase in the 1999–2000 Salable Quantity—102,311 pounds. This is the product of the revised 1999–2000 allotment base of 2,046,214 and the initial 5 percent increase.

(I) Initially Revised 1999–2000 Salable Quantity—1,228,066 pounds. This figure, effective on February 11, 2000, is the sum of the initial salable quantity of 1,125,755 pounds and the initial computed increase of 102,311 pounds, and is approximately 60 percent of the estimated 1999–2000 allotment base of 2,046,214 pounds.

(J) Additional Increase in the Allotment Percentage—4 percent. This percentage increase was recommended by the Committee at its February 23, 2000, meeting.

(K) Amended 1999–2000 Allotment Percentage—64 percent. This is the sum of the initial allotment percentage of 55 percent, and the 5 and 4 percent increases.

(L) Additional Computed Increase in the 1999–2000 Salable Quantity—81,849 pounds. This is the product of the revised 1999–2000 allotment base of 2,046,214 pounds and the additional 4 percent increase in the allotment percentage.

(M) 1999–2000 Salable Quantity as Revised by this Amended Interim Final Rule—1,309,915 pounds. This figure is the sum of the revised salable quantity of 1,228,066 and the additional computed increase of 81,849 pounds, and is approximately 64 percent of the revised 1999–2000 allotment base of 2,046,214 pounds.

In making this latest recommendation, the Committee considered all available information on supply and demand. The 1999–2000 marketing year began on June 1, 1999. Handlers have indicated that with this action, the available supply of both Scotch and Native spearmint oils appears adequate to meet anticipated demand through May 31, 2000. Without the increase, the Committee believes the industry will not be able to meet market needs. As of February 23, 2000, approximately

40,966 pounds of Native spearmint oil was available for market. During the past 5 years, the average sales of Native spearmint oil from March 1 to May 31 totaled 75,586 pounds, while the average sales for the period June 1 through February 29 totaled 1,087,385 pounds. The Far West spearmint oil industry has sold approximately 1,282,150 pounds of Native spearmint oil through February 23, 2000. This action has the effect of adding 73,545 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the remainder of this marketing year up to approximately 114,511 pounds.

The Department, based on its analysis of available information, has determined that the salable quantity and allotment percentage for Native spearmint oil for the 1999–2000 marketing year should be increased to 1,309,915 and 64 percent, respectively.

This amended rule further relaxes the regulation of Native spearmint oil and will allow producers to meet market needs and improve returns. In conjunction with the issuance of this rule, the Committee's revised marketing policy statement for the 1999–2000 marketing year has been reviewed by the Department. The Committee's marketing policy statement, a requirement whenever the Committee recommends implementing volume regulations or recommends revisions to existing volume regulations, meets the intent of section 985.50 of the order. During its discussion of revising the 1999–2000 salable quantities and allotment percentages, the Committee considered: (1) The estimated quantity of salable oil of each class held by producers and handlers; (2) the estimated demand for each class of oil; (3) prospective production of each class of oil; (4) total of allotment bases of each class of oil for the current marketing year and the estimated total of allotment bases of each class for the ensuing marketing year; (5) the quantity of reserve oil, by class, in storage; (6) producer prices of oil, including prices for each class of oil; and (7) general market conditions for each class of oil, including whether the estimated season average price to producers is likely to exceed parity. Conformity with the Department's "Guidelines for Fruit, Vegetable, and Specialty Crop Marketing Orders" has also been reviewed and confirmed.

This increase in the 1999–2000 marketing year Native spearmint oil salable quantity and allotment percentage allows for anticipated market needs for this class of oil. In determining anticipated market needs, consideration by the Committee was given to historical sales, and changes and trends in production and demand.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the AMS has considered the economic impact of this action on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 7 spearmint oil handlers subject to regulation under the marketing order and approximately 119 producers of Scotch spearmint oil and 105 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

The Far West spearmint oil industry is characterized by producers whose farming operations generally involve more than one commodity, and whose income from farming operations is not exclusively dependent on the production of spearmint oil. Crop rotation is an essential cultural practice in the production of spearmint oil for weed, insect, and disease control. A normal spearmint oil producing operation would have enough acreage for rotation such that the total acreage required to produce the crop would be about one-third spearmint and two-thirds rotational crops. An average spearmint oil producing farm would, thus, have to have considerably more acreage than would be planted to spearmint during any given season. To remain economically viable with the added costs associated with spearmint oil production, most spearmint oil producing farms would fall into the category of large businesses.

Small spearmint oil producers represent a minority of farming operations and are more vulnerable to market fluctuations. Such small farmers generally need to market their entire annual crop and do not have the resources to cushion seasons with poor spearmint oil returns. Conversely, large diversified producers have the potential to endure one or more seasons of poor spearmint oil markets because of stronger incomes from alternate crops which could support the operation for a period of time. Despite the advantage larger producers may have, increasing the Native salable quantity and allotment percentage will help both large and small producers by improving returns.

This rule amends an interim final rule that was published in the **Federal Register** on February 10, 2000 (65 FR 6528). That rule increased the salable quantity by 102,311 pounds from 1,125,755 pounds to 1,228,066 pounds, and the allotment percentage by 5 percent from 55 percent to 60 percent. This amended interim final rule increases the salable quantity an additional 81,849 pounds from 1,228,066 pounds to 1,309,915 pounds, and the allotment percentage an additional 4 percent from 60 percent to 64 percent for Native spearmint oil for the 1999–2000 marketing year. This rule relaxes the regulation of Native spearmint oil and will allow producers to meet market needs and improve returns.

The Committee considered alternatives to the 4 percent increase based on projections and historical data available at the meeting. Generally, spearmint oil producers and buyers attending the meeting recommended that the Native spearmint oil salable quantity be increased by at least an additional 55,000 pounds. The Committee reached its recommendation to increase the Native spearmint oil salable quantity by an additional 81,849 pounds and the allotment percentage by 4 percent after careful consideration of all available information, and believes that the level recommended will achieve the objectives sought. Without the increase, the Committee believes the industry will not be able to meet market needs. By recommending a greater increase than the market might otherwise demand, the Committee believes that any further unanticipated

demand for Native spearmint oil during the remainder of the marketing year will be satisfied.

As of February 23, 2000, approximately 40,966 pounds of Native spearmint oil was available for market. During the past 5 years, the average sales of Native spearmint oil from March 1 to May 31 totaled 75,586 pounds, while the average sales for the period June 1 through February 29 totaled 1,087,385 pounds. The Far West spearmint oil industry has sold approximately 1,282,150 pounds of Native spearmint oil through February 23, 2000. This action has the effect of adding 73,545 pounds of Native spearmint oil to the amount available for market, bringing the total available supply for the remainder of this marketing year up to approximately 114,511 pounds.

Annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Reporting and recordkeeping requirements have remained the same for each year of regulation. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers and handlers. All reports and forms associated with this program are reviewed periodically in order to avoid unnecessary and duplicative information collection by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Finally, the Committee's meetings were widely publicized throughout the spearmint oil industry and all interested persons were invited to attend and participate on all issues. Interested persons are also invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following website: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including that contained in the prior proposed and final rules in connection with the establishment of the salable quantities and allotment percentages for Scotch and Native spearmint oils for the 1999–2000 marketing year, the prior interim final rule increasing the 1999–2000 marketing year Native spearmint oil salable quantity and allotment percentage, the Committee's recommendation and other available information, it is found that to revise § 985.218 to change the salable quantity and allotment percentage for Native spearmint oil, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

This rule invites comments on a revision to the salable quantity and allotment percentage for Native spearmint oil for the 1999–2000 marketing year. A 30-day comment period is provided. Thirty days is deemed appropriate because this rule increases the quantity of Native spearmint oil that may be marketed during the marketing year ending on May 31, 2000. Additionally, the current quantity of Native spearmint oil available for market may not be adequate to satisfy market needs for the remainder of the marketing year. Any comments received will be considered prior to finalization of this rule.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) This rule increases the quantity of Native spearmint oil that may be marketed during the marketing year which ends on May 31, 2000; (2) the current quantity of Native spearmint oil may be inadequate to meet demand for the remainder of the season, thus making the additional oil available as soon as is practicable is beneficial to both handlers and producers; (3) the Committee unanimously recommended this change at a public meeting and interested parties had an opportunity to provide input; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR Part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 985.218 is amended by republishing the introductory text and revising paragraph (b) to read as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

§ 985.218 Salable quantities and allotment percentages—1999–2000 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 1999, shall be as follows:

* * * * *

(b) Class 3 (Native) oil—a salable quantity of 1,309,915 pounds and an allotment percentage of 64 percent.

Dated: March 21, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–7333 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 212, 240, 245, 274a, and 299

[INS No. 1963–98; AG Order No. 2294–2000]

RIN 1115–AF33

Adjustment of Status for Certain Nationals of Haiti

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This rule implements section 902 of the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA) by establishing procedures for certain nationals of Haiti who have been residing in the United States to become lawful permanent residents of this country. This rule allows them to obtain lawful permanent resident status without applying for an immigrant visa at a United States consulate abroad and waives many of the usual requirements for this benefit.

DATES: This final rule is effective March 24, 2000.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service:* Suzy Nguyen, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–5014. *For matters relating to the Executive Office for*

Immigration Review: Chuck Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

What are the Basic Provisions of Section 902 of HRIFA and the Interim Regulations Published on May 12, 1999?

On October 21, 1998, the President signed into law a Fiscal Year 1999 Omnibus Appropriations Act, Public Law 105–277 (112 Stat. 2681). Division A, title IX of that statute, the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA), contained a provision, section 902, that allows certain nationals of Haiti to adjust their status to that of lawful permanent resident. On May 12, 1999, the Department of Justice (Department) published an interim rule, with requests for comments, that implemented section 902 of HRIFA. *See* 64 FR 25756.

Section 902 of HRIFA provides that the Attorney General shall adjust the status of certain Haitian nationals who are physically present in the United States to that of lawful permanent resident. In order to be eligible for benefits under HRIFA, an applicant must:

- Be a national of Haiti who was present in the United States on December 31, 1995;
- Have been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for adjustment is filed (not including any absence or absences amounting to 180 days or less in the aggregate);
- Properly file an application for adjustment before April 1, 2000;
- Be admissible to the United States under all provisions of section 212(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1182(a), except those provisions specifically excepted by HRIFA; and
- Fall within one of the five classes of persons described in section 902(b)(1) of HRIFA.

The five classes described in section 902(b)(1) of HRIFA are:

(1) Haitian nationals who filed for asylum before December 31, 1995;

(2) Haitian nationals who were paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest;

(3) Haitian national children who arrived in the United States without parents and have remained without parents in the United States since such arrival;

(4) Haitian national children who became orphaned subsequent to arrival in the United States; and

(5) Haitian children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned since such abandonment.

How Many Comments Were Received from Interested Parties in Response to the Interim Rule?

A total of 46 comments were received during the comment period. Commenters included Members of Congress, the mayor of a major city, representatives of a number of nongovernmental organizations, private attorneys, and other interested individuals. The Department appreciates the contributions of all individuals and groups who submitted comments.

What Comments Were Submitted and how is the Regulation Being Changed as a Result?

The issues raised by the commenters generally fell into 17 areas:

1. Issues Pertaining to Eligibility Under the Statute, but not Related to Immigrant Visa Waivers

A number of commenters requested that the Department extend the time period for submission of applications by principal applicants beyond the March 31, 2000, deadline set by statute. Such action would require new legislation, as it is clearly beyond the rulemaking authority of the Department.

Other commenters, recognizing that such change would exceed the Department's authority, requested that the Department not reject any applications as improperly filed during the final 30 days of the filing period because of a lack of documentation to establish eligibility. In light of the relatively short filing period, the Department finds this suggestion to be both reasonable and within its rulemaking authority. Accordingly, 8 CFR 245.15(c)(2) has been revised to provide that an Application to Register Permanent Residence or Adjust Status (Form I–485) submitted to either the Nebraska Service Center or the Immigration Court by a principal applicant seeking adjustment of status under HRIFA will not be rejected as improperly filed as long as it has been properly completed and signed by the applicant, identifies the applicant as a HRIFA principal applicant, and is accompanied by either the correct fee or a request for a fee waiver.

Some commenters felt that any Haitian who entered the United States prior to December 31, 1995, or who has been living in the United States since December 31, 1995, and any family members of such an individual, should be allowed to adjust his or her status to that of permanent resident. Although the Department understands the desire of the commenters to have the benefits of permanent residence extended to as many persons as possible, the suggestion is contrary to the statute, which requires that principal applicants fall within one of the five categories set forth above, be admissible to the United States, and meet all other statutory requirements. Accordingly, this suggestion cannot be adopted.

Some commenters wanted the regulations to provide that upon being granted lawful permanent residence, any HRIFA applicants who arrived in the United States after being paroled from the U.S. Naval Base at Guantanamo Bay, Cuba (Guantanamo Bay), would immediately become eligible to apply for United States citizenship. This suggestion cannot be adopted because the Act specifically requires an alien to reside in the United States for a specific period "after being lawfully admitted for permanent residence." See Sec. 316(a)(1) of the Act, 8 U.S.C. 1427(a)(1). In the rare instances in which the Immigration and Naturalization Service (Service or INS) has recorded the date of admission for permanent residence as other than the actual date the application for such status was granted, it has only done so in accordance with explicit statutory authority.

Some commenters suggested that the regulations provide that any Haitian national who entered the United States prior to December 31, 1995, and who applied for asylum prior to December 31, 1997, should be eligible for adjustment under HRIFA. This suggestion is contrary to statute and beyond the rulemaking authority of the Department; it therefore cannot be adopted.

Finally, some commenters suggested that any asylum application that was mailed to the Service by December 31, 1995, but rejected as not properly filed, be considered to have been timely filed for HRIFA purposes. Congress could have opened the category to those who "filed or attempted to file" the application, or more simply to those who "submitted" the application. Instead, Congress required that the applicant have "filed for asylum before December 31, 1995," in order to fall

within this category. Accordingly, the Department will consider only those asylum applications that were properly filed by the deadline established by statute. The Service's long-standing regulation, 8 CFR 103.2(a)(7), which concerns the proper filing of petitions, will not be revised. The suggestion will not be adopted.

2. Issues Pertaining to Eligibility Under the Statute and Related to Immigrant Visa Waivers

A number of commenters suggested that the Department either automatically waive those grounds of inadmissibility relating to medical conditions (especially HIV/AIDS infection) and fraud violations, or provide a more generous waiver provision such as that accorded to refugees and asylees adjusting status to lawful permanent residence under section 209 of the Act. 8 U.S.C. 158.

Section 902(a)(1)(B) of HRIFA states that, in order for the Attorney General to grant permanent residence under HRIFA, the applicant must be admissible to the United States. The specific grounds under which an alien may be found inadmissible to the United States are set forth in section 212(a) of the Act. 8 U.S.C. 1182(a). While HRIFA provides that five of these specific grounds of inadmissibility shall not apply to HRIFA applicants, it does not exempt them from the grounds pertaining to either inadmissibility under medical grounds, which is discussed in section 212(a)(1)(A), 8 U.S.C. 1182(a)(1)(A), or inadmissibility under grounds pertaining to misrepresentation, which is discussed in section 212(a)(6)(C), 8 U.S.C. 1182(a)(1)(C). Without statutory authority to waive grounds of inadmissibility, the Attorney General may not grant permanent residence to an inadmissible alien.

The statutory authority to grant waivers of medical grounds of inadmissibility is contained in section 212(g) of the Act, 8 U.S.C. 1182(g), and the authority to grant waivers of grounds of inadmissibility pertaining to misrepresentation is contained in section 212(i) of the Act. 8 U.S.C. 1182(i). Both of these sections set forth waiver eligibility criteria mandating that, among other things, the applicant have a qualifying relative who is a citizen or lawful permanent resident of the United States. Unfortunately, many HRIFA applicants who are inadmissible under section 212(a)(1) or section 212(a)(6)(C) of the Act do not have such qualifying relatives, and are therefore ineligible for these waivers.

Some commenters suggest that the authority contained in section 209 of the Act, 8 U.S.C. 1159, enables the Department to grant waivers of inadmissibility to HRIFA applicants. In so doing, a number of them quote a portion of paragraph (c) of that section. The entire paragraph provides:

> (c) The provisions of paragraphs (4), (5), and (7)(A) of section 1182(a) of this title shall not be applicable to any alien seeking adjustment of status *under this section* [i.e., section 209 of the Act], and the Attorney General may waive any other provision of such section (other than paragraph (2)(C) or subparagraph (A), (B), (C), or (E) of paragraph (3)) *with respect to such an alien* for humanitarian purposes, to assure family unity, or when it is otherwise in the public interest.

8 U.S.C. 1159(c) (emphasis added).

When read in its entirety, it is clear that the waiver provision contained in section 209(c) of the Act applies only to aliens who are adjusting status under that section, not to aliens applying for adjustment of status under other provision of law, including HRIFA. The Department does not have the statutory authority to make this change. Accordingly, this suggestion cannot be adopted.

3. Other Waiver Issues

An applicant who is able to meet the statutory requirements set forth in sections 212(g) and 212(i) of the Act for grounds of inadmissibility pertaining to a medical condition or to fraud or willful misrepresentation must also show that his or her case warrants approval as a matter of discretion. In exercising such discretionary authority, adjudicating officers and immigration judges must take into account all factors—whether positive and negative—bearing on the case, and determine which factors carry significant weight and which do not.

A number of commenters have requested that in adjudicating the waiver application, the adjudicating officer or immigration judge take into account certain factors pertaining to the manner of the applicant's arrival in the United States or to conditions in the applicant's homeland. Specifically, commenters requested that for persons who were paroled into the United States from Guantanamo Bay for the purpose of receiving treatment of an HIV or AIDS condition, the fact that their arrival in the United States was the direct result of a government decision to provide such treatment should be viewed as a significant positive factor. Likewise, with regard to those applicants who used counterfeit documents to travel from Haiti to the United States, many commenters asked that the Department take into consideration the general lawlessness and corruption that was widespread in Haiti at the time of the alien's departure, the difficulties in obtaining legitimate departure documents at that time, and other factors peculiar to Haiti during that period that may have induced the alien to commit fraud or make willful misrepresentations. Although these factors would probably have been taken into account by the adjudicating officer or immigration judge regardless of the inclusion or exclusion of any specific language in the regulations, the Department feels that the inclusion of such language in the final rule will facilitate a general understanding of the importance of these factors in making the discretionary decision, and the suggestion has been adopted.

4. The Fee for Filing an Application

Some commenters requested that the Department provide a reduced fee level for families filing two or more applications for adjustment of status under the HRIFA program.

The fees charged under the HRIFA program are the same as those charged all other adjustment applicants and (on an individual case basis) the regulations already allow persons who are unable to pay the specified fees to request a waiver of the filing fee. Upon consideration of all factors, it was determined that it was not appropriate to provide a reduced fee level for HRIFA applicants in general.

5. Documentation in General

A number of commenters made suggestions regarding the documentation required for proof of eligibility and the manner and timeframe in which that documentation is to be submitted. Some commenters suggested that the regulations should not require submission of proof of unavailability of primary evidence (*e.g.*, a birth certificate) before accepting secondary evidence (*e.g.*, a baptismal record or a consistent prior claim). Conversely, other commenters suggested that the standard should call for the submission of the "best evidence available." In considering applications and petitions for benefits under the Act, the Department's policy has generally been that the applicant should submit, and the adjudication should be based on, the best evidence available. In determining whether a particular type of evidence is generally available from foreign countries, the Department is guided by the information contained in Volume 9, Part IV, Appendix C of the Department of State's Foreign Affairs

Manual (FAM), which reports that birth certificates, marriage records, divorce records, death certificates, and adoption certificates are all generally available from Haiti. This is not to say, as it could be said about any country in the world, that in an individual case, a particular record may not have become lost or destroyed, or be otherwise unavailable. For this reason, the Department requires an applicant to submit proof of the unavailability of primary documentation from Haiti before considering secondary evidence. In short, the only way of knowing that secondary evidence is the "best evidence available," and is therefore acceptable documentation, is to first establish that the primary evidence is unavailable. However, with regard to applications for adjustment of status under HRIFA, there is a very significant factor that complicates the application of the "best evidence available" standard: the March 31, 2000, HRIFA deadline for the filing of applications by principal applicants. Because of this deadline, the Department has determined that it is best to temper this standard so as to allow applicants to file for adjustment of status using secondary evidence as long as they also submit evidence that they have requested the primary evidence from an official recordkeeper (*e.g.*, the Haitian National Archives). This approach will avoid the risk of persons being unable to apply for adjustment under HRIFA, while at the same time ensuring the integrity of the documentation. In instances in which the primary documentation arrives prior to the applicant's interview with an immigration officer or hearing before an immigration judge, the applicant would present the primary documentation at such interview or hearing. Where the documentation does not arrive prior to the interview or hearing, the interviewing officer or presiding judge would make a determination whether to make a decision based on the evidence available or to continue the case until the primary documentation arrives.

Some commenters were under the mistaken impression that the regulations, *see, e.g.* 8 CFR 245.15(i), always require that a Form I–94 be submitted as proof of entry. If the alien is in possession of the Form I–94, he or she should submit it, but if the alien never received or lost the Form I–94, it cannot be submitted. Where it is crucial that the applicant establish the date of arrival, as with children who arrived without parents, secondary documents may be submitted (such as transportation company records or an affidavit) in lieu of a missing or nonexistent Form I–94. The regulations have been amended to clarify this point. However, the applicant is still required to meet the requirements set forth in 8 CFR 245.15(i) pertaining to documenting when the applicant's physical presence in the United States began.

Some commenters suggested that the Department allow applicants to submit a list of documents already known to be in their Service files. While the regulations already contain this provision, the relevant provision in 8 CFR 245.15(m) has been revised to eliminate possible confusion on this issue.

6. Documenting Haitian Nationality

A number of commenters felt that it was not reasonable for the Department to require applicants under HRIFA to submit evidence of nationality. Many felt that any "evidence" of nationality already contained in the alien's file (including the applicant's prior claims of Haitian nationality) should be more than sufficient to prove that the applicant is Haitian. Additionally, some commenters stated that it is unreasonable to require the applicant to submit evidence of the unavailability of a document before the Service or Immigration Court will accept secondary evidence in lieu of that document. Finally, some commenters expressed concerns that children born in Guantanamo Bay of Haitian parents would be unable to document either Haitian or Cuban nationality.

It is important to note that the submission of evidence of nationality with the application for adjustment is a standard requirement for all applicants for adjustment and not a special requirement placed upon applicants under HRIFA. Likewise, it is standard practice to require evidence of the unavailability of a document of record before considering secondary evidence. (As previously stated, the Department of State's FAM reports that such documents are generally available in Haiti.) Furthermore, files that were created upon an alien's arrest or submission of an application for benefits may contain no documentary evidence of nationality, but may refer to the alien's (perhaps self-serving) statement of nationality. Despite some commenters' contention to the contrary, while rare, it is not unheard of for a non-Haitian alien to falsely claim to be Haitian when it is to his or her advantage. Accordingly, every prior claim to Haitian nationality cannot automatically be presumed to be valid.

However, even considering all of these factors, the Department is willing to concede that, in light of the relatively short filing period provided in the statute, it will be difficult—if not impossible—for many bona fide applicants to obtain the normally required documentation in time to file an application for adjustment before the March 31, 2000, deadline. Accordingly, the Department is making a number of changes to the regulation that it believes will significantly alleviate, if not eliminate, this problem.

First, as previously stated, the regulations will now allow an applicant to file the application without the birth record being included in the application package, if the applicant presents evidence that he or she is attempting to obtain the birth record. Once the birth record has been received, such applicant would present it at his or her interview before a Service officer or hearing before an immigration judge.

Second, the regulations will allow the Service or Immigration Court to consider secondary evidence of nationality, if the applicant submits evidence that he or she has unsuccessfully attempted to obtain the standard documentation. Such an unsuccessful attempt to obtain the standard documentation may be shown by submitting a photocopy of a letter from the applicant to the keeper of records requesting the document in question. If the primary evidence is received prior to the interview or hearing, the applicant can present it at that time; otherwise, the adjudicating officer or judge may make a determination based on the secondary evidence. The secondary evidence which may be taken into consideration could include baptismal and other religious records, passports, and evidence or statements already contained in the alien's Service file. However, it must also be noted that all determinations as to the weight and credibility to be given to the secondary evidence rest with the adjudicating officer or judge.

With regard to those children born in Guantanamo Bay, there are at least three methods by which an applicant could document his or her birth. First, the United States Naval authorities issued a certificate of live birth to the parents of each child born on that naval base. Second, the records of the Service would reflect the place of birth as being at Guantanamo Bay. Third, the records of the voluntary agency that assisted in the family's resettlement would also show that the applicant was born at the U.S. Naval Base at Guantanamo Bay. Any of these records could be used in support of an application for adjustment under HRIFA.

7. Documenting Presence in the United States on December 31, 1995

Some commenters contend that the statutory requirement contained in section 902(b)(1) that limits the benefits of HRIFA to nationals of Haiti who were "present in the United States on December 31, 1995," also applies to those who had been present in the United States at some time before that date but had left and were not here on that specific date. This contention is based on the commenters' interpretation of the requirement in section 902(b)(2) of HRIFA that the applicant must have been physically present in the United States for a continuous period beginning not later than December 31, 1995, but allows for absences of up to 180 days in the aggregate during that period. The commenters interpret the phrase "beginning not later than December 31, 1995," as applying not only to the period of continuous presence, but also to the absences. This would have been a logical interpretation if section 902(b)(1) of HRIFA had allowed applicants to have been present "on or before December 31, 1995," but it does not. The only way to read both sections in concert is that persons who departed prior to December 31, 1995, and were not physically present on that date are ineligible for benefits under HRIFA as principal applicants.

8. Documenting Presence in the United States Since December 31, 1995

Many commenters were concerned that the rough guideline for documenting continuity of presence (one document for each 90-day period) would be impossible for many bona fide applicants to meet due to cultural norms unique to Haitians. Others contended that due to other factors unique to Haitians, such as political, financial and geographical constraints, it is unlikely that any Haitians departed from the United States and returned since December 31, 1995, and that even a rough guideline of one document for each 90 days is excessive. A few commenters argued that the Department should provide a more generous guideline of one document for each 180 days, since the statute allows applicants to have been outside the United States for up to 180 days without breaking continuity of presence.

Because the statute allows an applicant to be outside the United States for up to 180 days *in the aggregate* without breaking continuity of presence, not absences of up to 180 days each, the Department finds that the argument that the guideline should be set at 180 days is without merit. However, the Department has determined that the guideline that had been intended to ease the burden on applicants by assisting them in gauging how much documentation to submit has instead become a hindrance that may result in some applicants believing that, without a certain minimum amount of documentation, they are ineligible to apply for or receive the benefit of adjustment of status under HRIFA. Accordingly, the guideline is being removed from the regulations and applicants should simply submit sufficient documentation to satisfy the adjudicating officer or immigration judge that they have maintained continuous presence in the United States within the meaning of the statute. The adjudicating officer or immigration judge retains the right to request additional documentation should the evidence submitted by the applicant prove insufficient to meet his or her burden of proof.

9. Definition of the Term "Parole"

Several commenters suggested that all Haitians released from Service custody before December 31, 1995, including those released on bond or on their own recognizance pursuant to section 242(a)(1) of the Act, 8 U.S.C. 1252(a), as it was in effect at that time, should qualify as "parolees" under HRIFA. In support of this suggestion, these commenters cited an April 19, 1999, Service policy memorandum. That memorandum concerned the eligibility of certain Cuban nationals for adjustment of status under the Cuban Adjustment Act, despite their having arrived at a place other than a designated port-of-entry. It has no impact on the eligibility of a person seeking to adjust status under HRIFA as a Haitian national who was paroled in the United States prior to December 31, 1995. The April 19, 1999, memorandum provided in pertinent part that the "release of an *applicant for admission* from custody (pursuant to *section 236 of the Act*), without resolution of his or her admissibility, is a parole." (emphasis added.) The release from custody of someone other than an applicant for admission (*e.g.*, an overstay) does not constitute a parole. In the HRIFA context, an alien who had entered the United States without inspection, was detained by the Service, and was later released prior to December 31, 1995, cannot be seen as having been paroled into the United States because the alien was not an applicant for admission at the time of his or her release. The treatment of aliens present without inspection as applicants for admission was introduced to the immigration laws as a result of the enactment of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) in September 1996. These statutory reforms applied prospectively only. *See* IIRIRA section 309(c)(1). Accordingly, this suggestion will not be adopted.

10. Issues Pertaining to Applications Submitted by Children

A number of commenters felt that the Department's interpretation of "child without parents in the United States" was too restrictive and undercut the legislative intent. Others mistakenly believed that the Department adopted this position in order to combat possible fraud. In fact, the Department had simply taken the common meaning of the phrase since no definition was provided by the statute. According to the commenters, the focus should be on whether there has been a sustainable parent-child relationship between the child and his or her parents in the United States. In other words, who has or has had parental control over the child since his or her arrival into the United States? The Department agrees that this interpretation better reflects the legislative intent behind the provisions concerning children without parents. Therefore, the regulations have been amended by placing commas before and after the phrase "without parents" in 8 CFR 245.15(b)(1)(iii)(A).

A number of commenters felt that the regulations unnecessarily and onerously require children to show proof of their manner of arrival. Some commenters were under the mistaken impression that the regulations required that a Form I–94 be submitted in all cases. Where an applicant must establish his or her date of arrival, as with children who arrived without parents, the Form I–94 should be submitted whenever possible. However, as explained earlier, if the Form I–94 is not available, secondary documents may be submitted instead. In the case of a child arriving without parents, the secondary evidence may include the child's declaration which may be supported by other documentation (*e.g.*, his or her attendance record at school shortly after the claimed date of arrival). The regulations have been amended to clarify this point.

A number of commenters made suggestions regarding the documentation and level of proof required to prove eligibility as an orphaned or abandoned child. Some commenters suggested that an applicant's declaration of orphanage should be sufficient proof of orphanage or abandonment. Several commenters wanted secondary evidence to be

accepted as proof of orphanage or death of parents (e.g., declarations, news articles, and publications). Other commenters suggested that the Department should allow any probative evidence which might be submitted to state, local, or other authority to establish orphanage or abandonment. The Department agrees that, where primary evidence (e.g., official state or court documents) is unavailable, secondary evidence may be submitted to prove orphanage. Accordingly, the regulations have been modified to reflect many of these suggestions.

A number of commenters felt that a broader and more general definition of orphan should be used. Some commenters wanted to include as an orphan a child who has been irrevocably released by his or her sole or surviving parent who is unable to provide support. This is particularly relevant with regard to Haitian children who have had one of their parents disappear due to the actions of the former government of Haiti or due to tragedy at sea. The Department agrees and has so amended the regulation at § 245.15(a). The regulation now allows an otherwise eligible child to qualify for to qualify for classification as an orphan under section 902(b)(1)(C)(ii) of HRIFA if (1) the child has lost one parent through death or through disappearance, (2) competent Haitian authorities have certified that parent to be presumed dead, (3)the sole remaining parent is incapable of providing the proper care, and (4) the sole remaining parent has, in writing, irrevocably released the child for immigration to the United States. However, this amended regulation pertains only to applications filed under HRIFA and has no bearing on applications or petitions filed under the Act, such as petitions for classification under section 101(b)(1)(F) of the Act, where the surviving parent provision only pertains if the other parent is deceased.

One commenter believed that HRIFA should not be read as limiting orphans to those who lost their parents while under 21 years old. While, by common definition, the term "orphan" only applies to a child, and not to an adult, who has lost his or her parents, section 902(b)(1)(C) of HRIFA includes a unique set of qualifications on applicants seeking status based on orphanage. Those qualifications provide that the applicant must have been unmarried and under 21 years old at the time of his or her arrival in the United States and on December 31, 1995, and that he or she "became orphaned subsequent to arrival in the United States." Because it is possible for someone who became 21 years old after December 31, 1995, and was later orphaned to still meet the language of the statute, the regulations will be amended in this regard. However, this amended regulation pertains only to applications filed under HRIFA and has no bearing on applications or petitions filed under the Act.

Many commenters felt that the provision for abandoned children should be guided by the best interest of the child. A number of commenters wanted the Department to accept a broader array of evidence, besides official state, local, or court records, to prove the issue of abandonment. These suggestions include school records and declarations by the child (or Service records) indicating nonresidence or nonrelationship with the parents. One commenter suggested that if a child has been left by his or her parents with a relative, that should be sufficient to constitute abandonment along with notarized statements stating such. Other commenters wanted to allow any probative evidence which might be submitted to state, local, or other authority to establish abandonment. Several commenters suggested that runaway children should be considered abandoned, especially where the child ran way due to the home environment. A number of commenters urged the Department to adopt the standard of abandonment as defined by the law in Florida, where, if the parent or guardian of a child "makes no provision for the child's support and makes no effort to communicate with the child, * * * [the] situation is [deemed] sufficient to evince a willful rejection of parental obligations." F.S. 1997, Sec. 39.01. Other commenters suggested that the guidelines for abandonment established by the individual state having jurisdiction over the child should be adopted. The Department agrees that a broader category of evidence to prove abandonment should be allowed. Accordingly, the Department will apply the laws governing abandonment established by the individual state where the child resides, or resided at the time of the abandonment. The regulations have been amended to reflect this change.

A number of commenters wanted the Department to allow a dependent (of a HRIFA principal) to qualify for HRIFA benefits if he or she was a child on the date of HRIFA's enactment (October 21, 1998), or, alternatively, to toll the child's age as of October 21, 1998, until the date when his or her adjustment application is adjudicated. The Department will not accommodate this request. The Department has consistently held that an applicant must be eligible for the benefit being sought at the time of adjudication of the application, not on some prior date. *See, Matter of Hernandez-Puente*, 20 I & N Dec. 335, 337 (BIA 1991) (citing cases). The Department reaffirms this interpretation that benefits such as adjustment cannot be granted nunc pro tunc, which is essentially what the commenters have suggested.

11. Local Police Clearances

One commenter requested that the regulations provide a general exemption from the local police clearance requirement for persons who live or have lived in locations where the local authorities have made a blanket decision not to issue such clearances for immigration purposes, insofar as it relates to time periods when the applicant resided in that locale. The commenter listed New York City as an example of such a location. In the interest of reducing unnecessary burdens on both the applicants and on the local authorities, this suggestion has been adopted.

12. Reinstatement of Removal

Some persons expressed concerns about the applicability of section 241(a)(5) of the Act. 8 U.S.C. 1231. This section provides that:

(5) *Reinstatement of removal orders against aliens illegally reentering.* If the Attorney General finds that an alien has reentered the United States illegally after having been removed or having departed voluntarily, under an order of removal, the prior order of removal is reinstated from its original date and is not subject to being reopened or reviewed, the alien is not eligible and may not apply for any relief under this Act [chapter], and the alien shall be removed under the prior order at any time after the reentry.

In versions codified under the United States Code, the final sentence refers to any relief under "this chapter" instead of "this Act." This difference has resulted in some persons believing that the relief which affected persons are barred from seeking is only that relief provided under section 241 of the Act, not relief provided under other sections of the Act. A brief explanation is in order.

The language of HRIFA, as enacted by Congress, is the official text of the Act. When the laws enacted by Congress are codified in the U.S. Code, that codification is not "positive law." The titles of the U.S. Code are organized into "chapters," and so when an Act of Congress is codified it is referred to as a "chapter" of the Code. The Immigration and Nationality Act is codified as Chapter 12 of Title 8 of the U.S. Code. Accordingly, the Immigration and Nationality Act provides that an alien subject to section 241(a)(5) of the Act is barred from any relief provided under any provision of the Act.

Some commenters contend that section 241(a)(5), which was added to the Act by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. 104–208, 110 Stat. 3546, applies only to an alien ordered removed from the United States in post-IIRIRA proceedings, and not to an alien ordered excluded and deported, or ordered deported, from the United States in pre-IIRIRA proceedings. These commenters fail to take into account section 309(d)(2) of IIRIRA which states that "any reference in law to an order of removal shall be deemed to include a reference to an order of exclusion and deportation or an order of deportation." *Id.* at sec. 309(d)(2).

Other commenters are under the impression that the Department holds that, when a person who departed the United States with an advance parole (Form I–512) returns to the United States, he or she is re-entering illegally and is subject to section 241(a)(5) of the Act. These commenters may be confusing advance parole with the separate requirement that someone who departs the United States while under an order of exclusion, deportation, or removal obtain permission to reapply for admission after removal, even if that person receives an advance parole document. (This "permission to reapply" issue is discussed in section 15 of this preamble on advance parole.) The Department would not, without more, view a return to the United States pursuant to an advance parole as an illegal reentry that would trigger the provisions of section 241(a)(5) of the Act.

13. Stay of Removal

Some commenters suggested that the regulation should provide for an automatic stay of removal which would take effect upon the filing of the application for adjustment of status under HRIFA. The Department considered this issue when drafting the interim rule and concluded that it would not be appropriate.

The Department feels that the Attorney General should have the flexibility of denying stay of removal requests where there are overriding negative factors. Since the statute calls for regulations which allow the HRIFA applicant to apply for (or "seek") a stay of deportation, removal, or exclusion, rather than to be granted or receive such stay, it is clear that the Department's interim regulation on this point is within the scope of what is intended by the statute. Accordingly, this suggestion will not be adopted.

14. Procedural Issues

A number of commenters made suggestions pertaining to the procedures by which the Department adjudicates HRIFA applications and otherwise administers the program. Some wanted the Service to make more frequent use of the interview waiver option and clarify unresolved issues through written correspondence. However, the decision on whether to waive an interview is made solely on a case-by-case basis and is wholly dependent on whether the adjudicating officer is satisfied that the application is approvable (or deniable) without further examination. In making his or her determination, the officer takes into consideration the information submitted by the applicant (which may include that submitted in response to a request for additional evidence from the Service), information contained in the alien's file, and all other pertinent information at the officer's disposal. The suggestion will not be adopted.

Some commenters wanted any applications postmarked by March 31, 2000, to be considered to have been properly filed, even if received at the Nebraska Service Center after that date. The Service has long held that an application may only be considered properly filed when it is received in a Service office, provided it is properly signed and executed and the requisite fee is attached. *See e.g.* 8 CFR 103.2(a)(7). The Department sees no reason to hold HRIFA applications to a different standard.

Finally, some commenters wanted the regulations to specify that the Service must provide notice of the cancellation of an order of exclusion, deportation, or removal, or a notice of termination of removal, deportation or removal proceedings, in addition to the notice of approval, whenever adjustment of status is granted to an alien who is subject to such order or in such proceedings. While the Service will endeavor to provide such notification, the fact remains that the regulations already provide that regardless of whether such notification is sent (or if sent, received), upon final approval of the application for adjustment of status under HRIFA by the Service or the Executive Office for Immigration Review (EOIR) (depending on which agency has jurisdiction), any pending order of exclusion, deportation or removal is canceled and any pending exclusion, deportation, or removal proceedings are terminated. Adding a regulatory requirement that separate notification to that effect be issued could only add confusion and raise questions as to whether the order had been canceled or the proceedings had been terminated.

15. Advance Parole for Persons Outside the United States

A number of interested parties submitted comments regarding procedures involved in authorizing parole for persons who either have applied for adjustment of status or wish to travel to the United States in order to apply for adjustment of status. Section 245.15(t)(1) of Title 8 of the Code of Federal Regulations sets forth procedures for persons who have already filed for adjustment of status and wish to depart from and return to the United States. Additionally, that provision sets forth procedures for otherwise eligible persons who are outside the United States and wish to be paroled into the country in order to file the application for adjustment of status. For purposes of clarity, these will be referred to as "t-1 parole" and "t-2 parole" in this discussion.

Some commenters wanted t-1 parole authorization to be automatic for all persons who apply for adjustment of status under HRIFA. Upon consideration, the Department finds that this suggestion is likely to create more problems than it would solve. Many applicants under the HRIFA program are not in possession of acceptable travel documents and encouraging them to travel without first obtaining advance parole is likely to result in increased difficulties at ports-of-entry and departure both here and abroad. If this suggestion were to be adopted, it would also be all but impossible to determine which returning applicants had filed bona fide applications and which had filed mala fide or frivolous ones. The lack of a recognized advance parole document would considerably exacerbate problems for the applicants, as well as for government and airline officials, and would inevitably result in bona fide applicants being stranded outside the country. The Department has decided not to adopt this suggestion.

Some commenters wanted the Department to extend the time during which the alien can travel to the United States after receiving an advance t-2 parole authorization beyond the current 60 days. The Department feels that under all but the most abnormal circumstances, a 60-day period should be sufficient for this purpose. The

Department also notes that if the recipient feels that he or she will need additional time to obtain travel documents and exit permits, he or she can request that the Service Officer-in-Charge in Port-au-Prince delay issuance of the advance parole document until a later date. Accordingly, this suggestion has not been adopted.

Some commenters wanted the 60-day t-2 parole issued upon the alien's arrival to be "automatically extended" upon the filing of the application for adjustment. This suggestion cannot be adopted for at least three reasons. First, technically, a parole is not extended, although at the completion of a parole, one option available to the district director having jurisdiction over the alien's residence in the United States is to reparole the alien if such action is warranted in accordance with the statutory requirements set forth in section 212(d)(5) of the Act. 8 U.S.C. 1182(d)(5). Second, the purpose of the t-2 parole is to allow the alien to file the application for adjustment of status under HRIFA, and that purpose has been accomplished once the alien files the application for adjustment. Any decision to reparole the alien would have to be made (by that district director) once the applicant for adjustment requests reparole through his or her local immigration office and presents his or her receipt for filing the application for adjustment at the Nebraska Service Center. Third, even if the other objections were overcome, the technology does not currently exist to provide for automatic reparole, and the cost of developing such technology would not be warranted by the relatively small number of persons who would benefit from it.

Some commenters wanted the regulations to extend the authority of the Director of the Nebraska Service Center to adjudicate advance t-2 parole requests. That authority currently expires on March 31, 2000. It must be noted that the authority to approve this type of parole request normally lies with the District Director in Mexico City for anyone in the Western Hemisphere, but not at a United States port-of-entry. The authority was extended to the Director of the Nebraska Service Center primarily because of the anticipated volume of requests under the HRIFA program. A decision will be made sometime during March 2000 as to whether both the Director of the Nebraska Service Center and the Director in Mexico City should have such authority, or if such authority should be vested solely with the District Director at Mexico City. Regardless of whether the authority of the Director of the Nebraska Service Center is extended beyond March 31, 2000, the District Director in Mexico City will continue to have such authority. It should also be noted that the Service can extend the authority of the Director of the Nebraska Service Center to issue such parole authorizations through an internal Service memorandum. It need not be done through the rulemaking process. *See* 8 CFR 2.1. However, should the authority of the Nebraska Service Center to issue such parole authorizations be extended, the Service will publish a notice to that effect in the **Federal Register**.

Finally, an explanation is in order regarding the effect of departure from the United States while under an order of exclusion, deportation, or removal, including situations in which the alien first obtains an advance parole authorization, Form I–512. A Form I–512 is a document which authorizes an immigration officer to parole the bearer into the United States upon inspection at a port-of-entry. It neither contains nor connotes any special benefits for the bearer at the point of his or her departure from the United States. Whenever an alien who is under an outstanding order of exclusion, deportation, or removal departs from the United States, he or she effects or executes that order. This is true regardless of whether he or she is in possession of an I–512 authorizing a parole upon his or her return. Once the exclusion, deportation, or removal order has been executed, an alien must apply for and be granted permission to reapply (Form I–212) before he or she embarks or reembarks for his or her return travel to the United States. Failure to obtain such permission results in the alien being inadmissible to the United States and, therefore, ineligible for adjustment of status in the United States.

16. Employment Authorization Documents

Some commenters felt that the Service should automatically extend the work authorization for persons who had been granted Deferred Enforced Departure (DED) under the Presidential directive to the Attorney General of December 23, 1997. That order allowed the Service to grant DED status, with work authorization, to eligible applicants until December 22, 1998. Shortly before December 22, 1998, the Department published a notice in the **Federal Register** which explained that although it could not extend the DED program itself, it was extending the validity of the affiliated Employment Authorization Documents (EADs) for another year (until December 22, 1999) to give the Department time to promulgate regulations and eligible applicants an opportunity to apply for both adjustment of status and new EADs (as adjustment applicants). The Service recently published a notice in the **Federal Register**, at 64 FR 71151, which re-extended the validity of these EADs until September 30, 2000. Because this matter has been addressed by separate action, it will not be addressed here.

17. Comments Relating to the Procedures of the Executive Office for Immigration Review.

Many commenters suggested that Haitians eligible for HRIFA relief should be permitted to administratively close their cases without the concurrence of the Service. Currently, those aliens in proceedings before the Immigration Court or Board of Immigration Appeals (Board) may move to have these proceedings administratively closed for the purpose of filing an application for adjustment under HRIFA with the Service; however, the Service must concur with the administrative closure of the case.

The Department has decided not to change this procedure because it is established law that has been applied to other types of proceedings and not just those involving HRIFA-eligible aliens. Administrative closure is a convenience that allows for the removal of a case from the calendar in appropriate situations. An immigration judge or the Board may not administratively close a case if it is opposed by either party. *See Matter of Lopez-Barrios*, 20 I & N Dec. 203, 204 (BIA 1990). The Department does not find that aliens applying for HRIFA are in a substantially different position from other aliens requesting administrative closure of their cases. Therefore, an exception to the rule is not warranted.

Two groups suggested that the interim rule limits motions to reopen an EOIR decision denying HRIFA relief after a failure to appear by confining the motions to current reopening and rescission standards. They argue that reopening and rescission standards for certain applicants with final exclusion and deportation orders are improper because aliens with pre-IMMACT 90 deportation cases or aliens in exclusion proceedings predating IIRIRA's fusion of exclusion and deportation are subject to the "reasonable cause" standard for reopening or rescission of a case before EOIR.

The Department chose to apply current rescission and reopening standards in this particular situation because it has created a new proceeding applicable exclusively to HRIFA-only relief. Rescission or reopening in 8 CFR

245.15(s)(4) refers to 8 CFR 245.15(s)(1), and only discusses the situation involving aliens with final orders who applied for adjustment of status under section 902 of HRIFA with the Service, were denied that relief by the Service, and were then referred to the Immigration Court on Form I–290C for adjudication of their eligibility for such relief. The rescission or reopening of proceedings under 8 CFR 245.15(s)(4) refers exclusively to the HRIFA-only proceeding and not the original deportation or exclusion proceeding. Accordingly, the standard for determining whether an alien is eligible for rescission or reopening under this subsection refers not to the original proceeding and the old standard, but rather to the new proceedings and the current standard. Because the Department created this new type of proceeding, it considered it appropriate to choose a standard consistent with recent reopening standards for removal proceedings put in place by Congress.

Are Any Other Changes Being Made to The Regulation?

Section 245.15(d)(4) has been revised to clarify that in establishing the relationship between a principal beneficiary and a dependent beneficiary, the standards of documentation set forth in 8 CFR 204.2 apply. No other changes are being made to the regulation, with the exception of minor editorial corrections.

It has come to the Department's attention that the application of current regulations (8 C.F.R. 103.2(a)(7)) and practice to HRIFA applications filed with fee waiver requests may inadvertently result in certain applicants later being deemed to have missed the application deadline due to no fault on the part of the applicant. Currently an application submitted with a fee waiver request is not considered properly filed and does not retain a receipt date until the fee waiver is granted. In cases where a fee waiver is denied, the application is returned to the applicant with instructions to resubmit the application with the appropriate fee at which time the application will be considered properly filed and will be assigned a receipt date. Thus, under current regulations and practice were the Service or Immigration Court to deny a request for a waiver of the HRIFA application fee after March 31, 2000, and return the application, the alien could not file another application with the fee because the filing deadline would have already passed. Given the statutorily mandated filing deadline of March 31, 2000, the Department believes that it would be appropriate to modify the regulations with respect to this group of cases to avoid a potentially harsh and irreversible result. Accordingly, the regulations are being amended to afford an applicant whose HRIFA fee waiver request is denied the opportunity to submit the required fee within 30 days of notice that the fee waiver request was denied and thereby maintain a timely filing date.

In addition, in a case over which the Board has jurisdiction, an application received by the Board before April 1, 2000, that has been properly signed and executed is considered to be filed before the statutory deadline without payment of the fee or submission of a fee waiver request. Upon remand by the Board, the payment of the fee or a request for a fee waiver is made upon submission of the application to the Immigration Court in accordance with 8 CFR 240.11(f). The regulations are being amended to afford an applicant whose HRIFA adjustment fee waiver request is denied the opportunity to submit the required fee within 30 days of the notice that the fee waiver request was denied. If the required fee is not paid within 30 days, the applicant will no longer be considered to have filed a timely HRIFA adjustment application›

Good Cause Exception

The Department's implementation of this final rule effective upon publication in the **Federal Register** is based upon the "good cause" exception found at 5 U.S.C. 553(d)(3). By statute, all HRIFA principal adjustment applicants must file their applications before April 1, 2000. Immediate implementation of this final rule is necessary to ensure that HRIFA applicants are able to avail themselves of the modifications made in this final rule as soon as possible before the end of the application period. Accordingly, delaying the effective date of this final rule for 30 days would be contrary to the public interest.

Regulatory Flexibility Act

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Attorney General has reviewed this regulation and, by approving it, certifies that this regulation will not have a significant economic impact upon a substantial number of small entities. This rule allows certain Haitian nationals to apply for adjustment of status; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under section 3(f) of Executive Order 12866. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988: Civil Justice Reform

This final rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The information collection requirement contained in this rule (Form I–485 Supplement C) has been revised. Accordingly, it has been submitted and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act. The changes to the form are effective with the issuance of this rule.

Plain Language in Government Writing

The President's June 1, 1998, Memorandum published at 63 FR 31885, concerning Plain Language in Government Writing, applies to this proposed rule.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR Parts 3, 212, 240, 245, 274a, and 299, which was published at 64 FR 25756 on May 12, 1999, is adopted as a final rule with the following changes:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

§ 212.17 [Amended]

2. Section 212.7 is amended by:

a. Removing the phrase "§ 245.15(l)" and adding in its place the phrase "§ 245.15(t)" in both the heading and the text of paragraph (a)(1)(iii); and by

b. Removing the phrase "§ 245.15(l)(2)" and adding in its place the phrase "§ 245.15(t)(2)" in paragraph (b)(2)(iv).

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

3. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

4. Section 245.15 is amended by:

a. Revising the definitions of the terms "*Abandoned* and *abandonment*" and "*Orphan* and *orphaned*" in paragraph (a);

b. Adding a new definition for the term "*Sole remaining parent*" at the end of paragraph (a);

c. Revising paragraph (b)(1)(iii)(A);

d. Revising paragraph (c)(2);

e. Revising paragraph (d)(4);

f. Adding two new sentences at the end of paragraph (e)(2);

g. Revising paragraph (h)(5);

h. Revising paragraph (j)(1);

i. Revising paragraph (k)(3)(i);

j. Revising paragraph (k)(3)(ii)(B);

k. Revising paragraphs (k)(4)(i) and (ii);

l. Revising paragraphs (k)(5)(i) and (ii);

m. Revising paragraph (m);

n. Amending the last sentence in paragraph (t)(2)(i) by removing the phrase "paragraph (f)" and adding in its place the phrase "paragraph (h)"; and by

o. Amending paragraph (u)(2) by removing the phrase "paragraph (l)(2)" and adding in its place the phrase "paragraph (t)(2)".

The revised and added text reads as follows:

§ 245.15 Adjustment of Status of Certain Haitian Nationals under the Haitian Refugee Immigrant Fairness Act of 1998 (HRIFA).

(a) * * *

Abandoned and *abandonment* mean that both parents have, or the sole or surviving parent has, or in the case of a child who has been placed into a guardianship, the child's guardian or guardians have, willfully forsaken all parental or guardianship rights, obligations, and claims to the child, as well as all control over and possession of the child, without intending to transfer these rights to any specific person(s).

* * * * *

Orphan and *orphaned* refer to the involuntary detachment or severance of a child from his or her parents due to any of the following:

(1) The death or disappearance of, desertion by, or separation or loss from both parents, as those terms are defined in § 204.3(b) of this chapter;

(2) The irrevocable and written release of all parental rights by the sole parent, as that term is defined in § 204.3(b) of this chapter, based upon the inability of that parent to provide proper care (within the meaning of that phrase in § 204.3(b) of this chapter) for the child, provided that at the time of such irrevocable release such parent is legally obligated to provide such care; or

(3) The death or disappearance, as that term is defined in § 204.3(b) of this chapter, of one parent and the irrevocable and written release of all parental rights by the sole remaining parent based upon the inability of that parent to provide proper care (within the meaning of that phrase in § 204.3(b) of this chapter) for the child, provided that at the time of such irrevocable release such parent is legally obligated to provide such care.

* * * * *

Sole remaining parent means a person who is the child's only parent because:

(1) The child's other parent has died; or

(2) The child's other parent has been certified by competent Haitian authorities to be presumed dead as a result of his or her disappearance, within the meaning of that term as set forth in § 204.3(b) of this chapter.

* * * * *

(b) * * *

(1) * * *

(iii) * * *

(A) Arrived in the United States without parents in the United States and has remained, without parents, in the United States since his or her arrival;

* * * * *

(c) * * *

(2) *Proper application.* The alien properly files an application for adjustment of status in accordance with this section, including the evidence described in paragraphs (h), (i), (j), and (k) of this section. For purposes of § 245.15 of this chapter only, an Application to Register Permanent Residence or Adjust Status (Form I–485) submitted by a principal applicant for benefits under HRIFA may be considered to have been properly filed if it:

(i) Is received not later than March 31, 2000, at the Nebraska Service Center, the Board, or the Immigration Court having jurisdiction;

(ii) Has been properly completed and signed by the applicant;

(iii) Identifies the provision of HRIFA under which the applicant is seeking adjustment of status; and

(iv) Is accompanied by either:

(A) The correct fee as specified in § 103.7(b)(1) of this chapter; or

(B) A request for a fee waiver in accordance with § 103.7(c) of this chapter, provided such fee waiver request is subsequently granted; however, if such a fee waiver request is subsequently denied and the applicant submits the require fee within 30 days of the date of any notice that the fee waiver request had been denied, the application shall be regarded as having been filed before the statutory deadline. In addition, in a case over which the Board has jurisdiction, an application received by the Board before April 1, 2000, that has been properly signed and executed shall be considered filed before the statutory deadline without payment of the fee or submission of a fee waiver request. Upon remand by the Board, the payment of the fee or a request for a fee waiver shall be made upon submission of the application to the Immigration Court in accordance with 8 CFR 240.11(f). If a request for a fee waiver is denied, the application shall be considered as having been properly filed with the Immigration Court before the statutory deadline provided that the applicant submits the required fee within 30 days of the date of any notice that the fee waiver request has been denied.

* * * * *

(d) * * *

(4) *Relationship.* The qualifying relationship to the principal alien must have existed at the time the principal was granted adjustment of status and must continue to exist at the time the dependent alien is granted adjustment of status. To establish the qualifying relationship to the principal alien, evidence must be submitted in accordance with § 204.2 of this chapter. Such evidence should consist of the documents specified in § 204.2(a)(1)(i)(B), (a)(1)(iii)(B), (a)(2), (d)(2), and (d)(5) of this chapter;

* * * * *

(e) * * *

(2) * * * In considering an application for waiver under section 212(g) of the Act by an otherwise statutorily eligible applicant for adjustment of status under HRIFA who was paroled into the United States from the U.S. Naval Base at Guantanamo Bay, for the purpose of receiving treatment of an HIV or AIDS condition, the fact that his or her arrival in the United States was the direct result of a government decision to provide such treatment should be viewed as a significant positive factor when weighing discretionary factors. In considering an application for waiver under section 212(i) of the Act by an otherwise statutorily eligible applicant for adjustment of status under HRIFA who used counterfeit documents to travel from Haiti to the United States, the adjudicator shall, when weighing discretionary factors, take into consideration the general lawlessness and corruption which was widespread in Haiti at the time of the alien's departure, the difficulties in obtaining legitimate departure documents at that time, and other factors unique to Haiti at that time which may have induced the alien to commit fraud or make willful misrepresentations.

* * * * *

(h) * * *

(5) *Police clearances.* If the applicant is 14 years old or older, a police clearance from each municipality where the alien has resided for 6 months or longer since arriving in the United States. If there are multiple local law enforcement agencies (e.g., city police and county sheriff) with jurisdiction over the alien's residence, the applicant may obtain a clearance from either agency. If the applicant resides or resided in a State where the State police maintain a compilation of all local arrests and convictions, a statewide clearance is sufficient. If the applicant presents a letter from the local police agencies involved, or other evidence, to the effect that the applicant attempted to obtain such clearance but was unable to do so because of local or State policy, the director or immigration judge having jurisdiction over the application may waive the local police clearance. Furthermore, if such local police agency has provided the Service or the Immigration Court with a blanket statement that issuance of such police clearance is against local or State policy, the director or immigration judge having jurisdiction over the case may waive the local police clearance requirement regardless of whether the applicant individually submits a letter from that local police agency;

* * * * *

(j) * * *

(1) *Evidence establishing presence.* Evidence establishing the continuity of the alien's physical presence in the United States since December 31, 1995, may consist of any documentation issued by any governmental or nongovernmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the authorized representative of the issuing authority, if the document would normally contain such authenticating instrument.

* * * * *

(k) * * *

(3) * * *

(i) Evidence, showing the date, location, and manner of his or her arrival in the United States, such as:

(A) A photocopy of the Form I–94 issued at the time of the alien's arrival in the United States;

(B) A copy of the airline or vessel records showing transportation to the United States;

(C) Other similar documentation; or

(D) If none of the documents in paragraphs (k)(3)(i)(A)–(C) of this section are available, a statement from the applicant, accompanied by whatever evidence the applicant is able to submit in support of that statement; and

(ii) * * *

(B) Evidence showing that the applicant's parents did not live in the United States with the applicant. Such evidence may include, but is not limited to, documentation or affidavits showing that the applicant's parents have been continuously employed outside the United States, are deceased, disappeared, or abandoned the applicant prior to the applicant's arrival, or were otherwise engaged in activities showing that they were not in the United States, or (if they have been in the United States) that the applicant and his or her parents did not reside together.

(4) * * *

(i) Evidence, showing the date, location, and manner of his or her arrival in the United States, such as:

(A) A photocopy of the Form I–94 issued at the time of the alien's arrival in the United States;

(B) A copy of the airline or vessel records showing transportation to the United States;

(C) Other similar documentation; or

(D) If none of the documents in paragraphs (k)(4)(i)(A)–(C) of this section are available, a statement from the applicant, accompanied by whatever evidence the applicant is able to submit in support of that statement; and

(ii) Either:

(A) The death certificates of both parents (or in the case of a child having only one parent, the death certificate of the sole parent) showing that the death or deaths occurred after the date of the applicant's arrival in the United States; or

(B) Evidence from a State, local, or other court or governmental authority having jurisdiction and authority to make decisions in matters of child welfare establishing the disappearance of, the separation or loss from, or desertion by, both parents (or, in the case of a child born out of wedlock who has not been legitimated, the sole parent); or

(C) Evidence of:
(*1*) Either:
(*i*) The child having only a sole parent, as that term is defined in § 204.3(b) of this chapter;
(*ii*) The death of one parent; or
(*iii*) Certification by competent Haitian authorities that one parent is presumed dead as a result of his or her disappearance, within the meaning of that term as set forth in § 204.3(b) of this chapter; and
(*2*) A copy of a written statement executed by the sole parent, or the sole remaining parent, irrevocably releasing all parental rights based upon the inability of that parent to provide proper care for the child.
(5) * * *
(i) Evidence, showing the date, location, and manner of his or her arrival in the United States, such as:
(A) A photocopy of the Form I–94 issued at the time of the alien's arrival in the United States;
(B) A copy of the airline or vessel records showing transportation to the United States;
(C) Other similar documentation; or
(D) If none of the documents in paragraphs (k)(5)(i)(A)–(C) of this section are available, a statement from the applicant, accompanied by whatever evidence the applicant is able to submit in support of that statement; and
(ii) Either:
(A) Evidence from a State, local, or other court or governmental authority having jurisdiction and authority to make decisions in matters of child welfare establishing such abandonment; or
(B) Evidence to establish that the applicant would have been considered to be abandoned according to the laws of the State where he or she resides, or where he or she resided at the time of the abandonment, had the issue been presented to the proper authorities.
* * * * *

(m) *Secondary evidence.* Except as otherwise provided in this paragraph, if the primary evidence required in this section is unavailable, church or school records, or other secondary evidence pertinent to the facts in issue, may be submitted. If such documents are unavailable, affidavits may be submitted. The applicant may submit as many types of secondary evidence as necessary to establish birth, marriage, or other relevant events. Documentary evidence establishing that primary evidence is unavailable must accompany secondary evidence of birth or marriage in the home country. The unavailability of such documents may be shown by submission of a copy of the written request for a copy of such documents which was sent to the official keeper of the records. In adjudicating the application for adjustment of status under section 902 of HRIFA, the Service or immigration judge shall determine the weight to be given such secondary evidence. Secondary evidence may not be submitted in lieu of the documentation specified in paragraphs (i) or (j) of this section. However, subject to verification by the Service, if the documentation specified in this paragraph or in paragraphs (h)(3)(i), (i), (j), (l)(1), and (l)(2) of this section is already contained in the Service's file relating to the applicant, the applicant may submit an affidavit to that effect in lieu of the actual documentation.
* * * * *

PART 274A—CONTROL OF EMPLOYMENT OF ALIENS

5. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a; 8 CFR part 2; Pub. L. 101–410, 104 Stat 890, as amended by Pub. L. 104–34, 110 Stat 1321.

§ 274a.12 [Amended]

6. In § 274a.12, paragraph (c)(9) is amended in the second sentence by removing the words "§§ 245.13(j) and 245.13(k) of this chapter" and adding in its place the words "§§ 245.13(j) and 245.15(n) of this chapter".

§ 274a.13 [Amended]

7. In § 274a.13, paragraph (d) is amended in the first sentence by removing the words "insofar as it is governed by §§ 245.13(j) and 245.15(k) of this chapter" and adding in its place the words "insofar as it is governed by §§ 245.13(j) and 245.15(n) of this chapter".

PART 299—IMMIGRATION FORMS

8. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

9. Section 299.1 is amended in the table by revising the entry for Form "I–485 Supplement C", to read as follows:

§ 299.1 Prescribed forms.
* * * * *

Form No.	Edition date	Title
I–485 Supplement C	12–01–99	HRIFA Supplement to Form I–485 Instructions.

Dated: March 17, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–7204 Filed 3–21–00; 3:47 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 212, 240, 245, 274a and 299

[INS No. 1893–97; AG Order No. 2293–2000]

RIN 1115–AF04

Adjustment of Status for Certain Nationals of Nicaragua and Cuba

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Final rule.

SUMMARY: This rule implements section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA) by establishing procedures for certain nationals of Nicaragua and Cuba who have been residing in the United States to become lawful permanent residents of this country. This rule allows them to obtain lawful permanent resident status without applying for an immigrant visa at a United States consulate abroad, and waives many of the usual requirements for this benefit.

DATES: This final rule is effective March 24, 2000.

FOR FURTHER INFORMATION CONTACT: *For matters relating to the Immigration and Naturalization Service*—Suzy Nguyen, Adjudications Officer, Office of Adjudications, Immigration and Naturalization Service, 425 I Street NW, Room 3214, Washington, DC 20536, telephone (202) 514–5014; *For matters relating to the Executive Office for Immigration Review*—Chuck Adkins-Blanch, Acting General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2400, Falls Church, VA 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

What Are the Basic Provisions of Section 202 of NACARA and the Interim Regulation Published on May 21, 1998?

The Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of the District of Columbia Appropriations Act, 1998, Public Law 105–100 (111 Stat. 2160, 2193), was signed into law on November 19, 1997. As amended by Public Law 105–139 (111 Stat. 2644), which was signed into law the same day, section 202 of NACARA allows certain Nicaraguan and Cuban nationals who are physically present in the United States to adjust status to that of lawful permanent resident. In order to be eligible for benefits under NACARA, an applicant must be a national of Nicaragua or Cuba; must be admissible to the United States under all provisions of section 212(a) of the Immigration and Nationality Act (Act), other than those provisions specifically excepted by NACARA; must have been physically present in the United States for a continuous period beginning not later than December 1, 1995, and ending not earlier than the date the application for adjustment is filed (not counting absences totaling 180 days or less); and must properly file an application before April 1, 2000. In addition, certain family members of NACARA beneficiaries are also eligible for adjustment of status under NACARA.

The interim regulation published in the **Federal Register** by the Department of Justice (Department) on May 21, 1998, explained the forms, supporting documentation, and process through which a principal applicant, or an applicant who is a dependent of a principal applicant, may apply for adjustment of status under section 202 of NACARA. It provided that an alien who is currently in exclusion, deportation, or removal proceedings may file his or her application with the immigration court, unless the immigration court administratively closes such proceedings for the specific purpose of allowing the alien to apply for adjustment before the Immigration and Naturalization Service (Service or INS). The regulation also added an eighth method to the seven contained in the statute for proving commencement of physical presence in the United States. Additionally, it explained the process through which a NACARA adjustment applicant may seek authorization to work in the United States or to travel outside of the country. Finally, the regulation provided a vehicle through which certain aliens who are outside the United States may seek authorization to be paroled into the country for the purpose of applying for adjustment of status.

How Many Comments Were Received From Interested Parties During the Comment Period?

There were 36 separate comments received from various organizations, individuals, and other interested parties. That number included three Members of Congress, one representative of a foreign government, numerous nongovernmental organizations, and several attorneys and law firms. Also included in that number are 2 petitions, 1 with 426 signatures and the other with 66 signatures, and 124 identical letters signed by the members of 1 organization, making a total of 649 individuals and organizations who participated in the public comment process. The Department wishes to thank all participants for their insightful comments.

What Were the Specific Comments and How Is the Department Amending the Regulation as a Result?

The issues raised by commenters generally fell into 14 areas, each of which will be discussed separately, as follows:

1. Treatment of an Ineligible Spouse or Child

A significant number of commenters expressed concern about the requirement that a spouse or child of a principal applicant be a national of Nicaragua or Cuba in order to qualify for the benefits of section 202 of NACARA. Some questioned whether the language of the statute specified that the dependent be a national of Nicaragua or Cuba, while others recognized that the language so specified, but felt that the agency has the authority to "correct" the language through regulation. Still other commenters suggested that the Department create a family unity program for ineligible dependents and provide them with a blanket waiver of section 212(a)(9)(B) of the Act (which creates a 3-year bar for aliens who have been unlawfully present for more than 180 days and a 10-year bar for those who have been unlawfully present for 1 year or more). While the Department is sympathetic to the problem faced by non-Nicaraguan, non-Cuban dependents, section 202(d)(1)(A) of NACARA clearly states that the alien spouse must be "a national of Nicaragua or Cuba." While the courts have held that an agency has a certain amount of latitude in drafting implementing regulations if the statute is unclear on an issue, the agency has no such latitude where the statute is clear. Only a statutory change can redress the issue of eligibility for non-Nicaraguan and non-Cuban dependents. Likewise, a statutory change would be required to create a family unity program for ineligible dependents and to waive the provisions of section 212(a)(9)(B) of the Act. Accordingly, no changes are being made to the regulation on this point.

2. Other Statutory Issues

Some commenters wanted clarification in the regulation on whether sections 212(a)(6)(B), 240B(d), 241(a)(5) (and also by extension 212(a)(9)(C)), and "the former section 242B" of the Act applied to NACARA applicants. One party also requested information regarding the number of persons affected by section 241(a)(5) of the Act. Although incorporating a discussion of each of these provisions in 8 CFR 245.13 would unnecessarily complicate the regulation, we have decided to address them in this supplementary information.

Section 212(a)(6)(B) of the Act provides that if an alien failed to attend a removal hearing, he or she is inadmissible for a period of 5 years from his or her subsequent departure or removal. In order to be barred from adjusting status under NACARA, an alien would (1) have to fail to attend a removal hearing; (2) depart or be removed from the United States; (3) re-enter the United States; and (4) apply for adjustment under NACARA. If any of these four steps is missing, the alien would not be inadmissible under section 212(a)(6)(B) of the Act; if all four are present, he or she would be inadmissible and, therefore, ineligible for adjustment of status under section 202 of NACARA.

If an alien was permitted to depart voluntarily but failed to do so, he or she would be barred by section 240B(d) of

the Act from receiving benefits under certain specified provisions of the Act. Because a NACARA applicant would not be seeking benefits under one of the sections specified in section 240B(d) of the Act, section 240B(d) of the Act would not apply.

Section 241(a)(5) of the Act provides for the reinstatement of a removal order against any alien who illegally re-enters the United States after having been removed or after having departed voluntarily under an order of removal. It also bars any alien whose removal order has been reinstated from receiving any relief under the Act. An alien who has been previously deported is inadmissible for the applicable period set forth in the Act and may only overcome such inadmissibility by obtaining the applicable waiver of inadmissibility authorized under section 212(a)(9) of the Act (such waiver is more commonly referred to as permission to reapply for admission after deportation) before being granted adjustment of status (including adjustment under section 202 of NACARA). Because such a waiver is relief (from inadmissibility) under the Act for which an alien subject to reinstatement is ineligible, a previously deported alien who has re-entered the United States illegally at a time when his or her previous exclusion, deportation, or removal rendered him or her inadmissible to the United States is ineligible to adjust status under section 202 of NACARA. The Service does not know how many otherwise-eligible Nicaraguans and Cubans are barred from adjusting under section 202 due to the provisions of section 241(a)(5) of the Act, but judging solely from the volume of inquiries received on the issue, the number may be significant.

The issue of a previous exclusion, deportation, or removal also arises in connection with section 212(a)(9)(C)(i)(II) of the Act, which provides that:

> Any alien who * * * has been ordered removed under section 235(B)(1), section 240, or any other provision of law, and who enters or attempts to reenter the United States without being admitted is inadmissible.

Section 202(a)(2) of NACARA specifically provides that "[a]n alien present in the United States who has been ordered excluded, deported, removed, or ordered to depart voluntarily from the United States under any provision of the Immigration and Nationality Act may, notwithstanding such order, apply for adjustment of status under paragraph (1)." Accordingly, merely having been *ordered* removed does not make an alien inadmissible to the United States and, therefore, ineligible for adjustment under NACARA, but departing while under such order and then entering or attempting to re-enter without being properly admitted does.

The former section 242B of the Act was replaced by section 308(b)(6) of IIRIRA, and incorporated into the new section 240(b)(7) of the Act. That section bars an alien against whom a final order of removal is entered *in absentia* from eligibility for relief under certain specified sections of the Act. As with section 240B(d) of the Act, because a NACARA applicant is seeking adjustment under a provision of law that is separate from the Act, section 240(b)(7) (formerly section 242B) of the Act does not apply.

Some commenters inquired whether someone who is already a lawful permanent resident (LPR) may "readjust" under NACARA in order to obtain some ancillary benefit. In accordance with Board precedent, *see e.g., Matter of Krastman,* 11 I&N Dec. 720, 721 (BIA 1966), the ability of an alien who is an LPR to apply for and be granted adjustment of status to that of an alien lawfully admitted for permanent residence is limited to cases in which the alien is at risk of losing his or her current LPR status, i.e., the alien has been found to be subject to removal from the United States. Otherwise, an alien who is currently an LPR would have to abandon that status by leaving the United States with the intent of abandoning his or her residence in the United States before he or she could be considered eligible for NACARA adjustment. Like other eligible aliens currently abroad, a former LPR whom the Service believes has abandoned his or her status may apply for, and may be granted, parole into the United States in order to file a NACARA adjustment application. However, since each parole request must be considered on its own merits and must be based on either urgent humanitarian reasons or significant public benefit, there are no guarantees that such a parole request would be approved. The alien could end up stranded outside the United States.

One commenter felt that, because NACARA was modeled after the Cuban Adjustment Act of 1966, any Nicaraguan or Cuban who had been in the United States for 1 year should be allowed to adjust status. While there are certain similarities between the two statutes, there are also significant differences, including differences relating to the eligibility requirements. Merely being present in the United States for a year does not enable someone to apply for adjustment of status under NACARA.

Some commenters wanted the Department to provide an exception for those aliens who were deported from the United States more than 180 days before the NACARA enactment date and who as a result had already been absent for more time than allowed under section 202(b)(1) of NACARA. This suggested change exceeds the agency's rulemaking authority and could only be accomplished through new legislation.

3. Documentation Required for Proving Commencement of Physical Presence

In the supplementary information relating to the interim regulation, the Department specifically requested suggestions from interested parties concerning the documentation that may be used to establish physical presence in the United States on or prior to December 1, 1995. In particular, the Department stated that it was:

> soliciting public comments on the need for any additional methods of establishing commencement of physical presence in the United States and suggestions as to what those additional methods should be, including whether the documentary standards listed in 8 CFR 245.13(e)(3) for demonstrating continuity of physical presence should also be applied to the requirement for demonstrating commencement of physical presence.

63 FR 27823, 27824 (May 21, 1998). The rulemaking went on to state that commenters were "encouraged to explain which classes of aliens would benefit from the proposal, and how the proposal could be implemented without severely compromising the integrity of the adjudicative process." *Id.*

The Department received a number of suggestions regarding this matter. The suggestions ranged from expanding the list to include any type of governmental or nongovernmental document or affidavit that the applicant wishes to submit, to condensing the list by limiting it to documents issued by an agency of the Federal Government and excluding documents issued by State and local authorities. Some commenters wanted the Department to accept documents issued by certain private service providers, such as physicians, attorneys, nonpublic schools, and the clergy. Other commenters wanted the Department to give special consideration to persons who, through the nature of their presence in the United States, did not create a "paper trail," such as domestic servants and elderly "stay-at-homes." One commenter proposed that the Department accept any documents that were dated by the government at the time of issuance or receipt, including labor certification requests submitted by employers to the Department of Labor and visa petitions submitted to the Service.

Many commenters did not make suggestions as to how the Service could improve its ability to detect and deter fraud. Others took the view that the Service already has sufficient capability to detect and deter fraud through its interview and investigation procedures, and that there is no greater risk of fraud in NACARA applications than in other adjustment applications.

In addition, some commenters wanted the Department to clarify that under the existing regulations, the Form I–94, Record of Arrival and Departure, issued by the Service at the time of the alien's inspection and admission or parole is acceptable evidence of commencement of physical presence; others wanted the Department to clarify that the proof of commencement may relate to any time at or after entry and any time on or before December 1, 1995.

After carefully reviewing all of the comments in this regard, the Department has chosen not to expand the categories to include documents that are not based upon governmental records for the following reasons. The enumerated categories in the statute itself give strong indication that Congress intended that applicants provide the most reliable and readily verifiable evidence of the commencement of physical presence in the United States on or before December 1, 1995. Evidence in the form of contemporaneous governmental records (or copies of such contemporaneous records) provides the most reliable and readily verifiable means of documenting such physical presence. Nongovernmental records are generally more difficult to verify. Affidavits submitted by the applicant without independent corroboration raise serious reliability issues. Affidavits submitted by allegedly disinterested third parties on behalf of the applicant would also be problematic in that such affidavits would not provide a contemporaneous accounting of the relevant facts and therefore raise additional reliability concerns. In light of the foregoing, the Department does not think it prudent to extend the categories of documents that can be used to demonstrate commencement of physical presence beyond those set forth in the interim regulation, with one exception.

This one exception will allow an applicant who had attended a recognized private or religious school as a child (*i.e.*, under 21 years of age) to submit a transcript from that school as evidence of commencement of presence in the United States on or before December 1, 1995. This exception is being included in the regulation to ensure parity with the provisions of the regulation pertaining to the Haitian Refugee Immigration Fairness Act (HRIFA), which is in many ways comparable to section 202 of NACARA.

With this one exception, the Department will not expand the categories to include documents that are not based on governmental records. In so doing, the Department does not want to leave the impression that it is disparaging the recordkeeping processes or the integrity of nongovernmental organizations and individuals. Nor is the Department under the illusion that all governmental records are entirely reliable. Experience has shown, however, that governmental records are generally easier to verify than nongovernmental records.

Although one commenter correctly pointed out that the statutory list contains only documents that can be verified through the records of the Federal Government, the Department does not feel that it has sufficient justification at this time to make the requirement more restrictive.

The Department is, however, adopting the suggestions of those commenters who proposed that the list be expanded to include other documents for which governmental records exist. Beginning on the effective date of this final rule, the Department will accept as evidence of commencement of physical presence a certified copy of a Federal, State, or local governmental record that was created on or prior to December 1, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant sought on his or her own behalf, or some other party sought on the applicant's behalf, a benefit from the Federal, State, or local governmental agency maintaining such record. Additionally, the Department will accept as evidence of commencement of physical presence a certified copy of a Federal, State, or local governmental record that was created on or prior to December 1, 1995, that shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency maintaining such record. These changes will allow applicants to use records such as income tax returns, labor certification requests, and immigrant visa petitions. If the record involved is maintained by the Service, such as an immigrant visa petition, the copy need not be certified.

4. Documentation Required for Proving Continuity of Physical Presence

The interim regulation set forth a lower standard for documents evidencing continuity of presence, allowing applicants to submit both governmental and nongovernmental documents, so long as the document "bears the name of the applicant, was dated at the time it was issued, and bears the signature of the authorized representative of the issuing authority." 8 CFR 245.13(e)(3). The interim regulation also provided a general guideline which stated that submission of one document for each 90-day period since December 1, 1995, would normally be sufficient to establish continuity. *Id.*

The Department received numerous comments regarding evidence needed to establish continuity of presence. One commenter suggested that evidence pertaining to a child (such as school records) should also apply to other family members. Another suggested that a letter from a landlord, utility, or bank detailing the records of that person or organization should be acceptable. Still others recommended accepting affidavits from employers or requiring no documentation at all.

In response to these suggestions, the Department has decided to expand the list of documents that may be used to establish continuity of physical presence to include certified copies of records maintained by organizations chartered by the government, such as public utilities, accredited private and religious schools, and banks. Additionally, if the applicant establishes that a family unit was in existence and cohabiting in the United States, documents evidencing presence of one member of that family unit may be used by other members of that same family unit. Letters and affidavits created after the fact, regardless of the source, will not be acceptable.

A number of commenters pointed out that many documents do not normally bear the signature or seal of the originator, including many documents that are listed in the interim regulation as acceptable, such as utility bills and other receipts, employment records, and credit card statements. The Department is modifying the regulation to state that if the document is normally signed, sealed, issued on letterhead stationary, or otherwise authenticated, it must bear such indication of authenticity.

One commenter pointed out that the reference in the interim regulation to "pay checks" should read "pay stubs"

since the applicant would cash, not retain, the former, but might retain the latter. This correction is being made.

Some commenters suggested that the Department be flexible with regard to persons who have not created a "paper trail" such as domestics and the elderly. Others suggested that adjudicators be given a wide range of latitude with regard to continuity documents in general, urging the Department to be flexible with regard to the 90-day guideline.

Adjudicators already have a fair amount of latitude with regard to issues involving continuity of presence. The 90-day guideline was never intended to be a hard-and-fast rule, but rather more of a suggestion designed to guide applicants in judging the amount of documentation to submit. An adjudicator who is otherwise satisfied could always accept less frequent documentation as evidence of continuity of physical presence. Likewise, an adjudicator who has doubts about the alien's claim of continuity could request additional, and more frequent, documentation.

However, the Department has determined that the guideline, which had been intended to ease the burden on applicants by assisting them in gauging how much documentation to submit, might instead become a hindrance and may result in some applicants believing that without a certain minimum amount of documentation they are ineligible to apply for or receive the benefit of adjustment of status under NACARA. Accordingly, the Department is removing the guideline from the regulation, and applicants should simply submit sufficient documentation to satisfy the adjudicating officer or immigration judge that they have maintained continuous presence in the United States within the meaning of NACARA.

As with evidence of commencement, some commenters believed that the fraud risk relating to continuity of presence was no greater than in other applications, and that the Service's existing resources were sufficient to detect and deter fraud. Others felt that the potential for fraud in adjustment of status under NACARA is quite high, and that the regulation should be carefully drafted in order to combat such fraud. The Department takes a very serious view of the potential for fraud involved in applications for adjustment of status under section 202 of NACARA, and finds that regardless of whether or not the fraud potential is greater than that pertaining to other applications, there is certainly no reason to decrease the minimal level of fraud deterrence embodied in the interim regulation.

Finally, the regulation is being modified to clarify one point regarding continuity of presence that some persons may have misinterpreted. The statute allows an applicant to be absent from the United States for up to 180 days after establishing physical presence on or prior to December 1, 1995. Some persons have erroneously interpreted this to mean that absences between the last (pre-December 2, 1995) date on which the applicant commenced physical presence and December 1, 1995, do not count toward the 180-day maximum. The correct interpretation is that all absences between the last pre-December 2, 1995, date on which the applicant commenced physical presence and the date on which the application is approved count toward the 180-day maximum, with the exception of those periods for which time is tolled pursuant to § 245.13(o).

5. Local Police Clearance Requirements

Several commenters were concerned about the requirement that applicants for adjustment under NACARA submit local police clearances, finding it burdensome at best, and impossible to meet at worst. Some wanted the provision modified to allow for statewide (instead of local) clearances, others wanted it waived for minors or where the applicant's local police department refuses to issue a clearance; still others wanted it dropped entirely.

Although there is considerable value in obtaining local police clearances in addition to the nationwide fingerprint clearance, for certain individuals obtaining such local clearances may be extremely difficult or impossible through no fault of the individual. Accordingly, the final regulation is being modified to allow the director or immigration judge having jurisdiction over the application to waive the local police clearance. This waiver will be available upon presentation of a letter or similar documentation from the local police agencies involved showing that the applicant attempted to obtain such clearance but was unable to do so because of local or State policy.

Additionally, for persons who live, or have lived, in locations where the local authorities have made a blanket decision not to issue such clearances for immigration purposes, the regulation is being modified to provide a general exemption from the local police clearance requirement insofar as it relates to time periods when the applicant resided in that locale. One example of such location is New York City.

The regulation is being further clarified to explain that where multiple local law enforcement agencies have jurisdiction over an alien's residence (e.g., city police and county sheriff), the applicant may obtain a clearance from either agency, and that for those individuals living in states where the state police maintain a compilation of all local arrests and convictions, a statewide clearance is sufficient.

6. Determining Nationality

One commenter suggested that all applicants be required to establish nationality through a birth certificate that has been certified by the issuing governmental authority in accordance with 8 CFR 287.6(b).

All applicants are required to meet the proof of official records requirements set forth in 8 CFR 287.6 which, with regard to all documents submitted in support of this and other applications, requires either an official publication of the record, or a copy attested to by an authorized official. However, it should be noted that the Service regulation at 8 CFR 103.2(b) permits submission of secondary evidence and photocopies of documents under certain circumstances.

7. Fee for Fingerprinting Services

One commenter requested that the regulation clarify whether the applicant must pay an additional $25 fee for fingerprinting, in addition to the regular fee for filing an application for adjustment of status. Each applicant who is 14 years of age or older must be fingerprinted and must pay the fingerprinting fee at the time of filing the application for adjustment. The regulation has been clarified in this regard.

8. Employment Authorization

The Department received a number of comments on the employment authorization issuance process. As set forth in the interim regulation, the current process involves the Service's issuing employment authorization on an expedited basis to those applicants whose application is supported by evidence that may be verified through existing Service records. Other applicants must wait up to 180 days (the maximum timeframe allowed under the statute) while the Service adjudicates the application for adjustment of status. A number of commenters, citing the potential hardship to applicants, wanted the Service to issue employment authorization to all applicants immediately upon filing; one, citing the need to deter fraud, wanted the Service to wait the full 180 days in all cases; and one supported the process as set forth in the interim regulation. Upon examination of all the comments, the Department has concluded that the process set forth in the interim regulation provides the best balance between deterring fraud by mala fide applicants and alleviating financial hardship for bona fide applicants. Accordingly, no changes are being made with regard to the work authorization issue.

Some commenters pointed out the apparent conflict between the statement in the interim rule's supplementary information that the Department "will authorize employment for applicants whose cases have been pending for fewer than 180 days only if the applicant applies for work authorization and adjustment at the same time," and the lack of such concurrent filing requirement in § 245.13(j)(2). The Department has decided not to require that an applicant file concurrently in order to benefit from the more expedited of the two procedures. Accordingly, the language in the interim regulation will not be changed.

9. Travel and Parole Issues

Several commenters expressed concern about the provisions in the interim regulation that allow the Director of the Texas Service Center (TSC) to authorize parole for aliens outside the United States. One questioned the authority of the Attorney General (acting through the Director of the TSC) to authorize parole under these circumstances; a second did not want the Director of the TSC to authorize any paroles for persons to come to the United States; a third wanted the regulation to eliminate, or at least to restrict greatly the Director of the TSC's ability to authorize parole; and a fourth sought assurance that the Service would use a "tighter screening mechanism" to prevent abuse.

An explanation of the parole process, and how it relates to the NACARA adjustment program, may help to clarify the Service's approach. The authority to authorize parole into the United States is contained in section 212(d)(5) of the Act, which states:

> (5)(A) The Attorney General may, except as provided in subparagraph (B) or in section 214(f), in his discretion parole into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any alien applying for admission to the United States, but such parole of such alien shall not be regarded as an admission of the alien and when the purposes of such parole shall, in the opinion of the Attorney General, have been served the alien shall forthwith return or be returned to the custody from which he was paroled and thereafter his case shall continue to be dealt with in the same manner as that of any other applicant for admission to the United States.
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> (B) The Attorney General may not parole into the United States an alien who is a refugee unless the Attorney General determines that compelling reasons in the public interest with respect to that particular alien require that the alien be paroled into the United States rather than be admitted as a refugee under section 207.

The Attorney General has delegated her authority to authorize parole to the Commissioner of the Immigration and Naturalization Service. In the case of an alien who is seeking parole from outside the United States, that authority is normally redelegated to the Director of the INS Office of International Affairs and to the overseas district director having jurisdiction over the area in which the alien is located. The effect of the May 21, 1998, regulation was to expand the list of persons to whom this authority has been re-delegated to include the Director of the TSC for NACARA-related parole requests only. There have been no changes in the process for requesting, the standards for adjudicating, or the statutory authority for issuing parole. Parole determinations will still be made on a case-by-case basis, and the applicant for parole will still have to establish that urgent humanitarian reasons or significant public benefits exist. If the evidence shows that the positive factors (such as the desirability of reuniting a family or allowing an otherwise-eligible alien to participate in this special adjustment of status program which Congress has established) are outweighed by negative discretionary factors, the parole request will be denied as a matter of discretion. Minor changes have been made in the regulation at § 245.13(k) to clarify this point.

One commenter did not want the Department to issue parole authorization to any alien who returned to his or her home country during any portion of the 180 days of absence from the United States permitted by section 202(b)(1) of NACARA. Although the suggestion might be appropriate if NACARA were to require the applicant to establish, for example, that he or she would risk persecution or extreme hardship if he or she went home, there is no such requirement, and the commenter's suggestion will not be adopted.

One commenter felt that if the Service revoked the alien's parole, the regulation should either require the district director to make a bond redetermination or authorize the immigration judge to set bond. As indicated in the passage cited above, when parole is terminated the alien is returned to the custody of the Service and is treated as any other applicant for admission. Under existing statutory and regulatory provisions, the district director then has the option of placing the alien into removal proceedings, admitting the alien (if he or she is admissible), or reparoling the alien. If the decision is to admit or reparole the alien, the district director may require that certain conditions be met, including the posting of an appropriate bond. *See* 8 CFR §§ 212.5(c)(1), 214.1(a)(3).

10. Jurisdictional Issues Between the Service and the Executive Office for Immigration Review (EOIR)

One commenter suggested that the regulation be modified to allow an alien whose application for adjustment is denied by the Service to renew his or her application in proceedings before the Immigration Court regardless of whether the proceedings occur before or after the March 31, 2000, expiration date of the NACARA program. Although section 202(a)(1)(A) of NACARA provides that applications for adjustment must be filed by March 31, 2000, section 202(e) of NACARA also provides that applicants for adjustment of status shall have the same right to, and procedures for, administrative review as are provided to other applicants for adjustment under section 245 of the Act, or aliens subject to removal proceedings under section 240 of the Act. The Department interprets the deadline in section 202(a)(1)(A) of NACARA as relating only to the initial application for adjustment and not to any renewed application in removal proceedings following a denial of the initial application by the Service, provided that initial application was properly filed. The regulation is being modified accordingly.

Another commenter contended that all initial applications must be filed before the Service, and that EOIR only has appellate jurisdiction. The Department does not agree. The authority to adjudicate applications for adjustment of status under section 202 of NACARA rests with the Attorney General. It is well within her authority to assign initial jurisdiction over the applications to the Service (for those aliens who are not in removal proceedings) and to the Immigration Court (for those aliens who are in such proceedings), and to provide that the Board of Immigration Appeals has

appellate jurisdiction over cases decided by immigration judges. This arrangement is in keeping with the provisions of section 202(e) of NACARA.

One commenter suggested that aliens in proceedings before the Immigration Court be afforded the option of applying for adjustment before either the Service or the Immigration Court. Section 245.13(d)(3) already provides an alien in proceedings with a mechanism by which he or she may request administrative closure of such proceedings for the purpose of seeking adjustment of status under section 202 of NACARA before the Service.

One commenter suggested that aliens whose requests for administrative closure are granted be required to apply for adjustment before the Service within a fixed number of days of the granting of administrative closure. The Department considered this approach when drafting the interim regulation, but concluded that the difficulties inherent in administering it would far exceed any benefits.

Finally, one commenter suggested that for those cases which are referred to an immigration judge on a Form I–290C, Notice of Certification, for a "NACARA-only hearing" because the applicant had already been subject to an order of exclusion, deportation, or removal at the time the application was filed, the "NACARA-only hearing" should be conducted under the same rules of procedure as the proceeding in which the alien received the order of exclusion, deportation, or removal. Under this suggestion, an alien who was placed in exclusion or deportation proceedings prior to the enactment of IIRIRA would not be subject to the post-IIRIRA Immigration Court procedures. The Department does not agree with this suggestion, since the "NACARA-only hearing" is a new proceeding, not a reopening of the old exclusion or deportation proceeding.

11. Compliance With the Unfunded Mandates Reform Act of 1995

One commenter suggested that the interim rule implicated the Unfunded Mandates Reform Act of 1995. The interim rule merely implements a statutory provision providing permanent residency for certain qualified aliens. Neither the statute nor the interim rule mandates a State or local jurisdiction to provide any services not already provided to aliens who adjust their status to that of lawful permanent resident under other provisions of immigration law. The Department has no reason to believe that the implementation of section 202 of NACARA will result in any expenditures by State or local governments that are in contravention of the Unfunded Mandates Act.

12. Waiver of Interviews

The Department received a wide range of comments regarding waiver of interviews. One commenter stated that all applicants should be interviewed; a second wanted fewer restrictions on the types of interviews the Director of the TSC can waive; and a third wanted the Service to waive interviews for all children under age 14. It is important to remember that the Service does not waive interviews in order to avoid work for itself or inconvenience to the applicant, but rather because doing so enables it to concentrate its limited resources on those cases most warranting interview. The Department believes this can be best accomplished by giving the Director of the TSC the authority to waive interviews only in those cases that, first, are supported by evidence of commencement of physical presence that can be verified through Service records; second, have no unresolved questions about the applicant's eligibility; and third, do not require a waiver of inadmissibility. Accordingly, no changes will be made in the regulation in this regard.

13. Stay of Removal

A number of commenters felt that the Service should either grant stays of removal to all applicants for adjustment of status under section 202 of NACARA (*i.e.*, without fee or application), or require the application but waive the fee. Most of those who expressed the former view cited subsections 202(c)(1) and (2) of NACARA in support of their view. However, those subsections read:

(1) IN GENERAL—The Attorney General shall provide by regulation for an alien subject to a final order of deportation or removal *to seek* a stay of such order based on the filing of an application under subsection (a).

(2) DURING CERTAIN PROCEEDINGS—Notwithstanding any provision of the Immigration and Nationality Act, the Attorney General shall not order any alien to be removed from the United States, *if the alien is in exclusion, deportation, or removal proceedings* under any provision of such Act and has applied for adjustment of status under subsection (a), except where the Attorney General has rendered a final administrative determination to deny the application. [Emphasis Added]

Taken together, these two subsections clearly indicate that Congress intended that, with regard to any alien who is the beneficiary of a properly-filed application for adjustment of status under section 202 of NACARA and who is in exclusion, deportation, or removal proceedings before an immigration judge, or whose case is on appeal to the Board of Immigration Appeals (the Board), neither the immigration judge nor the Board may issue an order of exclusion, deportation, or removal unless and until the application for adjustment is denied. The alien does not need to file any request, motion, or other form beyond the application for adjustment itself in order to benefit from this automatic protection.

There is no such automatic protection with regard to an alien who became the subject of a final order of exclusion, deportation, or removal prior to his or her filing the application for adjustment under section 202 of NACARA. If the alien wishes to receive protection from the enforcement of an existing order of exclusion, deportation, or removal, he or she must "seek a stay of such order." The process for seeking a stay of removal is to file Form I–246, Application for Stay of Removal, and pay the required fee, through the local Service office. It must be noted that the filing of Form I–246 is not a prerequisite to applying for, or being granted, benefits under section 202 of NACARA; the decision to seek a stay of removal is strictly up to the alien. Accordingly, no change will be made to the regulation regarding the process for seeking a stay of removal. However, the Department does see a need for guidelines on the adjudication of such request for stay of removal. Accordingly, the regulation is being modified to reflect that, absent significant negative discretionary factors, if an alien files Form I–246, pays the fee, and submits evidence of the filing of an application for adjustment of status under section 202 of NACARA, execution of the order of exclusion, deportation, or removal shall be stayed until a decision is reached on the application for adjustment of status.

14. Typographical Errors, Technical Corrections and Stylistic Changes

One commenter pointed out that the regulation, as published in the **Federal Register** on May 21, 1998, contained a typographical error in 8 CFR 245.13(e)(2) wherein "1997" was typed instead of "1995". The May 21, 1998, version also contained the typographic error "Untied" instead of "United" in § 245.13(e)(12). These errors are being corrected. It should also be noted that on June 29, 1998, and again on July 21, 1998, the **Federal Register** published notices correcting two other typographical errors in the May 21 version. The first notice corrected the first sentence of the segment of the supplementary information entitled

"What Happens if an Application is Denied by the Immigration Court?" to read: "If the Immigration Court denies the NACARA adjustment application of an alien in exclusion, deportation, or removal proceedings before the Immigration Court, the decision may be appealed to the Board along with and under the same procedures as all other issues before the Immigration Court in those proceedings." The second notice corrected the reference in § 240.41 to read "Public Law 105–100" instead of "Pub L. 100"; it also corrected the amendatory language for the appropriate phrase in § 274a.13(d) to read "§ 274a.12(c)(8), which is governed by paragraph (a)(2) of this section, and § 274a.12(c)(9) insofar as it is governed by § 245.13(j) of this chapter."

A second commenter requested that the Department incorporate into the regulation a number of issues that were discussed in the supplementary information. In particular, the commenter wanted the Department to include in the regulation provisions specifying the procedure and language used by the Service to notify an alien whose application has been approved of the delivery of the Permanent Residence Card and the process for obtaining temporary evidence of alien registration. The commenter also wanted the Department to include in the regulation provisions specifying the procedure and language used by the Service to notify an alien whose application has been denied of the Service's decision and the right to renew the application for adjustment in proceedings before an immigration judge. Finally, the commenter requested that the regulation contain more specificity regarding the process by which the Board may remand a case to the immigration judge. Several of these suggestions have been adopted, especially where needed for purposes of clarity. Other suggestions pertained to matters that are standard to the adjudication process and are either already covered elsewhere in the regulation or are so basic as to not warrant special coverage in this particular section of the regulation.

Additionally, the Department has noted that in the interim regulation published on May 21, 1998, it failed to provide a mechanism whereby persons outside the United States who are seeking parole authorization pursuant to § 245.13(k)(2) and who must file either an Application for Permission to Reapply for Admission to the United States After Deportation or Removal (Form I–212) or an Application for Waiver of Grounds of Excludability (Form I–601) could file such applications concurrently with the request for parole authorization. This oversight has been corrected by making slight modifications to §§ 212.2 and 212.7. These modifications will allow such applicants to file Forms I–212 and I–601 with the Director of the TSC concurrently with the Form I–131.

Finally, it has come to the Department's attention that the application of current regulations (8 CFR § 103.2(a)(7)) and practice to NACARA applications filed with fee waiver requests may inadvertently result in certain applicants later being deemed to have missed the application deadline due to no fault on the part of the applicant. Currently an application submitted with a fee waiver request is not considered properly filed and does not retain a receipt date until the fee waiver is granted. In cases where a fee waiver is denied, the application is returned to the applicant with instructions to resubmit the application with the appropriate fee at which time the application will be considered properly filed and will be assigned a receipt date. Thus, under current regulations and practice were the Service or Immigration Court to deny a request for a waiver of the NACARA application fee after March 31, 2000, and return the application, the alien could not file another application with the fee because the filing deadline would have already passed. Given the statutorily mandated filing deadline of March 31, 2000, the Department believes that it would be appropriate to modify the regulations with respect to this group of cases to avoid a potentially harsh and irreversible result. Accordingly, the regulations are being amended to afford an applicant whose NACARA fee waiver request is denied the opportunity to submit the required fee within 30 days of notice that the fee waiver request was denied and thereby maintain a timely filing date.

In addition, in a case over which the Board has jurisdiction, an application received by the Board before April 1, 2000, that has been properly signed and executed is considered to be filed before the statutory deadline without payment of the fee or submission of a fee waiver request. Upon remand by the Board, the payment of the fee or a request for a fee waiver is made upon submission of the application to the Immigration Court in accordance with 8 CFR 240.11(f). The regulations are being amended to afford an applicant whose NACARA adjustment fee waiver request is denied the opportunity to submit the required fee within 30 days of the notice that the fee waiver request was denied. If the required fee is not paid within 30 days, the applicant will no longer be considered to have filed a timely NACARA adjustment application.

Good Cause Exception

The Department's implementation of this final rule effective upon publication in the **Federal Register** is based upon the "good cause" exception found at 5 U.S.C. 553(d)(3). By statute, all NACARA adjustment applicants must file their applications before April 1, 2000. Immediate implementation of this final rule is necessary to ensure that NACARA applicants are able to avail themselves of the modifications made in this final rule as soon as possible before the end of the application period. Accordingly, delaying the effective date of this final rule for 30 days would be contrary to the public interest.

Regulatory Flexibility Act

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule allows certain Nicaraguan and Cuban nationals to apply for adjustment of status; it has no effect on small entities as that term is defined in 5 U.S.C. 601(6).

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or

on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Paperwork Reduction Act

The information collection requirement contained in this rule (Form I–485 Supplement B) has been revised. Accordingly, it has been submitted and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act. The changes to the form are effective with the issuance of this rule.

Plain Language in Government Writing

The President's June 1, 1998, Memorandum published at 63 FR 31885, concerning Plain Language in Government Writing, applies to this proposed rule.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies)

8 CFR Part 212

Administrative practice and procedure, Aliens, Passports and visas, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 245

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

8 CFR Part 299

Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR Parts 3, 240, 245, 274a, and 299, which was published at 63 FR 27823 on May 21, 1998, is adopted as a final rule with the following changes, and part 212 is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1227, 1228, 1252; 8 CFR part 2.

2. Section 212.2(g)(3) is amended by:

a. Removing the reference to "§ 245.15(l)" and adding in its place "§ 245.15(t)(2)", and by

b. Adding a new sentence at the end of the paragraph to read as follows:

§ 212.2 Consent to reapply for admission after deportation, removal, or departure at Government expense.

* * * * *

(g) * * *

(3) * * * If an alien who is an applicant for parole authorization under § 245.13(k)(2) of this chapter requires consent to reapply for admission after deportation, removal, or departure at Government expense, or a waiver under section 212(g), 212(h), or 212(i) of the Act, he or she may file the requisite Form I–212 or Form I–601 at the Texas Service Center concurrently with the Form I–131, Application for Travel Document.

* * * * *

3. Section 212.7 is amended by:

a. Adding a new paragraph (a)(1)(iv);

b. Removing the word "or" at the end of paragraph (b)(2)(iii);

c. Removing the period at the end of paragraph (b)(2)(iv) and adding in its place a "; or"; and by

d. Adding a new paragraph (b)(2)(v), to read as follows:

§ 212.7 Waiver of certain grounds of excludability.

(a) * * *

(1) * * *

(iv) *Parole authorization applicant under § 245.13(k)(2) of this chapter.* An applicant for parole authorization under § 245.13(k)(2) of this chapter who is inadmissible and seeks a waiver under section 212(h) or (i) of the Act must file an application on Form I–601 with the Director of the Texas Service Center adjudicating the Form I–131.

* * * * *

(b) * * *

(2) * * *

(v) The Texas Service Center if the alien is outside the United States and is seeking parole authorization under § 245.13(k)(2) of this chapter.

* * * * *

PART 245—ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE

4. The authority citation for part 245 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1255; sec. 202, Pub. L. 105–100, 111 Stat. 2160, 2193; sec. 902, Pub. L. 105–277, 112 Stat. 2681; 8 CFR part 2.

5. Section 245.13 is amended by:

a. Revising paragraph (d)(2);

b. Adding a sentence at the end of paragraph (d)(5)(i);

c. Revising paragraph (e);

d. Adding five new sentences immediately before the last sentence in paragraph (g);

e. Revising the last sentence in paragraph (j)(1);

f. Revising the last sentence in paragraph (k)(1);

g. Adding a sentence at the end of paragraph (k)(2);

h. Adding a new sentence immediately after the first sentence in paragraph (l);

i. Revising the first sentence in the introductory text in paragraph (m); and by

j. Revising paragraphs (m)(1) and (m)(2), to read as follows:

§ 245.13 Adjustment of status of certain nationals of Nicaragua and Cuba under Public Law 105–100.

* * * * *

(d) * * *

(2) *Proceedings pending before the Board of Immigration Appeals.* Except as provided in paragraph (d)(3) of this section, in cases where a motion to reopen or motion to reconsider filed with the Board on or before May 21, 1998, or an appeal, is pending, the Board shall remand, or reopen and remand, the proceedings to the Immigration Court for the sole purpose of adjudicating an application for adjustment of status under section 202 of Public Law 105–100, unless the alien is clearly ineligible for adjustment of status under section 202 of Public Law 105–100. If the immigration judge denies, or the alien fails to file, the application for adjustment of status under section 202 of Public Law 105–100, the immigration judge shall certify the decision to the Board for consideration in conjunction with the previously pending appeal or motion.

* * * * *

(5) * * *

(i) *With the Service.* * * * Absent evidence of the applicant's statutory ineligibility for adjustment of status under section 202 of Public Law 105–100 or significant negative discretionary factors, a Form I–246 filed by a bona fide applicant for adjustment under section 202 of Public Law 105–100 shall be approved, and the removal of the applicant shall be stayed until such time as the application for adjustment has been adjudicated in accordance with this section.

* * * * *

(e) *Application and supporting documents.* Each applicant for adjustment of status must file a Form I–485, Application to Register Permanent Residence or Adjust Status. An applicant should complete Part 2 of Form I–485 by checking box "h—other" and writing "NACARA—Principal" or "NACARA—Dependent" next to that block. Each application must be accompanied by:

(1) The fee prescribed in § 103.7(b)(1) of this chapter;

(2) If the applicant is 14 years of age or older, the fee for fingerprinting prescribed in § 103.7(b)(1) of this chapter;

(3) Evidence of commencement of physical presence in the United States at any time on or before December 1, 1995. Such evidence may relate to any time at or after entry and may consist of either:

(i) Documentation evidencing one or more of the activities specified in section 202(b)(2)(A) of Public Law 105–100;

(ii) A copy of the Form I–94, Record of Arrival and Departure, issued to the applicant at the time of his or her inspection and admission or parole;

(iii) Other documentation issued by a Federal, State, or local authority provided such other documentation bears the signature, seal, or other authenticating instrument of such authority (if the document normally bears such instrument), was dated at the time of issuance, and bears a date of issuance not later than December 1, 1995. Examples of such other documentation include, but are not limited to:

(A) A State driver's license;

(B) A State identification card issued in lieu of a driver's license to a nondriver;

(C) A county or municipal hospital record;

(D) A public college or public school transcript; and

(E) Income tax records;

(iv) A copy of a petition on behalf of the applicant that was submitted to the Service on or before December 1, 1995, and that lists the applicant as being physically present in the United States;

(v) A certified copy of a Federal, State, or local governmental record that was created on or prior to December 1, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant sought on his or her own behalf, or some other party sought on the applicant's behalf, a benefit from the Federal, State, or local governmental agency keeping such record;

(vi) A certified copy of a Federal, State, or local governmental record that was created on or prior to December 1, 1995, shows that the applicant was present in the United States at the time, and establishes that the applicant submitted an income tax return, property tax payment, or similar submission or payment to the Federal, State, or local governmental agency keeping such record; or

(vii) In the case of an applicant who, while under the age of 21, attended a private or religious school in the United States on or prior to December 1, 1995, a transcript from such private or religious school, provided that the school:

(A) Is registered with, approved by, or licensed by, appropriate State or local authorities;

(B) Is accredited by the State or regional accrediting body, or by the appropriate private school association; or

(C) Maintains enrollment records in accordance with State or local requirements or standards;

(4) Evidence of continuity of physical presence in the United States since the last date on or prior to December 1, 1995, on which the applicant established commencement of physical presence in the United States. Such documentation may have been issued by any governmental or nongovernmental authority, provided such evidence bears the name of the applicant, was dated at the time it was issued, and bears the signature, seal, or other authenticating instrument of the issuing authority or its authorized representative, if the document would normally contain such authenticating instrument. Such documentation may include, but is not limited to:

(i) School records;

(ii) Rental receipts;

(iii) Utility bill receipts;

(iv) Any other dated receipts;

(v) Personal checks written by the applicant bearing a dated bank cancellation stamp;

(vi) Employment records, including pay stubs;

(vii) Credit card statements showing the dates of purchase, payment, or other transaction;

(viii) Certified copies of records maintained by organizations chartered by the government, such as public utilities, accredited private and parochial schools, and banks;

(ix) If the applicant establishes that a family unit was in existence and cohabiting in the United States, documents evidencing the physical presence in the United States of another member of that same family unit; and

(x) If the applicant has had correspondence or other interaction with the Service, a list of the types and dates of such correspondence or other contact that the applicant knows to be contained or reflected in Service records;

(5) A copy of the applicant's birth certificate;

(6) If the applicant is between 14 and 79 years of age, a completed Biographic Information Sheet (Form G–325A);

(7) A report of medical examination, as specified in § 245.5;

(8) Two photographs, as described in the instructions to Form I–485;

(9) If the applicant is 14 years of age or older, a police clearance from each municipality where the alien has resided for 6 months or longer since arriving in the United States. If there are multiple local law enforcement agencies (e.g., city police and county sheriff) with jurisdiction over the alien's residence, the applicant may obtain a clearance from either agency. If the applicant resides or resided in a State where the State Police maintain a compilation of all local arrests and convictions, a statewide clearance is sufficient. If the applicant presents a letter from the local police agencies involved, or other evidence, to the effect that the applicant attempted to obtain such clearance but was unable to do so because of local or State policy, the director or immigration judge having jurisdiction over the application may waive the local police clearance. Furthermore, if such local police agency has provided the Service or the Immigration Court with a blanket statement that issuance of such police clearance is against local or state policy, the director or immigration judge having jurisdiction over the case may waive the local police clearance requirement regardless of whether the applicant individually submits a letter from that local police agency;

(10) If the applicant is applying as the spouse of another Public Law 105–100 beneficiary, a copy of their certificate of marriage and copies of documents showing the legal termination of all

other marriages by the applicant or the other beneficiary;

(11) If the applicant is applying as the child, unmarried son, or unmarried daughter of another (principal) beneficiary under section 202 of Public Law 105–100 who is not the applicant's biological mother, copies of evidence (such as the applicant's parent's marriage certificate and documents showing the legal termination of all other marriages, an adoption decree, or other relevant evidence) to demonstrate the relationship between the applicant and the other beneficiary;

(12) A copy of the Form I–94, Arrival-Departure Record, issued at the time of the applicant's arrival in the United States, if the alien was inspected and admitted or paroled; and

(13) If the applicant has departed from and returned to the United States since December 1, 1995, an attachment on a plain piece of paper showing:

(i) The date of the applicant's last arrival in the United States before or on December 1, 1995;

(ii) The date of each departure from the United States since that arrival;

(iii) The reason for each departure; and

(iv) The date, manner, and place of each return to the United States.

* * * * *

(g) *Filing.* * * * All applications must be accompanied by either the correct fee as specified in § 103.7(b)(1) of this chapter; or a request for a fee waiver in accordance with § 103.7(c) of this chapter. An application received by the Service or Immigration Court before April 1, 2000, that has been properly signed and executed and for which a waiver of the filing fee has been requested shall be regarded as having been filed before the statutory deadline regardless of whether the fee waiver request is denied provided that the applicant submits the required fee within 30 days of the date of any notice that the fee waiver request has been denied. In a case over which the Board has jurisdiction, an application received by the Board before April 1, 2000, that has been properly signed and executed shall be considered filed before the statutory deadline without payment of the fee or submission of a fee waiver request. Upon demand by the Board, the payment of the fee or a request for a fee waiver shall be made upon submission of the application to the Immigration Court in accordance with 8 CFR 240.11(f). If a request for a fee waiver is denied, the applicaion shall be considered as having been properly filed with the Immigration Court before the statutory deadline provided that the applicant submits the required fee within 30 days of the date of any notice that the fee waiver request has been denied. * * *

(j) * * *

(1) *Application.* * * * The applicant may submit Form I–765 concurrently with, or subsequent to, the filing of the Form I–485.

* * * * *

(k) * * *

(1) *Travel from and return to the United States while the application for adjustment of status is pending.* * * * Unless the applicant files an advance parole request prior to departing from the United States, and the Service approves such request, his or her application for adjustment of status under section 202 of Public Law 105–100 is deemed to be abandoned as of the moment of his or her departure. Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act.

(2) *Parole authorization for the purpose of filing an application for adjustment of status under section 202 of Public Law 105–100.* * * * Parole may only be authorized pursuant to the authority contained in, and the standards prescribed in, section 212(d)(5) of the Act.

* * * * *

(l) *Approval.* * * * The director shall also advise the alien regarding the delivery of his or her Permanent Resident Card and of the process for obtaining temporary evidence of alien registration. * * *

(m) *Denial and review of decision.* If the director denies the application for adjustment of status under the provisions of section 202 of Public Law 105–100, the director shall notify the applicant of the decision, and of any right to renew the application in proceedings before the immigration judge. * * *

(1) In the case of an alien who is not maintaining valid nonimmigrant status and who had not previously been placed in exclusion, deportation, or removal proceedings, initiate removal proceedings in accordance with § 239.1 of this chapter, during which the alien may renew his or her application for adjustment of status under section 202 of Public Law 105–100. Such renewed application may be filed with the Immigration Court before, on, or after March 31, 2000, provided the initial application was properly filed with the Service on or before March 31, 2000; or

(2) In the case of an alien whose previously initiated exclusion, deportation, or removal proceeding had been administratively closed or continued indefinitely under paragraph (d)(3) of this section, advise the Immigration Court that had administratively closed the proceeding, or the Board, as appropriate, of the denial of the application. The Immigration Court or the Board will then recalendar or reinstate the prior exclusion, deportation, or removal proceeding, during which proceeding the alien may renew his or her application for adjustment under section 202 of Public Law 105–100. Such renewed application may be filed with the Immigration Court before, on, or after March 31, 2000, provided the initial application was properly filed with the Service on or before March 31, 2000; or

* * * * *

PART 299—IMMIGRATION FORMS

6. The authority citation for part 299 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103; 8 CFR part 2.

7. Section 299.1 is amended in the table by revising the entry for Form "I–485 Supplement B" to read as follows:

§ 299.1 Prescribed forms.

* * * * *

Form No.	Edition date	Title
.	.	.
I–485 Supplement B	12–01–99	NACARA Supplement to Form I–485 Instructions.
.	.	.

Dated: March 15, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–7205 Filed 3–21–00; 3:47 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–06–AD; Amendment 39–11645; AD 2000–06–05]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters. This action requires replacing certain tail rotor blades before further flight after April 30, 2000. This amendment is prompted by loss of control of a helicopter due to a lightning strike on a tail rotor blade. This condition, if not corrected, could result in loss of a tail rotor blade and subsequent loss of control of the helicopter.

DATES: Effective April 10, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 23, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–06–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations Group, Fort Worth, Texas 76193–0111, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters. The DGAC advises withdrawing tail rotor blades, part numbers (P/N) 332A12–0010, –0020, –0030, –0035, and –0045, and all dash numbers of these P/N, from service by March 31, 2000, due to an accident caused by a lightning strike on a tail rotor blade, P/N 332A–12–0010, fitted on an AS332 helicopter.

Eurocopter France has issued Service Bulletins 01.57 for the Models SA330 and 01.00.59 for the Models AS332, both dated November 23, 1999, which specify withdrawing tail rotor blades, P/N 332A12–0010, –0020, –0030, –0035, –0045, and all dash numbers of these P/N, from service. The DGAC classified these service bulletins as mandatory and issued AD's 2000–002–081(A) and 2000–003–075(A), both dated January 12, 2000, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters of the same type designs registered in the United States, this AD is being issued to prevent failure of a tail rotor blade due to a lightning strike. This AD requires removing from service any tail rotor blade, P/N 332A–12–0010, –0020, –0030, –0035, and –0045, and all dash numbers of these P/N. The actions are required to be accomplished in accordance with the service bulletins described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, removing and replacing these tail rotor blades are required before further flight after April 30, 2000, and this AD must be issued immediately.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 7 helicopters will be affected by this AD, that it will take approximately 2 work hours to accomplish removing and replacing the tail rotor blades, and that the average labor rate is $60 per work hour. Required parts will cost approximately $150,000 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,050,840 to replace the tail rotor blades on the entire fleet.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–06–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–06–05 Eurocopter France: Amendment 39–11645. Docket No. 2000–SW–06–AD.

Applicability: SA330F, SA330G, SA330J, AS332C, AS332L, AS332L1, and AS332L2 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required before further flight after April 30, 2000, unless accomplished previously.

To prevent failure of a tail rotor blade due to a lightning strike and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove from service any tail rotor blade with a following part number (P/N), including all dash numbers for each P/N:
332A–12–0010
332A–12–0020
332A–12–0030
332A–12–0035
332A–12–0045

Replace with an airworthy tail rotor blade with a following P/N:
332A–12–0050–01 or
332A–12–0055–01

Note 2: Eurocopter France Service Bulletins 01.57 for the Models SA330 and 01.00.59 for the Models AS332, both dated November 23, 1999, pertain to the subject of this AD.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector who may concur or comment and then send it to the Manager, Regulations Group.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on April 10, 2000.

Note 4: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD's 2000–002–081(A) and 2000–003–075(A), both dated January 12, 2000.

Issued in Fort Worth, Texas, on March 15, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–7111 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–SW–77–AD; Amendment 39–11647; AD 2000–06–07]

RIN 2120–AA64

Airworthiness Directives; Eurocopter Deutschland GMBH Model MBB–BK 117 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Eurocopter Deutschland GMBH (ECD) Model MBB–BK 117 helicopters, that requires changing the retirement life for the tail rotor (output) drive bevel gear (bevel gear). This amendment is prompted by a fatigue analysis of the bevel gear conducted by the manufacturer due to installation of different tail rotor blades. The actions specified by this AD are intended to prevent fatigue failure of the bevel gear, loss of tail rotor drive, and subsequent loss of control of the helicopter.

EFFECTIVE DATE: April 28, 2000.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to ECD Model MBB–BK 117 helicopters was published in the **Federal Register** on December 10, 1999 (64 FR 69208). That action proposed to require changing the retirement life for the bevel gear.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed except that the part number of the affected bevel gear has been added to the applicability paragraph and the limitations paragraph to more specifically identify the affected part. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 130 helicopters of U.S. registry will be affected by this AD, that it will take approximately 0.5 work hour per helicopter to change the retirement life in the records, and 36 work hours to replace the bevel gear. Required parts will cost approximately $14,092 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,116,660 to change the retirement life entry and to replace the bevel gear upon reaching 18,500 hours TIS for the entire fleet.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–06–07 Eurocopter Deutschland: Amendment 39–11647. Docket No. 98–SW–77–AD.

Applicability: Model MBB–BK 117 helicopters, serial numbers 7001 through 7250 and 7500 through 7509, with tail rotor (output) drive bevel gear (bevel gear), part number (P/N) 117–12215–01, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the bevel gear, loss of tail rotor drive, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 100 hours time-in-service (TIS):

(1) Record in the accessory replacement record and historical record "Main Transmission" section the retirement life of 18,500 hours TIS for the bevel gear.

(2) Determine the total hours TIS of the bevel gear. If the total hours TIS cannot be determined, use the operating time of the main transmission.

(b) If the bevel gear's total hours TIS is equal to or greater than 18,400 hours TIS, remove the bevel gear within the next 100 hours TIS and replace it with an airworthy bevel gear. If the bevel gear's total hours TIS is less than 18,400 hours TIS, remove the bevel gear on or before 18,500 hours TIS and replace it with an airworthy bevel gear.

(c) This AD revises the helicopter Airworthiness Limitations section of the maintenance manual by establishing a new retirement life for the bevel gear, P/N 117–12215–01, of 18,500 hours TIS.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on April 28, 2000.

Note 3: The subject of this AD is addressed in Luftfahrt-Bundesamt (Federal Republic of Germany) AD No. 97–350, dated December 18, 1997.

Issued in Fort Worth, Texas, on March 17, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–7336 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ASW–32]

Revision of Class D Airspace; Hobbs, NM

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class D airspace at Hobbs, NM.

EFFECTIVE DATE: The direct final rule published at 65 FR 2537 is effective 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 18, 2000, (65 FR 2537). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 20, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on March 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–7344 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–10]

Revision of Class D Airspace, Alexandria England AFB, LA; Revocation of Class D Airspace, Alexandria Esler Regional Airport, LA; and Revision of Class E Airspace, Alexandria, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This amendment revises the Class D Airspace at Alexandria England Air Force Base (AFB), LA; revokes the Class D Airspace at Alexandria Esler Regional Airport, LA; and revises the Class E Airspace at Alexandria, LA. The closure of England AFB and subsequent name change to Alexandria International Airport and closure of the air traffic control tower at Esler Regional Airport have made this rule necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Alexandria International and Esler Regional Airports.

DATES: Effective 0901 UTC, August 10, 2000. Comments must be received on or before May 8, 2000.

ADDRESSES: Send comments on the rule in triplicate to Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Docket No. 2000–ASW–10, Fort Worth, TX 76193–0520. The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Room 663, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the Airspace Branch, Air Traffic Division, Federal Aviation Administration, Southwest Region, Room 414, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone 817–222–5593.

SUPPLEMENTARY INFORMATION: This amendment to 14 CFR part 71 revises the Class D Airspace at Alexandria England AFB, LA; revokes the Class D Airspace at Alexandria Esler Regional Airport, LA; and revises the Class E Airspace at Alexandria, LA. The closure of England AFB and subsequent name change to Alexandria International Airport and closure of the air traffic control tower at Esler Regional Airport have made this rule necessary. The intended effect of this proposal is to provide adequate controlled airspace for aircraft operating in the vicinity of Alexandria International and Esler Regional Airports.

Class D and E airspace designations are published in Paragraphs 5000 and 6005 respectively, of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR § 71.1. The Class D and E airspace designations listed in this document will be published subsequently in the order.

The Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comment and therefore is issuing it as a direct final rule. A substantial number of previous opportunities provided to the public to comment on substantially identical actions have resulted in negligible adverse comments or objections. Unless a written adverse or negative comment, or a written notice of intent to submit an adverse or negative comment is received within the comment period, the regulation will become effective on the date specified above. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective. If the FAA does receive, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by a notice of proposed rulemaking, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rule Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended or withdrawn in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concern with the substance of this action will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–ASW–10." The postcard will be date stamped and returned to the commenter.

Agency Findings

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule will not have federalism implications under Executive Order 13132.

Further, the FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments and only involves an established body of technical regulations that require frequent and routine amendments to keep them operationally current. Therefore, I certify that this regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Since this rule involves routine matters that will only affect air traffic procedures and air navigation, it does not warrant preparation of a Regulatory Flexibility Analysis because the anticipated impact is so minimal.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, *Airspace Designations and Reporting Points,* dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 5000 Class D airspace areas.

* * * * *

ASW LA D Alexandria, LA [Revised]

Alexandria International Airport, LA
(Lat. 31°19′55″ N., long. 92°32′55″ W.)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 4.7-mile radius of Alexandria International Airport.

* * * * *

ASW LA D Alexandria Esler Regional Airport, LA [Revoked]

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW LA E5 Alexandria, LA [Revised]

Alexandria International Airport, LA
(Lat. 31°19′39″ N., long. 92°32′55″ W.)
Alexandria Esler Regional Airport, LA
(Lat. 31°23′42″ N., long. 92°17′45″ W.)
Esler VORTAC
(Lat. 31°26′51″ N., long. 92°19′19″ W.)

That airspace extending upward from 700 feet above the surface within a 14-mile radius of Alexandria International Airport and within a 7.7-mile radius of Esler Regional Airport and within 1.7 miles each side of the 154° radial of the Esler VORTAC extending from the 7.7-mile radius to 10.6 miles southeast of the airport.

* * * * *

Issued in Fort Worth, TX, on March 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–7347 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–01]

Revision of Class E Airspace; Corsicana, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which revises Class E airspace at Corsicana, TX.

EFFECTIVE DATE: The direct final rule published at 65 FR 3382 is effective 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 21, 2000, (65 FR 3382). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 20, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on March 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–7345 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 2000–ASW–02]

Establishment of Class E Airspace; Stigler, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This notice confirms the effective date of a direct final rule which establishes Class E airspace at Stigler, OK.

EFFECTIVE DATE: The direct final rule published at 65 FR 3381 is effective 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Donald J. Day, Airspace Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, Fort Worth, TX 76193–0520, telephone: 817–222–5593.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on January 21, 2000, (65 FR 3381). The FAA uses the direct final rulemaking procedure for a noncontroversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 20, 2000. No adverse comments were received, and, thus, this action confirms that this direct final rule will be effective on that date.

Issued in Fort Worth, TX, on March 16, 2000.

JoEllen Casilio,

Assistant Manager, Air Traffic Division, Southwest Region.

[FR Doc. 00–7346 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8867]

RIN 1545–AW69

Passive Foreign Investment Companies; Definition of Marketable Stock; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains a correction to final regulations which were published in the **Federal Register** on Tuesday, January 25, 2000 (65 FR 3817), relating to the new mark-to-market election for stock of a passive foreign investment company.

DATES: This correction is effective January 25, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Laudeman at (202) 622–3840 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 1296 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8867) contain an error in the title of the official signing the document.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8867), which were the subject of FR Doc. 00–1530, is corrected as follows:

1. On page 3820, third column, at the end of TD 8867, the title of the official signing the document, "Assistant Secretary of the Treasury." is corrected to read "Acting Assistant Secretary of the Treasury (Tax Policy)."

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5237 Filed 3–23–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 601

[TD 8848]

RIN 1545–AX29

Use of Penalty Mail in the Location and Recovery of Missing Children; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to procedural rules.

SUMMARY: This document contains a correction to procedural rules which were published in the **Federal Register** on Monday, December 13, 1999 (64 FR 69398), establishing the procedures under which the IRS may use penalty mail to aid in the location and recovery of missing children.

DATES: This correction is effective December 13, 1999.

FOR FURTHER INFORMATION CONTACT: Randall Hall at (202) 283–7900 or Sandy Kopta at (202) 622–3726 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The procedural rules that are the subject of this correction are the result of the Juvenile Justice and Delinquency Prevention Act of 1974.

Need for Correction

As published, the procedural rules (TD 8848) contain a typographical error that need correction to be corrected.

Correction of Publication

Accordingly, the publication of the procedural rules (TD 8848), which were the subject of FR Doc. 99–32098, is corrected as follows:

§ 601.901 [Corrected]

1. On page 69399, first column, § 601.901, paragraph (e) is corrected to read as follows:

§ 601.901 Missing children shown on penalty mail.

* * * * *

(e) *Period of applicability.* This section is applicable December 13, 1999 through December 31, 2002.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5241 Filed 3–23–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

30 CFR Part 250

Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Update of Revised/Reaffirmed Documents Incorporated by Reference

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Technical amendment.

SUMMARY: This document makes technical amendments to regulations that were published in a final rule on December 28, 1999 (64 FR 72756). This amendment incorporates the revision of 10 documents previously incorporated by reference in regulations governing oil and gas and sulfur operations in the Outer Continental Shelf (OCS). The revised editions of these 10 documents will ensure that lessees use the best available and safest technologies while operating in the OCS. Additionally, MMS is acknowledging the reaffirmation of 7 documents previously incorporated by reference in regulations governing oil and gas and sulfur operations in the OCS. The reaffirmation dates issued by the American Petroleum Institute's Manual of Petroleum Measurement Standards will be added to the 7 pertinent documents incorporated by reference.

EFFECTIVE DATE: April 24, 2000.

The incorporation by reference of publications listed in the regulation is approved by the Director of the Federal Register as of April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Frederick Gray at (703) 787–1027.

SUPPLEMENTARY INFORMATION: The revised editions of the documents previously incorporated by reference are: (1) Fourth Edition of the American Petroleum Institute (API) Recommended Practice for Operation and Maintenance of Offshore Cranes (API RP 2D); (2) Sixth Edition of the API Specification for Quality Programs for the Petroleum and Natural Gas Industry (API Spec Q1); (3) Second Edition of the API Manual of Petroleum Measurement Standards (MPMS), Chapter 4, Proving Systems, Section 6, Pulse Interpolation (MPMS, Chapter 4, Section 6); (4) Second Edition of the API MPMS, Chapter 4, Proving Systems, Section 7, Field Standard Test Measures (MPMS, Chapter 4, Section 7); (5) American Society for Testing and Materials (ASTM) Standard Specification for Concrete Aggregates (ASTM Standard C 33–99a); (6) ASTM Standard Specification for Ready-Mixed Concrete (ASTM Standard C 94/C 94M–99); (7) ASTM Standard Specification for Portland Cement (ASTM Standard C 150–99); (8) ASTM Standard Specification for Lightweight Aggregates for Structural Concrete (ASTM Standard C 330–99); (9) ASTM Standard Specification for Blended Hydraulic Cements (ASTM Standard C 595–98); and (10) 1999 Edition of the NACE International Sulfide Stress Cracking Resistant Metallic Materials for Oilfield Equipment (NACE Standard MR0175–99).

MMS has reviewed these documents and has determined that the new editions must be incorporated into the regulations to ensure the use of the best and safest technologies. Our review shows that the changes between the old and new editions result in safety improvements or represent new industry standard technology and will not impose undue cost on the offshore oil and gas industry. Furthermore, the old editions are not readily available to the affected parties because they are out of publication. Therefore, we are amending these documents to incorporate the updated editions according to the authority in 30 CFR 250.198(a)(2). We are updating the appropriate sections of other subparts to reflect these document revisions.

The regulations for cranes and other material-handling equipment on fixed platforms were recently revised under § 250.108 for all operations on the OCS, including those for sulphur. However, crane operations for sulphur leases are also regulated under § 250.1605(g). For consistency, this technical amendment simply revises § 250.1605(g) to specify that sulphur operations follow the requirements in § 250.108 with respect to crane operations.

List of Subjects in 30 CFR Part 250

Continental shelf, Environmental impact statements, Environmental protection, Government contracts, Incorporation by reference, Investigations, Mineral royalties, Oil and gas development and production, Oil and gas exploration, Oil and gas reserves, Penalties, Pipelines, Public lands—mineral resources, Public lands—rights-of-way, Reporting and recordkeeping requirements, Sulphur development and production, Sulphur exploration, Surety bonds.

Accordingly, 30 CFR Part 250 is amended by making the following technical amendments:

PART 250—OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF

1. The authority citation for part 250 continues to read as follows:

Authority: 43 U.S.C. 1331 *et seq.*

2. In § 250.198, in the table in paragraph (e), the following changes are made:

A. Remove the entries for ASTM standards C33–93, C94–96, C150–95a, C330–89, C595–94, and NACE standard MR.01–75–96.

B. Add entries for ASTM standards C 33–99a, C 94/C 94M–99, C 150–99, C 330–99, C 595–98 and NACE standard MR0175–99 as set forth below.

C. Revise the remaining entries as set forth below.

§ 250.198 Documents incorporated by reference.

* * * * *

(e) * * *

Title of document	Incorporated by reference at
. . . . .	
API MPMS, Chapter 4, Section 6, Pulse Interpolation, Second Edition, May 1999, API Stock No. H04062.	§ 250.1202(a)(3) and (f)(1).
API MPMS, Chapter, Section 7, Field Standard Test Measures, Second Edition, December 1998, API Stock No. H04072.	§ 250.1202(a)(3) and (f)(1).
. . . . .	
API MPMS, Chapter 5, Section 2, Measurement of Liquid Hydrocarbons by Displacement Meters, Second Edition, November 1987, reaffirmed January 1997, API Stock No. H30102.	§ 250.1202(a)(3).
. . . . .	
API MPMS, Chapter 5, Section 5, Fidelity and Security of Flow Measurement Pulsed-Data Transmission Systems, First Edition, June 1982, reaffirmed January 1997, API Stock No. H30105.	§ 250.1202(a)(3).
. . . . .	
API MPMS, Chapter 6, Section 7, Metering Viscous Hydrocarbons, Sescond Edition, May 1991, reaffirmed July 1996, API Stock No. H30127.	§ 250.1202(a)(3).
. . . . .	
API MPMS, Chapter 9, Density Determination, Section 1, Hydrometer Test Method for Density, Relative Density (Specific Gravity), or API Gravity of Crude Petroleum and Liquid Petroleum Products, First Edition, June 1981, reaffirmed December 1998, API Stock No. H30181; also available as ANSI/ASTM D 1298.	§ 250.1202(a)(3) and (1)(4).
API MPMS, Chapter 9, Section 2, Pressure Hydrometer Test Method for Density or Relative Density, First Edition, April 1982, reaffirmed December 1998, API Stock No. H30182.	§ 250.1202(a)(3) and (1)(4).
. . . . .	
API MPMS, Chapter 11.2.2, Compressibility Factors for Hydrocarbons: 0.350–0.637 Relative Density (60°F/60°F) and −50°F to 140°F Metering Temperature, Second Edition, October 1986, reaffirmed March 1997, API Stock No. H27307; also available as Gas Processors Association (GPA) 8286.	§ 250.1202(a)(3) and (g)(4).

Title of document	Incorporated by reference at
API MPMS, Chapter 14, Section 3, Part 3, Natural Gas Applications, Third Edition, August 1992, reaffirmed December 1998, API Stock No. H30353; also available as ANS/API 2530, Part 3.	§ 250.1203(b)(2).
API RP 2D, Recommended practice for Operation and Maintenance of Offshore Cranes, Fourth Edition, August 1, 1999. API Stock No. G02D04.	§ 250.108(a)(1).
API Spec Q1, Specification for Quality Programs for the Petroleum and Natural Gas Industry, Sixth Edition, March 1, 1999. API Stock No. GQ1006.	§ 250.806(a)(2)(ii).
ASTM Standard C 33–99a. Standard Specification for Concrete Aggregates	§ 250.908(b)(4)(i).
ASTM Standard C 94/C 94M–99, Standard Specification for Ready-Mixed Concrete	§ 250.908(e)(2)(i).
ASTM Standard C 150–99, Standard Specification for Portland Cement	§ 250.908(b)(2)(i).
ASTM Standard C 330–99, Standard Specification for Lightweight Aggregates for Structural Concrete.	§ 250.908(b)(4)(i).
ASTM Standard C 595–98, Standard Specification for Blended Hydraulic Cements	§ 250.908(b)(2)(i).
NACE Standard MR0175–99, Sulfide Stress Cracking Resistant Metallic Materials for Oilfield Equipment, Revised January 1999, NACE Item No. 21302.	§ 250.417(p)(2).

3. In § 250.417, paragraph (p)(2) is revised to read as follows:

§ 250.417 Hydrogen sulfide.

* * * * *

(p) * * *

(2) Use BOP system components, wellhead, pressure-control equipment, and related equipment exposed to H_2S-bearing fluids that conform to NACE Standard MR0175–99.

* * * * *

4. In § 250.908, paragraphs (b)(2)(i), (b)(4)(i), and (e)(2)(i) are revised to read as follows:

§ 250.908 Concrete-gravity platforms.

* * * * *

(b) * * *

(2) * * *

(i) Cement must be equivalent to Type I, II, or III portland cement as specified by ASTM Standard C 150–99, Standard Specification for Portland Cement, or portland-pozzolan cement as specified by ASTM Standard C 595–98, Standard Specification for Blended Hydraulic Cements. However, the suitability of Type III cement to serve its intended function must be demonstrated.

(4) * * *

(i) Aggregates must conform to the requirements of ASTM Standard C 33–99a, Standard Specification for Concrete Aggregates. Lightweight aggregates conforming to ASTM Standard C 330–99, Standard Specification for Lightweight Aggregates for Structural Concrete, will only be permitted if they do not pose durability problems and where they are used according to the applicable provisions of the ACI publication, ACI Standard 318, Building Code Requirements for Reinforced Concrete, plus Commentary.

* * * * *

(e) * * *

(2) * * *

(i) Mixing of concrete must conform to the requirements of ACI Standard 318 and ASTM Standard C 94/C 94M–99, Standard Specification for Ready-Mixed Concrete;

* * * * *

5. In § 250.1605, paragraph (g) is revised to read as follows:

§ 250.1605 Drilling requirements.

* * * * *

(g) *Crane operations.* You must operate a crane installed on fixed platforms according to § 250.108 of this subpart.

* * * * *

Dated: March 16, 2000.

E. P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–7267 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–MR–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 040–0223a FRL–6563–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District, Monterey Bay Unified Air Pollution Control District, and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rules from the following districts: Ventura County Air Pollution Control District (VCAPCD), Monterey Bay Unified Air Pollution Control District (MBUAPCD), and Santa Barbara County Air Pollution Control District (SBCAPCD). This approval action will incorporate these rules into the federally approved SIP. The intended effect of approving these rules is to regulate emissions of volatile organic compounds (VOCs) in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The revised rules control VOC emissions from architectural coatings. Thus, EPA is finalizing the approval of these revisions into the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on May 23, 2000 without further notice, unless EPA receives adverse comments by April 24, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being approved into the California SIP include: VCAPCD Rule 74.2, Architectural Coatings; MBUAPCD Rule 426, Architectural Coatings; and SBCAPCD Rule 323, Architectural Coatings. VCAPCD Rule 74.2 was submitted by the California Air Pollution Control District (CARB) to EPA on November 12, 1992. MBUAPCD Rule 426 and SBCAPCD Rule 323 were both submitted by CARB to EPA on March 3, 1997.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the Ventura County, Monterey Bay, and Santa Barbara-Santa Maria-Lompoc Areas. 43 FR 8964, 40 CFR 81.305. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the 1977 Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call).

On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. Section 110(a)(2)(A) of the Act requires that plans which are submitted to the EPA in order to achieve or maintain the National Ambient Air Quality Standards (NAAQS) contain enforceable emission limitations. The Ventura County Area is classified as severe and the Monterey Bay and Santa Barbara-Santa Maria-Lompoc Areas are classified as serious.[1]

The State of California submitted many rules for incorporation into its SIP on November 12, 1992 and March 3, 1997, including the rules being acted on in this document. This document addresses EPA's direct-final action for VCAPCD Rule 74.2, Architectural Coatings; MBUAPCD Rule 426, Architectural Coatings; and SBCAPCD Rule 323, Architectural Coatings. These rules were adopted by the VCAPCD, MBUAPCD, and SBCAPCD on August 11, 1992, December 18, 1996, and July 18, 1996, respectively. VCAPCD Rule 74.2 was found to be complete on March 26, 1993. MBUAPCD Rule 426 and SBCAPCD Rule 323 were found to be complete on August 12, 1997. Findings of completeness are made pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51 Appendix V.[2] These submitted rules are being finalized for approval into the SIP.

These rules control VOC emissions from architectural coatings. VOCs contribute to the production of ground level ozone and smog. These rules were originally adopted as part of the districts' efforts to achieve the NAAQS for ozone and in response to EPA's SIP-Call and the section 110(a)(2)(A) CAA requirement. The following is EPA's evaluation and final action for these rules.

III. EPA Evaluation and Action

In determining the approvability of VOC rules, EPA must evaluate the rules for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans).

In addition, these rules were evaluated against the general requirements of the CAA (section 110 and part D) 40 CFR part 52 and "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations—Clarification to Appendix D of November 24, 1987 **Federal Register**" (EPA's "Blue Book"). In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

On January 24, 1985, EPA approved into the SIP a version of Rule 74.2, Architectural Coatings, that had been adopted by the VCAPCD on November 22, 1983. VCAPCD submitted Rule 74.2, Architectural Coatings includes the following significant changes from the current SIP:

- Deletion of Section A1b in the SIP version to allow the sale of bituminous pavement sealers;
- Addition of 19 VOC limits and deletion of three VOC limits from the Table of Standards;
- A provision that the lowest VOC limit shall apply when a coating may fall under two or more categories;
- A requirement that all VOC-containing materials be stored in closed containers;
- A requirement that the maximum VOC content be displayed on coating containers;
- Deletion of Section B1 in the SIP version to remove the small business exemption;
- Exemptions for aerosol containers and emulsion-type bituminous pavement sealers;
- Removal of exemptions for 11 categories of coatings;
- Addition of test methods for determining the VOC, acid, and metal content of coatings; and
- Addition of 15, deletion of eight, and revision of 12 definitions.

On February 9, 1996, EPA approved into the SIP a version of Rule 426, Architectural Coatings, that had been adopted by the MBUAPCD on August

[1] The Ventura County, Monterey Bay, and Santa Barbara-Santa Maria-Lompoc Areas retained their designation of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 56 FR 56694 (November 6, 1991). On December 10, 1997, EPA published a final rule reclassifying the Santa Barbara-Santa Maria-Lompoc Area from moderate to serious. See 62 FR 65025. This reclassification became effective on January 9, 1998.

[2] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

25, 1993. MBUAPCD submitted Rule 426, Architectural Coatings includes the following significant changes from the current SIP:

- Addition of a VOC limit to the Table of Standards;
- References to other MBUAPCD rules;
- Addition of three and revision of five definitions; and
- Addition of a test method for determining the gloss of non-flat coatings.

On July 14, 1995, EPA approved into the SIP a version of Rule 323, Architectural Coatings, that had been adopted by the SBCAPCD on March 16, 1995. SBCAPCD submitted Rule 323, Architectural Coatings includes the following significant change from the current SIP:

- Deletion of the definition of reactive organic compound found in Section C27 of the SIP to maintain consistency with the definition in SBCAPCD Rule 102, Definitions.

EPA has evaluated the submitted rules and has determined that they strengthen the applicable SIP and are consistent with the CAA and EPA policy. Therefore, VCAPCD Rule 74.2, Architectural Coatings; MBUAPCD Rule 426, Architectural Coatings; and SBCAPCD Rule 323, Architectural Coatings are being approved under section 110(k)(3) of the CAA.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve these SIP revisions should adverse comments be filed. This rule will be effective May 23, 2000 without further notice unless the Agency receives adverse comments by April 24, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on May 23, 2000 and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under sections 110 and 301, and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 10, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52 [AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(190)(i)(A)(*2*), (244)(i)(A)(*5*), and (244)(i)(F) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(190) * * *

(i) * * *

(A) * * *

(*2*) Rule 74.2 revised on August 11, 1992.

* * * * *

(244) * * *

(i) * * *

(A) * * *

(*5*) Rule 426 revised December 18, 1996.

* * * * *

(F) Santa Barbara County Air Pollution Control District.

(*1*) Rule 323 revised July 18, 1996.

* * * * *

[FR Doc. 00–7227 Filed 3–23–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–6563–9]

Outer Continental Shelf Air Regulations Consistency Update for California

AGENCY: Environmental Protection Agency ("EPA")

ACTION: Final rule—consistency update.

SUMMARY: EPA is finalizing the update of the Outer Continental Shelf ("OCS") Air Regulations proposed in the **Federal Register** on November 19, 1999, August 19, 1999, May 27, 1999, August 6, 1998, January 16, 1998, August 23, 1997, July 16, 1997, December 16, 1996, and July 9, 1996. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act Amendments of 1990 ("the Act"). The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the Santa Barbara

County Air Pollution Control District, San Luis Obispo County Air Pollution Control District, South Coast Air Quality Management District, and Ventura County Air Pollution Control District are the designated COAs and requirements submitted by the State of California. The intended effect of approving the requirements contained in "Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources' (February, 2000), "San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources" (February, 2000), "South Coast Air Quality Management District Requirements Applicable to OCS Sources' (Part I, II and III) (February, 2000), "Ventura County Air Pollution Control District Requirements Applicable to OCS Sources' (February, 2000), and "State of California Requirements Applicable to OCS Sources" (February, 2000) is to regulate emissions from OCS sources in accordance with the requirements onshore.

DATES: This action is effective April 24, 2000.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency (LE–6102), 401 "M" Street, SW, Room M–1500, Washington, D.C. 20460.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (AIR–4), U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1197.

SUPPLEMENTARY INFORMATION:

Background

TABLE 1

Date of Proposed Rule	Federal Register citation
November 19, 1999 ..	64 FR 63271.
August 19, 1999	64 FR 45217.
May 27, 1999	64 FR 29775.
August 6, 1998	63 FR 41991.
January 19, 1998	63 FR 8642.
August 23, 1997	62 FR 45604.
July 16, 1997	62 FR 38047.
December 16, 1996 ..	61 FR 66003.
July 9, 1996	61 FR 36012.

On the dates listed in Table 1, EPA proposed to approve requirements into the OCS Air Regulations pertaining to Santa Barbara County APCD, San Luis Obispo County APCD, South Coast AQMD, Ventura County APCD, and State of California. These requirements are being promulgated in response to the submittal of rules from local air pollution control agencies and the State of California. EPA has evaluated the proposed requirements to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or Part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure that they are not arbitrary or capricious. 40 CFR 55.12(e). In addition, EPA has excluded administrative or procedural rules.

A 30-day public comment period was provided in each Proposed Rule, and no comments were received.

EPA Action

In this document, EPA takes final action to incorporate the proposed changes into 40 CFR part 55. No changes were made to the Proposed Rules listed in table 1. EPA is approving the proposed actions as modified under section 328(a)(1) of the Act, 42 U.S.C. 7627. Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into Part 55 as they exist onshore.

Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under

Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because consistency updates under section 328(a) of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the consistency update approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action.

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 23, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: March 15, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

Title 40, Chapter I of the Code of Federal Regulations, Part 55, is to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is amended by revising paragraphs (e)(3)(i)(A), (e)(3)(ii)(E), (e)(3)(ii)(F), (e)(3)(ii)(G), and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of States seaward boundaries, by State.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(A) State of California Requirements Applicable to OCS Sources.

(ii) * * *

(E) *San Luis Obispo County Air Pollution Control District Requirements*

Applicable to OCS Sources, February 2000.

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2000.

(G) *South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I , II and Part III), February 2000.

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2000.

* * * * *

3. Appendix A to CFR Part 55 is amended by revising paragraphs (a)(1) and (b)(5), (6), (7), and (8) under the heading "California" to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

California

(a) State Requirements

(1) The following requirements are contained in *State of California Requirements Applicable to OCS Sources*, February 2000.

Barclays California Code of Regulations

The following sections of Title 17 Subchapter 6:

17 § 92000 Definitions (Adopted 5/31/91)
17 § 92100 Scope and Policy (Adopted 5/31/91)
17 § 92200 Visible Emission Standards (Adopted 5/31/91)
17 § 92210 Nuisance Prohibition (Adopted 5/31/91)
17 § 92220 Compliance with Performance Standards (Adopted 5/31/91)
17 § 92400 Visible Evaluation Techniques (Adopted 5/31/91)
17 § 92500 General Provisions (Adopted 5/31/91)
17 § 92510 Pavement Marking (Adopted 5/31/91)
17 § 92520 Stucco and Concrete (Adopted 5/31/91)
17 § 92530 Certified Abrasive (Adopted 5/31/91)
17 § 92540 Stucco and Concrete (Adopted 5/31/91)

Health and Safety Code

The following section of Division 26, Part 4, Chapter 4, Article 1: Health and Safety Code § 42301.13 of *seq.* Stationary sources: demolition or removal (chaptered 7/25/96)

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(b) Local Requirements.

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(5) The following requirements are contained in *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2000:

Rule 103 Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
Rule 105 Definitions (Adopted 1/24/96)
Rule 106 Standard Conditions (Adopted 8/6/76)
Rule 108 Severability (Adopted 11/13/84)
Rule 113 Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
Rule 201 Equipment not Requiring a Permit, except A.1.b. (Revised 4/26/95)
Rule 202 Permits, except A.4. and A.8. (Adopted 11/5/91)
Rule 203 Applications, except B. (Adopted 11/5/91)
Rule 204 Requirements, except B.3. and C. (Adopted 8/10/93)
Rule 209 Provision for Sampling and Testing Facilities (Adopted 11/5/91)
Rule 210 Periodic Inspection, Testing and Renewal of Permits to Operate (Adopted 11/5/91)
Rule 213 Calculations, except E.4. and F. (Adopted 8/10/93)
Rule 302 Schedule of Fees (Adopted 6/18/97)
Rule 305 Fees for Major Non-Vehicular Sources (Adopted 9/15/92)
Rule 401 Visible Emissions (Adopted 8/6/76)
Rule 403 Particulate Matter Emissions (Adopted 8/6/76)
Rule 404 Sulfur Compounds Emission Standards, Limitations and Prohibitions (Revised 12/6/76)
Rule 405 Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/16/93)
Rule 406 Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)
Rule 407 Organic Material Emission Standards, Limitations and Prohibitions (Adopted 5/22/96)
Rule 411 Surface Coating of Metal Parts and Products (Adopted 1/28/98)
Rule 416 Degreasing Operations (Adopted 6/18/79)
Rule 417 Control of Fugitive Emissions of Volatile Organic Compounds (Adopted 2/9/93)
Rule 419 Petroleum Pits, Ponds, Sumps, Well Cellars, and Wastewater Separators (Revised 7/12/94)
Rule 422 Refinery Process Turnarounds (Adopted 6/18/79)
Rule 425 Storage of Volatile Organic Compounds (Adopted 7/12/94)
Rule 427 Marine Tanker Loading (Adopted 4/26/95)
Rule 429 Oxides of Nitrogen and Carbon Monoxide Emissions from Electric Power Generation Boilers (Revised 11/12/97)
Rule 430 Control of Oxides of Nitrogen from Industrial, Institutional, Commercial Boilers, Steam Generators, and Process Heaters (Adopted 7/26/95)
Rule 431 Stationary Internal Combustion Engines (Adopted 11/13/96)
Rule 501 General Burning Provisions (Adopted 1/10/89)
Rule 503 Incinerator Burning, except B.1.a. (Adopted 2/7/89)
Rule 601 New Source Performance Standards (Adopted 5/28/97)

(6) *The following requirements are containing in Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2000:

Rule 102 Definitions (Adopted 5/20/99)
Rule 103 Severability (Adopted 10/23/78)
Rule 106 Notice to Comply for Minor Violations (Adopted 7/15/99)
Rule 201 Permits Required (Adopted 4/17/97)
Rule 202 Exemptions to Rule 201 (Adopted 4/17/97)
Rule 203 Transfer (Adopted 4/17/97)
Rule 204 Applications (Adopted 4/17/97)
Rule 205 Standards for Granting Applications (Adopted 4/17/97)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 4/17/97)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and Fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 316 Storage and Transfer of Gasoline (Adopted 4/17/97)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Solvent Cleaning Operations (Adopted 9/18/97)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 7/18/96)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Crude Oil Production and Separation (Adopted 1/25/94)
Rule 326 Storage of Reactive Organic Liquid Compounds (Adopted 12/14/93)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 4/21/95)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems, Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (Adopted 4/17/97)
Rule 342 Control of Oxides of Nitrogen (NO_X) from Boilers, Steam Generators and Process Heaters) (Adopted 4/17/97)

Rule 343 Petroleum Storage Tank Degassing (Adopted 12/14/93)
Rule 344 Petroleum Sumps, Pits, and Well Cellars (Adopted 11/10/94)
Rule 352 Natural Gas-Fired Fan-Type Central Furnaces and Residential Water Heaters (Adopted 9/16/99)
Rule 353 Adhesives and Sealants (Adopted 8/19/99)
Rule 359 Flares and Thermal Oxidizers (6/28/94)
Rule 370 Potential to Emit—Limitations for Part 70 Sources (Adopted 6/15/95)
Rule 505 Breakdown Conditions Sections A., B.1,. and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)
Rule 702 General Conformity (Adopted 10/20/94)
Rule 801 New Source Review (Adopted 4/17/97)
Rule 802 Nonattainment Review (Adopted 4/17/97)
Rule 803 Prevention of Significant Deterioration (Adopted 4/17/97)
Rule 804 Emission Offsets (Adopted 4/17/97)
Rule 805 Air Quality Impact Analysis and Modeling (Adopted 4/17/97)
Rule 808 New Source Review for Major Sources of Hazardous Air Pollutants (Adopted 5/20/99)
Rule 1301 Part 70 Operating Permits—General Information (Adopted 4/17/97)
Rule 1302 Part 70 Operating Permits—Permit Application (Adopted 11/09/93)
Rule 1303 Part 70 Operating Permits—Permits (Adopted 11/09/93)
Rule 1304 Part 70 Operating Permits—Issuance, Renewal, Modification and Reopening (Adopted 11/09/93)
Rule 1305 Part 70 Operating Permits—Enforcement (Adopted 11/09/93)

(7) *The following requirements are contained in South Coast Air Quality Management District Requirements Applicable to OCS Sources* (Part I, II and III), February 2000:

Rule 102 Definition of Terms (Adopted 6/13/97)
Rule 103 Definition of Geographical Areas (Adopted 1/9/76)
Rule 104 Reporting of Source Test Data and Analyses (Adopted 1/9/76)
Rule 108 Alternative Emission Control Plans (Adopted 4/6/90)
Rule 109 Recordkeeping for Volatile Organic Compound Emissions (Adopted 3/6/92)
Rule 118 Emergencies (Adopted 12/7/95)
Rule 201 Permit to Construct (Adopted 1/5/90)
Rule 201.1 Permit Conditions in Federally Issued Permits to Construct (Adopted 1/5/90)
Rule 202 Temporary Permit to Operate (Adopted 5/7/76)
Rule 203 Permit to Operate (Adopted 1/5/90)
Rule 204 Permit Conditions (Adopted 3/6/92)
Rule 205 Expiration of Permits to Construct (Adopted 1/5/90)
Rule 206 Posting of Permit to Operate (Adopted 1/5/90)
Rule 207 Altering or Falsifying of Permit (Adopted 1/9/76)
Rule 208 Permit for Open Burning (Adopted 1/5/90)
Rule 209 Transfer and Voiding of Permits (Adopted 1/5/90)
Rule 210 Applications (Adopted 1/5/90)
Rule 212 Standards for Approving Permits (Adopted 12/7/95) except (c)(3) and (e)
Rule 214 Denial of Permits (Adopted 1/5/90)
Rule 217 Provisions for Sampling and Testing Facilities (Adopted 1/5/90)
Rule 218 Stack Monitoring (Adopted 8/7/81)
Rule 219 Equipment Not Requiring a Written Permit Pursuant to Regulation II (Adopted 12/13/96)
Rule 220 Exemption—Net Increase in Emissions (Adopted 8/7/81)
Rule 221 Plans (Adopted 1/4/85)
Rule 301 Permit Fees (Adopted 5/9/97) except (e)(6) and Table IV
Rule 304 Equipment, Materials, and Ambient Air Analyses (Adopted 5/9/97)
Rule 304.1 Analyses Fees (Adopted 5/9/97)
Rule 305 Fees for Acid Deposition (Adopted 10/4/91)
Rule 306 Plan Fees (Adopted 5/9/97)
Rule 309 Fees for Regulation XVI Plans (Adopted 5/9/97)
Rule 401 Visible Emissions (Adopted 4/7/89)
Rule 403 Fugitive Dust (Adopted 2/14/97)
Rule 404 Particulate Matter—Concentration (Adopted 2/7/86)
Rule 405 Solid Particulate Matter—Weight (Adopted 2/7/86)
Rule 407 Liquid and Gaseous Air Contaminants (Adopted 4/2/82)
Rule 408 Circumvention (Adopted 5/7/76)
Rule 409 Combustion Contaminants (Adopted 8/7/81)
Rule 429 Start-Up and Shutdown Provisions for Oxides of Nitrogen (Adopted 12/21/90)
Rule 430 Breakdown Provisions, (a) and (e) only (Adopted 7/12/96)
Rule 431.1 Sulfur Content of Gaseous Fuels (Adopted 11/17/95)
Rule 431.2 Sulfur Content of Liquid Fuels (Adopted 5/4/90)
Rule 431.3 Sulfur Content of Fossil Fuels (Adopted 5/7/76)
Rule 441 Research Operations (Adopted 5/7/76)
Rule 442 Usage of Solvents (Adopted 3/5/82)
Rule 444 Open Fires (Adopted 10/2/87)
Rule 463 Organic Liquid Storage (Adopted 3/11/94)
Rule 465 Vacuum Producing Devices or Systems (Adopted 11/1/91)
Rule 468 Sulfur Recovery Units (Adopted 10/8/76)
Rule 473 Disposal of Solid and Liquid Wastes (Adopted 5/7/76)
Rule 474 Fuel Burning Equipment-Oxides of Nitrogen (Adopted 12/4/81)
Rule 475 Electric Power Generating Equipment (Adopted 8/7/78)
Rule 476 Steam Generating Equipment (Adopted 10/8/76)
Rule 480 Natural Gas Fired Control Devices (Adopted 10/7/77); Addendum to Regulation IV (Effective 1977)
Rule 518 Variance Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.1 Permit Appeal Procedures for Title V Facilities (Adopted 8/11/95)
Rule 518.2 Federal Alternative Operating Conditions (Adopted 1/12/96)
Rule 701 Air Pollution Emergency Contingency Actions (Adopted 6/13/97)
Rule 702 Definitions (Adopted 7/11/80)
Rule 704 Episode Declaration (Adopted 7/9/82)
Rule 707 Radio—Communication System (Adopted 7/11/80)
Rule 708 Plans (Adopted 7/9/82)
Rule 708.1 Stationary Sources Required to File Plans (Adopted 4/4/80)
Rule 708.2 Content of Stationary Source Curtailment Plans (Adopted 4/4/80)
Rule 708.4 Procedural Requirements for Plans (Adopted 7/11/80)
Rule 709 First Stage Episode Actions (Adopted 7/11/80)
Rule 710 Second Stage Episode Actions (Adopted 7/11/80)
Rule 711 Third Stage Episode Actions (Adopted 7/11/80)
Rule 712 Sulfate Episode Actions (Adopted 7/11/80)
Rule 715 Burning of Fossil Fuel on Episode Days (Adopted 8/24/77)
Regulation IX—New Source Performance Standards (Adopted 1/9/98)
Rule 1106 Marine Coatings Operations (Adopted 1/13/95)
Rule 1107 Coating of Metal Parts and Products (Adopted 3/8/96)
Rule 1109 Emissions of Oxides of Nitrogen for Boilers and Process Heaters in Petroleum Refineries (Adopted 8/5/88)
Rule 1110 Emissions from Stationary Internal Combustion Engines (Demonstration) (Adopted 11/14/97)
Rule 1110.1 Emissions from Stationary Internal Combustion Engines (Adopted 10/4/85)
Rule 1110.2 Emissions from Gaseous- and Liquid-Fueled Internal Combustion Engines (Adopted 11/14/97)
Rule 1113 Architectural Coatings (Adopted 11/8/96)
Rule 1116.1 Lightering Vessel Operations-Sulfur Content of Bunker Fuel (Adopted 10/20/78)
Rule 1121 Control of Nitrogen Oxides from Residential-Type Natural Gas-Fired Water Heaters (Adopted 3/10/95)
Rule 1122 Solvent Degreasers (Adopted 7/11/97)
Rule 1123 Refinery Process Turnarounds (Adopted 12/7/90)
Rule 1129 Aerosol Coatings (rescinded 3/8/96)
Rule 1134 Emissions of Oxides of Nitrogen from Stationary Gas Turbines (Adopted 8/8/97)
Rule 1136 Wood Products Coatings (Adopted 6/14/96)
Rule 1140 Abrasive Blasting (Adopted 8/2/85)
Rule 1142 Marine Tank Vessel Operations (Adopted 7/19/91)
Rule 1146 Emissions of Oxides of Nitrogen from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)
Rule 1146.1 Emission of Oxides of Nitrogen from Small Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters (Adopted 5/13/94)

Rule 1146.2 Emissions of Oxides of Nitrogen from Large Water Heaters and Small Boilers (Adopted 1/9/98)
Rule 1148 Thermally Enhanced Oil Recovery Wells (Adopted 11/5/82)
Rule 1149 Storage Tank Degassing (Adopted 7/14/95)
Rule 1168 Adhesive Applications (Adopted 2/13/98)
Rule 1171 Solvent Cleaning Operations (Adopted 9/13/96)
Rule 1173 Fugitive Emissions of Volatile Organic Compounds (Adopted 5/13/94)
Rule 1176 VOC Emissions from Wastewater Systems (Adopted 9/13/96)
Rule 1301 General (Adopted 12/7/95)
Rule 1302 Definitions (Adopted 12/7/95)
Rule 1303 Requirements (Adopted 5/10/96)
Rule 1304 Exemptions (Adopted 6/14/96)
Rule 1306 Emission Calculations (Adopted 6/14/96)
Rule 1313 Permits to Operate (Adopted 12/7/95)
Rule 1403 Asbestos Emissions from Demolition/Renovation Activities (Adopted 4/8/94)
Rule 1605 Credits for the Voluntary Repair of On-Road Vehicles Identified Through Remote Sensing Devices (Adopted 10/11/96)
Rule 1610 Old-Vehicle Scrapping (Adopted 5/9/97)
Rule 1612 Credits for Clean On-Road Vehicles (Adopted 9/8/95)
Rule 1620 Credits for Clean Off-Road Mobile Equipment (Adopted 9/8/95)
Rule 1701 General (Adopted 1/6/89)
Rule 1702 Definitions (Adopted 1/6/89)
Rule 1703 PSD Analysis (Adopted 10/7/88)
Rule 1704 Exemptions (Adopted 1/6/89)
Rule 1706 Emission Calculations (Adopted 1/6/89)
Rule 1713 Source Obligation (Adopted 10/7/88)
Regulation XVII Appendix (effective 1977)
Rule 1901 General Conformity (Adopted 9/9/94)
Rule 2000 General (Adopted 4/11/97)
Rule 2001 Applicability (Adopted 2/14/97)
Rule 2002 Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (Sox) Emissions (Adopted 2/14/97)
Rule 2004 Requirements (Adopted 7/12/96) except (l)
Rule 2005 New Source Review for RECLAIM (Adopted 2/14/97) except (i)
Rule 2006 Permits (Adopted 12/7/95)
Rule 2007 Trading Requirements (Adopted 12/7/95)
Rule 2008 Mobile Source Credits (Adopted 10/15/93)
Rule 2010 Administrative Remedies and Sanctions (Adopted 10/15/93)
Rule 2011 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions (Adopted 4/11/97)
Appendix A Volume IV—(Protocol for oxides of sulfur) (Adopted 3/10/95)
Rule 2012 Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions (Adopted 4/11/97)
Appendix A Volume V—(Protocol for oxides of nitrogen) (Adopted 3/10/95)
Rule 2015 Backstop Provisions (Adopted 2/14/97) except (B)(1)(G) and (b)(3)(B)
Rule 2100 Registration of Portable Equipment (Adopted 7/11/97)
XXX Title V Permits
Rule 3000 General (Adopted 11/14/97)
Rule 3001 Applicability (Adopted 11/14/97)
Rule 3002 Requirements (Adopted 11/14/97)
Rule 3003 Applications (Adopted 11/14/97)
Rule 3004 Permit Types and Content (Adopted 11/14/97)
Rule 3005 Permit Revisions (Adopted 11/14/97)
Rule 3006 Public Participation (Adopted 11/14/97)
Rule 3007 Effect of Permit (Adopted 10/8/93)
XXXI Acid Rain Permit Program (Adopted 2/10/95)

(8) *The following requirements are contained in Ventura County Air Pollution Control District Requirements Applicable to OCS Sources*, February 2000:

Rule 2 Definitions (Adopted 11/10/98)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 6/13/95)
Rule 11 Definition for Regulation II (Adopted 6/13/95)
Rule 12 Application for Permits (Adopted 6/13/95)
Rule 13 Action on Applications for an Authority to Construct (Adopted 6/13/95)
Rule 14 Action on Applications for a Permit to Operate (Adopted 6/13/95)
Rule 15.1 Sampling and Testing Facilities (Adopted 10/12/93)
Rule 16 BACT Certification (Adopted 6/13/95)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 23 Exemptions from Permits (Adopted 7/9/96)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 9/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 1/13/98)
Rule 26.2 New Source Review—Requirements (Adopted 1/13/98)
Rule 26.3 New Source Review—Exemptions (Adopted 1/13/98)
Rule 26.6 New Source Review—Calculations (Adopted 1/13/98)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 1/13/98)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Rule 33 Part 70 Permits—General (Adopted 10/12/93)
Rule 33.1 Part 70 Permits—Definitions (Adopted 10/12/93)
Rule 33.2 Part 70 Permits—Application Contents (Adopted 10/12/93)
Rule 33.3 Part 70 Permits—Permit Content (Adopted 10/12/93)
Rule 33.4 Part 70 Permits—Operational Flexibility (Adopted 10/12/93)
Rule 33.5 Part 70 Permits—Time frames for Applications, Review and Issuance (Adopted 10/12/93)
Rule 33.6 Part 70 Permits—Permit Term and Permit Reissuance (Adopted 10/12/93)
Rule 33.7 Part 70 Permits—Notification (Adopted 10/12/93)
Rule 33.8 Part 70 Permits—Reopening of Permits (Adopted 10/12/93)
Rule 33.9 Part 70 Permits—Compliance Provisions (Adopted 10/12/93)
Rule 33.10 Part 70 Permits—General Part 70 Permits (Adopted 10/12/93)
Rule 34 Acid Deposition Control (Adopted 3/14/95)
Rule 35 Elective Emission Limits (Adopted 11/12/96)
Rule 36 New Source Review—Hazardous Air Pollutants (Adopted 10/6/98)
Rule 42 Permit Fees (Adopted 6/22/99)
Rule 44 Exemption Evaluation Fee (Adopted 9/10/96)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 47 Source Test, Emission Monitor, and Call-Back Fees (Adopted 6/22/99)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter-Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter-Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 6/14/94)
Rule 56 Open Fires (Adopted 3/29/94)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment-Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 4/13/99)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 12/13/94)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 71.5 Glycol Dehydrators (Adopted 12/13/94)
Rule 72 New Source Performance Standards (NSPS) (Adopted 9/10/96)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 11/10/98)
Rule 74.6.1 Cold Cleaning Operations (Adopted 7/9/96)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 7/9/96)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 10/10/95)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/21/93)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 3/10/98)
Rule 74.11 Natural Gas-Fired Residential Water Heaters-Control of NO_X (Adopted 4/9/85)
Rule 74.11.1 Large Water Heaters and Small Boilers (Adopted 9/14/99)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 9/10/96)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 11/8/94)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 6/13/95)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 1/14/97)
Rule 74.23 Stationary Gas Turbines (Adopted 10/10/95)
Rule 74.24 Marine Coating Operations (Adopted 9/10/96)
Rule 74.24.1 Pleasure Craft Coating and Commercial Boatyard Operations (Adopted 11/10/98)
Rule 74.26 Crude Oil Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.27 Gasoline and ROC Liquid Storage Tank Degassing Operations (Adopted 11/8/94)
Rule 74.28 Asphalt Roofing Operations (Adopted 5/10/94)
Rule 74.30 Wood Products Coatings (Adopted 9/10/96)
Rule 75 Circumvention (Adopted 11/27/78)
Rule 76 Federally Enforceable Limits on Potential to Emit (Adopted 10/10/95)
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Continuous Monitoring Systems (Adopted 2/9/99)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)
Rule 220 General Conformity (Adopted 5/9/95)

* * * * *

(FR Doc. 00–7327 Filed 3–23–00; 8:45 am)

BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 635

[I.D. 102299B]

Atlantic Highly Migratory Species; Swordfish Quota Adjustment

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Adjustment of annual catch quotas.

SUMMARY: NMFS adjusts the June 1, 1999, through May 31, 2000, directed category quota for North Atlantic swordfish to account for underharvest from the prior fishing year. The directed category annual quota is adjusted to 2,427.38 metric tons dressed weight (mt dw). The 1999–2000 season for North Atlantic swordfish incidental catch category quota remains at 300 mt dw. The annual directed catch category quota for the South Atlantic swordfish fishery remains at 289 mt dw. This action is required under management measures adopted in the Fishery Management Plan for Atlantic Tunas, Swordfish, and Sharks (HMS FMP), and is consistent with the criteria for swordfish quota transfers established at 50 CFR part 635.

DATES: Effective March 21, 2000.

FOR FURTHER INFORMATION CONTACT: Steve Meyers or Jill Stevenson at 301–713–2347; Fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: Analysis of reported landings for the directed North Atlantic swordfish fishery, the North Atlantic incidental swordfish fishery, and the South Atlantic directed swordfish fishery indicate that the quotas for those fisheries were not exceeded during the 1998 fishing year (June 1, 1998, through May 31, 1999). Under 50 CFR 635.27(c)(3)(ii), if total landings are above or below the specific North Atlantic swordfish annual quotas, they must be subtracted from, or added to, the following year's quota for that management area, provided quota modifications are consistent with applicable International Commission for the Conservation of Atlantic Tunas (ICCAT) recommendations. Further, any carryover adjustments to the 12-month directed catch quota for the North Atlantic swordfish fishery must to be apportioned equally between the two semiannual periods. Under 50 CFR 635.27(c)(2)(ii), incidental catch for North Atlantic swordfish may be reallocated to the directed catch quota if not expected to be taken in the incidental fishery before the end of the fishing year.

There is no ICCAT recommendation to modify the South Atlantic swordfish quota based on over or under harvests in prior years. Therefore, the annual quota for South Atlantic swordfish remains at the current quota level of 289 mt dw. There is no incidental catch quota in the South Atlantic swordfish fishery.

Adjusted Catch Quotas

The adjusted annual directed fishery quota for North Atlantic swordfish for the 1998 fishing year was 2,392.3 mt dw. The adjusted quota for incidental harvests of North Atlantic swordfish for the 1998 fishing year was 314.6 mt dw (64 FR 4059, January 27, 1999).

The initial annual directed fishery quota for North Atlantic swordfish for the 1999 fishing year (June 1, 1999, through May 31, 2000) was previously established at 2033.2 mt dw and is divided into two equal semiannual quotas of 1016.6 mt dw, one for June 1 through November 30, 1999, and the other for December 1, 1999, through May 31 of 2000 (63 FR 31710, June 10, 1998). The initial catch quota for incidental harvests of North Atlantic swordfish for the 1999 fishing year is 300 mt dw.

The harvest of North Atlantic swordfish in the directed catch category for the 1998 fishing year is estimated to be 2,308.3 mt dw, or 84.0 mt dw below the directed catch quota of 2,392.3 mt dw. Additionally, the harvest of North Atlantic swordfish in the incidental catch category for the 1998 fishing year was 4.4 mt dw, or 310.2 mt dw below the incidental catch quota of 314.6 mt dw.

The 84.0 mt dw underage from the directed catch quota and the 310.2 mt dw underage from the incidental catch quota for the 1998 fishing year are added to the directed catch quota for the 1999 fishing year, for a revised North Atlantic swordfish directed catch quota of 2,427.4 mt dw. This adjusted annual quota is divided into 2 equal semiannual catch quotas of 1,213.7 mt dw, one for June 1, 1999, through November 30, 1999, and the other for December 1, 1999, through May 31, 2000. NMFS is currently examining landings reports from the first semi-

annual period to determine if adjustments to the second period are required. Projections based on preliminary data from June 1, 1999, through January 31, 2000, suggest that a closure of the directed swordfish fishery prior to May 31, 2000, given the adjusted annual directed swordfish quota, will not be needed.

The incidental catch quota remains at 300 mt dw for the 1999 fishing year.

Under the swordfish limited access program established under the 1999 HMS FMP and implemented at 50 CFR 635.16, NMFS has issued incidental catch permits, and all catch by vessels so permitted will now be applied to the incidental catch quota. Thus, it is premature to consider reallocation of the incidental catch quota until NMFS examines logbooks of vessels with incidental catch permits.

Classification

This action is taken under 50 CFR 635.27(c). This action is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: March 20, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7322 Filed 3–21–00; 3:50 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register

Vol. 65, No. 58

Friday, March 24, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 531

RIN 3206–AI81

Locality-Based Comparability Payments

AGENCY: Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing proposed regulations to clarify and redefine the limitations on locality rates of pay for categories of non-General Schedule employees approved by the President's Pay Agent to receive locality-based comparability payments. This proposed change was prompted by a recent Executive order that delegated the President's authority to establish such limitations to the President's Pay Agent. The proposed regulations would ensure that all employees receiving locality payments are treated consistently.

DATES: Comments must be received on or before May 23, 2000.

ADDRESSES: Comments may be sent or delivered to Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, Office of Personnel Management, Room 7H31, 1900 E Street NW., Washington, DC 20415–8200 (FAX: (202) 606–0824 or email: payleave@opm.gov).

FOR FURTHER INFORMATION CONTACT: Vincent Donahue, (202) 606–2858, FAX: (202) 606–0824, or email: payleave@opm.gov.

SUPPLEMENTARY INFORMATION: The Office of Personnel Management (OPM) proposes to revise the locality pay regulations in subpart F of part 531 of title 5, Code of Federal Regulations, to clarify and redefine the limitations on locality rates of pay for categories of non-General Schedule employees approved by the President's Pay Agent to receive locality payments. Section 8 of Executive Order 13106 of December 7, 1998, delegated the President's authority under section 5304(g) of title 5, United States Code, to determine such limitations to the President's Pay Agent. To provide consistent treatment between General Schedule (GS) and non-GS employees receiving locality payments, OPM proposes to provide that (1) non-GS positions whose maximum scheduled annual rate of pay is less than or equal to the maximum payable scheduled annual rate of pay for GS–15 will be subject to a locality pay cap equal to the rate for level IV of the Executive Schedule, and (2) non-GS positions whose maximum scheduled annual rate of pay exceeds the maximum payable scheduled annual rate of pay for GS–15, but is not more than the rate for level IV of the Executive Schedule, will be subject to a locality pay cap equal to the rate for level III of the Executive Schedule. (See the definition of *scheduled annual rate of pay* in 5 CFR 531.602, as revised in these proposed regulations.)

Background

Locality-based comparability payments are authorized under 5 U.S.C. 5304. By law, locality payments automatically apply to General Schedule employees. The maximum rate of basic pay (excluding locality payments) for GS employees is the rate for GS–15, step 10, subject to a cap linked to the rate of pay for level V of the Executive Schedule. (See 5 U.S.C. 5303(f).) GS rates of basic pay adjusted by locality payments are capped at the rate of pay for level IV of the Executive Schedule. (See 5 U.S.C. 5304(g)(1).)

The locality pay law provides that the President may extend locality payments to various groups outside the GS pay system, such as members of the Senior Executive Service (SES), administrative law judges (ALJs), and other groups for which basic pay is limited to no more than the rate of pay for level IV of the Executive Schedule. (See 5 U.S.C. 5304(h).) Executive Order 12883 of November 29, 1993, provided that the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management) may act for the President in exercising the authority to extend locality payments to such non-GS groups.

Section 5304(g) of title 5, United States Code, provides that locality rates approved for certain categories of non-GS employees specified in 5 U.S.C. 5304(h)(1)(A)–(E), including members of the SES and ALJs, are capped at the rate for level III of the Executive Schedule. Section 5304(g) provides that a level III locality pay cap applies to "any positions under subsection (h)(1)(F) which the President may determine." Subsection (h)(1)(F) is a catch-all category of non-GS positions to which locality pay may be extended. This catch-all category includes Executive agency positions not otherwise listed in the law whose rates of basic pay are limited to not more than the rate for level IV of the Executive Schedule. If the President determines that a level III cap does not apply to a particular category of non-GS positions, the locality pay cap for those positions is automatically set at level IV of the Executive Schedule (*i.e.*, the locality pay cap for GS employees). (See 5 U.S.C. 5304(g)(1).)

Since the inception of locality pay in January 1994, the President's Pay Agent has approved locality pay for a number of non-GS categories of positions under its delegated authority. However, Executive Order 12883 did not delegate to the Pay Agent the President's authority to determine whether the level IV or level III locality pay cap should apply to any group of non-GS positions under 5 U.S.C. 5304(h)(1)(F) to whom locality pay is extended. Locality pay extension decisions for these positions were interpreted as automatically carrying a level III cap. (See 5 CFR 531.604(c).) Section 8 of Executive Order 13106 of December 7, 1998, has now delegated to the Pay Agent the President's authority to determine when the level III cap should apply to such non-GS employees.

Proposed Regulations

The proposed regulations provide a rule for determining the locality pay cap for non-GS positions for which the President's Pay Agent approves the extension of locality payments. We propose to amend 5 CFR 531.604 to clarify that a locality rate of pay may not exceed the rate for level III of the Executive Schedule for categories of positions specified in 5 U.S.C. 5304(h)(1)(A)–(E) (*e.g.*, members of the SES and ALJs). The proposed revision of

§ 531.604 also provides that, for categories of non-GS employees under 5 U.S.C. 5304(h)(1)(F), locality rates of pay may not exceed (1) the rate for level IV of the Executive Schedule, if the maximum scheduled annual rate of pay for such positions is less than or equal to the maximum payable scheduled annual rate of pay for GS–15, or (2) the rate for level III of the Executive Schedule, if the maximum scheduled annual rate of pay for such positions exceeds the maximum payable scheduled annual rate of pay for GS–15, but is not more than the rate for level IV of the Executive Schedule. (See the definition of *scheduled annual rate of pay* in 5 CFR 531.602, as revised in these proposed regulations.)

This proposed rule would fulfill the original intent of the locality pay law by not automatically providing a level III cap on locality payments for all groups of non-GS employees. This change would also provide for more consistent and equitable treatment of GS and non-GS employees receiving locality payments. For example, non-GS employees with a maximum scheduled annual rate of pay that is no higher than the rate of basic pay for GS–15, step 10, would have the same locality pay cap as GS employees.

The proposed regulations include pay protection for any employee who otherwise would suffer a reduction in his or her locality rate of pay under the proposed locality pay cap provisions. Although no employee would suffer an immediate reduction in pay, it is possible that the locality pay cap for a group of non-GS employees could be reduced from level III to level IV of the Executive Schedule as GS rates of basic pay increase. This could occur if the rate of basic pay for GS–15, step 10, becomes equal to or exceeds the maximum scheduled annual rate of pay for a non-GS group. To prevent reductions in pay that would otherwise occur, the regulations cap an affected employee's locality rate at the higher of (1) his or her locality rate on the day before the scheduled annual rate of pay for GS–15, step 10, becomes equal to or exceeds the maximum scheduled annual rate of pay for the group of non-GS employees or (2) the rate for level IV of the Executive Schedule. This means that the employee's locality rate would be frozen until it is exceeded by the rate for level IV of the Executive Schedule.

The proposed regulations exclude experts and consultants appointed under 5 U.S.C. 3109 from the locality pay limitations. Unless otherwise authorized by law, the aggregate pay (including basic pay, locality pay, and premium pay) for experts and consultants appointed under 5 U.S.C. 3109 may not exceed the daily rate for GS–15, step 10 (excluding locality pay or any other additional pay). (See 5 CFR 304.105.)

The proposed regulations also clarify the definition of *employee* in § 531.602 to include positions in the Federal Bureau of Investigation (FBI) and Drug Enforcement Administration (DEA) SES under 5 U.S.C. 5304(h)(1)(C) and other non-GS employee categories under § 5304(h)(1)(F) for which the President's Pay Agent has authorized locality payments. The regulations also amend paragraph (4) in the definition of *scheduled annual rate of pay* in § 531.602 to include the rates of basic pay for employees in the FBI and DEA SES and other categories of non-GS positions for which the Pay Agent has authorized locality pay. The proposed regulations clarify that the scheduled annual rate of pay for such employees must exclude any locality-based pay adjustments, special basic pay adjustments analogous to special salary rates established under 5 U.S.C. 5305, or other additional pay of any kind.

This rule has been reviewed and approved by the President's Pay Agent (the Secretary of Labor and the Directors of the Office of Management and Budget and the Office of Personnel Management).

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

Regulatory Flexibility Act

I certify that these regulations would not have a significant economic impact on a substantial number of small entities because they would apply only to Federal agencies and employees.

List of Subjects in 5 CFR Part 531

Government employees, Law enforcement officers, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director.

Accordingly, OPM is proposing to amend part 531 of title 5 of the Code of Federal Regulations as follows:

PART 531—PAY UNDER THE GENERAL SCHEDULE

1. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103–89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, 3 CFR, 1991 Comp., p. 316;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101–509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102–378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; E.O. 12883, 58 FR 63281, 3 CFR, 1993 Comp., p. 682; and E.O. 13106, 63 FR 68151, 3 CFR, 1998 Comp., p. 224.

Subpart G also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101–509, 104 Stat. 1462; and E.O. 12786, 56 FR 67453, 3 CFR, 1991 Comp., p. 376.

Subpart F—Locality-Based Comparability Payments

2. In § 531.602, paragraph (2) of the definition of *employee* and paragraph (4) of the definition of *scheduled annual rate of pay* are revised to read as follows:

§ 531.602 Definitions

* * * * *

Employee * * *

(2) An employee in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(F) for which the President (or designee) has authorized locality-based comparability payments under 5 U.S.C. 5304(h)(2) and whose official duty station is located in a locality pay area.

* * * * *

Scheduled annual rate of pay * * *

(4) For an employee in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(F) for which the President (or designee) has authorized locality-based comparability payments under 5 U.S.C. 5304(h)(2), the rate of basic pay fixed by law or administrative action, exclusive of any locality-based adjustments (including adjustments equivalent to local special rate adjustments under 5 U.S.C. 5305) or other additional pay of any kind.

3. In § 531.604, paragraph (c) is revised and a new paragraph (d) is added to read as follows:

§ 531.604 Determining locality rates of pay.

* * * * *

(c)(1) Locality rates of pay approved by the President (or designee) for employees in a category of positions described in 5 U.S.C. 5304(h)(1)(A)–(E) may not exceed the rate for level III of the Executive Schedule.

(2) Locality rates of pay approved by the President (or designee) for employees in a category of positions described in 5 U.S.C. 5304(h)(1)(F) may not exceed—

(i) The rate for level IV of the Executive Schedule, when the maximum scheduled annual rate of pay (excluding any retained rate) for such positions is less than or equal to the maximum payable scheduled annual rate of pay for GS–15; or

(ii) The rate for level III of the Executive Schedule, when the maximum scheduled annual rate of pay (excluding any retained rate) for such positions exceeds the maximum payable scheduled annual rate of pay for GS–15, but is not more than the rate for level IV of the Executive Schedule.

(3) If application of paragraph (c)(2) of this section would otherwise reduce an employee's existing locality rate of pay, the employee's locality rate of pay will be capped at the higher of—

(i) The amount of his or her locality rate of pay on the day before paragraph (c)(2) of this section is applied, or

(ii) The rate for level IV of the Executive Schedule.

(d) Paragraph (c) of this section does not apply to experts and consultants appointed under 5 U.S.C. 3109 if the pay for those experts and consultants is limited to the highest rate payable under 5 U.S.C. 5332 (*i.e.*, the unadjusted maximum GS–15 rate). Pay limitations for such experts and consultants must be determined in accordance with § 304.105 of this chapter.

[FR Doc. 00–7256 Filed 3–23–00; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 77

[Docket No. 99–038–2]

Tuberculosis in Cattle, Bison, Goats, and Captive Cervids; State and Zone Designations; Correction

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule; correction.

SUMMARY: We are correcting an error in a proposed rule that would amend the bovine tuberculosis regulations. This proposed rule was published in the **Federal Register** on March 7, 2000 (65 FR 11912–11940, Docket No. 99–038–1).

DATES: We invite you to comment on the proposed rule (Docket No. 99–038–1), as corrected by this document. We will consider all comments that we receive by April 21, 2000.

ADDRESSES: Please send your comment and three copies to: Docket No. 99–038–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–038–1.

You may read any comments that we receive on Docket No. 99–038–1 in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Joseph Van Tiem, Senior Staff Veterinarian, VS, APHIS, USDA, 4700 River Road Unit 43, Riverdale, MD 20737–1231; (301) 734–7716.

SUPPLEMENTARY INFORMATION: We published in the **Federal Register** on March 7, 2000, (65 FR 11912–11940, Docket No. 99–038–1), a proposed rule to amend the bovine tuberculosis regulations (9 CFR part 77).

There are several errors in that document. The first is in proposed § 77.10(b), which sets forth the requirements for the interstate movement of certain cattle and bison from States and zones listed as modified accredited advanced with regard to tuberculosis. It provides that if cattle or bison to be moved interstate from a modified accredited advanced State or zone are steers or spayed heifers, or are officially identified sexually intact heifers to be moved to an approved feedlot, the animals may be moved interstate without restriction.

However, as explained in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, any such animals moved interstate, *if they are not individually identified by a registration name and number, would be required to be officially identified.*

The other errors are in subpart C, "Captive Cervids," in the lists of States and zones with regard to tuberculosis risk classifications for captive cervids. These classifications appear in § 77.22(a) and (b) for accredited free States and zones, § 77.24(a) and (b) for modified accredited advanced States and zones, § 77.26(a) and (b) for modified accredited States and zones, § 77.28(a) and (b) for accreditation preparatory States and zones, and § 77.30(a) and (b) for nonaccredited States and zones. As set forth in the proposed rule, all States and zones are classified as either modified accredited or accreditation preparatory, and that is not correct. As explained in the **SUPPLEMENTARY INFORMATION** section of the proposed rule, only some States and zones should be classified as modified accredited or accreditation preparatory for captive cervids. The remainder should be classified as accredited-free or modified accredited advanced.

This document corrects proposed §§ 77.10(b), 77.22(a) and (b), 77.24(a), 77.26(a) and (b), and 77.28(a) as follows so that they are consistent with the explanations in the **SUPPLEMENTARY INFORMATION** section of the proposed rule.

PART 77—[CORRECTED]

1. On page 11928, column 1, § 77.10(b) is corrected to read as follows:

§ 77.10 Interstate movement from modified accredited advanced States and zones.

* * * * *

(b) Cattle or bison may be moved interstate if they are steers or spayed heifers, or are officially identified sexually intact heifers moved to an approved feedlot. All cattle and bison so moved that are not individually identified by a registration name and number must be officially identified.

* * * * *

2. On page 11931, column 3, § 77.22(a) and (b) are corrected to read as follows:

§ 77.22 Accredited-free States or zones.

(a) The following are accredited-free States: Alaska, Colorado, Hawaii, Idaho, Indiana, Louisiana, Maine, Minnesota, Montana, Nebraska, Nevada, New Hampshire, New York, North Dakota, Oklahoma, Oregon, South Carolina, South Dakota, Texas, Utah, Vermont,Virginia, Washington, and Wyoming.

(b) The following are accredited-free zones: That part of Michigan other than the zone described in § 77.26(b).

* * * * *

3. On page 11932, column 1, § 77.24(a) is corrected to read as follows:

§ 77.24 Modified accredited advanced States or zones.

(a) The following are modified accredited advanced States: Arizona, California, Florida, Georgia, Kansas, Kentucky, Mississippi, Missouri, New

Jersey, North Carolina, Pennsylvania,

broken front pylon mount bolts,

proposed rule. The proposals contained

minimum inspection requirement for

fleet. The FAA estimates that 10 engines

Pratt & Whitney: Docket No. 97–ANE–44. Supersedes AD 98–04–14, Amendment

Jersey, North Carolina, Pennsylvania, Tennessee, and Wisconsin.

* * * * *

4. On page 11932, column 3, § 77.26(a) and (b) are corrected to read as follows:

§ 77.26 Modified accredited States or zones.

(a) The following are modified accredited States: None.

(b) The following are modified accredited zones: A zone in Michigan delineated by starting at the juncture of State Route 55 and Interstate 75, then heading northwest and north along Interstate 75 to the Straits of Mackinac, then southeast and south along the shoreline of Michigan to the eastern terminus of State Route 55, then west along State Route 55 to Interstate 75.

* * * * *

5. On page 11933, column 2, § 77.28(a) is corrected to read as follows:

§ 77.28 Accreditation preparatory States or zones.

(a) The following are modified accredited States: Alabama, Arkansas, Connecticut, Delaware, Illinois, Iowa, Maryland, Massachusetts, New Mexico, Ohio, Puerto Rico, Rhode Island, the Virgin Islands of the United States, and West Virginia.

* * * * *

Done in Washington, DC, this 21st day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–7445 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–34–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–ANE–44]

RIN 2120–AA64

Airworthiness Directives; Pratt & Whitney PW4164, PW4168, and PW4168A Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to Pratt & Whitney PW4164, PW4168, and PW4168A series turbofan engines. AD 98–04–14 currently requires initial and repetitive torque checks for loose or broken front pylon mount bolts, replacement, if necessary, with new bolts, and establishment of a new cyclic life limit. This action would add initial and repetitive torque checks of new material MP159 front pylon mount bolts. In addition, this action would add initial and repetitive visual inspections of the primary mount thrust load path. This proposal is prompted by the introduction into service of the new MP159 front pylon mount bolts and the determination through fatigue testing that the forward engine mount bearing housings have insufficient fatigue life expectancy. The actions specified by the proposed AD are intended to prevent front pylon mount bolt and primary mount thrust load path failure, which could result in engine separation from the aircraft.

DATES: Comments must be received by April 24, 2000.

ADDRESSES: Submit comments to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97-ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney, 400 Main St., East Hartford, CT 06108; telephone (860) 565–8860, fax (860) 565–4503. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7130, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 97–ANE–44." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 97–ANE–44, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On February 6, 1998, the Federal Aviation Administration (FAA) issued airworthiness directive AD 98–04–14, Amendment 39–10326 (63 FR 9730, February 26, 1998), applicable to Pratt & Whitney (PW) PW4164, PW4168, and PW4168A series turbofan engines. That AD requires initial and repetitive inspections for loose or broken front pylon mount bolts, replacement, if necessary, with new bolts, and establishment of a new cyclic life limit of 11,000 cycles in service (CIS) for INCO 718 material bolts. That action was prompted by flight testing that revealed higher than predicted loads for front pylon mount bolts, resulting in decreased service life. That condition, if not corrected, could result in front pylon mount bolt failure, which could result in engine separation from the aircraft.

Events Since the Issuance of the AD

Since the issuance of that AD, PW introduced a new material bolt to address the fatigue life shortfall of the original INCO 718 material bolts, part number (P/N) 54T670. MP159 material bolts, P/N 51U615, do not require a life limit. However, in a bolt-out configuration, fatigue testing indicated that there was insufficient margin to meet the 8,000 cycles-in-service (CIS)

minimum inspection requirement for the aircraft. Therefore, the FAA determined a repetitive torque check interval of 1,000 CIS, plus or minus 250 CIS, to be consistent with the torque check interval required for the INCO 718 material bolts, P/N 54T670.

In addition, fatigue testing of the secondary thrust load path using the measured flight loads demonstrated that with a primary thrust load path failure, there is insufficient fatigue life expectancy of the forward engine mount bearing housing. Therefore, a repetitive visual inspection of the primary mount thrust load path at a 1,000 CIS, plus or minus 250 CIS, interval is required

Service Information

The FAA has reviewed and approved the technical contents of the following PW Service Bulletins (SBs):

- No. PW4G–100–A71–20, dated December 9, 1999, that describes procedures for torque checking MP159 material bolts, P/N 51U615.
- No. PW4G–100–A71–18, dated September 15, 1999, that describes procedures for visually inspecting the primary mount thrust load path.

Proposed Actions

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–04–14 to maintain the inspections of the INCO 718 material bolts, P/N 54T670, and replacement, if necessary, with serviceable parts. This superseding AD would also maintain the life limit of 11,000 CSN for the INCO 718 material bolts, P/N 54T670. However, based on a comment received to AD 98–04–14, the initial torque check would now be required for bolts with 1,000 or fewer CSN before accumulating 1,250 CSN, or 250 CIS after the effective date of this AD, whichever occurs first.

New Actions

This AD would also require initial and repetitive torque checks of MP159 material bolts, P/N 51U615, and the primary mount thrust load path. If any of the bolts are found loose or broken, all four bolts must be replaced with serviceable bolts.

Also, this AD would require initial and repetitive visual inspections of the primary mount thrust load path. If any components of the primary mount thrust load path are found cracked, then this AD would require replacement with serviceable parts.

Economic Analysis

There are approximately 75 engines of the affected design in the worldwide fleet. The FAA estimates that 10 engines installed on aircraft of US registry would be affected by this proposed AD, that it would take approximately 3 work hours per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $18,832 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $190,120.

Agency Findings

This proposal does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposal.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–10326, (63 FR 9730, February 26, 1998), and by adding a new airworthiness directive to read as follows:

Pratt & Whitney: Docket No. 97–ANE–44. Supersedes AD 98–04–14, Amendment 39–10326.

Applicability: Pratt & Whitney (PW) PW4164, PW4168, and PW4168A series turbofan engines, with front pylon mount bolts, part numbers (P/Ns) 54T670 or 51U615, installed. These engines are installed on but not limited to Airbus Industrie A330 series aircraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent front pylon mount bolt and primary mount thrust load path failure, which could result in engine separation from the aircraft, accomplish the following:

INCO 718 Material Bolts Torque Checks

(a) Perform initial and repetitive torque checks of INCO 718 material front pylon mount bolts, P/N 54T670, and replace, if necessary, with new bolts, in accordance with the Accomplishment Instructions of Pratt & Whitney Service Bulletin (SB) No. PW4G–100–A71–9, Revision 1, dated November 24, 1997, as follows:

(1) For front pylon mount bolts, P/N 54T670, with 1,000 or fewer cycles-since-new (CSN) on the effective date of this AD, perform torque checks in accordance with Part (A) of the Accomplishment Instructions of the SB at the earliest of:

(i) Before accumulating 1,250 CSN, or

(ii) Within 250 cycles-in-service (CIS) after the effective date of this AD, or

(iii) The next engine removal for any cause.

(2) Thereafter, perform torque checks at intervals not less than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN, in accordance with Part (A) of the Accomplishment Instructions of the SB.

(3) For front pylon mount bolts, P/N 54T670, with more than 1,000 CSN but less than 5,750 CSN on the effective date of this AD, accomplish the following:

(i) Perform an initial torque check within 250 CIS after the effective date of this AD, or at the next engine removal for any cause, whichever occurs first, in accordance with Part (A) of the Accomplishment Instructions of the SB.

(ii) Thereafter, perform torque checks at intervals not less than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN.

(4) For front pylon mount bolts, P/N 54T670, with 5,750 or more CSN but less

than 8,000 CSN on the effective date of this AD, accomplish the following in accordance with Part (B) of the Accomplishment Instructions of the SB:

(i) Perform an initial torque check within 250 CIS after the effective date of this AD, or prior to the next engine removal for any cause, whichever occurs first.

(ii) Thereafter, perform torque checks at intervals not less than 750 or greater than 1,250 CIS since last torque check, not to exceed 11,000 CSN.

(5) For front pylon mount bolts, P/N 54T670, with 8,000 or more CSN but less than 11,000 CSN on the effective date of this AD, perform an inspection in accordance with the schedule and procedures of the Appendix to the SB.

(6) Prior to further flight, replace all four bolts in accordance with Part (A), Paragraph 1(D) of the Accomplishment Instructions of the SB, if any are found loose or broken.

INCO 718 Material Bolts Life Limit

(b) This AD establishes a new life limit of 11,000 CSN for front pylon mount bolts, P/N 54T670. Except as provided in paragraph (e) of this AD, no front pylon mount bolts, P/N 54T670, may exceed this new life limit after the effective date of this AD.

MP159 Material Bolts Inspections

(c) Perform initial and repetitive torque checks of front pylon mount bolts, P/N 51U615, in accordance with the Accomplishment Instructions of PW SB PW4G–100–A71–20, dated December 9, 1999, as follows:

(1) Perform the initial torque check at the earliest of the following:

(i) Before accumulating 1,250 CSN, or

(ii) Within 250 CIS after the effective date of this AD, or

(iii) The next engine removal for any cause.

(2) Thereafter, perform torque inspections at intervals not less than 750 or greater than 1,250 CIS since last torque inspection.

(3) Prior to further flight, replace all four bolts, if any are found loose or broken.

Primary Mount Thrust Load Path Inspections

(d) Perform initial and repetitive visual inspections of the primary mount thrust load path, in accordance with the Accomplishment Instructions of PW4G–100–A71–18, dated September 15, 1999, as follows:

(1) Perform the initial visual inspection at the earliest of the following:

(i) Before accumulating 1,250 CSN, or

(ii) Within 250 CIS after the effective date of this AD, or

(iii) The next engine removal for any cause.

(2) Thereafter, perform visual inspections at intervals not less than 750 or greater than 1,250 CIS since last visual inspection.

(3) Prior to further flight, replace all cracked parts with serviceable parts.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

Ferry Flights

(f) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the inspection requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on March 17, 2000.

Mark C. Fulmer,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–7225 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–82–AD]

Airworthiness Directives; Eurocopter France Model AS332L2 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Eurocopter France Model AS332L2 helicopters. This proposal would require inspecting for interference between the transmission flexible mounting plate (plate) and the forward and aft shims (shims), replacing shims and repairing the plate if interference is found, and inspecting the plate for a broken plate slat (slat) and repairing the plate if a broken slat is found or replacing the plate if slat damage beyond repair limits is found. This proposal is prompted by the discovery that several helicopters were manufactured with shims that did not have cutouts to permit relative motion between the plate slats and the shims without interference. The actions specified by the proposed AD are intended to prevent cracking of the plate slats, increased helicopter vibration, loss of transmission mounting integrity, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 23, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–82–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, 2601 Meacham Blvd., Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Shep Blackman, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5296, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–82–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–82–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS332L2 helicopters. The DGAC advises that interference between the plate and the shims on the transmission deck can cause damage, which can lead to incipient slat cracks.

Eurocopter France has issued Eurocopter AS 332 Service Bulletin No. 05.00.54, dated July 8, 1999, which specifies ensuring that there is no interference between the plate and the shims on the transmission deck and ensuring that there are no broken slats. If broken slats are found, the service bulletin specifies procedures for replacing the plate. If interference is found, it specifies procedures for replacing the shims and repairing the plate or replacing the plate if slat damage is beyond repair limits. The DGAC classified this service bulletin as mandatory and issued AD 1999–329–015(A), dated August 11, 1999, to ensure the continued airworthiness of these helicopters in France.

This helicopter model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS332L2 helicopters of the same type design registered in the United States, the proposed AD would require inspecting for interference between the plate, part number (P/N) 332A38–0106–00, the forward shim, P/N 332A22307420, and the aft shim, P/N 332A22307020, and replacing shims and repairing the plate if interference is found; and inspecting the plate for broken slats and repairing the plate if broken slats are found or replacing the plate if slat damage beyond repair limits is found. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 1 helicopter of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per helicopter to accomplish the inspections, 80 work hours to accomplish the shim replacements and the plate repair, if necessary, and installation of Eurocopter France MOD 0725946 and MOD 0726012, and that the average labor rate is $60 per work hour. Required parts would cost approximately $4,126 for a forward shim; $4,052 for an aft shim; and $53,022 for a plate. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $66,060 to accomplish the inspections and all the replacements and repair, if necessary, and installation of both MODs.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 99–SW–82–AD.

Applicability: Model AS332L2 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 50 hours time-in-service (TIS) or within 50 hours TIS after accumulating 1,000 hours TIS on the transmission flexible mounting plate (plate), whichever occurs last, unless accomplished previously.

To prevent cracking of the plate slats, increased helicopter vibration, loss of transmission mounting integrity, and subsequent loss of control of the helicopter, accomplish the following:

(a) Inspect for interference between the plate, part number (P/N) 332A38–0106–00, the forward shim, P/N 332A22307420, and the aft shim (shim), P/N 332A22307020, in accordance with paragraph 2.B.1 of the Accomplishment Instructions in Eurocopter AS 332 Service Bulletin No. 05.00.54, dated July 8, 1999 (SB). If interference is found, replace the shims and repair the plate in accordance with paragraph 2.B.3 of the Accomplishment Instructions in the SB before further flight.

(b) Visually inspect the plate for a broken slat. If a broken slat is found, replace the plate and the shims with an airworthy plate and shims in accordance with paragraph 2.B.3 of the SB before further flight. Replace the plate with an airworthy plate if slat damage beyond repair limits is found.

(c) Install Eurocopter France MOD 0725946 and Eurocopter France MOD 0726012 at the next major inspection or when the transmission is next removed, whichever occurs first. Installation of both MOD's is considered a terminating action for the requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through

an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD No. 1999–329–015(A), dated August 11, 1999.

Issued in Fort Worth, Texas, on March 17, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–7338 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–01–AD]

Airworthiness Directives; Bell Helicopter Textron Inc.-Manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) applicable to Bell Helicopter Textron Inc. (BHTI)-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters. This AD would require removing and replacing certain main rotor mast (mast) assemblies. This proposal is prompted by the crash of a BHTI-manufactured Model UH–1B due to failure of a thin-wall mast installed on the helicopter. The actions specified by the proposed AD are intended to prevent fatigue failure of the mast and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 8, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–01–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Michael Kohner, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Certification Office, Fort Worth, Texas 76193–0170, telephone (817) 222–5447, fax (817) 222–5783.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–01–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–01–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new airworthiness directive (AD) for BHTI-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters. This AD would require removing any mast assembly, part number (P/N) 204–011–450–001 or –005, and replacing it with an airworthy mast assembly. This proposal is prompted by the crash of a BHTI-manufactured Model UH–1B due to failure of a thin-wall mast assembly, P/N 204–011–450–001, as the result of undetected fatigue cracking in the stabilizer bar damper spline. Metallurgical examination of the failed part by the National Transportation Safety Board (NTSB) Materials Laboratory revealed fatigue features on the crack faces adjacent to the upper groove on the stabilizer bar damper splice. Several other cracks were noted in the same area during visual examination. The mast was reported to have accumulated 4006 hours time-in-service. As a result of the accident investigation, the NTSB recommended among other things that the FAA issue an AD requiring that "thin-walled" rotor masts be replaced with "thick-walled" rotor masts. The FAA agrees with this recommendation. This condition, if not corrected, could result in fatigue failure of the mast and subsequent loss of control of the helicopter.

The FAA has reviewed Garlick Helicopters, Inc. Service Bulletin UH1–97–06, dated September 26, 1997, which describes procedures for removing all mast tubes, P/N 204–011–450–001, from service for Garlick's type-certificated Model HH–1K, TH–1F, TH–1L, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P helicopters. The service bulletin also establishes a maximum torque event cycle count of 300,000 for the P/N 204–011–450 (all other dashes) mast tube.

Since an unsafe condition has been identified that is likely to exist or develop on other Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters of the same type designs, the proposed AD would require removing any mast assembly, P/N 204–011–450–001 or –005, from service and replacing it with an airworthy mast assembly.

The FAA estimates that 75 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Replacing a mast assembly would cost approximately $8,862. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $709,650 to replace all the masts in the fleet.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Firefly Aviation Helicopter Services (Previously Erickson Air Crane Co.); Garlick Helicopters, Inc.; Hawkins and Powers Aviation, Inc.; International Helicopters, Inc.; Tamarack Helicopters, Inc. (Previously Ranger Helicopter Services, Inc.); Robinson Air Crane, Inc.; Williams Helicopter Corporation (Previously Scott Paper Co.); Smith Helicopters; Southern Helicopter, Inc.; Southwest Florida Aviation; Utah State University; Western International Aviation, Inc.; and U.S. Helicopter, Inc.; Docket No. 2000–SW–01–AD.

Applicability: Bell Helicopter Textron Inc.-manufactured Model HH–1K, TH–1F, TH–1L, UH–1A, UH–1B, UH–1E, UH–1F, UH–1H, UH–1L, and UH–1P; and Southwest Florida Aviation SW204, SW204HP, SW205, and SW205A–1 helicopters with a main rotor mast (mast) assembly, part number (P/N) 205–011–450–001 or –005, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required within 25 hours time-in-service (TIS), unless accomplished previously.

To prevent fatigue failure of the mast and subsequent loss of control of the helicopter, accomplish the following:

(a) Remove any mast assembly, part number (P/N) 204–011–450–001 or –005, from service. Replace with an airworthy mast assembly. Neither P/N 204–011–450–001 nor 204–011–450–005 are eligible for installation on any affected helicopter.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Rotorcraft Certification Office, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on March 17, 2000.

Eric Bries,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–7339 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 040–0223b; FRL–6563–4]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision, Ventura County Air Pollution Control District, Monterey Bay Unified Air Pollution Control District, and Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to the California State Implementation Plan (SIP) which concern the control of volatile organic compound (VOC) emissions from architectural coatings.

The intended effect of this action is to regulate emissions of VOCs in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules Section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by April 24, 2000.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Ventura County Air Pollution Control District, 669 County Square Drive, 2nd Floor, Ventura, CA 93003.

Monterey Bay Unified Air Pollution Control District, 24580 Silver Cloud Court, Monterey, CA 93940.
Santa Barbara County Air Pollution Control District, 26 Castilian Drive, Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office [AIR–4], Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901, Telephone: (415) 744–1199.

SUPPLEMENTARY INFORMATION:

This document concerns Ventura County Air Pollution Control District Rule 74.2, Architectural Coatings, submitted to EPA by the California Air Resources Board (CARB) on November 12, 1992; Monterey Bay Unified Air Pollution Control District Rule 426, Architectural Coatings, and Santa Barbara County Air Pollution Control District Rule 323, Architectural Coatings both submitted to EPA by the CARB on March 3, 1997. For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: March 10, 2000.

Felicia Marcus,

Regional Administrator, Region IX.

[FR Doc. 00–7228 Filed 3–23–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 152 and 156

[OPP–36190B; FRL–6551–1]

RIN 2070–AC46

Equivalency of Pesticides Metolachlor and S-metolachlor With Respect to Ground Water Contamination; Supplemental Notice of Availability and Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Supplemental Notice of Availability and extension of comment period.

SUMMARY: The Agency is providing supplemental information for an existing Notice of Availability and Request for Comment (65 FR 8925, February 23, 2000) and an extension of the original comment period. The original Notice provided an opportunity for the public and affected parties to submit comments on whether additional information shows that metolachlor and S-metolachlor are equivalent with respect to leaching and potential ground water contamination. EPA is seeking comment on the specific information that is being made available, which is described in this document, and is extending the original comment period by 30 days.

DATES: Comments, identified by the docket control number OPP–36190B, must be received on or before April 24, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–36190B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Arthur-Jean B. Williams, Field and External Affairs Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–5239; fax number: 703–308–3259; e-mail address: williams.artry@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This supplemental notice of data availability and request for comment is directed to the public in general. It may, however, be of particular interest to you if you register, distribute, apply, or manage the application of a pesticide that contains optically active isomeric active ingredients and, in particular, a product enriched for one (usually more pesticidally active) optical isomer. In addition, persons commenting on the Ground Water and Pesticide Management Plan proposal (61 FR 33260, June 26, 1996) (FRL–4981–9) may be particularly interested in some or all of these data. Since others may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

In person. The Agency has established an official record for this action under docket control number OPP–36190B. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided below. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket control number OPP–36190B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave NW, Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is 703–305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–36190B. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this proposed rule extension.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action is EPA Taking?

EPA is providing supplemental information on S-metolachlor and is extending the comment period for 30 days.

B. What Additional Data is EPA Making Available for Comment?

1. Novartis Study No. 381–97, in response to EPA Review of CGA–77102 Ecological Toxicology Studies, June 11, 1997.

2. Novartis Study No. 314–97, in response to EPA Review of CGA–77102/Metolachlor Environmental Fate Studies, June 6, 1997.

C. Why is EPA Seeking Comment on This Additional Data?

Three commenters requested an extension of the comment period. Of these, one commenter to the February 23, 2000, Notice of Availability and Request for Comment argued that additional information on S-metolachlor it had provided to EPA also warranted public comment. EPA is noticing that here.

III. Do Any Regulatory Assessment Requirements Apply to this Action?

No. This action is not a rule, it merely announces the availability of and requests comments on supplemental information related to a previous Notice (65 FR 8925, February 23, 2000) and extends the date by which public comments must be submitted to EPA. This information is related to, among other things, a proposed rule that previously published in the **Federal Register** of June 26, 1996 (61 FR 33260). For information about the applicability of the regulatory assessment requirements to that proposed rule, which published in the **Federal Register**, please refer to the discussion in Unit VIII of that document.

List of Subjects

40 CFR Part 152

Environmental protection, Administrative practice and procedure, Pesticides and pest, Reporting and recordkeeping requirements.

40 CFR Part 156

Environmental protection, Labeling, Occupational safety and health, Pesticides and pest, Reporting and recordkeeping requirements.

Dated: March 20, 2000.

Susan H. Wayland,

Acting Assistant Adminstrator for Prevention, Pesticides, and Toxic Substances.

[FR Doc. 00–7446 Filed 3–22–00; 2:08 pm]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–541, MM Docket No. 99–163, RM–9595]

Radio Broadcasting Services; Jackpot, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial of.

SUMMARY: The Commission denies the request of Mountain West Broadcasting to allot Channel 287C1 to Jackpot, NV, as its first local aural service for failure to provide sufficient information to demonstrate that it is a community for allotment purposes. *See* 64 FR 2842, May 26, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–163, adopted March 1, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7257 Filed 3–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–543; MM Docket No. 00–41, RM–9369]

Radio Broadcasting Services; Oakville, Raymond and South Bend, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Jodesha Broadcasting, Inc., proposing the reallotment of Channel 249C1 from Raymond to Oakville, Washington, and the modification of Station KFMY(FM)'s license accordingly; the reallotment of Channel 289C2 from South Bend to Raymond, Washington, and the modification of Station KJET(FM)'s license accordingly; and the allotment of Channel 300A at South Bend, Washington. Channel 249C1 can be reallotted to Oakville in compliance with the Commission's minimum distance separation requirements with respect to all domestic allotments at petitioner's requested site. The coordinates for Channel 249C1 at Oakville are 46–57–14 North Latitude and 123–29–21 West Longitude. See Supplementary Information, infra.

DATES: Comments must be filed on or before May 1, 2000, reply comments on or before May 18, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David Tillotson, Esq., 4606 Charleston Terrace, NW., Washington, DC 20007 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–41, adopted March 1, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Additionally, Channel 289C2 can be allotted to Raymond with a site restriction of 27 kilometers (16.8 miles) north at petitioner's requested site; and Channel 300A can be allotted to South Bend with a site restriction of 3.5 kilometers (2.2 miles) southwest to avoid a short-spacing to licensed sites of Station KNDD(FM), Channel 299C, Seattle, Washington, and Station KHPE(FM), Channel 300C, Albany, Oregon. The coordinates for Channel 289C2 at Raymond are 46–55–53 North Latitude and 123–44–02 West Longitude; and the coordinates for Channel 300A at South Bend are 46–38–19 North Latitude and 123–49–54 West Longitude. Since Oakville, Raymond, and South Bend are located with 320 kilometers of the U.S.-Canadian border, concurrence of the Canadian government has been requested, with concurrence of the Oakville allotment requested as a specially negotiated, short-spaced allotment. In accordance with the provisions of Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest in the use of Channel 249C1 at Oakville, Washington, or Channel 289C2 at Raymond, Washington.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7258 Filed 3–23–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–544; MM Docket No. 00–42, RM–9826]

Radio Broadcasting Services; Charlerol and Duquesne, PA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keymarket Licenses, LLC, proposing the reallotment of Channel 252A from Charleroi to Duquesne, Pennsylvania, and the modification of Station WOGI–FM's license accordingly. Channel 252A can be reallotted to Duquesne in compliance with the Commission's minimum distance separation requirements with a site restriction of 3.1 kilometers (1.9 miles) east at petitioner's requested site. The coordinates for Channel 252A at Duquesne are 40–21–52 North Latitude and 79–48–49 West Longitude. Since Duquesne is located within 320 kilometers (200 miles) of the U.S.-Canadian border, concurrence of the Canadian government has been requested. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 252A at Duquesne, Pennsylvania.

DATES: Comments must be filed on or before May 3, 2000, reply comments on or before May 18, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Allan G. Moskowitz, Esq., Kaye, Scholer, Fierman, Hays & Handler, LLP, 901 15th Street, NW., Suite 1100, Washington, DC 20005 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–42, adopted March 1, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7259 Filed 3–23–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF81

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period and Notice of Public Hearing on Proposed Rule To List the Santa Barbara County Distinct Population of the California Tiger Salamander as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of public hearing.

SUMMARY: The U.S. Fish and Wildlife Service (Service) gives notice of a public hearing on the proposed rule to list the Santa Barbara distinct population of the California tiger salamander. In addition, the comment period which originally closed on March 20, 2000, will be reopened. The new comment period and hearing will allow all interested parties to submit oral or written comments on the proposal.

DATES: The comment period for this proposal now closes on May 4, 2000. Any comments received by the closing date will be considered in the final decision on this proposal. The public hearing will be held from 6:00 p.m. until 8:00 p.m. on April 20, 2000, in Santa Maria, California.

ADDRESSES: The public hearing will be held at the Santa Maria Inn, 801 South Broadway, Santa Maria, California. Written comments and materials should be sent to Diane Noda, Field Supervisor, U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above Service address.

FOR FURTHER INFORMATION CONTACT: Carl Benz, at the above Ventura, California address, phone 805–644–1766, facsimile 805–644–3958.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 2000, the Fish and Wildlife Service (Service) published a notice in the **Federal Register** (65 FR 3110) proposing to list the Santa Barbara County distinct vertebrate population segment of the California tiger salamander, *Ambystoma californiense*, as endangered pursuant to the Endangered Species Act (Act) of 1973, as amended (Act). An emergency rule listing the population was published concurrently in the same issue of the **Federal Register**. The Santa Barbara County population segment of the California tiger salamander is endemic to low elevation (typically below 300 meters (1,000 feet)) vernal pools and seasonal ponds and the surrounding grasslands, oak woodlands, and coastal scrub of Santa Barbara County, California; and is imperiled primarily by habitat loss from conversion of natural habitat to intensive agriculture and urban development, habitat fragmentation, and agricultural contaminants.

Section 4(b)(5)(E) of the Act (16 U.S.C. 1531 *et seq.*), requires that a public hearing be held if it is requested within 45 days of the publication of a proposed rule. In response to three such requests, the Service will hold a public hearing on the date and at address described in the **DATES** and **ADDRESSES** sections above.

Anyone wishing to make an oral statement for the record is encouraged to provide a written copy of their statement and present it to the Service at the hearing. In the event there is a large attendance, the time allotted for oral statements may be limited. Oral and written statements receive equal consideration. There are no limits to the length of written comments presented at the hearing or mailed to the Service. Legal notices announcing the date, time, and location of the hearing will be published in newspapers concurrently with the **Federal Register** notice.

Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the species listed above;

(2) The location of any additional populations of the species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population sizes of the species; and

(4) Current or planned activities in the subject area and their possible impacts on the species.

Reopening of the comment period will enable the Service to respond to the request for a public hearing on the proposed action. The comment period on this proposal now closes on May 4, 2000. Written comments should be submitted to the Service office listed in the **ADDRESSES** section.

Author: The primary author of this notice is Carl Benz (see **ADDRESSES**).

Authority: The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

Elizabeth H. Stevens,

Acting Manager—California/Nevada Operations Office.

[FR Doc. 00–7169 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 65, No. 58
Friday, March 24, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV00–930–1NC]

Notice of Request for Extension and Revision of a Currently Approved Information Collection

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request an extension for and revision to a currently approved information collection for tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, Marketing Order No. 930.

DATES: Comments on this notice must be received by May 23, 2000.

ADDITIONAL INFORMATION OR COMMENTS: Contact Valerie L. Emmer-Scott, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S., P.O. Box 96456, Washington, DC 20090–6456; Tel: (202) 205–2829, Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov.

Small businesses may request information on this notice by contacting Jay Guerber, Regulatory Fairness Representative, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, D.C., 20090–6456; telephone (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION:

Title: Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, Marketing Order No. 930.

OMB Number: 0581–0177.

Expiration Date of Approval: January 31, 2001.

Type of Request: Extension and revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674) industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the program, which has operated since 1996.

The tart cherry marketing order regulates the handling of tart cherries in the states of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to as the "order." The order authorizes volume controls that provide for a reserve pool in times of heavy cherry supplies. Other major marketing order provisions, not currently in use, include minimum grade and size regulations and authorization for market research and development projects, including paid advertising.

The order, and rules and regulations issued thereunder, authorize the Cherry Industry Administrative Board (Board), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in carrying out marketing decisions.

The Board has developed forms as a means for persons to file required information with the Board relating to tart cherry inventories, shipments, diversions, and other information needed to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA. Since this order regulates the canned and frozen form of tart cherries, reporting requirements will be in effect all year. A USDA form is used to allow growers to vote on amendments or continuance of the marketing order. In addition, tart cherry producers and handlers who are nominated by their peers to serve as representatives on the Board must file nomination forms with the Secretary.

Formal rulemaking amendments to the order must be approved in referenda conducted by the Secretary. Also, the Secretary may conduct a continuance referendum to determine industry support for continuation of the order. Handlers are asked to sign an agreement to indicate their willingness to abide by the provisions of the order whenever the order is amended. These forms are included in this request.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to fulfill the intent of the AMAA as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Board. Authorized Board employees and the industry are the primary users of the information, and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .191 hours per response.

Respondents: Tart cherry producers and for-profit businesses handling fresh and processed tart cherries produced in Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Estimated Number of Respondents: 943.

Estimated Number of Responses per Respondent: 4.93

Estimated Total Annual Burden on Respondents: 887.63 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0177 and the Tart Cherry Marketing Order No. 930, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456; Fax (202) 720–5698; or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., SW., Washington, DC, room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 20, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–7332 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Secretary of Agriculture's Special Cotton Import Quota Announcements Numbers 21 Through 26 and Numbers 1 Through 10

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice.

SUMMARY: Sixteen special import quotas for upland cotton are established in accordance with section 136(b) of the Federal Agriculture Improvement and Reform Act of 1996 (the 1996 Act) under Presidential Proclamation 6301 of June 7, 1991, and Presidential Proclamation 6948 of October 29, 1996. The quotas are referenced as the Commodity Credit Corporation Special Cotton Import Quota Announcement Numbers 21 through 26 and Special Cotton Import Quota Announcement Numbers 1 through 10 and are set forth in subheadings 9903.52.21 through 9903.52.26 and subheadings 9903.52.01 through 9903.52.10, subchapter III, chapter 99 of the Harmonized Tariff Schedule of the United States (HTS).

DATES: Each of the special quotas is subject to an established date and applies to upland cotton purchased not later than 90 days from the established date and entered into the United States not later than 180 days from the established date. Dates applicable to each individual special import quota are contained in a table following this notice.

FOR FURTHER INFORMATION CONTACT: Scott O. Sanford, Farm Service Agency, United States Department of Agriculture, STOP 0515, 1400 Independence Avenue, SW., Washington, DC 20013–0515 or call (202) 720–3392.

SUPPLEMENTARY INFORMATION: The 1996 Act requires that a special import quota for upland cotton be determined and announced immediately if, for any consecutive 10-week period, the Friday through Thursday average price quotation for the lowest-priced U.S. growth, as quoted for Middling 1–3/32 inch cotton, C.I.F. northern Europe (U.S. Northern Europe price), adjusted for the value of any cotton user marketing certificates issued, exceeds the Northern Europe price by more than 3.00 cents per pound. This condition was met for 16 consecutive 10-week periods ending October 28, 1999. Therefore, quotas referenced as Special Cotton Import Quota Announcement Numbers 21 through 26 and Special Cotton Import Quota Announcement Numbers 1 through 10 are established subject to the following dates and quantities.

Each special import quota identifies a quantity of imports that is not subject to the over-quota tariff rate of a tariff-rate quota. The quota is not divided by staple length or by country of origin. The quota does not affect existing tariff rates or phytosanitary regulations. The quota does not apply to extra long staple cotton.

Authority: Sec. 136, P.L. 104–127 and U.S. Note 6(a), Subchapter III, Chapter 99 of the HTS.

Signed at Washington, D.C., on March 17, 2000.

Parks Shackelford,

Acting Executive Vice President, Commodity Credit Corporation.

Secretary of Agriculture's cotton import quota announcement	HTS subheading	News release date	Quota start date	90-day purchase date	180-day import date	Quota amount (kilograms)	3-month consumption base period
Number 21	9903.52.21	7/15/99	7/22/99	10/19/99	1/17/00	42,388,357	March–May 1999.
Number 22	9903.52.22	7/22/99	7/29/99	10/26/99	1/24/00	42,388,357	March–May 1999.
Number 23	9903.52.23	7/29/99	8/05/99	11/02/99	1/31/00	42,645,766	April–June 1999.
Number 24	9903.52.24	8/05/99	8/12/99	11/09/99	2/07/00	42,645,766	April–June 1999.
Number 25	9903.52.25	8/12/99	8/19/99	11/16/99	2/14/00	42,645,766	April–June 1999.
Number 26	9903.52.26	8/19/99	8/26/99	11/23/99	2/21/00	42,645,766	April–June 1999.
Number 1	9903.52.01	8/26/99	9/02/99	11/30/99	2/28/00	42,282,225	May–July 1999.
Number 2	9903.52.02	9/02/99	9/09/99	12/07/99	3/06/00	42,282,225	May–July 1999.
Number 3	9903.52.03	9/09/99	9/16/99	12/14/99	3/13/00	42,282,225	May–July 1999.
Number 4	9903.52.04	9/16/99	9/23/99	12/21/99	3/20/00	42,282,225	May–July 1999.
Number 5	9903.52.05	9/23/99	9/30/99	12/28/99	3/27/00	42,282,225	May–July 1999.
Number 6	9903.52.06	9/30/99	10/07/99	1/04/00	4/03/00	41,677,786	June–August 1999.
Number 7	9903.52.07	10/07/99	10/14/99	1/11/00	4/10/00	41,677,786	June–August 1999.
Number 8	9903.52.08	10/14/99	10/21/99	1/18/00	4/17/00	41,677,786	June–August 1999.
Number 9	9903.52.09	10/21/99	10/28/99	1/25/00	4/24/00	41,677,786	June–August 1999.
Number 10	9903.52.10	10/28/99	11/04/99	2/01/00	5/01/00	40,830,552	July–September 1999.

[FR Doc. 00–7277 Filed 3–23–00; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Farm Service Agency

Public Meetings of Advisory Committee on Beginning Farmers and Ranchers

AGENCY: Farm Service Agency, USDA.
ACTION: Notice of public meetings.

SUMMARY: The Farm Service Agency (FSA) is issuing this notice to advise the public that meetings of the Advisory Committee on Beginning Farmers and Ranchers (Committee) will be held to discuss ways to increase new farming and ranching opportunities for these producers, including the review of proposals and recommendations drafted at previous meetings.

DATES: The public meetings will be held April 11–12, 2000, from 8:30 a.m. to 5 p.m. at the Westin Crown Center Hotel, 1 Pershing Road, Kansas City, Missouri (telephone (816) 474–4400). All times noted are Central Standard Time (CST).

ADDRESSES: Mark Falcone, Designated Federal Official for the Advisory Committee on Beginning Farmers and Ranchers, Farm Service Agency, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5438-S, STOP 0522, Washington, DC 20250–0522; telephone (202) 720–1632; FAX (202) 690–1117; e-mail mark_falcone@wdc.fsa.usda.gov.

FOR FURTHER INFORMATION CONTACT: Mark Falcone at (202) 720–1632.

SUPPLEMENTARY INFORMATION: Section 5 of the Agricultural Credit Improvement Act of 1992 (Pub. L. 102–554) required the Secretary of Agriculture to establish the Committee for the purpose of advising the Secretary on the following: (1) The development of a program of coordinated financial assistance to qualified beginning farmers and ranchers required by section 309 (i) of the Consolidated Farm and Rural Development Act (Federal and State beginning farmer programs provide joint financing to beginning farmers and ranchers); (2) methods of maximizing the number of new farming and ranching opportunities created through the program; (3) methods of encouraging States to participate in the program; (4) the administration of the program; and (5) other methods of creating new farming or ranching opportunities.

Departmental Regulation 1042–119 dated November 25, 1998, formally established the Committee and designated FSA to provide support. The Committee is comprised of 16 members appointed by the Secretary. Members represent the following groups: (1) FSA; (2) State beginning farmer programs; (3) commercial lenders; (4) private nonprofit organizations with active beginning farmer programs; (5) the Cooperative State Research, Education, and Extension Service; (6) educational institutions with demonstrated experience in training beginning farmers or ranchers; (7) other entities providing lending or technical assistance to qualified beginning farmers or ranchers; and (8) farmers and ranchers. The Committee meets at least once a year and all meetings are open to the public. The duration of the Committee is indefinite.

The initial meetings of the Committee, held August 31–September 2, 1999, provided an opportunity for members to exchange ideas on ways to increase opportunities for beginning farmers and ranchers through Federal-State partnerships and to encourage more State participation. Members discussed various issues and drafted numerous recommendations, six of which the Committee determined were priorities and were submitted to the Secretary in writing. During the April meetings, members will discuss the Secretary's response to the six recommendations and review other draft proposals. Guest speakers from the Iowa State University's Beginning Farmer Center and the National Council of State Agricultural Finance Programs will address relevant issues.

Attendance is open to all interested persons but limited to space available. Anyone wishing to make an oral statement should submit their request in writing (letter, fax, or e-mail) to Mark Falcone at the above address. Statements should be received no later than April 6, 2000. Requests should include the name and affiliation of the individual who will make the presentation and an outline of the issues to be addressed. The floor will be open to oral presentations beginning at 1:00 p.m. CST on April 11, 2000. Comments will be limited to 5 minutes, and presenters will be approved on a first-come, first-served basis.

Persons with disabilities who require special accommodations to attend or participate in the meetings should contact Mark Falcone by April 6, 2000.

Signed in Washington, DC, on March 17, 2000.

Keith Kelly,
Administrator, Farm Service Agency.
[FR Doc. 00–7278 Filed 3–23–00; 8:45 am]
BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

East Fork of the Jemez Wild and Scenic River, Santa Fe National Forest, Sandoval County, New Mexico; Boundary Establishment

AGENCY: Forest Service, USDA.
ACTION: Notice of Availability.

SUMMARY: In accordance with 16 U.S.C. 1274, the USDA Forest Service has transmitted the final boundary of the East Fork of the Jemez Wild and Scenic River to the Senate and House of Representatives.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Diane Tafoya, Recreation Staff Officer, Jemez Ranger District, P.O. Box 98, Jemez Springs, NM 87025, 505–829–3535.

SUPPLEMENTARY INFORMATION: The detailed legal description and map of the East Fork of the Jemez Wild and Scenic River boundary are available for public inspection in the following Forest Service offices: USDA Forest Service Auditors Building, 201 14th St. SW at Independence Ave. SW, Washington, DC; USDA–FS Southwestern Regional Office, 517 Gold Ave SW, Albuquerque, NM; USDA–FS Santa Fe National Forest, 1474 Rodeo Rd., Santa Fe, NM; USDA–FS Jemez Ranger Station, Jemez Springs, NM.

The Wild and Scenic Rivers Act, Public Law 90–542, as amended by Public Law 101–306 on June 6, 1990 designated the 11-mile segment of the East Fork of the Jemez River, from the Santa Fe National Forest boundary to its confluence with the Rio San Antonio, to be administered by the Secretary of Agriculture in the following classifications: (a) The 2-mile segment for the Santa Fe National Forest boundary to the second crossing of State Highway 4, near Las Conchas trailhead, as a recreational river; and (b) the 4-mile segment from the second crossing of State Highway 4, near Las Conchas trailhead, to the third crossing of State Highway 4 approximately one and one-quarter miles upstream from Jemez Falls, as a wild river; and (c) the 5-mile segment from the third crossing of State Highway 4, approximately one and one-quarter miles upstream from Jemez Falls, to its confluence with the Rio San Antonio, as a scenic river. The final boundary for the designated segments approximately follows the original corridor boundary of ¼-mile of the ordinary high water mark on each side of the river, with adjustments made in order to follow legal and locatable landlines.

Dated: March 10, 2000.
James T. Gladen,
Deputy Regional Forester.
[FR Doc. 00–7281 Filed 3–23–00; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Pecos Wild and Scenic River, Santa Fe National Forest, San Miguel and Mora Counties, New Mexico; Boundary Establishment

AGENCY: Forest Service, USDA.
ACTION: Notice of availability.

SUMMARY: In accordance with 16 USC 1274, the USDA Forest Service is transmitting the final boundary of the Pecos Wild and Scenic River to the Senate and House of Representatives.

FOR FURTHER INFORMATION CONTACT: Information may be obtained by contacting Dan Crittenden, District Ranger, Pecos/Las Vegas Ranger District, P.O. Drawer 429, Pecos, NM 87552–0429, 505–757–6121.

SUPPLEMENTARY INFORMATION: The detailed legal description and map of the Pecos Wild and Scenic River boundary are available for public inspection in the following Forest Service offices: USDA Forest Service Auditors Building, 201 14th St. SW at Independence Ave. SW, Washington, DC; USDA–FS Southwestern Regional Office, 517 Gold Ave SW, Albuquerque, NM; USDA–FS Santa Fe National Forest, 1474 Rodeo Rd., Santa Fe, NM; USDA–FS Pecos Ranger Station, Pecos, NM.

The Wild and Scenic Rivers Act, Public Law 90–542, as amended by Public Law 101–306 on June 6, 1990 designated the 20.5 mile segment of the Pecos River, from its headwaters to the townsite of Tererro, to be administered by the Secretary of Agriculture in the following classifications: (a) The 13.5 mile segment from its headwaters to the Pecos Wilderness boundary, as a wild river; and (b) the 7-mile segment from the Pecos Wilderness boundary to the townsite of Tererro, as a recreational river. The final boundary for the designated segments approximately follows the original corridor boundary of ¼-mile of the ordinary high water mark on each side of the river, with adjustments made in order to follow legal and locatable landlines.

Dated: March 10, 2000.
James T. Gladen,
Deputy Regional Forester.
[FR Doc. 00–7279 Filed 3–23–00; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

Smoky Canyon Mine, Panels B and C, BLM Pocatello Field Office and Caribou-Targhee National Forest, Caribou County, ID

AGENCY: Bureau of Land Management, USDI and Forest Service, USDA.
ACTION: Notice of Intent to Prepare a Supplemental Environmental Impact Statement

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM), Pocatello Field Office and the Department of Agriculture, Forest Service (FS), Caribou-Targhee National Forest, will jointly prepare a Supplemental Environmental Impact Statement (SEIS) to document the analysis and disclose the environmental and human effects of a proposed mine plan for future operations at the existing J.R. Simplot Smoky Canyon Phosphate Mine, Caribou County, Idaho, located approximately 20 miles west of Afton, Wyoming. The proposed mining operations would utilize land administered by the FS, BLM and land that is privately owned. Mining would take place on Federal Phosphate Leases I–012890, I–026843, and I–027801, within the Caribou-Targhee National Forest.

J. R. Simplot Company must obtain federal permits prior to mining under the proposed mine plan. The existing mining and milling operations were authorized by a Record of Decision that was issued in 1982 upon completion of the original Smoky Canyon Phosphate Mine EIS. The conditional permits granted by the BLM and FS at the beginning of the Smoky Canyon mining operations required that subsequent site-specific mine plans for the individual mine panels be submitted to the agencies for their review and that appropriate mitigation measures be developed using further environmental analysis. The environmental effects from the proposed B and C Panels were assessed in the 1982 EIS, however this SEIS will further evaluate the effects of the proposed mine plan in light of additional information on selenium and other potential contaminants collected since 1982. Based on the supplemental environmental analysis, the BLM and FS would make decisions regarding the Panel B and C Mine and Reclamation Plan and additional land use authorizations for the proposed mining activities, potentially including: lease modifications by the BLM and a Special Use Permit by the FS. In addition, a Section 404, Clean Water Act permit may be required by the U.S. Army Corps of Engineers (Corps) for the proposed operations.

Agency Decisions

The BLM Pocatello Field Office Manager, who is the responsible official for the SEIS and on-lease lands, and the Caribou-Targhee National Forest Supervisor, who is the responsible official for Caribou-Targhee National Forest lands not on-lease will make separate decisions related to appropriate land use authorizations regarding this proposal considering: scoping comments and responses, anticipated environmental consequences discussed in the SEIS, and applicable laws, regulations, and policies. These decisions may include approval of a site specific Mine and Reclamation Plan; issuance of phosphate lease modifications by the BLM; and special use permits by the FS. A Section 404, Clean Water Act Permit may also be required by the Corps. They would render a decision related to that permit and how to mitigate the impacts to affected wetlands and Waters of the United States.

DATES: Written comments concerning the scope of the analysis described in this Notice should be received on or before April 24, 2000.

Scoping Procedure

The scoping procedure to be used for this SEIS will involve the following: a broad mailing asking for comments, issues and concerns to interested and potentially affected individuals, groups, Federal, State and local government; news releases or legal notices; and public scoping meetings.

ADDRESSES: Send written comments to Linda Matthews, JBR Environmental Consultants, Inc., 8160 South Highland Drive, Suite A–4, Sandy, Utah 84093, (lmatthews@jbr-env.com).

FOR FURTHER INFORMATION CONTACT: Jeff Cundick, Bureau of Land Management, Pocatello Field Office, 1111 N. 8th Ave., Pocatello, Idaho 83201, phone (208) 478–6354; or Philippe de Hánaut, Caribou-Targhee National Forest, Soda Springs Ranger District, 421 W. Second

South, Soda Springs, Idaho 83276, phone (208) 547–4356.

SUPPLEMENTARY INFORMATION: The proposed mining activities would consist of two open pits, known as Panels B and C, topsoil stockpiles, mine equipment parking areas, access and haul roads, a power line extension, external overburden storage areas, and runoff/sediment control facilities. Mining would include best management practices for control of releases of sediment and dissolved metals. The proposed open pits would be located on either side of Smoky Creek. The creek would be crossed in two locations by road fills. One of these road fills already exists for the mine access road and would be widened to accommodate the 100-foot width of a new haul road. A second, new haul road fill would be constructed across Smoky Creek in a separate location. The existing Forest Service road in Smoky Canyon would cross the proposed haul roads at grade in two locations. The public road would be protected with traffic controls posted on either side. A culvert or retaining wall would be installed in Smoky Creek along the mining area to protect water quality during mining and would be removed along with any road fills not required for continued access road requirements during reclamation activities.

Existing mine, maintenance, administrative, and milling facilities would be used during the mine period. Ore from the new panels would be beneficiated in the existing mill facilities and tailings would be deposited in the existing tailings disposal facilities. Ore concentrate would be transferred to the Don Plant in Pocatello, Idaho via the existing slurry pipeline transportation system. Water usage would continue as in the past with no increase in water consumption for the operations.

Disturbed lands directly resulting from the proposed activities would total 656 acres. The new pits would include 353 acres and the rest of the disturbed acreage would be for roads, overburden disposal areas, and other support facilities. Approximately 605 acres of the proposed disturbance would be reclaimed by backfilling most of the proposed open pit areas, regrading fill slopes, spreading topsoil, planting of appropriate vegetation, and installation and maintenance of runoff and sediment control facilities.

The BLM and FS believe, at this early stage, it is important to give reviewers notice of several court rulings, related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519,553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel, 803 F. 2d 1016, 1022 (9th Cir. 1986)* and *Wisconsin Heritages, Inc.* v. *Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980).* Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 60-day comment period for the draft SEIS so that substantive comments and objections are made available to the BLM and FS at a time when it can meaningfully consider them and respond to them in the final SEIS.

Preliminary Issues

Initially identified issues include potential effects on: ground water and surface water quantity and quality, wildlife and their habitats, livestock grazing, wetlands and riparian habitat, socio-economics, and development of best management practices for mine operations.

Possible Alternatives

The SEIS will analyze the Proposed Action and No Action Alternatives. Other alternatives to be considered would include altering portions of the proposed mining facilities or sequence and design parameters to provide mitigation for resources of concern.

Tentative SEIS Project Schedule

The tentative project schedule is as follows:

- Begin Public Comment Period—March, 2000
- Hold Public Scoping Meetings—April, 2000
- Estimated date for Draft SEIS—February, 2001
- Public Comment Period on Draft SEIS—60 days from when the Notice of Availability is published in the **Federal Register**

Public Scoping Meetings

Two public scoping meetings will be held, each an open house type, from 7 pm–9 pm. The open houses will include displays explaining the project and a forum for commenting on the project. The meetings will be held as follows:

- Star Valley High School, Afton, Wyoming
- BLM Field Office, Pocatello, Idaho

Information on the dates for the scoping meetings can be obtained from Linda Matthews, JBR Environmental Consultants, Inc., (801) 943–4144, (lmatthews@jbr-env.com).

Public Input Requested

The BLM and FS are seeking information and written comments from Federal, State and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action. To assist the BLM and FS in identifying and considering issues and concerns related to the proposed action, comments for scoping, and later for the Draft SEIS, should be as specific as possible. Referring to specific pages or chapters of the SEIS or the merits of the alternatives formulated and discussed in the SEIS is most helpful.

Dated: March 15, 2000.

Jeff Steele,

Manager, Pocatello Field Office, Bureau of Land Management.

Harold Klein,

Acting Forest Supervisor, Caribou-Targhee National Forest.

[FR Doc. 00–7110 Filed 2–23–00; 8:45 am]

BILLING CODE 4310–84–P, 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Gold/Boulder/Sullivan; Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA–Forest Service will prepare an Environmental Impact Statement (EIS) for the Gold/Boulder/Sullivan Project to disclose the effects of vegetative management through timber harvest and prescribed fire, and road management including road maintenance, reconstruction, and decommissioning. The Gold/Boulder/Sullivan project area encompasses the Gold Creek, Boulder Creek, and Sullivan Creek drainages approximately 12 miles southwest of Eureka, Montana.

The proposed activities are considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.23). The purpose and need for action is to achieve desirable and sustainable conditions in forest stands, improve big game winter range conditions, improve visual quality, improve water quality, and provide goods and services.

The EIS will tier to the Kootenai National Forest Land Resource Management Plan, as amended, and the Final Environmental Impact Statement (FEIS), and Record of Decision (ROD) of September 1987, which provides overall guidance for forest management of the area.

DATES: Written comments and suggestions should be received on or before April 24, 2000.

ADDRESSES: The Responsible Official is Bob Castaneda, the Kootenai National Forest Supervisor, 1101 Hwy 2 West, Libby, Montana 59923. Written comments and suggestions concerning the scope of the analysis should be sent to Glen M. McNitt, District Ranger, Rexford Ranger District, 1299 Hwy 93 N, Eureka, MT 59917.

FOR FURTHER INFORMATION CONTACT: Contact Ron Komac, Acting NEPA Coordinator, Rexford Ranger District, Phone: (406) 296–2536.

SUPPLEMENTARY INFORMATION: The project area is approximately 37,000 acres and has a favorable climate and good site conditions for forest vegetation. Proposed activities within the decision area include portions of the following areas: T34–36N; R28–30W.

Average annual precipitation ranges from 14 to 1000 inches. At higher elevations, most precipitation falls as snow. The decision area contains a combination of open-grown ponderosa pine and Douglas-fir in the lower elevations, adjacent to Lake Koocanusa; upland areas contain multistoried western larch/Douglas-fir intermixed with lodgepole pine, as well as uniform lodgepole pine stands.

Wildfire historically played a role in interrupting forest succession and creating much of the vegetative diversity that is apparent on the landscape today. Since the early 1900's, a policy of wildfire suppression has been in place on National Forest lands, interrupting the natural vegetation cycle. Existing stands in the lower elevations have a higher stocking level than occurred naturally and are dominated by Douglas-fir which is susceptible to bark beetles and root disease when stressed. Lodgepole pine in the upper elevations have experienced a high level of mortality due to mountain pine beetles and are not contributing toward a desired condition of forest health. A portion of the Decision Area is highly visible from the Tobacco Valley as well as the Scenic Byway (State Highway 37). A portion of the Mount Henry Inventoried Roadless Area is included within the project area. There are no treatments proposed for this area.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MAs). Most of the proposed timber harvest activities encompass five predominant MAs: 11, 12, 15, 16, 17. Briefly described, MA 11 is managed to maintain or enhance the winter range habitat effectiveness for big game species and produce a programmed yield of timber. MA 12 is managed to maintain or enhance the summer range habitat effectiveness for big game specifies and produce a programmed yield of timer. MA 15 focuses upon timber production using various silvicultural practices while providing for other resource values. MA 16 is managed to produce timber while providing for a pleasing view. MA 17 is managed to maintain or enhance a natural appearing landscape and produce a programmed yield of timber. Minor amounts of timber harvest and/or other proposed activities such as prescribed burning are found in other MAs, including 2 (roadless recreation); 5 (viewing areas); 10 (big game winter range); 13 (old growth), 19 (steep slopes), 21 (research natural area), and 24 (low productivity areas).

Purpose and Need

The primary purpose and need for the project is to: (1) Achieve desirable and sustainable conditions in forest stands by reducing stand densities and species competition, and salvage of mortality due to insects or disease; (2) improve big game winter range conditions through the use of prescribed fire to rejuvenate browse species; (3) improve water quality by reducing road effects through road maintenance and reconstruction, and road decommissioning; (4) improve visual quality through feathering edges to reduce line and form; and (5) respond to the social and economic desires of the surrounding area by providing a range of products from the forested environment, while maintaining a resilient, sustainable forest environment over time.

Proposed Activities

The Forest Service proposes to harvest between 18100 and 35600 CCF (hundred cubic feet), equivalent to between 9.1 and 17.8 MMBF (million board feet) of timber through the application of a variety of harvest methods on approximately 2528 acres of forestland. Silvicultural systems include 826 acres of regeneration harvest, 1423 acres of improvement harvest, 118 acres of salvage, and 161 acres of removal of small diameter material. Some treatments would feather or thin stands adjacent to existing units with abrupt edges to improve the visual setting for outdoor recreation.

Removal of trees would be accomplished by a variety of methods including: helicopter, tractor, and line skidding operations. Temporary roads may be needed to access some units to be harvested with ground-based systems. These temporary roads would be decommissioned after timber sale activities are accomplished.

The proposal also includes approximately 2,528 acres of prescribed in association with commercial timber harvest and approximately 3,316 acres of prescribed burning without commercial timber harvest. Prescribed burning without timber harvest is proposed within management area 13 (designated old growth).

The proposed action would result in four additional openings over 40 acres, ranging from 49 to 83 acres. The size of seven other large openings would be increased, ranging from 55 to 464 acres.

The proposal also includes .1 mile of temporary road construction, 64 miles of reconstruction to meet Best Management Practices requirements and decommissioning of four closed roads to restore natural drainage patterns.

Implementation of this proposal would require opening several miles of road currently restricted to public access. It is expected that public access would be allowed on a portion of these roads while management activities are occurring. Restrictions for motorized access would be restored following the conclusion of the management activities.

The proposed action includes precommercial thinning of sapling-sized trees on 2600 acres within managed plantations and natural stands that have regenerated after wildfire. Precommercial thinning would not occur in lynx habitat.

Forest Plan Amendments

The proposed action includes a project-specific forest plan amendments and a programmatic amendment to meet the goals of the Kootenai National Forest Plan.

A programmatic amendment to allow long-term MA 12 open road density to be managed at 1.1 miles/square mile, which exceeds the facilities standard of 0.75 miles/square mile. The roads currently open access high-use recreation facilities or are important access routes for forest users and have been managed as open roads for several decades. There is a social need to maintain these roads as open to motorized access.

A project specific amendment to allow harvest adjacent to existing

openings in up to 11 big game movement corridors. A Forest Plan amendment would be needed to suspend wildlife and fish standard #7 and timber standard #2 for this area. These standards state that movement corridors and adjacent hiding cover be retained. In this situation, high levels of mountain pine beetle activity have precluded alternative treatments. These opening sizes more closely correlate to natural disturbance patterns. Snags and down woody material would be left to provide wildlife habitat and maintain soil productivity.

MA–21; Research Natural Area Candidates

The proposed activities in the Big Creek Research Natural Area would involve fuel treatment activities prior to conducting an underburn in this low elevation area. The Kootenai Forest Plan scheduled two underburns for this area. Some smaller diameter understory trees would be removed in order for this burning to be successful. Any management proposals would be conducted with the full involvement of Forest Service Research.

Range of Alternatives

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities will be implemented. Additional alternatives may be considered to achieve the projects purpose and need and to respond to specific resource issues and public concerns.

Preliminary Issues

Tentatively, several preliminary issues of concern have been identified. These issues are briefly described below:

Transportation Systems: The implementation of the proposed action would permanently remove approximately 3 miles of road from the landscape which may affect the public's ability to use traditional routes.

Visual Resources: Implementation of the proposed action may alter the existing scenic resource within the project area. Although the proposed action is designed to improve the visuals of past harvest activities, some members of the public may feel that it will have additional scenic impacts.

Wildlife: The proposed action could potentially reduce existing cavity habitat in snags and reduce suitable hiding cover for wildlife security.

Management activities inside of a Research Natural Area: Typically, commercial thinning is not permitted within RNA's. In this particular case, a commercial thinning is necessary in order to remove fuels prior to underburning. If these fuels are not removed, there is a high likelihood that a stand destroying fire could occur rather than a cool underburn which is characteristic for this site.

Decisions To Be Made

The Kootenai Forest Supervisor will decide the following:

- Whether or not to harvest timber and, if so, identify the selection of, and site specific location of, appropriate timber management practices (silvicultural prescription, logging system, fuels treatment, and reforestation), road construction/reconstruction necessary to provide access and achieve other resource objectives, and appropriate mitigation measures.
- Whether or not water quality improvement projects (including road decommissioning) should be implemented and, if so, to what extent.
- Whether or not wildlife enhancement projects (including prescribed burning) should be implemented and, if so, to what extent.
- Whether road access restrictions or other actions are necessary to meet big game wildlife security needs.
- Whether or not project specific and programmatic Forest Plan amendments for MA 12 and MA 21 are necessary to meet the specific purpose and need of this project, and whether those amendments are significant under NFMA.
- What, if any, specific project monitoring requirements would be needed to assure mitigation measures are implemented and effective.

Public Involvement and Scoping

In January 2000 preliminary efforts were made to involve the public in looking at management opportunities within the Gold/Boulder/Sullivan Planning Area. Comments received prior to this notice will be included in the documentation for the EIS. The public is encouraged to take part in the process and is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will assist in identifying potential issues, identifying major issues to be analyzed in depth, identifying alternatives to the proposed action, identifying potential environmental effects of this project and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing

While public participation in this analysis is welcome at any time, comments received within 30 days of the publication of this notice will be especially useful in the preparation of the Draft EIS. The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June, 2000. At that time EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The Comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed by September, 2000. In the final EIS the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes, at this early state, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objectives that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hotel,* 803, F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objectives are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

As the Forest Supervisor of the Kootenai National Forest, 1101 US Highway 2 West, Libby, MT 59923, I am the Responsible Official. As the Responsible Official I will decide if the proposed project will be implemented. I will document the decision and reasons for the decision in the Record of Decision. I have delegated the responsibility to prepare the EIS to Glen M. McNitt, District Ranger, Rexford Ranger District.

Dated: March 15, 2000.

Bob Castaneda,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 00–7282 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Mill Creek Timber Sales and Related Activities, Rogue River National Forest, Jackson County, OR

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On December 14, 1999, a notice of intent for the Mill Creek Timber Sales and Related Activities was published in the **Federal Register** (64 FR 69691). Further project design, analysis, monitoring of previous actions and scoping have identified changes to the proposed action that will subsequently change the responsible official. Analysis has identified the need to adjust the standards and guidelines for soil in the 1990 Land and Resource Management Plan (Forest Plan) for the Rogue River National Forest. As part of the decision for the Mill Creek Timber Sales and Related Activities, an amendment to the Forest Plan will be made to make the Forest Plan consistent with regional policy, standards and guidelines related to soil quality. An amendment to the Forest Plan is a Forest Supervisor's decision. Therefore the responsible official for this EIS changes from the District Ranger to the Forest Supervisor. In addition, further analysis and scoping have allowed clarification of the preliminary issues and the development of alternatives to the proposed action. The following significant issues have emerged. *Soil:* activities associated with the proposed action (harvesting and activity fuels treatment) may cause direct or indirect impacts to soils by surface erosion, compaction, over-land flow, displacement, puddling, and a loss of site productivity (organic matter, nitrogen, water holding capacity, etc.). Activities in combination with past, other present and reasonably future actions may result in adverse cumulative effects to soils (especially considering existing skid trails per activity area and road density) and known detrimental soil areas. *Water quality:* activities may affect water quality via erosion, sediment production, and in combination with past, other present and reasonably foreseeable future actions may result in adverse cumulative effects. *Vegetation condition and forest health:* activities may affect the current mix of seral stages and the long-term health of forested stands; activities may also affect the current conditions associated with root disease, insect populations (pine and Douglas-fir beetles), blister rust, and Douglas-fir dwarf mistletoe, that is affecting the current and long-term health of forested stands. *Wildlife:* activities may affect big game (deer and elk) wildlife by affected hiding and thermal cover, and forage ratios (winter range); activities may affect big game (deer and elk) wildlife travel corridors and migration routes and road densities. Activities may affect terrestrial wildlife habitat associated with late-successional or old-growth forests; this could affect the degree of forest fragmentation and connectivity. *Human social and economic value:* activities may affect portions of certain (non-inventoried) "roadless" areas that are currently unroaded; some people may value them for their late-succesional (or spirtual) character. Activities may affect late seral or old-growth vegetation characteristics; some people believe such conditions should be preserved on public lands. Activities associated with the proposed action or its alternatives may generate various economic benefits/costs or overall present net values, depending on design.

The range of alternatives being considered includes a "no-action" alternative; the proposed action; an alternative designed to lessen adverse impacts to current soil conditions; an alternative that lessens the adverse impacts to big game cover, migration routes and connectivity of late successional stand types; and an alternative that would defer action in areas currently exhibiting unentered character, would defer building additional roads for harvest access, and would not commercially harvest large trees.

DATES: Comments concerning the scope of the revised analysis should be received by April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Questions should be directed to Joel King, District Ranger, Prospect Ranger District, at 47201 Highway 62, Prospect, Oregon, 97536, phone 541–560–3400, e-mail *jking/r6pnw__rogueriver@fs.fed.us.*

Dated: March 10, 2000.

Gregory A. Clevenger,

Acting Forest Supervisor.

[FR Doc. 00–7303 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Helicopter Landing Tours on the Juneau Icefield EIS 2000, Tongass National Forest, Juneau Ranger District, Juneau, Alaska

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) to disclose the environmental impacts of authorizing helicopter landing tours on the Icefield adjacent to Juneau, Alaska. A previous Notice Of Intent (NOI), published on February 3, identified the analysis and decision period as extending from 2000 to 2004. This is the revised NOI for the same project. The Proposed Action has been modified by changing the analysis and decision period to 2001–2005.

The proposed action is to issue special use permits (2001–2005) authorizing helicopter tour companies to land on the Juneau Icefield at specified locations and conduct tours. In addition to the regular glacier tours, this EIS will also analyze the effects of dog sled mushing tours, glacier trekking tours, and a combined fixed-wing/helicopter tour that would land at the lake at Antler Glacier. The majority of use would occur between May and September of each year. Tours would originate at private heliports and helicopter flight paths would transit a variety of private and municipal lands prior to entering the National Forest.

The proposed action would maintain the authorized helicopter landings on the Juneau Icefield at the 1999

authorized level of 19,039 landings. The Forest Service continues to seek information and comments from Federal, State, and local agencies as well as individuals and organizations who may be interested in, or affected by, the proposed action.

DATES: Comments concerning the scope of the analysis should be received in writing by March 31, 2000. A public meeting was held at the Juneau Ranger District on February 25 from 2:00 p.m. until 8:00 p.m. District staff were available at this open house to explain the project, accept comments, and answer questions. The Forrest Service is also participating with City and Borough of Juneau Tourism Advisory and Planning and Policy Committees who are addressing the noise impacts of flightseeing tours on the community, including the proposed helicopter tours, through a series of public and municipal meetings.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Laurie Thorpe, Interdisciplinary Team Leader, Juneau Ranger District Office, 8465 Old Dairy Road, Juneau, Alaska 99801.

FOR FURTHER INFORMATION CONTACT: Laurie Thorpe, Interdisciplinary Team Leader, Juneau Ranger District Office, 8465 Old Dairy Road, Juneau, Alaska 99801, (907) 586–8800, fax number (907) 586–8808. Email may be sent to lthorpe/r10@fs.fed.us.

SUPPLEMENTARY INFORMATION: The purpose and need for the proposed action is to meet public demand for quality guided services which provide safe access to remote locations on the Juneau Icefield. Meeting this demand includes providing for visitor safety and an appropriate balance between commercial guided recreation opportunities and non-commercial, non-guided recreation opportunities without unacceptable impacts to other forest users and resources.

The District Ranger, Juneau Ranger District, is the official responsible for authorizing the special use permits that have been requested. The decision to be made is whether or not to issue special use permits for helicopter landing tours on the Icefield as requested, and if issued, the authorized locations, levels of use, and the types of activities. The District Ranger will also determine any mitigation measures that will be required. The no action and proposed action alternatives will be considered in the EIS as well as other alternatives which address significant issues and satisfy the purpose and need for the action.

Preliminary issues that have been identified include helicopter noise disturbance to residential areas, wildlife, and ground-based recreation users.

In 1992 an environmental assessment and in 1995 an environmental impact statement were prepared to analyze the effects of these tours. Comments from the EA and EIS were used to identify issues for this EIS. Comments will be accepted throughout the EIS process but, to be most useful, should be received by March 31, 2000.

The draft environmental impact statement should be available for review by April 30, 2000. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage that are not raised until after the completion of the final environmental impact statement may be waived or dismissed by the courts. City of *Angoon* v. *Hodel,* 803 F.2d. 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate at the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement. To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS and Record of Decision is expected to be released in October, 2000. The Juneau District Ranger, Tongass National Forest will, as the responsible official for the EIS, make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the Final EIS, and applicable laws, regulations, and policies. The decision and supporting reasons will be documented in the Record of Decision.

Dated: March 9, 2000.

Pete Griffin,

Juneau District Ranger.

[FR Doc. 00–7280 Filed 3–23–00; 8:45 am]

BILLING CODE 3410–11–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

Comments Must Be Received on or Before: April 24, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.
2. The action will result in authorizing small entities to furnish the commodities and services to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Tape, Electronic Data, 7045–01–391–0947, 7045–01–438–7086.
NPA: North Central Sight Services, Inc., Williamsport, Pennsylvania.

Services

Acquisition & Distribution of AA-Cell Batteries, Tier AD, (6135–00–643–1309), Defense Supply Center—Richmond, Richmond, Virginia.
NPA: Eastern Carolina Vocational Center, Inc, Greenville, North Carolina.

Eyewear Prescription Service at the following locations: Department of Veterans Administration Medical Center Outpatient Clinic, 3510 Augusta Road, Greenville, South Carolina, Department of Veterans Affairs Medical Center, 6439 Garners Ferry Road, Columbia, South Carolina.
NPA: Winston-Salem Industries for the Blind, Winston-Salem, North Carolina.

Janitorial/Custodial for the following locations in Pasadena, California: US Court of Appeals, 125 South Grand Avenue, Social Security Administration Building, 104 Mentor Street. NPA: Asian Rehabilitation Services, Inc., Los Angeles, California.

Janitorial/Custodial, Bureau of Reclamation, Farmington Construction Office (FCO), 2200 Bloomfield Highway, Farmington, New Mexico. NPA: RCI, Inc., Albuquerque, New Mexico.

Janitorial/Custodial, U.S. Immigration & Naturalization Service, Institutional Hearing Program, 7405CI Highway 75 South, Huntsville, Texas.
NPA: Tri-County Mental Health Mental Retardation Services, Conroe, Texas.

Deletion

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
2. The action will result in authorizing small entities to furnish the commodities to the Government.
3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for deletion from the Procurement List.

The following commodities have been proposed for deletion from the Procurement List: Liner, Trousers, Cold Weather, 8415–01–180–0376 8415–01–180–0377.

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–7324 Filed 3–23–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the Procurement List.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: April 24, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 21, and December 18, 1998, October 29, 1999, January 14 and 21, and February 11, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (63 FR 44833 and 70099, 64 FR 58378, 65 FR 2373, 3416 and 6981) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.
2. The action will not have a severe economic impact on current contractors for the services.
3. The action will result in authorizing small entities to furnish the services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Base Supply Center, 934th Airlift Wing ARS, Minneapolis, Minnesota.

Base Supply Center, Offutt Air Force Base, Nebraska.

Janitorial/Custodial

U.S. Customs Service, Office of Investigation, East and West Wings, Building 50, JFK Airport, Jamaica, New York.

Library Services, Building 405, Shaw Air Force Base, South Carolina.

Mailroom Operation, U.S. Department of State, Office of Foreign Buildings Operations, 1701 North Fort Myer Drive, Arlington, Virginia.

Operation of Individual Equipment Element Store and HAZMART, McGuire Air Force Base, New Jersey.

Reprographics, (GPO Program #464–S), Department of Energy, Washington, DC.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Leon A. Wilson, Jr.,

Executive Director.

[FR Doc. 00–7325 Filed 3–23–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Office of the General Counsel; Laws or Regulations Posing Barriers to Electronic Commerce

AGENCY: Department of Commerce.

ACTION: Notice, 30-day re-opening of comment period.

SUMMARY: The Department of Commerce, on behalf of the Subgroup on Legal Barriers to Electronic Commerce ("Legal Barriers Subgroup") of the U.S. Government Working Group on Electronic Commerce, re-opens for an additional 30 days the response period for our request for public comments and suggestions concerning policies, laws or regulations that need to be adapted in order to eliminate barriers to and promote electronic commerce, electronic services, and electronic transactions. The original notice was published on February 1, 2000, with comments to be provided by March 17, 2000 (65 FR 4801).

DATES: Comments are requested by April 24, 2000.

ADDRESSES: Comments may be submitted via the Web at *http://www.ecommerce.gov/ebarriers/respond*. Alternatively, electronic submissions may be sent as documents attached to E-mail messages addressed to ebarriers@ita.doc.gov. Submissions made as E-mail attachments or submitted on floppy disks should be in WordPerfect, Microsoft Word or ASCII format. Diskettes should be labeled with the name of the party and the name and version of the word processing program used to create the document. Paper submissions may be mailed to the Subgroup on Legal Barriers to Electronic Commerce, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 2815, Washington DC 20230. If possible, paper submissions should include floppy disks in WordPerfect, Microsoft Word or ASCII format. Except for floppy disks with paper submissions, duplicate copies should not be submitted.

FOR FURTHER INFORMATION CONTACT: Kenneth Clark, phone: 202–482–3843; E-mail *kclark@doc.gov*.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce has determined that it is appropriate to re-open the record for comments concerning the above-described request for public comments for an additional 30-day period in order: (1) To officially accommodate the significant number of comments being filed somewhat beyond the original comment deadline; and (2) to allow a reasonable, but limited, time for interested parties to augment their previous comments, or to file original comments, in light of the comments of other parties, which have been routinely posted on our Web site at *http://www.ecommerce.gov/ebarriers/review* as soon as practicable after their receipt. Comments filed after April 24, 2000, will not be considered by the Subgroup. Detailed background information concerning the original request for comments is contained in the above-cited **Federal Register** notice, a copy of which is also posted at *http://www.ecommerce.gov/ebarriers/fedreg1*. A copy of this notice can be found at *http://www.ecommerce.gov/ebarriers/fedreg2*.

Publication:

Comments will be published online at *http://www.ecommerce.gov/ebarriers/review*. Respondents should not submit materials that they do not desire to be made public.

Authority:

Presidential Memorandum, "Facilitating the Growth of Electronic Commerce," dated November 29, 1999.

Dated: March 21, 2000.

Andrew J. Pincus,

General Counsel, Department of Commerce.

[FR Doc. 00–7404 Filed 3–23–00; 8:45 am]

BILLING CODE 3510–BW–U

DEPARTMENT OF COMMERCE

International Trade Administration

Advisory Committee on Africa; Notice of Open Meeting

AGENCY: International Trade Administration/Deputy Assistant Secretary for Africa, Commerce.

SUMMARY: The Advisory Committee on Africa was established to advise the Secretary of Commerce and the Deputy Secretary of Commerce on commercial policy issues in Sub-Saharan Africa.

TIME AND PLACE: March 30, 2000 from 9 a.m. to 12 noon. The meeting will take place at the Main Department of Commerce Building, Room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

AGENDA:

1. Review of recent trends in U.S. trade with Africa.
2. Discuss proposals for a Workshop for African Trade Ministers on the World Trade Organization.
3. Discuss commercial implications of the coup d'etat in Cote d'Ivoire.
4. Discuss actions U.S. firms are taking to combat HIV/AIDS in Africa.
5. Discuss Commercial Law Development Programs in Africa.
6. Review status and prospects for passage of the African Growth and Opportunity Act.

PUBLIC PARTICIPATION: The meeting will be open to public participation. Seating will be available on a first-come first-served basis. Members of the public who plan to attend are requested to advise Ms. Alicia Robinson, Office of Africa, tel: 202–482–5148, fax: 202–482–5198, e-mail: alicia_robinson@ita.doc.gov by March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Alicia Robinson, Office of Africa, Room 2037, U.S. Department of Commerce; tel: 202–482–5148, fax: 202–482–5198, e-mail: alicia robinson@ita.doc.gov.

Dated: March 20, 2000.

Sally Miller,

Director, Office of Africa.

[FR Doc. 00–7273 Filed 3–23–00; 8:45 am]

BILLING CODE 3510–DA–P

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY: Commodity Futures Trading Commission.

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 65 FR 11988.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 10:00 a.m., Wednesday, March 29, 2000.

CHANGES IN THE MEETING: The Commodity Futures Trading Commission has cancelled the meeting on proposed regulation 1.41(z).

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–7409 Filed 3–22–00; 10:28 am]

BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Government-Owned Invention Available for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of the general availability of exclusive or partially exclusive licenses under the following pending patent. Any license granted shall comply with 35 U.S.C. 209 and 37 CFR part 404. Applications will be evaluated utilizing the following criteria: (1) Ability to manufacture and market the technology; (2) manufacturing and marketing ability; (3) time required to bring technology to market and production rate; (4) royalties; (5) technical capabilities; and (6) small business status.

Serial No. 94/39011 entitled "A Recombinant Polypeptide For Use in the Manufacture of Vaccines Against Campylobacter-induced Diarrhea and to Reduce Colonization" by Lee, Guerry, Berg and Trust filed 15 July 1997. This technology represents an effective vaccine and treatment against Campylobacter diarrhea and comprises a recombinant fusion protein of the maltose binding protein (MBP) of E.coli fused to amino acids 5–337 of the FlaA flagellin of Campylobacter coli VC167. This fusion protein has provided evidence of immunogenicity and protective efficacy against challenge by a heterologous strain of Campylobacter jejuni 81–176 in mammals. The technology avoids the technical problem of inducing the autoimmune Guillain Barre Syndrome (GBS), a post-infection polyneuropathy caused by Campylobacter molecular mimicry of human gangliosides. The technology includes a recombinant DNA construct encoding the immunodominant region of flagellin conserved across the Campylobacter species; expression—systems; methods for inducing an immune response through injectable, intranasal, and oral formulations; and a method for reducing Campylobacter intestinal colonization.

DATES: Applications for an exclusive or partially exclusive license may be submitted at any time from the date of this notice.

ADDRESSES: Navy Medical Research Center (NMRC), 503 Robert Grant Ave, Silver Spring, MD 20910–7500.

FOR FURTHER INFORMATION CONTACT: CDR Charles J. Schlagel, Office of Technology Transfer, NMRC, phone (301) 319–7427, fax (301) 319–7432, e-mail schlagelc@nmripo.nmri.nnmc.navy.mil.

Dated: March 10, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–7319 Filed 3–23–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Meeting of the Chief of Naval Operations (CNO) Executive Panel

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The CNO Executive Panel is to conduct the final briefing of the Navy and Alliance Structures II Short Study to the Chief of Naval Operations. This meeting will consist of discussions relating to national security issues associated with coalition and alliance relationships.

DATES: The meeting will be held on April 17, 2000 from 10:00 a.m. to 11:00 a.m.

ADDRESSES: The meeting will be held at the office of the Chief of Naval Operations, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONCERNING THIS MEETING CONTACT: Commander Christopher Agan, CNO Executive Panel, 4401 Ford Avenue, Suite 601, Alexandria, Virginia 22302–0268, (703) 681–6205.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), these matters constitute classified information that is specifically authorized by Executive Order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

Dated: March 13, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, Federal Register Liaison Officer.

[FR Doc. 00–7318 Filed 3–23–00; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Intent To Grant Partially Exclusive License; Ford Motor Company

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant Ford Motor Company, a revocable, non-assignable, partially exclusive license in the field of use of all automotive applications for cars and trucks under 30,000 pounds gross vehicle weight in the United States to practice the Government-owned inventions described in U.S. Patent No. 5,705,863 entitled "Hight Speed Magnetostrictive Linear Motor."

DATES: Anyone wishing to object to the granting of this license must file written objections along with supporting evidence, if any, not later than May 23, 2000.

ADDRESSES: Written objections are to be filed with the Carderock Division, Naval Surface Warfare Center, Code 004, 9500 MacArthur Blvd., West Bethesda, Maryland 20817–5700.

FOR FURTHER INFORMATION CONTACT: Mr. Dick Bloomquist, Director Technology Transfer, Carderock Division, Naval Surface Warfare Center, Code 0117, 9500 MacArthur Blvd, West Bethesda, Maryland 20817–5700, telephone (301) 227–4299.

Authority: 35 U.S.C. 207, 37 CFR Part 404.

Dated: March 15, 2000.

J.L. Roth,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 00–7283 Filed 3–23–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–00NT40779 entitled "Hybrid Power Systems." The goal of this procurement is to aid the development of systems that will produce affordable, safe, environmentally-friendly electrical power with a goal of eventually being 70+ percent efficient (lower heating value) from fossil fuels. The work will focus on proof-of-concept systems of suppliers' market entry product. The system shall contain any combination of existing or "near-term" power industry fuel-to-electricity conversion equipment. One of these components must be a high-temperature fuel cell.

DATES: The solicitation will be available on the DOE/NETL's Internet address at

http://www.netl.doe.gov/business on or about April 24, 2000. The solicitation will allow for requests for explanation and/or interpretation. Solicitations will not be distributed in paper form or diskette. The exact date and time for the submission of proposals will be indicated in the solicitation. However, at least a forty-five (45)-day response time is currently planned.

FOR FURTHER INFORMATION CONTACT: Kelly A. McDonald, MS I07, U.S. Department of Energy, National Energy Technology Laboratory 3610 Collins Ferry Road, P.O. Box 880, Morgantown, WV 26507–0880, E-mail Address: kelly.mcdonald@netl.doe.gov, Telephone Number: (304) 285–4113.

SUPPLEMENTARY INFORMATION: The work performed under this action will consist of three phases. The first phase will entail identification and resolution of barrier issues of the proposed hybrid system. This will include concept identification, system definition, economic evaluation, and experimental work to resolve any barrier issues. This information will be used by the DOE for system validation. The second phase will consist of a detailed design and cost study of the proposed system. The third phase will include fabrication and proof-of-concept testing of the proposed system. If a potential offeror believes that there are no barrier issues in their proposed system, and has all of the information that would be required in the first phase, the offeror can petition to DOE to initially start the project in Phase II.

The proposed system must contain a high-temperature fuel cell combined with other power generation modules. Other power generation modules that may be proposed include: Another fuel cell; steam turbine; gas turbine; diesels; other heat engines; etc. This solicitation does not address photovoltaics, wind, or tidal energy systems. The system must be fueled by natural gas. The offerer must be a commercial producer of a major component of the proposed system or must partner with commercial producers of the major components (defined as power producing units such as fuel cells, turbines, etc.). While the goal of this procurement is to produce systems with energy efficiencies greater than 70 percent, it is anticipated that the initial market entry systems investigated under this solicitation, may have efficiencies less than this.

DOE anticipates multiple cooperative agreement awards resulting from this solicitation and no fee or profit will be paid to a recipient or subrecipient under the awards. For agreements spanning more than one maturation stage, continuation decision points will be inserted at the completion of each stage. Additional decision points may be required depending upon the length of any one maturation stage. This particular program is covered by Section 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. EPAct 3002 requires a cost-share commitment of at least 20 percent from non-Federal sources for research and development projects and at least 50 percent for demonstration and commercial projects. Depending on the phase and maturation stage of the agreement, cost-share expectations will range from 20 to 50 percent. The particular program is also covered by Section 2306 of EPAct, 42 U.S.C. 13525 for financial assistance awards. The solicitation will contain as part of the application package the applicable EPAct representation form(s) for Foreign-owned companies. Funds are not presently available for this procurement. The Government's obligation under this award is contingent upon the availability of appropriated funds from which payment for award purposes can be made, however, it is anticipated that two to four awards will be made during the first quarter of Fiscal Year 2001, with an average total estimated cost from $5 to $15 million.

Prospective applicants who would like to be notified as soon as the solicitation is available should register at http://www.netl.doe.gov/business. Provide your E-mail address and click on the "Advanced Electric Power Generation" technology choice located under the heading "Fossil Energy." Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The solicitation will allow for requests for explanation and/or interpretation.

Issued in Morgantown, WV, on March 10, 2000.

Randolph L. Kesling,

Director, Acquisition and Assistance Division.

[FR Doc. 00–7305 Filed 3–23–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL98–36–000 and ER91–569–009]

Aquila Power Corporation v. Entergy Services, Inc., as Agent for Entergy Arkansas, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc., Entergy Gulf States, Inc. and Entergy Services, Inc.; Notice of Issuance of Order

March 20, 2000.

On March 16, 2000, the Commission issued an Order Granting In Part, And Denying In Part, Complaint (Order), in the above-docketed proceedings. The Order found, *Inter alia*, that Entergy violated section 28.2 of the *pro forma* tariff but stated that the more appropriate forum for evaluating whether Entergy still lacks market power is in Docket No. ER91–569–009.

Ordering paragraph (C) of the Order states as follows: Aquila and other interested persons may raise or elaborate on the issue discussed in the body of this order in Docket No. ER91–569–009, by filing comments in that proceeding addressing this issue within thirty (30) days of the date of issuance of this order.

Notice is hereby given that the deadline for complying with ordering paragraph (C) above, is April 17, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7312 Filed 3–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–3886–002]

Commonwealth Edison Company and Commonwealth Edison Company of Indiana; Notice of Filing

March 20, 2000.

Take notice that on March 10, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana (collectively ComEd), tendered for filing amendments to ComEd's Open Access Transmission Tariff (OATT).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 31, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7316 Filed 3–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–125–000]

El Paso Natural Gas Company; Notice of Request Under Blanket Authorization

March 20, 2000.

Take notice that on March 15, 2000, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79987, filed a request with the Commission in Docket No. CP00–125–000, pursuant to Sections 157.216(b) of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to abandon, by conveyance to GPM Gas Corporation (GPM), seven taps serving Westar Transmission Company (Westar) and the service rendered by means thereof authorized in blanket certificate issued in Docket No. CP82–435–000, all as more fully set forth in the request on file with the Commission and open to public inspection. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

El Paso proposes to abandon seven taps known as the Hanslik & Emens Tap, the Anna McCollum Tap, the Paul McCollum Tap, the Howard D. Oliver Tap, the Fred Belt Tap, the Bob J. Spears Tap and the R.T. Bedwell Tap (Delivery Point Facilities). El Paso states that these facilities were required by El Paso to facilitate the sale and delivery of natural gas to Westar for resale to Energas Company, a Division of Atmos Energy Corporation (Energas), a local distribution company. El Paso further states that El Paso owns, operates and maintains the 4½-inch O.D., Fuel Line from Phillips-Seninole Plant to Riley Compressor Station (Line No. 6018), commencing in the Section 328, C.C.S.D. & R.G.N.G.R.R. Co. Block G, extending approximately 8.4 miles to the northeast, and terminating in Section 229, Waxahachie Tap R.R. Co., Block G, all in Gaines County Texas. El Paso reports that El Paso and GPM have agreed to the conveyance of line No. 6018 to GPM contingent upon El Paso's abandonment of the Delivery Point Facilities and the natural gas service they provide. El Paso further reports that by letter agreement dated October 21, 1999, Westar and Energas have consented to abandonment of the Delivery Point Facilities and GPM and Westar will provide natural gas service, pursuant to appropriate State regulatory requirements.

El Paso states that the abandonment would not cause any material change in El Paso's cost of service. El Paso continues the proposed abandonment would not result in or cause any interruption, reduction or termination of the transportation service presently rendered to the customers of the Delivery Point Facilities.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the NGA.

David P. Boergers,

Secretary.

[FR Doc. 00–7317 Filed 3–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–1258–000 and EL00–37–000]

First Electric Cooperative Corporation; Notice of Issuance of Order

March 20, 2000.

First Electric Cooperative Corporation (First Electric) made a rate filing in Docket No. ER00–1258–000 pertaining to arrangements under which it provides facilities to Arkansas Electric Cooperative Corporation to provide wheeling services to Entergy Arkansas and C&L Cooperative. Also, in Docket No. EL00–37–000, First Electric filed a request for certain waivers of the Commission's regulations. In particular, First Electric requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by First Electric. On March 15, 2000, the Commission issued an Order Granting Request for Waivers Of Order Nos. 888 And 889, Addressing Requests for Other Waivers And Accepting Rate Filing (Order), in the above-docketed proceedings.

The Commission's March 15, 2000 Order granted the request for blanket approval under Part 34, subject to the conditions found in Ordering Paragraphs (C), (D), and (H):

(C) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by First Electric should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice And Procedure, 18 CFR 385.211 and 385.214.

(D) Absent a request to be heard within the period set forth in Ordering Paragraph (C) above, First Electric is hereby authorized to issue securities and assume obligations and liabilities as guarantor endorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of First Electric, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(H) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of First

Electric's issuances of securities or assumptions of liabilities * * *.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 14, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, N.E., Washington, D.C. 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online rims. htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7313 Filed 3–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–1139–000 and ER00–1140–000, ER00–1141–000, ER00–1147–000, ER00–1171–000 (Not consolidated)]

Gleason Power I, L.L.C., West Fork Land Development Company, L.L.C., Des Plaines Green Land Development, L.L.C., AES Londonderry, LLC and Tiverton Power Associates Limited Partnership; Notice of Issuance of Order

March 20, 2000.

Gleason Power I, L.L.C., West Fork Land Development Company, L.L.C., Des Plaines Green Land Development Company, L.L.C., AES Londonderry, LLC, and Tiverton Power Associates Limited Partnership (hereafter, "the Applicants") filed with the Commission rate schedules in the above-captioned proceedings, respectively, under which the Applicants will engage in wholesale electric power and energy transactions at market-based rates, and for certain waivers and authorizations. In particular, certain of the Applicants may also have requested in their respective applications that the commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liabilities by the Applicants. On March 16, 2000, the Commission issued an order that accepted the rate schedules for sales of capacity and energy at market-based rates (Order), in the above-docketed proceedings.

The Commission's March 16, 2000 Order granted, for those Applicants that sought such approval, their request for blanket approval under Part 34, subject to the conditions found in Appendix B in Ordering Paragraphs (2), (3), and (5):

(2) Within 30 days of the date of this order, any person desiring to be heard or to protest the Commission's blanket approval of issuances of securities or assumptions of liabilities by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E, Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211 and 385.214.

(3) Absent a request to be heard within the period set forth in Ordering Paragraph (2) above, if the Applicants have requested such authorization, the Applicants are hereby authorized to issue securities and assume obligations and liabilities as guarantor, indorser, surety or otherwise in respect of any security of another person; provided that such issue or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and reasonably necessary or appropriate for such purposes.

(5) The Commission reserves the right to modify this order to require a further showing that neither public nor private interests will be adversely affected by continued Commission approval of the Applicants' issuances of securities or assumptions of liabilities.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 17, 2000.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. This issuance may also be viewed on the Internet at *http://www.ferc.fed.us*/online/rims.htm (call 202–208–2222 for assistance.)

David P. Boergers,

Secretary.

[FR Doc. 00–7314 Filed 3–23–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Regional Transmission Organizations; Notice of Meeting

March 20, 2000.

In the matter of: RM99–2–000, ER98–1438–000, EC98–24–000, ER99–3144–000, EC99–80–000, EL00–25–000, ER00–448–000, ER99–3318–000, EL00–39–000, EC00–27–000, EC00–28–000, EC00–26–000, EL00–43–000, EL00–46–000, ER99–2779–000, TX00–2–000, ER98–4410–000, ER99–1659–000, ER99–1660–000, ER99–3914–000, ER99–3916–000, EC99–101–000, ER99–1610–000, ER99–993–000, ER98–2910–000, EL98–74–000, ER98–3709–000, ER95–112–000, ER96–586–000, ER95–1001–000, EL95–17–000, ER95–1615–000, ER96–2709–000, TX97–7–000, ER00–1526–000, ER00–1381–000, ER00–1695–000, ER00–1743–000, ER00–536–000, ER00–1820–000, EC98–40–000, ER98–2770–000, ER98–2786–000, and EL99–57–000; Midwest Independent Transmission System Operator, Inc., The Cincinnati Gas & Electric Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Illinois Power Company, PSI Energy, Inc., Wisconsin Electric Power Company, Union Electric Company, Central Illinois Public Service Company, Louisville Gas & Electric Company, Kentucky Utilities Company, Alliance Companies; American Electric Power Service Corporation, Consumers Energy Company, Detroit Edison Company, FirstEnergy Corporation, Virginia Electric and Power Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc., IES Utilities Inc., Interstate Power Company, MidAmerican Energy Company, Midwest Independent Transmission, System Operator, Inc., Mid-Continent Area Power Pool, Southwest Power Pool, Inc., UtiliCorp United Inc. and St. Joseph Light & Power Company, UtiliCorp United Inc. and The Empire District Electric Company, Commonwealth Edison Company and PECO Energy Company, UtiliCorp United Inc. v. City of Harrisonville, Missouri, Entergy Power Marketing Corporation v. Southwest Power Pool, Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, Prairieland Energy, Inc., Entergy Services, Inc., Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma, Southwestern Electric Power Company, Northern States Power Company, *et al.* (Minnesota); Cheyenne Light, Fuel and Power Company, *et al.*, Northern States Power Company, *et al.* (Minnesota), New Century Services, Inc., Mid-Continent Area Power Pool, Entergy Services, Inc., Mid-Continent Area Power Pool, Entergy Services, Inc., Entergy Services, Inc. and Entergy Power, Inc., Entergy Power Marketing Corp., Entergy Services, Inc., Missouri Basin Municipal Power Agency, Reliant Energy Services, Inc., Ameren Services Company, Union Electric Company, d/b/a AmerenUE, Entergy Services, Inc., Southwestern Public Service Company, Commonwealth Edison Company, Commonwealth Edison Company of Indiana, American Electric Power Company and Central and South West Corporation and Entergy Services, Inc.

On December 20, 1999, the Commission issued Order No. 2000 to advance the formation of Regional Transmission Organizations (RTOs). Order No. 2000 announced the initiation of a regional collaborative process to aid in the formation of RTOs. To initiate the collaborative process, the Commission organized a series of regional workshops. These workshops are open to all interested parties. The fourth workshop is scheduled for March 29–30, 2000 in Kansas City, Missouri.

During the course of the Kansas City workshop, discussion of the above-listed cases could arise. Any person having an interest in an above-listed case is invited to attend the Kansas City workshop. There will be no Commission transcript of any of the workshops, and information discussion or disseminated in the workshop will not constitute part of the decisional record in the above-listed cases, unless formally, filed in accordance with Commission Regulations.

David P. Boergers,

Secretary.

[FR Doc. 00–7315 Filed 3–23–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6252–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 6, 2000 Through March 10, 2000 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–L65342–00 Rating EC2, Pacific Northwest Region Douglas-fir Tussock Moth (orgvia pseudotsugata) Project, To Partially Control an Anticipated Outbreak of Douglas-fir tussock moth, To be Implemented in Nine National Forests in WA and OH.

Summary

EPA expressed concerns about the EIS lacking a clear demonstration that defoliation by tussock moths would adversely affect the environment. EPA also urged that the EIS apply the protocol for addressing 303(d) waters, discuss further the IPM approach used, and describe the indicators that would trigger spraying.

ERP No. D–COE–G36151–TX Rating EC2, Programmatic EIS—Upper Trinity River Basin Feasibility Study, To Provide Flood Damage Reduction, Environmental Restoration, Water Quality Improvement and Recreational Enhancement, Trinity River, Dallas-Fort Worth Metroplex, Dallas, Denton and Tarrant Counties, TX.

Summary

EPA has environmental concerns about water quality. EPA requested additional information regarding optimum channel and lake morphology to ensure safe and recreational use compatible with water quality within the lakes. EPA also requested additional information regarding the Dallas Master Plan's compatibility with Floodplain Management requirements established by Executive Order 11988.

ERP No. D–NRS–A36450–00 Rating EC2, Programmatic EIS—Emergency Watershed Protection Program, Improvements and Expansion, To Preserve Life and Property Threatened by Disaster-Caused Erosion and Flooding, US 50 States and Territories except Coastal Area.

Summary

EPA expressed concern that the "Prioritized Watershed Planning and Management" alternative was not selected as the proposed action. EPA requested several modifications to the proposed program, including requirements for cumulative impact assessment and greater use of bioengineering principles when designing projects.

Final EISs

ERP No. F–AFS–J65314–MT, Flathead National Forest, Swan Lake Ranger District, Meadow Smith Project, Vegetative Treatments and Other Activities to Maintain and Restore Large-Tree Old Grow Forest Characteristics, Lake and Missoula Counties, MT.

Summary

EPA continues to express concern about the level of monitoring proposed to identify actual impacts from the implementation activities, EPA also requested additional mitigation measures to reduce other impacts.

ERP No. F–BLM–K67050–NV, South Pipeline Mine Project, Proposal to Extend Gold Mining Operations, Implementation, Lander County, NV.

Summary

EPA continues to express concern regarding air/water quality impacts and the ecological risk of pit lakes. EPA requested that BLM address these issues before the Record of Decision is signed.

ERP No. F–COE–C32035–00, New York and New Jersey Harbor Navigation Study, Identify, Screen and Select Navigation Channel Improvements, NY and NJ.

Summary

EPA's previous issues concerning the lack of a signed Memorandum of Understanding for the Comprehensive Port Improvement Plan (CPIP), the cumulative impacts analysis, and the no action alternative have been adequately addressed. EPA requested that air quality analyses be committed to in the Record of Decision for this project and completed prior to project implementation. EPA expressed concerns that until the CPIP is completed, impacts associated with port facility and infrastructure expansions will not have been addressed. EPA commented that a supplemental EIS for the Harbor Navigation Project may be required at some point in the future.

ERP No. F–DOE–G60007–NM, The Conveyance and Transfer of Certain Land Tracts Administered by the US DOE and Located at Los Alamos National Laboratory, Los Alamos and Santa Fe Counties, NM.

Summary

EPA has no objection to the action as proposed.

Dated: March 21, 2000.

B. Katherine Biggs,

Associate Director, NEPA Compliance Division Office of Federal Activities.

[FR Doc. 00–7348 Filed 3–23–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL–6252–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 OR www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed March 13, 2000 Through March 17, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000078, Final EIS, SFW, ID, MT, Grizzly Bear (Ursus arctos horribilus) Recovery Plan in the Bitterroot Ecosystem, Implementation, Endangered Species Act, Proposed Special Rule 10(j) Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area, Rocky Mountain, Blaine, Camas, Boise, Clearwater, Custer, Elmore, Idaho, Lemhi, Shoshone, Due: April 24, 2000, Contact: Dr. Christopher Servheen (406) 243–4903.

EIS No. 000079, Draft EIS, FHW, VA, Coalfields Expressway Location

Study, Improvements from Route 23 near Pound, VA to the WV State Line east of Slate, VA, Funding and COE Section 404 Permit, Wise, Dickerson and Buchanan, VA, Due: May 12, 2000, Contact: Roberto Forseca-Martinez (804) 775–3320.

Amended Notices

EIS No. 000001, Draft EIS, SFW, WA, Tacoma Water Green River Water Supply Operations and Watershed Protection Habitat Conservation Plan, Implementation, Issuance of a Multiple Species Permit for Incidental Take, King County, WA, Due: March 31, 2000, Contact: Tim Romanski (360) 753–5823. Published FR on 1–14–2000: CEQ Comment Date has been extended from 03/14/2000 to 03/31/2000.

EIS No. 000062, Final EIS, OSM, TN, Fall Creek Falls Petition Evaluation Document, Implementation, Designate the Land as Unsuitable for Surface Coal Mining Operation, Van Buren and Bledsoe Counties, TN , Due: May 03, 2000, Contact: Sam K. Bae (202) 208–2633. Published FR on 3–03–2000: CEQ Comment Date has been extended from 04/03/2000 to 05/03/2000.

EIS No. 000074, Draft EIS, AFS, CO, Upper Blue Stewardship Project, Implementation of Vegetation Management, Travel Management, Designation of Dispersed Camping Sites, White River National Forest, Dillon Ranger District, Summit County, CO, Due: May 01, 2000, Contact: Kathleen Phelps (970) 468–5400. Published FR–3–17–00—Correction to Comment Period from 5–12–2000 to 5–1–2000 and Correction to Title.

Dated: March 21, 2000.

B. Katherine Biggs,

Associate Director, Office of Federal Activities.

[FR Doc. 00–7349 Filed 3–23–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6563–6]

Proposed Past Cost Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as Amended by the Superfund Amendments and Reauthorization Act—Golden, CO

AGENCY: Environmental Protection Agency.

ACTION: Notice and request for public comment.

SUMMARY: In accordance with the requirements in section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), notice is hereby given of a proposed past cost settlement under section 122(h), concerning the Colorado School of Mines Research Institute site in Golden, Colorado (Site). The proposed Administrative Order on Consent (AOC) requires several Potentially Responsible Parties (PRPs), including Federal PRPs to pay an aggregate total of $871,000 to the United States Environmental Protection Agency (EPA) related to response actions taken at the Site.

DATES: Comments must be submitted by April 24, 2000.

ADDRESSES: The proposed settlement is available for public inspection at the EPA Superfund Record Center, 999 18th Street, 5th Floor, North Tower, Denver, Colorado. Comments should be addressed to Kelcey Land, Enforcement Specialist, (8ENF–T), U.S. Environmental Protection Agency, 999 18th Street, Suite 500, Denver, Colorado, 80202–2405, and should reference the Colorado School of Mines Research Institute Past Cost Settlement (EPA Docket No. CERCLA–8–2000–7).

FOR FURTHER INFORMATION CONTACT: Kelcey Land, Enforcement Specialist, at (303) 312–6393.

SUPPLEMENTARY INFORMATION: Notice of section 122(h) past cost settlement: In accordance with section 122(i)(1) of CERCLA, notice is hereby given that the terms of an Administrative Order on Consent (AOC) has been agreed to by the following parties:

The PRPs include: ASARCO Inc., BP America, Inc., Cotter Corporation, Cyprus Amax Minerals Company, El Paso Natural Gas Company, Elf Aquitane, Inc. on behalf of several Texasgulf companies, ExxonMobil Coal and Minerals Company, N.L. Industries, Inc., Inspiration Consolidated Copper Company, Phelps Dodge Corporation, Terra Industries, Inc., and Western Nuclear, Inc. as well as several affiliates of these companies, all of whom are listed in Attachment A of the agreement. The private PRPs paid a total of $480,993.48.

Several federal PRPs were also identified at the site, however only the Bureau of Mines is a signatory to the agreement. The United States paid a total of $390,006.52 in settlement of the claims against all federal entities.

By the terms of the proposed AOC, these parties will together pay $871,000 to the Hazardous Substance Superfund. This payment along with the $1.056 million reimbursement via the de minimis settlements constitutes approximately a 93% settlement of all EPA's costs at the site.

In exchange for payment, EPA will provide the settling parties with a limited covenant not to sue for liability under section 107(a) of CERCLA, which includes liability for EPA's past costs and contribution protection for EPA's past costs and other past costs incurred before and including May 31, 1997. The covenants and contribution protection also extends to Colorado School of Mines (CSM), Colorado School of Mines Research Institute (CSMRI), and the State of Colorado who are also signatories to the agreement. The only other past costs known at this time were incurred by the signatories to the agreement.

For a period of thirty (30) days from the date of this publication, the public may submit comments to EPA relating to this proposed past cost settlement.

A copy of the proposed AOC may be obtained from Kelcey Land (8ENF–T), U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Suite 5000, Colorado 80202–2405, (303) 312–6393. Additional background information relating to the proposed cost settlement is available for review at the Superfund Records Center at the above address.

It is So Agreed.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 00–7328 Filed 3–23–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6564–4]

Announcement of Schedule for Resource Conservation & Recovery Act (RCRA) Corrective Action Guidance Documents and Request for Feedback on RCRA Cleanup Reforms

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice .

SUMMARY: The intent of this notice is to announce a schedule and invite comment on three upcoming RCRA Cleanup Reforms draft guidance documents and invite additional feedback on the Resource Conservation & Recovery Act (RCRA) Cleanup Reforms announced on July 8, 1999. By inviting additional feedback and giving advanced notice of when we expect these draft guidance documents to be available for review and comment, we hope to encourage greater involvement by states, industry, and the public.

ADDRESSES: There will be a 60-day public comment period for each of three RCRA Corrective Action draft guidance documents. Brief descriptions of each of these draft guidance documents are included under Supplemental Information later in this Notice. The first draft guidance document that will be available is called the Handbook of Groundwater Policies for RCRA Corrective Action. The Agency expects it will be available for public review and comment in April 2000. If you would like to receive a copy, please call the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired).

Brief **Federal Register** Notices will announce the other two draft guidance documents when they become available later this spring. The Agency also intends to post these documents on the Corrective Action website http://www.epa.gov/correctiveaction.

If you wish to comment on the above draft guidance documents when they become available or provide feedback on the RCRA Cleanup Reforms in general, you should send an original and two copies of your comments, referencing docket number F–2000–CURA–FFFFF. If using regular US Postal Service mail to: RCRA Docket Information Center, U.S. Environmental Protection Agency Headquarters (EPA HQ), Office of Solid Waste, Ariel Rios Building (5305G), 1200 Pennsylvania Avenue NW, Washington, DC 20460–0002. If using special delivery such as overnight express service send to: RCRA Docket Information Center (RIC), Crystal Gateway I, 1235 Jefferson Davis Highway, First Floor, Arlington, VA 22202. Hand deliveries of comments should be made to the Arlington, VA, address above. You may also submit comments electronically through the Internet to: rcra-docket@epa.gov. Comments in electronic format must also reference the docket number F–2000–CURA–FFFFF. If you choose to submit your comments electronically, you should submit them as an ASCII file and should avoid the use of special characters and any form of encryption.

You should not submit electronically confidential business information (CBI). You must submit an original and two copies of CBI under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste, U.S. EPA, Ariel Rios Building (5305W), 1200 Pennsylvania Avenue NW, Washington, DC 20460–0002.

Any public feedback we receive and supporting materials will be available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, we recommend that you make an appointment by calling 703–603–9230. You may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. The index and some supporting materials are available electronically. See the **SUPPLEMENTARY INFORMATION** section of this **Federal Register** notice for information on accessing the index and these supporting materials.

FOR FURTHER INFORMATION CONTACT: For general information or to obtain copies of the draft guidance documents when they become available and RCRA Cleanup Reforms information, contact the RCRA Hotline at 800–424–9346 or TDD 800–553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call 703–412–9810 or TDD 703–412–3323.

For more detailed information on specific aspects of the draft guidance documents, contact Andrew Baca, Office of Solid Waste, 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (703–308–6787), (baca.andrew@epa.gov). For more detailed information on the RCRA Cleanup Reforms, contact Kevin Donovan, Office of Solid Waste, 5303W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, (703–308–8761), (donovan.kevin-e@epa.gov).

SUPPLEMENTARY INFORMATION: The draft guidance documents will be available on the Internet at: http://www.epa.gov/correctiveaction.

Information on the RCRA Cleanup Reforms (RCRA Cleanup Reforms Fact Sheet, RCRA Cleanup Baseline, Environmental Indicator Guidance, and additional Corrective Action Information) is available electronically at: http://www.epa.gov/epaoswer/osw/cleanup.htm.

The official record for this notice will be kept in paper form. Accordingly, we will transfer all feedback and input received electronically into paper form and place them in the official record, which will also include all comments submitted directly in writing. The official record is the paper record maintained at the RCRA Information Center.

All input will be thoroughly and seriously considered by EPA. Based on stakeholder input and our ongoing assessment of the program, we will continue to refine the RCRA Cleanup Reforms, add reforms as needed, and communicate program changes including those resulting from stakeholder input. We will provide periodic updates on the RCRA Cleanup Reforms and solicit input from stakeholders through several means including focus meetings, **Federal Register** Notices, the RCRA Corrective Action Newsletter (RCRA CAN), Internet postings, and press releases. EPA will not immediately reply to commenters electronically other than to seek clarification of electronic comments that may be garbled in transmission or during conversion to paper form, as discussed above.

The contents of today's notice are listed in the following outline:

I. What are the RCRA Cleanup Reforms?
II. What guidance documents are discussed in this notice?
A. Results-Based Approaches to Corrective Action
B. Corrective Action Completion Guidance
C. Handbook of Groundwater Policies for RCRA Corrective Action
III. Why are these guidance documents significant?
IV. What is the proposed schedule?
A. Guidance Document review
B. Feedback on RCRA Reforms
V. How Can I Influence EPA's Thinking on the RCRA Corrective Action Program?

I. What Are the RCRA Cleanup Reforms?

On July 8, 1999 EPA announced that it is implementing a set of administrative reforms, known as the RCRA Cleanup Reforms, to the Resource Conservation and Recovery Act (RCRA) Corrective Action Program. The reforms are designed to achieve faster, more efficient cleanups at RCRA sites that have actual or potential contamination. The Reform areas are:

—Provide new results-oriented guidance with clear objectives,
—Foster maximum use of program flexibility and practical approaches through training, outreach, and new uses of enforcement tools, and
—Enhance community involvement including greater public access to information on cleanup progress.

See the previous section entitled **FOR FURTHER INFORMATION** * * * on how to get additional detail and information on the RCRA Cleanup Reforms.

II. What Guidance Documents Are Discussed in This Notice?

Three draft guidance documents for the RCRA Corrective Action program are discussed below. Please note that the titles of these draft guidances may have changed slightly since the RCRA

Cleanup Reforms announcement on July 8, 1999 as a result of the Agency's current thinking.

A. Results-Based Approaches to Corrective Action

This guidance will take the form of an overview and supporting documents. The "Overview to Results-Based Approaches to Corrective Action" defines results-based corrective action and lists some of the approaches recommended to help stakeholders achieve program goals. These approaches include tailored oversight, procedural flexibility, holistic approach, presumptive remedies, performance standards, use of innovative technologies, targeted data collection, and owner/operator initiated corrective action. The first supporting document focuses on implementing tailored oversight. It provides a recommended framework for project managers and owner/operators to develop an oversight plan tailored to site-specific conditions.

B. Corrective Action Completion

This document will guide the Regions and the authorized States through issues that arise at the end of the corrective action process at RCRA treatment, storage, and disposal facilities (TSDF). Formal recognition that corrective action activities are complete provides assurance to the owner or operator that EPA intends no further imposition of RCRA corrective action requirements at the site unless the facility continues to operate as a TSDF and there is a subsequent release. Providing this assurance can help communities return previously used commercial and industrial properties, such as "brownfields," to productive use.

It is important that EPA Regions and the authorized States understand the issues related to corrective action completion. This guidance will provide useful information, and will encourage appropriate and timely action on the part of regulators.

C. Handbook of Groundwater Policies for RCRA Corrective Action

EPA is compiling in a single Handbook most policies concerning groundwater at facilities subject to corrective action under RCRA. This Handbook will help address concerns about time-consuming uncertainties and confusion about EPA's expectations for groundwater protection and clean up. It will help you as regulators and members of the regulated community, as well as the general public, find and understand EPA policies on groundwater use and the protection and clean up of groundwater at RCRA facilities. It will highlight the considerable flexibility in existing policies, particularly to those states that have distinguished the relative value and priority of their groundwater resources. The Handbook will also encourage States to take a lead role in protecting their groundwater resources.

Topic areas that will be discussed in the guidance will include: Groundwater Use Designations, Short-Term Protectiveness Goals, Final Remediation Goals, Cleanup Levels, Point of Compliance, Source Control, Monitored Natural Attenuation, Technical Impracticability, and Completing Remedies.

III. Why Are These Guidance Documents Significant?

The draft guidance documents discussed above are significant because EPA announced on October 7, 1999 (64 FR 54604) that it would not be finalizing the vast majority of the 1990 Proposed Subpart S regulations. EPA withdrew most of the proposed rule because we determined that such regulations are not necessary to carry out the Agency's duties under sections 3004 (u) and (v). Additionally, attempting to promulgate a comprehensive set of RCRA regulations could unnecessarily disrupt the State and Territorial programs already authorized to carry out the Corrective Action Program in lieu of EPA, as well as the additional State programs currently undergoing review for authorization. This decision ended uncertainty related to the Subpart S rulemaking for State regulators and owners and operators of hazardous waste management facilities. The guidance documents discussed in this notice will provide some further direction on performing the cleanup, or "corrective action," of contamination at RCRA facilities.

IV. What Is the Proposed Schedule?

A. Guidance Document Review

We anticipate that all the draft guidance documents will be available for public review and comment in spring 2000. These guidance documents are likely to become available at different times this spring. They will be available for review for a period of sixty (60) days for each draft guidance document. EPA is announcing the upcoming availability of the draft guidance documents for review and comment and information on how to obtain them when they are available and provide input on them to the Agency in this **Federal Register** and also on the following Websites: www.epa.gov/correctiveaction and www.epa.gov/epaoswer/osw/cleanup.

B. Feedback on RCRA Reforms

We continue to seek feedback from all stakeholders on the need for additional reforms to the RCRA Corrective Action program.

V. How Can I Influence EPA's Thinking on the RCRA Corrective Action Program?

In developing these upcoming draft guidances and the RCRA Cleanup Reforms, we are trying to address the key factors that may be impeding timely and cost-effective cleanups. We invite you to provide different views, or new approaches we haven't considered in trying to improve the pace and effectiveness of Corrective Action Cleanups. We welcome your views on the draft guidances and any aspect of the Reforms. Your feedback will be most effective if you follow the suggestions below:

—Explain your views as clearly as possible and why you feel that way,

—Provide solid technical and cost data to support your views,

—Tell us which parts you support, as well as those you disagree with,

—Provide solid technical and cost data to support your views,

—Tell us which parts you support, as well as those you disagree with,

—Provide specific examples to illustrate your point,

—Offer specific Reforms,

—Refer your comments to specific sections of the Reforms material, and

—Be sure to include the name, date, and docket number with your comments.

EPA continues to seek feedback from all stakeholders on the need for additional reforms to the RCRA Corrective Action Program. Based on stakeholder input and our ongoing assessment of the program, we will continue to refine the RCRA Cleanup Reforms, add reforms as needed, and communicate program changes including those resulting from stakeholder input. EPA may need to seek clarification of electronic or written feedback, or feedback received over the telephone.

Dated: March 17, 2000.

Elizabeth A. Cotsworth,

Director, Office of Solid Waste.

[FR Doc. 00–7326 Filed 3–23–00; 8:45 am]

BILLING CODE 6560–50–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comments Request

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Commission announces that it intends to submit to the Office of Management and Budget (OMB) a request for an extension of the expiration date without change to the existing collection requirements under 29 CFR 1625.22, Waivers of rights and claims under the ADEA. The Commission is seeking public comments on the proposed extension.

DATES: Written comments on this notice must be submitted on or before May 23, 2000.

ADDRESSES: Comments should be submitted to Frances M. Hart, Executive Officer, Executive Secretariat, Equal Employment Opportunity Commission, 10th Floor, 1801 L Street, NW, Washington, DC 20507. As a convenience to commentators, the Executive Secretariat will accept comments transmitted by facsimile ("FAX") machine. The telephone number for the FAX receiver is (202) 663–4114. (This is not a toll-free number.) Only comments of six or fewer pages will be accepted via FAX transmittal. This limitation is necessary to assure access to the equipment. Receipt of FAX transmittals will not be acknowledged, except that the sender may request confirmation of receipt by calling the Executive Secretariat staff at (202) 663–4078 (voice) or (202) 663–4074 (TDD). (These are not toll-free telephone numbers.) Copies of comments submitted by the public will be available for review at the Commission's library, Room 6502, 1801 L Street, NW, Washington, DC 20507 between the hours of 9:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Joseph N. Cleary, Assistant Legal Counsel, Office of Legal Counsel, at (202) 663–4647 or TTY (202) 663–7026. This notice is also available in the following formats: large print, braille, audio tape and electronic file on computer disk. Requests for this notice in an alternative format should be made to the Publications Center at 1–800–669–3362.

SUPPLEMENTARY INFORMATION: The Equal Employment Opportunity Commission (EEOC) enforces the ADEA of 1967, as amended, 29 U.S.C. 621 *et seq.*, which prohibits discrimination against employees and applicants for employment who are age 40 or older. Congress amended the ADEA by enacting the Older Workers Benefit Protection Act of 1990 (OWBPA), Pub. L. No. 101–433, 104 Stat. 983 (1990), to clarify the prohibitions against discrimination on the basis of age. In Title II of OWBPA, Congress addressed waivers of rights and claims under the ADEA, amending section 7 of the ADEA by adding a new subsection (f), 29 U.S.C. 626(f). The provisions of Title II of OWBPA do require employers to provide certain information to employees (but not to EEOC) in writing. The regulation at 29 CFR 1625.22 reiterates those requirements.

The EEOC seeks extension without change of the information collection requirements contained in this recordkeeping regulation.

Collection Title: Informational requirements under Title II of the Older Workers Benefit Protection Act of 1990 (OWBPA), 29 CFR Part 1625.

Form Number: None. Frequency of Report: None required.

OMB Control No. 3046–0042.

Type of Respondent: Business, state or local governments, not for profit institutions.

Description of the Affected Public: Any employer with 20 or more employees that seeks waiver agreements in connection with exit incentive or other employment termination programs (hereinafter, "Programs").

Responses: 13,713.

Reporting Hours: 41,139.

Number of Forms: None.

Abstract: This requirement does not involve record keeping. It consists of providing adequate information in waiver agreements offered to a group or class of persons in connection with a Program, to satisfy the requirements of the OWBPA.

Burden Statement: There is no reporting requirement nor additional record keeping associated with this rule. The only paperwork burden involved is the inclusion of the relevant data in waiver agreements. The rule applies only to those employers who have 20 or more employees and who offer waivers to a group or class of employees in connection with a Program.

Pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 5, and OMB regulation 5 CFR 1320.8(d)(1), the Commission solicits public comment to enable it to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the Commission's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of the Commission's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Dated: March 17, 2000.

For the Commission.

Ida L. Castro,

Chairwoman.

[FR Doc. 00–7265 Filed 3–23–00; 8:45 am]

BILLING CODE 6570–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2395]

Petitions for Reconsideration of Action in Rulemaking Proceedings

March 16, 2000.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to these petitions must be filed by April 10, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in The 800 MHz Frequency Band (PR Docket No. 93–144, RM–8117, RM–8030, RM–8029).

Implementation of Sections 3(n) and 332 of the Communications Act—Regulatory Treatment of Mobile Services (GN Docket No. 93–252).

Implementation of Section 309(j) of the Communications Act—Competitive Bidding (PP Docket No. 93–253).

Number of Petitions Filed: 2.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7302 Filed 3–23–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:00 pm on Friday, March 24, 2000, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, pursuant to sections 552b(c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B), of Title 5, United States Code, to consider matters relating to the Corporation's supervisory, corporate, and personnel activities.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550 17th Street, NW, Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Executive Secretary of the Corporation, at (202) 898–6757.

Dated: March 21, 2000.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 00–7394 Filed 3–21–00; 4:48 pm]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1320–DR]

Kentucky; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Kentucky, (FEMA–1320–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 2000:

Bourbon, Johnson, Lawrence, Oldham, and Pendleton Counties for Public Assistance

Carter County for Public Assistance (already designated for Individual Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Robert J. Adamcik,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 00–7331 Filed 3–23–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1318–DR]

Virginia; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the Commonwealth of Virginia, (FEMA–1318–DR), dated February 28, 2000, and related determinations.

EFFECTIVE DATE: March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3772.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the Commonwealth of Virginia is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of February 28, 2000:

The City of Lynchburg and the City of Norton for debris removal (Category A), emergency protective measures (Category B), and utilities (Category F) under Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program.)

Lacy E Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 00–7330 Filed 3–23–00; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Announcement of Board Approval Under Delegated Authority and Submission to OMB

SUMMARY:

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.16 (OMB Regulations on Controlling Paperwork Burdens on the Public). Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instrument(s) are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

FOR FURTHER INFORMATION CONTACT: Chief, Financial Reports Section—Mary M. West—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202–452–3829) OMB Desk Officer—Alexander T. Hunt—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202–395–7860).

Final Approval Under OMB Delegated Authority of the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title*: Interagency Notice of Change in Control, Interagency Notice of Change in Director or Senior Executive Officer, and Interagency Biographical and Financial Report.

Agency form numbers: FR 2081a, FR 2081b, and FR 2081c.

OMB control number: 7100–0134.

Frequency: On occasion.

Reporters: Financial institutions and certain of their officers and shareholders.

Annual reporting hours: Interagency Notice of Change in Control—4,800 hours; Interagency Notice of Change in Director or Senior Executive Officer—150 hours; Interagency Biographical and Financial Report—5,100 hours; Total—10,050 hours.

Estimated average hours per response: Interagency Notice of Change in Control—30 hours; Interagency Notice of Change in Director or Senior Executive Officer—2 hours; Interagency Biographical and Financial Report—4 hours.

Number of respondents: Interagency Notice of Change in Control—160; Interagency Notice of Change in Director or Senior Executive Officer—75; Interagency Biographical and Financial Report—1,275. Small businesses are affected.

General description of report: This information collection is mandatory (12 U.S.C. 1817(j) and 12 U.S.C. 1831(i)) and is not given confidential treatment.

Abstract: In 1996 a Federal Financial Institutions Examination Council task force adapted, reformatted, and retitled the three reports, pursuant to the Riegle Community Development and Regulatory Improvement Act of 1994. The Federal Reserve uses the biographical portions of the collections to evaluate the competence, experience, character, and integrity of persons proposed as organizers, senior executive officers, directors, or principal shareholders. The financial portion is used to evaluate the financial ability of persons proposed as organizers, senior executive officers, directors, or principal shareholders. The reports are also used to allow or disapprove proposed acquisitions. The reporting forms allow applicants greater efficiency in the interagency application process including eliminating duplicative filings.

Final Approval Under OMB Delegated Authority of the Extension for Three Years, With Minor Revisions, of the Following Reports

1. *Report title*: The Weekly Report of Eurodollar Liabilities Held by Selected U.S. Addressees at Foreign Offices of U.S. Banks.

Agency form number: FR 2050.

OMB control number: 7100–0068.

Frequency: Weekly.

Reporters: Foreign branches and banking subsidiaries of U.S. depository institutions.

Annual reporting hours: 2,236 burden hours.

Estimated average hours per response: 1.0 hour.

Number of respondents: 43. Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C.§§ 248(a)(2), 353 *et seq.*, 461, 602, and 625). Individual respondents data are confidential under section (b)(4) of the Freedom of Information Act (5 U.S.C. 552(b)(4)).

Abstract: The report collects data on Eurodollar deposits payable to nonbank U.S. addressees from foreign branches and subsidiaries of U.S. commercial banks and Edge and agreement corporations. The data are used for the construction of the Eurodollar component of the monetary aggregates and for analysis of banks' liability management practices.

Current Actions: The Federal Reserve will raise the reporting cutoff from a weekly average of $350 million to $500 million in Eurodollar liabilities.

2. *Report title*: The Quarterly Report of Assets and Liabilities of Large Foreign Offices of U.S. Banks.

Agency form number: FR 2502q.

OMB control number: 7100–0079.

Frequency: Quarterly.

Reporters: Large foreign branches and banking subsidiaries of U.S. depository institutions.

Annual reporting hours: 13,132 hours.

Estimated average hours per response: 3.5 hours.

Number of respondents: 938. Small businesses are not affected.

General description of report: This information collection is required (12 U.S.C.§§ 248(a)(2), 353 *et seq.*, 461, 602, and 625) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The report collects gross assets and liability positions from foreign branches and subsidiaries of U.S. commercial banks and Edge and agreement corporations vis-a-vis individual countries. A separate schedule collects information on Eurodollar liabilities payable to certain U.S. addressees.

Current Actions: The Federal Reserve will add the European Central Bank to the country list. In addition, the instructions will be clarified to say that U.S. banks report only for subsidiaries that have a banking charter and are engaged in banking business.

Final Approval Under OMB Delegated Authority to Conduct, Without Revision, the Following Report

1. *Report title*: The Quinquennial Finance Company Questionnaire and Survey.

Agency form number: FR 3033p/s.

OMB control number: 7100–0277.

Frequency: One-time.

Reporters: Domestic finance companies.

Annual reporting hours: Questionnaire, 750 hours; Survey, 840 hours.

Estimated average hours per response: Questionnaire, 0.25 hours; Survey, 1.4 hours.

Number of respondents: Questionnaire, 3000; Survey, 600. Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 263, and 353–359) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: Since 1995 the Federal Reserve has conducted surveys of domestic finance companies every five years on consumer and business credit and on major assets and liabilities of finance companies. The first stage is a simple questionnaire (FR 3033p) which is sent to all domestic finance companies. The questionnaire asks for information on each company's total receivables, areas of specialization, and other characteristics. From the universe of FR 3033p respondents, the Federal Reserve will draw a stratified random sample for the survey itself (FR 3033s). The survey will request detailed information, as of June 30, 2000, from both sides of the respondents' balance sheet.

Final Approval Under OMB Delegated Authority to Conduct Two-One Time Surveys

1. *Report title*: Customer Satisfaction Survey of Federal Reserve Bulletin Subscribers, and Customer Satisfaction Survey of Publication Subscribers.

Agency form number: FR 1371; and FR 1372.

OMB Control number: 7100–0293.

Frequency: One-time.

Reporters: Federal Reserve Bulletin subscribers; and Federal Reserve publications subscribers.

Annual reporting hours: FR 1371, 100; and FR 1372, 100.

Estimated average hours per response: 0.25 hours per survey.

Number of respondents: 400 per survey. Small businesses are affected.

General description of report: This information collection is voluntary (12 U.S.C 248i). The individual date are not considered confidential.

Abstract: The Customer Satisfaction Survey of *Federal Reserve Bulletin* Subscribers (FR 1371) will solicit comments on the content and usefulness of the Federal Reserve's monthly Bulletin from a sample of subscribers. The staff is focusing on the Bulletin because the Board devotes substantial resources to this publication and will use the information from this survey to determine whether the Board should continue to publish the Bulletin in its current form. The Customer Satisfaction Survey of Publication Subscribers (FR 1372) will solicit comments on the quality of the customer service provided by the Board's Publications Services Department. The information will be used to assess whether the needs of the Board's subscribers are being met in a courteous and expeditious manner and whether changes should be made to the ordering and payment policies and processes in order to increase efficiency and customer satisfaction.

Discontinuation of the Following Report

1. *Report title*: Report of Medium Term Note Issuance.

Agency form number: FR 2600.

OMB control number: 7100–0245.

Effective Date: Friday, March 31, 2000.

Frequency: Monthly, quarterly, or semi-annually.

Reporters: U.S. firms filing SEC shelf registration statements for medium term notes.

Annual reporting hours: 94 burden hours.

Estimated average hours per response: 0.083 hours.

Number of respondents: 424. Small businesses are affected.

General description of report: This information collection is voluntary (15 U.S.C. §§ 225a and 353 et seq). Respondent data are not regarded as confidential.

Abstract: The FR 2600 collects information on the monthly volume of medium-term notes issued by corporations.

Current Actions: The Federal Reserve will discontinue the FR 2600. The report has become unnecessary because data are now obtained from the Depository Trust Corporation, a national clearing house that collects data on medium-term notes issued in the course of its business of clearing and settling securities and acting as trustee for holders of securities.

Board of Governors of the Federal Reserve System, March 20, 2000.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 00–7269 Filed 3–23–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 17, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303–2713:

1. United Community Banks, Inc., Blairsville, Georgia; to merge with North Point Bancshares, Inc., Dawsonville, Georgia, and thereby indirectly acquire Dawson County Bank, Dawsonville, Georgia.

2. United Community Banks, Inc., Blairsville, Georgia; to merge with Independent Bancshares, Inc., Powder Springs, Georgia, and thereby indirectly acquire Independent Bank & Trust Company, Powder Springs, Georgia.

Board of Governors of the Federal Reserve System, March 20, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7271 Filed 3–23–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 7, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Banks, Inc., Creve Coeur, Missouri; to acquire certain assets and assume certain liabilities of First Capital Group, Inc., Albuquerque, New Mexico, and thereby engage in leasing personal and real property activities, pursuant to § 225.28(b)(3) of Regulation Y. The leasing activities will be conducted in a newly formed direct wholly owned subsidiary of Notificant, which will assume the selling institution's name of First Capital Group, Inc. and retain its head office location in Albuquerque, New Mexico.

Board of Governors of the Federal Reserve System, March 20, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7270 Filed 3–23–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

Agency Holding the Meeting: Board of Governors of the Federal Reserve System.

Time and Date: 10:00 am, Wednesday, March 29, 2000.

Place: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW., Washington, DC 20551.

Status: Closed.

Matters to be Considered:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

Contact Person for More Information: Lynn S. Fox, Assistant to the Board; 202–452–3204.

Supplementary Information: You may call 202–452–3206 beginning at approximately 5 pm two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 22, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7428 Filed 3–22–00; 10:59 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Public Workshop; Slotting Allowances and Other Grocery Marketing Practices: When Should They Raise Antitrust Concerns?

AGENCY: Federal Trade Commission.

ACTION: Notice announcing workshop.

SUMMARY: The Federal Trade Commission has set May 31 and June 1 as the dates for its public workshop examining the appropriate antitrust assessment of slotting allowances, category management, and other grocery marketing practices.

DATES: The workshop will be held on May 31 and June 1 in the Commission Meeting Room (Room 432), 600 Pennsylvania Avenue, NW., Washington, DC 20580.

FOR PANEL PARTICIPATION OR FURTHER INFORMATION CONTACT: To obtain information about possible panel participation or for questions about the workshop, please contact: David Balto, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–2881, e-mail *dbalto@ftc.gov;* or William Cohen, Office of Policy Planning, Federal Trade Commission, 600 Pennsylvania Avenue, NW., Washington, DC 20580, telephone 202–326–2110, e-mail *wcohen@ftc.gov.*

SUPPLEMENTARY INFORMATION:

Public Workshop: Slotting Allowances and Other Grocery Marketing Practices: When Should They Raise Antitrust Concerns?

Overview

In recent years, debate has continued about when slotting allowances and other grocery marketing practices appropriately raise antitrust concerns and thus pose potential matters for antitrust enforcement. The Commission last held hearings in this area in November, 1995, and this past fall, both the Senate Small Business Committee and the House Judiciary Committee held hearings that addressed several issues, including antitrust issues, in connection with slotting allowances.

The term "slotting allowance" typically refers to a lump-sum, up-front payment that a food manufacturer must pay to a supermarket for access to its shelves. Very often, debates over slotting allowances have assumed that all slotting allowances, and all of the market conditions in which they are used, are the same. In fact, the term "slotting allowance" has been used to cover an extremely broad range of conduct, some of it clearly unlawful as commercial bribery, some clearly lawful, and a great deal of it in the gray area in between, the antitrust legality of which can be determined only in light of all the surrounding facts and circumstances. At the same time, the legal and economic literature on the appropriate antitrust analysis of these practices has not been as well developed as would be desirable.

The FTC plans to convene a workshop that will focus on the antitrust implications of slotting allowances and other grocery marketing practices, such as category management, in which retailers engage particular manufacturers to provide advisory or decisionmaking functions in determining how best to market certain products of a type produced by those manufacturers. The workshop is intended to facilitate a discussion among manufacturers and retailers (both small and large businesses), consumer groups, marketing experts, economists, and lawyers that will increase factual knowledge and illuminate the relevant antitrust issues with respect to these and other grocery marketing practices. The format will consist of panel presentations and discussions, which will include participation by attendees.

The goal of the workshop is to gain a better understanding of the types of slotting allowances and other grocery marketing practices that are used, the reasons for which they are used, and the criteria for assessing whether slotting allowances or other grocery marketing practices raise antitrust concerns. Interested parties are invited to participate or attend.

Specific Question To Be Addressed

The workshop will address the following questions, among others:

- What are the different types of slotting allowances, and what prompts the use of one type rather than another?
- Are slotting allowances used for both new and established products? In what proportion?
- How do slotting allowances vary from other types of product promotion, and what circumstances lead to the use of slotting allowances rather than other types of product promotion?
- How do slotting allowances vary from market to market?
- What is the impact of slotting allowances on new product development and innovation?
- Do slotting allowances significantly increase the capital costs of entry or doing business in particular markets? If so, how do capital markets respond?
- How do supermarkets ultimately use the fees they receive as slotting allowances?
- Under what circumstances do slotting allowances have an impact on prices to consumers and consumer demand? What is the impact?
- Are slotting allowances sometimes paid in order to obtain substantial exclusivity and, arguably, market power?
- If slotting allowances were prohibited, would that lead to material differences in the bargaining relationship between manufacturers and retailers—or would discounts to retailers simply take a different form?

• What other types of grocery marketing practices—such as category management—may raise antitrust concern? What are those marketing practices, and under what circumstances might they pose antitrust issues?

The Commission welcomes suggestions for other questions that should be addressed as well.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–7268 Filed 3–23–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–1450]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Health Care Financing Administration.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) The accuracy of the estimated burden; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) The use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Reinstatement without change of a previously approved collection for which approval has expired;

Title of Information Collection: Medicare Uniform Institutional Provider Bill and Supporting Regulations in 42 CFR 424.5;

Form No.: HCFA–1450 (OMB# 0938–0279);

Use: This standardized form is used in the Medicare/Medicaid program to apply for reimbursement for covered services by all providers that accept Medicare/Medicaid assigned claims. It reduces cost and administrative burden associated with claims since only one reimbursement coding system is used and maintained.

Frequency: On occasion;

Affected Public: Business or other for-profit, Not-for-profit institutions, Federal Government, and State, Local or Tribal Government;

Number of Respondents 47,113;

Total Annual Responses: 149,609,549;

Total Annual Hours: 1,960,991.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: March 14, 2000.

John P. Burke III,

Manager, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–7284 Filed 3–23–00; 8:45 am]

BILLING CODE 4120–03–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–143]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information. Interested persons are invited to send comments regarding the burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection;

Title of Information Collection: Analysis of Malpractice Premium Data;

Form No.: HCFA–R–143 (OMB# 0938–0575);

Use: This form is used for computing the Medicare physician fee schedule Malpractice Geographic Practice Cost Index (MGPCI) and the Medicare Economic Index (MEI). The data collected will be used to update the MGPCI and the new resource-based malpractice relative value units (MRVUs) component of the physician fee schedule. The malpractice data are critical to the accuracy of the Medicare physician fee schedule.;

Frequency: Other: every 3 years;

Affected Public: State, Local or Tribal Gov., Business or other for-profit, and Not-for-profit institutions;

Number of Respondents: 50;

Total Annual Responses: 50;

Total Annual Hours: 150.

To obtain copies of the supporting statement for the proposed paperwork collections referenced above, access HCFA's WEB SITE ADDRESS at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address and phone number, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: February 8, 2000.

John P. Burke III,

HCFA Reports Clearance Officer, HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–7285 Filed 3–23–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–09]

Notice of Proposed Information Collection; Comment Request; Utility Allowance Adjustments

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: May 23, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, DC 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Multifamily Housing, Office of Business Products, Department of Housing and Urban Development, 451 7th Street SW, Washington, DC 20410, telephone number (202) 708–2866 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Utility Allowance Adjustments.

OMB Control Number, if applicable: 2502–0352.

Description of the need for the information and proposed use: When approval of a utility rate change would result in a cumulative increase of 10 percent or more in the most recently approved utility allowances for subsidized properties, the project owner must advise the Secretary and request new utility allowances. HUD uses this information to ensure that the utility allowances are appropriate for each unit type at the subsidized properties which provide utility allowances for its residents.

Agency form numbers, if applicable: None.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents are 1,200, the frequency of responses is 1 a year, the estimated hours per response is 30 minutes per response, and the estimated annual hour burden is 600.

Status of the proposed information collection: Extension of a currently approved collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 17, 2000.

William C. Apgar,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 00–7262 Filed 3–23–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–14]

Notice of Submission of Proposed Information Collection to OMB; Study of the Effectiveness of the Milwaukee Lead Hazard Control Ordinance

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: Comments Due Date: April 24, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments must be received within thirty (30) days from the date of this Notice. Comments should refer to the proposal by name and/or OMB approval number should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: A Study of the Effectiveness of the Milwaukee Lead Hazard Control Ordinance.

OMB Control Number: 2539–XXXX.

Description of the Need for the Information and Its Proposed Use: This study will assess the effectiveness of a city of Milwaukee ordinance requiring owners pre-1950 rental housing in two neighborhoods with high rates of childhood lead poisoning to conduct specified low cost lead hazard control treatments. Children born into treated units will be followed for 2 years to assess the efficacy of the interventions in preventing overexposure to lead. This information will be useful for determining the primary prevention effectiveness of these interventions and for other municipalities that are contemplating similar legislation. Residents of the two "treatment" neighborhoods and two control

neighborhoods will be recruited into the study.

Form Numbers: None.

Respondents: Individuals or households, State, Local or Tribal Government.

Frequency of Submission: Reporting.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
New Collection	312		2		0.68		425

Total Estimated Burden Hours: 425.

Status: New Collection.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 17, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–7260 Filed 3–23–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–15]

Notice of Submission of Proposed Information Collection to OMB; Multifamily Mortgage Insurance Benefits Claim

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 24, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0415) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne_Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Multifamily Mortgagee Insurance Benefits Claims.

OMB Approval Number: 2502–0415.

Form Numbers: HUD–2742, –2744–A, –2744–B, –2744–C, –2744–D, –2744–E.

Description of the Need for the Information and Its Proposed Use: To collect information from mortgagee claimants necessary to provide benefits of mortgage insurance to those mortgagees.

Respondents: Business or Other-for-Profit.

Frequency of Submission: As applications are submitted.

Reporting Burden:

Number of respondents	x	Frequency of responses	x	Hours per response	=	Burden hours
118		1		3.5		411

Total Estimated Burden Hours: 411.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 17, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–7261 Filed 3–23–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for the Coastal California Gnatcatcher Associated With Residential Development in the City of Fullerton, County of Orange, California

AGENCY: Fish and Wildlife Service, DOI.

ACTION: Notice of availability.

SUMMARY: Van Daele Development Corporation of Riverside, California (Van Daele), has applied to the Fish and Wildlife Service for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act, 1973, as amended. Van Daele seeks a permit for a period of 3 years that would authorize incidental take of a bird, the threatened coastal California gnatcatcher (*Polioptila californica californica*), associated with single-family residential development and occupancy of 35 acres of habitat within the City of Fullerton, County of Orange, California. The permit application includes a Habitat Conservation Plan and an Implementation Agreement, both of which are available for public review and comment. We also request

comments on our Environmental Assessment for the proposed issuance of the incidental take permit. We provide this notice pursuant to section 10(a) of the Endangered Species Act and National Environmental Policy Act regulations (40 CFR 1506.6). All comments on the Environmental Assessment and permit application will become part of the administrative record and will be available to the public.

DATES: Written comments should be received on or before April 24, 2000.

ADDRESSES: You should address written comments to Mr. Ken Berg, Field Supervisor, Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. You also may send comments by facsimile to telephone (760) 431–9624.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Evans, Division Chief, Los Angeles and Orange Counties, at the above address or call (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Availability of Documents

You may obtain copies of the documents for review by calling our Carlsbad Fish and Wildlife Office at the above referenced telephone number. You also may make an appointment to review the documents during normal business hours at the above address.

Background

Section 9 of the Endangered Species Act and Service regulations prohibit the "take" of threatened or endangered wildlife. Take means to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture or collect listed animal species, or attempt to engage in such conduct (16 USC 1538). Harm may include significant habitat modification that actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, and sheltering [50 CFR 17.3(c)]. The Service, however, may issue permits to take endangered and/or threatened wildlife incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered and threatened species are found at 50 CFR 17.22 and 17.32.

We propose to issue a permit to Van Daele authorizing take of the threatened coastal California gnatcatcher incidental to otherwise lawful construction, development, and occupancy of a residential subdivision. This project would directly impact the gnatcatcher by removing 4.65 acres of suitable habitat on the 35-acre parcel. The permit application includes a Habitat Conservation Plan and an Implementation Agreement that define the responsibilities of all parties under the Plan. Van Daele's Habitat Conservation Plan describes alternatives to the action and includes measures to minimize and mitigate impacts to the gnatcatcher.

To minimize impacts, Van Daele proposes in its Habitat Conservation Plan to flush coastal California gnatcatchers prior to grading operations and to monitor the site during clearing and grubbing operations (brushing). To mitigate for the permanent loss of occupied habitat due to the proposed subdivision development, Van Daele proposes to permanently protect coastal sage scrub habitat off site that has high long-term conservation value for the coastal California gnatcatcher. Van Daele has agreed with the Service to mitigate for the entire habitat area that supports coastal California gnatcatchers on site, which includes not only the coastal sage scrub but also the grassland ecotone (transition zone between habitat types) and the mulefat scrub on the property, for a combined total of 4.65 acres.

The mitigation plan contains four options that include acquisition or restoration, preservation, and management of high-quality habitat to support coastal California gnatcatchers (in order of priority);

1. Contribute funds to the purchase of lands within the Coal Canyon wildlife corridor.

2. Purchase coastal California gnatcatcher occupied habitat adjacent to, and for incorporation into, Chino Hills State Park.

3. Purchase land within the conditional sale area of the previously approved Shell Oil/Metropolitan Water District Habitat Conservation Plan, for incorporation into the Chino Hills State Park.

4. Restore 4.65 acres of a lemon orchard to coastal sage scrub vegetation within Chino Hills State Park. This lemon orchard is adjacent to occupied coastal California gnatcatcher habitat.

Based on lands valued at $37,000 per acre (as determined from the cost of land in the Shell Oil/Metropolitan Water District conditional sale area), Van Daele proposes to contribute a minimum of $172,050 in fulfillment of this Habitat Conservation Plan. The Service expects that this amount would be adequate to acquire between 3 and 4.65 acres of habitat, or to restore 4.65 ares of habitat. Van Daele reserves the right to propose other possible options at a later date. These options may be selected if they are acceptable to the Service and do not diminish the level or means of mitigation. We anticipate these options to be the acquisition of lands in another established reserve, should one become available prior to the issuance of Van Daele's grading permit and the use of the funds.

In our Environmental Assessment, we considered Van Daele's proposed project (Proposed Action Alternative) and three scenarios under the No Action Alternative. Under the Proposed Action Alternative, we would issue a permit under section 10(a)(1)(B) of the Endangered Species Act to Van Daele, authorizing incidental take of the threatened coastal California gnatcatcher during development and occupancy of the single-family residence tract on the 35-acre proposed project site. The project site was previously used for oil and gas operations. Prior to development, Van Daele would ensure that the site is fully remediated for hazardous wastes that might be present as a result of the approximately 19 wells that have operated at the site. The remediation would be fully compliant with requirements of all applicable State, County, and local agencies and regulations. Three oil wells would remain in operation concurrently with and adjacent to the proposed project.

Implementation of the proposed project would require several discretionary actions by the City of Fullerton including a Specific Plan amendment, zone change, and development agreement. Development of the proposed project would result in the conversion of approximately 35 acres of land from oilfield and gas operations to residential uses. Implementation would also require the marginal extension of Maple Avenue, which currently terminates at Rolling Hills Park, into the western portion of the project site.

Under the no Action Alternative, the Service would not issue an incidental take permit. Van Daele would either proceed with a reduced residential development, select an alternative site, or abandon the project.

Under this no take scenario, Van Daele could proceed with a residential development project within the same 35-acre parcel but with a reduced construction area configuration, so as to avoid physically disturbing the on-site coastal California gnatcatcher habitat. The residential development would be reduced by approximately 5 residences compared to the proposed project.

Under a second no take scenario, Van Daele could select a different site for a residential development project that does not support any listed species. Therefore, the project would not result in the incidental take of a listed species

and issuance of an incidental take permit would not be required.

Under a third no take scenario, Van Daele could abandon the project. The site would remain relatively vacant with the exception of the continued operation of up to 19 oil wells. Under this scenario, there is no assurance that site remediation and abandonment of the approximately 16 wells formerly in use at the site would occur in a timely fashion. Hazardous residuals from prior site use could remain indefinitely in the subsurface soils.

We provide this notice pursuant to section 10(a) of the Endangered Species Act and Service regulations for implementing the National Environmental Policy Act of 1969 (40 CFR 1506.6). We will evaluate the permit application, Habitat Conservation Plan, Implementation Agreement, Environmental Assessment, associated documents, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Endangered Species Act. If we determine that the requirements are met, we will issue a permit for the incidental take of the coastal California gnatcatcher. We will make a decision on permit issuance no sooner than 30 days from the date of this notice.

Dated: March 20, 2000.

Elizabeth H. Stevens,

Deputy Manager, California/Nevada Operations Office, Fish and Wildlife Service, Sacramento, California.

[FR Doc. 00–7304 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Draft Natural Resource Restoration Plan

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service), on behalf of the Department of the Interior (DOI), as a natural resource trustee, announces the release for public review of the Draft Natural Resource Restoration Plan (NRRP) for the Saegertown Industrial Area National Priorities List Superfund Site (Saegertown Site). The Draft NRRP describes the DOI's proposal to restore natural resources injured as a result of chemical contamination at the Saegertown Site.

DATES: Written comments must be submitted on or before April 15, 2000.

ADDRESSES: Requests for copies of the Draft NRRP may be made to: Mark Roberts, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801.

Written comments or materials regarding the Draft NRRP should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: Mark Roberts, Environmental Contaminants Branch, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801. Interested parties may also call (814) 234–4090 or send e-mail to mark_roberts@fws.gov for further information.

SUPPLEMENTARY INFORMATION: Under the authority of the Comprehensive Response, Compensation and Liability Act of 1980, as amended (CERCLA), "natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages." Natural resource damage assessments are separate from the cleanup actions undertaken at a hazardous waste site, and provide a process whereby the natural resource trustees can determine the proper compensation to the public for injury to natural resources. At the Saegertown Site in the Borough of Saegertown, Crawford County, Pennsylvania, DOI was the sole natural resource trustee involved in the federal government's settlement with the GATX Corporation (GATX). GATX owns a portion of the site. The U.S. Fish and Wildlife Service determined that contamination on the GATX portion of the site had degraded habitat and injured trust resources (migratory birds). The injuries resulted from the exposure of migratory birds (such as killdeers, red-winged blackbirds, mourning doves, and waterflow) to mercury, lead, and PCB contamination in a 2.3-acre pond/wetland complex on the site.

As part of a Consent Decree requiring remedial actions at the Saegertown site, DOI agreed to a monetary settlement with GATX for natural resource damages. The settlement of $94,510 was designated for restoration, replacement, or acquisition of the equivalent natural resource injured by the release of contaminants at the site, and included reimbursement for costs related to assessing the damages.

The Draft NRRP is being released in accordance with the Natural Resource Damage Assessment Regulations found at Title 43 of the Code of Federal Regulation Part II. The Draft NRRP describes several habitat restoration, acquisition, and protection alternatives identified by the DOI, and evaluates each of the possible alternatives based on all relevant considerations. The DOI's Preferred Alternative is to use the settlement funds to purchase and restore fish and wildlife habitat within the French Creek watershed, in cooperation with several identified partners. The Pennsylvania Game Commission will accept title of the property and manage it for the perpetual protection of fish and wildlife resources. Details regarding the proposed projects are contained in the Draft NRRP.

The Final Revised Procedures for the Service in implementing the National Environmental Policy Act were published in the **Federal Register** on January 16, 1997. That publication provides for a categorical exclusion for natural resource damage assessment restoration plans prepared under CERCLA when only minor or negligible change in the use of the affected areas is planned. The DOI has determined that the Preferred Alternative will result in only a minor change in the use of the affected area. Accordingly this Draft NRRP qualifies for a categorical exclusion under NEPA.

Interested members of the public are invited to review and comment on the Draft NRRP. Copies of the Draft NRRP are available from the U.S. Fish and Wildlife Service's Pennsylvania Field Office at 315 South Allen Street, Suite 322, State College, Pennsylvania 16801. Additionally the Draft NRRP is available for review at the Saegertown Area Library, 320 Broad Street, Saegertown, Pennsylvania 16433. All comments received on the Draft NRRP will be considered and a response provided either through revision of this Draft NRRP and incorporation into the Final Natural Resource Restoration Plan, or by letter to the commentor.

Author: The primary author of this notice is Mark Roberts, U.S. Fish and Wildlife Service, Pennsylvania Field Office, 315 South Allen Street, Suite 322, State College, Pennsylvania 16801.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C.

Dated: March 10, 2000.

M.A. Parker,

Assistant, Regional Director, Region 5, U.S. Fish and Wildlife Service.

[FR Doc. 00–7286 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930–1430–ET; COC–28245]

Public Land Order No. 7433; Partial Revocation of Two Secretarial Orders; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes two Secretarial orders which withdrew National Forest System lands for the Bureau of Reclamation's Colorado-Big Thompson Project. These lands are no longer needed for reclamation purposes. This action will open 922.26 acres to such forms of disposition as may by law be made of National Forest System lands and to mining. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. (1994), it is ordered as follows:

1. The Secretarial Orders dated March 7, 1935, and July 24, 1937, which withdrew National Forest System lands for the Colorado-Big Thompson Reclamation Project, are hereby revoked insofar as they affect following described lands:

Sixth Principal Meridian

Arapaho National Forest

T. 1 N., R. 75 W.,
Sec. 13, lots 5, 6, 11, and 12;
Sec. 14, NE¼NE¼, SW¼NE¼, and SE¼NW¼.
T. 2 N., R. 75 W.,
Sec. 19, lots 1 to 4, inclusive, and E½W½;
Sec. 23, NE¼NE¼;
Sec. 31, N½SW¼NE¼, NE¼NW¼, W½NE¼SW¼, SE¼NE¼SW¼, and SW¼NW¼SE¼;
Sec. 32, lots 3 and 6, SW¼NW¼, NE¼SW¼, and SW¼SE¼.

The areas described aggregate 922.26 acres in Grand County.

2. At 9 a.m. on April 24, 2000, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of lands described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determination in local courts.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7292 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–933–1430–ET; IDI–15630 et al.]

Public Land Order No. 7437; Modification and Partial Revocation of Executive Orders; Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order modifies 5 Executive orders to establish a 20-year term as to 8,040.07 acres of lands withdrawn for the Bureau of Land Management for use as Powersite Reserves. This order also partially revokes 3 of the Executive orders insofar as they affect 3,443 acres and opens 277.30 acres to surface entry. The remaining 3,165.70 acres have been conveyed out of Federal ownership. All of the lands in Federal ownership have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Jackie Simmons, BLM Idaho State Office, 1387 S. Vinnell Way, Boise, Idaho 83709, 208–373–3867.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994); it is ordered as follows:

1. The following Executive orders are hereby modified to expire 20 years from the effective date of this order unless as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawals shall be extended insofar as they affect the following described lands:

Boise Meridian

Executive Order dated November 21, 1916, Powersite Reserve No. 565 (IDI–15630)

T. 9 S., R. 16 E.,
Sec. 15, lot 8;
Sec. 16, lots 7 to 16, inclusive;
Sec. 17, lots 11 to 14, inclusive;
Sec. 21, lot 3;
Sec. 22, lots 5 to 12, inclusive;
Sec. 23, lots 10 to 19, inclusive;
Sec. 24, lots 10 to 15, inclusive;
Sec. 25, lots 4, 5, and 6.
T. 9 S., R. 17 E.,
Sec. 19, lots 8 to 13, inclusive, and SE¼SE¼;
Sec. 20, lots 3 and 4;
Sec. 28, lots 7 to 12, inclusive;
Sec. 29, lots 8 to 12, inclusive;
Sec. 30, lots 8 to 13, inclusive;
Sec. 33, lots 6 and 7 and NE¼NE¼;
Sec. 34, lot 11, and portions of lots 12 to 17, inclusive;
Sec. 35, portions of lots 10 to 13, inclusive, and portion of SE¼NW¼;
Sec. 36, lots 10, 11, 12, 14, and portion of lot 15.
T. 9 S., R. 18 E.,
Sec. 31, lots 4 and 5;
Sec. 32, lot 5 and N½NW¼;
Sec. 33, lots 1 and 2, SE¼SW¼, and SW¼SE¼.
T. 10 S., R. 18 E.,
Sec. 3, lot 9, and SW¼NW¼;
Sec. 4, lots 1, 2, and 4.
T. 10 S., R. 21 E.,
Sec. 29, lots 10, 11, and 12, SW¼NW¼, and W½SE¼NW¼.

Executive Order dated July 2, 1910, Powersite Reserve No. 120 (IDI–15632)

T. 8 S., R. 30 E.,
Sec. 1, lots 4 to 7, inclusive;
Sec. 10, lots 2 to 5, inclusive, and W½SW¼;
Sec. 11, lot 5, and NW¼NW¼;
Sec. 12, lots 2 and 3, and SE¼NW¼;
Sec. 15, lots 5, 6, and 7, and NW¼NW¼;
Sec. 22, lot 4 and SE¼SW¼.

Executive Order dated July 2, 1910, Powersite Reserve No. 91 (IDI–15634)

T. 45 N., R. 3 E.,
Sec. 4, lots 11, 12, 14, and island adjacent thereto;
Sec. 9, lots 1 to 6, inclusive;
Sec. 10, lots 1 to 5, inclusive;
Sec. 11, lots 3 and 4;
Sec. 13, lots 1 to 4, inclusive, lots 9, 11, 12, and 13, S½NW¼, and NW¼SE¼;
Sec. 14, lot 3 and E½NW¼.
T. 45 N., R. 4 E.,
Sec. 11, lots 3 and 4;
Sec. 14, lot 3;
Sec. 17, lots 1 to 10, inclusive, and SW¼NE¼;
Sec. 18, lot 7 and SW¼NE¼.

Executive Order dated July 2, 1910, Powersite Reserve No. 21 (IDI–15636)

T. 7 N., R. 2 E.,
Sec. 10, lots 1 and 2;
Sec. 11, lots 4 and 5;
Sec. 14, lots 1, 2, 4, and NW¼SW¼;

Sec. 15, lots 1 to 5, inclusive;
Sec. 22, NE¼NE¼;
Sec. 23, lot 10;
Sec. 32, lots 3, 4, and 8, and N½SE¼;
Sec. 33, lots 1 and 2.

Executive Order dated December 19, 1910, Powersite Reserve No. 165 (IDI–15650)

T. 2 S., R. 38 E.,
Sec. 7, lots 3, 4, and 5;
Sec. 8, lots 1 and 2;
Sec. 17, lot 1;
Sec. 29, lots 1, 2, and 3;
Sec. 33, lots 4 and 5, and NE¼SE¼.
T. 3 S., R. 38 E.,
Sec. 4, lots 8 to 11, inclusive;
Sec. 9, lot 3;
Sec. 10, lots 5 to 9, inclusive;
Sec. 11, lots 3 to 6, inclusive;
Sec. 13, lots 5 to 9, inclusive;
Sec. 14, lot 3;
Sec. 24, lots 6 and 7.
T. 3 S., R. 39 E.,
Sec. 19, lots 2 and 3, SE¼NW¼, SW¼NE¼, NE¼SW¼, N½SE¼, and SE¼SE¼;
Sec. 20, SW¼SW¼;
Sec. 29, N½NW¼, SE¼NW¼, and SE¼;
Sec. 32, NE¼ and NE¼SE¼;
Sec. 33, N½SW¼ and SE¼SW¼.
T. 4 S., R. 39 E.,
Sec. 4, W½NE¼, NE¼NW¼, S½NW¼, N½SW¼, and SW¼SW¼;
Sec. 5, S½SE¼;
Sec. 7, S½SE¼;
Sec. 8, N½NE¼, NE¼NW¼, S½NW¼, and N½SW¼;
Sec. 17, SW¼NW¼ and NW¼SW¼;
Sec. 20, SW¼NW¼, N½SW¼, and SE¼SW¼.

The areas described aggregate 8,040.07 acres in Jerome, Twin Falls, Power, Shoshone, Boise, and Bingham Counties.

The lands described above continue to be withdrawn from surface entry, but not mining or mineral leasing, to protect the waterpower values.

2. The Executive Order dated July 2, 1910, which established Powersite Reserve No. 21 (IDI–15636), is hereby revoked insofar as it affects the following described lands:

Boise Meridian

T. 8 N., R. 3 E.,
Sec. 5, lots 7, 8, and 9;
Sec. 8, lots 3, 4, 7, and 8;
Sec. 17, lots 1 and 2;
Sec. 18, lots 5, 6, 7, and 11;
Sec. 19, lots 1 and 2.

The areas described aggregate 277.30 acres in Boise County.

3. The following Executive orders are hereby revoked insofar as they affect the following described lands:

Boise Meridian

Executive Order dated July 2, 1910, Powersite Reserve No. 91 (IDI–15634)

T. 45 N., R. 3 E.,
Sec. 5, lot 10 and NW¼SW¼;
Sec. 10, lot 6;
Sec. 11, lots 1 and 2;
Sec. 13, lots 5 to 8, inclusive, lot 10, and SW¼NE¾.

Executive Order dated July 2, 1910, Powersite Reserve No. 21 (IDI–15636)

T. 7 N., R. 2 E.,
Sec. 30, lots 3, 4, and 5;
Sec. 31, lots 1 and 2, lots 5 to 9, inclusive, and SE¼NW¼.
T. 8 N., R. 2 E.,
Sec. 24, lots 1 to 7, inclusive;
Sec. 25, lots 1, 2, and 3, and NW¼NE¼;
Sec. 26, lots 1 to 5, inclusive.
T. 8 N., R. 3 E.,
Sec. 5, lots 1 and 10;
Sec. 8, lots 2, 5, and 6;
Sec. 17, lots 3 to 6, inclusive;
Sec. 18, lots 9 and 10;
Sec. 19, lots 3, 5, 6, and NW¼NE¼.

Executive Order dated December 19, 1910, Powersite Reserve No. 165 (IDI–15650)

T. 2 S., R. 38 E.,
Sec. 29, lot 4;
Sec. 33, lots 1 and 3.
T. 4 S., R. 39 E.
Sec. 8, SW¼SW¼;
Sec. 18, E½E½;
Sec. 19, E½NE¼.

The areas described aggregate 3,165.70 acres in Shoshone, Boise and Bingham Counties.

4. At 9 a.m. on April 24, 2000, the lands described in Paragraph 2, shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on April 24, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

5. The lands described in Paragragh 3 have been conveyed out of Federal ownership.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7320 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; MTM 014987 and MTM 41561]

Public Land Order No. 7430; Partial Revocation of Executive Order dated June 1, 1912 and Public Land Order No. 1692; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order and a public land order insofar as they affect 17.15 acres of National Forest System lands withdrawn for the Wise River Ranger Station and the Bureau of Land Management's Phosphate Reserve No. 12—Montana No. 3. The lands are no longer needed for these purposes and the revocation would make 14.90 acres available for exchange. These lands have been and will remain open to mineral leasing. The remaining 2.25 acres have been conveyed out of Federal ownership and this is a record-clearing action only for this portion.

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5052.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated June 10, 1912, which withdrew National Forest System lands for Phosphate Reserve 12—Montana No. 3, and Public Land Order No. 1692, which withdrew National Forest System lands for the Bureau of Land Management's Phosphate Reserve No. 12—Montana No. 3, are hereby revoked insofar as they affect the following described lands:

Principal Meridian, Montana

Beaverhead National Forest

(a) Federal lands (14.90 acres)

T. 1 S., R. 11 W.,
Sec. 3, lot 10.

(b) Non-Federal lands (2.25 acres)

T. 1 S., R. 11 W.,
Sec. 3, a strip of land lying between Tracts A and B of HES 223.

The areas described in (a) and (b) contain 17.15 acres in Beaverhead County.

2. The lands described in Paragraph 1(a) are hereby made available for exchange in accordance with the General Exchange Act of 1922, 16 U.S.C. 485, 486 (1994).

3. The lands described in Paragraph 1(b) have been conveyed out of Federal ownership and this is a record-clearing action only.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7289 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–ET; MTM 40729]

Public Land Order No. 7432; Partial Revocation of Secretarial Order Dated August 24, 1903; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 382.32 acres of public lands withdrawn for the Bureau of Reclamation's Lower Yellowstone Project. The lands are no longer needed for reclamation purposes. This action will open 222.32 acres to surface entry, subject to other segregations of record. The remaining 160 acres have been conveyed out of Federal ownership and the revocation on this portion is a record-clearing action only. The lands in Federal ownership have been and will remain open to mining and mineral leasing.

EFFECTIVE DATE: April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–896–5052.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Order dated August 24, 1903, which withdrew public lands for the Bureau of Reclamation's Lower Yellowstone Project, is hereby revoked insofar as it affects the following described lands:

Principal Meridian, Montana

(a) Federal Lands (222.32 Acres)

T. 19 N., R. 57 E.,
Sec. 24, W½W½.
T. 21 N., R. 58 E.,
Sec. 22, lots 4 and 5.

(b) Non-Federal Lands (160 Acres)

T. 19 N., R. 57 E.,
Sec. 24, N½NE¼, SE¼NE¼, and NE¼NW¼.

The areas described in (a) and (b) aggregate 382.32 acres in Richland County.

2. At 9 a.m. on April 24, 2000, the lands referenced in paragraph 1(a) shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9:00 a.m. on April 24, 2000, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7294 Filed 3–23–00; 8: 45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET; GP0–0161; OR–9651]

Public Land Order No. 6876; Withdrawal of National Forest System Lands for the Ashland Resource Natural Area, the Jackson Campground Extension, and the Kanaka Campground; Oregon; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This action corrects Public Land Order No. 6876, 56 FR 46122, published September 10, 1991, as FR Doc. 91–21627.

On page 46122, third column, paragraph 1, under T. 40 S., R. 3 W., which reads "Sec. 19, lots 2, 3, 4, and 6." is hereby corrected to read "Sec. 19, lots 1, 2, 3, 4, and 6."

Kenneth J. St. Mary,

Acting Chief, Branch of Realty and Records Services, Oregon/Washington.

[FR Doc. 00–7288 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET; GP0–0023; OR–19617(WA), OR–22318 (WA)]

Public Land Order No. 7431; Revocation of Secretarial Orders Dated July 8, 1916 and January 24, 1917; Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes, in their entirety, two Secretarial orders as they affect 2,404.11 acres of lands within the Colville Indian Reservation withdrawn for Bureau of Land Management Powersite Reserve Nos. 536 and 568. The lands are no longer needed for the purpose for which they were withdrawn. This action will open the lands to such forms of disposition as may by law be made of Indian Reservation lands.

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Allison O'Brien, BLM Oregon/Washington State Office, PO Box 2965, Portland, Oregon 97208–2965, 503–952–6171.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Secretarial Orders dated July 8, 1916 and January 24, 1917, which established Powersite Reserve No. 536 and Powersite Reserve No. 568 respectively, are hereby revoked in their entirety:

Willamette Meridian

Colville Indian Reservation

T. 29 N., R. 26 E.,
Sec. 4, lots 4 and 5.
T. 30 N., R. 26 E.,
Sec. 26, lots 3 and 4;
Sec. 35, lot 1.
T. 29 N., R. 30 E.,
Sec. 1, lots 4 and 5, and lots 7 to 11, inclusive;
Sec. 2, lots 6 and 7, and NE¼NE¼.
T. 30 N., R. 30 E.,
Sec. 10, lots 5 to 8, inclusive, NW¼NE¼, and NE¼SE¼;
Sec. 14, SW¼NW¼ and W½SW¼;
Sec. 15, lots 5 to 8, inclusive;
Sec. 22, lots 6 to 10, inclusive;
Sec. 23, W½W½;
Sec. 26, lots 1 to 4, inclusive, and SW¼SE¼;
Sec. 27, lot 5;
Sec. 35, lots 3 to 6, inclusive.
T. 31 N., R. 30 E.,
Sec. 31, lots 3 and 6;
Sec. 32, lots 1 to 4, inclusive;
Sec. 33, lots 3 and 4.
T. 28 N., R. 33 E.,
Sec. 10, lot 1, SE¼SW¼, and areas A and B lying in the NW¼SW¼;
Sec. 13, lots 9 to 17, inclusive;
Sec. 14, lots 8 to 15, inclusive, and areas A and B (formerly lot 7);
Sec. 15, lots 5, 6, 8, 9, and 10.
T. 28 N., R. 34 E.,
Sec. 17, lots 7 to 11, inclusive;
Sec. 18, lots 8, 9, 11, 12, and 13.

The areas described aggregate approximately 2,404.11 acres in Ferry and Okanogan Counties.

2. At 8:30 a.m. on March 24, 2000, the lands will be opened to such forms of disposition as may by law be made of Indian Reservation lands, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7291 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–6333–ET; GP0–0087; OR–54142]

Public Land Order No. 7436; Withdrawal of Public Lands for Coos Bay North Spit Special Recreation Area and Area of Critical Environmental Concern; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order withdraws 1,712.74 acres of public lands from mining for a period of 20 years for the Bureau of Land Management to protect the Coos Bay North Spit Special Recreation Management Area and Area of Critical Environmental Concern. An additional 150.93 acres of non-Federal lands, if acquired by the United States, would also be withdrawn by this order. The public lands have been and will remain open to surface entry and mineral leasing subject to other segregations of record.

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Barnes, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights and other segregations of record, the following described public lands are hereby withdrawn from location and entry under the United States mining laws (30 U.S.C. Ch 2 (1994)), but not from surface entry under the general land laws or leasing under the mineral leasing laws, to protect the Coos Bay North Spit Special Recreation Area and Area of Critical Environmental Concern:

Willamette Meridian

T. 25 S., R. 13 W.,
- Sec. 4, N½NW¼;
- Sec. 5, fractional NW¼NW¼;
- Sec. 6, lot 3, lots 5 to 9, inclusive, and SE¼NE¼;
- Sec. 7, lots 6 and 8, and lots 10 to 19, inclusive;
- Sec. 8, lot 2;
- Sec. 18, lots 7 and 8, E½NW¼, fractional W½NW¼, and fractional NW¼SW¼.

T. 25 S., R. 14 W.,
- Sec. 12, lot 1;
- Sec. 13, lots 1 to 4, inclusive, and E½SE¼;
- Sec. 23, lot 1;
- Sec. 24, lots 6 to 13, inclusive, W½NE¼, and NE¼SW¼;
- Sec. 25, lot 3 and lot 1 including all of the tideland lying east of, fronting, and abutting upon;
- Sec. 26, lots 8 to 10, inclusive;

The areas described aggregate approximately 1,712.74 acres in Coos County.

2. The following described non-Federal lands, if acquired by the United States, will be subject to the terms and conditions of this withdrawal as described in paragraph 1:

Willamette Meridian

T. 25 S., R. 13 W.,
- Sec. 18, lots 3 and 4, and NE¼SW¼;
- Sec. 19, lot 4.

T. 25 S., R. 14 W.,
- Sec. 24, lot 4.

Along with any accretion to the above listed lands. The areas described aggregate approximately 150.93 acres in Coos County.

3. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

4. This withdrawal will expire 20 years from the effective date of this order unless as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), the Secretary determines that the withdrawal shall be extended.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7293 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–ET; WYW 141567]

Public Land Order No. 7434; Withdrawal of Public Land for Whiskey Mountain Bighorn Sheep Winter Range; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order withdraws 1,430.92 acres of public lands from surface entry and mining for a period of 20 years to protect the Whiskey Mountain Bighorn Sheep Winter Range and capital investments in the area. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Janet Booth, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6124.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Subject to valid existing rights, the following described public lands are hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2 (1994)), but not from leasing under the mineral leasing laws, to protect the Whiskey Mountain Bighorn Sheep Winter Range:

Sixth Principal Meridian

T. 40 N., R.105 W.,
- Sec. 17, NE¼NE¼, S½N½, NE¼SW¼, and SE¼;
- Sec. 18, NE¼NE¼;
- Sec 20, E½NE¼;
- Sec. 21, NW¼NW¼, S½NW¼, N½SW¼, and SE¼SW¼.

T. 41 N., R. 106 W.,
- Sec. 17, NW¼SW¼, S½SW¼, and S½S½SE¼;
- Sec. 18, NE¼NE¼ (excepting patent 906078), W½NE¼, SE¼NW¼, NE¼SW¼, and SE¼;
- Sec. 19, lot 1, N½NE¼, and NE¼NW¼.

The areas described aggregate 1,430.92 acres in Fremont County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7290 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–940–01–5410–10–B119; CACA 41159]

Conveyance of Mineral Interests in California; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction.

SUMMARY: This notice corrects the following Notice of Segregation:

(1) Notice of Segregation which was published on February 18, 2000 on page 8440 (65 FR 8440), as FR Doc. 00–3957:

On page 8440, in the second column, under T. 26 S., R. 37 E., which reads "Sec. 7, N½S½SE¼NW¼, S½S½SE¼NW¼, N½S½SE¼NW¼." is hereby corrected to read "Sec. 7, N½S½ SE¼ NW¼, S½S½SE¼NW¼, N½N½NE¼SW¼."

David Mcilnay,

Chief, Branch of Lands.

[FR Doc. 00–7287 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Meeting of Concessions Management Advisory Board

AGENCY: National Park Service, DOI.

ACTION: Notice of Meeting of Concessions Management Advisory Board.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), notice is hereby given that the Concessions Management Advisory Board will hold its second meeting April 11 through April 13, 2000, in San Francisco, California. The meeting will convene at 8:30 a.m. on Tuesday, April 11 at the Golden Gate Club located in Building 135, Fisher Loop at the Presidio. The Board will adjourn at approximately 4:00 p.m. on Thursday, April 13.

SUPPLEMENTARY INFORMATION: The Advisory Board was established by Title IV, Section 409 of the National Park Omnibus Management Act of 1998, November 13, 1998 (Pub. L. 105–391). The purpose of the Board is to advise the Secretary and the National Park Service on matters relating to management of concessions in the National Park System.

Topics for discussion during this meeting include:

- Welcome; Objectives of meeting.
- Overview of various business ventures and programs at the Presidio and Golden Gate NRA.
- Review of NPS Rate Approval Procedures.
- Discussion of Department of Defense "Best Practices" Review.
- Closing remarks (including summary of accomplishments of meeting, date of next proposed meeting, assignment of tasks).

The Board will also discuss its organizational and administrative needs.

The meeting will be open to the public, however, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis.

Assistance to Individuals With Disabilities at the Public Meeting

The meeting site is accessible to individuals with disabilities. If you plan to attend and will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least 2 weeks before the scheduled meeting date. Attempts will be made to meet any request(s) we receive after that date, however, we may not be able to make the requested auxiliary aid or service available because of insufficient time to arrange for it.

Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the Director, National Park Service, attention: Manager, Concession Program Division, at least 7 days prior to the meeting. Further information concerning the meeting may be obtained from National Park Service, Concession Program Division, 1849 C St. NW, Rm. 7313, Washington, DC 20240, telephone 202/565–1210.

Draft minutes of the meeting will be available for public inspection about 8 weeks after the meeting, in room 7313, Main Interior Building, 1849 C Street, NW, Washington, DC.

Dated: March 17, 2000.

Robert Stanton,

Director, National Park Service.

[FR Doc. 00–7272 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Final Petition Evaluation Document/Environmental Impact Statement on Fall Creek Falls, Tennessee

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of extension.

SUMMARY: On March 3, 2000, the Office of Surface Mining Reclamation and Enforcement (we or OSM) made available a final petition evaluation document/environmental impact statement (PED/EIS) for a petition to designate certain lands in and near Fall Creek Falls State Park and Natural Area as unsuitable for all surface coal mining operations. The land is located in Van Buren and Bledsoe Counties, Tennessee. We prepared the PED/EIS to assist the Secretary of the Interior in making a decision on the petition. Governing regulations at 40 CFR 1506.10(b)(2) require that no decision on the petition be made until 30 days after the PED/EIS is made available to the public. We are extending the prescribed wait period by 30 days.

DATES: The prescribed time period is extended to May 3, 2000; therefore, the decision by the Secretary of the Interior will not be made prior to May 4, 2000.

ADDRESSES: You may obtain a copy of the final PED/EIS by contacting Beverly Brock at the address and telephone number listed under **FOR FURTHER INFORMATION CONTACT.** A copy of the final PED/EIS is available for inspection at that address, and also at the Bledsoe and Van Buren County Clerk's offices.

FOR FURTHER INFORMATION CONTACT: Beverly Brock, Supervisor, Technical Group, Office of Surface Mining, 530 Gay Street, S.W., Suite 500, Knoxville, Tennessee 37902. Telephone: (865) 545–4103, ext. 146. E-Mail: bbrock@osmre.gov.

SUPPLEMENTARY INFORMATION: We have been petitioned by Save Our Cumberland Mountains, Tennessee Citizens for Wilderness Planning, and 49 citizens to designate the watershed and viewshed of Fall Creek Falls State Park and Natural Area, Tennessee, as unsuitable for all types of surface coal mining operations.

We prepared the final PED/EIS in accordance with Section 522(d) of the Surface Mining Control and Reclamation Act of 1977 (SMCRA) and Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA). We have analyzed the

petitioners' proposed action of designating the entire petition area as unsuitable for surface coal mining operations and four alternative actions ranging from denying the petition in whole in designating certain portions of the petition area as unsuitable for mining.

In preparing the final PED/EIS, we revised the draft PED/EIS in response to comments received during the public comment periods. These comments and OSM's responses to them are included in the final PED/EIS.

The PED/EIS was made available on March 3, 2000. See 65 FR 11575 and 65 FR 11604. We have received a request to extend the prescribed wait period by 30 days and by this notice we are extending the wait period through May 3, 2000. No decision will be made by the Secretary of the Interior prior to May 4, 2000. When the decision is made, we will make it available to the public.

Dated: March 15, 2000.

Mary Josie Blanchard,

Assistant Director, Program Support.

[FR Doc. 00–7208 Filed 3–23–00; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: United States International Trade Commission.

ACTION: Notice of proposed collection; comment request.

SUMMARY: Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35), the Commission intends to seek approval from the Office of Management and Budget to survey complainants who obtained exclusion orders that are currently in effect from the United States International Trade Commission following proceedings under 19 U.S.C. 1337. The survey will seek feedback on the effectiveness of the exclusion orders in stopping certain imports. Comments concerning the proposed information collection are requested in accordance with 5 CFR 1320.8(d).

DATES: To be assured of consideration, written comments must be received on or before May 23, 2000.

ADDRESSES: Signed comments should be submitted to Donna R. Koehnke, Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed survey that the Commission will submit to the Office of Management and Budget for approval are posted on the Commission's World Wide Web site at http://www.usitc.gov or may be obtained from Lynn I. Levine, Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone, 202–205–2560.

SUPPLEMENTARY INFORMATION:

Request for Comments

Comments are solicited as to (1) whether the proposed information collection is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed information collection; (3) the quality, utility, and clarity of the information to be collected; and (4) minimization of the burden of the proposed information collection on those who are to respond.

Summary of the Proposed Information Collection

In its Strategic Plan (available on the agency's World Wide Web site at http://www.usitc.gov) the Commission set itself the goal of obtaining feedback on the effectiveness of its exclusion orders from complainants who obtained such orders under 19 U.S.C. 1337. The survey asks each firm responding to the survey to: (i) Evaluate whether the remedial exclusion order has prevented the importation of items covered by the order, (ii) if not, estimate what are the absolute value and effect in the United States market of such imports and (iii) indicate what experience it has had in policing the exclusion order, particularly with respect to any investigatory efforts and any interactions with the U.S. Customs Service.

Responses to the survey are voluntary. The Commission estimates that the survey will require less than 1 hour to complete.

By order of the Commission.

Dated: March 20, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7266 Filed 3–23–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")

Notice is hereby given that a proposed Consent Decree ("Decree") in *United States* v. *Apex Engineering, et al.*, Civil Action No. 00 2100 GTV, was lodged on February 28, 2000, with the United States District Court for the District of Kansas.

The complaint filed in the above-referenced matter alleges that Defendants Apex Engineering, Inc.; Cargill, Inc.; Continental Tank Car Corporation; Coastal Refining and Marketing, Inc.; The Coleman Company, Inc.; Farmland Industries, Inc.; Safety-Kleen (Wichita), Inc.; Unified School District No. 259; Union Oil Company of California, d/b/a Unocal; and Van Waters & Rogers Inc., are jointly and severally liable for the United States' response costs at the 29th and Mead Superfund Site ("Site") in Wichita, Kansas, pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

The Site is a 4,000-acre area comprised of various industrial, residential and commercial properties located in north central Wichita, Sedgwick County, Kansas. It has been used primarily for industrial purposes since the late 1880s. EPA discovered volatile organic compound contamination in groundwater beneath the Site in 1983.

Under the proposed Decree, the Defendants in this action, and three additional parties not named in the compliant—the City of Wichita, Kansas; Excel Corporation; and New Coleman Holdings, Inc.—collectively shall pay the United States $245,038.22 plus interest toward the United States' approximately $300,000.00 in unreimbursed response costs at the Site. In exchange, the United States gives all parties to the Decree a covenant not to sue and contribution protection for past response costs.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, 930 Pennsylvania Avenue, NW, Washington, DC 20530, and should refer to *United States* v. *Apex Engineering, et al.*, DOJ Ref. #90–11–3–06696.

The proposed Decree may be examined at the office of the United States Attorney, District of Kansas, 500 State Avenue, Suite 360, Kansas City, KS 66101, 913–551–6730; and the Region VII Office of the Environmental Protection Agency, 726 Minnesota Avenue, Kansas City, KS 66101, 913–551–7714. A copy of the proposed Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy of the Consent Decree, please refer to the referenced case and enclose a check in the amount of $9.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–7295 Filed 3–23–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Emergency Planning and Community Right-to-Know Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in the case of *United States and Communities for a Better Environment* v. *Sorenson Engineering, Inc.*, Civil Action No. EDCV 96–444–RT (VAPx) (C.D. Cal.), was lodged with the United States District Court for the Central District of California on March 2, 2000.

The proposed consent decree resolves claims that the United States asserted against Sorenson Engineering, Inc. in a civil complaint in intervention filed concurrently with the lodging of the consent decree. The complaint in intervention alleges that Sorenson failed to timely submit a toxic chemical release form for nitric acid and phosphoric acid in each year from 1990 through 1995, in violation of the requirements of section 313 of the Emergency Planning and Community Right-to-know Act, 42 U.S.C. 11023.

The proposed consent decree requires defendant to pay a civil penalty of $32,500. In addition, defendant is required to undertake two supplemental environmental projects to reduce tetrachloroethylene (perchloroethylene) emissions and to eliminate hexavalent chromium emissions at defendant's facility in Yucaipa, California. Finally, defendant is required to pay $20,000 to Communities for a Better Environment (CBE) in payment of CBE's attorney's fees and costs in this action.

The Department of Justice will accept comments relating to this consent decree for a period of thirty (30) days from the date of this publication. Address your comments to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and send a copy to the Environmental Enforcement Section, U.S. Department of Justice, 301 Howard Street, Suite 870, San Francisco, CA 94105, Attn: Robert Mullaney. Your comments should refer to *United States and Communities for a Better Environment* v. *Sorenson Engineering, Inc.*, Civil Action No. EDCV 96–444–RT (VAPx) (C.D. Cal.), and DOJ No. 90–11–2–06467.

You may examine the proposed consent decree at the office of the United States Attorney, Central District of California, Federal Building, Room 7516, 300 North Los Angeles Street, Los Angeles, California 90012. You may also obtain a copy of the consent decree by mail from the Consent Decree Library, P.O. Box 7611, Washington, DC 20044. Your request for a copy of the consent decree should refer to *United States and Communities for a Better Environment* v. *Sorenson Engineering, Inc.*, Civil Action No. EDCV 96–444–RT (VAPx) (D.C. Cal.), and DOJ No. 90–11–2–06467, and must include a check for $4.50 (25 cents per page reproduction cost) payable to the "Consent Decree Library."

Joel Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–7296 Filed 3–23–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Federal Bureau of Investigation

Meeting of the CJIS Advisory Policy Board

AGENCY: Federal Bureau of Investigation (FBI), DOJ.

ACTION: Meeting notice.

SUMMARY: The purpose of this notice is to announce the meeting of the Criminal Justice Information Services (CJIS) Advisory Policy Board. The CJIS Advisory Policy Board is responsible for reviewing policy issues, uniform crime reports, and appropriate technical and operational issues related to the programs administered by the FBI CJIS Division and thereafter, make appropriate recommendations to the FBI Director. The topics to be discussed will include proposals and enhancements to the National Crime Information Center (NCIC) Convicted Sexual Offender Registry File, an update on the CJIS Security Policy, and an overview of the use of Immigration and Naturalization Service records in relation to the National Instant Criminal Background Check System (NICS). Discussion will also include the status on future enhancements to the Integrated Automated Fingerprint Identification Systems (IAFIS), IAFIS latent fingerprint processing, the National Crime Prevention and Privacy Compact, the NCIC Protection Order File, and other issues related to the IAFIS, NCIC, Law Enforcement Online, NICS, and Uniform Crime Reporting Programs.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public wishing to file a written statement concerning the FBI's CJIS Division programs or wishing to address this session should notify the Designated Federal Employee, Mr. Don M. Johnson, Section Chief, Programs Development Section (304) 625–2740, at least 24 hours prior to the start of the session.

The notification should contain the requestor's name, corporate designation, and consumer affiliation or government designation along with a short statement describing the topic to be addressed and the time needed for the presentation. A requestor will ordinarily be allowed not more than 15 minutes to present a topic.

DATES AND TIMES: The Advisory Policy Board will meet in open session from 9 a.m. until 5 p.m. on June 13–14, 2000.

ADDRESSES: The meeting will take place at the Portland Hilton, 921 S.W. Sixth Avenue, Portland, Oregon, telephone (503) 226–1611.

FOR FURTHER INFORMATION CONTACT: Inquiries may be addressed to Mrs. Diane M. Shaffer, Management Analyst, Advisory Groups Management Unit, Programs Development Section, FBI CJIS Division, Module C3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306–0149, telephone (304) 625–2615, facsimile (304) 625–5090.

Dated: March 14, 2000.

Don M. Johnson,

Section Chief, Programs Development Section, Criminal Justice Information Services Division, Federal Bureau of Investigation.

[FR Doc. 00–7297 Filed 3–23–00; 8:45 am]

BILLING CODE 4410–02–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2052–00]

Delegation of Authority To Accept and Adjudicate Certain Requests for Advance Parole in Connection With the HRIFA Adjustment Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: This notice advises the public that effective April 1, 2000, the Immigration and Naturalization Service (Service) is delegating to the Director of the Nebraska Service Center the authority to accept and adjudicate requests for advance parole authorization filed by qualifying Haitian dependents of persons who have applied for adjustment of status under the Haitian Refugee Immigration Fairness Act of 1998 (HRIFA). The Director of the Nebraska Service Center had previously been authorized to adjudicate such requests until March 31, 2000, through an interim rule published in the **Federal Register** on May 12, 1999, at 64 FR 25756. The delegation of authority provided in this public notice will allow the Director of the Nebraska Service Center to continue to provide this service to the public without interruption.

DATES: This notice is effective April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Alice Khachikian, Immigration Officer, Parole Branch, Office of International Affairs, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536, telephone (202) 307–6084.

SUPPLEMENTARY INFORMATION:

What Is the Haitian Refugee Immigration Fairness Act (HRIFA)?

On October 21, 1998, the President signed into law a Fiscal Year 1999 Omnibus Appropriations Act, Public Law 105–277 (112 Stat. 2681). Division A, title IX of that statute, the HRIFA, contained a provision, section 902, that allows certain nationals of Haiti to adjust their status to that of lawful permanent resident. On May 12, 1999, the Department of Justice (Department) published an interim rule in the **Federal Register** at 64 FR 25756, with respects for comments, that implemented section 902 of the HRIFA.

Section 902 of the HRIFA provides that the Attorney General shall adjust the status of certain Haitian nationals who are physically present in the United States to that of lawful permanent resident. In order to be eligible for benefits under the HRIFA, an applicant must:

- Be a national of Haiti who was present in the United States on December 31, 1995;
- Have been physically present in the United States for a continuous period beginning not later than December 31, 1995, and ending not earlier than the date the application for adjustment is filed (not including any absence or absences amounting to 180 days or less in the aggregate);
- Properly file an application for adjustment before April 1, 2000;
- Be admissible to the United States under all provisions of section 212(a) of the Immigration and Nationally Act (Act), 8 U.S.C. 1182(a), except those provisions specifically excepted by the HRIFA; and
- Fall within one of the five classes of persons described in section 902(b)(1) of the HRIFA.

The five classes described in section 902(b)(1) of the HRIFA are:

(1) Haitian nationals who filed for asylum before December 31, 1995;

(2) Haitian nationals who were paroled into the United States prior to December 31, 1995, after having been identified as having a credible fear of persecution, or paroled for emergent reasons or reasons deemed strictly in the public interest;

(3) Haitian national children who arrived in the United States without parents and have remained without parents in the United States since such arrival;

(4) Haitian national children who became orphaned subsequent to arrival in the United States; and

(5) Haitian children who were abandoned by their parents or guardians prior to April 1, 1998, and have remained abandoned since such abandonment.

In addition, under section 902(d) of the HRIFA, the Haitian national spouse, child (i.e., under 21 years old), or unmarried son or daughter (i.e., 21 years old or older) of such principal adjustment applicant may apply for and be granted adjustment of status to that of lawful permanent resident. Although an unmarried son or daughter is required to have been physically present in the United States since December 31, 1995, neither the spouse or child need meet any physical presence requirements other than to be in the United States in order to apply for adjustment of status. Furthermore, unlike principal applicants, dependents have no deadline by which they must file their applications for adjustment of status under the HRIFA.

Under What Authority May an Alien Submit and the Service Consider a Request for Advance Parole for the Purpose of Coming to the United States in Order To Seek Adjustment of Status Under the HRIFA?

Service regulations at 8 CFR 245.15(t)(2) allow an otherwise eligible applicant who is outside the United States to request parole authorization to come to the United States to apply for benefits under section 902 of the HRIFA.

What Is the Process for Seeking an Advance Parole Authorization?

An eligible individual should file Form I–131, Application for Travel Document, with the USINS Nebraska Service Center, P.O. Box 87245, Lincoln, NE 68501–7245. The application must be accompanied by the filing fee for Form I–131 specified in 8 CFR 103.7(b)(1) (currently $95) and a photocopy of the complete Form I–485, Application to Register Permanent Residence or Adjust Status, which the requestor will file once he or she arrives in the United States. The applicant must include photocopies of all the supporting documentation listed on Forms I–485 and I–485 Supplement C, HRIFA Supplement to Form I–485 Instructions. However, the applicant should not submit the filing fee for the Form I–485, the medical report, the fingerprint card, or the local police clearances.

Although advance parole requests by persons outside the United States are normally filed with, and adjudicated by, the district director having jurisdiction over the overseas area (i.e., the district director in Mexico City, Mexico; Rome, Italy; or Bangkok, Thailand), the May 12, 1999, interim rule which implemented the HRIFA provided, at 8 CFR 245.15(t), that in most cases those advance parole requests submitted in connection with the HRIFA program would be filed with and adjudicated by, the Director of the Nebraska Service Center (NSC). The interim rule authorized the Director of the NSC to accept and adjudicate such requests through March 31, 2000, the deadline for the filing of HRIFA applications by principal applicants.

This delegation of authority was given to the Director of the NSC for two reasons. First, with the exception of applications filed by persons who are currently in proceedings before the Immigration Court, all applications for adjustment of status under the HRIFA must be filed with the NSC.

Accordingly, any files relating to the case (*e.g.*, the file of the principal applicant upon which the dependent's case depends) are likely to be at the NSC. Second, due to the NSC's larger staff and greater automation, it is in a better position to handle the volume of requests for parole under this program.

How Is the Advance Parole Process Being Changed?

There is no change in the process for requesting or being granted advance parole authorization in connection with the HRIFA applications. The only change is that the authorization for accepting and adjudicating parole requests is being delegated to the Director of the NSC from April 1, 2000, until further notice.

Under What Authority Is the Service Taking This Action?

Section 212(d)(5) of the Act authorizes the Attorney General to parole into the United States any alien applying for admission to the United States "on a case-by-case basis for urgent humanitarian reasons or significant public benefit." In accordance with section 103 of the Act, the Attorney General has delegated authority for administration and enforcement of the Act, including section 212(d)(5) of the Act, to the Commissioner of the Immigration and Naturalization Service. *See* 28 CFR 0.105, 8 CFR 2.1. The Commissioner may in turn redelegate her authority to any other officer or employee of the Service. *See* 28 CFR 0.108, 8 CFR 2.1, 8 CFR 103.1

What Individuals Are Included in This Advance Parole Program?

In order to participate in this advance parole program, an individual must be a national of Haiti who is the dependent spouse or child of a Haitian who is a principal applicant for adjustment of status under the HRIFA. In addition, a Haitian national who is the dependent unmarried son or daughter of a Haitian who is a principal applicant for adjustment of status under the HRIFA may also participate in this advance parole program, but only if he or she was physically present in the United States on or before December 31, 1995, and has not been outside the United States for more than 180 days in the aggregate since that date.

What Other Factors Will Determine Whether the Request for Advance Parole Will Be Granted?

In accordance with the provisions of section 212(d)(5) of the Act previously cited, the Service will review other factors on a case-by-case basis. These other factors include, but are not limited to, a determination as to whether the requestor's application for adjustment of status is likely to be approved, whether the requestor has a criminal record or immigration record which warrants denial of the parole request, and whether there are other negative discretionary factors which argue against approval of the parole request.

Furthermore, with regard to a dependent child who is approaching his or her 21st birthday and cannot demonstrate that he or she has been continuously physically present in the United States since December 31, 1995, not counting absences totaling 180 days or less, the Service will deny the parole request if it is not feasible to process the request and issue the travel document in sufficient time for the requestor to travel to the United States, file a HRIFA adjustment application and have that application completely adjudicated before the requestor's 21st birthday.

Why Is the Delegation of Authority Being Applied to Applicants Under the HRIFA Program and Not to Applicants Under Section 202 of the Nicaraguan Adjustment and Central American Relief Act (NACARA)?

Unlike the HRIFA, section 202 of NACARA requires all applicants, including dependents, to have filed their applications for adjustment of status by March 31, 2000. It is, therefore, not possible for anyone to be paroled into the United States on or after April 1, 2000, for the purpose of applying for adjustment of status under section 202 of NACARA.

How Will the Service Detect and Deter Potential Fraudulent Requests for Parole Authorization Under This Program?

Before approving the request for advance parole, the Director of the NSC will review all Service records, and other records as appropriate, pertaining to both the requestor and the principal applicant for adjustment of status through whom the requestor's parole request is based. The Director of the NSC will approve the parole request only after the Service has approved the principal applicant's adjustment application and the Director of the NSC is satisfied that the requestor meets all criteria for parole previously discussed.

Once the parole request has been approved, the documentation will be forwarded to the Service Officer-in-Charge in Port-au-Prince, Haiti (or, if the alien resides in another country, to the appropriate U.S. consulate) for interview of the alien. If the Officer-in-Charge (or, where appropriate, the consular officer) is not fully satisfied that the requestor meets all requirements for parole in order to apply for adjustment of status under the HRIFA, that officer will not issue the parole authorization to the alien, but will instead cancel and return it to the Director of the NSC. If that officer is fully satisfied regarding these issues, he or she will issue the advance parole document allowing the alien to travel to the United States and be paroled into the country for 60 days. The alien must apply for adjustment of status within this 60-day period. Once the application for adjustment of status has been filed, the alien will be allowed to remain until the application for adjustment of status has been adjudicated.

What Will Happen to Individuals Who Fail To Apply for Adjustment of Status During the 60-Day Parole Period?

If the individual paroled into the United States fails to apply for adjustment of status within the 60-day parole period, he or she will be subject to expedited removal from the United States under section 235(b)(1)(A)(i) of the Act.

When Will This Delegation of Authority Begin and How Long Will It Be in Effect?

This delegation of authority begins April 1, 2000, and will remain in effect indefinitely. If the Service should decide to terminate this delegation, a notice to that effect will be published in the **Federal Register**.

Dated: March 20, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–7410 Filed 3–22–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

DATE AND TIME: 9:30 a.m., Tuesday, March 28, 2000.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Closed—Meeting.

MATTERS CONSIDERED: The following matter will be considered during the closed portion of the Commission's Business Meeting:

Appeals to the Commission involving approximately one case decided by the National Commissioners pursuant to a reference under 28 CFR 2.27. This case was originally heard by an examiner panel wherein inmates of Federal prisons have applied for parole or are contesting revocation of parole or mandatory release.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 21, 2000.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 00–7407 Filed 3–22–00; 10:21 am]

BILLING CODE 4410–31–M

DEPARTMENT OF JUSTICE

Parole Commission

Sunshine Act Meeting

Public Announcement Pursuant to the Government in the Sunshine Act (Public Law 94–409) [5 U.S.C. Section 552b]

AGENCY HOLDING MEETING: Department of Justice, United States Parole Commission.

TIME AND DATE: 10:30 a.m., Tuesday, March 28, 2000.

PLACE: U.S. Parole Commission, 5550 Friendship Boulevard, 4th Floor, Chevy Chase, Maryland 20815.

STATUS: Open.

MATTERS TO BE CONSIDERED: The following matters have been placed on the agenda for the open Parole Commission meeting:

1. Approval of minutes of previous Commission meeting.

2. Reports from the Chairman, Commissioners, Legal, Chief of Staff, Case Operations, and Administrative Sections.

3. Proposed/Interim Rules for D.C. Code Offenders.

AGENCY CONTACT: Sam Robertson, Case Operations, United States Parole Commission, (301) 492–5962.

Dated: March 21, 2000.

Michael A. Stover,

General Counsel, U.S. Parole Commission.

[FR Doc. 00–7408 Filed 3–22–00; 10:22 am]

BILLING CODE 4410–31–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT000001 (Feb. 11, 2000)
- CT000003 (Feb. 11, 2000)
- CT000004 (Feb. 11, 2000)

Massachusetts
- MA000001 (Feb. 11, 2000)
- MA000003 (Feb. 11, 2000)
- MA000005 (Feb. 11, 2000)
- MA000007 (Feb. 11, 2000)
- MA000012 (Feb. 11, 2000)
- MA000013 (Feb. 11, 2000)
- MA000017 (Feb. 11, 2000)
- MA000018 (Feb. 11, 2000)
- MA000019 (Feb. 11, 2000)
- MA000020 (Feb. 11, 2000)

Maine
- ME000005 (Feb. 11, 2000)
- ME000007 (Feb. 11, 2000)
- ME000010 (Feb. 11, 2000)
- ME000018 (Feb. 11, 2000)
- ME000022 (Feb. 11, 2000)
- ME000037 (Feb. 11, 2000)

New Jersey
- NJ000003 (Feb. 11, 2000)
- NJ000005 (Feb. 11, 2000)

New York

- NY000003 (Feb. 11, 2000)
- NY000005 (Feb. 11, 2000)
- NY000007 (Feb. 11, 2000)
- NY000008 (Feb. 11, 2000)
- NY000009 (Feb. 11, 2000)
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- NY000019 (Feb. 11, 2000)
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- NY000026 (Feb. 11, 2000)
- NY000031 (Feb. 11, 2000)
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- NY000045 (Feb. 11, 2000)
- NY000051 (Feb. 11, 2000)
- NY000055 (Feb. 11, 2000)
- NY000066 (Feb. 11, 2000)
- NY000078 (Feb. 11, 2000)

Volume II

Pennsylvania
- PA000005 (Feb. 11, 2000)
- PA000006 (Feb. 11, 2000)
- PA000026 (Feb. 11, 2000)

Volume III

Georgia
- GA000022 (Feb. 11, 2000)

Kentucky
- KY000002 (Feb. 11, 2000)
- KY000004 (Feb. 11, 2000)
- KY000027 (Feb. 11, 2000)
- KY000028 (Feb. 11, 2000)
- KY000029 (Feb. 11, 2000)

Volume IV

Illinois
- IL000001 (Feb. 11, 2000)
- IL000008 (Feb. 11, 2000)
- IL000009 (Feb. 11, 2000)
- IL000011 (Feb. 11, 2000)
- IL000013 (Feb. 11, 2000)

Michigan
- MI000002 (Feb. 11, 2000)
- MI000004 (Feb. 11, 2000)
- MI000005 (Feb. 11, 2000)
- MI000007 (Feb. 11, 2000)
- MI000047 (Feb. 11, 2000)
- MI000062 (Feb. 11, 2000)
- MI000064 (Feb. 11, 2000)
- MI000077 (Feb. 11, 2000)
- MI000081 (Feb. 11, 2000)
- MI000082 (Feb. 11, 2000)
- MI000083 (Feb. 11, 2000)
- MI000084 (Feb. 11, 2000)
- MI000088 (Feb. 11, 2000)

Minnesota
- MN000007 (Feb. 11, 2000)

Ohio
- OH000002 (Feb. 11, 2000)
- OH000028 (Feb. 11, 2000)
- OH000029 (Feb. 11, 2000)
- OH000034 (Feb. 11, 2000)

Volume V

Nebraska
- NE000001 (Feb. 11, 2000)
- NE000002 (Feb. 11, 2000)
- NE000003 (Feb. 11, 2000)
- NE000019 (Feb. 11, 2000)

Volume VI

North Dakota
- ND000001 (Feb. 11, 2000)
- ND000003 (Feb. 11, 2000)
- ND000004 (Feb. 11, 2000)
- ND000054 (Feb. 11, 2000)

Volume VII

None.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Dated: Signed at Washington, D.C. this 15th Day of March 2000.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–7058 Filed 3–23–00; 8:45 am]

BILLING CODE 4510–27–M

THE NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings of Humanities Panel

AGENCY: The National Endowment for the Humanities.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Public Law 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW, Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by the grant applicants. Because the proposed meetings will consider information that is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential and/or information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c)(4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* April 3, 2000.
Time: 9 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline.

2. *Date:* April 3, 2000.
Time: 9 a.m. to 5:30 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public

Programs at the February 1, 2000 deadline.

3. *Date:* April 7, 2000.
Time: 9 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Media, submitted to the Division of Public Programs at the February 1, 2000 deadline.

4. *Date:* April 7, 2000.
Time: 9 a.m. to 5:30 p.m.
Room: 426.
Program: This meeting will review applications for Special Projects, submitted to the Division of Public Programs at the February 1, 2000 deadline.

5. *Date:* April 10, 2000.
Time: 9 a.m. to 5:30 p.m.
Room: 426.
Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations, submitted to the Division of Public Programs at the February 1, 2000 deadline.

6. *Date:* April 14, 2000.
Time: 9 a.m. to 5:30 p.m.
Room: 415.
Program: This meeting will review applications for Humanities Projects in Libraries and Archives, submitted to the Division of Public Programs at the February 1, 2000 deadline.

7. *Date:* April 25, 2000.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education at the March 1, 2000 deadline.

8. *Date:* April 26, 2000.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for College and University Teachers, submitted to the Division of Education at the March 1, 2000 deadline.

9. *Date:* April 27, 2000.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education at the March 1, 2000 deadline.

10. *Date:* April 28, 2000.
Time: 9 a.m. to 5 p.m.
Room: 315.
Program: This meeting will review applications for Summer Seminars and Institutes for School Teachers, submitted to the Division of Education at the March 1, 2000 deadline.

Laura S. Nelson,
Advisory Committee Management Officer.
[FR Doc. 00–7298 Filed 3–23–00; 8:45 am]
BILLING CODE 7536–01–M

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:
Rule 498, File No. 270–435, OMB Control No. 3235–0488;
Rule 30a–1, File No. 270–210, OMB Control No. 3235–0219.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted to the Office of Management and Budget requests for extension on the previously approved collections of information discussed below.

Rule 498 Under the Securities Act of 1933, Profiles for Certain Open-End Management Investment Companies

Rule 498 (17 CFR 230.498) permits open-end management investment companies (or a series of an investment company organized as a series company, which offers one or more series of shares representing interests in separate investment portfolios) ("funds") to provide investors with a "profile" that contains a summary of key information about a fund, including the fund's investment objectives, strategies, risks and performance, and fees in a standardized format. The profile provides investors the option of buying fund shares based on the information in the profile or reviewing the fund's prospectus before making an investment decision. Investors purchasing shares based on a profile receive the fund's prospectus prior to or with confirmation of their investment in the fund.

Consistent with the filing requirement of a fund's prospectus, a profile must be filed with the Commission thirty days before first use. Such a filing allows the Commission to review the profile for compliance with Rule 498. Compliance with the rule's standardized format assists investors in evaluating and comparing funds.

It is estimated that approximately 176 initial profiles and 129 updated profiles are filed with the Commission annually. The Commission estimates that each profile contains on average 1.25 portfolios, resulting in 220 portfolios filed annually on initial profiles and 161 portfolios filed annually on updated profiles. The number of burden hours for preparing and filing an initial profile per portfolio is 25. The number of burden hours for preparing and filing an updated profile per portfolio is 10. The total burden hours for preparing and filing initial and updated profiles under Rule 498 is 7,110, representing a decrease of 6,640 hours from the prior estimate of 13,750. The reduction in burden hours is attributable to the lower number of profiles actually prepared and filed as compared to the previous estimates.

The collection of information under Rule 498 is voluntary. The information provided by Rule 498 is not kept confidential.

Rule 30a–1 Under the Investment Company Act of 1940, Annual Reports

Rule 30a–1 [17 CFR 270.30a–1] requires that investment companies registered under the Investment Company Act file annual and periodic reports with the Commission and send to the Commission copies of their reports to shareholders. These requirements are designed to ensure that the Commission has enough information in its files to effectively monitor the operations of each company and to provide investors with the kind of current information that is necessary to detect problems in the operations of the company.[1]

There is no burden associated with complying with Rule 30a–1. The respondent's reporting burden and cost burden under Rule 30a–1 is associated with Form N–SAR. Those burdens and costs are discussed in the submission for Form N–SAR.

The collection of information under Rule 30a–1 is mandatory. The information provided by Rule 30a–1 is not kept confidential.

The estimates of average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms.

The Commission may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

General comments regarding the above information should be directed to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: March 20, 2000.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 00–7306 Filed 3–23–00; 8:45 am]
BILLING CODE 8010–01–M

[1] Annual and periodic reports to the Commission become part of its public files and, therefore, are available for use by prospective investors and shareholders.

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24342; 812–11800]

Medallion Financial Corp.; Notice of Application

March 17, 2000.
AGENCY: Securities and Exchange Commission ("SEC").
ACTION: Notice of application for an order under section 61(a)(3)(B) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Applicant, Medallion Financial Corp., requests an order approving its Amended and Restated 1996 Non-Employee Director Stock Option Plan (the "Amended Plan"). The requested order would supersede an existing order.[1]

FILING DATES: The application was filed on October 4, 1999. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 11, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609; Applicant, 437 Madison Avenue, 38th Floor, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Mary T. Geffroy, Senior Counsel, at (202) 942–0553, or Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington DC 20549–0102 (tel. (202) 942–8090).

Applicant's Representations

1. Applicant is business development company ("BDC") within the meaning of section 2(a)(48) of the Act.[2] Applicant's primary business is the origination and servicing of loans financing the purchase of taxicab medallions and related assets. Applicant is managed by its executive officers under the supervision of its board of directors ("Board") and has retained FMC Advisers, Inc. (the "Sub-Adviser"), an investment adviser registered under the Investment Advisers Act of 1940, as its investment adviser. The Sub-Adviser is paid a fixed fee on a monthly basis and receives no performance-based compensation.

2. Applicant requests an order under section 61(a)(3)(B) of the Act approving the Amended Plan[3] for current and future directors who are neither officers nor employees of applicant ("Eligible Directors"). The Board consists of seven members, five of whom are Eligible Directors.[4] On February 24, 1999, applicant's Board approved the Amended Plan, and on June 16, 1999, applicant's shareholders approved the Amended Plan. The Amended Plan will become effective on the date on which the SEC issues an order on the application (the "Approval Date").

3. The Amended Plan provides that: (i) On the Approval Date, the Eligible Director elected at the June 16, 1999 annual shareholders' meeting will be granted options to purchase 9,000 shares of applicant's common stock at the then Current Market Value;[5] (ii) at each annual shareholders' meeting after the Approval Date, each Eligible Director elected or reelected at that meeting to a three-year term will be granted options to purchase 9,000 shares of applicant's common stock; and (iii) upon the election, reelection or appointment of an Eligible Director to the Board other than at the annual shareholders' meeting, that Eligible Director will be granted an option to purchase that number of shares of common stock determined by multiplying 9,000 by a fraction, the numerator of which is equal to the number of whole months remaining in the new director's term and the denominator of which is 36. A total of 100,000 shares of applicant's common stock is reserved for issuance under the Original/Amended Plan.

4. Options granted under the Amended Plan become exercisable at each annual shareholders' meeting with respect to that number of shares that is determined by multiplying the number of shares covered by the option by a fraction, the numerator of which will equal the number of whole months elapsed since the most recent to have occurred of either: (i) The date of grant; or (ii) the last annual shareholder's meeting, and the denominator of which will be the number of whole months for which the Eligible Director was elected. The exercise price of an option will be: (i) Not less than the Current Market Value of applicant's common stock; or (ii) if the stock is not quoted on the date of grant, equal to the current net asset value of the common stock as determined in good faith by the members of the Board not eligible to participate in the Amended Plan. To the extent permitted by law, the option exercise price may be paid in whole or in part in cash, by a note or in installments, or with shares of

[1] *Medallion Financial Corp.*, Investment Company Act Release Nos. 22350 (Nov. 25, 1996) (notice) and 22417 (Dec. 23, 1996) (order).

[2] Section 2(a)(48) defines a BDC to be any closed-end investment company the operates for the purpose of making investments in securities described in sections 55(a)(1) through 55(a)(3) of the Act and makes available significant managerial assistance with respect to the issuers of those securities.

[3] The Amended Plan would replace the 1996 Non-Employee Director Stock Option Plan (the "Original Plan").

[4] Each Eligible Director receives $10,000 a year for each year of service, $2,000 for the first Board meeting held per quarter and $1,000 for any additional Board meetings held in that quarter, $250 for each telephonic meeting of the Board, $1,000 for the first committee meeting held per quarter and for any committee meetings held on a date when there is not also a Board meeting, $500 for all other committee meetings and for each telephonic meeting in which the director participates, and reimbursement of related expenses. The directors receive no other compensation for their services to applicant.

[5] "Current Market Value" is defined as the closing price as reported in the Wall Street Journal, Northeast Edition, as quoted on the NASDAQ National Market on the date of grant.

applicants' common stock or such other lawful consideration as the non-Eligible Directors determine. If the option exercise price is paid: (i) By note or in installments, any such arrangement will comply with section 62 of the Act; (ii) with shares of applicant's common stock, applicant will seek exemptive relief from section 63 of the Act, or (iii) by such other lawful consideration as the non-Eligible Directors determine, applicant will seek exemptive relief from section 57(a)(1) of the Act.

5. An Eligible Director holding exercisable options under the Amended Plan who ceases to be an Eligible Director for any reason, other than death, may exercise the rights the director had under the options on the date the director ceased to be an Eligible Director for a period of up to three months following that date. No additional options held by the director will become exercisable after the three month period. Upon the death of an Eligible Director, those entitled to do so under the director's will or the laws of descent and distribution will have the right, at any time within twelve months after the date of death, to exercise in whole or in part any rights which were available to the director at the time of the director's death. The Amended Plan will expire ten years from December 23, 1996, the date on which the Original Plan was approved by the SEC. Each option granted under the Amended Plan will expire five years from the date of grant. Options will not be transferable except for disposition by will or intestacy.

6. Applicant's officers and employees, including employee directors, are eligible to receive stock options under the Medallion Financial Corp. 1996 Stock Option Plan (the "Employee Plan"). Eligible Directors are not eligible to receive stock options under the Employee Plan. The total number of shares of common stock issuable under the Original/Amended Plan and the Employee Plan is approximately 1,600,000 (approximately 1,500,000 shares are reserved for issuance under the Employee Plan and approximately 100,000 are reserved for the Original/Amended Plan). The shares reserved for issuance under the two plans represent 11.4% of the 14,024,433 shares of applicant's common stock outstanding as of December 31, 1999. Applicant has no warrants, options or rights to purchase its outstanding voting securities other than those granted or to be granted to its directors, officers and employees pursuant to the Original/Amended Plan and the Employee Plan.

Applicant's Legal Analysis

1. Section 61(a)(3)(B) of the Act provides, in pertinent part, that a BDC may issue to its Eligible Directors options to purchase its voting securities pursuant to an executive compensation plan, provided that: (i) The options expire by their terms within 10 years; (ii) The exercise price of the options is not less than current market value of the underlying securities at the date of the issuance of the options, or if no market exists, the current net asset value of the voting securities; (iii) The proposal to issue the options is authorized by the BDC's shareholders, and is approved by order of the SEC on the basis that the terms of the proposal are fair and reasonable and do not involve overreaching of the BDC or its shareholders; (iv) The options are not transferable except for disposition by gift, will, or intestacy; (v) No investment adviser of the BDC receives any compensation described in paragraph (1) of section 205 of the Investment Advisers Act of 1940, except to the extent permitted by clause (A) or (B) of that section; and (vi) the BDC does not have a profit-sharing plan as described in section 57(n) of the Act.

2. In addition, section 61(a)(3)(B) of the Act provides that the amount of the BDC's voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance may not exceed 25% of the BDC's outstanding voting securities, except that if the amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights issued to the BDC's directors, officers, and employees pursuant to an executive compensation plan would exceed 15% of the BDC's outstanding voting securities, then the total amount of voting securities that would result from the exercise of all outstanding warrants, options, and rights at the time of issuance will not exceed 20% of the outstanding voting securities of the BDC.

3. Applicant represents that the terms of the Amended Plan meet all the requirements of section 61(a)(3)(B) of the Act. Applicant contends that the options that may be granted under the Amended Plan have substantially the same terms as the options that are currently issuable under the Original Plan, differing only in the calculation of the number of share issuable upon the election, reelection or appointment of an Eligible Director. In addition, applicant states that on the Approval Date, the number of voting securities that would result from an exercise of all options issued or issuable to the officers, directors and employees under the Employee Plan and the Original/Amended Plan is approximately 1,600,000 shares, or 11.4% of applicant's outstanding common stock as of December 31, 1999. Applicant asserts that, given the small number of shares of common stock issuable upon the exercise of options under the Amended Plan, the exercise of options should not have a substantial dilutive effect on the net asset value of applicant's common stock. Further, the options will vest in three annual installments, commencing with the first annual shareholder's meeting after an Eligible Director's election, appointment or reelection, and only if the Eligible Director continues to serve on applicant's Board.

4. Applicant submits that the terms of the Amended Plan are fair and reasonable and do not involve overreaching of applicant or its shareholders. Applicant states that the Eligible Directors are actively involved in the oversight of applicant's affairs and that it relies on the judgment and experience of its directors. Applicant also states that the extensive and varied financial, regulatory, political, and legal experience of its directors enhance applicant's ability to accomplish its investment objectives. Applicant submits that the Amended Plan will provide significant incentives to the Eligible Directors to remain on the Board and to devote their best efforts to the success of applicant's business. Applicant also states that the options will provide a means for the Eligible Directors to increase their ownership interests in applicant, thereby ensuring close identification of their interests with the interests of applicant's shareholders.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7274 Filed 3–23–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3241]

State of Ohio

As a result of the President's major disaster declaration on March 7, 2000, and an amendment thereto on March 10, I find that the Counties of Adams, Gallia, Jackson, Lawrence, Meigs, Pike, and Scioto in the State of Ohio constitute a disaster area due to damages caused by severe storms and flooding beginning on February 18, 2000 and continuing through March 2, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 6, 2000 and for economic injury until the close of business on December 7, 2000 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Athens, Brown, Highland, Ross, and Vinton in the State of Ohio may be filed until the specified date at the above location.

Any counties contiguous to the above-named primary counties and not listed herein have been covered under a separate declaration for the same occurrence.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere: 7.625%.

Homeowners Without Credit Available Elsewhere: 3.812%.

Businesses With Credit Available Elsewhere: 8.000%.

Businesses and Non-Profit Organizations Without Credit Available Elsewhere: 4.000%.

Others (Including Non-Profit Organizations) With Credit Available Elsewhere: 6.750%.

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere: 4.000%.

The number assigned to this disaster for physical damage is 324106 and for economic injury the number is 9G7500.

It should be noted that this Presidential declaration supersedes the SBA disaster declaration approved on February 28, 2000 for the same occurrence.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 13, 2000.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 00–7264 Filed 3–23–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region IV, North Florida District, Jacksonville, FL; Advisory Council Meeting; Public Meeting

The U. S. Small Business Administration, North Florida District Office, Jacksonville, Florida, Advisory Council will hold a public meeting from 12:00 p.m. to 2 p.m., April 20, 2000, at the Crowley American Transport, Inc. Building, First Floor Conference Room, 9487 Regency Square Boulevard, Jacksonville, Florida, to discuss such matters as may be presented by members, staff of the U. S. Small Business Administration, or others present.

For further information, write or call Claudia D. Taylor, U. S. Small Business Administration, 7825 Baymeadows Way, Suite 100–B, Jacksonville, Florida 32256–7504, telephone (904) 443–1933.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–7350 Filed 3–23–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region IX—Hawaii District Advisory Council; Public Meeting

The Small Business Administration Region IX Hawaii District Advisory Council, located in the geographical area of Honolulu, Hawaii, will hold a public meeting at 10:30 a.m. on Wednesday, April 12, 2000, at the Business Information and Counseling Center, 1111 Bishop Street, Suite 204, Training Center, Honolulu, HI 96813, to discuss such matters as may be presented by members, staff of the Small Business Administration, or others present.

FOR FURTHER INFORMATION, WRITE OR CALL: Andrew K. Poepoe, District Director U.S. Small Business Administration 300 Ala Moana Boulevard, Room 2–235 Honolulu, Hawaii 96850–4981 (808) 541–2965

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–7263 Filed 3–23–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

[FHWA Docket No. FHWA–98–4317]

Transportation Equity Act for the 21st Century; Final Guidance for the Congestion Mitigation and Air Quality Improvement Program; Correction

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Notice; issuance of final guidance; correction.

SUMMARY: This document contains a correction to the notice issuing final guidance on section 1110 of the Transportation Equity Act for the 21st Century (TEA–21) for the congestion mitigation and air quality improvement program (CMAQ) that was published on February 23, 2000 at 65 FR 9040. The notice published on February 23, 2000, contained an incorrect docket number. This document corrects a typographical error in the docket number.

DATES: This correction is effective on March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. S. Reid Alsop, HCC–30, Office of the Chief Counsel, (202) 366–1371 or Mr. Mike Savonis, HEPN–10, Office of Environment and Planning, (202) 366–2080. Office hours are from 8 a.m. to 4:30 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Need for Correction

The Federal Highway Administration and the Federal Transit Administration published a notice issuing final guidance on the CMAQ program on February 23, 2000 at 65 FR 9040. In the heading of the notice, it incorrectly states "FHWA Docket No. FHWA–99–4317." It should have stated "FHWA Docket No. FHWA–98–4317." This document corrects that number.

In notice FR Doc., 00–4224, published on February 23, 2000 (65 FR 9040), make the following correction: On page 9040, in the second column, in the heading of the document, correct the docket number to read FHWA Docket No. FHWA 98–4317.

Authority: 23 U.S.C. 315; sec. 1110, Pub. L. 105–178, 112 Stat. 107 (1998); 49 CFR 1.48 and 1.51.

Corrections

Issued on: March 10, 2000.

Karen E. Skelton,

Chief Counsel, Federal Highway Administration.

[FR Doc. 00–7223 Filed 3–23–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Ex Parte No. 290 (Sub No. 5) (2000–2)]

Quarterly Rail Cost Adjustment Factor

AGENCY: Surface Transportation Board.

ACTION: Approval of rail cost adjustment factor.

SUMMARY: The Board has approved the second quarter 2000 rail cost adjustment factor (RCAF) and cost index filed by the Association of American Railroads. The second quarter 2000 RCAF (Unadjusted) is 1.050. The second quarter 2000 RCAF (Adjusted) is 0.593. The second quarter 2000 RCAF–5 is 0.577.

EFFECTIVE DATE: April 1, 2000.

FOR FURTHER INFORMATION CONTACT: H. Jeff Warren, (202) 565–1533. TDD for the hearing impaired: (202) 565–1695.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: DAY TO DAY OFFICE SOLUTIONS, Suite 210, 1925 K Street, NW, Washington, DC 20423–0001, telephone (202) 289–4357. [Assistance for the hearing impaired is available through TDD services (202) 565–1695.]

This action will not significantly affect either the quality of the human environment or energy conservation.

Pursuant to 5 U.S.C. 605(b), we conclude that our action will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act.

Decided: March 20, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–7329 Filed 3–23–00; 8:45 am]

BILLING CODE 4915–00–P

Corrections

Federal Register

Vol. 65, No. 58

Friday, March 24, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–295 and 50–304

Commonwealth Edison Company Zion Nuclear Power Station, Units 1 and 2; Notice of Consideration of Approval of Transfer of Facility Operating Licenses and Conforming Amendments and Opportunity for a Hearing

Correction

In notice document 00–5743 beginning on page 12586 in the issue of Thursday, March 9, 2000, make the following correction:

On page 12587, in the first column, in the 8th line, "April 29, 2000" should read "March 29, 2000".

[FR Doc. C0–5743 Filed 3–23–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Extension: Rule 17a–6; SEC File No. 270–433; OMB Control No. 3235–0489]

Request Under Review by Office of Management and Budget

Correction

In notice document 00–6202 on page 13799 in the issue of Tuesday March 14, 2000, the agency 's name is corrected to read as set forth above.

[FR Doc. C0–6202 Filed 3–23–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release Nos. 33–7728A, IC–23958A, IA–1815A; File No. S7–25–95]

RIN 3235–AG27

Personal Investment Activities of Investment Company Personnel

Correction

In rule document 00–5914 beginning on page 12943 in the issue of Friday, March 10, 2000, make the following correction:

On page 12934, in the second column, above the signature, "Dated: March 6, 200" should read "Dated: March 6, 2000".

[FR Doc. C0–5914 Filed 3–23–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42494; File No. SR– NASD–00–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to the Delay of the Implementation Date of Changes to Riskless Principal Trade Reporting Rules

March 3, 2000.

Correction

In notice document 00–5916, beginning on page 13069, in the issue of Friday, March 10, 2000, make the following correction:

On page 13069, in the third column, the date line is added to read as set forth above.

[FR Doc. C0–5916 Filed 3–23–00; 8:45 am]

BILLING CODE 1505–01–D

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27149]

Filings Under the Public Utility Holding Company Act of 1935, as Amended, ("Act")

Correction

In notice document 00–6077 beginning on page 13349 in the issue of Monday, March 13, 2000, make the following corrections:

1. On page 13349, in the third column, the agency's name is corrected to read as set forth above.

2. On the same page, in the same column, in the sixth line from the bottom, "March 8, 2000" should read "March 28, 2000".

[FR Doc. C0–6077 Filed 3–23–00; 8:45 am]

BILLING CODE 1505–01–D

Federal Register

Friday,
March, 24, 2000

Part II

Department of State

Office of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 1999; Notice

DEPARTMENT OF STATE

statements which, as required by law,

Publication of this listing in the **Federal Register** is required by Section

REPORT OF TANGIBLE GIFTS—Continued

DEPARTMENT OF STATE

[Public Notice 3250]

Office of Protocol; Gifts to Federal Employees From Foreign Government Sources Reported to Employing Agencies in Calendar Year 1999

The Department of State submits the following comprehensive listing of the statements which, as required by law, Federal employees filed with their employing agencies during calendar year 1999 concerning gifts received from foreign government sources. The compilation includes reports of both tangible gifts and gifts of travel or travel expenses of more than minimal value, as defined by statute.

Publication of this listing in the **Federal Register** is required by Section 7342(f) of Title 5, Unites States Code, as added by Section 515(a)(1) of the Foreign Relations Authorization Act, Fiscal Year 1978 (Public Law 95–105, August 17, 1977, 91 Stat. 865).

Dated: March 10, 2000.

Bonnie Cohen,

Under Secretary for Management.

REPORT OF TANGIBLE GIFTS

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Executive Office of The President			
President	40″ x 29″ gilt framed oil painting of an autumn landscape that depicts a shepherd and goats. Recd—October 20, 1998. Est. Value—$1500. Archives Foreign.	His Excellency Petru Lucinschi, President of the Republic of Moldova.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Six bottles of sake. Recd—November 20, 1998. Est. Value—$72. Accepted by Another Government Agency.	His Excellency, Keizo Obuchi, The Prime Minister of Japan and Mrs. Obuchi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Two bonsai trees. One is a 250-year-old Ezo Spruce, $9000. The other is an 80-year-old Trident Maple, $5500. Recd—November 20, 1998. Est. Value—$14500. Accepted by Another Government Agency.		
President	49″ tall wood chair with a black leather seat and carved back splat that depicts the Mexican and American flags, an eagle, a snake, and two hands, and reads "USA and Mexico." Recd—January 15, 1999. Est. Value—$1000. Archives Foreign.	Sr. Victor Cervera Pacheco, Governor of Yucatan Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Rosary with white glass beads and silver-tone crucifix, $15. (2) Three limited edition Vatican coins: bronze, silver, and 22 kt. gold. Each is 44 mm diameter and is decorated with an image of the Pope and Latin text, $1000. Recd—January 26, 1999. Est. Value—$1015. Archives Foreign.	His Holiness John Paul II	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Paperback. "The Routes of Al-Andalus," by various authors, $15. (2) Three hardcover books. "The Fires of Excellence," by Miles Danby, "The Alhambra in Detail," by Aurelio Cid Acedo, and "American Orientalists," by Gerald Ackerman, $45. (3) 38″ x 30″ gilt framed and matted series of four etchings, two depict landscapes and two depict buildings in Spain, $600. Recd—February 3, 1999. Est. Value—$660. Archives Foreign.	His Majesty Juan Carlos I, King of Spain.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	31″ x 26″ silver-tone framed and double matted antique map circa 1669 of the United States, Canada, and Greenland; sight size 24″ x 18″. Recd—February 19, 1999. Est. Value—$1200. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	4″ x 6″ ornate reticulated silver tray. Recd—March 5, 1999. Est. Value—$1400. Archives Foreign.	His Excellency Massimo D'Alema and Mrs. D'Alema, President of the Council of Ministers of the Italian Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) 13″ x 22″ ceramic wall hanging that depicts a boy peeking through a cactus, $185. (2) Paperback. "Ceramica," by Cesar Sermeno, $5. Recd—March 9, 1999. Est. Value—$190. Archives Foreign.	His Excellency Armando Calderon Sol, President of the Republic of El Salvador.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	(1) Bottle of Foucher white wine. (2) Bottle of Cousine-Macul cabernet sauvignon. (3) Bottle of Finlandia vodka. (4) Bottle of Johnnie Walker Black Label scotch. (5) Bottle of Corodniu champagne. Recd—March 9, 1999. Est. Value—$120. Accepted by Another Government Agency.		
President	(1) 9″ bronze sculpture that depicts hands reaching upward, on a 5″ square black wooden base, $500. (2) Two 11″ x 14″ x 6″ inlaid wooden boxes that contain stationery and a black pen, personalized for the President and First lady, $800. (3) Two cases of refill stationery, $400. Recd—March 10, 1999. Est. Value—$1700. Archives Foreign.	His Excellency Alvaro Arzu Irigoyen, President of the Republic of Guatemala.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) 23″ x 16″ paper scroll honoring the President's visit to Honduras, $25. (2) 7″ long silver key, held in a 14″ x 10″ x 4″ wooden box with blue velvet lining, $400. Recd—March 11, 1999. Est. Value—$425. Archives Foreign.	The Honorable Dr. Vilma R. de Castellanos, Mayor of Tegucigalpa, Tegucigalpa, Honduras.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	18″ x 15″ black wood framed and matted watercolor painting of a white domed building, a fountain, and trees. Recd—March 17, 1999. Est. Value— $1200. Archives Foreign.	His Excellency Bertie Ahern, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Dublin crystal oval dish with etching that reads "Presented to Bill Clinton, President of the United States on the Occassion of St. Patrick's Day, 1999, by the Taoesich Bertie Ahern"; approximately 14″ long x 16″ tall x 18″ wide. Recd—March 17, 1999. Est. Value—$1200. Archives Foreign.		

REPORT OF TANGIBLE GIFTS—Continued

REPORT OF TANGIBLE GIFTS—Continued

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	20″ x 13″ mother-of-pearl and abalone oval shadow box Nativity scene with a horseshoe-shaped crown on top. Inside the crown is an angel and a man. Recd—March 23, 1999. Est. Value—$750. Archives Foreign.	Mr. Yasser Arafat, Chairman, Executive Committee of the Palestine Liberation Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	5″ square x 3″ tall Christian Dior men's burlwood jewelry box with removable top drawer lined with suede, and lid with small gilt handle. Recd—April 23, 1999. Est. Value—$250. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) 6″ x 7″ bronze statute of three men and one woman on a ship, on a marble base, $750. (2) 15″ x 5″ diameter green vase hand-painted with purple and blue stemmed irises, $250. Recd—April 24, 1999. Est. Value—$1000. Archives Foreign.	His Excellency Leonid Kuchma, President of Ukrane.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	5″ x 2″ silver box with lid rimmed with 18 kt. gold border and the seal of Kazakhstan engraved on top. Recd—April 14, 1999. Est. value—$2000. Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	8″ tall 14 kt. gold and silver tree with green enamel leaves and grapes, on a 3″ x 6″ marble stand. Recd—April 24, 1999. Est. Value—$2500. Archives Foreign.	His Excellency Eduard Shevardnadze, President of Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	.5 liter bottle of liquor, vintage 1963. Recd—May 3, 1999. Est. Value—$50. Accepted by Another Government Agency.	His Excellency Viktor Orban, The Prime Minister of the Republic of Hungary and Mrs. Orban.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Gilt framed pastel and gold wash painting of Mount Fuji at sunset with a pine forest in the foreground, under glass; sight size 16″ x 20″; signed in calligraphy. Recd—May 3, 1999 Est. Value—$2500. Archives Foreign.	His Excellency Keizo Obuchi, The Prime Minister of Japan and Mrs. Obuchi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Three bottles of 1995 Szepsy wine. Recd—June 8, 1999. Est. Value—$90. Accepted by Another Government Agency.	His Excellency Arpad Goncz, The President of the Republic of Hungary and Mrs. Goncz.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Handcrafted 32 piece lead crystal chess set. Board is 21″ square with black marble base and crystal top. Each playing piece is 2–3″ tall, one side has a white marble base, the other has a black marble base. Recd—June 22, 1999. Est. Value—$1400. Archives Foreign.	His Excellency Dr. Janez Drnovsek, Prime Minister of the Republic of Slovenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	13″ x 27″ wood carving of a bird and two bunches of grapes, with a 2.5″ wooden border. Recd—June 24, 1999. Est. Value—$500. Archives Foreign.	His Excellency Ljubco Georgievski, The Prime Minister of the Former Yugoslav Republic of Macedonia and Mrs. Georgievska.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	65″ x 78″ earth-tone wool tapestry wall hanging reproduction that depicts a city street filled with people. Recd—July 1, 1999. Est. Value—$2500. Archives Foreign.	His Excellency Mohamed Hosny Mubarak, President of the Arab Republic Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Leather-bound antique book with gilt edging. "The Recovery of Jerusalem," by Captain Charles Wilson and Captain Warren; original edition published 1871. Recd—July 16, 1999. Est. Value—$700. Archives Foreign.	His Excellency Ehud Barak, The Prime Minister of Israel and Mrs. Barak.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	8″ diameter carved gold chased metal and vermeil tray with tree matching 4″ tall pedestal cordial glasses. Recd—July 27, 1999. Est. Value—$300. Archives Foreign.	His Excellency Sergei Stepashin, Chairman of the Government of the Russian Federation.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Antique leather-bound books. (1) Six volume set of "The World Crisis," by Winston Churchill, first edition, $2400. (2) "Historic, Military, and Naval Anecdotes," by Edward Orme; illustrated with hand-colored lithographs, first edition, $3000. (3) "Sonnets," by the Italian poet Petrarch, hand-illuminated edition, $5000. (4) "Commentaries," by Caesar, edited by Clark in a large rebacked folio with maps, plans, and plates, $4000. Recd—September 1, 1999. Est. Value—$14400. Archives Foreign. 8″ x 11″ green leather portfolio embossed with the seal of Morocco. Recd—September 1, 1999. Est. Value—$30. Archives Foreign.	His Majesty Mohamed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	59″ x 67″ sage, beige, brown, and maroon colored rug titled "Whaka Hura"; limited edition. Recd—September 13, 1999. Est. Value—$2824. Archives Foreign.	His Excellency Sir Michael Hardie-Boys, G.C.M.G., Governor General of New Zealand.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	9″ diameter bronze incense burner with animal head ring handles. Bowl and legs have inlaid lacquer, shell, and mother-of-pearl traditional motifs and figures. Matching lid has open ventilation slots, inlaid folk instruments motif, and is capped with a "fu dog" finial. Burner stands on a tripodial base with plaque that reads "With the compliments from H.E. Mr. Phan Van Khai, Prime Minister, Socialist Republic of Vietnam." Recd—September 13, 1999. Est. Value—$500. Archives Foreign.	His Excellency Phan Van Khai, Prime Minister of the Socialist Republic of Vietnam.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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President	(1) 8″ x 17″ etched and sand blasted blue crystal canoe, $125. (2) Two woven pouches that contain a greenstone from the Ngai Tahu tribe and a Kauri tree seed, a symbolic tree in New Zealand, $30. (3) 18″ x 18″ x 10″ black wooden box with wool lining and a removable lid with an applied leaf design, $45. Recd—September 13, 1999. Est. Value—$200. Archives Foreign.	The Right Honorable Jenny Shipley, P.C., The Prime Minister of New Zealand and Mr. Shipley.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	24″ x 20″ gilt wood framed and matted impressionist style winter landscape oil painting titled "Vienvra le Temps," that depicts a hiking man sitting under a tree next to a campfire; painted and signed by Serge Brunoni; sight size 12″ x 16″. Recd—September 30, 1999. Est. Value—$800. Archives Foreign.	The Right Honorable Jean Chretien, P.C., M.P., Prime Minister of Canada.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	11″ tall x 9″ long x 3″ wide solid bronze sculpture of a woodland caribou; signed by artist Huguette Joneas. Recd—October 9, 1999. Est. Value—$1200. Archives Foreign.	The Honorable Lucien Bouchard, Prime Minister of the Province of Quebec.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	14″ cut crystal Valaska Bela vase with a snowflake motif and sawtooth border. Recd—October 9, 1999. Est. Value—$550. Archives Foreign.	His Excellency Eduard Kukan, Minister of Foreign Affairs of the Slovak Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Hardcover book. "The Mosaics of Jordan," by Michele Piccirillo. Recd—October 12, 1999. Est. Value—$65. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	9″ x 10″ long silver model of a single-sailed Norwegian Viking boat, which sits on a 6″ x 7.5″ wooden base with silver plaque. Recd—October 15, 1999. Est. Value—$700. Archives Foreign.	His Excellency Kjell Magne Bondevik, Prime Minister of Norway.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	Gilt framed shadow box that contains a gold-tone reproduction of a Panamanian Huaca. Recd—October 19, 1999. Est. Value—$200. Archives Foreign.	Her Excellency Mireya Moscoso, President of the Republic of Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	10.5″ tall x 10″ wide silver eagle with vermeil gold beak and talons, that sits on a wooden base with plaque. Recd—October 28, 1999. Est. Value—$2800. Archives Foreign.	His Excellency Olusegun Obasanjo, The President of the Federal Republic of Nigeria and Mrs. Obasanjo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Three hardcover books. "Norway," "The Other Side of Blue," and "Living in Norway," $60. (2) 8″ x 10″ framed photograph of King Harald and Queen Sonja, $20. Recd—November 1, 1999. Est. Value—$80. Archives Foreign.	Their Majesties, The King and Queen of Norway.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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	18″ tall bronze abstract sculpture of a man and woman standing together, titled "Unity," signed by artist Kjersti, W., that sits on a 8″ x 5.5″ black marble base. Recd—November 1, 1999. Est. Value—$3000. Archives Foreign.		
President	15″ x 19″ mother-of-pearl and abalone shadow box Nativity scene. Recd—November 1, 1999. Est. Value—$1000. Archives Foreign.	Mr. Yasser Arafat, Chairman, Committee of the Palestine Liberation Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	16″ x 14″ x 8″ 18 kt. gold mantle clock with Arabic numerals, with a sterling silver Arabian horse with traditional Bahraini dress saddle that stands on a malachite base. Recd—November 3, 1999. Est. Value—$12000. Archives Foreign.	His Royal Highness Prince Bandar bin Sultan, Ambassador of Saudi Arabia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) Hardcover book. "Istanbul," $50. (2) 12″ silver. coffee pot that sits on a 6″ diameter base, with inscription on base that reads "As a memory of visiting Istanbul: Earl Cakir," $2500. Recd—November 17, 1999. Est. Value—$2550. Archives Foreign.	The Honorable Erol Cakir, Governor of Istanbul, The Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	15″ x 9″ ornately carved gold and silver religious icon in the shape of an altar with a picture of the Virgin Mary of Soumela in the center; mounted on an 18″ x 12″ velvet-covered board. Recd—November 22, 1999. Est. Value—$800. Archives Foreign.	The Honorable Dimitris L. Avramopoulos, The Mayor of Athens and Mrs. Avramopoulos, The Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	(1) 14″ tall x 14″ wide x 6″ deep grey/green carved marble eagle, $1000. (2) 2.5″ diameter silver medallion that depicts a religious man with a beard, with writing around the rim, $50. Recd—November 22, 1999. Est. Value—$1050. Archives Foreign.	The Honorable Yordon Sokolov, President, National Assembly, Republic of Bulgaria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	(1) Videotape. "Panorama," $15. (2) Hardcover book. "120 Years National Assembly 1879–1999," by the National Assembly in Sofia, $25. Recd—November 22, 1999. Est. Value—$40. Archives Foreign..		
President	28″ x 23″ gilt and peach framed abstract oil painting that depicts a blue cup and a peach block in the lower corner on a navy background; sight size 19″ x 24″. Recd—November 22, 1999. Est. Value—$300. Archives Foreign.	His Excellency Petar Stoyanov, The President of the Republic of Bulgaria and Mrs. Stoyanova.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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President	(1) 31″ x 43″ oil painting on canvas titled "The Well," in a 49.5″ x 38″ gilt frame. Piece depicts a stone well in a barren landscape of muted grey, blue, and green tones, $3500. (2) Silver medallion engraved with the image of a Ukrainian palace, $50. (3) 3″ x 1″ gold-plated sculpture in the shape of a wand and a crown, all of which sit on a green marble base, $40. (4) 8″ diameter green glass vase with blue, grey, red, and yellow circles and swirls, $250. Recd—December 8, 1999. Est. Value—$3840. Archives Foreign.	His Excellency Leonid Kuchma, President of Ukraine.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	(1) Bottle of Hetman vodka (2) Bottle of Ukrainian liquor. Recd—December 8, 1999. Est. Value—$65. Accepted by Another Government Agency..		
President	(1) Three ceramic coffee canisters, with gold-tone clasps, $60. (2) Small navy blue nylon backpack, $25. (3) Green apron with gold vertical stripes, $30. (4) Green pot holder with gold vertical stripes, $15. (5) Navy blue plastic tote bag with gold stars, $20. (6) Light brown "Millennium Bear" teddy bear, $50. (7) 18″ x 27″ braided wicker basket, $60. (8) 14″ oatmeal and brown Harrods teddy bear with a maroon fleece hat and scarf, $75. (9) 10″ brass and glass coffee pot, $60. (10) Silver corkscrew, $35. (11) Two 7″ silver candlesticks, $60. (12) 9″ crystal decanter with gold trim, $100. (13) Set of four crystal brandy glasses with gold trim, $200. (14) Silver gray ladle, $25. (15) 9″ silver platter, $50. (16) 8″ silver gravy boat, $40. (17) 8″ cream colored cake stand with a green and purple grape and leaf pattern, $75. Recd—December 16, 1999. Est. Value—$980. Archives Foreign.	His Majesty Sultan Haji Hassanal Bolkiah Mu' Izzaddin Waddaulah, Sultan and Yang Di-Pertuan of Brunei Darussalam.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	Assorted wine, champagne, candles, and food products, all from Harrods. Recd—December 16, 1999. Est. Value—$1200. Accepted by Another Government Agency..		
President	Set of 14 kt. gold cuff links and tie clip that bear the seal of Finland. Recd—December 17, 1999. Est. Value—$575. Archives Foreign.	His Excellency Martti Ahtisaari, President of Finland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President	Three 29″ diameter circular leather mats and one 11.5′ x 10′ leather floor covering. All items are primarily beige with green stripes and a red and white floral and heart pattern. The three round mats are embroidered to read "Bill Clinton." Recd—December 18, 1999. Est. Value—$5000. Archives Foreign.	His Excellency Jibril Muhammad Aminu, Ambassador of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President	10″ x 8″ gold and silver sculpture with a circular flat top lined with small animals and a carved object in the middle, on a blue-green marble/granite base. Recd—December 20, 1999. Est. Value—$1000. Archives Foreign.	His Excellency Nursultan Nazarbayev, President of the Republic of Kazakhstan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	(1) Two 18 kt. gold rings attached to a pendant and cuff bracelet by two thin gold chains. All pieces are embedded with turquoise stones, $1800. (2) 12″ x 10″ green marble two-piece sculpture. The sphere has a metal ring that reads "Cooperative Threat Reduction," which sits in a concave spot on the marble base, $150. (3) Set of 18 kt. gold rectangular cuff links with an intricately carved design on each, $225. Recd—December 20, 1999. Est. Value—$2175. Archives Foreign.	.....	
President	(1) Case of eight bottles of olive oil. (2) Two 10lb. bags of dates. Recd—December 29, 1999. Est. Value—$200. Accepted by Another Government Agency.	His Excellency Zine El-Abidine Ben Ali, The President of the Republic of Tunisia and Mrs. Ben Ali.	Non-acceptance would cause embarrasment to donor and U.S. Government.
	20″diameter x 15″ tall yellow and purple leather ottman storage box. Ottoman is hollow with lid. Inside the ottoman are two 14″diameter x 5″ tall purple and yellow leather trays. Recd—December 29, 1999. Est. Value—$350. Archives Foreign.	.....	
President and First Lady	(1) Silver brooch with clusters of pearls in the shape of a daisy, $185. (2) 2″ x 8″ x 10″ black lacquer box with gold wheat desing on the lid, $250. Recd—June 22, 1994. Est. Value—$435. Archives Foreign.	Their Imperial Majesties The Emperor and Empress of Japan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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President and First Lady	(1) 15″ tall porcelain figure of a woman dancer with long brown hair and a white hardened mesh dress standing on a rock surrounded by puffins, $350. (2) 9″ x 7″ gold-tone framed poem titled "Dance In The Wind" $25. (3) 6″ x 4″ white and blue porcelain stand that reads "Dance In The Wind, Limited Edition No. 1, Presented to Hillary Clinton by the City of Limerick, Ireland, 5th of September 1998," $50. Recd—September 8, 1998. Est. Value—$425. Archives Foreign.	Mr. Joe Harrington Mayor of Limerick Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: 10″ tall off-white carved bone that depicts a warrior wearing a jaguar headdress; a lion's head protrudes from the top of the bone; sitting on a 3″ diameter wooden base, $200. For the First Lady: 1″ x 2″ gold filigree cross pendant, $250. Recd—February 14, 1999. Est. Value—$450. Archives Foreign.	The Honorable Licenciado Xavier Abreu Sierra, Presidente Municipal de Merida, Merida, Yucatan Mexico.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: Two volume and antique book set. "The History of the Conquest of Mexico By the Spaniards," by Don Antonio de Solis, $400. For the First Lady: (1) Book. "Rebuzus de la Collection," by Robert Everts, $50. (2) Traditional Mexican shawl, $150. Recd—February 15, 1999. Est. Value—$600. Archives Foreign.	His Excellency Ernesto Zedillo Ponce de Leon, President of the United Mexican States.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: 15″ x 20″ light yellow/brown traditional Ashanti stool with various shaped carvings, $500. For the First Lady: (1) Three 11″ x 13″ gilt framed and matted shadow boxes containing multicolored cotton traditional Ghanaian cloths, $375. (2) 23″ long yellow traditional Ghanaian beaded a necklace with blue, white, and red stripes, and two 1″ gold tube accents, with a matching bracelet, $100. (3) 18″ long 18 kt. gold link necklace with a 1″ pure gold nugget pendant, and a pair of matching 2″ dangling pierced earrings with .5″ pure gold nuggets at the ends, $1400. Recd—February 23, 1999. Est. Value—$2375. Archives Foreign.	His Excellency Flt. Lt. Jerry John Rawlings, (Ret.), The President of the Republic of Ghana and Mrs. Rawlings.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: 20″ x 13″ x 11″ wood lacquered humidor with two drawers, $650. For the First Lady: 1″ x 2″ x 14 kt. gold filigree leaf-shaped brooch, $300. Recd—March 10, 1999. Est. Value—$950. Archives Foreign.	His Excellency Arnoldo Aleman, The President of the Republic of Nicaragua and Mrs. Aleman.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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President and First Lady	For the President: 23″ x 15″ black framed and matted pen sketch of a Warsaw city square; signed by the artist Solom Krosimy, $300. For the First Lady: 90″ x 16″ blue silk table runner with rust, pink, green, tan, and blue floral motif, gold backing, and silver fringe on both ends, $165. Recd—April 23, 1999. Est. Value—$465. Archives Foreign.	His Excellency Aleksander Kwasniewski, The President of the Republic of Poland and Mrs. Kwasniewski.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) Hardcover book. "Together Towards the New Century: Official Visit of Heydar Aliyev to the United States of America," $40. (2) Paperback. "NATO and Azerbaijan," $10. (3) Silver and vermeil wine decanter ewer set with six cups and a platter. 13″ tall decanter has long spout and handle, with blue, white and green floral enamel motif. 3.5″ tall cups have engraved silver floral motif and sit on a gold stem. 16″ x 12″ platter has white, blue, and green floral enamel work on each scalloped end and a silver medallion in the center of the platter surrounded by a gold engraved background, $2500. (4) Silver and vermeil tea set with six settings and a black and white enamel floral motif; that includes 8.5″ tall teapot with gold spout, handle, and attached lid; 3″ diameter gold saucers; 1.5″ tall x 2.5″ diameter teacups; 3.5″ long spoons; 13″ diameter platter with silver rim, gold trimmed circle of black and white enamel work at the center, $3000. Recd—April 24, 1999. Est. Value—$5550. Archives Foreign.	His Excellency Heydar Aliyev, President of the Republic of Azerbaijan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the First Lady: 4″ x 7″ round crystal bowl with geometric and vine motif, $350. For the President: 30″ x 34″ brown framed and double matted 22″ x 26″ print of a crane in red and black, titled "Radiant Loon"; signed by the artist Kenojuak; numbered 15/50, $1000. Recd—April 24, 1999. Est. Value—$1350. Archives Foreign.	The Right Honorable Jean Chretien, P.C., M.P., The Prime Minister of Canada and Mrs. Chretien.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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President and First Lady	For the First Lady: (1) 13″ x 9″ round silver vessel with a floral and bird relief. Vessel has a hinged lid with a gold spiral leaf finial, $1200. (2) 48″ x 96″ rust, orange, blue, and tan Vakko silk scarf with a geometric and floral motif, $150. (3) Two silver frames with a rope border, a name plate of donor, and the Turkish crest, each including photographs inscribed by the donor, $600. For the President: Large hardcover book "Istanbul Capital of Empires," by Ertug, $200. Recd—April 24, 1999. Est. Value—$2150. Archives Foreign.	His Excellency Suleyman Demirel, The President of the Republic of Turkey and Mrs. Demirel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) Six place settings, including a four piece silver flatware set with a symbol that depicts an eagle at the bottom of each piece, $3300. (2) 13″ brass Chillim pipe that has turquoise beads in a floral motif, $300. (3) 19″ long wooden flute with mother-of-pearl inlay floral design, $175. Recd—April 24, 1999. Est. Value—$3775. Archives Foreign.	His Excellency Islam Karimov, President of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: 9″ diameter bronze plate with silver overlay and crest in the center and an etched signature, $300. For the First Lady: 3″ x 3″ silver model of a domed church, $250. Recd—April 24, 1999. Est. Value—$550. Archives Foreign.	His Excellency Petar Stoyanov, The President of the Republic of Bulgaria and Mrs. Stoyanova.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	43″ x 30″ gilt framed pencil sketch of butterflies, pink roses, orchids, and seven face profiles with a 5″ x 3″ square cut out in the center of the piece with sketches of five additional profiles. Recd—April 28, 1999. Est. Value—$750. Archives Foreign.	His Excellency Vaclav Havel, President of the Czech Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) 4′ x 8′ red hand-woven wool rug with green, black, blue, and yellow vertical stripes, $800. (2) 4′ x 3′ black wood framed painting titled "Spring/Winter," that is divided into two halves, one half has blue paint splatters and a blue horizontal stripe, other half has yellow paint splatters and a yellow horizontal stripe, $1200. (3) 72″ x 28″ rust and mustard colored silk shawl with a gold braided border and nine embroidered flowers with stems standing vertically from the base, $400. Recd—May 18, 1999. Est. Value—$2400. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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President and First Lady	For the First Lady: 16″ long Gilbert Albert black leather necklace with silver pendant that depicts three conch shells with a pink pearl in the center, $450. For the President: 10″ dark wood Gilbert Albert letter opener with two silver conch shells and one small pink pearl on the end, $300. Recd—June 16, 1999. Est. Value—$750. Archives Foreign.	The Honorable Pierre Muller, Mayor of Geneva, Switzerland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: 9″ square wooden Hermes picture frame with burgundy leather hinge that opens to display two 4.5″ square pictures, $200. For the First Lady: 18 kt. gold Claude Lalanne floral brooch depicting a dogwood blossom, $750. Recd—June 17, 1999. Est: Value—$950. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the President: Silver-plated Waterman "Night and Day" fountain pen that has silver and black horizontal stripes and black tips, $345. For the First Lady: 9.5″ tall x 4″ diameter cobalt blue porcelain vase with gilt fleur-de-lis accents and gilt rim, $300. Recd—June 17, 1999. Est. Value—$645. Archives Foreign.	His Excellency Lionel Jospin, The Prime Minister of the French Republic and Mrs. Jospin.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	10″ tall white cloisonne vase with gold trim and adorned with green, blue, and pink flowers, that sits on a silver base. Recd—July 3, 1999. Est. Value—$300. Archives Foreign.	His Excellency Kim Dae-jung, The President of the Republic of Korea and Mrs. Kim.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) 11″ tall black hand-woven handbag with a pink, yellow, and green floral motif with drawstring closure and a woven shoulder strap, $50. (2) 100″ x 95″ ornate white hand-woven hammock with braided fringe and a peacock motif on the edges, $450. Recd—September 21, 1999. Est. Value—$500. Archives Foreign.	His Excellency Andres Pastrana, The President of the Republic of Colombia and Mrs. Pastrana.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) 15″ x 22″ mother-of-pearl and abalone shadow box Nativity scene that reads "Bethlehem 2000″ across the front, $1000. (2) 16″ 18kt. gold hourglass link necklace with hexagonal diamond pendant with a blue sapphire in lower center, $5000. Recd—September 23, 1999. Est. Value—$6000. Archives Foreign.	Mr. Yasser Arafat, Chairman, Executive Committee of the Palestine Liberation Organization.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	23″ tall ceramic vase in blue, green, white, and gold pattern with gold around the rim and base. Recd—October 12, 1999. Est. Value—$300. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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	46″ x 29″ tile mosaic depicting the Church of St. Stephen on a beige background with yellow, rust, black, and brown. Recd—October 12, 1999. Est. Value—$3500. Archives Foreign.		
President and First Lady	For the President: 53″ x 41″ gilt wood framed and matted dot painting of the President wearing a black suit and a red and blue striped tie with a red and yellow background; sight size 36″ x 25″, $100. For the First Lady: Two traditional Nigerian silk outfits, each includes a mesh silk shirt and three wraps. One wrap measures 88″ x 50″, one measures 44″ x 27″, and the other measures 21″ x 74″. The first outfit is beige with gold and blue weaving, blue vertical stripes, and gold diagonal stripes with gold fringe, $360. The second outfit is silk with gold and brown weaving, pink and gold flowers, brown, gold, and red horizontal stripes and gold fringe, $310. Recd—October 28, 1999. Est. Value—$770. Archives Foreign.	His Excellency Olusegun Obasanjo, The President of the Federal Republic of Nigeria and Mrs. Obasanjo.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	(1) Two 42″ x 91″ and 42″ x 150″ black, rust, and cream silk sarees with an exotic print, $300. (2) 24″ square wood framed 3-dimensional wood carving that depicts a female Hindu Goddess playing a sitar in a forest setting, $1000. (3) 11″ diameter orange alabaster bowl with silver banding on the outside rim that sits on a wooden base, $600. Recd—November 12, 1999. Est. Value—$1900. Archives Foreign.	His Excellency Abdurrahman Wahid, The President of the Republic of Indonesia and Mrs. Wahid.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and First Lady	For the First Lady: 12″ x 9″ silver oval hanging mirror with silver chain, scalloped edges and raised heart motif on the back, $700. For the President: White album of photographs commemorating the President and First Lady's State Visit to Ankara, Turkey, $50. Recd—November 15, 1999. Est. Value—$750. Archives Foreign.	His Excellency Suleyman Demirel, The President of the Republic of Turkey and Mrs. Demirel.	Non-acceptance would causeembarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	(1) 18 kt. gold brooch with grape leaf motif that reads "2000," $450. (2) Three butterfly pins, one large silver, one medium gold, and one small silver, $250. (3) Paperback. "Tsitouras: Discover the Tsitouras Collection 1999," $15. (4) Pair of 18″ tall ornately engraved silver candlesticks on a tripodial base with clawed feet, $8000. Recd—November 17, 1999. Est. Value—$8715. Archives Foreign.	His All Holiness Bartholomew Archbishop of Constantinople, New Rome and Ecumenical Patriarch.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	21″ x 15″ unframed religious paper with four gold leaf squares of Jesus at various stages in his life and Turkish writings in the background. Recd—November 17, 1999. Est. Value—$800. Archives Foreign.		
	Two paperbacks. "Conversations With Ecumenical Patriarch Bartholomew I," by Oliver Clement, and "The Orthodox Church and the Environment," by Athena Schina. Recd—November 17, 1999. Est. Value—$35. Archives Foreign.		
President and First Lady	For the President: (1) Paperback. "Coins and Numismatics," published by the Hellenic Ministry of Culture and the Numismatic Museum, $25. (2) Three laminated pamphlets. "Archaic Horsemen of the Acropolis," $5. (3) Large hardcover book about ancient artifacts, written in Greek, $75. For the First Lady: Hardcover book. "Greek Jewellery[sic]: 6,000 Years of Tradition," published by The Archaeological Receipts Fund, $50. Recd—November 19, 1999. Est. Value—$155. Archives Foreign.	Her Excellency Elisavet Papazoi, Minister of Culture of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	For the President: (1) Four ancient silver Greek coins, $200. (2) 7″ tall composition replica bust of a young boy titled "The Head of Eros," on a 3″ square wooden base, $50. (3) Paperback. "The Monuments of the Acropolis," by Maria Brouskari, $20. For the First Lady: Gold-plated eight-petaled rosette brooch, $65. Recd—November 19, 1999. Est. Value—$335. Archives Foreign.		

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
President and First Lady	For the First Lady: 8″ x 6″ silver Hellenistic Water-Jug pitcher with scrolled handle and spout that resembles a leather sac, $1200. For the President and First Lady: (1) Hardcover book. "The Olympic Games in Ancient Greece," edited by Nicolaos Yalouris, $40. (2) 24″ x 11″ x 1″ off-white ceramic reproduction of an ancient relief that depicts two youths playing hockey with four onlookers, $175. Recd—November 20, 1999. Est. Value—$1415. Archives Foreign.	His Excellency Constantine Simitis, The Prime Minister of the Hellenic Republic and Mrs. Simitis.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	For the First Family: (1) 66″ x 65″ cherry wood framed and matted color sketch of the First Family at the Great Wall of China, $4000. (2) Hardcover book. "The Life and Works of Wang Yingchun and Yang Lizhou," $30. For the First Lady: Four silk shirts, one short sleeve with green and white stripes, two short sleeve with tan and white stripes, and one tan long sleeve, $160. Recd—April 8, 1999. Est. Value—$4190. Archives Foreign.	His Excellency Zhu Rongji, The Premier of the State Council of the People's Republic of China and Madame Lao.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	For the President: Paperback. "The Exhibition of Hohrin Fukuoji," $100. For the First Lady: (1) 12″ x 9″ black lacquer letter box with gold and pink flowers painted on lid, $600. (2) 76″ x 16″ silk shawl, half black, half white, with a silk rose and leaf on each end, $200. (3) 21″ x 18″ silver blue framed and matted Japanese poem written in charcoal, made by Mrs. Obuchi, $500. For Chelsea Clinton: 5″ x 4″ brass Mikimoto frame inlaid with lapis and two cultured pearls, $300. Recd—May 3, 1999. Est. Value—$1700. Archives Foreign.	His Excellency Keizo Obuchi, The Prime Minister of Japan and Mrs. Obuchi.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	(1) 25″ x 18″ framed impression of 200 nails on white flat paper, enclosed in a 33″ x 27″ plexiglass case; signed by artist Ueker, $2500. (2) Large hardcover book. "Ueker," inscribed by artist, $30. (3) Two 80″ x 30″ black cashmere Jil Sander scarves, $1000. Recd—June 16, 1999. Est. Value—$3530. Archives Foreign.	His Excellency Gerhard Schroeder, The Chancellor of the Federal Republic of Germany and Mrs Schroeder.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Family	For the President and First Lady: Set of 12 handblown clear crystal wine glasses by Oskar Kogoj, each with unique colored stem design. Three 6″ tall, six 8″ tall, and three 10″ tall. Five of the glasses have a flared cone base, $600. For the President: Hardcover book. "Ljubljana: A Pictorial Chronicle of a Capital City," by Marko Habic, $40. For the First Lady: (1) Hardcover book. "Nature Design," written and inscribed by Oskar Kogoj, $40. (2) Hardcover book. "Ljubljana: City of Culture," by Bojana Leskovar, $20. For Chelsea Clinton: Hardcover book. Recd—June 21, 1999. Est. Value—$740. Archives Foreign.	The Honorable Viktorija Potocnik, Mayor of Ljubljana Slovenia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	For the President: (1) 14″ x 10″ reproduction of the first Slovenian Bible, circa 1584, with brown leather cover. The Bible is stored in a 15″ x 12″ engraved wooden box, $250. For the First Lady: 16″ x 42″ cream colored intricately woven doily table runner with scalloped edges, $100. For the President and First Lady: Two brown leather photo albums commemorating the President and First Lady's trip to Slovenia, June 1999, $150. For Chelsea Clinton: (1) Hardcover book. "Slovenske Krajine," by Dusan Ogrin; inscribed by Ana and Spela Kucan, $30. (2) Paperback, "Krajine/Landscapes," written and inscribed by Ana Kucan, $20. (3) Small silver dove pendant on a silver chain, $50. Recd—June 22, 1999. Est. Value—$600. Archives Foreign.	His Excellency Milan Kucan, The President of the Republic of Solvenia and Mrs. Kucan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	For the President: (1) Black and green wool and viscose baseball cap that reads "Ireland," $20. (2) Grey, blue, and black wool fisherman's sweater, $85. (3) Pair of 18 kt. gold Cartier cuff links in the shape of a car's head with emerald eyes and onyx nose, $1500. For the First Lady: Pair of Saks Fifth Avenue 18kt. white gold loop earrings encircled with gold and diamonds, $4000. For Chelsea Clinton: 18kt. gold Tiffany & Co. charm bracelet with five charms depicting starfish and hearts, $1200. Reed—July 5, 1999. Est. Value—$6805. Archives Foreign.	His Excellency Nawaz Sharif, Prime Minister of the Islamic Republic of Pakistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Family	For Chelsea Clinton: (1) 16″ sliver red carnelian beaded necklace with eight carved seals and a flat oval red stone pendant, $400. (2) 70″ square purple, blue, and fuchsia silk scarf with a white circular pattern, $100. (3) 7″ purple satin purse with purple fringe and metal sequins, $30. For the First Lady: (1) 54″ x 16″ hand printed gold, orange, blue, turquoise, and black silk scarf, $60. (2) 3″ silver brooch with a 1″ lapis stone and a small red coral stone, $200. (3) 16″ carved silver serving tray with handles; attached to tray by a ribbon are 10 embroidered napkins, $550. For the President: (1) 9″ diameter scalloped silver serving bowl and lid with carved silver flower finial, $450. (2) 4″ tall scalloped silver creamer with handle and matching 6″ diameter drip plate, $450. (3) 54″ x 60″ red, blue, green, gold, black, and orange handwoven Anatolian wool rug with braided fringe, $2000. (4) Two large hardcover copies of the book "Anatolian Carpet," $50. (5) Leather-bound book. "Architecture of the Ottoman Empire," $375. (6) Paperback. "Turkish Handwoven Carpets," $50. Recd—September 28, 1999. Est. Value—$4715. Archives Foreign.	His Excellency Bulent Ecevit, Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Family	For Chelsea Clinton: Silver five piece mirror/hairbrush set with raised floral pattern. Set includes a 9.5″ handheld mirror, a 7″ comb, a 9″ oval brush with handle, a 7″ oval lint brush, and a 3″ powder box with lid, $1200. For the First Lady: Large silk-covered book. "Silks for the Sultans," by Ahmet Ertug, $150. For the President: (1) Large fabric-covered book. "In Pursuit of Excellence," by Ahmet Ertug, $125. (2) Set of seven commemorative Turkish coins, one 25 lira gold, and six 3,000,000 lira silver. All read "75 C 1923–1998," $300. (3) Turkish State Award. Award consists of (a) White enamel and gold trimmed starburst medallion that hangs from a white eagle and olive branches, attached to a red and white striped ribbon. (b) Black leather and velvet portfolio that contains a certificate signed by President Demirel, $500. Recd—November 15, 1999. Est. Value—$2275. Archives Foreign.	His Excellency Suleyman Demirel, The President of the Republic of Turkey and Mrs. Demirel.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	5.5″ long antique silver floral-motif handheld mirror, with six small lapis stones embedded on the front and one larger lapis stone embedded on the back, $200 (2) 16″ x 5″ x 9.5″ light green wooden box with gilt square accents on the top, each square painted with moon and berry designs; lined with tan velvet, $75. Recd—November 15, 1999. Est. Value—$275. Archives Foreign.	His Excellency Bulent Ecevit, Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	(1) 10″ square silk handkerchief trimmed with blue handstitched lace, $50. (2) Handmade 10″ long fork and spoon set made of black horn, inlaid with two stripes of bone and silver on the handles and dots on the tips, $40. (3) 67″ x 17″ handwoven white silk shawl with gold thread floral pattern and white silk fringe on each end, $175. Recd—November 15, 1999. Est. Value—$265. Archives Foreign.	His Excellency Bulent Ecevit, Prime Minister of the Republic of Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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First Family	(1) 40″ x 40″ hand-embroidered linen tablecloth with an embroidered floral design in each of the corners and a 1″ gold colored lace doiley trimming the edges, $175. (2) Three hardcover copies of "Ataturk's Izmir Days," complied by Izmir Valiligi, $150. (3) 42″ x 70″ dark multi-colored burlap kilim with fringed ends, displaying a Turkish design of different abstract shapes, $450. For Chelsea Clinton: 9″ x 9″ black velvet handmade Turkish drawstring handbag with a 3″ diameter gold and silver embroidered emblem and a thin rope shoulder strap, $50. Recd—November 16, 1999. Est. Value—$825. Archives Foreign.	The Honorable Kemal Nehrozoglu, Governor of the Province Izmir.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Family	For the First Lady: 18kt. gold bangle bracelet with a lion head on each end, $1200. For Chelsea Clinton: 7″ silver necklace with a 1″ round sodalite pendant, $225. For the President: (1) 9″ diameter x 1.5″ deep silver bowl engraved with a signature and the seal of Greece, $1000. (2) Two. 4.5″ tall hand-hammered silver cups with raised olive branch relieve under the rim. Each cup is 5″ in diameter and sits on a pedestal base, $3,000. Recd—November 19, 1999. Est. Value—$5425; Archives Foreign.	His Excellency Constantinos Stephanopoulos, President of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	26″ x 26″ gilt framed and white matted oil portrait of a man wearing a maroon and brown coat, by Carmelo de Arzadun. Recd—October 4, 1998. Est. Value—$3000. Archives Foreign.	His Excellency Dr. Julio Maria Sanguinetti, President of the Oriental Republic of Uruguay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) Two 4″ tall six-sided pots, $40. (2) Two 2″ tall six-sided cache pots, $20. (3) 5″ tall x 10″ diameter red metal bowl with gold trim, $20. (4) 8″ tall x 13″ diameter wooden box covered with blue and multicolored cotton fabric, $10. Recd—February 19, 1999. Est. Value—$90. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	73″ x 18″ grey silk and rayon scarf with a striped and floral pattern. Recd—March 17, 1999. Est. Value—$245. Archives Foreign.	His Excellency Bertie Ahern, Prime Minister of Ireland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	2″ x 3″ 18 kt. gold florentine scarab pendant with blue inlay accents. Recd—March 24, 1999. Est. Value—$1200. Archives Foreign.	General Selmy Selim, President of Supreme Council, Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	25″ tall cream Egyptian alabaster vase inlaid with turquoise, lapis, and limestone banding. Recd—March 24, 1999. Est. Value—$1200. Archives Foreign.		
First Lady	39″ diameter mosaic that depicts a man wearing a fruit and leaf crown, with a 7″ wide border that depicts fruit and leaves. Recd—March 26, 1999. Est. Value—$2500. Archives Foreign.	The Honorable Muhammid El Hashim Guedria, Governor of Mahidia, The Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	26″ coral graduated bead necklace with a 7″ matching bracelet and 2″ tear-drop clip-on earrings. Recd—March 31, 1999. Est. Value—$1500. Archives Foreign.	Mrs. Leila Ben Ali, Office of the President of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	48″ square red and white silk Hermes scarf, permanently creased accordion style. Recd—April 23, 1999. Est. Value—$175. Archives Foreign.	His Excellency Jacques Chirac, President of the French Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	25″ x 32″ gilt floral framed and matted cotton pastel drawing that is predominantly pink, white, blue, yellow, and black and depicts a woman walking away from a man; titled "Street Scene in Rome", by Zurab NizRaradze. Recd—April 24, 1999. Est. Value—$400. Archives Foreign:	His Excellency Eduard Shevardnadze, President of Georgia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	12″ x 8″ white Herend porcelain serving bowl bordered in mint green and gold with yellow and green flowers and butterfly motif. Recd—May 3, 1999. Est. Value—$450. Archives Foreign.	His Excellency Viktor Orban, The Prime Minister of the Republic of Hungary and Mrs. Orban.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) 80″ x 20″ orange silk shawl with red and gold embroidered paisley design and orange tassles on both ends, $400, (2) 54″ long purple silk dress with purple and gold embroidered flowers and multicolored applique on the sleeves, neck, and sides, $600. Recd—May 18, 1999. Est. Value—$1000. Archives Foreign.	His Excellency Abdul Kareem Kabariti, The Chief of the Royal Court and Mrs. Kabariti, Amman, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) 12″ x 7″ white Herend porcelain urn with gilt trim, pink and green flowers and butterfly motif, and matching lid with yellow rose finial, $1400. (2). 22″ x 11″ green velour table runner with gold trim and a 5″ diameter needle-pointed rose in the center, $100. Recd—June 8, 1999. Est. Value—$1500. Archives Foreign.	His Excellency Arpad Goncz, The President of the Republic of Hungary and Mrs. Goncz.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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First Lady	(1) 26″ x 9″ x 9″ carved red wooden statue depicting a woman carrying a baby in her arms and a bowl of fruit on her head, $475. (2) 20″ silver beaded necklace with amber stones, $40. (3) 25″ necklace with rust color seed beads, $65. (3) 9″ irregularly shaped box covered in pink leather, $10. (4) 6′ square cotton/linen blend blanket with white stitching, $75. Recd—June 11, 1999. Est. Value—$665. Archives Foreign.	Mrs. Marguerite Kerekou, First Lady of Benin.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	34″ tall silver-plated samovar with black wood finial lid, two wood side handles, and floral relief. Recd—June 23, 1999. Est. Value—$1300. Archives Foreign.	Maitre Mohamed Debbagh, President of the Municipal Council Fez, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) 30″ ornate gold and silver vermeil belt with an ornate buckle depicting St. George and the Dragon, $1200. (2) 10″ tall silver pitcher with large spout, pedestal base, and curled handle, $1200. Recd—June 23, 1999. Est. Value—$2400. Archives Foreign.	The Honorable Leoluca Orlando, Mayor of Palermo, Italy.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	2″ silver brooch with an oval mother-of-pearl center. Recd—June 24, 1999. Est. Value—$135. Archives Foreign.	His Excellency Ljubco Georgievski, The Prime Minister of the Former Yugoslav Republic of Macedonia and Mrs. Georgievska.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Two 14″ x 12″ 18 kt. gold and platinum picture frames with filigree motif and set with amethyst, topaz, garnet, jade, and acquamarine stones. Each hold an 8″ x 10″ photograph. One photograph is of the First Lady and the former King of Morocco. The other is of the former King of Morocco, the First Lady, and Chelsea Clinton walking. Both are inscribed by the former King. Recd—September 7, 1999. Est. Value—$15000. Archives Foreign.	His Majesty Mohamed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	21″ Benin gilt bronze head of a woman with rings around her neck, on a 4″ green stand. Recd—September 16, 1999. Est. Value—$1000. Archives Foreign.	Mrs. Stella Obasanjo, First Lady of the Federal Republic of Nigeria.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) 19.5″ silver square link necklace with yellow amber stones. (2) ¾″ silver square shaped earrings with yellow amber stones. (3) 8″ silver square link bracelet with yellow amber stones. Recd—October 6, 1999. Est. Value—$350. Archives Foreign.	His Excellency Bronislaw Geremek, Minister of Foreign Affairs of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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First Lady	(1) 5″ bronze statue of a man on a 1.5″ black marble stand, by Zofia Wolsika, $3000. (2) Silver medallion depicting the profile of Fryderyk Chopin and his signature, $35. (3) Compact disc. "Chopin Year 1999," $15. (4) Hardcover book. "Spotkania z Chopinem," by Edward Hartwig, $45. Recd—October 6, 1999. Est. Value—$3095. Archives Foreign.	His Excellency Aleksander Kwasniewski, President of the Republic of Poland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) Hardcover book. "Slovensko v Obrazoch," by Remedium, $50. (2) Hardcover book. "Slovakia," compiled by Eugen Lazistan, $25. (3) Silver medallion that depicts a castle and reads "Prezidentsky Palac v Bratislve," $35. (4) 3″ antique pottery oil lamp, $75. (5) 4″ antique pottery jug, $100. (6) 3″ antique pottery oil lamp, $75. Items 4–6 are contained on an 11″ x 6″ wooden stand with a gold-tone plaque that reads "Roman Period 63 B.C.E. 330 C.E" with a plastic lid. (7) 24″ x 24″ handwoven cream colored fiber wall hanging with floral design in a gold-tone wooden loom, $150. (8) 27″ x 20″ brightly colored oil painting on canvas that depicts a farm scene with people working, $350. (9) Blue glass tea set with hand-painted pink, yellow, and blue flowers and 24 kt. gold accents. Set includes a teapot, cream pitcher, sugar dish, six teacups, and six saucers, $600. Recd—October 6, 1999. Est. Value—$1460. Archives Foreign.	His Excellency Rudolf Schuster, The President of the Slovak Republic and Mrs. Schusterova.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	4″ blue, gold, white, orange, and yellow kelandic glass figure on a 3″ clear glass stand that reads "Forseti Islands.". Recd—October 8, 1999. Est. Value—$300. Archives Foreign.	His Excellency Olafur Ragnar Grimsson, President of the Republic of Iceland.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	10″ cut crystal table Valaska Bela basket with a snowflake motif. Recd—October 9, 1999. Est. Value—$300. Archives Foreign.	His Excellency Eduard Kukan, Minister of Foreign Affairs of the Slovak Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	Black onyx bead necklace with a pendant of four 14 kt. gold frogs and a pair of matching earrings. Recd—October 19, 1999. Est. Value—$1200. Archives Foreign.	Her Excellency Mireya Moscoso, President of the Republic of Panama.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady	Two ornate brass lamps, 58″ in height and 27″ in diameter. Lamps have rectangular glass panels with hinge doors that open and have eight sockets inside, on a brass stand. Lamps are an arabesque, traditional Middle Eastern pattern. Recd—October 26, 1999. Est. Value—$6000. Archives Foreign.	His Majesty Mohamed VI, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady	(1) 18 kt. white gold and diamond 16″ necklace with center pendant of seven diamonds, $8500. (2) Pair of open-work 18 kt. white gold and diamond clip-on earrings, $1200. Recd—November 17, 1999. Est. Value—$9700. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	(1) 13″ x 13″ x 2″ beige ceramic dish with four trees etched in the center in a darker beige tone, $150. (2) 16″ x 12″ red leather book of photographs commemorating the First Lady's visit to Jordan, $225. (3) 76″ x 48″ cream colored woven rug with three brown, green, and gold trees and cream colored fringe at each end, $675. Recd—November 17, 1999. Est. Value—$1050. Archives Foreign.		
First Lady	80″ x 36″ blue, red, green, black, and white patterned handwoven Turkish rug with cream colored fringe. Recd—November 18, 1999. Est. Value—$600. Archives Foreign.	The Honorable Ertugrul Dokuzoglu, Governor of the Province of Antalya, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
	40″ x 17″ cream colored silk table runner with blue, pink, gold, and green floral embroidery on the ends and silver sequins along the edges. Recd—November 18, 1999. Est. Value—$75. Archives Foreign.		
First Lady	10″ white, blue, and gold-tone porcelain urn with silver overlay, hearts, and jewelled insets. Recd—November 18, 1999. Est. Value—$850. Archives Foreign.	The Honorable Bekir Kumbul, Mayor of Antalya, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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First Lady	Six Coroc Studio purses. (1) 7″ x 13″ purple alligator pattern velvet handbag with two purple leather handles, $125. (2) 10″ x 12″ black leather shoulder bag with three divided compartments and two shoulder straps, $300. (3) 8″ x 14″ metallic grey leather purse with two shoulder straps and snap closure, $225. (4) 11″ x 12″ metallic blue handbag with two clear plastic handles, $250. (5) 12″ x 14″ soft brown alligator pattern leather drawstring shoulder bag, with one strap and silver accents, $200. (6) 6″ x 10″ red alligator pattern velvet handbag, with a front spin clasp and matching adjustable strap, $150. Recd—November 24, 1999. Est. Value—$1250. Archives Foreign.	His Excellency Abdelsam Jaidi, Consul General of the Kingdom of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady and Chelsea	For the First Lady: (1) Paperback. "Silent Images: Women in Pharaonic Egypt," by Zahi Hawass, $10. (2) 49″ x 39″ multicolored wool rug that depicts an Egyptian market with four men trading pottery, $350. For Chelsea Clinton: 2″ x .5″ silver brooch that depicts a pueblo style house and wheel, set with turquoise and amethyst, $150. Recd—March 23, 1999. Est. Value—$510. Archives Foreign.	Mrs. Suzanne Mubarak, Ittihadiya Palace, Egypt.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady and Chelsea	For the First Lady: Set of blue glass containers with silver filigree accents. (1) 5″ x 8″ round chalice with silver filigree base, $100. (2) 8″ round container with silver filigree top, $100. (3) 13″ x 7″ vase with silver filigree top, $150. (4) 13″ x 4″ oil lamp with silver filigree, $125. (5) 13″ x 3″ decorative oil lamp with silver filigree handle, $125. (6) 3″ x 2″ amphora-shaped black, blue, and yellow glass vessel, $25. (7) 5″ x 4″ silver plaque that reads "Presented to Mrs. Hillary Clinton By The Town Hall of Ariana Tunisia," $75. (8) Black carved rose on a silver stem with silver leaves, $150. (9) 22″ x 60″ orange scarf with foil stitching, $50. For Chelsea Clinton: Set of blue glass items with silver filigree accents. (1) 7″ x 2″ pair of slippers with silver fish motif on the toe, heal, and strap, $200. (2) Four blue and black painted pottery beads, each smaller than an inch, $40. (3) 4″ x 5″ silver plaque that reads "Presented to Ms. Chelsea Clinton By The Town Hall of Ariana Tunisia," $75. (4) 5″ x 3″ cylinder container with silver top, $100. Recd—March 25, 1999. Est. Value—$1315. Archives Foreign.	Her Excellency Faiza Kefi, Minister of Environment and Land Development of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady and Chelsea	For the First Lady: Two black ceramic bottles with swirl wirework motif silver finials, and silver pedestal base. One is wide and 9″ tall, the other is thin and 17″ tall, $800. For Chelsea Clinton: 13″ x 9″ silver filigree two-sided oval dressing mirror on two column supports with covered jar on base, mounted on four feet, $650. Recd—March 28, 1999. Est. Value—$1450. Archives Foreign.	His Excellency Zine El-Abidine Ben Ali, The President of the Republic of Tunisia and Mrs. Ben Ali.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady and Chelsea	For the First Lady: (1) 12″ x 6″ x 5″ wood lockable jewelry box with raised hinged lid, $200. (2) 26″ irregular amber bead necklace. Salmon colored stone beads on metal loops separate some beads, $100. For Chelsea Clinton: (1) 10″ x 6″ x 4″ wooden jewelry box, $100. (2) 28″ link necklace of round medallions connected by silver rings with red and blue bead accents, $100. Recd—March 31, 1999. Est. Value—$500. Archives Foreign.	The Honorable Moulay Mustapha Ait Mauma, Governor of Errachidia, Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady and Chelsea	(1) Gold-tone leather purse with two strap handles, $200. (2) Dark green silk caftan with green embroidery on the sleeves and collar, $300. (3) Black velvet caftan with gold-tone braiding at collar and shoulders, $300. (4) Two velvet capes, one blue/grey and one light blue, each with a hood lined with a gold-tone braid trim and tassels, $600. (5) Blue, green, yellow, and gold-tone silk caftan with gold-tone, blue, and green brocade down the center and matching sheer silk liner, $400. (6) Red and gold-tone polka-dot silk caftan with gold-tone and red brocade braid down the center and matching sheer silk liner, $350. (7) Two gold-tone brocade belts, $150. Recd—April 1, 1999. Est. Value—$2300. Archives Foreign.	His Majesty Hassan II, King of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
	(1) Three layered green organza and silk caftans with gold-tone embroidery, $350. (2) Silver-tone leather purse, $150. (3) 18 kt. gold overlay, silver, and green enamel horn-shaped evening purse with gold chain. Lid is set with 64 diamonds, and below the lid are seven garnets. Inside lid is a mirror surrounded by four more garnets, $20000. (4) Two 60″ x 60″ velvet blankets. One is red with gold-tone and red fringe. The other is blue with blue and gold-tone fringe tassels, and braid, $500. (5) Maroon velvet hooded cape with a gold-tone braid trim and tassels, $300. (6) Blue silk polka-dot caftan with blue, black, and gold-tone center brocade braid, $500. (7) Green and white floral silk caftan with green white, and gold-tone center brocade, $500. (8) Grey, silver-tone, and black diamond patterned silk caftan with gold-tone and silver-tone center brocade, $350. (9) Green sheer silk with a gold-tone, purple, white, and yellow floral design, with white, green and gold-tone braid accents, $350. (10) Sky blue silk satin caftan with white floral motif with blue, white and gold-tone center brocade, $350. Items 6–10 each have matching silk liners. (11) Blue and silver-tone silk caftan with silver-tone sequins and a blue, grey and gold-tone center brocade, $300. (12) Blue, white, and black silk caftan with silver-tone bars and blue, grey, and gold-tone brocade accents, $350. (13) Two brown leather suitcases, $700. (14) Four gold-tone brocade belts, $300. Recd—April 1, 1999. Est. Value—$25000. Archives Foreign.		
First Lady and Chelsea	(1) Large fabric-covered book. "The Splendour of Islamic Calligraphy," by Abdelkebir Khatibi, $60. (2) Large hardcover book. "The Hassan II Mosque," Mohammed-Allal Sinaceur, $60. (3) 11″ x 4″ x 7″ burlwood jewelry box with locking lid and two sectional interior, $250. (4) 6″ tall x 4.5″ diameter amber vessel with pointed lid. Both parts are decorated with silver accent overlays, $300. Recd—April 1, 1999. Est. Value—$670. Archives Foreign.	His Excellency Abderrahmane Youssoufi, Prime Minister of Morocco.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
First Lady and Chelsea	For the First Lady: Gold brooch in the shape of four tulips, $250. For Chelsea Clinton: 4″ swan-like turquoise stone paperweight that is also a letter opener, $50. Recd—July 16, 1999. Est. Value—$300. Archives Foreign.	His Excellency Ehud Barak, The Prime Minister of Israel and Mrs. Barak.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady and Chelsea	For Chelsea Clinton: 15.5″ blue topaz beaded necklace with a 22kt. gold double floral clasp, $450. For the First Lady: (1) 16″ cut camelian beaded triple strand necklace with a 22kt. gold clasp, $450. (2) .5″ 22 kt. gold and cabochon camelian circular earrings, $300. Recd—November 9, 1999. Est. Value—$1200. Archives Foreign.	Mrs. Nave Barak, Israel	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady and Chelsea	For Chelsea Clinton: Steel Sector watch with a black face and a gold-tone crown on the face, $150. For the First Lady: 7″ silver and gold camel with a silver and gold military figure riding the camel that sits on a 1.5″ marble stand, $4500. Recd—November 17, 1999. Est. Value—$4650. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
First Lady and Chelsea	For the First Lady: (1) 2″ 18 kt. gold brooch in the shape of a half man, half bird, $400. (2) 34″ x 34″ blue, white, yellow, and red Vakko silk scarf with a floral and striped pattern, $65. For Chelsea Clinton: (1) 16″ silver link necklace with a flower pendant, $175. (2) 25″ x 25″ blue, green, yellow, and white Vakko silk scarf with an astrological sign pattern, $50. Recd—November 18, 1999. Est. Value—$690. Archives Foreign.	The Honorable Istemihan Talay, The Minister of Culture, Republic of Turkey and Mrs. Talay.	Non-acceptance would cause embarrassment to donor and U.S. Government.
President and Chelsea	For the President (1) Black cotton/poly rugby jersey that reads "New Zealand All Blacks," $50. (2) 18″ tapered black and chartreuse art-glass vase, $140. For Chelsea Clinton: (1) Four compact discs. "Te Papa Suite" performed and recorded by Gareth Farr and the New Zealand Symphony Orchestra, "Stellar," by Tom Bailey and Stellar, "The Best of Crowded House," by Crowded House, and "The Mutton Birds," by the Mutton Birds, $60. (2) Small black cotton/poly rugby jersey that reads "New Zealand all Blacks," $50. Recd—September 13, 1999. Est. Value—$300. Archives Foreign.	The Right Honorable Jenny Shipley, P.C., The Prime Minister of New Zealand and Mr. Shipley.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Chelsea	Black brushed fabric cape with hood that has silver embroidery. Recd—March 27, 1999. Est. Value—$300. Archives Foreign.	Mrs. Leila Ben Ali, Office of the President of the Republic of Tunisia.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chelsea	7″ long x .5″ wide yellow and white gold and diamond bracelet. Recd—November 17, 1999. Est. Value—$2500. Archives Foreign.	Their Majesties King Abdullah II and Queen Rania al Abdullah, Jordan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Chelsea	(1) .Gold-tone scarf ring in the shape of a flower with a pearl in the center, $10. (2) 60″ x 23″ orange, yellow, red, blue, and tan Vakko silk scarf with Arabic motif, $90. Recd—November 18, 1999. Est. Value—$100. Archives Foreign.	The Honorable Bekir Kumbul, Mayor of Antalya, Turkey.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Carlos E. Pascual, Director, NSC Russia/Ukraine/Eurasian Affairs.	Three gold coins: 200 som, 20 som, and 1 som in a green velvet box. Recd—March 17, 1999. Est. Value—$1000. General Services Administration.	His Excellency Abdulazziz Kamilov, Minister of Foreign Affairs of the Republic of Uzbekistan.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Samuel Berger, Assistant to the President for National Security Affairs.	6″ diameter silver dish with gold plated medallion in the center. Recd—May 27, 1999. Est. Value—$350. General Services Administration.	His Excellency George Papandreou, Minister of Foreign Affairs of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Samuel Berger, Assistant to the President for National Security Affairs.	Silver crossed filigree desk set that includes a sword letter opener, a dagger and a small brass camel, on an oval wood base. Recd—June 15, 1999. Est. Value—$500. General Services Administration.	His Excellency Yusuf bin Alawi Bin Abdullah, The Minister Responsible for Foreign Affairs of the Sultanate of Oman.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Samuel Berger, Assistant to the President for National Security Affairs.	8″ x 8″ silver compote with vermeil lining and six dolphin fish on the scalloped rim and three on the pedestal base. Recd—September 23, 1999. Est. Value—$950. General Services Administration.	The Honorable A. Tsohatzopoulos, Minister of National Defense, Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Samuel Berger, Assistant to the President for National Security Affairs.	(1) Three 29″ diameter leather embroidered pillow covers, $300 each. (2) 100″ diameter leather embroidered rug to match the pillow covers, $2100. Recd—October 26, 1999. Est. Value—$3000. General Services Administration.	The Honorable Aliyu Mohammadd, Nigerian National Security Advisor.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Sean P. Maloney, Assistant to the President and Staff Secretary.	6″ round silver dish with gold plated sterling medallion. Recd—December 1, 1999. Est. Value—$350. General Services Administration.	His Excellency Constantinos Stephanopoulos, President of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
James. B. Steinberg, Deputy Assistant to the President for National Security Affairs.	6″ round silver dish with gold plated sterling medallion. Recd—December 3, 1999. Est. Value—$350. General Services Administration.	His Excellency Constantinos Stephanopoulos, President of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.
Jennifer Palmieri, Special Assistant to the Chief of Staff.	6″ round silver dish with gold plated sterling medallion. Recd—December 10, 1999. Est. Value—$350. General Services Administration.	His Excellency Constantinos Stephanopoulos, President of the Hellenic Republic.	Non-acceptance would cause embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

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Agency for International Development			
Anderson, J. Brady	Three gold coins in a brown leather case. Recd—November 23, 1999. Est. Value—$540.00. In the Administration awaiting disposition.	President Milo Djukanovic of the Republic of Montenegro.	Gift was from a high level foreign dignitary and was accepted to further government.
Air Force			
Gamble, Patrick (General)—Commander, Pacific Air Forces, Hickam Air Force Base, Hawaii.	Two Koji pottery dragons. Recd—November 18, 1999. Est. Value—$590.00 (aggregately). Retained for official display at Headquarters Pacific Air Forces, Hickam Air Force Base.	General Chen, Chaeo-Min, Taiwan Air Force.	Non-acceptance would have caused embarrassment to donor and United States Government.
Ryan, Jane Mrs.—wife of Chief of Staff, USAF, Washington, DC.	18-karat gold Kartouche. Recd—June 21, 1999. Est. Value—$200.00. Retained for official display at Air House (official residence of Chief of Staff, USAF).	Air Marshal Ahmed Shafik, Egyptian Air Force.	Non-acceptance would have caused embarrassment to donor and United States Government.
Ryan, Michael (General)—Chief of Staff, USAF, Washington, DC.	Sterling Silver Chilean matte cup. Recd—November 2, 1998. Est. Value—$325.00. Retained for official display at Air House (official residence of Chief of Staff, USAF).	General Fernando Rojas, Chief of Staff Chilean Air Force.	Non-acceptance would have caused embarrassment to the donor and U.S. Government.
Ryan, Michael (General)—Chief of Staff, USAF, Washington, DC.	Marble aircraft statue. Recd—November 2, 1998. Est. Value—$100.00. Retained for official display at Air House (official residence of Chief of Staff, USAF).	General Fernando Rojas, Chief of Staff, Chilean Air Force.	Non-acceptance would have caused embarrassment to donor and United States Government.
Taylor, Francis X. (Brigadier General)—Commander, Headquarters Air Force, Office of Special.	Watercolor print. Recd—June 22, 1998. Est. Value—$1,500.00. On official display at Headquarters Air Force Office of Special Investigations, Bolling Air Force Base, DC.	Superintendent General Yum Joe Lee, Attaché, Embassy of the Republic of Korea, Washington, DC.	Non-acceptance would have caused embarrassment to the donor and the United States Government.
Taylor, Francis X. (Brigadier General)—Commander, Headquarters Air Force, Office of Special.	Watercolor print. Recd—June 22, 1998. Est. Value—$1,500.00. On official display at Headquarters Air Force Office of Special Investigations, Bolling Air Force Base, DC.	Superintendent General Yum Joe, Attaché, Embassy of the Republic of Korea, Washington, DC.	Non-acceptance would have caused embarrassment to the donor and the United States Government.
Weston, Craig P. (Brigadier General)—Air Force Program Executive Officer, Command and Control,.	Tissot gold-tone wristwatch model—#T49.5.481.32. Recd—February 14, 1999. Est. Value—$275.00. Turned in to GSA, October 6, 1999.	Col. Sultan Bin Farhan Al-Milhin, Royal Saudi Air Force Peace Shield Project Officer.	Non-acceptance would have caused embarrassment to the donor and the United States Government.
Board of Governors of the Federal Reserve Sys			
Greenspan, Alan—Chairman	Pen and ink print, "Fragment III" by Noriko Yanagisawa. Recd—Sept. 7, 1999. Est. Value—$500.00. Retained for display.	Hakuo Yanagisawa, Chairman of the Japanese Financial Reconstruction Committee.	To have refused would have caused offense or embarrassment.
Central Intelligence Agency			
An Agency Employee	750 (18K) yellow gold circular braided necklace and matching bracelet, modern. (2 oz) Recd—June 10, 1999. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7343(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Gordon, John A.—Deputy Director of Central Intelligence.	Embossed silver mounted gilt tooled black leatherette stationary stand, modern, rectangular form with hinged writing leaf opening to view a removable folio cover, beneath two hinged boxes centering a letter rack, each mounted with embossed floral silver panels. 22 x 18½ inches. Recd—November 18, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Governments.
Gordon, John A.—Deputy Director of Central Intelligence.	Geometric piece and applied blue and beige leather round rug and three round pillows, modern with muslin backing, worked in a radiating geometric pattern with stylized flowers in white, red, green and blue on alternating beige and blue grounds. (approx. 10 feet) Recd—November 11, 1999. Est. Value—$500.00 To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Gordon, John A.—Deputy Director of Central Intelligence.	Geometric pieced and applied beige and lavender leather round rug and three round pillows, modern, en suite with number 99–072. (approx. 10 feet) Recd—November 10, 1999. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Mother-of-pearl Bible box, modern, with a hinged top set with nativity scene, enclosing Holy Bible, Old and New Testament, published Collins' Clear Type Press, London and New York, with mother-of-pearl binding. 3¼ x 9¾ inches. Recd—October 29, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Cut glass tall vase, modern, mounted on walnut plinth, inscribed on lip 34cm Vaza Anfoka 1987. 13¾ inches. Recd—October 1, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Brass mounted chagrin commemorative dagger and parade hat, modern, from the Third Lancers, 1815–1831. Recd—September 27, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	24 Karat textured gold 'loop and star' necklace, modern, marked 9999. Recd—December 2, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Tenet, George J.—Director of Central Intelligence.	Silver gilt group of a horned animal beneath a palm tree, modern. 7 inches. Recd—November 1, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Mother-of-pearl Diorama of Nativity and The Last Supper, modern. Each with applied plaque (17 x 23 x 2½ inches). Recd—October 26, 1999. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Commemorative six-piece coin set, 1993, consisting of: 3 gold coins and 3 silver coins, each with double-headed eagle and dates 1943–1993. Recd—October 1, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Marquetry ebonized wood hexagonal folding trestle-base table, modern, with scenes of early civilization. Recd—October 28, 1999. Est. Value—$300.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Engraved silver coffee pot, modern, of typical form 14½ inches. Recd—November 2, 1999. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Herend six-piece desk set, Rothschild Bird pattern #RO, modern, consisting of: oblong tray, cup and undertray, footed small cup, seal and a covered box. Recd—September 28, 1999. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Daum amber pat-de-verre glass figure of a standing woman, modern, inscribed Daum/France. 10 inches. Recd—May 19, 1999. Est. Value—$500.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tenet, George J.—Director of Central Intelligence.	Contemporary silver and specimen amethyst and rock crystal bust of a Horse, modeled by Laido, modern, mounted on mottled black marble oval base. 17 inches. Recd—October 29, 1999. Est. Value—$750.00. To be retained for official display.	5 U.S.C. 7342(f)(4)	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Commerce			
Daley, William M.—Secretary of Commerce.	Mother of Pearl replica of "The Manger Scene/Bethlehem 2000". Recd—October 11, 1999. Est. Value—$800.00. Commerce for disposition.	Mr. Yasser Arafat, Chairman, Palestinian Liberation Organization.	Non-acceptance would have caused embarrassment to donor and United States Government.
Daley, William M.—Secretary of Commerce.	14″ x 16″ Framed Multicolored Mosaic Painting. Recd—October 15, 1999. Est. Value—$275.00. Department of Commerce for disposition.	H.E. Osama Faqih, Minister of Commerce of Saudi Arabia/Riyadh.	Non-acceptance would have caused embarrassment to donor and United States Government.

REPORT OF TANGIBLE GIFTS—Continued

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Daley, William M.—Secretary of Commerce.	8" x 12" Metal Sculptured Horse mounted on stone with quartz formations. Recd—October 17, 1999. Est. Value—$800.00. Department of Commerce for disposition.	H.H. Sultan Bin Zayed Al Nahyan, Deputy Prime Minister of the United Arab Emirates, Abu Dhabi.	Non-acceptance would have caused embarrassment to donor and United States Government.
Defense			
Cohen, Mrs.—Spouse of Secretary of Defense (William Cohen).	Pearl Necklace Double Strand. Recd—March 4, 1998. Est. Value—$2,600.00. Reported to GSA on October 8, 1999.	Essa Bin Salman Al Khalifa, The Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, Mrs.—Spouse of Secretary of Defense (William Cohen).	Lady's Rolex. Recd—March 4, 1998. Est. Value—$4,700.00. Reported to GSA on October 14, 1999.	Essa Bin Salman Al Khalifa, The Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, Mrs.—Spouse of Secretary of Defense (William Cohen).	Pearl Bracelet Double Strand in a Gold Band. Recd—March 4, 1998. Est. Value—$720.00. Reported to GSA on October 14, 1999.	Essa Bin Salman Al Khalifa, The Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, Mrs.—Spouse of Secretary of Defense (William Cohen).	Hand made Gold Bracelet with enameled Beetle. Recd—March 4, 1998. Est. Value—$970.00. Reported to GSA—October 8, 1999.	Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, Mrs.—Spouse of Secretary of Defense (William Cohen).	Gold Egyptian Bracelet. Recd—December 24, 1998. Est. Value—$600.00. Retained for Official Display.	Essa Bin Salman Al Khalifa, The Amir of the State of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Head cast metal, on white marble block. Recd—January 8, 1999. Est. Value—$1,200.00. Returned for Official Display.	Unknown	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Man's Wristwatch, Rolex. Recd—January 8, 1999. Est. Value—$2,120.00. Retained for Official Display.	Unknown	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Hand made Silk Carpet (Floral Design). Recd—March 8, 1998. Est. Value—$650.00. Reported to GSA on October 8, 1999.	Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Lady's Wristwatch Rolex. Recd—January 8, 1999. Est. Value—$1,680.00. Retained for Official Display.	Unknown	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Handmade Silk Carpet (Floral Design). Recd—March 8, 1998. Est. Value—$700.00. Reported to GSA on October 8, 1999.	Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Wristwatch Rolex. Recd—Unknown. Est. Value—$5,220.00. Retained for Official Display.	Unknown	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Cohen, William S.—Secretary of Defense.	Jewelry/Writing Set. Recd—January 8, 1999. Est. Value—$4,895.00. Retained for Official Display.	Unknown	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kramer, Franklin D.—ASD for ISA	Gold Cherub Key Chain. Recd—May 17, 1999. Est. Value—$290.00 Reported to GSA on October 8, 1999.	Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kramer, Franklin D.—ASD for ISA	Three Blue Leather Mats and 23x27 small throw rug. Recd—May 18, 1999. Est. Value—$280.00. Retained for Official Display.	Gen. Abdulsalami A. Abubakar, Head of State of the Republic of Nigeria.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Kramer, Franklin D.—ASD for ISA	Beige Rug (53x37). Recd—March 13, 1999. Est. Value—$600.00. Reported to GSA on October 8, 1999.	Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kramer, Franklin D.—ASD for ISA	Silver Lamp. Recd—March 13, 1999. Est. Value—$480.00. Reported to GSA on October 8, 1999.	Lt. Gen. Magdy Hatata, Chief of Staff, Egyptian Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kramer, Mrs.—Spouse of ASD for ISA.	20" Gold Kartouche Necklace. Recd—May 17, 1999. Est. Value—$365.00. Reported to GSA on October 8, 1999.	Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Kramer, Mrs.—Spouse of ASD for ISA.	Egyptian Bracelet. Recd—March 13, 1999. Est. Value—$830.00. Reported to GSA on October 14, 1999.	Wife of Field Marshal Hussein Tantawy, Minister of Defense (Egypt).	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Ralston, Joseph W.—General, USAF Vice Chairman of the Joint Chiefs of Staff.	Chalice with decorative stones. Recd—December 10, 1998. Est. Value—$400.00. Reported to GSA on October 12, 1999.	General Lieutenant David Tevzadze, Minister of Defense, Republic of Georgia.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Romanowski, Alina, ASD of Defense Near Eastern and South Asian Affairs, ISA.	Two Gold Bracelets. Recd—December 3, 1998. Est. Value—$1,960.00. Reported to GSA on October 12, 1999.	H.E. Shaykh Salim al-Sabah Al-Salim Al Sahah, Minister of Defense.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Sattler, John F.—Brigadier General	Dunhill Watch. Recd—May 11, 1999. Est. Value—$345.00. Reported to GSA on October 14, 1999.	Lt. General Ali, Chief of Defense, Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Shelton, Henry H.—General, Joint of Chiefs of Staff.	Suit of Armor. Recd—March 11, 1999. Est. Value—$280.00. Retained for Official Display.	LTG Henryk Szumski	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Shelton, Mrs.—Spouse of General Henry H. Shelton, Chairman of the Joints Chiefs of Staff.	Concord ladies watch. Recd—March 11, 1999. Est. Value—$950.00. Reported to GSA on October 6, 1999.	General and Mrs. Al-Attayah, Chief of Staff, Qatar Armed Forces.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Smith, Frederick C.—PASD for ISA.	Globe. Recd—September 2, 1998. Est. Value—$3500.00. Reported to GSA on October 12, 1999.	Sheikh Salman, Under Secretary of Defense Policy, Bahrain MOD.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Tyrer, Bob—Chief of Staff	Eterna Men's watch in a wood presentation box. Recd—March 4, 1998. Est. Value—$2870.00. Reported to GSA on October 14, 1999.	Essa Bin Salman al Khalifa, Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Unruh, Brian—Near. Eastern and South Asian Affairs.	Man's watch—Christian Dior Ser# D71–100 AJ5787. Recd—December 23, 1998. Est. Value—$380.00. Reported to GSA on October 14, 1999.	Col. Mohammed al-Sobaie, Military Liaison Officer, Embassy of Kuwait.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Justice			
Carter, J.C.—Assistant Director In Charge, Washington Field Office.	Gold Coin. Recd—April 1999. Est. Value—$272.00. On display in Washington Field Office.	Saudi Arabia Mabahith	Courtesy gift received during meeting.
Marine Corps			
Schneider, H. Jr. (Major)—U.S. Central Command.	Candino Swiss Watch. Recd—September 29, 1999. Est. Value—$462.00. Forwarded to GSA for disposition.	Col Ahem Al-Al-Yatama—Kuwait	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Zinni, A.C. (General)—CINC, U.S. Central Command.	Egyptian Prayer Rug. Recd—November 1999. Est. Value—$2500.00. Individual purchased.	Lt. Gen. Hattata—Chief of Staff (Egypt).	Non-acceptance would have caused embarrassment to donor & U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Zinni, A.C. (General)—CINC, U.S. Central Command.	Sig Saul P228 9mm Combat Pistol. Recd—December 15, 1998. Est. Value—$1098.00. Individual purchased.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Navy			
Cheney, Stephen A. (Bgen)—Marine Corps IG.	Man's Eterna 18K Gold Watch. Recd—February 17, 1999. Est. Value—$7,500.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Danzig, Richard—Secretary of the Navy.	Woman's Rolex 18K Watch. Recd—February 17, 1999. Est. Value—$9000.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Danzig, Richard—Secretary of the Navy.	Tiffany & Co. Brass Alarm Clock and Tiffany & Co. Sterling Silver Gold Pen (given as one gift). Recd—February 15, 1999. Est. Value—$700.00 & $250.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Saud Nasser—Kuwait Minister of Oil.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Danzig, Richard—Secretary of the Navy.	Man's Rolex 18K Watch. Recd—February 17, 1999. Est. Value—$14,000.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Danzig, Richard—Secretary of the Navy.	Two-strand Pearl Necklace. Recd—February 17, 1999. Est. Value—$9000.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Stavridis, James (Captain)—Executive Assistant & Naval I/Aide to the Secretary of the Navy.	Man's Eterna 18K Gold Watch. Recd—February 17, 1999. Est. Value—$7,500.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Work, Robert (Colonel)—Military Assistant & Marine Aide to the Secretary of the Navy.	Man's Eterna 18K Gold Watch. Recd—February 17, 1999. Est. Value—$7,500.00. Forwarded to GSA on July 16, 1999 for disposition.	Sheikh Isa bin Sulman Al-Khalifa—Amir of Bahrain.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Office of the Vice President			
Mrs. Gore	Black silk evening bag with crystal beading decoration. Recd—June 6, 1999. Est. Value—$350.00. Archives.	Keizo Obuchi, Prime Minister of Japan and Mrs. Obuchi.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Gore	African masks in black frame. Recd—June 6, 1999. Est. Value—$400.00. Archives.	Mrs. Marguerite Midjo Keredou, c/o Embassy of the Republic of Benin.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Mrs. Gore	Broach in 20–22 kt. Gold, design of the Cycladic period. Recd—March 17, 1999. Est. Value—$500.00. Archives.	Mr. and Mrs. Vardis and Mariana Vardinoyannis, Athens.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
OVP Staff	Blue leather box with gold trim—inside is a silver box with a seal. Recd—May 3, 1999. Est. Value—$2500.00. Archives.	Nursultan Nazabayez, President of the Republic of Kazakhstan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice President	1. Statuette of Ukrainian figure. 2. Miniature gold mace. 3. 1999 commemorative silver coin. 4. Glass Vase. Recd—December 8, 1999. Est. Value—$ over $250.00, awaiting appraisal. Office of the Vice President.	Leonid Kuchma, President of Ukraine.	Non-acceptance would have caused embarrassment to donor and U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Vice President	Sculpture of calf by Inuk artist. Recd—May 3, 1999. Est. Value—$1000.00. Archives.	Prime Minister Jean Chretien, Prime Minister of Canada.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice President	Baseball autographed by Sammy Sosa. Recd—December 12, 1999. Est. Value—$ over $250.00 awaiting appraisal. Office of the Vice President.	Roberto B. Saladin Selin, Ambassador of the Dominican Republic, Washington, DC.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice President and Mrs. Gore	Jewelry: gold pin for Mrs. Gore (reproduction of pre-Columbian artifact excavated in Panama), gold cufflinks for VP. Recd—October 19, 1999. Est. Value—$650.00. Archives.	Mireya Moscoso, President of Republic of Panama.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice President and Mrs. Gore	Small carriage clock; Koran-sha white porcelain vase. Recd—June 6, 1999. Est. Value—$350.00. Archives.	Keizo Obuchi, Prime Minister of Japan.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Vice President and Mrs. Gore	Porcelain Jar. Recd—December 12, 1999. Est. Value—$ over $250.00, awaiting appraisal. Office of the Vice President.	Yuriy Viktorovich Ushakov, Ambassador Extraordinary and Plenipotentiary of the Russian Federation, Washington, DC.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Senate			
Durbin, Richard J—U.S. Senator	Commemorative historical sword. Recd—April 21, 1999. Est. Value—$260.00. Displayed in Senate Office, SR 364.	Buzek, Jerzy—Prime Minister of Poland.	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Shelby, Richard C. and Annette Nevin Shelby—U.S. Senator and Wife.	Gems Painting. Recd—September 1, 1999. Est. Value—$150.00. Deposited with Secretary of Senate.	Maj. Gen. Ye Myint of Myanmar	Non-acceptance would have caused embarrassment to donor and U.S. Government.
Shelby, Richard C. and Annette Nevin Shelby—U.S. Senator and Wife.	Nine-Gems Ring. Recd—August 31, 1999. Est. Value—$300.00. Deposited with Secretary of Senate.	Lt. Gen. And Mrs. Khin Myunt of Myanmar.	Non-acceptance would have caused embarrassment to donor and the U.S.
Shelby, Richard C. and Annette Nevin Shelby—U.S. Senator and Wife.	Silver Tea Set. Recd—August 23, 1999. Est. Value—$3,500.00. Deposited with Secretary of Senate.	President B.J. Habibie of Indonesia.	Non-acceptance would have caused embarrassment to donor and the U.S.
Sisco, Gary—Secretary of Senate	Waterman Pen. Recd—May 8, 1999. Est. Value—$300.00. Deposited with Secretary of Senate.	Harold Romer, Deputy Secretary General of the European Parliament.	Non-acceptance would have caused embarrassment to donor and the U.S.
State			
Albright, Madeleine K.—Secretary of State.	Silver Brooch with stones. Recd—December 22, 1999. Est. Value—$350.00. Office of Protocol for Disposition.	President Weizman—Israel	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Albright, Madeleine K.—Secretary of State.	Gold bracelet and necklace. Recd—December 8, 1999. Est. Value—$500.00. Office of Protocol for Disposition.	Chairman Yasser Arafat (PLO)	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Albright, Madeleine K.—Secretary of State.	Gold Bracelet. Recd—1998. Est. Value—$800.00 Office of Protocol for disposition.	Suha Arafat, First Lady (PLO)	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Albright, Madeleine K.—Secretary of State.	Gold Chain. Recd—September 20, 1999. Est. Value—$400.00. Office of Protocol for disposition.	Sheikh Hasina, Prime Minister (Banglesh).	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Albright, Madeleine—Secretary of State.	Gold Necklace with diamonds. Recd—October 22, 1999. Est. Value—$1500.00. Office of Protocol for disposition.	Chairman Yasser Arafat (PLO)	Non-acceptance would have caused embarrassment to donor & U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Albright, Madeleine—Secretary of State.	6" Round Silver Box w/lid. Recd—May 26, 1999. Est. Value—$500.00. Office of Protocol for disposition.	Lamberto Dini, Foreign Minister (Italy).	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ambassador Wife—Lagos	One double strand pearl necklace and matching earrings. Recd—July 1999. Est. Value—$325.00. Delivered to GSA on Sept. 7, 1999.	Lagos Government	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Bartels, Camila—Public Affairs	Eterna watch. Recd—November 1997. Est. Value—$2,550.00 Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Brill, Kenneth—Ambassador	Painting (Animal Abstractions). Recd—July 1, 1999. Est. Value—$460.00. Retained at Embassy for Official Display.	Foreign Government—Nicosia	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Brill, Kenneth—Ambassador	Painting (Ghost Island). Recd—July 1, 1999. Est. Value—$550.00. Retained at the Embassy for Official Display.	Foreign Government—Nicosia	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Bujac, Greg—Diplomatic Security	Eterna Watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Burnei—Admin Consul	Revue, Thommen Watch. Recd—December 23, 1997. Est. Value—$1,500.00. Office of Protocol for Disposition.	Burundian Royal Family Member	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Burnei—Ambassador	Baume & Mercier Watch. Recd—December 23, 1997. Est. Value—$3,500.00. Office of Protocol for Disposition.	Burundian Royal Family Member	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Burnei—Charge	Tag Heuer Watch. Recd—December 23, 1997. Est. Value—$1500.00. Office of Protocol for Disposition.	Burundian Royal Family Member	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Burns, Nick—Ambassador	Black Leather bound Coin Collection ("one Century of Greek Coins; 1880–1995". Recd—April 19, 1999. Est. Value—$1,677.00. Retained at the Embassy for Official Display.	Wife of Ministry of Defense official	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Burns, William—Ambassador	Motorola Cellular Telephone GSM package with accessories. Recd—Unknown Est. Value—$536.00. Retain at the Embassy for Official Use.	Greek Official at the Thessaloniki Trade Fair.	Non-acceptance would have cause embarrassment to donor & U.S. Government.
Cook, Frances D.—Mother of Ambassador for Muscat.	Set of traditional Omani Tribal Jewelry including necklace, ring, bracelet and earring. Recd—Late 1996. Est. Value—$700.00. Office of Protocol for disposition.	Ghassan Al Khalili	Non-acceptance would caused embarrassment to donor & U.S. Government.
Cook, Frances D.—Mother of Ambassador for Muscrat.	Two traditional Gold Omani Bracelets. Recd—December 26, 1997. Est. Value—$600.00. Office of Protocol for disposition.	Almutasim Bin Hamoud Al Busaidi, Minister of State and Governor of Muscat.	Non-acceptance would have cause embarrassment to donor & U.S. Government.
Dubai Consulate Political Officer	Gold Bracelet. Recd—October 1999. Est. Value—$274.00. Delivered to GSA on Sept. 7, 1999.	Leading Member of Dubai Business Community.	Gift was present as a mark of courtesy. To refuse would have been counter to U.S. interests.
Duncan, Charles—White House Liaison Office.	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Fowler, Wyche—Ambassador	Harry Winston Timepiece (Watch). Recd—September 1998. Est. Value—$10,666.00. Delivered to GSA on Sept. 7, 1999.	Saudi Crown Abdullah bin Abdul Aziz Al Saud.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
George, Suzanne—Office of Secretary.	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Buhrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Hale, David—Office of Secretary	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Hartnett, Larry—Diplomatic Security.	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Haycraft, Tom—Diplomatic Security.	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Helal, Gemal—Interpreter	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Hicks, Delores—Line Assistant	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Hipp, Mark—Diplomatic Security	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Hurly, John—Diplomatic Security	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Inderfurth, Karl F.—Assistant Security.	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Inderfurth, Karl F.—Asst. Sec. For South Asian Affairs.	Lalique Crystal Clock. Recd—May 11, 1999. Est. Value—$260.00. Delivered to GSA on Sept. 7, 1999.	The Hinduja Group	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Inderfurth, Karl F.—Asst. Sec. For South Asian Affairs.	Sterling Silver dessert service (4 piece place settings for six). Recd—April 26, 1999.Est. Value—$2,130.00. Delivered to GSA on September 7, 1999.	Mr. Islom, President of Uzbekistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Indyk, Martin—Assistant Secretary	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Indyk, Martin—Assistant Secretary	Versay Men's watch. Recd—October 7, 1999. Est. Value—$500.00. Office of Protocol for Disposition.	General Samih Battikhi, Chief of Jordanian Intelligence.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Indyk, Martin S. and wife—Asst. Sec. for Near East Affairs.	Two Swiss Watches. Recd—October 1999. Est. Value—$260.00/ $260.00. Office of Protocol for disposition.	Abu Mazen, Secretary General, PLO Executive Committee.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Koumans, Mark—Line Officer	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Krajeski, Thomas—Consul General	Mont Blanc Pen. Recd—October 1999. Est. Value—$800.00. Delivered to GSA on Sept. 7, 1999.	Leading Member of Dubai Business Community.	Gift was presented as a mark of courtesy. To refuse would have been counter to US interests.
Krajeski, Thomas—Consul General	Tissot Chronograph. Recd—October 1999. Est. Value—$1,200.00. Delivered to GSA on Sept. 7, 1999.	Leading Member of Dubai Chamber of Commerce.	Gift was presented as a mark of courtesy. To refuse would have been counter to US interests.

REPORT OF TANGIBLE GIFTS—Continued

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Lakhdhir, Kamala—Line Officer	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Lineberry, Laura Elizabeth—Secretary.	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Lucas, Hillary—Gift Officer	Oyster Perpetual Date Watch. Recd—June 8, 1998. Est. Value—$11,700.00. Office of Protocol for disposition to GSA.	The Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Luck, Al—Diplomatic Security	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Maybus, Raymond E. Jr—Ambassador.	4.5 x 2" Solid Silver Calendar, dipped in gold. Recd—January 9, 1998. Est. Value—$960.00. Office of Protocol for disposition.	Ahmed Zaki Yamani of Dallah Real Estate and Tourism Company—Jeddah.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Miller, Aaron—SMEC	Eterna, watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Moore, Alex—Diplomatic Security	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Morningstar, Richard—Ambassador.	4x8 rug. Recd—February 19, 1999. Est. Value—$250–500.00. Retained at Embassy for Official Display.	President Saparmurat Niyazov	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Morningstar, Richard—Ambassador.	4x6 rug. Recd—April 26, 1999. Est. Value—$250–500.00. Retained for Official Display.	President Heydar Aliyev, Azerbaijan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Morningstar, Richard—Ambassador.	4x8 rug. Recd—May 19, 1999. Est. Value—$250–500.00. Retained at the Embassy for Official Display.	President Saparmurat Niyazov, Turkmenistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Mussomeli, Joseph A.—Deputy Chief of Mission.	Gold Omega Men's watch with one pair of gold cufflinks and gold Omega Lady's watch with diamonds, Two-strand Bahraini pearl necklace. Recd—September 23, 1998. Est. Value—$5700.00, $5,700.00, $7,960.00 ($19,360.00). Delivered to GSA on Sept. 7, 1999.	Amir, Shaikh Isa Bin Salman Al-Khalifa, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ogle, Karen—Foreign Service Officer.	Diamond and White Gold Ring. Recd—June 22, 1999. Est. Value—$1850.00. Delivered to GSA on Sept. 7, 1999.	Princess Shamsa al-Saud, Jeddah.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Petrihos, Peter—Deputy Executive Director.	Eterna watch. Recd—November 1997. Est Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ransom, David—Ambassador (Retired).	Ebel Watch and $13,217.00 cash. Recd—February 1999. Est. Value—Above $260.00. Office of Protocol for disposition, money forwarded to appropriate agency.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ransom, David—Ambassador (Retired).	Rolex Watch and $26,490.00 cash. Recd—July 1998. Est. Value—Above $260.00. Office of Protocol for disposition, money forwarded to appropriate agency.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
Ransom, David—Ambassador (Retired).	Rolex Watch and $25,000.00 cash. Recd—June 1998. Est. Value—Above $260.00. Office of Protocol for disposition, money forwarded to appropriate agency.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ransom, David—Ambassador (Retired).	Rolex Watch and $52,966.88 cash. Recd—November 97. Est. Value—Above $260.00. Office of Protocol for disposition, Money forwarded to appropriate agency.	Amir of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Ransom, Marjorie—Foreign Service Officer.	Gold Bracelet with pearls. Recd—October 1999. Est. Value—Above $260.00. Office of Protocol for disposition.	Foreign Minister of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Reside, Julie—Public Affairs	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Riyadh—Consular Section at Embassy Saudi Arabia.	Longines Timepiece, Roamer of Switzerland watch with metal band (2), Roamer of Switzerland with leather band. Recd—January 31, 1999. Est. Value—$322.66, 133.33, 133.33, 120.00 = $709.32. Office of Protocol for Disposition.	H.R.H. Prince Turki Al-Faisal bin Abdul Aziz al Saud, Director of Intelligence.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Roy, J. Stapleton—Ambassador	A boxed piece of Silk Batik Fabric. Recd—Unknown. Est. Value—$600.00. Retained at the Embassy for Official Display.	President Habibie, Indonesia	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Roy, J. Stapleton—Ambassador	A Boxed Silver and Pewter Tea Service. Recd—Unknown. Est. Value—$1250.00. Retained at the Embassy for Official Use.	President Habibie, Indonesia	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Rubin, James P.—Assistant Secretary and Spokesman.	Pocket watch with the country's seal and tradition cap. Recd—08/17/99. Est. Value—$275.00. Office of Protocol for Disposition.	Unknown	Non-acceptance would have caused embarrassment to the donor and the United States Government.
Rubin, James P.—Spokesperson ..	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Shinnick, Richard—Deputy Executive Director.	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Shocas, Elaine—Chief of Staff	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Stocking, Tom—Diplomatic Security.	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Sweeney, Lynn—Computer Specialist.	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Tucker, Nichole—Secretary	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.

REPORT OF TANGIBLE GIFTS—Continued

Name and title of person accepting the gift on behalf of the U.S. Government	Gift, date of acceptance on behalf of the U.S. Government, estimated value, and current disposition or location	Identity of foreign donor and government	Circumstances justifying acceptance
USUN	Two Carpets: 139″ x 102″ plus fringe, wool on cotton, red field with many octagon and cross medallions, multiple borders, Pakistani Bokhara. Recd—April 1998. Est. Value—$1500.00 each. Delivered to GSA on Sept. 7, 1999.	Visiting Delegation of Afghanistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
USUN	Three (3) wool pile hand knotted carpets. Recd—April 1998. Est. Value—$300.00 ea. ($900.00). Retained at the Embassy for Official Use.	Visiting Delegation of Afghanistan	Non-acceptance would have caused embarrassment to donor & U.S. Government.
USUN	Two Carpets: 154″ x 230″ and 148″ x 226″ plus fringe, wool on cotton, red field with many octagonal and cross medallions, multiple borders, Pakistani Bokhara. Recd—April 1998. Est. Value—$2250.00 each. Delivered to GSA on Sept. 7, 1999.	Visiting Delegation from Afghanistan.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Welch, David C.—Ambassador	4.5 x 2″ Solid Silver Calendar dipped in gold. Recd—January 9, 1998. Est. Value—$960.00. Office of Protocol for Disposition.	Ahmed Zaki Yamani of Dallah Real Estate and Tourism Co.—Jeddah.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Wills, Laura B.—Assist. Chief of Protocol, Visits.	Raymond Weil Geneve Watch. Recd—November 5, 1999. Est. Value—$500.00. In the Office of Protocol for Disposition.	Crown Prince Sultan bin Abdul Aziz, Saudi Arabia.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Woodward, William—Speechwriter	Eterna watch. Recd—November 1997. Est. Value—$2,550.00. Delivered to GSA on September 7, 1999.	Government of Bahrain	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Young, Johnny—Ambassador	Pair of men's cufflinks in white gold with onyx and diamonds, pair of women's earrings and one ring with two-toned gold with diamonds. Recd—July 13, 1998. Est. Value—$3,580.00, $3,980.00 ($26,920.00). Delivered to GSA on Sept. 7, 1999.	Amir Shaikh Isa Bin Salman Al-Khalifa, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Young, Johnny—Ambassador	Men's Piaget wristwatch in white gold with date function and women's Piaget wristwatch in white gold with diamond chips. Recd—February 22, 1999. Est. Value—$12,000.00 & $11,400.00 ($23, 400.00) Office of Protocol for Disposition.	Amir, Shaikh Isa bin Salman Al-Khalifa, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.
Young, Johnny—Ambassador	Men's Piaget wristwatch in white gold with date function and women's Piaget wristwatch in white gold with diamond chips. Recd—February 22, 1999. Est. Value $12,000 and $11,400.00 ($23,400.00). Delivered to GSA on Sept 7, 1999.	Amir, Shaikh Isa bin Salman Al-Khalifa, Bahrain.	Non-acceptance would have caused embarrassment to donor & U.S. Government.

REPORT OF TRAVEL OR EXPENSES OF TRAVEL—1999

Name and title	Brief description	Identity of foreign donor	Circumstances
National Council on Disability			
Blank, Kathleen—Program Specialist.	Recd—July 18, 1999. Est. Value—$4,170.00. Expended for airfare, hotel, meals and conference registration for speaking engagement in Kuala Lumpur, Malaysia.	Airports Council International, Richmond, B.C., Canada.	To present paper and guest speak at conference.
U.S. General Accounting Office			
Epstein, David—GAO Evaluator	Recd—November 19–24, 1999. Est. Value—$800.00. Expended for airfare, hotel and meals.	Barbados Tourist Board, Barbados.	To become a specialist in the field of travel/tourism for Barbados as related to Mr. Epstein's ownership of a travel agency.
United States House of Representatives			
Hilliard, Earl—Member of Congress.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Burr, Richard—Member of Congress.	Recd—August 11–14, 1999. Est. Value—$not submitted. Air transport, rail travel, boat tour, meals and lodging for Member and spouse in Oslo and Bergen, Norway.	Norway	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Campbell, Tom—Member of Congress.	Recd—Nov. 24–25, 1999. Est. Value—$not submitted. Air transportation between Rangoon, Keng Tung, and Tachileik, Burma.	Burma	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Cardin, Benjamin—Member of Congress.	Recd—May 28–30, 1999. Est. Value—$not submitted. Meals, lodging and ground transportation for Member and spouse in Belfast, Northern Ireland.	United Kingdom of Great Britain	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Carson, Julia—Member of Congress.	Recd—May 28–30, 1999. Est. Value—$not submitted. Meals, lodging and ground transportation in Belfast, Northern Ireland.	United Kingdom of Great Britain	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Gilman, Benjamin—Member of Congress.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Van Wicklin, Robert W.—Rep. Houghton.	Recd—May 28–29, 1999. Est. Value—$not submitted. Meals and ground transportation in Belfast, Northern Ireland.	United Kingdom of Great Britain	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Greenwood, James C.—Member of Congress.	Recd—May 28–30, 1999. Est. Value—$not submitted. Food, lodging and ground transportation for Member and spouse in Belfast, Northern Ireland.	United Kingdom of Great Britain	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Hobson, David—Member of Congress.	Recd—August 11–14, 1999. Est. Value—$not submitted. Transportation from Stockholm to Oslo and return, and in-country lodging, meals, and transportation for Member and spouse among Myrdal, Flom, Gudvangen and Bergen, Norway.	Norway	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Houghton, Amory Jr.—Member of Congress.	Recd—May 28–30, 1999. Est. Value—$not submitted. Meals, lodging and ground transportation for Member and spouse in Belfast, Northern Ireland.	United Kingdom of Great Britain	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).

REPORT OF TRAVEL OR EXPENSES OF TRAVEL—1999—Continued

Name and title	Brief description	Identity of foreign donor	Circumstances
Johnson, Eddie Bernice—member of Congress.	Recd—May 28–30, 1999. Est. Value—$not submitted. Meals, lodging and ground transportation for Member and spouse in Belfast, Northern Ireland.	United Kingdom of Great Britain ..	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Ford, James Dr.—House Chaplin ..	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Filner, Bob—Member of Congress	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Roberts, Kimberly—International Relations Comm.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
McNulty, Michael R.—Member of Congress.	Recd—May 28–30, 1999. Est. Value—$not submitted. Meals, lodging and ground transportation in Belfast, Northern Ireland.	United Kingdom of Great Britain ..	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Olson, Susan L.—Rep. Bereuter ...	Recd—August 24–September 2, 1999. Est. Value—$not submitted. Lodging in Istanbul, Antalyla and Ankara, Turkey.	Republic of Turkey	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Munson, Lester—International Relations Comm.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Conzelman, James K.—Rep. Oxley.	Recd—August 11–14, 1999. Est. Value—$not submitted. Transportation from Stockholm to Oslo and return, and in-country lodging, meals, and transportation for Member and spouse among Myrdal, Flom, Gudvangen and Bergen, Norway.	Norway	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Clack, Mark—International Relations Comm.	Recd—April 2, 1999 Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Bodlander, Deborah—International Relations Comm.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Bloomer, Nancy Shuba—International Relations Comm.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	.....	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Wolf, Frank—Member of Congress	Recd—August 29, 1999. Est. Value—$not submitted. Airline flight from Rome to Pristina and helicopter flight over Pristina, Gjacova and Prizren for Member and spouse.	World Food Programme (UN)	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Sanders, Bernard—Member of Congress.	Recd—April 2, 1999. Est. Value—$not submitted. Air transportation from Amman to Petra, Jordan and back.	Hashemite Kingdom of Jordan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
Oxley, Michael—Member of congress.	Recd—August 11–14, 1999. Est. Value—$not submitted. Transportation from Stockholm to Oslo and return, and in-country lodging, meals and transportation for Member and spouse among Myrdal, Flom, Gudvangen and Bergen, Norway.	Norway	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).

REPORT OF TRAVEL OR EXPENSES OF TRAVEL—1999—Continued

Name and title	Brief description	Identity of foreign donor	Circumstances
Flanders, David Alan—Rep. Thompson.	Recd—August 24–26, 1999. Est. Value—$not submitted. Luncheon and dinner in Japan.	Japan	Authorized by 5 U.S.C. 7342(c)(1)(B)(ii).
	United States Senate		
Walsh, Sally—Director, Interparliamentary Services.	Recd—August 13–15, 1999. Est. Value—$not submitted. Transportation within Cuba to official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.
Dorgan, Byron L.—U.S. Senator ...	Recd—August 13–15, 1999. Est. Value—$not submitted. Official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.
Daschle, Tom—U.S. Senator	Recd—August 13–15, 1999. Est. Value—$not submitted. Official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.
Bob, Daniel—Special Assistant to Senator Roth.	Recd—January 11–15, 1999. Est. Value—$not submitted. Meals and transportation within Peru.	Government of Peru	Non-acceptance would cause host government embarrassment.
Daschle, Linda—Spouse of Senator.	Recd—August 13–15, 1999. Est. Value—$not submitted. Official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.
Dorgan, Kim—Spouse of Senator	Recd—August 13–15, 1999. Est. Value—$not submitted. Official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.
Roberts, Pat—U.S. Senator	Recd—August 12–14, 1999. Est. Value—$not submitted. Transportation, lodging and meals within Norway during an official visit.	Government of Norway	Official travel to participate in official meetings.
Roberts, Frankie—Spouse of Senator.	Recd—August 12–14, 1999. Est. Value—$not submitted. Transportation, lodging and meals within Norway during an official visit.	Government of Norway	Official travel to participate in official meetings.
Twining, Daniel C.—Legislative Correspondent to Senator McCain.	Recd—April 7–8, 1999. Est. Value—$not submitted. Round-trip transportation between Brussels, Belgium and Tirana, Albania aboard Belgian military aircraft to attend official meetings.	Government of Belgium	No commercial travel available.
Twining, Daniel C.—Legislative Correspondent to Senator McCain.	Recd—May 12, 1999. Est. Value—$not submitted. Transportation from Brussels, Belgium to Skopje, Macedonia aboard Belgian military aircraft to attend official meetings.	Government of Belgium	No commercial travel available.
Waldren, Howard—Legislative Assistant to Senator Dorgan.	Recd—August 13–15, 1999. Est. Value—$not submitted. Transportation within Cuba to official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.
Van Dum, Bradley—Legislative Assistant for Defense for Senator Daschle.	Recd—August 13–15, 1999. Est. Value—$not submitted. Transportation within Cuba to official meetings via two sedans and one minivan.	Government of Cuba	Non-acceptance would cause host government embarrassment.

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Friday,
March 24, 2000

Part III

Department of Justice

Antitrust Division

United States v. Cargill, Incorporated; Public Comment and Plaintiff's Response; Notice

DEPARTMENT OF JUSTICE

Antitrust Division

[Civil No. 98–CV–1875 (GK)]

United States v. Cargill, Incorporated; Public Comment and Plaintiff's Response

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), the United States of America hereby publishes below the comments received on the proposed Final Judgment in *United States* v. *Cargill, Incorporated and Continental Grain Company*, Civil No. 98–CV–1875 (GK), filed in the United States District Court for the District of Columbia, together with the Untied States' response to the comments.

Copies of the comments and response are available for inspection in Room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Washington, DC 20530 (telephone: 202/514–2481) and at the office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Constance K. Robinson,

Director of Operations, Antitrust Division.

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

In the matter of: United States of America, Plaintiff, v. Cargill, Incorporated, and Continental Grain Company, Defendants, Civil Action No. 99–1875 (GK).

UNITED STATES RESPONSE TO PUBLIC COMMENTS

Communications with respect to this document should be addressed to: Roger W. Fones, Chief; Donna N. Kooperstein, Assistant Chief; Robert L. McGeorge, Michael P. Harmonis, Attorneys; Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW, Washington, DC 20530, (202) 307–6361.
February 11, 2000.

Table of Contents

I. Factual Background
A. The Parties To The Transaction
B. The Proposed Acquisition
C. The Complaint
D. The Proposed Settlement
E. Compliance With Antitrust Procedures And Penalties Act
II. Legal Standard Governing The Court's Public Interest Determination
III. Summary Of Public Comments
IV. The Department's Analysis Of The Transaction
A. The Relevant Merger Law
B. Framework For The Department's Competitive Analysis
1. Monopoly Analysis
2. Monopsony Analysis
C. Overview Of The Department's Analysis Of Competitive Issues In This Transaction
1. Background
2. Analysis Of Cargill As A Seller Of Standard-Grade Grain Products
3. Analysis Of Cargill As A Seller Of Specialty Products
4. Analysis Of Cargill As A Buyer Of Grain
5. Analysis Of Cargill As An Operator Of River Elevators Designated By CBOT For Settlement Of Futures Contracts
6. Summary Of The Department's Competitive Analysis
V. The Department's Responses To Specific Comments
A. Remedy
B. Market Definition
C. Cargill's Power Over Price
D. Futures Markets
E. Specialty Markets
F. Nebraska Grain Markets
G. Concentration In Other Agriculture Markets
H. Ban On All Agribusiness Mergers
I. Vertical Integration
J. Non-Economic Concerns
K. Administration And Legislative Actions
L. The OCM Comments
M. A Hearing Is Unnecessary In This Case
N. The 60-Day Comment Period Should Not Be Extended
Conclusion

United States Response to Public Comments

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b) ("AAPA"), plaintiff, the UNITED STATES OF AMERICA, acting under the direction of the Attorney General, hereby files comments received from members of the public concerning the proposed Final Judgment in this civil antitrust suit and the Response of the United States to those comments.

I. Factual Background

A. The Parties to the Transaction

Cargill, Incorporated ("Cargill") and Continental Grain Company ("Continental") are grain traders. They employ grain distribution networks—primarily composed of country elevators, rail terminals, river elevators, and port elevators—to buy grain from farmers and other suppliers, store it, and move it to their domestic and foreign customers. In addition, both firms are engaged in related businesses such as grain processing and cattle feeding.

B. The Proposed Acquisition

On October 9, 1998, Cargill entered into an agreement with Continental to acquire its gain trading business (conducted by Continental's Commodity Marketing Group). Cargill is not acquiring Continental's processing or finance divisions, which Continental will continue to operate as independent businesses after Cargill's acquisition of its grain trading business.

C. The Complaint

On July 8, 1999, the United States Department of Justice (the Department) filed a Complaint with this Court alleging that Cargill's acquisition of Continental's Commodity Marketing Group would substantially lessen competition for grain purchasing services in nine relevant markets, in violation of Section 7 of the Clayton Act (15 U.S.C. 18). In those markets, Cargill would have gained the power to artificially depress the prices paid to U.S. farmers and other suppliers for their grain and oilseed crops—including corn, soybeans, and wheat (collectively referred to as "grain").

The Complaint also alleged that the transaction would have resulted in Cargill and one other grain company controlling approximately eighty percent of capacity at the Chicago and Illinois River elevators that are authorized by Chicago Board of Trade (CBOT) to accept delivery for the settlement of corn and soybeans futures contracts.[1] That concentration would have increased the risk of manipulation of futures prices.

Finally, the Complaint alleged that a non-compete provision of the Cargill/Continental agreement was a division of markets in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. Because the Cargill/Continental acquisition agreement prohibited Continental from re-entering the grain distribution business for five years, the Complaint charged that it gave Cargill more time than would be reasonably necessary to gain the loyalty of former Continental suppliers and customers, and therefore, the agreement constituted an unlawful division of markets.

D. The Proposed Settlement

The Department, Cargill, and Continental filed a joint stipulation for entry of a proposed Final Judgment settling this action on July 8, 1999. In each of the nine markets where the Department has determined that the consolidation of competing Cargill and Continental grain elevators would give grain companies the power to artificially depress the price of grain that they pay farmers and other suppliers, the Final Judgment requires the divesture of either the Cargill grain elevator or the Continental grain elevator serving that

[1] For corn futures contracts, CBOT-authorized delivery points are located in Chicago and on the Illinois River as far south as Peoria; for soybean contracts, these facilities are in Chicago and along the entire length of the Illinois River.

market. The Final Judgment also requires divestitures of elevators on the Illinois River to ensure that concentration among firms controlling CBOT-authorized delivery points does not provide opportunities for manipulation of CBOT corn and soybean futures contracts.

Continental's divestitures to preserve competition for the purchase of grain from farmers and other suppliers include:

- Its river elevator at Lockport, Illinois;
- Its river elevator at Caruthersville (Cottonwood Point), Missouri;
- Its rail elevator at Salina, Kansas;
- Its rail elevator at Troy, Ohio;
- Its port elevator at Stockton, California; and
- Its port elevator at Beaumont, Texas.

Prior to entering into the proposed Final Judgment, Continental also terminated its minority interest in a river elevator at Birds Point, Missouri. Accordingly, no divestitures were required to protect competition in this market.

In order to protect against manipulation of CBOT futures markets, Continental was required to divest its Chicago port elevator.[2]

Cargill's divestitures to preserve competition for the purchase of grain from farmers and other suppliers were:

- Its river elevator at East Dubuque, Iowa;
- Its river elevator at Morris, Illinois; and
- Its port elevator at Seattle, Washington (with the option to retain its port elevator at Seattle if it does not acquire the Continental port elevator at Tacoma).

In addition, the Final Judgment requires Cargill to enter into a throughput agreement making one-third of the daily loading capacity at its Havana, Illinois River elevator available to an independent grain company to avoid undue concentration among firms controlling CBOT delivery points.[3]

The proposed Final Judgment also prohibits Cargill from acquiring any interest in the facilities to be divested by Continental pursuant to the proposed Final Judgment or the river elevator at Birds Point, Missouri in which Continental formerly held a minority interest.

Finally, the proposed Final Judgment prohibits the non-compete provision of the Cargill/Continental agreement from remaining in force for more than three years.

[2] Continental's divestiture of its Lockport river elevator is a remedy for concentration among authorized CBOT delivery stations, as well as remedy for concentration among grain buyers in that area.

[3] Cargill's divestiture of its Morris facility serves to protect against CBOT concentration problems, as well as concentration among buyers of grain in that market.

E. Compliance With Antitrust Procedures and Penalties Act

To date, the parties have compiled with the provisions of the Antitrust Procedures and Penalties Act as follows:

(1) The Complaint and proposed Final Judgment were filed on July 8, 1999;

(2) Defendants filed settlement pursuant to 15 U.S.C. 16(g) on July 19, 1999.

(3) The Competitive Impact Statement ("CIS") was filed on July 23, 1999;

(4) The proposed Final Judgment and CIS were published in the **Federal Register** on August 12, 1999, 64 F.R. 44,046 (1999);

(5) A summary of the terms of the proposed Final Judgment and CIS was published in the *Washington Post*, a newspaper of general circulation in the District of Columbia, for seven days during the period August 10, 1999 through August 16, 1999;

(6) The sixty-day period specified in 15 U.S.C. 16(b) commenced on August 12, 1999 and terminated on October 12, 1999;

(7) The United States hereby files the comments of members of the public and the Nebraska Attorney General's amicus brief (bound separately as Appendix A) together with the Response of the United States to the comments and brief, pursuant to 15 U.S.C. 16(b); and

(8) The United States will move this Court for entry of the Final Judgment after the comments and the Response are published in the **Federal Register**. The Final Judgment cannot be entered before the publication. 15 U.S.C. § 16(d).

II. Legal, Standard Governing the Court's Public Interest Determination

Upon the publication of the public comments and this Response, the United States will have fully compiled with the APPA. After receiving the United States' motion for entry of the proposed Final Judgment, the Court must determine whether it "is in the public interest." 15 U.S.C. 16(e). In doing so, the Court must apply a deferential standard and should withhold its approval only under very limited conditions. As Judge Greene observed in the *AT&T* case:

> If courts acting under the Tunney Act disapproved proposed consent decrees merely because they did not contain the exact relief which the court would have imposed after a finding of liability, defendants would have no incentive to consent to judgment and this element of compromise would be destroyed. The consent decree would thus as a practical matter be eliminated as an antitrust enforcement tool, despite Congress' directive that it be preserved.

United States v. *American Tel. & Tel. Co.*, 552 F. Supp. 131, 151 (D.D.C. 1982), *aff'd mem. sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983).

The United States Court of Appeals for the District of Columbia has noted that "constitutional questions * * * would be raised if courts were to subject the government's exercise of its prosecutorial discretion to non-deferential review." *Massachusetts Sch. of Law at Andover, Inc.* v. *United States*, 118 F.3d 776, 783 (D.C. Cir. 1997) (citing *United States* v. *Microsoft Corp.*, 56 F.3d 1448, 1457–59 (D.C. Cir. 1995). Rather, the district court should review the proposed Final Judgment "in light of the violations charged in the complaint and * * * withhold approval only [a] if any of the terms appear ambiguous, [b] if the enforcement mechanism is inadequate, [c] if third parties will be positively injured, or [d] if the decree otherwise makes 'a mockery of judicial power.'" *Id.* at 783 (quoting *Microsoft* at 1462).

With this standard in mind, the Court should review the comments of members of the public concerning the proposed Final Judgment and the United States' Response to those comments. As this Response makes clear, entry of the proposed Final Judgment is in the public interest.

III. Summary of Public Comments

Sixty-seven individuals, eight public officials, and nineteen organizations expressed their views on the proposed Final Judgment. These comments and questions are summarized below.

Sixty-five individual farmers filed comments. Some are disappointed because they believe the transaction does nothing to raise the prices they receive when they sell their grain. Others are concerned that the markets in which they sell their grain have become so concentrated that the grain companies will be able to depress prices paid to farmers for their grain. Still others are concerned that Cargill will be able to monopolize "specialty or niche" markets or lessen competition in grain futures markets. Finally, some of the commenting farmers believe there should be a complete ban on mergers and acquisitions in the agribusiness sector.

Congresswoman Jo Ann Emerson, Missouri Attorney General Jeremiah Nixon, and several farm organizations, including the Missouri Farm Bureau Federation, Missouri Soybean Association, and Permiscot County Farm Bureau, addressed their comments to Section IV(D) of the proposed Final Judgment, which directs Continental to divest its river elevator at Cottonwood Point, Missouri, near Caruthersville. After noting that Bunge Corp. is one of

the major grain purchasers in the vicinity of Cottonwood Point, these commentators urge the Department of Justice not to permit divestiture of the Cottonwood Point facility to Bunge.

New Mexico Attorney General Patricia Madrid has no opposition to the proposed Final Judgment, although she is concerned about there being one less significant competitor in the national grain trading market after the transaction. Attorney General Madrid, therefore, urges the Department to actively advocate administrative and legislative actions that will invigorate competition in the agricultural sector of our economy.

Minnesota Attorney General Mike Hatch believes the proposed Final Judgment does not go quite far enough to ameliorate antitrust concerns raised by the transaction. He is concerned that grain markets are already too highly concentrated and that agriculture industries, in general, are experiencing high rates of vertical consolidation. Under the circumstances, Attorney General Hatch recommends that the proposed Final Judgment be modified to prohibit Cargill from acquiring any other of its competitors in grain export, transport, and storage markets.

Nebraska and South Dakota Attorneys General Don Stenberg and Mike Barnett the issue with the relevant geographic markets as defined in the Complaint. They believe the Department of Justice should not have focused on overlapping draw areas for country, rail, river or port areas, but rather suggest the relevant market should be enlarged to include the entire United States or even the rest of the world. Given that Cargill and Continental are two of our nation's largest grain trading companies, these—Attorneys General are of the view that the two firms should not be permitted to merge under any circumstances. In addition, Attorney General Stenberg's comments in his amicus brief mirror many of the concerns expressed by the Organization for Competitive Markets, discussed *infra*.

North Dakota Attorney General Heidi Heitkamp filed a comment expressing her appreciation for the ways in which this law suit has preserved competition for farmers at the local level in North Dakota. She, nevertheless, remains concerned about powerful concentrations of agribusiness firms that North Dakota farmers must face. Based on that concern, she suggests that the Department should reconsider the adequacy of divestitures required by the proposed Final Judgment and instead, seek to enjoin the transaction in its entirety. In particular, Attorney General Heitkamp thinks the time has come to rethink antitrust analysis in the farm sector to give greater consideration to non-economic concerns.

John W. Helmutch, an agricultural economist, filed a comment that set forth his suggested analytical framework for the Department's use in analyzing the transaction. In his view, it is essential for the Department to assess market concentration, the extent of information available to grain traders and farmers in the market, and the potential adverse competitive effects on grain futures markets and other agribusinesses beyond grain trading, such as livestock markets. Mr. Helmuth asks if we have made these assessments.

A.V. Krebs believes the Department's analysis is deficient because it fails to consider whether the transaction will permit Cargill to force its own standards, practices, marketing arrangements, and prices on farmers, processors, and merchandisers in grain markets throughout the United States.

Professor C. Robert Taylor of Auburn University is concerned that the Department did not adequately consider the extent of vertical integraiton in the agricultural sector. Minnesota and Nebraska Attorneys General Mike Hatch and Don Stenberg and Catholic Charities of Sioux Cit, Iowa voice the same concernin their comments.

Jon Lauck, writing on behalf of the Organization for Competitive Markets ("OCM"), filed a comment that was critical of the Department's analysis in several respects. OCM states that the Department's analysis failed to consider: (1) The impact of concentration in agriculture markets other than grain buying; (2) the continuing potential for anticompetitve behavior in the post-merger market; (3) whether the divested facilities will continue to be competitive forces in the hands of new owners, particularly if the new owners do not have a "network" of elevators that buy grain; (4) the impact on potential entry into grain buying markets; (5) the ramifications of competition in overseas grain markets; (6) the implications of economic disorganization of farmers which can be exploited by powerful buyers; (7) information disparities in agriculture markets; (8) the lack of benefits of the merger; (9) a range of statutes that Congress intended courts to consider when making decisions about agriculture markets; and (10) that the consent decree risks leaving farmers without an effective outlet for legal redress. OCM's conclusion is that the proposal Final Judgment is not an adequate remedy and that the transaction should be prohibited in its entirety.

Several farm, rural-life, and religious groups voice concerns about general levels or market concentration in agriculture industries. These groups include the American Agriculture Movement, Animal Welfare Institute, Clean Water Action Alliance, Farmland Co-op Inc., Institute for Agriculture and Trade Policy ("IATP"), Kansas Cattlemen's Association, Minnesota Catholic Conference, National Catholic Rural Life Conference, and the Office of Hispanic Ministry. In the main, they believe the Department's analysis does not adequately consider concentration in agriculture markets beyond grain buying. In their view, these non-grain markets are already too concentrated, and so Cargill ought not be permitted to acquire Continental under any circumstances.

The Kansas chapter of the National Farmers Organization (NFO) expressed concern about declining grain "basis levels." Thus, they are concerned that Kansas farmers will receive lower prices for their grain after the transaction. The Kansas NFO did not address the adequacy of the proposed Final Judgment.

National Farmers Union ("NFU") filed comments opposing the transaction because the transaction does not increase competition in grain markets. NFU also believes the proposed Final Judgment is deficient because it does not ensure that divested facilities will remain competitive. NFU also believes the proposed Final Judgment fails to address the roles played by Cargill and Continental in export markets.

Rural Life Office of Dorchester, Iowa expressed concern that the transaction may facilitate Cargill's exercise of market power in "organic and specialty" markets.

Women Involved in Farm Economics ("WIFE") is concerned that the transaction as proposed, by unifying the second and third largest grain traders in Nebraska, might depress grain prices to Nebraska farmers and permit Cargill to control their export market. WIFE did not object to the proposed Final Judgment.

IV. The Department's Analysis of the Transaction

We begin our response to public comments with an overview of the legal standards for analyzing mergers and acquisitions, our investigation of Cargill's proposed acquisition of Continental's commodity marketing business, and our analysis of the relevant competitive issues in this case. Thereafter, we respond to specific points raised by commentators.

A. The Relevant Merger Law

Section 7 of the Clayton Act, 15 U.S.C. 18, prohibits mergers and acquisitions whose effect may be substantially to lessen competition "in any line of commerce * * * in any section of the country." The purpose of Section 7 is to prevent acquisitions or mergers before they create harm. " 'The intent here * * * [is] to cope with monopolistic tendencies in their incipiency and well before they have attained such effects as would justify a Sherman Act proceeding.' " *Brown Shoe Co.* v. *United States*, 370 U.S. 294, 318 n. 32 (1962) (quoting S. Rep. No. 81–1775 at 4–5).

The antitrust laws apply to the exercise of market power over sellers (monopsony power), just as they do to the exercise of market power over buyers (monopoly power).[4] *See Mandeville Island Farms* v. *American Crystal Sugar Co.* 334 U.S. 219, 235–44 (1948) (a case arising under Sections 1 and 2 of the Sherman Act). Section 7, in particular, applies to monopsony power gained via acquisitions or mergers. *See United States* v. *Rice Growers Ass'n of California*, 1986 WL 12562 (E.D. Cal. 1986) (acquisition by one miller of another found to lessen competition in purchase of California paddy rice); *United States* v. *Pennzoil Company*, 252 F. Supp. 962, 981–985 (W.D. Pa. 1965), (merger found to lessen competition in purchase of Penn Grade crude oil).

To predict whether an acquisition may substantially lessen competition or tend to create a monopoly, the reviewing court must determine: (a) The "line of commerce" or product market in which to assess the transaction, (b) the "section of the country" or geographic market in which to assess the transaction, and (c) the acquisition's probable effect on competition in the product and geographic markets. The probable effect often can be assessed by determining the level of concentration based on the market shares of the parties to the proposed transaction and their competitors in the product and geographic markets. *See United States* v. *Philadelphia National Bank*, 374 U.S. 321, 362–63 (1963).

[4] As noted in the U.S. Department of Justice/Federal Trade Commission's *Horizontal Merger Guidelines* § 0.1 (issued 1992, revised 1997): "The unifying theme of the Guidelines is that mergers should not be permitted to create or enhance market power or to facilitate its exercise. Market power to a seller is the ability profitably to maintain prices above competitive levels for a significant period of time * * * Market power also encompasses the ability of a single buyer (a 'monopsonist'), a coordinating group of buyers, or a single buyer, not a monopsonist, to depress the price paid for a product to a level that is below the competitive price * * *"

B. Framework for the Department's Competitive Analysis

As the case law suggests, the core issue in competition analysis is whether the proposed transaction likely would create or enhance market power or facilitate its exercise. This investigation focused on both monopoly and monopsony issues (that is, whether Cargill would likely gain market power through its acquisition of Continental's grain trading business in its roles as a seller or as a buyer of grain).

1. Monopoly Analysis

The *Horizontal Merger Guidelines*, which outlines the Department's enforcement policy for horizontal acquisitions and mergers subject to Section 7 of the Clayton Act, define market power in monopoly situations as the ability of a seller profitably to maintain prices above competitive levels (or to reduce quality or service below competitive levels) for a significant period of time. *Horizontal Merger Guidelines* at § 0.1. An acquisition can facilitate the exercise of market power by increasing the likelihood of coordinated interaction among competing firms or by creating a market structure in which firms find it profitable to unilaterally raise prices or reduce output. *See id.* at § 2.

To determine whether the proposed acquisition would create, enhance or facilitate the exercise of market power, Department staff first had to define the markets within Cargill and Continental compete. Under the *Horizontal Merger Guidelines*, a market is defined as a set of products or services within a geographic area such that a hypothetical monopolist could profitably impose a "small but significant and nontransitory" price increase or decrease. *Id.* at § 1.0.

If the evidence shows that a hypothetical monopolist of any given product or service profitably could impose such a price increase, that product or service is defined as the relevant product market. *Id.* at 1.11. If, on the other hand, the evidence shows that a sufficient number of customers would substitute other products or services to make such a price increase unprofitable, those products or services are also included in the product market. *Id.* This process continues until a group of products or services is identified for which a small but significant and nontransitory price increase would be profitable. *Id.*

Similarly, if the evidence shows that a hypothetical monopolist of the relevant product or service could impose such a price increase in any given region, that region is defined as the relevant geographic market. *Id.* at 1.21. If, on the other hand, the evidence shows that a sufficient number of customers would switch to products or services provided at locations outside the region to make such a price increase unprofitable, those locations are also included in the geographic market. *Id.* This process continues until a group of locations is identified for which a small but significant and nontransitory price increase would be profitable. *Id.*

Once the relevant product and geographic markets are defined, Department staff must evaluate the competitive impact of the proposed acquisition. A merger is likely to be problematic if the merged firms are two of a relatively small number of sellers in the market. Under these circumstances, the merged firm may gain unilateral power to raise prices, or the existence of only a few other firms in the market may facilitate tacit collusion.

2. Monopsony Analysis

As a general proposition, the analysis of competitive issues in monopsony cases is the mirror image of the more common analysis of competitive issues in monopoly cases.[5] For example, instead of determining whether the merging firms are two of a small number of sellers in the relevant product and geographic market, and whether the merged firm would gain sufficient market power to raise prices to consumers, monopsony analysis focuses on whether the merging firms are two of a small number of buyers in the relevant product and geographic market, and whether the merged firm would gain sufficient market power to depress prices paid to its suppliers. Likewise, instead of determining whether the buyers could defeat an attempt by a monopolist to increase prices by a small but significant and non-transitory amount by switching to alternative products or alternative suppliers, the issue in a monopsony investigation is whether the sellers could defeat an attempt by a monopsonist to depress prices by producing other products or by selling their products to more distant buyers.

[5] As noted in Section 0.1 of the *Horizontal Guidelines:* "The exercise of market power by buyers ('power') has adverse effects comparable to those associated with the exercise of market power by sellers. In order to assess potential monopsony concerns, the Agency will apply an analytical framework analogous to the framework of these Guidelines."

C. Overview of the Department's Analysis of Competitive Issues in This Transaction

1. Background

Cargill and Continental are international grain traders, and so the Department's investigation encompassed grain markets throughout the world. In the course of this investigation, conducted by a team of approximately twenty lawyers, paralegals, and economists, the Department's staff: reviewed over 400 boxes of documents furnished by Cargill and Continental pursuant to our second request discovery procedures; deposed Cargill and Continental executives; reviewed relevant legal and economic literature; consulted with officials of the Department of Agriculture, the Commodity Futures Trading Commission, and state attorney general offices; and interviewed over one hundred farmers, farm organization officials, agricultural economists, grain company executives, and other individuals with knowledge of the industry and competitive conditions.

The Department's staff found that grain typically moves from farms to country elevators, from which it moves to river elevators and rail terminals, and then to domestic purchasers or to port elevators for export to the rest of the world. We found that Cargill and Continental often compete with each other at various stages of their grain distribution networks as they buy, store, distribute, and sell agricultural commodities. Accordingly, the investigation encompassed all aspects of their worldwide grain businesses in order to identify any portions of their respective grain distribution networks where they compete with each other.

In our investigation, we focused on the use of these grain distribution networks to facilitate four different aspects of the grain business:

1. Selling standard grades of grain (Primarily, corn, wheat and soybeans);
2. Selling less widely-traded grain products (super commodities, special commodities, and other niche products);
3. Buying grain; and
4. Providing elevator services at delivery facilities that are designated by the CBOT for the settlement of corn and soybean futures contracts.

As to the first two categories, the investigation indicated that the transaction would not create market power in the sale of these products; and very few of the public comments dealt with these aspects of the grain business. Most of the comments concerned the Department's conclusions on the third and fourth aspects of the Cargill and Continental grain businesses.

2. Analysis of Cargill as a Seller of Standard-Grade Grain Products

Cargill and Continental compete in a national (or international) market in their roles as sellers of standard agricultural commodities. Although they are big grain companies in absolute terms, they have relatively small shares of the output markets in which they compete. One way to assess concentration among grain traders is grain storage capacity.[6] By this measure of concentration, collectively they had less than eight percent of total U.S. off-farm grain storage capacity—before the divestitures required by the Final Judgment.[7]

Food processors, cattle feeders, and other buyers of agricultural commodities rely upon competition among a fairly large number of big grain companies with nationwide grain distribution networks and nearby regional grain companies to ensure competitive prices. Commodity prices tend to be fairly consistent in grain companies' output markets throughout the country when adjusted for transportation costs. With these competitive conditions, it was not surprising that the officials from cereal companies, bakers, and other buyers of wheat, corn, and soybeans whom we interviewed consistently indicated that they thought the transaction would not give Cargill the power to raise prices for standard commodities.

In summary, our investigation determined that the relevant geographic market for grain companies' sale of grain is at least as broad as the national market. With a combined Cargill/Continental share of less than eight percent of that market, it is highly unlikely that this transaction could create or enhance market power for sellers of these commodities to any appreciable degree.

3. Analysis of Cargill as a Seller of Speciality Products

Although we concluded that this transaction would not give Cargill or other grain companies market power as a seller of standard grade grain products, we considered the possibility that Cargill and Continental might be two of a relatively small number of sellers of less widely-traded commodities and that the consolidation of these business might give Cargill market power as a seller of these products. Niche grain products include super commodities (crops with specific characteristics, such as high oil content corn), special commodities (crops that are not widely traded, such as white corn), and organic crops.

Our investigation determined, however, that there are no niche product market sin which Cargill and Continental are two of a relatively small number of competitors. Consequently, we concluded that the transaction will not create opportunities for Cargill to gain sufficient market power to raise the prices on any of the niche products that it sells.

4. Analysis of Cargill as a Buyer of Grain

Although Cargill and Continental compete for the sale of grain in national and international markets, our investigation revealed that they compete for the purchase of grain in relatively small local or regional markets. Shipping grain by truck is relatively costly and time-consuming. Farmers, therefore, tend to truck their grain within limited geographic areas surrounding their farms—usually to buyers who operate nearby country elevators or to buyers who operate river, rail or port elevators if their farms are fairly close to those facilities. Operators of river elevators and rail terminals may transport grain farther distances to buyers who operate port elevators and domestic processing plants—reflecting the relatively low cost of transporting bulk commodities long distances by rail or barge as compared with truck transportation. The draw area of one grain company's country, river, rail or port elevator overlaps the "draw area" of a competing elevator if their facilities are close enough to each other so that the costs of shipping grain to the two elevators are not significantly different.

During the course of our investigation, the Department reviewed every local or regional market in which Continental competed with Cargill for the purchase of grain before the transaction. Department staff began this process by identifying every geographic market in which Cargill and Continental operate facilities with overlapping draw areas.[8] We then determined how many grain companies other than Cargill and

[6] Market share data is difficult to obtain and not entirely reliable in this industry. One limitation of this measure of concentration is the "double counting" problem that occurs when a firm handles the same bushel of grain several times—for example, when it buys wheat at a country elevator, transfers it to its rail terminal and subsequently its flour mill, and sells it to a baker.

[7] See section V(B) of this Response.

[8] At this stage of the process, we eliminated only the Continental elevators that are located so far away from the nearest Cargill elevator that it is inconceivable that the Continental elevator and nearest Cargill elevator might be drawing an appreciable amount of grain from the same farmers.

Continental operated grain elevators in each of those markets and conducted detailed and specific analyses of all of the approximately three dozen local or regional markets that are served by less than twelve grain company elevators. The analysis for each of these geographic markets included interviews of farmers, officials of farm organizations, independent elevator operators, and other people with knowledge of these local and regional markets, determinations of local or regional grain transportation costs, and other relevant information about competitive conditions in these markets. We concluded that sufficient numbers of competitive grain buyers would remain after the consolidation of the Cargill and Continental elevators in most of those local or regional markets to make it highly unlikely that grain companies could gain the power to depress the prices they pay for grain.

In nine local or regional markets, however, farmers located within the overlapping Cargill/Continental draw areas depend on competition among Cargill, Continental, and only a few other grain companies to obtain a competitive price for their grain. Cargill's acquisition of Continental's elevators in these markets, therefore, could create sufficient market power to enable the few grain companies competing in those markets to depress grain prices.

Sections VI and VII of the Complaint refer to these overlapping Cargill/Continental draw areas as "captive draw areas." This term identifies highly concentrated markets in which Cargill and Continental are two of a relatively small number of grain buyers and in which the transaction is likely to create or enhance monopsony market power for: operators of port elevators in the Pacific Northwest port range; operators of port elevators in the central California port range; operators of port elevators in the Texas Gulf port range; operators of river elevators along the Illinois and Mississippi rivers; and operators of rail terminals in the vicinities of Salina, Kansas and Troy, Ohio.

In order to prevent the loss of competition for the purchase of grain that would result from Continental's exit from these markets, the Department insisted that Cargill divest either its elevator or Continental's elevator in the markets to a new entrant who would operate the facility as a grain elevator and compete for the purchase of grain from farmers in the facility's draw area. Cargill and Continental have divested, or are in the process of divesting, the following facilities:

Continental Facilities	*Acquirer*
Lockport, IL river elevator.	Louis Dreyfus Corporation.
Caruthersville, MO river elevator.	Louis Dreyfus Corporation.
Salina, KN rail elevator.	Declined to renew its lease.
Troy, OH rail elevator.	Mennel Milling Company
Beaumont, TX port elevator.	Louis Dreyfus Corporation.
Stockton, CA port elevator.	Penny Newman Grain Co.
Birds Point, MO river elevator[9].	Terminated minority interest.
Cargill Facilities	*Acquirer*
East Dubuque, IL river elevator.	Consolidated Grain & Barge.
Morris, IL river elevator.	Louis Dreyfus Corporation.
Seattle, WA port elevator.	Louis Dreyfus Corporation.

[9] The proposed Final judgment does not require a divestiture of the Birds Points facility since Continental terminated its minority interest in that facility before the execution of that settlement agreement.

5. Analysis of Cargill as an Operator of River Elevators Designated by CBOT for Settlement of Futures Contracts

Our investigation indicated that the acquisition would give Cargill and one other firm approximately 80% of the authorized delivery capacity for settlement of CBOT corn and soybeans futures contracts. In the light of these market shares and other market information, we determined that Cargill's acquisition of Continental would make it easier for Cargill unilaterally, or in coordination with the few remaining firms in the corn and soybean futures markets, to manipulate corn and soybean futures contracts in violation of section 7 of the Clayton Act.

The divestitures of Continental's Lockport river elevator and Cargill's Morris river elevator are needed to prevent the loss of competitors that otherwise would have occurred as a result of consolidation among operators of delivery facilities authorized for the settlement of CBOT corn and soybean futures contracts. Further divestitures required by the Final Judgment to remedy these concerns include Continental's Chicago port elevator and one-third of the capacity of Cargill's river elevator at Havana, Illinois.

6. Summary of the Department's Competitive Analysis

In summary, the Department found that Cargill's acquisition of Continental's Commodity Grain Marketing Group, as originally structured, would violate the antitrust laws. Cargill's acquisition of grain elevators in nine local or regional markets in which there are relatively small numbers of elevators operated by other grain companies would have created or enhanced the ability of grain companies to exercise monopsony powers in those geographic markets. Cargill's acquisition of Continental's CBOT-authorized delivery points would have resulted in undue concentration of these facilities and increased opportunities for manipulations of CBOT futures markets. And, the non-compete provision of the Cargill/Continental agreement would have harmed competition by unduly restricting Continental's right to re-enter the grain trading business in the future.

The Department has concluded that the restructuring of the transaction as required by the proposed Final Judgment resolves these competitive concerns. The divestitures required by the Final Judgment should preserve the competitive conditions that existed before the acquisition and ensure that farmers in the affected markets will continue to have effective alternatives to Cargill when selling their crops. The entry of new operators of CBOT-authorized delivery stations should prevent manipulation of CBOT corn and soybean futures markets. And, the requirement that the non-compete provision of the Cargill/Continental agreement remain in force for no more than three years should ensure that Cargill does not preclude continental's re-entry into the grain distribution business for longer than is required to give Cargill a fair opportunity to gain the loyalty of former Continental suppliers and customers.

V. The Department's Responses to Specific Comments

We now turn to the comments that raise questions about our analysis or that suggest relief different or supplemental to that contained in the proposed Final Judgment. Copies of this Response without appendix are being mailed to all who filed comments.

A. Remedy

Several commentators questioned whether the acquirers of the divested facilities would be competitive.[10] The proposed Final Judgment sets forth procedures designed to ensure that the firms that acquire the divested facilities will vigorously compete to buy grain from farmers in their geographic markets.

Pursuant to the proposed Final Judgment, Cargill and Continental provided widespread notice of the availability of the facilities that they were required to divest in newspapers

[10] Minnesota Attorney General Mike Hatch, South Dakota Attorney General Mark Barnett, National Farmers Union, and Western Organization of Resource Councils.

of general circulation, provided appropriate information concerning these facilities to prospective acquirers, and submitted reports to the Department concerning these inquiries and subsequent negotiations. They received over one hundred written expressions of interest in the facilities to be divested,[11] and now have entered into definitive agreements to divest all of the facilities that they were required to transfer to new entrants under the terms of the Final Judgment.

To ensure that the new entrants have the capability to compete with Cargill and other incumbent grain companies in their markets, the United States reviewed the proposed divestiture agreements, obtained further information from the proposed acquirers, and conducted an independent investigation into the background and capabilities of the proposed acquirers. Under the Final Judgment, the United States has the sole right to disapprove any prospective acquirer if it concludes that the proposed acquirer might not operate the divested facility as part of a viable, ongoing business. The Department's investigation indicated that each of the proposed acquirers has the financial capability, expertise, and incentive to become a vigorous, independent competitor in the relevant market. Louis Dreyfus and Consolidated Grain & Barge are major grain companies who will use these acquisitions to expand into markets that they do not presently serve. Mennel and Penny Newman are smaller, but they are experienced grain traders who presented sound business plans for assimilating the Troy rail elevator and Stockton port elevator in their respective grain distribution businesses.

In summary, the divested facilities will be controlled by new entrants with the background, expertise, and incentive to compete effectively for the purchase of grain produced in these markets. With these divestitures, therefore, it is not likely that this transaction will create or enhance the exercise of market power by Cargill or other grain companies enabling them to depress prices paid to farmers for their crops in any market.[12]

[11] As a further indication of widespread interest in the divested facilities, the number of potential acquirers who obtained detailed information pursuant to confidentiality agreements ranged from thirteen (for the Seattle port elevator) to twenty-one (for the Morris and Caruthersville river elevators).

[12] Antitrust relief should "'cure the ill effects of the illegal conduct, * * * assure the public freedom from its continuance,' * * * and it necessarily must 'fit the exigencies of the particular case.'" *See Ford Motor Company* v. *United States*, 405 U.S. 562, 575 (1972) (quoting *United States* v. *United States Gypsum*, 340 U.S. 76, 88 (1950)) and *International Salt Co.* v. *United States*, 332 U.S. 392, 401 (1947)). The proposed Final Judgment meets these criteria by preserving competition in domestic grain markets, as it existed prior to the transaction. In the absence of any evidence to indicate that the transaction raises antitrust concerns elsewhere, there is no basis for prohibiting Cargill "from acquiring any other direct competitors in grain export, transport, and storage markets," as suggested by Minnesota Attorney General Mike Hatch. If Cargill were to attempt to acquire competitors in additional markets, the Department will have the opportunity to investigate those acquisitions and to seek remedies for any transactions that violate the antitrust laws.

For the divestitures required to forestall undue concentration among firms who control river elevators designated for the settlement of CBOT corn and futures contracts, the Department insisted on additional criteria. We required that the proposed acquires (Louis Dreyfus at Morris and Lockport, NIDERA at Chicago, and Prairie Central at Havana) demonstrate that they satisfy all requirements for obtaining CBOT designation as an authorized delivery point (including CBOT's financial standards) in addition to the criteria established for the other divestitures.

Turning to one specific local market, Congresswoman Jo Ann Emerson, several farm groups, and one individual farmer in southeastern Missouri cautioned against allowing Bunge Corp, to acquire the Continental river elevator at Caruthersville (Cottonwood Point), Missouri because Bunge is already one of the major grain buyers in that local market.[13] The United States agrees with their analysis. Bunge will not acquire that facility; instead it will be acquired by Louis Dreyfus.

B. Market Definition

Several commentators argue that the United States failed to recognize that Cargill and Continental operate on a national scale and to realize that this transaction would concentrate the national grain market for the purchase and sale of grain.[14] We believe that we used the correct market definitions in our competitive analysis.

Under standard antitrust analysis (as applied to monopsony cases), we determine the boundaries of relevant geographic markets by determining whether it would be profitable for the only buyer of grain in the geographic market to depress the price that farmers receive for their grain by a small, but significant, and non-transitory amount. In this case, the farmer's alternatives when he looks for buyers of his crops include the closest grain buyer and other buyers located relatively near the closest buyer.[15] In most markets, we found that the additional trucking costs would preclude farmers from shipping their crops more than about twenty to thirty miles beyond the nearest grain elevator to get a small, but significant, increase in the price paid for his grain.

In this case, therefore, it was appropriate to focus our monopsony analysis on local or regional markets consisting of areas in which: (a) Cargill and Continental had elevators that were close enough to each other to compete for the purchase of grain originating in their overlapping draw areas; and (b) there were a relatively small number of competitors near enough to the Cargill and Continental facilities to be reasonable outlets for farmers located in the overlapping Cargill/Continental draw areas. These are the markets in which the transaction could create market power if too few competitors remained after Cargill acquired nearby Continental grain elevators.

Our investigation began with an examination of all local or regional markets in which Cargill and Continental operated grain elevators that were close enough together to compete for the purchase of grain from the same farmers. After eliminating the local or regional markets served by relatively large numbers of other grain company elevators, we found that Cargill and Continental were two of a relatively small number of grain companies who competed for the purchases of grain in nine local or regional markets and concluded that the transaction would have created monopsony market power in those markets.

Not one of the comments that we received indicated that we overlooked a specific local or regional market in which the transaction was likely to create competitive problems. Instead, the commentators who said that we overlooked a relevant geographic market directed our attention to national, international or export markets.

If the relevant geographic market were nationwide, we would have been forced to conclude that the transaction is not likely to lessen competition among grain buyers. Using total U.S. off-farm grain elevator capacity as a measure of market share in the grain distribution industry, Cargill had about a 5.7% share of the market and Continental about 1.2% before the transaction (and before the combined capacity was reduced by the divestitures required under the Final Judgment).[16] The combined share of less than eight percent of the market is far below any appropriate threshold for suggesting that this transaction is likely to significantly lessen competition among grain buyers. Thus, the combined Cargill/Continental share of the national grain market masks the anticompetitive effects of this transaction, as originally structured, at the local or regional level.

Other commentators suggest that the U.S. grain export market may be a relevant market.[17] Cargill and Continental are two of the United States' largest agricultural exporters (with combined export market shares of about 40% for corn, 30% for soybeans, and 25% for wheat); but, U.S. export market shares are not meaningful indications of concentration in any relevant grain output market.The customers for Cargill and Continental U.S. grain exports (*i.e.*, grain buyers in foreign countries) rely on competition among relatively large numbers of U.S. and foreign grain sellers. These sellers include Cargill, Continental, other big international grain traders, such as Bunge, Louis Dreyfus, Peavey (a division of ConAgra), and ADM, smaller regional grain traders, and (in most cases) their own domestic producers. With such large numbers of competing sellers in these markets, it is not likely that this transaction will create or enhance monopoly market power.

Cargill and Continental port elevators were a major focus of our investigation, but not because of their impact on buyers in foreign markets. We devoted substantial efforts to the investigation of this level of the Cargill and Continental grain distribution networks because: (a) In several port ranges, they compete with each other for the purchase of grain from farmers and other suppliers in their port elevators' overlapping draw areas; and (b) there are relatively small numbers of other grain companies in some of those port ranges. In fact, we found competitive problems requiring the divestiture of four of Continental's six port elevators.

C. Cargill's Power Over Price

Many of those who file documents are concerned that Cargill may have the power to depress grain prices paid to farmers after it acquires Continental.[18] We too had that concern, and as explained in section IV of this memorandum, we concluded that the acquisition as originally proposed would have adversely affected farmers in local or regional markets who had no reasonable choice but to sell their grain to Cargill, Continental, and only a few other grain companies. As explained in section V(A) of this memorandum, the divestitures required by the proposed Final Judgment protect those farmers. Only if the Court were not to require the divestitures set forth in the proposed Final Judgment would grain companies gain the power to depress prices paid to farmers and other suppliers in these markets.[19]

D. Futures Markets

Several comments stated that the United States failed to consider the impact of the transaction on futures markets.[20] In fact, we devoted considerable attention to that issue. Our analysis of the futures issue included reviews of all agricultural futures markets and economic literature on the subject, interviews of farmers, farm organization officials, grain company executives, and other people who rely on futures markets, and extensive consultations with officials from the Commodity Futures Trading Commission (CFTC).

We concluded that the transaction, as originally structured, would have given Cargill and Archer Daniels Midland Co. (ADM) approximately eighty percent of the delivery capacity for the settlement of CBOT corn and soybean futures contracts, thereby increasing opportunities for manipulation of those futures markets. Under the transaction, as originally structured, Cargill would have acquired eight Continental elevators that were authorized to accept deliveries for the settlement of CBOT corn and soybean futures contracts. The proposed Final Judgment requires the divestiture of three CBOT-authorized delivery stations on the northern portion of the Illinois river—Continental's port elevator at Chicago, Continental's river elevator at Lockport, and Cargill's river elevator at Morris. In addition, Cargill is required to make one-third of its loading capacity at a fourth facility—its Havana river elevator—available to an independent grain company under a throughput agreement in order to gain an additional facility on the southern portion of the Illinois River for the settlement of soybean futures contracts.

During our review of the divestitures proposed by Cargill and Continental, we reviewed the prospective acquirers' backgrounds to ensure that they had the requisite financial and operational capabilities and incentives to become vigorous independent competitors. In cooperation with officials from the CFTC, we also obtained credible assurances that the acquirers could obtain CBOT authorization to accept deliveries in settlement of corn and soybean futures contracts. The Department concluded that the divestitures will leave sufficient CBOT-authorized delivery capacity in the control of firms other than Cargill and ADM to protect against manipulation of CBOT corn and soybean futures markets.

E. Specialty Markets

Several commentators indicated that the United States failed to consider whether the transaction would enable Cargill to monopolize speciality or niche commodity markets.[21] As noted in section IV(B)(3) of this Response, we did study this issue, but our investigation

[13] Missouri Farm Bureau Federation, Missouri Soybean Association, Pemiscot County Farm Bureau, and Clyde Southern.

[14] Nebraska Attorney General Don Stenberg, South Dakota Attorney General Mark Barnett, National Farmers Union, WIFE, and Reena Kazmann.

[15] The cost of shipping grain from farm to grain elevator is more relevant than the distance from farm to grain elevator, but cost and distance are roughly proportionate to each other in most cases.

[16] The *1999 Grain & Milling Annual* estimates total U.S. off-farm grain storage capacity to be 7,938,190,000 bushels. *Id.* at 7. Cargill had total capacity of 452,399,560 bushels; Continental 169,346,000 bushels. *Id.* at 21, 22. The combined Cargill/Continental capacity is 7.83% of total U.S. off-farm grain storage capacity.

[17] Nebraska Attorney General Don Stenberg, South Dakota Attorney General Mark Barnett, National Farmers Union, and WIFE.

[18] Nebraska Attorney General Don Stenberg, South Dakota Attorney General Mark Barnett, Animal Welfare Institute, National Catholic Rural Life Conference, and Office of Hispanic Ministry, Greta Anderson, Vivian Anderson, Kay Barnes, Isabelle Barth, Mary Beckrich, Amanda Bray, Loris von Brethorst, Marilyn Borchardt, Mike Callicrate, G.M. Carlson, Mary Casserand, Laurie Chancellor, Donald B. Clark, Roger and Shari Cummings, Peggy B. Daugherty, Lyman and Darline Denzer, Steve Dewell, C.K. Dresae, Llewellyn and Karen Engelhart, Dan and Judy Gotto, Bob Gregory, Mary Hargrafen, Minnesota AG Mike Hatch, Veron E. Heim, John W. Helmuth, Barbara Hook, Jeff Horejsi, Robin Kleven, Riley Lewis, Todd Lewis, Lawrence Marvin, Margot Ford McMillen, Darlene Milbradt, Winton Nelson, Jennifer Poole, Rae Powell, Lois Shank, Lyle D. Spencer, Ellen Stebbins, Elenor Steburg, Daniel J. Swartz, and Professor C. Robert Taylor.

[19] A.V. Krebs posed the question whether farmer and others who deal with Cargill will be forced to conform to Cargill's standards for marketing grain after the acquisition. The answer is no. The proposed Final Judgment ensures that the transaction will not create or enhance the ability of Cargill to exercise market power in domestic grain markets. Absent market power, Cargill cannot impose its will on the firms with whom it does business.

Several individual farmers and the National Farmers Union oppose the acquisition because it will not have the effect of increasing prices or competition in grain markets. The goal of antitrust is to prevent transactions that would reduce existing competition. The antitrust laws provide no legal basis for using the power to challenge proposed mergers to *increase* competition in any market.

[20] Minnesota Attorney General Mike Hatch, John W. Helmuth, and Keith Mudd.

[21] Minnesota Attorney General Mike Hatch, Rural Life Office, Office of Hispanic Ministry, and Roger and Shari Cummings.

produced information showing that the transaction would not create or enhance market power in any markets for the purchase or sale of niche products (including super commodities, special commodities, and organic grain products).

In summary, our investigation uncovered no niche product market in which Cargill and Continental were two of a relatively small number of buyers or sellers. Our investigation, which encompassed all niche products handled by either Cargill or continental, revealed that either: (a) They did not compete with each other before the transaction or (b) there were sufficient numbers of other grain companies in the market to deny Cargill the opportunity to gain monopoly or monopsony market power.

F. Nebraska Grain Markets

Several members of the WIFE organization in Nebraska expressed concern about the ability of Cargill to depress prices paid to Nebraska farmers. As mentioned previously, the main focus of our competitive analysis was to determine whether the transaction was likely to create sufficient market power for Cargill to depress prices paid to farmers in any local or regional market. Since our preliminary investigation identified several markets in Nebraska in which Cargill and Continental compete for the purchase of grain, we devoted considerable attention to local markets within he state. After conducting numerous interviews with farmers and farm organizations in those areas, calculating local grain transportation costs, and considering other relevant competitive data, however, we concluded that there were no local markets in Nebraska in which Cargill and Continental were two of a relatively small number of competitors for the purchase of grain. In each Nebraska market where Cargill and Continental compete with each other for the purchase of grain, we found that there were sufficient numbers of alternative nearby buyers remaining after the Cargill/Continental consolidation to defeat any attempt by grain companies to depress prices paid to farmers in those areas. Accordingly, we did not seek divestitures of any grain elevators in Nebraska.

G. Concentration in Other Agriculture Markets

Some comments express concern over concentration in markets other than grain—for example, markets pertaining to beef and pork packing, cattle feedlots, broiler and turkey production, animal feed plants, flour and corn milling, soybean crushing, and ethanol production.[22] The comments suggest that the Department's analysis of the Cargill transaction may be deficient because it fails to give due consideration to these and other agriculture markets.

The Department disagrees. No facts have arisen that lead us to believe that Cargill's acquisition of Continental will harm competition in markets other than those identified in the Complaint.

The Department filed the Complaint and entered into the proposed Final Judgment after an extensive investigation. During this investigation, we examined competition and the likely effects of the transaction in every market where both Cargill and Continental provide competing products or services. We focused on the grain and grain futures markets alleged in the Complaint because these are the markets in which Cargill and Continental compete with each other and the markets in which competition could diminish after this transaction.

We are aware of other agribusiness industries in which one or both firms operate—including beef and pork packing, broiler and turkey production, flour and corn milling, soybean crushing, cattle feedlots, animal feed plants, and ethanol—but none of these industries is affected by the transaction since Continental is not selling its processing division to Cargill. Having carefully reviewed the facts, the Department has found no reason to believe that the transaction would have an adverse impact on competition in markets other than the grain markets alleged in the Complaint.

H. Ban on All Agribusiness Mergers

Some commentators suggest that current concentration levels in agriculture markets justify an absolute ban on mergers and acquisitions in the agriculture sector.[23] The antitrust laws provide no legal basis for such a ban, and the Department has no power to prevent the consummation of any transaction except to prevent or cure specific violations of the antitrust laws. Section 7 of the Clayton Act is the principal federal statutory provision dealing with mergers and acquisitions and, as explained above, it prohibits transactions that may harm competition in specific markets. Concentration levels are an important part of the analysis, but the ultimate test under Section 7 is whether the acquisition may tend to substantially lessen competition and that is the showing we must be prepared to prove in court, based on the facts in any given case.

I. Vertical Integration

Several commentators express concern about a trend toward vertical integration in agricultural industries, and they ask if the Department gave due consideration to that trend.[24] The Department is aware that some agricultural sectors are experiencing an increase in vertical integration. While a trend toward integration can be anticompetitive in certain circumstances, we did not find that such concerns are presented by the Cargill-Continental transaction.

Vertical integration occurs when several stages of production, processing, distribution, and marketing are brought together in one firm. In broilers, for example, many of the big firms are involved in breeding, hatching, growing, processing, and packaging activities. Vertical integration also appears to be increasing in other agricultural sectors.

In many circumstances, vertical integration is actually procompetitive, allowing firms to reduce their costs. *See* Herbert Hovenkamp, *Federal Antitrust Policy, The Law of Competition and Its Practice,* 332–36 (1994). However, there may be circumstances in which vertical mergers raise antitrust concerns, usually by either increasing barriers to entry, facilitating collusion or circumventing regulation. *Id.* at 346–48.

Since the Cargill-Continental transaction is a horizontal, rather than vertical, acquisition, it does not raise significant vertical issues. The Department did not uncover evidence suggesting that the transaction, as restructured, would have anticompetitive effects at any level in the production chain or result in an increase in vertical integration that would be competitively problematic. In short, the Department was aware of, and did consider, trends toward vertical integration in various agricultural sectors, but concluded that such trends did not provide a basis for seeking broader relief with respect to this transaction.

J. Non-economic Concerns

North Dakota Attorney General Heitkamp urges the Department to go beyond antitrust analysis and give greater consideration to unspecified "non-economic concerns." While she does not say so directly, Attorney General Heitkamp may be suggesting that the antitrust laws be used to preserve family farms.

Our prosecution of this matter protects the interests of all farmers, large and small. The proposed Final Judgment is designed to eliminate the risk that Cargill's acquisition of Continental will lessen competition anywhere in the United States. Department staff first identified all markets in which Cargill and Continental are competitors, and then, in every one of these markets, assessed the extent to which the acquisition raises concerns about a loss of competition that would cause competitive problems. Ultimately, we identified nine relevant markets in which farmers were likely to be adversely affected by the creation of monopsony market power that would enable Cargill and other grain companies to depress grain prices. Through divestitures, the proposed Final Judgment resolves those concerns. In addition, the Final Judgment protects against the exercise of market power to manipulate corn and soybean futures prices and limits a non-compete clause that otherwise would have prevented Continental from re-entering the grain distribution business.

As far as our investigation was able to determine, there are no other potential adverse competitive effects likely to arise from the acquisition. The proposed Final Judgment therefore protects sellers of grain throughout the United States from the price depressing effects that otherwise could have been caused by the acquisition. This outcome is beneficial to farmers of every size, including small family farmers.

K. Administrative and Legislative Actions

New Mexico Attorney General Madrid has no opposition to the proposed Final Judgment. Rather, her comment urges the Department to advocate administrative and legislative actions that will invigorate competition in agriculture markets.

The Antitrust Division of the Department of Justice testifies before Congress on antitrust matters and prepares written reports stating the views of the Department on pending or proposed legislation pertaining to antitrust. Division attorneys also participate in administrative proceedings that require consideration of the antitrust laws or competition policies. In these situations, the Division often is the government's principal advocate of competition. Therefore, Attorney General Madrid can be sure that whenever the opportunities present themselves—in legislation, administrative proceedings or elsewhere—the Department will continue to promote competition in agriculture markets.

L. The OCM Comments

OCS's comments indicate that it is dissatisfied with the action taken by the Department of Justice. Apparently, OCM thinks the complaint and proposed Final Judgment are too modest to deal with Cargill's dominance, as perceived by OCM, in numerous agriculture markets throughout the world. OCM's comments thus "reach beyond the complaint, to evaluate claims that the government did not make and to inquire as to why they were not made." *See United States* v. *Microsoft Corp.*, 56 F.3d at 1459. By doing so, OCM invites the court improperly to intrude on the government's prosecutorial role. *See id.*

On the merits, many of OCM's comments in opposition to the Department's analysis are answered by the CIS itself, the rationale of which OCM has not addressed. Rather than repeat the CIS here, we briefly deal with OCM's principal objections with appropriate references to relevant explanations in the CIS or elsewhere in this Response.[25]

1. DOJ Failed To Consider the Wider Concentration in Agricultural Markets Beyond Grain Buying

In addition to its grain trading operations, Cargill has significant presence in beef packing, cattle feedlots, pork packing, broiler and turkey production, animal feed plants, flour and corn milling, soybean crushing, and ethanol production. OCM believes that Cargill transfers resources between these markets according to prevailing economic conditions.[26] In OCM's view, these transfers are bound to increase after the transaction and, in some manner, enhance Cargill's power regardless of its economic performance.

The appropriate question for antitrust purposes, however, is whether, by transferring its own assets across industry lines as it sees fit in response to changing economic conditions, Cargill's ability artificially to depress prices will increase. OCM does not explain how such transfers could actually injure competition, and the Department is not aware of any plausible theories.

2. DOJ Failed To Consider the Continuing Potential for Anticompetitive Behavior in the Post-Merger Market

OCM is concerned that the proposed Final Judgment may not preserve competition in the relevant markets. We address this concern in the CIS at pages 9–17 and in section V(A) of this memorandum.

3. DOJ Failed To Show That the Divested Remnants of Continental Will Be a Competitive Force Absent a Large Network of Elevators That Buy Grain

OCM questions whether the divested grain elevators will be operated by effective competitors if the acquirers do not operate a large-scale network of facilities. This comment also goes to the issue of relief, which we address in section V(A) of this memorandum.

In addition to the points discussed in that section, we note that operators of river elevators and rail terminals who do not have extensive distribution networks in their facilities' draw areas do not have to buy their grain from Cargill or other national grain companies—they can buy from farmers and local or regional operators of country elevators in those markets. Likewise, operators of port elevators who do not have extensive inland distribution networks can buy grain from independent operators of river elevators and grain terminals in their facilities' draw areas. On the basis of these facts and other information that we learned about the acquirers and competitive conditions in the markets where the divested facilities are located, we concluded that all of the acquirers of the divested facilities are likely to be viable and effective competitors as a result of the elevators that they are acquiring.

4. DOJ Failed To Consider the Impact on Potential Entry Into Grain Buying Markets

OCM suggests that Continental should be held together because it is one of the few firms that has the potential to challenge Cargill in markets that Cargill now dominates, citing *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158 (1964), for that proposition. The teachings of *Penn-Olin* do not apply to the facts in this case.

In *Penn-Olin*, the Supreme Court considered the legality of a joint venture between two chemical companies to build a sodium chlorate plant. Although the joint venture would have added a

[22] Nebraska Attorney General Don Stenberg, AAM Inc., Clean Water Action Alliance, IATP, Kansas Cattlemen's Association, and Minnesota Catholic Conference, Marilyn Borchardt, John W. Helmuth, and Richard and Margene Eiguren.

[23] May Beckrich, Dick Lundebreck, David Olson, and Professor C. Robert Taylor.

[24] South Dakota Attorney General Mark Barnett, AAM Inc., Animal Welfare Institute, Catholic Charities, Clean Water Action Alliance, Jan Lundebrek, David Olson, and Professor C. Robert Taylor.

[25] In a separate filing, Nebraska Attorney General Don Stenburg shares OCM's concerns as they are set out in points 4, 5, 6, 8, and 9 of this section.

[26] OCM refers to these transfers of resources between markets as "cross-subsidization," and claims that they make diversified firms "even more capable of * * * anti-competitive behavior." OCM at 2–3.

sodium chlorate producer to the market, the Court remanded the case with instructions that the district court consider "the reasonable probability that either one of the corporations would have entered the market by building a plant, while the other would have remained a significant potential competitor." *Id.* at 175–76. The Court's rationale was that "[t]he existence of an aggressive, well equipped, and well financed corporation engaged in the same or related lines of commerce waiting anxiously to enter an oligopolistic market would be a substantial incentive to competition which cannot be underestimated." *Id.* at 174.

Penn Olin thus concerns the protection of the present competitive force of a likely potential entrant—a firm perceived as a likely entrant by those in the market. That is not our concern in this case because Continental is presently in the market. We are concerned with the protection of *actual competition* in grain markets throughout the United States. As explained at pages 9–17 of the CIS and in section V(A) of this memorandum, the proposed Final Judgment fully addresses this concern by divesting Continental's assets to new, independent competitors in the markets, who can ensure that farmers receive a competitive price for their grain after the transaction.

5. DOJ Failed To Consider the Nature of Grain Selling Markets

It is true, as OCM suggests, that a lessening of competition in world grain markets could have an adverse effect on competition within the United States. Therefore, contrary to OCM's assertion, we did assess Cargill's acquisition of Continental in the light of market conditions throughout the world.

Our investigation revealed that numerous firms sell to buyers in foreign countries—including big international grain traders (such as Cargill, Bunge, ADM, Peavey, and Louis Dreyfus), smaller regional grain traders, and domestic producers in most foreign countries. These numbers suggest that overseas markets will remain unconcentrated, even after Cargill acquires Continental. Acquisitions in unconcentrated markets rarely have adverse competitive effects, and OCM provides no evidence to the contrary.[27]

[27] As noted in section IV(B)(4) of this Response, our investigation did indicate competitive problems at U.S. export facilities because Cargill and Continental were two of a relatively small number of grain buyers in the relevant port ranges, not because Cargill and Continental were two of a relatively small number of grain sellers in any overseas market.

6. DOJ Failed To Consider the Economic Disorganization of Farmers Which Can Be Exploited by Powerful Buyers

Many thousands of farmers produce corn, wheat, and soybeans in the United States. As grain leaves their farms, however, the number of firms that buy grain from the farmers becomes much smaller. OCM says this disparity "creates a rationale for scrutinizing the power of buyers relative to sellers." We agree with OCM on this point; its assertion that we ignored buyer power in our analysis is simply incorrect.

If there is one theme that unifies our analysis, it is that Cargill's acquisition of Continental should not be permitted to create or enhance market power or to facilitate its exercise. CIS at 4–9; *see also* section IV(B) of this memorandum. Market power in this case means the ability of Cargill, as a buyer, to depress the price it pays for grain. *See* section IV(B)(4) of this memorandum. During the course of our investigation, we located every grain market in the United States in which it appeared likely that Cargill could depress prices as a result of the acquisition—and we obtained appropriate relief to address that concern. See *id.* at section V(A).[28]

In short, the Department has not ignored the "power of buyers" that concerns OCM. Rather, we now recommend entry of the proposed Final Judgment, which will ensure that this transaction does not give Cargill the opportunity to exercise monopsony power over farmers anywhere in the United States.

7. DOJ Failed To Consider Informational Disparities in Agricultural Markets

OCM does not explain how Cargill's acquisition of Continental will exacerbate informational disparities that may exist in agriculture markets. To the extent that Cargill or other grain merchants have the benefit of information that may be in some sense superior, there is no evidence that such information will improve after the transaction so as to lessen competition. Assuming information disparities could be the predicate for a Section 7 violation, they are not exacerbated by the transaction.

8. DOJ Failed To Explain the Benefits of the Merger

OCM's argument that we should explain the efficiencies in order to justify our "approval of the merger," OCM comment at 8, suggests that it misunderstands the role of the Department of Justice in reviewing mergers subject to the antitrust laws. The Department does not approve mergers. Rather, the Department reviews the particular facts and circumstances of each proposed merger in order to determine whether the merger is likely to substantially lessen competition. If the Department determines that a proposed merger is likely to lessen competition in violation of the antitrust laws, we seek an injunction from the court to prohibit the transaction.

As the Complaint and CIS make clear, the Department challenged this merger in its original form as being in violation of Section 7 of the Clayton Act. The Department did not rely upon any asserted "efficiencies" as a defense to allow Cargill to acquire Continental facilities in any relevant market in which we concluded that the transaction would otherwise tend substantially to lessen competition. The Department agreed to settle only after Cargill and Continental agreed to be bound by the terms of the proposed Final Judgment, which has the effect of substantially altering the terms of the merger to ensure that the transaction will not give grain companies market power to depress grain prices in any relevant market in the United States.

[28] As noted in section V(B) of this Response, no commentetor suggested that we failed to require divestitures in any specific local or regional market in which Cargill and Continental are two of a relatively small number of grain buyers.

9. DOJ Failed To Consider a Range of Statutes That Congress Intended Courts To Consider When Making Decisions About Agriculture Markets

OCM refers at some length to the Packers and Stockyards Act, the Capper-Volstead Act, and the Agricultural Fair Practices Act. OCM then concludes that "mergers or other activities that enhance the power of buyers" require careful review under the antitrust laws, especially when farmers are involved. *See* OCM comment at 12. The United States carefully investigates *all* mergers that may create substantial competitive harm affecting any group, including farmers. As the CIS and this Response make clear, the Department's concern for Cargill's power as a buyer of grain from farmers has been central to our analysis, prosecution, and proposed remedy in this case.

10. DOJ Failed To Consider That the Consent Decree Risks Leaving Farmers Without an Effective Outlet for Legal Redress

OCM believes that the court of Appeals for the District of Columbia Circuit has "severely restricted" the ability of the district court to determine whether the proposed Final Judgment is in the public interest as required by the APPA. *See* OCM comment at 13. For that reason, OCM is concerned that the interests of midwestern farmers may not be fully considered in this federal circuit.

There is no reason to believe that the District Court for the District of Columbia cannot make the public interest determination that is required by law in this case.

M. A Hearing Is Unnecessary in This Case

Nebraska Attorney General Stenberg urges the Court to appoint a special master "to hear evidence and to make a recommendation to the court as to the efficacy" of the proposed Final Judgment prior to its entry. *See* Brief of the Attorney General of Nebraska as Amicus Curiae at 13–14. The APPA provides that the Court must make a determination that entry of the proposed consent judgment is in the public interest before entering that judgment. The statute provides that in making such a public interest determination, the Court "may", *inter alia*, appoint a special master, conduct proceedings involving the taking of testimony and documentary evidence, and "take such other action in the public interest as the court may deem appropriate." 15 U.S.C. 16(f)(5). The statute does not require the Court to hold hearings, but directs the court to take such action as it deems appropriate.

As noted in section II of this memorandum, Congress, in passing the APPA, intended that consent decrees remain a viable antitrust enforcement option. They could not remain viable if it were necessary for a reviewing court to conduct a trial for a *de novo* determination of factual issues relevant to the adequacy of a proposed decree. The legislative history is clear that the court need not conduct the equivalent of a trial on the merits, or even conduct a hearing or take evidence, S.Rep. No. 298–93 at 6 (1973):

> The Committee recognizes that the court must have broad discretion to accommodate a balancing of interests. On the one hand, the court must obtain the necessary information to make its determination that the proposed consent decree is in the public interest. On the other hand, it must preserve the consent decree as a viable settlement option. It is not the intent of the Committee to compel a hearing or trial on the public interest issue. It is anticipated that the trial judge will adduce the necessary information through the least complicated and least time-consuming means possible. Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, this is the approach that should be utilized. Only where it is imperative that the court should resort to calling witnesses for the purpose of eliciting additional facts should it do so.[29]

The expeditious procedures to determine the public interest that Congress envisioned are not possible without reliance upon the Department's good faith execution of its prosecutorial discretion. Evidentiary hearings, therefore, should be used only in extreme cases. *See United States* v *G. Heileman Brewing Co.*, 563 F. Supp. 642, 652 (D. Del. 1983) ("This preference for the comment procedure over more burdensome forms of third-party participation * * * is clearly shown by the legislative history of the APPA.").

In the instant case, an evidentiary hearing would be inordinately time consuming and would not in any way further the Court's understanding of facts relevant to the determination it must make. There has been no claim of bad faith or malfeasance on the part of the United States in settling this case. *See AMPI*, 394 F. Supp. at 41, and cases cited. Nor has Attorney General Stenberg explained why he has not been able to fully apprise the Court of his concerns in the comments he has already filed with respect to the proposed Final Judgment. *See Heileman Brewing Co.*, 563 F. Supp. at 653.

The Court need only consider the proposed Final Judgment as explained by the CIS, the comments thereon, and this Response thereto. Such consideration will amply demonstrate that the proposed Final Judgment satisfies the public interest standard of the APPA as interpreted by the courts.

N. The 60-Day Comment Period Should Not Be Extended

Several commentators request that the time period for filing public comments be extended.[30] There is no need for such extension.

The 60-day public comment period specified in 15 U.S.C. 16(b) commenced on August 12, 1999 and terminated on October 12, 1999; but we have considered and responded to every comment that we received before or after the deadline. Those who request more time for the filing of comments do not suggest the existence of relevant facts that the Department has failed to consider in negotiating and consenting to the proposed Final Judgment. Nor do they explain why more time would be desirable to assist the Court in making the public interest determination that is required by the APPA. Under the circumstances, an extension of the 60-day public comment period is unnecessary and inappropriate in this action.

[29] This passage is quoted in *United States v. Associated Milk Producers, Inc.*, 394 F. Supp. 29, 45 (W.D. Mo. 1975), *aff'd*, 534 F.2d 113 (8th Cir. 1976), *cert. denied sub non. National Farmers Org., Inc. v. United States*, 429 U.S. 940 (1976) (hereafter "AMPI").

[30] Animal Welfare Institute, NFO Kansas, OCM, Insabelle Barth, Mary Casserand, Steve Dewell, Grant and Mabel Dobbs, Barbara Hook, Jay Godley, Todd Lewis, Glenn Oshiro, N. Ramsey, Ellen Stebbins, Giles Stockton, Dr. Frankie M. Summers, Dennis and Janice Urie.

Conclusion

The Competitive Impact Statement and this Response to comments demonstrate that the proposed Final Judgment serves the public interest. Accordingly, after publication of this Response in the **Federal Register** pursuant to 15 U.S.C. 16(b), the United States will move this Court to enter the Final Judgment.

Dated this 11th day February, 2000.
Respectfully submitted,

Robert L. McGeorge,
D.C. Bar No. 91900.

Michael P. Harmonis,
U.S. Department of Justice, Antitrust Division, 325 7th Street, NW, Suite 500, Washington, D.C. 20530, (202) 307–6361.

Certificate of Service

I hereby certify that I am an attorney for the United States in this action, and have caused true and correct copies of the foregoing UNITED STATES RESPONSE TO PUBLIC COMMENTS to be served by first-class mail or by more expeditious means on counsel for the defendants, Marc G. Schildkraut, Esq., Howrey & Simon, 1299 Pennsylvania Ave., NW, Washington DC, Paul T. Dennis, Esq., Swidler Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300 Washington, DC and Jack Quinn, Esq., Arnold & Porter, 555 12th Street, NW, Washington, DC, on this 11th day of February, 2000.

Michael P. Harmonis.

United States Response to Public Comments—Appendix

Communications with respect to this document should be addressed to:

Roger W. Fones, Chief, Donna N. Kooperstein, Assistant Chief; Robert L. McGeorge, Michael P. Harmonis, Attorneys; Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW, Washington, DC 20530, (202) 307–6361.

Public Comments

The comments from members of the public that follow in this Appendix were filed during the sixty-day period specified in 15 U.S.C. 16(b),

commencing on August 12, 1999 and terminating on October 12, 1999.

Congresswoman Jo Ann Emerson—Tab 1
State Attorneys General (alphabetical by State)—Tab 2
Organizations (in alphabetical order)—Tab 3
Individuals (in alphabetical order)—Tab 4

Tab 1

Congress of the United States,
House of Representatives,
Washington, DC 20515–2508, August 11, 1999.

Mr. Roger Fones,
Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, U.S. Department Of Justice, 325 7th Street, NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: Thank you for the attention of your Department to the plans by Cargill, Inc. to acquire the grain handling interests of Continental Grain. In all of agriculture, from transportation to processing, to inputs, there is a troubling trend toward larger and fewer companies. It is vitally important that your office work to prevent the kind of consolidation in agriculture markets that hurts producers. In the case of Cargill, I believe that your investigation and the ensuing stipulations were well warranted. However, I hope that you will consider an issue that has been raised by producers in my District regarding the consent agreement that the DOJ has entered into with Cargill (civil action number 991875).

Specifically, I have been contacted by producers in Southeast Missouri concerned that Continental's Cottonwood Point facility may be sold to an entity already possessing a significant share of the local grain market. As you know, the consent agreement requires Cargill to divest itself of the Cottonwood Point facility in order to satisfy competitive concerns. Local producers fear that Bunge would gain a near monopoly share of the local market if it were allowed to purchase the facility. I urge you to exercise strict oversight authority over the divestiture of the Cottonwood Point facility in order to prevent an unintended, anticompetitive situation.

Thank you for your attention to this matter and I look forward to hearing from you.

Sincerely,

Jo Ann Emerson, Member of Congress.

Tab 2

Richard Blumenthal, Attorney General,
State of Connecticut
Hartford June 23, 1999.

The Honorable Joel I. Klein,
Assistant Attorney General, Antitrust Division, Department of Justice, 950 Pennsylvania Avenue, N.W., Room 3109, Washington, D.C. 20530.

Re: Mergers in the Agricultural Industry.

Dear Joel: I am sure you are aware of Minnesota Attorney General Mike Hatch's recent letter to you—which he has suggested I support in my capacity as Chair of the Antitrust Committee of the National Association of Attorneys General—expressing his concern about the proposed merger of the grain operations of Cargill, Inc. and Continental Grain Company. In addition, I understand that North Dakota Attorney General Heidi Heitkamp, Missouri Attorney General Jay Nixon, and South Dakota Attorney General Mark Barnett have each written to express their similar concerns about this proposed merger.

As the Chair of the Antitrust Committee, I join in asking you to consider carefully the possible damage to our nation's agricultural industry caused by undue concentration in numerous grain markets.

In exercising our *parens patriae* authority, Attorneys General are often called upon to evaluate and gauge the competitive harm that may result in their own states from a proposed merger. Moreover, we are all well informed of the benefits of competitive markets in lower prices and better quality for consumers. Given the importance of the food supply to our national, as well as local, interests, and the needs of consumers and farmers for fair pricing, it is crucial that we not allow monopolies or oligopolies to form—or if already formed, from abusing their market power—at any level of the agricultural industry. I urge you to be wary of and oppose any merger that may tend to lessen competition in this all-important industry in the interests of farmers and consumers alike.

Very truly yours.

Richard Blumenthal.

Mike Hatch, Attorney General
State of Minnesota
Office of the Attorney General,
St. Paul, MN, October 12, 1999.
Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Re: Comment—Proposed Consent Decree Approving the Proposed Merger of Cargill, Inc. and Continental Grain Co.

Dear Mr. Fones: I submit these comments about the proposed Cargill-Continental merger pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16 (1998). Our concerns were explained in detail in a letter submitted to the Department of Justice in May, attached for your information as Exhibit 1. While we appreciate the Department of Justice's (DOJ) efforts in its lengthy investigation of the proposed merger and while the proposed consent decree strives to alleviate many concerns that have been raised regarding this merger, we remain concerned about the impact of this merger upon farmers and rural communities in Minnesota. This merger is taking place in the context of a nationwide, even a global trend toward consolidation of agricultural industries which, we fear, will only harm the interests of farmers, consumers, and local communities.

As noted in our earlier letter, the grain industries, particularly grain exports, are already highly concentrated, increasing the likelihood that further concentration will lead to oligopsony and even monopsony markets for grain farmers and other sellers of grain. Further, agricultural industries are experiencing a high rate of vertical consolidation as well, with Cargill being one of the key players in this vertical consolidation given its ties to agricultural biotechnology, grain production, animal feed, meat packing, food processing, *etc.* Particularly disturbing are recent comments of the chairman of Cargill who has publicly proclaimed the company's intention to continue to expand its market reach throughout agricultural industries, both on a horizontal and vertical level. "Cargill Chairman Micek Says Acquisitions Could Fuel Growth," Star Tribune, September 11, 1999 (Exhibit 2). These comments illustrate Cargill's intention to further reduce competition in agricultural markets a time when its most recent and controversial acquisition has not even been finalized.Thus, we believe it would be prudent for the consent decree to prohibit Cargill from acquiring any other direct competitors in grain export, transport, and storage markets.

Also, it should be noted that Cargill continues to come under scrutiny for its business conduct. In the most recent example, a little over one month ago, the Commodities Futures Trading Commission charged Cargill with improper selling of a commodity option for future delivery of grain, because of its use of certain contracts. Barshay, Jill, "Cargill Charged With Illegally Selling Option Contracts," Star Tribune, August 27, 1999 (Exhibit 3). This type of alleged conduct is directly relevant to the proposed merger, and should be considered by the Court in its evaluation of the proposed merger and consent decree.

Finally, should the Court approve the proposed consent decree and allow the merger to take place, we urge the Department of Justice to strictly scrutinize Cargill's and Continental's compliance with the proposed final order, and to exercise its discretion in approving acquirers of the proposed divestitures in a careful and exacting way. As the Department of Justice will have sole discretion to approve or disapprove any proposed acquirers, we ask that it exercise this discretion vigilantly to minimize to the greatest degree possible any potential harm to competition and public welfare that may result from this merger.

Very truly yours,

Mike Hatch,
Attorney General, State of Minnesota.

Exhibit 1 to the comment filed by Minnesota Attorney General Mike Hatch is available for inspection in room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, NW, Washington, DC 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Jeremiah W. (Jay) Nixon, Attorney General,
Attorney General of Missouri,

Jefferson City, MO, September 16, 1999.

Mr. Roger W. Fones, Esq.,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Re: Comments on Proposed Consent Decree and Divestiture Settlement, Cargill, Inc.'s Acquisition of Continental Grain Company.

Dear Mr. Fones: As Missouri Attorney General, I wrote directly to Joel Klein, Assistant Attorney General in charge of the Antitrust Division, in mid-May, 1999, regarding the above-referenced acquisition. I had also instructed my assistant, Trey Hanna, to assist your office in assessing the anticompetitive impact this merger would have on grain farmers in southeast Missouri. As expressed on earlier occasions, I am concerned about this acquisition.

I was quite glad to see that the Department of Justice secured (1) Cargill's agreement that it would not seek to acquire any ownership interest in the river elevator at Birds' Point, Missouri, which Continental had previously held, and (2) Continental's agreement to first divest its river terminal at Cottonwood Point, Missouri, (near Caruthersville) before conveying most of its other grain assets to Cargill. Allow me to again express our thanks.

But we are still concerned; it remains to be seen whether the new owner of that Cottonwood Point facility will be acceptable.

We have analyzed competitive conditions in southeast Missouri's grain business and farmers' ability to secure a fair price for their product. We have analyzed the "Competitive Impact Statement" (C.I.S.) filed by the Department of Justice on July 23, 1999 and subsequently published in the **Federal Register.** Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16 (b)–(h), I now wish to formally comment on the proposed consent decree which, if approved by the court, will become a final judgment and will set competitive conditions in southeast Missouri for many years to come.

As the Department of Justice explained in that C.I.S., the core purpose of requiring Continental to first divest the Cottonwood Point facility is to "preserve existing competition" and "maintain the level of competition [in southeast Missouri] that existed pre-acquisition." (C.I.S., at p. 9). As also recited therein, the Department of Justice has the sole discretion to approve or disapprove the manner in which the defendants propose to implement the divestiture of this facility (C.I.S., at p. 12), and whom they propose to divest it to (C.I.S., at p. 11).

Farmers in southeast Missouri hear rumors that Continental may propose to divest the Cottonwood Point facility to Bunge, the second largest competing purchaser of grain in the area (after Cargill). That would reduce the number of competing buyers of grain from four to three, being nearly as bad for competition in southeast Missouri as a sale to Cargill, which you sued to prevent. Likewise, a divestiture to Consolidated Grain and Barge (C.G.B.), another competitor in the market, would also be far from optimal.

Before Cargill and Continental announced this global transaction, farmers in southeast Missouri had four competing buyers to sell their product to. We urge the Department of Justice to exercise its discretion, when approving proffered buyers, to make sure they have four separate and distinct buyers after this divestiture, as well.

While my analysis has focused exclusively on the Missouri facilities, I also have concerns about the impact of this merger on the market generally. I share the concern of many Missouri farmers that the current anti-trust laws and resources may not adequately protect them from attempts to manipulate the market place. I urge the Justice Department to scrutinize this acquisition closely in light of the growing consolidation in agriculture.

Thank you for giving these comments due consideration. If we can answer any questions or provide other assistance, don't hesitate to contact us through my assistant, Trey Hanna, at (816) 889–5000.

Sincerely,

Jeremiah W. (Jay) Nixon.

Don Stenberg, Attorney General,
State of Nebraska,
Office of the Attorney General,
Lincoln, Nebraska 68509–8920, September 7, 1999.

Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Re: United States of America v. Cargill, Inc and Continental Grain Company.

Dear Mr. Fones: Pursuant to the Antitrust Procedures and Penalties Act, I am writing in my official position as the Attorney General of the State of Nebraska to object to the proposed final judgment in this case. In my opinion, the approval of the consent decree is not in the public interest and is not consistent with the public policy underlying federal antitrust statutes.

The proposed consent decree requires the divestiture of certain grain elevators in specified locations, but otherwise approves the merger of two of our nation's largest grain trading companies.

The increasing concentration in agricultural marketing and processing will mean lower prices for farmers and higher prices for consumers. Indeed, it was farmers' protests against the formation of large agricultural marketing and processing trusts in the late 1800's that led to the creation of our antitrust laws.

We are now seeing the same types of concentrations of economic power in the agricultural processing and marketing industries that existed over 100 years ago until they were broken up by the passage and enforcement of federal antitrust laws. At a minimum, a line must now be drawn to prevent further anti-competitive economic concentration in agriculture.

The fundamental flaw in the U.S. Justice Department's analysis that it fails to recognize that grain handling and grain merchandising is a nationwide and worldwide business. The proposed merger needs to be viewed not simply on a region by region basis, but upon overall national grain marketing implications.

The fundamental evils of excessive economic concentration are well known and have been well known for more than 100 years. In a highly concentrated industry, it is easy to keep track of the prices a handful of competitors are paying to acquire grain and to sell it. It is in the interest of the handful of competitors to uniformly offer low prices to buy and high prices to sell to consumers. This is true whether or not there is an explicit contract or conspiracy in restraint of trade. Moreover, it is easier and more tempting to form contracts or conspiracies to restraint of trade in a highly concentrated industry.

In a May 7, 1999 letter concerning the Cargill/Continental merger to the U.S. Department of Justice, Minnesota Attorney General Mike Hatch noted some basic market share information that is of great importance. He pointed out that Cargill and Continental are the two largest grain exporters in the United States. Cargill is the nation's largest grain exporter and Continental is the second largest. General Hatch goes on the explain that in fiscal year 1998, the market shares for the four largest national grain exporters (including Cargill and Continental) range from 46.6% for wheat to 64.9% for soybeans and 80.9% for corn. Cargill itself estimates that it and Continental together control about 35% of the U.S. grain exports.

Continental and Cargill are both already such large enterprises that it is very doubtful that this merger will produce any economies of scale thet would increase profits. Rather, increased profits will come from the increased market power to pay producers less and charge consumers more by virtue of vastly increased economic power.

The purpose of the anti-trust statutes is to preserve the free markets so that our free enterprise system can produce the fairest prices for both producers and consumers. The anti-trust statutes should be brought to bear in this case for that very reason.

As General Hatch correctly noted in his May 7 letter, these issues are national in scope and adequate resolution cannot come from the state or local level. If the U.S. Department of Justice cannot be persuaded to vigorously oppose a merger of this magnitude, it is difficult to imagine any merger in the area of agri-business which would be opposed by the Department.

Those of us from agricultural states understand the negative impact of excessive economic concentrations in agriculture on our farmers and ranchers. Persons from non-agricultural states should carefully consider the substantial increases in consumer food prices that loom on the horizon if further economic concentration occurs in our agricultural sector.

Yours truly,

Don Stenber.

In the matter of The United States District Court for the District of Columbia; United States of America, Plaintiff, vs. Cargill, Incorporated, and Continental Grain Company, Defendants; Case No. 1:99CV01875 (GK) Judge; Gladys Kessler.

Filed October 22, 1999.

Motion by the Attorney General of Nebraska To File Brief as Amicus Curiae

Comes Now Don Stenberg, the Attorney General of the State of Nebraska, and moves this Court for leave to file the brief attached hereto as Exhibit A as amicus curiae in the above-referenced action. The Attorney General of Nebraska has a special interest in the subject matter of this lawsuit because of his duties and responsibilities to enforce the antitrust laws, and because the merger proposed herein will have a significant impact upon the State of Nebraska.

Don Stenberg, #14023,
Attorney General of Nebraska.
Dale A. Comer, #15365,
Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Motion By The Attorney General Of Nebraska To File Brief As Amicus Curiae with attachments has been served upon the parties herein by mailing each of those parties a true and correct copy of the same, via first-class United States Mail, postage prepaid, addressed to the parties' counsel of record as follows:

Robert L. McGeorge, Esq.
Attorney, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.
Marc G. Schildkraut, Esq.,
Howrey & Simon, 1299 Pennsylvania Avenue, NW, Washington, DC 20004.
Paul T. Denis, Esq.,
Swidler, Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007–5116.
Jack Quinn, Esq.,
Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004.

On this 21st day of October, 1999.

Dale A. Comer,
Assistant Attorney General.

Memorandum of Points and Authorities in Support of Motion by the Attorney General of Nebraska To File Brief as Amicus Curiae

Don Stenberg, #14023,
Attorney General of Nebraska.
Dale A. Comer, #15365,
Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Introduction

This case involves an action under the Tunney Act, and in particular 15 U.S.C. 16(e), in which the parties seek this court's approval of a proposed final consent judgment involving a corporate merger between Cargill, Inc. and Continental Grain Company. The Attorney General of the State of Nebraska has now filed a Motion For Leave To File A Brief As Amicus Curiae in this proceeding. This Memorandum of Points and Authorities is submitted to the court in support of that Motion.

Argument

I

The decision as to whether to allow participation by amicus curiae in this case is left to the discretion of this court.

In general, the decision as to whether to allow a non-party to participate in a case as *amicus curiae* is solely within the broad discretion of the court. *Ellsworth Associates, Inc.* v. *United States,* 917 F.Supp. 841 (D.D.C. 1996). Such discretion also applies within the specific context of the Tunney Act. *United States* v. *Associated Milk Producers,* 394 F.Supp. 29 (W.D.Mo. 1975). The aid of amicus curiae is appropriate at the trial level where they can provide helpful analysis of the law. *Waste Management of Pennsylvania* v. *City of York,* 162 F.R.D. 34 (M.D.Pa. 1995). *Amicus curiae* are also appropriate when they have a special interest in the subject matter of the suit. *Strasser* v. *Doorley,* 432 F.2d 567 (1st Cir. 1970). As a result, the decision as to whether to allow participation by amicus curiae in this case is left to the discretion of this court, and such participation is warranted if the amicus participants can provide a helpful analysis of the law or if they have a special interest in the subject matter of this suit.

II

The court should exercise its discretion so as to allow the Attorney General of Nebraska to file a brief in this case as amicus curiae.

The *amicus curiae* brief which the Attorney General of Nebraska proposes to submit to this court contains a detailed discussion and analysis of the proposed Final Judgment in this case under the applicable antitrust laws, and therefore, will hopefully provide this court with a helpful analysis of the law. More importantly, the Attorney General of Nebraska has a special interest in the subject matter of this lawsuit, in two respects.

First, the Attorney General of Nebraska is the primary state official in Nebraska charged with the duty of enforcing the state's antitrust laws. See, *e.g.,* Neb. Rev. Stat. §§ 59–1601 through 59–1623 (1998) (the Nebraska Consumer Protection Act which, among other things, authorizes the Attorney General to bring an action seeking to enjoin a corporate acquisition which would "substantially lessen competition or tend to create a monopoly in any line of commerce); Neb. Rev. Stat. §§ 59–801 through 59–831) (1998) (authorizing criminal sanctions for antitrust violations in Nebraska); and Neb. Rev. Stat. §§ 84–212 (1994) (authorizing the Attorney General to sue a *parens patriae* on behalf of citizens of the state to recover damages sustained by those citizens as a result of violations of the state or federal antitrust laws). The Nebraska Attorney General also has specific enforcement authority under the federal antitrust laws. See, *e.g.,* Section 4 of the Clayton Act, 15 U.S.C. 15 (1998) (authorizing states to sue for proprietary damages inflicted upon them); Title III of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. 15c (1998) (authorizing state attorneys general to sue for damages as *parens patriae* on behalf of natural persons); Section 16 of the Clayton Act, 15 U.S.C. § 26 (1998); *California* v. *American Stores Co.,* 495 U.S. 271 (1990) (upholding state's right pursuant to Section 16 of the Clayton Act to obtain injunctive relief, including divestiture, against illegal mergers); *Hawaii* v. *Standard Oil,* 405 U.S. 251, 257–60 (1972) (acknowledging state's authority to seek injunctive relief on behalf of general economy of the state). As a result, the Attorney General of Nebraska has a strong interest in antitrust enforcement and in promoting free and fair competition. The Attorney General of Nebraska also has a strong interest in protecting the citizens of Nebraska from unreasonable restraints of trade, both in their capacities as consumers and their capacities as competitors.

Second, agriculture is an important and major industry in the State of Nebraska. In 1997, more than 96 percent of the state's land, involving 47 million acres, was farm and ranchland. Clerk of the Nebraska Legislature, Nebraska Blue Book 1998–99 (Michael R. Lewis ed., 1998) p. 40. In that same year, gross cash receipts from farm marketing in Nebraska totaled $10.1 billion, and Nebraska had 55,000 farms that produced food for consumers in the United States and abroad. *Id.* Consequently, any anticompetitive activities which affect agricultural markets and farmers in the State of Nebraska in general are of concern to the Attorney General of Nebraska.

It is also clear that agricultural interests and farmers in Nebraska are affected specifically by the details of the proposed final consent judgment in this case. As noted in the government's Competitive Impact Statement herein, the overlapping draw area for the Pacific Northwest includes portions of Nebraska. Competitive Impact Statement at 4. In addition, the overlapping draw area for the Texas Gulf also includes portions of Nebraska. Competitive Impact Statement at 4. Therefore, the final consent judgment proposed in this case affects the agricultural industry in Nebraska, and the Attorney General of Nebraska has a direct responsibility to deal with anticompetitive practices affecting those markets. On that basis, the Attorney General also has a special interest in the subject matter of this lawsuit.

Conclusion

An amicus brief by the Attorney General of Nebraska in this case would provide this court with a helpful analysis of the law. Moreover, for the reasons stated above, the Attorney General of Nebraska has a special interest in the subject matter of this lawsuit. As a result, the Attorney General of Nebraska respectfully requests that this court exercise its discretion and grant him leave to participate in this action by filing a brief as *amicus curiae.*

Dated this 21st day of October, 1999.

(By: Don Stenberg, #14023, Attorney General)
Don Stenberg,
Attorney General of Nebraska.
Dale A. Comer, #15365,
Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Memorandum Of Points And Authorities in Support Of Motion By The Attorney General Of Nebraska To File Brief As *Amicus Curiae* has been served upon the parties herein by mailing each of those parties a true and correct copy of the same, via first-class United States Mail, postage prepaid, addressed to the parties' counsel of record as follows:

Robert L. McGeorge, Esq.,
Attorney, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.
Marc G. Schildkraut, Esq.,
Howrey & Simon, 1299 Pennsylvania, NW, Washington, DC 20004.
Paul T. Denis, Esq.,
Swidler, Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007–5116.
Jack Quinn, Esq.,
Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004.

On this 21st day of October, 1999.

Dale A. Comer,
Assistant Attorney General.

Brief of the Attorney General of Nebraska as Amicus Curiae

Don Stenberg, #14023,
Attorney General of Nebraska.
Dale A. Comer, #15365,
Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Exhibit A

Interest of Amicus Curiae

The Attorney General of Nebraska is the primary state official in Nebraska charged with the duty of enforcing the state's antitrust laws. See, *e.g.,* Neb. Rev. Stat. §§ 59–1601 through 59–1623 (1998) (the Nebraska Consumer Protection Act which, among other things, authorizes the Attorney General to being an action seeking to enjoin a corporate acquisition which would "substantially lessen competition or tend to create a monopoly in any line of commerce); Neb. Rev. Stat. §§ 59–801 through 59–831 (1998) (authorizing criminal sanctions for antitrust violations in Nebraska); and Neb. Rev. Stat. § 84–212 (1994) (authorizing the Attorney General to sue as *parens patriae* on behalf of citizens of the state to recover damages sustained by those citizens as a result of violations of the state or federal antitrust laws). The Nebraska Attorney General also has specific enforcement authority under the federal antitrust laws. See, *e.g.,* Section 4 of the Clayton Act, 15 U.S.C. 15 (1998) (authorizing states to sue for proprietary damages inflicted upon them); Title III of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, 15 U.S.C. § 15c (1998) (authorizing state attorneys general to sue for damages as *parens patriae* on behalf of natural persons); section 16 of the Clayton Act, 15 U.S.C. 26 (1998); *California* v. *American Stores Co.,* 495 U.S. 271 (1990) (upholding state's right pursuant to Section 16 of the Clayton Act to obtain injunctive relief, including divestiture, against illegal mergers); *Hawaii* v. *Standard Oil,* 405 U.S. 251, 257–60 (1972) (acknowledging state's authority to seek injunctive relief on behalf of general economy of the state). As a result, the Attorney General of Nebraska has a strong interest in antitrust enforcement and in promoting free and fair competition. The Attorney General of Nebraska also has a strong interest in protecting the citizens of Nebraska from unreasonable restraints of trade, both in their capacities as consumers and in their capacities as competitors.

Agriculture is an important and major industry in the State of Nebraska. In 1997, more than 96 per cent of the state's land, involving 47 million acres, was farm and ranch land. Clerk of the Nebraska Legislature, Nebraska Blue Book 1998–99 (Michael R. Lewis ed., 1998) p. 40. In that same year, gross cash receipts from farm marketing in Nebraska totaled $10.1 billion, and Nebraska had 55,000 farms that produced food for consumers in the United States and abroad. *Id.* As a result, any anticompetitive activities which affect agricultural markets and farmers in the State of Nebraska in general are of concern to the Attorney General of Nebraska.

It is also clear that agricultural interests and farmers in Nebraska are affected specifically by the details of the proposed final consent judgment in this case. As noted in the government's Competitive Impact Statement herein, the overlapping draw area for the Pacific Northwest includes portions of Nebraska. Competitive Impact Statement at 4. In addition, the

overlapping draw area for the Texas Gulf also includes portions of Nebraska. Competitive Impact Statement at 4. As a result, the final consent judgment proposed in this case will affect the agricultural industry in Nebraska, and the Attorney General of Nebraska has a direct responsibility to deal with anticompetitive practices in those markets.

Argument

The Final Consent Judgment Proposed by the Parties in This Proceeding is Not in the Public Interest, and Should Not be Approved by This Court

Under the Tunney Act, and in particular 15 U.S.C. 16(e), this court may approve the final consent judgment proposed by the parties in this case only if the court determines that the entry of such judgment is "in the public interest." For the reasons discussed at length below, the Attorney General of Nebraska contends that the consent judgment with Cargill and Continental Grain Company (hereafter "Continental") proposed by the United States is deficient and not in the public interest. Consequently, this court should refuse to approve that final consent judgment.

I

In a proceeding under the Tunney Act, this court is not a "rubber stamp" for the Department of Justice, but acts as an independent check on the terms of the proposed final consent judgment.

A number of federal cases have set out the applicable standards with respect to a review of a proposed final consent judgment proposed by the government under the Tunney Act. First of all, it is clear that the court is not to act simply as a "rubber stamp" for the proposal submitted by the Department of Justice. *United States* v. *BNS Inc.*, 858 F.2d 456 (9th Cir. 1988); *United States* v. *Western Electric Company*, 767 F.Supp. 308 (D.D.C. 1991). Instead, the court "is required to act as an independent check on the terms of such decrees." *United States* v. *Western Electric Company*, 767 F.Supp. 308, 328 (D.D.C. 1991). In addition, Congress did not intend the court's review of a proposed final consent judgment under the Tunney Act to be merely pro forma or limited to what appears on the surface. *United States* v. *Gillette Company*, 406 F.Supp. 713 (D. Mass. 1975). The court must make an independent determination as to whether or not entry of a proposed consent decree is in the public interest. *United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995).

What constitutes the "public interest" in the context of this type of proceeding was discussed at length in *United States* v. *American Telephone and Telegraph Company*, 552 F.Supp. 131 (D.D.C. 1982). In that case, this court indicated that purpose of the antitrust laws was to "preserv[e] free and unfettered competition as the rule of trade." *Id.* at 149 (quoting from *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1 (1958)). Within that purpose, an antitrust remedy, including a consent decree, must "leave the defendant without the ability to resume the actions which constituted the antitrust violation in the first place" or "effectively foreclose the possibility that antitrust violations will occur or recur." *Id.* at 150. In addition, "antitrust violations should be remedied with as little injury as possible to the interest of the general public' and to relevant private interests." *Id.* at 150 (quoting from *United States* v. *American Tobacco Co.*, 221 U.S. 106 (1911)).

II

The final judgment proposed by the parties in this action is deficient in a number of respects, and is not in the public interest.

The Attorney General of Nebraska believes that the final consent judgment proposed by the parties in this case is deficient in the first instance because it does not take into account the wider context of vertical consolidation in the nation's agribusiness system, and instead focuses solely on the grain buying activities of Cargill and Continental. Consolidation across vertically-related markets is increasingly leading to the creation of all-inclusive food supply chains in the United States where one company or interrelated group of companies can control certain agricultural commodities from their creation at the genetic level to their ultimate purchase by the consumer. This sort of vertical consolidation will harm competition by making entry into the affected markets more difficult, by making the extent of actual competition more difficult to estimate, and by forcing independent farmers and producers out of business. Allowing the merger of Cargill and Continental will make further agribusiness consolidation more likely. For one thing, acquisition of Continental's seventy grain elevators will enhance Cargill's economic power generally, and allow deployment of that economic power across a wide range of other agricultural sectors including beef packing, cattle feedlots, pork packing, broiler production, turkey production, flour milling, soybean crushing and ethanol production. That enhanced economic power will also allow Cargill to transfer resources across markets without regard to competitive conditions. As a result, the government should have considered more than the grain buying operations of Cargill in evaluating this merger.

The proposed final consent judgment also fails to recognize that grain handling and grain merchandising is a nationwide and worldwide business. In that regard, as noted in the competitive impact statement filed herein, Cargill is the second largest grain trader in North America and the largest U.S. grain exporter. Continental is the third largest grain trader in North America and the third largest U.S. grain exporter. Merger of those market shares cannot help but increase the concentration in the national and global grain trading and grain exporting markets to questionable levels with damaging effects upon farmers and consumers in Nebraska and other agricultural states. Yet, the government's proposed final consent judgment focuses only on grain trading activities in a small number of regional markets.

The Attorney General of Nebraska is aware of the decision in *United States* v. *Microsoft*, 56 F.3d 1448 (D.C. Cir. 1995). Consequently, the remainder of this amicus curia brief will focus on specific deficiencies with respect to the matters alleged in the government's Complaint in this case and the proposed final consent judgment presented to the court.

A. The final consent judgment fails to take into account the size and organization of the sellers in the markets affected by the proposed merger.

In a number of merger cases, courts have given credence to the notion that a merger resulting in a larger, more powerful firm may be permissible if the companies the merged firm sells to also possess market power. *United States* v. *Baker Hughes, Inc.*, 908 F.2d 981, 984 (D.C. Cir 1990); *F.T.C.* v. *Elders Grain, Inc.*, 868 F.2d 901, 905 (7th Cir. 1989). For example, in *United States* v. *Country Lake Foods, Inc.*, 754 F.Supp. 669 (D.Minn. 1990), the district court recognized the ability of large food corporations which were milk purchasers to act as a check to the market power of milk processors in a merger involving the fluid milk processing industry because the food corporations could respond aggressively to price increases and had the capital resources necessary to vertically integrate fluid milk processing. That reasoning forms the basis for the "power buyer" defense to merger enforcement.

If the presence of "power buyers" in a particular market helps to make a proposed merger more acceptable, it necessarily follows that the lack of such "power buyers" makes a merger less acceptable, because powerful sellers in a given market can use their market power to exploit small and disorganized buyers. For example, in *United States* v. *Tote, Inc.*, 768 F.Supp. 1064 (D. Del. 1991), the court rejected the power buyer defense because there were a large number of small buyers in the market at issue. For that reason, among others, the court held the merger in question to be anticompetitive. See also *F.T.C.* v. *Cardinal Health, Inc.*, 12 F.Supp.2d 34 (D.D.C. 1998).

The reasoning underlying the power buyer defense should also be applied equally in evaluating the competitive effects of a merger in an oligopsony situation. In other words, the anticompetitive effects of a merger involving a small number of possible buyers should be evaluated, in part, by measuring the number and power of the sellers for those buyers. If the sellers are numerous, disorganized and small, then they will be unable to respond to the anticompetitive exercise of market power by small group of powerful buyers. That is precisely the situation in the present case where a small group of buyers in the grain buying and marketing industry are able to exert anticompetitive power over numerous, disorganized and small farmers selling grain. That situation will be exacerbated by the merger proposed under the final consent judgment in this case, and for that reason, the final judgment is not in the public interest.

B. The proposed final consent judgment does not take into account the potential for continuing anticompetitive behavior in the post-merger market.

In its Complaint, the government argues that very few firms buy grain within particular draw areas. Government Complaint, p.4. The government then contends that in those "captive draw areas, [a merged] Cargill would be in a position unilaterally, or in coordinated interaction with the few remaining competitors, to depress prices paid to producers and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease." Government Complaint, p.4. To remedy this problem in the context of the proposed merger, the government simply proposes divestitures in a few of the captive draw areas. However, even with the divestitures proposed by the Department of Justice, grain buying in the post-merger markets in the captive draw areas at issue will still remain heavily concentrated and susceptive to collusive and cooperative activity among the remaining grain buyers. As a result, the proposed final consent judgment will not effectively foreclose the possibility that antitrust violations will occur in the future in the captive draw areas. For that reason, it is deficient.

C. The proposed final consent judgment fails to take into account the impact of global sales or grain buying in the United States.

A great deal of the grain purchased by Continental and Cargill is sold overseas where purchases are based upon factors such as geographic area, historic preference or long-term contracts. Those factors often reduce the need for competition in buying American grain. However, the proposed final consent judgment fails to take those global market factors into account in determining what is necessary to maintain competitive grain buying in the United States.

D. Under the proposed final consent judgment, there is no assurance that the portions of Continental's operations which are divested can or will remain a competitive force in the markets in question.

The government notes, in its Complaint, that "[g]rain traders such as Cargill and Continental operate extensive grain distribution networks, which facilitate the movement of grain from farms to domestic consumers of these commodities and to foreign markets." Government Complaint at 3. Given this need for "extensive grain distribution networks." it is unclear as to how the remnants of Continental divested as a result of the final consent judgment will compete effectively in the markets where they are located, since they may not be part of such a distribution network with its competitive flexibility and access to information about grain flows. In addition, the acknowledged need for "extensive grain distribution networks" in these markets will make it highly unlikely that new firms will enter these markets and provide additional competition. Indeed, the Department of Justice concedes in its Complaint that new entry into the grain buying business is unlikely. Government Complaint at 6.

E. The proposed final consent judgment fails to take into account the effects of removal of Continental as potential competitor to Cargill.

In *United States* v. *Penn-Olin Chemical Co.*, 378 U.S. 158, 173–4 (1964), the United States Supreme Court stated:

> [t]he existence of an aggressive, well equipped and well financed corporation engaged in the same or related lines of commerce waiting anxiously to enter into an oligopolistic market would be a substantial incentive to competition which cannot be underestimated.

In the present case, Continental currently possesses the grain distribution network and other resources to potentially challenge Cargill in the grain buying business. With Continental taken out of that business as a result of the merger proposed herein, Cargill will face much less pressure to pay competitive prices and compete in grain buying markets. This is particularly true given the difficulty of entry into the market by new firms.

F. The final consent judgment fails to take into account other statutes which Congress intended should be considered in making determinations regarding agricultural markets.

A primary rule of statutory construction is that when a court interprets multiple statutes dealing with a related object or subject, those statutes are *in pari materia* and should be construed together. *Common Cause* v. *Federal Election Commission*, 842 F.2d 436 (D.C. Cir. 1988); *Linquist* v. *Bowen*, 813 F.2d 884 (8th Cir. 1987). Essentially, if a number of separate statutes relate to the same thing, they are *in pari materia*, and all ought to be taken into consideration in construing any one of them. *United States* v. *Freeman*, 44 U.S. 556 (1845). In the area of agricultural markets, Congress has passed a number of statutes in addition to the provisions of the Sherman Act and the Clayton Act which are *in pari materia* with those antitrust statutes because they reflect congressional concerns about economic concentration and the disproportionate bargaining power of farmers. All of those statutes should have been considered in fashioning the proposed final consent judgment in this case. Because they were not, that final consent judgment is deficient.

First of all, the Department of Justice failed to consider the implications of the Packers and Stockyards Act of 1921, 7 U.S.C. 181 *et seq.* (the "PSA"), in developing the final consent judgment. The PSA was passed after the Sherman, Clayton and Federal Trade Commission

Acts, and was designed to go beyond the broad language of those statutes. *Wilson & Co.* v. *Benson*, 286 F.2d 891 (7th Cir. 1961). Among other things, the PSA was directed at the lack of competition between agricultural buyers and the attendant possible depression of producers' prices. *Swift & Co.* v. *United States*, 393 F. 2d 247 (7th Cir. 1968). In the present case, one of the government's concerns with the proposed merger is that prices paid to farmers could be depressed in a post-merger market. Government Complaint at 6. The PSA supports the notion that particular attention should be directed to mergers which implicate marketing for farmers.

Another statute with implications for the merger under consideration which was not considered by the government is the Capper-Volstead Act, 7 U.S.C. 291–2. That statute specifically exempted agricultural cooperatives from the antitrust laws because Congress intended to treat farmer cooperatives differently from typical corporations and to give farmers the opportunity to build their bargaining power relative to corporate buyers. *Fairdale Farms, Inc.* v. *Yankee Milk, Inc.*, 635 F.2d 1037 (2nd Cir. 1980). This was done deliberately to enable farmers to organize and work together so as to obtain and exercise marketing power. *Kinnet Dairies, Inc.* v. *Dairymen, Inc.*, 512 F.Supp. 608 (M.D. GA. 1981). Any merger which works against those principles to increase the power of buyers at the expense of farmers should therefore be subject to special, heightened scrutiny.

Finally, the proposed final consent judgment fails to consider the implications of the Agricultural Fair Practices Act of 1967, 7 U.S.C. 2301–2306 (the "AFPA"). That Act was intended to prevent corporations from interfering in the formation of collective marketing organizations involving farmers. The overriding purpose of the legislation was the protection of farmers' rights to organize cooperatively. *Butz* v. *Lawson Milk Co.*, 386 F.Supp. 227 (N.D. OH. 1974). Again, AFPA's recognition of the potential for abusive practices by agricultural processors shows congressional concern with the potential market power of agricultural buyers which should have been reflected to a greater degree in the final consent judgment which is now before this court.

G. The final consent judgment fails to set out any benefits or efficiencies of the proposed merger.

The Department of Justice obviously has concerns about the anticompetitive effects of the merger in this case as witnessed by the divestitures required in the proposed final consent judgment and the other allegations in the Complaint. Yet, the papers prepared by the government do not set out any reasons for approving the proposed merger after the divestitures such as post-merger efficiencies which will result from the action. Absent any economic benefits resulting from the merger in this case, it is difficult to understand how this merger can be in the public interest in light of the other potential anticompetitive problems set out above.

III

If necessary, this court should appoint a special master to assist in determining if the proposed final consent judgment in this case is in the public interest

For all the various reasons set out above, the Attorney General of Nebraska contends that the proposed final consent judgment in this case is not in the public interest as required by 15 U.S.C. 16(e). However, should this court not determine that such a finding is appropriate at the present time, the Attorney General of Nebraska urges the court to appoint a special master in this case as contemplated by 15 U.S.C. 16(f) to hear evidence and to make a recommendation to the court as to the efficacy of the proposed final consent judgment. The appointment of a special master in this case is based upon the complex nature of the agricultural markets at issue and the various statutes discussed above which interact upon the application of the antitrust laws in this context.

Conclusion

For the reasons discussed above, the Attorney General of Nebraska, as amicus curiae, urges the court to reject the proposed final consent judgment in this case as not in the public interest. Alternatively, the Attorney General of Nebraska urges the court to appoint a special master in this case who can assist the court in analyzing the particular agricultural markets at issue.

Dated this 21st day of October, 1999.

Don Stenberg, #14023

Attorney General of Nebraska.

Dale A. Comer, #15365

Assistant Attorney General, 2115 State Capitol, Lincoln, NE 68509–8920, Tel: (402) 471–2682.

Certificate of Service

The undersigned hereby certifies that a copy of the foregoing Brief Of The Attorney General Of Nebraska As *Amicus Curiae* has been served upon the parties herein by mailing each of those parties a true and correct copy of the same, via first-class Unjted States Mail, postage prepaid, addressed to the parties' counsel of record as follows:

Robert L. McGeorge, Esq.,

Attorney, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Marc G. Schildkraut, Esq.,

Howrey & Simon, 1299 Pennsylvania Avenue, NW, Washington, DC 20004.

Paul T. Denis, Esq.,

Swidler, Berlin Shereff Friedman, LLP, 3000 K Street, NW, Suite 300, Washington, DC 20007–5116.

Jack Quinn, Esq.,

Arnold & Porter, 555 Twelfth Street, NW, Washington, DC 20004.

On this 21st day of October, 1999.

Dale A. Comer,

Assistant Attorney General.

Attorney General of New Mexico

6301 Indian School Rd., NE., Suite 400, Albuquerque, New Mexico 87110; (505) 841–8098, FAX: (505) 841–8095

October 12, 1999.
FACSIMILE NUMBER (202) 307–2784
Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW., Suite 500, Washington, DC 20530.

Re: United States v. Cargill, Incorporated and Continental Grain Company, Case Number 1:99CV0187 (GK)

Dear Mr. Fones: I want to take this opportunity to express my concerns for small farmers and ranchers and the serious threats I believe they face from the ever-increasing rate of consolidation in agricultural industries, of which the pending Cargill-Continental Grain Company transaction is but one example.

Not only is consolidation occurring on a horizontal level—that is between direct competitors—but large, economically powerful companies are becoming more vertically integrated. Increasingly, these vertically integrated companies are able to exercise significant power over the food chain, all the way from production to the packaged product. This can have serious adverse effects on our economy and the important role performed by small farmers and ranchers throughout our nation. As Minnesota Attorney General Hatch pointed out in his May 7, 1999 letter concerning this matter to United States Assistant Attorney General Klein, and consistent with the comments submitted to you by Attorney General Don Stenberg of Nebraska dated September 7, 1999, reliable studies indicate that the gap between rising food retail prices and falling prices to farmers and ranchers has been growing for some time. This widening gap is the result, at least in part, of growing economic power of vertically integrated agribusinesses and increasingly concentrated markets and suggests that these markets may already be dysfunctional in some important ways.

Given the state of the law interpreting Section 7 of the Clayton Act, I do not challenge the consent judgment proposed by the Department of Justice in this matter as being legally or factually unsupported. Certainly the divestitures and other provisions required by the proposed consent judgment ought to ameliorate the anticompetitive effects of the acquisition to some extent. However, even with the required divestitures, this transaction will likely decrease the number of significant competitors in the national grain trading market in the United States. It will also bolster Cargill's already significant market presence both in markets in which Cargill and Continental currently are direct competitors and in markets such as those in the areas of animal feed, feeding cattle and processing cattle, in which Continental is not currently a significant competitor.

Thus, I would urge that these difficult issues be dealt with as comprehensively as possible and that to the extent possible the Department of Justice actively advocate administrative and legislative responses that will enhance and invigorate competition in the agricultural sector of our economy. In addition, the antitrust laws in this sector of the economy should be effectively and timely enforced, especially to protect the valuable interests of small farmers and ranchers. I hope that any additional moves toward further concentration in agricultural markets will be carefully and thoroughly scrutinized.

Sincerely yours,

Patricia A. Madrid,

Attorney General.

cc: Attorney General Michael Hatch
Attorney General Don Stenberg

State of North Dakota, Office of Attorney General

State Capitol, 600 E Boulevard Ave, Bismarck, ND 58505–0040; (701) 328–2210; Fax (701) 328–2226.

October 11, 1999.
Mr. Roger Fones,
Chief, Transportation, Energy, and Agriculture Section, Antitrust Division, US Department of Justice, 325 7th St. NW, Rm 500, Washington, DC 20530.

Dear Mr. Fones: The following comments are submitted concerning the proposed merger of Cargill, Incorporated, and Continental Grain Company. Because there is little competition between Cargill and Continental on the local level in North Dakota, my principal concern has been with this merger's potential impact on the grain export market. It is encouraging that the Antitrust Division responded to these concerns by requiring divestiture by Cargill of its Seattle port elevator and by placing limitations on any future throughout agreement with the subsequent acquirer of that facility.

Nevertheless, I continue to have serious concerns about the increasing consolidation among the agribusiness firms who purchase the output of North Dakota's farmers. I am disappointed with the apparent inability of present day antitrust law to prevent this consolidation and the resultant injury to our farmers, the producers of the agricultural bounty our country enjoys.

Over the past decade, we have witnessed ever-larger mergers among ever-more-concentrated competitors. And all that the antitrust enforcement agencies, my own included, seem capable of doing in response is to tinker around the edges. At a minimal cost of a few divestitures and some relatively insignificant restrictions on post-merger conduct, agribusiness companies in the livestock, meatpacking industries, and now the grain industry continue to grow larger, more concentrated and more powerful. As a result, our farmers now confront the most powerful concentrations of global economic interests the world has ever known.

The economic history of North Dakota agriculture is largely the story of the unequal balance of power between our farmers and the large agribusiness and transportation interests with which they must deal. While producer cooperatives have played a significant role in counter-balancing these economic forces and hold substantial promise for the future, economic disorganization is the natural result of having a large number of farmers, geographically dispersed and producing a wide variety of commodities. The original antitrust laws were enacted over one hundred years ago in significant measure in response to calls to protect farmers from the ravages of raw economic power and to moderate its negative effects on society.

Unfortunately, these laws and the modern trends in their enforcement are proving inadequate to the task. Modern antitrust policy has lost sight of its agrarian roots. The farm sector is hemorrhaging and that bedrock institution, the family farm, is in mortal danger as a result of low commodity prices brought on, in part, by the imbalance of economic forces the antitrust laws were supposed to prevent.

I believe that the time has come to rethink antitrust analysis, particularly in the farmer-agribusiness context. It is time to forthrightly address the failures of economic analysis in this areas as well to give greater consideration to the importance of non-economic concerns in antitrust enforcement. I intend to work with my fellow state attorneys general to initiate this process. I hope that we will be able to count on the Antitrust Division for assistance as we proceed.

In light of the above comments, I would ask that the Antitrust Division reconsider its approval of this merger.

Thank you for your consideration of these comments.

Sincerely,

Heidi Heitkamp,

Attorney General.

State of South Dakota Office of Attorney General, 500 East Capitol Avenue, Pierre, South Dakota 57501–5070; Phone (605) 773–3215, FAX (605) 773–4106

October 5, 1999.
Roger W. Fones,
Chief, Transportation, Energy, and Agricultural Section, Antitrust Division, United States Department of Justice, 325 7th Street, NW, Room 500, Washington, DC 20530.

Re: *United States of America* v. *Cargill Incorporated and Continental Grain Company.*

Dear Mr. Fones: In my capacity as Attorney General of the State of South Dakota I am filing these written comments in opposition to the proposed consent decree in the above referenced action pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16.

As you are aware, prior to the Department of Justice's proposed consent decree, I joined the Minnesota Attorney General's letter expressing opposition to Cargill Inc.'s proposal to acquire the worldwide commodity marketing business of Continental Grain Company and urged the Department of Justice to oppose the proposed merger. It was, and still is my opinion, that the proposed merger may well reduce competition. The resulting consequences on South Dakota's agricultural industry could be serious. While the proposed consent decree would require Continental to divest itself of a couple of port, river and rail elevators and would prohibit Cargill from acquiring certain interests and require entry into a throughput agreement, these measures are simply inadequate to fully address the long term consequences of this merger of two global grain industry giants.

The Department of Justice, in its Complaint and Competitive Impact Statement, distinctly explained that if the acquisition of Continental's worldwide commodity marketing business is permitted to proceed, there will be a substantial lessening of competition for grain purchasing services to farms and other suppliers. As the Department of Justice further explained, this will likely result in many American farmers and other suppliers receiving lower prices for their grain and oil seed crops. The proposed consent decree simply does not go far enough to prevent the occurrence of the events contained in these legal documents.

The Cargill/Continental merger is not adequately addressed by simply dealing with market implications of the merger on a region by region basis. The geographic market for grain is nationwide with worldwide implications.

Further, it does not appear that Department of Justice has adequately considered whether the divested remnants of Continental will be a competitive force given the nature of the grain market. It also appears that the Department of Justice did not adequately consider the economic disparities that currently exist in the grain market power over this nation's farmers who are many in number and wield very limited power. The merger only increases this disparity.

The federal antitrust laws were enacted over a hundred years ago in part to address the large agricultural trusts that existed in the late 1800's. As a result these large trusts were broken up. Now, despite the antitrust laws, we are experiencing increasing concentration in all areas and aspects of the agricultural industry. The concentration is both vertical and horizontal in nature. Such concentration and resulting market power is the problem

that the antitrust laws were intended to rectify. If a merger of the magnitude of that proposed between Cargill and Continental is allowed to go forward as currently proposed in the consent decree, the purpose behind antitrust laws will be defeated. This would be a very big step backwards.

South Dakota has the smallest attorney general's office in the nation. I simply do not have the resources to take on this merger and neither do the offices for the surrounding states. No matter how much myself and the Attorneys General of the surrounding states are opposed to the merger we are not in a position to go to war with Cargill and Continental. Only the Department of Justice is sufficiently staffed and financed to contest a merger of this size.

As the Attorney General from an agricultural state, I have witnessed first hand the devastating impact upon ranchers and farmers that can result from market concentration by commodity purchasers. The proposed merger will only make the situation worse. The grain and livestock products produced by this nation's farmers and ranchers are the lifeblood to this great country. The Department of Justice should do whatever is necessary to preserve the ability of our farmers and ranchers to conduct business in a competitive, free and open market place. Only the prevention of the proposed merger is an adequate remedy. The proposed consent decree is simply inadequate and as such I object to its entry.

Yours truly,

Mark Barnett,

Attorney General, State of South Dakota.

Tab 3

American Agriculture Movement

AAM Inc., 2898 Audrain Road, #114, Sturgeon, MO 65284

October 10, 1999.

Chief, Transportation, Energy, & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh St., N.W., Suite 500, Washington, DC 20530.

Dear Roger W. Fones: Please place these comments in the **Federal Register**.

AAM wants to state its opposition to:

Cargill's announced purchase of Continental Grain's merchandising business;

Smithfield Foods purchase of Murphy Family Farms and Tyson Food's Pork Group.

Oligopoly is just a fancy word for monopoly. The Clayton & Sherman Antitrust Laws were enacted after the release of *THE JUNGLE* by Sinclair Lewis concerning excesses in the slaughter industry. Today's excesses are more extreme but hurt farmers and ranchers more directly and pose a threat to the consumer. The U.S. cheap food policy will fail with the continued disregard of these laws.

With the present trend to consolidation in the livestock industry, 3 or 4 vertically integrated companies not only disproportionately control several livestock sectors but food production, distribution and sales. This removes all pretense of fair and open competitive markets.

The Packers And Stockyard Act must also be rigidly enforced to protect small and medium livestock producers.

Sincerely,

Edward M. Fashing,

Missouri Vice President Communications.

Animal Welfare Institute

P.O. Box 3650, Washington, D.C. 20007–0150; Telephone: (202) 337–2332, Fax (202) 338–9478

October 11, 1999.

Hon. Gladys Kessler,

Fax: 202–354–3442.

Dear Judge Kessler: I am writing to respectfully request that the deadline for comment on the Cargill/Continental acquisition be extended by the Department of Justice for another sixty days to December 12, 1999.

It is my understanding that the Department of Justice states, "The court's role in protecting the public interest is one of ensuring that the government has not breached its duty to the public in consenting to the decree."

I address this letter to you because of the Department's failure to act in the blatant current case affecting millions of animals suffering in hog factories: the acquisition by Smithfield Foods, first of Murphy Farms and not of Tysons hog component. All of these huge corporations employ the same cruel methods of hog production and, by their "vertical integration," are destroying family farms at a terrifying pace.

Because of the studies of the Animal Welfare Institute and its long-term efforts to protect family farmers who raise pigs humanely, I am responsible, as President of the Animal Welfare Institute, for a detailed grasp of this huge problem, of which animal feed is a major component. The Cargill/Continental acquisition impinges heavily upon this feed and is harmful to the family farmers whose ability to compete in a system increasingly monopolized by agribusiness is being zeroed out.

The general public, likewise, is being cheated because the anti-trust laws are not protecting the public, as they are intended to do, by proper enforcement.

Respectfully yours,

Christine Stevens,

President.

P.S. You may be amused by the quotation from Art Buchwald which was recently brought to my attention through "The Agribusiness Examiner," issued by A.V. Krebs, Editor and Publisher. I attach a copy of page 14.

ANIMAL WELFARE INSTITUTE

"THANK GOD FOR THE FREE ENTERPRISE SYSTEM"

In his book of essays Down the Seine and Up the Potomac (G. P. Putnam's Sons: 1977) political humorist Art Buchwald imagines a scenario where two corporations—Samson Securities and Delilah Company—asked the head of the Justice Department's Anti-Trust Division if the two companies could merge. At the time Samson Securities owned everything east of the Mississippi River, while Delilah Company owned everything west of the river. Initially, the head of the Anti-Trust Division indicated that he might have reservations about the merger of the only two companies left in the United States.

"Our department," he said, "will take a close look at this proposed merger. It is our job to further competition in private business and industry, and if we allow Samson and Delilah to merge we may be doing the consumer a disservice."

The chairman of Samson protested vigorously that merging with Delilah would not stifle competition, but would help it. "The public will be the true beneficiary of this merger," he said. "The larger we are, the most services we can perform, and the lower prices we can charge."

The president of Delilah backed him up. "In the Communist system the people don't have a choice. They must buy from the state. In our capitalist society the people can buy from either the Samson or the Delilah Company."

"But if you merge," someone pointed out, "there will be only one company left in the United States."

"Exactly," said the president of Delilah. "Thank God for the free enterprise system."

The Anti-Trust Division of the Justice Department studied the merger for months. Finally the Attorney General made this ruling. "While we find drawbacks to only one company being left in the United States, we feel the advantages to the public far outweigh the disadvantages."

"Therefore, we're making an exception in this case and allowing Samson and Delilah to merge."

"I would like to announce that the Samson and Delilah Company is now negotiating at the White House with the President to buy the United States. The Justice Department will naturally study this merger to see if it violates any of our strong anti-trust laws."

Catholic Charities, Diocese of Sioux City

October 6, 1999.

Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, D.C. 20530.

Dear Sir: We are writing in regard to the Department of Justice's "Final Judgement" relative to Cargill's purchase of Continental Grain's grain merchandising division.

It is our understanding that the Department filed a formal "Complaint" with the U.S. District Court charging that Cargill's purchase would "substantially lessen competition for the purchase of corn, soybeans and wheat in each of the relevant geographic markets, enabling it unilaterally to depress prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans and wheat in these markets will engage in anticompetitive coordination to depress farm prices."

We also understand that on the same day this "Complaint" was filed, the Department filed a consented "Final Judgement" agreed to by all parties.

This makes no sense to those of us who agree with the Department's own finding in its "Complaint".

This purchase, if approved in its present form, will further accelerate the vertical integration of the agricultural sector with dire consequences for family farm agriculture, rural America and the consumers of our food supply.

We urge the Department of Justice to withdraw its "Final Judgement"; reaffirm the adverse impact of the Cargill purchase upon the economic and social structure of rural America and to stand by its original "Complaint".

Very truly yours,

Marilyn Murphy,

Social Concerns Facilitator/Rural Life Contact.

Clean Water Action Alliance

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

Re: *United States of America* v. *Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: I am writing on behalf of our organization to object to the proposed final judgment in this case. The approval of the consent decree is not in the public interest and is not consistent with the public policy underlying federal antitrust laws. Our organization has over 40,000 members statewide. We are concerned with the growing concentration in agriculture and the resulting economic impact on family farmers and environmental degradation of our rural communities. Antitrust laws have long recognized that concentration in agricultural industries is harmful to farmers. These protections have not been enforced to prevent extensive concentration in the meatpacking and other agricultural industries which are now being controlled by a small number of agribusiness giants.

Both the DOJ/FTC and NAAG Guidelines raise serious questions and grave concerns regarding the economic effect of the proposed Cargill-Continental merger. The grain industry is already heavily concentrated, leaving farmers who sell their grain to exporters vulnerable and with very limited options. Both Cargill and Continental are among the top four corn and soybean exporters nationwide. Cargill estimates that together they will control 35% of U.S. grain exports. This type of extensive control in the market share by Cargill and Continental extends beyond grain processing to animal feed and meat-packing. If the economic power of these mega-firms is not controlled, a few large corporations will control the marketplace and our food supply which is harmful to both farmers and consumers.

The federal antitrust laws are important to allow every business entity—no matter how small—the freedom to compete. The rapid rate of concentration in the agricultural sector is threatening the ability of the small farmer to compete effectively in the marketplace. Not only are farmers suffering because of the lack of access to markets and unfair prices paid to them, but rural communities are experiencing negative economic impacts as corporate agribusiness giants continue to consolidate and control more and more of our food system. Many small towns in the state depend on farming income to support their local infrastructures—schools, banks, churches and small businesses. The trend toward vertical and horizontal integration is threatening the economic viability of these communities.

Cargill has utterly failed to addressed the above-mentioned concerns generated by excessive vertical and horizontal integration in the industry. We urge you to reject the proposed consent decree.

Sincerely,

Suzanne R. McIntosh, Esq.,

Program Director.

Farmland Co-Op Inc., A Pro Farmers Choice

P.O. Box 276, Brush, Colorado 80723; Telephone 1–970–842–5059, Fax 1–970–842–5667

October 8, 1999.

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: It is my belief that the merger of Cargill and Continental Grain has to be stopped. Our farmers have realized for a long time that without market competition, they suffer from pricing that is below what can be achieved through active competition. This lack of competition threatens the future of our agricultural system. It may be all right for the large corporations and regional entities, but I have to look out for my individual farmers. I do not think you take consolidation seriously. When you look a consolidation I believe you have to look at all their activities including strategic alliances, and joint ventures. A full-blown combination of assets is not telling the whole story. Concentration of large companies is one of the reasons for lower prices even though it may be only one of many. I do not see how you can say that some of these merging companies preserve competition. If you truly believe this I would like to be able to explain that to my farmers. You as a representative our political system need to step up to the plate and address this growing concern of rapid consolidation. We need to be more pro active in our communities and in our state by even court actions to curtail market concentration.

I represent a local cooperative association of approximately 1000 producers. In conversations with the top 165 growers, I can say that they know the results and have been impacted from no competition to placed competition in the grain market in our community. In 1997 we had only one local entity purchasing grain. In 1998 after a partnership with us that opened a competitive elevator, the price offered to our growners increased $0.5 a bushel and the competitor was forced to pay for protein. Without this action, how many dollars do you think would have gone on in the hands of a large corporation? What benefit does increased concentration have on our American agriculture?

I don't know just exactly how long these mergers will take to impact our local farmers. I do not that when Farmland Industries and Cenex Harvest States consolidated their petroleum operations into Country Energy L.L.C. that we took an enormous hit on product pricing and had to go to the outside. I hated to do that, but our farmers need competition in the market place. What impact did this joint venture for most cooperatives that had not sought out other supplies? They were forced to pay a higher price for this consolidation. I'm am against these mergers if they do not benefit our producers. I just believe that we need to protect our farmers by making sure that competition continues to be strong. Just thought I would share my opinion with you.

Thank you,

Glenn A. Babcock,

General Manager.

Institute for Agriculture and Trade Policy

2105 First Avenue South, Minneapolis, MN 55404–2505

October 7, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street N.W., Suite 500, Washington, D.C. 20530.

Re: *United States of America* v. *Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: I am writing to express IATP's opposition to Cargill's proposed acquisition of Continental Grain Company, an acquisition which would unify the second and third largest grain traders in North America, which export 40 percent of American agricultural commodities.

Competition in agricultural markets is rapidly declining in the face of mergers and acquisitions and a plethora of new corporate relationships including joint ventures, strategic alliances or partnerships, interlocking directorates and partial ownership. In its analysis, the Department of Justice failed to recognize the wider concentration in agriculture markets beyond grain buying to include handling, processing and merchandising both domestically and globally.

The principle result of this concentration would be a significant increase in the imbalance of power favoring agribusiness at the expense of the farmer. This growing imbalance would exacerbate the trend toward lower prices for farmers and likely result in higher prices for consumers.

While the proposed consent decree requires divestiture of some grain elevators in certain locations, it does not, in our opinion, meet the spirit and the letter of federal anti-trust law. We must use our anti-trust laws to preserve our free market system and ensure competition that produces fair prices for both producers and consumers.

Thank you for your attention in this matter.

Sincerely,

Niel Ritchie,

Policy Analyst.

Dated: November 10, 1999.

Judge Gladys Kessler,

U.S. District Court, for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you awaiting your approval is a "Final Judgment" filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General.—The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is within the reaches of the public interest."

In its July 8, 1999 "Final Judgment" I believe in fact that the Department of Justice has "breached its duty to the public in consenting to the decree" and that its "Final Judgment" is not "within the reaches of the public interest."

Clearly, as the Department of Justice's own "Complaint" states the Cargill purchase would "substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices."

Using the Department of Justice's own figures and criteria we see in its "Complaint" that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's "Final Judgment" addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess, Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets. Cargill will become an even more powerful and "sophisticated" firm, even more capable of strategic, cooperative, and anti-competitive behavior.

As the Kansas Cattlemen's Association Chairman I, Michael L. Schultz am acting on behalf of our members to state that we are opposed in the continual mergers and acquisitions that are becoming common place in our society. These mergers do have detrimental effects on our communities by taking the wealth out of the community and destroying competition and family life, which is what built this country.

We have seen the effects of the consolidation in the cattle industry and its negative effects on our industry and communities. It is mentally conditioning that has taken over, along with great amounts of money from the corporations to pressure the political and legal systems to allow these mergers to continue. We are not sure where it will end, possibly when we have 1 company in the U.S.A., Russia and China then will we have enough consolidation in our society.

We ask that you enforce the anti-trust laws to ensure competition in the market, once competition is reduced the corporations will not pass the savings or profits back to the producers or consumers of which they claim. A great example for doing the reverse is the breakup of Ma-Bell. It produced more competition in the telecommunication industry and now we have competition, great phone rates, cellular service, etc. This is what drives creativity and healthy communities. In Kansas a population of less than 3300 serves over 80% of the communities. We do need your support to end the death of our communities, competition will ensure that small communities survive.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its "Final Judgment," study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Michael L. Schultz,

Chairman, Kansas Cattlemen's Association.

Minnesota Catholic Conference

475 University Avenue W., St. Paul, Minnesota 55103–1996) Phone (651) 227–8777, Fax (651) 227–2675

September 23, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, 325 Seventh Street N.W., Suite 500, Washington, D.C. 20530.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Mr. Fones: Pursuant to the Antitrust Procedures and Penalties Act, I am writing to object to the proposed final judgment in this case. The approval of the consent decree is not in the public interest and is not consistent with the public policy underlying federal antitrust statutes.

The proposed consent decree requires divestiture of certain grain elevators in specified locations, but otherwise approves the merger of the second and third largest grain traders in North America, which export 40 percent of American agricultural commodities. This continued concentration of commodity exporters violates the spirit and the letter of the federal antitrust laws.

The increasing concentration in agricultural marketing and processing will mean continued low prices for farmers and higher prices for consumers. It was this very type of concentration, which lead to the creation and passage of the first federal antitrust laws.

The primary flaw in the U.S. Justice Department's analysis is that it failed to recognize the wider concentration in agriculture markets beyond grain buying to include grain handling and merchandizing both a nationwide and worldwide business.

The proposed merger between Cargill and Continental fails to explain what benefits will be produced. The economies of scale of these two corporations merging will not lead to increased profits. Rather, the increased profits will come on the backs of the farmers receiving a lower price for their grain and consumers paying higher prices for their products, the very consequence antitrust statutes seek to prevent.

Catholic Social Teaching states a firm belief in the principle that the economy exists for the people, not the people for the economy; In this merger there is a threat to that principle and therefore I urge you to reject the proposed consent decree.

Sincerely,

Thomas (Toby) Pearson,

Director of Social Concerns, Minnesota Catholic Conference.

Missouri Farm Bureau Federation

P.O. Box 658, 701 South Country Club Drive, Jefferson City, MO 65102 / (573) 893–1400

July 13, 1999.

Mr. Roger Fones,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, US Department of Justice, 327 7th Street, NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: We appreciate the Justice Department's scrutiny of the proposed sale of Continental Grain Company's Commodity Marketing Group to Cargill, Incorporated and believe the stipulations included in the consent decree are warranted. The preservation of competition at the local level is of the utmost importance; agricultural producers can ill afford consolidation that further depresses commodity prices. While the Justice Department complaint states the proposed Cargill/Continental sale would have adversely affected competition in some areas, we urge the Justice Department to conduct a similar review of purchase offers made for the facilities is which divestiture is required.

Specifically, we have been contacted by producers in southeast Missouri who are concerned that Continental's Cottonwood Point facility may be sold to an entity that would also have an excessive influence on the local grain market. Specifically, there are rumors circulating that Bunge may be interested in this facility. We cannot stress enough the importance of preserving competition for agricultural products, regardless of who the principal parties are.

We urge the Justice Department to scrutinize every offer to purchase facilities that are offered for sale as a result of the Cargill divestiture and prevent any further erosion of marketing options available to agricultural producers.

Sincerely,

Charles E. Kruse,

President.

Missouri Soybean Association

P.O. Box 104778, 520 Ellis Blvd., Suite N, Jefferson City, MO 65101; Phone: (573) 635–3819, Fax: (573) 635–5122

August 24, 1999

Mr. Roger Fones,

U.S. Department of Justice, Washington, DC 20530.

RE: Civil Action #991875 Filed 7–8–99

Dear Mr. Fones: The Missouri Soybean Association represents nearly 2,000 soybean farmers across the state of Missouri. We have been very vocal expressing our concern about the consolidation within our agricultural industry. We want to thank you for keeping a protective eye out for too much consolidation resulting in lack of competition and unfair prices to our farmers.

We understand Bunge Grain Company is interested in purchasing the Continental Grain Cottonwood Point elevator located in Southeast Missouri. We fear that purchase would eliminate competition in that area since this acquisition would give them a total of seven elevators within a fifty-mile radius.

We would encourage you to carefully look at all the options available for purchasing the Cottonwood Point elevator to determine which of the large grain-trading firms, including Cargill, would offer the best long-term fair prices for Southeast Missouri grain producers.

Please let me know if you have any questions on this matter. Thank you for your attention to this important agriculture issue.

Sincerely,

Dale R. Lugwig,

Executive Director/CEO.

National Catholic Rural Life Conference

4625 Beaver Avenue, Des Moines, Iowa 50310–2199; (515) 270–2634

October 8, 1999.

Judge Gladys Kessler,

U.S. District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001.

Re: United States of America v. Cargill and Continental Grain

Dear Judge Kessler: Presently before you and awaiting your approval is a "Final Judgment" filed by the U.S. Department of Justice regarding the purchase by Cargill Corp. of the grain merchandising division of Continental Grain Co.

According to the Department of Justice, legal precedent requires that the "balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is within the reaches of the public interest."

In its July 8th "Final Judgment", the Department of Justice appears to have breached its duty to the public in consenting to the decree, and we believe that its "Final Judgment" is not "within the reaches of the public interest."

The Department of Justice's own "Complaint" states the Cargill purchase would "substantially lessen competition for purchases of corn, soybeans and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans and wheat in these markets will engage in anticompetitive coordination to depress farm pieces."

The Department of Justice needs to take into full consideration the existing dominant position of Cargill in our nation's grain trade. The acquisition of Continental Grain's elevators (numbering 70) will enhance the economic power of Cargill. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a nearly complete range of agricultural sectors: Cargill has a dominant position in beef packing, cattle feedlots, pork packing, poultry production, animal feed plants, grain elevator capacity, flour milling, corn milling, soybean crushing and ethanol production. Such a dominant position across many agricultural markets allows Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets also allows Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. With the additional assets of Continental Grain, Cargill will become an even more powerful firm and ever more capable of strategic anti-competitive behavior.

The National Catholic Rural Life Conference has stood with small farmers and rural communities since our inception in 1923. Besides the farm crisis of the 1980s, we have used our voice to defend the family farm system throughout the 20th century as corporate and industrial interests have eroded our nation's rural communities. Once again we raise our voice in solidarity with the vulnerable individuals and families who are often overlooked when large mergers or acquisitions take place in our food and agriculture system.

In the name of economic and social justice and the preservation of an independent and locally-controlled family farm system of agriculture in the United States, we urge you to recommend that the Department of Justice withdraw its "Final Judgment". We ask that this ill-advised acquisition by Cargill undergo far greater study in respect to antitrust issues and the dire consequences to both producers and consumers of our food supply.

Respectfully,

Brother David Andrews, CSC,

Executive Director.

NFO Kansas

1783 Barn Road, Solomon, KS 67480, 785–479–2183

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Mr. Fones: I am writing on behalf of our many grain farmer members in Kansas to ask that the proposed merger between Continental and Cargill grain be revisited. We strongly, passionately feel that this violates the intentions of pro-competitive marketplace acts such as the Clayton Act provides.

Our organization is a bargaining group. Anytime two major buyers like these companies join together, it lessons the strength of farm bargaining.

Please extend the comment period for another 60 days and revisit this issue.

Thanks.

Sincerely,

Ray Kohman,

Kansas NFO President.

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Mr. Fones: On behalf of our members in Kansas National Farmers, we would like at request that the merger between Cargill and Continental be NOT allowed. Our organization passed a resolution at our state annual meeting in August which opposed this "Giant of Mergers."

We are very concerned about the lack of enforcement on anti-trust issues today. Our very livelihoods are at stake due to increasing market channel monopolization. We feel that our ability to get competitive bids will be reduced and we feel that grain "basis levels" will decline due to "Price Leadership" strategies.

Please conduct a more thorough investigation into the Cargill/Continental Grain sale before submitting a Final Judgment on the matter. Also, please extend the public comment period for another sixty days.

Thank You!

Greg Stephens,

Kansas NFO National Director, 842 S. 10th, Salina, KS 67401.

National Farmers Union

400 Virginia Avenue, S.W., Suite 710, Washington, D.C. 20024, Phone (202) 554–1600

October 7, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

Re: *United States of America v. Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: On behalf of the 300,000 farm and ranch families of the National Farmers Union, I write to express our strong opposition to the acquisition of Continental Grain company by Cargill, Inc.

We agree with the allegation in the complaint that alleges the merger would substantially lessen competition for grain purchasing service to farmers and other suppliers in many areas in the United States. We also agree that the merger would increase concentration in the delivery point for settlement of Chicago Board of Trade contracts. And, we agree that the covenant not to compete is an unreasonable violation of trade.

The proposed stipulation attempts to address these concerns by requiring a number of divestitures. Yet, even these divestitures are insufficient to avoid the harm that will inevitably occur to market competition if there is a merger between Cargill—the second largest grain trader in North America and the largest grain exporter, and Continental—until recently the third largest grain trader and the third largest grain exporter.

If the two firms were less dominant, the proposed divestitures may have been sufficient to insure post-merger competition within the grain market. However, when the tops firms are allowed to merge, there is no way to recoup the loss to market competitiveness.

In the countryside, Continental is known for being an aggressive grain buyer. Elevator operators report Continental will usually beat any other offer by $.02 per bushel, if given the chance. And while $.02 is inconsequential, it turns into millions of dollars when multiplied by the volume of grain that farmers and ranchers sold to Continental last year.

Cargill's extensive submission of information in public documents reveals that Cargill is already operating in the areas where Continental operates. The clear reason for this merger is the elimination of competition. There is nothing about this merger that will increase competition to either farmers or ranchers or other members of the general public. Therefore, both the Department of Justice and the Court should find that the proposed stipulation that allows the merger is not and cannot be in the public interest.

In addition to failing the public interest test, we believe the proposed enforcement mechanisms are not enforceable and are therefore, insufficient. The stipulation requires a number of divestitures in order to maintain competition. Yet, what happens if another buyer cannot be found. And, if a buyer is found, what buyer will be able to effectively compete with the newly enlarged Cargill? Once Continental Grain has been swallowed by Cargill, the damage is done. We cannot come back at a later date and have any assurance of being able to replace the loss of this competitor.

The proposed stipulation also completely fails to address the roles Cargill and Continental play as the largest and third largest grain exporters. Lack of competition in the export market has a direct impact on U.S. grain producers for two reasons: 1) exports make up an important part of our market and, 2) the domestic market is influenced by the world price. While the complaint alleges the merger will lessen competition, and estimates that collectively Cargill and Continental control approximately 40 percent of all U.S. grain exports, the stipulation does nothing to address that problem.

In addition, the only alternative to the proposed final judgment, discussed in the consent decree, is that of going to trial and obtaining a court decision similar to the proposed stipulation. The consent decree fails to consider the alternative of disallowing the acquisition.

While we appreciate that the Justice Department required a number of concessions from the merging parties, the bottom line is that there is just no way to allow this merger without causing irreversible damage to market competition. Therefore, we respectfully request that the proposed consent decree be rejected.

Sincerely,

Leland Swenson,

President.

Office of Hispanic Ministry, St. Joseph Catholic Church

320 Mulberry, Waterloo, IA 50703, 319–234–6744

September 30, 1999.

Judge Gladys Kessler,

U.S. District Court for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Dear Judge Kessler: The Department of Justice's investigation and subsequent formal "Complaint" revealed that the nation's largest private corporation, Cargill, is attempting to overwhelmingly control the U.S. grain trade. Legal documents show that Cargill's purchase would "substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn. soybeans and wheat in these markets will engage in anti-competitive coordination to depress farm prices."

According to the Department of Justice, the court is required to determine, not whether this judgment to allow the Cargill/Continental sale best serves society, but whether it falls within the range of acceptability or is "within the reaches of public interest."

The Cargill purchase of Continental Grain facilities will increase Cargill's buying power and price control; it will decrease the markets available to farmers and cause farmers to have to transport grain farther, especially if some terminals are closed to increase corporate profits; it will position Cargill to dominate specialty or "niche" markets because of the acquisition of continental's storage facilities (markets that farmers are currently using to try to find profitability in already heavily Cargill-dominated markets).

I believe that every person has a right to the gifts of creations, especially to the necessities of life. Respect for the dignity of the human person also requires that each person has the right to free enterprise, the right to undertake the work that is their calling and the right to fair compensation for that work. This right is compromised when too much control is concentrated to increase the power and wealth of a few. Food, as well as the facilities for production and distribution, should not be concentrated to the benefit of a few.

Therefore I urge that you not allow the sale of Continental to Cargill. Thank you very much.

Sincerely,

Sister Kathleen Grace,

Pastoral Minister.

O.C.M.—Organization for Competitive Markets

301 South 13th Street, Suite 401, Lincoln, Nebraska 68508, (402) 434–2938

October 1, 1999.

Bob McGeorge,

U.S. Department of Justice, Antitrust Division, 3257th St. NW, Room 506, Washington, D.C. 20530.

Dear Bob: This letter seeks confirmation that your office has received our objections to the Cargill-Continental consent decree. Please advise.

Given the great interest in this merger, OCM has also requested that the Department of Justice seek an extension of the comment period, as allowed in the Tunney Act. Since many groups and individuals will need to be advised of a potential extension, OCM is interested in knowing whether DOJ will seek such an extension.

Thank you for your help in this matter.

Sincerely,

Jon K. Lauck

O.C.M.—Organization for Competitive Markets

301 South 13th Street, Suite 401, Lincoln, Nebraska 68508, (402) 434–2938

September 20, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street NW, Suite 500, Washington, DC 20530.

Re: *United States of America v. Cargill, Inc. and Continental Grain Company*

Dear Mr. Fones: I am writing to you to explain OCM's opposition to Cargill's acquisition of Continental Grain Company, an acquisition which would unify the second and third largest grain traders in North America, which export 40 percent of American agricultural commodities. Specifically, OCM objects to the analysis used by the Department of Justice ("DOJ") when reviewing the acquisition. DOB's analysis: (1) failed to consider the wider concentration in agricultural markets beyond grain buying; (2) failed to consider the continuing potential for anticompetitive behavior in the post-merger market; (3) failed to show that the divested remnants of Continental will be a competitive force absent a large network of elevators which buy grain; (4) DOJ failed to consider the impact on potential entry into grain buying markets; (5) failed to consider the nature of the grain selling market; (6) failed to consider the economic disorganization of farmers which can be exploited by powerful buyers; (7) failed to consider information disparities in agricultural markets; (8) failed to explain the benefits of the merger; (9) failed to consider a range of statutes that Congress intended courts to consider when making decisions about agricultural markets; (10) and failed to consider that the consent decree risks leaving farmers without an effective outlet for legal redress. By failing to consider the aforementioned factors, the DOJ failed to recognize how the Cargill-Continental merger posed "a significant threat of injury from an impending violation of the antitrust laws." [1]

(1) DOJ failed to consider the wider concentration in agricultural markets beyond grain buying.

In recent years, agricultural processing markets have become highly concentrated. From a top-five concentration ratio of 24 percent in the early 1980s, for example, the beef-packing sector's five-firm concentration ratio has grown to 85 percent. Similar statistics apply to several other sectors of the agricultural processing economy. I have enclosed a copy of a report authorized by Professor William Heffernan of the University of Missouri that explains the extent of the concentration problem.

The DOJ's analysis did not consider the wider context of consolidation in the agricultural system and instead focused on the grain buying activities of Cargill and Continental. Growing concentration in agricultural markets should have been considered by the DOJ given the continuing consolidation of agribusiness firms. In United States v. Philadelphia National Bank, for example, in which enforcement officials stopped the merger of the second- and third-largest banks in Philadelphia, the court noted the particular importance of stopping the merger given the growing concentration in the banking market.[2] It was the growing power of agribusiness firms that triggered concerns among farmers and inspired the passage of the Sherman Act. And it was continuing concentration in agricultural markets, particularly through merger, that prompted passage of additional antitrust statutes such as the Clayton Act. The importance of the antitrust laws to farmers is explained by the difficulties inherent in farmers bargaining with large and powerful agribusiness buyers. Legislators and courts have fully recognized these concerns in statutes and in cases, respectively, but the DOJ's merger analysis failed to weigh these considerations. I have explained this background in a law reviews article entitled "Toward an Agrarian Antitrust," 75 *North Dakota Law Review* (August/September 1999) which I have included for your review.

The DOJ must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors. For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest and where it plans to invest the one-half billion dollars paid by Cargill for its elevator chain), port packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time. This cross-subsidization will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and "sophisticated" firm, even more capable of strategic, cooperative, and anti-competitive behavior.[3]

Allowing the merger of Cargill and Continental makes further agribusiness consolidation likely. Allowing such a large-scale merger abets the recently-announced merger of Smithfield Foods, the nation's largest pork packers, with Murphy Farms, the nation's largest pork producer. The Smithfield-Murphy Farms merger sets the stage for another Cargill-Continental merger, this time involving Cargill's large-scale pork packing operation and Continental's pork producing operation, further continuing the cycle of agribusiness consolidation.

(2) DOJ failed to consider the continuing potential for anticompetitive behavior in the post-merger market:

The DOJ argues in its complaint that within particular draw areas very few firms buy grain. It argues that if Continental's operations were absorbed "Cargill would be in a position unilaterally, or in *coordinated interaction with the few remaining competitors, to depress prices paid to producers* and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease." [4] Divestitures in a few of these markets as proposed by the DOJ does not address this problem. Even with the divestitures, grain buying would remain heavily concentrated and susceptible to collusive and cooperative activity.

(3) DOJ failed to show that the divested remnants of Continental will be a competitive force absent a large network of elevators which buy grain:

Furthermore, it is unclear how the divested components of Continental will remain an effective competitor with Cargill absent the former entity's large-scale elevator capacity. The few facilities that will not be acquired by Cargill hardly constitute a legitimate competitive threat. As the DOJ emphasized in its complaint, grain buying involves a large-scale network of facilities.[5] The few remaining Continental facilities, stripped of their internal networks which provide them with competitive flexibility and information about grain flows, will be powerless in comparison with Cargill, with its $51 billion in annual revenues and 81,000 employees in 60 different countries. Continental's decision to sell off its grain buying operation may also indicate that it no longer considers grain buying a priority. In short, there is no assurance that the remaining facilities will even compete in the markets that concerned the DOJ. Given the need for a network of elevators to compete in the grain buying business, it is also highly unlikely that any new firms will enter the market to challenge Cargill. The DOJ openly concedes in its complaint that it is "unlikely that Cargill's exercise of market power will be prevented by new entry, by farmers and other suppliers transporting their products to more distant markets, or by any other countervailing competitive force." [6]

(4) DOJ failed to consider the impact on potential entry into grain buying markets:

Stripping Continental Grain of its internal network of elevators poses additional threats to competition. Given the difficulty of entry into the grain buying business, as conceded by DOJ, it is additionally important to hold together a firm that could potentially challenge Cargill in the many markets in which it holds a dominant position. As the Supreme Court has noted, "[t]he existence of an aggressive, well equipped and well financed corporation engaged in the same or

[1] Zenith Radio Corp. v. Hazeltime Research Inc., 395 U.S. 100, 130 (1969). Section 16 of the Clayton Act allows individuals to sue for injunctive relief "against threatened loss or damage by a violation of the antitrust laws." 15 U.S.C. § 26 (1988).

[2] United States v. Philadelphia National Bank, 374 U.S. 321, 367 (1963).

[3] For judicial recognition of the power of sophisticated firms see Michael S. Jacobs, The New Sophistication in Antitrust, 79, Minn. L. Rev. 1 (1994).

[4] Complaint, U.S. v. Cargill, Inc. and Continental Grain Company. July 8, 1999, at 4 (*italic* added).

[5] *Id.* at 3 (noting that "Grain traders such as Cargill and Continental operate extensive grain distribution networks, which facilitate the movement of grain from farms to domestic consumers of these commodities and to foreign markets").

[6] *Id.* at 6.

related lines of commerce waiting anxiously to enter an oligopolistic market would be a substantial incentive to competition which cannot be underestimated."[7] Important factors in determining whether a firm may enter the concentrated grain buying market include its "resourcefulness" and the "nearness of the absorbed company" to the market, characteristics that could be attributed to a large-scale firm such as Continental Grain.[8] Without the existence of Continental's grain buying operations, Cargill will face considerably less pressure to pay farmers a competitive price for their product.

(5) DOJ failed to consider the nature of grain selling markets:

The DOJ also fails to assess the nature of grain selling markets. Much of the grain bought by Cargill and Continental is sold on world markets. But this selling is sometimes based on geographic area, historic preference, or long-term contracting. Without a guaranty of vigorous competition among grain traders for overseas customers, it is not necessary to compete vigorously for the purchase of the grain of American farmers and therefore there is no incentive to bid up the prices paid to farmers. If Cargill has a long-term arrangement with an overseas grain buyer, for example, Cargill will buy grain from American farmers when it needs to fulfill its obligation. In this process, no competitive bidding with another grain buying firm will be necessary. Without an assessment of the workings of world grain selling practices, DOJ's assumption that competitive bidding will maintain a competitive price for American farm products is unfounded.[9] And even if evidence of competition for export markets can be found, that does not necessarily mean that there is competition for the grain sold by American farmers. Firms can choose to collude in upstream markets and compete in downstream markets.

(6) DOJ failed to consider the economic disorganization of farmers which can be exploited by powerful buyers:

The DOJ also fails to consider the economic organization of farmers who sell to the large grain buyers. Courts have often noted that a key consideration when determining the potential for horizontal collusion is the relative organization of firms in the adjacent sectors. Judicial recognition has come in the form of a defense to challenged mergers.[10] Courts have entertained the argument that a larger, more powerful firm resulting from a merger may be acceptable if the firms it sells to also possess market power.[11] In U.S. v. Country Lake Foods, Inc., a case involving the merger of two firms in the fluid milk processing industry, a court recognized the ability of large food corporations who bought milk to check the power of milk processors.[12] The court noted the "extremely concentrated" nature of the food processing industry in the relevant market, where the top-three concentration ratio was over 90 percent.[13] The size of the food firms and the volume of their purchases allowed them to monitor milk prices, making them "very sophisticated buyers."[14] The court noted their ability to switch to other milk processors and to enter the processing market themselves.[15] The market entry of the large food processors would be aided by their capital resources, which would allow them to purchase an existing plant, and by their existing customer base.[16] The court found the power-buyer defense the "most persuasive argument" advanced by the defendants.[17]

Commentators have elaborated on the potential power of certain buyers. For example, buyers are particularly adept at checking the power of concentrated sellers when the price of the item in question is widely known.[18] In Country Lake Foods, the milk buyers could estimate the cost of processed milk based on the price paid for raw milk (since prices are publicly reported) and switch to a different seller if prices were deemed to be oligopolistically-priced.[19] In addition to switching to a new seller, buyers could induce the market entry of additional sellers by extending long-term contracts or providing the financing for the start-up of new sellers.[20] Large buyers could support the merger of two smaller sellers who, when their assets are combined, could more effectively compete against larger sellers in the market.[21] Large buyers could also enter or threaten to enter the upstream market themselves.[22]

Implicit in the recognition of the power-buyer defense is the assumption that powerful firms in a market can exploit small and disorganized firms in a vertically adjacent market. In other words, the power-buyer argument provides a rationale for halting the growth of powerful agribusiness processors at the expense of the thousands of farmers who sell to them. In U.S. v. United Tote, Inc., the court rejected the power-buyer defense because it recognized the relative disorganization of the buyers of the totalisator.[23] Because so many buyers were present in the market and the buyers possessed different levels of sophistication, they could not constitute a legitimate check on the power of the sellers.[24] In the recent case FTC v. Cardinal Health, Inc., the DC Court of Appeals considered the potential power of firms who bought drugs from the four largest wholesale distributors of drugs in the nation.[25] While the court noted the power of certain buyers in the market, it also considered the numerous independent pharmacies that lacked the power to effectively bargain with the large wholesalers.[26] The existence of a large number of buyers and the presence of many small independents created a "fragmented" buying sector unable to counter the power of the wholesalers.[27] The buyer-power defense creates a rational for scrutinizing the power of buyers relative to sellers. Thousands of farmers, for example, are hard-pressed to muster the market power necessary to check the powerful food companies who buy their products. Farmer marketing is characteristically disorganized and "fragmented," similar to the descriptions of the totalisator and wholesale drug buyers described in United Tote and Cardinal Health.

An example of buyer power in agricultural markets was recently exposed in South Dakota. During the summer of 1999, a federal court in South Dakota ruled on the constitutionality of a South Dakota livestock

[7] *U.S.* v. *Penn-Olin Chemicol Co.*, 378 U.S. 158, 173–4 (1964).

[8] *U.S.* v. *El Paso Natural Gas Co.*, 376 U.S. 651, 660 (1964). See generally U.S. v. Falstaff Brewing Corp., 410 U.S. 526 (1973) (preventing Falstaff's acquisition of a New England brewery because it would eliminate Falstaff's de novo entry into the New England market); Mark D. Whitener, Potential Competition Theory—Forgotten But Not Gone, 5 Antitrust 17 (1991).

[9] For examples of grain company manipulations of world markets, see DAN MORGAN, THE MERCHANTS OF GRAIN (1979).

[10] Mary Lou Steptoe, The New Merger Guidelines: Have They Changed the Rules of the Game? 61 Antitrust L.J. 493, 493–4 (1993) (explaining that "[a]lthough the power-buyer defense may appear to be a judicial creation that has only emerged within the last two years, it actually reflects an underlying trend in merger law, present since General Dynamics [1974], toward a more searching examination of the economic conditions that affect a seller's ability to exercise market power").

[11] U.S. v. Baker Hughes, Inc., 908 F.2d 981, 984 (D.C. Cir. 1990) (now-Justice Thomas endorsing the consideration of a "variety of factors" in merger cases, including buyer power, and rejecting the "fixation" on singular factors such as market entry); F.T.C. v. Elders Grain, Inc., 868 F.2d 901, 905 (7th Cir. 1989) (Judge Posner recognizing that the industrial dry corn industry was unlikely to be cartelized given the nature of their buyers, "a handful of large and sophisticated manufacturers of food products").

[12] 754 F. Supp. 669 (D. Minn. 1990).

[13] Id., at 674.

[14] Id.

[15] Id.

[16] Id., at 680.

[17] Id., at 679.

[18] Steptoe, at 496.

[19] Steptoe, at 496.

[20] Steptoe, at 501.

[21] Safeway and Kroger, major buyers of ready-to-eat cereals, supported the merger of Kraft, which owns Post, and the cereal division of Nabisco because "it makes Post a stronger competitor to Kellogg and General Mills," which sell 60 percent of ready-to-eat cereals. State v. Kraft General Foods, 926 F. Supp. 321, 325, 351 (S.D.N.Y. 1995).

[22] Steptoe, at 499–500.

[23] 768 F. Supp. 1064 (D. Del. 1991). The totalisator system manages betting at horse tracks. Id., at 1065.

[24] Tote, at 1085 (explaining that "the totalisator market does not consist of a few, very large consumers. In stark contrast, the totalisator market consists of over two hundred fifty-five pari-mutuel [the most common form of wagering on horses] facilities, only thirty-nine of which have average daily handles in excess of 1 million dollars. Even if the Court were to accept United Tote's argument that the owners of these large, sophisticated facilities would be able to protect themselves from any anti-competitive price increase, this would still leave at least one hundred nine facilities unprotected in the small market segment along").

[25] 12 F. Supp. 2d 34 (D.C. Cir. 1998).

[26] Cardinal Health, at 60 (noting that "[i]ncreasingly, the 27,000 independent pharmacies in the United States today are joining buying cooperatives which, in turn, are consolidating to try to develop greater buyer power," but concluding that "independent pharmacies have little leverage, as evidenced by the considerably higher upcharges they have to pay in comparison to the retail chains and institutional GPOs").

[27] Cardinal Health, at 61 (holding that the "existence of the independent pharmacies and the smaller hospitals makes the wholesale market considerably fragmented and remarkably similar to the market described in United Tote").

price reporting law, passed during the 1999 legislative session in response to concerns about price manipulations by large packers.[28] While not an antitrust ruling, the court did note the large amount of buying power possessed by packers. The court explained the absence of bargaining power on the part of farmers, who "are unable to set their prices but must rely on what buyers will pay," and concluded that "[p]ackers have the market power in each livestock market to influence or determine prices paid to producers of livestock."[29] In the context of South Dakota farmers, the court noted the existence of an "oligopsony" among the state's three packers.[30]

(7) DOJ failed to consider information disparities in agricultural markets:

The DOJ also failed to consider informational disparities between farmers and large grain buyers. In Eastman Kodak Co. v. Image Technical Services the Supreme Court expanded the notion of market power, an element critical to most antitrust violations, to include information.[31] The Kodak decision recognizes a fundamental economic point raised in the economics literature in the 1960s, when information studies became prominent.[32] As George Stigler pointed out, market sellers do not simply accept the offer of the highest bidder.[33] Finding, or "searching" for, the highest bidder is a costly process, involving significant transaction costs.[34] Time is perhaps the largest expense,[35] especially for sellers of perishable agricultural products. When the prices paid for a commodity vary widely, indicating that some sellers did not find the highest bidders in the market, information problems are in evidence.[36] That some sellers did not search for higher prices may mean that they concluded the cost of the search would outstrip any potential returns from higher prices.[37] One method of reducing the problem of poor information and the resulting "price dispersion" is the centralization of knowledge in one identifiable location,[38] a solution similar to the recent calls for the mandatory reporting of prices paid by meatpackers.[39]

Agricultural markets are defined by stark information disparities. One study of Iowa hog farmers, for example, indicates that price searching is very limited[40] and that 85 percent of a farmer's hogs are sold to the same packer, indicating a very limited amount of price searching.[41] Such a result is similar to DOJ findings about the grain selling pattern of farmers, who "generally sell their grain within a limited geographic area surrounding their farms."[42] Commentators have noted how "firms can exploit in numerous ways the bargaining power that the lack of comparison shoppers confers on them."[43] The case for heightened scrutiny for bargaining arrangements involving farmers is provided for the Kodak analysis. as one commentator explained, "Kodak suggests that market power may be found wherever ignorant buyers can be exploited through individualized bargaining," a conclusion which could also apply to disorganized sellers.[44] The power of possessing information in grain trading was recently conceded by Cargill's head of public affairs, ironically enough, when launching a new public relations campaign: "' If you look at our oldest business, which is grain trading, whoever has been in that business has been reticent to talk about the details' because a close hold on trading information could be critical to profits."[45] The importance of information was also noted in the recent price reporting decision in South Dakota, in which a federal court acknowledged that "only packers have complete knowledge of livestock purchases and prices" and that "[o]nly a relatively small portion of livestock purchasing and pricing information is available to the public, including producers."[46]

(8) DOJ failed to explain the benefits of the merger:

Given the DOJ's concerns about the anticompetitive consequences of the merger, it is odd that no effort is made to justify its approval of the merger. The fears of anticompetitive behavior set forth in the complaint are not counter-balanced with a recognition of post-merger efficiencies, for example. With no apparent benefit to the merger and significant concerns expressed by many parties about its approval, the natural reaction would be to halt he merger. This response is further justified by the obvious difficulties that accompany the reversal of market concentration once it has become an economic fact.

(9) DOJ failed to consider a range of statutes that Congress intended courts to consider when making decisions about agricultural markets:

Perhaps the most glaring defect in the DOJ's analysis is its failure to consider all of the relevant statutes. Robert Pitofsky, Chairman of the Federal Trade Commission, has explained the importance of construing the antitrust laws comprehensively.[47] Pitofsky invokes the Supreme Court case *United States* v. *Hutcheson*,[48] which specifically interpreted the Sherman, Clayton, and Norris-LaGuardia Acts as "interlacing statutes."[49] The existence of agricultural statutes in pari materia, which "relate to the same thing" as the antitrust statutes, requires that both be considered as "one law" in judicial decision-making.[50] Failing to consider agricultural statutes eliminates critical factors to be considered in antitrust decisions and undermines the designs of legislator.[51] As a broad principle, weighing an array of factors, including closely related statutes, is recognized as an important component of balanced legislative interpretation.[52] If courts consider the wider statutory regime and the particular problem it addressed, judicial decisions can more properly reflect past Congressional concerns about economic concentration and its negative impact on the bargaining power of farmers.[53]

The DOJ, for example, failed to consider the Packers and Stockyards Act ("P&SA") of

[28] American Meat Institute and John Morrell & Company v. Mark W. Barnett, Findings of Fact and Conclusions of Law, Civ 99–3017, U.S. Dis. Court, South Dakota, Filed July 26, 1999 (upholding the statute's price reporting provision; holding the statute's prohibition on discriminatory pricing to be a violation of the commerce clause).

[29] Id. at 5.

[30] Id.

[31] 504 U.S. 451 (1992); Mark R. Patterson, Product Definition, Product Information, and Market Power: Kodak in Perspective, 73 N.C.L. Rev. 185, 187 (1994) (arguing that Kodak "incorporated into antitrust law a body of economic teachings on product information that the Court had previously neglected").

[32] GEORGE STIGLER, THE ORGANIZATION OF INDUSTRY 171 (1968).

[33] Id. at 171.

[34] Id.

[35] Id. at 175.

[36] Id. at 172.

[37] Id. at 175.

[38] Id. at 172, 176.

[39] S. 19, 106th Cong., 1st Sess., § 6 (requiring meatpackers to report prices paid for livestock); Steve Marbery, Debate Over Price Discovery Enters Critical Round, Feedstuffs, June 1, 1998.

[40] Market Access, 1995 Survey Results (Iowa Pork Producers Association, In Cooperation with Iowa State University), at 3 ("Eighty-seven percent of the producers reported pricing their hogs the day of, or the day before, delivery").

[41] Id., at 4; Merle D. Faminow, Monica de Matos, R.J. Richmond, Errors in Slaughter Steer and Heifer Prices, 12 Agribusiness, 79, 79 (1996) (noting that the "exploitation of informational asymmetries can be one form of market power whereby agricultural processing industries can exploit farmers who sell to them").

[42] Complaint, at 4.

[43] Alan Schwartz and Louis L. Wilde, Intervening in Markets on the Basis of Imperfect Information: A Legal and Economic Analysis, 127 Cornell L. Rev. 630, 667 (1979).

[44] Thomas C. Arthur, The Costly Quest for Perfect Competition: Kodak and Nonstructural Market Power, 69 N.Y.U.L. Rev. 1, 15 (1994).

[45] Jill J. Barsbay, Cargill Steps Into the Light With Image Campaign, Star Tribune (Minneapolis, Minn.), March 5, 1999.

[46] AMI v. Barnett, at 5–6.

[47] Robert Pitofsky, The Political Content of Antitrust, 127 U. Pa. L. Rev. 1051, n.31 (1979).

[48] 312 U.S. 219 (1941).

[49] Id., at 232; See also, Fairdale Farms, Inc. v. Yankee Milk, Inc., 635 F.2d 1037, 1042–32 (2nd Cir. 1980) (construing the Capper-Volstead Act In light of subsequent agricultural statutes).

[50] U.S. v. Freeman, 44 U.S. 556, 564 (1845) ("The correct rule of interpretation is, that if divers statutes relate to the same thing, they ought all to be taken into consideration in construing any one of them, and it is an established rule of law, that all acts in pari materia are to be taken together, as if they were one law"); 73 Am. Jur. 2d Statutes § 187 (1974) (Current Through April 1998 Cumulative Supplement) (explaining that "acts in pari materia, and all parts thereof, should be construed together and compared with each other. Because the object of the rule is to ascertain and carry into effect the legislative intent, it proceeds upon the supposition that the several statutes were governed by one spirit and policy, and were intended to be consistent and harmonious in their several parts and provisions. Under this rule, each statute or section is construed in the light of, with reference to, or in connection with, other statutes or sections").

[51] U.S. v. Ferman, at 564 (explaining that "[t]he error" in the interpretation of a statute "arose from that act having been considered by itself, without any reference to other statutes relating to [similar concerns]").

[52] William N. Eskridge, Jr. and Philip P. Frickey, Statutory Interpretation as Practical Reasoning, 42 Stanford L. Rev. 321, 356 (1990).

[53] Id., at 358 (also noting the importance of the purposive inquiry: "What problem was trying to solve, and what general goals did it set forth in trying to solve it?").

1921.[54] The purposes and provisions of the statute require consideration when enforcing the Sherman, Clayton, and Federal Trade Commission Acts. P&SA passed after these broader statutes became law and was specifically directed toward a problem that seemed to persist despite the existence of previous legislation. The Congressional intent to promote the combined consideration and construction of the antitrust statutes is evidenced by the shared enforcement provisions of the P&SA.[55]

Some courts have specifically held that the statute is designed to go beyond the broad language of the Sherman, Clayton, and Federal Trade Commission Acts, thereby recognizing the importance of construing the statutes together.[56] While refusing to purchase a farmer's livestock might be acceptable under the Sherman or Federal Trade Commission Acts, for example, it would not be acceptable under the broad protective purposes of the P&SA.[57] In making such decisions, courts have recognized the problem of buyer power that farmers face[58] and which Congress attempted to address in the P&SA.[59] Furthermore, given the remedial nature of the statute, it should be interpreted liberally to carry out its broad mandate and purposes.[60] When combined with the already broad language of the statute, enforcement agencies are given wide regulatory powers over the meatpacking industry,[61] especially as it relates to injuries inflicted upon farmers.[62] One contemporary commentator described the legislation as "extending farther than any previous law in the regulation of private business."[63] Borrowing heavily from the language of other antitrust laws, again confirming the interconnectedness of the antitrust legal regime, the legislation prohibits "any unfair"[64] practices or "any undue or unreasonable preference or advantage" to certain sellers.[65] The language of the PP&SA makes clear that particularly close scrutiny should be given to the marketing problems of farmers.

The DOJ also failed to consider the Capper-Volstead Act.[66] Among farmers in the late 19th century, a favored method of responding to the economic concentration of buyers was the marketing cooperative. Formal government efforts to aid farmer cooperatives came with the passage of the Clayton Act in 1914.[67] In order to eliminate legal obstacles that might slow the growth of market power among farmers through cooperatives, the legislation specifically exempted non-stock agricultural cooperatives from the antitrust laws.[68] The inclusion of the farmer cooperative provision within an antitrust statute offers further evidence of the importance Congress placed on considering the economic disorganization of farmers when applying the antitrust laws. Doubts about the effectiveness of the Clayton Act exemption triggered legislative efforts to draft a stronger statute.[69] The result was the Capper-Volstead Act of 1922, which broadened the exemption from the antitrust laws beyond non-stock cooperatives.[70]

With the passage of Capper-Volstead, Congress demonstrated its intention to treat farmer cooperatives differently from the typical corporate form and to give farmers the opportunity to build their bargaining power relative to corporate buyers.[71] By exempting farmer cooperatives from the antitrust laws Congress sought to help "farmers to compete with large corporations."[72] According to some commentators, the legislation was specifically designed to "counterveil the monopsony power then held by the corporate purchasers."[73] The Supreme Court agreed that "individual farmers should be given, through agricultural cooperatives acting as entities, the same unified competitive advantage—and responsibility—available to businessmen acting through corporations as entities."[74] Without fear of antitrust prosecution, farmers were to unify into farmer cooperatives that could employ their bargaining power to negotiate with large food manufacturers for better prices for their products.[75]

The jurisprudence interpreting the Capper-Volstead Act recognizes farmer disorganization and the power of large-scale buyers. The court in Kinnet Dairies, Inc. v. Dairymen, Inc., for example, noted that "farmers needed congressional help" since they "had always been pricetakers, standing relatively helpless before those who would purchase their products."[76] In order to overcome the monopoly problem common to agricultural markets, Congress "deliberately set about to enable farmers to organize and band together in order to acquire and exercise marketing power."[77] If farmers can muster enough bargaining power a "bilateral monopoly" between seller and buyer will result, conferring on farmers a fair price for their products.[78] The mirror image of

[54] 7 U.S.C. § 181 et seq.

[55] The PS&A even allowed for divided enforcement between the Secretary of Agriculture and the FTC. The FTC was to enforce the "retail sales" provision of the statute but the Secretary could assume responsibility if the FTC was not already proceeding with a similar investigation. § 406(d). Per se illegality standards in the Clayton and FTC Acts carry over to P&SA. Re ITT Continental Baking Co. (1985) 44 Ag Dec 748.

[56] Wilson & Co. v. Benson, 286 F.2d 891 (7th Cir. 1961).

[57] Swift & Co. v. U.S., 393 F.2d 247, 255 (7th Cir. 1968).

[58] Id., at 250–52 (finding that buyers of lambs agreed not to pay over a certain price and that buyers agreed not to bid against one another for lambs; the firm which bought the lambs then sold them to another buyer which had agreed not to bid on the lambs).

[59] Id., at 254 ("The lack competition between buyers, with the attendant possible depression of producers' prices, was one of the evils at which the Packers and Stockyards Act was directed") (citing Meat Packer Legislation hearings before the House Committee on Agriculture, 66th Cong., 2d Sess., pp. 22, 229, 250, 303, 1047, 2284 (1920)).

[60] Bruhn's Freezer Meats of Chicago, Inc. v. U.S. Department of Agriculture, 438 F.2d 1332, 1336 (8th Cir. 1971) (citations omitted); Glover Livestock Commission Company, Inc. v. Hardin, 454 F.2d 109, 111 (8th Cir. 1972) (describing the legislation as'remedial and requiring liberal construction to carry out its purpose of ("prevent[ing] economic harm to producers and consumers at the expense of middlemen") (citing Bruhn's).

[61] Id., at 1339 ("The Act was framed in language designed to permit the fullest controls of packers and stockyards which the Constitution permits, and its coverage was to encompass the complete chain of commerce and give the Secretary of Agriculture complete regulatory power over packers and all activities connected therewith").

[62] Stafford v. Wallace, 258 U.S. 495, 514–15 (1922) (holding that the "chief evil feared is the monopoly of the packers, enabling them unduly and arbitrarily to lower prices to the shipper who sells").

[63] Current Legislation, The Packing Industry and the Packing Act, 22 Colum L. Rev. 68, 70 (1922) (quoting Senate Agricultural Comm., Rep. No. 77, 67th Cong., 1st Sess. 2 (1921)).

[64] 7 U.S.C. § 202(a) (italics added).

[65] Id. at § 202(b) (italics added).

[66] 7 U.S.C. §§ 291–2.

[67] 15 U.S.C. §§ 12–27 (1983).

[68] Id., at § 17.

[69] Wendy Moser, Selective Issues Facing Cooperatives: Can the Customer continue to be the Company? 31 S.D.L.Rev. 394, 395 (explaining that Capper-Volstead was passed to "clarify the Clayton Act exemption provided to farmers").

[70] 7 U.S.C. §§ 291–92.

[71] Fairdale Farms, 635 F.2d at 1043 (noting that "agricultural cooperatives were 'a favorite child of Congressional policy'") (quoting treatise); David Million, The Sherman Act and the Balance of Power, 61 S. Cal. L. Rev. 1219, 1281 (1988) ("The exemption of labor and agricultural combinations from the Sherman Act's proscriptions further demonstrates that a deep concern about social balance lay beneath statements of solicitude for those harmed by the trusts. Several senators advocated exemption on the ground that such combinations were necessary to counterbalance the economic power of massed capital."); Michael D. Love, Antitrust Law—Fairdale Farms, Inc. v. Yankee Milk, Inc.:—The Right of Agricultural Cooperatives to Possess Monopoly Power, 7 J.Corp.L. 339, 341 (1982) (explaining Congressional hopes of helping "cooperatives to finance business operations of sufficient magnitude to compete with corporations"); Kathryn J. Sedo, The Application of the Securities Law to Cooperatives: A Call for Equal Treatment for Non-agricultural Cooperatives, 46 Drake L. Rev. 259, 272 (1997) (noting the farmer cooperative exemption from the securities laws, indicating the Congressional view that cooperatives were favored organizations).

[72] Sunkist Growers, Inc. v. Winckler & Smith Citrus Products Co., 284 F.2d 1, 8 (9th Cir. 1960).

[73] David L. Baumer, Robert T. Masson, and Robin Abrahamson Masson, Curdling the Competition: An Economic and Legal Analysis of the Antitrust Exemptions for Agriculture, 31 Vill. L. Rev., 183, 185 (1986) ("Congressional passage of the agricultural antitrust exemption encouraged the formation of agricultural cooperatives intended to counterveil the monopsony power then held by the corporate purchasers").

[74] Maryland & Va. Milk Producers Ass'n v. United States, 362 U.S. 458, 466 (1960).

[75] Note, Trust Busting Down on the Farm: Narrowing the Scope of Antitrust Exemptions for Agricultural Cooperatives, 61 VA L. Rev. 341, 364 (1975) ("Capper-Volstead's authorization of collective processing and marketing was an attempt to counter the bargaining power of oligopsonist buyers, but the bargaining power gap is as wide today as it was fifty years ago").

[76] 512 F.Supp. 608, 630 (M.D. GA. 1981); Northern Cal. Supermarkets, Inc. v. Central Cal. Lettuce Producers Cooperative., 413 F.Supp. 984, 988 (N.D. Cal. 1976) (noting that "Congress perceived farmers as being at the mercy of sharp dealers in the sale of their produce and, therefore, made it possible for them to form cooperatives to help themselves").

[77] Kinnet Dairies, 512 F.Supp. at 630. The court specifically mentions the promotion of "countervailing power" as a function of farmer cooperatives. Id., at 614.

[78] National Broiler Marketing Assn. v. U.S., 436 U.S. 816, 842 (1978) (J. White dissenting) ("The

promoting farmer bargaining power is close attention to economic activities that might increase the concentration among buyers and contribute to their collusive potential. Accordingly, the wider policy rationale of Capper-Volstead requires that DOJ and other enforcement officials apply strict scrutiny to mergers or other activities that enhances the power of buyers and worsens the bargaining position of farmers.

Finally, the DOJ failed to consider Congressional concerns about maintaining a balanced bargaining arrangement between farmers and processors as manifest in the Agricultural Fair Practices Act (AFPA) of 1967.[79] The statute was designed to prevent corporations from interfering in the formation of collective marketing organizations among farmers.[80] Congressional action stemmed from episodes in which food processing corporations discriminated against cooperative bargaining associations by refusing to buy their products.[81] Courts have interpreted the "overriding purpose" of the resulting legislation to be the protection of farmers' rights to cooperatively organize.[82] Throughout the 1970s, Congress considered additional legislation to improve the bargaining power of farmers relative to that of the corporate food processing sector.[83] The AFPA's recognition of the disorganized nature of farmer marketing[84] and the potential for abusive practices on the part of agricultural processors adds further evidence of heightened Congressional concern with market power among buyers.

(10) DOJ failed to consider that the consent decree risks leaving farmers without an effective outlet for legal redress:

The resulting consent decree will be reviewed by a district court in the District of Columbia ("D.C."), where it is less likely that a federal judge will be familiar with agricultural concerns. When seeking leverage in the negotiations over the consent decree, the DOJ had a plane waiting to take a lawyer to Fargo to file suit, indicating their understanding that a farm-state venue would be more advantageous in litigation than Washington, D.C. The D.C. Court of Appeals has also severely restricted the ability of district courts to determine whether a consent decree is "in the public interest," making it more likely that the concerns of interested parties will not be fully considered in a court of law.[85] One commentator has noted that the DC Court of Appeals ruling "threatens to eliminate any effective role for the courts in reviewing antitrust consent decrees."[86] The DC Court of Appeals conclusion that a consent decree can be rejected only if it makes a "mockery" of judicial power is "almost no standard at all and places in jeopardy the Tunney Act [Antitrust Procedures and Penalties Act] requirement that the district court independently review the decree to ensure that it is in the public interest."[87]

If a federal court does not reject the consent decree, the next logical step is for the attorneys general of farm states to challenge the merger in federal court. Unfortunately, such a move is extremely difficult given the limited enforcement budgets and antitrust expertise of attorney general offices in Midwestern farm states, leaving many of the states most affected by the merger hard-pressed to marshal the resources necessary to challenge the merger, especially given the wealth of Cargill, the largest private company in the country.[88] Larger states such as New York and California, which have larger antitrust divisions, are not likely to challenge the merger given their distance from the concerns of the Midwestern farmer. Such conditions make it possible that those who have advanced legitimate objections to the merger will not have their day in court. As a result, one of the main reasons for the passage of the Tunney Act—the fear of excluding interested third parties from the merger review process—will be ignored.

Given the importance of this merger and the constraints on state action if the consent decree is approved, I respectfully request that the comment period for this merger be extended another sixty days to December 12th. Several parties have expressed interest in commenting on the merger and will not be able to do so by October 12th. In the interest of a fair hearing on this critical matter, I urge DOJ to support a lengthening of the comment period, as allowed under the Tunney Act.[89]

If the DOJ and the court do not see fit to extend the comment period, OCM urges the court to reject the proposed consent decree for failing to consider the factors set forth herein.

Sincerely,

Jon Lauck, Ph.D.,

Special Project Director, Organization for Competitive Markets.

Attachments to the comment filed by the Organization for Competitive Markets are available for inspection in room 215 of the U.S. Department of Justice, Antitrust Division, 325 Seventh Street, N.W., Washington, DC 20530 (telephone: 202–514–2481) and at the Office of the Clerk of the United States District Court for the District of Columbia, 333 Constitution Avenue, NW, Washington, DC 20001. Copies of these materials may be obtained upon request and payment of a copying fee.

Pemiscot County Farm Bureau

P.O. Box 80, Caruthersville, MO 63830, (573) 333–4196, Fax: (573) 333–4537

August 2, 1999.

Judge Gladys Kessler,

US District Court, District of Columbia, 333 Constitution Ave. NW, Washington, DC 20001.

Dear Judge Gladys Kessler: We are writing to request that you protect competition in this part of Missouri.

We are concerned there may have been some misrepresentation in the civil action

specific goal of permitting agricultural organizations was to combat, and even to supplant, purchasers' organizations facing the farmer. Economics teach that the result in such circumstances is 'bilateral monopoly' with a potentially beneficial impact on the eventual consumer and a sharing of cartel profits between the organized suppliers and the organized buyers"). The court also specifically mentions that chicken farmers exist in an "oligopsonistic" market. Id., at 844 (quoting Brown, U.S. v. Broiler Marketing Association: Will the Chicken Lickin' Stand?, 56 N.C.L.Rev. 29, 44 (1978)).

[79] 7 U.S.C. §§ 2301–2306; Donald A. Frederick, Agricultural Bargaining Law: Policy in Flux, 43 Ark. L. Rev. 679, 689 (noting that the legislation was "viewed as an important sanction of agricultural bargaining" and was a "congressional reaffirmation of the value of cooperative bargaining and marketing by agricultural producers").

[80] 7 U.S.C. § 2303 (forbidding corporations from coercing, discriminating, or intimidating members of farmer bargaining groups).

[81] Randall Torgerson, PRODUCER POWER AT THE BARGAINING TABLE: A CASE STUDY OF THE LEGISLATIVE LIFE OF S. 109 3–17 (1970).

[82] Butz v. Lawson Milk Co., Division of Consolidated Foods Corp., 386 F.Supp. 227, 235 (N.D. OH. 1974) ("the overriding purpose of Congress in enacting the Agricultural and Fair Practices Act of 1967 was to protect the individual producer of milk in his right to band together with other producers or, in effect, to unionize").

[83] National Broiler Marketing Assn., 436 U.S. at 837 (1978) (Brennan, J., concurring) (noting the "persuasive evidence that Congress' concern for protecting contract growers vis-à-vis processors and handlers has not abated"); Oliver and Snyder, Antitrust, Bargaining, and Cooperative: ABC's of the National Agricultural Marketing and Bargaining Act of 1971, 9 Harvard J. Legislation 498 (1972); Frederick supra, Agricultural Bargaining Law, at 691–693.

[84] 7 U.S.C. § 2301.

[85] *United States v. Microsoft Corp.*, 56 F.3d 1448 (D.C. Cir. 1995).

[86] Lloyd C. Anderson, *United States v. Microsoft, Antitrust Consent Decrees*, and the Need for a Proper Scope of Judicial Review, Antitrust L.J. 1, 3 (1996).

[87] *Id. at 4.* See also Deborah A. Garza, The Microsoft Consent Decree: The Court of Appeals Sets Strict Limits on Tunney Act Review, 10 Antitrust 21 (Fall 1995) (arguing that the Tunney Act "might reasonably be read to authorize a more substantial role for the district court").

[88] The office of Attorney General in Minnesota currently has 2 and one-half attorneys who handle antitrust matters. The offices in North and South Dakota do not have attorneys who work full-time on antitrust matters. See generally Joseph F. Brodley, Antitrust Standing in Private Merger Cases: Reconciling Private Incentives and Public Enforcement Goals, Mich. L. Rev. 2, 38–41 (1995) (explaining the limits on state action).

State merger enforcement is confined to a relatively few merger-enforcing states and is dependent on the views of changing state attorneys general and state budgetary support in a time of increasing financial stringency . . . Resources and personnel limit state merger enforcement. Merger cases are the most resource-intensive antitrust litigation. Within a matter of weeks, sometimes even days, the plaintiff must marshall a sophisticated antitrust case involving proof of complex economic facts, including market definition, market power, and oligopolistic conduct—an awesome task, even for a large team of lawyers and economists representing a billion-dollar corporation. Yet most states have only three to five antitrust lawyers, others no more than one or two, and some states none at all. In addition, almost none of the states has a staff economist, and the tight time limits of merger litigation tend to hamper the effective multi-state coordination that occurs in other types of state antitrust litigation. Financial pressures also inhibit state merger capability and growing budgetary limitations on state finances may intensify these pressures.

[89] 15 U.S.C. & 16(d).

case #991875 that may lead you to a different conclusion.

Cargill was initially asked to divest itself of the Continental Grain Cottonwood Point elevator. We believe this was done through an error or misunderstanding about the location of this elevator. This elevator sits on the Mississippi River at a place called Cottonwood Point. Although it is 10 miles south of Caruthersville, MO it carries that address. This is unfortunate because we believe it made the anti-trust people feel it was too close to an elevator Cargill owns at New Madrid, MO. These elevators are about 47 miles apart and do not, to my knowledge, compete for business.

So we are asking that you permit the sale of this elevator to Cargill to go ahead. We feel strongly that this will give local farmers the most competitive prices for our grain.

Judge, we are asking that whatever happens, please don't let Bunge, Inc., acquire this elevator because they own the next 3 elevators above it and the next 3 elevators below it (a distance of 84 miles).

I personally have farmed 13 miles inland from Cottonwood Point for just over 30 years. All my grain has been sold almost equally to Bunge and Continental during these years. If the grain producers in this area do not have 2 or more strong competitors within 25 or less miles, then our little world is going to get a lot more difficult real quick.

Thank for your consideration in this matter.

Sincerely,

David Haggard,

Pemiscot County Farm Bureau Board President.

October 11, 1999.

Rural Life Office

511 Bear Creek Drive, Dorchester, Iowa 52140–7505; 1–800–772–2758

Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 321 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: We are very concerned about the Department of Justice's "Final Ruling" on the case of US of America v. Cargill, Inc and Continental Grain Co. We ask that you please forward our comments and the enclosed letter to Judge Kessler.

We work with farmers and rural communities all over the 30 counties of north east Iowa for the Rural Life Office of the Archdiocese of Dubuque.

We do not find the Department of Justice's findings for the merger of Cargill-Continental to be in the best interests of the people we work with in the 30 counties of Northeast Iowa. Producers will be even more limited in their markets than they currently are, and they face the probability that Cargill/Continental will exert strength in the organic and specialty markets with the take-over of Continental's facilities. This has to be recognized as not being in the public interest.

The laws of this country are meant to protect the advancement and good of common people, not corporations. The action we request would help government to move further in this direction.

Respectfully,

Mary and Don Klauke.

Western Organization of Resource Councils

2401 Montana Avenue, #301, Billings, Montana 59101; (406) 252–9672, FAX (406) 252–1092

October 12, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

By FAX: 202/307–2784

Dear Mr. Fones: On behalf of the Western Organization of Resource Councils, I am writing to urge you to reopen your investigation into the proposed acquisition of Continental Grain by Cargill and extend the public comment period on the proposal. Mergers and acquisitions in the agribusiness industry are closing out the markets for family farmers and ranchers. The Department's approval of this merger with a few required divestitures is wholly inadequate to protect competition in the grain trade, which these two firms dominate along with ADM.

As Jon Lauck has explained in his letter for the Organization for Competitive Markets to you, the Department's analysis of this proposal (1) fails to consider the wider concentration in agricultural markets beyond grain buying; (2) fails to consider the continuing potential for anticompetitive behavior in the post-merger market; (3) fails to show that the divested remnants of Continental will be a competitive force absent a large network of elevators which buy grain; (4) fails to consider the nature of the grain selling market; (5) fails to consider the economic disorganization of farmers which can be exploited by powerful buyers; (6) fails to consider information disparities in agricultural markets; (7) fails to explain the benefits of the merger; (8) and fails to consider a range of statutes that Congress intended courts to consider when making decisions about agricultural markets.

We strongly urge your reconsideration of this action in an analysis which weighs these issues. The Department's strong action is needed here to preserve competition and free, competitive markets against encroachment by monopolistic corporations.

Sincerely,

Shane Kolb,

Chair, Agriculture Issue Team.

Exeten, NE 68351,

Oct. 6, 1999.

Mr. Roger W. Fones,

Antitrust Division—U.S. Dept. of Justice, Washington, D.C. 20530.

Dear Mr. Fones: The merger concerning Cargill & Continental Grain is a major concern to me as a farmer. This merger would unify the second and third largest grain traders in North America, which export 40% of the American agricultural commodities.

To demonstrate how confident these companies are of the merger, a lady sold her grain to her elevator this year which is owned by Continental (for years) and four days later she received her check in a Cargill envelope. This merger has not been approved.

In my area Cargill has an elevator on the Burlington-Northern rail line. They control the amount of rail cars available and the time. This influences the prices paid for our grain in the surrounding elevators and the York ethanol plant. All exist within less than 25 miles of our farm. We need market transparency and tougher anti-trust enforcement.

Keep competition open. Do not allow the merger.

Sincerely,

Cynthia Thomson,

State WIFE President.

Lincoln's Letter on Corporations

"We may congratulate ourselves that this cruel war is nearing its end. It has cost a vast amount of treasure and blood * * * It has indeed been a trying hour for the Republic; but I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country.

"As a result of the war, corporations have been enthroned and an era of corruption in high places follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth's aggregated in a few hands and the Republic is destroyed.

"I feel at this moment more anxiety for the safety of my country than ever before, even in the midst of war."

This letter was written by Abraham Lincoln to William F. Elkins, Nov. 21, 1864.

Alvo, Nebraska

Sept. 28, 1999.

Mr. Roger W. Fones *Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh St. N.W. Suite 500, Washington, D.C. 20530.*

Dear Sir: As a member of a family who has resided and made its living on the same farm for five generations, I feel compelled to write to you concerning the merger of Cargill and Continental Grain.

That merger is a major concern to all American farmers because of the impact Cargill's monopoly of the grain trade will have on the farms and communities in our areas.

The main thrust in our operation is wheat, corn and soybean production and a cow/calf and cattle feeding program. That is our source of income.

I believe family farmers who are producing food for the world, below the cost of production, are at a disadvantage competing with conglomerates such as the top four firms.

I urge you to use your authority to pressure the U.S. Department of Justice to revisit its investigation of the Cargill/Continental sale.

Respectfully yours,

Pauline Johnson.

Alvo, NE 68304

Sept. 29, 1999.

Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division in U.S. Dept. of Justice, 325 Seventh Street, NW, Ste 500, Washington, D.C. 20530.

Dear Sir: Regarding merger of Continental and Cargill Grain Co.

Deep concerns of the shrinking but necessary family farmers.

Excessive mergers are forming monopolies. In the agriculture sector it is putting more stress on your food producers (grain & livestock).

Cargill may have already thought they have the merger sewed up the merger as grain sold to the Continental Grain Co. was paid for with a Cargill check?

I urge you to stop this mad rush of mergers with everything. Seven corporations will rule the world. It is fast becoming international.

Is this what our pioneer fore-fathers wanted?

Thank you for your time and *thought.*

Dyed in the wool American farm wife.

Senior Citizen,

Dorothy McKay.

Elmwood, NE 68349

Mr. Roger Fones,

U.S. Dept. of Justice, Antitrust Division, 325 Seventh St. N.W. Suite 500, Washington, D.C.

Dear Mr. Fones: I am a family farmer in eastern Nebraska. I am extremely concerned about the merger of Cargill and Continental grain companies. The merger of these two giant grain companies would lessen the competition in grains, locally, nationally and globally. I urge you to consider the impact this would have on us and act to stop the merger. This merger (proposed) needs immediate action by the antitrust division and the U.S. Justice Department. The antitrust laws are in place and need to be enforced!

Thank You.

Norma Hall.

Plentywood, MT

Mr. Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Dept. of Justice, 325 7th St. NW, Suite 500, Washington, D.C. 20530.

Dear Mr. Fones, Having served as Transportation officer for WIFE for many years, and seen just what 'mergers'/ 'takeovers'/ acquisitions, etc. do to rural America in the field of rail transportation, I write to ask that the U.S. Department of Justice re-open its investigation of the Cargill's acquisition of Continental Grain operations.

As farmers, we are already experiencing the loss of competition in rural America. Producers who own one company's machinery find that they may have to drive 100–150 miles to acquire some repairs for its. Or wait until it can be mailed to them from some central point thousands of miles away.

Those of us who have no alternative to shipping by rail have found not only that we now are 'served' by one carrier, but we have to drive greater distances with our own farm trucks to reach a terminal.

Formerly, Montana was the only state that was dominated by one rail carrier. Now we see that, because of mergers, other states, other industries, have lost the edge that competition in transportation gives them. Those who have watched the developments are not surprised that, no matter what reassurances are given by the company that is benefitting by the takeover, the dire predictions by those opposing the transaction have proven accurate.

So now we are again among those who are predicting that the Cargill acquisition of Continental's grain operations will be beneficial only to Cargill.

Competition is vital to not only our grain producers, but to the farmers of the world. The takeover of Continental's operations is going to dramatically affect not only those producers who are directly served by the Cargill/Continental terminals, but by all producers of grains in the U.S.

The Antitrust Division is our only hope, so we ask that you exercise your authority before the amount of power exerted by one company becomes too great, and producers lose one more battle to keep competition working for them.

Sincerely,

Mary W. Nielsen,

Montana Transportation, WIFE.

September 27, 1999.

Mr. Roger W. Fones

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, US Department of Justice, 325 Seventh St. SW Suite 500, Washington, DC 20530.

Re: Cargill & Continental Grain Company Merger

Dear Mr. Fones: It is my understanding that the final judgment concerning the above matter will be determined in the middle of October.

I want to urge you to consider this matter very carefully and urge your affiliates to rule against this merger. Cargill's purchase of Continental Grain would unify the second and third largest grain traders in Nebraska, making it possible for Cargill to control the export market much more than it does at the present time.

We do not need bigger companies with more control over our markets. We have a Cargill elevator within 15 miles of our farming operating. They have so many different plans for each agriculture producer that it is unbelievable. They have determined that our grain should be .5% dryer when brought into the elevator making more money for the elevator and less for the producer. It may not seem like a large amount but when you are paying the drying bill, it definitely adds up. They also have a plan if you buy everything from them—fertilizer, seed corn, chemicals, insecticide and deliver all your grain to them—they will do this for you and that for you. They definitely want control—both of the farmer and the market.

The farming industry is in very serious trouble with today's markets so low and our cost of production going up.

We hope that in reading this letter that you will investigate the merger more thoroughly and understand why this merger is being challenged in the agriculture sector. Since this is harvest in the Midwest, it would also be of some assistance if the deadline for comment would be extended another sixty days to December 12, 1999.

Yours in Ag,

Frances Heinrichs,

Women Involved in Farm Economics (WIFE).

Tab 4

Greta Anderson, Iowa City, IA

September 19, 1999.

Judge Gladys Kessler,

U.S. District Court, for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler:

Presently before you awaiting your approval is a "Final Judgment" filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society. but whether the settlement is within the reaches of the public interest."

In its July 8, 1999 "Final Judgment" I believe in fact that the Department of Justice has "breached its duty to the public in consenting to the decree" and that its Final Judgment is not "within the reaches of the public interest."

As the Department of Justice's own "Complaint" states, the Cargill purchase would "substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices."

Using the Department of Justice's own figures and criteria we see in its "Complaint" that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's "Final Judgment" addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots, pork

packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and "sophisticated" firm, even more capable of strategic, cooperative, and anti-competitive behavior.

To me, it is tragic that the government does not put the rights of family farmers first, but rather participates in the idea that there are "too many farmers." Drive through rural America: you will see that there are not too many farmers, but rather, too many suburbanites and strip malls. The accumulation of capital such as Cargills is not "inevitable", nor is this merger.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its "Final Judgment," study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Greta Anderson.

Iowa City, IA
September 22, 1999.

Dear Sir: I am writing my concern over the merger of Cargill and Continental. Bigger is not better, the market for cash grain is already highly concentrated and yet another merger would spell doom for the independent farmer.

Sincerely,

Vivian Anderson.

Cresco, IN

Dear Chief Fones: I was born and raised on a farm, coming from a family of 13 children. Those were days of fair treatment, where farmers could make a living (however big the family). I believe the small average farmer meant something. These days we're used, to put it bluntly (as doormats). Is it just the big shots (the powers that be) that force us to do things their way, no matter who they step on? Don't us little guys count? I was taught that God made us all equal. Do you think the way the smaller people are being treated is equal and fair? I don't, and I'm sure God didn't have plans for the big corporations (such as Cargill) to be (in control); as they seem to be doing. Haven't we been pushed down, stepped on, and ground in the dirt enough? I think we count too. I beg you, Please don't let Cargill have any more control. Seems we've been damaged about as much as possible. We don't have a leg to stand on now; let alone if you let Cargill and other big corporations have any more control. We work very hard and can't squeeze a meager pauper's wage and living now. Why can't we have a little cream of the crop? Are the (people in control) entitled to all the cream and us little people can have the skim milk or whey that is left over?

I think you should keep in mind that God made us all equal; and you and I know the way things are now is way off balance.

Please don't let Cargill or any other of these big corporations have any more control and completely wipe *us* out

Thank you Kindly,

Kay M. Barnes.

September 23, 1999.

Dear Sir: This is in response to the invitation for comments regarding Final Judgment; the case of Cargill merging. This was written up in the Minnesota Farmers Union August publication and got me to thinking about how we little people are being squeezed and eventually choked by big business

As a midwest dairy farmer, reading articles only depresses one as there is a feeling of hopelessness implied by the "powers that be". They talk and talk, attend meeting after meeting and declare the poor farm situation must be addressed and so far in 1999 that's as far as it goes.

The CEO's of the major grain mergers can only see $$ for their own pockets and I suppose one can't judge harshly on that, but is it fair to the hard working farmer to not have a decent cut for his efforts. Every day in the business section someone's throat is cut by the money people. I am thoroughly opposed to more merging. Let's put a moratorium on mergers until someone figures out the agriculture and dairy dilemma and really moves in the right direction for all.

Sincerely,

Mary Beckrich.

Cologne, Minnesota
October 11, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a large monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Deari Borth.

October 11, 1999.
Meade, KS
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anit-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

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Please give my request your serious consideration.

Sincerely,

Greg Borth.

Honorable Judge Gladys Kessler
U.S. District Court, District of Columbia, 333 Constitution Ave. N.W., Washington, DC 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: You have before you awaiting your approval a Final Judgment filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp, which is a privately held corporation.

Legal precedent, according to the Department of Justice, requires that the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is within the reaches of the public interest.

In its July 8, 1999 Final Judgment I believe in fact that the Department of Justice has breached its duty to the public in consenting to the decree and that its Final Judgment is not within the reaches of the public interest.

Clearly, as the Department of justice's own complaint states the Cargill purchase would substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices.

Using the Department of Justice's own figures and criteria we see in its Complaint that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's Final Judgment addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets allows Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

This vertical and horizontal domination by Cargill allows then to maintain dominant status in all of these markets. While small family farmers are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time because it can afford to subsidize poor economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and sophisticated firm, even more capable of strategic, cooperative, and anti-competitive behavior.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its Final Judgment, study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Marilyn Borchardt,

Daughter of a former farmer.

Meade, KS.
October 11, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70% Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Isabelle Borth,

Tri-Von Enterprises,

107 S. Celina Street, Roanoke, IL 61561–1097,

September 25, 1999.
Energy & Agriculture Section, Antitrust Division, U.S. Dept. of Justice, 325 7th St. NW, Ste 550, Washington, D.C. 20530.

Attention: Roger W. Fones, Chief of Transportation

Dear Mr. Fones, We are concerned about the Cargill-Continental merger. We do not believe it is required to compete in the global economy and will be extremely detrimental to the agricultural community. It is our opinion that this market is already highly concentrated and we feel this will work to the destruction of the few remaining independent farmers left here in our precious prairie.

Although we are not farmers, we sell computers to many of our local farmers and know the sad situation this would put them in. Independent farmers are the backbone of this nation and we must not let corporate farming take over. Enough is enough!

Sincerely,

Loris von Brethorst.

Callicrate Feedyard

P.O. Box 748, St. Francis, KS 67756s

October 11, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones, Mergers and concentration have gone too far. Justice not only needs to deny the Cargill-Continental Merger but also needs to reverse prior mergers and restore competition in agricultural markets.

Companies like Cargill, ConAgra, ADM, Farmland and IBP are destroying our food system and killing us. We are losing our towns and communities with their low fixed commodity prices.

The big money of companies like Cargill is dominating government policy and influencing the non-enforcement of antitrust laws for their benefit; what about the people? Stop using the lame excuse of "economies of scale and efficiencies," they have no more basis today than when used as an excuse in Thomas Jefferson's day.

Sincerely,

Mike Callicrate.

New York Times,

October 11, 1999.

Essay By William Safire

Where is antitrust? I say No to the Cargill-Continental Merger!—G.M. Calnon, St. Francis, KS 67756.

Clinton's Consumer Rip-Off

Jacksonville, Fla.—"You want to buy this new cable service that's much faster than your old modem," my son the information architect told me. Not wanting to become the slowpoke pundit, I called my local cable company and ordered ExpressNet. A new black box cost $150 and the monthly fee was $25.

Two weeks later, a disembodied voice called to say that the superspeed Internet connecting service had merged with a Texas conglomerate and if I didn't agree to the doubling of the monthly rate, my service would end and I would be stuck with a useless $150 receiver.

I again called my local cable monopoly. Although I never reached a human being, its complaint software signaled that I could continue for six months at the original rate, after which it was double or nothing.

This minor outrage came to mind in watching the gee-whiz, ain't-these-big-numbers-fun accounts on television news of the latest combinations of corporate colossi.

Worldcom, which last year bought MCI, was now swallowing up Sprint for $115 billion.

This, analysts assure us, will allow the new supergiant to compete with AT&T, which already is plunking down $58 billion for Mediaone with the smiling approval of roundheeled Clintonites at the Federal Communications Commission.

Why are we going from four giants in telecommunications down to two? Because, the voice with the corporate-government smile tells us, that will help competition. Now each giant will be able to hedge its bets in cable, phone line and wireless, not knowing which form will win out. The merger-manic mantra: In conglomeration there is strength.

That's what they said a long generation ago when business empire-builders boosted their egos by boosting their stock to buy the earnings of unrelated companies. A good manager could manage anything, they said, achieving vast economies of scale. As stockholders discovered to their loss, that turned out to be baloney.

Ah, but now, say the biggest-is-best philosophers, we're merging within the field we know best. And if we don't combine quickly, the Europeans and Asians will,

stealing world business domination from us. The urgency of "globalization," say today's mergermaniacs, destroys all notions of diverse competition, and only the huge, heavily capitalized multinational can survive.

That's why we see the Old Seven Sisters of oil working their way down toward two big sisters having fun with fungibility, and why our former Big Seven accounting firms are headed to a Big Two. Unchecked international combines can crush unions, water down professional ethics, circumvent national regulation and stick it to consumers.

Here are two startling, counterintuitive thoughts: The fewer companies there are to compete, the less competition there is. And as competition shrinks, prices go up and service declines for the consumer. (Say these reactionary words at the annual World Economic Forum in Davos, and listen to the global wheeler-dealers guffaw.)

Who is supposed to protect business and the consumer from the power of trusts? Republican Teddy Roosevelt believed it to be the Federal Government, but the antitrust division of Janet Reno's Justice Department is so transfixed by its cases against Microsoft and overseas vitamin companies that it has little time to enforce antitrust law in dozens of other combinations that restrain free trade.

Our other great protector of the public interest in diverse sources is supposed to be the F.C.C. When MCI merged with Worldcom last year, the chairman appointed by President Clinton, William Kennard, took no action but direly warned that the industry was "just a merger away from undue concentration." Now that is happening.

Why will the F.C.C., after asking for some minor divestiture, ultimately welcome a two-giant waltz? For the same reason that the broadcasters' lobby was able to steal tens of billions in the public's bandwidth assets over the past few years: Mr. Clinton wants no part of a communication consumer's "bill of rights."

Candidates Bradley, Bush and Gore look shyly away lest trust-luster contributions dry up. Only John McCain dares to say: "Anybody who glances at increases in cable rates, phone rates, mergers and lack of competition clearly knows that the special interests are protected in Washington and the public interest is submerged."

Today's populist message comes to you by my old, slow modem.

October 11; 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: The purpose of this letter is to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

The creation of a larger monopoly will not only depress grain prices further in this country, but also be detrimental to all consumers.

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give this your serious consideration.

Sincerely,

Don Nauereud.
Mary Gosserand.

Brooksville, MS
October 11, 1999.
Mr. Roger Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: As a daughter and wife of farm producers, I have a stake in the future of the American farm family. I am actively involved in the operation and management of our operation. I am also a homemaker—I have three teenage children. My family worked diligently the last eighteen months—long hours, day after day—and we would have lost less money if we had done nothing. This is disheartening to say the least. Cattle and grain prices have remained low and feed and other related costs have been high. I tell you this not to whine but to explain our plight.

The rapid corporate concentration of the world's largest grain and meat handlers is killing the farm family. When we are gone and the people of this country who are accustomed to a relatively inexpensive quality food supply realize what has happened, it will be too late. Please stop the Cargill-Continental Grain sale for the reason that it will further impact grain prices and farm income in my community and in the U.S. in general. Please extend the comment deadline for another sixty days. We must have a competitive market in this country.

Thank you for your consideration of this matter. If you eat, you have a stake in this ruling. When farm families are driven out of business, the cost of foods will skyrocket. Make no mistake about that. If you are a consumer, you are very vulnerable. Mr. Fones, this includes you.

Sincerely,

Lori Chancellor.

September 20, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave. N.W., Washington, DC 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you, awaiting your approval, is a "Final Judgment" filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. "The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.'"

In its July 8, 1999 "Final Judgment" I believe in fact that the Department of Justice has "breached its duty to the public in consenting to the decree and that its "Final Judgment" is not "within the reaches of the public interest."

Clearly, as the Department of Justice's own "Complaint" states, the Cargill purchase would "substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices."

Using the Department of Justice's own figures and criteria we see in its "Complaint" that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's "Final Judgment" addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and "sophisticated" firm, even more capable of strategic, cooperative, and anti-competitive behavior.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its "Final Judgment," study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Thank you.

Donald B. Clark,
Convener, United Church of Christ, Network for Environmental & Economic Responsibility.

October 1, 1999.
Judge Gladys Kessler
U.S. District of Columbia, 333 Constitution Ave. NW, Washington, DC 20001.

RE: Cargill/Continental Grain Sale

Your Honor: It is my understanding you are taking public comment regarding the sale of Continental Grain to Cargill. It is with this understanding I write.

I believe every person has a right to the gifts of creations, especially to the necessities of life. Respect for the dignity of the human person also requires that each person has the right to free enterprise, the right to undertake the work that is their calling and the right to fair compensation for that work. This right is compromised when too much control is concentrated to increase the power of wealth of a few. Food, as well as the facilities for production and distribution, should not be concentrated to the benefit of a few.

The Cargill purchase of Continental Grain facilities will increase Cargill's buying power and price control; it will decrease the markets available to farmers and cause farmers to have to transport grain farther, especially if some terminals are closed to increase corporate profits; it will position Cargill to dominate specialty or "niche" markets because of the acquisition of Continental's storage facilities (markets that farmers are currently using to try to find profitability in already heavily Cargill-dominated markets).

Family farms are already struggling in the mid-west due to mega hog, mega dairy and mega beef operations. This would put another nail into the already partly closed coffin of family farms. Some of the family farms in my part of Iowa have been in the same family for 100 to 150 years. These families keep my small town alive and thriving.

The already rampant farm crisis is putting a squeeze on farm families which in turn puts a squeeze on the small businesses in my town, which in turn makes me have to drive further to purchase food, clothing and essential items at a greater cost.

I realize that the farming community is only 2% of the political vote but it is 100% of food production. One family farm feed approximately 212 persons. If the current farm crisis continues statistics show 6000 Iowa family farms will go belly up in the next couple years. Should this happen 112,000 non farming people will be affected. There are 49 other states in the union that I haven't even included in these figures.

I've been told that mega corporations are going to be the future of the US. It it my belief that mega corporations will only happen if we give up the fight. America has always been known as the land of opportunity and I see no reason for that to change. As Abraham Lincoln once said, "Let us have faith that right makes might; and in that faith let us to the end dare to do our duty as we understand it." or in the words of Margaret Mead, "Never doubt that a small group of thoughtful committed citizens can change the world; indeed, it's the only thing that ever has."

Thank you for listening to me.

Sincerely,

Shari Cummings.

October 11, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division of Justice, 325 Seventh Street, N.W., Ste 500, Washington, DC 20530.

Via FAX: 202–307–2784

Dear Mr. Fones: As the Executive Vice President and Director of a small rural community bank outside of Memphis, Tennessee, and as the daughter of a farmer. I have personally witnessed the demise of the "family farmer." I have seen "up close and personal" the struggles of these hard working people for all of my life. While they seem to easily take into stride their battle with the environmental elements, their struggles with rising production costs and stagnant to declining harvest prices has driven countless operations out of business. Ten years ago, our bank financed about two dozen local operations, and today, we have only two operations remaining viable. Given the very small size of our community, these numbers are quite staggering to our local economy.

Without exception, their demise is due to the ever increasing production costs and stagnant or declining harvest prices. One does not habe to look very hard at the reason for this problem. The biggest issue that has driven hundreds of thousands of US family farmers is the rapid corporate concentration of the world's largest grain and meat handlers. While the family farmers harvest prices remain stagnant, or even declined, the prices in the grocery store has SOARED!! Most of the general population is oblivious to this issue, but, when they are finally aware of it, it will be too late!

I can no longer sit idly by and not speak on behalf of this vital segment of our nations economy, but also on behalf of all consumers. With the absence of the family farmer, the cost of food will skyrocket.

It is for this reason, that I implore you to prevent the Cargill-Continental Grain sale and stop the negative impact on grain prices and farm income in my community and across this nation. Please extend the comment deadline for another sixty days. You have the power to "do the right thing," or else we will be "paying the price" for generations to come.

Sincerely.

Peggy B. Daugherty,
Executive Vice President, The Bank of Moscow, Moscow, Tennessee.

Mr. Roger Fones,
Chief of Energy & Ag. Section, Antitrust Division, U.S. Dept. of Justice, 325 7th St., N.W., Suite 500, Washington, D.C. 20530.

Sir: Please do not approve of the purchasing of the grain division of Continental by Cargill.

We raise cattle, wheat and barley in this area of Montana.

There is little competition in the world markets placing the farm and ranches at the mercy of a few international companies. There will be no chance to improve the depressed prices with so little competition. Our rural life style will continue to deteriorate as low prices are driving farmers and ranchers out of business.

Sincerely,

Lymen and Darlene Denzer.

Dewell Motor Co.

P.O. Box 109, Fowler, Kansas 67844

10 October 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing this to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Steve Dewell.

Dobbs Ranch

957 Manns Creek Road – Weiser, Idaho 83672–5523

October 11, 1999.
Mr. Roger W. Fones
Chief of Transportation, Energy and Agriculture Section

Dear Mr. Fones: Please extend the public comment period for a minimum of 60 days on the Continental/Cargill Grain merger. Please conduct a more thorough investigation of this sale before submitting a Final Judgment in this matter.

Please do this for your children, grandchildren and all future generations of food consumers in this great country. The monopolization of America's food supply is one of the most frightening things that is happening in this country. As a family

farmer/rancher I beg you to continue your investigation.

Sincerely yours,

Grant and Mabel Dobbs.

Blvd Island, MN

September 25, 1999.

Mr. Roger W. Fones,
US Dept of Justice, 325 7th Street NW Suite 500, Washington, DC 20530.

Dear Mr. Fones: Considering the months of hearings regarding Bill Gates's Micro Soft monopoly, and (over a decade ago) the breakup of AT&T because they were too large, it seems unfathomable that you would *Consider* giving Cargill total control of the world with the Cargill-Continental merger. Cargill is already a monster that everyone is afraid of. Have you seen *any* news on *any* media that would dare till about Cargill's present control . . . let alone the total control they would have after this merger? *No* . . . Furthermore you wont because Cargill has the power to crush any media that would tell the story. Cargill has cleverly contributed to charities that don't want their funds cut off so NO ONE is objecting.

Cargill already owns the docks in major foreign countries so ships of grain other than Cargill's are not allowed to dock.

We live in rural Minnesota where the independent farmer has few options. Please allow us the few we have left.

This affects much more than farm prices—this merger spells doom for our entire free enterprise system.

Please have the courage and backbone to stop this Cargill-Continental merger!

Sincerely,

C.K. Dresser.

Jordan Valley, OR 92910
September 11, 1999.

Dear Mr. Fones: We are cattle producers in the state of Oregon and we are requesting that you conduct a more thorough investigation of the Cargill/Continental Grain companies. This will exaserbate the detremental effects of concentration in the grain and livestock industries. Agriculture in America is in trouble, involving the safety of our food supply the survival of rural communities and the survival of agriculture producers. To have this much concentrated purchasing power in the hands of one company, is unthinkable. It shouldn't be difficult for our government to recognize the inherant with such a merger.

Also, we would ask that you extend the comment period on the merger.

Thank you.

Richard & Margene Eiguren.

Englehart Ranch

Meadow, SD 57644–7502

Judge Gladys Kessler

U.S. District Court for the District of Columbia, 333 Constitution Ave. NW, Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you, awaiting your approval, is a "Final Judgment" filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. "The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interesf.'"

In its July 8, 1999 "Final Judgment" I believe the Department of Justice has "breached its duty to the public in consenting to the decree and that its "Final Judgment" is not "within the reaches of the public interest."

Clearly, as the Department of Justice's own "Complaint" states, the Cargill purchase would "substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat, in these markets will engage in anticompetitive coordination to depress farm prices."

Using the Department of Justice's own figures and criteria we see in its "Complaint" that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's "Final Judgment" addresses itself to that important issue.

Likewise, the Department of Justice must consider more than the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and "sophisticated" firm, even more capable of strategic, cooperative, and anti-competitive behavior.

I've seen our market opportunities slowly shrinking. We currently have wheat in storage going into its third year in the bin. Why, because the price is so low on today's market that it is worth more to leave it in the bin as an asset on our bank's financial statement. As the market for wheat becomes more concentrated in the hands of fewer traders, the farmer will receive less, the huge agricorporations will depress the market at will and eventually force the farmers into bankruptcy. In South Dakota we have little access to wheat buyers, we are dependent upon those in our local area now currently dealing with farmer owned cooperatives who ship it to the big terminals by truck. This merger will remove what little competitiveness now remains in the wheat trade. Making Cargill even bigger will give them even greater power in all segments of agriculture. The competition is being narrowed to the point that the family farm, which has been the very foundation of this great nation, will go down in bankruptcy, despair, and desolation. This corporatization of agriculture will destroy us, the family rancher and farmer. We are human beings (generations of families) that have worked, nurtured, conserved, and loved the land while feeding this nation's population at the "lowest cost per capita income" of any country in the world.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States, I urge you to recommend that the Department of Justice withdraw its "Final Judgment". Please study in far greater detail this ill-advised sale; carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Llewellyn Englehart.

Karen Englehart.

Buffalo Livestock Auction

Buffalo, Wyoming

To: Mr. Roger W. Fones
Chief of Transportation, Energy & Agriculture.

I am urging you to please conduct a much more thorough investigation into the Cargill/Continental Grain sale before submitting a Final Judgment on the matter. Contrary to what the large multi national corporations tell you, putting the power into the hands of a few does not increase competition in the marketplace, but is having, and will only get worse, a devastating effect to the independent Ag producers in this country.

I would also encourage you to please extend the public comment period for another sixty days to allow this matter to be more fully investigated and commented on.

Thank you,

Jay Godley.

Epworth, IA 52045

We believe: Every person has a right to the gifts of creations, especially to the necessities of life. Respect for the dignity of the human person also requires that each person has the right to free enterprise, the right to undertake the work that is their calling and the right to fair compensation for that work. This right is comprised when too much control is concentrated to increase the power and wealth of a few. Food, as well as the facilities for production and distribution, should not be concentrated to the benefit of a few.

We live on a centery farm. And our oldest boy, 20 years old, would love to go farming with us and someday take over the centery farm. But because of the hag prices we had to liquidate our farrow to finish hog operation. All we have left now is our grain. Letting Cargill and Continental gain together would take away another buyer and would not give the family farms a promising future. Help save the Family Farms.

Dan & Judy Gotto.

Epworth, IA 52045

Dear Roger: I urge you to revisit the investigation of Cargill/Continental sale and to extend the comment period for at least 60 days.

It is my feeling that the family farm will not survive if we have all these large companies going together and not having any competition.

We believe: Every person has a right to the gifts of creations, especially to the necessities of life. Respect for the dignity of the human person also requires that each person has the right to free enterprise, the right to undertake the work that is their calling and the right to fair compensation for that work. This right is comprised when too much control is concentrated to increase the power and wealth of a few. Food, as well as the facilities for production and distribution, should not be concentrated to the benefit of a few.

Yours truly;

Grace Gotto.

Bowling Green, NC 63334

To Roger W. Fones: For the Justice Department's stand in siding with the multinational grain Cartel System, today's AG markets have totally stolen from independent family farmers. I believe this to be the most daring issue to ever be suffered by the Family Farmers and Rural Economics, Consumer and Taxpayer Mergers are the stealing of open markets, and this action now has the Seal of Approval from many Federal Agencies to hold accountable.

These agencies have failed in their selected duties to perform on behalf of the Public to the Common Welfare and Protection of all United States Citizens.

George Grover.

Okolona, MS 38860
October 13, 1999.
Roger W. Fones,
Chief, Transportation Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: Please stop the Cargill-Continental Grain sale. It would further impact grain prices and farm income in my community and in the U.S. in general. Please extend the comment deadline for another sixty days.

This sales would be extremely detrimental to the U.S. family farmers. Our farm has operated for over 50 years, and is really feeling the effects lately. It was very obvious that somebody, the middleman, made money during the hog crisis. The farmer was paid very little for the hogs, but the prices in the supermarkets never went down.

Thank you for your time in considering this.

Sincerely,

Bob Gregory.

Okolona,, MS 38860

Cresco, IA 52136
October 6, 1999.
Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 321 Seventh Street, Suite 500, Washington, DC 20530.

Roger W. Fones: I am an Iowa resident concerned about the impending takeover of the Continental Grain facilities by the Cargill Company. With this merger, the ability of the Cargill Company to price control and decrease the markets available to farmers will not only effect the farmers but every person in the United States who buys food. With Cargill Compnay having such a large monopoly they will be able to overwhelmingly control the U.S. grain trade. I urge you to rethink your investigation of the Cargill/Continental sale.

The antitrust laws do not seem to include farming and farm products; I think it is time for that to be reevaluated in the light of this impending merger.

Thank you for your time and consideration.

Mary Hargrafen.

Cresco, IA 52136
October 6, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave., NW, Washington, DC 20010.

Judge Gladys Kessler: I am an Iowa resident concerned about the impending takeover of the Continental Grain facilities by the Cargill Company. With this merger, the ability of the Cargill Company to price control and decrease the markets available to farmers will not only effect the farmers but every person in the United States who buys food. With Cargill Compnay having such a large monopoly they will be able to overwhelmingly control the U.S. grain trade. I urge you to rethink your investigation of the Cargill/Continental sale and extend the comment period for a longer period so that more people can comment.

Thank you for your time and consideration.

Mary Hargrafen.

Callicrate Feedyard

P.O. Box 748, St. Francis, KS 67756

October 11, 1999.
Mr. Roger W. Fones
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20503.

Dear Mr. Fones: Mergers and concentration are out of control. Please stop the Cargill-Continental Merger as it will further deteriorate grain prices and farm income in my community and in all of the rural communities in the U.S.

Companies like Cargill, ConAgra, ADM, Farmland and IBP are eliminating our safe food system and bankrupting us. Our small towns and communities are being devastated by their low fixed commodity prices.

Please enforce antitrust laws and help the people of this nation.

Sincerely,

Vernon E. Heim,

Manager.

The Organization for Competitive Markets (OCM)

P.O. Box 540061, Omaha, NE 68154–0061

September 16, 1999.
Mr. Roger W. Fones
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20503.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Mr. Fones: This letter concerns important considerations that may have been over looked by the Department of Justice during its review of the proposed merger of Cargill and Continental Grain.

On November 30, 1998, former Congressman Neal Smith of Iowa sent a detailed letter (copy enclosed) to Attorney General Janet Reno emphasizing the importance of looking at the futures trading positions of the two companies in order to understand the impact of the proposed merger on the price of grains and soybeans which are determined in the futures markets (see John W. Helmuth, *Grain Pricing*, Commodity Futures Trading Commission (CFTC), Economic Bulletin Number 1, September 1977.)

While I understand individual company information cannot be made public, the Department of Justice has given no public indication that you have performed any of the essential analysis called for in Mr. Smith's letter. The DOJ cannot claim to have adequately investigated the impacts of the merger without analyzing the fundamental elements called for by Mr. Smith.

The judge reviewing this matter cannot make an informed decision without this fundamental information.

Sincerely,

John W. Helmuth, Ph.D.

Agricultural Economist, Member of the Board, OCM.

November 30, 1998.
Attorney General Janet Reno
Main Justice Building, Room 5111, 10th and Constitution Avenue, Washington, DC 20530.

Re: Cargill Buyout of Continental Grain

Dear Attorney General Reno: Please be advised that, while I am an agricultural producer like millions of others. I do not represent any of the parties on either side

directly involved in the subject matter of this letter, but am sending this letter because of my long-time interest in international grain marketing during the more than 30 years in Congress during which I authored the CFTC Act and other legislation dealing with grain exports.

The recent announcement of Cargill's plan to buy the grain operations of Continental is subject to federal government approval pending antitrust review. I believe the outcome of that review will have far reaching effects on US and international grain markets for decades to come. The size of the two companies (measured by market share) is of obvious importance to these considerations, especially since there are so few international grain trading companies. But there are other equally important considerations that should be taken into account by any comprehensive, objective review. These are discussed below.

The Importance of Information in World Grain Markets

Detailed, accurate, daily information on literally hundreds of variables impacting the worldwide supply and demand of grain is essential for any company engaged in grain marketing. There are two sources of such information: public and private.

Public information is generally gathered and disseminated by governments around the world. The accuracy of such information varies across countries. US, Canadian, and European information generally set the standard for timely accuracy. By definition, public information is available to anyone and has as one of its goals to provide "a level playing field" for anyone buying and selling grain.

Private information is gathered by companies and/or individuals and is usually not disseminated to others, or is disseminated selectively to the advantage of the "owner" of the information. Arguably some of the most valuable private information involves details of major transactions engaged in by grain trading companies. The larger the company and the larger the transaction, the more valuable is the "inside" information.

For example, if the largest firm in the industry makes a large sale of US wheat for export, public knowledge of such a sale is likely to result in higher US (and World) wheat prices. It is very much in the exporting firm's best interest to buy the US wheat (and possibly large numbers of US wheat futures contracts) before knowledge of the export sale becomes public, and before wheat prices increase. Such transactions, based upon inside knowledge are not prohibited in cash or futures markets for agricultural commodities, as they are in the Securities markets.

Placed in perspective, large grain trading companies have access to the same public information everyone else has, plus they have knowledge of their own transactions, and information gathered by their worldwide offices and subsidiaries, and information gathered by their privately owned reconnaissance satellites. Thus, while the playing field may be level with regard to public information, and US farmers may voluntarily give away valuable supply information about their crops for USDA crop surveys out of a sense of national duty, private companies are making daily trading decisions based on jealously guarded private (mostly demand) information.

Given this fact, combining the number one and number two companies in the grain marketing industry not only aggregates their physical facilities, it also aggregates their inside information gathering capabilities and increases at least proportionately their information advantage in the US and World grain markets.

Number of Buyers, Price Competition

Price competition exists, if and only if, a market is characterized by a large number of buyers and sellers. "Large number" is not defined by economists. However, most economists would agree it is probably greater than two.

With respect to the market for farmers' grain at the local level, the number of buyers appears to be as low as one or two. To my knowledge, the federal government has not documented the number of grain buyers since the mid-1970's. In any event, when a local market currently has two buyers which happen to be Cargill and Continental, there will be only one buyer if the companies merge.

However, it should be understood that the local impact on grain prices will be mostly confined to what is called "the basis" which is the nearby futures price adjusted to reflect local conditions. The major price impact, in dollars and cents per bushel, is likely to occur in the grain futures markets.

The Number of Entities Making Economic Decisions

Fundamental to consideration of the Cargill acquisition of Continental Grain is to weigh the impact on economic decision making. Over fifty years ago Noble Laureate Frederick von Hayek elucidated the core strength and flexibility of market capitalism as being the making of economic decisions by many relatively small resource owners, who are close to the economic circumstances of time and place. Such market structure results in the most efficient use of resources and competitive markets. Hayek clearly pointed out that the concentration of economic decisionmaking in a relatively small number of individuals, regardless of whether those individuals are government bureaucrats as in the former Soviet Union or corporate executive in large companies, the result is the inefficient use of resources and non-competitive markets.

If Cargill acquires Continental, economic decision making clearly will become more concentrated and the efficiency of capitalistic grain markets is very likely to decline.

A Level Playing Field: Grain Markets Compared to Securities Markets

Federal regulations affect grain markets based upon the authority, inter alia, of the Commodity Exchange Act and the Commodity Futures Trading Commission Act. Federal regulations affect securities markets based upon the authority of the Securities Exchange Act. While these laws contain equally clear and strong language with respect to fraudulent activities, regulations promulgated by enforcement agencies are markedly different in the grain (futures) markets and the securities markets.

The table below highlights the difference in federal enforcement of anti-fraudulent regulations between the grain futures markets and the securities markets.

COMPARISON OF ANTI-FRAUDULENT REGULATIONS

	Securities markets	Grain futures markets
Insider trading prohibited	yes	no.
Short selling prohibited unless last price change was an up-tick.	yes	no.
Short selling limited to actual stock certificates borrowed from owner.	yes	no.

International grain companies with overseas offices also have a way to avoid the speculative limits applying to local grain elevators and producers. Despite efforts, which have been strongly opposed by those who benefit, this loop hole has not been closed. In one instance, twice as much grain was covered in the futures market as the customer took delivery of, and before the public was aware of the sale, and the balance was then sold at a big profit after the public overreacted to the exaggereated report.

In considering any merger in an area so involved with international trade affecting the most local of U.S. businesses, and such a history, great caution should be observed.

The American public and American farmers in particular, are entitled to an answer to the question: "Why are the playing fields different?"

If the two largest U.S. securities firms were proposing a merger, federal authorities would undoubtedly consider the impact on securities markets. No less is necessary regarding the Cargill-Continental merger and its potential impact on grain futures markets.

Consider the Impact on Other Agricultural Markets

Finally, an astute observe reported that Continental is the largest cattle feeder in the U.S. (an industry that has been rapidly concentrating over the last two decades) and that public statements by Continental officials indicate a company objective of expanding its cattle operations. Such an objective could be realized with the proceeds of the sale of Continental's grain operations.

While considering the grain market implications, federal officials should also consider the possible impacts on other agricultural markets such as livestock. Such impacts could be substantial and far reaching.

Sincerely,

Neal Smith,

Former Member of Congress from Iowa.

Minnetonka, MN
October 8, 1999.
Roger W. Fones
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: I have been following with great interest the Cargill-Continental merger. I work in an office with many policy analysts and they understand in a more technical way what is going on. I do the administrative work and have never really been interested in technical jargon except to file it. But I am very interested in the lives of people. No longer should people's lives be caught up in the technical jargon but it is time to seriously take a look at the holocaust happening within the rural communities of our nation. It is a slow demise of the family farmer and if you ask the farmer they are slowly losing hope for a culture that made this country great.

I also worked at Cargill many years ago, I am aware of the hug offices, the money that they have accrued on a personal level is incredible and that money was made off the very product that our family farms produced for you and I to eat. It is a product that we use everyday of our lives in some way or other and the farmers worked hard everyday of their lives to bring it to us. They were not looking for ways to make more money to satisfy their stockholders, they did not have an insatiable need for more things. What they did was take their land, put the seed into the ground tend to the crops, harvest it and then turned around and sold it to people like Cargill and Continental. I was always amazed when I worked at Cargill the amounts of product that were shipped from ordinary farmers and the amounts of money they made on trading and selling it. I didn't understand at that time nor was I very interested but today as I watch and listen to farmers story my heart is breaking for those people you are not listening to.

I don't want to be a part of our country's holocaust when it comes to our farmers. I do know that by letter in the Cargill Continental merger happen you are saying to the farmers you are not very important but money is and the bottom line is money not people. How can I say that? Because it is the message I'm hearing loud and clear from you. Whitney McMillan, Cargill McMillan, and the other McMillan's have more money that I or most of our farmers will ever dream of. Who do you think they made that money from? How much is enough? And do we have to lose a whole culture so they will make enough to satisfy their insatiable need for more money? Look at who they say they are competing with how many companies is it really? Some of the competition comes from within. My husband is in the wallcoverings business competition is there all the time for him but he doesn't go out and buy all the business out so he can make more money. We are satisfied with the money we make, we work hard for it but it allow us to live with integrity.

You can listen to all the technical jargon, you can look at all the numbers but in the end we are talking about people's lives here. Our farmers need us to stand with them. They need the very government that they have helped support through hard work and toil to stop and listen very closely to do the right thing that will make the most money. Hitler was working on economic health when he came into power and look what happened. Please stop this merger, let the farmers be heard throughout the land, help them to find solutions don't put the nails in the coffin of rural America. These people are your neighbors, your friends, your community, remember it is people you are dealing with here not just numbers.

Thank you.

Sincerely,

Kathy Hiltsley.

Tulsa, OK 74133
10 October 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 7th Street, NW, Suite 500, Washington, DC 20530.
FAX: 202/307–2784

Dear Mr. Fones: I am writing this to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this country, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give my request your serious consideration.

Sincerely,

Barbara Hook.

Madison, MN 56256
October 7, 1999.
Mr. Roger W. Fones
U.S. Dept. of Justice, 325 Seventh St. NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: I am writing to you because of my concern abut the proposed merger between two grain handling giants. I am a pastor of a Catholic parish of about 600 people in western Minnesota. Our economy in Madison is very much tied to agriculture. When farm commodities are depressed, it does not simply mean hard times. Businesses fold and do not reopen. More and more of our population flees to other towns and areas. Of course there are other contributing factors, but there is no denying that an unhealthy agricultural sector spells rapid decline for our town and region.

Ten years ago, it was well known that 90% of the world's grain exports were done through just five corporations. Cargill and Contentntal are two of the five. There is already too much concentration in this area of agriculture. This merger would mean even less competition in the marketplace. It would be great for the few corporations left, but it would certainly be detrimental to small and medium sized farms that are less able to hang on to their grain until markets improve. Even if one believes that bigger farms are always better, there is considerable danger in allowing such large corporations to merge when there is already very limited competition. Add to this the fact that we are dealing with food, and the danger of monopolizing the market becomes even more grave.

For all of these reasons, I strongly urge you and your department to disallow this merger between Cargill and Continental. Thank you for your consideration.

Sincerely,

Rev. Jeff Horejsi.

Roger W. Fones
Chief, Transportation, Energy and Agriculture Section, Antitrust Division, U.S. Dept. of Justice, 325 7th Street NW, #500, Washington, DC 20530.

Please stop the Cargill-Continental Grain Sale because it will hurt the small farmers in my area and the U.S. It will also eventually raise food prices. Please extend the comment period for 60 days.

Reena Kazmann.

October 07, 1999.
Roger W. Fones,
Chief, of Transportation, Energy & Agriculture Section, Antitrust, Division, 325 Seventh St. NW, Suite 500, Washington, DC 20530.

Dear Sir: I am writing to concerning the Cargill-Continental merger. I wanted to let you know that the market for our grain on the farm is already highly concentrated. The Cargill-Continental Merger would spell doom for the independent farms we have left on the prairie. Small farmers are struggling the way it is. Please consider this before you vote.

Sincerely,

Robin Kleven.

Corporate Agribusiness Research Project

P.O. Box 2201, Everett, Washington 98203–0201

October 8, 1999.
Roger W. Fones
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street N.W., Suite 500, Washington, DC 20530.

Dear Mr. Fones: In accordance with the "Antitrust Procedures and Penalties Act" (APPA) of the U.S. Code I am enclosing a recent issue of *The Agribusiness Examiner,*" a weekly e-mail newsletter which I edit and publish devoted to monitoring corporate agribusiness from a public interest perspective.

I am sending this copy to you as my way of making a "public comment" regarding the Justice Department's "Final Judgment" regarding the sale of Continental Grain's grain merchandising division to Cargill. I will look forward to the Department's comments in the Federal Register regarding the various issues raised in this issue of my newsletter.

I should also note that this newsletter is distributed on a weekly basis to nearly 850 people through the U.S. and the rest of the world, including many family farmers, farm organizations and public interest food advocates.

Thank you for your time and consideration of the enclosed.

Sincerely,

A.V. Krebs,

Director.

Subject: The Agribusiness Examiner #50
Date: Fri. 08 Oct 1999 01:15:46–0700
From: "Albert V. Krebs"
(avkrebs@earthlink.net)
To: one@earthlink.net

SPECIAL EDITION

The Agribusiness Examiner

Monitoring Corporate Agribusiness From a Public Interest Perspective

Issue #50 October 8, 1999

A.V. Krebs, *Editor/Publisher.*

Urgent Appeal: Effort to Block Cargill/Continental Sale—Public Comment Deadline at Hand

October 12, 1999 remains the deadline for public comment on the U.S. Department of Justice's Anti-Trust Division's "Final Judgment" relative to the sale by Continental Grain of its grain merchandising division to Cargill, the world's largest grain trader.

After characterizing what it publicly called an almost year long "investigation" of the sale the Department of Justice (DofJ) in fact filed a formal "Complaint" with the U.S. District Court for the District of Columbia. However, the DofJ totally neutralized its "Complaint" by filing it on the same day (July 8, 1999) and at the same time that it furtively filed a consented "Final Judgment," agreed to by all parties. While the DofJ's "Final Judgment" now awaits the approval of presiding U.S. District Court Judge Gladys Kessler, the public comment period regarding the Department's decision remains open until October 12.

In their "Complaint" the DofJ formally charged that Cargill's purchase would "substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices."

Commentary

Liberals and progressives and those individuals and organizations that seemingly care so deeply about the plight of the nation's family farmers may pride themselves on being on the cutting edge of today's economic and social issues such as genetic engineering and the upcoming World Trade Organization meeting in Seattle, Washington.

At the moment, however, agrarian populists and thousands of family farmers throughout the U.S. see such issues, as important as they may be for the future of agriculture, merely as additional logs on that fire that is intended to smoke them out of the business of farming.

Meanwhile, the crucial issue that is today deeply distressing family farmers to the point of near hopelessness is the rapid corporate concentration within agriculture as exemplified by the recent announced purchases by Cargill of Continental Grain's merchandising business and Smithfield Foods buying up of Murphy Family Farms and Tyson Food's Pork Group.

While Dan "Of the Grain Trade, By the Grain Trade and For the Grain Trade" Glickman may be "very pleased that the Department of Justice has taken * * * steps to protect American farmers from the potential adverse effects" of the Cargill/Continental sale by its recent "Final Judgment" and divestiture order, farmers from Stockton, California to Hampton Roads, Virginia see the consolidation of two of the world's largest grain traders as nothing but more economic and social adversity for them and their families.

Thus, in an attempt to force the Department of Justice anti-trust division to conduct a more thorough investigation of the Cargill/Continental sale, efforts are currently underway to forestall the Department from submitting its "Final Judgment" for the approval to presiding U.S. District Court Judge Gladys Kessler. This "Special Issue" of The Agribusiness Examiner is part of that effort.

For once, not simply acting as a mere mouthpiece for corporate agribusiness, but actually serving as "a voice for American Agriculture," American Farm Bureau President Dean Kleckner, has rightfully observed that "the time has come for the Justice Department to have someone with agricultural expertise to oversee such concentration issues. Agriculture is a unique industry. It requires someone with the experience and background to ensure anti-trust laws are not being violated and that opportunities for all farmers are protected"

The hour is late, the deadline for public comment on the Cargill/Continental "Final Judgment" is Tuesday, October 12.

No matter what one's degree of involvement in various and related public interest issues might be or what political or ideological persuasion one might be if they care about who grows their food, who produces and manufacturers it, its availability, its safety, its cost and the future of family farming agriculture the effort to block this sale is one that deserves their immediate and highest priority.

The "Antitrust Procedures and Penalties Act" (APPA) of the U.S. Code provides that any person may submit to the United States written comments regarding the proposed "Final Judgment." Any person who wishes to comment should do so by October 12. The comments and the response of the United States will be filed with the Court and published in the Federal Register.

Written comments should be submitted to: Roger W. Fones, Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Legal precedent, according to the DofJ, requires that "[t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree.

"The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' [A] proposed decree must be approved even if it falls short of the remedy the court the would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of the public interest.'."

Letters specifically demonstrating and/or documenting the impact of Cargill's monopoly of the grain trade and how the Continental purchase will affect that situation on one's own family farm operation or upon the rural community in which one lives will be most valuable. Copies of such letters should also be sent to the letter writer's state attorney general's office urging that office at the same time to utilize their good offices in not only calling upon the U.S. Department of Justice to revisit its "investigation" of the Cargill/Continental sale, but requesting that the deadline for comment be extended another sixty days to December 12.

Whether or not Judge Kessler concludes that the consent decree is "within the reaches of public interest" the corporate audaciousness of Cargill in attempting to summarily own this nation's grain trade with its purchase of Continental's grain assets is breathtaking. One need only look at the facts brought to light in the DofJ's own "Complaint" to see such covertness.

OCM'S Fred Stokes: "A Dark Day for Agriculture"

"If the Cargill merger goes through, it is a dark day for agriculture," is the way Fred Stokes, a Mississippi cattlemen and recently elected President of the Organization for Competitive Markets (OCM) describes the Cargill/Continental sale. "The loss of Continental Grain as a competitor while creating a more powerful Cargill will drive farmers' share of the retail dollar even lower. Continental Grain will then plow the new money into further consolidating the livestock industry."

Alone among farm organizations who have denounced the Department of Justice's "Final Judgment" decree the Organization for Competitive Markets is a non-profit, non-partisan organization of farmers, ranchers, academics and attorneys which provides information to the public about the importance of true competition in the agricultural marketplace.

Keith Mudd, a Missouri farmer and OCM board member, adds, "Farmers used to have several choices of elevators to market their grain. Mergers have reduced the number of buyers to two in many geographic areas. If the Cargill merger goes through, many farmers will have only one buyer. I fail to understand how the Department of Justice can view this merger as promoting competition."

"The immediate effects of the merger will be less market choices for farmers, more control over exports and a heightened ability by Cargill to unilaterally affect the futures markets," stated Dr. John Helmuth, agricultural economist and OCM board member. "The subsequent effects will be pressure for other grain merchandisers and their customers to merge in order to equal the market power of Cargill."

OCM's Jon Lauck and other Midwest farm activists have been meeting in recent weeks with both Republican and Democrat state attorney generals, in efforts to line up support for a lawsuit to block the sale.

"Not too long ago," Lauck recently told *The Corporate Crime Reporter*," antitrust officials would have looked at something like this and decided—this is obviously too large, these are two dominant players. We are never going to allow something like this to go through.

"Given the DOJ's concerns about the anticompetitive consequences of the merger," Lauck stresses, "it is odd that no effort is made to justify its approval of the merger. The fears of antitcompetitive behavior set forth in the 'Complaint' are not counter-balanced with a recognition of post-merger efficiencies, for example. With no apparent benefit to the merger and significant concerns expressed by many parties about its approval, the natural reaction would be to halt the merger. This response is further justified by the obvious difficulties that accompany the reversal of market concentration once it has become an economic fact."

One argument that defenders of the recent wave of corporate mergers within agribusiness have sought to make is that such mergers, specifically within the grain trade, are necessary so as enable U.S. companies to compete with foreign "parastatal monopolies."

Recently, the corporate agribusiness dominated International Policy Council on Agriculture, Food and Trade (IPC) issued a call for the elimination of parastatal monopolies in the next round of world trade talks. Although the Australian and Canadian Wheat Boards were not mentioned by name the IPC report bemoaned the fact that the monopoly power of such agricultural state-trading enterprises (STE's) "have the ability to distort domestic markets and international trade flows," even if they are not directly supported by government payments.

"As long as they enjoy exclusive powers or advantages not shared by their competitors, monopolies will not behave like "at risk" enterprises," the IPC said. "To end the resulting market distortions, the monopolies themselves should be eliminated, preferably by the end of the implementation period of the next round."

But, as Dr. Helmuth has noted, "when fewer and fewer individuals make more and more of the economic decisions, whether those individuals are in government or big business, the results is anti-competitive, inefficient and harmful to society as a whole; when more and more individuals make more and more of the economic decisions, the result is more competitive and more efficient and beneficial to society as a whole.

"There is even greater irony in that the principal advocates of centralized economic planning—the former Soviet Union and Eastern European countries—are abandoning it as an economic failure, at the very time American industries are becoming more and more centrally planned by those few firms with greater and greater economic power resulting from ever increasing industry concentration," he adds.

Cargill: To Become More Powerful and Sophisticated Firm "Capable of Strategic, Cooperative and Anti-Competitive Behavior"

In a recent letter to Roger W. Fones, Chief of the Transportation, Energy & Agriculture Section of the Antitrust Division, United States Department of Justice, Organization for Competitive Markets Jon Lauck wrote that Cargill's acquisition of Continental Grain Company "would unify the second and third largest grain traders in North America, which export 40% of American agricultural commodities."

Specifically, Lauck, the author of a law review article entitled "Toward an Agrarian Antitrust," 75 *North Dakota Law Review* (August/September 1999, objected "to the analysis used by the Department of Justice when reviewing the acquisition. DofJ's analysis: (1) fails to consider the wider concentration in agricultural markets beyond grain buying; (2) fails to consider the continuing potential for anticompetitive behavior in the post-merger market; (3) fails to show that the divested remnants of Continental will be a competitive force absent a large network of elevators which buy grain; (4) fails to consider the nature of the grain selling market; (5) fails to consider the economic disorganization of farmers which can be exploited by powerful buyers; (6) fails to consider information disparities in agricultural markets; (7) fails to explain the benefits of the merger; (8) and fails to consider a range of statutes that Congress intended courts to consider when making decisions about agricultural markets.

"In recent years," he continues, "agricultural processing markets have become highly concentrated. From a top-five concentration ratio of 24% in the early 1980s, for example, the beef-packing sector's five-firm concentration ratio has grown to 85 percent. Similar statistics apply to several other sectors of the agricultural processing economy.

"The DofJ's analysis did not consider the wider context of consolidation in the agricultural system and instead focused on the grain buying activities of Cargill and Continental. Growing concentration in agricultural markets should have been considered by the DofJ given the continuing consolidation of agribusiness firms," he adds.

"It was the growing power of agribusiness firms that triggered concerns among farmers and inspired the passage of the Sherman Act. And it was continuing concentration in agricultural markets, particularly through merger, that prompted passage of additional antitrust statutes such as the Clayton Act. The importance of the antitrust laws to farmers is explained by the difficulties inherent in farmers bargaining with large and powerful agribusiness buyers. Legislators and courts have fully recognized these concerns in statutes and in cases, respectively, but the DOJ's merger analysis failed to weigh these considerations."

Lauck's letter goes on to warn the Department of Justice that it "must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors. For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production.

"Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time. The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and 'sophisticated' firm, even more capable of strategic, cooperative, and anti-competitive behavior.

"The DofJ argues in its complaint that within particular draw areas very few firms buy grain. It argues that if Continental's operations where absorbed 'Cargill would be in a position unilaterally, or in coordinated interaction with the few remaining competitors, to depress prices paid to producers and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease.' Divestitures in a few of these markets as proposed by the DofJ does not address this problem. Even with the divestitures, grain buying would remain heavily concentrated and susceptive to collusive and cooperative activity," Lauck's letter warns.

"Furthermore, it is unclear how Continental will remain an effective competitor with Cargill after selling almost all of its elevator capacity. The few facilities that will not be acquired by Cargill hardly constitute a legitimate competitive threat. As the DofJ emphasized in its complaint, grain buying involves a large-scale network of facilities. The few remaining Continental facilities, stripped of their internal networks which provide them with competitive flexibility and information about grain flows, will be powerless in comparison with Cargill, with its $51 billion in annual revenues and 81,000 employees in 60 different countries.

"Continental's decision to sell off its grain buying operation may also indicate that it no longer considers grain buying a priority. In

short, there is no assurance that the remaining facilities will even compete in the markets that concerned the DoJ. Given the need for a network of elevators to compete in the grain buying business, it is also highly unlikely that any new firms will enter the market to challenge Cargill. The DoJ openly concedes in its complaint that it is 'unlikely that Cargill's exercise of market power will be prevented by new entry, by farmers and other suppliers transporting their products to more distant markets, or by any other countervailing competitive force'."

Lauck concludes his carefully documented 13-page letter to Fones by emphasizing that "given the importance of this merger and the constraints on state action if the consent decree is approved, I respectfully request that the comment period for this merger be extended another sixty days to December 12th. Several parties have expressed interest in commenting on the merger and will not be able to do so by October 12th. In the interest of a fair hearing on this critical matter, I urge DoJ to support a lengthening of the comment period, as allowed under the Tunney Act. If the DoJ and the court do not see fit to extend the comment period, I urge the court to reject the proposed consent decree for failing to consider the factors set forth herein."

Iowa State Study: Why Did Continental Sell? Why Did Cargill Become a Buyer?

Prior to the Department of Justice's "Final Judgment" Iowa State Department of Economics professors Marvin Hayenga and Robert Wisner addressed the questions of why Continental sought to sell its grain merchandising division and why Cargill became such a willing buyer.

The complete text of the Hayenga-Wisner paper can be viewed at: *http://www.econ.iastate.edu/outreach/agriculture/marketing/hayenga.*

Professors Hayenga and Wisner note in their January, 1999 paper, "Cargill's Acquisition of Continental Grain's Grain Merchandising Business," that industry speculation was that Continental excelled in very large volume bulk export trading, and had not diversified enough into the value added processing to compete effectively in a market environment where export volumes have been sharply reduced in recent years.

"To compete effectively by restructuring their operations at this late date," they add, "would require too much capital and too much risk. Continental's storage capacity declined significantly over the last ten years, while Cargill, ADM and Peavey [ConAgra] expanded. Their capital could be more productively employed in their other agricultural and financial businesses."

In seeking answers as to why Cargill expected the Continental purchase acquisition to contribute to its ability to compete effectively in a rapidly changing market environment the Iowa State study summarized that the acquisition will contribute to "more effective knowledge acquisition and transfer from an expanded global presence and a broader base of grain origination facilities in the countries where grain is produced.

"The grain merchandising system is a high fixed cost system. Cargill hopes to compete more effectively and keep a large share of the Continental volume, capturing economies of scale by running more volume through without equivalent changes in the costs of managing their system. Further, Cargill expects that it will be more able to take costs out of the system, not just through fewer people, but by dedicating some facilities to specialized products and getting more efficiencies in operations (shorter barge turnaround times, longer runs in elevator handling, etc.).

Hayenga and Wisner point out that Cargill's new joint venture with Monsanto to arrange production and to market value-added specialty grains and oilseeds for the feed and processing industries "will require greater capacity to handle segregated grain flows throughout the domestic and export marketing system. Continental has had a significant presence in the identity preserved grain market, with half its international feed customers converted to high oil corn.

"Cargill expects to better serve the producer by enhancing productivity and passing some of those cost savings on in the form of better prices to their suppliers and customers. They also plan offer many more price risk management alternatives and advice, financing, etc., to farmers," they add.

The study goes no to add that "the basic concern expressed by some farmers, politicians, and industry participants is that Cargill bought Continental to remove a significant competitor, particularly in the export market, and expand merchandising margins. The ability to 'control' more facilities and larger volumes of grain and soybeans might adversely influence competition and the transparency and effectiveness of the price discovery process in the grain marketing system."

The two professors then ask a series of key questions: Will the merger result other merchandisers and processors having to conform to Cargill standards in grain merchandising? Will the merger result in exclusivity in marketing arrangements with Cargill such that firms that do business with Cargill are excluded from or penalized for doing business with other merchandisers? Will Cargill bundle products or terms into their merchandising arrangements, like requiring its buyers and suppliers to use Cargill transportation or Cargill risk management tools? Will Cargill control so much grain at various stages of the system that fewer negotiated prices and price reports are available to keep the price discovery system transparent?

It is these questions that many farm critics feel that the Department of Justice's "Final Judgment" fails to answer.

"Captive Draw Areas" and the HHI

Although Cargill and Continental have from the outset sought to minimize the monopoly situation the purchase would have created within the grain trade the facts are that farmers typically sell their crops to rural grain elevator operators, many of which are owned by cooperatives and small companies. These elevators then either export the grain or resell it to flour mills and other food processors with much of it being sold to grain trading corporations such as Cargill, Continental and Archer Daniels Midland (ADM) and it is these companies that own and operate the larger grain elevators, rail links, terminals, barges and ships needed to move grain around the country and the world.

The role of the grain trade in a nation that is constantly touted as being "the world's breadbasket" cannot be over emphasized as the respected University of Missouri rural sociologist William Heffernan points out, 75% of the world's food (based on dry weight) is grain based.

In discussing the nation's grain network the DoJ in its "Complaint" notes that in each instance, the geographic area from which a country elevator, river elevator, rail terminal, or port elevator receives grain is limited by transportation costs and is known as the "draw area" for that facility. Draw areas they conclude, expand and contract only slightly in response to normal economic fluctuations in crop supply, crop demand, and transportation costs.

For many country elevators, river elevators, railroad terminals, and port elevators, draw are Cargill and Continental often operate facilities that have overlapping draw areas, and they therefore compete with one another for the purchase of wheat, corn, and soybeans from the same producers or other suppliers. In some areas within these overlapping draw areas, Cargill and Continental have been two of a small number of competing grain trading companies.

"Sometimes they are the best," DoJ observes, "and occasionally the only realistic alternative purchasers of grain from producers and other suppliers. By acquiring Continental's facilities that purchase grain from these 'captive draw areas,' Cargill would be in a position unilaterally, or in coordinated interaction with the few remaining competitors, to depress prices paid to producers and other suppliers because transportation costs would preclude them from selling to purchasers outside the captive draw areas in sufficient quantities to prevent the price decrease."

By way of evaluating concentration is these "captive draw areas" the Department of Justice uses a criteria based on the Herfindahl-Hirschman Index (HHI), a commonly accepted measure of market concentration. The HHI is calculated by squaring the market share of each firm competing in the market and then summing the resulting numbers.

For example, for a market consisting of four firms with shares of 30, 30, 20, and 20 percent, the HHI is 2,600 (302 + 302 + 202 + 202 = 2,600). The HHI takes into account the relative size and distribution of the firms in a market. It approaches zero when a market is occupied by a large number of firms of relatively equal size and reaches its maximum of 10,000 when a market is controlled by a single firm. The HHI increases both as the number of firms in the market decreases and as the disparity is size between those firms increases.

Markets in which the HHI is between 1000 and 1800 are considered to be moderately concentrated, and markets in which the HHI is in excess of 1800 are considered to be highly concentrated. Transactions that

increase the HHI by more than 100 points in highly concentrated markets presumptively raise significant antitrust concerns under the Department of Justice and Federal Trade Commission 1992 Horizontal Merger Guidelines.

In their "Complaint" the DoJ vividly shows that even prior to the purchase agreement Cargill and Continental were two of a very small number of grain trading companies competing to purchase grain in four key "captive draw area" including: the Pacific Northwest port range, which include western Minnesota, eastern North Dakota, and northeastern South Dakota; the Central California port range, which include the areas around Stockton, California, to West Sacramento, California; elevators in the Texas Gulf port range, which include portions of Texas and Louisiana; elevators along the Illinois river stretching from Morris, Illinois, to Chicago, Illinois, and on the Mississippi river in the vicinities of Dubuque, Iowa, and New Madrid/Caruthersville, Missouri, and the captive draw areas for rail terminals in the vicinities of Salina, Kansas, and Troy, Ohio.

Each of those "captive draw areas" is already highly concentrated based on HHI figures. The potential combination of Cargill and Continental would have dramatically and substantially increased concentration in already highly concentrated grain purchasing markets.

For example, in the Pacific Northwest port range markets for corn and soybean purchases are highly concentrated, with the top four port elevator operators accounting for 100% of all corn and soybean purchases in these markets as Cargill alone accounts for about 44% of all soybean purchases and 23% of all corn purchases. Continental, in a joint venture with Cenex Harvest States, accounts for about 50% of all soybean purchases and 30% of all corn purchases in the same port range.

After the proposed acquisition, Cargill would have accounted for 94% of Pacific Northwest soybean purchases and about 53% of Pacific Northwest corn purchases. The approximate post-merger HHIs for purchases of soybeans and corn in the Pacific Northwest port range would be about 8868 and 5004, with increases in the HHIs of 4400 and 1364 points, respectively, resulting from this transaction.

Likewise, the Central California port range market for wheat is highly concentrated, with Cargill and Continental accounting for virtually all wheat purchases in this market. The approximate post-merger HHI for purchases of wheat in the Central California port range would be about 10,000, with an increase in the HHI of 7,888 points resulting from this transaction.

In the Texas Gulf port range markets for soybeans and wheat are also highly concentrated, with the top three purchasers accounting for 100% of all purchases of soybeans and the top four purchasers accounting for 79% of all purchases of wheat in these markets. Cargill accounts for about 16% of all soybean purchases and 25% of all wheat purchases in the Texas Gulf port range. Continental accounts for about 33% of all soybean purchases and 9% of all wheat purchases in the same port range.

After the proposed acquisition, Cargill would have accounted for about 49% of Texas Gulf soybean purchases and about 34% of Texas Gulf wheat purchases. The approximate post-merger HHIs for purchases of soybeans and wheat in the Texas Gulf port range would be 5105 and 2611, with increases in the HHIs of 1056 and 451 points, respectively, resulting from this transaction.

Other geographic markets in which Cargill and Continental compete for purchase of corn, soybeans, and wheat are also highly concentrated. These markets include river elevator markets on the Illinois River and the Mississippi River, authorized delivery points on the Illinois River for corn and soybean futures contracts, and rail terminal markets in Kansas and Ohio. The proposed transaction would have increased the HHIs in each of these markets to over 3,000.

Divestiture: Trade Collusion by Any Other Name?

In its "Final Judgment" the Department of Justice not only directs Cargill to divest all of its property rights in the port of Seattle elevator, East Dubuque and Morris river elevator, but also mandates that Continental is ordered and directed to divest all of its property rights in the Lockport and Caruthersville river elevators, the Salina rail and Troy rail elevators, the Beaumont, Stockton and Chicago port elevator to an Acquirer acceptable to the United States in its sole discretion.

When one totals the elevator capacities of those facilities that Cargill must relinquish and those Continental elevators which it is prohibited from operating some rather curious figures emerge.

The total domestic storage capacity for Cargill and Continental in January of 1999 was 463 million bushels for Cargill and 169 million bushels for Continental. This compares to 1981 figures of 148 million bushels for Cargill and 110 million bushels for Continental. The total capacity of the Seattle port and Morris River elevators and one third of the Havana river elevator (see below) is some five million bushels while the storage capacity of the Lockport, Caruthersville, Salina and Troy rail elevators and the Beaumont and Stockton port elevators totals some 15 million bushels. If hypothetically one independent corporation should buy all these elevators its combined storage capacity would be but between three and four percent of Cargill's storage capacity and a similar percentage of ADM's total storage capacity.

The DoJ directs that Cargill and Continental's assets shall be made to an Acquirer for whom it is demonstrated to the sole satisfaction of the United States that: (1) the purchase is for the purpose of using the Asset to compete effectively in the grain business, (2) the Acquirer has the managerial, operational, and financial capability to use the Asset to compete effectively in the grain business; and (3) none of the terms of any agreement between the Acquirer and defendant(s) give defendant(s) the ability unreasonably to raise the Acquirer's costs, to lower the Acquirer's efficiency, or otherwise to interfere in the ability or incentive of the Acquirer to compete effectively.

Among the other terms of the "Final Judgment" Cargill shall not purchase, lease or acquire any interest in the Lockport river elevator, Caruthersville river elevator, Salina rail elevator, Troy rail elevator, Beaumont port elevator, Stockton port elevator or Chicago port elevator, or any interest in the river elevator at or near Birds Point, Missouri (in which Continental formerly owned a minority interest, and had a right of first refusal to purchase grain).

Cargill was also directed to enter into a throughput agreement that makes one-third ⅓ of the daily loading capacity at its river elevator located at or near Havana, Illinois, or one barge-load per day, whichever is greater, to an independent grain company acceptable to the United States in its sole discretion (the "Havana Throughput Agreement"). Daily loading capacity shall be the capacity registered with the CBOT.

A "Standard Throughput Agreement" means an agreement that allows one grain company to move its grain through an elevator operated by another person, with unloading, storage, loading and ancillary services provided by the operator pursuant to terms, conditions and rates that are common in the grain industry.

The independent grain company that obtains the throughput right from Cargill (the "third party") must be qualified under CBOT rules and regulations to make delivery of at least one barge-load of corn and soybeans per day for the settlement of CBOT corn and soybean futures contracts, and must agree to register that capacity at the Havana facility with the CBOT.

The "Havana Throughput Agreement" shall allow the third party to use its share of the loading capacity at the Havana facility to transload grain from trucks onto barges for commercial purposes unrelated to futures contract deliveries, as well as to make deliveries under CBOT futures contracts. Cargill, however, is not obligated by the "Final Judgment" to provide storage services to the third party in excess of the storage services required to accommodate the transloading of grain shipments from trucks to barges. Load to barge loading, may not exceed the load-out fees.

Cargill: Getting the "86" in Seattle?

In the Department of Justice's original "Complaint," the anti-trust division asserted that competition for the purchase of grain and soybeans from farmers and other suppliers would have been harmed by combining Cargill's and Continental's competing port elevators in the Pacific Northwest, which purchase corn and soybeans from farmers in portions of Minnesota, North Dakota, and South Dakota. Currently, nearly 40% of Cargill's corn shipments abroad go through their Pier 86 elevator in Seattle.

Yet, in ordering the divestiture of Cargill's 4.2 million bushel terminal in Seattle, presently leased from the Port of Seattle, the nation's largest private corporation will now operate in part the TEMCO three million bushel grain elevator at the nearby Port of Tacoma. TEMCO or Tacoma Export Marketing Corp. has operated the terminal as a joint venture for Continental and Cenex

Harvest States Co-op, now in the process of merging with Farmland Industries, to form United Country Brands, the nation's largest agricultural cooperative. (See Issue #25)

Slightly over 100 miles to the south of Tacoma, Mitsubishi Corp. a leading Japanese trading company, recently announced it has acquired about a 10% stake in the Kalama Export Company LLC.equally owned by ConAgra Inc. and Archer Daniels Midland Co. ("Supermarkup to the World"). Kalama Export Company LLC operates a grain elevator along the Columbia River in Washington State, with hourly shipping capacity of around 3,000 tons and storage capacity of about 50,000 tons. It also plans to increase storage capacity to 90,000 tons by the end of 2000.

Yet Cargill spokeswoman Lori Johnson said the Justice Department was concerned that her company would have too much business concentrated in the Pacific Northwest because of Continental's leasing of the Tacoma grain-storage facility. "We fought the Justice Department; not to include Seattle," said Johnson. "We still need to sit down with Port officials and talk about the options and make it work for everyone," she said. "But we do have an obligation under the lease."

According to the DoJ's divestiture order the Seattle port elevator may enter into a Standard Throughput Agreement with Cargill, or any joint venture involving the Tacoma elevator to which Cargill is a party (the "Cargill Joint Venture"), provided that: (1) The Acquirer has no interest in Cargill or the "Cargill Joint Venture"; (2) the throughput agreement gives Cargill or the "Joint Venture" no more rights concerning the operations of the facility than are commonly granted to sublessees in Standard Throughput Agreements; and (3) Cargill or the "Cargill Joint Venture" obtains continuing rights to move no more than 8.5 million bushels of grain and oilseeds combined in any given month through the Seattle port elevator.

"Moreover," the Justice Department states, "the United States must be satisfied, in its sole discretion, that any Standard Throughput Agreement that may be negotiated between Cargill or the 'Cargill Joint Venture' and the Acquirer of the Seattle port elevator: (1) Would leave the Acquirer with sufficient capacity for it to be a viable and effective competitor for the purchase of corn and soybeans in the Pacific Northwest draw area; and (2) would not adversely affect the Acquirer's ability or incentives to compete vigorously for the origination of corn and soybeans in the Pacific Northwest draw area, by raising the Acquirer's costs, lowering its efficiency, or otherwise interfering in the ability or incentive of the Acquirer to compete effectively."

The DoJ notes, however, that Cargill need not divest the Seattle port elevator if it does not buy, lease or otherwise acquire an interest in Continental's port elevator at or near Tacoma, Washington.

If another firm, however, acquires the Tacoma port elevator pursuant to a right of first refusal (and Cargill retains the Seattle port elevator), Cargill shall not subsequently purchase or lease the Tacoma port elevator. If another firm acquires the Tacoma port elevator pursuant to a right of first refusal, Cargill shall not subsequently acquire any other interest in that facility (including a joint venture interest) without the written consent of the United States.

As for the Seattle elevator, the *Seattle Times* business correspondent Patrick Harrington recently reported, "with Cargill now planning to shift operations to Tacoma after all, it remains to be seen whether there is a player big enough to fill its shoes."

"Cargill, even before it acquired Continental last month, was the nation's largest exporter of grain; Continental was the second largest. Illinois-based Archer Daniels Midland, another large grain company, had earlier expressed interest in the facility, according to Port of Seattle officials, but spokesmen for the company refused to comment."

Banking on the Futures

The issues of concentration in the grain trade, even prior to the Continental purchase by Cargill was promising to become a major issue in the year 2000, when new delivery terms take effect for the Chicago Board of Trade's (CBOT) corn and soybean futures contracts as Toledo, Ohio, will cease being a delivery point for the CBOT contracts, and delivery points will instead be clustered up and down the Illinois River where a large portion of grain facilities, on the northern portion of that river, are owned by Cargill or Continental, and likely will be combined.

In its "Complaint" the DoJ stresses that by consolidating the Cargill and Continental river elevators on the Illinois River, their proposed transaction would concentrate approximately 80% of the authorized delivery capacity for settlement of Chicago Board of Trade corn and soybean futures contracts in two firms. "This concentration," they emphasize, "would increase the likelihood of price manipulation of futures contracts by those firms, resulting in higher risks for buyers and sellers of futures contracts."

For farmers like Floyd Schultz who currently transports his grain by truck just four miles to Lockport, Illinois where he can choose between Cargill and Continental grain terminals, sitting side by along a canal leading to the Illinois River, the proposed merger of the two grain companies will leave the nearest competitor an Archer Daniels Midland terminal 30 miles and another 10 cents a bushel in shipping costs away. While Cargill could lower its prices and improve its margins, he notes, "we as farmers would be the ones who pay."

In Marvin Hayenga and Robert Wisner's 1998 study, "Cargill's Acquisition of Continental Grain's Grain Merchandising Business," (see above), the authors obvious area of concern at that time was the northern section of the Illinois River. They noted at the time that even if the Continental sale to Cargill was approved, ADM will remain the largest firm on the river, controlling 36% of storage space.

Faced with such a situation Sid Love, analyst with Joe Kropf & Sid Love Consulting Services in Overland Park, Kansas, told the *Wall Street Journal* that he regrets the possible departure of Continental from the grain market. "My concern is deliveries on the Illinois River," Love said. "Now, you'll basically have two big companies, and if they're both bullish, you won't have any deliveries," since they could export the grain rather than meet contract obligations.

Reacting to the initial announcement of the purchase one Illinois farmer also speculated that if Continental was unable to successfully compete financially with other grain trading companies to the extent that it was willing to sell its assets to a competitor why would anyone believe that an independent elevator operator could achieve success in such a concentrated market?

"Throughput Arrangements" High Costs Discourage Competition

The Department of Justice's willingness to use "throughput agreements" as part of its Cargill/Continental divestiture order has received sharp criticism from Dan McGuire, a member of the American Corn Growers Association and the Nebraska Farmers Union.

"Our department," he said, "will take a close look at this proposed merger. It is our job to further competition in private business and industry, and if we allow Samson and Delilah to merge we may be doing the consumer a disservice."

The chairman of Samson protested vigorously that merging with Delilah would not stifle competition, but would help it. "The public will be the true beneficiary of this merger," he said. "The larger we are, the more services we can perform, and the lower prices we can charge."

The president of Delilah backed him up. "In the Communist system the people don't have a choice. They must buy from the state. In our capitalistic society the people can buy from either the Samson or the Delilah Company."

"But if you merge, " someone pointed out, "there will be only one company left in the United States."

"Exactly," said the president of Delilah. "Thank God for the free enterprise system."

The Anti-Trust Division of the Justice Department studied the merger for months. Finally the Attorney General made this ruling. "While we find drawbacks to only one company being left in the United States, we feel the advantages to the public far outweigh the disadvantages."

"Therefore, we're making an exception in this case and allowing Samson and Delilah to merge."

"I would like to announce that the Samson and Delilah Company is now negotiating at the White House with the President to buy the United States. The Justice Department will naturally study this merger to see if it violates any of our strong anti-trust laws."

August 30, 1999.

Department of Justice, Antitrust Division, San Francisco Office.

From: Riley Lewis (Forest City, Iowa)
Sent: Wednesday, June 23, 1999 6:52 AM
To: WEB JPR
Subject: Cargill-Continental Merger

As your dept. dwells on the merger-acquisition of Continental Grain by Cargill I would like to comment as a 5th Generation Iowa farmer on the merits. I am against it—

farming for thirty years I've seen this many times in smaller amounts of suppliers to agriculture. When you have dealerships-coops etc that are of the larger scope I find the less competition tends to maker service less and more expensive with a take it or leave it attitude. Grain bids are our income and competition just as we sell hogs to three packers makes better bids. In a small town nearby there where two aggressive shoe stores five years ago—people come from big cities to buy brand name shoes at competitive bids—then one year the owner of one store died with no heirs and the store closed. The other raised his bids for shoes and within two years he went out of business as business went to a larger town. Great example of what competition does and here as your good producer we need competition—not mergers!

Thank you.

Riley Lewis.

October 11, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: I am writing to request that you conduct further investigation of the Cargill-Continental Grain sales and that you extend the comment deadline for another sixty days.

Are you aware of what the creation of a larger monopoly will do, not only to grain farmers in this county, but also to all consumers?

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate, Across the U.S. farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting to final judgment on this.

Please give my request your serious consideration.

Sincerely,

Todd Lewis.

September 21, 1999.
Roger W. Fones,

Chief of Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh St. NW, Suite 500, Washington, D.C. 20530.

Dear Mr. Fones: Please stop the Cargill Continental Merger. Cargill is so big already. They are in the seed, banking, fertilizer, chemical business. They manipulate the markets for cheap grain. They are in the feeding business. They own packing plants. What happened to our Anti-trust to stop all this. It is ruining the township and county rural life. They do not do business locally.

They are giving mega bucks to the University of Minnesota to have the do research that they will own. They have the biggest lobbying effort in Washington DC.

They only way rural life can fight this big giant is through political action. We have let it go to far. Look what happened in Russia when the food supply wasn't done individually. Look at Roosevelts monument and DC and read the words. It will help you understand why the Cargill-Continental merger can go on.

I request you stop all mergers including the co-ops. They are big business and have forgotten about the patrons who built them.

Rick Lundebrek,

Township Officer, Benson, Minnesota 56215.

First Security Bank

September 21, 1999.
Roger W. Fones,

Chief of Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh St. NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: How can you let Cargill and Continental Merger. The marketing is so concentrated already. Cargill is dominating the full chain: Seed, fertilizer, chemical, banking, end process, meat industry, meat packing. This is ANTI-TRUST. Please stop it now.

Sincerely,

Vice President,

First Security Bank, 215 13th St. So. Benson, Minnesota 56215.

The family farmer is who I work with. They can't believe this has happened in America. They look at Cargill like a sleeping giant.

September 24, 1999.
Judge Gladys Kessler,

U.S. District Court for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you awaiting your approval is a "Final Judgment" filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that "the balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is 'within the reaches of the public interest.' "

In its July 8, 1999 "Final Judgment" we believe the Department of Justice has "breached its duty to the public in consenting to the decree" and that its "Final Judgment" is not "within the reaches of the public interest."

As the Department of Justice's own "Complaint" states, the Cargill purchase would "substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies purchasing corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices."

Using the Department of Justice's own figures and criteria, we see in its "Complaint" that even before this announced purchase the U.S. grain trade was already dominated, if not monopolized, by Cargill. Nothing in the Department of Justice's "Final Judgment" addresses itself to that issue.

The Department of Justice must consider more than the grain-buying operations of Cargill. Acquisition of Continental's seventy elevators will enhance the economic power of Cargill. This concerns farmers, because Cargill stands out as a top-four firm in beef and pork packing, cattle feedlots (where Continental is the largest), broiler and turkey production, animal-feed plants, grain-elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. This dominant position across wide-ranging agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Farmers are forced into bankruptcy after a few bad seasons, but Cargill will maintain its dominant status over time, regardless of economic performance over the short term. With Continental's assets, Cargill will become an even more powerful firm, even more capable of strategic, cooperative, and anti-competitive behavior.

In the name of economic and social justice and the preservation of the family-farm system of agriculture in the United States, we urge you to recommend that the Department of Justice withdraw its "Final Judgment," study in far greater detail this ill-advised sale, and carefully consider the grave anti-trust issues it presents with dire consequences to both producers and consumers of our food supply.

Sincerely,

Muriel Marvin.

Lawrence Marvin,

Placerville, CA 95667.

Dear Attorney General Reno: I am writing to you to express my deep concern with the giant agriculturer marketer Cargill and its' agriculture anti-trust actions when it concerns small farmers in this nation. There should be an immediate investigation to see if Cargill is violating anti-trust laws.

Thanks for your time.

Sincerely,

Jerome McCollom,

Department of Justice, August 30, 1999, Antitrust Division, San Francisco Office.

Alta Vista, KS 66834
October 8, 1999.
Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington, D.C. 20530, FAX: 202–307–2784.

Dear Mr. Fones: Please do not approve corporate mergers and buyouts such as Cargill with Continental Grain or Smithfield Foods with Murphy Farms and Tyson Food's Pork Group. I believe such mergers and buyouts serve to weaken American national security by forcing reliance upon foreign markets rather than promoting a sound domestic agriculture production and delivery system.

While capitalism favors competition, such mergers and buyouts represent the same command and control favored by communism. Totalitarian food production and delivery systems have failed in all nations where they were the dominant system. Why would Americans believe such a system could work here? We use food and medicine as a political tool with nations reliant on imports. Do we truly wish to open our own country to similar political leveraging?

The merging of Cargill and Continental Grain will not favorably improve grain prices for farm producers. As farm stability weakens, so does it's surrounding community. As communities lose their economic base, they lose their ability to adapt to fluctuations of market, economy and social unrest.

Through the past decades, we have seen a reduction in the number of industry competitors of steel, auto and textile manufacturing as well as food and fiber production. The reduction to a few industry giants has given the impression of reduced consumer prices and strong economy. However, such mega-corporations are not flexible. Labor problems, interest rates, consumer choice, environmental impact, and many other factors can result in massive employee lay-offs, plant closings, unmanageable pollutants, labor strikes, unstable housing, overburdening of community services and other negative impacts that are too great for the community to effectively handle.

I believe in world trade, competitive trade with choice and options rather than singular avenues. I support the government use of anti-trust laws when corporate mergers and takeovers threaten the competitive edge of all America for the sake of exorbitant short-term gain for relatively few beneficiaries. Thank you for your consideration.

Sincerely,

Carissa McKenzie

Westminster College

501 Westminster Avenue, Fulton, Missouri 65251–1299, 314 642–3361

October 1, 1999.

Roger W. Fones,
Chief, Transportation, Energy and Agriculture Section, Antitrust Division—U.S. Department of Justice, 325 Seventh Street, N.W., Suite 500, Washington DC 20530.

Dear Mr. Fones: Antitrust legislation is in place to protect consumers and competitors against a company dominating the market and taking unfair advantage. For that reason, I object to the Cargill purchase of Continental's grain operations. This purchase would move Cargill from the category of dominator to the category of terminator of everyone else.

When I hear that the Cargill/Continental sale is in your hands, I hope that you will consider the impact on rural communities of this merger. I have had the chance to see these big players operate firsthand. I live across the road from a Cargill hog operation. The arrogance of these corporate fellows is astonishing. Making these guys more powerful would be another nail in the coffin for diverse rural communities like mine.

When independent operators are put out of business by big operators, as has happened in my community, everybody suffers. The markets have already gotten so concentrated that an out-of-favor producer can be cut off from being able to make a living. The big operators create environmental disasters that are impossible to regulate. When regulators get involved, they are ignored or tied up in court.

Consumers are hurt by this concentration, too. Consumers suffer from price-fixing and from lack of choice in the marketplace.

National policy has made corporations more powerful, and this needs to stop. These big operations do not treat producers like independent businessman. Instead, they are paid as little as possible while keeping as much as possible in the corporation. This hurts us all.

Please do all you can to stop this merger.

Sincerely,

Margot Ford McMillen

Sept. 27, 1999.

I am very much opposed to the Cargill-continental merger. Can't anyone see what is happening? Going big is not better—look what is happening to our schools, our little towns etc.—look at our grain prices now—the farms are all getting *too* big—soon there will be only a few farms left in each county—please use some *common* sense in this situation!

Darlene Milbreadt,

Echo, MN 56237.

September 28, 1999.

Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street N.W., Suite 500, Washington, D.C. 20530.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Mr. Fones: I am writing to express my opposition to Cargill Inc. purchasing the grain division of Continental Grain Co. I will leave the technical analysis to those qualified to do so and mainly focus on the human element involved. I want you to know how this will affect me and my community and hundreds of thousands like myself and their communities across this country.

I am a farmer from Northeast Missouri. I wish I could tell you that the proposed acquisition would leave me with one fewer choice when it came time to market the grain I raise. I can not make that claim as there is no Continental elevator in my area. I wish there were because then my choices of elevators would almost be double what they now are. I say almost because I have one soybean processor (ADM) who normally pays 7–10 cents more that their competitor (?), Bunge, who does not process soybeans at their location. It is reversed for corn and wheat as Bunge outbids ADM by substantial margins on these two crops 90% of the time. Thus you can see why I would welcome another elevator, regardless of who owns

Following are some of my reasons for opposing the merger:

1. This area of northeast Missouri, west central Illinois, and southeast Iowa are all part of a captive draw area for ADM in regards to soybean purchases. As recently as 10 years ago this tri-state area had no less than 4 competitive bidders for soybeans. Two processors, ADM and Quincy Soybean Co., and two river terminals, MFA Incorporated and Bunge. All of the soybeans purchased at the small country elevators eventually ended up being sold to one of these 4 purchasers. Within the last 10 years ADM has purchased Quincy Soybean Co. and Bunge has bought out MFA Inc.'s river terminal. That leaves the area where we are today with ADM and a non-competitive Bunge. I know first hand what a lack of competition means when it is time to sell my crops.

2. I use the Chicago Board of Trade to hedge my grain. I do not pretend to be an expert on the operation of the board but it concerns me when one firm will control 80% of the delivery points for futures settlement. I have read that this could lead to manipulation of futures contracts.

3. The United States agricultural community has been caught up in a frenzy of mergers and buyouts. This may be the weakest argument to make legally, but it is the strongest from the human element standpoint. This merger, like most of those before, is really a double edged sword. One side of the blade cuts out the inefficiencies of smaller entities when they increase economic size. The other edge cuts the fabric of Rural America. Each business we lose, be it a elevator, seed company or machinery manufacturer lessens competition among those who we do business with. This lessening of competition drives up cost which in turn drives producers from business.

It is extremely difficult for anyone not in the rural areas of the Midwest to fully understand rural infrastructure. I live near a town with a population of 2700. This size community, like thousands across this country, depends upon farmers and ranchers to provide a large portion of the fuel for their economic engines. Consolidation is killing rural America. Will stopping this merger or any other single acquisition reverse this

trend? No—but it will be a start to the revitalization of the rural areas of this country. Without a healthy rural area our country can not be whole. It is time for someone in a position of authority to step up and draw a line on this insanity. I hope this message reaches someone who has the courage and insight to do just that.

Sincerely,

Keith G. Mudd

Roger W. Fones,
Antitrust Division, U.S. Department of Justice, 325 7th St. NW, Suite 550 Washington, D.C. 20530.

October 9, 1999.

Dear Sir: Please consider this letter regarding the Cargill Continental merger very carefully.

Cargill, a company from my state of Minnesota, has been ruthless in dealing with farmers and small businesses. They practice buying the narrow point in the pipeline and using that position to control and dominate the industry.

I have personally experienced this when I sold three ship loads of corn to the Egyptian feed millers in 1995. The corn was to be loaded to Egyptian ships at the port of Duluth. Cargill would not load it and the deal fell through. The same scenario happened at the Port of New Orleans to the N.F.O.

This summer Cargill was bidding 20 cents above Chicago for corn delivered by rail to Duluth, however Cargill had booked all the rail cars so independent elevators could not take advantage at that price. Truck bid for the same commodity was 20 cents under Chicago. Thus *Market Domination.*

This merger would give Cargill control of most of the major ports and loading facilities on the U.S. and thus control of the movement of grain and other commodities in the U.S.

It is not wise or in the best national interest to allow one company to control this much of the food supply of the United States of America.

Sincerely,

Winton Nelson,

Darwin, MS 55243, 320–693–7966.

September 21, 1999.

Roger W. Fones,
Chief, of Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh St. NW, Suite 500, Washington, D.C. 20530.

Dear Mr. Fones: Please stop all these big corporate mergers. This is to stop the Cargill-Continental Merger as well as all large Ag corporate Mergers. Last winter in Texas in one county alone Cargill was feeding 83,000 head of beef feeders. Two miles away Continental was feeding 83,000 head. This has got to stop. They purchased alot of these cattle cheap from the drought in Texas and so forth. They purchased all the cheap feed manipulated by their marketing. Look into it yourself as they made mega bucks on the meat division. All this is ruining the family farmers. This is also ruining rural areas. Farmers spend their money locally. Cargill is in the seed, fertilizer, banking, chemical business. They do not support local areas at all. Farmers that are desperate to keep farming farm land all over for them. This does not help local areas. We need a stop on all mergers now.

They do not support local schools, or rural infrastructure. Do you want Cargill to get even bigger. They are farming land down in South America and paying the locals $250.00 per month. They are glad to farm down there because there is no infrastructure there. Do we want this to continue.

The grain marketing now is so concentrated. They are in the livestock business as well. They own the packing plants. Please look into these problems. They concentrate animals in large numbers. Look at the livestock in the large hog operations in North Carolina. We are going to pay for all this concentration.

Rural Areas need help from people like you. We need to have the anti-trust laws enforced. When Cargill Owns the Food Policy we will PAY.

Sincerely,

David Olson

Lei 'Ohu Farm

46–3615 Kahana Drive, Ahualoa, Honokaa, Hawaii, Phone: (808) 775–9473

FAX TO: Mr. Roger W. Fones, (202) 307–2784
FAX FROM: Glenn Oshiro
FAX #: (808) 775–9473
DATE: October 11, 1999
Re: Cargill, etc.

Please extend the period for public input on the Cargill Continental Grain matter. This is the first day I've heard of your deliberations, and I consider myself to be well informed. My business calls for me to be in touch with small farmers and ranchers. As you can imagine, this is ongoing and intensive being that there are few consistent means to reach the small producer, e.g. there are few, if any, umbrellas that cover small farmers and ranchers. Much of what I do to attract the attention of my clients is word of mouth, one on one.

While I'm not suggesting that you solicit responses from small producers individually, more time is necessary for word of the public comment period to reach small producers.

I am a farmer, business person, and stockholder.

Glenn S. Oshiro,

Buy from the Farmer.

September 18, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave., N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: After reading that the Department of Justice itself has admitted that the Cargill purchase of the Continental grain division would "substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers," I can only urge you to put a stop to it. This purchase is not in the public interest.

More and more lately I read in the business news about mergers between already massive corporations.

More and more I hear about how desperate farmers across America are again being squeezed between high costs they pay to raise animals and grow crops and low prices they're being offered for their livestock and produce.

Here in rural Mendocino and Sonoma counties, in Northern California, beautiful old apple and pear orchards are being bought from family farmers and then razed at a frantic price by investment corporations anxious to plant vineyards, the money-making crop of the moment. Other local ag producers and ranchers are finding the costs of farming and raising livestock too high to resist the pressure to sell off their land for vineyard conversions or rural residential subdivisions.

It is our government's duty to prevent any more mergers that further increase the costs to American family farmers. America needs to grow its own food. Putting agriculture in the hands of international corporations instead of the family farmers—as seems to be happening more and more rapidly—is a social and environmental disaster.

Thank you.

Jennifer Poole,

Willits, CA 95490, Mendocino County.

Mon., Oct. 11, 1999.
From: "Mike Callicrate" <mike@nobull.net>
To: <Undisclosed-Recipient:@secure06.levon.net;>
Date: Mon., Oct. 11, 1999, 12:22 PM
Subject: [HeartbeatUSA] last day for comment on Continental-Cargill merger

Consumers, family farmers, small-town business owners: Today, October 11, is your last chance for public comment on the creation of the world's largest food monopoly. It is the merger of Cargill and Continental Grain. Its effect will be to raise consumer prices and reduce the earnings of already-hurting family farmers and small businessmen. Monopolies always hurt the consumer by destroying competition.

You may register your objections to the above deal simply by faxing the Chief of Transportation, Energy and Agriculture Section (Mr. Roger W. Fones) at the following Fax number: 202/307–2784.

Use a simple, brief message like the following:

"Please conduct a more thorough investigation into the Cargill/Continental Grain sale before submitting a Final Judgment on the matter. Please extend the public comment period for another sixty days."

Public comment period officially closes tomorrow. Fax your message today.

verell@rahab.net

As states above.

Rae Powell

Amanda Bray

October 9. 1999.
Roger W. Fones,
Chief of Transportation, Energy and Agriculture, Anti Trust Division, U.S.

Department of Justice.

Dr. Fones: I urge you to Conduct a more Complete investigation into the sale of Cargill-Continental Grain, before submitting a final judgment.

Farm income in the United States is down by 70%.

Depressed prices are running farmers and small town business people.

Please delay the Comments deadline for another 60 days.

I appreciate your consideration.

Sincerely,

N. Ramsey,

Mesquite, TN 75150.

September 22, 1999.

Dear Mr. Roger Fones: The merger of Cargill & Continental Grain Co. Is a major concern of ours. This merger will take away our market freedom. Already we are hurting because to few people control our markets and tell us what they will give us and we have to take it.

I always believed the anti-trust laws were to protect the little man but it seems like no one abides by them any more and they just find ways to go around them. We know that it is not fair! Cargill is already one of the top 4 firms in beef, pork, turkey, chicken, corn, soybean and production in merger would just make these more powerful.

Thank you for reading this,

Mrs. Jan Richardson

A copy has also been sent to Attorney General Ken Salazor.

September 18, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave. N.W., Washington, D.C. 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you awaiting your approval is a "Final Judgment" filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its "Final Judgment", study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Howard H. Sargent,

Consumer, Boulder, CO 80303.

Central City, NE 68826
Sept. 26, 1999.
Department of Justice,
United States Government, Washington, D.C. 20510.

ATTN: Dept. for Comments on proposed Cargill-Continental merger

Dear Sirs: I am writing to voice my concern on the proposed Cargill buyout of Continental Grain Co. I would ask you to please disapprove this merger on the grounds that with the merger-mania of the past 20 years, the agricultural industry has become so concentrated that there is no free market.

Both the meat-packing plants and grain companies have gained a dangerous stranglehold on U.S. food production and prices. Shouldn't our anti-trust laws protect the people from such monopolies?

Eventually, even our farmer co-ops will have little influence in agriculture when they are up against such giants.

It is probable that thousands of family farmers will be going out of business this year—a tragedy for their families and for the nation. For the most part their only customers are the corporation giants which can name their own price—way below the cost of production, and the result of the over-concentration in the agricultural industry.

What safeguards are in place to make certain that food will continue to be affordable if family farms become a thing of the past?

Please use our anti-trust laws to protect all Americans.

Sincerely,

Lois Schank

Clyde Southern

Steele, MO 63877.

July 23, 1999.
The Honorable Judge Gladys Kessler,
U.S. District Court, District of Columbia, 333 Constitution Ave., NW, Washington, D.C. 20001.

Civil Action #991875 Filed 7–8–99.

Dear Judge Kessler: I write to you as a second-generation farmer located in the Missouri Bootheel area, along the Mississippi River at the juncture of Missouri, Arkansas and Tennessee. My family is primarily engaged in the production of soybeans, wheat, corn, and rice and we have experienced the great advantage of river barge transportation of our farm produce for many years. We like to think that we contribute to the prosperity of our nation by our involvement in international trade, not to mention our bountiful production that has alleviated hunger and starvation throughout the world.

The above civil action involves the Continental Grain Elevator which is located at Cottonwood Point (a historic ferry crossing), some ten miles south of our county seat at Caruthersville, and within a couple of miles of Arkansas. We have been privileged to sell grain to all of the grain elevators within this area, and conditions have always been amicable. In this flat alluvial valley, we can see many of the elevators along the river, and the Continental Storage Tanks are within sight of our farm.

I certainly agree with Joel Klein's statement in the Attorney General press release, which states "This enforcement action demonstrates the Department's commitment to preserve competition in agriculture." Over the years I have seen significant improvement in competition along the river, and producers in other parts of the nation are envious of the prices we receive on the spot market and the ability to book a favorable basis at local elevators or at the Chicago Board of Trade. Now comes a point of jeopardy which we perceive exists in one small portion of the divestitures listed in the final judgment of the civil action claim filed under Section 7 of the Clayton Act, as amended (15 U.S.C. 18).

I respectfully refer to Page 2, of the Final Judgment (Definitions) Paragraph F, "Caruthersville river elevator". Although this elevator has a mailing address of Route 1, Caruthersville, MO 63830, it is known locally as the Cottonwood Point facility, which is located 10 miles south of Caruthersville, near the Arkansas border. The nearest town and postoffice is Cooter, Missouri, three miles west. A modern bridge crossing to Tennessee along Interstate 155, leads to other elevators (within sight of the Continental elevator at Cottonwood Point). We have no trepidation or fear of monopoly practices from Cargill, which has an elevator at New Madrid, Missouri 45 miles to the north. The present fear is that one of the largest members of the International Grain Cartels is interested in purchasing the Continental facility at Cottonwood Point. We learn that Bunge Grain Company may have entered into negotiations to purchase the Continental elevator, which would pose a definite lack of competition for local grain farmers in their choice of port outlets in the area. The proximity of current Bunge elevators in our area of operation could artificially depress the prices offered for our grain.

- Nearby—Bunge has an elevator at Caruthersville (10 miles), one at Huffman, Arkansas (8 miles), one at Booths Point (across the river in Tennessee at the Interstate Bridge—15 miles), and one at Heloise directly across the river in Tennessee within eyesight of Continental.
- If Bunge purchases Continental at Cottonwood Point, this would given them a total of seven elevators along the river within a fifty-mile distance.

It is common knowledge locally that other large grain trading facilities are interested in purchasing the Continental facility at Cottonwood Point. Cargill would probably provide trade opportunities without restraint of trade in the area, and of course we would be happy to see Continental remain at its current location and with the same ownership.

However, we would like to offer one caveat in regard to the selection or location of any grain-trading firm at the current Continental Cottonwood Point site. The owners and operator must be large enough to trade and offer strong competition in the International trading arena. It would likely be impossible for a small independent grain elevator to offer competitive prices to local producers if it did not have the ability to compete and trade in a worldwide arena of International trade.

During this critical time of agriculture stress, it is imperative that we continue to have strong competition and fair prices for producers in our area. Therefore, we strongly insist that Bunge Grain should not be allowed to purchase the Continental Grain facility at Cottonwood Point, thus creating a near monopoly situation which would invalidate the current anti-trust action.

Sincerely,

Clyde Southern

October 12, 1999.
Mr. Tom Miller,
Iowa State Attorney General, Hoover State Office Building, Des Moines, Iowa.

Re: Cargil-Continental Grain Merger

Dear Mr. Miller: As a graduate of one of the finest Universities in the middlewest, Iowa State at Ames, with a major in soils and a minor in Agricultural Economics, I strongly urge you to vote NO for this merger. This merger will dictate less market choices for farmers, large and small alike. Today, a bushels of corn, (56 pounds of beautiful raw protein) will not buy a cheap hamburger in many restaurants. This merger, IF APPROVED, will lower the farmer's share of the retail market even still more.

Following my senior year at Iowa State, I took advantage of the long established ISU Ag. travel trip. It was a 10,000 mile accredited trip visiting areas in Detroit, Washington, D.C., Gainsville, Austin, and Denver. With four major stops per day, we studied crops, soils, and we also visited with farmers and ranchers along the way. One very interesting stop was along the lake area in Michigan where a overseas grain buyer/shipper was located by the name of Spencer. (No relation to me). I would like to see our government encourage the escalation of these small shippers. This would increase competition and help the family farmer win a fairer share of the consumer's food dollar. Please vote no for the merger of giant self serving corporations like Cargil and Continental.

Sincerely,

Lyle D. Spencer,

Goldfield, Iowa.

Blooming Prairie, MN 55917
September 28, 1999.
Mr. Roger W. Fones,
Chief, Transportation, Energy & Agriculture Section, Antitrust Division, U.S. Department of Justice, 325 Seventh St. NW Suite 500, Washington, DC 20530.

Dear Sir: The merger of Cargill and Continental Grain Co. is a major concern to the American farmer. This would increase Cargill's monopoly of the grain trade. Why should Cargill be any different than other big monopolies? Isn't this what anti-trust laws are for?

I am proud to be an American farmer. We feed the people! This is the *most* important occupation in the world! Why can't we be given the respect we deserve? We need fair prices at today's standard of living, not yesterday's!

If this merger goes through, Cargill will have even more power to control the farmer's prices and life. Look at the example of the hog farmer. What a shame the small hog farmer has been driven to give up. Why do all that hard work to lose money constantly?

Prices are already so horribly poor in all the markets we are hanging on only by the hope things will improve. When? Farmers can't wait much longer. Farmers work as hard as anybody in the world, yet can't get a fair price for all their hard work. Most everybody else's wages increase with the years. Not ours!

Look at rural America's communities. Their livelihood depends on what the farmer buys in town. There are many vacant stores in rural America. When the farmer doesn't have money, he stops buying everything but the bare necessities. It will trickle to the big cities eventually. Think depression! It's already here in rural America.

The U.S. Department of Justice needs to further investigate this merger and stop it! Also extend the deadline for comment and really get out in the rural communities and on the farms. *See* and *listen* to what its *really* like. Feel the hopelessness and pain!

What can the government do? Show us you care and stop this merger. Investigate who or what is *really* controlling the market. It's not the farmers who work so hard to feed the people!

Sincerely,

Ellen Stebbins

Pennack, MN 56279
October 6, 1999.
Roger W. Fones
Chief of Transportation, Energy And Agriculture Section, Antitrust Division, US Dept of Justice, 325 7th St., NW, Suite 550, Washington, DC 20530.

Dear Mr. Fones: As a retired owner of a 160 acre farm, my first interest is in farming and I am writing to protest the Cargill-Continental merger. Why are these big companies allowed to merge? Many years ago when I was in school there were antitrust laws to prevent monopolies. It seems that monopolies are now allowed so that among others, farmers have no say in setting prices on their products.

Monopolies are not only bad for farmers, they are bad for telephone users, cable to users, medical services and huge grocery store patrons. I think it is time to bring all of this to a stop.

Please do what you can to help farmers.

Sincerely,

Eleanor Stehieg

Stockton Ranch

Box 182,

Grass Range, MT 59032

October 11, 1999.
Roger W. Fones,
Chief of Transportation, Energy, and Agriculture Section, Fax: (202) 307–2784.

Dear Mr. Fones: the merger between Cargill and Continental will destroy any vestige of a competitive market for grains. I urge you to do a more thorough investigation before submitting a final judgment. Also the comment period has been too short for farmers to adequately respond to, please extend it by at least 60 days.

Sincerely yours,

Gilles Stockton

Lakin, Kansas 67860
October 12, 1999.
Mr. Roger Fones,
Chief Transportation, Energy & Agriculture Section, Antitrust Division, US Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

Dear Mr. Fones: I WISH TO REQUEST THAT YOU GRANT FURTHER CONSIDERATION TO THE PROPOSED CARGILL AND CONTINENTAL GRAIN SALE. PLEASE GRANT A SIXTY DAY COMMENT PERIOD EXTENSION AS I KNOW THAT MANY PEOPLE DID NOT COMMENT AS THEY WERE MADE TO BELIEVE BY MEDIA PRESENTATIONS THAT IT WAS A "DONE DEAL."

Please conduct a more thorough investigation and abide by your requirements to give all facets of the matter due consideration. Thank you for your attention to the issue and your service to all the American public. We would not wish to believe the allegations that such a takeover with extremely grave consequences for farmer and the consuming public would not have your serious evaluation.

With sincere respects,

Dr. Frankie M. Summers

Greenwich, NY 12834
October 4, 1999.
Judge Gladys Kessler,
U.S. District Court for the District of Columbia, 333 Constitution Ave. NW, Washington, DC 20001.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Judge Kessler: Presently before you awaiting your approval is a "Final Judgment" filed by the U.S. Department of Justice relative to the purchase of the grain merchandising division of Continental Grain Co. by the Cargill Corp.

Legal precedent, according to the Department of Justice, requires that "(t)he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is "within the reaches of the public interest.'"

In its July 8, 1999 "Final Judgment" I believe in fact that the Department of Justice has "breached its duty to the public in consenting to the decree" and that its "Final Judgment" is not "within the reaches of the public interest."

Clearly, as the Department of Justice's own "Complaint" states the Cargill purchase would "substantially lessen competition for purchases of corn, soybeans, and wheat in each of the relevant geographic markets, enabling it unilaterally to depress the prices paid to farmers. The proposed transaction will also make it more likely that the few remaining grain trading companies that purchase corn, soybeans, and wheat in these markets will engage in anticompetitive coordination to depress farm prices."

Using the Department of Justice's own figures and criteria we see in its "Complaint" that even before this announced purchase the

U.S. grain trade was already dominated, if not monopolized, by Cargill and nothing in the Department of Justice's "Final Judgment" addresses itself to that important issue.

Likewise, the Department of Justice must consider more that the grain buying operations of Cargill. The acquisition of Continental's seventy elevators will enhance the economic power of Cargill as a general matter. Such a result concerns farmers because Cargill's assets and economic power can be deployed across a range of agricultural sectors.

For example, Cargill stands out as a top-four firm in beef packing, cattle feedlots (where Continental is the largest), pork packing, broiler production, turkey production, animal feed plants, grain elevator capacity, flour milling, dry corn milling, wet corn milling, soybean crushing, and ethanol production. Such a dominant position across many agricultural markets will allow Cargill to transfer resources between sectors according to the economic conditions that are prevailing at a given time.

The ability to transfer assets will allow Cargill to maintain its dominant status in all of these markets irrespective of its competitive prowess. Unlike farmers, who are forced into bankruptcy after a few bad seasons, Cargill will maintain its dominant status over time regardless of economic performance over the short-term. With Continental's assets, Cargill will become an even more powerful and "sophisticated" firm, even more capable of strategic, cooperative, and anti-competitive behavior.

In the name of economic and social justice and the preservation of the family farm system of agriculture in the United States I urge you to recommend that the Department of Justice withdraw its "Final Judgment," study in far greater detail this ill-advised sale and carefully consider the grave anti-trust issues that it presents and the dire consequences to both producers and consumers of our food supply.

Sincerely,

Daniel J. Swartz,

A SEED Europe.

Auburn University, Alabama 36849–5406

College of Agriculture, Department of Agricultural Economics, and Rural Sociology, 202 Comer Hall, Telephone: (334) 844–4800, FAX: (334) 844–5639

September 15, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy & Agriculture Section, Antitrust Division, United States Department of Justice, 325 Seventh Street N.W., Suite 500, Washington, D.C. 20530.

Re: United States of America v. Cargill, Inc. and Continental Grain Company

Dear Mr. Fones: I am writing to state my opposition to Cargill's acquisition of Continental Grain Company. My opposition is based not on disapproval of either Cargill or Continental as individual firms, but on the merger as it relates to the reorganization of global agriculture that is unprecedented in terms of size and speed.

My objections to this merger are that it would: (1) Continue the erosion of competition in agriculture markets, (2) increase the imbalance of economic power favoring agribusiness giants at the expense of the farmer, and (3) decrease land and resource stewardship incentives in the emerging system.

Competition is fading in agricultural markets in part because of unprecedented mergers and acquisitions, and in part because of insidious joint ventures, strategic alliances, interlocking directorates and partial ownership of related agribusiness firms. These alliances, which are very difficult to trace, result in a fuzzy web of corporations and cooperatives that soften, if not threaten, competition. In some circles, the alliances are appropriately referred to as "corporate incest."

As just one example out of thousands of alliances that threaten competition, I would point to a Cargill corn processing plant in Eddyville, IA, which is connected by pipeline to a Heartland Lysine plant nearby. Nearing completion is a Midwest Lysine plant located in Blair, NE, which will also be connected to the Cargill corn processing plant. Midwest Lysine is a joint venture between Cargill Degussa Corp, while Heartland Lysine is owned by the Japanese firm, Ajinomoto, of lysine price-fixing fame. Are Midwest Lysine and Heartland Lysine going to engage in rigorous competition? Hardly. Arrangements such as this do not appear to be properly considered in DOJ evaluations of mergers.

Perhaps of more concern than softening competition is the increasing economic power of giant corporations over farmers. The emerging food system has a few vertically integrated supply chains like Cargill, in which production is increasingly contracted out to farmers. With contract production, farmers have little economic power and continue in farming at the discretion of the supply chain corporations. Supply chain corporations can thus extract essentially all of the economic profits, leaving the contract farmer with a subsistence level of income composed of very low returns to management and labor.

Agricultural cooperatives were established under the Capper-Volstad Act as a way for farmers to horizontally organize to countervail market (economic) power held by corporations. Unfortunately, the giant cooperatives have drifted from this mission. Giant cooperatives are evolving to a vertical structure, run more for the benefit of managers that for benefit of the farmer members. At best, the farmer member is relegated to the position held by a minority stockholder in a corporation. At worst, the farmer member is a minority stockholder that cannot get his equity out of the corporation until death.

Cooperatives have formed hundreds of alliances and joint ventures with the giant corporations like Cargill. For example, Cargill has a 50–50 joint venture with Delta Growers Association, a Cooperative. Deals like this have the potential for a subtle "co-opting of co-ops" by corporations. Thus, in my opinion, many of the existing cooperatives should not be viewed as countervailing corporate power.

In this emerging vertically integrated supply system, the giant corporations do not own the land and other resources used in production agriculture, yet input and production decisions are dictated by CEO's. Incentives for conservation of land and other resource are thus lost, and could lead to degradation of natural resources. Furthermore, having land management decisions made by people (CEO's) who are not intimate with the land is asking for trouble.

Those of us in major poultry production areas have witnessed contracting for over 30 years. The bottom line is that contract producers invest one-half of the capital in the industry, yet capture a proportionally much smaller percentage of the returns. Moreover, contract poultry producers know that if they speak out against "The Man" (the integrator) they will be instantly bankrupt. Is this the kind of Society we want?

Individually, many of the recent mergers, acquisitions and joint ventures involving large agribusiness corporations may appear innocuous. Collectively, however, they are quickly moving us down the road to agricultural feudalism with only a few firms controlling much of the world's food supply. The DOJ appears to assess mergers in terms of horizontal competition, without giving adequate consideration to vertical power imbalances.

I respectfully request that you stop the merger of Cargill and Continental. All mergers of corporations and cooperatives alike should be blocked pending a thorough, objective evaluation of whether the frenzy of mergers, acquisitions and alliances is in Society's best interest.

Thank you.

Sincerely,

C. Robert Taylor,

ALFA Eminent Scholar and Professor of Agricultural Economics.

To: Mr. Roger W. Fones
Sent: 10/10/1999 at 2:44:56 PM
Subject: Cargill/Continental Grain Merger

Dear Sir: I respectfully request that you conduct a more thorough investigation of the Cargill/Continental grain sale before submitting a final judgment on the matter. Please extend the public comment period for another sixty days.

Sincerely,

Janice Urie,

Rt. 1, Box 28B, Lakin, KS 67860.

October 11, 1999.

Dear Sirs: I want to strongly oppose the proposed merger of Cargill and Continental Grain.

As a farmer from South Dakota we need all the competing entities we can get it called capitalism!

No No No

Sincerely,

James H. Peht,

Keldion, SD 57634.

October 11, 1999.

Mr. Roger W. Fones,

Chief, Transportation, Energy and Agriculture Section, Anti-Trust Division, U.S. Department of Justice, 325 Seventh Street, NW, Suite 500, Washington, DC 20530.

FAX: 202/307–2784

Dear Mr. Fones: The purpose of this letter is to request that you conduct further investigation of the Cargill-Continental Grain sale and that you extend the comment deadline for another sixty days.

The creation of a larger monopoly will not only depress grain prices further in this country, but also be detrimental to all consumers.

Monopolies always create higher prices for the consuming public. They create even lower prices for those who must sell their commodities to the monopolies. Grain prices are already far below break-even.

Farmers are going broke in our state at an alarming rate. Across the U.S., farm income is down by 70%. Depressed prices are ruining not only farmers but all small-town businesses. I urge you to conduct a more thorough investigation into the Cargill/Continental Sale before submitting a final judgment on this.

Please give this your serious consideration.

Sincerely,

Gerald Luin.

Litchfield, MN

Roger W. Fones: Please do not let Cargill merge with Continental. Cargill is the most disliked name in Agriculture. Cargill don't respect other businesses. It thinks of Cargill's bottom line only. They are making massive amounts of money on farmers. In the mean time farmers are making record low profits. USDA census reports 50% of farmers in the U.S. are making a profit and 50% are not. They flood the market with livestock. I would rather see farmers produce the livestock. Wouldn't you? When I drive around my county I see empty livestock facilities everywhere. Rural America is getting very ugly. It is very depressing.

Cargill also imports grain into the U.S. which floods our markets and this lower our prices. Cargill is giving up in South America to buy grain down there to flood the world with more grain.

I know a very reputable grain elevator owner. He is furious with Cargill. He sells his grain to loading facilities on the river. He is faced to sell most of his grain to Cargill because of lack of competition. Cargill treats this elevator owner very poorly. Cargill close at 3:00, which doesn't allow much time to haul grain there 70 miles away. There was also a problem with the size of the trucks he uses. They don't want him hauling there anymore. They are simply disrespectful people.

Farmers could buy chicken manure from a large complex here. Cargill moved in and bought up all the manure and are not doubling the price for the manure. I am an organic farmer. I need to stockpile manure for six months. I called Cargill to see if I could pick it up myself and they said no.

Cargill also got into the scrap metal industry recently. The scrap prices dropped to record low levels. Both of our scrap metal buyers are going out of business in one year. Is there a connection?

I tried to buy a bag of salt and without the Cargill name on it. Six out of eight businesses sold Cargill band salt in my town.

We heard that other countries get very poor quality grain from Cargill. These countries would like to try farmer direct to get better quality. We've tried to do that, but the facilities would not allow that. We need public facilities. Could the government buy Continental Grain? Cargill also has a negative impact on government for farmers.

This company is getting too big. It doesn't respect other people in business. There is a lot of people trying to make a living in this country. It is unfair to let the big get bigger and the small independents get swept under the rug.

I will not do business with Cargill, and I know many other people who also will not.

It's time to realize bigness is hurting independent business in this country. This is making rural US.

Please think PEOPLE BEFORE MONEY. It's time to regulate how big a company can get. It's our responsibility to secure our future for he young people who want to be independent.

Thank you for reading my letter. Please do the right thing.

Sincerely,

Scott D. Anderson.

Mr. Roger Fones, Chief, Transportation, Energy & Agriculture, Antitrust Division, US Dept. of Justice, 325 Seventh Street, NW, #500, Washington, DC 20530.

Re: Final Judgment on Cargill's proposed purchase of Continental Grain

Dear Mr. Fones: We are very opposed to this purchase! It will less competition and decrease prices for farmers. This is bad for all farmers who are not large agri businesses. We ask you to deny this purchase.

Rosie Seymour,

Superior WI 54880

Bob,

Superior WI 54880

Michael C. Cramey,

Foxboro, WI 54836

Connie M. Cramey,

Chaffey Rd, Foxboro WI 54836

Laura Cenley,

Superior, WI 54880

Janice Watten,

Duluth, MN 55805

Carol Stevens,

Superior, WI 54880

Dear Mr. Roger Fones: As an independent agricultural producer, I strongly urge you to conduct a more thorough investigation of the Cargill/Continental Grain sale. Please extend the public comment period for another sixty days.

Sincerely,

[no signature]

[FR Doc. 00–4591 Filed 3–23–00; 8:45 am]

BILLING CODE 4410–11–M

Federal Register

Friday,
March 24, 2000

Part IV

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development; Federal Property Suitable as Facilities To Assist the Homeless; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–12]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: DOT: Mr. Rugene Spruill, Principal, Space Management, SVC–140, Transportation Administrative Service Center, Department of Transportation, 400 7th Street, SW, Room 2310; (202) 366–4246; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: March 16, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

Title V, Federal Surplus Property Program Federal Register Report for 3/24/00

Suitable/Available Properties

Buildings (by State)

Hawaii

Bldg. S87, Radio Trans. Fac.
Lualualei, Naval Station, Eastern Pacific
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 77199240011
Status: Unutilized
Comment: 7566 sq. ft., 1-story, needs rehab, most recent use—storage, off-site use only

Bldg. 64, Radio Trans. Facility
Naval Computer & Telecommunications Area
Wahiawa Co: Honolulu HI 96786–3050
Landholding Agency: Navy
Property Number: 77199310004
Status: Unutilized
Comment: 3612 sq. ft., 1-story, access restrictions, needs rehab, most recent use—storage, off-site use only

Bldg. 442, Naval Station
Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199630088
Status: Excess
Comment: 192 sq. ft., most recent use—storage, off-site use only

Bldg. S180
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640039
Status: Unutilized
Comment: 3412 sq. ft., 2-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. S181
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640040
Status: Unutilized
Comment: 4258 sq. ft., 1-story, most recent use—bomb shelter, off-site use only, relocation may not be feasible

Bldg. 219
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640041
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Bldg. 220

Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640042
Status: Unutilized
Comment: 620 sq. ft., most recent use—damage control, off-site use only, relocation may not be feasible

Bldg. 160
Naval Station, Pearl Harbor
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840002
Status: Excess
Comment: 6070 sq. ft., needs rehab, presence of lead paint, most recent use—storage/office, off-site use only

Facility No. 92
Naval Computer & Telecom.
Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930076
Status: Excess
Comment: 1008 sq. ft., needs rehab, most recent use—storage, off-site use only

Facility No. 99
Naval Computer & Telecom. Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930077
Status: Excess
Comment: 544 sq. ft., concrete, needs rehab, presence of asbestos, most recent use—storage, off-site use only

Facility No. 127
Naval Computer & Telecom. Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930078
Status: Excess
Comment: 198 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Facility No. 227
Naval Computer & Telecom. Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930079
Status: Excess
Comment: 2240 sq. ft., needs rehab, presence of asbestos, most recent use—weight room, off-site use only

Facility No. 285
Naval Computer & Telecom. Area Master Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199930080
Status: Excess
Comment: 418 sq. ft., needs rehab, most recent use—storage, off-site use only

Bldg. 5175
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 77199940033
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only

Bldg. 5179
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 77199940034
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only

Bldg. 5183
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 77199940035
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only

Bldg. 5187
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 77199940036
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only

Bldg. 5191
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96705–
Landholding Agency: Navy
Property Number: 77199940037
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only

Bldg. 5193
Naval Public Works
Iroquois Ave.
Ewa Beach Co: Honolulu HI 96706–
Landholding Agency: Navy
Property Number: 77199940038
Status: Excess
Comment: 1328 sq. ft., possible asbestos/lead paint, most recent use—residence, off-site use only

Maine

Bldg. 4
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930005
Status: Excess
Comment: 16,644 sq. ft., presence of asbestos/lead paint, most recent use—headquarters building, off-site use only

Bldg. 8
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930006
Status: Excess
Comment: 7413 sq. ft., presence of asbestos/lead paint, most recent use—public works building, off-site use only

Bldg. 12
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930007
Status: Excess
Comment: 25,354 sq. ft., presence of asbestos/lead paint, most recent use—admin., off-site use only

Bldg. 41
Naval Air Station
Brunswick Co: ME 04011–
Landholding Agency: Navy
Property Number: 77199930008
Status: Excess
Comment: 10,526 sq. ft., presence of asbestos/lead paint, most recent use—security building, off-site use only

New Hampshire

Bldg. 128
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830015
Status: Excess
Comment: 10,900 sq. ft., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. 185
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830016
Status: Excess
Comment: 2310 sq. ft., needs rehab, presence of asbestos, most recent use—office, off-site use only

Bldg. 314
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830017
Status: Excess
Comment: cement block bldg., needs rehab, presence of asbestos, most recent use—storage, off-site use only

Bldg. 336
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830018
Status: Excess
Comment: metal bldg w/cement block foundation, off-site use only

Bldg. 160
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910046
Status: Unutilized
Comment: 6080 sq. ft., possible asbestos, most recent use—storage, off-site use only

New Jersey

Old Bridge Housing
Route 9
Old Bridge Co: NJ 08857–
Landholding Agency: GSA
Property Number: 54199940010
Status: Excess
Comment: 12 three bedroom housing units, no long-term wastewater treatment system for property, presence of asbestos/lead paint, needs repair
GSA Number: 0–0–NJ–000

Bldg. D1–A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940024

Status: Unutilized
Comment: 1134 sq. ft., presence of lead paint, most recent use—smokehouse/lunchroom, off-site use only

Bldg. HA–1A
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940025
Status: Unutilized
Comment: 120 sq. ft., most recent use—storage, off-site use only

Suitable/Unavailable Properties

Buildings (by State)

Puerto Rico

Bldgs. 501 & 502
U.S. Naval Radio Transmitter Facility
State Road No. 2
Juana Diaz PR 00795–
Landholding Agency: Navy
Property Number: 77199530007
Status: Underutilized
Comment: Reinforced concrete structures, limited access, needs rehab, most recent use—transmitter and power house

Virginia

Naval Medical Clinic
6500 Hampton Blvd.
Norfolk Co: Norfolk VA 23508–
Landholding Agency: Navy
Property Number: 77199010109
Status: Unutilized
Comment: 3665 sq. ft., 1 story, possible asbestos, most recent use—laundry.

Land (by State)

Virginia

Naval Base
Norfolk Co: Norfolk VA 23508–
Location: Northeast corner of base, near Willoughby housing area.
Landholding Agency: Navy
Property Number: 77199010156
Status: Unutilized
Comment: 60 acres; most recent use—sandpit; secured area with alternate access.

Land—CD area
Naval Base Norfolk
Norfolk VA 23511–2797
Landholding Agency: Navy
Property Number: 77199830022
Status: Unutilized
Comment: 2 acres, open space

Suitable/To Be Excessed

Buildings (by State)

Puerto Rico

Bldg. 561
Former Ramey AFB
Aquadilla PR 00604–
Landholding Agency: Navy
Property Number: 77199630001
Status: Unutilized
Comment: 102666 sq. ft. bldg. on 5.006 acres, most recent use—manufacturing, office and freight distribution center, presence of asbestos

Unsuitable Properties

Buildings (by State)

Alaska

"Gazebo"
Coast Guard
Cordova Co: AK 99574–
Landholding Agency: DOT
Property Number: 87200010002
Status: Unutilized
Reason: Extensive deterioration

California

Bldg. 210
Naval Station, San Diego
San Diego CA 92136–
Landholding Agency: Navy
Property Number: 77199830001
Status: Excess
Reason: Extensive deterioration

Bldg. 444
Naval Station
San Diego CA 92136–5065
Landholding Agency: Navy
Property Number: 77199830122
Status: Excess
Reason: Extensive deterioration

Bldg. 209
Naval Station, San Diego
San Diego CA 92136–5294
Landholding Agency: Navy
Property Number: 77199840001
Status: Excess
Reason: Extensive deterioration

Bldgs. 20106, 20195
Naval Air Weapons Station
China Lake Co: CA 93555–
Landholding Agency: Navy
Property Number: 77199930001
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldgs. 40, 62
Naval Air Station, North Island
Imperial Beach Co: CA 91932–
Landholding Agency: Navy
Property Number: 77199930024
Status: Excess
Reason: Extensive deterioration

Bldg. 5UT4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930081
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5US4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930082
Status: Unutilized
Reason: Extensive deterioration

Bldg. 127
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930083
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930084
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930085
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930086
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5A9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930087
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930088
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930089
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930090
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5B9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930091
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C6
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930092
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C7
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930093
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C8
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930094
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5C9
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930095
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D1
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930096
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D2
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930097
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D3
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930098
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D4
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930099
Status: Unutilized
Reason: Extensive deterioration

Bldg. 5D5
Marine Corps Recruit Depot
San Diego Co: CA 92140–
Landholding Agency: Navy
Property Number: 77199930100
Status: Unutilized
Reason: Extensive deterioration

Bldg. 206
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930105
Status: Unutilized
Reason: Extensive deterioration

Bldg. 432
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930106
Status: Unutilized
Reason: Extensive deterioration

Bldg. 433
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930107
Status: Unutilized
Reason: Extensive deterioration

Bldg. 435
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930108
Status: Unutilized
Reason: Extensive deterioration

Bldg. 456
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930109
Status: Unutilized
Reason: Extensive deterioration

Bldg. 921
Naval Weapons Station Seal Beach
Seal Beach Co: CA 90740–5000
Landholding Agency: Navy
Property Number: 77199930110
Status: Unutilized
Reason: Extensive deterioration

Bldg. 201
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940002
Status: Unutilized
Reason: Extensive deterioration

Bldg. 205
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940003
Status: Unutilized
Reason: Extensive deterioration

Bldg. 227
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940004
Status: Unutilized
Reason: Extensive deterioration

Bldg. 230
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940005
Status: Unutilized
Reason: Extensive deterioration

Bldg. 232
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 337
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 338
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940008
Status: Unutilized
Reason: Extensive deterioration

Bldg. 339
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 349
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 362
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940011
Status: Unutilized
Reason: Extensive deterioration

Bldg. 363
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 410
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940013
Status: Unutilized
Reason: Extensive deterioration

Bldg. 438
Naval Weapons Station
Fallbrook Co: CA 92028–3187
Landholding Agency: Navy
Property Number: 77199940014
Status: Unutilized
Reason: Extensive deterioration

Bldg. Q100
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940067
Status: Excess
Reason: Extensive deterioration

Bldg. Q102
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940068
Status: Excess
Reason: Extensive deterioration

Bldg. 106
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940069
Status: Excess
Reason: Extensive deterioration

Bldg. 111
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940070
Status: Excess
Reason: Extensive deterioration

Bldg. 112
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940071
Status: Excess
Reason: Extensive deterioration

Bldg. 613
NAS, North Island
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940072
Status: Excess
Reason: Extensive deterioration

Bldg. 55
Naval Amphibious Base
Coronado Co: CA 92118–
Landholding Agency: Navy
Property Number: 77199940073
Status: Excess
Reason: Extensive deterioration

OT68 Space & Navy Warfare Systems Center
San Diego Co: CA 92152-5001
Landholding Agency: Navy
Property Number: 77200010076
Status: Unutilized
Reason: Floodway

Bldg. 1234
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010077
Status: Excess
Reason: Extensive deterioration

Bldg. 1439
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010078
Status: Excess
Reason: Extensive deterioration

Bldg. 1443
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010079
Status: Excess
Reason: Extensive deterioration

Bldg. 2231
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010080
Status: Excess
Reason: Extensive deterioration

Bldg. 2232
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010081
Status: Excess
Reason: Extensive deterioration

Bldg. 2582
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010082
Status: Excess
Reason: Extensive deterioration

Bldg. 2583
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010083
Status: Excess
Reason: Extensive deterioration

Bldg. 21544
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010084
Status: Excess
Reason: Extensive deterioration

Bldg. 21549
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010085
Status: Excess
Reason: Extensive deterioration

Bldg. 25131
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010086
Status: Excess
Reason: Extensive deterioration

Bldg. 32927
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010087
Status: Excess
Reason: Extensive deterioration

Bldg. 130167
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010088
Status: Excess
Reason: Extensive deterioration

Bldg. 130175
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010089
Status: Excess
Reason: Extensive deterioration

Bldg. 20176
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010090
Status: Excess
Reason: Extensive deterioration

Bldg. 201487
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010091
Status: Excess
Reason: Extensive deterioration

Bldg. 1684
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010092
Status: Excess
Reason: Extensive deterioration

Bldg. 16146
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010093
Status: Excess
Reason: Extensive deterioration

Bldg. 43332
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010094
Status: Excess
Reason: Extensive deterioration

Bldg. 43333
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010095
Status: Excess
Reason: Extensive deterioration

Bldg. 43334
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010096
Status: Excess
Reason: Extensive deterioration

Bldg. 43335
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010097
Status: Excess
Reason: Extensive deterioration

Bldg. 43336
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010098
Status: Excess
Reason: Extensive deterioration

Bldg. 43337
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010099
Status: Excess
Reason: Extensive deterioration

Bldg. 52651
Marine Corps Base
Camp Pendleton Co: CA 92055–
Landholding Agency: Navy
Property Number: 77200010100
Status: Excess
Reason: Extensive deterioration

Connecticut

DG1–DG8, DG10–DG–27
Dolphin Gardens
Naval Submarine Base New London
Groton Co: New London Ct 06349–
Landholding Agency: Navy
Status: Unutilized
Reason: Extensive deterioration

Florida

Bldg. 648
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920087
Status: Unutilized
Reason: Secured Area

Bldg. 1882
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920088
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3228
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920089
Status: Unutilized
Reason: Secured Area

Bldg. 3604
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920090
Status: Unutilized
Reason: Secured Area

Bldg. 3605
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920091
Status: Unutilized
Reason: Secured Area

Bldg. 3626
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920092
Status: Unutilized
Reason: Secured Area

Bldg. 3674
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199920093
Status: Unutilized
Reason: Secured Area

Bldg. A–146
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930027
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–232
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930028
Status: Unutilized
Reason: Extensive deterioration

Bldg. A–4020
Boca Chica Annex
Naval Air Station
Key West Co: Monroe FL 33040–
Landholding Agency: Navy
Property Number: 77199930029
Status: Unutilized
Reason: Extensive deterioration

Bldg. 3451
Naval Air Station
Pensacola Co: Escambia FL 32508–
Landholding Agency: Navy
Property Number: 77199940066
Status: Unutilized
Reason: Secured Area

Georgia

Bldg. 3012
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199910001
Status: Unutilized
Reason: Extensive deterioration

Facility 5001
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940016
Status: Unutilized
Reason: Secured Area

Facility 5002
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940017
Status: Unutilized
Reason: Secured Area

Facility 5003
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940018
Status: Unutilized
Reason: Secured Area

Facility 5935
Naval Submarine Base
Kings Bay Co: Camden GA 31547–
Landholding Agency: Navy
Property Number: 77199940019
Status: Unutilized
Reason: Secured Area

Guam

Bldg. 296
Communications Annex
Dededo Co: GU 96537–
Landholding Agency: Navy
Property Number: 77199920132
Status: Unutilized
Reason: Secured Area

Structures 312, 1792
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930002
Status: Excess
Reason: Secured Area

Structures 2020, 2021
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930003
Status: Excess
Reason: Secured Area

Bldg. 3171
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–
Landholding Agency: Navy
Property Number: 77199930004
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 76
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930047
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 264
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930048
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 2012
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930049
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 3114
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930050
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3151
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930051
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3152
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930052
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3153
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930053
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3154
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930054
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3155
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930055
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3268A
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930056
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 4400
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930057
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 4402
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930058

Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 4414
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930059
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 4425
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930060
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldgs. 4426–4428
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930061
Status: Unutilized
Reasons: Secured Area, Extensive deterioration
Bldg. 5408
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930062
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration
Bldg. 5540
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930063
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration
Bldg. 5541
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930064
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration
Small Craft Bldg.
U.S. Naval Forces
COMNAVMARIANAS
Waterfront Annex Co: GU 96540–0051
Landholding Agency: Navy
Property Number: 77199930065
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Hawaii

Bldg. 126, Naval Magazine
Waikele Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230012
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive Deterioration, Secured Area
Bldg. Q75, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230013
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area
Bldg. 7, Naval Magazine
Lualualei Branch
Lualualei Co: Oahu HI 96792–
Landholding Agency: Navy
Property Number: 77199230014
Status: Unutilized
Reasons: Extensive Deterioration, Secured Area
Bldg. 6, Pear Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199410003
Status: Unutilized
Reason: Extensive deterioration
Bldg. 10, Pear Harbor
Richardson Recreational Area
Honolulu Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199410004
Status: Unutilized
Reason: Extensive deterioration
Bldg. 9
Navy Public Works Center
Kolekole Road
Lualualei Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530009
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area
Bldg. X5
Nanumea Road
Pearl Harbor Co: Honolulu HI 96782–
Landholding Agency: Navy
Property Number: 77199530010
Status: Excess
Reason: Secured Area
Bldg. SX30
Nanumea Road
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199530011
Status: Excess
Reason: Secured Area
Bldg. 98
Pearl Harbor Naval Shipyard
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199620032
Status: Excess
Reason: Extensive deterioration
Bldg. Q13
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640035
Status: Unutilized
Reason: Extensive deterioration
Bldg. Q14
Naval Station, Ford Island
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199640036
Status: Unutilized
Reason: Extensive deterioration
Bldg. 40
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830028
Status: Unutilized
Reason: Extensive deterioration
Bldg. 50
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830029
Status: Unutilized
Reason: Extensive deterioration
Bldg. Q76
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830030
Status: Unutilized
Reason: Extensive deterioration
Bldg. Q334
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830031
Status: Unutilized
Reason: Extensive deterioration
Bldg. S380
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830032
Status: Unutilized
Reason: Extensive deterioration
Bldg. S381
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830033
Status: Unutilized
Reason: Extensive deterioration
Bldg. Q410
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830034
Status: Unutilized
Reason: Extensive deterioration
Bldg. Q422
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830035
Status: Unutilized
Reason: Extensive deterioration
Bldg. 429
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830036
Status: Unutilized
Reason: Extensive deterioration
Bldg. 431
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830037

Status: Unutilized
Reason: Extensive deterioration
Bldg. 447
Naval Magazine Lualualei
Co: Oahu HI 96792–4301
Landholding Agency: Navy
Property Number: 77199830038
Status: Unutilized
Reason: Extensive deterioration
Facility S–721
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840042
Status: Excess
Reason: Secured Area
Facility S–897
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840043
Status: Excess
Reason: Secured Area
Facility S–937
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840044
Status: Excess
Reason: Secured Area
Facility 19
Naval Station
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199840045
Status: Excess
Reason: Secured Area
Facility 63
Naval Computer & Telecomm. Station
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199920013
Status: Excess
Reason: Extensive deterioration
Facility SX30
Naval Public Works Center
Pearl Harbor Co: Honolulu HI 96860–
Landholding Agency: Navy
Property Number: 77199920027
Status: Excess
Reason: Secured Area, Extensive deterioration
Bldg. 102
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number: 77199930066
Status: Unutilized
Reason: Extensive deterioration
Bldg. 103
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number: 77199930067
Status: Unutilized
Reason: Extensive deterioration
Bldg. 104
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number 77199930068
Status: Unutilized
Reason: Extensive deterioration
Bldg. 107
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number 77199930069
Status: Unutilized
Reason: Extensive deterioration
Bldg. 108
Molokai Training Support Facility
Molokai Co: HI 96820–
Landholding Agency: Navy
Property Number 77199930070
Status: Unutilized
Reason: Extensive deterioration
Bldg. 330
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199940061
Status: Excess
Reason: Extensive deterioration
Bldg. 348
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199940062
Status: Excess
Reason: Extensive deterioration
Bldg. 349
NCTAMS PAC
Wahiawa Co: HI 96786–
Landholding Agency: Navy
Property Number: 77199940063
Status: Excess
Reason: Extensive deterioration

Illinois

Bldg. 415
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840023
Status: Unutilized
Reason: Secured Area
Bldg. 1015
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840024
Status: Unutilized
Reason: Secured Area
Bldg. 1016
Naval Training Center
201 N. Decatur Ave.
Great Lakes IL
Landholding Agency: Navy
Property Number: 77199840025
Status: Unutilized
Reason: Secured Area
Bldg. 910
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920055
Status: Unutilized
Reason: Secured Area
Bldg. 800
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920056
Status: Unutilized
Reason: Secured Area
Bldg. 1000
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920057
Status: Unutilized
Reason: Secured Area
Bldg. 1200
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920058
Status: Unutilized
Reason: Secured Area
Bldg. 1400
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920059
Status: Unutilized
Reason: Secured Area
Bldg. 1600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920060
Status: Unutilized
Reason: Secured Area
Bldg. 2600
Naval Training Center
Great Lakes Co: IL 60088–5000
Landholding Agency: Navy
Property Number: 77199920061
Status: Unutilized
Reason: Secured Area

Maine

Aircraft Hanger #2
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199810015
Status: Excess
Reason: Extensive deterioration
Bldg. 13
Naval Air Station
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840005
Status: Excess
Reason: Extensive deterioration
Bldg. 15
Naval Air Base
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840006
Status: Excess
Reason: Extensive deterioration
Bldg. 16
Naval Air Base
Brunswick Co: Cumberland ME 04011–
Landholding Agency: Navy
Property Number: 77199840007
Status: Excess
Reason: Extensive deterioration

Maryland

15 Bldgs.
Naval Air Warfare Center
Patuxent River Co: St. Mary's MD 20670–5304
Landholding Agency: Navy
Property Number: 77199730062
Status: Unutilized
Reason: Extensive deterioration

Mississippi

Bldg. 78
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830047
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 113
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830048
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 147
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830049
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 187
Naval Construction Battalion Center
Gulfport Co: Harrison MS 39501–5001
Landholding Agency: Navy
Property Number: 77199830050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 7
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930010
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 75
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930011
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 179
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930012
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Structure 262
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930013
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 279
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930014
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 326
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930015
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 412
Construction Battalion Center
Gulfport Co: Harrison MS 39501–
Landholding Agency: Navy
Property Number: 77199930016
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

New Hampshire

Bldg. 89
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830086
Status: Unutilized
Reason: Secured Area

Bldg. 99
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830088
Status: Unutilized
Reason: Secured Area

Bldg. 115
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830089
Status: Unutilized
Reason: Secured Area

Bldg. 178
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830090
Status: Unutilized
Reason: Secured Area

Bldg. 298
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830091
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. H–21
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199830092
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Dry Dock 1
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840012
Status: Underutilized
Reason: Secured Area

Dry Dock 3
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840013
Status: Underutilized
Reason: Secured Area

Berth 2
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840014
Status: Underutilized
Reason: Secured Area

Berth 11
Portsmouth Naval Shipyard
Portsmouth NH 03804–5000
Landholding Agency: Navy
Property Number: 77199840015
Status: Underutilized
Reason: Secured Area

Parcel #1
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910002
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Parcel #2
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910003
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Parcel #3
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199910004
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 55
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199940020
Status: Unutilized
Reason: Secured Area

Bldg. 150
Portsmouth Naval Shipyard
Portsmouth Co: NH 03804–5000
Landholding Agency: Navy
Property Number: 77199940021
Status: Unutilized
Reason: Secured Area

New Jersey

Bldg. 188
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199830065
Status: Unutilized
Reason: Extensive deterioration

Bldg. 473
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920024
Status: Unutilized
Reason: Extensive deterioration

Bldg. 474
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199920025
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 220, 234, 236
Naval Air Engineering Station
Lakehurst Co: Ocean NJ 08733–5000
Landholding Agency: Navy
Property Number: 77199930017
Status: Unutilized
Reason: Extensive deterioration

28 Sheds
Naval Weapons Station
Colts Neck Co: NJ 07722–
Landholding Agency: Navy
Property Number: 77199940026
Status: Unutilized
Reason: Extensive deterioration

North Carolina

Bldg. 96
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820111
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 97
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820112
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 169
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820113
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 196
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820114
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 477
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820115
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 3422
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199820116
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. TC–849
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199920062
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. TC–852
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77199920063
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 2159
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number: 77199920146
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Structure 3758
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28532–
Landholding Agency: Navy
Property Number: 77199920147
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 8027
Marine Corps Air Station, Cherry Point
Bogue Co: NC 28584–
Landholding Agency: Navy
Property Number: 77199930043
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 8028
Marine Corps Air Station, Cherry Point
Bogue Co: NC 28584–
Landholding Agency: Navy
Property Number: 77199930044
Status: Excess
Reasons: Secured Area, Extensive deterioration

Bldg. 1649
Marine Corps Air Station, Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199940022
Status: Excess
Reasons: Secured Area, Extensive deterioration

Pennsylvania

Bldg. 524
Naval Systems Engineering Station
Philadelphia PA 19112–
Landholding Agency: Navy
Property Number: 77199830023
Status: Unutilized
Reason: Extensive deterioration

Bldg. 152
Naval Air Station Willow Grove
Willow Grove Co: Montgomery PA 19113–
Landholding Agency: Navy
Property Number: 77199930018
Status: Excess
Reason: Extensive deterioration

Bldg. 185
Naval Air Station Willow Grove
Willow Grove Co: Montgomery PA 19113–
Landholding Agency: Navy
Property Number: 77199930019
Status: Excess
Reason: Extensive deterioration

Bldg. 603
Naval Support Station
Mechanicsburg Co: Cumberland PA 17055–0788
Landholding Agency: Navy
Property Number: 77199940015
Status: Unutilized
Reason: Extensive deterioration

Facility 22
Naval Support Station
Philadelphia Co: PA 19111–5098
Landholding Agency: Navy
Property Number: 77199940060
Status: Excess
Reason: Extensive deterioration

Puerto Rico

Bldg. 433
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830066
Status: Unutilized
Reason: Extensive deterioration

Bldg. 434
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830067
Status: Unutilized
Reason: Extensive deterioration

Bldg. 464
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830068
Status: Unutilized
Reason: Extensive deterioration

Bldg. 762
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830069
Status: Unutilized
Reason: Extensive deterioration

Bldg. 763
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830070
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1927
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830071
Status: Unutilized
Reason: Extensive deterioration

Bldg. 175
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830072
Status: Unutilized
Reason: Extensive deterioration

Former No. 2091
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830073
Status: Unutilized
Reason: Extensive deterioration

Bldg. 261/1692
Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830074
Status: Unutilized
Reason: Extensive deterioration

Naval Station Roosevelt Roads
Ceiba PR 00735–
Landholding Agency: Navy
Property Number: 77199830075
Status: Unutilized
Reason: Extensive deterioration

Bldg. 781
Naval Station Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910006
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1740
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910007
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1933
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910008
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1934
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910009
Status: Unutilized
Reason: Extensive deterioration

Bldg. 1976
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 2001
Naval Base Roosevelt Roads
Ceiba Co: PR 00735–
Landholding Agency: Navy
Property Number: 77199910011
Status: Unutilized
Reason: Extensive deterioration

4 Bldgs.
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Location: 440, 441, 442, 443
Landholding Agency: Navy
Property Number: 77199920120
Status: Underutilized
Reason: Secured Area

Bldg. 444
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920121
Status: Underutilized
Reason: Secured Area

Bldgs. 445–447
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920122
Status: Underutilized
Reason: Secured Area

6 Bldgs.
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Location: 448, 449, 450, 451, 452, 455
Landholding Agency: Navy
Property Number: 77199920123
Status: Underutilized
Reason: Secured Area

Bldg. 458
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920124
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 461, 2157
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920125
Status: Underutilized
Reason: Secured Area

Bldgs. 28–29
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920126
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 30–31
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920127
Status: Unutilized
Reason: Extensive deterioration

Bldg. 104
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920128
Status: Unutilized
Reason: Extensive deterioration

Bldg. 459
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920129
Status: Unutilized
Reason: Extensive deterioration

Structure 460
STOP 7½ Compound, Naval Reservation
San Juan Co: PR 34051–
Landholding Agency: Navy
Property Number: 77199920130
Status: Underutilized
Reason: Secured Area

Rhode Island

Bldg. 52
Gould Island, Naval Station
Newport Co: RI 00000–
Landholding Agency: Navy
Property Number: 77199930020
Status: Excess
Reasons: Not accessible by road, Extensive deterioration

Tennessee

20 Bldgs.
Naval Support Activity
Millington Co: Shelby TN 38054–
Location: 766, 1597–1598, 5238, 435–446, S239, S75, 1211, 1379
Landholding Agency: Navy
Property Number: 77199940027
Status: Excess
Reasons: Secured Area, Extensive deterioration

Texas

Bldgs. 1561, 1562, 1563
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820050
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1190
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820053
Status: Unutilized
Reasons: Secured Area

Bldg. 1820
Naval Air Station Joint Reserve Base
Ft. Worth Co: Tarrant TX 76127–6200
Landholding Agency: Navy
Property Number: 77199820054
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Facilities 105 and 105C
Naval Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199910012
Status: Unutilized
Reason: Extensive deterioration

Bldg. 101
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940052
Status: Excess
Reason: Extensive deterioration

Bldg. 198
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940053
Status: Excess
Reason: Extensive deterioration

Bldg. 1104
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940054
Status: Excess
Reason: Extensive deterioration

Bldg. 1198
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940055
Status: Excess
Reason: Extensive deterioration

Bldg. 1823
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940056
Status: Excess
Reason: Extensive deterioration

Bldg. H–9
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940057
Status: Excess
Reason: Extensive deterioration

Bldg. H–45
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940058
Status: Excess
Reason: Extensive deterioration

Bldg. H–54
Naval Air Station
Corpus Christi Co: Nueces TX 78419–5021
Landholding Agency: Navy
Property Number: 77199940059
Status: Excess
Reason: Extensive deterioration

Virginia

Fleet Training Center
Fire Fighting Training Facility
SDA–323, SDA–324, SDA–325, SDA–326
Norfolk, VA 23511–
Landholding Agency: Navy
Property Number: 77199740010
Status: Unutilized
Reason: Extensive deterioration

Bldg. 02
Naval Weapons Station
Yorktown Co: York VA 23691–
Landholding Agency: Navy
Property Number: 77199810073
Status: Excess
Reason: Extensive deterioration

Bldg. 2208
Naval Medical Clinic
Quantico, VA
Landholding Agency: Navy
Property Number: 77199820001
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 358, 359
Cheatham Annex
Williamsburg, VA 23185–
Landholding Agency: Navy
Property Number: 77199820023
Status: Excess
Reason: Extensive deterioration

Bldgs. CAD–43
Cheatham Annex
Williamsburg, VA 23185–
Landholding Agency: Navy
Property Number: 77199820024
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–102
Cheatham Annex
Williamsburg, VA 23185–
Landholding Agency: Navy
Property Number: 77199820025
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–102A
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820026
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–127
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199820027
Status: Excess
Reason: Extensive deterioration

Bldg. CAD–40
Cheatham Annex
Williamsburg VA 23185–
Landholding Agency: Navy
Property Number: 77199830084
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 1256
Naval Amphibious Base Little Creek
Norfolk Co: VA 23521–2616
Landholding Agency: Navy
Property Number: 77199910013
Status: Excess
Reason: Extensive deterioration

Bldg. W219
Naval Base Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199910014
Status: Excess
Reason: Secured Area

Bldg. SP76AQ
Naval Air Station
Norfolk Co: VA 23511–2797
Landholding Agency: Navy
Property Number: 77199910051
Status: Excess
Reason: Extensive deterioration

Bldg. CA502
Naval Station Norfolk
Norfolk Co: VA 23511–
Landholding Agency: Navy
Property Number: 77199910052
Status: Excess
Reason: Secured Area

Bldg. 3074
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199920026
Status: Unutilized
Reason: Extensive deterioration

Bldg. SC–319
Armed Forces Staff College
Norfolk Naval Base
Norfolk Co: VA 23511–1702
Landholding Agency: Navy
Property Number: 77199920067
Status: Excess
Reason: Extensive deterioration

Bldg. 449
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920068
Status: Excess
Reason: Extensive deterioration

Bldg. 450
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920069
Status: Excess
Reason: Extensive deterioration

Bldg. 451
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920070
Status: Excess
Reason: Extensive deterioration

Bldg. 453
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920071
Status: Excess
Reason: Extensive deterioration

Bldg. 454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920072
Status: Excess
Reason: Extensive deterioration

Bldg. 708
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920073
Status: Excess
Reason: Extensive deterioration

Bldg. 709
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920074
Status: Excess
Reason: Extensive deterioration

Bldg. 710
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920075
Status: Excess
Reason: Extensive deterioration

Bldg. 711
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920076
Status: Excess
Reason: Extensive deterioration

Bldg. 712
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920077
Status: Excess
Reason: Extensive deterioration

Bldg. 713
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920078
Status: Excess
Reason: Extensive deterioration

Bldg. 714
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920079
Status: Excess
Reason: Extensive deterioration

Bldg. 715
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920080
Status: Excess
Reason: Extensive deterioration

Bldg. 716
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920081
Status: Excess
Reason: Extensive deterioration

Bldg. 717

Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920082
Status: Excess
Reason: Extensive deterioration

Bldg. 718
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920083
Status: Excess
Reason: Extensive deterioration

Bldg. 1454
Norfolk Naval Shipyard
Portsmouth Co: VA 23709–
Landholding Agency: Navy
Property Number: 77199920084
Status: Excess
Reason: Extensive deterioration

Bldg. 3170
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199940064
Status: Unutilized
Reason: Extensive deterioration

Bldgs. 1252, 1277
Marine Corps Base
Quantico Co: VA 22134–
Landholding Agency: Navy
Property Number: 77199940065
Status: Unutilized
Reason: Extensive deterioration

Washington

Bldg. 6661
Naval Submarine Base, Bangor
Silverdale Co: Kitsap WA 98315–6499
Landholding Agency: Navy
Property Number: 77199730039
Status: Unutilzied
Reason: Secured Area

Bldg. 604
Manchester Fuel Department
Port Orchard WA 98366–
Landholding Agency: Navy
Property Number: 77199810170
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 288
Fleet Industrial Supply Center
Bremerton WA 98314–5100
Landholding Agency: Navy
Property Number: 77199810171
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 47
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820056
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Bldg. 48
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199820057
Status: Unutilized
Reason: Secured Area, Extensive deterioration

Coal Handling Facilties
Puget Sound Naval Shipyard
#908, 919, 926–929
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199820142
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 193
Puget Sound Naval Shipyard
Bremerton WA 98310–
Landholding Agency: Navy
Property Number: 77199820143
Status: Unutilized
Reason: Contamination

Bldg. 202
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830019
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Bldg. 2649
Naval Air Station Whidbey Island
Oak Harbor WA 98278–
Landholding Agency: Navy
Property Number: 77199830020
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Extensive deterioration

Bldg. 35, 36
Naval Radio Station T Jim Creek
Arlington Co: Snohomish WA 98223–
Landholding Agency: Navy
Property Number: 77199830076
Status: Unutilized
Reason: Extensive deterioration

Bldg. 918
Puget Sound Naval Shipyard
Bremerton WA 98314–5000
Landholding Agency: Navy
Property Number: 77199840020
Status: Unutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 894
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–7610
Landholding Agency: Navy
Property Number: 77199920085
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 73
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345—
Landholding Agency: Navy
Property Number: 77199920152
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 210A
Naval Station Bremerton
Bremerton Co: WA 98314—
Landholding Agency: Navy
Property Number: 77199930021
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 511
Naval Station Bremerton
Bremerton Co: WA 98314—
Landholding Agency: Navy
Property Number: 77199930022
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area, Extensive deterioration

Bldg. 527
Naval Station Bremerton
Bremerton Co: WA 98314–
Landholding Agency: Navy
Property Number: 77199930023
Status: Excess
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

Bldg. 97
Naval Air Station
Whidbey Island
Oak Harbor Co: WA 98278–
Landholding Agency: Navy
Property Number: 77199930040
Status: Unutilized
Reason: Extensive deterioration

Bldg. 331
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930041
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 786
Naval Undersea Warfare Center
Keyport Co: Kitsap WA 98345–
Landholding Agency: Navy
Property Number: 77199930042
Status: Unutilized
Reasons: Secured Area, Extensive deterioration

Bldg. 15
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930071
Status: Unutilized
Reason: Extensive deterioration

Bldg. 119
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930072
Status: Unutilized
Reason: Extensive deterioration

Bldg. 853
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930073
Status: Unutilized
Reason: Extensive deterioration

Bldg. 854
Naval Air Station, Whidbey Island
Oak Harbor Co: WA 98278–3500
Landholding Agency: Navy
Property Number: 77199930074
Status: Unutilized
Reason: Extensive deterioration

Bldg. 166
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930101
Status: Excess
Reason: Secured Area

Bldg. 287
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930102
Status: Excess
Reason: Secured Area

Bldg. 418
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930103
Status: Excess
Reason: Secured Area

Bldg. 858
Puget Sound Naval Shipyard
Bremerton Co: WA 98314–5000
Landholding Agency: Navy
Property Number: 77199930104
Status: Excess
Reason: Secured Area

Land (by State)

California

Space Surv. Field Station
Portion/Off Heritage Road
San Diego CA 90012–1408
Landholding Agency: Navy
Property Number: 77199820049
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material

Land
Naval Construction Battalion Center
Port Hueneme Co: Ventura CA 93043–4301
Landholding Agency: Navy
Property Number: 77199940001
Status: Underutilized
Reason: Secured Area

Maryland

6 Acres
Naval Air Station
Patuxent River Co: MD 20670–
Landholding Agency: Navy
Property Number: 77199940023
Status: Unutilized
Reason: Secured Area

North Carolina

0.85 parcel of land
Marine Corps Air Station,
Cherry Point
Havelock Co: Craven NC 28533–
Landholding Agency: Navy
Property Number: 77199740074
Status: Unutilized
Reason: Secured Area

Washington

Land-Port Hadlock Detachment
Naval Ordnance Center
Pacific Division
Port Hadlock Co: Jefferson WA 98339–
Landholding Agency: Navy
Property Number: 77199640019
Status: Underutilized
Reasons: Within 2000 ft. of flammable or explosive material, Secured Area

[FR Doc. 00–6989 Filed 3–23–00; 8:45 am]

BILLING CODE 4210–29–M

Federal Register

Friday,
March 24, 2000

Part V

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Contiguous U.S. Distinct Population Segment of the Canada Lynx and Related Rule; Final Rule

denning sites with security and thermal

disease, fire, wind, ice, or insects, and

1999b). Hodges (1999b) proposes that

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF03

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Contiguous U.S. Distinct Population Segment of the Canada Lynx and Related Rule

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine threatened status for the contiguous U.S. Distinct Population Segment of the Canada lynx (*Lynx canadensis*), with a special rule, pursuant to the Endangered Species Act of 1973, as amended. This population segment occurs in forested portions of the States of Colorado, Idaho, Maine, Michigan, Minnesota, Montana, New Hampshire, New York, Oregon, Utah, Vermont, Washington, and Wisconsin. The contiguous U.S. Distinct Population Segment of the lynx is threatened by the inadequacy of existing regulatory mechanisms. Current U.S. Forest Service Land and Resource Management Plans include programs, practices, and activities within the authority and jurisdiction of Federal land management agencies that may threaten lynx or lynx habitat. The lack of protection for lynx in these Plans render them inadequate to protect the species.

EFFECTIVE DATE: April 24, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Montana Field Office, U.S. Fish and Wildlife Service, 100 N. Park Avenue, Suite 320, Helena, Montana 59601.

FOR FURTHER INFORMATION CONTACT: Kemper McMaster, Field Supervisor, Montana Field Office (see **ADDRESSES** section) (telephone 406/449–5225; facsimile 406/449–5339).

Background

The Canada lynx, hereafter referred to as lynx, is a medium-sized cat with long legs; large, well-furred paws; long tufts on the ears; and a short, black-tipped tail (McCord and Cardoza 1982). Adult males average 10 kilograms (22 pounds) in weight and 85 centimeters (33.5 inches) in length (head to tail), and females average 8.5 kilograms (19 pounds) and 82 centimeters (32 inches) (Quinn and Parker 1987). The lynx's long legs and large feet make it highly adapted for hunting in deep snow.

The bobcat (*Lynx rufus*) is a North American relative of the lynx. Compared to the lynx, the bobcat has smaller paws, shorter ear tufts, and a more spotted pelage (coat), and only the top of the tip of the tail is black. The paws of the lynx have twice the surface area as those of the bobcat (Quinn and Parker 1987). The lynx also differs in its body proportions in comparison to the bobcat. Lynx have longer legs, with hind legs that are longer than the front legs, giving the lynx a "stooped" appearance (Quinn and Parker 1987). Bobcats are largely restricted to habitats where deep snows do not accumulate (Koehler and Hornocker 1991). Hybridization (breeding) between lynx and bobcat is not known (Quinn and Parker 1987).

Classification of the Canada lynx (also called the North American lynx) has been subject to revision. In accordance with Wilson and Reeder (1993), we currently recognize the lynx in North America as *Lynx canadensis*. We previously used the latin name *L. lynx canadensis* for the lynx (Jones *et al.* 1992; S. Williams, Texas Tech University, pers. comm. 1994). Other scientific names still in use include *Felis lynx* or *F. lynx canadensis* (Jones *et al.* 1986; Tumlison 1987).

The historical and present range of the lynx north of the contiguous United States includes Alaska and that part of Canada that extends from the Yukon and Northwest Territories south across the United States border and east to New Brunswick and Nova Scotia. In the contiguous United States, lynx historically occurred in the Cascades Range of Washington and Oregon; the Rocky Mountain Range in Montana, Wyoming, Idaho, eastern Washington, eastern Oregon, northern Utah, and Colorado; the western Great Lakes Region; and the northeastern United States region from Maine southwest to New York (McCord and Cardoza 1982; Quinn and Parker 1987) (see "Distribution and Status" section).

In the contiguous United States, the distribution of the lynx is associated with the southern boreal forest, comprising of subalpine coniferous forest in the West and primarily mixed coniferous/deciduous forest in the East (Aubry *et al.* 1999) (see "Distribution and Status" section); whereas in Canada and Alaska, lynx inhabit the classic boreal forest ecosystem known as the taiga (McCord and Cardoza 1982; Quinn and Parker 1987; Agee 1999; McKelvey *et al.* 1999b). Within these general forest types, lynx are most likely to persist in areas that receive deep snow, for which the lynx is highly adapted (Ruggiero *et al.* 1999b).

We consider lynx in the contiguous United States to be part of a larger metapopulation whose core is located in the northern boreal forest of central Canada; lynx populations emanate from this area (Buskirk *et al.* 1999b; McKelvey *et al.* 1999a, 1999b). The boreal forest extends south into the contiguous United States along the Cascade and Rocky Mountain Ranges in the West, the western Great Lakes Region, and along the Appalachian Mountain Range of the northeastern United States. At its southern margins, the boreal forest becomes naturally fragmented into patches of varying size as it transitions into other vegetation types. These southern boreal forest habitat patches are small relative to the extensive northern boreal forest of Canada and Alaska, which constitutes the majority of the lynx range.

Many of these southern boreal forest habitat patches within the contiguous United States are able to support resident populations of lynx and their primary prey species. It is likely that some of the habitat patches act as sources of lynx (recruitment is greater than mortality) that are able to disperse and potentially colonize other patches (McKelvey *et al.* 1999a). Other habitat patches act as "sinks" where lynx mortality is greater than recruitment and lynx are lost from the overall population. The ability of naturally dynamic habitat to support lynx populations may change as the habitat undergoes natural succession following natural or manmade disturbances (*i.e.*, fire, clearcutting). In addition, fluctuations in the prey populations may cause some habitat patches to change from being sinks to sources and vice versa. Throughout this document, we use the term "resident population" to refer to a group of lynx that has exhibited long-term persistence in an area based on a variety of factors, such as evidence of reproduction, successful recruitment into the breeding cohort, and maintenance of home ranges. We use the word "transient" to refer to a lynx moving from one place to another within suitable habitat. Another word we use throughout the document is "dispersing," which refers to lynx that have left suitable habitat for various reasons, such as competition or lack of food. When dispersing lynx leave suitable habitat and enter habitats that are unlikely to sustain lynx, these individuals are considered lost from the metapopulations unless they return to boreal forest.

Lynx use large woody debris, such as downed logs and windfalls, to provide

denning sites with security and thermal cover for kittens (McCord and Cardoza 1982; Koehler 1990; Koehler and Brittell 1990; Squires and Laurion 1999; J. Organ, U.S. Fish and Wildlife Service, *in litt.* 1999). For lynx den sites, the age of the forest stand does not seem as important as the amount of downed, woody debris available (Mowat *et al.* 1999). In Washington, lynx used *Pinus contorta* (lodgepole pine), *Picea* spp. (spruce), and *Abies lasiocarpa* (subalpine fir) forests older than 200 years with an abundance of downed woody debris for denning (Koehler 1990). A den site in Wyoming was located in a mature subalpine fir/lodgepole pine forest with abundant downed logs and a high amount of horizontal cover (Squires and Laurion 1999). A lynx den site found in Maine in 1999 was located in a forest stand in *Picea rubra* (red spruce) cover type that was logged in 1930 and again in the 1980s (J. Organ, *in litt.* 1999). The site is regenerating into hardwoods and has a dense understory (J. Organ, *in litt.* 1999). The dominant feature of the Maine site was the abundance of dead and downed wood (J. Organ, *in litt.* 1999).

The size of lynx home ranges varies by the animal's gender, abundance of prey, season, and the density of lynx populations (Hatler 1988; Koehler 1990; Poole 1994; Slough and Mowat 1996; Aubry *et al.* 1999; Mowat *et al.* 1999). Documented home ranges vary from 8 to 800 square kilometers (3 to 300 square miles) (Saunders 1963; Brand *et al.* 1976; Mech 1980; Parker *et al.* 1983; Koehler and Aubry 1994; Apps 1999; Mowat *et al.* 1999; Squires and Laurion 1999). Preliminary research supports the hypothesis that lynx home ranges at the southern extent of the species' range are generally large compared to those in the northern portion of the range in Canada (Koehler and Aubry 1994; Apps 1999; Squires and Laurion 1999).

Lynx are highly specialized predators whose primary prey is the snowshoe hare (*Lepus americanus*), which has evolved to survive in areas that receive deep snow (Bittner and Rongstad 1982). Snowshoe hares use forests with dense understories that provide forage, cover to escape from predators, and protection during extreme weather (Wolfe *et al.* 1982; Monthey 1986; Hodges 1999a,1999b). Generally, earlier successional forest stages have greater understory structure than do mature forests and therefore support higher hare densities (Hodges 1999a,1999b). However, mature forests can also provide snowshoe hare habitat as openings develop in the canopy of mature forests when trees succumb to disease, fire, wind, ice, or insects, and the understory grows (Buskirk *et al.* 1999b). Lynx concentrate their hunting activities in areas where hare activity is relatively high (Koehler *et al.* 1979; Parker 1981; Ward and Krebs 1985; Major 1989; Murray *et al.* 1994; O'Donoghue *et al.* 1997, 1998a).

The association between lynx and snowshoe hare is considered a classic predator-prey relationship (Saunders 1963; van Zyll de Jong 1966; Quinn and Parker 1987). In northern Canada and Alaska, lynx populations fluctuate on approximately 10-year cycles that follow the cycles of hare populations (Elton and Nicholson 1942; Hodges 1999a, 1999b; McKelvey *et al.* 1999b). Generally, researchers believe that when hare populations are at their cyclic high, depletion of food resources exacerbated by predation cause hare populations to decline drastically (Buehler and Keith 1982; Krebs *et al.* 1995; O'Donoghue *et al.* 1997). Snowshoe hare provide the quality prey necessary to support high-density lynx populations (Brand and Keith 1979). Lynx also prey opportunistically on other small mammals and birds, particularly when hare populations decline (Nellis *et al.* 1972; Brand *et al.* 1976; McCord and Cardoza 1982; O'Donoghue 1997, 1998a). Red squirrels (*Tamiasciurus hudsonicus*) are an important alternate prey (O'Donoghue 1997;1998a; Apps 1999; Aubry *et al.* 1999). In the Yukon, lynx shifted to red squirrels when hare numbers began to decline (O'Donoghue 1998a, 1998b). However, a shift to alternate food sources may not compensate for the decrease in hares consumed (Koehler and Aubry 1994). In northern regions, when hare densities decline, the lower quality diet causes sudden decreases in the productivity of adult female lynx and decreased survival of kittens, which causes the numbers of breeding lynx to level off or decrease (Nellis *et al.* 1972; Brand *et al.* 1976; Brand and Keith 1979; Poole 1994; Slough and Mowat 1996; O'Donoghue *et al.* 1997).

Relative densities of snowshoe hares at southern latitudes are generally lower than those in the north, which has led to differing interpretations of the population dynamics of snowshoe hare populations. At southern latitudes hare populations may be—(1) noncyclic, (2) cyclic like northern populations, (3) cyclic with the high and low population numbers closer to the average population numbers, or (4) cyclic with a fluctuating periodicity (length of time between peaks and lows) (Dolbeer and Clark 1975; Wolff 1980; Buehler and Keith 1982; Brittell *et al.* 1989; Koehler 1990; Koehler and Aubry 1994; Hodges 1999b). Hodges (1999b) proposes that northern and southern hare populations have similar cyclic dynamics but that in southern areas both peak and low densities are lower than in the north. Snowshoe hares are generally associated with conifer forest cover types (Hodges 1999b). Relatively low snowshoe hare densities at southern latitudes are likely a result of the naturally patchy, transitional boreal habitat at southern latitudes that prevents hare populations from achieving densities similar to those of the expansive northern boreal forest (Wolff 1980; Buehler and Keith 1982; Koehler 1990; Koehler and Aubry 1994). Additionally, the presence of more predators and competitors of hares at southern latitudes may inhibit the potential for high-density hare populations with extreme cyclic fluctuations (Wolff 1980). If snowshoe hare populations in southern boreal forests do fluctuate (Hodges 1999b), then southern lynx populations also may be expected to fluctuate.

Therefore, lynx densities at the southern part of the range never achieve the high densities that occur in the northern boreal forest (Aubry *et al.* 1999). Comparisons between Canadian and contiguous U.S. lynx harvest returns and snowshoe hare densities over time suggest lynx numbers and snowshoe hare densities for the contiguous United States are substantially lower than those for Canadian provinces (Hodges 1999a, 1999b; McKelvey *et al.* 1999b). We conclude that historic and current lynx densities in the contiguous United States also are naturally low relative to lynx densities in the northern boreal forest.

Researchers believe cyclic increases in historic lynx harvest numbers in the contiguous United States were augmented by dispersal of transient animals from Canadian populations (Gunderson 1978; Henderson 1978; Mech 1980; McKelvey *et al.* 1999b). The opinion of some individuals and agencies is that presence of lynx in some regions of the contiguous United States, particularly the Great Lakes, is solely a consequence of dispersal from Canada (G. Meyer, Wisconsin Department of Natural Resources, *in litt.* 1998; R. Sando, Minnesota Department of Natural Resources, *in litt.* 1998). Lynx are capable of dispersing extremely long distances (Mech 1977; Brainerd 1985; Washington Department of Wildlife 1993); for example, a male was documented traveling 616 kilometers (370 miles) (Brainerd 1985). Lynx disperse primarily when snowshoe hare populations decline (Ward and Krebs 1985; Koehler and Aubry 1994;

O'Donoghue *et al.* 1997; Poole 1997). Subadult lynx disperse even when prey is abundant (Poole 1997), presumably as an innate response to establish home ranges. An extreme example of the apparent emigration of lynx from Canada to the contiguous United States is the numerous occurrences of lynx that were frequently documented in atypical habitat, such as in North Dakota, during the early 1960s and 1970s. In these years harvest returns indicated unprecedented cyclic lynx highs for the 20th century in Canada (Adams 1963; Harger 1965; Mech 1973; Gunderson 1978; Thiel 1987; McKelvey *et al.* 1999b). We believe that many of these animals were dispersing and were either lost from the population because they were in areas that are unable to support lynx or they were able to return to suitable habitat.

Distribution and Status

The complexities of lynx life-history and population dynamics, combined with a general lack of reliable historic or current lynx data for the contiguous United States, make it difficult for us to ascertain the past or present population status of lynx in the contiguous United States. Lynx population dynamics in the contiguous United States may not be the same as in the northern boreal forests of Canada and Alaska. Regarding lynx in the northern boreal forests of Canada and Alaska, we know the following—northern lynx populations undergo extreme fluctuations in response to snowshoe hare population cycles; lynx disperse when hare populations decline; lynx are capable of dispersing long distances; recruitment of young into the population seems to cease during cyclic lows of snowshoe hare populations; and lynx maintain home ranges (Mowat *et al.* 1999). We do not know the extent to which the northern lynx populations influence lynx occurrence in the contiguous United States. Because of the naturally fragmented habitat and lower density hare populations in the contiguous United States, we expect lynx in the contiguous United States to occur at naturally lower densities than in the north.

Historic lynx data in the contiguous United States are scarce and exist primarily in the form of trapping records. Many States did not differentiate between bobcats and lynx in trapping records, referring to both as "lynxcats." Therefore, long-term lynx trapping data is not available for most States. Surveys designed specifically for lynx were rarely conducted, and many reports (*e.g.*, visual observations, snow tracks) of lynx were collected incidental to other activities. The reliability of many of these records is unknown; trapping records may have errors, track identification is extremely difficult, and observations may be wrong. Long-term trapping data have been used to understand population trends for various species; however, because trapper effort can change, trapping returns may not accurately reflect population trends. Data showing few lynx trapped could be a result of decreased trapper effort, not necessarily a decreased population. These factors hamper our understanding of lynx population dynamics and status in the contiguous United States and preclude us from drawing definitive conclusions about lynx population trends. Data are too incomplete to infer much beyond simple occurrence (McKelvey *et al.* 1999b) and distribution of lynx in the contiguous United States. However, despite these difficulties, trapping data is the best information available on lynx presence throughout much of its range in the contiguous United States and therefore was relied upon in our analysis.

Data that would help us determine whether resident populations of lynx existed historically or exist currently in many States are generally unavailable. Given the available data and the propensity of lynx to disperse, at this time it is impossible to determine with certainty whether reports of lynx in many States were—(1) merely dispersing animals from northern populations that were effectively lost from the metapopulation because they did not join or establish resident populations, (2) animals that were a part of a resident population that persisted for many generations, or (3) a mixture of both members of resident populations and dispersing animals.

There are several plausible explanations for a lack of lynx records, such as (1) the true absence of lynx, (2) lynx populations are at a cyclic low, (3) lack of adequate surveys, or (4) decreased trapper effort. We suspect that some areas in the contiguous United States naturally act as "sinks" for lynx where mortality is higher than recruitment and lynx are lost from the overall population (McKelvey *et al.* 1999a). Sink habitats are most likely those places on the periphery of the southern boreal forest in the contiguous United States where habitat becomes more fragmented and more distant from larger lynx populations.

In the following discussions, we describe available lynx data, habitat, and other elements that frame our understanding of lynx in the various regions and States where lynx have been reported within the contiguous United States.

Within the contiguous United States, the lynx range extends into different regions that are separated from each other by ecological barriers consisting of unsuitable lynx habitat. These regions are the Northeast, the Great Lakes, the Northern Rocky Mountains/Cascades, and the Southern Rocky Mountains. In general, lynx in each of these regions are associated with habitats that are southern extensions of the boreal forest (Aubry *et al.* 1999). Differences in local climate, primarily precipitation, and effects of elevation have resulted in climax forest types that differ in the eastern regions compared to the West (Buskirk *et al.* 1999b). The climax forest in the East is primarily deciduous or mixed deciduous/coniferous whereas in the West the climax forest is coniferous (Buskirk *et al.* 1999b). While the four regions of lynx range in the contiguous United States are ecologically unique and discreet, in each of these regions the lynx is associated with the southern boreal forest and, with the exception of the Southern Rockies, they are each geographically connected to the much larger population of lynx in Canada. For a more detailed description of the significance of each region within the overall U.S. population, see the "Distinct Population Segment" section.

Northeast Region—Based on an analysis of cover types and elevation zones containing most of the lynx occurrences, McKelvey *et al.* (1999b) determined that, at the broad scale, most lynx occurrence records in the Northeast were found within the "Mixed Forest-Coniferous Forest-Tundra" cover type at elevations ranging from 250 to 750 meters (820 to 2,460 feet). This habitat type in the northeast U.S. occurs along the northern Appalachian Mountain range from southeastern Quebec, western New Brunswick, and western Maine, south through northern New Hampshire. This habitat type becomes naturally more fragmented and begins to diminish to the south and west, with a disjunct segment running north-south through Vermont, an extensive patch of habitat in the Adirondacks of northern New York, and with a few more distant and isolated patches in Pennsylvania (see Figure 8.23 in McKelvey *et al.* 1999b). Within this habitat type, the highest frequency of lynx occurrences were in the *Picea rubens* (red spruce), *Abies balsamea* (balsam fir), *Acer saccharum* (sugar maple), *Betula* spp. (birch), *Fagus grandifolia* (beech) forest (McKelvey *et al.* 1999b).

The entire region south of the St. Lawrence River must be considered in

an assessment of lynx in the northeastern United States. Movement of lynx across the St. Lawrence River is believed to occur infrequently (R. Lafond, Quebec Ministry of the Environment, pers. comm. 1999); therefore, emigration from lynx populations of northern Quebec to the region south of the St. Lawrence River is limited. However, northeastern U.S. lynx and snowshoe hare habitat and populations are contiguous with those south of the St. Lawrence River in southeastern Quebec and western New Brunswick and, presumably, together constitute a metapopulation. Lynx should encounter little difficulty moving between southeastern Quebec and Maine and New Hampshire, because habitat is continuous and without barriers. In this region, we conclude the core of lynx habitat historically was found in western Maine, northern New Hampshire, southeastern Quebec, and western New Brunswick.

Harvest records from southeastern Quebec provide evidence that lynx persist in this region. Quebec instituted a lynx management plan requiring that trapping seasons for lynx be closed for 3 years during the lows in the cycles; most recently these seasons were closed during 1995, 1996, and 1997 (Enyironment et faune Quebec 1995). Outside of these closed seasons, harvest returns in the 1990s ranged from 100 (in 1990 and 1993) to nearly 275 (in 1998) (R. Lafond, *in litt.* 1999). In New Brunswick, the lynx has been listed as endangered since 1982; during 1996 revisions, it was categorized as a "regionally endangered species" (Cumberland *et al.* 1998). Although the lynx harvest season in New Brunswick has been closed, lynx were incidentally caught throughout the 1990s, evidence of the continued occurrence of lynx in New Brunswick (Cumberland *et al.* 1998).

Maine—In Maine, lynx accounts are irregular and anecdotal (McKelvey *et al.* 1999b; Maine Department of Inland Fisheries and Wildlife, *in litt.* 1997; R. Joseph, U.S. Fish and Wildlife Service, *in litt.* 1999). Twenty-eight verified records exist for Maine since 1862 (McKelvey *et al.* 1999b). Anecdotal information plus historical and recent records provide evidence of presence, reproduction, and persistence of lynx in several northern and western townships (R. Joseph, *in litt.* 1999), indicating the historical residency of lynx. Lynx had a bounty placed on them in Maine from 1832 to the closure of hunting and trapping seasons in 1967. Maine classifies lynx as a species of special concern (Matula 1997), and currently hunting or trapping seasons for lynx are closed.

Although no reliable population estimates exist, in 1994 it was suggested that 200 animals or fewer occur Statewide (Maine Department of Inland Fisheries and Wildlife 1994). Lynx tracks were detected during track surveys in the 1990s (Maine Department of Inland Fisheries and Wildlife, *in litt.* 1997, 1998). In 1999, Maine and Service biologists radio-collared six lynx, three adult males and three adult females, and recorded two sub-adults and two kittens associated with radio-collared adults. This finding established with certainty current reproduction in Maine (J. Organ, *in litt.* 1999) and indicates the existence of a resident population. However, available data are not adequate for determining either population trend (increasing or decreasing) or size.

New Hampshire—New Hampshire is the only northeastern State that maintained a record of historic lynx harvest (Orff 1985 *in* McKelvey *et al.* 1999b; see Figure 8.1 *in* McKelvey *et al.* 1999b). Lynx were intermittently bountied in New Hampshire until 1965. Most of the lynx harvest occurred in the 1930s, ranging from 1 to 20 per year. Between 1940 and 1964, lynx harvests were lower, ranging from 0 to 3 lynx being caught per year. For 11 years, the harvest was zero (McKelvey *et al.* 1999b). The trapping season was closed in 1964 in response to apparent declines in lynx abundance reflected in harvest returns (Siegler 1971; Silver 1974; Litvaitis *et al.* 1991). Since 1980, the lynx has been listed as an endangered species by the New Hampshire Department of Fish and Game. Winter track surveys in 1986 in portions of the White Mountain National Forest did not detect lynx (Litvaitis *et al.* 1991). Litvaitis *et al.* (1991) hypothesized that lynx were extirpated from New Hampshire as increasing agriculture and timber harvesting in the 1970s precluded them from dispersing into the State from southeastern Quebec. Only two reports of lynx in New Hampshire exist for the 1990s (M. Amaral, U.S. Fish and Wildlife Service, *in litt.* 1999). Although lynx reports are scarce, to our knowledge, no lynx surveys have been completed in New Hampshire in recent years. Therefore, we suspect that lynx are present in New Hampshire because habitat remains contiguous with Maine.

Vermont—In Vermont, only four verified records of historic lynx occurrence exist (McKelvey *et al.* 1999b). In the mid-1900s, it was reported that Vermont had not had a documented breeding population of lynx for several decades (Osgood 1938 *in* Vermont Department of Fish and Wildlife 1987). In fact, we have no evidence of a breeding population ever occurring in Vermont. Since 1972, the lynx has been listed by the State as endangered. The last verified occurrence was from 1968, with periodic reports since then. Vermont naturally supports less lynx habitat than we previously presumed, based on analyses by McKelvey *et al.* (1999b). Furthermore, lynx habitat in Vermont is somewhat isolated from that in New Hampshire. The State of Vermont currently considers lynx to be extirpated (A. Elser, Vermont Department of Fish and Wildlife, *in litt.* 1998). Therefore, we conclude that lynx occurrence in Vermont is poorly documented, and, based upon the limited extent and dispersed nature of suitable habitat, lynx were probably never abundant or persistent over time. Currently, lynx are not thought to occur in Vermont.

New York—Historically, lynx reportedly occurred in most northern regions of New York, particularly in the Adirondack Mountains and the Catskill Mountains (McKelvey *et al.* 1999b; K. Gustafson, pers. comm. 1994). Miller (1899 *in* Brocke 1982) believed that, by the 1880s, the population was approaching extirpation. McKelvey *et al.* (1999b) found 23 verified lynx occurrences since 1900, primarily from the Adirondack Mountains. The most recent verified record was from 1973 (McKelvey *et al.* 1999b). Historically, the Adirondacks apparently supported lynx habitat, although it was isolated from habitats and lynx populations to the north.

An effort to reintroduce lynx into the Adirondack Mountains occurred during 1988–1990 (Brocke *et al.* 1990; D. Major, U.S. Fish and Wildlife Service, pers. comm. 1998), but the reintroduction is believed to have failed. A collared lynx from the reintroduction effort was found near Ottawa, Ontario, Canada (M. Amaral, U.S. Fish and Wildlife Service, pers. comm. 1997) and another as far away as northern New Jersey (K. Gustafson, New Hampshire Fish and Game Department, pers. comm. 2000). No verified occurrences in New York have been reported recently. In New York, lynx are legally classified as a small game species with a closed season. We conclude the lynx is extirpated from New York.

Pennsylvania/Massachusetts—In the proposed rule, Pennsylvania and Massachusetts were considered to be a part of the historic range of lynx. However, the inherent isolation and small sizes of habitat patches both currently and historically, combined with the few accounts of lynx occurrence in these States, led us to

conclude that lynx were merely dispersing animals in these States (J. Belfonti, The Nature Conservancy, *in litt.* 1994). Without the habitat and prey to support lynx, we concluded that these animals were lost from the gene pool and that Pennsylvania and Massachusetts were not within the historic range of lynx.

In summary, we have firm documentation that lynx occur in Maine and that they are reproducing. We conclude that a resident lynx population historically occurred and currently occurs in Maine. Lynx historically occurred in New Hampshire, but recent records of lynx occurrence in New Hampshire are rare. Suitable habitat exists contiguous to Maine. Historically, Vermont and New York have had relatively few records of lynx and none exist from the 1990s, with the exception of animals introduced into New York. It is possible that lynx have been extirpated from New Hampshire, Vermont, and New York. We no longer include Pennsylvania and Massachusetts within the historic range of lynx because these States are isolated from resident populations and lack suitable habitat. Therefore, we concluded that the low number of lynx occurrence records represented dispersing animals that were likely lost from the population.

We conclude, based on documentation of lynx reproduction and individual animals in Maine, the substantive lynx harvest in southeastern Quebec, and the connectivity of boreal forest south of the St. Lawrence River in Quebec, New Brunswick, Maine, and New Hampshire, that in the Northeast a population of lynx continues to exist in the core of the region in the north; however, the range appears to have retracted northward. Connectivity with lynx populations north of the St. Lawrence River in Canada has been reduced from historic levels because of development along the St. Lawrence River and ice breaking to allow year-round shipping.

Great Lakes Region—The majority of lynx occurrence records in the Great Lakes Region are associated with the "mixed deciduous-coniferous forest" type (McKelvey *et al.* 1999b). Within this general forest type, the highest frequency of lynx occurrences were in the *Acer saccharum* (sugar maple), *Tilia* spp. (basswood), *Pinus banksiana* (jack pine), *P. strobus* (white pine), and *P. resinosa* (red pine) forest types (McKelvey *et al.* 1999b). These types are found primarily in northeastern Minnesota, northern Wisconsin, and the western portion of Michigan's upper peninsula.

Although the mixed deciduous-coniferous forest covers an extensive area in this region, we consider much of this area to be marginal habitat for lynx because it is a transitional forest type at the edge of the snowshoe hare range. Habitat at the edge of hare range supports lower hare densities (Buehler and Keith 1982) that may not be sufficient to support lynx reproduction. Furthermore, snow depths within appropriate habitat that allow lynx a competitive advantage over other carnivores (*i.e.*, coyotes (*Canis latrans*)) occur only in limited areas in northeastern Minnesota, extreme northern Wisconsin, and Michigan's upper peninsula.

The historic and current status of lynx in the Great Lakes Region is uncertain. Minnesota has a substantial number of lynx reports, primarily trapping records (McKelvey *et al.* 1999b), as expected because of the connectivity of the boreal forest with that of Ontario, Canada, where lynx occur. Wisconsin and Michigan have substantially fewer records of lynx (McKelvey *et al.* 1999b). Researchers have debated whether lynx in this region are simply dispersing lynx emigrating from Canada, are members of a resident population, or are a combination of a resident population and dispersing individuals (McKelvey *et al.* 1999b; R. Sando, Minnesota Department of Natural Resources, *in litt.* 1998). In recent decades, lynx dynamics in the Great Lakes appear to have been driven by immigration because lynx occurrence records did not show a response to local cycles of hare abundance (McKelvey *et al.* 1999b), as would have been expected of a resident lynx population. Available information, does not indicate that resident populations exist, but it does indicate that recent cyclic highs in the Great Lakes lynx data are at least partially Canadian in origin (McKelvey *et al.* 1999b).

Minnesota—The majority of lynx occurrence records are from the northeastern portion of the State; however, dispersing lynx have been found throughout Minnesota outside of typical lynx habitat (Gunderson 1978; Mech 1980; McKelvey *et al.* 1999b). Until 1965, lynx had a bounty placed on them in Minnesota. In 1976, the lynx was classified as a game species, and harvest seasons were established (M. DonCarlos, Minnesota Department of Natural Resources, *in litt.* 1994). Harvest and bounty records for Minnesota are available since 1930. Approximate 10-year cycles are apparent in the data, with highs in the lynx cycle in 1940, 1952, 1962, and 1973 (Henderson 1978; McKelvey *et al.* 1999b). During a 47-year period (1930–1976), the Minnesota lynx harvest was substantial, ranging from 0 to 400 per year (Henderson 1978). These harvest returns for Minnesota are believed to be influenced by influxes from Canada, particularly in recent decades (Henderson 1978; Mech 1980; McKelvey *et al.* 1999b; M. DonCarlos, *in litt.* 1994). When an anticipated lynx cyclic high for the early 1980s did not occur, the harvest season was closed in 1984 (M. DonCarlos, *in litt.* 1994) and remains closed today. Outside of harvest data, 76 verified lynx records exist for Minnesota (McKelvey *et al.* 1999b).

With available data, we cannot verify whether a resident population existed historically in Minnesota. Reproduction and maintenance of home ranges by lynx was documented in the early 1970s (Mech 1973, 1980), which may be evidence of the existence of a resident population. The early 1970s also were a period when the second highest lynx harvest returns in the 20th century occurred throughout Canada. High numbers of lynx trapped in Minnesota during this period were likely due in part to immigrants from Canada (McKelvey *et al.* 1999b). Lynx were consistently trapped over 40 years during cyclic lows, which may indicate that a small resident population occurred historically.

Current information is insufficient to determine whether a resident population of lynx exists in Minnesota and, if so, whether there has been a decline in numbers. In northeastern Minnesota, where deep snow accumulates, suitable lynx and snowshoe hare habitat is likely present. Much of this area is protected as designated wilderness, including the Boundary Waters Canoe Area. Furthermore, these habitats are contiguous with boreal forest in southern Ontario. Trapping records for Ontario districts adjacent to the Minnesota border demonstrate consistent occurrence of lynx in the area over the past 10 years (N. Dawson, Ontario Ministry of Natural Resources, *in litt.* 1999). The only recent verified records of lynx in Minnesota were two lynx in 1992 and one in 1993 (M. DonCarlos, *in litt.* 1994). However, no lynx surveys or research have been conducted in Minnesota to document presence, absence, or population trend. A lynx survey was initiated this year as a joint effort by the Service, the Forest Service and the University of Minnesota. Although habitat and prey conditions appear suitable in the northeastern portion of the State, we have received no information that substantiates presence of a resident lynx population currently in Minnesota.

Wisconsin—Thiel (1987) concluded that, historically, Wisconsin did not support a permanent, self-sustaining lynx population; rather, lynx presence was associated with cyclic lynx population fluctuations in Canada resulting in increased dispersal. Verified reports of lynx in Wisconsin are few (29 records from 1870 to 1992) (McKelvey *et al.* 1999b); over half of these reports are associated with unprecedented cyclic highs that occurred throughout Canada in the early 1960s and 1970s. Between 1948 and 1956, 19 lynx were harvested in the State; annual harvests were low, ranging from 0 (in 1954) to 4 (in 1952) (Wisconsin Department of Natural Resources 1993). In 1992, two lynx mortalities were reported in Wisconsin (Wydeven 1993; C. Pils, *in litt.* 1994). Lynx tracks have been detected during wolf surveys in the 1990s (Wydeven 1998).

A bounty on lynx existed until 1957. Lynx were placed on the protected species list in 1957 and were classified as State endangered in 1972 (C. Pils, *in litt.* 1994). Because of the lack of breeding records, Wisconsin reclassified the lynx as a "protected" species with a closed season (G. Meyer, *in litt.* 1998).

We have no evidence to determine whether a lynx population resided in Wisconsin historically or resides currently; however, Wisconsin Department of Natural Resources suggested that a breeding population may have existed in the State prior to the 1900s (G. Meyer, *in litt.* 1998). Most of northern Wisconsin forests are mixed deciduous-coniferous forest (McKelvey 1999b). We believe this transitional forest type at the edge of the snowshoe hare range may be unable to support hare densities sufficient to sustain a resident lynx population. An exception may be in extreme northern portions of Wisconsin, where more suitable habitat exists and deep snows accumulate.

Michigan—In Michigan, historical reports suggest that the Canada lynx was resident and widespread throughout the upper and lower peninsula in the 19th century (Harger 1965). However, records verifying these accounts are scarce; 44 verified records exist from the mid 1800s until 1983 (McKelvey *et al.* 1999b). Lynx were believed extirpated from Michigan's lower peninsula in 1928, and by 1938 they were considered rare or extinct throughout the State (Harger 1965). Lynx persisted on Isle Royale in Lake Superior into the late 1970s (Peterson 1977 *in* Baker 1983; M. Romanski, Isle Royale National Park, *in litt.* 1998). Sixteen of 44 verified lynx records for Michigan are associated with an extreme cyclic high in Canada in the early 1960s (Harger 1965; McKelvey *et al.* 1999b). Only two verified records of lynx exist for Michigan (from the upper peninsula) since the 1960s (McKelvey *et al.* 1999b; G. Burgoyne, Jr., Michigan Department of Natural Resources, *in litt.* 1998). Michigan listed the lynx as "rare" in 1974; in 1983 it was listed as threatened and in 1987, its status was upgraded to endangered (G. Burgoyne, Jr., *in litt.* 1998). Although suitable habitat and snow depths likely exist in Michigan's upper peninsula, too few records exist to substantiate either the historic or current presence of a resident lynx population in Michigan.

In summary, using the best available information we cannot determine whether resident lynx populations occur currently or historically in the Great Lakes Region. Within this region, we consider northeastern Minnesota to be most likely to support a resident lynx population based on the presence of boreal forest that is contiguous with that of Ontario, where lynx are known to exist, and the number of lynx records from this area. We suspect that there may have been a small resident population historically in northeastern Minnesota; however, we recognize the lack of evidence to clearly support either the past or current existence of a resident population in Minnesota. Because of the paucity of records from Wisconsin and Michigan and the presence of habitat that we think is marginal for lynx, we suspect records of lynx in Wisconsin and Michigan most likely are transient animals that are dispersing, rather than individuals from resident populations. Accurate mapping of lynx habitat in the Great Lakes Region would enable us to define where to expect resident lynx to occur in this region.

Northern Rocky Mountain/Cascades Region—In this region, the majority of lynx occurrences are associated at a broad scale with the "Rocky Mountain Conifer Forest"; within this type, most of the occurrences are in moist *Pseudotsuga menziesii* (Douglas fir) and western spruce/fir forests (McKelvey *et al.* 1999b). Most of the lynx occurrences are in the 1,500–2,000 meters (4,920–6,560 feet) elevation class (McKelvey *et al.* 1999b). These habitats are found in the Rocky Mountains of Montana, Idaho, eastern Washington, and Utah and the Cascade Mountains in Washington and Oregon. The majority of verified lynx occurrences in the U.S. and the confirmed presence of resident populations are from this region. The boreal forest of Washington, Montana, and Idaho is contiguous with that in adjacent British Columbia and Alberta, Canada.

Washington—In Washington, resident lynx populations were historically found in the northeast and north-central regions and along the east slope of the Cascade Mountains (Washington Department of Wildlife 1993). Records of lynx exist from the Mount Rainier National Park area in the central Cascades, south in the Cascades nearly to the Oregon border on Mount Adams, and in the Blue Mountains in southeastern Washington (Taylor and Shaw 1927 *in* Koehler and Aubry 1994; Dalquest 1948; Washington Department of Natural Resources 1996a). Washington has a long record of verified lynx occurrences over the past century (McKelvey *et al.* 1999b).

Trapping data kept since 1961 reflect cyclic patterns (McKelvey *et al.* 1999b). The largest harvests were taken in 1969–1970 (31 lynx) and 1976–1977 (39 lynx) (Washington Department of Wildlife 1993). Trapping restrictions were implemented in 1977–1978, and lynx hunting and trapping seasons were closed in 1991 (Washington Department of Wildlife 1993). In the years 1987–1989, immediately prior to the season being closed, harvest increased substantially despite restrictive quotas and shortened seasons (see Figure 8.7 *in* McKelvey *et al.* 1999b). We suspect that this increase in trapped animals may have represented a cyclic increase, as was evident in harvest data from British Columbia during this time frame (see Figure 8.6 *in* McKelvey *et al.* 1999b; M. Badry, British Columbia Ministry of Environment, *in litt.* 1999). Lynx harvest data from British Columbia demonstrate cyclic fluctuations for the past 13 seasons, as well as the continued presence of lynx, in regions contiguous with Washington (M. Badry, *in litt.* 1999).

Established snow track survey routes are conducted to detect the presence of lynx within the six designated "Lynx Management Zones" across the north-central part of Washington (Richardson 1999; Washington Department of Natural Resources 1996a). Results of these surveys show that currently, lynx occupy four of these zones—Okanogan, Kettle Range, Little Pend Oreille, and Salmo Priest—but have not documented lynx presence in the Wedge or Vulcan Mountain, the two smallest zones delineated in Washington (Richardson 1999). Recent preliminary DNA survey results indicate the presence of lynx in the southern and central Cascades in Washington (Weaver and Amato 1999), and recent records of lynx reproduction also exist for Washington in the northern Cascades (Koehler 1990;

Friends of the Loomis Forest, *in litt.* 1999).

Although Washington has the best lynx data in the contiguous U.S., we cannot identify population changes or trend from this data. It is clear that resident lynx populations exist in Washington. The lynx population in Washington has been roughly estimated at 96–191 (Washington Department of Wildlife 1993) and 225 individuals (Brittell *et al.* 1989). However, these population estimates may be high because of assumed similar habitat suitability and lynx densities across the range, which is not the case (Washington Department of Wildlife 1993). Since 1993, the lynx has been listed as a State threatened species (Washington Department of Wildlife 1993). Richardson (1999) recommended retaining the lynx as a threatened species in the State because the status of the lynx had not changed appreciably in Washington.

Oregon—Historic lynx records exist from nine counties in Oregon (Bailey 1936; Nellis 1971). McKelvey (1999b) documented 12 verified lynx records for Oregon in the past century. Based on the time frames when collected and locations in atypical habitat, some of these records likely were dispersing transient individuals. Recent observations of lynx have been reported from the Cascades and the Blue Mountains in northeastern Oregon (Csuti *et al.* 1997; R. Anderson, Wallowa-Whitman National Forest, *in litt.* 1998), and preliminary DNA survey results also suggest the presence of lynx in the Cascade Range in Oregon (Weaver and Amato 1999). Lynx have rarely been reported harvested in Oregon, although the season for lynx is essentially open because the State does not regulate lynx harvest, however we do not believe any lynx have been harvested because there are no records of lynx trapping or pelts collected in Oregon (C. Carson, pers. comm., USFWS, Office of Management Authority (OMA), 2000). Based on the limited available information, we cannot substantiate the historic or current presence of a resident lynx population in Oregon.

Idaho—According to Rust (1946), lynx were not abundant but were distributed throughout northern Idaho in the early 1940s, occurring in 8 of the 10 northern and north-central counties. McKelvey *et al.* (1999b) located a number of lynx specimen records from Idaho collected during the early 1900s. Harvest records for Idaho are unreliable because no distinction was made between lynx and bobcats until 1982 when Idaho Department of Fish and Game initiated a mandatory pelt tagging program. Anecdotal reports compiled by Lewis and Wenger (1998) indicated the occurrence of lynx in atypical habitats. Based on the time frames when collected, these records likely were dispersing transient individuals. Between 1960 and 1991, 35 verified records exist for Idaho, with 13 of these from 1982 to 1991 (McKelvey *et al.* 1999b). From 1991 until recently, there had been no verified records of lynx from Idaho (McKelvey *et al.* 1999b); however, until the past year, no lynx surveys were conducted in Idaho. Preliminary results from recent DNA surveys suggest the presence of lynx in northern and north-central Idaho (J. Weaver, Wildlife Conservation Society, *in litt.* 1999).

Prior to 1977, the species was considered a predator, subject to unrestricted harvest with no closed season and no bag limit. In 1990, in response to concern over the status of lynx in Idaho, the Idaho Department of Fish and Game instituted a Statewide harvest quota of three lynx per year. In 1997/1998, Idaho closed the lynx trapping/hunting season because no lynx had been captured in several years.

Although records of lynx in Idaho are relatively common and boreal forest habitat is contiguous with adjacent States and Canada where lynx populations are known to exist, we cannot clearly substantiate either the historic or current presence of resident lynx populations in Idaho, nor can we identify population changes or trend with the available information.

Montana—In Montana, numerous historic and current lynx records exist throughout the Rocky Mountain Conifer Forest in the western part of the State (McKelvey *et al.* 1999b; P. Graham, Montana Department of Fish, Wildlife, and Parks, *in litt.* 1998). Reproduction has been documented (Brainerd 1985). Many records exist of lynx harvested in eastern Montana's Great Plains Region in the 1960s (Hoffman *et al.* 1969); however, we suspect these were dispersing transient animals associated with cyclic highs in northern lynx populations during the early 1960s.

Since 1950, Montana lynx harvest records exhibit cycles (McKelvey *et al.* 1999b), although accurate harvest records were not kept until 1977 when lynx were classified as a furbearer. The harvest data reflect the extreme highs of the early 1960s and 1970s that were documented throughout Canada. Since 1977, Montana's largest lynx harvest occurred in both 1979 and 1984 when 62 lynx were taken in each season (McKelvey *et al.* 1999b; B. Giddings, Montana Department of Fish, Wildlife, and Parks, *in litt.* 1994). These harvest returns were substantially lower than those recorded in the early 1960s and 1970s, leading to concern that lynx populations in Montana were at or near their lowest levels in the past several decades (Hash 1990; S. Conn, Montana Trappers Association, *in litt.* 1990). The State established quotas that were incrementally decreased from 135 in 1982 down to a Statewide quota of 2 beginning in 1991 (B. Giddings, *in litt.* 1994). In 1999, Montana's lynx harvest season was closed.

Harvest records, winter track surveys conducted since 1990/1991, and trapper logbooks, led Montana Department of Fish, Wildlife, and Parks to conclude that the State's lynx population has recovered and is distributed throughout what it determined to be "predicted lynx habitat" (P. Graham, *in litt.* 1998). Montana Department of Fish, Wildlife, and Parks estimated the lynx population as 1,040 lynx in 1994 (B. Giddings, *in litt.* 1994). This estimate was determined using a habitat area/density index, which is likely inaccurate, given broad assumptions regarding habitat suitability and lynx distribution.

We conclude that a resident population of lynx is distributed throughout its historic range in Montana. However, available data are not sufficient to determine either population trend (increasing or decreasing) or estimates of population size. Furthermore, we now question the interpretations we made in the proposed rule as well as those made by the other sources that harvest returns in the 1980s and 1990s reflected substantially reduced populations (see "Factor B" in the "Summary of Factors" section). We now know that harvest returns in the early 1960s and 1970s represented unprecedented cyclic highs for the 20th century (McKelvey *et al.* 1999b). Therefore, it is possible that lower lynx harvest returns in the 1980s were not unusual compared to harvest returns prior to 1960. Lynx harvest returns for British Columbia and Alberta since 1919 demonstrate the variability of cyclic amplitudes throughout the past century (McKelvey *et al.* 1999b) and lead us to suspect that cycles in Montana were similar.

Wyoming—Most historical and recent records of lynx in Wyoming are from the northwestern mountain ranges (Reeve *et al.* 1986; McKelvey *et al.* 1999b). McKelvey *et al.* (1999b) found only 30 verified records Statewide since 1856. Documented reports of lynx in Yellowstone National Park are rare (S. Consolo-Murphy, Yellowstone National Park, pers. comm. 1994); no recent verified records exist from the Greater Yellowstone Ecosystem (McKelvey *et al.*

1999b). However, no lynx surveys have been conducted in this area. Elsewhere, lynx have been reported from the Big Horn Mountains in north-central Wyoming (Reeve *et al.* 1986; McKelvey *et al.* 1999b). Until 1957, lynx had bounties place on them in the State. Since 1973, the lynx has been listed as a protected non-game species and harvest was closed. Because of connectivity with lynx populations and habitat in Montana, we suspect that lynx were historically resident in northwestern Wyoming.

In 1996 the Wyoming Game and Fish Department began a lynx study in west-central Wyoming. Production of kittens was documented in 1998 (Squires and Laurion 1999). This may indicate the presence of a resident population in this local area (Ruggiero *et al.* 1999b). However, using available information we are unable to determine status or trend of lynx throughout Wyoming.

Utah—There are few historic reports of lynx in Utah (McKay 1991; McKelvey *et al.* 1999b). Nearly all the reliable lynx reports are from the Uinta Mountain Range along the Wyoming border (McKay 1991). McKelvey *et al.* (1999b) found only 10 verified records of lynx in Utah since 1916; no verified records exist since 1991. However, recent unverified reports of lynx in the Uintas persist (Bates, Utah Department of Wildlife, pers. comm. 1999). The lynx is listed as a State sensitive species with closed harvest seasons. Based on the limited available information we cannot substantiate either the historic or current presence of a resident lynx population in Utah.

In summary, we believe the Northern Rockies/Cascades Region supports the most viable resident lynx populations in the contiguous U.S., while recognizing that, at best, lynx in the contiguous U.S. are naturally rare. Strong evidence exists to support the presence of resident lynx populations distributed throughout much of the forest types considered lynx habitat in Montana and Washington. We expect that resident lynx populations exist in contiguous habitats in Idaho and northwestern Wyoming. We believe that lynx have always occurred intermittently in Oregon and Utah, although we cannot determine the historic or current presence of resident populations in either of these States. Recently initiated DNA surveys in all the States within this region should further refine our understanding of the status of lynx in this region.

Southern Rockies

Colorado represents the extreme southern edge of the range of the lynx. The southern boreal forest of Colorado and southeastern Wyoming is isolated from boreal forest in Utah and northwestern Wyoming by the Green River Valley and the Wyoming basin (Findley and Anderson 1956 in McKelvey *et al.* 1999b). These habitats likely act as a barrier that reduces or precludes opportunities for immigration and emigration from the Northern Rocky Mountains/Cascades Region and Canada, effectively isolating lynx in the southern Rocky Mountains in Colorado and southeastern Wyoming (Halfpenny *et al.* 1982; Koehler and Aubry 1994). A majority of the lynx occurrence records in Colorado and southeastern Wyoming, are associated with the "Rocky Mountain Conifer Forest" type. The occurrences in the Southern Rockies were generally at higher elevations (1,250 to over 3,750 meters (4,100–12,300 feet)) than were all other occurrences in the West (McKelvey *et al.* 1999b).

Colorado—The montane and subalpine forest ecosystems in Colorado are naturally highly fragmented (Thompson 1994), which we believe limits the size of lynx populations. A total of 78 lynx reports rated as positive (22) or probable (56) exist in State records since the late 1800s (J. Mumma, Colorado Division of Wildlife, *in litt.* 1998); although McKelvey *et al.* (1999b) considered only 17 of these records "verified." The last verified lynx specimens were taken in 1974 (Halfpenny *et al.* 1982). No verified records of lynx exist since 1974; however, extensive survey efforts have resulted in reports of lynx tracks (Halfpenny and Miller 1981; Thompson and Halfpenny 1989; Anderson 1990; Thompson and Halfpenny 1991; Andrews 1992; Carney 1993; Fitzgerald 1994; Colorado Division of Wildlife *et al.* 1997). The lynx has been listed as a State endangered species since 1976 (Colorado Division of Wildlife *et al.* 1997) and harvest of the species is currently closed.

Few, if any, native lynx continue to exist in Colorado (J. Mumma, *in litt.* 1998). As a result, in 1997, the Colorado Division of Wildlife, in cooperation with numerous government and private entities, began a program to introduce lynx from Canada and Alaska into Colorado in an attempt to reestablish a viable lynx population. Forty-one lynx were released into the wild beginning in early spring 1999. It is too early to predict the success of this effort.

Wyoming—"Rocky Mountain Conifer Forest" in southeastern Wyoming is contiguous with that of Colorado. None of the reports of lynx in the Medicine Bow and Laramie Ranges in southeastern Wyoming have been confirmed (Reeve *et al.* 1986). However, McKelvey *et al.* (1999b) found two specimens collected prior to 1900 in southeastern Wyoming. There is a general lack of information in Wyoming, particularly southeastern Wyoming, that limits our ability to assess historical and current status of the lynx.

In summary, we believe that a resident lynx population historically occurred in the Southern Rockies Region in both Colorado and southeastern Wyoming, based on the records of lynx in Colorado and the persistence of contiguous habitat in southeastern Wyoming with the Colorado habitat. This resident population may now be extirpated.

Other Reports or Sightings—Lynx observations in Nevada, North Dakota, South Dakota, Iowa, Nebraska, Indiana, Ohio, and Virginia are considered individuals dispersing subsequent to periods of cyclic high lynx numbers in Canada (Hall and Kelson 1959; Burt 1954 *in* Brocke 1982; McKelvey *et al.* 1999b; S. Johnson, Indiana Department of Natural Resources, *in litt.* 1994; P. Jones, Ohio Department of Natural Resources, *in litt.* 1994; W. Jobman, U.S. Fish and Wildlife Service, *in litt.* 1997; Smithsonian Institute, *in litt.* 1998). During the early 1960s, lynx moved into the Great Plains and the Midwest Region of the U.S. associated with an unprecedented cyclic high in Canada (Gunderson 1978; Mech 1980; DeStefano 1987; South Dakota Natural Heritage Program, *in litt.* 1994). These records are outside of the southern boreal forests where most lynx occurrences are found (McKelvey *et al.* 1999b). We conclude that these unsuitable habitats are unable to sustain lynx and that these records represent dispersing individuals that are lost from the metapopulation unless they return to boreal forest. We do not consider these States to be within the contiguous U.S. range of lynx.

Distinct Population Segment

For a species to be listable under the Endangered Species Act (Act), it must be a "species" as defined in the Act. The Act defines "species" as a species, subspecies, or Distinct Population Segment (DPS) of a vertebrate species. On February 7, 1996, the Service and the National Marine Fisheries Service published final policy guidance concerning recognition of Distinct Vertebrate Population Segments for consideration under the Act (61 FR 4722). We follow the Vertebrate Population Policy when considering listing a vertebrate species as endangered or threatened in only a

portion of its range. In developing the proposed rule and final rule for the lynx, we used the Vertebrate Population Policy to evaluate whether the lynx population in the contiguous United States constitutes a DPS under the Act.

Under the Vertebrate Population Policy, two elements, discreteness and significance, must be considered to determine whether a species' population meets the definition of a DPS. If a population is discrete and significant, its status is evaluated using the five listing factors described in section 4(a)(1) of the Act to determine if it meets the definition of either threatened or endangered.

According to the Vertebrate Population Policy, a species' population can be considered discrete from the remainder of the taxon if it satisfies either one of the following conditions—(1) "it is markedly separated from other populations of the same taxon as a consequence of physical, physiological, ecological, or behavioral factors," or (2) "it is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist."

We have determined that resident populations of lynx existed historically and currently exist within the contiguous United States (see "Status" section). In Canada, management of forest lands and conservation of wildlife habitat varies depending on Provincial regulations. Canada has no overarching forest practices legislation, such as the United States National Forest Management Act, governing management of national lands and/or providing for consideration of wildlife habitat requirements. Additionally, in Canada, lynx harvest regulations, such as length of season and quotas, vary, being regulated by individual Provinces or, in some cases, individual trapping districts. Therefore, we conclude that the contiguous United States population of the lynx is discrete based on the international boundary between Canada and the contiguous United States due to differences in management of lynx and lynx habitat.

According to the Vertebrate Population Policy, a population segment can be considered significant based on considerations that include, but are not limited to, the following—(1) "Persistence of the discrete population segment in an ecological setting unusual or unique for the taxon," (2) "Evidence that loss of the discrete population segment would result in a significant gap in the range of the taxon," (3) "Evidence that the discrete population segment represents the only surviving natural occurrence of a taxon that may be more abundant elsewhere as an introduced population outside its historic range," and (4) "Evidence that the discrete population segment differs markedly from other populations of the species in its genetic characteristics."

Lynx in the contiguous United States may be considered biologically and ecologically significant simply because of the climatic, vegetational, and ecological differences between lynx habitat in the contiguous United States and that in northern latitudes in Canada and Alaska (Buskirk *et al.* 1999b). In the contiguous United States, the distribution of lynx is associated with the mosaic of southern boreal forest and subalpine coniferous forest in the West and southern boreal forest/hardwoods in the East; whereas in Canada and Alaska lynx inhabit the classic boreal forest ecosystem known as the taiga (McCord and Cardoza 1982; Quinn and Parker 1987; Agee 1999; McKelvey *et al.* 1999b) (see "Background" and "Distribution and Status" sections).

Lynx and snowshoe hare population dynamics in portions of the contiguous United States are different from those in northern Canada. We conclude that historic and current lynx and snowshoe hare densities in the contiguous United States are naturally low relative to lynx and hare densities in the northern boreal forest (see "Background" and "Distribution and Status" sections). Because the southern boreal forest in the contiguous United States is naturally highly fragmented and contains more hare predators, it is unable to support the extremely high peak densities of snowshoe hares as in the northern boreal forest of Canada and Alaska (Wolff 1980; Buehler and Keith 1982; Hodges 1999a,1999b; McKelvey 1999a). Therefore, lynx densities at the southern part of the range never achieve the high densities of the northern boreal forest (Aubry 1999).

After review and consideration of lynx status and management in the contiguous United States and Canada, and lynx and snowshoe hare life-history, habitat, and population dynamics, we have determined that the lynx population in the contiguous United States is discrete and significant and, therefore, qualifies as a DPS to be considered for listing under the Act.

Within the contiguous United States population segment, the range of the lynx is divided regionally by ecological barriers of unsuitable lynx habitat. These regions are— (1) the Northeastern Region, including Maine, New Hampshire, Vermont, and New York; (2) the Great Lakes Region, including Michigan, Wisconsin, and Minnesota; (3) the Northern Rocky Mountain/Cascades Region, including Washington, Oregon, Idaho, Montana, northwestern Wyoming, and Utah; and (4) the Southern Rocky Mountains Region, including Colorado and southeastern Wyoming.

McKelvey *et al.* (1999b) illustrate lynx population dynamics emanating from central Canada to the periphery. The authors use Canadian and United States lynx trapping and occurrence data to display lagged synchronous cycles (cycles with similar peaks and lows in population size) (McKelvey *et al.* 1999b), providing evidence of the interconnectedness of lynx population dynamics in the contiguous United States with lynx population dynamics in the Canadian boreal forest. All of the different regions that support lynx within the contiguous United States are directly contiguous with lynx habitat or lynx populations in Canada, except the Southern Rockies, although the connectivity of the Northeast Region is largely limited to areas south of the St. Lawrence Seaway: southern Quebec and New Brunswick.

Within the contiguous United States, all four regions are isolated from each other by expanses of unsuitable habitats that limit or preclude lynx movement between these regions. Unsuitable habitat along the southeastern Great Lakes isolates the Northeastern and Great Lakes regions; the Great Plains isolates the eastern regions from the West. Although there may be some limited potential for dispersal between the Southern and Northern Rockies, lynx in the Southern Rockies are considered to be isolated from lynx populations in the Northern Rockies/Cascades Region by the Green River basin and the Red Desert. We have no expectation that lynx in these individual regions influence the presence or persistence of lynx within another region of the contiguous United States. Therefore, we believe each of these four regions are discrete.

When considering whether a population meets the significance test, policy requires us to evaluate the population as it relates to the entire range of the taxon. In the case of the lynx, the range of the taxon is extensive and exists mainly in Canada and Alaska. When we evaluated the significance of the small discrete regions in the contiguous United States to the entire range of the taxon in North America, we determined that none of these regions individually constitute significantly unique or unusual ecological settings; therefore, they could not be separated from the contiguous U.S. DPS as a whole. Within all four regions of the contiguous United States, the distribution of the lynx is associated with the southern boreal forest.

We have concluded that none of the four regions, individually, fulfill both the discreteness and significance criteria as provided under the policy. Therefore, we conclude that the listable entity is the contiguous United States DPS of the lynx, consisting of the Northeast, the Great Lakes, the Northern Rockies/Cascades, and the Southern Rockies regions.

Within the contiguous United States, the relative importance of each region to the persistence of the DPS varies. The Northern Rockies/Cascades Region supports the largest amount of lynx habitat and has the strongest evidence of persistent occurrence of resident lynx populations, both historically and currently. In the Northeast (where resident lynx populations continue to persist) and Southern Rockies regions, the amount of lynx habitat is naturally limited and does not contribute substantially to the persistence of the contiguous United States DPS. Much of the habitat in the Great Lakes Region is naturally marginal and may not support prey densities sufficient to sustain lynx populations. As such, the Great Lakes Region does not currently contribute substantially to the persistence of the contiguous United States DPS. Collectively, the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion of the range of the DPS. We conclude the Northern Rockies/Cascades Region is the primary region necessary to support the continued long-term existence of the contiguous United States DPS. However, the role that each region plays in the long-term conservation of the species will be explored further in recovery planning for the species.

Previous Federal Action

The lynx was added to Appendix II of the Convention on International Trade in Endangered Species (CITES) of Wild Flora and Fauna in 1977. The species was classified as a category 2 candidate species in the December 30, 1982, Vertebrate Notice of Review (47 FR 58454), meaning that more information was necessary to determine whether the species' status was declining. In response to a petition received on August 22, 1991, we published a notice of a 90-day petition finding on October 6, 1992, that we did not have substantial information to indicate that listing the North Cascades population of the lynx as endangered may be warranted (57 FR 46007). A lawsuit was filed challenging the October 6, 1992, finding. On July 9, 1993, we published a notice indicating that we had reviewed the North Cascades 90-day petition after receiving new information and again found that we did not have substantial information to indicate that listing the population may be warranted (58 FR 36924). In a settlement agreement dated November 30, 1993, we agreed to conduct a status review throughout the lower 48 States to determine if the species was threatened or endangered, and to complete the review and publish the finding by November 15, 1994. On February 2, 1994, we published a notice announcing continuation of the status review (59 FR 4887).

On April 27, 1994, we received a petition to list the conterminous U.S. population of "North American" lynx as threatened or endangered. Additionally, the petitioners requested that the Southern Rocky Mountain population of the "North American" lynx in Wyoming and Colorado be emergency-listed. We published a notice on August 26, 1994, that the petition presented substantial information that listing may be warranted, but that we determined emergency listing was not warranted for the Southern Rocky Mountain population (59 FR 44123).

On December 27, 1994, we published a notice (59 FR 66507) of our 12-month finding that listing the lynx in the contiguous United States was not warranted because of the lack of residency in lynx populations in the lower 48 States and our inability to substantiate that threats such as "trapping, hunting, poaching, and present habitat destruction" actually "threaten the continued existence of the lynx in the wild." On January 30, 1996, the Defenders of Wildlife and 14 other plaintiffs filed a lawsuit challenging our finding.

On March 27, 1997, the court issued an opinion and order setting aside the not warranted finding and remanding it back to us for further consideration. We were ordered to publish a 12-month finding on the status of the lynx within 60 days. On May 27, 1997, we published a 12-month finding (62 FR 28653) that the lynx population in the contiguous United States was warranted for listing under the Act but precluded by higher priority listing actions. This warranted-but-precluded finding automatically elevated the lynx to candidate species status.

On September 15, 1997, Defenders of Wildlife *et al.* filed suit in response to our finding that listing the Canada lynx population in the contiguous United States was warranted but precluded. On February 12, 1998, a settlement agreement was reached that called for us to finalize a proposed rule to list the Lynx in the contiguous United States by June 30, 1998. The proposed rule to list the contiguous United States DPS of the Canada lynx as threatened was published on July 8, 1998 (63 FR 36994).

On July 8, 1999 (64 FR 36836), we extended the listing deadline by 6 months to receive and evaluate comments on new information contained in a report, "The scientific basis for lynx conservation in the contiguous United States" (Science Report), prepared by a team led by the Forest Service's Rocky Mountain Research Station (Ruggiero *et al.* 1999c). As a result, the new listing deadline became January 8, 2000. The Act permits such an extension for the purpose of soliciting additional data when there is substantial disagreement regarding the sufficiency or accuracy of the available data relative to the determination.

The Act requires listing determinations to be made using the best scientific and commercial data available. However, the 1998 settlement agreement allowed only 4 months within which to prepare the proposed rule to list the lynx, much less time than the 9 months allowed by the Act to conduct a status review to make a listing determination. Consequently, we were not able to gather nor consider the best scientific and commercial data available at the time of publication of the proposed rule; instead we relied primarily on data we had gathered during the lynx status review in 1994. Therefore, this final rule treats information available since 1994 as new information; whereas, typically, new information is that information made available subsequent to the proposed rule.

Summary of Comments and Recommendations

In the July 8, 1998, proposed rule and associated notifications (63 FR 58910), all interested parties were requested to submit comments or suggestions on the proposed rule, particularly on the following topics—(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species; (2) Additional information concerning the range, distribution, and population size of the species; (3) Current or planned activities in the subject area and their possible impacts on the species; and (4) Additional information pertaining to the promulgation of a special rule to provide States and Tribes the opportunity to maintain the lead role in protection, management, and recovery of the species through the voluntary

development and implementation of a conservation plan. In the proposed rule, we announced that 10 public hearings on the proposal would be held in various locations throughout the range of the lynx in the contiguous United States. One additional public hearing was announced on August 26, 1998 (63 FR 45445).

Open houses and public hearings, providing an additional forum for public comment on the proposed rule, were held in Colorado, Idaho, Montana, Oregon, Washington, Wyoming, Maine, and Wisconsin. The 60-day comment period on the proposed rule, originally closing on September 30, 1998, was twice extended by request. The first extension was announced on October 2, 1998, and extended the comment period to October 14, 1998 (63 FR 53010). The second extension was announced on October 19, 1998, and extended the comment period on the proposed rule until November 16, 1998 (63 FR 55839).

On July 8, 1999 (64 FR 36836), we extended the listing deadline by 6 months to receive and evaluate comments on new information contained in a report, "The scientific basis for lynx conservation in the contiguous United States" (Science Report), prepared by a team led by the Forest Service's Rocky Mountain Research Station (Ruggiero *et al.* 1999c). The Act permits such an extension for the purpose of soliciting additional data when there is substantial disagreement regarding the sufficiency or accuracy of the available data relative to the determination. On August 18, 1999, we announced that we had reopened the comment period for an additional 38 days to allow the public to provide additional comment on the proposed rule based on new information contained in the Science Report (64 FR 44883).

Prior to making our final listing determination on the lynx, we held the 11 announced public hearings, and allowed for a total of 140 days of public comment on the proposed rule and Science Report. Appropriate Federal and State agencies, tribal governments, county governments, scientific organizations, and other interested parties were contacted and requested to comment during the initial comment period, notified of the extensions, and were again contacted when the comment period was reopened to allow evaluation of the Science Report. Notices of the proposed rule and public hearings were sent to over 1,200 individuals, and public notices were published in 63 newspapers within the contiguous U.S. range of the lynx, including the Spokesman Review, Spokane, Washington; Wenatchee World, Wenatchee, Washington; The Oregonian, Portland, Oregon; The La Grande Observer, La Grande, Oregon; The News Review, Roseburg, Oregon; The Daily Courier, Grants Pass, Oregon; The Bend Bulletin, Bend, Oregon; The Idaho Statesman, Boise, Idaho; Great Falls Tribune, Great Falls, Montana; Independent Record, Helena, Montana; The Missoulian, Missoula, Montana; The Billings Gazette, Billings, Montana; Bozeman Daily Chronicle, Bozeman, Montana; The Daily Inter Lake, Kalispell, Montana; The Western News, Libby, Montana; Casper Star-Tribune, Natrona County, Wyoming; Wyoming Tribune Eagle, Laramie County, Wyoming; The Cody Enterprise, Cody, Wyoming; The Dubois Frontier, Fremont County, Wyoming; Jackson Hole News, Jackson, Wyoming; Pinedale Roundup, Sublette County, Wyoming; The Riverton Ranger, Fremont County, Wyoming; Thermopolis Independent Record, Thermopolis, Wyoming; Detroit Free Press, Detroit, Michigan; Lansing State Journal, Lansing, Michigan; Daily Mining Gazette, Michigan; Marquette Mining Journal, Marquette, Michigan; Iron Mountain News, Iron Mountain, Michigan; Escanaba Press, Escanaba, Michigan; The Evening News, Michigan; North Country Sun, Michigan; Ontonagon Herald, Ontonagon, Michigan; L'Anse Sentinel, L'Anse, Michigan; The Munsing News, Munsing, Michigan; Manistique Pioneer Tribune, Manistique, Michigan; The Newberry News, Newberry, Michigan; Iron River Reporter, Iron River, Michigan; The Menominee County Journal, Michigan; Minneapolis Star Tribune, Minneapolis, Minnesota; St. Paul Pioneer Press, St. Paul, Minnesota; Duluth News Tribune, Duluth, Minnesota; Ely Echo, Ely, Minnesota; Grand Forks Herald, Grand Forks, Minnesota; Bemidji Pioneer, Bemidji, Minnesota; International Falls Journal, International Falls, Minnesota; Virginia Mesabi News, Minnesota; Cook County News, Minnesota; Grand Rapids Herald Review, Minnesota; Milwaukee Journal Sentinel, Milwaukee, Wisconsin; Wisconsin State Journal, Madison, Wisconsin; Wausau Herald, Wausau, Wisconsin; Florence Mining News, Florence, Wisconsin; Spooner Advocate, Spooner, Wisconsin; Rhinelander News, Rhinelander, Wisconsin; Vilas County News Review, Wisconsin; Superior Daily Telegram, Superior, Wisconsin; Bangor Daily News, Bangor, Maine; Manchester Union Leader, Manchester, New Hampshire; Burlington Free Press, Burlington, Vermont; Albany Times Union, Albany, New York; Rocky Mountain News, Denver, Colorado; Boulder Daily Camera, Boulder, Colorado; and The Daily Sentinel, Grand Junction, Colorado.

We received a total of 3,548 responses on the proposed rule, 166 oral and 3,382 written comments. Of these comments, 7 were from Federal agencies; 58 were from State, county, city governments or schools; 3,261 were from individuals; 214 were from organizations and industry; 5 were from tribal governments, and 3 were from Canada. Most of these responses were received in the form of a form letter or postcard. Of these commentors, 2,676 supported listing the Canada lynx, 780 opposed listing, and 92 expressed no position.

In response to the reopening of the comment period on August 18, 1999, to receive comment on the Science Report, we received an additional 379 responses. Of these, 239 supported a listing, 115 opposed the listing, and 25 provided comment on the Science Report only. All written and oral statements presented at the public hearings and received during the public comment periods, including comments on the Science Report and peer review comments, are addressed below and within the text of this rule. Comments of a similar nature are grouped into general issues. These issues and our response to each are discussed below.

Issue 1—Several commentors believed that there are insufficient and/or inadequate data to support evidence of lynx existence and viable population status within the lower 48 States or at the southern fringes of the range. They believed lynx should be managed in Canada rather than by the Act in the United States. Numerous commentors strongly opposed listing the lynx in Oregon and other individual States, claiming there has never been a self-sustaining breeding population of lynx in a particular State. Several commentors were concerned that much of the information used to develop the range maps for lynx in the United States may represent only dispersing individuals and does not indicate viable populations capable of successful reproduction and recruitment. Similarly, several individuals commented that the distribution maps in the Science Report do not accurately reflect occupied range and that there is no evidence that lynx currently exist in many of the States that the map identifies as occupied.

Response—The scientific basis for our findings and conclusions in the proposed rule and those in the Science Report were questioned by many of the affected State wildlife agencies and others that responded during the public

comment period. When making a listing determination, we are required to use the best available scientific and commercial information. To accomplish this, section 4(b)(6)(B) of the Act allows for a 6-month extension of a final determination for the purpose of soliciting additional information if there is substantial disagreement regarding the sufficiency or accuracy of the available data. In the case of the lynx finding, because there was substantial disagreement regarding the sufficiency or accuracy of the available data, we extended for 6 months the deadline for a final listing determination on the proposal to list the contiguous United States DPS (64 FR 36836). The 6-month extension allowed us to receive and evaluate new information contained in the Science Report, a scientific report on lynx prepared by a team of scientist assembled by the Forest Service's Rocky Mountain Research Station in 1998. The Science Report is a comprehensive compilation and assessment of historic and current lynx occurrence records and distribution, scientific literature, lynx and prey ecology, habitat correlations and threats to the continued existence of lynx in the contiguous United States. The Science Report is the only comprehensive assessment of lynx in the contiguous United States and was used, as was the new information obtained during the comment period, in our final listing determination (see "Background," "Distribution and Status," and "Summary of Factors" sections).

Current and best available information, including the Science Report, verified the persistence and presence of lynx in the contiguous United States and recent records of lynx in Oregon (see "Distribution and Status" section). However, with the limited information available on the species, we cannot ascertain whether a resident lynx population exists currently or existed historically in Oregon. We believe that many of the lynx records in the contiguous United States, including Oregon, are of transient animals that dispersed during cyclic population increases (see "Background" and "Distribution and Status" sections). Regardless, the Act, and the Service in administering the Act, do not make a distinction between resident populations, breeding populations, and transient or breeding individuals when considering a species for listing. However animals that are considered "dispersing," and found in unsuitable habitat are considered lost from the metapopulations, because they are unlikely to survive unless they return to boreal forest. Therefore, dispersing individuals were not considered in this listing. Further, the fact that lynx are managed in Canada does not relieve us from our statutory responsibilities to protect the wildlife of the United States. We have determined that the contiguous United States population of lynx is a DPS under the Act and warrants listing as a threatened species. This determination, therefore, includes all lynx within the contiguous United States, whether they be transient lynx or resident populations.

The lynx distribution maps developed for the Science Report were produced by overlaying lynx occurrence records on maps of primary vegetation types (McKelvey *et al.* 1999b). The authors included all occurrence records made available by State, tribal, and Federal agencies, published and unpublished reports, and museum and harvest records. Furthermore, they considered the reliability of the records. Although there may be errors for some individual data points, these data provide a good basis for us to evaluate lynx occurrence and distribution in the contiguous United States. The maps defined vegetation types for which most lynx occurrences are associated. They are not maps of occupied habitat.

Issue 2—Many commentors believed we have insufficient or inadequate data to show that a sufficient prey base historically existed or currently exists in the lower 48 States to support lynx.

Response—The Act requires that the Service make listing determinations solely on the basis of the best scientific and commercial data available. Where there is little information available we use our best scientific judgement and that of experts in the field. Available snowshoe hare information as it applies to lynx is summarized by Hodges (1999a, 1999b) in the Science Report. Additionally, we relied on the availability of the primary habitat types used by both snowshoe hares and lynx as an indicator of suitable habitat and likely presence of one or both species (see "Distribution and Status" and "Factor A").

Issue 3—Many commentors believed there were insufficient or inadequate data to support a listing and that the decision-making process concerning the proposal to list the lynx was being driven by political pressure and lawsuits. One commentor also believed that the limited quantity of evidence gathered by the Service does not meet the standard of sound science required by the Act and that the proposed rule did not acknowledge the strengths and limitations in the extant body of research related to Canada. For example, trapper harvest data do not account for trapper effort which may be affected by pelt prices, social change or climatic conditions. Several commentors wanted to know what the effects of trapping on lynx population status and potential recovery were and if the mortality from accidental trapping or animal damage control activities were significant to the overall population. They similarly commented that the Science Report failed to provide quantified data and conclusions justifying additional protection under the Act and believed that additional studies were needed and should be initiated and completed. They suggested that we defer a decision until more information is available.

Response—While lawsuits have had an important procedural impact in our listing process, whether the species warrants listing under the Act is a substantive biological determination and has remained our responsibility. We have carefully assessed the best scientific and commercial data available, as required by the Act. We recognize that there are limitations in the extant body of data, including the trapping information, and have taken those limitations into consideration when evaluating the data. As described in "Factor B" in the "Summary of Factors" section, harvest returns are affected by factors that influence trapper effort and success, such as changes in socioeconomic conditions, season length, quotas and trapping restrictions, and ease of access. However, we also recognize the harvest data provided information on the presence and persistence of lynx within the contiguous United States (see "Distribution and Status" section). Furthermore, harvest data for lynx in Canada has similarly provided information about the persistence of lynx in adjacent habitats in Canada and increased our understanding of lynx population dynamics (see "Background," "Distribution and Status," and "Factor B" sections). We have determined that the occurrence of lynx within the contiguous United States is influenced to varying degrees by immigration of lynx from Canada.

We carefully assessed the effects of trapping during our review of the species' status (see "Factor B" and "Factor E" in the "Summary of Factors" section). The effects of trapping on lynx populations are variable depending on factors such as whether lynx taken are a part of a resident population or dispersing individuals that are unlikely to reproduce and contribute to a population, fitness of the lynx population in a given area, connectivity within a larger metapopulation, the

impact of other threats to the population, and the additive nature of these threats. If the population is doing well in an area and there are no threats to its continued existence, trapping mortality would not likely jeopardize the population. However, if other threats to a resident population exist, the additive nature of additional losses to the population may prove to be significant, at least on a local scale. Mortality from accidental trapping or animal damage control activities would be considered incidental and in most cases would not be significant; we have no information to indicate that the loss of such individuals has negatively affected the overall ability of the contiguous United States DPS to persist.

We agree that additional studies of lynx are necessary to better understand the dynamics and requirements of lynx populations in the contiguous United States (see "Distribution and Status" section). However, the Act does not allow us to defer a listing decision based on the need for more research. Most scientists would agree that there is always a need for more research, but listing decisions cannot be postponed based on this premise when known threats to a species are present that may result in a species' trend toward extinction.

Issue 4—Several wildlife professionals stated that the effects of overharvesting lynx during the 1970s and 1980s were overstated in our proposed rule and that it does not explain current population levels. If lynx were overharvested in the past, they should have had sufficient time to recover by now. They stated that overutilization is no longer a potential threat nor an additive threat to the continued existence of lynx.

Response—We made our determination to propose the species for listing based on the available information at the time. We concluded that low numbers of lynx in the contiguous United States and Canada were the residual effects of substantial overtrapping that occurred in the 1970s and 1980s. We no longer believe that to be true (see "Factor B" in the "Summary of Factors" section). New information explains that the cyclic lynx highs of the early 1960s and 1970s that are reflected in harvest records were unprecedented high levels for the 20th century. Harvest returns that we believed to be abnormally low, were being compared to harvest records during the unprecedented high levels of the 1960s and 1970s rather than to data for cycles over a longer period of time. Comparisons of the recent records to earlier records from the 20th century indicated comparable harvest records. We conclude that, in the contiguous United States, lynx populations are naturally at low densities; therefore, what seem to be low population levels compared to those of the northern boreal forest in Canada and Alaska likely are normal for lynx at the southern portion of their range where optimal habitat is naturally limited (see "Factor B"of the "Summary of Factors" section).

We recognize the limitations of using harvest data to evaluate the status of a vertebrate population (see "Distribution and Status" section and "Factor B" of the "Summary of Factors" section). There can be numerous reasons for a smaller harvest return one year compared to previous returns, such as trapper effort, weather, or low pelt prices. States in the contiguous United States substantially restricted or closed their lynx harvest seasons by 1990, resulting in less information with which to evaluate the current status of lynx. We now believe that ongoing precautions taken by States and Provinces to restrict lynx trapping since the 1980s possibly prevented the overharvest of resident populations of lynx. We concur with Mowat *et al.* (1999) that it is possible lynx were overharvested in local areas but that in time, particularly with the protection given lynx from trapping closures in the contiguous United States, dispersal by lynx from healthy populations has led and in the absence of significant threats will lead to the repopulation of such areas.

Issue 5—Numerous individuals commented that the proposed rule and the Science Report failed to demonstrate that there are significant threats to the survival of the lynx, claiming that there is little evidence in the proposed rule or the Science Report to support claims that current management practices, including timber harvesting and human access, adversely affect lynx; that lynx are old growth obligates; that either bobcat or coyotes are direct competitors for prey with lynx; that lynx habitat throughout the lower 48 States has been fragmented, degraded or reduced by human activity; or that this has resulted in lynx declines. Additionally, these commentors asked how important were localized threats to the overall status of the species and if we knew enough about the threats to assess the cumulative effects to lynx.

Response—In the proposed rule, we identified numerous potential threats to the continued existence of lynx based on information available at the time. Since then we have significant new information regarding the magnitude and imminence of some of the factors identified as threats in the proposed rule. However, there is still a lack of quantifiability information to determine whether some of the possible threats have or would actually result in lynx declines. Both the "Summary of Factors" and "Background" sections discuss the new information we have obtained and how it has been assessed in our decision, particularly regarding habitat (Factor A) and competition issues (Factor E). Because a substantial amount of lynx habitat in the contiguous United States occurs on federally managed lands, particularly in the West, we conclude that the factor threatening lynx in the contiguous United States is the lack of guidance in existing Federal land management plans for conservation of lynx and lynx habitat. Implementation of lynx conservation through revision of Federal land management plans may sufficiently remove threats to the species such that it no longer warrants listing.

Issue 6—Many State agencies believed the proposed rule failed to demonstrate that there has been significant extirpation of lynx within the lower 48 States or that a significant range reduction has occurred. There is disagreement on the status and historic range of lynx within some States. Furthermore, they believe that lynx do not occur throughout predicted habitat. They requested information on the basis of our determination of whether a resident or remnant lynx population existed within a State and if the low numbers were the result of poor monitoring, marginal habitat or poor rates of immigration from source populations. They believed the Science Report likewise failed to assess lynx population size, status, and trends.

Response—The Act requires us to make listing determinations on the best available scientific and commercial information. Data are often not available to make statistically rigorous inferences about a species' status (*e.g.*, abundance, population trends, and distribution). The extant body of data concerning lynx population status, trends, and historic range is limited. Current information about lynx in the contiguous United States allows us to understand the distribution of lynx. However, the available data for most States do not allow us to assess whether resident populations were historically or are currently present (see "Distribution and Status" section). The scientific community is just beginning to study issues such as specific habitat and prey requirements necessary to support lynx populations, role of dispersing animals in metapopulation dynamics, and lynx

demographics. However, given these uncertainties, we are still charged with determining whether the species warrants listing under the Act. After reviewing the best available information, obtained through a comprehensive effort involving review of historic and current occurrence records, including harvest records for both Canada and the United States; sightings and track records; personal communications with lynx, hare, and forest ecology experts; and a review of all available literature, we have made several conclusions about the status of lynx in the contiguous United States as described in the "Distribution and Status" and "Finding" sections.

In the proposed rule we attempted to identify whether each of the States historically supported or currently support resident populations of lynx. The Act does not make a distinction between protection of resident and migratory or transient species, or between resident populations and those supported by immigration from Canada. Whether a species resides in whole or in part in the United States, it is eligible for protection under the Act. In many instances we cannot be certain whether the lynx was historically resident in a region or was wholly made up of transient animals from Canada or other parts of its range, or a combination of these (see "Background" and "Distribution and Status" sections). However, given the available information from occurrence records, habitat maps, and comparisons of harvest records from the United States and Canada, we concluded that certain areas, such as the Northern Rockies/Cascades Region, continue to support self-sustaining resident lynx populations, while in other areas or regions we were unable to determine the historic or current presence of a resident lynx population based on available information (see "Distribution and Status" section).

Issue 7—Numerous commentors made the following statements: The proposed rule failed to demonstrate that the contiguous United States population represents a DPS and, given the large areas of habitat still directly connected to Canada, evidence of movement across the international border, and the failure to demonstrate that the United States' population is significant, designation of a contiguous United States DPS for lynx is not warranted. The Vertebrate Population Policy does not provide authority for using an international boundary and differences in management programs as a basis for determining discreteness. Likewise, the "significant gap" criterion in the policy was not intended to be applied to populations on the edge of a species' range. There is no evidence that lynx in the United States are capable of long-term survival if isolated from the larger population in Canada. There is no evidence that lynx populations within the contiguous 48 States were once connected. The idea that semi-isolated subpopulations of lynx separate from each other and from Canada can be supported within the United States is contrary to what is known about lynx ecology. Lynx in the United States are part of a trans-border population and should be managed in cooperation with Canada. Conversely, several commentors believe that lynx in the southern portion of Canada have sharply declined and that we cannot rely on immigration from Canada, nor Canadian management of lynx, to maintain lynx in the United States. Several commentors believe that the lynx deserves protection under the Act based solely on its United States' population.

Response—The Service's Vertebrate Population Policy, published in the **Federal Register** on February 7, 1996 (61 FR 4722) specifies that a population segment may be found to be discrete if it satisfies one of two conditions. One of the two conditions states, "It is delimited by international governmental boundaries within which differences in control of exploitation, management of habitat, conservation status, or regulatory mechanisms exist." We have determined that lynx occur in both resident populations and as transients in the contiguous United States and conclude that this population satisfies the above requirement for discreteness based on the international boundary between Canada and the contiguous United States and the differences in management of lynx between Canada and the United States (see "Distinct Population Segment" section). While we recognize that portions of the contiguous United States DPS of lynx are part of a trans-border population, when using the international boundary as a criterion for establishing discreteness, the Vertebrate Population Policy does not make a distinction of whether there is movement between the two populations. While we recognize that this movement occurs, and we believe that immigration from Canada may strongly influence the persistent occurrence of lynx in some portions of the United States' population (see "Distribution and Status" section), this does not negate the international boundary for establishing discreteness between Canadian' and United States' lynx populations under our policy.

Based on the discreteness of a population, our Vertebrate Population Policy requires that we consider the significance of the population to the taxon to which it belongs. We believe there are climatic and vegetational differences in lynx habitat between Canada and the United States, as well as ecological differences between lynx in the contiguous United States and northern populations in Canada and Alaska (see "Distinct Population Segment" section). Therefore, the contiguous United States' population meets the significance criteria for establishment of a DPS.

Additionally, we believe the criterion relating to a "significant gap" in the species' range applies to any discrete unit that exhibits significance regardless of whether it is on the edge of the species' range. For example, there may be situations where populations at the edge of a species range may have unique genetic characteristics or may have adapted to unique or unusual ecological conditions.

Finally, after we established that the United States' population of lynx is discrete and significant, we then applied the listing criteria to the contiguous United States' population of lynx and determined that it meets the definition of a threatened species under the Act (see Factors A-E in the " Summary of Factors" section).

Issue 8—Many commentors believed that lynx in different regions of the United States, isolated in island populations and divided regionally by ecological barriers, even State boundaries, are biologically significant and should be considered for listing separately so that each population can be protected and managed according to its needs. They think that, for a wide-ranging species such as lynx, the status of the lynx population in Montana should have no bearing and should not provide a baseline for populations struggling to survive elsewhere in the lower 48 States. In particular, they stated that the Southern Rockies meets the definition of a DPS and that it should be listed as endangered because it is likely on the verge of extirpation, is genetically isolated, faces continued threats, and meets the definition of an unusual or unique ecological setting. These commentors stated that loss of lynx in the Southern Rockies would result in a significant gap in its range. Furthermore, there is scientific consensus that lynx were once viable in Colorado and southern Wyoming. Conversely, some commentors believe lynx at the southern edge of the range

should be excluded from listing. They stated that existing data suggest that lynx exist in the lower 48 States, especially east of Montana, only as a rare and transitory species at the edge of its range, dependent on continued immigration from Canada.

Response—We recognize that, within the contiguous United States, the distribution of the lynx is divided into four geographically isolated regions; the Northern Rockies/Cascades, Southern Rockies, Great Lakes and Northeast (see "Distribution and Status" and "Distinct Population Segment" sections). In evaluating whether these qualified as separate DPSs or should be considered one, we analyzed whether lynx in these individual regions qualified as both discrete and significant according to our DPS policy. We concluded that within the United States they were geographically isolated and, therefore, qualified as discrete. When considering whether a population meets the significance test, policy requires that our evaluation take into account the population as it relates to the entire range of the taxon. In the case of the lynx, the range of the taxon is extensive and exists mainly in Canada and Alaska. Only a small portion of the range extends into the United States. The Southern Rockies and Northeast regions account for an extremely small fraction of the entire range of the taxon. We determined that none of the regions individually constitute significantly unique or unusual ecological settings. Within all four regions of the contiguous United States the distribution of lynx is associated with the southern boreal forest. The important element for lynx is forest structure that provides food and cover for snowshoe hares and cover for lynx dens, not the specific vegetation found within the boreal forest. Therefore, the individual regions could not be considered individually significant under our Vertebrate Population Policy and could not be separated from the contiguous United States DPS as a whole. We determined that, individually, none of the four regions fulfill both the discreteness and significance criteria as required under the Vertebrate Population Policy (see "Distinct Population Segment" section). Therefore, we conclude that the listable entity is the contiguous United States DPS of the lynx, consisting of the Northeast, the Great Lakes, the Northern Rockies/Cascades, and the Southern Rockies regions.

Within the contiguous United States, the relative importance of each region to the persistence of the DPS varies. The Northern Rockies/Cascades Region supports the largest amount of lynx habitat and has the strongest evidence of persistent occurrence of resident lynx populations, both historically and currently. In the Northeast, Great Lakes, and Southern Rockies regions, the amount of lynx habitat is relatively limited and does not contribute substantially to the persistence of the contiguous United States DPS. We conclude the Northern Rockies/Cascades Region is the primary region necessary to support the continued long-term existence of the contiguous United States DPS.

Issue 9—Several individuals believed that we failed to take into account the increased abundance of mountain lions as a threat to lynx and that the rule should acknowledge this concern and discuss this factor as potentially affecting Canada lynx.

Response—At the time we wrote the proposed rule to list the lynx as a threatened species, we did not address mountain lion competition with lynx because we had no information that it was a potential threat. Subsequently, the Science Report has identified the potential threat of mountain lion competition (Aubry et al. 1999; Buskirk et al. 1999a). Definitive data on the potential threat of mountain lions on lynx are lacking. However, because known incidents of mountain lions killing lynx are rare, we presume they occupy different ecological niches (particularly in winter), and because they depend on different prey, we conclude that the population-level effect of mountain lions on lynx is minimal (see "Factor E" of the "Summary of Factors" section).

Issue 10—Some commentors believed we did not provide for adequate public participation in commenting on the Science Report or in response to the listing proposal.

Response—Prior to making our final listing determination on the lynx, we held 11 public hearings and allowed for a total of 140 days of public comment on the proposed rule and Science Report. Our proposed rule to list the lynx as threatened, published in the **Federal Register** on July 8, 1998, opened a 60-day comment period during which we requested comments and materials concerning the proposed rule. At the same time we announced that 10 public hearings on the proposal would be held in various locations throughout the range of the lynx in the contiguous United States. One additional public hearing was announced on August 26, 1998 (63 FR 45445). Open houses and public hearings, providing a forum for verbal comment on the proposed rule, were held in Colorado, Idaho, Montana, Oregon, Washington, Wyoming, Maine, and Wisconsin. Announcements of the proposed rule and public hearings were made in local newspapers throughout the range of the lynx. The comment period on the proposed rule, originally closing on September 30, 1998, was twice extended by request. From the time a proposed rule is published, the Act allows 12 months in which to make and publish a final determination on a listing action. We extended the 1-year period for the lynx final listing determination for 6 months in a July 8, 1999, **Federal Register** announcement (64 FR 36836), specifically to allow for review, evaluation, and comment on the Science Report because there was substantial disagreement regarding the sufficiency and accuracy of the information. On August 18, 1999, we announced in the **Federal Register** that we were reopening the comment period for an additional 38 days to allow the public to review and comment on the proposed rule based on new information contained in the Science Report, which was placed on the Internet for accessibility. Press releases were issued to ensure the public was aware of the reopened comment period. While we received requests to extend the comment period on the Science Report, we declined to do so because of the time frames the Act allows for completion of a final listing determination, the amount of public notice about the Science Report and rapid availability of the Science Report to interested parties via the Internet.

Issue 11—Several individuals believe the lynx should be listed as endangered, not threatened because they believe the lynx is in danger of extinction throughout a significant portion of its range, that it is part of our cultural heritage and should be protected. They stated that in light of the uncertainties about the existing information collected on lynx status and threats, the Service should be cautious and protect existing populations of lynx while additional information is collected. If listed as endangered the lynx would receive the full protection of the Act. Listing would focus more attention on the precarious status of the species and encourage State wildlife agencies to do more educational outreach and encourage conservation on private lands. These commentors also stated that a listing would increase attention given to lynx by Federal land management agencies and would provide the oversight that is needed to ensure conservation and recovery activities are implemented and are effective. Some commentors also believed that failure to list the lynx as

endangered would be contrary to the settlement agreement and other court-ordered stipulations, as well as the Service's listing priority guidance. They stated that the proposed rule to list the lynx as threatened rather than endangered is inconsistent with the prior "warranted" petition finding of May 27, 1997, in which the Service assigned the lynx its highest listing priority number because of the magnitude and imminence of the threats. Conversely, some commentors believed that a listing as threatened was more appropriate and would provide the opportunity and resources to plan a conservation strategy at the landscape scale.

Response—When evaluating whether a species, or in this case a DPS, should be listed as threatened or endangered, we first assess the current status of the DPS and then analyze the degree, magnitude and imminence, of the threats to its continued existence. If we conclude that a DPS of a species is likely to go extinct in the foreseeable future, then we must list it as endangered. If we conclude that it is likely to become endangered in the foreseeable future then we must list it as threatened. While we made an extensive effort to find and assess all the available information on the status of lynx in the contiguous United States, the best scientific information available does not provide a clear picture as to the current status of the species (see "Distribution and Status" section). The lack of information on lynx does not allow us to determine with certainty whether the species' population trend is stable, increasing or declining. However, we can make several inferences from the available data. Resident populations continue to exist in the Northern Rockies/Cascades and Northeast regions. Available information provides evidence that within the contiguous United States, lynx continue to occur in most places with historical evidence of persistence except for possible range reductions in the Northeast and Southern Rockies. Given available information on current and historical lynx occurrence and threats, as identified in the "Summary of Factors" section, we conclude that the contiguous United States DPS of the lynx is threatened (see "Finding" section).

In the proposed rule, various threats were identified as potentially affecting lynx populations (see "Summary of Factors" section), including competition, habitat loss and fragmentation, and the inadequacy of existing regulatory mechanisms (in the form of land management plans) to protect the species. However, there is inconclusive evidence that any of these factors, with the exception of inadequate regulatory mechanisms, may actually adversely affect the contiguous United States' lynx population. At the local level, particularly in the Southern Rockies, habitat loss and fragmentation may negatively affect lynx (see "Factor A" and "Factor E" of the "Summary of Factors" section). However, at the DPS scale, we conclude the factor threatening lynx is the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx and lynx habitat in Federal land management plans (see "Factor D" of the "Summary of Factors" section). A substantial number of the primary areas of lynx occurrence are on Federal lands (see "Factor A" of the "Summary of Factors" section) where programs, practices and activities allowed by current plans may cumulatively impact lynx.

In the settlement agreement dated February 12, 1998, we agreed to publish a proposed rule to list the lynx within the contiguous United States under section 4 of the Act. At the time, we had not determined whether it warranted threatened or endangered status. In the "warranted but precluded" petition finding of May 27, 1997, we assigned the lynx a listing priority number of 3. Guidelines for assigning listing priority numbers, published in the **Federal Register** on September 21, 1983 (48 FR 43098), describe a system for considering three factors in assigning a species a numerical listing priority on a scale of 1–12. The three factors are magnitude of threat (high or moderate to low), immediacy of threat (imminent or non-imminent), and taxonomic distinctiveness (monotypic genus, species or subspecies/population). For a population, such as the contiguous United States' Canada lynx population, listing priority numbers of 3, 6, 9, or 12 are possible. At the time of the "warranted but precluded" finding we concluded that the overall magnitude of threats to lynx was high and that the threats were imminent. Therefore, a priority number of 3 was assigned. New information indicates that threats are at a much lower magnitude than previously believed (see "Summary of Factors" section).

Issue 12—Several commentors were concerned that we did not propose a special 4(d) rule for incidental take of lynx along with the proposed listing. They encouraged us to cooperate with the respective States and Tribes in the development of a 4(d) rule and wondered what type of Federal oversight role would follow the issuance of a special rule.

Response—Section 4(d) of the Act provides that whenever a species is listed as threatened, the Secretary of Interior will issue regulations deemed necessary and advisable to provide for the conservation of the species.

We have issued regulations that generally apply to threatened wildlife virtually all the prohibitions that section 9 of the Act establishes with respect to endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to "take" any listed wildlife species; to harass, harm pursue, hunt, shoot, wound, kill, trap, or collect any threatened or endangered species or to attempt to engage in any such conduct (16 U.S.C. section 1532 (19)).

Our regulations for threatened wildlife also provide that a "special rule" under section 4(d) of the Act can be tailored to define the section 9 prohibitions for particular threatened species. In that case, the general regulations applying most section 9 prohibitions to threatened species do not apply to that species, and the special rule is to contain the prohibitions (and exemptions) necessary and appropriate to conserve that species.

Such regulations generally are issued and published as special rules in the **Federal Register** along with or following a listing. This final rule includes a special 4(d) rule that addresses the taking and export of captive lynx. To address incidental take of lynx while engaged in otherwise lawful hunting and trapping for bobcat we are currently consulting under section 7 of the Act with the U.S. Fish and Wildlife Service's Office of Management Authority which issues CITES permits for export of bobcat pelts. Additionally, we have worked with State and Tribal agencies and are currently preparing an additional special 4(d) rule to address incidental take of lynx resulting from otherwise lawful hunting and trapping for species other than bobcat (and other than lynx). This proposed amendment to the special rule will describe the Federal oversight that will be required if the rule is implemented. We hope to publish the proposed special rule in the **Federal Register** as soon as possible following this listing rule.

Issue 13—One commentor asked what role the Draft Lynx Conservation Assessment and Strategy (LCAS) would play in the long-term conservation of lynx if the species were listed. Another commentor was concerned about conferencing with other Federal agencies to conserve lynx and how we

intended to work with other agencies to identify and implement protective lynx measures. They suggested that a comprehensive review of the Forest Service Forest Management Plans is needed to assess their impacts upon potential lynx habitat and that management plans should be revised to improve snowshoe hare and lynx habitat. Many commentors also stated that Federal agencies should manage and protect public lands in a manner that will increase snowshoe hare habitat.

Response—The LCAS was developed to provide a consistent and effective approach to conservation of lynx on Federal lands in the contiguous United States (United States Forest Service *et al.* 1999). It was developed by the Forest Service, Bureau of Land Management (BLM), National Park Service, and the Service. The overall goals of the LCAS were to develop recommended lynx conservation measures, provide a basis for reviewing the adequacy of the Forest Service and BLM Land and Resource Management Plans with regard to lynx conservation, to facilitate section 7 conferencing and consultation under the Act should the lynx be listed (see "Factor D" of the "Summary of Factors" section) and to guide future recovery efforts. The "Draft Biological Assessment of the Effects of National Forest Land and Resource Plans and Bureau of Land Management Land Use Plans on Canada Lynx" (DBA) identified potential effects resulting from 57 Forest Service Land and Resource Management Plans and 56 BLM Land Use Plans within the 16-State area where lynx were proposed for listing (United States Forest Service and Bureau of Land Management 1999).

Section 7(a)(4) of the Act states that Federal agencies shall confer with the Service on any agency action which is likely to jeopardize the continued existence of any species proposed to be listed under section 4 of the Act or result in the destruction or adverse modification of critical habitat proposed to be designated for such species. Conferencing is a process of early interagency cooperation involving informal or formal discussions between a Federal agency and the Service regarding the likely impact of an action on proposed species or critical habitat. It is designed to help Federal agencies identify and resolve potential conflicts between an action and species conservation early in a project's planning and to develop recommendations to minimize or avoid adverse effects to proposed species or proposed critical habitat. With this final rule to list the lynx within the contiguous United States as threatened, conferencing is no longer applicable and any agency actions that may affect the lynx will need to be addressed under consultation in accordance with section 7(a)(2) of the Act.

For the lynx, the Forest Service, BLM, National Park Service, and the Service recognized that Federal agencies have a significant role in the conservation of lynx. They established a Lynx Steering Committee in 1998 consisting of representatives from each agency. The Steering Committee provides oversight and guidance to teams established to address various lynx conservation issues on Federal lands. One team developed the LCAS; another team developed the Science Report; a third team prepared a biological assessment to evaluate the effects of Forest Service and BLM Land Management Plans on lynx. All of these efforts are intended to plan and implement sound conservation actions and management decisions for lynx on Federal lands.

Issue 14—Numerous commentors were concerned about the economic, social, and cultural effects of listing the lynx. They believed a listing would result in increased burdens on local economies affecting jobs, culture and way of life, and that the cost of implementing a lynx conservation and recovery program is not an efficient allocation of tax dollars.

Response—When drafting the Act, Congress found in section 2(a)(1) that, "various species of fish, wildlife and plants in the United States have been rendered extinct as a consequence of economic growth and development untempered by adequate concern and conservation." In keeping with this finding, listing decisions, other than critical habitat designations, are not subject to economic analyses. The purpose of listing a species is to provide a means whereby the ecosystems upon which endangered species and threatened species depend may be conserved, to provide a program for the conservation of such endangered species and threatened species, and to take such steps as may be appropriate to conserve the various species facing extinction. In accordance with 16 U.S.C. 1533(b)(1)(A) and 50 CFR 424.11(b), listing decisions are made solely on the basis of the best scientific and commercial data available. In adding the word "solely" to the statutory criteria for listing a species, Congress specifically addressed this issue in the 1982 amendments to the Act. The legislative history of the 1982 amendments states— "The addition of the word 'solely' is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species. The committee strongly believes that economic considerations have no relevance to determinations regarding the status of species * * *," H.R. Rep. No. 567, Part I, 97th Cong., 2d Sess. 20 (1982). Therefore, we have not considered the impacts of listing on economic development in making this listing determination. However, economic impacts will be considered in the designation of critical habitat.

Issue 15—We received numerous comments concerning the impact of a listing on the status of introduced lynx in Colorado and requests that these animals be declared a 10(j) "nonessential experimental population."

Response—The term "experimental population" as defined in the Act, refers to any population (including any offspring arising solely therefrom) of an endangered species or a threatened species released outside the current range of the species to further its conservation. Experimental populations can only be established when they are wholly separate geographically from nonexperimental populations of the same species. Since there is no clear evidence of the absence of a lynx population within the area prior to reintroduction, establishment of an "experimental population" would not be possible and was not pursued in Colorado. The lynx that were recently introduced into Colorado from Canada and Alaska were released prior to this rule and the resulting placement of the species on the list of threatened and endangered species. Therefore, as of this final rule, they are considered resident lynx and do not qualify as an experimental population. Further, these reintroduced lynx are included as part of the listed entity and placed on the list of threatened and endangered species as of the effective date of this final rule.

Issue 16—Several commentors believed that there is a very limited potential, or none at all, for re-establishment, recolonization, and population expansion of historic lynx habitat because of habitat changes, human-induced mortality, and bobcat and mountain lion competition with lynx. They believed the lynx decline is the result of global warming, a natural factor which has allowed the prey generalists, and bobcat and mountain lion, to move into lynx territory and outcompete this less adaptable specialist.

Response—We recognize that some historic lynx habitat may no longer be suitable for recolonization of lynx because of habitat changes. However, we do not agree that global warming or the expansion of the bobcat range has resulted in eliminating historic habitat from recolonization by lynx. There is no evidence that either the bobcat or mountain lion outcompete the lynx for habitat and food resources (see "Factor E" of the "Summary of Factors" section). The lynx, bobcat, and mountain lion co-evolved in similar, yet spatially segregated environments. The lynx is specially adapted for deep snow habitats while the bobcat and mountain lion are not. This special adaptation allows the lynx to outcompete bobcat and mountain lion in deep snow environments. Because we have limited understanding of lynx habitat requirements, it is difficult to determine precisely the amount of habitat available historically or currently. In the majority of the range of lynx in the contiguous United States, suitable habitat remains available (see "Factor A" of the "Summary of Factors" section). There is no evidence to support global warming as a threat to the lynx.

Issue 17—Several commentors stated that in lieu of listing, we should pursue candidate conservation mechanisms that eliminate the need to list. Efforts should be focused on landscape planning, developing conservation agreements, forest management plans and lynx conservation criteria in lieu of listing. A multi-species forest planning process, incorporating not only species but special habitats and unique biological communities, would be a better approach, providing more protection to lynx and other wildlife communities, than a single species listing under the Act. They believed that managing for only one species might be detrimental to other species or communities.

Some commentors stated that we failed to take into account the continuing forest fragmentation and increased competition brought on by road construction, excessive timber harvest, off-road back country use and ski area development. They stated that we should implement strong standards to prevent excessive logging, road development, and other human developments in important lynx habitat. Lynx conservation can only be achieved at the landscape scale. They further believed that we failed to take into account the adequacy, inadequacy, political pressures, and limitations of current State and Forest Service programs and questioned the role of these existing programs for lynx as regulatory mechanisms.

Response—We fully support candidate conservation mechanisms, landscape planning, and changes in forest planning as mechanisms to conserve candidate species and species at risk. We are signatories to numerous candidate conservation agreements across the country. The Act requires us to consider conservation efforts by the States and others in listing decisions. However, to conclude that a conservation effort removes the need to list a species, we must determine that the conservation effort is sufficiently certain to be implemented and effective.

In the case of amending forest management plans, we have specifically identified current Federal regulatory mechanisms as a threat to lynx because of the ongoing and potential future actions allowed by current Land and Resource Management Plans. Changes in land management plans to manage these potential threats would result in a significant reduction to the current threats facing the species and, therefore, would strongly factor in future lynx status determinations. In the case of State regulatory and conservation mechanisms, we also have identified that existing State programs will be essential in lynx conservation and recovery (see "Issue 19").

Issue 18—Numerous State agencies believe that Federal intervention is not necessary to manage and protect the lynx and that State regulatory protection is adequate. Some States hold that they are already doing everything they can to protect and conserve the lynx. They further believe that States are in a better position to manage the lynx in the future, as they maintain the bulk of the information and management expertise and that we should, as an interim step, assist the respective States and other Federal agencies in gathering biological information and implementing management plans through funding or joint ventures. They questioned how the Act provides for a species' recovery.

Response—The role of the Service, as mandated by the Act, is more encompassing than is the role of individual States, or even groups of States. States are responsible for the management of species within their boundaries and to their credit, most if not all States have implemented lynx management measures. The Service, pursuant to the Act, must evaluate the status of a species throughout its entire range and, when determined necessary, provide for its conservation and recovery. In the case of the lynx, this includes 14 separate States. While some States may still harbor resident populations of lynx, the status of lynx in other States is unclear. The Service, as a Federal agency, is responsible for coordinating recovery of a species such as the lynx that crosses State boundaries and occupies substantial amounts of habitat on Federal lands. Furthermore, we have identified the major threat to lynx as the inadequacy of Federal regulatory mechanisms to provide for the long-term conservation of the species. Listing the lynx under the Act confers substantive protections not otherwise provided by State management.

We agree that the States maintain management expertise and knowledge of lynx within their boundaries, particularly concerning evidence of resident populations or individuals and local snowshoe hare abundance. Much of the available information on lynx status and threats comes from the reports of State wildlife agencies. States have already taken significant steps within their jurisdiction to conserve lynx. With the exception of Oregon, all States within lynx range have closed lynx trapping seasons. In some cases they have been closed for more than 2 decades. New York and Colorado have attempted lynx reintroduction as a means to re-establish viable populations. Long-term conservation of the lynx will not only be dependent on the States continuing their respective conservation programs, but on Federal agencies improving their efforts to conserve lynx and, where necessary, amending regulations, policies and/or practices for the conservation of the species.

When a species is listed under the Act, additional protections and prohibitions are applied. These efforts further conservation in several ways. When a species is listed under the Act as either threatened or endangered, it becomes illegal to "take" the species without a permit or incidental take statement from the Service. The term "take" means to harass, harm, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in any such conduct. "Harm" is further defined to include significant habitat modification or degradation that results in death or injury to listed species by significantly impairing behavioral patterns, such as breeding, feeding, or sheltering. "Harass" is defined as actions that create the likelihood of injury to listed species to such an extent as to significantly disrupt normal behavior patterns, which include but are not limited to breeding, feeding, or sheltering. Federal agencies are required to conserve species listed under the Act and to consult with the Service on any actions that may affect the species. Furthermore, the Act requires that the Service develop and implement a species recovery plan unless such a plan will not promote the recovery of the

species. When a species is considered recovered, it can then be removed from the list of threatened and endangered species.

Issue 19—One commentor stated that if the lynx were listed, restrictions imposed, such as limitations on trapping, would interfere with Tribal treaty rights.

Response—We have been communicating with Tribal governments regarding development of a special 4(d) rule (see "Issue 12") that would address the incidental take of lynx resulting from otherwise legal trapping and hunting for species other than lynx on Tribal lands. Under Executive Order 13084 "Consultation and Coordination with Indian Tribal Governments" (63 FR 27655, May 14, 1998) we are to inform and receive input from Tribal governments of any actions, such as listings under the Act, that may affect Tribes and to work to resolve any conflicts. However, there are certain circumstances where we cannot resolve issues to everyone's satisfaction. The Act applies to Tribal, as well as all other lands within the United States, and, therefore, the prohibitions brought on by the listing of a species, also apply. There are numerous Tribes within the range of the lynx that might be affected by this listing. On some Tribal lands lynx harvest seasons have already been closed. We will continue to work with Tribal governments to avoid or minimize conflicts should they arise.

Issue 20—In response to our reopening of the comment period for review of the Science Report we received numerous specific comments on the adequacy, accuracy and reliability of the Science Report. One commentor believed we should convene a Blue Ribbon panel to review the Science Report and make those deliberations part of the record. The information should be shared with the States and collaborative workshops conducted to ensure that all information is thoroughly evaluated and judged fairly against standards that are supportable.

Response—We employed a seldom-used section of the Act, section 4(b)(6)(B), in extending the time frame for issuance of a final listing rule by 6 months. We reopened the comment period on the lynx proposed rule specifically to allow for review, evaluation, and comment on the Science Report because there was substantial disagreement regarding the sufficiency and accuracy of the data relative to the listing determination in the proposed rule. We solicited comments on the Science Report from hundreds of agencies, Tribal governments, organizations, scientific experts, and individuals. All comments received have been incorporated into the administrative record for this rule and have been reviewed and incorporated into our decision making process.

While we recognize that there are limitations to the Science Report and have attempted to explain these throughout this rule, we also believe that it provides a comprehensive review of the current knowledge concerning the lynx in the contiguous United States. Therefore, we could not ignore it during our review. We have conducted an exhaustive review of the Science Report and all available literature and data on lynx in the United States, as well as the extensive comments we received on the proposed listing. Because of the wide range of the species, sizable list of interested parties and time limitations, it was not possible to convene a workshop of all interested parties specifically to discuss the Science Report. However, we have been in contact with specialists knowledgeable about lynx, hares, forest ecology and management, and potential lynx competitors to discuss various issues about the Science Report. This also is part of the administrative record for this finding.

Issue 21—Numerous responses addressed and opposed a proposed reintroduction of lynx into Idaho.

Response—We received extensive comment on this particular issue and are addressing it here for clarification purposes. We have not proposed a reintroduction effort for Idaho. At this time, we have not proposed any reintroduction efforts for lynx. Past reintroduction, both in New York and in Colorado, have been initiated and conducted by State wildlife agencies because they believed the lynx had been extirpated or extremely reduced in numbers in specific, historically occupied habitat. In recent years, Idaho Department of Fish and Game considered reintroducing lynx into the State. If during the course of recovery planning for lynx, reintroduction are proposed, we would conduct extensive public outreach, with public hearings and comment periods, to determine the feasibility of such a project.

Peer Review

On July 1, 1994, we published a notice in the **Federal Register** announcing our interagency policy to clarify the role of peer review in activities we undertake under authority of the Act (59 FR 34270). This Interagency Cooperative Policy on Peer Review states that it is the policy of the Service to incorporate independent peer review in listing decisions during the public comment period in the following manner—(1) Solicit the expert opinions of a minimum of three appropriate and independent specialists regarding pertinent scientific and commercial data and assumptions relating to the taxonomy, population models, and supportive biological and ecological information for species under consideration for listing; and (2) Summarize in the final decision document the opinions of all independent peer reviewers received on the species under consideration.

In accordance with this policy, in a letter dated August 21, 1998, we solicited the expert, independent professional opinion of six peer reviewers. We specifically asked the reviewers to address the following questions—(1) Does the information referenced and described in the "Distribution and Status" section of the proposed rule support the Service's conclusions regarding the status of the lynx in the contiguous United States; and (2) Does the information referenced and described in the "Summary of Factors Affecting the Species" section of the proposed rule support the Service's conclusions about threats to the lynx in the contiguous United States? We also requested the reviewers advise us of other available information that would assist us in making a final listing decision.

In response to our solicitation, we received two comment letters. Both commentors stated that they believed the status and threats to the lynx were reliably documented in the proposed rule. The commentors provided some additional information concerning an ongoing survey for lynx populations and the status of lynx in Idaho, Washington, and Wyoming, and also commented that our conclusion that resident populations of lynx historically occurred in Massachusetts, Pennsylvania, and Utah, and possibly Vermont and New Hampshire, was problematic. This information has been incorporated into our discussion of the status of the species. The same response also indicated that the forest practice of precommercial thinning was a greater threat than we had indicated and felt that conservation of lynx across southern Canada was important to conservation of lynx across the northern United States. These comments also have been incorporated into our analyses.

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the Canada lynx (*Lynx canadensis*) are discussed below.

Factor A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Factors affecting lynx habitat include human alteration of the distribution and abundance, species composition, successional stages, and connectivity of forests, and the resulting changes in the forest's capacity to sustain lynx populations. People change forests through timber harvest, fire suppression and conversion of forest lands to agriculture. Forest fragmentation may eventually become severe enough to isolate habitat into small patches, thereby reducing the viability of wildlife that are dependent on larger areas of forest habitat (Litvaitis and Harrison 1989).

Since the publication of the proposed rule, we received new information related specifically to lynx—habitat associations (McKelvey *et al.* 1999b; United States Forest Service and Bureau of Land Management 1999), the distribution and ownership of lynx forest types as well as the amount of habitat in specific Federal land allocations (United States Forest Service and Bureau of Land Management 1999), the types and effects of different forest management practices (United States Forest Service *et al.* 1999), the effects of fire suppression (Agee 1999), and some probable implications of forest management practices on lynx forest types (McKelvey *et al.* 1999d).

New information suggests that lynx in the contiguous United States occur at naturally low densities. Lynx are limited to moist, cool boreal forests that support some minimum density of snowshoe hares, where winters are snowy (Ruggerio *et al.* 1999b). Snowshoe hares in the contiguous United States occur at low levels compared to northern reaches of their range in Canada and Alaska (Hodges 1999a, 1999b). Two important human influences on snowshoe hare habitat are timber harvest and fire suppression; however, our knowledge of how lynx populations respond to these specific impacts is limited.

In all regions of the lynx range in the contiguous United States, timber harvest and its related activities are a predominant land use affecting lynx habitat. Timber harvest and associated forest management can be benign, beneficial, or detrimental to lynx depending on harvest methods, spatial and temporal specifications, and the inherent vegetation potential of the site.

For example, intensive tree harvesting (large-scale clearcutting) can eliminate the mosaic of habitats and mix of forest stand age classes that promote lynx survival, including late successional seral stages that support lynx denning and red squirrel habitat, and early successional snowshoe hare habitat. The response of lynx populations to particular vegetative mosaics is unknown. However, timber harvest can result in reduced cover, unusable forest openings, and large monotypic stands with sparse understories that are unfavorable for lynx and snowshoe hare, the primary lynx prey (Brittell *et al.* 1989; de Vos and Matel 1952; Harger 1965; Hatler 1988; Koehler 1990; K. Gustafson, pers. comm. 1994; J. Lanier, pers. comm. 1994). Some studies indicate that lynx avoid openings such as clear-cut, unforested areas, and grasslands (Koehler *et al.* 1979; Koehler and Brittell 1990; Murray *et al.* 1994). Snowshoe hares also are unlikely to use such areas because of the lack of cover (Koehler *et al.* 1979; Koehler and Aubry 1994; H. Golden, Alaska Department of Fish and Game, pers. comm. 1994). Mechanical thinning of densely stocked young stands to promote vigorous growth of fewer trees can reduce the stem densities required to support high numbers of snowshoe hare (United States Forest Service *et al.* 1999a). Reductions in cone-bearing mature and older forests can result in decreases in habitat for red squirrel, an important alternate lynx prey (Koehler 1990; O'Donoghue 1997; Apps 1999; Mowat *et al.* 1999).

Forestry practices can be beneficial when the resulting understory stem densities and structure meet the forage and cover needs of snowshoe hare (Keith and Surrendi 1971; Fox 1978; Conroy *et al* 1979; Wolff 1980; Parker *et al.* 1983; Litvaitis *et al.* 1985; Monthey 1986; Bailey *et al.* 1986; Koehler 1990; McKelvey *et al.* 1999d). Hodges (1999a, 1999b) illustrated that snowshoe hare densities are highest in regenerating stands with very high stem densities. Regeneration harvest can be used to create high quality snowshoe hare habitat, especially where natural regeneration would be expected to provide dense young vegetation. Although large openings may initially be underused by snowshoe hare and lynx, regeneration harvest units in appropriate habitat types eventually (in 15 years or more depending on the type of forest) achieve early successional stages in forests preferred by snowshoe hares (Monthey 1986; Quinn and Parker 1987; Koehler 1990; Koehler and Brittell 1990; Washington Department of Wildlife 1993; McKelvey *et al.* 1999c). Lynx can readily move across landscapes fragmented by commercial forestry (Squires and Laurion 1999). Larger openings can often more closely resemble vegetative patterns that follow natural disturbance events, and decrease amounts of edge favorable to generalist predators (McKelvey *et al.* 1999c).

Natural fire has an important role in forest ecology in some forest types in the United States. During the early 20th century, Federal and State agencies in the contiguous United States enacted a policy of suppressing forest fires. The effects of fire suppression, as well as timber harvest, on lynx habitat vary among the geographic regions (Agee 1999) and will be discussed separately below for western and eastern regions.

McKelvey *et al.* (1999b) used lynx occurrence data to describe lynx distribution patterns and habitat associations. The primary vegetation classes encompassing the majority of lynx occurrences in the West were Rocky Mountain Conifer and Pacific Northwest Conifer, including Douglas-fir and western spruce/fir and fir/hemlock. In the Great Lakes, the primary vegetation class was Mixed Deciduous-Coniferous, and in the Northeast, Mixed Forest-Coniferous Forest-Tundra. These broad vegetation classes include areas that because of elevation or other physical factors are not considered lynx habitat and cannot easily be deleted from the data. Therefore, accurate assessments of the total amount of lynx habitat within these regions is not possible. However, we assume that the areas encompassed within these vegetation classes contain the majority of lynx habitat types in the regions. We also assume that pockets of lynx habitat may occur outside these broad vegetation classes. With these assumptions in mind, where our discussion is based on lynx/habitat associations as reported in McKelvey *et al.* (1999b), we shall refer to the landscapes characterized by these broad vegetation classes as lynx forest types.

Northern Rockies/Cascades and Southern Rockies

In the western regions, most lynx forest types occurs on Federal lands. Of all western forest types, the western boreal forests (subalpine fir/spruce forests which provide lynx habitat) have the highest proportion of reserved land, largely because they are primarily in public ownership and are the least productive timberland, making land use

trade-offs between preservation and extraction less controversial than for other public lands (Agee 1999). Human land use that changed areas of forest land, disturbance patterns, and dominant tree species is much less prevalent in the West than in the Great Lakes or Northeast boreal forest (Agee 1999). Broad-scale habitat assessments generally support these conclusions.

Large amounts of lynx forest types occur on Federal lands, within both developmental and nondevelopmental allocations within the western regions. Lands in developmental allocations are managed for multiple uses, such as recreation and timber harvest. Lands within nondevelopmental allocations are to be managed to allow natural ecological processes to dominate (United States Forest Service and Bureau of Land Management 1999). Nondevelopmental lands contain large portions of wilderness or other natural areas (D. Prevedal, United States Forest Service, *in litt.* 1999). Timber harvest and construction of roads typically do not occur or are very limited in lands managed in nondevelopmental allocations. Large proportions of Federal lands in each of the western regions are managed under nondevelopmental allocations. In an assessment of the Columbia River Basin of eastern Washington and Oregon, Idaho, and western Montana, more than 35 percent of cold forest types encompassing subalpine fir/spruce habitats, were in designated wilderness, wilderness study areas, or other administrative natural areas (United States Department of Agriculture and United States Department of the Interior 1997).

Raphael *et al.* (1999) developed a broad-scale landscape model for lynx that assessed conditions across the Columbia River Basin. The model was based on the changes from historic to current amounts of habitat, landscape mosaics, disturbance regimes, vegetation structures, road densities, and human population. The model produced two outcomes, a habitat outcome and a population outcome. We acknowledge that such coarse-scale analyses may not reflect finer-scale environmental requirements that potentially account for a large amount of variation in lynx demographics. Preliminary results of the model suggest that lynx habitat is broadly distributed and of high abundance (relative to historic conditions) across the historic range of the species in the Columbia River Basin, and provides opportunity for intraspecific interactions for the species (Raphael *et al.* 1999). The model's population outcome for lynx suggests that the potential distribution of lynx in this area is restricted and characterized by patchiness and/or areas of low abundance. There is opportunity for subpopulations in most of the specie's range in this area to interact as a metapopulation; however, some subpopulations are essentially isolated.

At finer scales of analysis, the Forest Service and BLM concluded that many Forest and BLM administrative units have land and resource management plans that may adversely affect lynx due to timber harvest activities (United States Forest Service *et al.* 1999; United States Forest Service and Bureau of Land Management 1999). These plans may affect individual lynx or local lynx populations primarily in the developmental allocation areas of the Northern Rockies/Cascades and Southern Rockies regions, although the assessment did not quantify the level of impact.

Since publication of the proposed rule, we have received information related to past and projected timber harvest levels and precommercial thinning activities on Federal lands in the West. Timber harvest levels on Federal lands in the West have declined consistently and dramatically (approximately 80 percent) over the past decade or longer (R. Gay, United States Forest Service, *in litt.* 1999). Timber harvest in specific lynx forest types also has concurrently declined in the Northern Rockies (B. Ballenbacher, United States Forest Service, *in litt.* 1999; B. Ferguson, United States Forest Service, pers. comm. 1999) and Cascades (Fred Zenson, United States Forest Service, pers. comm. 1999), and the Southern Rockies (B. Short, United States Forest Service, *in litt.* 1999).

The Forest Service's projected need for future precommercial thinning on Forest Service lands over the next decade in the Northern Rockies, Cascades, and Southern Rockies will affect less than approximately 1–4 percent of primary lynx forest types within each of these regions (B. Ballenbacher, United States Forest Service, *in litt.* 1999; B. Ferguson, United States Forest Service, pers. comm. 1999; B. Short, *in litt.* 1999; F. Zenson, United States Forest Service, pers. comm. 1999). Past thinning and timber harvest impacted similarly low proportions of lynx forest types on Federal lands in the Northern Rockies (B. Ballenbacher, *in litt.* 1999; B. Ferguson, pers. comm. 1999), Cascades (F. Zenson, pers. comm. 1999) and the Southern Rockies (B. Short, *in litt.* 1999). Precommercial thinning has occurred in approximately one-fifth (B. Ballenbacher, *in litt.* 1999) to one-half (B. Short, *in litt.* 1999) of the early successional vegetation created by timber harvest in lynx forest types on western Federal lands over the past decade. This likely reduced snowshoe hare habitat quality at local scales, adversely affecting individual lynx. However, considering the overall proportions of lynx forest types affected, timber harvest and precommercial thinning on Federal lands are not currently conducted, nor are they likely in the projected future to be conducted, at levels likely to impact lynx at the population level.

However, the Northern Rockies encompass more privately owned lynx forest types than elsewhere in the West. Almost one-third of lynx forest types are in private ownership. Although we lack specific information, large portions of this habitat likely occur on privately owned corporate timber lands where timber harvest and thinning occurs. There are no data available on these private lands which would allow us to make a conclusion concerning the quality of lynx and snowshoe hare habitat. However, there is a potential for current and future management of these lands to adversely affect lynx.

Most lynx forest types in the West occur on Federal lands, and large Federal acreage of this habitat in the Northern Rockies/Cascades and Southern Rockies are managed in nondevelopmental status, where timber harvest activities and precommercial thinning generally do not occur. Nondevelopmental allocations on Federal lands require that natural ecological processes play a dominant role in the landscape (United States Forest Service and Bureau of Land Management 1999), as opposed to developmental lands, which are managed for multiple uses, such as recreation and timber harvest.

Large portions of nondevelopmental lands occur in the Northern Rockies and Cascades regions, which encompass most of the lynx forest types in Wyoming, Utah, Montana, Idaho, Oregon, and Washington. We recognize the importance of wildlands and nondevelopmental lands in the Northern Rockies/Cascades Region to provide lynx habitat that is buffered from many human impacts, creating the most likely stronghold for lynx populations in the contiguous U.S.

In the Northern Rockies, nearly 50 percent of the 35 million acres of lynx forest types is in nondevelopmental allocations on Forest Service lands or occurs in National Parks. In the Northern Rockies, 67 percent of the lynx forest types are managed by the Forest Service, 5 percent by the BLM, and 28 percent are in other ownerships (see

"Table 1"). The Forest Service and BLM manage over 24 million acres of lynx forest types. Of federally managed lynx forest types, 57 percent (roughly 14 million acres) lies within areas with nondevelopmental status. Sixty-seven percent of this 14 million acres lie within wilderness or scenic river designations (D. Prevedal, *in litt.* 1999), both of which provide restrictions on land use beneficial to lynx. Additional large tracts of lynx forest types occur in Glacier (735,310 acres) and Yellowstone (1,910,590 acres) National Parks (D. Prevedal, *in litt.* 1999). However, the 43 percent of federally managed lynx forest types that are in developmental status are managed for multiple uses that may, on local scales, conflict with lynx conservation.

TABLE 1.—AMOUNT OF LYNX FOREST TYPES IN GEOGRAPHIC REGIONS IN THE CONTIGUOUS U.S., AMOUNT OF LYNX FOREST TYPES (LFT) ON FOREST SERVICE (FS) AND BUREAU OF LAND MANAGEMENT (BLM) LANDS, AND FEDERAL LAND ALLOCATIONS IN LYNX FOREST TYPES (DATA FROM U.S. FOREST SERVICE AND BUREAU OF LAND MANAGEMENT 1999)

Geographic region	Total acres LFT, all ownerships	Total acres LFT on FS/BLM	Total acres FS/BLM LFT non-developed allocations	Percent LFT on FS/BLM	Percent FS/BLM LFT in nondevelopoed allocations	Percent all LFT in nondevelopoed allocations
Cascades	4.2 M	4.1 M	3.6 M	99	87	85
Northern Rockies	34.3 M	24.8 M	14.1 M	72	57	41
Southern Rockies	6.5 M	5.3 M	1.4 M	82	25	23

The Cascades and Southern Rockies regions encompass substantively smaller proportions of lynx forest types. In the Cascades Region, 99 percent of lynx forest types are managed by the Forest Service, less than 1 percent by the BLM, and less than 1 percent is in other ownerships (see "Table 1"). The Forest Service and BLM manage approximately 4 million acres of lynx forest types. Of federally managed lynx forest types, 87 percent (3.5 million acres) lies within areas with nondevelopmental allocations and 13 percent occur in areas of developmental status, where multiple use management occurs. Ninety percent of this 3.5 million acres is in wilderness or in key watersheds under the Pacific Northwest Forest Plan, and the remaining 10 percent is in matrix lands including late successional reserves, which allows limited timber harvest such as salvage harvest (D. Prevedal, *in litt.* 1999). In Washington and Oregon, the National Park Service manages an additional 200,000 acres of lynx forest types (D. Prevedal, *in litt.* 1999).

In the Southern Rockies, 76 percent of the lynx forest types are managed by the Forest Service, about 5 percent by the BLM, and 19 percent is in other ownerships (see "Table 1"). Federally managed lynx forest types amount to over 5 million acres. Of the federally managed lynx forest types, only 25 percent (1.4 million acres) lies within areas with nondevelopmental status while the other 75 percent are in developmental status and are managed for multiple uses that may, on local scales, conflict with lynx conservation.

Considering the Northern Rockies, Cascades and Southern Rockies, a cumulative total of 56 percent of Forest Service and BLM lands is managed in nondevelopmental status, comprising over 40 percent of lynx forest types, allowing for 44 percent to be managed for multiple uses which may conflict with lynx conservation. National Parks in the western regions add several million acres of lynx forest types in more or less undeveloped status.

We conclude that timber harvest activities and precommercial thinning may reduce the quality of snowshoe hare habitat and red squirrel habitat in local areas of the Northern Rockies/Cascades and Southern Rockies, and thus may negatively affect lynx at local scales. Furthermore, the large percentage of Federal lands in developmental status and managed for multiple use may, on local scales, conflict with lynx conservation. However, based on the large proportion of lynx forest types managed in nondevelopmental status compared to the proportion of managed lynx forest types affected, current regional effects of timber harvest and thinning appear to occur at levels that are not likely threatening the Northern Rockies/Cascades and Southern Rockies lynx populations.

Federal land management in developmental allocations often maintains conditions suitable for lynx, and these lands constitute important landscapes providing regional connectivity. Construction of roads, timber harvest, and fire suppression occur in developmental allocations. However, recent studies of lynx have documented lynx presence and reproduction in a variety of managed landscapes (Koehler 1990; Staples 1995; Apps 1999; Squires and Laurion 1999; J. Organ, U.S. Fish and Wildlife Service, pers. comm. 1999). Lynx occurrence records provide evidence that lynx continue to be broadly distributed throughout lynx forest types in the Northern Rockies/Cascades and Southern Rockies (McKelvey *et al.* 1999b), both inside and outside of the nondevelopmental allocation areas within the last decade (U.S. Forest Service and Bureau of Land Management 1999).

Because of the preponderance of lynx forest types on Forest Service, BLM, and National Park system lands, Federal land management assumes the largest single role in the conservation of lynx in western portions of its range. We believe that the large amounts of lynx forest types managed in nondevelopmental allocations, especially in designated wilderness areas, protects lynx in the Northern Rockies/Cascades and Southern Rockies and contributes to the likelihood of persistence of lynx into the future. The forests upon which lynx depend have had less timber harvest, road construction, and have been modified much less than other drier forests (U.S. Forest Service and Bureau of Land Management 1997). In addition, significant portions of these forests are within areas that do not have roads and have habitat that has been classified as wilderness. Natural fires are more likely allowed to burn in wilderness or areas without roads, which helps retain diversity in structural stages and create habitat mosaics in forests for the future. Also, in the Northern Rockies/Cascades Region there are strong habitat connections to lynx populations in

Canada. The Northern Rockies/Cascades Region has the highest potential for maintaining a viable lynx population within the DPS, based upon the large amount of lynx forest types, the large portions of habitat in nondevelopmental management, and strong regional connections to lynx forest types and lynx populations in Canada.

Natural fire has an important role in forest ecology in western mountain ranges of the United States. Some researchers believe that fire suppression during the past 50 years has allowed certain forest types to mature, thereby reducing habitat suitability for snowshoe hares and Canada lynx (Brittell *et al.* 1989; Fox 1978; Koehler 1990; Washington Department of Wildlife 1993; T. Bailey, U.S. Fish and Wildlife Service, *in litt.* 1994; W. Hann, U.S. Forest Service, *in litt.* 1999).

However, others argue that fire suppression is most likely affecting lynx habitat in areas where the historical frequency of fires is shorter than the length of time fires have been suppressed (P. Stickney, U.S. Forest Service, pers. comm. 1994; Agee 1999). Fire suppression in areas with a history of infrequent fire has probably not had much impact (Habeck 1985; Agee 1993). In the western boreal forest zone, long natural fire return intervals (150–300 years) signify that removal of fire has not been as significant as in the West with lower-severity fire regimes and return intervals (30–90 years), even though fire suppression has been in effect for much of this century (Agee 1993, Agee 1998 *in* Agee 1999). More frequent fires of lower-intensity do occur in some boreal forest types (W. Hann, *in litt.* 1999), although they typically comprise a small proportion of the total area burned (Agee 1999). In forests with high-severity fire regimes, a number of smaller fires burn a small proportion of the forests, while fewer larger fires account for most of the area burned (McKelvey and Busse 1996 *in* McKelvey *et al.* 1999d; Agee 1999). Lynx forest types in the West include a preponderance of forest types with long natural fire return intervals and high-fire intensity (S. Arno, U.S. Forest Service, *in litt.* 1998; Agee 1999), which suggests that removal of fire in lynx forest types has not been as significant as in the lower-severity fire regimes of the West (Agee 1998 *in* Agee 1999).

In the Northern Rockies, most of the wilderness areas in Montana and Idaho have fire management plans that affect more than 5 million acres that allow naturally caused fires to burn during certain periods and in certain areas (N. Warren, U.S. Forest Service, *in litt.* 1999). In Wyoming and Utah, one-third of the wilderness areas also have completed similar fire plans, with the remaining plans close to completion (B. Noblit, U.S. Forest Service, *in litt.* 1999). Glacier and Yellowstone National Parks allow natural fires to burn under many conditions. In the Cascades, two of three wilderness areas have fire management plans in place (B. Naney, U.S. Forest Service, Okanogan, pers. comm. 1999). Further, the 1994 Federal Wildland Fire Policy directs the Department of the Interior and the Department of Agriculture to use a full range of potential responses to fire, from full suppression to allowing more fires to burn large areas thereby allowing fires to assume a larger role in maintaining forest health in the future (B. Meuchel, pers. comm. 1999; D. Milburn, pers. comm. 1999). However, natural fire regimes are not necessarily restored because prescriptive criteria to manage these natural wildland fires remain conservative.

Currently, outside large wilderness areas in all western regions, most fires are suppressed. Most fires (98 percent) are successfully extinguished when small and only a small proportion of fires burn large areas (B. Meuchel, U.S. Forest Service, pers. comm. 1999; D. Milburn, U.S. Forest Service, pers. comm. 1999). Fires are extinguished largely due to costs, firefighter safety, local human safety and property concerns. The majority of these fires occur outside lynx forest types at lower elevations in drier forests. However, fires igniting in the lynx forest types outside, and some fires inside, wilderness are suppressed, which can reduce the amount of early seral forests compared to natural conditions and/or change species composition and structural components of forests (W. Hann, *in litt.* 1999). The total area that would have burned had such fires been allowed to burn is likely not substantive when compared to the proportion of the landscape burned by the large, high-intensity fires typical of lynx forest types. However, the resulting pattern of vegetation mosaic and the mix of stand age classes may be altered, as the large fires may burn areas more uniformly due to lack of fire breaks that would have been created by past, smaller fires (D. Milburn, pers. comm. 1999). Other natural processes such as insects, disease, and wind-throw also can play a role in affecting the vegetation mosaics.

Based on available information on fire suppression and upon available habitat assessments, we conclude that at the present time, fire suppression effects are less evident in lynx forest types than in many other forest types in the West. In the Cascades, fire return intervals in many lynx forest types are very long, 200–500 years (Agee 1999). Mixed-severity fire regimes were not common; therefore, fire suppression is not a factor limiting lynx in the Cascades. In the Northern and Southern Rockies, fire intervals also are long and fire regimes are typically intense (Agee 1999). Where mixed-severity fire regimes occur in the Northern and Southern Rockies, lynx habitat quality may be affected at some local scales, especially outside of wilderness areas, resulting in adverse effects to individual lynx. However, considering a larger scale, the current effects of fire suppression alone are not threatening the Northern Rockies/Cascades and Southern Rockies lynx at the population level at this time.

While recent studies of lynx have documented lynx presence and reproduction in a variety of managed landscapes (Koehler 1990; Staples 1995; Apps 1999; Squires and Laurion 1999; J. Organ, U.S. Fish and Wildlife Service, pers. comm. 1999), we remain concerned about the maintenance of lynx habitat conditions, especially since a large percentage of lands managed by the Forest Service and BLM are in developable status and allow programs, practices and activities that may impact lynx and their primary prey, snowshoe hare. Lynx occur naturally at very low densities in the contiguous United States (see "Background" section). It is imperative that snowshoe hare and alternate prey populations be supported by habitat on Federal lands into the future, to ensure the persistence of lynx in the contiguous United States. Substantive declines in prey species, especially snowshoe hare, may result in a prey base insufficient to support lynx populations. Therefore, amendment of Forest Plans to provide protection for lynx and lynx habitat is needed to conserve habitat for lynx and its prey on Federal forest lands. Without such amendments, the species is threatened.

Northeast

In the Northeast Region, softwoods that provided Canada lynx habitat were logged extensively during the late 1800s and early 1900s (Jackson 1961; Barbour *et al.* 1980; Belcher 1980; Irland 1982). Over a short time period, timber extraction during this era resulted in the replacement of late-successional conifer forest with extensive tracts of very early successional habitat, which eliminated cover for lynx and hare (Jackson 1961; Keener 1971). In the Northeast Region, slash, accumulated during logging operations, fueled wildfires that burned vast acreage of softwood forest (Belcher 1980; J. Lanier, pers. comm. 1994). This

sudden alteration of habitat may have resulted in sharp declines in snowshoe hare numbers over large areas, subsequently reducing lynx numbers (Jackson 1961; Keener 1971; K. Gustafson, pers. comm. 1994; J. Lanier, pers. comm. 1994).

The impacts of the logging conducted in the Northeast Region during the late 1800s continue to affect lynx forest types. In Maine, softwood cover and dense sapling growth provided improved snowshoe hare habitat after timber harvest and fires in late successional forests (Monthey 1986). However, in the western sections of the Northeast Region, extensive tracts of predominantly softwood forests that were harvested and burned-over during the late 1800s and early 1900s were subsequently replaced with regenerating hardwoods (D. Degraff, pers. comm. 1994; J. Lanier, pers. comm. 1994). Hardwood forests do not typically supply adequate cover for snowshoe hares (Monthey 1986). For a period of time, this extensive area would have provided the early successional habitat used by snowshoe hare. However, such extensive tracts may not have provided a suitable mosaic of forest habitats and as succession progressed, these large tracts eventually became unsuitable for both snowshoe hare and lynx. Declines in snowshoe hare habitat may have occurred during the 1940s and 1950s as a result of large-scale forest maturation (Litvaitis *et al.* 1991).

In Maine, large tracts of forest (some as large as 36-square mile townships) were harvested in the 1960s to reduce the incidence of spruce budworm. During early successional stages, these forests may provide high quality hare habitat. However, these large tracts create a simplified, monotypic forest over large areas, not a mosaic of forest stands. Passage of the State Forestry Practices Act has required clear-cut size to be substantially reduced. The Maine Department of Conservation recently analyzed Statewide timber production on Maine's 17 million acres of forest land (Gadzik *et al.* 1998). The report indicated 25 percent of the forest was in seedling/sapling stages, which likely includes quality snowshoe hare habitat. However, the report concludes that increasing the number of acres under high-yield silvicultural practices, which will likely include precommercial thinning, to a cumulative total of 9 percent of Maine's forest land by the year 2015 is necessary to sustain the current timber harvest levels into the future. Such high-yield techniques may temporarily reduce snowshoe hare habitat quality, but the long-term effects on lynx on a landscape scale are not known.

Forested habitat in the Northeast has increased because of land-use changes during the past century (Irland 1982; Litvaitis 1993), including the abandonment of agriculture in many areas. In some areas there may be a gradual upward trend in the coniferous component as spruce and fir regenerate beneath hardwood species (D. Degraff, pers. comm. 1994). Several of the northeastern States support adequate, if not abundant, snowshoe hare populations (C. Grove, Green Mountain National Forest, pers. comm. 1994; F. Hurley, *in litt.* 1994; J. Lanier, pers. comm. 1994).

In 1990, the Forest Service published a report that examined the Northern Forest Lands in New York, Vermont, New Hampshire, and Maine (Harper *et al.* 1990). Eighty-four percent of northern forest lands in the region are currently privately owned and 16 percent are in public ownership. According to another analysis, the Forest Service manages only 7 percent of lynx forest types in the Northeast, of which 23 percent is managed in nondevelopmental status (U.S. Forest Service and Bureau of Land Management 1999). Federal land management will have minimal effect on the persistence of lynx in the Northeast, due to the small amount of lynx forest types managed by the Forest Service.

Commercial forestry continues to be the dominant land use on 60 percent of the private lands in northeastern forests. The rapid pace of subdivision for recreational home sites has been identified as a concern in maintaining the integrity of Northeast forests (Harper *et al.* 1990), though this is not currently posing a significant threat to lynx. At higher elevations and northern latitudes in the Northeast, red spruce and balsam fir are important components of snowshoe hare habitat. Declines in red spruce forests have been documented, and drought, acid deposition, and other human-generated pollutants have been suggested as principal causes (Scott *et al.* 1984). Historic declines in some forest types may have contributed to reducing the quality of lynx habitat in the Northeast. Current lynx research in Maine is contributing to our knowledge about lynx habitat use in the Northeast (J. Organ, pers. comm. 1999).

In Northeast forests, fire return intervals are very long, due to the moist maritime influence (Agee 1999). Thus, fire did not historically play a significant role in creating early successional habitats. Insect infestations and wind were the primary disturbance events that created early successional habitats. While current fire suppression on public and private lands may have localized effects, it is not likely affecting overall lynx forest types in the Northeast. We conclude that fire suppression in the Northeast does not threaten lynx subpopulations there.

We conclude that most lynx forest types are in private, State, or county ownership in the Northeast. Timber harvest and associated activities exert the most influence on lynx forest types in the Northeast, although the extent of influence of current forest practices on lynx is not known.

Great Lakes

In the Great Lakes Region, as in the Northeast, softwood forests were logged extensively during the late 1800s and early 1900s (Jackson 1961; Barbour *et al.* 1980; Belcher 1980; Irland 1982) and over a short period resulted in the replacement of late-successional-conifer forest with extensive tracts of very early successional habitat, which eliminated cover for lynx and hare (Jackson 1961; Keener 1971). Coniferous forests also were cleared for agriculture during this period in the Great Lakes.

In the Great Lakes Region, the Forest Service manages about 19 percent of the area within which lynx forest types occur, of which 40 percent is managed in nondevelopmental status (U.S. Forest Service and Bureau of Land Management 1999). The remaining 80 percent of the area encompassing lynx forest types in the Great Lakes is in State, county, or Tribal lands, or is privately owned. Public or Tribal ownership accounts for 41 percent of all lynx forest types in the region (J. Wright, *in litt.* 1999 in U.S. Forest Service *et al.* 1999).

Timber harvest levels on Federal lands in the Great Lakes have declined by approximately 20 percent over the past decade (R. Gay, U.S. Forest Service, *in litt.* 1999). While specific information on timber harvest levels or pulpwood production on non-Federal lands in the Great Lakes was not available, timber harvest is generally prevalent on these lands. Past habitat fragmentation likely occurred from forestry management programs, agricultural conversions, residential development and highways. As in the Northeast, regenerating forests now occupy abandoned farmlands in northern portions of the Great Lakes. However, mixed conifer/hardwood stands are often replaced by pure deciduous seral stands, which have been maintained in deciduous stages in recent years because of the importance of aspen as a crop tree (Agee 1999). In the East, hare densities were higher in

coniferous forests than deciduous (Litvaitis *et al.* 1985; Fuller and Heisey 1986). On managed timber lands in all ownerships, the maintenance of aspen seral components to produce pulpwood precludes the establishment of coniferous forest types, which in turn likely diminishes snowshoe hare habitat quality, adversely impacting lynx.

In the Great Lakes, natural fire regimes are frequent and intense (Agee 1999). Fire suppression in the Great Lakes area has changed the dominant successional pathways, perhaps permanently (Agee 1999). However, in the northeastern portion of Minnesota fires are allowed to burn in the Boundary Waters Canoe Area. This portion of the Great Lakes Region may provide the highest quality lynx habitat, as the largely coniferous forests here more closely resemble the northern boreal forests of Canada than do the transitional coniferous/deciduous forests to the south. On other Federal lands in the Great Lakes, fire suppression policies are such that fire is unlikely to assume its natural role in creating a mosaic of vegetation communities and age classes across the landscape. Escaped fires and other natural processes such as insects, disease, and wind throw maintain natural mosaics to some degree. Lynx foraging habitat is likely to be maintained at levels less than would be provided under natural disturbance regimes. Fire suppression is likely reducing the quality of lynx habitat in the Great Lakes.

Most lynx forest types are in private, State, or county ownership in the Great Lakes and timber harvest is prevalent on these lands. We conclude that timber harvest and fire suppression may be impacting lynx and prey habitat in the Great Lakes Region.

However, we further conclude that timber harvest and fire suppression may have regional or local impacts but do not currently threaten the contiguous United States population. Considering the entire United States distinct population segment, we remain concerned about maintenance of lynx habitat conditions, especially in areas outside nondevelopmental lands in the West. It is imperative that snowshoe hare and alternate prey populations be supported by habitat on Federal lands into the future, to ensure the persistence of lynx in the contiguous United States. We conclude that the single factor threatening the contiguous United States distinct population segment of lynx is the lack of guidance for conservation of lynx and snowshoe hare habitat in National Forest Land and Resource Plans and BLM Land Use Plans (see "Factor D" of the "Summary of Factors" section). This lack of guidance allows the potential for future degradation of lynx habitat on Federal lands through timber management and other Federal activities (see "Factor D" of the "Summary of Factors" section).

Factor B. Overutilization for Commercial, Recreational, Scientific, or Education Purposes

One of the primary reasons we proposed to list lynx, based on available information at the time, was our conclusion that the low numbers of lynx in the contiguous United States and southern Canada were the residual effects of overtrapping that was believed to have occurred in the 1970s and 1980s, in response to unprecedented high pelt prices, a concern that was widely shared (Brand and Keith 1979; Todd 1985; Bailey *et al.* 1986; Hatler 1988; Washington Department of Wildlife 1993).

Since the publication of the proposed rule, we have received substantive new information related to relative numbers of lynx in the northern and southern portions of its range. We now understand that lynx in the contiguous United States always existed at low densities, comparable to lynx populations of the northern boreal forest during cyclic lows (Aubry *et al.* 1999) (see "Background" and "Distribution and Status" sections). These low densities of lynx do not appear to be the result of declining population trends. Rather, lynx are relatively rare in the contiguous United States because of habitats that are inherently unable to support cyclic, high-density snowshoe hare populations and are thus unable to sustain cyclic, high-density lynx populations.

Trapping records are the best, long-term lynx data available. Harvest returns are generally indicative of, but do not represent, real population changes because of the number of factors that influence trapper effort and success, such as changes in socioeconomic conditions, season length, quotas and trapping restrictions, and ease of access (Hatler 1988; Mowat *et al.* 1999). Mowat *et al.* (1999) suggest that fur prices likely affect harvest over the short-term but that it may not be valid to compare and contrast inflation-adjusted prices and harvests that occurred decades apart. Mowat *et al.* (1999) conclude trapping can reduce lynx numbers and that lower lynx harvest levels in Canada in the first half of the 20th century were possibly a result of overtrapping. However, prior to 1921, harvest data were maintained by the Hudson Bay Company. Lower lynx harvest returns in Canada coincide with Hudson Bay Company's going out of business and Provinces starting to maintain harvest records; we surmise that the lower harvests are, at least in part, more likely an artifact of changes in recordkeeping.

Human-induced mortality was generally believed to be the most significant source of lynx mortality (Ward and Krebs 1985). Trapping mortality was considered to be entirely additive (i.e., in addition to natural mortality) rather than compensatory (taking the place of natural mortality) (Brand and Keith 1979). However, Canadian researchers determined that natural mortality during the declining phase of the lynx cycle is high; therefore, trapping mortality during some portions of the cyclic decline may compensate for natural mortality (Hatler 1988; Poole 1994; Slough and Mowat 1996; Poole 1997; Mowat *et al.* 1999). Therefore, we recognize that trapping of lynx can be both additive and compensatory, depending on when it occurs in the cycle.

From the mid-1970s until the late 1980s, prices of lynx pelts were at record highs throughout the United States and Canada (Todd 1985; Hatler 1988; Hash 1990). In Montana, the 1974 average pelt price was $63; by 1978 the average price increased over 500 percent to $348 (B. Giddings, *in litt.* 1994). Lynx pelt prices peaked in the mid-1980s at nearly $500 per pelt and remained above $200 per pelt for 12 years until 1989 (B. Giddings, *in litt.* 1994).

In response to declining harvests in the late 1970s and 1980s, Washington, Montana, Minnesota, Alberta, British Columbia, Manitoba, Ontario, Quebec, and Alaska severely restricted or closed their lynx harvest seasons because of concern that lynx populations had been overexploited (Bailey *et al.* 1986; Hatler 1988; Hash 1990; Washington Department of Wildlife 1993; S. Conn, *in litt.* 1990; M. DonCarlos, *in litt.* 1994; B. Giddings, *in litt.* 1994; R. McFetridge, Alberta Environmental Protection, *in litt.* 1994; I. McKay, *in litt.* 1994).

Based on information obtained since the proposed rule, we now recognize that the cyclic peak harvest returns of the early 1960s and 1970s were unprecedented highs for the 20th century (e.g., Figures 8.3 and 8.6 in McKelvey *et al.* 1999b; Figure 9.4 in Mowat *et al.* 1999). Wildlife managers may have expected harvest returns during the 1980s and 1990s to be comparable to the anomalous cyclic peaks of the 1960s and 1970s. When harvest returns failed to be as high as anticipated, managers appear to have interpreted the lower returns to be caused by overtrapping when pelt prices were high (Bailey *et al.* 1986; Hatler 1988; Hash 1990; Washington Department of Wildlife 1993). We compared the lynx harvest returns in the 1980s and early 1990s to harvest data dating back over a longer period of time (i.e., prior to 1960) and found that lynx harvest returns were not unusual nor appreciably lower than those recorded prior to the 1960s.

Trapping data for the contiguous United States during the 1970s and 1980s is available from Minnesota, Montana, and Washington. Only Minnesota has long-term trapping records (Henderson 1978). Minnesota lynx harvest data indicate cycles approximately every 10–12 years (McKelvey *et al.* 1999b). Lynx harvest in Minnesota was relatively high, but also highly variable, ranging from as low as 0 to as high as 400 per year over the 40 years of recordkeeping (Henderson 1978). The Minnesota harvest is believed to have consisted, at least partially, of lynx dispersing from Canada (Henderson 1978; McKelvey 1999b). The amplitude of Minnesota lynx harvest cycles was high and, therefore, the exceptionally high peaks of the early 1960s and 1970s that are evident in all other regions do not appear extraordinary in the Minnesota data. After two seasons in the mid-1970s when no lynx were harvested, a quota of five lynx was established from 1977 through the 1982 season. This quota presumably influenced trapper effort and likely was a factor in the reduced harvests in the late 1970s and early 1980s. However, the quota was always exceeded by at least three times the quota. Although the quota was further reduced to two in 1983, nine lynx were taken, providing evidence of the continued occurrence of lynx in Minnesota. The Minnesota lynx season has been closed since 1984. Given the history of lynx cycles reflected in Minnesota data, a cycle would have been expected to return between 1983 and 1985. However, strict season limits were in place or the season was closed so that evidence of cycles from harvest data is not available after the mid-1980s. During the decade preceding the 1984 closure, over 160 lynx were trapped despite restrictive quotas beginning in 1977. These levels of harvest do not differ substantially from previous cyclic lows considering the effects of restrictive quotas on trapper effort.

Montana has maintained lynx harvest records since 1950 (see Figure 8.5 in McKelvey *et al.* 1999b). The most conspicuous features of the data are the cyclic peaks in the 1960s and 1970s. There is no clearly evident peak in the 1950s. In the mid-1980s, in response to concerns that lynx were being overharvested when returns did not compare to those of the 1960s and 1970s, Montana set lynx trapping quotas. Over successive years, initial annual quotas were set at 135, 120, and 100, but were established without the benefit of long-term harvest data to gauge the range of cyclic highs and lows. These quotas were not filled. However, if returns in the 1950s are a better indication of average long-term harvest, it is possible that these quotas were unrealistically high. Further, despite the quotas, a small cyclic peak is evident in the early 1980s. Since 1991, the quota has been very low, two annually, and has been filled or slightly exceeded every season. The low quota likely affects trapper effort and masks any recent population cycles that could have been reflected in harvest data. Beginning with the 1999 season, all lynx trapping is closed in Montana unless another State is in need of lynx for a reintroduction, in which case five lynx can be taken and translocated to the reintroduction site.

Harvest data for Washington is available only since 1960 (Figure 8.7 in McKelvey *et al.* 1999b). Without harvest information prior to 1960, we cannot know the range of cyclic lows and highs over time in Washington. The 1960s and 1970s cyclic highs are evident in the harvest data, but the data do not clearly track a 10-year cycle. Following the 1970s peak, there were five seasons during which no lynx were harvested. As a result, low quotas were set and seasons were shortened. However, despite the low quotas and restricted seasons, harvest returns increased during the final three seasons of the 1980s and the numbers of lynx harvested were high relative to past records. The final season in 1989 was the fifth highest return ever recorded in Washington. Although the data is limited, the annual number of lynx harvested increased in the late 1980s, perhaps leading to or indicative of a cyclic high. No harvest data are available since a Statewide lynx trapping closure went into effect in 1990.

At the time that Washington, Minnesota, and Montana closed their seasons, lynx were still being trapped, which demonstrates that lynx persisted in these States. We recognize that the States did not have lynx population trend information and so relied on trapping data, deciding to take conservative measures when trapping returns decreased.

Mowat *et al.* (1999) suspected that high harvest pressure during the low phase in the lynx cycle of the mid-1980s or where trapping intensity was severe may have had more of an impact on lynx populations in the southern part of the range (southern Canada and the contiguous U.S.) than on northern lynx populations (Canada and Alaska) (Mowat *et al.* 1999). Mowat *et al.* (1999) also expected that dispersal by lynx from healthy populations will lead and has led to the repopulation of areas where overtrapping had depleted the local lynx population. Mortality of lynx through legal trapping has been virtually eliminated in the contiguous United States, except in locations where Tribal regulations permit the taking of lynx. We now believe that ongoing precautions taken by States and Provinces to restrict lynx trapping since the 1980s possibly prevented the overharvest of resident populations of lynx. However, the lack of available data (trapping or otherwise) for the past 15 years makes it difficult to discern the effect trapping restrictions may have had on resident populations.

We conclude that in the contiguous United States, lynx populations occur at naturally low densities; the rarity of lynx at the southern portion of the range compared to more northern populations is normal. The rarity of lynx is based largely on limited availability of primary prey, snowshoe hares. At southern latitudes, low snowshoe hare densities are likely a result of the naturally patchy, transitional boreal habitat. Such habitat prevents hare populations from achieving high densities similar to those in the extensive northern boreal forest (Wolff 1980; Buehler and Keith 1982; Koehler 1990; Koehler and Aubry 1994; Hodges 1999a, 1999b; McKelvey *et al.* 1999c). Comparatively low numbers of lynx in the contiguous United States occur not as a result of overtrapping, but because lynx and their prey are naturally limited by fragmented habitat, topography, and climate.

Legal trapping activities for bobcat, coyote, wolverine and other furbearers create a potential for incidental capture of lynx. The threat to resident lynx from legal trapping for other species may be limited in many areas because bobcat or coyote trapping generally occurs outside of areas where lynx would be found, although we know that incidental capture occurs (Wydeven 1998; M. DonCarlos *in litt.* 1994; R. Naney, U.S. Forest Service, pers. comm. 1999). Although we are concerned about the loss of lynx that are incidentally captured, we have no information to indicate that the loss of these individuals has negatively affected the overall ability of the contiguous United States DPS to persist. Additionally, we

believe that lynx have been incidentally trapped throughout the past, and still they persist throughout most of their historic range.

In summary, we conclude that past and present overutilization is not a factor threatening lynx.

Factor C. Disease or Predation.

Disease and predation are not known to be factors threatening Canada lynx.

Factor D. Inadequacy of Existing Regulatory Mechanisms

For the reasons discussed below, existing regulatory mechanisms do not adequately address the needs of the lynx, or reduce the threats to the species or its habitat. Within the contiguous United States range of the lynx, all States, except Oregon, provide the lynx regulatory protection by specifically prohibiting hunting and trapping for lynx. However based on pelt tags records we believe that Oregons trapping programs have not resulted in take of any lynx (Carol Carson, pers. comm. OMA, 2000). Four States classify the lynx as endangered—Vermont (1972), New Hampshire (1980), Michigan (1987), and Colorado (1976). Lynx are classified as "threatened" in Washington (1993), "sensitive" in Utah (1979), and "species of special concern" in Maine (1997), and in Wisconsin are "protected" (1997).

Five States classify lynx as small game or furbearers with closed seasons—Idaho (1997), New York (1967), Minnesota (1984), Wyoming (1973), and Montana (1999). It is legal to harvest lynx in Oregon because the lynx is not protected under Oregon State Law. However based on pelt tags records we believe that Oregons trapping programs have not resulted in take of any lynx (Carol Carson, pers. comm. OMA, 2000). The contiguous United States range of the lynx extends across tribal reservation lands and ceded territories of numerous Tribes. Lynx trapping and hunting are permitted under the regulations of some Tribes, although the Confederated Salish and Kootenai Tribes of the Flathead Nation have prohibited the trapping and taking of lynx since 1986 (M. Pablo, Confederated Salish and Kootenai Tribes Tribal Council, *in litt.* 1998). In the Great Lakes Region, lynx harvest is prohibited on off-reservation ceded lands by the Voigt Intertribal Task Force of the Great Lakes Indian Fish and Wildlife Commission and the 1854 Authority of the Bois Forte and Grand Portage Bands (J. Schlender, Voigt Intertribal Task Force of the Great Lakes Indian Fish and Wildlife Commission, *in litt.* 1998; M. Schrage, Fond du Lac Resource Management Division, *in litt.* 1998; M. Myers and A. Edwards, 1854 Authority, *in litt.* 1999). We conclude that current hunting and trapping regulations are not threatening the continued existence of the contiguous United States DPS; however, other regulatory mechanisms, as described below, are inadequate.

Most States across the range of lynx have laws and regulations regarding environmental issues. Indirectly, these regulations may promote the conservation of lynx habitat on non-Federal lands; however, few are specific to lynx habitat conservation. Two programs in the Northeast and in Washington may provide some benefit to the species. The majority of lynx forest types in the Northeast occur on private land, ranging from small residential lots to large industrial timber company ownerships (Harper *et al.* 1990). The Northern Forest Lands Council has a charter to maintain traditional patterns of landownership and use in the Northeast; part of this effort includes a forest inventory (Northern Forest Lands Council, *in litt.* 1994). The maintenance of traditional patterns of landownership may prevent the fragmentation and/or development of lynx habitat.

In response to the Washington State Wildlife Commission listing the lynx as threatened, the Washington Forest Practices Board allowed the three primary, non-Federal land managers of Washington lynx habitat to develop "special wildlife management plans" for lynx. Upon approval by Washington Division of Fish and Wildlife, these plans were adopted in lieu of the development of forest practices rules to protect lynx habitat under the State's critical habitat designation. These three land managers have adopted and implemented lynx habitat management plans in Washington—"Lynx Habitat Management Plan for Department of Natural Resources Managed Lands" (Washington Department of Natural Resources 1996a), "North American Lynx Habitat Management Plan for Boise Cascade Corporation" (Whitwill and Roloff 1996), and a plan originally developed by Plum Creek Timber Company and adopted by Stimson Lumber Company "Salmo-Priest and Little Pend Oreille Lynx Management Plan" (Gilbert 1996; Duke Engineering and Services 1998). These plans represent efforts to improve habitat conditions for lynx in Washington, but only on State managed lands and those lands managed by the plan developers.

A substantial amount of the primary areas of lynx occurrence is on National Forest Service lands (Cascades (99 percent), Northern Rockies (67 percent), Southern Rockies (76 percent), Great Lakes (19 percent), Northeast (7 percent)) (U.S. Forest Service and Bureau of Land Management 1999). National Forest Management Act regulations (36 CFR 219.19) provide the following direction to the Forest Service—"Fish and wildlife habitat shall be managed to maintain viable populations of existing native and desired non-native vertebrate species." Additionally, the lynx is classified as a sensitive species by all Forest Service regions within the contiguous United States lynx range. There is no regulatory mandate specific to sensitive species; however, the Forest Service Manual (FSM 2670.32) provides the following policy guidance for sensitive species—"avoid or minimize impacts to sensitive species; if impacts cannot be managed to maintain viable populations, a decision must not result in loss of existing native and desired non-native vertebrate species viability or create a significant trend toward Federal listing." At present, Federal land management plans do not adequately address lynx, as described below.

The LCAS was developed to provide a consistent and effective approach to conserving lynx on Federal lands in the contiguous United States (U.S. Forest Service *et al.* 1999). The overall goals of the LCAS were to recommend lynx conservation measures, provide a basis for reviewing the adequacy with regard to lynx conservation of Forest Service and BLM land and resource management plans, and facilitate conferencing and consultation under section 7 of the Act, should the lynx be listed. The LCAS identifies an inclusive list of 17 potential risk factors for lynx that may be addressed under programs, practices, and activities within the authority and jurisdiction of Federal land management agencies. For example, these risk factors include programs or practices that result in: Habitat conversion, fragmentation or obstruction to lynx movement; roads or winter recreation trails that facilitate access to historical lynx habitat by competitors; and fire exclusion, which changes the vegetation mosaic maintained by natural disturbance processes. The risks identified in the LCAS are based on effects to either individual lynx or population segments, or both. Therefore, we do not necessarily consider all of the risks identified in the LCAS to be factors threatening the contiguous United States DPS of lynx. For example, one risk factor identified for the Southern Rockies Region is accidental death to

individual lynx from being hit by a vehicle while crossing roads. While this may result in incidental take of lynx, it is not considered to be a significant threat to the contiguous United States DPS.

The DBA determined that Federal land management plans are likely to adversely affect the lynx (U.S. Forest Service and Bureau of Land Management 1999). The DBA identified potential effects resulting from 57 Forest Service Land and Resource Management Plans (Plans) and 56 BLM Land Use Plans (Plans) within the 16-State area where lynx were proposed for listing. The direction found in the Plans was compared to direction proposed in the LCAS. If it were determined that a Plan may adversely affect either an individual lynx or a population segment through failure to meet any one of the programmatic conservation measures in the LCAS (U.S. Forest Service *et al.* 1999), then the Plan was deemed overall as likely to adversely affect lynx (U.S. Forest Service and Bureau of Land Management 1999). In other words, a risk was deemed harmful to lynx if the possibility of any adverse effect existed due to Plan direction or if the Plans did not address lynx conservation issues.

The Federal agencies chose a conservative approach in determining whether Plans might result in adverse effects to lynx. The determination was based only on what the Plans directed or allowed, not on a quantitative assessment of the effects to lynx from actual actions as a result of past or current implementation of the Plans. We acknowledge that many activities allowed by Plans, such as timber harvest and road construction, are never carried out for a variety of reasons, such as funding limitations and environmental, wildlife or policy considerations (U.S. Forest Service and Bureau of Land Management 1999).

The DBA identifies 15 criteria that contribute to some level of adverse effects to either an individual lynx or a population segment through failure to meet any one of the programmatic conservation measures in the LCAS. These criteria included, but are not limited to, precommercial thinning, fire management, landscape patterns, winter recreation, and monitoring. Individually, these criteria may not impart substantial impacts on the DPS, however, current Plans do allow actions that cumulatively could result in significant detrimental effects to the DPS. We cannot predict the future levels of impacts to lynx that would result from continued implementation of current Plans. However, the DBA concludes that there is reasonable potential for adverse effects to lynx as a result of actions directed or allowed by existing Plans. Because the Forest Service and BLM manage a substantial amount of lynx forest types in the contiguous United States, particularly in the West, it is imperative that lynx habitat and habitat for lynx prey be maintained and conserved on Federal lands. Though a large percentage of these lands are in nondevelopmental status, a large proportion remain subject to management under multiple use mandates. Until Plans adequately address risks such as those identified in the LCAS, we conclude that the lack of Plan guidance for conservation of lynx, and the potential for Plans to allow or direct actions that adversely affect lynx (as evidenced by the assessment in the DBA), is a significant threat to the contiguous United States DPS of the lynx. On February 4, 1977, the lynx was included in Appendix II of the CITES. The CITES is an international treaty established to prevent international trade that may be detrimental to the survival of plants and animals. A CITES export permit must be issued by the exporting country before an Appendix II species may be shipped. The CITES permits may not be issued if the export will be detrimental to the survival of the species or if the specimens were not legally acquired; however, CITES does not itself regulate take or domestic trade and therefore does not contribute to protection of the lynx in the United States.

Factor E. Other Natural or Manmade Factors Affecting Its Continued Existence

Based on mapping of lynx forest types for the contiguous United States (McKelvey *et al.* 1999b), we know that the southern boreal forests that support lynx and hares in the contiguous United States are naturally fragmented and disjunct compared with the northern boreal forests in Canada and Alaska (see "Background" section). Connectivity of appropriate habitat types and cover provide travel corridors between habitat patches, thereby increasing the likelihood of successful lynx dispersal. However, we know that lynx can traverse a variety of habitat types and obstacles, including rivers, nonforested habitats, and various types of roads, based on records of lynx occurrences in habitats and locations far from their traditional range and forest habitat types, such as Nebraska, Nevada, Iowa, and South Dakota (Aubry *et al.* 1999; McKelvey *et al.* 1999b; Ruggiero et al. 1999b).

For most areas of the contiguous United States, we have no evidence that human-caused factors have significantly reduced the ability of lynx to disperse or have resulted in the loss of genetic interchange. No information is currently available to identify whether any genetic concerns exist for lynx in the contiguous United States.

In western regions of lynx range, naturally fragmented patches of lynx habitat, typically occurring along mountain ranges, are often connected by a variety of intervening habitats, including shrub steppe, grassland, low-elevation forested or unforested valleys, and in some cases, desert. This natural fragmentation becomes more pronounced in the more southern extremes of lynx range. We have little information to compare these intervening landscapes to the historical condition, nor do we fully understand the environmental or physiological requirements of lynx as they attempt to disperse across them. We do know that much of the intervening landscapes between patches of lynx forest types in the Northern Rockies/Cascades is either used for agriculture or is Federal land; human population centers and other large human developments are limited across the western range of lynx.

In the Northeast, development along the St. Lawrence seaway and ice breaking for winter navigation may reduce the ability of lynx to move between northern Quebec and the area south of the St. Lawrence that includes southern Quebec, New Brunswick, Nova Scotia, and the northeastern United States (R. Lafond, pers. comm. 1999). Historically, lynx populations in the Northeast were periodically supplemented with transient or dispersing individuals from northern Quebec (Litvaitis *et al.* 1991). South of the St. Lawrence, movement is still possible between southeastern Quebec, western New Brunswick, Maine and New Hampshire, because the habitat is contiguous along the Appalachian Mountains and there are no natural or human-caused barriers to dispersal.

In the Great Lakes Region, winter navigation on the St. Mary's River between Ontario and Michigan's Upper Peninsula may reduce the ability of lynx to migrate across the St. Mary's shipping channel from Ontario to Michigan (Robinson and Fuller 1980).

Lynx movements may be negatively influenced by high traffic volume on roads that bisect suitable lynx habitat. In southern British Columbia, lynx movements and selection of home ranges appear to be influenced by highways (Apps 1999). Apps (1999) surmised that highway influence on lynx varies according to local habitat conditions, roadway width, traffic

volume, and possibly gender and reproductive status of individual lynx. Given the distances and locations where known lynx within the southern boreal forest have moved, we know that lynx successfully cross many types of roads, including unpaved forest roads, secondary paved roads, State and interstate highways (Mech 1980; Smith 1984; Brainerd 1985; Aubry *et al.* 1999; Squires and Laurion 1999). We suspect that highways with high volumes of traffic and associated suburban developments inhibit lynx home range movement and dispersal, and may contribute to loss of habitat connectivity. Such highways occur in the Southern Rockies Region connecting cities, towns, and ski areas, and also in the Northern Rockies/Cascade Region through the Cascade Range along the Columbia River. However, no information currently exists to determine the level at which traffic volume or roadway design may influence lynx movements or create an impediment to movement.

Although we assume that high-volume, high-speed traffic presents a barrier to dispersal, roads do not appear to be a significant direct cause of lynx mortality (Staples 1995; Ruggiero *et al.* 1999b). Few records exist of native lynx being killed by vehicles (Wydeven 1998; M. DonCarlos, *in litt.* 1994). None of the animals tracked by radiotelemetry in various studies throughout the contiguous United States were killed in vehicle accidents (Aubry *et al.* 1999). The majority of records of lynx mortalities from vehicle accidents are of recently translocated animals, who generally move large distances before settling (Brocke *et al.* 1991; Brocke *et al.* 1993; G. Byrne, Colorado Division of Wildlife, pers. comm. 1999). The high incidence of translocated lynx killed by cars is likely not typical of resident lynx populations in southern boreal forests (Aubry *et al.* 1999).

At the time of the proposed rule, we thought that the existence, density, and human use of unpaved forest roads also negatively impacted resident lynx populations by causing displacement or avoidance by lynx and degradation of lynx habitat. Evidence now available indicates that lynx tolerate some level of human disturbance (Staples 1995; Aubry *et al.* 1999; Bailey and Staples 1999; Mowat *et al.* 1999). No evidence exists that human presence displaces lynx. Although information regarding indirect effects of roads on lynx populations is lacking, recent analyses on the Okanogan National Forest in Washington indicate that lynx show no preference or avoidance of forest roads, and that road density does not appear to affect lynx habitat selection (McKelvey *et al.* 1999c). Lynx have been documented using some types of roads for hunting and travel (Parker 1981; Koehler and Brittell 1990; Koehler and Aubry 1994). We find no information demonstrating that forest roads negatively impact resident lynx populations.

In the proposed rule, we stated that increasing ease of human access into forests increased the vulnerability of lynx to intentional or unintentional shooting and trapping (Todd 1985; McKay 1991; Washington Department of Wildlife 1993; Koehler and Aubry 1994). We know that lynx are taken during legal trapping and hunting for other species, such as wolverine and bobcat, even when lynx seasons are closed (McKay 1991; Staples 1995; Wydeven 1998; M. DonCarlos *in litt.* 1994; R. Naney, pers. comm. 1999). We do not know how many lynx may be purposefully poached, but are concerned about radio-collared lynx that have been killed but not reported (G. Byrne, pers. comm. 1999; M. Amaral, pers. comm. 1999). No reliable recordkeeping exists to determine how frequently such taking occurs, nor if it has increased because of the increasing accessibility of forests. Further, lynx were likely captured incidentally in the past during regulated and unregulated trapping for other predators, and still they have persisted throughout much of their historic range. We are concerned about the loss of lynx through legal or illegal trapping and shooting; however, we have no information to indicate that the loss of these individuals is negatively affecting the overall ability of the contiguous United States DPS to persist (see "Factor B" of this section).

In the proposed rule, we considered displacement or elimination of lynx when competitors (e.g., bobcat, coyote) expand into lynx range (de Vos and Matel 1952; Parker *et al.* 1983; Quinn and Parker 1987) to be a significant threat to the contiguous United States DPS of lynx. At this time, there are no data on competition between lynx and other species; therefore, we have only information on behavior of possible competitors from which to gain some inferences about the possibility of competition and its impact on lynx.

Coyote, bobcat, and mountain lion are hypothesized to be potential lynx competitors (Brocke 1982; McCord and Cardoza 1982; Parker *et al.* 1983; Quinn and Parker 1987; Aubry *et al.* 1999; Buskirk *et al.* 1999a; Ruggiero *et al.* 1999b). In the Northeast and Great Lakes regions of the contiguous United States range of the lynx, bobcat and coyote ranges generally overlap with lynx. In the Northern Rockies/Cascades and Southern Rockies lynx generally overlap with bobcat, coyote and mountain lion. Lynx are highly evolved for hunting in deep snow: they have a morphological advantage because they are able to walk on snow rather than sink into it as do species with higher foot loads, such as the coyote, bobcat, or mountain lion (Murray and Boutin 1991; Buskirk *et al.* 1999a). Traditionally, where these species' ranges overlap with that of lynx, snow conditions exclude them from the winter habitats occupied by lynx (McCord and Cardoza 1982; Parker *et al.* 1983; Quinn and Parker 1987; Buskirk *et al.* 1999a).

However, today competition may be facilitated through human alteration of forests, creating habitats that may be more suitable to potential lynx competitors (McCord and Cardoza 1982; Quinn and Parker 1987; Buskirk *et al.* 1999a). The range of the coyote has significantly expanded, snowshoe hares are important prey for both coyotes and bobcats, mountain lion numbers appear to have increased, mountain lions have killed lynx, and snowtrails packed by humans facilitate the movement of potential lynx competitors into the deep snow habitats of the lynx.

Researchers believe the coyote's original range prior to European settlement was the North American Great Plains but over the past century its range has substantially expanded in all directions (Nowak 1979; 1999; Parker 1995). Nearly the entire North American range of the lynx now overlaps with that of the coyote. Coyotes expanded into the far western States in the mid to late 1800s, the western Great Lakes states in the early 1900s, and the Northeast by the 1950s (Nowak 1979, 1999; Parker 1995). Coyotes are generalist predators, feeding on rabbits and hares, rodents, deer, and plants (Parker 1995). In northern latitudes, particularly in winter, where the diversity of food items is limited, snowshoe hares are a primary food item for coyotes (Parker 1995; Staples 1995); the concern regarding competition with lynx stems primarily from diet overlap.

Extirpation of the wolf (*Canis lupus*) is one factor believed to have enabled the coyote to extend its range (Parker 1995). As wolf populations expand in the Northern Rockies Region in Montana, Idaho, and Wyoming, and the Great Lakes Region in Minnesota, Wisconsin, and Michigan, we expect coyote populations may be reduced (Crabtree and Sheldon 1999). An indirect result may be a reduction in the potential for coyotes to affect lynx in areas of overlap between lynx and wolves.

The range of the bobcat overlaps the lynx range within the contiguous United States and southern Canada. Like the coyote, the bobcat is a generalist predator that feeds on a wide variety of prey, including snowshoe hares (McCord and Cardoza 1982; Koehler and Hornocker 1991). Although lynx in the southern boreal forests evolved with bobcats, competition between these species is suspected because of their similar size and appearance (Buskirk *et al.* 1999a). Bobcats remain restricted to areas with low snow depths (Koehler and Hornocker 1991; Buskirk *et al.* 1999a). Parker *et al.* (1983) speculated that bobcats displaced lynx from all areas on Cape Breton Island, Nova Scotia, except high elevations, where snow accumulation limited the bobcat's range. We have no evidence that competition with bobcats has negatively affected the contiguous United States DPS.

Buskirk *et al.* (1999a) advanced the theory that mountain lions compete with lynx, based on a few records of mountain lions killing lynx and presumed increasing mountain lion populations. Interactions between lynx and lions would most likely occur during snowfree seasons because lions generally do not occupy the same winter habitats as lynx (H. Quigley, Hornocker Wildlife Institute, pers. comm. 1999). It is generally accepted that mountain lion numbers in the West have increased, therefore the rate of encounters between lynx and mountain lions has probably increased (H. Quigley, pers. comm. 1999). Deer (*Odocoileus* spp.) are the primary prey of mountain lions (Dixon 1982) and are an important food item for coyotes (Parker 1995) and bobcats (McCord and Cardoza 1982; Koehler and Hornocker 1991). In Idaho, mountain lion kills were frequently visited by bobcats and coyotes (Koehler and Hornocker 1991). Lions kill coyotes and bobcats, often in defense of food caches (Boyd and O'Gara 1985; Koehler and Hornocker 1991). Lynx occasionally feed on ungulates or scavenge from carcasses (Brand *et al.* 1976); we expect interactions between mountain lions and lynx would most likely occur in defense of food caches, as with coyotes and bobcats. Despite numerous mountain lion studies within the western range of the lynx, incidents of lions killing lynx are extremely rare (H. Quigley, pers. comm. 1999). No evidence exists that mountain lions exert a population-level impact on lynx.

Historically, interactions between lynx and potential competitors were limited in winter because most competitors cannot effectively move through the deep snow habitats of the lynx (Buskirk *et al.* 1999a). Now, ski and snowmobile trails and roads that are maintained for winter recreation and forest management create packed snow corridors that give other species access to lynx winter habitat (Koehler and Aubry 1994; U.S. Forest Service *et al.* 1999), although significant amounts of habitat remain relatively undisturbed by humans in the interior of large blocks of lynx forest types on Federal lands in the West, especially in designated wilderness and National Parks (U.S. Forest Service and Bureau of Land Management 1999). It appears that bobcats remain restricted to areas with low snow depths (Koehler and Hornock 1991; Buskirk *et al.* 1999a), and that lynx and lion winter habitats typically do not overlap (H. Quigley, pers. comm. 1999).

Coyotes use packed snowtrails and now occupy the winter habitats of lynx (Murray and Boutin 1991; Murray *et al.* 1994; Staples 1995; O'Donoghue *et al.* 1997, 1998a, 1998b) and, therefore, are a concern as a potential lynx competitor in winter. Studies of lynx, coyotes, and hares from the Yukon Territory and Alaska provide some information with which to consider potential for competition between lynx and coyote in winter (Murray and Boutin 1991; Murray *et al.* 1994; Staples 1995; O'Donoghue *et al.* 1997, 1998a, 1998b). Coyotes adapted their behavioral patterns for hunting in snow by selecting snow that was shallower and harder; whereas lynx successfully hunted in all habitats where hares were found (Murray and Boutin 1991; Murray *et al.* 1994; O'Donoghue *et al.* 1998a). Coyotes and lynx both preferred snowshoe hares over alternate prey during all phases of the hare cycle (O'Donoghue *et al.* 1998a). During the snowshoe hare decline, lynx switched to hunting red squirrels, whereas coyotes switched to hunting voles (O'Donoghue *et al.* 1998b). In Alaska, Staples (1995) believes that the 42 percent dietary overlap between lynx and coyote observed during a cyclic low in the hare cycle indicated the potential for competition; however, we are not aware of research or other evidence indicating that coyote competition has negatively affected the lynx populations in Canada. In fact, we expect that the variability of snow conditions and frequency of fresh snows in the winter habitats that support lynx continually reduce or alter the availability of snowtrails and shallow snow depths used by coyotes in lynx habitat, making it more difficult for coyotes to effectively hunt in these areas regularly during the winter. No evidence exists indicating that coyote competition has negatively affected the contiguous United States lynx DPS (Aubry *et al.* 1999).

Little is known about lynx habits in snow-free seasons. A greater diversity of prey and habitats available during this time may reduce the negative effects of competition. Furthermore, because lynx have co-evolved with bobcats and mountain lions, and in most areas lynx have coexisted with coyotes for many decades, we suspect some level of segregation of habitat and prey among these species. In summer in Idaho, coyotes, bobcats, and mountain lions used different topographic and habitat features; allowing habitat and prey resources to be partitioned among these species; coyotes used lower elevations than bobcats who used lower elevations than lions (Koehler and Hornocker 1991). All of the elevations used in this study were within the range recorded for lynx occurrences in the West (McKelvey *et al.* 1999b); however, the data for lynx were not recorded by season. We suspect these data are more representative of elevations lynx use in winter rather than snow-free seasons because much of the lynx data are from trapping records, an activity that occurs during winter.

In summary, we conclude lynx movements may be negatively influenced by high traffic volume on roads that bisect suitable lynx habitat, such as in the Southern Rockies and in some parts of the Northern Rockies/Cascades Region. We suspect that highways with high volumes of traffic and associated suburban developments inhibit dispersal and movements within home ranges, and may contribute to loss of habitat connectivity. However, roads do not appear to be a significant direct cause of lynx mortality. We find no information demonstrating that forest roads negatively impact resident lynx populations. Packed snowtrails facilitate the movement of coyotes into formerly inaccessible deep snow habitats occupied by lynx; however, we have no evidence that competition with coyotes, mountain lions or bobcats is negatively affecting lynx at a population-level scale.

Finding

We conclude that, in the contiguous United States, lynx populations occur at naturally low densities and that the rarity of lynx at the southern portion of their range compared to more northern populations is normal. This rarity is based largely on low densities of snowshoe hares, their primary prey. Low snowshoe hare densities are likely a result of naturally patchy, transitional

boreal habitat at southern latitudes that prevents hare populations from achieving densities similar to those in the extensive northern boreal forest of Canada. Low numbers of lynx reflected in harvest data for the contiguous United States are not a result of overtrapping, but of naturally limiting fragmentation, topography, and climate. Lynx in the contiguous United States are the southernmost extension of a larger metapopulation whose core is in central Canada.

We conclude the single factor threatening the contiguous U.S. DPS of lynx is the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx in National Forest Land and Resource Plans and BLM Land Use Plans as described in Factor D. Until Plans adequately address risks such as those identified in the LCAS, and described generally in Factors A, B and E, we conclude that the lack of Plan guidance for conservation of lynx, as evidenced by the fact that Plans allow or direct actions that cumulatively adversely affect lynx (as indicated by the assessment in the DBA), is a significant threat to the contiguous U.S. DPS of lynx. Therefore, we find that listing the lynx within the contiguous United States as threatened is necessary.

We conclude that Federal land management assumes the largest single role in the conservation of lynx in the contiguous United States because of the preponderance of lynx forest types on Forest Service, BLM, and National Park Service lands, particularly in the western United States. A substantial amount of lynx forest types occur on Forest Service and BLM lands (Northern Rockies-72 percent, Cascades-99 percent, Southern Rockies-82 percent, Great Lakes-19 percent, Northeast-7 percent). We believe that the large amount of lynx forest types properly managed in nondevelopmental allocations, especially in designated wilderness areas, and amendments to existing land use plans, such that management of lynx forest types in developmental areas does not conflict with lynx conservation, will be a substantial benefit to lynx in the Northern Rockies/Cascades and Southern Rockies and will contribute significantly to the likelihood of conserving lynx into the future within the contiguous United States.

It is imperative that snowshoe hare and alternate prey populations be supported by appropriate habitat management on Federal lands into the future to ensure the conservation of lynx in the contiguous United States. Substantive declines in prey species, especially snowshoe hare, may result in a prey base insufficient to support lynx persistence.

Factors affecting lynx status vary among regions of the contiguous United States. The Northern Rockies/Cascades Region supports the largest amount of lynx habitat and has the strongest evidence of resident lynx populations, both historically and currently. This region has strong habitat connections to lynx populations in Canada, as well as large proportions of lynx habitat in wilderness and other areas with limited human influence. The Northern Rockies/Cascades Region has the highest potential to maintain a viable lynx population within the contiguous United States. Available evidence suggests that lynx populations within this region fluctuate, and we have no information suggesting a declining population trend. The primary factor affecting lynx in this region is the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx in Federal land management plans.

In the Southern Rockies Region, lynx habitat is naturally limited and highly fragmented, which leads us to conclude that lynx were rare historically. We conclude native lynx may now be extirpated from this region. The factors affecting lynx in this region are the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx in Federal land management plans, and loss of habitat connectivity resulting from high-use highways and associated suburban development.

The historic and current status of lynx in the Great Lakes Region is uncertain. We lack information to determine whether lynx in this region are simply dispersing from Canada, are members of a resident population, or are a combination of a resident population and dispersing individuals. Much of this region contains marginal habitat that may not sustain resident lynx populations. The factors affecting lynx in this region include the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx in Federal land management plans, and timber harvest and fire suppression on non-Federal lands.

In the Northeast, lynx reproduction and individual animals have recently been documented in Maine. Recent lynx harvests were substantial in adjacent southeastern Quebec. Therefore, we conclude that a resident population of lynx continues to exist in the core of the region; however, the range may have retracted northward. The main factor affecting lynx forest types in this region is timber harvest on non-Federal lands, although the extent of influence of current forest practices on lynx is not known.

Within the contiguous United States, the relative importance of each region to the persistence of the DPS varies. The Northern Rockies/Cascades Region supports the largest amount of lynx habitat and has the strongest evidence of persistent occurrence of resident lynx populations, both historically and currently. In the Northeast (where resident lynx populations continue to persist) and Southern Rockies regions, the amount of lynx habitat is naturally limited and does not contribute substantially to the persistence of the contiguous United States DPS. Much of the habitat in the Great Lakes Region is naturally marginal and may not support prey densities sufficient to sustain lynx populations. As such, the Great Lakes Region does not contribute substantially to the persistence of the contiguous United States DPS. Collectively, the Northeast, Great Lakes, and Southern Rockies do not constitute a significant portion of the range of the DPS. We conclude the Northern Rockies/Cascades Region is the primary region necessary to support the continued long-term existence of the contiguous United States DPS. However, the role that each region plays in the long-term conservation of the species will be explored further in recovery planning for the species.

Critical Habitat

Critical habitat is defined in section 3(5)(a) of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. The term "conservation" as defined in section 3(3) of the Act means "to use and the use of all methods and procedures necessary to bring any endangered or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary," that is, the species is recovered and can be removed from the list of endangered and threatened species.

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)) state that critical habitat is not determinable if information sufficient to perform required analysis of impacts of the designation is lacking or if the biological needs of the species are not sufficiently well known to permit identification of an area as critical habitat. Section 4(b)(2) of the Act requires us to consider economic and other relevant impacts of designating a particular area as critical habitat on the basis of the best scientific data available. The Secretary may exclude any area from critical habitat if he determines that the benefits of such exclusion outweigh the conservation benefits, unless to do so would result in the extinction of the species.

In the proposed rule, we indicated that designation of critical habitat was not prudent for the Canada lynx because it could increase the vulnerability of lynx to poaching, because the species and its habitat are continually shifting spatially and temporally across the landscape making static designation of specific areas of little benefit to the species, and because designation of broad geographic areas would necessarily include many areas of unsuitable habitat that would not be used by and would not be critical to the species. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as threatened.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent. Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for Canada lynx would be prudent.

The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat also would be likely to adversely affect the species, there may be instances where section 7 consultation would be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. There also may be some educational or informational benefits to designating critical habitat. Therefore, we find that critical habitat is prudent for Canada lynx.

As explained in detail in our Final Listing Priority Guidance for Fiscal Year 2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for Canada lynx allows us to concentrate our limited resources on higher priority critical habitat (including court ordered designations) and other listing actions, while allowing us to put in place protections needed for the conservation of Canada lynx without further delay. However, because we have successfully reduced, although not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the Canada lynx as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 6's listing budget must be directed to complying with court orders and settlement agreements, as well as due and overdue final listing determinations.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing results in public awareness and conservation actions by Federal, State, and local agencies, private organizations, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer with the Service on any action that is likely to jeopardize the continued existence of a species proposed for listing or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The Forest Service and the Fish and Wildlife Service recently signed a Lynx Conservation Agreement (Feb 2000) to promote the conservation of lynx and lynx habitat on Federal lands managed by the Forest Service. It identifies actions the signatories agree to take to reduce or eliminate adverse affects or risks to lynx and lynx habitat. Implementation of these actions within this agreement will provide immediate benefits to lynx.

Section 9 of the Act and implementing regulations set forth a series of general prohibitions and exceptions that apply to all endangered or threatened wildlife. The prohibitions, codified at 50 CFR 17.21 and 17.31, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife under certain circumstances. Regulations governing permits are codified at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the

propagation or survival of the species, and/or for incidental take in the course of otherwise lawful activities. For threatened species, permits also are available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

It is our policy, as published in the **Federal Register** on July 1, 1994, to identify to the maximum extent practicable at the time a species is listed those activities that would or would not constitute a violation of section 9 of the Act (59 FR 34272). The intent of this policy is to increase public awareness of the effect of this listing on proposed and ongoing activities within the species' range. For the contiguous United States population of wild lynx, we believe the following actions would not likely result in a violation of section 9 of the Act:

(1) Actions that may result in take of wild lynx in the contiguous United States that are authorized, funded, or carried out by a Federal agency when the action is conducted in accordance with an incidental take statement issued by us pursuant to section 7 of the Act;

(2) Actions that may result in take of wild lynx in the contiguous United States when the action is conducted in accordance with a permit issued under 50 CFR 17.32 or special rule issued under section 4(d) of the Act. These activities include take for educational purposes, scientific purposes, the enhancement of propagation or survival, zoological exhibition, and other conservation purposes consistent with the Act.

For the contiguous United States population of captive lynx, we believe the following actions would not likely result in a violation of section 9 of the Act:

(1) Take, transport, possess, sell, deliver, and receive of captive lynx and export of captive lynx or their pelts under valid CITES export permits.

For the contiguous United States population of wild lynx, the following actions likely would be considered a violation of section 9 of the Act:

(1) Take of wild lynx (including both purposeful and incidental)

(2) Possessing, selling, delivering, carrying, transporting, or shipping illegally taken lynx;

(3) Export of lynx or lynx parts or products (including pelts) without a permit under section 17.32 (a CITES permit would also be required in order to be in compliance with CITES);

(4) Significant lynx habitat modification or degradation to the point that it results in death or injury by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

For the contiguous United States population of captive lynx, the following would likely constitute a violation of section 9 of the Act:

(1) export of any lynx part or products other than a properly tagged pelt or permitted parts or products;

For lynx that occur outside of the contiguous United States (Alaska and Canada), the Endangered Species Act listing and companion 4(d) have no effect. Lynx in those areas, as well as in the contiguous United States, remain covered by the designation of Appendix II under CITES. Therefore, the import of lynx into the United States and the transportation of lynx from Alaska to the contiguous United States may continue under current procedures established by State law and CITES.

Requests for copies of the regulations regarding listed wildlife and inquiries about prohibitions and permits may be addressed to United States Fish and Wildlife Service, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

Special Rule

Section 4(d) also states that the Service may, by regulation, extend to threatened species, prohibitions provided for endangered species under section 9. Our implementing regulations for threatened wildlife (50 CFR 17.31) incorporate the section 9 prohibitions for endangered wildlife, except when a special rule is promulgated pursuant to section 4(d) applies (50 CFR 17.31(c)).

This special rule applies the general take prohibitions for threatened wildlife to the wild population of Canada lynx in the contiguous United States. It also provides for the continuation of the take and export of captive lynx and their pelts under Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) export permits and provides for the transportation of lynx pelts in commerce within the United States. The export of properly tagged (with valid CITES export tag) pelts from lynx documented as captive is not prohibited under the special rule. Properly tagged pelts may be transported in interstate trade without permits otherwise required under 50 CFR 17.32.

CITES is an international treaty for the regulation of international trade in certain animal and plant species. The lynx was included in CITES Appendix II on February 4, 1977, as a part of the listing of all Felidae that were not already included in the appendices. A CITES export permit pursuant to 50 CFR part 23 must be issued by the exporting country before an Appendix II species may be shipped. All Felidae are included in Appendix II to enable better protection of look-alike species that were or could be threatened with extinction without strict regulation of trade. After the lynx (as well as the bobcat and river otter) were included in CITES Appendix II, we worked with the States to develop guidelines for State programs that would provide the information needed to satisfy CITES export requirements. Under the State CITES export programs, all pelts to be exported are required to be tagged with a permanently attached, serially numbered tag that identifies the species, State of origin, and season of taking. The tags are provided to the States and Tribes by the Service. In the past the States that have been approved for export of captive or wild lynx are Alaska, Idaho, Minnesota, Montana, and Washington. In the last few years Idaho, Minnesota and Washington have had zero quotas or closed seasons, and Montana has had a quota of two to three wild lynx trapped per year. Due to the listing all of the States in the contiguous U.S. will no longer be approved for export of wild lynx; Lynx in Alaska are not encompassed by this listing; all existing CITES requirements remain the same for lynx originating in Alaska.

Currently facilities in Idaho, Minnesota, Montana, North Dakota, and Utah raise captive lynx for commercial purposes. At least some of the farms report that their initial stock was obtained from Canada. From 1992 through 1997, Minnesota and Montana reported that a total of 169 lynx pelts were tagged for export under the CITES program and these primarily originated from farmed animals. These captive-bred specimens have neither a positive nor negative effect on the species in the wild.

Current prices for lynx pelts are low so there is little present incentive to trap wild lynx. However, an increase in pelt prices could create a strong incentive to trap wild lynx and export their pelts. Lynx are easy to trap, and the illegal take of lynx would present an enforcement and inspection problem for Service personnel. Since they look the same, captive lynx pelts cannot be effectively differentiated from wild lynx pelts by Service law enforcement and inspection personnel without proper tagging.

This final rule would allow the export from the United States of live captive lynx or their pelts if the pelt is tagged with a CITES export tag and accompanied by a valid CITES export permit. The import of lawfully obtained live lynx or their parts or products would continue to require the necessary CITES export permits from the exporting country, but no additional permits under 50 CFR 17.32 would be required. CITES permit requirements are found in 50 CFR part 23.

In summary, CITES permits will be required for the export of captive lynx or their parts or products from the United States. No permits under 50 CFR 17.32 will be required for the importation of lynx or their parts or products into the United States or for interstate commerce in pelts that are properly tagged with valid CITES export tags. However, interstate commerce of untagged pelts is prohibited.

Similarity of Appearance

In the proposed rule we proposed listing the wild population of lynx in the contiguous United States as threatened, and we proposed listing the captive population separately under the similarity of appearance provisions of the Act (section 4(e)). We proposed listing the captive population under the Similarity of Appearance provisions in order to aid law enforcement efforts to protect the wild populations. Upon further review we have determined that separate listings of the wild and captive populations are not necessary. Instead, we have revised the special 4(d) rule accompanying this listing rule to establish prohibitions for the wild and captive populations separately.

Paperwork Reduction Act for the Listing Rule

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information, unless it displays a currently valid control number. For additional information concerning permit and associated requirements for threatened wildlife, see 50 CFR 17.32.

Required Determinations for the Listing and Special Rule

In accordance with Executive Order 12866, this document is a significant rule and has been reviewed by the Office of Management and Budget, under Executive Order 12866. We completed a Record of Compliance for the 4(d) rule, and published a notice of availability for the Record of Compliance in the **Federal Register** on July 26, 1999 (64 FR 40333). A copy can be obtained by contacting the Montana Field Office (see **ADDRESSES** section).

National Environmental Policy Act

We have determined that Environmental Assessments and Environmental Impact Statements, as defined in the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Montana Field Office (see **ADDRESSES** section).

Author(s)

The primary authors of this document are Lori Nordstrom and Anne Vandehey, Montana Field Office, Helena, Montana; and Janet Mizzi, Mountain-Prairie Regional Office, Denver, Colorado.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, Stat. 3500; unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under "MAMMALS," to the List of Endangered and Threatened Wildlife:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
Lynx, Canada	*Lynx canadensis*	U.S.A. (AK, CO, ID, ME, MI, MN, MT, NH, NY, OR, UT, VT, WA, WI, WY) Canada.	CO, ID, ME, MI, MN, MT, NH, NY, OR, UT, VT, WA, WI, WY.	T	692	NA	17.40 (k)

3. Section 17.40 is amended by adding paragraph (k) to read as follows:

§ 17.40 Special rules—mammals

* * * * *

(k) Canada lynx (*Lynx canadensis*).

(1) *What lynx does this special rule apply to?* The regulations in this paragraph (k) apply to all wild and captive lynx in the contiguous United States.

(2) *What activities are prohibited for wild lynx?* All prohibitions and provisions of 50 CFR 17.31 and 17.32 apply to wild lynx found in the contiguous United States.

(3) *What is considered a captive lynx?*

(i) For purposes of this paragraph (k), captive lynx means lynx, whether alive or dead, and any part or product, if the specimen was in captivity at the time of the listing, born in captivity, or lawfully imported or transported into the contiguous United States.

(ii) Lynx that were either born or held in captivity and then released into the wild are considered wild.

(4) *What activities are allowed for captive lynx?*

(i) *Take.* You may take lawfully obtained captive lynx without a permit.

(ii) *Import and export.* You may export captive live lynx, parts or products of captive lynx provided the

specimens are tagged with Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) export tags and/or accompanied by a valid CITES export permit. You may import lawfully obtained lynx that originated outside the United States when you follow the requirements of CITES.

(iii) *Interstate commerce.* You may deliver, receive, carry, transport, ship, sell, offer to sell, purchase, or offer to purchase in interstate commerce captive lynx and captive lynx parts and products in accordance with State or tribal laws and regulations. In addition, lynx pelts that are properly tagged with valid CITES export tags also qualify for this exemption on interstate commerce.

(5) *Are any activities not allowed or restricted for captive lynx?* You must comply with all applicable State and tribal laws and regulations. Violation of State or tribal law will also be a violation of the Act.

Dated: March 16, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–7145 Filed 3–21–00; 8:45 am]

BILLING CODE 4310–55–p



Federal Register

Friday,
March 24, 2000

Part VI

Department of Education

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program—The Challenge Newsletter; Notices

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program—The Challenge Newsletter

AGENCY: Department of Education.

ACTION: Notice of final priority and selection criteria for fiscal year 2000 and subsequent years.

SUMMARY: The Assistant Secretary announces a final priority, eligible applicants, and selection criteria for fiscal year (FY) 2000 and, at the discretion of the Assistant Secretary, for subsequent years under the Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program. The Assistant Secretary takes this action to focus Federal financial assistance on an identified national need—the development and dissemination of a newsletter with information about effective practices to prevent drug use and violent behavior among youth. *The Challenge* newsletter will provide a communication link on current and future program directions, research-based activities, and other information related to effective drug and violence prevention strategies between the U.S. Department of Education and State and local educational agencies and other public and private organizations involved with prevention of youth drug use and violent behavior.

EFFECTIVE DATE: This notice takes effect on April 24, 2000.

Eligible Applicants: Eligible applicants under this competition are public and private nonprofit organizations and individuals.

FOR FURTHER INFORMATION CONTACT: Gail Beaumont, Safe and Drug-Free Schools Program, U.S. Department of Education, 400 Maryland Avenue, SW, Room 3E310, Washington, DC 20202–6123, (202) 260–3954. Fax: (202) 260–7767. Internet: gail_beaumont@ed.gov.

An individual who uses a TDD may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published elsewhere in this issue of the **Federal Register**.

SUPPLEMENTARY INFORMATION: This notice contains the final priority for fiscal year 2000, and related selection criteria. Under the absolute priority, the Assistant Secretary intends to award one cooperative agreement for up to 36 months; this cooperative agreement will support a means of communicating with the field on current and future program directions, research-based activities, and other information related to effective drug and violence prevention practices through *The Challenge* newsletter. The primary audience for *The Challenge* is classroom teachers.

Applicants must demonstrate extensive knowledge of elements of effective drug and violence prevention programs and current research in the area of drug and violence prevention. Funds under the Safe and Drug-Free Schools Program reach 97 percent of the nation's school districts. While most school districts have implemented drug and violence prevention activities in some form, too often these activities are narrow in scope and are not based on science. Many school districts lack data on the effects of their drug and violence prevention programs on student behavior. They need information about programs that have proven to be effective or promising that they can adopt for their students. Although research exists on drug and violence prevention strategies that have positive results, too often this research is not known to school personnel, and does not get translated into practice. *The Challenge* will provide classroom teachers and other professionals with information about effective or promising drug and violence prevention programs and strategies, articles by experts in the prevention field, and other timely information covering a broad range of topics that comprise the expanding knowledge base on drug and violence prevention.

With regard to content, the following information describes examples of topics and types of articles that have been featured in past issues of *The Challenge:*

- Information about principles of effective drug and violence prevention programs.
- Key elements or characteristics of successful drug and violence prevention programs.
- Research studies and data related to drug and violence prevention.
- Articles by recognized experts in fields related to safe and drug-free schools.
- Articles describing model programs.
- Information that describes discretionary grant activities funded under the Safe and Drug-Free Schools and Communities Program, National Programs, including resources and products resulting from the activities.
- Timely information on special topics such as emerging trends in use of specific drugs, or early warning signs of violent behavior.
- Resources and helplines for obtaining information and materials on drug and violence prevention.

While applicants are expected to address in their applications the topics and types of articles described in the above list, the list is by no means comprehensive. Applicants are encouraged to offer suggestions on ways to communicate with the field on a broad range of key issues, including information on classroom practices, assessments, and appropriate strategies.

Frequency of past publication of *The Challenge* has ranged from 6–10 times per year, and the number of pages has ranged from 4–26 pages per issue. The number of copies has been 50,000 per issue. These numbers are offered as guides based on past practice, and are not requirements of the current competition. Applicants are encouraged to offer suggestions regarding the length and frequency of publication, as well as number of copies per issue and dissemination plan.

The applicant funded under the absolute priority in this notice will have the responsibility to design, develop, publish, disseminate, and manage all aspects of *The Challenge* consistent with the specific requirements in the absolute priority below. In submitting their proposals for funding, applicants are encouraged to offer suggestions and ideas for *The Challenge* in addition to those specified in the absolute priority.

Public Comments

On January 25, 2000, the Assistant Secretary published a notice of proposed priority, eligible applicants, and selection criteria for this competition in the **Federal Register** (65 FR 3948–3950). In response to the Assistant Secretary's invitation to comment, the Department received comments from two organizations. In response to the comments received, the Assistant Secretary made two modifications—one to the supplementary information section of the notice and one to the selection criteria—as noted in the analysis of comments and changes and elsewhere in this notice.

Analysis of Comments and Changes

Highlight More Classroom Practices, Assessments, and Appropriate Strategies

Comment: One commenter suggested that, in order to benefit classroom teachers, the content of the newsletter should highlight more classroom practices, assessments, and appropriate strategies rather than the items identified in the **Federal Register**.

Discussion: The Department agrees that the newsletter should include information for classroom teachers such as classroom practices, assessments, and appropriate strategies, but not to the exclusion of other topics listed in supplementary information.

The supplementary information provided in the Notice of Proposed Priority includes a list of suggested, but not mandatory, topics and types of articles that have been featured in past issues of *The Challenge.*

Changes: The supplementary information section of this notice is amended to include a statement that applicants are encouraged to offer suggestions about communicating information about classroom practices, assessments, and appropriate strategies.

Definition of "Newsletter", Specifications Regarding Length, Frequency of Publication

Comment: One commenter sought clarification of the meaning of the term "newsletter" in terms of length and frequency of publication envisioned for 5 *The Challenge*, expressing the concern that without more clarification proposals might be very different and difficult to compare.

Discussion: The dictionary definition for the term "newsletter" is "a printed sheet, pamphlet, or small newspaper containing news or information of interest chiefly to a special group." While a specific definition of "newsletter" is not provided for this priority, the dictionary definition provides a general frame of reference. The supplementary information in the Notice of Proposed Priority states that past publication of *The Challenge* has ranged from 6—10 times per year, and the number of pages has ranged from 4—26 pages per issue. These numbers are offered as guides based on past practice, and are not requirements. The Department chose not to be prescriptive in terms of length and frequency of publication, opting instead to encourage applicants to offer their suggestions. Proposals will be reviewed individually on their own merits against the selection criteria.

Changes: None.

Selection Criteria—Adequacy of Resources

Comment: One commenter asked if peer reviewers should be determining whether costs are reasonable, and based on what qualifications.

Discussion: Peer reviewers for all grant competitions have as one of their tasks assessing budgets submitted by applicants and determining if costs are reasonable, based on the design, scope, and complexity of the proposed projects.

Changes: None.

Comment: One commenter suggested that the adequacy of resources such as adequate office space, computer hardware and software, database capabilities for the subscriber database, and established relationships with graphic designers, printers, and mailing houses are also important considerations. The commenter suggested also increasing the point value to ensure that offerors possess the necessary non-staff resources and capabilities.

Discussion: The Department agrees that it is important to consider resources such as those described by the commenter, but that consideration of those resources can be accomplished by adding a factor to the "Adequacy of Resources" selection criterion without increasing the overall point score for this criterion.

Change: The comment is addressed by adding the following factor under the "Adequacy of Resources" selection criterion: "The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization" for 5 points. The overall point score of 10 points for the "Adequacy of Resources" selection criterion remains the same. The point score for the factor "the extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project" is reduced from 10 to 5 points.

Organizational Experience as a Selection Factor

Comment: One commenter stated that organizational experience/qualifications is nowhere to be found within the proposed selection criteria, and commented that organizational experience and qualifications would be an important selection factor.

Discussion: The Department agrees that organizational experience and qualifications is an important selection factor. Qualifications and experience of key personnel and other factors for ensuring high-quality products and services from the proposed project are addressed under the selection criterion "Quality of Management Plan".

Changes: None.

Selection Criteria—Quality of Project Evaluation

Comment: One commenter questioned why so many points (25) are allocated to the "Quality of Project Evaluation" criterion since *The Challenge* is not a demonstration project. The commenter stated that measuring the impact on recipients of reading an article or an entire issue will be complicated and the validity of those studies can be questionable. In addition, the commenter stated that the large number of points (25% of the total possible) seems to imply an expectation of a sophisticated evaluation plan, which can be costly. Those costs would likely reduce the number or size or both, of the issues that can be produced, which would in turn reduce the likelihood of measurable impact.

Discussion: The Department places high importance on the quality of the project evaluation, which is reflected in the relatively high point score assigned to this criterion. Evaluation is also addressed in the absolute priority, which includes the statement that applicants must propose projects that: "evaluate on an ongoing basis the impact of *The Challenge* on the intended audience, and use evaluation results for continuous improvement of the newsletter." The evaluation plan and methods of evaluation will vary, depending on the objectives and design of *The Challenge* proposed by each applicant. The Department intends for the award recipient to solicit customer feedback, and assess customer satisfaction regarding content, design, format, frequency of publication, length, and other relevant aspects of the newsletter, and leaves it to the applicant to develop a suitable plan to collect and use the information for quality improvement.

Changes: None

Absolute Priority

Under 34 CFR 75.105(c)(3) and the Safe and Drug-Free Schools and Communities Act of 1994, the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority. Under the absolute funding priority for this competition, applicants must propose projects that:

(1) Design, develop, publish, and disseminate *The Challenge*, a newsletter for educators, prevention specialists, and other professionals in fields related to education and drug and violence prevention to provide information about effective practices to prevent drug use and violent behavior among youth.

(2) Manage all aspects of *The Challenge*, including developing contents of each issue, writing or soliciting articles for each issue, preparing artwork, handling all design and pre-production tasks, and printing and mailing.

(3) Create, maintain, and expand a subscriber data base for ED.

(4) Evaluate on an ongoing basis the impact of *The Challenge* on the intended audience, and use evaluation results for continuous improvement of the newsletter.

(5) Develop, create, and maintain a Web site to post each issue and receive reader comments and suggestions.

(6) Agree to have content of the newsletter reviewed and approved by the Department of Education prior to publication.

Selection Criteria

The following selection criteria will be used to evaluate applications for one cooperative agreement under this competition. The maximum score for all these criteria is 100 points. The maximum score for each criterion or factor under that criterion is indicated in parentheses.

(1) *Significance.* (10 points)

In determining the significance of the proposed project, the following factor is considered: The potential contribution of the proposed project to increased knowledge or understanding of educational problems, issues, or effective strategies.

(2) *Quality of the project design.* (30 points)

In determining the quality of the design of the proposed project, the following factors are considered:

(a) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable. (10)

(b) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs. (5)

(c) The extent to which the proposed project represents an exceptional approach to the priority or priorities established for the competition. (15)

(3) *Adequacy of resources.* (10 points)

In determining the adequacy of resources for the proposed project, the following factors are considered:

(a) The adequacy of support, including facilities, equipment, supplies, and other resources, from the applicant organization or the lead applicant organization. (5)

(b) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project. (5)

(4) *Quality of management plan.* (25 points)

In determining the quality of the management plan for the proposed project, the following factors are considered:

(a) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks. (5)

(b) The adequacy of mechanisms for ensuring high-quality products and services from the proposed project, including qualifications and experience of key personnel in writing and editing newsletters for education, prevention and related fields. (10)

(c) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project. (5)

(d) How the applicant will ensure that a diversity of perspectives are brought to bear in the operation of the proposed project, including those of students, faculty, parents, the business community, a variety of disciplinary and professional fields, recipients or beneficiaries of services, or others, as appropriate. (5)

(5) *Quality of project evaluation.* (25 points)

In determining the quality of the evaluation, the following factors are considered:

(a) The extent to which the evaluation plan provides for an ongoing evaluation of the effectiveness of *The Challenge* newsletter, and its impact on the intended audience. (10)

(b) The extent to which the evaluation results will be used for continuous improvement of *The Challenge.* (5)

(c) The extent to which the methods of evaluation are appropriate to the context within which the project operates. (5)

(d) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes. (5)

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local government for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Electronic Access to This Document

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Program Authority: 20 U.S.C. 7131

Dated: March 21, 2000.

(Catalog of Federal Domestic Assistance Number 84.184P Office of Elementary and Secondary Education—Safe and Drug-Free Schools and Communities National Programs—Federal Activities—*The Challenge* Newsletter)

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–7300 Filed 3–23–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

[CFDA No: 84.184P]

Office of Elementary and Secondary Education; Safe and Drug-Free Schools and Communities National Programs—Federal Activities Grants Program—The Challenge Newsletter

AGENCY: Department of Education.

ACTION: Notice Inviting Applications for New Awards for Fiscal Year 2000.

Purpose of the Program: To fund one cooperative agreement for the development and dissemination of *The Challenge* newsletter to provide information about effective practices to prevent drug use and violent behavior among youth.

Eligible Applicants: Public and private nonprofit organizations and individuals.

Applications available: March 24, 2000.

Deadline for Receipt of Applications: April 24, 2000.

Note: All applications must be received by the Department's Application Control Center by 4:30 p.m. Eastern Time on or before the deadline date. Applications received after that time will not be eligible for funding. Postmarked dates will not be accepted. This requirement takes exception to the Education Department General Administrative Regulations (EDGAR), 34 CFR 75.102. Under the Administrative Procedure Act (5 U.S.C. 553), the Department generally offers interested parties the opportunity to comment on proposed regulations. However, this exception to EDGAR makes procedural changes only and does not establish new substantive policy. Therefore, under 5 U.S.C. 553 (b) (A), the Assistant Secretary for Elementary and Secondary Education has determined that proposed rulemaking is not required. Applications by mail should be sent to: U.S. Department of Education, Application Control Center, Attention: CFDA: 84.184P, Room 3633, ROB#3, 400 Maryland Avenue, SW, Washington, DC 20202–4725. The address for applications delivered by hand is: U.S. Department of Education, Application Control Center, Attention: CFDA: 84.184P, Regional Office Building 3, Room 3633, 7th and D Streets, SW, Washington, DC 20202–4725.

Deadline for Intergovernmental Review: May 23, 2000.

Available Funds: $300,000.

Estimated Size of Award: $300,000.

Estimated Number of Awards: 1.

Note: The Department of Education is not bound by any estimates in this notice.

Project Period: Up to 36 months. Please note that all applicants for multi-year awards are required to provide detailed budget information for the total project period requested. The Department will negotiate at the time of the initial award the funding levels for each year of the cooperative agreement award.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 97, 98, and 99; and (b) The Notice of Final Priority and Selection Criteria for FY 2000 published elsewhere in this issue of the **Federal Register.**

Absolute Priority: The Assistant Secretary has published elsewhere in this issue of the **Federal Register** a notice of final priority and selection criteria which establishes an absolute priority for *The Challenge* newsletter. Under 34 CFR 75.105(c)(3), the Assistant Secretary will fund under this competition only applications that meet the absolute priority.

For Applications or Information Contact: Gail Beaumont, Safe and Drug-Free Schools Program, 400 Maryland Avenue, SW, Washington, DC 20202–6123. Telephone: (202) 260–3954. By FAX: (202) 260–7767. Internet: gail_beaumont@ed.gov.

An individual who uses a TDD may call the Federal Information Relay Service FIRS) at 1–800–877–8339.

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http://ocfo.ed.gov/fedreg.htm
http://www.ed.gov/news.html

To use the PDF you must have Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register.**

Program Authority: 20 U.S.C. 7131.

Dated: March 21, 2000.

Michael Cohen,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 00–7301 Filed 3–23–00; 8:45 am]

BILLING CODE 4000–01–U

Federal Register

Friday,
March 24, 2000

Part VII

Environmental Protection Agency

40 CFR Part 755

Methyl Tertiary Butyl Ether (MTBE); Advance Notice of Intent To Initiate Rulemaking Under the Toxic Substances Control Act To Eliminate or Limit the Use of MTBE as a Fuel Additive in Gasoline; Advance Notice of Proposed Rulemaking

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 755

[OPPT–62164; FRL–6496–1]

Methyl Tertiary Butyl Ether (MTBE); Advance Notice of Intent to Initiate Rulemaking Under the Toxic Substances Control Act to Eliminate or Limit the Use of MTBE as a Fuel Additive in Gasoline

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance Notice of Proposed Rulemaking.

SUMMARY: Methyl Tertiary Butyl Ether (MTBE) is a chemical compound that is used as a fuel additive in gasoline. Refiners have primarily added MTBE to gasoline to meet the Clean Air Act (CAA) requirement that areas with severe problems in attaining the National Ambient Air Quality Standard (NAAQS) for ozone use Reformulated Gasoline (RFG) containing 2% oxygen by weight. Many States have also voluntarily chosen to use RFG as a means of addressing marginal, moderate, or serious ozone nonattainment, and some refiners use MTBE to boost the octane of gasoline. In addition to the RFG program, the CAA also required the establishment of a Wintertime Oxygenated Fuel (Wintertime Oxyfuel) program. Under this program, gasoline must contain 2.7% oxygen by weight during the wintertime in areas that are not in attainment for the NAAQS for carbon monoxide (CO). In some cases this requirement is met through the use of MTBE. While the use of MTBE as a fuel additive in gasoline has helped to reduce harmful air emissions, it has also caused widespread and serious contamination of the nation's drinking water supplies. Unlike other components of gasoline, MTBE dissolves and spreads readily in the groundwater underlying a spill site, resists biodegradation, and is difficult and costly to remove from groundwater. Low levels of MTBE can render drinking water supplies unpotable due to its offensive taste and odor. At higher levels, it may also pose a risk to human health. The United States Geological Survey (USGS) has found that the occurrence of MTBE in groundwater is strongly related to its use as a fuel additive in the area, finding detections of MTBE in 21% of ambient groundwater tested in areas where MTBE is used in RFG compared with 2% of ambient groundwater in areas using conventional gasoline. EPA is today providing an advance notice of its intent to initiate a rulemaking pursuant to section 6 of the Toxic Substances Control Act (TSCA) to eliminate or limit the use of MTBE as a fuel additive. EPA seeks public comment on a number of aspects of this anticipated regulatory action, including whether the Agency should take action to address any fuel additives other than MTBE.

DATES: Comments, identified by docket control number OPPTS–62164, must be received on or before May 8, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–62164 on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7401), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Karen Smith, Office of Transportation and Air Quality, Fuels and Energy Division (6406J), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–9674; e-mail address: smith.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

Entities potentially regulated by a limit or ban on the use of MTBE as a fuel additive in gasoline are those entities that refine, import, or blend gasoline with additives, or that transport, store, or sell gasoline, or otherwise introduce gasoline into commerce. Potentially regulated categories include:

Categories	NAICS codes	SIC codes	Examples of regulated entities
Industry	324110	2911	Petroleum refiners, blenders, and importers
Industry	422710	5171	Gasoline marketers and distributors
	422720	5172	

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by an action resulting from this ANPRM. Other types of entities not listed in this table could also be directly affected, particularly if future action includes limits directed at gasoline release prevention or water remediation, rather than the MTBE content of gasoline. The North American Industrial Classification System (NAICS) and Standard Industrial Classification (SIC) codes have been provided to assist you and others in determining whether or not this action applies to certain entities. To determine whether you or your business is affected by this action, you should carefully examine this ANPRM. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPTS–62164. The official record consists of the documents specifically referenced in this ANPRM, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents and in this ANPRM. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall, Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099. For additional information related to this ANPRM, see the Office of Air and Radiation (OAR) Docket, A–99–01, The Blue Ribbon Panel to Review the Use of Oxygenates in Gasoline. The index for OAR docket A–99–01 can be found at http://www.epa.gov/oms/consumer/fuels/oxypanel/blueribb.htm.

3. *Fax-on-Demand.* Using a faxphone call (202) 401–0527 and select item 4005 for an index of items in this category.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–62164 on the first page of your response. Commenters should be aware that their comments may be placed on an Internet docket web site. This information may include the commenters name and address.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093. If your comments are received after 3 p.m., they will be dated as received the next business day.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–62164. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

EPA invites you to provide your views on any issue relevant to this ANPRM. EPA has identified particular subjects in Unit VI. regarding which comment would be particularly appreciated. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to address the concerns identified by EPA.

7. Make sure to submit your comments by the deadline in this ANPRM.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Introduction

This ANPRM initiates an Agency rulemaking to address the threat to the nation's drinking water resources from contamination by MTBE, a widely used additive in gasoline. This rulemaking will be conducted under TSCA section 6, 15 U.S.C. 2605. It is EPA's intent to conduct this rulemaking as quickly as reasonably practicable. EPA's review of existing information on contamination of drinking water resources by MTBE indicates substantial evidence of a significant risk to the nation's drinking water supply. A comprehensive approach to such risk must include consideration of either reducing or eliminating the use of MTBE as a gasoline additive. As a result, EPA is initiating this process pursuant to the unreasonable risk provision under TSCA section 6 to eliminate or greatly reduce the use of MTBE as a gasoline additive. EPA is interested in comments on both the risk and these possible responses to it.

MTBE is a common and widely used additive in gasoline. It is an oxygenate, meaning it increases the oxygen content of the gasoline. It is also a source of octane in gasoline. It is widely used in those parts of the country where oxygenated gasoline is required, either by Federal or State law. For example, the 1990 amendments to the CAA require that Federal RFG meet a 2.0% oxygen content requirement by weight. MTBE is the primary oxygenate used by refiners to meet this requirement, which applies to over 30% of the country's gasoline. When MTBE is used to meet this requirement, the gasoline is blended so it contains about 11% MTBE by volume. In other parts of the country, MTBE is sometimes used in conventional or non-RFG as a source of octane. Significantly more MTBE is used in RFG and other oxygenated gasoline programs than is used in conventional gasoline.

Current data on MTBE levels in ground and surface waters indicate widespread and numerous detections at low levels of MTBE, with a more limited number of detections at higher levels. Given MTBE's widespread use as a gasoline additive and the large volumes of gasoline that are stored, transported, and used in all areas of the country, releases of MTBE to the nation's ground and surface waters occur in a number of ways. Leakage from the gasoline storage and distribution system is a major source of contamination, but the

contamination can also come from spills, emissions from marine engines into lakes and reservoirs, and to some extent from air deposition. MTBE is highly soluble in water, resists biodegradation, and moves rapidly with groundwater. It may end up in drinking water supplies even when there are no indications of other gasoline components. MTBE is detected in water much more often and at higher concentrations in areas of the country where Federal RFG is sold, given its dominant use by refiners as an oxygenate to meet the statutory RFG oxygen content requirement. The USGS has found detections of MTBE in 21% of ambient groundwater tested in areas where MTBE is used in RFG as compared with 2% of ambient groundwater in areas using conventional gasoline. (Ref. 1)

The presence of MTBE in drinking water sources presents two major problems. The first concern is that MTBE contamination may render water supplies unuseable as drinking water. MTBE has an offensive taste and odor which can be detected in water even at low levels. Because of the taste and odor problem, MTBE contamination has resulted in the loss of certain drinking water sources. For example, high levels of MTBE found in groundwater wells that supply Santa Monica's drinking water led that city to close its wells, forcing it to purchase drinking water from another public water supplier. In addition, MTBE detections found in groundwater wells that supply South Lake Tahoe forced the South Tahoe Public Utility District to close 8 of its 34 wells despite detections below EPA's advisory levels. An additional four wells were closed as a precautionary measure due to their proximity to the existing MTBE plumes.

The second major concern involves uncertainty regarding the level of risk to public health from the chronic exposure of large numbers of people to low levels of MTBE in drinking water. While inhalation of MTBE in high concentrations has been shown to cause cancer in laboratory animals, the Agency concluded in 1997 that there is little likelihood that MTBE in drinking water would cause adverse health effects at levels that cause taste and odor problems. (Ref. 2) There is still much uncertainty about the extent of the health risks associated with chronic, low-level exposures to MTBE in drinking water. The Agency is continuing to review and update its analysis of the potential health risks posed by MTBE.

Once MTBE contaminates a drinking water source, its chemical nature makes it difficult, expensive, and time-consuming to remediate. For example, it is much harder and more expensive to remove MTBE from drinking water than it is to remove other organic components of gasoline. Furthermore, MTBE does not biodegrade as readily as other components of gasoline. Given the numerous and diverse sources of potential release into the environment and the problems associated with cleaning it up once it is released, EPA believes a comprehensive approach to such risk must include consideration of either reducing or eliminating the use of MTBE as a gasoline additive.

As discussed earlier, in ground water MTBE is more soluble, does not adsorb as readily to soil particles, biodegrades less rapidly and moves more quickly than other components of gasoline. By comparison, unless frozen, MTBE in surface water will volatalize and find its way into the atmosphere. This accounts for the less frequent and generally lower concentrations of MTBE found in surface water.

Since the available information shows that there are numerous and widespread instances of groundwater contamination, EPA is considering the substitutes that would likely be used to replace MTBE. In oxygenated gasoline programs such as Federal RFG, the most likely substitute based on current usage is ethanol. Other ether compounds are currently used as oxygenates in relatively small quantities. MTBE does not occupy as dominant a position as an octane enhancer for conventional gasoline as it does as an oxygenate in RFG. Ethanol, alkylates, and aromatics are all widely-used as octane enhancers in conventional gasoline. Although EPA is seeking more information on alternatives to MTBE, EPA does not expect the use of ethanol, alkylates, or aromatics as fuel additives to present the same magnitude of risk to drinking water supplies as MTBE. Ethanol biodegrades more quickly than MTBE, and therefore seems less likely to contaminate drinking water as often as MTBE, or at the concentrations of MTBE. First order degradation constants for MTBE in ambient ground water have been reported by Schirmer and others (1998) and Borden and others (1997). The rate constants, k, from these studies are 0.0012 day(-1) (Schirmer and others, 1998) and 0.0010 +− 0.0007 day(-1) (Borden and others, 1997). (Refs. 3,4) These reaction rates for MTBE correspond to a half-life of about 1.6 and 1.9 years, respectively. By comparison, in a December 1999 report to the California Environmental Policy Council the authors report that under aerobic conditions, the reported half-lives of ethanol in surface waters are short. Half-lives span 6.5 to 26 hours for ethanol. Anaerobic biodegradation in oxygen-limited environments is also expected to proceed at rapid rates. Reported half-lives for ethanol biodegradation under anaerobic conditions range from 1 to 4.3 days. (Ref. 5) Unlike MTBE, alkylates and aromatics are expected to behave in soil and water more like other components typically found in gasoline; as a result, they too would be unlikely to contaminate drinking water as often as MTBE or at the concentrations of MTBE. Ethers other than MTBE, and alcohols other than ethanol, are not currently used widely as oxygenates; the Agency does not have much data to characterize the risks they might pose to drinking water supplies. However, the other ethers are chemically similar or related to MTBE, and they may well move through soil and water in ways and amounts similar to MTBE. EPA will closely evaluate whether compounds not currently used in significant quantities as oxygenates in RFG might be widely used as alternatives to MTBE, if MTBE use in gasoline is banned or limited, whether additional information on these compounds is necessary, and whether other measures are appropriate to assure that an elimination or limitation of MTBE in gasoline does not result in the use of alternatives that might cause a similar or greater level of risk.

The remainder of this ANPRM outlines the major elements of the problem and its potential solution. EPA invites comment from all interested parties on these and any other matters relevant to addressing the risk of MTBE to the nation's drinking water resources.

III. Background

A. What is MTBE and Why is it Used as a Fuel Additive?

MTBE is an ether compound made by combining methanol and isobutylene. The methanol is typically derived from natural gas; isobutylene can be derived as a byproduct of the petroleum refinery process. Since the 1970's, MTBE has been used in the United States as an octane-enhancing replacement for lead, primarily in mid- and high-grade gasoline at concentrations as high as 7% (by volume). Now, however, MTBE is mainly used as a fuel oxygenate at higher concentrations (11% to 15% by volume) as part of the Federal RFG and Wintertime Oxyfuel programs. These programs were initiated by EPA in 1995 and 1992, respectively.

The CAA mandates that RFG be sold in the 10 largest metropolitan areas with the most severe summertime ozone levels, including Baltimore, Chicago, Hartford, Houston, Los Angeles, Milwaukee, New York, Philadelphia, Sacramento, and San Diego. The CAA also allows any other area classified as a marginal, moderate, or serious ozone nonattainment area to opt into the RFG program. Currently, 17 States and the District of Columbia voluntarily participate in the RFG program. These areas are located in California, Connecticut, Delaware, District of Columbia, Illinois, Indiana, Kentucky, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Texas, Virginia, and Wisconsin. The total number of areas participating in the RFG program may change from year to year, depending on potential opt-ins.

EPA regulations adopted pursuant to the CAA require that RFG achieve reductions in mass emissions of volatile organic compounds (VOCs) and toxic air emissions of at least 15% during Phase I of the RFG program (1995 through 1999), and reductions in such emissions of 27% and 22%, respectively, during Phase II of the RFG program (2000 and on). Phase II RFG also requires a 6.8% reduction in oxides of nitrogen (NO_X). RFG must also meet certain mandatory content standards, including limitations on benzene and a restriction of heavy metal content. To address its unique air pollution challenges, California has adopted similar, but more stringent requirements for California RFG.

The CAA specifies that RFG must contain 2% oxygen by weight. Although a number of oxygenates could be used to meet this requirement, in practice over 87% of RFG contains MTBE as the primary oxygenate; approximately 12% of RFG contains ethanol. Two percent oxygen by weight is equivalent to approximately 11% MTBE by volume. When ethanol is used as an oxygenate, it is usually blended at 10% by volume, which is equivalent to 3.5% oxygen by weight. A small percentage of refiners use tertiary amyl methyl ether (TAME) as the primary oxygenate in RFG; more frequently TAME is present in RFG as a secondary oxygenate together with MTBE. Other oxygenates are available to refiners, such as ethyl tertiary butyl ether (ETBE), tertiary butyl alcohol (TBA), and diisopropyl ether (DIPE), but are not being used in significant quantities (or at all) at this time.

Reformulated gasoline represents over 30% of the total retail gasoline sold in the United States. According to the Department of Energy (DOE), over 126 billion gallons of gasoline were supplied for U.S. markets in 1998, with 41.5 billion gallons of that volume being reformulated gasoline. (Ref. 6) In addition to the RFG program, certain areas in California and elsewhere in the nation that have not attained the NAAQS for CO are required under the CAA to implement the Wintertime Oxyfuel program. The CAA requires Wintertime Oxyfuel to contain no less than 2.7% oxygen (by weight) during the winter, when CO levels are highest. There are 17 areas across the country that currently implement the Wintertime Oxyfuel program. Ethanol is the primary oxygenate used to meet this oxygen requirement. Currently, Los Angeles is the only area implementing the Wintertime Oxyfuel program with MTBE. When MTBE is used to meet the Wintertime Oxyfuel requirements, it is added to gasoline at a concentration of approximately 15% by volume.

MTBE is also used in conventional gasoline to boost the octane of gasoline. Octane is a measure of a fuel's resistance to uncontrolled combustion (engine knock). The DOE estimates that approximately 12,000 barrels of MTBE are used per day as an octane enhancer in conventional gasoline. (Ref. 7) This is less than 5% of the total MTBE use in gasoline. MTBE is typically present in gasoline as an octane enhancer at 3–7% by volume. Alternative octane enhancers are also used, including ethanol, alkylates, and aromatic compounds.

A number of States have taken actions designed to limit the use of MTBE in gasoline. In March 1999, Governor Gray Davis of California issued an executive order requiring the California Air Resources Board to develop a timetable for the removal of MTBE from gasoline sold in California as soon as possible, but by no later than December 31, 2002. Maine opted out of the RFG program in March 1999. In July of 1999, New Hampshire enacted a law directed at reducing the use of MTBE in gasoline, including a requirement that the State request a waiver from EPA of RFG oxygen content requirements until 2002. Five other States have initiated proposed limited use, bans or phase-outs of MTBE, including Arizona, Kansas, Missouri, New York, and South Dakota.

B. What Risks Does MTBE Pose to Drinking Water Supplies?

1. *Chemical properties.* In comparison to other components of concern in gasoline, including benzene, toluene, ethylbenzene, and xylenes (collectively referred to as "BTEX"), the available information shows MTBE may pose additional problems when it escapes into the environment through gasoline releases. MTBE is capable of traveling through soil rapidly, is very soluble in water (much more so than BTEX), and is highly resistant to biodegradation (much more so than BTEX). MTBE that enters groundwater moves at nearly the same velocity as the groundwater itself. As a result, it often travels farther than other gasoline constituents, making it more likely to impact public and private drinking water wells. Due to its affinity for water and its tendency to form large contamination plumes in groundwater, and because MTBE is highly resistant to biodegradation and remediation, gasoline releases with MTBE can be substantially more difficult and costly to remediate than gasoline releases that do not contain MTBE (Unit III.E.). This is a substantial concern in the United States, where approximately 40–46% of the population uses groundwater as a source of drinking water.

2. *Taste and odor.* MTBE has a very unpleasant turpentine-like taste and odor that at low levels of contamination can render drinking water unacceptable for consumption. A number of studies have been conducted on the concentrations of MTBE in drinking water at which individuals can detect the taste and odor of the chemical. (Refs. 8,9,10) Human sensitivity to taste and odor varies widely. In controlled studies, some individuals were able to detect very low concentrations of MTBE, while others do not taste or smell the chemical even at much higher concentrations. In controlled studies individuals have detected odor and taste at concentrations of MTBE as low as 2.5 parts per billion (ppb) for odor and 2 ppb for taste.[1]

In December 1997, EPA's Office of Water released a non-regulatory advisory for MTBE in drinking water. The EPA advisory is not a mandatory standard for action and is not Federally enforceable, but provides guidance for communities that may be exposed to drinking water contaminated with MTBE. According to the advisory, keeping MTBE concentrations in the range of 20–40 µg/L or below would likely avert unpleasant taste and odor effects, recognizing that some people may detect the chemical below this concentration range.

The State of California has chosen to establish a secondary drinking water standard of 5 µg/L to ensure the potability of drinking water for more

[1] Throughout this ANPRM, various studies are cited which may refer to the presence of MTBE in water in either micrograms per liter (µg/L) or ppb. These units are approximately interchangeable assuming the density of the water is constant. In reality, to the extent that the water density may vary from study to study, equivalence of these units may not be exact.

sensitive individuals. EPA is planning to upgrade its MTBE advisory to a national secondary drinking water standard and will review its 1997 advisory levels at that time. Secondary drinking water standards address the aesthetic qualities that relate to public acceptance of drinking water and are provided as non-enforceable guidance to the States.

3. *Human health effects.* The majority of the human health-related research conducted to date on MTBE has focused on adverse effects that may result through inhalation of the chemical. At high doses by the inhalation route, MTBE has caused non-cancer health effects as well as tumors in two strains of rat and one strain of mouse in a variety of organs. However, there have been no human or animal health effects studies concerning the ingestion of MTBE in drinking water. In one study, animals were given a daily (all at once) dose of MTBE in olive oil. There were carcinogenic effects at a high level of exposure. Because the animals were not exposed through drinking water, uncertainties remain concerning the degree of risk associated with typical human exposure.

EPA classified MTBE as a "possible" human carcinogen under its 1986 cancer risk assessment guidelines on the basis of results of inhalation cancer tests and has suggested that it be regarded as posing a potential carcinogenic hazard and risk to humans, although no quantitative estimate of the cancer potency of MTBE has been established by EPA because of limitations in the available data. (Refs. 11,12) While MTBE has been characterized as an animal carcinogen, both the International Agency for Research on Cancer and the Department of Health and Human Services have indicated that there are not enough data to classify MTBE with regard to human carcinogenicity under their classification schemes. (Refs. 13,14) It should be noted that conclusions in the Office of Science and Technology Policy's 1997 Interagency Assessment of Oxygenated Fuels and in a 1996 report by the Health Effects Institute generally support EPA's view on potential carcinogenic hazard. (Ref. 15) The Interagency Assessment stated, in regard to inhalation risks, that "it is not known whether the cancer risk of oxygenated gasoline containing MTBE is significantly different from the cancer risk of conventional gasoline." The estimated upper bound cancer units risks of MTBE are similar to or slightly lower than those of fully vaporized conventional gasoline, which has been listed by EPA as a probable human carcinogen based on animal carcinogenicity data. However, because of lack of health data on the nonoxygenated gasoline vapors to which humans are actually exposed, it is not possible to have a reasonably good estimate of population cancer risk to conventional gasoline.

As a result of substantial scientific uncertainties, a review committee of the National Academy of Sciences (NAS) recommended that additional studies be conducted on MTBE and that questions about the bolus dosing study be resolved before the study is used for risk assessment purposes. (Ref. 16) A number of ongoing studies by EPA, the Chemical Industry Institute of Toxicology (CIIT) and other organizations should provide EPA with information to assess health risks via different routes of MTBE exposure. These studies should allow for extrapolation from the inhalation studies to an assessment of risks associated with ingestion of drinking water. In addition, further study of potential health effects of MTBE and other fuel additives are underway by the petroleum industry as required under CAA section 211.

EPA reviewed available health effects information on MTBE in its 1997 drinking water advisory guidance and determined that there was insufficient information available on MTBE health effects and exposure to allow EPA to establish a national primary drinking water regulation. The drinking water advisory document indicated there is little likelihood that MTBE concentrations between 20 and 40 µg/L would cause adverse health effects. Nevertheless, California and New Hampshire have proposed health-based primary drinking water standards of 13 µg/L for MTBE.

C. How Widespread is the MTBE Contamination?

Each year approximately 9 million gallons of gasoline (the equivalent of a full supertanker) are released to the environment in the United States from leaks and spills, according to an estimate by the Alliance for Proper Gasoline Handling. (Ref. 17) MTBE may be present in a substantial portion of these releases. Because of MTBE's solubility in water and resistance to degradation, it is being detected with increasing frequency in both groundwater and surface water. The potential for harm posed by MTBE releases can perhaps best be understood by reviewing some well-documented case studies. The releases of MTBE that occurred in these situations could have occurred, and could be repeated, virtually anywhere in the United States. Larger-scale studies document the widespread detection of MTBE in the nation's water supplies.

1. *Examples of MTBE contamination.* The City of Santa Monica, California, has historically relied on seven wells from the Arcadia and Charnock well fields to provide approximately 50% of the drinking water to the town's 87,000 residents. In August of 1995, the City found MTBE in water derived from the Charnock Wellfield. By April of 1996, MTBE levels had risen dramatically in all wells, with concentrations reaching up to 610 ppb. All five of the city's Charnock wells were shut down in 1996. The Southern California Water Company (SCWC), which had withdrawn drinking water from the Charnock well field, also closed its two production wells to avoid drawing contamination into the wells. The SCWC Charnock wells had provided a portion of the drinking water for 10,000 residences in Culver City, California. After completion of screening level investigations at 28 underground storage tanks (USTs) locations and two gasoline product pipelines, the EPA and the Los Angeles Regional Water Quality Control Board (RWQCB) identified 25 USTs as contributing contamination to the Charnock Sub-Basin, the groundwater basin which supplies water to the Charnock Wellfields. From 1997–1999, three companies potentially responsible for the contamination voluntarily conducted testing of wellhead drinking water treatment technologies, performed regional groundwater investigation activities, and reimbursed the City of Santa Monica and Southern California Water Company for water replacement costs. These companies claim to have spent over $50 million on response activities to date. Since 1996, the city and SCWC have met their municipal water demand by utilizing water purchased from the Metropolitan Water District, at a cost of over $3 million per year. Together with the Agencies' oversight cost and the costs of investigation and cleanup at all the UST locations and gasoline product pipelines, it is estimated that over $60 million in response costs have been expended in addressing the Charnock Wellfield problem to date. In September 1999, EPA and RWQCB issued orders to potentially responsible parties that require them to pay for replacement water for the affected homeowners from January 2000 until January 2005. A final cleanup is expected to cost more than $160 million.

Contamination of the Arcadia field was traced to a single gas station. The gas station was demolished,

underground tanks and lines were removed, and approximately 2,000 cubic yards of gasoline-containing soils were excavated. Cleanup crews are now working to control and remove additional sources of contamination from the area. In addition, a shallow groundwater pump and treat system was installed in October 1997 to control further migration of the contaminated groundwater. The extracted water is filtered through three carbon beds to remove the bulk of MTBE before the water is discharged into the sanitary sewer. Actions are currently underway to begin additional treatment of water from the Arcadia wells with carbon and eventually obtain a permit to serve the water as drinking water.

In Glennville, California, residential drinking wells were contaminated with MTBE at levels up to 20,000 ppb. The likely source of the contamination was an UST and associated piping at the town's only gas station. The town was forced to start using an alternative drinking water source in 1997, and still relies on alternative sources of water.

In Whitefield, Maine, an automobile gasoline leak of 20 gallons or less contaminated a bedrock drinking water well for an elementary school with MTBE to a level of 900 µg/L. According to a report by the the Northeast States for Coordinated Air Use Management (NESCAUM), the State of Maine traced the source of the spill to an area about 120 feet from the well where cars were parked on the grass. (Ref. 18)

In December 1997, a car accident in Standish, Maine, led to the release of 8 to 10 gallons of gasoline that contaminated 24 nearby private wells. Eleven wells were contaminated with MTBE to a level above 35 µg/L; two were contaminated at over 1,000 µg/L; and the well nearest the accident site contained the highest concentration of 6,500 µg/L. When the State discovered the contaminated wells in May 1998, it removed 79 cubic yards of contaminated soil. The contamination extended to the top of the underlying bedrock at a depth of 9 feet below the surface. (Ref. 19)

In the town of Windham, Maine, two public water supply wells 900 to 1,100 feet from underground gasoline tanks were contaminated to levels of 1 to 6 µg/L MTBE. According to a NESCAUM report, the tanks were state-of-the-art technology, double walled and only 10 months old when the MTBE contamination was discovered. (Ref. 20) Extensive testing showed that the tanks did not leak directly to the ground, nor were any vapor leaks found after extensive testing. NESCAUM stated that the only plausible cause of the contamination was gasoline overfills. The amount spilled was estimated to be 10 to 40 gallons.

MTBE has also been detected in surface waters of lakes and reservoirs. A University of California, Davis, study was conducted at Donner Lake, California. (Ref. 21) The lake is a source of drinking water for lakeside residents and contributes to the drinking water supply of downstream communities, such as Reno, Nevada. MTBE levels were low during winter months, at just above the 0.1 µg/L level of detection. Levels increased dramatically during the summer boating season to a high of 12.1 µg/L. Following Labor Day, boat use declined dramatically, as did MTBE levels. Volatilization between the air/water interface appeared to be the major avenue for loss of MTBE.

In Shasta Lake, a large recreational-use reservoir in northern California, MTBE concentrations were reported to range from 9–88 µg/L over the Labor Day 1996 weekend. Maximum values were associated with large boats entering a docking area or with engine exhaust from those boats. MTBE was also measured in a temporary lake constructed in southern California for a jetski event in the summer of 1996. After the 3-day event, concentrations reportedly ranged from 50–60 µg/L.

On January 28, 2000, a tanker truck rolled over on Route 110 in Lowell, Massachusetts, releasing approximately 11,000 gallons of gasoline. Most of the gasoline entered the Merrimack River. The cities of Tewksbury, Methuen, and Lawrence each have drinking water intakes on the River downstream of the spill site. Although contaminants were not detected at the drinking water treatment plants the night of the spill, later samples indicated elevated levels of MTBE. The cities of Tewksbury and Lawrence temporarily closed their drinking water treatment facilities and purchased water from alternative sources; the treatment facility in Methuen remained open. MTBE levels dropped significantly after a few days, and the facilities were advised that they could safely use their intakes.

2. *Large-scale studies.* Although scattered incidents of localized water contamination by MTBE have been reported since the early 1980s, the first report to suggest that MTBE contamination of water might be occurring on a widespread basis came as a result of the sampling of ambient groundwater conducted by the USGS National Water Quality Assessment Program (NAWQA). Ambient groundwater is groundwater where there are no known point sources of contamination prior to sampling in drinking water and non-drinking water wells. In an initial report of sampling conducted in shallow groundwater in 1993 and 1994, USGS reported that of 210 sampled wells and springs in 8 urban areas, 56 (27%) contained MTBE at a minimum reporting level of 0.2 µg/L, and 3% of the wells and springs had MTBE concentrations exceeding 20 µg/L. (Ref. 22) The maximum concentration of MTBE detected in these urban areas was over 100 µg/L.

The USGS collected data in 1995 from additional wells in urban areas and combined them with data from 1993–1994 to provide specific information on drinking water aquifers. This analysis showed MTBE detections in 12 (14%) of 83 shallow urban wells located in aquifers supplying drinking water and in 19 (2%) of 949 rural wells in aquifers used for drinking water, with a median concentration of approximately 0.50 µg/L. (Ref. 23)

Finally, in a 1999 publication in the Proceedings of the 1999 Water Resources Conference of the American Water Works Association, USGS assembled its early ambient groundwater data with additional data from urban and rural wells. (Ref. 24) For urban areas, the frequency of detection of MTBE in groundwater in areas of substantial MTBE use was about 27% (49 of 184 wells), whereas frequency of detection in non-substantial use areas was about 5%. In rural areas, the frequency of detection of MTBE in areas of substantial MTBE use was about 17% (50 of 298 wells), whereas the frequency of detection in non-substantial use areas was about 2%. Overall, USGS found detections of MTBE in 21% of ambient groundwater tested in areas where MTBE is used in RFG compared with 2% of ambient groundwater in areas using conventional gasoline. In contrast, BTEX was found in only 4% of areas where RFG or winter oxyfuels were used. (Ref. 25)

Preliminary results from a joint USGS/EPA study of 12 northeastern States (with a detection limit of 1.0 µg/L) show that MTBE was detected in 7% of drinking water supplies, with 0.8% of these detections above 20 µg/L. (Ref. 26) The study also concluded that MTBE is detected five times more frequently in drinking water from community water systems in RFG or Winter Oxyfuel areas than in non-RFG or non-Winter Oxyfuel areas. The study showed BTEX detections in 8.3% of the systems analyzed (2,097 systems). Although collectively BTEX was found at approximately the same frequency as MTBE, there is very little co-occurrence of the BTEX compounds with MTBE (less than 1% of the systems). This may indicate that MTBE separated from the

rest of the contaminants in the original gasoline plumes, but it also indicates that the increased use of MTBE since 1995 may have created a new universe of contaminated water supplies.

In 1998, the State of Maine reported on sampling conducted on 951 household drinking water wells and 793 public water supplies. (Ref. 27) The study was designed to be statistically representative of the entire State. MTBE was detected in 150 (15.8%) of the sampled household wells at a minimum reporting level of 0.1 µg/L, and 1.1% of the wells contained MTBE levels exceeding 35 µg/L. The Maine report projected that approximately 1,400–5,200 private wells across the State could be contaminated at levels exceeding 35 µg/L. For public water systems sampled, 125 (16%) showed detectable levels of MTBE, 48 (6.1%) between 1 µg/L and 35 µg/L, and no samples above 35 µg/L.

In another study reported in 1998, the American Water Works Service Company collected data from drinking water wells in 16 States. (Ref. 28) Forty-four (2%) of 2,120 samples from 17 (4%) of 450 wells tested positive for MTBE at a minimum reporting level of 0.2 µg/L, with the highest concentration at 8 µg/L.

In a 1998 industry study of 700 service stations known to have released gasoline, MTBE was detected at 83% of the sites, with about 43% of the sites having MTBE concentrations greater than 1,000 µg/L. (Ref. 29) A large percentage (76%) of station sites sampled in Florida showed MTBE contamination, even though Florida does not participate in the RFG or winter oxyfuel programs. It is assumed that MTBE was used as an octane enhancer in gasoline released from Florida service stations.

An EPA-supported survey of the 50 States and District of Columbia in 1998 found that, of the 34 States that acquire MTBE data from leaking underground storage tank (LUST) sites, 27 (79%) indicated that MTBE was present at more than 20% of their sites, and 10 (29%) reported MTBE at more than 80% of their sites. (Ref. 30) The survey also asked about contamination of drinking water wells. Of the 40 State programs that responded, 25 (51%) had received reports of private wells contaminated with MTBE. In addition, 19 (39%) of the programs reported public drinking water wells contaminated with MTBE. Five of the States responding to the survey reported that MTBE was detected in groundwater at LUST sites where the product released was not gasoline. MTBE concentrations of greater than 20 µg/L in groundwater had occurred as the result of releases of diesel fuel, jet fuel, heating oil, aviation fuel, and waste oil. Apparently, MTBE cross-contaminated other petroleum products during transport and distribution. A study of fuel releases in Connecticut (Ref. 31) provides further evidence of MTBE contamination of heating oil. In this study, 27 heating oil release sites resulted in MTBE contamination of groundwater with concentrations ranging from 1 to 4,100 µg/L. At the site with the highest concentration of MTBE in groundwater, MTBE was measured in the heating oil at a concentration of 14 milligram/Liter (mg/L).

Individual case studies suggest that, depending on the hydrogeology of the site, significant MTBE contamination of water supplies could occur and is costly and time-consuming to remedy. The large-scale studies indicate that MTBE releases have occurred in many places, with documented detections in public and private drinking water sources.

D. What are the Major Sources of MTBE Contamination and How are They Currently Regulated?

As a large industrialized nation, the United States produces, distributes, and consumes extensive quantities of gasoline, and much of that gasoline contains MTBE. The DOE estimates that in 1998, over 126 billion gallons of gasoline were sold in the United States (Ref. 32) RFG represented 41.5 billion gallons of that total, with the vast majority containing MTBE as the primary oxygenate. After production in the United States or import, gasoline may travel through thousands of miles of pipelines, or be transported by truck, to any of roughly 10,000 terminals and bulk stations. From there it may be distributed to one of 180,000 retail outlets and fleet storage facilities, or to any of hundreds of thousands of above-ground or underground tanks at farms, industrial facilities, businesses, and homes. Finally, gasoline is removed from bulk storage into individualized storage units associated with such products as cars, trucks, boats, planes, lawn mowers, brush cutters, and chain saws. Residual gasoline in transport conduits may contaminate different types of fuels (e.g., home heating oil) that is transported through the same conduits at different times. Although this does not normally cause problems, it may explain why MTBE has been found in releases of home heating oil and other fuels. There are opportunities for leaks wherever gasoline (or a product containing gasoline) is stored, and there are opportunities for spills whenever fuel is transported or transferred from one container to another. Although many Federal and State programs have been developed to minimize the potential for leaks and spills from the vast array of units and individuals handling gasoline, no system involving so much product and so many individual handlers can be foolproof. Gasoline is released to the environment every day; these releases can be expected to continue and MTBE, being more soluble and less biodegradable than BTEX, will move more quickly and at higher concentrations than the other components of gasoline, making its way to surface water and groundwater resources. This unit describes the major sources of gasoline leaks, and summarizes regulatory programs applicable to them.

1. *Underground storage tanks.* There are an estimated 760,000 USTs currently in use for petroleum storage in the United States that are subject to regulation under Subtitle I of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C . 6991a-i. These tanks have a storage capacity of approximately 6 billion gallons. In addition, there are approximately 3 to 4 million USTs storing fuel that are exempt from RCRA Subtitle I regulation including:

a. Farm and residential tanks of 1,100 gallons or less capacity holding motor fuel for noncommercial purposes.

b. Tanks storing heating oil used on the premises where it is stored.

c. Tanks on or above the floor of underground areas, such as basements or tunnels.

d. Septic tanks and systems for collecting storm water and wastewater.

e. Flow-through process tanks.

f. Tanks of 110 gallons or less capacity.

g. Emergency spill and overfill tanks.

Leaking USTs have been identified as the likely sources of a number of the more problematic releases of MTBE to the environment, including releases that have closed water supplies in Santa Monica and Glennville, California. In California alone, the minimum number of MTBE point sources from leaking UST sites is estimated at greater than 10,000.

In 1988, EPA issued regulations setting minimum standards for RCRA Subtitle I-regulated UST systems. Existing UST systems, those installed on or before December 22, 1988, had until December 22, 1998, to upgrade with spill, overfill, and corrosion protection, properly close, or meet new tank performance standards. Any UST system installed after December 22, 1988, had to meet new tank performance standards for spill, overfill, and corrosion protection at the time of installation. Based on reports received as of the end of September 1999, EPA estimates that approximately 85% of the RCRA-regulated universe of UST systems currently meet EPA's upgrade or new tank requirements. By the end of 2000, EPA expects that approximately 90% of RCRA-regulated USTs will be in compliance, leaving approximately 70,000 substandard USTs.

The Federal regulations also require that UST systems have release detection equipment to identify releases to the environment. The regulations required that all owners and operators install and properly operate a method of release detection no later than 1993 based on the age of the UST system. While virtually all UST systems are equipped with leak detection equipment, they are not necessarily installed or operated properly. Largely as a result of problems with proper operation of leak detection equipment, EPA estimates that approximately 60% of UST systems are in compliance with the leak detection requirements. By the end of 2005, EPA expects compliance with the leak detection requirements will be 90%.

EPA provides funding (through the Leaking Underground Storage Tank Trust Fund) to States to oversee the cleanup of releases from USTs. Since the UST program began, approximately 400,000 releases from USTs have been confirmed; of that number, approximately 230,000 cleanups have been completed. While not every State is testing for MTBE at UST release sites, those that do have found MTBE at most, if not all, release sites. In response to a recommendation by the Blue Ribbon Panel (the Panel), EPA recently sent a memo to all State UST programs recommending that they monitor for and report MTBE in groundwater at all leaking UST sites.

Those facilities that have a total underground oil storage capacity of more than 42,000 gallons, and which are located such that they could reasonably be expected to discharge oil into navigable waters or adjoining shorelines, are subject to EPA requirements for the development of Spill Prevention, Control and Countermeasure (SPCC) Plans pursuant to Clean Water Act (CWA) section 311(j)(1)(C). An SPCC plan is a detailed, facility-specific description of how the facility will comply with EPA regulatory requirements for secondary containment, facility drainage, dikes or barriers, sump and collection systems, retention ponds, curbing, tank corrosion protection systems, and liquid level devices (40 CFR 112.1–112.7). To avoid duplicative regulation under the RCRA and CWA section 311 programs, EPA proposed in 1991 to exempt from SPCC requirements those completely buried tanks that are subject to RCRA Subtitle I requirements. EPA expects to issue a final rule dealing with this and other modifications to the SPCC program later in 2000.

It is important to understand that even after USTs are in full compliance with the RCRA and CWA section 311 requirements, some releases are expected to occur as a result of improper installation or upgrading, improper operation and maintenance, and accidents.

2. *Above-ground storage tanks.* EPA regulates under the CWA section 311 SPCC program approximately 440,000 facilities with above-ground storage tanks (ASTs) that are located so as to be reasonably expected to discharge oil to surface waters or adjoining shorelines. A facility is regulated if it has an AST with a capacity of more than 660 gallons, or multiple ASTs with a combined capacity of more than 1,320 gallons. ASTs are also subject to EPA's more general requirements for the reporting of oil spills to navigable waters, 40 CFR part 110, and EPA's prohibition on the discharge to navigable waters of oil in quantities that will:

a. Violate applicable water quality standards.

b. Cause a sheen on the waters.

c. Cause a sludge or emulsion to be deposited beneath the surface of the water or adjoining shoreline (40 CFR 110.3).

Despite EPA's regulatory programs, almost 20,000 oil spills to navigable water (from all sources, including tank trucks, barges, etc.) are reported each year. About half, or 10,000 spills, occur annually to the inland zone over which EPA has jurisdiction, while the other half occurs in the coastal zone over which the Coast Guard exercises jurisdiction.

3. *Pipelines.* Excluding intrastate pipelines and small gathering lines associated with crude oil production fields, there are approximately 160,000 miles of liquids pipelines in the United States. These pipelines transport approximately 525 billion gallons of crude oil and refined products annually. The Department of Transportation (DOT) estimates that, over a recent 5-year period (1994–1998), an average of 29 gasoline spills occurred annually from pipelines, with the total volume of gasoline released from pipelines averaging 1.03 million gallons per year. While there are little or no data on the extent of MTBE releases from pipelines, MTBE is expected to be present in some portion of the refined product in the pipelines.

In California, pipeline release data are currently being compiled by the Office of the State Fire Marshal, which regulates approximately 8,500 miles of pipelines. Since 1981, there have been approximately 300 pipeline releases within the State Fire Marshal's Jurisdiction. (Ref. 33)

Pipelines are regulated by the DOT, Research and Special Programs Administration (RSPA). Under authority of the Pipeline Safety Act of 1992, 49 U.S.C. 60101 *et seq.*, DOT has established minimum safety standards for pipelines carrying hazardous liquids, including petroleum and petroleum products (49 CFR part 195). Under authority of CWA section 311, DOT also requires response planning for pipelines that, because of their location, could reasonably be expected to cause substantial harm to the environment by discharging oil into or on the navigable water, adjoining shorelines, or the exclusive economic zones (49 CFR part 194).

4. *Other releases.* Releases from automobile accidents, tank truck spills, consumer disposal of "old" gasoline, and spills during fueling operations have been identified as sources of contamination of drinking water wells. The incidents in Maine, described in Unit III.C.1. are examples of how relatively small spills can result in contamination of nearby drinking water supplies. Home heating oil storage tanks have also been identified as potential sources of MTBE contamination, as MTBE might be present from mixing the heating oil with small volumes of gasoline in the bulk fuel distribution or tank truck delivery systems. Other data on releases of this type are not available, and EPA is not aware of any efforts currently underway to further characterize these sources of MTBE contamination..

EPA regulatory programs do not address small episodic releases of gasoline unless they result in a discharge to surface waters. For those releases, the spill must be reported, and the responsible party may be penalized for any violation of EPA's oil discharge prohibition. In the many cases involving accidental spills, however, these requirements are not effective in preventing releases.

5. *Watercraft.* Gasoline-powered watercraft have contributed to the contamination of lakes and reservoirs with MTBE. The two-stroke engines commonly used for certain watercraft can discharge up to 30% of each gallon of gasoline as unburned hydrocarbons. (EPA issued a final rule to reduce the

amount of air emissions from new gasoline-powered watercraft and outboard motors which will be phased-in beginning in 1998, and completed in the 2006 model year. This rule is also expected to reduce the release of unburned hydrocarbons from new engines into surface waters. This rulemaking published in the **Federal Register** of October 4, 1996 (61 FR 52088) (FRL–5548–8), which applies only to new engines, will reduce hydrocarbon emissions by 75%. The State of California requires that EPA's new standards be fully implemented by 2001). As described in Unit III.C.1., concentrations of MTBE in lakes with significant recreational boating tend to peak in the boating season at levels that can be a concern for taste and odor, and possibly human health, and decrease fairly rapidly after the boating season has ended. Volatilization at the air/water surface is considered the dominant mechanism for this removal process.

Although most discharges of pollutants from point sources (e.g., pipes and other discrete conveyances) to surface waters must be authorized under CWA section 402 by a National Pollutant Discharge Elimination System (NPDES) permit, discharges from properly functioning marine engines are currently subject to a regulatory exemption from this requirement (40 CFR 122.3 (a)).

6.*Storm water runoff.* Storm water runoff becomes contaminated with MTBE from the dissolution of residual MTBE from parking lots and roadways, as well as from atmospheric washout during precipitation events. The USGS has characterized MTBE concentrations in runoff in many areas and has found such contamination typically to be lower than 2 ppb. (Ref. 34) The National Science and Technology Council's 1997 Interagency Assessment of Oxygenated Fuels Report describes storm water runoff as exhibiting concentrations of 0.2–8.7 ppb in 7% of the samples tested in 16 cities from 1991 to 1995. (Ref. 35) Most detections in this study were in the Denver area, where implementation of the Wintertime Oxyfuel program began in 1988. Based on predictive modeling, concentrations in rainwater (in µg/L) are expected to be equivalent to the surrounding air concentrations (in ppb, volume). MTBE air concentrations tend to be less than 1 ppb in urban areas, leading to predicted rainwater levels of 1 µg/L or less. However, rainwater around localized areas of high MTBE air concentrations (e.g., parking garages) could contain correspondingly higher levels of MTBE. Storm water may be discharged to surface water or percolate to groundwater, and thus serves as a continuing source of low-level MTBE contamination of these potential drinking water sources.

Clean Water Act NPDES permit requirements apply to certain discharges of storm water which may contain MTBE. Though many discharges of storm water are not subject to permit requirements, NPDES permits are required for industrial storm water discharges, discharges from municipal separate storm sewer systems, and storm water discharges specifically designated by EPA or authorized NPDES States. Although MTBE is not typically targeted in these permits, the best management practices and planning requirements usually specified are likely to reduce MTBE discharges through storm water.

As this summary demonstrates, there are a number of programs in place to minimize or mitigate the effects of gasoline releases. However, in light of the volume of gasoline used and the myriad opportunities for leaks, spills, and accidents, substantial releases of gasoline are likely to continue to occur in the future.

E. How Practical is it to Cleanup Drinking Water Supplies to Remove MTBE?

Because spills of conventional gasoline typically move slowly through groundwater, and are biodegraded over time, many are left in place to undergo bioremediation at no cost other than temporarily replacing the water supply. However, MTBE moves rapidly with groundwater, is not readily degraded in the groundwater environment, and can render groundwater unpotable at low levels. Therefore, spills involving MTBE require much more aggressive management and remediation than do spills of conventional gasoline.

MTBE's chemical properties also make it difficult or costly to remediate using conventional "active" processes. Two common treatment techniques are air stripping and use of granular activated carbon (GAC). In air stripping, contaminated groundwater is passed through an aeration tower that effectively removes the chemicals from the water and releases it into the air. Where necessary, the chemical is then removed from the air into a solid medium that can be disposed of. MTBE does not readily partition from water to the vapor phase. Air stripping of MTBE is most effective when higher air to water ratios, or higher temperatures are used than would be required for other more volatile compounds. In a GAC system, water is passed through one or more beds of carbon; contaminants in the water are sorbed onto the carbon, which can either be disposed of or "refreshed" by driving out the contaminants (usually by heating). However, the relatively low sorption of MTBE to solid particles means that the GAC must be used in greater quantities, driving up treatment costs. As a practical matter, therefore, MTBE-contaminated groundwater is difficult and costly to remediate.

F. What Action did EPA's Blue Ribbon Panel Recommend?

In November 1998, EPA established a the Panel to investigate air quality benefits and water quality concerns associated with the use of oxygenates, including MTBE, in gasoline. The Panel was established under EPA's Clean Air Act Advisory Committee, a policy committee established to advise EPA on issues related to implementing the CAA Amendments of 1990.

The Panel members consisted of leading experts from the public health, environmental and scientific communities, automotive and fuels industry, water utilities, and local and State governments. The Panel met six times from January to June 1999, with the charge to:

1. Examine the role of oxygenates in meeting the nation's goal of clean air.
2. Evaluate each product's efficiency in providing clean air benefits and the existence of alternatives.
3. Assess the behavior of oxygenates in the environment.
4. Review any known health effects.
5. Compare the cost of production and use and each product's availability—both at present and in the future.

Further, the Panel studied the causes of groundwater and drinking water contamination from motor vehicle fuels, and explored prevention and cleanup technologies for water and soil. In September 1999, the Panel released its report, entitled *Achieving Clean Air and Clean Water, The Report of the Blue Ribbon Panel on Oxygenates in Gasoline.* The Report is available in the docket to this ANPRM, and is also available on http://www.epa.gov/oms/consumer/fuels/oxypanel.blueribb.htm.

The Panel recommended a package of reforms to ensure that water supplies are better protected while the substantial reductions in air pollution that have resulted from RFG are maintained. The Panel enumerated 16 suggestions for Federal, State, and Congressional action, including the following:

- Recommended a comprehensive set of improvements to the nation's water protection programs, including over 20 specific actions to enhance UST, safe drinking water, and private-well protection programs.
- Agreed broadly that use of MTBE should be reduced substantially (with some members supporting its complete phase out), and recommended action by Congress to clarify Federal and State authority to regulate and/or eliminate the use of MTBE and other gasoline additives that threaten drinking water supplies.
- Recommended that Congress act to remove the current CAA requirement that 2% of RFG, by weight, consist of oxygen, to ensure that adequate fuel supplies can be blended in a cost-effective manner while quickly reducing usage of MTBE.
- Recommended that EPA take action to ensure that there is no loss of current air quality benefits associated with the use of MTBE.

While the Panel indicated that its recommendations should be implemented as a complete package, it also stated that "the majority of these recommendations could be implemented by Federal and State environmental agencies without further legislative action, and we would urge their rapid implementation."

Although the Panel agreed broadly on its recommendations, two members, while in general agreement with the Panel, had concerns with specific provisions: The MTBE industry representative disagreed with the recommendation to limit the use of MTBE, and the ethanol industry representative disagreed with the recommendation that the CAA requirement that oxygenates be used in RFG be eliminated. Some Panel members believed that MTBE use should be banned altogether.

EPA agrees with the concerns raised in the report of the Panel regarding the continued use of MTBE as a fuel additive, and will consider its recommendations further as it proceeds through a TSCA section 6 rulemaking to limit or ban MTBE's use in gasoline.

IV. Section 6 of the Toxic Substances Control Act

A. What is the Scope of TSCA Section 6 Authority?

Section 6 of TSCA, 15 U.S.C. 2605, provides EPA with broad authority to issue rules to regulate the manufacture, processing, distribution in commerce, use, and/or disposal of chemical substances in the United States where such regulation is necessary to prevent unreasonable risks to health or the environment. The Agency and courts have interpreted the "unreasonable risk" standard to be a risk-benefit standard, allowing regulation where risks to health or the environment posed by a particular activity or activities involving a chemical outweigh the benefits associated with such activity or activities. TSCA section 6 lists a number of possible forms that such regulation may take, including:

1. Regulating the manufacturing, processing, or distribution in commerce of a chemical substance, including a complete ban of any such activity or limiting the amounts of the chemical substances that may be manufactured, processed, or distributed in commerce.
2. Regulating the manufacturing, processing, or distribution in commerce of a chemical substance for a particular use or uses, including banning any such activity for a particular use or uses of the chemical substance; limiting the concentration of the chemical substance that may be used in any such activity; or limiting the amounts of the chemical substance that may be manufactured, processed, or distributed in commerce for such particular use or uses.
3. Requiring that the chemical substance be accompanied by such warning statements and/or instructions for use with respect to its use, distribution in commerce, and/or disposal as the Administrator finds necessary.
4. Requiring manufacturers and/or processors of a chemical substance to make and retain such records of the manufacturing process as the Administrator finds necessary and/or to monitor or conduct tests which are reasonable and necessary to assure compliance with a rule under TSCA section 6.
5. Prohibiting or regulating any manner or method of commercial use of a chemical substance.
6. Prohibiting or regulating the disposal of a chemical substance.
7. Requiring manufacturers or processors of a chemical substance to provide warnings to distributors or users of the substance and to replace or repurchase such substance.

TSCA section 6(a) directs the Agency to apply the least burdensome of the identified regulatory options to the extent necessary to mitigate the unreasonable risk. The statute also makes clear that the Agency may select a combination of the options, and may limit the geographic application of a rule under TSCA section 6(a).

In promulgating any rule under TSCA section 6(a), TSCA section 6(c) requires the Agency to publish a statement addressing:

1. The effect of the chemical substance being regulated on health and the magnitude of exposure of humans to the substance.
2. The effects of such substance on the environment and the magnitude of exposure of the environment to the substance.
3. The benefits of such substance for various uses and the availability of substitutes for such uses.
4. The reasonably ascertainable economic consequences of the rule, after consideration of the effect on the national economy, small business, technological innovation, the environment, and public health.

TSCA section 6(c) also provides that if the Administrator determines that the risk of injury to health or the environment could be eliminated or reduced to a sufficient extent through actions taken under another statute administered by EPA, she may not promulgate a rule under TSCA section 6 unless the Administrator finds, in her discretion, that it is in the public interest to protect against such risk under TSCA. In making this finding, the Administrator must consider all relevant aspects of the risk; a comparison of the estimated costs of complying with actions taken under TSCA and any other statute that adequately addresses the risk; and the relative efficiency of actions under TSCA and such other statute to address the risk.

Any rulemaking under TSCA section 6 includes the opportunity for any interested person to request an informal hearing. Such hearings could be limited to the right to present an oral statement, or could include the right to present and cross-examine witnesses if the Administrator determines that there are disputed issues of material fact necessary to be resolved and that cross-examination of witnesses is both appropriate and required for full and true disclosure with respect to such issues.

B. How Would EPA Apply TSCA Section 6 to Risks Associated with MTBE?

As discussed earlier, the use of MTBE as an additive in gasoline has resulted, and if unchanged is likely to continue to result, in the widespread release of MTBE into the environment; MTBE is difficult to contain and prevent from reaching sources of drinking water once it is released into the environment; and it has the potential to render drinking water unpotable at low levels and unsafe at higher levels. EPA's review of existing information on contamination of drinking water resources by MTBE indicates substantial evidence of a significant risk to the nation's drinking water supply. A comprehensive

approach to such risk must include consideration of either reducing or eliminating the use of MTBE as a gasoline additive. As a result, EPA is initiating this process pursuant to the unreasonable risk provision under TSCA section 6 to eliminate or greatly reduce the use of MTBE as a gasoline additive. EPA is interested in comments on both the risk and these possible responses to it. In accordance with the requirements of TSCA section 6, EPA will consider whether there are other appropriate mechanisms to address the problems presented by the use of MTBE as a gasoline additive. Thus, the outcome of this rulemaking could be a total ban on the use of MTBE as a gasoline additive. Consistent with TSCA section 6, EPA will carefully consider regulatory alternatives to a ban. These could include limiting the amount of MTBE that could be used in gasoline, limiting use of MTBE in particular geographic areas or during particular times of year; limiting the types of facilities in which MTBE can be stored; limiting the manner in which MTBE is transported; etc. Any final outcome must, however, provide adequate protection against any unreasonable risk associated with MTBE.

As part of a rulemaking under TSCA section 6, the Agency must also consider whether action under another statute administered by EPA, such as the CAA, RCRA, CWA, or SDWA, could effectively address the risks posed by MTBE and, if so, whether it is in the public interest to regulate the risk under TSCA instead of such other statute. It is worth noting in this regard that although a number of Agency programs could address some of the risks posed by MTBE (such as, for example, the regulation of USTs under RCRA), TSCA appears to provide the best tool for assessing and addressing the risks posed by MTBE.

As part of the consideration of other programs and identification of the least burdensome mechanism to provide adequate protection against the risks of MTBE, the Agency expects to consider a number of possible strategies for mitigating those risks, including preventing MTBE in gasoline from getting into groundwater, cleaning up water contaminated with MTBE, and removing MTBE from gasoline in whole or in part. While the Agency's assessment in this regard is preliminary at this point, the available evidence suggests that dealing with the problem before MTBE is added to gasoline may be the best solution for mitigating any unreasonable risks associated with MTBE. Given the large quantities of gasoline that are used and transported in the United States, and the number of different possible avenues for release into the environment (including leaks from storage tanks and pipelines; spills resulting from loading/unloading gasoline at tanks, gasoline pumps, or pipelines; spills resulting from transportation accidents; un-combusted gasoline from boat engines; emissions from automobile exhaust), it may not be practicable to prevent significant quantities of MTBE from getting into surface water or groundwater once the chemical is added to gasoline. Similarly, given the importance of groundwater as a drinking water source in the United States and the large number of wells and groundwater sources that have been and could be contaminated with MTBE and the costs and difficulties of cleaning contaminated drinking water sources, a risk-mitigation strategy centering on cleaning up water may not be the preferred strategy under TSCA section 6 for mitigating any unreasonable risks associated with MTBE: Consequently, EPA believes that a comprehensive approach must include consideration of either reducing or eliminating the use of MTBE as a gasoline additive.

In conducting this rulemaking under TSCA section 6, the Agency will also consider the costs and impacts of alternatives to MTBE. In oxygenated gasoline programs like Federal RFG, the most likely substitute based on current usage is ethanol. Other ether compounds are currently used as oxygenates in small quantities. MTBE does not occupy as dominant a position as an octane enhancer for conventional gasoline as it does as an oxygenate in RFG. Ethanol, alkylates, and aromatics are alternative octane enhancers in conventional gasoline. Although EPA is seeking more information on alternatives to MTBE, EPA does not expect ethanol, alkylates, or aromatics to present the same magnitude of risk to drinking water supplies as MTBE. Ethanol biodegrades more quickly than MTBE, and therefore is less likely to contaminate drinking water as often as MTBE, or at the levels of MTBE. Alkylates and aromatics are expected to behave in soil and water more like other components typically found in gasoline than MTBE; they too would be unlikely to contaminate drinking water as often as MTBE or at the levels of MTBE. Other ether compounds are not currently used widely as oxygenates, and the Agency does not have much data to characterize the risks they might pose to drinking water supplies. However, they are chemically similar to MTBE, and they may well move through soil and water in ways and amounts similar to MTBE. EPA will closely evaluate the likelihood that compounds not currently used in significant quantities as oxygenates in RFG might be widely used as alternatives to MTBE, whether additional information on these compounds is necessary, and whether other measures are appropriate to assure that an elimination or limitation of MTBE in gasoline does not result in the use of alternatives that might cause similar risks to drinking water. It appears that eliminating or limiting the use of MTBE as a fuel additive will result in increased costs in producing gasoline of approximately $1.9 billion per year if the oxygen mandate remains in place.

V. Alternative Gasoline Additives to MTBE

In conducting a rulemaking under TSCA section 6, EPA must consider the alternatives to MTBE. If the use of MTBE as a fuel additive is limited or banned by EPA, refiners will have to look to other chemicals as substitutes. To meet the oxygenate requirements of RFG, ethanol and other ethers are the most likely alternatives, while ethanol, alkylates, and aromatics will most likely replace MTBE as an octane enhancer. This unit assesses these chemicals and their potential to replace MTBE in gasoline.

A. What Oxygenates Other Than MTBE Could be Used to Meet RFG Requirements?

If the use of MTBE is limited or banned and the CAA oxygenate requirement remains in place, refiners will have to use a substitute oxygenate to meet the RFG requirements. Ethanol and other ethers are the most likely oxygenate alternatives.

1. *Ethanol.* Ethanol is an oxygenate that is produced from agricultural products such as corn. Ethanol and MTBE have been the primary oxygenates used to meet the RFG oxygen content requirements because of their availability, blendability, and ability to deliver air quality benefits. Ethanol is currently the primary oxygenate in about 12.5% of RFG, and it is the main oxygenate in the Midwest RFG areas.

Despite its current use in RFG, ethanol is not yet manufactured in sufficient volume to meet total current national oxygenate demands. Current U.S. ethanol production capacity is estimated at 120,000 b/d (barrels per day), which is equivalent in oxygen content to approximately 230,000 b/d of MTBE. In order for ethanol alone to fulfill the nationwide oxygen requirement in all RFG and oxygenated

fuels areas, the Panel estimated that at least an additional 67,000 b/d of ethanol would be needed. Because of the higher oxygen content of ethanol, a smaller volume of ethanol (5.7%) needs to be added to a gallon of RFG to satisfy the CAA oxygen content requirement than MTBE (11% by volume).

This shortfall in ethanol supply could be fulfilled by a combination of increasing production capacity at existing facilities and by building new facilities. The ethanol industry estimates that the current expansion of existing ethanol-from-corn production facilities may increase production capacity by as much as 40,000 b/d. (Ref. 36) Additionally, the industry estimates that new ethanol production facilities currently being planned could provide another 25,000 b/d. Ethanol production from biomass processing is currently approximately 4,000 b/d. Thus, while there is an insufficient supply of ethanol to meet current oxygenate demand, the ethanol industry projects that future ethanol production should be able to adequately meet the oxygenate demand and replace MTBE given appropriate time. The Department of Agriculture (USDA) has concluded that ethanol can fully meet all oxygenate requirements within 4 years. (Ref. 37)

Refiners that currently use MTBE in meeting the oxygenate requirement would need to modify their operations to produce an appropriate blendstock to which ethanol can be added. Terminals, responsible for actually adding the ethanol to the gasoline, would also have to modify their facilities. For example, terminals would have to add storage facilities for ethanol. Due to these initial logistical concerns, refiners have stated that an immediate ban on MTBE could have a negative impact on the nation's fuel supply.

In addition to initial capital costs, use of ethanol as a replacement for MTBE would have several long term impacts on the price of gasoline. When added to gasoline, ethanol increases the Reid Vapor Pressure (RVP) of the gasoline by about 1.0 pound per square inch. RVP is a measure of the gasoline's volatility. An RVP increase results in an increase in emissions of VOCs from motor vehicles. To compensate for this increase, and to reduce the risk of VOCs evaporating into the air, refiners must blend ethanol gasoline with a low-RVP blendstock. This low-RVP blendstock is more expensive to produce or purchase.

In order to make RFG with MTBE, refiners blend MTBE into gasoline. After mixture, the RFG is transported to distribution terminals by pipeline. Since ethanol is soluble in water, which is commonly found in pipelines, and will separate from gasoline, ethanol is usually blended at the distribution terminal. Because ethanol is produced primarily in the Midwest, though, it must be transported to terminals by either an ethanol-only pipeline, rail, marine or truck shipping or some combination of these options. It is possible that greater transportation connections between ethanol producers and terminals will have to be developed. The USDA study indicates that given a 3 to 5 year transition period, there does not appear to be a transportation impediment to the use of ethanol as a substitute for MTBE. (Ref. 38)

Economic impacts are not likely to be shared equally among petroleum refiners/marketers. Each refinery processes different types of crude, supplies different mixes of products (e.g., some refineries do not manufacture any RFG), and use widely varying technologies. Areas of the country that rely heavily on MTBE as an oxygenate will experience a more pronounced economic effect in the event of an oxygenate replacement or removal (e.g., Texas, California, and Northeast RFG markets use MTBE, whereas the Chicago and Milwaukee RFG markets use ethanol). In addition, markets farthest from the Midwest may experience a greater effect due to increased transportation costs.

The economic impact of using ethanol as an alternative to MTBE will be reflected primarily in the price of gasoline. A 1999 study by the DOE concluded that a phased elimination of MTBE as an additive for oxygenation in RFG in 4 years would result in an increase in the price of RFG of between 2.4 cents per gallon and 3.9 cents per gallon. (Ref. 39) A California Energy Commission (CEC) study estimated that the price of gasoline in California would increase anywhere from 1.9 cents per gallon to 2.5 cents per gallon in the long term (6 years) if ethanol was substituted for MTBE. (Ref. 40) A Chevron/Tosco analysis estimated that gasoline prices in California would increase 1.9 cents per gallon in the long term (6 years) if ethanol was substituted for MTBE. (Ref. 41)

Pure ethanol is highly soluble in water, and hypothetically should travel in groundwater at about the same rate as MTBE. Ethanol is not expected to persist in groundwater, though, because it biodegrades easily. Thus, ethanol itself does not appear to pose as great a danger to groundwater supplies as MTBE.

Ethanol's ability to biodegrade does present another potential issue of concern. Laboratory data and hypothetical modeling indicate that based on physical, chemical, and biological properties, ethanol will likely preferentially biodegrade in groundwater compared with other gasoline components. As a result, the levels of BTEX in water may decline more slowly, and BTEX plumes may extend further than they would without ethanol present. However, BTEX does not migrate as quickly as MTBE. Thus, even with the presence of ethanol, BTEX plumes would not be expected to travel as far as MTBE plumes. Although there are limited data regarding the movement of ethanol and BTEX, a recent USGS report cites several examples of MTBE plumes migrating further than BTEX plumes. (Ref. 42) At some sites, MTBE has migrated much further than other common gasoline components and those long travel distances increase the probability that MTBE will be detected in a drinking water well and that treatment may be required.

The health effects of ingested ethanol have been extensively investigated. Given that ethanol is formed naturally in the body at low levels, inhalation exposure to ethanol at the low levels that human are likely to be exposed are generally not expected to result in adverse health effects. (Ref. 43) Ingestion of ethanol in relatively large quantities, increases the risks for several forms of human cancer. (Ref. 44) However, it is highly unlikely that the public will be exposed to large quantities of ethanol from drinking water contamination.

When used as an oxygenate, ethanol blends of RFG achieve all Phase I goals of the RFG program. Ethanol is the primary oxygenate in Chicago and Milwaukee, and those areas have easily exceeded all Phase I performance requirements for VOCs, NO_X and air toxics. Thus, use of ethanol as an oxygenate nationwide would not appear to compromise compliance with air quality requirements; refiners seem able to produce RFG using ethanol that complies with RFG emissions standards. The Panel did note, however, that Chicago and Milwaukee, while exceeding the Phase I requirements, do not appear to achieve as great a reduction in air toxics as do other RFG areas. It is unclear whether MTBE is responsible for this greater reduction in air toxics or other aspects of the formulation. Starting in the year 2000, all RFG areas will be subject to more stringent standards for VOC, NO_X and toxics reductions, regardless of which oxygenate is used.

2. *Other ethers.* A variety of other ethers (ETBE, DIPE, TAME) are

currently used in gasoline, though in limited quantities; these ethers provide approximately 5% of the oxygenate used in RFG. These other ethers have found only limited use because they are more expensive than MTBE. For example, greater volumes of ETBE and TAME are necessary to achieve the 2.0% weight standard compared to MTBE. Use of ETBE also requires large quantities of ethanol as feedstock. Production supplies of other ethers are also limited. The current production capacity in this country of TAME is approximately 23,000 b/d. Increasing ETBE production would require refitting MTBE plants, primarily in the Gulf South. Transportation issues could be similar to those involving increased use of ethanol. CEC estimates that gasoline prices will increase 2.4 cents per gallon if ETBE is used to replace MTBE. (Ref. 45) This estimate is specific to California.

Given their similarity to MTBE, other ethers are likely to display similar chemical properties—high solubility in groundwater, poor sorption in soil, and slower biodegradation compared to BTEX. MTBE has become a concern in large part because of its chemical properties. MTBE can travel farther than other gasoline constituents and can create larger contamination plumes, making it more likely to impact drinking water supplies. Other ethers are likely to demonstrate the same properties and thus could well raise similar water contamination concerns as MTBE. No studies have been reported on the carcinogenicity of ETBE, TAME, or TBA.

B. What Compounds Other Than MTBE Could be Added to Gasoline to Boost Octane?

In addition to its use as an oxygenate, MTBE is also used as an octane enhancer in conventional gasoline. However, while MTBE is the dominant oxygenate additive in RFG, it is not the predominant octane enhancing additive in conventional gasoline. More conventional gasoline contains ethanol as an octane enhancer than contains MTBE for that purpose. In 1997, approximately 12,000 b/d of MTBE were used for octane enhancement purposes. If MTBE is banned or its use as an octane enhancer is limited, refineries will have to look to other alternatives to replace this source of octane. There are a limited number of octane-rich components that refiners can choose to produce needed octane. Ethanol, alkylates, and aromatics are the three most likely available alternatives to MTBE for use as an octane enhancer in conventional gasoline. Ethanol as an additive is discussed in Unit V.A.1.

1. *Alkylates.* Alkylates are a mix of high octane, low vapor pressure compounds that are produced from crude oil through a catalytic cracking process. Because of their desirable properties, alkylates are popular components for use in gasoline.

In order for a refiner to use alkylates as an octane enhancer, the refiner must possess an alkylation unit. According to an industry estimate, an alkylation unit can cost up to $80 million for a refinery that produces 10,000 b/d of alkylate. (Ref. 46) Refiners that do not currently use alkylates would have to make a substantial initial capital investment in order to do so. In addition, refiners would need to adjust other component streams to accommodate the change in vapor pressure characteristics associated with a fuel containing high alkylate content.

Supply of alkylates could be a key economic consideration. There are currently not enough domestic alkylates available to make up for the loss in MTBE volume. While increasing alkylate production is possible, it appears that refiners in California have limited possibilities for such an increase. Alkylate production on the East Coast and Gulf Coast also appears to be close to capacity. Given this situation, it may take refiners some number of years to modify facilities to produce enough alkylates to replace the octane enhancement currently provided by MTBE.

It is unclear, however, how much alkylate is needed to replace MTBE as an octane enhancer. Only 12,000 b/d of MTBE are currently used for octane enhancement in conventional gasoline. MTBE has a higher octane value than alkylates, and a simple linear comparison of these values would conclude that 14,350 b/d of alkylates would be necessary to replace MTBE. This linear comparison would not take into account several factors important in determining the amount of alkylates used, such as the blend of gasoline. Refineries can be expected to react in different ways to these factors to maximize production and economic feasibility and to meet performance standards.

Alkylates are less soluble in water, and they will not likely pose the same degree of risks to water resources as MTBE. Alkylates would be expected to behave more like other components of gasoline (BTEX) than like MTBE if released into the environment. Alkylates thus do not appear to pose a significant threat to drinking water resources.

According to NESCAUM, increased use of alkylates in gasoline blends will not increase toxic emissions. (Ref. 47) However, the available human and aquatic toxicity data on alkylates are limited.

2. *Aromatics.* Aromatics are hydrocarbons which can include benzene, toluene, and xylene. Toluene is the primary aromatic used for octane enhancing. NESCAUM estimates that current toluene production capacity may be sufficient to produce enough toluene to replace MTBE by volume. (Ref. 48) The aromatics are significantly less likely to end up in drinking water sources in significant quantities after release to the environment than is MTBE.

Aromatics contain compounds that are known to have a range of potential human health effects. Benzene is a known human carcinogen, and xylene is a major contributor to smog. Toluene is associated with some toxic by-products, though it is less toxic than benzene.

VI. Specific Requests for Comment, Data, and Information

Interested persons are invited to comment on any issue raised in this ANPRM. The Agency is particularly interested in receiving additional information and/or comments addressing the following issues:

A. EPA Action

As explained in this ANPRM, EPA is initiating this process pursuant to TSCA section 6 to consider eliminating or limiting the use of MTBE in gasoline. EPA requests comment (including comments addressing the health, environmental, and/or cost implications) on:

1. Whether some use of MTBE as a gasoline additive should be allowed to continue and, if so, the level or type of use that should be allowed to continue?

2. How much lead time, if any, would be necessary to enable refiners to eliminate MTBE from RFG while continuing to meet the current levels of compliance with RFG standards for VOC, NO_X, and toxic emissions without unacceptable impacts on the price or supply of fuel?

3. How much lead time, if any, would be necessary to enable refiners to eliminate MTBE as an octane enhancer in conventional gasoline without unacceptable impacts on the price or supply of fuel?

4. Whether EPA should obtain additional information on, or reduce, eliminate, or cap the use of any other gasoline additives in addition to MTBE?

5. Whether MTBE presents significantly greater risk to public health and/or water quality than alternative gasoline additives.

B. Releases of Gasoline Containing MTBE, Contamination of Water Resource by MTBE, and Remediation Technologies

1. As explained in this ANPRM, the Agency identified numerous and widespread instances of MTBE contamination of groundwater. In order to ensure that EPA has the most recent and accurate data available, EPA requests information regarding incidents of both releases of gasoline containing MTBE and the detection of MTBE in groundwater, surface waters, or drinking water supplies. Comments should include, to the extent possible, the amounts, locations, sources, and types of MTBE releases, and the levels and sources of water resource contamination from MTBE.

2. EPA is interested in additional information concerning the toxicity of MTBE, the levels at which its taste or odor can be detected in water, the levels at which its taste or odor makes water unacceptable to consumers, and any other properties of MTBE that may be relevant to a rulemaking under TSCA section 6.

3. EPA's summary of current MTBE contamination problems suggests that there is significant risk of additional future contamination of water resources by MTBE from gasoline. In order to more comprehensively characterize this risk EPA is requesting comment regarding the likely future occurrence of MTBE contamination in groundwater, surface water, and/or drinking water.

4. EPA is requesting information regarding the relative contribution of different sources (such as USTs, spills, storm water runoff, air deposition, and marine engines) to present and future MTBE contamination of groundwater, surface water, and drinking water.

5. EPA is requesting information regarding the cost and efficacy of technologies for remediating soil and drinking water sources that have been contaminated with MTBE. EPA is particularly interested in examples of remediation efforts that have addressed MTBE contamination, and cost and efficacy comparisons with remediation efforts for other components of gasoline (such as BTEX).

C. Alternatives to MTBE

1. EPA is requesting information on potential substitutes, including those not identified in this ANPRM, that might replace MTBE either as an oxygenate in RFG or an octane enhancer in conventional gasoline. In addition to identifying a potential substitute, any information addressing the following would be helpful:

a. The basis for the belief that the substitute might replace MTBE in significant quantities.

b. The behavior of the substitute in soil and water, with an emphasis on the quantities of the substitute that might find their way into drinking water sources if the substitute is added to gasoline.

c. Toxicity, taste or odor properties, current exposure levels, or any other properties or considerations of the substitute that may be relevant to a rulemaking under TSCA section 6.

2. EPA is interested in information based on actual releases of oxygenates and other gasoline additives other than MTBE to the environment; including degree of contamination, the spread of any contaminant plumes, and the cost and efficacy of the technologies available to remediate such contamination. Comments should include, to the extent possible, the amounts, locations, sources and types of releases, and the levels and sources of water resource contamination from these oxygenates and additives, as well as from other gasoline constitutents.

3. EPA is interested in information regarding any possible impacts on health or the environment that might result from the elimination or limitation of use of MTBE as a gasoline additive and the use of alternative compounds in MTBE's place, including not only whether alternative additives may have a greater or lesser impact than MTBE on drinking water sources, but also whether increased use of such alternatives might have other beneficial or negative consequences on human health or the environment (such as air quality or water quality impacts).

D. Economic Considerations

1. EPA is requesting comment on the cost impacts of an elimination or limitation of MTBE in gasoline, in the absence of a change in the RFG requirements. EPA is particularly interested in comments that address:

a. The cost implications of an immediate elimination of MTBE from gasoline nationwide.

b. The cost implications of an immediate nationwide limit on MTBE content in gasoline to pre-RFG levels or levels generally associated with the use of MTBE for purposes of octane enhancement.

c. The cost implications of a phase out of MTBE from gasoline nationwide, resulting in complete elimination in a period of 3 to 4 years or 5 to 6 years.

d. The cost implications of a nationwide phase down of MTBE content in gasoline, over 3 to 4 years, resulting in a limit on MTBE content equivalent to pre-RFG levels or levels generally associated with the use of MTBE for purposes of octane enhancement.

2. EPA is requesting comment regarding any information that was not considered by the Blue Ribbon Panel on the availability of alternative oxygenates and octane enhancers, the time it would take for production of alternatives to meet national demand, and the potential impacts on fuel supply and price.

VII. References

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VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the EPA must determine whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

1. Have an annual effect on the economy of $100 million or more, or adversely affects in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

2. Creates a serious inconsistency or otherwise interferes with an action taken or planned by another agency;

3. Materially alters the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

4. Raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

A draft of this ANPRM was reviewed by OMB prior to publication, as required by E.O. 12866. Any changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Federalism

Executive Order 13132, entitled "*Federalism*" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the EPA consults with State and local officials early in the process of developing the proposed regulation.

If EPA complies by consulting, Executive Order 13132 requires EPA to provide to OMB, in a separately identified unit of the preamble to the rule, a federalism summary impact statement. The federalism summary impact statement must include a description of the extent of EPA's prior consultation with State and local officials, a summary of the nature of their concerns and the EPA's position supporting the need to issue the regulation, and a statement of the extent to which the concerns of State and local officials have been met. Also, when EPA transmits a draft final rule with federalism implications to OMB for review pursuant to Executive Order 12866, EPA must include a certification from the agency's Federalism Official stating that EPA has met the requirements of Executive Order 13132 in a meaningful and timely manner.

EPA has determined that the requirements of Executive Order 13132 do not apply to this ANPRM, and therefore the Executive Order does not apply to this ANPRM.

C. Small Business Concerns

Section 603 of the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, Public Law 104–121, requires the Administrator to assess the economic impact of proposed rules on small entities, including small businesses. The Agency accordingly requests comment on the potential economic impact on small business of the limitation or elimination of MTBE as an oxygenate or octane enhancer in gasoline. EPA does not anticipate, at this point, that the potential action discussed in this ANPRM will have a significant economic impact on small business. Comments on the potential economic impact of such an action on small businesses will help the Agency meet its obligations under the RFA, as amended by SBREFA, and will provide information to assist the Agency in its efforts to minimize any significant economic impact of such an action for potentially affected small businesses.

D. Children's Health Protection

Executive Order 13045, entitled "*Protection of Children from Environmental Health Risks and Safety Risks*" (62 FR 19885, April 23, 1997) applies to any rule that:

1. Is determined to be "economically significant" as defined under E.O. 12866.

2. Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

While E.O. 13045 does not require EPA to evaluate the health or safety risks of actions discussed in an ANPRM, the Agency is, nonetheless, soliciting comment on such risks. The potential action discussed in this ANPRM might involve issues related to health or safety risks. To the extent that this is the case, the potential action would be intended to minimize or eliminate any such risks for all people who utilize groundwater resources, including children. We request comment on whether there are health or safety considerations related to the potential action discussed in this ANPRM that may disproportionately affect children.

List of Subjects in 40 CFR Part 755

Environmental protection, Air pollution, Fuel additives, Hazardous substances, Water resources.

Dated: March 20, 2000.

Carol M. Browner,

Administrator.

[FR Doc. 00–7323 Filed 3–21–00; 2:11 pm]

BILLING CODE 6560–50–F

Federal Register

Friday,
March 24, 2000

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Removal of the Prohibition Against Certain Flights Within the Territory and Airspace of Serbia-Montenegro; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 29508; Special Federal Aviation Regulation (SFAR) No. 84]

Removal of the Prohibition Against Certain Flights Within the Territory and Airspace of Serbia-Montenegro

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; removal.

SUMMARY: This action removes Special Federal Aviation Regulation (SFAR) No. 84, which prohibit flight operations within the territory and airspace of Serbia-Montenegro by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA except persons operating U.S.-registered aircraft for foreign air carriers, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier. This action is taken because the North Atlantic Treaty Organization (NATO) has ceased air strikes against Serb forces in Serbia-Montenegro, which has reduced the threat of hostile actions against persons and aircraft engaged in flight operations within the airspace of Serbia-Montenegro.

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: David Catey, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591. Telephone: (202) 267–8166.

SUPPLEMENTARY INFORMATION:

Availability of This Action

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the GPO's web page at http://www.access. gpo.gov/nara for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Ave., SW, Wasington, DC 20591, or by calling (202) 267–9680. Communications must identify the docket number of this action.

Persons interested in being placed on the mailing list for future rules should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Background

From March 21, 1999, through June 10, 1999, NATO conducted air strikes against Serb military forces in Serbia-Montenegro. As a result, the FAA determined that the potential for hostile action against U.S. civil aircraft operating over the territory of Serbia-Montenegro warranted a prohibition of flight in that region. Accordingly, in exercising its statutory safety authority, the FAA issued a final rule prohibiting certain U.S. civil aircraft operations within the territory and airspace of Serbia-Montenegro. SFAR No. 84 prohibits flight operations within the territory and airspace of Serbia-Montenegro by any United States air carrier or commercial operator, by any person exercising the privileges of an airman certificate issued by the FAA, or by an operator using an aircraft registered in the United States unless the operator of such aircraft is a foreign air carrier.

Following the cessation of NATO air strikes on June 10, 1999, there has been a reduction in tensions. As a result, the FAA has determined that the risk of hostile military action against civil aircraft by armed elements in Serbia-Montenegro no longer exists. The FAA has determined that the territory of Serbia-Montenegro can be safely overflown by civil aircraft.

Regulatory Analyses

The FAA has determined that this action is not a "significant regulatory action" under Executive Order 12866, nor is it considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Because this amendment removes a restriction that is no longer warranted, the FAA finds that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. The FAA also certifies that this rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Therefore, on the basis of the foregoing information, I have determined that the immediate removal of SFAR 84 from 14 CFR Part 91 is appropriate. The Department of State has been advised of, and has no objection to, this action.

List of Subjects in 14 CFR Part 91

Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Freight, Serbia-Montenegro.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends Part 91 of chapter I of title 14, of the Code of Federal Regulations by removing SFAR 84 as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 46507–47122, 47508, 47528–47531.

PART 91 [AMENDED]

2. Special Federal Aviation Regulation No. 84 is removed.

Issued in Washington, DC, on March 21, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–7340 Filed 3–23–00; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Friday,
March 24, 2000

Part IX

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Special Visual Flight Rules; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2000–7110; Amdt; No. 91–262]

RIN 2120–AG94

Special Visual Flight Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule; request for comments.

SUMMARY: This action amends the language regarding aircraft operating in accordance with Special Visual Flight Rules (SVFR). Specifically, this action will permit a general aviation pilot at a satellite airport where weather reporting is not available, to depart in meteorological conditions less than basic Visual Flight Rules (VFR) weather minimums provided that the pilot determines that he has the requisite flight visibility. The FAA is taking this action to reduce the number of unnecessary flight delays being faced by general aviation aircraft while providing an equivalent level of safety.

DATES: Effective May 23, 2000.

Comments must be received by April 24, 2000.

ADDRESSES: Comments on this document should be mailed or delivered, in duplicate, to: United States Department of Transportation Dockets, Docket No. FAA–2000–7110, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m. weekdays, except Federal holidays. Comments also may be sent electronically to the Dockets Management System (DMS) at the following Internet address: http://dms.dot.gov/. Commenters who wish to file comments electronically should follow the instruction on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Avis P. Person, Airspace and Rules Division (ATA–400), Air Traffic Airspace Management Program, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone number (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Direct Final Rule Procedure

The FAA anticipates that this regulation will not result in adverse or negative comments; therefore, the FAA is issuing it as a direct final rule. The amendment was recommended by the Aviation Rulemaking Advisory Committee (ARAC) with no dissenting opinions. In addition, the FAA believes that the amendment will be well received by the public.

Unless a written adverse or negative comment or a written notice of intent to submit an adverse or negative comment is received on this direct final rule within the comment period, the regulation will become effective on the date specified. After the close of the comment period, the FAA will publish a document in the **Federal Register** indicating that no adverse or negative comments were received and confirming the date on which the final rule will become effective.

If the FAA does received, within the comment period, an adverse or negative comment, or written notice of intent to submit such a comment, a document withdrawing the direct final rule will be published in the **Federal Register**, and a notice of proposed rulemaking (NPRM) may be published with a new comment period.

Comments Invited

Although this action is in the form of a final rule and was not preceded by an NPRM, comments are invited on this document. Interested persons are invited to participate in this action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public comment contact with FAA personnel on this rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. [FAA–2000–7110]." The postcard will be date stamped and mailed to the commenter.

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone (703) 321–3339), the Government Printing Office's electronic bulletin board service (telephone (202) 512–1661).

Internet users may reach the FAA's web page at http://www.faa.gov/avr/arm/nprm/nprm.htm or the Government Printing Office's web page at http://www.access.gpo.gov/nara for access to recently published rulemaking documents. This direct final rule also may be accessed on the DMS at the electronic address listed in the **ADDRESSES** section above.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW, Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number of docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statues and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and may send electronic inquiries to the following Internet address: 9–AWA–SBREFA@faa.gov.

Background

The current language of §§ 91.155 and 91.157 have causes confusion as to the application of VFR weather minimums in controlled airspace at satellite airports, and prompted numerous inquiries and requests for clarification. In particular, concerns have been raised as to whether the ceiling at a satellite airport can be determined by a pilot on the ground in takeoff position.

On January 9, 1995, the FAA requested that the Aviation Rulemaking Advisory Committee on Air Traffic Issues (ARAC) review §§ 91.155 and 91.157 and recommend language that would be more easily understood by the aviation community. In response, the ARAC established a working group composed of representatives from the

Air Traffic Control Association, Inc. (ATCA), the Aircraft Owners and Pilots Association (AOPA), the Experimental Aircraft Association (EAA), the Helicopter Association International (HAI), and the National Business Aviation Association (NBAA) to review this matter. As a result of this review of §§ 91.155 and 91.157, the working group concluded that misunderstandings occur when applying the visibility minimums on the ground for SVFR operations from a satellite airport. The ARAC recommended that the FAA resolve the problem by permitting part 91 general aviation pilots in takeoff position to determine whether visibility minimums exist for SVFR departure at satellite airports when weather reporting is not available at the satellite airport.

A satellite airport, is an airport that exists within the same airspace area as the primary airport that determines the airspace designation. SVFR operations are aircraft operating in accordance with clearances within controlled airspace in meteorological conditions less than the basic VFR weather minimums.

Under current rules, an SVFR clearance must be requested and approved by the nearest air traffic control (ATC) facility to operate within a Class B, C, D, or E surface area when the weather does not meet VFR flight weather minimums. This clearance allows operations below 10,000 feet mean sea level (MSL) within the lateral boundaries of a controlled airspace surface area, with limited exceptions, provided the following conditions are satisfied: (1) the pilot receives a clearance from ATC; (2) the pilot remains clear of clouds; (3) SVFR operations are conducted only between sunrise and sunset; and (4) the ground visibility report indicates that at least 1 statute mile of visibility exists. If ground visibility is not reported, flight visibility must be determined to be at least 1 statute mile.

Ground visibility is defined in 14 CFR section 1.1 as the "prevailing horizontal visibility near the Earth's surface as reported by the United States Weather Service or an accredited observer." Because ground visibility is considered an official report, pilots and air traffic controllers are more likely to rely on a ground visibility report than a flight visibility report which is reported by a pilot. But in the absence of a ground visibility report, § 91.157(c)(2) currently allows a pilot departing under SVFR to rely on a flight visibility report, which may have been reported by a pilot in flight who is not required to be an official weather observer. Flight visibility is also defined in 14 CFR section 1.1 and must be determined by a pilot from the cockpit while an aircraft is airborne. The current rules do not permit flight visibility to be determined by a pilot on the ground.

Discussion of the Recommendation

The ARAC working group recommended that the FAA permit those general aviation pilots operating in accordance with part 91 to determine whether visibility minimums exist for SVFR departure at satellite airports when weather reporting capabilities do not exist at the satellite airport. The working group rationale is that there is little difference between a pilot's ability to determine visibility in flight versus on the ground.

The FAA has reviewed and accepted the ARAC recommendation. Thus, the FAA is amending § 91.157 to allow pilots to determined if visibility minimums exist on the ground for SVFR departure provided the following conditions are satisfied: 1) the flight is conducted under part 91; and 2) the airport at which the aircraft is located is a satellite airport that does not have weather reporting capabilities. The pilot's visibility determination on the ground for SVFR departure is not an official ground visibility report since the pilot's report is not equivalent to that of an official weather observer. Consequently, the rule expands the term "flight visibility" as opposed to 'ground visibility" but limits that expansion to SVFR departure under § 91.157.

This action is intended to reduce unnecessary delays for part 91 operations and clarify the appropriate means of determining visibility minimums for SVFR departure from satellite airports when that airport does not have weather reporting capabilities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction of 1995 (44 U.S.C. 3507(d), there are no requirements for information collection associated with this rule.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities regulations, where they exist, and has identified no differences in these proposed amendments and the foreign regulations.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act requires agencies to analyze the economic effect of regulatory changes on small businesses and other small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the FAA has determined that this direct final rule: (1) will generate benefits that justify its costs and is not a "significant regulatory action" as defined in the Executive Order; (2) is not significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (3) will not have a significant impact on a substantial number of small entities; (4) will not constitute a barrier to international trade; and (5) will not contain any Federal intergovernmental or private sector mandates. These analyses are presented here in the preamble.

This direct final rule allows pilots who are on the ground (in controlled air space at satellite airports) to determine whether visibility conditions meet or exceed the minimums necessary to allow flight departure under special visual flight rules (SVFR) when these satellite airports do not have weather reporting capabilities. Previously, if satellite airports were experiencing weather conditions that would have permitted takeoff under SVFR, but the weather at the primary airport was not favorable, the pilot was required to delay departure until either the weather conditions improved at the primary airport or the pilot received a flight visibility report indicating at least 1 statute mile of visibility. This direct final rule will clarify the language regarding departure under SVFR and reduce the number of unnecessary flight delays while providing an equivalent level of safety.

The direct final rule is expected to impose no costs on the FAA or airspace users since no additional resources will be needed to implement this rule. In fact, the direct final rule may reduce the unnecessary number of flight delays, however, information is not available to calculate this number. The FAA contends that safety will not be adversely affected as a result of this rulemaking.

In view of the fact that this direct final rule will result in potential cost-savings, while maintaining an equivalent level of safety, the FAA has determined that his direct final rule will be cost-beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statues, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has conducted the required review of this direct final rule and has determined that it will impose no costs on the FAA or airspace users, and therefore, will not have a significant economic impact on a substantial number of small entities. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this direct final rule will not have a significant impact on a substantial number of small entities. However, the FAA solicits comments from the public regarding this determination of no significant impact.

International Trade Impact Assessment

The provisions of this rule will have little impact on trade for both U.S. firms doing business in foreign countries and foreign firms doing business in the United States.

Federalism Implications

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. It has determined that this action will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this direct final rule does not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, mut provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This direct final rule does not contain any Federal intergovernmental or private sector mandate that exceeds $100 million a year.

Agency Findings

The FAA has determined that this regulation is noncontroversial and unlikely to result in adverse or negative comments. For the reasons discussed in the preamble, I certify that this regulation (1) is not a "significant regulatory action" under section 3(F) of Executive Order 12866 and, therefore, its not subject to review by the Office of Management and Budget; (2) is not a "significant rule" under Department of Transportation Regulatory Policies and Procedures (44 FR 11034, February 26, 1979; and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 91

Air Traffic Control, Aircraft, Airplanes, Airports, Airspace, Weather.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 91 of Title 14, Code of Federal Regulations as follows:

PART 91—AIR TRAFFIC AND GENERAL OPERATING RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120. 44101, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506, 47122, 47508, and 47528–47531.

2. Section 91.157(c)(2) is revised and paragraph (d) is added to read as follows:

§ 91.157 Special VFR weather minimums.

* * * * *

(c) * * *

(2) If ground visibility is not reported, unless flight visibility is at least 1 statute mile. For the purposes of this paragraph, the term flight visibility includes the visibility from the cockpit of an aircraft in takeoff position if:

(i) The flight is conducted under this part 91; and

(ii) The airport at which the aircraft is located is a satellite airport that does not have weather reporting capabilities.

(d) The determination of visibility by a pilot in accordance with paragraph (c)(2) of this section is not an official weather report or an official ground visibility report.

Issued in Washington, DC on March 21, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–7341 Filed 3–23–00; 8:45 a.m.]

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Federal Register

Vol. 65, No. 58

Friday, March 24, 2000

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FEDERAL REGISTER PAGES AND DATE, MARCH

10931–11196	1
11197–11454	2
11455–11734	3
11735–11858	6
11859–12060	7
12061–12426	8
12427–12904	9
12905–13234	10
13235–13658	13
13659–13864	14
13865–14206	15
14207–14430	16
14431–14780	17
14781–15052	20
15053–15202	21
15203–15520	22
15521–15822	23
15823–16116	24

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7276	11197
7277	11199
7278	11455
7279	11733
7280	12903
7281	15201

Executive Orders:

12170 (See Notice of March 13, 2000)	13863
12957 (Continued by Notice of March 13, 2000)	13863
12959 (See Notice of March 13, 2000)	13863
13059 (See Notice of March 13, 2000)	13863
13146	11201
13147	13233

Administrative Orders:

Memorandum of January 5, 2000	15823

Presidential Determinations:

No. 2000-15 of February 24, 2000	10931
No. 2000-16 of February 29, 2000	15797
No. 2000-17 of March 2, 2000	15821

Notices:

March 13, 2000	13863

4 CFR

27	15203
28	15203

5 CFR

Ch. LXXIII	15825
213	14431
315	14431
335	14431
531	15875
532	15521
792	13659

Proposed Rules:

3	14477
213	14477
315	14477

7 CFR

2	12427
75	15830
205	13512
210	12429
215	12429
220	12429
225	12429
226	12429
301	11203
457	11457
600	14781
601	14781
761	14432
762	14432
915	15203
916	15205
917	15205
993	12061
955	12442
985	15832
989	15214
1421	13865
1427	13865
1464	10933
1710	14207, 14785
1721	10933
3019	14406

Proposed Rules:

6	14478
20	11483
27	10979
28	10979, 12140
29	13915
57	14652
97	13917
201	12952
205	15579
360	14926
930	15580
1140	10981
1160	14484
1205	12146
1210	14485
1306	12141
1307	12141
1309	12141
1710	12952
1717	12952
1718	12952

8 CFR

3	15835, 15846
212	14774, 15835, 15846
214	14774
240	15835, 15846
245	15835, 15846
274a	15835, 15846
248	14774
278A	14774
299	15835, 15846

9 CFR

74	15216
78	12064
93	15216
94	15521

Proposed Rules:

71	11485
77	11485, 11912, 15877
78	11485
93	12486
98	12486
113	12151
130	12486

317.....14486
318.....14486, 14489
319.....144867, 14489
327.....14489
381.....14486
590.....11486

10 CFR

72 .....11458, 12444, 14790
170.....11204
600.....14406
820.....15218
Proposed Rules:
Ch. XVIII 13700
21.....11488
50.....11488
52.....11488
54.....11488
100.....11488
430.....14128
431.....10984
960.....11755
963.....11755

11 CFR

108.....15221
Proposed Rules:
9038.....15273

12 CFR

5.....12905
204.....12916
208.....14810, 15050
225 .....14433, 14440, 15053
303.....15526
340.....14816
362.....15526
701.....15224
724.....10933
745.....10933
Ch. IX.....13663
925.....13866
950.....13866
1501.....12064, 14819
1510.....15050
Proposed Rules:
3.....12320
8.....15111
208.....12320
225.....12320
325.....12320
567.....12320
614.....14491
620.....14494
709.....11250
716.....10988
741.....10988
742.....15275
1750.....13251

13 CFR

Proposed Rules:
124.....12955

14 CFR

25.....13666
39.....10934,
10937, 10938, 11204, 11459, 11859, 11861, 12071, 12072, 12073, 12075, 12077, 12080, 12081, 12082, 12084, 12085, 12460, 12462, 12463, 13668, 13871, 13875, 13877, 14207, 14209, 14822, 14826, 14827, 14831, 14834, 14838, 14844, 14846, 14847, 14849, 14852, 15226, 15230, 15232, 15531, 15534, 15536, 15537, 15857, 15858
71 .....11369, 11461, 11866, 12630, 12917, 12918, 14344, 14855, 14856, 14857, 15859, 15860, 15861
91.....16112, 16114
95.....14442
97 .....13669, 13671, 13673, 15540, 15541, 15544
1260.....14406
Proposed Rules:
25.....13703
39 .....11006, 11505, 11940, 11942, 12489, 12957, 13251, 13919, 13921, 13923, 14216, 14218, 15278, 15280, 15584, 15878, 15880, 15882
71 .....12153, 12957, 13704, 13705, 13707, 14497, 15282, 15586
108.....15113
109.....15113
111.....15113
129.....15113
191.....15113
255.....11009

15 CFR

14.....14406
734.....12919
736.....14858
738.....12919, 14857
740.....12919, 14857
742.....12919, 14857
743.....12919
744.....12919, 14444
748.....12919
756.....14857, 14861
762.....14858
766.....14862
770.....14857
774 .....12919, 13879, 14862

16 CFR

1615.....12924
1616.....12924
1630.....12929
1631.....12929
1632.....12935
Proposed Rules:
307.....11944
312.....11947
313.....11174

17 CFR

1.....12466
4.....10939, 12938
15.....14452
16.....14452
17.....14452
200.....12469
240.....13235
242.....13235
Proposed Rules:
4.....11253, 12318
228.....11507, 15043
229.....11507
230.....11507, 15500
232.....11507
239.....11507, 15500
240.....11507
248.....12354
249.....11507
250.....11507
259.....11507
260.....11507
269.....11507
270.....11507, 15500
274.....11507, 15500

18 CFR

35.....12088
157 .....11461, 12115, 15234
380.....15234

19 CFR

12.....12470
24.....13880
111.....13880
178.....13880

20 CFR

220.....14458
322.....14459
404.....11866
416.....11866

21 CFR

20.....11881
101.....11205
176.....13675
177.....15057
178.....15545
524.....13904
558.....11888
640.....13678
868.....11464
870.....11465
1301.....13235
1308.....13235
Proposed Rules:
101.....14219
314.....12154

22 CFR

22.....14211
23.....14211
41.....14768
51.....14211
139.....14764
145.....14406
226.....14406
Proposed Rules:
22.....13253

23 CFR

1340.....13679

24 CFR

200.....15043
401.....15452
402.....15452
905.....14422
Proposed Rules:
81.....12632
990.....11525

25 CFR

290.....14461

26 CFR

1 .....11205, 11467, 12471, 15547, 15548, 15862
301.....11211, 11215
601.....15862
602 .....11205, 11211, 11215
Proposed Rules:
1 .....11012, 11269, 15587
301.....11271, 11272

27 CFR

4.....11889
5.....11889
7.....11889
16.....11889
75.....15058
Proposed Rules:
00.....15115
4.....12490
70.....15115
75.....15115
90.....15115

28 CFR

70.....14406

29 CFR

95.....14406
4022.....14752, 14753
4044.....13905, 14752
4050.....14752
Proposed Rules:
1614.....11019
1910.....11948, 13254

30 CFR

202.....11467
206.....11467, 14022
250.....14469, 15862
938.....15553
Proposed Rules:
914.....11950, 12492

31 CFR

103.....13683

32 CFR

22.....14406
32.....14406
668.....13906
776.....15059

33 CFR

26.....14863
95.....14223
100.....15558
110.....11892
117 .....11893, 12943, 15238
127.....10943
140.....14226
141.....14226
142.....14226
143.....14226
144.....14226
145.....14226
146.....14226
147.....14226
154.....10943
155.....10943, 14470
159.....10943
161.....14863
164.....10943
165.....14864
167.....12944
177.....14223
183.....10943
Proposed Rules:
100 .....11274, 13926, 14498

110.....13926, 14498
165 .....13926, 14498, 14501, 14502, 15283, 15285
175.....11410
177.....11410
179.....11410
181.....11410
183.....11410

34 CFR

74.....14406
1100.....11894
Proposed Rules:
606.....15115
607.....15115
608.....15115

36 CFR

Ch. XV.....14760
1.....15077
3.....15077
13.....15077
701.....11735, 11736
1210.....14406
Proposed Rules:
212.....11680
261.....11680
295.....11680
1190.....12493
1191.....12493
1280.....15592

37 CFR

1.....14864
Proposed Rules:
201.....14227, 14505

38 CFR

3.....12116
19.....14471
20.....14471
21.....12117, 13893
Proposed Rules:
3.....13254

39 CFR

111.....12946
Proposed Rules:
20.....11023
111.....13258
913.....14229
952.....13707

40 CFR

9.....15090
30.....14406
51.....11222
52 .....10944, 11468, 12118, 12472, 12474, 12476, 12481, 12948, 13239, 13694, 14212, 14873, 15240, 15244, 15864
55.....15867
60.....13242
63.....11231, 15690
68.....13243
86.....11898
136.....14344
141.....11372
148.....14472
180 .....10946, 11234, 11243, 11736, 12122, 12129, 15248
261.....14472
262.....12378
268.....14472
271.....14472
300.....13697, 14475
302.....14472
431.....15091
445.....14344
Proposed Rules:
51.....11024
52 .....11027, 11275, 11524, 12494, 12495, 12499, 12958, 13260, 13709, 14506, 14510, 14930, 15286, 15287, 15883
63.....11278
81.....14510
141.....11372
152.....15883
156.....15884
438.....11755
503.....11278
755.....16094

42 CFR

121.....15252
405.....13911
410.....13911
Proposed Rules:
410.....13082
493.....14510

43 CFR

12.....14406
3500.....11475

45 CFR

74.....14406
400.....15410
401.....15410
612.....11740
613.....11740

46 CFR

28.....10943
30.....10943
32.....10943
34.....10943
35.....10943
38.....10943
39.....10943
54.....10943
56.....10943
58.....10943
61.....10943
63.....10943
76.....10943
77.....10943
78.....10943
91.....11904
92.....10943
95.....10943
96.....10943
97.....10943
105.....10943
108.....10943
109.....10943
110.....10943
111.....10943
114.....10943
115.....11904
119.....10943
125.....10943
132.....11904
133.....11904
134.....11904
151.....10943
153.....10943
154.....10943
160.....10943
161.....10943
162.....10943
163.....10943
164.....10943
170.....10943
174.....10943
175.....10943
182.....10943
189.....11904
190.....10943
193.....10943
195.....10943
199.....10943, 11904
515.....15252
Proposed Rules:
2.....11410
10.....11410
15.....11410
24.....11410
25.....11410
26.....11410
28.....11410
30.....11410
70.....11410
90.....11410
114.....11410
169.....11410
175.....11410
188.....11410
199.....11410

47 CFR

1.....14476
20.....15559
22.....15559
24.....14213, 15559
27.....12483
54.....12135
73 .....11476, 11477, 11750, 13250
76.....12135, 15559
80.....15559
90.....15559
99.....15559
Proposed Rules:
Ch. I.....15599
1.....13933
2.....14230
26.....14230
27.....14230
54.....13933
61.....13933
69.....13933
73 .....11537, 11538, 11539, 11540, 11541, 11955, 12155, 13260, 13261, 15600, 15885, 15886

48 CFR

Ch. 2.....14380
Ch. 5.....11246
202.....14397
204.....14397
207.....14397
208.....14397, 14400
212.....14400
222.....14397, 14402
244.....14400
247.....14400
252 .....14397, 14400, 14402
1806.....12484
1808.....12484
1811.....12484
1813.....12484
1815.....12484
1825.....12484
1835.....12484
1837.....12484
1842.....12484
1848.....12484
1851.....12484
2409.....12950
Proposed Rules:
Ch. 9.....13416

49 CFR

19.....14406
193.....10950
350.....15092
355.....15092
385.....11904
571.....11751
572.....10961, 15254
Proposed Rules:
Ch I.....11541
40.....13261, 15118
171.....11028
172.....11028
173.....11028
174.....11028
175.....11028
176.....11028
177.....11028
178.....11028
179.....11028
180.....11028
190.....15290
191.....15290
192.....15290
195.....15290
222.....15298
229.....15298

50 CFR

17 .....14876, 14886, 14896, 16052
300.....14907
622.....12136
635.....15873
648 .....11478, 11909, 15110, 15576
660.....11480
679 .....10978, 11247, 11481, 11909, 12137, 12138, 13698, 14918, 14924, 15271, 15272, 15577
Proposed Rules:
16.....11756
17 .....12155, 12181, 13262, 13935, 14513, 14931, 14935, 15887
216.....11542
223.....12959
224.....12959, 13935
300.....13284
600.....11956
622.....11028, 14518
648 .....11029, 11956, 14519
679 .....11756, 11973, 12500

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 24, 2000

ADMINISTRATIVE COMMITTEE OF THE FEDERAL REGISTER
Federal Register, Administrative Committee
Federal Register publications; prices, availability and official status; published 2-23-00

AGRICULTURE DEPARTMENT
Supplemental standards of ethical conduct for employees of the Department of Agriculture; published 3-24-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Mortgage and loan insurance programs:
Multifamiliy Reform Act; implementation; published 2-23-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Riparian brush rabbit and riparian woodrat; published 2-23-00

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Immigration:
Haitian nationals; status adjustment; published 3-24-00
Nicaraguan and Cuban nationals; status adjustment; published 3-24-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air traffic operating and flight rules, etc.:
Serbia-Montenegro; flights within territory and airspace; prohibition removed (SFAR No. 84); published 3-24-00
Airworthiness directives:
Empresa Brasileira de Aeronautica S.A.; published 2-4-00
Eurocopter France; published 3-9-00
Mitsubishi; published 2-4-00
Twin Commander Aircraft Corp.; published 2-4-00¶

RULES GOING INTO EFFECT MARCH 25, 2000

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Spearmint oil produced in—
Far West; published 3-24-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Upland cotton; official color grade determination; comments due by 3-31-00; published 3-1-00
Raisins produced from grapes grown in—
California; comments due by 3-31-00; published 1-31-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Canine and equine semen from Canada; comments due by 3-27-00; published 1-26-00

AGRICULTURE DEPARTMENT
Forest Service
Alaska National Interest Lands Conservation Act:
TItle VII implementation (subsistence priority)
Kenai Peninsula determination; comments due by 3-31-00; published 2-22-00
Alaska National Interest Lands Conservation Act; Title VIII implementation (subsistence priority):
Fish and wildlife; subsistence taking; comments due by 3-27-00; published 2-2-00

COMMERCE DEPARTMENT
Anticybersquatting Consumer Protection Act; abusive domain registrations involving personal names; resolution issues; comments due by 3-30-00; published 2-29-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Deep-sea red crab; comments due by 3-31-00; published 3-1-00
Deep-sea red crab; correction; comments due by 3-31-00; published 3-17-00

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00

ENERGY DEPARTMENT
Energy Efficiency and Renewable Energy Office
Energy conservation:
Weatherization assistance program for low-income persons; comments due by 3-27-00; published 1-26-00

ENVIRONMENTAL PROTECTION AGENCY
Air programs:
Stratospheric ozone protection—
Essential-use allowances ; allocation; comments due by 3-27-00; published 2-25-00
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Georgia; comments due by 3-27-00; published 2-25-00
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 3-29-00; published 3-14-00
New Mexico; comments due by 3-29-00; published 2-28-00
Hazardous waste program authorizations:
Louisiana; comments due by 3-29-00; published 2-28-00
Missouri; comments due by 3-29-00; published 2-28-00

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Local exchange carriers, low-volume long distance users, and Federal-State Joint Board on Universal Service—
Access charge reform and price cap performance review; comments due by 3-30-00; published 3-15-00
Wireless telecommunications services—
Specialized mobile radio (SMR) systems in 800 MHz frequency band; future development facilitation; comments due by 3-27-00; published 3-23-00
Radio stations; table of assignments:
Alabama and Florida; comments due by 3-27-00; published 2-16-00
Texas; comments due by 3-27-00; published 2-16-00
Television broadcasting:
Broadcast licensees; public interest obligations; comments due by 3-27-00; published 1-26-00

FEDERAL DEPOSIT INSURANCE CORPORATION
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

FEDERAL RESERVE SYSTEM
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

FEDERAL TRADE COMMISSION
Consumer financial information; privacy requirements; comments due by 3-31-00; published 3-1-00

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Alaska National Interest Lands Conservation Act:
Fish and wildlife resources on public lands; preference for subsistence use—
Kenai Peninsula; comments due by 3-31-00; published 2-22-00
Alaska National Interest Lands Conservation Act; Title VIII

implementation (subsistence priority):
Fish and wildlife; subsistence taking; comments due by 3-27-00; published 2-2-00
Endangered and threatened species:
Columbian sharp-tailed grouse; status review; comments due by 3-27-00; published 1-24-00
Tidewater goby; comments due by 3-31-00; published 2-15-00

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Digital Millennium Copyright Act:
Circumvention of copyright protection systems for access control technologies; exemption to prohibition; comments due by 3-31-00; published 3-17-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Deferred research and development costs; comments due by 3-27-00; published 1-26-00
Drafting principles; comments due by 3-27-00; published 1-26-00

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Consumer financial information; privacy requirements; comments due by 3-31-00; published 3-1-00

PERSONNEL MANAGEMENT OFFICE
Absence and leave:
Sick leave for family care purposes; comments due by 3-27-00; published 2-9-00
Prevailing rate systems; comments due by 3-30-00; published 2-29-00

POSTAL SERVICE
International Mail Manual:
International surface mail; postal rate changes; comments due by 3-31-00; published 3-1-00

SECURITIES AND EXCHANGE COMMISSION
Practice and procedure:
Market information fees and revenues; public dissemination; comments due by 3-31-00; published 12-17-99
Privacy of Consumer Financial Information (Regulation S-P); comments due by 3-31-00; published 3-8-00
Securities:
Selective disclosure and insider trading; comments due by 3-29-00; published 12-28-99

SMALL BUSINESS ADMINISTRATION
Small business size standards:
Compliance with other agency programs; comments due by 3-27-00; published 1-26-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Agusta S.p.A.; comments due by 3-27-00; published 1-26-00
Airbus; comments due by 3-27-00; published 2-24-00
Alexander Schleicher Segelflugzeugbau; comments due by 3-31-00; published 3-1-00
Empresa Brasileira de Aeronautica S.A.; comments due by 3-27-00; published 2-24-00
Eurocopter Deutschland GMBH; comments due by 3-27-00; published 1-25-00
Airworthiness standards:
Special conditions—
McDonnell Douglas Model MD-10-10/10F and MD10-30/30F airplanes; comments due by 3-27-00; published 2-25-00
Transport airplane fuel tank system design review, flammability reduction, and maintenance and inspection requirements; comments due by 3-27-00; published 2-16-00

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Hazardous materials:
Hazardous materials transportation—
Compatibility with International Atomic Energy Agency regulations; comments due by 3-29-00; published 12-28-99

TREASURY DEPARTMENT
Comptroller of the Currency
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

TREASURY DEPARTMENT
Customs Service
Country of origin marking; comments due by 3-27-00; published 1-26-00

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Source of compensation for labor or personal services; comments due by 3-29-00; published 1-21-00
Procedure and administration:
Combat zone service and Presidentially declared disaster; tax-related deadline relief; comments due by 3-30-00; published 12-30-99

TREASURY DEPARTMENT
Thrift Supervision Office
Consumer financial information privacy; comments due by 3-31-00; published 2-22-00

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S. 376/P.L. 106–180

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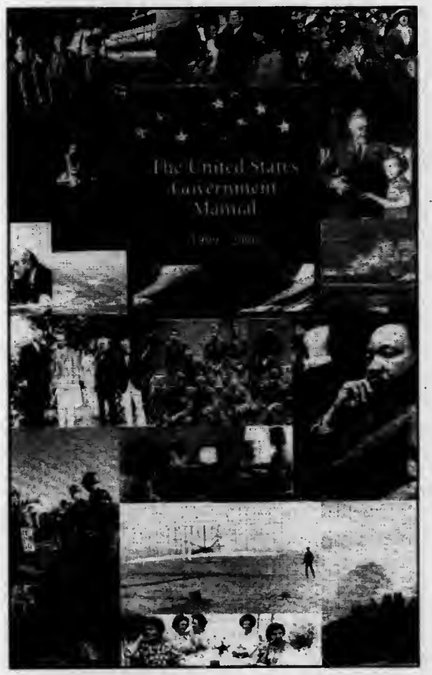
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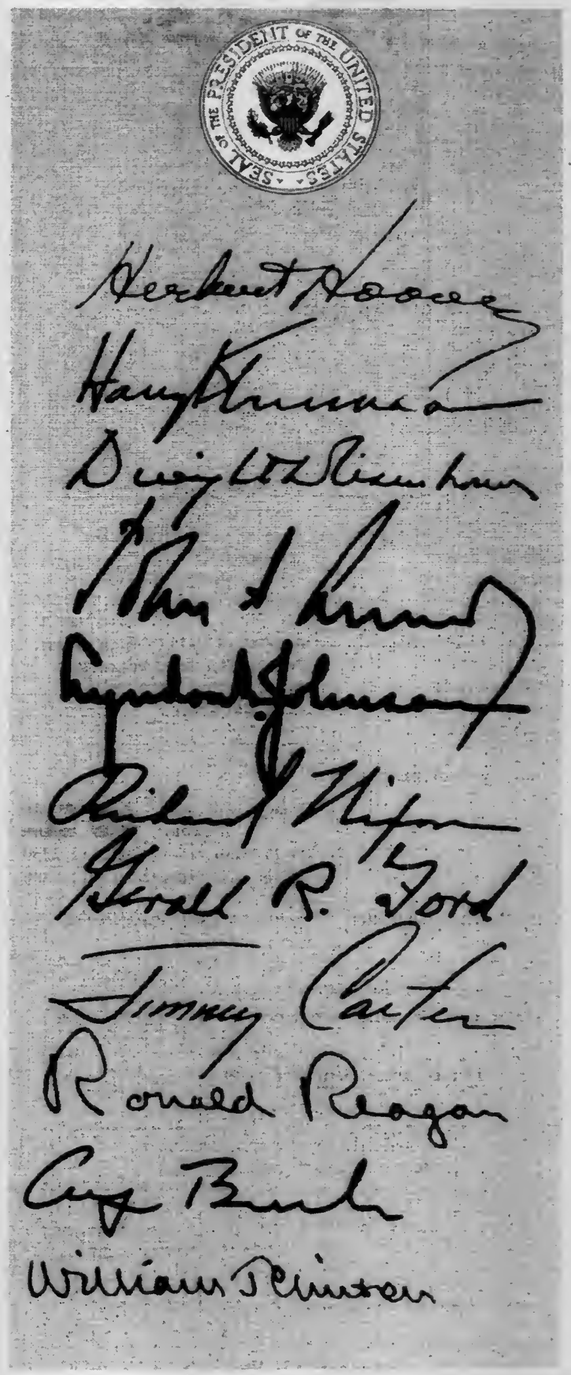
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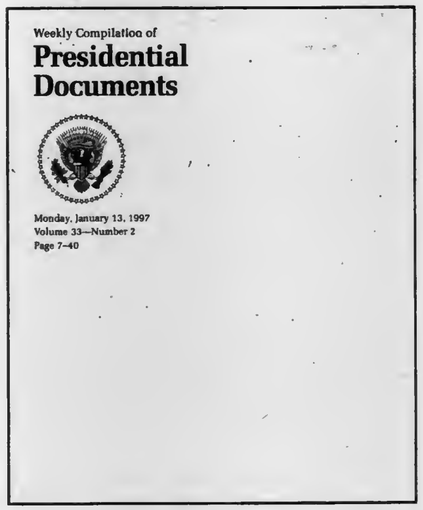
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Contents

Federal Register
Vol. 65, No. 59
Monday, March 27, 2000

Advisory Commission on Electronic Commerce
See Electronic Commerce Advisory Commission

Agriculture Department
See Animal and Plant Health Inspection Service
See Farm Service Agency
See Forest Service
See Natural Resources Conservation Service

Animal and Plant Health Inspection Service
RULES
User fees:
Veterinary services—
Export certificate endorsements, 16122–16124

Army Department
See Engineers Corps
NOTICES
Meetings:
U.S. Military Academy, Board of Visitors, 16190

Census Bureau
NOTICES
Surveys, determinations, etc.:
Manufacturers' shipments, inventories, and orders; unfilled orders benchmark survey, 16165–16166

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16204–16206

Commerce Department
See Census Bureau
See International Trade Administration
See National Institute of Standards and Technology
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Oman, 16188
Thailand, 16188–16189

Comptroller of the Currency
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16242

Corporation for National and Community Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16189–16190

Defense Department
See Army Department
See Engineers Corps
RULES
Federal Acquisition Regulation (FAR):
Introduction, 16274–16275
Progress payments and related financing policies, 16276–16285
Small Business Competitiveness Demonstration Program, 16275–16276
Small entity compliance guide, 16286–16287
Technical amendments, 16285–16286

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16192–16193
Submission for OMB review; comment request, 16193–16194
Grants and cooperative agreements; availability, etc.:
Jacob K. Javits Gifted and Talented Education Program, 16290–16291
Meetings:
Web-Based Education Commission, 16194

Electronic Commerce Advisory Commission
NOTICES
Meetings, 16163

Employment and Training Administration
NOTICES
Adjustment assistance:
Alliant Tech Systems et al., 16220–16221
Cluett, Peabody & Company, Inc., 16221
Condor DC Power Supplies, Inc., 16221–16222
Freeport-McMoRan Sulphur, L.L.C., 16222
Justin Boot Co., 16222
Philadelphia Gear Corp. et al., 16222–16223
Renfro Corp. et al., 16223–16224
Thomas Energy Services, 16224
Adjustment assistance and NAFTA transitional adjustment assistance:
Case Corp., 16220
Environmental statements; availability, etc.:
Gillis W. Long Hansen's Disease Center, LA; Job Corps Center, 16224–16226
Meetings:
Migrant and Seasonal Farmworker Employment and Training Advisory Committee, 16226
NAFTA transitional adjustment assistance:
AMP, Inc., 16226–16227
Superior-Essex, 16227

Energy Department
See Federal Energy Regulatory Commission
RULES
Assistance to foreign atomic energy activities:
Miscellaneous amendments, 16124–16128
NOTICES
Defense Nuclear Facilities Safety Board recommendations:
Nuclear material stabilization and storage, 16194–16195

Engineers Corps
NOTICES
Environmental statements; notice of intent:
Black Warrior and Tombigbee Rivers, AL; operation and maintenance dredging activities, 16190–16191
Pocahontas County, WV; Marlinton local flood protection project, 16191–16192

Environmental Protection Agency
RULES
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Dichlormid, 16143–16149
NOTICES
Air programs:
State implementation plans; adequacy status for transportation conformity purposes—
New York, 16196
Meetings:
Gulf of Mexico Program Citizens Advisory Committee, 16197
National Drinking Water Advisory Council, 16197
Pesticide programs:
Organophosphates; risk assessments and public participation in risk management—
Phostebupirim and tetrachlorvinphos, 16197–16199
Pesticide registration, cancellation, etc.:
ISK Biosciences Corp. et al., 16199–16200
Reports and guidance documents; availability, etc.:
Freshwater invertebrates, toxicity and bioaccumulation of sediment-associated contaminants; measurement methodology, 16200–16201

Farm Service Agency
RULES
Farm marketing quotas, acreage allotments, and production adjustments:
Peanuts, 16117–16118

Federal Aviation Administration
RULES
Airworthiness directives:
Learjet, 16129–16130
Airworthiness standards:
Special conditions—
McDonnell Douglas DC-9-30 series airplanes, 16128–16129
Class C and Class E airspace, 16130–16131
Class E airspace; correction, 16131–16132
PROPOSED RULES
Airworthiness directives:
Airbus, 16151–16158
Dornier, 16153–16154
Saab, 16154–16160
NOTICES
Meetings:
RTCA, Inc., 16240–16241

Federal Communications Commission
RULES
Radio stations; table of assignments:
Texas, 16149
PROPOSED RULES
Radio stations; table of assignments:
Florida, 16160–16161
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16201–16202
Common carrier services:
Wireless telecommunications services—
Fixed, mobile, and broadcasting service in 747-762 and 777-792 MHz bands; auction of licenses, 16202–16203

Federal Deposit Insurance Corporation
NOTICES
Meetings; Sunshine Act, 16203

Federal Energy Regulatory Commission
NOTICES
Meetings; Sunshine Act, 16196
Applications, hearings, determinations, etc.:
PSI Energy, Inc., et al., 16195
Southern Natural Gas Co., 16195
Tucson Electric Power Co., 16196

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 16203
Formations, acquisitions, and mergers, 16203–16204

Federal Trade Commission
RULES
Appliances, consumer; energy consumption and water use information in labeling and advertising:
Comparability ranges—
Clothes washers; front-loading and top-loading subcategories eliminated, 16132–16142

Fish and Wildlife Service
NOTICES
Environmental statements; notice of intent:
Bair Island, Don Edwards San Francisco Bay National Wildlife Refuge, CA; restoration and management plan, 16217–16218
Meetings:
Aquatic Nuisance Species Task Force, 16218

Food and Drug Administration
NOTICES
Meetings:
Advisory committees; tentative schedule, 16206–16207

Forest Service
NOTICES
Environmental statements; notice of intent:
Superior National Forest, MN, 16163–16165

General Services Administration
RULES
Federal Acquisition Regulation (FAR):
Introduction, 16274–16275
Progress payments and related financing policies, 16276–16285
Small Business Competitiveness Demonstration Program, 16275–16276
Small entity compliance guide, 16286–16287
Technical amendments, 16285–16286

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health
NOTICES
Committees; establishment, renewal, termination, etc.:
Vital and Health Statistics National Committee, 16204

Housing and Urban Development Department
RULES
Housing programs:
Uniform financial reporting standards; annual financial report filing date, 16294–16296
NOTICES
Grant and cooperative agreement awards:
Troubled Agency Recovery Office, 16215–16216

Mortgage and loan insurance programs:
Credit Watch Termination Initiative; list of mortgagees whose Origination Approval Agreements have been terminated, 16216–16217

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Reclamation Bureau

Internal Revenue Service
RULES
Income taxes:
Tax-exempt organizations; travel and tour activities Correction, 16143

International Trade Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16166
Antidumping:
Bars and wedges and hammers and sledges from—
China; correction, 16167
Brass sheet and strip from—
Netherlands, 16167–16168
Cold-rolled carbon steel flat products from—
Netherlands, 16168–16169
Corrosion-resistant carbon steel flat products from—
Japan, 16169–16171
Cut-to-length carbon steel plate from—
Romania, 16171–16173
Steel wire rope from—
Various countries, 16173–16175
Antidumping and countervailing duties:
Five-year (sunset) reviews—
Preliminary results; time limit extension, 16166–16167
Countervailing duties:
Corrosion-resistant carbon steel flat products, cold-rolled carbon steel flat products, and cut-to-length carbon steel plate products from—
Germany, 16176–16178

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Survey plat filings:
Oregon and Washington, 16218–16219

Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16227–16229

National Aeronautics and Space Administration
RULES
Federal Acquisition Regulation (FAR):
Introduction, 16274–16275
Progress payments and related financing policies, 16276–16285
Small Business Competitiveness Demonstration Program, 16275–16276
Small entity compliance guide, 16286–16287
Technical amendments, 16285–16286
NOTICES
Meetings:
Advisory Council
Aero-Space Technology Advisory Committee, 16230
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Horton's Orthotic Lab, Inc, 16230

National Archives and Records Administration
NOTICES
Records scheduling and appraisal policies and process review; comment request, 16230

National Institute of Standards and Technology
NOTICES
Meetings:
Computer System Security and Privacy Advisory Board, 16178–16179

National Institutes of Health
NOTICES
Grants and cooperative agreements; availability, etc.:
National Cancer Institute—
Factors that inhibit human immunodeficiency virus (HIV) replication; research, purification, and further development, 16207–16209
GADD45 polypeptide activity, novel inhibitors; screening, development, and commercialization, 16209–16211
Meetings:
Director's Council of Public Representatives, 16211
National Cancer Institute, 16211
National Heart, Lung, and Blood Institute, 16211–16212
National Institute of Allergy and Infectious Diseases, 16213
National Institute of Mental Health, 16212
National Institute on Aging, 16212
National Institute on Alcohol Abuse and Alcoholism, 16213
National Institute on Drug Abuse, 16212–16213
National Library of Medicine, 16213
Scientific Review Center, 16213–16215

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Steller sea lion critical habitat; trawling, 16150
NOTICES
Grants and cooperative agreements; availability, etc.:
Fisheries Finance Program, 16179–16181
National Marine Aquaculture Initiative, 16181–16185
Meetings:
Gulf of Mexico Fishery Management Council, 16185–16186
New England Fishery Management Council, 16186
North Pacific Fishery Management Council, 16187–16188
Sharks; conservation and management; national plan of action, 16186–16187

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
North Dakota, 16165

CFR PARTS AFFECTED IN THIS ISSUE

Northeast Dairy Compact Commission
RULES
Over-order price regulations:
Compact over-order price regulations—
Definitions and required action dates; technical amendments, 16118–16122

Nuclear Regulatory Commission
PROPOSED RULES
Fee schedules revision; 100% fee recovery (2000 FY), 16250–16272
NOTICES
Applications, hearings, determinations, etc.:
Consolidated Edison Co. of New York, Inc., 16230–16232

Personnel Management Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16232–16233

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See National Institutes of Health

Reclamation Bureau
NOTICES
Environmental statements; notice of intent:
Navajo-Gallup Water Supply Project, NM, 16219–16220

Research and Special Programs Administration
PROPOSED RULES
Hazardous materials:
Tank cars and cargo tank motor vehicles; attendance requirements; withdrawn, 16161–16162

Securities and Exchange Commission
PROPOSED RULES
Securities:
Selective disclosure and insider trading, 16160
NOTICES
Meetings; Sunshine Act, 16234–16235
Self-regulatory organizations; proposed rule changes:
New York Stock Exchange, Inc., 16235
Pacific Exchange, Inc., 16235–16236
Applications, hearings, determinations, etc.:
Aeroflex Inc., 16233
Koger Equity, Inc., 16233–16234
U.S.B. Holding Co., Inc., 16234

Small Business Administration
NOTICES
Meetings; district and regional advisory councils:
Rhode Island, 16236

Social Security Administration
NOTICES
Agency information collection activities:
Proposed collection and submission for OMB review; comment request, 16236–16237

State Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16238
Organization, functions, and authority delegations:
Principal Deputy Assistant Secretary et al., 16238

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 16241–16242

Tennessee Valley Authority
NOTICES
Meetings; Sunshine Act, 16238–16239

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Federal Aviation Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Aviation proceedings:
Agreements filed; weekly receipts, 16239–16240
Certificates of public convenience and necessity and foreign air carrier permits; weekly applications, 16240

Treasury Department
See Comptroller of the Currency
See Internal Revenue Service

Twenty-First Century Workforce Commission
NOTICES
Meetings, 16242–16243

Veterans Affairs Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16243–16246
Submission for OMB review; comment request, 16246
Committees; establishment, renewal, termination, etc.:
Special Medical Advisory Group, 16246
Meetings:
Cemeteries and Memorials Advisory Committee, 16246–16247
Special Medical Advisory Group, 16247

Separate Parts In This Issue

Part II
Nuclear Regulatory Commission, 16249–16272

Part III
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 16273–16287

Part IV
Department of Education, 16289–16291

Part V
Department of Housing and Urban Development, 16293–16296

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
729.....16117
1301.....16118
1304.....16118
1305.....16118
1306.....16118
1307.....16118
1308.....16118

9 CFR
130.....16122

10 CFR
810.....16124
Proposed Rules:
170.....16250
171.....16250

14 CFR
25.....16128
39.....16129
71 (2 documents).....16130, 16131
Proposed Rules:
39 (5 documents).....16151, 16153, 16154, 16157, 16158

16 CFR
305.....16132

17 CFR
Proposed Rules:
230.....16160
240.....16160
243.....16160
249.....16160

24 CFR
5.....16294
266.....16294

26 CFR
1.....16143

40 CFR
180.....16143

47 CFR
73.....16149
Proposed Rules:
73.....16160

48 CFR
Ch. 1(2 documents).....16274, 16286
1.....16285
6.....16285
9.....16285
15.....26285
19.....26275
32.....26276
52(2 documents).....16276, 16285

49 CFR
Proposed Rules:
174.....16161
177.....16161

50 CFR
679.....16150

Rules and Regulations

VOL
65
ISS
59
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 729

RIN 0560–AF48

1999-Crop Peanuts National Poundage Quota

AGENCY: Farm Service Agency, USDA.

ACTION: Final rule.

SUMMARY: The purpose of this final rule is to codify the establishment of the national poundage quota for peanuts at 1,180,000 short tons (st).

EFFECTIVE DATE: December 14, 1998.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Robison, USDA, Farm Service Agency, STOP 0514, 1400 Independence Avenue, SW, Washington, DC 20250–0514, telephone 202–720–9255. Copies of the cost-benefit assessment prepared for this rule can be obtained from Mr. Robison.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule has been determined to be significant for purposes of Executive Order 12866 and, therefore, has been reviewed by OMB.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12988

This final rule has been reviewed in accordance with Executive Order 12988. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Paperwork Reduction Act

This amendment does not contain information collections that require clearance by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this determination.

Unfunded Federal Mandates

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandate Reform Act (UMRA), for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Background

The determination made in this notice follows a proposed rule published on November 25, 1998, in the **Federal Register** (63 FR 65133). That notice proposed a marketing year (MY) 1999 national poundage quota level between 1,175,000 and 1,225,000 st. There were 16 comments received. Comments were submitted by 11 producer groups, two manufacturers' groups, one sheller group, one consumer group, and one manufacturer. The comments received and the determination made are discussed below.

A. Determination of the Quota

Peanut producers voting in a mail referendum held December 1 through 4, 1997, approved poundage quotas for the 1998 through 2002 MY by an affirmative vote of 94.8 percent. Therefore, as provided for in the Agriculture Adjustment Act of 1938 (1938 Act), the Secretary is required to administer a peanut program in which marketings are governed through the use of federally-granted quota and in which price support is offered.

Section 358–1(a)(1) of the 1938 Act, as amended in 1996 by the Agricultural Market Transition Act, requires that the national poundage quota for peanuts for each of the 1996 through 2002 MYs be established by the Secretary at a level that is equal to the quantity of peanuts (in tons) that the Secretary estimates will be devoted in each MY to domestic edible use (excluding seed use) and related uses. Under the 1996 amendments to the 1938 Act, seed use remains a quota use but, unlike in the past, the seed aspect of the quota is accounted for by the granting of a temporary seed quota to all producers. As a result, seed is no longer part of the basic quota calculation codified in this determination.

The MY for 1999-crop peanuts begins on August 1, 1999, and ends July 31, 2000.

The national poundage quota for the 1999 crop, which will be marketed in MY 1999, was established at 1,180,000 st, based on the following data:

ESTIMATED DOMESTIC EDIBLE AND RELATED USES FOR 1999-CROP PEANUTS

Item	Farmer stock equivalent (short tons)
Regular domestic food use	984,000
Related uses:	
Crushing residual	128,500
Shrinkage and other losses	44,000
Unused quota	23,500
Total	1,180,000

The estimate of MY 1999 domestic food use of peanuts was developed in two steps. First, normal commercial use was estimated based upon figures from the USDA Interagency Commodity Estimates Committee (ICEC) adjusted to take out peanut imports, peanut butter imports, and peanut butter exports (which normally consist of additional peanuts only). Then, farm sales and other direct marketings to consumers were added based upon differences between production data and Federal-State Inspection Service inspection data. Insofar as related uses are concerned, an added allowance is made for the normal crushing residual that cannot effectively be used for food. That amount is traditionally expected to be about 12 percent, on a farmer stock basis, of the total domestic production. An allowance for shrinkage and other losses is made to account for reduced kernel and other kernel losses during storage using the customary factor of 4 percent of domestic food use. Finally, the

unused quota allowance applies to those

NORTHEAST DAIRY COMPACT

Pursuant to its rulemaking authority

II. Summary of Amendments and

The amendments in Parts 1305, 1307

that the public interest is served by

unused quota allowance applies to those instances where the farmer cannot fulfill a quota either because of underplanting or because the farmer is unable to produce enough Segregation 1 peanuts to fulfill the quota. Because of the changes in the law as enacted in 1996, which have been outlined in previous notices, a greater incentive now exists than in the past to fully market the quota. It is expected that, after discounting for quality problems, more than 98.1 percent of the quota will be marketed.

With respect to comments on these issues, the 11 producer groups and the sheller group expressed concern about USDA's projected growth in demand, projected stocks levels, the buy back program, and the export/import situation. The producer groups and the sheller group proposed setting the quota at the lower end of the proposed range. The manufacturer groups, the consumer group, and the manufacturer all expressed concern about adequate supplies. They proposed setting the quota above the minimum and one proposed setting it at the upper end of the proposed range. As indicated, however, the quota amount is controlled by a statutory formula which led to the announced amount for the reasons given above.

List of Subjects in 7 CFR Part 729

Peanuts, Penalties, Poundage quotas, Reporting and record keeping requirements.

Accordingly, this final rule amends 7 CFR part 729 as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375, and 7271.

2. Section 729.216 is amended by adding a new paragraph (c)(4) to read as follows:

§ 729.216 National poundage quota.

* * * * *

(c) * * *

(4) The national poundage quota for quota peanuts for marketing year 1999 is 1,180,000 short tons.

Signed at Washington, DC, on March 20, 2000.

Parks Shackelford,

Acting Administrator, Farm Service Agency.

[FR Doc. 00–7399 Filed 3–24–00; 8:45 am]

BILLING CODE 3410–05–P

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Parts 1301, 1304, 1305, 1306, 1307 and 1308

Over-Order Price Regulation

AGENCY: Northeast Dairy Compact Commission.

ACTION: Final rule.

SUMMARY: The Northeast Dairy Compact Commission amends the over-order price regulation to make technical amendments to certain definitions and to change certain dates of required action. The amendments are necessary to conform the over-order price regulation to similar regulations recently reformed by the United States Department of Agriculture regarding milk marketed in the New England states. These amendments will ensure continuity of regulatory definitions and compliance dates in the New England milk market. The Commission also amends the definition of *producer* to specify every December since 1996 as a condition of qualification.

EFFECTIVE DATE: May 1, 2000.

ADDRESSES: Northeast Dairy Compact Commission, 34 Barre Street, Suite 2, Montpelier, Vermont 05602.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Becker, Executive Director, Northeast Dairy Compact Commission at the above address or by telephone at (802) 229–1941, or by facsimile at (802) 229–2028.

SUPPLEMENTARY INFORMATION:

I. Background

The Northeast Dairy Compact Commission ("Commission") was established under authority of the Northeast Interstate Dairy Compact ("Compact"). The Compact was enacted into law by each of the six participating New England states as follows: Connecticut—Pub. L. 93–320; Maine—Pub. L. 89–437, as amended, Pub. L. 93–274; Massachusetts—Pub. L. 93–370; New Hampshire—Pub. L. 93–336; Rhode Island—Pub. L. 93–106; Vermont—Pub. L. 93–57. In accordance with Article I, Section 10 of the United States Constitution, Congress consented to the Compact in Pub. L. 104–127 (FAIR Act), Section 147, codified at 7 U.S.C. 7256. Subsequently, the United States Secretary of Agriculture, pursuant to 7 U.S.C. 7256(1), authorized implementation of the Compact. Authorization of the Compact was extended until September 30, 2001 in the Consolidated Appropriations Act for Fiscal Year 2000, Pub. L. 106–113, 115 Stat. 1501, November 29, 1999.

Pursuant to its rulemaking authority under Article V, Section 11 of the Compact, the Commission concluded an informal rulemaking process and voted to adopt a compact over-order price regulation on May 30, 1997.[1] The Commission subsequently amended and extended the compact over-order price regulation.[2] In 1998 and 1999, the Commission further amended specific provisions of the over-order price regulation.[3] The current compact over-order price regulation is codified at 7 CFR Chapter XIII.

On November 29, 1999, the President signed into law the Consolidated Appropriations Act, 2000 (Pub. L. 106–113, 115 Stat. 1501.) That Act required the United States Secretary of Agriculture to immediately implement certain reforms to the federal milk order regulations. The required regulation was published in the **Federal Register** on December 17, 1999, implementing and amending the final rule that was initially published on September 1, 1999.[4]

On January 12, 2000, the Commission issued a notice of proposed rulemaking to consider amendments to the Compact Over-order Price Regulation that would bring the Commission's regulations into conformity with the reformed federal milk market order regulations and provide consistency and uniformity in definitions and compliance dates for regulated entities in the New England milk market and to amend the definition of *producer*.[5] The Commission held a public hearing to receive testimony on the proposed amendments on February 2, 2000 and additional comments and exhibits were accepted until 5:00 PM on February 16, 2000. The Commission held a deliberative meeting on March 1, 2000, pursuant to 7 CFR 1361.8, to consider the testimony and comments received and to deliberate and act on the proposed amendments. The Commission hereby amends the Over-order Price Regulation to make technical amendments to certain definitions and to change certain dates of required action and to amend the definition of producer to specify every December since 1996 as a condition of qualification.

[1] 62 FR 29626 (May 30, 1997).

[2] 62 FR 62810 (Nov. 25, 1997).

[3] See, e.g., 63 FR 10104 (Feb. 27, 1998); 63 FR 46385 (Sept. 1, 1998); 63 FR 65517 (Nov. 27, 1998); 64 FR 23532 (May 3, 1999); and 64 FR 34511 (June 28, 1999).

[4] 64 FR 70868 (Dec. 17, 1999); 64 FR 47898 (Sept. 1, 1999).

[5] 65 FR 1825 (Jan. 12, 2000).

II. Summary of Amendments and Analysis of Issues and Comments

The Commission held a duly noticed public hearing on February 2, 2000, however, no one appeared to testify. The Commission received one letter of comment that generally supported the proposed amendments to the Over-order Price Regulation.[6]

The Commission amends the definition of *producer* in section 1301.11 to change the qualification condition from "December 1996, December 1997 and December 1998" to "every December since 1996." This language clarifies the future application of this condition, without necessitating annual rulemaking proceedings.

The Commission also amends definitions in Part 1301 sections 1301.9, 1301.10, 1301.14 and 1301.17 to conform to recent amendments to definitions in the federal market order regulations. The amendment to section 1301.9, the definition of *handler*, brings that section into conformity with the federal amendment to the definition of *handler* in 7 CFR 1000.9 by adding certain milk brokers to the definition. The amendment to section 1301.10, the definition of *producer-handler*, brings that section into conformity with the definition of the same term in 7 CFR 1001.10, through uniform reformatting of the definition and changing the minimum from 300 quarts per day to 150,000 pounds per month. Similarly, the amendments to section 1301.14, *fluid milk products* (adds eggnog and changes descriptive terms for various products, such as skim milk) and section 1301.17, *cooperative association* (includes federation of cooperatives) bring those definitions into conformity with the reformed federal regulations at 7 CFR 1000.15 and 1000.18, respectively.

The amendment to Part 1304 section 1304.1, deletes eggnog from the list in subsection (b)(4)(iv), in conformity with the new federal regulation at 7 CFR 1000.40(b)(2)(iv), reclassifying eggnog from Class II to Class I. The amendment to Part 1305 section 1305.1 changes the reference to the federal Class I price from the prior regulation reference to Zone 1, Class 1 to the reformed reference in 7 CFR 1000.52 to the Class I Price for Suffolk County, Massachusetts.

The Commission amends Part 1306 sections 1306.1 and 1306.2 to remove the existing minimum of a daily average of 300 quarts to the new federal minimum of 150,000 pounds per month as codified at 7 CFR 1000.8(d)(4).

The amendments in Parts 1305, 1307 and 1308 sections 1305.2, 1307.2, 1307.3, 1307.4, 1307.7, 1307.9 and 1308.1 change the prescribed dates for required action to conform to the new dates used under the federal market order reform regulations for similar required activities. The amendments change the dates required for: (1) announcing the over-order obligation (from the 5th of the month to the 23rd); (2) issuing statements (from the 15th to the 13th); (3) for making payments (including adjustments and administrative assessments) to the producer-settlement fund (from the 18th to the 15th) and (4) for issuing payments (including adjustments) from the fund (from the 20th to the 16th).

The amendment to Part 1307 section 1307.8 conforms to the federal regulation at 7 CFR 1000.78 by changing the language regarding charges on overdue accounts to include funds due to both the producer-settlement fund and the administrative assessment fund and includes the new requirement that all interest accrues to the administrative assessment fund. The only comment received opposed the part of this amendment that provides that late charges accrue to the Commission's administrative fund.[7] The Commission carefully considered the commenter's analysis. However, the Commission notes that the amount of money involved is so small as to not affect the producer price and that the costs to enforce late payments can be significant. Therefore, the Commission determines that accrual of late charges to the administrative fund is appropriate under all the circumstances.

The Commission also adds a new section at Part 1307 section 1307.9, in conformance with the federal regulation at 7 CFR 1000.90, specifying that if a required date falls on a weekend or holiday, the action is required on the next business day.

III. Summary and Explanation of Findings

Article V, Section 12 of the Compact directs the Commission to make four findings of fact before an amendment of the Over-order Price Regulation can become effective. Each required finding is discussed below.

a. Whether the Public Interest Will Be Served by the Amendments to the Over-Order Price Regulation

The first finding considers whether the amendments to the Compact Over-order Price Regulation serve the public interest. The Commission determines that the public interest is served by conforming the definitions and compliance dates in the Over-order Price Regulation with the definitions of the same terms and compliance dates for similar actions under the federal milk market order regulations to ensure uniformity and continuity for regulated entities in the New England Milk Market.

The Commission also determines that the public interest is served by amending the definition of *producer* to specify every December since 1996 as a condition of qualification. This amendment simply keeps the qualification condition current, without requiring annual rulemaking to update the definition.

b. The Impact on the Price Level Needed To Assure a Sufficient Price to Producers and an Adequate Local Supply of Milk

The amendments to the Compact Over-order Price Regulation adopted in this rulemaking proceeding are related to the administration of the Over-order Price Regulation and do not affect the local supply of milk or price received by producers.

c. Whether the Major Provisions of the Order, Other Than Those Fixing Minimum Milk Prices, Are in the Public Interest and Are Reasonably Designed To Achieve the Purposes of the Order

The Commission concludes that, for the same reasons identified in the first finding, the amendments adopted in this rulemaking proceeding are in the public interest. The Commission further concludes that the Over-order Price Regulation, as hereby amended, remains in the public interest in the manner contemplated by this finding.

d. Whether the Terms of the Proposed Amendments Are Approved by Producers

The fourth finding, requires the determination of whether the amendment has been approved by producer referendum pursuant to Article V, Section 13 of the Compact. In this final rule, as in the previous final rules, the Commission makes this finding premised upon certification of the results of the producer referendum. The procedure for the producer referendum and certification of the results is set forth in 7 CFR Part 1371.

Pursuant to 7 CFR § 1371.3 and the referendum procedure certified by the Commission, a referendum was held during the period of March 10 through March 20, 2000. All producers who were producing milk pooled in Federal Order #1 for consumption in New

[6] Robert Wellington, Written Comments (hereinafter "WC") at 1.

[7] Wellington, WC at 1.

England, during December 1999, the representative period determined by the Commission, were deemed eligible to vote. Ballots were mailed to these producers on or before March 10, 2000 by the Federal Market Order #1 Market Administrator. The ballots included an official summary of the Commission's action. Producers were notified that, to be counted, their ballots had to be returned to the Commission offices by 5:00 p.m. on March 20, 2000. The ballots were opened and counted in the Commission offices on March 21, 2000 under the direction and supervision of Commissioner Robert Starr, designated "Referendum Agent."

Eleven Cooperative Associations were notified of the procedures necessary to block vote by letter dated March 3, 2000. Cooperatives were required to provide prior written notice of their intention to block vote to all members on a form provided by the Commission, and to certify to the Commission that (1) timely notice was provided, and (2) that they were qualified under the Capper-Volstead Act. Cooperative Associations were further notified that the Cooperative Association block vote had to be received in the Commission office by 5:00 p.m. on March 20, 2000. Certified and notarized notification to its members of the Cooperative's intent to block vote or not to block vote had to be mailed by March 14, 2000 with notice mailed to the Commission offices no later than March 16, 2000.

Notice

On March 21, 2000, the duly authorized referendum agent verified all ballots according to procedures and criteria established by the Commission. The ballots cast were reviewed and counted. A total of 3982 ballots were mailed to eligible producers. All producer ballots and cooperative block vote ballots received by the Commission were opened and counted. Producer ballots and cooperative block vote ballots were verified or disqualified based on criteria established by the Commission, including timeliness, completeness, appearance of authenticity. appropriate certifications by cooperative associations and other steps taken to avoid duplication of ballots. Ballots determined by the referendum agent to be invalid were marked "disqualified" with a notation as to the reason.

Block votes cast by Cooperative Associations were then counted. Producer votes against their cooperative associations block vote were then counted for each cooperative association. These votes were deducted from the cooperative association's total and were counted appropriately. Ballots returned by cooperative members who cast votes in agreement with their cooperative block vote were disqualified as duplicative of the cooperative block vote.

Votes of independent producers not members of any cooperative association were then counted.

The referendum agent then certified the following for the ballot on the amendments:

A total of 3,982 ballots were mailed to eligible producers.

A total of 3064 ballots were returned to the Commission.

A total of 42 ballots were disqualified—late, incomplete or duplicate.

A total of 3022 ballots were verified.

A total of 3015 verified ballots were cast in favor of the amendments.

A total of 7 verified ballots were cast in opposition to the amendments.

Accordingly, notice is hereby provided that of the 3022 verified ballots cast, 99.8%, or 3015, a minimum of two-thirds were in the affirmative.

Therefore, the Commission concludes that the terms of the amendments are approved by producers.

IV. Required Findings of Fact

Pursuant to Compact Article V, Section 12, the Compact Commission hereby finds:

(1) That the public interest continues to be served by establishment of minimum milk prices to dairy farmers under Article IV, as hereby amended.

(2) That the previously established level price of $16.94 (Zone 1) to dairy farmers under Article IV, is unaffected by these amendments, and will continue to assure that producers supplying the New England market receive a price sufficient to cover their costs of production and will elicit an adequate supply of milk for the inhabitants of the regulated area and for manufacturing purposes.

(3) That the major provisions of the order, other than those fixing minimum milk prices, are and continue to be in the public interest and are reasonably designed to achieve the purposes of the order.

(4) That the terms of the proposed amendments are approved by producers pursuant to a producer referendum required by Article V, Section 13.

List of Subjects in 7 CFR Parts 1301, 1304, 1305, 1306, 1307 and 1308

Milk Price support programs.

Codification in Code of Federal Regulations

For reasons set forth in the preamble, the Northeast Dairy Compact Commission amends 7 CFR Parts 1301, 1304, 1305, 1306, 1307 and 1308 as follows:

PART 1301—DEFINITIONS

1. The authority citation for Part 1301 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Amend § 1301.9 to revise paragraph (e) to read as follows:

§ 1301.9 Handler.

Handler means:

* * * * *

(e) Any person who does not operate a plant but who engages in the business of receiving fluid milk products for resale and distributes to retail or wholesale outlets packaged fluid milk products received from any plant described in paragraph (a), (b) or (c) of this section. Any person who as a broker negotiates a purchase or sale of fluid milk products or fluid cream products from or to any pool, partially regulated or nonpool plant, and any person who by purchase or direction causes milk of producers to be picked up at the farm and/or moved to a plant. Persons who qualify as handlers only under this paragraph are not subject to the payment provisions of §§ 1307.3 and 1308.1.

3. Revise § 1301.10 to read as follows:

§ 1301.10 Producer-handler.

Producer-handler means a person who:

(a) Operates a dairy farm and a distributing plant from which there is monthly route disposition in the regulated area during the month;

(b) Receives milk solely from own farm production or receives milk that is fully subject to the pricing and pooling provisions of any Federal order;

(c) Receives at its plant or acquires for route disposition no more than 150,000 pounds of fluid milk products from handlers fully regulated under any Federal order. This limitation shall not apply if the producer-handler's own farm production is less than 150,000 pounds during the month;

(d) Disposes of no other source milk as Class I milk except by increasing the nonfat milk solids content of the fluid milk products; and

(e) Provides proof satisfactory to the compact commission that the care and management of the dairy animals and other resources necessary to produce all Class I milk handled (excluding receipts from handlers fully regulated under any Federal order) and the processing and packaging operations are the producer-handler's own enterprise and at its own risk.

4. Amend section 1301.11 to revise paragraphs (b) introductory text and (b)(1) to read as follows:

§ 1301.11 Producer.

Producer means:

* * * * *

(b) A dairy farmer who produces milk outside of the regulated area that is moved to a pool plant, provided that on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm in every December since 1996, all of that milk was physically moved to a pool plant in the regulated area. Or: to be considered a qualified producer, on more than half of the days on which the handler caused milk to be moved from the dairy farmer's farm during the current month and for five (5) months subsequent to July of the preceding calendar year, all of that milk must have moved to a pool plant, provided that the total amount of milk at a pool plant eligible to qualify producers who did not qualify in every December since 1996, shall not exceed the total bulk receipts of fluid milk products less:

(1) Producers receipts as described in paragraph (a) of this section and producer receipts as described in paragraph (b) of this section who are qualified based on every December since 1996;

* * * * *

5. Revise section 1301.14 to read as follows:

§ 1301.14 Fluid milk product.

(a) Except as provided in paragraph (b) of this section *fluid milk product* means any milk products in fluid or frozen form containing less than nine percent butterfat, that are intended to be used as beverages. Such products include, but are not limited to: Milk, fat-free milk, low fat milk, light milk, reduced fat milk, milk drinks, eggnog and cultured buttermilk, including any such beverage products that are flavored, cultured, modified with added nonfat milk solids, sterilized, concentrated or reconstituted. As used in this Part, the term *concentrated milk* means milk that contains not less than 25.5 percent, and not more than 50 percent, total milk solids.

(b) The term *fluid milk product* shall not include:

(1) Plain or sweetened evaporated milk/skim milk, sweetened condensed milk /skim milk, formulas especially prepared for infant feeding or dietary use (meal replacement) that are packaged in hermetically-sealed containers, any product that contains by weight less than 6.5 percent nonfat milk solids, and whey; and

(2) The quantity of skim milk equivalent in any modified product specified in paragraph (a) of this section that is greater than an equal volume of an unmodified product of the same nature and butterfat content.

6. Revise section 1301.17 to read as follows:

§ 1301.17 Cooperative association.

Cooperative association means any cooperative marketing association of producers which the Secretary of Agriculture of the United States determines is qualified under the provisions of the Capper-Volstead Act, has full authority in the sale of milk of its members and is engaged in marketing milk or milk products for its members. A federation of two or more cooperatives incorporated under the laws of any state will be considered a cooperative association if all member cooperatives meet the requirements of this section.

PART 1304—CLASSIFICATION OF MILK

1. The authority citation for Part 1304 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Amend section 1304.1 to revise paragraph (b)(4)(iv) to read as follows:

§ 1304.1 Classification of milk.

* * * * *

(b) * * *

(4) * * *

(iv) Custards, puddings, pancake mixes, buttermilk biscuit mixes, coatings, batter and similar products;

* * * * *

PART 1305—CLASS PRICE

1. The authority citation for Part 1305 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Amend section 1305.1 to revise paragraph (b)(2) to read as follows:

§ 1305.1 Compact over-order class I price and compact over-order obligation.

* * * * *

(b) * * *

(2) Deduct Class I Price for Suffolk County, Massachusetts.

* * * * *

3. Revise section 1305.2 to read as follows:

§ 1305.2 Announcement of compact over-order class I price and compact over-order obligation.

The compact commission shall announce publicly on or before the 23rd day of each month the Class I over-order price and the compact over-order obligation for the following month.

PART 1306—COMPACT OVER-ORDER PRODUCER PRICE

1. The authority citation for Part 1306 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Revise section 1306.1 to read as follows:

§ 1306.1 Handler's value of milk for computing basic over-order producer price.

For the purpose of computing the basic over-order producer price, the compact commission shall determine for each month the value of milk of each handler with respect to each of the handler's pool plants and of each handler described in § 1301.9(d) of this chapter with respect to milk that was not received at a pool plant, as directed in this section. Any pool plant that does not exceed 150,000 pounds of disposition in the compact regulated area in the month shall not be subject to the compact over-order obligation. The total assessment for each handler is to be calculated by multiplying the pounds of Class I fluid milk products as determined pursuant to § 1304.1(a) of this chapter by the compact over-order obligation.

3. Revise § 1306.2 to read as follows:

§ 1306.2 Partially regulated plant operator's value of milk for computing basic over-order producer price.

For the purpose of computing the basic over-order producer price, the compact commission shall determine for each month the value of milk disposition in the regulated area by the operator of a partially regulated plant as directed in this section. Any partially regulated plant that does not exceed 150,000 of disposition in the compact regulated area in the month shall not be subject to the compact over-order obligation. The total assessment for each handler is to be calculated by multiplying the pounds of Class I fluid milk products as determined pursuant to § 1304.1(a) of this chapter by the compact over-order obligation.

PART 1307—PAYMENTS FOR MILK

1. The authority citation for Part 1307 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Revise the introductory text of § 1307.2 to read as follows:

§ 1307.2 Handlers' producer-settlement fund debits and credits.

On or before the 13th day after the end of the month, the compact

commission shall render a statement to each handler showing the amount of the handler's producer-settlement fund debit or credit, as calculated in this section.

* * * * *

3. Revise 1307.3 to read as follows:

§ 1307.3 Payments to and from the producer-settlement fund.

(a) On or before the 15th day after the end of the month, each handler shall pay to the compact commission the handler's producer-settlement fund debit for the month as determined under Sec. 1307.2(a).

(b) On or before the 16th day after the end of the month, the compact commission shall pay to each handler the handler's producer-settlement fund credit for the month as determined under Sec. 1307.2(b). If the unobligated balance in the producer-settlement fund is insufficient to make such payments, the compact commission shall reduce uniformly such payments and shall complete them as soon as the funds are available.

4. Revise section 1307.5 paragraph (a) to read as follows:

§ 1307.5 Payments to producers.

(a) For milk received during the month, payment shall be made so that it is received by each producer no later than the day after the payment date required in section 1307.3(b). Each handler shall make payment to each producer for the milk received from him during the month at not less than the basic over-order producer price per hundredweight computer under Sec. 1306.3. If the handler has not received full payment for the compact commission under Sec. 1307.3(b) by the date payments are due under this paragraph, he may reduce pro rata his payments to producers by an amount not to exceed such underpayment. Such payments shall be completed after receipt of the balance due from the compact commission by the next following date for making payments under this paragraph.

* * * * *

5. Revise section 1307.7 to read as follows:

§ 1307.7 Adjustment of accounts.

(a) Whenever the compact commission verification of a handler's reports or payments discloses an error in payments to or from the compact commission under Sec. 1307.3 or Sec. 1308.1, the compact commission shall promptly issue to the handler a charge bill or a credit, as the case may be, for the amount of the error. Adjustment charge bills issued during the period beginning with the 10th day of the prior month and ending with the 9th day of the current month shall be payable by the handler to the compact commission on or before the 15th day of the current month. Adjustment credits issued during that period shall be payable by the compact commission to the handler on or before the 16th day of the current month.

(b) Whenever the compact commission's verification of a handler's payments discloses payment to a producer or a cooperative association of an amount less than is required by Sec. 1307.4, the handler shall make payment of the balance due the producer not later than the 16th day after the end of the month in which the handler is notified of the deficiency.

6. Revise section 1307.8 to read as follows:

§ 1307.8 Charges on overdue accounts.

Any unpaid obligation due the compact commission from a handler pursuant to the provisions of 7 CFR parts 1307 and 1308 shall be increased 1.0 percent each month beginning with the day following the date such obligation was due under the regulation. Any remaining amount due shall be increased at the same rate on the corresponding day of each succeeding month until paid. The amounts payable pursuant to this section shall be computed monthly on each unpaid obligation and shall include any unpaid charges previously computed pursuant to this section. The late charges shall accrue to the administrative assessment fund. For the purpose of this section, any obligation that was determined at a date later than prescribed by 7 CFR parts 1307 and 1308 because of a handler's failure to submit a report to the compact commission when due shall be considered to have been payable by the date it would have been due if the report had been filed when due.

7. Add a new section 1307.9 to read as follows:

§ 1307.9 Dates.

If a date required for payment contained in 7 CFR parts 1307 and 1308 falls on a Saturday, Sunday, or national holiday, such payment will be due on the next day that the compact commission office is open for public business.

PART 1308—ADMINISTRATIVE ASSESSMENT

1. The authority citation for Part 1308 continues to read as follows:

Authority: 7 U.S.C. 7256.

2. Revise the introductory text of section 1308.1 to read as follows:

§ 1308.1 Assessment for pricing regulations administration.

On or before the 15th day after the end of the month, each handler shall pay to the compact commission his pro rata share of the expense of administration of this pricing regulation. The payment shall be at the rate of 3.2 cents per hundredweight. The payment shall apply to:

* * * * *

Dated: March 21, 2000.

Kenneth M. Becker,

Executive Director.

[FR Doc. 00–7413 Filed 3–24–00; 8:45 am]

BILLING CODE 1650–01–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 130

[Docket No. 98–003–2]

Veterinary Services User Fees; Export Certificate Endorsements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are establishing a maximum user fee for the endorsement of export certificates for a single shipment of animals or birds that require verification of tests or vaccinations. Prior to this final rule, user fees for these endorsements were based on the number of animals or birds listed on the certificate and the number of tests or vaccinations that the importing country required for those animals or birds. We are taking this action in response to requests from industry organizations and from our field and port employees to reconsider the fairness of these user fees for large export shipments of animals. The maximum user fee will result in lower user fees for large shipments, yet still recover the full cost of providing this service.

EFFECTIVE DATE: April 26, 2000.

FOR FURTHER INFORMATION CONTACT: Ms. Donna Ford, Section Head, Financial Systems and Services Branch, BASE, MRPBS, APHIS, 4700 River Road Unit 54, Riverdale, MD 20737–1232; (301) 734–8351.

SUPPLEMENTARY INFORMATION:

Background

User fees to reimburse the Animal and Plant Health Inspection Service (APHIS) for the costs of providing veterinary diagnostic services and import- and export-related services for live animals and birds and animal products are contained in 9 CFR part 130 (referred to below as the regulations). Section 130.20 lists user fees we charge for endorsing certificates for animals and birds exported from the United States. Importing countries often require these certificates to show that an animal or bird has tested negative to specific animal diseases or that an animal or bird has not been exposed to specific animal diseases. The endorsement indicates that APHIS has reviewed a certificate and believes it to be accurate and reliable. The steps associated with endorsing an export certificate may include reviewing supporting documentation; confirming that the importing country's requirements have been met; verifying laboratory test results for each animal if tests are required; reviewing any certification statements required by the importing country; and endorsing, or signing, the certificates. Our user fees are intended to cover all of the costs associated with endorsing the certificates.

On September 23, 1999, we published in the **Federal Register** (64 FR 51477–51479, Docket No. 98–003–1) a proposal to amend the regulations by establishing a maximum user fee for the endorsement of export certificates for a single shipment of animals or birds that require verification of tests or vaccinations. User fees for these endorsements were based on the number of animals or birds listed on the certificate and the number of tests or vaccinations that the importing country required for those animals or birds. We proposed to establish a maximum user fee of 12 times the hourly rate listed in § 130.21 of the regulations, since large shipments rarely take more than 12 hours to verify. The proposed maximum user fee was intended to lower user fees for large shipments, yet still allow APHIS to recover the full cost of providing this service.

We solicited comments concerning our proposal for 60 days ending November 22, 1999. We did not receive any comments. Therefore, for the reasons given in the proposed rule, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

We are revising our user fees to implement a maximum user fee for the endorsement of export certificates that require the verification of tests or vaccinations for the animals or birds on the certificate. The maximum user fee will be 12 times the hourly rate user fee listed in § 130.21 of the regulations.

User fees for the endorsement of export certificates will continue to be calculated based on the current user fees. The maximum user fee will be used whenever the calculated user fee is higher than the maximum user fee. This will benefit exporters with large shipments. The following table compares the maximum user fee to the charges for endorsing export certificates for large shipments based on current user fees.

Number of tests or vaccinations	Current user fee	Current charge for large shipment (300 animals)	Proposed maximum user fee [1]
1 or 2	$52.50 (first animal) $3.00 (each additional)	$949.50	$672
3 to 6	64.75 (first animal) 5.00 (each additional)	1,559.75	672
7 or more	75.75 (first animal) 6.00 (each additional)	1,869.75	672

[1] Based on 12 times $56 (the current hourly rate user fee).

In fiscal year 1998, APHIS issued 6,245 export certificates that required the verification of tests or vaccinations. Of these, only 80 (1.28 percent) would have benefitted from the maximum user fee. Using the maximum user fee will cost less than the current user fees for any export certificates for a single shipment of:

- 208 or more animals with 1 or 2 tests,
- 123 or more animals with 3 to 6 tests, or
- 101 or more animals with 7 or more tests.

The maximum user fee could affect some exporters of live animals or birds. Any exporter of live animals or birds whose total sales are less than $5 million annually is a small entity according to the Small Business Administration's criteria. The number of entities that export live animals or birds and that would qualify as small entities under this definition cannot be determined. Data from the 1995 Bureau of the Census indicates the majority of agricultural entities that deal in less valuable animals, such as grade animals, can be considered small entities. This may not be the case for entities dealing exclusively in more valuable animals, such as purebred or registered animals.

This rule should have a minimal effect on exporters, whether small or large. Only 1.28 percent of the export certificates requiring the verification of tests or vaccinations that APHIS issued in FY 1998 would have been covered by the maximum user fee for those endorsements. For those entities that do experience a change in the amount, the difference will be a lower charge for the endorsement.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Regulatory Reform

This action is part of the President's Regulatory Reform Initiative, which,

among other things, directs agencies to remove obsolete and unnecessary regulations and to find less burdensome ways to achieve regulatory goals.

List of Subjects in 9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we are amending 9 CFR part 130 as follows:

PART 130—USER FEES

1. The authority citation for part 130 continues to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.2(d).

2. In § 130.20, paragraph (b)(1) introductory text is revised to read as follows:

§ 130.20 User fees for endorsing export health certificates.

* * * * *

(b)(1) User fees for the endorsement of export health certificates that require the verification of tests or vaccinations are listed in the following table. The user fees apply to each export health certificate[5] endorsed for animals and birds depending on the number of animals or birds covered by the certificate and the number of tests required. However, there will be a maximum user fee of 12 times the hourly rate user fee listed in § 130.21(a) of this part for any single shipment. The person for whom the service is provided and the person requesting the service are jointly and severally liable for payment of these user fees in accordance with the provisions in §§ 130.50 and 130.51.

* * * * *

Done in Washington, DC, this 21st day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–7447 Filed 3–24–00; 8:45 am]

BILLING CODE 3410–34–P

[5] An export health certificate may need to be endorsed for an animal being exported from the United States of the country to which the animal is being shipped requires one. APHIS endorses export health certificates as a service.

DEPARTMENT OF ENERGY

10 CFR Part 810

RIN 1992–AA24

Assistance to Foreign Atomic Energy Activities

AGENCY: Office of Defense Nuclear Nonproliferation, U.S. Department of Energy.

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) amends its regulations concerning unclassified assistance to foreign atomic energy activities. The amendments make explicit DOE's export control jurisdiction over transfers of technology and services to foreign activities relating to production of special nuclear material (SNM) by means of accelerator-driven subcritical assembly systems (particle accelerators operating in conjunction with subcritical assemblies); revise the list of countries for which all assistance controlled by the regulations requires specific authorization; and substitute current addressees for submitting reports and requests.

EFFECTIVE DATE: This final rule is effective April 26, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Zander Hollander, Nuclear Transfer and Supplier Policy Division, NN–43, Office of Arms Control and Nonproliferation, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585: Telephone (202) 586–2125; or Mr. Robert Newton, Office of General Counsel, GC–53, U.S. Department of Energy, 1000 Independence Ave., SW, Washington, DC 20585: Telephone (202) 586–0806.

SUPPLEMENTARY INFORMATION:

1. Background

DOE Regulations 10 CFR part 810 implements section 57b(2) of the Atomic Energy Act of 1954, as amended by section 302 of the Nuclear Non-Proliferation Act of 1978 (NNPA) (42 U.S.C. 2077). These sections require that U.S. persons who engage directly or indirectly in the production of SNM outside the United States be authorized to do so by the Secretary of Energy. As explained in a notice of proposed rulemaking published in the **Federal Register** on July 2, 1999, 64 FR 35959, there has been rapid progress in practical applications of accelerator systems which, until recently, were almost entirely devoted to fundamental scientific research. For example, DOE currently is researching accelerator production of tritium (APT) and accelerator transmutation of nuclear waste (ATW). The potential use of accelerator-driven subcritical assembly systems to produce SNM places exports of technology and services for these systems squarely within the jurisdiction of section 57b(2) of the Atomic Energy Act. Accordingly, to conform part 810 to these technological advances, DOE is revising the rule to publicly assert its until now implicit jurisdiction over exports of technology and services that assist in the production of SNM by means of accelerator-driven subcritical assembly systems and their components.

DOE intends part 810 to apply to accelerator-driven subcritical assembly system activities only when the purpose is SNM (plutonium or uranium-233) production or when the activities will result in significant SNM production. While some accelerators devoted to basic scientific research and development activities may, technically, also be capable of configuration to produce SNM, DOE does not intend to exert export control authority simply on the basis of capability. Rather, DOE intends to be guided by the following policy: Specific authorization by the Secretary is required for the export to any country of technology or services for production or processing of SNM by means of an accelerator-driven subcritical assembly system, or when a U.S. provider of assistance knows or has reason to know that an accelerator-driven subcritical assembly system will be used for the production or processing of SNM. When the intended use for production of SNM is not publicly announced, the U.S. provider may ascertain the intended use from participants in the project or from the U.S. Government or other sources. However, Part 810 authorization is required only when the subcritical assembly is capable of continuous operation above five megawatts thermal. This is the same threshold of control DOE applies to exports of assistance to research and test reactors; as with small reactors, subcritical assemblies below this capability do not pose significant proliferation concern.

DOE part 810 jurisdiction applies to assistance to production of SNM (plutonium or uranium-233) with an accelerator-driven subcritical assembly system whether the assistance is given inside or outside the United States. DOE assertion of part 810 jurisdiction over assistance should not be construed as inhibiting a U.S. provider of assistance from participating in multinational or other non-U.S. accelerator activities when the intent is not to produce SNM, but rather for scientific, medical, or other non-SNM objectives. Therefore, when a U.S. provider has no reason to believe that accelerator production of SNM is the objective, the U.S. provider needs no Part 810 authorization. The same is true for U.S. hosts of foreign participation in scientific or other non-SNM accelerator activities in the United States. Therefore, unless intending to pursue accelerator-driven subcritical assembly system technologies for the production of SNM outside the United States or to allow foreign scientists to participate in such activities in the United States, members of the U.S. accelerator community—individual scientists, universities, commercial firms, research and development institutions, and other enterprises—do not require part 810 authorization.

The section 810.8 list of countries has been revised to include all non-nuclear-weapon states that do not have full-scope safeguards agreements with the International Atomic Energy Agency (IAEA) and to reflect changes in world conditions since the last time the list was published. Since existence of an IAEA full-scope safeguards agreement is an important factor in making part 810 determinations, DOE believes applicants should be aware of the countries lacking such agreements.

2. Regulatory Changes

The following changes are made to Part 810:

A. Section 810.3 Definitions. Definitions for "non-nuclear-weapon state," "accelerator-driven subcritical assembly system," "production accelerator," and "subcritical assembly" are added.

B. Section 810.4 Communications. A new addressee for communications concerning these regulations is given.

C. Section 810.5 Interpretations. The title of the DOE office providing advice is changed.

D. Section 810.7 Generally authorized activities. Assistance to "accelerator-driven subcritical assembly systems" and certain research and test reactors are added to the exclusions from this general authorization.

E. Section 810.8 Activities requiring specific authorization. Specific authorization is required for assistance relating to accelerator-driven subcritical assembly systems used or intended to be used for the processing, use, or production of SNM, and subcritical assemblies capable of continuous operation above five megawatts thermal. In addition, the list of countries in this section is revised and countries lacking full-scope safeguards agreements are noted.

F. Section 810.13 Reports. The title of the office to which reports should be sent is changed.

G. Section 810.16 Effective date and savings clause. The effective date is changed but the savings clause continues to state that the revision does not affect previously granted specific authorizations or generally authorized activities for which the contracts, purchase orders, or licensing arrangements are already in effect on the date of publication of the final rule; also, that persons engaging in activities generally authorized under the present regulations but requiring specific authorization under the revision must request such specific authorization within 90 days but may continue their activities until DOE acts on the request.

3. Statutory Requirements

Pursuant to section 57b of the Atomic Energy Act as amended by the NNPA, with the concurrence of the Department of State and after consultations with the Departments of Defense and Commerce, and the Nuclear Regulatory Commission, the Secretary of Energy has determined that to authorize this revision of 10 CFR Part 810 will not be inimical to the interests of the United States.

4. Procedural Matters

A. Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs of the Office of Management and Budget.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601–612, requires that an agency prepare an initial regulatory flexibility analysis for any rule that requires a general notice of proposed rulemaking and that would have a significant economic effect on small entities. A final regulatory flexibility analysis must be prepared and made available when a final rule is published. These requirements do not apply if the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605.

In the notice of proposed rulemaking, DOE determined the revisions to Part 810 would codify existing DOE export control jurisdiction and U.S. Government obligations. Therefore, DOE certified that the proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. DOE did not receive any comments on the certification.

C. Review Under the National Environmental Policy Act

The rule was reviewed under the National Environmental Policy Act of 1969, Pub. L. 91–190 (42 U.S.C. 4321 *et seq.*), Council on Environmental Quality Regulations (40 CFR Parts 1500–08), and DOE environmental regulations (10 CFR Part 1021). As stated above, the revision to this rule conforms the rule to recent technological advances. Therefore, DOE has concluded that this rule is covered by Categorical Exclusion A5 "Rulemaking, interpreting or amending an existing rule or regulation that does not change the environmental effect of the rule or regulation being amended." As a result, this rule does not constitute a major Federal action significantly affecting the quality of the human environment. Accordingly, no environmental impact statement is required.

D. Review Under Executive Order 13132

Executive Order 13132 (42 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating or implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined today's rule and has determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

E. Review Under Executive Order 12988

With respect to review of existing regulations and promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform," (61 FR 4729, February 7, 1996), imposes on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden

reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effects, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

F. Review Under the Paperwork Reduction Act

The information collections in this rule are exempt from review by the Office of Management and Budget and from public comment for reasons of national security as provided for in Executive Orders 12035 and 12333 issued under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

G. Review Under the Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

5. Review of Comments

Written comments were received from one interested person, an official of a private sector technology firm. These comments were made available for public inspection in the DOE Reading Room. The commenter said that accelerators are not necessarily equivalent to reactors either in the mechanism for SNM production, the power requirements to produce radioactive material, the chemistry sophistication to extract plutonium from uranium fuel, or the vulnerability to counterproliferation measures. Therefore, the commenter suggested that the Final Rule for accelerators should take into account these significant differences. Specifically, the commenter recommended that:

- A limit be placed on accelerator beam current or beam power as well as the fission power (for a 1 GeV proton accelerator, the commenter suggested that 0.5 mA would be appropriate).
- The proposed 5 MWt control threshold for subcritical assemblies be reduced sharply because, the commenter said, it is possible to produce significant SNM without release of significant fission energy with processes entirely different from those of a reactor by optimizing neutron absorption.

With respect to the first recommendation, DOE gave extensive consideration to establishing control thresholds on accelerators based on accelerator beam energy and beam current. While DOE believes that this approach has technical merit, a significant drawback is that it would establish Part 810 control jurisdiction over all accelerator activities and facilities meeting the technical parameters, even those engaged strictly in benign scientific research, or industrial or medical applications and that involve no source or special nuclear material. DOE believes that such an approach would unnecessarily impede international cooperation on accelerator activities of a wholly benign nature. Therefore, DOE's approach eschews technical parameters on accelerator beam energy and beam current. Rather, it targets all accelerator activities and facilities used or intended for the processing, use, or production of SNM, regardless of accelerator beam energy and current.

With respect to the second recommendation, DOE believes that extending the existing threshold of control for reactors, which is based on total thermal power, is appropriate for subcritical assemblies. No known accelerator-driven subcritical assembly of source material can produce fissile material (SNM) from fertile material by neutron capture without attendant fission in the produced fissile material. If the system is operated so that, as the commenter suggests, "the fraction of a given accumulation of plutonium in the uranium is much higher than in a reactor," then there is even more reason to expect substantial fission energy release. DOE agrees that accelerator-driven systems differ significantly from reactors, but both liberate comparable energy while producing SNM in systems of interest to a potential proliferant. DOE's conclusions on this score are based on technical studies conducted at three national laboratories. The choice of power limit is based upon realistic calculations for both reactors and accelerator-driven subcritical assemblies.

In response to the commenter, for this final rule, DOE is revising proposed section 810.8(c)(5) to change the wording "accelerator-driven subcritical assembly systems" to "subcritical assemblies." This clarification better reflects DOE's original intent, which is that the 5 MWt power threshold applies to the operating level of the subcritical assembly itself, not to the power of the accelerator beam. Further, the 5 MWt power threshold includes all sources of power to and within the subcritical assembly device—both external (spallation neutrons) and internal (fission neutrons).

List of Subjects in 10 CFR Part 810

Foreign relations, Nuclear energy, Reporting and recordkeeping requirements.

Issued in Washington, DC, March 10, 2000.

Rose Gottemoeller,

Acting Deputy Administrator for Defense Nuclear Nonproliferation.

For reasons set out in the preamble, Chapter III of Title 10 of the Code of Federal Regulations is amended as follows:

PART 810—ASSISTANCE TO FOREIGN ATOMIC ENERGY ACTIVITIES

1. The authority citation for Part 810 continues to read as follows:

Authority: Secs. 57, 127, 128, 129, 161, and 223, Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978, Pub. L. 95–242, 68 Stat. 932, 948, 950, 958, 92 Stat. 126, 136, 137, 138 (42 U.S.C. 2077, 2156, 2157, 2158, 2201, 2273); Sec. 104 of the Energy Reorganization Act of 1974, Pub. L. 93–438; Sec 301, Department of Energy Organization Act, Pub. L. 95–91.

2. Section 810.3 is amended by adding new definitions of "accelerator-driven subcritical assembly system," "non-nuclear-weapon state," "production accelerator," and "subcritical assembly," in alphabetical order, to read as follows:

§ 810.3 Definitions.

* * * * *

Accelerator-driven subcritical assembly system is a system comprising a "subcritical assembly" and a "production accelerator" and which is designed or used for the purpose of producing or processing special nuclear material (SNM) or which a U.S. provider of assistance knows or has reason to know will be used for the production or processing of SNM. In such a system, the "production accelerator" provides a source of neutrons used to effect SNM production in the "subcritical assembly."

* * * * *

Non-nuclear-weapon state is a country not recognized as a nuclear-weapon state by the NPT (i.e., states other than the United States, Russia, the United Kingdom, France, and China).

* * * * *

Production accelerator is a particle accelerator designed and/or intended to be used, with a subcritical assembly, for the production or processing of SNM or which a U.S. provider of assistance knows or has reason to know will be used for the production or processing of SNM.

* * * * *

Subcritical assembly is an apparatus containing source material or SNM designed or used to produce a nuclear fission chain reaction that is not self-sustaining.

* * * * *

3. Section 810.4(a) is revised to read as follows:

§ 810.4 Communications.

(a) All communications concerning the regulations in this part should be addressed to: U.S. Department of Energy, Washington, DC 20585. Attention: Director, Nuclear Transfer and Supplier Policy Division, NN–43, Office of Arms Control and Nonproliferation. Telephone: (202) 586–2331.

* * * * *

4. Section 810.5 is revised to read as follows:

§ 810.5 Interpretations.

A person may request the advice of the Director, Nuclear Transfer and Supplier Policy Division (NN–43), on whether a proposed activity falls outside the scope of this part, is generally authorized under § 810.7, or requires specific authorization under § 810.8; however, unless authorized by the Secretary of Energy, in writing, no interpretation of the regulations in this part other than a written interpretation by the General Counsel is binding upon the Department. When advice is requested from the Director, Nuclear Transfer and Supplier Policy Division, or a binding, written determination is requested from the General Counsel, a response normally will be made within 30 days and, if this is not feasible, an interim response will explain the delay.

5. Section 810.7(h) is revised to read as follows:

§ 810.7 Generally authorized activities.

* * * * *

(h) Otherwise engaging directly or indirectly in the production of SNM outside the United States in ways that:

(1) Do not involve any of the countries listed in § 810.8(a); and

(2) Do not involve production reactors, accelerator-driven subcritical assembly systems, enrichment, reprocessing, fabrication of nuclear fuel containing plutonium, production of heavy water, or research reactors, or test reactors, as described in § 810.8 (c)(1) through (6).

6. Section 810.8 is revised to read as follows:

§ 810.8 Activities requiring specific authorization.

Unless generally authorized by § 810.7, a person requires specific authorization by the Secretary of Energy before:

(a) Engaging directly or indirectly in the production of special nuclear material in any of the countries following. Countries marked with an asterisk (*) are non-nuclear-weapon states that do not have full-scope IAEA safeguards agreements in force.

Afghanistan
Albania
Algeria
Andorra*
Angola*
Armenia
Azerbaijan*
Bahrain*
Belarus
Benin*
Botswana*
Burkina Faso*
Burma (Myanmar)
Burundi*
Cambodia*
Cameroon*
Cape Verde*
Central African Republic*
Chad*
China, People's Republic of Comoros*
Congo* (Zaire)
Cuba*
Djibouti*
Equatorial Guinea*
Eritrea*
Gabon*
Georgia*
Guinea*
Guinea-Bissau*
Haiti*
India*
Iran
Iraq*
Israel*
Kazakhstan
Kenya*
Korea, People's Democratic Republic of*
Kuwait*
Kyrgyzstan*
Laos*
Liberia*
Libya
Macedonia
Mali*
Marshall Islands*
Mauritania*
Micronesia*
Moldova*
Mongolia
Mozambique*
Niger*
Oman*
Pakistan*
Palau*
Qatar*
Russia
Rwanda*
Sao Tome and Principe*
Saudi Arabia*
Seychelles*
Sierra Leone*
Somalia*
Sudan
Syria
Tajikistan*
Tanzania*
Togo*
Turkmenistan*
Uganda*
Ukraine
United Arab Emirates*
Uzbekistan
Vanuatu*
Vietnam
Yemen*
Yugoslavia

(b) Providing sensitive nuclear technology for an activity in any foreign country.

(c) Engaging in or providing assistance or training in any of the following activities with respect to any foreign country.

(1) Designing production reactors, accelerator-driven subcritical assembly systems, or facilities for the separation of isotopes of source or SNM (enrichment), chemical processing of irradiated SNM (reprocessing), fabrication of nuclear fuel containing plutonium, or the production of heavy water;

(2) Constructing, fabricating, operating, or maintaining such reactors, accelerator-driven subcritical assembly systems, or facilities;

(3) Designing, constructing, fabricating, operating or maintaining components especially designed, modified or adapted for use in such reactors, accelerator-driven subcritical assembly systems, or facilities;

(4) Designing, constructing, fabricating, operating or maintaining major critical components for use in such reactors, accelerator-driven subcritical assembly systems, or production-scale facilities; or

(5) Designing, constructing, fabricating, operating, or maintaining research reactors, test reactors or subcritical assemblies capable of continuous operation above five megawatts thermal.

(6) Training in the activities of paragraphs (c)(1) through (5) of this section.

7. Section 810.10 (a) is revised to read as follows:

§ 810.10 Grant of specific authorization.

(a) Any person proposing to provide assistance for which § 810.8 indicates specific authorization is required may apply for the authorization to the U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, Attention: Director, Nuclear Transfer and Supplier Policy Division, NN–43, Office of Arms Control and Nonproliferation.

* * * * *

8. Section 810.13(g) is revised to read as follows:

§ 810.13 Reports.

* * * * *

(g) All reports should be sent to: U.S. Department of Energy, National Nuclear Security Administration, Washington, DC 20585, Attention: Director, Nuclear Transfer and Supplier Policy Division, NN–43, Office of Arms Control and Nonproliferation.

9. Section 810.16 is revised as follows:

§ 810.16 Effective date and savings clause.

Except for actions that may be taken by DOE pursuant to § 810.11, the regulations in this part do not affect the validity or terms of any specific authorizations granted under regulations in effect before April 26, 2000 (and contained in the 10 CFR, part 500 to end, edition revised as of January 1, 2000) or generally authorized activities under those regulations for which the contracts, purchase orders, or licensing arrangements were already in effect. Persons engaging in activities that were generally authorized under regulations in effect before April 26, 2000, but that require specific authorization under the regulations in this part, must request specific authorization by July 25, 2000 but may continue their activities until DOE acts on the request.

[FR Doc. 00–7181 Filed 3–24–00; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM165, Special Conditions No. 25–158–SC]

Special Conditions: McDonnell Douglas DC–9–30 Series Airplanes; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for McDonnell Douglas DC–9–30 series airplanes modified by Lockheed Martin Aircraft Center. These airplanes will have novel and unusual design features when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. These airplanes will utilize electronic systems that perform critical functions. The applicable type certification regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions provide the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the existing airworthiness standards.

EFFECTIVE DATE: March 13, 2000.

FOR FURTHER INFORMATION CONTACT: Connie Beane, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2796; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On April 20, 1998, Lockheed Martin Aircraft Center, Inc. (LMAC), 244 Terminal Road, Greenville, NC 29605, applied for a supplemental type certificate (STC) to modify McDonnell Douglas DC–9–30 series airplanes listed on Type Certificate A6WE. The modification incorporates the installation of a Rockwell-Collins FDS–255 Electronic Flight Instrument System, consisting of an electronic attitude display, an electronic horizontal situation indicator, and a display controller for each pilot. This advanced system uses electronics to a far greater extent than the original mechanical attitude displays and may be more susceptible to electrical and magnetic interference. This disruption of signals could result in loss of attitude display or present misleading attitude information to the pilot.

In addition, on August 18, 1998, LMAC applied for an additional STC to modify McDonnell Douglas DC–9–30 series airplanes listed on Type Certificate A6WE. The modification incorporates the installation of an Innovative Solution & Support electronic air data instrument system, which consists of an electronic airspeed display, an electronic altimeter, and a digital air data computer for each pilot. This advanced system uses electronics to a far greater extent than the original pneumatic pitot-static instruments and may be more susceptible to electrical and magnetic interference. This disruption of signals could result in loss of air data display or present misleading air data information to the pilot.

Type Certification Basis

Under the provisions of 14 CFR 21.101, LMAC must show that the McDonnell Douglas DC–9–30 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. A6WE, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the modified McDonnell Douglas DC–9–30 series airplanes includes CAR 4b, dated December 31, 1953, with Amendments 4b–1 through 4b–16, as amended by Type Certificate Data Sheet (TCDS) A6WE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, CAR 4b, as amended) do not contain adequate or appropriate safety standards for the McDonnell Douglas DC–9–30 series airplanes because of novel or unusual design features, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model DC–9–30 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with 14 CFR 11.49, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should LMAC apply at a later date for design change approval to modify any other model already

included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The modified McDonnell Douglas DC–9–30 series airplanes will incorporate an electronic attitude display system and an electronic air data system, which were not available at the time of certification of these airplanes, both of which perform critical functions. These systems may be vulnerable to HIRF external to the airplane.

Discussion

There is no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground-based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are needed for the McDonnell Douglas DC–9–30 series airplanes. These special conditions require that new electrical and electronic systems, such as the electronic attitude and air data display systems that perform critical functions, be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of HIRF.

High-Intensity Radiated Fields

With the trend toward increased power levels from ground-based transmitters, plus the advent of space and satellite communications coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of electromagnetic energy to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraph 1, OR 2 below:

1. A minimum threat of 100 volts rms per meter electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz ...	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz ...	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz ...	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz ...	2000	200
18 GHz–40 GHz ...	600	200

The field strengths are expressed in terms of peak of the root-mean-square (rms) over the complete modulation period.

The threat levels identified above are the result of an FAA review of existing studies on the subject of HIRF in light of the ongoing work of the Electromagnetic Effects Harmonization Working Group of the Aviation Rulemaking Advisory Committee.

Applicability

As discussed above, these special conditions are applicable initially to the McDonnell Douglas DC–9–30 series airplanes modified by LMAC. Should LMAC apply at a later date for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Discussion of Comments

Notice of proposed special conditions No. 25–99–09-SC was published in the **Federal Register** on December 3, 1999 (64 FR 67804). One commenter responded, expressing support for the special conditions. The special conditions are therefore adopted as proposed.

Conclusion

This action affects only certain novel or unusual design features on the McDonnell Douglas DC–9–30 series airplanes modified by LMAC. It is not a rule of general applicability and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for McDonnell Douglas DC–9–30 series airplanes modified by Lockheed Martin Aircraft Center.

1. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high intensity radiated fields.

2. For the purpose of these special conditions, the following definition applies: *Critical Functions.* Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Issued in Renton, Washington, on March 13, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–7495 Filed 3–24–00; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–311–AD; Amendment 39–11649; AD 95–19–04 R1]

RIN 2120–AA64

Airworthiness Directives; Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; rescission.

SUMMARY: This amendment rescinds an existing Airworthiness Directive (AD), applicable to certain Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C airplanes. That AD currently requires installation of a placard on the instrument panel in the cockpit to advise the flightcrew that the Omega navigation system may be inoperative at certain engine speeds. That AD also provides for an optional installation of certain band reject filters, which eliminates the need for the placard. The requirements of that AD were intended to prevent excessive deviation from the intended flight path due to loss of navigation signals, which could result in a potentially low-fuel condition or a traffic conflict. Since the issuance of that AD, use of the Omega navigation system has been permanently discontinued; therefore, the original unsafe condition no longer exists.

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: C. Dale Bleakney, Aerospace Engineer, Flight Test Branch, ACE–117W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: On September 5, 1995, the Federal Aviation Administration (FAA) issued AD 95–19–04, amendment 39–9365 (60 FR 47265, September 12, 1995), applicable to certain Learjet Model 35, 35A, 36, 36A, 55, 55B, and 55C airplanes. That AD requires installation of a placard on the instrument panel in the cockpit to advise the flightcrew that the Omega navigation system may be inoperative at certain engine speeds. That AD also provides for an optional installation of certain band reject filters, which eliminates the need for the placard. That action was prompted by reports of loss of certain navigation signals during extended over-water operation. That condition, if not corrected, could result in excessive deviation from the intended flight path due to loss of navigation signals, and consequent potential low-fuel condition or a traffic conflict.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received in response to the proposal.

Conclusion

After careful review of the available data, the FAA has determined that air safety and the public interest require the rescission of the rule as proposed.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Rescission

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding an airworthiness directive removing amendment 39–9365 to read as follows:

95–19–04 R1 Learjet: Amendment 39–11649. Docket No. 99–NM–311–AD. Rescinds AD 95–19–04, Amendment 39–9365.

Applicability: Model 35, 35A, 36, 36A, 55, 55B, and 55C airplanes; equipped with Global Wulfsburg GNS 500, GNS–1000, and GNS–X Flight Management Systems; certificated in any category.

This rescission is effective March 27, 2000.

Issued in Renton, Washington, on March 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7335 Filed 3–24–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–AWA–3]

RIN 2120–AA66

Revocation of the Sacramento McClellan Air Force Base (AFB) Class C Airspace Area, Establishment of the Sacramento McClellan AFB Class E Surface Area; and Modification of the Sacramento International Airport Class C Airspace Area; CA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule revokes the Sacramento McClellan AFB, CA, Class C airspace area, establishes Class E airspace at Sacramento McClellan AFB, CA, and modifies the Sacramento International Airport, CA, Class C airspace area. Specifically, the FAA is revoking the Sacramento McClellan AFB Class C airspace area due to a reduction in the number of aircraft operations at McClellan AFB. This action also establishes a Class E surface area to provide controlled airspace for the protection of instrument approach operations to McClellan AFB. In addition, this action modifies the Sacramento International Airport Class C airspace area to provide additional airspace for the management of aircraft operations to and from the Sacramento International Airport. The FAA is making these changes to enhance safety, reduce the risk of midair collision, and improve the management of aircraft operations in the Sacramento terminal airspace area.

EFFECTIVE DATE: 0901 UTC, September 7, 2000.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

As announced in the **Federal Register** on October 13, 1998 (63 FR 54637), a public meeting was held on November 17, 1998, at Sacramento McClellan AFB, CA. The purpose of this meeting was to provide airspace users with an opportunity to provide their views, recommendations and comments regarding the FAA's planned modification to the Sacramento, CA, terminal airspace area. Those attending the meeting expressed general support for the planned modification.

On December 2, 1999, the FAA published a notice (64 FR 67525) proposing to revoke the McClellan AFB Class C airspace area, establish Class E airspace in its place, and modify the Sacramento International Class C airspace area. Interested parties were invited to participate in this rulemaking effort by submitting comments on the proposal to the FAA. In the ensuing comment period, which closed on January 17, 2000, the FAA received no comments on the proposed action.

The Rule

This action amends 14 CFR part 71 by revoking the Sacramento McClellan AFB, CA, Class C airspace area and establishing a Class E surface area at Sacramento McClellan AFB, CA. The FAA is taking this action because the number of aircraft operations at McClellan AFB have decreased significantly as a result of the permanent closure of the airport traffic control tower (ATCT). The United States Air Force closed McClellan AFB tower on October 1, 1998, as part of its Base Realignment and Closing process. McClellan AFB is scheduled for closure July 2001. Remaining aircraft operations are expected to decline with the closure of McClellan AFB. Thus, the FAA is replacing the Sacramento McClellan AFB Class C airspace area with a Class E surface area to provide controlled airspace for the protection of instrument approach operations to McClellan AFB.

This amendment to 14 CFR part 71 also modifies the Sacramento International Airport Class C airspace area by expanding its eastern boundary. This modification will ensure that the airspace overlying the Rio Linda airport, located in the revoked McClellan AFB Class C airspace area, retains Class C airspace protection. This is necessary to maintain the safety level previously afforded by part of the McClellan Class C airspace area.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

The coordinates for this airspace docket are based on North American Datum 83. Class C and Class E airspace designations are published, respectively, in paragraphs 4000 and 6002 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class C and E airspace designations listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends part 71 of Title 14, Code of Federal Regulations as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 4000—Subpart C—Class C Airspace.

* * * * *

AWP CA C Sacramento, McClellan AFB, CA [Removed]

* * * * *

AWP CA C Sacramento International Airport, CA [Revised]

Sacramento International Airport, CA
(Lat. 38°41′44″ N., long. 121°35′27″ W.)
Riego Flight Strip
(Lat. 38°45′15″ N., long. 121°33′47″ W.)
Natomas Field
(Lat. 38°38′18″ N., long. 121°30′55″ W.)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Sacramento International Airport, excluding that airspace within a 2-mile radius of Riego Flight Strip, and that airspace within a 2-mile radius of Natomas Field, and that airspace east of the 002° bearing from Natomas Field; and that airspace extending upward from 1,600 feet MSL to 4,100 feet MSL within a 10-mile radius of Sacramento International Airport.

* * * * *

Paragraph 6002—Class E Airspace Designated as Surface Areas.

* * * * *

AWP CA E2 Sacramento, McClellan AFB, CA [New]

Sacramento, McClellan AFB, CA
(Lat. 38°40′04″ N., long. 121°24′02″ W.)

That airspace extending upward from the surface within a 4.5-mile radius of McClellan AFB excluding that airspace within the Sacramento International Airport Class C surface area.

* * * * *

Issued in Washington, DC on March 20, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–7494 Filed 3–24–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

14 CFR Part 71

[Airspace Docket No. 99–AGL–53]

Modification of Class E Airspace; Bemidji, MN; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the final rule that was published in the **Federal Register** on Wednesday, February 2, 2000 (65 FR 4872), Airspace Docket No. 99–AGL–53. The final rule modified Class E Airspace at Bemedji, MN.

EFFECTIVE DATE: 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, IL 60018, telephone: (847) 294–7477.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 00–2256, Airspace Docket No. 99–AGL–53, published on February 2, 2000 (65 FR 4872), modified Class E Airspace at Bemidji, MN. An incorrect spelling of Bemidji was published in the legal description for the Class E airspace for Bemidji, MN. This action corrects that error.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the error for the class E airspace, Bemidji, MN, as published in the **Federal Register** February 2, 2000 (65 FR 4872), (FR Doc. 00–2256), is corrected as follows:

§ 71.1 [Corrected]

1. On page 4873, Column 2, in the airspace description for Bemidji, MN, incorporated by reference in § 71.1, lines 1 and 2 and 16, correct "Bemidiji-Beltrami" to read "Bemidji-Beltrami".

Issued in Des Plaines, IL on March 15, 2000.

Christopher R. Blum,

Manager, Air Traffic Division.

[FR Doc. 00–7343 Filed 3–24–00; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Applicances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the Commission) amends Appendix F to its Appliance Labeling Rule (the Rule) to eliminate the "Front-Loading" and "Top-Loading" sub-categories for clothes washers. The purpose of this change is to provide consumers with a more accurate basis to compare the efficiency of clothes washers.

EFFECTIVE DATE: July 14, 2000.

FOR FURTHER INFORMATION CONTACT: James G. Mills, Attorney (202–326–3035; jmills@ftc.gov), or Janice Podoll Frankle, Attorney (202–326–3022; jfrankle@ftc.gov) Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION:

I. Background

A. The Commission's Appliance Labeling Rule

The Commission issued the Appliance Labeling Rule on November 19, 1979, pursuant to a directive in section 324 of Title III of the Energy Policy and Conservation Act of 1975, 42 U.S.C. 6294 (EPCA). The Rule requires manufacturers to disclose energy information about major household appliances to enable consumers purchasing appliances to compare the energy use or efficiency of competing models. When published, the Rule applied to eight appliance categories: Refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Since then, the Commission has expanded the Rule's coverage five times: In 1987 (central air conditioners, heat pumps, and certain new types of furnaces, 52 FR 46888 (Dec. 10, 1987)); 1989 (fluorescent lamp ballasts (54 FR 28031 (July 5, 1989)); 1993 (certain plumbing products (58 FR 54955 (Oct. 25, 1993); and twice in 1994 (certain lighting products (59 FR 25176 (May 13, 1994)), and pool heaters and certain other types of water heaters (59 FR 49556 (Sept. 28, 1994)).

Manufacturers of all covered appliances must disclose specific energy consumption or efficiency information at the point of sale in the form of an "EnergyGuide" label affixed to the covered product. The information on the EnergyGuide also must appear in catalogs from which covered products can be ordered. Manufacturers must derive the information from standardized tests that EPCA directs the Department of Energy ("DOE") to promulgate. 42 U.S.C. 6293. Manufacturers of furnaces, central air conditioners, and heat pumps also either must provide fact sheets showing additional cost information or be listed in an industry directory that shows the cost information for their products. Required labels for appliances and required fact sheets for heating and cooling equipment must include a highlighted energy consumption or efficiency disclosure and a scale, or "range of comparability," which appears as a bar on the label below the main energy use or efficiency figure, that shows the highest and lowest energy consumption or efficiencies for all similar appliance models. Labels for clothes washers and some other appliance products also must disclose estimated annual operating cost based on a specified national average cost for the fuel the appliances use.

B. Ranges of Comparability and the Categories in Appendix F

The "range of comparability" scale on the EnergyGuide is intended to enable consumers to compare the energy consumption or efficiency of the other models (perhaps competing brands) in the marketplace that are similar to the labeled model they are considering. Section 305.8(b) of the Rule, 16 CFR 305.8(b), requires manufacturers to report annually (by specified dates for each product type) the estimated annual energy consumption or energy efficiency ratings for the appliances derived from the DOE test procedures. Due to modifications to product lines and improvements in the energy use of individual models, the base of reported information is constantly changing. To keep the required information on labels consistent with these changes, the Commission publishes new range figures (but not more often than annually) for manufacturers to use on labels if the upper or lower limits of the range scales have changed by more than 15%. 16 CFR 305.10. Otherwise, the Commission publishes a statement that the prior ranges remain in effect for the next year.

Each category of the products covered by the Rule is divided to some extent into sub-categories for purposes of the ranges of comparability. These sub-categories, which are generally the same as those developed by DOE in connection with its efficiency standards program,[1] are based on fuel type, size, and/or functional features, depending on the type of product.

When the Commission published the Rule in 1979, the clothes washer category in Appendix F was divided into the sub-categories "Standard" and "Compact" only.[2] 44 FR 66466, 66486 (Nov. 19, 1979). These sub-categories stayed in effect until 1994, when the Commission amended Appendix F in response to comments received in connection with a comprehensive review of the Rule. The amendment to Appendix F created the additional subdivisions of "Top Loading" and "Front Loading" that appear in the current Rule. In the **Federal Register** notice announcing the amendments that grew out of the review, the Commission discussed the comments on clothes washer sub-categories and its reasons for the amendment to Appendix F:

> Horizontal axis clothes washers (which are generally front-loading) are significantly more energy-efficient than vertical axis washers (generally top-loading). Because the typical door configurations for these products are different, consumers may shop for only one configuration, and information respecting the energy usage of products having the other configuration may not be useful. For example, consumers wanting to stack a clothes dryer on top of their washer to conserve space would only be interested in a front loading washer. The Commission finds, therefore, that separate ranges of comparability for these products would benefit consumers. Accordingly, the Commission is * * * amending the sub-categories for clothes washers to reflect a further subdivision into top-loading and front-loading models.

59 FR 34014, 34019 (July 1, 1994).

[1] Section 325 of EPCA, 42 U.S.C. 6295, directs DOE to develop efficiency standards for major household appliances to achieve the maximum improvement in energy efficiency for residential appliances that is technologically feasible and economically justified. As amended, the statute itself sets the initial national standards for appliances and establishes a schedule for regular DOE review of the standards for each product category.

[2] Appendix F defines "Compact" as including all household clothes washers with a tub capacity of less than 1.6 cubic feet or 13 gallons of water; "Standard" includes all washers with a capacity of 1.6 cubic feet or 13 gallons of water or more.

C. The Petition to Change the Sub-categories

The Consortium for Energy Efficiency, Inc. ("CEE")[3] petitioned the Commission to amend the Rule by changing the clothes washer category in Appendix F to eliminate the "Front-Loading" and "Top-Loading" subdivisions of the "Standard" and "Compact" sub-categories. CEE asserted that, because of the recent introduction of high-efficiency products from major domestic manufacturers, it is at a critical point in its efforts to promote high-efficiency clothes washers, and that its members have committed to significant expansions of their consumer-targeted campaigns to promote the purchase of these products. CEE argued that Appendix F to the Rule confuses consumers and undermines CEE's and its members' efforts to promote high-efficiency clothes washers. In its petition, CEE contended that eliminating the "Front-Loading" and "Top-Loading" subdivisions of the "Standard" and "Compact" sub-categories would remedy these concerns.

CEE asserted that, since the Commission's 1994 statement in the **Federal Register**, the clothes washer market has changed, and front-loading washers are no longer merely a niche product. According to CEE, consumer research in the Northwest has shown that a significant proportion of consumers who were shopping for top-loading machines were also interested in, and had looked at, front-loading models, and that many were ready to pay a premium for the front-loading models. The research showed that many consumers could be persuaded to purchase front-loading washers at the point of sale.[4]

CEE explained that, because the most highly efficient clothes washers are all front-loading,[5] an EnergyGuide comparison only among front-loading models provides an incomplete picture of the efficiencies available in the clothes washer market. According to the petition, the least efficient of the high-efficiency front-loading clothes washers, will, of necessity, appear at the "Uses Most Energy" end of the comparability range on the label attached to it, even though it consumes only half the energy that the average top-loading model does. This situation, according to CEE, confuses consumers and creates the erroneous impression that these highly-efficient products are high energy users.

CEE also asserted that the current front-loading and top-loading subdivisions are particularly problematical in connection with the DOE/EPA Energy Star Program.[6] Under that program, all front-loading clothes washers produced by manufacturers participating in the program qualify for the Energy Star logo. This means that the label on the least energy efficient of these highly efficient products will indicate that the product "Uses Most Energy" while also bearing the Energy Star logo. CEE contended that this situation creates consumer confusion and undermines the credibility of both the EnergyGuide and Energy Star programs.

In addition, CEE noted that the Canadian EnerGuide appliance labeling program (which is very similar to the EnergyGuide Program) does not distinguish between front-loading and top-loading clothes washers for range purposes. The Canadian Program divides the clothes washer category into only the "Compact" and "Standard" sub-categories.

Finally, CEE asserted that technological advances in the clothes washer industry have begun to eliminate the distinction between the front-loading and top-loading subdivisions. As examples, CEE cited the Maytag Neptune model, which has a basket that operates on an axis that is 15 degrees off of vertical and an opening mounted on a plane angled between the top and front of the machine (Maytag classifies this as a front-loading model), and the Staber Industries horizontal axis model that loads from the top (and is thus a top-loading model). CEE maintained that, perhaps in recognition of this incipient blurring of the distinction between the subdivisions, DOE is considering eliminating the separate classes from its testing and standards program. CEE urged that the Commission grant its petition to help achieve consistency on this issue at the Federal level.

D. The Notice of Proposed Rulemaking

On November 2, 1998, the Commission published a Notice of Proposed Rulemaking (the NPR) proposing amendments that would eliminate the "Top-Loading" and "Front-Loading" sub-categories of the "Standard" and "Compact" categories. 63 FR 58671. In the NPR, the Commission discussed the reasons for the proposed amendments and solicited comment on several specific questions and issues.

The NPR explained that the market for clothes washers has changed significantly since the Commission promulgated the "Front-Loading" and "Top-loading" subdivisions. In 1993–94, front-loading machines appeared to be a "niche" product.[7] Since that time, the availability of and technology for these products have advanced considerably. When the NPR was published, ten of the 228 clothes washer models for which data were submitted in March 1998 were front-loading models. In comparison, in 1993–1994, five models were front-loaders. Front-loaders are still a small percentage of the overall number of models (now 7.6% as compared to 4.4% in 1998).[8]

[3] According to its Mission Statement, CEE is a non-profit, public benefit corporation that expands national markets for super-efficient technologies, using market transformation strategies. Its members include more than 40 electric and gas utilities, public interest groups, research and development organizations, and state energy offices. Major support is provided to CEE by DOE and the Environmental Protection Agency ("EPA").

[4] CEE summarized the results of the intercept interviews and surveys in its petition, which appears on the public rulemaking record in binder R611004–1–1–3. The research itself, which was a study prepared in January, 1998 by Pacific Energy Associates, Inc. under contract to the Northwest Energy Efficiency Alliance, also appears in binder R611004–1–1–3.

[5] CEE noted one exception: one manufacturer makes a horizontal-axis, highly efficient washer that loads from the top and is thus classified as a top-loading model.

[6] DOE and EPA staff are implementing statutory directives to promote high-efficiency household appliances in the marketplace. They have produced a joint effort called the "Energy Star" Program, which defines what constitutes a high-efficiency product and identifies products that qualify for the designation. A product's qualification for the Program is indicated by the Energy Star logo, currently either on the product or a separate Energy Star label. The Commission is considering a proposal to permit manufacturers of qualifying appliances to place the Energy Star logo on the Appliance Labeling Rule EnergyGuides.

[7] The Commission theorized that these products may have been considered a niche market in part because they were so much more expensive than top-loading models and because they may have been favored by consumers with limited space looking for stackable models. The Commission noted that, although front-loading models are on average still more expensive than top-loading, the price differential is now much smaller, citing "A New Spin on Clothes Washers," in the July 1998 issue of Consumer Reports.

[8] The data report for clothes washers for March 1999 shows that there is a continuing increase in

Continued

But, the increase in their availability, coupled with CEE's research suggesting that a significant proportion of current clothes washer consumers are receptive to the idea of buying a front-loading machine, suggested that eliminating the distinction between them on labels could assist consumers interested in purchasing more efficient products.

The NPR also cited information the Commission had received stating that the current sub-categories may be causing confusion among prospective clothes washer purchasers. Specifically, two letters to Commission staff, dated April 27 and May 19 of 1998, from the Office of Energy of the Oregon Department of Consumer and Business Services ("OEO") supported CEE's petition.[9] In both letters, OEO expressed concern that consumers are confused by the current subdivisions and that such confusion undermines consumer confidence in the EnergyGuide itself, which, according to OEO, has been rising steadily since the Rule was promulgated in 1979.

The NPR explained that consumer confusion may occur because, although the label for clothes washers states that "Only standard size, front-loading (or top-loading) clothes washers are used in this scale," not all consumers may notice the disclosure. Consumers looking at top-loading machines may not realize that front-loading models are generally much more efficient, and may not even consider purchasing a front-loading model simply because the energy consumption figures for front-loading machines are not included in the range scales appearing on labels for top-loading models. And, consumers shopping for front-loading machines may get the incorrect impression that some of the most efficient models (front-loading) on the market are not really highly energy efficient, only because they are being compared unfavorably to other even more highly-efficient models (also front-loading), instead of to the generally less efficient top-loading models. Finally, the NPR pointed out that, because some front-loading clothes washers that have qualified for the Energy Star logo are shown on the EnergyGuide to be at or near the "Uses Most Energy" end of the comparability scale bar, this may cause consumer confusion about the Energy Star Program.[10]

The NPR also discussed DOE's energy conservation standards for clothes washers and possible future changes to the DOE test procedure, and their impact on the proposed amendments. DOE has announced, in connection with an ongoing review of its energy conservation standards for clothes washers, that it may eliminate any reference to front-loading or top-loading (or horizontal-or vertical-axis) in the standards.[11] Thus, when DOE completes its review of the clothes washer standards rule, it is reasonable to expect that DOE will no longer use the "Front-loading" and "Top-loading" (or "horizontal-axis" and "vertical-axis") subdivisions to describe clothes washers. An August 14, 1998 letter to Commission staff from DOE's Assistant Secretary for Energy Efficiency and Renewable Energy asked that the Commission eliminate the top-loading and front-loading sub-categories for clothes washers because they are causing consumer confusion about washer efficiency and appear to be undermining the Energy Star Program's credibility. The Assistant Secretary also stated that, although the amendments to DOE's rules will not take effect for several years, DOE believes "that it is in the consumer's best interest for FTC to adopt the new classifications for labeling purposes as soon as possible."[12]

The NPR also discussed the Commission's interest in harmonizing the Rule's labeling requirements with those of the Canadian EnerGuide Program in accordance with the North American Free Trade Agreement ("NAFTA") goals of reducing or eliminating non-tariff barriers to trade (*e.g.*, labeling requirements). Commission staff has worked with staff at Natural Resources Canada ("NRCan") since 1992 to harmonize the two countries' appliance labeling programs as much as possible. One example of this cooperation is a change in the primary energy use descriptor on EnergyGuides for most appliances from estimated annual operating cost to kiloWatt-hours per year, the descriptor used in the Canadian Program.[13]

The Canadian EnerGuide Program does not divide the "Standard" and "Compact" clothes washer sub-categories further into top-loading and front-loading (or horizontal-axis and vertical-axis) subdivisions.[14] The NPR suggested that eliminating the "Top-loading" and "Front-loading" subdivisions would benefit consumers and have the salutary effect of promoting international harmonization and furthering the NAFTA goal of making the standards-related measures of the treaty signatories compatible, thereby facilitating trade among the parties.

Finally, the NPR solicited comment from the public on the proposed amendments. In particular, the NPR sought comments on the following questions and issues: The effect of the "Top-Loading" and "Front-Loading" sub-categories on consumers' ability to choose the most energy efficient model that will fill their needs; the extent to which consumers shop exclusively for either a top-loading or a front-loading model; the economic impact on manufacturers of the proposed amendment; the costs and benefits of the proposed amendment, and to whom; the benefits and economic impact of the proposed amendment on small businesses; whether there should be additional descriptors added to the label (such as tub volume); and whether the timing of the anticipated change to

the availability of front-loading clothes washers (there were 29 front-loading models out of a total of 381 models (7.6%)).

[9] These two letters are on the public rulemaking record in Binder R611004–1–1–3.

[10] The NPR also stated that, without the subdivisions, it may be more difficult for consumers to determine the range of energy use possibilities for each type of washer. Thus, for a consumer who, because of price or some other reason, wishes to purchase a top-loading washer, eliminating the "Top-Loading" and "Front-Loading" sub-categories would make it more difficult to determine which top-loading machine achieves the highest energy efficiency possible for a top-loader. Although a given retail outlet will likely have several brands and models for comparison, and such a consumer would be able to find the most efficient top-loader in the store by comparing EnergyGuides, the consumer still would not know whether he should seek other choices by going to another retailer. The Commission suggested that consumers' search costs may not be significantly increased, however, because consumers may not necessarily know the range of possibilities for other characteristics (such as price) of the washer, and thus already need to search various retailers.

[11] In connection with its review of the energy and water consumption standards for clothes washers, DOE published an Advance Notice of Proposed Rulemaking on November 14, 1994, in which it indicated its intention to consider only two classes for the clothes washer category—"Compact" and "Standard." 59 FR 56423, at 56425. Later in the review process, DOE issued a Draft Report on Design Options for Clothes Washers for use in a November 1996 DOE workshop in which DOE again proposed reducing the number of clothes washer categories to "Compact" and "Standard." In July 1997, DOE published a draft Clothes Washer Rulemaking Framework, which DOE staff describes as a "roadmap" for the review process. In that document, DOE stated that it "believes that there is no basis for maintaining separate classes for horizontal and vertical clothes washers."

[12] DOE's letter is on the public record in binder R611004–1–1–3.

[13] 59 FR 34014 (July 1, 1994). In addition, in 1996, the Commission amended the Rule to permit Canada's EnerGuide, as well as Mexico's energy label, to be placed "directly adjoining" the Rule's required "EnergyGuide" label. Previously the Rule prohibited the placement of non-required information "on or directly adjoining" the EnergyGuide. 61 FR 33651 (June 28, 1996).

[14] According to NRCan staff, this is because the definition of "clothes washer" in the Canadian regulations encompasses both top-loading and front-loading technologies, and the rulemaking staff saw no reason for further differentiation.

DOE's energy conservation standard rule should affect the timing of the amendments (if they become final), and, if so, how.

II. Discussion of the Comments and Final Amendments

A. The Proposed Amendment

The Commission received twenty-three comments in response to the NPR.[15] The comments were from five manufacturers,[16] six non-profit public interest groups,[17] five utilities,[18] two city energy offices,[19] one state energy office,[20] one research laboratory,[21] one intra-state compact,[22] one law firm on behalf of a manufacturer,[23] and one individual.[24] Three of the commenters opposed the Commission's proposal to amend the Rule to eliminate the "Front-Loading" and "Top-Loading" sub-categories.[25] One other commenter supported the amendment but opposed its becoming effective in advance of anticipated revisions to DOE's test procedure and energy conservation standards for clothes washers,[26] and another opposed the amendment on grounds that will likely be resolved by DOE's revised test and standards.[27]

1. Comments in Support

Eighteen comments expressed general support for the Commission's proposal to eliminate the "front-loading" and "top-loading" sub-categories for clothes washers.[28] They contended that the current "front-loading" and "top-loading" sub-categories confuse consumers,[29] undermine efforts to promote high-efficiency clothes washers,[30] or impair a consumer's ability to distinguish highly efficient equipment from standard.[31] The commenters explained that the confusion occurs because under the current labeling system, front-loaders are not compared to top-loaders in any direct way. Consequently, some of the most energy efficient front-loading models have an EnergyGuide label stating "Uses Most Energy" because the front-loading models are only compared with other front-loading models.[32] Two commenters pointed out that those same high-efficiency models labeled "Uses Most Energy" also bear a DOE/EPA Energy Star endorsement indicating that they are highly efficient.[33] ACEEE stated:

> On one hand, consumers have been told by utilities and DOE to look for the Energy Star and rebate-eligible models. On the other hand, when they look at the Energy Guide, they see that some highly-efficient washers are labeled "uses most energy" while other, much less efficient models, are labeled "uses least energy."[34]

Several commenters stated that combining the categories would enable consumers to compare the different types of machines and be better informed regarding energy efficiency,[35] and that this would provide better quality information to consumers.[36]

Nine commenters stated that typically customers do not choose a washer on the basis of top- versus front-loading.[37] ACEEE stated that its understanding, based on discussions with appliance manufacturers and retailers, as well as discussions with manufacturers of high-efficiency clothes washers, is that many consumers are now considering both top- and front-loading machines and are comparing a range of product attributes, including cleaning ability; wear on clothes; manufacturer reputation; washer capacity; energy, water and

[15] Willett Kempton ("Kempton") (1); Consumers Union ("CU") (2); City of Portland, Oregon Energy Office ("POE") (3); Amana Appliances ("Amana") (4); Oregon Office of Energy ("OOE") (5); Maytag Corporation ("Maytag") (6); City of Austin, Water Conservation Division ("Austin-WCD") (7); Boston Edison (8); American Council for an Energy Efficient Economy ("ACEEE") (9); Whirlpool Corporation ("Whirlpool-1") (10); Whirlpool Corporation ("Whirlpool-2") (11) (Whirlpool filed its substantive comments twice; this second version contains a confidential attachment and is not on the public part of the rulemaking record); General Electric Appliances ("GE") (12); Massachusetts Electric ("Mass. Elec.") (13); Pacific Northwest National Laboratory ("PNNL") (14); Natural Resource Defense Council ("NRDC") (15); Consortium for Energy Efficiency ("CEE") (16); Northwest Energy Efficiency Alliance ("NEEA") (17); Commonwealth Electric Company ("Com. Elec.") (18); Alliance Laundry Services ("Alliance") (19); White & Case Limited Liability Partnership ("White & Case") (19A); Bay State Gas Company ("Bay State Gas") (20); Northwest Power Planning Council ("NPPC") (21); Tacoma Public Utilities ("TPU") (22); Northeast Energy Efficiency Partnerships ("NEEP") (23). The comments are on the public record and are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's Rules of Practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, D.C. The comments are organized under the Appliance Labeling Rule, 16 CFR part 305, Matter No. R611004, "Clothes Washer Categories Rulemaking."

[16] Amana (4); Maytag (6); Whirlpool-1 (10); GE (12); and Alliance (19).

[17] CU (2); ACEEE (9); NRDC (15); CEE (16); NEEA (17); and NEEP (23).

[18] Boston Edison (8); Mass. Elec. (13); Com. Elec. (18); Bay State Gas (20); and TPU (22).

[19] POE (3); and Austin-WCD (7).

[20] OOE (5).

[21] PNNL (14).

[22] NPPC (21).

[23] White & Case (19A).

[24] Kempton (1) (Willett Kempton is a senior policy scientist at the University of Delaware.)

[25] Amana (4); Alliance (19); White & Case (19A).

[26] Whirlpool-1 (10).

[27] GE (12).

[28] Kempton (1) p. 1; CU (2) p. 1; POE (3) p. 1; OOE (5) p. 1; Maytag (6); Austin-WCD (7) p. 1; Boston Edison (8) p. 1; ACEEE (9) p. 1; Whirlpool-1 (10) p. 1; Mass. Elec. (13) p. 1; NRDC (15); CEE (16) p. 1; NEEA (17) p. 1; Com. Elec. (18) p. 1; Bay State Gas (20) p. 1; NPPC (21) p. 1; TPU (22) p. 1; NEEP (23) p. 1.

[29] OOE (5) p. 2 (Many consumers who have called OOE have asked for clarification regarding what seems to be contradictory information on the EnergyGuide labels.); Maytag (6) p. 2 (Separation of top-loading and front-loading washers into different subdivisions makes the comparison misleading.); Austin-WCD (7) (Received calls from consumers who were confused by the EnergyGuide label.); ACEEE (9) p. 1; NEEA (17) p. 2 (Top- and front-loading subdivisions may confuse consumers interested in purchasing a resource-efficient clothes washer.); Bay State Gas (20) p. 2 (Evidence that the current system of labeling categories is inaccurate and confusing to consumers is overwhelming and agreed upon by a broad cross-section of stakeholders, *e.g.*, utilities, efficiency advocates, manufacturers, Consumer Reports magazine.); NPPC (21) p. 1 (Current label may cause confusion among consumers wanting to purchase a resource-efficient model since the "least efficient" front-loading resource-efficient models are far less costly to operate than the "most efficient" top-loading models.); NEEP (23) pp. 1–2 (May cause confusion for those who want to buy a resource-efficient model.)

[30] CU (2) p. 1; POE (3) p. 1 (Seeing a highly efficient, horizontal-axis washing machine on the high end of the energy use spectrum is inconsistent with the message about how efficient they are.); Maytag (6) p. 3 (Single EnergyGuide label for all standard size washers could be a significant force in transforming the clothes washer market to high efficiency models.); NRDC (15) p. 1; CEE (16) p. 1; Bay State Gas (20) p. 1; TPU (22) p. 1.

[31] Maytag (6) p.2; CEE (16) p.1; Bay State Gas (20) p.1.

[32] Maytag (6) p.2 ("By placing all front loaders, which tend to be far more efficient, in a separate subdivision, the rating of a specific model front loader washer may appear to be less efficient than a specific model top load washer, when in reality it is much more efficient."); Boston Edison (8) p.1; Mass. Elec. (13) p.1; Bay State Gas (20) p.1.

[33] CEE (16) p.1; Bay State Gas (20) p.1.

[34] ACEEE (9) p.1.

[35] Kempton (1) p. 1; POE (3) p.1; Austin-WCD (7) p. 1 ("Combining the categories would . . . emphasize the savings derived from the more efficient washers, promoting the more efficient machines at the expense of the less efficient."); NEEA (17) p. 1; NPPC (21) p. 1; NEEP (23) p. 1.

[36] Maytag (6) p.3 ("Unfortunately, because of the separate classes and labels for H-axis and V-axis, the dramatic difference in energy use between these washer designs is not apparent to the consumer. By combining H-axis and V-axis into a single class and therefore a single, label, the energy savings would be immediately apparent."); Boston Edison (8) p. 2; Com. Elec. (18) p. 2.

[37] Kempton (1) p. 1 (Most consumers will choose a washer based on other features, including operating cost.); POE (3) p. 1 (Capacity, rather than door configuration, is most consumers' first consideration, and cost is next.); Boston Edison (8) p. 1; Mass. Elec. (13); CEE (16) pp. 3–4; NEEA (17) p. 3 (When consumers were asked which clothes washer features were important to them, they ranked good cleaning first, followed by load capacity, energy/water efficiency, price and operating costs.); Com. Elec. (18) p. 1; NPPC (21) p. 2 (Other features of the clothes washer have more importance in the decision making process than style of loading.); NEEP (23) p. 2 (Current FTC label is based on a now arbitrary distinction regarding how the washers load, a feature that is not considered by consumers when shopping for a new clothes washer.)

detergent use; ease of use; and cycle time.[38]

Maytag stated:

> When consumers shop for a washer, their natural inclination is to shop for what they previously owned unless there is a compelling reason to change. When comparing a V-axis to a H-axis, the substantial difference in energy use could be that compelling reason. Unfortunately, because of the separate classes and labels for H-axis and V-axis, the dramatic difference in energy use between these washer designs is not apparent to the consumer.[39]

Several commenters stated that a clear technological distinction between top- and front-loaders can no longer be easily made as a result of the introduction of new products,[40] and that these new products make the current system of rating clothes washers in separate categories based on loading style obsolete.[41] ACEEE stated "(W)e applaud the FTC for recognizing that the clothes washer market is changing, and that a labeling approach developed several years ago may not be appropriate today."[42] Four commenters observed that the growth in sales volume of front-loading high efficiency washers shows that they are securing a wider market acceptance and that they are no longer a "niche" product that only a subset of consumers are interested in purchasing.[43] Maytag stated that the front-loading Maytag Neptune has proven to have consumer appeal across all demographic segments and is helping to transform the U.S. market by focusing attention on the environmental benefits of high efficiency appliances.[44]

[38] ACEEE (9) p. 1.

[39] Maytag (6) p.3.

[40] Maytag (6) p. 1; Boston Edison (8) p. 1; Mass. Elec. (13); CEE (16) pp. 1–2 (Whirlpool has a resource efficient top-loading vertical-axis washer with an annual kWh usage of 451 that is far more comparable in terms of energy efficiency and annual operating cost to the high efficiency horizontal-axis washers than to the standard efficiency vertical-axis washers; under the current system, the Whirlpool Resource Saver would be labeled "Uses Least Energy," while the Maytag Neptune, a front-loading machine that uses only 333 kWh annually would be labeled "Uses Most Energy."); Com. Elec. (18) p. 1.

[41] Maytag (6) p. 1 (Top-loading and front-loading subdivisions are becoming "meaningless" because of the introduction of new washer designs that no longer fit into those categories in the way they were intended; other designs are possible that will allow for high efficiency with the top-loading capacity or access somewhere in between, e.g., Maytag Neptune.); NEEA (17) p. 1; NPPC (21) p. 1; NEEP (23) p. 2 (Now there are many more choices in the market and distinctions based on how the consumers load washers are no longer relevant.)

[42] ACEEE (9) p. 3.

[43] Maytag (6) p. 2; Austin-WCD (7) p. 1; CEE (16) p. 1; Bay State gas (20) p. 1.

[44] Maytag (6) p. 2.

2. Comments in Opposition

Three commenters stated that they opposed the proposed amendment on its merits.[45] Alliance stated that the Commission must respect the existing product class definitions in DOE's energy conservation standards program, which are based largely on capacity and consumer utility, and that the Commission should not combine the categories just because a petitioner believes one class of product is no longer a niche product. Alliance added that consumers who are uncertain why a product carries an Energy Star logo while showing high energy use on the EnergyGuide should consult with a salesperson or look at the EnergyGuides on other models.[46]

White & Case argued that putting front-loading and top-loading washing machines on a single label would combine two products that are not similar and are not within the same product market and, therefore, do not compete pursuant to the Commission's Horizontal Merger Guidelines.[47] Thus, consumers searching for the most efficient top-loading clothes washer among other top-loading washers would confront considerable difficulties with a label that included the energy efficiency of non-competing products.[48] White & Case also asserted that consumers shop exclusively for either a top-loader or a front-loader. It contended that some of the reasons for this are the substantial price difference between the two and that front-loaders must use specially formulated, more expensive laundry detergents because regular detergents do not function well in front-loading machines.[49]

Amana stated that any change in the energy standards or labeling requirements for clothes washers could have a significant impact on its business and associated employment.[50] It contended that elimination of the sub-categories will remove a significant distinction and cause increased confusion to the consumer when trying to compare models in a consolidated category.[51] Amana stated that the justification for separate categories is based on ergonometrics, product utility and technology employed, including costs and energy and water consumption, and that the differences in technology and energy consumption between V-axis and H-axis machines are clearly evident.[52] Amana contended that the retail price of a high end H-axis washer is more than 50% above the most highly featured, stainless steel, electronically-controlled V-axis washer currently available, and argued that this difference is important to a consumer's buying decision.[53]

Amana and Alliance, as well as two other commenters, took the position that the Commission should not make any change to the "Top-Loading" and "Front-Loading" sub-categories until the effective date of DOE's proposed revisions to its energy conservation standards for clothes washers.[54] Amana stated: "While we believe there is no justification for, and it is inappropriate for the FTC to consider changing the labels, there is less justification to do it before DOE has established revised Energy Standards in the proposed rulemaking."[55]

Alliance cited DOE's recent initiation of work on a consumer analysis, which, "although not necessarily determinative of the issues, is intended to measure and document the 'consumer utility' associated with horizontal-axis and vertical-axis designs." Alliance maintained that it was premature to combine the categories before DOE's consumer analysis is completed.[56]

GE said that the Commission should reject the petition, but that if it does not do so, it should not revise the labeling program to eliminate the classes contained in the current DOE standard until the pending DOE clothes washer energy efficiency rulemaking is concluded and the product class issue is resolved.[57] GE also opposed the amendment because it believes that a clothes washer label with a combined front-loading/top-loading range scale would misrepresent the true energy performance of horizontal-axis machines by understating their actual energy consumption.

[45] Amana (4) p. 1; Alliance (19) pp. 1–2; White & Case (19A) pp. 1–3.

[46] Alliance (19) p. 1 ("The current FTC label clearly identifies the product class being compared and it would be no more logical to combine the clothes washer classes than it would (be to combine) those used for the refrigerator-freezer product with its numerous classes and their ranges of comparability.")

[47] White & Case (19A) pp. 1–3 ("The purpose of the Commission's test for product markets under the Horizontal Merger Guidelines is to determine what the practical demand-side choices are for the buyers of various products. Front-loading washing machines do not compete with top-loading machines at current pricing levels.")

[48] *Id.* p.3.

[49] *Id.*

[50] Amana (4) p. 1.

[51] *Id.* pp. 2–3.

[52] *Id.* p. 1. ("The typical H-axis machine of comparable washer capacity uses less than half of the water of a typical V-axis machine.")

[53] *Id.* p. 2.

[54] Amana (4) p. 2; Whirlpool-1 (10) pp. 1,7; GE (12) pp. 2–5; Alliance (19) p. 1.

[55] Amana (4) p. 2.

[56] Alliance (19) p. 1.

[57] GE (12) pp. 1–2.

GE's point was based on the fact that, under the current DOE test procedure, vertical-axis machines are tested for the average energy used in running the machine in the maximum fill and minimum fill cycles with no test load in the tub, while front-loaders are tested for the average energy used in running the machine with three-pound and seven-pound loads. GE argued that thus only the test for V-axis machines accounts for the full range of potential clothes loads. GE contended that "advocates of horizontal-axis clothes washers tout these machines' ability to hold far more garments than the users of traditional machines would perceive to be optimal," and that "this claimed advantage" would result in an understatement in energy label values for horizontal-axis washers. GE asserted that this understatement results from the fact that the larger loads would use more water, and thus energy to heat it, which would mean a higher energy use value than what is on the front-loading machines' labels. GE conceded that "if the DOE eliminates the different product classes [in its revised energy conservation standards and test procedure], the change sought by [CEE's] petition could be reconsidered."[58]

Whirlpool stated that consumers know the difference between top- and front-loading and that the vast majority of consumers have strong preferences for the ease of loading offered by top-loaders.[59] Whirlpool also expressed concern about the cost differential between top- and front-loading washing machines. It stated that most consumers cannot afford the high cost of front-loading machines, and thus shop for top-loaders generally because of the perceived or actual convenience that top-loaders offer and because of the price difference. Consumers who wish to shop for the more efficient top-loaders would not be able to discern the ranges of comparability for these products with a consolidated range scale.[60] Whirlpool concluded that the amendment is the best course to follow only if it is made effective in concert with the effective date of new DOE energy standards for clothes washers, when high-efficiency top-loaders have much more market penetration.[61]

[58] *Id.* p. 4.

[59] Whirlpool-1 (10) pp. 3–4.

[60] *Id.* p. 3 ("front-loading machines * * * generally run from $800 to $1100 plus. Most toploaders average about $400.")

[61] *Id.* p. 1.

3. Comments Addressing the Benefits and Costs of the Proposed Amendment

A majority of the commenters maintained that the amendment would have beneficial results.[62] Several asserted that consumers would be more effectively educated[63] and that there would be consistency with the categories used by the EnerGuide Program in Canada.[64] Four commenters contended that one of the benefits of the proposed amendment would be that some purchasers would choose to buy more efficient washers.[65] Commenters variously stated that the proposed amendment would reduce water consumption,[66] promote energy efficiency,[67] and that saving energy means saving money.[68] Several commenters stated that they believed that the proposed amendment would benefit the environment,[69] consumers,[70] the economy,[71] and retailers and manufacturers.[72] Six commenters urged that the Commission not wait for possible changes to the DOE regulations before implementing the revised sub-categories because the implementation of the test and standards is still at least several years away.[73] Those arguing in favor of immediate implementation contended generally that continuance of the current sub-categories: would continue consumer confusion;[74] could impede DOE/EPA and utilities' efforts to increase consumer awareness about energy efficiency in clothes washers;[75] would result in significant uncaptured energy and water savings due to lost sales of more efficient clothes washer models;[76] and would perpetuate an artificial market barrier to adoption of a highly energy efficient technology.[77]

Amana saw no benefits in the proposed amendment. It is believed that a label change would confuse consumers and adversely impact energy consumption and/or delay purchase decisions in favor of the repair of older, less efficient models."[78] Two other commenters said that manufacturers who currently have no front-loading, efficient models would incur the costs of slightly lower sales and that the sales of more efficient washer models would

[62] Kempton (1) p. 1; CU (2) p. 1; POE (4) p. 1; OOE (5) p. 3; Maytag (6) pp. 2–4; Austin-WCD (7) p. 1; Boston Edison (8) pp. 1–2; ACEEE (9) p. 2; Mass. Elec. (13) pp. 1–2; NRDC (15) p. 1; CEE (16) p. 5; Com. Elec. (18) pp. 1–2; Bay State (20) pp. 1–2; NPPC (21) p. 1; TPU (22) p. 1; NEEP (23) pp. 1–2.

[63] OOC (5) p. 3; Maytag (6) p. 3 (Consumers could determine at a glance how any washer compares with the universe of standard size washers of all configurations.); Boston Ed. (8) p. 1 (There would be an increased consumer awareness about energy efficiency.); CEE (16) p. 5 (Better and more accurate information to consumers.); ACEEE (9) p. 2 ("The prime benefits . . . stem from the fact that consumers would better be able to compare different products, with the result that some consumers will likely purchase more efficient washers than if the amendment were not adopted."); Com. Elec. (18) p. 2 (Increased consumer awareness of energy efficiency.); NPPC (21) p. 2 (The current label may cause confusion among consumers who want to purchase a resource-efficient washer.)

[64] OEE (5) p. 3; CEE (5) p. 3.

[65] Kempton (1) p. 1; CU (2) p. 1; POE (3) p. 1; ACEEE (9) p. 2.

[66] Maytag (6) p. 2.

[67] Maytag (6) p. 2; Boston Edison (8) pp. 1–2; Com. Elec. (18) pp. 1–2; NPPC (21) p. 1.

[68] Kempton (1) p. 1; POE (3) p. 1; TPU (22) p. 1 (There is a cost of about $300 for a rsource-efficient machine, but households that purchase these machines save $75 to $100 in yearly charges for electricity, water and wastewater; which means there is a quick pay-back.)

[69] Kempton (1) p. 1; OOE (5) p. 3 ("[A]s the sales of more efficient clothes washers increase, there will be enormous water, wastewater treatment and energy savings benefits."); Austin-WCD (7) p. 1 (Emphasizing water conservation.); NRDC (15) p. 1 (There are energy and water savings with more efficient clothes washer models.); CEE (16) p. 5 ("There will be significant energy savings, avoided air pollution and greenhouse gas emissions, substantial water savings, and wastewater treatment savings as sales of more efficient clothes washers increase."); Bay State Gas (20) p. 1.

[70] Kempton (1) p. 1 (By purchasing more efficient washers, consumers could reduce their non-discretionary expenditures and money would be made available for other consumer spending.); OOE (5) p. 3; Maytag (6) p. 2 (Consumer could determine at a glance how any washer compares with the universe of standard-size washers of all configurations.); Boston Edison (8) p. 1; ACEEE (9) p. 2 ("The prime beneficiary of this change will be consumers who purchase these more efficient washers as the high-efficiency washers now being sold can reduce operating costs by 50% or more relative to typical units being sold."); Mass. Elec. (13).

[71] Kempton (1) p. 1; CEE (16) p. 5.

[72] ACEEE (9) p. 2; Boston Edison (8) p. 1; Mass. Elec. (13) p. 1.

[73] POE (3) p. 1; OOE (5) p. 5 ("[I]t will be at least five years from the time of the Commission's decision to implementation if the Commission wishes to coordinate with DOE's standard implementation. This is far too long for consumers to live with the disadvantages of the current labeling classifications."); Maytag (6) p. 4 ("Immediate adoption by the Commission of the proposed amendment, regardless of the timing of the next rulemaking by the Department of Energy, is in the best interests of consumers."); ACEEE (9) p. 3 (The earliest time that a new DOE standard can take effect is September 2003; that time frame is "much too long to wait to correct a serious problem with the current label."); CEE (16) p. 6 ("[I]f the FTC waits for DOE, it could be a very long time before an accurate EnergyGuide label for clothes washers is implemented."); (NPPC (21) p. 3 (Strongly recommended that the Commission not wait for DOE to make its changes since the earliest possible date that the new standard could take effect is the fall of 2002.)

[74] Boston Edison (8) pp. 1–2; Mass. Elec. (13) p. 2; NRDC (15) p. 1; CEE (16) p. 6.

[75] Boston Edison (8) pp. 1–2; Mass. Elec. (13) p. 2.

[76] NRDC (15) p. 1.

[77] CEE (16) p. 1.

[78] Amana (4) p. 2.

increase at the expense of less efficient models.[79]

Six commenters mentioned specifically the costs associated with changing the EnergyGuide labels.[80] Alliance stated that the cost of creating new labels and scrapping finished printed labels would be borne by manufacturers.[81] Maytag stated, however, that the economic impact should not be detrimental to any manufacturer: "In fact, in the long run it could result in a small savings for those manufacturers that presently have to stock two different types of labels, one for "front loader" and one for 'top loader.' "[82] Whirlpool was concerned that there would be some engineering, administrative and cost implications that would ultimately be borne by consumers:

> With the constant turnover of personnel in sales, marketing, manufacturing and engineering there would be ongoing confusion between the newly formatted label with one product category and the DOE's vertical and horizontal axis categories. This considerably increases the likelihood of an inadvertent error in energy reporting/certification. At the most, a cost of $100 per unit per day, under Section 333 of the Energy Policy and Conservation Act, could be a serious burden of manufacturers. At the least, there is a real possibility of a lesser fine as well as substantial internal cost of correcting mislabeled units.[83]

Addressing the expense to manufacturers of changing EnergyGuide labels to eliminate the "Top-loading" and "Front-Loading" categories, some commenters explained that the cost depended on the timing of the change. Amana stated: "If the label changes are made at some time other than a normal FTC label revision, there would be significant cost impact for the manufacturers."[84] Whirlpool stated that if the washer category consolidation could be combined with other changes to the Energy Guide, such as a change in the ranges of comparability, the confusion for manufacturers and potential complications would be minimized.[85] OOE, ACEEE, and CEE pointed out that there are fixed costs incurred any time there is a change to the ranges of comparability, energy prices, model descriptions, or any other information on the label, but that timed to coincide with such a change, and with enough lead time, the costs of changing labels to reflect the eliminated product categories would be near zero.[86]

4. Final Amendments

After careful consideration of the comments, the Commission has decided to amend Appendix F of the Rule, which pertains to the clothes washer category, by eliminating the "front-loading" and "top-loading" subdivisions of the "standard" and "compact" sub-categories. The Commission agrees with the comments that maintained that the current "front-loading" and "top-loading" subdivisions may be confusing to consumers, may impair efforts to promote high-efficiency clothes washers and may hinder a consumer's ability to distinguish highly energy efficient clothes washers.[87] Further, the Commission has determined not to add any additional information or descriptors, other than the current "standard" and "compact" sub-divisions, to the EnergyGuide label at this time, as discussed in section II.B., below.

In deciding to amend Appendix F, the Commission concludes that the technological distinction between top-loading and front-loading clothes washers is becoming blurred. As several commenters noted, the present system of placing clothes washers in separate product categories based on loading orientation is becoming outmoded.[88] The comments largely showed that consumers are willing to consider both types of washers and that the present labeling system can impair consumers' ability to make meaningful comparisons based on energy efficiency.

The Commission recognizes that consumers are more familiar with top-loading machines, because they have been sold in the U.S. for many years longer than front-loaders. However, the Commission believes that if consumers are provided with the opportunity to compare directly the energy use of both top- and front-loading washers, then, when making a purchase decision, they will be able to consider the purchase cost differential between the two types of washers along with other product attributes, such as cleaning ability, tub capacity, ease of use, and water and energy consumption. Because of being able to compare energy use more efficiently, some consumers may choose to buy more efficient washers. Ultimately, the amendment will help to promote energy efficiency while reducing water and energy consumption, which will save consumers money. The Commission also gave weight to the fact that the proposed amendment will provide consistency with Canada's EnerGuide for clothes washers.

The Commission recognizes the potential, raised by Whirlpool and others, for some negative impact on manufacturers and retailers producing and marketing only top-loading machines (especially resource-efficient models). The Commission believes however, that the beneficial effects on consumers and the environment that are likely to result from the elimination of the top-loading and front-loading sub-categories will significantly outweigh whatever negative impact occurs.

The Commission has decided that the amendment will become effective in July, 2000, rather than after the effective date of DOE's expected changes to its energy conservation standards and test procedure for clothes washers. There is uncertainty about the final date of DOE's changes, and DOE itself has advised Commission staff in its letter of August 14, 1998, that it would be in the consumer's best interest for the Commission to adopt the changes to the clothes washer sub-categories "as soon as possible."[89] Because there are costs associated with changing the EnergyGuide label, as discussed in section II.A.3., above, the Commission is coordinating the effective date of the amendment with the next scheduled change to the ranges of comparability for clothes washers. Consequently, the relabeling costs of eliminating the top-loading and front-loading subdivisions will be minimal. And, as Maytag pointed out, there could be a long-run savings to manufacturers because they will no longer have to stock separate labels for both top-loading and front-loading clothes washers.

The Commission has considered GE's contention that the current differences in the DOE test procedures may affect the comparability of the energy ratings for H-axis and V-axis machines on

[79] Kempton (1) pp.1–2; OOE (5) p. 3.

[80] Amana (4) p. 3; OOE (5) p. 3; Maytag (6) p. 3; Whirlpool–1 (10) p. 5; CEE (16) p. 5; Alliance (19) p. 2.

[81] Alliance (19) p. 2 ("Frequent label changes are disruptive to our business.")

[82] Maytag (6) p. 3.

[83] Whirlpool–1 (10) p. 5.

[84] Amana (4) p. 3.

[85] *Id.*

[86] OOE (5) p. 3; ACEEE (9) p. 2; CEE (16) p. 5.

[87] The Commission agrees that there is potential for confusion when consumers see a high-efficiency front-loading washer bearing the Energy Star logo with an accompanying EnergyGuide label that shows the model is close to the "Uses Most Energy" end of the comparability scale. This would occur only because it is not as efficient as the even more efficient competing models.

[88] In part, this may be due to the fact that the price differential is diminishing. For example, a July, 1999 Consumer Reports article on clothes washers rated four front-loading models priced at $700, $720, $800, and $1,000. The article rated 18 top-loading models, of which the six most costly models were priced at $550 (two models), $580, $600, $640, and $800.

[89] Letter from Dan W. Reicher, Assistant Secretary, Energy Efficiency and Renewable Energy, DOE (Aug. 14, 1998). See note 12, *supra.*

EnergyGuides that do not distinguish between the two subcategories, and that, in particular, H-axis machines would appear to have greater relative efficiency than is actually the case. GE did not provide evidence of consumer behavior respecting the pounds of clothes that consumers wash, or expect to wash, in front-loading machines. And, although GE implies that front-loaders have greater capacity than top-loaders, a recent study by Consumer Reports magazine states that there is little variation in capacity among full-sized washers, including both front- and top-loading.[90] Thus, there is no clear indication that the load used in the DOE test for front-loading machines is too small.

The seven-pound load specified as the large load (to be used with a three-pound load in conducting the test) in the DOE test was the result of a rulemaking procedure conducted by DOE with input from all sectors of the public. One of DOE's goals in developing this aspect of the test was to capture the concept of "maximum fill" so that the test results for front-loaders would be analogous to the results for top-loaders. Therefore, in the absence of evidence to the contrary, the Commission believes that the test results are comparable.

The Commission has concluded that any inaccuracies in the relative efficiency of H-axis and V-axis washers that may be caused by the differences in the current DOE test procedures are likely to be small. Accordingly, the Commission has decided not to delay the effective date of these amendments until DOE's amended energy conservation standards and test procedure for clothes washers become effective and possibly eliminate any slight inequalities between the measured energy use of the two types of machines.[91]

The Commission also is not persuaded by the contention of Alliance that the proposed amendment would result in an EnergyGuide label that compares the energy efficiency of two distinct products. An EnergyGuide label that does not categorize washers based on loading orientation will enable consumers who are not looking for a washer with particular loading option to compare easily features and energy consumption for all washers within either the "standard" or "compact" sub-categories, or both.

Finally, the Commission does not agree with White & Case that top-loading and front-loading washers are necessarily in separate product markets according to the Commission's Horizontal Merger Guidelines. White & Case's argument rests almost entirely on the difference in purchase prices between the two types of washers, but, as noted above, this price differential has changed considerably in recent years and is likely to change in the future. Furthermore, consumers often consider the differences in operating costs of these products, which may reduce the overall price differential between the two types of products.

To implement today's decision, the Commission amends Sample Label 3 in Appendix I of the Rule, which shows the proper format for a clothes washer EnergyGuide label, by deleting references on the label to the "Top-loading" and "Front-Loading" subcategories.

B. The Need for Additional Information on the Label

1. Comments

Fourteen commenters responded to the question in the NPR asking whether the Commission should add other descriptors of clothes washer capacity (such as tub volume) to the label if it eliminates the "Top-Loading" and "Front-Loading" sub-categories.[92] Six stated that other information or descriptors are unnecessary.[93]

CU stated that it would like to see the proposed amendment taken one step further, noting that the FTC label looks only at total energy consumption, and not efficiency: "Therefore, at first glance, small-clothing-capacity washers may appear better than ones with much larger capacities. However, the larger clothing capacity may make for a much more efficient machine."[94] To improve on this situation, CU stated that the annual energy cost should be for washing a specific number of pounds of clothing per year, based on the DOE test's assumed average annual use of 392 cycles per year.[95]

Five commenters stated that the Commission should require that the internal tub volume of clothes washers, in cubic feet or in gallons (or both), also be required on the EnergyGuide labels.[96] PNNL pointed out:

> Without some reference to tub volume the consumer may believe that the comparison between two machines of different tub volume is equal. In reality, a comparison of two machines of different tub volumes is not equal. Assuming that near-full loads are washed, the machine with the smaller tub volume will require that more loads be washed per year than the machine with the larger tub volume.[97]

Maytag contended that tub volume measurements in cubic feet are misleading because in H-axis washers the entire measured tub volume is usable, whereas V-axis tub volume measurement includes unusable space at the top of the tub.[98] Maytag also stated that using gallons as a measurement of internal tub volume would likely confuse consumers because it could be construed as a water consumption measurement rather than a capacity measurement.[99] OEE stated that using cubic feet as a capacity indicator is a problem because, according to manufacturers, this metric is not directly comparable from vertical axis to horizontal axis products.[100]

2. The Commission's Conclusions

The Commission has decided not to add other capacity descriptors to labels for clothes washers, and to keep only

[90] Consumer Reports, July 1999. In the article, "capacity" is based on how well clothes can circulate in increasingly large loads.

[91] The Commission does not agree, moreover, with FE's contention that the Commission cannot amend the product classes set out in the Appendices to its Rule independent of a DOE determination on product class. The Commission is not constrained by any statutory provisions from establishing the product classes in the Appendices for purposes of the ranges of comparability in whatever form it believes to be most appropriate. For example, until 1994, the product classes for refrigerators, refrigerator-freezers, and freezers in (then) Appendices A–1, A–2, and B were significantly different from the more feature-specific configurations in DOE's energy conservation standards, and the current classes for dishwashers are determined differently (the Commission's Rule differentiates between "Standard" and "Compact" on the basis of place settings, and DOE uses exterior width). The Commission has chosen to align its product classes with those in the DOF energy conservation standards program whenever it has concluded that doing so is helpful to consumers and competition.

[92] Kempton (1) p. 2; CU (2) p. 1; Amana (4) pp. 2 and 3; OOE (5) p. 4; POE (3) p. 1; OOE (5) p. 5; Maytag (6) p. 4; ACEEE (9) p. 3; Whirlpool-1 (10) p. 6; GE (12) p. 2; PNNL (14) p. 1; NRDC (15) p. 1; CEE (16) p. 5; Alliance (19) p. 2.

[93] Kempton (1) p. 2; OOE (5) p. 5; Maytag (6) p. 4; ACEEE (9) p. 3; NRDC (15) p. 1; CEE (16) p. 5.

[94] CU (2) p. 1.

[95] Id. p. 1 ("We would suggest that the annual pounds-of-clothing be calculated by multiplying 392 by about 8 pounds per load, or 3136 pounds-of-laundry per year. Therefore, the yellow sticker should list the amount of energy used to wash 3136 pounds of clothes, rather than the amount of energy used in 392 cycles regardless of how many pounds of clothes can be washed in those 392 cycles.")

[96] Amana (4) p. 3; OOE (5) p. 4; ACEE (9) p. 3; PNNL (14) p. 1; CEE (16) pp. 5–6.

[97] PNNL (14) p. 1.

[98] The DOE test measures the tub volume in top-loaders without including the space taken up by the agitator, so the volume figure reflects the amount of water that can actually go into the tub. Maytag suggested applying a factor of 1.2 to the volume of an H-axis machine to correct this inconsistency for test procedure purposes; for example, and H-axis machine with a measured volume of 3.0 cubic feet would have the equivalent usable volume of a 3.6-cubic-foot V-axis machine. Maytag (6) p. 4.

[99] Maytag (6) p. 4.

[100] OOE (5) p. 4.

the "Standard" and "Compact" descriptors at this time. At present, internal tub volume is a metric that is not directly comparable between vertical and horizontal axis machines. Thus, adding tub volume to the EnergyGuide label might be more confusing, and perhaps misleading, than helpful to consumers.

The Commission also is not adopting CU's suggestion to include operating cost for a specific number of pounds of clothes per year. This information cannot be derived by means of the current DOE test procedure for clothes washers. The Commission is not empowered, therefore, to require that manufacturers include it on EnergyGuides. If DOE decides to provide for the quantification of this information in its test procedure at some future time, the Commission may revisit this issue. In the meantime, because the information could be helpful to consumers, the Commission encourages manufacturers to consider including it, together with a meaningful explanation of its use, in promotional materials relating to their products.

III. Regulatory Flexibility Act

This notice does not contain a regulatory analysis under the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603–604, because the Commission believes that the amendment will not have "a significant economic impact on a substantial number of small entities," 5 U.S.C. 605.

In the NPR, the Commission concluded tentatively that the amendment would not impose any new requirements on manufacturers of clothes washers. Instead, it would require less information than is currently required on labels that clothes washer manufacturers already must affix to their products. The Commission stated that it therefore believed that the impact of the proposed amendment on all entities within the affected industry, if any, would be *de minimis*.

In light of the above, the Commission certified in the NPR, pursuant to section 605 of the RFA, 5 U.S.C. 605, that the proposed amendments would not, if granted, have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact was overlooked, however, the Commission solicited comments concerning the effects of the proposed amendment, including any benefits and burdens on manufacturers or consumers and the extent of those benefits and burdens, beyond those imposed or conferred by the current Rule, that the amendment would have on manufacturers, retailers, or other sellers. The Commission expressed particular interest in comments regarding the effects of the amendment on small businesses. The Commission stated that, after reviewing any comments received, it would determine whether it would be necessary to prepare a final regulatory flexibility analysis if it determined to issue the amendment.

Five comments responded to the Commission's solicitation.[101] ACEEE stated that "For retailers who sell high efficiency machines, we would expect modest benefits, as sales of high-efficiency machines increase sales and profits.".[102] OOE, Maytag, and CEC commented that there would be virtually no impact on small businesses.[103] Amana said that label confusion and training costs could have an adverse economic impact on small businesses,[104] and Whirlpool stated that "Small retailers that specialize in top-loaders only could be disadvantaged." [105]

The Commission acknowledges that manufacturers that do not make, and small businesses that do not sell, front-loading clothes washers, and especially those companies that do manufacture and/or sell efficient top-loading models, may, in the short run, be at a slight disadvantage as a result of today's amendment. The Commission has concluded, however, that such disadvantages are offset by the benefits to consumers. Further, continuing developments in clothes washer technology and ongoing changes in the marketplace (and manufacturer and retailer responses to such changes), could quickly overcome any slight disadvantages that may be incurred now.

Therefore, although the comments on this issue seem split as to whether there will be any effect at all on small businesses, the Commission believes that the impact of the results that do accrue will be *de minimis*, because the potential costs will be small in comparison to the overall budgets of the businesses affected, and thus will not be "significant."

In light of the above, the Commission certifies, pursuant to section 605 of the RFA, 5 U.S.C. 605, that the amendment published today will not have a significant impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require "collections of information" (*i.e.*, recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget ("OMB"), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084–0069).

In the NPR, the Commission concluded that the conditional exemption would not impose any new information collection requirements. To ensure that no additional burden was overlooked, however, the Commission sought public comment on what, if any, additional information collection burden the proposed conditional exemption would impose.

No comments addressed this issue. The Commission again concludes, therefore, that the conditional exemption will not impose any new information collection requirements.

[101] Amana (4) p. 3; OOE (5) p. 4; ACEEE (9) p. 3; Whirlpool-1 (10) p. 5; and CEE (16) p. 5.
[102] ACEEE (9) p. 3.
[103] OOE (5) p. 4; Maytag (6) p. 3; CEE (16) p. 5.
[104] Amana (4) p. 3.
[105] Whirlpool-1 (10) p. 5.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 6294.

V. Final Amendment

In consideration of the foregoing, the Commission amends title 16, chapter I, subchapter C of the Code of Federal Regulations, as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCE AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

1. The authority for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. Appendix F to Part 305—Clothes Washers is revised to read as follows:

Appendix F to Part 305—Clothes Washers

Range Information

"Compact" includes all household clothes washers with a tub capacity of less than 1.6 cu. ft. or 13 gallons of water.

"Standard" includes all household clothes washers with a tub capacity of 1.6 cu. ft. or 13 gallons of water or more.

Capacity	Range of estimated annual energy consumption (kWh/yr.)	
	Low	High
COMPACT	537	607
STANDARD	156	1154

3. Sample Label 3 in Appendix L to Part 305 is revised to read as follows:

BILLING CODE 6750–01–P

Based on standard U.S. Government tests

ENERGYGUIDE

Clothes Washer
Capacity: Standard

XYZ Corporation
Model(s) MR328, XL12, NAA83

Compare the Energy Use of this Clothes Washer with Others Before You Buy.

This Model Uses
873kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy	Uses Most Energy
156	1154

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size clothes washers are used in this scale.

Clothes washers using more energy cost more to operate. This model's estimated yearly operating cost is:

$70	$33
when used with an electric water heater	when used with a natural gas water heater

Based on eight loads of clothes a week and a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity and 68.8¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 3

By direction of the Commission.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 00–7461 Filed 3–24–00; 8:45 am]

BILLING CODE 6750–01–C

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8874]

RIN 1545–AW10

Travel and Tour Activities of Tax-Exempt Organizations; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Monday, February 7, 2000 (65 FR 5771), clarifying when the travel and tour activities of tax-exempt organizations are substantially related to the purposes of which exemptions was granted.

DATES: This correction is effective February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Robin Ehrenberg at (202) 622–6080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 513 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8874) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8874), which were the subject of FR Doc. 00–2154, is corrected as follows:

1. On page 5772, in the first column, under the caption "Background", in the last line of the first paragraph, the language, "circumstances test in four situations" is corrected to read "circumstances test".

§ 1.513–7 [Corrected]

2. On page 5774, third column, in § 1.513–7(b) *Example 7*, line 10, the language, "contribution to W of q dollars. Each year, W" is corrected to read "contribution to W of $q. Each year, W".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5248 Filed 3–24–00; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300988; FRL–6498–7]

RIN 2070–AB78

Dichlormid; Time-Limited Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes time-limited tolerances for residues of the inert ingredient (herbicide safener) dichlormid (*N,N*-diallyl dichloroacetamide) in or on corn commodities (forage, grain, stover) at 0.05 ppm. Zeneca Ag Products requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. The tolerances will expire and be revoked on March 27, 2002.

DATES: This regulation is effective March 27, 2000. Objections and requests for hearings, identified by docket control number OPP–300988, must be received by EPA on or before May 26, 2000.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VI. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP– 300988 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg.,1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone number: (703–308–8373; and e-mail address: alston.treva@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111	Crop production.
	112	Animal production.
	311	Food manufacturing.
	32532	Pesticide manufacturing.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "Federal Register—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300988. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

The Agency previously established under the Federal Food, Drug, and Cosmetic Act in a **Federal Register** Notice dated March 18, 1994 (59 FR 12857), a time-limited tolerances for dichlormid which expired on December 31, 1998. These tolerances were for corn, forage (field), at 0.05 ppm; corn, fodder (field) at 0.05 ppm; and corn, grain (field) at 0.05 ppm. In the **Federal Register** of September 16, 1998 (63 FR 49568–49574) (FRL–6025–8), EPA issued a notice pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of pesticide petition (PP) 6F03344 for tolerance by Zeneca Ag Products, 1800 Concord Pike, Wilmington, DE. This notice included a summary of the petition prepared by Zeneca Ag Products, the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.469 be amended to establish again tolerances for residues of the safener dichlormid, in or on field corn grain, field corn forage, and field corn fodder at 0.05 ppm. The tolerances will expire and be revoked on March 27, 2002.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides based primarily on toxicological studies using laboratory animals. These studies address many adverse health effects, including (but not limited to) reproductive effects, developmental toxicity, toxicity to the nervous system, and carcinogenicity. Second, EPA examines exposure to the pesticide through the diet (e.g., food and drinking water) and through exposures that occur as a result of pesticide use in residential settings. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for time limited tolerances for residues of dichlormid on corn, field, forage at 0.05 ppm; corn, field, grain, at 0.05 ppm; corn, field, stover at 0.05 ppm; corn, pop, grain at 0.05 ppm; corn, pop, stover at 0.05 ppm. EPA's assessment of the dietary exposures and risks associated with establishing the tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by dichlormid are discussed in this unit.

1. *Acute oral toxicity to the rat.* Lethal Dose, LD_{50}, is 2,146 mg/kg. Clinical signs of neurotoxicity included upward curvature of the spine, piloerection, salivation, tip toe gait (Toxicity Category III).

2. *Acute dermal toxicity.* $LD_{50} < 2,000$ mg/kg (limit dose) (Toxicity Category III).

3. *Acute inhalation.* Lethal Concentration (LC_{50}) is greater than 5.5 mg/L limit dose. Clinical signs of neurotoxicity included head flicking, paw flicking, and salivation.

4. *Primary eye irritation.* Mild Ocular Irritant (Toxicity Category IV).

5. *Primary dermal irritation.* Severe Dermal Irritant (Toxicity Category II).

6. Skin sensitization. Mild dermal sensitizer.

7. *90–day feeding study/rat.* The no-observed-adverse-effect level (NOAEL) is 20 ppm (intake of approximately 1.4 mg/kg/day for males and 1.6 mg/kg/day for females). Based on minor decreases in body weight gains and food efficiency in females and on increased liver weight and a slightly increased incidence of liver lipidosis in males, the lowest-observe-adverse-effect level (LOAEL) is 200 ppm under the conditions of this study (intake of approximately 14 mg/kg/day for males and 16 mg/kg/day for females.

8. *90–day feeding (capsule) study.* The NOAEL is 5 mg/kg/day for both sexes in the 90–day dog study. Based on decreased body weight gains, hematological and clinical chemistry alterations, liver toxicity, and voluntary muscle pathological changes, the LOAEL is 25 mg/kg/day for both males or females under the conditions of this study.

9. *90–day inhalation study.* The NOAEL is 2 mg/m^3 (2 µg/L) in the 90–day rat inhalation study. The LOAEL is 19.9 mg/m^3 (19.9µg/L) based on clinical signs, gross pathology, opthamology, liver and kidney weights, and non-neoplastic histology.

10. *Carcinogenicity in the mouse.* Under the conditions of the study, there was no evidence of carcinogenic potential. The NOAEL for chronic toxicity is 50 ppm (equivalent to 7.0 mg/kg/day for male mice and 9.2 mg/kg/day for females). The LOAEL for chronic toxicity is 500 ppm (equivalent to 70.7 mg/kg/day for male mice and 92.4 mg/kg/day for females) based on changes in reproductive organs and kidney changes in males.

11. *Combined chronic toxicity/carcinogenicity in the rat.* Under the conditions of this study, there was no evidence of carcinogenic potential. The NOAEL for chronic toxicity is 100 ppm (6.5 mg/kg/day and 7.5 mg/kg/day for males and females respectively). The LOAEL is 500 ppm (32.8 mg/kg/day and 37.1 mg/kg/day in males and females respectively) based on liver clinical pathology, liver histopathology, and increased liver weight.

12. *Developmental toxicity in the rat.* The developmental toxicity NOAEL is 40 mg/kg/day. The maternal toxicity NOAEL is 10 mg/kg/day. The maternal toxicity LOAEL is 40 mg/kg/day based on decreased mean absolute body weights, body weight gains, and food consumption. The developmental toxicity LOAEL is 160 mg/kg/day based on a marginal increase in skeletal anomalies.

13. *The developmental toxicity in the rabbit.* The developmental toxicity and the maternal toxicity NOAEL are 30 mg/kg/day. The maternal toxicity LOAEL is 180 mg/kg/day based on an increased incidence of alopecia and decreased mean maternal body weight gains and food consumption. The developmental toxicity LOAEL is 180 mg/kg/day based on increases in post-implantation loss accompanied by an increased number of resorptions per doe (both early and late resorptions), a decreased number of fetuses per litter, and slightly decreased mean fetal body weights.

14. *Mutagenicity/gene mutation.* Dichlormid was negative for mutagenic activity in *Salmonella typhimurium* strains TA 1535 ,TA 1537, TA 98, & TA 100 in both the absence and presence of metabolic activation up to cytotoxic doses. Dichlormid was positive for mutagenic activity both in the absence and presence of metabolic activation *in vitro* L5178Y Mouse Lymphoma Cells at doses that extend to the cytotoxic range.

15. *Mutagenicity/structural chromosomal aberration.* Dichlormid was negative for mutagenicity in an *in vitro* cytogenetic assay in human lymphocytes in the presence and absence of S–9 up to cytotoxic doses. Dichlormid was not clastogenic or anugenic mutagenicity in an *in vivo* mouse micronucleus assay up to 2,000 mg/kg.

16. *Mutagencity/other.* Dichlormid was negative for induced unscheduled DNA synthesis in rat primary hepatocytes.

B. Toxicological Endpoints

1. *Acute dietary toxicity.* For an acute dietary risk assessment, the Agency selected a maternal toxicity NOAEL of 10 mg/kg/day from the developmental toxicity study in the rat. The LOAEL is 40 mg/kg/day based on decreased body weight gain and food consumption (most significant on days 7–10 of dosing).

2. *Short-term dermal toxicity.* For a short-term dermal risk assessment the Agency selected the maternal toxicity NOAEL of 10 mg/kg/day. The LOAEL of 40 mg/kg/day was based on decreased body weight gain and food consumption. This dose was also selected for the acute toxicity. The duration of the short term dermal scenarios for dichlormid are comparable to the duration of exposure in the rat developmental toxicity study.

3. *Intermediate and long term dermal toxicity.* For intermediate and long-term dermal risk assessment, the Agency selected a NOAEL of 6.5 mg/kg/day (100 ppm) from a 2-year chronic toxicity/carcinogenicity rat feeding study. The LOAEL of 32.8 mg/kg/day (500 ppm) was based on an increased incidence of liver clinical pathology/histopathology and increased liver weight in the 2-year study in rats.

4. *Inhalation (all durations).* For an inhalation risk assessment, the Agency selected an inhalation NOAEL of 2 µg/L based on clinical signs, increased liver and kidney weight, gross pathology findings and non-neoplastic histopathology at the LOAEL of 19.9 µg/L (14-week inhalation study).

5. *Chronic dietary toxicity.* For a chronic dietary risk assessment the Agency selected a NOAEL of 6.5 mg/kg/day (100 ppm) from a 2–year chronic toxicity/carcinogenicity rat feeding study. The LOAEL of 32.8 mg/kg/day (500 ppm) was based on an increased incidence of liver clinical pathology/histopathology and increased liver weight in the 2–year study in rats.

6. *Carcinogenicity.* There is no evidence of carcinogenic potential in the rat and mouse carcinogenicity studies based on evaluation of the above described studies.

7. *Dermal penetration.* Dermal penetration could not be determined due to the absence of appropriate dermal studies and therefore a value of 100% dermal penetration was used.

8. *Safety factors.* The Agency will use the above NOAELs and LOAELs levels to assess the risks of using dichlormid to the general population and certain subgroups of the general population. However, the Agency first modifies these values numerically downward by dividing the NOAEL by two or more safety factors. The safety (uncertainty) factors used are: a 10–fold factor to account for intraspecies variability (the differences in how the test animals reacted to the test substance) and a 10–fold factor to account for interspecies variation (the use of animal studies to predict human risk).

FFDCA Section 408 provides that the Agency shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless the Agency determines that a different margin of safety will be safe for infants and children. As noted, the Agency has added an additional ten fold factor to both the acute and chronic dietary risk assessment due to the qualitative evidence of increased susceptibility demonstrated following *in utero* exposure in the prenatal developmental toxicity study in rabbits; and the incompleteness of the toxicity database. There are data gaps for the 2-generation reproduction study in rats, and acute and subchronic neurotoxicity studies.

i. *Acute dietary toxicity.* The Agency divided the NOAEL by 1,000 (10x interspecies extrapolation, 10x intraspecies variation and 10x safety factor) to address additional susceptibility in the fetus and data gaps. The acute Population Adjusted Dose (aPAD) is equal to 0.010 mg/kg/day.

ii *Chronic dietary toxicity.* The Agency divided the NOAEL of 6.5 mg/kg/day by 3,000 (10x interspecies extrapolation, 10x intraspecies variation, 10x for additional susceptibility and the data gap for the 2 generation reproductive study, and 3x for the data gap for the chronic toxicity study in dogs). The chronic Population Adjusted Dose (cPAD) is equal to 0.0022 mg/kg/day.

C. Exposures and Risks

1. *From food and feed uses.* Time-limited tolerances were previously established in 40 CFR 180.469 for residues of dichlormid at 0.05 ppm, in or on corn. Risk assessments were conducted by EPA to assess dietary exposures from dichlormid as follows:

i. *Acute exposure and risk.* Acute dietary risk assessments are performed for a food-use pesticide if a toxicological study has indicated the possibility of an effect of concern occurring as a result of a 1–day or single exposure. In performing the acute dietary risk assessment, the Agency's level of concern is for exposures greater than 100% aPAD. For all population groups, including U.S. Population, infants and children, the acute dietary exposures are less than the Agency's level of concern at the 95th percentile using tolerance level residues and assuming 100%CT. The population groups with the highest dietary exposures are all infants (> 1 year) (5 %), non nursing infants (> 1 year) (5%), and children (1–6 years of age) (4%), children (7–12 years of age) (3%).

ii. *Chronic exposure and risk.* In performing the chronic dietary risk assessment, the Agency's level of concern is for exposures greater than 100% cPAD. Using tolerance level residues and assuming 100%CT, the population groups with the highest percentages are all infants (> 1 year) (7%), non-nursing infants (> 1 year) (9%), Children (1–6 years old) (7%), children (7–12 years old) (5%), and males (13–19 years)(4%).

2. *From drinking water.* A Drinking Water Level of Comparison (DWLOC) is a theoretical exposure to a pesticide in food, drinking water, and through residential uses. A DWLOC will vary depending on the toxic endpoint, with drinking water consumption, and body weights. Different populations will have different DWLOCs. The Agency uses DWLOCs internally in the risk assessment process as a surrogate measure of potential exposure

associated with exposure through drinking water. In the absence of monitoring data for pesticides, it is used as a point of comparison against conservative model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. They do have an indirect regulatory impact through aggregate exposure and risk assessments.

Dichlormid is relatively short-lived in aerobic soil. Carbon dioxide was the only major identified aerobic soil metabolite. Significant amounts of other soil degradates were resistant to harsher extraction and presumably remain as bound residues. Dichlormid was stable against hydrolysis and photolysis in soil and water. Dichlormid's low sorptivity to soil indicates high mobility. Based on its low sorptivity to soil, high solubility in water (4.4 g/L), and low octanol to water partitioning ratio, bioconcentration is not anticipated.

Drinking water exposure estimates are based on degradation and transport factors for dichlormid coupled with the Agency's current GENEEC (surface water) and SCI-GROW (groundwater) screening models for surface and ground water, respectively. Model results are for an application rate of dichlormid of 0.5 lbs/acre.

For ground water, the Agency used its SCI-GROW (Screening Concentration in Ground Water) screening model and environmental fate data to determine the Estimated Environmental Concentration (EEC) of dichlormid in ground water. SCI-GROW is an empirical model based upon actual ground water monitoring data collected for the registration of a number of pesticides that serve as benchmarks for the model. The current version of SCI-GROW appears to provide realistic estimates of pesticide concentrations in shallow, highly vulnerable ground water sites (i.e., sites with sandy soils and depth to ground water of 10 to 20 feet). The SCI-GROW ground water screening concentration is 0.046 ppb.

For surface water, the Agency used its GEENEC (Generic Estimated Environmental Concentration) screening model and environmental fate data to determine the EECs of dichlormid in surface water. GENEEC simulates a 1 hectare by 2 meter deep edge-of-the-field farm pond which receives pesticide runoff from a treated 10 hectare field. GENEEC can substantially overestimate true pesticide concentrations in drinking water. It has certain limitations and is not the ideal tool for use in drinking water risk assessments. However, it can be used in screening calculations and does provide an upper bound on the concentration of true drinking water concentrations. It will be necessary to refine the GENEEC estimate when the level of concern is exceeded. In those situations where the level of concern is exceeded and the GENEEC value is a substantial part of the total exposure, the Agency can use a variety of methods to refine the exposure estimates.

Using the GENEEC model and available environmental fate data, EPA calculated the following Tier 1 EECs for dichlormid:

Peak (Acute) EEC: 27.29 ppb
Average (Chronic) EEC 26.93 ppb

However, the interim Agency policy allows the average (chronic) GENEEC value to be divided by 3 to obtain a value of 8.98 ppb for use in chronic risk assessment calculations. It is current Agency policy that the following subpopulations be addressed when calculating drinking water levels of concern: U.S. Population (48 States), any other adult populations whose %PAD is greater than that of the U.S. population, and the Female and Infant/Children subgroups (1 each) with the highest food exposure. The subgroups which are listed below are those which fall into these categories.

i. *Acute exposure and risk.* Based on the acute dietary exposure estimates, an acute drinking water level of comparison (DWLOC) for dichlormid was calculated to be 340 ppb and 95 ppb for the U.S. population and non-nursing infants (> 1 year old) respectively.

ii. *Chronic exposure and risk.* Based on the chronic dietary exposure estimates, chronic drinking water levels of comparison (DWLOC) for dichlormid was calculated to be 75 ppb and 20 ppb for the U.S. population and non-nursing infants (> 1 year old), respectively.

iii. *Drinking water risks.* The modeled groundwater and surface water concentrations are less than the DWLOCs for dichlormid in drinking water for acute and chronic aggregate exposures. Thus, the Agency is able to screen out dichlormid drinking water risks.

3. *From non-dietary exposure.* There are no existing residential uses for dichlormid; therefore, no assessment was performed for residential exposure.

4. *Cumulative exposure to substances with a common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether dichlormid has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, dichlormid does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that dichlormid has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* High-end dietary exposure estimates through food were calculated for the U.S. Population and other subgroups. The % aPADs for the U.S. population and all other subgroups were > 5% which is below the Agency's level of concern of 100% at the 95th percentile. The acute estimated concentrations of dichlormid in surface and ground water are less than the Agency's DWLOCs for dichlormid. Therefore, EPA does not expect the aggregate risk to exceed 100% of the aPAD.

2. *Chronic risk.* There are no registered residential uses for dichlormid. Chronic aggregate exposure will include food and water only. Using tolerance level residues and 100% crop treated assumptions, the percent cPADS for the U.S. population and all other subgroups were > 9%. The estimated chronic dietary risk from food is below the Agency's level of concern (100%). The estimated average concentrations of dichlormid in surface and ground water are less than the Agency's DWLOCs for dichlormid in drinking water. Therefore, EPA does not expect the aggregate risk to exceed 100% of the cPAD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. There are no existing residential uses for dichlormid; therefore, no short-term or intermediate-term risk assessment was performed.

4. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to dichlormid residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children*—i. *In general.* In assessing the potential for additional sensitivity of infants and children to residues of dichlormid, EPA considered data from developmental toxicity studies in the rat and rabbit. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure gestation.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined interspecies and intraspecies variability) when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Conclusion.* An additional safety factor is to be retained at 10x since: (1) There is qualitative evidence of increased susceptibility in the rabbit developmental study; and (2) the toxicity database is incomplete. There are data gaps for the 2-generation reproduction study in rats, and acute and subchronic neurotoxicity studies.

2. *Acute risk.* From the acute dietary risk assessments, high-end exposure estimates were calculated for the U.S. Population and other subgroups. At the 95 th percentile the highest dietary exposure for infants < 1 year and non-nursing infants (< 1 year old) is 5% aPAD. The estimated acute dietary risk associated with the use of dichlormid on corn is below the Agency's level of concern. The maximum estimated concentrations of dichlormid in surface and ground water are less than the Agency's DWLOCs for dichlormid. Therefore, EPA does not expect the acute risk to exceed 100% of the aPAD.

3. *Chronic (non cancer) risk.* There are no registered residential uses for dichlormid. Therefore, chronic aggregate exposure will include food and water only. Using tolerance level residues and 100% crop treated assumptions, the highest exposure is from an infants and children subgroup, non-nursing infants(< 1year old), with an estimated dietary exposure of 9% cPAD. The estimated chronic dietary risk associated with the use of dichlormid on corn is below the Agency's level of concern. The estimated average concentrations of dichlormid in surface and groundwater are less than the Agency's DWLOCs for dichlormid in drinking water. Therefore, EPA does not expect the chronic risk to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. There are no existing residential uses for dichlormid, therefore, no short and intermediate term risk assessment was performed.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to dichlormid residues.

IV. Other Considerations

A. Endocrine Disruptor Effects

FQPA requires the Agency to develop a screening program to determine whether certain substances (including all pesticides and inerts or active ingredients) "may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other endocrine effect..." The Agency has been working with interested stakeholders to develop a screening and testing program as well as a priority setting scheme. As the Agency proceeds with implementation of this program, further testing of products containing the inert ingredient dichlormid for endocrine effects may be required.

B. Metabolism in Plants and Animals

No data pertaining to the metabolism of dichlormid have been submitted. The nature of the residue in corn was previously found to be understood based on the published metabolism studies of *N,N*-diallyl-2-chloroacetamide. It was concluded that the metabolism of dichlormid would follow the pathway of *N,N*-dially-2-chloroacetamide.

C. Analytical Enforcement Methodology

Adequate enforcement methodology is available to enforce the tolerance expression. The method may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

D. Magnitude of Residues

Crop field trial data for dichlormid were submitted and reviewed. The submitted data support the time-limited tolerance level of 0.05 ppm for all corn commodities.

E. International Residue Limits

There is neither a Codex proposal, nor Canadian or Mexican limits for residues of dichlormid in corn commodities.

V. Conclusion

Therefore, the time limited tolerances are established for residues of the inert ingredient herbicide safener, *N,N*-diallyldichloracetamide in corn, field, forage at tolerance level of 0.05 ppm; corn, field, grain at a tolerance level of 0.05 ppm; corn, field, stover at a tolerance level of 0.05 ppm; corn, pop, grain at a tolerance level of 0.05 ppm; and corn, pop, stover at a tolerance level of 0.05 ppm. The tolerances will expire and be revoked 2 years from the date of this publication. These tolerances are being established on a time-limited basis due to an incomplete data base. The following toxicological data gaps (OPPTS Harmonized Test Guideline) have been identified (1) Chronic Feeding Study in Dogs, Test Guidelines 870.4100; (2) 2-Generation Reproductive Study in Rats, Test Guideline 870.3800; (3) General Metabolism Study, Test Guideline 870.7485; (4) Acute Neurotoxicity Study, Test Guideline 870.6200; and (5) Subchronic Neurotoxicity Study, Test Guideline 870.6200.

The following product and residue chemistry data were also identified: (1) Product Chemistry Data-color, Test Guideline 830.6302; physical state, Test Guideline 830.6303; odor, 830.6304; melting point, Test Guideline 830.7200; boiling point, Test Guideline 830.7220; water solubility, Test Guideline 830.7840; and stability, Test Guideline 830.6313; (2) Plant Metabolism Study, Test Guideline 860.1300; (3) Animal Metabolism Studies, Test Guideline

860.1300; (4) Crop Field Trials, 860.1500; (5) Rotational Crop Study, Test Guideline 860.1850 (Confined Study). The toxicological, product chemistry and residue chemistry data gaps as identified must be addressed before a permanent tolerance can be established.

VI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300988 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 26, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. M3708, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VI.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300988, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VII. Regulatory Assessment Requirements

This final rule establishes a time-tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 16, 2000

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a) and 371.

2. Section 180.469 is revised to read as follows:

§ 180.469 N,N-diallyl dichloroacetamide; tolerances for residues.

(a) *General.* Tolerances are established for residues of dichlormid; *N,N*-diallyl dichloroacetamide (CAS Reg. No. 37764–25–3) when used as an inert ingredient (safener) in pesticide formulations in or on the following food commodities:

Commodity	Parts per million	Expiration/Revocation Date
Corn, field, forage	0.05	March 27, 2002
Corn, field, grain	0.05	March 27, 2002
Corn, field, stover	0.05	March 27, 2002
Corn, pop, grain	0.05	March 27, 2002
Corn, pop, stover	0.05	March 27, 2002

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 00–7416 Filed 3–24–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–552; MM Docket No. 97–251; RM–9199]

Radio Broadcasting Services; Breckenridge and Graford, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule; dismissal.

SUMMARY: The Commission, at the request of Big Country Radio, Inc., licensee of Station KLXK(FM), Channel 228C2, Breckenridge, Texas, dismisses the petition for rule making requesting the substitution of Channel 228C3 for Channel 228C2 at Brackenridge and the reallotment of Channel 228C3 to Graford, Texas. See 63 FR 02355 (January 15, 1998).

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No.97–251, adopted March 1, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7389 Filed 3–24–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211040–0040–01; I.D. 032100B]

Fisheries of the Exclusive Economic Zone Off Alaska; Trawling in Steller Sea Lion Critical Habitat in the Western Aleutian District of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting trawling within Steller sea lion critical habitat in the Western Aleutian District of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary because the 2000 critical habitat percentage of Atka mackerel allocated to the Western Aleutian District has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 22, 2000, until the directed fishery for Atka mackerel closes within the Western Aleutian District.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2000 TAC for Atka mackerel specified for the Western Aleutian District during the 'A' season is 13,736 metric tons (mt), of which no more than 7,829 mt may be harvested from critical habitat (65 FR 8282, February 18, 2000). See § 679.20(c)(3)(iii)(A) and 679.22(a)(8)(iii)(B).

In accordance with § 679.22(a)(8)(iii)(A), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the allowable harvest of Atka mackerel in Steller Sea lion critical habitat in the Western Aleutian District as specified under the 2000 harvest specifications for the 'A' season has been reached. Consequently, NMFS is prohibiting trawling in critical habitat, as defined at 50 CFR part 226, Table 1 and Table 2 in the Western Aleutian District of the BSAI.

Classification

This action responds to the TAC limitations for Atka mackerel in the BSAI. It must be implemented immediately to avoid jeopardy to the continued existence of Steller sea lions. A delay in the effective date is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 22, 2000.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7488 Filed 3–22–00; 4:30 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 59
Monday, March 27, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–128–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300, A310, and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Model A300, A310, and A300–600 series airplanes. This proposal would require an inspection to detect damage of the electrical bonding leads in specified locations of the fuel tanks, and replacement of any damaged electrical bonding leads with serviceable electrical bonding leads. For certain airplanes, this proposal also would require modifying the fuel pipe couplings in specified locations of the fuel tank. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent electrical arcing/discharge in the fuel tank due to damaged electrical bonding leads or inadequate electrical bonding of the fuel pipe couplings, which could result in fuel ignition and consequent uncontained rupture of the fuel tank.

DATES: Comments must be received by April 26, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–128–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–128–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on all Airbus Model A300, A310, and A300–600 series airplanes. The DGAC advises that, during a maintenance check, an inspection of the inner fuel tanks revealed damage (i.e., breakage and corrosion) to several bonding leads. The damage is a result of normal aging of the bonding leads. Damaged bonding leads could create electrical voltage differentials between the fuel tank components, which could result in electrical arcing inside the fuel tanks. The DGAC advises that electrical arcing also could occur between certain fuel pipe couplings inside the fuel tanks due to their existing design. These conditions, if not corrected, could result in fuel ignition and consequent uncontained rupture of the fuel tank.

Explanation of Relevant Service Information

Airbus has issued Service Bulletins A300–28–0072, Revision 01, dated October 01, 1998, including Appendix 1, dated October 01, 1998, and Appendix 2, dated February 20, 1998 (for Model A300 series airplanes); A310–28–2128, Revision 01, dated October 01, 1998, including Appendix 1, dated October 01, 1998, and Appendix 2, dated February 20, 1998 (for Model A310 series airplanes); and A300–28–6057, Revision 01, dated October 01, 1998, including Appendix 1, dated October 01, 1998, and Appendix 2, dated February 20, 1998 (for Model A300–600 series airplanes). These service bulletins describe procedures for inspection of the electrical bonding leads in specified locations of the fuel tank for damage (i.e., breakage, fraying, abrasion damage, looseness of the outer metal braid protection in the end crimp, looseness of the outer metal braid protection on the bonding lead inner core, corrosion, or missing leads), and replacement of any damaged electrical bonding lead with a serviceable electrical bonding lead.

Also, Airbus has issued Service Bulletins A300–28–0073, Revision 01, dated October 01, 1998 (for Model A300

series airplanes); A310–28–2130, Revision 01, dated October 01, 1998 (for Model A310 series airplanes); and A300–28–6058, Revision 01, dated October 01, 1998 (for Model A300–600 series airplanes). For certain airplanes these service bulletins describe procedures for modifying the fuel pipe couplings in specified locations of the fuel tank by removing one bolt from each flanged fuel pipe coupling and reinstalling it as an electrical bonding bolt.

Accomplishment of the actions specified in these service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified these service bulletins as mandatory and issued French airworthiness directive 98–174–248(B), dated April 22, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously, except as discussed below.

Difference Between Proposed Rule and Foreign Airworthiness Directive

Operators should note that, although the service bulletin and French airworthiness directive recommend that the modification be accomplished within 4 years (after the release of the service bulletin), the FAA has determined that an interval of 4 years would not address the identified unsafe condition in a timely manner.

An electrical discharge in a fuel tank can create a spark that could ignite the fuel vapors inside the tank. The spark energy required to ignite fuel depends on the type of fuel, the fuel temperature, and the air pressure (altitude) inside a fuel tank. Under certain conditions, fuel can be ignited with spark energy levels much lower than the energy required to create a visible mark. Therefore, a spark that has enough energy to cause a mark can ignite fuel vapor under a wider range of fuel tank conditions.

In developing an appropriate compliance time for this AD, the FAA considered not only the manufacturer's recommendation, but the degree of urgency associated with addressing the subject unsafe condition, the average utilization of the affected fleet, and the time necessary to perform the modification. In light of all of these factors, the FAA finds a 36-month compliance time for accomplishing the inspection and modification to be warranted, in that 36 months represent an appropriate interval of time allowable for affected airplanes to continue to operate without compromising safety.

Cost Impact

The FAA estimates that 116 airplanes of U.S. registry would be affected by this proposed AD.

It would take between 70 and 80 work hours per airplane to accomplish the proposed inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed inspection on U.S. operators is estimated to be between $487,200 and $556,800, or between $4,200 and $4,800 per airplane.

It would take between 77 and 103 work hours per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $104 per airplane. Based on these figures, the cost impact of the proposed modification on U.S. operators is estimated to be between $547,984 and $728,944, or between $4,724 and $6,284 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 99–NM–128–AD.

Applicability: All Model A300, A310, and A300–600 series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing/discharge in the fuel tank due to damaged electrical bonding leads or inadequate electrical bonding of the fuel pipe couplings, which could result in fuel ignition and consequent uncontained rupture of the fuel tank, accomplish the following:

(a) Within 36 months after the effective date of this AD, perform a one-time inspection to detect damage (*i.e.*, breakage, fraying, abrasion damage, looseness of the outer metal braid protection in the end crimp, looseness of the outer metal braid protection on the bonding lead inner core, corrosion, or missing leads) of the electrical bonding leads in specified locations of the fuel tanks, in accordance with the Accomplishment Instructions of Airbus Service Bulletins A300–28–0072, Revision 01, dated October 01, 1998, including Appendix 1, dated October 01, 1998, and Appendix 2, dated February 20, 1998 (for Model A300 series airplanes); A310–28–2128, Revision 01, dated October 01, 1998, including Appendix 1, dated October 01, 1998, and Appendix 2, dated February 20, 1998 (for Model A310 series airplanes); or A300–28–6057, Revision 01, dated October 01, 1998, including Appendix 1, dated October 01, 1998, and Appendix 2, dated February 20, 1998 (for Model A300–600 series airplanes); as applicable.

Note 2: Inspection of the area specified in paragraph (a) of this AD accomplished prior the effective date of this AD in accordance with Airbus Service Bulletins A300–28–0072, A310–28–2128, or A300–28–6057; all dated February 20, 1998; as applicable; is considered acceptable for compliance with the requirements of paragraph (a) of this AD.

(b) If any electrical bonding lead is damaged, prior to further flight, replace the bonding lead with a serviceable bonding lead in accordance with the applicable service bulletin specified in paragraph (a) of this AD.

(c) For airplanes on which Airbus Industrie Modification 11847 (for Model A310 series airplanes) or 11848 (for Model A300/A300–600 series airplanes) has not been accomplished, within 36 months after the effective date of this AD, modify the fuel pipe couplings in the specified locations of the fuel tank in accordance with the Accomplishment Instructions of Airbus Service Bulletins A300–28–0073, Revision 01, dated October 01, 1998 (for Model A300 series airplanes); A310–28–2130, Revision 01, dated October 01, 1998 (for Model A310 series airplanes); or A300–28–6058, Revision 01, dated October 01, 1998 (for Model A300–600 series airplanes); as applicable.

Note 3: Modification of the fuel pipe couplings accomplished prior to the effective date of this AD in accordance with Airbus Service Bulletins A300–28–0073, A310–28–2130, or A300–28–6058; all dated February 20, 1998; as applicable; is considered acceptable for compliance with the requirements of paragraph (c) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 5: The subject of this AD is addressed in French airworthiness directive 98–174–248(B), dated April 22, 1998.

Issued in Renton, Washington, on March 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7337 Filed 3–24–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 97–NM–203–AD]

RIN 2120–AA64

Airworthiness Directives; Dornier Model 328–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws a notice of proposed rulemaking (NPRM) that proposed a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes. That action would have required installation of two reinforcing brackets on the keel beam in the lower shell of the main landing gear bay. Since the issuance of the NPRM, the Federal Aviation Administration (FAA) has received new data indicating that the unsafe condition addressed in the NPRM does not exist. Accordingly, the proposed rule is withdrawn.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add a new airworthiness directive (AD), applicable to certain Dornier Model 328–100 series airplanes, was published in the **Federal Register** as a Notice of Proposed Rulemaking (NPRM) on April 6, 1998 (63 FR 16715). The proposed rule would have required installation of two reinforcing brackets on the keel beam in the lower shell of the main landing gear bay. That action was prompted by a report of cracking of the keel beam that was discovered during full-scale fatigue testing. The proposed actions were intended to prevent fatigue cracking of the keel beam, which could result in reduced structural integrity of the airplane.

Actions That Occurred Since the NPRM Was Issued

Since the issuance of that NPRM, the manufacturer has provided the FAA with additional information regarding the unsafe condition identified in the proposed AD. The manufacturer states that an analysis has been accomplished that shows that if the cracking addressed by the proposed AD propagated to its maximum limit, the airplane could still withstand ultimate structural loads.

FAA's Conclusions

Upon further consideration, the FAA has determined that fatigue cracking of the keel beam, which was intended to be addressed by the corrective actions required in the proposed AD, does not constitute an unsafe condition. Accordingly, the proposed rule is hereby withdrawn.

Withdrawal of this notice of proposed rulemaking constitutes only such action, and does not preclude the agency from issuing another notice in the future, nor does it commit the agency to any course of action in the future.

Regulatory Impact

Since this action only withdraws a notice of proposed rulemaking, it is neither a proposed nor a final rule and

therefore is not covered under Executive Order 12866, the Regulatory Flexibility Act, or DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Withdrawal

Accordingly, the notice of proposed rulemaking, Docket 97–NM–203–AD, published in the **Federal Register** on April 6, 1998 (63 FR 16715), is withdrawn.

Issued in Renton, Washington, on March 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7460 Filed 3–24–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–354–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB 340B and SAAB 2000 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Saab Model SAAB 340B and SAAB 2000 series airplanes, that currently requires an inspection of the fluorescent lamps in the cabin area to ensure correct installation, and correction, if necessary; and an inspection of the lampholders to identify any discrepancies and to ensure the security of the back covers, and replacement of discrepant lampholders with new lampholders; installation of retaining clips on certain Page Aerospace lampholders; and reinspection of the lamps to ensure correct installation after replacement or reinstallation of the lamps or lampholders, and corrections, if necessary. This action would add a requirement for replacement of the electronic light ballasts with improved ballasts, which would terminate the reinspections. This action would also expand the applicability of the existing AD. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent electrical arcing between the fluorescent tube pins and the lampholders, which could burn the surrounding area and lead to smoke and fumes in the passenger compartment or lavatory area.

DATES: Comments must be received by April 26, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–354–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–354–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–354–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On June 13, 1997, the FAA issued AD 97–13–06, amendment 39–10052 (62 FR 33545, June 20, 1997), applicable to certain Saab Model SAAB 340B and SAAB 2000 series airplanes, to require an inspection of the fluorescent lamps in the cabin area to ensure correct installation, and corrections, if necessary. That AD also requires an inspection of the lampholders to identify any discrepancies and to ensure the security of the back covers, and replacement of discrepant lampholders with new lampholders; installation of retaining clips on certain Page Aerospace lampholders; and reinspection of the lamps to ensure correct installation after replacement or reinstallation of the lamps or lampholders, and corrections, if necessary. That action was prompted by reports indicating that loose back covers on the lampholders and incorrect lamp installations have led to electrical arcing between fluorescent tube pins and lampholders and consequent charring or melting of the affected areas. The requirements of that AD are intended to prevent such electrical arcing, which could burn the surrounding area and lead to smoke and fumes in the passenger compartment or lavatory area.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the Luftfartsverket (LFV), which is the airworthiness authority for Sweden, has advised the FAA that additional Model SAAB 340B and SAAB 2000 series airplanes may be subject to fluorescent lampholder charring due to the incorrect installation of fluorescent lamps in their holders. Additionally, the LFV has advised the FAA that a modification is now available that will eliminate the need for reinspecting the fluorescent lamps following each replacement or reinstallation of the lamps or lampholders.

In the preamble to AD 97–13–06, the FAA indicated that the actions required by that AD were considered "interim action" and that further rulemaking action was being considered. The FAA now has determined that further rulemaking action is indeed necessary, and this proposed AD follows from that determination.

Explanation of Relevant Service Information

Saab has issued Service Bulletins 340–33–048, Revision 01, dated January 21, 1999 (for Model SAAB 340B series airplanes), and 2000–33–015 (for Model SAAB 2000 series airplanes), dated January 29, 1999. These service bulletins describe procedures for replacement of the electronic light ballasts with improved ballasts, which would eliminate the need for reinspection of the fluorescent lampholders. Additionally, Service Bulletin 340–33–048, Revision 01, references Service Bulletin 340–33–049, dated January 21, 1999, which describes procedures for concurrent modification of the ballasts to ensure sufficient clearance between the ballast and certain transistors.

Saab also has issued Service Bulletin 340–33–047, Revision 01, dated June 26, 1998. The procedures in Revision 01 are identical to those in the original issue of the service bulletin, which is cited as the appropriate source of service information in AD 97–13–06 for Model SAAB 340B series airplanes. However, Revision 01 specifies additional airplanes in the effectivity of the service bulletin, and adds a reference to Saab Service Bulletin 340–33–048 (Saab Modification No. 2936), which would eliminate the need for reinspections of the lamps.

The LFV classified Service Bulletin 340–33–047, Revision 01, as mandatory, and approved Service Bulletins 340–33–048, Revision 01; 340–33–049; and 2000–33–015; and issued Swedish airworthiness directives 1–113R1 and 1–114R1, both dated September 8, 1998, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 97–13–06 to continue to require the actions specified in that AD, and to add a requirement for replacement of the electronic light ballasts with improved ballasts, which would terminate the requirement for reinspections of the lamps. The proposed AD would also expand the applicability of the existing AD to include additional Model SAAB 340B and SAAB 2000 series airplanes that are also subject to the identified unsafe condition. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that this AD proposes to mandate, within 18 months, the replacement of the light ballasts with improved ballasts as terminating action for the reinspections. (Incorporation of the terminating action specified in this service bulletin is optional in Swedish airworthiness directives 1–113R1 and 1–114R1.)

The FAA has determined that long-term continued operational safety will be better assured by design changes to remove the source of the problem, rather than by repetitive inspections. Long-term inspections may not be providing the degree of safety assurance necessary for the transport airplane fleet. This, coupled with a better understanding of the human factors associated with numerous continual inspections, has led the FAA to consider placing less emphasis on inspections and more emphasis on design improvements. The proposed replacement requirement is consistent with these conditions.

Cost Impact

There are approximately 78 airplanes of U.S. registry that would be affected by this proposed AD.

The actions that are currently required by AD 97–13–06 take approximately 7 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $420 per airplane.

The new actions that are proposed in this AD action would take as much as 9 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would be provided free of charge by the manufacturer. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $42,120, or $540 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10052 (62 FR 33545, June 20, 1997), and by adding a new airworthiness directive (AD), to read as follows:

SAAB Aircraft AB: Docket 99–NM–354–AD. Supersedes AD 97–13–06, Amendment 39–10052.

Applicability: This AD applies to the following airplanes:

- Model SAAB 340B series airplanes having serial numbers –342 and –359 through –460 inclusive, certificated in any category; except those on which Saab Service Bulletin 340–33–048, Revision 01, dated January 21, 1999 (Saab Modification No. 2936), has been incorporated; and
- Model SAAB 2000 series airplanes having serial numbers –004 through –063 inclusive, certificated in any category; except those on which Saab Service Bulletin 2000–33–015, dated January 29, 1999 (Saab Modification No. 6148), has been incorporated.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent electrical arcing between the fluorescent tube pins and the lampholders, which could burn the surrounding area and lead to smoke and fumes in the passenger compartment or lavatory area, accomplish the following:

Restatement of Requirements of AD 97–13–06

Inspections

(a) For Model SAAB 340B series airplanes having serial numbers –342 and –359 through –439 inclusive; and Model SAAB 2000 series airplanes having serial numbers –004 through –059 inclusive: Within 30 days after July 7, 1997 (the effective date of AD 97–13–06, amendment 39–10052), accomplish the actions required by paragraphs (a)(1), (a)(2), and (a)(3), as applicable.

(1) For all airplanes: Inspect the fluorescent lamps installed in the ceiling/window of the lavatory and passenger compartment to ensure correct installation; and inspect the lampholders for discrepancies such as discoloration, evidence of electrical arcing at the light tube pins, charring or melting, or insecure back covers; in accordance with Saab Service Bulletin 340–33–047, dated May 16, 1997 (for Model SAAB 340B series airplanes); or Saab Service Bulletin 2000–33–014, dated May 16, 1997 (for Model SAAB 2000 series airplanes); as applicable.

(i) If any lamp is installed incorrectly, prior to further flight, install the lamp correctly in accordance with the applicable service bulletin.

(ii) If any discrepancy is found, prior to further flight, replace the lampholder with a new lampholder in accordance with the applicable service bulletin.

(2) For Model SAAB 340B series airplanes on which a Page Aerospace lampholder having part number (P/N) D756–02–001 is installed: Install a retaining clip in accordance with Saab Service Bulletin 340–33–040, Revision 02, dated February 20, 1997.

Note 2: Installation of retaining clips on Page Aerospace lampholders that was accomplished prior to July 7, 1997, in accordance with Saab Service Bulletin 340–33–040, Revision 01, dated January 31, 1997, also is considered acceptable for compliance with the requirement of paragraph (a)(2) of this AD.

(3) For Model SAAB 2000 series airplanes on which a Page Aerospace lampholder having P/N C756–10–001 is installed: Install a retaining clip in accordance with Saab Service Bulletin 2000–33–009, dated June 19, 1996.

Reinspections Following Replacement or Reinstallation

(b) Following the accomplishment of the requirements of paragraph (a) or paragraph (c) of this AD: If any fluorescent lamp or lampholder is replaced or reinstalled, within 7 days after accomplishing such replacement or reinstallation, reinspect the lamp to ensure it is still in the correct position, in accordance with Saab Service Bulletin 340–33–047, dated May 16, 1997, or Revision 01, dated June 26, 1998 (for Model SAAB 340B series airplanes); or Saab Service Bulletin 2000–33–014, dated May 16, 1997 (for Model SAAB 2000 series airplanes); as applicable. If any lamp is installed incorrectly, prior to further flight, make corrections to ensure correct installation in accordance with the applicable service bulletin.

New Requirements of This AD

Inspections for Additional Airplanes

(c) For airplanes other than those specified in paragraph (a) of this AD: Within 30 days after the effective date of this AD, accomplish the requirements of paragraph (a) of this AD, and thereafter accomplish the requirements of paragraph (b) of this AD.

Terminating Modification

(d) For all airplanes: Within 18 months after the effective date of this AD, accomplish the requirements of paragraph (d)(1) or (d)(2) of this AD, as applicable. Accomplishment of the actions required by the applicable paragraph constitutes terminating action for the requirements of this AD.

(1) For Model SAAB 340B series airplanes: Replace the electronic light ballasts with improved ballasts, in accordance with Saab Service Bulletin 340–33–048, Revision 01, dated January 21, 1999. Concurrent with the replacement, modify the ballasts to ensure sufficient clearance between the ballast and certain transistors, in accordance with Saab Service Bulletin 340–33–049, dated January 21, 1999.

(2) For Model SAAB 2000 series airplanes: Replace the electronic light ballasts with improved ballasts, in accordance with Saab Service Bulletin 2000–33–015, dated January 29, 1999.

Spares

(e) As of the effective date of this AD, no person shall install a fluorescent lampholder having Page Aerospace P/N D756–02–001 or Page Aerospace P/N C756–10–001 on any Model SAAB 340B or SAAB 2000 series airplane, unless the lampholder has been modified in accordance with the requirements of paragraph (a)(2) or (a)(3) of this AD, as applicable.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

(2) Alternative methods of compliance, approved previously in accordance with AD 97–13–06, amendment 39–10052, are approved as alternative methods of compliance with this AD.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Swedish airworthiness directives 1–113R1 and 1–114R1, both dated September 8, 1998.

Issued in Renton, Washington, on March 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7459 Filed 3–24–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–22–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A320–232 and –233 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A320–232 and –233 series airplanes. This proposal would require replacement of the fuel metering units (FMU) of each engine with new FMU's. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent an inadvertent increase in thrust, which could result in reduced controllability of the airplane during final approach.

DATES: Comments must be received by April 26, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–22–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–22–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Airbus Model A320–232 and –233 series airplanes. The DGAC advises that an inadvertent increase of thrust can occur during a critical phase of flight. Investigation revealed that the cause of the inadvertent increase of thrust is due to a malfunction of the high flow fuel metering unit (FMU), which controls the fuel flow to the engines. This condition, if not corrected, could result in reduced controllability of the airplane during final approach.

Explanation of Relevant Service Information

The manufacturer has issued Airbus Service Bulletin A320–73–1067, dated August 11, 1999, which describes procedures for replacement of the FMU of each engine with new FMU's. Accomplishment of the actions specified in the service bulletin will permit the operators with a mixed fleet (Models A319 and A320 series airplanes) to have a single common FMU, which will eliminate the possibility of inadvertent increase of thrust due to a malfunction of the FMU. The DGAC classified this service bulletin as mandatory and issued French airworthiness directive 2000–005–143(B), dated January 12, 2000, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the high flow FMU of each engine with new FMU's. The

actions would be required to be accomplished in accordance with the

PART 39—AIRWORTHINESS DIRECTIVES

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–005–

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

detector (Fenwall) is apt to generate false smoke warnings. Such warnings could result in aborted takeoffs

operators is estimated to be between $4,142, or $2,131 per airplane.

The cost impact figure discussed

actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 77 series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 14 work hours per airplane (7 work hours per engine) to accomplish the proposed replacements, and that the average labor rate is $60 per work hour. Required parts would be provided by the manufacturer or vendor at no cost to the operators. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $64,680, or $840 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–22–AD.

Applicability: Model A320–232 and –233 series airplanes, certificated in any category, except those airplanes on which Airbus Modification 27146 or 28006 has been installed, or on which Airbus Service Bulletin A320–73–1067 has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an inadvertent increase in thrust, which could result in reduced controllability of the airplane during final approach, accomplish the following:

Replacement

(a) Within 12 months after the effective date of this AD, replace the fuel metering units (FMU) of each engine with new FMU's in accordance with Airbus Service Bulletin A320–73–1067, dated August 11, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 2000–005–143(B), dated January 12, 2000.

Issued in Renton, Washington, on March 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7458 Filed 3–24–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–23–AD]

RIN 2120–AA64

Airworthiness Directives; Saab Model SAAB SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Saab Model SAAB SF340A and SAAB 340B series airplanes. This proposal would require replacing the smoke detectors in the cargo compartment with new, improved smoke detectors. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent false smoke warnings from the cargo compartment smoke detectors, which could result in aborted takeoffs, diversions of flight routes, and emergency evacuation of flight crew and passengers.

DATES: Comments must be received by April 26, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–23–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Saab Aircraft AB, SAAB Aircraft Product Support, S–581.88, Linköping, Sweden. This information may be examined at the FAA, Transport

Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–23–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–23–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket (LFV), which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain Saab Model SAAB SF340A and SAAB 340B series airplanes. The LFV advises that in-service experience has indicated that the smoke detectors in the cargo compartment may generate false smoke warnings. Investigation revealed that, during certain environmental conditions (high humidity), a certain type of smoke detector (Fenwall) is apt to generate false smoke warnings. Such warnings could result in aborted takeoffs, diversions of flight routes, and emergency evacuation of flight crew and passengers.

Explanation of Relevant Service Information

The manufacturer has issued SAAB Service Bulletin 340–26–023, dated December 21, 1999, which describes procedures for replacing the smoke detectors in the cargo compartment with new, improved smoke detectors. The improved smoke detectors are less susceptible to humidity, thereby minimizing false smoke warnings. The LFV classified this service bulletin as mandatory and issued Swedish airworthiness directive 1–151, dated December 28, 1999, in order to assure the continued airworthiness of these airplanes in Sweden.

FAA's Conclusions

These airplane models are manufactured in Sweden and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the LFV has kept the FAA informed of the situation described above. The FAA has examined the findings of the LFV, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacing the smoke detectors in the cargo compartment with new, improved smoke detectors. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Cost Impact

The FAA estimates that 289 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost between $4,022 and $2,011 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be between $4,142, or $2,131 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB Aircraft AB: Docket 2000–NM23–AD.

Applicability: Model SAAB SF340A series airplanes, manufacturer's serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, manufacturer's serial numbers 160 through 459 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent false smoke warnings from the cargo compartment smoke detectors, which could result in aborted takeoffs, diversions of flight routes, and emergency evacuation of flight crew and passengers, accomplish the following:

Replacement

(a) Within 2 years after the effective date of this AD, replace the smoke detectors in the cargo compartment with new, improved smoke detectors, in accordance with Saab Service Bulletin 340–26–023, dated December 21, 1999.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Swedish airworthiness directive 1–151, dated December 28, 1999.

Issued in Renton, Washington, on March 21, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7457 Filed 3–24–00; 8:45 am]

BILLING CODE 4910–13–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 230, 240, 243, and 249

[Release Nos. 33–7815, 34–42552, IC–24343, File No. S7–31–99]

RIN 3235–AH82

Selective Disclosure and Insider Trading

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending the comment period for its proposed rules regarding selective disclosure and insider trading, contained in Release No. 33–7787, 64 FR 72590 (Dec. 28, 1999). The original comment period ends March 29, 2000. The new deadline for submitting public comments is April 28, 2000.

DATES: Public comments are due on or before April 28, 2000.

ADDRESSES: Please send three copies of your comment letter to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, N.W., Washington, D.C. 20549–0609. Comments can also be sent electronically to the following e-mail address: rule-comments@sec.gov. Your comment letter should refer to File No. S7–31–99. If e-mail is used, include this file number on the subject line. Anyone can inspect and copy the comment letters in the Commission's Public Reference Room at 450 5th St., N.W., Washington, D.C. 20549. Electronically submitted comments will be posted on the Commission's Internet web site (http://www.sec.gov).

FOR FURTHER INFORMATION CONTACT: Richard A. Levine, Assistant General Counsel, Sharon Zamore, Senior Counsel, or Elizabeth Nowicki, Attorney, Office of the General Counsel, at (202) 942–0890.

SUPPLEMENTARY INFORMATION: On December 20, 1999, the Securities and Exchange Commission (Commission) issued a proposal for new rules to address three issues: the selective disclosure by issuers of material nonpublic information; whether insider trading liability depends on a trader's "use" or "knowing possession" of material nonpublic information; and when the breach of a family or other non-business relationship may give rise to liability under the misappropriation theory of insider trading. The proposals are designed to promote the full and fair disclosure of information by issuers, and to clarify and enhance existing prohibitions against insider trading. The deadline for submitting public comments established by the proposing release was March 29, 2000. The Commission has received requests to extend the deadline. We are therefore extending the comment period to April 28, 2000 so that commenters have adequate time to address the issues raised by the proposing release.

By the Commission.

Dated: March 21, 2000.

Margaret H. McFarland

Deputy Secretary

[FR Doc. 00–7433 Filed 3–24–00; 8:45 am]

BILLING CODE 8010–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–553, MM Docket No. 00–43, RM–9833]

Radio Broadcasting Services; Ebro, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Washington County Communications requesting the allotment of Channel 236A at Ebro, Florida, as the community's first local broadcast service. Channel 236A can be allotted to Ebro with a site restriction 3.3 kilometers (2.0 miles) northwest of the community at coordinates 30–28–15 and 85–53–45.

DATES: Comments must be filed on or before May 1, 2000, and reply comments on or before May 16, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Bruce Eisen, Kaye, Scholer, Fierman, Hays & Handler, LLP, 901 15th Street, NW, Suite 901, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–43, adopted March 1, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7388 Filed 3–24–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 174 and 177

[Docket No. HM–212]

RIN 2137–AC24

Hazardous Materials: Tank Cars and Cargo Tank Motor Vehicles; Attendance Requirements

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: RSPA is withdrawing the notice of proposed rulemaking (NPRM) issued in 1992 under this docket on attendance requirements for tank cars and cargo tank motor vehicles. RSPA will address the issues raised in that NPRM, including the proposed rewrite of tank car unloading regulations, in rulemaking under RSPA Docket HM–223 (RSPA–98–4952). The HM–223 rulemaking is intended to clarify the applicability of the Hazardous Materials Regulations to specific functions and activities, including hazardous materials loading and unloading operations.

DATES: The proposed rule is withdrawn as of March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Susan Gorsky (202) 366–8553, Office of Hazardous Materials Standards, Research and Special Programs Administration, Department of Transportation.

SUPPLEMENTARY INFORMATION:

I. Background

On September 14, 1992, the Research and Special Programs Administration (RSPA, "we") published a notice of proposed rulemaking (NPRM) under Docket HM–212 (57 FR 42466), proposing several changes to the Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) as they apply to loading and unloading of hazardous materials from rail tank cars and cargo tanks. We proposed to amend the following sections of the HMR:

Section 174.67(i) pertaining to unloading of tank cars and § 177.834(i) pertaining to the loading of cargo tanks to provide for the use of signaling systems to meet attendance requirements.

- Sections 174.67(i) and 174.67(j) to allow a tank car containing hazardous materials, under certain conditions, to remain standing with the unloading connections attached when no hazardous material is being transferred.
- Section 177.834 to remove a requirement that an attendant must be within 25 feet of the cargo tank motor vehicle during loading operations that are monitored by a signaling system.

II. HM–225 and –225A Cargo Tank Rulemaking

Because of safety concerns, we addressed cargo tank attendance requirements in separate rulemakings under Docket Nos. RSPA–97–2133 (HM–225) and RSPA–97–2718 (HM–225A). In a final rule published May 24, 1999 (64 FR 28030), we revised the regulations applicable to transportation and unloading of liquefied compressed gases in cargo tank motor vehicles. The final rule, which became effective on July 1, 1999, established a comprehensive safety program intended to reduce the risk of an unintentional release of a liquefied compressed gas during unloading, assure prompt detection and control of an unintentional release, and make the regulatory requirements easier to understand and comply with. Among the changes effected by that final rule were revisions to the attendance requirements in § 177.834(i). We do not believe that it is appropriate to implement changes to the cargo tank loading requirements before we have had an opportunity to evaluate industry experience under that recent rule.

III. HM–223 Rulemaking on Applicability of the HMR

Since the HM–212 NPRM was issued in 1992, we have initiated a broad rulemaking under HM–223 (Docket No. RSPA–98–4952) designed to clarify the meaning of "transportation in commerce" as it is used in federal hazardous material transportation law (49 U.S.C. 5101–5127) and to delineate specific activities that are included in that term and, therefore, subject to regulation under the HMR. In developing this rulemaking, we have four goals. First, we want to ensure that there are uniform national standards applicable to functions performed in advance of transportation that affect the safe transportation of hazardous materials in commerce. Second, we want to ensure that there are uniform national standards applicable to the actual transportation of hazardous materials in commerce. Third, we want to distinguish functions that are subject to the HMR from functions that are not subject to the HMR. Finally, we want to clarify that facilities within which functions subject to the HMR occur may be subject to federal, state, or local regulations governing occupational safety and health and environmental protection.

In 1996, we issued an advance notice of proposed rulemaking (ANPRM; 61 FR 39522) under HM–223 and hosted a series of public meetings to elicit ideas, proposals, and recommendations on the applicability of the HMR. The ANPRM identified loading, unloading, and storage of hazardous materials as areas of particular confusion and concern. On April 27, 1999, we published a supplemental ANPRM (64 FR 22718) requesting additional information on these issues.

We are currently evaluating comments submitted in response to the two ANPRMs and at the public meetings. We expect to issue an NPRM later this year. The NPRM may propose to interpret the statutory definition of "transportation in commerce" in a way that could affect how the HMR apply to certain loading, unloading, and storage operations, particularly loading, unloading, and storage of hazardous materials in bulk packages, such as tank cars. Thus, we believe it is more appropriate to address tank car unloading issues in the context of the HM–223 rulemaking. Indeed, commenters to the HM–212 docket recommended that the scope of the 1992 NPRM should be broadened. Several commenters suggested that the tank car unloading requirements in Part 174 be moved to Part 173 because unloading is

not typically performed by rail carriers, but by non-transportation entities. Commenters also suggested that we revise the HMR to more clearly define the term "in transportation" and to clarify the regulatory jurisdiction of the Occupational Safety and Health Administration (OSHA) and RSPA with respect to the transfer of hazardous materials.

IV. Withdrawal of NPRM

For the reasons outlined above, we are withdrawing the 1992 NPRM published on September 14, 1992 (57 FR 42466), concerning cargo tank and tank car loading and unloading operations that was issued under HM–212 and closing the HM–212 docket. We are deferring action on the overall rewrite of § 174.67 that was proposed in the 1992 NPRM. Changes to this section will be considered as part of HM–223. Comments submitted to the HM–212 docket will be placed in the HM–223 docket. This action should not be read as an indication of how we intend to resolve the questions at issue in HM 223.

Issued in Washington, DC on March 20, 2000, under authority delegated in 49 CFR Part 106.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

[FR Doc. 00–7469 Filed 3–24–00; 8:45 am]

BILLING CODE 4910–60–P

Notices

Federal Register

Vol. 65, No. 59

Monday, March 27, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COMMISSION ON ELECTRONIC COMMERCE

Meetings

The Advisory Commission on Electronic Commerce was established by Public Law 105–277 to conduct a thorough study of federal, state, local and international taxation and tariff treatment of transactions using the Internet and Internet access and other comparable intrastate, interstate or international sales activities. The Commission is to report its findings and recommendations to Congress no later than April 21, 2000. Notice is hereby given, that the Advisory Commission on Electronic Commerce has scheduled a meeting by telephone conference call on Monday, April 10, 2000, at a time to be determined. Meetings of the Commission shall be open to the public. This meeting will be audiocast live on the World Wide Web. The audiocast will be accessible from the "Calendar/Meetings" page of the Commission's Web site, *www.ecommercecommission.org/calendar.htm*. The time for the meeting will be posted on the Web site no later than Friday, April 7, 2000. A verbatim transcript of this meeting will be posted on the Web site no later than April 24, 2000.

Oral comments from the public will be excluded at this meeting.

A listing of the members of the Commission and details concerning their appointment were published in the **Federal Register** on June 9, 1999, at 64 FR 30958.

Heather Rosenker,

Executive Director.

[FR Doc. 00–7594 Filed 3–24–00; 8:45 am]

BILLING CODE 0000–00

DEPARTMENT OF AGRICULTURE

Forest Service

Boundary Waters Canoe Area Wilderness Fuels Treatment Environmental Impact Statement

AGENCY: Forest Service, USDA

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: On July 4, 1999, heavy rains and straight-line winds in excess of 90 miles per hour blew down approximately 477,000 acres of forest within northeastern Minnesota. The majority of the blown down forest occurs within the Boundary Waters Canoe Area Wilderness (BWCAW) on the Superior National Forest. As a result of the windstorm, down and dead trees and brush (fuels) on approximately 360,000 acres within the wilderness increased from 5 to 20 tons per acre up to 50 to 100 tons per acre. This fuel loading increases the potential for wildfire to move from within the wilderness to adjacent State, County, federal, and private lands and across the Canadian border, and possibly threaten life, property and other resource values. The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for the BWCAW to develop a site-specific fuels treatment plan to reduce the fire hazard resulting from the blown down forest. This fuels treatment plan may require an amendment or exception to the Superior National Forest Land and Resource Management Plan (Forest Plan) and the BWCAW Management Plan in order to use prescribed fire (fire ignited by management actions to meet specific objectives) within the Wilderness. The purpose of the project is to improve public safety by reducing the potential for high-intensity wildland fires to spread from the BWCAW into areas of intermingled ownership that includes homes, cabins, resorts, and other improvements both in the United States and Canada. This will be accomplished in a manner which is sensitive to ecological and wilderness values, and protects safety of firefighters and BWCAW visitors during implementation. The proposed action is to treat approximately 47,000 to 81,000 acres with prescribed fire over a five to six year time-period. The proposed action would treat approximately 13 to 22 percent of the area blown down in the July 4, 1999 windstorm or four to seven percent of the 1.1 million acre wilderness. Implementation of the proposed action may require the use of mechanized tools within the BWCAW. A range of alternatives responsive to significant issues will be developed, including a no-action alternative. The Record of Decision will disclose whether or not the Forest Service will manage fuels within the BWCAW to improve public safety. If the decision is to use prescribed fire, the decision will include the following:

- The pattern of treatment to be used;
- The priority areas to be treated;
- The approximate timeframe when each area will be treated;
- The minimum action and tools needed within the wilderness to meet management objectives;
- The environmental conditions (*e.g.*, weather conditions) under which areas will be prescribed burned;
- How wilderness and ecological values and other resources will be protected during treatment;
- Surveys and monitoring that will be conducted before, during and after treatments; and
- How decisions will be coordinated with adjacent landowners and how the public will be notified of prescribed burns.

DATES: Public open houses to solicit comments and to answer questions on the proposed action will be held from 3:00 PM to 8:00 PM, CST at the following locations:

- April 10, 2000 at Cook County Community Center, 317 West 5th St., Grand Marais, MN 55604.
- April 11, 2000 at Holiday Inn SunSpree, Ridgeview Room, 400 North Poineer Rd., Ely, MN 55731.
- April 12, 2000 at Radisson Hotel, Great Hall 1, 505 West Superior St., Duluth, MN 55802.
- April 13, 2000 at Country Inn at White Bear Lake, Lambert Room, 4940 Hwy. 61 N., White Bear Lake, MN 55110 (directly north of Minneapolis and St. Paul, MN).
- April 14, 2000 at U.S. Forest Service, LaCroix Ranger District Office, 320 Hwy 53 N., Cook, MN 55723.

Comments concerning the scope of this project should be received by the Superior National Forest by May 1, 2000.

ADDRESSES: Please send written comments to Superior National Forest, BWCAW Fuels Reduction EIS, 8901 Grand Ave. Place, Duluth, MN 55808.

FOR FURTHER INFORMATION CONTACT: James W. Sanders, Forest Supervisor, Superior National Forest, telephone: (218) 626–4300, or Joyce Thompson, BWCAW EIS Team Leader, Superior National Forest, 8901 Grand Ave. Place, Duluth, MN 55808, telephone (218) 626–4317, email: jelmatho/r9_superior@fs.fed.us. A detailed scoping package is available by contacting Joyce Thompson at the address listed above or on the Superior National Forest's website at http://www.fs.fed.us/r9/superior/.

SUPPLEMENTARY INFORMATION: Public participation will be an integral component of the study process, and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments and assistance from federal, State, County, and local agencies, individuals and organizations that may be interested in or affected by the proposed activities. The scoping process will include: (1) Identification of potential issues, (2) identification of issues to be analyzed in depth, and (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Written scoping comments will be solicited through a scoping package that will be sent to the project mailing list and the local newspaper. For the Forest Service to best use the scoping input, comments should be received by May 1, 2000. Preliminary issues identified for analysis in the EIS include the potential effects and relationship of the project to fire hazard reduction, safety of firefighters and wilderness visitors during implementation, and the impact of the proposed action on wilderness values (including the use of mechanized equipment within the wilderness, ecological conditions, recreation, scenery, air quality, wildlife habitat, riparian areas, heritage resources, sensitive plants and communities, soil productivity, and water quality).

Based on the results of scoping and the resource conditions within the project area, alternatives (including a no-action alternative) will be developed for the draft EIS. The draft EIS is projected to be filed with the Environmental Protection Agency (EPA) in December 2000. The final EIS is anticipated in April 2001.

The comment period on the draft EIS will be 45 days from the date that the EPA publishes the notice of availability in the **Federal Register**.

At this early stage, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal, so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could have been raised at the draft EIS stage, but that are not raised until the completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period on the draft EIS, so that substantive comments and objections are made available to the Forest Service at a time when they can be meaningfully considered and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may address the adequacy of the draft EIS, or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR 1503.3, in addressing these points.

The proposed action is to treat between 47,000 to 81,000 acres of fuels within the BWCAW over a five to six year time-period. The proposed action includes a variety of prescribed burning treatments, including patchwork treatment pattern, fuel patch burns, and understory burns. In areas adjacent to the BWCAW boundary and where fuels are the heaviest, a patchwork pattern of prescribed burns across the landscape would be used. Patchwork pattern treatments would be designed to use natural fire breaks and fit into the natural landscape where possible. A patchwork pattern of fuels treatment would break up fuels so that in the event of a wildfire the rate of spread of the fire would be greatly reduced. Within the patchwork treatment areas, a variety of density of treatments are proposed based upon the risk to health and safety and fuel loads. Between 33,524 to 51,576 acres are proposed for treatment under this pattern.

In areas where isolated stands of trees were blown down, treatment of the individual patches (or fuel patch treatment) would be used. Patch fuel treatments would include burning in isolated patches on the landscape. Between 4,195 to 11,310 acres are proposed for fuel patch treatment.

Understory burns (*i.e.*, burning fuels under the main forest canopy) would be used, where the blowdown is patchy and ecological conditions allow the use of burning the understory to reduce fuel ladders, which in turn reduce the potential of high intensity crown fires. Fuel ladders are young trees and dead and down fuels beneath the tops of older trees. These create a "ladder" for fire to travel from the ground to the forest canopy and burn more intensely. Between 9,180 to 18,360 acres are proposed for a combination of fuel patch treatment and understory burning.

Implementing the proposed prescribed burns may require the use of mechanized equipment within the wilderness. Prior to using any mechnanized equipment a site-specific minimum requirements and tools analysis will be prepared. Possible mechanized and motorized tools that may be used while implementing the prescribed burns include: chainsaws; portable water pumps; and helicopters and fixed wing aircraft for transporting of fire personnel, igniting prescribed burns and dropping water and fire retardant and motor boats on lakes where use is allowed by the public. Aircraft may need to fly below the 4,000 foot limit above sea-level in the BWCAW or land on waterbodies. Nonmotorized and nonmechanized tools that possibly could be used during implementation of the proposed action include: digging and chopping tools (shovel, pulaski, axe, etc.), crosscut saws, drip torch ignition tools and fusees, fireline construction explosives, hoses and hose-fittings, sprinklers, backpack pumps, and non-motorized boats and canoes. Fire camps (camps where fire crews stay during implementation) and fire caches (caches of fire fighting equipment) within the wilderness may need to be used during implementation.

Permits/Authorizations

The proposed action includes prescribed fire in the BWCAW to reduce heavy fuel accumulation. This action may require an amendment or exception to the Forest Plan and the BWCAW Management Plan to use prescribed fire within the BWCAW. U.S.D.A. Forest Service, Eastern Region, may request the project be considered an emergency under CFR 215.10(d)(1) in order to allow for implementation during the appeal period. The use of motorized and mechanized tools were not allowed by the general public and flights below 4,000 feet above sea level on National Forest System lands within the BWCAW would also require approval.

Lead and Cooperating Agencies

The Superior National Forest manages approximately 800,000 acres within the boundaries of the BWCAW. It is the lead agency for preparation of this document. The State of Minnesota manages approximately 279,000 acres wthin the boundaries of the BWCAW. In order to achieve the best arrangement of prescribed burn treatment units to minimize the risk of an escaped wildfire it may be necessary to treat State lands. The Minnesota Department of Natural Resources is a cooperating agency on this project. They will provide direction and approval regarding fuels treatment on State lands.

Responsible Official

James W. Sanders, Forest Supervisor, Superior National Forest, is the responsible official. In making the decision, the responsible official will consider the comments; responses; disclosure of environmental consequences; and applicable laws, regulations, and policies. The responsible official will state the rationale for the chosen alternative in the Record of Decision.

Dated: March 20, 2000.

James W. Sanders,

Forest Supervisor.

[FR Doc. 00–7411 Filed 3–24–00; 8:45 am]

BILLING CODE 3410–11–U

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in North Dakota

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in North Dakota for review and comment.

SUMMARY: It is the intention of the NRCS in North Dakota to issue a revised conservation practice standard, Wetland Restoration (Code 657), in Section IV of the FOTG. This practice may be used in conservation systems that treat wetlands.

DATES: Comments will be received on or before April 26, 2000.

ADDRESSES: Address all requests and comments to Myron P. Senechal, State Resource Conservationist, Natural Resources Conservation Service, P.O. Box 1458 Bismarck, ND 58502–1458. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to Myron.Senechal@nd.usda.gov.

FOR FURTHER INFORMATION CONTACT: Myron P. Senechal, (701) 530–2085.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in North Dakota will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in North Dakota regarding disposition of those comments and a final determination of changes will be made.

Dated: March 16, 2000.

Thomas E. Coleman

Assistant State Conservationist (Operations, Bismarck, North Dakota.

[FR Doc. 00–7398 Filed 3–24–00; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF COMMERCE

Bureau of the Census

[Docket Number 000207031–0074–02]

RIN Number 0607–XX55

Manufacturers' Shipments, Inventories and Orders (M3) Supplement: Unfilled Orders Benchmark Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: Notice is hereby given that the Bureau of the Census (Census Bureau) will conduct a survey, the Unfilled Orders Benchmark survey, to supplement the monthly Manufacturers' Shipments, Inventories, and Orders survey for 1999. The Census Bureau has determined that it needs to collect data covering unfilled orders in manufacturing. The data received from this supplement will provide the information necessary to benchmark the monthly estimates of unfilled orders in manufacturing.

FOR FURTHER INFORMATION CONTACT: Lee Wentela, Chief, Manufacturers' Shipments, Inventories, and Orders Branch, Manufacturing and Construction Division, on (301) 457–4832.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to conduct surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United States Code, Sections 182, 224, and 225. The Unfilled Orders Benchmark survey will provide continuing and timely national statistical data for the period between the economic censuses. The next economic census will occur in 2002. Data collected in this survey will be within the general scope, type, and character of those inquiries covered in the economic census.

This survey is a supplement to the Manufacturers' Shipments, Inventories, and Orders survey and will request end-of-year unfilled orders and annual sales data for 1999. The unfilled orders series is an important indicator of economic activity and has significant application to the needs of the public and industry. These data are not available from nongovernmental or other governmental sources.

The survey will require a selected sample of manufacturing companies, classified in industries for which unfilled orders are normally maintained longer than one month, to report in the 1999 Unfilled Orders Benchmark survey. We will furnish report forms and instruction manuals to the firms covered by this survey and will require their submissions within 45 days after receipt. The resulting unfilled orders estimates will be used to revise the levels currently being published for the monthly survey and will improve the accuracy of the data. The current estimates are based on a small sample and are subject to error. The survey is especially critical because of the conversion to the new North American Industry Classification System.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a current valid Office of Management and

Budget (OMB) control number. In accordance with the PRA, 44 United States Code, Chapter 35, the OMB approved the 1999 Unfilled Orders Benchmark survey under OMB Control Number 0607–0868. We will furnish report forms to companies included in the survey, and additional copies are available on written request to the Director, U.S. Census Bureau, Washington, DC 20233–0101.

Based on the foregoing, I have directed that a survey be conducted for the purpose of collecting these data.

Dated: March 21, 2000.

Kenneth Prewitt,

Director, Bureau of the Census.

[FR Doc. 00–7443 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

Agency Information Collection Activities: Proposed Collection Comment Request

TITLE: Internet Export Finance Matchmaker.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burdens, invites the general public and other Federal agencies to take this opportunity to comment on the continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 26, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms, Clearance Officer, (202) 482–3272, Email *Lengelme@doc.gov.*, Department of Commerce, Room 5027, 14th & Constitution Avenue, NW, Washington, D.C. 20230.

FOR FURTHER INFORMATION CONTACT: Request for additional information or copies of the information collection instrument and instructions should be directed to: John Shuman, Office of Finance, Room 1800. The U.S. Department of Commerce, 14th & Constitution Ave., NW, Washington, D.C. 20230; Phone number: (202) 482–3277.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Office of Finance assists U.S. firms in identifying trade finance opportunities and promotes the competitiveness of U.S. financial services in international trade. The Office of Finance interacts with private financial institutions in insurance, banking, leasing, factoring, barter, and counter trade; U.S. financing agencies, such as the Export-Import Bank and the Overseas Private Investment Corporation; and multilateral development banks, such as the World Bank, Asian Development Bank, and others. To facilitate contact between exporters and financial institutions, the Office of Finance is developing an interactive INTERNET trade finance match-making program to link exporters seeking trade finance with banks and other financial institutions. The information collected from financial institutions regarding the trade finance products and services they offer will be compiled into a database. An exporter will be able to electronically submit a one page form identifying the potential export transaction and type of financing requested. This information will be electronically matched with the financial institution(s) that meet the requirements of the exporter. After a match has been made, a message will be electronically sent to both the exporter and the financial institution containing information about the match, and contact information for either party to initiate communication. This program is designed to implement the Department of Commerce's goal of improving access to trade financing for small business exporters.

II. Method of Collection

Electronic submission to the International Trade Administration, Office of Finance.

III. Data

OMB Number: 0625–0232.
Form Number: N/A.
Type of Review: Regular Submission.
Affected Public: Business or other for profit.
Estimated Number of Respondents: 2,000.
Estimated Time Per Response: Exporters: 10 minutes, Financial Institution: 30 minutes.
Estimated Total Annual Burden Hours: 350 hours.
Estimated Total Annual Costs: $21,000 (Government $8,750, Respondents $12,250).

IV. Request for Comments

Comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and costs) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 21, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–7423 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–DR–P

DEPARTMENT OF COMMERCE

International Trade Administration

Extension of Time Limit for Preliminary Results of Full Five-Year Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of full five-year ("sunset") reviews.

SUMMARY: The Department of Commerce is extending the time limit for the preliminary results of two full sunset reviews initiated on December 1, 1999 (64 FR 67247), covering an antidumping and countervailing duty order. Based on adequate responses from domestic and respondent interested parties, the Department of Commerce is conducting full sunset reviews to determine whether revocation of the antidumping duty order on aramid fiber formed of poly para-phenylene terephthalamide from the Netherlands and the countervailing duty order on grain-oriented electrical steel from Italy would be likely to lead to continuation or recurrence of dumping and countervailable subsidy, respectively. As a result of these extensions, the Department of Commerce intends to issue its preliminary results not later than June 19, 2000.

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Martha V. Douthit or Melissa G. Skinner, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–5050, or (202) 482–1560, respectively.

Extension of Preliminary Results

In accordance with section 751(c)(5)(C)(v) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") may treat a sunset review as extraordinarily complicated if it is a review of a transition order (i.e., an order in effect on January 1, 1995). Because the sunset reviews at issue concern transition orders within the meaning of section 751(c)(6)(C)(i) and (ii) of the Act, the Department has determined that the sunset reviews of the following antidumping and countervailing duty orders are extraordinarily complicated:

A–421–805 Aramid Fiber Formed of Poly Para-Phenylene Terephthalamide from the Netherlands

C–475–812 Grain-Oriented Electrical Steel from Italy

Therefore, in accordance with section 751(c)(5)(B) of the Act, the Department is extending the time limit for completion of the preliminary results of these reviews until not later than June 19, 2000.

Dated: March 20, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–7382 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–803, A–570–803]

Bars and Wedges and Hammers and Sledges from the People's Republic of China; Corrected Preliminary Results of Full Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Correction to Preliminary Results of Full Sunset Reviews: Bars and Wedges and Hammers and Sledges from the People's Republic of China.

SUMMARY: On January 24, 2000, the Department of Commerce ("the Department") published in the **Federal Register** the preliminary results of the full sunset reviews of the antidumping duty orders on bars and wedges and hammers and sledges from the People's Republic of China ("PRC").[1] Subsequent to the publication of the preliminary results, we identified an inadvertent error in the Preliminary Results of Reviews section of the notice. Therefore, we are correcting and clarifying this inadvertent error.

The error lies in the last sentence of the next-to-last paragraph: "The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than June 26, 2000." This sentence should be replaced with: "The Department will issue a notice of final results of these sunset reviews, which will include the results of its analysis of issues raised in any such comments, no later than May 26, 2000."

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230: telephone (202) 482–3207 and (202) 482–1560, respectively.

This correction is issued and published in accordance with sections 751(h) and 777(i) of the Act.

Dated: March 20, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–7383 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–701]

Brass Sheet and Strip from the Netherlands; Notice of Second Amended Final Results of Administrative Review in Accordance With Final Court Decision

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On September 29, 1998, the U.S. Court of International Trade (the Court) affirmed the Department of Commerce's (the Department's) remand determination of the final results of the antidumping duty administrative review of brass sheet and strip from the Netherlands. No party has appealed this ruling. As there is now a final and conclusive court decision in this action, we are amending our final results.

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: John Brinkmann or Jarrod Goldfeder, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4126 or (202) 482–2305, respectively.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1996, the Department published the final results of the third administrative review in Brass Sheet and Strip from the Netherlands (61 FR 1324) (*Brass Final*), covering the period of review (POR) August 1, 1990 through July 31, 1991. On February 12, 1996, the Department received timely allegations from the petitioners and the respondent that the Department had made certain ministerial errors in the *Brass Final* that affected the final dumping margin. Although the Department agreed that certain of the allegations constituted ministerial errors, the Department was unable to issue a determination correcting these errors before the petitioners filed a complaint with the Court challenging the *Brass Final*. Therefore, the Department requested leave from the Court to correct these errors and on August 1, 1996, the Court granted the Department's request. *See* August 1, 1996 Order, *Hussey Copper, Ltd.* v. *United States*, Ct. No. 96–02–00578 (CIT dismissed August 7, 1997). Accordingly, on June 19, 1997, the Department published amended final results (62 FR 33395) (*Amended Brass Final*).

In the original *Brass Final*, the U.S. sales database used to calculate the dumping margin included all entries made during the POR, regardless of date of sale. The respondent alleged that in addition to correcting the ministerial errors identified in the Court's August 1, 1996 order, in the *Amended Brass Final* the Department also excluded several purchase price (PP) transactions and one exporter's sales price (ESP) transaction that entered the United States during, but were sold prior to, the POR. Consequently, the respondent claimed that these changes reduced the number of transactions included in the database from 391 to 150 and increased the weighted-average dumping margin to 5.85%. The Department agreed that it should not have omitted these transactions from the U.S. sales database and requested that the Court remand the

[1] *See Preliminary Results of Full Sunset Reviews: Bars and Wedges and Hammers and Sledges from the People's Republic of China*, 65 FR 3658 (January 24, 2000).

case in order to reinstate the excluded transactions.

Given that the exclusion of transactions from the U.S. sales database used to calculate the dumping margin was neither requested by the parties pursuant to the first remand request nor authorized by the Court in its first remand order, the Court remanded the *Amended Brass Final. See Outokumpu Copper Strip, B.V.* v. *United States*, 15 F. Supp. 2d 806 (CIT 1998). On remand, the Court instructed the Department to recalculate the dumping margins by including in the U.S. sales database (1) all PP transactions of merchandise sold prior to the POR but entered during the POR, and (2) the ESP transaction omitted from the *Amended Brass Final*, and to issue new amended final results.

On September 29, 1998, the Court affirmed the Department's remand results, finding that the Department had complied with the Court's Remand by correcting the two ministerial errors and recalculating the dumping margin for Outokumpu Copper Rolled Products. *See Outokumpu Copper Strip, B.V.* v. *United States*, 24 F. Supp. 2d 318 (CIT 1998). The Court dismissed the case, given that all issues had been decided. No appeal has been filed in this case.

Amendment to Final Results of Review

Because there is now a final and conclusive decision in the court proceeding, effective as of the publication date of this notice, we are amending the *Amended Brass Final*, and establishing the following revised weighted-average dumping margin for the period August 1, 1990 through July 31, 1991:

Manufacturer/exporter	Weighted-average margin (percent)
Outokumpu Copper Rolled Products AB (OBV)	2.03

As the assessment rate is the same as the weighted-average dumping margin, the Department will instruct the United States Customs Service to assess the revised antidumping duty on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Dated: March 20, 2000.

Richard Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–7492 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–804]

Cold-Rolled Carbon Steel Flat Products From the Netherlands; Preliminary Results of Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Full Sunset Review: Cold-Rolled Carbon Steel Flat Products from the Netherlands.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of domestic and respondent interested parties, the Department determined to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On September 1, 1999, the Department initiated a sunset review of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands (64 FR 47767), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of the Bethlehem Steel Corporation, U.S. Steel Group, a unit of USX Corporation, Ispat Inland, Inc., LTV Steel Company, Inc., and National Steel Company (collectively, "domestic interested parties"), within the applicable deadline (September 15, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. On October 1, 1999, Hoogovens Stal BV ("HSBV") and Hoogovens Steel USA, Inc. ("HS-USA") (together, "Hoogovens") notified the Department that it intended to participate in this review as a respondent interested party. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product; Hoogovens is an interested party pursuant to section 771(9)(A) of the Act, as a foreign producer and exporter of subject merchandise.

On September 24, 1999, we received a request for an extension to file rebuttal comments from domestic interested parties.[1] Pursuant to 19 CFR 351.302(b), the Department extended the deadline for all participants eligible to file rebuttal comments until October 15, 1999.[2] On October 1, 1999, we received a timely and complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i), as well as from Hoogovens. On October 15, 1999, we received rebuttal comments from domestic interested parties and Hoogovens. On October 20, 1999, pursuant to 19 CFR 351.218 (e)(1)(ii)(A), the Department determined to conduct a full (240-day) sunset review of this order.[3]

[1] *See* September 24, 1999, Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Antidumping and Countervailing Duty Orders: A–602–803; A–351–817; C–351–818, A–122–822, A–122–823, A–405–802, A–588–826, A–421–804, A–455–802, A–485–803, C–401–401, C–401–804, C–401–805, from Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP, to Jeffrey A. May, Office of Policy.

[2] *See* September 30, 1999, Letter from Jeffrey A. May, Director, Office of Policy to Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP.

[3] *See* October 20, 1999, Memorandum for Jeffrey A. May, Re: Certain Cold-Rolled Carbon Steel Flat Products from the Netherlands; Adequacy of Respondent Interested Party Response to the Notice of Initiation.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Accordingly, on December 22, 1999, the Department determined that the sunset review of cold-rolled carbon steel flat products is extraordinarily complicated, and extended the time limit for completion of the preliminary results of this review until not later than March 20, 2000, in accordance with section 751(c)(5)(B) of the Act.[4]

Scope of Review

The products covered by this order include cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000, 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7215.50.0015, 7215.50.0060, 7215.50.0090, 7215.90.5000, 7217.10.1000, 7217.10.2000, 7217.10.3000, 7217.10.7000, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is certain shadow mask steel, i.e., aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra-flat, isotropic surface. These HTS item numbers are provided for convenience and customs purposes. The written description of the scope of this order remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. La Russa, Assistant Secretary for Import Administration, dated March 20, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import_admin/records/frn/. The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

We preliminarily determine that revocation of the antidumping duty order on cold-rolled carbon steel flat products from the Netherlands would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margins (percent)
Hoogovens	7.96
All Others	7.96

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on May 17, 2000, in accordance with 19 CFR 351.310(d). Interested parties may submit case briefs no later than May 8, 2000, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than May 15, 2000. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than July 27, 2000, in accordance with section 751(c)(5)(B) of the Act.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 20, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–7387 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–826]

Corrosion-Resistant Carbon Steel Flat Products From Japan; Preliminary Results of Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of full sunset review: Corrosion-resistant carbon steel flat products from Japan.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on corrosion-resistant carbon steel flat products from Japan (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of a notice of intent to participate filed on behalf of domestic interested parties and adequate substantive responses filed on behalf of domestic and respondent interested parties, the Department determined to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade

[4] *See Extension of Time Limit for Preliminary Results of Full Five-Yeor Reviews*, 64 FR 71726 (December 22, 1999).

Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On September 1, 1999, the Department initiated a sunset review of the antidumping duty order on Japanese corrosion-resistant carbon steel flat products (64 FR 47767), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of the Bethlehem Steel Corporation and U.S. Steel Group, a unit of USX Corporation ("domestic interested parties"), within the applicable deadline (September 15, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. On October 1, 1999, respondent interested party Nippon Steel Corporation ("NSC") notified the Department that it intended to participate in this review. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as the U.S. producers of a domestic like product; NSC is an interested party pursuant to section 771(9)(A) of the Act as a foreign producer and exporter of subject merchandise.

On September 24, 1999, we received a request for an extension to file rebuttal comments from domestic interested parties.[1] Pursuant to 19 CFR 351.302(b)(1999), the Department extended the deadline for all participants eligible to file rebuttal comments until October 15, 1999.[2] On October 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i). On October 1, 1999, we received a complete substantive response from NSC. The Department received rebuttal comments from domestic interested parties and NSC, on October 15, 1999, and October 12, 1999, respectively. On October 20, 1999, pursuant to 19 CFR 351.218 (e)(2), the Department determined to conduct a full (240-day) sunset review of this order.[3]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Accordingly, on December 22, 1999, the Department determined that the sunset review of corrosion-resistant carbon steel flat products from Japan is extraordinarily complicated, and extended the time limit for completion of the preliminary results of this review until not later than March 20, 2000, in accordance with section 751(c)(5)(B) of the Act.[4]

Scope of Order

These products include flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel-or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or, if of a thickness of 4.75 millimeters or more, are of a width which exceeds 150 millimeters and measures at least twice the thickness,[5] as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7210.30.0030, 7210.30.0060, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.61.0000, 7210.69.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.20.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.3000, 7215.90.5000, 7217.20.1500, 7217.30.1530, 7217.30.1560, 7217.90.1000, 7217.90.5030, 7217.90.5060, and 7217.90.5090.

Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been bevelled or rounded at the edges.

Excluded from order are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from these investigations are clad products in straight lengths of 0.1874 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded are certain clad stainless flat-rolled products which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.74 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a 20–60–20 percent ratio. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

Also excluded are certain corrosion-resistant carbon steel flat products meeting the following specifications: (1) Widths ranging from 10 millimeters (0.394 inches) through 100 millimeters (3.94 inches); (2) thicknesses, including coatings, ranging from 0.11 millimeters (0.004 inches) through 0.60 millimeters (0.024 inches); and (3) a coating that is from 0.003 millimeters (0.00012 inches) through 0.005 millimeters (0.000196 inches) in thickness and that is comprised of either two evenly applied layers, the first layer consisting of 99 percent zinc, 0.5 percent cobalt, and 0.5 percent molybdenum followed by a layer consisting of chromate, and finally, a layer consisting of silicate.

There have been three changed circumstances administrative reviews. On December 22, 1997, the Department published the final results of a changed circumstances review requested by Sudo Corporation.[6] In this review, the Department revoked the antidumping duty order with regard to certain electrolytic zinc-coated steel coiled rolls from Japan.

In the second changed circumstances review, requested by Uchiyama, the Department revoked the antidumping duty order with regard to certain corrosion-resistant carbon steel flat products used in the manufacture of rubber seals and metal inserts for ball bearings.[7]

The Department completed a third changed circumstances review, requested by Taiho Corporation of America, in which it determined to revoke the order with respect to (1) certain products meeting the requirements of SAE standard 792 for Bearing and Bushing Alloys, and (2) certain products meeting the requirements of SAE standard 783 for Bearing and Bushing Alloys.[8]

There has been one circumvention inquiry initiated regarding this proceeding. On October 30, 1998, the Department initiated an anticircumvention inquiry regarding boron-added corrosion-resistant carbon steel flat products from Japan.[9] The inquiry was subsequently enjoined by the Court of International Trade in *Nippon Steel* v. *United States*, Ct. No. 98–10–03102 (Ct. Int'l Trade). The case is now pending before the Court of Appeals for the Federal Circuit, No. 99–1379, 1386 (Fed. Cir.).

The Department has conducted one scope ruling at the request of Drive Automotive Industries of America, Inc. ("Drive Automotive"). On February 24, 1998, the Department found that steel coils imported by Drive Automotive and having a thickness of 0.8 mm and a width of 2000 mm, electrolytically coated with zinc, were within the scope of the order (63 FR 29700, June 1, 1998).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. La Russa, Assistant Secretary for Import Administration, dated March 20, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

We preliminarily determine that revocation of the antidumping duty order on corrosion-resistant carbon steel flat products from Japan would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Nippon Steel Corporation	36.41
Kawasaki Steel Corporation	36.41
All Others	36.41

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on May 17, 2000, in accordance with 19 CFR 351.310(d). Interested parties may submit case briefs no later than May 8, 2000, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than May 15, 2000. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than July 27, 2000.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 20, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–7386 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* September 24, 1999, Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Antidumping and Countervailing Duty Orders: A–602–803; A–351–817; C–351–818, A–122–822, A–122–823, A–405–802, A–588–826, A–421–804, A–455–802, A–485–803, C–401–401, C–401–804, C–401–805, from Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP, to Jeffrey A. May, Office of Policy.

[2] *See* September 30, 1999, Letter from Jeffrey A. May, Director, Office of Policy to Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP.

[3] *See* October 20, 1999, Memoranda for Jeffrey A. May, Re: Certain Corrosion-Resistant Carbon Steel Flat Products from Japan; Adequacy of Respondent Interested Party Response to the Notice of Initiation.

[4] *See Extension of Time Limit for Preliminary Results of Full Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

[5] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Preliminary Results of Antidumping Duty Administrative Review*, 64 FR 44483 (August 16, 1999).

[6] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Change Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 62 FR 66848 (December 22, 1997).

[7] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Change Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 14861 (March 29, 1999).

[8] *See Certain Corrosion-Resistant Carbon Steel Flat Products from Japan: Final Results of Change Circumstances Antidumping Duty Administrative Review, and Revocation in Part of Antidumping Duty Order*, 64 FR 57032 (October 22, 1999).

[9] *See Corrosion-Resistant Carbon Steel Flat Products from Japan; Initiation of Anticircumvention Inquiry on Antidumping Duty Order*, 63 FR 58364 (October 30, 1998).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–803]

Cut-to-Length Carbon Steel Plate From Romania; Preliminary Results of Full Sunset Review of Antidumping Duty Order

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Full Sunset Review: Cut-to-Length Carbon Steel Plate from Romania.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated a sunset review of the antidumping duty order on cut-to-length carbon steel plate from Romania (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate and adequate substantive responses filed on behalf of domestic and respondent interested parties, the Department determined to conduct a full review. As a result of this review, the Department preliminarily finds that revocation of the antidumping duty order would likely lead to continuation or recurrence of dumping at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

Statute and Regulations

This review is being conducted pursuant to sections 751(c) and 752 of the Tariff Act of 1930, as amended ("the Act"). The Department's procedures for the conduct of sunset reviews are set forth in *Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders*, 63 FR 13516 (March 20, 1998) ("*Sunset Regulations*") and in 19 CFR part 351 (1999) in general. Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On September 1, 1999, the Department initiated a sunset review of the antidumping duty order on cut-to-length carbon steel plate from Romania (64 FR 47767), pursuant to section 751(c) of the Act. The Department received a notice of intent to participate on behalf of the Bethlehem Steel Corporation and U.S. Steel Corporation, a unit of USX Corporation ("domestic interested parties"), within the applicable deadline (September 15, 1999) specified in section 351.218(d)(1)(i) of the *Sunset Regulations*. On October 4, 1999, Sidex, S.A. ("Sidex") notified the Department that it intended to participate in this review as a respondent interested party. Domestic interested parties claimed interested-party status under section 771(9)(C) of the Act, as U.S. producers of a domestic like product; Sidex is an interested party pursuant to section 771(9)(A) of the Act, as a foreign producer and exporter of subject merchandise.

On September 24, 1999, we received a request for an extension to file rebuttal comments from domestic interested parties.[1] Pursuant to 19 CFR 351.302(b)(1999), the Department extended the deadline for all participants eligible to file rebuttal comments until October 15, 1999.[2] On October 1, 1999, we received a complete substantive response from domestic interested parties, within the 30-day deadline specified in the *Sunset Regulations* under section 351.218(d)(3)(i), and a complete substantive response from Sidex. On October 15, 1999, we received rebuttal comments from domestic interested parties. On October 21, 1999, pursuant to 19 CFR 351.218(e)(1)(ii)(A), the Department determined to conduct a full (240-day) sunset review of this order.[3]

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). This review concerns a transition order within the meaning of section 751(c)(6)(C)(ii) of the Act. Accordingly, on December 22, 1999, the Department determined that the sunset review of cut-to-length carbon steel flat plate is extraordinarily complicated, and extended the time limit for completion of the preliminary results of this review until not later than March 20, 2000, in accordance with section 751(c)(5)(B) of the Act.[4]

Scope of Review

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers: 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.1000, 7212.40.1000, 7212.50.0000, and 7212.50.5000. Included in this order are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been "worked after rolling")—for example, products which have been beveled or rounded at the edges. Excluded from this order is grade X–70 plate. These HTS item numbers are provided for convenience and customs purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this sunset review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Robert S. La Russa, Assistant Secretary for Import Administration, dated March 20, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of dumping and the magnitude of the margin likely to prevail were the order revoked. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099, of the main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

We preliminarily determine that revocation of the antidumping duty order on cut-to-length carbon steel plate from Romania would be likely to lead to continuation or recurrence of dumping at the following percentage weighted-average margins:

Manufacturer/exporters	Margin (percent)
Metalexportimport, S.A.	75.04
All Others	75.04

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on May 17, 2000, in accordance with 19 CFR 351.310(d). Interested parties may submit case briefs no later than May 8, 2000, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than May 15, 2000. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments, no later than July 27, 2000.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 20, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–7385 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See* September 24, 1999, Request for an Extension to File Rebuttal Comments in the Sunset Reviews of Antidumping and Countervailing Duty Orders: A–602–803; A–351–817; C–351–818, A–122–822, A–122–823, A–405–802, A–588–826, A–421–804, A–455–802, A–485–803, C–401–401, C–401–804, C–401–805, from Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP, to Jeffrey A. May, Office of Policy.

[2] *See* September 30, 1999, Letter from Jeffrey A. May, Director, Office of Policy to Valerie S. Schindler, Skadden, Arps, Slate, Meagher & Flom LLP.

[3] *See* October 21, 1999, Memoranda for Jeffrey A. May, Re: Certain Cut-to-Length Carbon Steel Plate from Romania; Adequacy of Respondent Interested Party Response to the Notice of Initiation.

[4] *See Extension of Time Limit for Preliminary Results of Full Five-Year Reviews*, 64 FR 71726 (December 22, 1999).

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–859, A–557–810, A–533–819, A–549–816]

Initiation of Antidumping Duty Investigations: Steel Wire Rope From India, Malaysia, the People's Republic of China, and Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Abdelali Elouaradia or Gabriel Adler at (202) 482–0498 and (202) 482–1442, respectively; Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

Initiation of Investigations

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are references to the provisions codified at 19 CFR part 351 (1999).

The Petitions

On March 1, 2000, the Department of Commerce (the Department) received petitions filed in proper form by the Committee of Domestic Steel Wire Rope and Speciality Cable Manufacturers (the petitioner). The Department received information supplementing the petitions throughout the initiation period.

In accordance with section 732(b) of the Act, the petitioner alleges that imports of steel wire rope from India, Malaysia, the People's Republic of China (China), and Thailand are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act, and that such imports are materially injuring an industry in the United States.

The Department finds that the petitioner filed these petitions on behalf of the domestic industry because it is an interested party as defined in sections 771(9)(C) and (D) of the Act and has demonstrated sufficient industry support with respect to each of the antidumping investigations that it is requesting the Department to initiate (*see Determination of Industry Support for the Petitions* below).

Scope of Investigations

For purposes of these investigations, the product covered is steel wire rope. Steel wire rope encompasses ropes, cables, and cordage of iron or carbon or stainless steel, other than stranded wire, not fitted with fittings or made up into articles, and not made up of brass-plated wire. Imports of these products are currently classifiable under subheadings: 7312.10.6030, 7312.10.6060, 7312.10.9030, 7312.10.9060, and 7312.10.9090 of the Harmonized Tariff Schedule of the United States (HTSUS). Although HTSUS subheadings are provided for convenience and Customs Service purposes, the written description of the scope of this investigation is dispositive.

During our review of the petitions, we discussed the scope with the petitioner to ensure that it accurately reflects the product for which the domestic industry is seeking relief. Moreover, as discussed in the preamble to the Department's regulations (62 FR 27323), we are setting aside a period for parties to raise issues regarding product coverage. The Department encourages all parties to submit such comments by April 7, 2000. Comments should be addressed to Import Administration's Central Records Unit at Room 1870, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. The period of scope consultations is intended to provide the Department with ample opportunity to consider all comments and consult with parties prior to the issuance of the preliminary determinations.

Determination of Industry Support for the Petitions

Section 732(b)(1) of the Act requires that a petition be filed on behalf of the domestic industry. Section 732(c)(4)(A) of the Act provides that a petition meets this requirement if the domestic producers or workers who support the petition account for: (1) At least 25 percent of the total production of the domestic like product, and (2) more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for, or opposition to, the petition.

Section 771(4)(A) of the Act defines the "industry" as the producers of a domestic like product. Thus, to determine whether the petition has the requisite industry support, the statute directs the Department to look to producers and workers who produce the domestic like product. The International Trade Commission (ITC), which is responsible for determining whether "the domestic industry" has been injured, must also determine what constitutes a domestic like product in order to define the industry. While both the Department and the ITC must apply the same statutory definition regarding the domestic like product (section 771(10) of the Act), they do so for different purposes and pursuant to separate and distinct authority. In addition, the Department's determination is subject to limitations of time and information. Although this may result in different definitions of the like product, such differences do not render the decision of either agency contrary to the law.[1]

Section 771(10) of the Act defines the domestic like product as "a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle." Thus, the reference point from which the domestic like product analysis begins is "the article subject to an investigation," *i.e.*, the class or kind of merchandise to be investigated, which normally will be the scope as defined in the petition.

The domestic like product referred to in the petitions is the single domestic like product defined in the "Scope of Investigations" section, above. No party has commented on the petition's definition of domestic like product, and there is nothing on the record to

[1] *See Algoma Steel Corp. Ltd.*, v. *United States*, 688 F. Supp. 639, 642–44 (CIT 1988); *High Information Content Flat Panel Displays and Display Glass from Japan: Final Determination; Rescission of Investigation and Partial Dismissal of Petition*, 56 FR 32376, 32380–81 (July 16, 1991).

indicate that this definition is inaccurate. The Department, therefore, has adopted the domestic like product definition set forth in the petitions.

Moreover, the Department has determined that the petitions contain adequate evidence of industry support; therefore, polling is unnecessary (*see Initiation Checklist*, dated March 16, 2000 (*Initiation Checklist*), at Attachment Re: Industry Support). For all four countries covered by the petitions, the petitioner established industry support representing over 50 percent of total production of the domestic like product. Accordingly, the Department determines that these petitions are filed on behalf of the domestic industry within the meaning of section 732(b)(1) of the Act.

Export Price and Normal Value

The following are descriptions of the allegations of sales at less than fair value upon which the Department based its decision to initiate these investigations. The petitioner, in determining normal value (NV) for India, Malaysia and Thailand, relied upon price data contained in confidential market research reports filed with the Department. At the Department's request, the petitioner arranged for the Department to contact the author of the reports to verify the accuracy of the data, the methodology used to collect the data, and the credentials of those gathering the market research. The Department's discussions with the author of the market research reports are summarized in the *Initiation Checklist*. The sources of data for the deductions and adjustments relating to home market price, U.S. price, and factors of production are also discussed in the Initiation Checklist. Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate.

China

Export Price

The petitioner identified Fasten Bloc. Company (Fasten), Jiangying Wire Rope Plant, Qingdao Steel Wire Rope Plant, Tianjin Wire Rope Factory, Ningxia Shizuishan Steel Plant, Liaoning Metals & Minerals Import and Export Corp, Guizhou Steel Union Metal Limited, Anshan Iron and Steel Company, Wuxi Steel Wire Rope Factory and Sichuan Steel Wire Rope Plant as the major producers and exporters of subject merchandise in China.

The petitioner determined export price (EP) using two different methods. It first calculated EP based on the import average unit value (AUV) for the ten-digit category of the HTSUS (*i.e.*, 7132.10.9030) accounting for the largest volume of in-scope imports from China in 1999. For this HTSUS subheading, the petitioner calculated the AUV using the reported quantity and customs value for imports as recorded in the U.S. Bureau of the Census' IM–146 import statistics for the month of December 1999. The petitioner made a deduction for estimated inland freight charges incurred in moving the subject merchandise from the Chinese plant to the closest port of export.

Second, the petitioner based EP on contemporaneous offers for sale made by Fasten to a U.S. unaffiliated purchaser for seven specific wire rope products, provided through an affidavit. This information was obtained from industry sources in the United States. The petitioner calculated a net U.S. price for each sale by subtracting, where appropriate, estimated international freight and insurance, foreign inland freight, U.S. customs duties, and merchandise processing and harbor maintenance fees.

Normal Value

The petitioner asserts that the Department considers China to be a non-market economy country (NME), and constructed NV based on the factors of production (FOP) methodology pursuant to section 773(c) of the Act. In previous cases, the Department has determined that China is an NME. *See, e.g., Heavy Forged Hand Tools, Finished or Unfinished, With or Without Handles, From the People's Republic of China*, 64 FR 5770, 5773 (February 5, 1999). In accordance with section 771(18)(C)(i) of the Act, the NME status remains in effect until revoked by the Department. The NME status of China has not been revoked by the Department and, therefore, remains in effect for purposes of the initiation of this investigation. Accordingly, the NV of the product appropriately is based on FOP valued in a surrogate market economy country in accordance with section 773(c) of the Act. In the course of this investigation, all parties will have the opportunity to provide relevant information related to the issues of China's NME status and the granting of separate rates to individual exporters.

For the NV calculation, the petitioner based the FOP, as defined by section 773(c)(3) of the Act (raw materials, labor, and energy), for steel wire rope on the quantities of inputs used by petitioning companies. The petitioner asserted that detailed information was not available regarding the quantities of inputs used by steel wire rope producers in China. It assumed, for purposes of the petition, that the main producer in China (Fasten) uses the same inputs in the same quantities as the petitioner's most similar plant based on plant facilities and equipment. Based on the information provided by the petitioner, we believe that the adjusted FOP represent information reasonably available to the petitioner and is appropriate for purposes of initiation of this investigation.

In accordance with section 773(c)(4) of the Act, the petitioner valued FOP, where possible, on reasonably available, public surrogate country data. Citing past Department practice, the petitioner used India as the surrogate country. Input and packing materials were valued based on India's import values, as published in the *Monthly Statistics of the Foreign Trade of India*. Labor was valued using the regression-based wage rate for China, in accordance with 19 CFR 351.408(c)(3). Electricity was valued using the rate for India published in the International Energy Agency's *Energy Prices and Taxes Quarterly Statistics*. The petitioner conservatively did not include a value for natural gas. For overhead, SG&A and profit, the petitioner applied rates derived from the public annual report of an Indian producer of subject merchandise, Tata Iron and Steel Company.

Based on comparisons of EP to NV, calculated in accordance with section 773(c) of the Act, the estimated dumping margins for steel wire rope from China range from 5 percent to 58 percent.

India

Export Price

The petitioner used two different methods to determine EP for India. First, the petitioner submitted an Indian producer's offer for sale of two specific wire rope products in the United States. The petitioner calculated an ex-factory U.S. price for each sale by subtracting from each price quote, where appropriate, movement related charges, specifically foreign inland freight, international freight and insurance, U.S. import duties, merchandise processing fees, and harbor maintenance fees.

Second, the petitioner calculated EP using AUV data for the following HTSUS: 7312.10.9090 and 7312.10.9060. The petitioner calculated the AUV using the reported quantity and customs value for imports as recorded in the U.S. Bureau of the Census' IM–146 import statistics for the month of December 1999. Deductions were made for foreign inland freight charges incurred in moving the subject merchandise from the plant in India to the closest port of export.

Normal Value

The petitioner identified Usha Martin Industries Limited, Mohatta & Heckel Ltd., Bombay Wire Ropes Limited, Bharat Wire Ropes Ltd., Asahi Steel Industries Ltd., Wellworth Wire Ropes Pvt. Ltd., and Davangere Wire Rope Industry Pvt. Ltd. as the producers accounting for almost all steel wire rope production in India. NV was based on actual price quotes from several Indian manufacturers to a customer in India for specific wire rope products. This information was obtained principally through the foreign market researcher. The price quotes are provided on an ex-factory basis, exclusive of all taxes. The petitioner subtracted estimated foreign packing costs and added estimated U.S. packing costs to the price quotes.

Based on comparisons of EP to NV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins for steel wire rope from India range from 59 percent to 142 percent.

Malaysia

Export Price

The petitioner based export price on AUV data, using the reported quantity and customs value for imports as recorded in the U.S. Bureau of the Census' IM–146 import statistics for the following ten-digit categories of the HTSUS: 7312.10.9030, 7312.10.9060 and 7312.10.9090. The petitioner used the AUV data from the month of December 1999. The petitioner conservatively did not make any deductions for movement expenses.

Normal Value

The petitioner identified KISWIRE SDN. BHD (KISWIRE), Southern Wire Industries SDN, BHD. (Southern Wire) and Berjaya Kawat Manufacturing SDN. BHD. as the producers accounting for almost all steel wire rope production in Malaysia. NV is based on Malaysian home market price quotes. The foreign market researcher obtained prices offered by Malaysian distributors to unrelated customers. Since the price quotes came from distributors, the petitioner made a deduction for the estimated distributors' mark-up. Additionally, the petitioner subtracted estimated home market packing expenses and added estimated U.S. packing expenses to calculate net price.

Based on comparisons of EP to NV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins for steel wire rope from Malaysia range from 11 percent to 63 percent.

Thailand

Export Price

The petitioner based export price on AUV data, using the reported quantity and customs value for imports as recorded in the U.S. Bureau of the Census' IM–146 import statistics for the following ten-digit categories of the HTSUS: 7312.10.9030 and 7312.10.9060. The petitioner used the information from the month of December 1999. The petitioner conservatively did not make any deductions for movement expenses.

Normal Value

The petitioner identified Usha Siam Steel Industries Public Co., Ltd. (Usha Siam); Lee Thai Mui 1991 Co., Ltd. (Lee Thai Mui); Jinyang Wire Rope (Thailand) Co., Ltd.; Thai Steel Cable Co., Ltd.; Thai Wire Products Pcl, and Steel Processing (Thailand) Co., Ltd. as the producers which account for almost all steel wire rope production in Thailand. The foreign market researcher obtained five prices quotes for sale offers to unrelated customers in Thailand. The petitioner calculated net prices for sales in Thailand by subtracting estimated home market packing expenses and adding estimated U.S. packing expenses.

Based on comparisons of EP to NV, calculated in accordance with section 773(a) of the Act, the estimated dumping margins for steel wire rope from Thailand range from 49 percent to 69 percent.

Fair Value Comparisons

Based on the data provided by the petitioner, there is reason to believe that imports of steel wire rope from China, India, Malaysia and Thailand are being, or are likely to be, sold at less than fair value.

Allegations and Evidence of Material Injury and Causation

The petitions allege that the U.S. industry producing the domestic like product is being materially injured, or is threatened with material injury, by reason of the individual and cumulated imports of the subject merchandise sold at less than NV. The petitioner contends that the industry's injured condition is evident in the declining trends in net operating profits, net sales volumes, profit to sales ratios, and capacity utilization. The allegations of injury and causation are supported by relevant evidence including U.S. Customs import data, lost sales, and pricing information. We have assessed the allegations and supporting evidence regarding material injury and causation, and have determined that these allegations are properly supported by accurate and adequate evidence and meet the statutory requirements for initiation (*see Initiation Checklist* at Attachment Re: Material Injury).

Initiation of Antidumping Investigations

Based upon our examination of the petitions on steel wire rope, we have found that the petitions meet the requirements of section 732 of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of steel wire rope from China, India, Malaysia and Thailand are being, or are likely to be, sold in the United States at less than fair value. Unless this deadline is extended, we will make our preliminary determinations no later than 140 days after the date of this initiation.

Distribution of Copies of the Petitions

In accordance with section 732(b)(3)(A) of the Act, a copy of the public version of each petition has been provided to the representatives of China, India, Malaysia and Thailand. We will attempt to provide a copy of the public version of each petition to each exporter named in the petition, as appropriate.

International Trade Commission Notification

We have notified the ITC of our initiations, as required by section 732(d) of the Act.

Preliminary Determinations by the ITC

The ITC will determine, no later than April 17, 2000, whether there is a reasonable indication that imports of certain steel wire rope products from China, India, Malaysia and Thailand are causing material injury, or threatening to cause material injury, to a U.S. industry. A negative ITC determination for any country will result in the investigation being terminated with respect to that country; otherwise, these investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 777(i) of the Act.

Dated: March 17, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

[FR Doc. 00–7384 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[C–428–817]

Certain Corrosion-Resistant Carbon Steel Flat Products; Cold-Rolled Carbon Steel Flat Products; and Cut-to-Length Carbon Steel Plate Products From Germany; Preliminary Results of Full Sunset Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of preliminary results of full sunset reviews: Certain corrosion-resistant carbon steel flat products; cold-rolled carbon steel flat products; and cut-to-length carbon steel plate products from Germany.

SUMMARY: On September 1, 1999, the Department of Commerce ("the Department") initiated sunset reviews of the countervailing duty orders on certain corrosion-resistant carbon steel flat products, cold-rolled carbon steel flat products, and cut-to-length carbon steel plate products (collectively the "steel products") from Germany (64 FR 47767) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). On the basis of notices of intent to participate filed on behalf of domestic interested parties and substantive responses filed on behalf of domestic and respondent interested parties, the Department is conducting full (240-day) sunset reviews. As a result of these reviews, the Department preliminarily finds that revocation of the countervailing duty orders would be likely to lead to continuation or recurrence of countervailing subsidies at the levels indicated in the Preliminary Results of Review section of this notice.

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Eun W. Cho or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1698 or (202) 482–1560, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) (Sunset Policy Bulletin).

Background

On September 1, 1999, the Department initiated sunset reviews of the countervailing duty orders on the steel products from Germany (64 FR 47767). We invited parties to comment. On the basis of notices of intent to participate filed on behalf of domestic interested parties and substantive responses filed on behalf of domestic and respondent interested parties, the Department is conducting full (240-day) sunset reviews. The Department is conducting these sunset reviews in accordance with sections 751 and 752 of the Act.

In accordance with section 751(c)(5)(C)(v) of the Act, the Department may treat a review as extraordinarily complicated if it is a review of a transition order (*i.e.*, an order in effect on January 1, 1995). These reviews concern transition orders within the meaning of section 751(c)(6)(C)(i) of the Act. Therefore, on December 22, 1999, the Department determined that the sunset reviews of the countervailing duty orders on the steel products from Germany are extraordinarily complicated and extended the time limit for completion of the preliminary results of these reviews until not later than March 19, 2000, in accordance with section 751(c)(5)(B) of the Act.[1]

Scope of Review

The products covered by these reviews are certain corrosion-resistant carbon steel flat products, cold-rolled carbon steel flat products, and cut-to-length steel plate products from Germany.

(1) *Certain corrosion-resistant carbon steel flat products:* The scope of countervailing duty order of certain corrosion-resistant carbon steel flat products ("corrosion-resistant") includes flat-rolled carbon steel products, of rectangular shape, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000. Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been bevelled or rounded at the edges. Excluded from this scope are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this scope are clad products in straight lengths of 0.1875 inch or more in composite thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness. Also excluded from this scope are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in composite thickness that consist of a carbon steel flat-rolled product clad on both sides with stainless steel in a "20 percent–60 percent–20 percent" ratio.

[1] See Extension of Time Limit for Preliminary Results of Full Five-Year Reviews, 64 FR 71726 (December 22, 1999).

On September 22, 1999, the Department issued the final results of a changed circumstances review and revoked the order with respect to certain corrosion-resistant steel.[2]

(2) *Certain cold-rolled carbon steel flat products:* The scope of countervailing duty order of certain cold-rolled carbon steel flat products includes cold-rolled (cold-reduced) carbon steel flat-rolled products, of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Included in this scope are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling)—for example, products which have been bevelled or rounded at the edges. Excluded from this scope is certain shadow mask steel; *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

(3) *Certain cut-to-length carbon steel plate products:* The scope of countervailing duty order on certain cut-to-length carbon steel plate products ("cut-to-length steel") includes hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), of rectangular shape, neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat-rolled products in straight lengths, of rectangular shape, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the Harmonized Tariff Schedule ("HTS") under item numbers 7208.40.3030, 7208.40.3060, 7208.51.0030, 7208.51.0045, 7208.51.0060, 7208.52.0000, 7208.53.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.13.0000, 7211.14.0030, 7211.14.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Included are flat-rolled products of non-rectangular cross-section where such cross-section is achieved subsequent to the rolling process (*i.e.*, products which have been worked after rolling) for example, products which have been bevelled or rounded at the edges. Excluded is grade X–70 plate.

On August 25, 1999, the Department issued the final results of a changed-circumstances review revoking the order in part, with respect to certain carbon cut-to-length steel plate with a maximum thickness of 80 mm in steel grades BS 7191, 355 EM and 355 EMZ, as amended by Sable Offshore Energy Project Specification XB MOO Y 15 0001, types 1 and 2.[3]

The HTS item numbers are provided for convenience and custom purposes. The written description remains dispositive.

Analysis of Comments Received

All issues raised in substantive responses and rebuttals by parties to these sunset reviews are addressed in the Issues and Decision Memorandum ("Decision Memo") from Jeffrey A. May, Director, Office of Policy, Import Administration, to Richard W. Moreland, Acting Assistant Secretary for Import Administration, dated March 20, 2000, which is hereby adopted and incorporated by reference into this notice. The issues discussed in the attached Decision Memo include the likelihood of continuation or recurrence of countervailable subsidy, the net countervailable subsidy likely to prevail were the order revoked, and the nature of the subsidy. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in B–099, the Central Records Unit, of the Main Commerce building.

In addition, a complete version of the Decision Memo can be accessed directly on the Web at www.ita.doc.gov/import—admin/records/frn. The paper copy and electronic version of the Decision Memo are identical in content.

Preliminary Results of Review

We preliminarily determine that revocation of the countervailing duty orders would be likely to lead to continuation or recurrence of a countervailable subsidy at the following net subsidy rates.

Manufacturer/exporters	Margin (percent)
Corrosion-resistant carbon steel flat products: Country-wide rate	0.54

[2] See Notice of Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews and Revocation of Orders in Part: Certain Corrosion-Resistant Carbon Steel Flat Products From Germany, 64 FR 51292 (September 22, 1999). The Department noted that the affirmative statement of no interest by petitioners, combined with the lack of comments from interested parties, is sufficient to warrant partial revocation. This partial revocation applies to certain corrosion-resistant deep-drawing carbon steel strip, roll-clad on both sides with aluminum (AlSi) foils in accordance with St3 LG as to EN 10139/10140. The merchandise's chemical composition encompasses a core material of U St 23 (continuous casting) in which carbon is less than 0.08 percent; manganese is less than 0.30 percent; phosphorous is less than 0.20 percent; sulfur is less than 0.015 percent; aluminum is less than 0.01 percent; and the cladding material is a minimum of 99 percent aluminum with silicon/copper/iron of less than 1 percent. The products are in strips with thicknesses of 0.07mm to 4.0mm (inclusive) and widths of 5mm to 800mm (inclusive). The thickness ratio of aluminum on either side of steel may range from 3 percent/94 percent/3 percent to 10 percent/80 percent/10 percent.

[3] See Certain Cut-to-Length Carbon Steel Plate from Finland, Germany, and United Kingdom: Final Results of Changed Circumstances Antidumping Duty and Countervailing Duty Reviews, and Revocation of Orders in Part, 64 FR 46343 (August 25, 1999).

Manufacturer/exporters	Margin (percent)
Cold-rolled carbon steel flat products: Country-wide rate ..	0.55
Cut-to-length steel plate products:	
Salzgitter	1.62
TKS	0.51
Country-wide (Dillinger)	14.84

Although the programs included in our calculation of the net countervailable subsidy likely to prevail if the orders were revoked do not fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, they may be subsidies described in Article 6, if the net countervailable subsidy exceeds five percent, as measured in accordance with Annex IV of the Subsidies Agreement. The Department, however, has no information with which to make such a calculation; nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Moreover, we note that as of January 1, 2000, Article 6.1 has ceased to apply (see Article 31 of the Subsidies Agreement). As such, we are providing the Commission the following program descriptions:

Capital Investment Grants: This non-recurring program provided grants to reimburse a certain percentage of acquisition-cost of assets purchased or produced after July 1981 but prior to January 1986.

Investment Premium Act: Under this non-recurring program, which was supposedly in effect from 1969 through 1989, grants were provided to companies investing in specific regions of Germany for projects implemented by the company within three years of the certification.

Joint Scheme: This non-recurring program, which was signed in October 1969 and came into force in January 1970, was designed to assist companies in depressed areas.

Aid for Closure of Steel Operations: Based on two laws, this non-recurring program was created to reduce the economic and social costs of plant closings in the steel industry between 1987 and 1990.

Upswing East: This non-recurring program was established to provide a special investment allowance in five new states in Berlin.

TRA/BvS: The purpose of this non-recurring program is to take over the government-held assets in the former GDR and place them within the competition-directed market economy of the unified Germany.

SVK grant: The Government of Saarland and Dillinger's parent company, Usinor Sacilor, created a new holding company, DHS, making Dillinger and Saarstahl wholly-owned subsidiaries of DHS. In this restructuring process, the governments of Germany and Saarland forgave debts owed to them by Saarstahl. Also, private creditors forgave Saarstahl's debts as a part of the aforementioned restructuring.

Structural Improvement Aids: This program was created to provide funds for companies in the iron and steel industry to cover severance pay and transitional assistance for steel workers affected by the restructuring plan within the industry and to assist steel companies with the costs associated with plant closures.

Ruhr District Action Program: This program provided grants for investments in the Ruhr region. Under this program, grants relating to environmental protection were available exclusively to the steel industry.

ECSC 56: This program was created to provide assistance to persons who lost their jobs in iron, steel, and coal industries.

ECSC 54: This program was available only to the iron, steel, and coal industries to purchase new equipment or finance modernization.

ECSC 54 Interest: This program was available only to the iron, steel, and coal industries providing rebates during the restructuring and modernization of the industry beginning in the 1980's.

Any interested party may request a hearing within 30 days of publication of this notice in accordance with 19 CFR 351.310(c). Any hearing, if requested, will be held on May 17, 2000. Interested parties may submit case briefs no later than May 8, 2000, in accordance with 19 CFR 351.309(c)(1)(i). Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than May 15, 2000. The Department will issue a notice of final results of this sunset review, which will include the results of its analysis of issues raised in any such comments and/or at a hearing, no later than July 27, 2000.

We are issuing and publishing this determination and notice in accordance with sections section 751(c), 752, and 777(i) of the Act.

Dated: March 20, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–7493 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Computer System Security and Privacy Advisory Board; Notice of Meeting

AGENCY: National Institute of Standards and Technology.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that the Computer System Security and Privacy Advisory Board (CSSPAB) will meet Wednesday, March 29, 2000, and Thursday, March 30, 2000, from 9 a.m. to 5 p.m. The Advisory Board was established by the Computer Security Act of 1987 (P.L. 100–235) to advise the Secretary of Commerce and the Director of NIST on security and privacy issues pertaining to federal computer systems. All sessions will be open to the public. Details regarding the Board's activities are available at http://csrc.nist.gov/csspab/.

DATES: The meeting will be held on March 29–30, 2000, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will take place at the National Institute of Standards and Technology, Gaithersburg, MD, Administration Building, Lecture Room D.

Agenda

—Welcome and Overview
—Issues Update and Briefings
—Legislative Updates
—Systems Security Engineering-Capability Maturity Model Briefing
—Office of Management and Budget/Office of Information and Regulatory Affairs Briefing
—Update on GSA's Access Certificates Electronic (ACES)
—Best Practices Briefing
—NIST Computer Security Updates
—Planning for Security Program Metrics Workshop
—Pending Business/Discussion
—Public Participation
—Agenda Development for June 2000 Meeting
—Wrap-U

Note that agenda items may change without notice because of possible unexpected schedule conflicts of presenters.

Public Participation

The Board agenda will include a period of time, not to exceed thirty minutes, for oral comments and questions from the public. Each speaker will be limited to five minutes. Members of the public who are interested in speaking are asked to contact the Board Secretariat at the telephone number indicated below. In addition, written statements are invited and may be submitted to the Board. It would be appreciated if 35 copies of written material were available for distribution to the Board and attendees at the meeting. Approximately 15 seats will be available for the public and media.

FOR FURTHER INFORMATION CONTACT: Mr. Edward Roback, Board Secretariat, Information Technology Laboratory, National Institute of Standards and Technology, 100 Bureau Drive, Stop 8930, Gaithersburg, MD 20899–8930, telephone: (301) 975–3696.

Dated: March 23, 2000.

Raymond G. Kammer,

Director, NIST.

[FR Doc. 00–7593 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–CN–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 000314073–0073–01; I.D. 120399C]

RIN 0648–ZA83

Fisheries Finance Program; Program Notice and Announcement of Federal Financial Assistance Availability

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Federal financial assistance availability.

SUMMARY: NMFS announces the availability of $28.7 million in Fisheries Finance Program (FFP) loans during fiscal year (FY) 2000. This notice establishes FY 2000 loan application priorities.

DATES: Effective March 27, 2000.

ADDRESSES:

(1) *Applicants in the Alaska, Northwest, and Southwest Regions.* Kimberly Ott, Northwest Financial Services Branch (F/SF23), 7600 Sand Point Way, NE (BIN C15700), Building 1, Seattle, WA 98115;

(2) *Applicants in the Northeast Region.* Leo Erwin, Northeast Financial Services Branch (F/SF21), One Blackburn Drive, Gloucester, MA 01930; and

(3) *Applicants in the Southeast Region.* Kell Freeman, Southeast Financial Services Branch (F/SF22), 9721 Executive Center Drive North., St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable, 301–713–2390, fax 301–713–1306, E-mail Michael.Grable@noaa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction

(1) *Notice purpose.* The notice's purpose is to:

(a) Announce that the FFP has a $28.7 loan ceiling for FY 2000;

(b) Establish loan application priorities for the $23.7 million loan ceiling not dedicated to any specific loan purpose; and

(c) Establish an application selection basis for the $5 million loan ceiling dedicated to purchasing halibut and sablefish individual fishing quota (IFQ).

(2) *FFP description.* The FFP is a direct loan program under Title XI of the Merchant Marine Act, 1936, as amended. Debt maturities can be up to 25 years, but not longer than financed property's economically useful life. Interest rates, which are fixed, are the U.S. Treasury's borrowing cost plus 2 percent. There are no prepayment penalties. Loans may equal 80 percent of financed property's depreciated cost, and may generally be either original financing or refinancing of existing loans.

FFP loans generally require experienced fisheries borrowers with strong primary and secondary means of repayment, including personal guarantees.

FFP loans generally have longer maturities and lower interest rates than private fisheries credit. This stretches the service of lower-cost FFP debt over a longer repayment period more consistent with cyclical fisheries economics.

For further FFP details, see the FFP's operating rules at 50 CFR part 253, subpart B.

(3) *FFP lending purposes.* These are the FFP's statutory lending purposes:

(a) Fishing vessel construction, reconstruction, reconditioning, and acquisition. The FFP rules, however, prohibit loans that increase existing harvesting capacity, as does the FY 2000 appropriations act. FFP loans may not, consequently, originally finance either vessel construction or reconstruction that increases vessel harvesting capacity. Nevertheless, FFP loans remain available for refinancing existing vessel loans for all eligible purposes because this does not increase harvesting capacity. Additionally, FFP loans remain available for originally financing vessel purchase and/or reconditioning;

(b) Fisheries shoreside facilities construction, reconstruction, reconditioning, and acquisition;

(c) Aquacultural facilities construction, reconstruction, reconditioning, and acquisition;

(d) IFQ acquisition. So far, only entry level or small boat fishermen in the halibut and sablefish fisheries are eligible for these loans. Eligibility in additional fisheries depends on Fishery Management Council requests;

(e) Fishing capacity reduction under section 312(b)–(e) of the Magnuson-Stevens Fishery Conservation and Management Act. Fishery Management Councils must also request these loans; and

(f) Acquiring pollock fishing vessels or shoreside facilities. This dedicated use of FFP loan ceilings was available in FY 1999 only to communities eligible to participate in the Western Alaska Community Development Program.

(4) *Federal Credit Reform Act (FCRA) cost effect on loan ceilings.* Congress annually authorizes FFP loan ceilings. Since 1972, Congress has done this by appropriating FCRA costs at rates projected in the President's annual budgets.

FCRA cost is the loan loss that the Office of Management and Budget (OMB) projects for different Federal loan categories. A loan ceiling is the amount that a stated FCRA cost appropriation produces at a stated FCRA cost rate. The following table shows, for example, the loan ceiling effect of different FCRA cost rates for a $0.1 million FCRA cost appropriation:

FCRA Cost Appropriation	FCRA Cost Rate	Loan Ceiling
$0.1 million	1%	$10 million
$0.1 million	2%	$5 million
$0.1 million	5%	$2 million
$0.1 million	10%	$1 million

FCRA Cost Appropriation	FCRA Cost Rate	Loan Ceiling
$0.1 million	20%	$0.5 million
$0.1 million	50%	$0.2 million

The FFP uses FCRA cost appropriations as lending capital, borrowing the balance from the U.S. Treasury. If, for example, the FFP had a $0.1 million FCRA cost appropriation at a 1 percent FCRA cost rate, the FFP's lending capital would be the $0.1 million FCRA cost appropriation plus $9.9 million borrowed from the U.S. Treasury. The FFP would then make loans worth $10 million, using their repayment proceeds to repay (with interest) the FFP's own loan from the Treasury.

(5) *FFP's FY 2000 loan ceiling.* The President's FY 2000 budget established a 1 percent FCRA cost rate for the FFP loan ceiling that the budget requested (which did not include IFQ loans).

Congress enacted a FY 2000 FCRA cost appropriation of $0.338 million and dedicated $0.1 million of it to IFQ loans, leaving the undedicated $0.238 million balance available for the FFP's other lending purposes. OMB reduced the apportioned FCRA cost to $0.337 million.

The President's budgets have not, through FY 2000, requested IFQ loan ceilings. OMB, however, established a 2– percent FCRA cost rate for the first FCRA cost appropriation that Congress dedicated to IFQ loans. This FCRA cost rate has since applied to all FCRA cost appropriations that Congress dedicated to IFQ loans (fiscal years 1998 and 1999).

Consequently, the FFP's apportioned loan ceiling for FY 2000 is as follows:

	FCRA Cost	× FCRA	= Loan
Loan Purpose	*Appropriation*	*Cost Rate*	*Ceiling*
IFQ	$0.1 million	2 percent	$5 million
Other Purposes	$0.237 million	1 percent	$23.7 million
Totals	$0.337 million	-	$28.7 million

(6) *Catalog of Federal Domestic Assistance.* The FFP is listed in the "Catalog of Federal Domestic Assistance" under number 11.415: Fisheries Finance Program.

II. $5 Million Ceiling For IFQ Loans During FY 2000

Backlogged IFQ applications from FY 1999 far exceed this $5 million loan ceiling. NMFS will not, consequently, accept new IFQ loan applications during FY 2000. Instead, NMFS will select $5 million worth of backlogged applications for processing. This accords with NMFS' previous **Federal Register** notice (64 FR 25289, May 11, 1999). NMFS will use for FY 2000 selection the same random process it used for FY 1999 selection. NMFS' previous **Federal Register** notice requested, but did not receive, public comment about this.

III. $23.7 Million Ceiling For Other Loan Purposes During FY 2000 (1) *Priority lending purposes.* **These are the priority lending purposes for this $23.7 million loan ceiling:**

(a) *Fishing Capacity Reduction.* This is the highest priority because harvesting overcapitalization is a major national fisheries problem.

(b) *Supporting the existing FFP credit portfolio.* This includes: refinancing loans, assuming loans, and other loan servicing actions that protect the Government's interest in the existing FFP portfolio and limit loan loss exposure;

(c) *Backlogged FY 1999 loan applications.* This includes about $10 million in FFP loan applications backlogged from FY 1999; and

(d) *Marine and closed system aquaculture.* This excludes land-based aquaculture not occurring in closed systems.

(2) *Non-priority lending purposes.* These are the non-priority lending purposes for this $23.7 million loan ceiling:

(a) Land based aquaculture in open systems;

(b) Fisheries shoreside facilities; and

(c) Fishing vessels.

(3) *Reserving FY 2000 loan ceiling.* (a) *Before April 17, 2000.* Before this date, NMFS will reserve the entire $23.7 million loan ceiling for applications that involve the priority lending purposes.

(b) *After April 17, 2000.* If any of the $23.7 million loan ceiling remains unreserved after this date, the unreserved amount will then be available to reserve for applications involving any FFP lending purpose.

(c) *Fishing Capacity Reduction Exclusion.* Because this is the highest FFP lending priority, NMFS may at any time during FY 2000 consider reserving for this purpose any or all of the $23.7 FFP loan ceiling not previously reserved for another purpose. NMFS will do so only for accepted fishing capacity reduction requests whose further processing requires FY 2000 loan approval.

(4) *Application fee.* NMFS will reserve loan ceiling for an application only upon the applicant's payment of an application fee. Fifty percent of this fee is non-refundable (NMFS earns the remainder upon loan approval).

(5) *Losing loan ceiling reservations.* NMFS intends to ensure that it obligates this entire $23.7 million loan ceiling before October 1, 2000. If an applicant with a loan ceiling reservation does not comply with NMFS' loan processing requirements promptly enough for NMFS to prospectively achieve this intention, NMFS may transfer the loan ceiling reservation to another applicant who can and will comply.

(6) *Applications and waiting list.* All potential applicants must first discuss their loan projects with the appropriate NMFS Regional Financial Services Branch.

If a potential applicant appears to be ineligible for an FFP loan or unable to meet the FFP's loan risk criteria, NMFS will take no further action.

If, however, a potential applicant prospectively appears to be both eligible and able to meet the loan risk criteria, NMFS will either then advise the applicant that it may submit an application and application fee or add the applicant to a FFP waiting list for submitting future applications when lending priorities and/or unreserved loan ceilings permit.

NMFS will reserve sufficient loan ceiling for every applicant that submits an application and application fee after NMFS advises the applicant that it may do so.

Although NMFS advises a potential applicant that it may submit a loan application and application fee, only subsequent loan investigation and analysis will determine whether, and under what conditions, NMFS will approve a loan.

Subject to FY 2001 loan priorities and loan ceilings, NMFS will consider as FY 2001 application candidates all parties on the FY 2000 waiting list for whom NMFS did not reserve FY 2000 loan ceiling. NMFS will do so in the chronological order in which parties were added to the waiting list.

All FFP loans are subject to the FFP operating rules. Potential applicants should see these rules for further eligibility and qualification details.

IV. Administrative Requirements

The Debt Collection Improvement Act of 1996 bars additional Federal loans (other than disaster loans) to delinquent Federal borrowers (excluding debt under the Internal Revenue Code of 1986).

Loan applicants are subject to name-check reviews intended to reveal whether applicant principals have been convicted of, or are facing, criminal charges for fraud, theft, perjury, or other matters affecting the applicant's honesty, integrity, or creditworthiness.

False application statements can result in loan denial, loan termination, and possible punishment by fines or imprisonment as provided in 18 U.S.C. 1001.

Applicants must complete a Form CD–511 because they are subject to 15 CFR part 26 (Federal assistance debarment) and the lobbying provisions of 31 U.S.C. 1352 (using appropriated funds to influence Federal financial transactions). NMFS will furnish this form when it advises potential applicants to submit their applications.

Classification

Neither the Administrative Procedure Act nor any other law requires prior notice and opportunity for public comment about this loan notice. Consequently, the Regulatory Flexibility Act does not require a regulatory flexibility analysis.

This notice is not significant for purposes of Executive Order 12866.

FFP applications are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

This notice contains a collection-of-information requirement subject to the Paperwork Reduction Act. OMB approved the required collection of information under control number 0648–0012.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

Dated: March 16, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7503 Filed 3–24–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 00309067–0067–01]

RIN 0648–ZA82]

National Marine Aquaculture Initiative: Request for Proposals for FY–2000

AGENCY: Office of Oceanic and Atmospheric Research (OAR) and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce.

ACTION: Notice of request for proposals.

SUMMARY: The purpose of this notice is to advise the public OAR is expanding the existing aquaculture initiative that was begun in FY–99 in order to meet the objectives of the new Department of Commerce (DOC) aquaculture policy and the NOAA Strategic Plan to Build Sustainable Fisheries. Because of the limited funds available and the specific objectives that are put forward in the policy and the plan, OAR can only entertain a limited number of proposals in every specific areas which lead to:

1. Improvements to the regulatory framework for marine aquaculture;
2. Definition of elements to be included in a code of conduct for responsible marine aquaculture and stakeholder acceptance of the code;
3. Demonstration of the use of Geographic Information System based Use-mapping of Federal and/or state waters useful to the potential siting of marine aquaculture projects;
4. Environmentally sound technologies and evaluation of impacts associated with grow-out and enhancement activities; and
5. Regional planning and coordination efforts which further regional or national marine aquaculture goals.

The topics are in rank order and some topics will require the participation of government agencies responsible for developing guidelines, rules and regulations for growing aquaculture industry. More specific guidelines for the proposal topics are provided later in this document.

OAR will make available $600,000 in FY2000 for research, developmental and programmatic activities. While matching funds are not required, applicants are encouraged to submit collaborative projects between Federal and state agencies, academic and research interests, private industry, and other partners as necessary to accomplish the tasks of the proposals. Either Grants or Cooperative Agreements will be considered for this competition. If a Cooperative Agreement, OAR will work through the NOAA/DOC Aquaculture Steering Committee to finalize the work plan. OAR recognizes that proposals that interface with ongoing offshore aquaculture or stock enhancement projects may offer opportunities for cost savings, and will be given priority when such cost savings can be realized.

DATES: Full proposals are due to the OAR, by 4 p.m. May 15, 2000. Proposal selection will occur by June 15, 2000, and grant start dates will be September 1, 2000.

ADDRESSES: Applications should be sent to the Office of Oceanic and Atmospheric Research, Attn: National Marine Aquaculture Initiative, Room 11838, NOAA, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: James P. McVey, Program Director for Aquaculture, 301–713–2451, facsimile 301–713–0799, or Edwin Rhodes, National Marine Fisheries Service, 301–713–2334.

SUPPLEMENTARY INFORMATION:

I. Program Authority

Catalog of Federal Assistance Numbers: 11.417. Sea Grant Support.

Authority: 33 U.S.C. 1123(c)(4)(F).

II. Program Description

Background

Worldwide fisheries production will be inadequate to meet the needs of the world's population without

supplementation through aquaculture and marine fish enhancement. The development of a robust aquaculture industry can help meet the Nation's needs for seafood and other non-edible aquaculture products, reduce imports of fishery products and benefit the nation's balance of trade. In the US marine aquaculture has been very slow to develop for a variety of reasons including the lack of appropriate technologies, difficulty in obtaining financing, concerns over environmental impacts, multi-use conflicts in the coastal zone, and difficult and expensive permit and licensing processes. However, none of these problems are insurmountable and the need for creating a marine aquaculture sector has never been greater.

NOAA includes aquaculture in its Strategic Plan under the Build Sustainable Fisheries topic as part of a three part program that integrates aquaculture, capture fisheries and coastal community development in order to maximize value from coastal and ocean resources. This plan calls for NOAA and DOC to undertake research, demonstration, education/outreach, regulatory and financial support activities in support of marine aquaculture. NOAA recognizes the role of other Federal agencies and state management partners in aquaculture and coordinates its aquaculture programs through NOAA/DOC representatives at the regional level and at the national level through the Joint Sub-Committee on Aquaculture. The NOAA/DOC program is aligned with the National Aquaculture Development Plan.

III. Funding Availability and Priorities

The Office of Oceanic and Atmospheric Research encourages proposals that address the following research, development, policy and management priorities that have been developed through the NOAA/DOC budget process. Approximately $600,000 will be available for this competition in FY 2000. We are not placing a maximum on the amount that can be requested for each project but we will be looking for appropriate budget levels relative to the scale of the project being contemplated. Projects below $100,000 are encouraged. Maximum time frame for the proposals is 18 months. Priority will be given to national issues areas, identified here, that combine and leverage the financial, manpower and infrastructure resources of federal, state, academic, non-governmental organizations, and private industry partners to expand US aquaculture. We anticipate this initiative to be long term and we will hold several planning meetings during this year to set the agenda for the following years.

Competitive proposals should be multi-disciplinary, multi-institutional, innovative, and blend the resources of Federal, State, academic and private industry resources when appropriate.

The NOAA/DOC Aquaculture Steering Committee has interpreted the results of a national workshop on aquaculture that was held August 11–13, 1999 at the NOAA facilities in Silver Spring, Maryland, to determine research and program priorities for this aquaculture initiative. As a result of this analysis and in keeping with the NOAA Strategic Plan, OAR would like to ask for proposals in the following topic areas that are listed in rank order:

Regulatory Framework

Proposals to improve understanding of measures which would lead to a more efficient and transparent license and permit procedure for aquaculture facilities and related uses in marine waters including the Exclus Economic Zone (EEZ). Proposals should identify the problem or problems to be addressed and the methodology to be used to identify measures and recommendations for improvements. This program area may require joint efforts by the industry, state and federal regulatory agencies in order to clarify and improve the present regulatory framework. Proposals may address state, regional or national permitting or federal consistency issues.

Code of Conduct for Responsible Aquaculture

NOAA will develop a code of conduct for responsible aquaculture in Federal marine waters (the exclusive economic zone, or EEZ) to guide potential applicants for Federal permits to operate aquaculture facilities in the EEZ, and will be used by Federal agencies to evaluate applications. OAR is seeking proposals that address the content of this code (*e.g.*, aquatic health management, genetic management, *etc.*), and proposals that would improve stakeholder participation and acceptance of such a code. Additionally, OAR is seeking proposals from aquaculture industry sector groups to develop codes of conduct or best management plans for their industries.

Use Suitability-Mapping of EEZ and State Waters To Assist in Aquaculture Siting

OAR is seeking proposals that evaluate use/suitability mapping as a tool to assist in the siting of aquaculture facilities. Proposals should consider all sociological, environmental, technological, physical and other relative parameters that should be included in use/suitability mapping to identify potential lease sites which would avoid conflicts with other major uses and yet satisfy marine aquaculture industry requirements. This would include the need to consider state coastal management interests, fisheries and other maritime interests. Proposals that include testing or demonstration of use/suitability mapping for aquaculture siting will receive additional consideration.

Environmentally Sound Technologies and Impacts (Specifically for Grow-Out and Enhancement)

The NOAA goal to promote the development of environmentally sound aquaculture requires information on the impacts of aquaculture under present operating conditions and predictions of impacts with increased aquaculture activity. Part of this goal includes the development of production technologies to improve the environmental performance of aquaculture production systems and locations.

OAR is seeking proposals that evaluate environmental impacts of aquaculture production systems, particularly those that will provide information on impacts from aquaculture facilities in the EEZ. Proposals that address the environmental aspects of stock enhancement will also be considered.

Regional Planning and Coordination

OAR recognizes the need for integrated regional planning and prioritization in order to focus Federal and assistance efforts. OAR is seeking proposals to establish mechanisms for broad regional planning that would address the NOAA goals to promote environmentally sound marine aquaculture. Specifically, OAR seeks proposals from the northeast, southeast, Gulf, Pacific and Great Lakes regions. Some regional planning groups have formed based on the regional focus sessions at the August 1999 workshop, and these groups will be given priority.

We are particularly interested in working on the above issues in order to create a regulatory and management environment conducive to sound industry development. This will require partnerships between State and Federal agencies, non-government organizations, the industry and the academic and regulatory authorities necessary to achieve this goal.

IV. What To Submit

Full Proposal Guidelines

Each full proposal should include the first six items listed below: the standard forms included as Item 7 will only be required for proposals for selected funding. All pages should be single– or double-spaced, typewritten in at least a 10-point font, and printed on metric A4 (210 mm × 297 mm) or 8 2″ × 11″ paper. Brevity will assist reviewers and program staff in dealing effectively with proposals. Therefore, the Project Description may not exceed 15 pages. Tables and visual materials, including figures, charts, graphs, maps, photographs and other pictorial presentations are included in the 15-page limitation; literature citations and letters of support, if any, are not included in the 15-page limitation. Conformance to the 15-page limitation will be strictly enforced. All information needed for review of the proposal should be included in the main text; no appendices, other than support letters, if any, are permitted. Failure to adhere to the above limitations will result in the proposal being rejected without review.

(2) Signed Title Page

The title page should be signed by the Principal Investigator and the institutional representative and should clearly identify the program area being addressed by starting the project title "National Marine Aquaculture Initiative." The Principal Investigator and institutional representative should be identified by full name, title, organization, telephone number, and address. The total amount of Federal funds being requested should be listed for each budget period; the total should include all subrecipient's budgets on projects involving multiple institutions.

(2) Project Summary

This information is very important. Prior to attending the peer review panel meetings, some of the panelists may read only the project summary. Therefore, it is critical that the project summary accurately describes the research being proposed and conveys all essential elements of the research. Applicants are encouraged to use to Sea Grant Project Summary Form 90–2, but may use their own form as long as it provides the same information as the Sea Grant form. The project summary should include: 1. Title: Use the exact title as it appears in the rest of the application. 2. Investigators: List the names and affiliations of each investigator who will significantly contribute to the project. Start with the Principal Investigator. 3. Funding request for each year of the project, including matching funds if appropriate. 4. Project Period: Start and completion dates. Proposals should request a start date of July 1, 2000, or later. 5. Project Summary: This should include the rationale for the project, the scientific or technical objectives and/or hypotheses to be tested, and a brief summary of work to be completed.

(3) Project Description (15-page limit)

(a) Introduction/Background/Justification: Subjects that the investigator(s) may wish to include in this section are: (i) Current state of knowledge; (ii) Contributions that the study will make to the particular discipline or subject area; (iii) Contributions and impacts the study will make toward advancement of marine aquaculture technology and policy; and iv) As appropriate, contributions of investigator's previously funded research results to current proposal.

(b) Research or Technical Plan: (i) Objectives to be achieved, hypotheses to be tested; (ii) Plan of work—discuss how stated project objectives will be achieved; and (iii) Role of project personnel.

(c) Output: Describe the project outputs and impacts that will enhance the Nation's ability to develop marine aquaculture in an environmentally responsible way.

(d) Coordination with other Program Elements: Describe any coordination with other agency programs or ongoing research efforts. Describe any other proposals that are essential to the success of this proposal.

(e) Literature Cited: Should be included here, but does not count against the 15-page limit.

(4) Budget and Budget Justification

There should be a separate budget for each year of the project as well as a cumulative annual budget for the entire project. Applicants are encouraged to use the Sea Grant Budget Form 90–4, but may use their own form as long as it provides the same information as the Sea Grant form. Successful applicants whose awards would be made through a state Sea Grant Program must consult with that state Sea Grant Program budget office to ensure that all necessary overhead costs are included. Subcontracts should have a separate budget page. Matching funds must be indicated if required; failure to provide adequate matching funds will result in the proposal being rejected without review. Applicants should provide justification for all budget items in sufficient detail to enable the reviewers to evaluate the appropriateness of the funding requested. For all applications, regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the Recipient shall be the lesser of: (a) The Federal share of the total allocable indirect costs of the award based on the negotiated rate with the cognizant Federal agency as established by audit or negotiation; or (b) The line item amount for the Federal share of indirect costs contained in the approved budget of the award.

(5) Current and Pending Support

Applicants must provide information on all current and pending support for ongoing projects and proposals, including subsequent funding in the case of continuing grants. All current project support from whatever source (*e.g.*, Federal, State, or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the principal investigator and other senior personnel should be included, even if they receive no Federal salary support from the project(s). The number of person-months per year to be devoted to the projects must be stated, regardless of source of support. Similar information must be provided for all proposals already submitted or submitted concurrently to other possible sponsors, including those within NOAA.

(6) Vitae

(2 pages maximum per investigator).

(7) Standard Application Forms

Applicants may obtain all required application forms at the following Internet website: (http://www.nsgo.seagrant.org/research/rfp/index.html#3), from the state Sea Grant Programs, or from Dr. James McVey at the NSGO (phone: 301–713–2451 x160 or e-mail: Jim.mcvey@noaa.gov). For proposals selected for funding, the following forms must also be submitted:

(a) Standard Form 424, Application for Federal Assistance, and 424B Assurances—Non-Construction Programs, (Rev 4–88). Applications should clearly identify the program area being addressed by starting the project title with "Marine Aquaculture Initiative." Please note that both the Principal Investigator and an administrative contact should be identified in Section 5 of the SF424. For Section 10, applicants should enter "11.417" for the CFDA Number and Sea

Grant Support for the title. The form must contain the original signature of an authorized representative of the applying institution.

(b) Primary Applicant Certifications. All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided:

(i) Non-Procurement Debarment and Suspension. Prospective participants (as defined at 15 CFR Part 26, Section 105) are subject to 15 CFR Part 26, "Non-Procurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

(ii) Drug-Free Workplace. Grantees (as defined in 15 CFR Part 26, Section 605) are subject to 15 CFR Part 26, Subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

(iii) Anti-Lobbying. Persons (as defined at 15 CFR Part 28, Section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(iv) Anti-Lobbying Disclosures. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR Part 28, Appendix B.

(c) Lower Tier Certifications. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department of Commerce (DOC). Renewal of an award to increase funding or extend the period of performance is based on satisfactory performance and is at the total discretion of the DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

V. Selection Procedures

All proposals will be sent out for written reviews and a blue ribbon panel of non-government aquaculture experts and NOAA scientists will rate the proposals in rank order for funding based on the written reviews and the panel process. OAR, in cooperation with the NOAA/DOC Steering Committee on Aquaculture, will make the final proposal selection based on the input from the selection panel, but reserves the right to select outside of rank order for programmatic balance and purposes. Selection criteria will be as follows:

60% Scientific and/or technical merit
20% Project relevance to the priorities of the RFP
10% Competency of project team and ability to complete project according to schedule
10% Plan for dissemination and incorporation of project results, including publication and extension opportunities.

Projects will be graded on a percent system with each category contributing towards a total of 100%

VI. Eligibility

Support under this call for proposals is available to all non-federal scientists as well as all federal and state agencies and institutions. Investigators submitting proposals in response to this announcement are strongly encouraged to develop inter-institutions, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. Persons directly involved in the proposal selection process are not eligible for support. NOAA conflict of interest procedures will be followed.

VII. How To Submit

Proposals can be submitted directly to the National Sea Grant Office (NSGO), according to the schedule outlined above. Although investigators are not required to submit more than 3 copies of full proposals, the normal review process requires 10 copies. Investigators are encouraged to submit sufficient copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5″ x 11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. Proposals sent to the NSGO should be addressed to: NSGO, R/SG, Attn.: Dr. James P. McVey, National Marine Aquaculture Initiative, 1315 East-West Highway, Room 11838, Silver Spring, MD 20910 (phone number for express mail applications is 301–713–2435).

Applications received after the deadline and application that deviate from the format described above will be returned to the sender without review. Facsimile transmissions and electronic mail submission of pre-proposals and full proposals will not be accepted.

VIII. Other Requirements

(A) Federal Policies and Procedures—Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce (DOC) policies, regulations, and procedures applicable to Federal financial assistance awards.

(B) Past Performance—Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

(C) Pre-Award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

(B) No Obligation for Future Funding—If an application is selected for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of DOC.

(E) Delinquent Federal Debts—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangement satisfactory to DOC are made.

(F) Name Check Review—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

(G) False Statements—A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(H) Intergovernmental Review—Applications for support from the National Sea Grant College Program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(I) Purchase of American-Made Equipment and Products—Applicants are hereby notified that they will be encouraged, to the greatest extent practicable, to purchase American-made equipment and products with funding provided under this program.

(J) Pursuant to Executive Orders 12876, 12900, and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities (HBCU), Hispanic Serving Institutions (HSI), and Tribal Colleges and Universities (TCU) in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs. Institutions eligible to be considered HBCU/MSIs are listed at the following Internet website: http://www.ed.gov/offices/OCR/99minin.html.

(K) For awards receiving funding for the collection or production of geospatial data (*e.g.*, GIS data layers), the recipient will comply to the maximum extent practicable with E.O. 12906, Coordinating Geographic Data Acquisition and Access, The National Spatial Data Infrastructure, 59 FR 17671 (April 11, 1994). The award recipient shall document all new geospatial data collected or produced using the standard developed by the Federal Geographic Data Center, and make that standardized documentation electronically accessible. The standard can be found at the following Internet website: *(http://www.fgdc.gov/standards/standards/html).*

L. Indirect Costs: If indirect costs are proposed, the following statement applies: The total dollar amount of the indirect costs proposed in an application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act or any other law for this notice concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act.

This action has been determined to be not significant for purposes of E.O. 12866.

This notice contains collection of information requirements subject to the Paperwork Reduction Act. The Sea Grant Budget Form, 90–4, Sea Grant Summary Form, 90–2, and Standard Forms 424, and 424b have been approved under control numbers 0648–0362, 0648–0362, 0348–0043, and 0348–0040 with average responses estimated to take 15, 20, 45, and 15 minutes, respectively. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments on these estimates or any other aspect of these collections to National Sea Grant College Program, R/SG, NOAA, 1315 East-West Highway, Silver Spring, MD 20910 (Attention: Francis S. Schuler). Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid OMB Control Number.

Louisa Koch,

Deputy Assistant Administrator, Office of Oceanic and Atmospheric Research, National Oceanic and Atmospheric Administration.

[FR Doc. 00–7512 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–KA–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032000C]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Socioeconomic Panel (SEP).

DATES: A meeting of the SEP will be held beginning at 8:30 a.m. on Thursday, April 13, and will conclude by 4:00 p.m. on Friday, April 14, 2000.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone: 813–877–6688.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The SEP will convene to review available social and economic information on the Gulf migratory group of king and Spanish mackerels and to determine the social and economic implications of the levels of acceptable biological catches recommended by the Council's Mackerel Stock Assessment Panel (MSAP). The SEP may recommend to the Council total allowable catch (TAC) levels for the 2000–01 fishing year and certain management measures associated with achieving the TACs.

Composing the SEP membership are economists, sociologists, and anthropologists from various universities and state fishery agencies throughout the Gulf. They advise the Council on the social and economic implications of certain fishery management measures.

A copy of the agenda can be obtained by calling 813–228–2815.

Although other non-emergency issues not on the agendas may come before the SEP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the SEP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by April 6, 2000.

Dated: March 20, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7502 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032000E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling public meetings of its Groundfish, Research Steering and Herring Committees in April, 2000. Recommendations from these groups will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meetings will be held between April 11, 2000 and April 27, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: The meetings will be held in Mansfield and Danvers, MA. See **SUPPLEMENTARY INFORMATION** for specific locations.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Agendas

Tuesday, April 11, 2000 at 9:30 a.m.—Groundfish Committee Meeting

Location: Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

The committee will continue development of management options for Amendment 13 to the Northeast Multispecies Fishery Management Plan (FMP). Agenda items include discussion of guidance received from the full Council concerning overfishing definitions and control rules. Current overfishing definitions and control rules for the multispecies complex will be reviewed and the assumptions and policy decisions in those rules examined. The committee will determine the biological goals of the amendment in light of these discussions. The committee also will organize into subcommittees that will be tasked to develop specific management options for consideration by the full committee. These tasks will be based on broad approaches to management selected by the committee.

Tuesday, April 12, 2000, 9 a.m.—Research Steering Committee Meeting

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The committee will discuss and establish a method to score concept papers received in response to a Request for Information (RFI) distributed by NMFS. The RFI was developed as part of a program to fund collaborative research projects developed by fishermen and scientists to investigate scientific and management questions related to groundfish management in the Northeast. The committee also will develop a procedure to evaluate scallop research proposals to be funded through the Total Allowable Catch set-aside approved by the Council in Framework 13 to the Atlantic Sea Scallop FMP. Additionally, if it is determined to be appropriate and time allows, the committee may begin review of the concept papers received in response to the RFI.

Tuesday, April 25, 2000, 9:00 a.m. and Wednesday, April 26, 2000, 8:30 a.m.—Research Steering Committee Meeting

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The committee will review and evaluate concept papers submitted to NMFS in response to a Request for Information distributed by NMFS in early March. The RFI was developed as part of a program to fund collaborative research projects developed by fishermen and scientists to investigate scientific and management questions related to groundfish management in the Northeast. Results of this meeting will be discussed at the next full Council scheduled for May 3–4, 2000.

Thursday, April 27, 2000, 10:00 a.m.—Joint New England Fishery Management Council and Atlantic States Marine Fisheries Commission (ASMFC) Herring Section Meeting

Location: Sheraton Ferncroft Hotel, 50 Ferncroft Road, Danvers, MA 01923; telephone: (978) 777–2500.

The two committees will review the comments received from the public during the scoping process for a limited entry or controlled access system for the Atlantic herring fishery. Based on this review, the committees will decide how to proceed in the development of such a system, and will develop a schedule for and provide initial direction to the Plan Development Team (PDT) should they choose to continue development of a limited entry or controlled access system. The committees will discuss options for the protection of spawning herring and will decide whether to make any revisions to the spawning restrictions contained in the ASMFC management plan, and whether to recommend spawning restrictions for the Council's Atlantic Herring FMP. The committees will discuss the impact of the total allowable catch on industry sectors and will determine what action, if any, should be taken to insure the fixed gear sector has access to the fishery. The committees may also discuss the annual specification process and may provide direction to the PDT on how that process should proceed.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **FOR FURTHER INFORMATION CONTACT**) at least 5 days prior to the meeting dates.

Dated: March 21, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7500 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032100A]

National Plan of Action for the Conservation and Management of Sharks

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of revised timeframe.

SUMMARY: On September 30, 1999, NMFS announced its intention to develop a National Plan of Action (NPOA) pursuant to the endorsement of the International Plan of Action (IPOA) for the Conservation and Management of Sharks by the United Nations Food and Agriculture Organization (FAO) Committee on Fisheries (COFI) Ministerial Meeting in March 1999. Noting the increased concern about the expanding catches of sharks and their potential negative impacts on shark populations, this IPOA calls on COFI member states to develop voluntarily national plans to ensure the conservation and management of sharks for their long-term sustainable use. The United States has committed to reporting on the implementation of the NPOA to COFI, no later than the 25th COFI session in February 2001. This document provides a revised time frame for the completion of this NPOA.

ADDRESSES: Written comments should be sent to Karyl Brewster-Geisz, NOAA Fisheries / SF1, 1315 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Karyl Brewster-Geisz, Margo Schulze-Haugen, or Steve Meyers, 301–713–2347, or fax 301–713–1917.

SUPPLEMENTARY INFORMATION: The IPOA for the conservation and management of sharks was endorsed in principle at the 23rd FAO COFI session in February 1999 and also at the Fisheries Ministerial Meeting in March 1999. As with the two other IPOAs for seabirds and fishing capacity, the IPOA for sharks calls on members to develop voluntarily an NPOA on this issue.

On September 30, 1999, NMFS announced that the NPOA was currently under development, with a draft NPOA for sharks tentatively due for publication in the **Federal Register** in December, 1999, and full completion by February, 2000 (64 FR 52772). Unforseen circumstances require NMFS to change the schedule on the availability of the draft and final NPOA. NMFS now tentatively expects to have a draft NPOA for sharks available for public review in June, 2000, and a final NPOA available in September, 2000.

Dated: March 21, 2000.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7504 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032000F]

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings of the North Pacific Fishery Management Council and its advisory committees.

SUMMARY: The North Pacific Fishery Management Council (Council) and its advisory committees will hold public meetings.

DATES: The Council and its advisory committees will meet in Anchorage, AK the week of April 10, 2000. See **SUPPLEMENTARY INFORMATION** for specific dates and times.

ADDRESSES: All meetings through Saturday, April 15, will be held at the Hilton Hotel, 500 W. Third Avenue, Anchorage, AK. On Sunday and Monday, April 16–17, the Council will meet at the Fourth Avenue Theater, 630 W. Fourth Avenue, in Anchorage.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Council staff, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION:

Meeting Dates and Times

The Advisory Panel meeting will begin at 8:00 a.m., April 10, and continue through Thursday, April 13.

The Scientific Committee will begin at 9:00 a.m. on Monday, April 10, and continue through Tuesday, April 11.

The Council will begin their plenary session at 8:00 a.m. on Wednesday, April 12, continuing through Monday, April 17.

All meetings are open to the public except Executive Sessions which may be held during the week to discuss litigation and/or personnel matters.

Council:

The agenda for the Council's plenary session will include the following issues:

The Council may take appropriate action on any of the issues identified.

1. Reports
   (a) Executive Director's Report.
   (b) State Fisheries Report by Alaska Dept. of Fish and Game.
   (c) NMFS Management Report.
   (d) Enforcement and Surveillance reports by NMFS and the Coast Guard.
   (e) Seabird Bycatch Report.
   (f) Report on March meeting of the Alaska Board of Fisheries.
   (g) Gulf of Alaska Ecosystems Management Report.
2. Halibut Charterboat Guideline Harvest Level/Individual Fishing Quotas (IFQ): Receive committee report on preliminary elements and options for potential IFQ system.
   (a) Observer Program:
   (b) Observer Committee report.
   (c) Review of six regulatory amendments recommended by NMFS.
   (d) Report on experimental fishing project for observer sampling methods.
3. Pacific cod license limitation endorsements: Final action.
4. Steller Sea Lions:
   (a) Status reports on litigation, implementation of sea lion protective measures, and biological opinion number three.
   (b) Extend emergency rule for sea lion protection measures.
5. American Fisheries Act:
   (a) Action to extend emergency rules for 180 days.
   (b) Status report on development of Environmental Impact Statement.
6. Halibut Subsistence: initial review of amendment.
7. Habitat Areas of Particular Concern: Final action on protection of invertebrates.
8. Groundfish Management:
   (a) Review groundfish fishery management plan updates and review Supplemental Environmental Impact Statement (SEIS) scoping document.
   (b) Status report on the groundfish specification process.
   (c) Review Experimental Fishing Permit for halibut excluders.
9. Crab Management:
   (a) Initial review of rebuilding plans for St. Matthew blue and Opilio crabs.
   (b) Updates on crab cooperatives and permit buyback program.

Advisory Meetings:

Advisory Panel: With the exception of the reports listed under Item 1, the agenda for the Advisory Panel will mirror that of the Council listed above.

Scientific and Statistical Committee: The Scientific and Statistical Committee (SSC) will address the following items on the Council agenda:

1. Observer Program issues.
2. Progress on the Groundfish SEIS.
3. Pacific cod license limitation endorsements.
4. Habitat areas of particular concern.
5. Crab rebuilding plans.
6. Review Experimental Fishing Permit for halibut excluders.

7. Review and comment on NMFS Economic Guidelines.

Other committees and workgroups may hold impromptu meetings throughout the meeting week. Such meetings will be announced during regularly-scheduled meetings of the Council, Advisory Panel, and SSC, and will be posted at the hotel.

Although non-emergency issues not contained in this agenda may come before these groups for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Helen Allen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: March 21, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7501 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Products Produced or Manufactured in Oman

March 21, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover and recrediting of unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70223, published on December 16, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 21, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in Oman and exported during the twelve-month period beginning on January 1, 2000 and extending through December 31, 2000.

Effective on March 28, 2000, you are directed to increase the current limits for the following categories, as provided for under the current bilateral textile agreement between the Governments of the United States and the Sultanate of Oman:

Category	Adjusted twelve-month limit [1]
334/634	176,640 dozen.
335/635	314,911 dozen.
338/339	653,441 dozen.
340/640	287,097 dozen.
341/641	236,182 dozen.
347/348	986,616 dozen.
647/648/847	482,765 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–7406 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textiles and Textile Products Produced or Manufactured in Thailand

March 21, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being reduced for carryforward used. The current limits are being increased in Category 603 for unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68336, published on December 7, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 21, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Thailand and exported during the period which began on January 1, 2000 and extends through December 31, 2000, except for the period for Category 603 which began on January 1, 2000 and extends through September 30, 2000.

Effective on March 27, 2000, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted twelve-month limit [1]
Levels in Group I	
363	23,193,679 numbers.
369–D [2]	263,114 kilograms.
603	1,735,591 kilograms.
619	8,066,394 square meters.
Sublevels in Group II	
336/636	363,239 dozen.
338/339	2,123,160 dozen
340	318,335 dozen.
347/348/847	935,030 dozen.
638/639	2,510,374 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–7405 Filed 3–24–00; 8:45 am]

BILLING CODE 3510–DR–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed. Currently, the Corporation is soliciting comments concerning its request for approval of a new information collection from representatives of communities served by organizations that conduct community service activities under the sponsorship of Corporation grants. This information will be used by the Corporation to evaluate the nature and effectiveness of its national service programs.

Copies of the proposed information collection request may be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by May 26, 2000.

ADDRESSES: Send comments to the Corporation for National and Community Service Attn: Marcia Scott, Office of Evaluation, 1201 New York Avenue, N.W., 9th floor, Washington, D.C. 20525.

FOR FURTHER INFORMATION CONTACT: Marcia Scott, (202) 606–5000, ext. 100.

SUPPLEMENTARY INFORMATION:

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Propose ways to enhance the quality, utility and clarity of the information to be collected; and
- Propose ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Background

The Corporation for National Service has the responsibility to evaluate the effectiveness of its programs. The Corporation's major initiative is AmeriCorps, the national service program funded at $435 million annually. While the primary emphasis of AmeriCorps is on providing services to communities and other beneficiaries, of key importance is participant development. AmeriCorps includes the State/National program and the National Civilian Community Corps (NCCC) program. The objectives of this study are to describe the outcomes that are associated with participating and document changes in those outcomes over time; to identify factors explaining variation in outcomes at different stages of time; and to identify relationships between selected program features and member outcomes. Outcome domains will include civic engagement, educational skill aspiration and achievements, employment skill aspiration and achievements, and life skills.

To meet these objectives, the study has selected a nationally representative sample of 2,500 incoming AmeriCorps members from over 100 programs to ensure generalizability to the overall population. The Corporation is conducting a study to collect baseline data from a self-report survey measuring a variety of life outcomes for AmeriCorps members of State/National and NCCC programs as well as individual background characteristics. To fully understand the impacts that cause change in outcomes, the Corporation has selected a comparison group for both programs and is in the process of collecting baseline information on those individuals.

Current Action

The Corporation seeks approval to continue to study the impact of AmeriCorp*State/National and AmeriCorps*NCCC on members over time. The initial round of data collection for this study was authorized under OMB approval 3045–0060 which expires September 30, 2002. This is a request to conduct two additional rounds of data collection on the study: (1) Surveys of treatment and comparsion group members at two time points: ten months and two years after baseline; and (2) a survey of AmeriCorps program administrators at the end of the 1999–2000 program year.

Type of Review: New approval.

Agency: Corporation for National and Community Service.

Title: Long-term Study of Member Outcomes.

OMB Number: None.

Agency Number: None.

Affected Public: AmeriCorps members, comparison group individuals, AmeriCorps program administrators.

Total Respondents: 4613.

- 2,500 AmeriCorps members (2,000 State/National and 500 NCCC).
- 2,000 individuals in the comparison groups (1,500 individuals who inquired about AmeriCorps through the CNS inquiry line for the State/National comparison group; 500 individuals from the NCCC program's wait list for the NCCC comparison group).
- 113 AmeriCorps program administrators.

Frequency:

- AmeriCorps members at post-program (eight months after baseline).
- Comparison group individuals eight months after baseline.
- Program characteristics from AmeriCorps administrators.
- AmeriCorps member and comparison group follow-up at three years after baseline (approximately two years after the post-program survey).

Average Time Per Response:

- The Post-program survey of members will require an average of 45 minutes per respondent.
- The initial follow-up survey of individuals in the comparison groups will take an average of 30 minutes per respondent.
- The survey of AmeriCorps program administrators will take an average of 30 minutes per program.
- Follow-up surveys of AmeriCorps members and individuals in the comparison group at three years after baseline will take an average of 30 minutes per respondent.

Estimated Total Burden Hours: 5,182 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they also will become a matter of public record.

Dated: March 21, 2000.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 00–7393 Filed 3–24–00; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Department of the Army

Board of Visitors, United States Military Academy; Meeting

AGENCY: United States Military Academy.

ACTION: Notice of Open Meeting.

SUMMARY: In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following meeting:

Name of Committee: Board of Visitors, United States Military Academy.

Date of Meeting: 8 May 2000.

Place of Meeting: Superintendent's Conference Room, Taylor Hall, United States Military Academy, West Point, New York.

Start Time of Meeting: Approximately 2:00 pm.

FOR FURTHER INFORMATION CONTACT: For further information, contract Lieutenant Colonel Lawrence J. Verbiest, United States Military Academy, West Point, NY 10996–5000, (914) 938–4200.

SUPPLEMENTARY INFORMATION:

Proposed Agenda: Review of the Academic, Military and Physical Programs, Intercollegiate Sports Programs and Admissions at USMA. All proceedings are open.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–7391 Filed 3–24–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army Corps of Engineers

Intent To Prepare a Supplemental Environmental Impact Statement (SEIS) for Modifications to Operation and Maintenance Dredging Activities on the Black Warrior and Tombigbee Rivers, Alabama

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The Mobile District, U.S. Army Corps of Engineers intends to prepare a SEIS. Operation and maintenance (O&M) dredging needs on the Black Warrior and Tombigbee Rivers (BWT Waterway) have been dynamic over time as has sediment transport. Removal of sediment deposited in the navigation channel has resulted in the need for additional within-bank and upland disposal areas. Diminishing disposal area capacity primarily in upland disposal areas, has begun to impact operation and maintenance dredging activities at several locations along the BWT Waterway. Rock formations have also been identified that are impacting the navigation channel. The Mobile District will evaluate dredging and disposal area needs, develop and evaluate alternatives for long-term operation and maintenance dredging on the BWT Waterway and recommend an environmentally and economically sound plan.

FOR FURTHER INFORMATION CONTACT: Questions about the SEIS can be answered by: Mr. Steve Hrabovsky; Inland Environment Section; U.S. Army Engineer District-Mobile; Post Office Box 2288; Mobile, Alabama 36628–0001; Telephone (334) 690–2872; Fax (334) 694–3815. Mr. Hrabovsky can also be reached by e-mail (steven.l.hrabovsky@sam.usace.army.mil).

SUPPLEMENTARY INFORMATION: The Black Warrior and Tombigbee Rivers Project was authorized by Congress in various River and Harbor Acts from 1884–1986 for the primary purpose of navigation. Construction of the project was completed to existing channel dimensions in 1938. Other project purposes include hydroelectric power, public recreation, regulation of stream flow, water quality, fish and wildlife conservation and fish and wildlife mitigation. O&M dredging activities on the BWT Waterway have been discussed in two environmental impact statements (EISs) prepared by the Corps: (1) Final EIS Black Warrior and Tombigbee Rivers (Maintenance), Alabama, filed with the Council on Environmental Quality on April 16, 1976; and (2) Final Supplement to the Final EIS Black Warrior and Tombigbee Rivers, Alabama (Maintenance), filed with the Council on Environmental Quality on April 13, 1987. However, the dynamics of the river system have forced more changes to meet current O&M needs. The Mobile District has identified additional within-bank disposal areas that are required due to changing sedimentation patterns; additional upland disposal areas required to supplement existing upland sites or establish disposal area capacity in other portions of the BWT Waterway; and changes to the list of small boat access channels to potentially be dredged. These changes to the small boat access channel list consist primarily of corrections/updates in name and river mile number, as well as, dredging quantities and frequency. In addition to the items listed above the Mobile District proposes to use blasting as an O&M tool to remove rock from the navigation channel at various locations along the BWT Waterway, which would constitute a change to current dredging practices.

Proposed Action and Alternatives

The Mobile District will formulate and evaluate alternatives to address long-term operation and maintenance dredging needs on the BWT Waterway. The "no action" alternative evaluation will consist of continuation of the "status quo" operation and maintenance dredging activities. Another alternative that the Corps will evaluate is hauling of dredged material from the existing disposal sites for beneficial or other potential commercial uses. This could potentially negate or reduce the need to obtain additional upland disposal areas.

Scoping

The Mobile District will conduct public scoping meetings at Jackson and Tuscaloosa, Alabama during the month of April 2000. As soon as dates of the public scoping meetings have been established, they will be published in local newspapers serving the various cities along the Waterway. The purpose of the meetings will be to gather information from the public about the issues they would like to see addressed in the SEIS. Comments may be made orally or in writing at the meetings, or they may be sent to the Mobile District at the address listed above. Potentially significant issues that will be analyzed in depth in the SEIS include environmental and economic impacts of various dredging and disposal alternatives (*e.g.*, within-bank disposal areas, upland disposal areas, rock removal via blasting, and small boat access channels) on fisheries, waterfowl, water quality, endangered and threatened species, wetlands, cultural resources and wildlife habitat. The evaluation will consider potential direct and indirect effects of these options on the BWT Waterway.

Environmental Review and Consultation Requirements

Coordination with the U.S. Fish and Wildlife Service will be accomplished in compliance with Section 7 of the Endangered Species Act. Coordination required by other laws and regulations will also be conducted.

SEIS Preparation

The Mobile District estimates that the draft SEIS will be available for public review in July 2000.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–7392 Filed 3–24–00; 8:45 am]

BILLING CODE 3710–CR–U

DEPARTMENT OF THE DEFENSE

Department of the Army Corps of Engineers

Notice of Intent To Prepare an Environmental Impact Statement and Conduct a Public Scoping Meeting for the Marlinton Local Protection Project, Marlinton, Pocahontas County, West Virginia

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice.

SUMMARY: Pursuant to the National Environmental Policy Act (NEPA), the U.S. Army Corps of Engineers, DoD, Huntington District will prepare an Environmental Impact Statement (EIS). The EIS will evaluate potential impacts to the natural, physical, and human environment as a result of the proposed flood damage reduction measure for the City of Marlinton, Pocahontas County, West Virginia (Marlinton Local Protection Project). The proposed project would consist of a levy along the banks of the Greenbrier River and two alternative measures for managing flooding from Knapp Creek. A public scoping meeting is announced for April 11, 2000, from 7:00–10:00 pm in the Marlinton City Hall Auditorium, Marlinton, Pocahontas County, West Virginia.

ADDRESSES: Send written comments and suggestions concerning this proposed project to Nicholas E. Krupa PD–R, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, West Virginia, 25701–2070. Telephone: 304–529–5712. Electronic mail: nickk@lrh.usace.army.mil. Requests to be placed on the mailing list should also be sent to this address.

FOR FURTHER INFORMATION CONTACT: To obtain additional information about the proposed project, contact Curt Murdock PM–P, U.S. Army Corps of Engineers, Huntington District, 502 Eighth Street, Huntington, West Virginia, 25701–2070. Telephone: 304–528–7444. Electronic mail: curt.e.murdock@lrh01.usace.army.mil.

SUPPLEMENTARY INFORMATION:

1. Public Participation

a. The Corps of Engineers will conduct a public scoping meeting to gain input from interested agencies, organizations, and the general public concerning the content of the EIS, issues and impacts to be addressed in the EIS, and alternatives that should be analyzed. The meeting is scheduled for:

Date: April 11, 2000.

Time: 7:00–10:00 pm.

Place: The Marlinton City Hall Auditorium, Marlinton, Pocahontas County, West Virginia.

b. The Corps invites full public participation to promote open communication and better decision-making. All persons and organizations that have an interest in the Greenbrier River flooding problems as they effect the community of Marlinton, West Virginia and the affected environment are urged to participate in this NEPA environmental analysis process. Assistance will be provided upon request to anyone having difficulty with learning how to participate.

c. Public comments are welcomed anytime throughout the NEPA process. Formal opportunities for public participation include: (1) Public meetings to be held near the community of Marlinton; (2) Anytime during the NEPA process via mail, telephone or e-mail; (3) During Review and Comment on the Draft EIS—approximately July to October 2001; and, (4) Review of the Final EIS —winter 2001–02. Schedules and locations will be announced in local news media. Interested parties may also request to be included on the mailing list for public distribution of meeting announcements and documents. (See **ADDRESSES**).

d. To ensure that all issues related to the proposed project are addressed, the Corps will conduct an open process to define the scope of the EIS. Recommendations from interested agencies, local and regional stakeholders and the general public are encouraged to provide input in identifying areas of concern, issues and impacts to be addressed in the EIS, and the alternatives that should be analyzed. Scoping for the DEIS will continue to build upon the knowledge and information developed during the more than 20 years of Corps of Engineer investigations of flooding in the Greenbrier watershed.

2. Background

a. Flooding has played a significant role in the history of Marlinton. Virtually the entire town lies within the 100-year floodplain of the Greenbrier River. Approximately 465 structures

(both residential and nonresidential) in Marlinton stand within the 100-year floodplain. Potential annual damages for this reach are estimated to be $1.8 million (1997 dollars). Located near the headwaters of the Greenbrier, warning times for floods in Marlinton are short, yet flood flows can be significant because of the large drainage area.

b. The largest known floods in the basin occurred in 1812, 1877, 1985, and 1996. At least eleven other major, but less severe, floods occurred in the 20th centruy. In November 1985, the flood of record for the upper portion of the basin occurred, resulting in five deaths. This event caused an estimated $97 million (1997 dollars) in damages basin-wide, with approximately $20 million (1997 dollars) occurring in Marlinton alone. The most recent major flood occurred in January 1996 and was approximately 1.5 feet lower than the 1985 event in Marlinton, but still caused widespread destruction.

c. Section 579 of the 1996 Water Resources Development Act specifically authorized the Corps to again consider local protection plans that would include such measures as floodwalls, levees, channelization and small tributary impoundments along with the nonstructural plans. The Greenbrier Limited Feasibility Study, completed in 1997 by the Huntington District Corps, evaluated alternatives for three major damage centers, including Marlinton. The 1997 study reevaluated the economic analysis of structural alternatives using more accurate property evaluation data. Three feasible alternatives emerged from the 1997 study for local flood protection at Marlinton. These are:

d. Alternative 1—An earthen levee/concrete floodwall combination to protect Marlinton, and an earthen levee to protect Riverside. The Marlinton levee will begin at high ground 200 feet north, or at the end of First Avenue, and run 6,000 feet along the Greenbrier River to Knapp Creek, and then 2,900 feet up Knapp Creek to the vicinity of the water plant. From this point, a 1,000-foot long floodwall would continue to the protection along Knapp Creek. A 600-foot levee would run from the end of the floodwall to high ground in the vicinity of Wilson's field. Marlin Run, which flows into Knapp Creek and which would be blocked by the proposed levee, would be re-routed to a point upstream of the end of the levee to avoid the need for a pump station. The 5,000-foot long Riverside levee would begin at high ground in the vicinity of Campbelltown, and run along Stoney Creek to the Greenbrier. Along the Greenbrier River, the levee would run to high ground in the vicinity of Burns Motor Freight. The Riverside levee would be required because the Marlinton protection would increase flood heights in the Riverside area.

e. Alternative 2—An earth levee/concrete floodwall combination and a diversion of Knapp Creek to protect Marlinton, and an earth levee to protect Riverside. The Marlinton levee would be the same as in Alternative 1 along the Greenbrier River to Knapp Creek. From that point along Knapp Creek, the levee would then cross Knapp Creek and run 800 feet to high ground. Three, gated culverts would run through this structure at Knapp Creek. A pump station would be mounted on the levee in close proximity. When the level of the Greenbrier River reaches a set point, the culvert gates would close and pumping of Knapp Creek to the Greenbrier River would occur. A 2,200-foot long diversion channel would be cut through Buckley Mountain, from a point approximately 1 mile upstream of the mouth of Knapp Creek to a point on the Greenbrier River 2000 feet downstream of their confluence. This channel diversion would carry Knapp Creek flood flows away from Marlinton. In conjunction with the channel diversion, an 800-foot long, 25foot-high concrete dam would be built across Knapp Creek just downstream of the channel diversion.

f. Alternative 3—Nonstructural plan for both Marlinton and Riverside. The nonstructural plan for the Marlinton/Riverside area involves the raising in place of 260 residential and 5 nonresidential structures and the acquisition of 10 residential structures and 145 nonresidential structures.

g. These alternatives, along with the no-action will be the alternatives the Corps initially proposes to evaluate in the EIS. As necessary, any reasonable alternatives that may become apparent as the evaluation proceeds will be addressed.

Gregory D. Showalter,

Army Federal Register Liaison Officer.

[FR Doc. 00–7390 Filed 3–24–00; 8:45 am]

BILLING CODE 3710–GM–U

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 26, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 22, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Final Performance Report for the Business and International Education Program.

Frequency: After the completion of the project.

Affected Public: Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden: Responses: 30; *Burden Hours:* 150.

Abstract: The data collected through the final performance report will enable ED officials to determine the impact of the Business and International Education federal funds on its recipients. US/ED will sue the information collected to meet Government Performance and Results Act (GPRA) requirements and to provide budget justification.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7508 Filed 3–24–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 26, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 21, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Arts in Education Competitive Grants Program.

Frequency: Annually.

Affected Public: Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 3,200.

Abstract: To provide assistance to eligible schools to support programs for media literacy that will (1) Enable students to critically interpret and analyze the violent messages transmitted through the media and (2) enable students to create their own media-based arts project through the uses of film, video, hypermedia, website design and other contemporary communications media.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7403 Filed 3–24–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before April 26, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office

of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 22, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Star Schools Program Online Annual Performance Reporting System.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden: Responses: 18; *Burden Hours:* 2,700.

Abstract: The proposed interactive, on-line database provides the U.S. Department of Education and funded Star School Program projects with up-to-date information on a number of key issues that include: basic characteristics of the project and key contact information; project partners; project participants; the project focus; project goals and activities; professional development activities; impact on students; dissemination of project products; lessons learned from the project; and the project's budget.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax). Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7507 Filed 3–24–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Web-Based Education Commission; Telephone Conference Call

AGENCY: Office of Postsecondary Education, Education.

ACTION: Notice of full Commission telephone conference call.

SUMMARY: This notice announces the telephone conference call for the full Commission. Notice of this conference call is required under Section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to call into the conference.

DATES: The conference call will be on March 27, 2000, from 12:00–1:00 pm eastern standard time. Individuals interested in listening in on the call should contact the Commission for instructions.

FOR FURTHER INFORMATION CONTACT: David S. Byer, Executive Director, Congressional Web-based Education Commission, U.S. Department of Education, 1990 K Street, NW, Washington, DC 20006–8533. Telephone: (202) 219–7045. Fax: (202) 502–7873. You may reach Mr. Byer by email at: *david__byer@ed.gov*.

SUPPLEMENTARY INFORMATION: The Web-based Education Commission is authorized by title VIII, part J of the Higher Education Amendments of 1998, as amended by the Fiscal 2000 Appropriations Act for the Departments of Labor, Health, and Human Services, and Education, and Related Agencies. The Commission is required to conduct a thorough study to assess the critical pedagogical and policy issues affecting the creation and use of web-based and other technology-mediated content and learning strategies to transform and improve teaching and achievement at the K–12 and postsecondary education levels. The Commission must issue a final report to the President and the Congress, not later than 12 months after the first meeting of the Commission, which occurred November 16–17, 1999. The final report will contain a detailed statement of the Commission's findings and conclusions, as well as recommendations.

The purpose of the March 27 conference call is to (1) provide an update on Commission activities; (2) discuss the formation of working groups and the assignment of members to each group; (3) report on web site presence; and (4) plan for the next hearing of the Commission, tentatively scheduled for April 7–8 in Silicon Valley.

The conference call is open to the public. Records are kept of all Commission proceedings and are available for public inspection at the office of the Web-based Education Commission, Room 8089, 1990 K Street, NW, Washington, DC 20006–8533 from the hours of 9:00 am to 5:30 pm. The meeting site is accessible to individuals with disabilities. Individuals who will need accommodations for a disability in order to attend the meeting (*i.e.* interpreting services, assistive listening devices, or materials in alternative format) should contact the person listed in this notice at least two weeks before the scheduled meeting date. We will attempt to meet requests after this date, but cannot guarantee availability of the requested accommodation.

Dated: March 22, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–7510 Filed 3–24–00; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

DOE Response to Recommendation 2000–1 of the Defense Nuclear Facilities Safety Board, Stabilization and Storage of Nuclear Material

AGENCY: Department of Energy.

ACTION: Notice.

SUMMARY: The Defense Nuclear Facilities Safety Board published Recommendation 2000–1, concerning the stabilization and storage of nuclear material, on January 26, 2000 (65 FR 4237). Under section 315(b) of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2286d(b), the Department of Energy was required to transmit a response to the Defense Nuclear Facilities Safety Board by March 13, 2000. The Secretary's response follows.

DATES: Comments, data, views, or arguments concerning the Secretary's response are due on or before April 26, 2000.

ADDRESSES: Send comments, data, views, or arguments concerning the Secretary's response to: Defense Nuclear Facilities Safety Board, 625 Indiana Avenue NW, Suite 700, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Mr. David Huizenga, Deputy Assistant Secretary for Integration and Disposition, Environmental Management, Department of Energy, 1000 Independence Avenue SW, Washington, DC 20585.

Issued in Washington, DC, on March 21, 2000.

Mark B. Whitaker, Jr.,

Departmental Representative to the Defense Nuclear Facilities Safety Board.

The Secretary of Energy

Washington, DC 20585

March 13, 2000.

The Honorable John T. Conway,
Chairman, Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Suite 700, Washington, D.C. 20004.

Dear Mr. Chairman: This letter acknowledges receipt of your Recommendation 2000–1, "Stabilization and Storage of Nuclear Materials," issued on January 14, 2000, concerning continued efforts to stabilize and safely store the materials identified in your previous Recommendation 94–1. I share the Board's concerns that the nuclear materials remaining to be stabilized throughout the DOE complex pose significant risks, and I agree it is a priority to improve the Department's performance reducing these risks.

The Department has made progress in the last six years. Most of the very immediate concerns prompting Recommendation 94–1 have been mitigated. Stabilization activities are continuing. The Department has updated its safety analyses and implemented needed compensatory measures to ensure interim safe storage of nuclear materials. We recognize, however, that we must remain focussed until the task is complete.

We are working aggressively to complete the resource-loaded baselines for the Savannah River Site and the Los Alamos National Laboratory to finish the stabilization work begun under 94–1. By the end of April, we plan to provide you with an implementation plan for completing the remaining 94–1 activities and satisfying the risk-reduction requirements of Recommendation 2000–1. It is our intention that this combined plan will serve as the Department's 2000–1 Implementation Plan and enable the closure of Recommendation 94–1. Morever, as we proceed with implementing Recommendation 2000–1, we will continually examine options and related resource requirements that may allow schedule acceleration.

Accordingly, the Department accepts sub-recommendations 1 through 9 of Recommendation 2000–1, which deal specifically with the technical aspects of our stabilization plans. We do not accept sub-recommendations 10 and 11. While we agree that the funding requirements of our work need to be addressed, funding is not the only factor affecting the implementation of stabilization activities. Our rate of progress to date has also been affected by such factors as lack of adequate contractor baselines to guide work, technology maturity, facility and operational readiness, and unanticipated difficulties in maintaining and operating aging facilities. Currently, the accepted Implementation Plan for 94–1 is the December 1998 version, which has since been revised to reflect these factors. As such, an analysis of funding requirements for the accepted Implementation Plan would not provide a realistic or meaningful measure of how our stabilization activities could be accelerated. In addition, budgetary shortfalls have not made implementation impracticable and thus do not provide a basis for so notifying the President and the Congress.

Dr. Carolyn Huntoon, Assistant Secretary for Environmental Management, is accountable to me for effective implementation of this recommendation. Mr. David Huizenga, Deputy Assistant Secretary for Integration and Disposition in Environmental Management, is the responsible manager for the preparation of the Implementation Plan. He will work with you, other board members, and your staff to develop an acceptable Implementation Plan meeting our mutual expectations. He can be reached at (202) 586–5151.

Yours sincerely,

Bill Richardson.

[FR Doc. 00–7499 Filed 3–24–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER00–188–000; ER00–213–000 and EL00–22–000]

PSI Energy, Inc.; Cincinnati Gas & Electric Company; Notice of Informal Settlement Conference

March 21, 2000.

Take notice that an informal settlement conference will convened in this proceeding on March 29, 2000, at 10:00 am (in a Room to be posted on the Commission's Posting Screen), and on March 30, 2000, at 10:00 am in Room 3M–3, at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the above referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Joel Cockrell at (202) 208–1184 or Anja M. Clark at (202) 208–2034.

David P. Boergers,

Secretary.

[FR Doc. 00–7397 Filed 3–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–496–005]

Southern Natural Gas Company; Notice of Proposed Changes In FERC Gas Tariff

March 21, 2000.

Take notice that on March 17, 2000, Southern Natural Gas Company (Southern) tendered for filing to become part of its FERC Gas Tariff, Seventh Revised Volume No. 1, the revised tariff sheets in Appendix A to the filing, with an effective date of March 1, 2000.

Southern hereby files to place into effect as of March 1, 2000 an interim rate reduction as reflected on the tariff sheets listed on Appendix A. The interim rates set forth on such sheets are proposed to go into effect for customers consenting to the offer of settlement filed by Southern on March 10, 2000 in Docket Nos. RP99–495–004 et al. The interim rates will remain in effect pending final Commission action on the settlement in this proceeding.

Southern states that copies of the revised tariff sheets are being filed to Southern's jurisdictional customers and interested state commissions and to parties on the official service list complied by the Secretary in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 27, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7396 Filed 3–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–771–001]

Tucson Electric Power Company; Notice of Filing

March 21, 2000.

Take notice that on March 9, 2000, Tucson Electric Power Company (Tucson) tendered for filing revised tariff sheets in compliance with the Commission's Order of February 8, 2000 in this proceeding. In that order, the Commission required that Tucson modify the methodology for computing load ratios under its Open Access Transmission Tariff (OATT) to conform to the pro forma tariff.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before March 31, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7395 Filed 3–24–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Meeting

March 22, 2000.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 29, 2000 (Following Regular Commission Meeting).

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Docket No. IN00–1–000, Kinder Morgan Interstate Gas Transmission LLC, *et al.*

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400.

David P. Boergers,

Secretary.

[FR Doc. 00–7645 Filed 3–23–00; 3:56 pm]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6565–3]

Adequacy Status of the New York State Portion of the New York-New Jersey-Connecticut Carbon Monoxide Maintenance Plan for Transportation Conformity Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets contained in the November 23, 1999 carbon monoxide maintenance plan for the New York State portion of the New York-New Jersey-Connecticut carbon monoxide nonattainment area are adequate for conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State implementation plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the New York State portion of the New York-New Jersey-Connecticut carbon monoxide nonattainment area must use the motor vehicle emissions budgets from the submitted carbon monoxide maintenance plan for future conformity determinations. This finding is effective April 11, 2000.

FOR FURTHER INFORMATION CONTACT: Rudolph K. Kapichak, Mobile Source Team Leader, Air Programs Branch, Environmental Protection Agency, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–3804, e-mail address: *Kapichak.Rudolph@epa.gov.*

The finding and the response to comments will be available at EPA's conformity website: *http://www.epa.gov/oms/traq* (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to the New York State Department of Environmental Conservation on March 17, 2000 stating that the motor vehicle emissions budgets for 2000, 2007 and 2012 in the submitted carbon monoxide maintenance plan for the New York State portion of the New York-New Jersey-Connecticut carbon monoxide nonattainment area are adequate. This finding will also be announced on EPA's conformity website: *http://www.epa.gov/oms/traq* (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to State air quality implementation plans (SIPs) and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 17, 2000.

William Muszynski,

Acting Regional Administrator, Region 2.

[FR Doc. 00–7453 Filed 3–24–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6565–2]

Gulf of Mexico Program Citizens Advisory Committee Meeting

AGENCY: Environmental Protection Agency (USEPA).

ACTION: Notice of meeting.

SUMMARY: Under the Federal Advisory Act, P.L. 92463, EPA gives notice of a meeting of the Gulf of Mexico Program (GMP) Citizens Advisory Committee (CAC) in conjunction with the Gulf of Mexico Symposium.

DATES: The CAC meeting will be held on Monday, April 10, 2000 from 12:00 p.m. to 1:00 p.m. and on Tuesday, April 11, 2000 from 8:00 a.m. to11:00 a.m. and 1:30 p.m. to 4:30 p.m. and on Wednesday, April 12, 2000 from 1:00 p.m. to 3:00 p.m.

ADDRESSES: The meeting will be held at the Mobile Convention Center, 1 South Water Street, Mobile, AL, (334) 415–2100.

FOR FURTHER INFORMATION CONTACT: Gloria D. Car, Designated Federal Officer, Gulf of Mexico Program Office, Building 1103, Room 202, Stennis Space Center, MS 39529–6000 at (228) 688–2421.

SUPPLEMENTARY INFORMATION: Proposed agenda items will include: Coordination of Gulf of Mexico Symposium activities, Participation in Gulf of Mexico Symposium community action sessions, Progress of place-based work within Gulf States' watersheds, status of CAC membership appointments, review and update on Measures of Success and CAC activities, and Symposium reports.

The meeting is open to the public.

Dated: March 20, 2000.

James D. Giattina,

Director, Gulf of Mexico Program Office.

[FR Doc. 00–7452 Filed 3–24–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6564–9]

National Drinking Water Advisory Council; Small Systems Implementation Working Group; Notice of Conference Call

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Under Section 10(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that two conference calls of the Small Systems Implementation Working Group of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (42 U.S.C. S300f *et seq.*), will be held on April 10, 2000, from 1:00 p.m. to 3:00 p.m. EDT, and April 20, 2000 from 1:00 pm to 3:00 pm EDT. The calls will be held at the U.S. Environmental Protection Agency, 401 M Street S.W., Room 1209 East Tower, Washington, D.C. Both meetings are open to the public to observe, but seating will be limited.

The purpose of the first meeting is to review the draft report outlining the working group's final recommendations to the National Drinking Water Advisory Council. These recommendations are based on a series of analyses and deliberations on seven issue areas including water-system capacity development, public awareness and education, water-system governance, water-system organization, water service costs and affordability, unsustainable water systems, and water-policy institutions. The second meeting will be used to reach a final consensus of any revisions made as a result of discussions from the first conference call.

For more information, please contact Peter E. Shanaghan, Designated Federal Officer, Small Systems Implementation Working Group, U.S. EPA, Office of Ground Water and Drinking Water (4606), 401 M Street, S.W., Washington, D.C. 20460. The telephone number is 202–260–5813 and the email address is shanaghan.peter@epa.gov.

Dated: March 21, 2000.

Charlene E. Shaw,

Designated Federal Officer, National Drinking Water Advisory Council.

[FR Doc. 00–7451 Filed 3–24–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34220; FRL–6551–4]

Organophosphate Pesticides; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for two organophosphate pesticides, phostebupirim and tetrachlorvinphos. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control numbers OPP–34186A for phostebupirim and OPP–34175B for tetrachlorvinphos, must be received by EPA on or before May 26, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control numbers OPP–34186A for phostebupirim and OPP–34175B for tetrachlorvinphos in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does This Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on phostebupirim and tetrachlorvinphos, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of This Document or Other Related Documents?

A. Electronically

You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look

up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In Person

The Agency has established an official record for this action under docket control numbers OPP–34186A for phostebupirim and OPP–34175B for tetrachlorvinphos. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to This Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control numbers OPP–34186A for phostebupirim and OPP–34175B for tetrachlorvinphos in the subject line on the first page of your response.

1. By Mail

Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. In Person or by Courier

Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. Electronically

Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control numbers OPP–34186A for phostebupirim and OPP–34175B for tetrachlorvinphos. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information That I Want To Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

IV. What Action Is EPA Taking in This Notice?

EPA is making available for public viewing the revised risk assessments and related documents for two organophosphate pesticides, phostebupirim and tetrachlorvinphos. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA–USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the phostebupirim and tetrachlorvinphos preliminary risk assessments, which where released to the public on May 26, 1999 (64 FR 101) (FRL–6083–4) for phostebupirim and January 15, 1999 (64 FR 10) (FRL–6056–9) for tetrachlorvinphos through notices in the **Federal Register.**

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk managements for phostebupirim and tetrachlorvinphos. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how phostebupirim and tetrachlorvinphos use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre-harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commentors may suggest ways to reduce environmental exposure, *e.g.*, exposure to birds, fish,

mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate pesticide tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before May 26, 2000, at the addresses given under the **ADDRESSES** section. Comments and proposals will become part of the Agency record for the organophosphate pesticides specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 20, 2000.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–7418 Filed 3–24–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30492; FRL–6494–7]

Pesticide Products; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of applications to register pesticide products containing new active ingredients not included in any previously registered products, and pesticide products involving a changed use pattern pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30492, must be received on or before April 26, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30492 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The Regulatory Action Leader, Registration Division (7505C), listed in the table below:

Regulatory Action Leader	Mailing address/telephone number	E-mail address
Cynthia Giles-Parker (PM–22)	Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460 (703) 305–7740	giles-parker.cynthia@epa.gov
Mary L. Waller (PM–21)	Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460 (703) 308–9354	waller.mary@epa.gov

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30492. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30492 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs

(OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30492. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.
2. Describe any assumptions that you used.
3. Provide copies of any technical information and/or data you used that support your views.
4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the registration activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received applications as follows to register pesticide products containing active ingredients not included in any previously registered products, and pesticide products involving a changed use pattern pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of these applications does not imply a decision by the Agency on the applications.

A. Products Containing Active Ingredients Not Included in any Previously Registered Products

File Symbol: 71512–R. Applicant: ISK Biosciences Corporation. Product Name: Omega 500F. Fungicide. Active Ingredient: Fluazinam, 3-chloro-*N*-3-chloro-2,6-dinitro-4-(trifluoromethyl)phenyl-5-(trifluoromethyl)-2-pyridinamine. Proposed classification/Use: none. For sclerotinia blight, southern blight and limb and pod rot on peanuts. For late blight and white mold on potatoes. (PM 22)

B. Products Involving a Changed Use Pattern

1. EPA File Symbol 264–ATA. Applicant: Aventis CropScience USA LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. Product name: Tatoo C Fungicide. Fungicide. Active ingredient: propyl[3-(dimethyl amino)propyl]carbamate monohydrochloride 30.5% and tetrachloroisophthalonitrile 30.5%. Proposed classification/Use: To include in its presently registered use on turf and ornamentals, new use on potato for the control of late blight. (PM–21)

2. EPA File Symbol 264–ATI. Applicant: Aventis CropScience USA LP, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709. Product name: Previcur Fungicide. Fungicide. Active ingredient: propyl[3-(dimethylamino)propyl]carbamate monohydrochloride 66.5%. Proposed classification/Use: To include in its presently registered use on turf and ornamentals, new use on potato for the control of late blight. (PM–21)

List of Subjects

Environmental protection, Pesticides and pest.

Dated: March 13, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–7417 Filed 3–24–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6564–7]

Methods for Measuring the Toxicity and Bioaccumulation of Sediment-Associated Contaminants With Freshwater Invertebrates—Second Edition

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of methods for measuring the toxicity and bioaccumulation of sediment-associated contaminants with freshwater invertebrates—second edition.

SUMMARY: The Environmental Protection Agency (EPA) is publishing procedures for testing freshwater organisms in the laboratory to evaluate the potential toxicity or bioaccumulation of chemicals in whole sediments. This second edition updates methods originally published in 1994 (EPA/600/6–94/024). The second edition of the manual includes new methods for evaluating sublethal effects of sediment-associated contaminants utilizing long-term sediment exposures. Procedures are described for testing the freshwater organisms in the laboratory to evaluate the potential toxicity or bioaccumulation of chemicals in whole sediments. Sediments may be collected from the field or spiked with compounds in the laboratory. Toxicity methods are outlined for two (2) organisms, the amphipod *Hyalella azteca*, and the midge *Chironomus tentans*. Toxicity tests with amphipods or midges are conducted for 10 days in 300-mL chambers containing 100 mL of sediment and 175 mL of overlying water. Overlying water is renewed daily and test organisms are fed during the toxicity tests. The endpoints in the 10 day test with *H. azteca* and *C. tentans* are survival and growth. Procedures are primarily described for testing freshwater sediments; however, estuarine sediments (up to 15‰ salinity) can also be tested in 10 day sediment toxicity tests with *H. azteca*. Guidance is also provided for conducting long-term sediment toxicity tests with *H. azteca* and *C. tentans*. The long-term sediment exposures with *H. azteca* are started with 7-to 8-day old amphipods. On day 28 of the sediment exposure, amphipods are isolated from the sediment and placed in water-only chambers where reproduction is measured on day 35 and 42. Endpoints measured in the amphipod test include survival (day 28, 35, and 42), growth (on day 28 and 42), and reproduction (number of young/female produced from day 28 to 42). The long-term sediment exposures with *C. tentans* start with newly hatched larvae (<24 hours old) and continue through emergence, reproduction, and hatching of the F_1 generation (about 60 day sediment exposures). Survival and growth are determined at 20 days. Starting on day 23 to the end of the test, emergence and reproduction of *C. tentans* are monitored daily. The number of eggs/female is determined for each egg mass, which is incubated for 6 days to determine hatching success. The procedures detailed in this document include measurement of a variety of lethal and sublethal endpoints with *Hyalella azteca* and *Chironomus tentans*. Minor modifications of the basic methods can be used in cases where only a subset of these endpoints is of interest. Guidance for conducting 28 day bioaccumulation tests with the oligochaete *Lumbriculus variegatus* is also provided in the manual. Overlying water is renewed daily and test organisms are not fed during the bioaccumulation tests. Methods are also described for determining bioaccumulation kinetics of different classes of compounds during 28 day exposures with *L. variegatus*.

This guidance is designed to describe procedures for testing freshwater organisms in the laboratory to evaluate the potential toxicity or bioaccumulation of chemicals in whole sediments. This guidance document has no immediate or regulatory consequence. It does not in itself establish or affect legal rights or obligations, or represent a determination of any party's liability. The USEPA may change this guidance in the future.

This guidance document has been reviewed in accordance with USEPA Policy and approved for publication. Any mention of trade names or commercial products does not constitute endorsement or recommendation for use.

Availability of Document: Copies of the complete document, titled Methods for Measuring the Toxicity and Bioaccumulation of Sediment-associated Contaminants with Freshwater Invertebrates—Second Edition (EPA/600/R–99/064) can be obtained from the National Service Center for Environmental Publications, P.O. Box 42419, Cincinnati, OH., 45242 by phone at 1–800–490-9198 or on their web site at *www.epa.gov/ncepihom/orderpub.html*. A pdf version of this document will be made available to be viewed or downloaded from the Office of Science and Technology's home page on the Internet at *www.epa.gov/OST/*.

FOR FURTHER INFORMATION CONTACT: D. Scott Ireland, USEPA, Standards and Applied Science Division (4305), Office of Science and Technology, Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington, DC 20460; or call (202) 260–6091; fax (202) 260–9830; or e-mail ireland.scott@epa.gov.

SUPPLEMENTARY INFORMATION:

Background Information

Sediment contamination is a widespread environmental problem that can potentially pose a threat to a variety of aquatic ecosystems. Sediment functions as a reservoir for common chemicals such as pesticides, herbicides, polychlorinated biphenyls (PCBs), polycyclic aromatic hydrocarbons (PAHs), and metals such as lead, mercury, and arsenic.

These methods provide consistent testing protocols for agency-wide use to evaluate risks and provide comparable data. They provide the basis for uniform cross-program decision making within the USEPA. Each program, however, retains the flexibility of deciding whether identified risk would trigger regulatory actions.

Dated: March 22, 2000.

Geoffrey H. Grubbs,

Director, Office of Science and Technology.

[FR Doc. 00–7454 Filed 3–24–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

March 20, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 26, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Les Smith, Federal Communications Commissions, 445 12th Street, S.W., Room 1–A804, Washington, DC 20554 or via the Internet to lesmith@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Les Smith at (202) 418–0217 or via the Internet at lesmith@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control Number: 3060–0012.

Title: Application for Additional Time to Construct A Radio Station.

Form Number: FCC Form 701.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 100.

Estimated Time per Response: 2 hours.

Frequency of Response: Reporting on occasion.

Total Annual Burden: 200 hours.

Total Annual Cost: $17,000.00.

Needs and Uses: FCC Form 701 is used when applying for additional time to construct an MDS or international broadcast station. This form is used by agency staff to determine whether to

grant the applicant's request for an additional period of time to construct a station. The agency could not determine whether the applicant's request for additional time to construct should be granted without this collection of information.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 00–7425 Filed 3–24–00; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 16, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 26, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: *OMB Control No.:* 3060–0750.

Title: Section 73.673, Public Information Initiatives Regarding Educational and Informational Programming for Children.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Individuals or households, and business or other for-profit.

Number of Respondents: 1,225.

Estimated Time Per Response: 1 minute per program and 5 minutes per program to publishers of program guides.

Frequency of Response: Third party disclosure requirement.

Total Annual Burden: 38,219 hours.

Total Annual Cost: N/A.

Needs and Uses: Section 73.673 requires commercial TV broadcasters to identify programs specifically designed to educate and inform children at the beginning of those programs and to provide information identifying such programs and the age groups for which they are intended to publishers of program guides.

These requirements provide better information to the public about the shows broadcasters air to fulfill their obligation to air educational and informational programming under the Children's Television Act (CTA) of 1990. This information will assist parents who wish to guide their children's television viewing. In addition, if large numbers of parents use that information to choose educational programming for their children, it will increase the likelihood that the market will respond with more educational programming. Better information should help parents and others to have an effective dialogue with broadcasters in their community about children's programming and, where appropriate, to urge programming improvements without resorting to government intervention.

The next television renewal cycle will commence on June 1, 2004. As part of the license renewal applications submission, each commercial television licensee will report on its compliance with the Commission's children's television programming and commercial advertisement regulations during the preceding eight-year license term.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.
[FR Doc. 00–7427 Filed 3–24–00; 8:45 am]
BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–31–D (Auction No. 31); DA 00–573]

747–762 and 777–792 MHz Band Auction Postponed Until June 7, 2000

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document postpones the upcoming auction originally scheduled to begin May 10, 2000, in order to provide additional time for bidder preparation and planning. The auction is rescheduled to begin June 7, 2000.

DATES: Auction No. 31 will begin June 7, 2000.

FOR FURTHER INFORMATION CONTACT: Howard Davenport, Auctions and Industry Analysis Division, at (202) 418–0660 or Kathy Garland, Auction Operations at (717) 338–2801.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released March 17, 2000. The complete text of the public notice is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, D.C. 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

1. The upcoming auction of licenses in the 747–762 and 777–792 MHz band, originally scheduled to begin on May 10, 2000, is postponed until June 7, 2000, in order to provide additional time for bidder preparation and planning. *See* Auction No. 31 Public Notice, 65 FR 12251 (March 8, 2000). Except for the dates listed below, the information provided in previous public notices remains unchanged. The new schedule is as follows:

Seminar Date: April 24, 2000
FCC Form 175 Filing Deadline: May 8, 2000
Upfront Payments: May 22, 2000
Mock Auction: June 2, 2000
Auction Begins: June 7, 2000

Federal Communications Commission.
Louis J. Sigalos,
Deputy Chief, Auctions & Industry Analysis Division.
[FR Doc. 00–7424 Filed 3–24–00; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Sunshine Act Meeting; Cancellation

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the previously announced closed meeting of the Board of Directors of the Federal Deposit Insurance Corporation scheduled to be held at 2 pm on Friday, March 24, 2000, has been Cancelled.

No earlier notice of this cancellation was practicable.

Dated: March 22, 2000.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Executive Secretary.
[FR Doc. 00–7546 Filed 3–23–00; 10:13 am]
BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 10, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Theresa M. Ward, Peoria, Illinois; to acquire voting shares of Mid Illinois Bancorp, Inc., Peoria, Illinois, and thereby indirectly acquire voting shares of South Side Trust and Savings Bank of Peoria, Peoria, Illinois.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Gunter Family Limited Partnership, Sour Lake, Texas; to acquire voting shares of Norkitt Bancorp, Inc., Hallock, Minnesota, and thereby indirectly acquire voting shares of Northwestern State Bank of Hallock, Hallock, Minnesota.

Board of Governors of the Federal Reserve System, March 21, 2000.

Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 00–7402 Filed 3–24–00; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 20, 2000.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Eastern Virginia Bankshares, Inc., Tappahannock, Virginia; to acquire 100 percent of the voting shares of Hanover Bank (in organization), Mechanicsville, Virginia.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. First Security Group, Inc., Deer Lodge, Montana; to become a bank holding company by acquiring 89.4 percent of the voting shares of First Security Bank of Deer Lodge, Deer Lodge, Montana.

Board of Governors of the Federal Reserve System, March 21, 2000.

Robert deV. Frierson,
Associate Secretary of the Board.
[FR Doc. 00–7401 Filed 3–24–00; 8:45 am]
BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank

indicated or the offices of the Board of Governors not later than April 21, 2000.

A. Federal Reserve Bank of Atlanta (Lois Berthaume, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303–2713:

1. Regent Bancorp, Inc., Davie, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Regent Bank, Davie, Florida.

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Coloeast Bankshares, Inc., Lamar, Colorado; to acquire 100 percent of the voting shares of Citizens Holding Company, Keenesburg, Colorado; and thereby indirectly acquire Citizens State Bank, Keenesburg, Colorado.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. Corpus Christi Bancshares, Inc., Corpus Christi, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of The First State Bank, Bishop, Texas.

Board of Governors of the Federal Reserve System, March 22, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7511 Filed 3–24–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Advisory Committees; Notice

AGENCY: Office of the Secretary.

ACTION: Notice.

SUMMARY: The purpose of this notice is to solicit nominations for membership on the National Committee on Vital and Health Statistics (NCVHS). The NCVHS is the statutory public advisory body to the U.S. Department of Health and Human Services in the areas of health data policy, data standards, health information privacy and population-based data. In addition, the Committee has been assigned new advisory responsibilities in health data standards and health information privacy as a result of the Health Insurance Portability and Accountability Act of 1996.

One or more vacancies are expected to occur on the Committee as of June 2000. New members of the Committee will be appointed to terms of up to four years by the Secretary of Health and Human Services from among persons who have distinguished themselves in the following fields: health statistics, electronic interchange of health care information, privacy and security of electronic information, population-based public health, purchasing or financing health care services, integrated computerized health information systems, health services research, consumer interests in health information, health data standards, epidemiology, and the provision of health services.

In appointing members, the Department will give close attention to equitable geographic distribution and to minority and female representation. Appointments will be made without discrimination on the basis of age, race, gender, sexual orientation, HIV status, cultural, religious or socioeconomic status.

DATES: Nominations for new members should include a letter describing the qualifications of the nominee and the nominee's current resume or vitae. The closing date for nominations is April 26, 2000.

Nominations should be sent to the person named below. James Scanlon Executive Secretary, HHS Data Council, U.S. Department of Health and Human Services, Room 440–D, 200 Independence Avenue S.W., Washington, DC 20201, (202) 690–7100.

FOR FURTHER INFORMATION CONTACT: James Scanlon (202) 690–7100 or Marjorie Greenberg (301) 458–4245. Additional information about the NCVHS, including the charter, current roster, organization, and previous recommendations and reports is available on the NCVHS website: http://www.ncvhs.hhs.gov.

SUPPLEMENTARY INFORMATION: The National Committee on Vital and Health Statistics serves as the statutory public advisory body to the Department of Health and Human Services in the area of health data policy. In that capacity, the Committee, which will celebrate its 50th anniversary this year, provides advice and assistance to the Department on a variety of key health data issues, including health data standards, privacy, population-based-data, and national health information infrastructure issues.

The Committee also provides advice to HHS on the implementation of the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996. The Committee consists of 18 members: Of the 18 members, one is appointed by the Speaker of the House of Representatives after consultation with the minority leader of the House of Representatives; one is appointed by the President pro tempore of the Senate after consultation with the minority leader of the Senate, and 16 are appointed by the Secretary of Health and Human Services.

Dated: March 17, 2000.

James Scanlon,

Executive Secretary, HHS Data Council.

[FR Doc. 00–7365 Filed 3–24–00; 8:45 am]

BILLING CODE 4151–05–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–28]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506 (c) (2) (A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

Possible Estuary-Associated Syndrome (PEAS) Surveillance –New– National Center for Environmental Health (NCEH)—In 1997, scientists found a newly identified microorganism, the dinoflagellate Pfiesteria piscicida, in water samples taken from a bay tributary. The presence of large numbers of this organism (a bloom) was purportedly associated with

observations of thousands of dead fish as well as with reports of a wide range of adverse human health effects. Reports of this purported association created excessive public concern about exposure to estuarine waters and a general distrust in seafood that prompted a flood of inquiries to public health and environmental quality agencies.

Since 1997, the Centers for Disease Control and Prevention (CDC) has been working with the States of Delaware, Florida, Maryland, North Carolina, South Carolina, and Virginia in a series of meetings, workshops, and conference calls to design, implement, evaluate, and revise surveillance activities to provide a quantitative estimate of the public health burden associated with responding to Pfiesteria-related events, including blooms, fish kills, and people with health complaints. Cooperative agreement funds were awarded to these states to develop a multi-state surveillance system to examine the effects of Pfiesteria blooms upon humans and to expand the scientific knowledge of the human health effects if Pfiesteria. Specifically, the states will quantify the burden of PEAS on their health agencies by enumerating the number of contacts involving public and professional requests for information as well as symptoms involved in self-reporting. In collaboration with the state health departments, NCEH has developed a standardized data collection instrument that the states may use to collect and store the surveillance data. NCEH has requested that the states report specific data elements back at regular intervals so that NCEH can compile the data and issue periodic aggregate reports. CDC/NCEH is requesting a 3 year clearance. There is no cost to respondents.

Type of burden	Number of respondents	Number of responses	Avg. burden/ Response (in hrs.)	Total burden (in hrs.)
Information only Calls	800	1	5/60	66
Symptomatic Reports—telephone interview	80	1	25/60	33
Total				99

2. Microbial Contamination of Produce: A Field Study in the Lower Rio Grande Valley, Texas—New—National Center for Environmental Health (NCEH). Foodborne diseases are common; an estimated 6–33 million cases occur each year in the United States. Although most of these infections cause mild illness, severe infections and serious complications do occur. The public health challenges of foodborne diseases are changing rapidly. In recent years, new and emerging foodborne pathogens have been described and changes in food production have led to new food safety concerns. Foodborne diseases have been associated with many different foods, including recent outbreaks linked to contaminated fresh fruits (*e.g.*, cantaloupe, strawberries) and vegetables (*e.g.*, leaf lettuce, alfalfa sprouts).

NCEH proposes to conduct a study to determine what specific farm and produce processing practices are associated with fecal contamination of fruits and vegetables. Growing, handling and processing methods used in the produce industry may increase the risk that these foods will become contaminated with fecal matter. The study will describe the chain of farm to shipping practices for three vulnerable produce groups (leafy lettuces, leafy herbs, green onions). Critical agricultural practices where contamination with foodborne pathogens is likely will be identified by measuring the microbial quality of produce at each step during harvesting and processing (farm to shipping). Sources of fecal contamination will be determined by measuring the microbial quality of irrigation and process water, measuring fecal indicator organisms on hand rinses from farm laborers and handlers, and conducting sanitary surveys of sources of human and animal feces in and around the farms and processing areas. CDC/NCEH is requesting a 3-year clearance. There is no cost to respondents.

Respondents	Number of respondents	Responses/ respondents	Avg. burden/ respondent (in hrs.)	Total burden (in hrs.)
Farm Recruiting visit	14	1	30/60	7
Packing Facility Recruiting visit	9	1	30/60	4.5
Farm Manager interview (in person)	12	2	30/60	12
Packing Facility Manager interview (in person)	8	1	30/60	4
Hand rinse sample collection	160	1	10/60	26.7
Total				54.2

3. The National Health and Nutrition Examination Survey (NHANES)—(0920-0237)—Revision— The National Health and Nutrition Examination Survey (NHANES) has been conducted in several cycles since 1970 by the National Center for Health Statistics (NCHS). The current cycle of NHANES began in February 1999. The survey will now be conducted on a continuous, rather than episodic, basis. About 6,700 individuals receive a health interview in their homes annually; of these, 5,000 persons complete a physical examination. Participation in the survey is voluntary and confidential.

NHANES programs produce descriptive statistics which measure the health and nutritional status of the U.S. population. Through the use of questionnaires, physical examinations, and laboratory tests, NHANES studies the relationship between diet, nutrition and health in a representative sample of the United States civilian, noninstitutionalized population. NHANES monitors the prevalence of chronic conditions and risk factors such as coronary heart disease, arthritis, osteoporosis, pulmonary and infectious diseases, diabetes, high blood pressure, high cholesterol, obesity, smoking, drug and alcohol use, environmental

exposures, and diet. NHANES data are used to establish the norms for the general population against which health care providers can compare such patient characteristics as height, weight, and nutrient levels in the blood. Data from NHANES can be compared to those from previous surveys to monitor changes in the health of the U.S.

population. NHANES will also establish a national probability sample of genetic material for future genetic research for susceptibility to disease.

Users of NHANES data include Congress; the World Health Organization; Federal agencies such as NIH, EPA, and USDA; private groups such as the American Heart Association; schools of public health; private businesses; individual practitioners; and administrators. NHANES data are used to establish, monitor, and evaluate long-term national health objectives, food fortification policies, programs to limit environmental exposures, immunization guidelines and health education and disease prevention programs. There is no cost to the respondent.

Burden category	Number of respondents between 12/00–12/02	Number of responses/ respondent	Avg. burden per response (in hours)	Total burden (hours)
1. Screening interview only	40,000	1	10/60	6,680
2. Screeners and family interviews only	2,000	1	26/60	868
3. Screeners, family, and SP interviews only	3,000	1	1 6/60	3,303
4. Screener, household, and SP interviews and primary MEC exam only	14,800	1	6 40/60	98,686
5. Screener, household, and SP interviews, primary MEC exam and full MEC replicate exam	740	1	11 40/60	8,634
6. Screener, household, and SP interviews, MEC exam and dietary replicate interview only (5% + optional 15%)	2,960	1	9 1/60	26,693
7. Home exam	200	1	2 36/60	521
8. Telephone follow-up of elderly—option	3,500	1	15/60	875
Total				146,260

Dated: March 20, 2000.

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–7412 Filed 3–24–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a tentative schedule of forthcoming meetings of its public advisory committees for the remainder of 2000.

At the request of the Commissioner of Food and Drugs (the Commissioner), the Institute of Medicine (the IOM) conducted a study of the use of FDA's advisory committees. The IOM recommended that the agency publish an annual tentative schedule of its meetings in the **Federal Register**. In response to that recommendation, FDA is publishing its annual tentative scheduled meetings for the remainder of 2000.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4820.

SUPPLEMENTARY INFORMATION: The IOM, at the request of the Commissioner, undertook a study of the use of FDA's advisory committees. In its final report, the IOM recommended that FDA adopt a policy of publishing an advance yearly schedule of its upcoming public advisory committee meetings in the **Federal Register**. FDA has implemented this recommendation. A tentative schedule of forthcoming meetings will be published annually in the **Federal Register**. The annual publication of tentatively scheduled advisory committee meetings will provide both advisory committee members and the public with the opportunity, in advance, to schedule attendance at FDA's upcoming advisory committee meetings. The schedule is tentative and amendments to this notice will not be published in the **Federal Register**. FDA will, however, publish a **Federal Register** notice 15 days in advance of each upcoming advisory committee meeting, announcing the meeting (21 CFR 14.20).

The following list announces FDA's tentatively scheduled advisory committee meetings for the remainder of 2000:

Committee Names	Dates of Meetings
OFFICE OF THE COMMISSIONER	
Science Board to the Food and Drug Administration	April 21
CENTER FOR BIOLOGICS EVALUATION AND RESEARCH	
Allergenic Products Advisory Committee	October 24
Biological Response Modifiers Advisory Committee	March 20–21, October 19–20
Blood Products Advisory Committee	March 16–17, June 15–16, September 14–15, December 14–15
Transmissible Spongiform Encephalopathies Advisory Committee	November 2–3
Vaccines and Related Biological Products Advisory Committee	May 11–12, July 27–28, September 21–22, November 2–3
CENTER FOR DRUG EVALUATION AND RESEARCH	
Advisory Committee for Pharmaceutical Science	April 26, May 15–16, November 2–3
Advisory Committee for Reproductive Health Drugs	March 28–29, April 10, May 4–5
Anesthetic and Life Support Drugs Advisory Committee	November 6–7

Committee Names	Dates of Meetings
Anti-Infective Drugs Advisory Committee	March 24, September 11–12
Antiviral Drugs Advisory Committee	July 20–21
Arthritis Advisory Committee	April 11, June 8–9, September 11–12, November 9–10
Cardiovascular and Renal Drugs Advisory Committee	May 1–2, July 20–21, October 19–20
Dermatologic and Ophthalmic Drugs Advisory Committee	May 4–5
Drug Abuse Advisory Committee	October 19–20
Endocrinologic and Metabolic Drugs Advisory Committee	May 18–19, July 13–14, October 5–6, December 7–8
Gastrointestinal Drugs Advisory Committee	April 12
Medical Imaging Drugs Advisory Committee	May 22–23, October 30–31
Nonprescription Drugs Advisory Committee	June 22–23, July 13–14, October 19–20, December 7–8
Oncologic Drugs Advisory Committee	March 16–17, June 5–6
Peripheral and Central Nervous System Drugs Advisory Committee	October 26
Pharmacy Compounding Advisory Committee	May 15–16
Psychopharmacologic Drugs Advisory Committee	June 28–29, November 2–3
Pulmonary-Allergy Drugs Advisory Committee	November 8–7
CENTER FOR FOOD SAFETY AND APPLIED NUTRITION	
Food Advisory Committee	September 14–15
CENTER FOR DEVICES AND RADIOLOGICAL HEALTH	
Device Good Manufacturing Practice Advisory Committee	No meetings planned
Medical Devices Advisory Committee	
Anesthesiology and Respiratory Therapy Devices Panel	May 25–26, September 7–8, November 2–3
Circulatory System Devices Panel	May 2–3, September 25–26
Clinical Chemistry and Clinical Toxicology Devices Panel	March 24, June 29–30, September 14–15, December 14–15
Dental Products Panel	April 6–7, May 23–24, July 18–19, October 3–4
Ear, Nose, and Throat Devices Panel	May 26, June 23, July 20–21, September 22
Gastroenterology-Urology Devices Panel	April 13–14, August 31–September 1, November 30–December 1
General and Plastic Surgery Devices Panel	June 12–13, September 11–12, December 4–5
General Hospital and Personal Use Devices Panel	May 1–2, August 7–8, November 6–7
Hematology and Pathology Devices Panel	June 12, August 8, November 7
Immunology Devices Panel	June 16, September 15, December 8
Medical Devices Dispute Resolution Panel	To be determined
Microbiology Devices Panel	June 21–22, November 16–17
Molecular and Clinical Genetics Panel	June 23, September 15, December 15
Neurological Devices Panel	March 31, May 11–12, August 17–18, November 16–17
Obstetrics-Gynecology Devices Panel	April 10–11, July 24–25, October 9–10
Ophthalmic Devices Panel	March 17, May 11–12, July 27–28, September 21–22, November 8–9
Orthopaedic and Rehabilitation Devices Panel	March 18, May 4–5, August 24–25, November 16–17
Radiological Devices Panel	May 15, August 14, November 6
National Mammography Quality Assurance Advisory Committee	July 10, December 11
Technical Electronic Product Radiation Safety Standards Committee	June 21–22
CENTER FOR VETERINARY MEDICINE	
Veterinary Medicine Advisory Committee	September 15
NATIONAL CENTER FOR TOXICOLOGICAL RESEARCH	
Advisory Committee on Special Studies Relating to the Possible Long-Term Health Effects of Phenoxy Herbicides and Contaminants	No meetings planned
Science Board to the National Center for Toxicological Research	May 1–2

Dated: March 17, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–7429 Filed 3–24–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Research, Purification, and Further Development of a Factor(s) That Inhibits Human Immunodeficiency Virus (HIV) Replication

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

SUMMARY: The National Cancer Institute (NCI) seeks a Cooperative Research and Development Agreement (CRADA) Collaborator to aid NCI in the further characterization and commercial development of a factor(s) that inhibits the replication of the Human Immunodeficiency Virus (HIV). NCI recently discovered that leukocytes stimulated with infectious or ultraviolet-inactivated influenza A virus produce a factor(s) that inhibits the replication of both CCR5- and CXCR4-tropic HIV–1 viral isolates. The factor(s) inhibits replication of the virus after

The National Cancer Institute's Experimental Immunology Branch has identified a factor that is produced by leukocytes when exposed to influenza virus which inhibits HIV replication.

viral binding but prior to reverse transcription. NCI has performed the initial characterization of the HIV–1 replication-inhibiting factor(s). The discovery of this factor(s) raises the possibility that immunization with recombinant influenza viral constructs and/or ultraviolet (UV)-inactivated influenza offers an immune-based therapeutic strategy that could be used to treat HIV-infected patients. NCI is looking for a CRADA Collaborator with a demonstrated record of success in protein purification and HIV therapeutics for the eventual use of this factor(s) in the clinical treatment of patients suffering from Acquired Immunodeficiency Syndrome (AIDS). The proposed term of the CRADA can be up to five (5) years.

DATES: Interested parties should notify this office in writing of their interest in filing a formal proposal no later than May 26, 2000. Potential CRADA Collaborators will then have an additional thirty (30) days to submit a formal proposal. CRADA proposals submitted thereafter may be considered if a suitable CRADA Collaborator has not been selected.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Holly Symonds Clark, Ph.D., Technology Development Specialist (Tel. # 301–496–0477, FAX # 301–402–2117), Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852. Inquiries directed to obtaining patent license(s) for the technology described in U.S. Provisional Patent Application Serial No. 60/162,262, filed October 29, 1999 for "Leukocyte-Derived Anti-Viral Factors" (Shearer *et al.*) (NCI), should be addressed to J.P. Kim, J.D., M.B.A., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, (Tel. 301–496–7056, ext. 264; FAX 301–402–0220).

SUPPLEMENTARY INFORMATION: A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into with NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995. NCI is looking for a CRADA partner to aide NCI in the characterization and commercial development of the HIV replication-inhibiting factor. The expected duration of the CRADA would be from one (1) to five (5) years.

NCI has discovered a system in which leukocytes can produce an anti-HIV factor following exposure to an influenza virus. Specifically, NCI has found that the factor or factors secreted by the leukocytes inhibit retroviral replication prior to reverse transcription and formation of the provirus. The influenza virus to which the leukocytes are exposed causing them to generate anti-HIV activity include infectious influenza virus and UV-inactivated influenza virus. NCI has found that exposure of the leukocytes to the influenza virus can inhibit viral isolates that use different coreceptors for binding CD4.

The generation of the influenza-stimulated anti-HIV factor(s) can be mediated in the absence of CD4+ or CD8+ cells, and it does not appear to require the presence of both subsets. Thus, it is possible that the anti-HIV factor could be produced in patients exhibiting low CD4 counts. NCI has determined that the anti-HIV factor(s) presently claimed do not include several of the known chemokines or cytokines.

NCI predicts that the influenza-stimulated anti-HIV factor(s) offers the following advantages: 1. The anti-HIV activity appears to be independent of the presence of both CD4+ and CD8+ cells and of ability to generate strong T cell proliferative responses to flu, as well as of influenza-stimulated production of the Th1 cytokine, IFN-gamma. 2. Influenza-stimulated peripheral blood mononuclear cells (PBMCs) from HIV+ patients can generate anti-HIV activity that is as potent as cells from HIV-donors, and this activity appears to be independent of a patient's T helper responses to influenza. 3. Flu-stimulated anti-HIV–1 activity is broadly reactive in that it inhibits HIV–1 isolates that use different coreceptors for entry, and is therefore not a beta-chemokine. 4. NCI's demonstration that inhibition occurs prior to HIV reverse transcription distinguishes it from the CD8 anti-viral factor (CAF), which inhibits at transcription. 5. The fact that UV-inactivated flu can stimulate anti-HIV activity indicates the potential clinical feasibility of immunizing HIV+ patients. NCI believes that the utilization of an attenuated form of live influenza virus might represent the best form of immunization to HIV–1.

The described methods are the subject of U.S. Provisional Patent Application Serial No. 60/162,262, filed on October 29, 1999 by the Public Health Service on behalf of the Federal Government. Furthermore, the initial report and characterization of the invention is described in: J. Virol., in press, May 2000.

Under the present proposal, the goal of the CRADA will be to enhance the development of the influenza-stimulated, anti-HIV factor(s) in the following areas:

1. Further purification and characterization of the factor(s).
2. Determination of the factor's mechanism of viral replication inhibition.
3. Determination as to whether or not the factor(s) is unique by cloning and sequencing the gene.
4. Utilization of the SIV/macaque model to determine efficacy of flu-based therapy.
5. Development of clinical trials to test the efficacy of the flu-based therapy.

Party Contributions

The role of the NCI in the CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.
2. Providing the CRADA Collaborator with information and data relating to the influenza-stimulated, anti-HIV factor(s).
3. Planning research studies and interpreting research results.
4. Carrying out research to validate the anti-viral activities of the influenza-stimulated factor(s).
5. Publishing research results.
6. Developing additional potential applications of the factor(s).

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.
2. Planning research studies and interpreting research results.
3. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.
4. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. A demonstrated record of success in the areas of protein purification, characterization and therapeutic development.
2. A demonstrated background and expertise in immunological sciences and AIDS therapeutics.
3. The ability to collaborate with NCI on further research and development of this technology. This ability will be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.

4. The demonstration of adequate resources to perform the research and development of this technology (*e.g.* facilities, personnel and expertise) and to accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.
5. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.
6. The demonstration of expertise in the commercial development and production of products related to this area of technology.
7. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.
8. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.
9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects, and all PHS policies relating to the use and care of laboratory animals.
10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of future patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor, with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: March 20, 2000.

Karen Maurey,

Deputy Chief, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 00–7380 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute: Opportunity for a Cooperative Research and Development Agreement (CRADA) for the Screening, Development and Commercialization of Novel Inhibitors of GADD45 Polypeptide Activity for the Treatment of Cancer

AGENCY: National Institutes of Health, PHS, DHHS.

ACTION: Notice.

The National Cancer Institute's Laboratory of Human Carcinogenesis (LHC) has created and characterized *in vitro* and *in vivo* methods designed to screen for modulators of GADD45 polypeptide activity. Furthermore, LHC has developed methods for sensitizing proliferating cells to DNA damaging agents by inhibiting GADD45 polypeptide activity. Identification of novel inhibitors of GADD45 using LHC's screening assays would provide potential new treatments for cancer.

SUMMARY: The National Cancer Institute (NCI) seeks a Cooperative Research and Development Agreement (CRADA) Collaborator to aid NCI in the screening, development and commercialization of novel compounds for the treatment of cancer. These methods focus on the identification of small molecule inhibitors of GADD45 polypeptide activity.

NCI has developed a series of *in vitro* and *in vivo* assays to screen for modulators of GADD45 polypeptide activity. These assays may identify novel small molecule inhibitors of GADD45 activity that, when used in conjunction with current chemotherapeutics, reduce the toxicity of and enhance the effectiveness of current treatments of cancer. NCI is looking for a CRADA Collaborator with a demonstrated record of success in cancer diagnostics and therapeutics. The proposed term of the CRADA can be up to five (5) years.

DATES: Interested parties should notify the Technology Development and Commercialization Branch of the NCI in writing of their interest in filing a formal proposal no later than May 26, 2000. Potential CRADA Collaborators will then have an additional thirty (30) days to submit a formal proposal. CRADA proposals submitted thereafter may be considered if a suitable CRADA Collaborator has not been selected.

ADDRESSES: Inquiries and proposals regarding this opportunity should be addressed to Holly Symonds Clark, Ph.D., Technology Development Specialist (Tel. # 301–496–0477, FAX # 301–402–2117), Technology Development and Commercialization Branch, National Cancer Institute, 6120 Executive Blvd., Suite 450, Rockville, MD 20852. Inquiries directed to obtaining patent license(s) for the technology described in U.S. Provisional Patent Application Serial No. 60/126,069, filed March 25, 1999, for "Methods for Identifying Modulators of GADD45 Polypeptide Activity" (Harris *et al.*) should be addressed to Vasant Gandhi, J.D., Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Blvd., Suite 325, Rockville, MD 20852, (Tel. 301–496–7056; FAX 301–402–0220).

SUPPLEMENTARY INFORMATION: A Cooperative Research and Development Agreement (CRADA) is the anticipated joint agreement to be entered into with NCI pursuant to the Federal Technology Transfer Act of 1986 and Executive Order 12591 of April 10, 1987 as amended by the National Technology Transfer Advancement Act of 1995. NCI is looking for a CRADA partner to collaborate with NCI in the further development and commercialization of screening assays and methods relating to the analysis of small molecule inhibitors of GADD45 polypeptide activity. The expected duration of the CRADA would be from one (1) to five (5) years.

Mammalian cells cycle through a series of ordered stages that involve various cellular components during normal cellular growth (for reviews: 1, 2). A normal cell can arrest cell cycle progression when DNA damage is incurred. Cell cycle "checkpoints" exist at two different stages in cell cycle progression: the G1 to S (replication) stage and the G2–M (mitosis) stage. These checkpoints are essentially stages in which the cell "stalls" its cell cycle to repair any damaged DNA that may exist prior to entry into mitosis. The G2–M checkpoint prevents the improper segregation of chromosomes likely to be important in human tumorigenesis (3, 4). The G2-specific kinase composed of Cdc2 and cyclin B1 is a regulator of the cell cycle transition from G2 to M (1). NCI has recently reported the identification of one of the gene products that controls the G2–M checkpoint: the ubiquitously expressed polypeptide, GADD45. GADD45 was originally identified on the basis of its rapid transcriptional induction following ultraviolet (UV) irradiation (5). Induction of GADD45 has also been observed following various types of pathological stimuli including various environmental stresses, hypoxia, IR, genotoxic drugs and growth factor withdrawal (6). The GADD45-induced G2/M checkpoint is at least in part mediated through inactivation of the Cdc2/cyclin B1 kinase (1).

NCI believes that the GADD45-mediated G2–M checkpoint could be a new target for the development of anti-cancer agents. Inhibitors of GADD45 activity at the G2–M checkpoint could destroy the cell's ability to stall its proliferative cycle to correct damaged DNA. Cancer cells are often deficient in the G1–S checkpoint, thus, the G2–M

checkpoint is necessary for the repair of damaged DNA in cancer cells. Currently, high levels of radiation and chemotherapy are necessary to target cancer cells that are stalled at the G2–M checkpoint. Such levels of treatment are often toxic to normal cells also undergoing proliferation. However, when both checkpoints are abolished in cancer cells, the cells proceed at a greater rate, without stalling, into mitosis where they are susceptible to DNA damaging chemotherapeutic agents. Thus, in the presence of a G2–M checkpoint inhibitor, a reduced amount of radiation or chemotherapeutic agent is needed to kill all of a population of cancer cells. A reduced level of DNA damaging agent would also lessen the toxicity to normal cells since many of these cells would be stalled at their intact G1–S checkpoints. In effect, the use of a G2–M checkpoint inhibitor would selectively target cancer cells by "sensitizing" them to the anti-cancer treatments. NCI believes that small molecule inhibitors of GADD45 polypeptide activity could be used to abolish the G2–M checkpoint in cancer cells. Indeed, a previous report has found that blocking GADD45 expression by constitutive antisense oligonucleotide expression sensitized a human colon carcinoma cell line to killing by UV irradiation and by cisplatin, a DNA-damaging cancer chemotherapy drug (7). Thus, the identification of novel inhibitors of GADD45 activity would provide a new means to treat cancers in conjunction with current chemotherapy methods. In the clinic, such combined treatment would reduce the uncomfortable side-effects of current anti-cancer treatments, thus, improving the quality of life for cancer patients.

NCI has developed several *in vitro* and in vivo methods for assaying for modulators of GADD45 polypeptide activity. The methods focus on the ability to assess the binding activities of the GADD45 polypeptide during the cell cycle. NCI has identified a functional domain of GADD45 that is involved in the G2–M checkpoint and in binding to the cell cycle regulator, cdc2. Deletion analysis indicates that the central region of this functional domain mediates the G2/M arrest. Specifically, the central region contains a unique acidic motif that appears to be important for the induction of a G2/M arrest because changes in the acidic residues abolish the G2/M checkpoint. Small molecule compounds that are designed to target the region of the GADD45 polypeptide would affect 1. GADD45/cdc2 binding, 2. the GADD45 polypeptide-mediated dissociation of the cdc2/cyclinB1 protein complex, and 3. the ability of the cdc2/cyclinB1 complex to phosphorylate histone H1. NCI suggests that the small acidic motif may, in itself, be a possible small molecule, dominant negative inhibitor of GADD45 activity. Once other small molecule GADD45 modulators are identified, NCI would be interested in a collaboration to further characterize all candidate GADD45 modulators using preclinical and clinical assays.

NCI is seeking a CRADA Collaborator to aid in the screening, development and commercialization of small molecule inhibitors of GADD45 polypeptide activity for use in the preclinical and clinical treatment of cancer. NCI has developed various *in vitro* and in vivo methods that could be applied to a drug screening protocol in which potential modulators of GADD45 could be identified and characterized. Once identified and characterized, novel GADD45 inhibitors may be administered to candidate cancer patients and evaluated in their ability to treat various tumors in conjunction with current chemotherapeutic treatments. The described methods are the subject of U.S. provisional patent application, USSN 60/126,069, filed on March 25, 1999 by the Public Health Service on behalf of the Federal Government. Furthermore, the initial report and characterization of the invention is described in Wang, X.W. *et al*, PNAS, vol. 96: 3706–3711.

References

1. Nurse, P., 1994, Cell 79: 547–550.
2. Sherr, C.J., 1996, Science 274: 1672–1677.
3. Hartwell, L.H. and M.B. Kastan, 1994, Science 266: 1821–1828.
4. Paulovich, A.G., *et al.*, 1997, Cell 88: 315–321.
5. Fornace, A.J., Jr., *et al.*, 1989, Mol. Cell Biol. 9: 4196–4203.
6. Papathanasiou, M.A., *et al.*, 1991, Mol. Cell Biol. 11: 1009–1016.
7. Smith, M.L., *et al.*, 1996, Oncogene 13: 2255–2263.

Under the present proposal, the overall goal of the CRADA collaboration will involve the following:

1. To use the current technology developed by NCI to screen for modulators of GADD45 polypeptide activity.

2. To conduct preclinical and clinical assays to test the effectiveness of the candidate GADD45 polypeptide modulators in the treatment of different cancers.

Party Contributions

The role of the NCI in the CRADA may include, but not be limited to:

1. Providing intellectual, scientific, and technical expertise and experience to the research project.

2. Providing the CRADA Collaborator with information and data relating to the methods developed to assess the activity of the GADD45 polypeptide.

3. Planning research studies and interpreting research results.

4. Carrying out research to validate the use of the GADD45-related methods and candidate GADD45 polypeptide modulators in preclinical, diagnostic and clinical settings.

5. Publishing research results.

6. Developing additional potential applications of the screening methods.

The role of the CRADA Collaborator may include, but not be limited to:

1. Providing significant intellectual, scientific, and technical expertise or experience to the research project.

2. Planning research studies and interpreting research results.

3. Providing technical and/or financial support to facilitate scientific goals and for further design of applications of the technology outlined in the agreement.

4. Publishing research results.

Selection criteria for choosing the CRADA Collaborator may include, but not be limited to:

1. A demonstrated record of success in the screening of chemotherapeutic agents.

2. A demonstrated background and expertise in cancer research and treatment.

3. The ability to collaborate with NCI on further research and development of this technology. This ability will be demonstrated through experience and expertise in this or related areas of technology indicating the ability to contribute intellectually to ongoing research and development.

4. The demonstration of adequate resources to perform the research and development of this technology (*e.g.* facilities, personnel and expertise) and to accomplish objectives according to an appropriate timetable to be outlined in the CRADA Collaborator's proposal.

5. The willingness to commit best effort and demonstrated resources to the research and development of this technology, as outlined in the CRADA Collaborator's proposal.

6. The demonstration of expertise in the commercial development and production of products related to this area of technology.

7. The level of financial support the CRADA Collaborator will provide for CRADA-related Government activities.

8. The willingness to cooperate with the National Cancer Institute in the timely publication of research results.

9. The agreement to be bound by the appropriate DHHS regulations relating to human subjects and to all PHS policies relating to the use and care of laboratory animals.

10. The willingness to accept the legal provisions and language of the CRADA with only minor modifications, if any. These provisions govern the distribution of future patent rights to CRADA inventions. Generally, the rights of ownership are retained by the organization that is the employer of the inventor with (1) the grant of a license for research and other Government purposes to the Government when the CRADA Collaborator's employee is the sole inventor, or (2) the grant of an option to elect an exclusive or nonexclusive license to the CRADA Collaborator when the Government employee is the sole inventor.

Dated: March 20, 2000.

Karen Maurey,

Deputy Chief, Technology Development and Commercialization Branch, National Cancer Institute, National Institutes of Health.

[FR Doc. 00–7381 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Director's Council of Public Representatives.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Director's Council of Public Representatives.

Date: April 6–7, 2000.

Time: 8:30 a.m. to 1:00 p.m.

Agenda: Among topics proposed for discussion are: (1) health disparities; (2) human subject protections; (3) constituency outreach; and (4) public involvement in programs of the NHGRI and NIMH.

Place: National Institutes of Health, 9000 Rockville Pike, Building 31, Conference Room 6, Bethesda, MD 20892.

Contact Person: Jennifer E. Gorman, Public Liaison/COPR Coordinator, Office of the Communications and Public Liaison, Office of the Director, National Institutes of Health, 9000 Rockville Pike, Building 1, Room 344, Bethesda, MD 20892, (301) 435–4448.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: March 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7370 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee C—Basic & Preclinical.

Date: April 12–14, 2000.

Time: 7:30 p.m. to 12:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Virginia P. Wray, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8046, Rockville, MD 20895–7405, 301/496–9236.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 20, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7374 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Mouse Phenotyping RFA.

Date: April 12, 2000.

Time: 8:00 a.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Valerie L. Prenger, PhD, Health Science Administrator, NIH, NHLBI, DEA, Review Branch, Rockledge Center II, 6701 Rockledge Drive, Suite 7198, Bethesda, MD 20892–7924, (301) 435–0297.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Protease Inhibitor Related Atherosclerosis in HIV Infection.

Date: April 18–19, 2000.

Time: 7:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Joyce A. Hunter, PhD, NIH, NHLBI, DEA, Rockledge Center II, 6701

Rockledge Drive, Suite 7192, Bethesda, MD 20892–7924, (301) 435–0287.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: March 20, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7373 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Aging; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Aging Special Emphasis Panel To Review Applications in Racism, Stress, and Chronic Disease in Older Blacks.

Date: April 10, 2000.

Time: 2:10 p.m. to 3:00 p.m.

Agenda: To review and evaluate grant applications

Place: 7201 Wisconsin Avenue, Bethesda, MD 20814 (Telephone Conference Call)

Contact Person: William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel To Review Program Project in Biomedical Outcomes in Aging.

Date: April 10, 2000.

Time: 3:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: 7201 Wisconsin Avenue, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

Name of Committee: National Institute on Aging Special Emphasis Panel.

Date: April 12–13, 2000.

Time: 6:00 p.m. to 6:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: William A. Kachadorian, PhD, The Bethesda Gateway Building, 7201 Wisconsin Avenue/Suite 2C212, Bethesda, MD 20892, (301) 496–9666.

(Catalogue of Federal Domestic Assistance Program Nos. 93.866, Aging Research, National Institutes of Health, HHS)

Dated: March 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7371 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 4, 2000.

Time: 1 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: April 6, 2000.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Gerald E. Calderone, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd., Rm 6150, MSC 9608, Bethesda, MD 20892–9608, 301–443–1340.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7375 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Drug Abuse Special Emphasis Panel, ;"Phase II SBIR (Develop Prevention Research Dissemination—Topic 021)".

Date: March 31, 2000.

Time: 10:30 a.m. to 12:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Eric Zatman, Contract Review Specialist, Office of Extramural Affairs, National Institute on Drug Abuse, National Institutes of Health, DHHS, 6001 Executive Boulevard, Room 3158, MSC 9547, Bethesda, MD 20892–9547, (301) 435–1438.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.277, Drug Abuse Scientist Development Award for Clinicians, Scientist Development Awards, and Research Scientist Awards; 93.278, Drug Abuse National Research Service Awards for Research Training; 93.279, Drug Abuse Research Programs, National Institutes of Health, HHS)

Dated: March 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7376 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.

Date: April 13–14, 2000.

Time: 8:30 a.m. to 5:30 p.m.

Agenda: To review and evaluate grant applications.

Place: Georgetown Holiday Inn, Mirage I, 2101 Wisconsin Avenue, NW, Washington, DC 20007.

Contact Person: Ken Wasserman, PhD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2220, 6700–B Rockledge Drive; MSC 7610, Bethesda, MD, 301 496–2550, kw159p@nih.gov

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7377 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Alcohol Abuse and Alcoholism; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute on Alcohol Abuse and Alcoholism Special Emphasis Panel.

Date: March 27, 2000.

Time: 11:00 a.m. to 2:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Willco Building, Suite 409, 6000 Executive Boulevard, Rockville, MD 20892 (Telephone Conference Call).

Contact Person: Sean O'Rourke, Scientific Review Administrator, Extramural Project Review Branch, National Institute on Alcohol Abuse and Alcoholism, National Institutes of Health, Suite 409, 6000 Executive Boulevard, Bethesda, MD 20892–7003, 301–443–2861.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.271, Alcohol Research Career Development Awards for Scientists and Clinicians; 93.272, Alcohol National Research Service Awards for Research Training; 93.273, Alcohol Research Programs; 93.891, Alcohol Research Center Grants, National Institutes of Health, HHS)

Dated: March 16, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7379 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Library of Medicine Special Emphasis Panel, SEP Review Phone Conference.

Date: April 4, 2000.

Time: 3:30 p.m. to 4:30 p.m.

Agenda: To review and evaluate grant applications.

Place: National Library of Medicine, Division of Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sharee Pepper, PhD, Scientific Review Administrator, Health Scientist Administrator, Office of Extramural Programs, National Library of Medicine, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20892, (301) 594–4933.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: March 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7372 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 22, 2000.
Time: 11:00 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Michael J. Kozak, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3170, MSC 7848, Bethesda, MD 20892, (301) 435–0913.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 29, 2000.
Time: 9:00 a.m. to 10:00 a.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Syed Quadri, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 29, 2000.
Time: 12:00 p.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Karen Sirocco, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3184, MSC 7848, Bethesda, MD 20892, (301) 435–0676.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 30, 2000.
Time: 10:00 a.m. to 1:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: J. Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: March 31, 2000.
Time: 10:00 a.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: J. Scott Osborne, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4114, MSC 7816, Bethesda, MD 20892, (301) 435–1782.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 4, 2000.
Time: 10:30 a.m. to 12:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Mariana Dimitrov, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3180, Bethesda, MD 20892, (301) 435–1281.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 4, 2000.
Time: 1:00 p.m. to 3:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Eugene M. Zimmerman, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4202, MSC 7812, Bethesda, MD 20892, (301) 435–1220, zimmerng@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 4, 2000.
Time: 2:00 p.m. to 4:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Marcia Steinberg, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5140, MSC 7840, Bethesda, MD 20892, (301) 435–1023.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HEM–2 (01).
Date: April 4, 2000.
Time: 4:00 p.m. to 5:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Jerrold Fried, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 5, 2000.
Time: 1:00 p.m. to 2:00 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Ranga V. Srinivas, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 5, 2000.
Time: 1:00 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).
Contact Person: Joanne T. Fujii, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5218, Bethesda, MD 20892, (301) 435–1178, fujiij@drg.nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 5, 2000.
Time: 1:30 p.m. to 2:30 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Abubakar A. Shaikh, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6166, MSC 7892, Bethesda, MD 20892, (301) 435–1042.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 5, 2000.
Time: 2 p.m. to 4:40 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard Marcus, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, 301–435–1245, richard,marcus@nih.gov

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1 HEM–2 (03)M.
Date: April 5, 2000.
Time: 2 p.m. to 3:30 p.m.
Agenda To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Jerrold Fried, PhD, Scienticific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4126, MSC 7802, Bethesda, MD 20892, (301) 435–1777.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 6, 2000.
Time: 9 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Ramada Inn, 1775 Rockville Pike, Rockville, MD 20852.
Contact Person: Gopa Rakhit, PhD, Scientific Review Administrator, Center for Scientific Review, National Insitutes of Health, 6701 Rockledge Drive, Room 4154, MSC 7806, Bethesda, MD 20892, (301) 435–1721.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 6, 2000.
Time: 2 p.m. to 4 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: N. Krish Krishnan, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6164, MSC 7892, Bethesda, MD 20892, (301) 435–1041.

Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 6, 2000.
Time: 3 p.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Kathryn Meadow-Orlans, PhD, Scientific Review Administrator, Center of Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3182, MSC 7848, Bethesda, MD 20892, (301) 435–0902.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Insitutes of Health, HHS)

Dated: March 17, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7369 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Special Emphasis Panel, March 23, 2000, 2:00 PM to March 23, 2000, 3:00 PM, NIH, Rockledge 2, Bethesda, MD, 20892 which was published in the **Federal Register** on March 9, 2000, 65 FR 12565.

The meeting will be held on April 5, 2000 from 3:00 PM to 4:00 PM. The location remains the same. The meeting is closed to the public.

Dated: March 16, 2000.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–7378 Filed 3–24–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–01]

Announcement of Funding Awards—Fiscal Year 1999; Office of Troubled Agency Recovery; Cooperative Agreements

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department from funds distributed to the Office of Troubled Agency Recovery during Fiscal Year 1999. This announcement contains the name and address of all awardees and the amount of each award.

FOR FURTHER INFORMATION CONTACT: Kathryn Edgar, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1141 (this is not a toll-free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service 1–800–877–8339.

SUPPLEMENTARY INFORMATION: The Cooperative Agreement with each of the following recipients was issued pursuant to Section 6(j) of the United States Housing Act of 1937. The awards will be used to provide technical assistance to support troubled agency recovery efforts and funding assistance as necessary to remedy the substantial deterioration of living conditions in public housing or other related emergencies that endanger the health, safety, and welfare of the residents.

The Catalog of Federal Domestic Assistance number for this program is 14.859.

In accordance with section 102 (a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the name, address, and amount of each award as follows:

FISCAL YEAR 1999 TROUBLED AGENCY RECOVERY RECIPIENTS OF FUNDING DECISIONS

Awardee	Amount
Mobile County Housing Authority, P.O. Box 303, Citronelle, AL 36522–0309	$20,000
New Haven Housing Authority, 360 Orange Street, New Haven, CT 06501	$577,500
New London Housing Authority, 78 Walden Avenue, New London, CT 06320	$259,220
Sarasota Housing Authority, 1300 Sixth Street, Sarasota, FL 34236	$50,000 & $45,000
Venice Housing Authority, 201 North Strove Street, Venice, FL 34292	$8,010

FISCAL YEAR 1999 TROUBLED AGENCY RECOVERY RECIPIENTS OF FUNDING DECISIONS—Continued

Awardee	Amount
Housing Authority of the City of Alma, 401 East Twelfth Street, P.O. Box 190, Alma, GA 31510–0190	$30,000
Housing Authority of the City of Greenville, P.O. Box 83, Greenville, GA 30222–0083	$5,000
City Of Topeka Housing Authority, 2101 Southeast California, Topeka, KS 66607	$40,000
Tulane University (Campus Affiliates Program), Tulane-Xavier National Center for the Urban Community, 31 McAlister, New Orleans, LA 70118–5698.	$2,000,000
Dracut Housing Authority, 971 Mammoth Road, Dracut, MA 01826	$15,000
Muskegon Housing Commission, 1823 Commerce Street, Muskegon, MI 49440	$5,000
Muskegon Heights Housing Commission, 615 East Hovey Avenue, Muskegon Heights, MI 49444	$495,000
Hayti Heights Housing Authority, 100 North Martin Luther King Drive, Hayti Heights, MO 63851	$106,800
Housing Authority of Kansas City, 299 Paseo, Kansas City, MO 64106	$425,000
Marionville Housing Authority, 105 East O'Dell, Marionville, MO 65705	$15,000 & $5,000
St. Louis Housing Authority, 4100 Lindell Boulevard, Saint Louis, MO 63108	$200,000
Sainte Genevieve Housing Authority, 225 St. Joseph Street, St. Genevieve, MO 63670	$9,000
Wellston Housing Authority, 1584 Ogdon Avenue, Wellston, MO 63112	$6,500
Bellevue Housing Authority, 8214 Armstrong Circle, Bellevue, NE 68147	$9,500
Greeley Housing Authority, P.O. Box 219, Greeley, NE 68842	$4,675
North Platte Housing Authority, 900 Autumn Park Drive, North Platte, NE 69101	$8,500
Rensselaer Housing Authority, 85 Aiken Avenue, Rensselaer, NY 12144	$40,000
Clinton Metropolitan Housing Authority, 478 Thorne Avenue, Wilmington, OH 45177	$40,000
Springfield Metropolitan Housing Authority, 437 East John, Springfield, OH 45505	$200,000 & $165,000
Waynoka Housing Authority, P.O. Box 183, Waynoka, OK 73860	$4,900
Bellville Housing Authority, P.O. Box 247, Bellville, TX 77418	$12,000
Orange County Housing Authority, 205 Vidor, Vidor, TX 77662	$40,000

Dated: March 20, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–7367 Filed 3–24–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4513–N–03]

Credit Watch Termination Initiative

AGENCY: Office of Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This notice advises of the cause and effect of termination of Origination Approval Agreements taken by HUD's Federal Housing Administration against HUD-approved mortgagees through its Credit Watch Termination Initiative. This notice includes a list of mortgagees which have had their Origination Approval Agreements (Agreements) terminated.

FOR FURTHER INFORMATION CONTACT: The Quality Assurance Division, Office of Housing, Department of Housing and Urban Development, 451 Seventh St. SW, Room B133-P3214, Washington, DC 20410; telephone (202) 708–2830 (This is not a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION: HUD has the authority to address deficiencies in the performance of lenders' loans as provided in the HUD mortgagee approval regulations at 24 CFR 202.3. On May 17, 1999 (64 FR 26769), HUD published a notice on its procedures for terminating origination approval agreements with FHA lenders and placement of FHA lenders on Credit Watch status (an evaluation period). In the May 17, 1999 notice, HUD advised that it would publish in the **Federal Register** a list of mortgagees which have had their Origination Approval Agreements terminated.

Termination of Origination Approval Agreement

Approval of a mortgagee by HUD/FHA to participate in FHA mortgage insurance programs includes an Agreement between HUD and the mortgagee. Under the Agreement, the mortgagee is authorized to originate single family mortgage loans and submit them to FHA for insurance endorsement. The Agreement may be terminated on the basis of poor performance of FHA-insured mortgage loans originated by the mortgagee. The Termination of a mortgagee's Agreement is separate and apart from any action taken by HUD's Mortgagee Review Board under HUD's regulations at 24 CFR part 25.

Cause

HUD's regulations permit HUD to terminate the Agreement with any mortgagee having a default and claim rate for loans endorsed within the preceding 24 months that exceeds 200 percent of the default and claim rate within the geographic area served by a HUD field office, and also exceeds the national default and claim rate. For the second review period, HUD is only terminating the Agreement of mortgagees whose default and claim rate exceeds both the national rate and 300 percent of the field office rate.

Effect

Termination of the Agreement precludes that branch(s) of the mortgagee from originating FHA-insured single family mortgages within the area of the HUD field office(s) listed in this notice. Mortgagees authorized to purchase, hold, or service FHA insured mortgages may continue to do so.

Loans that closed or were approved before the Termination became effective may be submitted for insurance endorsement. Approved loans are (1) those already underwritten and approved by a Direct Endorsement (DE) underwriter employed by an unconditionally approved DE lender and (2) cases covered by a firm commitment issued by HUD. Cases at earlier stages of processing cannot be submitted for insurance by the terminated branch; however, they may be transferred for completion of processing and underwriting to another mortgagee or branch authorized to originate FHA insured mortgages in that area. Mortgagees are obligated to continue to pay existing insurance premiums and meet all other obligations associated with insured mortgages.

A terminated mortgagee may request to have its authority to originate FHA loans reinstated no earlier that six months after the effective date of the Termination. The request, addressed to the Director, Office of Lender Activities and Program Compliance, should describe any actions taken (*e.g.*, changes in operations and/or personnel) to eliminate the cause(s) of the poor loan performance that led to the Termination.

Action

The following mortgagees have had their Agreements terminated by HUD:

Mortgagee name	Mortgagee branch address	HUD office jurisdictions	Termination effective date	Home ownership centers
Atlantic Vanguard Mortgage dba First Advantage Mortgage.	251 Maitland Ave., Suite 304 Altamonte Springs, FL 32701.	Orlando, FL	01/17/2000	Atlanta.
CTX Mortgage Company	151 Kalmus STE J–4 Costa Mesa, CA 92626.	Los Angeles, CA	11/01/1999	Santa Ana.
Embassy Mortgage Corp	6817 W 167th St. Tinley Park, IL 60477	Chicago, IL	01/21/2000	Atlanta.
Paradigm Mortgage Associates Inc	7845 Baymeadows Way Jacksonville, FL 32256.	Coral Gables, FL	11/01/1999	Atlanta.
RE Mortgage Group dba American Pacific Mortgage Corp.	8141 E Kaiser Blvd, Suite 212 Anaheim Hills, CA 92808.	Santa Ana, CA	01/21/2000	Santa Ana.

Dated: March 21, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–7421 Filed 3–24–00; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare an Environmental Impact Statement/Environmental Impact Report on the Restoration and Management Plan for Bair Island, Don Edwards San Francisco Bay National Wildlife Refuge, San Mateo County, California, and Announcement of Public Scoping Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare an environmental impact statement/environmental impact report and notice of public meeting.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare an Environmental Impact Statement/Environmental Impact Report (EIS/EIR) for the development of a Restoration and Management Plan (RMP) for Bair Island located in San Mateo County, California. Interested persons are encouraged to submit written comments and/or attend a public scoping meeting to identify and discuss issues and alternatives that should be addressed in the RMP and in the EIS/EIR. The Service is furnishing this notice in compliance with the National Environmental Policy Act (NEPA) regulations (40 CFR 1501.7) for the following purposes: (1) To advise other agencies and the public of our intentions; (2) to obtain suggestions and information on the scope of issues to be addressed in the EIS/EIR; and (3) to announce a public scoping meeting. Comments and participation in this scoping process are solicited. We estimate the Draft Environmental Impact Statement will be made available to the public by February 2001.

DATES: A public scoping meeting will be held on April 27, 2000, from 7:00 p.m. to 9:00 p.m., see addresses for location. Written comments related to the scope and content of the Restoration and Management Plan and EIS/EIR should be received by the Service at the Newark address below by April 26, 2000.

ADDRESSES: The public meeting will be held at the Community Activities Building, 1400 Roosevelt Avenue, Redwood City, California. Oral and written comments will be taken at the meeting. Written comments also may be mailed to Ms. Margaret T. Kolar, Refuge Complex Manager, San Francisco Bay National Wildlife Refuge Complex, P.O. Box 524, Newark, California 94560; or sent by facsimile to (510) 792–5828.

FOR FURTHER INFORMATION CONTACT: Clyde Morris, Refuge Manager, Don Edwards San Francisco Bay National Wildlife Refuge, Newark, California, telephone (510) 792–0222.

SUPPLEMENTARY INFORMATION:

Background Information

The U.S. Fish and Wildlife Service (Service) will manage all State and Federal land on Bair Island as a part of the Don Edwards San Francisco Bay National Wildlife Refuge (Refuge). Lands owned by the California Department of Fish and Game on Bair Island will be managed as a part of the Refuge in compliance with a Memorandum of Understanding.

The Service proposes to restore Bair Island to tidal wetlands. The purpose of the project is to restore saltwater marsh habitat for endangered species and other native wildlife; and to enhance the public's appreciation and awareness of the unique resources of Bair Island.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal regulations, and Service procedures for compliance with those regulations.

Project Objectives

The objectives of the project follow.

1. Restore and enhance habitat for the endangered California clapper rail and salt marsh harvest mouse.

2. Create and enhance habitat for other endangered and threatened species, and other wetland dependent species if compatible with restoration for the clapper rail and harvest mouse.

3. Minimize disturbance to any sensitive species (clapper rail, harbor seals, *etc.*).

4. Provide for control of undesirable species including invasive plants, undesirable predators, and mosquitos.

5. Enhance the public's awareness of the unique resources at Bair Island by providing opportunities for wildlife-oriented recreation and nature study.

Questions and Issues

Questions and issues identified to date include the following.

1. What recreational uses are compatible with restoration?

2. How will historic and cultural resources be protected?

3. What are the impacts of restoration activities on sensitive wildlife resources?

4. How will invasive non-native and undesirable species be controlled?

5. Would this project improve flood conditions along Redwood, Pulgas, and Cordilleras creeks, or affect the stability of Highway 101 and flood control levees along Steinberger Slough and Redwood Creeks?

6. How will San Carlos Airport property on Inner Bair Island be protected from tidal inundation?

7. What impacts will there be to adjacent marinas and the Port of Redwood City from increased tidal currents?

8. What are the risks to low flying aircraft from increased waterbird use?

9. How will this project impact the South Bayside System Authority's pipeline and Pacific Gas and Electric's towers?

Public Comments

Comments already received are on record and need not be resubmitted. All comments received from individuals on the EIS/EIR become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, the Council on Environmental Quality's NEPA regulations (40 CFR 1506.6(f)), and other Service and Departmental policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. Telephone numbers of commenting individuals, however, will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the commentator's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

Dated: March 17, 2000.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations, Sacramento, California.

[FR Doc. 00–7168 Filed 3–24–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force *Caulpera taxifolia* (Mediterranean strain) Prevention Committee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the *Caulpera taxifolia* (Mediterranean strain) Prevention Committee of the Aquatic Nuisance Species Task Force. The meeting topics are identified in the **SUPPLEMENTARY INFORMATION**.

DATES: The Committee will meet from 1:30 pm to 5 pm, on Wednesday, April 5, 2000.

ADDRESSES: The meeting will be held at the Rosenstiel School of Marine and Atmospheric Science, Cooperative Institute for Marine and Atmospheric Studies (CIMAS) Building, 3rd floor conference room, 4600 Rickenbacker Causeway, Miami, Florida.

FOR FURTHER INFORMATION CONTACT: Sandra Keppner, U.S. Fish and Wildlife Service at 716–691–5456 or by email at *sandra_keppner@fws.gov* or Sharon Gross, Executive Secretary, Aquatic Nuisance Species Task Force at 703–358–2308 or by e-mail at: *sharon_gross@fws.gov*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force *Caulpera taxifolia* (Mediterranean strain) Prevention Committee. The Task Force was established by the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (16 U.S.C. 4701–4741).

Topics to be addressed at this meeting include: reviewing the roles and responsibilities of the committee, reviewing the draft Prevention Program, reviewing existing authorities that could be used to regulate import of the Mediterranean strain of *Caulpera taxifolia*, identifying gaps in the draft Prevention Program, and developing criteria for prioritizing actions in the Prevention Program.

Minutes of the meeting will be maintained by the Executive Secretary, Aquatic Nuisance Species Task Force, Suite 851, 4401 North Fairfax Drive, Arlington, Virginia 22203–1622. Minutes for the meetings will be available at this location for public inspection during regular business hours, Monday through Friday.

Dated: March 20, 2000.

Rowan Gould,

Acting Aquatic Nuisance Species Task Force, Acting Assistant Director—Fisheries.

[FR Doc. 00–7364 Filed 3–24–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–957–00–1420–BJ: GPO–0149]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 25 S., R. 1 W., accepted January 27, 2000
T. 29 S., R. 10 W., accepted February 7, 2000
T. 20 S., R. 1 W., accepted February 18, 2000
T. 14 S., R. 31 E., accepted February 25, 2000
T. 19 S., R. 2 W., accepted March 6, 2000

Washington

T. 27 N., R. 13 W., accepted February 28, 2000
T. 27 N., R. 12 W., accepted February 28, 2000
T. 16 N., R. 19 E., accepted March 6, 2000
T. 31 N., R. 11 W., accepted March 6, 2000

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1515 S.W. 5th Avenue, Portland, Oregon 97201, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey, and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, (1515 S.W. 5th Avenue P.O. Box 2965, Portland, Oregon 97208.

Dated: March 10, 2000.

Robert D. DeViney, Jr.,

Branch of Realty and Records Services.

[FR Doc. 00–7455 Filed 3–24–00; 8:45 am]

BILLING CODE 4310–33–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Notice of Intent To Prepare a Draft Environmental Impact Statement on the Construction and Operation of the Navajo-Gallup Water Supply Project and Announcement of Public Scoping Meetings

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement on the construction and operation of the Navajo-Gallup Water Supply Project and announcement of public scoping meetings.

SUMMARY: The Department of the Interior, Bureau of Reclamation, announces its intent to prepare a Draft Environmental Impact Statement (DEIS) pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, on the Navajo-Gallup Water Supply Project to supply municipal and industrial water to the New Mexico portion of the Navajo Nation south of the San Juan River and the Window Rock area within Arizona, and the City of Gallup, New Mexico. The DEIS will evaluate alternatives for the construction and operation of the Navajo-Gallup Water Supply Project and act as the final planning report to support a request for construction authorization.

A long-term high quality municipal and industrial water supply is needed to improve the standard of living for current and future populations and to support economic growth of the Navajo Nation and the City of Gallup. The Navajo-Gallup Water Supply Project has evolved as a major infrastructure initiative to supply approximately 40,000 acre-feet of municipal and industrial water annually from the San Juan River to meet these needs. To achieve this initiative, the following organizations have worked closely in a cooperative effort: the Navajo Nation Department of Water Resources, Northwest New Mexico Council of Governments, City of Gallup, Bureau of Indian Affairs, and the Bureau of Reclamation.

Two structural alternatives for the Navajo-Gallup Water Supply Project are currently under study and proposed: The Navajo Indian Irrigation Project (NIIP) Alternative and the San Juan River Diversion Alternative. The DEIS will examine both of these proposed alternatives as well as a Non-Structural Water Conservation Alternative, a No Action Alternative, and any other proposed alternatives brought forth as a result of the public scoping meetings that will be conducted in April and May 2000 (See **SUPPLEMENTARY INFORMATION** section).

Reclamation invites other federal agencies, states, Indian Tribes, local governments, and the general public to submit written comments or suggestions concerning the scope of the issues to be addressed in the DEIS. This is intended to meet the public involvement requirements of both NEPA and the National Historic Preservation Act. The public is invited to participate in a series of scoping meetings that will be held in late April and early May 2000 in New Mexico and Arizona (see **SUPPLEMENTARY INFORMATION** section). Those not desiring to submit comments or suggestions at this time, but who would like to receive a copy of the DEIS, should write to the address given below. When the DEIS is complete, its availability will be announced in the **Federal Register**, local news media, and through direct contact with interested parties. Comments will be solicited on the document.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. If you want us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

DATES AND LOCATIONS: See **SUPPLEMENTARY INFORMATION** section meeting dates and locations.

FOR FURTHER INFORMATION CONTACT: Mr. Rege Leach, Bureau of Reclamation, Western Colorado Area Office, 835 East Second Avenue, Suite 300, Durango, Colorado 81301; telephone (970) 385–6553; faxogram (970) 385–6539; E-mail: rleach@uc.usbr.gov.

SUPPLEMENTARY INFORMATION:

Background

Recognizing the severe water supply problems facing the Navajo Nation and the City of Gallup, the Navajo Nation and the City signed a Memorandum of Agreement on April 17, 1998, to proceed with planning and developing the Navajo-Gallup Water Supply Project. The two parties, working as partners with the Bureau of Reclamation and the Bureau of Indian Affairs, propose to plan, implement environmental compliance, secure water supplies, obtain Congressional authorization, and construct and operate the Navajo-Gallup Water Supply Project. The project will serve the residents of the Navajo Nation and the City of Gallup.

Purpose and Need for Action

The purpose and need of the proposed federal action is to provide a long-term, high quality municipal and industrial water supply to improve the standard of living for current and future populations and to support economic growth of the Navajo Nation and the City of Gallup.

Range of Alternatives

As part of its NEPA analysis, Reclamation intends to evaluate the following alternatives:

NIIP Alternative—This alternative would supply approximately 40,000 acre-feet of water annually. The water would be diverted from the Navajo Reservoir through the Main and Burnham Lateral Canals of the NIIP and delivered to a proposed 8,800 acre-foot Moncisco Dam and Reservoir (to be constructed under this alternative). A treatment plant and pumping station would be constructed near Moncisco Reservoir. The pipeline alignment would run south from the treatment plant to an existing natural gas line corridor used by the El Paso San Juan Triangle Mainline and by the Transwestern San Juan Lateral System. The main pipeline route would follow the gas line corridor to the vicinity of Twin Lakes where it would turn south to Yah-ta-hey. At Yah-ta-hey, the main pipeline would connect to smaller spur water lines heading west along Highway 64 to Window Rock, Arizona, and south along Highway 666 to the City of Gallup, and surrounding areas. Three other spur pipelines would connect to the mainline. They would include a pipeline from Naschitti north along Highway 666 to Sanostee, pipeline from Twin Lakes east along Indian Route 9 to Dalton Pass, and a pipeline from the treatment plant along Highway 44 to Nageezi and then south to Torreon. Storage tanks and rechlorination facilities would be included in the project.

San Juan River Diversion Alternative—This alternative would

divert water directly out of the San Juan River below the confluence of the La Plata and San Juan Rivers. The existing Hogback Diversion structure or the Public Service Company of New Mexico's nearby weir would be used to divert the water. The Hogback structure is located on the San Juan River at river mile 158.9 downstream of the La Plata River confluence and upstream from Chaco Wash. A treatment plant, storage reservoir, and pumping plant would be constructed near the point of diversion. From the pumping plant, the pipeline alignment would proceed south along Highway 666 of Yah-ta-hey. At Yah-ta-hey, the main pipeline would connect to smaller spur water lines for the Window Rock, Arizona, and Gallup areas. Compared to the water from Navajo Reservoir, the water quality of the San Juan River is poorer and will require additional water treatment.

To service the eastern portion of the Navajo Reservation, an additional mainline would be constructed. This eastern pipeline would originate at a treatment and pumping plant to be constructed at Cutter Reservoir. The eastern pipeline would carry water from the pumping plant south to Huerfano, follow Highway 44 to Nageezi, and then head south to Torreon. Cutter Reservoir, part of the NIIP canal system, receives water from Navajo Reservoir.

Under both structural alternatives, the locations of the points of diversion have critical hydrologic implications for the endangered species in the San Juan River and project purposes of the Navajo Reservoir as authorized by the Colorado River Storage Project Act.

Non-Structural Water Conservation Alternative—Non-structural alternatives to developing a water supply project include water conservation and reuse. Significant and cost effective water conservation opportunities may not be available due to the already low water use. Current safe Drinking Water Act regulations limit water reuse applications.

No Action Alternative—Under this alternative, the project would not be constructed and there would be no federal action taken to meet the current and future water needs of the Navajo Nation and the City of Gallup.

Public Scoping

Public scoping meetings will be held in New Mexico and Arizona in late April and early May 2000 to obtain input on the significant issues related to the proposed action. The schedule and locations of the meetings are shown below. The public is asked to provide input on the following:

1. Whether the overall range of alternative is appropriate and are there additional alternatives to consider.
2. Identification of relevant issues related to the proposed action.

Schedule of Scoping Meetings

Each of the scoping meetings will begin with a one-hour open house where the public can informally discuss issues and ask questions of staff and managers. The open house will be followed by a more formal scoping hearing in which participants will be given time to make official comments. These comments will be formally recorded. Speakers are encouraged to provide written versions of their oral comments, and any other additional written materials, for the record.

Comments may also be sent directly to the Bureau of Reclamation's Western Colorado Area Office, 835 East Second Avenue, Suite 300, Durango, CO 81301. Written comments should be received no later than Friday, May 26, 2000, to be most effectively considered.

Dates of Scoping Meetings

- April 25, 2000, 6 to 9 p.m., Crownpoint Chapter House, Crownpoint, New Mexico.
- April 26, 2000, 6 to 9 p.m., St. Michaels (Chi'hootso) Chapter House, St. Michaels, Arizona.
- April 27, 2000, 6 to 9 p.m., University of New Mexico Gallup Campus, Auditorium 248,200 College Road, Gallup, New Mexico.
- May 2, 2000, 6 to 9 p.m., Dine College, Shiprock Campus Gymnasium, Shiprock, New Mexico.
- May 3, 2000, 6 to 9 p.m., San Juan College Lecture Hall 7103, Computer Science Building, 4601 College Boulevard, Farmington, New Mexico.

Dated: March 21, 2000.

Charles A. Calhoun,

Regional Director, Upper Colorado Region.

[FR Doc. 00–7442 Filed 3–24–00; 8:45 am]

BILLING CODE 4310–94–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,801 and TA–W–36801A and NAFTA–3546 and NAFTA–3546A]

Case Corp., Racine, Wisconsin and East Moline, IL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at the Case Corporation, Racine, Wisconsin and East Moline, Illinois. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,801 and TA–W–36,801A and NAFTA–3418 and NAFTA–3418A, Case Corporation, Racine, Wisconsin and East Moline, Illinois (March 15, 2000).

Signed at Washington, DC, this 21st day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7479 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 6, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 6, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC, this 22nd day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 02/22/2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,357	Alliant Tech Systems (Wrks)	Totowa, NJ	02/01/2000	Tank Ammunition for US Military.
37,358	Epson Portland, Inc (Wrks)	Hillsboro, OR	02/11/2000	Printers.
37,359	General Electric Co (IUE)	Warwick, RI	02/08/2000	Programable Lighting.
37,360	Geo Drilling Fluids (Wrks)	Bakersfield, CA	01/13/2000	Drilling Fluids.
37,361	Motch Corp./MGS, Inc (IAM/Co)	Cleveland, OH	02/09/2000	Vertical Chuckers & Inverted Self Loader.
37,362	Jasper Sportswear Corp (Comp)	Brooklyn, NY	02/01/2000	Ladies' Knitted Outerwear.
37,363	George Bassi Distributing (IBT)	Watsonville, CA	02/07/2000	Wooden Pallets.
37,364	Robinson Manufacturing (Wrks)	Madisonville, TN	02/02/2000	Shorts and Shirts.
37,365	Borg-Warner Automative (Wrks)	Blytheville, AR	01/25/2000	Transmission Solenoids.
37,366	California Shirt Sales (Comp)	Fullerton, CA	01/26/2000	Fleece Pants, Crewneck Shirts.
37,367	KeyBank USA NA (Wrks)	Albany, NY	02/01/2000	Collect Auto Loans.
37,368	ITT Jabsco (IBT)	Springfield, OH	01/03/2000	Recreational & Marine Products.
37,369	Ikeda Interior Systems (Wrks)	Sidney, OH	02/03/2000	Seats for Nissan.
37,370	Lees Curtain (Wrks)	Mansfield, MO	02/01/2000	Curtains for Windows.
37,371	Burlington Industries (Wrks)	Belmont, NC	01/07/2000	Fabrics.
37,372	Deer Valley Apparel, Inc (Wrks)	Chilhowie, VA	01/28/2000	Knitted Apparel.
37,373	Sawdust Pencil Co (Comp)	Edison, NJ	02/14/2000	Pencils and Markers.
37,374	T and K Manufacturing (Comp)	Brownstown, PA	02/07/2000	Underwear and Outerwear—Men, Women.
37,375	Mitec Wireless, Inc (Comp)	Tinton Falls, NJ	01/21/2000	Micro Basestations, Radio Frequency Amp.
37,376	Oneida Limited (Wrks)	Sherrill, NY	02/04/2000	Oneida Flatware.
37,377	Duro Finishing (UNITE)	Fall River, MA	02/09/2000	Dye and Finishing Cloth.
37,378	Bugbee and Niles Co., Inc (Comp)	Providence, RI	02/10/2000	Costume Jewelry.
37,379	Emerson Electric Co (Wrks)	Rogers, AR	02/03/2000	Electric Motors.
37,380	American Sewn Products (Wrks)	Bremerton, WA	02/08/2000	Customize Bags.
37,381	U.S. Leather (IBT)	Milwaukee, WI	02/04/2000	Process Leather.
37,382	Alaska Petroleum (Wrks)	Kenai, AK	11/12/1999	Oil and Gas Equipment.

[FR Doc. 00–7476 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36–647 and TA–W–36–647C]

Cluett, Peabody and Company, Inc., The Enterprise Plant, Enterprise, AL and Albertville, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 16, 1999, applicable to workers of Cluett, Peabody and Company, Inc., the Enterprise Plant, Enterprise, Alabama, the Austell Plant, Austell, Georgia and New York, New York. The notice was published in the **Federal Register** on October 14, 1999 (64 FR 55750).

At the request of the company, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations are occurring at the Albertville Plant, Albertville, Alabama location of Cluett, Peabody and Company, Inc. The workers are engaged in employment related to the production of men's shirts.

Accordingly, the Department is amending the certification to cover workers of Cluett, Peabody and Company, Inc., Albertville Plant, Albertville, Alabama.

The intent of the Department's certification is to include all workers of Cluett, Peabody and Company, Inc. adversely affected by increased imports of men's shirts.

The amended notice applicable to TA–W–36,647 is hereby issued as follows:

All workers of Cluett, Peabody and Company, Inc., The Enterprise Plant, Enterprise, Alabama (TA–W–36,647) and Albertville Plant, Albertville, Alabama (TA–W–36,647C) who became totally or partially separated from employment on or after August 10, 1998 through September 16, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 20th day of March 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7485 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,024]

Condor DC Power Supplies, Inc., The Todd Products Group, Brentwood, New York; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 9, 1998, applicable to workers of Todd Products Corporation, Brentwood, New York. The notice was

published in the **Federal Register** on December 4, 1998 (63 FR 67140).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of electronic power supply devices. New information received from the company shows that in July, 1999, Condor DC Power Supplies, Inc. purchased Todd Products Corporation and became known as Condor DC Power Supplies, Inc., The Todd Products Group. Information also shows that workers separated from employment at Todd Products Corporation had their wages reported under a separate unemployment insurance (UI) tax account for Condor Power Supplies, Inc., The Todd Products, Group.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–35,024 is hereby issued as follows:

All workers of Condor DC Power Supplies, Inc., The Todd Products Group, Brentwood, New York who becomes totally or partially separated from employment on or after September 15, 1997 through November 9, 2000 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7484 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,557]

Freeport-McMoRan Sulphur, L.L.C., Culberson Mine, a.k.a. McMoRan Exploration Co., Pecos, TX, Including Leased Workers of Pecos Valley Field Services, Inc., Pecos, Texas; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 5, 1999 applicable to workers of Freeport-McMoRan Sulphur, L.L.C., Culberson Mine, Pecos, Texas, including leased workers of Pecos Valley Field Services, Inc., Pecos, Texas. The notice was published in the **Federal Register** on May 21, 1999 (64 FR 27811).

At the request of the company and State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of molten elemental sulphur. Company information shows that Freeport-McMoRan Sulphur, L.L.C. "became also known as McMoRan Exploration Company" after its merger in November, 1998.

Accordingly, the Department is amending the certification determination to correctly identify the new ownership to read "Freeport-McMoRan Sulphur L.L.C, Culberson Mine, also known as McMoRan Exploration Company," Pecos, Texas.

The intent of the Department's certification is to include all workers of Freeport-McMoRan Sulphur, L.L.C. who were adversely affected by increased imports of molten elemental sulphur.

The amended notice applicable to TA–W–35,557 is hereby issued as follows:

All workers of Freeport-McMoRan Sulphur, L.L.C, Culberson Mine, also known as McMoRan Exploration Company, Pecos, Texas, including leased workers of Pecos Valley Field Services, Inc., working at Freeport-McMoRan Sulphur, L.L.C., Pecos, Texas engaged in employment related to the production of molten elemental sulphur who became totally or partially separated from employment on or after January 12, 1998 through April 5, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 7th day of March, 1998.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7482 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–35,886, TA–W–35,886A, TA–W–886B and TA–W35,886C]

Justin Boot Company, Justin Management Company, Sarcoxie, MO, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on July 20, 1999, applicable to workers of Justin Boot Company, Sarcoxie, Missouri, Cassville, Missouri, Carthage, Missouri and Fort Worth, Texas. The notice was published in the **Federal Register** on August 11, 1999 (64 FR 43724).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers are engaged in the production of boots and related components. New information received from the company shows that some workers separated from employment at Justin Boot Company had their wages reported under a separate unemployment insurance (UI) tax account for Justin Management Company.

The intent of the Department's certification is to include all workers of Justin Boot Company who were adversely affected by increased imports. Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–35,886 is hereby issued as follows:

All workers of Justin Boot Company, Justin Management Company, Sarcoxi, Missouri (TA–W–35,886), Cassville, Missouri (TA–W–886A), Carthage, Missouri (TA–W–35,886B) and Fort Worth, Texas (TA–W–886C) who became totally or partially separated from employment on or after March 3, 1998 through July 20, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 7th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7483 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than April 6, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 6, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210.

Signed at Washington, D.C. this 28th day of February, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 02/28/2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,383	Philadelphia Gear Corp. (IAMAW)	King of Prussia, PA	02/07/2000	Gears & Gear Boxes—Power Transmissions.
37,384	FNA Acquisitions (Co.)	Mooresville, NC	02/11/2000	Textile Prints & Dyed Fabrics.
37,385	Kryptonite Corporation (Co.)	Canton, MA	01/11/2000	Locks—Motorcycle and Bicycle.
37,386	Southside Sportswear (Co.)	Florence, SC	02/15/2000	Shirts, Tank Tops, Shorts, Pants.
37,387	Timbergon (Wkrs)	Redmond, OR	02/10/2000	Door and Window Jambs.
37,388	Sullivan Die Casting (Wkrs)	Kenilworth, NJ	02/09/2000	Auto Mirror Castings, Sunroof Castings.
37,389	Langenberg Hat (Wkrs)	New Haven, MO	02/11/2000	Hats and Caps.
37,390	Target (Wkrs)	Mt. Carmel, IL	02/18/2000	Retail Store.
37,391	Hewlett Packard (Wkrs)	San Jose, CA	02/08/2000	Opticouplers.
37,392	Alphabet (UNITE)	El Paso, TX	02/10/2000	Wiring Harness.
37,393	Preston Trucking Co. (GT)	Pittsburgh, PA	02/11/2000	Trucking—General Freight.
37,394	Corporate Expressions (Co.)	Salisbury, NC	02/14/2000	Golf Shirts, Athletic Wear.
37,395	Johnson Matthey/Allied (Wkrs)	Chippewa Falls, WI	02/15/2000	Plastic Laminated Semiconductor Packages.
37,396	Elliott Corporation (Wkrs)	Gillett, WI	02/10/2000	Safety Clothing.
37,397	Katz Lace Corp. (Wkrs)	New York, NY	02/08/2000	Lace.
37,398	Kenro, Inc. (Co.)	Fredonia, WI	02/17/2000	Fiberglass.
37,399	Tanner Companies Limited (Co.)	Rutherfordton, NC	02/16/2000	Ladies' Apparel.

[FR Doc. 00–7477 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than April 6, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 6, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 6th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

APPENDIX.—PETITIONS INSTITUTED ON 03/06/2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,400	Renfro Corp. (Wkrs)	South Pittsburg, IN	02/17/2000	Package Socks.
37,401	Arbor Acres (Wkrs)	Carthage, MS	02/12/2000	Breeder Stock for Poultry.
37,402	Midas International (Wkrs)	Bedford, IL	02/05/2000	Mufflers, Pipes, Brackets.
37,403	R. Kaye Ltd (Co.)	New York, NY	02/16/2000	Rhinestone Buttons and Buckles.
37,404	Border Apparel Laundry (UNITE)	El Paso, TX	02/11/2000	Jeans.
37,405	GCC Cutting, Inc (Wkrs)	El Paso, TX	01/14/2000	Garment Cutting.

APPENDIX.—PETITIONS INSTITUTED ON 03/06/2000—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,406	York International (UAW)	Waynesboro, PA	02/15/2000	Oil Separators—Commercial Refrigeration.
37,407	Briggs Manufacturing (GMP)	Robinson, IL	02/04/2000	Toilet Bowls, Lavatories Tanks.
37,408	Raco—Hubbell (IUE)	So. Bend, IN	02/07/2000	Electrical Boxes and Fittings.
37,409	Quaker Oats (UFCW)	St. Joseph, MO	02/11/2000	Ready to Eat Cereals.
37,410	Trico Product of Lawrence (Wkrs)	Lawrenceburg, TN	01/29/2000	Windshield Wiper Systems.
37,411	Monet Group (The) (Co.)	East Providence, RI	02/18/2000	Fashion Jewelry.
37,412	Sun Apparel of Texas (Co.)	El Paso, TX	02/22/2000	Jeans, Jackets, Shirts & Shorts.
37,413	Cebeco Lilies (Co.)	Aurora, OR	02/16/2000	Lily Bulbs.
37,414	Proper International (Wkrs)	Waverly, TN	02/11/2000	Jeans, Shirts and Jackets.
37,415	Parker Drilling Co (Wkrs)	Tulsa, OK	02/24/2000	Oil Drilling.
37,416	Triboro Electric Co. (IBEW)	Doylestown, PA	02/22/2000	Lighting Components and Switches.
37,417	Microtek Medical (Wkrs)	Columbus, MS	02/16/2000	Medical Drapes.
37,418	Baker Atlas (Comp)	Prudhoe Bay, AK	02/15/2000	Wireline Logging.
37,419	Compaq Computer (Wrks)	Houston, TX	02/08/2000	Printed Circuit Boards.
37,420	Western Gas Resources (Wrks)	Midkiff, TX	02/17/2000	Natural Gas Processing.
37,421	Whistler Automation (Comp)	Novi, MI	02/26/2000	Electronic Transmitters.
37,422	BTR Sealing Systems (UNITE)	Maryville, TN	02/23/2000	Autombile Weatherstripping.
37,423	Warren Leasing (Wrks)	New York, NY	01/21/2000	Woven Textiles.
37,424	Pincus Brothers (UNITE)	Philadelphia, PA	02/23/2000	Men's Clothing.
37,425	SKF USA, Inc (Wrks)	Glasgow, KY	02/24/2000	Hub Bearings.
37,426	Leather Specialty Co/Howg (Comp)	Sanford, FL	02/22/2000	Tool Cases, Business Cases.
37,427	Kongsberg (Wrks)	Livonia, MI	02/15/2000	Foam Seat Heaters.
37,428	Valley Cities Apparel (Wrks)	Sayre, PA	01/28/2000	Lingerie—Sleepwear.
37,429	Basset Upholstery (Wrks)	Dumas, AR	02/22/2000	Furniture.
37,430	Square D Co. (IBEW)	OshKosh, WI	02/17/2000	Transformers.
37,431	Magnecomp Corp (Comp)	Temecula, CA	02/24/2000	Computer Hard Disk, Drive Suspension.
37,432	Globe Manufacturing Corp (Comp)	Fall River, MA	02/24/2000	Extruded Latex Thread.
37,433	Smithville Sportswear (Wrks)	Smithville, TN	02/24/2000	Men's and Ladies' Knit Apparel.
37,434	Bula, Inc. (Comp)	Durango, CO	02/24/2000	Winter Headwear.
37,435	OshKosh B'Gosh, Inc (Comp)	OshKosh, WI	02/23/2000	Men's and Children's Clothing.
37,436	Alliance Labeling (Wrks)	Allentown, PA	02/15/2000	Labeled Glass and Plastic Bottles.
37,437	Elliot Turbomachinery (Comp)	Jeannette, PA	02/15/2000	Turbines and Compressors.

[FR Doc. 00–7478 Filed 3–24–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,019]

Thomas Energy Services, MWD Division, a.k.a. Pathfinder Energy Services, Inc., New Iberia, LA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on December 3, 1999, applicable to workers of Thomas MWD, a/k/a Pathfinder Energy Services, Inc., New Iberia, Louisiana. The notice was published in the **Federal Register** on December 28, 1999 (64 FR 72692).

At the request of the State agency, the Department reviewed the certification for workers of the subject firm. The workers provided engineering, logging and drilling services related to the exploration and production of crude oil and natural gas. New information received from the company shows that in March, 1999, Thomas MWD merged with PathFinder Energy Services and became known as Thomas Energy Services, MWD Division, a/k/a PathFinder Energy Services. Information also shows that workers separated from employment at Thomas MWD, a/k/a Pathfinder Energy Services, Inc. had their wages reported under a separate unemployment insurance (UI) tax account for Thomas Energy Services, MWD Division, a/k/a Pathfinder Energy Services, Inc.

Accordingly, the Department is amending the certification to properly reflect this matter.

The amended notice applicable to TA–W–37,019 is hereby issued as follows:

All workers of Thomas Energy Services, MWD Division, a/k/a Pathfinder Energy Services, Inc., New Iberia, Louisiana who became totally or partially separated from employment on or after October 22, 1998 through December 3, 2001 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 10th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7486 Filed 3–24–00; 8:45 am]
BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps: Preliminary Finding of No Significant Impact (FONSI) for the Proposed Job Corps Center at the Gillis W. Long Hansen's Disease Center, 5445 Point Clair Road, Carville, Iberville Parish, LA

AGENCY: Employment and Training Administration, Labor.

ACTION: Preliminary Finding of No Significant Impact (FONSI) for the proposed Job Corps Center to be located at the Gillis W. Long Hansen's Disease Center, 5445 Point Clair Road, Carville, Iberville Parish, Louisiana.

SUMMARY: Pursuant to the Council on Environmental Quality Regulations (40 CFR part 1500–08) implementing procedural provisions of the National Environmental Policy Act (NEPA), the Department of Labor, Employment and Training Administration, Office of Job Corps, in accordance with 29 CFR 11.11(d), gives notice that an Environmental Assessment (EA) has been prepared for a new Job Corps Center to be located in Carville, Louisiana, and that the proposed plan for a new Job Corps Center will have no significant environmental impact. This Preliminary Finding of No Significant Impact (FONSI) will be made available for public review and comment for a period of 30 days.

DATES: Comments must be submitted by April 26, 2000.

ADDRESSES: Any comment(s) are to be submitted to Eric Luetkenhaus, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N–4659, Washington, DC, 20210, (202) 219–5468 ext. 118 (this is not a toll-free number).

FOR FURTHER INFORMATION CONTACT: Copies of the EA and additional information are available to interested parties by contacting Jose M. de Olivares, Region VI (Six) Office of Job Corps, Federal Building Room 403, 525 Griffin Street, Dallas, TX 75202, (214) 767–2567 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: This Environmental Assessment (EA) summary addresses the proposed construction of a new Job Corps Center in Carville, Louisiana. The subject property for the proposed Job Corps Center is an approximately 28.8-acre parcel within the approximately 331-acre site formally known as the Gillis W. Long Hansen's Disease Center (GWLHDC), operated by the United States Department of Health and Human Services (HHS). The GWLHDC has been acquired by the State of Louisiana for the purpose of establishing a multi-purpose educational and military training facility. Planned programs include not only a Job Corps, but also the Youth Challenge Program and a military training unit for the Louisiana Army National Guard (LAARNG). The U.S. Department of Labor will be leasing the 28.8 acre Job Corps Center site from the State of Louisiana.

The EA indicates that an existing golf course located on the east side of the GWLHDC complex will be utilized for the 28.8-acre Job Corps Center parcel. The new center will require construction of seven (7) new buildings. The proposed Job Corps Center will provide housing, training, and support services for 272 resident students. The current facility utilization plan includes new dormitories (53,000 square feet), a heavy vocational building (17,300 square feet), a cafeteria building (10,300 square feet), administration/medical/dental offices (11,200 square feet), recreation facilities (18,000 square feet), and classroom facilities (21,600 square feet).

The construction of the Job Corps Center on this proposed site would be a positive asset to the area in terms of environmental and socioeconomic improvements, and long-term productivity. The proposed Job Corps Center will be a new source of employment opportunity for people in the Carville, Louisiana area. The Job Corps program provides basic education, vocational skills training, work experience, counseling, health care and related support services. The program is designed to graduate students who are ready to participate in the local economy.

The proposed project will not have any significant adverse impact on any natural systems or resources. No state or federal threatened or endangered species (proposed or listed) have been on the subject property.

The Job Corps Center construction will not affect any existing historic structures on the GWLHDC, and there are no historic or archeologically sensitive areas on the proposed property parcel.

Air quality and noise levels should not be affected by the proposed development project. Due to the nature of the proposed project, it would not be a source of air pollutants or additional noise, except possibly during construction of the facility. All construction activities will be conducted in accordance with applicable noise and air pollution regulations, and all pollution sources will be permitted in accordance with applicable pollution control regulations. The proposed Job Corps Center is not expected to significantly increase the vehicle traffic in the vicinity.

The proposed project will not have any significant adverse impact on the surrounding water, sewer, and storm water management infrastructure. Currently, drinking water at the site is drawn from two (2) 400-foot wells and pumped to the GWLHDC water treatment plant via pipeline. According to the GWLHDC, the maximum treatment capacity for the water treatment plant is 430,000 gallons per day. The projected usage requirements for all proposed tenants at the GWLHDC, including the Job Corps Center, is less than 200,000 gallons per day. The new buildings to be constructed for the proposed Job Corps Center will be tied in to the existing GWLHDC water distribution system. The current water treatment facility appears more than adequate to support the proposed Job Corps Center, and should only require continued maintenance and cost effective upgrades.

The new buildings to be constructed for the proposed Job Corps Center will also be tied in to the existing GWLHDC sewer system for treatment at the GWLHDC wastewater treatment plant. The wastewater treatment plant currently possesses the capacity to effectively treat up to 150,000 gallons per day. Based upon the maximum estimated site occupancy for all proposed tenants (± 1,250) and using an established figure of 60 gallons of wastewater production per day per person, the volume of wastewater is estimated at approximately 75,500 gallons per day. The current system should be more than capable of handling the volume of wastewater generated by the proposed Job Corps Center and all other proposed uses of the property.

Currently, all garbage and solid wastes generated at the site are disposed under a contract with the GWLHDC. All materials are collected and disposed of in accordance with all federal, state and local regulations. No solid waste is disposed on site. The proposed Job Corps Center will continue to use solid waste contractor to provide waste disposal. While the Job Corps Center may increase the amount of solid waste generated on-site, this increase will be accommodated through additional collection containers (dumpsters) and an increased frequency of collection by the contractor. It is not anticipated that this added capacity will create a significant impact on the ability of regional waste handlers to collect and dispose of waste materials in a safe, timely, and efficient manner. Local off-site approved disposal facilities should not be impacted by the proposed Job Corps Center.

Gulf State Utilities provides the primary supply of electricity (a 4,160 volt power line) to the GWLHDC. The GWLHDC owns and maintains the 208/480 volt distribution lines throughout the facility. An engineering review of the existing electrical infrastructure has determined that the existing electrical capacity on the GWLHDC is not adequate to provide electrical service to the new buildings proposed for the Job Corps Center, so electrical service will

be extended to the proposed Job Corps Center property parcel in accordance with all applicable building codes. This is not expected to create any significant impacts to the environment or to the regional utility infrastructure.

The major highway that connects the GWLHDC facility with nearby metropolitan cities is U.S. Highway 10, located east of the Carville property. No public transportation is available to or from the proposed Job Corps Center. Private bus transportation is available from the Greyhound Bus Company with a bus station located in St. Gabriel. Rail transportation is provided by Amtrak with a station located in Baton Rouge. Air transportation is provided by several commercial carriers, including American Eagle, Continental, Delta Northwest, and USAirways, at the Baton Rouge Metropolitan Airport. The construction of a new Job Corps Center will not have any significant impact on the regional transportation infrastructure.

No significant adverse affects to local medical, emergency, fire and police services are anticipated. The primary medical provider located closest to the proposed Job Corps parcel is the Baton Rouge General Medical Center, approximately 15 miles from the proposed Job Corps parcel. The Job Corps Center will have a small medical and dental facility on-site for use by the residents as necessary. Security services at the Job Corps will be provided by the center's security staff, with two (2) personnel on the day shift, three (3) on the evening shift, and two (2) on the night shift. Law enforcement services are provided by the Iberville Parish Sheriff Office Substation, located approximately 5 miles from the proposed project site. The local fire station is the East Iberville Fire Department located in St. Gabriel. The fire department consists of three (3) stations with approximately 35 volunteers. The GWLHDC has entered into a Memorandum of Agreement with the Iberville Volunteer Fire Department for all emergency services.

The proposed project will not have a significant adverse sociological affect on the surrounding community. Similarly, the proposed project will not have a significant adverse affect on demographic and socioeconomic characteristics of the area.

The alternatives considered in the preparation of this FONSI were as follows: (1) No Action; (2) Construction at an Alternate Site; and (3) Continue Construction as Proposed. The "No Action" alternative was not selected. The U.S. Department of Labor's goal of expanding the Job Corps Program by establishing new Job Corps Center in under-served regions of the United States would not be met under this alternative. "Construction at an Alternate Site" was not selected because the Carville site was the only proposed facility in the State of Louisiana, and no alternative sites are available for construction within the State of Louisiana. Due to the suitability of the proposed site for establishment of a new Job Corps Center, and the absence of any identified significant adverse environmental impacts from locating a Job Corps Center on the subject property, the "Continue Construction as Proposed" alternative was selected.

Based on the information gathered during the preparation of the EA, no environmental liabilities, current or historical, were found to exist on the proposed Job Corps Center site. The construction of the Job Corps Center at the Gillis W. Long Hansen's Disease Center, 5445 Point Clair Road, in Carville, Iberville Parish, Louisiana will not create any significant adverse impacts on the environment.

Dated at Washington, DC, this 21st day of March, 2000.

Mary H. Silva,

Director of Job Corps.

[FR Doc. 00–7472 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–30–U

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act and Workforce investment Act; Migrant and Seasonal Farmworker Employment and Training Advisory Committee; Notice of Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463) as amended, notice is hereby given of the scheduled meeting of the Migrant and Seasonal Farmworker Employment and Training Advisory Committee.

Time and Date: The meeting will begin at 9:00 a.m. on May 4, 2000, and continue until approximately 4:30 p.m., and will reconvene at 9:00 a.m. on May 5, 2000, and adjourn at close of business that day. Time is reserved from 1:30 to 3:00 p.m. on May 4, 2000 for participation and presentations by members of the public.

Place: Mexican American Unity Council Building, Conference Room, 2300 West Commerce Street, San Antonio, Texas 78207–3841.

Status: The meeting will be open to the public. Persons with disabilities who need special accommodations should contact the telephone number provided below no less than ten days before the meeting.

Matters to be Considered: The agenda will focus on the following topics:

Brief report of meeting of December 2, 3, 1999
Public Comment Session
Division of Seasonal Farmworker Program Report and Update
Presentation on Final Workforce Investment Act Regulations
Preparation of Strategic Plan for Advisory Committee

FOR FURTHER INFORMATION CONTACT: Alicia Fernandez-Mott, Chief, Division of Migrant and Seasonal Farmworker Programs, Office of National Programs, Employment and Training Administration, Room N–4641, 200 Constitution Ave., NW, Washington, DC 20210. Telephone: (202) 219–5500.

Signed at Washington, DC, this 21st day of March, 2000.

Alicia Fernandez-Mott,

Acting Director, Office of National Programs, Employment and Training Administration.

[FR Doc. 00–7487 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3415]

AMP, Inc., a Tyco International Ltd. Company, Fiber Optic Division, Middletown, Pennsylvania; Notice of Revised Determination on Reconsideration

By letter of February 10, 2000, petitioners requested reconsideration of the Department's negative determination applicable to workers and former workers of the subject firm.

The initial investigation resulted in a negative determination issued on December 28, 1999, based on the finding that criterion (1) of the worker group eligibility requirements of paragraph (a)(1) of section 250 of the Trade Act of 1974, as amended, was not met. Net employment at the Larue facility increased in 1999 compared to 1998. The notice of negative determination was published in the **Federal Register** on January 14, 2000 (65 FR 2433).

The petitioners presented information showing that the articles subject of the petition investigation were produced in Middletown, not Larue, Pennsylvania. On reconsideration the company provided employment data for the Middletown, Pennsylvania plant of the subject firm. Employment declined from 1998 to 1999 and in the first two months of 2000. The initial investigation confirmed that there was a shift in production of fiber optic connectors from Middletown to Mexico. The workers at the plant are not separately identifiable by product line.

Conclusion

After careful consideration of the new facts obtained on reconsideration, I conclude that there was a shift in production from the workers' firm to Mexico of articles that are like or directly competitive with those produced by the subject firm. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of AMP, Incorporated, A Tyco International LTD. Company, Fiber Optic Division, Middletown, Pennsylvania, who became totally or partially separated from employment on or after August 30, 1998, are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 20th day of March 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7481 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3369]

Superior-Essex, Pauline, KS; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of February 25, 2000, the United Steelworkers of America (USWA) request administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for North American Free Trade Agreement—Transitional Adjustment Assistance (NAFTA–TAA) for workers of the subject firm. The denial notice was signed January 14, 2000, and published in the **Federal Register** on February 4, 2000 (FR 65 5691).

The USWA acknowledges that the subject firm is not shifting production of copper building wire to Mexico, but states that the production of copper rod has been shifted from the Pauline, Kansas plant of Superior-Essex to Mexico.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 20th day of March 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7480 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Fire Protection (Underground Coal Mines)

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before May 26, 2000.

ADDRESSES: Send comments to Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to tomalley@msha.gov, along with an original printed copy. Ms. O'Malley can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Subpart L of 30 CFR part 75, establishes minimum fire protection requirements for underground coal mines. This subpart contains provisions requiring that a program for the instruction of miners in fire fighting and evacuation procedures be adopted by the mine operator and approved by the MSHA district manager. Subpart L also contains provisions requiring fire extinguishers to be examined every 6 months, fire drills to be conducted every 90 days, automatic fire sensor and warning device systems to be examined weekly and tested annually, and fire hydrants and hose to be tested at least once a year. These provisions also require that the mine operator maintain a record or certification that the fire drills and examinations and tests are conducted.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Fire Protection (Underground Coal Mines). MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Paperwork Reduction Act Submissions (http://www.msha.gov/regspwork.htm)", or by contacting the employee listed above in

the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

MSHA believes that the requirement for distinct fire fighting and evacuation programs for coal mines promotes the objectives of the Federal Mine Safety and Health Act of 1977 by ensuring that miners are able to safely evacuate a mine in the event of a fire and that fires are extinguished as soon as possible. MSHA uses the programs and the fire drill and fire fighting equipment certifications to determine whether a mine operator has adequate procedures and equipment to protect miners in the event of a fire.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Fire Protection (Underground Coal Mines)

OMB Number: 1219–0054.

Affected Public: Business or other for-profit institutions.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden hours*
75.1100–3	1,424	Semi-annually	56,960	2 minutes	1,899
33975.1101–23(a)	339	On occasion	339	30 minutes	170
75.1101–23(c)	1,424	Quarterly	17,088	30 minutes	8,544
75.1103–8	685	Weekly	178,100	25 minutes	41,558
75.1103–8 (Test)	685	Annually	2,740	15 minutes	685
75.1103–11	685	Annually	41,100	30 minutes	20,550
Total			296,327	15 minutes	73,406

*Discrepancies due to rounding.

Total Burden Cost (capital/startup) $0.

Total Burden Cost (operating/maintaining): $1,695.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 21, 2000.

Theresa M. O'Malley,

Program Analysis Officer, Program Evaluation and Information Resources.

[FR Doc. 00–7473 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Underground Retorts

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before May 26, 2000.

ADDRESSES: Send comments to Theresa O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to tomalley@msha.gov, along with an original printed copy. Ms. O'Malley can be reached at (703) 235–1470 (voice) or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

This regulation pertains to the safety requirements to be followed by the mine operators in the use of underground retorts to extract oil from shale by heat or fire. Prior to ignition of retorts, the mine operator must submit a written plan indicating the acceptable levels of combustible gases and oxygen; specifications and location of off-gas monitoring procedures and equipment; procedures for ignition of retorts and details of area monitoring and alarm systems for hazardous gases and actions to be taken to assure safety of miners.

II. Desire Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to Underground Retorts. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (http:///www.msha.gov) and then choosing "Statutory and Regulatory Information" and "Paperwork Reduction Act Submissions (http:www.msha.gov/regspwork.htm)", or by contacting the employee listed above the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

This request for information contains provisions whereby mine operators can maintain compliance with the safety of mining personnel where underground retorts are used.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Underground Retorts.

OMB Number: 1219–0096.

Affected Public: Business or other for-profit.

Frequency: On occasion.

Cite/Reference/Form/etc: 30 CFR 57.22401.

Total Respondents: 1.

Total Responses: 1.

Average Time per Response: 160 hours.

Estimated Total Burden Hours: 160 hours.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 21, 2000.

Theresa O'Malley,

Program Analysis Officer, Program Evaluation and Information Resources.

[FR Doc. 00–7474 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–43–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Petitions for Modification of Mandatory Safety Standards

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before May 26, 2000.

ADDRESSES: Send comments to Theresa O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via E-mail to tomalley@msha.gov, along with an original printed copy. Ms. O'Malley can be reached at (703) 235–1910 (voice) or (703) 235–5551 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Section 101(c) of the Federal Mine Safety and Health Act of 1977 (Mine Act), 30 U.S.C. 811(c), provides that a mine operator or a representative of miners may petition the Secretary to modify the application of a mandatory safety standard. A petition for modification may be granted if the Secretary of Labor (Secretary) determines: (1) That an alternative method of achieving the results of the standard exists and that it will guarantee, at all times, no less than the same measure of protection for the miners affected as that afforded by the standard; or (2) that the application of the standard will result in a diminution of safety to the miners affected.

Petitions for Modification must be in writing and contain the petitioner's name and address, the mailing address and mine identification number of the mine or mines affected, the mandatory safety standard to which the petition is directed, a concise statement of the modification requested; a detailed statement of the facts that show the grounds upon which a modification is claimed or warranted; and, if the petitioner is a mine operator, the identity of any representative of miners at the affected mine.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Petitions for Modification. MSHA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information: and then "Paperwork Reduction Act Submissions" (http://www.msha.gov/regspwork.htm) or by contacting the employee listed below in the **FOR FURTHER INFORMATION CONTACT** section of this notice.

III. Current Actions

Each petition for modification must be investigated by MSHA on a mine-by-mine basis and a decision reached on the merits. A mine operator may only request modification of one mandatory safety standard per petition. However, a mine operator may file a petition for more than one mine by showing that identical issues of law and fact exist for each mine.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Petitions for Modification of Mandatory Safety Standards.

OMB Number: 1219–0065.

Affected Public: Business or other for-profit institutions.

Frequency: On occasion.

Cite/Reference/Form/etc: 30 CFR 44.9, 44.10, and 44.11

Total Respondents: 140 mine operators.

Total Responses: 110.

Average Time per Response: 40 hours.

Estimated Total Burden Hours: 4,400 hours.

Estimated Total Burden Cost: $150,420.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 21, 2000.

Theresa M. O'Malley,

Program Analysis Officer, Program Evaluation and Information Resources.

[FR Doc. 00–7475 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–43–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Notice [00–028]

NASA Advisory Council (NAC), Aero-Space Technology Advisory Committee (ASTAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aero-Space Technology Advisory Committee.

DATES: Wednesday, April 12, 2000, 1 p.m. to 5 p.m.; and Thursday, April 13, 2000, 8:30 a.m. to 5 p.m.

ADDRESSES: Holiday Inn, Rosslyn Westpark Hotel, 1900 North Fort Myer Drive, Arlington, Virginia 22209; and National Aeronautics and Space Administration, Room 6H46, 300 E Street, SW, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Mary-Ellen McGrath, Office of Aero-Space Technology, National Aeronautics and Space Administration, Washington, DC 20546 (202/358–4729).

SUPPLEMENTARY INFORMATION: The April 12, 2000, meeting will be a Joint Aero-Space Technology Advisory Committee (ASTAC) and Research, Engineering and Development (R,E&D) Advisory Committee session. The meeting will be open to the public up to the seating capacity of the room.

The agenda for the meeting is as follows:

Wednesday, April 12—Holiday Inn, Rosslyn Westpark Hotel

—Opening Comments for Joint Aero-Space Technology Advisory Committee (ASTAC) and Research, Engineering and Development (R,E&D) Advisory Committee
—Icing Research Overview
—Small Aircraft Transportation System (SATS) Report
—Air Traffic Management Steering Committee Report
—Aviation Systems After Next R&D Planning

Thursday, April 13—National Aeronautics and Space Administration

—Aero-Space Technology Overview
—Intelligent Synthesis Environment (ISE) Briefing
—Revolutionary Concepts (REVCON) Selection Report
—High-Speed Research Program Status
—University Strategy Update
—Subcommittee Reports

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Dated: March 21, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–7414 Filed 3–24–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–029)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Horton's Orthotic Lab, Inc., of Little Rock, Arkansas, has applied for an exclusive license for the field of use in orthotics and prosthetics of the invention disclosed in NASA Case No. MFS–31258 entitled "Releasable Conical Roller Clutch" which has been assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to Mr. James J. McGroary, Patent Counsel/LS01, Marshall Space Flight Center, Huntsville, AL 35812.

DATES: Responses to this notice must be received by May 26, 2000.

FOR FURTHER INFORMATON CONTACT: Ms. Caroline Wang, Mail Code CD30, Marshall Space Flight Center, Huntsville, AL 35812; telephone 256–544–3887.

Dated: March 21, 2000.

Edward A. Frankle,

General Counsel.

[FR Doc. 00–7415 Filed 3–24–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

NARA Scheduling and Appraisal Review

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice; request for comment.

SUMMARY: The National Archives and Records Administration (NARA) is conducting a review of its records scheduling and appraisal policies and process. NARA invites comment on a proposed Work Plan for Stage I supporting this Scheduling and Appraisal Project. Work under this proposed Plan includes:

1. Developing a methodology for gathering information from customers (Federal agencies, including NARA staff, and the public);
2. Developing data gathering tools such as customer surveys and focus group sessions;
3. Performing the information collections;
4. Analyzing the data gathered; and,
5. Analyzing a number of policy issues relating to scheduling and appraising Federal records.

The Draft Work Plan is available at http://www.nara.gov/records/sap/

DATES: Comments must be received by April 11, 2000.

ADDRESSES: Paper copies of the document are also available from the contact person in **FOR FURTHER INFORMATION CONTACT** section of this notice.

Send comments electronically in the body of the message to *comments@nara.gov*. Comments may also be mailed to Scheduling and Appraisal Project Comments, Rm 4100, National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001 or faxed to 301 713–7270.

FOR FURTHER INFORMATION CONTACT: Susan Cummings by email at *susan.cummings@arch2.nara.gov* or by telephone at 301 713–7360, ext. 238.

SUPPLEMENTARY INFORMATION: This notice is also published in the Commerce Business Daily.

Lewis J. Bellardo,

Deputy Archivist of the United States.

[FR Doc. 00–7438 Filed 3–24–00; 8:45 am]

BILLING CODE 7515–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–247]

Consolidated Edison Company of New York, Inc.; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–26 issued to Consolidated Edison Company of New York, Inc. (the licensee) for operation of the Indian Point Nuclear Generating Unit No. 2, located in Westchester County, New York.

The proposed amendment would revise Technical Specifications (TSs) associated with probes used in steam generator tube inspections, specifically TS Section 4.13.A.3.f. The proposed change would provide more flexibility in the type of probe used and to reflect current technological advances in inspection equipment, while still maintaining the current 610-mil diameter probe restriction.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

No. The proposed changes facilitate the application of current diagnostic techniques. The changes involve updating Section 4.13.A.3.f, to permit more flexibility in the eddy current probes used in steam generator tube inspection and to reflect current technological advances in inspection equipment, while still maintaining the 610-mil diameter probe restriction. These changes do not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed changes would not involve a significant increase in the probability or [* * *] consequences of an accident previously evaluated.

2. Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes facilitate the application of current diagnostic techniques. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently no new failure modes are introduced as a result of the proposed change. Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed changes facilitate the application of current diagnostic techniques. Since there are no changes to the operation of the facility or the physical design, the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By April 26, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the

petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. Brent L. Brandenburg, Assistant General Counsel, Consolidated Edison Company of New York, Inc., 4 Irving Place—1822, New York, NY 10003, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors.

For further details with respect to this action, see the application for amendment dated March 17, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 22nd day of March 2000.

For the Nuclear Regulatory Commission.

Jefferey F. Harold,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7430 Filed 3–24–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF PERSONNEL MANAGEMENT

[RI 34–16]

Proposed Collection; Comment Request for Review of a New Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for a new information collection. RI 34–16, Information for Individuals Who Have Received an Overpayment From the Civil Service Retirement and Disability Fund (CSRDF), will be used to submit a lump-sum payment to settle an overpayment from the CSRDF, request an installment repayment agreement, or request reconsideration, waiver or compromise.

Comments are particularly invited on:

—Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;

—Whether our estimate of the public burden of this collection is accurate, and based on valid assumptions and methodology; and

—Ways in which we can minimize the burden of the collection of information on those who are to respond, through use of the appropriate technological collection techniques or other forms of information technology.

Approximately 1,000 RI 34–16 forms are completed per year. Each form will take approximately 1 hour to complete. The annual estimated burden will be 1,000 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov.

DATES: Comments on this proposal should be received on or before May 26, 2000.

ADDRESSES: Send or deliver comments to—William J. Washington, Chief, Financial Management Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3H19, Washington, DC 20415.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Phyllis R. Pinkney, Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–7440 Filed 3–24–00; 8:45 am]

BILLING CODE 6325–01–U

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Reclearance of an Information Collection

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Public Law 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for reclearance of an information collection. Standard Form 3112, CSRS/FERS Documentation in Support of Disability Retirement Application, collects information from applicants for disability retirement so that OPM can determine whether to approve a disability retirement. The applicant will only complete Standard Forms 3112A and 3112C. Standard Forms: 3112B, 3112D, and 3112E will be completed by the immediate supervisor and the employing agency of the applicant.

Comments are particularly invited on: whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

Approximately 12,100 Standard Form 3112, SF 3112A and SF 3112C will be completed annually. The SF 3112A requires approximately 30 minutes to complete and the SF 3112C requires approximately 60 minutes to complete. The annual burden is 12,775 hours.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, or E-mail to mbtoomey@opm.gov

DATES: Comments on this proposal should be received on or before May 26, 2000.

ADDRESSES: Send or deliver comments to Ronald W. Melton, Chief, Operations Support Division, Retirement and Insurance Service, U.S. Office of Personnel Management, 1900 E Street, NW, Room 3349, Washington, DC 20415–3540.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION CONTACT: Cyrus S. Benson, Sr., Management Analyst, Budget & Administrative Services Division, (202) 606–0623.

Office of Personnel Management.

Janice R. Lachance,

Director.

[FR Doc. 00–7441 Filed 3–24–00; 8:45 am]

BILLING CODE 6325–01–U

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–8037]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Aeroflex Incorporated, Common Stock, Par Value $.10, and Preferred Share Purchase Rights)

March 21, 2000.

Areoflex Incorporated ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d)[2] thereunder, to withdraw the securities described above ("Securities")[3] from listing and registration on the New York Stock Exchange,Inc. ("NYSE").

The Securities, which have been listed and registered on the NYSE pursuant to Section 12(b)[4] of the Act, have become registered under Section 12(g) of the Act,[5] pursuant to a Registration Statement filed with the Commission on Form 8–A which became effective on March 20, 2000. The Securities have been designated for quotation on the National Market of the Nasdaq Stock Market, Inc. ("Nasdaq"), and trading in the Securities on the Nasdaq is scheduled to commence at the opening of business on March 21, 2000.

The Company has stated that it has complied with the Rules of the NYSE governing the withdrawal of its Security from listing and registration on the NYSE and that the NYSE in turn has indicated that it will not oppose such withdrawal.

The Company's application relates solely to the withdrawal of the Securities from listing and registration on the NYSE and shall have no effect upon the Securities' continued designation for quotation and trading on the Nasdaq. By reason of Section 12(g) of the Act[6] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission required by Section 13 of the Act.[7]

Any interested person may, on or before April 11, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the NYSE and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–7436 Filed 3–24–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] The Preferred Share Purchase Rights currently are attached to and trade together with shares of the Common Stock.

[4] 15 U.S.C. 78*l*(b).

[5] 15 U.S.C. 78*l*(g).

[6] *Id.*

[7] 15 U.S.C. 78m.

[8] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–9997]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (Koger Equity, Inc., Common Stock, Par Value $.01 per Share)

March 21, 2000.

Koger Equity, Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw the security described above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex").

The Security, which has been listed registered on the Amex, has recently become listed and registered on the New

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

York Stock Exchange, Inc. ("NYSE"), under a Registration Statement, filed with the Commission on Form 8–A, which became effective on March 6, 2000. Trading in the Security commenced on the NYSE, and was simultaneously suspended on the Amex, at the opening of business on March 9, 2000.

The Company has stated that it has complied with Amex Rules relating to the withdrawal of its Security, and that the Amex in turn has indicated that it does not oppose such withdrawal. In obtaining a listing and registration for its Security on the NYSE, the Company hopes to realize a broader market for shares of its Security than was available through the Amex.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listing and registration on the NYSE. By reason of Section 12(b) of the Act [3] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission under Section 13 of the Act.[4]

Any interested person may, on or before April 11, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–7435 Filed 3–24–00; 8:45 am]

BILLING CODE 8010–01–M

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78m.

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12811]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration (U.S.B. Holding Co., Inc., Common Stock, Par Value $.01 per Share)

March 21, 2000.

U.S.B. Holding Co., Inc. ("Company"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 12d2–2(d) thereunder, [2] to withdraw the security specified above ("Security") from listing and registration on the American Stock Exchange LLC ("Amex").

The Security has been listed and registered on the Amex. On December 16, 1999, the Company's Registration Statement on Form 8–A, filed with the Commission on December 8, 1999, became effective and the Security became listed and registered on the New York Stock Exchange, Inc. ("NYSE"). Trading in the Company's Security commenced on the NYSE, and was simultaneously suspended on the Amex, at the opening of business on December 28, 2000.

The Company has stated that it has complied with the rules of the Amex governing the withdrawal of its Security and that the Amex in turn has indicated that it will not oppose such withdrawal. The Company hopes that, by listing and registering its Security on the NYSE, it will benefit from the NYSE's deep and liquid market, and that the Company will gain better exposure to the marketplace than it has had through the Amex. The Company does not see any merit in having its Security listed on two exchanges simultaneously.

The Company's application relates solely to the withdrawal of the Security from listing and registration on the Amex and shall have no effect upon the Security's continued listing and registration on the NYSE. By reason of Section 12(b) of the Act [3] and the rules and regulations of the Commission thereunder, the Company shall continue to be obligated to file reports with the Commission under Section 13 of the Act.[4]

Any interested person may, on or before April 11, 2000, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 00–7434 Filed 3–24–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b)

[4] 15 U.S.C. 78m.

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of March 27, 2000.

A closed meeting will be held on Thursday, March 30, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to hte Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Carey, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matters of the closed meeting scheduled for Thursday, March 30, 2000 are:

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7515 Filed 3–22–00; 4:08 pm]

BILLING CODE 8010–01–M

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42546; File No. SR–NYSE–00–02]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 by the New York Stock Exchange, Inc. To Amend the Schedule of Continued Annual Listing Fees for Non-U.S. Companies

March 20, 2000.

On January 4, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] a proposed rule change to amend the schedule of continuing annual fees for non-U.S. companies. Amendment No. 1 was filed on January 27, 2000.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on February 17, 2000.[4] No comments were received on the proposal. This order approves the proposal, as amended.

The proposed rule change amends the listed company fee schedule, set forth in Paragraph 902.04 of the NYSE's Listed Company Manual ("Manual"), as it applies to continuing annual listing fees for non-U.S. companies. The current continuing annual listing fee for non-U.S. companies is equal to the greater of the fee calculated on a per share or American Depositary Receipts ("ADR") (or similar security) basis or based on the range minimums listed in the Manual. The proposal would combine the three lowest range of shares or ADRs (up to 10 million, from 10 to 20 million, and from 20 to 50 million) and their respective fees ($16,170, $24,260, and $32,340) into one range minimum (up to 50 million) with one fee ($35,000).

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6(b).[5] The proposal would establish a range minimum fee for non-U.S. companies with up to 50 million shares or ADRs (or similar securities) of $35,000 per year. In light of the increased costs of providing market place services,[6] the Commission believes that the proposal is consistent with the Section 6(b)(4) [7] requirements that an Exchange have rules that provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.[8]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NYSE–00–02), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7400 Filed 3–24–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard Strasser, Assistant Director, Division of Market Regulation, SEC, dated January 21, 2000 ("Amendment No. 1").

[4] Securities Exchange Act Release No. 42406 (February 8, 2000), 65 FR 8222.

[5] 15 U.S.C. 78f(b).

[6] According to the NYSE, the proposal is necessary because of the increased costs of providing market place services to issuers, such as research analysis. Telephone conversation between Amy Bilbija, Counsel, NYSE, and Heather Traeger, Attorney, Division of Market Regulation, SEC, on March 8, 2000.

[7] 15 U.S.C. 78f(b)(4).

[8] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital information. 15 U.S.C. 78c(f).

[9] 15 U.S.C. 78b(b)(2).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42550; File No. SR–PCX–99–38]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Exchange, Inc. Relating to Statistical Reports Provided to Market Makers

March 20, 2000.

I. Introduction

On October 5, 1999, the Pacific Exchange, Inc. ("Exchange" or "PCX"), filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder, [2] a proposed rule change relating to statistical reports provided to market makers. The Exchange filed Amendment No. 1 to the proposed rule change on January 11, 2000.[3] The proposed rule change, as amended, was published for comment in the **Federal Register** on February 15, 2000.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

II. Description of the Proposal

The Exchange proposes to furnish its market makers with statistical reports designed to measure trading volume and participation in trading activity in each option issue traded on the Exchange. The reports will identify which order flow providers currently are bringing trades to the PCX and how those orders are being executed. Specifically, the reports will include monthly trading information that describes, by order flow provider, the issue and number of contracts traded, the Lead Market Maker post where the issue is traded, the contra and executing broker symbols, and whether the trade was executed through the Exchange's Automatic Execution System, through the Limit Order Book, or manually in the trading crowd.

The Exchange believes these reports will help market makers develop marketing plans specific to order flow providers that the market makers can use to help increase order flow to the PCX. In addition, the reports are designed to help market makers support their business relationships and encourage further business development with order flow providers. Furthermore, these reports will help the market makers identify specific customers to whom they should direct their marketing efforts. The Exchange believes that these reports will help the market makers focus on specific business needs of their customers, so that they can attract more business to the PCX. Finally, the Exchange believes the reports will help the Exchange compete for order flow in multiple traded issues.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Richard C. Strasser, Assistant Director, Division of Market Regulation, Commission, dated January 7, 2000 ("Amendment No. 1"). Amendment No. 1 adds Exchange Rule 6.41 to the text of Exchange Rule 6.

[4] Securities Exchange Act Release No. 42401 (Feb. 7, 2000), 65 FR 6647.

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particular, the requirements of Section 6 of the Act.[5] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,[6] in that it is designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market.[7]

The Commission recognizes the extent to which the proposed rule change may facilitate the practice of market makers offering incentives such as payment for order flow to firms that agree to direct their order flow to the Exchange. Specifically, by providing market makers with firm-specific volume breakdowns, the reports will permit market makers to identify firms that have not historically provided significant order flow to the Exchange. Market makers may in turn seek to attract new orders from these firms by offering payment in exchange for the new order flow. Such arrangements, standing along, are not inconsistent with the purposes of the Act as long as price competition remains vigorous and brokers vigilantly pursue their best execution obligation.

Accordingly, the Commission does not believe the proposal's potential to facilitate payment for order flow arrangements constitutes a barrier to approval. We will, however, monitor the manner in which the reports are used, to ensure that they are used in a manner consistent with the purposes of the Act.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 6(b)(5).

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–PCX–99–38), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7437 Filed 3–24–00; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. 78f.

[6] 15 U.S.C. 78f(b)(5).

[7] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Region I—SBA Providence District Office, Rhode Island SBA Advisory Council; Notice of Public Meeting

The Rhode Island SBA Advisory Council located in Providence, Rhode Island, will hold a public meeting at 8:00 a.m. on Friday, April 28, at the ToKalon Club, 26 Main Street, Pawtucket, RI 02860, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information write or call Mark S. Hayward, Acting District Director, 380 Westminster Street, Room 511, Providence, Rhode Island 02903 or telephone at (401) 528–4561.

Bettie Baca,

Counselor to the Administrator/Public Liaison.

[FR Doc. 00–7505 Filed 3–24–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

Region I—SBA Providence District Office Rhode Island SBA Advisory Council; Notice of Public Meeting

The Rhode Island SBA Advisory Council located in Providence, Rhode Island, will hold a public meeting at 8:00 a.m. on Friday, May 19, 2000, at the ToKalon Club, 26 Main Street, Pawtucket, RI 02860, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information write or call Mark S. Hayward, Acting District Director, 380 Westminster Street, Room 511, Providence, Rhode Island 02903 or telephone at (401) 528–4561.

Bettie Baca,

Counselor to the Administrator/Public Lioison.

[FR Doc. 00–7506 Filed 3–24–00; 8:45 am]

BILLING CODE 8025–01–U

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Request for Emergency Review, Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with P.L. 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the SSA Reports Clearance Officer and to the OMB Desk Officer at the following addresses:

(OMB) Attn: Desk Officer for SSA, New Executive Office Building, Room 10230, 725 17th St., NW, Washington, D.C. 20503

(SSA) Social Security Administration, DCFAM, Attn: Frederick W. Brickenkamp, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235

I. The information collection listed below has been submitted to OMB for emergency clearance. OMB approval has been requested by April 7, 2000. Comments will be most useful if submitted to OMB and SSA by this date.

Medicare Part B Buy-in Screening Project—0960–0601. Public Law (Pub. L.) 105–277 authorized SSA to conduct a Medicare buy-in demonstration project to evaluate means to promote the Medicare buy-in programs targeted to elderly and disabled individuals under titles XVIII and XIX of the Social Security Act. P.L. 106–113 extends the authority established for fiscal year (FY) 1999 and allows SSA to use money still available to continue exploring the Medicare buy-in program in FY 2000. A lack of awareness about the Medicare buy-in programs appears to be one of the major obstacles to enrollment. Other obstacles to enrollment include the confusion of potential eligibles as to how to apply for these programs and a preference for dealing with SSA field offices rather than with local Medicaid offices.

SSA will screen respondents voluntarily for potential Medicare Part B buy-in eligibility using a screening guide developed for this purpose. The screening guide will collect information from SSA beneficiaries regarding income, resources, marital status, and living arrangements and also ask questions about how they became aware of Medicare Part B buy-in programs. SSA will gather this information to identify and overcome obstacles to Medicare Part B buy-in enrollments and to determine potential eligibility for Medicare Part B benefits.

In one of the models, the Decisionmaking Model, SSA employees will complete State buy-in application forms for beneficiaries screened potentially eligible. SSA will then make a decision about the beneficiary's eligibility, following the State's Medicaid eligibility rules, and will pass all materials and its decision to the county welfare office for issuance of the buy-in award or denial notice. In another model called the Widow(er)s Model, SSA employees will complete the State buy-in application but not make the eligibility decision. The completed application will be submitted to the county welfare office for an eligibility determination.

Collection Instrument	SSA Screening Guide	State Buy-In Guide Application.
Number of Respondents	25,000	15,000.
Frequency of Response	1	1.
Average Burden Per Response	20 minutes	124 minutes.
Estimated Annual Burden	8,333 hours	31,000 hours.

II. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain a copy of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to him at the address listed above.

1. Statement of Claimant or Other Person—0960–0045. In special situations when there is no standard form or questionnaire, Form SSA–795 is used by SSA to obtain information from claimants or other persons having knowledge of facts in connection with claims for Social Security or Supplementary Supplemental Security Income. The information collected is used to process claims for benefits. The respondents are applicants for Social Security or Supplemental Security Income benefits.

Number of Respondents: 305,500.
Frequency of Response: 1.
Average Burden Per Response: 15 minutes.
Estimated Annual Burden: 76,375 hours.

2. Student Statement Regarding School Attendance—0960–NEW. The information on Form SSA–1372–TEST is needed to determine whether children of an insured worker are eligible for benefits as a student. SSA will conduct a limited trial of a revised SSA–1372 (Student Statement Regarding School Attendance) designated as SSA–1372–TEST. This limited test will study the efficacy and usability of the new format. Results of the testing will formulate SSA's decision to reject, modify or institute the revised form. The respondents are student claimants for Social Security Benefits and their respective schools.

Number of respondents: 2,000.
Number of Response: 1.
Average burden per response: 10 minutes.
Estimated Annual Burden: 333 hours.

III. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to him at the address listed above.

1. Privacy and Disclosure of Official Records and Information: Availability of Information and Records to the Public—20 CFR 401 and 402—0960–0566. The respondents are individuals requesting access to their SSA records, correction of their SSA records and disclosure of SSA records. This information is required to:

(a) Identify individuals who request access to their records:
Number of Respondents: 10,000.
Frequency of Response: On Occasion.
Average Burden Per Response: 11 minutes.
Estimated Annual Burden: 1,833 hours.

(b) Designate an individual to receive and review a recordholder's sensitive medical records in accordance with 20 CFR 401.55 and for disclosure of such records to the recordholder by his/her designee:
Number of Respondents: 3,000.
Frequency of Response: On Occasion.
Average Burden Per Response: 2 hours.
Estimated Annual Burden: 6,000 hours.

(c) Correct or amend records:
Number of Respondents: 100.
Frequency of Response: On Occasion.
Average Burden Per Response: 10 minutes.
Estimated Annual Burden: 17 hours.

(d) Obtain consent from an individual to release his/her records to others. Consents are submitted by letter in writing or by use of an SSA–3288:
Number of Respondents: 2,200,000.
Frequency of Response: On Occasion.
Average Burden Per Response: 3 minutes.
Estimated Annual Burden: 110,000 hours.

(e) Facilitate the release of information under the Freedom of Information Act (FOIA):
Number of Respondents: 15,000.
Frequency of Response: On Occasion.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 1,250.

(f) Grant Waiver or reduction of fees for records requested under FOIA:
Number of Respondents: 400.
Frequency of Response: On Occasion.
Average Burden Per Response: 5 minutes.
Estimated Annual Burden: 33 hours.

2. Annual Registration Statement Identifying Separated Participants with Deferred Benefits, Schedule SSA—0960–0606 (1999 edition). Schedule SSA is a form filed annually as part of a series of pension plan documents required by Section 6057 of the IRS Code. Administrators of pension benefit plans are required to report specific information on future plan benefits for those participants who left plan coverage during the year. SSA maintains the information until a claim for Social Security benefits has been approved. At that time, SSA notifies the beneficiary of his/her potential eligibility for payments from the private pension plan. The respondents are administrators of pension benefit plans or their service providers employed to prepare the Schedule SSA on behalf of the pension benefit plan.

Below is an estimate of the cost and hour burdens in completing and filing Schedule SSA(s). The burden estimates will vary for different plans and service providers, depending on individual circumstances. Therefore, the estimate below is simply an average.

Number of Respondents: 88,000.
Frequency of Response: Annually.
Average Burden Per Respondent: 2.5 hours.
Estimated Annual Burden: 220,074 hours.
Estimated Annual Cost Burden for All Respondents: $12,194,400.

Dated: March 21, 2000.

Frederick W. Brickenkamp,

Reports Clearance Officer.

[FR Doc. 00–7422 Filed 3–24–00; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 3262]

Information Collection; Comment Request

AGENCY: Department of State.

ACTION: 30-Day Notice of Information Collection; Joint Survey on Public-Private Partnership of the Alliance for International Educational and Cultural Exchange (Alliance) and the Interagency Working Group on U.S. Government-Sponsored International Exchanges and Training (IAWG).

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: New information collection request.

Originating Office: ECA/C.

Title of Information Collection: Joint Survey on Public-Private Partnership of the Alliance for International Educational and Cultural Exchange (Alliance) and the Interagency Working Group on U.S. Government-sponsored International Exchanges and Training (IAWG).

Frequency: This collection is the first effort and every effort will be made to keep additional information collection activities to the minimum required for effective reporting within the IAWG mandate.

Form Number: None.

Respondents: Private sector organizations that are involved in international training and exchange activities.

Estimated Number of Respondents: 1,200.

Average Hours Per Response: 45 minutes.

Total Estimated Burden: None, the total time, effort or financial resources expended to generate survey responses would not go beyond those that would be incurred in the normal course of an organization's administrative activities.

Public comments are being solicited to permit the agency to:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.
- Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected.
- Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER ADDITIONAL INFORMATION: Copies of the proposed information collection and supporting documents may be obtained from Mary O'Boyle Franko, Suite 320, 301 4th Street, SW, 202–260–5124, ECA/C, U.S. Department of State, Washington, DC 20520. Public comments and questions should be directed to the State Department Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20530, (202) 395–5871.

Dated: February 18, 2000.

James D. Whitten,

Executive Director, Bureau of Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–7353 Filed 3–24–00; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[DA1–239]

Bureau of Educational and Cultural Affairs Redelegation of Authority to the Principal Deputy Assistant Secretary and Deputy Assistant Secretary for Policy and Resources and to the Chief, Exchange Visitor Program Designation Staff

By virtue of the authority vested in me and in accordance with Delegation of Authority No. 236–1, dated November 9, 1999, I hereby redelegate to the Principal Deputy Assistant Secretary and Deputy Assistant Secretary for Policy and Resources (ECA/D) and to the Chief, Exchange Visitor Program Designation Staff and designated members of the Exchange Visitor Program Designation Staff (ECA/GCV), the authority to exercise the following-described authorities:

To ECA/D, the functions in sections 101(1)(15)(J) and 212(j) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J) and 1182 (J)), and section 641 of Pub L. 104–208 (8 U.S.C. 1372(h)(2)(A)) as they relate to the designation, redesignation, suspension, or revocation of Exchange Visitor Programs.

To ECA/GCV, the functions in sections 101(l)(15)(J) and 212(j) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(J) and 1182(J)), and section 641 of Pub. L. 104–208 (8 U.S.C. 1372(h)(2)(A)) as they relate to all other Exchange Visitor Program matters. (In exercising this authority, ECA/GCV shall consult, as necessary, with ECA/D.)

Notwithstanding any other provision of this Order, the Assistant Secretary retains, and may at any time exercise, any function or authority redelegated herein.

All actions related to the responsibilities described herein which have been taken pursuant to any authority delegated prior to this Order or delegated by this Order, and which have been taken prior to and are in effect on the date of this Order, are hereby confirmed and ratified. Such actions shall remain in force as if taken under this Order, unless or until rescinded, amended or superseded.

This Redelegation shall be published in the **Federal Register**.

This Order is effective immediately.

Dated: March 10, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 00–7354 Filed 3–24–00; 8:45 am]

BILLING CODE 4710–08–P

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1517).

TIME AND DATE: 9 a.m. (CST), March 29, 2000.

PLACE: Nashville Convention Center, Level One, Rooms 103 and 104, 601 Commerce Street, Nashville, Tennessee.

STATUS: Open.

Agenda: Approval of minutes of meeting held on February 22, 2000.

New Business

B—Purchase Award

B1. Contract with Key Services, Inc., for telephone moves, additions, and changes.

B2. Contract with IBM Corporation for mainframe computer products and services.

C—Energy

C1. Extension of blanket agreement with A & G Tree Service, Inc., for transmission line right-of-way reclearing and maintenance.

C2. Extension of blanket agreement with Three Rivers Contracting for transmission line right-of-way reclearing and maintenance.

E—Real Property Transactions

E1. Amendment to Guntersville Reservoir Land Management Plan to change the allocated use for an 18.5-acre portion of Tract No. XGR–20PT from timber and wildlife management to industrial use and grant of a permanent easement for a road easement (Tract No. XTGR–166H) and a permanent industrial easement (Tract No. XTGR—1671E); both without charge, except for payment of TVA's administrative costs, to the City of Guntersville, affecting approximately 62.1 acres of land on Guntersville Reservoir in Marshall County, Alabama.

E2. Abandonment of approximately 14.7 acres of the Waterville-Kingsport Nolichucky Tap Transmission Line right-of-way easement in Greene County, Tennessee (Tract No. NOLT–2).

F—Unclassified

1. Filing of condemnation cases to acquire permanent easements, rights-of-way, right to enter, and fee simple ownership, affecting the Murfreesboro-Smyrna No. 2 Transmission Line, Rutherford County, Tennessee; West Ringgold-Center Point Transmission Line, Whitfield County, Georgia; and acquisition of 2.77 acres of land in Todd County, Kentucky, for the expansion of TVA's Elkton, Kentucky, Substation from a 69-kV to a 161-kV substation.

Information Items

1. Approval of the membership and chair appointments to the Regional Resource Stewardship Council.

For more information: Please call TVA Public Relations at (423) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000.

Dated: March 22, 2000.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 00–7592 Filed 3–23–00; 1:21 pm]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending February 25, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–6969.
Date Filed: February 22, 2000.
Parties: Members of the International Air Transport Association.

Subject

PTC2 EUR–AFR 0098 dated 18 February 2000
Europe-Africa Expedited Resolution 002hh
Intended effective date: 1 April 2000

Docket Number: OST–2000–6988.
Date Filed: February 25, 2000.
Parties: Members of the International Air Transport Association.

Subject

PTC12 NMS–AFR 0079 dated 15 February 2000
North Atlantic-Africa Resolutions r1–r21
Minutes—PTC12 NMS–AFR 0081 dated 18 February 2000
Tables—PTC12 NMS–AFR FARES 0048 dated 22 February 2000
Intended effective date: 1 April 2000

Docket Number: OST–2000–6989.
Date Filed: February 25, 2000.
Parties: Members of the International Air Transport Association.

Subject

PTC12 SATL–EUR 0058 dated 11 February 2000
South Atlantic-Europe Resolutions r1–r14
Minutes—PTC12 SATL–EUR 0059 dated 22 February 2000
Tables—PTC12 SATL–EUR FARES 0016 dated 18 February 2000
Intended effective date: 1 April 2000

Docket Number: OST–2000–6990.
Date Filed: February 25, 2000.
Parties: Members of the International Air Transport Association.

Subject

PTC12 MEX–EUR 0031 dated 15 February 2000
Mid Atlantic-Europe Resolutions r1–r22
Minutes—PTC12 MEX–EUR 0030 dated 11 February 2000
Tables—PTC12 MEX-EUR FARES 0010 dated 25 February 2000
Intended effective date: 1 May 2000

Docket Number: OST–2000–6991.
Date Filed: February 25, 2000.
Parties: Members of the International Air Transport Association.

Subject

PTC2 ME–AFR 0046 dated 22 February 2000
TC2 Middle East-Africa Expedited Resolutions r1–r3
Intended effective date: 1 April 2000s

Dorothy W. Walker,

Federal Register Liaison.

[FR Doc. 00–7462 Filed 3–24–00; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Aviation Proceedings, Agreements Filed During the Week Ending March 10, 2000

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days after the filing of the application.

Docket Number: OST–2000–7042.
Date Filed: March 7, 2000.
Parties: Members of the International Air Transport Association.

Subject

PTC COMP 0589 dated 7 March 2000
Composite Resolution 002y
Minutes—PTC COMP 0588 dated 7 March 2000
Intended effective date: 1 April 2000 (except to/from Japan 15 April 2000)

Docket Number: OST–2000–7043.
Date Filed: March 8, 2000.
Parties: Members of the International Air Transport Association.

Subject

PTC12 NMS–AFR 0078 dated 10 February 2000 (Mail Vote 064)
Mid Atlantic-Africa Resolutions r1–r9
PTC12 NMS–AFR 0082 dated 7 March 2000 adopting (Mail Vote 064)
PTC12 NMS–AFR 0080 dated 15 February 1999
South Atlantic-Africa Resolutions r10–r22
Minutes—PTC12 NMS–AFR 0081 dated 18 February 2000 filed with Docket OST–00–6988
Tables—PTC12 NMS–AFR FARES 0050 dated 7 March 2000
PTC12 NMS–AFR FARES 0049 dated 25 February 2000 Intended effective date: 1 April 2000

Docket Number: OST–2000–7044.
Date Filed: March 8, 2000.
Parties: Members of the International Air Transport Association.

Subject

PTC2 EUR–AFR 0099 dated 25 February 2000
TC2 Europe–Africa Resolutions r1–r56
PTC2 EUR–AFR 0101 dated 3 March 2000 (Technical Correction)
Minutes—PTC2 EUR–AFR 0100 dated 29 February 2000
Tables—PTC2 EUR–AFR Fares 0061 dated 3 March 2000
PTC2 EUR–AFR Fares 0062 dated 3 March 2000
PTC2 EUR–AFR Fares 0063 dated 3 March 2000
PTC2 EUR–AFR Fares 0064 dated 3 March 2000

PTC2 EUR–AFR Fares 0065 dated 3 March 2000
PTC2 EUR–AFR Fares 0066 dated 3 March 2000
Intended effective date: 1 May 2000

Docket Number: OST–2000–7067.
Date Filed: March 10, 2000.
Parties: Members of the International Air Transport Association.

Subject

PTC2 ME–AFR 0047 dated 29 February 2000
TC2 Middle East–Africa Resolutions r1–r18
Minutes—PTC2 ME–AFR 0048 dated 7 March 2000
Tables—PTC2 ME–AFR FARES 0032 dated 7 March 2000
Intended effective date: 1 May 2000

Dorothy Walker,
Federal Register Liaison.
[FR Doc. 00–7464 Filed 3–24–00; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending February 25, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–6962.
Date Filed: February 22, 2000.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 21, 2000.
Description: Application of the Flight International Group, Inc. ("Flight International" or "Group"), Flight Alaska, Inc. ("Flight Alaska"), and Yute Air Alaska, Inc. ("Yute") pursuant to 49 U.S.C. 41105 and Subpart Q, jointly seek expedited approval by the Department of Transportation, of the transfer of Yute's Certificate of Public Convenience and Necessity to Flight Alaska d/b/a Yute Air Alaska.

Docket Number: OST–2000–6978.
Date Filed: February 24, 2000.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 23, 2000.
Description: Application of Servicios Aereos Profesionales, Inc. pursuant to 49 U.S.C. 41102 and Subpart Q, requests a Certificate of Public Convenience and Necessity to engage in Foreign Scheduled Air Transportation of persons, property and mail.

Docket Number: OST–2000–6979.
Date Filed: February 24, 2000.
Due Date for Answers, Conforming Applications, or Motions to Modify Scope: March 23, 2000.
Description: Application of Servicios Aereos Profesionales, Inc. pursuant to 49 U.S.C. 41102 and Subpart Q, requests a Certificate of Public Convenience and Necessity authorizing Interstate Scheduled Air Transportation of person, property and mail.

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 00–7463 Filed 3–24–00; 8:45 am]
BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ending March 10, 2000

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: OST–2000–7060.
Date Filed: March 9, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: April 6, 2000.
Description: Application of Air Malta P.L.C. ("Air Malta") pursuant to 49 U.S.C. 41302 and Subpart Q, requests the issuance of a foreign air carrier permit to Air Malta to provide scheduled and charter foreign air transportation of passenger, property (including cargo), and mail between Malta and the United States, commencing on or about May 1, 2000.

Docket Number: OST–2000–7069.
Date Filed: March 10, 2000.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: March 31, 2000.
Description: Application of Airline Partner Associates, Inc. d/b/a TransPacific Airlines pursuant to 49 U.S.C. 41102 and Subpart B (formerly Subpart Q), requests a certificate of public convenience and necessity to engage in interstate scheduled air transportation of persons, property, and mail.

Dorothy W. Walker,
Federal Register Liaison.
[FR Doc. 00–7465 Filed 3–24–00; 8:45 am]
BILLING CODE 4910–62–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government Industry Free Flight Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for an RTCA Government/Industry Free Flight Steering Committee meeting to be held April 13, 2000, starting at 1:00 pm. The meeting will be held at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, in the Bessie Coleman Conference Center, Room 2AB (second floor).

The agenda will include: (1) Welcome and Opening Remarks: (a) Recognizing Departing Members of the Steering Committee; (b) Welcome Incoming Members. (2) Review Summary of the Previous Meeting; (3) Report and Recommendations from the Free Flight Select Committee: (c) Status Report—Merging Government/Industry and FAA Operational Concepts; (d) Safe Flight 21 Update. (4) Reports from FAA on: (e) Free Flight Phase 1 Baseline Data and Performance Assessments Update; (f) Controller-Pilot Data Link Communications (CPDLC) Update. (5) Other Business; (6) Date and Location of Next Meeting; (7) Closing Remarks.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA, Inc., at (202) 833–9339 (phone), (202) 833–9434 (facsimile).

Issued in Washington, DC on March 21, 2000.

Janice L. Peters,
Designated Official.
[FR Doc. 00–7496 Filed 3–24–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Program Management Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Program Management Committee meeting to be held April 19, 2000, starting at 9 a.m. The meeting will be held at RTCA, Inc., 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036.

The agenda will include: (1) Welcome and Introductions; (2) Review/Approve Summary of Previous Meeting; (3) Publication Consideration/Approval: (a) Final Draft, Minimum Operational Performance Standards (MOPS) for Geosynchronous Orbit Aeronautical Mobile Satellite Services (AMASS) Avionics (RTCA Paper No. 054–00/PMC–077, prepared by SC–165); (b) Final Draft, DO–201A, Standards for Aeronautical Information, (RTCA Paper No. 058–00/PMC–080, prepared by SC–181); (c) Final Draft, Design Assurance Guidance for Airborne Electronic Hardware, (RTCA Paper No. 0 60–00/PMC–081, prepared by Joint Committee SC–180/WG–46); (4) Action Item Review: (d) Action Item 00–02, Update on ADS–B Ad Hoc Group; (5) Discussion: (e) Update on request for RTCA Comment on EUROCONTROL Document, Use of Safety Management Systems by ATM Service Providers; (f) SC–159 Status Report—GNSS Application to Airport Surface Operation; (g) Proposed revision to Terms of Reference for SC–194, Air Traffic Management Data Link Implementation; (6) Other Business; (7) Date and Location of Next Meeting; (8) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 21, 2000.

Janice L. Peters,
Designated Official.
[FR Doc. 00–7497 Filed 3–24–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Government/Industry Certification Steering Committee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for RTCA Government/Industry Certification Steering Committee meeting to be held April 18, 2000, from 10 a.m. to 12 p.m. The meeting will be held at Federal Aviation Administration (FAA), 800 Independence Avenue, SW, Washington, DC, 20591, in Conference Room 5ABC (5th Floor).

Formation of the Certification Steering Committee is a follow-on initiative recommended in RTCA's Report of Task Force 4, Certification. The concept of the Certification Steering Committee is supported by the FAA and will provide a public advisory forum for developing consensus-based recommendations for implementing the opportunities identified by Task Force 4. The Task Force completed its work in 1999 and published its findings in the "Final Report of RTCA TASK FORCE 4, Certification." This report serves as a starting point for the Certification Steering Committee.

The Certification Steering Committee is co-chaired by Mr. Tom McSweeney, FAA Associate Administrator for Regulation and Certification, and Mr. Clay Jones, president, Rockwell Collins. The Certification Steering Committee will function as a Federal Advisory Committee with all meetings open to the public.

The agenda will include: (1) Welcome and Introductory Remarks: (a) RTCA Certification Activity Structure and Procedures; (b) Review Steering Committee Charter; (2) Background: (c) Task Force Four (TF4) Recommendations; (3) Certification Select Committee: (d) Membership; (e) Terms of Reference and Proposal for Implementing TF4 Recommendations; (f) Working Group Organization and Work Plans; (g) Near Term Certification Improvement Goals; (h) Deliverables and Milestones; (4) Other Business; (5) Date and Location of Next Meeting; (6) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the co-chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW, Suite 1020, Washington, DC 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 21, 2000.

Janice L. Peters,
Designated Official.
[FR Doc. 00–7498 Filed 3–24–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33847]

Nebraska Central Railroad Company—Acquisition Exemption—The Burlington Northern and Santa Fe Railway Company

Nebraska Central Railroad Company (NCRC), a Class III rail carrier, has filed a verified notice of exemption under 49 CFR 1150.41 to acquire approximately 18.2 miles of rail line owned by The Burlington Northern and Santa Fe Railway Company (BNSF). The rail line is located between milepost 17.50, near Central City, NE, and milepost 35.70, at Palmer, NE. In conjunction with the acquisition of the rail line, NCRC will acquire incidental overhead trackage rights over BNSF's rail line between milepost 52.7, at David City, NE, and milepost 66.5, at Columbus, NE, restricted to serving the facilities of Minnesota Corn Processors at Columbus.

Because the projected revenues of the rail line to be operated will exceed $5 million, NCRC certified to the Board, on January 14, 2000, that the required notice of its rail line acquisition was posted at the workplace of the employees on the affected lines on January 6, 2000. *See* 49 CFR 1150.42(e). The transaction was expected to be consummated on or shortly after March 14, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke does not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33847, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Karl Morell, Esq., Ball Janik LLP, 1455 F Street, N.W., Suite 225, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 20, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–7470 Filed 3–24–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

Proposed Renewal of Information Collection; Comment Request

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on a continuing information collection, as required by the Paperwork Reduction Act of 1995. Currently, the OCC is soliciting comment concerning its extension, without change, of an information collection titled, "Leasing—12 CFR 23."

DATES: You should submit written comments by May 26, 2000.

ADDRESSES: You should direct all written comments to the Communications Division, Attention: 1557–0206, Third Floor, Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. In addition, you may send comments by facsimile transmission to (202) 874–5274, or by electronic mail to regs.comments@occ.treas.gov.

FOR FURTHER INFORMATION CONTACT: You can request additional information from Jacqueline Lussier, Senior Attorney, (202) 874–5090; or a copy of the collection from Jessie Dunaway or Camille Dixon, (202) 874–5090, Legislative and Regulatory Activities Division (1557–0206), Office of the Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219. You can inspect and photocopy the comments at the OCC's Public Reference Room, 250 E Street, SW, Washington, DC, between 9:00 a.m. and 5:00 p.m. on business days. You can make an appointment to inspect the comments by calling (202) 874–5043.

SUPPLEMENTARY INFORMATION: The OCC is proposing to extend OMB approval of the following information collection:

Title: Leasing—12 CFR 23.

OMB Number: 1557–0206.

Form Number: None.

Abstract: This submission covers an existing regulation and involves no change to the regulation or to the information collections embodied in the regulation. The OCC requests only that OMB renew its approval of the information collections in the current regulation.

The information requirements in 12 CFR part 23 are located as follows:

12 CFR 23.4(c)—Reporting: A national bank must liquidate or re-lease property that is no longer subject to lease (off-lease property) as soon as practicable, but no later than five years from the lease expiration. A bank wishing to extend that five-year holding period for up to an additional five years must obtain OCC approval. To ensure that a bank is not holding property for speculative reasons, the OCC requires the bank to provide a clearly convincing demonstration why an additional holding period is necessary. This requirement confers a benefit on national banks and may result in cost savings. This requirement provides flexibility for a bank when it faces unusual and unforeseen conditions under which it would be imprudent to dispose of the off-lease property.

12 CFR 23.4(c)—Recordkeeping: A national bank must value off-lease property at the lower of current fair market value or book value promptly after the property comes off-lease.

12 CFR 23.5—Recordkeeping: A national bank may engage in two types of lease financing. First, a national bank may acquire tangible or intangible personal property for purposes of lease financing if the lease serves as the functional equivalent of a loan. There is no aggregate volume limitation on a bank's investment in personal property that it leases. Second, a national bank may acquire tangible personal property for purposes of lease financing up to 10 percent of the assets of the bank. Section 23.5 requires that if a bank enters into both types of leases, its records must distinguish between the two types of leases.

National banks need these information collections to ensure that they conduct their operations in a safe and sound manner and in accordance with Federal banking statutes and regulations. These information collections also provide needed information for examiners and protections for banks. The OCC uses this information to verify compliance.

Type of Review: Extension, without change, of a currently approved collection.

Affected Public: Businesses or other for-profit.

Estimated Number of Respondents: 660.

Estimated Total Annual Responses: 710.

Frequency of Response: On occasion.

Estimated Total Annual Burden: 1,820 burden hours.

COMMENTS: Comments submitted in response to this notice will be summarized and included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection of information;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected;

(d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and

(e) Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 21, 2000.

Mark Tenhundfeld,

Assistant Director, Legislative & Regulatory Activities Division.

[FR Doc. 00–7444 Filed 3–24–00; 8:45 am]

BILLING CODE 4810–33–P

TWENTY-FIRST CENTURY WORKFORCE COMMISSION

Notice of Business Meeting

AGENCY: Twenty-First Century Workforce Commission.

ACTION: Notice of business meeting.

SUMMARY: This notice is to announce a business meeting on Thursday, March 30, 2000. Members of the public are invited to attend the meeting. The agenda is set forth below.

The purpose of the meeting is for Commissioners to formulate next steps in carrying out its statutory requirements. The Commissioners and Commission staff will discuss trends and findings arising from its public information gathering hearings, and from site visits conducted by Commission staff. In addition, Commissioners will discuss best practices in Information Technology Workforce Development, and how federal programs and policies affect these practices. Finally, the Commissioners will discuss the format of the Commission's report, and how the recommendations of the report will be transmitted to Congress and the Administration.

DATES: The business meeting will be held on Thursday, March 30, 2000, from 9:00 am to approximately 2:00 p.m. Registration is from 9:00 am to 10:00 am. The dates, locations and times for subsequent meetings will be announced in advance in the **Federal Register**.

ADDRESSES: George Mason University, Fairfax Campus is located at 4400 University Drive, Fairfax, VA 22030. Main Phone: (703) 993–1000. The meeting will be held at the Johnson Center in Meeting Room A. Web-based directions can be found at: http://coyote.gmu.edu/map/. All interested parties are invited to attend this business meeting. Seating may be limited and will be available on a first-come, first-serve basis.

FOR FURTHER INFORMATION CONTACT: Mr. Hans Meeder, Executive Director, Twenty-First Century Workforce Commission, 1201 New York Avenue, NW, Suite 700, Washington, DC 20005. (Telephone (202–289–2939. TTY (202) 289–2977) These are not toll-free numbers. Email: *Workforce21@nab.com.*

SUPPLEMENTARY INFORMATION: Establishment of the Twenty-First Century Workforce Commission was mandated by Subtitle C of Title III of the Workforce Investment Act, Sec. 331 of Pub. L. 105–220, 112 Stat. 1087–1091, (29 U.S.C. 2701 note), signed into law on August 7, 1998. The 15 voting member Twenty-First Century Workforce Commission is charged with studying all aspects of the information technology workforce in the United States. Notice is hereby given of a business meeting of the Twenty-First Century Workforce Commission.

The Workforce Investment Act (Pub. L. No. 105–220), signed into law on August 7, 1998, established the Twenty-First Century Workforce Commission. The Commission is charged with carrying out a study of the information technology workforce in the U.S., including the examination of the following issues:

1. What skills are currently required to enter the information technology workforce? What technical skills will be demanded in the near future?

2. How can the United States expand its number of skilled information technology workers?

3. How do information technology education programs in the United States compare with other countries in effectively training information technology workers? [The Commission study should place particular emphasis upon contrasting secondary, non-and-post-baccalaureate degree education programs available within the U.S. and foreign countries.]

The Workforce Investment Act directs the Commission to issue recommendations to the President and Congress within six months. The Commission first met on November 16, 1999, and will issue its recommendations by May 16, 2000.

Agenda

At the Fairfax, Virginia meeting, the Commission working group conducting the meeting will discuss trends and findings arising from its public information gathering hearings, and from site visits conducted by Commission staff. In addition, Commissioners will discuss best practices in Information Technology Workforce Development, and how federal programs and policies affect these practices. Finally, the Commissioners will discuss the format of the Commission's report, and how the recommendations of the report will be transmitted to Congress and the Administration.

Commission Membership

The Workforce Investment Act mandates that 15 voting members be appointed by the President, Majority Leader of the Senate, and Speaker of the House (5 members each), including 3 educators, 3 state and local government representatives, 8 business representatives and 1 labor representative. The Act also mandates that the President appoint 2 ex-officio members, one each from the Departments of Labor and Education.

The Commissioners are: Chairman Lawrence Perlman, Ceridian Corporation, Minneapolis, MN; Vice Chair, Katherine K. Clark, Landmark Systems Corporation, Reston, VA; Susan Auld, Capitol Strategies, Ltd., Montpelier, VT; Morton Bahr, Communication Workers of America, Washington, DC; Patricia Gallup, PC Communications, Inc., Merrimack, NH; Dr. Bobby Garvin, Mississippi Delta Community College, Moorhead, MS; Susan M. Green (ex officio), U.S. Department of Labor, Washington, DC; Randel Johnson, U.S. Chamber of Commerce, Washington, DC; Roger Knutsen, National Council for Higher Education, Auburn, WA; Patricia McNeil (ex officio), U.S. Department of Education, Washington, DC; The Honorable Mark Morial, Mayor, City of New Orleans, LA; Thomas Murrin, Ph.D., Duquesne University, Pittsburgh, PA; Leo Reynolds, Electronic Systems, Inc., Sioux Falls, SD; The Honorable Frank Riggs, National Homebuilders Institute, Washington, DC; The Honorable Frank Roberts, Mayor, City of Lancaster, California; Kenneth Saxe, Stambaugh-Ness, York, PA; David L. Steward, World Wide Technology, Inc., St. Louis, MO; Hans K. Meeder, Executive Director, Washington, DC.

Public Participation

Members of the public are invited to attend this meeting. Members of the public may also submit written statements for distribution to the Commissioners and inclusion in the public record without presenting oral statements. Such written statements should be sent to Mr. Hans Meeder, as shown above, or may be submitted at the meeting site.

The Commission has established a web site, *www.workforce21.org.* Any written comments regarding documents published on this web site should be directed to Mr. Hans Meeder, as shown above.

Special Accomodations

Reasonable accommodations will be available. Persons needing any special assistance such as sign language interpretation, or other special accommodation, are invited to contact Mr. Hans Meeder, as shown above. Requests for accommodations must be made four days in advance of the meeting.

Due to difficulties of scheduling the members we are unable to provide a full 15-day advance notice of this meeting.

Signed at Washington, DC this 21th day of March 2000.

Hans K. Meeder,

Executive Director, Twenty-First Century Workforce Commission.

[FR Doc. 00–7471 Filed 3–24–00; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–NEW]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Health Administration, Department of Veterans Affairs

ACTION: Notice

SUMMARY: The Veterans Health Administration (VHA), Department of

Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed new collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine whether Agent Orange exposure has significantly affected the health of those exposed and whether genetic predisposition played a role in the outcome of the exposure.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 26, 2000.

ADDRESSES: Submit written comments on the collection of information to Ann W. Bickoff, Veterans Health Administration (193B1), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–NEW" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Ann W. Bickoff at (202) 273–8310 or FAX (202) 273–9381.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VHA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VHA's functions, including whether the information will have practical utility; (2) the accuracy of VHA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: The Association of Agent Orange Exposure with Adverse Outcomes, VA Forms 10–21035a (NR) and 10–21035b (NR).

OMB Control Number: 2900-NEW.

Type of Review: New collection.

Abstract: The purpose of this study is to determine whether Agent Orange exposure has significantly affected the health of those exposed and whether genetic predisposition has played a significant role in the outcome of the exposure.

Affected Public: Individuals or households.

Estimated Annual Burden:

a. VA Form 10–21035a—250 hours.

b. VA Form 10–21035b—250 hours.

Estimated Average Burden Per Respondent:

a. VA Form 10–21035a—15 minutes.

b. VA Form 10–21035b—15 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 1,000.

Dated: March 15, 2000.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–7358 Filed 3–24–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0524]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Security and Law Enforcement, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Security and Law Enforcement, Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a previously approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to document the pre-employment screening process and special background checks for applicants seeking employment as VA police officers.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 26, 2000.

ADDRESSES: Submit written comments on the collection of information to Tanya Al-Khateeb, Office of Security and Law Enforcement (07C), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0524" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Tanya Al-Khateeb at (202) 273–5510.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, the Office of Security and Law Enforcement invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VA's functions, including whether the information will have practical utility; (2) the accuracy of the Office of Security and Law Enforcement's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: VA Police Officer Pre-Employment Screening Checklist, VA Form 0120.

OMB Control Number: 2900–0524.

Type of Review: Extension of a currently approved collection.

Abstract: It is the policy of VA that no person be employed as a VA police officer who has been convicted of a serious crime or whose history reflects a disregard for laws and regulations, questionable character, or a pattern of misconduct or poor work habits. Pre-employment screening for VA police officers and full verification of qualifications and suitability has been a long-standing policy. The form provides a record of the accomplishment of pre-employment vouchering following selection standards which serve as VA's basic assurance that Federal criminal law enforcement authority is granted cautiously and responsibly.

Affected Public: State, Local or Tribal Governments, and Business or other for-profit.

Estimated Annual Burden: 300 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Generally one-time.

Estimated Number of Respondents: 1,800.

Dated: March 15, 2000.

By direction of the Secretary.

Sandra McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–7359 Filed 3–24–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0112]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to determine whether a veteran can be release from liability on a Government home loan.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 26, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0112" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Statement of Holder or Servicer of Veteran's Loan, VA Form 26–559.

OMB Control Number: 2900–0112.

Type of Review: Reinstatement, without change, of a currently approved collection for which approval has expired.

Abstract: Veteran-borrowers may sell their home subject to the existing VA-guaranteed mortgage lien without the prior approval of the VA if the commitment for the loan was made prior to March 1, 1988. However, if they request to be released from personal liability to the Government in the event of a subsequent default by a transferee, VA must determine, that (1) the loan payments are current; (2) the transferee will assume the veteran's legal liabilities in connection with the loan; and (3) the purchaser qualifies from a credit standpoint. Also, a veteran-borrower may sell their home to a veteran-transferee. However, eligible transferees must meet all the requirements in addition to having sufficient available loan guaranty entitlement to replace the amount of entitlement used by the seller in obtaining the original loan.

Affected Public: Individuals or households, Business or other for profit.

Estimated Annual Burden: 1,167 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 7,000.

Dated: March 3, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–7360 Filed 3–24–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0156]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed revision of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments for information needed to report changes in a student enrollment status.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 26, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0156" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on

respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Notice of Change in Student Status, VA Form 22–1999b.

OMB Control Number: 2900–0156.

Type of Review: Revision of a currently approved collection.

Abstract: VA Form 22–1999b is used by educational institution to report changes in the enrollment of students in receipt of VA education benefits. The information is used to determine a student's entitlement to educational benefits or whether the benefit should be increased, decreased, or terminated. Without this information, VA might underpay or overpay benefits.

Affected Public: State, Local or Tribal Government, Business or other for-profit, and Not-for-profit institutions.

Estimated Annual Burden: 68,716 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Annual Responses: 824,588.

Estimated Number of Respondents: 7,514.

Dated: March 3, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–7361 Filed 3–24–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0399]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before April 26, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0399."

SUPPLEMENTARY INFORMATION: *Title:* Student Beneficiary Report—REPS, VA Form 21–8938.

OMB Control Number: 2900–0399.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to verify that an individual who is receiving the REPS (Restored Entitlement Program for Survivors) benefits based on schoolchild status is in fact enrolled full-time in an approved school and is otherwise eligible for continued benefits. The form is released each March and sent to all student beneficiaries. Without this form payments would continue to be made to ineligible payees and substantial overpayments would result.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on November 29, 1999, at pages 66695 and 66696.

Affected Public: Individuals or households.

Estimated Annual Burden: 1,767 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: One time.

Estimated Number of Respondents: 5,300.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0399" in any correspondence.

Dated: March 3, 2000.

By direction of the Secretary.

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 00–7362 Filed 3–24–00; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Charter Renewal

This gives notice under the Federal Advisory Committee Act, as amended (Public Law 92–463; 5 U.S.C. App.), that the Department of Veterans Affairs' Special Medical Advisory Group has been renewed for a 2-year period beginning March 9, 2000, through March 9, 2002.

Dated: March 9, 2000.

By direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–7356 Filed 3–24–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Cemeteries and Memorials, Notice of Meeting

The Department of Veterans Affairs (VA) gives notice that a meeting of the Advisory Committee on Cemeteries and Memorials, authorized by 38 U.S.C. 2401, will be held Wednesday, May 3, from 8:30 am and adjourn at 5 pm and Thursday, May 4, 2000, from 8:30 am and adjourn at 5 pm, at the Arlington Hilton and Towers, Gallery Ballroom, 950 North Stafford Street, Arlington, VA. This will be the Committee's second meeting of Fiscal Year 2000.

The purpose of the Committee is to review the administration of VA's cemeteries and burial benefits program.

On Wednesday, May 3, the Committee will be updated on National Cemetery Administration (NCA) issues, including state cemetery grants program, cemetery construction, budget and legislation. In the afternoon, members will depart for the Arlington National Cemetery. Members will return to the Arlington Hilton and Towers. A reception will be held for members to meet the NCA staff.

On Thursday, May 4, the Committee will reconvene for updates and reports on military funeral honors and DOD Military Honors Legislation. In the afternoon, the Committee will discuss recommendations and endorsements.

The meeting will be open to the public. Individuals wishing to attend the meeting should contact Mrs. Paige Lowther, National Cemetery Administration, [phone (202) 273–5164] no later than 12 noon (EDT), April 26, 2000.

Any interested person may attend, appear before, or file a statement with the Committee. Individuals wishing to appear before the Committee should indicate this in a letter to Mrs. Paige Lowther, Designated Federal Official, National Cemetery Administration (40), 810 Vermont Avenue, NW, Washington, DC. 20420. In any such letters, the writers must fully identify themselves and state the organization, association or person(s) they represent. In addition, to the extent practicable, letters should indicate the subject matter to be discussed. Oral presentations should be limited to 10 minutes in duration. Individuals wishing to file written statements to be submitted to the Committee must also mail, or otherwise deliver, them to Mrs. Lowther.

Letters and written statements as discussed above must be mailed or delivered in time to reach Mrs. Lowther by 12 noon (EDT), April 26, 2000. Oral statements will be heard between 1 pm and 1:30 pm (EDT), May 4, 2000, at Arlington Hilton and Towers in Arlington, VA.

Dated: March 16, 2000.

By direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–7355 Filed 3–24–00; 8:45 am]

BILLING CODE 8320–01–M

DEPARTMENT OF VETERANS AFFAIRS

Special Medical Advisory Group; Notice of Meeting

As required by the Federal Advisory Committee Act, the VA hereby gives notice that the Special Medical Advisory Group has scheduled a meeting on April 5, 2000. The meeting will convene at 8:30 am and end at 2 pm. The meeting will be held in Room 830 at VA Central Office, 810 Vermont Avenue, NW, Washington, DC. The purpose of the meeting is to advise the Secretary and Under Secretary for Health relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration (VHA).

The agenda for the meeting will include discussion of Patient Safety Program, Capital Asset Realignment for Enhanced Services (CARES) Program, VISN 12 Options Study, National Formulary Process, Office of Research Compliance and Assurance, and an update on the service line implementation.

All sessions will be open to the public up to the seating capacity of the meeting room. Those wishing to attend should contact Celestine Brockington, Office of the Under Secretary for Health, Department of Veterans Affairs. Her phone number is 202.273.5878.

Dated: March 16, 2000.

By direction of the Secretary of Veterans Affairs.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–7357 Filed 3–24–00; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Monday,
March 27, 2000

Part II

Nuclear Regulatory Commission

10 CFR Parts 170 and 171
Revision of Fee Schedules; 100% Fee Recovery, FY 2000; Proposed Rule

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 170 and 171

RIN 3150–AG50

Revision of Fee Schedules; 100% Fee Recovery, FY 2000

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to amend the licensing, inspection, and annual fees charged to its applicants and licensees. The proposed amendments are necessary to implement the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), as amended, which mandates that the NRC recover approximately 100 percent of its budget authority in Fiscal Year (FY) 2000, less amounts appropriated from the Nuclear Waste Fund (NWF) and the General Fund. The amount to be recovered for FY 2000 is approximately $447.0 million.

DATES: The comment period expires April 26, 2000. Comments received after this date will be considered if it is practical to do so, but the NRC is able to ensure only that comments received on or before this date will be considered. Because OBRA–90 requires that NRC collect the FY 2000 fees by September 30, 2000, requests for extensions of the comment period will not be granted.

ADDRESSES: Mail written comments to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, ATTN: Rulemakings and Adjudications Staff. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland 20852, between 7:30 am and 4:15 pm Federal workdays. (Telephone 301–415–1678).

Comments may also be submitted via the NRC's interactive rulemaking website (http://ruleforum.llnl.gov). This site provides the ability to upload comments as files (any format), if your web browser supports that function. For information about the interactive rulemaking site, contact Ms. Carol Gallagher, 301–415–5905; e-mail *CAG@nrc.gov*. Comments received may also be viewed and downloaded electronically via this interactive rulemaking website.

With the exception of restricted information, documents created or received at the NRC after November 1, 1999, are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or by email to *pdr@nrc.gov*.

Copies of comments received and the agency workpapers that support these proposed changes to 10 CFR Parts 170 and 171 may be examined at the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC 20555–0001.

FOR FURTHER INFORMATION CONTACT: Glenda Jackson, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone 301–415–6057.

SUPPLEMENTARY INFORMATION:

I. Background
II. Proposed Action
III. Plain Language
IV. Voluntary Consensus Standards
V. Environmental Impact: Categorical Exclusion
VI. Paperwork Reduction Act Statement
VII. Regulatory Analysis
VIII. Regulatory Flexibility Analysis
IX. Backfit Analysis

I. Background

OBRA–90, as amended, requires that the NRC recover approximately 100 percent of its budget authority, less the amount appropriated from the Department of Energy (DOE) administered Nuclear Waste Fund (NWF). Certain NRC costs related to reviews and other assistance provided to the Department of Energy (DOE) and other Federal agencies were excluded from the fee recovery requirement for FY 2000 by the FY 2000 Energy and Water Development Appropriations Act.

The NRC assesses two types of fees to recover its budget authority. First, license and inspection fees, established at 10 CFR Part 170 under the authority of the Independent Offices Appropriation Act of 1952 (IOAA), 31 U.S.C. 9701, recover the NRC's costs of providing special benefits to identifiable applicants and licensees. Examples of the services provided by the NRC for which these fees are assessed are the review of applications for the issuance of new licenses, approvals or renewals, and amendments to licenses or approvals. Second, annual fees, established in 10 CFR Part 171 under the authority of OBRA–90, recover generic and other regulatory costs not recovered through 10 CFR Part 170 fees.

This proposed rule is based on the current 100 percent fee recovery requirement under OBRA–90. To address fairness and equity concerns related to NRC licensees paying for agency expenses which do not provide a direct benefit to them, the NRC has submitted legislation to the Congress which would reduce the fee recovery amount to 98 percent for FY 2001, and further reduce the fee recovery amount by an additional two percent per year beginning in FY 2002 until the fee recovery requirement is reduced to 90 percent by FY 2005.

Also, in the FY 1999 final fee rule published June 10, 1999 (64 FR 31450), the NRC responded to a comment requesting that NRC designate as small entities, for reduced fee purposes, all those companies with small business certification under the U.S. Small Business Administration's (SBA) Small Disadvantaged Business Program, commonly known as the 8(a) Program. The Commission agreed to give further consideration to the issue raised by this commenter.

The Commission has declined to adopt the suggested approach, for the following reasons. On April 11, 1995 (60 FR 18344), the NRC promulgated a final rule, after notice and comment rulemaking, that revised its size standards. The final rule established the small entity classification applicable to small businesses as follows. Those companies providing services having no more than $5 million in average annual gross receipts over its last three completed fiscal years, or, for manufacturing concerns, having an average of 500 or fewer employees during the preceding 12-month period would qualify as small entities (10 CFR 2.810).

The NRC promulgated this rule pursuant to Section 3(a)(2) of the Small Business Act, which permits Federal agencies to establish size standards via notice and comment rulemaking, subject to the approval of the SBA Administrator. Unlike the NRC, the SBA's Standard Industrial Classification (SIC) System establishes size standards based on types of economic activity or industry. The NRC rule, which the SBA approved, established generic size standards for small businesses because NRC's regulatory scheme is not well suited to setting standards for each component of the regulated nuclear industry.

II. Proposed Action

The NRC is proposing to amend its licensing, inspection, and annual fees to recover approximately 100 percent of its FY 2000 budget authority, including the budget authority for its Office of the Inspector General, less the appropriations received from the NWF and the General Fund. For FY 2000, the NRC's budget authority is $470.0 million, of which $19.15 million has been appropriated from the NWF. In addition, $3.85 million has been appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the DOE and other Federal agencies. The NRC's FY 2000 Appropriations Act states that this $3.85 million appropriation shall be excluded from license fee revenues. Therefore, the NRC is required to collect approximately $447.0 million in FY 2000 through 10 CFR Part 170 licensing and inspection fees and 10 CFR Part 171 annual fees. The total amount to be recovered in fees for FY 2000 is $2.6 million less than the total amount estimated for recovery in the NRC's FY 1999 fee rule.

The NRC estimates that approximately $106.0 million will be recovered in FY 2000 from Part 170 fees and other offsetting receipts. The remaining $341.0 million would be recovered through the Part 171 annual fees.

The NRC also estimates a net adjustment for FY 2000 of approximately $5.7 million for the small entity subsidy, for FY 2000 invoices that would not be paid in FY 2000, and for payments received in FY 2000 for FY 1999 invoices. These adjustments are approximately $2.5 million more than in FY 1999. In addition, there are approximately 530 fewer licenses subject to annual fees in FY 2000 than in FY 1999, due primarily to Ohio becoming an Agreement State in August, 1999.

As a result of these changes, the proposed FY 2000 annual fees would increase slightly, by approximately 1.4 percent, compared to the FY 1999 actual (prior to rounding) annual fees. As a result of rounding, the proposed FY 2000 annual fees for several fee categories are the same as the final (rounded) FY 1999 annual fees. The change to the annual fees is described in more detail in Section B. The following examples illustrate the changes in annual fees:

	FY 1999 annual fee	FY 2000 proposed annual fee
Class of Licensees:		
Power Reactors (Including Spent Fuel Storage/Reactor Decommissioning fee)	$2,776,000	$2,815,000
Spent Fuel Storage/Reactor Decommissioning	206,000	209,000
Nonpower Reactors	85,900	87,100
High Enriched Uranium Fuel Facility	3,281,000	3,327,000
Low Enriched Uranium Fuel Facility	1,100,000	1,116,000
UF_6 Conversion Facility	472,000	478,000
Uranium Mills	131,000	132,000
Typical Materials Licenses:		
Radiographers	14,700	14,900
Well Loggers	9,900	10,100
Gauge Users	2,600	2,600
Broad Scope Medical	27,800	28,100

The final FY 2000 fee rule will be a "major" final action as defined by the Small Business Regulatory Enforcement Fairness Act of 1996. Therefore, the NRC's fees for FY 2000 would become effective 60 days after publication of the final rule in the **Federal Register**. The NRC will send an invoice for the amount of the annual fee to reactors and major fuel cycle facilities upon publication of the FY 2000 final rule. For these licensees, payment would be due on the effective date of the FY 2000 rule. Those materials licensees whose license anniversary date during FY 2000 falls before the effective date of the final FY 2000 rule would be billed during the anniversary month of the license and continue to pay annual fees at the FY 1999 rate in FY 2000. Those materials licensees whose license anniversary date falls on or after the effective date of the final FY 2000 rule would be billed at the FY 2000 revised rates during the anniversary month of the license and payment would be due on the date of the invoice.

As a matter of courtesy, the NRC plans to continue to mail the proposed fee rules to all licensees. However, the NRC announced in FY 1998 that, as a cost-saving measure, it planned to discontinue mailing the final rule to all licensees. Accordingly, the NRC does not plan to mail the FY 2000 final rule, or future final rules, to all licensees. However, the NRC will send the final rule to any licensee or other person upon request. To request a copy, contact the License Fee and Accounts Receivable Branch, Division of Accounting and Finance, Office of the Chief Financial Officer, at 301–415–7554, or e-mail us at fees@nrc.gov. It is our intent to publish the final rule in late May or early June of 2000. In addition to publication in the **Federal Register**, the final rule will be available on the internet at *http://ruleforum.llnl.gov*.

The NRC is also proposing to make other changes to 10 CFR Parts 170 and 171 as discussed in Sections A and B below:

A. Amendments to 10 CFR Part 170: Fees for Facilities, Materials, Import and Export Licenses, and Other Regulatory Services Under the Atomic Energy Act of 1954, as Amended

The NRC is proposing to revise the hourly rates used to calculate fees and to adjust the 10 CFR Part 170 fees based on the revised hourly rates. The NRC is also proposing an administrative amendment to § 170.12(c) to clarify that the site to which a resident inspector is assigned will not be assessed Part 170 fees for time spent by the resident inspector in support of activities at another site. The proposed amendments are as follows:

1. Hourly Rates

The NRC is proposing to revise the two professional hourly rates for NRC staff time established in § 170.20. These proposed rates would be based on the number of FY 2000 direct program full time equivalents (FTEs) and the FY 2000 NRC budget, excluding direct program support costs and NRC's appropriations from the NWF and the General Fund. These rates are used to determine the Part 170 fees. The

proposed hourly rate for the reactor program is $144 per hour ($255,844 per direct FTE). This rate would be applicable to all activities for which fees are based on full cost under § 170.21 of the fee regulations. The proposed hourly rate for the nuclear materials and nuclear waste program is $143 per hour ($253,450 per direct FTE). This rate would be applicable to all activities for which fees are based on full cost under § 170.31 of the fee regulations. In the FY 1999 final fee rule, these rates were $141 and $140, respectively. The proposed increase is primarily due to the Government-wide pay increase in FY 2000.

The method used to determine the two professional hourly rates is as follows:

a. Direct program FTE levels are identified for the reactor program and the nuclear material and waste program.

b. Direct contract support, which is the use of contract or other services in support of the line organization's direct program, is excluded from the calculation of the hourly rates because the costs for direct contract support are charged directly through the various categories of fees.

c. All other direct program costs (i.e., Salaries and Benefits, Travel) represent "in-house" costs and are allocated by dividing them uniformly by the total number of direct FTEs for the program. In addition, salaries and benefits plus contracts for non-program direct management and support, and the Office of the Inspector General are allocated to each program based on that program's direct costs. This method results in the following costs which are included in the hourly rates.

TABLE 1. FY 2000 BUDGET AUTHORITY TO BE INCLUDED IN HOURLY RATES

	Reactor program	Materials program
Direct Program Salaries & Benefits	$103.3M	$29.0M
Overhead Salaries & Benefits, Program Travel and Other Support	53.2M	15.3M
Allocated Agency Management and Support	98.8M	27.9M
Subtotal	$255.3M	$72.2M
Less offsetting receipts	−.1M	
Total Budget Included in Hourly Rate	$255.2M	$72.2M
Program Direct FTEs	997.5	284.9
Rate per Direct FTE	255,844	253,450
Professional Hourly Rate (Rate per direct FTE divided by 1,776 hours)	144	143

As shown in Table I, dividing the $255.2 million (rounded) budgeted amount included in the hourly rate for the reactor program by the reactor program direct FTEs (997.5) results in a rate for the reactor program of $255,844 per FTE for FY 2000. The Direct FTE Hourly Rate for the reactor program would be $144 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($255,844) by the number of productive hours in one year (1,776 hours) as set forth in the revised OMB Circular A–76, "Performance of Commercial Activities." Dividing the $72.2 million (rounded) budgeted amount included in the hourly rate for the nuclear materials and nuclear waste program by the program direct FTEs (284.9) results in a rate of $253,450 per FTE for FY 2000. The Direct FTE Hourly Rate for the materials program would be $143 per hour (rounded to the nearest whole dollar). This rate is calculated by dividing the cost per direct FTE ($253,450) by the number of productive hours in one year (1,776 hours).

2. Fee Adjustments

The NRC is proposing to adjust the current Part 170 fees in §§ 170.21 and 170.31 to reflect the changes in the revised hourly rates. The full cost fees assessed under §§ 170.21 and 170.31 would be based on the proposed professional hourly rates and any direct program support (contractual services) costs expended by the NRC. Any professional hours expended on or after the effective date of the final rule would be assessed at the FY 2000 hourly rates.

The fees in §§ 170.21 and 170.31 that are based on the average time to review an application ("flat" fees) would be adjusted to reflect the increase in the professional hourly rates from FY 1999. The amounts of the materials licensing "flat" fees were rounded so that the amounts would be de minimis and the resulting flat fee would be convenient to the user. Fees under $1,000 are rounded to the nearest $10. Fees that are greater than $1,000 but less than $100,000 are rounded to the nearest $100. Fees that are greater than $100,000 are rounded to the nearest $1,000.

The proposed licensing "flat" fees are applicable to fee categories K.1 through K.5 of § 170.21, and fee categories 1.C, 1.D, 2.B, 2.C, 3.A through 3.P, 4.B through 9.D, 10.B, 15.A through 15.E, and 16 of § 170.31. Applications filed on or after the effective date of the final rule would be subject to the revised fees in this proposed rule.

3. Administrative Amendment

The NRC is proposing to amend § 170.12(c)(1) to clarify that the fees assessed for a resident inspector's time will exclude time spent by the resident inspector in support of activities at another site. This provision was inadvertently omitted from the revision of 10 CFR 170 in the FY 1999 fee rule.

4. Other

The NRC solicited public comment in the FY 1999 proposed fee rulemaking (April 1, 1999; 64 FR 15878) on whether to include the development of orders, evaluation of responses to orders, development of Notices of Violations (NOVs) accompanying escalated enforcement actions, and evaluation of responses to NOVs in the fees collected for identifiable services under Part 170 in the FY 2000 proposed fee rule. Those commenting on this issue presented arguments both for and against assessing Part 170 fees for these activities. The NRC stated in the final fee rulemaking (June 10, 1999; 64 FR 31452), that it would further evaluate this issue prior to promulgation of the FY 2000 fee rule.

Three of the four commenters who addressed this issue in FY 1999 did not support recovering the costs for these activities under Part 170. These commenters were concerned that assessing these costs to the specific licensees under Part 170 could be viewed as penalizing the licensee when the licensee identifies and corrects violations. One commenter supported Part 170 fee assessment for escalated enforcement actions, indicating that it is inappropriate for one licensee to subsidize oversight for another licensee. This commenter also stated that the perception that these actions serve as an industry-wide deterrent is not borne out.

In addition to concerns raised by the commenters, there are other problems with assessing Part 170 fees for these activities. These problems include the handling of escalated enforcement costs if the enforcement action is reduced to a non-escalated enforcement action or is dropped altogether. Based on the public comments received in FY 1999 and legal and policy concerns, the NRC will continue to recover costs for orders and escalated enforcement actions through Part 171 annual fees.

In summary, the NRC is proposing to amend 10 CFR Part 170 to:

1. Revise the two hourly rates;
2. Revise the licensing fees to be assessed to reflect the revised hourly rates; and
3. Make an administrative amendment to § 170.12(c) to clarify that the site to which a resident inspector is assigned will not be assessed Part 170 fees for time spent by the resident inspector in support of activities at another site.

B. Amendments to 10 CFR Part 171: Annual Fees for Reactor Licenses, and Fuel Cycle Licenses and Materials Licenses, Including Holders of Certificates of Compliance, Registrations, and Quality Assurance Program Approvals, and Government Agencies Licensed by the NRC

The NRC proposes to revise the annual fees for FY 2000, to increase the maximum annual fees assessed to those licensees who qualify as small entities, and to make several administrative amendments. The proposed amendments are as follows:

1. Annual Fees

The NRC proposes to amend §§ 171.15 and 171.16 to revise the annual fees for FY 2000 to recover approximately 100 percent of the FY 2000 budget authority, less fees collected under 10 CFR Part 170 and funds appropriated from the NWF and the General Fund. In the FY 1995 final rule, the NRC stated that it would stabilize annual fees as follows. Beginning in FY 1996, the NRC would adjust the annual fees only by the percentage change (plus or minus) in NRC's total budget authority, unless there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees. If either case should occur, the annual fee base would be recalculated (June 20, 1995; 60 FR 32225). The NRC also indicated that the percentage change would be adjusted based on changes in 10 CFR Part 170 fees and other adjustments as well as on the number of licensees paying the fees. In addition, beginning in FY 1997, the NRC made an adjustment to recognize that all fees billed in a fiscal year are not collected in that year.

In the FY 1999 proposed fee rule (April 1, 1999; 63 FR 15884), public comment was solicited on whether the NRC should, in future years, continue to use the percent change method and rebaseline annual fees every several years, as established in FY 1995, or return to a policy of rebaselining annual fees every year. The majority of those commenting on the frequency for rebaselining annual fees supported rebaselining every several years, as warranted. Based on the comments received, licensees have continuing concerns about fee stability. Therefore, in the final FY 1999 fee rule (64 FR 31448; June 10, 1999), the NRC stated that it is continuing the policy of adjusting the annual fees only by the percent change in the NRC's total budget, with additional adjustments for the numbers of licensees paying fees, changes in Part 170 fees, and other adjustments that may be required, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. However, based on experience gained from applying the criteria from FY 1996 to FY 1999, the Commission determined that, in the future, annual fees should be rebaselined at least every three years, or earlier, if warranted.

After evaluating NRC's budget data for FY 2000 and concluding that there has not been a substantial change in the NRC budget or in the magnitude of a specific budget allocation to a class of licensees, the NRC intends to continue to stabilize annual fees by adjusting the FY 1999 annual fees by the percent change in the NRC's total budget, with adjustments for the number of licensees paying fees, changes in estimated Part 170 collections and other offsetting receipts, and other changes required to assure that the amounts billed result in the required collections.

The $447.0 million to be recovered through Part 170 and Part 171 fees for FY 2000 is $2.6 million less than the total amount estimated for recovery in the NRC's FY 1999 fee rule. The NRC estimates that approximately $106.0 million will be recovered in FY 2000 from Part 170 fees and other offsetting receipts, compared to $107.7 million in FY 1999, a $1.7 million decrease. As the NRC explained in the FY 1999 proposed and final fee rules (April 1, 1999; 64 FR 15876 and June 10, 1999; 64 FR 31458), the amount for FY 1999 included a $4.1 million carryover from additional FY 1998 collections which reduced the total fee recovery amount for FY 1999. This circumstance does not exist for FY 2000. The $1.7 million decrease for FY 2000 is the difference between the $4.1 million reduction available in FY 1999 from FY 1998 collections and an estimated $2.4 million increase in Part 170 collections FY 2000 compared to FY 1999. The increase in estimated Part 170 collections, from $103.5 in FY 1999 to $105.9 for FY 2000, is largely attributable to changes in Commission policy included in the FY 1999 final fee rule, such as billing full cost under Part 170 for project managers, performance assessments, incident investigations, and reviews of reports and other documents that do not require formal or legal approval.

The remaining $341.0 million ($447.0 million total FY 2000 fee recovery amount less $106.0 million for estimated Part 170 collections and other receipts) would be recovered through the Part 171 annual fees. The $341.0 million annual fee recovery amount for FY 2000 is approximately $1.0 million less than in FY 1999.

In addition to the slight reduction in the amount to be recovered through annual fees, the NRC estimates a net annual fee billing adjustment of approximately $5.7 million for FY 2000 resulting from: (1) Bills that will not be paid in FY 2000; (2) the small entity subsidy; and (3) payments received in FY 2000 for FY 1999 invoices. The billing adjustment, which is necessary to assure that the "billed" amount results in the required collections, is approximately $2.5 million more than in FY 1999.

In addition to these changes, there are approximately 530 fewer licenses subject to annual fees in FY 2000 than in FY 1999, due primarily to Ohio becoming an Agreement State in August 1999. As a result of these changes, the proposed FY 2000 annual fees would increase slightly, by approximately 1.4 percent, compared to the FY 1999 actual (prior to rounding) annual fees. As a result of rounding, the proposed FY 2000 annual fees for several fee categories are the same as the final (rounded) FY 1999 annual fees. The effects of these changes on the annual fees are shown in Table II.

TABLE II.—CALCULATION OF THE PERCENTAGE CHANGE TO THE FY 1999 ANNUAL FEES

[Dollars in millions]

	FY 1999	FY 2000
Total Budget	$469.80	$470.0
Less NWF	−17.00	−19.15
Less General Fund (Regulatory reviews, and other assistance to other Federal agencies)	−3.20	−3.85
Total Fee Base	$449.60	$447.00
Less Part 170 Fees	−103.50	−105.90
Less other receipts	−4.20	−0.10
Part 171 Fee Collections Required	$341.90	$341.00
Part 171 Billing Adjustment:[1]		
Small Entity Allowance	5.30	5.60
Estimated Unpaid Current FY Part 171 Invoices	3.40	3.30
Estimated Payments from Prior Year Invoices	−5.50	−3.20
Subtotal	3.20	5.70
Total Part 171 Billing	$345.10	$346.70

[1] These adjustments are necessary to ensure that the "billed" amount results in the required collections. Positive amounts indicate amounts billed that will not be collected in FY 2000.

2. Small Entity Annual Fees

The NRC is proposing to increase the current maximum small entity annual fee and the lower tier small entity annual fee by 25 percent. The maximum small entity annual fee would be increased from $1,800 to $2,300, and the lower tier small entity fee would be increased from $400 to $500. The current maximum small entity annual fee was established in FY 1991; the current lower tier small entity annual fee was established in FY 1992. The proposed 25 percent increase is consistent with the increase in NRC fees for other NRC materials licensees since FY 1991. The proposed increase is less than the increase in the average fees paid by small entity licensees in Agreement States during this time.

Between 1991 and 1999, changes in both the external and internal environment have affected NRC's costs and those of its licensees. Increases in the NRC materials license fees, Agreement States' materials license fees, and the Consumer Price Index all indicate that the NRC small entity fee established in 1991 should be revised. In addition, the structure of the fees that NRC charges to its materials licensees changed during the period between 1991 and 1999. In the past, costs for materials license inspections, renewals, and amendments were recovered through Part 170 fees for services. The costs of these activities are now included in the Part 171 annual fees assessed to materials licensees.

While the annual fees increased for most materials licensees as a result of these changes, the NRC's annual fees assessed to small entities have not been adjusted to include the additional costs. As a result, small entities are currently paying a smaller percentage of the total NRC regulatory costs related to them than they did in FY 1991 and FY 1992 when the small entity fees were established.

Based on the changes that have occurred since FY 1991, the NRC has reanalyzed its maximum small entity annual fee. As part of the reanalysis, the NRC considered the 1999 fees assessed by Agreement States, the NRC's FY 1999 fee structure, and the increase in the Consumer Price Index between FY 1991 and FY 1999. The reanalysis and alternatives considered by the NRC for revising the small entity annual fees are described in the Regulatory Flexibility Analysis, which is Appendix A to this proposed rule.

In the future, the NRC plans to re-examine the small entity fees each year that annual fees are rebaselined.

3. Administrative Amendments

a. The NRC is proposing to revise § 171.5, Definitions, to include Certificates of Compliance (Certificates) issued under Part 76. The NRC issued two Certificates of Compliance under Part 76 to the United States Enrichment Corporation (USEC) for the operation of the gaseous diffusion uranium enrichment plants located at Paducah, Kentucky, and Piketon, Ohio. This proposal would add Part 76 Certificates to the definition of Materials License in § 171.5. This proposed change is an administrative change to codify agency practice in the definitions for 10 CFR Part 171. Section 171.16(a)(1) already provides that annual fees covered by the section apply to person(s) authorized to conduct activities under 10 CFR Part 76 for uranium enrichment. USEC has been subject to annual fees since FY 1997.

b. Section 171.15 would be revised as follows:

(1) Paragraphs (b) and (c) of § 171.15 would be revised in their entirety to establish the FY 2000 annual fees for operating power reactors, power reactors in decommissioning or possession only status, and Part 72 licensees who do not hold Part 50 licenses. The fees would be established by increasing the FY 1999 actual (prior to rounding) annual fees by approximately 1.4 percent. In the FY 1999 fee rule, the NRC stated it would continue to stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and other adjustments that may be required, unless there is a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished. The activities comprising the FY 1999 base annual fees and the additional charge (surcharge) are listed in § 171.15(b)(2), (c)(2) and (d)(1) for convenience purposes.

Each operating power reactor would pay an FY 2000 annual fee of $2,815,000, which includes the proposed annual fee of $209,000 for spent fuel storage/reactor decommissioning. Each power reactor holding a Part 50 license that is in decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license would pay the spent fuel storage/reactor decommissioning annual fee of $209,000 in FY 2000.

(2) Paragraph (e) of § 171.15 would be revised to establish the FY 2000 annual fee for non-power (test and research) reactors. The fee would be established by increasing the FY 1999 actual (prior to rounding) annual fee by approximately 1.4 percent. Each non-power reactor would pay an annual fee of $87,100 in FY 2000. The NRC would continue to grant exemptions from the annual fee to Federally-owned and State-owned research and test reactors that meet the exemption criteria specified in § 171.11(a)(2).

c. Section 171.16 would be amended as follows:

(1) Section 171.16(c) covers the fees assessed for those licensees that can qualify as small entities under NRC size standards. A materials licensee may pay a reduced annual fee if the licensee qualifies as a small entity under the NRC's size standards and certifies that it is a small entity using NRC Form 526. This section would be revised to reflect the proposed 25 percent increase in the small entity fees. The NRC would maintain a two-tier fee structure for licensees that qualify as small entities under the NRC's size standards. In general, licensees who qualify as small entities would pay a maximum annual fee of $2,300. A second or lower-tier small entity fee of $500 would be in place for those licensees who are considered to be very small entities for the purposes of this regulation.

(2) Section 171.16(d) would be revised to establish the FY 2000 annual fees for materials licensees, including Government agencies, licensed by the NRC. The proposed FY 2000 annual fees were determined by increasing the FY 1999 actual (prior to rounding) annual fees by approximately 1.4 percent. After rounding, the FY 2000 annual fees for several categories of materials licenses would be the same as in FY 1999. The amount or range of the proposed FY 2000 annual fees for materials licenses is summarized as follows:

MATERIALS LICENSES—ANNUAL FEE RANGES

Category of license	Annual fees
Part 70—High enriched fuel facility	$3,327,000
Part 70—Low enriched fuel facility	1,116,000
Part 40—UF_6 conversion facility	478,000
Part 40—Uranium recovery facilities	30,800 to 132,000
Part 30—Byproduct Material Licenses	620 to 28,100[1]
Part 71—Transportation of Radioactive Material	2,300 to 67,600

[1] Excludes the annual fee for a few military "master" materials licenses of broad-scope issued to Government agencies, which is $363,000.

(3) Footnote 1 of § 171.16(d) would be amended to provide a waiver of the annual fees for materials licensees, and holders of certificates, registrations, and approvals, who either filed for termination of their licenses or approvals or filed for possession only/storage only licenses before October 1, 1999, and permanently ceased licensed activities entirely by September 30, 1999. All other licensees and approval holders who held a license or approval on October 1, 1999, would be subject to the FY 2000 annual fees.

Holders of new licenses issued during FY 2000 would be subject to a prorated annual fee in accordance with the current proration provision of § 171.17. For example, those new materials licenses issued during the period October 1, 1999, through March 31, 2000, would be assessed one-half the annual fee in effect on the anniversary date of the license. New materials licenses issued on or after April 1, 2000, would not be assessed an annual fee for FY 2000. Thereafter, the full annual fee would be due and payable each subsequent fiscal year on the anniversary date of the license. Beginning June 11, 1996 (the effective date of the FY 1996 final rule), affected materials licensees are subject to the annual fee in effect on the anniversary date of the license. The anniversary date of the materials license for annual fee purposes is the first day of the month in which the original license was issued.

d. Section 171.19 Payment, would be amended as follows:

(1) Section 171.19(b) would be revised to update the fiscal year references, and to give credit for partial payments made by certain licensees in FY 2000 toward their FY 2000 annual fees. The NRC anticipates that the first, second, and third quarterly payments for FY 2000 will have been made by operating power reactor licensees and some large materials licensees before the final rule becomes effective. Therefore, the NRC would credit payments received for those quarterly annual fee assessments toward the total annual fee to be assessed. The NRC would adjust the fourth quarterly invoice to recover the full amount of the revised annual fee or to make refunds, as necessary. Payment of the annual fee is due on the date of the invoice and interest accrues from the invoice date. However, interest would be waived if payment is received within 30 days from the invoice date.

(2) The remainder of this section, although unchanged, is presented for the convenience of the user. As in FY 1999, the NRC would continue to bill annual fees for most materials licenses on the anniversary date of the license (licensees whose annual fees are $100,000 or more would continue to be assessed quarterly). The annual fee assessed would be the fee in effect on the license anniversary date, unless the annual fee for the prior year was less than $100,000 and the revised annual fee for the current fiscal year is $100,000 or more. In this case, the revised amount would be billed to the licensees upon publication of the final rule in the **Federal Register**, adjusted for any annual fee payments already made for that fiscal year based on the anniversary month billing process. For FY 2000, the anniversary date billing process applies to those materials licenses in the following fee categories: 1C, 1D, 2A(2) Other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4A through 9D, 10A, and 10B. For annual fee purposes, the anniversary date of the materials license is considered to be the first day of the month in which the original materials license was issued. For example, if the original materials license was issued on June 17 then, for annual fee purposes, the anniversary date of the materials license is June 1 and the licensee would continue to be billed in June of each year for the annual fee in effect on June 1. Materials licensees with anniversary dates in FY 2000 before the effective date of the FY 2000 final rule would be billed during the anniversary month of the license and continue to pay annual fees at the FY 1999 rate in FY 2000. Those materials licensees with license anniversary dates falling on or after the

effective date of the FY 2000 final rule would be billed at the FY 2000 revised rates during the anniversary month of their license.

The NRC reemphasizes that the annual fee will be assessed based on whether a licensee holds a valid NRC license that authorizes possession and use of radioactive material.

In summary, the NRC is proposing to:

1. Use the percent change method to determine annual fees for FY 2000. The FY 2000 annual fee for each license fee category would be determined by increasing the FY 1999 actual annual fee by approximately 1.4 percent;

2. Increase the maximum small entity annual fee from $1,800 to $2,300 and increase the lower tier small entity fee from $400 to $500; and

3. Add Certificates of Compliance issued under Part 76 to the definition of Materials License in § 171.5.

III. Plain Language

The Presidential Memorandum dated June 1, 1998, entitled, "Plain Language in Government Writing," directed that the Federal government's writing be in plain language (63 FR 31883; June 10, 1998). The NRC requests comments on this proposed rule specifically with respect to the clarity and effectiveness of the language used. Comments on the language used should be sent to the NRC as indicated under the **ADDRESSES** heading.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Pub. L. 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this proposed rule, the NRC is amending the licensing, inspection, and annual fees charged to its licensees and applicants as necessary to recover approximately 100 percent of its budget authority in FY 2000 as is required by the Omnibus Budget Reconciliation Act of 1990, as amended. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Environmental Impact: Categorical Exclusion

The NRC has determined that this proposed rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental impact assessment has been prepared for the proposed regulation. By its very nature, this regulatory action does not affect the environment, and therefore; no environmental justice issues are raised.

VI. Paperwork Reduction Act Statement

This proposed rule contains no information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

With respect to 10 CFR Part 170, this proposed rule was developed pursuant to Title V of the Independent Offices Appropriation Act of 1952 (IOAA) (31 U.S.C. 9701) and the Commission's fee guidelines. When developing these guidelines the Commission took into account guidance provided by the U.S. Supreme Court on March 4, 1974, *in National Cable Television Association, Inc.* v. *United States*, 415 U.S. 36 (1974) and *Federal Power Commission* v. *New England Power Company*, 415 U.S. 345 (1974). In these decisions, the Court held that the IOAA authorizes an agency to charge fees for special benefits rendered to identifiable persons measured by the "value to the recipient" of the agency service. The meaning of the IOAA was further clarified on December 16, 1976, by four decisions of the U.S. Court of Appeals for the District of Columbia: *National Cable Television Association* v. *Federal Communications Commission*, 554 F.2d 1094 (D.C. Cir. 1976); *National Association of Broadcasters* v. *Federal Communications Commission*, 554 F.2d 1118 (D.C. Cir. 1976); *Electronic Industries Association* v. *Federal Communications Commission*, 554 F.2d 1109 (D.C. Cir. 1976) and *Capital Cities Communication, Inc.* v. *Federal Communications Commission*, 554 F.2d 1135 (D.C. Cir. 1976). The Commission's fee guidelines were developed based on these legal decisions.

The Commission's fee guidelines were upheld on August 24, 1979, by the U.S. Court of Appeals for the Fifth Circuit in *Mississippi Power and Light Co.* v. *U.S. Nuclear Regulatory Commission*, 601 F.2d 223 (5th Cir. 1979), *cert. denied*, 444 U.S. 1102 (1980). This court held that—

(1) The NRC had the authority to recover the full cost of providing services to identifiable beneficiaries;

(2) The NRC could properly assess a fee for the costs of providing routine inspections necessary to ensure a licensee's compliance with the Atomic Energy Act and with applicable regulations;

(3) The NRC could charge for costs incurred in conducting environmental reviews required by NEPA;

(4) The NRC properly included the costs of uncontested hearings and of administrative and technical support services in the fee schedule;

(5) The NRC could assess a fee for renewing a license to operate a low-level radioactive waste burial site; and

(6) The NRC's fees were not arbitrary or capricious.

With respect to 10 CFR Part 171, on November 5, 1990, the Congress passed Pub. L. 101–508, the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), which required that, for FYs 1991 through 1995, approximately 100 percent of the NRC budget authority be recovered through the assessment of fees. OBRA–90 was amended in 1999 to extend the 100 percent fee recovery requirement for the NRC through FY 2000. To comply with this statutory requirement, and in accordance with § 171.13, the NRC is publishing the proposed amount of the FY 2000 annual fees for reactor licensees, fuel cycle licensees, materials licensees, and holders of Certificates of Compliance, registrations of sealed source and devices and QA program approvals, and Government agencies. OBRA–90, consistent with the accompanying Conference Committee Report, and the amendments to OBRA–90, provide that—

(1) The annual fees be based on the Commission's FY 2000 budget of $470.0 million less the amounts collected from Part 170 fees and the funds directly appropriated from the NWF to cover the NRC's high level waste program;

(2) The annual fees shall, to the maximum extent practicable, have a reasonable relationship to the cost of regulatory services provided by the Commission; and

(3) The annual fees be assessed to those licensees the Commission, in its discretion, determines can fairly, equitably, and practicably contribute to their payment.

In addition, the NRC's FY 2000 appropriations language provides that $3.85 million appropriated from the General Fund for activities related to regulatory reviews and other assistance provided to the Department of Energy and other Federal agencies be excluded from fee recovery.

10 CFR Part 171, which established annual fees for operating power reactors effective October 20, 1986 (51 FR 33224; September 18, 1986), was challenged and upheld in its entirety in *Florida Power and Light Company* v. *United States*, 846 F.2d 765 (D.C. Cir. 1988), *cert. denied*, 490 U.S. 1045 (1989).

Further, the NRC's FY 1991 annual fee rule methodology was upheld by the D.C. Circuit Court of Appeals in *Allied Signal* v. *NRC*, 988 F.2d 146 (D.C. Cir. 1993).

VIII. Regulatory Flexibility Analysis

The NRC is required by the Omnibus Budget Reconciliation Act of 1990 to recover approximately 100 percent of its budget authority through the assessment of user fees. OBRA-90 further requires that the NRC establish a schedule of charges that fairly and equitably allocates the aggregate amount of these charges among licensees.

This proposed rule establishes the schedules of fees that are necessary to implement the Congressional mandate for FY 2000. The proposed rule would result in increases in the annual fees charged to licensees and holders of certificates, registrations, and approvals, including those that qualify as a small entity under NRC's size standards in 10 CFR 2.810. The Regulatory Flexibility Analysis, prepared in accordance with 5 U.S.C. 604, is included as Appendix A to this proposed rule.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) was signed into law on March 29, 1996. The SBREFA requires all Federal agencies to prepare a written compliance guide for each rule for which the agency is required by 5 U.S.C. 604 to prepare a regulatory flexibility analysis. Therefore, in compliance with the law, Attachment 1 to the Regulatory Flexibility Analysis is the small entity compliance guide for FY 2000.

IX. Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this proposed rule and that a backfit analysis is not required for this proposed rule. The backfit analysis is not required because these proposed amendments do not require the modification of or additions to systems, structures, components, or the design of a facility or the design approval or manufacturing license for a facility or the procedures or organization required to design, construct or operate a facility.

List of Subjects

10 CFR Part 170

Byproduct material, Import and export licenses, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

10 CFR Part 171

Annual charges, Byproduct material, Holders of certificates, registrations, approvals, Intergovernmental relations, Non-payment penalties, Nuclear materials, Nuclear power plants and reactors, Source material, Special nuclear material.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, and 5 U.S.C. 553, the NRC is proposing to adopt the following amendments to 10 CFR Parts 170 and 171.

PART 170—FEES FOR FACILITIES, MATERIALS, IMPORT AND EXPORT LICENSES, AND OTHER REGULATORY SERVICES UNDER THE ATOMIC ENERGY ACT OF 1954, AS AMENDED

1. The authority citation for Part 170 continues to read as follows:

Authority: 31 U.S.C. 9701, 96 Stat. 1051; sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201w); sec. 201, Pub. L. 93–4381, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 205, Pub. L. 101–576, 104 Stat. 2842, (31 U.S.C. 901).

2. In § 170.12, paragraph (c)(1) is revised to read as follows:

§ 170.12 Payment of Fees.

* * * * *

(c) *Inspection fees.* (1) Inspection fees will be assessed to recover full cost for each resident inspector (including the senior resident inspector), assigned to a specific plant or facility. The fees assessed will be based on the number of hours that each inspector assigned to the plant or facility is in an official duty status (*i.e.*, all time in a non-leave status), excluding time spent by a resident inspector in support of activities at another site. The hours will be billed at the appropriate hourly rate established in 10 CFR 170.20. Resident inspectors' time related to a specific inspection will be included in the fee assessed for the specific inspection in accordance with paragraph (c)(2) of this section.

* * * * *

3. Section 170.20 is revised to read as follows:

§ 170.20 Average cost per professional staff-hour.

Fees for permits, licenses, amendments, renewals, special projects, Part 55 requalification and replacement examinations and tests, other required reviews, approvals, and inspections under §§ 170.21 and 170.31 will be calculated using the following applicable professional staff-hour rates:

	Per hour
Reactor Program (§ 170.21 Activities)	$144
Nuclear Materials and Nuclear Waste Program (§ 170.31 Activities)	143

4. In § 170.21, the introductory text, Category K, and footnotes 1 and 2 to the table are revised to read as follows:

§ 170.21 Schedule of fees for production and utilization facilities, review of standard referenced design approvals, special projects, inspections and import and export licenses.

Applicants for construction permits, manufacturing licenses, operating licenses, import and export licenses, approvals of facility standard reference designs, requalification and replacement examinations for reactor operators, and special projects and holders of construction permits, licenses, and other approvals shall pay fees for the following categories of services.

SCHEDULE OF FACILITY FEES

[See footnotes at end of table]

Facility categories and type of fees	Fees [1] [2]
. . . . .	
K. Import and export licenses:	
Licenses for the import and export only of production and utilization facilities or the export only of components for production and utilization facilities issued under 10 CFR Part 110:	
1. Application for import or export of reactors and other facilities and exports of components which must be reviewed by the Commissioners and the Executive Branch, for example, actions under 10 CFR 110.40(b)	
Application-new license	$9,300

SCHEDULE OF FACILITY FEES—Continued

[See footnotes at end of table]

Facility categories and type of fees	Fees[1 2]
Amendment	9,300
2. Application for export of reactor and other components requiring Executive Branch review only, for example, those actions under 10 CFR 110.41(a)(1)–(8)	
Application-new license	5,700
Amendment	5,700
3. Application for export of components requiring foreign government assurances only	
Application-new license	1,700
Amendment	1,700
4. Application for export of facility components and equipment not requiring Commissioner review, Executive Branch review, or foreign government assurances	
Application-new license	1,100
Amendment	1,100
5. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis or review	
Amendment	210

[1] Fees will not be charged for orders issued by the Commission under § 2.202 of this chapter or for amendments resulting specifically from the requirements of these types of Commission orders. Fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, §§ 50.12, 73.5) and any other sections in effect now or in the future, regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. Fees for licenses in this schedule that are initially issued for less than full power are based on review through the issuance of a full power license (generally full power is considered 100 percent of the facility's full rated power). Thus, if a licensee received a low power license or a temporary license for less than full power and subsequently receives full power authority (by way of license amendment or otherwise), the total costs for the license will be determined through that period when authority is granted for full power operation. If a situation arises in which the Commission determines that full operating power for a particular facility should be less than 100 percent of full rated power, the total costs for the license will be at that determined lower operating power level and not at the 100 percent capacity.

[2] Full cost fees will be determined based on the professional staff time and appropriate contractual support services expended. For applications currently on file and for which fees are determined based on the full cost expended for the review, the professional staff hours expended for the review of the application up to the effective date of the final rule will be determined at the professional rates in effect at the time the service was provided. For those applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for any topical report, amendment, revision or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

* * * * *

5. Section 170.31 is revised to read as follows:

§ 170.31 Schedule of fees for materials licenses and other regulatory services, including inspections, and import and export licenses.

Applicants for materials licenses, import and export licenses, and other regulatory services and holders of materials licenses, or import and export licenses shall pay fees for the following categories of services. This schedule includes fees for health and safety and safeguards inspections where applicable.

SCHEDULE OF MATERIALS FEES

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
1. Special nuclear material:	
A. Licenses for possession and use of 200 grams or more of plutonium in unsealed form or 350 grams or more of contained U–235 in unsealed form or 200 grams or more of U–233 in unsealed form. This includes applications to terminate licenses as well as licenses authorizing possession only:	
Licensing and Inspection	Full Cost.
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI):	
Licensing and inspection	Full Cost.
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers:[4]	
Application	$660.
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in § 150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1A:[4]	
Application	$1300.
E. Licenses or certificates for construction and operation of a uranium enrichment facility	
Licensing and inspection	Full Cost.
2. Source material:	

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees[1]	Fee[2 3]
A.(1) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, refining uranium mill concentrates to uranium hexafluoride, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode:	
Licensing and inspection	Full Cost.
(2) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal except those licenses subject to fees in Category 2.A.(1)	
Licensing and inspection	Full Cost.
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(1)	
Licensing and inspection	Full Cost.
B. Licenses which authorize the possession, use, and/or installation of source material for shielding:	
Application	$160.
C. All other source material licenses:	
Application	$5,600.
3. Byproduct material:	
A. Licenses of broad scope for the possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$6,700.
B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution:	
Application	$2,500.
C. Licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter that authorize the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources and devices containing byproduct material. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4). These licenses are covered by fee Category 3D	
Application	$10,300.
D. Licenses and approvals issued under §§ 32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits, and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§ 32.72, 32.73, and/or 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 170.11(a)(4)	
Application	$2,400.
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units):	
Application	$1,700.
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes	
Application	$3,300.
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials where the source is not exposed for irradiation purposes	
Application	$3,500.
H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter. The category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application	$2,100.
I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter:	
Application	$3,200.
J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application	$1,000.
K. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter. This category does not include specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter:	
Application	$590.
L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution:	
Application	$5,600.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution:	
Application	$2,300.
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C:	
Application	$2,400.
O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations:	
Application	$5,900.
P. All other specific byproduct material licenses, except those in Categories 4A through 9D:	
Application	$1,300.
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material:	
Licensing and inspection	Full Cost.
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$1,700.
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material:	
Application	$2,600.
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies:	
Application	$6,100.
B. Licenses for possession and use of byproduct material for field flooding tracer studies:	
Licensing	Full Cost.
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material:	
Application	$11,400.
7. Medical licenses:	
A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$6,200.
B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$4,500.
C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material, except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices:	
Application	$2,400.
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities:	
Application	$330.
9. Device, product, or sealed source safety evaluation:	
A. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution:	
Application—each device	$5,300.
B. Safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices:	
Application—each device	$3,800.
C. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution:	
Application—each source	$1,600.
D. Safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel:	
Application—each source	$540.
10. Transportation of radioactive material:	
A. Evaluation of casks, packages, and shipping containers:	
Licensing and inspections	Full Cost.

SCHEDULE OF MATERIALS FEES—Continued

[See footnotes at end of table]

Category of materials licenses and type of fees [1]	Fee [2] [3]
B. Evaluation of 10 CFR Part 71 quality assurance programs:	
Application	$400.
Inspections	Full Cost.
11. Review of standardized spent fuel facilities:	
Licensing and inspection	Full Cost.
12. Special projects: [5]	
Approvals and preapplication/Licensing activities	Full Cost.
Inspections	Full Cost.
13. A. Spent fuel storage cask Certificate of Compliance:	
Licensing	Full Cost.
B. Inspections related to spent fuel storage cask Certificate of Compliance	Full Cost.
C. Inspections related to storage of spent fuel under § 72.210 of this chapter	Full Cost.
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under Parts 30, 40, 70, 72, and 76 of this chapter:	
Licensing and inspection	Full Cost.
15. Import and Export licenses:	
Licenses issued under 10 CFR Part 110 of this chapter for the import and export only of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite	
A. Application for export or import of high enriched uranium and other materials, including radioactive waste, which must be reviewed by the Commissioners and the Executive Branch, for example, those actions under 10 CFR 110.40(b). This category includes application for export or import of radioactive wastes in multiple forms from multiple generators or brokers in the exporting country and/or going to multiple treatment, storage or disposal facilities in one or more receiving countries	
Application—new license	$9,300.
Amendment	$9,300.
B. Application for export or import of special nuclear material, source material, tritium and other byproduct material, heavy water, or nuclear grade graphite, including radioactive waste, requiring Executive Branch review but not Commissioner review. This category includes application for the export or import of radioactive waste involving a single form of waste from a single class of generator in the exporting country to a single treatment, storage and/or disposal facility in the receiving country	
Application—new license	$5,700.
Amendment	$5,700.
C. Application for export of routine reloads of low enriched uranium reactor fuel and exports of source material requiring only foreign government assurances under the Atomic Energy Act	
Application—new license	$1,700.
Amendment	$1,700.
D. Application for export or import of other materials, including radioactive waste, not requiring Commissioner review, Executive Branch review, or foreign government assurances under the Atomic Energy Act. This category includes application for export or import of radioactive waste where the NRC has previously authorized the export or import of the same form of waste to or from the same or similar parties, requiring only confirmation from the receiving facility and licensing authorities that the shipments may proceed according to previously agreed understandings and procedures	
Application-new license	$1,100.
Amendment	$1,100.
E. Minor amendment of any export or import license to extend the expiration date, change domestic information, or make other revisions which do not require in-depth analysis, review, or consultations with other agencies or foreign governments	
Amendment	$210.
16. Reciprocity:	
Agreement State licensees who conduct activities under the reciprocity provisions of 10 CFR 150.20	
Application (initial filing of Form 241)	$1,200.
Revisions	$200.

[1] Types of fees—Separate charges, as shown in the schedule, will be assessed for preapplication consultations and reviews and applications for new licenses and approvals, issuance of new licenses and approvals, certain amendments and renewals to existing licenses and approvals, safety evaluations of sealed sources and devices, and certain inspections. The following guidelines apply to these charges:

(a) *Application fees.* Applications for new materials licenses and export and import licenses; applications to reinstate expired, terminated, or inactive licenses except those subject to fees assessed at full costs; applications filed by Agreement State licensees to register under the general license provisions of 10 CFR 150.20; and applications for amendments to materials licenses that would place the license in a higher fee category or add a new fee category must be accompanied by the prescribed application fee for each category.

(1) Applications for licenses covering more than one fee category of special nuclear material or source material must be accompanied by the prescribed application fee for the highest fee category.

(2) Applications for new licenses that cover both byproduct material and special nuclear material in sealed sources for use in gauging devices will pay the appropriate application fee for fee Category 1C only.

(b) *Licensing fees.* Fees for reviews of applications for new licenses and for renewals and amendments to existing licenses, for preapplication consultations and for reviews of other documents submitted to NRC for review, and for project manager time for fee categories subject to full cost fees (fee Categories 1A, 1B, 1E, 2A, 4A, 5B, 10A, 11, 12, 13A, and 14) are due upon notification by the Commission in accordance with § 170.12(b).

(c) *Amendment/revision fees.*

Applications for amendments to export and import licenses and revisions to reciprocity initial applications must be accompanied by the prescribed amendment/revision fee for each license/revision affected. An application for an amendment to a license or approval classified in more than one fee category must be accompanied by the prescribed amendment fee for the category affected by the amendment unless the amendment is applicable to two or more fee categories in which case the amendment fee for the highest fee category would apply.

(d) *Inspection fees.* Inspections resulting from investigations conducted by the Office of Investigations and nonroutine inspections that result from third-party allegations are not subject to fees. Inspection fees are due upon notification by the Commission in accordance with § 170.12(c).

[2] Fees will not be charged for orders issued by the Commission under 10 CFR 2.202 or for amendments resulting specifically from the requirements of these types of Commission orders. However, fees will be charged for approvals issued under a specific exemption provision of the Commission's regulations under Title 10 of the Code of Federal Regulations (*e.g.*, 10 CFR 30.11, 40.14, 70.14, 73.5, and any other sections in effect now in the future) regardless of whether the approval is in the form of a license amendment, letter of approval, safety evaluation report, or other form. In addition to the fee shown, an applicant may be assessed an additional fee for sealed source and device evaluations as shown in Categories 9A through 9D.

[3] Full cost fees will be determined based on the professional staff time multiplied by the appropriate professional hourly rate established in § 170.20 in effect at the time the service is provided, and the appropriate contractual support services expended. For applications currently on file for which review costs have reached an applicable fee ceiling established by the June 20, 1984, and July 2, 1990, rules, but are still pending completion of the review, the cost incurred after any applicable ceiling was reached through January 29, 1989, will not be billed to the applicant. Any professional staff-hours expended above those ceilings on or after January 30, 1989, will be assessed at the applicable rates established by § 170.20, as appropriate, except for topical reports whose costs exceed $50,000. Costs which exceed $50,000 for each topical report, amendment, revision, or supplement to a topical report completed or under review from January 30, 1989, through August 8, 1991, will not be billed to the applicant. Any professional hours expended on or after August 9, 1991, will be assessed at the applicable rate established in § 170.20.

[4] Licensees paying fees under Categories 1A, 1B, and 1E are not subject to fees under Categories 1C and 1D for sealed sources authorized in the same license except for an application that deals only with the sealed sources authorized by the license.

[5] Fees will not be assessed for requests/reports submitted to the NRC:

(a) In response to a Generic Letter or NRC Bulletin that does not result in an amendment to the license, does not result in the review of an alternate method or reanalysis to meet the requirements of the Generic Letter, or does not involve an unreviewed safety issue;

(b) In response to an NRC request (at the Associate Office Director level or above) to resolve an identified safety, safeguards, or environmental issue, or to assist NRC in developing a rule, regulatory guide, policy statement, generic letter, or bulletin; or

(c) As a means of exchanging information between industry organizations and the NRC for the purpose of supporting generic regulatory improvements or efforts.

PART 171—ANNUAL FEES FOR REACTOR LICENSES AND FUEL CYCLE LICENSES AND MATERIAL LICENSES, INCLUDING HOLDERS OF CERTIFICATES OF COMPLIANCE, REGISTRATIONS, AND QUALITY ASSURANCE PROGRAM APPROVALS AND GOVERNMENT AGENCIES LICENSED BY THE NRC

6. The authority citation for Part 171 continues to read as follows:

Authority: Sec. 7601, Pub. L. 99–272, 100 Stat. 146, as amended by sec. 5601, Pub. L. 100–203, 101 Stat. 1330, as amended by Sec. 3201, Pub. L. 101–239, 103 Stat. 2106 as amended by sec. 6101, Pub. L. 101–508, 104 Stat. 1388, (42 U.S.C. 2213); sec. 301, Pub. L. 92–314, 86 Stat. 222 (42 U.S.C. 2201(w)); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 2903, Pub. L. 102–486, 106 Stat. 3125, (42 U.S.C. 2214 note).

7. In Section § 171.5, the definition of the term Materials License is revised to read as follows:

§ 171.5 Definitions.

* * * * *

Materials License means a license, certificate, approval, registration or other form of permission issued by the NRC under the regulations in 10 CFR parts 30, 32 through 36, 39, 40, 61, 70, 71, 72, and 76.

* * * * *

8. In § 171.15, paragraphs (b), (c), (d)(1), and (e) are revised to read as follows:

§ 171.15 Annual Fees: Reactor licenses and spent fuel storage/reactor decommissioning.

* * * * *

(b)(1) The FY 2000 annual fee for each operating power reactor which must be collected by September 30, 2000, is $2,815,000. This fee has been determined by adjusting the FY 1999 actual (prior to rounding) annual fee upward by approximately 1.4 percent.

(2) The FY 1999 annual fee was comprised of a base operating power reactor annual fee, a base spent fuel storage/reactor decommissioning annual fee, and associated additional charges (surcharges). The activities comprising the FY 1999 spent storage/reactor decommissioning base annual fee are shown in paragraph (c)(2)(i) and (ii) of this section. The activities comprising the FY 1999 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 1999 base annual fee for operating power reactors are as follows:

(i) Power reactor safety and safeguards regulation except licensing and inspection activities recovered under Part 170 of this chapter and generic reactor decommissioning activities.

(ii) Research activities directly related to the regulation of power reactors except those activities specifically related to reactor decommissioning.

(iii) Generic activities required largely for NRC to regulate power reactors, *e.g.*, updating Part 50 of this chapter, or operating the Incident Response Center. The base annual fee for operating power reactors does not include generic activities specifically related to reactor decommissioning.

(c)(1) The FY 2000 annual fee for each power reactor holding a Part 50 license that is in a decommissioning or possession only status and has spent fuel on-site and each independent spent fuel storage Part 72 licensee who does not hold a Part 50 license is $209,000. This fee has been determined by increasing the FY 1999 actual (prior to rounding) annual fee by approximately 1.4 percent.

(2) The FY 1999 annual fee was comprised of a base spent fuel storage/reactor decommissioning annual fee (which is also included in the operating power reactor annual fee shown in paragraph (b) of this section), and an additional charge (surcharge). The activities comprising the FY 1999 surcharge are shown in paragraph (d)(1) of this section. The activities comprising the FY 1999 spent fuel storage/reactor decommissioning base annual fee are:

(i) Generic and other research activities directly related to reactor decommissioning and spent fuel storage; and

(ii) Other safety, environmental, and safeguards activities related to reactor decommissioning and spent fuel storage, except costs for licensing and inspection activities that are recovered under part 170 of this chapter.

(d)(1) The activities comprising the FY 1999 surcharge are as follows:

(i) Low level waste disposal generic activities;

(ii) Activities not attributable to an existing NRC licensee or class of licensees (*e.g.*, international cooperative safety program and international safeguards activities, support for the Agreement State program, and site decommissioning management plan (SDMP) activities); and

(iii) Activities not currently subject to 10 CFR Part 170 licensing and inspection fees based on existing law or Commission policy, *e.g.*, reviews and inspections conducted of nonprofit educational institutions, licensing actions for Federal agencies, and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

* * * * *

(e) The FY 2000 annual fees for licensees authorized to operate a nonpower (test and research) reactor licensed under Part 50 of this chapter have been determined by revising the FY 1999 actual (prior to rounding) annual fee upward by approximately 1.4 percent. The FY 2000 annual fee for each nonpower reactor, unless the reactor is exempted from fees under § 171.11(a), is as follows:

Research reactor: $87,100

Test reactor: $87,100

9. In § 171.16, paragraphs (c), (d), and (e) are revised to read as follows:

§ 171.16 Annual Fees: Materials Licensees, Holders of Certificates of Compliance, Holders of Sealed Source and Device Registrations, Holders of Quality Assurance Program Approvals and Government Agencies Licensed by the NRC.

* * * * *

(c) A licensee who is required to pay an annual fee under this section may qualify as a small entity. If a licensee qualifies as a small entity and provides the Commission with the proper certification with the annual fee payment, the licensee may pay reduced annual fees as shown below. Failure to file a small entity certification in a timely manner could result in the denial of any refund that might otherwise be due.

	Maximum annual fee per licensed category
Small Businesses Not Engaged in Manufacturing and Small Not-For-Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

(1) A licensee qualifies as a small entity if it meets the size standards established by the NRC (See 10 CFR 2.810).

(2) A licensee who seeks to establish status as a small entity for the purpose of paying the annual fees required under this section must file a certification statement with the NRC. The licensee must file the required certification on NRC Form 526 for each license under which it is billed. The NRC will include a copy of NRC Form 526 with each annual fee invoice sent to a licensee. A licensee who seeks to qualify as a small entity must submit the completed NRC Form 526 with the reduced annual fee payment.

(3) For purposes of this section, the licensee must submit a new certification with its annual fee payment each year.

(4) The maximum annual fee a small entity is required to pay is $2,300 for each category applicable to the license(s).

(d) The FY 2000 annual fees for materials licensees and holders of certificates, registrations or approvals subject to fees under this section are shown below. The FY 2000 annual fees, which must be collected by September 30, 2000, have been determined by adjusting the FY 1999 actual (prior to rounding) annual fees upward by approximately 1.4 percent. As a result of rounding, the FY 2000 annual fee for several fee cateogries is the same as the FY 1999 annual fee. In the FY 1999 final rule, the NRC stated it would stabilize annual fees by adjusting the annual fees only by the percentage change (plus or minus) in NRC's total budget authority and adjustments based on changes in 10 CFR Part 170 fees, the number of licensees paying the fees, and other required adjustments. The FY 1999 annual fees were comprised of a base annual fee and an additional charge (surcharge). The activities comprising the FY 1999 surcharge are shown for convenience in paragraph (e) of this section.

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC

[See footnotes at end of table]

Category of materials licenses	Annual fees [1 2 3]
1. Special nuclear material:	
A. (1) Licenses for possession and use of U–235 or plutonium for fuel fabrication activities.	
(a) Strategic Special Nuclear Material:	
Babcock & Wilcox SNM–42	$3,327,000
Nuclear Fuel Services SNM–124	3,327,000
(b) Low Enriched Uranium in Dispersible Form Used for Fabrication of Power Reactor Fuel:	
Combustion Engineering (Hematite) SNM–33	1,116,000
General Electric Company SNM–1097	1,116,000
Siemens Nuclear Power SNM–1227	1,116,000
Westinghouse Electric Company SNM–1107	1,116,000
(2) All other special nuclear materials licenses not included in Category 1.A.(1) which are licensed for fuel cycle activities	
(a) Facilities with limited operations:	
Framatome Cogema SNM–1168	438,000
(b) All Others:	
General Electric SNM–960	319,000

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
B. Licenses for receipt and storage of spent fuel at an independent spent fuel storage installation (ISFSI). See 10 CFR 171.15(c).	
C. Licenses for possession and use of special nuclear material in sealed sources contained in devices used in industrial measuring systems, including x-ray fluorescence analyzers	1,200
D. All other special nuclear material licenses, except licenses authorizing special nuclear material in unsealed form in combination that would constitute a critical quantity, as defined in §150.11 of this chapter, for which the licensee shall pay the same fees as those for Category 1.A.(2)	3,400
E. Licenses or certificates for the operation of a uranium enrichment facility	2,072,000
2. Source material:	
A.(1) Licenses for possession and use of source material for refining uranium mill concentrates to uranium hexafluoride.	47[illegible]00
(2) Licenses for possession and use of source material in recovery operations such as milling, in-situ leaching, heap-leaching, ore buying stations, ion exchange facilities and in processing of ores containing source material for extraction of metals other than uranium or thorium, including licenses authorizing the possession of byproduct waste material (tailings) from source material recovery operations, as well as licenses authorizing the possession and maintenance of a facility in a standby mode.	
Class I facilities [4]	132,000
Class II facilities [4]	111,000
Other facilities [4]	30,800
(3) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal, except those licenses subject to the fees in Category 2.A.(2) or Category 2.A.(4)	81,700
(4) Licenses that authorize the receipt of byproduct material, as defined in Section 11e.(2) of the Atomic Energy Act, from other persons for possession and disposal incidental to the disposal of the uranium waste tailings generated by the licensee's milling operations, except those licenses subject to the fees in Category 2.A.(2)	12,900
B. Licenses that authorize only the possession, use and/or installation of source material for shielding	630
C. All other source material licenses	11,800
3. Byproduct material:	
A. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	26,300
B. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for processing or manufacturing of items containing byproduct material for commercial distribution	6,400
C. Licenses issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing the processing or manufacturing and distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources and devices containing byproduct material. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license. This category does not apply to licenses issued to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). These licenses are covered by fee Category 3D.	15,600
D. Licenses and approvals issued under §§32.72, 32.73, and/or 32.74 of this chapter authorizing distribution or redistribution of radiopharmaceuticals, generators, reagent kits and/or sources or devices not involving processing of byproduct material. This category includes licenses issued under §§32.72, 32.73 and 32.74 of this chapter to nonprofit educational institutions whose processing or manufacturing is exempt under 10 CFR 171.11(a)(1). This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when included on the same license	3,800
E. Licenses for possession and use of byproduct material in sealed sources for irradiation of materials in which the source is not removed from its shield (self-shielded units).	3,500
F. Licenses for possession and use of less than 10,000 curies of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	5,800
G. Licenses for possession and use of 10,000 curies or more of byproduct material in sealed sources for irradiation of materials in which the source is exposed for irradiation purposes. This category also includes underwater irradiators for irradiation of materials in which the source is not exposed for irradiation purposes	15,000
H. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material that require device review to persons exempt from the licensing requirements of Part 30 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	3,300
I. Licenses issued under Subpart A of Part 32 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require device evaluation to persons exempt from the licensing requirements of Part 30 of this chapter, except for specific licenses authorizing redistribution of items that have been authorized for distribution to persons exempt from the licensing requirements of Part 30 of this chapter	4,700
J. Licenses issued under Subpart B of Part 32 of this chapter to distribute items containing byproduct material that require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	2,100
K. Licenses issued under Subpart B of Part 31 of this chapter to distribute items containing byproduct material or quantities of byproduct material that do not require sealed source and/or device review to persons generally licensed under Part 31 of this chapter, except specific licenses authorizing redistribution of items that have been authorized for distribution to persons generally licensed under Part 31 of this chapter	1,800
L. Licenses of broad scope for possession and use of byproduct material issued under Parts 30 and 33 of this chapter for research and development that do not authorize commercial distribution	11,300

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
M. Other licenses for possession and use of byproduct material issued under Part 30 of this chapter for research and development that do not authorize commercial distribution	5,000
N. Licenses that authorize services for other licensees, except:	
(1) Licenses that authorize only calibration and/or leak testing services are subject to the fees specified in fee Category 3P; and	
(2) Licenses that authorize waste disposal services are subject to the fees specified in fee Categories 4A, 4B, and 4C	5,300
O. Licenses for possession and use of byproduct material issued under Part 34 of this chapter for industrial radiography operations. This category also includes the possession and use of source material for shielding authorized under Part 40 of this chapter when authorized on the same license	14,900
P. All other specific byproduct material licenses, except those in Categories 4A through 9D	2,600
4. Waste disposal and processing:	
A. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of contingency storage or commercial land disposal by the licensee; or licenses authorizing contingency storage of low-level radioactive waste at the site of nuclear power reactors; or licenses for receipt of waste from other persons for incineration or other treatment, packaging of resulting waste and residues, and transfer of packages to another person authorized to receive or dispose of waste material	[5] N/A
B. Licenses specifically authorizing the receipt of waste byproduct material, source material, or special nuclear material from other persons for the purpose of packaging or repackaging the material. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	11,500
C. Licenses specifically authorizing the receipt of prepackaged waste byproduct material, source material, or special nuclear material from other persons. The licensee will dispose of the material by transfer to another person authorized to receive or dispose of the material	8,500
5. Well logging:	
A. Licenses for possession and use of byproduct material, source material, and/or special nuclear material for well logging, well surveys, and tracer studies other than field flooding tracer studies	10,100
B. Licenses for possession and use of byproduct material for field flooding tracer studies	[6] N/A
6. Nuclear laundries:	
A. Licenses for commercial collection and laundry of items contaminated with byproduct material, source material, or special nuclear material	19,200
7. Medical licenses:	
A. Licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license	15,500
B. Licenses of broad scope issued to medical institutions or two or more physicians under Parts 30, 33, 35, 40, and 70 of this chapter authorizing research and development, including human use of byproduct material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	28,100
C. Other licenses issued under Parts 30, 35, 40, and 70 of this chapter for human use of byproduct material, source material, and/or special nuclear material except licenses for byproduct material, source material, or special nuclear material in sealed sources contained in teletherapy devices. This category also includes the possession and use of source material for shielding when authorized on the same license [9]	5,900
8. Civil defense:	
A. Licenses for possession and use of byproduct material, source material, or special nuclear material for civil defense activities	1,200
9. Device, product, or sealed source safety evaluation:	
A. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material, except reactor fuel devices, for commercial distribution	6,100
B. Registrations issued for the safety evaluation of devices or products containing byproduct material, source material, or special nuclear material manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel devices	4,400
C. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, except reactor fuel, for commercial distribution	1,900
D. Registrations issued for the safety evaluation of sealed sources containing byproduct material, source material, or special nuclear material, manufactured in accordance with the unique specifications of, and for use by, a single applicant, except reactor fuel	620
10. Transportation of radioactive material:	
A. Certificates of Compliance or other package approvals issued for design of casks, packages, and shipping containers.	
Spent Fuel, High-Level Waste, and plutonium air packages	[6] N/A
Other Casks	[6] N/A
B. Quality assurance program approvals issued under 10 CFR Part 71	
Users and Fabricators	67,600
Users	2,300
11. Standardized spent fuel facilities	[6] N/A
12. Special Projects	[6] N/A
13. A. Spent fuel storage cask Certificate of Compliance	[6] N/A
B. General licenses for storage of spent fuel under 10 CFR 72.210. N/A (See 10 CFR 171.15(c)).	
14. Byproduct, source, or special nuclear material licenses and other approvals authorizing decommissioning, decontamination, reclamation, or site restoration activities under 10 CFR Parts 30, 40, 70, 72, and 76 of this chapter	[7] N/A
15. Import and Export licenses	[8] N/A
16. Reciprocity	[8] N/A

SCHEDULE OF MATERIALS ANNUAL FEES AND FEES FOR GOVERNMENT AGENCIES LICENSED BY NRC—Continued

[See footnotes at end of table]

Category of materials licenses	Annual fees [1] [2] [3]
17. Master materials licenses of broad scope issued to Government agencies	363,000
18. Department of Energy:	
A. Certificates of Compliance	[10] 884,000
B. Uranium Mill Tailing Radiation Control Act (UMTRCA) activities	881,000

[1] Annual fees will be assessed based on whether a licensee held a valid license with the NRC authorizing possession and use of radioactive material during the fiscal year. However, the annual fee is waived for those materials licenses and holders of certificates, registrations, and approvals who either filed for termination of their licenses or approvals or filed for possession only/storage licenses prior to October 1, 1999, and permanently ceased licensed activities entirely by September 30, 1999. Annual fees for licensees who filed for termination of a license, downgrade of a license, or for a possession only license during the fiscal year and for new licenses issued during the fiscal year will be prorated in accordance with the provisions of § 171.17. If a person holds more than one license, certificate, registration, or approval, the annual fee(s) will be assessed for each license, certificate, registration, or approval held by that person. For licenses that authorize more than one activity on a single license (e.g., human use and irradiator activities), annual fees will be assessed for each category applicable to the license. Licensees paying annual fees under Category 1A(1) are not subject to the annual fees for Category 1C and 1D for sealed sources authorized in the license.

[2] Payment of the prescribed annual fee does not automatically renew the license, certificate, registration, or approval for which the fee is paid. Renewal applications must be filed in accordance with the requirements of Parts 30, 40, 70, 71, 72, or 76 of this chapter.

[3] Each fiscal year, fees for these materials licenses will be calculated and assessed in accordance with § 171.13 and will be published in the Federal Register for notice and comment.

[4] A Class I license includes mill licenses issued for the extraction of uranium from uranium ore. A Class II license includes solution mining licenses (in-situ and heap leach) issued for the extraction of uranium from uranium ores including research and development licenses. An "other" license includes licenses for extraction of metals, heavy metals, and rare earths.

[5] There are no existing NRC licenses in these fee categories. Once NRC issues a license for these categories, the Commission will consider establishing an annual fee for that type of license.

[6] Standardized spent fuel facilities, 10 CFR Parts 71 and 72 Certificates of Compliance, and special reviews, such as topical reports, are not assessed an annual fee because the generic costs of regulating these activities are primarily attributable to the users of the designs, certificates, and topical reports.

[7] Licensees in this category are not assessed an annual fee because they are charged an annual fee in other categories while they are licensed to operate.

[8] No annual fee is charged because it is not practical to administer due to the relatively short life or temporary nature of the license.

[9] Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions who also hold nuclear medicine licenses under Categories 7B or 7C.

[10] This includes Certificates of Compliance issued to DOE that are not under the Nuclear Waste Fund.

(e) The activities comprising the surcharge are as follows:

(1) LLW disposal generic activities;

(2) Activities not directly attributable to an existing NRC licensee or classes of licensees; *e.g.*, international cooperative safety program and international safeguards activities; support for the Agreement State program; site decommissioning management plan (SDMP) activities; and

(3) Activities not currently assessed licensing and inspection fees under 10 CFR Part 170 based on existing law or Commission policy, *e.g.*, reviews and inspections conducted of nonprofit educational institutions and reviews for Federal agencies; activities related to decommissioning and reclamation; and costs that would not be collected from small entities based on Commission policy in accordance with the Regulatory Flexibility Act.

10. Section 171.19 is revised to read as follows:

§ 171.19 Payment.

(a) Method of payment. Annual fee payments, made payable to the U.S. Nuclear Regulatory Commission, are to be made in U.S. funds by electronic funds transfer such as ACH (Automated Clearing House) using EDI (Electronic Data Interchange), check, draft, money order, or credit card. Federal agencies may also make payment by the On-line Payment and Collection System (OPAC's). Where specific payment instructions are provided on the invoices to applicants and licensees, payment should be made accordingly, *e.g.* invoices of $5,000 or more should be paid via ACH through NRC's Lockbox Bank at the address indicated on the invoice. Credit card payments should be made up to the limit established by the credit card bank, in accordance with specific instructions provided with the invoices, to the Lockbox Bank designated for credit card payments. In accordance with Department of the Treasury requirements, refunds will only be made upon receipt of information on the payee's financial institution and bank accounts.

(b) Annual fees in the amount of $100,000 or more and described in the **Federal Register** document issued under § 171.13 must be paid in quarterly installments of 25 percent as billed by the NRC. The quarters begin on October 1, January 1, April 1, and July 1 of each fiscal year. The NRC will adjust the fourth quarterly invoice to recover the full amount of the revised annual fee. If the amounts collected in the first three quarters exceed the amount of the revised annual fee, the overpayment will be refunded. Licensees whose annual fee for FY 1999 was less than $100,000 (billed on the anniversary date of the license), and whose revised annual fee for FY 2000 would be $100,000 (subject to quarterly billing), would be issued a bill upon publication of the final rule for the full amount of the FY 2000 annual fee, less any payments received for FY 2000 based on the anniversary date billing process.

(c) Annual fees that are less than $100,000 are billed on the anniversary date of the license. For annual fee purposes, the anniversary date of the license is considered to be the first day of the month in which the original license was issued by the NRC. Licensees that are billed on the license anniversary date will be assessed the annual fee in effect on the anniversary date of the license. Materials licenses subject to the annual fee that are terminated during the fiscal year but before the anniversary month of the license will be billed upon termination for the fee in effect at the time of the billing. New materials licenses subject to the annual fee will be billed in the month the license is issued or in the next available monthly billing for the fee in effect on the anniversary date of the license. Thereafter, annual fees for new licenses will be assessed in the anniversary month of the license.

(d) Annual fees of less than $100,000 must be paid as billed by the NRC. Materials license annual fees that are less than $100,000 are billed on the anniversary date of the license. The materials licensees that are billed on the anniversary date of the license are those covered by fee categories 1C, 1.D, 2(A)(2) other, 2A(3), 2A(4), 2B, 2C, 3A through 3P, 4B through 9D, 10A, and 10B.

(e) Payment is due on the invoice date and interest accrues from the date of the invoice. However, interest will be waived if payment is received within 30 days from the invoice date.

Dated at Rockville, Maryland, this 14th day of March, 2000.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

Note: This Appendix Will Not Appear in the Code of Federal Regulations.

Appendix A to This Proposed Rule—Draft Regulatory Flexibility Analysis for the Amendments to 10 CFR Part 170 (License Fees) and 10 CFR Part 171 (Annual Fees)

I. Background

The Regulatory Flexibility Act (RFA), as amended, (5 U.S.C. 601 *et seq.*) requires that agencies consider the impact of their rulemakings on small entities and, consistent with applicable statutes, consider alternatives to minimize these impacts on the businesses, organizations, and government jurisdictions to which they apply.

The NRC has established standards for determining which NRC licensees qualify as small entities (10 CFR 2.801). These size standards reflect the Small Business Administration's most common receipts-based size standards and include a size standard for business concerns that are manufacturing entities. The NRC uses the size standards to reduce the impact of annual fees on small entities by establishing a licensee's eligibility to qualify for a maximum small entity fee. The small entity fee categories in § 171.16(c) of this proposed rule are based on the NRC's size standards.

The Omnibus Budget Reconciliation Act (OBRA–90), as amended, requires that the NRC recover approximately 100 percent of its budget authority, less appropriations from the Nuclear Waste Fund, by assessing license and annual fees. OBRA–90 requires that the schedule of charges established by rule should fairly and equitably allocate the total amount to recover from NRC's licensees and be assessed under the principle that licensees who require the greatest expenditure of agency resources pay the greatest annual charges. The amount to be collected for FY 2000 is approximately $447.0 million.

Since 1991, the NRC has complied with OBRA–90 by issuing a final rule that amends its fee regulations. These final rules have established the methodology used by NRC in identifying and determining the fees to be assessed and collected in any given fiscal year.

In FY 1995, the NRC announced that, in order to stabilize fees, annual fees would be adjusted only by the percentage change (plus or minus) in NRC's total budget authority, adjusted for changes in estimated collections for 10 CFR Part 170 fees, the number of licensees paying annual fees, and as otherwise needed to assure the billed amounts resulted in the required collections. The NRC indicated that if there was a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees, the annual fee base would be recalculated.

In FY 1999, the NRC concluded that there had been significant changes in the allocation of agency resources among the various classes of licensees and established rebaselined annual fees for FY 1999. The NRC stated in the final FY 1999 rule that to stabilize fees it would continue the policy established in FY 1995 to adjust the annual fees by the percent change method, unless there was a substantial change in the total NRC budget or the magnitude of the budget allocated to a specific class of licensees, in which case the annual fee base would be reestablished.

After evaluating budget data for FY 2000, the NRC has concluded that there has not been a substantial change in the total NRC budget authority or the magnitude of the budget allocated to a specific class of licensees since FY 1999. Therefore, the NRC's proposed FY 2000 annual fees have been determined by the percent change method based on FY 1999 annual fees. As a result, the FY 2000 annual fees for all licenses would increase by about 1.4 percent.

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) is intended to reduce regulatory burdens imposed by Federal agencies on small businesses, nonprofit organizations, and governmental jurisdictions. SBREFA also provides Congress with the opportunity to review agency rules before they go into effect. Under this legislation, the NRC annual fee rule is considered a "major" rule and must be reviewed by Congress and the Comptroller General before the rule becomes effective. SBREFA also requires that an agency prepare a guide to assist small entities in complying with each rule for which final regulatory flexibility analysis is prepared. This Regulatory Flexibility Analysis and the small entity compliance guide (Attachment 1) have been prepared for the FY 2000 fee rule as required by law.

II. Impact on Small Entities

The fee rule results in substantial fees being charged to those individuals, organizations, and companies that are licensed by the NRC, including those licensed under the NRC materials program. The comments received on previous proposed fee rules and the small entity certifications received in response to previous final fee rules indicate that NRC licensees qualifying as small entities under the NRC's size standards are primarily materials licensees. Therefore, this analysis will focus on the economic impact of the annual fees on materials licensees. About 20 percent of these licensees (approximately 1,200 licensees for FY 1999) have requested small entity certification in the past. A 1993 NRC survey of its materials licensees indicated that about 25 percent of these licensees could qualify as small entities under the NRC's size standards.

The commenters on previous fee rulemakings consistently indicated that the following results would occur if the proposed annual fees were not modified.

1. Large firms would gain an unfair competitive advantage over small entities. Commenters noted that small and very small companies ("Mom and Pop" operations) would find it more difficult to absorb the annual fee than a large corporation or a high-volume type of operation. In competitive markets, such as soils testing, annual fees would put small licensees at an extreme competitive disadvantage with their much larger competitors because the proposed fees would be the same for a two-person licensee as for a large firm with thousands of employees.

2. Some firms would be forced to cancel their licenses. A licensee with receipts of less than $500,000 per year stated that the proposed rule would, in effect, force it to relinquish its soil density gauge and license, thereby reducing its ability to do its work effectively. Other licensees, especially well-loggers, noted that the increased fees would force small businesses to get rid of the materials license altogether. Commenters stated that the proposed rule would result in about 10 percent of the well-logging licensees terminating their licenses immediately and approximately 25 percent terminating their licenses before the next annual assessment.

3. Some companies would go out of business.

4. Some companies would have budget problems. Many medical licensees noted that, along with reduced reimbursements, the proposed increase of the existing fees and the introduction of additional fees would significantly affect their budgets. Others noted that, in view of the cuts by Medicare and other third party carriers, the fees would produce a hardship and some facilities would experience a great deal of difficulty in meeting this additional burden.

Since annual fees for materials licenses were first established, approximately 3,000 license, approval, and registration terminations have been requested. Although some of these terminations were requested because the license was no longer needed or licenses or registrations could be combined, indications are that other termination requests were due to the economic impact of the fees.

To alleviate the significant impact of the annual fees on a substantial number of small entities, the NRC considered the following alternatives, in accordance with the RFA, in developing each of its fee rules since 1991.

1. Base fees on some measure of the amount of radioactivity possessed by the licensee (*e.g.*, number of sources).

2. Base fees on the frequency of use of the licensed radioactive material (*e.g.*, volume of patients).

3. Base fees on the NRC size standards for small entities.

The NRC has reexamined its previous evaluations of these alternatives and continues to believe that establishment of a maximum fee for small entities is the most appropriate and effective option for reducing the impact of its fees on small entities.

III. Maximum Fee

The RFA and its implementing guidance do not provide specific guidelines on what constitutes a significant economic impact on a small entity. Therefore, the NRC has no benchmark to assist it in determining the amount or the percent of gross receipts that should be charged to a small entity. In developing the maximum small entity annual fee in FY 1991, the NRC examined its 10 CFR Part 170 licensing and inspection fees and Agreement State fees for those fee categories which were expected to have a substantial number of small entities. Six Agreement States; Washington, Texas, Illinois, Nebraska, New York, and Utah were used as benchmarks in the establishment of the maximum small entity annual fee in 1991. Because small entities in those Agreement States were paying the fees, the NRC concluded that these fees did not have a significant impact on a substantial number of small entities. Therefore, those fees were considered a useful benchmark in establishing the NRC maximum small entity annual fee.

The NRC maximum small entity fee was established as an annual fee only. In addition to the annual fee, NRC small entity licensees were required to pay amendment, renewal and inspection fees. In setting the small entity annual fee, NRC ensured that the total amount small entities paid annually would not exceed the maximum paid in the six benchmark Agreement States.

Of the six benchmark states, the maximum Agreement State fee of $3,800 in Washington was used as the ceiling for the total fees. Thus the NRC's small entity fee was developed to ensure that the total fees paid by NRC small entities would not exceed $3,800. Given the NRC's 1991 fee structure for inspections, amendments, and renewals, a small entity annual fee established at $1,800 allowed the total fee (small entity annual fee plus yearly average for inspections, amendments and renewal fees) for all categories to fall under the $3,800 ceiling.

In 1992, the NRC introduced a second, lower tier to the small entity fee in response to concerns that the $1,800 fee, when added to the license and inspection fees, still imposed a significant impact on small entities with relatively low gross annual receipts. For purposes of the annual fee, each small entity size standard was divided into an upper and lower tier. Small entity licensees in the upper tier continued to pay an annual fee of $1,800 while those in the lower tier paid an annual fee of $400.

Between 1991 and 1999, changes in both the external and internal environment have impacted NRC costs and those of its licensees. The upper and lower tier maximum small entity annual fees did not change in those years. Increases in the NRC materials license fees, Agreement States' materials license fees, and the Consumer Price Index all indicate that the NRC small entity fee established in 1991 should be revised. In addition to these increases, the structure of the fees that NRC charges to its materials licensees changed during the period between 1991 and 1999. Costs for materials license inspections, renewals, and amendments, which were previously recovered through Part 170 fees for services, are now included in the Part 171 annual fees assessed to materials licensees.

While the annual fees increased for most materials licensees as a result of these changes, the NRC's annual fees assessed to small entities have not been adjusted to include the additional costs. As a result, small entities are currently paying a smaller percentage of the total NRC regulatory costs related to them than they did in FY 1991 and FY 1992 when the small entity fees were established. The amount of the small entity subsidy paid by other licensees for these regulatory costs was $4.3 million in FY 1991. With the addition of the lower tier small entity fee in FY 1992, the small entity subsidy increased to $5.4 million, or about $2,700 for each of the 2000 small entities in FY 1992. Although the number of small entities had declined to approximately 1,200 by 1999, the FY 1999 small entity subsidy was $5.3 million, or about $4,400 for each small entity.

Based on the changes that have occurred since FY 1991, the NRC has reanalyzed its maximum small entity annual fee. As part of the reanalysis, the NRC considered the 1999 fees assessed by Agreement States, the NRC's FY 1999 fee structure, and the increase in the Consumer Price Index between FY 1991 and FY 1999. The reanalysis and alternatives considered by the NRC for revising the small entity annual fees are described below.

A. Analysis of Maximum Small Entity Annual Fee

The analysis included a review of the fee structures in Agreement States to determine what fees they currently assess small entities. To maintain consistency and to facilitate direct comparisons between 1991 and 1999, the analysis focused on the fee categories used in 1991 and included fees imposed by the six benchmark Agreement States used in 1991 and five other Agreement States with the highest number of licenses.

The eleven states selected were: California, Texas, New York, Florida, Illinois, Tennessee, Maryland, Georgia, Washington, Utah, and Nebraska. Seven NRC fee categories were selected for review based on the number of small entities present in the category and inclusion of the category in the 1991 review. The fee categories selected were: 3M—Research and Development, 3N—Services, 3O—Industrial Radiography, 3P—Gauges and Other Industrial Uses, 5A—Well Logging, 7A—Teletherapy, and 7C—Nuclear Medicine. Together these categories comprise 80 percent of NRC's small entity licensees for FY 1999.

Among the eleven Agreement States reviewed, the fee structures varied both in terms of the fee amounts and the services included in the fees. Of the eleven states, only Georgia and Washington provide a separate small entity fee for qualified licensees. The remaining nine states do not identify small entities in their fee structure and therefore assess the same fee to all licensees regardless of their size.

Increases in the materials license fees since 1991 for the eleven Agreement States selected ranged from 10 percent in New York to 218 percent in Utah (see Table 1). Of particular note are the increases in the States of Washington, Georgia, and Utah. Washington and Utah are two of the original states benchmarked in 1991. Georgia and Washington are the two Agreement States reviewed that have a separate annual fee for small entities.

The structure of the total fees per year in Georgia is similar to that used to determine the total fees paid by NRC small entity licensees in 1991. In Georgia, this fee increased by 64 percent from 1991 to 1999. The increase in Georgia is directly comparable to the NRC context since Georgia uses the same two-tier structure for its small entity annual fees.

Washington's maximum fee assessed to small entities increased by 25 percent, from approximately $3,800 in 1991 to approximately $4,700 in 1999. The $4,700 fee is charged for an Industrial Radiography license. Washington had the highest maximum fee in 1991 and it was this fee that provided the basis for the maximum fees assessed to NRC small entity licensees.

Utah had the lowest maximum fee of the six benchmark states in 1991 . By 1999, Utah's maximum fee had increased by 218 percent, from $440 to $1,400. As in Washington, the maximum fee is charged for an Industrial Radiography license.

Table 1 shows the increases in the maximum total fees paid by small entities in the selected Agreement States from 1991 to 1999. Data is not presented in the Table for the State of California because California does not use fee categories that are directly mapped to NRC fee categories. California charges a base fee plus a fee based on the number of millicuries handled. In addition, because the FY 1991 fees for the State of Maryland were not available, only the maximum fee for FY 1999 is shown in the Table. The change in the maximum fee paid by NRC small entity licensees over the same period is included for purposes of comparison. This fee decreased by 47 percent while fees in the Agreement States were increasing. The reason for this decrease is discussed in B. below.

TABLE 1.—PERCENTAGE CHANGE IN THE MAXIMUM TOTAL FEE ASSESSED TO SMALL ENTITIES ANNUALLY

State	Maximum fee 1991	Maximum fee 1999	Percent change
Utah	$440	$1,400	218
Nebraska	1,456	2,925	101
Texas	2,100	4,230	101
Tennessee	2,000	4,000	100
Georgia	1,650	2,700	64
Florida	1,925	2,657	38
Illinois	2,000	2,733	37
Washington	3,760	4,699	25
New York	1,000	1,100	10
Maryland	(1)	1,350	(1)
NRC Small Entity	3,400	1,800	(−47)

[1] Not available.

The increases in the fees assessed to small entities in Agreement States between 1991 and 1999 suggest that the cost to support radioactive materials licensees has increased over time. Because small entities in Agreement States are currently paying the increased fees, it can be inferred that the fees do not have a significant impact on them.

B. Analysis of Changes in the NRC Small Entity Fee Structure

When NRC established its small entity annual fee in 1991, the fee was viewed as one component of the total annual costs that would be assessed to small entities. Table 2 presents the composition of the 1991 total annual cost for small entities.

TABLE 2.—TOTAL FEES ASSESSED TO NRC SMALL ENTITIES IN 1991

Fees	Selected Fee Categories						
	7A Teletherapy	7C Nuclear medicine	3M Research and development	3N Services	3O Industrial radiography	3P Gauges	5A Well logging
Annualized Inspection Fee[1]	$920	$ 420	$ 200	$140	$920	$180	$210
Amendment Fee[2]	340	340	630	320	390	300	430
Annualized Renewal Fee[3]	130	170	40	130	280	80	320
Subtotal	1,390	930	870	590	1,590	560	960
Annual Fee for Small Entity	1,800	1,800	1,800	1,800	1,800	[4]1,500	1,800
Total Fees (Rounded)	3,200	2,700	2,700	2,400	3,400	2,100	2,800

[1] NRC charged a separate fee for inspections under Part 170. The inspection frequency, defined as years between inspections, varies with each category of license. To annualize the inspection fee, the fee charged per inspection was divided by the inspection frequency.
[2] NRC charged a fee for each amendment to a license. In determining the total annual cost, one amendment per year was assumed.
[3] In 1991 NRC issued materials licenses for a five-year period. At the end of this period each licensee paid a fee under Part 170 to renew the license. Because the licensee paid this fee once every five years, in calculating the total annual cost, the renewal fee was annualized by dividing by five.
[4] The FY 1991 annual fee of $1,500 for category 3P was less than the $1,800 small entity annual fee. Therefore, small entities in this category paid the $1,500 annual fee, not $1,800.

Since 1991, NRC's Part 170 inspection, renewal, and amendment fees for materials licenses have been eliminated and the costs of those services included in the annual fee. Although the annual fee now covers the costs for inspections, renewals, and amendments, the small entity fee itself remained unchanged. As a result, the maximum NRC fees paid by small entities has declined by 47 percent, from $3,400 in 1991 to $1,800 in 1999. This decrease occurred while the average total non-small entity annual fee for other NRC materials licenses increased by 25 percent and the average maximum annual fee for small entity licensees in Agreement States increased by 54 percent.

Table 3 compares the total fees (annual, inspection, renewal, and amendment) assessed to NRC materials licensees in 1991 with the total fees (annual) assessed to these licensees in 1999. In five of the seven categories the fee increases were over 20 percent. Of particular note are the increases in categories 7C—Nuclear Medicine, 3O—Industrial Radiography, and 3P—Gauges. These categories contain 67 percent of the small entity licenses invoiced for FY1999. The average fee increase for these three categories is 31 percent, compared to the 25 percent average for the seven categories reviewed.

TABLE 3.—COMPARISON BETWEEN TOTAL NRC ANNUAL FEES FOR SELECTED CATEGORIES FOR 1991 AND 1999

NRC Fees	7A Teletherapy	7C Nuclear medicine	3M Research & development	3N Services	3O Industrial radiography	3P Gauges	5A Well logging	Average
1991 Annual Fee	$9,700	$3,500	$4,000	$4,400	$9,300	$1,500	$7,000	$5,600
1991 Other Fees:								
Annualized Inspection Fee	920	420	200	140	920	180	200	
Amendment Fee	340	340	630	320	390	300	430	
Annualized Renewal Fee	130	170	40	130	280	80	320	
Total Other Fees	1,390	930	870	590	1,590	560	950	
Total Fee in 1991 (Rounded)	11,100	4,400	4,900	5,000	10,900	2,100	8,000	6,700
Total (Annual) Fee In 1999	15,300	5,800	5,000	5,200	14,700	2,600	9,900	8,400
Fee Increase from 1991 to 1999	38%	32%	2%	4%	35%	24%	24%	25%

Table 4 compares the 1991 fees for amendments and inspections with the cost to provide these services in 1999. The cost was determined by multiplying the average hours to complete amendments and inspections by the hourly rate. The 1999 cost for amendments is on average 60 percent higher than the amendment fee assessed in 1991; inspection costs are 260 percent higher. These services are provided to all licensees, both small entities and non-small entities. However, under the current fee structure these costs are recovered only from annual fees assessed to non-small entities. Because the small entity annual fee has remained static, it does not reflect any increases in NRC's costs since 1991.

TABLE 4.—COMPARISON OF NRC INSPECTION AND AMENDMENT COSTS IN 1991 AND 1999

	Amendments			Inspections		
	1991	1999	Increase (percent)	1991	1999	Increase (percent)
7A—Teletherapy	$340	$450	32	$920	$3,200	248
7C—Nuclear Medicine	340	520	53	830	3,100	273
3M—Research & Development	630	710	13	800	2,300	188
3N—Services	320	690	116	550	2,700	391
3O—Industrial Radiography	390	780	100	920	3,300	259
3P—Gauges	300	390	30	920	2,200	139
5A—Well Logging	430	950	121	640	2,700	322
Average	400	640	60	800	2,900	263

Given NRC's 100 percent cost recovery requirement, the portion of annual fees not recovered from small entities is passed to other NRC licensees. The increasing disparity between the small entity fee and the cost of NRC services included in the annual fee calls for a more equitable distribution of the NRC costs to these licensees. An increase in the small entity fee would mitigate the cost differences and would permit small entities to assume a greater portion of NRC costs attributable to them. If everything else remains the same, an increase in the small entity fee would result in a decrease in the small entity subsidy paid by other licensees.

C. Analysis of Increases in the Consumer Price Index

On a national level the cost of goods and services increased between 1991 and 1999. According to the U.S. Department of Labor, Bureau of Labor Statistics, the Consumer Price Index (CPI) increased 28.8 points, from 136.2 in 1991 to 165.0 for the first half of 1999, an increase of 21 percent. This index is an accepted economic indicator of price changes in the US economy. The 21 percent increase in the CPI is evidence that costs in NRC's external environment have increased. Obviously, NRC's cost of providing services to its licensees will be impacted by these increases.

D. Alternatives for Revising the Maximum Annual Fee

1. Increase Small Entity Fees Using the 1991 Methodology

Following the reasoning used in the 1991 process, the maximum annual fee for small entities could be revised to reflect the current maximum fees charged by Agreement States and the changes in the NRC fee structure since 1991. The maximum Agreement State fee assessed to small entities in 1999 is $4,700. Therefore, the maximum value for NRC's small entity fee could be set at $4,700.

This method would allow the NRC to recover from small entities 48 percent of the total amount of the small entity annual fee invoices. Although this method is defensible, because it is based on sound reasoning used in the original establishment of the small entity fees that have been in place since 1991, it is based on an external fee that is outside NRC's direct control.

2. Increase the Small Entity Fee Using the Average Increase in NRC Materials License Fees From 1991 to 1999

From 1991 to 1999 total NRC fees for materials licenses increased, on average, by 25 percent. This percentage could be applied to the existing small entity fee to give a new small entity fee of $2,300.

This method is a simple and obvious means of applying the rates of increase in NRC fees since FY 1991 to the small entity fees. This method does not consider the changes to the total fees paid by small entities since FY 1991 and does not incorporate changes in the composition of the total fees assessed to small entities per year by Agreement States. However, it does rely on the increases to the total fees paid by other NRC materials licensees since FY 1991. This method could also provide a sustainable and simple means of determining whether NRC's small entity fees should be revised in the future.

3. Add the 1991 Amendment, Renewal, and Inspection Costs to the Existing Small Entity Fee and Increase the Sum by the Average Increase in NRC Materials License Fees From 1991 to 1999

The small entity fee could be increased by loading the existing small entity annual fee of $1,800 with the amendment, renewal, and inspection costs used in 1991 and increasing the total by 25 percent. This method not only incorporates the average increase in NRC fees but it bases the increase on the total annual costs that were assessed to small entities in 1991.

To revise the small entity fee using this method, a category must be selected as the 1991 base. The total annual cost for this

category, as presented in Table 3, will then be increased by the NRC average of 25 percent. Five possible approaches to selecting the 1991 base were explored.

Method 3A—Maximum Fee Category in the Benchmark States

Method 3A uses the Industrial Radiography category as the base. This category had the maximum fee in the Agreement States benchmarked in 1991. The total NRC fee assessed to the Industrial Radiography category in 1991 was $3,400. Increasing this fee by 25 percent gives a new small entity fee of $4,300.

Method 3B—Highest Number of Small Entities Present

Method 3B uses the fee category with the highest number of small entities. In FY1999, Category 3P, Gauges and Other Industrial Uses, had 30 percent of all NRC small entity licensees. This was the highest number of small entities present in a single category. In 1991, the total fees for Category 3P was $2,100. A 25 percent increase in this fee would set the small entity fee at $2,600.

Method 3C—Highest Number of Upper Tier Small Entities Present

Method 3C uses Category 7C, Nuclear Medicine as the base. This category has the highest number of upper tier small entities and is considered a viable base because the small entity annual fee originally established in FY 1991 was the upper tier fee. In 1991, Category 7C had a total fee of $2,700; this base would give a new small entity fee of $3,400.

Method 3A yields a 45 percent recovery of the invoiced amounts from small entities, the highest recovery rate under Method 3. However, the Industrial Radiography category contains only 7 percent of all NRC small entity licensees in 1999 and arguably does not affect a significant number of the small entities. Method 3B addresses this issue and uses Category 3P, the category with the highest number of small entities. However, the 3P Category also has the lowest 1991 total cost and results in a recovery rate of 34 percent from small entities, the lowest under Method 3. Method 3C uses Category 7C, Nuclear Medicine, and is preferable to both Methods 3A and 3B in that it yields a 37 percent recovery rate from small entities and contains 30 percent of the small entity licensees.

Methods 3A, 3B and 3C are all based on the selection of a single fee category as the 1991 base. Using the fee from a specific fee category as the base fee can implicitly make the category a benchmark. This increases the risk of challenges to the fee if significant changes occur in the benchmark category.

Method 3D—Weighted Average of the Total Fees in the Seven Categories

Method 3D uses the number of upper tier small entities in each category to weight the total fee assessed to each category in 1991. The weighted-average of $2,700 is then used as the base. This gives a new small entity fee of $3,400.

Method 3E—Average of the Total Fees for the Seven Categories

Method 3E uses the average total fee for the categories reviewed as the base fee. The average total fee of $2,800 is then increased by 25 percent to give a new small entity fee of $3,500.

Both Methods 3D and 3E use averages to determine the base fee and this reduces the risks associated with Methods 3A, 3B and 3C. Both methods yield the same recovery rate of 37 percent and can be considered equally acceptable from a monetary perspective.

Because Method 3D uses a weighted average, the number of small entities in each of the seven categories are factored into the selection process while smoothing the impact of the highest and lowest fee categories.

While Methods 3D and 3E would consider the total fees paid by small entities in FY 1991 and would increase the amounts recovered from small entities thereby reducing the small entity subsidy paid by other licensees, the percentage increase under either of these methods would be larger than the average percentage increase in the total fees assessed to other NRC materials licensees since FY 1991.

IV. Conclusion

Based on the results of the reanalysis, the NRC is proposing to increase the maximum small entity annual fee by 25 percent, based on the percentage increase since FY 1991 in the average total fees paid per year by other NRC materials licensees. As a result, the maximum small entity annual fee would increase from $1,800 to $2,300. By increasing the maximum annual fee for small entities from $1,800 to $2,300, the annual fee for many small entities is reduced while at the same time materials licensees, including small entities, would pay for most of the costs attributable to them. The costs not recovered from small entities are allocated to other materials licensees and to power reactors.

While reducing the impact on many small entities, the proposed maximum annual fee of $2,300 for small entities may continue to have a significant impact on materials licensees with annual gross receipts in the thousands of dollars. Therefore, the NRC would continue to provide a lower-tier small entity annual fee for small entities with relatively low gross annual receipts. The lower-tier small entity fee also applies to manufacturing concerns, and educational institutions not State or publicly supported, with less than 35 employees. The NRC is proposing to increase the lower tier small entity fee by the same percentage increase to the maximum small entity annual fee. This 25 percent increase would result in the lower tier small entity fee increasing from $400 to $500.

In the future, the NRC plans to re-examine the small entity fees each year that annual fees are rebaselined. As part of the re-examination, the NRC will consider the percentage increase in fees paid by other NRC materials licensees since the last rebaselining to determine if the maximum small entity annual fees should be revised.

The NRC continues to believe that the 10 CFR Part 170 application fees, or any adjustments to these licensing fees during the past year, do not have a significant impact on small entities.

V. Summary

The NRC has determined that the 10 CFR Part 171 annual fees significantly impact a substantial number of small entities. A maximum fee for small entities strikes a balance between the requirement to collect 100 percent of the NRC budget and the requirement to consider means of reducing the impact of the fee on small entities. On the basis of its regulatory flexibility analyses, the NRC concludes that a maximum annual fee of $2,300 for small entities and a lower-tier small entity annual fee of $500 for small businesses and not-for-profit organizations with gross annual receipts of less than $350,000, small governmental jurisdictions with a population of less than 20,000, small manufacturing entities that have less than 35 employees and educational institutions that are not State or publicly supported and have less than 35 employees reduces the impact on small entities. At the same time, these reduced annual fees are consistent with the objectives of OBRA–90. Thus, the fees for small entities maintain a balance between the objectives of OBRA–90 and the RFA.

Attachment 1 to Appendix A.—U.S. Nuclear Regulatory Commission, Small Entity Compliance Guide, Fiscal Year 2000

Contents

Introduction
NRC Definition of Small Entity
NRC Small Entity Fees
Instructions for Completing NRC Form 526

Introduction

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires all Federal agencies to prepare a written guide for each "major" final rule as defined by the Act. The NRC's fee rule, published annually to comply with the Omnibus Budget Reconciliation Act of 1990 (OBRA–90), requires the NRC to collect approximately 100 percent of its budget authority each year through fees. This rule is considered a "major" rule under this law. This compliance guide has been prepared to assist NRC material licensees comply with the FY 2000 fee rule.

Licensees may use this guide to determine whether they qualify as a small entity under NRC regulations and are eligible to pay reduced FY 2000 annual fees assessed under 10 CFR Part 171. The NRC has established two tiers of separate annual fees for those materials licensees who qualify as small entities under NRC's size standards.

Licensees who meet NRC's size standards for a small entity must complete NRC Form 526 to qualify for the reduced annual fee. This form accompanies each annual fee invoice mailed to materials licensees. The completed form, the appropriate small entity fee, and the payment copy of the invoice, should be mailed to the U.S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, to the address indicated on the invoice. Failure to file a small entity certification in a timely manner may result in the denial of any refund that might otherwise be due.

NRC Definition of Small Entity

The NRC has defined a small entity for purposes of compliance with its regulations (10 CFR 2.810) as follows:

1. Small business—a for-profit concern that provides a service or a concern not engaged in manufacturing with average gross receipts of $5 million or less over its last 3 completed fiscal years;

2. Manufacturing industry—a manufacturing concern with an average number of 500 or fewer employees based upon employment during each pay period for the preceding 12 calendar months;

3. Small organization—a not-for-profit organization which is independently owned and operated and has annual gross receipts of $5 million or less;

4. Small governmental jurisdiction—a government of a city, county, town, township, village, school district or special district with a population of less than 50,000;

5. Small educational institution—an educational institution supported by a qualifying small governmental jurisdiction, or one that is not state or publicly supported and has 500 or fewer labors.[1]

NRC Small Entity Fees

In 10 CFR 171.16 (c), the NRC has established two tiers of small entity fees for licensees that qualify under the NRC's size standards. The NRC is proposing to increase these fees by 25 percent. The proposed fees are as follows:

	Maximum annual fee per licensed category
Small Business Not Engaged in Manufacturing and Small Not-For Profit Organizations (Gross Annual Receipts):	
$350,000 to $5 million	$2,300
Less than $350,000	500
Manufacturing entities that have an average of 500 employees or less:	
35 to 500 employees	2,300
Less than 35 employees	500
Small Governmental Jurisdictions (Including publicly supported educational institutions) (Population):	
20,000 to 50,000	2,300
Less than 20,000	500
Educational Institutions that are not State or Publicly Supported, and have 500 Employees or Less:	
35 to 500 employees	2,300
Less than 35 employees	500

To pay a reduced annual fee, a licensee must use NRC Form 526, enclosed with the fee invoice, to certify that it meets NRC's size standards for a small entity. Failure to file NRC Form 526 in a timely manner may result in the denial of any refund that might otherwise be due.

Instructions for Completing NRC Form 526

1. File a separate NRC Form 526 for each annual fee invoice received.

2. Complete all items on NRC Form 526 as follows:

a. The license number and invoice number must be entered exactly as they appear on the annual fee invoice.

b. The Standard Industrial Classification (SIC) Code should be entered if it is known.

c. The licensee's name and address must be entered as they appear on the invoice. Name and/or address changes for billing purposes must be annotated on the invoice. Correcting the name and/or address on NRC Form 526 or on the invoice does not constitute a request to amend the license. Any request to amend a license is to be submitted to the respective licensing staffs in the NRC Regional or Headquarters Offices.

d. Check the appropriate size standard under which the licensee qualifies as a small entity. Check one box only. Note the following:

(1) The size standards apply to the licensee, not the individual authorized users listed in the license.

(2) Gross annual receipts as used in the size standards includes all revenue in whatever form received or accrued from whatever sources, not solely receipts from licensed activities. There are limited exceptions as set forth at 13 CFR 121.104. These are: the term receipts excludes net capital gains or losses, taxes collected for and remitted to a taxing authority if included in gross or total income, proceeds from the transactions between a concern and its domestic or foreign affiliates (if also excluded from gross or total income on a consolidated return filed with the IRS), and amounts collected for another by a travel agent, real estate agent, advertising agent, or conference management service provider.

(3) A licensee who is a subsidiary of a large entity does not qualify as a small entity.

(4) The owner of the entity, or an official empowered to act on behalf of the entity, must sign and date the small entity certification.

The NRC sends invoices to its licensees for the full annual fee, even though some entities qualify for reduced fees as a small entity. Licensees who qualify as a small entity and file NRC Form 526, which certifies eligibility for small entity fees, may pay the reduced fee, which for a full year is either $2,300 or $500 depending on the size of the entity, for each fee category shown on the invoice. Licensees granted a license during the first six months of the fiscal year and licensees who file for termination or for a possession only license and permanently cease licensed activities during the first six months of the fiscal year pay only 50 percent of the annual fee for that year. Such an invoice states the "Amount Billed Represents 50% Proration." This means the amount due from a small entity is not the prorated amount shown on the invoice but rather one-half of the maximum annual fee shown on NRC Form 526 for the size standard under which the licensee qualifies, resulting in a fee of either $1150 or $250 for each fee category billed instead of the full small entity annual fee of $2,300 or $500.

A new small entity form (NRC Form 526) must be filed with the NRC each fiscal year to qualify for reduced fees for that fiscal year. Because a licensee's "size," or the size standards, may change from year to year, the invoice reflects the full fee and a new Form must be completed and returned for the fee to be reduced to the small entity fee. LICENSEES WILL NOT BE ISSUED A NEW INVOICE FOR THE REDUCED AMOUNT. The completed NRC Form 526, the payment of the appropriate small entity fee, and the "Payment Copy " of the invoice should be mailed to the U. S. Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch at the address indicated on the invoice.

If you have questions about the NRC's annual fees, please call the license fee staff at 301–415–7554, e-mail the fee staff at fees@nrc.gov, or write to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Office of the Chief Financial Officer.

False certification of small entity status could result in civil sanctions being imposed by the NRC under the Program Fraud Civil Remedies Act, 31 U.S.C. 3801 *et seq.* NRC's implementing regulations are found at 10 CFR Part 13.

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BILLING CODE 7590–01–P

[1] An educational institution referred to in the size standards is an entity whose primary function is education, whose programs are accredited by a nationally recognized accrediting agency or association, who is legally authorized to provide a program of organized instruction or study, who provides an educational program for which it awards academic degrees, and whose educational programs are available to the public.

Federal Register

Monday,
March 27, 2000

Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Chapter 1 and Part 19 et al. Federal Acquisition Circular 97–16; Introduction; Federal Acquisition Regulation; Small Business Competiveness Demonstration Program; Progress Payments and Related Financing Policies; Technical Amendments; Small Entity Compliance Guide; Interim and Final Rules

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Circular 97–16; Introduction

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Summary presentation of final and interim rules, and technical amendments.

SUMMARY: This document summarizes the Federal Acquisition Regulation (FAR) rules issued by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in this Federal Acquisition Circular (FAC) 97–16. The Councils drafted these FAR rules using plain language in accordance with the White House memorandum, Plain Language in Government Writing, dated June 1, 1998. The Councils wrote all new and revised text using plain language. A companion document, the Small Entity Compliance Guide (SECG), follows this FAC. The FAC, including the SECG, is available via the Internet at http://www.arnet.gov/far.

DATES: For effective dates and comment dates, see separate documents which follow.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact the analyst whose name appears in the table below in relation to each FAR case or subject area. Please cite FAC 97–16 and specific FAR case number(s). Interested parties may also visit our website at http://www.arnet.gov/far.

Item	Subject	FAR case	Analyst
I	Small Business Competitiveness Demonstration Program (Interim).	1999–012	Moss.
II	Progress Payments and Related Financing Policies	1998–400 (98–400)	Olson.
III	Technical Amendments.		

SUPPLEMENTARY INFORMATION: Summaries for each FAR rule follow. For the actual revisions and/or amendments to these FAR cases, refer to the specific item number and subject set forth in the documents following these item summaries.

Federal Acquisition Circular 97–16 amends the FAR as specified below:

Item I—Small Business Competitiveness Demonstration Program (FAR Case 1999–012)

This interim rule amends FAR Subpart 19.10 to clarify language pertaining to the Small Business Competitiveness Demonstration (Comp. Demo.) Program, consistent with revisions to the Program that were contained in an OFPP and SBA joint final policy directive dated May 25, 1999.

The interim rule—

- Advises the contracting officer to consider the 8(a) Program and HUBZone Program, in addition to small business set-asides, for acquisitions of $25,000 or less in one of the four designated industry groups that will not be set aside for emerging small business concerns.
- Adds FAR 19.1006, Exclusions, to specify acquisitions to which Subpart 19.10 does not apply. None of the Small Business Comp. Demo. policies and procedures apply to orders under the Federal Supply Schedule Program or to contracts awarded to educational and nonprofit institutions or governmental entities.

This interim rule only will affect contracting officers at participating agencies when acquiring supplies or services subject to the procedures of the Small Business Comp. Demo. Program. The participating agencies are: Department of Agriculture; Department of Defense, except the National Imagery and Mapping Agency; Department of Energy; Department of Health and Human Services; Department of the Interior; Department of Transportation; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; and National Aeronautics and Space Administration.

Item II—Progress Payments and Related Financing Policies (FAR Case 1998–400) (98–400)

This final rule revises certain financing policies at FAR Part 32, Contract Financing, and related contract provisions at FAR Part 52. The rule—

- Emphasizes that performance-based payments are the preferred method of contract financing. Performance-based payments are contract financing payments made after achievement of predetermined goals, such as performance objectives or defined events. Contracting officers should consider performance-based payments and deem their use impracticable before deciding to provide customary progress payments;
- Permits contracting officers to provide contract financing on contracts awarded to large businesses if the individual contract is $2 million or more. Previously, the threshold in the FAR for financing a contract with a large business was $1 million;
- Permits a large business to bill the Government for subcontract costs that the large business has incurred but not actually paid, if certain conditions are met. Previously, the FAR permitted only small business concerns to bill for subcontract costs that have been incurred but not paid;
- Permits the contracting officer to use performance-based payments in contracts for research and development, and in contracts awarded through competitive negotiation procedures; and
- Is effective on March 27, 2000. However, it is mandatory only for solicitations issued on or after May 26, 2000. Contracting officers may, at their discretion, include the clauses and provisions in this rule in solicitations issued before that date.

Item III—Technical Amendments

These amendments update references and make editorial changes at sections 1.106, 1.201–1, 1.304, 6.305, 9.404, 9.405, 15.404–1, 49.105–2, 52.212–1, 52.217–9, and 52.219–23.

Dated: March 20, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Federal Acquisition Circular

Federal Acquisition Circular (FAC) 97–16 is issued under the authority of the Secretary of Defense, the Administrator of General Services, and the Administrator for the National Aeronautics and Space Administration.

All Federal Acquisition Regulation (FAR) changes and other directive material contained in FAC 97–16 are effective March 27, 2000. For Item II, the rule is mandatory for solicitations issued on or after May 26, 2000, but contracting officers may, at their discretion, include the clauses and provisions in soliciations issued before May 26, 2000. For Item I, the rule is applicable to solicitations issued on or after the rule's effective date.

Dated: March 15, 2000.

R.D. Kerrins, Jr.,

Acting Director, Defense Procurement.

Dated: March 20, 2000.

Sue McIver,

Acting Deputy Associate Administrator, Office of Acquisition Policy, General Services Administration.

Dated: March 16, 2000.

Tom Luedtke,

Associate Administrator for Procurement, National Aeronautics and Space Administration.

[FR Doc. 00–7307 Filed 3–24–00; 8:45 am]

BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 19

[FAC 97–16; FAR Case 1999–012; Item I]

RIN 9000–AI64

Federal Acquisition Regulation; Small Business Competitiveness Demonstration Program

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on an interim rule amending the Federal Acquisition Regulation (FAR) to implement the Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) final policy directive to provide updated guidance on the Small Business Competitiveness Demonstration Program.

DATES: *Effective Date:* March 27, 2000.

Applicability Date: The FAR, as amended by this rule, is applicable to solicitations issued on or after March 27, 2000.

Comment Date: Interested parties should submit comments to the FAR Secretariat at the address shown below on or before May 26, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVR), 1800 F Street, NW, Room 4035, Attn: Ms. Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999–012@gsa.gov. Please submit comments only and cite FAC 97–16, FAR case 1999–012 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Ms. Victoria Moss, Procurement Analyst, at (202) 501–4764. Please cite FAC 97–16, FAR case 1999–012.

SUPPLEMENTARY INFORMATION:

A. Background

This interim rule amends FAR Subpart 19.10 to provide updated guidance regarding the Small Business Competitiveness Demonstration Program (Program). The Program was originally established in 1988 by Title VII of Public Law 100–656, as amended, and subsequently implemented in the FAR. As statutory amendments were made to the Program, OFPP issued conforming modifications to its policy directive. With the enactment of Public Law 105–135, the Small Business Reauthorization Act of 1997, the Program was made permanent. The OFPP and SBA published a joint final policy directive on the Program in the **Federal Register** at 64 FR 29693, June 2, 1999. Specific guidance published in the OFPP and SBA final policy directive requires that DoD, GSA, and NASA revise the FAR to provide this updated guidance.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule merely makes ministerial changes to the existing language and does not change existing policy. Therefore, the Councils have not performed an Initial Regulatory Flexibility Analysis. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–012), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DoD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that urgent and compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because this rule implements a joint OFPP/SBA policy directive that became effective on October 1, 1999. However, pursuant to Public Law 98–577 and FAR 1.501, the Councils will consider public comments received in response to this interim rule in the formation of the final rule.

List of Subjects in 48 CFR Part 19

Government procurement.

Dated: March 20, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR part 19 as set forth below:

PART 19—SMALL BUSINESS PROGRAMS

1. The authority citation for 48 CFR part 19 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 19.502–2 in paragraph (a) by revising the last sentence; and in paragraph (d) by removing "(see 19.1006(b))" and adding "(see 19.1007(b))" in its place. The revised text reads as follows:

19.502–2 Total small business set-asides.

(a) * * * The small business reservation does not preclude the award

of a contract with a value not greater than $100,000 under Subpart 19.8, Contracting with the Small Business Administration, under 19.1007(c), Solicitations equal to or less than the ESB reserve amount, or under 19.1305, HUBZone set-aside procedures.

* * * * *

3. Amend section 19.1001 by revising the introductory paragraph to read as follows:

19.1001 General.

The Small Business Competitiveness Demonstration Program was established by the Small Business Competitiveness Demonstration Program Act of 1988, Public Law 100–656 (15 U.S.C. 644 note). The program is implemented by a joint OFPP and SBA Policy Directive and Implementation Plan, dated May 25, 1999. The program consists of two major components—

* * * * *

4. Amend section 19.1002 by revising the section heading and adding, in alphabetical order, the definition "Emerging small business reserve amount" to read as follows:

19.1002 Definitions.

* * * * *

Emerging small business reserve amount, for the designated groups described in 19.1005, means a threshold established by the Office of Federal Procurement Policy of—

(1) $25,000 for construction, refuse systems and related services, and nonnuclear ship repair; and

(2) $50,000 for architectural and engineering services.

19.1003 [Amended]

5. Amend section 19.1003 by redesignating paragraphs (b) and (c) as (c) and (b), respectively.

6. Amend section 19.1005 by redesignating paragraphs (a)(3) and (a)(4) as (a)(4) and (a)(3), respectively, and revising newly designated (a)(4); and in paragraph (b) by removing "shall designate" and adding "designates" in its place. The revised text reads as follows:

19.1005 Applicability.

(a) * * *

(4) Architectural and engineering services (including surveying and mapping) under SIC code 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C216, C219, T002, T004, T008, T009, T014, and R404), which are awarded under the qualification-based selection procedures required by 40 U.S.C. 541, *et seq.* (the "Brooks A–E Act") (see Subpart 36.6).

* * * * *

19.1006 and 19.1007 [Redesignated as 19.1007 and 19.1008, respectively] [New 19.1006 added]

7a. Redesignate sections 19.1006 and 19.1007 as 19.1007 and 19.1008, respectively; and add a new section 19.1006 to read as follows:

19.1006 Exclusions.

This subpart does not apply to—

(a) Orders placed against Federal Supply Schedules;

(b) Contract awards to educational and nonprofit organizations; or

(c) Contract awards to governmental entities.

7b. Revise the newly designated 19.1007 to read as follows:

19.1007 Procedures.

(a) *General.* (1) All solicitations must include the applicable SIC code and size standards.

(2) The face of each award made pursuant to the program must contain a statement that the award is being issued pursuant to the Small Business Competitiveness Demonstration Program.

(b) *Solicitations greater than the ESB reserve amount.* (1) Solicitations for acquisitions in any of the four designated industry groups that have an anticipated dollar value greater than the emerging small business reserve amount must not be considered for small business set-asides under subpart 19.5. However, agencies may reinstate the use of small business set-asides as necessary to meet their assigned goals, but only within organizational units that failed to meet the small business participation goal.

(2) Acquisitions in the designated industry groups must continue to be considered for placement under the 8(a) Program (see subpart 19.8) and the HUBZone Program (see subpart 19.13).

(c) *Solicitations equal to or less than the ESB reserve amount.* (1) Solicitations for acquisitions in the four designated industry groups with an estimated value equal to or less than the emerging small business reserve amount must be set aside for ESBs, provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible ESBs that will be competitive in terms of market price, quality, and delivery. If no such reasonable expectation exists, the contracting officer must—

(i) For acquisitions $25,000 or less, proceed in accordance with subpart 19.5, 19.8, or 19.13; or

(ii) For acquisitions greater than $25,000 and less than or equal to the ESB reserve amount, proceed in accordance with paragraph (b) of this section.

(2) If the contracting officer proceeds with the ESB set-aside and receives a quotation from only one ESB at a reasonable price, the contracting officer must make the award. If there is no quote from an ESB, or the quote is not at a reasonable price, then the contracting officer must cancel the ESB set-aside and proceed in accordance with paragraph (c)(1)(i) or (ii) of this section.

(d) *Expanding small business participation in targeted industry categories.* Each participating agency must develop and implement a time-phased strategy with incremental goals, including reporting on goal attainment. To the extent practicable, provisions that encourage and promote teaming and joint ventures must be considered. These provisions should permit small business firms to effectively compete for contracts that individual small businesses would be ineligible to compete for because of lack of production capacity or capability.

19.1008 [Amended]

7c. Amend the newly designated 19.1008 in paragraphs (a), (b), and (c) by removing "The contracting officer shall insert" and adding "Insert" in their place; and in paragraph (b) by removing "19.1006(c)" and adding "19.1007(c)" in its place.

[FR Doc. 00–7308 Filed 3–24–00; 8:45 am]

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 32 and 52

[FAC 97–16; FAR Case 1998–400 (98–400); Item II]

RIN 9000–AI27

Federal Acquisition Regulation; Progress Payments and Related Financing Policies

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) have agreed on a final rule amending the Federal Acquisition Regulation (FAR) to reduce the burdens imposed on contractors and contracting officers by the progress payment type of financing; to permit the use of performance-based payments in contracts for research and development, and contracts awarded through competitive negotiation procedures; to expand the use of subcontractor performance-based and commercial financing payments; and to simplify and clarify related provisions.

DATES: *Effective Date:* March 27, 2000.

Applicability Date: The FAR, as amended by this rule, is mandatory for solicitations issued on or after May 26, 2000. Contracting officers may, at their discretion, include the clauses and provisions in this rule in solicitations issued before May 26, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, (202) 501–4755, for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson, at (202) 501–0692. Please cite FAC 97–16, FAR case 1998–400.

SUPPLEMENTARY INFORMATION:

A. Background

The Director of Defense Procurement at the Department of Defense established a special interagency team to review existing policies and procedures related to progress payments to make them easier to understand and to minimize the burdens imposed on contractors and contracting officers. This Progress Payment Rewrite Team considered for revision or elimination those regulatory requirements pertaining to progress payments that were not required by statute, required to ensure adequately standardized Government business practices, or required to protect the public interest.

The Progress Payment Rewrite Team published an advance notice of proposed rulemaking (ANPR) in the **Federal Register** on May 1, 1997 (62 FR 23740). The ANPR solicited comments from industry and Government personnel on how the FAR could be revised to result in a simplified and streamlined process of applying for and administering progress payments.

After reviewing progress payment policies and public comments received in response to the ANPR, the team identified potential changes to the FAR. They published a second ANPR in the **Federal Register** on March 5, 1998 (63 FR 11074), that solicited comments on the potential changes identified in the notice. The ANPR also announced a public meeting, that was subsequently held on April 23, 1998. After considering written comments received in response to the two notices, and verbal comments provided during the public meeting, the Progress Payment Rewrite Team submitted a report including a draft proposed rule for consideration by the Councils.

The Councils reviewed the team's recommendations and published a proposed rule in the **Federal Register** on February 10, 1999 (64 FR 6758). Fifteen respondents submitted public comments to the proposed rule. Several respondents expressed concern that the use of performance-based payments in competitive negotiations may lengthen the competitive process and complicate proposal evaluation. The Councils believe that potential procedural impacts are among the factors (along with such issues as the potential impact on small business competitiveness) that the contracting officer may consider when assessing the practicality of the use of performance-based payments under FAR 32.1001. However, the Councils also believe that performance-based payments can be used effectively in competitive negotiations, and that their use may attract new sources, including small businesses, whose accounting systems do not support cost-based financing. Consequently, the Councils concluded the existing FAR prohibition against use of performance-based payments in competitive negotiations is inappropriate. The final rule differs from the proposed rule by making a number of nonsubstantive, clarifying changes.

The final rule revises the FAR to:

1. *Ensure consideration of performance-based payments.* The rule emphasizes that—

(a) Performance-based payments are the preferred method of financing;

(b) Their use should be considered and deemed impracticable by the contracting officer before a decision is made to provide customary progress payments; and

(c) Each payment amount should represent what the contractor could reasonably be expected to incur to achieve the payment event rather than resemble an advance payment or a reward to the contractor for achieving performance levels over and above what is required for successful completion of the contract.

2. *Increase the threshold for contract financing and establish a threshold for individual progress payment requests.* To reduce the administrative burden that small dollar actions place on the contract administration and payment process, the final rule—

(a) Raises the dollar threshold for use of contract financing with large businesses from $1 million to $2 million; and

(b) Adds a minimum dollar threshold of $2,500 for individual progress payment requests, unless a lower amount is authorized in accordance with agency procedures.

3. *Eliminate the "paid cost rule."* Prior to implementation of this final rule, a large business was required to pay a subcontractor before including the payment in its billings to the Government. This is referred to as the "paid cost rule." The final FAR rule allows a large business to include, in its billings, subcontract costs that it has incurred but not actually paid, provided the payment to the subcontractor will be made in accordance with the terms and conditions of a subcontract or invoice, and ordinarily prior to the submission of the contractor's next payment request to the Government.

4. *Permit subcontractor performance-based payments or commercial financing payments under prime contracts that have progress payments or cost-reimbursement type of financing.* The final rule permits prime contractors that receive progress payments or cost-reimbursement type of payments to use performance-based payments or commercial financing payments with their subcontractors.

5. *Eliminate the limitation on general and administrative expenses.* The rule removes the limitation at FAR 32.503–7, which applies to only those contractors that have established an inventory suspense account under 48 CFR 9904.410, Allocation of Business Unit General and Administrative Expenses to Final Cost Objectives. This provision dates from 1979 and currently applies to very few remaining contractors.

6. *Eliminate the contracting officer review of quarterly statements.* The rule removes the requirement for the contracting officer to review quarterly statements under price revision or redeterminable contracts. This requirement is unnecessary, as the Government's interests are protected adequately by the contracting officer that has the responsibility for administering progress payments.

7. *Permit the use of performance-based payments in contracts for research and development, and in contracts awarded through competitive negotiation procedures.* The rule removes the prohibition against using performance-based payments type of financing in contracts for research and development, and contracts awarded

through competitive negotiation procedures.

8. *Simplify and clarify.* The rule also simplifies and clarifies the concept that, on a loss contract, application of the loss ratio constitutes the adjustment that ensures progress payments do not exceed the value of work performed; deletes the authorization for the Department of Defense to establish customary progress payment rates for foreign military sales (FMS) and flexible progress payments that differ from the customary rates cited in FAR 32.501–1(a) (DoD no longer uses flexible progress payments and does not intend to establish alternate rates for FMS); and makes a number of editorial changes.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Department of Defense, the General Services Administration, and the National Aeronautics and Space Administration stated in the proposed rule that the rule was not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities have a dollar value less than the simplified acquisition threshold, and, therefore, do not require the progress payment or performance-based payment type of financing. However, some of the commentors expressed the concern that elimination of the "paid cost rule" may have a significant impact on a substantial number of small entities. Accordingly, even though an Initial Regulatory Flexibility Analysis had not been done, the Councils prepared a Final Regulatory Flexibility Analysis (FRFA) as a result of those comments. The FRFA is summarized as follows:

The small entities that may be impacted by elimination of the "paid cost rule" are subcontractors to large businesses. That is, the current FAR requires large businesses to pay its subcontractors by cash or check before the large business can request payment from the Government under cost reimbursement contracts or progress payments for amounts owed to subcontractors. The final rule will permit prime contractors to request payment of those amounts from the Government when it incurs a cost based on a request for payment from its subcontractors.

We do not have any reporting mechanisms or central data collections that reveal how many subcontractors may be impacted by this rule. However, we have concluded that the number may be substantial.

In order to mitigate any potential impact this portion of the rule may have on small businesses, the Councils adopted a range of safeguards to provide further assurances that payments to subcontractors will not be delayed. These safeguards were adopted rather than merely applying the policies previously used for small businesses that permitted small business prime contractors to recognize subcontract costs immediately after they were incurred, even if they were not yet paid to the subcontractor. This final rule requires that both large and small business prime contractors pay these incurred subcontract amounts in accordance with the terms of the subcontract and ordinarily before submittal of the next payment request sent to the Government.

The FAR Secretariat has submitted a copy of the FRFA to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 104–13) applies because the final rule contains information collection requirements.

1. *Office of Management and Budget (OMB) Control Number 9000–0010.* The final rule decreases the collection requirements under the previously approved OMB Control No. 9000–0010, since the rule raises the threshold for permitting contract financing in the form of progress payments based on costs, and establishes a dollar threshold for contractor requests for progress payments. OMB approved the revised information collection requirement through September 30, 2002. Estimated number of respondents: reduced from 27,000 to 18,090; yearly responses per respondent: 32 (unchanged); average time per response: 33 minutes (unchanged); total yearly burden hours: reduced from 475,000 to 318,384; frequency of report; on occasion.

2. *Office of Management and Budget (OMB) Control Number 9000–0138.* There is no net impact to the collection requirements currently approved under OMB Control No. 9000-0138. The increase in hours associated with the addition of the provision at FAR 52.232–28, Invitation to Propose Performance-Based Payments, is offset by the decrease in hours resulting from raising the contract dollar threshold for permitting performance-based payments.

List of Subjects in 48 CFR Parts 32 and 52

Government procurement.

Dated: March 20, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR parts 32 and 52 as set forth below:

1. The authority citation for 48 CFR parts 32 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 32—CONTRACT FINANCING

2. Revise section 32.104 to read as follows:

32.104 Providing contract financing.

(a) Prudent contract financing can be a useful working tool in Government acquisition by expediting the performance of essential contracts. Contracting officers must consider the criteria in this part in determining whether to include contract financing in solicitations and contracts. Resolve reasonable doubts by including contract financing in the solicitation. The contracting officer must—

(1) Provide Government financing only to the extent actually needed for prompt and efficient performance, considering the availability of private financing and the probable impact on working capital of the predelivery expenditures and production lead-times associated with the contract, or groups of contracts or orders (*e.g.*, issued under indefinite-delivery contracts, basic ordering agreements, or their equivalent);

(2) Administer contract financing so as to aid, not impede, the acquisition;

(3) Avoid any undue risk of monetary loss to the Government through the financing;

(4) Include the form of contract financing deemed to be in the Government's best interest in the solicitation (see 32.106 and 32.113); and

(5) Monitor the contractor's use of the contract financing provided and the contractor's financial status.

(b) If the contractor is a small business concern, the contracting officer must give special attention to meeting the contractor's contract financing need. However, a contractor's receipt of a certificate of competency from the Small Business Administration has no bearing on the contractor's need for or entitlement to contract financing.

(c) Subject to specific agency regulations and paragraph (d) of this section, the contracting officer—

(1) May provide customary contract financing in accordance with 32.113; and

(2) Must not provide unusual contract financing except as authorized in 32.114.

(d) Unless otherwise authorized by agency procedures, the contracting officer may provide contract financing in the form of performance-based payments (see subpart 32.10) or customary progress payments (see subpart 32.5) if the following conditions are met:

(1) The contractor—

(i) Will not be able to bill for the first delivery of products for a substantial time after work must begin (normally 4 months or more for small business concerns, and 6 months or more for others), and will make expenditures for contract performance during the predelivery period that have a significant impact on the contractor's working capital; or

(ii) Demonstrates actual financial need or the unavailability of private financing.

(2) If the contractor is not a small business concern—

(i) For an individual contract, the contract price is $2 million or more; or

(ii) For an indefinite-delivery contract, a basic ordering agreement or a similar ordering instrument, the contracting officer expects the aggregate value of orders or contracts that individually exceed the simplified acquisition threshold to have a total value of $2 million or more. The contracting officer must limit financing to those orders or contracts that exceed the simplified acquisition threshold.

(3) If the contractor is a small business concern—

(i) For an individual contract, the contract price exceeds the simplified acquisition threshold; or

(ii) For an indefinite-delivery contract, a basic ordering agreement or a similar ordering instrument, the contracting officer expects the aggregate value of orders or contracts to exceed the simplified acquisition threshold.

3. Amend section 32.106 in the introductory paragraph by removing "shall" and adding "must" in its place; and by revising paragraphs (a) and (b) to read as follows:

32.106 Order of preference.

* * * * *

(a) Private financing without Government guarantee. It is not intended, however, that the contracting officer require the contractor to obtain private financing—

(1) At unreasonable terms; or

(2) From other agencies.

(b) Customary contract financing other than loan guarantees and certain advance payments (see 32.113).

* * * * *

4. Add section 32.110 to read as follows:

32.110 Payment of subcontractors under cost-reimbursement prime contracts.

If the contractor makes financing payments to a subcontractor under a cost-reimbursement prime contract, the contracting officer should accept the financing payments as reimbursable costs of the prime contract only under the following conditions:

(a) The payments are made under the criteria in subpart 32.5 for customary progress payments based on costs, 32.202–1 for commercial item purchase financing, or 32.1003 for performance-based payments, as applicable.

(b) If customary progress payments are made, the payments do not exceed the progress payment rate in 32.501–1, unless unusual progress payments to the subcontractor have been approved in accordance with 32.501–2.

(c) If customary progress payments are made, the subcontractor complies with the liquidation principles of 32.503–8, 32.503–9, and 32.503–10.

(d) If performance-based payments are made, the subcontractor complies with the liquidation principles of 32.1004(d).

(e) The subcontract contains financing payments terms as prescribed in this part.

5. Revise the section heading at 32.112 to read as follows:

32.112 Nonpayment of subcontractors under contracts for noncommercial items.

* * * * *

6. Revise section 32.113 to read as follows:

32.113 Customary contract financing.

The solicitation must specify the customary contract financing offerors may propose. The following are customary contract financing when provided in accordance with this part and agency regulations:

(a) Financing of shipbuilding, or ship conversion, alteration, or repair, when agency regulations provide for progress payments based on a percentage or stage of completion.

(b) Financing of construction or architect-engineer services purchased under the authority of part 36.

(c) Financing of contracts for supplies or services awarded under the sealed bid method of procurement in accordance with part 14 through progress payments based on costs in accordance with subpart 32.5.

(d) Financing of contracts for supplies or services awarded under the competitive negotiation method of procurement in accordance with part 15, through either progress payments based on costs in accordance with subpart 32.5, or performance-based payments in accordance with subpart 32.10 (but not both).

(e) Financing of contracts for supplies or services awarded under a sole-source acquisition as defined in part 6 and using the procedures of part 15, through either progress payments based on costs in accordance with subpart 32.5, or performance-based payments in accordance with subpart 32.10 (but not both).

(f) Financing of contracts for supplies or services through advance payments in accordance with subpart 32.4.

(g) Financing of contracts for supplies or services through guaranteed loans in accordance with subpart 32.3.

(h) Financing of contracts for supplies or services through any appropriate combination of advance payments, guaranteed loans, and either performance-based payments or progress payments (but not both) in accordance with their respective subparts.

7. Amend section 32.205 in the introductory text of paragraph (b) by removing "shall" each time it is used (twice) and adding "must" in its place; and by revising the first sentence of paragraph (c)(4) to read as follows:

32.205 Procedures for offeror-proposed commercial contract financing.

* * * * *

(c) * * *

(4) The contracting officer must calculate the time value of proposal-specified contract financing arrangements using as the interest rate the nominal discount rate specified in Appendix C of the Office of Management and Budget (OMB) Circular A–94, "Guidelines and Discount Rates for Benefit-Cost Analysis of Federal Programs", appropriate to the period of contract financing. * * *

8. Amend section 32.500 by revising paragraph (a) to read as follows:

32.500 Scope of subpart.

* * * * *

(a) Payments under cost-reimbursement contracts, but see 32.110 for progress payments made to subcontractors under cost-reimbursement prime contracts; or

* * * * *

9. Revise section 32.501–1 to read as follows:

32.501–1 Customary progress payment rates.

(a) The customary progress payment rate is 80 percent, applicable to the total

costs of performing the contract. The customary rate for contracts with small business concerns is 85 percent.

(b) The contracting officer must—

(1) Consider any rate higher than those permitted in paragraph (a) of this section an unusual progress payment; and

(2) Not include a higher rate in a contract unless advance agency approval is obtained as prescribed in 32.501–2.

(c) When advance payments and progress payments are authorized under the same contract, the contracting officer must not authorize a progress payment rate higher than the customary rate.

(d) In accordance with 10 U.S.C. 2307(e)(2) and 41 U.S.C. 255, the limit for progress payments is 80 percent on work accomplished under undefinitized contract actions. The contracting officer must not authorize a higher rate under unusual progress payments or other customary progress payments for the undefinitized actions.

10. Revise section 32.502–1 to read as follows:

32.502–1 Use of customary progress payments.

The contracting officer may use a Progress Payments clause in solicitations and contracts, in accordance with this subpart. The contracting officer must reject as nonresponsive bids conditioned on progress payments when the solicitation did not provide for progress payments.

11. Revise section 32.502–4 to read as follows:

32.502–4 Contract clauses.

(a)(1) Insert the clause at 52.232–16, Progress Payments, in—

(i) Solicitations that may result in contracts providing for progress payments based on costs; and

(ii) Fixed-price contracts under which the Government will provide progress payments based on costs.

(2) If advance agency approval has been given in accordance with 32.501–1, the contracting officer may substitute a different customary rate for other than small business concerns for the progress payment and liquidation rate indicated.

(3) If an unusual progress payment rate is approved for the prime contractor (see 32.501–2), substitute the approved rate for the customary rate in paragraphs (a)(1), (a)(5), and (b) of the clause.

(4) If the liquidation rate is changed from the customary progress payment rate (see 32.503–8 and 32.503–9), substitute the new rate for the rate in paragraphs (a)(1), (a)(5), and (b) of the clause.

(5) If an unusual progress payment rate is approved for a subcontract (see 32.504(c) and 32.501–2), modify paragraph (j)(6) of the clause to specify the new rate, the name of the subcontractor, and that the new rate shall be used for that subcontractor in lieu of the customary rate.

(b) If the contractor is a small business concern, use the clause with its Alternate I.

(c) If the contract is a letter contract, use the clause with its Alternate II.

(d) If the contractor is not a small business concern, and progress payments are authorized under an indefinite-delivery contract, basic ordering agreement, or their equivalent, use the clause with its Alternate III.

(e) If the nature of the contract necessitates separate progress payment rates for portions of work that are clearly severable and accounting segregation would be maintained (*e.g.*, annual production requirements), describe the application of separate progress payment rates in a supplementary special provision within the contract. The contractor must submit separate progress payment requests and subsequent invoices for the severable portions of work in order to maintain accounting integrity.

12. Revise section 32.503–1 to read as follows:

32.503–1 Contractor requests.

Each contractor request for progress payment must—

(a) Be submitted on Standard Form 1443, Contractor's Request for Progress Payment, in accordance with the form instructions and the contract terms;

(b) Include any additional information reasonably requested by the contracting officer; and

(c) Be $2,500 or more, unless agency procedures authorize a lower amount.

13. Amend section 32.503–5 by revising paragraph (c) to read as follows:

32.503–5 Administration of progress payments.

* * * * *

(c) Under indefinite-delivery contracts, the contracting officer should administer progress payments made under each individual order as if the order constituted a separate contract, unless agency procedures provide otherwise.

14. Amend section 32.503–6 in paragraph (e)(3) by removing "paragraph (a)(2)" and adding "paragraph (a)(3)" in its place; and by revising paragraphs (f) and (g)(4) to read as follows:

32.503–6 Suspension or reduction of payments.

* * * * *

(f) *Fair value of undelivered work.* Progress payments must be commensurate with the fair value of work accomplished in accordance with contract requirements. Governed by the principles of paragraphs (c) and (e) of this subsection, the contracting officer must adjust progress payments when necessary to ensure that the fair value of undelivered work equals or exceeds the amount of unliquidated progress payments. On loss contracts, the application of a loss ratio as described in paragraph (g) of this subsection constitutes this adjustment.

(g) * * *

(4) The following is an example of the supplementary analysis required in paragraph (g)(3) of this subsection:

Section I	
Contract price.	$2,850,000
Change orders and unpriced orders (to extent funds have been obligated)	150,000
Revised contract price	3,000,000
Section II	
Total costs incurred to date	2,700,000
Estimated additional costs to complete	900,000
Total costs to complete	3,600,000

$$\text{Loss ratio factor } \frac{\$3{,}000{,}000}{\$3{,}600{,}000} = 83.3\%$$

Total costs eligible for progress payments	2,700,000
Loss ratio factor	×83.3%
Recognized costs for progress payments	2,249,100
Progress payment rate	×80.0%
Alternate amount to be used	1,799,280
Section III	
Factored costs of items delivered*	750,000
Recognized costs applicable to undelivered items ($2,249,100–750,000)	1,499,100

* This amount must be the same as the contract price of the items delivered.

32.503–7 [Reserved]

15. Remove and reserve section 32.503–7.

16. Revise section 32.503–8 to read as follows:

32.503–8 Liquidation rates—ordinary method.

The Government recoups progress payments through the deduction of liquidations from payments that would otherwise be due to the contractor for completed contract items. To determine the amount of the liquidation, the contracting officer applies a liquidation rate to the contract price of contract

items delivered and accepted. The ordinary method is that the liquidation rate is the same as the progress payment rate. At the beginning of a contract, the contracting officer must use this method.

17. Amend section 32.503–10 in the introductory text of paragraph (a) by removing "shall" and adding "must" in its place; by revising paragraph (b)(1); in paragraph (b)(2) by removing "shall" and adding "must" in its place; and by revising paragraph (b)(3) to read as follows:

32.503–10 Establishing alternate liquidation rates.

* * * * *

(b) * * *

(1) The contracting officer must compute the expected progress payments by multiplying the estimated cost of performing the contract by the progress payment rate.

* * * * *

(3) The following are examples of the computation. Assuming an estimated price of $2,200,000 and total estimated costs eligible for progress payments of $2,000,000:

(i) If the progress payment rate is 80 percent, the minimum liquidation rate should be 72.7 percent, computed as follows:

$$\frac{\$2{,}000{,}000 \times 80\%}{\$2{,}200{,}000} = 72.7\%$$

(ii) If the progress payment rate is 85 percent, the minimum liquidation rate should be 77.3 percent, computed as follows:

$$\frac{\$2{,}000{,}000 \times 85\%}{\$2{,}200{,}000} = 77.3\%$$

* * * * *

32.503–13 [Reserved]

18. Remove and reserve section 32.503–13.

19. Revise the section heading and text of section 32.504 to read as follows:

32.504 Subcontracts under prime contracts providing progress payments.

(a) Subcontracts may include either performance-based payments, provided they meet the criteria in 32.1003, or progress payments, provided they meet the criteria in subpart 32.5 for customary progress payments, but not both. Subcontracts for commercial purchases may include commercial item purchase financing terms, provided they meet the criteria in 32.202–1.

(b) The contractor's requests for progress payments may include the full amount of commercial item purchase financing payments, performance-based payments, or progress payments to a subcontractor, whether paid or unpaid, provided that unpaid amounts are limited to amounts that the contractor will pay—

(1) In accordance with the terms and conditions of a subcontract or invoice; and

(2) Ordinarily prior to the submission of the contractor's next progress payment request to the Government.

(c) If the contractor is considering making unusual progress payments to a subcontractor, the parties will be guided by the policies in 32.501–2. If the Government approves unusual progress payments for the subcontract, the contracting officer must issue a contract modification to specify the new rate in paragraph (j)(6) of the clause at 52.232–16, Progress Payments, in the prime contract. This will allow the contractor to include the progress payments to the subcontractor in the cost basis for progress payments by the Government. This modification is not a deviation and does not require the clearance prescribed in 32.502–2(b).

(d) The contractor has a duty to ensure that financing payments to subcontractors conform to the standards and principles prescribed in paragraph (j) of the Progress Payments clause in the prime contract. Although the contracting officer should, to the extent appropriate, review the subcontract as part of the overall administration of progress payments in the prime contract, there is no special requirement for contracting officer review or consent merely because the subcontract includes financing payments, except as provided in paragraph (c) of this section. However, the contracting officer must ensure that the contractor has installed the necessary management control systems, including internal audit procedures.

(e) When financing payments are in the form of progress payments, the Progress Payments clause at 52.232–16 requires that the subcontract include the substance of the Progress Payments clause in the prime contract, modified to indicate that the contractor, not the Government, awards the subcontract and administers the progress payments. The following exceptions apply to wording modifications:

(1) The subcontract terms on title to property under progress payments shall provide for vesting of title in the Government, not the contractor, as in paragraph (d) of the Progress Payments clause in the prime contract. A reference to the contractor may, however, be substituted for "Government" in paragraph (d)(2)(iv) of the clause.

(2) In the subcontract terms on reports and access to records, the contractor shall not delete the references to "Contracting Officer" and "Government" in adapting paragraph (g) of the Progress Payments clause in the contract, but may expand the terms as follows:

(i) The term "Contracting Officer" may be changed to "Contracting Officer or Prime Contractor."

(ii) The term "the Government" may be changed to "the Government or Prime Contractor."

(3) The subcontract special terms regarding default shall include paragraph (h) of the Progress Payments clause in the contract through its subdivision (i). The rest of paragraph (h) is optional.

(f) When financing payments are in the form of performance-based payments, the Performance-Based Payments clause at 52.232–32 requires that the subcontract terms include the substance of the Performance-Based Payments clause, modified to indicate that the contractor, not the Government, awards the subcontract and administers the performance-based payments, and include appropriately worded modifications similar to those noted in paragraph (e) of this section.

(g) When financing payments are in the form of commercial item purchase financing, the subcontract must include a contract financing clause structured in accordance with 32.206.

20. Amend section 32.1000—

a. In the introductory paragraph by removing the word "non-commercial" and adding "noncommercial" in its place;

b. At the end of paragraph (b) by adding "or" after the semicolon;

c. By removing paragraph (c) and redesignating paragraph

(d) as paragraph (c); and

d. By revising newly designated (c) to read as follows:

32.1000 Scope of subpart.

* * * * *

(c) Contracts awarded through sealed bid procedures.

21. Revise section 32.1001 to read as follows:

32.1001 Policy.

(a) Performance-based payments are the preferred Government financing method when the contracting officer finds them practical, and the contractor agrees to their use.

(b) Performance-based payments are contract financing payments that are not payment for accepted items.

(c) Performance-based payments are fully recoverable, in the same manner as

progress payments, in the event of default. Except as provided in 32.1003(c), the contracting officer must not use performance-based payments when other forms of contract financing are provided.

(d) For Government accounting purposes, the Government should treat performance-based payments like progress payments based on costs under subpart 32.5.

(e) Performance-based payments are contract financing payments and, therefore, are not subject to the interest-penalty provisions of prompt payment (see subpart 32.9). However, each agency must make these payments in accordance with the agency's policy for prompt payment of contract financing payments.

32.1003 [Amended]

22. Amend section 32.1003 in paragraph (b) by removing "(but see 32.1005(b))".

23. Revise the section headings and text of sections 32.1004 and 32.1005 to read as follows:

32.1004 Procedures.

Performance-based payments may be made either on a whole contract or on a deliverable item basis, unless otherwise prescribed by agency regulations. Financing payments to be made on a whole contract basis are applicable to the entire contract, and not to specific deliverable items. Financing payments to be made on a deliverable item basis are applicable to a specific individual deliverable item. (A deliverable item for these purposes is a separate item with a distinct unit price. Thus, a contract line item for 10 airplanes, with a unit price of $1,000,000 each, has 10 deliverable items—the separate planes. A contract line item for 1 lot of 10 airplanes, with a lot price of $10,000,000, has only one deliverable item—the lot.)

(a) *Establishing performance bases.* (1) The basis for performance-based payments may be either specifically described events (*e.g.*, milestones) or some measurable criterion of performance. Each event or performance criterion that will trigger a finance payment must be an integral and necessary part of contract performance and must be identified in the contract, along with a description of what constitutes successful performance of the event or attainment of the performance criterion. The signing of contracts or modifications, the exercise of options, or other such actions must not be events or criteria for performance-based payments. An event need not be a critical event in order to trigger a payment, but the Government must be able to readily verify successful performance of each such event or performance criterion.

(2) Events or criteria may be either severable or cumulative. The successful completion of a severable event or criterion is independent of the accomplishment of any other event or criterion. Conversely, the successful accomplishment of a cumulative event or criterion is dependent upon the previous accomplishment of another event. A contract may provide for more than one series of severable and/or cumulative performance events or criteria performed in parallel. The contracting officer must include the following in the contract:

(i) The contract must not permit payment for a cumulative event or criterion until the dependent event or criterion has been successfully completed.

(ii) The contract must specifically identify severable events or criteria.

(iii) The contract must identify which events or criteria are preconditions for the successful achievement of each cumulative event or criterion.

(iv) Because performance-based payments are contract financing, events or criteria must not serve as a vehicle to reward the contractor for completion of performance levels over and above what is required for successful completion of the contract.

(v) If payment of performance-based finance amounts is on a deliverable item basis, each event or performance criterion must be part of the performance necessary for that deliverable item and must be identified to a specific contract line item or subline item.

(b) *Establishing performance-based finance payment amounts.* (1) The contracting officer must establish a complete, fully defined schedule of events or performance criteria and payment amounts when negotiating contract terms. If a contract action significantly affects the price, or event or performance criterion, the contracting officer responsible for pricing the contract modification must adjust the performance-based payment schedule appropriately.

(2) Total performance-based payments must—

(i) Reflect prudent contract financing provided only to the extent needed for contract performance (see 32.104(a)); and

(ii) Not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.

(3) The contract must specifically state the amount of each performance-based payment either as a dollar amount or as a percentage of a specifically identified price (*e.g.*, contract price, or unit price of the deliverable item). The payment of contract financing has a cost to the Government in terms of interest paid by the Treasury to borrow funds to make the payment. Because the contracting officer has wide discretion as to the timing and amount of the performance-based payments, the contracting officer must ensure that—

(i) The total contract price is fair and reasonable, all factors considered; and

(ii) Performance-based payment amounts are commensurate with the value of the performance event or performance criterion, and are not expected to result in an unreasonably low or negative level of contractor investment in the contract. To confirm sufficient investment, the contracting officer may request expenditure profile information from offerors, but only if other information in the proposal, or information otherwise available to the contracting officer, is expected to be insufficient.

(4) Unless agency procedures prescribe the bases for establishing performance-based payment amounts, contracting officers may establish them on any rational basis, including (but not limited to)—

(i) Engineering estimates of stages of completion;

(ii) Engineering estimates of hours or other measures of effort to be expended in performance of an event or achievement of a performance criterion; or

(iii) The estimated projected cost of performance of particular events.

(5) When subsequent contract modifications are issued, the contracting officer must adjust the performance-based payment schedule as necessary to reflect the actions required by those contract modifications.

(c) *Instructions for multiple appropriations.* If there is more than one appropriation account (or subaccount) funding payments on the contract, the contracting officer must provide instructions to the Government payment office for distribution of financing payments to the respective funds accounts. Distribution instructions must be consistent with the contract's liquidation provisions.

(d) *Liquidating performance-based finance payments.* Performance-based amounts must be liquidated by deducting a percentage or a designated dollar amount from the delivery payments. The contracting officer must specify the liquidation rate or designated dollar amount in the contract. The method of liquidation must ensure complete liquidation no later than final payment.

(1) If the contracting officer establishes the performance-based payments on a delivery item basis, the liquidation amount for each line item is the percent of that delivery item price that was previously paid under performance-based finance payments or the designated dollar amount.

(2) If the performance-based finance payments are on a whole contract basis, liquidation is by predesignated liquidation amounts or liquidation percentages.

(e) *Competitive negotiated solicitations.* (1) If a solicitation requests offerors to propose performance-based payments, the solicitation must specify—

(i) What, if any, terms must be included in all offers; and

(ii) The extent to which and how offeror-proposed performance-based payment terms will be evaluated. Unless agencies prescribe other evaluation procedures, if the contracting officer anticipates that the cost of providing performance-based payments would have a significant impact on determining the best value offer, the solicitation should include an adjustment of proposed prices to reflect the estimated cost to the Government of providing each offeror's proposed performance-based payments (see Alternate I to the provision at 52.232–28).

(2) The contracting officer must—

(i) Review the proposed terms to ensure they comply with this section; and

(ii) Use the adjustment method in 32.205(c) if the price is to be adjusted for evaluation purposes in accordance with paragraph (e)(1)(ii) of this section.

32.1005 Solicitation provision and contract clause.

(a) Insert the clause at 52.232–32, Performance-Based Payments, with the description of the basis for payment and liquidation as required in 32.1004 in—

(1) Solicitations that may result in contracts providing for performance-based payments; and

(2) Fixed-price contracts under which the Government will provide performance-based payments.

(b)(1) Insert the solicitation provision at 52.232–28, Invitation to Propose Performance-Based Payments, in negotiated solicitations that invite offerors to propose performance-based payments.

(2) Use the provision with its Alternate I in competitive negotiated solicitations if the Government intends to adjust proposed prices for proposal evaluation purposes (see 32.1004(e)).

32.1006 [Removed and Reserved]

24. Remove and reserve section 32.1006.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

25. Amend section 52.216–7 by—

a. Revising the date of the clause;

b. In the introductory text of paragraph (b)(1) by removing "subparagraph (2) below" and adding "paragraph (b)(2) of the clause" in its place;

c. Redesignating paragraphs (b)(1)(ii)(A) through (b)(1)(ii)(E) as (b)(1)(ii)(B) through (b)(1)(ii)(F);

d. Adding a new paragraph (b)(1)(ii)(A); and

e. Revising paragraphs (b)(1)(iii), (b)(2), and (c) to read as follows:

52.216–7 Allowable Cost and Payment.

* * * * *

ALLOWABLE COST AND PAYMENT (MAR 2000)

* * * * *

(b) * * *

(1) * * *

(ii) * * *

(A) Supplies and services purchased directly for the contract and associated financing payments to subcontractors, provided payments will be made—

(*1*) In accordance with the terms and conditions of a subcontract or invoice; and

(*2*) Ordinarily prior to the submission of the Contractor's next payment request to the Government;

* * * * *

(iii) The amount of financing payments that have been paid by cash, check, or other forms of payment to subcontractors.

(2) Accrued costs of Contractor contributions under employee pension plans shall be excluded until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's indirect costs for payment purposes).

* * * * *

(c) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

* * * * *

26. Amend section 52.216–26 by—

a. Revising the introductory paragraph and the date of the clause;

b. Removing "shall" and adding "will" in the introductory text of paragraph (a) of the clause; and

c. Revising paragraphs (a)(1), (d)(2), (d)(3), and (e) of the clause to read as follows:

52.216–26 Payments of Allowable Costs Before Definitization.

As prescribed in 16.603–4(c), insert the following clause:

PAYMENTS OF ALLOWABLE COSTS BEFORE DEFINITIZATION (MAR 2000)

* * * * *

(a) * * *

(1) One hundred percent of approved costs representing financing payments to subcontractors under fixed-price subcontracts, provided that the Government's payments to the Contractor will not exceed 80 percent of the allowable costs of those subcontractors.

* * * * *

(d) * * *

(2) When the Contractor is not delinquent in payment of costs of contract performance in the ordinary course of business, costs incurred, but not necessarily paid, for—

(i) Supplies and services purchased directly for the contract, provided payments will be made—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily prior to the submission of the Contractor's next payment request to the Government;

(ii) Materials issued from the Contractor's stores inventory and placed in the production process for use on the contract;

(iii) Direct labor;

(iv) Direct travel;

(v) Other direct in-house costs; and

(vi) Properly allocable and allowable indirect costs as shown on the records maintained by the Contractor for purposes of obtaining reimbursement under Government contracts; and

(3) The amount of financing payments that the Contractor has paid by cash, check, or other forms of payment to subcontractors.

(e) *Small business concerns.* A small business concern may receive more frequent payments than every 2 weeks.

* * * * *

27. Amend section 52.232–7 by revising the date of the clause; in the introductory paragraph by removing "shall" and adding "will" in its place; and by revising paragraph (b) and Alternate I of the clause to read as follows:

52.232–7 Payments under Time-and-Materials and Labor-Hour Contracts.

* * * * *

PAYMENTS UNDER TIME-AND-MATERIALS AND LABOR-HOUR CONTRACTS (MAR 2000)

* * * * *

(b) *Materials and subcontracts.* (1) The Contracting Officer will determine allowable costs of direct materials in accordance with Subpart 31.2 of the Federal Acquisition Regulation (FAR) in effect on the date of this contract. Direct materials, as used in this clause, are those materials that enter directly

into the end product, or that are used or consumed directly in connection with the furnishing of the end product.

(2) The Contractor may include reasonable and allocable material handling costs in the charge for material to the extent they are clearly excluded from the hourly rate. Material handling costs are comprised of indirect costs, including, when appropriate, general and administrative expense allocated to direct materials in accordance with the Contractor's usual accounting practices consistent with Subpart 31.2 of the FAR.

(3) The Government will reimburse the Contractor for items and services purchased directly for the contract only when payments of cash, checks, or other forms of payment have been made for such purchased items or services.

(4)(i) The Government will reimburse the Contractor for costs of subcontracts that are authorized under the subcontracts clause of this contract, provided that the costs are consistent with paragraph (b)(5) of this clause.

(ii) The Government will limit reimbursable costs in connection with subcontracts to the amounts paid for items and services purchased directly for the contract only when the Contractor has made or will make payments of cash, checks, or other forms of payment to the subcontractor—

(A) In accordance with the terms and conditions of a subcontract or invoice; and

(B) Ordinarily prior to the submission of the Contractor's next payment request to the Government.

(iii) The Government will not reimburse the Contractor for any costs arising from the letting, administration, or supervision of performance of the subcontract, if the costs are included in the hourly rates payable under paragraph (a)(1) of this clause.

(5) To the extent able, the Contractor shall—

(i) Obtain materials at the most advantageous prices available with due regard to securing prompt delivery of satisfactory materials; and

(ii) Take all cash and trade discounts, rebates, allowances, credits, salvage, commissions, and other benefits. When unable to take advantage of the benefits, the Contractor shall promptly notify the Contracting Officer and give the reasons. The Contractor shall give credit to the Government for cash and trade discounts, rebates, scrap, commissions, and other amounts that have accrued to the benefit of the Contractor, or would have accrued except for the fault or neglect of the Contractor. The Contractor shall not deduct from gross costs the benefits lost without fault or neglect on the part of the Contractor, or lost through fault of the Government.

* * * * *

(End of clause)

Alternate I (Mar 2000). If the nature of the work to be performed requires the Contractor to furnish material that the Contractor regularly sells to the general public in the normal course of business, and the price is under the limitations prescribed in 16.601(b)(3), add the following paragraph (6) to paragraph (b) of the basic clause:

(b)(6) If the nature of the work to be performed requires the Contractor to furnish material that the Contractor regularly sells to the general public in the normal course of business, the price to be paid for such material, notwithstanding the other requirements of this paragraph (b), shall be on the basis of an established catalog or list price, in effect when the material is furnished, less all applicable discounts to the Government, provided that in no event shall such price be in excess of the Contractor's sales price to its most favored customer for the same item in like quantity, or the current market price, whichever is lower.

* * * * *

28. Amend section 52.232–16 by—

a. Removing the introductory text, consisting of paragraphs (a) through (e) and adding in its place a prescription;

b. Revising the date of the clause;

c. Revising the introductory text of the clause;

d. Revising paragraphs (a)(1) and (a)(2) of the clause;

e. Redesignating paragraphs (a)(3) through (a)(6) of the clause as (a)(4) through (a)(7) and adding new paragraphs (a)(3) and (a)(8);

f. Revising the introductory text of newly redesignated paragraph (a)(4);

g. Revising paragraph (j) of the clause; and

h. Revising Alternate I and adding Alternate III to read as follows:

52.232–16 Progress Payments.

As prescribed in 32.502–4(a), insert the following clause:

PROGRESS PAYMENTS (MAR 2000)

The Government will make progress payments to the Contractor when requested as work progresses, but not more frequently than monthly, in amounts of $2,500 or more approved by the Contracting Officer, under the following conditions:

(a) *Computation of amounts.* (1) Unless the Contractor requests a smaller amount, the Government will compute each progress payment as 80 percent of the Contractor's total costs incurred under this contract whether or not actually paid, plus financing payments to subcontractors (see paragraph (j) of this clause), less the sum of all previous progress payments made by the Government under this contract. The Contracting Officer will consider cost of money that would be allowable under FAR 31.205–10 as an incurred cost for progress payment purposes.

(2) The amount of financing and other payments for supplies and services purchased directly for the contract are limited to the amounts that have been paid by cash, check, or other forms of payment, or that will be paid to subcontractors—

(i) In accordance with the terms and conditions of a subcontract or invoice; and

(ii) Ordinarily prior to the submission of the Contractor's next payment request to the Government.

(3) The Government will exclude accrued costs of Contractor contributions under employee pension plans until actually paid unless—

(i) The Contractor's practice is to make contributions to the retirement fund quarterly or more frequently; and

(ii) The contribution does not remain unpaid 30 days after the end of the applicable quarter or shorter payment period (any contribution remaining unpaid shall be excluded from the Contractor's total costs for progress payments until paid).

(4) The Contractor shall not include the following in total costs for progress payment purposes in paragraph (a)(1) of this clause:

* * * * *

(8) Notwithstanding any other terms of the contract, the Contractor agrees not to request progress payments in dollar amounts of less than $2,500. The Contracting Officer may make exceptions.

* * * * *

(j) *Financing payments to subcontractors.* The financing payments to subcontractors mentioned in paragraphs (a)(1) and (a)(2) of this clause shall be all financing payments to subcontractors or divisions, if the following conditions are met:

(1) The amounts included are limited to—

(i) The unliquidated remainder of financing payments made; plus

(ii) Any unpaid subcontractor requests for financing payments.

(2) The subcontract or interdivisional order is expected to involve a minimum of approximately 6 months between the beginning of work and the first delivery; or, if the subcontractor is a small business concern, 4 months.

(3) If the financing payments are in the form of progress payments, the terms of the subcontract or interdivisional order concerning progress payments—

(i) Are substantially similar to the terms of this clause for any subcontractor that is a large business concern, or this clause with its Alternate I for any subcontractor that is a small business concern;

(ii) Are at least as favorable to the Government as the terms of this clause;

(iii) Are not more favorable to the subcontractor or division than the terms of this clause are to the Contractor;

(iv) Are in conformance with the requirements of FAR 32.504(e); and

(v) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(4) If the financing payments are in the form of performance-based payments, the terms of the subcontract or interdivisional order concerning payments—

(i) Are substantially similar to the Performance-Based Payments clause at FAR 52.232–32 and meet the criteria for, and definition of, performance-based payments in FAR Part 32;

(ii) Are in conformance with the requirements of FAR 32.504(f); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(5) If the financing payments are in the form of commercial item financing payments, the terms of the subcontract or interdivisional order concerning payments—

(i) Are constructed in accordance with FAR 32.206(c) and included in a subcontract for a commercial item purchase that meets the definition and standards for acquisition of commercial items in FAR Parts 2 and 12;

(ii) Are in conformance with the requirements of FAR 32.504(g); and

(iii) Subordinate all subcontractor rights concerning property to which the Government has title under the subcontract to the Government's right to require delivery of the property to the Government if—

(A) The Contractor defaults; or

(B) The subcontractor becomes bankrupt or insolvent.

(6) If financing is in the form of progress payments, the progress payment rate in the subcontract is the customary rate used by the contracting agency, depending on whether the subcontractor is or is not a small business concern.

(7) Concerning any proceeds received by the Government for property to which title has vested in the Government under the subcontract terms, the parties agree that the proceeds shall be applied to reducing any unliquidated financing payments by the Government to the Contractor under this contract.

(8) If no unliquidated financing payments to the Contractor remain, but there are unliquidated financing payments that the Contractor has made to any subcontractor, the Contractor shall be subrogated to all the rights the Government obtained through the terms required by this clause to be in any subcontract, as if all such rights had been assigned and transferred to the Contractor.

(9) To facilitate small business participation in subcontracting under this contract, the Contractor shall provide financing payments to small business concerns, in conformity with the standards for customary contract financing payments stated in FAR 32.113. The Contractor shall not consider the need for such financing payments as a handicap or adverse factor in the award of subcontracts.

* * * * *

(End of clause)

Alternate I (Mar 2000). If the contract is with a small business concern, change each mention of the progress payment and liquidation rates excepting paragraph (k) to the customary rate of 85 percent for small business concerns (see FAR 32.501–1).

* * * * *

Alternate III (Mar 2000). As prescribed in 32.502–4(d), add the following paragraph (l) to the basic clause. If Alternate II is also being used, redesignate the following paragraph as paragraph (n):

(l) The provisions of this clause will not be applicable to individual orders at or below the simplified acquisition threshold.

29. Add section 52.232–28 to read as follows:

52.232–28 Invitation to Propose Performance-Based Payments.

As prescribed in 32.1005(b)(1), insert the following provision:

Invitation to Propose Performance-Based Payments (Mar 2000)

(a) The Government invites the offeror to propose terms under which the Government will make performance-based contract financing payments during contract performance. The Government will consider performance-based payment financing terms proposed by the offeror in the evaluation of the offeror's proposal. The Contracting Officer will incorporate the financing terms of the successful offeror and the FAR clause, Performance-Based Payments, at FAR 52.232–32, in any resulting contract.

(b) In the event of any conflict between the terms proposed by the offeror and the terms in the clause at FAR 52.232–32, Performance-Based Payments, the terms of the clause at FAR 52.232–32 shall govern.

(c) The Contracting Officer will not accept the offeror's proposed performance-based payment financing if the financing does not conform to the following limitations:

(1) The Government will make delivery payments only for supplies delivered and accepted, or services rendered and accepted in accordance with the payment terms of this contract.

(2) The terms and conditions of the performance-based payments must—

(i) Comply with FAR 32.1004;

(ii) Be reasonable and consistent with all other technical and cost information included in the offeror's proposal; and

(iii) Their total shall not exceed 90 percent of the contract price if on a whole contract basis, or 90 percent of the delivery item price if on a delivery item basis.

(3) The terms and conditions of the performance-based financing must be in the best interests of the Government.

(d) The offeror's proposal of performance-based payment financing shall include the following:

(1) The proposed contractual language describing the performance-based payments (see FAR 32.1004 for appropriate criteria for establishing performance bases and performance-based finance payment amounts).

(2) A listing of—

(i) The projected performance-based payment dates and the projected payment amounts; and

(ii) The projected delivery date and the projected payment amount.

(3) Information addressing the Contractor's investment in the contract.

(e) Evaluation of the offeror's proposed prices and financing terms will include whether the offeror's proposed performance-based payment events and payment amounts are reasonable and consistent with all other terms and conditions of the offeror's proposal.

(End of provision)

Alternate I (Mar 2000). As prescribed in FAR 32.1005(b)(2), add the following paragraph (f) to the basic provision:

(f) The Government will adjust each proposed price to reflect the cost of providing the proposed performance-based payments to determine the total cost to the Government of that particular combination of price and performance-based financing. The Government will make the adjustment using the procedure described in FAR 32.205(c).

[FR Doc. 00–7309 Filed 3–24–00; 8:45 am]

BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1, 6, 9, 15, and 52

[FAC 97–16; Item III]

Federal Acquisition Regulation; Technical Amendments

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Technical amendments.

SUMMARY: This document makes amendments to the Federal Acquisition Regulation in order to update references and make editorial changes.

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501–4755.

List of Subjects in 48 CFR Parts 1, 6, 9, 15, and 52

Government procurement.

Dated: March 20, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA amend 48 CFR Parts 1, 6, 9, 15, and 52 as set forth below:

1. The authority citation for 48 CFR Parts 1, 6, 9, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION REGULATIONS SYSTEM

2. Amend section 1.106 in the table following the introductory paragraph by adding entries 23.9, 52.223–13, and 52.223–14, and by revising entry 52.247–64 to read as follows:

1.106 OMB approval under the Paperwork Reduction Act.

* * * * *

FAR segment	OMB control no.
. . . . .	
23.9	9000–0139
. . . . .	
52.223–13	9000–0139
52.223–14	9000–0139
. . . . .	
52.247–64	9000–0061
. . . . .	

1.201–1 [Amended]

3. Amend section 1.201–1(a) by removing "1.102" and adding "1.103" in its place.

1.304 [Amended]

4. Amend section 1.304(a) by removing "1.301(c)" and adding "1.301(d)" in its place.

PART 6—COMPETITION REQUIREMENTS

6.305 [Amended]

5. In section 6.305 redesignate paragraphs (1) and (2) as (a) and (b), respectively; and in the newly redesignated paragraph (a) remove "41 U.S.C. 303(f)(4)" and add "41 U.S.C. 253(f)(4)" in its place.

PART 9—CONTRACTOR QUALIFICATIONS

6. Revise section 9.404 to read as follows:

9.404 List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

(a) The General Services Administration (GSA)—

(1) Compiles and maintains a current list of all parties debarred, suspended, proposed for debarment, or declared ineligible by agencies or by the General Accounting Office;

(2) Periodically revises and distributes the list and issues supplements, if necessary, to all agencies and the General Accounting Office; and

(3) Includes in the list the name and telephone number of the official responsible for its maintenance and distribution.

(b) The List of Parties Excluded from Federal Procurement and Nonprocurement Programs includes the—

(1) Names and addresses of all contractors debarred, suspended, proposed for debarment, or declared ineligible, in alphabetical order, with cross-references when more than one name is involved in a single action;

(2) Name of the agency or other authority taking the action;

(3) Cause for the action (see 9.406–2 and 9.407–2 for causes authorized under this subpart) or other statutory or regulatory authority;

(4) Effect of the action;

(5) Termination date for each listing;

(6) DUNS No.; and

(7) Name and telephone number of the point of contact for the action.

(c) Each agency must—

(1) Provide GSA with the information required by paragraph (b) of this section within 5 working days after the action becomes effective;

(2) Notify GSA within 5 working days after modifying or rescinding an action;

(3) Notify GSA of the names and addresses of agency organizations that are to receive the list and the number of copies to be furnished to each;

(4) In accordance with internal retention procedures, maintain records relating to each debarment, suspension, or proposed debarment taken by the agency;

(5) Establish procedures to provide for the effective use of the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, including internal distribution thereof, to ensure that the agency does not solicit offers from, award contracts to, or consent to subcontracts with contractors on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs, except as otherwise provided in this subpart; and

(6) Direct inquiries concerning listed contractors to the agency or other authority that took the action.

(d) The List of Parties Excluded from Federal Procurement and Nonprocurement Programs is available as follows:

(1) The printed version is published monthly. Copies may be obtained by purchasing a yearly subscription.

(i) Federal agencies may subscribe through their organization's printing and distribution office.

(ii) The public may subscribe by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, or by calling the Government Printing Office Inquiry and Order Desk at (202) 512–1800.

(2) The electronic version is updated daily and is available via—

(i) The internet at http://epls.arnet.gov; or

(ii) Electronic bulletin board. Dial (202) 219–0132. The settings are N–8–1–F.

(e) For general questions about entries on the List of Parties Excluded from Federal Procurement and Nonprocurement Programs or additional information on accessing the electronic bulletin board, call GSA at (202) 501–4873 or 501–4740.

9.405 [Amended]

7. Amend section 9.405 in paragraph (d)(4) by removing the word "List" and adding "List of Parties Excluded from Federal Procurement and Nonprocurement Programs" in its place.

PART 15—CONTRACTING BY NEGOTIATION

8. Amend section 15.404–1 by revising the last sentence of paragraph (a)(7) to read as follows:

15.404–1 Proposal analysis techniques.

(a) * * *

(7) * * * They are available via the internet at http://www.acq.osd.mil/dp/cpf.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.212–1 [Amended]

9. Amend section 52.212–1 by revising the date of the clause to read "(MAR 2000)"; and in paragraph (i)(2)(ii)(B) by removing "http://www.dodssp.daps.mil" and adding "http://assist.daps.mil" in its place.

52.217–9 [Amended]

10. Amend section 52.217–9 by revising the date of the clause to read "(MAR 2000)"; and in paragraph (b) by removing "provision" and adding "clause" in its place.

52.219–23 [Amended]

11. Amend the introductory text of Alternate II in section 52.219–23 by removing "(b)(i)" both times it appears and adding "(b)(1)(i)" in their places.

[FR Doc. 00–7310 Filed 3–24–00; 8:45 am]
BILLING CODE 6820–EP–U

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 1

Federal Acquisition Regulation; Small Entity Compliance Guide

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Small Entity Compliance Guide.

SUMMARY: This document is issued under the joint authority of the Secretary of Defense, the Administrator of General Services and the Administrator for the National Aeronautics and Space Administration. This *Small Entity Compliance Guide* has been prepared in accordance with Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121). It consists of a summary of rules appearing in Federal Acquisition Circular (FAC) 97–16 which amend the FAR. The rule marked with an asterisk (*) indicates that a regulatory flexibility analysis has been prepared in accordance with 5 U.S.C. 604. Interested parties may obtain further information regarding these rules by referring to FAC 97–16 which precedes this document. These documents are also available via the Internet at http://www.arnet.gov/far.

FOR FURTHER INFORMATION CONTACT: Laurie Duarte, FAR Secretariat, (202) 501–4225. For clarification of content, contact the analyst whose name appears in the table below.

LIST OF RULES IN FAC 97–16

Item	Subject	FAR case	Analyst
I	Small Business Competitiveness Demonstration Program (Interim)	1999–012	Moss.
II	Progress Payments and Related Financing Policies *	1998–400 (98–400)	Olson.

Item I—Small Business Competitiveness Demonstration Program (FAR Case 1999–012)

This interim rule amends FAR Subpart 19.10 to clarify language pertaining to the Small Business Competitiveness Demonstration (Comp. Demo.) Program, consistent with revisions to the Program that were contained in an OFPP and SBA joint final policy directive dated May 25, 1999.

The interim rule—

- Advises the contracting officer to consider the 8(a) Program and HUBZone Program, in addition to small business set-asides, for acquisitions of $25,000 or less in one of the four designated industry groups that will not be set aside for emerging small business concerns.
- Adds FAR 19.1006, Exclusions, to specify acquisitions to which Subpart 19.10 does not apply. None of the Small Business Comp. Demo. policies and procedures apply to orders under the Federal Supply Schedule Program or to contracts awarded to educational and nonprofit institutions or governmental entities.

This interim rule only will affect contracting officers at participating agencies when acquiring supplies or services subject to the procedures of the Small Business Comp. Demo. Program. The participating agencies are: Department of Agriculture; Department of Defense, except the National Imagery and Mapping Agency; Department of Energy; Department of Health and Human Services; Department of the Interior; Department of Transportation; Department of Veterans Affairs; Environmental Protection Agency; General Services Administration; and National Aeronautics and Space Administration.

Item II—Progress Payments and Related Financing Policies (FAR Case 1998–400) (98–400)

This final rule revises certain financing policies at FAR Part 32, Contract Financing, and related contract provisions at FAR Part 52. The rule—

- Emphasizes that performance-based payments are the preferred method of contract financing. Performance-based payments are contract financing payments made after achievement of predetermined goals, such as performance objectives or defined events. Contracting officers should consider performance-based payments and deem their use impracticable before deciding to provide customary progress payments;
- Permits contracting officers to provide contract financing on contracts awarded to large businesses if the individual contract is $2 million or more. Previously, the threshold in the FAR for financing a contract with a large business was $1 million;
- Permits a large business to bill the Government for subcontract costs that the large business has incurred but not actually paid, if certain conditions are met. Previously, the FAR permitted only small business concerns to bill for subcontract costs that have been incurred but not paid;
- Permits the contracting officer to use performance-based payments in contracts for research and development, and in contracts awarded through competitive negotiation procedures; and
- Is effective on March 27, 2000. However, it is mandatory only for solicitations issued on or after May 26, 2000. Contracting officers may, at their discretion, include the clauses and provisions in this rule in solicitations issued before that date.

Dated: March 20, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–7311 Filed 3–24–00; 8:45 am]
BILLING CODE 6820–EP–U

Federal Register

Monday,
March 27, 2000

Part IV

Department of Education

Jacob K. Javits Gifted and Talented Education Program: National Research and Development Center; Notice

DEPARTMENT OF EDUCATION

Jacob K. Javits Gifted and Talented Education Program: National Research and Development Center

AGENCY: Office of Educational Research and Improvement, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for the Office of Educational Research and Improvement (OERI) proposes a priority under the Jacob K. Javits Gifted and Talented Education Program—National Research and Development Center (Center). The Assistant Secretary will use this priority for the Center competition in fiscal year (FY) 2000. This priority is intended to focus on research to obtain a better understanding of the under-representation of students from some minority groups among top performers, and on using national data sets to better understand the educational opportunities available to top performing students.

DATES: We must receive your comments on or before April 26, 2000.

ADDRESSES: Address all comments about this proposed priority to Beverly Coleman, U.S. Department of Education, 555 New Jersey Avenue, NW., room 611A, Washington, DC 20208–5521. If you prefer to send your comments through the Internet, use the following address: beverly_coleman@ed.gov

FOR FURTHER INFORMATION CONTACT: Beth Fine, U.S. Department of Education, 555 New Jersey Avenue, NW., room 613, Washington, DC 20202–5521. Telephone: (202) 219–1323. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternate format (*e.g.*, Braille, large print, audiotape, or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding this proposed priority.

During and after the comment period, you may inspect all public comments about this proposed priority in room 611a, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, you may call (202) 205–8113 or (202) 260–9895. If you use a TDD, you may call the Federal Information Relay Service at 1–800–877–8339.

General Information

OERI administers the Jacob K. Javits Gifted and Talented Students Education Act of 1994 (Javits Act) under Title X, Part B of Public Law 103–382 (20 U.S.C. 8031 *et seq.*). The purposes of the Javits Act are (1) To support a coordinated program of research, demonstration projects, personnel training, and similar activities designed to build a nationwide capability in elementary and secondary schools to meet the special educational needs of gifted and talented students; (2) to encourage rich and challenging curricula for all students through the appropriate application and adaptation of materials and instructional methods used with gifted and talented students; and (3) to supplement and make more effective the expenditure of State and local funds devoted to gifted and talented students.

The Secretary is authorized, under the Javits Act, to create a national research center to carry out: (1) Research on methods and techniques for identifying and teaching gifted and talented students, and for using gifted and talented education programs and methods to serve all students; and (2) program evaluations, surveys, and the collection, analysis, and development of information needed to accomplish the purposes of the Act.

The Javits Act gives the highest priority to: (1) The identification and services for gifted and talented students who may not be identified and served through traditional assessment methods (including economically disadvantaged, individuals of limited-English proficiency, and individuals with disabilities); and (2) programs and projects designed to develop or improve the capability of schools in an entire State or region of the Nation through the cooperative efforts of State and local educational agencies, institutions of higher education, and other public and private agencies.

The Secretary believes that there are certain areas of research in gifted and talented education that are especially significant and in the national interest. He believes that focusing on these areas will substantially increase our knowledge and improve our ability to serve gifted and talented students well. Therefore, the Secretary proposes one priority for the Center competition.

First, the Secretary believes that it is in the national interest to have a better understanding of the reasons for the under-representation of some minority groups among top performing students. National surveys reveal that only about ten percent of the students performing at the highest levels are African-Americans, Latinos, or Native Americans, even though they make up about one-third of the population. There has been very little sustained and coordinated research to investigate the reasons for the under-representation of minorities at the highest levels of achievement or to develop and evaluate methods for increasing the number of minority students performing at the highest levels.

Second, there is a substantial body of information on gifted and talented students and their educational programs contained in national and international studies, such as those conducted by the National Center for Education Statistics (NCES), that could and should be used to inform our understanding of the opportunities available for top-performing students. There are robust data sets in a number of national and international studies that address issues related to the education of high achieving and high ability students. These studies have not been analyzed, to any significant degree, in order to gain a national and international portrait of these students and the educational opportunities available to them. These studies include, but are not limited to, the Early Childhood Longitudinal Study, the National Educational Longitudinal Study (NELS 88), the National Assessment of Educational Progress (NAEP), and the Third International Mathematics and Science Study (TIMSS). For example, data from the Early Childhood Longitudinal Study could provide findings about the early childhood experiences of high achieving minority and nonminority children, both at home and in school. Data from the National Educational Longitudinal Study (NELS) could help address a number of questions related to the opportunities and achievement of middle and high school students, such as: what can we learn about the educational experiences of minority students identified as high achieving in eighth grade? What coursework did they take, and did this lead to differences in achievement? Did they go on to higher education? How is this the same or different from nonminority students? The Secretary believes that analyzing these studies will lead to a better understanding of how top performing students are identified and served throughout the nation and the world.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does not preclude us from proposing or funding additional priorities, subject to meeting applicable rulemaking requirements.

Note: This notice does *not* solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only one application that meets this absolute priority.

Proposed Priority—Research on Gifted and Talented Students

The Secretary will only fund a Center application that proposes to carry out the following activities—

(a) Conducts a coherent and sustained program of research that:

(1) Investigates the causes for disparities in achievement at the highest levels of performance among various racial and ethnic groups;

(2) Studies models for increasing the proportion of under represented students performing at the highest levels; and

(3) Generates findings and applications that build the capacity of teachers and schools to improve the performance of under-represented students.

(b) Informs the research carried out under paragraph (a) by conducting analyses of existing national and international databases to determine what is known about the opportunities available to, and educational outcomes of gifted and talented, high achieving or high ability students from these studies. Special attention would be given to studies that provide analyses that:

(1) Lead to a better understanding of what contributes to the educational achievement of these students, disaggregated by socio-economic status and race;

(2) Frame questions not yet being asked that will guide future discussion and inquiry;

(3) Propose new approaches to enduring problems; and

(4) Influence discussion of subsequent research, practice, and policy activities.

(c) Reserves five percent of each budget period's funds to support activities that fall within the Center's priority area, are designed and mutually agreed to by the Center and OERI, and enhance OERI's ability to carry out its mission. These activities may include developing research agenda, conducting research projects collaborating with other federally-supported entities, and engaging in research agenda setting and dissemination activities,

(d) Prepares, at the end of the award period, a report that synthesizes the findings and advances in knowledge that resulted from the Center's program of work and that describes the potential impact on the improvement of American education, including any observable impact to date.

Executive Order 12372

This program is not subject to Executive Order 12372 and the regulations in 34 CFR Part 79.

Applicable Program Regulations: 34 CFR Part 700.

Program Authority: 20 U.S.C. 8034(c).

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at either of the following sites:

http://ocfo.ed.gov/fedreg.htm
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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–294–6498; or in the Washington, D.C., area at (202) 512–1530.

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(Catalog of Federal Domestic Assistance Number: 84.206R Jacob K. Javits National Research and Development Center for Gifted and Talented Education Program)

Dated: March 21, 2000.

C. Kent McGuire,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 00–7363 Filed 3–24–00; 8:45 am]

BILLING CODE 4001–01–U



Federal Register

Monday,
March 27, 2000

Part V

Department of Housing and Urban Development

24 CFR Parts 5 and 266

Uniform Financial Reporting Standards for HUD Housing Programs; Revised Report Filing Date; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5 and 266

[Docket No. FR–4321–F–07]

RIN 2501–AC49

Uniform Financial Reporting Standards for HUD Housing Programs; Revised Report Filing Date

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends HUD's regulations on Uniform Financial Reporting Standards to provide for certain entities subject to these standards an annual financial report filing date that is no later than 90 days after the end of the entity's fiscal year. This amendment provides these entities with an additional 30 days to prepare and submit their annual financial reports. This rule also makes certain technical corrections to these regulations.

EFFECTIVE DATE: April 26, 2000.

FOR FURTHER INFORMATION CONTACT: For further information contact Beverly Miller, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–1320 (this is not a toll free number). Persons with hearing or speech impairments may access that number via TTY by calling the Federal Information Relay Service at 1–800 877–8399.

SUPPLEMENTARY INFORMATION: HUD's Uniform Financial Reporting Standards regulations, codified at 24 CFR part 5, subpart H (issued by final rule on September 1, 1998 at 63 FR 46582), establish uniform annual financial reporting standards for HUD's Public Housing, Section 8 housing, and multifamily insured housing programs. The regulations provide that the financial information required to be submitted to HUD on an annual basis under these programs must be submitted electronically and prepared in accordance with generally accepted accounting principles (GAAP).

The move to uniform financial reporting standards in HUD programs was part of Secretary Cuomo's HUD 2020 Management Reform Plan. The requirement for electronic submission of the financial report responds to the Vice President's call to all federal agencies to expand the use of new technologies and telecommunications to create an electronic government (September 7, 1993, Report of the Vice President's National Performance Review, pp. 113–117, Ref. 2).

Since issuance of the September 1, 1998 final rule, HUD believes that the transition to electronic reporting of financial information, using uniform accounting principles is proceeding well. HUD has worked closely with the entities subject to these standards (covered entities) to assist them in becoming familiar with GAAP and reporting information electronically. Additionally, given the introduction of a new uniform and electronic financial reporting system, HUD has been sensitive to transition difficulties and HAS provided additional time and assistance where additional time and assistance was needed. For example, in January 1999, at the request of covered entities for more time to file their first financial reports, HUD changed the filing due date for the first financial report from April 30, 1999, to June 30, 1999 (see final rule issued on January 11, 1999 at 64 FR 1504). In June 1999, HUD again responded to a request by entities for additional time to submit first financial reports under the Uniform Financial Reporting Standards (see final rule issued on June 24, 1999 at 64 FR 33755).

With a little over a year's experience with this new reporting system, HUD has determined that for certain entities the annual financial report due date should be changed from 60 days after the end of the entity's fiscal year to 90 days after fiscal year end. These entities are owners of housing assisted under any Section 8 project-based housing assistance payments program, as described in 24 CFR 801.1(a)(3), and owners of certain multifamily projects receiving direct or indirect assistance from HUD, or with mortgages insured, coinsured or held by HUD under the programs listed in 24 CFR 801.1(a)(4). Experience to date has shown that 90 days after fiscal year end is a more reasonable period of time for these owners to prepare and submit their financial reports to HUD.

Public housing agencies and owners assisted under section 8 project-based assistance are also covered by the Uniform Financial Reporting Standards regulations in 24 CFR part 5, subpart H (see 24 CFR 801.1(a)(1), (2) and (3). This rule does not revise the reporting due date for these entities. HUD recently amended the Public Housing Assessment System regulations on January 11, 2000 (65 FR 1712). The PHAS regulations are applicable to public housing agencies (PHAs) and adopt the uniform financial reporting requirements in 24 CFR part 5, subpart H. Although the PHAs provides some additional time without penalties for PHAs to submit their fiscal year end financial reports, the PHAS did not change the reporting due date for PHAs. In accordance with 902.33, PHAs must submit their financial reports no later than two months after the end of the PHA's fiscal year end. (See 24 CFR 902.33 of PHAS Amendments final rule at 65 FR 1744.)

Therefore, the revised due date is only applicable to those multifamily housing entities listed in 24 CFR 5.801(a)(4). In addition to revising the reporting due for multifamily housing covered entities, HUD is removing the provisions in 24 CFR 5.801(c) that were applicable only to the first year reports. Those reports have been submitted and the regulatory language is no longer applicable.

This rule makes three technical corrections in addition to the amendments made to § 5.801, discussed above. HUD is removing from the list of multifamily programs subject to the Uniform Financial Reporting Standards, the reference to HUD's Housing Finance Agency Risk Sharing Program. This rule was inadvertently included in these regulations, and these regulations are not applicable to this program. The regulations for the Housing Finance Agency Risk Sharing Program in 24 CFR part 266 are corrected to remove the cross reference to the part 5, subpart H regulations. The cross reference is found in § 266.505(b). Also, HUD's rule implementing OMB Circular A–133 (Administrative Requirements for Grantees to Reflect the Single Audit Act Amendments of 1996), published November 18, 1997 (62 FR 61616) removed parts 44 and 45 of HUD's regulations. (These regulations addressed, respectively, Non-Federal Audit Requirements for State and Local Governments, and Non-Federal Audit Requirements for Institutions of Higher Learning). This rule also will remove the cross-reference to part 44 in § 266.510(c). The applicable cross reference to be made concerning non-federal audits is now found in 24 CFR 85.26.

Findings and Certifications

Justification for Final Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking at 24 CFR part 10. Part 10, however, does provide for exceptions from that general rule where the Department finds good cause to omit advance notice and public participation. The good cause

requirement is satisfied when the prior public procedure is "impracticable, unnecessary, or contrary to the public interest" (24 CFR 10.1). The Department finds that good cause exists to publish this final rule for effect without first soliciting public comment, in that prior public procedure is unnecessary. Public procedure is unnecessary entities subject to HUD's regulations in 24 CFR part 5, subpart H, requested the change in the report filing date, which this rule provides, and seeks expeditious implementation of this change. The regulatory amendment made by this rule, therefore, alleviates a burden for these entities. In addition to extending the reporting due date, the rule makes three technical corrections. No policies or standards are changed by this rulemaking.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this final rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule is limited to changing the reporting filing date owners of multifamily housing who are subject to HUD's Uniform Financial Reporting Standards. Although this change alleviates a burdensome requirement for these entities, which include small entities, the rule does not result either adversely or beneficially in any significant economic impact on a substantial number of small entities.

Environmental Impact

This final rule is exempt from the environmental review procedures under HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332) because of the exemption under § 50.19(c)(1). This final rule only amends the financial reporting deadline of existing regulations.

Executive Order 13132, Federalism

This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled "Federalism").

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbers for the programs that would be affected by this rule are:

14.126—Mortgage—Insurance—Cooperative Projects (Section 213)
14.129—Mortgage—Insurance—Nursing Homes, Intermediate Care Facilities, Board and Care Homes and Assisted Living Facilities (Section 232)
14.134—Mortgage—Insurance—Rental Housing (Section 207)
14.135—Mortgage—Insurance—Rental and Cooperative Housing for Moderate Income Families and Elderly, Market Rate Interest (Sections 221(d)(3) and (4))
14.138—Mortgage—Insurance—Rental Housing for Elderly (Section 231)
14.139—Mortgage—Insurance—Rental Housing in Urban Areas (Section 220 Multifamily)
14.157—Supportive—Housing for the Elderly (Section 202)
14.181—Supportive—Housing for Persons with Disabilities (Section 811)
14.188—Housing—Finance Agency (HFA) Risk Sharing Pilot Program (Section 542(c))
14.850—Public Housing
14.851—Low Income Housing—Homeownership Opportunities for Low Income Families (Turnkey III)
14.852—Public Housing—Comprehensive Improvement Assistance Program
14.855—Section 8 Rental Voucher Program
14.856—Lower Income Housing Assistance Program—Section 8 Moderate Rehabilitation
14.857—Section 8 Rental Certificate Program
14.859—Public Housing—Comprehensive Grant Program

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Grant programs—Indians, Individuals with disabilities, Loan programs—housing and community development, Low-and moderate-income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 266

Aged, Fair housing, Intergovernmental relations, Low-and moderate-income housing, Mortgage insurance, Risk-sharing, Reporting and recordkeeping requirements.

Accordingly, for the reasons stated in the preamble, title 24 of the CFR is amended as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for 24 CFR part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. In § 5.801, paragraph (a)(4)(xiv) is removed and paragraph (c) is revised to read as follows;

§ 5.801 Uniform financial reporting standards.

* * * * *

(c) *Annual financial report filing dates.* (1) For entities listed in paragraphs (a)(1) and (2) of this section, the financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 60 days after the end of the fiscal year of the reporting period, and as otherwise provided by law (for public housing agencies, see also 24 CFR 903.33).

(2) For entities listed in paragraphs (a)(3) and (4) of this section, the financial information to be submitted to HUD in accordance with paragraph (b) of this section, must be submitted to HUD annually, no later than 90 days after the end of the fiscal year of the reporting period, and as otherwise provided by law.

* * * * *

PART 266—HOUSING FINANCE AGENCY RISK-SHARING PROGRAM FOR INSURED AFFORDABLE MULTIFAMILY PROJECT LOANS

3. The authority citation for 24 CFR part 266 continues to read as follows:

Authority: 12 U.S.C. 1707, 42 U.S.C. 3535(d).

4. Paragraph (b)(7) of § 266.505 is revised to read as follows;

§ 266.505 Regulatory agreement requirements.

* * * * *

(b) * * *

(1) * * *

* * * * *

(7) Maintain complete books and records established solely for the project.

* * * * *

5. Paragraph (c) of § 266.510 is revised to read as follows;

§ 266.510 HFA Responsibilities.

* * * * *

(c) *HFA's annual financial statement.* The HFA must provide HUD with annual audited financial statement in accordance with the requirements of 24 CFR part 85.26.

Dated: March 20, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–7366 Filed 3–24–00; 8:45 am]

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Federal Register

Vol. 65, No. 59

Monday, March 27, 2000

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FEDERAL REGISTER PAGES AND DATE, MARCH

10931–11196	1
11197–11454	2
11455–11734	3
11735–11858	6
11859–12060	7
12061–12426	8
12427–12904	9
12905–13234	10
13235–13658	13
13659–13864	14
13865–14206	15
14207–14430	16
14431–14780	17
14781–15052	20
15053–15202	21
15203–15520	22
15521–15822	23
15823–16116	24
16117–16296	27

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7276 11197
7277 11199
7278 11455
7279 11733
7280 12903
7281 15201

Executive Orders:
12170 (See Notice of March 13, 2000) 13863
12957 (Continued by Notice of March 13, 2000) 13863
12959 (See Notice of March 13, 2000) 13863
13059 (See Notice of March 13, 2000) 13863
13146 11201
13147 13233

Administrative Orders:
Memorandum of January 5, 2000 15823

Presidential Determinations:
No. 2000-15 of February 24, 2000 10931
No. 2000-16 of February 29, 2000 15797
No. 2000-17 of March 2, 2000 15821

Notices:
March 13, 2000 13863

4 CFR

27 15203
28 15203

5 CFR

Ch. LXXIII 15825
213 14431
315 14431
335 14431
531 15875
532 15521
792 13659

Proposed Rules:
3 14477
213 14477
315 14477

7 CFR

2 12427
75 15830
205 13512
210 12429
215 12429
220 12429
225 12429
226 12429
301 11203
457 11457
600 14781
601 14781
729 16117
761 14432
762 14432
915 15203
916 15205
917 15205
993 12061
955 12442
985 15832
989 15214
1301 16118
1304 16118
1305 16118
1306 16118
1307 16118
1308 16118
1421 13865
1427 13865
1464 10933
1710 ..... 14207, 14785
1721 10933
3019 14406

Proposed Rules:
6 14478
20 11483
27 10979
28 ..... 10979, 12140
29 13915
57 14652
97 13917
201 12952
205 15579
360 14926
930 15580
1140 10981
1160 14484
1205 12146
1210 14485
1306 12141
1307 12141
1309 12141
1710 12952
1717 12952
1718 12952

8 CFR

3 ..... 15835, 15846
212 ..... 14774, 15835, 15846
214 14774
240 ..... 15835, 15846
245 ..... 15835, 15846
274a 15835, 15846
248 14774
278A 14774
299 ..... 15835, 15846

9 CFR

74 15216
78 12064
93 15216
94 15521
130 16122

Proposed Rules:
71 11485
77 ..... 11485, 11912, 15877
78 11485
93 12486
98 12486
113 12151
130 12486
317 14486
318 ..... 14486, 14489
319 ..... 144867, 14489
327 14489
381 14486
590 11486

10 CFR
72 ..... 11458, 12444, 14790
170 11204
600 14406
810 16124
820 15218

Proposed Rules:
Ch. XVIII 13700
21 11488
50 11488
52 11488
54 11488
100 11488
170 16250
171 16250
430 14128
431 10984
960 11755
963 11755

11 CFR
108 15221

Proposed Rules:
9038 15273

12 CFR
5 12905
204 12916
208 ..... 14810, 15050
225 ..... 14433, 14440, 15053
303 15526
340 14816
362 15526
701 15224
724 10933
745 10933
Ch. IX 13663
925 13866
950 13866
1501 ..... 12064, 14819
1510 15050

Proposed Rules:
3 12320
8 15111
208 12320
225 12320
325 12320
567 12320
614 14491
620 14494
709 11250
716 10988
741 10988
742 15275
1750 13251

13 CFR

Proposed Rules:
124 12955

14 CFR
25 ..... 13666, 16128
39 ..... 10934, 10937, 10938, 11204, 11459, 11859, 11861, 12071, 12072, 12073, 12075, 12077, 12080, 12081, 12082, 12084, 12085, 12460, 12462, 12463, 13668, 13871, 13875, 13877, 14207, 14209, 14822, 14826, 14827, 14831, 14834, 14838, 14844, 14846, 14847, 14849, 14852, 15226, 15230, 15232, 15531, 15534, 15536, 15537, 15857, 15858, 16129
71 ..... 11369, 11461, 11866, 12630, 12917, 12918, 14344, 14855, 14856, 14857, 15859, 15860, 15861, 16130, 16131
91 ..... 16112, 16114
95 14442
97 ..... 13669, 13671, 13673, 15540, 15541, 15544
1260 14406

Proposed Rules:
25 13703
39 ..... 11006, 11505, 11940, 11942, 12489, 12957, 13251, 13919, 13921, 13923, 14216, 14218, 15278, 15280, 15584, 15678, 15880, 15882, 16151, 16153, 16154, 16157, 16158
71 ..... 12153, 12957, 13704, 13705, 13707, 14497, 15282, 15586
108 15113
109 15113
111 15113
129 15113
191 15113
255 11009

15 CFR
14 14406
734 12919
736 14858
738 ..... 12919, 14857
740 ..... 12919, 14857
742 ..... 12919, 14857
743 12919
744 ..... 12919, 14444
748 12919
756 ..... 14857, 14861
762 14858
766 14862
770 14857
774 ..... 12919, 13879, 14862

16 CFR
305 16132
1615 12924
1616 12924
1630 12929
1631 12929
1632 12935

Proposed Rules:
307 11944
312 11947
313 11174

17 CFR
1 12466
4 ..... 10939, 12938
15 14452
16 14452
17 14452
200 12469
240 13235
242 13235

Proposed Rules:
4 ..... 11253, 12318
228 ..... 11507, 15043
229 11507
230 ..... 11507, 15500, 16160
232 11507
239 ..... 11507, 15500
240 ..... 11507, 16160
243 16160
248 12354
249 ..... 11507, 16160
250 11507
259 11507
260 11507
269 11507
270 ..... 11507, 15500
274 ..... 11507, 15500

18 CFR
35 12088
157 ..... 11461, 12115, 15234
380 15234

19 CFR
12 12470
24 13880
111 13880
178 13880

20 CFR
220 14458
322 14459
404 11866
416 11866

21 CFR
20 11881
101 11205
176 13675
177 15057
178 15545
524 13904
558 11888
640 13678
868 11464
870 11465
1301 13235
1308 13235

Proposed Rules:
101 14219
314 12154

22 CFR
22 14211
23 14211
41 14768
51 14211
139 14764
145 14406
226 14406

Proposed Rules:
22 13253

23 CFR
1340 13679

24 CFR
5 16294
200 15043
266 16294
401 15452
402 15452
905 14422

Proposed Rules:
81 12632
990 11525

25 CFR
290 14461

26 CFR
1 ..... 11205, 11467, 12471, 15547, 15548, 15862, 16143
301 ..... 11211, 11215
601 15862
602 ..... 11205, 11211, 11215

Proposed Rules:
1 ..... 11012, 11269, 15587
301 ..... 11271, 11272

27 CFR
4 11889
5 11889
7 11889
16 11889
75 15058

Proposed Rules:
00 15115
4 12490
70 15115
75 15115
90 15115

28 CFR
70 14406

29 CFR
95 14406
4022 ..... 14752, 14753
4044 ..... 13905, 14752
4050 14752

Proposed Rules:
1614 11019
1910 ..... 11948, 13254

30 CFR
202 11467
206 ..... 11467, 14022
250 ..... 14469, 15862
938 15553

Proposed Rules:
914 ..... 11950, 12492

31 CFR
103 13683

32 CFR
22 14406
32 14406
668 13906
776 15059

33 CFR
26 14863
95 14223
100 15558
110 11892
117 ..... 11893, 12943, 15238
127 10943
140 14226
141 14226
142 14226
143 14226
144 14226
145 14226
146 14226
147 14226
154 10943
155 ..... 10943, 14470
159 10943

161 14863
164 10943
165 14864
167 12944
177 14223
183 10943

Proposed Rules:
100 ..... 11274, 13926, 14498
110 ..... 13926, 14498
165 ..... 13926, 14498, 14501, 14502, 15283, 15285
175 11410
177 11410
179 11410
181 11410
183 11410

34 CFR
74 14406
1100 11894

Proposed Rules:
606 15115
607 15115
608 15115

36 CFR
Ch. XV 14760
1 15077
3 15077
13 15077
701 ..... 11735, 11736
1210 14406

Proposed Rules:
212 11680
261 11680
295 11680
1190 12493
1191 12493
1280 15592

37 CFR
1 14864

Proposed Rules:
201 ..... 14227, 14505

38 CFR
3 12116
19 14471
20 14471
21 ..... 12117, 13893

Proposed Rules:
3 13254

39 CFR
111 12946

Proposed Rules:
20 11023
111 13258
913 14229
952 13707

40 CFR
9 15090
30 14406
51 11222
52 ..... 10944, 11468, 12118, 12472, 12474, 12476, 12481, 12948, 13239, 13694, 14212, 14873, 15240, 15244, 15864
55 15867
60 13242
63 ..... 11231, 15690
68 13243
86 11898
136 14344
141 11372
148 14472
180 ..... 10946, 11234, 11243, 11736, 12122, 12129, 15248, 16143
261 14472
262 12378
268 14472
271 14472
300 ..... 13697, 14475
302 14472
431 15091
445 14344

Proposed Rules:
51 11024
52 ..... 11027, 11275, 11524, 12494, 12495, 12499, 12958, 13260, 13709, 14506, 14510, 14930, 15286, 15287, 15883
63 11278
81 14510
141 11372
152 15883
156 15884
438 11755
503 11278
755 16094

42 CFR
121 15252
405 13911
410 13911

Proposed Rules:
410 13082
493 14510

43 CFR
12 14406
3500 11475

45 CFR
74 14406
400 15410
401 15410
612 11740
613 11740

46 CFR
28 10943
30 10943
32 10943
34 10943
35 10943
38 10943
39 10943
54 10943
56 10943
58 10943
61 10943
63 10943
76 10943
77 10943
78 10943
91 11904
92 10943
95 10943
96 10943
97 10943
105 10943
108 10943
109 10943
110 10943
111 10943
114 10943
115 11904
119 10943
125 10943
132 11904
133 11904
134 11904
151 10943
153 10943
154 10943
160 10943
161 10943
162 10943
163 10943
164 10943
170 10943
174 10943
175 10943
182 10943
189 11904
190 10943
193 10943
195 10943
199 ..... 10943, 11904
515 15252

Proposed Rules:
2 11410
10 11410
15 11410
24 11410
25 11410
26 11410
28 11410
30 11410
70 11410
90 11410
114 11410
169 11410
175 11410
188 11410
199 11410

47 CFR
1 14476
20 15559
22 15559
24 ..... 14213, 15559
27 12483
54 12135
73 ..... 11476, 11477, 11750, 13250, 16149
76 ..... 12135, 15559
80 15559
90 15559
99 15559

Proposed Rules:
Ch. I 15599
1 13933
2 14230
26 14230
27 14230
54 13933
61 13933
69 13933
73 ..... 11537, 11538, 11539, 11540, 11541, 11955, 12155, 13260, 13261, 15600, 15885, 15886, 16160

48 CFR
Ch. 1 ..... 16285, 16286
Ch. 2 14380
Ch. 5 11246
1 16285
6 16285
9 16285
15 16285
19 16275
32 16276
52 ..... 16276, 16285
202 14397
204 14397
207 14397
208 ..... 14397, 14400
212 14400
222 ..... 14397, 14402
244 14400
247 14400
252 ..... 14397, 14400, 14402
1806 12484
1808 12484
1811 12484
1813 12484
1815 12484
1825 12484
1835 12484
1837 12484
1842 12484
1848 12484
1851 12484
2409 12950

Proposed Rules:
Ch. 9 13416

49 CFR

19.....14406
193.....10950
350.....15092
355.....15092
385.....11904
571.....11751
572.....10961, 15254

Proposed Rules:

Ch I.....11541
40.....13261, 15118
171.....11028
172.....11028
173.....11028
174.....11028, 16161
175.....11028
176.....11028
177.....11028, 16161
178.....11028
179.....11028
180.....11028
190.....15290
191.....15290
192.....15290
195.....15290
222.....15298
229.....15298

50 CFR

17.....14876, 14886, 14896, 16052
300.....14907
622.....12136
635.....15873
648.....11478, 11909, 15110, 15576
660.....11480
679.....10978, 11247, 11481, 11909, 12137, 12138, 13698, 14918, 14924, 15271, 15272, 15577, 16150

Proposed Rules:

16.....11756
17.....12155, 12181, 13262, 13935, 14513, 14931, 14935, 15887
216.....11542
223.....12959
224.....12959, 13935
300.....13284
600.....11956
622.....11028, 14518
648.....11029, 11956, 14519
679.....11756, 11973, 12500

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 27, 2000

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Fishery conservation and management:
Northeastern United States fisheries—
Spiny dogfish; published 3-21-00

DEFENSE DEPARTMENT
Federal Acquisition Regulation (FAR):
Progress payments and related financing policies; published 3-27-00
Small Business Competitiveness Demonstration Program; published 3-27-00
Technical amendments; published 3-27-00

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural gas companies (Natural Gas Act) and Natural Gas Policy Act:
Short-term and interstate natural gas transportation services; regulation; published 2-25-00

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
Georgia; published 1-26-00
Indiana; published 1-26-00
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Dichlormid; published 3-27-00

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Various States; published 2-23-00

FEDERAL ELECTION COMMISSION
Freedom of Information Act; implementation; published 2-24-00

GENERAL SERVICES ADMINISTRATION
Federal Acquisition Regulation (FAR):
Introduction; published 3-27-00
Progress payments and related financing policies; published 3-27-00
Small Business Competitiveness Demonstration Program; published 3-27-00
Technical amendments; published 3-27-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Children and Families Administration
Foster care maintenance payments, adoption assistance, and child and family services:
Title IV-E foster care eligibility reviews and child and family services State plan reviews; published 1-25-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Manufacturers, importers, distributors, and health care facilities; reporting requirements; published 1-26-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Armored snail and slender campeloma; published 2-25-00

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION
Federal Acquisition Regulation (FAR):
Introduction; published 3-27-00
Progress payments and related financing policies; published 3-27-00
Small Business Competitiveness Demonstration Program; published 3-27-00
Technical amendments; published 3-27-00

TRANSPORTATION DEPARTMENT
Coast Guard
Ports and waterways safety:
Tampa Bay, FL; safety zone; published 2-24-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
AeroSpace Technologies of Australia Pty Ltd.; published 2-4-00
Eurocopter France; published 3-15-00
Harbin Aircraft Manufacturing Corp.; published 2-4-00
Learjet; published 3-27-00
Pilatus Aircraft Ltd; published 2-4-00
SOCATA—Groupe AEROSPATIALE; published 2-4-00

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
Hydraulic brake systems—
Passenger car brake systems; published 2-9-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Classification services to growers; 2000 user fees; comments due by 4-7-00; published 3-8-00
Cotton research and promotion order:
Imported content and cotton content of imported products; supplemental assessment calculation; comments due by 4-7-00; published 3-8-00
Meats, prepared meats, and meat products; grading, certification, and standards:
Imported beef, lamb, veal, and calf carcasses; official grading; comments due by 4-3-00; published 2-1-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Asian longhorned beetle; comments due by 4-3-00; published 2-2-00

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
National school lunch and school breakfast programs; alternatives to standard application and meal counting procedures; comments due by 4-7-00; published 2-7-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
International fisheries regulations:
Antarctic marine living resources; harvesting and dealer permits, and catch documentation; comments due by 4-7-00; published 3-13-00
Marine mammals:
Incidental taking—
Eastern Tropical Pacific Ocean; tuna purse seine vessels; compliance with International Dolphin Conservation Program; comments due by 4-3-00; published 1-3-00
Naval activities; USS Winston S. Churchill shock testing; comments due by 4-3-00; published 3-3-00

DEFENSE DEPARTMENT
Vocational rehabilitation and education:
Veterans education—
Educational assistance; new criteria for approving courses; comments due by 4-3-00; published 2-2-00

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural gas companies (Natural Gas Act):
Section 7 new service applications; optional certificate and abandonment procedures; comments due by 4-3-00; published 2-16-00
Practice and procedure:
Public utilities; annual charges; comments due by 4-3-00; published 2-3-00

ENVIRONMENTAL PROTECTION AGENCY
Air programs; State authority delegations:
Arizona; comments due by 4-3-00; published 3-2-00
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-3-00; published 3-2-00
Illinois; comments due by 4-3-00; published 3-3-00
Hazardous wastes:
Land disposal restrictions—
Polychlorinated biphenyls; underlying hazardous constituent in soil;

Phase IV standards deferral; comments due by 4-3-00; published 2-16-00

Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 4-4-00; published 2-4-00

Water supply:
National primary drinking water regulations—
Public water systems; unregulated contaminant monitoring regulation; comments due by 4-3-00; published 3-2-00
Public water systems; unregulated contaminant monitoring regulation; comments due by 4-3-00; published 3-2-00

FEDERAL COMMUNICATIONS COMMISSION

Radio stations; table of assignments:
Montana; comments due by 4-3-00; published 2-25-00
Texas; comments due by 4-3-00; published 2-23-00
Wisconsin; comments due by 4-3-00; published 2-25-00

FEDERAL TRADE COMMISSION

Children's Online Privacy Protection Act; implementation
Safe harbor guidelines; comments due by 4-6-00; published 3-7-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Medical care and examinations:
Indian health—
Indian Self-Determination Act; contracts; comments due by 4-3-00; published 2-1-00

INTERIOR DEPARTMENT
Fish and Wildlife Service

Endangered and threatened species:
Critical habitat determinations—
Coastal California gnatcatcher; comments due by 4-7-00; published 2-7-00

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 4-6-00; published 3-7-00

JUSTICE DEPARTMENT
Drug Enforcement Administration

Records, reports, and exports of listed chemicals:
Red phosphorus; comments due by 4-3-00; published 2-2-00

JUSTICE DEPARTMENT

Privacy Act; implementation; comments due by 4-3-00; published 2-23-00

MANAGEMENT AND BUDGET OFFICE
Federal Procurement Policy Office

Acquisition regulations:
Cost Accounting Standards Board—
Cost accounting standards coverage; applicability, thresholds, and waivers; comments due by 4-7-00; published 2-7-00

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:
Uniformed Services Employment and Reemployment Rights Act and Veterans Employment Opportunities Act; implementation—
Appeals; comments due by 4-4-00; published 2-4-00

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records management:
Computer tapes, rewind requirement; elimination; comments due by 4-3-00; published 2-3-00

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
Involuntary liquidation; adjudication of creditor claims; comments due by 4-3-00; published 3-2-00

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:
Barbour, Donald A.; comments due by 4-5-00; published 1-21-00

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list additions; comments due by 4-5-00; published 1-21-00

SECURITIES AND EXCHANGE COMMISSION

Securities:
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR)—
Modernization; filing requirements; changes; comments due by 4-3-00; published 3-3-00

TRANSPORTATION DEPARTMENT
Coast Guard

Boating safety:
Personal flotation devices; Federal requirements for wearing; comments due by 4-3-00; published 10-5-99
Uninspected passenger vessels; comments due by 4-3-00; published 3-2-00

Outer Continental Shelf activities regulations; revision; comments due by 4-5-00; published 12-7-99

Practice and procedure:
Adjudicative procedures consolidation; comments due by 4-3-00; published 10-5-99

Vocational rehabilitation and education:
Veterans education—
New criteria for approving courses; comments due by 4-3-00; published 2-2-00

TRANSPORTATION DEPARTMENT

Workplace drug and alcohol testing programs:
Procedures; revision; comments due by 4-7-00; published 12-9-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration

Air carrier certification and operations:
Aviation security screening; comments due by 4-4-00; published 1-5-00

Airworthiness directives:
Boeing; comments due by 4-3-00; published 2-3-00
CFM International, S.A.; comments due by 4-3-00; published 3-3-00
Dornier; comments due by 4-6-00; published 3-7-00
Eurocopter Deutschland GMBH; comments due by 4-4-00; published 2-4-00
Lockheed; comments due by 4-3-00; published 2-16-00
McDonnell Douglas; comments due by 4-3-00; published 2-16-00

Class D and Class E airspace; comments due by 4-3-00; published 2-18-00
Class E airspace; comments due by 4-3-00; published 2-17-00

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:
Lodi, CA; comments due by 4-7-00; published 2-7-00

TREASURY DEPARTMENT
Comptroller of the Currency

Electronic banking; facilitation of national banks' use of new technologies; advance notice; comments due by 4-3-00; published 2-2-00

TREASURY DEPARTMENT
Customs Service

Tariff-rate quotas:
Sugar-containing products; export certificates; comments due by 4-4-00; published 2-4-00

TREASURY DEPARTMENT
Internal Revenue Service

Excise taxes:
Deposits and tax returns; comments due by 4-6-00; published 1-7-00

Income taxes:
Credit for increasing research activities; comments due by 4-5-00; published 1-4-00

Procedure and administration:
Agriculture Department; return information disclosures for statistical purposes and related activities; cross reference; comments due by 4-3-00; published 1-4-00

TREASURY DEPARTMENT

Resolution Funding Corporation operations; comments due by 4-7-00; published 3-8-00

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:
Veterans educations—
New criteria for approving courses; comments due by 4-3-00; published 2-2-00

LIST OF PUBLIC LAWS

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "PLUS" (Public Laws Update Service) on 202–523–6641. This list is also available online at http://www.nara.gov/fedreg.

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S. 376/P.L. 106–180

Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

Last List March 16, 2000

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
1–699	(869–042–00004–8)	43.00	Jan. 1, 2000
700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
53–209	(869–042–00009–9)	22.00	Jan. 1, 2000
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–042–00011–1)	29.00	Jan. 1, 2000
400–699	(869–042–00012–9)	41.00	Jan. 1, 2000
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–042–00014–5)	46.00	Jan. 1, 2000
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
*1940–1949	(869–042–00019–6)	37.00	Jan. 1, 2000
1950–1999	(869–042–00020–0)	38.00	Jan. 1, 2000
2000–End	(869–042–00021–8)	31.00	Jan. 1, 2000
8	(869–042–00022–6)	41.00	Jan. 1, 2000
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
1–50	(869–038–00025–3)	42.00	Jan. 1, 1999
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–042–00031–5)	22.00	Jan. 1, 2000
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–042–00033–1)	29.00	Jan. 1, 2000
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
60–139	(869–038–00038–5)	42.00	Jan. 1, 1999
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–042–00041–2)	25.00	Jan. 1, 2000
15 Parts:			
0–299	(869–042–00042–1)	28.00	Jan. 1, 2000
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	18.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0–1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441–1.500	(869–038–00082–2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200–End	(869–038–00097–1)	17.00	Apr. 1, 1999
28 Parts:			
0–42	(869–038–00098–9)	39.00	July 1, 1999
43–end	(869–038–00099–7)	32.00	July 1, 1999
29 Parts:			
0–99	(869–038–00100–4)	28.00	July 1, 1999
100–499	(869–038–00101–2)	13.00	July 1, 1999
500–899	(869–038–00102–1)	40.00	[8] July 1, 1999
900–1899	(869–038–00103–9)	21.00	July 1, 1999
1900–1910 (§§ 1900 to 1910.999)	(869–038–00104–7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869–038–00105–5)	28.00	July 1, 1999
1911–1925	(869–038–00106–3)	18.00	July 1, 1999
1926	(869–038–00107–1)	30.00	July 1, 1999
1927–End	(869–038–00108–0)	43.00	July 1, 1999
30 Parts:			
1–199	(869–038–00109–8)	35.00	July 1, 1999
200–699	(869–038–00110–1)	30.00	July 1, 1999
700–End	(869–038–00111–0)	35.00	July 1, 1999
31 Parts:			
0–199	(869–038–00112–8)	21.00	July 1, 1999
200–End	(869–038–00113–6)	48.00	July 1, 1999
32 Parts:			
1–39, Vol. I		15.00	[2] July 1, 1984
1–39, Vol. II		19.00	[2] July 1, 1984
1–39, Vol. III		18.00	[2] July 1, 1984
1–190	(869–038–00114–4)	46.00	July 1, 1999
191–399	(869–038–00115–2)	55.00	July 1, 1999
400–629	(869–038–00116–1)	32.00	July 1, 1999
630–699	(869–038–00117–9)	23.00	July 1, 1999
700–799	(869–038–00118–7)	27.00	July 1, 1999
800–End	(869–038–00119–5)	27.00	July 1, 1999
33 Parts:			
1–124	(869–038–00120–9)	32.00	July 1, 1999
125–199	(869–038–00121–7)	41.00	July 1, 1999
200–End	(869–038–00122–5)	33.00	July 1, 1999
34 Parts:			
1–299	(869–038–00123–3)	28.00	July 1, 1999
300–399	(869–038–00124–1)	25.00	July 1, 1999
400–End	(869–038–00125–0)	46.00	July 1, 1999
35	(869–038–00126–8)	14.00	[8] July 1, 1999
36 Parts			
1–199	(869–038–00127–6)	21.00	July 1, 1999
200–299	(869–038–00128–4)	23.00	July 1, 1999
300–End	(869–038–00129–2)	38.00	July 1, 1999
37	(869–038–00130–6)	29.00	July 1, 1999
38 Parts:			
0–17	(869–038–00131–4)	37.00	July 1, 1999
18–End	(869–038–00132–2)	41.00	July 1, 1999
39	(869–038–00133–1)	24.00	July 1, 1999
40 Parts:			
1–49	(869–038–00134–9)	33.00	July 1, 1999
50–51	(869–038–00135–7)	25.00	July 1, 1999
52 (52.01–52.1018)	(869–038–00136–5)	33.00	July 1, 1999
52 (52.1019–End)	(869–038–00137–3)	37.00	July 1, 1999
53–59	(869–038–00138–1)	19.00	July 1, 1999
60	(869–038–00139–0)	59.00	July 1, 1999
61–62	(869–038–00140–3)	19.00	July 1, 1999
63 (63.1–63.1119)	(869–038–00141–1)	58.00	July 1, 1999
63 (63.1200–End)	(869–038–00142–0)	36.00	July 1, 1999
64–71	(869–038–00143–8)	11.00	July 1, 1999
72–80	(869–038–00144–6)	41.00	July 1, 1999
81–85	(869–038–00145–4)	33.00	July 1, 1999
86	(869–038–00146–2)	59.00	July 1, 1999
87–135	(869–038–00146–1)	53.00	July 1, 1999
136–149	(869–038–00148–9)	40.00	July 1, 1999
150–189	(869–038–00149–7)	35.00	July 1, 1999
190–259	(869–038–00150–1)	23.00	July 1, 1999
260–265	(869–038–00151–9)	32.00	July 1, 1999
266–299	(869–038–00152–7)	33.00	July 1, 1999
300–399	(869–038–00153–5)	26.00	July 1, 1999
400–424	(869–038–00154–3)	34.00	July 1, 1999
425–699	(869–038–00155–1)	44.00	July 1, 1999
700–789	(869–038–00156–0)	42.00	July 1, 1999
790–End	(869–038–00157–8)	23.00	July 1, 1999
41 Chapters:			
1, 1–1 to 1–10		13.00	[3] July 1, 1984
1, 1–11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3–6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10–17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1–5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6–19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20–52		13.00	[3] July 1, 1984
19–100		13.00	[3] July 1, 1984
1–100	(869–038–00158–6)	14.00	July 1, 1999
101	(869–038–00159–4)	39.00	July 1, 1999
102–200	(869–038–00160–8)	16.00	July 1, 1999
201–End	(869–038–00161–6)	15.00	July 1, 1999
42 Parts:			
1–399	(869–038–00162–4)	36.00	Oct. 1, 1999
400–429	(869–038–00163–2)	44.00	Oct. 1, 1999
430–End	(869–038–00164–1)	54.00	Oct. 1, 1999
43 Parts:			
1–999	(869–038–00165–9)	32.00	Oct. 1, 1999
1000–end	(869–038–00166–7)	47.00	Oct. 1, 1999
44	(869–038–00167–5)	28.00	Oct. 1, 1999
45 Parts:			
1–199	(869–038–00168–3)	33.00	Oct. 1, 1999
200–499	(869–038–00169–1)	16.00	Oct. 1, 1999
500–1199	(869–038–00170–5)	30.00	Oct. 1, 1999
1200–End	(869–038–00171–3)	40.00	Oct. 1, 1999
46 Parts:			
1–40	(869–038–00172–1)	27.00	Oct. 1, 1999
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200–499	(869–038–00179–9)	23.00	Oct. 1, 1999
500–End	(869–038–00180–2)	15.00	Oct. 1, 1999
47 Parts:			
0–19	(869–038–00181–1)	39.00	Oct. 1, 1999
20–39	(869–038–00182–9)	26.00	Oct. 1, 1999
40–69	(869–038–00183–7)	26.00	Oct. 1, 1999
70–79	(869–038–00184–5)	39.00	Oct. 1, 1999
80–End	(869–038–00185–3)	40.00	Oct. 1, 1999
48 Chapters:			
1 (Parts 1–51)	(869–038–00186–1)	55.00	Oct. 1, 1999
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1–99	(869–038–00193–4)	34.00	Oct. 1, 1999
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200–399	(869–038–00196–9)	53.00	Oct. 1, 1999
400–999	(869–038–00197–7)	57.00	Oct. 1, 1999
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Contents

Federal Register
Vol. 65, No. 60
Tuesday, March 28, 2000

Agency for Healthcare Research and Quality
NOTICES
Organization, functions, and authority delegations:
Nomenclature changes, 16395

Agriculture Department
See Food and Nutrition Service
See Forest Service
See Natural Resources Conservation Service

Air Force Department
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Science Applications International Corp., 16380

Army Department
See Engineers Corps

Bonneville Power Administration
NOTICES
Floodplain and wetlands protection; environmental review determinations; availability, etc.:
Kangly-Echo Lake Transmission Line Project, WA, 16380–16381

Children and Families Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16395–16396

Coast Guard
PROPOSED RULES
Anchorage regulations and ports and waterways safety:
OPSAIL 2000, Deleware River, PA; regulated areas, 16361–16364
Regattas and marine parades, anchorage regulations, and ports and waterways safety:
OPSAIL 2000, Baltimore, MD; regulated areas, 16355–16358
OPSAIL 2000, New London, CT; regulated areas, 16358–16361

Commerce Department
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Dominican Republic, 16379

Commodity Futures Trading Commission
NOTICES
Meetings; Sunshine Act, 16379–16380

Customs Service
PROPOSED RULES
Organization and functions; field organizations, ports of entry, etc.:
Milwaukee and Racine, WI; ports consolidation, 16354–16355

Defense Department
See Air Force Department
See Engineers Corps

Drug Enforcement Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16418–16419

Energy Department
See Bonneville Power Administration
See Energy Efficiency and Renewable Energy Office
See Energy Information Administration
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Committees; establishment, renewal, termination, etc.:
Secretary of Energy Advisory Board, 16380

Energy Efficiency and Renewable Energy Office
NOTICES
Meetings:
State Energy Advisory Board, 16381

Energy Information Administration
NOTICES
Meetings:
American Statistical Association Committee on Energy Statistics, 16381–16382

Engineers Corps
RULES
Administrative appeal process, 16486–16503

Environmental Protection Agency
RULES
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Idaho, 16320–16323
Indiana, 16323–16327
Air quality implementation plans; approval and promulgation; various States:
Maryland, 16320
PROPOSED RULES
Air programs:
Tier 2/gasoline sulfur refinery projects; BACT and LAER guidance, 16364–16365
Air programs; approval and promulgation; State plans for designated facilities and pollutants:
Idaho, 16365–16366
Indiana, 16365
NOTICES
Superfund; response and remedial actions, proposed settlements, etc.:
7-7 Merger, Inc., Site, OH, 16392
Superfund program:
Prospective purchaser agreements—
Redding Life Care, LLC, 16391–16392

Executive Office of the President
See Presidential Documents

See Trade Representative, Office of United States

Federal Aviation Administration
RULES
Airworthiness directives:
CFM International, 16309–16311
Israel Aircraft Industries, Ltd.; correction, 16311–16312
Airworthiness standards:
Special conditions—
Boeing Model 777 series airplanes, 16305–16309
PROPOSED RULES
Airworthiness directives:
Eurocopter France, 16352–16354
NOTICES
Exemption petitions; summary and disposition, 16451–16454

Federal Communications Commission
RULES
Common carrier services:
Incumbent local exchange carriers; accounting and reporting requirements; comprehensive review, 16328–16335
Satellite communications—
Earth stations operating with non-U.S. licensed space stations; application requirements; reconsideration; correction, 16327–16328
Radio stations; table of assignments:
Texas, 16335–16336
PROPOSED RULES
Radio stations; table of assignments:
Minnesota, 16366
NOTICES
Common carrier services:
Wireless telecommunications services—
Canada-United States; use of 220-222 MHz band along border; interim sharing arrangement, 16392–16393

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
New Hampshire Electric Cooperative, Inc., et al., 16383–16384
Environmental statements; availability, etc.:
Yadkin, Inc., 16384–16385
Hydroelectric applications, 16385–16387
Meetings; Sunshine Act, 16387–16389
Applications, hearings, determinations, etc.:
Natural Gas Pipeline Co. of America, 16382
Northwest Pipeline Corp., 16382
Questar Pipeline Co., 16383

Federal Housing Finance Board
NOTICES
Meetings; Sunshine Act, 16393

Federal Reserve System
RULES
Bank holding companies and change in bank control (Regulation Y):
Financial holding company requirements—
Elections by foreign banks, etc.; correction, 16302
Merchant banking investments, 16460–16479
PROPOSED RULES
Bank holding companies and change in bank control (Regulation Y):
Nonfinancial company investments; capital treatment guidelines, 16480–16483
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 16393–16394
Meetings; Sunshine Act, 16394

Fish and Wildlife Service
NOTICES
Comprehensive conservation plans; availability, etc.:
Washington Coast National Wildlife Refuges, WA, 16404–16405
Migratory bird hunting:
Alaska—
Management bodies establishment to develop recommendations related to spring/summer subsistence harvest of migratory birds, 16405–16409

Food and Drug Administration
RULES
Food additives:
Acidified sodium chlorite solutions, 16312
Adjuvants, production aids, and sanitizers—
Aluminum, hydroxybis[2,4,8,10-tetrakis (1,1-dimethylethyl)-6-hydroxy-12H-dibenzo[d,g][1,3,2]dioxaphosphocin 6-oxidato]-, 16315–16316
N,N'''-1,2-ethanediylibis, etc., 16314–16315
Polymers—
Ethylene-octene-1 copolymers, 16313–16314
NOTICES
Food additive petitions:
Thomas J. Lipton, Inc., 16396
Human drugs:
Drug products discontinued from sale for reasons other than safety or effectiveness—
Hydrocodone bitartrate and acetaminophen tablets USP, 5 mg/325 mg, 16396–16397
New drug applications—
Ferrante, John J., et al.; proposal to withdraw approval, 16397–16401
Meetings:
Medical Devices Advisory Committee, 16401

Food and Nutrition Service
NOTICES
Child nutrition programs:
Women, infants, and children; special supplemental nutrition program—
Income eligibility guidelines, 16367–16369

Forest Service
NOTICES
Environmental statements; notice of intent:
Routt National Forest, CO, et al.; Canada lynx; land and resource management plans, 16369–16373
Meetings:
Deschutes Provincial Interagency Executive Committee Advisory Committee, 16373

General Services Administration
NOTICES
Privacy Act:
Systems of records, 16394–16395

Health and Human Services Department
See Agency for Healthcare Research and Quality
See Children and Families Administration
See Food and Drug Administration

See Substance Abuse and Mental Health Services Administration

Information Security Oversight Office
RULES
Classified national security information:
Multi-agency declassification issues; uniform referral standard; correction, 16320

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
RULES
Income taxes:
Estates; applicability of separate share rules; correction, 16317
Fast-pay stock; financing arrangements recharacterization Correction, 16316–16317
Foreign investment; passive foreign investment company preferred shares; qualified electing fund elections; special exclusions
Correction, 16319
Intangible property; amortization
Correction, 16318
Low-income housing credit; compliance monitoring and miscellaneous issues
Correction, 16317
S corporations—
Corporate subsidiaries treatment; correction, 16317–16318
Passthrough of items to shareholders; correction, 16318–16319
Withholding of tax on certain U.S. source income paid to foreign persons and related collection, refunds, and credits, etc.; correction, 16319–16320
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16456–16457

Justice Department
See Drug Enforcement Administration
See National Institute of Justice

Land Management Bureau
NOTICES
Closure of public lands:
California, 16409–16410
Utah, 16410

Maritime Administration
NOTICES
Coastwise trade laws; administrative waivers:
JUST DESSERT, 16454
ULTRA GRAND SLAM, 16454–16455

National Aeronautics and Space Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16419–16420

National Archives and Records Administration
See Information Security Oversight Office

National Institute of Justice
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16419

National Labor Relations Board
NOTICES
Meetings; Sunshine Act, 16420

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Caribbean, Gulf, and South Atlantic fisheries—
Gulf of Mexico and South Atlantic coastal migratory pelagic resources, 16336–16341
Northeastern United States fisheries—
Atlantic mackerel, squid, and butterfish, 16341–16346
West Coast States and Western Pacific fisheries—
Western Pacific pelagic, 16346–16349
NOTICES
Marine mammals:
Incidental taking; authorization letters, etc.—
Marine seismic-reflection data collection in Southern California, 16374–16379

National Park Service
NOTICES
Meetings:
National Landmarks Advisory Commission, 16410–16411
National Register of Historic Places:
Pending nominations, 16411–16412
National Trail Systems:
Official trail marker insignias—
Appalachian National Scenic Trail, 16412
California National Historic Trail, 16412
Ice Age National Scenic Trail, 16412–16413
Juan Bautista de Anza National Historic Trail, 16413
Mormon Pioneer National Historic Trail, 16413–16414
Natchez Trace National Scenic Trail, 16414
National Recreation Trails, 16417–16418
North Country National Scenic Trail, 16414–16415
Oregon National Historic Trail, 16415
Overmountain Victory National Historic Trail, 16415–16416
Pony Express National Historic Trail, 16416
Santa Fe National Historic Trail, 16416
Selma to Montgomery National Historic Trail, 16416–16417
Trail of Tears National Historic Trail, 16417

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Oregon, 16373–16374

Nuclear Regulatory Commission
RULES
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list additions, 16299–16302
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16420–16421
Environmental statements; availability, etc.:
Indiana Michigan Power Co., 16421
National Aeronautics and Space Administration, 16421–16423

Office of United States Trade Representative
See Trade Representative, Office of United States

Presidential Documents
EXECUTIVE ORDERS
Special observances:
Education and Sharing Day, U.S.A. (Proc. 7282), 16505–16508
ADMINISTRATIVE ORDERS
India; waiver of sanctions (Presidential Determination No. 2000-18), 16297

Public Health Service
See Agency for Healthcare Research and Quality
See Food and Drug Administration
See Substance Abuse and Mental Health Services Administration

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Exemption applications—
Equity Investor Fund et al., 16431–16433
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 16433–16440
Chicago Stock Exchange, Inc., 16440–16445
Philadelphia Stock Exchange, Inc., 16445–16447
Applications, hearings, determinations, etc.:
Canada Life Insurance Co. of America et al., 16423–16431

Social Security Administration
NOTICES
Privacy Act:
Computer matching programs, 16447–16448

State Department
NOTICES
Meetings:
International Communications and Information Policy Advisory Committee, 16448
Shipping Coordinating Committee, 16448–16449

Substance Abuse and Mental Health Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Substance Abuse Treatment Center—
Community-Based Practice/Research Collaboratives Implementation Program, 16401–16404

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Evansville Terminal Co., Inc., et al., 16455
Pioneer Railcorp, 16455–16456

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Thrift Supervision Office
RULES
Operations:
Government securities transfer and repurchase, 16302–16305
PROPOSED RULES
Operations:
Government securities transfer and repurchase, 16350–16352
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16457–16458

Trade Representative, Office of United States
NOTICES
Harmonized Tariff Schedule; rectification, 16449–16450
Meetings:
Industry Sector Advisory Committees—
Small and Minority Business, 16450
World Trade Organization:
Mandated multilateral trade negotiations on agriculture and services; future access negotiations on non-agricultural goods; comment request, 16450–16451

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Maritime Administration
See Surface Transportation Board

Treasury Department
See Customs Service
See Internal Revenue Service
See Thrift Supervision Office
RULES
Bank holding companies and change in bank control:
Merchant banking investments, 16460–16479
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16456

Western Area Power Administration
NOTICES
Environmental statements; availability, etc.:
Energy Planning and Management Program, 16389–16390
Power rate adjustments:
Washoe Project, 16390–16391

Separate Parts In This Issue

Part II
Department of Treasury, Federal Reserve System, 16459–16483

Part III
Department of Army, Corps of Engineers, 16485–16503

Part IV
The President, 16505–16508

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7282.....16507
Administrative Orders:
Presidential Determination:
No. 2000-18 of March 16, 2000.....16297
10 CFR
72.....16299
12 CFR
225 (2 documents).....16302, 16460
563.....16302
563c.....16302
563g.....16302
1500.....16460
Proposed Rules:
225.....16480
563.....16350
563c.....16350
563g.....16350
14 CFR
25.....16305
39 (2 documents).....16309, 16311
Proposed Rules:
39.....16352
19 CFR
Proposed Rules:
101.....16354
21 CFR
173.....16312
177.....16313
178 (2 documents).....16314, 16315
26 CFR
1 (8 documents).....16316, 16317, 16318, 16319
32 CFR
2001.....16320
33 CFR
320.....16486
326.....16486
331.....16486
Proposed Rules:
100 (2 documents).....16355, 16358
110 (3 documents).....16355, 16358, 16361
165 (3 documents).....16355, 16358, 16361
40 CFR
52.....16320
62 (2 documents).....16320, 16323
Proposed Rules:
51.....16364
52 (2 documents).....16364, 16365
62.....16365
47 CFR
25.....16327
32.....16328
64.....16328
73 (2 documents).....16335, 16336
Proposed Rules:
73.....16366
50 CFR
622.....16336
648 (2 documents).....16341, 16345
660.....16346

Federal Register
Vol. 65, No. 60
Tuesday, March 28, 2000

Presidential Documents

Title 3—

The President

Presidential Determination No. 2000–18 of March 16, 2000

Sanctions on India

Memorandum for the Secretary of State

Pursuant to the authority vested in me as President of the United States, including under title IX of the Department of Defense Appropriations Act, 2000 (Public Law 106–79), I hereby waive the sanctions contained in sections 101 and 102 of the Arms Export Control Act, section 620E(e) of the Foreign Assistance Act of 1961, and section 2(b)(4) of the Export-Import Bank Act of 1945:

With respect to India, insofar as such sanctions would otherwise apply to assistance to the South Asia Regional Initiative/Energy; the Presidential Initiative on Internet for Economic Development; the Financial Institution Reform and Expansion program; and the United States Educational Foundation in India Environmental Exchange.

You are hereby authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, March 16, 2000.

[FR Doc. 00–7748
Filed 03–27–00; 8:45 am]
Billing code 4710–10–M

Rules and Regulations

Federal Register
Vol. 65, No. 60
Tuesday, March 28, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG19

List of Approved Spent Fuel Storage Casks; Revision, NUHOMS 24–P and NUHOMS 52–B

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations containing the list of approved spent fuel storage cask designs by adding an amended version of Certificate of Compliance Number (CoC No.) 1004 to this list. The amended version reflects a change of ownership of this certificate from VECTRA Technologies, Inc. to Transnuclear West, Inc., (TN West) as well as an amendment to the certificate.

EFFECTIVE DATE: This final rule is effective on April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Stan Turel, telephone (301) 415–6234, e-mail spt@nrc.gov of the Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

SUPPLEMENTARY INFORMATION:

Background

Section 218(a) of the Nuclear Waste Policy Act of 1982, as amended (NWPA), requires that "[t]he Secretary (of Energy) shall establish a demonstration program, in cooperation with the private sector, for the dry storage of spent nuclear fuel at civilian nuclear reactor power sites, with the objective of establishing one or more technologies that the [Nuclear Regulatory] Commission may, by rule, approve for use at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site-specific approvals by the Commission." Section 133 of the NWPA states, in part, "[t]he Commission shall, by rule, establish procedures for the licensing of any technology approved by the Commission under Section 218(a) for use at the site of any civilian nuclear power reactor."

To implement this mandate, the NRC approved dry storage of spent nuclear fuel in NRC-approved casks under a general license, publishing a final rule in 10 CFR part 72 entitled "General License for Storage of Spent Fuel at Power Reactor Sites" (55 FR 29181; July 18, 1990). This rule also established a new subpart L within 10 CFR part 72 entitled "Approval of Spent Fuel Storage Casks," containing procedures and criteria for obtaining NRC approval of dry storage cask designs.

Discussion

The NRC is revising information contained in § 72.214 under CoC No. 1004 to reflect Amendment No. 1 to CoC No. 1004 and to address four administrative issues in the current language in § 72.214. These four administrative issues include (1) correcting the expiration date of CoC No. 1004 from the present "(20 years after the final rule effective date)" to "January 23, 2015;" (2) correcting the title and revision number of the standardized NUHOMS SAR to be consistent with the approach the NRC adopted for CoC SARs in a new § 72.248 (see final rule in 64 FR 53582; October 4, 1999); (3) revising the CoC to reflect the transfer of the CoC from VECTRA Technologies, Inc. to Transnuclear West, Inc., (TN West); and (4) specifying the applicability of Amendment No. 0 and Amendment No. 1 to this CoC.

Change 1 keeps the certificate expiration date consistent with the NRC's policy for part 72 CoCs, which is to use 20 years from the date the final rule is effective. The final rule adding CoC No. 1004 to § 72.214 was effective on January 23, 1995; consequently, the expiration date for this CoC is January 23, 2015.

Change 2 keeps CoC No. 1004 consistent with other recent changes to 10 CFR 72.248. The SAR title will be changed from "Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel, Revision 2" to "Final Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel." In the new § 72.248, a final SAR is to be submitted to the Commission within 90 days after approval of the cask design and then will be updated periodically. Replacement pages will be provided to the Commission in accordance with § 72.248.

Change 3 recognizes the transfer of the CoC from VECTRA to TN West. NRC received letters dated December 18, 1997, from both VECTRA and TN West describing the purchase of VECTRA's intellectual properties and assets associated with NUHOMS technology by TN West. In its December 18, 1997, letter, TN West described that it planned to conduct fabrication activities in accordance with the quality assurance program described in Section 11 of the NUHOMS SAR. TN West further described that it had acquired the composite records of casks manufactured under CoC No. 1004 and that it had records associated with changes to the NUHOMS design implemented after issuance of the CoC.

Change 4 describes how general licensees would continue to use spent fuel storage casks manufactured under the original CoC No. 1004, if the cask being used was fabricated before April 27, 2000. After April 27, 2000, casks must be manufactured in accordance with CoC No. 1004, Amendment No. 1. This final rule issues Amendment No. 1 to CoC No. 1004. Amendment No. 1 revises and reformats the CoC to be consistent with the NRC's current format and layout for part 72 certificates. Proposed condition No. 4 in CoC No. 1004 is removed in response to comments as discussed below. Conditions No. 1 through 8 are renumbered.

Based on the October 1995 and January 1999 safety evaluations, the newly established fabrication inspection procedures, and the Amendment No. 1 to CoC No. 1004, the NRC staff has concluded that the NUHOMS–24P and –52B cask design, when used in accordance with the conditions specified in the CoC as amended, and NRC regulations, will meet the part 72 requirements and thus ensure adequate protection of the public health and safety.

The Amendment No. 1 to CoC No. 1004, the VECTRA safety analyses, and the NRC staff safety evaluations are available for inspection at the NRC Public Document Room, 2120 L Street, NW (Lower Level), Washington, DC 20003–1527. Documents created or received at the NRC after November 1, 1999 are also available electronically at the NRC's Public Electronic Reading Room on the Internet at *http://www.nrc.gov/NRC/ADAMS/index.html*. From this site, the public can gain entry into the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. For more information, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 202–634–3273 or by email to *pdr@nrc.gov*. Single copies of the Amendment No. 1 to CoC No. 1004 may be obtained from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, telephone (301) 415–6234, email spt@nrc.gov.

Public Comments on the Proposed Rule

Summary of Public Comments on Proposed Rule

The NRC received two comment letters on the proposed rule. One comment was from a user of the NUHOMS spent fuel storage system and the other was from the vendor of the NUHOMS spent fuel storage system. Both commenters supported the overall approach taken in the proposed amendment. However, both commenters also disagreed with the proposed change to Condition No. 4 in the CoC and proposed alternate wording. Condition No. 4 was added, in part, in response to a February 5, 1997, NMSS Director's Decision, to ensure future compliance with § 72.150, with respect to dry shielded canister (DSC) shell-weld thickness, by requiring inspection of DSC shell welds. Both commenters believe that the concerns identified in the Director's Decision have been overtaken by other events, specifically the numerous corrective actions taken by Vectra and later by TN West—Vectra was subsequently acquired by TN West. These actions corrected the petitioner's and NRC's concerns regarding this issue.

At the time of the Director's Decision, Vectra had already begun an exhaustive review of its design, licensing, fabrication, and quality assurance program and implemented numerous improvements to its fabrication specifications, drawings, and procedures. The remaining concerns were addressed by TN West and resulted in NRC authorizing resumption of fabrication of NUHOMS components in 1998. Both commenters indicated that TN West has translated and implemented the proposed Condition No. 4 into the fabrication drawings and specifications. Furthermore, these corrective actions provide adequate assurance that the NUHOMS storage system will perform its intended safety function. Therefore, including such detailed fabrication and inspection requirements in the CoC is redundant, inconsistent with the NRC's initiative in this rule to be uniform in the format and layout for part 72 CoCs, and is unnecessary.

Response: The NRC agrees with the comments, in part. The 1997 Director's Decision established a process to provide other interested members of the public an opportunity to comment on any aspect of the NRC safety evaluation associated with this issue. One purpose of the rulemaking was to consider whether the wall thinning issue justified a unique fabrication inspection requirement in the CoC No. 1004. The Director's Decision was based, in part, on Vectra's performance history with this issue and concluded that changes to the CoC merited consideration. After the 1997 Director's Decision, requirements for wall thickness have been included and implemented in the NUHOMS storage system fabrication specifications, procedures, and inspection requirements. In the revised CoC, Condition No. 3 specifies that the system drawings for the NUHOMS are contained in Appendix E of the Safety Analysis Report. The NRC also notes that Vectra's performance history with this issue is no longer a relevant factor in establishing the CoC conditions, because VECTRA is no longer involved in the fabrication of the NUHOMS storage system.

Additionally, the NRC has recently published a separate final rule to expand the applicability of the quality assurance provisions of part 72, subpart G, to certificate holders and applicants for a CoC (64 FR 56114; October 15, 1999). Three of the sections in the revised subpart G are relevant to this response (see §§ 72.146, "Design Control"; 72.150, "Instructions, Procedures, and Drawings"; and 72.160, "Licensee and Certificate Holder Inspection"). The revised § 72.146(a) states, in part:

> The * * * certificate holder * * * shall establish measures to ensure that applicable regulatory requirements and the design basis, as specified in the * * * CoC application for those structures, systems, and components to which this section applies, are correctly translated into specifications, drawings, procedures, and instructions. These measures must include provisions to ensure that appropriate quality standards are included in design documents * * *

The revised § 72.150 states, in part:

> The * * * certificate holder * * * shall prescribe activities affecting quality by documented instructions, procedures, or drawings of a type appropriate to the circumstances and shall require that these instructions, procedures, and drawings be followed.

The revised § 72.160 states, in part:

> The * * * certificate holder * * * shall establish and execute a program for inspection of activities affecting quality by or for the organization performing the activity to verify conformance with documented instructions, procedures, and drawings for the accomplishment of the activity.

TN West's [VECTRA's] revision of the design drawings, instructions, and procedures to specify a weld thickness of greater than 0.500 inch and a weld inspection requirement and its responsibility as the certificate holder to comply with the new quality assurance requirements contained in §§ 72.146, 72.150, and 72.164, taken together, provide reasonable assurance that public health and safety will not be adversely affected by the continued manufacture and use of the NUHOMS storage system. Consequently, the NRC agrees with the commenters that the proposed Condition No. 4 is unnecessary and would be inconsistent with a purpose of the proposed rule related to the NRC's initiative to establish a standard format and content for all Part 72 CoCs. However, the NRC disagrees with the alternative solution proposed by the commenters to retain a modified version of Condition No. 4, because this action would not be fully consistent with the intent of the commenter's standardization issue; nor would it be fully consistent with the NRC's initiative in the proposed rule to establish a standard format and content for Part 72 CoCs.

Therefore, inclusion of the proposed detailed fabrication requirements (i.e., proposed Condition No. 4) in CoC No. 1004 is unnecessary and is removed in this final rule. All other changes to the CoC stand as proposed. The NRC considers that this action is consistent with the actions delineated in the February 5, 1997, Director's Decision and the subsequent rulemaking to expand the applicability of the Part 72 quality assurance regulations in Subpart G to certificate holders.

Summary of Final Revisions

The NRC staff modified the listing for the Transnuclear West, Inc. NUHOMS 24–P and NUHOMS 52–B cask system within 10 CFR 72.214, "List of approved spent fuel storage casks," with respect to the expiration date of CoC, the title and revision number of the standardized NUHOMS SAR, and the applicability of Amendment No. 0 and Amendment No. 1 to the CoC. The NRC staff also revised the CoC.

Agreement State Compatibility

Under the "Policy Statement on Adequacy and Compatibility of Agreement State Programs" approved by the Commission on June 30, 1997, and published in the **Federal Register** on September 3, 1997 (62 FR 46517), this rule is classified as compatibility Category "NRC." Compatibility is not required for Category "NRC" regulations. The NRC program elements in this category are those that relate directly to areas of regulation reserved to the NRC by the Atomic Energy Act of 1954, as amended (AEA), or the provisions of Title 10 of the Code of Federal Regulations. Although an Agreement State may not adopt program elements reserved to NRC, it may wish to inform its licensees of certain requirements via a mechanism that is consistent with the particular State's administrative procedure laws, but does not confer regulatory authority on the State.

Finding of No Significant Environmental Impact: Availability

Under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, the NRC has determined that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore, an environmental impact statement is not required. This final rule adds an amended version of Certificate of Compliance Number (CoC No.) 1004 to the list of approved spent fuel storage casks that power-reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals from the Commission. The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and finding of no significant impact are available from Stan Turel, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6234, e-mail spt@nrc.gov.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget, approval number 3150–0132.

Public Protection Notification

If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

Voluntary Consensus Standards

The National Technology Transfer Act of 1995 (Pub. L. 104–113) requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless the use of such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is adding an amended version of CoC No. 1004 to the list of approved spent fuel storage casks that power-reactor licensees can use to store spent fuel at reactor sites without additional site-specific approvals from the Commission. This action does not constitute the establishment of a standard that establishes generally-applicable requirements.

Regulatory Analysis

On July 18, 1990 (55 FR 29181), the Commission issued an amendment to 10 CFR part 72. The amendment provided for the storage of spent nuclear fuel in cask systems with designs approved by the NRC under a general license. Any nuclear power reactor licensee can use cask systems with designs approved by the NRC to store spent nuclear fuel if it notifies the NRC in advance, the spent fuel is stored under the conditions specified in the cask's CoC, and the conditions of the general license are met. In that rule, four spent fuel storage casks were approved for use at reactor sites and were listed in 10 CFR 72.214. That rule envisioned that storage casks certified in the future could be routinely added to the listing in 10 CFR 72.214 through the rulemaking process. Procedures and criteria for obtaining NRC approval of new spent fuel storage cask designs were provided in 10 CFR part 72, subpart L.

The alternative to this action is to withhold approval of this new design and issue a site-specific license to each utility that proposes to use the casks. This alternative would cost both the NRC and utilities more time and money for each site-specific license. Conducting site-specific reviews would ignore the procedures and criteria currently in place for the addition of new cask designs that can be used under a general license, and would be in conflict with NWPA direction to the Commission to approve technologies for the use of spent fuel storage at the sites of civilian nuclear power reactors without, to the maximum extent practicable, the need for additional site reviews. This alternative also would tend to exclude new vendors from the business market without cause and would arbitrarily limit the choice of cask designs available to power reactor licensees. This final rule will eliminate the above problems and is consistent with previous Commission actions. Further, the rule will have no adverse effect on public health and safety.

The benefit of this rule to nuclear power reactor licensees is to make available a greater choice of spent fuel storage cask designs that can be used under a general license. The new cask vendors with casks to be listed in 10 CFR 72.214 benefit by having to obtain NRC certificates only once for a design that can then be used by more than one power reactor licensee. The NRC also benefits because it will need to certify a cask design only once for use by multiple licensees. Casks approved through rulemaking are to be suitable for use under a range of environmental conditions sufficiently broad to encompass multiple nuclear power plants in the United States without the need for further site-specific approval by NRC. Vendors with cask designs already listed may be adversely impacted because power reactor licensees may choose a newly listed design over an existing one. However, the NRC is required by its regulations and NWPA direction to certify and list approved casks. This rule has no significant identifiable impact or benefit on other Government agencies.

Based on the above discussion of the benefits and impacts of the alternatives, the NRC concludes that the requirements of the final rule are commensurate with the Commission's responsibilities for public health and safety and the common defense and security. No other available alternative is believed to be as satisfactory, and thus, this action is recommended.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC has determined that this action is not a major rule and has verified this

determination with the Office of Information and Regulatory Affairs, Office of Management and Budget.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants, independent spent fuel storage facilities, and Transnuclear West, Inc. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121.

Backfit Analysis

The NRC has determined that the backfit rule (10 CFR 50.109 or 10 CFR 72.62) does not apply to this rule because this amendment does not involve any provisions that would impose backfits as defined in the backfit rule. Therefore, a backfit analysis is not required.

List of Subjects in 10 CFR Part 72

Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Reporting and recordkeeping requirements, Security measures, Spent fuel.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL AND HIGH-LEVEL RADIOACTIVE WASTE

1. The authority citation for Part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended, sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86–373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95–601, sec. 10, 92 Stat. 2951 as amended by Pub. L. 10d–48b, sec. 7902, 10b Stat. 31b3 (42 U.S.C. 5851); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97–425, 96 Stat. 2229, 2230, 2232, 2241, sec. 148, Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168).

Section 72.44(g) also issued under secs. 142(b) and 148 (c), (d), Pub. L. 100–203, 101 Stat. 1330–232, 1330–236 (42 U.S.C. 10162(b), 10168 (c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97–425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100–203, 101 Stat. 1330–235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97–425, 96 Stat. 2202, 2203, 2204, 2222, 2244, (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In Section 72.214, Certificate of Compliance 1004 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1004
Amendment Number: 0 and 1
Amendment Applicability:
Amendment No. 0 is applicable for casks manufactured before [insert effective date of final rule].
Amendment No. 1 is applicable for casks manufactured after [insert effective date of final rule].
SAR Submitted by: Transnuclear West, Inc.
SAR Title: Final Safety Analysis Report for the Standardized NUHOMS Horizontal Modular Storage System for Irradiated Nuclear Fuel
Docket Number: 72–1004
Certificate Expiration Date: January 23, 2015
Model Numbers: Standardized NUHOMS–24P and NUHOMS–52B

* * * * *

Dated at Rockville, Maryland, this 13th day of March, 2000.

For the Nuclear Regulatory Commission.

William D. Travers,

Executive Director for Operations.

[FR Doc. 00–7431 Filed 3–27–00; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1057]

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule; correction.

SUMMARY: This document corrects the preamble to an interim rule published in the **Federal Register** of March 21, 2000, regarding procedures for bank holding companies and foreign banks to elect to be treated as financial holding companies. This correction clarifies that depository institution subsidiaries of foreign banks electing financial holding company status must meet the same requirements as depository institution subsidiaries of bank holding companies electing financial holding company status.

DATES: This correction is effective March 15, 2000.

FOR FURTHER INFORMATION CONTACT: Ann Misback, 202–452–3788.

Correction

In interim rule FR Doc. No. 00–6049, beginning on 65 FR 15053 in the issue of March 21, 2000, make the following correction in the Summary section. On page 15053 in the second column beginning on the first line, remove the first sentence in its entirety and replace it with the following sentence:

"Second, in order to make the requirements for foreign banks consistent with the requirements imposed on bank holding companies, the Board is amending the interim rule to require that all U.S. depository institution subsidiaries (such as thrifts and nonbank trust companies) of electing foreign banks meet the same requirements as depository institution subsidiaries of bank holding companies."

Dated: March 21, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7432 Filed 3–27–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563, 563c, 563g

[No. 2000–30]

RIN 1550–AB38

Transfer and Repurchase of Government Securities

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Direct final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is removing its regulation on the transfer and repurchase of government securities. This regulation is unnecessary and is overly burdensome to savings associations.

DATES: The direct final rule is effective May 30, 2000 without further notice, unless OTS receives significant adverse comments by April 27, 2000. If OTS receives such comments, it will publish a timely withdrawal informing the public that this rule will not take effect.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management & Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Attention Docket No. 2000–30. Hand deliver comments to Public Reference Room, 1700 G Street, NW., lower level, from 9 a.m. to 5 p.m. on business days. Send facsimile transmissions to FAX (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9 a.m. until 4 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Ed O'Connell, (202) 906–5694, Manager, Supervision Policy: or Teresa Scott (202) 906–6478, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

OTS regulations at 12 CFR 563.84 govern the transfer and repurchase of government securities under certain circumstances where the savings association is obligated to repurchase.[1] This rule applies to repurchase obligations evidencing an indebtedness arising from a transfer of direct obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or any agency of the United States.

The rule prohibits savings associations from issuing repurchase agreement obligations in denominations under $100,000 and a maturity of 90 days or more, unless the savings association issues the obligation to an institution whose accounts or deposits are insured by the Federal Deposit Insurance Corporation ("FDIC") or to a broker or dealer registered with the Securities and Exchange Commission. Repurchase agreement obligations under $100,000 with a maturity of less than 90 days are subject to various consumer protection and other requirements. Specifically, the rule: (1) Mandates that all such agreements, related advertisements and offering statements must include a legend indicating that the obligation is not a savings account or deposit and is not insured by the FDIC; (2) prohibits savings associations from making specified representations regarding deposit insurance, guarantees, etc.; (3) requires the purchaser under the repurchase agreement to obtain a perfected security interest in the securities under applicable state law; (4) requires that the value of the security underlying the repurchase agreement be maintained at a level at least equal to the principal amount of the repayment obligation; (5) requires that savings associations issuing repurchase agreements to the public make full and accurate disclosures of all material information regarding the repurchase agreement; (6) imposes additional requirements on certain renewals beyond 89 days; and (7) requires a savings association to provide additional safeguards and financial disclosures if it does not meet specified requirements regarding total capital.[2]

OTS is removing § 563.84 because it is unnecessary and imposes overly burdensome requirements on savings associations. One of the original purposes of the predecessor of § 563.84 was to ensure that savings associations would not use repurchase agreements as a method of offering small denomination accounts to avoid existing interest rate ceiling restrictions on deposit accounts.[3] In 1979, the Federal Home Loan Bank Board (FHLBB) issued a policy statement prohibiting savings associations from entering into any government securities repurchase agreements in amounts under $100,000, except with federally insured depository institutions or with broker dealers. Because the potential for circumvention of the maximum interest rate ceiling was reduced if the maturity of the agreement was less than 90 days, the FHLBB revised the policy statement to permit short term agreements in amounts under $100,000, subject to certain consumer protections.[4] The FHLBB codified the policy statement in its regulations in 1982 and expanded consumer protection requirements.[5]

It is no longer necessary to retain § 563.84 to prevent evasions of maximum interest rate ceilings on deposit accounts. Interest rate ceilings have not been in effect since March of 1986 when the FHLBB's authority to set these ceilings expired.[6] Savings associations, of course, still may not pay interest on commercial checking accounts.[7] However, OTS has concluded that federal savings associations may offer various sweep accounts to transfer idle, non-interest bearing demand deposit account (DDA) checking funds to investment vehicles to generate earnings.[8] OTS has specifically stated that these sweep accounts, including sweep arrangements that use government security repurchase agreements, are permissible notwithstanding the prohibition on the payment of interest on DDAs.

To the extent that § 563.84 was designed to protect consumers who buy United States government securities under repurchase agreements, OTS believes that existing statutes, regulations and guidance already adequately serve this function. The commercial repurchase market is much more developed than when the regulation was adopted and is regulated now in other ways. The Government Securities Act of 1986 (the GSA),[9] for example, protects investors in government securities by establishing appropriate financial responsibility and custodial standards. Under the Department of Treasury's implementing regulations,[10] a thrift that holds government securities for another party to a hold-in-custody repurchase agreement must comply with requirements for safeguarding and custody of the securities. The savings association is also subject to other provisions requiring written agreements, confirmations and disclosures, including disclosures that the obligation is not a deposit and is not insured by the FDIC.[11] Moreover, Thrift Bulletin 23–2, Interagency Statement on Retail Sales of Non-deposit Investment

[1] Under these repurchase obligations, a savings association obtains funds by selling government securities, and simultaneously agrees to buy back the securities at a specified price and date.

[2] Under this requirement, a savings association's total capital must equal one percent of its liabilities plus 20 percent of its classified assets.

[3] *See* 12 CFR 531.12, published 44 FR 33669 (June 12, 1979).

[4] 44 FR 46445 (August 6, 1979).

[5] 47 FR 23140 (May 27, 1982).

[6] As of March 31, 1986, the FHLBB's authority to regulate payment of interest under section 5B of the Federal Home Loan Bank Act expired. 12 U.S.C. 1425b (1980). The FHLBB amended its regulations to reflect these changes on March 31, 1986. *See* 51 FR 10810 (March 31, 1986).

[7] 12 U.S.C. 1464(b)(1)(B)(i).

[8] Op. Chief Counsel (March 2, 1998). Typically, under these transactions, funds are swept out of a DDA at the end of a business day and into an investment vehicle, and swept back to the DDA the next morning to pay checks as needed. This process is repeated each business day.

[9] The Government Securities Act of 1986 (Pub. L. 99–571, 100 Stat 3208), as amended by, Pub. L. 103–202, 107 Stat 2344.

[10] 17 CFR parts 400 through 450.

[11] Savings associations that enter into repurchase agreements should pay particular attention to the requirements and required disclosures at 17 CFR 403.5.

Products (February 22, 1994) provides for certain customer protections, including disclosures, for retail sales of non-deposit investment products, including government securities repurchase agreements. In addition, OTS notes that state and federal anti-fraud provisions, which generally require the disclosure of facts that would be material to a decision to invest in a security, also apply to repurchase transactions.[12]

OTS also believes that § 563.84 may unduly restrict savings associations' ability to engage in certain types of transactions. Since none of the other federal banking agencies currently have similar provisions, OTS believes that the retention of this rule may have a negative impact on the ability of OTS-regulated institutions to compete on an equal footing.

For example, in a recent opinion letter, OTS clarified the authority of savings associations to offer various types of sweep accounts, including the use of repurchase agreements in sweep accounts.[13] Section 563.84, however, requires that the interest of a repurchase agreement purchaser in the security or securities underlying the repurchase agreement constitute a perfected security interest under applicable state law. Various state laws[14] no longer allow for the perfection of a security interest in a security through placement with a trustee, such as a Federal Home Loan Bank. Other perfection methods may be operationally impractical in the context of repurchase agreement sweep accounts that typically involve repeated collateralizations of varying dollar amounts.[15] As a result, this regulation may effectively bar savings associations' use of repurchase agreement sweep accounts to accommodate the cash management needs of their commercial customers. As noted above, other financial institutions are not subject to similar restrictions.

For these reasons, OTS is deleting § 563.84. In the absence of this provision, federal savings associations would continue to be authorized to engage in repurchase agreements. This authority would be subject to applicable statutes and regulations, including the GSA, Treasury's implementing regulations, Thrift Bulletin 23–2, and state and federal securities laws. In addition, the Federal Financial Institutions Examination Council's Policy Statement on Repurchase Agreements of Depository Institutions with Securities Dealers and Others[16] provides safety and soundness guidance to depository institutions entering into repurchase agreements. The FFIEC Policy Statement cautions that institutions should have adequate policies and controls for their particular circumstances, provides explicit guidance for controlling collateral for securities sold under an agreement to repurchase, and contains other pertinent guidance.

[12] *See* The Federal Financial Institutions Examination Council's Policy Statement on Repurchase Agreements of Depository Institutions with Security Dealers and Others, 63 FR 6935 (February 11, 1998) and Thrift Bulletin 23–2.

[13] Op. Chief Counsel (March 2, 1998).

[14] *See* Uniform Commercial Code, Article 8, as amended by the various states.

[15] Although this rule eliminates the requirement that the purchaser under the repurchase agreement obtain a perfected security interest in the securities under state law, 17 CFR 450.4 of the Treasury GSA regulations provides specific protections for safeguarding and custody of the securities.

Rulemaking Procedures

Direct final rulemaking is a technique for expediting the issuance of non-controversial rules. Under this procedure, an agency may publish a rule in the **Federal Register** with a statement that, unless a significant adverse comment is received within a specified time period, the rule will become effective as a final rule on a particular date. If a significant adverse comment is filed, however, the agency must withdraw the direct final rule and complete standard notice and comment procedures. This procedure permits an agency to issue final rules expeditiously, while at the same time offering the public the opportunity to challenge the agency's view that the rule is non-controversial.[17]

Several other federal agencies, including the Environmental Protection Agency, the Department of Agriculture, and the Department of Transportation, have used this procedure to expedite non-controversial rules. The primary advantage of the procedure is that it permits an agency to issue rules without having to go through internal and external review processes twice (*i.e.*, at the proposed and final rule stage).

[16] 63 FR 6935 (February 11, 1998).

[17] Under current law, direct final rulemaking is supported by two rationales. First, it is justified by the Administrative Procedure Act's "good cause" exemption from notice-and-comment procedures where such procedures are "unnecessary." The agency's solicitation of public comment does not undercut this argument, but rather is used to validate the agency's initial determination.

Alternatively, direct final rulemaking also complies with the basic notice-and-comment requirements in section 553 of the APA. The agency provides notice and opportunity to comment on the rule through its **Federal Register** notice; the publication requirements are met, although the information has been published earlier in the process than normal; and the requisite advance notice of the effective date required by the APA is provided.

The Administrative Conference of the United States adopted Recommendation 95–4 encouraging the use of direct final rulemaking,[18] and recommending that agencies develop a direct final rulemaking process for issuing rules that are unlikely to result in significant adverse comments.

OTS has concluded that this rule is non-controversial and should elicit no significant adverse comment.[19] Accordingly, the agency has determined that it is appropriate to apply direct final rulemaking procedures. This preamble explains the procedures OTS intends to use for direct final rules. The agency welcomes any comments on how to make this process more useful.

Consistent with the Administrative Conference's recommendations, OTS is applying the following procedures in this rulemaking:

OTS is publishing this notice of direct final rule in the final rule section of the **Federal Register** and is including an opportunity for public comment on the substance of the change (*i.e.*, a 30-day public comment period). Consistent with the Administrative Conference recommendation, OTS has included a statement of basis and purpose for the rule and has discussed relevant substantive issues in the discussion above.

The direct final rule will automatically become effective in 60 days, unless OTS receives a significant adverse comment within the 30-day comment period. If a timely, significant adverse comment is received, OTS will withdraw the direct final rule before the stated effective date. To be a significant adverse comment, the comment must explain why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or why the rule would be ineffective or unacceptable without a change.

To ensure that the promulgation of a final rule will not be delayed if significant adverse comments are submitted, OTS has published a related notice of proposed rulemaking (NPRM) elsewhere in today's **Federal Register**. This related notice cross-references the direct final rule. The related notice indicates that if a timely, significant adverse comment on the matter is received, OTS will address all public comments in subsequent final rule based on the NPRM. If no significant adverse comments are timely received, OTS will take no further action on the NPRM.

[18] 60 FR 43108 (Aug. 18, 1995). The National Performance Review has also endorsed the use of this process. *See* Office of the Vice President, Creating a Government that Works Better and Costs Less, Improving Regulatory Systems, National Performance Review, 42–44 (1993).

[19] The rulemaking record includes a copy of a petition for rulemaking requesting OTS to initiate this proceeding.

Effective Date

This direct final rule imposes no additional requirements on insured depository institutions. This rule is therefore exempt from the requirement found in section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994[20] that regulations must not take effect before the first day of the quarter following publication.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[21] the Director certifies that this direct final rule will not have a significant economic impact on a substantial number of small entities. The rule merely removes an unnecessary regulation that imposes overly burdensome requirements on all savings associations, including small savings associations.

Executive Order 12866

OTS has determined that this direct final rule is not a "significant regulatory action" for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this direct final rule will not result in expenditures by State, local, and tribal governments or by the private sector of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

Federalism

Executive Order 13132 imposes certain requirements on an agency when formulating and implementing policies that have federalism implications or taking actions that preempt state law. OTS has determined that this direct final rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and will not preempt State law.

[20] Pub. L. No. 103–325, 12 U.S.C. 4802.

[21] Pub. L. No. 96–354, 5 U.S.C. 601.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563c

Accounting, Savings associations, Securities.

12 CFR Part 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby amends title 12, chapter V of the Code of Federal Regulations as set forth below.

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831i, 3806; 42 U.S.C. 4106.

§ 563.84 [Removed]

2. Section 563.84 is removed.

PART 563c—ACCOUNTING REQUIREMENTS

3. The authority citation for part 563c continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78m, 78n, 78w.

4. Section 563c.101 is amended by revising paragraph (c) to read as follows:

§ 563c.101 Application of this subpart.

* * * * *

(c) Any offering circular required to be used in connection with the issuance of mutual capital certificates under § 563.74 and debt securities under § 563.80 and § 563.81 of this chapter.

PART 563g—SECURITIES OFFERINGS

5. The authority citation for part 563g continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w.

§ 563g.3 [Amended]

6. Section 563g.3 is amended by removing and reserving paragraph (a).

Dated: March 21, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–7419 Filed 3–27–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM167; Special Conditions No. 25–159–SC]

Special Conditions: Boeing Model 777 Series Airplanes; Seats With Inflatable Lapbelts

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for Boeing Model 777 series airplanes. These airplanes as modified by BF Goodrich Aerospace will have novel and unusual design features associated with seats with inflatable lapbelts. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

EFFECTIVE DATE: April 27, 2000.

FOR FURTHER INFORMATION CONTACT: Jeff Gardlin, Airframe and Cabin Safety Branch, ANM–115, Transport Airplane Directorate, Aircraft Certification Service, FAA, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (425) 227–2136; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Background

On March 31, 1999, BF Goodrich Aerospace, 3420 South 7th Street, Suite 1, Phoenix, Arizona 85040, applied for a supplemental type certificate to install inflatable lapbelts for head injury protection on certain seats in Boeing Model 777 series airplanes. The Model 777 series airplane is a swept-wing, conventional-tail, twin-engine, turbofan-powered transport. The inflatable lapbelt is designed to limit occupant forward excursion in the event of an accident. This will reduce the potential for head injury, thereby reducing the Head Injury Criteria (HIC) measurement. The inflatable lapbelt behaves similarly to an automotive airbag, but in this case the airbag is integrated into the lapbelt, and inflates away from the seated occupant. While airbags are now standard in the automotive industry, the use of an inflatable lapbelt is novel for commercial aviation.

Title 14 Code of Federal Regulations (14 CFR) § 25.785 requires that

occupants be protected from head injury by either the elimination of any injurious object within the striking radius of the head, or by padding. Traditionally, this has required a set back of 35 inches from any bulkhead or other rigid interior feature or, where not practical, specified types of padding. The relative effectiveness of these means of injury protection was not quantified. With the adoption of Amendment 25–64 to 14 CFR part 25, specifically § 25.562, a new standard that quantifies required head injury protection was created.

Title 14 CFR 25.562 specifies that dynamic tests must be conducted for each seat type installed in the airplane. In particular, the regulations require that persons not suffer serious head injury under the conditions specified in the tests, and that a HIC measurement of not more than 1000 units be recorded, should contact with the cabin interior occur. While the test conditions described in this section are specific, it is the intent of the requirement that an adequate level of head injury protection be provided for crash severity up to and including that specified.

Amendment 25–64 is part of the Model 777 certification basis. Therefore, the seat installation with inflatable lapbelts must meet the requirement that a HIC of less than 1000 be demonstrated for occupants of seats incorporating the inflatable lapbelt.

Because §§ 25.562 and 25.785 and associated guidance do not adequately address seats with inflatable lapbelts, the FAA recognizes that appropriate pass/fail criteria need to be developed that do fully address the safety concerns specific to occupants of these seats.

The inflatable lapbelt has two potential advantages over other means of head impact protection. First, it can provide significantly greater protection than would be expected with energy-absorbing pads, for example, and second, it can provide essentially equivalent protection for occupants of all stature. These are significant advantages from a safety standpoint, since such devices will likely provide a level of safety that exceeds the minimum standards of the Federal Aviation Regulations (FAR). Conversely, airbags in general are active systems and must be relied upon to activate properly when needed, as opposed to an energy-absorbing pad or upper torso restraint that is passive, and always available. These potential advantages must be balanced against the potential disadvantages in order to develop standards that will provide an equivalent level of safety to that intended by the regulations.

The FAA has considered the installation of inflatable lapbelts to have two primary safety concerns: first, that they perform properly under foreseeable operating conditions, and second, that they do not perform in a manner or at such times as would constitute a hazard to the airplane or occupants. This latter point has the potential to be the more rigorous of the requirements, owing to the active nature of the system. With this philosophy in mind, the FAA has considered the following as a basis for the special conditions.

The inflatable lapbelt will rely on electronic sensors for signaling and pyrotechnic charges for activation so that it is available when needed. These same devices could be susceptible to inadvertent activation, causing deployment in a potentially unsafe manner. The consequences of such deployment must be considered in establishing the reliability of the system. BF Goodrich Aerospace must substantiate that the effects of an inadvertent deployment in flight are either not a hazard to the airplane, or that such deployment is an extremely improbable occurrence (less than 10^{-9} per flight hour). The effect of an inadvertent deployment on a passenger or crewmember that might be positioned close to the airbag should also be considered. The person could be either standing or sitting. A minimum reliability level will have to be established for this case, depending upon the consequences, even if the effect on the airplane is negligible.

The potential for an inadvertent deployment could be increased as a result of conditions in service. The installation must take into account wear and tear so that the likelihood of an inadvertent deployment is not increased to an unacceptable level. In this context, an appropriate inspection interval and self-test capability are considered necessary. Other outside influences are lightning and high intensity electromagnetic fields (HIRF). Since the sensors that trigger deployment are electronic, they must be protected from the effects of these threats. Existing Special Conditions No. 25–ANM–78 regarding lightning and HIRF are therefore applicable. For the purposes of compliance with those special conditions, if inadvertent deployment could cause a hazard to the airplane, the airbag is considered a critical system; if inadvertent deployment could cause injuries to persons, the airbag should be considered an essential system. Finally, the airbag installation should be protected from the effects of fire, so that an additional hazard is not created by, for example, a rupture of the pyrotechnic squib.

In order to be an effective safety system, the airbag must function properly and must not introduce any additional hazards to occupants as a result of its functioning. There are several areas where the airbag differs from traditional occupant protection systems, and requires special conditions to ensure adequate performance.

Because the airbag is essentially a single use device, there is the potential that it could deploy under crash conditions that are not sufficiently severe as to require head injury protection from the airbag. Since an actual crash is frequently composed of a series of impacts before the airplane comes to rest, this could render the airbag useless if a larger impact follows the initial impact. This situation does not exist with energy absorbing pads or upper torso restraints, which tend to provide protection according to the severity of the impact. Therefore, the airbag installation should be such that the airbag will provide protection when it is required, and will not expend its protection when it is not needed. There is no requirement for the airbag to provide protection for multiple impacts, where more than one impact would require protection.

Since each occupant's restraint system provides protection for that occupant only, the installation must address seats that are unoccupied. It will be necessary to show that the required protection is provided for each occupant regardless of the number of occupied seats, and considering that unoccupied seats may have lapbelts that are active.

Since a wide range of occupants could occupy a seat, the inflatable lapbelt should be effective for a wide range of occupants. The FAA has historically considered the range from the fifth percentile female to the ninety-fifth percentile male as the range of occupants that must be taken into account. In this case, the FAA is proposing consideration of a broader range of occupants, due to the nature of the lapbelt installation and its close proximity to the occupant. In a similar vein, these persons could have assumed the brace position, for those accidents where an impact is anticipated. Test data indicate that occupants in the brace position do not require supplemental protection, and so it would not be necessary to show that the inflatable lapbelt will enhance the brace position. However, the inflatable lapbelt must not introduce a hazard in that case by deploying into the seated, braced occupant.

Another area of concern is the use of seats so equipped by children whether lap-held, in approved child safety seats, or occupying the seat directly. Similarly, if the seat is occupied by a pregnant woman, the installation needs to address such usage, either by demonstrating that it will function properly, or by adding appropriate limitation on usage.

Since the inflatable lapbelt will be electrically powered, there is the possibility that the system could fail due to a separation in the fuselage. Since this system is intended as crash/post-crash protection means, failure due to fuselage separation is not acceptable. As with emergency lighting, the system should function properly if such a separation occurs at any point in the fuselage. A separation that occurs at the location of the inflatable lapbelt would not have to be considered.

Since the inflatable lapbelt is likely to have a large volume displacement, the inflated bag could potentially impede egress of passengers. Since the bag deflates to absorb energy, it is likely that an inflatable lapbelt would be deflated at the time that persons would be trying to leave their seats. Nonetheless, it is considered appropriate to specify a time interval after which the inflatable lapbelt may not impede rapid egress. Ten seconds has been chosen as a reasonable time since this corresponds to the maximum time allowed for an exit to be openable. In actuality, it is unlikely that an exit would be prepared this quickly in an accident severe enough to warrant deployment of the inflatable lapbelt, and the inflatable lapbelt will likely deflate much quicker than ten seconds.

Finally, it should be noted that the special conditions are certification applied to the inflatable lapbelt system as installed. The special conditions are not an installation approval. Therefore, while the special conditions relate to each such system installed, the overall installation approval is a separate finding, and must consider the combined effects of all such systems installed.

Type Certification Basis

Under the provisions of 14 CFR 21.101, BF Goodrich Aerospace must show that the Model 777 series airplanes, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate No. T00001SE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The regulations incorporated by reference in Type Certificate No. T00001SE are as follows: Amendments 25–1 through 25–82 for the Model 777–200 and Amendments 25–1 through 25–86 with exceptions for the Model 777–300. The U.S. type certification basis for the Model 777 is established in accordance with 14 CFR 21.29 and 21.17 and the type certification application date. The U.S. type certification basis is listed in Type Certificate Data Sheet No. T00001SE.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25 as amended) do not contain adequate or appropriate safety standards for Boeing Model 777 series airplanes because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Boeing Model 777 must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Model 777 series airplanes will incorporate the following novel or unusual design features: BF Goodrich is proposing to install an inflatable lapbelt on certain seats of Boeing Model 777 series airplanes, in order to reduce the potential for head injury in the event of an accident. The inflatable lapbelt works similar to an automotive airbag, except that the airbag is integrated with the lap belt of the restraint system.

The CFR states the performance criteria for head injury protection in objective terms. However, none of these criteria are adequate to address the specific issues raised concerning seats with inflatable lapbelts. The FAA has therefore determined that, in addition to the requirements of 14 CFR part 25, special conditions are needed to address requirements particular to installation of seats with inflatable lapbelts.

Accordingly, in addition to the passenger injury criteria specified in § 25.785, these special conditions are adopted for the Boeing Model 777 series airplanes equipped with inflatable lapbelts. Other conditions may be developed, as needed, based on further FAA review and discussions with the manufacturer and civil aviation authorities.

Discussion

From the standpoint of a passenger safety system, the airbag is unique in that it is both an active and entirely autonomous device. While the automotive industry has good experience with airbags, the conditions of use and reliance on the airbag as the sole means of injury protection are quite different. In automobile installations, the airbag is a supplemental system and works in conjunction with an upper torso restraint. In addition, the crash event is more definable and of typically shorter duration, which can simplify the activation logic. The airplane-operating environment is also quite different from automobiles and includes the potential for greater wear and tear, and unanticipated abuse conditions (due to galley loading, passenger baggage, etc.); airplanes also operate where exposure to high intensity electromagnetic fields could affect the activation system.

The following special conditions can be characterized as addressing either the safety performance of the system, or the system's integrity against inadvertent activation. Because a crash requiring use of the airbags is a relatively rare event, and because the consequences of an inadvertent activation are potentially quite severe, these latter requirements are probably the more rigorous from a design standpoint.

Discussion of Comments

Notice of proposed special conditions No. 25–99–10–SC for the Boeing Model 777 series airplanes was published in the **Federal Register** on December 13, 1999 (64 FR 69425). Three comments were received. One commenter concurred with the special conditions as proposed.

One commenter states that the requirement of condition #4 was vague, and that "wear and tear" needed further definition. The commenter suggests that the special condition be specific as to the level of wear and tear that must be addressed. The commenter indicates that operational inspections would be difficult and require changes to manufacturers' manuals. The commenter notes that the special condition seems to be focused on

pyrotechnically operated designs, and that this might not always be the case.

The FAA agrees that the term "wear and tear" is not particularly specific, and this was intentional. Depending on where certain components of the system are installed, their susceptibility to in-service wear and tear will vary. It is the intent of this requirement that the inflatable lapbelt will not deploy as a result of foreseeable in-service conditions, including interaction with passengers, if applicable, use of service carts, if applicable, and so on. There are regulatory requirements for instructions for continued airworthiness that continue to apply and are not a substitute for these special conditions. The device in question is pyrotechnically activated and, therefore, this condition was written with that in mind. Other designs that might require a different condition, or might not require a similar consideration, are not the subject of this special condition. No change is made to the special condition.

One commenter felt that special conditions #4 and #7 should also address the storage and transportation of the unit or its components, relative to inadvertent deployment. While this is a legitimate concern, it is not relevant to these special conditions, since it is not an issue for approval of the inflatable lapbelt on an airplane. Existing regulations in Title 49 of CFR address storage and transportation of hazardous materials.

One commenter states that the requirement of condition #5 was impractical as stated, since no injury severity level was specified. One commenter points out that a bruise or rash could be considered an injury under the current wording, and would therefore make the inflatable lapbelt unacceptable. The commenter suggests that the requirement should be stated as a performance criterion. For example, a requirement that deployment of the inflatable lapbelt should not cause an injury that would adversely affect the ability to egress the airplane.

Another commenter notes that in promotional literature the inflatable lapbelt appears to deploy from between the occupant and the seatbelt, and is characterized as a pre-tensioning device. The commenter considers that this could introduce new injury mechanisms that should be considered. In addition, the commenter questions whether this type of deployment could alter the position of the seatbelt itself, so that it bears on soft tissue, rather than the hips.

The intent of the requirement is to prevent the introduction of injury mechanisms that did not exist previously, or would not be present on a seat that complied with the regulations directly. In this regard, injuries that would affect rapid egress are certainly of concern. Bruises or friction injuries would not be considered new injury mechanisms. However, there could be other injury mechanisms that might not have a direct impact on rapid egress, but could still be debilitating. The special condition requires that the inflatable lapbelt not introduce injury mechanisms and that rapid egress not be affected. With regard to the manner in which the airbag deploys, the FAA agrees that this should be considered as part of the special conditions. In fact, the concern expressed by the commenter is precisely the sort of thing the special conditions are intended to address, *i.e.*, the introduction of injury mechanisms.

One commenter states that consideration should be given to potential injury resulting from an airbag that appears not to provide full coverage to the head. It is not clear what change to the special conditions the commenter intended as a result of this suggestion. The performance of the inflatable lapbelt must be assessed by actual test. Therefore, whether or not the airbag provides full coverage to the head will be evident from tests and, of course, the acceptability of this must be assessed. No change is made to the special conditions.

One commenter questioned the origin of the 10-second standard proposed in condition #8, and whether that standard applied equally to accidents that consisted of single and multiple impacts. The commenter also states that this requirement must be related to other time critical requirements in the regulations, such as those for exit opening, escape slide deployment and overall airplane evacuation time.

The requirement as written was intended to address a representative accident scenario, from initial impact until the airplane comes to rest. The reason that a specific time interval was chosen was in consideration of the fact that an evacuation cannot take place simultaneously with the accident. The 10-second interval was established based on FAA review of both test and accident data considering the time from impact until an airplane comes to rest, coupled with the time needed to prepare exits and escape slides for evacuation. Therefore, whether an accident consists of a single impact or several, 10 seconds after the device deploys, it should not impede rapid egress of occupants. This includes occupants of seats adjacent to deployed devices, as well as occupants of the seat in which the device deploys. No change is made to this provision. There is no need to further correlate this requirement to other evacuation time-related requirements, since there is no conflict or incompatibility.

One commenter notes that promotional literature implies that the inflatable lapbelt will have an end release buckle. The commenter questions whether this is appropriate in an aviation application and whether an injured person would be able to release such a buckle.

The FAA considers the utility and functionality of the buckle itself as not requiring special conditions. Any restraint system buckle must be demonstrated to be in compliance with the applicable requirements, whether it releases from the center or the end. Therefore, the fact that this restraint system is also equipped with an airbag device has no bearing on the buckle position assessment, other than as it relates to egress. Egress issues are already covered in condition #8.

Applicability

As discussed above, these special conditions are applicable to the Model 777 series airplanes. Should BF Goodrich apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate No. T00001SE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on the Boeing Model 777 series airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety, Reporting and recordkeeping requirements.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Special Conditions

Accordingly, pursuant to the authority delegated to me by the Administrator, the following special conditions are issued as part of the type certification basis for the Boeing Model 777 series airplanes modified by BF Goodrich Aerospace by installing inflatable lapbelts.

1. *Seats With Inflatable Lapbelts.* It must be shown that the inflatable lapbelt will deploy and provide protection under crash conditions where it is necessary to prevent serious head injury. The means of protection must take into consideration a range of stature from a two-year-old child to a ninety-fifth percentile male. The inflatable lapbelt must provide a consistent approach to energy absorption throughout that range. In addition, the following situations must be considered:

a. The seat occupant is holding an infant.

b. The seat occupant is a child in a child restraint device.

c. The seat occupant is a child not using a child restraint device.

d. The seat occupant is a pregnant woman.

2. The inflatable lapbelt must provide adequate protection for each occupant regardless of the number of occupants of the seat assembly, considering that unoccupied seats may have active seatbelts.

3. The design must prevent the inflatable lapbelt from being either incorrectly buckled or incorrectly installed such that the airbag would not properly deploy. Alternatively, it must be shown that such deployment is not hazardous to the occupant, and will provide the required head injury protection.

4. It must be shown that the inflatable lapbelt system is not susceptible to inadvertent deployment as a result of wear and tear, or inertial loads resulting from in-flight or ground maneuvers (including gusts and hard landings), likely to be experienced in service.

5. Deployment of the inflatable lapbelt must not introduce injury mechanisms to the seated occupant, or result in injuries that could impede rapid egress. This assessment should include an occupant who is in the brace position when it deploys and an occupant whose belt is loosely fastened.

6. It must be shown that an inadvertent deployment, that could cause injury to a standing or sitting person, is improbable.

7. It must be shown that inadvertent deployment of the inflatable lapbelt, during the most critical part of the flight, will either not cause a hazard to the airplane or is extremely improbable.

8. It must be shown that the inflatable lapbelt will not impede rapid egress of occupants 10 seconds after its deployment.

9. The system must be protected from lightning and HIRF. The threats specified in Special Condition No. 25–ANM–78 are incorporated by reference for the purpose of measuring lightning and HIRF protection. For the purposes of complying with HIRF requirements, the inflatable lapbelt system is considered a "critical system" if its deployment could have a hazardous effect on the airplane; otherwise it is considered an "essential" system.

10. The inflatable lapbelt must function properly after loss of normal aircraft electrical power, and after a transverse separation of the fuselage at the most critical location. A separation at the location of the lapbelt does not have to be considered.

11. It must be shown that the inflatable lapbelt will not release hazardous quantities of gas or particulate matter into the cabin.

12. The inflatable lapbelt installation must be protected from the effects of fire such that no hazard to occupants will result.

13. There must be a means for a crewmember to verify the integrity of the inflatable lapbelt activation system prior to each flight or it must be demonstrated to reliably operate between inspection intervals.

Issued in Renton, Washington, on March 20, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM–100.

[FR Doc. 00–7633 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–57–AD; Amendment 39–11632; AD 2000–05–22]

RIN 2120–AA64

Airworthiness Directives; CFM International CFM56–2, –2A, –2B, –3, –3B, and –3C Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to CFM International CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines. This amendment requires a one-time eddy current inspection (ECI) for cracks in the bolt holes of high pressure turbine (HPT) front rotating air seals. This amendment is prompted by reports of machining anomalies in a bolt hole that led to an HPT front rotating air seal failure. The actions specified by this AD are intended to detect cracks in the bolt holes of HPT front rotating air seals, which can lead to an uncontained engine failure and damage to the aircraft.

DATES: Effective May 2, 2000.

The incorporation by reference of certain publications in this rule is approved by the Director of the Federal Register as of May 2, 2000.

ADDRESSES: The service information referenced in this AD may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800, fax (513) 552–2816. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: James Rosa, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7152, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to CFM International CFM56–2, –2A, –2B, –3, –3B, and –3C Series Turbofan Engines was published in the **Federal Register** on December 13, 1999 (64 FR 69248). That action proposed to require a one-time eddy current inspection (ECI) for cracks in the bolt holes of high pressure turbine (HPT) front rotating air seals. That action was prompted by reports of machining anomalies in a bolt hole that led to an HPT front rotating air seal failure. That condition, if not corrected could result in cracks in the bolt holes of HPT front rotating air seals, which can lead to an uncontained engine failure and damage to the aircraft.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

There are approximately 121 engines of the affected design in the worldwide fleet. The FAA estimates that 13 engines installed on aircraft of US registry will be affected by this AD, that it would take approximately 300 work hours per engine to accomplish the actions, and that the average labor rate is $60 per work hour. Based on these figures, the

total cost impact of the AD on US operators is estimated to be $234,000.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–05–22 CFM International: Amendment 39–11632. Docket 99–NE–57–AD.

Applicability: CFM International (CFMI) CFM56–2, –2A, –2B, –3, –3B, and –3C series turbofan engines, installed on but not limited to McDonnell Douglas DC–8 series, Boeing 737 series, as well as Boeing E–3, E–6, and KC–135 (Military) series airplanes.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect cracks in the bolt holes of high pressure turbine (HPT) front rotating air seals, which can lead to an uncontained engine failure and damage to the aircraft, accomplish the following:

One-Time Eddy Current Inspections (ECI) Based Upon Engine Model and Thrust Ratings

(a) Perform a one-time ECI for cracks in the bolt holes of HPT front rotating air seals, part number 1282M72P03, and, if necessary, replace with serviceable parts, as follows:

CFM56–3 Series

(1) For CFM56–3–B1 engine nameplate models with HPT front rotating air seals listed by serial number (S/N) in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C Service Bulletin (SB) 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraph (a)(4)(i) or (a)(4)(ii) of this AD, as applicable.

(2) For CFM56–3B–2 models with maximum thrust limited to 20,100 or 18,500 pounds by the flight management computer (FMC) and aircraft flight manual (AFM), with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraph (a)(4)(i) or (a)(4)(ii) of this AD, as applicable.

(3) For CFM56–3C–1 models with maximum thrust limited to 20,100 or 18,500 pounds by the FMC and AFM, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraph (a)(4)(i) or (a)(4)(ii), as applicable.

Compliance Times for (a)(1), (a)(2), and (a)(3)

(4) Use the following compliance times for the engine models listed in paragraphs (a)(1), (a)(2), and (a)(3) of this AD:

(i) For HPT front rotating air seals with less than 10,000 cycles since new (CSN) on the effective date of this AD, inspect at the next engine shop visit after accumulating 4,000 CSN, not to exceed 13,000 CSN.

(ii) For HPT front rotating air seals with 10,000 CSN or more on the effective date of this AD, inspect at the next engine shop visit prior to accumulating 3,000 cycles-in-service (CIS) after the effective date of this AD, or prior to accumulating 20,000 CSN, whichever occurs first.

(5) For CFM56–3B–2 engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraphs (a)(7)(i), or (a)(7)(ii) of this AD, as applicable.

(6) For CFM56–3C–1 models with maximum thrust limited to 22,100 pounds by the FMC and AFM, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, and in accordance with the intervals listed in paragraphs (a)(7)(i), or (a)(7)(ii) of this AD, as applicable.

Compliance Times for (a)(5) and (a)(6)

(7) Use the following compliance times for the engine models listed in paragraphs (a)(5) and (a)(6) of this AD:

(i) For HPT front rotating air seals with less than 9,800 CSN on the effective date of this AD, inspect at the next engine shop visit after accumulating 4,000 CSN, not to exceed 12,800 CSN.

(ii) For HPT front rotating air seals with 9,800 CSN or more on the effective date of this AD, inspect at the next engine shop visit prior to accumulating 3,000 CIS after the effective date of this AD, or prior to accumulating 15,800 CSN, whichever occurs first.

(8) For CFM56–3C–1 engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, as follows:

(i) For HPT front rotating air seals with less than 9,100 CSN on the effective date of this AD, inspect at the next engine shop visit after accumulating 4,000 CSN, not to exceed 12,100 CSN.

(ii) For HPT front rotating air seals with 9,100 CSN or more on the effective date of this AD, inspect at the next engine shop visit prior to accumulating 3,000 CIS after the effective date of this AD, or prior to accumulating 15,100 CSN, whichever occurs first.

Uninstalled Parts

(9) Prior to installation in CFM56–3/3B/3C series engines, inspect uninstalled parts listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999, in accordance with Paragraph 2, Accomplishment Instructions, of that SB.

CFM56–2 Series

(10) For CFM56–2 engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–2 SB 72–869, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, as follows:

(i) For HPT front rotating air seals with less than 9,100 CSN on the effective date of this AD, inspect at the next engine shop visit after accumulating 4,000 CSN, not to exceed 10,100 CSN.

(ii) For HPT front rotating air seals with 9,100 CSN or more on the effective date of this AD, inspect at the next engine shop visit prior to accumulating 1,000 CIS after the effective date of this AD, or prior to accumulating 13,100 CSN, whichever occurs first.

Uninstalled Parts

(11) Prior to installation in CFM56–2 series engines, inspect uninstalled parts listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–2 SB 72–869, dated November 12, 1999, in accordance with Paragraph 2, Accomplishment Instructions, of that SB.

CFM56–2A Series

(12) For CFM56–2A engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFM56–2A SB 72–470, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, after accumulating 3,000 CSN but before accumulating 6,000 CSN.

Uninstalled Parts

(13) Prior to installation in CFM56–2A series engines, inspect uninstalled parts listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–2A SB 72–470, dated November 12, 1999, in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB.

CFM56–2B Series

(14) For CFM56–2B engine nameplate models, with HPT front rotating air seals listed by S/N in paragraph 1.A(1), Effectivity, of CFM56–2B SB 72–611, dated November 12, 1999, inspect in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB, after accumulating 3,000 CSN but before accumulating 6,000 CSN.

Uninstalled Parts

(15) Prior to installation in CFM56–2B series engines, inspect uninstalled parts listed by S/N in paragraph 1.A(1), Effectivity, of CFMI CFM56–2B SB 72–611, dated November 12, 1999, in accordance with the procedures described in Paragraph 2, Accomplishment Instructions, of that SB.

Replace Cracked Parts

(16) Prior to further flight, replace cracked HPT front rotating air seals with serviceable parts.

Definition

(b) For the purpose of this AD, an engine shop visit is defined as the next time, after the effective date of this AD, an engine is in the shop for the purpose of maintenance or inspection.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Incorporation by Reference

(d) The inspections shall be done in accordance with the following CFMI SB's: CFMI CFM56–3/3B/3C SB 72–922, dated November 12, 1999; CFMI CFM56–2 SB 72–869, dated November 12, 1999; CFM56–2A SB 72–470, dated November 12, 1999, and CFM56–2B SB 72–611, dated November 12, 1999. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from CFM International, Technical Publications Department, 1 Neumann Way, Cincinnati, OH 45215; telephone (513) 552–2800, fax (513) 552–2816. Copies may be inspected at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Ferry Flights

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the aircraft to a location where the inspection requirements of this AD can be accomplished.

(f) This amendment becomes effective on May 2, 2000.

Issued in Burlington, Massachusetts, on March 7, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–6552 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–256–AD; Amendment 39–11587; AD 2000–04–05]

RIN 2120–AA64

Airworthiness Directives; Israel Aircraft Industries, Ltd., Model Astra SPX Series Airplanes; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document adds a line of text that was inadvertently omitted from the applicability of airworthiness directive (AD) 2000–04–05 that applies to certain Israel Aircraft Industries, Ltd., Model Astra SPX series airplanes which was published on February 23, 2000 (65 FR 8848). That AD currently requires a one-time inspection to measure the countersink angle of the bolt holes in the lower scissors fitting of the horizontal stabilizer, and corrective actions, if necessary. This document corrects the applicability to include the serial numbers for Model Astra SPX series airplanes. This correction is necessary to ensure that the appropriate operators accomplish the requirements of the AD.

DATES: Effective March 29, 2000.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of March 29, 2000 (65 FR 8848, February 23, 2000).

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: Airworthiness Directive (AD) 2000–04–05, amendment 39–11587, applicable to certain Israel Aircraft Industries, Ltd., Model Astra SPX series airplanes, was published in the **Federal Register** on February 23, 2000 (65 FR 8848). That AD requires a one-time inspection to measure the countersink angle of the bolt holes in the lower scissors fitting of the horizontal stabilizer, and corrective actions, if necessary.

As published, the applicability of AD 2000–04–05 inadvertently omitted "serial numbers 085 through 112 inclusive" for Israel Aircraft Industries, Ltd., Model Astra SPX series airplanes.

Since no other part of the regulatory information has been changed, the final rule is not being republished.

The effective date of this AD remains March 29, 2000.

§ 39.13 [Corrected]

1. On page 8848, in the third column, the applicability paragraph that precedes Note 1 of AD 2000–04–05 is corrected to read as follows:

* * * * *

Applicability: Model Astra SPX series airplanes, serial numbers 085 through 112 inclusive, certificated in any category.

* * * * *

Issued in Renton, Washington, on March 22, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7614 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 173

[Docket No. 99F–5523]

Secondary Direct Food Additives Permitted in Food for Human Consumption

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on poultry carcass parts. This action is in response to a petition filed by Alcide Corp.

DATES: This rule is effective March 28, 2000. Submit written objections and requests for a hearing by April 27, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Robert L. Martin, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204–0001, 202–418–3074.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 6, 2000 (65 FR 782), FDA announced that a food additive petition (FAP 0A4705) had been filed by Alcide Corp., 8561 154th Ave. NE., Redmond, WA 98052. The petition proposed to amend the food additive regulation in § 173.325 (21 CFR 173.325) to provide for the safe use of acidified sodium chlorite solutions as an antimicrobial agent on poultry carcass parts.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and, therefore, (3) the regulation in § 173.325 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

In the notice of filing, FDA gave interested parties an opportunity to submit comments on the petitioner's environmental assessment. FDA received no comments in response to that notice.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 27, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects 21 CFR Part 173

Food additives.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 173 is amended as follows:

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR part 173 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348.

2. Section 173.325 is amended by revising paragraph (b) to read as follows:

§ 173.325 Acidified sodium chlorite solutions.

* * * * *

(b)(1) The additive is used as an antimicrobial agent in poultry processing water in accordance with current industry practice under the following conditions:

(i) As a component of a carcass spray or dip solution prior to immersion of the intact carcass in a prechiller or chiller tank;

(ii) In a prechiller or chiller solution for application to the intact carcass;

(iii) As a component of a spray or dip solution for application to poultry carcass parts; or

(iv) In a prechiller or chiller solution for application to poultry carcass parts.

(2) When used in a spray or dip solution, the additive is used at levels that result in sodium chlorite concentrations between 500 and 1,200 parts per million (ppm), in combination with any GRAS acid at a level sufficient to achieve a solution pH of 2.3 to 2.9.

(3) When used in a prechiller or chiller solution, the additive is used at levels that result in sodium chlorite concentrations between 50 and 150 ppm, in combination with any GRAS acid at levels sufficient to achieve a solution pH of 2.8 to 3.2.

* * * * *

Dated: March 20, 2000.

L. Robert Lake

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7536 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 98F–0567]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the expanded safe use of ethylene-octene-1 copolymers, containing not less than 50 weight-percent of polymer units derived from ethylene, as articles or components of food-contact articles. This action is in response to a petition filed by The Dow Chemical Co.

DATES: This rule is effective March 28, 2000. Submit written objections and requests for a hearing by April 27, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3091.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 28, 1998 (63 FR 40297), FDA announced that a petition (FAP 8B4601) had been filed by The Dow Chemical Co., 2030 Dow Center, Midland, MI 48674. The petition proposed to amend the food additive regulations in § 177.1520 *Olefin polymers* (21 CFR 177.1520) to expand the safe use of ethylene-octene-1 copolymers as articles or components of articles contacting food by lowering the required level of polymer units derived from ethylene to not less than 50 weight-percent.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 27, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379(e).

2. Section 177.1520 is amended by adding paragraph (a)(3)(i)(*a*)(*4*), and in the table in paragraph (c) by adding item "3.2c" in numerical order to read as follows:

§ 177.1520 Olefin polymers.

* * * * *

(a) * * *

(3) * * *

(i) * * *

(*a*) * * *

(*4*) Olefin basic copolymers manufactured by the catalytic polymerization of ethylene and octene-1 shall contain not less than 50 weight-percent of polymer units derived from ethylene.

* * * * *

(c) * * *

environmental impact statement is not

which a hearing is requested shall

authority delegated to the Commissioner

Olefin polymers	Density	Melting Poing (MP) or softening point (SP) (*Degrees Centigrade*)	Maximum extractable fraction (expressed as percent by weight of the polymer in *N*-hexane at specified temperatures	Maximum soluble fraction (expressed as percent by weight of polymer) in xylene at specified temperatures
* * *	*	*	*	* *
3.2c Olefin copolymers described in paragraph (a)(3)(i)(*a*)(*4*) of this section have a melt flow index no greater than 50 grams per 10 minutes as determined by the method described in paragraph (d)(7) of this section. Articles manufactured using these polymers may be used with all types of food under conditions of use C through H as described in table 2 of § 176.170(c) of this chapter.	0.85–0.92			
* * *	*	*	*	* *

* * * * *

Dated: February 29, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7540 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–0126]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations for the safe use of N,N′″–1,2-ethanediylbis [N–[3–[[4,6-bis [butyl (1,2,2,6,6-pentamethyl-4-piperidinyl) amino] -1,3,5-triazin-2-yl]amino]propyl]- N′,N″-dibutyl-N′,″-bis (1,2,2,6,6-pentamethyl-4-piperidinyl) -1,3,5-triazine-2,4,6-triamine] as a light/thermal stabilizer in olefin polymers intended for use in contact with food. This action is in response to a petition filed by Ciba Specialty Chemicals Corp.

DATES: This rule is effective March 28, 2000. Submit written objections and requests for a hearing by April 27, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Ellen M. Waldron, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3089.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of February 3, 1999 (64 FR 5299), FDA announced that a food additive petition (FAP 9B4639) had been filed by Ciba Specialty Chemicals Corp., 540 White Plains Rd., Tarrytown, NY 10591–9005. The petition proposed to amend the food additive regulations in § 178.2010 Antioxidants and/or stabilizers for polymers (21 CFR 178.2010) to provide for the safe use of N,N′″–[1,2-ethanediylbis [[[4,6-bis [butyl (1,2,2,6,6-pentamethyl-4-piperidinyl) amino] -1,3,5-triazin-2-yl]imino] -3,1-propanediyl]] bis[N′,N″-dibutyl-N′,N″-bis (1,2,2,6,6-pentamethyl-4-piperidinyl) -1,3,5-triazine-2,4,6-triamine] as a light/thermal stabilizer in olefin polymers intended for use in contact with food. After further evaluation, the agency has determined that the correct name for the subject additive is N,N′″–1,2-ethanediylbis[N–[3-[[4,6-bis[butyl(1,2,2,6,6-pentamethyl-4-piperidinyl)amino]-1,3,5-triazin-2-yl]amino]propyl]-N′,N″-dibutyl-N′,N″-bis(1,2,2,6,6-pentamethyl-4-piperidinyl)-1,3,5-triazine-2,4,6-triamine] (CAS Reg. No. 106990–43–6) in accordance with the Chemical Abstracts Service (CAS) 9th Collective Index. This latest CAS name will be used in the regulation.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive as a light/thermal stabilizer in olefin polymers intended for use in contact with food is safe, and (2) the additive will have the intended technical effect. Therefore, the regulations in § 178.2010 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the potential environmental effects of this rule as announced in the notice of filing for FAP 9B4639 (64 FR 5299). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 27, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.2010 is amended in the table in paragraph (b) by alphabetically adding an entry under the headings "Substances" and "Limitations" to read as follows:

§ 178.2010 Antioxidants and/or stabilizers for polymers.

* * * * *

(b) * * *

Substances	Limitations
* * *	* * *
N,N′″–1,2–Ethanediylbis[N–[3–[[4,6-bis[butyl(1,2,2,6,6-pentamethyl-4-piperidinyl)amino]-1,3,5-triazin-2-yl]amino]propyl]-N′,N″-dibutyl-N′,N″-bis(1,2,2,6,6-pentamethyl-4-piperidinyl)-1,3,5-triazine-2,4,6-triamine] (CAS Reg. No. 106990–43–6)	For use only: 1. At levels not to exceed 0.06 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter, items 1.1a, 1.1b, 1.2, or 1.3. The finished polymers may only be used in contact with food of the Types III, IV–A, V, VI–C, VII–A, and IX as described in table 1 of § 176.170(c) of this chapter, and under conditions of use A through H as described in table 2 of § 176.170(c) of this chapter. 2. At levels not to exceed 0.08 percent by weight of olefin polymers complying with § 177.1520(c) of this chapter. The finished polymers may only be used in contact with food of the Types I, II, IV–B, VI–A, VI–B, VII–B, and VIII as described in table 1 of § 176.170(c) of this chapter, and under conditions of use A through H as described in table 2 of § 176.170(c) of this chapter.
* * *	* * *

Dated: March 8, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7537 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 99F–0298]

Indirect Food Additives: Adjuvants, Production Aids, and Sanitizers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aluminum, hydroxybis[2,4,8,10-tetrakis (1,1-dimethylethyl)-6-hydroxy-12H-dibenzo[d,g][1,3,2]dioxaphosphocin 6-oxidato]- as a clarifying agent for polypropylene and polypropylene copolymers intended for use in contact with food. This action responds to a petition filed by Asahi Denka Kogyo K.K.

DATES: This rule is effective March 28, 2000; submit written objections and requests for a hearing by April 27, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3086.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 3, 1999 (64 FR 10304), FDA announced that a food additive petition (FAP 9B4638) had been filed by Asahi Denka Kogyo K.K., 2–13, Shirahata 5-chome, Urawa City Saitama 336, Japan. The petition proposed to amend the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) to provide for the safe use of aluminum, hydroxybis[2,4,8,10-tetrakis(1,1-dimethylethyl)-6-hydroxy-12H-dibenzo[d,g][1,3,2]dioxaphosphocin 6-oxidato]- as a clarifying agent for polypropylene and polypropylene

copolymers intended for use in contact

Background

Need for Correction

FOR FURTHER INFORMATION CONTACT: Paul

copolymers intended for use in contact with food.

FDA has evaluated the data in the petition and other relevant material. Based on this information, the agency concludes that the proposed use of the additive is safe, the additive will achieve its intended technical effect, and therefore, that the regulations in § 178.3295 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 9B4638 (64 FR 10304). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time on or before April 27, 2000, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 178

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 178 is amended as follows:

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

1. The authority citation for 21 CFR part 178 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 178.3295 is amended in the table by alphabetically adding a new entry under the headings "Substances" and "Limitations" to read as follows:

178.3295 Clarifying agents for polymers.

* * * * *

Substances	Limitations
Aluminum, hydroxybis[2,4,8,10-tetrakis(1,1-dimethylethyl)-6-hydroxy-12H-dibenzo[d,g][1,3,2]dioxaphosphocin 6-oxidato]-(CAS Reg. No. 151841–65–5).	For use only as a clarifying agent at levels not to exceed 0.25 percent by weight of polypropylene and polypropylene copolymers complying with § 177.1520(c) of this chapter, items 1.1, 3.1, or 3.2. The finished polymers contact food only of types I, II, IV-B, VI-B, VII-B, and VIII as identified in Table 1 of § 176.170(c) of this chapter, under conditions of use B through H described in Table 2 of § 176.170(c) of this chapter or foods only of types III, IV-A, V, VI-A, VI-C, VII-A, and IX as identified in Table 1 of § 176.170(c) of this chapter, under conditions of use C through G described in Table 2 of § 176.170(c) of this chapter.

Dated: February 28, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7539 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8853]

RIN 1545–AV07

Recharacterizing Financing Arrangements Involving Fast-Pay Stock; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on January 10, 2000 (65 FR 1310), that recharacterize, for tax purposes, financing arrangements involving fast-pay stock.

DATES: This correction is effective January 10, 2000.

FOR FURTHER INFORMATION CONTACT: Jonathan Zelnick, (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under section 7701(l) of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8853) contain an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8853), which were the subject of FR Doc. 00–114, is corrected as follows:

§ 1.7701(l)–3 [Corrected]

1. On page 1316, in § 1.7701(l)–3(g)(2)(iii) *Example 1*, paragraph (ii)(C)(*2*), in the third column of the table, the heading "Amortizable premium" is corrected to read "Accrued discount".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5235 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8849]

RIN 1545–AW57

Section 663(c); Separate Share Rules Applicable to Estates; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Tuesday, December 28, 1999 (64 FR 72540), relating to separate share rules applicable to estates under section 663(c) of the Internal Revenue Code.

DATES: This correction is effective December 28, 1999.

FOR FURTHER INFORMATION CONTACT: Laura Howell at (202) 622–3060 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction are under 663(c) of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8849) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8849), which were the subject of FR Doc. 99–32694, is corrected as follows:

1. On page 72542, in the preamble, 3rd column, under the heading "Effective Dates", line 4, the language "with respect to decedents who die after" is corrected to read "with respect to decedents who die on or after".

§ 1.663(c)–5 [Corrected]

2. On page 72544, column 3, § 1.663(c)–5 *Example 4(i)*, lines 6 and 7, the language, "the child in the amount needed to reduce the estate taxes to zero and a bequest of the" is corrected to read "the child of the largest amount that can pass free of Federal estate tax and a bequest of the".

§ 1.663(c)–6 [Corrected]

3. On page 72545, column 3, § 1.663(c)–6, line 5, the language "decedents who die after December 28," is corrected to read "decedents who die on or after December 28,".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5236 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8859]

RIN 1545–AV44

Compliance Monitoring and Miscellaneous Issues Relating to the Low-Income Housing Credit; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Friday, January 14, 2000 (65 FR 2323), affecting owners of low-income housing projects who claim the credit and the Agencies who administer the credit..

DATES: This correction is effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Paul Handleman at (202) 622–3040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections relate to owners of low-income housing projects who claim the credit and the Agencies who administer the credit.

Need for Correction

As published, the final regulations (TD 8859) contain errors that are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8859), which were the subject of FR Doc. 00–111, is corrected as follows:

§ 1.42–5 [Corrected]

1. On page 2327, column 2, § 1.42–5(c)(1)(xi), line 14, the language "1437s" is corrected to read "1437f".

§ 1.42–6 [Corrected]

2. On page 2328, column 1, Instructional Par. 3, paragraph 1, in line 4, the language "Report"" is corrected to read "Report,"" and in line 6, the language "Report'" is corrected to read "Report,'".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5239 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8869]

RIN 1545–AU77

Subchapter S Subsidiaries; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Tuesday, January 25, 2000 (65 FR 3843), relating to the treatment of corporate subsidiaries of S corporations and interpret the rules added to the Internal Revenue Code by section 1308 of the Small Business Job Protection Act of 1996.

DATES: This correction is effective January 25, 2000.

and the treatment of distributions by an

that wish to make a section 1295

"1.195–3", and adding "1.1295–3" in its

FOR FURTHER INFORMATION CONTACT: Jeanne M. Sullivan at (202) 622–3050 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under sections 1361, 1362, and 1374 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8869) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8869), which wer the subject of FR Doc. 00–1718, is corrected as follows:

1. On page 3845, column 1, under the caption "Explanation of Provisions", line 14 from the top of the column, the language, "2 I.R.B.1, which provides that the" is corrected to read "2 I.R.B. 288, which provides that the".

§ 1.1361–4 [Corrected]

2. On page 3852, column 2, § 1.1361–4(d) *Example 3*, line 15, the language, "2000, the day after the acquisition date" is corrected to read "2002, the day after the acquisition date".

§ 1.1361–5 [Corrected]

3. On page 3853, column 1, § 1.1361–5(b)(1)(i), line 9, the language, "corporation. he tax treatment of this". is corrected to read "corporation. The tax treatment of this".

§ 1.1362–8 [Corrected]

4. On page 3855, column 3, § 1.1362–8(d) Example 2(ii), line 1, the language, "(ii) Four-fifths ($12,000/15,000) of the" is corrected to read "(ii) Four-fifths ($12,000/$15,000) of the".

5. On page 3855, column 3, § 1.1362–8(d) Example 2(ii), line 13, the language, "Under these facts, $41 ($920/1,900 of" is corrected to read " Under these facts, $41 ($920/$1,900 of".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5242 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8865]

RIN 1545–AS77

Amortization of Intangible Property; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction of final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Tuesday, January 25, 2000 (65 FR 3820), relating to the amortization of certain intangible property.

DATES: This correction is effective January 25, 2000.

FOR FURTHER INFORMATION CONTACT: John Huffman at (202) 622–3110 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under sections 167 and 197 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8865) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8865), which were the subject of FR Doc. 00–1380, is corrected as follows:

§ 1.197–2 [Corrected]

1. On page 3834, column 3, § 1.197–2(g)(3), line 22, the language, "increase. The provisions of paragraph" is corrected to read "increase, except as provided in § 1.743–1(j)(f)(i)(B)(*2*). The provisions of paragraph".

2. On page 3834, column 3, § 1.197–2(g)(4)(i), lines 10 through 13, the language, "either the curative or remedial allocation methods described in the regulations under section 704(c). See § 1.704–3(c) and (d)" is corrected to read "any of the permissible methods described in the regulations under section 704(c). See § 1.704–3".

3. On page 3834, column 1, § 1.197–2(g)(4)(ii), line 6, the language, "the intangible is not amortizable by the" is corrected to read "the intangible is not amortizable under section 197 by the ".

4. On page 3839, column 3, § 1.197–2(k) *Example 6*(i), third line from the top of the column, the language "consideration paid for all assets acquired in" is corrected to read "consideration paid excluding any amount treated as interest or original issue discount under applicable provisions of the Internal Revenue Code, for all assets acquired in".

5. On page 3839, column 3, § 1.197–2(k) *Example 6*(ii), lines 15 through 18, the language, "Although the payments under the agreement ($270,000) exceed the amount allocated to the covenant by $45,000, all of the remaining consideration ($50,000) is allocated to Class" is corrected to read "All of the remaining consideration after allocation to the covenant and other Class VI assets, ($50,000) is allocated to Class".

6. On page 3839, column 3, § 1.197–2(k) *Example 7*(ii), line 7, the language, "amecause it does not have a term of less than" is corrected to read "amount because it does not have a term of less than".

7. On page 3843, column 1, § 1.197–2(k) *Example 27*(i), lines 3 and 4, the language, "which A owns a 60-percent, and B owns a 40-percent, interest in profits and capital. A" is corrected to read "which A owns a 40-percent, and B owns a 60-percent, interest in profits and capital. A".

8. On page 3843, column 2, § 1.197–2(l)(4)(iii), line 14, the language, "before a federal court, the taxpayer must" is corrected to read "before a Federal court, the taxpayer must".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5246 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8852]

RIN 1545–AT52

Passthrough of Items of an S Corporation to Its Shareholders; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction of Correction to final regulations.

SUMMARY: This document contains a correction to a correction to final regulations which was published in the **Federal Register** on Thursday, March 9, 2000 (65 FR 12471), relating to the passthrough of items of an S corporation to its shareholders, the adjustments to the basis of stock of the shareholders,

and the treatment of distributions by an S corporation.

DATES: This correction is effective December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Martin Schaffer, Deane Burke, or David Shulman at (202) 622–3070, or Brenda Stewart at (202) 622–3120 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The correction to final regulations that are subject to this correction is under sections 1366, 1367, and 1368 of the Internal Revenue Code.

Need for Correction

As published, the correction to final regulations (TD 8852) contains a typographical error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the correction of the final regulations (TD 8852), which was the subject of FR Doc. 00–5244, is corrected as follows:

§ 1.1367–1 [Corrected]

1. On page 12471, third column, the penultimate line of the correction for § 1.1367–1, the reference "§ 1.1377(b)(1)" is corrected to read "§ 1.1377–1(b)(1)".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–6693 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8870]

RIN 1545–AV39

General Rules for Making and Maintaining Qualified Electing Fund Elections; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction of final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Monday, February 7, 2000 (65 FR 5777), relating to a passive foreign investment company (PFIC) shareholder that makes the election under section 1295 to treat the PFIC as a qualified electing fund, and for PFIC shareholders that wish to make a section 1295 election that will apply on a retroactive basis.

DATES: This correction is effective February 7, 2000.

FOR FURTHER INFORMATION CONTACT: Margaret A. Fung, (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under sections 1291, 1293, 1295 and 1298 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8870) contain errors that are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8870), which were the subject of FR Doc. 00–1892, is corrected as follows:

PART 1—[CORRECTED]

1. On page 5779, beginning in column 1, instructional Paragraph 1, and the authority citation are corrected to read as follows:

Paragraph 1. The authority citation for part 1 is amended by removing the entries for 1.1291–1T, 1.1293–1T, 1.1295–1T, and 1.1295–3T, and by adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Sec. 1.1291–1 also issued under 26 U.S.C. 1291. * * *

Sec. 1.1293–1 also issued under 26 U.S.C. 1293. * * *

Sec. 1.1295–1 also issued under 26 U.S.C. 1295.

Sec. 1.1295–3 also issued under 26 U.S.C. 1295. * * *

§ 1.1293–0 [Corrected]

2. On page 5779, column 2, a new instructional paragraph 2a. is added to read as follows:

Par. 2a. Section 1.1293–0 is amended by:

1. Removing the reference "1.1293–1T" in the introductory text of the section and adding "1.1293–1" in its place.

2. Removing the "T" and the parenthetical "(temporary)" from the entry for § 1.1293–1T.

§ 1.1295–0 [Corrected]

3. On page 5779, column 2, instruction 5 of instructional Par. 4. is corrected by removing the reference "1.195–3", and adding "1.1295–3" in its place.

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–6257 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8856]

RIN 1545–AX44

General Revision of Regulations Relating to Withholding of Tax on Certain U.S. Source Income Paid to Foreign Persons and Related Collection, Refunds, and Credits; Revision of Information Reporting and Backup Withholding Regulations; and Removal of Regulations Under Parts 1 and 35a and of Certain Regulations Under Income Tax Treaties; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to final regulations (TD 8856) which were published in the **Federal Register** on Thursday, December 30, 1999 (64 FR 73408), relating to the withholding of income tax on certain U.S. source income payments to foreign persons.

DATES: This correction is effective January 1, 2001.

FOR FURTHER INFORMATION CONTACT: Laurie Hatten-Boyd at (202) 622–3840 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections provide guidance under sections 1441, 1442, and 1443 of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8856) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8856), which were the subject of FR Doc. 99–33515, is corrected as follows:

§ 1.1441–1 [Corrected]

1. On page 73409, column 2, § 1.1441–1(f)(2)(i), line 24, the language,

"valid after December 31, 2001. The

(d) * * *

ENVIRONMENTAL PROTECTION

How does this approval affect sources

covers sources located in Indian

approvable plan in place by December

"valid after December 31, 2001. The rule" is corrected to read "valid after December 31, 2000. The rule".

§ 1.1441–6 [Corrected]

2. On page 73410, column 2, § 1.1441–6(g)(2), line 10, the language "Form 1001 or 8233 is valid on or after" is corrected to read "Form 1001 or 8233 that is valid on or after".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5247 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Information Security Oversight Office

32 CFR Part 2001

[Directive No. 1; Appendix A]

RIN 3095–AA92

Information Security Oversight Office; Classified National Security Information; Correction

AGENCY: Information Security Oversight Office (ISOO), National Archives and Records Administration (NARA).

ACTION: Final rule; correction.

SUMMARY: The Information Security Oversight Office, NARA, published in the **Federal Register** of September 13, 1999, a final rule establishing a uniform referral standard that Federal agencies must use for multi-agency declassification issues. Inadvertently, we omitted the term and definition of "Equity." This document provides the missing text.

DATES: Effective on October 13, 1999.

FOR FURTHER INFORMATION CONTACT: Steven Garfinkel, Director, ISOO. Telephone: 202–219–5250.

SUPPLEMENTARY INFORMATION: ISOO published a final rule document in the **Federal Register** of September 13, 1999, (64 FR 49388) adding a new § 2001.55 to Subpart E. The term and definition of "Equity" was inadvertently dropped from the text of the rule. This correction provides the definition for "Equity."

In the document FR 99–23800 published on September 13, 1999, (99 FR 49388) make the following correction.

On page 49389, in the second column, in § 2001.55, paragraph (d), add the definition of "Equity" in alphabetical order to read as follows:

§ 2001.55 Document referral.

* * * * *

(d) * * *

"*Equity* means information originally classifed by or under the control of an agency, as control is defined in section 1.1(b) of E.O. 12958."

* * * * *

Dated: March 22, 2000.

John W. Carlin,

Archivist of the United States.

[FR Doc. 00–7604 Filed 3–27–00; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD059–3049a; FRL–6564–8]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Withdrawal of Direct Final Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Because we received adverse comments, EPA is withdrawing the direct final rule to approve Maryland's Post-1996 Rate-of-Progress plan for the Cecil County portion of the Philadelphia-Wilmington-Trenton severe ozone nonattainment area. In the direct final rule published on February 3, 2000 (65 FR 5252), we stated that if we received adverse comment by March 6, 2000, we would publish a timely withdrawal in the **Federal Register**. EPA subsequently received adverse comments. We will address those comments in a final rule based upon the proposed rule also published on February 3, 2000 (65 FR 5296). As stated in the parallel proposal, EPA will not institute a second comment period on this action.

DATES: The addition of 40 CFR 52.1075(h) and 52.1076(e) is withdrawn as of March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Kristeen Gaffney (215) 814–2092.

SUPPLEMENTARY INFORMATION:

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Ozone.

Dated: March 19, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

Accordingly, the addition of 40 CFR 52.1075(h) and 52.1076(e) is withdrawn as of March 28, 2000.

[FR Doc. 00–7625 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket No. ID–01–0001; FRL–6566–2]

Approval and Promulgation of Municipal Solid Waste Landfills State Plan for Designated Facilities and Pollutants: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving the State of Idaho's section 111(d) State Plan for controlling emissions from existing Municipal Solid Waste (MSW) Landfills. The plan was submitted on December 16, 1999, to fulfill the requirements of section 111(d) of the Clean Air Act. The State Plan adopts and implements the Emissions Guidelines applicable to existing MSW Landfills, and establishes emission limits and controls for sources which commenced construction, reconstruction, or modification before May 30, 1991. EPA has determined that Idaho's State Plan meets CAA requirements and hereby approves this State Plan, thus making it federally enforceable.

DATES: This action will be effective on May 30, 2000 without further notice, unless EPA receives relevant adverse comments by April 27, 2000. If EPA receives such comments, then it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that this rule will not take effect.

ADDRESSES: Written comments should be addressed to: Catherine Woo, US EPA, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101.

Copies of materials submitted to EPA may be examined during normal business hours at the following location: US EPA, Region X, Office of Air Quality, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Catherine Woo, US EPA, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, Washington 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: Throughout this document, whenever we, us or our is used, this refers to EPA. Information regarding this action is presented in the following order:

I. EPA Action
What action is EPA taking today?
Why is EPA taking this action?
Who is affected by Idaho's State Plan?
How does this approval affect sources located in Indian Country?
How does this approval relate to the Federal Plan?
II. Background
What is a State Plan?
What is a MSW Landfills State Plan?
Why are we requiring Idaho to submit a MSW Landfills State Plan?
What are the requirements for a MSW Landfills State Plan?
III. Idaho's State Plan
What is contained in the Idaho State Plan?
What approval criteria did we use to evaluate Idaho's State Plan?
IV. EPA Rulemaking Action
V. Administrative Requirements

I. EPA Action

What Action Is EPA Taking Today?

We are approving the State of Idaho's section 111(d) State Plan for controlling emissions from existing Municipal Solid Waste (MSW) Landfills. Idaho submitted its State Plan on December 16, 1999, to fulfill the requirements of section 111(d) of the Clean Air Act (CAA). The State Plan adopts and implements the Emissions Guidelines (EG) applicable to existing MSW Landfills, and establishes emission limits and controls for sources which commenced construction, reconstruction, or modification before May 30, 1991. This approval, once effective, will make the Idaho MSW Landfills rules included in the plan federally enforceable.

Why Is EPA Taking This Action?

We have evaluated Idaho's MSW Landfills State Plan for consistency with the CAA, EPA guidelines and policy. We have determined that Idaho's State Plan meets all requirements, and, therefore, we are approving Idaho's plan to implement and enforce the standards applicable to existing MSW Landfills.

Who Is Affected by Idaho's State Plan?

Idaho's State Plan regulates all the sources designated by EPA's EG for existing MSW Landfills which commenced construction, reconstruction, or modification before May 30, 1991. If your facility meets this criteria, then you are subject to these regulations.

How Does This Approval Affect Sources Located in Indian Country?

Idaho's State Plan does not cover facilities located in Indian Country. Therefore, any sources located in Indian Country are subject to the Federal plan (see below).

How Does This Approval Relate to the Federal Plan?

On November 8, 1999, we finalized a Federal Plan for MSW Landfills which covers sources located in Indian Country and sources for which there is no approved State Plan. This plan is codified at 40 CFR part 62, subpart GGG, and became effective on January 7, 2000. All existing MSW Landfills in Idaho, including those in Indian Country, are currently subject to the requirements in this Federal Plan (see 64 FR 60689, November 8, 1999). However, as of the effective date of this action approving Idaho's MSW Landfills State Plan, existing MSW Landfills within Idaho's jurisdiction will be subject to Idaho's State Plan, and will no longer be subject to the Federal Plan. Furthermore, MSW Landfills located in Indian Country are currently subject to the Federal Plan and will continue to be subject to the Federal Plan only.

II. Background

What Is a State Plan?

Section 111 of the CAA, "Standards of Performance for New Stationary Sources," authorizes us to set air emissions standards for certain categories of sources. These standards are called New Source Performance Standards (NSPS). When a NSPS is promulgated for new sources, section 111(d) also requires that we publish an EG applicable to the control of the same pollutant from existing (designated) facilities. States with designated facilities must then develop a State Plan to adopt the EG into the State's body of regulations. States must also include in their State Plan other elements, such as inventories, legal authority, and public participation documentation, to demonstrate their ability to enforce the State Plans.

What Is a MSW Landfills State Plan?

A MSW Landfills State Plan is a State Plan (as described above) that controls air pollutant emissions from existing Municipal Solid Waste Landfills.

Why Are We Requiring Idaho To Submit a MSW Landfills State Plan?

When we developed NSPS for MSW Landfills, we simultaneously developed the EG to control air emissions from existing MSW Landfills (see 61 FR 9919, March 12, 1996). Under section 111(d) of the CAA, the EG are not federally enforceable; therefore, section 111(d) of the CAA also requires states to submit to EPA for approval State Plans that implement and enforce the EG. These State Plans must be at least as protective as the EG, and they become federally enforceable upon approval by EPA. The procedures for adopting and submitting State Plans are located in 40 CFR part 60, subpart B. If a State fails to have an approvable plan in place by December 12, 1996, the EPA is required to promulgate a Federal plan to establish requirements for those sources not under an EPA-approved State Plan. EPA promulgated a Federal Plan for MSW Landfills on November 8, 1999. Existing MSW Landfills are subject to the Federal Plan until the State Plan is approved and in effect.

What Are the Requirements for a MSW Landfills State Plan?

A section 111(d) State Plan submittal must meet the requirements of 40 CFR part 60, subpart B, §§ 60.23 through 60.26; 40 CFR part 60, subpart Cc, §§ 60.30(c) through 60.36(c); and it must be consistent with the requirements established in the Federal Plan for MSW Landfills. Subpart B contains the procedures for adoption and submittal of State Plans. This subpart addresses public participation, legal authority, emission standards and other emission limitations, compliance schedules, emission inventories, source surveillance, and compliance assurance and enforcement requirements. EPA promulgated the EG as 40 CFR part 60, subpart Cc on March 12, 1996, and amended the EG on June 16, 1998, and February 24, 1999. Subpart Cc contains the technical requirements for existing MSW Landfills and applies to sources which commenced construction, reconstruction, or modification before May 30, 1991. A State will generally address the MSW Landfills technical requirements by adopting by reference subpart Cc. The Federal Plan also contains the technical requirements for existing MSW Landfills with the same applicability. EPA promulgated the MSW Landfills Federal Plan on November 8, 1999. The section 111(d) state plan is required to be submitted within one year of the EG promulgation date, i.e., by December 12, 1996. Prior to submittal to us, the State must make available to the public the State Plan and provide opportunity for public comment. For States that submit their State Plans after December 12, 1996, the requirements within their State Plans (including compliance timelines) must be as protective as the Federal Plan. Idaho has developed and submitted a State Plan, as required by section 111(d) of the CAA, to gain federal approval to implement and enforce the MSW Landfills EG.

III. Idaho's State Plan

What Is Contained in the Idaho State Plan?

The State of Idaho submitted its section 111(d) State Plan on December

16, 1999, for implementing EPA's EG for existing MSW Landfills. Idaho adopted the EG requirements into IDAPA 16.01.01.860 (effective November 19, 1999) entitled, "Emission Guidelines for Municipal Solid Waste Landfills That Commenced Construction, Reconstruction, Or Modification Before May 30, 1991." Idaho's section 111(d) Plan contains:

(1) A demonstration of the State's legal authority to implement the section 111(d) State Plan;

(2) State Rules adopted into 16.01.01.860 as the mechanism for implementing and enforcing the State Plan;

(3) Emission inventories of all Idaho's applicable sources. There are over 100 existing MSW Landfills in Idaho's inventory, including several closed facilities which are subject to the initial reporting requirements of the EG and the procedures for notification of modification as prescribed under 40 CFR 60.7(a)(4). Many of the listed landfills will not exceed the design capacity threshold for which compliance requirements have been established. These landfillls will only be required to submit their initial design capacity reports and their initial emission rate reports. In these inventories, all designated pollutants have been identified and data have been provided for each;

(4) Emission limits that are as protective as the EG;

(5) Enforceable compliance schedules for all sources which will take more than 12 months from the effective date of the State Plan to comply with all emission standards. The State Plan also indicates within its regulations a final compliance date which is at least as protective as the date required by the Federal Plan;

(6) Testing, monitoring, reporting and recordkeeping requirements for the designated facilities;

(7) Records for the public notice and hearing; and

(8) Provisions for Idaho's progress reports to EPA.

What Approval Criteria Did We Use To Evaluate Idaho's State Plan?

We reviewed Idaho's MSW Landfills State Plan for approval against the following criteria: 40 CFR part 60, subpart B, §§ 60.23 through 60.26; 40 CFR part 60, subpart Cc, §§ 60.30(c) through 60.36(c); and the Federal Plan for MSW Landfills. A detailed discussion of our evaluation of Idaho's State Plan is included in our technical support document located in the official file for this action and available from the EPA contact listed above. We have determined that Idaho's MSW Landfills State Plan meets all of the applicable approval criteria.

IV. EPA Rulemaking Action

We are approving, through direct final rulemaking action, Idaho's section 111(d) State Plan for MSW Landfills. EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the Idaho State Plan should relevant adverse comments be filed. This action will be effective on May 30, 2000 without further notice, unless EPA receives relevant adverse comments by April 27, 2000.

If EPA receives such comments, then it will publish a timely withdrawal in the **Federal Register** informing the public that this direct final rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on May 30, 2000 and no further action will be taken on the proposed rule.

V. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action," and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing State Plan submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a State Plan submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a State Plan submission, to use VCS in place of a State Plan submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 30, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal Solid Waste Landfills, Non-methane organic compounds, Reporting and recordkeeping requirements.

Dated: March 14, 2000.

Chuck Clarke,

Regional Administrator, Region 10.

40 CFR Part 62 of the Code of Federal Regulations is amended as follows:

PART 62—[AMENDED]

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart N—Idaho

2. Subpart N is amended by adding § 62.3120 and an undesignated center heading to read as follows:

* * * * *

Control of Non-Methane Organic Compounds Emissions From Existing Municipal Solid Waste Landfills

§ 62.3120 Identification of plan.

(a) The Idaho Division of Environmental Quality submitted to the Environmental Protection Agency a State Plan for the control of air emissions from Municipal Solid Waste Landfills on December 16, 1999.

(b) Identification of Sources: The Idaho State Plan applies to all existing Municipal Solid Waste Landfills which commenced construction, reconstruction, or modification before May 30, 1991, as described in 40 CFR part 60, subpart Cc. (This plan does not apply to facilities on tribal lands).

(c) The effective date for the portion of the plan applicable to existing Municipal Solid Waste Landfills is May 30, 2000.

[FR Doc. 00–7619 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[IN193–1a; FRL–6566–7]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Indiana; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The EPA is approving the Indiana State Plan submittal for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines. The State submitted this plan on September 30, 1999 in accordance with requirements found in the Clean Air Act (CAA) and in the Code of Federal Regulations for adoption and submittal of State plans for designated facilities. The plan establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. The EPA finds that Indiana's plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans. EPA's approval of the State's MSW Landfill Plan also includes rules submitted to EPA on November 21, 1995, and February 14, 1996, as volatile organic compound control measures. EPA approved the rules as part of the Indiana SIP on January 17, 1997. In this action, EPA is incorporating the rule revisions into the Indiana MSW Landfill Plan.

DATES: The "direct final" rule is effective on May 30, 2000, unless EPA receives adverse written comments by April 27, 2000. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be sent to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the requested SIP revision are available for inspection at the U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard, Chicago, Illinois 60604. (Please telephone Randolph O. Cano at (312) 886–6036 before visiting the Region 5 Office.)

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we," "us," or "our" is used we mean EPA.

Background
I. Why Was This Plan Prepared and Submitted?
II. What Elements Are Included in the EPA Review of Indiana's MSW Landfill Plan?
A. Identification of Enforceable State Mechanism for Implementing the Emission Guidelines (EG)
B. Demonstration of the State's Legal Authority to Carry Out the Section 111(d) State Plan as Submitted
C. Inventory of Existing MSW Landfills in the State Affected by the State Plan
D. Inventory of Emissions From Existing MSW Landfills in the State
E. Emission Limitations for MSW Landfills
F. A Process for State Review and Approval of Site-Specific Gas Collection and Control System Design Plans
G. Compliance Schedules
H. Testing, Monitoring, Recordkeeping and Reporting Requirements
I. A Record of Public Hearings on the State Plan
J. Submittal of Annual State Progress Reports to EPA
III. EPA Final Action
IV. Administrative Requirements
A. Executive Order 12866
B. Executive Order 13045
C. Executive Order 13084
D. Executive Order 13132
E. Regulatory Flexibility Act
F. Unfunded Mandates
G. Submission to Congress and the Comptroller General
H. National Technology Transfer and Advancement Act
I. Petitions for Judicial Review

Background

I. Why Was This Plan Prepared and Submitted?

Under section 111(d) of the Act and 40 CFR part 60, subpart B, EPA has established procedures for States to submit plans to control certain existing sources of "designated pollutants." Designated pollutants are defined as pollutants for which a standard of performance for new sources applies under section 111, but which are not

"criteria pollutants" (*i.e.*, pollutants for which EPA has established National Ambient Air Quality Standards (NAAQS) under sections 108 and 109 of the Act) or hazardous air pollutants (HAPs) regulated under section 112 of the Act. As required by section 111(d) of the Act, EPA established a process at 40 CFR part 60, subpart B, similar to the process required by section 110 of the Act (regarding State Implementation Plan (SIP) approval) which States must follow in adopting and submitting a section 111(d) plan. Whenever EPA promulgates a new source performance standard (NSPS) that controls a designated pollutant, it simultaneously establishes emissions guidelines in accordance with 40 CFR 60.22. This provision contains information on the control of the designated pollutant from that NSPS source category (*i.e.*, the "designated facility" as defined at 40 CFR 60.21(b)). Thus, a State's section 111(d) plan for a designated facility must comply with the emission guideline for that source category, as well as with 40 CFR part 60, subpart B.

On March 12, 1996, EPA published EG for existing MSW landfills at 40 CFR part 60, subpart Cc (40 CFR 60.30c through 60.36c), and NSPS for new MSW Landfills at 40 CFR part 60, subpart WWW (40 CFR 60.750 through 60.759) (See 61 FR 9905–9929.). The pollutant regulated by the NSPS and EG is "MSW landfill gas emissions", which contain a mixture of methane and non-methane organic compounds. Non-methane organic compounds (NMOC) consist of volatile organic compounds (VOC), hazardous air pollutants (HAPs), and odorous compounds. VOC emissions can contribute to ozone formation which can result in adverse effects to human health and vegetation. The health effects of HAPs include cancer, respiratory irritation, and damage to the nervous system. Methane emissions contribute to global climate change and can result in fires or explosions when they accumulate in structures on or off the landfill site. To determine if control is required, NMOCs are measured as a surrogate for MSW landfill gas emissions. Thus, NMOC is considered the designated pollutant. The designated facility which is subject to the EG is each existing MSW landfill (as defined in 40 CFR 60.31c) for which construction, reconstruction or modification was commenced before May 30, 1991.

40 CFR 60.23(a) requires States to submit a plan for the control of the designated pollutant to which the EG applies within nine months after publication of the EG (*i.e.*, by December 12, 1996). If there were no designated facilities in the State, then the State was required to submit a negative declaration by December 12, 1996.

II. What Elements Are Included in the EPA Review Indiana's MSW Landfill Plan?

The EPA has reviewed Indiana's section 111(d) plan for existing MSW landfills against the requirements of 40 CFR part 60, subpart B and subpart Cc, as follows:

A. Identification of Enforceable State Mechanism for Implementing the Emission Guidelines (EG)

The Indiana Air Pollution Control Board adopted amendments to 326 IAC 8–8–2, 8–8–3, 8–8–4 and new rule 8–8.1 on April 10, 1997. Indiana filed these rules with the Secretary of State on September 8, 1997. These rules became effective on October 8, 1997. Indiana published a notice of the adoption of these rules in the Indiana Register (21 IR 30) on October 1, 1997. Indiana also submitted a November 1, 1996 Findings and Determination by the Commissioner of the Indiana Department of Environmental Management (IDEM) related to the adoption of this rule, copies of public hearing notices and hearing transcripts as part of the 111(d) plan.

It should be noted that on November 21, 1995, and February 14, 1996, Indiana submitted 326 IAC 8–8 Municipal Solid Waste Landfills Located in Clark, Floyd, Lake and Porter Counties, sections 1 through 4, as a requested revision to the Indiana SIP. The Indiana Air Pollution Control Board adopted these rules on July 12, 1995, and filed them with the Secretary of State on December 19, 1995. The rules became effective on January 18, 1996. Indiana published these rules on February 1, 1996 at Indiana Register, Volume 19, Number 5, page 1050. On January 17, 1997 (62 FR 2591), EPA approved these rules into the Indiana SIP at 40 CFR 52.770(c)(110). By this action, EPA is also incorporating them into the Indiana Municipal Solid Waste Landfill Plan for Clark, Floyd, Lake, and Porter Counties.

Thus, the State has met the requirement of 40 CFR 60.24(a) to have legally enforceable emission standards.

B. Demonstration of the State's Legal Authority to Carry Out the Section 111(d) State Plan as Submitted

40 CFR 60.26 requires the section 111(d) plan to demonstrate that the State has legal authority to adopt and implement the emission standards and compliance schedules.

The Indiana Code (IC) divides legal authority for environmental rule adoption and rule development and implementation between the Indiana Air Pollution Control Board (IAPCB) and IDEM. The IAPCB has the legal authority to adopt rules governing landfill gas emissions from existing MSW landfills. The IDEM has authority for rule development and implementation. These responsibilities are spelled out in Titles 4 and 13 of the IC. Under the IC, the APCB and IDEM have sufficient legal authority to carry out the plan.

C. Inventory of Existing MSW Landfills in the State Affected by the State Plan

40 CFR 60.25(a) requires the section 111(d) plan to include a complete source inventory of all existing MSW landfills (*i.e.*, those MSW landfills that were constructed, reconstructed, or modified prior to May 30, 1991) in the State that are subject to the plan. This includes all existing landfills that have accepted waste since November 8, 1987 or that have additional capacity for future waste deposition.

Indiana submitted a list of the existing MSW landfills in Indiana and an estimate of NMOC emissions from each landfill as part of its landfill plan.

D. Inventory of Emissions From Existing MSW Landfills in the State

40 CFR 60.25(a) requires that the plan include an emissions inventory that estimates emissions of the pollutant regulated by the EG, which, in the case of MSW landfills, is NMOC. Indiana included an estimation of NMOC emissions for all of the landfills in the State using the Landfill Air Emissions Estimation Model and AP–42 default emission factors in Appendices B and D to its section 111(d) plan.

E. Emission Limitations for MSW Landfills

40 CFR 60.24(c) specifies that the State plan must include emission standards that are no less stringent than those specified in 40 CFR 60.33c for existing MSW landfills. However, 40 CFR 60.24(f) allows for States to implement less stringent emission limits on a case-by-case basis if certain conditions are met.

Indiana's rules require existing MSW landfills to comply with the same level of control as prescribed in the NSPS. The controls and control system design criteria required by the NSPS are the same as those required by the EG. Thus, the emission standards implemented by Indiana are "no less stringent than" subpart Cc, which meets the requirements of 40 CFR 60.24(c).

Section 60.24(f) allows States, in certain case-by-case situations, to provide for a less stringent emission standard. Indiana's rules, 326 IAC 8–8.1–5 allow an owner/operator of a landfill that has been issued a closure certification, has an approved post-closure plan, and can demonstrate unreasonable cost, physical impossibilities, or other significant obstacles in complying with the standard emission limits, to apply for a less stringent standard. An owner/operator of a landfill seeking an alternative emission limit must submit a written request to IDEM and receive approval from IDEM and EPA pursuant to 40 CFR 60.24(f). The criteria in 325 IAC 8–8.1–5 parallel those contained in 40 CFR 60.24(f).

Thus, IDEM's plan meets the emission limitation requirements by requiring emission limitations that are no less stringent than the EG.

F. A Process for State Review and Approval of Site-Specific Gas Collection and Control System Design Plans

40 CFR 60.33c(b) in the EG requires State plans to include a process for State review and approval of site-specific design plans for required gas collection and control systems.

The IAPCB's rules regulating landfill gas emissions from MSW landfills essentially make the federal NSPS applicable to existing MSW landfills. The design criteria and the design specifications for active collection systems specified in the NSPS also apply to existing landfills, unless a request pursuant to 40 CFR 60.24(f) has been approved by the IDEM and by EPA. Once IDEM receives a design plan, it will record the date the plan is received. IDEM will then review the submittal for completeness and request additional information if necessary. Indiana will complete its review of the design plan within 180 days of its receipt.

Thus, Indiana section 111(d) plan adequately addresses this requirement.

G. Compliance Schedules

The State's section 111(d) plan must include a compliance schedule that owners and operators of affected MSW landfills must meet in complying with the requirements of the plan. 40 CFR 60.36c provides that planning, awarding of contracts, and installation of air emission collection and control equipment capable of meeting the EG must be accomplished within 30 months of the effective date of a State emission standard for MSW landfills. 40 CFR 60.24(e)(1) provides that any compliance schedule extending more than 12 months from the date required for plan submittal shall include legally enforceable increments of progress as specified in 40 CFR 60.21(h), including deadlines for submittal of a final control plan, awarding of contracts for emission control systems, initiation of on-site construction or installation of emission control equipment, completion of on-site construction/installation of emission control equipment, and final compliance.

IAPCB has adopted enforceable compliance schedules in 326 IAC 8–8.1–4. The State's rules require landfills that must install collection and control systems to be in final compliance with the requirements of the State plan no later than 30 months from the effective date of State adoption of the State rule or, for those MSW landfills which are not currently subject to the collection and control system requirements, within 30 months of first becoming subject to such requirements (*i.e.*, within 30 months of reporting a NMOC emission rate of 50 Mg/yr or greater). Section 8–8–4 which regulates sources located in Clark, Floyd, Lake and Porter Counties requires affected sources to comply with the requirement of the Indiana MSW Landfill rule no later than May 1, 1996. Thus, the State's rule satisfies the requirement of 40 CFR 60.36c.

H. Testing, Monitoring, Recordkeeping and Reporting Requirements

40 CFR 60.34c specifies the testing and monitoring provisions that State plans must include (60.34c actually refers to the NSPS requirements found in 40 CFR 60.754 to 60.756), and 40 CFR 60.35c specifies the reporting and recordkeeping requirements (§ 60.35c refers to the NSPS requirements found in 40 CFR 60.757 and 60.758). The IAPCB has adopted rules incorporating these pertinent Federal requirements. Consequently, EPA finds that the State's section 111(d) plan for MSW landfills adequately addresses the testing, monitoring, reporting, and recordkeeping requirements of the EG.

I. A Record of Public Hearings on the State Plan

40 CFR 60.23 contains the requirements for public hearings that must be met by the State in adopting a section 111(d) plan. EPA's "Summary of the Requirements for Section 111(d) State Plans for Implementing the Municipal Solid Waste Landfill Emission Guidelines (EPA–456R/96–005, October 1996)" contains additional guidance on this requirement. Indiana included documents in its plan submittal demonstrating that it complied with these procedures, as well as the State's administrative procedures, in adopting the State's plan. Therefore, EPA finds that Indiana has adequately met this requirement.

J. Submittal of Annual State Progress Reports to EPA

40 CFR 60.25(e) and (f) require States to submit to EPA annual reports on the progress of plan enforcement. Indiana committed in the submittal for its section 111(d) plan to submit annual progress reports to EPA. The first progress report will be submitted by the State one year after EPA approval of the State plan. This commitment is part of section 15 #98–1 of IDEM's policy and procedures notebook. Section 15 #98–1 which was revised on May 20, 1998 details how Indiana intends to implement its MSW Landfill Plan.

III. EPA Final Action

Based on the rationale discussed above, EPA is approving Indiana's September 30, 1999, submittal of its section 111(d) plan for the control of landfill gas from existing MSW landfills. EPA is also incorporating the rules for controlling VOC emissions from existing MSW landfills located in Clark, Floyd, Lake and Porter Counties into the State's 111(d) plan. Indiana originally submitted these rules, contained in 326 IAC 8–8, to EPA as part of the Indiana Ozone Plan on November 21, 1995 and February 14, 1996. EPA approved these rules as part of the Ozone SIP on January 17, 1997 (62 FR 2593). EPA codified its approval of these State rules at 40 CFR 52.770(c)(110). As provided by 40 CFR 60.28(c), any revisions to Indiana's section 111(d) plan or associated regulations will not be considered part of the applicable plan until submitted by the State in accordance with 40 CFR 60.28(a) or (b), as applicable, and approved by EPA in accordance with 40 CFR part 60, subpart B.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, EPA is proposing to approve the State Plan should adverse written comments be filed. This action will be effective May 30, 2000, unless, by April 27, 2000, adverse written comments are received.

If EPA receives such comments, this action will be withdrawn before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule

based on this action serving as a proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on May 30, 2000.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. This action does not involve or impose any requirements that affect Indian Tribes. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under sections 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective May 30, 2000, unless EPA receives adverse written comments by April 27, 2000.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 30, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 62

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Methane, Municipal solid waste landfills, Non-methane organic compounds, Reporting and recordkeeping requirements.

Dated: March 17, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

40 CFR part 62 is amended as follows:

PART 62—[AMENDED]

1. The authority citation for part 62 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart P—Indiana

2. Subpart P is amended by adding a new center heading and sections 62.3630, 62.3631 and 62.3632 to read as follows:

Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

§ 62.3630 Identification of plan.

"Section 111(d) Plan for Municipal Solid Waste Landfills" and the associated State regulations found in Title 326: Air Pollution Control Board of the Indiana Administrative Code (IAC), Article 8. Volatile Organic Compound Rules, Rule 8. Municipal Solid Waste Landfills Located in Clark, Floyd, Lake and Porter Counties and Rule 8.1. Municipal Solid Waste Landfills Not Located in Clark, Floyd, Lake and Porter Counties added at 21 Indiana Register 31, filed with the Secretary of State September 8, 1997, effective October 8, 1997, submitted by the State to EPA on September 30, 1999. Also included in this plan are rules submitted to EPA on November 21, 1995 and February 14, 1996: Title 326 IAC Article 8. Volatile Organic Compound Rules, Rule 8. Municipal Solid Waste Landfills adopted at 19 Indiana Register 1050, filed with the Secretary of State December 19, 1995, effective January 18, 1996.

§ 62.3631 Identification of sources.

The plan applies to all existing municipal solid waste landfills for which construction, reconstruction, or modification was commenced before May 30, 1991 that accepted waste at any time since November 8, 1987 or that have additional capacity available for future waste deposition, as described in 40 CFR part 60, subpart Cc.

§ 62.3632 Effective date.

The effective date of the plan for municipal solid waste landfills is May 30, 2000.

[FR Doc. 00–7621 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 25

[IB Docket No. 96–111; FCC 99–325]

Earth Stations Communicating With Non-U.S. Licensed Space Stations; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The Federal Communications Commission published in the **Federal Register** of November 15, 1999, (64 FR 61791), a document revising rules governing application requirements for earth stations communicating with non-U.S. licensed space stations. The Commission inadvertently failed to specify that it was revising only the first sentence of § 25.137(b), rather than § 25.137(b) in its entirety. This document corrects that error.

DATES: Effective on December 22, 1999.

FOR FURTHER INFORMATION CONTACT: Steven Spaeth, International Bureau, (202) 418–1539.

SUPPLEMENTARY INFORMATION: The FCC published a document in the **Federal Register** on November 15, 1999 (64 FR 61791) amending 47 CFR 25.137(b). In FR Doc. 99–29538, published in the **Federal Register** of November 15, 1999 (64 FR 61791), everything in § 25.137(b) after the first sentence was inadvertently removed. This correction adds the part of § 25.137(b) inadvertently removed on November 15, 1999.

§ 25.137 [Corrected]

In rule FR Doc. 99–29538 published on November 15, 1999, (64 FR 61791) make the following correction. On page 61792, in the third column, revise § 25.137(b) to read as follows:

* * * * *

(b) Earth station applicants, or entities filing a "letter of intent," or "Petition for Declaratory Ruling," requesting authority to operate with a non-U.S. licensed space station must attach to their FCC Form 312 an exhibit providing legal, financial, and technical information for the non-U.S. licensed space station in accordance with part 25 and part 100 of this Chapter. If the non-U.S. licensed space station is in orbit

and operating, the applicant need not include the financial information specified in §§ 25.114(c)(17) and (c)(18) of this part. If the international coordination process for the non-U.S. licensed space station has been completed, the applicant need not include the technical information specified in §§ 25.114(c)(5) through (c)(11) and (c)(14) of this part, unless the technical characteristics differ from the characteristics established in that process.

* * * * *

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7596 Filed 3–27–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 64

[CC Docket No. 99–253; FCC 00–78]

Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers: Phase 1

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In the document, the Commission is completing the first phase of our Comprehensive Accounting Requirements and ARMIS Reporting Requirements review by adopting most of our proposals initiated in our Phase 1 Notice of Proposed Rulemaking (NPRM). This document also grants significant accounting relief to incumbent local exchange carriers (ILECs). The Commission anticipates that the rule changes adopted will reduce regulatory and procedural burdens on ILECS.

DATES: Effective September 28, 2000. The rules in this document contain information collections, which have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

Written comments by the public on the new and/or modified information collections are due May 30, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW, TW–A325, Washington, DC 20554. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: JoAnn Lucanik, Accounting Safeguards Division, Common Carrier Bureau, at (202) 418–0873 or Mika Savir, Accounting Safeguards Division, Common Carrier Bureau, at (202) 418–0384. For additional information concerning the information collections contained in this document, contact Judy Boley at 202–418–0214, or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order adopted March 2, 2000, and released March 8, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. The complete text may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, Washington, DC 20036, telephone (202) 857–3800.

This Report and Order contains new or modified information collections subject to the Paperwork Reduction Act of 1995 (RA), Public Law 10413. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new or modified information collections contained in this proceeding.

Paperwork Reduction Act

This R&O contains either a new or modified information collection(s). The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this R&O as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due May 30, 2000. Comments should address: (a) whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

Type of Review: Revision of currently approved collections.

Respondents: Business or other for-profit.

OMB control No.	Title	Number of respondents	Est. time per respondent	Total annual responses	Cost to per respondents
3060–0395	ARMIS USOA Report (FCC Report 43–02).	50	295.4	14,770	$0
3060–0370	Part 32	239	9543.6	2,280,934	0
3060–0384	Section 64.904	14	250	3,500	1,200,000
3060–0470	Sections 64.901–64.903	18	600	10,800	0
3060–0734	Affiliates Transactions	20	24	480	0

Needs and Uses: In the Report and Order, the Commission is completing the first phase of its Comprehensive Accounting and ARMIS review by adopting most of its proposals initiated in its Phase 1 NPRM, 64 FR 44877 (August 18, 1999). In the Report and Order, the Commission eliminates the expense matrix filing requirement; provides large ILECs the option to obtain a biennial attestation engagement to satisfy their CAM audit obligation; establishes a $500,000 de minimis exception to our affiliate transactions fair market value estimate requirement; and eliminates the 15 day pre-filing requirement for cost pool and time reporting procedures changes. The Commission substantially streamlines the ARMIS 43–02 USOA report and significantly reduces the reporting requirements for carriers. The information provides the necessary detail to enable the Commission to fulfill its regulatory responsibilities.

Summary of Report and Order

1. Expense Matrix

We adopt our proposal to eliminate the expense matrix. We find that, although the expense matrix data have been an important part of our policy and tariff review processes, the changing telecommunications marketplace and regulatory framework have led us to rely on this data less frequently in our deliberations. We recognize that there remains a need for certain information provided by the expense matrix; we find, however, that the information can be provided to the Commission on an as-needed basis. We expect companies to keep such data available and be prepared to provide it to the Commission should the Commission make such a request.

We require ILECs to maintain subsidiary record categories to provide the data necessary for the Commission, carriers, and competitors to calculate pole attachment rates. The Commission reviews complaints about pole attachment rates under sections 224 and 251 of the Communications Act. In the *Accounting Reductions Report and Order*, 64 FR 50002 (February 15, 1999), we required mid-sized ILECs to maintain subsidiary records to provide the pole attachment data, and we will continue to require the larger carriers to maintain such records as well. Several commenters in this proceeding oppose the subsidiary record requirement. We find that elimination of the expense matrix and future ARMIS changes make it uncertain that ARMIS alone will be sufficient to allow parties to evaluate the pole attachment rates. We conclude that it is necessary to maintain subsidiary records for data needed in pole attachment formulas. This will assure that the data are publicly available, uniformly maintained among the carriers, and maintained in a manner that can be audited. We therefore require ILECs to maintain subsidiary record categories to provide the pole attachment data currently in the expense matrix and ARMIS reports. We note that the Commission is considering issues regarding pole attachment formulas. When we release a Report and Order in that docket, we will specify the subsidiary record categories needed for the finalized pole attachment formulas.

2. Audits

We are adopting the less burdensome attest audit requirement, as an option, because we are convinced that attest audits, with the Commission's input on audit procedures, will adequately protect ratepayers. We are also persuaded to conclude as we do because the accounting profession has improved the standards governing attest audits since we first required them more than ten years ago. For example, in 1993, the AICPA promulgated detailed standards for attestation engagements concerning compliance with specific laws and regulations. We also note that our attest examination will involve much of the same audit testing as previously required, and that attest audit findings can lead to the same type of adjustment to carrier reports as did the previous audit requirement.

We are giving carriers the option of choosing an attest examination every two years, covering the prior two-year period, or a financial audit. Instead of an annual financial audit, the financial audit option will also be biennial, covering the prior two years. We are changing the annual financial audit requirement to a biennial requirement to allow carriers to move from one option to the other. The biennial requirement serves the policy underlying this proceeding appropriately. The requirement provides accounting reform without compromising the Commission's ability to meet its statutory and policymaking responsibilities. We disagree with the large ILECs who claim that the audit should be biennial yet cover only one year. Our experience reviewing CAM audits and performing our own audits leads us to conclude that each year requires audit work. Carrier accounting systems can and do change from year to year. Likewise, one-time material errors do occur. These problems would go undetected if we allowed carriers to skip an audit year. On the other hand, we do not believe we must require an attest audit each year. The auditor's work in the "off year" should provide assurance against cross-subsidization, while allowing large ILECs to realize reduced costs that come with obtaining one attestation instead of two.

3. Affiliate Transactions Rules

We adopt the proposal in our *NPRM* and establish a *de minimis* exception to our affiliate transactions rules for services. This *de minimis* exception is limited to affiliate transactions rules for services. All commenters addressing this issue are in support of the *de minimis* exception. We find that when the total annual value of transactions for a service is *de minimis*, the regulatory benefits of requiring carriers to make a good faith determination of the fair market value of a service may be outweighed by the administrative cost and effort of making such a determination. For non-*de minimis* services, the fully distributed cost/fair market value comparison remains an important safeguard against cross-subsidization. Thus, we do not eliminate the requirement for all services, nor do we extend it to asset transfers between carriers and their affiliates, as requested by several commenters. We note that the fully distributed cost/fair market value comparisons for assets is not as burdensome as those for services because the types of assets transferred are not typically so unique; further, we did not propose an asset exception in the *NPRM*.

In the *NPRM*, we proposed a threshold of $250,000. Several commenters suggest a higher threshold of $500,000. Commenters observe that only a limited number of services would fall under the $250,000 threshold for some large LECs and to provide meaningful relief the threshold should be $500,000. One commenter, on the other hand, suggests the threshold should be $1,000,000. We do not believe that the cost of fair market value/fully distributed cost comparisons is so high that a $1,000,000 exception is necessary. On the other hand, we believe that a $100,000 threshold, or a cap of 25 percent of the amount of services subject to the exception, may deprive carriers of many of the benefits of the exception. A cap is unnecessary because the independent auditors and the Commission will continue to monitor how carriers define services, thereby reducing the risk that the exception will be abused. We therefore adopt the $500,000 per service, per year *de minimis* exception to our § 32.27(c) good faith estimate requirement. Based on our experience enforcing the affiliate transactions rules, we conclude that the $500,000 threshold is reasonable. We find that below this threshold, the administrative cost and effort of making such a determination will outweigh the regulatory benefits of the good faith determination of fair market value of a service. Adopting this $500,000 *de minimis* exception will reduce the burden to carriers without lessening the effectiveness of our affiliate transactions rules.

Therefore, we eliminate the requirement that carriers make a good faith determination of fair market value for each service in cases where the total annual value of transactions for that service is less than $500,000. In such cases, the service should be recorded at fully distributed cost, and carriers should continue to report such transactions in their CAMs and ARMIS reports.

In the NPRM, we sought comment on whether affiliate transactions services conducted pursuant to sections 260, and 271 through 276 of the Communications Act should be included in the services eligible for the *de minimis* exception. We agree with the commenters that the *de minimis* exception should apply to all affiliate transactions when a carrier must compare fully distributed cost and fair market value of services. We note that in our first action on affiliate transactions after the Telecommunications Act of 1996 we applied our valuation rules equally to transactions under these sections. This *de minimis* exception applies only to affiliate transactions in which a carrier must compare fully distributed cost and fair market value pursuant to § 32.27(c) of our rules, and thus it does not apply to transactions under sections 271 and 272, which do not require such a comparison.

4. Elimination of 15-Day Pre-Filing for Cost Pool Changes

Section 64.903 of the Commission's rules requires carriers to update their CAMs at least annually except that changes to the cost apportionment table and time-reporting procedures must be filed at least 15 days before the carrier plans to implement such changes. Once a CAM change has been filed, the Chief of the Common Carrier Bureau may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective. BellSouth claims that the 15-day filing period requires it to disclose sensitive competitive service information. In the *NPRM*, we proposed eliminating the 15-day pre-filing requirement.

We adopt our proposal, which is supported by most of the commenters, and eliminate the 15-day pre-filing requirement for cost apportionment table and time reporting procedure changes. Carriers will no longer have to disclose competitively sensitive information before the CAM changes are implemented. We disagree with the suggestion that we eliminate the contemporaneous filing requirement and allow changes to be filed annually. It is important to review CAM changes upon receipt and stay them if necessary. That authority and oversight over CAM changes remains a safeguard against modifications such as cost pool changes that may hurt ratepayers. The potential harm to ratepayers is that a LEC could shift costs from nonregulated services to regulated services, resulting in subsidization of nonregulated services with revenues earned from the provision of regulated services. We are not persuaded that the 15-day pre-filing rule must be retained in order to prevent such improper cost shifting. We review proposed CAM changes immediately and that authority and oversight remains an important safeguard against any improper cost shifting.

5. Revision to Section 32.13, Accounts—General

Section 32.13(a)(3) of the Commission's rules allows carriers to establish temporary or experimental accounts, provided they notify the Commission of the nature and purpose of the accounts within 30 days of their establishment. Carriers use these accounts as clearing accounts that are closed each financial period, and do not alter the part 32 accounting structure. In the *NPRM*, we proposed eliminating the 30-day notice requirement of § 32.13(a)(3) because other accounting safeguards, such as ARMIS reporting, audit reviews, and our ability to obtain additional information as necessary are sufficient for our regulatory oversight.

We adopt our proposal, supported by most of the commenters, and eliminate the 30-day notification requirement in § 32.13(a)(3). As we noted in the *NPRM*, sufficient accounting safeguards exist to detect any improper activity resulting from experimental or temporary accounts. Our audits and the CAM engagements of the carriers' independent auditors will protect regulated ratepayers from absorbing costs of the carrier's nonregulated activities. At the same time, this action relieves carriers of a notification requirement.

6. Revision to Section 32.25, Unusual Items and Contingent Liabilities

Section 32.25 of the Commission's rules requires carriers to submit journal entries detailing extraordinary items, contingent liabilities, and material prior period adjustments to the Commission for approval before recording them in their books of account. In the *NPRM*, we proposed eliminating this requirement due to other safeguards, such as review of ARMIS filings, reviews by independent auditors, our audits, and our ability to obtain additional information on these accounting entries as we need it.

We adopt our proposal, which most of the commenters unconditionally support as well. Therefore, we eliminate the requirement that carriers submit extraordinary items, material prior period adjustments, and contingent liabilities for our review prior to recording them pursuant to § 32.25. Sufficient accounting safeguards exist to detect ratepayer harm resulting from these accounting entries. Our audits, ARMIS filings, and the CAM engagements of the carriers' independent auditors will assure us that carriers will not use these accounts to harm ratepayers. At the same time, this action relieves carriers of a notification requirement.

7. Revision to Section 32.2002, Property Held for Future Telecommunications Use

Section 32.2002 of the Commission's rules requires that carriers record to Account 2002, Property held for future telecommunications use, the original cost of property held for no longer than two years under a definite plan for use in telecommunications service. If the property is not put into service within two years, its cost must be transferred to Account 2006, Nonoperating plant. Carriers may keep the cost in Account 2002 only if they request and receive approval from the Commission based on a public interest showing. BellSouth states that this reclassification is burdensome and that the cost of the property could remain recorded in Account 2002, but be removed from the ratebase in a less burdensome manner. In the *NPRM*, we proposed that carriers may keep the costs in Account 2002 but they must exclude the costs, and the associated depreciation reserve, from the ratebase. The depreciation reserve associated with these costs should also be excluded from ratemaking considerations. The amounts removed from the ratebase would be reported in the ARMIS 43–01, column (e) All Other Adjustments and ARMIS 43–03, column (1) Other Adjustments.

We adopt the proposal in the *NPRM* and eliminate the requirement that carriers reclassify property from Account 2002 to Account 2006 if it is not put into service within two years. Under this new method, carriers must exclude the costs and associated accumulated depreciation from the ratebase and ratemaking considerations and report these amounts in ARMIS 43–01, column (e) All Other Adjustments and ARMIS 43–03, column (1) Other Adjustments. Reporting the amounts remaining in Account 2002 in ARMIS 43–03 is essential for accounting safeguards. Carriers' methodologies in producing the ARMIS 43–03 report form the basis of their independent auditors' review and will also be the basis for any dollar adjustments. Additionally, reporting the amounts in ARMIS allows us to review the data. We conclude that reporting the amounts remaining in Account 2002 in ARMIS 43–03 is less burdensome than reclassifying the costs from Account 2002 to Account 2006.

8. Revision to Section 32.2003, Telecommunications Plant Under Construction

Section 32.2003 of the Commission's rules requires that carriers record in Account 2003, Telecommunications plant under construction, the original cost of construction projects including all related direct and indirect costs as provided under § 32.2000(c). If the construction project is suspended for six months or more, the cost must be reclassified to Account 2006, Nonoperating plant. If the project is abandoned, the cost must be charged to Account 7370, Special charges. BellSouth states that this reclassification is burdensome and that the property could remain recorded in Account 2003 and be excluded from the ratebase in a less burdensome manner. In the *NPRM*, we proposed that carriers be permitted to keep the costs in Account 2003, but remove the cost of suspended projects from the ratebase after six months. Carriers would be required to discontinue capitalization of allowance for funds used during construction under § 32.2000(c)(2)(x) until construction is resumed. Carriers would report these amounts in ARMIS 43–01, column (e) All Other Adjustments and ARMIS 43–03, column (1) Other Adjustments. Carriers would, however, continue to charge Account 7370 if the project were abandoned.

We adopt our proposal and eliminate the requirement that carriers reclassify property from Account 2003 to Account 2006 if the construction project is suspended for six months or more. Most of the commenters support this proposal. Under this new method, carriers must exclude the costs from the ratebase and ratemaking considerations. Carriers must also report these amounts in ARMIS 43–01, column (e) All Other Adjustments and ARMIS 43–03, column (1) Other Adjustments. We believe that reporting the construction costs in ARMIS are essential for several reasons related to accounting safeguards. Carriers' methodologies in producing the ARMIS 43–03 report form the basis of their independent auditors' attestation and will be the basis for any related dollar adjustments. Additionally, reporting the amounts in ARMIS allows us to review them as necessary.

B. ARMIS Reporting Requirements

1. Reductions to ARMIS 43–02 USOA Report

Most commenters generally agree with the changes we proposed to the ARMIS 43–02 Report. Some commenters, however, advocate changes to ARMIS reporting requirements beyond those set forth in the *NPRM*. We agree that further review of the ARMIS reporting requirements is warranted and further streamlining measures must be considered. In this Phase, however, we believe the more expeditious action is to eliminate and simplify requirements that can be implemented without delay, thereby minimizing the burdens on the industry immediately. As we stated in the *NPRM*, in Phase 2 we will examine more structural and long-term changes to our reporting requirements that will be appropriate as local exchange markets become competitive, and will assess what interim measures should be made as various transitional competitive milestones are reached. We note that ARMIS changes proposed by commenters that are not considered in this Phase will be fully considered in Phase 2.

2. ARMIS 43–02 USOA Report: Table C Reductions

We adopt our proposal in the *NPRM* to consolidate all of the basic ownership information from Tables C–1, C–2, C–3 and C–4 into one table. In reviewing our experience with the current reporting system, we find that the information collected in these four tables can more efficiently be provided in one table. As designed, the current system requires carriers to maintain four separate tables with a combined total of 8 columns and 27 row sections of information about its ownership and corporate structure, including information about state laws, partnerships, and various degrees of control over the organization. We can substantially simplify the current requirements and eliminate all but the basic kinds of ownership information. We find that an ownership profile consisting of the carrier's name, operating states, directors, and executive officers will be sufficient to meet our oversight responsibilities and permit us to make informed regulatory decisions. To accomplish this, we revise Table C–3 to include the carrier's name and states of operation and eliminate reporting of Tables C–1, C–2, and C–4.

We do not agree with the argument advanced by several commenters that these tables should be eliminated in their entirety because the information is available in SEC Form 10–K filings. Our review shows that in many cases, certain information collected in these tables is not reported in the carrier's SEC Form 10–K. For instance, the SEC Form 10–K provides that information about a carrier's directors and executive officers is optional. Our review found that in virtually every case, carriers choose the option not to report this information in their SEC Form 10–K. Our oversight responsibility requires that, at a minimum, we have access to the most basic information about the carrier. We conclude that our decision to require the carrier's name, operating states, directors, and executive officers is warranted. Collection of this data in the consolidated table will reduce the reporting burden on carriers.

Generally, Table C–5 requires the carrier to report on important changes to 12 activities: (1) Extensions of Systems; (2) Substantial Portions or All Property Sold; (3) Map Defining Territory; (4) Companies Coming Under the Direct Control of the Carrier; (5) Changes in the Direct Control of a Company; (6) Changes Affecting the Direct Control of a Company; (7) Companies Coming Under the Indirect Control of the Carrier; (8) Changes in the Indirect Control of a Company; (9) Changes Affecting the Indirect Control of a Company; (10) Important Contracts or Agreements; (11) Changes in Accounting Standards; and (12) Important Changes in Service and Rate Schedules.

In reviewing our experience with Table C–5, we conclude that the burdens imposed on the carriers are disproportionate to the benefits provided, and that elimination of a substantial portion of information collected in Table C–5 is warranted. We agree with commenters that certain information otherwise available in the carrier's SEC Form 10–K can be eliminated from Table C–5. We find that the reporting requirements concerning direct and indirect control of the carrier (items 4 through 9 in paragraph 39) can be eliminated without adverse consequences because this information is routinely reported in the carriers' SEC Form 10–K. In addition, information concerning changes in accounting standards (item 11 in paragraph 39) can be obtained from the carriers' SEC Form 10–K. Therefore, we will also eliminate this reporting requirement from Table C–5. Eliminating the reporting of these requirements will afford carrier's considerable relief from reiteration of information contained in their SEC filings. We will, however, require that carriers submit a copy of their SEC Form 10–K annual report to the Commission.

We also note that extension of system and map defining territory are not regularly reported by the ILECs due to the infrequent nature of these activities. We find that information related to these two items as reported in Table C–5 has not contributed to the Commission's overall formulation of policy and that further reporting on these matters is unwarranted. We

conclude that lack of information on these items in Table C–5 will not have a detrimental effect on our regulatory oversight responsibilities. Thus, we further simplify the reporting requirements of Table C–5 by eliminating these reporting requirements.

We agree with Ad Hoc that certain activities reported in Table C–5 should not be eliminated at this time. Information concerning substantial portions or all property sold, important contracts or agreements entered into, and important changes in service and rate schedules (items 2, 10, and 12 in paragraph 39), is not reported in carrier's SEC Form 10–K or its cost allocation manuals and is not available in other publicly available data. Information concerning these activities provides us with important information about the carriers' operations that is relevant to our deliberations on numerous policy matters. Thus, we will retain the requirement to report these activities in Table C–5.

The *NPRM* sought comment on whether we should adopt a threshold for reporting items in Table C–5, and if so, what would be an appropriate level. Commenters proposed establishing a threshold level of reporting that included specific dollar amounts ranging from $250,000 to $1 million or using a percentage of total operating revenues ranging from 1 percent to 5 percent. We agree with the parties that a threshold level is appropriate for reporting amounts for substantial portions or all property sold and for reporting important changes in service and rate schedules. Based on our experience, we find that a threshold level of $500,000 is appropriate for both these items. This level will provide relief to carriers in reporting and will continue to provide us with material and sufficient data. We do not agree, however, that a threshold level is appropriate for reporting important contracts or agreements entered into. This item generally encompasses contracts for interconnection and resale agreements that are not typically associated with specific total dollar amounts, but rather have price terms on a per unit or usage basis. We find that our current requirements, which do not require reporting of specific dollar amounts, are not overly burdensome and, in fact, establishing a threshold level may have the result of imposing additional burdens on carriers. Thus, we will not establish a threshold level for important contracts or agreements entered into.

3. ARMIS 43–02 USOA Report: Table B Reductions

We adopt our proposal, which is supported by most commenters, to eliminate seven tables from the Table B Series. Specifically, we eliminate the requirement to report on a routine basis: Tables B–8, Capital Leases; B–9, Deferred Charges; B–11, Long-Term Debt; B–12, Net Deferred Income Taxes; B–13, Other Deferred Credits; B–14, Capital Stock; and B–15, Capital Stock and Funded Debt Reacquired or Retired During the Year. These seven tables were intended to provide a more detailed explanation of specific accounts reported in Table B–1. A review of our experience reveals that, while the data derived from these seven tables have contributed to our policy analysis and rulemaking function, the level of detail required by these tables is no longer as critical to our deliberations. To the extent we may require such detail in the future, we can obtain such information through specific data requests to the carrier on an as needed basis. Thus, we conclude we can substantially reduce the Table B reporting requirements by eliminating the separate reporting requirements of these seven items.

GSA argues that we should retain our current reporting requirements for these seven items because the information they contain may not readily be available through other sources, such as routine SEC Reports. We recognize that that information and data reported in the carriers' SEC Form 10–K are highly aggregated and include both regulated telephone and nonregulated business information. As SBC points out, however, the footnotes in the SEC Form 10–K will generally provide information on details such as long-term debt and deferred taxes, which correspond to items reported in Tables B–11 and B–12. Further, to the extent that we require information that is not available in the carrier's SEC Form 10–K, or through other reliable public sources, we believe we can maintain our oversight of these activities through specific data requests on an as needed basis. Thus, although we relieve companies from routinely reporting this information in Table B, companies must keep such data available and be prepared to provide it promptly to the Commission should the Commission make such a request. In such cases, we expect carriers to provide requested information to the Commission in a timely manner and on a non-proprietary basis. We do not agree with the argument that data formerly reported in these ARMIS tables and now requested by the Commission on an as-needed basis should be treated as non-public. The purpose of this proceeding is to reduce the ARMIS reporting requirements while retaining sufficient information needed for the Commission and state commissions to meet their responsibilities. Therefore, all information requested by the Commission that would otherwise be reported in the ARMIS tables shall be publicly available unless the carrier makes a sufficient showing as to why the information should be treated as proprietary.

In addition to the seven tables at issue here, some parties further recommend that we eliminate all Table B reporting requirements, arguing that essentially all of the information is publicly available in carriers' SEC Form 10–K or other SEC filings, and is duplicative of other ARMIS Reports. Commenters also contend that information contained in these reports is irrelevant to regulation of price cap carriers. At this time we do not agree that it is appropriate to eliminate all Table B reporting requirements. The Commission continues to require accounting and financial data about these carriers to make informed regulatory judgments on numerous policy and ratemaking issues. Furthermore, under the current regulatory price cap scheme, carriers have the ability to seek full recovery of regulated costs through low-end adjustments, as well as taking claims. Thus, our continued monitoring of the reasonableness of these costs is necessary. The steps we take in this Order substantially streamline the current requirements and will afford carriers immediate regulatory relief of ARMIS reporting requirements. As we stated in the *NPRM*, we will undertake an exhaustive and thorough review of our ARMIS reporting requirements in Phase 2.

4. ARMIS 43–02 USOA Report: Table I Reductions

We adopt the proposal in the *NPRM*, which is supported by most commenters, to eliminate Tables I–3, I–4, and I–5. Our experience in collecting detailed data pertaining to the carrier's pension costs and taxes reveals that routine collection of such a level of detail is no longer necessary for us to make informed regulatory judgments in this area. We can obtain necessary information for our regulatory purposes through specific data requests to the carriers on an as-needed basis. Similar to our determination concerning elimination of the seven B tables above, we expect carriers to keep such data available and be prepared to provide such data to the Commission should the Commission make such a request. In such cases, we expect carriers to provide requested information to the Commission in a timely manner and on a non-proprietary basis.

We affirm our conclusion in the *NPRM* that information collected in Table I–6 continues to be essential to our oversight responsibilities. This table reports on items that are below-the-line amounts, *i.e.*, are not allowable expenses to be charged against regulated revenues. Special Charges reported in Table I–6 include lobbying expenses, membership fees and dues, abandoned construction projects amounting to $100,000 or more, telecommunications plant acquisition adjustments, penalties and fines amounting to $100,000 or more, and charitable, social, or other community welfare expenses. Some commenters argue that all reporting of Table I–6 should be eliminated. We disagree. Price cap carriers may fully recover reasonable costs associated with regulated activities through the low-end adjustment mechanism or through a takings claim, therefore it is important that below-the-line expenditures are not included in regulated activities. The items reported in Table I–6, especially if material, could have significant impact on the carrier's regulated activities if not properly recorded. Routine monitoring of these expenses provides assurance that these amounts are properly recorded on the carrier's books.

We can significantly reduce the burdens associated with Table I–6 without seriously hampering our ability to monitor these expenses by raising the current reporting threshold level for abandoned construction projects and penalties and fines. In the *NPRM*, we sought comment on whether the reporting threshold for these items should be raised to a higher amount and, if so, what amount to establish as the reporting threshold. Commenters provided a range of options for raising the threshold level for these items, from $250,000 to $1,000,000. Based on our review of the data, we find it would be appropriate to increase the current threshold levels from $100,000 to $500,000 for both abandoned construction projects and penalties and fines. Specifically, we reviewed 1998 data reported in Table I–6 for abandoned construction projects and penalties and fines and found that the Bell Operating Companies and GTE reported 22 individual items with a total amount of approximately $16 million. We found that expenditures of $500,000 or more constituted 85 percent of the total amount reported for the two activities. Thus, we conclude that $500,000 or more is a reasonable level of reporting for both these activities. Any threshold lower than $500,000 would not significantly reduce the reporting burden for the largest carriers and any threshold higher than $500,000 may not provide us sufficient information to perform our monitoring function.

We also affirm our determination to retain reporting for Table I–7. We disagree with commenters that reporting of these amounts should be eliminated. The items reported in Table I–7 concern expenditures that may not be appropriate or reasonable to charge against regulated operations. Thus, our oversight responsibilities require that we maintain some degree of reporting to ensure that these expenditures are reasonable and recorded properly.

The *NPRM* requested comment on whether the current threshold levels for Table I–7 reporting should be revised. Under the current requirements, there are three reporting threshold levels depending on the type of payment. Carriers must report: (1) Amounts exceeding $250,000 for Advertising & Information Services, Clerical & Office Services, Computer & Data Processing Services, Personnel Services, Printing & Design Services, and Security Services; (2) amounts exceeding $25,000 for Audit & Accounting, Consulting & Research Services, Financial, and Legal; and (3) amounts exceeding $10,000 for Membership Fees & Dues. Table I–7 also requires carriers to report all amounts for Academia.

We find that an increase in the current threshold levels for reporting items on Table I–7 is justified. By raising the current threshold levels, we can significantly reduce the reporting burden for Table I–7 while retaining sufficient information to meet our oversight responsibilities. Our review of proposals submitted by the commenters finds that the threshold levels advanced by GSA and Ad Hoc would have a very small impact on the amounts provided under current reporting requirements and would provide little relief to carriers. We also find that by changing the payment types corresponding to the current threshold levels, and thus, proposing a fourth threshold level for some items, the proposals advanced by USTA and GTE result in a more complex reporting scheme than currently exists. Based on our analysis, we find that it is appropriate to raise the threshold levels for reporting items in Table I–7 as follows: (1) Amounts exceeding $1,000,000 for Advertising & Information Services, Clerical & Office Services, Computer & Data Processing Services, Personnel Services, Printing & Design Services, and Security Services; (2) amounts exceeding $500,000 for Audit & Accounting, Consulting & Research Services, Financial, and Legal; and (3) amounts exceeding $50,000 for Membership Fees & Dues. We find that these new thresholds will capture material information for our oversight needs while at the same time substantially reduce the reporting burden for carriers.

We also find that we can eliminate the reporting of amounts reported for Academia. Based on our analysis, we find that the existing requirement to report all amounts for Academia is no longer justified. As designed, this reporting requirement was established to provide the Commission with information relevant to expertise obtained by carriers for regulatory purposes. Reviewing our experience with the present reporting requirement for Academia, we find that it imposes substantial burdens on the carriers while providing little value to our oversight of carrier's activities. Given the minimum level of benefit this data provides we find that we can eliminate the collection of this information without compromising our oversight responsibilities.

III. Conclusion

In this *Report and Order*, we eliminate the expense matrix filing requirement; provide large ILECs the option to obtain a biennial attestation engagement to satisfy their CAM audit obligation; establish a $500,000 *de minimis* exception to our affiliate transactions fair market value estimate requirement; eliminate the 15-day pre-filing requirement for cost pool and time reporting procedures changes; eliminate the notification requirement for temporary or experimental accounts; eliminate the notification requirement for extraordinary items, contingent liabilities, and material prior period adjustments; eliminate the reclassification requirements for property in Account 2002; and eliminate the reclassification requirements for property in Account 2003. We substantially streamline the ARMIS 43–02 USOA Report and significantly reduce the reporting requirements for carriers. Specifically, we revise Table C–3 to include carrier's name, address, and operating states and eliminate Tables C–1, C–2, and C–4; eliminate nine of twelve reporting items in Table C–5 and establish reporting threshold levels for two items; eliminate seven of fifteen reporting items in Table B; eliminate three of seven reporting items in Table I; establish higher threshold levels for items reported in

Tables I–6 and I–7 and eliminate the reporting requirements for Academia.

IV. Procedural Issues

A. Regulatory Flexibility Analysis

Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA) requires that an agency prepare a regulatory flexibility analysis for notice-and-comment rulemaking proceedings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." In the *NPRM*, the Commission certified that the proposed rules would not have a significant economic impact on a substantial number of small entities. The Commission stated that the proposed rules would reduce certain recordkeeping and CAM audit requirements; that the changes should be easy and inexpensive for the ILECs to implement; and that the rule changes would not require costly or burdensome procedures. No comments were received concerning this certification. The Commission now reaffirms this certification with respect to the rules adopted in this Report and Order. The Commission anticipates that the rule changes adopted here will reduce regulatory and procedural burdens on ILECs. The rule modifications do not impose any additional compliance burden on persons dealing with the Commission. Accordingly, the Commission certifies, pursuant to 5 U.S.C. 605(b) of the RFA, that the rules adopted herein will not have a significant economic impact on a substantial number of small business entities, as defined by the RFA.

Report to Congress

The Consumer Information Bureau, Reference Information Center, shall provide a copy of this certification to the Chief Counsel for Advocacy of the SBA, and include it in the report to Congress pursuant to the SBREFA. The certification will also be published in the **Federal Register**.

B. Paperwork Reduction Act Analysis

Final Paperwork Reduction Act Analysis

The decision herein has been analyzed with respect to the Paperwork Reduction Act of 1995, Public Law 104–13, and found to impose new or modified recordkeeping requirements or burdens on the public. The rule amendments set forth in this Report and Order will become effective 6 months after their publication in the **Federal Register**. The rules in this document contain information collections, which have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

V. Ordering Clauses

Pursuant to Sections 1, 4, 201–205, 215, and 218–220 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154, 201–205, 215, and 218–220, §§ 32 and 64 of the Commission's rules, 47 CFR 32 and 64, are amended.

The rule amendments set forth in this Report and Order will become effective 6 months after their publication in the **Federal Register**. The rules in this document contain information collections which have not been approved by OMB. The Commission will publish a document in the **Federal Register** announcing the effective date of these rules.

The Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Report and Order, including this certification and statement, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects

47 CFR Part 32

Communications common carriers, Reporting and recordkeeping requirements, Telephone, Uniform system of accounts.

47 CFR Part 64

Communications common carriers, Federal Communications Commission, Radio, Reporting and recordkeeping requirements, Telegraph, Telephone.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

Rules Changes

Part 32 of Title 47 of the CFR is amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 continues to read as follows:

Authority: 47 U.S.C. 154(i), 154(j) and 220 as amended, unless otherwise noted.

2. In § 32.13 paragraph (a)(3) is revised to read as follows:

§ 32.13 Accounts—general.

(a) * * *

(3) A company may establish temporary or experimental accounts without prior notice to the Commission.

3. Section 32.25 is revised to read as follows:

§ 32.25 Unusual items and contingent liabilities.

Extraordinary items, prior period adjustments, and contingent liabilities may be recorded in the company's books of account without prior Commission approval.

4. In § 32.27 paragraph (c) is revised to read as follows:

§ 32.27 Transactions with affiliates.

* * * * *

(c) Services provided between a carrier and its affiliate pursuant to a tariff, including a tariff filed with a state commission, shall be recorded in the appropriate revenue accounts at the tariffed rate. Non-tariffed services provided between a carrier and its affiliate pursuant to publicly-filed agreements submitted to a state commission pursuant to section 252(e) of the Communications Act of 1934 or statements of generally available terms pursuant to section 252(f) shall be recorded using the charges appearing in such publicly-filed agreements or statements. Non-tariffed services provided between a carrier and its affiliate that qualify for prevailing price valuation, as defined in paragraph (d) of this section, shall be recorded at the prevailing price. For all other services provided by a carrier to its affiliate, the services shall be recorded at the higher of fair market value and fully distributed cost. For all other services received by a carrier from its affiliate, the service shall be recorded at the lower of fair market value and fully distributed cost. For purposes of this section, carriers are required to make a good faith determination of fair market value for a service when the total aggregate annual value of that service reaches or exceeds $500,000. When a carrier reaches or exceeds the $500,000 threshold for a particular service for the first time, the carrier must perform the market valuation and value the transaction in accordance with the affiliate transactions rules on a going-forward basis. All services received by a carrier from its affiliate(s) that exist solely to provide services to members of the carrier's corporate family shall be recorded at fully distributed cost.

* * * * *

5. Section 32.2002 is revised to read as follows:

§ 32.2002 Property held for future telecommunications use.

(a) This account shall include the original cost of property owned and held for no longer than two years under a definite plan for use in telecommunications service. If at the end of two years the property is not in service, the original cost of the property may remain in this account so long as the carrier excludes the original cost and associated depreciation from its ratebase and ratemaking considerations and report those amounts in reports filed with the Commission pursuant to 43.21(e)(1) and 43.21(e)(2) of this chapter.

(b) Subsidiary records shall be maintained to show the character of the amounts carried in this account.

6. In § 32.2003(c) the paragraph is revised to read as follows:

§ 32.2003 Telecommunications plant under construction.

* * * * *

(c) If a construction project has been suspended for six months or more, the cost of the project included in this account may remain in this account so long as the carrier excludes the original cost and associated depreciation from its ratebase and ratemaking considerations and reports those amounts in reports filed with the Commission pursuant to 43.21(e)(1) and 43.21(e)(2) of this chapter. If a project is abandoned, the cost included in this account shall be charged to Account 7370, Special Charges.

§ 32.5999 [Amended]

* * * * *

7. In § 32.5999, paragraph (f) is removed, and paragraphs (g) and (h) are redesignated as paragraphs (f) and (g).

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

8. The authority citation for part 64 continues to read as follows:

Authority: 47 U.S.C. 10, 201, 218, 226, 228, 332, unless otherwise noted.

9. In § 64.903 paragraph (b) is revised to read as follows:

§ 64.903 Cost allocation manuals.

* * * * *

(b) Each carrier shall ensure that the information contained in its cost allocation manual is accurate. Carriers must update their cost allocation manuals at least annually, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at the time of implementation. Annual cost allocation manual updates shall be filed on or before the last working day of each calendar year. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in cost apportionment tables must be quantified in $100,000 increments at the cost pool level. The Chief, Common Carrier Bureau may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure.

* * * * *

10. In § 64.904 paragraph (a) is revised to read as follows:

§ 64.904 Independent audits.

(a) With the exception of mid-sized local exchange carriers, each local exchange carrier required to file a cost allocation manual, by virtue of having annual operating revenues that equal or exceed the indexed revenue threshold for a given year or by order by the Commission, shall elect to either (1) have an attest engagement performed by an independent auditor every two years, covering the prior two year period, or (2) have a financial audit performed by an independent auditor every two years, covering the prior two year period. In either case, the initial engagement shall be performed in the calendar year after the carrier is first required to file a cost allocation manual. The attest engagement shall be an examination engagement and shall provide a written communication that expresses an opinion that the systems, processes, and procedures applied by the carrier to generate the results reported pursuant to 43.21(e)(2) of this chapter comply with the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111, the Commission's Accounting Safeguards proceeding in CC Docket No. 96–150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, 64.901, and 64.903 in force as of the date of the auditor's report. At least 30 days prior to beginning the attestation engagement, the independent auditors shall provide the Commission with the audit program. The attest engagement shall be conducted in accordance with the attestation standards established by the American Institute of Certified Public Accountants, except as otherwise directed by the Chief, Common Carrier Bureau. The biennial financial audit shall provide a positive opinion on whether the applicable data shown in the carrier's annual report required by § 43.21(e)(2) of this chapter present fairly, in all material respects, the information of the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 96–150, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter, 64.901, and 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Common Carrier Bureau.

* * * * *

[FR Doc. 00–7598 Filed 3–27–00; 8:45 am]

BILLING CODE 6701–12–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–321; MM Docket No. 98–55; RM–9255, RM–9327

Radio Broadcasting Services; Pleasanton, Bandera, Hondo, and Schertz, Texas

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Reding Broadcasting Company, substitutes Channel 252A for Channel 253C1 at Pleasanton, TX, reallots Channel 253C1 from Pleasanton to to Schertz, TX as the community's first local aural service, and modifies its license for Station KBUC(FM) to specify the higher class channel and new community of license. See 63 FR 20563 (1998). To accomplish these changes, the Commission also substitutes Channel 253A for Channel 290A at Hondo, TX with a transmitter site change, and Channel 252A for Channel 276A at Bandera, TX, at the licensed cite. Counterproposals filed by Comal Broadcasting Company and North American Broadcasting Company are dismissed. The coordinates for Channel 253C1 at Schertz are 29–31–25 and 98–43–25. The coordinates for Channel 276A at Bandera are 29–51–22 and 99–05–25. The coordinates for Channel 290A at Hondo are 29–21–00 and 99–15–00. These communities are located within 320 kilometers (199 miles) of the U.S.-Mexican border. Therefore, concurrence by the Mexican Government for these allotments has been received.

DATES: Effective April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Victoria M. McCauley, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 98–55, adopted February 9, 2000, and released February 18, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Information Center (Room CY-A257), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Texas, is amended by adding Schertz, Channel 253C1, removing Pleasanton, Channel 252A, removing Channel 253A at Hondo, and adding Channel 290A at Hondo, and removing Channel 252A at Bandera, and adding Channel 276A at Bandera.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7600 Filed 3–27–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–524; MM Docket 98–135; RM–9300, 9383]

Radio Broadcasting Services; Lufkin and Corrigan, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The document grants the Petition for Reconsideration filed by Corrigan Broadcasting Company of our *Report and Order*, 64 FR 65712 (November 23, 1999) which allotted Channel 232A to Corrigan, Texas and Channel 261A to Lufkin, Texas. In light of the Commission's action herein, Channel 261A is substituted for Channel 232A at Corrigan and the Commission's action allotting Channel 261A to Lufkin is reversed. The coordinates for Channel 261A at Corrigan are North Latitude 30–59–48 and West Longitude 94–49–48. With this action, this proceeding is terminated.

DATES: Effective April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Arthur D. Scrutchins, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 98–135, adopted March 1, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business in the Commission's Reference Information Center (Room CY–A257) at its headquarters, 445 12th Street, S.W. Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc. (202) 857–3800, 1231 20th Street, N.W., Washington, D.C. 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

The authority citation for Part 73 continues to read as follows:

Authority: Sections 303, 48 Stat., as amended, 1082; 47 U.S.C. 154, as amended.

§ 73.202 [Amended]

1. Section 73.202(b), the Table of FM Allotments under Texas is amended by removing Channel 232A from Corrigan and adding Channel 261A at Corrigan, and removing Channel 261A from Lufkin.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7599 Filed 3–27–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 991008273–0070–02; I.D. 062399B]

RIN 0648–AK89

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Amendment 9

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 9 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (Amendment 9). For Gulf migratory group king mackerel, this rule establishes a moratorium on issuance of gillnet endorsements that includes eligibility criteria and restrictions on transferability of endorsements; restricts the area in which the gillnet fishery can operate; reallocates the eastern zone quota between the Florida east coast and Florida west coast subzones; and divides the Florida west coast subzone into northern and southern subzones with respective quotas. This rule also allows retention and sale of cut-off (damaged) king and Spanish mackerel that are greater than the minimum size limits and possessed within the trip limits. The intended effect of this rule is to protect king and Spanish mackerel from overfishing and to maintain healthy stocks while still allowing catches by important commercial and recreational fisheries.

DATES: This final rule is effective April 27, 2000.

ADDRESSES: Comments regarding the collection-of-information requirements contained in this rule should be sent to Edward E. Burgess, Southeast Regional Office, NMFS, 9721 Executive Center Drive N., St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Dr. Steve Branstetter; telephone: 727–570–5305; fax: 727–570–5583; e-mail: Steve.Branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fisheries for coastal migratory pelagic resources are managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared jointly by the Gulf of Mexico Fishery Management Council and the South Atlantic Fishery Management Council (Councils), approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

On July 6, 1999, NMFS announced the availability of Amendment 9 and requested comments on the amendment (64 FR 36325). NMFS approved Amendment 9 on October 7, 1999, and published a proposed rule to implement the measures in Amendment 9 and requested comments (64 FR 60151, November 4, 1999). The background and rationale for the measures in the amendment and proposed rule are contained in the preamble to the proposed rule and are not repeated here.

Comments and Responses

NMFS received twenty-one public comments, many with common statements. A summary of the comments and NMFS' responses follow.

Comment 1: Three commenters expressed general support for the actions to be implemented by this final rule, with minor comments or suggestions for additional measures that could be considered by the Council (see Comment 10). One of the commenters stated that the actions to establish separate sub-zones along Florida's west coast and to implement a moratorium on gill net endorsements were long overdue. Another commenter supported measures that would bring catch capacity in line with total allowable catch until an individual fishing quota or other capacity limiting management strategy could be implemented. By contrast, one commenter opposed all of the actions proposed in Amendment 9, concluding that the actions were unwarranted and unnecessary.

Response: NMFS believes that the actions in Amendment 9 will enhance the socioeconomic benefits of the commercial king mackerel fishery, protect the stock from overfishing, and reduce waste which will improve the accuracy of fishing mortality estimates. NMFS is implementing these actions through this final rule.

Comment 2: Three comments supported the establishment of a northern and southern subzone in the Florida west coast subzone, but three other commenters were opposed to the establishment of the subzones because they unfairly restricted access to the fishery resource. One of the latter commenters noted that the proposed boundaries of the northern and southern subzones would discriminate against central Florida Gulf coast fishermen. The commenter stated that the northern subzone quota will be caught by fishermen fishing off the Florida Panhandle during the summer, closing the fishery in the subzone before the fish migrated south to the central Florida area; central Florida fishermen then would be restricted to fish in the southern subzone (Collier and Monroe Counties), creating a hardship on the fishermen and their families.

Response: NMFS disagrees that the establishment of subzones and the reallocation of the Gulf group king mackerel Eastern Zone quota is unfair or discriminatory to any particular region or fishing sector. The allocations of the quota, as derived by the Councils, were based on the recent landing histories for each region. The Councils recommended an allocation to fishers in the northern zone that reflected their recent landings, while at the same time, protected the historical contribution and participation of the fishers in the south Florida area. NMFS agrees with the strategy employed to derive these re-allocations.

Comment 3: Eleven comments stated the proposed northern subzone quota of 175,500 lb (79,606 kg) was too small. Several of these commenters expressed dismay that the proposed quota was only 14 percent of the total 1,170,000–lb (530,703–kg) eastern zone quota. The commenters thought that the northern subzone would receive a 25 to 30 percent allocation of the eastern zone quota. Several commenters stated that the re-allocation unfairly provided most of the quota to the southern subzone, noting that fishermen in the southern subzone also have the ability to fish seasonally on Atlantic group king mackerel, thus providing even greater access to king mackerel resources. Several commenters suggested that NMFS increase the allocation proposed by the Council for the northern subzone by at least 100,000 lb (45,359 kg).

Response: The Councils recognized that northern Florida landings of king mackerel have increased significantly in recent years. During the 1980s, Monroe County (the Florida Keys) accounted for nearly 90 percent of the king mackerel landings on the west coast of Florida. During the 1990s, the contribution by the Florida Panhandle area increased to approximately 25 percent of the total hook-and-line landings. The selection of a dedicated 175,500 lb (79,606 kg) to the proposed northern subzone equates to 30 percent of the existing 585,000–lb (265,352–kg) hook-and-line allocation for the existing Florida west coast subzone, and nearly 25 percent of the total Florida west coast hook-and-line allocation as implemented in this rule. The allocation of the 175,500 lb (79,606 kg) was derived by dedicating 7.5 percent of the total eastern Gulf commercial quota of 2.34 million lb (1.06 million kg) to the northern subzone. The remaining 92.5 percent was then divided equally between the Florida east coast and Florida west coast (excluding the northern subzone). The Florida west coast quota for the proposed southern subzone was then divided equally between the hook-and-line and run-around gillnet fisheries. In providing this option, the Councils attempted to reflect the recent increases in the proportion of the landings attributable to the northern area, while maintaining support for the more traditional and historical fishery of southern Florida.

With the seasonal shift in the boundary dividing the Atlantic group from the Gulf group king mackerel stocks, beginning on April 1 of each year, southern Florida (Monroe and Collier County) fishermen do have access to the Atlantic group fish. However, this fishery is short-lived as the fish soon migrate north out of the south Florida area.

NMFS supports the Councils' rationale in deriving the allocations for each subzone within the Gulf group eastern zone king mackerel fishery. NMFS cannot increase the proposed allocation for the northern subzone, as suggested by the various commenters. NMFS may approve, partially approve, or disapprove actions submitted by the Councils; NMFS may not substitute actions in this rule for those submitted by the Councils.

Comment 4: Three commenters believed that the proposed reduction for the Florida east coast quota was unfair. Commenters noted that they had accepted lower trip limits for years so that the fishery could remain open year-round. With the reduction in their quota, the fishers are concerned that the fishery will be closed earlier resulting in hardship on Atlantic coast fishermen.

Response: The Florida east coast subzone was first established for the 1994–95 fishing year with a quota of 865,000 lb (392,357 kg) for this segment of the fishery. Beginning with the 1997–98 fishing year, the quota was increased to 1,170,000 lb (530,703 kg). The measures in Amendment 9 would reduce this quota to 1,082,250 lb

(490,900 kg). This segment of the fishery has been closed only once when the quota was reached during the 1998–99 fishing year. That closure was only two weeks prior to the March 31 end of the fishing year. Given that this fishery has only once met its quota, NMFS does not believe that the redistribution of quota allocations will affect overall landings and fishing season for this segment of the fishery.

Additionally, any future increases of total allowable catch for the Gulf group king mackerel stock, when that stock is no longer overfished, would be distributed among the various fishery sectors.

Comment 5: Two commenters believed that restricting gillnet endorsements to those fishers who were active in the fishery is unfair. One of the commenters also opposed the limited transferability of the endorsements. Both noted that fishers who may be inactive in a fishery still maintain their permits and endorsements in the event that their primary fisheries are closed, and it becomes necessary for them to fish in an alternative fishery. By contrast, two commenters supported the moratorium and limited transferability of gillnet endorsements, but questioned the continuing 50–percent allocation of the commercial quota for the proposed southern subzone gillnet segment of the fishery.

Response: The Councils chose to restrict the issuance of gillnet endorsements in the Gulf group king mackerel fishery to curtail expansion of that fishery, and NMFS agrees with this concept. The gillnet fishery has a long history of participating in the commercial king mackerel fishery. NMFS' records indicate that about 87 vessels hold active king mackerel permits with gillnet endorsements, but, since the 1994/1995 season, only 22 different vessels have participated in the fishery. Only about 17 of the 22 recently active gillnet endorsement holders would be able to retain their gillnet endorsements under Amendment 9. Two of the 22 vessels dropped out of the fishery prior to the 1995/1996 and 1996/1997 fishing seasons that will be used as the criterion for retention of the gillnet endorsement, and three vessels entered the fishery after these dates. Thus, the majority (17 of 22) of the current and active gillnet fishers will be eligible to remain in the fishery.

NMFS believes that limiting the number of participants in the gillnet fishery is imperative to prevent expansion and overcapitalization in the fishery and to reduce the probability of quota overruns by this prolific segment of the fishery. Limiting the issuance of gillnet endorsements to those vessels that can demonstrate active participation in the fishery and allowing transfer of those endorsements only to family members will allow continued participation by historical fishing families while the Councils consider whether additional or alternative options should be implemented to effectively manage the overfished Gulf group king mackerel fishery.

NMFS disagrees that the continued 50–percent allocation to the gillnet fishery in the proposed southern subzone of the Florida west coast subzone is inequitable. As noted, about 17 of the 22 recently active participants will be eligible to continue in this fishery, and this segment of the fishery historically has taken its allocation of the quota in a short timeframe. Should the number of eligible participants in the gillnet fishery decline in the future, the Council can reconsider this allocation.

Comment 6: Two comments supported the sale of cut-off fish.

Response: One of the mandates in the 1996 Sustainable Fisheries Act is to reduce bycatch and waste in fisheries. NMFS agrees that allowing the possession and sale of cut-off fish that otherwise would meet the minimum size limit and be possessed within the legal trip limit will reduce waste in this fishery and provide a more accurate assessment of fishing mortality by reducing unreported regulatory discards.

Comment 7: Three comments addressed a proposed action described in Amendment 9 that was rejected by the Councils and not included in the proposed and final rule. This action would have prohibited the sale of recreationally caught fish. Additionally, a minority report from one Gulf Council member expressed concern that this measure was not approved by the South Atlantic Council for consideration by the Secretary of Commerce. Commenters suggested that recreational sale, if allowed to continue, should be suspended when the commercial fishery closes.

Response: NMFS supports the concept of prohibiting the sale of recreationally caught fish. Allowing such sales leads to double-counting of fish which impacts the accuracy of the estimates of fishing mortality. The no-sale provision described in the amendment was not supported collectively by the Councils administering this joint FMP. Thus, the Councils could not forward the no-sale provision for inclusion in the proposed rule.

Comment 8: Two commenters questioned the fairness of further restricting the commercial fishery by placing a moratorium on gillnet endorsements, while the recreational fishery is not required to have a permit and does not have to demonstrate any qualifications to maintain an active status in the fishery.

Response: There are currently no licensing requirements for private individuals to fish recreationally in the exclusive economic zone (EEZ). However, a charter vessel/headboat permit for coastal migratory fish must be issued and on board a vessel that is operating as a charter vessel or headboat to fish for or possess coastal migratory pelagic fish in or from the EEZ. Additionally, the owner or operator of a vessel for which a charter vessel/headboat permit for coastal migratory pelagic fish has been issued, or whose vessel fishes for or lands such coastal migratory pelagic fish in or from state waters adjoining the Gulf or South Atlantic EEZ, and who is selected by NMFS to report must maintain a fishing record for each trip or a portion of such trips, as specified by NMFS, on forms provided by NMFS and must submit such records on a regular basis. If selected, charter vessels must submit completed fishing records to NMFS weekly, and headboats must submit completed fishing records monthly. The Councils are currently considering a permit moratorium for the for-hire sector for coastal migratory pelagic fish, Gulf reef fish, and South Atlantic snapper-groupers to address the rapid expansion of the for-hire industry throughout the Southeast.

Comment 9: One commenter questioned why it was necessary to further restrict directed commercial harvest by limiting the number of commercial fishermen in the coastal migratory pelagic fishery through a permit moratorium, when the Councils were not further restricting shrimping effort which has an impact on coastal migratory stocks through bycatch mortality.

Response: The Councils have addressed shrimp trawl bycatch and its impact on coastal migratory pelagic fishes. Bycatch reduction devices (BRDs) are required in all EEZ waters shoreward of the 100–fathom (183–m) depth contour west of Cape San Blas, Florida, in the Gulf of Mexico, and in all EEZ waters of the South Atlantic. BRDs are also required in all South Atlantic state waters, and the State of Florida requires the use of BRDs in shrimp trawls in state waters in the Gulf of Mexico. Additionally, the Gulf of Mexico Fishery Management Council is considering options to extend BRD requirements into the eastern Gulf of Mexico, making the use of BRDs mandatory in all EEZ waters in the Gulf of Mexico.

Comment 10: Several commenters offered suggestions for additional actions that they believe would be beneficial to managing the coastal migratory pelagic fisheries but that were not included in Amendment 9. One comment suggested that NMFS allow for quota adjustments in subsequent years for any overruns that occur by a particular fishery segment. Two commenters suggested that a logbook or other reporting system should be required for recreational fishing vessels or operators who sell their catch to avoid the double-counting of recreationally caught fish that are later sold and counted against the commercial quota. One commenter further suggested that a fishing license system should be developed for the private recreational sector in the EEZ. One commenter suggested that 50 percent, not 25 percent, of the fisher's income should be derived from commercial fishing in order to be eligible for a commercial permit. Another commenter suggested that the criterion should be based on the landing history of mackerel and not just on income derived from fishing. One commenter stated that the stock assessment and proposed actions did not consider an 18.6-year lunar cycle, the North Atlantic oscillation, or the 11-year shift in sea water temperatures and the effects of these phenomena on coastal migratory pelagic fish stocks.

Response: NMFS agrees that numerous additional management options are available to the Councils to effectively manage the coastal migratory pelagic resources of the southeastern United States. However, as noted in Comment 3, NMFS cannot substitute measures for those proposed by the Councils in this rule. NMFS encourages the public to be actively involved in the Council process and provide suggestions to the Councils for their deliberations. Regarding the incorporation of environmental variables and their effects on fish stocks in stock assessments, although these phenomena may exist, there is currently no evidence suggesting that they have any effect on the biology, abundance, or distribution of mackerel.

Classification

The Administrator, Southeast Region, NMFS, determined on October 7, 1999, that Amendment 9 is necessary for the conservation and management of the FMP and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

This final rule has been determined to be not significant for purposes of E.O. 12866.

The Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule would not have a significant economic impact on a substantial number of small entities. No comments were received regarding this certification. As a result, a regulatory flexibility analysis was not prepared.

Notwithstanding any other provision of law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection-of-information subject to the requirements of the Paperwork Reduction Act (PRA) unless that collection of information displays a currently valid OMB control number.

This rule includes collection-of-information requirements that are subject to the PRA and which has been approved under OMB control number 0648-0205. The estimated response times are 20 minutes for a king mackerel permit application and 5 minutes for a king mackerel gillnet endorsement. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collections of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

List of Subjects in 50 CFR Part 622

Fisheries, Fishing, Puerto Rico, Reporting and recordkeeping requirements, Virgin Islands.

Dated: March 22, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

PART 622—FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH ATLANTIC

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.4, paragraphs (a)(2)(ii) through (a)(2)(iv), the first sentence of paragraph (g), and paragraph (o) are revised to read as follows:

§ 622.4 Permits and fees.

(a) * * *

(2) * * *

(ii) *Gillnets for king mackerel in the southern Florida west coast subzone.* For a person aboard a vessel to use a run-around gillnet for king mackerel in the southern Florida west coast subzone (see § 622.42(c)(1)(i)(A)(*3*)), a commercial vessel permit for king mackerel with a gillnet endorsement must have been issued to the vessel and must be on board. See paragraph (o) of this section regarding a moratorium on endorsements for the use of gillnets for king mackerel in the southern Florida west coast subzone and restrictions on transferability of king mackerel gillnet endorsements.

(iii) *King mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for king mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for king mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for king mackerel valid after April 30, 1999, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application. See paragraph (q) of this section regarding a moratorium on commercial vessel permits for king mackerel, initial permits under the moratorium, transfers of permits during the moratorium, and limited exceptions to the earned income or gross sales requirement for a permit.

(iv) *Spanish mackerel.* For a person aboard a vessel to be eligible for exemption from the bag limits and to fish under a quota for Spanish mackerel in or from the Gulf, Mid-Atlantic, or South Atlantic EEZ, a commercial vessel permit for Spanish mackerel must have been issued to the vessel and must be on board. To obtain or renew a commercial vessel permit for Spanish mackerel valid after April 30, 1999, at least 25 percent of the applicant's earned income, or at least $10,000, must have been derived from commercial fishing (i.e., harvest and first sale of fish) or from charter fishing during one of the 3 calendar years preceding the application.

* * * * *

(g) *Transfer.* A vessel permit, license, or endorsement or dealer permit issued under this section is not transferable or assignable, except as provided in paragraph (m) of this section for a

commercial vessel permit for Gulf reef fish, in paragraph (n) of this section for a fish trap endorsement, in paragraph (o) of this section for a Gulf king mackerel gillnet endorsement, in paragraph (p) of this section for a red snapper license, in paragraph (q) of this section for a king mackerel permit, in § 622.17(c) for a commercial vessel permit for golden crab, or in § 622.18(e) for a commercial vessel permit for South Atlantic snapper-grouper. * * *

* * * * *

(o) *Moratorium on endorsements for the use of gillnets for king mackerel in the southern Florida west coast subzone.* (1) An initial king mackerel gillnet endorsement will be issued only if—

(i) The vessel owner was the owner of a vessel with a commercial mackerel permit with a gillnet endorsement on or before October 16, 1995; and

(ii) The vessel owner was the owner of a vessel that had gillnet landings of Gulf migratory group king mackerel in one of the two fishing years, July 1, 1995, through June 30, 1996, or July 1, 1996, through June 30, 1997. Such landings must have been documented by NMFS or by the Florida Department of Environmental Protection trip ticket system as of December 31, 1997. Only landings when a vessel had a valid commercial permit for king mackerel with a gillnet endorsement and only landings that were harvested, landed, and sold in compliance with state and Federal regulations may be used to establish eligibility.

(2) Paragraphs (o)(1)(i) and (o)(1)(ii) of this section notwithstanding, the owner of a vessel that received a commercial king mackerel permit through transfer, between March 4, 1998, and March 28, 2000, from a vessel that met the eligibility requirements in paragraphs (o)(1)(i) and (o)(1)(ii) also qualifies for an initial king mackerel gillnet endorsement.

(3) To obtain an initial king mackerel gillnet endorsement under the moratorium, an owner or operator of a vessel that does not have a king mackerel gillnet endorsement on March 28, 2000 must submit an application to the RA, postmarked or hand delivered not later than June 26, 2000. Except for applications for renewals of king mackerel gillnet endorsements, no applications for king mackerel gillnet endorsements will be accepted after June 26, 2000. Application forms are available from the RA.

(4) The RA will not issue an owner more initial king mackerel gillnet endorsements under the moratorium than the number of vessels with king mackerel gillnet endorsements that the owner owned simultaneously on or before October 16, 1995.

(5) An owner of a vessel with a king mackerel gillnet endorsement issued under this moratorium may transfer that endorsement upon a change of ownership of a permitted vessel with such endorsement from one to another of the following: Husband, wife, son, daughter, brother, sister, mother, or father. Such endorsement also may be transferred to another vessel owned by the same entity.

(6) A king mackerel gillnet endorsement that is not renewed or that is revoked will not be reissued. An endorsement is considered to be not renewed when an application for renewal is not received by the RA within 1 year after the expiration date of the permit that includes the endorsement.

* * * * *

3. In § 622.38, paragraph (g) is revised to read as follows:

§ 622.38 Landing fish intact.

* * * * *

(g) Cut-off (damaged) king or Spanish mackerel that comply with the minimum size limits in § 622.37(c)(2) and (c)(3), respectively, and the trip limits in § 622.44(a) and (b), respectively, may be possessed in the Gulf, Mid-Atlantic, or South Atlantic EEZ on, and offloaded ashore from, a vessel that is operating under the respective trip limits. Such cut-off fish also may be sold. A maximum of five additional cut-off (damaged) king mackerel, not subject to the size limits or trip limits, may be possessed or offloaded ashore but may not be sold or purchased and are not counted against the trip limit.

* * * * *

4. In § 622.41, paragraphs (c)(1)(ii) and (c)(2)(iv) are revised to read as follows:

§ 622.41 Species specific limitations.

* * * * *

(c) * * *

(1) * * *

(ii) King mackerel, Gulf migratory group—hook-and-line gear and, in the southern Florida west coast subzone only, run-around gillnet. (See § 622.42(c)(1)(i)(A)(*3*) for a description of the southern Florida west coast subzone.)

* * * * *

(2) * * *

(iv) *Exception for king mackerel in the Gulf EEZ.* The provisions of this paragraph (c)(2)(iv) apply to king mackerel taken in the Gulf EEZ and to such king mackerel possessed in the Gulf. Paragraph (c)(2)(iii) of this section notwithstanding, a person aboard a vessel that has a valid commercial permit for king mackerel is not subject to the bag limit for king mackerel when the vessel has on board on a trip unauthorized gear other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone. Thus, the following applies to a vessel that has a commercial permit for king mackerel:

(A) Such vessel may not use unauthorized gear in a directed fishery for king mackerel in the Gulf EEZ.

(B) If such a vessel has a drift gillnet or a long gillnet on board or a run-around gillnet in an area other than the southern Florida west coast subzone, no king mackerel may be possessed.

(C) If such a vessel has unauthorized gear on board other than a drift gillnet in the Gulf EEZ, a long gillnet, or a run-around gillnet in an area other than the southern Florida west coast subzone, the possession of king mackerel taken incidentally is restricted only by the closure provisions of § 622.43(a)(3) and the trip limits specified in § 622.44(a). See also paragraph (c)(4) of this section regarding the purse seine incidental catch allowance of king mackerel.

* * * * *

5. In § 622.42, paragraphs (c)(1)(i)(A)(*1*) through (c)(1)(i)(A)(*3*) are revised to read as follows:

§ 622.42 Quotas.

* * * * *

(c) * * *

(1) * * *

(i) * * *

(A) * * *

(*1*) *Florida east coast subzone*—1,082,250 lb (490,900 kg).

(*2*) *Florida west coast subzones*—(*i*) *Southern*—1,082,250 lb (490,900 kg), which is further divided into a quota of 541,125 lb (245,450 kg) for vessels fishing with hook-and-line and a quota of 541,125 lb (245,450 kg) for vessels fishing with run-around gillnets.

(*ii*) *Northern*—175,500 lb (79,606 kg).

(*3*) *Description of Florida subzones.* The Florida east coast subzone is that part of the eastern zone south of 25°20.4' N. lat., which is a line due east from the Miami-Dade/Monroe County, FL, boundary. The Florida west coast subzone is that part of the eastern zone south and west of 25°20.4' N. lat. The Florida west coast subzone is further divided into southern and northern subzones. From November 1 through March 31, the southern subzone is that part of the Florida west coast subzone that extends south and west from 25°20.4' N. lat. to 26°19.8' N. lat., a line directly west from the Lee/Collier County, FL boundary (i.e., the area off Collier and Monroe Counties). From April 1 through October 31, the southern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 25°48' N. lat., which is a line directly west from the Monroe/Collier County, FL, boundary (i.e., off Collier County). The northern subzone is that part of the Florida west coast subzone that is between 26°19.8' N. lat. and 87°31'06" W. long., which is a line directly south from the Alabama/Florida boundary.

* * * * *

6. In § 622.44, paragraphs (a)(2)(i) and (a)(2)(ii) are revised to read as follows:

§ 622.44 Commercial trip limits.

* * * * *

(a) * * *

(2) * * *

(i) *Eastern zone-Florida east coast subzone.* In the Florida east coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit for king mackerel has been issued, as required under § 622.4(a)(2)(iii), from November 1 each fishing year until the subzone's fishing year quota of king mackerel has been harvested or until March 31, whichever occurs first, in amounts not exceeding 50 fish per day.

(ii) *Eastern zone-Florida west coast subzone*—(A) *Gillnet gear.* (*1*) In the southern Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel for which a commercial permit with a gillnet endorsement has been issued, as required under § 622.4(a)(2)(ii), from July 1, each fishing year, until a closure of the southern Florida west coast subzone's fishery for vessels fishing with run-around gillnets has been effected under § 622.43(a)—in amounts not exceeding 25,000 lb (11,340 kg) per day.

(*2*) In the southern Florida west coast subzone:

(*i*) King mackerel in or from the EEZ may be possessed on board or landed from a vessel that uses or has on board a run-around gillnet on a trip only when such vessel has on board a commercial permit for king mackerel with a gillnet endorsement.

(*ii*) King mackerel from the southern west coast subzone landed by a vessel for which such commercial permit with endorsement has been issued will be counted against the run-around gillnet quota of § 622.42(c)(1)(i)(A)(*2*)(*i*).

(*iii*) King mackerel in or from the EEZ harvested with gear other than run-around gillnet may not be retained on board a vessel for which such commercial permit with endorsement has been issued.

(B) *Hook-and-line gear.* In the Florida west coast subzone, king mackerel in or from the EEZ may be possessed on board or landed from a vessel with a commercial permit for king mackerel, as required by § 622.4(a)(2)(iii), and operating under the hook-and-line gear quotas in § 622.42(c)(1)(i)(A)(*2*)(*i*) or (c)(1)(i)(A)(*2*)(*ii*):

(*1*) From July 1, each fishing year, until 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested—in amounts not exceeding 1,250 lb (567 kg) per day.

(*2*) From the date that 75 percent of the respective northern or southern subzone's hook-and-line gear quota has been harvested, until a closure of the respective northern or southern subzone's fishery for vessels fishing with hook-and-line gear has been effected under § 622.43(a)—in amounts not exceeding 500 lb (227 kg) per day.

* * * * *

7. In § 622.45, paragraph (h) is revised to read as follows:

§ 622.45 Restrictions on sale/purchase.

* * * * *

(h) *Cut-off (damaged) king or Spanish mackerel.* A person may not sell or purchase a cut-off (damaged) king or Spanish mackerel that does not comply with the minimum size limits specified in § 622.37(c)(2) or (c)(3), respectively, or that is in excess of the trip limits specified in § 622.44(a) or (b), respectively.

[FR Doc. 00–7610 Filed 3–27–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 991228354–0078–02; I.D. No. 111299C]

RIN 0648–AM49

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; 2000 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; specifications for 2000.

SUMMARY: NMFS issues final specifications for the 2000 fishing year for Atlantic mackerel, squid, and butterfish (MSB). This rule also allocates the domestic annual harvest for *Loligo* squid into three 4-month periods, and prohibits the use of any combination of mesh or liners that effectively decreases the mesh size below the minimum mesh size of 1⅞ in (48 mm). The intent of this rule is to comply with the regulations for MSB that require NMFS to publish specifications for each fishing year to conserve and manage the resource in compliance with the regulations, fishery management plan, and Magnuson-Stevens Fishery Conservation and Management Act.

DATES: The quotas for *Loligo* and *Illex* squid, Atlantic mackerel, and butterfish are effective March 22, 2000, through December 31, 2000. Sections 648.21(e) and 648.22(a) are effective March 22, 2000. Section 648.23(c) is effective April 27, 2000.

ADDRESSES: Copies of the Environmental Assessment/Regulatory Impact Review/Initial and Final Regulatory Flexibility Analyses (EA/RIR/IRFA), are available from Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930–2298. The EA/RIR/IRFA is accessible via the Internet at *http://www.nero.gov/ro/doc/nr.htm.*

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, 978–281–9273, fax 978–281–9135, e-mail *paul.h.jones@noaa.gov.*

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for Atlantic Mackerel, Squid, and Butterfish Fisheries (FMP) require NMFS to publish annual specifications for initial optimum yield (IOY), allowable biological catch (ABC), domestic annual harvest (DAH), domestic annual processing (DAP), joint venture processing (JVP), and total allowable levels of foreign fishing (TALFF) for the species managed under the FMP.

Proposed 2000 initial specifications were published on January 5, 2000 (65 FR 431). Public comments were requested through February 4, 2000. The final specifications are unchanged from those that were proposed. A complete discussion of the specifications appears in the preamble to the proposed rule and is not repeated here.

2000 Final Specifications

The following table contains the final specifications for the 2000 MSB fisheries as recommended by the Mid-

Atlantic Fishery Management Council (Council).

TABLE 1.—FINAL ANNUAL SPECIFICATIONS FOR ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FOR THE FISHING YEAR JANUARY 1 THROUGH DECEMBER 31, 2000

[Metric Tons (mt)]

Specifications	Squid		Atlantic mackerel	Butterfish
	Loligo	Illex		
Max OY	26,000	24,000	1 (1)	6,000
ABC	13,000	24,000	347,000	7,200
IOY	13,000	24,000	2 75,000	5,900
DAH	13,000	24,000	3 75,000	5,900
DAP	13,000	24,000	50,000	0
JVP	0	0	4 10,000	0
TALFF	0	0	0	0

[1] Not applicable.
[2] OY may be increased during the year, but the total ABC will not exceed 347,000 mt.
[3] Includes 15,000 mt of Atlantic mackerel recreational allocation.
[4] JVP may be increased up to 15,000 mt at discretion of the Regional Administrator.

Joint Ventures

This rule also specifies an Atlantic mackerel JVP of 10,000 mt for the 2000 fishery, with a possible increase of up to 5,000 mt for a total JVP of up to 15,000 mt later in the fishing year. If applications received for JVP account for more than 10,000 mt in a fishing year, NMFS may increase this allocation up to 15,000 mt by publishing a final rule in the **Federal Register**. NMFS believes that increasing the JVP in this way could provide additional opportunities for U.S. vessels to participate in joint venture (JV) fisheries. This action also specifies an Atlantic mackerel DAP of 50,000 mt and a DAH of 75,000 mt, which includes a 15,000-mt recreational component.

Four special conditions recommended by the Council and imposed by NMFS in previous years continue to apply to the 2000 Atlantic mackerel fishery as follows: (1) River herring bycatch may not exceed 0.25 percent of the over-the-side transfers of Atlantic mackerel in JVs south of 37°30′ N. lat.; (2) The Regional Administrator (RA) must ensure that impacts on marine mammals are reduced in the prosecution of the Atlantic mackerel fishery; (3) If the Atlantic mackerel IOY is increased during the year, the total may not exceed 347,000 mt; and (4) Applications for a JV with a particular Nation's vessels for 2000 cannot be considered until the RA determines, based on an evaluation of performances, that the Nation's purchase obligations for previous years have been fulfilled.

Atlantic Squids

Loligo Gear Requirements

In addition to the quota specifications, this rule establishes additional gear requirements for the *Loligo* fishery as follows: "The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthener). In addition, the inside webbing shall not be more than 2 ft (61 cm) longer than the outside webbing." This is intended to help improve enforcement of the minimum mesh size requirements in the *Loligo* fishery while preserving the intended selective properties of the regulated mesh size (1⅞ in (48 mm)).

Distribution of Annual Loligo Quota by Three 4-Month Periods

This rule specifies a *Loligo* squid IOY of 13,000 mt, which is equal to ABC, and sub-divides the annual quota into three 4-month quota periods (Period I (Jan-Apr), Period II (May-Aug), and Period III (Sep-Dec)). The quota is allocated to each period based on the average proportion of landings that occurred in each 4-month period during the years 1994–1998. The directed *Loligo* fishery during Periods I and II will be closed when 90 percent of the amount allocated to the respective period is landed. The directed *Loligo* fishery will be closed in Period III when 95 percent of the annual quota has been taken. Once the directed squid fishery closes for a given period, a 2,500-lb (1,134-kg) *Loligo* trip limit would remain in place until the end of the respective period. The quota, allocated by 4-month periods, is shown in Table 2.

TABLE 2.—LOLIGO 4-MONTH PERIOD ALLOCATIONS

4-month period	Percent	Metric tons
I (Jan-Apr)	42	5,460
II (May-Aug)	18	2,340
III (Sep-Dec)	40	5,200
Total	100	13,000

Changes From the Proposed Rule

The Council recommended that any Period I or II quota underage be applied to the next trimester and that quota overages from Periods I and II be deducted from Period III. NMFS, in the preamble to the proposed rule, tried to clarify the Council's intent and proposed that any Period I and II quota underages be applied to Period III and any Period I and II quota overages be subtracted from Period III. However, that proposal would not provide the time needed to assess landings before the start of Period III. Each of the three trimester periods follow a monthly schedule, and not reporting weeks, therefore, the weekly reports using the data gathered by NMFS" interactive voice response (IVR) will need to be adjusted to account for reporting weeks in which a period ends in the middle of that week. This adjustment is accomplished by either adding or subtracting landings from one period or the other. Final landings are determined by using all sources of data available to NMFS, including detailed trip level dealer and vessel reports, to validate the weekly IVR data. This process normally takes 60 to 90 days, depending on the availability of the data. By revising § 648.21(e)(2) to apply any Period I and II quota underages or overages to Period III after November 15 of the same year, NMFS will have 75 days to validate the quota monitoring data and to make changes to the Period III commercial quota.

Editorial simplification and clarifications were made to § 648.23(c) to clarify further the mesh obstruction or constriction prohibition.

Comments and Responses

Eight comments were received on the proposed annual specifications and regulations. Summaries of the comments and responses on them are provided below.

Comment 1: In the proposed rule, DAH for Atlantic mackerel is composed of 15,000 mt for the recreational fishery, 50,000 mt for DAP, and 10,000 mt for JVP. A commenter proposed instead to specify 65,000 mt for DAH (15,000 mt for the recreational fishery), 35,000 mt for DAP, and 15,000 mt for JVP. The commenter noted that processors in past years have not attained the DAP levels recommended by the Council. The commenter also proposed allocation of 45,000 mt of TALFF to provide directed fishing as an incentive to foreign vessels considering JVs.

Response 1: These proposals, which could negatively affect U.S. processing and exports by infringing on markets currently engaged in by domestic processors, go well beyond any measures discussed and analyzed by the Council. In order to be considered by NMFS, all recommendations should be made through the Council for its consideration and analysis. Since passage of the American Fisheries Act of 1995, TALFF for mackerel may not be specified unless recommended by the appropriate Regional Fishery Management Council. However, NMFS may adjust JVP up to 15,000 mt, the level preferred by the commenter, provided certain conditions are met.

Comment 2: One commenter observed that the Atlantic mackerel specifications should be set for 2 fishing years, rather than 1.

Response 2: Setting the specifications for more than 1 year is not allowed under the FMP.

Comment 3: One commenter argued that there was not ample time to comment on proposed 2000 specifications. The draft EA/RIR/IRFA document was posted on the Internet in November 1999 and the comment period was only January 20, 2000, through February 4, 2000.

Response 3: The draft EA/RIR/IRFA document was posted on the Internet January 6, 2000, and the comment period was January 5, 2000 through February 4, 2000, allowing 30 days for written comments. NMFS believes that this is an adequate amount of time to solicit comments and notes that a 30-day comment period has been used for all Mid-Atlantic Council annual specifications for the past 10 years.

Comment 4: One commenter stated that very few vessels actually direct effort on both *Loligo* and *Illex* in a given year. If the first part of the year is closed to *Loligo* fishing when the proposed trimester quota is harvested, squid fishermen will have few, if any, other fisheries in which to participate.

Response 4: The commercial fishery for *Loligo* is primarily prosecuted with otter trawls and often harvests a mix of species, including *Loligo*, scup, black sea bass, summer flounder, Atlantic mackerel, and silver hake. Although the DAH for *Loligo* is less in 2000 than in 1999, the establishment of seasonal quotas for each of the trimesters preserves the percent of harvest for each of those 3 periods, based on 1994–1998 landings patterns. *Loligo* matures in a year or less from birth, therefore it is hoped that stock recovery will be rapid and higher DAHs will be possible within the next few years.

Comment 5: One commenter asked where in the draft EA/RIR/IRFA document are figures and information regarding the profile of the recreational squid fishery?

Response 5: In Section 8.4, on page 43 of the EA/RIR/IRFA document there is a discussion of the recreational squid fishery. The primary use of squid in the recreation sector is for bait.

Comment 6: Several commenters disagree with the 38 percent reduction in *Loligo* quota from 1999 and requested that the *Loligo* 2000 ABC be set at the 1999 ABC level of 21,000 mt.

Response 6: Because *Loligo* has been designated as overfished, the Council is required under the Magnuson-Stevens Act to implement a stock rebuilding strategy that will allow the *Loligo* stock to rebuild to levels that will produce the maximum sustainable yield (B_{MSY}) in as short a time period as possible, not to exceed 10 years. Stock projections from Stock Assessment Workshop (SAW)–29 indicated that the stock would rebuild to the B_{MSY} level in 3 to 5 years if the fishing mortality rate is reduced below the level that would allow the stocks to produce MSY (F_{MSY}). As a result, the Council recommended, and NMFS implements by this action, an ABC specification for 2000 consistent with landings that would result from a fishing mortality rate of 90 percent of F_{MSY}, or 13,000 mt. This specification represents an 8,000 mt reduction from the 21,000-mt ABC specified in 1999. However, the specification represents only an 18-percent reduction in landings relative to the average landings for the past 3 years (1996–1998). Specifying the *Loligo* 2000 ABC at the 1999 ABC level of 21,000 mt would conflict with the requirements of the Magnuson-Stevens Act to end overfishing and rebuild the resource.

Comment 7: Because of the small 2000 *Loligo* specification, one commenter stated that factory vessels will have the capacity to control the entire trimester quota allocation.

Response 7: Management advice from SAW–29 made special note that yield from the *Loligo* fishery should be distributed throughout the fishing year. Given that the current permitted fleet historically has demonstrated the ability to land *Loligo* in excess of the quota specified for 2000, the Council recommended, and NMFS has approved, a management action to sub-divide the annual quota into three quota periods (trimesters). The quota, which is allocated to each period based on the proportion of historical landings occurring in each trimester from 1994–1998, is divided as follows: Period I (January–April) is 5,460 mt (42 percent of the total); Period II (May–August) is 2,340 mt (18 percent of the total); and Period III (September–December) is 5,200 mt (40 percent of the total). NMFS believes that allocation of seasonal quotas allows all vessels to utilize the entire trimester quota allocations, and notes there is no information available to indicate that factory vessels will have more disproportionate access to *Loligo* than they had under the annual quota system.

Comment 8: One commenter stated that the proposed rule does not set forth or project the 1999 *Loligo* landings.

Response 8: On page 5 of the EA/RIR/IRFA, supporting documents for the annual specifications, Table 2, lists the preliminary *Loligo* landings through September 11, 1999, as 11,004 mt.

Comment 9: One commenter believed that NMFS disregarded the best available scientific information and failed to provide updated estimates to reconcile the impacts of predators on the *Loligo* stock. The commenter also asked what are the agency's updated marine mammal consumption estimates (for *Loligo*), based on the updated mammal stock assessments as required by the Marine Mammal Protection Act, how has the agency taken these energetic requirements into consideration, and how have these large removal levels impacted *Loligo* stock survey and biomass estimates. The commenter believed that the proposed rule did not appear to address this important issue about total *Loligo* squid

mortality and ,therefore, did not use the best available scientific information.

Response 9: Loligo squid is an important forage species consumed in quantity by many fish, bird, and marine mammal predators. Unfortunately, there is currently no way to estimate the amount of *Loligo* taken by marine mammals because there are too many variables to consider. Natural mortality (*e.g.*, primarily predation) and human predation (fishing mortality) are "additive" as rates. As human predation increases, the resulting total mortality increases. The only element in the total mortality that can be controlled at this time is human predation. NMFS believes that the final *Loligo* specifications are based on the best scientific information available.

Comment 10: One commenter asked since real-time monitoring is critical but not a component of the current plan, how can NMFS accurately monitor the *Loligo* specifications and determine the status of the stock?

Response 10: NMFS currently collects landings for *Loligo* every week via the IVR dealer reporting system. These electronic reports are then followed by detailed dealer and vessel reports that are submitted monthly. The IVR system allows NMFS to monitor accurately the *Loligo* specifications and determine the status of the stock.

Classification

This action is authorized by 50 CFR part 648 and complies with the National Environmental Policy Act.

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS completed a final regulatory flexibility analysis (FRFA) that contains the items specified in 5 U.S.C. sec. 604(a). The FRFA is as follows:

Final Regulatory Flexibility Analysis for Atlantic Mackerel, Squid, and Butterfish 2000 Specifications

Need for, and Objectives of, the Rule

This rule is needed to establish annual specifications for the Atlantic mackerel, squid and butterfish (MSB) fisheries and to prevent circumvention of a mesh restriction. The intent of this rule is to comply with the regulations for MSB that require the National Marine Fisheries Service (NMFS) to publish specifications for each fishing year to conserve and manage the resource in compliance with the regulations, fishery management plan (FMP), and Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

Public Comments

Three comments were submitted on the initial regulatory flexibility analysis (IRFA). These comments are addressed in the Comments and Responses section of the preamble to the final rule. No significant issues were raised by these comments, and no changes were made to the rule as a result of these comments.

Number of Small Entities

There are 443 vessels fishing for *Loligo*, 77 for *Illex*, 443 for butterfish, and 1,980 for Atlantic mackerel in 1997 that would likely be impacted by the 2000 specifications. Many vessels participate in more than one of these fisheries; therefore, the numbers are not additive. The final *Illex*, butterfish, and Atlantic mackerel specifications represent no constraint on vessels in these fisheries as there exists a surplus between the proposed specifications and the actual landings for these species in recent years. The final specifications for *Loligo* represent an 18-percent reduction in landings compared to the average last 3 years' (1996–1998) landings. This reduction may result in a 5 to 10 percent revenue reduction (all species combined) for 121 of 443 vessels that reported landing *Loligo* in 1997. The remaining vessels (322) are expected to experience a reduction in revenues of less than 5 percent.

Cost of Compliance

No additional costs of compliance, including those associated with recordkeeping and reporting, would result from the implementation of the quotas. There are no recordkeeping or reporting requirements associated with this rule. The prohibition on the use of any combination of mesh or liners in the Loligo fishery that effectively decreases the mesh size below the minimum mesh size of 1⅞ in (48 mm) will not adversely impact any small entity that is not circumventing the mesh size regulations by using a larger codend. No additional gear is needed to comply with this restriction.

Minimizing Significant Impacts

Alternatives considered and rejected for these four species were detailed in the IRFA. A review of the impacts of the final specifications, including alternatives to the final specifications, indicates that the impacts associated with the selected measures for Atlantic mackerel, *Illex*, and butterfish will not create significant economic impacts on small entities. As for *Loligo*, of the 443 vessels that reported landing *Loligo* in 1997, 121 vessels would be expected to experience a reduction in total gross revenues (all species combined) between 5 and 10 percent as a result of the 18 percent reduction in the *Loligo* quota in 2000. This represents 27.3 percent of the vessels that landed *Loligo* in 1997. The remaining vessels (322, or 72.7 percent) are expected to experience a reduction in total gross revenues (all species combined) of less than 5 percent as a result of the 18 percent reduction in the *Loligo* quota in 2000.

While all other considered alternatives for Atlantic mackerel would result in similar impacts on small entities, two of the three alternatives were found inconsistent with the FMP. The third alternative eliminated joint venture processing (JVP). NMFS believes JVP is necessary at this time to provide another opportunity for U.S. vessels to participate in joint venture fisheries. The selected *Loligo* alternative represented the alternative most consistent with the stated objectives of applicable statutes and the FMP. The rejected alternative resulted in 161 of 443 vessels being impacted (compared to 121 of 443 under the adopted alternative). Specifying the *Loligo* 2000 ABC at the 1999 ABC level of 21,000 mt was not analyzed by the Council because it would conflict with the requirements of the Magnuson-Stevens Act to end overfishing and rebuild the resource. The selected *Illex* alterative represented the alternative most consistent with the stated objectives of applicable statutes and the FMP. Alternatives considered and rejected for butterfish would have been detrimental to the stock and were not consistent with the FMP. The selected alternative was consistent with stated objectives of the applicable statutes and the FMP.

The final rule minimizes the economic impact on small entities by establishing a mechanism (the trimester quota system) of spreading the total quota throughout the year. The effect of this is to enable fishermen to fish for *Loligo* on a more consistent basis and to ensure that there is some quota available for harvest during the winter period when prices are higher. It also minimizes impacts on small entities by not establishing more restrictive quotas that were considered.

A copy of the IRFA can be obtained from the NMFS Northeast Regional Office (see **ADDRESSES**).

The Assistant Administrator for Fisheries, NOAA (AA), finds that it would be contrary to the public interest to delay for 30 days the effectiveness of the quotas, § 648.21(e) (distribution of the *Loligo* quota among three periods and the overage deduction provision), and § 648.22 (fishery closures), because the quota for Period I will most likely

be reached shortly, and a delay in the effectiveness of these regulations will prevent NMFS from closing the *Loligo* fishery for Period I in a timely manner. If the Period I fishery is not closed in a timely manner and the quota is exceeded, NMFS will be required to deduct the Period I quota overage from the quota allocated to Period III. However, Period III occurs at a time of year when fishermen receive higher prices for *Loligo*. As a result, the inability to restrict *Loligo* landings to the quota for Period I would cause fewer higher priced fish to be available for harvest in Period III, thereby reducing fishermen's profits. For these reasons, the AA finds good cause under 5 U.S.C. sec. 553(d)(3) not to delay for 30 days the effectiveness of the quotas and §§ 648.21(e) and 648.22.

List of Subjects 50 in CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 22, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.21, paragraph (e) is added to read as follows:

§ 648.21 Procedures for determining initial annual amounts.

* * * * *

(e) *Distribution of annual commercial quota.* (1) Beginning January 1, 2000, a commercial quota will be allocated annually into three periods, based on the following percentages:

Period	Percent
I—January–April	42
II—May–August	18
III—September–December	40

(2) Beginning January 1, 2000, any underages of commercial period quota for Periods I and II will be applied to Period III after November 15 of the same year and any overages of commercial quota for Periods I and II will be subtracted from Period III after November 15 of the same year.

3. In § 648.22, paragraph (a) is revised to read as follows:

§ 648.22 Closure of the fishery.

(a) *General.* NMFS shall close the directed mackerel fishery in the EEZ when U.S. fishermen have harvested 80 percent of the DAH of that fishery if such closure is necessary to prevent the DAH from being exceeded. The closure shall remain in effect for the remainder of the fishing year, with incidental catches allowed as specified in paragraph (c) of this section, until the entire DAH is attained. When the Regional Administrator projects that DAH will be attained for mackerel, NMFS shall close the mackerel fishery in the EEZ, and the incidental catches specified for mackerel in paragraph (c) of this section will be prohibited. NMFS shall close the directed fishery in the EEZ for *Loligo* when 90 percent is harvested in Periods I and II, and when 95 percent of DAH has been harvested in Period III. The closure of the directed fishery shall be in effect for the remainder of the fishing period with incidental catches allowed as specified in paragraph (c) of this section. NMFS shall close the directed fishery in the EEZ for *Illex* or butterfish when 95 percent of DAH has been harvested. The closure of the directed fishery shall be in effect for the remainder of the fishing year with incidental catches allowed as specified in paragraph (c) of this section.

* * * * *

4. In § 648.23, paragraph (c) is revised to read as follows:

§ 648.23 Gear restrictions.

* * * * *

(c) *Mesh obstruction or constriction.* The owner or operator of a fishing vessel shall not use any mesh construction, mesh configuration or other means that effectively decreases the mesh size below the minimum mesh size, except that a liner may be used to close the opening created by the rings in the aftermost portion of the net, provided the liner extends no more than 10 meshes forward of the aftermost portion of the net. The inside webbing of the codend shall be the same circumference or less than the outside webbing (strengthener). In addition, the inside webbing shall not be more than 2 ft (61 cm) longer than the outside webbing.

* * * * *

[FR Doc. 00–7514 Filed 3–22–00; 4:48 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 991228354–0078–02; I.D. 032100C]

Fisheries of the Northeastern United States; Atlantic Mackerel, Squid, and Butterfish Fisheries; Closure of Fishery for *Loligo* Squid

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS announces that the directed fishery for *Loligo* squid in the exclusive economic zone (EEZ) is closed. Vessels issued a Federal permit to harvest *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) per trip of *Loligo* squid for the remainder of Quota Period 1. This action is necessary to prevent the fishery from exceeding the Period I quota and allow for rebuilding of this overfished stock, while allowing for fishing throughout the year.

DATES: Effective 0001 hours, March 25, 2000, through 0001 hours, May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Myles Raizin, Fishery Policy Analyst, 508–281–9104, fax 978–281–9135, e-mail *myles.a.raizin@noaa.gov*.

SUPPLEMENTARY INFORMATION: Regulations governing the *Loligo* squid fishery are found at 50 CFR part 648. The regulations require annual specifications for initial optimum yield as well as the amounts for allowable biological catch, domestic annual harvest (DAH), domestic annual processing, joint venture processing, and total allowable levels of foreign fishing for the species managed under the Atlantic Mackerel, Squid, and Butterfish Fishery Management Plan. The procedures for setting the annual initial specifications are described at § 648.21.

The 2000 specification of DAH for *Loligo* squid was set at 13,000 mt as part of the Atlantic mackerel, squid, and butterfish specifications published elsewhere in the Rules section of today's *Federal Register*. This amount is allocated among three quota periods as indicated in the following table.

TABLE 2.—LOLIGO QUOTA PERIOD ALLOCATIONS

Quota Period	Percent	Metric Tons
I (Jan-Apr)	42	5,460
II (May-Aug)	18	2,340
III (Sep-Dec)	40	5,200
Total	100	13,000

Section 648.22 requires NMFS to close the directed *Loligo* squid fishery in the EEZ when 90 percent of the DAH for *Loligo* squid is harvested in either Period I or II, or 95 percent is harvested in Period III. NMFS is further required to notify, in advance of the closure, the Executive Directors of the Mid-Atlantic, New England, and South Atlantic Fishery Management Councils; mail notification of the closure to all holders of *Loligo* squid permits at least 72 hours before the effective date of the closure; provide adequate notice of the closure to recreational participants in the fishery; and publish notification of the closure in the **Federal Register**. NMFS has determined, based on vessel and dealer logbook data, that 90 percent of the DAH for *Loligo* squid in Period I has been harvested. Therefore, effective 0001 hours, March 25, 2000, the directed fishery for *Loligo* squid is closed and vessels issued Federal permits for *Loligo* squid may not retain or land more than 2,500 lb (1.13 mt) per trip. The directed fishery will reopen effective 0001 hours, May 1, 2000, which marks the beginning of Quota Period II.

Classification

This action is required by 50 CFR part 648 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 22, 2000.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7513 Filed 3–22–00; 4:30 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000214041–0081–02; I.D. 012100C]

RIN 0648–AN50

Fisheries off West Coast States and in the Western Pacific; Western Pacific Pelagic Fisheries; Hawaii-based Pelagic Longline Fishery Line Clipper and Dipnet Requirement; Guidelines for Handling of Sea Turtles Brought Aboard Hawaii-based Pelagic Longline Vessels

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; gear requirements.

SUMMARY: NMFS issues a final rule to require the possession and use of line clippers and dip nets aboard vessels registered for use under a Hawaii pelagic longline limited access permit to disengage sea turtles hooked or entangled by longline fishing gear. The final rule requires the use of specific methods for the handling, resuscitating, and releasing of sea turtles. The intended effect of the measures is to minimize the mortality of, and injury to, sea turtles hooked or entangled by longline fishing gear.

DATES: Effective April 27, 2000.

ADDRESSES: Copies of the environmental assessment (EA) and final regulatory flexibility analysis (FRFA) prepared for this action may be obtained from Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814–4700, and from Alvin Katekaru or Marilyn Luipold, PIAO.

FOR FURTHER INFORMATION CONTACT: Margaret Dupree or Marilyn Luipold, 808–973–2937.

SUPPLEMENTARY INFORMATION: The Hawaii-based pelagic longline fishery is managed under the Fishery Management Plan for the Pelagics Fisheries of the Western Pacific Region (FMP). The FMP was prepared by the Western Pacific Fishery Management Council (Council) and is implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 660.

On November 26, 1999, the United States District Court, District of Hawaii, entered an Order in *CMC v. NMFS* directing NMFS to require, within 4 months of the date of entry of the Order, "every vessel with a Hawaii longline limited entry permit to carry and use line clippers and dip nets to disengage any hooked or entangled sea turtles with the least harm possible to the turtles." NMFS published a proposed rule on February 17, 2000 (65 FR 8107), that provided background. That background is not repeated here.

Comments and Responses

Comment: One commenter objected to the requirement that all vessels registered for use under a Hawaii pelagic longline limited access permit carry and use a line clipper and dip net. The commenter believes longline fishermen targeting tuna south of 24° N. lat. should be exempt from the requirements because they do not experience major interactions with sea turtles or sea birds.

Response: Sea turtles may interact with longline gear set for tuna, as well as swordfish, and in areas south of 24° N. lat. Embedded hooks or entangled line left on a turtle may seriously injure it and result in mortality once the turtle is released. Vessels registered under a Hawaii longline limited access permit deploy longline gear, and therefore, NMFS considers it necessary to require such vessels to possess gear intended to assist with disengaging sea turtles hooked or entangled by longline fisning gear. NMFS continues to explore and consider other appropriate mitigation measures.

The final rule is unchanged from the proposed rule, with the exception of one change to increase the clarity of the rule text. The phrase "comply with" has been substituted for the term "follow" in 50 CFR 660.22(dd).

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

NMFS prepared an environmental assessment/regulatory impact review/initial regulatory flexibility analysis (EA/RIR/IRFA). No public comments were received on the IRFA (summarized in the **Federal Register** on February 17, 2000, at 65 FR 8107).

A summary of the final regulatory flexibility analysis (FRFA) follows:

The fishery consists of 114 active vessels, all of which are considered small entities, and all of which would be affected. The rule does not contain any reporting or record keeping requirements and does not duplicate, overlap, or conflict with any other relevant Federal rules.

The preferred alternative, as set forth in this final rule, meets the objective of the District Court order while minimizing the economic impacts on fishery participants. It accomplishes this by establishing gear requirements based on performance and design standards, rather than requiring the purchase and use of specific devices. Total cost for the materials to fabricate and/or purchase line clippers and dip nets is estimated to be $250. The exact cost of resuscitating a sea turtle, as described herein, is not known; however, it is expected to be minimal.

In addition to the preferred alternative, two other alternatives were evaluated. The first, a "no action" alternative, would impose no cost burden on small entities; however, this alternative would fail to comply with the November 26, 1999, District Court order. The other alternative would require each permitted Hawaii pelagic longline vessel to purchase and carry on board a specific, prefabricated line clipper and sea turtle dip net, as well as require vessel operators to try and resuscitate inactive or comatose turtles. This alternative was rejected in favor of the preferred alternative. Although the preferred alternative also requires resuscitation of sea turtles, it proposes design standards for line clippers and dip nets rather than requiring the purchase of prefabricated items. Specifying design standards encourages innovation and is likely to minimize compliance costs. Moreover, such prefabricated line clippers and dip nets are not readily available in the commercial market. This rule would result in costs that represent less than 1 percent of the average exvessel revenue in 1998. A copy of the FRFA is available from NMFS (see **ADDRESSES**).

An informal consultation under the Endangered Species Act was concluded on January 20, 2000. As a result of the informal consultation, the Regional Administrator determined that fishing activities conducted under this rule are not likely to affect adversely endangered or threatened species or critical habitat.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Fishing gear, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: March 23, 2000.

Andrew J. Kemmerer,

Acting Assistant Administrator, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.22, new paragraphs (cc) and (dd) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(cc) Fail to carry line clippers meeting the minimum design standards as specified in § 660.32(a)(1), and a dip net as required under § 660.32(a)(2), on board a vessel registered for use under a Hawaii longline limited access permit.

(dd) Fail to comply with the sea turtle handling, resuscitation, and release requirements specified in § 660.32(b) through (d), when operating a vessel registered for use under a Hawaii longline limited access permit.

3. A new § 660.32 is added to part 660 to read as follows:

§ 660.32 Sea turtle take mitigation measures.

(a) *Possession and use of required mitigation gear.* Line clippers meeting minimum design standards as specified in paragraph (a)(1) of this section and dip nets meeting minimum standards prescribed in paragraph (a)(2) of this section must be carried aboard vessels registered for use under a Hawaii longline limited access permit and must be used to disengage any hooked or entangled sea turtles with the least harm possible to the sea turtles and as close to the hook as possible in accordance with the requirements specified in paragraphs (b) through (d) of this section.

(1) *Line clippers.* Line clippers are intended to cut fishing line as close as possible to hooked or entangled sea turtles. NMFS has established minimum design standards for line clippers. The Arceneaux line clipper (ALC) is a model line clipper that meets these minimum design standards and may be fabricated from readily available and low-cost materials (figure 1). The minimum design standards are as follows:

(i) *A protected cutting blade.* The cutting blade must be curved, recessed, contained in a holder, or otherwise afforded some protection to minimize direct contact of the cutting surface with sea turtles or users of the cutting blade.

(ii) *Cutting blade edge.* The blade must be capable of cutting 2.0–2.1 mm monofilament line and nylon or polypropylene multistrand material commonly known as braided mainline or tarred mainline.

(iii) *An extended reach holder for the cutting blade.* The line clipper must have an extended reach handle or pole of at least 6 ft (1.82 m).

(iv) *Secure fastener.* The cutting blade must be securely fastened to the extended reach handle or pole to ensure effective deployment and use.

(2) *Dip nets.* Dip nets are intended to facilitate safe handling of sea turtles and access to sea turtles for purposes of cutting lines in a manner that minimizes injury and trauma to sea turtles. The minimum design standards for dip nets that meet the requirements of this section nets are:

(i) *An extended reach handle.* The dip net must have an extended reach handle of at least 6 ft (1.82 m) of wood or other rigid material able to support a minimum of 100 lbs (34.1 kg) without breaking or significant bending or distortion.

(ii) *Size of dip net.* The dip net must have a net hoop of at least 31 inches (78.74 cm) inside diameter and a bag depth of at least 38 inches (96.52 cm). The bag mesh openings may be no more than 3 inches x 3 inches (7.62 cm 7.62 cm).

(b) *Handling requirements.* (1) All incidentally taken sea turtles brought aboard for dehooking and/or disentanglement must be handled in a manner to minimize injury and promote post-hooking survival.

(2) When practicable, comatose sea turtles must be brought on board immediately, with a minimum of injury, and handled in accordance with the procedures specified in paragraphs (c) and (d) of this section.

(3) If a sea turtle is too large or hooked in such a manner as to preclude safe boarding without causing further damage/injury to the turtle, line clippers

described in paragraph (a)(1) of this section must be used to clip the line and remove as much line as possible prior to releasing the turtle.

(c) *Resuscitation.* If the sea turtle brought aboard appears dead or comatose, the sea turtle must be placed on its belly (on the bottom shell or plastron) so that the turtle is right side up and its hindquarters elevated at least 6 inches (15.24 cm) for a period of no less than 4 hours and no more than 24 hours. The amount of the elevation depends on the size of the turtle; greater elevations are needed for larger turtles. A reflex test, performed by gently touching the eye and pinching the tail of a sea turtle, must be administered by a vessel operator, at least every 3 hours, to determine if the sea turtle is responsive. Sea turtles being resuscitated must be shaded and kept damp or moist but under no circumstance may be placed into a container holding water. A water-soaked towel placed over the eyes, carapace, and flippers is the most effective method in keeping a turtle moist. Those that revive and become active must be returned to the sea in the manner described in paragraph (d) of this section. Sea turtles that fail to revive within the 24–hour period must also be returned to the sea in the manner described in paragraph (d)(1) of this section.

(d) *Release.* Live turtles must be returned to the sea after handling in accordance with the requirements of paragraphs (b) and (c) of this section:

(1) By putting the vessel engine in neutral gear so that the propeller is disengaged and the vessel is stopped, and releasing the turtle away from deployed gear; and

(2) Observing that the turtle is safely away from the vessel before engaging the propeller and continuing operations.

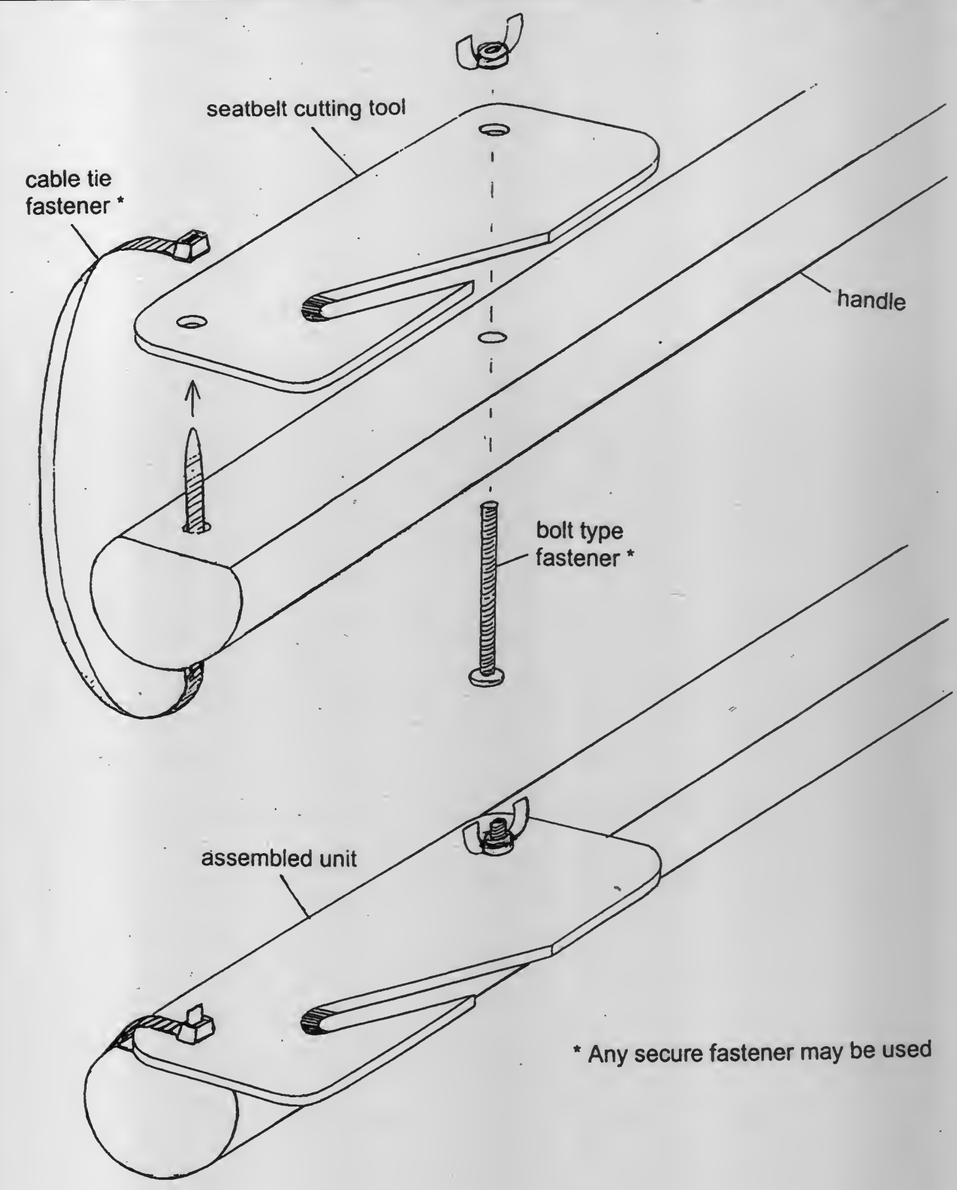


Figure 1 – Sample Fabricated Arceneaux Line Clipper

[FR Doc. 00–7695 Filed 3–24–00; 1:18 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 60
Tuesday, March 28, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 563, 563c, 563g

[No. 2000–31]

RIN 1550–AB38

Transfer and Repurchase of Government Securities

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is proposing to remove its regulation on the transfer and repurchase of government securities. This regulation is unnecessary and is overly burdensome to savings associations.

DATES: Comments must be received on or before April 27, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management & Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552. Attention Docket No. 2000–31. Hand deliver comments to Public Reference Room, 1700 G Street, NW., lower level, from 9:00 A.M. to 5:00 P.M. on business days. Send facsimile transmissions to FAX (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 A.M. until 4:00 P.M. on business days.

FOR FURTHER INFORMATION CONTACT: Ed O'Connell, (202) 906–5694, Manager, Supervision Policy: or Teresa Scott (202) 906–6478, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington DC 20552.

SUPPLEMENTARY INFORMATION:

Background

OTS regulations at 12 CFR 563.84 govern the transfer and repurchase of government securities under certain circumstances where the savings association is obligated to repurchase.[1] This rule applies to repurchase obligations evidencing an indebtedness arising from a transfer of direct obligations of, or obligations which are fully guaranteed as to principal and interest by, the United States or any agency of the United States.

The rule prohibits savings associations from issuing repurchase agreement obligations in denominations under $100,000 and a maturity of 90 days or more, unless the savings association issues the obligation to an institution whose accounts or deposits are insured by the Federal Deposit Insurance Corporation ("FDIC") or to a broker or dealer registered with the Securities and Exchange Commission. Repurchase agreement obligations under $100,000 with a maturity of less than 90 days are subject to various consumer protection and other requirements. Specifically, the rule: (1) Mandates that all such agreements, related advertisements and offering statements must include a legend indicating that the obligation is not a savings account or deposit and is not insured by the FDIC; (2) prohibits savings associations from making specified representations regarding deposit insurance, guarantees, etc.; (3) requires the purchaser under the repurchase agreement to obtain a perfected security interest in the securities under applicable state law; (4) requires that the value of the security underlying the repurchase agreement be maintained at a level at least equal to the principal amount of the repayment obligation; (5) requires that savings associations issuing repurchase agreements to the public make full and accurate disclosures of all material information regarding the repurchase agreement; (6) imposes additional requirements on certain renewals beyond 89 days; and (7) requires a savings association to provide additional safeguards and financial disclosures if it does not meet specified requirements regarding total capital.[2]

OTS is proposing to remove § 563.84 because it is unnecessary and imposes overly burdensome requirements on savings associations. One of the original purposes of the predecessor of § 563.84 was to ensure that savings associations would not use repurchase agreements as a method of offering small denomination accounts to avoid existing interest rate ceiling restrictions on deposit accounts.[3] In 1979, the Federal Home Loan Bank Board (FHLBB) issued a policy statement prohibiting savings associations from entering into any government securities repurchase agreements in amounts under $100,000, except with federally insured depository institutions or with broker dealers. Because the potential for circumvention of the maximum interest rate ceiling was reduced if the maturity of the agreement was less than 90 days, the FHLBB revised the policy statement to permit short term agreements in amounts under $100,000, subject to certain consumer protections.[4] The FHLBB codified the policy statement in its regulations in 1982 and expanded consumer protection requirements.[5]

It is no longer necessary to retain § 563.84 to prevent evasions of maximum interest rate ceilings on deposit accounts. Interest rate ceilings have not been in effect since March of 1986 when the FHLBB's authority to set these ceilings expired.[6] Savings associations, of course, still may not pay interest on commercial checking accounts.[7] However, OTS has concluded that federal savings associations may offer various sweep accounts to transfer idle, non-interest bearing demand deposit account (DDA) checking funds to investment vehicles to generate earnings.[8] OTS has specifically stated that these sweep accounts, including sweep arrangements that use government security repurchase agreements, are permissible notwithstanding the prohibition on the payment of interest on DDAs.

To the extent that § 563.84 was designed to protect consumers who buy United States government securities under repurchase agreements, OTS believes that existing statutes, regulations and guidance already adequately serve this function. The commercial repurchase market is much more developed than when the regulation was adopted and is regulated now in other ways. The Government Securities Act of 1986 (the GSA),[9] for example, protects investors in government securities by establishing appropriate financial responsibility and custodial standards. Under the Department of Treasury's implementing regulations,[10] a thrift that holds government securities for another party to a hold-in-custody repurchase agreement must comply with requirements for safeguarding and custody of the securities. The savings association is also subject to other provisions requiring written agreements, confirmations and disclosures, including disclosures that the obligation is not a deposit and is not insured by the FDIC.[11] Moreover, Thrift Bulletin 23–2, Interagency Statement on Retail Sales of Non-deposit Investment Products (February 22, 1994) provides for certain customer protections, including disclosures, for retail sales of non-deposit investment products, including government securities repurchase agreements. In addition, OTS notes that state and federal anti-fraud provisions, which generally require the disclosure of facts that would be material to a decision to invest in a security, also apply to repurchase transactions.[12]

OTS also believes that § 563.84 may unduly restrict savings associations' ability to engage in certain types of transactions. Since none of the other federal banking agencies currently have similar provisions, OTS believes that the retention of this rule may have a negative impact on the ability of OTS-regulated institutions to compete on an equal footing.

For example, in a recent opinion letter, OTS clarified the authority of savings associations to offer various types of sweep accounts, including the use of repurchase agreements in sweep accounts.[13] Section 563.84, however, requires that the interest of a repurchase agreement purchaser in the security or securities underlying the repurchase agreement constitute a perfected security interest under applicable state law. Various state laws [14] no longer allow for the perfection of a security interest in a security through placement with a trustee, such as a Federal Home Loan Bank. Other perfection methods may be operationally impractical in the context of repurchase agreement sweep accounts that typically involve repeated collateralizations of varying dollar amounts.[15] As a result, this regulation may effectively bar savings associations' use of repurchase agreement sweep accounts to accommodate the cash management needs of their commercial customers. As noted above, other financial institutions are not subject to similar restrictions.

For these reasons, OTS is proposing to delete § 563.84. In the absence of this provision, federal savings associations would continue to be authorized to engage in repurchase agreements. This authority would be subject to applicable statutes and regulations, including the GSA, Treasury's implementing regulations, Thrift Bulletin 23–2, and state and federal securities laws. In addition, the Federal Financial Institutions Examination Council's Policy Statement on Repurchase Agreements of Depository Institutions with Securities Dealers and Others [16] provides safety and soundness guidance to depository institutions entering into repurchase agreements. The FFIEC Policy Statement cautions that institutions should have adequate policies and controls for their particular circumstances, provides explicit guidance for controlling collateral for securities sold under an agreement to repurchase, and contains other pertinent guidance.

Comments; Accompanying Direct Final Rule

If no significant adverse comments are timely received, no further activity is contemplated relative to this proposed rule. Rather, the related direct final rule published elsewhere in this issue of the **Federal Register** will automatically go into effect on the date specified in that rule. If significant adverse comments are timely received, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule. Because OTS will not institute a second comment period for this proposed rule, any parties interested in commenting should do so during this comment period.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act,[17] the Director certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The rule would merely remove an unnecessary regulation that imposes overly burdensome requirements on all savings associations, including small savings associations.

Executive Order 12866

OTS has determined that this proposed rule is not a "significant regulatory action" for purposes of Executive Order 12866.

Unfunded Mandates Reform Act of 1995

OTS has determined that the requirements of this proposed rule will not result in expenditures by State, local, and tribal governments or by the private sector of $100 million or more in any one year. Accordingly, a budgetary impact statement is not required under section 202 of the Unfunded Mandates Reform Act of 1995.

Federalism

Executive Order 13132 imposes certain requirements on an agency when formulating and implementing polices that have federalism implications or taking actions that preempt state law. OTS has determined that this proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, and will not preempt State law.

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[1] Under these repurchase obligations, a savings association obtains funds by selling government securities, and simultaneously agrees to buy back the securities at a specified price and date.

[2] Under this requirement, a savings association's total capital must equal one percent of its liabilities plus 20 percent of its classified assets.

[3] See 12 CFR 531.12, published 44 FR 33669 (June 12, 1979).

[4] 44 FR 46445 (August 6, 1979).

[5] 47 FR 23140 (May 27, 1982).

[6] As of March 31, 1986, the FHLBB's authority to regulate payment of interest under section 5B of the Federal Home Loan Bank Act expired. 12 U.S.C. 1425b (1980). The FHLBB amended its regulations to reflect these changes on March 31, 1986. See 51 FR 10810 (March 31, 1986).

[7] 12 U.S.C. 1464(b)(1)(B)(i).

[8] Op. Chief Counsel (March 2, 1998). Typically, under these transactions, funds are swept out of a DDA at the end of a business day and into an investment vehicle, and swept back to the DDA the next morning to pay checks as needed. This process is repeated each business day.

[9] The Government Securities Act of 1986 (Pub. L. 99–571,100 Stat 3208), as amended by, Pub. L. 103–202, 107 Stat 2344.

[10] 17 CFR parts 400 through 450.

[11] Savings associations that enter into repurchase agreements should pay particular attention to the requirements and required disclosures at 17 CFR 403.5.

[12] See The Federal Financial Institutions Examination Council's Policy Statement on Repurchase Agreements of Depository Institutions with Security Dealers and Others, 63 FR 6935 (February 11, 1998) and Thrift Bulletin 23–2.

[13] Op. Chief Counsel (March 2, 1998).

[14] See Uniform Commercial Code, Article 8, as amended by the various states.

[15] Although this rule eliminates the requiremeot that the purchaser under the repurchase agreement obtain a perfected security interest in the securities under state law, 17 CFR 450.4 of the Treasury GSA regulations provides specific protections for safeguarding and custody of the securities.

[16] 63 FR 6935 (February 11, 1998).

[17] Pub. L. No. 96–354, 5 U.S.C. 601.

List of Subjects

12 CFR Part 563

Accounting, Advertising, Crime, Currency, Investments, Reporting and recordkeeping requirements, Savings associations, Securities, Surety bonds.

12 CFR Part 563c

Accounting, Savings associations, Securities.

12 CFR Part 563g

Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend title 12, chapter V of the Code of Federal Regulations as set forth below.

PART 563—OPERATIONS

1. The authority citation for part 563 continues to read as follows:

Authority: 12 U.S.C. 375b, 1462, 1462a, 1463, 1464, 1467a, 1468, 1817, 1820, 1828, 1831i, 3806; 42 U.S.C. 4106.

§ 563.84 [Removed]

2. Section 563.84 is removed.

PART 563c—ACCOUNTING REQUIREMENTS

3. The authority citation for part 563c continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78m, 78n, 78w.

4. Section 563c.101 is amended by revising paragraph (c) to read as follows:

§ 563c.101 Application of this subpart.

* * * * *

(c) Any offering circular required to be used in connection with the issuance of mutual capital certificates under § 563.74 and debt securities under § 563.80 and § 563.81 of this chapter.

PART 563g—SECURITIES OFFERINGS

5. The authority citation for part 563g continues to read as follows:

Authority: 12 U.S.C. 1462a, 1463, 1464; 15 U.S.C. 78c(b), 78l, 78m, 78n, 78p, 78w.

§ 563g.3 [Amended]

6. Section 563g.3 is amended by removing and reserving paragraph (a).

Dated: March 21, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–7420 Filed 3–27–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–35–AD]

Airworthiness Directives; Eurocopter France Model AS332C, L, and L1 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) applicable to Eurocopter France Model AS332C, L, and L1 helicopters. This proposal would require inspecting the horizontal stabilizer spar tube (spar tube) for corrosion, hardness, cracks, and scratches, and if necessary, replacing any unairworthy spar tube and bushing with an airworthy spar tube and bushing. This proposal is prompted by the loss of a horizontal stabilizer in flight due to a spar tube failure. The actions specified by the proposed AD are intended to prevent failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter.

DATES: Comments must be received on or before May 30, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–35–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053–4005, telephone (972) 641–3460, fax (972) 641–3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aerospace Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5116, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–35–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–35–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

Discussion

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter France Model AS332C, L, and L1 helicopters. The DGAC advises that a horizontal stabilizer was lost in flight due to spar tube fatigue failure.

Eurocopter France has issued Eurocopter Service Bulletin 01.00.57R1, dated November 24, 1999 (SB), which specifies inspecting any spar tube, part number (P/N) 330A13–2024–01, –02, –03, –04, installed on metal horizontal stabilizers, P/N's 332A13–1000–00, –01, –02, –03 and 332A13–1040–00, –01, for corrosion, hardness, cracks, or scratches, and, if necessary, replacing the spar tubes and bushing. This SB was issued as a result of the loss of a horizontal stabilizer in flight due to spar tube failure. The failure of the spar tube was due to an improperly installed bushing that led to corrosion and fatigue cracking. The failed spar tube also showed evidence of localized scoring and decarburization. The DGAC classified this SB as mandatory and issued AD 1999–039–073(A)R1, dated December 29, 1999, to ensure the continued airworthiness of these helicopters in France.

These helicopter models are manufactured in France and are type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Eurocopter France Model AS332C, L, and L1 helicopters of the same type design registered in the United States, the proposed AD would require inspecting any spar tube, P/N 330A13–2024–01, –02, –03, –04, installed on horizontal stabilizers, P/N's 332A13–1000–00, –01, –02, –03, and 332A13–1040–00, –01, for corrosion, hardness, cracks, or scratches. The AD would also require replacing the spar tube and bushing, as necessary, with an airworthy spar tube and bushing. The actions would be required to be accomplished in accordance with the SB described previously.

The FAA estimates that 3 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $1,000 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $10,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

Eurocopter France: Docket No. 99–SW–35–AD.

Applicability: Model AS322C, L, and L1 helicopters with horizontal stabilizer spar tube (spar tube), part number (P/N) 330A13–2024–01, –02, –03, –04, installed on horizontal stabilizer, P/N 332A13–1000–00, –01, –02, –03 or 332A13–1040–00, –01, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the spar tube, separation of the horizontal stabilizer and impact with the main or tail rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For helicopters on which the horizontal spar tube (spar tube) composite bushing (bushing), P/N 330A13–2024–31, has been replaced and since replacement has accumulated:

(1) Less than 1400 hours time-in-service (TIS) or less than 30 calendar months:

(i) Prior to accumulating 1600 hours TIS or 32 calendar months, whichever occurs first, and thereafter at intervals not to exceed (NTE) 3000 hours TIS or 72 calendar months, whichever occurs first, inspect the spar tube in accordance with (IAW) the Accomplishment Instructions, paragraph 2.B.1.1 and 2.B.2. of Eurocopter France Service Bulletin No. 01.00.57, Revision 1, dated November 24, 1999 (SB).

(A) If the spar tube passes the hardness inspection of paragraph 2.B.1.1 of the SB and the scratch, corrosion, or crack inspection of paragraph 2.B.2. of the SB, replace the bushing with a new bushing, before further flight.

(B) If the spar tube fails either the hardness inspection of paragraph 2.B.1.1 of the SB or the scratch, corrosion, or crack inspection of paragraph 2.B.2. of the SB, replace the spar tube with an airworthy spar tube before further flight.

(ii) Before installing any replacement spar tube that has previously been installed on any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(2) 1400 or more hours TIS or 30 or more calendar months:

(i) Within 200 hours TIS or 2 calendar months, whichever occurs first, and thereafter at intervals NTE 3000 hours TIS or 72 calendar months, whichever occurs first, inspect the spar tube IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(A) If the spar tube passes the hardness inspection of paragraph 2.B.1.1 of the SB and the scratch, corrosion, or crack inspection of paragraph 2.B.2 of the SB, replace the bushing with a new bushing before further flight.

(B) If the spar tube fails either the hardness inspection of paragraph 2.B.1.1 of the SB or the scratch, corrosion, or crack inspection of paragraph 2.B.2 of the SB, replace the spar tube with an airworthy spar tube before further flight.

(ii) Before installing any replacement spar tube that has previously been installed on any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(b) For all spar tubes:

(1) With less than 7500 hours TIS or 144 calendar months since original installation:

(i) Prior to accumulating 7500 hours TIS or 144 calendar months, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(ii) After accomplishing the requirements of paragraph (b)(1)(i) of this AD, install an airworthy spar tube before further flight. Before installing any replacement spar tube that has been previously installed in any helicopter, inspect it IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(2) With 7500 or more hours TIS or 144 or more calendar months since original installation:

(i) Within 500 hours TIS or 12 calendar months, whichever occurs first, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(ii) After accomplishing the requirements of paragraph (b)(2)(i) of this AD, install an airworthy spar tube before further flight. Before installing any replacement spar tube that has been previously installed in any helicopter, inspect it IAW the Accomplishment Instructions, paragraph 2.B.1.1 and 2.B.2. of the SB.

(3) After accomplishing the requirements of either paragraph (b)(1) or (b)(2) of this AD, as applicable, thereafter, at intervals NTE 7500 hours TIS or 144 calendar months, whichever occurs first, remove the spar tube and inspect IAW the Accomplishment Instructions, paragraphs 2.B.1.1 and 2.B.2. of the SB.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through a FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(d) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Direction Generale De L'Aviation Civile (France) AD 1999–039–073(A)R1, dated December 29, 1999.

Issued in Fort Worth, Texas, on March 21, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–7553 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 101

Consolidation of the Ports of Milwaukee and Racine

AGENCY: U. S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes amending the Customs Regulations pertaining to the field organization of the Customs Service by consolidating the ports of Milwaukee, Wisconsin, and Racine, Wisconsin and also expanding the area of coverage in southeast Wisconsin. This change is being proposed as part of Customs continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better services to carriers, importers and the general public.

DATES: Comments must be received on or before May 30, 2000.

ADDRESSES: Written comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U. S. Customs Service, 1300 Pennsylvania Avenue NW., Third Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Betsy Passuth, Office of Field Operations, 202–927–0795.

SUPPLEMENTARY INFORMATION:

Background

As part of a continuing program to obtain more efficient use of its personnel, facilities, and resources, and to provide better service to carriers, importers, and the general public, Customs proposes to amend § 101.3 of the Customs Regulations (19 CFR 101.3) by consolidating the ports of Milwaukee, Wisconsin, and Racine, Wisconsin. Both are currently listed as ports under § 101.3(b), Customs Regulations (19 CFR 101.3(b)). The consolidated port would be renamed the Port of Milwaukee-Racine. Consolidating the two ports will reduce administrative costs, without impairing service to area businesses or to the general public, and will provide a more efficient use of Customs personnel and resources. The proposal, if adopted, will improve service to the public by making better use of staffing resources.

Currently, southeast Wisconsin is served by the Customs ports of Racine and Milwaukee, both operating in limited areas with minimal staffing. Budget restrictions have prevented Customs from allocating additional resources to the area.

Because Racine has only one inspector, services other than the filing of entries and manifests are restricted. If for any reason the inspector at Racine is not available, service is not available and entries must be filed at the Port of Milwaukee. The proposed consolidation of the ports of Racine and Milwaukee, which includes enlarging the overall area of the port to include four counties, would result in providing centralized full-time service to the entire area, not merely service to the former ports of Milwaukee and Racine. Personnel would be available to perform cargo examinations, private aircraft processing, and other services such as the processing of entries and manifests on an as needed basis at the port of Racine and all locations within this proposed consolidation.

Current Port Limits

The current port limits of the Port of Milwaukee are described in T.D. 72–105 (37 FR 7591) as encompassing all the territory within the counties of Milwaukee and Waukesha, Wisconsin.

The current port limits of the Port of Racine are described in T.D. 54884 (24 FR 5366) as the corporate limits of the city of Racine, the corporate limits of the city of Kenosha, and the townships of Mt. Pleasant and Somers, all in the state of Wisconsin.

Proposed Port Limits

The proposed port limits of the Port of Milwaukee-Racine will be the counties of Waukesha, Milwaukee, Racine and Kenosha in the state of Wisconsin.

Comments

Prior to adoption of this proposal, consideration will be given to written comments timely submitted to Customs. Submitted comments will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9:00 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Third Floor, Washington, DC 20229.

Authority

This change is proposed under the authority of 5 U.S.C. 301 and 19 U.S.C. 2, 66, and 1624.

Regulatory Flexibility Act and Executive Order 12866

Customs establishes, expands, and consolidates Customs ports of entry throughout the United States to accommodate the volume of Customs-related activity in various parts of the country. Thus, although this document is being issued with notice for public comment, because it relates to agency management and organization, it is not subject to the notice and public procedure requirements of 5 U.S.C. 553. Accordingly, this document is not subject to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

Agency organization matters such as this proposed port extension are exempt from consideration under Executive Order 12866.

Drafting Information

The principal author of this document was Janet L. Johnson, Regulations Branch. However, personnel from other offices participated in its development.

Raymond W. Kelly,

Commissioner of Customs.

Approved: July 7, 1999.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–7556 Filed 3–27–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110 and 165

[CGD–05–99–097]

RIN 2115–AA97, AA98, AE46

OPSAIL 2000, Port of Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in the Port of Baltimore, Maryland for OPSAIL 2000 activities. This action is necessary to provide for the safety of life on navigable waters before, during, and after OPSAIL 2000 events. This action will restrict vessel traffic in portions of the Inner Harbor, the Northwest Harbor, the Patapsco River, and the Chesapeake Bay.

DATES: Comments and related material must reach the Coast Guard on or before May 12, 2000.

ADDRESSES: You may mail comments and related material to Commander, (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 or deliver them to Room 119 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Commander, (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 maintains the public docket for this rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: S.L. Phillips, Project Manager, Operations Division, Auxiliary Section, at (757) 398–6204.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–99–097), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. The comment period for this regulation is 45 days. This time period is adequate to allow local input because the event is highly publicized and the shortened comment period will allow the full 30-day publication requirement prior to the final rule becoming effective. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commander, (Aoax), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Sail Baltimore is sponsoring OPSAIL 2000 activities in the Port of Baltimore, Maryland. Planned events include the arrival of 27 Tall Ships and other vessels on June 23, 2000 and a Parade of Sail and scheduled departure of those vessels on June 29, 2000.

The Coast Guard anticipates a large spectator fleet for these events. Operators should expect significant vessel congestion along the arrival and parade routes.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public in the Port of Baltimore and the waters of the Chesapeake Bay immediately prior to, during, and after the scheduled events. The regulations will provide for clear parade routes for the participating vessels, establish no wake zones along the parade routes, provide a safety buffer around the participating vessels while they are in transit, and in certain anchorage areas, modify existing anchorage regulations for the benefit of participants and spectators. The regulations will impact the movement of all vessels operating in the specified areas of the Port of Baltimore and the Chesapeake Bay.

It may be necessary for the Coast Guard to establish additional safety or security zones in addition to these regulations to safeguard dignitaries and certain vessels participating in the event. If the Coast Guard deems it necessary to establish such zones at a later date, the details of those zones will be announced separately via the **Federal Register**, Local Notice to Mariners, Safety Voice Broadcasts, and any other means available.

All vessel operators and passengers are reminded that vessels carrying passengers for hire or that have been chartered and are carrying passengers may have to comply with certain additional rules and regulations beyond the safety equipment requirements for all pleasure craft. When a vessel is not being used exclusively for pleasure, but rather is engaged in carrying passengers for hire or has been chartered and is carrying the requisite number of passengers, the vessel operator must possess an appropriate license and the vessel may be subject to inspection. The definition of the term "passenger for hire" is found in 46 U.S.C. 2101(21a). In general, it means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage onboard the vessel. The definition of the term "passenger" is found in 46 U.S.C. 2101(21). It varies depending on the type of vessel, but generally means individuals carried aboard vessels except for certain specified individuals engaged in the operation of the vessel or the business of the owner/charterer. The law provides for substantial penalties for any violation of applicable license and inspection requirements. If you have any questions concerning the application of the above law to your particular case, you should contact the Coast Guard at the address listed in **ADDRESSES** for additional information.

Vessel operators are reminded they must have sufficient facilities on board their vessels to retain all garbage and untreated sewage. Discharge of either into any waters of the United States is strictly forbidden. Violators may be assessed civil penalties up to $25,000 or face criminal prosecution.

We recommend that vessel operators visiting the Port of Baltimore for this event obtain up to date editions of National Ocean Service Charts 12278 and 12281 to avoid anchoring within a charted cable or pipeline area.

With the arrival of OPSAIL 2000 and spectator vessels in the Port of Baltimore for this event, it will be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

Discussion of Proposed Rule

The OPSAIL 2000 vessels are scheduled to arrive on June 23, 2000 and will follow a parade route of approximately 3 nautical miles that includes specified waters of the Inner Harbor and Northwest Harbor. The OPSAIL 2000 vessels are scheduled to depart on June 29, 2000 and will follow a parade route of approximately 7 nautical miles that includes specified waters of the Inner Harbor, Northwest Harbor, and Patapsco River.

The safety of parade participants and spectators requires that spectator craft be kept at a safe distance from the parade routes during these vessel movements. The Coast Guard proposes establishing special local regulations for the areas through which the vessels will pass for the OPSAIL 2000 Tall Ships Arrival on June 23, 2000 and the OPSAIL 2000 Parade of Sail on June 29, 2000.

In addition to establishing special local regulations, we propose to establish temporary moving safety zones around OPSAIL 2000 vessels which are 175 feet or greater in length, to ensure the safety of participants and spectators immediately prior to, during, and following the parades.

The Coast Guard also intends to temporarily modify the existing anchorage regulations found at 33 CFR 110.158 to accommodate OPSAIL 2000 and spectator vessels. Anchorage No. 1, Anchorage No. 4, Anchorage No. 5, and Anchorage No. 6 will be designated exclusively for spectator vessels. Anchorage No. 3 will be designated exclusively for passenger vessels. Anchorage No. 2 will be closed to all vessels except OPSAIL 2000 vessels.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the Tall Ships Arrival on June 23, 2000 and the Parade of Sail on June 29, 2000. Although these regulations prevent traffic from transiting a portion of the Inner Harbor, Northwest Harbor, and Patapsco River during these events, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to operate or anchor in portions of the Inner Harbor, the Northwest Harbor, and the Patapsco River in the Port of Baltimore, Maryland. The regulations would not have a significant impact on a substantial number of small entities for the following reasons: the restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Commander (Aoax), Fifth Coast Guard District, 431Crawford Street, Portsmouth, Virginia 23704–5004.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C; this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**. By controlling vessel traffic during these events, this proposed rule is intended to minimize environmental impacts of increased vessel traffic during the transits of event vessels.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 100, 110, and 165 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add temporary § 100.35T–05–097 to read as follows:

§ 100.35T–05–097 Special Local Regulations; OPSAIL 2000, Port of Baltimore, MD.

(a) *Definitions.* (1) *Captain of the Port* means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Official Patrol Vessel* includes all Coast Guard, public, state, county or local law enforcement vessels assigned and/or approved by Commander, Coast Guard Activities Baltimore.

(3) *OPSAIL 2000 Vessel* includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Baltimore and approved by Commander, Fifth Coast Guard District.

(4) *Parade of Sail* is the outbound procession of OPSAIL 2000 vessels as they navigate designated routes in the Port of Baltimore on June 29, 2000.

(5) *Tall Ships Arrival* is the inbound procession of OPSAIL 2000 vessels as they navigate designated routes in the Port of Baltimore on June 23, 2000.

(b) *Regulated areas.* (1) *Tall ships arrival area* (all coordinates use datum: NAD 83): All waters of the Patapsco River, Baltimore, Maryland, between the Ferry Bar Channel-East Section and the Inner Harbor west bulkhead, bounded by a line drawn from the coordinates at position latitude 39°15′40″ N, longitude 076°34′50″ W, thence southeasterly to latitude 39°15′23.5″ N, longitude 076°34′44″ W, thence easterly to latitude 39°15′23.5″ N, longitude 076°33′53″ W.

(2) *Parade of Sail Area:* The waters of the Patapsco River, Northwest Harbor and Inner Harbor enclosed by:

Latitude	Longitude
39°15′40.5″ N	076°34′47.5″ W, to
39°15′04.9″ N	076°34′43.7″ W, and
39°14′07.5″ N	076°33′37.7″ W, to
39°12′46.3″ N	076°32′02.6″ W, to
39°10′ 24.8″ N	076°31′01″ W, to
39°12′06.3″ N	076°29′43.2″ W, to
39°13′22.3″ N	076°31′15.7″ W, to
39°15′40.2″ N	076°33′33.7″ W.

(c) *Special Local Regulations.* (1) Any person or vessel within the regulated area must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area immediately if the Captain of the Port so orders.

(2) Unless otherwise directed by the Captain of the Port, all vessels within the regulated area shall be operated at the minimum speed required to maintain steerage and shall avoid creating a wake.

(3) No vessel within the regulated area may anchor except in conformance with 33 CFR 110.158.

(4) The Coast Guard and Official Patrol vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (410) 576–2521 or 2693.

(5) The Captain of the Port will notify the public of any changes in the status of the regulated area by a Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective date:* (1) *Tall ships arrival area.* This section is effective from 9 a.m. until 6 p.m. on June 23, 2000.

(2) *Parade of Sail Area.* Paragraph (b)(2) of this section is applicable from 10:30 a.m. until 2:30 p.m. on June 29, 2000.

PART 110—[AMENDED]

3. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

4. From 10:30 a.m. until 2:30 p.m. on June 29, 2000, § 110.158 is amended by adding paragraph (c) to read as follows:

§ 110.158 Baltimore Harbor, MD

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, the following temporary regulations apply from 10:30 a.m. until 2:30 p.m. on June 29, 2000 for OPSAIL 2000.

(1) Anchorage No. 1, Anchorage No. 4, Anchorage No. 5, and Anchorage No. 6 are designated for the exclusive use of spectator vessels. "Spectator vessels" includes any vessel, commercial or recreational, being used for pleasure or carrying passengers, that is in the Port of Baltimore to observe part or all of the events attendant to OPSAIL 2000.

(2) Anchorage No. 2 is designated for the exclusive use of OPSAIL 2000 vessels. "OPSAIL 2000 Vessels" includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Baltimore and approved by the Commander, Fifth Coast Guard District.

(3) Anchorage No. 3 is designated for the exclusive use of passenger vessels. "Passenger vessel" has the meaning of that term in 46 U.S.C. 2101(22).

PART 165—[AMENDED]

5. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

6. Add temporary § 165.T05–097 to read as follows:

§ 165.T05–097 Safety Zone; OPSAIL 2000, Port of Baltimore, MD.

(a) *Definitions.* (1) *Captain of the Port* means the Commander, Coast Guard Activities Baltimore or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *OPSAIL 2000 Vessels* includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Baltimore and approved by Commander, Fifth Coast Guard District.

(b) *Location.* The following areas are moving safety zones: All waters within 150 yards ahead of or 50 yards outboard or aft of any OPSAIL 2000 vessel which is 175 feet or greater in length, while operating on the Chesapeake Bay or its tributaries, north of the Maryland-Virginia border and south of latitude 39°35′00″.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within the regulated areas unless authorized to do so by the Captain of the Port. Any person or vessel authorized to enter the regulated areas must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area immediately if the Captain of the Port so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (410) 576–2521 or 2693.

(4) The Captain of the Port will notify the public of any changes in the status of this zone by a Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective dates:* This section is effective from 6 a.m. on June 23, 2000 to 11:30 p.m. on June 29, 2000.

Dated: March 15, 2000.

Thomas E. Bernard,

Captain, U.S. Coast Guard, Acting Commander, Fifth Coast Guard District.

[FR Doc. 00–7466 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110 and 165

[CGD01–99–203]

RIN 2115–AA98, AE84, AE46

Temporary Regulations: OPSAIL 2000, Port of New London, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in Niantic Bay, Long Island Sound, the Thames River, and New London Harbor for OPSAIL 2000 Connecticut activities. This action is necessary to provide for the safety of life on navigable waters during OPSAIL 2000 Connecticut. This action is intended to restrict vessel traffic in portions of Niantic Bay, Long Island Sound, the Thames River, and New London Harbor.

DATES: Comments and related materials must reach the Coast Guard on or before May 12, 2000.

ADDRESSES: You may mail comments and related material to Coast Guard Group/Marine Safety Office Long Island Sound, 120 Woodward Ave, New Haven, CT 06512–3698. The Readiness/Support Department maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the Readiness/Support Department between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Master Chief Kenneth G. Dolan, Group/MSO Long Island Sound, New Haven, Connecticut, (203) 468–4429.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD01–99–203), indicate the specific section of this document to which each comment applies, and give reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them. The comment period for this regulation is 45 days. This time period is adequate to allow local input because the event is highly publicized, and the shortened comment period will allow the full 30-day publication requirement prior to the final rule becoming effective. Copies of this proposal will also be placed in the local notice to mariners.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Coast Guard Group/MSO Long Island Sound Readiness/Support Department at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

The proposed temporary regulations are for OPSAIL 2000 Connecticut events in Niantic Bay, Long Island Sound and New London Harbor. These events will be held on July 11–12, 2000. The rule is proposed to provide for the safety of life and property on navigable waters.

Discussion of Proposed Rule

Operation Sail, Inc. is sponsoring a Parade of Tall Ships into New London Harbor. The Tall Ships and participating vessels will be at anchorage in Niantic Bay on July 11, 2000. On July 12, 2000, the Tall Ships and participating vessels will transit from Niantic Bay via Long Island Sound and the Thames River Federal Channel to the Port of New London. The Coast Guard expects a minimum of 5,000 spectator craft for this event. The proposed regulations create vessel movement controls, safety zones and temporary anchorage regulations. The regulations will be in effect at various times in Niantic Bay, Long Island Sound and New London Harbor during July 11 and 12, 2000. The vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life and property. This proposed rulemaking is necessary to ensure the safety of life and property on the navigable waters of the United States.

Regulated Areas

The Coast Guard proposes to establish one regulated area in Niantic Bay during July 11–12, 2000. This proposed Regulated Area A is needed to protect the maritime public and participating vessels from possible hazards to navigation associated with the overnight anchoring of a large number of Tall Ships and their departure prior to the beginning of the Parade of Tall Ships into New London Harbor on July 12, 2000.

Regulated Area A includes all waters of Niantic Bay located on Long Island Sound within the following boundaries: beginning at a point 300 yards, bearing 203°T from Wigwam Rock 41°18′53″ N, 072°11′48″ W (NAD 1983), then to 41°18′53″ N, 072°10′38″ W (NAD 1983), then to 41°16′40″ N, 072°10′38″ W (NAD 1983), then to 41°16′40″ N, 072°11′48″ W (NAD 1983). This proposed area will be used as an anchorage area for vessels participating in the Parade of Tall Ships on July 12, 2000. This proposed regulated area is effective from 6 a.m., July 11, 2000 until 5 p.m., on July 12, 2000. Vessels transiting Regulated Area A must do so at no wake speed or at speeds not to exceed 6 knots, whichever is less. Vessels transiting Regulated Area A must not maneuver within 100 yards of a Tall Ship or other vessel participating in OPSAIL 2000, unless authorized by the Captain of the Port or the Captain of the Port's on-scene representative.

Anchorage Regulations

The Coast Guard also proposes to establish temporary Anchorage Regulations for participating OPSAIL 2000 vessels and spectator craft. Current Anchorage Regulations in 33 CFR 110.147 will be temporarily suspended by this regulation and other Anchorage Grounds will be temporarily established.

The proposed anchorage regulations designate selected current or temporarily established Anchorage Grounds for spectator or OPSAIL 2000 participant vessel use only. They restrict all other vessels from using these anchorage grounds during various portions of the OPSAIL 2000 event. The anchorage grounds are needed to provide viewing areas for spectator vessels while maintaining a clear parade route for the participating OPSAIL vessels and to protect boaters and spectator vessels from the hazards associated with the Parade of Tall Ships.

The Coast Guard proposes to temporarily suspend Anchorage Area C (see 33 CFR 110.147(3)), and redesignate it as Anchorage Area G, exclusively for spectator vessels exceeding 50 feet in length, carrying passengers for the viewing of the Tall Ships parade. Anchorage Area G will be established from 7:30 a.m., until 5 p.m., on July 12, 2000. The Coast Guard proposes to temporarily establish Anchorage Area H in Niantic Bay exclusively for the vessels participating in the Parade of Tall Ships. Anchorage Area H in Niantic Bay will be established from 6 a.m., on July 11, 2000 until 5 p.m., on July 12, 2000. Anchorage Area H is the same area designated as Regulated Area A. Therefore, within this area, vessels other than those participating in OPSAIL 2000 will not be able to anchor and will be able to transit at reduced speeds staying at least 100 yards away from any OPSAIL 2000 vessel.

The Coast Guard proposes to temporarily establish Anchorage Area I in the Thames River in the vicinity of the State Pier exclusively for vessels who have participated in the Parade of Tall Ships. Anchorage Area I will be established from 7:30 a.m., on July 12, 2000 until 5 p.m., on July 12, 2000. The Coast Guard proposes to temporarily establish Anchorage Area J, located in the Thames River on the eastern side of the Federal Channel, exclusively for spectator vessels exceeding 50 feet in length carrying passengers for the viewing of the Tall Ships parade. Anchorage Area J will be established from 7:30 a.m., until 5 p.m., on July 12, 2000.

Safety Zones

The Coast Guard proposes to establish two safety zones in the waters of Long Island Sound and New London Harbor. Safety Zone 1 includes all waters of the Thames River in New London Harbor, in the vicinity of the State Pier within the following boundaries: beginning at a point located on the west shore line of the Thames River 25 yards below the Thames River Railroad Bridge, position 41°21′46″ N, 072°05′23″ W (NAD 1983), then to position 41°21′46″ N, 072°05′16″ W (NAD 1983), then to position 41°20′37″ N, 072°05′16″ W (NAD 1983), then to position 41°20′37″ N, 072°05′33″ W (NAD 1983), then along the shoreline to position 41°21′46″ N, 072°05′23″ W (NAD 1983). This safety zone will be used as a mooring and turning area for the Parade of Tall Ships at the conclusion of the parade and is effective from 7:30 a.m., on July 12, 2000, until 5 p.m., on July 12, 2000. Safety Zone 1 consists of the same area as Anchorage I.

Safety Zone 2 covers all waters of the Thames River within the following boundaries: beginning at the east side of the Federal Channel at the Thames River Rail Road Bridge in the Port of New London, in position 41°21′47.0″ N, 072°05′14.0″ W (NAD 1983), then southward along the east side of the Federal Channel to the New London Harbor Channel Lighted Buoy "2" (LLNR 21790) in approximate position 41°17′38″ N, 072°04′40″ W (NAD 1983), then to Bartlett Reef Lighted Bell Buoy "4" (LLNR 21065) in approximate position 41°15′38″ N, 072°08′22″ W (NAD 1983), then south to Bartlett Reef Lighted Buoy "1" (LLNR 21065) in approximate position 41°16′28″ N, 072°07′54″ W (NAD 1983), then to an area located, bearing 192°T, approximately 325 yards from Rapid Rock Buoy "R" (LLNR 21770) 41°17′07″ N, 072°06′09″ W (NAD 1983), then to position 41°18′04″ N, 072°04′50″ W (NAD 1983), which meets the west side of the Federal Channel, then along the west side of the Federal Channel to the Thames River Railroad Bridge in the Port of New London, in the position 41°21′46″ N, 072°05′23″ W (NAD 1983). This proposed area will be used for the parade route of Tall Ships and is effective from 7:30 a.m., on July 12, 2000, until 5 p.m., on July 12, 2000. No vessel may transit within Safety Zones 1 or 2 unless authorized by the Coast Guard Captain of the Port, Long Island Sound, or his on-scene representative.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. It has not been reviewed by the Office of Management and Budget under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this regulation prevents traffic from transiting a portion of Long Island Sound, Niantic Bay, and the Thames River during the events, the effect of this regulation will not be significant for the following reasons: the limited duration that the regulated areas will be in effect, mariners will be able to transit around these areas and the extensive advance notifications that will be made to the maritime community via the Local Notice to Mariners, facsimile, marine information broadcasts, local area committee meetings, and New London area newspapers. Mariners will be able to adjust their plans accordingly based on the extensive advance information. Additionally, these regulated areas have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considers whether this proposed rule, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities. This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels

intending to transit through Niantic Bay, portions of Long Island Sound and New London Harbor during various times from July 11–12, 2000. Although these regulations would apply to a substantial portion of Niantic Bay and New London Harbor, designated areas for viewing the Parade of Sail are being established to allow for maximum use of the waterways by commercial tour boats that usually operate in the affected areas. Vessels, including commercial traffic, will be able to transit around the designated areas. At no time will the Port of New London be closed to commercial traffic. Before the effective period, the Coast Guard would make notifications to the public via mailings, facsimiles, the Local Notice to Mariners and use of the sponsors Internet site. In addition, the sponsoring organization, OPSAIL, Inc., is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts.

If, however, you think that your business or organization qualifies as a small entity and that this proposed rule will have a significant economic impact on your business or organization, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and in what way and to what degree this proposed rule will economically affect it.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13405, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraphs 34(f and h), of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects

33 CFR 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR 110

Anchorage grounds.

33 CFR 165

Harbors, Marine Safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 100, 110 and 165 as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233 through 1236; 49 CFR 1.46; 33 CFR 100.35.

2. Add temporary § 100.T01–203 to read as follows:

§ 100.T01–203 Special Local Regulations: OPSAIL 2000 CT, Long Island Sound and the Thames River, Connecticut.

(a) *Regulated Area A location.* All waters of Niantic Bay located on Long Island Sound within the following boundaries: Beginning at a point 300 yards, bearing 203°T from Wigwam Rock 41°18′53″ N, 072°11′48″ W (NAD 1983), then 41°18′53″ N, 072°10′38″ W (NAD 1983), then 41°16′40″ N, 072°10′38″ W (NAD 1983) then to 41°16′40″ N, 072°11′48″ W (NAD 1983).

(b) *Special local regulations.* (1) Vessels transiting Area A must do so at no wake speed or at speeds not to exceed 6 knots, whichever is less.

(2) Vessels transiting Area A must not maneuver within 100 yards of a Tall Ship or an OPSAIL participating vessel unless they are specifically authorized to do so by Coast Guard Captain of the Port, Long Island Sound, or his on-scene representative.

(c) *Effective period.* This section is effective from 6 a.m., July 11, 2000 until 5 p.m., on July 12, 2000.

PART 110—ANCHORAGE REGULATIONS

3. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

4. From July 11, 2000 through July 12, 2000, § 110.147 is temporarily amended by suspending paragraph (a)(3) and adding new paragraphs (a)(7), (a)(8), (a)(9) and (a)(10) to read as follows:

§ 110.147 New London Harbor, Conn.

(a) * * *

(7) *Anchorage Area G.* In the Thames River southward of New London Harbor, bounded by lines connecting a point bearing 100°, 450 yards from New London Harbor Light, a point bearing 270° 575 yards from New London Ledge Light (latitude 41°18′21″ N., longitude 72°04′41″ W.), and a point bearing 270°, 1450 yards from New London Ledge Light. From 7:30 a.m., on July 12, 2000 through 5 p.m., on July 12, 2000, this anchorage is designated for the exclusive use of spectator vessels exceeding 50 feet in length carrying passengers for the viewing of the Tall Ships Parade.

(8) *Anchorage Area H.* All waters of Niantic Bay located on Long Island Sound within the following boundaries: beginning at a point 300 yards, bearing 203T from Wigwam Rock 41°18′53″ N, 072°11′48″ W (NAD 1983), then to 41°18′53″ N, 072°10′38″ W (NAD 1983), then to 41°16′40″ N, 072°10′38″ W (NAD 1983), then to 41°16′40″ N, 072°11′48″ W (NAD 1983). From 6 a.m., July 11, 2000 until 5 p.m., on July 12, 2000, this anchorage is designated exclusively for the use of vessels participating in the Parade of Tall Ships into New London Harbor on July 12, 2000.

(9) *Anchorage I.* All waters of the Thames River in New London Harbor, in the vicinity of the State Pier within the following boundaries: beginning at a point located on the west shore line of the Thames River 25 yards below the Thames River Railroad Bridge, position 41°21′46″ N, 072°05′23″ W (NAD 1983), then to position 41°21′46″ N, 072°05′16″ W (NAD 1983), then to position 41°20′37″ N, 072°05′16″ W (NAD 1983), then to position 41°20′37″ N, 072°05′33″ W (NAD 1983), then along the shoreline to position 41°21′46″ N, 072°05′23″ W (NAD 1983). From 7:30 a.m., on July 12, 2000 through 5 p.m. on July 12, 2000, this anchorage is designated for the exclusive use of vessels participating in the Parade of Tall Ships into New London Harbor.

(10) *Anchorage J.* All waters of the Thames River southward of New London Harbor, on the east side of the Federal Channel within the following boundaries: beginning at a point bearing 245°T, 290 yards from Eastern Point 41°19′07″ N, 072°04′42″ W (NAD 1983), then to position 41°19′01″ N, 072°04′30″ W (NAD 1983), then to position 41°18′46″ N, 072°04′36″ W (NAD 1983), then to position 41°18′44″ N, 072°04′49″ W (NAD 1983). This area is designated for the exclusive use of commercial vessels greater than 50 feet in length carrying passengers for the viewing of the Tall Ships parade from 7:30 a.m., on July 12, 2000, until 5 p.m., on July 12, 2000.

* * * * *

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

5. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05(g), 6.04–1, 6.04–6 and 160.5; 49 CFR 1.46.

6. Add temporary § 165.T01–203 to read as follows:

§ 165.T01–198 Safety Zones: OPSAIL 2000, Port of New London, Connecticut.

(a) The following areas are established as a safety zone:

(1) *Safety Zone 1.* Includes all waters of the Thames River in New London Harbor, in the vicinity of the State Pier within the following boundaries: beginning at a point located on the west shore line of the Thames River 25 yards below the Thames River Railroad Bridge, position 41°21′46″ N, 072°05′23″ W (NAD 1983), then to position 41°21′46″ N, 072°05′16″ W (NAD 1983), then to position 41°20′37″ N, 072°05′16″ W (NAD 1983), then to position 41°20′37″ N, 072°05′33″ W (NAD 1983), then along the shoreline to position 41°21′46″ N, 072°05′23″ W (NAD 1983). This safety zone will be used as a mooring and turning area for the Parade of Tall Ships at the conclusion of the parade from 7:30 a.m., on July 12, 2000 until 5 p.m., on July 12, 2000.

(2) *Safety Zone 2.* Includes waters of the Thames River within the following boundaries: beginning at the east side of the Federal Channel at the Thames River Rail Road Bridge in the Port of New London, in position 41°21′47.0″ N, 072°05′14.0″ W (NAD 1983), then southward along the east side of the Federal Channel to the New London Harbor Channel Lighted Buoy "2" (LLNR 21790) in approximate position 41°17′38″ N, 072°04′40″ W (NAD 1983), then to Bartlett Reef Lighted Bell Buoy "4" (LLNR 21065) in approximate position 41°15′38″ N, 072°08′22″ W (NAD 1983), then south to Bartlett Reef Lighted Buoy "1" (LLNR 21065) in approximate position 41°16′28″ N, 072°07′54″ W (NAD 1983), then to an area located, bearing 192°T, approximately 325 yards from Rapid Rock Buoy "R" (LLNR 21770) 41°17′07″ N, 072°06′09″ W (NAD 1983), then to position 41°18′04″ N, 072°04′50″ W, (NAD 1983), which meets the west side of the Federal Channel, then along the west side of the Federal Channel to the Thames River Railroad Bridge in the Port of New London, in the position 41°21′46″ N, 072°05′23″ W (NAD 1983). This safety zone will be used for the parade route of Tall Ships from 7:30 a.m., on July 12, 2000, until 5 p.m., on July 12, 2000.

(b) No vessel may transit within Safety Zone 1 or 2 without the express authorization of the Coast Guard Captain of the Port, Long Island Sound, or his on-scene representative. All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or the designated on-scene patrol personnel. These personnel comprise commissioned, warrant, and petty officers of the Coast Guard. Upon being hailed by siren, radio, flashing light, or other means, the operator of the vessel shall proceed as directed. (c) This section is effective from 7:30 a.m. on July 12, 2000 until 5 p.m. on July 12, 2000.

Dated: March 15, 2000.

Robert F. Duncan,

Captain, U.S. Coast GuardActing Commander, First Coast Guard District, Boston, Massachusetts.

[FR Doc. 00–7468 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CGD05–00–002]

RIN 2115–AA97, AA98

OPSAIL 2000, Delaware River, Philadelphia, PA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in the Delaware River, Philadelphia, Pennsylvania for OPSAIL 2000 activities. This action is necessary to provide for the safety of life on navigable waters before, during, and after OPSAIL 2000 events. This action will restrict vessel traffic in the Delaware River between Anchorage 9 (Mantua Creek anchorage) and the Benjamin Franklin Bridge.

DATES: Comments and related material must reach the Coast Guard on or before May 12, 2000.

ADDRESSES: You may mail comments and related material to the Waterways and Waterfront Facilities Branch, Coast Guard Marine Safety Office/Group Philadelphia, One Washington Ave., Philadelphia, Pennsylvania 19147 or deliver them to the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The Waterways and Waterfront Facilities Branch, Coast Guard Marine Safety Office/Group Philadelphia maintains the public docket for this rulemaking. Comments and materials received from the public as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at the above address between 8:30 a.m. and 2:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (junior grade) Kirsten Codel, Waterways and Waterfront Facilities Branch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD05–00–002), indicate the specific section of this document to which each comment

applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. The comment period for this regulation is 45 days. This time period is adequate to allow local input because the event is highly publicized and the shortened comment period will allow the full 30-day publication requirement prior to the final rule becoming effective. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Commanding Officer, Coast Guard Marine Safety Office/Group Philadelphia, One Washington Ave., Philadelphia, Pennsylvania 19147, explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

Philadelphia OPSAIL 2000, Inc., is sponsoring OPSAIL 2000 activities in the Delaware River, Philadelphia, Pennsylvania. Planned events include the arrival of a number of international Tall Ships at Anchorage 9 (Mantua Creek anchorage) on June 22, 2000 and a Parade of Sail from that anchorage, upriver to the Benjamin Franklin Bridge on June 23, 2000.

The Coast Guard anticipates a large spectator fleet for this event. Operators should expect significant vessel congestion along the parade route.

The purpose of these regulations is to promote maritime safety and protect participants and the boating public immediately prior to, during, and after the scheduled events. The regulations will establish a clear parade route for the OPSAIL 2000 vessels, provide a safety buffer around the participating vessels while they are at anchor and in transit, and in certain anchorage areas, modify existing anchorage regulations for the benefit of participants and spectators. The regulations will affect the movement of all vessels operating in the specified areas of the Delaware River.

It may be necessary for the Coast Guard to establish safety or security zones in addition to these regulations to safeguard dignitaries and certain vessels participating in the event. If the Coast Guard deems it necessary to establish such zones at a later date, the details of those zones will be announced separately via the **Federal Register**, Local Notice to Mariners, Safety Voice Broadcasts, and any other means available.

All vessel operators and passengers are reminded that vessels carrying passengers for hire or that have been chartered and are carrying passengers may have to comply with certain additional rules and regulations beyond the safety equipment requirements for all pleasure craft. When a vessel is not being used exclusively for pleasure, but rather is engaged in carrying passengers for hire or has been chartered and is carrying the requisite number of passengers, the vessel operator must possess an appropriate license and the vessel may be subject to inspection. The definition of the term "passenger for hire" is found in 46 U.S.C. 2101(21a). In general, it means any passenger who has contributed any consideration (monetary or otherwise) either directly or indirectly for carriage onboard the vessel. The definition of the term "passenger" is found in 46 U.S.C. 2101(21). It varies depending on the type of vessel, but generally means individuals carried aboard vessels except for certain specified individuals engaged in the operation of the vessel or the business of the owner/charterer. The law provides for substantial penalties for any violation of applicable license and inspection requirements. If you have any questions concerning the application of the above law to your particular case, you should contact the Coast Guard at the address listed in **ADDRESSES** for additional information.

Vessel operators are reminded they must have sufficient facilities on board their vessels to retain all garbage and untreated sewage. Discharge of either into any waters of the United States is strictly forbidden. Violators may be assessed civil penalties up to $25,000 or face criminal prosecution.

We recommend that vessel operators visiting the Philadelphia area for this event obtain an up to date edition of National Ocean Service Chart 12313 to avoid anchoring within a charted cable or pipeline area.

With the arrival of OPSAIL 2000 and spectator vessels in the Philadelphia area for this event, it will be necessary to curtail normal port operations to some extent. Interference will be kept to the minimum considered necessary to ensure the safety of life on the navigable waters immediately before, during, and after the scheduled events.

Discussion of Proposed Rule

The OPSAIL 2000 vessels are scheduled to arrive at Anchorage 9 (Mantua Creek anchorage) on June 22, 2000. The lead vessel is scheduled to begin the Parade of Sail at 9 a.m. on June 23, 2000, and will follow a parade route of approximately 8 nautical miles from that anchorage, upriver to the Benjamin Franklin Bridge. Two larger OPSAIL 2000 vessels which are unable to sail under the Walt Whitman Bridge will depart the Parade of Sail in the vicinity of the Schuylkill River and be berthed at the Philadelphia Naval Shipyard. The remainder of the OPSAIL 2000 vessels will be berthed along the Philadelphia, PA and Camden, NJ waterfronts as they complete the Parade of Sail.

The safety of parade participants and spectators will require that spectator craft be kept at a safe distance from the parade route during these vessel movements. The Coast Guard proposes using safety zones along the parade route to keep all vessels not involved in the Parade of Sail a safe distance from the OPSAIL 2000 vessels. The parade route has been segmented in this rulemaking to facilitate the earliest possible reopening of the waterway once all OPSAIL 2000 vessels have cleared a particular segment of the route, but portions of the Delaware River will remain closed to all traffic until all of the OPSAIL 2000 vessels are safely moored at their assigned berths or have departed the event area.

The Coast Guard also intends to temporarily modify the existing anchorage regulations found at 33 CFR 110.157 to accommodate OPSAIL 2000 and spectator vessels. Anchorage 9 will be closed to all vessels except OPSAIL 2000 vessels that will be using it as the staging area for the Parade of Sail. Vessels will not be allowed to anchor in Anchorage 10 and Anchorage 11 to enable spectator vessels to safely follow the Parade of Sail. The southern portion of Anchorage 13, and the northern portion of Anchorage 12 will be closed because they are in the portion of the river that the OPSAIL 2000 vessels will be using to maneuver in preparation of mooring. The southern portion of Anchorage 12 will be designated exclusively for spectator vessels.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

The primary impact of these regulations will be on vessels wishing to transit the affected waterways during the Parade of Sail on June 23, 2000. Although these regulations prevent traffic from transiting portions of the Delaware River during the event, that restriction is limited in duration, affects only a limited area, and will be well publicized to allow mariners to make alternative plans for transiting the affected area. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of vessels intending to operate or anchor in portions of the Delaware River in the vicinity of Philadelphia, Pennsylvania. The regulations would not have a significant impact on a substantial number of small entities for the following reasons: The restrictions are limited in duration, affect only limited areas, and will be well publicized to allow mariners to make alternative plans for transiting the affected areas. Moreover, the magnitude of the event itself will severely hamper or prevent transit of the waterway, even absent these regulations designed to ensure it is conducted in a safe and orderly fashion.

If you think that your business, organization or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (junior grade) Kirsten Codel, Waterways and Waterfront Facilities Branch, Coast Guard Marine Safety Office/Group Philadelphia, at (215) 271–4889.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1C; this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" will be available in the docket where indicated under **ADDRESSES**. By controlling vessel traffic during these events, this proposed rule is intended to minimize environmental impacts of increased vessel traffic during the transits of event vessels.

List of Subjects

33 CFR Part 110

Anchorage grounds.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR Parts 110 and 165 as follows:

PART 110—[AMENDED]

1. The authority citation for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g).

2. From 8 a.m. on June 22, 2000 until 4 p.m. on June 23, 2000 § 110.157 is amended by adding paragraph (d) to read as follows:

§ 110.157 Delaware Bay and River

* * * * *

(d) Not withstanding paragraphs (a) through (c) of this section, the following temporary regulations are in effect from 8 a.m. on June 22, 2000 until 4 p.m. on June 23, 2000 for OPSAIL 2000.

(1) Anchorage 9 will be closed to all vessels except OPSAIL 2000 vessels. "OPSAIL 2000 vessels" includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Philadelphia and approved by the Commander, Fifth Coast Guard District.

(2) No vessel may anchor in Anchorage 10, or Anchorage 13 south of

the Benjamin Franklin Bridge, without permission of the Captain of the Port.

(3) No vessel may anchor in Anchorage 11 after 1 a.m. on June 23, 2000 without permission of the Captain of the Port.

(4) Anchorage 12:

(i) No vessel may anchor north of latitude 39° 55′41″ N without permission of the Captain of the Port.

(ii) South of latitude 39° 55′41″ N is designated for the exclusive use of spectator vessels. "Spectator vessels" includes any vessel, commercial or recreational, being used for pleasure or carrying passengers, that is in the Port of Philadelphia to observe part or all of the events attendant to OPSAIL 2000.

PART 165—[AMENDED]

3. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1225 and 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46. Section 165.100 is also issued under authority of Sec. 311, Pub. L. 105–383.

4. Add temporary § 165.T05–002 to read as follows:

§ 165.T05–002 Safety Zone; OPSAIL 2000, Delaware River, Philadelphia, PA.

(a) Definitions. (1) *Captain of the Port* means the Commanding Officer of the Coast Guard Marine Safety Office/Group Philadelphia or any Coast Guard commissioned, warrant, or petty officer who has been authorized by the Captain of the Port to act on his behalf.

(2) *Coast Guard Patrol Commander* is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commanding Officer, Coast Guard Marine Safety Office/Group Philadelphia.

(3) *OPSAIL 2000 Vessels* includes all vessels participating in Operation Sail 2000 under the auspices of the Marine Event Permit submitted for the Port of Philadelphia and approved by Commander, Fifth Coast Guard District.

(b) *Location.* The following areas are Safety Zones:

(1) *Parade of Sail—First Segment:* This moving safety zone includes all waters from 500 yards forward of the lead OPSAIL 2000 vessel to 100 yards aft of the last OPSAIL 2000 vessel, and extending 50 yards outboard of each OPSAIL 2000 vessel participating in the Parade of Sail. This safety zone will move with the Parade of Sail as it transits the Delaware River from Anchorage 9 (Mantua Creek anchorage) to the Walt Whitman Bridge.

(2) *Parade of Sail—Second Segment:* All waters of the Delaware River, from shoreline to shoreline, bounded on the south by the Walt Whitman Bridge and on the north by the Benjamin Franklin Bridge with the exception of the southern portion of Anchorage 12, defined as that portion of the anchorage south of latitude 39° 55′41″ N.

(c) *Regulations.* (1) All persons are required to comply with the general regulations governing safety zones in § 165.23 of this part.

(2) No person or vessel may enter or navigate within these regulated areas unless authorized to do so by the Coast Guard Patrol Commander. Any person or vessel authorized to enter the regulated area must operate in strict conformance with any directions given by the Captain of the Port and leave the regulated area immediately if the Coast Guard Patrol Commander so orders.

(3) The Coast Guard vessels enforcing this section can be contacted on VHF Marine Band Radio, channels 13 and 16. The Captain of the Port can be contacted at telephone number (215) 271–4940.

(4) The Coast Guard Patrol Commander will notify the public of changes in the status of these zones by Marine Safety Radio Broadcast on VHF–FM marine band radio, channel 22 (157.1 MHZ).

(d) *Effective dates:* This section is effective from 8 a.m. to 4 p.m. on June 23, 2000.

Dated: March 10, 2000.

J.E. Shkor,

Vice Admiral, U.S. Coast Guard, Commander Fifth Coast Guard District.

[FR Doc. 00–7467 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 52

[FRL–6567–1]

Notice of Availability for Draft Guidance Document on BACT and LAER for Tier2/Gasoline Sulfur Refinery Projects

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: The EPA is making available for public review and comment a preliminary draft of its pending guidance on BACT and LAER for Tier 2/gasoline sulfur refinery projects.

On February 10, 2000, EPA issued new emissions standards ("Tier 2 standards") for all passenger vehicles, including sport utility vehicles, minivans, vans and pick-up trucks. To ensure the effectiveness of low emission control technologies in these vehicles, this rule also sets new standards to significantly reduce the sulfur content in gasoline. In order to meet these sulfur in gasoline requirements, many refiners will have to make modifications to their existing facilities, which could be subject to the major new source review (NSR) preconstruction permitting requirements under parts C and D of the Clean Air Act. The refiners subject to major NSR will be required to undergo a pollution control technology evaluation to apply either best available control technology (BACT) or lowest achievable emission rate (LAER), depending on the applicable program requirements. To provide greater certainty and to expedite the NSR permitting process for refinery projects undertaken to comply with the recently issued gasoline sulfur standards, EPA intends to provide Federal guidance on BACT and LAER for these type of projects.

A draft of EPA's guidance and a supporting background document on BACT and LAER for certain refinery construction projects undertaken to comply with the new gasoline sulfur standards is available for public review and comment. The EPA does not intend to respond to individual comments, but rather to consider comments and information from the public in the preparation of a final guidance document.

DATES: The comment period on the draft guidance will close on April 27, 2000.

ADDRESSES: Comments should be sent to Pamela J. Smith, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541–0641, telefax 919–541–5509 or E-mail *smith.pam@epa.gov.*

FOR FURTHER INFORMATION CONTACT: David Solomon, Information Transfer and Program Integration Division (MD–12), Office of Air Quality Planning and Standards, U.S. EPA, Research Triangle Park, North Carolina 27711, telephone 919–541-5375, telefax 919–541–5509 or E-mail *solomon.david@epa.gov.*

SUPPLEMENTARY INFORMATION: A copy of the draft guidance document and a supporting technical background document may be obtained by calling or E-mailing Pamela J. Smith. The draft guidance may also be downloaded from the NSR Website *http://www.epa.gov/ttn/nsr* under the topic "What's New on NSR."

Dated: March 17, 2000.

Jeffrey Clark,

Acting Director, Office of Air Quality Planning and Standards.

[FR Doc. 00–7718 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN193–1b; FRL–6566–6]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Indiana; Control of Landfill Gas Emissions From Existing Municipal Solid Waste Landfills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the Indiana State Plan submittal for implementing the Municipal Solid Waste (MSW) Landfill Emission Guidelines. The State submitted this plan to EPA in accordance with requirements found in the Clean Air Act (Act) and the requirements for State plans for designated facilities in 40 CFR part 60, subpart B. The submittal establishes performance standards for existing MSW landfills and provides for the implementation and enforcement of those standards. The EPA proposes to find that Indiana's Plan for existing MSW landfills adequately addresses all of the Federal requirements applicable to such plans. EPA's proposed approval of the State's MSW Landfill Plan also includes rules submitted to EPA on November 21, 1995, and February 14, 1996, as volatile organic compound control measures. EPA approved the incorporation of these rules into the Indiana SIP on January 17, 1997. In this action, EPA is proposing to include these rules as part of the Indiana MSW Landfill Plan.

DATES: Written comments must be received on or before April 27, 2000.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

Copies of the State submittal are available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Randolph O. Cano, Environmental Protection Specialist, Regulation Development Section, Air Programs Branch (AR–18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–6036.

SUPPLEMENTARY INFORMATION:

Throughout this document wherever "we," "us" or "our" are used we mean EPA.

Table of Contents

I. What action is EPA taking today?
II. Where can I find more information about this proposal and the corresponding direct final rule?

I. What Action Is EPA Taking Today?

We have examined the State's 111(d) revision request and the supporting documentation provided by the State. Based on the merits of the information supplied, EPA is proposing to approve Indiana's 111(d) plan for control of landfill gas from existing MSW landfills which was submitted to EPA on September 30, 1999. EPA is also proposing to add rules for controlling volatile organic compound emissions from existing MSW landfills located in Clark, Floyd, Lake and Porter Counties to the State's 111(d) plan. These rules, contained in 326 IAC 8–8, were originally submitted to EPA as part of the Indiana Ozone Plan on November 21, 1995 and February 14, 1996. EPA approved the incorporation of these rules into the Ozone Plan on January 17, 1997 (62 FR 2593). EPA codified its approval of these State rules at 40 CFR 52.770(c)(110).

II. Where Can I Find More Information About This Proposal and the Corresponding Direct Final Rule?

For additional information see the direct final rule published in the final rules section of this **Federal Register.**

Dated: March 17, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–7622 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[Docket #ID–02–0001; FRL–6566–3]

Approval and Promulgation of Municipal Solid Waste Landfills State Plan for Designated Facilities and Pollutants: Idaho

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State of Idaho's section 111(d) State Plan for controlling emissions from existing Municipal Solid Waste (MSW) Landfills. The plan was submitted on December 16, 1999, to fulfill the requirements of section 111(d) of the Clean Air Act. The State Plan adopts and implements the Emissions Guidelines applicable to existing MSW Landfills, and establishes emission limits and controls for sources which commenced construction, reconstruction, or modification before May 30, 1991.

In the final rules section of this **Federal Register,** the EPA is approving Idaho's State Plan as a direct final rule without prior proposal because the Agency views this as a noncontroversial action and anticipates no relevant adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no relevant adverse comments are received in response to this action, EPA will not take action on this proposed rule. If the EPA receives relevant adverse comments, EPA will withdraw the direct final rule and it will not take effect. EPA will then address all public comments received in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period on this action.

DATES: Written comments must be received by April 27, 2000.

ADDRESSES: Written comments should be addressed to: Catherine Woo, US EPA, Region X, Office of Air Quality (OAQ–107), 1200 Sixth Avenue, Seattle, WA 98101. Copies of the State submittal are available for public review during normal business hours at the following locations. Persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the day of the visit.

Environmental Protection Agency, Region X, Office of Air Quality, 1200 Sixth Avenue, Seattle, WA 98101.

Idaho Division of Environmental Quality, 1410 N. Hilton, Boise, ID

83720 (Contact Tim Teater at 208–373–0457 for an appointment at IDEQ).

FOR FURTHER INFORMATION CONTACT: Catherine Woo, Office of Air Quality (OAQ–107), US EPA, Region X, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1814.

SUPPLEMENTARY INFORMATION: For additional information see the direct final action which is published in the Rules section of this **Federal Register**.

Dated: March 14, 2000.

Chuck Clarke,

Regional Administrator, Region 10.

[FR Doc. 00–7620 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–540; MM Docket No. 99–298; RM–9714]

Radio Broadcasting Services; St. James and Fairmont, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document dismisses a petition for rule making filed by Minnesota Valley Broadcasting Company, Inc. requesting the reallotment of Channel 263C2 from St. James, Minnesota, to Fairmont, Minnesota, and modification of the license for Station KXAC to specify operation at Fairmont. *See* 64 FR 56724, October 21, 1999. Minnesota Valley Broadcasting Company, Inc. withdrew its interest in the allotment of Channel 263C2 at Fairmont, Minnesota. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–298, adopted March 6, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7601 Filed 3–27–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 65, No. 60

Tuesday, March 28, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF ARICULTURE

Food and Nutrition Service

Special Supplemental Nutrition Program for Women, Infants and Children (WIC): Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: The Department announces adjusted income eligibility guidelines to be used by State agencies in determining the income eligibility of persons applying to participate in the Special Supplemental Nutrition Program for Women, Infants and Children (WIC Program). These income eligibility guidelines are to be used in conjunction with the WIC Regulations.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Debra Whitford, Branch Chief, Policy and Program Development Branch, Supplemental Food Programs Division, FNS, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 305–2730.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This notice is exempted from review by the Office of Management and Budget under Executive Order 12866.

Regulatory Flexibility Act

This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of this Act.

Paperwork Reduction Act of 1995

This notice does not contain reporting or recordkeeping requirements subject to approval by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507).

Executive Order 12372

This program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.557 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials (7 CFR Part 3015, Subpart V, 48 FR 29112 June 24, 1983).

Description

Section 17(d)(2)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1786 (d)(2)(A)) requires the Secretary of Agriculture to establish income criteria to be used with nutritional risk criteria in determining a person's eligibility for participation in the WIC Program. The law provides that persons will be income eligible for the WIC Program only if they are members of families that satisfy the income standard prescribed for reduced price school meals under section 9(b) of the National School Lunch Act (42 U.S.C. 1758(b)). Under section 9(b), the income limit for reduced price school meals is 185 percent of the Federal poverty guidelines, as adjusted.

Section 9(b) also requires that these guidelines be revised annually to reflect changes in the Consumer Price Index. The annual revision for 2000 was published by the Department of Health and Human Services (DHHS) in the **Federal Register** on February 15, 2000 at 65 FR 7555. The guidelines published by DHHS are referred to as the poverty guidelines.

Section 246.7(d)(1) of the WIC regulations specifies that State agencies may prescribe income guidelines either equaling the income guidelines established under section 9 of the National School Lunch Act for reduced price school meals or identical to State or local guidelines for free or reduced price health care. However, in conforming WIC income guidelines to State or local health care guidelines, the State cannot establish WIC guidelines which exceed the guidelines for reduced price school meals, or which are less than 100 percent of the Federal poverty guidelines. Consistent with the method used to compute income eligibility guidelines for reduced price meals under the National School Lunch Program, the poverty guidelines were multiplied by 1.85 and the results rounded upward to the next whole dollar.

At this time the Department is publishing the maximum and minimum WIC income eligibility guidelines by household size for the period July 1, 2000 through June 30, 2001. Consistent with section 17(f)(17) of the Child Nutrition Act of 1966 (42 U.S.C. 1786(f)(17)), a State agency may implement the revised WIC income eligibility guidelines concurrently with the implementation of income eligibility guidelines under the Medicaid program established under title XIX of the Social Security Act (42 U.S.C. 1396, *et seq.*). State agencies may coordinate implementation with the revised Medicaid guidelines, but in no case may implementation take place later than July 1, 2000. State agencies that do not coordinate implementation with the revised Medicaid guidelines must implement the WIC income eligibility guidelines on July 1, 2000. The first table of this notice contains the income limits by household size for the 48 contiguous States, the District of Columbia and all Territories, including Guam. Because the poverty guidelines for Alaska and Hawaii are higher than for the 48 contiguous States, separate tables for Alaska and Hawaii have been included for the convenience of the State agencies.

BILLING CODE 3410–30–U

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 2000 to June 30, 2001)

Household Size	Federal Poverty Guidelines - 100%				Reduced Price Meals - 185%			
	Annual	Monthly	Twice-Monthly	Bi-Weekly	Annual	Monthly	Twice-Monthly	Weekly
48 Contiguous States, D.C., Guam and Territories								
1	8,350	696	348	322	15,448	1,288	644	595	298
2	11,250	938	469	433	20,813	1,735	868	801	401
3	14,150	1180	590	545	26,178	2,182	1,091	1,007	504
4	17,050	1421	711	656	31,543	2,629	1,315	1,214	607
5	19,950	1663	832	768	36,908	3,076	1,538	1,420	710
6	22,850	1905	953	879	42,273	3,523	1,762	1,626	813
7	25,750	2146	1073	991	47,638	3,970	1,985	1,833	917
8	28,650	2388	1194	1102	53,003	4,417	2,209	2,039	1,020
Each Add'l Member Add	+2,900	+242	+121	+112	+5,365	+448	+224	+207	+104
Alaska								
1	10,430	870	435	402	19,296	1,608	804	743	372
2	14,060	1,172	586	541	26,011	2,168	1,084	1,001	501
3	17,690	1,475	738	681	32,727	2,728	1,364	1,259	630
4	21,320	1,777	889	820	39,442	3,287	1,644	1,517	759
5	24,950	2,080	1040	960	46,158	3,847	1,924	1,776	888
6	28,580	2,382	1191	1100	52,873	4,407	2,204	2,034	1,017
7	32,210	2,685	1343	1239	59,589	4,966	2,483	2,292	1,146
8	35,840	2,987	1494	1379	66,304	5,526	2,763	2,551	1,276
Each Add'l Member Add	+3,630	+303	+152	+140	+6,716	+560	+280	+259	+130
Hawaii								
1	9,590	800	400	369	17,742	1,479	740	683	342
2	12,930	1,078	539	498	23,921	1,994	997	921	461
3	16,270	1,356	678	626	30,100	2,509	1,255	1,158	579
4	19,610	1,635	818	755	36,279	3,024	1,512	1,396	698
5	22,950	1,913	957	883	42,458	3,539	1,770	1,633	817
6	26,290	2,191	1096	1012	48,637	4,054	2,027	1,871	936
7	29,630	2,470	1235	1140	54,816	4,568	2,284	2,109	1,055
8	32,970	2,748	1374	1269	60,995	5,083	2,542	2,346	1,173
Each Add'l Member Add	+3,340	+279	+140	+129	+6,179	+515	+258	+238	+119

Authority: 42 U.S.C. 1786.

Dated: March 21, 2000.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 00–7547 Filed 3–27–00; 8:45 am]

BILLING CODE 3410–30–C

DEPARTMENT OF AGRICULTURE

Forest Service

Land and Resource Management Plan Amendments for Canada Lynx in Colorado and Southern Wyoming

AGENCY: USDA Forest Service.

ACTION: Notice of intent to prepare an environmental impact statement in conjunction with amendments to land and resource management plans for the Routt National Forest; Arapaho and Roosevelt National Forests; Pike and San Isabel National Forests; the San Juan National Forest; Grand Mesa, Uncompahgre and Gunnison National Forests; and the Rio Grande National Forest located in the State of Colorado; and the Medicine Bow National Forest located in the State of Wyoming.

SUMMARY: Pursuant to Part 36 Code of Federal Regulations (CFR) 219.10(g), the Regional Forester for the Rocky Mountain Region gives notice of the agency's intent to prepare an environmental impact statement in conjunction with the amendments of Land and Resource Management Plans (hereafter referred to as Forest Plans or Plans) for the National Forests listed above. The White River National Forest is not included in this proposed action because this unit will include lynx management direction in its final revised forest plan scheduled to be completed in May 2001.

On the basis of new information regarding lynx biology developed since the issuance of the plans mentioned above, the Forest Service has identified a need to update management direction. This notice described a proposal to change Forest Plans to the extent necessary to respond to recommendations in the Canada Lynx Conservation Assessment and Strategy (LCAS) and other new information regarding the Canada lynx and its habitat.

DATES: Comments concerning the scope of the analysis should be postmarked by May 11, 2000. The agency expects to file a draft environmental impact statement with the Environmental Protection Agency (EPA) and make it available for public, agency, and tribal government comment in the summer of 2000. A final environmental impact statement is expected to be filed in early 2001.

ADDRESSES: Send written comments to: Howard Sargent, Team Leader, Lynx Plan Amendment Team, USDA Forest Service, Rocky Mountain Region, PO Box 25127, Lakewood, Colorado, 80225–0127.

FOR FURTHER INFORMATION CONTACT: Howard Sargent, Team Leader, (970) 498–1201.

RESPONSIBLE OFFICIAL: Lyle Laverty, Rocky Mountain Regional Forester, P.O. Box 25127, Lakewood, CO 80225–0127.

SUPPLEMENTARY INFORMATION: The Regional Forester gives notice that the Rocky Mountain Region of the USDA Forest Service is beginning an environmental analysis and decision-making process for this proposed action so that interested or affected people can participate in the analysis and contribute to the final decision. The Forest Service is seeking information, comments, and assistance from individuals, organizations, tribal governments, and federal, state, and local agencies who are interested in or may be effected by the proposed action (36 CFR 219.6). The public is invited to help identify issues and define the range of alternatives to be considered in the enviromental impact statement. The range of alternatives to be considered in the DEIS will be based on issues and specific decisions to be made. Written comments identifying issues for analysis and the range of alternatives are encouraged.

Proposed Action

The proposed action is to amend Forest Plans for the units listed previously in this notice to, as necessary, establish or revise goals, standards, and guidelines that respond to recommendations contained in the LCAS and other new information regarding the lynx and its habitat. The decision to be made is how to amend the Forest Plans to incorporate direction that responds to the LCAS recommendations and other new information regarding the lynx, if at all. Attachment 1 displays the key LCAS recommendations phrased in terms of goals, standards, and guidelines that will be considered as part of the environmental analysis process. Note that existing Forest Plans may already contain some direction that is essentially the same as the LCAS recommendations. Each plan will be amended only to the extent necessary to appropriately respond to the LCAS recommendations and other new information.

A range of alternatives that respond to issues developed during scoping will be considered when amending the Forest Plans. A reasonable range of alternatives will be evaluated and reasons will be given for eliminating some alternatives from detailed study, if that occurs. A "no-action alternative" is required, meaning that Forest Plans would not be amended.

Purpose and Need

The purpose and need for this proposal is to establish Forest Plan management direction designed to respond to the recommendations in the LCAS and other new information concerning the lynx and its habitat. This proposal is limited to the National Forests in the Rocky Mountain Region and Southern Rocky Mountain Geographic Area that have lynx habitat (see list above).

The Secretary of Interior listed the Canada lynx as a threatened species on March 24, 2000. This decision will take effect 30 days after publication. A key finding of the listing decision is that "the inadequacy of existing regulatory mechanisms, specifically the lack of guidance for conservation of lynx in Federal land management plans" (Department of the Interior, Fish and Wildlife Service, 50 CFR Part 17, Determination of Threatened Status for the Contiguous U.S. Distinct Population Segment of the Canada Lynx and Related Rule, p. 147) has contributed to the species' decline. When a species is listed, Section 7(a)(2) of the Endangered Species Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of the species or destroy or adversely modify its critical habitat.

This action is also needed to assure that land and resource management plans are in compliance with species viability requirements in the planning regulations that implement the National Forest Management Act. The Rocky Mountain Region has identified the lynx as a sensitive species, it is listed by the State of Colorado as an endangered species, and the State of Wyoming lists the lynx as a "protected animal", meaning it is protected from take.

A large amount of new information about the lynx has become available in the past two years. Key elements of this new information to be considered include: (1) The LCAS; (2) a compendium and interpretation of current scientific knowledge in "Ecology and Conservation of Lynx in the United States, published in October 1999; (3) the Canada Lynx Conservation Agreement, prepared in February 2000

and signed by the Forest Service Regional Foresters and Fish and Wildlife Service Regional Directors responsible for the geographic areas within the range of the lynx in the conterminous United States; (4) the release of lynx in Colorado by the Colorado Division of Wildlife; and (5) the decision by the U.S. Fish and Wildlife Service, announced on March 24, 2000, to list the lynx as a threatened species in the conterminous United States, under the provisions of the Endangered Species Act. This information has provided a better understanding of the lynx, its prey base and habitat requirements, particularly the forest communities it uses and the ecology of those forests, and risk factors affecting lynx productivity, mortality, and movements. Forest Plans in the Region were largely developed before issues regarding the lynx were identified and without the benefit of the new information on the lynx and its habitat.

Public Participation

Public participation will be solicited with news releases or by notifying people in person or by mail. The first formal opportunity to comment is during the scoping process (40 CFR 1501.7) which begins with the issuance of this notice of intent. All comments, including the names and addresses when provided, are placed in the record and are available for public inspection and copying at the Forest Service Regional Office. Persons wishing to inspect the comments are encouraged to call ahead (303–275–5103) to facilitate entrance into the building.

The Forest Service will work with tribal governments to address issues concerning Indian tribal self-government and sovereignty, natural and cultural resources held in trust, Indian tribal treaty and Executive order rights, and any issues that significantly or uniquely affect their communities.

Preliminary Issues

Some preliminary issues have already been identified and are listed below. These issues apply only to National Forest system lands on the units listed previously in this notice.

- The adoption of new Forest Plan goals, standards and guidelines is expected to maintain or enhance habitat conditions for the lynx on National Forest lands. Project implementation is expected to facilitate the development of landscape and site characteristics suitable for lynx and its principal prey, the snowshoe hare.
- The adoption of new Forest Plan goals, standards and guidelines may affect the areas where winter and summer recreation take place and how and when these activities are conducted. Activities like cross country skiing, snowmobiling, off-road vehicle use and developed recreation facilities could be affected. New direction could also affect ski area operations and expansions.
- The adoption of new Forest Plan goals, standards and guidelines may affect the ability to use roads and trails, the construction of roads and trails and the closure or decommissioning of roads and trails. This potentially influences activities like recreational use, oil and gas leasing, mineral development or other uses associated with Forest Service roads and trails.
- The adoption of new Forest Plan goals, standards and guidelines may affect timber harvest practices in order to protect lynx denning sites and foraging areas or to minimize disturbance in key habitat linkage areas. New plan direction may also affect the type of harvest or the timing of harvest in order to preserve or enhance the habitat of the snowshoe hare, a key prey species.
- The adoption of new Forest Plan goals, standards and guidelines may affect livestock grazing by requiring that vegetation conditions be maintained to support lynx prey species.

The Forest Service, Rocky Mountain Region is the lead agency. No joint lead agencies have been identified at this time. The Forest Service will continue to cooperate with other federal and state agencies as this action proceeds. There are no permits or licenses required to implement the proposed action.

Release and Review of the EIS

The Forest Service expects the DEIS to be filed with the Environmental Protection Agency (EPA) and to be available for public, agency, and tribal government comment in the summer of 2000. At that time, the EPA will publish a notice of availability for the DEIS in the Federal Register. The comment period on the DEIS will be 45 days from the date the EPA publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, potential reviewers of the DEIS must participate in the environmental review of the proposal, including this initial scoping period, in such a way that their participation is meaningful and alerts an agency to the reviewers's position and contentions; Vermont Yankee Nuclear Power Corp. v. NRDC [435 U.S. 519, 553 (1978)]. Also, environmental objections that could be raised at the DEIS stage but are not raised until after completion of the final environmental impact statement (FEIS) may be waived or dismissed by the courts; *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc., v. Harris, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate throughout the process, so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns relating to the proposed actions, comments on the DEIS, when it become available, should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statements. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3. After the comment period on the DEIS ends, comments will be analyzed, considered, and responded to by the Forest Service in preparing the Final EIS. The FEIS is scheduled to be completed in early 2001. The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations and policies in making decisions regarding these amendments. The responsible official will document the decisions and reasons for the decisions in a Record of Decision. The decision will be subject to appeal in accordance with 36 CFR 215 or in accordance with 36 CFR 217 depending on whether the amendments are significant under the National Forest Management Act requirements at 36 CFR 219.10(f).

Dated: March 22, 2000.

David A. Heerwagen,

Deputy Regional Forester, Rocky Mountain Region, USDA Forest Service.

Attachment 1—Key Recommendations of the LCAS, Phrased in Terms of Potential Goals, Standards, and Guidelines

Goals, Standards, and Guidelines

The goals, standards, and guidelines generally apply only to lynx habitat within a Lynx Analysis Unit. Lynx habitat occurs in mesic coniferous forests that have cold, snowy winters and provide a prey base of snowshoe hare. Lynx habitat is a mosiac within the Englemann spruce, subalpine fir, lodgepole pine, aspen, mesic Douglas-fir and mesic white fir forested landscapes, generally between 8,000 and 12,000 feet. High elevation sagebrush and mountain shrub communities found adjacent to or intermixed with the forest communities may be potentially important as habitat for alternative prey species. Ponderosa pine is generally not considered lynx habitat.

Category: Physical

Water and Aquatic Resources—Riparian Areas and Wetlands

Standard: Refer to: Range, standard #1.

Category: Biological

Range

Goals: 1. Manage grazing to maintain or move toward the composition and structure of native plant communities within lynx habitat and adjacent shrub-steppe habitats.

Standards: 1. Within lynx habitat, manage livestock grazing in riparian areas and willow carrs to maintain or achieve mid-seral or later condition to provide cover and forage for lynx prey species.

2. Delay livestock use in post-fire and post-harvest created openings until successful regeneration of the shrub and tree components occurs.

Guidelines: 1. Ensure that ungulate grazing does not impede the development of snowshoe hare habitat in natural or created openings within lynx habitat.

2. Manage grazing in aspen stands to ensure sprouting and sprout survival sufficient to perpetuate the long-term viability of the clones.

3. Maintain or achieve mid-seral or higher condition in shrub-steppe habitat that is within the elevational range of forested lynx habitat or that provides landscape connectivity between blocks of primary lynx habitat.

Silviculture

Goals: 1. Design regeneration harvest, planting, and thinning to develop characteristics suitable for lynx and snowshoe hare habitat.

2. Maintain suitable acres of lynx habitat and juxtaposition of habitat through time when planning timber sales and related activities.

Standards: 1. Pre-commercial thinning will be allowed only when stands no longer provide snowshoe hare habitat (*e.g.*, self-pruning processes have eliminated snowshoe hare cover and forage availability during winter conditions with average snowpack).

2. In aspen stands within lynx habitat, favor regeneration of aspen.

3. Following a disturbance such as blowdown, fires, insects, and disease, where lynx denning habitat is less than 10% of a Lynx Analysis Unit, do not salvage harvest when the affected area is smaller than 5 acres if it could continue to lynx denning habitat. (Exceptions are developed recreation sites or other sites of high human concentration.) Where larger areas are affected, retain a minimum of 10% of the affected area per Lynx Analysis Unit in patches of at least 5 acres to provide future denning habitat. In such areas, defer or modify management activities that would prevent development or maintenance of lynx foraging habitat.

Also refer to:

- Threatened, Endangered, and Sensitive Species, Lynx Analysis Units, standards 1 and 2.
- Threatened, Endangered, and Sensitive Species, Denning and Foraging Habitat, standard #1.
- Travelways, standard #1.

Guidelines: 1. Management activities retain adequate amounts of coarse woody debris for lynx and snowshoe hare cover, if it exists on site.

2. Commercial thinning projects shall maintain or enhance lynx habitat.

3. Design vegetation management activities that consider retaining or encouraging tree species composition and structure that will provide habitat for red squirrels or other lynx alternate prey species.

Also refer to:

- Range, guideline #2.
- Threatened, Endangered, Sensitive Species, Denning and Foraging Habitat, guideline #1.
- Fire, guidelines 4 and 7.

Threatened, Endangered, and Sensitive Species

Lynx Analysis Units

Goals: 1. Maintain effectiveness of lynx habitat. (Effectiveness is primarily affected by high level of human use.)

Standards: 1. If more than 30% of the lynx habitat in a Lynx Analysis Unit (LAU) is currently in unsuitable condition, no further reduction of suitable habitat shall occur as a result of vegetation management activities.

2. Vegetation management shall not change more than 15 percent of lynx habitat within a LAU to unsuitable condition within a 10-year period.

Denning and Foraging Habitat

Goal: 1. Provide a landscape with interconnected blocks of high quality foraging and denning habitat that allows lynx movement between these habitats.

Standard: 1. Within a Lynx Analysis Unit, maintain denning habitat on at least 10% of the area that is capable of producing stands with characteristics suitable for denning habitat. Denning habitat should be well distributed, in patches generally larger than 5 acres. This applies to vegetation treatment, timber harvest, prescribed fire, fire suppression actions, and other similar activities.

Guidelines: 1. In areas where future denning habitat is desired, or to extend the production of snowshoe hare foraging habitat where forage quality and quantity is declining due to plant succession, consider improvement of habitat through activities such as commercial thinning and selection harvesting. Use harvesting and thinning to retain and recruit understories of small diameter conifers and shrubs preferred by hares and to retain and recruit coarse woody debris.

2. Maintain or improve the juxtaposition of denning to foraging habitat. This can be important in large wildfire events in late seral.

3. Design vegetation and fire management activities to retain or restore lynx denning habitat on landscapes with the highest probability of escaping stand-replacing fire events.

Connectivity and Fragmentation

Goals: 1. Maintain and, where necessary and feasible, restore lynx habitat connectivity across forested landscapes and within and between Lynx Analysis Units. Facilitate wildlife movement within key linkage areas considering highway crossing structures when feasible.

2. Within Lynx Analysis Units that have been fragmented by past management activities that reduced the quality of lynx habitat, management practices will be implemented to move toward forest composition, structure and patterns more similar to those that would have occurred under historical conditions and natural disturbance processes.

Predation/Competition

Goal: 1. Avoid management practices that would increase competition with and predation on lynx.

Prey Species:

Goals: 1. Reduce incidental harm or capture of lynx during predator control activities and ensure retention of adequate prey base.

2. Retain and enhance existing habitat conditions for important lynx prey species and alternate prey species, such as the red squirrel.

Category: Disturbance Processes

Fire

Goal: 1. Restore fire as an ecological process through time and use fire as a tool to maintain, enhance, or restore lynx habitat.

Standards: Refer to:

- Silviculture, standard #3.
- Threatened, Endangered, and Sensitive Species, Lynx Analysis Units, standards 1 and 2.
- Threatened, Endangered, and Sensitive Species, Denning and Foraging Habitat, standard #1.

Guidelines: 1. Consider prescriptions that can result in regeneration and the creation of snowshoe hare habitat when developing burn prescriptions, especially for lodgepole pine and aspen.

2. Design burn prescriptions to promote response by shrub and tree species that are favored by snowshoe hare.

3. Consider the need for pre-treatment of fuels before conducting management ignitions.

4. In lynx habitat, avoid constructing permanent firebreaks on ridges or saddles.

5. Minimize construction of temporary roads and machine fire lines to the extent possible during fire suppression activities in lynx habitat.

6. In the event of a large wildlife in stands that were formally late seral, during the post-disturbance assessment prior to restoration or salvage harvesting, evaluate the potential for providing for lynx denning and foraging habitat.

Also refer to:

- Silviculture, guideline #3.
- Threatened, Endangered, and Sensitive Species, Denning and Foraging Habitat, guidelines 2 and 3.

Category: Social

Recreation—Developed Recreation

Standard: 1. Locate new or relocated trails, roads, and ski lift termini to direct winter use away from diurnal security habitat.

2. Protect key linkage areas when planning new or expanding recreational developments.

Guidelines: 1. Provide adequately sized coniferous inter-trail islands, including the retention of coarse woody material, to maintain snowshoe hare habitat when designing ski area expansions.

2. Identify and protect potential lynx security habitats in and around proposed developments or expansions.

3. Evaluate, and adjust as necessary, ski operations in expanded or newly developed areas to provide nocturnal foraging opportunities for lynx in a manner consistent with operational needs, especially in landscapes where lynx habitat occurs as narrow bands of coniferous forest across the mountain slopes.

Recreation—Dispersed Recreation

Standards: 1. Allow no net increase in groomed or designated over-the-snow routes and designated snowmobile play areas by Lynx Analysis Units unless the designation serves to consolidate unregulated use and improves lynx habitat. Winter logging activity would be an exception.

Guidelines: 1. Limit or discourage activities that result in snow compaction in areas where it is shown to compromise lynx habitat. Such actions should be undertaken on a priority basis considering habitat function and importance.

Also refer to: Travelways, guidelines 3 and 4.

Category: Administrative

Infrastructure—Travelways

Standard: 1. Close temporary roads constructed for timber sale activities in lynx habitat to public use during the winter.

Guidelines: 1. Design new roads that could impact lynx habitat, especially the entrance, for effective closure and subsequent decommissioning, if it meets overall management objectives.

2. Minimize roadside brushing on low speed, low volume roads in order to provide snowshoe hare habitat.

3. Locate trails and roads away from forested stringers to avoid fragmentation.

4. Minimize creation of permanent travelways on ridgetops and saddles that could facilitate increased access by lynx competitors in lynx habitat.

Real Estate—Land Adjustments

Goal: 1. Retain key wildlife linkage areas on National Forest System lands in public ownership. Cooperate with other ownerships to establish unified management direction via habitat conservation plans, conservation easement or agreements, and land acquisition.

Special Uses

Goal: 1. Design activities and facilities to minimize impacts on lynx habitat.

Standard: 1. Restrict authorized use under permits to designated routes when in lynx habitat on projects where over-snow access is required. Close newly constructed roads to public access during project activities. Upon project completion, evaluate the need to reclaim these roads.

Guideline: 1. Encourage remote monitoring of sites that are located in lynx habitat, so that they do not have to be visited daily.

Transportation and Utility Corridors

Goals: 1. Reduce the potential for lynx mortality related to highways.

2. Work cooperatively with the Federal Highway Administration and State Department of Transportation to address the movement needs of lynx.

Standard: Maintain connectivity of lynx habitat during the planning for highway right-of-ways, construction, reconstruction, and other possible transportation corridors.

Glossary

Fragmentation—Human alteration of natural landscape patterns, resulting in reduction of total area, increased isolation of patches, and reduced connectivity between patches of natural vegetation.

Highway—A road that is at least 2 lanes wide, paved with asphalt or concrete. Average daily traffic may exceed 5,000 vehicles and speeds are 45 mph or greater.

Key Linkage Areas—Critical areas for lynx habitat. Usually, the factors that place connectivity at risk are highways or private land developments. Special management emphasis is recommended to maintain or increase the permeability of key linkage areas.

Lynx Analysis Unit (LAU)—The LAU is a project analysis unit upon which direct, indirect, and cumulative effects analyses are performed. LAU boundaries should remain constant to facilitate planning and allow effective monitoring of habitat changes over time. An area of at least the size used by an individual lynx, about 25–50 square miles in contiguous habitat (should be larger in less contiguous, poorer quality, or naturally fragmented habitat.

Lynx Denning Habitat—Habitat used during parturition and rearing of young until they are mobile. The common component appears to be large amounts of coarse woody debris, either down logs or root wads. The coarse woody debris provides escape and thermal cover for kittens. Denning habitat may be found either in older mature forest of conifer or mixed conifer/deciduous types, or in regenerating stands (greater than 20 years since disturbance). Denning habitat must be located within daily travel distance of foraging habitat.

Lynx Diurnal Security Habitat—In lynx habitat, areas that provide secure winter daytime bedding sites for lynx in highly disturbed landscapes, *e.g.*, large developed winter recreational sites or areas of concentrated winter recreational use. It is presumed that lynx may be able to adapt to the presence of regular and concentrated human use during winter, so long as other critical habitat needs are being met, and security habitat blocks are present and adequately distributed in such disturbed landscapes. Security habitat will provide lynx the ability to retreat from human disturbance during winter daytime hours, emerging at dusk to hunt when most human activity ceases. Security habitats will generally be sites that naturally discourage winter human activity because of extensive forest floor structure, or stand conditions that otherwise make human access difficult, and should be protected to the degree necessary. Security habitats are likely to be most effective if they are sufficiently large to provide effective visual and acoustic insulation from winter activity and to easily allow movement away from infrequent human intrusion. These winter habitats must be distributed such that they are in proximity to foraging habitat.

Lynx Forgaging Habitat—Habitat that supports primary prey (snowshoe hare) and/or important alternate prey (especially red squirrels) that are available to lynx. The highest quality snowshoe hare habitats are those that support a high density of young trees or shrubs (greater than 4,500 stems or branches per acre), tall enough to protrude above the snow. These conditions may occur in early successional stands following some type of disturbance, or in older forests with a substantial understory of shrubs and young conifer trees. Coarse wood debris, especially in early successional stages (created by harvest regeneration units and large fires), provides important cover for snowshoe hares and other prey. Red squirrel densities tend to be highest in mature cone-bearing forests with substantial quantities of coarse woody debris.

Lynx Habitat—Lynx occur in mesic coniferous forest that have cold, snowy winters and provide a prey base of snowshoe hare. Lynx records occur predominantly in lodgepole pine, subalpine fir, Engelmann spruce, and aspen vegetation cover types on subalpine fir habitat types in the western United States. Cool, moist Douglas-fir, grand fir, or western larch forest, where they are interspersed with subalpine forest, also provide habitat for lynx.

Primary Lynx Habitat—Habitat that must be present to support foraging, denning, and rearing of young (in the western U.S. primary habitat is lodgepole pine or subalpine fir habitat types).

Secondary Lynx Habitat—Other vegetation types, when intermingled with or immediately adjacent to primary habitat, that contribute to lynx annual needs (cool/moist Douglas-fir habitat types adjacent to primary habitat).

Unsuitable Habitat Condition—An area that is capable of producing lynx foraging or denning habitat, but which currently does not have the necessary vegetation composition, structure, and/or density to support lynx and snowshoe hare populations during all seasons. For example, during the winter, vegetation must provide dense cover that extends above (greater than 6 feet) the average snow depth. Timber harvest, salvage harvest, commercial thinning, and prescribed fire may or may not result in unsuitable habitat conditions.

Snowshoe Hare Habitat—See foraging habitat.

[FR Doc. 00–7549 Filed 3–27–00; 8:45 am]

BILLING CODE 3410–81–M

DEPARTMENT OF AGRICULTURE

Forest Service

Deschutes Provincial Interagency Executive Committee (PIEC), Advisory Committee; Notice of Meeting

SUMMARY: The Deschutes PIEC Advisory Committee will meet on April 12–13, 2000 at the Hood River Hotel at 102 Oak Avenue, Hood River, Oregon. The first day will be a field trip starting at 10:00 a.m. to visit restoration projects in the northern part of the Province. The second day will be a business meeting that will begin at 8:30 a.m. and finish at 3:30 p.m. Agenda items will include Wilderness Issues on the Mt. Hood, Interior Columbia Basin Ecosystem Management Project Briefing and Comment Process, Working Group/Subcommittee Updates, Info Sharing Around the Province and a Public Forum from 3:00 p.m. till 3:30 p.m. All Deschutes Province Advisory Committee Meetings are open to the public.

FOR FURTHER INFORMATION CONTACT: Mollie Chaudet, Province Liaison, USDA, Bend-Ft. Rock Ranger District, 1230 N.E. 3rd, Bend, OR, 97701, Phone (541) 383–4769.

Dated: March 21, 2000.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 00–7548 Filed 3–27–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Oregon

AGENCY: Natural Resources Conservation Service (NRCS), USDA.

ACTION: Notice of availability of proposed change in Section IV of the FOTG of the NRCS in Oregon for review and comment.

SUMMARY: It is the intention of NRCS in Oregon to issue a revision to Conservation Practice Standard 580, Streambank and Shoreline Protection, in Section IV of the State Technical Guide in Oregon. This practice may be used in conservation systems that treat highly erodible land.

DATES: Comments will be received until April 27, 2000. Once the review and comment period is over and the standard is finalized, it will be placed in the individual Field Office Technical Guide in each field office.

ADDRESSES: Address all requests and comments to Bob Graham, State Conservationist, Natural Resources Conservation Service (NRCS), 101 SW Main Street, Suite 1300, Portland, Oregon 97204. Copies of this standard will be made available upon written request. You may submit electronic requests and comments to *dave.dishman@or.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Bob Graham, 503–414–3200.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law, to NRCS state technical guides used to carry out highly erodible land and wetland provisions of the law, shall be made available for public review and comment. For the next 30 days, the NRCS in Oregon will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Oregon regarding disposition of those comments and a final determination of changes

will be made. In Oregon, "technical guides" refers to the Field Office Technical Guide maintained at each NRCS Field Office in Oregon.

Dated: March 21, 2000.

Bob Graham,

State Conservationist, Portland, Oregon.

[FR Doc. 00–7609 Filed 3–27–00; 8:45 am]

BILLING CODE 3410–16–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D.022800B]

Small Takes of Marine Mammals Incidental to Specified Activities; Marine Seismic-Reflection Data Collection in Southern California

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of receipt of application and proposed authorization for a small take exemption; request for comments.

SUMMARY: NMFS has received a request from the U.S. Geological Survey (USGS) for an authorization to take small numbers of marine mammals by harassment incidental to collecting marine seismic-reflection data in southern California waters. Under the Marine Mammal Protection Act (MMPA), NMFS is requesting comments on its proposal to authorize the USGS to incidentally take, by harassment, small numbers of marine mammals in the afore- mentioned area for a 3-week period between May and July 2000.

DATES: Comments and information must be received no later than April 27, 2000.

ADDRESSES: Comments on the application should be addressed to Donna Wieting, Chief, Marine Mammal Conservation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3225. A copy of the application and a list of references used in this document may be obtained by writing to this address or by telephoning one of the contacts listed here.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Hollingshead, NMFS, (301) 713–2055, or Christina Fahy, NMFS, 562–960–4023.

SUPPLEMENTARY INFORMATION:

Background

Sections 101(a)(5)(A) and (D) of the MMPA (16 U.S.C. 1361 *et seq.*) directs the Secretary of Commerce to allow, upon request, the incidental, but not intentional, taking of marine mammals by U.S. citizens who engage in a specified activity (other than commercial fishing) within a specified geographical region if certain findings are made and either regulations are issued or, if the taking is limited to harassment, a notice of a proposed authorization is provided to the public for review.

Permission may be granted if NMFS finds that the taking will have a negligible impact on the species or stock(s), will not have an unmitigable adverse impact on the availability of the species or stock(s) for subsistence uses, and permissible methods of taking and requirements pertaining to the monitoring and reporting of such takings are set forth. NMFS has defined "negligible impact" in 50 CFR 216.103 as " * * *an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival."

Subsection 101(a)(5)(D) of the MMPA established an expedited process by which citizens of the United States can apply for an authorization to incidentally take small numbers of marine mammals by harassment. The MMPA now defines "harassment" as:

...any act of pursuit, torment, or annoyance which (a) has the potential to injure a marine mammal or marine mammal stock in the wild; or (b) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering.

Subsection 101(a)(5)(D) establishes a 45-day time limit for NMFS review of an application followed by a 30-day public notice and comment period on any proposed authorizations for the incidental harassment of small numbers of marine mammals. Within 45 days of the close of the comment period, NMFS must either issue or deny issuance of the authorization.

Summary of Request

On January 24, 2000, NMFS received a request from the USGS for authorization to take small numbers of several species of marine mammals by harassment incidental to collecting marine seismic-reflection data from waters off southern California. Seismic data will be collected during a 3-week period between May and July 2000, preferably June, to determine the source of the invasion of seawater into freshwater aquifers that are critical to the Los Angeles-San Pedro area water supply and to support studies of the regional landslide and earthquake hazards for people within the coastal cities between Santa Barbara and San Diego.

Background

The USGS proposes to conduct a high-resolution seismic survey offshore from Southern California. For a 3-week period between May and July 1999, preferably in June, the USGS would like to collect seismic-reflection data to investigate: (1) the intrusion of seawater into freshwater coastal aquifers that are critical to the water supply for people within the Los Angeles- San Pedro area and (2) the hazards posed by landslides, tsunamis, and potential earthquake faults in the nearshore region from Santa Barbara to San Diego. Both of these tasks are multi-year efforts that require high-resolution, seismic-reflection data using a minisparker acoustic source.

Coastal Southern California is the most highly populated urban area along the U.S. Pacific coast with 30 percent of the California population (approximately 10 million people) living in Los Angeles County alone. The primary objectives of the USGS research are to provide information (1) to understand and help mitigate the intrusion of salt water into coastal aquifer systems resulting from ground-water overdraft and (2) to help mitigate the earthquake threat to this area. Data collected to address the salt water intrusion objective will be used to develop a hydrogeologic model for the region. This model will assist water managers (Water Replenishment District of Southern California and the Los Angeles County Department of Public Works) provide a safe and uncontaminated ground-water supply to the local population.

Important geologic information that the USGS will derive from this project's seismic-reflection data concerns how earthquake deformation is distributed offshore; that is, where the active faults are and what the history of movement along them has been. This should improve understanding of the shifting pattern of deformation that occurred over both the long term (approximately the last 100,000 years) and short term (the last few thousand years). The USGS seeks to identify actively deforming structures that may constitute significant earthquake threats. The USGS also proposes to locate offshore landslides that might affect coastal areas. Not only major subsea landslides might affect the footings of coastal buildings, but also very large slides can generate local tsunamis. These large sea waves can be generated by seafloor movement that is produced either by landslides or by earthquakes. Knowing where large slides have occurred offshore will help locate areas susceptible to wave inundation.

Some faults that have produced earthquakes lie entirely offshore or extend into offshore areas where they can be studied using high-resolution seismic-reflection techniques. An example is the Rose Canyon fault, which extends through the San Diego area, and is considered to be the primary earthquake threat. This fault extends northward from La Jolla, beneath the inner continental shelf, and appears again onshore in the Los Angeles area. This fault and others like it near shore could generate moderate (M5–6) to large (M6–7) earthquakes.

Knowing the location and geometry of fault systems is critical to estimating the location and severity of ground shaking. Therefore, the results of this project will contribute to decisions involving land use, hazard zonation, insurance premiums, and building codes.

The USGS emphasizes that the goal is not to predict earthquakes but rather to help determine what steps might be taken to minimize the devastation should a large earthquake occur. The regional earthquake threat is known to be high, and a major earthquake could adversely affect the well-being of a large number of people. In one example, earthquakes in the coastal ocean off southern California commonly result in large-scale submarine landslides, many of which could be capable of producing destructive tsunamis.

The proposed work is in collaboration with scientists at the Southern California Earthquake Center, which analyzes faults and earthquakes in onshore regions, and with scientists at the Scripps Institute of Oceanography, who measure strain (incremental movement) on offshore faults.

The USGS also wants to collect high-resolution seismic-reflection data to locate the sources and pathways of seawater that intrudes into freshwater aquifers below San Pedro. Ground water usage in the Los Angeles basin began in the mid-1800s. Today, more than 44,000 acre-feet of freshwater each year are extracted from the aquifers that underlie the West Coast Basin. Aggressive extraction of freshwater from coastal aquifers causes offshore salt water to flow toward areas of active pumping. To limit this salt-water intrusion, the Water Replenishment District and water purveyors in San Pedro are investing $2.7 million per year at the Dominguez Gap Barrier Project to inject freshwater underground to establish a zone of high water pressure in the aquifers near San Pedro and Long Beach. The resulting zone of high pressure forms a barrier between the invasive saltwater and the productive coastal aquifers.

USGS scientists in San Diego are working with the Los Angeles County Department of Public Works and the Water Replenishment District to develop a ground-water simulation model to predict fluid flow below San Pedro and nearby parts of the Los Angeles Basin. This model will eventually be used in managing water resources. The accuracy of the present model, however, is

compromised by a paucity of information about aquifer geometry and about other geologic factors that might affect fluid flow. Data collected by the USGS will be used to improve three-dimensional, fluid-flow models to aid management of water resources.

Proposed Field Work

Fieldwork described here will be the fourth geophysical survey on the west coast that the USGS has conducted under close supervision by marine-mammal biologists. In March 1998, the USGS used a large (6,500 in^3, 106 liters) airgun array in and around Puget Sound to study the regional earthquake hazard (see 63 FR 2213, January 14, 1998). The USGS employed 12 biologists, who worked on two ships continuously to oversee the seismic- reflection operations. On several occasions the USGS shut off the acoustic sources when marine mammals entered safety zones that had been stipulated by NMFS, and when mammals left these zones, the USGS gradually ramped-up the array as required in its permit to avoid harming wildlife. Marine-mammal biologists reported that during the survey, no overt distress was evident among the dense marine-mammal population, and afterward no unexplained marine-mammal strandings occurred.

In August 1998, the USGS surveyed offshore from southern California, using a small airgun (40 in^3, 0.65 liters). Two marine-mammal biologists oversaw this activity. In June 1999, the USGS conducted the third survey to support study of aquifer contamination and earthquake hazards in southern California (see 64 FR 31548, June 11, 1999). Three marine-mammal biologists provided oversight for this operation. The survey described in this document is proposed to be conducted with similar oversight.

Experimental Design

Marine studies conducted by the USGS focus where saltwater intrusion into coastal aquifers is an active concern and where other kinds of natural hazards have their greatest potential impact on society. In southern California, USGS studies will focus on five chief geographic areas. First is the San Pedro shelf, offshore of the Dominguez Gap barrier project. Collecting data as close to shore as feasible is critically important in order to merge onshore and offshore geology in a manner that allows modeling the hydrologic flow through the system. With respect to the seismic-hazard issues in the offshore, the USGS' main priority (and second geographic area) is the coastal zone and continental shelf between Long Beach and San Diego, where much of the hazard appears to be associated with strike-slip faults such as the Newport-Inglewood and Palos Verdes faults. A critical component of the survey concerns the third geographic area, which lies farther offshore in the Santa Monica, San Pedro, and San Diego Trough deeps, where rapid sedimentation has left a more complete record, relative to shallow-water areas, that can be used to decipher earthquake history. The fourth area is the extension into the Santa Barbara Channel of major elements of onshore geology that cross the northern part of Santa Monica Bay and include several major known earthquake faults. The fifth area is the geologic boundary, marked generally by the Channel Islands, between the inner California Borderland (dominated by strike-slip faults) and the Santa Barbara Channel (dominated by compressional faults). This change in fault types is important to study because the degree of earthquake threat varies with fault type. The study proposed herein focuses on the three highest priority areas, which lie near shore between Los Angeles and San Diego.

The seismic-reflection survey is planned to last 21 days. Based on experience collecting seismic-reflection data in this general area during 1998 and 1999, the USGS would prefer to conduct the 2000 survey in June. Because it will have to contract for a vessel from which to conduct the geophysical survey, the targeted study time frame is sometime within the May through July window. The basis for this decision is the USGS' desire to avoid the gray whale migrations and the peak arrival of other mysticetes during the later summer. An important part of the effort this summer will be to fill in gaps

caused by shutdowns and daylight-only operations during earlier surveys.

The USGS has not yet determined the exact tracklines for the survey, but it does know the areas where minisparker use will be concentrated (see Fig. 3 in the application). Within the overall work area, the objective is to collect seismic-reflection data along a grid of lines that are about 2 km (1.07 nmi) apart. Data collected during the 1998 and 1999 surveys will be used to guide the planning for the proposed survey in order to minimize the number of survey lines that are required to adequately define the aquifer geometries and location of potential earthquake faults.

The USGS proposes to use two seismic-reflection systems for data collection: (1) A 1.5 kilo-Joule (kJ) minisparker using a 200-m (656.2–ft) long multichannel streamer, and (2) a low-power, high resolution deep-tow system. The potential effect on marine mammals is from the minisparker; mammals cannot become entangled in the streamer. The low-powered, high-resolution seismic- reflection system, manufactured by Huntec, Ltd., will obtain detailed information about the very shallow geology. The seismic-reflection systems will be aboard a vessel owned by a private contractor or academic cooperator. Ship navigation will be accomplished using satellites of the Global Positioning System. The survey ship will be able to report accurate positions, which is important to mitigating the minisparker's effect on marine mammals and to analyzing what impact, if any, minisparker operation has on the environment.

The Seismic Sound Sources

The primary sound source to be used during this survey will be a 1.5 kJ sparker "SQUID 2000" minisparker system manufactured by Applied Acoustic Engineering, Inc. This minisparker includes eight electrodes that are mounted on a small pontoon sled. The electrodes simultaneously discharge electric current through the seawater to an electrical ground. This discharge creates an acoustic signal. The pontoon sled that supports the minisparker is towed on the sea surface, approximately 20 meters (65.6 ft) behind the ship.

Source characteristics of the SQUID 2000™ provided by the manufacturer show a sound-pressure level (SPL) of 209 dB re 1 µPa-m root-mean-square (RMS). The amplitude spectrum of this pulse indicates that most of the sound energy lies between 150 Hz and 1700 Hz (1.7 kHz), and the peak amplitude is at 900 Hz. The output sound pulse of the minisparker has a duration of about 0.8 milli-seconds (ms). When operated at sea for the multichannel seismic-reflection survey proposed herein, the minisparker will be discharged every 4 to 6 seconds.

The second seismic source that will be used during this survey is a Huntec™ system, which generates underwater sound at higher frequencies than does the minisparker. The Huntec system uses electromagnetically driven plates to produce an acoustic pulse every 0.5 seconds. This sound source is towed approximately 100 meters (328.1 ft) behind the ship in water depths greater than 200 m (656.2 ft). In shallow water, such as the inner shelf, the sound source is towed within 5 m (16.4 ft) of the sea surface. The SPL for this source is 205 dB re 1 µPa RMS. The frequencies of the main output sound are between 500 Hz and 8 kHz, with a peak amplitude at 4.5 kHz.

Description of Habitat and Marine Mammals Affected by the Activity

The Southern California Bight supports a diverse assemblage of 29 species of cetaceans (whales, dolphins and porpoises) and 6 species of pinnipeds (seals and sea lions). The species of marine mammals that are likely to be present in the seismic research area include the bottlenose dolphin (*Tursiops truncatus*), common dolphin (*Delphinus delphis*), killer whale (*Orcinus orca*), Pacific white-sided dolphin (*Lagenorhynchus obliquidens*), northern right whale dolphin (*Lissodelphis borealis*), Risso's dolphin (*Grampus griseus*), pilot whales (*Globicephala macrorhynchus*), Dall's porpoise (*Phocoenoides dalli*), sperm whale (*Physeter macrocephalus*), humpback whale (*Megaptera novaengliae*), gray whale (*Eschrichtius robustus*), blue whale (*Balaenoptera musculus*), minke whale (*Balaenoptera acutorostrata*), fin whales (*Balaenoptera physalus*), harbor seal (*Phoca vitulina*), elephant seal (*Mirounga angustirostris*), northern sea lion (*Eumetopias jubatus*), and California sea lion (*Zalophus californianus*), northern fur seal (*Callorhinus ursinus*) and sea otters (*Enhydra lutris*). General information on these latter species can be found in the USGS application and in Forney *et al.* (1999) and Barlow *et al.* (1998, 1997). Please refer to these documents for information on the biology, distribution, and abundance of these species in southern California waters.

Potential Effects of Seismic Surveys on Marine Mammals

Discussion

Seismic surveys are used to obtain data about stratigraphic sequences and rock formations up to several thousands of feet deep. These surveys are accomplished by transmitting sound waves into the earth, which are reflected off subsurface formations and recorded with detectors in the water column.

Disturbance by seismic noise is the principal means of taking by this activity. Vessel noise may provide a secondary source. Also, the physical presence of vessel(s) could lead to some non-acoustic effects involving visual or other cues.

Depending upon ambient conditions and the sensitivity of the receptor, underwater sounds produced by open-water seismic operations may be detectable some distance away from the activity. Any sound that is detectable is (at least in theory) capable of eliciting a disturbance reaction by a marine mammal or of masking a signal of comparable frequency. An incidental harassment take is presumed to occur when marine mammals in the vicinity of the seismic source (or vessel) react to the generated sounds or to visual cues.

Seismic pulses are known to cause some species of whales, including gray whales, to behaviorally respond within a distance of several kilometers (Richardson *et al.*, 1995). Although some limited masking of low-frequency sounds is a possibility for those species of whales using low frequencies for communication, the intermittent nature of seismic source pulses limits the extent of masking. Bowhead whales in Arctic waters, for example, are known to continue calling in the presence of seismic survey sounds, and their calls can be heard between seismic pulses (Richardson *et al.*, 1986).

When the received levels of noise exceed some behavioral reaction threshold, cetaceans will show disturbance reactions. The levels, frequencies, and types of noise that will elicit a response vary between and within species, individuals, locations and seasons. Behavioral changes may be subtle alterations in surface-dive-respiration cycles. More conspicuous responses include changes in activity or aerial displays, movement away from the sound source, or complete avoidance of the area. The reaction threshold and degree of response are related to the activity of the animal at the time of the disturbance. Whales engaged in active behaviors, such as feeding, socializing, or mating are less likely than resting animals to show overt behavioral reactions, unless the disturbance is directly threatening.

Hearing damage is not expected to occur during the project. While it is not known whether a marine mammal co-located or very close to the seismic source would be at risk of permanent hearing impairment, temporary threshold shift (TTS) is a theoretical possibility for animals close to the minisparker. However, planned monitoring and mitigation measures (described later in this document) are designed to detect marine mammals occurring near the seismic source(s) and to avoid, to the greatest extent practicable, exposing them to sound pulses that have any possibility of causing TTS in hearing.

Maximum Sound-Exposure Levels for Marine Mammals

The adverse effects of underwater sound on mammals have been documented for exposure times that last for tens of seconds or minutes, but adverse effects have not been documented for the brief pulses typical of the minisparker (0.8 ms) and the Huntec system (typically 0.3 ms). While NMFS in the past considered that the maximum SPLs, from impulse sounds, to which marine mammals should be exposed are 180 dB re 1 µPa-m RMS for mysticetes (baleen whales) and sperm whales, and 190 dB re 1 µPa-m RMS for odontocetes (toothed whales, dolphins and porpoises) and pinnipeds (seals and sea lions), recent workshops have recommended a more precautionary approach be taken and, accordingly, NMFS now recommends that odontocetes also be limited to an SPL no greater than 180 dB re 1 µPa-m RMS. However, based on statements and recommendations made at NMFS' Acoustic Criteria Workshop in 1998, NMFS has not increased its recommended safety zone for pinnipeds to this same level. In 1999, the California Coastal Commission (CCC) limited the maximum sound-exposure level to 180 dB re 1 µPa-m RMS for all species of marine mammals.

In its application, the USGS has provided two estimates of how close marine mammals can approach the minisparker source before it needs to be powered down. The first estimate follows the procedure required by the CCC in 1999, where underwater sound is assumed to attenuate with distance according to the equation 20log(Radius(R)), and the maximum SPL to which marine mammals can be exposed is 180 dB re 1 µPa-m RMS. The alternative estimate of safe distance is proposed for operations limited to shallow water. In shallow water, sound from the minisparker will decay (attenuate) with distance more sharply than 20log(R) because some of the sound energy will exit the water and penetrate the sea floor when the minisparker source is physically close to the sea floor.

In the deeper water (greater than 50 m (164 ft)) areas of the proposed survey, the safety zone for the minisparker is a circle whose radius is the distance from the source to where the SPL is reduced to 180 dB re 1 µPa-m RMS. For a 20log(R) sound attenuation, the safety zone for a 209 dB RMS source has a radius of about 30 m (98 ft).

Much of that part of the proposed 2000 survey that focuses on saltwater intrusion of coastal aquifers will be conducted close to shore, where water is shallow. In such areas, underwater sound commonly attenuates more sharply than 20log(R) because sound exits the water layer and penetrates into the substrate. In 1999, the USGS measured a sound attenuation of 27log(R) in shallow water off southern California. Therefore, the USGS proposes that for inshore areas, underwater sound will attenuate approximately like 25log(R), which for inshore areas would yield a safety zone with a radius of 15 m (49.2 ft). Because of this short radius of the safety zone in shallow water, the USGS proposes that the minisparker can be used at night, using spotlights to illuminate the safety zone around the tow sled.

Estimated Number of Potential Harassments of Marine Mammals

Based on estimated marine mammal populations within the survey area (Calambokidis and Francis, 1994) and on the number of individuals that were observed during the 1998 and 1999 seismic surveys, the USGS estimates that up to 50 blue whales, 5 killer whales, 10 minke whales, 10 sea otters, 50 humpback whales, 50 northern sea lions, 100 northern fur seals, 100 northern elephant seals, 100 Dall's porpoise, 100 Risso's dolphins, 100 northern right-whale dolphins, 100–200 Pacific white-sided dolphins, 100 bottlenosed dolphins, 200 California sea lions, 200 Pacific harbor seals, and 10,000–12,000 common dolphins may be harassed incidental to the USGS survey. No marine mammals will be seriously injured or killed as a result of the survey.

Proposed Mitigation of Potential Environmental Impact

To avoid potential Level A harassment (i.e., injury) of marine mammals, safety zones will be established and monitored continuously by biologists, and the USGS will shut off the seismic source whenever the ship and a marine mammal converge closer than the previously mentioned safety distance.

For gray, fin, blue and humpback whales, the marine mammal species near the survey area that are considered to be most sensitive to the frequency and intensity of the sound source, and for odontocetes, even with their lower sensitivity to the low frequency sound that will be emitted by the minisparker, minisparker operations will cease when members of these species approach within 30 m (98 ft) of the sound source when operating in deep water and 15 m (49.2 ft) when in shallow water as mentioned previously.

For pinnipeds (seals and sea lions), if the research vessel approaches a pinniped, a safety radius of 30 m (98 ft) around the seismic source when operating in deep water and 15 m (49.2 ft) when in shallow water will be maintained. However, if a pinniped approaches the towed minisparker source, NMFS proposes that it will not require the USGS to shutdown the minisparker, but will require the USGS to monitor the interaction to ensure the animal does not show signs of distress. Experience indicates that pinnipeds will come from great distances to inspect seismic operations. Seals have been observed swimming within airgun bubbles, 10 m (33 ft) away from active arrays, apparently unaffected. Although minisparker oprations will be terminated if the pinnipeds show obvious distress, the USGS will conduct observations on effects the minisparker may have on the animals.

The USGS plans to have marine biologists aboard the ship who will have the authority to stop the minisparker operations when a marine mammal enters the safety zone. If observations are made that one or more marine mammals of any species are attempting to beach themselves when the source is operating in the vicinity of the beaching, the minisparker will be immediately shut off and NMFS contacted.

During seismic-reflection surveying, the ship's speed will only be 4 to 5 knots, so that when the minisparker is being discharged, nearby marine mammals, if they hear the low frequency noise, will have gradual warning of the vessel's approach and can move away if disturbed. Finally, NMFS will coordinate with the local stranding network to determine whether strandings can be related to the seismic operation. If NMFS determines, based upon a necropsy of the animal(s), that the death was likely due to exposure to the minisparker, the survey shall cease

until procedures are altered to eliminate the potential for future deaths.

Operating less than 24 hours each day incurs substantially increased cost for the leased ship, which the USGS states that it cannot afford. The ship schedule provides a narrow time window for this project; other experiments are already scheduled to precede and follow this one and for that reason, the USGS cannot arbitrarily extend the survey time. Thus, the USGS does not propose as a mitigation measure shutting down in dark or during periods of poor visibility. The 2000 survey will require only three weeks, and it will be spread out geographically from Los Angeles to San Diego, so no single area will experience long-term activity. In the view of the USGS, the best course is to complete the experiment as expeditiously as possible. For these reasons, the USGS has requested that the Incidental Harassment Authorization (IHA) allow 24-hour operations, specifically at night and limiting surveys during this time to shallow water.

Monitoring and Reporting

Monitoring marine mammals while the minisparker is active will be conducted 24 hours each day. Trained marine mammal observers will be aboard the seismic vessel to mitigate the potential environmental impact from minisparker use and to gather data on the species, number, and reaction of marine mammals to the minisparker. During daylight, observers will use 7x50 binoculars with internal compasses and reticules to record the horizontal and vertical angle to sighted mammals. Night-time operations will be conducted with a spotlight to illuminate the safety zone around the minisparker tow sled. Monitoring data to be recorded during minisparker operations include the name of the observer on duty, and weather conditions (such as Beaufort sea state, wind speed, cloud cover, swell height, precipitation, and visibility). For each mammal sighting, the observer will record the time, bearing and reticule readings, species, group size, and the animal's surface behavior and orientation. Observers will instruct geologists to shut off the minisparker whenever a marine mammal enters the safety zone.

Possible Modifications or Alternatives to the Proposed Survey

The instructions for this permit request stipulate that the USGS consider alternatives to the proposed experiment. Options to change the activity are limited, but for the proposed survey, the USGS has changed from using an airgun source as used in prior surveys to a minisparker in order to reduce the probability for the harassment of marine mammals and to be able to operate within nearshore areas.

To abandon this study altogether is a poor option. The USGS has described the societal relevance of this project as it would improve understanding of fluid movement in coastal aquifers and how to stem the intrusion of salt water into them. Another facet of this study is to help scientists understand the regional earthquake hazard that, in turn, will aid city planners in establishing building codes. If the project was canceled, such information would be unavailable.

The seismic-source strength cannot be reduced further in an attempt to limit the potential environmental impact. The proposed minisparker is already smaller than any source the USGS has previously used for these kinds of geophysical surveys, and the problem with this option is that the USGS cannot significantly reduce the source strength without jeopardizing the success of this survey. This judgment is based on USGS' decades-long experience with seismic-reflection surveys, but especially on the 1998 survey that was conducted in the same general area as outlined here. If the USGS were to reduce the sound-source size and then fail to obtain the required information, another survey would need to be conducted, and this would have the potential to increase impact on marine mammals.

This project could be carried out at some other time of year, and the USGS is open to suggestions. The USGS talked with biologists to find out the best time for the project to be conducted. The USGS wants to avoid the gray whale migrations and the mid-summer arrival of other mysticete species because, while these species remain mostly in the area of the Channel Islands, some individuals venture closer to the mainland. An important consideration in deciding the most appropriate time of the year is that biologists can best prevent harm to mammals when daylight is long, that is, near the solstice.

Reporting

The USGS will contract with qualified marine-mammal observers to provide an initial report to NMFS within 160 days of the completion of the 2000 phase of the marine seismic project. This report will provide dates and locations of seismic operations, details of marine mammal sightings, and estimates of the amount and nature of all takes by harassment. A final technical report will be provided by USGS within 1 year of completion of the 2000 phase of the marine seismic project. The final technical report will contain a description of the methods, results, and interpretation of all monitoring tasks.

Consultation

Under section 7 of the Endangered Species Act, NMFS has begun consultation on the proposed issuance of an IHA. Consultation will be concluded upon completion of the comment period and consideration of those comments in the final determination on issuance of an authorization.

Conclusions

NMFS has preliminarily determined that the short-term impact of conducting marine seismic-reflection data in offshore southern California will result, at worst, in a temporary modification in behavior by certain species of pinnipeds and cetaceans. While behavioral modifications may be made by certain species of marine mammals to avoid the resultant noise from the minisparker, this behavioral change is expected to have a negligible impact on the animals.

In addition, no take by injury and/or death is anticipated, and takes will be at the lowest level practicable due to the incorporation of the mitigation measures previously mentioned. No known rookeries, mating grounds, areas of concentrated feeding, or other areas of special significance for marine mammals occur within or near the planned area of operations during the season of operations.

Proposed Authorization

NMFS proposes to issue an IHA to the USGS for the possible harassment of small numbers of several species of marine mammals incidental to collecting marine seismic-reflection data off southern California, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated. NMFS has preliminarily determined that the proposed activities would result in the harassment of only small numbers of each of several species of marine mammals and will have no more than a negligible impact on these marine mammal stocks.

Information Solicited

NMFS requests interested persons to submit comments, information, and suggestions concerning this request (see **ADDRESSES**).

Dated: March 22, 2000.

Donald R. Knowles,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–7611 Filed 3–27–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of Guaranteed Access Levels for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

March 24, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

Upon the request of the Government of the Dominican Republic, the U.S. Government has agreed to increase the current Guaranteed Access Levels for textile products in Categories 338/638, 339/639 and 433.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 50495, published on September 17, 1999.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 24, 2000.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on September 13, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on March 27, 2000, you are directed to increase the Guaranteed Access Levels for the categories listed below for the period beginning on January 1, 2000 and extending through December 31, 2000.

Category	Guaranteed access level
338/638	3,150,000 dozen.
339/639	2,150,000 dozen.
433	61,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,
Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–7717 Filed 3–27–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, April 7, 2000.

PLACE: 1155 21st St., NW, Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR FURTHER INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–7720 Filed 3–24–00; 1:51 am]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m. Friday, April 14, 2000.

PLACE: 1155 21st St., NW, Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–7721 Filed 3–24–00; 1:51 pm]

BILLING CODE 6351–07–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, April 21, 2000.

PLACE: 1155 21st St., NW, Washington, D.C., 9th Floor Conference Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR FURTHER INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 00–7722 Filed 3–24–00; 1:55 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Commodity Futures Trading Commission.

TIME AND DATE: 11 a.m., Friday, April 28, 2000.

PLACE: 1155 21st St., NW, Washington, D.C., 9th Floor Conference Room.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Surveillance Matters.
CONTACT PERSON FOR FURTHER INFORMATION: Jean A. Webb, 202–418–5100.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 00–7723 Filed 3–24–00; 1:51 pm]
BILLING CODE 6351–01–M

DEPARTMENT OF DEFENSE

Department of the Air Force

Notice of Intent To Grant an Exclusive Patent License

Pursuant to the provisions of Part 404 of Title 37, Code of Federal Regulations (CFR), which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Science Applications International Corporation, a company having its headquarters in San Diego, CA, an exclusive license in any right, title and interest the Air Force has in: U.S. Patent No. 5,942,157. A co-inventor, Wade W. Adams, was a government employee at the time of invention. The invention is entitled "Switchable Volume Hologram Materials and Devices."

The license described above will be granted unless an objection, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within 60 days from the date of publication of this Notice. Information concerning the application may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to Mr. Randy Heald, Associate General Counsel (Acquisition), SAF/GCQ, 1500 Wilson Blvd., Suite 304, Arlington, VA 22209–2310. Mr. Heald can be reached by telephone at 703–588–5091 or by fax at 703–588–8037.

Janet A. Long,
Federal Register Liaison Officer.
[FR Doc. 00–7517 Filed 3–27–00; 8:45 am]
BILLING CODE 5001–05–P

DEPARTMENT OF ENERGY

Notice of Renewal of the Secretary of Energy Advisory Board

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, section 101–6.1015, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the Secretary of Energy Advisory Board (the Board) has been renewed for an additional two-year period, beginning in March 2000.

The Board will continue to provide independent, balanced, and authoritative advice to the Secretary of Energy on matters concerning the Department's management, basic science, research, development and technology activities; energy and national security responsibilities; environmental cleanup activities; energy-related economic activities; and the operations of the Department.

The Board members are selected to assure well-balanced geographical representation and on the basis of their broad competence in areas relating to quality management, basic science, renewable energy, energy policy, environmental science, economics, and broad public policy interests. Membership of the Board will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act (Public Law 92–463) and implementing regulations.

The renewal of the Board has been determined to be in the public interest, important and vital to the conduct of the Department's business in connection with the performance of duties established by statute for the Department of Energy. The Board will operate in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92–463), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

FOR FURTHER INFORMATION CONTACT: Ms. Rachel M. Samuel, U.S. Department of Energy, MA–72, FORS, Washington, D.C. 20585, Telephone: (202) 586–3279.

Issued in Washington, D.C. on March 20, 2000.

James N. Solit,
Advisory Committee Management Officer.
[FR Doc. 00–7580 Filed 3–27–00; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Kangley-Echo Lake Transmission Line Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of intent to prepare an Environmental impact Statement (EIS) and notice of floodplain and wetlands involvement.

SUMMARY: This notice announces BPA's intention to prepare an EIS on the construction, operation, and maintenance of a 10-mile-long 500-kilovolt (kv) transmission line in King County, State of Washington. In accordance with DOE regulations for compliance with floodplain and wetlands environmental review requirements, BPA will prepare a floodplain and wetlands assessment and will perform this proposed action in a manner so as to avoid or minimize potential harm to or within the affected floodplain and wetlands. The assessment and a floodplain statement of findings will be included in the EIS being prepared for the proposed project in accordance with the National Environmental Policy Act.

DATES: BPA has established a 30-day scoping period. Written comments are due to the address below no later than April 27, 2000.

Comments may also be made at an EIS scoping meeting to be held on Tuesday, April 11, 2000.

ADDRESSES: BPA invites comments and suggestions on the proposed scope of the Draft EIS. Send comment letters and requests to be placed on the project mailing list to Communications, Bonneville Power Administration—KC–7, P.O. Box 12999, Portland, Oregon, 97212. The phone number of the Communications office is 503–230–3478 in Portland; toll-free 1–800–622–4519 outside of Portland. Comments may also be sent to the BPA Internet address: *comment@bpa.gov.*

The EIS scoping meeting will be held on April 11, 2000, from 3:00 p.m. to 8:00 p.m. at the Mt. Si Senior Center, 411 Main Avenue South, North Bend, Washington. At the informal meeting, we will have several members of the project team available to answer your questions and accept oral and written comments.

FOR FURTHER INFORMATION, CONTACT: Lou Driessen, Project Manager, Bonneville Power Administration—TNP–3, P.O. Box 3621, Portland, Oregon, 97208–3621; phone number 503–230–5525; or e-mail *lcdriessen@bpa.gov.* You may also contact Gene Lynard, Environmental Project Manager, Bonneville Power Administration—KECN–4, P.O. Box 3621, Portland, Oregon, 97208–3621; phone number 503–230–3790; fax number 503–230–5699; or email: *gplynard@bpa.gov.*

SUPPLEMENTARY INFORMATION: This notice announces BPA's intention to prepare an EIS on the construction, operation, and maintenance of a 10-mile-long 500-kv transmission line. This action may involve floodplain and wetlands located in King County, State of Washington. The action is necessary to maintain reliable load service during severe winter conditions in the growing northwest Washington area. The intended effect on the public is to maintain a reliable high-voltage transmission system and to avoid significant load loss in the south Seattle area. When completed, the Draft EIS will be circulated for review and comment, and BPA will hold a public comment meeting for the Draft EIS. BPA will consider and respond to comments received on the Draft EIS in the Final EIS during which affected landowners, concerned citizens, special interest groups, local governments, and any other interested parties are invited to comment on the scope of the proposed EIS. Scoping will help BPA ensure that a full range of issues related to this proposal is addressed in the EIS, and also will identify significant or potentially significant impacts that may result from the proposed project.

BPA proposes to construct a 500-kv transmission line near the community of Kangley in King County, Washington, in 2002. BPA has identified three action alternatives for constructing the transmission line, all of which cross the Cedar River Municipal Watershed. The Cedar River Municipal Watershed is a large natural area in the Cascade Mountains that is used by the City of Seattle to collect approximately two thirds of the potable water for about 1.3 million people in King and Snohomish Counties.

Maps and further information are available from BPA at the address above.

Issued in Portland, Oregon, on March 17, 2000.

Steven G. Hickok,
Acting Administrator and Chief Executive Officer.
[FR Doc. 00–7581 Filed 3–27–00; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Open Meeting

SUMMARY: This notice announces a meeting of the State Energy Advisory Board. Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770) requires that public notice be announced in the **Federal Register.**

DATES: April 13, 2000 from 8:00 am to 5:00 pm, and April 14, 2000 from 8:00 am to 1:00 pm. Phone: 800/689–6765 or 910/256–8696.

PLACE: The Madison Hotel, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Building Technology, State, and Community Programs, Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda

- Release of the STEAB Eighth Annual Report.
- Discussions of Fiscal Year 2002 Federal Budget.
- STEAB Committee updates.

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on March 23, 2000.

Rachel Samuel,
Deputy Advisory Committee Management Officer.
[FR Doc. 00–7579 Filed 3–27–00; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Energy Information Administration

American Statistical Association Committee on Energy Statistics

AGENCY: Department of Energy.
ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the American Statistical Association Committee on Energy Statistics, a utilized Federal Advisory Committee. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register.**

DATE AND TIME: Thursday, April 13, 2000, 8:30am–4:30pm.

Friday, April 14, 2000, 8:30am–12:00 noon.

PLACE: U. S. Department of Energy, Forrestal Building, 1000 Independence Ave., S.W., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Mr. William I. Weinig, EI–70, Committee Liaison, Energy Information Administration, U.S. Department of Energy, Washington, DC 20585, Telephone: (202) 426–1101. Alternately, Mr. Weinig may be contacted by email at william.weinig@eia.doe.gov or by FAX at (202) 426–1083.

Purpose of Committee: To advise the Department of Energy, Energy Information Administration (EIA), on EIA technical statistical issues and to enable the EIA to benefit from the Committee's experience concerning other energy-related statistical matters.

Tentative Agenda

Thursday, April 13, 2000

A. Opening Remarks by the Chair, Room 8E–089
B. Major Topics
1. Panel Discussion on Confidentiality Legislation, Room 8E–089
2. System for Analysis of Global Energy (SAGE) Markets, 8E–089
3. Cognitive Interviews on EIA's Web Site, Room 8E–089
4. Electricity Forecasting Beyond New England, GH–019
5. Progress on Auditing Software, GH–027
6. Methodological Issues in the Energy Consumption Surveys, GH–035

7. Redesign of Electricity Data Collections: 2002, 8E–089

Friday, April 14, 2000

C. Major Topics
1. EIA Responses to Market Changes in Natural Gas, Room 8E–089
2. Announce the Winners of the 7th Annual EIA Graphics Contest, Room 8E–089
3. Measuring Uncertainty in Energy CO2 Emissions: Evaluating a Monte Carlo Approach, Room 8E–089
4. Panel Discussion on Challenges in Measuring Data Quality, 8E–089

D. Closing Remarks by the Chair, 8E–089

Public Participation: The meeting is open to the public. The Chair of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Written statements may be filed with the committee either before or after the meeting. If there are any questions, please contact Mr. William I. Weinig, EIA Committee Liaison, at the address or telephone number listed above.

Minutes: Available for public review and copying at the Public Reading Room, (Room 1E–190), 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday.

Issued at Washington, DC on March 23, 2000.

Rachel M. Samuel,

Deputy Advisory CommitteManagement Officer.

[FR Doc. 00–7578 Filed 3–27–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–218–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

March 22, 2000.

Take notice that on March 16, 2000, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, certain tariff sheets to be effective April 16, 2000.

Natural states that the purpose of this filing is to implement new Rate Schedule IBS, under which Natural would provide an interruptible imbalance management service on a no-notice basis for end-use facilities in conjunction with transportation under Rate Schedules FTS, FTS–G and ITS. This service would be provided through management of line pack. Conforming tariff changes have also been made in the General Terms and Conditions of the Tariff and in the pro forma service agreement. This filing represents a resubmission with some modification of Natural's previous tariff filing in Docket No. RP00–77, which was rejected by the Commission (without prejudice to refiling) in an order issued December 30, 1999 (89 FERC ¶ 61,341). Unlike the submission rejected in Docket No. RP00–77, this filing includes extensive supporting material, including a cost and revenue study and testimony. Natural states that the testimony addresses, *inter alia*, the issues raised by the intervenors in the prior filing at Docket No. RP00–77.

Natural requests waiver of the Commission's Regulations to the extent necessary to permit the tariff sheets submitted to become effective April 16, 2000.

Natural states that copies of the filing are being mailed to its customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7529 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–219–000]

Northwest Pipeline Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 22, 2000.

Take notice that on March 16, 2000, Northwest Pipeline Corporation (Northwest) tendered for filing as part of its FERC Gas Tariff the following tariff sheets, to be effective May 1, 2000.

Third Revised Volume No. 1

Twelfth Revised Sheet No. 14

Original Volume No. 2

Twenty-Eighth Revised Sheet No. 2.1

Northwest states that the purpose of this filing is to propose new fuel reimbursement factors (Factors) for Northwest's transportation and storage rate schedules. The Factors allow Northwest to be reimbursed in-kind for the fuel used during the transmission and storage of gas and for the volumes of gas lost and unaccounted-for that occur as a normal part of operating the transmission system.

Northwest states that a copy of this filing has been served upon Northwest's customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7530 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–75–001]

Questar Pipeline Company; Notice of Tariff Filing

March 22, 2000.

Take notice that on March 20, 2000, Questar Pipeline Company (Questar) tendered for filing and acceptance, to be effective January 5, 2000, the following tariff sheets to Original Volume No. 3 of its FERC Gas Tariff.

Original Volume No.
Sixth Revised Sheet No. 2
Third Revised Sheet No. 9
Seventh Revised Sheet No. 10
First Revised Sheet No. 330

Questar filed an application under section 7(b) of the Natural Gas Act in Docket No. CP00–75–000, on January 27, 2000, as supplemented February 10, 2000, to abandon service under a certificated agreement between Questar and Northern Natural Gas Company (Northern). On January 5, 2000, Northern signed a letter indicating its agreement to the abandonment of this service. On March 10, 2000, the Commission issued an order granting permission for, and approval of, the abandonment to be effective January 5, 2000. Therefore, Questar filed to revise tariff sheets reflecting the cancellation of Rate Schedule X–28.

Questar states that a copy of this filing has been served upon Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Room 1A, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7527 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1858–001, et al.]

New Hampshire Electric Cooperative, Inc., et al; Electric Rate and Corporate Regulation Filings.

March 20, 2000.

Take notice that the following filings have been made with the Commission:

1. New Hampshire Electric Cooperative, Inc.

[Docket No. ER00–1858–001]

Take notice that on March 14, 2000, New Hampshire Electric Cooperative, Inc. (NHEC), tendered for filing the Revised Petition of New Hampshire Electric Cooperative, Inc., for Acceptance of Initial Rate Schedule, Waivers, and Blanket Authority (Revised Petition). The Revised Petition replaces the March 10, 2000 Petition of New Hampshire Electric Cooperative, Inc., for Acceptance of Initial Rate Schedule, Waivers, and Blanket Authority.

By its March 14, 2000 filing, NHEC petitioned the Commission for acceptance of NHEC Rate Schedule, the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission Regulations.

NHEC intends to engage in wholesale electric power and energy sales as a marketer. NHEC is a consumer-owned electric generation and distribution cooperative that provides electric service to 65,000 customers in New Hampshire

Comment date: April 4, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Keys Electric Cooperative Association, Inc.

[Docket No. ER00–1883–000]

Take notice that on March 15, 2000, Florida Keys Electric Cooperative Association, Inc., tendered for filing a revised rate for non-firm transmission service provided to the City Electric System, Key West, Florida in accordance with the terms and conditions of the Long-Term Joint Investment Transmission Agreement between the Parties.

A copy of this filing has been served on CES and the Florida Public Service Commissioner.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Southwest Power Pool, Inc.

[Docket No. ER00–1884–000]

Take notice that on March 15, 2000, Southwest Power Pool, Inc. (SPP), tendered for filing an executed service agreement for firm point-to-point transmission service under the SPP Tariff with Southwestern Public Service Company (SPS).

SPP requests an effective date of January 1, 2002 for this agreement.

Copies of this filing were served upon SPS.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Energy Corporation

[Docket No. ER00–1885–000]

Take notice that on March 15, 2000, Duke Energy Corporation (Duke), on behalf of Duke Electric Transmission, a division of Duke, tendered for filing an Interconnection and Operating Agreement with Broad River Energy LLC (Broad River).

Duke requests an effective date of March 16, 2000.

Duke states that a copy of this filing was been mailed to Broad River.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Central Illinois Light Company

[Docket No. ER00–1886–000]

Take notice that on March 15, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and one service agreement with one new customer, British Columbia Power Exchange Corporation (POWERX).

CILCO requested an effective date of March 9, 2000.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Light Company

[Docket No. ER00–1887–000]

Take notice that on March 15, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois

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61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and one service agreement with one new customer, British Columbia Power Exchange Corporation (POWERX).

CILCO requested an effective date of March 9, 2000.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Cinergy Services, Inc.

[Docket No. ER00–1888–000]

Take notice that on March 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Conectiv Energy Supply, Inc. (Conectiv).

Cinergy and Conectiv are requesting an effective date of March 1, 2000.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER00–1889–000]

Take notice that on March 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Texas Electric Marketing, LLC (Texas).

Cinergy and Texas are requesting an effective date of February 20, 2000.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER00–1890–000]

Take notice that on March 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Texas Electric Marketing, LLC (Texas).

Cinergy and Texas are requesting an effective date of February 20, 2000.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Cinergy Services, Inc.

[Docket No. ER00–1891–000]

Take notice that on March 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Conectiv Energy Supply, Inc., (Conectiv).

Cinergy and Conectiv are requesting an effective date of March 1, 2000.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Cinergy Services, Inc.

[Docket No. ER00–1892–000]

Take notice that on March 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Non-Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Allegheny Energy Supply Company, LLC (Allegheny).

Cinergy and Allegheny are requesting an effective date of February 21, 2000.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Cinergy Services, Inc.

[Docket No. ER00–1893–000]

Take notice that on March 15, 2000, Cinergy Services, Inc. (Cinergy), tendered for filing a Firm Point-To-Point Service Agreement under Cinergy's Open Access Transmission Service Tariff (the Tariff) entered into between Cinergy and Allegheny Energy Supply Company, LLC (Allegheny).

Cinergy and Allegheny are requesting an effective date of February 21, 2000.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Consumers Energy Company

[Docket No. ER00–1894–000]

Take notice that on March 15, 2000, Consumers Energy Company (Consumers), tendered for filing a Facility Engineering Authorization Agreement between Consumers and SEI Michigan, L.L.C. [SEI] (Agreement), dated March 3, 2000, (Agreement). Under the Agreement, Consumers is to perform engineering and other preliminary work associated with providing an electrical connection between a generating plant to be built by SEI and Consumers' transmission system.

Consumers requested that the Agreements be allowed to become effective by March 3, 2000.

Copies of the filing were served upon SEI and the Michigan Public Service Commission.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Dynegy Midwest Generation, Inc.

[Docket No. ER00–1895–000]

Take notice that on March 15, 2000, Dynegy Midwest Generation, Inc., 1000 Louisiana, Suite 5800, Houston, Texas 77002–5050 tendered for filing with the Federal Energy Regulatory Commission a Notice of Succession to reflect a name change from Illinova Power Marketing, Inc., to Dynegy Midwest Generation, Inc.

Comment date: April 5, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph E

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7577 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2197–035, North Carolina]

Yadkin, Inc.; Notice Extending Public Comment Period for Draft Environment Assessment

March 22, 2000.

Staff from the Federal Energy Regulatory Commission (Commission) are extending the public comment period for our draft environmental assessment (DEA) issued for the Yadkin Hydroelectric Project. The DEA analyzes the environmental impacts of a Shoreline Management Plan (SMP) filed for Commission approval. The Yadkin Project is located on the Yadkin-Pee Dee River in Montgomery, Stanly, Davidson and Rowan Counties, North Carolina.

The Yadkin Project contains the following reservoirs: High Rock, Tuckertown, Narrows (Badin) and Falls.

Comments will be solicited on our DEA until April 17, 2000. The DEA was written by staff in the Commission's Office of Energy Projects. Commission staff believe the SMP would not constitute a major federal action significantly affecting the quality of the human environment. Copies of the DEA can be viewed on the web at *www.ferc.fed.us/online/rims.htm*. Call (202) 208–2222 for assistance. Copies are also available for inspection and reproduction at the Commission's Public Reference Room located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371.

Anyone may file comments on the DEA. The public, federal and state resource agencies are encouraged to provide comments. All written comments must be filed by April 17, 2000. Send an original and eight copies of all comments marked with the project number P–2197–035 to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. If you have any questions regarding this notice, please call Steve Hocking at (202) 219–2656.

David P. Boergers,

Secretary.

[FR Doc. 00–7531 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protest

March 22, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.* 11815–000.

c. *Date filed:* September 7, 1999, and revised on October 21, 1999.

d. *Applicant:* Harms Mill Power Company, Inc.

e. *Name of Project:* Harms Mill Power Project.

f. *Location:* At the existing Harms Mill Dam, on the Elk River, near the Town of Fayetteville, Lincoln County, Tennessee.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Curtis Hunter, Harms Mill Power Company, Inc., P.O. Box 3281, Huntsville, Alabama 35810, (256) 851–6277 or Mr. Ted Randolph, Harms Mill Power Company, Inc., 391 Dan Tibbs Road, Huntsville, Alabama 35806, (256) 852–1214.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@FERC.fed.us.

j. *Comment Date:* May 30, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of practice and procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would consist of the following facilities: (1) The existing Harms Mill Dam with a 250-foot-long spillway; (2) a 75-foot-long powerhouse having an installed capacity of 300 kilowatts; (3) a new 2.1-mile-long, 13-kV transmission line; and (4) appurtenant facilities. The proposed average annual generation is estimated to be 1,800 Megawatt hours. The cost of the studies under the permit will not exceed $20,000.

l. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO

INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–7526 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No.

Notice of Application Accepted for Filing and Request for Motions To Intervene and Protests

March 22, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11818–000

c. *Dated filed:* September 27, 1999.

d. *Applicant:* Universal Electric Power Corporation.

e. *Name of Project:* Fresno Dam Hydroelectric Project.

f. *Location:* On the Milk River, near the town of Havre, Hill County, Montana, utilizing federal lands administered by the U.S. Bureau of Reclamation.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gregory S. Feltenberger, Universal Electric Power Corp., 1145 Highbrook Street, Akron, Ohio 44301, (330) 535–7115.

i. *FERC Contact:* Susan Tseng (202) 219–2798 or E-mail address at susan.tseng@ferc.fed.us.

j. *Comment Date:* May 30, 2000.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed project would utilize the existing Fresno Dam and Reservoir with lands owned by the U.S. Bureau of Reclamation, and would consist of: (1) A steel penstock, about 150-foot-long and 9-foot-in-diameter; (2) a new 60-foot-long, 30-foot-wide, 30-foot-high powerhouse to be constructed on the downstream side of the dam; (3) two turbine/generator units having a total installed capacity of 3 megawatts; (4) a new 100-foot-long, 14.7-kilovolt transmission line; and (5) appurtenant facilities.

The proposed average annual generation is estimated to be 18 gigawatt hours. The cost of studies under the permit will not exceed $1,000,000.

i. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing prelimiary permit application must conform with 18 CFR 4.30(b) and 4.36.

Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–7528 Filed 3–27–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

March 22, 2000.

The following notice of meeting is published pursuant to Section 3(A) of the government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: March 29, 2000, 10:00 a.m.

PLACE: Room 2C, 888 First Street, N.E., Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda * Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: David P. Boergers, Secretary, Telephone (202) 208–0400, for a Recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; However all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro; 737th—Meeting March 29, 2000; Regular Meeting (10:00 a.m.)

CAH–1.
DOCKET# P–1927, 013, PACIFICORP

CAH–2.
DOCKET# P–2197, 036, YADKIN, INC.

CAH–3.
DOCKET# P–11634, 000, CONTINENTAL LANDS, INC.

CAH–4.
DOCKET# P–7041, 043, POTTER TOWNSHIP HYDROELECTRIC AUTHORITY

Consent Agenda—Electric

CAE–1.
DOCKET# ER00–1239, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–2.
DOCKET# ER00–1483, 000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION

CAE–3.
DOCKET# ER00–1411, 000, ILLINOIS POWER COMPANY

CAE–4.
DOCKET# ER00–1404, 000, WEST TEXAS UTILITIES COMPANY AND CENTRAL AND SOUTH WEST SERVICES, INC.

CAE–5.
DOCKET# ER00–1379, 000, AMEREN SERVICES COMPANY
OTHER#S ER00–1386, 000, AMEREN SERVICES COMPANY
ER00–1387 000, AMEREN SERVICES COMPANY

CAE–6.
DOCKET# ER00–1519 000, INPOWER MARKETING CORPORATION

CAE–7.
DOCKET# ER00–1030, 000, AMERGEN VERMONT, LLC
OTHER S
EL00–33, 000, AMERGEN VERMONT, LLC
EL00–38, 000, LOUISIANA GENERATING, LLC
ER00–1259, 000, LOUISIANA GENERATING, LLC
ER00–1463, 000, ORION POWER MIDWEST, LLC
ER00–1502, 000, BONNIE MINE ENERGY, LLC
ER00–1517, 000, SAN JOAQUIN COGEN LIMITED
ER00–1598, 000, BALTIMORE GAS AND ELECTRIC COMPANY, CALVERT CLIFFS, INC., CONSTELLATION GENERATION, INC. AND CONSTELLATION POWER SERVICE, INC.

CAE–8.
DOCKET# ER00–1389, 000, NEW ENGLAND POWER POOL

CAE–9.
DOCKET# ER00–1516, 000, PJM INTERCONNECTION, L.L.C.

CAE–10.
DOCKET# ER00–801, 000, TAMPA ELECTRIC COMPANY

CAE–11.
DOCKET# ER00–1580, 000, CINERGY OPERATING COMPANIES

CAE–12.
DOCKET# ER00–1572, 000, USGEN NEW ENGLAND, INC.

CAE–13.
DOCKET# ER00–941, 000, PJM INTERCONNECTION, L.L.C.

CAE–14.
DOCKET# ER00–1533, 000, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC.

CAE–15.
DOCKET# ER00–1365, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

CAE–16.
DOCKET# ER00–1671, 000, NEW YORK STATE RELIABILITY COUNCIL

CAE–17.
DOCKET# ER99–3110, 000, NEVADA POWER COMPANY

CAE–18.
OMITTED

CAE–19.
DOCKET# ER00–395, 002, ISO NEW ENGLAND, INC.
OTHER#S ER00–395, 001, ISO NEW ENGLAND, INC.

CAE–20.
DOCKET# EC99–81, 001, DOMINION RESOURCES, INC.

CAE–21.
DOCKET# ER00–1439, 000, AUTOMATED POWER EXCHANGE, INC.

CAE–22.
DOCKET# ER99–897, 000, CENTRAL POWER AND LIGHT COMPANY, WEST TEXAS UTILITIES COMPANY, PUBLIC SERVICE COMPANY OF OKLAHOMA AND SOUTHWESTERN ELECTRIC POWER COMPANY

CAE–23.
DOCKET# ER99–2852, 000, ARIZONA PUBLIC SERVICE COMPANY

CAE–24.
DOCKET# EC00–45, 000, WISCONSIN ELECTRIC POWER COMPANY

CAE–25.
DOCKET# EC00–33, 000, WISCONSIN POWER & LIGHT COMPANY

CAE–26.
DOCKET# EC00–29, 000, ALLIANT ENERGY CORPORATE SERVICES, INC.

CAE–27.
DOCKET# EC00–1, 000, ENERGY EAST CORPORATION AND CMP GROUP, INC.

CAE–28.
DOCKET# EC00–48, 000, CAJUN ELECTRIC POWER COOPERATIVE, INC. AND LOUISIANA GENERATING LLC

CAE–29.
DOCKET# ER99–4545, 002, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION
OTHER#S ER99–4545, 003, CALIFORNIA

INDEPENDENT SYSTEM OPERATOR CORPORATION
CAE–30.
DOCKET# ER97–1523, 020, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
OTHER#S OA97–470, 019, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
OA97–470, 020, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
ER97–1523, 021, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
ER97–4234, 017, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
ER97–4234, 018, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC AND GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES INC., ROCHESTER GAS AND ELECTRIC CORPORATION AND NEW YORK POWER POOL
CAE–31.
OMITTED
CAE–32.
DOCKET# ER00–550, 001, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
OTHER#S ER00–556, 001, NEW YORK INDEPENDENT SYSTEM OPERATOR, INC., CENTRAL HUDSON GAS & ELECTRIC CORPORATION, CONSOLIDATED EDISON COMPANY OF NEW YORK, INC., NEW YORK STATE ELECTRIC & GAS CORPORATION, NIAGARA MOHAWK POWER CORPORATION, ORANGE AND ROCKLAND UTILITIES, INC. AND ROCHESTER GAS AND ELECTRIC CORPORATION
CAE–33.
DOCKET# ER00–950, 001, CALIFORNIA POWER EXCHANGE CORPORATION
CAE–34.
DOCKET# RM99–12, 000, DESIGNATION OF ELECTRIC RATE SCHEDULE SHEETS
CAE–35.
DOCKET# EL99–91, 000, PACIFIC GAS AND ELECTRIC COMPANY
CAE–36.
DOCKET# EL99–58, 000, VILLAGE OF FREEPORT, NEW YORK V. CONSOLIDATED EDISON COMPANY OF NEW YORK
CAE–37.
DOCKET# EG00–89, 000, LOUISIANA GENERATING LLC
CAE–38.
DOCKET# OA00–1, 000, NEW ENGLAND POWER COMPANY, MASSACHUSETTS ELECTRIC COMPANY, THE NARRAGANSETT ELECTRIC COMPANY, NEW ENGLAND ELECTRIC TRANSMISSION CORPORATION, NEW ENGLAND HYDRO-TRANSMISSION CORPORATION, NEW ENGLAND HYDRO-TRANSMISSION ELECTRIC COMPANY, INC., ALLENERGY MARKETING COMPANY, L.L.C., MONTAUP ELECTRIC COMPANY, BLACKSTONE VALLEY ELECTRIC COMPANY, EASTERN EDISON COMPANY, NEWPORT ELECTRIC CORPORATION AND RESEARCH DRIVE, L.L.C.
OTHER#S ER99–2832, 001, NEW ENGLAND POWER COMPANY AND MONTAUP ELECTRIC COMPANY
CAE–39.
DOCKET# OA00–3, 000, CENTRAL ILLINOIS LIGHT COMPANY AND QST ENERGY TRADING COMPANY
CAE–40.
DOCKET# OA99–1, 000, NORTHERN STATES POWER COMPANY (MINNESOTA), NORTHERN STATES POWER COMPANY (WISCONSIN), PUBLIC SERVICE COMPANY OF COLORADO, CHEYENNE LIGHT, FUEL AND POWER COMPANY AND SOUTHWESTERN PUBLIC SERVICE COMPANY
CAE–41.
OMITTED
CAE–42.
DOCKET# ER00–866, 000, CALIFORNIA INDEPENDENT SYSTEM OPERATOR CORPORATION

Consent Agenda—Gas and Oil

CAG–1.
DOCKET# RP00–187, 000, NATIONAL FUEL GAS SUPPLY CORPORATION
CAG–2.
DOCKET# RP00–188, 000, GREAT LAKES GAS TRANSMISSION LIMITED PARTNERSHIP
CAG–3.
DOCKET# RP96–200, 051, RELIANT ENERGY GAS TRANSMISSION COMPANY
CAG–4.
DOCKET# RP00–184, 000, NATURAL GAS PIPELINE COMPANY OF AMERICA
CAG–5.
DOCKET# RP00–199, 000, RELIANT ENERGY GAS TRANSMISSION COMPANY
CAG–6.
DOCKET# RP00–183, 000, COLORADO INTERSTATE GAS COMPANY
CAG–7.
OMITTED
CAG–8.
DOCKET# RP00–195, 000, TRANSCOLORADO GAS TRANSMISSION COMPANY
CAG–9.
OMITTED
CAG–10.
DOCKET# RP00–205, 000, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
OTHER#S RP00–205, 001, PG&E GAS TRANSMISSION, NORTHWEST CORPORATION
CAG–11.
DOCKET# RP97–14, 004, MIDWESTERN GAS TRANSMISSION COMPANY
OTHER#S GT00–16, 000, MIDWESTERN GAS TRANSMISSION COMPANY
CAG–12.
DOCKET# RP00–21, 000, CNG TRANSMISSION CORPORATION
OTHER#S RP00–21, 002, CNG TRANSMISSION CORPORATION
CAG–13.
DOCKET# RP00–190, 000, VIKING GAS TRANSMISSION COMPANY
CAG–14.
DOCKET# RP00–203, 000, ANR PIPELINE COMPANY
OTHER#S RP00–203, 001, ANR PIPELINE COMPANY
CAG–15.
DOCKET# RP00–209, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION

OTHER#S RP00–209, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–16.
DOCKET# RP00–204, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP00–204, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–17.
DOCKET# RP00–84, 000, KANSAS PIPELINE COMPANY
CAG–18.
DOCKET# RP99–190, 001, NATIONAL FUEL GAS DISTRIBUTION CORPORATION
CAG–19.
DOCKET# RP99–260, 000, EAST TENNESSEE NATURAL GAS COMPANY
OTHER#S RP99–261, 000, EAST TENNESSEE NATURAL GAS COMPANY
RP99–460, 000, EAST TENNESSEE NATURAL GAS COMPANY
RP00–211, 000, EAST TENNESSEE NATURAL GAS COMPANY
CAG–20.
DOCKET# RP00–30, 002, ANR PIPELINE COMPANY
OTHER#S RP00–30, 003, ANR PIPELINE COMPANY
RP00–30, 004, ANR PIPELINE COMPANY
RP00–30, 005, ANR PIPELINE COMPANY
CAG–21.
DOCKET# RP00–154, 001, COLUMBIA GAS TRANSMISSION CORPORATION
CAG–22.
DOCKET# RP00–24, 002, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S RP00–24, 000, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
RP00–24, 001, TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–23.
DOCKET# RP00–128, 002, WILLIAMS GAS PIPELINES CENTRAL, INC.
OTHER#S RP00–128, 001, WILLIAMS GAS PIPELINES CENTRAL, INC.
CAG–24.
DOCKET# RP97–287, 045, EL PASO NATURAL GAS COMPANY
CAG–25.
DOCKET# RP00–168, 000, NORTHWEST PIPELINE CORPORATION V. El PASO NATURAL GAS COMPANY
CAG–26.
DOCKET# RP97–29, 003, PANHANDLE EASTERN PIPE LINE COMPANY
CAG–27.
DOCKET# RP96–275, 005, TENNESSEE GAS PIPELINE COMPANY
CAG–28.
DOCKET# MG00–6, 000, CONSOLIDATED NATURAL GAS COMPANY
CAG–29.
DOCKET# CP99–624, 000, WYOMING INTERSTATE COMPANY, LTD.
CAG–30.
DOCKET# CP99–592, 000, SOUTHWEST GAS TRANSMISSION COMPANY, A LIMITED PARTNERSHIP
CAG–31.
DOCKET# CP98–49, 004, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
CAG–32.
DOCKET# CP99–191, 002, NORTHERN NATURAL GAS COMPANY
CAG–33.
DOCKET# CP97–256, 005, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
OTHER#S CP97–256, 006, K N WATTENBERG TRANSMISSION LIMITED LIABILITY COMPANY
CAG–34.
DOCKET# CP98–74, 002, ANR PIPELINE COMPANY V. TRANSCONTINENTAL GAS PIPE LINE CORPORATION
OTHER#S CP98–74, 001, ANR PIPELINE COMPANY V. TRANSCONTINENTAL GAS PIPE LINE CORPORATION
CAG–35.
DOCKET# RP95–363, 017, EL PASO NATURAL GAS COMPANY
OTHER#S RP98–407, 001, EL PASO NATURAL GAS COMPANY
RP99–507, 001, AMOCO ENERGY TRADING CORPORATION, AMOCO PRODUCTION COMPANY AND BURLINGTON RESOURCES OIL & GAS COMPANY v. El PASO NATURAL GAS COMPANY
CAG–36.
DOCKET# CP99–604, 000, SOUTHERN NATURAL GAS COMPANY
CAG–37.
DOCKET# CP92–481, 001, NORTHERN ILLINOIS GAS COMPANY
OTHER#S PR93–11, 001, NORTHERN ILLINOS GAS COMPANY
PR94–16, 001, SOUTHERN CALIFORNIA GAS COMPANY

Hydro Agenda

H–1.
RESERVED

Electric Agenda

E–1.
RESERVED

Oil and Gas Agenda

I.
PIPELINE RATE MATTERS
PR–1.
RESERVED
II.
PIPELINE CERTIFICATE MATTERS
PC–1.
DOCKET# RM99–5, 000, REGULATIONS UNDER THE OUTER CONTINENTAL SHELF LANDS ACT GOVERNING THE MOVEMENT OF NATURAL GAS ON FACILITIES ON THE OUTER CONTINENTAL SHELF
ORDER ON FINAL RULE.

David P. Boergers,

Secretary.

[FR Doc. 00–7670 Filed 3–23–00; 4:58 pm]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Record of Decision for the Energy Planning and Management Program; Integrated Resource Planning Approval Criteria

AGENCY: Western Area Power Administration, DOE.

ACTION: Record of Decision

SUMMARY: Western Area Power Administration (Western) completed a Final Environmental Impact Statement (EIS), DOE/EIS–0182, on its Energy Planning and Management Program (EPAMP); and a Supplement Analysis, DOE/EIS–0182–SA–1, on the Integrated Resource Plan (IRP) program. Western is publishing this Record of Decision (ROD) to adopt revisions to its current regulations that require customers to prepare IRPs (10 CFR part 905). These revisions allow customers more alternatives in meeting the IRP requirements.

DATES: This ROD is effective March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Simmons Buntin, Energy Services Specialist, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213, telephone (720) 962–7419, fax (720) 962–7427, e-mail buntin@wapa.gov.

SUPPLEMENTARY INFORMATION: Section 114 of the Energy Policy Act of 1992 (EPAct), Public Law 102–486, requires integrated resource planning by Western's customers. Western implemented EPAct through completion of the EPAMP in October 1995. The EPAMP was published in the Code of Federal Regulations at 10 CFR part 905. The EPAMP was addressed in a final EIS that was distributed to the public on June 27, 1995. The Environmental Protection Agency notice of availability was published on July 21, 1995 (60 FR 37640). The final EIS addressed requirements for full IRPs and other planning options for small customers. Western issued its ROD for EPAMP on September 21, 1995 (60 FR 53181), selecting the preferred alternative as described in the final EIS. Essential elements of Western's preferred alternative required IRPs for many of Western's long-term customers, and a Small Customer Plan option for those customers with total energy sales or usage of 25 gigawatthours (GWh) or less, which are not members of either a joint action agency or a generation and transmission cooperative with power supply responsibility, and which have limited economic, managerial, and

resource capabilities. Other alternatives considered are addressed in Western's September 21, 1995, ROD on EPAMP.

Following EPAct requirements, Western's Administrator initiated a public process to review Western's IRP regulations on November 17, 1999 (64 FR 62604). The Administrator is authorized to revise Western's criteria for approving IRPs "to reflect changes, if any, in technology, needs, or other developments."

In response to this public process, Western proposed revised IRP Criteria, revisions to the Small Customer Plan, and two new options that will be promulgated with the new regulation. Western is adopting an approach that features customer choice and flexibility, and reflects the transition of the electric utility industry. Customers can choose to continue preparing IRPs, or can adopt approaches that are emerging in lieu of IRP requirements. These new approaches include compliance with a defined level of investment in demand-side management and/or renewable energy, including compliance with a public benefits program, or compliance with mandated energy efficiency and/or renewable energy activities and related reporting requirements. The revisions were not addressed in the EIS for EPAMP. It was unclear whether or not to prepare an EIS supplement for the revisions, so Western prepared a Supplement Analysis (DOE/EIS–0182–SA–1) addressing the changes pursuant to 10 CFR part 1021.314. Based on the Supplement Analysis, Western determined that no further National Environmental Policy Act documentation is required for the revisions to the IRP regulations. Therefore, Western has decided to promulgate new IRP regulations. The Supplement Analysis is available upon request.

No Mitigation Action Plan will be prepared for the new IRP regulations, as the proposal involves no construction, and no mitigation was identified as necessary to implement the new regulations.

Dated: March 13, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–7582 Filed 3–27–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Proposed Rates for Washoe Project—Nonfirm Power

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed rates.

SUMMARY: The Western Area Power Administration (Western) is proposing rates to sell nonfirm energy from Stampede Powerplant (Stampede) of the Washoe Project. Stampede is in Sierra County, California. The current rates expire September 30, 2000. The proposed rates will provide sufficient revenue to repay all annual costs, including interest expense, and repay required investment within the allowable period. Rate impacts are detailed in a rate brochure to be provided to all interested parties. Proposed rates are scheduled to go into effect on October 1, 2000, to correspond with the start of the Federal fiscal year (FY), and will remain in effect through September 30, 2005. This **Federal Register** notice initiates the formal process for the proposed rates.

DATES: The consultation and comment period begins today and will end April 27, 2000. During this period Western will accept written comments from interested parties.

ADDRESSES: Send written comments to Mr. Jerry W. Toenyes, Regional Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710. Western must receive written comments by the end of the consultation and comment period to assure they are considered.

FOR FURTHER INFORMATION CONTACT: Ms. Debbie Dietz, Rates Manager, Sierra Nevada Customer Service Region, Western Area Power Administration, 114 Parkshore Drive, Folsom, CA 95630–4710, telephone (916) 353–4453.

SUPPLEMENTARY INFORMATION: Proposed rates for the sale of nonfirm energy from Stampede consist of floor and ceiling rates and are designed to recover an annual revenue requirement that includes investment repayment, interest, project use costs, and operation and maintenance expense. A power repayment study indicates the ceiling rate provides sufficient revenue to repay all annual costs, including interest expense, and the investment within the allowable period. Other analyses indicate the proposed floor rate provides sufficient revenue to pay annual operation and maintenance expenses. Proposed floor and ceiling rates for nonfirm energy from Stampede Powerplant are 17.89 mills/kilowatthour (mills/kWh) and 90.07 mills/kWh, respectively. The proposed rates are designed to ensure maximum recovery of annual revenue requirement at marketable rates.

To serve project use loads and market the energy from Stampede, Western's contract with Sierra Pacific Resources (Sierra) provides for the Stampede Energy Exchange Account (SEEA). SEEA is an annual energy exchange account for Stampede energy. Under this contract, Sierra accepts delivery of all energy generated from Stampede into Sierra's electrical system. The dollar value of the Stampede energy received by Sierra during any month is credited into the SEEA. Western uses the SEEA to benefit project use facilities, market energy from Stampede to preference entities over Sierra's transmission system, and sell a portion of the energy to Sierra. Beginning January 1, 2005, energy available after meeting project use requirements will be sold to the Central Valley Project (CVP) at the ceiling rate, as provided in the CVP 2004 Marketing Plan. As long as Western has a balance in the SEEA, Western and Sierra agree to do any combination of the above transactions in any month.

After meeting project use power requirements, the remaining energy available through the SEEA is sold either to Sierra at the proposed floor rate or to other entities, giving priority to preference customers, at a rate not greater than the proposed ceiling rate but more than the proposed floor rate. The formula for the proposed floor rate is equal to 85 percent of the then effective, nontime differentiated rate provided in Sierra's California Quarterly Short Term Purchase Price Schedule for As-Available Purchases from Qualifying Facilities with Capacities of 100 kilowatts (kW) or Less. This floor rate reflects the rate used to determine a value of the SEEA for the benefit of project use facilities. Western determines the proposed ceiling rate as the rate necessary to repay the Stampede annual expenses and power investment over the remaining repayment period of the power facilities.

A comparison of existing and proposed rates follows:

Nonfirm energy rate	Existing rates as of October 1, 1995 mills/kWh	Proposed rates October 1, 2000 mills/kWh	Percent change
Floor Rate	19.26	17.89	−7
Ceiling Rate	80.44	90.07	12

Stampede Powerplant is a feature of the Washoe Project authorized by Congress in 1956 and is located on the Little Truckee River in Sierra County, California. The powerplant has a maximum operating capability of 3,650 kW with an estimated annual generation of 11 million kWh. Since Stampede Powerplant has an installed capacity of less than 20,000 kW and generates less than 100 million kWh annually for sale, the proposed rates constitute a minor rate adjustment. Western has determined that it is not necessary to hold a public information or comment forum for this proposed minor rate adjustment (10 CFR 903). After Western reviews the comments received, it will recommend the proposed rates (and as amended) for approval on an interim basis by the Department of Energy (DOE) Deputy Secretary.

Legal Authority

These nonfirm energy rates for Stampede are established under the DOE Organization Act, 42 U.S.C. 7101–7352; the Reclamation Act of 1902, ch. 1093, 32 Stat. 388, as amended and supplemented by subsequent enactments, particularly section 9(c) of the Reclamation Project Act of 1939, 43 U.S.C. 485h(c); and other acts specifically applicable to the project involved.

By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator; and (2) the authority to confirm, approve and place into effect on a final basis, to remand, or to disapprove such rates to FERC. In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve and place such rates into effect on an interim basis to the Deputy Secretary. Existing DOE procedures for public participation in power rate adjustments (10 CFR part 903) became effective on September 18, 1985 (50 FR 37835).

Availability of Information

The rate brochure, studies, comments, letters, memorandums, and other documents made or kept by Western in developing the proposed rates to sell nonfirm energy from Stampede are available for inspection and copying at the Sierra Nevada Customer Service Regional Office, at 114 Parkshore Drive, Folsom, California.

Regulatory Procedural Requirements

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601, *et seq.*) requires Federal agencies to perform a regulatory flexibility analysis if a final rule is likely to have a significant economic impact on a substantial number of small entities and there is a legal requirement to issue a general notice of proposed rulemaking. Western has determined that this action does not require a regulatory flexibility analysis since it is a rulemaking involving rates or services for public property.

Environmental Compliance

In compliance with the National Environmental Policy Act (NEPA), of 1969, 42 U.S.C. 4321, *et seq.*, Council on Environmental Quality Regulations (40 CFR parts 1500–1508); and the DOE NEPA Regulations (10 CFR part 1021), Western has determined that this action is categorically excluded from the preparation of an environmental assessment or an environmental impact statement.

Determination Under Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this notice by the Office of Management and Budget is required.

Small Business Regulatory Enforcement Fairness Act

Western has determined that this rule is exempt from congressional notification requirements under 5 U.S.C. 801 because the action is a rulemaking of particular applicability relating to rates or services and involves matters of procedure.

Dated: March 14, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–7583 Filed 3–27–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6565–7]

Proposed Administrative Settlement under the Comprehensive Environmental Response, Compensation, and Liability Act and the Resource Conservation and Recovery Act; In The Matter of: Redding Life Care, LLC

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed prospective purchaser agreement and request for public comment.

SUMMARY: The Environmental Protection Agency ("EPA") is proposing to enter into a prospective purchaser agreement to address claims under sections 106 and 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, and section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, and further amended by the Hazardous and Solid Waste Amendments of 1984 ("RCRA"), 42 U.S.C. 6973. EPA is entering into this agreement under the authority of CERCLA Section 101 *et seq.* which provides EPA with authority to consider, compromise, and settle a claim under Sections 106 and 107 of CERCLA for costs incurred by the United States if the claim has not been referred to the U.S. Department of Justice for further action. Notice is being published to inform the public of the proposed settlement and of the opportunity for a public meeting in Redding, Connecticut and to comment on the proposed settlement. The settlement is intended to resolve the liability of Redding Life Care, LLC, under CERCLA and Section 7003 of RCRA for remedial activities Redding Life Care, LLC, will perform at the Gilbert & Bennett Site at 22 Redding

Road in Redding, Connecticut. The settlement has been approved by EPA Region I and the United States Department of Justice, subject to review by the public pursuant to this Notice. EPA will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper or inadequate.

DATES: Comments on the proposed settlement and requests for a public meeting in Redding, Connecticut must be provided on or before April 27, 2000.

ADDRESSES: The proposed settlement is available for public inspection at the offices of EPA, Region I, One Congress Street, Suite 1100, Boston, Massachusetts 02114–2023. A copy of the proposed settlement may be obtained from Eve S. Vaudo, U.S. Environmental Protection Agency, New England, Region I, One Congress Street, Suite 1100 (SES), Boston, Massachusetts 02114–2023, (617) 918–1089. Comments and requests for a public meeting should be addressed to Eve Vaudo at the address set forth above and should refer to: Agreement and Covenant Not to Sue Re: Gilbert & Bennett Site, U.S. EPA Docket No. CERCLA–1–99–0071.

FOR FURTHER INFORMATION CONTACT: Eve S. Vaudo, U.S. Environmental Protection Agency, One Congress Street, Suite 1100, Mailcode SES, Boston, Massachusetts 02114–2023, (617) 918–1089.

Dated: December 2, 1999.

John P. DeVillars,

Regional Administrator, Region I.

[FR Doc. 00–7623 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

FRL–6564–1]

Proposed Agreement Pursuant to Section 122(h)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act for the 7–7 Merger, Inc., Superfund Site

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice; Request for public comment on proposed CERCLA 122(h)(1) agreement with Weitron Steel Corporation; USX Corporation; Sloss Industries Corporation; Shenango Incorporated; Roanoke Gas Company; Republic Technologies International, L.L.C.; Reilly Industries, Inc.; Premier Refractories, Inc.; North Star Steel Company; Granite City Division of National Steel Corporation; Lone Star Steel Company; Koppers Industries, Inc.; Kaiser Ventures, Inc.; Honeywell International, Inc. (f/k/a Allied Signal Inc.); Columbia Gas of Pennsylvania, Inc.; Coopers Creek Chemical Corporation; ENCOAL Corporation; Bethlehem Steel Corporation; Aristech Chemical Corporation, and; AK Steel Corporation for the 7–7 Merger, Inc., Superfund Site.

SUMMARY: In accordance with section 122(i)(1) of the Comprehensive Environmental Response, Compensation and Liability Act of 1984, as amended ("CERCLA"), EPA hereby gives notice of a proposed administrative agreement concerning the 7–7 Merger Inc., hazardous waste site at 607 Freelander Road, Wooster, Wayne County, Ohio (the "Site"). EPA proposes to enter into this agreement under the authority of sections 106 and 122(h) of CERCLA. The proposed agreement has been executed by Weitron Steel Corporation; USX Corporation; Sloss Industries Corporation; Shenango Incorporated; Roanoke Gas Company; Republic Technologies International, L.L.C.; Reilly Industries, Inc.; Premier Refractories, Inc.; North Star Steel Company; Granite City Division of National Steel Corporation; Lone Star Steel Company; Koppers Industries, Inc.; Kaiser Ventures, Inc.; Honeywell International, Inc. (f/k/a Allied Signal Inc.); Columbia Gas of Pennsylvania, Inc.; Coopers Creek Chemical Corporation; ENCOAL Corporation; Bethlehem Steel Corporation; Aristech Chemical Corporation; and AK Steel Corporation (the "Settling Parties").

Under the proposed agreement, the Settling Parties are resolving EPA's claims against them for response actions and EPA response and oversight costs at the site. The Settling Parties are conducting an emergency response at the site and paying to the Hazardous Substances Superfund all past response costs and costs of overseeing the emergency response to the extent that these costs exceed $150,000. EPA incurred response costs mitigating an imminent and substantial endangerment to human health or the environment, present or threatened by hazardous substances at the site. EPA also incurred and will incur response costs overseeing response activities conducted and to be conducted at the site by the Settling Parties. EPA is compromising $150,000 of its response costs based on EPA's Orphan Share Policy.

For thirty days following the date this notice is published, the EPA will receive written comments relating to this proposed agreement. EPA will consider all comments received and may decide not to enter this proposed agreement if comments disclose facts or considerations which indicate that the proposed agreement is inappropriate, improper or inadequate.

DATES: EPA must receive comments on the proposed agreement before April 28, 2000.

ADDRESSES: You should address comments to the Docket Clerk, U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, and should refer to: In the 7–7 Merger, Inc., Site, Wooster, Ohio, U.S. EPA Docket No. V–W–00–C–584.

FOR FURTHER INFORMATION CONTACT: Stuart P. Hersh, U.S. Environmental Protection Agency, Office of Regional Counsel, C–14J, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590, (312) 886–6235.

You may obtain a copy of the proposed administrative settlement agreement in person or by mail from the EPA's Region 5 Office of Regional Counsel, 77 West Jackson Boulevard, Chicago, Illinois, 60604–3590. Additional background information relating to the settlement is available for review at the EPA's Region 5 Office of Regional Counsel.

Authority: The Comprehensive Environmental Response, Compensation, and Liability Act, as amended, 42 U.S.C. 9601–9675.

Richard C. Karl,

Acting Director, Superfund Division, Region 5.

[FR Doc. 00–7626 Filed 3–27–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 00–109]

United States and Canada Reach Agreement Regarding Use of the 220–222 MHz Band Along Their Border

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces that the Federal Communications Commission, the National Telecommunications and Information Administration, and Industry Canada have signed an interim sharing Arrangement regarding use of the 220–222 MHz band along the United States -Canada Border. Now that the Arrangement has been agreed upon, any non-nationwide Phase I 220 MHz licensee with a base station authorized at a location North of Line A must construct its base station and place it in operation, or commence service, on all authorized channels by January 21, 2001. The authorization of a licensee that does not construct its base station and place it into operation, or commence service, by January 21, 2001, cancels automatically on that date and must be returned to the Commission. United States licensees along the border whose construction deadlines had previously been delayed pending completion of this Arrangement between the United States and Canada are now required to complete construction and commence operation by January 21, 2001.

DATES: Effective January 21, 2000.

FOR FURTHER INFORMATION CONTACT: Dan Abeyta, Wireless Telecommunications Bureau, at (202) 418–1538; Henry Straube, International Bureau, at (202) 418–2144.

SUPPLEMENTARY INFORMATION: This *Public Notice,* reproduced without footnotes, was released January 21, 2000. It is available for inspection and copying during normal business hours in the FCC Reference Center, 445 Twelfth Street, S.W., Washington D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington D.C. 20036 (202) 857–3800. The complete document is also available via the internet at *http://www.fcc.gov/Bureaus/Wireless/Public—Notices/2000/index2.html.*

Interim Sharing Agreement Reached Regarding Use of 220–222 MHz Band with Canada

The Federal Communications Commission, the National Telecommunications and Information Administration, and Industry Canada have signed an interim sharing Arrangement regarding use of the 220–222 MHz band along the U.S.-Canada border. The Arrangement will resolve long-standing uncertainty regarding use of this band in the border area. In addition, by significantly reducing the amount of cross-border coordination required, the Arrangement will allow quick implementation of new services expected to be offered in the band. U.S. licensees along the border whose construction deadlines had previously been delayed pending completion of a U.S.-Canada agreement will now be required to complete construction and commence operation by January 21, 2001.

The Arrangement governs operations in the 220–222 MHz band within 120 kilometers of the U.S.-Canada border. The Arrangement identifies 200 channel pairs within this band and allots each channel pair for primary use by the United States or Canada, or for shared use. Frequencies allotted for primary use by one country may also be used on a secondary basis by the other country provided certain conditions are met. The Arrangement also provides antenna height and power restrictions, and there are special sharing arrangements for certain geographic areas and for low power stations. In addition, the Arrangement provides that, to the extent possible, certain specified channels will be available for implementation of Intelligent Transportation Systems/ Intelligent Vehicle Highway System and Public Safety and Mutual Aid services. Beyond 120 kilometers from the border, both countries have full and unrestricted use of all channels in the band.

In commenting on the Arrangement, International Bureau Chief Donald Abelson stated, "This Arrangement builds on the strong cooperative relationship between the U.S. and Canada and encourages prompt provision of new services to the citizens on both sides of the border while protecting licensees and consumers from cross-border interference." This Arrangement was reached as part of an on-going Commission effort to negotiate sharing agreements with Canada and Mexico that will promote efficient spectrum use in border areas.

In 1995, the Commission extended the construction deadline for non-nationwide Phase I 220 MHz licenses that were located north of Line A, near the Canadian border, due to the uncertainties surrounding the future of these licenses prior to reaching an agreement with Canada. The construction period was extended until twelve months after an agreement was reached between the United States and Canada on sharing the 220–222 MHz band. Now that the Arrangement has been realized, any non-nationwide Phase I 220 MHz licensee with a base station authorized at a location north of Line A must construct its base station and place it into operation, or commence service, on all authorized channels by January 21, 2001. The authorization of a licensee that does not construct its base station and place it into operation, or commence service, by January 21, 2001, cancels automatically on that date and must be returned to the Commission.

The full text of the Arrangement has been placed on file at the International Bureau Reference Room CY-A257, located on the Courtyard level of 445 12th St. S.W., Washington, D.C. Copies are also available from the International Transcription Service at (202) 857–3800 and can be downloaded from the FCC's International Bureau internet site at *http://www.fcc.gov/ib/pnd/agree.*

Federal Communications Commission.

James D. Schlichting,

Deputy Chief, Wireless Telecommunications Bureau.

[FR Doc. 00–7597 Filed 3–27–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Notice

FEDERAL REGISTER CITATION OF PREVIOUS NOTICE: 65 FR 14977, March 20, 2000.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 1 P.M., Wednesday, March 22, 2000.

CHANGE IN THE MEETING. The time and location of the above mentioned meeting was changed to 2:30 p.m., Wednesday, March 22, 2000 and held at 2222 Rayburn House Office Building, Independence Avenue and South Capitol Street, SW, Washington, DC 20515.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Bruce A. Morrison,

Chairman.

[FR Doc. 00–7770 Filed 3–24–00; 4 pm]

BILLING CODE 6725–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank

indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 21, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Benchmark Bancorp, Inc., Aurora, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Financial Institutions Inc., Port Washington, Wisconsin, and thereby indirectly acquire Valley Bank, Verona, Illinois.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Hopkins Financial Corporation, Mitchell, South Dakota; to merge with The First Freeman Corporation, Freeman, South Dakota, and thereby indirectly acquire The First National Bank of Freeman, Freeman, South Dakota.

Board of Governors of the Federal Reserve System, March 23, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7605 Filed 3–27–00; 8:45 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, April 3, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED: 1. Proposals concerning renovation of a Federal Reserve Bank building.

2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 24, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7772 Filed 3–24–00; 3:59 pm]

BILLING CODE 6210–01–P

GENERAL SERVICES ADMINISTRATION

Privacy Act of 1974; System of Records

AGENCY: General Services Administration.

ACTION: Notice of a new system of records subject to the Privacy Act of 1974.

SUMMARY: The General Services Administration (GSA) is providing notice of the establishment of a new system of records, Child Care Subsidy (GSA/ChildCare-1). The new system will collect family income data from GSA employees for the purpose of determining their eligibility for child care subsidies, and the amounts of the subsidies. It also will collect information from the employees' child care provider(s) for verification purposes, e.g., that the provider is licensed. Collection of data will be by subsidy application forms submitted by employees.

DATES: Comments on the new system must be provided April 27, 2000. The system will become effective without further notice on April 27, 2000, unless comments dictate otherwise.

ADDRESSES: Address comments to: General Services Administration, Office of Child Care (D), 1800 F Street, NW, Washington, DC 20405; or to GSA Privacy Act Officer, General Services Administration, CAI, 1800 F Street, NW, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: The Office of Child Care, at the above address, or telephone (202) 208–5119.

GSA/Childcare-1

SYSTEM NAME:

GSA CHILD CARE SUBSIDY.

SYSTEM LOCATION:

This system of records is maintained by the Office of Child Care (D), 1800 F Street, NW, Washington, DC.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The individuals in the system are employees of the General Services Administration who voluntarily apply for child care subsidies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application forms for child care subsidy containing personal information, including employee (parent) name, Social Security Number, grade, home and work numbers addresses, telephone numbers, total income, number of dependent children, and number of children on whose behalf the parent is applying for a subsidy; information on child care providers used, including name, address, provider license number and State where issued, tuition cost, and provider tax identification number; and copies of IRS Form 1040 and 1040A for verification purposes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 106–58 and E.O. 9397.

PURPOSE(S):

To establish and verify GSA employees' eligibility for child care subsidies in order for GSA to provide monetary assistance to its employees.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this system may be disclosed as a routine use:

a. To the Federal, State, or local agency responsible for investigating, prosecuting, enforcing, or implementing a statute, rule, regulation, or order, where the General Services Administration becomes aware of a violation or potential violation of civil or criminal law or regulation.

b. To a Member of Congress or to a congressional staff member in response to a request for assistance from the Member by the individual of record.

c. To another Federal agency or to a court when the Government is party to a judicial proceeding before the court.

d. To the Office of Personnel Management or the General Accounting Office when the information is required for evaluation of the subsidy program.

e. To an expert, consultant, or contractor (including employees of the contractor) of GSA if necessary to further the implementation and operation of this program.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Information may be collected on paper or electronically and may be stored as paper forms or on computers.

RETRIEVABILITY:

By name; may also be cross-referenced to Social Security Number.

SAFEGUARDS:

When not in use by an authorized person, paper records are stored in lockable metal file cabinets or secured rooms. Electronic records are protected by the use of passwords.

RETENTION AND DISPOSAL:

Disposition of records is according to the National Archives and Records Administration (NARA) guidelines, as set forth in the handbook, GSA Records Maintenance and Disposition System (OAD P 1820.2) and authorized GSA records schedules.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Administrator for Child Care (D), General Services Administration, 1800 F St., NW, Washington, DC 20405.

NOTIFICATION PROCEDURE:

Individuals may submit a request on whether a system contains records about them to: Associate Administrator for Child Care (D), General Services Administration, 1800 F St., NW, Washington, DC 20405.

RECORD ACCESS PROCEDURES:

Requests from individuals for access to their records should be addressed to the system manager.

CONTESTING RECORD PROCEDURES:

GSA rules for access to systems of records, contesting the contents of systems of records, and appealing initial determinations are published in the **Federal Register**, 41 CFR part 105–64.

RECORD SOURCE CATEGORIES:

Information is provided by GSA employees who apply for child care subsidies. Furnishing of the information is voluntary.

Dated: March 21, 2000.

Daniel K. Cooper,

Director, Administrative Services Division.

[FR Doc. 00–7509 Filed 3–27–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Healthcare Research and Quality (AHRQ); Statement of Organization, Functions, and Delegations of Authority

Part E, Chapter E (Agency for Health Care Policy and Research), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (61 FR 15955–58, April 10, 1996, most recently amended at 64 FR 11012–15 on march 8, 1999) is further amended to reflect organizational changes necessitated by the enactment of the Healthcare Research and Quality Act of 1999, Public Law 106–129. The Act retitled the Agency for Health care Policy and Research (AHCPR) as the Agency for Healthcare Research and Quality (AHRQ); and changed the title of the Administrator to Director. The changes are as follows:

1. All references to the Agency for Health Care Policy and Research (AHCPR) are hereby changed to the Agency for Healthcare Research and Quality (AHRQ); and all references to AHCPR are changed to AHRQ.

2. All references to the AHCPR "Administrator" are changed to the AHRQ "Director."

3. Under Section E–20, Functions, in the statement for the Center for Practice and Technology Assessment (EM), delete item (6) in its entirety.

These changes are effective upon date of signature.

Dated: March 21, 2000.

Donna E. Shalala,

Secretary.

[FR Doc. 00–7521 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–90–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Submission for OMB Review; Comment Request

Title: Child Care and Development Fund Plan for State/Territories.

OMB No.: 0970–0114.

Description: The ACF–118, the Child Care and Development (CCDF) Plan for States and Territories, is required from the child care lead agency by section 658E of the Child Care and Development Block Grant Act of 1990 (Pub. L. 101–508, 42 U.S.C. 9858). The implementing regulations for the Statutorily required Plan are at 45 CFR 98.10 through 98.19. The Plan is required biennially and remains in effect for two years. States/Territories have completed the ACF–118 for the FFY 2000–2001 biennium. However, approval for the ACF–118 expires May 31, 2000. States and Territories may amend during a biennium. Therefore, in order to provide continually for the Plan process, ACF is requesting that the current approval of the ACF–118 be extended through the end of the biennium, *i.e.*, September 30, 2001. The Tribal Plan (ACF–118A) is not affected by this notice.

Respondents: State, Local or Tribal Govt.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Child Care & Dev. Fund Plan for States/Terr	56	.5	162.57	4,552
Estimated Total Annual Burden Hours				4,552

Additional Information

Copies of the proposed collection may be obtained by writing to The Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer.

OMB Comment

OMB is required to make a decision concerning the collection of information between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment is best assured of having its full effect if OMB receives it within 30 days of publication. Written comments and recommendations for the proposed information collection should be sent directly to the following: Office of Management and Budget, Paperwork Reduction Project, 725 17th Street, NW, Washington, DC 20503, Attn: Desk Officer for ACF.

Dated: March 22, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–7520 Filed 3–27–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 79F–0401]

Thomas J. Lipton, Inc.; Withdrawal of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the withdrawal, without prejudice to a future filing, of a food additive petition (FAP 0A3481) proposing that the food additive regulations be amended to provide for the safe use of methylene chloride as a solvent for decaffeinating tea.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied-Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3110.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of November 23, 1979 (44 FR 67231), FDA announced that a food additive petition (FAP 0A3481) had been filed by Thomas J. Lipton, Inc., 800 Sylvan Ave., Englewood Cliffs, NJ 07632. The petition proposed that the food additive regulations be amended to provide for the safe use of methylene chloride as a solvent for decaffeinating tea. Thomas J. Lipton, Inc., an operating division of Unilever, the successor to Thomas J. Lipton, Inc., has now withdrawn the petition without prejudice to a future filing (21 CFR 171.7).

Dated: March 15, 2000.

Laura M. Tarantino,

Acting Director, Office of Premarket Approval, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7538 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99P–4209]

Determination That Hydrocodone Bitartrate and Acetaminophen Tablets USP, 5 Milligrams/325 Milligrams, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined that hydrocodone bitartrate and acetaminophen tablets USP, 5 milligrams (mg)/325 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDA's) for this drug product.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments) authorizes the approval, under an abbreviated procedure, of duplicate versions of previously approved drug products. Sponsors of ANDA's do not have to repeat the extensive clinical testing necessary to gain approval of a new drug application (NDA). An ANDA sponsor must, with certain exceptions, show that the drug for which approval is sought contains the same active ingredient(s) in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments included what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is commonly referred to as the "Orange Book." Drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.162 (21 CFR 314.162)). Also, before an ANDA that refers to a listed drug may be approved, the agency must determine whether the listed drug was withdrawn from sale for reasons of safety or effectiveness (§ 314.161(a)(1) (21 CFR 314.161(a)(1))). FDA may not approve an ANDA that does not refer to a listed drug.

Mallinckrodt, Inc., submitted a citizen petition dated September 27, 1999 (Docket No. 99P–4209/CP1), under 21 CFR 10.30(b) and 314.122(a), requesting that the agency determine whether hydrocodone bitartrate and acetaminophen tablets USP, 5 mg/325 mg, were withdrawn from sale for reasons of safety or effectiveness and, if not, to keep the drug in the Orange Book. Hydrocodone bitartrate and acetaminophen tablets USP, 5 mg/325 mg, are the subject of ANDA 40–099 held by UCB Pharma, Inc. ANDA 40–099 was approved on June 8, 1987, but the product was never marketed. FDA has determined, for purposes of §§ 314.161 and 314.162(c), that never marketing an approved drug product is equivalent to withdrawing the drug from sale.

FDA has reviewed its records and, under §§ 314.161 and 314.162(c), has determined that hydrocodone bitartrate and acetaminophen tablets USP, 5 mg/325 mg, were not withdrawn from sale for reasons of safety or effectiveness. FDA will, therefore, continue to list this product in the Orange Book's "Discontinued Drug Product List," which lists, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDA's that refer to hydrocodone bitartrate and acetaminophen tablets USP, 5 mg/325 mg, may be approved by the agency.

Dated: March 20, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–7542 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1198]

John J. Ferrante et al.; Proposal to Withdraw Approval of 158 Abbreviated New Drug Applications; Opportunity for a Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on the agency's proposal to withdraw approval of 158 abbreviated new drug applications (ANDA's). The basis for the proposal is that the sponsors have repeatedly failed to file required annual reports for these applications.

DATES: Submit written requests for a hearing by April 27, 2000; submit data and information in support of the hearing request by May 30, 2000.

ADDRESSES: Requests for a hearing, supporting data, and other comments are to be identified with Docket No. 00N–1198 and submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Olivia A. Pritzlaff, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: The holders of approved applications to market new drugs for human use are required to submit annual reports to FDA concerning each of their approved applications in accordance with § 314.81 (21 CFR 314.81). The holders of the applications listed in the following table have failed to submit the required annual reports and have not responded to the agency's request by certified mail for submission of the reports.

ANDA No.	Drug	Applicant
60–058	Chloramphenicol Capsules, 250 milligrams (mg).	John J. Ferrante, c/o Operations Management Consulting, 11 Fairway Lane, Trumbull, CT 06611.
60–062	Penicillin G Potassium.	The Upjohn Co., 700 Portage Rd., Kalamazoo, MI 49001.
60–094	Sterile Penicillin G Procaine Suspension USP.	Do.
60–110	Sterile Dihydrostreptomycin Sulfate USP.	Pfizer Central Research, Pfizer, Inc., Eastern Point Rd., Groton, CT 06340.
60–170	Penicillin G Potassium Tablets, 200,000, 250,000, and 400,000 units.	John J. Ferrante.
60–173	Tetracycline Hydrochloride (HCl) Capsules, 250 mg.	Do.
60–174	Tetracycline Oral Suspension, 125 mg/5 milliliters (mL).	Do.
60–177	Bacitracin-Neomycin Sulfate Polymyxin B Sulfate Ointment.	Do.
60–178	Bacitracin-Neomycin Sulfate Ointment.	Do.
60–179	Oxytetracycline HCl Capsules, 250 mg.	Do.
60–188	Neomycin Sulfate and Hydrocortisone Actetate Ophthalmic Suspension USP.	Akorn, Inc., c/o Walnut Pharmaceuticals, Inc., 1340 North Jefferson St., Anaheim, CA 92807.
60–360	Neomycin and Polymyxin B Sulfate and Bacitracin Ointment with Benzocaine.	Ambix Laboratories, 210 Orchard St., East Rutherford, NJ 07073.
60–435	Tetracycline HCl Tablets USP, 250 mg.	Farmitalia Carlo Erba S.p.A., c/o Montedison, USA, Inc., 1114 Avenue of the Americas, New York, NY 10036.
60–453	Neomycin and Polymyxin B Sulfate and Bacitracin Ointment with Diperodon HCl.	Ambix Laboratories.
60–464	Neomycin Sulfate and Prednisolone.	The Upjohn Co.
60–647	Neo-Polycin Opthalmic Ointment.	Merrell Dow Pharmaceuticals, Inc., P.O. Box 68511, Indianapolis, IN 46268.
60–666	Ampicillin Tihydrate for Oral Suspension.	Beecham Laboratories, 501 Fifth St., Bristol, TN 37620.
60–690	Oxytetracycline HCl.	Pierrel America, Inc., 576 Fifth Ave., New York, NY 10036.
60–720	Tetracycline HCl Capsules, 250 mg.	Towne Paulsen & Co., Inc., 140 East Duarte Rd., Monrovia, CA 91016.
60–757	Polymyxin B Sulfate, 500,000 units.	Burroughs Wellcome Co., 3030 Comwallis Rd., Research Triangle Park, NC 27709.
60–774	Griseofulvin Tablets, 500 mg.	McNeil Consumer, Inc., Camp Hill Rd., Fort Washington, PA 19034.
60–809	Penicillin G Potassium Tablets USP, 100,000, 200,000, 250,000, 400,000, and 500,000 units.	Consolidated Pharmaceutical Group, 6110 Robinwood Rd., Baltimore, MD 21225.
60–855	Oxytetracycline HCl Capsules, 250 mg.	Rachelle Laboratories, Inc., 700 Henry Ford Ave., P.O. Box 2029, Long Beach, CA 90801.
60–869	Oxytetracycline HCl Capsule, 250 mg.	Proter S.p.A., c/o Arnold Buhl Christen, 1000 Connecticut Ave., Washington, DC 20086.
61–174	Candicidin.	Penick Corp., 1050 Wall St. West, Lyndhurst, NJ 07071.
61–396	Hetacillin Capsules.	Bristol-Myers, U.S. Pharmaceutical Group, Evansville, IN 47721–0001.
61–523	Tetracycline HCl Susceptibility Power, 20 mg.	Lederle Laboratories, Division of American Cyanamid Co., Pearl River, NY 10965.
61–676	Ampicillin Trihydrate Capsules, 250 mg and 500 mg.	Public Health Service, Health Service Administration, Perry Point, MD 21902.
61–700	Bacitracin Zinc USP for Compounding.	Alpharma A.S., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024.
61–718	Nystatin Vaginal Tablets USP, 100,000 units.	Holland-Rantos Co., Inc., 310 Enterprise Ave., Trenton, NJ 08638.
61–720	Doxycycline Oral Suspension USP.	Rachelle Laboratories, Inc.

ANDA No.	Drug	Applicant
61–933	Penicillin G Potassium for Injection USP.	E.R. Squibb & Sons, P.O. Box 191, New Brunswick, NJ 08903–0191.
61–953	Doxycycline Hyclate Injection.	Rachelle Laboratories, Inc., P.O. Box 187, Culver, IN 46511.
61–957	Benzylpenicilloyl Polylysine Injection.	Kremers-Urban Co., 5600 West County Line Rd., P.O. Box 2038, Milwaukee, WI 53201.
61–961	Bacitracin Ointment USP.	Clay-Park Labs, Inc., 1700 Bathgate Ave., Bronx, NY 10457.
61–994	Kanamycin Sulfate Injection USP.	Bristol Laboratories, Division of Bristol-Myers Co., P.O. Box 657, Syracuse, NY 13201.
62–007	Bacitracin USP, 50,000 and 10,000 units/vial.	Alpharma A.S., c/o Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024.
62–042	Chloramphenicol Ophthalmic Solution, 0.5%.	Akorn, Inc.
62–138	Cefoxitin Solution.	Pfizer Pharmaceuticals, Inc., 235 East 42d St., New York, NY 10017.
62–224	Neomycin Sulfate Ointment.	Clay-Park Labs, Inc.
62–236	Bacitracin Ointment USP.	Denison Laboratories, Inc., 60 Dunnell Lane, P.O. Box 1305, Pawtucket, RI 02862.
62–248	Gentamicin Sulfate Injection USP.	The Upjohn Co.
62–345	Tetracycline HCl Capsules, 250 mg.	Public Health Service, HAS Supply Service Center, Perry Point, MD 21902.
62–354	Gentamicin Sulfate Injection USP.	Kalapharm, Inc., 145 East 27th St., New York, NY 10016.
62–357	Amoxicillin Trihydrate Capsules, 250 mg and 500 mg.	Public Health Service, HAS Supply Service Center.
62–359	Bacitracin Topical Ointment, 500 units/gram.	NMC Laboratories, Inc., 70–36 83d St., Glendale, NY 11385.
62–361	Bacitracin-Neomycin-Polymyxin B Sulfate.	Do.
62–528	Amoxicillin Capsules USP, 250 mg and 500 mg.	Laboratories Atral, S.A., c/o Louie F. Turner, P.O. Box 331044, Fort Worth, TX 76133–2924.
62–538	Doxycycline Hyclate Tablets USP, 100 mg.	Vintage Pharmaceuticals, Inc., 3241 Woodpark Blvd., Charlotte, NC 28206.
71–278	PEG 3350 and Electrolytes for Oral Solution USP.	E–Z–EM, Inc., 717 Main St., Westbury, NY 11590.
71–320	PEG 3350 and Electrolytes for Oral Solution USP.	DynaPharm, Inc., P.O. Box 2141, Del Mar, CA 92014.
71–419	Chlorhexidine Gluconate Topical Solution 4%.	Hygenics Pharmaceuticals, Inc., 26941 Cabot Rd., suite 128, Laguna Hills, CA 92653.
71–639	Ibuprofen Tablets USP, 200 mg.	Vintage Pharmaceuticals, Inc.
71–644	Ibuprofen Tablets USP, 400 mg.	Do.
71–777	Clorazepate Dipotassium Capsules, 3.75 mg.	Able Laboratories, 333 Cassell Dr., suite 3500, Baltimore, MD 21224.
71–778	Clorazepate Dipotassium Capsules, 7.5 mg.	Do.
71–779	Clorazepate Dipotassium Capsules, 15 mg.	Do.
72–319	Glycoprep (PEG 3350 and Electrolytes for Oral Solution).	Goldline Laboratories, 1900 West Commerical Blvd., Ft. Lauderdale, FL 33309.
72–399	Sulfamethoxazole and Trimethorprim Oral Suspension USP.	NASKA Pharmacal Co., Inc., P.O. Box 898 Riverview Rd., Lincolnton, NC 28093.
72–409	Nifedipine Capsules USP, 10 mg.	Chase Laboratories, Inc., 280 Chestnut St., Newark, NJ 07105.
73–421	Nifedipine Capsules USP, 20 mg.	Do.
74–080	Carbidopa and Levodopa Tablets USP, 10 mg/100 mg, 25 mg/100 mg, and 25 mg/250 mg.	SCS Pharmaceuticals, 4901 Searle Pkwy., Skokie, IL 60077.
80–094	Triple Sulfoid Tablets.	Pal-Pak, Inc., 1201 Liberty St., Allentown, PA 18102.
80–117	Nitrofurantoin Tablets, 50 mg.	Rachelle Laboratories, Inc., 700 Henry Ford Ave., P.O. Box 2029, Long Beach, CA 90801.
80–118	Nitrofurantoin Tablets, 100 mg.	Do.
80–335	Prednisolone Tablets, 5 mg.	Central Pharmaceutical, Inc., 110–128 East Third St., Seymour, IN 47274.
80–375	Lidocaine HCl Injection USP, 2%.	Rachelle Laboratories, Inc.
80–376	Lidocaine HCl Injection USP, 1%.	Do.
80–481	Hydrocortisone Ointment USP.	C & M Pharmacal, Inc., 1721 Maple Lane, Hazel Park, MI 48030–1215.
80–482	Hydrocortisone Cream USP.	Do.
80–562	Prednisolone Tablets, 2.5 mg and 5 mg.	John J. Ferrante.
80–568	Hydrocortisone Tablets, 10 mg and 20 mg.	Do.
80–967	Vitamin A Capsules USP.	West-Ward, Inc., 465 Industrial Lane, Eatontown, NJ 07724.
81–008	Chlorzoxazone Tablets USP, 500 mg.	Ferndale Laboratories, Inc., 780 West Eight Mile Rd., Ferndale, MI 48220.
83–102	Vitamin D Capsules, 50,000 units.	West-Ward, Inc.
83–156	Hydrocortisone Acetate Cream, 1.0%.	Parke-Davis, Div. of Warner-Lambert Co., 201 Tabor Rd., Morris Plains, NJ 07950.
83–161	Dexamethasone Sodium Phosphate Injection.	Dell Laboratories, Inc., 668 Front St., Teaneck, NJ 07666.
83–358	Prednisolone Sodium Phosphate Ophthalmic Solution USP.	Akorn, Inc.
83–400	Propoxyphene HCl Capsules USP, 65 mg.	Rachelle Laboratories, Inc.
83–643	Acetaminophen and Codeine Phosphate Tablets, 325 mg/30 mg.	Camrick Laboratories, Inc., 65 Horse Hill Rd., Cedar Knolls, NJ 07927.
83–682	Phendimetrazine Tartrate Tablets USP, 35 mg (yellow).	Zenith Laboratories, Inc., 140 Legrand Ave., Northvale, NJ 07647.
83–787	Chlorpheniramine Maleate Tablets, 4 mg.	West-Ward, Inc.

ANDA No.	Drug	Applicant
83–790	Phendimetrazine Tartrate Tablets USP, 35 mg.	Numark Laboratories, Inc., 75 Mayfield Ave., Edison, NJ 08837.
83–791	Nitrofurazone Powder.	Roberts Laboratories, Inc., 4 Industrial Way West, Eatontown, NJ 07724.
83–829	Chlorpromazine HCl Tablets USP.	Rachelle Laboratories, Inc.
83–977	Selenium Sulfide.	USV Pharmaceutical Corp., One Scarsdale Rd., Tuckahoe, NY 10707.
84–030	Meprobamate Tablets, 400 mg	Ferndale Laboratories, Inc.
84–185	Bethanechol Chloride Tablets, 10 mg.	Wendt Laboratories, Inc., 100 Nancy Dr., P.O. Box 128, Belle Plaine, MN 56011.
84–186	Bethanechol Chloride Tablets, 25 mg.	Do.
84–255	Sulfasalazine Tablets, 500 mg.	William H. Rorer, Inc., 500 Virginia Dr., Fort Washington, PA 19034.
84–337	Sulfisoxasole Tablets, 500 mg.	Rachelle Laboratories, Inc.
84–377	Prednisone Capsules, 50 mg.	R. P. Scherer Corp., 2725 Scherer Dr., St. Petersburg, FL 33702.
84–492	Prednisolone Acetate Injection.	Akorn, Inc.
84–563	Aminophylline Tablets, 200 mg.	ICN Pharmaceuticals, Inc., 5040 Lester Rd., Cincinnati, OH 45213.
84–639	Chlordiazepoxide HCl Capsules USP, 10 mg.	Rachelle Laboratories, Inc.
84–727	Lidocaine HCl Injection 2%.	Pharmaton, Inc., 150 East 58th St., New York, NY 19155.
84–728	Lidocaine HCl Injection, 2% with Epinephrine 1:50,000.	Pharmaton, Inc., c/o Bass, Ullman & Lustrigman, 747 Third Ave., New York, NY 10017.
84–855	Dexamethasone Sodium Phosphate Ophthalmic Solution USP, 0.1%.	Akorn, Inc.
85–039	Folic Acid Tablets USP, 1 mg.	Wendt Laboratories, Inc.
85–040	Isoniazed Tablets USP, 100 mg.	Do.
85–041	Meclizine HCl Tablets, 25 mg.	Do.
85–042	Methocarbamol Tablets USP, 500 mg.	Do.
85–044	Reserpine Tablets USP, 0.25 mg.	Do.
85–086	Chlordiazepoxide HCl Capsules, 5 mg.	Rachelle Laboratories, Inc.
85–087	Chlordiazepoxide HCl Capsules USP, 25 mg.	Do.
85–091	Isoniazid Tablets USP, 100 mg.	Pharmavite Corp., 15451 San Fernando Mission Blvd., P.O. Box 9606, Mission Hills, CA 91346–9606.
85–104	Chlorpheniramine Maleate Tablets USP, 4 mg.	Do.
85–118	Chlordiazepoxide HCl Capsules, 5 mg.	John J. Ferrante.
85–119	Chlordiazepoxide HCl Capsules, 10 mg.	Do.
85–120	Chlordiazepoxide HCl Capsules, 25 mg.	Do.
85–341	Butabartital Sodium Tablets USP, 30 mg.	Vale Chemical Co., Inc., 1201 Liberty St., Allentown, PA 18102.
85–345	Butabartital Sodium Tablets USP, 15 mg.	Do.
85–477	Secobarbital Sodium Capsules, 100 mg.	ICN Pharmaceuticals, Inc., 222 North Vincent Ave., Covina, CA 91722.
85–509	Diphenoxylate HCl and Atropine Sulfate Tablets USP, 2.5 mg/0.025 mg.	Inwood Laboratories, Inc., Subsidiary of Forest Labs, Inc., 150 East 58th St., New York, NY 10155.
85–539	Triamcinolone Acetonide Cream USP, 0.1%, 0.5%, and 0.025%.	Zenith Goldline Pharmaceuticals, Inc.,
85–630	Trichlormethiazide Tablets, 4 mg.	Lannett Co., Inc., 9000 State Rd., Philadelphia, PA 19136.
85–733	Hydrocortisone Cream USP, 1%.	Zenith Goldine Pharmaceuticals, Inc.
85–777	Selenium Sulfide USP.	Do.
85–851	Imipramine HCl Tablets USP, 25 mg.	A. H. Robins Co., 1407 Cummings Dr., P.O. Box 26609, Richmond, VA 23261–6609.
86–116	Phendimetrazine Tartrate Tablets, 17.5 mg.	Camall Co., P.O. Box 218, Washington, MI 48094.
86–129	Heparin Sodium Injection USP, 1,000 units/mL.	Pharma-Serve, Inc., 218–20 98th Ave., Queens Village, NY 11429.
86–543	Diphenhydramine HCl Capsules, 25 mg.	Newtron Pharmaceuticals, Inc., 155 Knickerbocker Ave., Bohemia, NY 11716.
86–544	Diphenhydramine HCl Capsules, 50 mg.	Do.
86–766	Nitrofurazone Ointment 0.2%.	Wendt Laboratories, Inc.
87–081	Nitrofurazone Solution 0.2%.	Do.
87–328	Trifluoperazine HCl Tablets USP, 5 mg.	Zenith Goldline Pharmaceuticals, Inc.
87–375	Triamcinolone Acetonide Ointment USP, 0.025%.	Do.
87–376	Triamcinolone Acetonide Ointment USP, 0.5%.	Do.
87–377	Triamcinolone Acetonide Ointment USP, 0.1%.	Do.
87–427	Hydrocortisone Cream USP, 1%.	Do.
87–428	Triamcinolone Acetonide Cream USP, 0.5%.	Do.
87–429	Triamcinolone Acetonide Cream USP, 0.1%.	Do.
87–430	Triamcinolone Acetonide Cream USP, 0.025%.	Do.
87–489	Hydrocortisone Lotion USP, 1%.	Heran Pharmaceutical, Inc., 7215 Eckhert Rd., San Antonio, TX 78238.
87–612	Trifluoperazine HCl Tablets USP, 1 mg.	Zenith Goldline Pharmaceuticals, Inc.
87–613	Trifluoperazine HCl Tablets USP, 2 mg.	Do.
87–614	Trifluoperazine HCl Tablets USP, 10 mg.	Do.

ANDA No.	Drug	Applicant
87–628	Butalbital, Acetaminophen, and Caffeine Capsules, 50 mg/325 mg/40 mg.	Roberts/Hauck Pharmaceuticals, Inc., Six Industrial Way West, Eatontown, NJ 07724.
87–818	Sulfacetamide Sodium Ophthalmic Solution, 10%.	Bausch & Lomb Pharmaceuticals, 8500 Hidden River Pkwy., Tampa, FL 33637.
87–834	Hydrocortisone USP (micronized powder).	Torch Laboratories, Inc., P.O. Box 248, Reisterstown, MD 21136.
87–865	Chlorpromazine HCl Tablets, 25 mg.	West-Ward, Inc.
88–024	Phendimetrazine Tartrate Extended-Release Capsules, 105 mg.	Numark Laboratories, Inc., 75 Mayfield Ave., Edison, NJ 08837.
88–059	Sulfacetamide Sodium and Prednisolone Acetate Ophthalmic Suspension USP, 10%/0.5%.	Akorn, Inc.
88–089	Sulfacetamide Sodium and Prednisolone Acetate Ophthalmic Suspension USP, 10%/0.5%.	Bausch & Lomb Pharmaceuticals.
88–189	Reserpine and Hydrochlorthiazide Tablets USP, 0.125 mg/50 mg.	West-Ward, Inc.
88–255	Theophylline Sustained-Release Capsules, 300 mg.	R. P. Scherer North America, P.O. Box 5600, Clearwater, FL 33518.
88–393	Hydroxyzine Pamoate Capsules, 50 mg.	Vanguard Labs, Packaging Div. of MWM Corp., 101–107 Samson St., P.O. Box K, Glasgow, KY 42141.
88–447	Tropicamide Ophthalmic Solution USP, 1%.	Akorn, Inc.
88–474	Triprolidine HCl and Pseudoephedrine HCl, 1.25 mg/5 mL and 30 mg/5 mL.	Newtron Pharmaceuticals, Inc.
89–268	Butalbital and Acetaminophen Capsules, 50 mg/325 mg.	Dunhall Pharmaceuticals, Inc., P.O. Box 100, Gravette, AR 72736.
89–273	Hydrocortisone Cream USP, 1.0%.	Topiderm, Inc., 155 Knickerbocker Ave., Bohemia, NY 11716.
89–274	Triamcinolone Acetonide Cream USP, 0.025%.	Do.
89–275	Triamcinolone Acetonide Cream USP, 0.1%.	Do.
89–276	Triamcinolone Acetonide Cream USP, 0.5%.	Do.
89–495	Hydrocortisone Lotion USP, 1%.	Beta Dermaceuticals, Inc., 5419 Bandera Rd., suite 708, San Antonio, TX 78238.
89–805	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/30 mg.	Vintage Pharmaceuticals, Inc.
89–828	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/60 mg.	Do.
89–990	Acetaminophen and Codeine Phosphate Tablets USP, 300 mg/15 mg.	Do.

Therefore, notice is given to the holders of the applications listed in the table and to all other interested persons that the Director of the Center for Drug Evaluation and Research proposes to issue an order under section 505(e) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(e)) withdrawing approval of the applications and all amendments and supplements thereto on the ground that the applicants have failed to submit reports required under § 314.81.

In accordance with section 505 of the act and 21 CFR part 314, the applicants are hereby provided an opportunity for a hearing to show why the applications listed previously should not be withdrawn and an opportunity to raise, for administrative determination, all issues relating to the legal status of the drug products covered by these applications.

An applicant who decides to seek a hearing shall file: (1) On or before April 27, 2000, a written notice of participation and request for a hearing, and (2) on or before May 30, 2000, the data, information, and analyses relied on to demonstrate that there is a genuine and substantial issue of fact that requires a hearing. Any other interested person may also submit comments on this notice. The procedures and requirements governing this notice of opportunity for a hearing, notice of participation and request for a hearing, information and analyses to justify a hearing, other comments, and a grant or denial of a hearing are contained in § 314.200 and in 21 CFR part 12.

The failure of an applicant to file a timely written notice of participation and request for a hearing, as required by § 314.200, constitutes an election by that applicant not to avail itself of the opportunity for a hearing concerning the proposal to withdraw approval of the applications and constitutes a waiver of any contentions concerning the legal status of the drug products. FDA will then withdraw approval of the applications and the drug products may not thereafter lawfully be marketed, and FDA will begin appropriate regulatory action to remove the products from the market. Any new drug product marketed without an approved new drug application is subject to regulatory action at any time.

A request for a hearing may not rest upon mere allegations or denials, but must present specific facts showing that there is a genuine and substantial issue of fact that requires a hearing. Reports submitted to remedy the deficiencies must be complete in all respects in accordance with § 314.81. If the submission is not complete or if a request for a hearing is not made in the required format or with the required reports, the Commissioner of Food and Drugs will enter summary judgment against the person who requests the hearing, making findings and conclusions, and denying a hearing.

All submissions under this notice of opportunity for a hearing must be filed in four copies. Except for data and information prohibited from public disclosure under section 301 of the act (21 U.S.C. 331(j)) or 18 U.S.C. 1905, the submissions may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 505 (21 U.S.C. 355)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82).

Dated: March 13, 2000.

Janet Woodcock,

Director, Center for Drug Evaluation and Research.

[FR Doc. 00–7589 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Circulatory System Devices Panel of the Medical Devices Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committee: Circulatory System Devices Panel of the Medical Devices Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on April 4, 2000, 8 a.m. to 6 p.m.

Location: Holiday Inn, Walker/Whetstone Rooms, Two Montgomery Village Ave., Gaithersburg, MD.

Contact Person: John E. Stuhlmuller, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8243, ext. 157, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area), code 12625. Please call the Information Line for up-to-date information on this meeting.

Agenda: There will be a brief FDA presentation on the least burdensome provisions of the FDA Modernization Act of 1997. Subsequently, the committee is being asked to provide input to the agency regarding the design of clinical trials for the following: (1) Devices using spinal cord stimulation in the treatment of angina pectoris; (2) rate-responsive pacemakers, specifically, the evaluation of rate-adaptive features; and (3) devices used in the treatment of atrial fibrillation. Background information, questions for the panel, and a bibliography for each topic to be discussed by the committee are available to the public on the Internet at http://www.fda.gov/cdrh/upadvmtg.html.

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by March 28, 2000. Oral presentations from the public will be scheduled between approximately 8 a.m. and 9 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before March 28, 2000, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

FDA regrets that it was unable to publish this notice 15 days prior to the April 4, 2000, Circulatory System Devices Panel of the Medical Device Advisory Committee meeting. Because the agency believes there is some urgency to bring these issues to public discussion and qualified members of the Circulatory System Devices Panel were available at this time, the Commissioner of Food and Drugs concluded that it was in the public interest to hold this meeting even if there was not sufficient time for the customary 15-day public notice.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: March 20, 2000.

Linda A. Suydam,

Senior Associate Commissioner.

[FR Doc. 00–7543 Filed 3–27–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2000 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of funding availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Treatment (CSAT) announces the availability of FY 2000 funds for grants for the following activity. This activity is discussed in more detail under Section 3 of this notice. This notice is not a complete description of the activity; potential applicants must obtain a copy of the Program Announcement, including Part I, Programmatic Guidance for Grants to Expand Substance Abuse Treatment Capacity in Targeted Areas of Need, and Part II, General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements, before preparing an application.

Activity	Application deadline	Estimated funds available, FY 2000	Estimated No. of Awards	Project period
PRC Implementation Program	June 13, 2000	$3,000,000	8–10	Up to 3 years.

The actual amount available for awards and their allocation may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2000 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–113. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The SAMHSA Centers' substance abuse and mental health services activities address issues related to Healthy People 2000 objectives of Mental Health and Mental Disorders; Alcohol and Other Drugs; Clinical Preventive Services; HIV Infection; and Surveillance and Data Systems. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–0) or Summary Report: Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: 202–512–1800).

SAMHSA will publish additional notices of available funding opportunities for FY 2000 in subsequent issues of the **Federal Register**.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 6/99; OMB No. 0920–0428). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from the organization specified for the activity covered by this notice (see Section 3).

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. This is to ensure receipt of all necessary forms and information, including any specific program review and award criteria.

The PHS 5161–1 application form and the full text of the activity described in Section 4 are also available electronically via SAMHSA's World Wide Web Home Page (address: http://www.samhsa.gov).

Application Submission

Applications must be submitted to: SAMHSA Programs, Center for Scientific Review, National Institutes of Health, Suite 1040, 6701 Rockledge Drive MSC–7710, Bethesda, Maryland 20892–7710*, (* Applicants who wish to use express mail or courier service should change the zip code to 20817.)

Applications sent to an address other than the address specified above will be returned to the applicant without review.

Application Deadlines

The deadline for receipt of applications is listed in the table above. Competing applications must be received by the indicated receipt date to be accepted for review. An application received after the deadline may only be accepted if it carries a legible proof-of-mailing date assigned by the carrier and that date is not later than one week prior to the deadline date. Private metered postmarks are not acceptable as proof of timely mailing. Applications received after the deadline date will be returned to the applicant without review.

FOR FURTHER INFORMATION CONTACT: Requests for activity-specific technical information should be directed to the program contact person identified for the activity covered by this notice (see Section 3). Requests for information concerning business management issues should be directed to the grants management contact person identified for the activity covered by this notice (see Section 3).

Programmatic Information

1. Program Background and Objectives

SAMHSA's mission within the Nation's health system is to improve the quality and availability of prevention, early intervention, treatment, and rehabilitation services for substance abuse and mental illnesses, including co-occurring disorders, in order to improve health and reduce illness, death, disability, and cost to society.

Reinventing government, with its emphases on redefining the role of Federal agencies and on improving customer service, has provided SAMHSA with a welcome opportunity to examine carefully its programs and activities. As a result of that process, SAMHSA moved assertively to create a renewed and strategic emphasis on using its resources to generate knowledge about ways to improve the prevention and treatment of substance abuse and mental illness and to work with State and local governments as well as providers, families, and consumers to effectively use that knowledge in everyday practice.

2. Criteria for Review and Funding

2.1 General Review Criteria

Competing applications requesting funding under the specific project activity in Section 3 will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

2.2 Award Criteria for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

3. Special FY 2000 SAMHSA Activities

Cooperative Agreement to Bridge the Gap: Phase II Implementation of Community-Based Practice/Research Collaboratives (Short Title: PRC Implementation Program) number TI 00–004.

- *Application Deadline:* June 13, 2000.
- *Purpose:* The overall purpose of the PRC program is to improve the quality of substance abuse treatment by increasing interaction and knowledge exchange among key community based stakeholders, including substance abuse treatment providers, community-based organizations providing support services to substance abusers, researchers, and policy makers, including health plan managers and purchasers of substance abuse treatment. Prior to the Implementation Phase of the program, it is expected that the PRCs will have developed the necessary infrastructure and capacity to conduct knowledge development and application studies to be able to participate effectively in federally-funded research efforts. Through these efforts, the PRCs will be able, over time, to make significant contributions to the field's knowledge and understanding about substance abuse treatment.

In order to accomplish the goals of the Phase II PRC Implementation Program, applicants are required to have met the following criteria: (1) An operational, community based PRC has been established in which providers participate as full partners with researchers, policy makers and other stakeholder groups; (2) a formal organizational structure and statement of operating procedures, roles and responsibilities of stakeholder members and designated consumer representative has been developed and endorsed by stakeholder groups; (3) a formal needs assessment of PRC stakeholders has been conducted and utilized to establish a consensus based research and knowledge application agenda and implementation plan; and (4) stakeholders have endorsed the implementation plan.

- *Eligible Applicants:* Applications for Implementation Cooperative Agreements may be submitted by domestic public and private nonprofit and for-profit entities, such as community-based organizations, public or private universities, colleges, and hospitals, units of State or local government, and Indian Tribes and tribal organizations.
- *Amount:* It is estimated that $3.0 million will be available to support approximately 8–10 Implementation awards under this program in FY 2000. Awards are expected to range from $300,000—$400,000 per year in total costs (direct+indirect).
- *Period of Support:* Support may be requested for a period of up to three years. Annual awards will be made subject to continued availability of funds and progress achieved.
- *Catalog of Federal Domestic Assistance Number:* 93.230.
- *Program Contact:* For questions concerning program issues, contact: Frances Cotter, Project Officer, Office of Managed Care, Center for Substance Abuse Treatment, Substance Abuse and Mental Health Services Administration, Rockwall II, Suite 740, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–8796.
- *For questions regarding grants management issues, contact:* Christine Chen, Grants Management Officer, Division of Grants Management, OPS, Substance Abuse and Mental Health Services Administration, Rockwall II, 6th Floor, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–8926.
- *Application kits are available from:* National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345, Telephone: 1–800–729–6686.

4. Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements.

Application guidance materials will specify if a particular FY 2000 activity is subject to the Public Health System Reporting Requirements.

5. PHS Non-Use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

6. Executive Order 12372

Applications submitted in response to the FY 2000 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. E.O. 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more-than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: March 12, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–7544 Filed 3–27–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Grant Programs Technical Assistance Workshops; Notice of Meetings

AGENCY: Center for Substance Abuse Treatment (CSAT), Substance Abuse and Mental Health Services Administration (SAMHSA), HHS.

ACTION: Notice of Technical Assistance Sessions for Potential Applicants for the SAMHSA/CSAT Grant Program: TI 00–004—"Cooperative Agreement to Bridge the Gap: Phase II Implementation of Community-Based Practice/Research Collaboratives.

Notice is hereby given for the following technical assistance sessions to be provided to prospective applicants for SAMHSA/CSAT Guidance for Applicants (GFA) TI 00–004. The text of the grant announcement can be downloaded from the SAMHSA Web Site at www.samhsa.gov or ordered from the National Clearinghouse for Alcohol and Drug Information (NCADI) at (800) 729–6686.

The technical assistance sessions will be held as follows: Session I—April 5, 2000, 1–3 p.m., 7th Floor Conference Room, Rockwall II Building, Center for Substance Abuse Treatment, 5515 Security Lane, Rockville, MD 20852; Session II—April 12, 2000, 3–5 p.m., Hilton New Orleans Riverside, New Orleans, LA. Each two-hour session will follow the following format: (1) Presentation of the key components of the GFA, and (2) question and answer session.

Potential applicants are strongly encouraged to review the grant announcement prior to attending a technical assistance session to determine if they meet the capability criteria listed below for the implementation phase. Applications may be submitted by domestic public and private non-profit and for-profit entities such as community-based organizations, public or private universities, colleges, and hospitals, and units of State or local government. In order to accomplish the goals of the Phase II PRC Implementation Program, applicants are required to have met the following criteria: (1) An operational, community based PRC has been established in which providers participate as full partners with researchers, policy makers and other stakeholder groups; (2) a formal organizational structure and statement of operating procedures, roles and

responsibilities of stakeholder members and designated consumer representative has been developed and endorsed by stakeholder groups; (3) a formal needs assessment of PRC stakeholders has been conducted and utilized to establish a consensus based research and knowledge application agenda and implementation plan; and (4) stakeholders have endorsed the implementation plan.

There is no registration fee for the sessions. Preregistration is encouraged. Registrants are responsible for costs associated with their own travel, meals and lodging. To preregister and for logistical assistance, please contact Un Lee, Tascon, Inc., (301) 315–9000. Session confirmation will be faxed.

Dated: March 21, 2000.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 00–7545 Filed 3–27–00; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Associated Environmental Assessment for the Washington Coast National Wildlife Refuges (Refuges), Which Are Located in Clallam, Jefferson, and Grays Harbor Counties, WA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent to prepare a comprehensive conservation plan and associated environmental assessment.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and an associated environmental assessment for the Washington Coast National Wildlife Refuges (Refuges), which are composed of Flattery Rocks National Wildlife Refuge (NWR), Quillayute Needles NWR, and Copalis NWR, located in Clallam, Jefferson, and Grays Harbor Counties, Washington. The Service is furnishing this notice in compliance with Service CCP policy and the National Environmental Policy Act (NEPA) and implementing regulations to advise other agencies and the public of our intentions, and to obtain suggestions and information on the scope of issues to include in the environmental document.

DATES: Submit comments on issues to include on or before April 29, 2000.

ADDRESSES: Address comments and requests for more information, to be put on the mailing list, or for a copy of the most recent planning update to: Refuge Manager, Washington Maritime National Wildlife Refuge Complex, 33 S. Barr Road, Port Angeles, Washington, 98362, or call the Complex at (360) 457–8451. Submit faxes to (360) 457-9778. If you choose to submit comments via electronic mail, visit our Pacific Region Planning Website: *http://www.r1.fws.gov/planning/plnhome.html.* Please send these comments using the "Guest Mailbox" provided at that site.

FOR FURTHER INFORMATION CONTACT: Refuge Manager Kevin Ryan at the address and phone number above.

SUPPLEMENTARY INFORMATION: The Washington Coast NWRs (Flattery Rocks, Quillayute Needles, and Copalis NWRs), were established in 1907 by Theodore Roosevelt for the purpose of being "a preserve and breeding ground for native birds and animals" (Executive Orders 703, 704, and 705). These three Refuges extend over 100 miles along the outer coast of Washington State and include more than 600 rocks, reefs, and islands. Approximately 80% of the seabirds in the State nest within the Refuges. It was the original intent, with the establishment of the Refuges, to preserve these islands in a natural condition and to minimize human intrusion. As such, all islands are closed to public entry. Because of the physical characteristics of these islands, landings and access are extremely hazardous. On October 23, 1970, the Washington Islands Wilderness was established by Public Law 92–504. This placed all the islands, except for Destruction and James Islands, under wilderness designation.

It is Service policy to have all lands within the National Wildlife Refuge System managed in accordance with an approved Comprehensive Conservation Plan. This CCP will guide management decisions and identify Refuge goals, long-range objectives, and strategies for achieving Refuge purposes. Public input into this planning process is encouraged. The CCP will provide other agencies and the public with a clear understanding of the desired conditions for the Refuges and how the Service will implement management strategies over the next 15 years. Until the CCP is completed, Refuge management will continue to be guided by official Refuge purposes; Federal legislation regarding management of national wildlife refuges; and other legal, regulatory, and policy guidance.

Comments and concerns received will be used to develop goals, key issues and management strategies, and draft alternatives. Additional opportunities for public participation will occur throughout the CCP process, which is expected to be completed in early 2001. Interested federal, state, and local agencies, Tribes, organizations, and individuals will be contacted for input.

At this time, preliminary issues identified for the CCP include: how to handle wildlife disturbances caused by low-flying aircraft and by people trespassing during low tides or in water craft; the amount of research opportunities that the Refuges can support without adversely impacting biological resources; determining if invasive species are a problem, and if so, what would be the appropriate management response; determining what opportunities exist to cooperate with agencies responsible for pollution threats; and identifying off-site educational/interpretative opportunities in cooperation with the National Park Service, National Marine Sanctuary, state and local government, and Tribes. Because of their inaccessibility and the sensitivity of wildlife to disturbance, public uses of the Refuges' Islands are not a part of the long-term planning. A range of alternatives (and their effects on the biological resources and on the local communities) that address the issues and management strategies associated with these issues will be evaluated in the environmental assessment.

With the publication of this notice, the public is encouraged to send written comments on these and other issues, courses of action that the Service should consider, and potential impacts that could result from CCP implementation on Washington Coast National Wildlife Refuges.

All comments received from individuals become part of the official public record. Requests for such comments will be handled in accordance with the Freedom of Information Act, Council on Environmental Quality's NEPA Regulations 40 CFR 1506.6(f), and other Service and Department policy and procedures. When requested, the Service generally will provide comment letters with the names and addresses of the individuals who wrote the comments. However, the telephone number of the commenting individual will not be provided in response to such requests to the extent permissible by law. Additionally, public comment letters are not required to contain the author's name, address, or other identifying information. Such comments may be submitted anonymously to the Service.

The environmental review of this project will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR 1500–1508), other appropriate Federal laws and regulations, Executive Order 12996, and Service policies and procedures for compliance with those regulations.

Dated: March 22, 2000.

Thomas Dwyer,

Acting Regional Director, Region 1, Portland, Oregon.

[FR Doc. 00–7608 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Establishment of Management Bodies in Alaska To Develop Recommendations Related to the Spring/Summer Subsistence Harvest of Migratory Birds

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of decision.

SUMMARY: The U.S. Fish and Wildlife Service (Service) published a Notice in the **Federal Register**, 64 FR 35674, July 1, 1999, inviting public comment on an options document entitled, "Forming Management Bodies to Implement Legal Spring and Summer Migratory Bird Subsistence Hunting in Alaska." The document described four models for organizing management bodies as required by the amended migratory bird treaty with Canada. The comment period closed October 29 and, after reviewing the comments, the Alaska Regional Director decided to implement a system combining elements of models 1 and 3 as described in the options document.

DATES: The decision described in this notice will become effective April 27, 2000.

ADDRESSES: Correspondence may be addressed to the Alaska Regional Director, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503; Attn: Migratory Bird Management.

FOR FURTHER INFORMATION CONTACT: Mimi Hogan, 907/786–3673, or Bob Stevens, 907/786–3499, at the above address.

SUPPLEMENTARY INFORMATION:

Background

In 1916 the U.S. Senate ratified the Convention Between the United States and Great Britain (on behalf of Canada) For The Protection Of Migratory Birds. A similar treaty was ratified with Mexico in 1936. The treaties specified a close season on the taking of migratory game birds between March 10 and September 1 of each year. The treaties did not take into account traditional harvests of migratory birds by northern indigenous people during the spring and summer months. This harvest, which had occurred for centuries, was a necessary part of the subsistence lifestyle of the northern people, and continued after the ratification of the treaties. After many years of attempts to change the treaties, the Senate approved Protocol amendments to both treaties in 1997, allowing for the subsistence harvest of migratory birds by indigenous inhabitants of identified subsistence zones in Alaska.

(a) What is the intent of the Protocol amendments? The goals of the Protocol are to allow a traditional subsistence harvest and to improve conservation of migratory birds by allowing for the effective regulation of this harvest. The action is not intended to cause significant increases in the take of migratory birds relative to their continental population sizes.

(b) Who is eligible to harvest in the spring and summer? The U.S. Senate confirmed its understanding at ratification that an eligible indigenous inhabitant is a permanent resident of a village within a subsistence harvest area, regardless of race.

(c) Where are the subsistence harvest areas? According to Protocol documents, most villages north and west of the Alaska range and within the Alaska Peninsula, Kodiak Archipelago, and the Aleutian Islands would qualify as subsistence harvest areas. Anchorage, Matanuska-Susitna and Fairbanks North Star Boroughs, the Kenai Peninsula roaded area, the Gulf of Alaska roaded area and Southeast Alaska would generally not qualify for a spring or summer harvest.

(d) Are there exceptions to the eligible areas? Protocol language allows for limited exceptions so that some individual communities within excluded areas may qualify for designation as subsistence harvest areas for some limited purposes. For example, regulations could allow collecting of gull eggs by some villages in Southeast Alaska.

(e) What other changes does the Protocol mandate? The Protocol amendments call for participation of indigenous inhabitants on management bodies that will be created to ensure an effective and meaningful role for indigenous inhabitants in the conservation of migratory birds.

(f) Who will be on these management bodies and what will they do? The Secretary of State's submittal document accompanying the Protocol confirms that the management bodies will include Native, federal, and State of Alaska representatives as equals, and that they will develop recommendations for, among other things: seasons and bag limits; law enforcement policies; population and harvest monitoring; education programs; research and use of traditional knowledge; and habitat protection.

(g) Where do the recommendations go? Relevant recommendations will be submitted to the U.S. Fish and Wildlife Service and to the Flyway Councils.

Summary of Public Involvement

(a) What public process did you follow before writing the options document entitled, "Forming Management Bodies to Implement Legal Spring and Summer Migratory Bird Subsistence Hunting in Alaska"? To aid in the preparation of the options document entitled, "Forming Management Bodies to Implement Legal Spring and Summer Migratory Bird Subsistence Hunting in Alaska", the Service, the Alaska Department of Fish and Game, and the Native Migratory Bird Working Group held public forums to discuss the amended treaty and to listen to the needs of the subsistence user. The Native Migratory Bird Working Group is a consortium of Alaska Natives, formed by the Rural Alaska Community Action Program to represent the Alaska Native subsistence hunters of migratory birds. Forum locations included Nome, Kotzebue, Fort Yukon, Allakaket, Naknek, Bethel, Dillingham, Barrow, and Copper Center. The Service led additional briefings and discussions at the annual meeting of the Association of Village Council Presidents in Hooper Bay, and for the Central Council of Tlingit & Haida in Juneau. Refuge staffs at the Yukon Delta, Togiak, and Kodiak National Wildlife Refuges conducted public meetings in the villages within their refuge areas and discussed the amended treaty at those meetings. We wrote the four models described in the options document based on what we heard at statewide meetings.

(b) Who received copies of "Forming Management Bodies to Implement Legal Spring and Summer Migratory Bird Subsistence Hunting in Alaska"? In May 1999 we released to the public for

review and comment the options document describing four possible models for establishing management bodies. We mailed copies of that options document to approximately 1350 individuals and organizations on the project mail list, including all tribal councils and municipal governments in Alaska. We distributed an additional 600 copies at public meetings held to discuss the four models. Also, we made the document available on the Fish and Wildlife Service web page.

(c) How long was the public comment period? The comment period was open from the time the document was released the end of May until September 30, 1999. We then extended the opportunity to comment through October 29, 1999.

Analysis of Public Comments

(a) What was the response? We received 60 written comments addressing the formation of management bodies. Of those 60 comments 26 were from tribal governments, 20 from individuals, 10 from organizations, 2 from federal government, 1 from the State of Alaska, and 1 from the Native Migratory Bird Working Group. Comments reflected a wide range of views and did not show a definitive selection of any one model.

(b) What comments did you receive supporting or opposing Model 1? Model 1 proposed one statewide management body with 12 regional bodies providing representation to the statewide body. The statewide management body would consist of three federal, three state, and 12 Native members. Representative comments supporting Model 1: The management body is manageable in size and appears simple, well-balanced, and cost effective. The non-profit organizations identified as partners are well established and accustomed to working with one another. One management body promotes interregional cooperation for management of shared bird populations. It also can better develop interregional management programs and be more creative in resolving conservation issues. Also, one management body provides incentive to reconcile differences instate rather than presenting dissenting views to the Flyway Councils and to the Service Regulations Committee.

Representative comments opposing Model 1: This project adds too much workload on the non-profit agencies leading to limited representation for the more remote villages. The representatives on the management body would need to know all the relative issues statewide resulting in reduced ability to focus on the regional issues. Decisions would not be made at the regional level. People outside the region would be too influential leading to the possibility that the statewide group would override regional needs. The statewide body is too removed from the village. Along that same line, the non-profit agencies should be acting on behalf of its regional people and not have statewide responsibility.

(c) What comments did you receive supporting or opposing Model 2? Model 2 proposed one statewide management body with 10 regional bodies. The Federal Subsistence Regional Advisory Councils would serve as the regional bodies. The statewide management body would consist of two federal, two state, and 10 Native members. Representative comments supporting Model 2: The ten Regional Advisory Councils are already organized and familiar to subsistence users. They obtain local input better than most other groups. Using the Regional Advisory Councils would be efficient, cost effective, the least disruptive, and quickly implemented. One management body would improve communication among all areas of the state and would provide a diversity of views on the management body. It would give each geographic area an opportunity to get a clearer view of the big picture of migratory bird management. One management body would represent Alaska with one unified voice.

Representative comments opposing Model 2: All of the ten Regional Advisory Council representatives would need to know all the issues statewide and not just those of their respective regions. The Regional Advisory Councils are already overworked, especially with the addition of fisheries management issues. Using groups formed pursuant to the Alaska National Interest Lands Conservation Act (ANILCA) to manage a resource for which subsistence harvest is governed by international treaty and regulations promulgated thereunder could be confusing to the management body members as well as to the subsistence hunters.

(d) What comments did you receive supporting or opposing Model 3? Model 3 proposed creating seven management bodies using common resource use patterns to form the boundaries. Membership on the seven management bodies would total 12 federal, 12 state, and 48 Native members. Representative comments supporting Model 3: This model would allow for geographic differences in culture, traditions, hunting styles, and management needs. Input would be more readily received from local subsistence users and decisions would be made regionally. Travel to regional meetings would be affordable.

Representative comments opposing Model 3: With this model no unified voice would be speaking for the subsistence hunter in Alaska. Conflicting recommendations would go forward to the Flyway Councils and the Service Regulations Committee, causing decisions to be made outside Alaska. So many management bodies would tax communication among the regions in the state. This model would be too expensive to administer.

(e) What comments did you receive supporting or opposing Model 4? Model 4 proposed creating three management bodies using shared bird populations to form the boundaries. Membership on the three bodies would total three federal, three state, and 13 Native members. Representative comments supporting Model 4: This model provides strong relationships with the Flyway Councils. It is aligned well for management of shared species and similar harvest patterns.

Representative comments opposing Model 4: The culture of the people in the Interior region and the bird populations are too different to be combined with those of the Northwest and Arctic Slope. Village leaders are very busy with a wide range of responsibilities to uphold. There are not enough leaders in the rural communities to accommodate the needs created by this model. The workload generated by this model is too much for the non-profit organizations, impacting their ability to adequately involve their people.

(f) Did the Federal Subsistence Regional Advisory Councils provide comments? Yes. In addition to the 60 written comments, 9 of the 10 Federal Subsistence Regional Advisory Councils passed resolutions regarding the four models presented. Five of the councils approved the model using the Regional Advisory Councils to provide a representative to one statewide management body. Reasons for supporting that model included a concern for adequate communication if too many different groups became involved in management of subsistence resources. They also felt that they were the most knowledgeable about subsistence issues and that they would be able to begin management more quickly since they already had an organization in place. Four of the Regional Advisory Councils opposed the model involving them. Reasons given for their opposition included a lack of time or the feeling that the regional non-profit organizations had already been involved in the treaty amendments and were more knowledgeable of the issues specific to migratory bird subsistence hunting. One Regional Advisory Council decided not to comment.

(g) How did you address suggestions that did not fit any specific model? We received a few comments that were in the form of recommendations and neither supported nor opposed any of the four models. One comment suggested that the number of agency representatives on the management body remain flexible. We agree. In the May document we stated that both the federal and state governments would place one representative on the management body for each five Native representatives. Our final decision is to place one federal and one state representative on the management body. Regardless of the number of representatives serving on the management body, the Native, federal, and state components included on the management body will serve as equals.

A second comment suggested that the proposals formulated by the management body be submitted to the Board of Game. The Letter of Submittal accompanying the Protocol to the White House stated that recommendations from the management body would be submitted to the U.S. Fish and Wildlife Service and to the Flyway Councils. The Regional Director's decision discussed below incorporates this mandate into the process to be followed.

A third comment suggested that the state representative on the management body be a member of the Alaska Board of Game. It is not the purpose of this Notice to specify who will serve on the management body or how those selections should be made. In the case of the State of Alaska, representatives will be selected by the Commissioner of the Department of Fish and Game.

A fourth comment suggested that the Fish and Wildlife Service have an ad hoc member from the lower 48 states on the management body. A primary purpose of the management body is to afford the indigenous inhabitants of the State of Alaska an effective and meaningful role in the conservation of migratory birds including the development and implementation of regulations affecting the non-wasteful taking of migratory birds and the collection of their eggs. The management body will formulate recommendations after reviewing technical information of local and national significance. This information will be provided by federal and state technical support staff. Flyway Councils and Fish and Wildlife Service staff in the lower 48 states will review the recommendations before regulations are promulgated. This process assures protection of the national interest while initiating regulations at the local level.

A fifth comment to be addressed suggested that the state fish and game advisory councils and the Alaska Board of Game be involved in the regulatory process, possibly through an intergovernmental agreement. Management body meetings, as well as regional meetings, will be conducted as a part of a public process. The meetings will be open to public comment, and organizations as well as individuals will be encouraged to participate. By participating in this manner the fish and game advisory councils and the Alaska Board of Game can become involved in the initial stages of the regulatory process. As with all waterfowl regulations, the State Board of Game will establish state regulations.

The Alaska Department of Fish and Game supported Model 1, believing that one management body would be more effective and could be more creative in developing regulations and working on conservation issues. One management body would also provide incentive to resolve regional differences within Alaska and before recommendations are forwarded to the Flyway Councils and the Service Regulations Committee. The State also endorsed consensus as the primary means of decision making and full involvement of the public in the process. The State strongly supported the establishment of state migratory bird hunting regulations within frameworks provided in federal regulations.

The Native Migratory Bird Working Group (NMBWG) proposed a fifth model. They proposed seven regional management bodies, using boundaries as proposed in Model 3. Each of the seven bodies would have Native, federal, and state representation. A statewide management body would coordinate overlapping regional issues and provide for sharing information between regions. The NMBWG could serve initially to represent subsistence hunters on the statewide body until the partner organizations appoint or select their representatives.

The NMBWG made several additional comments. They proposed that the management bodies address all issues related to migratory birds for all seasons and not be limited to spring/summer hunting. Article II(4)(b)(ii) of the Protocol provides for an exception to the close season on migratory game birds between March 10 and September 1 found in Article II(1). The intent of amending the Migratory Bird Treaty with Canada has always been to provide for a spring/summer subsistence harvest during the close season. The management of the hunt for this period (March 10–September 1) will be done through management bodies established in the amendment. Recommendations from the management bodies will address regulations for spring and summer harvest only.

The NMBWG proposed an official seat for a Native representative on the Flyway Council and the Technical Committee of each of the four Flyway Councils. The Service cannot provide an official seat for a representative on any of the Flyway Councils or Technical Committees. The Flyway Councils and Flyway Technical Committees are comprised of administrative and technical representatives, respectively, from each state wildlife agency. Flyway Councils are governed by by-laws, and members are comprised mostly of state agency directors or their designated representatives. While there is Service participation in Flyway meetings, final recommendations are formulated by the state personnel involved. It is our understanding that representatives of the Alaska Management Body probably would be welcome on the Flyway Technical Committees, but that decision is up to the respective Flyway Councils, not the Service.

The NMBWG requested that a Native representative be provided a meaningful role on the Service Regulations Committee. Only Service officials serve on the Regulations Committee. We propose that two representatives from the Statewide Management Body attend the Service Regulations Committee to provide technical information and to answer questions regarding spring and summer harvest regulations for Alaska.

The NMBWG suggested that the Service Regulations Committee provide its concerns in writing if a recommendation is rejected. Whenever a proposal is sent to the Service Regulations Committee, the Service responds in writing stating its position.

The NMBWG suggested a voting system that would tend to avoid 2 to 1 votes on the management bodies when consensus could not be reached. Details regarding the role of voting on the management bodies will be determined when the management bodies have an opportunity to develop an operations manual outlining their policies and procedures.

The NMBWG requested that neither the State Board of Game nor the Federal Subsistence Board have any jurisdiction over the subsistence migratory bird harvest—spring, summer, or fall. The Federal Subsistence Board will not be a

part of the management body organization. However, the states are actively involved in migratory game bird management and have considerable involvement in regulatory matters. This relationship is longstanding and assures that state interests are considered fully, if not always satisfied, in the exercise of federal authority to promulgate regulations governing migratory bird hunting. The Service affirms the State's right, as defined in Section 708 of the Migratory Bird Treaty Act, to make or enforce laws or regulations as long as they are not inconsistent with federal laws or regulations.

Decision on Format of Management Bodies

(a) Which of the 4 models in the options document did you choose? In our options document, "Forming Management Bodies to Implement Legal Spring and Summer Migratory Bird Subsistence Hunting in Alaska" , we said that additional models or a combination of models would be considered, depending on the comments received during the review period. What we heard during the comment period were strong statements for (1) the need for a unified statewide body in order to coordinate overlapping issues and to communicate with subsistence hunters from all over the state; and (2) the need to keep discussion and decision-making regarding regional issues at the regional level where the user could be more involved. In order to address those two needs, we have decided to combine elements of model 1, (one statewide management body with 12 regions providing one representative each) with elements of model 3, (seven management bodies representing seven geographic areas.) Details on how we propose to combine and modify the two models follows.

(b) What is the format for management bodies? A single Statewide Management Body will be formed consisting of representatives from each of seven regional bodies and one representative each from the Fish and Wildlife Service and the Alaska Department of Fish and Game. Membership on the seven regional bodies will be comprised of subsistence users from each of the seven regions. The Service will contract with 12 partner organizations (see(e)), to organize and administer the regional bodies. The Native Migratory Bird Working Group will serve initially to represent migratory bird subsistence users on the statewide body until the regional bodies appoint or select their representatives.

(c) What is the function of the Statewide Management Body? The Statewide Management Body will provide meaningful input in the development of recommendations on regulations for spring and summer harvest and conservation of migratory birds in Alaska. In doing so, it will provide guidelines within which the regional bodies can create recommendations. An example of a guideline would be no hunting of spectacled or Steller's eiders because their populations are listed as threatened. Another statewide guideline might prohibit harvest during the nesting season but the regions would have flexibility to determine dates that recognize differences in timing and distribution of migratory birds. We believe the guidelines will be relatively stable and might need little modification from year to year. The regional bodies will recommend regulations based on regional needs but the recommendations must be within the broad guidelines established by the Statewide Management Body. The Statewide Management Body will coordinate the recommendations from the seven regional bodies and forward them to the Service and Flyway Councils.

(d) How will the Statewide Management Body operate? The Statewide Management Body will include Native, federal, and state representatives as equals. The Statewide Management Body will strive for consensus on all decisions. The Statewide Management Body will develop an operating manual providing options for voting on issues that are not reached by consensus. All meetings will be open and accessible to the public. Any member of the public will be able to file proposals and statements with the Statewide Management Body; and any member of the public may speak at the meeting, consistent with the operating procedures.

(e) Who are the regional bodies? Consistent with the recommendation of the Native Migratory Bird Working Group, the seven regional bodies will be organized along the lines of Model 3. The seven regional bodies will be made up of subsistence users and will be organized by the following 12 partner organizations that will be responsible for administering the regional programs:

1. Chugachmiut, Cook Inlet Tribal Council, Copper River Native Association, and Central Council, Tlingit & Haida Indian Tribes
2. Aleutian/Pribilof Islands Association, Kodiak Area Native Association
3. Bristol Bay Native Association
4. Association of Village Council Presidents
5. Kawerak
6. Maniilaq Association & the North Slope Borough
7. Tanana Chiefs Conference

(f) What are the responsibilities of the 12 partner organizations? Each of the partner organizations listed above will work with the subsistence users within its region to establish membership on each of the regional bodies. They will be responsible for coordinating meetings within their regions, soliciting proposals and keeping the villages informed.

(g) What are the functions of the regional bodies? The regional bodies have all the functions as the Statewide Management Body as described in the Protocol Letter of Submittal. These are: develop recommendations, for among other things, seasons and bag limits; law enforcement policies; population and harvest monitoring; education programs; research and use of traditional knowledge; and habitat protection.

Each regional body will provide at least one representative to the Statewide Management Body consistent with paragraph (b). However the three regional bodies with more than one administrative partner organization (see (e)) may provide a representative from each of the partner organizations. For example, the regional body administered by Maniilaq Association & the North Slope Borough could choose to send just one representative to the Statewide Management Body to represent the regional body or they could choose one representative from Maniilaq region and one from the North Slope Borough. Total regional representation on the Statewide Management Body could range from seven to 12 members.

(h) How will the regional bodies operate? Each region can decide on the size of its organization, who serves on it, the length of terms, methods of involving subsistence users, and related matters. The state and federal partners will provide technical assistance to the regional bodies but will not serve as members of the regional body or be involved in the decision making of the regional body. As long as the regional bodies operate within the guidelines provided by the Statewide Management Body, the final decision for recommendations that affect only one region would be made solely by that regional body. Regional body recommendations for regulations will be forwarded to the Statewide Management Body. The Statewide Management Body may choose to reject the recommendation from a regional body only when it does not conform with the statewide guidelines.

Although they are referred to as regional bodies for the purpose of this Notice the regional bodies may adopt any name that reflects their mission in their region. For example, the Waterfowl Conservation Committee of the Association of Village Council Presidents is already in existence on the Yukon-Kuskokwim Delta and has been instrumental in the negotiations of the Protocol amendments.

(i) How will the this program be funded? The Service will negotiate annual funding agreements with the administrative partner organizations (see (e) above) to help cover the cost of meetings, travel, village council coordination and training. An important part of this program is monitoring the spring and summer subsistence harvest in order to properly manage migratory birds. Annual funding agreements with Alaska Native Organizations, the Alaska Department of Fish and Game, and others will be used to accomplish harvest monitoring.

(j) How will the Statewide Management Body interact with the Flyways? The State of Alaska is most associated with Pacific coast states and is a member of the Pacific Flyway Council. As necessary, Alaska coordinates with the Atlantic Flyway on tundra swans, the Mississippi Flyway on ducks, and the Central Flyway on mid-continent white-fronted geese, sandhill cranes and ducks. Two representatives from the Statewide Management Body will attend Pacific and Central Flyway Council meetings and can request membership to their Technical Committees that provide the individual Flyway Councils with advice on biological matters. In addition, the responsibilities of the two representatives will include attending the Service Regulations Committee meetings. Representatives will be expected to provide technical information and to answer questions regarding spring and summer harvest regulations for Alaska.

(k) What is the relationship to the federal and state systems for managing migratory birds? The regulations adopted to manage spring and summer subsistence hunting of migratory birds in Alaska will become part of the annual regulatory process currently used by the Service and the State. The Service Regulations Committee will consider the proposed regulations at the same time as those for fall and winter seasons.

The process of developing these regulations begins in January with a meeting of the Service Regulations Committee. Preliminary regulatory proposals are developed for the coming year and published in the **Federal Register** as a notice of proposed rulemaking. The Flyway Councils and their Technical Committees, as well as individual states and the public, then have an opportunity to respond to these proposals. Federal migratory bird hunting regulations are divided into "early season" and "late season" regulations. Early season regulations presently cover all of Alaska's migratory bird seasons, opening as early as September 1. The state adopts migratory bird hunting regulations within the federal frameworks.

Late season regulations cover the normal waterfowl, crane and snipe seasons in the lower-48 states and generally begin on or after October 1. In the next phase, the Service Regulations Committee meets; public hearings are held; proposed frameworks are developed and published in the **Federal Register**; and an abbreviated open comment period is established. Following this comment period, final frameworks are established and published in the **Federal Register**. The **Federal Register** final rule represents the final product of the regulations development process. Alaska's spring and summer regulations could be a part of "late season" regulations schedule in order to coordinate with the Flyway Councils and Service Regulations Committee. This means regulations would be published in the fall for the following spring and summer. If this proves too unresponsive, the schedule will be revised.

(l) When would the Statewide Management Body and the regional bodies meet? A schedule which interacts with the present regulatory system might look like this:

November: Statewide Management Body meets, reviews population and harvest information, and prepares guidelines. Issues a request to the regions for regional recommendations that are within guidelines.

January: Regional bodies meet, review population and harvest information and prepare recommendations for regional regulations and management programs.

February: Statewide Management Body meets and reviews recommendations from regional bodies. Sends recommendations to Pacific Flyway, Central Flyway and the Service.

March: Representatives from the Statewide Management Body attend Flyway Technical Committee and Council meetings.

July: Representatives from Statewide Management Body represent Alaska and provide technical information to the Flyway Councils and Service Regulations Committee.

September: Final rules are published for the following spring and summer. Cycle starts again.

(m) How will the general public be involved in the process of setting spring and summer regulations for migratory birds in Alaska? The Statewide Management Body and the supporting regional bodies will be open to recommendations from all user groups. The meetings will be open to the public and there will be opportunities for public comment on proposals. In the present continental migratory bird regulatory system there are periods open for public comment. All the comments and recommendations are taken into consideration before hunting regulations are proposed and finalized.

Dated: March 21, 2000.

David B. Allen,

Regional Director, Anchorage, Alaska.

[FR Doc. 00–7550 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–55–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–050–00–1230–PA; 8322]

California: Temporary Closure of Squaw Lake Campground to all Access, Imperial County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Temporary Closure of Squaw Lake Campground to all public access: May 1, 2000, through July 31, 2000. Days and times of closures will be from each Sunday at 7 p.m. through each Friday at 10 a.m. Mountain Standard Time. The campground will remain open on Memorial Day, May 29, 2000, until 7 p.m. MST.

SUMMARY: Notice is hereby given that all public access is prohibited into the Squaw Lake Campground area each Sunday at 7 p.m. through each Friday at 10 a.m. MST. The closure area is located within:

San Bernardino Meridian, California

T.15 S., R.24 E.,
Sec. 5, portion of the E½, portion of the E½NW¼.

Aggregating 5 acres, more or less.

SUPPLEMENTARY INFORMATION: The temporary closure of Squaw Lake Campground to all public access is being implemented for the health and safety of the public. The U.S. Bureau of Reclamation will be conducting safety testing of the dam structures to

determine foundation and seismic stability of the structures. During the testing, the water level elevation of Senator Wash Reservoir will be raised and lowered significantly. The dam will be monitored on a 24 hour basis utilizing various methods and equipment such as flood lights, generators, piezometers and an early alert warning siren for safety. The campground will be open to the public on Friday mornings at 10 a.m. All persons, boats, vehicles, and personal equipment must be vacated from the campground by 7 p.m. each Sunday. The only exception is Memorial Day which falls on a Monday May 29, 2000, when the campground will remain open for the extended weekend until 7 p.m. on Monday the 29th. The campground will remain closed to all public access during testing which will take place from Sunday at 7 p.m. until Friday at 10 a.m. This closure shall apply to all members of the public unless permitted by an authorized Bureau of Land Management Officer. Authority for this action is contained in 43 CFR 8364.1. Violation of this regulation is punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months. Vehicles found in violation of this closure notice are subject to being towed at the owners expense.

EFFECTIVE DATES: May 1, 2000, through July 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Lowans, Yuma Field Office, 2555 Gila Ridge Road, Yuma, Arizona 85365; (520) 317–3210.

Dated: March 17, 2000.

Gail Acheson,

Field Manager.

[FR Doc. 00–7518 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–020–00–1220–00]

Notice of Closure of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Closure of Certain Public Lands in Box Elder County, Utah to Off Road Vehicle Use.

SUMMARY: Notice is hereby given that effective immediately, selected public lands administered by the Bureau of Land Management (BLM), Salt Lake Field Office, within western Box Elder County are closed to off road vehicle (ORV) (also commonly referred to as off highway vehicle—OHV) use on an interim emergency basis. This action will allow BLM to address concerns related to unrestricted cross country travel in the specific places where we now have resource damage. The purpose of this closure is to protect wildlife, wildlife habitat, rangeland resources, soil, vegetation, cultural resources, historical resources, and other resources from ongoing and imminent adverse impacts from ORV use. Exemptions to this closure will apply for administrative and management purposes for the Bureau of Land Management, BLM authorized permittees, and law enforcement personnel. Other exemptions to this closure order may be made on a case by case basis by the authorized officer. This emergency closure will remain in effect until BLM completes a land use plan amendment for OHV management.

FOR FURTHER INFORMATION CONTACT: Alice Stephenson, Environmental Coordinator, Bureau of Land Management, Salt Lake Field Office, 2370 S. 2300 W., Salt Lake City, UT 84119, telephone (801) 977–4300.

SUPPLEMENTARY INFORMATION: As an interim measure, BLM is joining Box Elder County, the U.S. Forest Service and the State of Utah Sovereign Lands in imposing restrictions for OHV use on public lands in western Box Elder County. The BLM is temporarily closing selected public lands to off highway vehicle use consistent with the County's access road management plan and related map. The new restrictions for public lands, which are identified on the map, include full closure of very limited lands, seasonal closures of specific lands and closures to cross country travel for certain lands. This plan was adopted on July 7, 1998, by the Box Elder County Commission as Ordinance No. 222 which applies to western Box Elder County. This ordinance is the product of recommendations made by the West Box Elder Access Management Team with extensive public involvement and support from BLM, State Sovereign Lands, and the U.S. Forest Service (USFS). With this interim emergency action, BLM joins the County, USFS and State Sovereign Lands in providing consistent OHV management in western Box Elder County regardless of land ownership. Without this action, and because all other lands in western Box Elder County have OHV restrictions, BLM public lands, which are currently open to OHV use without restriction, would be subject to increasing impacts from OHV use. These closures are a temporary action to protect public lands and resources until BLM completes the proposed plan amendment for off-highway vehicle designations for public lands in Box Elder County, Notice of Intent published April 15, 1997. Imposing the OHV use restrictions will protect wildlife, wildlife habitat, soil, vegetation, cultural resources, historical resources, and other resources from damage by off-highway vehicles (OHVs). This closure shall not be construed as a limitation on BLM's future planning and off-highway vehicle route designations.

The referenced map and ordinance is available for review at the above address and at the Box Elder County Mapping Department.

The authority for this closure is 43 CFR 8341.2 and 43 CFR 8364.1. Violations of this closure are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months as provided in 43 CFR 8360.0–7.

Sally Wisely,

State Director.

[FR Doc. 00–7551 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–DQ–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Meeting, National Landmarks Advisory Commission

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the National Landmarks Committee of the National Park System Advisory Board will be held at 9:00 a.m. on the following date and at the following location.

DATES: April 10, 2000.

LOCATION: Main Hearing Room (Room 100); First Floor; 800 North Capitol Street, NW; Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Patricia Henry, National Register, History, and Education (2280); National Park Service, 1849 C Street, NW; Room NC–400; Washington, DC 20013–7127. Telephone (202) 343–81635.

SUPPLEMENTARY INFORMATION: The purpose of the meeting of the National Landmarks Committee of the National Park System Advisory Board is to evaluate nominations of historic properties in order to advise the full National Park System Advisory Board, meeting on April 16, 2000, of the qualifications of properties being proposed for National Historic Landmark (NHL) designation, and to recommend to the National Park System Advisory Board those properties that the Landmarks Committee finds meet the criteria for designation as National Historic Landmarks. The members of the National Landmarks Committee are:

Mr. Parker Westbrook, Co-Chair
Dr. Allyson Brooks
Dr. Ian W. Brown
Mr. S. Allen Chambers, Jr.
Dr. Elizabeth Clark-Lewis
Mr. Jerry L. Rogers
Dr. Richard Guy Wilson

The meeting will include presentations and discussions on the national historic significance and the historic integrity of a number of properties being nominated for National Historic Landmark designation. The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file for consideration by the committee written comments concerning nominations and matters to be discussed pursuant to 36 CFR Part 65.

Comments should be submitted to Carol D. Shull, Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Register, History, and Education (2280); National Park Service; 1849 C Street, NW; Room NC–400; Washington, DC 20240–7127.

The committee will consider the following nominations:

CONNECTICUT
Portland Brownstone Quarries

IOWA
Old State Quarry

MAINE
Parker Cleaveland House

MASSACHUSETTS
Gropius House

OREGON
Columbia River Highway

PENNSYLVANIA
I.N. Hagan House

VERMONT
Rockingham Meetinghouse

The committee will consider the following boundary expansion:

MONTANA
Great Northern Railway Buildings

The following properties will be on the agenda if waivers to the 60-day notification period are received from the owners and the highest elected local official.

INDIANA
First Baptist Church
First Christian Church
Irwin Union Bank and Trust
Mabel McDowell Elementary School
Miller House
North Christian Church

KENTUCKY
Labrot & Graham (Old Oscar Pepper) Distillery

NEW YORK
Sagamore Lodge
Santanoni Preserve

RHODE ISLAND
John N.A. Griswold House

VERMONT
Socialist Labor Party Hall

Dated: March 20, 2000.

Beth Boland,

Acting Chief, National Historic Landmarks Survey and Keeper of the National Register of Historic Places; National Park Service, Washington, DC.

[FR Doc. 00–7572 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before March 18, 2000.

Pursuant to § 60.13 of 36 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW, NC400, Washington, DC 20240. Written comments should be submitted by April 12, 2000.

Carol D. Shull,

Keeper of the National Register.

CALIFORNIA

Alameda County
Oakland Waterfront Warehouse District, Roughly bounded by I–880, Madison St., 2nd St., and Webster St., Oakland, 00000361

Amador County
Jackson Downtown Historic District, Roughly along Main St. from 215 Main St. to 14 Broadway, Jackson, 00000365

Contra Costa County
Richmond Shipyard Number Three, Point Potrero, Richmond, 00000364

Santa Barbara County
Herschell, Allan, 3–Abreast Carousel, 223 E. Cabrillo Blvd., Santa Barbara, 00000363

Santa Clara County
Spillman Engineering 3–Abreast Carousel, 139 B Eastridge Mall, San Jose, 00000366

Tehama County
Kraft, Herbert, Memorial Free Library, 909 Jefferson, Red Bluff, 00000362

COLORADO

Delta County
Surface Creek Livestock Company Silos, 315 SW 3rd St., Cedaredge, 00000367

Weld County
Parish, Harvey J., House, 701 Charlotte St., Johnstown, 00000368

CONNECTICUT

Hartford County
West End Library, 15 School St., Farmington, 00000369

GEORGIA

Newton County
Covington Mills and Mill Village Historic District, Roughly bounded by Wheat, Collins and Lott Sts. and, to the north, the Covington Mills pond and Creek, Covington, 00000370

Thomas County
MacIntyre Park and MacIntyre Park High School, 117 Glenwood Dr., Thomasville, 00000371

MAINE

Hancock County
Shore Acres, 791 Lamoine Beach Rd., Lamoine Beach, 00000373

Kennebec County
Oakland Public Library, (Maine Public Libraries MPS) 18 Church St., Oakland, 00000375

Lincoln County
Bremen Town Hall, (Former), Rte 32., 0.2 mi. N of Medomak Rd., Medomak, 00000372

Somerset County
Carrabasset Inn, Jct. of Union St. and ME 8, North Anson, 00000376

Waldo County
College Club Inn, 190 W. Main St., Searsport, 00000377
Springdale Farm, Horseback Rd., 0.5 mi. S of Troy Rd., Burnham, 00000374

MISSISSIPPI

Forrest County
Burkett's Creek Archeological Site, Address Restricted, Hattiesburg, 00000380

Lamar County
Municipal Courtroon and Jail, Old, 405 Pine St. at Railroad Ave., Sumrall, 00000379

Walthall County
New Orleans and Great Northern Railroad Depot— Tylertown, Franklin Hwy., Tylerton, 00000378

NEW YORK

Livingston County

Hartman, William, Farmstead, 9296 NY 63 N, Dansville, 00000381

PENNSYLVANIA

Bucks County

Quakertown Passenger and Freight Station, Front and East Broad Sts., Quakertown, 00000382

RHODE ISLAND

Providence County

Hope Street School, 40 Hope St., Woonsocket, 00000383

VERMONT

Bennington County

Orchards, The, 982 Mansion Dr., Bennington, 00000384

[FR Doc. 00–7573 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Appalachian Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Appalachian National Scenic Trail. The original graphic image was developed and published by the Department of the Interior in 1970. The National Park Service has officially used this insignia—and earlier variations—since completion of planning documents of the Trail in 1982. It has been slightly redesigned since then so that lettering and framing match other National Trail System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Appalachian National Scenic Trail, administered by the National Park Service, Appalachian Trail Park Office, Harper's Ferry, WV. Authorization for use of this trail marker is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7558 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the California National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the California National Historic Trail. The original graphic image was developed as part of the Trail's comprehensive management and use plan. It first came into public use in 1997. The National Park Service official uses this insignia to mark the trail's route. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the California National Historic Trail, administered by the National Park Service, Long Distance Trails Office, Salt Lake City, UT. Authorization for use of this trail marker is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for the National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7559 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Ice Age National Scenic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Ice Age National Scenic Trail. The original graphic image was developed as part of the Trail's comprehensive and use plan by the Department of the Interior and was published on May 13, 1983 in the **Federal Register.** The National Park Service has officially used this insignia—and subsequent variations—since the plan was completed in 1983. It was redesigned in 1996 so that lettering and framing match other National Trails System markers. The earlier design which is still in use along the Trail is also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Ice Age National Scenic Trail, administered by the National Park Service, Ice Age and North Country National Scenic Trails, Madison, WI. Authorization for use of this trail marker is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7560 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Juan Bautista de Anza National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Juan Bautista de Anza National Historic Trail. The insignia for this trail was developed as part of the Trail's comprehensive management and use plan published in 1996. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Juan Bautista de Anza National Historic Trail, administered by the National Park Service, Pacific Great Basin Regional Ofice, San Francisco, CA. Authorization for use of this trail marker is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7561 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Mormon Pioneer National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of Mormon Pioneer National Historic Trail. The original graphic was developed as part of the Trail's comprehensive plan and finding of no significant impact in 1981. It was published by the Department of the Interior on March 14, 1983 in the **Federal Register**. The National Park Service has officially used this insignia—and subsequent variations—

since then. It has been slightly redesigned in recent years so that lettering and framing match other National Trails System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Mormon Pioneer National Scenic Trail, administered by the National Park Service, Long Distance Trails Office, Salt Lake City, UT. Authorization for use of this trail marker is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufacturers, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms–3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7562 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Natchez Trace National Scenic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Natchez Trace National Scenic Trail. The National Park Service has officially used this insignia—and subsequent variations—since the trail was established. It was redesigned in 1996 so that lettering and framing match other National Trails System markers. The earlier design which is still in use along the Trail is also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Natchez Trace National Scenic Trail, administered by the National Park Service, Natchez Trace Parkway, Tupelo, MS. Authorization for use of this trail marker is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufacturers, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7563 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Market for the North Country National Scenic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the North County National Scenic Trail. The original graphic image was developed as part of the Trail's comprehensive plan for management and use in 1982 and published in the **Federal Register,** May 13, 1983. The National Park Service has officially used this insignia—and subsequent variations—since. It was slightly redesigned in 1996 so that lettering and framing match other National Trails System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplished the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail logo for the North County National Scenic Trail, administration by the National Park Service, Ice Age and North Country National Scenic Trails, Madison, WI. Authorization for use of this trail market is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufactures, sells or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7564 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Oregon National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of Oregon National Historic Trail. The original graphic was developed after completion of the Trail's comprehensive management and use plan in 1981. The insignia was published in the **Federal Register,** September 11, 1985. The National Park Service has officially used this insignia—and subsequent variations—ever since. It was slightly redesigned in 1996 so that lettering and framing match other National Trails System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Oregon National Scenic Trail, administered by the National Park Service, Long Distance Trails Office, Salt Lake City, UT. Authorization for use of this trail marker is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufacturers, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7565 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Market for the Overmountain Victory National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, *etc.* in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Overmountain Victory National Historic Trail. The original graphic image was developed for the Trail's comprehensive management plan in 1982 and published in the **Federal Register** May 13, 1983. The National Park Service has officially used this insignia—and subsequent variations—ever since. It was slightly redesigned in 1996 so that lettering and framing match other National Trails System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Overmountain Victory National Historic Trail, administered by the National Park Service, Southeast Region, Atlanta, GA. Authorization for use of this trail marker is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufacturers, sells, or possesses this insignia, or any colorable imitation

thereof, or photographs or prints on in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7566 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

Official Trail Marker for the Pony Express National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. In 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Pony Express National Historic Trail. The graphic image was developed in conjunction with the comprehensive management and use plan. It came into use in 1997 to mark the Trail's route. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Pony Express National Historic Trail, administered by the National Park Service's Long Distance Trails Office, Salt Lake City, UT. Authorization for use of this trail marker is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufacturers, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7567 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Santa Fe National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trail Systems Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Santa Fe National Historic Trail. The original graphic image was developed as part of the Trail's comprehensive management and use plan and published in the **Federal Register** May 6, 1989. The National Park Service has officially used this insignia—and subsequent variations—since completion of planning documents for the Trail in 1990. It has been slightly redesigned since then so that lettering and framing match other National Trail System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Santa Fe National Historic Trail, administered by the National Park Service, Long Distance Trails Group Office, Santa Fe, NM. Authorization for use of this trail marker is controlled by the administrator of the Trial.



In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Director.

[FR Doc. 00–7568 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Selma to Montgomery National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 124(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Selma to Montgomery National Historic Trail. The insignia for this trail was completed in February 1998. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Selma to Montgomery National Historic Trail, administered by Central Alabama Parks. Authorization for use of this trail marker is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms–3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7569 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for the Trail of Tears National Historic Trail

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia of the Trail of Tears National Historic Trail. The original graphic image was developed as part of the Trail's comprehensive management and use plan in 1992. The National Park Service has officially used this insignia—and subsequent variations—ever since. It has been slightly redesigned since then so that lettering and framing match other National Trails System markers. The earlier designs which are still in use along the Trail are also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkington, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for the Trail of Tears National Historic Trail, administered by the National Park Service, Long Distance Trails Group Office, Santa Fe, NM. Authorization for use of this trail marker is controlled by the administrator of the Trail.



In making this prescription, notice is hereby given that whoever manufactures, sells, or possesses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steve Elkington, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7570 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Official Trail Marker for National Recreation Trails

AGENCY: National Park Service, Interior.

ACTION: Official Insignia, Designation.

Authority: National Trails System Act, 16 U.S.C. 1241(a) and 1246c and Protection of Official Badges, Insignia, etc. in 18 U.S.C. 701.

SUMMARY: This notice issues the official trail marker insignia for National Recreation Trails. The original graphic image was developed by the Federal Interagency Council on Trails in 1970. The National Park Service has officially used this insignia to help mark all designated national recreation trails. The insignia was slightly redesigned in 1996 so that lettering and framing match other National Trails System markets.

The earlier design, which is still in use, is also protected from unauthorized uses by this notice. This publication accomplishes the official designation of the insignia now in use by the National Park Service.

SUPPLEMENTARY INFORMATION: The primary author of this document is Steven Elkinton, Program Leader for National Trails System Programming, National Center for Recreation and Conservation.

The insignia depicted below is prescribed as the official trail marker logo for National Recreation Trails. Authorization for use of this trail marker is controlled by the National Park Service's National Center for Recreation and Conservation, Washington, D.C.



In making this prescription, notice is hereby given that whoever manufactures, sells, or posses this insignia, or any colorable imitation thereof, or photographs or prints or in any other manner makes or executes any engraving, photograph or print, or impression in the likeness of this insignia, or any colorable imitation thereof, without written authorization from the United States Department of the Interior is subject to the penalty provisions of section 701 of Title 18 of the United States Code.

FOR FURTHER INFORMATION CONTACT: Steven Elkinton, Program Leader for National Trails System Programming, NPS, ms-3622, U.S. Department of the Interior, 1849 C Street, NW, Washington, DC 20240, 202–565–1177.

Dated: March 16, 2000.

Denis P. Galvin,

Acting Director.

[FR Doc. 00–7571 Filed 3–27–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Notice of information collection under review; new collection; notice of Intent to Operate a Freight Forwarding Facility.

The Department of Justice, Drug Enforcement Administration has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on January 19, 2000, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until April 27, 2000. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item contained in the notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Comments may also be submitted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Deputy Clearance Officer, Suite 1220, 1331 Pennsylvania Avenue, NW, Washington, DC 20530. Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of the information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* New collection.

(2) *The title of the form/collection:* Notice of Intent to Operate a Freight Forwarding Facility.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form No.: None. Applicable component of the Department sponsoring the collection: Office of Diversion Control, Drug Enforcement Administration, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. Other: None. Abstract: The collection of this information is necessary to maintain a closed system of distribution of controlled substances by requiring notification from DEA registrants of their intention to operate a freight forwarding facility through which sealed, packaged controlled substances in unmarked shipping containers are, in the course of delivery to customers, transferred or stored for less than 24 hours. The notice details the registered locations that will utilize the facility, the location of the facility, the hours of operation, the individual(s) responsible for the controlled substances, and the security and record keeping procedures that will be employed. The notice must also detail what state licensing requirements apply to the facility and the registrant's actions to comply with any such requirements. Persons providing such notice and operating within the regulations will not be required to obtain a separate DEA registration for the facility.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 50 respondents. 50 responses per year × 2 hours per responses = 100 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 100 annual burden hours.

If additional information is required contact: Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Ave., NW, Washington, DC 20530.

Dated: March 22, 2000.

Robert B. Briggs,

Department Clearance Officer, Department of Justice.

[FR Doc. 00–7555 Filed 3–27–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs, National Institute of Justice

Agency Information Collection Activities: Proposed Collection; Comment Request

ACTION: Reinstatement, without change, of a previously approved collection for which approval has expired; Crime Mapping Survey.

The Department of Justice, Office of Justice Programs, National Institute of Justice, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and clearance in accordance with emergency review procedures of the Paperwork Reduction Act of 1995. OMB approval has been requested by April 7, 2000. The proposed information collection is published to obtain comments from the public and affected agencies. If granted, the emergency approval is only valid for 180 days. Comments should be director to OMB, Office of Information Regulation Affairs, Attention: Department of Justice Desk Officer (202) 396–3122, Washington, DC 20530.

During the first 60 days of this same review period, a regular review of this information collection is also being undertaken. All comments and suggestions, or questions regarding additional information, to include obtaining a copy of the proposed information collection instrument with instructions, should be directed to the Office of Research and Evaluation, National Institute Justice, 810 7th Street, NW, Washington, DC 20531, or via facsimile (202) 616–0275, Attention: La Vigne.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Reinstatement, without change, of a previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Crime Mapping Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* Form: None. Office of Research and Evaluation, National Institute of Justice, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Law enforcement agencies.

Other: None. This national survey is designed to determine the extent to which police departments, specifically crime analysts, are using computerized crime mapping. Surveys will be mailed to a randomly selected sample of police departments. The questionnaire will determine the level of crime mapping within departments, both in terms of hardware and software resources, as well as the types of maps that are produced and how they are used. The information collected from this survey will be used to advise the activities of the Crime Mapping Research Center.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* 2,798 respondents for an average of 33 minutes per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the nomination is 562.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Ave., NW, Washington, D.C. 20530.

Dated: March 22, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–7554 Filed 3–27–00; 8:45 am]

BILLING CODE 4410–18–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–030)]

Agency Information Collection: Submission for OMB Review, Comment Request

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of Agency Report Forms Under OMB Review.

SUMMARY: The National Aeronautics and Space Administration has submitted to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this proposal should be received on or before April 27, 2000.

ADDRESSES: All comments should be addressed to Mr. Phillip Smith, Code BFZ, National Aeronautics and Space Administration, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Ms. Carmela Simonson, Office of the Chief Information Officer, (202) 358–1223.

Reports: None.

Title: NASA Contractor Financial Management Reports.

OMB Number: 2700–0003.

Type of Review: Extension.

Need and Uses: The NASA Contractor Financial Management Reporting System is the basic financial medium for contractor reporting of estimated and incurred costs, providing essential data for projecting costs and hours to ensure that contractor performance is realistically planned and supported by dollar and labor resources. The data provided by these reports is an integral part of the Agency's accrual accounting and cost-based budgeting systems required under 31 U.S.C. 3513.

Affected Public: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 850.

Responses Per Respondent: 12.

Estimated Annual Responses: 10,200.

Estimated Hours Per Request: 9 hrs.

Estimated Annual Burden Hours: 91,500.

Frequency of Report: Quarterly/monthly.

David B. Nelson,

Deputy Chief Information Officer, Office of the Administrator.

[FR Doc. 00–7632 Filed 3–27–00; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL LABOR RELATIONS BOARD

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: National Labor Relations Board.

TIME AND DATE: 10:00 a.m., Friday, March 24, 2000.

PLACE: Board Conference Room, Eleventh Floor, 1099 Fourteenth St., NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices); and (9)(B) disclosure would significantly frustrate implementation of a proposed Agency action).

MATTERS TO BE CONSIDERED: Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: John J. Toner, Executive Secretary, Washington, D.C. 20570, Telephone: (202) 273–1940.

Dated, Washington, DC., March 23, 2000.

By direction of the Board.

John J. Toner,

Executive Secretary, National Labor Relations Board.

[FR Doc. 00–7700 Filed 3–24–00; 10:54 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities; Proposed Collection; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to the Office of Management and Budget (OMB) and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a current valid OMB control number.

Information pertaining to the requirement to be submitted:

1. *The title of the information collection*: NRC "Nuclear Material Events Database (NMED)" for the Collection of Event Report, Response, Analyses, and Follow-up Data on Events Involving the Use of Atomic Energy Act (AEA) Radioactive Byproduct Material.

2. *Current OMB approval number*: 3150–0178

3. *How often the collection is required*: Agreement States are requested to provide copies of licensee event reports electronically or by hard copy to NRC on a monthly basis or within 30 days of receipt from their licensee. This schedule provides the Agreement States 30 days to assess the licensee information prior to providing the information to NRC. Reportable events involve the industrial, commercial, medical use, and/or academic use of radioactive byproduct materials. In addition, Agreement States are requested to report events that may pose a significant health and safety hazard to the NRC Headquarters Operations Officer within the next working day of notification by an Agreement States licensee.

4. *Who is required or asked to report*: Current Agreement States and any State receiving Agreement State status in the future.

5. *The number of annual respondents*: 31.

6. *The number of hours needed annually to complete the requirement or request*: 945 hours (an average of approximately 1.0 hour per response) for all existing Agreement States reporting; any new Agreement State would add approximately 29 event reports (including follow-up reports) per year or 29 burden hours.

7. *Abstract*: NRC regulations require NRC licensees to report incidents and events involving the use of radioactive byproduct material, and source material, such as those involving a radiation overexposure, leaking or contaminated sealed source(s), release of excessive contamination of radioactive material, lost or stolen radioactive material, equipment failures, and abandoned well logging sources. Medical misadministrations are required to be reported in accordance with 10 CFR 35.33. Agreement State licensees are also required to report these events and medical misadministrations to their individual Agreement State regulatory authorities under compatible Agreement State regulations. NRC is requesting that the Agreement States provide information on the initial notification, response actions, and follow-up investigations on events and medical misadministrations involving the use of nuclear materials regulated pursuant to the Atomic Energy Act. The event information should be provided in a uniform electronic format, for assessment and identification of any facility/site specific or generic safety concerns that could have the potential to impact public health and safety. The identification and review of safety concerns may result in lessons learned, and may also identify generic issues for further study which could result in proposals for changes or revisions to technical or regulatory designs, processes or standards.

Submit by May 30, 2000, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is their a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC World Wide Web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U. S. Nuclear Regulatory Commission, T–6 E6, Washington, DC 20555–000, by telephone at 301–415–7233, or by Internet electronic mail at *BJS1@NRC.GOV*.

Dated at Rockville, Maryland, this 22nd day of March 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–7575 Filed 3–27–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 and 50–316]

Indiana Michigan Power Company; Donald C. Cook Unit 1 and 2, Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an amendment to Facility Operating License No. DPR–58 and No. DPR–74, issued to Indiana Michigan Power Company (the licensee), for operation of the Donald C. Cook Nuclear Plant, Units 1 and 2, located in Berrien County, Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would make administrative and editorial changes to several Technical Specifications (TSs). The proposed changes include: (1) revising boron sampling requirements in mode 6; (2) deleting a reference to obsolete equipment in a footnote; (3) deleting a redundant figure; (4) correcting a reference to another requirement; (5) deleting obsolete notes; (6) adding to surveillance requirements; (7) clarifying instrumentation configuration; and (8) correcting typographical errors.

The proposed action is in accordance with the licensee's application for amendment dated December 3, 1998.

The Need for the Proposed Action

These proposed changes are needed to remove obsolete information, provide consistency between Unit 1 and Unit 2 TSs, provide consistency with the Standard Technical Specifications, provide clarification, and correct typographical errors.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the administrative and editorial changes do not impact any requirements. The proposed action does not modify the facility or affect the manner in which the facility is operated.

The proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Donald C. Cook Nuclear Plant.

Agencies and Persons Consulted

In accordance with its stated policy, on March 2, 2000, the staff consulted with the Michigan State official, Mr. David Minnaar of the Michigan Department of Environmental Quality, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 3, 1998, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publicly available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http:www.nrc.gov* (the Electronic Reading Room)

Dated at Rockville, Maryland, this 22d day of March 2000.

For the Nuclear Regulatory Commission.

John F. Stang,

Senior Project Manager, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7574 Filed 3–27–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–30 and 50–185]

National Aeronautics and Space Administration; Plum Brook Reactor and Plum Brook Mock-Up Reactor Environmental Assessment and Finding of No Significant Impact

The Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. TR–3 and R–93, issued to the National Aeronautics and Space Administration (NASA), the licensee. The license amendment would allow decommissioning of the Plum Brook Reactor and the Plum Brook Mock-up Reactor at the Plum Brook Reactor Facility (PBRF) near Sandusky, Ohio.

Environmental Assessment

Identification of the Proposed Action

The PBRF consists of a complex of buildings with two non-power reactors. Both reactors have been shut down and defueled. The Plum Brook Reactor (Docket No. 50–30, NRC License No. TR–3) is a 60-megawatt materials test reactor, constructed to perform irradiation testing of fueled and unfueled experiments for space program application. The Plum Brook Mock-up Reactor (Docket No. 50–185, NRC License No. R–93) is a 100-kilowatt swimming-pool type reactor constructed to test "mock-up" irradiation components for the Plum Brook Reactor. The PBRF reactors were shut down in 1973. NASA currently has possession only licenses to possess the residual radioactive materials at the facility. All reactor fuel elements have been removed from the facility and the possession only licenses do not allow operation of the reactors.

NASA has proposed to decontaminate the facility to levels that would allow unrestricted release of the 11-hectare (27-acre) PBRF and termination of the licenses. The licensee submitted a decommissioning plan in accordance with 10 CFR 50.82(b) on December 20, 1999. Decommissioning, as described in the plan, will consist of transferring licensed radioactive equipment and

material from the site and decontamination of the facility to meet unrestricted release criteria (this is called the DECON option, as described in NUREG–0586, "Final Generic Environmental Impact Statement on Decommissioning of Nuclear Facilities"). While the decontamination work is in process, remedial action status surveys will be conducted to ensure that the contaminated material has been removed to levels below the limits required for unrestricted release (25 mrem/yr). Final status surveys will be conducted also. After the Commission verifies that the release criteria have been met, the reactor license will be terminated.

A "Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission the Plum Brook Reactor Facility" was published in the **Federal Register** (65 FR 12040) on March 7, 2000.

Further, 10 CFR 51.53(d) requires that each applicant for a license amendment to authorize decommissioning of a production or utilization facility must submit an environmental report that reflects any new information or significant environmental change associated with the proposed decommissioning activities. The licensee's environmental report is contained in Section 8 of the licensee's decommissioning plan.

The Need for the Proposed Action

The proposed action is necessary because the licensee has decided to decommission the facility rather than other alternatives. As specified in 10 CFR 50.82, any licensee may apply to the NRC for authority to decommission the affected facility.

Environmental Impacts of the Proposed Action

The NRC staff has evaluated the radiological impacts of the proposed action as presented in Section 8.5 of the decommissioning plan submitted on December 20, 1999, and concludes that the associated radiological effects of the decommissioning will be acceptable. The staff considered impacts on onsite workers, on transportation workers, and on the public, both during the decommissioning activities and after license termination.

The licensee has established controls to ensure occupational exposure remains below NRC regulatory limits for decommissioning personnel. The collective total dose equivalent to all onsite workers for all of the decommissioning activities is estimated to be about 70 person-rem over the approximate 4-year decommissioning project. This is less than the estimated occupational exposure of 344 person-rem presented in NUREG–0586 and is a result of the approximately 30 years of decay that has already taken place.

Occupational exposure associated with shipment of low level waste has been estimated at less than 18 person-rem. This is similar to the estimate of 22 person-rem for the reference test reactor presented in NUREG–0586 and, again, the lower dose can be attributed to the decay that has occurred since the reactors were shutdown.

The licensee concluded that the offsite public exposure would be small from routine release, based on the generic estimates of NUREG–0586 and on analyzed exposures for potential accidents ("the largest accident analyzed resulted in an offsite dose of about 0.5 mrem"). The licensee's estimates for transportation related exposures were less than 8.2 person-rem and were also consistent with NUREG–0586, again considering the decay time since shutdown. The licensee has also established an As Low As Reasonably Achievable (ALARA) program to minimize exposure and must ensure that decommissioning activities will not exceed the limits in 10 CFR 20.1301, "Dose Limits for Individual Members of the Public."

The anticipated potential exposure to the public after license termination will be negligible. To be released for unrestricted use, the maximum dose to the "average member of the critical group" must be less than 25 mrem/yr. The actual dose to the public is expected to be much less than 25 mrem/yr because decontamination will be more extensive than that required to meet minimum license termination requirements and public exposure will not occur for some time because the licensee has no plans to make the site available for public reuse.

Based on its review of the specific proposed activities associated with the dismantling and decommissioning of the PBRF, the NRC staff concludes that the proposed action will not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. Non-radiological hazardous materials, including friable lead paint and asbestos insulation, will be managed as described in the decommissioning plan and transported offsite for disposal at a licensed burial site. The proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

The three alternatives to the proposed action for the PBFR are SAFSTOR, ENTOMB, and no action.

SAFSTOR (safe storage) is the alternative in which the nuclear facility is placed and maintained in a condition that allows the nuclear facility to be safely stored and subsequently decontaminated (delayed decontamination) to levels that permit release for unrestricted use. Implementing this alternative would necessitate continued surveillance and maintenance of the PBRF over a period of time. Impacts during the storage period would be minimal, although there would be substantial monitoring and maintenance costs. Eventually, decontamination and decommissioning would be required. The radiological impacts of delayed decontamination and decommissioning would be comparable to, or slightly less than, those of the proposed action because of radioactive decay prior to DECON.

ENTOMB (entombment) is the alternative in which radioactive contaminants are encased in a structurally long-lived material, such as concrete. The entombed structure would be appropriately maintained and continued surveillance would be necessary over a substantial period of time until radioactivity decayed to a level permitting release of the property for unrestricted use. The time period necessary for entombment has been estimated to last for time frames on the order of a hundred years. The ENTOMB option would result in lower radiological exposure, but would require continued use of resources and would incur the costs associated with such long-term monitoring and maintenance.

The no-action alternative would leave the facility in its present configuration, SAFSTOR, and would limit the activities that the licensee could conduct on the site. However, the regulations in 10 CFR 50.82(b) only allow this condition to exist for a limited period of time.

The licensee has determined that the proposed action (DECON) is the most efficient use of the existing facility, because the SAFSTOR, ENTOMB, and no-action alternatives would entail continued surveillance, maintenance, and physical security measures to be in place and continued monitoring by licensee personnel. The alternatives would also entail the costs associated with these activities.

Alternative Use of Resources

This action does not involve the use of any resources different from those previously committed for construction and operation of the PBRF.

Agencies and Persons Consulted

In accordance with its stated policy, on January 21, 2000, the staff consulted with the State of Ohio official, Ruth Vandegrift, Supervisor Decommissioning for the Ohio Department of Health, Bureau of Radiation Protection regarding the environmental impact of the proposed action. The state official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. The environmental impacts are expected to be bounded by the analyses in NUREG–0586. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated December 20, 1999, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. It is also available at *http://www.nrc.gov/OPA/reports* under "What's New on This Page," "Decommissioning" or "Other Documents."

Dated at Rockville, Maryland, this 21st day of March 2000.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7576 Filed 3–27–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24346; File No. 812–11862]

Canada Life Insurance Company of America, et al.; Notice of Application

March 22, 2000.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order of approval pursuant to Section 26(b) of the Investment Company Act of 1940 (the "Act") approving certain substitutions of securities.

Summary of Application: Applicants request an order under Section 26(b) of the Act to permit certain registered unit investment trusts to substitute (a) Shares of the Money Market Portfolio ("Fidelity Money Market Portfolio") of the Fidelity Variable Insurance products Fund ("Fidelity VIP") for shares of the Money Market Portfolio of the Canada Life of America Series Fund, Inc. (the "Series Fund"); (2) shares of the Investment Grade Bond Portfolio ("Fidelity Bond Portfolio") of the Fidelity Variable Insurance Products Fund II ("Fidelity VIP II") for shares of the Series Fund's Bond Portfolio; (3) shares of the Fidelity VIP's Overseas Portfolio ("Fidelity Overseas Portfolio") for shares of the Series Fund's International Equity Portfolio; (4) shares of the American MidCap Growth Portfolio ("Alger MidCap Portfolio") of The Alger American Fund ("Alger") for shares of the Series Fund's Capital Portfolio; (5) shares of the Fidelity VIP II's Asset Manager Portfolio ("Fidelity Asset Manager Portfolio") for shares of the Series Fund's Managed Portfolio; and (6) shares of the Fidelity VIP II's Contrafund Portfolio ("Fidelity Contrafund Portfolio") for shares of the Series Fund's Value Equity Portfolio currently held by those unit investment trusts.

Applicants: Canada Life Insurance Company of America ("Canada Life"), Canada Life Insurance Company of New York ("Canada Life of New York"), Canada Life of America Variable Annuity Account 1 ("the Canada Life Account") and Canada Life of New York Variable Annuity Account 1 ("the Canada Life of New York Account") (together, the "Applicants").

Filing Date: The application was filed on November 19, 1999.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 17, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, Charles MacPhaul, Esq., Senior Counsel, Canada Life Insurance Company of America, 6201 Powers Ferry Road, N.W., Atlanta, GA 30339. Copy to Stephen E. Roth, Esq., Sutherland Asbill & Brennan LLP, 1275 Pennsylvania Avenue, NW, Washington, DC 20004–2415.

FOR FURTHER INFORMATION CONTACT: Paul G. Cellupica, Senior Counsel, or Keith Carpenter, Branch Chief, Office of Insurance Products, Division of Investment Management, at (202) 942–0670.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Public Reference Branch of the Commission, 450 5th Street, NW, Washington, DC 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. Canada Life is a stock life insurance company incorporated under the laws of Michigan. Canada Life is engaged in the business of writing individual annuity contracts in the District of Columbia and all states except New York and Vermont. Canada Life is the depositor and sponsor of the Canada Life Account.

2. Canada Life of New York is a stock life insurance company incorporated under New York law. Canada Life of New York is engaged in the business of writing individual life insurance and annuity contracts in the State of New York. Canada Life of New York is the depositor and sponsor of the Canada Life of New York Account.

3. The Canada Life Account, a separate investment account established under Michigan law, is registered with the Commission as a unit investment trust. The assets of the Canada Life Account support individual flexible premium deferred variable annuity contracts ("Contracts"), and interests in the Canada Life Account offered through such Contracts have been registered under the Securities Act of 1933 (the "1933 Act") on Form N–4.

The Canada Life Account is currently divided into twenty-six subaccounts. Each subaccount invests exclusively in shares representing an interest in a corresponding investment portfolio ("Portfolio") of one of nine management investment companies of the series type ("Management Companies").

4. The Canada Life of New York Account, a separate investment account established under New York law, is registered with the Commission as a unit investment trust. The assets of the Canada Life of New York Account support the Contracts, and interests in the Canada Life of New York Account offered through such Contracts have been registered under the 1933 Act on Form N–4. The Canada Life of New York Account is currently divided into twenty-six subaccounts. Each subaccount invests exclusively in shares representing an interest in a Portfolio.

5. The Series Fund, a Maryland corporation, is registered under the Act as an open-end management investment company. The Series Fund is currently comprised of six portfolios, all of which would be involved in the proposed substitutions. The Series Fund issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. CL Capital Management, Inc. serves as the investment adviser to the Series Fund's Bond Portfolio, Money Market Portfolio and to the debt and money market portions of the Managed Portfolio, and, in general, supervises the management and investment program for all of the Series Fund portfolios. The investments of the Capital Portfolio, Value Equity Portfolio, and International Equity Portfolio and the equity portion of the Managed Portfolio are managed by subadvisers that are supervised by CL Capital Management, Inc.

6. Fidelity VIP, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Fidelity VIP is currently comprised of five portfolios, two of which would be involved in the proposed substitutions. Fidelity VIP issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. Fidelity Management & Research Company serves as the investment adviser to Fidelity VIP's Portfolios.

7. Fidelity VIP II, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Fidelity VIP II is currently comprised of five portfolios, three of which would be involved in the proposed substitutions. Fidelity VIP II issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. Fidelity Management & Research Company serves as the investment adviser to Fidelity VIP II's Portfolios.

8. Alger, a Massachusetts business trust, is registered under the Act as an open-end management investment company. Alger is currently comprised of six portfolios, one of which would be involved in the proposed substitutions. Alger issues a separate series of shares of beneficial interest in connection with each portfolio, and has registered such shares under the 1933 Act on Form N–1A. Fred Alger Management Inc. serves as the investment adviser to Alger's Portfolios.

9. The Series Fund's Money Market Portfolio seeks as high a level of current income as is consistent with preservation of capital and liquidity. It invests primarily in high-quality U.S. dollar-denominated money market instruments of U.S. and foreign issuers that generally have remaining maturities of thirteen months or less. The Money Market Portfolio's investment adviser complies with industry-standard requirements for money market funds regarding the quality, maturity and diversification of the fund's investments. The investment adviser stresses maintaining a stable $10.00 share price, liquidity and income. The Portfolio's investments are comprised of U.S. government securities, obligations issued or guaranteed as to principal and interest by the Government of Canada, the government of any Canadian province, or any Canadian or provincial Crown agency, obligations such as certificates of deposits and bankers' acceptances of banks, prime commercial paper; and repurchase agreements backed by U.S. government securities.

10. The Series Fund's Bond Portfolio seeks as high a level of current income and capital appreciation as is consistent with preservation of principal. Its primary investments are debt securities, and it normally invests at least 80% of its total assets in U.S. government securities; publicly traded debt instruments rated within the four highest categories by a rating agency; and Canadian government obligations. The Portfolio only invests in U.S. dollar-denominated debt instruments.

11. The Series Fund's International Equity Portfolio seeks long-term capital appreciation by investing inequity or equity type securities of companies located outside the United States. The International Equity Portfolio's subadviser seeks diversification by purchasing securities of at least four different countries that offer varying investment opportunities and are affected by different economic trends. The Portfolio may invest in developed countries, in American Depository Receipts, European Depositary Receipts and up to 30% of its total assets in emerging markets countries. In seeking to limit risks, the Portfolio's exposure is limited as follows: to a single industry group to 25% of its total assets; to a single country, excluding the United Kingdom and Japan, to 25% of its total assets; by normally holding investments in at least 4 countries and at least 40 different companies; and by investing in a minimum of at least 5 to 8 different industry groups.

12. The Series Fund's Capital Portfolio seeks capital appreciation, not current income, by investing in common stocks and securities convertible into or exchangeable for common stocks, in common stock purchase warrants, in debt securities, and in preferred stocks believed to provide capital appreciation opportunities. The Capital Portfolio's subadviser selects common stocks based on their near- or intermediate-term prospects, and its portfolio manager selects stock believed to be underpriced or stocks of growth companies, cyclical companies, or companies believed to be undergoing a basic change for the better. The Capital Portfolio may invest in stocks of companies showing earnings growth and predictability and newer, less-seasoned companies believed to have better-than-average prospects.

13. The Series Fund's Managed Portfolio seeks as high a level of return as possible, through capital appreciation and income, consistent with prudent invesmtent risk and preservation of capital. The Managed Portfolio follows a fully managed investment policy by investing in three types of investments: equities, debt obligations, and money market instruments. There are no maximum or minimum percentages as to the amount of the Portfolio's assets that may be invested in any one type of investment. The Managed Portfolio's investment adviser determines the asset mix based on its overall analysis of the political and economic outlook over the next six to eighteen months, taking into account such factors as inflation, commodity prices, growth, relative values of stocks and bonds, and trends in currency values.

14. The Series Fund's Value Equity Portfolio seeks long-term growth of capital and income by investing in equity securities which are believed to have appreciation potential. The portfolio manager principal approach is to invest in common stocks having depressed values based on poor current

market and appearing undervalued relative to normal earnings power. The portfolio manager chooses investments emphasizing companies with good financial resources, satisfactory rate of return on capital, good industry position, and superior management skills.

15. The Fidelity Money Market Portfolio seeks as high a level of current income as is consistent with preservation of capital and liquidity. The principal investment strategies of the Portfolio's investment adviser include investing in U.S. dollar-denominated money market securities, including U.S. Government securities and repurchase agreements, and entering into reverse repurchase agreements; investing more than 25% of total assets in the financial services industry; and investing in compliance with industry-standard requirements for money market funds for the quality, maturity and diversification of investments. The investment adviser stresses maintaining a stable 41.00 share price, liquidity and income.

16. The Fidelity Overseas Portfolio seeks long-term growth of capital. The principal investment strategies of the Portfolio's investment adviser include investing at least 65% of total assets in foreign securities; investing primarily in common stocks; allocating investments across countries and regions considering the size of the market in each country and region relative to the size of the international market as a whole; and using fundamental analysis of each issuer's financial condition and industry position and market and economic conditions to select investments.

17. The Fidelity Bond Portfolio seeks as high a level of current income as is consistent with the preservation of capital. The principal investment strategies of the Portfolio's investment adviser include investing in U.S. dollar-denominated investment-grade bonds; managing the fund to have similar overall interest rate risk to the Lehman Brothers Aggregate Bond Index; allocating assets across different market sectors and maturities; and using analysis of a security's structural features, current pricing and trading opportunities, and the credit quality of its issuer to select investments.

18. The Fidelity Asset Manager Portfolio seeks to obtain high return with reduced risk over the long term by allocating its assets among stocks, bonds, and short-term instruments. The principal investment strategies of the Portfolio's investment adviser include allocating the fund's assets among stocks, bonds, and short-term and money market instruments; maintaining a neutral mix over time of 50% of assets in stocks, 40% of assets in bonds, and 10% of assets in short-term and money market instruments; adjusting allocation among asset classes gradually within the following ranges: stock class (30%–70%), bond class (20%–60%), and short-term/money market class (0%–50%); investing in domestic and foreign issuers; and using analysis off fundamental and/or quantitative factors and evaluation of each security's current price relative to estimated long-term value to select investments.

19. The Alger MidCap Portfolio seeks long-term capital appreciation. The Alger MidCap Portfolio focuses on midsize companies with promising growth potential. Under normal circumstances, the Portfolio invests primarily in the equity securities of companies having a market capitalization within the range of companies in the S&P Mid Cap 400 Index.

20. The Fidelity Contrafund Portfolio seeks long-term capital appreciation. The principal investment strategies of the Portfolio's investment adviser include investing primarily in common stocks; investing in securities of companies whose value it believes is not fully recognized by the public; investing in domestic and foreign issuers; investing in either "growth" stocks or "value" stocks or both; and using fundamental analysis of each issuer's financial condition and industry position and market and economic conditions to select investments.

21. The Contracts provide for the accumulation of values on a variable basis, fixed basis, or both, during the accumulation period, and provide settlement or annuity payment options on a fixed basis. Under the Contracts, Canada Life and Canada Life of New York reserve the right to substitute shares of another portfolio of the Management Companies or shares of a different management company. A policyowner may make unlimited transfers (in minimum amounts of $250 or the entire value of the subaccounts of the Accounts or the fixed account that is part of the general account of Canada Life or Canada Life of New York. The first twelve transfers during each policy year are free. Canada Life and Canada Life of New York assess a $25 transfer fee for each transfer in excess of twelve made during a policy year.

22. Since its inception, the Series Fund has been relatively small for several reasons, including the fact that its Portfolios are only offered as funding vehicles for products of Canada Life and Canada Life of New York. As a result, the Series Fund has been able to generate a sufficient level of assets to achieve any significant economies of scale, and has not been able to achieve above-average performance results or otherwise distinguish itself from other Management Companies that offer comparable portfolios. In light of the fact that a number of unaffiliated mutual fund organizations have large and successful insurance product portfolios in which the Accounts could invest, including several that the Accounts already invest in, Canada Life and Canada Life of New York propose substituting shares of the Fidelity VIP, Fidelity VIP II and Alger Portfolios for shares of the Series Fund Portfolios. The Fidelity VIP, Fidelity VIP II and Alger Portfolios are all part of a larger group of funds and have more distribution channels that the Series Fund Portfolios. Although the immediate increase in the size of the Fidelity VIP, Fidelity VIP II and Alger Portfolios as a direct result of the proposed substitutions would be modes, Applicants understand that these Portfolios offer their shares to insurance companies other than Canada Life and Canada Life of New York as investment options under various variable annuity and variable life insurance contracts issued by such companies. Applicants believe that the Fidelity VIP, Fidelity VIP II and Alger Portfolios would offer policyowners invested in them better growth prospects and greater appeal than is currently the case with the Series Fund Portfolios.

23. Canada Life and Canada Life of New York, on their behalf and on behalf of the Canada Life Account and the Canada Life of New York Account, propose to substitute: (1) Shares of the Fidelity Money Market Portfolio for shares of the Money Market Portfolio; (2) shares of the Fidelity Bond Portfolio for shares of the Bond Portfolio; (3) shares of the Fidelity Overseas Portfolio for shares of the International Equity Portfolio; (4) shares of the Alger MidCap Portfolio for shares of the Capital Portfolio; (5) shares of the Fidelity Asset Manager Portfolio for shares of the Managed Portfolio; and (6) shares of the Fidelity Contrafund Portfolio for shares of the Value Equity Portfolio.

24. Certain subaccounts of the Canada Life Account and the Canada Life of New York Account currently invest in shares representing an interest in the Fidelity Overseas Portfolio, Alger MidCap Portfolio, Fidelity Asset Manager Portfolio and Fidelity Contrafund Portfolio. Accordingly, immediately following the substitution transactions, the Canada Life Account and the Canada Life of New York Account would each have two

subaccounts holding shares of Fidelity Overseas Portfolio, two subaccounts holding shares of Alger MidCap Portfolio, two subaccounts holding shares of Fidelity Asset Manager Portfolio, and two subaccounts holding shares of Fidelity Contrafund Portfolio. The Canada Life Account and the Canada Life of New York Account would immediately combine the two subaccounts holding shares of the Fidelity Overseas Portfolio by transferring shares on the same date from one of the subaccounts holding shares of the Fidelity Overseas Portfolio to the other subaccount holding shares of the Overseas Portfolio. The Canada Life Account and the Canada Life of New York Account would similarly combine the two subaccounts holding shares of Alger MidCap Portfolio, Fidelity Asset Manager Portfolio, and Fidelity Contrafund Portfolio.

25. With respect to the proposed substitution of shares of the Fidelity Money Market Portfolio for shares of the Money Market Portfolio, both Portfolios share substantially similar investment objectives using similar investment policies by seeking to provide policyowners with as high a level of current income as is consistent with preservation of capital and liquidity. Applicants believe that by making the proposed substitution, they can better serve the interests of policyowners by offering them a Portfolio which in recent years has had lower expenses and better performance than the Money Market Portfolio. The assets of the Fidelity Money Market Portfolio have been significantly greater than the assets of the Money Market Portfolio for each of the past three years. As a result of its size, the Fidelity Money Market Portfolio has been able to achieve economies of scale that the Money Market Portfolio could not attain. These economies of scale are reflected in the fidelity Money Market Portfolio's ratio of total operating expenses to net asset value. Even after the Money Market Portfolio received an expense reimbursement, the Fidelity Money Market Portfolio's expense ratios have been less than one-half those of the Money Market Portfolio over the past three years. Applicants believe that the Fidelity Money Market Portfolio in the near future. Further, the Fidelity Money Market Portfolio has had better cumulative performance than has the Money Market Portfolio during the past three years. Accordingly, this proposed substitution would move policyowners currently invested in the Money Market Portfolio to a much larger fund with a significantly greater level of net assets, lower expense ratios, and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

Money market portfolio[1]	Net assets at year-end	Expense ratio[2] (percent)	Total return (percent)
1996	$7,599,213	0.75	4.58
1997	9,149,393	0.75	4.95
1998	12,309,897	0.75	4.77

[1] The Money Market Portfolio began operations on Dec. 4, 1989.
[2] Before expense reimbursement, the Money Market Portfolio's expense ratios for 1996, 1997, and 1998 were 1.09%, 1.16% and 0.95%, respectively.

Fidelity money market portfolio[1]	Net assets at year-end	Expense ratio (percent)	Total return (percent)
1996	$1,126,155,000	0.30	5.41
1997	1,020,794,000	0.31	5.51
1998	1,507,489,000	0.30	5.46

[1] The Fidelity Money Market Portfolio began operations on April 1, 1982.

26. With respect to the proposed substitution of shares of the Fidelity Bond Portfolio for shares of the Bond Portfolio, both Portfolios have substantially the same investment objective and pursue this objective using similar investment policies. Both Portfolios seek to provide policyowners with as high a level of current income as is consistent with the preservation of capital by investing in U.S. dollar-denominated debt instruments. Applicants believe that the interests of policyowners will be better served by making the proposed substitutions and offering policyowners a Portfolio which has experienced lower expenses and a greater level of assets than the Bond Portfolio in recent years. The assets of the Fidelity Bond Portfolio have been significantly greater than the assets of the Bond Portfolio for each of the past three years. Due to the fact that the Fidelity Bond Portfolio is a much larger Portfolio than the Bond Portfolio, it has been able to take advantage of much greater economies of scale. These economies of scale are reflected in the Fidelity Bond Portfolio's lower expense ratios, which have been approximately one-third less than those of the Bond Portfolio's expense ratios,after expense reimbursement, during the past three years. Applicants believe that the Fidelity Bond Portfolio will continue to have significantly greater assets than the Bond Portfolio, and have no reason to believe, given the limited distribution of the Bond Portfolio, that the Bond Portfolio will match the low expense ratios of the Fidelity Bond Portfolio in the near future. Further, although the Fidelity Bond Portfolio and Bond Portfolio have both experienced approximately the same cumulative performance during the past three years, Applicants have no reason to believe that, in the near future, the performance of the Bond Portfolio will significantly exceed that of the Fidelity Bond Portfolio. Accordingly, this proposed substitution would offer policyowners currently invested in the Bond Portfolio the opportunity to invest in a much larger fund with a significantly greater level of net assets, lower expense ratios, and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

Bond portfolio[1]	Net assets at year-end	Expense ratio[2] (percent)	Total return (percent)
1996	$6,712,914	0.90	4.66
1997	7,065,818	0.90	8.09
1998	16,705,618	0.90	9.00

[1] The Bond Portfolio began operations on December 4, 1989.
[2] Before expense reimbursement, the Bond Portfolio's expense ratios for 1996, 1997, and 1998 were 1.08%, 1.02% and 0.92%, respectively.

Fidelity bond portfolio[1]	Net assets at year-end	Expense ratio[2] (percent)	Total return (percent)
1996	$228,594,000	0.58	3.19
1997	324,525,000	0.58	9.06
1998	674,813,000	0.57	8.85

[1] The Fidelity Bond Portfolio began operations on December 5, 1988.
[2] The investment adviser has voluntarily agreed to reimburse the Fidelity Bond Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending fees, brokerage commissions and extraordinary expenses), as a percentage of its average net assets, exceed 0.80%.

27. With respect to the proposed substitution of shares of the Fidelity Overseas Portfolio for shares of the International Equity Portfolio, both Portfolios seek to provide policyowners with long-term growth of capital by investing primarily in equity or equity type securities of companies located outside the United States. The two Portfolios have substantially similar investment objectives and similar investment policies. Applicants believe that policyowners will be better off if, as proposed, they are offered the Fidelity Overseas Portfolio which in recent years has had a greater level of assets and lower expenses than the International Equity Portfolio. The assets of the Fidelity Overseas Portfolio have been significantly greater than the assets of the International Equity Portfolio for each of the past three years. The Fidelity Overseas Portfolio's ratio of total operating expenses to net asset value, which have been much lower than the International Equity Portfolio's during the past three years, reflect a level of economies of scale that the International Equity Portfolio has not been able to achieve. Applicants believe that the Fidelity Overseas Portfolio will continue to have significantly greater assets than the International Equity Portfolio, and have no reason to believe, given the limited distribution of the International Equity Portfolio, that the International Equity Portfolio will match the low expense ratios of the Fidelity Overseas Portfolio in the near future. Further, although neither Portfolio has consistently outperformed the other during the past three years, this proposed substitution would move policyowners currently invested in the International Equity Portfolio to a much larger fund with a significantly greater level of net assets, lower expense ratios, and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

International equity portfolio[1]	Net assets at year-end	Expense ratio[2] (percent)	Total return (percent)
1996	$3,305,190	1.20	19.44
1997	4,771,122	1.20	4.32
1998	6,259,057	1.20	13.37

[1] The International Equity Portfolio began operations on April 24, 1995.
[2] Before expense reimbursement, the International Equity Portfolio's expense ratios for 1996, 1997, and 1998 were 1.56%, 1.32% and 1.47%, respectively.

Fidelity overseas portfolio[1]	Net assets at year-end	Expense ratio[2] (percent)	Total return (percent)
1996	$1,667,601,000	0.92	13.15
1997	1,926,322,000	0.90	11.56
1998	2,074,843,000	0.89	12.81

[1] The Fidelity Overseas Portfolio began operations on Jan. 28, 1987.
[2] The investment adviser or the Fidelity Overseas Portfolio has entered into varying arrangements with third parties who either paid or reduced a portion of the Portfolio's expenses. Before such reimbursements or reductions, the Portfolio's expense ratios for 1996, 1997, and 1998 were 0.93%, 0.92% and 0.91%, respectively. The investment adviser has voluntarily agreed to reimburse the Fidelity Overseas Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending fees, brokerage commissions and extraordinary expenses), as a percentage of its average net assets, exceed 1.50%.

28. With respect to the proposed substitution of shares of the Alger MidCap Portfolio for shares of the Capital Portfolio, although the Alger MidCap Portfolio invests primarily in the equity securities of companies having a market capitalization within the range of companies in the S&P MidCap 400 Index, it shares substantially the same investment objective as the Capital Portfolio in that both Portfolios seek to provide

policyowners with capital appreciation by focusing on companies with promising growth potential. Applicants believe that by making the proposed substitution, they can better serve the interests of policyowners by offering them a Portfolio which in recent years has had lower expenses and in the past year a higher total return than the Capital Portfolio. The assets of the Alger MidCap Portfolio have been significantly greater than the assets of the Capital Portfolio for each of the past three years. As a result of its size, the Alger MidCap Portfolio has been able to achieve economies of scale that the Capital Portfolio could not attain, which are reflected in the Alger MidCap Portfolio's ratio of total operating expenses to net asset value. Applicants believe that the Alger MidCap Portfolio will continue to have significantly greater assets than the Capital Portfolio, and have no reason to believe, given the limited distribution of the Capital Portfolio, that the Capital Portfolio will match the lower expense ratios of the Alger MidCap Portfolio in the near future. Further, although the Capital Portfolio experienced higher total returns than the Alger MidCap Portfolio in 1996 and 1997, the Alger MidCap Portfolio's total return in 1998 was substantially higher than the Capital Portfolio's return. Applicants believe that this proposed substitution would move policyowners currently invested in the Capital Portfolio to a much larger fund with a significantly greater level of net assets, lower expense ratios, and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

Capital portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$6,676,516	0.90	12.65
1997	6,494,058	0.90	21.14
1998	8,407,733	0.90	20.23

[1] The Capital Portfolio began operations on May 1, 1993.
[2] Before expense reimbursement, the Capital Portfolio's expense ratios for 1996, 1997, and 1998 were 0.99%, 0.99% and 0.99%, respectively.

Alger MidCap portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$394,847,000	0.84	11.90
1997	444,967,000	0.84	15.01
1998	689,571,000	0.84	30.30

[1] The Alger MidCap Portfolio began operations on May 3, 1993.

29. With respect to the proposed substitution of shares of the Fidelity Asset Manager Portfolio for shares of the Managed Portfolio, both Portfolios have substantially the same investment objective and both pursue this objective using similar investment policies. Both Portfolios seek to provide policyowners with high total return, consistent with prudent investment risk, by allocating the Portfolio assets among equities, debt obligations, and short-term and money market instruments. Applicants believe that by making the proposed substitution, they can better serve the interests of policyowners by offering them a Portfolio which in recent years has had lower expenses and better performance than the Managed Portfolio. The assets of the Fidelity Asset Manager Portfolio have been significantly greater than the assets of the Managed Portfolio for each of the past three years. As a result of its size, the Fidelity Asset Manager Portfolio has been able to achieve economies of scale that the Managed Portfolio could not attain. These economies of scale are reflected in the Fidelity Asset Manager Portfolio's lower expense ratios. Applicants believe that the Fidelity Asset Manager Portfolio will continue to have significantly greater assets than the Managed Portfolio, and have no reason to believe, given the limited distribution of the Managed Portfolio, that the Managed Portfolio will match the low expense ratios of the Fidelity Asset Manager Portfolio in the near future. Further, the Fidelity Asset Manager Portfolio has had better cumulative performance than has the Managed Portfolio during the past three years. Accordingly, this proposed substitution would move policyowners currently invested in the Managed Portfolio to a much larger fund with a significantly greater level of net assets, lower expense ratios, higher total returns and substantially the same risk and reward characteristics. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following charts:

Managed portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$15,972,639	0.90	5.75
1997	15,277,567	0.90	17.61
1998	13,308,554	0.90	5.15

[1] The Managed Portfolio began operations on Dec. 4, 1989.
[2] Before expense reimbursement, the Managed Portfolio's expense ratios for 1996, 1997, and 1998 were 0.95%, 0.95% and 0.96%, respectively.

Fidelity asset manager portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$3,641,194,000	0.73	14.60

Fidelity asset manager portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1997	4,399,937,000	0.64	20.65
1998	4,905,468,000	0.63	15.05

[1] The Fidelity Asset Manager Portfolio began operations on Sept. 6, 1989.
[2] The investment adviser of the Fidelity Asset Manager Portfolio has entered into varying arrangements with third parties who either paid or reduced a portion of the Portfolio's expenses. Before such reimbursements or reductions, the Portfolio's expense ratios for 1996, 1997 and 1998 were 0.74%, 0.65% and 0.64%, respectively. The investment adviser has voluntarily agreed to reimburse the Fidelity Asset Manager Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending fees, brokerage commissions and extraordinary expenses) as a percentage of its average net assets, exceed 1.25%.

30. With respect to the proposed substitution of shares of the Fidelity Contrafund Portfolio for shares of the Value Equity Portfolio, the investment objectives of both Portfolios are substantially similar in that both Portfolios seek long-term capital appreciation, although the Value Equity Portfolio also pursues long-term growth of income. Further, although the Fidelity Contrafund Portfolio's investment policies are broader than those of the Value Equity Portfolio, one of its principal investment strategies parallels the primary approach of the Value Equity Portfolio: to invest in securities which appear to be undervalued. In addition, Applicants believe that by making the proposed substitution, they can better serve the interests of policyowners by offering them a Portfolio which in recent years has had lower expenses and better overall total returns than the Value Equity Portfolio. The assets of the Fidelity Contrafund Portfolio have been significantly greater than the assets of the Value Equity Portfolio for each of the past three years. As with all of the Portfolios proposed as adequate substitutions for the Series Fund Portfolios, the Fidelity Contrafund Portfolio's size has resulted in greater economies of scale than that of the Value Equity Portfolio. The Fidelity Contrafund Portfolio's expense ratios have been consistently lower than the Value Equity Portfolio's expense ratios over the past three years. Applicants believe that the Fidelity Contrafund Portfolio will continue to have significantly greater assets than the Value Equity Portfolio, and have no reason to believe, given the limited distribution of the Value Equity Portfolio, that the Value Equity Portfolio will match the lower expense ratios of the Fidelity Contrafund Portfolio in the near future. Further, the Fidelity Contrafund Portfolio has experienced higher total returns in 1996 and 1998 than the Value Equity Portfolio. Applicants believe that this proposed substitution would move policyowners currently invested in the Value Equity Portfolio to a much larger fund with a significantly greater level of net assets and lower expense ratios. The net assets, expense ratios (expressed as a percentage of net assets), and returns of the two funds are shown in the following chairs:

Value equity portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$8,519,192	0.90	16.94
1997	10,146,856	0.90	26.93
1998	16,829,336	0.90	2.81

[1] The Value Equity Portfolio began operations on Dec. 4, 1989.
[2] Before expense reimbursement, the Value Equity Portfolio's expense ratios for 1996, 1997, and 1998 were 0.99%, 1.01% and 0.97%, respectively.

Fidelity contrafund portfolio [1]	Net assets at year-end	Expense ratio [2] (percent)	Total return (percent)
1996	$2,394,103,000	.71	21.22
1997	4,107,868,000	.68	24.14
1998	6,388,592,000	.66	29.98

[1] The Fidelity Contrafund Portfolio began operations on January 3, 1995.
[2] The investment adviser of the Fidelity Contrafund Portfolio has entered into varying arrangements with third parties who either paid or reduced a portion of the Portfolio's expenses. Before such reimbursements or reductions, the Portfolio's expense ratios for 1996, 1997 and 1998 were 0.74%, 0.71% and 0.70%, respectively. The investment adviser has voluntarily agreed to reimburse the Fidelity Contrafund Portfolio to the extent that total operating expenses (excluding interest, taxes, securities lending fees, brokerage commissions and extraordinary expenses) as a percentage of its average net assets, exceed 1.00%.

31. Canada Life and Canada Life of New York will redeem the shares of the Series Fund Portfolios for cash and use the redemption proceeds to purchase shares of the Fidelity VIP, Fidelity VIP II and Alger Portfolios. The proposed substitutions will take place at relative net asset value with no change in the amount of any policyowner's policy value, cash value or death benefit or in the dollar value of his or her investment in either of the Accounts. As a result, policyowners will remain fully invested. Policyowners will not incur any fees or charges as a result of the proposed substitutions, nor will their rights or Canada Life's and Canada Life of New York's obligations under the Contracts be altered in any way. All expenses incurred in connection with the proposed substitutions, including legal, accounting and other fees and expenses, will be paid by Canada Life and Canada Life of New York. In addition, the proposed substitutions will not impose any tax liability on policyowners. The proposed substitutions will not cause the Contract fees and charges currently being paid by existing policyowners to be greater after

the proposed substitutions than before the proposed substitutions. The proposed substitutions will not be treated as a transfer for the purpose of assessing transfer charges or for determining the number of remaining permissible transfers in a policy year. Canada Life and Canada Life of New York will not exercise any right they may have under the Contracts to impose additional restrictions on transfers under any of the Contracts for a period of at least 30 days following the substitutions.

32. By supplements to the various prospectuses for the Contracts and the Accounts, Canada Life and Canada Life of New York will notify all owners of the Contracts of their intention to effect the substitutions. The supplements advise policyowners that from the date of the supplement until the date of the proposed substitution, they are permitted to make one transfer of all amounts which are invested, as of the date of the supplement, in any one of the affected subaccounts to another subaccount (other than one of the other affected subaccounts) without that transfer counting as a "free" transfer under the Contract. The supplements also inform policyowners that Canada Life and Canada Life of New York will not exercise any rights reserved under any Contract to impose additional restrictions on transfers until at least 30 days after the proposed substitutions.

33. In addition to the prospectus supplements distributed to owners of Contracts, within five days after the proposed substitutions are effected, any policyowners who were affected by the substitutions will be sent a written notice informing them that the substitutions were carried out and that they may make one transfer of all policy value or cash value under a Contract invested in any one of the affected subaccounts on the date of the notice to another subaccount available under their Contract or to the fixed account without that transfer counting as one of any limited number of transfers permitted in a policy year or as one of a limited number of transfers permitted in a policy year free of charge. The notice will also reiterate the fact that Canada Life and Canada Life of New York will not exercise any rights reserved by them under the Contracts to impose additional restrictions on transfers until at least 30 days after the proposed substitutions. The notice as delivered in certain states also may explain that, under the insurance regulations in those states, policyowners who are affected by the substitutions may exchange their Contracts for fixed-benefit life insurance contracts or annuity contracts, as applicable, issued by Canada Life and Canada Life of New York (or one of their affiliates) during the 60 days following the proposed substitutions. The notices will be preceded or accompanied by current prospectuses for Fidelity VIP, Fidelity VIP II and Alger.

Applicants' Legal Analysis

1. Section 26(b) of the Act requires the depositor of a registered unit investment trust holding the securities of a single issuer to obtain Commission approval before substituting the securities held by the trust. Specifically, Section 26(b) states that.

> It shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution. The Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of this title.

2. Applicants state that the substitutions appear to involve substitutions of securities within the meaning of Section 26(b) of the Act and request that the Commission issue an order pursuant to Section 26(b) of the Act approving the substitutions.

3. The Contracts expressly reserve for Canada Life and Canada Life of New York the right, subject to compliance with applicable law, to substitute shares of another Management Company for shares of a Management Company held by a subaccount of the Canada Life Account or the Canada Life of New York Account. The prospectuses for the Contracts and the Canada Life Account and the Canada Life of New York Account contain appropriate disclosure of this right.

4. Applicants request an order of the Commission pursuant to Section 26(b) of the Act approving the proposed substitutions by Canada Life and Canada Life of New York. Applicants assert that the proposed substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

5. Applicants assert that the Fidelity VIP, Fidelity VIP II and Alger Portfolios would offer policyowners better growth prospects than the Series Fund Portfolios do. The Fidelity VIP, Fidelity VIP II and Alger Portfolios are all part of a larger group of funds and have more distribution channels than the Series Fund Portfolios. Applicants therefore believe that the Fidelity VIP, Fidelity VIP II and Alger Portfolios will offer greater appeal and the capacity for faster future growth to potential future investors than would the Series Fund Portfolios. Further, the investment objectives of the Series Fund Portfolios are substantially similar if not identical to those of their corresponding Fidelity VIP, Fidelity VIP II, and Alger Portfolios, with such objectives being pursued using the same or similar investment policies. Accordingly, although the Fidelity VIP, Fidelity VIP II and Alger Portfolios and the Series Fund Portfolios do not share the same investment adviser, Applicants assert that the proposed substitutions will result in an array of subaccounts that not only continue to meet policyholders' investment expectations and maintain investment flexibility, but that are essentially the same as the array offered prior to the substitution, except that the underlying portfolios will be larger with lower expense ratios. For these reasons, Applicants assert that policyowners would benefit from the proposed substitutions.

6. Applicants assert that each of the substitutions is not the type of substitution which Section 26(b) was designed to prevent. Unlike traditional unit investment trusts where a depositor could only substitute an investment security in a manner which permanently affected all the investors in the trust, the Contracts provide each policyowner with the right to exercise his or her own judgment and transfer policy or cash values into other subaccounts. Moreover, the Contracts will offer policyowners the opportunity to transfer amounts out of the affected subaccounts into any of the remaining subaccounts without cost or other disadvantage. Applicants assert that the substitutions, therefore, will not result in the type of costly forced redemption which Section 26(b) was designed to prevent.

7. Applicants further assert that the proposed substitutions also are unlike the type of substitution which Section 26(b) was designed to prevent in that by purchasing a Contract, policyowners select much more than a particular investment company in which to invest their account values. Applicants believe that they also select the specific type of insurance coverage offered by Canada Life and Canada Life of New York under their contract as well as numerous other rights and privileges set forth in the Contract. Applicants assert that policyowners may also have considered Canada Life's and Canada Life of New York's size, financial condition, type and their reputation for service in selecting their Contract. Applicants maintain that these factors will not change as a result of the proposed substitutions.

Conclusion

Applicants assert that, for the reasons summarized above, the substitutions are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7584 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24344; 812–11430]

Equity Investor Fund, et al.; Notice of Application

March 21, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for an order under section 12(d)(1)(J) of the Investment Company Act of 1940 (the "Act") for an exemption from section 12(d)(1)(F)(ii) of the Act and under sections 6(c) and 17(b) of the Act for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: The requested order would permit certain unit investment trusts ("UITs") relying on section 12(d)(1)(F) of the Act to offer units with a sales load in excess of the limit in section 12(d)(1)(F)(ii) of the Act. In addition, the requested order would permit a terminating series of a UIT to sell certain investment company shares to a new series of the UIT.

APPLICANTS: Merrill Lynch, Pierce, Fenner & Smith Incorporated ("Merrill Lynch"), Salomon Smith Barney Inc., Dean Witter Reynolds Inc. and Paine Webber Incorporated (collectively, the "Sponsors"); and the Equity Investor Fund ("EIF").

FILING DATES: The application was filed on December 10, 1998 and amended on April 20, 1999 and March 7, 2000. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 17, 2000, and should be accompanied by proof of service on applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, P.O. Box 9051, Princeton, NJ 08543–9051.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574 or George J. Zornada, Branch Chief, at (202) 942–0564, (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. EIF is registered under the Act as a UIT and is sponsored by one or more of the Sponsors. EIF consists of multiple series ("Series"), each created by a trust indenture between the Sponsors and a financial institution that satisfies the criteria of section 26(a) of the Act (the "Trustee"). Each Sponsor is registered as a broker-dealer under the Securities Exchange Act of 1934 and is a member of the National Association of Securities Dealers, Inc. ("NASD"). Applicants request relief for each subsequently-issued Series and for any future registered UIT that is sponsored by one or more of the Sponsors and which becomes party to the trust indenture.

2. Each Series will contain a portfolio of equity securities ("Fund Shares") issued by registered investment companies that are not affiliated with any of the applicants (the "Funds"). The Funds may be closed-end investment companies ("Closed-end Funds"), open-end investment companies ("Open-end Funds"), UITs or investment companies that are registered under the Act as open-end investment companies or UITs but have received exemptive relief under the Act to permit their shares to trade at negotiated prices on a national securities exchange ("Exchange-Traded Funds"). The Sponsors will deposit Fund Shares in a Series at the Fund Shares' net asset value (in the case of Open-end Funds and UITs) or at their market value (in the case of Closed-end Funds and Exchange-Traded Funds). Market value will be a Fund's closing sale price on a national securities exchange or the Nasdaq National Market System ("Nasdaq-NMS") or, if unavailable, at the closing ask prices as determined by the Trustee.

3. Simultaneously with the deposit of Fund Shares, the Trustee will deliver to the Sponsors units ("Units") which represent the entire ownership of the Series. These Units will in turn be offered for sale to the public by the Sponsors. The Units will be offered at prices based on the aggregate value of the Fund Shares deposited (plus any cash, receivables (including dividends receivable) and any other assets of the Series less accrued liabilities), plus a sales charge and organization costs. The sales charges on the Units will not, when aggregated with any sales charge, distribution fees and service fees paid by the Series with respect to Fund Shares, exceed the limits set forth in rule 2830 of the NASD's Conduct Rules. Although a Series may invest in a Fund with an asset-based sales charge exceeding .25% of the Fund's average net assets, any fees paid by a Fund to the Sponsors or the Trustee will be rebated to the Series and used to reduce the Series' expenses.

4. The portfolios of certain Series may be selected based on an asset allocation model or other selection criteria, which the investment strategy requires to be reapplied periodically. These Series ("Rollover Series") may terminate approximately one or two years after they are offered for sale. At that time, the Sponsors intend to create and offer a new Series ("New Series"), the portfolio of which will reflect the current asset allocation model or reapplication of the selection process and may contain the same Fund Shares as the Rollover Series. Investors in the Rollover Series may elect to invest in the New Series.

5. Applicants request relief to permit a Rollover Series to sell Fund Shares to the New Series. In order to minimize the potential for overreaching, Merrill Lynch as agent for the Sponsors will certify in writing to the Trustee, within five days of each sale of Fund Shares from a Rollover Series to a New Series: (a) That the transaction is consistent with the policy of both the Rollover Series and the New Series, as recited in their respective registration statement and reports filed under the Act, (b) the date of the transaction, and (c) the net asset value of the Fund in the case of an Open-end Fund or UIT, or the closing sale price on a national securities

exchange or Nasdaq-NMS in the case of a Closed-end Fund or Exchange Fund. The Trustee will then countersign the certificate unless, in the event the Trustee disagrees with a price listed on the certificate, the Trustee immediately informs Merrill Lynch orally of any such disagreement and return the certificate within five days to Merrill Lynch with corrections duly noted. Upon Merrill Lynch's receipt of a corrected certificate, Merrill Lynch and the Trustee will jointly determine the correct closing sale price by reference to a mutually agreeable, published list of prices for the date of the transaction.

Applicants' Legal Analysis

A. Section 12(d)(1) of the Act

1. Section 12(d)(1)(A) of the Act provides that no registered investment company may acquire securities issued by another investment company if such securities represent more than 3% of the total outstanding voting stock of the acquired company, more than 5% of the value of the total assets of the acquiring company, or if securities issued by the acquired company and all other investment companies have an aggregate value in excess of 10% of the value of the total assets of the acquiring company.

2. Section 12(d)(1)(F) of the Act provides that section 12(d)(1) does not apply to securities purchased or otherwise acquired by a registered investment company if, immediately after the purchase or acquisition, not more than 3% of the total outstanding stock of the acquired company is owned by the acquiring company and all affiliated persons of the acquiring company, and the acquiring company does not impose a sales load on its shares of more than 1.5%. In addition, no acquired company may be obligated to honor any acquiring company's redemption request in excess of 1% of the acquired company's securities during any period of less than 30 days, and the acquiring company must vote its acquired company shares either in accordance with instructions from its shareholders or in the same proportion as all other shareholders of the acquired company. The Series will invest in Fund Shares in reliance on section 12(d)(1)(F).

3. Section 12(d)(1)(J) of the Act provides that the Commission may exempt persons or transactions from any provision of section 12(d)(1) if and to the extent such exemption is consistent with the public interest and the protection of investors. Applicants request an exemption under section 12(d)(1)(J) to permit a Series relying on section 12(d)(1)(F) to offer Units with a sales load in excess of 1.5%. For the reasons stated below, applicants believe that the requested relief meets the standards of section 12(d)(1)(J).

4. While each Series may charge a sales load, the Sponsors will deposit the Fund Shares at net asset value (*i.e.*, without any sales charge). To further limit the extent to which unitholders may pay indirectly for distribution costs of the underlying Funds, any fees paid by a Fund to the Sponsors or the Trustee will be rebated to the Series. Applicants also have agreed, as a condition to the requested relief, that any sales charges, distribution related fees, and service fees relating to Units, when aggregated with any sales charges, distribution related fees, and service fees paid by the Series relating to its acquisition, holding, or disposition of Fund Shares, will not exceed the limits set forth in rule 2830 of the NASD Conduct Rules. Applicants believe that it is appropriate to apply the NASD's rule to the proposed arrangement in place of the sales load limitation in section 12(d)(1)(F). As a result, the aggregate sales charges will not exceed the limit that otherwise could be charged at any single level.

B. Section 17(a) of the Act

1. Section 17(a) of the Act generally makes it unlawful for an affiliated person of a registered investment company to sell securities to or purchase securities from the company. Applicants submit that the Series may be deemed to be affiliated persons of one another by virtue of being under common control because they have one or more common Sponsors. The Series therefore may be unable to sell and purchase Fund Shares to and from each other without an exemption from section 17(a) of the Act. Accordingly, applicants request relief to permit a Rollover Series to sell Fund Shares to a New Series ("Rollover Transactions").

2. Section 17(b) of the Act permits the Commission to grant an order permitting a transaction otherwise prohibited by section 17(a) if it finds that the terms of the proposed transaction, including the consideration to be paid or received, are fair and reasonable and do not involve overreaching on the part of any person concerned and the proposed transaction is consistent with the policy of the registered investment company and the general purposes of the Act. Section 6(c) of the Act permits the Commission to exempt persons or transactions from any provision of the Act, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. For the reasons stated below, applicants believe that the terms of the Rollover Transactions meet the standards of sections 6(c) and 17(b) of the Act.

3. Rule 17a–7 under the Act permits registered investment companies that might be deemed affiliated persons solely by reason of having a common investment adviser, directors, and/or officers, to purchase securities from or to sell securities to one another, provided certain conditions are met. Applicants represent that they will comply with all of the provisions of rule 17a–7, other than paragraphs (b) and (e).

4. Rule 17a–7(b) requires that the transactions be effected at the independent current market price of the security. Shares of Open-end Funds and UITs would fall within the category of "all other securities" in paragraph (b)(4) of the rule, for which the current market price under rule 17a–7(b) is the average of the highest current independent bid and the lowest current independent offer determined on the basis of reasonable inquiry. Applicants state that shares of Open-end Funds and UITs do not trade at a bid or offer price but at an independently-determined net asset value.

5. Rule 17a–7(e) requires an investment company's board of directors to adopt and monitor procedures for transactions effected pursuant to the rule to assure compliance with the rule. Because a UIT does not have a board of directors, applicants state that there can be no board review of the Rollover Transactions.

6. Applicants submit that engaging in Rollover Transactions will not disadvantage either the Rollover Series or the New Series. Applicants note that Rollover Transactions may reduce costs to unitholders of the Series. In addition, the Rollover Transactions will be consistent with the policy of each Series, as only securities that would otherwise be bought and sold on the open market pursuant to the policy of each Series will be involved in the Rollover Transactions.

Applicants' Conditions

Applicants agree that the order granting the requested relief shall be subject to the following conditions:

1. Each Series will comply with section 12(d)(1)(F) in all respects except for the sales load limitation of section 12(d)(1)(F)(ii).

2. Any sales charges, distribution-related fees, and service fees relating to the Units, when aggregated with any sales charges, distribution-related fees and service fees paid by a Series relating to its acquisition, holding or disposition of Fund Shares, will not exceed the limits set forth in rule 2830(d) for the NASD Conduct Rules.

3. Each sale of Fund Shares between the Series will be effected at the net asset value of the Fund Shares as determined by the Fund on the sale date or, if traded on a national securities exchange or Nasdaq-NMS, the closing sale price on the sale date. Such sales will be effected without any brokerage commissions or other remuneration except customary transfer fees, if any.

4. The nature and conditions of such transactions will be disclosed to investors in the prospectus of each Series.

5. The Trustee of each Rollover Series and New Series will (a) review the procedures relating to the sale of Fund Shares from a Rollover Series and the purchase of Fund Shares for deposit in a New Series and (b) make such changes to the procedures as the Trustee deems necessary that are reasonably designed to comply with paragraphs (a), (c) and (d) of rule 17a–7.

6. A written copy of these procedures and a written record of each transaction effected pursuant to the requested order will be maintained as provided in rule 17a–7(f).

7. No Series will acquire securities of a Fund which, at the time of acquisition, owns securities of any other investment company in excess of the limits contained in section 12(d)(1)(A) of the Act.

8. No Series will terminate within 30 days of the termination of any other Series that holds shares of one or more common Funds.

9. The prospectus of each Series and any sales literature or advertising that mentions that existence of an in-kind distribution option will disclose that unitholders who elect to receive Fund Shares will incur any applicable rule 12b–1 fees.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7532 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42543; File No. SR–Amex–99–49]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to Investment Series of the iShares℠ Trust Based on Foreign Stock Indexes

March 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to list the trade under rules 1000A *et seq.* ("Index Fund Shares") series of the iShares℠ Trust based on stock indexes that consist in whole or part of foreign stocks. The text of the proposed rule change is available at the Office of the Secretary, the Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Amex rules 1000A *et seq.* provide for the listing and trading of Index Fund Shares, which are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of a specified foreign or domestic index.[3] The Exchange currently lists under Amex rules 1000A *et seq.* seventeen series of World Equity Benchmark Shares℠ ("WEBS™") based on Morgan Stanley Capital International foreign stock indices;[4] and nine series of Select Sector SPDRs® based on Select Sector Indexes comprised of stocks representing various industry sectors and included in the S&P 500® Index.[5]

The Exchange proposes to list and trade under Amex rules 1000A *et seq.* the following investment series (each a "Fund" and collectively, the "Funds") of the iShares℠ Trust[6] ("Trust") based on indexes (referred to herein as "Underlying Indices") comprised in whole or part of equity securities issued by foreign issuers as follows: (1) iShares S&P Europe 350 Fund and (2) iShares S&P/TSE 60 Fund.

In addition to the Funds listed above, the Trust's Investment Company Act of 1940 ("1940 Act") exemptive application requests that the exemptive relief sought in the Application apply to Funds (referred to herein as "Additional Funds") based on the following indexes: (1) S&P Euro Index; (2) Dow Jones Global Media Sector Index; (3) Dow Jones Global Pharmaceuticals Sector Index; and (4) Dow Jones Global Telecommunications Sector Index. Funds on these indexes will not be the subject of the Trust's initial registration statement, which will cover, among other Funds,[7] the iShares S&P Europe 350 Fund and the iShares S&P/TSE 60 Fund. The Exchange proposes to list and trade the Additional Funds, listed above, that are the subject of the Trust's 1940 Act exemptive application after an effective registration statement is in place for those funds. All descriptions herein that apply to the two proposed

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[4] "World Equity Benchmark Shares" and "WEBS" are service marks of Morgan Stanley Group, Inc. *See* Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999).

[5] "S&P®", "S&P 500®" and "SPDRs®" are trademarks of The McGraw-Hill Companies, Inc., and "Selected Sector SPDR" is a service mark of The McGraw-Hill Companies, Inc., *See* Securities Exchange Act Release 40479 (December 4, 1998), 63 FR 68483 (December 11, 1998).

[6] The Trust has filed with the Commission an Application for Orders ("Application") under Sections 6(c) and 17(b) of the Investment Company Act of 1940 ("1940 Act") as amended, for the purpose of exempting the Trust from various provisions of the 1940 Act and Amex Rules thereunder (File No. 812–11598).

[7] *See* File No. SR–Amex–99–48 for a description of iShares Funds based on indexes composed of stocks traded in the U.S.

iShares Funds also apply to the Additional Funds.

A detailed description of each Underlying Index for the iShares Funds and the Additional Funds, as prepared by the compilers of the Underlying Indices, is available in the Commission's public reference room as Exhibit B. These descriptions include information regarding component selection criteria, issue changes, index maintenance, index availability, index description, and industry group distribution by market capitalization.

"Passive" or Indexing Investment Approach. The investment objective of each Fund is to provide investment results that, before expenses, correspond generally to the price and yield performance of companies in the Underlying Index. In seeking to achieve the respective investment objective of each Fund, Barclays Global Fund Advisors, ("the Adviser"), will utilize some variety of "passive" or indexing investment approach. Certain Funds will use a replication strategy by which an index fund seeks to match an Underlying Index's performance, before fees and expenses, by buying and selling all of the Underlying Index's securities in the same proportion as they are reflected in the Underlying Index. These Funds reserve the right not to invest in every security in the Underlying Index if the Adviser believes it is not practical to do so under the circumstances. It is anticipated that the iShares S&P/TSE 60 Fund will use a replication strategy.

Representative Portfolio Sampling Approach. Other Funds may not hold all or most of the securities in the Underlying Index ("Component Securities"). This may be the case, for example, when there are substantial costs involved in compiling an entire Underlying Index basket that contains scores of Component Securities or, in certain instances, when a Component Security is illiquid. In cases such as these, a Fund will attempt to hold a representative sample of the Component Securities in the Underlying Index, which will be selected by the Adviser utilizing quantitative analytical models in a strategy known as "representative portfolio sampling." It is anticipated that the iShares S&P Europe 350 Fund will use this technique.

No Fund will concentrate (*i.e.*, hold more than 25% of its assets in the stocks of a single industry or a group of industries) its investments in issuers of one or more particular industries, except that a Fund will concentrate to the extent that its Underlying Index concentrates in the stocks of such particular industry or industries.

Under this strategy, each security is considered for inclusion in a Fund based on its contribution to certain capitalization, industry, and fundamental investment characteristics. The Adviser will seek to construct the portfolio of a Fund so that it will have capitalization, industry and fundamental investment characteristics that perform like those in the corresponding Underlying Index. From time to time, adjustments, will be made in the portfolio of each Fund in accordance with changes in the composition of the Underlying Index, or to maintain compliance as a "regulated company" under the Internal Revenue Code.[8] Certain of these Funds may also hold some securities that are not components of the relevant Underlying Index if the Adviser decides it is appropriate in view of such Funds' investment objectives and investment or tax constraints. If the representative portfolio sampling technique is used, a Fund will not be expected to track its Underlying Index with the same degree of accuracy as would an investment vehicle that invested in every Component Security of the Underlying with the same weighting as the Underlying Index. It is anticipated that, over time, the Adviser in such case will be able to employ representative portfolio sampling techniques such that the expected tracking error of a Fund relative to the performance of its Underlying Index will be less than 5 percent.

Procedures for Creation and Redemption of iShares of the Funds. Procedures for the creation and redemption of iShares of the proposed Funds similar to procedures for creation and redemption of certain other Index Fund Shares based on a foreign stock index currently listed on the Amex (*i.e.*, WEBS), which do not utilize processes of the National Securities Clearing Corporation ("NSCC") in connection with the transmittal of trade instructions, the transfer of component securities and the cash component, and the transfer of iShares on creation and redemption. In contrast, creation and redemption procedures applicable to Portfolio Depositary Receipts, such as SPDRs and Index Fund Shares, such as Select Sector SPDRs based on domestic stock indexes, utilize such NSCC processes.

Purchase or Creation of Creation Unit Aggregations. The Trust will issue and sell iShares of each Fund only in Creation Unit Aggregations[9] on a continuous basis through the distributor, SEI Investments Distribution Company ("the Distributor"), without a sales load at their net asset value ("NAV") next determined after receipt, on any business day, of an order in proper form. The consideration for purchase of Creation Unit Aggregations of a Fund generally consists of the in-kind deposit of a designated portfolio of equity securities (the "Deposit Securities") per each Creation Unit Aggregation of the stocks and weightings in the relevant Fund's portfolio ("Fund Securities") and an amount of cash (the "Cash Component") computed as described below. Together, the Deposit Securities and the Cash Component constitute the "Fund Deposit," which represents the minimum initial and subsequent investment amount for a Creation Unit Aggregation of any Fund. The Trust will impose a Transaction Fee in connection with the creation and redemption of Creation Unit Aggregations.

The Cash Component is an amount equal to the Balancing Amount. The "Balancing Amount" is an amount equal to the difference between the NAV of the iShares (per Creation Unit Aggregation) and the "Deposit Amount," an amount equal to the market value of the Deposit Securities. If the Balancing Amount is a positive number, (*i.e.*, the NAV per Creation Unit Aggregation exceeds the Deposit Amount), the Cash Component will be paid to the Trust by the creator. If the Balancing Amount is a negative number, (*i.e.*, the NAV per Creation Unit. Aggregation is less than the Deposit Amount), the creator will receive cash in an amount equal to the differential.

The Adviser, through NSCC will make available on each Business Day immediately prior to the opening of business on the Amex, currently 9:30 a.m., New York time, the list of the names and the required number of shares of each Deposit Security to be included in the current Fund Deposit for each Fund. Such Fund Deposit is applicable, subject to any adjustments, to effect creations of Creation Unit Aggregations of a given Fund, until such time as the next-announced composition of the Deposit Securities is made available.

It is anticipated that the deposit of Deposit Securities and the Cash Component in exchange for iShares will be made primarily by institutional investors, arbitrageurs, and the Exchange specialist. Creation Unit Aggregations are separable upon issuance into identical shares that are listed and traded on the Amex.

Redemption of Creation Unit Aggregations. Shares may be redeemed only in Creation Unit Aggregations at their NAV next determined after receipt of a redemption request in proper form by the Fund through the Distributor and only on a business day. Immediately prior to the opening of business on the Amex on each business day, the Adviser, through NSCC, will identity the Fund Securities that will be applicable (subject to possible amendment or correction) to redemption requests for each Fund received in proper form on that day. Fund securities received on redemption may not be identical to Deposit Securities that are applicable to creations of Creation Unit Aggregations.

Unless cash redemptions are available or specified for a Fund, the redemption proceeds for a Creation Unit Aggregation generally consist of Fund Securities—as announced by the Adviser on the business day of the request for redemption received in proper form—plus cash in an amount equal to the difference between the NAV of the iShares being redeemed, as next determined after a receipt of a request in proper form, and the value of the Fund Securities (the "Cash Redemption Amount").

If it is not possible to effect deliveries of the Fund Securities, the Trust may in its discretion exercise its option to redeem iShares in cash, and the redeeming beneficial owner will be required to receive redemption proceeds in cash. In addition, an investor may request a redemption in cash which the Fund may, in its sole discretion, permit. In either case, the investor will receive a cash payment equal to the NAV of its iShares based on the NAV of iShares of the relevant Fund next determined after the redemption request is received in proper form. A Fund may also, in its sole discretion, upon request of a shareholder, provide the redeemer a portfolio of securities that differs from the exact composition of the Fund Securities but does not differ in NAV.

Availability of Information Regarding Fund Shares and Underlying Indices. In addition to the list of names and amount of each security constituting the current Deposit Securities of the Portfolio Deposit, the Cash Component effective as of the previous business day, per outstanding share of each Fund, is expected to be made available each business day. The Exchange expects to disseminate, every 15 seconds during regular Amex trading hours, through the facilities of the Consolidated Tape Association ("CTA"), an amount per Fund Share representing the sum of the estimated Cash Component effective through and including the previous business day, plus the current value of the Deposit Securities in U.S. dollars, on a per share basis.

The value of each Underlying Index will be updated intra-day on a real time basis as individual Component Securities change in price. These intra-day values of the Underlying Indices will be disseminated every 15 seconds throughout the trading day. In addition, these organizations will disseminate a value for each Underlying Index once each trading day, based on closing prices in the relevant exchange market. Each Fund will make available on a daily basis the names and required number of shares of each of the Deposit Securities in a Creation Unit Aggregation, as well as information regarding the cash-balancing amount. The NAV for each Fund will be calculated and disseminated daily. In addition, the Adviser maintains a website that provides information about the returns and methodology of various indices, and will include the relevant Underlying Index for each Fund. The Trust also intends to maintain a website that will include the relevant prospectuses and additional quantitative information that is updated on a daily basis, including daily trading volume and closing price for each Fund. The Amex also intends to disseminate a variety of data with respect to each Index Series on a daily basis by means of CTA and Consolidated Quotation High Speed Lines, including shares outstanding and cash amount per Creation Unit Aggregation, which will be made available prior to the opening of the Amex. The closing prices of the Funds' Deposit Securities are readily available from, as applicable, the relevant exchanges, automated quotation systems, or on-line information services such as Bloomberg or Reuters.

Dissemination of Indicative Portfolio Value. In order to provide updated information relating to each Fund for use by investors, professionals and persons wishing to create or redeem iShares based on indexes with non-U.S. components, it is expected that the Exchange will disseminate through the facilities of the CTA an updated indicative portfolio value ("Value") for each of the Funds traded on the Exchange as calculated by a securities information provider ("Value calculator"). It is anticipated that the methodology utilized in connection with the Funds will be similar to procedures used to calculate the Value for WEBS currently trading on the Exchange. The Value will be disseminated on a per iShares basis every 15 seconds during regular Amex trading hours of 9:30 a.m. to 4:15 p.m. New York time. The equity securities values included in the Value are the values of the Deposit Securities, which are the same as the portfolio that is to be utilized generally in connection with creations and redemptions of iShares in Creation Unit Aggregations on that day. The equity securities included in the Value reflects the same market capitalization weighting as the Deposit Securities in the portfolio for the particular iShares Fund. In addition to the value of the Deposit Securities for each Fund, the Value includes the Cash Component. The Value also reflects changes in currency exchange rates between the U.S. dollar and the applicable home foreign currency.

The Value may not reflect the value of all securities included in the applicable Underlying Index. In addition, the Value does not necessarily reflect the precise composition of the current portfolio of securities held by each Fund at a particular point in time. Therefore, the Value on a per iShares basis disseminated during Amex trading hours should not be viewed as a real time updated of the NAV of a particular Fund, which is calculated only once a day. While the Value that will be disseminated by the Amex at 9:30 a.m. is expected to be generally very close to the most recently calculated Fund NAV on a per iShares basis, it is possible that the value of the portfolio of securities held by a Fund may diverge from the Deposit Securities Values during any trading day. In such case, the Value will not precisely reflect the value of the Fund portfolio.

However, during the trading day, the Value can be expected to closely approximate the value per Fund share of the portfolio of securities for each Fund except under unusual circumstances (*e.g.*, in the case of extensive

[8] In order for a Fund to qualify for tax treatment as a regulated investment company, it must meet several requirements under the Internal Revenue Code. Among these is the requirement that, at the close of each quarter of the Fund's taxable year, (1) at least 50 percent of the market value of the Fund's total assets must be represented by cash items, U.S. government securities, securities of other regulated investment companies and other securities, with such other securities limited for purposes of this calculation in respect of any one issuer to an amount not greater than 5 percent of the value of the Fund's assets and not greater than 10 percent of the outstanding voting securities of such issuer, and (2) not more than 25 percent of the value of its total assets may be invested in the securities of any one issuer, or of two or more issuers that are controlled by the Fund (within the meaning of Section 851(b)(4)(B) of the Internal Revenue Code) and that are engaged in the same or similar trades or business or related trades or business (other than U.S. government securities or the securities of other regulated investment companies.)

[9] iShares cannot be redeemed individually but must be redeemed in Creation Unit Aggregations applicable to the specific Fund.

rebalancing of multiple securities in a Fund at the same time by the Advisor). The circumstances that might cause the Value to be based on calculations different from the valuation per Fund share of the actual portfolio of a Fund would not be different than circumstances causing any index fund or trust to diverge from an underlying benchmark index.

The Exchange believes that dissemination of the Value based on the Deposit Securities provides additional information regarding each Fund that would not otherwise be available to the public and is useful to professionals and investors in connection with iShares trading on the Exchange or the creation or redemption of iShares.

For each Fund the Value calculator will utilize closing prices (in applicable foreign currency prices) in the principles foreign market(s) for securities in the Fund portfolio, and convert the price to U.S. dollars. This Value will be updated every 15 seconds during the Amex trading hours to reflect change in currency exchange rates between the U.S. dollars and the applicable foreign currency. The Value will also include the applicable Cash Component for each Fund.

For Funds that include foreign stocks, the principal foreign markets for which have trading hours overlapping regular Amex trading hours, the Value calculator will update the applicable Value every 15 seconds to reflect price changes in the applicable foreign market or markets, and convert such prices into U.S. dollars based on the current currency exchange rate. When the foreign market or markets are closed but the Amex is open, the Value will be updated every 15 seconds to reflect changes in currency exchange rates after the foreign markets close.

Other Characteristics of iShares. It is anticipated that a minimum of two Creation Unit Aggregations for each Fund will be outstanding at the commencement of trading on the Exchange. The number of shares per Creation Unit Aggregation is anticipated to be approximately 50,000 shares.

Funds shares will be registered in book-entry form through the Depository Trust Company ("DTC"). Trading in Funds shares on the Exchange will be effected until 4:15 p.m. each business day. The minimum trading increment under Amex rule 127 for Fund Shares will be 1/64 of $1.00.

Dividends from net investment income will be declared and paid at least annually by each Fund. Distributions of realized securities gains, if any, generally will be declared and paid at least once a year, but each Fund may make distributions on a more frequent basis to comply with Internal Revenue Code distribution requirements. Certain of the Funds intend to make the DTC book-entry Dividend Reinvestment Service available for use by beneficial owners of the Fund through DTC Participants for reinvestment of their cash proceeds.

The Exchange, in an information circular, will inform member firms, prior to commencement of trading, that investors purchasing iShares will be required to receive a fund prospectus prior to or concurrently with the confirmation of a transaction therein.[10]

Original and Annual Listing Fees. The Amex original listing fee applicable to the listing of iShares is $5,000 for each Fund. In addition, the annual listing fee under Section 141 of the Amex *Company Guide* will be based upon the year-end aggregate number of outstanding iShares for all Funds combined.

Stop and Stop Limit Orders. Amex rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security other than an option, which is covered by Amex rule 950(f) and Commentary thereto, the price of which is derivatively priced based upon an other security or index of securities, may with the prior approval of a Floor Official be elected by a quotation, as set forth in Commentary .04(c) (i–v). The Exchange has designated iShares as eligible for this treatment.[11]

Trading Halts. In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex rule 918C(b) in exercising its discretion to halt or suspend trading in a Fund. These factors would include: (1) The extent to which trading is not occurring in stocks underlying the specific underlying index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in iShares will halt in the event that market-wide circuit breakers are triggered pursuant to Amex rule 117.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organizations' Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organizations' Statement on Comments on the Proposed Amex Rule Change Received From Members, Participants, or Others

The Exchange neither solicited nor received written comments.

III. Date of Effectiveness of the Proposed Rule Change and timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Amex–99–49 and should be submitted by April 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7533 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

[10] In its 1940 Act exemptive application, the Trust requests relief from the prospectus delivery requirements imposed by Section 24(d) of the 1940 Act. The Exchange will inform member firms of the prospectus delivery requirements applicable at commencement of trading.

[11] *See* Securities Act Release No. 29063, note 9, (SR–Amex–90–31) regarding Exchange designation of equity derivstive securities as eligible for such treatment under Amex Rule 154, Commentary .04(c).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42542; File No. SR–Amex–00–14]

Self-Regulatory Organization; Notice of Filing of Proposed Rule Change by the American Stock Exchange LLC Relating to Generic Standards Applicable to Listing Portfolio Depositary Receipts and Index Fund Shares Pursuant to Rule 19b–4(e)

March 17, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder, notice is hereby given that on March 6, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to add new Commentary .03 to Amex Rule 1000 (Portfolio Depositary Receipts) and New Commentary .02 to Amex Rule 1000A (Index Fund Shares) to provide standards to permit listing and trading of Portfolio Depositary Receipts ("PDR") and Index Fund Shares pursuant to Rule 19b–4(e) under the Act.[3] Below is the text of the proposed rule change. Proposed new language is in italics.

Portfolio Depositary Receipts

Rule 1000 No change.

* * * Commentary

.01 No change.
.02 No change.
.03 The Exchange may approve a series of Portfolio Depositary Receipts for listing and trading pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Portfolio Depositary Receipts on the Exchange, the component stocks of an index or portfolio underlying such series of Portfolio Depositary Receipts shall meet the following criteria:

(1) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 million;

(2) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(3) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(4) The underlying index or portfolio must include a minimum of 13 stocks; and

(5) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

(b) Index Methodology and Calculation. (i) The index underlying a series of Portfolio Depository Receipts will be calculate based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (iii) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Portfolio Depositary Receipts an estimate, undated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Portfolio Depositary Receipts is required to be outstanding at start-up of trading.

(e) Trading Increment. The minimum trading increment for a series of Portfolio Depositary Receipts shall be 1/64 of $1.00.

(f) Listing Fees. The original listing fee is $5,000 for each series of Portfolio Depositary Receipts. The annual listing fee under Section 141 of the Amex Company Guide will be based upon the number of a series of Portfolio Depositary Receipts outstanding at the end of each calendar year.

(g) Surveillance Procedures. The Exchange will implement written surveillance procedures for Portfolio Depositary Receipts.

(h) Applicability of Other Rules. The provisions of Rules 1000 et seq. will apply to all series of Portfolio Depositary Receipts.

* * * * *

Index Fund Shares

Rule 1000A No change.

* * * Commentary

.01 No change.
.02 The Exchange may approve a series of Index Fund Shares of listing pursuant to Rule 19b–4(e) under the Securities Exchange Act of 1934 provided each of the following criteria is satisfied:

(a) Eligibility Criteria for Index Components. Upon the initial listing of a series of Index Fund Shares each component of an index or portfolio underlying a series of Index Fund Shares shall meet the following criteria:

(1) Component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio shall have a minimum market value of at least $75 million;

(2) The component stocks shall have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio;

(3) The most heavily weighted component stock cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio;

(4) The underlying index or portfolio must include a minimum of 13 stocks; and

(5) All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market.)

(b) Index Methodology and Calculation. (i) The index underlying a

[1] 15 U.S.C 78s(b)(1).
[2] 17 CFR 240.19b–4
[3] 17 CFR 240.19b–4(e).

series of Index Fund Shares will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology; (ii) If the index is maintained by a broker-dealer, the broker-dealer shall erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer; and (iii) The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

(c) Disseminated Information. The Reporting Authority will disseminate for each series of Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

(d) Initial Shares Outstanding. A minimum of 100,000 shares of a series of Index Fund Shares is required to be outstanding at start-up of trading.

(e) Trading Increment. The trading increment may vary among different series of Index Fund Shares but will be set at 1/16, 1/32 or 1/64 of $1.00.

(f) Hours of Trading. Trading will occur between 9:30 a.m. and either 4:00 p.m. or 4:15 p.m. for each series of Index Fund Shares, as specified by the Exchange.

(g) Listing Fees. The original listing fee is $5,000 for each series of Index Fund Shares. The annual listing fee under Section 144 of the Amex Company Guide will be based upon the number of shares of a series of Index Fund Shares outstanding at the end of each calendar year. For multiple series of Index Fund Shares issued by an opened management investment company, the annual listing fee will be based on the aggregate number of shares in all series outstanding at the end of each calendar year.

(h) Surveillance Procedures. The Exchange will implement written surveillance procedures for Index Fund Shares.

(i) Applicability of Other Rules. The provisions of Rules 1000A et seq. will apply to all series of Index Fund Shares.

II. Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

1. Purpose

On December 11, 1992, the Commission approved Amex Rules 1000 *et seq.* to accommodate trading on the Exchange of PDR securities, which represent interests in an unit investment trust ("Trust") that operates on an open-end basis and holds a portfolio of securities.[4] Each Trust is intended to provide investors with an instrument that closely tracks the underlying securities portfolio that trades like a share of common stock, and that pays to PDR holders periodic dividends proportionate to those paid with respect to the underlying portfolio of securities, less certain expenses, as described in the applicable Trust prospectus. The first Trust be formed in connection with the issuance of PDR was based on the Standard & Poor's 500 Index, known as Standard & Poor's Depositary Receipts® ("SPDRs"®), which have been trading on the Exchange since January 29, 1993.[5] In 1995, the Commission approved Amex's listing and trading of PDR based on the Standard & Poor's MidCap 400 Index™ ("MidCap SPDRs™").[6] In January 1998, the Commission approved the listing and trading of PDR based on the Dow Jones Insustrial Average℠ ("DIAMONDs℠").[7] Most recently, on February 26, 1999, the Commission approved Nasdaq-100 Shares™, which are PDR based on the Nasdaq-100® Index.[8] The Commission first approved Amex's listing and trading of Index Fund Shares under Amex Rules 100A *et seq.* in 1996.[9] Index Fund Shares are shares issued by an open-end management investment company that seeks to provide investment results that correspond generally to the price and yield performance of specified foreign or domestic equity index. The Exchange currently lists under Amex Rules 1000A *et set.* seventeen series of World Equity Benchmark Shares℠ ("WEBS™") based on Morgan Stanley Capital International foreign stock indices;[10] and nine series of Select Sector SPDRs® based on Select Indexes comprised of stocks representing various industry sectors and included in the S&P 500® Index.[11]

The Exchange proposes to amend Amex Rules 1000 and 1000A to provide standards to permit listing and trading of PDR and Index Fund Shares pursuant to Rule 19b–4(e) under the Act. Rule 19b–4(e) provides that the listing and trading of a new derivative securities product by a self-regulatory organization shall not be deemed a proposed rule change, pursuant to paragraph (c)(1) of Rule 19b–4, if the Commission has approved, pursuant to Section 19(b) of the Exchange Act, the self-regulatory organization's trading rules, procedures and listing standards for the product class that would include the new derivative securities product and the self-regulatory organization has a surveillance program for the product class.[12]

As noted above, the Commission has previously approved Amex Rules 1000 *et seq.* and 1000A *et seq.* to permit listing and trading of PDR and Index Fund Shares. In approving these securities for Exchange trading, the Commission thoroughly considered the structure of these securities, their usefulness to investors and to the markets, and the Amex rules that govern their trading. Moreover, the Exchange has separately filed proposed rule changes pursuant to Rule 19b–4 for each series of PDR or Index Fund Shares currently trading on the Exchange. The Exchange believes that application of Rule 19b–4e to such securities will further the intent of that rule by facilitating commencement of trading in these securities, subject to the proposed generic standards for PDR and Index Fund Shares, discussed below, without the need for notice and comment and Commission approval under Section 19(b) of the Act. This has the potential to reduce the time frame for bringing such securities to market.

The Exchange is proposing that PDR and Index Fund Shares listed pursuant to Rule 19b–4(e) be subject to specific generic criteria as set forth in proposed Amex Rule 1000, Commentary .03 (for PDR) and Amex Rule 1000A, Commentary .02 (for Index Fund Shares). The Exchange notes that all other provisions of Amex Rules 1000 *et seq.* and 1000A *et seq.* will continue to apply to such securities.

The Exchange is proposing to implement generic listing criteria that are intended to ensure that a substantial portion of the weight of an index or portfolio is accounted for by stocks with substantial market capitalization and trading volume. Proposed Amex Rule 1000, Commentary .03 and Amex Rule 1000A, Commentary .02 would both provide that, upon the initial listing of a series of PDR or Index Fund Shares under Rule 19b–4(e), component stocks that in the aggregate account for at least 90% of the weight of the index or portfolio must have minimum market value of at least $75 million. In addition, the component stocks in the index must have a minimum monthly trading volume during each of the last six months of at least 250,000 shares for stocks representing at least 90% of the weight of the index or portfolio.

The most heavily weighted component stock in an underlying index cannot exceed 25% of the weight of the index or portfolio, and the five most heavily weighted component stocks cannot exceed 65% of the weight of the index or portfolio. The underlying index or portfolio must include a minimum of 13 stocks, which is the minimum number to permit qualification as a regulated investment company under Subchapter M of the Internal Revenue Code.[13] All securities in an underlying index or portfolio must be listed on a national securities exchange or The Nasdaq Stock Market (including the Nasdaq SmallCap Market).

Proposed Amex Rule 1000, Commentary .03 and Amex Rule 1000A, Commentary .02 provide that the underlying index will be calculated based on either the market capitalization, modified market capitalization, price, equal-dollar or modified equal-dollar weighting methodology. In addition, if the index is maintained by a broker-dealer, the broker-dealer must erect a "fire wall" around the personnel who have access to information concerning changes and adjustments to the index and the index shall be calculated by a third party who is not a broker-dealer. The current index value will be disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The Reporting Authority will disseminate for each series of PDR and Index Fund Shares an estimate, updated every 15 seconds, of the value of a share of each series. This may be based, for example, upon current information regarding the required deposit of securities and cash amount to permit creation of new shares of the series or upon the index value.

A minimum of 100,000 shares of a series of PDR or index Fund Shares will be required to be outstanding at start-up of trading. The Exchange believes this minimum number is sufficient to establish a liquid Exchange market at the start of trading.

The minimum trading increment for a series of PDR will be 1/64 of $1.00, and for Index Fund Shares will be 1/16, 1/32 or 1/64 of $1.00, as determined by the Exchange for a specific series.

The original listing fee for each series of PDR and Index Fund Shares will be $5,000. The annual listing fee under Section 141 of the Amex *Company Guide* will be based upon the number of shares of a series of PDR outstanding at the end of each calendar year. For funds with multiple series of Index Fund Shares, shares in all series outstanding at year end will be aggregated for purposes of the annual listing fee under Section 141 of the Amex *Company Guide.*

The Exchange will implement written surveillance procedures for PDR and Index Fund Shares. In addition, the Exchange will comply with all recordkeeping requirements of Rule 19b–4(e). The Exchange will file Form 19b–4(e) for each series of PDR or Index Fund Shares listed under Rule 19b–4(e) within five business days of commencement of trading.[14]

The provisions of Amex Rules 1000 *et seq.* or 1000A *et seq.* will apply to all series of PDR and Index Fund Shares listed under Rule 19b–4(e). In addition to the requirements of proposed Amex Rule 1000, Commentary .03 and Amex Rule 1000A, Commentary .02, PDR and Index Fund Shares will be subject to Exchange procedures and rules, discussed below, comparable to those applied to existing PDR and Index Fund Shares.

Amex Rule 154. Amex Rule 154, Commentary .04(c) provides that stop and stop limit orders to buy or sell a security (other than an option, which is covered by Amex Rule 950(f) and Commentary thereto), the price of which is derivatively priced based upon another security or index of securities, may, with the prior approval of a Floor Official, be elected by a quotation, as set forth in Commentary. 04(c)(i–v). PDR and Index Fund Shares listed under Rule 19b–4(e) will be eligible for this treatment.[15]

Trading Halts. In addition to other factors that may be relevant, the Exchange may consider factors such as those set forth in Amex Rule 918C(b) in exercising its discretion to halt or suspend trading in PDR and Index Fund Shares. These factors would include (1) the extent to which trading is not occurring in stocks underlying the index; or (2) whether other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present. Trading in these securities will also be halted in the event that market-wide "circuit breaker" parameters of Amex Rule 117 are triggered.

Amex Rule 190, Commentary .04. Amex Rule 190, Commentary .04 will apply to PDR and Index Fund Shares listed under Rule 19b–4(e). This Commentary provides that the prohibition in Amex Rule 190(a) against a specialist or the specialist's member organization effecting any business transactions with a company in which stock the specialist is registered does not restrict a specialist registered in a series of PDR or Index Fund Shares from purchasing and redeeming the applicable series from the issuer to facilitate the maintenance of a fair and orderly market.

Notice to Members. The Exchange will issue a Notice to Members for each

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[4] Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992). "PDRs" us a service mark of PDR Services LLC, a wholly-owned subsidiary of the Exchange.

[5] Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992).

[6] Securities Exchange Act Release No. 35534 (March 24, 1995), 60 FR 16686 (March 31, 1995). "Standard & Poor's 500," "Standard & Poor's MidCap 400 Index," "Standard & Poor's Depositary Receipts®," "SPDRs®," "Standard & Poor's MidCap 400 Depositary Receipts" and "MidCap SPDRs" are trademarks of the McGraw-Hill Companies, Inc.

[7] Securities Exchange Act Release No. 39525 (January 8, 1998), 63 FR 2438 (January 15, 1998). "Dow Jones Industrial Average℠," "DJIA℠" "Dow Jones℠" and "DIAMONDS" are each trademarks and service marks of Dow Jones & Company, Inc.

[8] Securities Exchange Act Release No. 41119 (February 26, 1999), 64 FR 11510 (March 9, 1999). The "Nasdaq-100 Index®," "Nasdaq-100®," "Nasdaq®, "and "The Nasdaq Stock Market®" are trademarks of Nasdaq and have been licensed for use for certain purpose by Investment Product Services, Inc. pursuant to a License Agreement with Nasdaq.

[9] Securities Exchange Act Release No. 36947 (March 8, 1996), 61 FR 10606 (March 14, 1996).

[10] *See* Securities Exchange Act Release No. 41983 (October 6, 1999), 64 FR 56008 (October 15, 1999). "World Equity Benchmark Shares" and "WEBS" are service marks or Morgan Stanley Group, Inc.

[11] *See* Securities Exchange Act Release No. 40479 (December 4, 1998), 63 FR 68483 (December 11, 1998) "Select Sector SPDR" is a service mark of The McGraw-Hill Companies, Inc.

[12] *See* Securities Exchange Act Release No. 40761 (December 8, 1998), 63 FR 70952 (December 22, 1998).

[13] Under Subchapter M of the Internal Revenue Code, for a fund to qualify as a regulated investment company the securities of a single issuer can account for no more than 25% of a fund's total assets, and at least 50% of a fund's total assets must be comprised of cash (including government securities) and securities of single issuers whose securities account for less than 5% of such fund's total assets.

[14] 17 CFR 240.19b–4(e).

[15] *See* Securities Exchange Act Release No. 29063, note 9 (April 10, 1991), 56 FR 15652 (April 17, 1991) regarding Exchange designation of equity derivative securities as eligible for such treatment under Rule 154, Commentary .04(c).

series to be listed pursuant to Rule 19b–4(e). The notice will describe the characteristics of the securities and will inform members of any obligation to deliver a written product description or prospectus, as applicable, to purchasers of PDR or Index Fund Shares. In addition, the notice will inform members of their responsibilities under Amex Rule 411 (Duty to Know and Approve Customers) in connection with customer transactions in these securities.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act [16] in general and furthers the objectives of Section 6(b)(5) [17] in particular in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room in Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the file number SR–AMEX–00–14 and should be submitted by April 18, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7534 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42553; File No. SR–CHX–99–30]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to a Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Relating to Amendments to the Exchange's Procedures for Market-at-the-Close Orders

March 21, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 28, 1999, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Purposed Rule Change

The Exchange proposes to amend its procedures for the cancellation of Market-at-the-Close orders ("MOC orders") under CHX Article XX, Rule 44. The text of the proposed rule change is available at the CHX and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On November 10, 1998, the Commission approved a rule change that established formal procedures governing the entry, executions and cancellation of MOC orders on the CHX.[3] Those procedures were designed to mirror procedures in use by the New York Stock Exchange ("NYSE") and the American Stock Exchange ("AMEX") to ensure that MOC orders sent to the CHX receive treatment comparable to MOC orders sent to the NYSE or AMEX, and to prevent the entry, execution or cancellation of MOC orders on the CHX that would otherwise be prohibited on those primary markets.

As defined in CHX Article XX, Rule 44, an MOC order is a market order which is to be executed in its entirety at the closing price on the primary market of the stock named in the order, and if not so executed, is to be treated as cancelled. MOC orders may not be entered on the CHX after 2:40 p.m. (Central Time) unless the specialist determines that an order could have been entered on the primary market. This is done by monitoring published MOC order imbalances on the primary market. Current CHX MOC order procedures also prohibit Exchange members from canceling MOC orders after 2:40 p.m. (Central Time) except in the case of a legitimate error.

On June 9, 1999, the Commission approved an NYSE rule change amending NYSE's MOC (and limit-on-close) order entry and cancellation procedures during regulatory halts.[4] That change amended, among other things, the NYSE's MOC procedures to allow market participants to cancel MOC orders if a regulatory halt is in effect at 2:40 p.m. (Central Time) or later, until 2:50 p.m. (Central Time) or the reopening of the stock, whichever occurs first. The Commission, on September 14, 1999, approved a corresponding rule change submitted by the AMEX.[5]

On October 20, 1999, the Commission approved an additional NYSE rule change concerning MOC order cancellation procedures.[6] That change further amended the NYSE's MOC cancellation procedures to prohibit the cancellation or reduction in size of MOC orders after 2:50 p.m. (Central Time) for any reason.

Therefore, until recently, the NYSE only allowed cancellation of MOC orders after 2:40 p.m. (Central Time) to correct a legitimate error. However, under the revised NYSE procedures, if a regulatory halt has been instituted for a stock at or after 2:40 p.m., NYSE members will be permitted to cancel MOC orders between 2:40 p.m. and 2:50 p.m. (Central Time) or when the stock reopens, whichever occurs first. This allows market participants to react to news generated during a regulatory halt that could result in the stock reopening at a price substantially different from the last sale. Furthermore, the NYSE now prohibits cancellation or reduction in size of MOC Orders after 2:50 p.m. for any reason, including legitimate error.

The CHX proposal would amend the CHX policy to allow for cancellations if such cancellation would be allowed on the primary market (*i.e.*, if a regulatory halt has been instituted at or after 2:40 p.m. Central Time). The proposed rule change would also prohibit cancellation or reduction in size of MOC orders after 2:50 p.m. for any reason.

While CHX Article XX, Rule 44 by its nature can only apply to Dual Trading System Issues,[7] the proposed rule change also amends the title of Rule 44 to explicitly state that the rule only applies to MOC orders in Dual Trading System Issues.

2. Statutory Basis

The CHX believes that the proposed rule change is consistent with Section 6(b)(5) of the Act,[8] in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CHX–99–30 and should be submitted by April 18, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission has reviewed carefully the Exchange's proposed rule change and finds, for the reasons set forth below, the proposal is consistent with the requirements of Section 6 of the Act [9] and the rules and regulations thereunder applicable to a national securities exchange. Specifically, the Commission finds the proposal is consistent with Section 6(b)(5) of the Act [10] because the proposal will promote just and equitable principles of trade, remove impediments to, and perfect the mechanism of a free and open market, by (1) allowing for cancellations of MOC orders if such cancellation would be allowed on the primary market; and (2) prohibiting cancellation or reduction in the size of MOC orders after 2:50 p.m. for any reason consistent with primary market requirements. The Commission also finds the proposal is consistent with Section 6(b)(5) of the Act [11] because it will allow the Exchange to handle MOC orders in conformity with procedures in place on other Exchanges.

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission notes that accelerated approval would afford investors the benefits to be realized under this proposal as soon as possible. Additionally, the Commission notes that the proposal is similar to proposals filed by other self-regulatory organizations that the Commission has approved.[12] These were noticed for the full 21 day comment period, and no comments were received. For these reasons, and because the proposal is unlikely to raise new issues, the Commission deems it appropriate to approve the proposed rule change on an accelerated basis. The Commission finds, therefore, that good cause exists, consistent with Section 19(b) [13] and Section 6(b) [14] of the Act, to grant accelerated approval of the proposed rule change.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–CHX–99–30) is hereby approved on an accelerated basis.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 40655 (November 10, 1998), 63 FR 64299 (November 19, 1998)(SR–CHX–97–19).

[4] *See* Securities Exchange Act Release No. 41497 (June 9, 1999), 64 FR 32595 (June 17, 1999) SR–NYSE–98–42).

[5] *See* Securities Exchange Act Release No. 41877 (September 14, 1999), 64 FR 51566 (September 23, 1999) (SR–AMEX–99–32).

[6] *See* Securities Exchange Act Release No. 42040 (October 20, 1999), 64 FR 57681 (October 26, 1999) (SR–NYSE–99–26).

[7] Dual Trading System Issues are issues that are traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the NYSE or AMEX.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78f.

[10] 15 U.S.C. 78f(b)(5).

[11] 15 U.S.C. 78f(b)(5).

[12] *See* footnotes 4 and 6, *supra.*

[13] 15 U.S.C. 78s(b).

[14] 15 U.S.C. 78f(b).

[15] 15 U.S.C. 78s(b)(2).

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7535 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42565; File No. SR–CHX–99–24]

Self-Regulatory Organizations; Order Granting Accelerated Approval and Notice of Filing and Order Granting Accelerated Approval of Amendment No. 1 to Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to Price Improvement for Securities that Trade in Minimum Variations of 1/64th of $1.00

March 22, 2000.

I. Background

On October 20, 1999, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Article XX, Rule 37, of the Exchange's rules relating to price improvement. The proposed rule change was published for comment in the **Federal Register** on February 28, 2000.[3] On March 21, 2000, the Exchange filed Amendment No. 1 to the proposal.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Article XX, Rule 37, of the Exchange's rules, governing price improvement, to add section 37(g) to provide for an algorithm for price improvement for issues trading in minimum variations of 1/64th of $1.00. The primary purpose of the proposed rule change is to afford specialists a viable means of offering customers price improvement for securities that trade in minimum variations of 1/64th.

Presently, three existing CHX programs within the MAX system, SuperMAX, Enhanced SuperMAX and SuperMAX Plus, use computerized algorithms to provide automated price improvement. These programs were created for securities that trade in minimum variations of 1/16th to provide for price improvement of 1/16th of a point when the spread is 1/8th or greater. Specialist participation in all three of these programs is voluntary. Each of these price improvement programs were approved by the Commission on a permanent basis.[5] Under this proposal, the CHX would add a fourth voluntary program, Derivative SuperMAX, within the MAX system to provide for price improvement for securities trading in minimum variation of 1/64th.[6] The addition of the proposed price improvement algorithm for Derivative SuperMAX should enhance the ability of CHX specialists to offer customers price improvement for all securities at the minimum increment, even those securities that trade in 1/64th increments.

Under Derivative Super MAX, which would be available only for those securities trading in minimum variation of 1/64th of $1.00, small agency market order (*i.e.* orders from 100 shares up to and including 500 shares (or such greater amount designated by the specialist and approved by the Exchange)) would be eligible for price improvement if the market for the security is quoted with a spread of 1/16th of a point or greater. The new algorithm would provide 1/64th of a point price improvement from the ITS BBO. Specialist participation in the Derivative SuperMAX would be on a security-by-security basis and would be limited to securities that trade in minimum variations of 1/64th of $1.00.

The addition of Derivative SuperMAX would become operative shortly after Commission approval of this proposed rule change, on a date to be determined by the Exchange.[7]

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments conceding Amendment No. 1, including whether Amendment No. 1 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–99–24 and should be submitted by April 18, 2000.

IV. Commission findings and Order Granting Accelerated Approval of the Proposed Rule Change

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange.[8] Specifically, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act[9] which requires that the rules of an exchange be designed, among other things, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediment sand to perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

The Commission believes that the Derivative SuperMAX price improvement algorithm should provide investors a meaningful opportunity for price improvement when securities trading in 1/64th increments have a spread of 1/16th point or greater. The Commission believes that, because the opportunity for price improvement is automatic and without any specialist intervention, Derivative SuperMAX could facilitate order interaction and enhance customer orders consistent with section 6(b)(5) of the Act.[10] The Commission notes that while Derivative Super MAX is a voluntary program that specialists may choose to participate in for Dual Trading System issues,[11] providing a greater number of investors an opportunity to achieve price improvement is compatible with the views on best execution expressed in the Order Handling release.[12]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of the proposal in the **Federal Register** because in Amendment No. 1 to the proposal the Exchange has asserted that is able to activate the price improvement algorithm within one day of Commission approval. Further the, Commission believes that the proposal's price improvement algorithm should enhance the CHX's ability to compete with other market centers that trade the same securities that trade at the Exchange in minimum increments of 1/64th, which in turn should benefit customers. Finally, the Commission notes that it expects the Exchange to submit proposed rule changes for all four MAX price improvement algorithms, pursuant to Section 19(b)(3)(A) of the Act,[13] to clarify the interpretation and operation of the pricing algorithms once securities are quoted and traded in decimals.

IV. CONCLUSION

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[14] that the proposed rule change (File No. SR–CHX–24), as amended, be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland

Deputy Secretary.

[FR Doc. 00–7585 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42561; File No. SR–CHX–00–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated, Amending Its Membership Dues and Fees Schedule

March 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice hereby is given that on March 3, 2000, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The CHX has designated this proposal as one establishing or changing a due, fee, or other charge imposed by the CHX under Section 19(b)(3)(A)(ii) of the Act,[2] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX proposes to amend its membership dues and fees schedule ("Schedule") in several ways. These changes increase the membership dues paid by all members; revise the fixed fees and credits for all securities; revise the application and assignment fee structure for all securities; and reflect charges relating to the processing of applications. The text of the proposed rule change is available upon request from the CHX or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change amends the Schedule in several ways. These changes are designed to allow the Exchange to continue its rapid growth while providing a strong market for its members and for investors.

First, the proposal increases the annual membership dues for all members by $1,800 (from $3,200 to $5,000 per year). These dues are paid in equal monthly installments throughout the year. The proposal would increase the payments beginning April 1, 2000.[3]

Second, the proposal revises the specialist fixed fees and credits for all securities by increasing the specialist fixed fees and credits for Dual Trading System Securities and by imposing a specialist fixed fee and a credit for Nasdaq/NM Securities. The specialist fixed fee is paid by the specialist in a particular security; the amount of the fee is based either on the trading volume in that security (for Dual Trading System Securities) or on a market share calculation in that security (for Nasdaq/NM Securities)[4] Specialist credits are designed to reduce the total monthly fees paid by each specialist and to reduce the costs of trading on the

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[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42442 (February 18, 2000), 65 FR 10575.

[4] *See* letter from Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 21, 2000. ("Amendment No. 1"). In Amendment No. 1, the CHX confirmed its readiness and intention to activate the price improvement algorithm described in this proposal within one day following the Commission's approval of this proposed rule change. The CHX also indicated that it intended to implement the proposal as soon as practicable in order to remain competitive with other market centers that trade the securities that trade at the CHX in minimum increments of 1/64th. Finally, the CHX noted that approximately 88% of the trades in such securities are for 599 shares or less.

[5] *See* Securities Exchange Act Release Nos. 40017 (May 20, 1998), 63 FR 29277 (May 28, 1998) and 40235 (July 17, 1998, 63 FR 40147 (July 27, 1998) (File No. SR–CHX–98–9) (orders approving revised SuperMAX and Enhanced SuperMAX algorithms); 41480 (June 4, 1999), 64 FR 32570 (June 17, 1999) (order approving revised SuperMAX Plus algorithm).

[6] Presently, only securities derivative equity products trade in a minimum increment of 1/64th on the Exchange. However, the Derivative SuperMAX algorithm is not limited to derivative products, thus non-derivative securities traded in 1/64th increments on the Exchange in the future would eligible for price improvement under this proposal. Telephone conversation between Paul B. O'Kelly, Executive Vice President, Market Regulation and Legal, CHX, and Marc McKayle, Attorney, Division, Commission on March 20, 2000.

[7] *See* Amendment No. 1, note 4, *above.*

[8] In approving this proposed rule change, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(5).

[11] Dual Trading issues are issues traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the New York Stock Exchange or the American Stock Exchange.

[12] See Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

[13] 15 U.S.C. 78s(b)(3)(A).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12)

[1] 15 U.S.C. 78s(b)(1).

[2] 15 U.S.C. 78s(b)(3)(A)(ii).

[3] Because the increase takes effect during the year, a member will not pay the full $5,000 in 2000; instead, a member will pay approximately $4,550 (three months at $266.66/month plus nine months at $416.66/month equals $4,549.92].

[4] According to the proposed schedule, the fixed fee for Dual Trading System Securities would increase on April 1, 2000, and again on October 1, 2000; the new fixed fee for Nasdaq/NM Securities would begin on April 1, 2000. The Exchange has charged its members a fixed fee on Dual Trading System Securities for many years; this proposed revision to the Schedule represents the first time that the Exchange would charge a fixed fee on its nascent Nasdaq/NM Securities product line. These new Nasdaq/NM-related fixed fees allow the Exchange to defray, at least partially, the costs associated with the continued development and anticipated growth of this program. The Exchange believes it is appropriate, at least initially, to begin assessing this new Nasdaq/NM Securities fixed fee at a somewhat lower level than the fee that has been in place for Dual Trading System Securities for a number of years in order to allow members time to adjust their business models to this new requirement.

Exchange for members who make particular contributions to the Exchange's overall success.

The proposed also imposes a $150 fee on each application submitted by a member organization to act as the specialist in a security and revises the fee paid per assignment by the member organization ultimately chosen to fulfill the specialist role. These revised fees are smallest for assignments made when only one firm is seeking to act as the specialist on a particular security, and then increase in two tiers, depending on how many firms seek a common assignment. This revised fee structure reflects, in part, the increased work involved both in processing multiple specialist applications for the same security and in bringing those issues before the Exchange's Committee on Specialist Assignment and Evaluation. This structure also reflects the Exchange's belief that an assignment sought by more than one specialist firm is a more valuable assignment than one that is not the subject of competition.[5] These modified fees take effect on April 1, 2000.

Finally, the proposal defines the amounts of the fees for the fingerprinting and background checks required as part of the membership and floor employee application process, and also states the amount of the fee for replacing a floor access badge.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(4)[6] in particular in that it is intended to provide for the equitable allocation of reasonable dues, fees and other charges among its members and issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement of Burden on Competition

The CHX does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing Commission Action

Because the foregoing rule change establishes or changes a due, fee, or other charge imposed by the CHX, it has become effective pursuant to Section 19(b)(3)(A) of the Act[7] and paragraph (f)(2) of Rule 19b–4 thereunder.[8] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, N.W., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–00–06 and should be submitted by April 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Maragret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7586 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–10–M

[5] Under the proposed arrangement, the Exchange will continue its practice of charging somewhat higher fees for the assignment of Nasdaq/NM Securities than for the assignment of Dual Trading System Securities. The Exchange believes this structure appropriately reflects the increasing amount of work related to the number of specialist applications the Exchange receives for the assignment of Nasdaq/NM Securities. The higher fee will also help to offset at least some of the development costs associated with the growing Nasdaq/NM Securities program by directly assessing the firms being assigned the opportunity to act as specialists in Nasdaq/NM Securities. More importantly, demand for Nasdaq/NM issues exceeds the supply available under the Exchange's current pilot program, which permits the Exchange to trade only 1,000 Nasdaq/NM Securities. The Exchange believes that the higher fee will, in part, moderate that demand. See Securities Exchange Act Release No. 41392 (May 12, 1999), 64 FR 27839 (May 21, 1999), (S7–24–89), increasing the permissible number of Nasdaq/NM Securities eligible for trading on the CHX on an unlisted or listed basis from 500 to 1,000.

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42567; File No. SR–CHX–00–03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Administration of the Exchange's Floor Membership Examination

March 22, 2000.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on March 6, 2000,[3] the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CHX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Interpretation and Policy .01(a) to CHX Rule 3 to eliminate the requirement that applicants for Exchange membership requesting a floor presence be posted for membership before taking the Exchange's Floor Membership Examination. The proposal would permit administration of the Floor Membership Examination in a manner more convenient for both the applicant and the Exchange's staff. The text of the proposed rule change is set forth below. Deletions are in brackets.

ARTICLE VI

RESTRICTIONS AND REQUIREMENTS

Training and Examination of Registrants

Rule 3.

* * * * *

Interpretations and Policies

.01 Floor Member Organizations

(a) Floor Membership Exam

All applicants for membership on the Exchange requesting a floor presence must successfully complete the Floor Membership Exam [after the applicant has been posted for membership].

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CHX included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change will permit administration of the Floor Membership Examination either before or after posting of an applicant requesting a floor presence on the Exchange. The Exchange believes that the flexibility afforded by the proposed rule change will permit more efficient scheduling and administration of the examination process to the benefit of prospective members, member organizations, and Exchange staff, by removing the unnecessary formality of requiring posting as a prerequisite to taking the exam. The Exchange will still require applicants of prospective members to be posted prior to approval for membership, which will maintain the protections of the membership consideration progress.

2. Statutory Basis

The proposed rule change is consistent with section 6(b)(5) of the Act[4] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons regulating securities transactions, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has not solicited or received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from March 6, 2000, the date on which it was filed, and the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date, it has become effective upon filing pursuant to section 19(b)(3)(A) of the Act and rule 19b–4(f)(6) thereunder.[5] At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[6]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 522, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to the File No. SR–CHX–00–01 and should be submitted by April 18, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7587 Filed 3–27–00; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Exchange originally submitted the proposed rule change on February 28, 2000 pursuant to section 19(b)(2) of the Act. After consulting with Commission staff, the Exchange submitted Amendment No. 1 to refile the proposed rule change as a non-controversial filing pursuant to Rule 19b–4(f)(6) under the Act. Letter from Ellen J. Neely, Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated March 3, 2000 ("Amendment No. 1").

[4] 15 U.S.C. 78(b)(5).

[5] 17 CFR 250.19b–4(f)(6).

[6] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42562; File No. SR–Phlx–00–18]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Relating to the Monthly Examination Fee

March 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 18, 2000, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. On March 13, 2000, the Exchange submitted Amendment No. 1 to the proposed rule change.[3]

[1] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange corrected the Schedule of Dues and Fees contained in Appendix A to reflect the current status of recently proposed fees. See letter from Murray L. Ross, Secretary, Phlx, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation ("Division"), SEC, dated March 10, 2000 ("Amendment No. 1").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to increase the monthly examinations fee from $1,000 per month to $2,000 per month. The proposed increase in the Examinations Fee is to be effective as of March 1, 2000. The text of the proposed change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to increase from $1,000 per month to $2,000 per month the Examinations Fee paid by member organizations for which the Exchange is the Designated Examining Authority ("DEA") and which do not meet any of the exemptions to the examinations fee. Those exemptions remain unchanged.[4] Since the implementation of this fee in 1995, the number of member organizations for which the Exchange is the DEA, and which are subject to the Examinations Fee, has more than doubled.

The Exchange has experienced increased administrative costs incurred while conducting examinations of member organizations, not only due to increased travel and lodging costs for its examiners, but also because of an increase in the amount of staff time committed to undertake such examinations. The Exchange notes that a number of member organizations subject to the Examinations Fee operate as foreign-based registered broker-dealers.

Additionally, the Exchange has had to increase the amount of staff time devoted to the service function it performs for firms. This service function consists of initially advising firms on how to set up financial reporting records, comply with Exchange and Commission rules, and comply with supervisory procedures and controls required by the Exchange and the Commission. Moreover, the Exchange has undertaken increased administrative and regulatory responsibilities associated with member organizations and their off floor traders, including scheduling more frequent compliance inspections as part of the Examinations Department's audit plan.[5]

In order to compensate for the extensive staff time, examination and regulatory administrative cost associated with examining off-floor firms that are not active participants in Phlx markets, the Exchange proposes to amend its fee schedule by increasing the Examinations Fee to $2,000 per month.[6] The firms subject to the Examinations Fee are all located off the Exchange's trading floors.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b)[7] of the Act in general and furthers the objectives of Section 6(b)(4)[8] in particular because it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate or unnecessary burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or charge imposed by the exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A) of the Act[9] and paragraph (f)(2) of Rule 19b–4 thereunder.[10]

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.[11] Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–00–18 and should be submitted by April 18, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[4] The Examinations Fee was approved by the Commission on December 12, 1994 and made effective January 1, 1995. *See* Exchange Act Release No. 35091 (Dec. 12, 1994), 59 FR 65558 (Dec. 20, 1994).

[5] The Exchange notes that the enumerated exemptions from the Examinations Fee remain unchanged. *See* note 2 to Appendix A. Moreover, the proposed change will not affect the current procedures pursuant to which the actual cost of an examination is passed through to members in the event a self-regulatory organization other than the Phlx conducts the examination. *See* Exchange Act Release No. 39744 (March 11, 1998), 63 FR 13294 (March 18, 1998).

[6] *See* Appendix A attached hereto.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(4).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(2).

[11] In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 USC 78c(f).

[12] 17 CFR 200.30–3(a)(12).

APPENDIX A

New Text *Underlined;* Deleted Text Bracketed:	
Membership dues or Foreign Currency User Fees[1]	$166.67 monthly.
Foreign Currency Option Participation Fee	$166.67 monthly.
Application Fee	$200.00.
Initiation Fee	$1,500.00.
Transfer Fee	$500.00.
Trading Post/Booth	$250.00 monthly.
Controller Space	$750.00 quarterly.
Floor Facility Fees	$375.00 quarterly.
Shelf Space on Equity Option Trading Floor	$375.00 quarterly.
Direct Wire to the Floor	$60.00 quarterly.
Telephone System Line Extensions	$22.50 monthly/per extension.
Wireless Telephone System	$200.00 monthly.
Execution Services/Communication Charge	$200.00 monthly.
Stock Execution Machine Registration Fee (Equity Floor)	$300.00.
Equity, Option, or FCO Transmission Charge	$750.00 monthly.
FCO Pricing Tape	$600.00 monthly.
Option Report Service:	
(New York)	$600.00 monthly.
(Chicago)	$800.00 monthly.
Quotron Equipment	$225.00 monthly.
Instinet, Reuters Equipment	cost passed through.
Examinations Fee	$[1]2,000.00 monthly[2] or pass-through of another SRO's fees.
Technology Fee[3]	$100.00 monthly.
Review/Process Subordinated Loans	$25.00.
Registered Representative Registration:	
Initial	$25.00
Maintenance	$25.00 annually.
Transfer	$25.00.
Option Mailgram Service	$117.00 monthly.
Off-Floor Trader Initial Registration Fee	$200.00.
Off-Floor Trader Annual Fee	$200.00.
Computer Equipment Services, Repairs or Replacements[4]	$100.00 per service call and $75.00 per hour (Two hour minimum).
Computer Relocation Requests[5]	$75.00 per person, per hour (Two hour minimum).

[1] An exemption from foreign currency user fees is extended to PHLX members also holding title to a foreign currency options participation.

[2] This fee is applicable to member/participant organizations for which the PHLX is the DEA. The following organizations are exempt: (1) inactive organizations; (2) organizations operating from the PHLX trading floor which have demonstrated that at least 25% of their income as reflected on the most recently submitted FOCUS Report was derived from floor activities; (3) organizations for any month where they incur transaction or clearing fees charged directly by the Exchange or by its registered clearing subsidiary, provided that the fees exceed the examinatiions fee for that month; and (4) organizations affiliated with an organization exempt from this fee due to the second or third category. Affiliation includes an organization that is a wholly owned subsidiary of or controlled by or under the common control with an exempt member or participant organization. An inactive organization is one that had no securities transaction revenue, as determined by semi-annual FOCUS reports, as long as the organization continues to have no such revenue each month.

[3] An exemption from the technology fee is extended to foreign currency options participants who are also affiliated with the Exchange as Phlx members.

[4] These fees will be effective from January 1, 2000 until March 31, 2000, unless extended consistent with the requirements of Section 19(b) of the Securities Exchange Act of 1934. At this time, these fees will not be applied to participants on the Foreign Currency Options Trading Floor.

[5] These fees will be effective from January 1, 2000 until March 31, 2000, unless extended consistent with the requirements of Section 19(b) of the Securities Exchange Act of 1934. At this time, these fees will not be applied to participants on the Foreign Currency Options Trading Floor.

[FR Doc. 00–7588 Filed 3–27–00; 8:45 am]
BILLING CODE 8010–01–M

SOCIAL SECURITY ADMINISTRATION

Privacy Act of 1974 as Amended; Computer Matching Program (SSA/State Department(s) for Health and Income Maintenance) for Disclosure of Medicaid Information (Match #1085)

AGENCY: Social Security Administration (SSA).

ACTION: Notice of computer matching program.

SUMMARY: In accordance with the provisions of the Privacy Act, as amended, this notice announces a computer matching program that SSA plans to conduct.

DATES: SSA will file a report of the subject matching program with the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives and the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB). The matching program will be effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by either telefax to (410) 597–0841, or writing to the Associate Commissioner for Program Support, 4400 West High Rise, 6401 Security Boulevard, Baltimore, MD 21235.

All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program Support as shown above.

SUPPLEMENTARY INFORMATION:

A. General

The Computer Matching and Privacy Protection Act of 1988 [Public Law (Pub. L.)100–503], amended the Privacy

Act (5 U.S.C. 552a) by describing the manner in which computer matching involving records of Federal and State agencies could be performed and adding certain protections for individuals applying for and receiving State administered Federal benefits. Section 7201 of the Omnibus Budget Reconciliation Act of 1990 (Pub. L.101–508), further amended the Privacy Act regarding protections for such individuals. The Privacy Act, as amended, regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State or local government records. It requires Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with the other agency or agencies ' participating in the matching programs;

(2) Obtain the approval of the match agreements by the Data Integrity Boards of the participating Federal Agency;

(3) Furnish detailed reports about matching programs to Congress and OMB;

(4) Notify applicants and beneficiaries that their records are subject to matching; and

(5) Verify match findings before reducing, suspending, terminating or denying an individual's benefits or payments.

B. SSA Computer Matches Subject to the Privacy Act

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of the Privacy Act, as amended.

Dated: March 20, 2000.

Susan M. Daniels,

Deputy Commissioner for Disability, and Income Security Programs.

Notice of Computer Matching Program, Social Security Administration (SSA) with State Health and Income Maintenance Agencies

A. Participating Agencies

SSA and State Health/Income Maintenance Agencies

B. Purpose of the Matching Program

To identify eligible Supplemental Security Income (SSI) Medicaid enrollees whose records have been inactive for a set period of at least nine consecutive months. Records of individual recipients who meet the aforementioned criteria will be disclosed for SSA to review the accuracy of SSI eligibility factors. This disclosure will ensure that SSA has accurate information upon which to base decisions for the SSI program.

C. Authority for Conducting the Matching Programs

Section 1611(f) (41 U.S.C. 1382), 1616 (42 U.S.C. 1382e), 1631(e) (42 U.S.C. 1383), and section 1137 (42 U.S.C. 1320b–7) of the Social Security Act.

D. Categories of Records and Individuals Covered by the Matching Program

SSA systems of records used for the purposes of this agreement will be the Supplemental Security Income Record (SSR) (SSA/OSR 09–60–0103), and the State Data Exchange system (SDX). The SDX derives data from the SSR. The State health/income maintenance agency will identify eligible SSI Medicaid enrollees whose records have been inactive for at least one year. Selected records will be disclosed to SSA to review for accuracy of eligibility factors. The disclosure will ensure that SSA has accurate information on which to base its entitlement decisions for the SSI program.

E. Inclusive Dates of the Match

The matching program shall become effective 40 days after notice of this matching program is sent to Congress and OMB, or 30 days after publication of this notice in the **Federal Register**, whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

[FR Doc. 00–7602 Filed 3–27–00; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF STATE

[Public Notice 3263]

Advisory Committee on International Communications and Information Policy Meeting Notice

The Department of State is announcing the next meeting of its Advisory Committee on International Communications and Information Policy. The Committee provides a formal channel for regular consultation and coordination on major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communication services, providers of such services, technology research and development, foreign industrial and regulatory policy, the activities of international organizations with regard to communications and information, and developing country interests.

There will be a featured guest speaker at the meeting who will speak on an important topic involving international communications and information policy.

This meeting will be held on Thursday, April 27, 2000, from 9:30 a.m.—12:30 p.m. in Room 1107 of the Main Building of the U.S. Department of State, located at 2201 "C" Street, NW., Washington, DC. 20520.

Members of the public may attend these meetings up to the seating capacity of the room. While the meeting is open to the public, admittance to the State Department Building is only by means of a pre-arranged clearance list. In order to be placed on the pre-clearance list, please provide your name, title, company, social security number, date of birth, and citizenship to Timothy C. Finton at <fintontc@state.gov>. All attendees for this meeting must use the 23rd Street entrance. One of the following valid ID's will be required for admittance: any U.S. driver's license with photo, a passport, or a U.S. Government agency ID. Non-U.S. Government attendees must be escorted by State Department personnel at all times when in the State Department building.

For further information, contact Timothy C. Finton, Executive Secretary of the Committee, at (202) 647–5385 or <fintontc@state.gov>.

Dated: March 2, 2000.

Timothy C. Finton,

Executive Secretary of the Advisory Committee on International Communications and Information Policy, U.S. Department of State.

[FR Doc. 00–7613 Filed 3–27–00; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF STATE

[Public Notice 3234]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea; Working Group on Safety of Navigation Notice of Meeting

There will be two meetings hosted by the Shipping Coordinating Committee. They are as follows:

The Working Group on Safety of Navigation of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 AM on Wednesday, April 12, 2000, in room 6103, U. S. Coast Guard Headquarters, 2100 Second Street, S.W., Washington, DC.

The purpose of the meeting is to prepare for the 46th session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) which is scheduled for July 10—14, 2000, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Routing of ships, ship reporting and related matters;
—Amendments to the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS);
—Integrated bridge systems (IBS) operational aspects;
—Guidelines on ergonomic criteria for bridge equipment and layout;
—Navigational aids and related matters;
—International Telecommunication Union (ITU) matters, including Radiocommunication ITU-R Study Group 8;
—IMO Standard Marine Communication Phrases;
—Guidelines relating to SOLAS chapter V;
—Comprehensive review of chapter 13 of the High Speed Craft (HSC) Code;
—Development of guidelines for ships operating in ice-covered waters.

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G-MWV–3), Room 1407, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:00 am., on Tuesday, April 18, 2000, in Room 2415 at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of this meeting is to report the results of Eighty-first Session of the International Maritime Organization Legal Committee (LEG 81) being held from March 27–31, 2000, in London.

During LEG 81, the Legal Committee will complete the preparation of the draft bunkers convention for a diplomatic conference, which will be held in the 2000–2001 biennium. The Legal Committee will then continue work on a draft protocol to the Athens Convention and on the draft Wreck Removal Convention. The committee will next turn its' attention to the implementation of the HNS Convention, and time will also be allotted to address any other issues on the Legal Committee's work program on which there are questions or comments.

Members of the public are invited to attend the SHC meeting, up to the seating capacity of the room. For further information, or to submit views in advance of meeting, please contact Captain Malcolm J. Williams, Jr., or Lieutenant Daniel J. Goettle, U.S. Coast Guard, Office of Maritime and International Law (G–LMI), 2100 Second Street SW, Washington, DC 20593–0001; telephone (202) 267–1527; fax (202) 267–4496.

Dated: March 20, 2000.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee U.S. Department of State 3.

[FR Doc. 00–7612 Filed 3–27–00; 8:45 am]

BILLING CODE 4710–07–U

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Rectification to the Harmonized Tariff Schedule of the United States

AGENCY: Office of the United States Trade Representative

ACTION: Notice of rectification to the Harmonized Tariff Schedule of the United States.

SUMMARY: The United States Trade Representative (the USTR) is providing notice of certain technical rectifications to subheadings in chapter 2 of the Harmonized Tariff Schedule of the United States (HTS) pursuant to authority granted by Congress to the President in section 604 of the Trade Act of 1974 and delegated to the USTR in Presidential Proclamation No. 6969 of January 27, 1997 (62 FR 4415). These rectifications will correct omissions that occurred when the HTS was modified to reflect the Uruguay Round conversion of the U.S. quota on beef to a tariff-rate quota and will ensure that the United States continues to meet its obligations under the Canada-U.S. Free Trade Agreement and the North American Free Trade Agreement with respect to goods of Canada, under the terms of general note 12 to the HTS, that are classified in HTS subheadings relating to meat from bovine animals.

DATES: The effective date of the rectifications is January 1, 1995, for all goods entered, or withdrawn from warehouse for consumption, under the specified HTS subheadings, for which the liquidation of duties has not become final under 9 U.S.C. 1514.

FOR FURTHER INFORMATION CONTACT: Mark Sloan, Office of Agricultural Affairs, Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C. 20508, (202) 395–6127.

SUPPLEMENTARY INFORMATION: As part of the Canada-U.S. Free Trade Agreement and the North American Free Trade Agreement, the United States agreed to provide Canada duty-free treatment for meat of bovine animals classified in chapter 2 of the HTS under tariff headings 0201 and 0202 and constituting goods of Canada, under the terms of general note 12 to the HTS. Duty-free treatment for meat from bovine animals comprising goods of Canada commenced on January 1, 1994. However, when the HTS was modified in 1995 to reflect the creation of a U.S. tariff-rate quota consistent for beef with the World Trade Organization Agreement on Agriculture, the tariff subheadings related to imports of meat from bovine animals not included in the United States tariff-rate quota, which is set forth in additional U.S. note 3 to chapter 2 of the HTS, were inadvertently not modified to provide Canada a special rate of duty of "free" for six tariff subheadings in the HTS: 0201.10.50; 0201.20.80; 0201.30.80; 0202.10.50; 0202.20.80; and 0202.30.80. This notice rectifies that omission in the HTS and reflects the duty-free treatment that should be accorded to meat of bovine animals, the foregoing being goods of Canada under the terms of general note 12 to the HTS, not covered by the tariff-rate quota set forth in additional U.S. note 3 to chapter 2 of the HTS. Duty-free treatment for beef from bovine animals that comprises goods of Canada is already provided for in the HTS.

Proclamation 6969 of January 27, 1997 (62 FR 4415, January 29, 1997) authorized the United States Trade Representative (USTR) to exercise the authority provided to the President under section 604 of the Trade Act of 1974, as amended by Public Law 100–418, 88 Stat. 2073 (19 U.S.C. 2483), to embody in the HTS the substance of the relevant provisions of that Act, and of other acts affecting import treatment, and actions thereunder, including rectifications, technical or conforming changes, or similar modifications in the HTS. Under authority vested in the USTR by Proclamation 6969 and the authority vested in the President by the Constitution and the laws of the United States, including, but not limited to, section 604 of the Trade Act of 1974, the United States-Canada Free-Trade Agreement Implementation Act of 1988, P.L. 100–449 (19 U.S.C. 2112 note), and the North American Free-Trade Agreement Implementation Act, P.L. 103–182 (19 U.S.C. 3301 *et seq.*), the following subheadings of chapter 2 of the Harmonized Tariff Schedule of the United States are modified by inserting, in the Rates of Duty1-Special subcolumn in the parentheses following the "Free" rate of duty the symbol "CA" in alphabetical order: 0201.10.50;

0201.20.80; 0201.30.80; 0202.10.50; 0202.20.80; and 0202.30.80. This modification to the identified HTS subheadings shall be effective with respect to goods of Canada that are entered, or withdrawn from warehouse for consumption, on or after January 1, 1995, for which the liquidation of duties has not become final under 19 U.S.C. 1514.

The tariff rectification and duty treatment provided herein shall be applicable to the aforementioned entries of goods under the specified HTS subheadings provided that the importer supplies any information that may be requested by the United States Customs Service to permit identification of each such entry (including, but not limited to, the entry number for the shipment concerned).

Robert T. Novick,

Acting United States Trade Representative.

[FR Doc. 00–7616 Filed 3–27–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice of Meeting of the Industry Sector Advisory Committee on Small and Minority Business (ISAC–14)

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of meeting.

SUMMARY: The Industry Sector Advisory Committee on Small and Minority Business (ISAC–14) will hold a meeting on April 10, 2000, from 9:30 a.m. to 2:45 p.m. The meeting will be open to the public from 9:30 a.m. to 10:30 a.m. and again from 11:00 a.m. to 2:45 p.m. and closed to the public from 10:30 a.m. to 11:00 a.m.

DATES: The meeting is scheduled for April 10, 2000, unless otherwise notified.

ADDRESSES: The meeting will be held at the Department of Commerce Room 4830, located at 14th Street and Constitution Avenue, NW., Washington, DC, unless otherwise notified.

FOR FURTHER INFORMATION CONTACT: Millie Sjoberg or Cory Churches, Department of Commerce, 14th St. and Constitution Ave., N.W., Washington, D.C. 20230, (202) 482–4792 or Ladan Manteghi, Office of the United States Trade Representative, 1724 F St. N.W., Washington, D.C. 20508, (202) 395–6120.

SUPPLEMENTARY INFORMATION: The ISAC–14 will hold a meeting on April 10, 2000, from 9:30 a.m. to 2:45 p.m. The meeting will include a review and discussion of current issues which influence U.S. trade policy. Pursuant to Section 2155(f)(2) of Title 19 of the United States Code and Executive Order 11846 of March 27, 1975, the Office of the U.S. Trade Representative has determined that part of this meeting will be concerned with matters the disclosure of which would seriously compromise the development by the United States Government of trade policy, priorities, negotiating objectives or bargaining positions with respect to the operation of a trade agreement and other matters arising in connection with the development, implementation and administration of the trade policy of the United States. During the discussion of such matters, the meeting will be closed to the public from 10:30 a.m. to 11:00 a.m. The meeting will be open to the public and press from 9:30 a.m. to 10:30 a.m. and again from 11:00 a.m. to 2:45 p.m. when other trade policy issues will be discussed. Attendance during this part of the meeting is for observation only. Individuals who are not members of the committee will not be invited to comment.

Pate Felts,

Acting Assistant United States Trade Representative, Intergovernmental Affairs and Public Liaison.

[FR Doc. 00–7617 Filed 3–27–00; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Public Comments for Mandated Multilateral Trade Negotiations on Agriculture and Services in the World Trade Organization (WTO) and Priorities for Future Market Access Negotiations on Non-Agricultural Goods

ACTION: Notice and request for comments.

SUMMARY: The Trade Policy Staff Comments (TPSC) is requesting written public comments on general U.S. negotiating objectives as well as country and item-specific export priorities for agriculture and services. The TPSC also seeks public comment on country-specific export priorities for tariffs and non-tariff measures for non-agricultural products. Comments received will be considered by the Executive Branch in formulating U.S. positions and objectives for U.S. participation in the mandated WTO negotiations on agriculture and services and further negotiations on market for non-agricultural products should consensus emerge among WTO Members to launch negotiations in this area.

DATES: Public comments are due by noon, May 12, 2000.

ADDRESSES: Office of the U.S. Trade Representative, 600 17th Street, N.W., Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Steve Neff, Office of Agricultural Affairs (202) 395–6127 for agriculture; Peter Collins, Office of Services, Investment and Intellectual Property (202) 395–7271 for services; Barbara Chattin, Office of WTO and Multilateral Affairs at (202) 395–5097 for non-agricultural market access; and Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representatives, (202) 395–3475 for procedural questions concerning public comments.

Information about the WTO can be obtained via the WTO website (*www.wto.org*). U.S. submissions on agriculture, services and non-agricultural market access made to the WTO General Council as part of the preparatory process for the WTO Ministerial in December 1999 can be found on the USTR website (*www.ustr.gov*) under "what's new."

SUPPLEMENTARY INFORMATION: The TPSC invites written comments from the public on issues to be addressed in the course of the mandated negotiations on agriculture and services that are underway in the WTO. The Uruguay Round Agreement on Agriculture stipulates in Article 20 that a continuation of the reform process begin "one year before the end of the implementation period," *i.e.*, beginning of 2000. Similarly, the General Agreement on Trade in Services (GATS) provides, in Article XIX, "Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement * * *." Although not part of the WTO mandated negotiations, the Administration notes that it has received expressions of interest in further negotiations on non-agricultural market access, including tariffs and non-tariff measures for specific products and countries.

For agriculture, topics for negotiating objectives include reforms in each of the areas of market access, domestic support, export competition, and other rules and disciplines affecting trade in agricultural products, including biotechnology. Comments are welcome with as much specificity as the respondent can provide an general or commodity-specific negotiating objectives; country and product specific export interests or barriers; and experience with particular measures, such as tariff-rate quota administration, that might be addressed in the context of the new negotiations.

For services, topics for negotiating objectives include removal or reduction of barriers to U.S. services exports under existing GATS disciplines; establishment of new GATS disciplines to ensure effective market access, *e.g.*, proposed disciplines on domestic regulations on services, possibly addressing transparency and necessity; and clarification of sectoral definitions in the Agreement.

Services sectors under consideration in the negotiations include: (1) Business services, including professional and related services (including legal, accounting, auditing and bookkeeping, taxation, medical, dental, veterinary, engineering, architectural, and urban planning services), computer and related services, research and development services, real estate services, rental and leasing services, and advertising and management services; (2) communication services (including telecommunications services, audiovisual services, postal services, and express delivery or "courier" services); (3) construction and related engineering services; (4) distribution services (including wholesale, retail, and franchising services); (5) educational and training services; (6) environmental services; (7) energy services; (8) financial services, including insurance and insurance-related services, banking and securities services; (9) health-related and social services; (10) tourism and travel-related services; (11) recreational, cultural and sporting services; and (12) transport services.

Comments on broader negotiations on non-agricultural market access are welcome with as much specificity as the respondent can provide on general negotiating objectives and/or targets; country and product specific export interests or barriers; and experience with particular measures that might be improved in the context of the new negotiations.

The U.S. International Trade Commission has provided to the TPSC the public comments received on agricultural and non-agricultural products as part of its investigation No. 332–403, Probable Economic Effects on Reduction or Elimination of U.S. Tariffs (November 1999 (Confidential report)). Hence, these comments need not be resubmitted.

Comments should state clearly the objective(s) and should contain detailed information supporting the objective(s). Submissions should clearly indicate the general topic (*i.e.*, agriculture, services or non-agricultural products). For agriculture and non-agricultural products, identification of country-specific export priorities on goods should, to the maximum extent possible, identify the item by Harmonized System nomenclature at the 6-digit level at a minimum and the country of interest. For services, the submissions should include, wherever appropriate, sector-specific export priorities by country.

Persons submitting written comments should provide twenty (20) copies no later than noon May 12, 2000, to Gloria Blue, Executive Secretary, Trade Policy Staff Committee, Office of the United States Trade Representative, Room 122, 600 17th Street Northwest, Washington, DC 20508. In addition, a helpful supplement to the written statement would be to provide a disk of the submission containing as much of the technical details as possible, either in a spreadsheet format or in a word processing table format, with each tariff line/services sector in a separate cell. The disk should have a label identifying the software used and the submitter.

Written comments submitted in connection with this request, except for information granted "business confidential" status pursuant to 15 CFR 2003.6, will be available for public inspection in the USTR Reading Room, Room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb at 202–395–6186. The Reading Room is open to the public from 10:00 a.m. to 12 noon, and from 1 p.m. to 4 p.m. Monday through Friday.

Business confidential information, including any information submitted on disks, will be subject to the requirements of 15 CFR 2003.6. Any business confidential material must be clearly marked as such on the cover letter or page and each succeeding page, and must be accompanied by a non-confidential summary thereof. If the submission contains business confidential information, twenty copies of a public version that does not contain confidential information, must be submitted. A justification as to why the information contained in the submission should be treated confidentially must be included in the submission. In addition, any submissions containing business confidential information must be clearly marked "Confidential" at the top and bottom of the cover page (or letter) and each succeeding page of the submission. The version that does not contain confidential information should also be clearly marked, at the top and bottom of each page, "public version" or "non-confidential."

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 00–7516 Filed 3–27–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–13

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspects of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 18, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9–NPRM–cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa

Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 23, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 25052.
Petitioner: Promech, Inc.
Section of the FAR Affected: 14 CFR 135.203(a)(1).
Description of Relief Sought/ Disposition: To permit Promech and six similarly situated certificate holders conducting operations under part 135 to operate seaplanes inside the Ketchikan, Alaska, Class E airspace under Special Visual Flight Rules below 500 feet above the surface.
Grant, 02/28/2000, Exemption No. 4760H.

Docket No.: 25390.
Petitioner: Airbus Industrie.
Section of the FAR Affected: 14 CFR 145.35.
Description of Relief Sought/ Disposition: To permit the production units of the members and associated partners of the Airbus consortium to be certificated collectively under Airbus as a U.S. foreign repair station to support the operation of U.S.-registered A300, A310, A319, A320, A321, A330, and A340 series airplanes.
Grant, 02/28/2000, Exemption No. 6029B.

Docket No.: 29052.
Petitioner: Business Airfreight.
Section of the FAR Affected: 14 CFR 43.3.
Description of Relief Sought/ Disposition: To permit appropriately trained and certificated pilots employed by BAF to replace navigation lightbulbs, landing lightbulbs, taxi lightbulbs, missing or broken static wicks, and missing or broken bonding straps on BAF's aircraft used in operations conducted under 14 CFR part 135.
Denial, 02/29/2000, Exemption No. 7131.

Docket No.: 29116.
Petitioner: Taconite Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit TAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on each aircraft.
Grant, 02/09/2000, Exemption No. 6735A.

Docket No.: 29288.
Petitioner: Mr. Patrick J. Halloran.
Section of the FAR Affected: 14 CFR 65.104(a)(2).
Description of Relief Sought/ Disposition: To permit Mr. Halloran to satisfy the eligibility requirement for a repairman certificate (experimental aircraft builder) without being the primary builder of the aircraft to which the certificate privileges would apply.
Denial, 02/24/2000, Exemption No. 7127.

Docket No.: 29410.
Petitioner: U.S. Technical.
Section of the FAR Affected: 14 CFR 145.37(b).
Description of Relief Sought/ Disposition: To permit U.S. Technical to install, modify, and retrofit passenger and cabin amenities at customer facilities without providing suitable permanent housing for at least one of the heaviest aircraft for which it is rated.
Denial, 02/24/2000, Exemption No. 7130.

Docket No.: 29695.
Petitioner: Raytheon Systems Company.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit Raytheon to make its Inspection Procedures Manual (IPM) available electronically to its supervisory, inspection, and other personnel, rather than give a paper copy of the IPM to each of its supervisory and inspection personnel.
Grant, 02/03/2000, Exemption No. 7115.

Docket No.: 29799.
Petitioner: Bombardier Aerospace.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit Bombardier to place an adequate number of repair station IPMs in inspection areas and to assign IPMs to key individuals.
Grant, 02/03/2000, Exemption No. 7114.

Docket No.: 29822.
Petitioner: Mr. John A. Chunis.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit Mr. Chunis to conduct one local sightseeing flight for compensation or hire, auctioned off to raise funds for the United Way, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 02/04/2000, Exemption No. 7117.

Docket No.: 29845.
Petitioner: Mr. Ronald Drachenberg.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit Mr. Drachenberg to conduct one local sightseeing flight for a fundraising event for the Plainville Congregational Church, Plainville, Connecticut, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 02/25/200, Exemption No. 7128.

Docket No.: 29868.
Petitioner: Dee Howard Aircraft Maintenance, L.P.
Section of the FAR Affected: 14 CFR 145.45(f).
Description of Relief Sought/ Disposition: To permit DHM to assign its IPM to specific management personnel rather than give a copy of its IPM to each of its supervisory and inspection personnel.
Grant, 02/24/2000, Exemption No. 7123.

Docket No.: 29929.
Petitioner: Quest Aviation, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit QAI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.
Grant, 02/16/2000, Exemption No. 7125.

Docket No.: 29931.
Petitioner: Rotary Club of Kern River Valley.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit the Rotary Club of KRV to conduct local sightseeing flights at Kern Valley Airport on February 18, 19, and 20, 2000, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 02/18/2000, Exemption No. 7121.

Docket No.: 29932.
Petitioner: Mr. Maurice H. Witten.
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit Mr. Witten to conduct local sightseeing flights in the vicinity of Hays, Kansas, for the Hays Jaycee fund raising event, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 02/22/2000, Exemption No. 7122.

[FR Doc. 00–7635 Filed 3–27–00; 8:45 am]
BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2000–14]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before April 18, 2000.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, D.C. 20591.

Comments may also be sent electronically to the following internet address: 9__NPRM__cmts@faa.gov.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Cherie Jack (202) 267–7271 or Vanessa Wilkins (202) 267–8029 Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on March 23, 2000.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Dispositions of Petitions

Docket No.: 27787.
Petitioner: Ameriflight, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Ameriflight to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 03/03/2000, Exemption No. 6830A.

Docket No.: 28529.
Petitioner: Atlantic Aero, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Atlantic Aero to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 03/03/2000, Exemption No. 6459c.

Docket No.: 29143.
Petitioner: Honeywell, Inc.
Section of the FAR Affected: 14 CFR 145.47(b).
Description of Relief Sought/ Disposition: To permit Honeywell to substitute the instrument calibration standards of the Instituto Nacional de Metrologia, Normalizacao e Qualidade Industrial, Brazil's national standards laboratory, for the calibration standards of the U.S. National Institute of Standards and Technology, formerly the National Bureau of Standards, to test its inspection and test equipment.
Grant, 03/03/2000, Exemption No. 7137.

Docket No.: 29209.
Petitioner: AirNet Systems, Inc.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit ASI to operate certain aircraft under part 135 without a TSO–C112 (Mode S) transponder installed on those aircraft.
Grant, 03/03/2000, Exemption No. 6772A.

Docket No.: 29218.
Petitioner: Cessna Aircraft Company.
Section of the FAR Affected: 14 CFR 91.409(b).
Description of Relief Sought/ Disposition: To permit owners and operators of Cessna C–172R, C–172S, and C–182S to use Cesna's PhaseCard Inspection Program rather under completing the 100-hour inspection required by 14 CFR § 91.409(b).
Grant, 03/03/2000, Exemption No. 6091A.

Docket No.: 29723.
Petitioner: Westjet Air Center, Inc.
Section of the FAR Affected: 14 CFR 61.3(a) and (c).
Description of Relief Sought/ Disposition: To permit Westjet to issue to its pilot flight crewmembers written confirmation of an individual FAA-issued crewmember certificates based on information in Westjet's approved record system. That confirmation, when attached to this exemption, permits (1) Westjet to operate the affected flight and (2) the individual pilot to serve as a flight crewmember for any part 135 flight operation without having in his/her possession an FAA-issued pilot or medical certificate.
Grant, 03/06/2000, Exemption No. 7136.

Docket No.: 29813.
Petitioner: Mr. Jeffrey D. Harband..
Section of the FAR Affected: 14 CFR 135.251, 135.255, 135.353, and appendixes I and J to part 121.
Description of Relief Sought/ Disposition: To permit Mr. Harband to conduct local sightseeing flights for charitable organizations, for compensation or hire, without complying with certain organizations, for compensation or hire, without complying with certain anti-drug and alcohol misuse prevention requirements of part 135.
Grant, 03/08/2000, Exemption No. 7139.

Docket No.: 29887.
Petitioner: Atlantic Southeast Airlines, Inc.
Section of the FAR Affected: 14 CFR 121.434(c)(1)(ii).
Description of Relief Sought/ Disposition: To permit ASA to substitute a qualified and authorized check airman in place of an FAA inspector to observe a qualifying pilot in command who is completing initial or upgrade training specified in § 121.424 during at least one flight leg that includes a takeoff and a landing.
Grant, 03/07/2000, Exemption No. 7135.

Docket No.: 29902.
Petitioner: Brim Equipment Leasing, Inc., d.b.a. Brim Aviation.
Section of the FAR Affected: 14 CFR 135.143(c)(2).
Description of Relief Sought/ Disposition: To permit Brim Aviation to operate its Robinson R22 Beta II aircraft

under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 03/08/2000, Exemption No. 7141.

Docket No.: 29926.

Petitioner: Ottumwa Flying Services, Inc.

Section of the FAR Affected: 14 CFR 135.143(c)(2).

Description of Relief Sought/ Disposition: To permit OFS to operate its King Air aircraft under part 135 without a TSO–C112 (Mode S) transponder installed in the aircraft.

Grant, 03/08/2000, Exemption No. 7140.

[FR Doc. 00–7636 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7090]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel JUST DESSERT.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub.L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 27, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7090.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub.L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: name: "JUST DESSERT", owner: Michael J. & Dawn G. Baldacchino.

(2) Size, capacity and tonnage of vessel: Hull length 44.2", beam: 13.6', depth: 6.5', tonnages: Gross—20, Net—18, measured pursuant to 46 U.S.C. 14502.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "We are retired live-aboards, using our sailboat as our home. Our intention is to travel along the coastal United States (all coasts) and overseas (circumnavigate). We will be picking up crew, visitors, and friends for periods of time and legs of our journey who will pay for the segment that they are aboard to supplement our retirement income."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1990 Place of original construction: Cedex, France.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "We believe that there will be no impact on any local or existing commercial passenger vessel operators as our commercial impact will be transient and sporadic in nature."

(6) A statement on the impact this waiver will have on U.S. shipyards. In addition to the statement above, also according to the applicant: "We believe that this waiver will have no or insignificant impact on U.S. shipyards."

By order of the Maritime Administrator.

Dated: March 23, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–7606 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–81–P

DERARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7091]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel ULTRA GRAND SLAM.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 27, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7091.

Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub.L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested: ULTRA GRAND SLAM, USCG Documentation No. 1066376 owner: according to the applicant "the owner of the vessel ULTRA GRAND SLAM is C & J Enterprises Co. inc. d/b/a Charter Boat Grand Slam, an entity of the United States. The corporate officer is Craig Jiovani". (2) Size, capacity and tonnage of vessel: Hull length 46'9", beam: 15'9", depth: 9'8", tonnages: Gross—49.82, Net—19.93, measured pursuant to 46 U.S.C. 14502.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "The vessel ULTRA GRAND SLAM will be used to carry six or less passengers for hire, solely within the coastal waters of the State of Florida, and also outside the limits of the United States."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1971 Place of original construction: construction was believed to have taken place in Baltimore, MD, USA. However, due to the absence of sufficient builder certification necessary to meet U.S. documentation standards to qualify for a coastwise endorsement, for the purposes of waivers permitted under Pub.L. 105–383 the vessel is considered to not have been built in the United States.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "I, Craig Jiovani, as the President of C & J Enterprises Co. Inc. d/b/a/ Charter Boat Grand Slam, sole owner of the subject vessel, hereby attest to the fact that the much coveted Small Vessel Waiver will not unduly adversely affect either U.S. flagged vessel operators or U.S. shipbuilders."

(6) A statement on the impact this waiver will have on U.S. shipyards. In addition to the statement above, also according to the applicant: "Having been constructed entirely in Baltimore, Maryland in 1971, a Small Vessel Waiver will have no impact whatsoever on U.S. shipyards. All major components used on the vessel are U.S. Constructed."

By Order of the Maritime Administrator.

Dated: March 23, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–7607 Filed 3–27–00; 8:45 am]

BILLING CODE 4910–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33859]

Indiana Southwestern Railway Co.—Acquisition and Operation Exemption—Evansville Terminal Company, Inc. and AB Rail Investments, Inc.

Indiana Southwestern Railway Co. (ISW), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to purchase and operate two connecting lines of railroad in Vanderburgh and Posey Counties, IN, as follows: (1) Approximately 17.2 route miles from Evansville to Poseyville, owned by the Evansville Terminal Company (ETC); and (2) approximately 4.667 route miles from Poseyville to Cynthiana, owned by AB Rail Investments, Inc.[1]

The parties reported that they intended to consummate the transaction on or about March 15, 2000. The earliest the transaction could have been consummated was March 15, 2000, the effective date of the exemption (7 days after the exemption was filed).

This transaction is related to STB Finance Docket No. 33858, *Pioneer Railcorp—Continuance in Control Exemption—Indiana Southwestern Railway Co.*, wherein Pioneer Railcorp has concurrently filed a verified notice to continue in control of ISW upon its becoming a Class III rail carrier.

If the verified notice contains false or misleading information, the exemption is void *ob initio*. Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33859, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., Rea, Cross & Auchincloss, 1707 L Street, NW., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 21, 2000.

By the Board, David M. Konschanik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–7591 Filed 3–27–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33858]

Pioneer Railcorp—Continuance in Control Exemption—Indiana Southwestern Railway Co.

Pioneer Railcorp (Pioneer), a noncarrier holding company, has filed a notice of exemption to continue in control of Indiana Southwestern Railway Co. (ISW), upon ISW's becoming a carrier.

The transaction was scheduled to be consummated on March 15, 2000.

This transaction is related to STB Finance Docket No. 33859, *Indiana*

[1] ETC currently operates both lines of railroad.

Southwestern Railway Co.—Acquisition and Operation Exemption—Evansville Terminal Company, Inc. and AB Rail Investments, Inc., wherein ISW seeks to acquire and operate two connecting lines of railroad currently owned by Evansville Terminal Company Inc. and AB Rail Investments, Inc.

At the time it filed the notice, Pioneer owned and controlled thirteen existing Class III shortline rail carriers: West Michigan Railroad Co., operating in Michigan; Fort Smith Railroad Co., operating in Arkansas; Alabama Railroad Co., operating in Alabama; Mississippi Central Railroad Co., operating in Mississippi and Tennessee; Alabama & Florida Railway Co., Inc., operating in Alabama; Decatur Junction Railway Co., operating in Illinois; Vandalia Railroad Company, operating in Illinois; Keokuk Junction Railway Co., operating in Iowa and Illinois; Michigan Southern Railroad Company, operating in Michigan and Indiana; Shawnee Terminal Railway Company, operating in Illinois; Pioneer Industrial Railway Co., operating in Illinois; Michigan Southern Railroad Co., Inc., operating in Michigan and Indiana; and Garden City Western Railway, Inc., operating in Kansas.

Pioneer states that: (i) The railroads will not connect with each other or any railroad in their corporate family; (ii) The continuance-in-control is not part of a series of anticipated transactions that would connect the fourteen railroads with each other or any railroad in their corporate family; and (iii) The transaction does not involve a Class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11323. *See* 49 CFR 1180.2(d)(2).

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33858, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of each pleading must be served on John D. Heffner, Esq., Rea, Cross & Auchincloss, 1707 L Street, NW., Suite 570, Washington, DC 20036.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 21, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–7590 Filed 3–27–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Submission for OMB Review; Comment Request

February 10, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 27, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1503.

Revenue Procedure Number: Revenue Procedure 96–53.

Type of Review: Extension.

Title: Section 482—Allocations Between Related Parties.

Description: The information requested in sections 4.02, 5, 8.02, 9, 11.01, 11.02(1), 11.04, 11.07, and 11.08 is required to enable the Internal Revenue Service to give advice on filing Advance Pricing Agreement applications, to process such applications and negotiate agreements, and to verify compliance with agreements and whether agreements require modification.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 160.

Estimated Burden Hours Per Respondent/Recordkeeper: 32 hours, 49 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 5,250 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget Room 10202, New Executive Office Building Washington, DC 20503.

Mary A. Able,

Departmental Reports Management Officer.

[FR Doc. 00–7615 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Forms 4461, 4461–A, and 4461–B

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4461, Application for Approval of Master or Prototype Defined Contribution Plan; Form 4461–A, Application for Approval of Master or Prototype Defined Benefit Plan; Form 4461–B, Application for Approval of Master or Prototype Plan, Mass Submitter Adopting Sponsor.

DATES: Written comments should be received on or before May 30, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Form 4461, Application for Approval of Master or Prototype Defined Contribution Plan; Form 4461–A, Application for Approval of Master or Prototype Defined Benefit Plan; Form 4461–B, Application for Approval of Master or Prototype Plan, Mass Submitter Adopting Sponsor.

OMB Number: 1545–0169.

Form Numbers: Forms 4461, 4461–A, and 4461–B.

Abstract: The IRS uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Current Actions: There are no changes being made to these forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated Number of Responses: 5,250.

Estimated Time Per Respondent: 20 hours, 50 minutes.

Estimated Total Annual Burden Hours: 109,388.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2000

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–7524 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 911

AGENCY: Internal Revenue Service (IRS), Treasury

ACTION: Notice and request for comments

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 911, Application for Taxpayer Assistance Order (ATAO).

DATES: Written comments should be received on or before May 30, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to Garrick R. Shear, Internal Revenue Service, room 5244, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, Internal Revenue Service, room 5242, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Application for Taxpayer Assistance Order (ATAO).

OMB Number: 1545–1504.

Form Number: 911.

Abstract: This form is used by taxpayers to apply for relief from a significant hardship which may have already occurred or is about to occur if the IRS takes or fails or take certain actions. This form is submitted to the IRS Taxpayer Advocate Office in the district where the taxpayer lives.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, business or other for-profit organizations, not-for-profit institutions, farms and state, local or tribal governments.

Estimated Number of Respondents: 93,000.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 46,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) The accuracy of the agency's estimate of the burden of the collection of information; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: March 17, 2000

Garrick R. Shear,

IRS Reports Clearance Officer.

[FR Doc. 00–7525 Filed 3–27–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

Proposed Agency Information Collection Activities; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on proposed and continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Today, the Office of Thrift Supervision within the Department of the Treasury solicits comments on the Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities.

DATES: Submit written comments on or before May 30, 2000.

ADDRESSES: Send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention 1550–0025. Hand deliver comments to the Public Reference Room, 1700 G Street, NW., lower level, from 9:00 a.m. to 4:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755; or (202) 906–6956 (if comments are over 25 pages). Send e-mails to "public.info@ots.treas.gov", and include your name and telephone number. Interested persons may inspect comments at the Public Reference Room, 1700 G St. N.W., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Nadine Washington, Supervision, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, (202) 906–6706.

SUPPLEMENTARY INFORMATION:

Title: Purchase of Branch Office(s) and/or Transfer of Assets/Liabilities.

OMB Number: 1550–0025.

Form Number: OTS Forms 1594, 1585, 1589.

Abstract: Information provided to OTS is evaluated to determine whether the proposed assumption of liabilities and/or transfer of assets transactions complies with applicable laws, regulations and policy, and will not have an adverse effect on the risk exposure to the insurance fund.

Current Actions: OTS proposes to renew this information collection without revision.

Type of Review: Renewal.

Affected Public: Business or For Profit.

Estimated Number of Respondents: 122.

Estimated Time Per Respondent: 1.1 hours.

Estimated Total Annual Burden Hours: 134 hours.

Request for Comments

The OTS will summarize comments submitted in response to this notice or will include these comments in its request for OMB approval. All comments will become a matter of public record. The OTS invites comment on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality; (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or starting costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: March 22, 2000.

John E. Werner,

Director, Information & Management Services Division.

[FR Doc. 00–7603 Filed 3–27–00; 8:45 am]

BILLING CODE 6720–01–P



Federal Register

Tuesday,
March 28, 2000

Part II

Federal Reserve System

Department of the Treasury

12 CFR Parts 225 and 1500

Bank Holding Companies and Change in Bank Control; Interim Rule and Proposed Rule

FEDERAL RESERVE SYSTEM

Constitution Avenue and C Street, N.W.

financial holding companies to make

documentation of these interventions,

experience is gained in managing and

investments. System staff and Treasury

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–1065]

DEPARTMENT OF THE TREASURY

Office of the Under Secretary for Domestic Finance

12 CFR Part 1500

RIN 1505–AA78

Bank Holding Companies and Change In Bank Control

AGENCIES: Board of Governors of the Federal Reserve System and Department of the Treasury.

ACTION: Interim rule, with request for public comments.

SUMMARY: The Board of Governors of the Federal Reserve System and the Secretary of the Treasury jointly adopt on an interim basis, effective March 17, 2000, and solicit comment on a rule that will govern merchant banking investments made by financial holding companies. This rule implements provisions of the recently enacted Gramm-Leach-Bliley Act (GLB Act) that permit financial holding companies to make investments as part of a bona fide securities underwriting or merchant or investment banking activity. A summary of the rule appears below in the executive summary in the **SUPPLEMENTARY INFORMATION** section.

DATES: The interim rule is effective on March 17, 2000. Comments must be received on both the interim rule and the capital proposal by May 22, 2000.

ADDRESSES: Comments should refer to docket number R–1065 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (or mailed electronically to *regs.comments@federalreserve.gov*) and to Merchant Banking Regulation, Office of Financial Institution Policy, U.S. Department of the Treasury, 1500 Pennsylvania Avenue, N.W., Room SC 37, Washington, D.C. 20220 (or mailed electronically to financial.institutions@do.treas.gov). Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. and, outside of those hours, to the Board's security control room. Both the mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays. Comments addressed to the Treasury Department may also be delivered to the Treasury Department mail room between the hours of 8:45 a.m. and 5:15 p.m. at the 15th Street entrance to the Treasury Building.

FOR FURTHER INFORMATION CONTACT:

Board of Governors: Scott G. Alvarez, Associate General Counsel (202/452–3583), Kieran J. Fallon, Senior Counsel (202/452–5270), or Camille M. Caesar, Senior Attorney (202/452–3513), Legal Division; Jean Nellie Liang, Chief, Capital Markets (202/452–2918), Division of Research & Statistics; Michael G. Martinson, Deputy Associate Director (202/452–3640) or James A. Embersit, Manager, Capital Markets (202/452–5249), Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Users of Telecommunications Device for the Deaf (TDD) *only* contact Janice Simms at (202) 872–4984.

Department of the Treasury: Joan Affleck-Smith, Director, Office of Financial Institutions Policy (202/622–2740), Gerry Hughes, Senior Financial Economist (202/622–2740); Roberta K. McInerney, Assistant General Counsel (Banking and Finance) (202/622–0480) or Gary Sutton, Senior Banking Counsel (202/622–0480).

SUPPLEMENTARY INFORMATION:

A. Executive Summary

This rule implements provisions of the recently enacted GLB Act that permit financial holding companies to make investments as part of a bona fide securities underwriting or merchant or investment banking activity. These investments may be made in any type of ownership interest in any type of nonfinancial entity (portfolio company), and may include any amount up to all of the ownership interests in the company. The investments that may be made under this new authority are substantially broader in scope than the investment activities otherwise permissible for bank holding companies, and are referred to as "merchant banking investments."

The interim rule does not address or apply to securities underwriting, dealing or market making activities conducted under section 4(k)(4)(E) of the Bank Holding Company Act (BHC Act). Moreover, the authority granted by section 4(k)(4)(H) of the BHC Act to financial holding companies to make merchant banking investments is an alternative to any other authority that the financial holding company may have to make investments in nonfinancial companies under other provisions of the Bank Holding Company Act except as specifically noted in the rule.

The interim rule sets forth the parameters within which financial holding companies may make merchant banking investments. As an initial matter, the GLB Act allows a financial holding company to make merchant banking investments if the financial holding company controls a securities affiliate or controls both an insurance underwriter and a registered investment adviser. The rule defines a securities affiliate for this purpose to be any registered securities broker or dealer.

The GLB Act contains provisions that are designed to help maintain the separation between banking and commerce by limiting the time period that a merchant banking investment may be held by a financial holding company and the circumstances under which the financial holding company may routinely manage or operate a portfolio company. In particular, the GLB Act provides that merchant banking investments may be held only for a period of time that enables the sale or disposition of the investment on a reasonable basis consistent with the financial viability of merchant banking investment activities. The rule provides that, in most cases, merchant banking investments may be held for a 10-year period. The rule allows a financial holding company to invest in a qualifying private equity fund for the term of the fund, up to 15 years under certain circumstances.

With respect to routinely managing or operating portfolio companies, the rule clarifies that director interlocks at the portfolio company and certain types of agreements and covenants that affect only extraordinary corporate events would not, as a general matter, be considered routine management or operation. The rule also provides that a financial holding company would be considered to be routinely managing or operating a portfolio company if the financial holding company establishes interlocks at the officer or employee level of the portfolio company or has certain other arrangements involving day-to-day management or participation in ordinary business decisions. The rule sets forth those limited circumstances when it is permissible for a financial holding company to routinely manage or operate a portfolio company, requires

documentation of these interventions, and limits the duration of the involvement.

The interim rule contains other provisions that are also designed to serve this fundamental purpose of maintaining the separation of banking and commerce as well as to promote the safe and sound conduct of merchant banking activities. In particular, the rule requires financial holding companies to establish policies and systems to monitor and assess the various risks associated with making merchant banking investments. The financial holding company must also establish policies for assuring the corporate separateness of companies held under the rule and limiting the potential that the financial holding company or its affiliated depository institutions may be legally liable for the financial obligations or operations of those companies. In addition, the rule implements the cross-marketing prohibitions of the GLB Act and the provisions of sections 23A and B of the Federal Reserve Act that restrict transactions between a depository institution and a portfolio company controlled by the same financial holding company.

Recordkeeping and reporting requirements are also established in order to promote compliance with the provisions of the rule and the safe and sound conduct of the activity. These records include documentation of transactions and relationships between a financial holding company, including each of its subsidiaries, and a company held under the merchant banking authority, with special attention paid to transactions and relationships that are not on market terms.

Also to limit the potential level of risk to a financial holding company and its affiliated depository institutions from merchant banking investments, the interim rule establishes aggregate investment limits. The new Subpart provides that a financial holding company may not make additional merchant banking investments if the aggregate carrying value of all merchant banking investments made by the financial holding company under the GLB Act exceeds (1) the lesser of 30 percent of its Tier 1 capital or $6 billion, or (2) the lesser of 20 percent of Tier 1 capital or $4 billion after excluding investments made by the financial holding company in private equity funds. A financial holding company may invest a greater amount with prior approval. As explained below, the Board and the Secretary believe these limits are necessary until appropriate capital rules are put in place and experience is gained in managing and supervising the risks of this activity.

Chief among the elements necessary to address safety and soundness is the appropriate capital treatment for merchant banking investments made by financial holding companies. The Board and the Secretary have developed a proposal to address the appropriate capital charge for merchant banking investments. This proposal seeks comment on an amendment to the Board's capital guidelines for bank holding companies that, in general, would apply a 50 percent capital charge to all merchant banking investments made under the interim rule. The capital proposal also requests comment on whether similar capital treatment should be applied at the holding company level to investments by bank holding companies and their subsidiaries in nonfinancial companies through small business investment companies (whether held directly by the bank holding company or by a depository institution controlled by the bank holding company), under Regulation K, in less than 5% of the shares of companies under section 4(c)(6) or 4(c)(7) of the BHC Act, or by an insured state bank subsidiary in accordance with section 24 of the Federal Deposit Insurance Act (FDI Act).

The interim rule is contained in a new Subpart J to the Board's Regulation Y and in a new Part 1500 of the rules of the Department of the Treasury. These new subparts are promulgated on an interim basis, effective on March 17, 2000, in order to provide guidance to financial holding companies regarding the definitions, limits and supervisory requirements that govern the activity of making merchant banking investments as soon as possible following the effective date of the relevant provisions of the GLB Act.

The capital proposal is described below, and is published separately in accordance with the requirements of the **Federal Register.**

The Board and the Secretary of the Treasury solicit comments on all aspects of the interim rule and will amend the rule as appropriate in response to comments received.

B. Background

Interviews With Securities Firms and Bank Holding Companies

In order to gather information about how firms currently make merchant banking investments, staff of the Federal Reserve System and the Department of the Treasury conducted interviews with a number of securities firms that currently make merchant banking investments. System staff and Treasury staff also interviewed several bank holding companies that make more limited types of investments under existing authority. The attached rule reflects information collected in these interviews and the experience of the System in supervising the more limited types of investment activities permissible for bank holding companies.

The interviews indicated that merchant banking investment activities conducted by major securities firms most often are conducted through private equity funds, which pool a financial institution's capital with funds from third-party investors. These investors are generally either institutions (such as other investment companies, pension funds, endowments, charitable organizations, investment units of financial institutions, and other companies) or individuals with high net worth. The securities firm is typically the sponsor and advisor to the fund as well as an investor in the fund. The private equity fund may be organized in corporate, partnership or other form, and by contract has a limited life that typically spans 10 years, with the possibility of limited extensions.

Private equity funds typically have features, including compensation arrangements, that—in addition to the limited life of the fund—strongly encourage the resale of investments made by the fund. As a result of these incentives and structural arrangements, and given current economic conditions, investments made by private equity funds are typically sold within a period of between 3 and 5 years. In addition, private equity funds typically have policies, review committees or other measures that encourage funds to diversify holdings and/or limit the amount of the fund's capital invested in a single portfolio company.

Securities firms also at times make merchant banking investments for the account of the securities firm and not through a private equity fund. These investments tended to be less significant than investments made through a private equity fund. The investment period for direct investments ranged from less than one year to somewhat longer than 10 years, with investments most often held for an average of 5 years under current conditions.

Securities firms and bank holding companies uniformly indicated that they apply higher internal capital charges against merchant banking investments than are applied to many other types of activities. The industry practice regarding the appropriate

internal measures of capital required to support merchant banking activities reflects the greater risks associated with these investments, including the volatility and illiquidity of many investments, and the fact that portfolio companies are themselves often leveraged companies. Private equity funds supported their investment activities almost exclusively with capital contributed by investors. Occasionally, private equity funds rely on short-term leverage that is repaid with a capital call on investors. However, private equity funds do not appear to rely to any significant extent on debt to fund investment activities.

Firms that make merchant banking investments impose internal capital charges that differ by firm and, in some cases, by type of investment. These capital charges range from 25 percent to 100 percent of the investment. Firms typically record investments initially at the lower of cost or market. Investments may be assigned an adjusted carrying value if a significant event occurs (such as an initial public offering, follow-up financing, or secondary capital raising events), subject to a discount that reflects the size of the firm's holding, the liquidity of the market for the shares held, the volatility of the market and other factors and that is applied prior to recognizing any unrealized gains on the investment. The securities firms all have policies for reviewing and recording the value of individual investments and the appropriate discounts to apply to the unrealized gains on investments.

Securities firms use a variety of methods to monitor the condition of portfolio companies. The most important involve receiving formal and informal reports on both a periodic basis and in the case of significant events, and maintaining representation on the board of directors of the portfolio company. Securities firms typically participate to the fullest extent allowed under their ownership interest in selecting the board of directors of a portfolio company and often select officers and employees of the firm to serve on the board of the portfolio company. These directors exercise the full rights and responsibilities of a member of the board, but are not expected to become involved in the routine management or operation of a portfolio company, as a general matter.

In both the private equity fund context and the direct investment context, securities firms indicated that the firm would on occasion become involved in routinely managing or operating a portfolio company. These interventions occur in limited situations when the merchant banker determines that intervention is necessary (1) to respond to an unusual event that directly affects the value of the investment, such as loss of portfolio company senior management, operational failures, major acquisitions, business plan changes and significant business losses, or (2) to facilitate the sale or disposition of the investment, such as participation in negotiations for sale of the portfolio company or the initial public offering of the company's shares. These interventions are temporary in most cases and usually take the form of increased consultation with the management of the portfolio company, exercise of review and veto rights over certain extraordinary decisions of management, replacement of management, and, in a small number of cases, temporary appointment of a representative of the investor as an officer of the portfolio company.

C. Interim Rule

The GLB Act specifically provides that the Board and the Secretary of the Treasury may issue regulations implementing section 4(k)(4)(H) that they jointly determine to be appropriate to assure compliance with the purposes and prevent evasions of the BHC Act and the GLB Act and to protect depository institutions, including limiting transactions between depository institutions and companies controlled under section 4(k)(4)(H) (12 U.S.C. 1843(k)(7)(A)) and reporting and recordkeeping requirements. The Board is also authorized by the BHC Act and other provisions of law to promulgate rules, including capital standards and reporting and recordkeeping requirements, consistent with the requirements and purposes of the BHC Act and other provisions.

The proposed interim rule reflects the information collected in the interview process in defining the parameters of merchant banking activities, allowable holding periods, involvement in the management and operation of portfolio companies and the monitoring and risk management systems these firms have developed. As noted above, securities firms and others that make merchant banking investments recognized that merchant banking investments are often riskier, less liquid and more volatile than many other types of investments and often involve an investment in a leveraged company. Consequently, these investments require greater capital support, careful monitoring and valuation systems, specific policies for addressing diversification of investments, and carefully developed limits on the amount of funds put at risk in the activity. In each of these areas, the interim rule and proposal are consistent with industry practices in making, monitoring and managing the risks associated with merchant banking investments.

At the same time, the Board and the Secretary recognize that, by its nature, an agency rule sets outside limits, and in several key areas—such as the duration of holding periods, internal capital charges, and level of involvement in management of portfolio companies—industry practice has been more conservative than—and well within—the outside parameters set by the rule and proposal. In setting outside limits, the Board and the Secretary do not intend to encourage behavior that is different than more conservative industry practice and expect to monitor merchant banking activities carefully and discourage migration from the norms for conducting these activities to the outer limits allowed under the rule and proposal.

While the rule is being adopted on an interim basis, the Board and the Secretary welcome comments on all aspects of the interim rule. These comments will be carefully considered and adjustments made to the interim rule as appropriate before its final adoption.

Section 225.170—What Investments Are Permitted Under This Subpart and Who May Make Them?

As noted above, section 4(k)(4)(H) and the interim rule permit a financial holding company to acquire or control shares, assets or ownership interests of any company that engages in activities that are not otherwise permissible for a financial holding company. Interests acquired or controlled under the interim rule are referred to as merchant banking investments, and a financial holding company must comply with the requirements of this interim rule in order to make such investments.

A financial holding company is not required to obtain the Board's approval or provide notice to the Board before the financial holding company begins making merchant banking investments or acquires a company that makes merchant banking investments. A financial holding company must, however, file notice with the Board under section 4(k)(6) of the BHC Act and section 225.87 of Regulation Y (12 CFR 225.87) within 30 days after commencing merchant banking investment activities or acquiring any company that makes merchant banking investments.

Section 4(k)(4)(H) provides that a financial holding company may acquire or control shares of a company under

that section "as part of a bona fide underwriting or merchant or investment banking activity." The Board and the Secretary wish to emphasize the importance of this requirement in preventing circumvention of one of the fundamental purposes of the GLB Act of maintaining the separation of banking and commerce.

This requirement prevents the merchant banking authority from being used to engage in a nonfinancial activity. It distinguishes authorized merchant banking investments from strategic or other types of investments that are not permitted under the BHC Act or the GLB Act, such as the purchase of a commercial company or a real estate project made for the purposes of engaging in a commercial or other nonfinancial activity. Thus, for example, this authority could not be used by the financial holding company to engage in real estate development or other activities that have not been found to be financial.

This "bona fide" requirement does not prevent the acquisition of an interest in a company engaged in real estate development as part of a diversified portfolio of investments by the financial holding company in connection with its merchant banking business and in accordance with the other restrictions in the interim rule. The Board and the Secretary recognize that investments in real estate are often part of a diversified merchant banking portfolio. The Board and the Secretary believe, however, that the subpart would not allow a financial holding company to acquire a real estate development company if that acquisition represented all or substantially all of the holding company's investments claimed under this subpart. The rule includes this "bona fide" provision, and the Board will carefully monitor merchant banking investments to ensure that they meet this requirement and that the merchant banking authorization is not used by a financial holding company to engage in impermissible nonfinancial activities.

Under the statute and the rule, merchant banking investments include the full range of ownership interests, including securities, warrants, partnership interests, trust certificates, and other instruments representing an ownership interest in a company, whether the interest is voting or nonvoting. They also include any instrument convertible into a security or other ownership interest.

Under the statute and the rule, merchant banking investments may represent any amount of ownership interests in a portfolio company, whether or not that amount results in control for purposes of the BHC Act. Thus, this authority allows a financial holding company the flexibility to use its merchant banking authority to acquire or control a nominal amount of shares of a portfolio company or all of the ownership interests in a portfolio company.

The authority granted by section 4(k)(4)(H) is an alternative to the other authority granted to financial holding companies to make investments in nonfinancial companies under other provisions of the BHC Act.[1] Moreover, the rule does not address or apply to securities underwriting, dealing or market-making activities conducted under section 4(k)(4)(E) of the BHC Act.

The rule allows financial holding companies to make investments directly or through any subsidiary other than a depository institution or subsidiary of a depository institution.[2] The rule also incorporates the provision of the GLB Act that prohibits a financial holding company from making merchant banking investments on behalf of a depository institution or subsidiary of a depository institution. For purposes of the provisions of the rule, the term "financial holding company" refers to the financial holding company and any direct or indirect subsidiary of the holding company other than a portfolio company. The term "financial holding company" does not include a depository institution controlled by the financial holding company or any subsidiary of such a depository institution, except for purposes of the routine management provisions of section 171 and the recordkeeping and reporting provisions of section 174.

Subsection (e) allows a financial holding company to acquire and hold "assets" (other than shares or other ownership interests) of a company. In keeping with the stricture in section 4(k)(4)(H) that assets be "of a company," subsection (e) requires that assets acquired as a merchant banking investment, such as real estate or assets of a division of an operating company, be promptly placed in and held through a portfolio company that maintains strict corporate separation from the financial holding company in order to limit the liability of the financial holding company and its financial and depository institution affiliates for the financial obligations and operating risks of the asset.

To take advantage of this new authority, section 4(k)(4)(H) of the BHC Act requires that a bank holding company become a financial holding company.[3] In addition, the financial holding company must control either (1) a securities affiliate or (2) both an insurance underwriter and an investment adviser, registered under the Investment Advisers Act of 1940, that provides investment advice to an insurance company. Subsection (f) incorporates this requirement.

Subsection (f) also defines a "securities affiliate" to include any broker or dealer registered with the Securities and Exchange Commission. The adoption of this definition would allow a broader range of financial holding companies to make merchant banking investments than a definition restricted to securities underwriting firms.

The Board and the Secretary request comment on whether this or another definition is appropriate. In particular, the Board and the Secretary request comment on whether "securities affiliate" should include a division of a bank that is registered as a municipal securities dealer. In this regard, the Board and Secretary seek comment on whether expertise or policies developed in the course of conducting specific types of securities activities may be necessary or appropriate for making merchant banking investments in a safe and sound manner.

As noted above, the rule adopts the language of section 4(k)(4)(H) of the BHC Act that allows investments in any company "engaged in any activity not authorized pursuant to [section 4 of the Bank Holding Company Act]," that is, any company engaged in an activity that is not financial in nature or incidental to a financial activity or otherwise permissible for a financial holding company to conduct.[4] This provision appears to have been included in recognition of the fact that other provisions of the BHC Act permit a financial holding company to make investments in companies that conduct

[1] For purposes of determining whether an investment qualifies under the alternative authority for making investments granted by Regulation K and by sections 4(c)(6) and (7) of the BHC Act, a financial holding company must generally aggregate all investments held by the financial holding company in a single company.

[2] A subsidiary of a member bank may make merchant banking investments only if, after five years, the Board and the Secretary jointly adopt rules in accordance with section 122 of the GLB Act that permit financial subsidiaries of member banks to make merchant banking investments.

[3] The Board recently adopted, on an interim basis, regulations governing the process by which a bank holding company may become a financial holding company. *See* 65 FR 3785 (January 25, 2000).

[4] Nothing in the merchant banking provision overrides the prior approval requirements of section 3 of the BHC Act that govern the acquisition of shares of a bank or bank holding company or the provisions of section 4(k)(6) and 4(j) of the BHC Act that govern the acquisition of shares of a savings association.

financial activities without resorting to

management decisions made in the

actions outside of the ordinary course of

company may control and manage a

investments. The rule provides that a

financial holding company above the 25 percent threshold described above).

financial activities without resorting to merchant banking authority.

This distinction, however, may have practical consequences for private equity funds. As a result of this distinction in the statute and other provisions of the GLB Act, a private equity fund controlled by a financial holding company would appear to be prohibited from acquiring any additional financial company if any insured depository institution controlled by the financial holding company fails to have at least a satisfactory CRA rating, or, potentially, does not remain well managed and well capitalized. The Board and the Secretary request comment on this and on what, if any, amendments to the rule would be appropriate to deal with such affiliations within the requirements of the GLB Act.

Section 225.171—What Are the Limitations on Managing or Operating a Portfolio Company Held as a Merchant Banking Investment?

A financial holding company is prohibited by the GLB Act from routinely managing or operating a portfolio company except as may be necessary or required to obtain a reasonable return on the resale or disposition of the investment. Section 225.171 provides guidance on this statutory restriction.

Under this section, a financial holding company is considered to be engaged in routinely managing or operating a portfolio company if any director, officer, employee or agent of the financial holding company serves as or has responsibilities of an officer or employee of the portfolio company. The Board and the Secretary seek comment on whether any such interlocks would be appropriate.

Similarly, routinely managing or operating a company would include supervising any officer or employee of the portfolio company, other than through participation on the board of directors. The rule also defines routinely managing or operating a company to include any covenant or other contractual arrangement between the financial holding company and the portfolio company that would restrict the portfolio company's ability to make routine business decisions, such as entering into transactions in the ordinary course of business or hiring employees below the rank of the five most senior officers.

In addition, the rule defines routinely managing or operating a company to include participation in the day-to-day operations of the portfolio company. It also includes participation in management decisions made in the ordinary course of business of the portfolio company (other than decisions in which directors of a company customarily participate in their capacity as a director).

A financial holding company is not considered to be engaged in routinely managing or operating a portfolio company by virtue of having one or more representatives on the board of directors of the portfolio company. For this purpose, the Board's existing interpretations consider selection of a general partner to be the equivalent of selecting the board of directors. A representative of the financial holding company that serves as a director of a portfolio company may not routinely manage or operate the portfolio company, as discussed more fully above. In addition, in order for the financial holding company to have a director interlock without being considered to be routinely managing or operating a portfolio company, the portfolio company must employ officers and employees responsible for managing and operating the company, and no other arrangements or practices may exist that constitute routine management or operation of the portfolio company by the financial holding company.

The rule anticipates that representatives of the financial holding company will participate fully in matters typically presented to directors to the same degree as any other director. This permits the current practice of merchant bankers of placing representatives on the board of directors of a portfolio company in order to monitor the success of the company and assist at the board of directors level in overseeing and providing strategic advice to the management of the portfolio company. At the same time, the rule is intended to define as routine management or operation situations in which a representative of the financial holding company takes on responsibilities or is involved in decisions that are typically made by officers or employees of a portfolio company and not customarily considered by directors.

The section identifies a set of covenants and other written agreements between a financial holding company and a portfolio company, that, in the absence of circumstances that would indicate otherwise, are not considered to represent routinely managing or operating a portfolio company. These agreements and covenants may require the portfolio company to seek the approval of, or to consult with, the financial holding company before taking actions outside of the ordinary course of business, including (i) the acquisition of assets of another company; (ii) significant revision of the business plan; (iii) redemption, authorization or issuance of any shares of capital stock (including options, warrants or convertible shares) by the portfolio company; and (iv) the sale, merger, consolidation, spin-off, recapitalization, liquidation or dissolution of the portfolio company or any of its significant subsidiaries, or of all or substantially all of the assets of such company or subsidiary.

Under the Act and the rule, a financial holding company may routinely manage or operate a portfolio company under limited circumstances. The rule provides that this type of intervention is permitted only when necessary to address a material risk to the value or operation of the portfolio company. This might include a significant operating loss or a loss of senior management. This involvement must be temporary, and last only for the time necessary for the financial holding company to address the cause of involvement, obtain suitable alternative management arrangements, dispose of the investment or otherwise obtain a reasonable return on the investment. The rule would require a financial holding company to obtain Board approval to routinely manage or operate a portfolio company for a period greater than six months, and requires that a financial holding company document each instance of its involvement in routinely managing or operating a portfolio company.

The rule provides that a depository institution or subsidiary (other than a financial subsidiary held in accordance with section 5136A of the Revised Statutes or section 46 of the Federal Deposit Insurance Act) of a depository institution may not under any circumstances manage or operate a company held under this rule. This limitation would also apply to U.S. branches and agencies of foreign banks. The rule would, however, allow a director, officer or employee of a depository institution (or subsidiary of a depository institution) or U.S. branch or agency to serve as a director of a portfolio company to the same extent as would be permitted for a representative of a financial holding company.

As explained more fully below, the rule permits merchant banking investments to be made through so-called private equity funds that are subject to several limits different than those that apply to other merchant banking investments. The rule contemplates that a financial holding company may control and manage a private equity fund or may be a passive investor in the fund. The restrictions on routinely managing or operating portfolio companies acquired or controlled by the private equity fund apply to both the financial holding company and the private equity fund.

The Board and the Secretary request comment on each of these provisions. In particular, comment is requested on whether there are additional situations in which a financial holding company should be permitted routinely to manage or operate a portfolio company consistent with the statute and its purpose of preventing the mixing of banking and commerce. Comment is also sought on whether additional agreements and covenants should be included in the list of arrangements that would not represent routine management or operation of the portfolio company.

Section 225.172—What Are the Holding Periods Permitted for Merchant Banking Investments?

The GLB Act requires that shares, assets and ownership interests be held only for a period of time that enables the sale or disposition of the interest on a reasonable basis consistent with the financial viability of the merchant banking activity. The rule incorporates this statutory limitation.

Consistent with industry practice, the rule generally would allow merchant banking investments to be held for a period of up to 10 years. Interests held by a financial holding company in private equity funds (defined below) could be held for the life of the fund, up to 15 years under circumstances described below.

The rule allows a greater period for holding merchant banking investments, including investments in or by private equity funds, in exceptional circumstances, with Board approval. To receive that approval, the financial holding company must explain the financial holding company's plan for divesting the investment. In determining whether to grant the extension, the Board may consider the cost to the financial holding company of disposing of the investment within the applicable time period. The Board may also consider the total exposure of the financial holding company to the portfolio company and the risks that disposing of the investment without an extension may pose to the financial holding company. In addition, the Board may consider market conditions and any other relevant information, such as the financial holding company's history of timely disposition of investments. The rule provides that a request for additional time must be filed at least 1 year prior to the expiration of the normal holding period.

The rule also establishes several supervisory restrictions designed to discourage investments from being held beyond the applicable period described above (i.e., 10 years in general, and up to 15 years under certain circumstances for investments made in a private equity fund). First, the rule requires a financial holding company that has held, owned, or controlled a merchant banking investment for longer than the applicable period to deduct 100 percent of the carrying value of its investment from the holding company's Tier 1 capital and does not allow the financial holding company to include any of the unrealized gains on the investment in its Tier 2 capital for regulatory purposes. The financial holding company is also prohibited from entering into any additional contractual arrangements or other relationships with the company or extending any additional credit to the company without Board approval. These requirements would apply in addition to any restrictions that the Board might impose in granting approval for an extended holding period.

As noted above, the rule establishes somewhat different holding periods for investments made in private equity funds. The rule defines a "private equity fund" based on prevalent industry practice. A qualifying private equity fund is defined as any company that is not an operating company and that engages exclusively in merchant banking activities. The fund may be organized in any form, including a partnership, corporation or limited liability company. The fund may, but need not be, registered as an investment company under the Federal securities laws.

To meet the rule's definition, a private equity fund must be owned by at least 10 investors that are unrelated to the financial holding company (and are not officers, directors, employees or principal shareholders of the financial holding company) and the financial holding company (including its officers, directors, employees and principal shareholders) may not own or control more than 25 percent of the equity capital of the fund. The rule does not impose any limits on advisory fees or on the various types of incentive compensation that the financial holding company may receive for services rendered to the fund (except to the extent the fee increases the equity capital owned or controlled by the financial holding company above the 25 percent threshold described above).

To qualify, a fund must invest in shares, assets or ownership interests of companies for the purpose of reselling or disposing of them and must establish a plan for the resale or disposition of its investments. In addition, the fund must have a limited life that does not exceed 12 years, with the possibility of three 1-year extensions with the approval of persons holding a majority of the fund's equity. The rule does not, however, impose the 10-year holding period on portfolio companies held by private equity funds.

A fund cannot "routinely manage or operate" the portfolio companies in which it invests except in the situations identified in section 225.171. A fund is also expected to have policies to address diversification of its portfolio, which may include single investment limits, review of large investments by investors other than the adviser, or other approaches. Finally, the fund must not be established or operated to evade the limitations on merchant banking activities contained in the GLB Act or the rule.

A financial holding company may, without Board approval, own or control a private equity fund that meets these requirements for the term of the fund up to 12 years, plus three additional one-year increments that may be obtained with the approval of a majority of the investors in the fund. In addition, different aggregate limits, reporting requirements and recordkeeping requirements apply to private equity funds and interests held by a financial holding company in private equity funds.

Moreover, as explained more fully below, the restrictions on cross-marketing, the limitations of sections 23A and 23B of the Federal Reserve Act, and the reporting and recordkeeping requirements of the rule, do not apply to a financial holding company that holds a passive interest in a private equity fund that is controlled or sponsored and advised by an unrelated third party. These requirements, however, would apply to a financial holding company that controls the private equity fund.

These differences recognize that private equity funds typically are established for the purpose of making investments for resale and have a limited term and a number of other incentives and terms that encourage the resale or disposition of investments within a reasonable period. Importantly, investments made by private equity funds also are monitored by outside

investors that encourage resale of investments

Section 225.173—What Aggregate Limits Apply to Merchant Banking

The rule provides that a financial

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investors that encourage resale of investments.

A financial holding company may also own an interest in or control an investment vehicle or fund that makes merchant banking investments but that does not meet the rule's definition of a private equity fund. If a financial holding company controls the investment vehicle or fund, then investments made by the investment vehicle or fund are subject to the 10-year holding period and the other provisions of the rule governing ownership or control of a portfolio company. If a financial holding company owns an interest in, without controlling, such an investment vehicle or fund, the interest is treated as an interest in a portfolio company for purposes of the rule.

The rule also contains a provision that prevents a financial holding company from attempting to circumvent the holding periods by transferring merchant banking investments from one company or fund to another. The rule also provides that, for purposes of calculating compliance with the merchant banking holding periods, an investment acquired by the financial holding company under another authority that imposes a restriction on the amount of time that the financial holding company may hold the investment is considered to have been acquired on the original acquisition date.

The Board and the Secretary request comment on whether the approach taken in the rule is appropriate or whether more specific limits on investments should be adopted. The Board and the Secretary also request comment on whether additional incentives are necessary or appropriate to assure that merchant banking investments are held only for a reasonable period consistent with the financial viability of the activity.

The Board and the Secretary also request comment on whether it is appropriate or useful to establish different rules for holding periods and other requirements for merchant banking investments made in and through private equity funds than those made by a financial holding company directly or otherwise. If it is appropriate and helpful, comment is invited on whether the proposed rule properly defines private equity funds and whether the limits contained in the rule are consistent with the requirements and purposes of the GLB Act and the BHC Act.

Section 225.173—What Aggregate Limits Apply to Merchant Banking Investments?

The authority to make merchant banking investments is newly granted to those bank holding companies that have been certified as financial holding companies. As noted above, this authority is in addition to other authority provided to all bank holding companies (including financial holding companies) under the BHC Act to make investments. These existing authorities allow investments in nonfinancial companies to be made through small business investment companies, outside the United States under Regulation K, and in up to 5 percent of the voting shares of any company. In addition, a financial holding company may make investments under the GLB Act through insurance underwriting companies.

The Board and the Secretary are concerned that rapid expansion of merchant banking activities, particularly given the flexibility provided for such investments under the GLB Act, may pose new and potentially significant risks to the safety and soundness of depository institutions affiliated with financial holding companies engaged in these activities. These risks seem particularly apparent and material if the financial holding company commits a significant portion of its capital to merchant banking investments without appropriate systems for monitoring and managing the risks of these activities, or if the financial holding company does not reserve sufficient capital to take account of the risks of these investments.

Accordingly, until such time as the agencies and the industry have gained experience with supervising these activities and the rules governing the regulatory capital treatment of these investments are in place, the rule establishes two aggregate limits on merchant banking investments. The first threshold prevents a financial holding company from making additional merchant banking investments (including making additional capital contributions to a company held under the rule) if the aggregate carrying value to the financial holding company of all its merchant banking investments exceeds the lesser of 30 percent of the financial holding company's Tier 1 capital or $6 billion. A second sublimit applies to the aggregate carrying value of all merchant banking investments excluding investments made by the financial holding company in private equity funds. This sublimit is the lesser of 20 percent of the financial holding company's Tier 1 capital or $4 billion.

The rule provides that a financial holding company may exceed either threshold with the prior approval of the Board. This gives the Board flexibility to deal with circumstances that may arise before final action in this area on the Board's capital proposal.

In establishing these limits, the Board and the Secretary have considered that many securities firms that make merchant banking investments and many bank holding companies that conduct more limited investment activities already impose internal limits on the aggregate amount of capital that they will commit to these investments. The Board and the Secretary have also considered the current levels of investment activities of bank holding companies under existing authority. Neither threshold contained in the interim rule would apply to the existing activities of bank holding companies (or financial holding companies) conducted under other authority, such as authority to own a small business investment company, authority to make investments abroad under Regulation K, or authority to acquire 5 percent or less of the voting shares of any company.

The Board and the Secretary request comment on whether these thresholds are appropriate, and, if the thresholds are retained, whether they should be increased or decreased, whether the mechanism for Board approval to exceed the thresholds should be retained, and whether the thresholds should be based on the initial cost of investments or the carrying value of investments. The Board and the Secretary also request comment on whether the limits on merchant banking investments should be structured to take account of the types and levels of other kinds of investments made by financial holding companies. In particular, should a higher limit be set for financial holding companies that do not have significant investments under other authorities.

The Board and the Secretary expect to revisit these limits in connection with consideration of the final capital rules for this activity and as the agencies and the industry gain experience in conducting and supervising merchant banking activities and in implementing the proposed capital rules for investment activities.

Section 225.174—What Risk Management, Reporting and Record Keeping Policies Are Required To Make Merchant Banking Investments?

This section requires financial holding companies to adopt policies, procedures and systems reasonably designed to manage the risks associated

with making merchant banking investments. It also requires policies and systems designed to monitor compliance with the statutory and regulatory provisions governing these activities. A financial holding company that controls a private equity fund or other company that makes investments under the interim rule is expected to establish the same types of systems and policies for monitoring and managing the risks of merchant banking investments acquired or controlled by the private equity fund or company as those required for other types of merchant banking investments.

The list of policies, procedures and systems contained in the interim rule, as well as the recordkeeping requirements, are not intended to be exclusive. Instead, these lists are representative of the types of policies, procedures and systems that are important elements of a sound approach to monitoring merchant banking investment activities, and others will be needed to address the particular approach that each financial holding company takes to making merchant banking investments. Beyond the procedures and systems required by the rule, it is essential to prudently and profitably making merchant banking investments that a financial holding company retain qualified personnel and carefully manage and oversee investment decisions.

Each financial holding company is expected to institute appropriate policies and systems to monitor and manage investment activities before the company commences the activity. The Board expects to conduct a review of the policies and systems, in particular the investment and risk management systems, of each financial holding company that makes merchant banking investments within a short period after the holding company commences the activity.

Among the policies and systems that a financial holding company is expected to establish are policies and systems designed to identify and assess adequately the value of individual investments and of the aggregate portfolio. These systems must also adequately assess the total exposure of the financial holding company to each company acquired under the rule, and the diversification of the portfolio. A financial holding company must be able to identify and manage the market, liquidity, credit and other risks associated with merchant banking investments and the terms, amounts and types of transactions between the financial holding company (and each of its subsidiaries) and each company acquired under the rule.

In addition, the policies and systems must be adequate to maintain corporate separateness between the financial holding company and each portfolio company and sufficient to protect the financial holding company from legal liability for the conduct of operations and for the financial obligations of portfolio companies. The financial holding company must also develop policies and a business structure to limit the legal liability of the financial holding company for the financial obligations and operating risks that may flow through a private equity fund controlled by the financial holding company. This may include establishing a corporation or limited liability company that would be the general partner of a private equity fund controlled by the financial holding company.

Moreover, these systems and policies must be adequate for ensuring compliance with the statutory and regulatory provisions governing merchant banking activities, including the limits on holding period, routinely managing or operating a portfolio company, and the cross-marketing and inter-company transaction limits imposed under other provisions of the GLB Act or other law.

Subsection (b) requires generally that a financial holding company maintain at a central location certain types of records and supporting information. This section contemplates that financial holding companies will be able to satisfy these record keeping requirements by using reports and records that are prepared in the ordinary course of making a merchant banking investment or controlling a private equity fund and used to inform third-party investors of the type and status of merchant banking investments.

In particular, these records and materials must document the company's policies for making merchant banking investments and for managing and monitoring the various risks and exposures created by these activities. These records would include, for example, documentation of the review process for making investments and for properly assessing the value of each investment. In addition, these records must detail the investment amount, carrying value, market value, performance data and financial statements for each merchant banking investment.

These records must also include records of transactions between the financial holding company and companies held under the rule. In particular, these records must document transactions that are not on market terms.

The financial holding company would be expected to make available any reports, including valuations of investments, given to co-investors by the financial holding company or given to other investors in a private equity fund. The financial holding company is also expected to document incentive arrangements (sometimes called overrides or carried interests) in connection with advising or controlling a fund under this rule, including the carrying value and market value of the arrangement and amounts distributed under the arrangement that may be contingent on future asset performance.

Subsection (c) establishes annual and quarterly reporting requirements regarding merchant banking investments. The annual report focuses on investments that have been held for a period longer than five years. A private equity fund controlled by a financial holding company is only required to provide annual reports regarding investments that have been held by the fund for a period longer than eight years. A financial holding company that has made a passive non-controlling investment in a private equity fund is only required to report its investment in the fund as part of an annual report after eight years and is not required to report investments held by the fund.

The annual report must list and describe each investment held for the applicable period (*i.e.*, longer than eight years in the case of private equity funds and longer than five years in all other cases) as of the date of the report. In addition, the report must briefly describe the historical cost of the investment, the market valuation of the investment as of the reporting date, and the schedule for divestiture of the investment. A financial holding company that does not sell or dispose of an investment within eight years (including in the case of private equity funds) must include in its annual report a detailed divestiture plan for the investment.

The annual report must also include aggregate data regarding the merchant banking investments made by the financial holding company broadly divided by category. These categories would be divided by general industrial sector, geography (national, international or regional as appropriate), and holding periods.

The quarterly report focuses entirely on aggregate data regarding the financial holding company's merchant banking portfolio. The report would require quarterly reporting of the total number

of investments made under the merchant banking authority, the aggregate cost of these investments, and the current valuation of the merchant banking portfolio (including any value assigned to any incentive arrangements related to a private equity fund). These aggregates would be reported for several categories of investment, such as investments made in private equity funds, investments made in publicly traded securities, and investments made in ownership interests that are not publicly traded.

The Board expects shortly to issue forms that may be used to comply with the annual and quarterly reporting requirements.

Section 4(k)(6) of the BHC Act requires a financial holding company to provide written notice to the Board within 30 days after acquiring any company under any authority granted in section 4(k). Merchant banking investments, by their nature, must be temporary and held for resale. Consequently, the Board believes that the filing of notice in connection with the acquisition of a company done in the course of conducting merchant banking activities is generally not needed, except in the context of large investments. Notice of substantial investments made under the merchant banking authority would allow the Board to monitor financial holding companies that have large exposures to single portfolio companies.

On this basis, the rule provides that a financial holding company will fulfill the notice requirements of section 4(k)(6) of the BHC Act in connection with its merchant banking activities if the company files a notice with the Board within 30 days of making an acquisition of a company under the rule only in the situation where both: (1) The acquisition represents in excess of 5 percent of the voting shares, assets or ownership interests of the company and (2) the cost of the investment exceeds the lesser of 5 percent of the Tier 1 capital of the financial holding company or $200 million. This notice must briefly indicate the cost and funding of the investment, the percentage of regulatory capital that the investment represents, the nature of the company acquired and the type of investment, and the risk management measures that apply to this investment. A financial holding company qualifies for this streamlined notice procedure only if the financial holding company has notified the Board under section 225.87 of Regulation Y that the financial holding company has commenced or acquired a company engaged in making merchant banking investments.

Comment is invited on each of the recordkeeping and reporting requirements. In particular, comment is sought on whether the requested information would be readily available and valuable if provided in either a quarterly or annual report, and on the burdens associated with the proposed reporting requirements. Comment is also requested on whether it is appropriate to provide different reporting requirements for investments made by and in private equity funds than other types of merchant banking investments.

Section 225.175—How do the Statutory Cross-Marketing and Section 23A and B Limitations Apply to Merchant Banking Investments?

The GLB Act prohibits depository institutions controlled by the financial holding company from marketing or offering, directly or through any arrangement, any product or service of a company held under the rule or allowing any product or service of the depository institution to be offered or marketed, directly or through any arrangement, by or through any company held under section 4(k)(4)(H). Section 225.175 of the interim rule implements this prohibition. In addition, this section includes the statutory presumption regarding control by a financial holding company of a company held under section 4(k)(4)(H) for the purposes of sections 23A and 23B of the Federal Reserve Act.

Subsection (a) addresses the prohibition on cross-marketing. The cross-marketing restrictions would apply to cross-marketing between a depository institution controlled by a financial holding company and any portfolio company, private equity fund or other investment vehicle in which the financial holding company has an interest under this subpart. The restrictions would not apply to cross-marketing with a portfolio company that is owned by a private equity fund or other investment vehicle, however, unless the financial holding company controls the private equity fund or investment vehicle. Where control exists, the financial holding company is deemed by the BHC Act to indirectly own the shares of the portfolio company held by the private equity fund or investment vehicle.

The restrictions on cross-marketing are applied to the U.S. branches and agencies of foreign banks that conduct merchant banking activities in the United States or through a U.S. company. The cross-marketing restrictions also apply to any subsidiary of a depository institution, other than a financial subsidiary held in accordance with section 5136A of the Revised Statutes or section 46 of the Federal Deposit Insurance Act.[5] These so-called operating subsidiaries are considered to be and are authorized as a part of the depository institution.

Neither the GLB Act nor the rule applies these restrictions to cross-marketing by nondepository affiliates of the financial holding company. Moreover, the rule does not apply these restrictions to companies in which the financial holding company, either directly or through a private equity fund or other investment vehicle, owns less than 5 percent of the voting shares.

The rule does not define cross-marketing activities. Cross-marketing would not appear to cover efforts by a depository institution to syndicate a loan made to a portfolio company, the purchase by a depository institution for its own use of products or services of a portfolio company, or the provision of services or extensions of credit by the depository institution directly to the portfolio company. These latter two types of transactions would, of course, be governed by the requirements of sections 23A and 23B if the portfolio company is an affiliate of the depository institution.

The Board and the Secretary request comment on whether it would be useful to include a definition of cross-marketing activities in the rule, and if so, invite comment on an appropriate definition. The Board and the Secretary also seek comment on the scope of the cross-marketing restrictions. In particular, comment is invited on whether these restrictions should be applied more broadly than in the interim rule or whether the statute permits a more limited application.

Subsection (b) establishes a rebuttable presumption of control for purposes of the restrictions contained in section 23A and 23B of the Federal Reserve Act on transactions between an insured depository institution and its affiliates. Under sections 23A and 23B, certain types of transactions between an insured depository institution and an affiliate are subject to specific quantitative, qualitative and collateral requirements..

Under the presumption contained in the GLB Act, a financial holding company or other person that, directly or indirectly, or acting through one or more other persons, owns or controls 15 percent or more of the equity capital of

[5] A financial subsidiary may engage in many of the activities permissible for a financial holding company, but may not engage in merchant banking activities, certain insurance underwriting activities, or real estate investment or development activities.

any company held under this subpart is presumed to control that company. Equity capital includes voting and nonvoting shares, warrants, options and other instruments convertible into equity capital. The presumption may be rebutted with the agreement of the Board and the rule allows a financial holding company to submit any relevant information in an effort to rebut this presumption.

The rule also applies sections 23A and 23B to covered transactions between a U.S. branch or agency of a foreign bank and (1) any portfolio company controlled by the foreign bank or an affiliate of the foreign bank, and (2) any company controlled by the foreign bank or an affiliate that is engaged in making merchant banking investments. For purposes of determining whether a foreign bank or affiliate controls a company, the rule applies the rebuttable presumption applicable to domestic financial holding companies. These provisions promote competitive equity and safe and sound banking. The rule is intended to restrict lending by a foreign bank's branches and agencies to portfolio companies and to affiliated companies that are actually engaged in making merchant banking investments. It is not intended to restrict otherwise permissible lending to parent companies or other affiliated companies, unless the proceeds of such lending would be used by these companies to make, or fund the making of, merchant banking investments under this subpart.

The rule recognizes that a financial holding company may make a passive investment in a private equity fund. In this case, the rule clarifies that a company controlled by a private equity fund will not be presumed to be an affiliate of a depository institution controlled by a financial holding company that has made an investment in the private equity fund unless the financial holding company controls the fund or has sponsored and advises the fund.

Comment is invited on each of these provisions. In particular, comment is requested on whether there are specific situations that should be included in the rule in which the presumption under section 23A and 23B should, by rule, be considered to be rebutted. Comment is also requested on the provisions applying sections 23A and 23B to certain transactions involving U.S. branches and agencies of foreign banks.

D. Capital Adequacy Proposal

As discussed above, many firms that make merchant banking investments and engage in other types of investment activities internally allocate capital to these investments that is higher than they allocate to most banking assets in light of the greater risk, illiquidity and volatility of merchant banking and similar investments and the higher leverage that often is associated with portfolio companies. The internal capital allocation for these investments is generally many multiples of the current regulatory capital charge.

After consideration of the industry practice and in consultation with the Secretary, the Board is proposing to modify the methods of calculating the risk-weighted and leverage capital ratios for bank holding companies to better address the risks associated with merchant banking and other investment activities. This capital proposal, which is described below and published separately, is based on information about firm accounting and capital policies that System and Treasury Department staff gathered in interviews with securities firms and bank holding companies that currently conduct merchant banking and other investment activities. The Board and the Secretary also note that the proposed capital treatment is similar to the approach to capital sufficiency that the Federal Deposit Insurance Corporation has adopted under section 24 of the FDI Act for investment in subsidiaries that engage in principal activities that are not permissible for a national bank.

The Board and the Secretary view this capital proposal as a precaution that is necessary to prevent the buildup within banking organizations of excessive risk from merchant banking and other investment activities. In developing this proposal, they have considered the effect of the proposal on the existing activities of bank holding companies.

As an initial matter, adoption of the capital proposal would *not* prevent any bank holding company from becoming a financial holding company or from taking advantage of the new powers granted under the GLB Act. The capital charge would be applied only at the holding company level on the consolidated organization. Consequently, the capital proposal would not affect the capital levels of any depository institution—which, under the GLB Act, determine whether a company qualifies to be a financial holding company—controlled by a bank holding company.

In addition, the Board and the Secretary have reviewed a sampling of call reports of bank holding companies engaged currently in significant investment activities, including companies that are likely to seek to become financial holding companies. This review indicates that, with virtually no exception, bank holding companies would remain well capitalized on a consolidated basis even after applying the proposed capital charge on all of the investments currently made by these companies. Moreover, nearly all of these companies would be able to increase significantly their level of investment activity and continue to be well capitalized on a consolidated basis after applying the proposed capital charge.

For these reasons, the capital proposal is not expected to have an effect on the level of investment activities conducted by bank holding companies. The capital proposal would, however, help to limit the potential harm to bank holding companies and depository institutions controlled by bank holding companies from the risks associated with investment activities.

The proposal is being published for comment and, unlike the rule discussed above, is not being made effective on an interim basis. During the comment period, the Board and the Secretary will discuss the issues raised by this proposal with the other Federal banking agencies and with other appropriate functional regulators.

Under the proposal, a financial holding company would be required to deduct from its regulatory Tier 1 capital an amount equal to 50 percent of the total carrying value, as reflected on consolidated financial statements of the financial holding company, of all merchant banking investments. The financial holding company would deduct 100 percent of the carrying value of such investments from the assets of the financial holding company for capital purposes.[6]

This capital charge would apply to all equity instruments and all debt instruments that are convertible into equity held under the merchant banking authority. It also would apply to all debt extended by a financial holding company to a portfolio company in which the financial holding company owns 15 percent or more of the total equity. The proposal contains exceptions for short-term secured loans

[6] Some investments are booked using "available for sale" (AFS) accounting. Under this accounting treatment, unrealized gains are *not* recognized in net income, and flow to a special segregated equity account that is not recognized as Tier 1 capital by the regulatory agencies. Under the current bank holding company capital rules, 45 percent of the gain on AFS equity securities may be included in Tier 2 capital. The proposal would continue this treatment but further require deduction from Tier 1 capital of 50 percent of the reported cost (or fair value if lower for equity securities) of investments recorded as AFS. The reported cost or fair value of these investments would be deducted from risk-weighted and average consolidated assets.

for working capital purposes, for loans

financial holding companies held in

the manner provided by the proposal.

would equal 50 percent of the reported

activities. These statutory limits apply

that the rule governs cannot be

for working capital purposes, for loans in which at least half has been participated to third parties, and for loans that are guaranteed by the United States government. An exception is also proposed for extensions of credit by a depository institution controlled by the bank holding company that are fully collateralized in accordance with section 23A of the Federal Reserve Act and meet the other requirements of that section.

The proposal would apply the same capital treatment to investments in nonfinancial companies held under Regulation K, in less than 5% of the shares of any company under sections 4(c)(6) or (7) of the BHC Act, held through an SBIC that is controlled by the bank holding company or a subsidiary depository institution, or held by a state bank subsidiary in accordance with section 24 of the FDI Act. This capital treatment would not apply to investments that are held in a trading account in accordance with applicable accounting principles and that are part of an underwriting, market making or dealing activity. Comment is requested on whether this exclusion is appropriate. In addition, comment is invited on whether passive investments in less than 5 percent of the shares of publicly traded companies, where there is a ready market, should also be excluded or subjected to a lesser capital charge.

The proposal applies the capital treatment to nonfinancial investment activities conducted by bank holding companies and their subsidiaries as well as to merchant banking investments for several reasons. Importantly, the risks associated with these investment activities do not vary according to the authority used to conduct the activity. Thus, similar investment activities should be given the same capital treatment regardless of the source of legal authority to make the investment. In addition, current regulatory capital treatment, which applies an 8 percent minimum capital charge to investments, was developed at a time when the investment activities of banking organizations were relatively small. In recent years, some bank holding companies have greatly expanded the level of their investment activities. The Board's capital proposal reflects the judgment that it is appropriate at this time, when the investment authority of banking organizations has also been greatly expanded, to revisit and revise regulatory capital treatment for all investment activities.

The capital charge would not be applied to investments made by insurance company subsidiaries of financial holding companies held in accordance with section 4(k)(4)(I) of the BHC Act. The Board expects soon to seek comments on a proposal to de-consolidate functionally regulated insurance underwriting companies from the financial holding company for purposes of applying the Board's consolidated capital rules. The proposal would take account of the different accounting standards, business practices, and capital and supervisory regimes that apply to insurance underwriting companies.

The Board and the Secretary recognize that the new authority accorded financial holding companies under the GLB Act may raise the possibility for arbitrage between an insurance company and its financial holding company affiliates designed to avoid the capital charges proposed for merchant banking and other investments. The Board and the Secretary seek comment on whether provisions should be included in the final capital rule that would apply to investments made through an insurance company the same capital charge at the holding company level as would be applied to merchant banking and other investments if the Board finds that such arbitrage is occurring within a particular holding company. The Board and the Secretary also invite comment on whether there are other mechanisms that would prevent such arbitrage.

During the period prior to adoption of a final capital rule, financial holding companies that engage in merchant banking activities will be expected to adopt and implement internal capital and accounting policies that reflect the liquidity, market and other risks associated with the company's investment activities. An initial criterion for these internal capital and accounting policies is that they be capable of enabling the financial holding company to meet the terms of the proposed capital rule on its effective date, with minimal adjustment, and remain in compliance with applicable regulatory capital standards.

The separate capital proposal requests comment on all aspects of the proposed capital charge, including the appropriateness of a separate capital charge for investment activities and the amount of the charge. For convenience, a detailed description of the proposed amendments to the Board's capital appendices follows.

Section II. B of Appendix A to Part 225 would be amended by adding a new clause (v) at the end of the introductory paragraph stating that portfolio investments must be deducted from the sum of core Tier 1 capital elements in the manner provided by the proposal. Section II. B would also be amended by adding a new section II.B.5 governing portfolio investments. This new provision would provide that fifty percent (50%) of the value of all portfolio investments made by the parent bank holding company or by its direct or indirect subsidiaries must be deducted from the consolidated parent banking organization's core Tier 1 capital components.

The proposal defines a portfolio investment as any merchant banking investment made directly or indirectly by a financial holding company under section 4(k)(4)(H) of the BHC Act, and any investment made directly or indirectly in a nonfinancial company by any bank holding company pursuant to section 4(c)(6), or 4(c)(7) of the BHC Act, section 211.5(b)(1)(iii) of the Board's Regulation K, section 302(b) of the Small Business Investment Act of 1958, or by an insured state bank subsidiary in accordance with section 24 of the FDI Act.

For this purpose, an investment would include any equity instrument and any debt instrument with equity features (such as conversion rights, warrants or call options). If the bank holding company owns or controls 15 percent or more of the company's total equity, the term also would include any other debt instrument held by the bank holding company or any subsidiary, except for (i) any short-term, secured extension of credit provided for working capital purposes, (ii) any extensions of credit by an insured depository institution controlled by the bank holding company that is collateralized in accordance with the requirements of section 23A of the Federal Reserve Act and that meets the other requirements of that section, (iii) any extension of credit at least 50 percent of which is sold or participated out to unaffiliated persons on the same terms and conditions that applied to the initial credit, and (iv) any extension of credit that is guaranteed by the U.S. Government. The capital charge would not apply to investments that are held in the trading account in accordance with applicable accounting principles and that are part of an underwriting, market making or dealing activity. For portfolio investments that are reported at cost, under the equity method, or at fair value with unrealized gains (or losses) included in earnings, the deduction would be equal to 50 percent of the carrying value of the investment. For available-for-sale portfolio investments reported at fair value with unrealized gains (or losses) included in other comprehensive income, the amount of the deduction would equal 50 percent of the reported cost of the investment.[7] Any unrealized gains on available-for-sale investments are not included in core capital, but may be included in supplementary capital to the extent permitted under section II.A.2.e of the Appendix.

For portfolio investments in companies that are consolidated for accounting purposes, the deduction would equal 50 percent of the parent organization's investment in the company as determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the consolidated bank holding company's core capital in accordance with section II.B.1 of the Appendix). The company would remain fully consolidated for purposes of determining the banking organization's risk-weighted assets.

The total carrying value of any portfolio investment subject to the deduction is excluded from the bank holding company's weighted risk assets for purposes of computing the denominator of the company's risk-based capital ratio. For AFS portfolio investments, this exclusion would apply to the reported cost or, in the case of AFS equity investments where fair value is less than historical cost, reported fair value.

The proposal makes conforming changes to section II.b of Appendix D to include portfolio investments in the list of items that are excluded from Tier 1 capital.

[7] For available-for-sale equity investments where fair value is less than historical cost, the amount of the deduction is equal to 50 percent of reported fair value. The unrealized losses on such investments are deducted from core capital in accordance with section II.A.1.a of the Appendix.

Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this rulemaking. The rule implements provisions of section 103 of the GLB Act that allow entities that have become financial holding companies to enter the merchant banking business.

The interim rule includes limited reporting and recordkeeping requirements that apply to all financial holding companies that engage in merchant banking, regardless of their size. The reporting and record keeping requirements that the rule establishes on an interim basis are necessary to enable the Board to execute properly its supervisory function and to ensure compliance by financial holding companies with the limitations imposed by the GLB Act on merchant banking activities. These statutory limits apply to all financial holding companies, regardless of size, engaged in merchant banking activities. The Board believes that the information required to be submitted or retained, in most cases, would be contained in routine reports to management, to third-party investors, or to other regulatory agencies, including the Securities and Exchange Commission, or would be prepared and retained by an organization in the normal conduct of its investment activities.

The ability of financial holding companies to participate in the merchant banking business will likely enhance their overall efficiency and ability to compete effectively in the market for corporate financial services. The Board specifically seeks comment on the likely burden that the interim rule and proposed rule will impose on financial holding companies that engage in merchant banking activities and other financial holding companies.

Executive Order 12866 Determination

The Department of the Treasury has determined that this interim rule does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

Administrative Procedure Act

The provisions of the rule are effective on March 17, 2000 on an interim basis. Pursuant to 5 U.S.C. 553, the Board and the Secretary of the Treasury find that it is impracticable to review public comments prior to the effective date of the interim rule, and that there is good cause to make the interim rule effective on March 17, 2000, due to the fact that the rule sets forth procedures to implement statutory changes that were recently enacted and that became effective on March 11, 2000. The Board and the Secretary of the Treasury are seeking public comment on all aspects of the interim rule and will amend the rule as appropriate after reviewing the comments.

Subject to certain exceptions, 12 U.S.C. 4802(b)(1) provides that new regulations and amendments to regulations prescribed by a federal banking agency that impose additional reporting, disclosure, or other new requirements on an insured depository institution must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form. The interim rule imposes no additional reporting, disclosure, or other new requirements on an insured depository institution because the new activities that the rule governs cannot be conducted by an insured depository institution. For this reason, section 4802(b)(1) does not apply to this rulemaking.

Paperwork Reduction Act

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the interim rule under the authority delegated to the Board by the Office of Management and Budget.

The collection of information requirements in the interim rule are found in 12 CFR 225.171(d)(3); 225.172, and 225.174. This information is required to evidence compliance with the requirements of Title I of the GLB Act (Pub. L. No. 106–102, 113 Stat. 1338 (1999)), which amends section 4 of the Bank Holding Company Act (12 U.S.C. 1843), and to allow the Board to properly exercise its supervisory responsibility for financial holding companies. The respondents are financial holding companies that choose to engage in merchant banking activities.

The interim rule requires that a financial holding company submit an annual report to the Reserve Bank relating to merchant banking investments that have been held for an extended period of time and providing aggregate information on merchant banking investments (see 12 CFR 225.174(c)(1)) and file quarterly reports with the Reserve Bank providing aggregate data on the company's merchant banking investments (see 12 CFR 225.174(c)(2)). The Board expects to publish a separate notice to issue reporting forms that may be used to comply with the annual and quarterly reporting requirements. The burden associated with these information collections will be addressed at that time.

The interim rule also requires that a financial holding company file a notice with the Reserve Bank within 30 days of making a large merchant banking investment (see 12 CFR 225.174(d)). The agency form number for this declaration will be the FR 4018. In addition, the rule allows a financial holding company to seek relief from the holding period and aggregate investment limits imposed by the rule by filing a request and supporting documentation with the Board (see 12 CFR 225.172(b) and 225.173). The agency form number for these requests will be FR 4019. There will be no formal reporting form for these notices and requests. The information may be submitted in the form of a letter. The Board expects to

receive very few of these notices and requests. The Board estimates that approximately 250 financial holding companies will engage in merchant banking activities in the first year after adoption of the interim rule. Of the 250 financial holding companies, the Board estimates that 100 will file these notices and requests and that these companies will spend approximately 1 hour to prepare these filings, resulting in an estimated annual burden of 100 hours. Based on a rate of $50 per hour, the annual cost to the public would be $5000.

The interim rule also requires that a financial holding company engaged in merchant banking activities establish and maintain certain policies, procedures, and systems to appropriately monitor and manage its merchant banking activities and maintain certain records relating to the company's merchant banking activities (see 12 CFR 225.171(d)(3), and 225.174(a) and (b)). The Federal Reserve believes that most of these internal control and record keeping requirements are consistent with those established and maintained by organizations in the normal course of conducting a merchant banking business. The Board estimates that the 250 financial holding companies will spend approximately 5 hours in complying with these internal control and recordkeeping requirements, resulting in an estimated annual burden of 1,250 hours. Based on a rate of $50 per hour, the annual cost to the public would be $62,500.

The Federal Reserve specifically requests comment on the accuracy of these burden estimates. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, an information collection unless the Board has displayed a currently valid OMB control number. The OMB control number for these information collections is 7100–0292. A financial holding company may request confidentiality for the information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(6)).

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collections, including the cost of compliance; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collections on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, with copies of such comments to be sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the GLB Act requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments about how to make the interim rule easier to understand, including answers to the following questions:

(1) Has the Board organized the material in an effective manner? If not, how could the material be better organized?

(2) Are the terms of the rule clearly stated? If not, how could the terms be more clearly stated?

(3) Does the rule contain technical language or jargon that is unclear? If not, which language requires clarification?

(4) Would a different format (with respect to the grouping and order of sections and use of headings) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

(5) Would increasing the number of sections (and making each section shorter) clarify the rule? If so, which portions of the rule should be changed in this respect?

(6) What additional changes would make the rule easier to understand?

The Board also solicits comment about whether including factual examples in the rule in order to illustrate its terms is appropriate. The Board notes that creating safe harbors in the rule may generate certain problems over time due to changes in technology or business practices. Are there alternatives that the Board should consider to illustrate the terms in the rule?

List of Subjects

12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 1500

Administrative practice and procedure, Banks, banking, Holding companies

Federal Reserve System

12 CFR Chapter II

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System amends part 225 of Chapter II, Title 12 of the Code of Federal Regulations as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. Section 225.1 is amended by redesignating paragraphs (c)(9) through (c)(13) as paragraphs (c)(11) through (c)(15), respectively, adding and reserving a new paragraph (c)(9), and adding a new paragraph (c)10 to read as follows:

§ 225.1 Authority, purpose, and scope.

* * * * *

(c) * * *

(10) *Subpart J* governs the conduct by financial holding companies of merchant banking investment activities permitted under section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)H)).

* * * * *

3. A new Subpart J is added to read as follows:

Subpart J—Merchant Banking Investments

Sec.

225.170 What investments are permitted under this subpart and who may make them?
225.171 What are the limitations on managing or operating a portfolio company held as a merchant banking investment?
225.172 What are the holding periods permitted for merchant banking investments?
225.173 What aggregate limits apply to merchant banking investments?
225.174 What risk management, reporting and recordkeeping policies are required to make merchant banking investments?
225.175 How do the statutory cross marketing and section 23A and 23B limitations apply to merchant banking investments?

Subpart J—Merchant Banking Investments

§ 225.170—What investments are permitted under this subpart and who may make them?

(a) *What investments are permitted under this subpart?* Section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)) and this subpart authorize a financial holding company, directly or indirectly and as principal or on behalf of one or more persons, to acquire or control any amount of shares, assets or ownership interests of a company or other entity that is engaged in any activity not otherwise authorized for a financial holding company under section 4 of the Bank Holding Company Act. For purposes of this subpart, shares, assets or ownership interests acquired or controlled under this subpart are referred to as "merchant banking investments." A financial holding company may not directly or indirectly acquire or control any merchant banking investment except in compliance with the requirements of this subpart.

(b) *Must the investment be a bona fide merchant banking investment?* The acquisition or control of shares, assets or ownership interests under this subpart is not permitted unless it is part of a bona fide underwriting or merchant or investment banking activity.

(c) *What types of ownership interests may be acquired?* Shares, assets or ownership interests of a company or other entity include any debt or equity security, warrant, option, partnership interest, trust certificate or other instrument representing an ownership interest in the company or entity, whether voting or nonvoting.

(d) *Where in a financial holding company may merchant banking investments be made?* A financial holding company and any subsidiary (other than a depository institution or subsidiary of a depository institution) may acquire or control merchant banking investments. A financial holding company and its subsidiaries may not acquire or control merchant banking investments on behalf of a depository institution or subsidiary of a depository institution.

(e) *May assets other than shares be held directly?* A financial holding company may not under this subpart acquire or control assets, other than shares or other ownership interests in a company, unless:

(1) The assets are held within or promptly transferred to a portfolio company;

(2) The portfolio company maintains policies, books and records, accounts, and other indicia of corporate, partnership or limited liability organization and operation that are separate from the financial holding company and that meet the requirements of § 225.174(a)(4) for limiting the legal liability of the financial holding company; and

(3) The portfolio company has management that is separate from the financial holding company to the extent required by section § 225.171.

(f) *What type of affiliate is required for a financial holding company to make merchant banking investments?* A financial holding company may not acquire or control merchant banking investments under this subpart unless the financial holding company qualifies under at least one of the following paragraphs:

(1) *Securities affiliate.* The financial holding company controls a company that is registered with the Securities and Exchange Commission as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); or

(2) *Insurance affiliate with an investment adviser affiliate.* The financial holding company controls:

(i) An insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance), or providing and issuing annuities; and

(ii) A company that:

(A) Is registered with the Securities and Exchange Commission as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*); and

(B) provides investment advice to an insurance company.

(g) What do references to a financial holding company include? The term "financial holding company" as used in this subpart means the financial holding company and each of its subsidiaries, but, except for §§ 225.171 and 225.174, does not include a depository institution or subsidiary of a depository institution. The term includes any private equity fund controlled by the financial holding company, but does not include any portfolio company controlled by the financial holding company.

(h) *What do references to a depository institution include?* For purposes of this subpart, the term "depository institution" includes a U.S. branch or agency of a foreign bank that acquires or controls, or is affiliated with a company that acquires or controls, merchant banking investments under this subpart.

(i) *What is a portfolio company?* A portfolio company is any company or entity:

(1) That is engaged in any activity not authorized for a financial holding company under section 4 of the Bank Holding Company Act; (12 U.S.C. 1843) and

(2) The shares, assets or ownership interests of which are held, owned or controlled directly or indirectly by the financial holding company pursuant to this subpart.

§ 225.171 What are the limitations on managing or operating a portfolio company held as a merchant banking investment?

(a) *May a financial holding company routinely manage or operate a portfolio company?* Except as provided in paragraph (d) of this section, a financial holding company may not routinely manage or operate any portfolio company in which it has a direct or indirect interest and any portfolio company held by any company (including a private equity fund) in which the financial holding company has an ownership interest under this subpart.

(b) *What does it mean to routinely manage or operate a company?* A financial holding company routinely manages or operates a portfolio company if:

(1) Any director, officer, employee or agent of the financial holding company serves as or has the responsibilities of an officer or employee of the portfolio company;

(2) Any officer or employee of the portfolio company is supervised by any director, officer, employee or agent of the financial holding company (other than in that individual's capacity as a director of the portfolio company);

(3) Any covenant or other contractual arrangement exists between the financial holding company and the portfolio company that would restrict the portfolio company's ability to make routine business decisions, such as entering transactions in the ordinary course of business or hiring employees below the rank of the five highest ranking executive officers;

(4) Any director, officer, employee or agent of the financial holding company, whether in the capacity of a director of the portfolio company, adviser to the portfolio company, or otherwise, participates in:

(i) The day-to-day operations of the portfolio company, or

(ii) Management decisions made in the ordinary course of business of the portfolio company other than decisions in which a director of a company customarily participates in that individual's capacity as a director; or (5) Any other arrangement or practice exists by which the financial holding company

routinely manages or operates the portfolio company.

(c) *What arrangements do not involve routinely managing or operating a company?* (1) *Director representation at portfolio companies.* A financial holding company may select any or all of the directors of a portfolio company or have one or more directors, officers, employees or agents serve as directors of a portfolio company if:

(i) The portfolio company employs officers and employees responsible for routinely managing and operating the company; and

(ii) The financial holding company does not routinely manage or operate the portfolio company as described in paragraph (b) of this section.

(2) *Covenants or other provisions regarding extraordinary events.* A financial holding company may, by virtue of covenants or other written agreements with a portfolio company, require the portfolio company to consult with or obtain the approval of the financial holding company to take actions outside of the ordinary course of the business of the portfolio company, including:

(i) The acquisition of control or significant assets of other companies;

(ii) Significant changes to the business plan of the portfolio company;

(iii) The redemption, authorization or issuance of any shares of capital stock (including options, warrants or convertible shares) of the portfolio company; and

(iv) The sale, merger, consolidation, spin-off, recapitalization, liquidation, dissolution or sale of substantially all of the assets of the portfolio company or any of its significant subsidiaries.

(d) *When may a financial holding company manage or operate a portfolio company?* (1) *Special circumstances required.* A financial holding company may routinely manage or operate a portfolio company only:

(i) When intervention is necessary to address a material risk to the value or operation of the portfolio company, such as a significant operating loss or loss of senior management; and

(ii) For the period of time as may be necessary to address the cause of involvement, to obtain suitable alternative management arrangements, to dispose of the investment, or to otherwise obtain a reasonable return upon the resale or disposition of the investment.

(2) *Approval required for extended involvement.* A financial holding company may not routinely manage or operate a portfolio company for a period greater than six months without prior approval of the Board.

(3) *Documentation required.* A financial holding company must maintain and make available to the Board a written record describing its involvement in the management or operation of a portfolio company and the reasons therefor.

(e) *May a depository institution or its subsidiary manage or operate a portfolio company?* (1) *In general.* A depository institution or subsidiary of a depository institution may not under any circumstances manage or operate a portfolio company in which an affiliated company owns or controls an interest under this subpart.

(2) *Exceptions.* Paragraph (e)(1) of this section does not prohibit—

(i) A director, officer or employee of a depository institution or subsidiary of a depository institution from serving as a director of a portfolio company in accordance with the limitations set forth in this section; or

(ii) A financial subsidiary held in accordance with section 5136A of the Revised Statutes (12 U.S.C. 24a) or section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) from taking actions in accordance with the limitations set forth in this section.

§ 225.172 What are the holding periods permitted for merchant banking investments?

(a) *Must investments be made for resale?* A financial holding company may own or control shares, assets and ownership interests pursuant to this subpart only for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the financial holding company's merchant banking investment activities.

(b) *What period of time is generally permitted for holding merchant banking investments?* (1) *In general.* A financial holding company may not, directly or indirectly, own, control or hold any share, asset or ownership interest pursuant to this subpart for a period that exceeds 10 years, except that an investment in or held through a private equity fund may be held for the duration of the fund.

(2) *Ownership interests acquired from or transferred to companies held under this subpart.* For purposes of paragraph (b)(1) of this section, any interest in shares, assets or ownership interests—

(i) Acquired by a financial holding company from a company (including a private equity fund) in which the financial holding company held an interest under this subpart will be considered to have been acquired by the company on the date that the share, asset or ownership interest was acquired by the company; and

(ii) Acquired by a company (including a private equity fund) from a financial holding company will be considered to have been acquired by the company on the date that the share, asset or ownership interest was acquired by the financial holding company if

(A) The financial holding company held the share, asset, or ownership interest under this subpart; and

(B) The financial holding company holds an interest in the acquiring company under this subpart.

(3) *Interests previously held by a financial holding company under limited authority.* For purposes of paragraph (b)(1) of this section, any shares, assets, or ownership interests previously owned or controlled, directly or indirectly, by a financial holding company under any other provision of the Federal banking laws that imposes a limited holding period will be considered to have been acquired by the financial holding company under this subpart on the date the financial holding company first acquired ownership or control of the shares, assets or ownership interests under such other provision of law. For purposes of this paragraph (b)(3), a financial holding company includes a depository institution controlled by the financial holding company and any subsidiary of such a depository institution.

(4) *Approval required to hold investments held in excess of applicable time limit.* A financial holding company may, in extraordinary circumstances, seek Board approval to own, control or hold shares, assets or ownership interests of a company under this subpart for a period that exceeds the applicable period specified in paragraph (b)(1) of this section. A request for approval must:

(i) Be submitted to the Board no later than 1 year prior to the expiration of the applicable time period;

(ii) Provide the reasons for the request, including information that addresses the factors in paragraph (b)(5) of this section; and

(iii) Explain the financial holding company's plan for divesting the shares, assets or ownership interests.

(5) *Factors governing Board determinations.* In reviewing any proposal under paragraph (b)(4) of this section, the Board may consider all the facts and circumstances related to the investment, including:

(i) The cost to the financial holding company of disposing of the investment within the applicable period;

(ii) The total exposure of the financial holding company to the company and

the risks that disposing of the investment may pose to the financial holding company;

(iii) Market conditions; and

(iv) The extent and history of involvement by the financial holding company in the management and operations of the company.

(6) *Restrictions applicable to investments held beyond applicable period.* A financial holding company that directly or indirectly owns, controls or holds any share, asset or ownership interest of a company under this subpart for a total period that exceeds the applicable period specified in paragraph (b)(1) of this section must:

(i) Deduct an amount equal to 100 percent of the carrying value of the financial holding company's interest in the share, asset or ownership interest from the Tier 1 capital of the holding company and exclude all unrealized gains on the share, asset or ownership interest from its Tier 2 capital;

(ii) Not enter into any additional transactions, contractual arrangements or other relationships with the company or extend any additional credit to the company without Board approval; and

(iii) Abide by any other restrictions that the Board may impose in connection with granting approval under paragraph (b)(4) of this section.

(c) *What is a private equity fund?* (1) *Definition of a private equity fund.* For purposes of this subpart, a "private equity fund" is any company that:

(i) Is formed for the purpose of and is engaged exclusively in the business of investing in shares, assets, and ownership interests of companies for resale or other disposition;

(ii) Is not an operating company;

(iii) Issues equity ownership interests to at least 10 investors that are not affiliated with, and are not officers, directors, employees or principal shareholders of the financial holding company;

(iv) No more than 25 percent of the total equity of which is held, owned or controlled, directly or indirectly, by the financial holding company and its directors, officers, employees and principal shareholders;

(v) That has an initial term of not more than 12 years, which term may be extended for an additional three 1-year periods with the approval of persons holding a majority of the equity of the fund;

(vi) Establishes a plan for the resale or disposition of its investments, and holds, owns or controls investments only for a reasonable period of time consistent with making merchant banking investments;

(vii) Maintains policies on diversification of fund investments; and

(viii) Is not formed or operated for the purpose of making investments inconsistent with the authority granted under section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)) or evading the limitations contained in this subpart on merchant banking investments.

(2) *What form may a private equity fund take?* A private equity fund may be a corporation, partnership, limited liability company or other type of company that issues ownership interests in any form.

(3) *May a private equity fund manage a portfolio company?* A private equity fund may not routinely manage or operate a portfolio company except as permitted by this subpart.

§ 225.173 What aggregate limits apply to merchant banking investments?

(a) *In general.* A financial holding company may not, without Board approval, directly or indirectly acquire any additional shares, assets or ownership interests under this subpart or make any additional capital contribution to any company the shares, assets or ownership interests of which are held by it under this subpart if the aggregate carrying value of all merchant banking investments held by the financial holding company under this subpart exceeds:

(1) The lesser of 30 percent of the Tier 1 capital of the company or $6 billion; or

(2) The lesser of 20 percent of the Tier 1 capital of the company or $4 billion excluding interests in private equity funds.

(b) *Do these limits apply to interests held through a private equity fund?* Paragraph (a) of this section does not prohibit any private equity fund that a financial holding company controls from acquiring shares, assets or ownership interests.

§ 225.174 What risk management, reporting and recordkeeping policies are required to make merchant banking investments?

(a) *What internal controls are necessary?* A financial holding company, including a private equity fund controlled by the financial holding company, that makes investments under this subpart must establish and maintain policies, procedures, and systems reasonably designed to:

(1) Monitor and adequately assess the value of each investment, the value of the aggregate portfolio, and the diversification of the portfolio;

(2) Identify and manage the market, credit, concentration and other risks associated with merchant banking investments;

(3) Monitor and review the terms, amounts and types of transactions and relationships between the financial holding company (in the aggregate and separately by affiliate) and each company in which the financial holding company has an interest under this subpart to assess the risks and costs of the transactions and relationships, including whether each transaction or relationship is on market terms, and to assure compliance with any provisions of law, including any applicable fiduciary principles, governing those transactions and relationships;

(4) Ensure the maintenance of corporate separateness between the financial holding company and each company in which the financial holding company has an interest under this subpart, including policies, procedures and systems sufficient to protect the financial holding company and depository institutions controlled by the financial holding company from legal liability for the conduct of operations and for the financial obligations of each such company; and

(5) Ensure compliance with the provisions of this subpart governing merchant banking investments.

(b) *What records must be maintained?* A financial holding company must maintain, at a central location, records and supporting information that:

(1) Are sufficient to enable the Board to review the policies, procedures and systems described in paragraph (a) of this section;

(2) Detail the cost, carrying value, market value, and performance data for each investment made under this subpart, including investments made through private equity funds;

(3) Include copies of the financial statements of any company in which the financial holding company holds an interest under this subpart, including investments made through private equity funds, and any information and valuations provided to any co-investors in such companies;

(4) Document any transaction or relationship between the financial holding company and any company in which the financial holding company holds an interest under this subpart that is not on market terms; and

(5) Document any contingent fee or contingent interest in a private equity fund or relating to any other investment held under this subpart, including the carrying value and market value of such fee or interest and the amount of such fee or interest that has been recognized by the financial holding company as

income but that is contingent on future performance or asset valuations.

(c) *What periodic reports must be filed?* (1) *Annual reports regarding merchant banking investments.* A financial holding company must report annually to the appropriate Reserve Bank in such format and at such time as the Board may prescribe:

(i) For each interest that the financial holding company owns or controls under this subpart (other than an interest in or held through a private equity fund) and that it has owned or controlled for a period that totals longer than five years as of the reporting date:

(A) The identity of the company in which the interest is held, a description of the investment and, if available, a description of the other investors and their interests in the company;

(B) The historical cost of the investment;

(C) The market or other valuation of the investment as of the reporting date; and

(D) The schedule for sale or disposition of the investment;

(ii) For each interest that the financial holding company owns or controls under this subpart, including an interest in or held through a private equity fund, and that it has owned or controlled for a period that totals longer than eight years as of the reporting date:

(A) A detailed explanation of the financial holding company's plan and schedule for the sale or disposition of the investment; and

(B) The information required under paragraph (c)(1)(i) of this section;

(iii) Aggregate data describing the number, total historical cost, total carrying value and total market value for merchant banking investments, segregated by holding period (in 2 year increments), geographic distribution (national or regional, as appropriate), and industrial sector.

(2) *Quarterly reporting for all merchant banking investments.* A financial holding company must, within 60 days of the end of each calendar quarter and in the format prescribed by the Board, submit a report to the appropriate Reserve Bank of the total number, aggregate historical cost and aggregate current valuation of all investments held pursuant to this subpart.

(d) *Is notice required for the acquisition of companies?*

(1) *Fulfillment of statutory notice requirement.* Except as required in paragraph (d)(2) of this section, no post acquisition notice under section 4(k)(6)) of the Bank Holding Company Act (12 U.S.C. 1843(k)(6)) is required by a financial holding company in connection with an investment made under this subpart if the financial holding company has previously filed a notice under § 225.87 indicating that it had commenced activities under this subpart.

(2) *Notice of large individual investments.* A financial holding company must provide written notice to the Board within 30 days after acquiring more than 5 percent of the shares, assets or ownership interests of any company, including a private equity fund, at a total cost that exceeds the lesser of 5 percent of the Tier 1 capital of the company or $200 million.

(3) *Content of notice.* A notice under paragraph (d)(2) of this section must set forth:

(i) The cost of the investment and method for funding the investment;

(ii) The percentage of Tier 1 capital that the investment represents;

(iii) A description of the company and the type of investment; and

(iv) An explanation of the risk management measures to be applied by the financial holding company to the investment.

§ 225.175 How do the statutory cross marketing and section 23A and 23B limitations apply to merchant banking investments?

(a) *Are cross marketing activities prohibited?* (1) *In general.* A depository institution, including a subsidiary of a depository institution, controlled by a financial holding company may not:

(i) Offer or market, directly or through any arrangement, any product or service of any company if more than 5 percent of the company's shares, assets or ownership interests are owned or controlled by the financial holding company pursuant to this subpart; or

(ii) Allow any product or service of the depository institution, including any product or service of a subsidiary of the depository institution, to be offered or marketed, directly or through any arrangement, by or through any company described in paragraph (a)(1)(i) of this section.

(2) *How are financial subsidiaries treated?* For purposes of paragraph (a)(1) of this section, a subsidiary of a depository institution does not include a financial subsidiary held in accordance with section 5136A of the Revised Statutes (12 U.S.C. 24a) or section 46 of the Federal Deposit Insurance Act (12 U.S.C. 1831w).

(b) *When are companies held under section 4(k)(4)(H) affiliates under sections 23A and 23B?* (1) *Rebuttable presumption of control.* The following rebuttable presumption of control shall apply for purposes of sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c, 371c–1): if a financial holding company holds any shares, assets or ownership interests of a company pursuant to this subpart, the company shall be presumed to be an affiliate of any member bank that is affiliated with the financial holding company if such financial holding company, directly or indirectly, owns or controls 15 percent or more of the equity capital of the company.

(2) *Request to rebut presumption.* A financial holding company may rebut this presumption by providing information acceptable to the Board demonstrating that the financial holding company does not control the company.

(3) *Convertible instruments.* For purposes of paragraph (b)(1) of this section, equity capital includes options, warrants and any other instrument convertible into equity capital.

(4) *Application of presumption to private equity funds.* A financial holding company will not be presumed to own or control the equity capital of a company for purposes of paragraph (b)(1) of this section solely by virtue of an investment made by the financial holding company in a private equity fund that owns or controls the equity capital of the company unless the financial holding company controls or has sponsored and advises the private equity fund.

(5) *Application of sections 23A and 23B to U.S. branches and agencies of foreign banks.* Sections 23A and 23B of the Federal Reserve Act shall apply to all covered transactions between each U.S. branch and agency of a foreign bank that acquires or controls, or that is affiliated with a company that acquires or controls, merchant banking investments and—

(i) Any portfolio company that the foreign bank or affiliated company controls or is presumed to control under paragraph (b)(1) of this section; and

(ii) Any company that the foreign bank or affiliated company controls or is presumed to control under paragraph (b)(1) of this section if the company is engaged in acquiring or controlling merchant banking investments.

By order of the Board of Governors of the Federal Reserve System, March 17, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

Department of the Treasury

12 CFR Chapter XV

Authority and Issuance

For the reasons set forth in the preamble, the Department of the Treasury adds part 1500 to subchapter A of chapter XV of Title 12 of the Code of Federal Regulations to read as follows:

PART 1500—MERCHANT BANKING INVESTMENTS

Sec.

1500.1 How are terms defined for purposes of this part?
1500.2 What investments are permitted under this part and who may make them?
1500.3 What are the limitations on managing or operating a portfolio company held as a merchant banking investment?
1500.4 What are the holding periods permitted for merchant banking investments?
1500.5 What aggregate limits apply to merchant banking investments?
1500.6 What risk management, reporting and record keeping policies are required to make merchant banking investments?
1500.7 How do the statutory cross marketing and sections 23A and 23B limitations apply to merchant banking investments?

Authority: 12 U.S.C. 1843(k)(4)(7).

§ 1500.1—How are terms defined for purposes of this part?

Unless otherwise provided in this part, all terms used in this part have the meanings given such terms in 12 CFR Part 225 (Regulation Y of the Board of Governors of the Federal Reserve System Board).

§ 1500.2—What investments are permitted under this part and who may make them?

(a) *What investments are permitted under this part?* Section 4(k)(4)(H) of the Bank Holding Company Act (12 U.S.C. 1843(k)(4)(H)) and this part authorize a financial holding company, directly or indirectly and as principal or on behalf of one or more persons, to acquire or control any amount of shares, assets or ownership interests of a company or other entity that is engaged in any activity not otherwise authorized for a financial holding company under section 4 of the Bank Holding Company Act. For purposes of this part, shares, assets or ownership interests acquired or controlled under this part are referred to as "merchant banking investments." A financial holding company may not directly or indirectly acquire or control any merchant banking investment except in compliance with the requirements of this part.

(b) *Must the investment be a bona fide merchant banking investment?* The acquisition or control of shares, assets or ownership interests under this part is not permitted unless it is part of a bona fide underwriting or merchant or investment banking activity.

(c) *What types of ownership interests may be acquired?* Shares, assets or ownership interests of a company or other entity include any debt or equity security, warrant, option, partnership interest, trust certificate or other instrument representing an ownership interest in the company or entity, whether voting or nonvoting.

(d) *Where in a financial holding company may merchant banking investments be made?* A financial holding company and any subsidiary (other than a depository institution or subsidiary of a depository institution) may acquire or control merchant banking investments. A financial holding company and its subsidiaries may not acquire or control merchant banking investments on behalf of a depository institution or subsidiary of a depository institution.

(e) *May assets other than shares be held directly?* A financial holding company may not under this part acquire or control assets, other than shares or other ownership interests in a company, unless:

(1) The assets are held within or promptly transferred to a portfolio company;

(2) The portfolio company maintains policies, books and records, accounts, and other indicia of corporate, partnership or limited liability organization and operation that are separate from the financial holding company and that meet the requirements of 12 CFR 225.174(a)(4) for limiting the legal liability of the financial holding company; and

(3) The portfolio company has management that is separate from the financial holding company to the extent required by § 1500.3.

(f) *What type of affiliate is required for a financial holding company to make merchant banking investments?* A financial holding company may not acquire or control merchant banking investments under this part unless the financial holding company qualifies under at least one of the following:

(1) *Securities affiliate.* The financial holding company controls a company that is registered with the Securities and Exchange Commission as a broker or dealer under the Securities Exchange Act of 1934 (15 U.S.C. 78a *et seq.*); or

(2) *Insurance affiliate with an investment adviser affiliate.* The financial holding company controls:

(i) An insurance company that is predominantly engaged in underwriting life, accident and health, or property and casualty insurance (other than credit-related insurance), or providing and issuing annuities; and

(ii) A company that:

(A) Is registered with the Securities and Exchange Commission as an investment adviser under the Investment Advisers Act of 1940 (15 U.S.C. 80b–1 *et seq.*); and

(B) Provides investment advice to an insurance company.

(g) *What do references to a financial holding company include?* The term "financial holding company" as used in this part means the financial holding company and each of its subsidiaries, but, except for § 1500.3, does not include a depository institution or subsidiary of a depository institution. The term includes a private equity fund controlled by the financial holding company, but does not include any portfolio company controlled by the financial holding company.

(h) *What do references to a depository institution include?* For purposes of this part, the term "depository institution" includes a U.S. branch or agency of a foreign bank that acquires or controls, or is affiliated with a company that acquires or controls, merchant banking investments under this part.

(i) *What is a portfolio company?* A portfolio company is any company or entity:

(1) That is engaged in any activity not authorized for a financial holding company under section 4 of the Bank Holding Company Act; and

(2) The shares, assets or ownership interests of which are held, owned or controlled directly or indirectly by the financial holding company pursuant to this part.

§ 1500.3 What are the limitations on managing or operating a portfolio company held as a merchant banking investment?

(a) *May a financial holding company routinely manage or operate a portfolio company?* Except as provided in paragraph (d) of this section, a financial holding company may not routinely manage or operate any portfolio company in which it has a direct or indirect interest and any portfolio company held by any company (including a private equity fund) in which the financial holding company has an ownership interest under this part.

(b) *What does it mean to routinely manage or operate a company?* A financial holding company routinely manages or operates a portfolio company if:

(1) Any director, officer, employee or agent of the financial holding company serves as or has the responsibilities of an officer or employee of the portfolio company;

(2) Any officer or employee of the portfolio company is supervised by any

director, officer, employee or agent of the financial holding company (other than in that individual's capacity as a director of the portfolio company);

(3) Any covenant or other contractual arrangement exists between the financial holding company and the portfolio company that would restrict the portfolio company's ability to make routine business decisions, such as entering transactions in the ordinary course of business or hiring employees below the rank of the five highest ranking executive officers;

(4) Any director, officer, employee or agent of the financial holding company, whether in the capacity of a director of the portfolio company, adviser to the portfolio company, or otherwise, participates in:

(i) The day-to-day operations of the portfolio company, or

(ii) Management decisions made in the ordinary course of business of the portfolio company other than decisions in which a director of a company customarily participates in that individual's capacity as a director; or

(5) Any other arrangement or practice exists by which the financial holding company routinely manages or operates the portfolio company.

(c) *What arrangements do not involve routinely managing or operating a company?* (1) *Director representation at portfolio companies.* A financial holding company may select any or all of the directors of a portfolio company or have one or more directors, officers, employees or agents serve as directors of a portfolio company if:

(i) The portfolio company employs officers and employees responsible for routinely managing and operating the company; and

(ii) The financial holding company does not routinely manage or operate the portfolio company as described in paragraph (b) of this section.

(2) *Covenants or other provisions regarding extraordinary events.* A financial holding company may, by virtue of covenants or other written agreements with a portfolio company, require the portfolio company to consult with or obtain the approval of the financial holding company to take actions outside of the ordinary course of the business of the portfolio company, including:

(i) The acquisition of control or significant assets of other companies;

(ii) Significant changes to the business plan of the portfolio company;

(iii) The redemption, authorization or issuance of any shares of capital stock (including options, warrants or convertible shares) of the portfolio company; and

(iv) The sale, merger, consolidation, spin-off, recapitalization, liquidation, dissolution or sale of substantially all of the assets of the portfolio company or any of its significant subsidiaries.

(d) *When may a financial holding company manage or operate a portfolio company?* (1) *Special circumstances required.* A financial holding company may routinely manage or operate a portfolio company only:

(i) When intervention is necessary to address a material risk to the value or operation of the portfolio company, such as a significant operating loss or loss of senior management; and

(ii) For the period of time as may be necessary to address the cause of involvement, to obtain suitable alternative management arrangements, to dispose of the investment, or to otherwise obtain a reasonable return upon the resale or disposition of the investment.

(2) *Approval required for extended involvement.* A financial holding company may not routinely manage or operate a portfolio company for a period greater than six months without prior approval of the Board.

(3) *Documentation required.* A financial holding company must maintain and make available to the Board a written record describing its involvement in the management or operation of a portfolio company and the reasons therefor.

(e) *May a depository institution or its subsidiary manage or operate a portfolio company?* (1) *In general.* A depository institution or subsidiary of a depository institution may not under any circumstances manage or operate a portfolio company in which an affiliated company owns or controls an interest under this part.

(2) *Exceptions.* Paragraph (e)(1) of this section does not prohibit—

(i) A director, officer or employee of a depository institution or subsidiary of a depository institution from serving as a director of a portfolio company in accordance with the limitations set forth in this section; or

(ii) A financial subsidiary held in accordance with section 5136A of the Revised Statutes (12 U.S.C. 24a) or section 46(a) of the Federal Deposit Insurance Act (12 U.S.C. 1831w) from taking actions in accordance with the limitations set forth in this section.

§ 1500.4 What are the holding periods permitted for merchant banking investments?

(a) *Must investments be made for resale?* A financial holding company may own or control shares, assets and ownership interests pursuant to this part only for a period of time to enable the sale or disposition thereof on a reasonable basis consistent with the financial viability of the financial holding company's merchant banking investment activities.

(b) *What period of time is generally permitted for holding merchant banking investments?* (1) *In general.* A financial holding company may not, directly or indirectly, own, control or hold any share, asset or ownership interest pursuant to this part for a period that exceeds 10 years, except that an investment in or held through a private equity fund may be held for the duration of the fund.

(2) *Ownership interests acquired from or transferred to companies held under this part.* For purposes of paragraph (b)(1) of this section, any interest in shares, assets or ownership interests—

(i) Acquired by a financial holding company from a company (including a private equity fund) in which the financial holding company held an interest under this part will be considered to have been acquired by the financial holding company on the date that the share, asset or ownership interest was acquired by the company; and

(ii) Acquired by a company (including a private equity fund) from a financial holding company will be considered to have been acquired by the company on the date that the share, asset or ownership interest was acquired by the financial holding company if—

(A) The financial holding company held the share, asset, or ownership interest under this part; and

(B) The financial holding company holds an interest in the acquiring company under this part.

(3) *Interests previously held by a financial holding company under limited authority.* For purposes of paragraph (b)(1) of this section, any shares, assets, or ownership interests previously owned or controlled, directly or indirectly, by a financial holding company under any other provision of the Federal banking laws that imposes a limited holding period will be considered to have been acquired by the financial holding company under this part on the date the financial holding company first acquired ownership or control of the shares, assets or ownership interests under such other provision of law. For purposes of this paragraph (b)(3), a financial holding company includes a depository institution controlled by the financial holding company and any subsidiary of such a depository institution.

(4) *Approval required to hold investments held in excess of applicable time limit.* A financial holding company may, in extraordinary circumstances, seek Board approval to own, control or hold shares, assets or ownership interests of a company under this part for a period that exceeds the applicable period specified in paragraph (b)(1) of this section. A request for approval must:

(i) Be submitted to the Board no later than 1 year prior to the expiration of the applicable time period;

(ii) Provide the reasons for the request, including information that addresses the factors in paragraph (b)(5) of this section; and

(iii) Explain the financial holding company's plan for divesting the shares, assets or ownership interests.

(5) *Factors governing Board determinations.* In reviewing any proposal under paragraph (b)(4) of this section, the Board may consider all the facts and circumstances related to the investment, including:

(i) The cost to the financial holding company of disposing of the investment within the applicable period;

(ii) The total exposure of the financial holding company to the company and the risks that disposing of the investment may pose to the financial holding company;

(iii) Market conditions; and

(iv) The extent and history of involvement by the financial holding company in the management and operations of the company.

(6) *Restrictions applicable to investments held beyond applicable period.* A financial holding company that directly or indirectly owns, controls or holds any share, asset or ownership interest of a company under this part for a total period that exceeds the applicable period specified in paragraph (b)(1) of this section must:

(i) Deduct an amount equal to 100 percent of the carrying value of the financial holding company's interest in the share, asset or ownership interest from the Tier 1 capital of the holding company and exclude all unrealized gains on the share, asset or ownership interest from its Tier 2 capital;

(ii) Not enter into any additional transactions, contractual arrangements or other relationships with the company or extend any additional credit to the company without Board approval; and

(iii) Abide by any other restrictions that the Board may impose in connection with granting approval under paragraph (4).

(c) *What is a private equity fund?* (1) *Definition of a private equity fund.* For purposes of this part, a "private equity fund" is any company that:

(i) Is formed for the purpose of and is engaged exclusively in the business of investing in shares, assets, and ownership interests of companies for resale or other disposition;

(ii) Is not an operating company;

(iii) Issues equity ownership interests to at least 10 investors that are not affiliated with, and are not officers, directors, employees or principal shareholders of the financial holding company;

(iv) No more than 25 percent of the total equity of which is held, owned or controlled, directly or indirectly, by the financial holding company and its directors, officers, employees and principal shareholders;

(v) That has an initial term of not more than 12 years, which term may be extended for an additional three 1-year periods with the approval of persons holding a majority of the equity of the fund;

(vi) Establishes a plan for the resale or disposition of its investments, and holds, owns or controls investments only for a reasonable period of time consistent with making merchant banking investments;

(vii) Maintains policies on diversification of fund investments; and

(viii) Is not formed or operated for the purpose of making investments inconsistent with the authority granted under section 4(k)(4)(H) of the Bank Holding Company Act or evading the limitations contained in this part on merchant banking investments.

(2) *What form may a private equity fund take?* A private equity fund may be a corporation, partnership, limited liability company or other type of company that issues ownership interests in any form.

(3) *May a private equity fund manage a portfolio company?* A private equity fund may not routinely manage or operate a portfolio company except as permitted by this part.

§ 1500.5 What aggregate limits apply to merchant banking investments?

(a) *In general.* A financial holding company may not, without Board approval, directly or indirectly acquire any additional shares, assets or ownership interests under this part or make any additional capital contribution to any company the shares, assets or ownership interests of which are held by it under this part if the aggregate carrying value of all merchant banking investments held by the financial holding company under this part exceeds:

(1) The lesser of 30 percent of the Tier 1 capital of the company or $6 billion; or

(2) The lesser of 20 percent of the Tier 1 capital of the company or $4 billion excluding interests in private equity funds.

(b) *Do these limits apply to interests held through a private equity fund?* Paragraph (a) of this section does not prohibit any private equity fund that a financial holding company controls from acquiring shares, assets or ownership interests.

§ 1500.6 What risk management, reporting and recordkeeping policies are required to make merchant banking investments?

Certain risk management, reporting and recordkeeping requirements for merchant banking investments are set forth in the Board's Regulation Y, 12 CFR 225.174.

§ 1500.7 How do the statutory cross marketing and sections 23A and 23B limitations apply to merchant banking investments?

Certain cross-marketing limitations and limitations under sections 23A and 23B of the Federal Reserve Act applicable to merchant banking investment are set forth in the Board's Regulation Y, 12 CFR 225.175.

Dated: March 17, 2000.

Gregory A. Baer,

Assistant Secretary for Financial Institutions, Department of the Treasury.

[FR Doc. 00–7147 Filed 3–27–00; 8:45 am]

BILLING CODE 6210–01–U

FEDERAL RESERVE SYSTEM

12 CFR Part 225

Regulation Y; Docket No. R–1067

Bank Holding Companies and Change in Bank Control

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule with request for public comments.

SUMMARY: The Board of Governors of the Federal Reserve System, in consultation with the Secretary of the Treasury, solicits comment on a proposal that would govern the regulatory capital treatment of certain investments in nonfinancial companies by bank holding companies. This proposal would amend the Board's consolidated capital guidelines for bank holding companies to apply a 50 percent capital charge to all investments made, directly or indirectly, by a bank holding company in nonfinancial companies under the merchant banking authority of the Bank Holding Company Act (BHC Act), in nonfinancial companies under the Board's Regulation K, under the Federal Deposit Insurance Act, through small business investment companies (whether controlled by the bank holding company or by a subsidiary depository institution), or under the BHC Act in less than 5 percent of the shares of a nonfinancial company.

This proposal is a supplement to an interim rule (with request for public comment) that governs merchant banking investments made by financial holding companies. That interim rule is published separately and implements provisions of the recently enacted Gramm-Leach-Bliley Act (GLB Act) that permit financial holding companies to make investments in nonfinancial companies as part of a bona fide securities underwriting or merchant or investment banking activity. The capital proposal described below is being published for comment and, unlike the interim rule on merchant banking investments, is not being made effective on an interim basis. During the comment period, the Board and the Secretary will discuss issues raised by this proposal with the other Federal banking agencies and with other appropriate functional regulators.

Comment is invited on all aspects of the proposed rule, and the Board will revise the final rule as appropriate in response to comments received. The Board expects to complete this rulemaking on capital treatment expeditiously.

DATES: Comments must be received on the capital proposal by May 22, 2000.

ADDRESSES: Comments should refer to docket number R–1067 and should be sent to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551 (or mailed electronically to *regs.comments@federalreserve.gov*). Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between the hours of 8:45 a.m. and 5:15 p.m. and, outside of those hours, to the Board's security control room. Both the mail room and the security control room are accessible from the Eccles Building courtyard entrance, located on 20th Street between Constitution Avenue and C Street, N.W. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Scott G. Alvarez, Associate General Counsel (202/452–3583), Kieran J. Fallon, Senior Counsel (202/452–5270), or Camille M. Caesar, Senior Attorney (202/452–3513), Legal Division; Jean Nellie Liang, Chief, Capital Markets (202/452–2918), Division of Research & Statistics; Michael G. Martinson, Deputy Associate Director (202/452–3640) or James A. Embersit, Manager, Capital Markets (202/452–5249), Division of Banking Supervision and Regulation; Norah M. Barger, Assistant Director, Supervisory Policies and Procedures, Division of Banking Supervision and Regulation; Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. Users of Telecommunications Device for the Deaf (TDD) *only* contact Janice Simms at (202) 872–4984.

SUPPLEMENTARY INFORMATION:

A. Background

Section 103(a) of the GLB Act (Pub. L. 106–102, 113 Stat. 1338 (1999)) added a new section 4(k)(4)(H) to the BHC Act (12 U.S.C. 1843(k)(4)(H)) that authorizes financial holding companies to acquire or control shares, assets or ownership interests of any nonfinancial company as part of a bona fide underwriting or merchant or investment banking activity (merchant banking investments).

Interviews With Securities Firms and Bank Holding Companies

In order to gather information about how firms currently reserve capital against merchant banking investments, staff of the Federal Reserve System and the Department of the Treasury conducted interviews with a number of securities firms that currently make in merchant banking investments. System staff and Treasury staff also interviewed several bank holding companies that engage in more limited types of investment activities under existing authority. The attached rule reflects information collected in these interviews and the experience of the System staff and Treasury staff in supervising the more limited types of investment activities permissible for bank holding companies.

Securities firms and bank holding companies uniformly indicated that they apply higher internal capital charges against merchant banking investments than are applied to many other types of activities. The industry practice regarding the appropriate internal measures of capital required to support merchant banking activities reflects the greater risks associated with these investments, including the volatility and illiquidity of many investments and the higher leverage often associated with companies in which such investments are made. Firms that make merchant banking investments impose internal capital charges that differ by firm and, in some cases, by type of investment. These capital charges range from 25 percent to 100 percent of the investment. Firms typically record investments initially at the lower of cost or market. Investments may be assigned an adjusted carrying value if a significant event occurs (such as an initial public offering, follow-up financing, or secondary capital raising events), subject to a discount that reflects the size of the firm's holding, the liquidity of the market for the shares held, the volatility of the market and other factors and that is applied prior to recognizing any unrealized gains on the investment.

The proposal reflects industry practices in conducting merchant banking activities. The information about industry practice collected during the interviews is discussed more fully in connection with the interim rule implementing the merchant banking investment authority.

The Board and the Secretary view this capital proposal as a precaution that is necessary to prevent the buildup within banking organizations of excessive risk from merchant banking and other investment activities. In developing this proposal, they have considered the effect of the proposal on the existing activities of bank holding companies.

The Board welcomes comments on all aspects of the proposed rule. These

comments will be carefully considered before promulgation of a final rule.

B. Proposed Rule

As discussed above, many firms that make merchant banking investments and engage in other types of investment activities internally allocate capital to these investments in amounts that are higher than the amounts of capital allocated to most banking assets due to the greater risk, illiquidity and volatility of merchant banking and similar investments and the higher leverage that often is associated with portfolio companies. The internal capital allocation for these investments is generally many multiples of the current regulatory capital charge.

After consideration of the industry practice, the Board, in consultation with the Secretary, is proposing to modify the methods of calculating the risk-weighted and leverage capital ratios for bank holding companies to reflect the risk profiles of these investment activities. The Board is authorized by the BHC Act and other provisions of law to promulgate rules, including capital standards, consistent with the requirements and purposes of the BHC Act and other provisions.

Under the proposal, a bank holding company would be required to deduct from its Tier 1 regulatory capital an amount equal to 50 percent of the total carrying value, as reflected on consolidated financial statements of the bank holding company, of all merchant banking investments held by the bank holding company. The total carrying value of any merchant banking investment subject to this capital deduction is excluded from the bank holding company's assets for purposes of calculating the asset denominator of the risk-based and leverage capital ratios.[1]

The capital charge applies to all investments that would be considered to be equity of the nonfinancial company and all debt instruments that are convertible into equity. It also applies to all debt extended by a bank holding company to a nonfinancial company in which the financial holding company owns 15 percent or more of the total equity. The proposal contains exceptions for short-term secured loans for working capital purposes; for debt if at least 50 percent of the initial principal balance has been syndicated to third parties; for loans that are guaranteed by the United States government; and for extensions of credit by an insured depository institution controlled by the financial holding company that are collateralized in accordance with the requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c) and that meet the other requirements of that section.

The proposal would also apply the same capital treatment to investments held in nonfinancial companies under Regulation K, in less than 5% of the shares of any company under section 4(c)(6) or 4(c)(7) of the BHC Act, through a small business investment company (SBIC) that is controlled by the bank holding company or a subsidiary depository institution, or held by a state bank subsidiary in accordance with section 24 of the Federal Deposit Insurance Act. This capital treatment would not apply to investments that are held in a trading account in accordance with applicable accounting principles and that are part of an underwriting, market making or dealing activity.

The proposal applies this capital treatment to nonfinancial investment activities described above for several reasons. Importantly, the risks associated with these investment activities do not vary according to the authority used to conduct the activity. Thus, similar investment activities should be given the same capital treatment regardless of the source of legal authority to make the investment. Moreover, current regulatory capital treatment, which applies an 8% minimum capital charge to these investments, was developed at a time when the investment activities of banking organizations were relatively small. In recent years, some bank holding companies have greatly expanded the level of their investment activities. The proposal reflects the judgment that it is appropriate at this time, when the investment authority of banking organizations has also been greatly expanded, to revisit and revise regulatory capital treatment for all investment activities.

The Board and the Secretary view this capital proposal as a precaution that is necessary to prevent the development within banking organizations of excessive risk from merchant banking and other investment activities. In developing this proposal, they have considered the effect of the proposal on the existing activities of bank holding companies. The Board and the Secretary also note that the proposed capital treatment is similar to the approach to capital sufficiency that the Federal Deposit Insurance Corporation has adopted under section 24 of the Federal Deposit Insurance Act for investments in subsidiaries that engage in principal activities that are not permissible for a national bank.

As an initial matter, adoption of the capital proposal would not prevent any holding company from becoming or remaining a financial holding company or from taking advantage of the new powers granted under the GLB Act. The capital charge would be applied only at the holding company level on the consolidated organization. Consequently, the capital proposal would not affect the capital levels of any depository institution—which, under the GLB Act, determine whether a company qualifies to be a financial holding company—controlled by a bank holding company.

In addition, the Board and the Secretary have reviewed a sampling of call reports of bank holding companies engaged currently in significant investment activities, including companies that are likely to seek to become financial holding companies. This review indicates that, with virtually no exception, bank holding companies would remain well capitalized on a consolidated basis even after applying the proposed capital charge to all of the investments currently made by these companies. Moreover, nearly all of these companies would be able to increase significantly their level of investment activity and continue to be well capitalized on a consolidated basis after applying the proposed capital charge.

For these reasons, the capital proposal is not expected to have a significant effect on the level of investment activities conducted by bank holding companies. The capital proposal would, however, help to limit the potential harm to bank holding companies and depository institutions controlled by bank holding companies from the risks associated with investment activities.

The capital charge would not be applied to investments made by insurance company subsidiaries of financial holding companies held in accordance with section 4(k)(4)(I) of the BHC Act. The Board expects soon to seek comments on a proposal to de-consolidate functionally regulated insurance underwriting companies from the financial holding company for purposes of applying the Board's

[1] Some investments are booked using "available for sale" (AFS) accounting. Under this accounting treatment, unrealized gains are not recognized as net income and flow to a special segregated equity account that is not recognized as Tier 1 capital by the regulatory agencies. Under the current bank holding company rules, 45 percent of the gain on AFS equity securities may be included in Tier 2 capital. This proposal would continue this treatment but further require deduction from Tier 1 capital of 50 percent of the reported cost (or fair value if lower for equity securities) of merchant banking investments recorded as AFS. The reported cost or fair value of these investments would be deducted from risk-weighted and average consolidated assets.

consolidated capital rules. The proposal would take account of the different accounting standards, business practices, and capital and supervisory regimes that apply to insurance underwriting companies.

The Board and the Secretary recognize that the new authority accorded financial holding companies under the GLB Act may raise the possibility of arbitrage between an insurance company and its financial holding company affiliates designed to avoid the capital charges proposed for merchant banking and other investments. The Board and the Secretary seek comment on whether provisions should be included in the final capital rule that would apply to investments made through an insurance company the same capital charge at the holding company level as would be applied to merchant banking and other investments if the Board finds that such arbitrage is occurring within a particular holding company. The Board and the Secretary also invite comment on whether there are other mechanisms that would prevent such arbitrage.

During the period prior to adoption of a final capital rule, financial holding companies that engage in merchant banking activities will be expected to adopt and implement internal capital and accounting policies that reflect the liquidity, market and other risks associated with the company's investment activities. An initial criterion for these internal capital and accounting policies is that they be capable of enabling the financial holding company to meet the terms of the proposed capital rule on its effective date with minimal adjustment and remain in compliance with applicable regulatory capital standards. Moreover, the Board and the Secretary do not intend to encourage behavior that is different than conservative industry practice and expect to monitor capital treatment of merchant banking activities carefully.

Comment is invited on all aspects of the capital charge, including the appropriateness of a separate capital charge for investment activities under different authorities, the amount of the charge, and whether the charge should apply to the exclusions outlined. In particular, comment is invited on how, if at all, the charge differs from the internal capital charges imposed on investment activities by firms that conduct merchant banking and other investment activities. In addition, comment is sought on whether a different approach to the capital treatment would more accurately reserve for the risks of merchant banking and other investment activities. Moreover, comment is invited on the interaction between the capital sufficiency proposal and the investment thresholds for aggregate merchant banking activities discussed in the related interim rule governing merchant banking investments.

Comment also is invited on the manner in which the capital charge is applied to debt extended to portfolio companies in which a financial holding company has made investments. In addition, comment is requested on whether other methods would be more appropriate for assuring that an organization does not use an extension of credit that functions like equity as a means of evading the capital charge.

Comment is requested on whether an exclusion from the proposed capital treatment, or a lesser capital charge, should be established for investments in less than 5 percent of the securities or assets of a nonfinancial company that is publicly held and in which there is a ready market. In addition, the Board seeks comment on whether the proposed capital treatment or a lesser capital charge should apply to merchant banking investments that do not result in a financial holding company's control of the merchant banking investment.

Regulatory Flexibility Act Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a)), the Board must publish an initial regulatory flexibility analysis with this rulemaking. The rule proposes and requests comment on amendments to the Board's consolidated risk-based and Tier 1 leverage capital adequacy guidelines for bank holding companies (Part 225, Appendix A and D). These amendments would establish the regulatory capital requirements applicable to the merchant banking investments of financial holding companies and similar investment activities of bank holding companies. The proposed capital amendments generally would not apply to financial or bank holding companies with consolidated assets of less than $150 million and, thus, are not likely to have a significant economic impact on a substantial number of small entities (*i.e.*, holding companies with less than $100 million in assets). The Board believes the proposed amendments to its capital guidelines are necessary and appropriate to ensure that bank holding companies maintain capital commensurate with the level of risks associated with their activities and that the investment activities of bank holding companies do not pose an undue risk to the safety and soundness of affiliated insured depository institutions.

The Board specifically seeks comment on the likely burden that the proposed rule will impose on bank holding companies.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 App. A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the proposed rule.

List of Subjects in 12 CFR Part 225

Administrative practice and procedure, Banks, banking, Federal Reserve System, Holding companies, Reporting and recordkeeping requirements, Securities.

For the reasons set out in the preamble, the Board amends 12 CFR part 225 as follows:

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1828(o), 1831i, 1831p–1, 1843(c)(8), 1843(k), 1844(b), 1972(l), 3106, 3108, 3310, 3331–3351, 3907, and 3909.

2. In Appendix A to part 225:

a. In section II.*B.*, a new paragraph (v) is added at the end of the introductory paragraph and a new paragraph 5 is added at the end of section II.B; and

b. In sections III. and IV., footnotes 24 through 57 are redesignated as footnotes 26 through 59.

Appendix A to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Risk-Based Measure

* * * * *

II. * * *

B. * * *

(v) Portfolio investments—deducted from the sum of core capital elements in the manner described below.

* * * * *

5. *Portfolio investments.* a. Fifty percent (50%) of the value of all portfolio investments made by the parent bank holding company or by its direct or indirect subsidiaries must be deducted from the consolidated parent banking organization's core capital components.

b. A portfolio investment is any merchant banking investment made directly or indirectly by the bank holding company pursuant to section 4(k)(4)(H) of the Bank Holding Company (BHC) Act and subpart J of Regulation Y, and any investment made directly or indirectly by the bank holding company in a nonfinancial company pursuant to section 4(c)(6) or 4(c)(7) of the BHC Act, § 211.5(b)(1)(iii) of the Board's Regulation K, or section 392(b) of the Small Business Investment Act of 1958, or in accordance with section 24 of the Federal Deposit Insurance Act.[24] A nonfinancial company is an entity that engages in any activity that has not been determined to be financial in nature or incidental to financial activities under section 4(k) of the Bank Holding Company Act.

c. The deduction applies to all merchant banking investments made under section 4(k)(4)(H) of the BHC Act and all investments made in nonfinancial companies under the other authorities listed above, regardless of whether the investment is held by the bank holding company, a depository institution subsidiary of the bank holding company, or a direct or indirect subsidiary of either. For example, a portfolio investment includes any investment in a private equity fund under section 4(k)(4)(H) of the BHC Act, any nonfinancial investment made by a small business investment company (SBIC) subsidiary of the bank holding company, and any nonfinancial investment made by an Edge or Agreement Corporation subsidiary of the holding company under § 211.5(b)(1)(iii) of the Board's Regulation K.

d. For this purpose, an investment includes any equity instrument and any debt instrument with equity features (such as conversion rights, warrants or call options). If the bank holding company owns or controls 15 percent or more of the company's total equity, the term also includes any other debt instrument held by the bank holding company or any subsidiary, except for any short-term, secured extension of credit provided for working capital purposes, any extension of credit by an insured depository institution that is collateralized in accordance with the requirements of section 23A of the Federal Reserve Act (12 U.S.C. 371c) and that meets the other requirements of that section; any extension of credit at least 50 percent of which is sold or participated out to unaffiliated persons on the same terms and conditions that applied to the initial credit, and any extension of credit that is guaranteed by the U.S. government.

[24] *See* 12 U.S.C. 1843(c)(6), (c)(7) and (k)(4)(H); 12 CFR 211.5(b)(1)(iii); 15 U.S.C. 682(b); 12 U.S.C. 1831a.

This provision does not apply to investments that are held in the trading account in accordance with applicable accounting principles and that are held as part of an underwriting, market making or dealing activity.

f. For portfolio investments that are reported at cost, under the equity method, or at fair value with unrealized gains (or losses) included in earnings, the deduction is equal to 50 percent of the carrying value of the investment. For available-for-sale portfolio investments reported at fair value with unrealized gains (or losses) included in other comprehensive income, the amount of the deduction is equal to 50 percent of the reported cost of the investment.[25] Any unrealized gains on available-for-sale investments are not to be included in core capital, but may be included in supplementary capital to the extent permitted under section II.A.2.e of this Appendix.

g. For portfolio investments in a company that is consolidated for accounting purposes, the deduction is equal to 50 percent of the parent banking organization's investment in the company as determined under the equity method of accounting (net of any intangibles associated with the investment that are deducted from the consolidated bank holding company's core capital in accordance with section II.B.1 of this Appendix). The company remains fully consolidated for purposes of determining the banking organization's risk-weighted assets.

h. The value of any portfolio investment subject to the deduction described in this paragraph that is not consolidated for accounting purposes is excluded from the bank holding company's weighted risk assets for purposes of computing the denominator of the company's risk-based capital ratio. For available-for-sale portfolio investments, this exclusion applies to the investment's reported cost or, in the case of equity investments when fair value is less than historical cost, reported fair value.

* * * * *

3. In Appendix D to part 225, in section II.b., footnote 3 is revised and the fourth sentence of section II.b. is revised to read as follows:

[25] For available-for-sale equity investments where fair value is less than historical cost, the amount of the deduction is equal to 50 percent of reported fair value. The unrealized losses on such investments are deducted from core capital in accordance with section II.A.1.a of this Appendix.

Appendix D to Part 225—Capital Adequacy Guidelines for Bank Holding Companies: Tier 1 Leverage Measure

* * * * *

II. * * *

b. * * *[3] As a general matter, average total consolidated assets are defined as the quarterly average total assets (defined net of the allowance for loan and lease losses) reported on the organization's Consolidated Financial Statements (FR Y–9C Report), less goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, are in excess of 100 percent of Tier 1 capital; amounts of nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, are in excess of 25 percent of Tier 1 capital; all other identifiable intangible assets; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of the limitations set forth in section II.B.4 of Appendix A of this part; portfolio investments; and other investments in subsidiaries or associated companies that the Federal Reserve determines should be deducted from Tier 1 capital.

By order of the Board of Governors of the Federal Reserve System, March 17, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7148 Filed 3–27–00; 8:45 am]

BILLING CODE 6210–01–U

[3] Tier 1 capital for banking organizations includes common equity, minority interest in the equity accounts of consolidated subsidiaries, qualifying noncumulative perpetual preferred stock, and qualifying cumulative perpetual preferred stock. (Cumulative perpetual preferred stock is limited to 25 percent of Tier 1 capital.) In addition, as a general matter, Tier 1 capital excludes goodwill; amounts of mortgage servicing assets, nonmortgage servicing assets, and purchased credit card relationships that, in the aggregate, exceed 100 percent of Tier 1 capital; nonmortgage servicing assets and purchased credit card relationships that, in the aggregate, exceed 25 percent of Tier 1 capital; all other identifiable intangible assets; deferred tax assets that are dependent upon future taxable income, net of their valuation allowance, in excess of certain limitations; and 50 percent of the value of portfolio investments. The Federal Reserve may exclude certain other investments in subsidiaries or associated companies as appropriate.

Federal Register

Tuesday,
March 28, 2000

Part III

Department of Defense

Department of the Army, Corps of Engineers

33 CFR Parts 320, 326 and 331
Final Rule Establishing an Administrative Appeal Process for the Regulatory Program of the Corps of Engineers; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Parts 320, 326, and 331

Final Rule Establishing an Administrative Appeal Process for the Regulatory Program of the Corps of Engineers

AGENCY: Army Corps of Engineers, DoD.

ACTION: Final rule.

SUMMARY: On July 19, 1995, the Army Corps of Engineers published notice in the **Federal Register** of a proposal to establish an administrative appeal process for the regulatory program of the Department of the Army. The comment period expired on September 5, 1995. The Corps evaluated and addressed the issues raised in comments submitted in response to the proposed rule. In the March 9, 1999, **Federal Register**, the Corps published a final rule establishing an administrative appeal process for permit denials and declined individual permits. Due to budget constraints, the Corps delayed publication of an administrative appeal process for jurisdictional determinations. On September 29, 1999, the President signed the Corps Fiscal Year 2000 appropriations bill which provided funds to administer a one-step appeal process for jurisdictional determinations. The final rule published today establishes a one step administrative appeal process for jurisdictional determinations. In addition, minor changes have been made to clarify the administrative appeal process for permit denials and declined individual permits. These revised regulations contain the complete administrative appeal process for jurisdictional determinations, permit denials, and declined individual permits.

DATES: This rule becomes effective on March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Sam Collinson, Corps of Engineers Regulatory Branch, (202) 761–0199.

SUPPLEMENTARY INFORMATION:

I. Background

Shortly after coming into office in 1993, the Clinton Administration convened an interagency working group to address concerns with Federal wetlands policy. After hearing from States, tribes, developers, farmers, environmental interests, members of Congress, and scientists, the White House Wetlands Working Group developed a comprehensive, 40-point plan (the Plan) to enhance wetlands protection, while making wetlands regulations more fair, flexible, and effective for everyone, including America's small landowners. The Plan was issued on August 24, 1993. It emphasizes improving Federal wetlands policy through various means, including streamlining wetlands permitting programs. One of several approaches identified in the Plan for achieving such streamlining was the development by the Corps of an administrative appeal process to be implemented after public rulemaking. The Plan discusses an administrative appeal process for Section 404 geographic jurisdictional determinations (JDs) and permit denials. This rule is also contained in the Regulatory Plan and Unified Agenda of Federal Regulatory and Deregulatory Actions pursuant to Executive Order 12866.

On July 19, 1995, the Corps of Engineers (Corps) published a notice in the **Federal Register** (60 FR 37280) proposing to establish an administrative appeal process for the Department of the Army regulatory program (33 CFR Parts 320–331). The comment period expired on September 5, 1995. The Corps evaluated and addressed the comments submitted in response to the proposed rule. In the March 9, 1999, issue of the **Federal Register** (64 FR 11708), the Corps published a final rule establishing an administrative appeal process for permit denials and declined permits. That rule became effective on August 6, 1999. Due to budget constraints, the Corps delayed the establishment and implementation of an administrative appeal process for JDs. The final rule published today establishes an administrative appeal process for JDs. The administrative appeal process for JDs applies only to geographical JDs that are approved by the Corps of Engineers. In addition, minor edits have been made to clarify the administrative appeal process for permit denials and declined individual permits. That existing process has not been changed by this rule. Published herein is the consolidated 33 CFR Part 331, containing the complete administrative appeal process for JDs, permit denials, and declined individual permits. In Fiscal Years 1995 to 2000 the President's budgets have included money to implement an administrative appeal process for permit denials and JDs. From Fiscal Year (FY) 1995 through FY 1997 the Congressional appropriations for the Department of the Army regulatory program was held level at $101 million. In FY 1998 and FY 1999 Congress appropriated $106 million each year. This funding increase in FY 98 and FY 99 allowed the Corps to finalize regulations to establish and implement an administrative appeal process for permit denials and declined individual permits. In FY 2000 Congress appropriated sufficient funds to implement the administrative appeal process for JDs, that we are finalizing with this consolidated rule, as well as the existing administrative appeal process for permit denials and declined individual permits. The consolidated rule for the administrative appeal process published today provides for the administrative appeal, within the Corps, of an approved JD, a denial with prejudice by the district engineer of a Department of the Army permit application, and/or a declined individual permit (i.e., an individual permit refused by the applicant because of objections to the terms or special conditions of the proffered permit). The appeal process allows administrative appeal of such decisions to the Corps under Section 404 of the Clean Water Act, Section 10 of the Rivers and Harbors Act, and Section 103 of the Marine Protection, Research, and Sanctuaries Act.

The revised rule provides for the addition of an administrative appeal process for JDs. Although some minor editing of the permit denial appeal regulation has been done, the existing process has not been modified. However, we have published 33 CFR Part 331 in its entirety to include the administrative appeal process for approved JDs and to provide a **Federal Register** document that contains the administrative appeal rule in its entirety. The preamble discussion that follows only addresses comments relating to the administrative appeal process for JDs. The comments relating to the administrative appeal process for permit denials and declined individual permits were discussed in the preamble of the final regulation published in the March 9, 1999, **Federal Register** document.

II. Comments on the Proposed Rule

A. General

Comments received on the proposed rule can be summarized under several broad headings: (1) The type of actions reviewed and the extent of the review; (2) the identity and authority of the review officer (RO); (3) the identity and rights of appellants; (4) the finality of JDs; (5) enforcement-related issues; (6) suggested procedural changes and clarifications; and (7) general expressions of both opposition and support of adoption of an administrative

appeal process. The following discussion of comments is divided into these topics and additional comments on specific sections of the regulation are discussed later in the text.

B. Discussion of Specific Comments

(1) Type of Actions Reviewed and Extent of Review

A number of comments were received requesting that the appeal process be expanded to include the assertion of discretionary authority, issuance of cease and desist orders, special conditions, denial without prejudice of a permit application, delays in the evaluation of a permit application, JDs regarding minor incidental discharges associated with excavation and landclearing activities, and the applicability of exemptions and general permits. Those comments were addressed in the March 9, 1999, **Federal Register** document. For the reasons stated in the March 9, 1999, **Federal Register** document, the Corps is not including an administrative appeal process for determining whether or not a particular activity requires a Section 404 and/or Section 10 permit. It should be noted that the biggest concern of applicants and landowners was the geographic extent of waters of the United States on their property (e.g., wetlands delineation).

There were several comments concerning the scope of the review process. Several commenters recommended that the review officer (RO) consider new information, conducting, in effect, a new and independent review. Other commenters indicated that new information should be accepted only if it serves to clarify existing issues and does not raise new issues that were not considered in the Corps original evaluation of the JD and/or the permit application.

After careful consideration, we have decided that the review undertaken by the RO would be limited to the existing administrative record; however, the RO may seek to clarify the record through consultation with the appellant and his agent(s), the district engineer, other Federal and state agency personnel, or other parties, as described in 33 CFR 331.3 and 331.7.

In the revised rule, we are providing an opportunity for a landowner or applicant to request reconsideration of an approved JD by the district engineer if he has new information that may affect the district engineer's decision concerning a particular JD. (See 33 CFR 331.6(c).) It is essential that new information can only be accepted at the district level, so that the district engineer's decision will reflect an accurate and comprehensive analysis of the data compiled in the administrative record. Accepting new information concerning a JD or project during the appeal process would constitute a fundamental change of the administrative record. Such new information might have resulted in a different JD or permit decision had it been presented to the district engineer during the original decision process. Furthermore, allowing an applicant to withhold potentially critical information from the district engineer and submit it during the appeal process might encourage forum-shopping, if an applicant believes that a more favorable decision might be obtained from the division engineer than from the district engineer. Therefore, once a landowner or applicant submits a request for an appeal of an approved JD or permit denial, he cannot submit new information.

(2) The Identity and Authority of the Review Officer (RO)

Comments were received regarding the appropriate person to serve as the RO and the extent of the RO's authority. Most comments were concerned primarily with ensuring the independence and impartiality of the RO, ensuring the fairness of the administrative appeal process, and providing the RO with the authority to change the original decision regarding the appealed decision. Some commenters also recommended authorizing the RO to unilaterally change a district engineer's permit decision.

Some commenters stated that the administrative appeal process should be conducted outside of the Corps of Engineers, *e.g.*, by contracting with private consultants, utilizing administrative law judges, or referring the appeals to another Federal agency. Several commenters expressed strong support for retaining the appeal process within the Corps, while other commenters expressed an equally strong desire to transfer the appeal process to an independent third party in order to promote impartiality, to avoid the perception of bias, and to enhance the credibility of the process. Simplification and lower program costs were also offered by commenters as reasons for transferring the process to the private sector. Efficiency was also cited by several commenters in support of establishing the appeal process as a single level of review at the division level.

We have reviewed and considered these comments in the context of permit denials and declined individual permits, as discussed in the March 9, 1999, **Federal Register** document. Our responses to those comments also apply to the administrative appeal of approved JDs. Further, Congress in the FY 2000 appropriation for the regulatory program required a one step process for the administrative appeal of JDs.

Several commenters expressed the view that the appeal process should grant authority to the division engineer to unilaterally overturn the permit decision of the district engineer. Otherwise, it was argued, the best result an appellant could hope for would be a new, time-consuming review by the same regulatory project manager who made the original permit recommendation to the district engineer. One commenter stated that such a process is inconsistent with the Corps own assertion that an impartial, objective review requires the final permit decision be made at the division rather than district level.

These comments were addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program. The responses published in that **Federal Register** document also apply to the administrative appeal process for approved JDs. For the administrative appeal of JDs, the authority to make the final appeal decision for approved JDs can be delegated to the ROs or other appropriate officials.

Another commenter suggested modifying the third sentence of § 331.3(b)(2) to provide the RO more flexibility. This commenter recommended striking the phrase "shall not substitute their judgment for that of the Corps district (when reviewing technical issues) unless the reviewed decision was clearly erroneous or omitted a material fact," and replacing it with "shall provide a recommendation on the decision that is supported by clear and convincing evidence." This comment was addressed in the March 9, 1999, **Federal Register** document announcing the final rule for the administrative appeal process for the Corps regulatory program.

A comment was received suggesting more involvement by Corps headquarters to ensure consistency of appealed decisions and to facilitate adjustments in policy, if necessary.

This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

Several commenters suggested that, because of its unique organizational structure, appeals of decisions made by the New England Division office should be directed to Corps headquarters rather than the division engineer. This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

(3) The Identity and Rights of the Appellant

A number of commenters expressed concerns that the proposed administrative appeal process would unduly restrict who may pursue an appeal, that the scope of participation by the appellant was ill-defined, and that appellants should not be required to exhaust the administrative appeal process before seeking relief in the Federal courts. Several commenters recommended broadening the definition of the term "affected party" to include adjacent landowners and the general public. Numerous comments were received regarding third party involvement in the administrative appeal process. A number of commenters favored limiting third party involvement to the extent provided for in the proposed rule. Other commenters requested expansion of third party involvement.

For permit denials and declined individual permits, these comments were addressed in the March 9, 1999, **Federal Register** document.

In response to the question regarding who may pursue an appeal, the Corps has modified the definition of the term "affected party" to include the permit applicant, the landowner, or the lease, easement, or option holder. The affected party must have received an approved JD or permit denial, or declined a proffered individual permit. Expanding the administrative appeal process to third parties would potentially increase the number of appealed actions by an order of magnitude or more. This would simply be unworkable.

We do not agree that third parties should be allowed to appeal JDs because JDs are primarily site-specific evaluations of technical criteria, such as tide lines or high water marks, hydric soils, hydrophytic vegetation, wetland hydrology, and interstate commerce connections. Adjacent landowners do not typically have knowledge of, or sufficient interest in, a property to become involved in such determinations. Often an adjacent landowner's interests are related to issues other than effects to aquatic resources. We believe that such interests are best addressed by local land use plans and zoning ordinances rather than by seeking to control potential development by challenging Corps JDs. In addition, broadening the definition of "affected party" for JDs to include adjacent landowners and the general public would likely produce a tremendous workload increase for the Corps. The Corps annually conducts approximately 60,000 JDs. Consequently, we have decided not to broaden our definition of "affected party" to include adjacent landowners and/or the general public. JDs are not subject to a public interest review or third party participation. JD appeals are limited to parties who have the requisite legal interest in the land that is under jurisdictional review. While the appeals regulation provides for some third party involvement, a few commenters have questioned whether the Corps has provided the appropriate level of public involvement. Consequently, the Corps will evaluate the first year of operation of the appeal process relative to third party involvement and will propose any appropriate modification to ensure effective public involvement in the appeal process.

(4) The Finality of Jurisdictional Determinations

A number of comments urged that approved JDs be recognized as "final agency actions" apparently under the view that JDs could thereby be immediately appealed in Federal court. However, even final agency actions must be "ripe" before a court can review them. In the past, a number of courts have held that jurisdictional determinations are not ripe for review until a landowner who disagrees with a JD has gone through the permitting process. The Federal Government believes this is the correct result, and nothing in today's rule is intended to alter this position. Ultimately, ripeness is a question that only the reviewing court can answer, and the Agency cannot satisfy ripeness concerns simply by declaring that an agency action is "final." Furthermore, JDs are not necessarily "final" even as an administrative matter. Physical circumstances can change over time, and the scope of regulatory jurisdiction when a JD is initially performed might be different from the scope of jurisdiction when a permit application is reviewed or when an enforcement action is taken. Accordingly, we have decided not to address in this rulemaking when a JD should be considered a final agency action.

(5) Enforcement-Related Issues

Many commenters questioned our proposal that, as a general rule, JDs made in the context of an enforcement case should not be administratively appealable under this rule, unless an after-the-fact (ATF) permit application was accepted by the Corps. In the proposed rule published in the July 19, 1995, **Federal Register** notice, the district engineer could accept, in exceptional circumstances, an appeal of a JD associated with an unauthorized activity without accepting an ATF permit application.

In response to these comments, we continue to believe that normally it is not appropriate to provide for appeals of approved JDs associated with unauthorized activities, except when the Corps has accepted an ATF permit application and denied it. However, we recognize that there can be rare cases where the interests of justice, fairness and administrative efficiency would be served by allowing the district engineer to accept an appeal of an approved JD without an ATF permit application. Therefore, we have determined that § 331.11 will be adopted as proposed so that the Corps ability to resolve enforcement actions expeditiously is preserved and so that there is not disparate treatment of JDs embodied in EPA and Corps administrative orders.

One commenter suggested that under the proposed rule the ATF permit process should more appropriately be titled an after-the-fact "enforcement" process. This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

Several commenters responded to our proposal to amend 33 CFR 326.3(e) to require a tolling agreement as a prerequisite to filing an administrative appeal of an adverse ATF permit decision. Several commenters recommended narrowing the scope of the proposed tolling agreement. As discussed in the March 9, 1999, **Federal Register** document, we determined that it would be appropriate to limit the tolling agreement, and 326.3(e) was amended by adding subparagraph (v). This subparagraph has been revised to include approved JDs.

Sections 326.3(e)(1)(v) and 331.11(c) state that any person alleged to have engaged in an unauthorized activity, who is either allowed to appeal an approved JD or files an ATF permit application that is accepted and processed by the Corps, agrees to a tolling of the Statute of Limitations and must sign an agreement to that effect. The tolling agreement would state that, in exchange for the Corps accepting the approved JD appeal or ATF permit application, the ATF permit applicant or recipient of an approved JD associated with an unauthorized activity has agreed that the Statute of Limitations would be suspended until one year after the final action has been taken on the approved JD appeal, ATF permit decision, or declined ATF individual permit.

The tolling agreement also applies to any succeeding administrative appeal of an ATF permit denial or declined ATF individual permit. The tolling period would terminate one year after a final decision on (1) the appeal of an approved JD; (2) the appeal of a proffered ATF permit; (3) the denial of an ATF permit application; or, (4) an appeal of such a denial decision, whichever is later. The one year post-decision period is necessary in the event that the United States determines that it would be appropriate to file an action in the Federal courts to obtain a satisfactory remedy for the unauthorized activity.

The tolling agreement would also state that approved JD appellants and permit applicants will not raise a Statute of Limitations defense in any subsequent enforcement action brought by the United States, with respect to the unauthorized activity for the period of time in which the Statute of Limitations is suspended. A separate tolling agreement is required for each unauthorized activity.

One commenter asked that the third sentence in § 331.11 be revised to indicate that the Corps "receives" rather than "may accept" an after-the-fact permit application, because the commenter believes the Corps could not refuse a permit application. This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

Comments were received questioning the basis of the requirement that initial corrective measures must be completed before an appeal could be accepted. One commenter stated that this requirement left an appellant little recourse, a result that appeared to be contrary to the purpose of the rule. Another believed that such a requirement was premature because it presupposes that the appeal lacks merit. These comments were addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

The proposed rule published in the July 19, 1995, **Federal Register** notice, in § 331.11(b), concerned the calculation of potential penalties for unauthorized activities. That provision stated that "[A]ny penalty imposed, as determined in the appropriate forum by the appropriate decision-maker, may also include in the calculation of penalty the time period involving the appeal process." This provision elicited comments stating that it was both ambiguous and potentially unlawful. In the March 9, 1999, **Federal Register** document, we addressed the comments concerning that issue and explained why that provision was omitted from the final rule.

(6) Suggested Procedural Changes and Clarifications for Specific Sections

Section 331.1: We have revised this section to state that approved JDs, in addition to permit denials with prejudice and declined individual permits, are subject to the administrative appeal process. We have also revised paragraph (b) of this section to describe the level of decision maker and removed paragraph (c) from this section.

Section 331.2: In this section, we have modified some definitions and added new definitions. These changes are discussed below.

Affected party: We have modified the definition of this term to include landowners and lease, easement, or option holders as affected parties. An individual who has an identifiable and substantial legal interest in the property is also considered an "affected party" for the purposes of this rule. We have also inserted the phrase "approved JD" into the definition since the revised rule now includes approved JDs as appealable actions.

Appealable Action: We have inserted the term "an approved JD" into the definition of this term since the revised rule now includes approved JDs in the administrative appeal process.

Approved jurisdictional determination: We have added a definition of this term to this section.

Basis of jurisdictional determination: We added a definition of this term to § 331.2 since the revised rule now includes approved JDs as appealable actions.

Declined permit: We have inserted the word "special" before the word "conditions" throughout the definition of this term to clarify that general conditions required by Corps regulations are not appealable. Also, special conditions added to an individual permit are usually the reason why proffered individual permits are declined by applicants.

Jurisdictional determination (JD): We have added a definition of this term to § 331.2 since the revised rule now includes approved JDs as appealable actions.

Several commenters said that it was not clear that "jurisdictional determinations" includes "wetland delineation." We have modified the language in the introductory comments in the preamble and the language in the rule to clarify that wetland delineations and wetland delineation verifications are jurisdictional determinations. We believe the definition of the term "jurisdictional determination" now clearly includes both the finding of Corps regulatory jurisdiction (*i.e.* a determination of the presence of waters of the United States on a parcel of land) and the delineation of boundaries of waters of the United States, including wetlands, on a parcel of land.

Several commenters noted that some sections of the proposed rule referred to the "current Federal manual for identifying and delineating wetlands" and the 1987 *Corps of Engineers Wetlands Delineation Manual* as if they were the same.

We acknowledge that this can be confusing. We have changed language in the introductory comments in the preamble and language in the rule to clarify that the 1987 *Corps of Engineers Wetlands Delineation Manual* is the currently accepted Federal manual for identifying and delineating wetlands. Recognizing that a new Federal wetland delineation manual or additional guidance or criteria may be developed in the future, all references within the rule to a delineation manual are made generically as "the current regulatory criteria for identifying and delineating wetlands" to minimize the impact to this rule in the event of adoption of a new manual. We have also inserted the phrase "and associated guidance" to refer to the guidance that was issued by the Corps in 1992 to clarify the use of the 1987 *Corps of Engineers Wetlands Delineation Manual* and address any potential future guidance that may be issued for a new Federal wetland delineation manual.

Notification of Appeal Process (NAP): We have modified the definition of this term by inserting the phrase "approved JD" into the list of actions that are subject to the administrative appeal process.

Preliminary JDs: We have added a definition of this term to this section.

Proffered Permit: We added a definition of this term to § 331.2 to clarify this term to distinguish the

initial proffered permit which is not appealable from the second proffered permit which is an appealable action.

Request for Appeal (RFA): We have modified the definition of this term by inserting the phrase "approved JD" into the list of actions that are subject to the administrative appeal process. We have also added the phrase "* * *" to allow the RO to conduct field tests or sampling for purposes directly related to the appeal * * *" to the end of the third sentence to clarify the reasons necessary for the right of entry.

Tolling agreement: We have added a definition of this term to this section.

Section 331.3(a): One commenter suggested including "prompt" with "fair, reasonable, and effective" in describing the administrative appeal process to emphasize the Corps commitment to timely action on appeals.

This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

Section 331.3(a)(2): One commenter suggested including the phrase "based on the merits of the appeal" in the first sentence.

This comment was addressed in the March 9, 1999, **Federal Register** document announcing the final rule for the administrative appeal process for the Corps regulatory program.

Section 331.4: Several commenters noted that the proposed rule did not contain a list of items that must be present in the administrative record that would be the subject of an administrative appeal.

These comments were addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program. We have added a sentence to this section stating that, for approved JDs, the notification must include an NAP fact sheet, an RFA form, and a basis for JD.

Section 331.5: This section has been revised to include approved JDs as appealable actions. In § 331.5(a)(2) we have added "incorrect application of the current regulatory criteria and associated guidance for identifying and delineating wetlands" as a reason for appeal. We have also revised § 331.5(b) by adding three more actions that are not appealable. These actions are: approved JDs associated with an individual permit where the permit has been accepted and signed by the permittee, preliminary JDs, and previously approved JDs that have been superceded by another approved JD.

Section 331.5(b)(1): One commenter suggested that it may not be clear to permit applicants that endorsement of a proffered individual permit indicates acceptance of the permit in its entirety, and effects a waiver of the applicant's right to appeal the terms and special conditions of the permit. This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

Section 331.6: One commenter suggested that we change the rule so that the RFA must be filed within 60 days of the date that the applicant receives the NAP, rather than within 60 days of the date of the NAP. One commenter suggested that it would be difficult for appellants to provide their reasons for requesting an appeal within 60 days unless the Corps provides a rationale as part of the JD or permit denial notification. Another commenter requested that information concerning JDs and permit decisions be made available to the public.

For permit denials and declined individual permits, these comments were addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program. We have modified and expanded § 331.4 to clarify that for JDs, the affected party will be sent a "basis of JD" summarizing the information used by the Corps to make the approved JD.

One commenter suggested modifying the sentence addressing "right of entry" in § 331.6 of the proposed rule published in the July 19, 1995, **Federal Register** notice to specify that any field tests or sampling by the RO be "for purposes directly related to the appeal." In the final rule published in the March 9, 1999, **Federal Register** document, we had moved this provision from § 331.6 and added it to the definition of "request for appeal" in § 331.2. In the revised rule published today, we have added "to allow the RO to clarify elements of the record or to conduct field test or sampling for purposes directly related to the appeal" to the end of the third sentence of that definition.

We have modified this section to include approved JDs as appealable actions. We have also added a sentence to § 331.6(e) to require a recipient of a general permit authorization or individual permit to complete the appeal process prior to commencing work in waters of the United States on the project site, if he does not accept the approved JD associated with that general permit authorization or individual permit or the special conditions of the proffered individual permit.

Section 331.7: We have revised this section to include approved JDs as appealable actions.

One commenter asked what the status of a permit application would be during the time an appeal of the JD for the project site is being considered. We acknowledge that there are no provisions addressing this situation in the rule. We understand this concern and are planning to issue guidance to the districts which will allow them flexibility to take appropriate action on individual applications. The district engineer can either continue or suspend the evaluation of the permit application until the appeal is resolved, depending on case-specific considerations. For instance, it may be in the interest of the applicant to continue evaluation of the permit application if the applicant is appealing the geographic limits of waters of the United States or if the applicant needs to comply with other laws which involve extended periods of review, such as consultation under Section 7 of the Endangered Species Act. However, in cases where the Corps must respond to a request for authorization within a specific time period (*e.g.*, the 30-day preconstruction notification period for certain nationwide permit activities), the district engineer should consider the PCN to be incomplete until the administrative appeal process for the approved JD has been completed. If the appeal concerns the issue of jurisdiction, it may be appropriate to suspend permit evaluation until the appeal is resolved, since a subsequent determination of "no jurisdiction" would obviate the need to continue the permit evaluation process. Due to the multitude of factors that must be considered for this issue, we have decided not to modify the rule to address this issue, but retain flexibility in the regulation and provide guidance to Corps districts concurrent with implementation of this rule.

Section 331.7(c) (Proposed § 331.8(a)): A number of commenters recommended that we allow division ROs to conduct site visits on appeals of JDs. The JD appeal process proposed in the July 19, 1995, **Federal Register** notice was a two level process, with the first level appeal to the district office that conducted the original JD. The second level appeal would have been to the division office. The district RO would have been allowed to conduct site visits, but not the division RO. In the interests of fairness to appellants, program efficiency, and cost effectiveness, we have modified the JD appeal process to a one level appeal to the division engineer. Consequently, the division RO will conduct site visits, if necessary, for the purpose of clarifying the administrative record.

Another commenter indicated that we should be required to obtain the landowner's permission before conducting a site inspection and that the landowner and his consultants be allowed to attend.

We believe that if a landowner wishes to request a review of a JD, he must make the site available to the district regulatory staff because a site visit is, under most circumstances, essential to adequately review a particular JD. The RFA is conditioned to grant the Corps right of entry to the project site. Section 331.7(c) requires the RO to notify the appellant and the appellant's authorized agents at least 15 days prior to the site investigation, to provide the appellant and his authorized agents the opportunity to attend the site investigation.

We received many comments concerning the deadlines proposed for appeals of approved JDs. Only one commenter strongly opposed the proposed deadlines; that commenter wanted all decisions reached within 120 days. Most of the commenters acknowledged that there may be seasonal constraints involved in making wetland determinations, unique site conditions, or other circumstances that may affect the timeliness of such decisions. One commenter wanted even greater flexibility than the proposed 12 month time period when there are extenuating circumstances, but another commenter was concerned that Corps districts may request an extension of time due to a "wet" season to gain additional time and delay their decisions. Two commenters suggested we follow the same time deadlines as NRCS.

After considering these comments and our proposed deadlines, we believe the time periods are reasonable, and we have retained them in the final rule. We will monitor the JD appeals program and if significant delays are occurring, we will revisit this issue. We have also added text to this section that explains how extenuating circumstances concerning site visits, such as seasonal hydrology, winter weather, or disturbed site conditions, should be addressed.

Section 331.7(d) (Proposed as § 331.7(d)(1)): Several commenters requested clarification of the purpose, location, and notification requirements for the approved JD appeal meeting. These comments, sometimes contradictory, suggested that the meetings should be: (1) informal; (2) more structured; (3) limited to clarification of the administrative record; (4) open to the oral presentation of the appellant's case; and (5) limited to the district staff asking questions rather than providing an opportunity to discuss settlement. One commenter suggested that approved JD appeal meetings should be held in the Corps office.

The language of this section has been modified to clarify that these meetings will be scheduled by the RO to review and discuss issues directly related to the approved JD under appeal. Additionally, we have revised this section to state that that the approved JD meeting should be held at a location of reasonable convenience to the appellant and near the parcel subject to the approved JD, since the site may be a considerable distance from the Corps office. Consequently, we anticipate that the RO may have to travel frequently and have included this factor in our estimate of the cost of the appeal process.

Section 331.7(e)(1) (Formerly § 331.7(d)(1)): Several commenters suggested that the RO should be required to notify the appellant a minimum number of days prior to the date of the appeal conference to ensure that the appellant has sufficient time to schedule and attend the meeting.

We addressed this comment in the March 9, 1999, **Federal Register** document announcing the final rule for the administrative appeal process for the Corps regulatory program.

One commenter suggested that it be made mandatory that complete transcripts be prepared for all presentations and discussions occurring during the appeal conference.

This comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

Section 331.7(f) (Formerly § 331.7(e)): One commenter suggested that the RO be allowed to communicate with both the appellant and the Corps district during the appeal process. Another commenter concurred with our initial proposal to prohibit any conversations between the RO and the parties to the appeal, and also suggested that the regulation should explicitly prohibit any conversations regarding the appeal between the RO and any third party.

We addressed these comments in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program. Those responses also apply to the administrative appeal process for approved JDs.

Section 331.7(g) (Formerly § 331.7(f)): We have revised this section to include approved JDs.

Section 331.10: We have made a few minor revisions to this section to clarify that this section applies to Corps permit decisions and not to approved JDs.

In § 331.10(a), we have clarified that the final letter to the applicant will include the original permit denial or proffered permit.

In § 331.10(b), the fourth sentence has been revised by adding the phrase "permit decisions" to clarify that the requirements listed in that sentence apply only to permit denials or declined individual permits.

One commenter observed that this section was silent with respect to the roles of the EPA and the NRCS in final agency decisions regarding JDs. This commenter argued that JDs are not only the responsibility of the Corps and that the appeals process should address other authorities in this regard. This rule is promulgated under authority of the Corps of Engineers and thus addresses only Corps approved jurisdictional determinations. Whether or not appeals are available for jurisdictional determinations by other agencies and the process for such appeals lies within the respective authorities of NRCS and EPA. Thus, this rule does not provide for appeal of such jurisdictional determinations, and nothing in this rule is intended to alter or abridge the authority of any other federal agency with respect to jurisdictional determinations for which they are responsible. To further clarify this issue the definition for "Approved Jurisdictional Determination" provides that such JDs, which are the only JDs that can be appealed, are "Corps" determinations.

Section 331.11: We have revised this section to include approved JDs associated with permit denials and declined individual permits attendant with after-the-fact permit applications. We have also adopted the language in the July 19, 1995, proposed regulation indicating that normally approved JDs associated with unauthorized activities are not appealable except where an after the fact permit application has been accepted by the Corps and denied, unless the Corps determines that extraordinary circumstances warranted such an appeal.

In the last sentence of § 331.11(c), we have also replaced the word "written" with "signed" to clarify that a signed tolling agreement must be submitted to the district engineer before an after-the-fact permit application or an

administrative appeal associated with an unauthorized activity will be accepted by the district engineer.

Section 331.12: We have revised the last sentence of this section to clarify that this section only applies to permit denials or proffered permits.

(7) General Expressions of Opposition and Support

A number of comments addressed the estimated costs of administering the proposed administrative appeal process. One commenter indicated that our estimated costs were too low. Two commenters said that our estimated costs were too high.

We addressed these comments in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

III. Application of Rule to Prior Regulatory Decisions

Affected parties may appeal approved JDs for those determinations occurring on or after March 28, 2000. Such requests will be accepted for administrative appeal in accordance with this regulation. Approved JDs completed prior to the publication date of the final regulation will not be accepted under the appeal process. During the initial implementation period of these regulations, the RO may delay the processing an RFA for up to 60 days after March 28, 2000.

One commenter asked whether the availability of an administrative appeal process would affect in-process litigation, initiated in response to a permit denied with prejudice after the date of the publication of the final rule in the **Federal Register**. That comment was addressed in the March 9, 1999, **Federal Register** document containing the final rule for the administrative appeal process for the Corps regulatory program.

IV. Environmental Documentation

We have determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, because the Corps prepares appropriate environmental documentation, including Environmental Impact Statements when required, for all permit decisions. Therefore, environmental documentation under the National Environmental Policy Act (NEPA) is not required for the revision of this rule. Furthermore, JDs do not authorize an applicant or landowner to conduct work in waters of the United States if a Section 404 and/or Section 10 permit is required. JDs only describe presence and extent of waters of the United States based on standard technical criteria. Therefore, environmental documentation under the NEPA is not required for these actions. Moreover, this regulation for administrative appeal only establishes a one-level review for approved JDs, denied permits and declined individual permits, as needed to ensure that applicable regulations, policies, practices, and procedures, including the preparation of appropriate environmental documentation, have been appropriately followed.

V. Executive Order 12291 and the Regulatory Flexibility Act

We do not believe that this revision of the final rule meets the definition of a major rule under Executive Order 12291, and therefore we do not believe that a regulatory impact analysis is required. The revised final rule should reduce the burden on the public by offering an administrative appeal process for certain Corps decisions, and, in many instances, should allow the applicant to avoid the more time-consuming and costly alternative of challenging a Corps permit decision in the Federal courts.

We also do not believe that this revision of the final rule will have a significant impact on a substantial number of small entities pursuant to Section 605(b) of the Regulatory Flexibility Act of 1980, because the revised final rule only creates an optional review of jurisdictional determinations through an administrative appeal process. The final rule should be less time consuming and less costly to permit applicants who want to appeal a decision with which they disagree, but prior to March 9, 1999, could only seek to have the decision reviewed through the Federal courts. In addition, this rule establishes an opportunity for affected parties to appeal approved JDs, which was not available in the past. Furthermore, since the administrative appeal process is optional (*i.e.*, at the applicant's or landowner's discretion), we have minimized the potential of any increased regulatory burden on small entities. If an applicant or landowner chooses to forego an appeal, the net effect of the final rule would be zero.

Note: The term "he" and its derivatives used in these regulations are generic and should be considered as applying to both male and female.

List of Subjects

33 CFR Part 320

Administrative practice and procedure, Dams, Environmental protection, Intergovernmental relations, Navigation (water), Water pollution control, Waterways.

33 CFR Part 326

Administrative practice and procedure, Intergovernmental relations, Investigations, Law enforcement, Navigation (water), Penalties, Water pollution control, Waterways.

33 CFR Part 331

Administrative practice and procedure, Environmental protection, Navigation (water), Water pollution control, Waterways.

Dated: March 22, 2000.

Joseph W. Westphal,

Assistant Secretary of the Army (Civil Works), Department of the Army.

Accordingly, 33 CFR, Chapter II is amended as follows:

PART 320—GENERAL REGULATORY POLICIES

1. The authority citation for Part 320 continues to read as follows:

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413.

2. Amend § 320.1 by revising the last five sentences of paragraph (a)(2) to read as follows:

§ 320.1 Purpose and scope.

(a) * * *

(2) * * * A district engineer's decision on an approved jurisdictional determination, a permit denial, or a declined individual permit is subject to an administrative appeal by the affected party in accordance with the procedures and authorities contained in 33 CFR Part 331. Such administrative appeal must meet the criteria in 33 CFR 331.5; otherwise, no administrative appeal of that decision is allowed. The terms "approved jurisdictional determination," "permit denial," and "declined permit" are defined at 33 CFR 331.2. There shall be no administrative appeal of any issued individual permit that an applicant has accepted, unless the authorized work has not started in waters of the United States, and that issued permit is subsequently modified by the district engineer pursuant to 33 CFR 325.7 (see 33 CFR 331.5(b)(1)). An affected party must exhaust any administrative appeal available pursuant to 33 CFR Part 331 and receive a final Corps decision on the appealed action prior to filing a lawsuit in the Federal courts (see 33 CFR 331.12).

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PART 326—ENFORCEMENT

3. The authority citation for Part 326 continues to read as follows:

Authority: 33 U.S.C. 401 *et seq.*; 33 U.S.C. 1344; 33 U.S.C. 1413; 33 U.S.C. 2101.

4. Amend § 326.3 to revise paragraph (e)(1)(v) to read as follows:

§ 326.3 Unauthorized activities.

* * * * *

(e) * * *

(1) * * *

(v) No appeal of an approved jurisdictional determination (JD) associated with an unauthorized activity or after-the-fact permit application will be accepted unless and until the applicant has furnished a signed statute of limitations tolling agreement to the district engineer. A separate statute of limitations tolling agreement will be prepared for each unauthorized activity. Any person who appeals an approved JD associated with an unauthorized activity or applies for an after-the-fact permit, where the application is accepted and evaluated by the Corps, thereby agrees that the statute of limitations regarding any violation associated with that application is suspended until one year after the final Corps decision, as defined at 33 CFR 331.10. Moreover, the recipient of an approved JD associated with an unauthorized activity or an application for an after-the-fact permit must also memorialize that agreement to toll the statute of limitations, by signing an agreement to that effect, in exchange for the Corps acceptance of the after-the-fact permit application, and/or any administrative appeal. Such agreement will state that, in exchange for the Corps acceptance of any after-the-fact permit application and/or any administrative appeal associated with the unauthorized activity, the responsible party agrees that the statute of limitations will be suspended (i.e., tolled) until one year after the final Corps decision on the after-the-fact permit application or, if there is an administrative appeal, one year after the final Corps decision as defined at 33 CFR 331.10, whichever date is later.

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5. Revise part 331 to read as follows:

PART 331—ADMINISTRATIVE APPEAL PROCESS

Sec.

331.1 Purpose and policy.
331.2 Definitions.
331.3 Review officer.
331.4 Notification of appealable actions.
331.5 Criteria.
331.6 Filing an appeal.
331.7 Review procedures.
331.8 Timeframes for final appeal decisions.
331.9 Final appeal decision.
331.10 Final Corps decision.
331.11 Unauthorized activities.
331.12 Exhaustion of administrative remedies.
Appendix A to Part 331—Administrative Appeal Process for Permit Denials and Proffered Permits
Appendix B to Part 331—Applicant Options With Initial Proffered Permit
Appendix C to Part 331—Administrative Appeal Process for Approved Jurisdictional Determinations
Appendix D to Part 331—Process for Unacceptable Request for Appeal

Authority: 33 U.S.C. 401 *et seq.*, 1344, 1413.

§ 331.1 Purpose and policy.

(a) *General.* The purpose of this Part is to establish policies and procedures to be used for the administrative appeal of approved jurisdictional determinations (JDs), permit applications denied with prejudice, and declined permits. The appeal process will allow the affected party to pursue an administrative appeal of certain Corps of Engineers decisions with which they disagree. The basis for an appeal and the specific policies and procedures of the appeal process are described in the following sections. It shall be the policy of the Corps of Engineers to promote and maintain an administrative appeal process that is independent, objective, fair, prompt, and efficient.

(b) *Level of decision maker.* Appealable actions decided by a division engineer or higher authority may be appealed to an Army official at least one level higher than the decision maker. This higher Army official shall make the decision on the merits of the appeal, and may appoint a qualified individual to act as a review officer (as defined in § 331.2). References to the division engineer in this Part shall be understood as also referring to a higher level Army official when such official is conducting an administrative appeal.

§ 331.2 Definitions.

The terms and definitions contained in 33 CFR Parts 320 through 330 are applicable to this part. In addition, the following terms are defined for the purposes of this part:

Affected party means a permit applicant, landowner, a lease, easement or option holder (*i.e.*, an individual who has an identifiable and substantial legal interest in the property) who has received an approved JD, permit denial, or has declined a proffered individual permit.

Agent(s) means the affected party's business partner, attorney, consultant, engineer, planner, or any individual with legal authority to represent the appellant's interests.

Appealable action means an approved JD, a permit denial, or a declined permit, as these terms are defined in this section.

Appellant means an affected party who has filed an appeal of an approved JD, a permit denial or declined permit under the criteria and procedures of this part.

Approved jurisdictional determination means a Corps document stating the presence or absence of waters of the United States on a parcel or a written statement and map identifying the limits of waters of the United States on a parcel. Approved JDs are clearly designated appealable actions and will include a basis of JD with the document.

Basis of Jurisdictional determination is a summary of the indicators that support the Corps approved JD. Indicators supporting the Corps approved JD can include, but are not limited to: indicators of wetland hydrology, hydric soils, and hydrophytic plant communities; indicators of ordinary high water marks, high tide lines, or mean high water marks; indicators of adjacency to navigable or interstate waters; indicators that the wetland or waterbody is of part of a tributary system; or indicators of linkages between isolated water bodies and interstate or foreign commerce.

Declined permit means a proffered individual permit, including a letter of permission, that an applicant has refused to accept, because he has objections to the terms and special conditions therein. A declined permit can also be an individual permit that the applicant originally accepted, but where such permit was subsequently modified by the district engineer, pursuant to 33 CFR 325.7, in such a manner that the resulting permit contains terms and special conditions that lead the applicant to decline the modified permit, provided that the applicant has not started work in waters of the United States authorized by such permit. Where an applicant declines a permit (either initial or modified), the applicant does not have a valid permit to conduct regulated activities in waters of the United States, and must not begin construction of the work requiring a Corps permit unless and until the applicant receives and accepts a valid Corps permit.

Denial determination means a letter from the district engineer detailing the reasons a permit was denied with prejudice. The decision document for

the project will be attached to the denial determination in all cases.

Jurisdictional determination (JD) means a written Corps determination that a wetland and/or waterbody is subject to regulatory jurisdiction under Section 404 of the Clean Water Act (33 U.S.C. 1344) or a written determination that a waterbody is subject to regulatory jurisdiction under Section 9 or 10 of the Rivers and Harbors Act of 1899 (33 U.S.C. 401 *et seq.*). Additionally, the term includes a written reverification of expired JDs and a written reverification of JDs where new information has become available that may affect the previously written determination. For example, such geographic JDs may include, but are not limited to, one or more of the following determinations: the presence or absence of wetlands; the location(s) of the wetland boundary, ordinary high water mark, mean high water mark, and/or high tide line; interstate commerce nexus for isolated waters; and adjacency of wetlands to other waters of the United States. All JDs will be in writing and will be identified as either preliminary or approved. JDs do not include determinations that a particular activity requires a DA permit.

Notification of Appeal Process (NAP) means a fact sheet that explains the criteria and procedures of the administrative appeal process. Every approved JD, permit denial, and every proffered individual permit returned for reconsideration after review by the district engineer in accordance with § 331.6(b) will have an NAP form attached.

Notification of Applicant Options (NAO) means a fact sheet explaining an applicant's options with a proffered individual permit under the administrative appeal process.

Permit denial means a written denial with prejudice (see 33 CFR 320.4(j)) of an individual permit application as defined in 33 CFR 325.5(b).

Preliminary JDs are written indications that there may be waters of the United States on a parcel or indications of the approximate location(s) of waters of the United States on a parcel. Preliminary JDs are advisory in nature and may not be appealed. Preliminary JDs include compliance orders that have an implicit JD, but no approved JD.

Proffered permit means a permit that is sent to an applicant that is in the proper format for the applicant to sign (for a standard permit) or accept (for a letter of permission). The term "initial proffered permit" as used in this part refers to the first time a permit is sent to the applicant. The initial proffered permit is not an appealable action. However, the applicant may object to the terms or conditions of the initial proffered permit and, if so, a second reconsidered permit will be sent to the applicant. The term "proffered permit" as used in this part refers to the second permit that is sent to the applicant. Such proffered permit is an appealable action.

Request for appeal (RFA) means the affected party's official request to initiate the appeal process. The RFA must include the name of the affected party, the Corps file number of the approved JD, denied permit, or declined permit, the reason(s) for the appeal, and any supporting data and information. No new information may be submitted. A grant of right of entry for the Corps to the project site is a condition of the RFA to allow the RO to clarify elements of the record or to conduct field tests or sampling for purposes directly related to the appeal. A standard RFA form will be provided to the affected party with the NAP form. For appeals of decisions related to unauthorized activities a signed tolling agreement, as required by 33 CFR 326.3(e)(1)(v), must be included with the RFA, unless a signed tolling agreement has previously been furnished to the Corps district office. The affected party initiates the administrative appeal process by providing an acceptable RFA to the appropriate Corps of Engineers division office. An acceptable RFA contains all the required information and provides reasons for appeal that meets the criteria identified in § 331.5.

Review officer (RO) means the Corps official responsible for assisting the division engineer or higher authority responsible for rendering the final decision on the merits of an appeal.

Tolling agreement refers to a document signed by any person who appeals an approved JD associated with an unauthorized activity or applies for an after-the-fact (ATF) permit, where the application is accepted and evaluated by the Corps. The agreement states that the affected party agrees to have the statute of limitations regarding any violation associated with that approved JD or application "tolled" or temporarily set aside until one year after the final Corps decision, as defined at § 331.10. No ATF permit application or administrative appeal associated with an unauthorized activity will be accepted until a tolling agreement is furnished to the district engineer.

§ 331.3 Review officer.

(a) *Authority.* (1) The division engineer has the authority and responsibility for administering a fair, reasonable, prompt, and effective administrative appeal process. The division engineer may act as the review officer (RO), or may delegate, either generically or on a case-by-case basis, any authority or responsibility described in this part as that of the RO. With the exception of JDs, as described in this paragraph (a)(1), the division engineer may not delegate any authority or responsibility described in this part as that of the division engineer. For approved JDs only, the division engineer may delegate any authority or responsibility described in this part as that of the division engineer, including the final appeal decision. In such cases, any delegated authority must be granted to an official that is at the same or higher grade level than the grade level of the official that signed the approved JD. Regardless of any delegation of authority or responsibility for ROs or for final appeal decisions for approved JDs, the division engineer retains overall responsibility for the administrative appeal process.

(2) The RO will assist the division engineer in reaching and documenting the division engineer's decision on the merits of an appeal, if the division engineer has delegated this responsibility as explained in paragraph (a)(1) of this section. The division engineer has the authority to make the final decision on the merits of the appeal. Neither the RO nor the division engineer has the authority to make a final decision to issue or deny any particular permit nor to make an approved JD, pursuant to the administrative appeal process established by this part. The authority to issue or deny permits remains with the district engineer. However, the division engineer may exercise the authority at 33 CFR 325.8(c) to elevate any permit application, and subsequently make the final permit decision. In such a case, any appeal process of the district engineer's initial decision is terminated. If a particular permit application is elevated to the division engineer pursuant to 33 CFR 325.8(c), and the division engineer's decision on the permit application is a permit denial or results in a declined permit, that permit denial or declined permit would be subject to an administrative appeal to the Chief of Engineers.

(3) *Qualifications.* The RO will be a Corps employee with extensive knowledge of the Corps regulatory program. Where the permit decision being appealed was made by the division engineer or higher authority, a Corps official at least one level higher than the decision maker shall make the decision on the merits of the RFA, and this Corps official shall appoint a qualified individual as the RO to conduct the appeal process.

(b) *General*—(1) *Independence.* The RO will not perform, or have been involved with, the preparation, review, or decision making of the action being appealed. The RO will be independent and impartial in reviewing any appeal, and when assisting the division engineer to make a decision on the merits of the appeal.

(2) *Review.* The RO will conduct an independent review of the administrative record to address the reasons for the appeal cited by the applicant in the RFA. In addition, to the extent that it is practicable and feasible, the RO will also conduct an independent review of the administrative record to verify that the record provides an adequate and reasonable basis supporting the district engineer's decision, that facts or analysis essential to the district engineer's decision have not been omitted from the administrative record, and that all relevant requirements of law, regulations, and officially promulgated Corps policy guidance have been satisfied. Should the RO require expert advice regarding any subject, he may seek such advice from any employee of the Corps or of another Federal or state agency, or from any recognized expert, so long as that person had not been previously involved in the action under review.

§ 331.4 Notification of appealable actions.

Affected parties will be notified in writing of a Corps decision on those activities that are eligible for an appeal. For approved JDs, the notification must include an NAP fact sheet, an RFA form, and a basis of JD. For permit denials, the notification must include a copy of the decision document for the permit application, an NAP fact sheet and an RFA form. For proffered individual permits, when the initial proffered permit is sent to the applicant, the notification must include an NAO fact sheet. For declined permits (i.e., proffered individual permits that the applicant refuses to accept and sends back to the Corps), the notification must include an NAP fact sheet and an RFA form. Additionally, an affected party has the right to obtain a copy of the administrative record.

§ 331.5 Criteria.

(a) *Criteria for appeal*—(1) *Submission of RFA.* The appellant must submit a completed RFA (as defined at § 331.2) to the appropriate division office in order to appeal an approved JD, a permit denial, or a declined permit.

An individual permit that has been signed by the applicant, and subsequently unilaterally modified by the district engineer pursuant to 33 CFR 325.7, may be appealed under this process, provided that the applicant has not started work in waters of the United States authorized by the permit. The RFA must be received by the division engineer within 60 days of the date of the NAP.

(2) *Reasons for appeal.* The reason(s) for requesting an appeal of an approved JD, a permit denial, or a declined permit must be specifically stated in the RFA and must be more than a simple request for appeal because the affected party did not like the approved JD, permit decision, or the permit conditions. Examples of reasons for appeals include, but are not limited to, the following: A procedural error; an incorrect application of law, regulation or officially promulgated policy; omission of material fact; incorrect application of the current regulatory criteria and associated guidance for identifying and delineating wetlands; incorrect application of the Section 404(b)(1) Guidelines (see 40 CFR Part 230); or use of incorrect data. The reasons for appealing a permit denial or a declined permit may include jurisdiction issues, whether or not a previous approved JD was appealed.

(b) *Actions not appealable.* An action or decision is not subject to an administrative appeal under this part if it falls into one or more of the following categories:

(1) An individual permit decision (including a letter of permission or a standard permit with special conditions), where the permit has been accepted and signed by the permittee. By signing the permit, the applicant waives all rights to appeal the terms and conditions of the permit, unless the authorized work has not started in waters of the United States and that issued permit is subsequently modified by the district engineer pursuant to 33 CFR 325.7;

(2) Any site-specific matter that has been the subject of a final decision of the Federal courts;

(3) A final Corps decision that has resulted from additional analysis and evaluation, as directed by a final appeal decision;

(4) A permit denial without prejudice or a declined permit, where the controlling factor cannot be changed by the Corps decision maker (*e.g.*, the requirements of a binding statute, regulation, state Section 401 water quality certification, state coastal zone management disapproval, *etc.* (See 33 CFR 320.4(j));

(5) A permit denial case where the applicant has subsequently modified the proposed project, because this would constitute an amended application that would require a new public interest review, rather than an appeal of the existing record and decision;

(6) Any request for the appeal of an approved JD, a denied permit, or a declined permit where the RFA has not been received by the division engineer within 60 days of the date of the NAP;

(7) A previously approved JD that has been superceded by another approved JD based on new information or data submitted by the applicant. The new approved JD is an appealable action;

(8) An approved JD associated with an individual permit where the permit has been accepted and signed by the permittee;

(9) A preliminary JD; or

(10) A JD associated with unauthorized activities except as provided in § 331.11.

§ 331.6 Filing an appeal.

(a) An affected party appealing an approved JD, permit denial or declined permit must submit an RFA that is received by the division engineer within 60 days of the date of the NAP. Flow charts illustrating the appeal process are in the Appendices of this part.

(b) In the case where an applicant objects to an initial proffered individual permit, the appeal process proceeds as follows. To initiate the appeal process regarding the terms and special conditions of the permit, the applicant must write a letter to the district engineer explaining his objections to the permit. The district engineer, upon evaluation of the applicant's objections, may: Modify the permit to address all of the applicant's objections or modify the permit to address some, but not all, of the applicant's objections, or not modify the permit, having determined that the permit should be issued as previously written. In the event that the district engineer agrees to modify the initial proffered individual permit to address all of the applicant's objections, the district engineer will proffer such modified permit to the applicant, enclosing an NAP fact sheet and an RFA form as well. Should the district engineer modify the initial proffered individual permit to address some, but not all, of the applicant's objections, the district engineer will proffer such modified permit to the applicant, enclosing an NAP fact sheet, RFA form, and a copy of the decision document for the project. If the district engineer does not modify the initial proffered individual permit, the district engineer will proffer the unmodified permit to

the applicant a second time, enclosing an NAP fact sheet, an RFA form, and a copy of the decision document. If the applicant still has objections, after receiving the second proffered permit (modified or unmodified), the applicant may decline such proffered permit; this declined permit may be appealed to the division engineer upon submittal of a complete RFA form. The completed RFA must be received by the division engineer within 60 days of the NAP. A flow chart of an applicant's options for an initial proffered individual permit is shown in Appendix B of this part. A flow chart of the appeal process for a permit denial or a declined permit (*i.e.*, a proffered permit declined after the Corps decision on the applicant's objections to the initial proffered permit) is shown in Appendix A of this part. A flow chart of the appeal process for an approved jurisdictional determination is shown in Appendix C of this part. A flow chart of the process for when an unacceptable request for appeal is returned to an applicant is shown in Appendix D of this part.

(c) An approved JD will be reconsidered by the district engineer if the affected party submits new information or data to the district engineer within 60 days of the date of the NAP. (An RFA that contains new information will either be returned to the district engineer for reconsideration or the appeal will be processed if the applicant withdraws the new information.) The district engineer has 60 days from the receipt of such new information or data to review the new information or data, consider whether or not that information changes the previously approved JD, and, reissue the approved JD or issue a new approved JD. The reconsideration of an approved JD by the district engineer does not commence the administrative appeal process. The affected party may appeal the district engineer's reissued or new approved JD.

(d) The district engineer may not delegate his signature authority to deny the permit with prejudice or to return an individual permit to the applicant with unresolved objections. The district engineer may delegate signature authority for JDs, including approved JDs.

(e) Affected parties may appeal approved JDs where the determination was dated after March 28, 2000, but may not appeal approved JDs dated on or before March 28, 2000. The Corps will begin processing JD appeals no later than May 30, 2000. All appeals must meet the criteria set forth in § 331.5. If work is authorized by either general or individual permit, and the affected party wishes to request an appeal of the JD associated with the general permit authorization or individual permit or the special conditions of the proffered individual permit, the appeal must be received by the Corps and the appeal process concluded prior to the commencement of any work in waters of the United States and prior to any work that could alter the hydrology of waters of the United States.

§ 331.7 Review procedures.

(a) *General.* The administrative appeal process for approved JDs, permit denials, and declined permits is a one level appeal, normally to the division engineer. The appeal process will normally be conducted by the RO. The RO will document the appeal process, and assist the division engineer in making a decision on the merits of the appeal. The division engineer may participate in the appeal process as the division engineer deems appropriate. The division engineer will make the decision on the merits of the appeal, and provide any instructions, as appropriate, to the district engineer.

(b) *Requests for the appeal of approved JDs, permit denials, or declined permits.* Upon receipt of an RFA, the RO shall review the RFA to determine whether the RFA is acceptable (*i.e.*, complete and meets the criteria for appeal). If the RFA is acceptable, the RO will so notify the appellant in writing within 30 days of the receipt of the acceptable RFA. If the RO determines that the RFA is not complete the RO will so notify the appellant in writing within 30 days of the receipt of the RFA detailing the reason(s) why the RFA is not complete. If the RO believes that the RFA does not meet the criteria for appeal (see § 331.5), the RO will make a recommendation on the RFA to the division engineer. If the division engineer determines that the RFA is not acceptable, the division engineer will notify the appellant of this determination by a certified letter detailing the reason(s) why the appeal failed to meet the criteria for appeal. No further administrative appeal is available, unless the appellant revises the RFA to correct the deficiencies noted in the division engineer's letter or the RO's letter. The revised RFA must be received by the division engineer within 30 days of the date of the Corps letter indicating that the initial RFA is not acceptable. If the RO determines that the revised RFA is still not complete, the RO will again so notify the appellant in writing within 30 days of the receipt of the RFA detailing the reason(s) why the RFA is not complete. If the division engineer determines that the revised RFA is still not acceptable, the division engineer will notify the appellant of this determination by a certified letter within 30 days of the date of the receipt of the revised RFA, and will advise the appellant that the matter is not eligible for appeal. No further RFAs will be accepted after this point.

(c) *Site investigations.* Within 30 days of receipt of an acceptable RFA, the RO should determine if a site investigation is needed to clarify the administrative record. The RO should normally conduct any such site investigation within 60 days of receipt of an acceptable RFA. The RO may also conduct a site investigation at the request of the appellant, provided the RO has determined that such an investigation would be of benefit in interpreting the administrative record. The appellant and the appellant's authorized agent(s) must be provided an opportunity to participate in any site investigation, and will be given 15 days notice of any site investigation. The RO will attempt to schedule any site investigation at the earliest practicable time acceptable to both the RO and the appellant. The RO, the appellant, the appellant's agent(s) and the Corps district staff are authorized participants at any site investigation. The RO may also invite any other party the RO has determined to be appropriate, such as any technical experts consulted by the Corps. For permit denials and declined permit appeals, any site investigation should be scheduled in conjunction with the appeal review conference, where practicable. If extenuating circumstances occur at the site that preclude the appellant and/or the RO from conducting any required site visit within 60 days, the RO may extend the time period for review. Examples of extenuating circumstances may include seasonal hydrologic conditions, winter weather, or disturbed site conditions. The site visit must be conducted as soon as practicable as allowed by the extenuating circumstances, however, in no case shall any site visit extend the total appeals process beyond twelve months from the date of receipt of the RFA. If any site visit delay is necessary, the RO will notify the appellant in writing.

(d) *Approved JD appeal meeting.* The RO may schedule an informal meeting moderated by the RO or conference call with the appellant, his authorized agent, or both, and appropriate Corps regulatory personnel to review and discuss issues directly related to the appeal for the purpose of clarifying the administrative record. If a meeting is held, the appellant will bear his own

costs associated with necessary arrangements, exhibits, travel, and representatives. The approved JD appeal meeting should be held at a location of reasonable convenience to the appellant and near the site where the approved JD was conducted.

(e) *Permit denials and declined permits appeal conference.* Conferences held in accordance with this part will be informal, and will be chaired by the RO. The purpose of the appeal conference is to provide a forum that allows the participants to discuss freely all relevant issues and material facts associated with the appeal. An appeal conference will be held for every appeal of a permit denial or a declined permit, unless the RO and the appellant mutually agree to forego a conference. The conference will take place within 60 days of receipt of an acceptable RFA, unless the RO determines that unforeseen or unusual circumstances require scheduling the conference for a later date. The purpose of the conference will be to allow the appellant and the Corps district representatives to discuss supporting data and information on issues previously identified in the administrative record, and to allow the RO the opportunity to clarify elements of the administrative record. Presentations by the appellant and the Corps district representatives may include interpretation, clarification, or explanation of the legal, policy, and factual bases for their positions. The conference will be governed by the following guidelines:

(1) *Notification.* The RO will set a date, time, and location for the conference. The RO will notify the appellant and the Corps district office in writing within 30 days of receipt of the RFA, and not less than 15 days before the date of the conference.

(2) *Facilities.* The conference will be held at a location that has suitable facilities and that is reasonably convenient to the appellant, preferably in the proximity of the project site. Public facilities available at no expense are preferred. If a free facility is not available, the Corps will pay the cost for the facility.

(3) *Participants.* The RO, the appellant, the appellant's agent(s) and the Corps district staff are authorized participants in the conference. The RO may also invite any other party the RO has determined to be appropriate, such as any technical experts consulted by the Corps, adjacent property owners or Federal or state agency personnel to clarify elements of the administrative record. The division engineer and/or the district engineer may attend the conference at their discretion. If the appellant or his authorized agent(s) fail to attend the appeal conference, the appeal process is terminated, unless the RO excuses the appellant for a justifiable reason. Furthermore, should the process be terminated in such a manner, the district engineer's original decision on the appealed action will be sustained.

(4) *The role of the RO.* The RO shall be in charge of conducting the conference. The RO shall open the conference with a summary of the policies and procedures for conducting the conference. The RO will conduct a fair and impartial conference, hear and fully consider all relevant issues and facts, and seek clarification of any issues of the administrative record, as needed, to allow the division engineer to make a final determination on the merits of the appeal. The RO will also be responsible for documenting the appeal conference.

(5) *Appellant rights.* The appellant, and/or the appellant's authorized agent(s), will be given a reasonable opportunity to present the appellant's views regarding the subject permit denial or declined permit.

(6) *Subject matter.* The purpose of the appeal conference will be to discuss the reasons for appeal contained in the RFA. Any material in the administrative record may be discussed during the conference, but the discussion should be focused on relevant issues needed to address the reasons for appeal contained in the RFA. The RO may question the appellant or the Corps representatives with respect to interpretation of particular issues in the record, or otherwise to clarify elements of the administrative record. Issues not identified in the administrative record by the date of the NAP for the application may not be raised or discussed, because substantive new information or project modifications would be treated as a new permit application (see § 331.5(b)(5)).

(7) *Documentation of the appeal conference.* The appeal conference is an informal proceeding, intended to provide clarifications and explanations of the administrative record for the RO and the division engineer; it is not intended to supplement the administrative record. Consequently, the proceedings of the conference will not be recorded verbatim by the Corps or any other party attending the conference, and no verbatim transcripts of the conference will be made. However, after the conference, the RO will write a memorandum for the record (MFR) summarizing the presentations made at the conference, and will provide a copy of that MFR to the division engineer, the appellant, and the district engineer.

(8) *Appellant costs.* The appellant will be responsible for his own expenses for attending the appeal conference.

(f) *Basis of decision and communication with the RO.* The appeal of an approved JD, a permit denial, or a declined permit is limited to the information contained in the administrative record by the date of the NAP for the application or approved JD, the proceedings of the appeal conference, and any relevant information gathered by the RO as described in § 331.5. Neither the appellant nor the Corps may present new information not already contained in the administrative record, but both parties may interpret, clarify or explain issues and information contained in the record.

(g) *Applicability of appeal decisions.* Because a decision to determine geographic jurisdiction, deny a permit, or condition a permit depends on the facts, circumstances, and physical conditions particular to the specific project and/or site being evaluated, appeal decisions would be of little or no precedential utility. Therefore, an appeal decision of the division engineer is applicable only to the instant appeal, and has no other precedential effect. Such a decision may not be cited in any other administrative appeal, and may not be used as precedent for the evaluation of any other jurisdictional determination or permit application. While administrative appeal decisions lack precedential value and may not be cited by an appellant or a district engineer in any other appeal proceeding, the Corps goal is to have the Corps regulatory program operate as consistently as possible, particularly with respect to interpretations of law, regulation, an Executive Order, and officially-promulgated policy. Therefore, a copy of each appeal decision will be forwarded to Corps Headquarters; those decisions will be periodically reviewed at the headquarters level for consistency with law, Executive Orders, and policy. Additional official guidance will be issued as necessary to maintain or improve the consistency of the Corps' appellate and permit decisions.

§ 331.8 Timeframes for final appeal decisions.

The Division Engineer will make a final decision on the merits of the appeal at the earliest practicable time, in accordance with the following time limits. The administrative appeal process is initiated by the receipt of an RFA by the division engineer. The

Corps will review the RFA to determine whether the RFA is acceptable. The Corps will notify the appellant accordingly within 30 days of the receipt of the RFA in accordance with § 331.7(b). If the Corps determines that the RFA is acceptable, the RO will immediately request the administrative record from the district engineer. The division engineer will normally make a final decision on the merits of the appeal within 90 days of the receipt of an acceptable RFA unless any site visit is delayed pursuant to § 331.7(c). In such case, the RO will complete the appeal review and the division engineer will make a final appeal decision within 30 days of the site visit. In no case will a site visit delay extend the total appeal process beyond twelve months from the date of receipt of an acceptable RFA.

§ 331.9 Final appeal decision.

(a) In accordance with the authorities contained in § 331.3(a), the division engineer will make a decision on the merits of the appeal. While reviewing an appeal and reaching a decision on the merits of an appeal, the division engineer can consult with or seek information from any person, including the district engineer.

(b) The division engineer will disapprove the entirety of or any part of the district engineer's decision only if he determines that the decision on some relevant matter was arbitrary, capricious, an abuse of discretion, not supported by substantial evidence in the administrative record, or plainly contrary to a requirement of law, regulation, an Executive Order, or officially promulgated Corps policy guidance. The division engineer will not attempt to substitute his judgment for that of the district engineer regarding a matter of fact, so long as the district engineer's determination was supported by substantial evidence in the administrative record, or regarding any other matter if the district engineer's determination was reasonable and within the zone of discretion delegated to the district engineer by Corps regulations. The division engineer may instruct the district engineer on how to correct any procedural error that was prejudicial to the appellant (i.e., that was not a "harmless" procedural error), or to reconsider the decision where any essential part of the district engineer's decision was not supported by accurate or sufficient information, or analysis, in the administrative record. The division engineer will document his decision on the merits of the appeal in writing, and provide a copy of this decision to the applicant (using certified mail) and the district engineer.

(c) The final decision of the division engineer on the merits of the appeal will conclude the administrative appeal process, and this decision will be filed in the administrative record for the project.

§ 331.10 Final Corps decision.

The final Corps decision on a permit application is the initial decision to issue or deny a permit, unless the applicant submits an RFA, and the division engineer accepts the RFA, pursuant to this Part. The final Corps decision on an appealed action is as follows:

(a) If the division engineer determines that the appeal is without merit, the final Corps decision is the district engineer's letter advising the applicant that the division engineer has decided that the appeal is without merit, confirming the district engineer's initial decision, and sending the permit denial or the proffered permit for signature to the appellant; or

(b) If the division engineer determines that the appeal has merit, the final Corps decision is the district engineer's decision made pursuant to the division engineer's remand of the appealed action. The division engineer will remand the decision to the district engineer with specific instructions to review the administrative record, and to further analyze or evaluate specific issues. If the district engineer determines that the effects of the district engineer's reconsideration of the administrative record would be narrow in scope and impact, the district engineer must provide notification only to those parties who commented or participated in the original review, and would allow 15 days for the submission of supplemental comments. For permit decisions, where the district engineer determines that the effect of the district engineer's reconsideration of the administrative record would be substantial in scope and impact, the district engineer's review process will include issuance of a new public notice, and/or preparation of a supplemental environmental analysis and decision document (see 33 CFR 325.7). Subsequently, the district engineer's decision made pursuant to the division engineer's remand of the appealed action becomes the final Corps permit decision. Nothing in this part precludes the agencies' authorities pursuant to Section 404(q) of the Clean Water Act.

§ 331.11 Unauthorized activities.

Approved JDs, permit denials, and declined permits associated with after-the-fact permit applications are appealable actions for the purposes of this part. If the Corps accepts an after-the-fact permit application, an administrative appeal of an approved JD, permit denial, or declined permit may be filed and processed in accordance with these regulations subject to the provisions of paragraphs (a), (b), and (c) of this section. An appeal of an approved JD associated with unauthorized activities will normally not be accepted unless the Corps accepts an after-the-fact permit application. However, in rare cases, the district engineer may accept an appeal of such an approved JD, if the district engineer determines that the interests of justice, fairness, and administrative efficiency would be served thereby. Furthermore, no such appeal will be accepted if the unauthorized activity is the subject of a referral to the Department of Justice or the EPA, or for which the EPA has the lead enforcement authority or has requested lead enforcement authority.

(a) *Initial corrective measures.* If the district engineer determines that initial corrective measures are necessary pursuant to 33 CFR 326.3(d), an RFA for an appealable action will not be accepted by the Corps, until the initial corrective measures have been completed to the satisfaction of the district engineer.

(b) *Penalties.* If an affected party requests, under this Section, an administrative appeal of an appealable action prior to the resolution of the unauthorized activity, and the division engineer determines that the appeal has no merit, the responsible party remains subject to any civil, criminal, and administrative penalties as provided by law.

(c) *Tolling of statute of limitations.* Any person who appeals an approved JD associated with an unauthorized activity or applies for an after-the-fact permit, where the application is accepted and processed by the Corps, thereby agrees that the statute of limitations regarding any violation associated with that approved JD or application is tolled until one year after the final Corps decision, as defined at § 331.10. Moreover, the recipient of an approved JD associated with an unauthorized activity or applicant for an after-the-fact permit must also memorialize that agreement to toll the statute of limitations, by signing an agreement to that effect, in exchange for the Corps acceptance of the after-the-fact permit application, and/or any administrative appeal (See 33 CFR 326.3(e)(1)(v)). No administrative appeal associated with an unauthorized activity or after-the-fact permit application will be accepted until such signed tolling

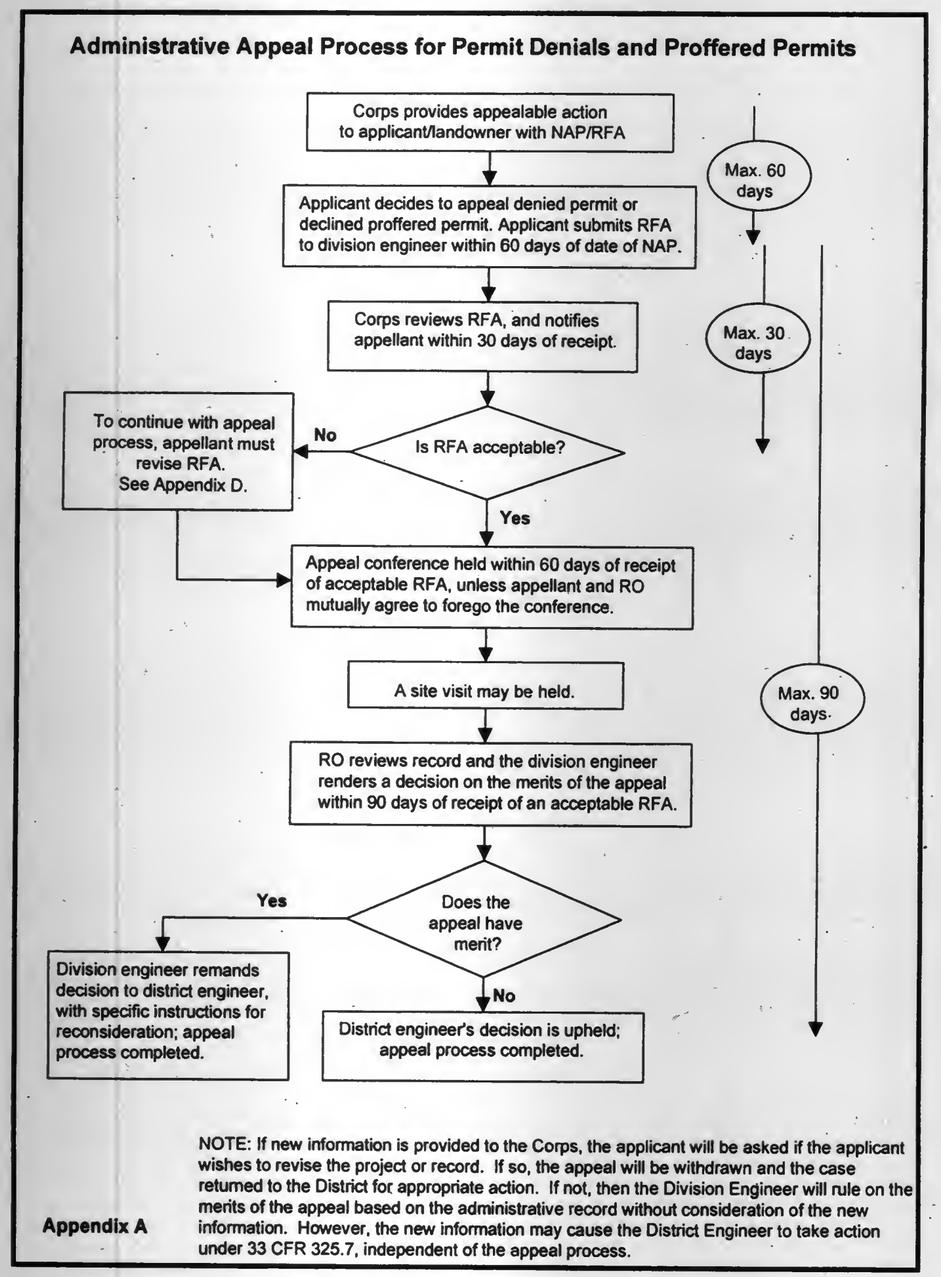
agreement is furnished to the district engineer.

§ 331.12 Exhaustion of administrative remedies.

No affected party may file a legal action in the Federal courts based on a permit denial or a proffered permit until after a final Corps decision has been made and the appellant has exhausted all applicable administrative remedies under this part. The appellant is considered to have exhausted all administrative remedies when a final Corps permit decision is made in accordance with § 331.10.

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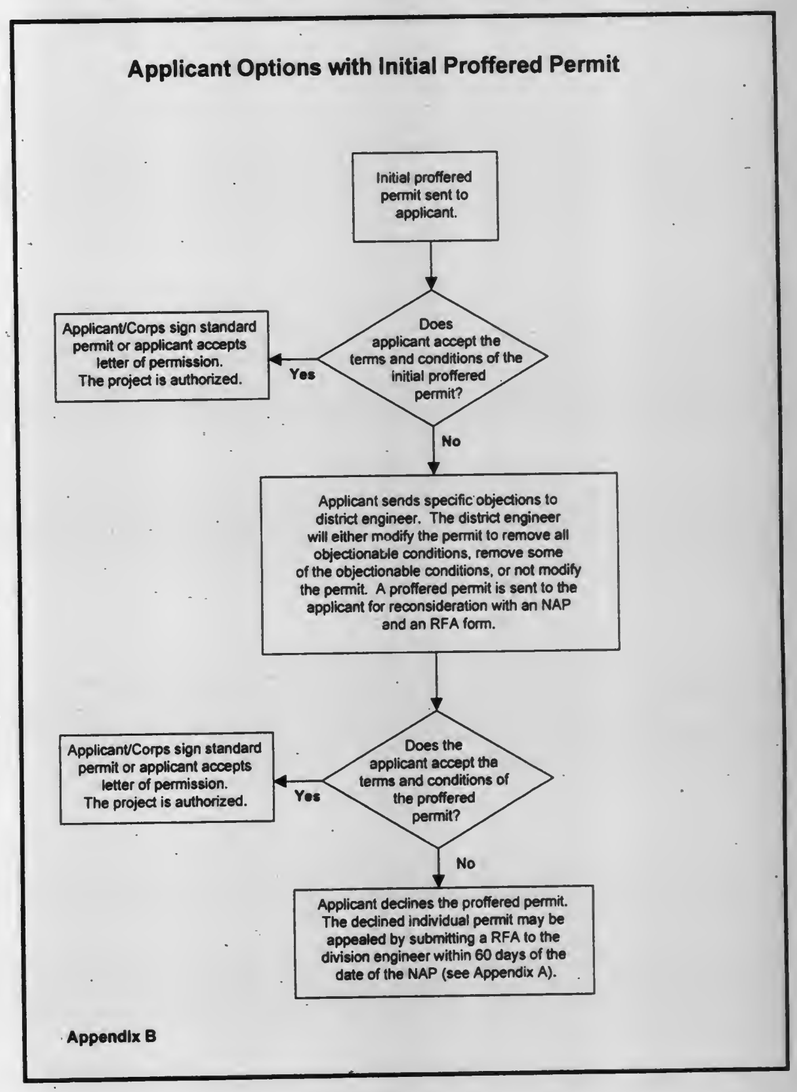
Appendix A to Part 331—Administrative Appeal Process for Permit Denials and Proffered Permits



NOTE: If new information is provided to the Corps, the applicant will be asked if the applicant wishes to revise the project or record. If so, the appeal will be withdrawn and the case returned to the District for appropriate action. If not, then the Division Engineer will rule on the merits of the appeal based on the administrative record without consideration of the new information. However, the new information may cause the District Engineer to take action under 33 CFR 325.7, independent of the appeal process.

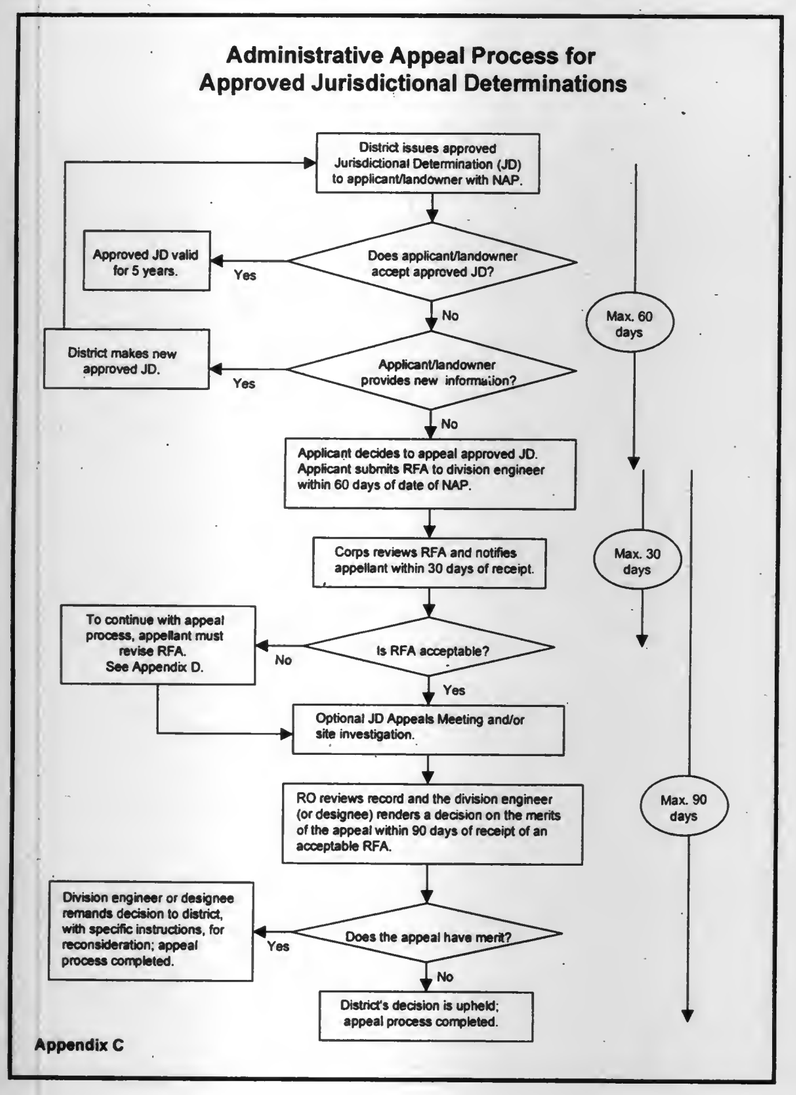
Appendix A

Appendix B to Part 331—Applicant Options With Initial Proffered Permit

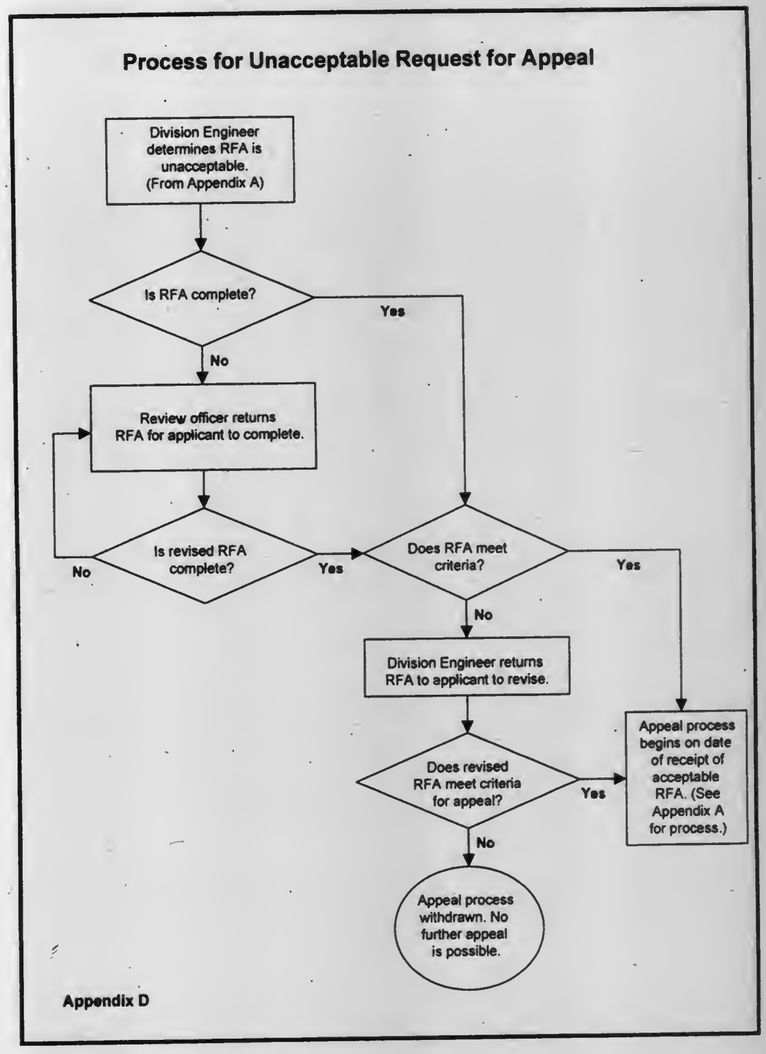


Appendix B

Appendix C to Part 331—Administrative Appeal Process for Approved Jurisdictional Determinations



Appendix D to Part 331—Process for Unacceptable Request for Appeal



[FR Doc. 00–7439 Filed 3–27–00; 8:45 am]
BILLING CODE 3710–92–C

Federal Register

Tuesday,
March 28, 2000

Part IV

The President

Proclamation 7282—Education and Sharing Day, U.S.A., 2000

Federal Register
Vol. 65, No. 60
Tuesday, March 28, 2000

Presidential Documents

Title 3—

The President

Proclamation 7282 of March 24, 2000

Education and Sharing Day, U.S.A., 2000

By the President of the United States of America

A Proclamation

As we welcome a new millennium, America stands at a unique moment in time. We can look back over the past century, where we experienced profound advances in science, medicine, and technology that fundamentally altered the world in which we live. At the same time, we can look ahead to a new century filled with unparalleled promise and unlimited possibilities for further progress.

Throughout our Nation's history, education has been at the heart of achievement in America, and it is the key to meeting the challenges and seizing the opportunities that lie before us. To succeed in the global community of the 21st century, we must provide all our citizens with a world-class, well-rounded education. We must ensure that every American has not only the knowledge and the skills he or she needs to flourish, but also a solid foundation of moral guidance and values. As the technology revolution breaks down barriers of geography, culture, and economic status, it is more crucial than ever that young people learn the importance of tolerance, cooperation, and sharing. Imbued with these values and enriched by a quality education, our children can look forward to a bright future.

Rabbi Menachem Mendel Schneerson, the Lubavitcher Rebbe, recognized early the importance of such comprehensive learning. In addition to being one of the world's highly respected religious leaders, he was also an accomplished scholar in mathematics and science. Understanding that both secular education and spiritual training contribute enormously to human development, he sought to provide young people with fresh opportunities for academic, social, and moral enrichment through the more than 2,000 educational and social institutions he established throughout our country and around the world. His efforts continue to bear fruit today, helping a new generation to develop into responsible and mature adults.

As we observe this special day, let us renew our commitment to excellence in education and to nurturing our young people's academic and spiritual development. Let us also remember the example of Rabbi Schneerson and pass on to our children the values and knowledge that have strengthened our Nation in the past and that will empower us to face the challenges of the future.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim March 28, 2000, as Education and Sharing Day, U.S.A. I invite Government officials, educators, volunteers, and all the citizens of the United States to observe this day with appropriate activities, programs, and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–7825
Filed 3–27–00; 11:45 am]
Billing code 3195–01–P

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Federal Register
Vol. 65, No. 60
Tuesday, March 28, 2000

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FEDERAL REGISTER PAGES AND DATE, MARCH

10931–11196	1
11197–11454	2
11455–11734	3
11735–11858	6
11859–12060	7
12061–12426	8
12427–12904	9
12905–13234	10
13235–13658	13
13659–13864	14
13865–14206	15
14207–14430	16
14431–14780	17
14781–15052	20
15053–15202	21
15203–15520	22
15521–15822	23
15823–16116	24
16117–16296	27
16297–16508	28

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:
7276 11197
7277 11199
7278 11455
7279 11733
7280 12903
7281 15201
7282 16507

Executive Orders:
12170 (See Notice of March 13, 2000) 13863
12957 (Continued by Notice of March 13, 2000) 13863
12959 (See Notice of March 13, 2000) 13863
13059 (See Notice of March 13, 2000) 13863
13146 11201
13147 13233

Administrative Orders:
Memorandum of January 5, 2000 15823

Presidential Determinations:
No. 2000-15 of February 24, 2000 10931
No. 2000-16 of February 29, 2000 15797
No. 2000-17 of March 2, 2000 15821
Nc. 2000-18 of March 16, 2000 16297

Notices:
March 13, 2000 13863

4 CFR

27 15203
28 15203

5 CFR

Ch. LXXIII 15825
213 14431
315 14431
335 14431
531 15875
532 15521
792 13659

Proposed Rules:
3 14477
213 14477
315 14477

7 CFR

2 12427
75 15830
205 13512
210 12429
215 12429
220 12429
225 12429
226 12429
301 11203
457 11457
600 14781
601 14781
729 16117
761 14432
762 14432
915 15203
916 15205
917 15205
993 12061
955 12442
985 15832
989 15214
1301 16118
1304 16118
1305 16118
1306 16118
1307 16118
1308 16118
1421 13865
1427 13865
1464 10933
1710 ..... 14207, 14785
1721 10933
3019 14406

Proposed Rules:
6 14478
20 11483
27 10979
28 ..... 10979, 12140
29 13915
57 14652
97 13917
201 12952
205 15579
360 14926
930 15580
1140 10981
1160 14484
1205 12146
1210 14485
1306 12141
1307 12141
1309 12141
1710 12952
1717 12952
1718 12952

8 CFR

3 ..... 15835, 15846
212 ..... 14774, 15835, 15846
214 14774
240 ..... 15835, 15846
245 ..... 15835, 15846
248 14774
274a 15835, 15846
278A 14774
299 ..... 15835, 15846

9 CFR

74 15216
78 12064

93 15216
94 15521
130 16122

Proposed Rules:
71 11485
77 ..... 11485, 11912, 15877
78 11485
93 12486
98 12486
113 12151
130 12486
317 14486
318 ..... 14486, 14489
319 ..... 144867, 14489
327 14489
381 14486
590 11486

10 CFR

72 ..... 11458, 12444, 14790, 16299
170 11204
600 14406
810 16124
820 15218

Proposed Rules:
Ch. XVIII 13700
21 11488
50 11488
52 11488
54 11488
100 11488
170 16250
171 16250
430 14128
431 10984
960 11755
963 11755

11 CFR

108 15221

Proposed Rules:
9038 15273

12 CFR

Ch. IX 13663
5 12905
204 12916
208 ..... 14810, 15050
225 ..... 14433, 14440, 15053, 16302, 16460
303 15526
340 14816
362 15526
563 16302
563c 16302
563g 16302
701 15224
724 10933
745 10933
925 13866
950 13866
1500 16460
1501 ..... 12064, 14819
1510 15050

Proposed Rules:
3 12320
8 15111
208 12320
225 12320
325 12320
563 16350
563c 16350
563g 16350
567 12320
614 14491
620 14494
709 11250
716 10988
741 10988
742 15275
1750 13251

13 CFR

Proposed Rules:
124 12955

14 CFR

25 ..... 13666, 16128, 16305
39 ..... 10934, 10937, 10938, 11204, 11459, 11859, 11861, 12071, 12072, 12073, 12075, 12077, 12080, 12081, 12082, 12084, 12085, 12460, 12462, 12463, 13668, 13871, 13875, 13877, 14207, 14209, 14822, 14826, 14827, 14831, 14834, 14838, 14844, 14846, 14847, 14849, 14852, 15226, 15230, 15232, 15531, 15534, 15536, 15537, 15857, 15858, 16129, 16309, 16311
71 ..... 11369, 11461, 11866, 12630, 12917, 12918, 14344, 14855, 14856, 14857, 15859, 15860, 15861, 16130, 16131
91 ..... 16112, 16114
95 14442
97 ..... 13669, 13671, 13673, 15540, 15541, 15544
1260 14406

Proposed Rules:
25 13703
39 ..... 11006, 11505, 11940, 11942, 12489, 12957, 13251, 13919, 13921, 13923, 14216, 14218, 15278, 15280, 15584, 15878, 15880, 15882, 16151, 16153, 16154, 16157, 16158, 16352
71 ..... 12153, 12957, 13704, 13705, 13707, 14497, 15282, 15586
108 15113
109 15113
111 15113
129 15113
191 15113
255 11009

15 CFR

14 14406
734 12919
736 14858
738 ..... 12919, 14857
740 ..... 12919, 14857
742 ..... 12919, 14857
743 12919
744 ..... 12919, 14444
748 12919
756 ..... 14857, 14861
762 14858
766 14862
770 14857
774 ..... 12919, 13879, 14862

16 CFR

305 16132
1615 12924
1616 12924
1630 12929
1631 12929
1632 12935

Proposed Rules:
307 11944
312 11947
313 11174

17 CFR

1 12466
4 ..... 10939, 12938
15 14452
16 14452
17 14452
200 12469
240 13235
242 13235

Proposed Rules:
4 ..... 11253, 12318
228 ..... 11507, 15043
229 11507
230 ..... 11507, 15500, 16160
232 11507
239 ..... 11507, 15500
240 ..... 11507, 16160
243 16160
248 12354
249 ..... 11507, 16160
250 11507
259 11507
260 11507
269 11507
270 ..... 11507, 15500
274 ..... 11507, 15500

18 CFR

35 12088
157 ..... 11461, 12115, 15234
380 15234

19 CFR

12 12470
24 13880
111 13880
178 13880

Proposed Rules:
101 16354

20 CFR

220 14458
322 14459
404 11866
416 11866

21 CFR

20 11881
101 11205
173 16312
176 13675
177 ..... 15057, 16313
178 ..... 15545, 16314, 16315
524 13904
558 11888
640 13678
868 11464
870 11465
1301 13235
1308 13235

Proposed Rules:
101 14219
314 12154

22 CFR

22 14211
23 14211
41 14768
51 14211
139 14764
145 14406
226 14406

Proposed Rules:
22 13253

23 CFR

1340 13679

24 CFR

5 16294
200 15043
266 16294
401 15452
402 15452
905 14422

Proposed Rules:
81 12632
990 11525

25 CFR

290 14461

26 CFR

1 ..... 11205, 11467, 12471, 15547, 15548, 15862, 16143, 16316, 16317, 16318, 16319
301 ..... 11211, 11215
601 15862
602 ..... 11205, 11211, 11215

Proposed Rules:
1 ..... 11012, 11269, 15587
301 ..... 11271, 11272

27 CFR

4 11889
5 11889
7 11889
16 11889
75 15058

Proposed Rules:
00 15115
4 12490
70 15115
75 15115
90 15115

28 CFR

70 14406

29 CFR

95 14406
4022 ..... 14752, 14753
4044 ..... 13905, 14752
4050 14752

Proposed Rules:
1614 11019
1910 ..... 11948, 13254

30 CFR

202 11467
206 ..... 11467, 14022
250 ..... 14469, 15862
938 15553

Proposed Rules:
914 ..... 11950, 12492

31 CFR

103 13683

32 CFR

22 14406
32 14406
668 13906
776 15059

2001 16320

33 CFR

26 14863
95 14223
100 15558
110 11892
117 ..... 11893, 12943, 15238
127 10943
140 14226
141 14226
142 14226
143 14226
144 14226
145 14226
146 14226
147 14226
154 10943
155 ..... 10943, 14470
159 10943
161 14863
164 10943
165 14864
167 12944
177 14223
183 10943
320 16486
326 16486
331 16486

Proposed Rules:
100 ..... 11274, 13926, 14498, 17355, 16358
110 ..... 13926, 14498, 16355, 16358, 16361
165 ..... 13926, 14498, 14501, 14502, 15283, 15285, 16355, 16358, 16361
175 11410
177 11410
179 11410
181 11410
183 11410

34 CFR

74 14406
1100 11894

Proposed Rules:
606 15115
607 15115
608 15115

36 CFR

Ch. XV 14760
1 15077
3 15077
13 15077
701 ..... 11735, 11736
1210 14406

Proposed Rules:
212 11680
261 11680
295 11680
1190 12493
1191 12493
1280 15592

37 CFR

1 14864

Proposed Rules:
201 ..... 14227, 14505

38 CFR

3 12116
19 14471
20 14471
21 ..... 12117, 13693

Proposed Rules:
3 13254

39 CFR

111 12946

Proposed Rules:
20 11023
111 13258
913 14229
952 13707

40 CFR

9 15090
30 14406
51 11222
52 ..... 10944, 11468, 12118, 12472, 12474, 12476, 12481, 12948, 13239, 13694, 14212, 14873, 15240, 15244, 15864, 16320
55 15867
60 13242
62 ..... 16320, 16323
63 ..... 11231, 15690
68 13243
86 11898
136 14344
141 11372
148 14472
180 ..... 10946, 11234, 11243, 11736, 12122, 12129, 15248, 16143
261 14472
262 12378
268 14472
271 14472
300 ..... 13697, 14475
302 14472
431 15091
445 14344

Proposed Rules:
51 ..... 11024, 16364
52 ..... 11027, 11275, 11524, 12494, 12495, 12499, 12958, 13260, 13709, 14506, 14510, 14930, 15286, 15287, 15883, 16364, 16365
62 16365
63 11278
81 14510
141 11372
152 15883
156 15884
438 11755
503 11278
755 16094

42 CFR

121 15252
405 13911
410 13911

Proposed Rules:
410 13082
493 14510

43 CFR

12 14406
3500 11475

45 CFR

74 14406
400 15410
401 15410
612 11740
613 11740

46 CFR

28 10943
30 10943
32 10943
34 10943
35 10943
38 10943
39 10943
54 10943
56 10943
58 10943
61 10943
63 10943
76 10943
77 10943
78 10943
91 11904
92 10943
95 10943
96 10943
97 10943
105 10943
108 10943
109 10943
110 10943
111 10943
114 10943
115 11904
119 10943
125 10943
132 11904
133 11904
134 11904
151 10943
153 10943
154 10943
160 10943
161 10943
162 10943
163 10943
164 10943
170 10943
174 10943
175 10943
182 10943
189 11904
190 10943
193 10943
195 10943
199 ..... 10943, 11904
515 15252

Proposed Rules:
2 11410
10 11410
15 11410
24 11410
25 11410
26 11410
28 11410
30 11410
70 11410
90 11410
114 11410
169 11410
175 11410
188 11410
199 11410

47 CFR

1 14476
20 15559
22 15559
24 ..... 14213, 15559
25 16327
27 12483
32 16328
54 12135
64 16328
73 ..... 11476, 11477, 11750, 13250, 16149, 16335, 16336
76 ..... 12135, 15559
80 15559
90 15559
99 15559

Proposed Rules:
Ch. I 15599
1 13933
2 14230
26 14230
27 14230
54 13933
61 13933
69 13933
73 ..... 11537, 11538, 11539, 11540, 11541, 11955, 12155, 13260, 13261, 15600, 15885, 15886, 16160, 16366

48 CFR

Ch. 1 ..... 16285, 16286
Ch. 2 14380
Ch. 5 11246
1 16285
6 16285
9 16285
15 16285
19 16275
32 16276
52 ..... 16276, 16285
202 14397
204 14397
207 14397
208 ..... 14397, 14400
212 14400
222 ..... 14397, 14402
244 14400
247 14400
252 ..... 14397, 14400, 14402
1806 12484
1808 12484
1811 12484
1813 12484
1815 12484
1825 12484
1835 12484
1837 12484
1842 12484
1848 12484
1851 12484
2409 12950

Proposed Rules:
Ch. 9 13416

49 CFR

19.....14406
193.....10950
350.....15092
355.....15092
385.....11904
571.....11751
572.....10961, 15254

Proposed Rules:

Ch I.....11541
40.....13261, 15118
171.....11028
172.....11028
173.....11028
174.....11028, 16161
175.....11028
176.....11028
177.....11028, 16161
178.....11028
179.....11028
180.....11028
190.....15290
191.....15290
192.....15290
195.....15290
222.....15298
229.....15298

50 CFR

17 .....14876, 14886, 14896, 16052
300.....14907
622.....12136, 16336
635.....15873
648 .....11478, 11909, 15110, 15576, 16341, 16345
660.....11480, 16346
679 .....10978, 11247, 11481, 11909, 12137, 12138, 13698, 14918, 14924, 15271, 15272, 15577, 16150

Proposed Rules:

16.....11756
17 .....12155, 12181, 13262, 13935, 14513, 14931, 14935, 15887
216.....11542
223.....12959
224.....12959, 13935
300.....13284
600.....11956
622.....11028, 14518
648 .....11029, 11956, 14519
679 .....11756, 11973, 12500

REMINDERS

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RULES GOING INTO EFFECT MARCH 28, 2000

DEFENSE DEPARTMENT
Engineers Corps
Administrative appeal process; published 3-28-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
- Acidified sodium chlorite solutions; published 3-28-00

Food additives:
- Adjuvants, production aids, and sanitizers—
  - Aluminum, hydroxybis [2,4,8,10-tetrakis (1,1-dimethylethyl)-6-hydroxy-12H-dibenzo[d,g] [1,3,2]dioxyaphosphocin 67-oxidato]-; published 3-28-00
  - N,N'''-1,2-ethanediylibis (CAS Reg. No. 106990-43-6); published 3-28-00
- Polymers—
  - Ethylene-octene-1 copolymers; published 3-28-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
- Airbus; published 2-22-00
- Boeing; published 2-22-00
- McDonnell Douglas; published 2-22-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
- Classification services to growers; 2000 user fees; comments due by 4-7-00; published 3-8-00

Cotton research and promotion order:
- Imported content and cotton content of imported products; supplemental assessment calculation; comments due by 4-7-00; published 3-8-00

Meats, prepared meats, and meat products; grading, certification, and standards:
- Imported beef, lamb, veal, and calf carcasses; official grading; comments due by 4-3-00; published 2-1-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
- Asian longhorned beetle; comments due by 4-3-00; published 2-2-00

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
- National school lunch and school breakfast programs; alternatives to standard application and meal counting procedures; comments due by 4-7-00; published 2-7-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
International fisheries regulations:
- Antarctic marine living resources; harvesting and dealer permits, and catch documentation; comments due by 4-7-00; published 3-13-00

Marine mammals:
- Incidental taking—
  - Eastern Tropical Pacific Ocean; tuna purse seine vessels; compliance with International Dolphin Conservation Program; comments due by 4-3-00; published 1-3-00
  - Naval activities; USS Winston S. Churchill shock testing; comments due by 4-3-00; published 3-3-00

DEFENSE DEPARTMENT
Vocational rehabilitation and education:
- Veterans education—
  - Educational assistance; new criteria for approving courses; comments due by 4-3-00; published 2-2-00

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural gas companies (Natural Gas Act):
- Section 7 new service applications; optional certificate and abandonment procedures; comments due by 4-3-00; published 2-16-00

Practice and procedure:
- Public utilities; annual charges; comments due by 4-3-00; published 2-3-00

ENVIRONMENTAL PROTECTION AGENCY
Air programs; State authority delegations:
- Arizona; comments due by 4-3-00; published 3-2-00

Air quality implementation plans; approval and promulgation; various States:
- California; comments due by 4-3-00; published 3-2-00
- Illinois; comments due by 4-3-00; published 3-3-00

Hazardous wastes:
- Land disposal restrictions—
  - Polychlorinated biphenyls; underlying hazardous constituent in soil; Phase IV standards deferral; comments due by 4-3-00; published 2-16-00

Superfund program:
- National oil and hazardous substances contingency plan—
  - National priorities list update; comments due by 4-4-00; published 2-4-00

Water supply:
- National primary drinking water regulations—
  - Public water systems; unregulated contaminant monitoring regulation; comments due by 4-3-00; published 3-2-00
  - Public water systems; unregulated contaminant monitoring regulation; comments due by 4-3-00; published 3-2-00

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
- Montana; comments due by 4-3-00; published 2-25-00
- Texas; comments due by 4-3-00; published 2-23-00
- Wisconsin; comments due by 4-3-00; published 2-25-00

FEDERAL TRADE COMMISSION
Children's Online Privacy Protection Act; implementation
- Safe harbor guidelines; comments due by 4-6-00; published 3-7-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Medical care and examinations:
- Indian health—
  - Indian Self-Determination Act; contracts; comments due by 4-3-00; published 2-1-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
- Critical habitat determinations—
  - Coastal California gnatcatcher; comments due by 4-7-00; published 2-7-00

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
- Indiana; comments due by 4-6-00; published 3-7-00

JUSTICE DEPARTMENT
Drug Enforcement Administration
Records, reports, and exports of listed chemicals:
- Red phosphorus; comments due by 4-3-00; published 2-2-00

JUSTICE DEPARTMENT
Privacy Act; implementation; comments due by 4-3-00; published 2-23-00

MANAGEMENT AND BUDGET OFFICE
Federal Procurement Policy Office
Acquisition regulations:
- Cost Accounting Standards Board—
  - Cost accounting standards coverage; applicability, thresholds, and waivers; comments due by 4-7-00; published 2-7-00

MERIT SYSTEMS PROTECTION BOARD
Practice and procedure:
- Uniformed Services Employment and Reemployment Rights Act and Veterans Employment Opportunities Act; implementation—
  - Appeals; comments due by 4-4-00; published 2-4-00

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Records management:

Computer tapes, rewind requirement; elimination; comments due by 4-3-00; published 2-3-00

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
Involuntary liquidation; adjudication of creditor claims; comments due by 4-3-00; published 3-2-00

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:
Barbour, Donald A.; comments due by 4-5-00; published 1-21-00

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list additions; comments due by 4-5-00; published 1-21-00

SECURITIES AND EXCHANGE COMMISSION

Securities:
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR)—
Modernization; filing requirements; changes; comments due by 4-3-00; published 3-3-00

TRANSPORTATION DEPARTMENT

Coast Guard

Boating safety:
Personal flotation devices; Federal requirements for wearing; comments due by 4-3-00; published 10-5-99
Uninspected passenger vessels; comments due by 4-3-00; published 3-2-00

Outer Continental Shelf activities regulations; revision; comments due by 4-5-00; published 12-7-99

Practice and procedure:
Adjudicative procedures consolidation; comments due by 4-3-00; published 10-5-99

Vocational rehabilitation and education:
Veterans education—
New criteria for approving courses; comments due by 4-3-00; published 2-2-00

TRANSPORTATION DEPARTMENT

Workplace drug and alcohol testing programs:
Procedures; revision; comments due by 4-7-00; published 12-9-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:
Aviation security screening; comments due by 4-4-00; published 1-5-00

Airworthiness directives:
Boeing; comments due by 4-3-00; published 2-3-00
CFM International, S.A.; comments due by 4-3-00; published 3-3-00
Dornier; comments due by 4-6-00; published 3-7-00
Eurocopter Deutschland GMBH; comments due by 4-4-00; published 2-4-00
Lockheed; comments due by 4-3-00; published 2-16-00
McDonnell Douglas; comments due by 4-3-00; published 2-16-00

Class D and Class E airspace; comments due by 4-3-00; published 2-18-00

Class E airspace; comments due by 4-3-00; published 2-17-00

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:
Lodi, CA; comments due by 4-7-00; published 2-7-00

TREASURY DEPARTMENT

Comptroller of the Currency

Electronic banking; facilitation of national banks' use of new technologies; advance notice; comments due by 4-3-00; published 2-2-00

TREASURY DEPARTMENT

Customs Service

Tariff-rate quotas:
Sugar-containing products; export certificates; comments due by 4-4-00; published 2-4-00

TREASURY DEPARTMENT

Internal Revenue Service

Excise taxes:
Deposits and tax returns; comments due by 4-6-00; published 1-7-00

Income taxes:
Credit for increasing research activities; comments due by 4-5-00; published 1-4-00

Procedure and administration:
Agriculture Department; return information disclosures for statistical purposes and related activities; cross reference; comments due by 4-3-00; published 1-4-00

TREASURY DEPARTMENT

Resolution Funding Corporation operations; comments due by 4-7-00; published 3-8-00

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:
Veterans educations—
New criteria for approving courses; comments due by 4-3-00; published 2-2-00

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S. 376/P.L. 106–180

Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

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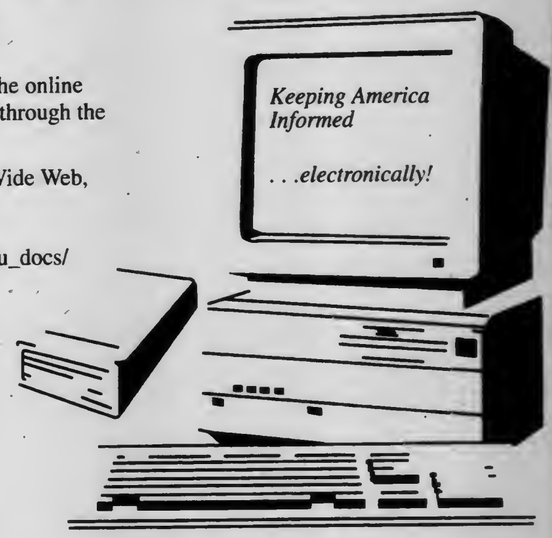
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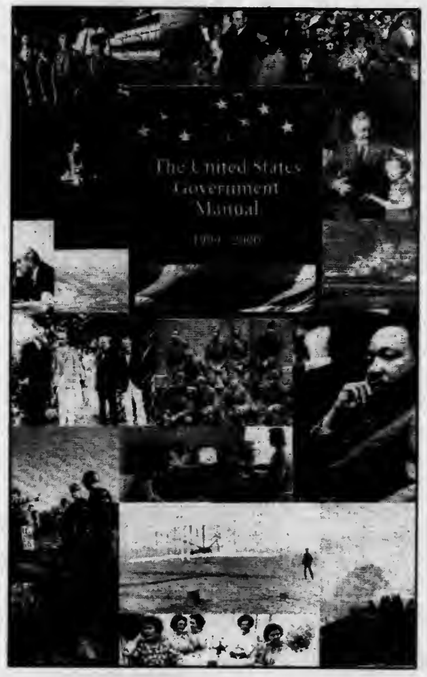
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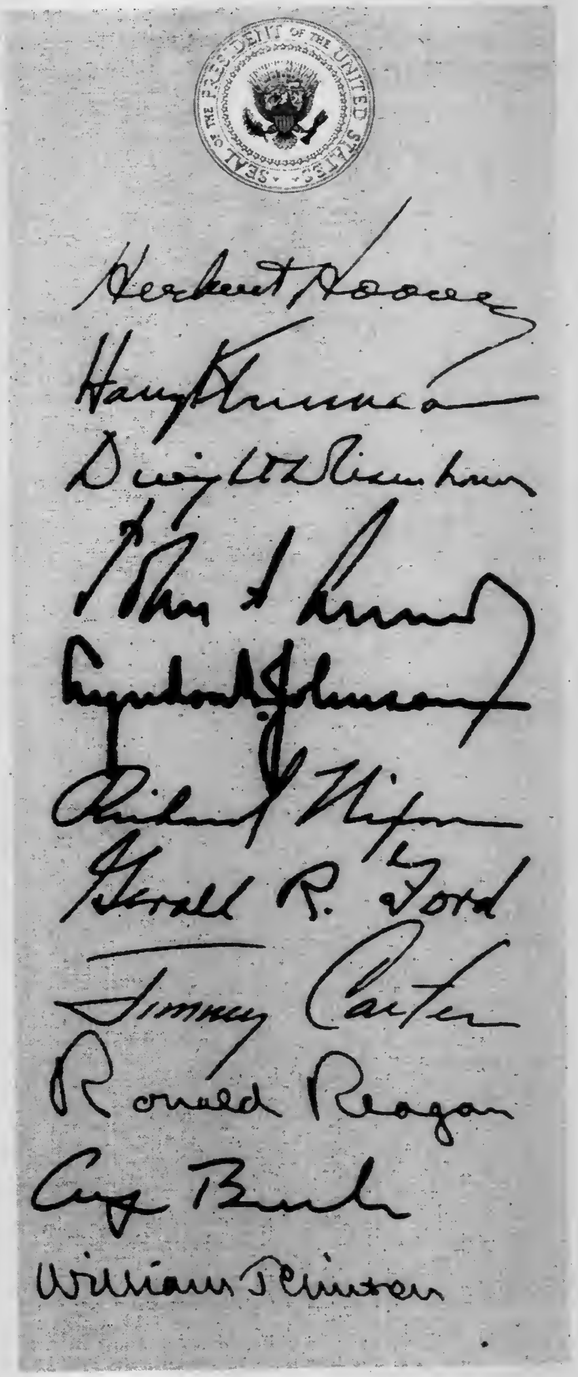
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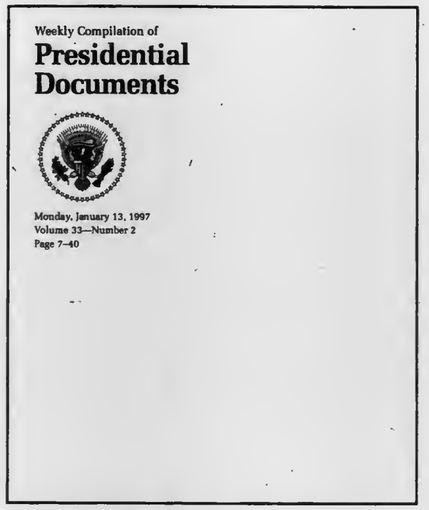
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Contents

Federal Register
Vol. 65, No. 61
Wednesday, March 29, 2000

Agriculture Department
See Grain Inspection, Packers and Stockyards Administration

Army Department
NOTICES
Privacy Act:
Systems of records, 16568–16571

Broadcasting Board of Governors
NOTICES
Meetings; Sunshine Act, 16561

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16619–16620

Coast Guard
RULES
Drawbridge operations:
Louisiana, 16521–16522
Ports and waterways safety:
Saint Pete Beach, FL; safety zone, 16522–16523
PROPOSED RULES
Regattas and marine parades:
OPSAIL 2000, San Juan, PR, 16554–16557
NOTICES
Meetings:
National Boating Safety Advisory Council, 16683–16684

Commerce Department
See Economic Development Administration
See Foreign-Trade Zones Board
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office

Customs Service
RULES
Customs forms; technical corrections, 16513–16518

Defense Department
See Army Department
See Defense Logistics Agency
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Procurement integrity rewrite, 16758–16763
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16566
Arms sale notification; transmittal letter, etc., 16566–16567
Meetings:
Defense Intelligence Agency Science and Technology Advisory Board, 16567
Nuclear Weapons Surety Joint Advisory Committee, 16567–16568

Defense Logistics Agency
NOTICES
Privacy Act:
Systems of records, 16571–16576

Economic Development Administration
NOTICES
Adjustment assistance:
Yates Foil USA, Inc., et al., 16561–16562

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16576–16578
Meetings:
Web-based Education Commission, 16579

Employment and Training Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
Comprehensive incumbent/dislocated worker retraining demonstration program, 16638–16656
H-1B technical skill training programs, 16657–16669

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration
NOTICES
Electricity export and import authorizations, permits, etc.:
Citizens Power Sales, LLC, 16579–16580
Meetings:
Environmental Management Site-Specific Advisory Board—
Paducah, KY, 16580

Environmental Protection Agency
RULES
Air pollution control:
Operating permits programs; interim approval expiration dates; extension, 16523
Hazardous waste program authorizations:
Oklahoma, 16528–16532
Municipal solid waste landfill permit program; adequacy determinations:
West Virginia, 16523–16528
PROPOSED RULES
Hazardous waste program authorizations:
Oklahoma, 16557–16558
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16589–16590
Meetings:
Voluntary children's health chemical testing program; stakeholder involvement process, 16590–16592
Pesticide, food, and feed additive petitions:
American Cyanamid Co., 16594–16598
Bayer Corp., 16598–16602
Interregional Research Project (No. 4), 16602–16608
McLaughlin Gormley King Co., et al, 16608–16614
Pesticide programs:
Organophosphate, 16592–16594
Reports and guidance documents; availability, etc.:
Indoor residential insecticide product label statements; guidance availability, 16614–16615
List of pests of significant public health importance; availability, 16615–16616

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
RULES
Air carrier certification and operations:
Terrain awareness and warning system, 16736–16756
PROPOSED RULES
Airworthiness standards:
Special conditions—
Hamilton Sunderstrand model np2000 propeller, 16542–16545

Federal Communications Commission
PROPOSED RULES
Radio stations; table of assignments:
Idaho, 16558
New York, 16558
Texas, 16559
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16616–16617

Federal Election Commission
PROPOSED RULES
Administrative fines:
Reporting requirements; civil money penalties, 16534–16541

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Cobisa-Person Limited Partnership et al., 16583–16585
Pacific Gas and Electric Co. et al., 16585–16587
Hydroelectric applications, 16587
Meetings:
South Carolina Electric & Gas Co., 16587–16588
Applications, hearings, determinations, etc.:
ANR Pipeline Co., 16580
Cove Point LNG Limited Partnership, 16580–16581
Panhandle Eastern Pipe Line Co., 16581
Sun River Electric Cooperative, Inc., 16581
Transcontinental Gas Pipe Line Corp., 16582

Federal Railroad Administration
PROPOSED RULES
Railroad safety:
Locomotive horns use of highway-rail grade crossings; requirements for sounding
Hearings, 16559–16560

Federal Reserve System
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16617–16618

Federal Retirement Thrift Investment Board
NOTICES
Meetings; Sunshine Act, 16618

Food and Drug Administration
RULES
Food additives:
Paper and paperboard components—
Hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin, 16518–16520
Medical devices:
Clinical chemistry and clinical toxicology devices—
Biotinidase test system, 16520–16521
NOTICES
Reports and guidance documents; availability, etc.:
Information program on clinical trials for serious or life-threatening diseases: establishment of a data bank; industry guidance, 16620–16623

Foreign-Trade Zones Board
NOTICES
Applications, hearings, determinations, etc.:
Texas
Zale Corp.; distribution processing of jewelry and accessories, 16562–16563
Virginia
Hanover Direct, Inc.; subzone status, 16563

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Procurement integrity rewrite, 16758–16763
NOTICES
Federal travel:
Record of travel expense standard form; cancellation, 16619

Government Ethics Office
RULES
Government ethics:
Decennial census; financial interests of non-federal government employees; exemption, 16511–16513

Grain Inspection, Packers and Stockyards Administration
NOTICES
Stockyards; posting and deposting:
4-State Horse & Equipment Auction, et al., 16561

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Organization, functions, and authority delegations:
Primary Heath Care Bureau, 16623

Housing and Urban Development Department
RULES
Low income housing:
Housing assistance payments (Section 8)—
Admission and occupancy requirements, 16692–16733

Immigration and Naturalization Service
NOTICES
Temporary protected status program determinations:
Angola, 16634–16635

Indian Affairs Bureau
NOTICES
Reservation establishment, additions, etc.:
Jicarilla Apache Tribe, NM, 16628–16629

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See Minerals Management Service

See National Park Service
See Reclamation Bureau

Internal Revenue Service
PROPOSED RULES
Income taxes:
Foreign corportations, gross income; exclusions, 16554
Qualified retirement plans; optional forms of benefit, 16546–16553
Qualified transportation fringe benefits
Correction, 16545–16546

International Trade Administration
NOTICES
Applications, hearings, determinations, etc.:
University of—
Michigan, 16563

International Trade Commission
NOTICES
Import investigations:
Chrome-plated lug nuts from—
China and Taiwan, 16632
Drams of one megabit and above from—
Korea, 16632–16633
The year in trade 1999; report to Congress, 16633–16634

Justice Department
See Immigration and Naturalization Service
See Justice Programs Office
NOTICES
Pollution control; consent judgments:
Doyle, Wilbur S., et al., 16634

Justice Programs Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Statistical methodologies for analysis of disproportionate minority confinement, 16635–16637

Labor Department
See Employment and Training Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16637–16638

Land Management Bureau
NOTICES
Public land orders:
Oregon, 16624–16625

Libraries and Information Science, National Commission
See National Commission on Libraries and Information Science

Maritime Administration
NOTICES
Coastwise trade laws; administrative waivers, 16684–16685

Minerals Management Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16625–16626
Submission for OMB review; comment request, 16623–16628

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Procurement integrity rewrite, 16758–16763

National Commission on Libraries and Information Science
NOTICES
Meetings; Sunshine Act, 16669

National Council on Disability
NOTICES
Meetings; Sunshine Act, 16669

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock, 16532–16533
Northeastern United States fisheries—
Northeast multispecies, 16766–16782
NOTICES
Environmental statements; notice of intent:
Tortugas Marine Reserve, Gulf of Mexico; establishment, 16563–16564
Meetings:
Pacific Fishery Management Council, 16564

National Park Service
NOTICES
Environmental statements; notice of intent:
Morristown National Historical Park; Morris and Sommerset Counties, NJ, 16629–16630
Meetings:
Aniakchak National Monument Subsistence Resource Commission, 16630
Manzanar National Historic Site Advisory Commission, 16630
National Register of Historic Places:
Eligibility determinations, 16691

Nuclear Regulatory Commission
NOTICES
Meetings; Sunshine Act, 16670–16671
Organization, functions, and authority delegations:
Local public document room relocation and establishment—
White Flint Complex, Rockville, MD, 16671
Applications, hearings, determinations, etc.:
Baltimore Gas & Electric Co., 16669–16670
Entergy Operations, Inc., 16670

Patent and Trademark Office
NOTICES
Committees; establishment, renewal, termination, etc.:
Public Advisory Committee, 16564–16565

Pension Benefit Guaranty Corporation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16671–16672

Presidential Documents
PROCLAMATIONS
Special observances:
Greek Independence Day: A National Day of Celebration of Greek and American Democracy (Proc. 7283), 16509–16510

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Reclamation Bureau
NOTICES
Environmental statements; notice of intent:
Marina Coast Water District Recycled Water Pipeline Project, CA, 16631–16632

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16672–16673
Self-regulatory organizations; proposed rule changes:
Chicago Board Options Exchange, Inc., 16675–16676
Chicago Stock Exchange, Inc., 16676–16678
Options Clearing Corp., 16678–16679
Pacific Exchange, Inc., 16679–16682
Philadelphia Stock Exchange, Inc., 16682–16683
Applications, hearings, determinations, etc.:
Baker, Fentress & Co., 16673–16674
Cirsa Business Corp., S.A., 16674–16675

State Department
NOTICES
Art objects; importation for exhibition:
Spirits of the Water: Art from Alaska and British Columbia, 16683

Surface Transportation Board
NOTICES
Motor carriers:
Finance applications—
Stagecoach Holdings plc and Coach USA, Inc., et al., 16685–16686

Tennessee Valley Authority
RULES
Freedom of Information Act; implementation, 16513

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See Maritime Administration
See Surface Transportation Board

Treasury Department
See Customs Service
See Internal Revenue Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16686–16689

Western Area Power Administration
NOTICES
Power rate adjustments:
Loveland area projects, CO, 16588
Pick-Sloan Missouri basin program, 16588–16589

Separate Parts In This Issue

Part II
Department of Housing and Urban Development 16691–16733

Part III
Department of Transportation, Federal Aviation Administration, 16735–16756

Part IV
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 16757–16763

Part V
Department of Commerce, National Oceanic and Atmospheric Administration, 16765–16782

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7283.....16509
5 CFR
2640.....16511
11 CFR
Proposed Rules:
104.....16534
111.....16534
14 CFR
91.....16736
121.....16736
135.....16736
Proposed Rules:
35.....16542
15 CFR
902.....16766
18 CFR
1301.....16513
19 CFR
4.....16513
18.....16513
122.....16513
123.....16513
144.....16513
146.....16513
21 CFR
176.....16518
862.....16520
24 CFR
5.....16692
880.....16692
881.....16692
884.....16692
886.....16692
891.....16692
960.....16692
966.....16692
984.....16692
985.....16692
26 CFR
Proposed Rules:
1 (3 documents).....16545, 16546, 166554
33 CFR
117.....16521
165.....16522
Proposed Rules:
100.....16554
110.....16554
40 CFR
70.....16523
258.....16523
271.....16528
Proposed Rules:
271.....16557
47 CFR
Proposed Rules:
73 (3 documents).....16558, 16559
48 CFR
Proposed Rules:
2.....16758
3.....16758
4.....16758
9.....16758
15.....16758
52.....16758
49 CFR
Proposed Rules:
222.....16559
229.....16559
50 CFR
648 (2 documents).....16532
679.....16532

Federal Register
Vol. 65, No. 61
Wednesday, March 29, 2000

Presidential Documents

Title 3—

The President

Proclamation 7283 of March 24

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2000

By the President of the United States of America

A Proclamation

Two thousand five hundred years ago, the birth of democracy in Greece ushered in one of the true golden ages of Western civilization. The flowering of political, social, and artistic innovation in Greece served as the source of many of our most treasured gifts—the philosophy of Plato and Socrates, the plays of Sophocles and Aristophanes, the heroic individualism that rings in the epic poetry of Homer.

But Ancient Greece's greatest legacy is the establishment of democratic government. America's founders were deeply influenced by the passion for truth and justice that guided Greek political theory. In ratifying our Constitution, they forever enshrined these principles in American law and created a system of government based on the Hellenic belief that the authority to govern derives directly from the people.

While our democracy has its roots in Greek thought, the friendship between our two nations flows from our shared values, common goals, and mutual respect. This kinship with the Greek people was reflected in the enthusiasm with which America embraced modern Greece's fight for independence 179 years ago. Many Americans fought alongside the Greeks, while stirring speeches by President James Monroe and Daniel Webster led the Congress to send funds and supplies to aid the Greeks in their struggle for freedom.

Our alliance with Greece has remained strong. Together we have stood up to the forces of oppression in conflicts from World War II to the Persian Gulf, we have joined as strategic partners in NATO, and we have worked to build peace, stability, and prosperity in the Balkans. Through decades of challenge and change, our friendship has endured and deepened, and together we have proved the fundamental truth of the Greek proverb, "The passion for freedom never dies."

That passion for freedom has also beckoned generations of Greek men and women to America's shores, and today we celebrate and give thanks for the myriad contributions Greek Americans have made to our national life. More than a million citizens of Greek descent live in America today, and their devotion to family, faith, community, and country has enriched our society immeasurably.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and the laws of the United States, do hereby proclaim March 25, 2000, as Greek Independence Day: A National Day of Celebration of Greek and American Democracy. I call upon all Americans to observe this day with appropriate ceremonies, activities, and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of March, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–7900
Filed 03–28–00; 8:45 am]
Billing code 3195–01–P

Rules and Regulations

Federal Register
Vol. 65, No. 61
Wednesday, March 29, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2640

RIN 3209–AA09

Exemption Under 18 U.S.C. 208(b)(2) for Financial Interests of Non-Federal Government Employers in the Decennial Census

AGENCY: Office of Government Ethics (OGE).

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Government Ethics is issuing an interim regulation that would permit certain temporary employees of the Department of Commerce Bureau of the Census (the Bureau) who have been hired under authority of 13 U.S.C. 23 to perform duties in connection with the decennial census, notwithstanding these employees' disqualifying financial interest under 18 U.S.C. 208(a) arising from the interests of their non-Federal employers.

DATES: This interim regulation is effective March 29, 2000. Comments are invited and are due by April 28, 2000.

ADDRESSES: Send comments to the Office of Government Ethics, Suite 500, 1201 New York Avenue, NW., Washington, DC 20005–3917. Attention: Karen Kimball.

FOR FURTHER INFORMATION CONTACT: Karen Kimball, Associate General Counsel, Office of Government Ethics; telephone: 202–208–8000; TDD: 202–208–8025; FAX: 202–208–8037; Internet E-mail address: usoge@oge.gov. For E-mail messages, the subject line should include the following reference: Interim Rule Exemption Under 18 U.S.C. 208(b)(2).

SUPPLEMENTARY INFORMATION: Section 208(a) of title 18 of the United States Code prohibits Government employees from participating in an official capacity in particular Government matters in which, to their knowledge, they, or, *inter alia*, any organization in which they are serving as an employee, have a financial interest, if the particular matter would have a direct and predictable effect on that interest. Section 208(b)(2) of title 18 permits the Office of Government Ethics to promulgate executive branchwide regulations describing financial interests that are too remote or inconsequential to warrant disqualification pursuant to section 208(a).

On December 18, 1996, the Office of Government Ethics published an executive branchwide final rule, "Interpretation, Exemptions and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)," which as corrected is now codified at 5 CFR part 2640. The regulation describes financial interests that OGE has determined are either too remote or too inconsequential to affect an employee's consideration of any particular matter. Employees who have these financial interests, or who have such interests that are imputed to them, are permitted, to the extent described in the final regulation, to participate in matters affecting such interests notwithstanding the general prohibition in section 208(a).

In order to carry out its decennial census responsibilities, the Bureau of the Census must hire approximately 800,000 temporary employees throughout the country, primarily to assist in the enumeration process. Current historic low unemployment rates and demographic and societal changes have rendered traditional sources of decennial census workers insufficient. The Bureau, therefore, must engage in vigorous recruitment efforts to obtain needed personnel. Potential sources of such workers are likely to include teachers and other State, local, or tribal government workers who are available to work nights and weekends. The recruitment of these workers is time-sensitive because of the Constitutional mandate to conduct the census during calendar year 2000. The majority of workers are hired within a period of a few weeks.

The Bureau of the Census has authority under 13 U.S.C. 23 to hire temporary employees, "including employees of Federal, State, or local agencies or instrumentalities * * * to assist the Bureau" in conducting the census. *See* 13 U.S.C. 23(c). That statute grants no express relief from the application of 18 U.S.C. 208.

State, local, and tribal governments have a financial interest in the decennial census. Census results are used to apportion funds among the States and among jurisdictions within the States in connection with entitlements under a number of Federal and State programs. We note that the results of the census also are used to allocate representation among the States in the United States House of Representatives and in State legislatures which, presumably, affects a State's ability to pursue its interests, including financial interests.

Conflict-of-interest concerns arise regarding decennial census workers who are directly involved in the enumeration process or in the supervisory chain of command for workers involved in that process. Such employees may be participating personally and substantially in particular matters that have a direct and predictable effect on the financial interests of their non-Federal government employer within the meaning of 18 U.S.C. 208(a). These employees' participation may be "personal and substantial" as those terms are defined in 5 CFR 2635.402(b)(4) of OGE's executive branch standards of ethical conduct and 5 CFR 2640.103(a)(2) of the OGE executive branchwide personal financial interests regulation because they participate directly in the determination of the census count and the numbers which their work produces are the substance of the census. Their work is the basis on which the census count is determined and, thus, their work is of significance to the matters. The decennial census and its administration in various States and localities may be "particular matters" as defined by 5 CFR 2635.402(b)(3) and 2640.103(a)(1), because the matters involve deliberation, decision, or action that *is* focused upon the interests of specific persons or on a discrete and identifiable class of persons.

As participation in census matters may be a conflict of interest pursuant to 18 U.S.C. 208(a), decennial census workers need to know whether they can lawfully engage in the activities required by their employment. Also,

since all aspects of the work that enumerators and their supervisors will do is related to the determination of the census numbers, it would not be possible to disqualify these employees from working on these matters and have them perform services for the agency. Granting waivers or creating an exemption is an appropriate method for removing any legal uncertainty about whether the conflict-of-interest laws in title 18 apply.

In the view of the Department of Commerce, as the department responsible for the administration of the census program, the financial interests of the non-Federal government employers in the work that these temporary census employees perform are both too remote and too inconsequential to affect the integrity of the services which the United States Government may expect from these employees for the following reasons. The nature of the work to be performed is basic data gathering and lower level supervision of the data gathering. No employee in a position covered by the new exemption in this interim rule would be able to affect the count for any census statistical unit to any significant degree due to the extent of the data gathering, the fragmentation of the data-gathering process, and the several quality checking and verification processes that the Department of Commerce has imposed. Additionally, the work of these employees is too far removed from the financial interests of their non-Federal government employers due to the number of independent intervening steps in the census process before final census determinations are made. Thus, the work of these employees is inconsequential to those financial interests due to the limited scope of their duties. Any risks regarding the conduct of an inaccurate and biased census are remote.

In addition, the scope of the exemption is very narrow and will not apply to cover those serving in State, local, and tribal government positions which are filled through public election. While elected officials would not be able to distort the census count to any significant degree because of the procedures that Commerce has imposed and the limited scope of temporary census employees' duties, there is a heightened concern about appearances arising from the greater interest elected officials have regarding the impact of the census count on their employers. The exclusion of such employees from the exemption and the narrowness of the exemption also address any concerns that the census count might appear to be biased or inaccurate.

The Department of Commerce, under authority of 18 U.S.C. 208(b)(1), could issue individual waivers after determining that the employees' disqualifying financial interests are not so substantial as to be deemed likely to affect the integrity of the services which the Government may expect from them. However, senior officials at the Bureau of the Census have determined that it is administratively impractical to implement a system which would assure that individual waivers are granted due to the scale of the workforce it expects to hire, the decentralized nationwide hiring process, and the streamlined hiring process that must be utilized to meet the personnel needs required by the decennial census. According to Bureau of the Census officials, it would not be feasible to issue individual waivers due to the volume of personnel actions anticipated. Hundreds of thousands of positions need to be filled within a three- to four-week period for employment lasting six to eight weeks. In addition, most of this hiring process is administered by temporary clerks who are employed scarcely longer than those whose positions they are attempting to fill. These clerks are required to follow a multitude of complex procedures in order legally to hire and pay new employees. Bureau of the Census officials have concluded that having these clerks perform an additional step to determine whether the new employees are employed by State, local, or tribal government employers in order to determine whether a conflict of interest waiver is required is an unjustified use of very limited time. They also believe that such a process would be inconsistent with permission the Bureau of the Census received from the Office of Management and Budget to reduce and consolidate the number of forms that must be completed for each employee at the time of appointment. The Office of Management and Budget's agreement has permitted the Bureau to streamline its hiring process for the 2000 Census, minimizing the administrative burden wherever possible. Under these circumstances, the Bureau believes that only a regulatory waiver will address the Bureau's administrative needs and will provide reliable protection from inadvertent violations of the conflict of interest statute.

Based on the determinations of the Commerce Department and the Census Bureau, OGE has decided to issue this interim rule exemption. Accordingly, this interim regulation provides an exemption for the financial interests of State, local, or tribal government employers whose employees are hired on a temporary basis by the Department of Commerce under authority of 13 U.S.C. 23 to participate in activities related to the conduct of the decennial census. While still employed by State, local, or tribal governments, the employees also work on a part-time or intermittent basis at the Bureau of the Census in a Local Census Office or in an Accuracy and Coverage Evaluation (ACE) function as enumerators, crew leaders, or as field operations supervisors. Commerce Department employment is expected to last from six to eight weeks. None of these temporary Commerce employees serve in a State, local, or tribal government position which is filled through public election.

This interim rule is being published after obtaining the concurrence of the Department of Justice pursuant to section 201(c) of Executive Order 12674. Also, as provided in section 402 of the Ethics in Government Act of 1978, as amended, 5 U.S.C. appendix, section 402, OGE has consulted with both the Department of Justice (as additionally required under 18 U.S.C. 208(d)(2)) and the Office of Personnel Management on this rule.

Matters of Regulatory Procedure

Administrative Procedure Act

Pursuant to 5 CFR 553(b) and (d), I find that good cause exists for waiving the general requirements of notice of proposed rulemaking, opportunity for public comments, and 30-day delayed effective date for this interim rule. It is in the public interest that this regulation take effect as soon as possible in order to enable the Bureau of the Census to conduct the census during the year 2000 as required by Constitutional mandate. Interested persons are invited to submit written comments to OGE on this interim regulation, to be received on or before April 28, 2000. The Office of Government Ethics will review all comments received and consider any modifications to this rule which appear warranted before adopting the final rule on this matter.

Executive Order 12866

In promulgating this interim rule, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This interim rule has also been reviewed by the Office of Management and Budget under that Executive order.

Executive Order 12988

As Director of the Office of Government Ethics, I have reviewed this interim regulation in light of section 3 of Executive Order 12988, Civil Justice Reform, and certify that it meets the applicable standards provided therein.

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this interim rule will not have a significant economic impact on a substantial number of small entities because it primarily affects Federal executive branch employees.

Paperwork Reduction Act

The Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply because this interim regulation does not contain information collection requirements that require approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2640

Conflict of interests, Government employees.

Approved: March 17, 2000.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending 5 CFR part 2640 as follows:

PART 2640—INTERPRETATION, EXEMPTIONS AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

1. The authority citation for part 2640 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 18 U.S.C. 208; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart B—Exemptions Pursuant to 18 U.S.C. 208(b)(2)

2. Section 2640.203 is amended by adding a new paragraph (l) to read as follows:

§ 2640.203 Miscellaneous exemptions.

* * * * *

(l) *Exemption for financial interests of non-Federal government employers in the decennial census.* An employee of the Bureau of the Census at the United States Department of Commerce, who is also an employee of a State, local, or tribal government, may participate in the decennial census notwithstanding the disqualifying financial interests of the employee's non-Federal government employer in the census provided that the employee:

(1) Does not serve in a State, local, or tribal government position which is filled through public election;

(2) Was hired for a temporary position under authority of 13 U.S.C. 23; and

(3) Is serving in a Local Census Office or an Accuracy and Coverage Evaluation function position as an enumerator, crew leader, or field operations supervisor.

[FR Doc. 00–7769 Filed 3–28–00; 8:45 am]
BILLING CODE 6345–01–U

TENNESSEE VALLEY AUTHORITY

18 CFR Part 1301

Revision of Tennessee Valley Authority Freedom of Information Act Regulations

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Final rule.

SUMMARY: The Tennessee Valley Authority is amending its Freedom of Information Act (FOIA) regulations to reflect an organizational reassignment of the FOIA function within TVA. It also provides a new address for filing FOIA requests and FOIA appeals.

EFFECTIVE DATE: March 29, 2000.

FOR FURTHER INFORMATION CONTACT: Denise Smith, FOIA Officer, Tennessee Valley Authority, 400 W. Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902–1499, telephone number (865) 632–6945.

SUPPLEMENTARY INFORMATION: This rule was not published in proposed form since it relates to internal agency organization and administration. Since this rule is nonsubstantive, it is being made effective on March 29, 2000.

List of Subjects in 18 CFR Part 1301

Freedom of information, Government in the Sunshine, Privacy.

For the reasons stated in the preamble, TVA amends 18 CFR Part 1301 as follows:

PART 1301—PROCEDURES

1. The authority citation for part 1301, subpart A, continues to read as follows:

Authority: 16 U.S.C. 831–831dd, 5 U.S.C. 552.

2. In § 1301.3, revise the first sentence of paragraph (a) to read as follows:

§ 1301.3 Requirements for making requests.

(a) *How made and addressed.* You may make a request for records of TVA by writing to the Tennessee Valley Authority, FOIA Officer, 400 W. Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902–1499. * * *

* * * * *

3. In § 1301.9, revise the first sentence of paragraph (a) to read as follows:

§ 1301.9 Appeals.

(a) *Appeals of adverse determinations.* If you are dissatisfied with TVA's response to your request, you may appeal an adverse determination denying your request, in any respect, to TVA's FOIA Appeal Official, the General Manager, CAO Business Services, Tennessee Valley Authority, 400 Summit Hill Drive (ET 5D), Knoxville, Tennessee 37902–1499. * * *

* * * * *

Cleo W. Norman,

General Manager, CAO Business Services.

[FR Doc. 00–7519 Filed 3–28–00; 8:45 am]
BILLING CODE 8120–08–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 18, 122, 123, 144, and 146

[T.D. 00–22]

Technical Corrections Relating to Customs Forms

AGENCY: Customs Service, Treasury.

ACTION: Final rule.

SUMMARY: This document amends the Customs Regulations by correcting references to certain Customs Forms that have either been eliminated, substantially revised, or consolidated with another Customs Form. These corrections are made to update the Customs Regulations so that the trade community and vessel operators can be aware of current Customs information requirements.

EFFECTIVE DATE: March 29, 2000.

FOR FURTHER INFORMATION CONTACT: *For legal questions:* Larry Burton, Entry Procedures & Carriers Branch, Office of Regulations and Rulings, (202) 927–1287.

For operational questions: Robert Watt, Office of Field Operations, (202) 927–3654, or Kim Nott, Office of Field Operations, (202) 927–1364.

SUPPLEMENTARY INFORMATION:

Background

This document amends the Customs Regulations by correcting references to certain Customs Forms (CFs) that have either been eliminated, substantially revised, or consolidated with another Customs Form. These corrections are made to update the Customs Regulations so that the trade community and vessel operators can be aware of current Customs information requirements.

Elimination of Master's Oath Requirement (CF 1300)

The CF 1300 (Master's Oath of Vessel in Foreign Trade) was a multi-purpose form that had to be completed for each entrance and clearance of a vessel, including preliminary entry and the granting of a permit to proceed, and contained the sworn statement of the master as to the contents of documents and manifests filed with Customs for vessels over five net tons engaged in trade or commercial use. The statutory basis (19 U.S.C. 282) for the Master's Oath requirement was repealed by section 690(a) of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, Title VI, section 690(a)(2), 107 Stat. 2222) without replacement. Nine sections in the Customs Regulations (19 CFR 4.7(a), 4.20(f), 4.61(a), 4.63(a)(1), 4.75(a) and (b), 4.81(e), (g)(1) and (2), 4.84(c)(1), 4.85(b) and (c), and 4.87(b), (d), and (g)) provide for the submission of the CF 1300 or otherwise reference the master's oath for purposes of meeting Customs entry requirements. Accordingly, the applicable texts of these regulatory provisions are amended to remove the reference.

Elimination of Customs Form 7512–C

The CF 7512–C (Transportation Entry and Manifest of Goods) was a multiple-copy, data-card form used by Customs and the trade to track in-bond movements of merchandise by means of a unique 9-digit number pre-printed on the card. This form was designed to speed cargo movement reporting by means of having one copy of the form stay with Customs for data input once the designated merchandise was picked up by the in-bond carrier; the other copy of the form accompanied the merchandise in transit, to be delivered to Customs at the port of destination. With the continued development of the Automated Manifest System (AMS) throughout the 1990s, which now tracks these types of in-bond cargo movements, the practical use of the CF 7512–C tracking system became obsolete, and, in fact, this form has been eliminated. Some fifteen sections in the Customs Regulations (19 CFR 4.81(g)(1), 18.2(b)–(d), 18.3(b), 18.7(a), 18.13(b), 122.83(e), 122.92(a)(2) and (b)(1) and (2), 122.93(a), 122.94(a), 122.119(c), 122.120(d) and (i), 123.42(c) and (d), 123.64(b), 144.37(a), and 146.68(b)) provide for the submission of the CF 7512–C for purposes of meeting Customs entry requirements. Accordingly, the applicable texts of these regulatory provisions are amended to remove the reference.

New Customs Form 1300

Two Customs Forms pertaining to vessel operators (the CF 1301—General Declaration; and the CF 1378—Clearance of Vessel to a Foreign Port) recently have been combined into a new form designated as CF 1300 (Vessel Entrance or Clearance Statement). Accordingly, all references to these two forms in the Customs Regulations (19 CFR Chapter I) need to be amended. In Part 4 of the Customs Regulations (19 CFR part 4) there are some thirteen sections of the Customs Regulations (19 CFR 4.7(a), 4.9(b), 4.34(e), 4.61(a), 4.75(a) and (b), 4.81(e), (g)(1) and (2), 4.84(a) and (d), 4.85(a) through (c), 4.87(b) through (d) and (f), 4.89(b) and (d), 4.90(b), 4.91(a) and (b), and 4.99(a)) that require submission of one or both of these Customs Forms for purposes of meeting Customs vessel entry requirements. The applicable texts of these regulatory provisions are amended to remove references to the CF 1301 and CF 1378. Further, in tandem with the elimination of the old CF 1300 (see discussion above), the applicable texts of the identified sections in part 4 of the Customs Regulations are amended to correct references to the new CF 1300.

Other Changes

Section 4.81(g) of the Customs Regulations contains simplified procedural provisions regarding the coastwise movement of LASH-type barges. The fourth sentence of paragraph (g)(2) states:

> Where a complete manifest is not available at the port of lading, the permit to proceed must include a statement that a complete manifest and shipper's export declaration for each barge will be filed at the port where the barge will be taken aboard a barge-carrying vessel, and that port must be identified in the statement.

It has come to Customs attention that this requirement is irrelevant to LASH-type barges and merely serves to cause confusion at ports. Accordingly, this sentence is removed in this document.

Paperwork Reduction Act

The collection of information contained in this final rule document has previously been reviewed and approved by the Office of Management and Budget (OMB) under OMB control numbers 1515–0060 and 1515–0062. These amendments do not make any substantive or substantial change to the existing approved information collections; they merely require vessel operators to submit the same vessel information on a different form.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Inapplicability of Public Notice and Comment Requirements and Delayed Effective Date Requirements; The Regulatory Flexibility Act and Executive Order 12866

Inasmuch as these amendments either substitute one Customs Form reference for another or otherwise advise the public that certain Customs Forms are no longer used and that a certain procedural requirement is no longer required, which are matters pertaining to agency procedure, pursuant to 5 U.S.C. 553(b)(A), the notice and public procedure requirements of the Administrative Procedures Act (5 U.S.C. 553) are not applicable. For the same reason, these amendments are not subject to the delayed effective date requirement of 5 U.S.C. 553(d). Since this document is not subject to the notice and public procedure requirements of 5 U.S.C. 553, it is not subject to the regulatory analysis or other requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This amendment does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Drafting Information

The principal author of this document was Gregory R. Vilders, Attorney, Regulations Branch. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 4

Administrative practice and procedure, Cargo vessels, Computer technology, Customs duties and inspection, Entry, Imports, Maritime carriers, Merchandise, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 18

Bonded transportation, Common carriers, Customs duties and inspection, Exports, Foreign trade statistics, Freight, Imports, Reporting and recordkeeping requirements, Surety bonds, Transportation, Vehicles, Vessels.

19 CFR Part 122

Administrative practice and procedure, Air carriers, Aircraft, Air transportation, Baggage, Customs duties and inspection, Entry procedure, Foreign commerce and trade statistics, Freight, Imports, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 123

Administrative practice and procedure, Aircraft, Common carriers, Customs duties and inspection, Entry of merchandise, Forms, Freight, Imports, International traffic, Motor carriers, Reporting and recordkeeping requirements, Vehicles, Vessels.

19 CFR Part 144

Customs duties and inspection, Reporting and recordkeeping requirements, Surety bonds.

19 CFR Part 146

Administrative practice and procedure, Customs duties and inspection, Entry, Exports, Foreign trade zones, Imports, Reporting and recordkeeping requirements, Surety bonds.

Amendments to the Regulations

Parts 4, 18, 122, 123, 144, and 146 of the Customs Regulations (19 CFR parts 4, 18, 122, 123, 144, and 146) are amended as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4, and the specific authority citations for §§ 4.7, 4.9, 4.20, 4.75, 4.81, 4.84, and 4.85, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1431, 1433, 1434, 1624; 46 U.S.C. App. 3, 91.

* * * * *

Section 4.7 also issued under 19 U.S.C. 1581(a); 46 U.S.C. App. 883a, 883b;

* * * * *

Section 4.9 also issued under 42 U.S.C. 269;

* * * * *

Section 4.20 also issued under 46 U.S.C. 2107(b), 8103, 14306, 14502, 14511, 14512, 14513, 14701, 14702; 46 U.S.C. App. 121, 128;

* * * * *

Section 4.75 also issued under 46 U.S.C. App. 91;

* * * * *

Section 4.81 also issued under 19 U.S.C. 1442, 1486; 46 U.S.C. 251, 883;

* * * * *

Section 4.84 also issued under 46 U.S.C. App. 883–1;

Section 4.85 also issued under 19 U.S.C. 1442, 1623;

* * * * *

2. Section 4.7(a) is amended:

a. In the fourth sentence by removing the words "Master's Oath on Entry of Vessel in Foreign Trade, Customs Form 1300, a General Declaration, Customs Form 1301" and adding, in their place, the words "Vessel Entrance or Clearance Statement, Customs Form 1300";

b. In the fifth sentence by removing the words "item 17–22 of the General Declaration" and adding, in their place, the words "items 16, 18, and/or 19 of the Vessel Entrance or Clearance Statement"; and

c. In the last sentence by removing the words "13 of the General Declaration" and adding, in their place, the words "16 of the Vessel Entrance or Clearance Statement".

3. Section 4.9(b) is amended by removing the words "Customs Form 1301 (General Declaration)" wherever they appear and adding, in their place, the words "Customs Form 1300 (Vessel Entrance or Clearance Statement)".

4. Section 4.20 (f)(2) is amended by removing the words "master's oath" and adding, in their place, the words "Vessel Entrance or Clearance Statement".

5. Section 4.34(e) is amended in the last sentence by removing the words "General Declaration, Customs Form 1301" and adding, in their place, the words "Vessel Entrance or Clearance Statement, Customs Form 1300".

6. In § 4.61, paragraph (a) is amended by revising the first four sentences to read as follows; and paragraph (b) is amended in the fourth sentence by removing the words "Customs Form 1301 (General Declaration)" and adding, in their place, the words "Customs Form 1300 (Vessel Entrance or Clearance Statement)":

§ 4.61 Requirements for clearance.

(a) *Application for clearance.* A clearance application for a vessel intending to depart for a foreign port must be made by filing Customs Form 1300 (Vessel Entrance or Clearance Statement) executed by the vessel master or other proper officer. The master, licensed deck officer, or purser may appear in person to clear the vessel, or the properly executed Customs Form 1300 may be delivered to the customhouse by the vessel agent or other personal representative of the master. Necessary information may also be transmitted electronically pursuant to a system authorized by Customs. Clearance will be granted by Customs either on the Customs Form 1300 or by approved electronic means. * * *

* * * * *

§ 4.63 [Amended]

7. Section 4.63(a)(1) is amended by removing the words "properly executed Master's Oath on Entry of Vessel in Foreign Trade" and adding, in their place, the words "Vessel Entrance or Clearance Statement".

§ 4.75 [Amended]

8. In § 4.75:

a. Paragraph (a) is amended:

1. By removing the words "General Declaration, Customs Form 1301" and adding, in their place, the words "Vessel Entrance or Clearance Statement, Customs Form 1300"; and

2. By removing the last two sentences and adding, in their place, the following sentence:

* * * * *

(a) * * * The "Incomplete Manifest for Export" box in item 17 of the Vessel Entrance or Clearance Statement form must be checked.

* * * * *

b. Paragraph (b) is amended:

1. In the first sentence by removing the words "General Declaration on Customs Form 1301" and adding, in their place, the words "Vessel Entrance or Clearance Statement, Customs Form 1300"; and

2. By removing the second sentence.

9. Section 4.81 is amended by revising paragraphs (e) and (g)(1) and (2) to read as follows:

§ 4.81 Reports of arrivals and departures in coastwise trade.

* * * * *

(e) Before any foreign vessel departs in ballast, or solely with articles to be transported in accordance with § 4.93, from any port in the United States for any other such port, the master must apply to the port director for a permit to proceed by filing a Vessel Entrance or Clearance Statement, Customs Form 1300, in duplicate. If a vessel is proceeding in ballast and therefore the Cargo Declaration (Customs Form 1302) is omitted, the words "No merchandise on board" shall be inserted in item 16 of the Vessel Entrance or Clearance Statement. However, articles to be transported in accordance with § 4.93 must be manifested on the Cargo Declaration, as required by § 4.93(c). Three copies of the Cargo Declaration must be filed with the port director.

When the port director grants the permit by making an appropriate endorsement on the Vessel Entrance or Clearance Statement (see § 4.85(b)), the duplicate copy, together with two copies of the Cargo Declaration covering articles to be transported in accordance with § 4.93, must be returned to the master. The traveling Crew's Effects Declaration, Customs Form 1304, and all unused crewmembers' declarations on Customs Form 5129 will be placed in a sealed envelope addressed to the appropriate Customs officer at the next intended domestic port and returned to the master for delivery. The master must execute a receipt for all unused crewmembers' declarations which are returned to him. Immediately upon arrival at the next United States port the master must report his arrival to the port director. He must make entry within 48 hours by filing with the port director the permit to proceed on the Vessel Entrance or Clearance Statement received at the previous port, a newly executed Vessel Entrance or Clearance Statement, a Crew's Effects Declaration of all unentered articles acquired abroad by crewmembers which are still on board, a Ship's Stores Declaration, Customs Form 1303, in duplicate of the stores remaining on board, both copies of the Cargo Declaration covering articles transported in accordance with § 4.93, and the document of the vessel. The traveling Crew's Effects Declaration and all unused crewmembers' declarations on Customs Form 5129 returned at the prior port to the master must be delivered by him to the appropriate Customs officer.

* * * * *

(g) * * *

(1) At the port where a LASH-type barge begins a coastwise movement with inward foreign cargo, a permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, must be obtained. A single permit to proceed may be used for all the barges proceeding to the same port of unlading in the same town. An inward foreign manifest of the cargo in each barge, destined to the port of unlading shown on the permit to proceed, must be attached to each permit. At the port of unlading of the barge, report of arrival and entry must be made immediately upon arrival to the appropriate Customs officer by presentation of the permit to proceed, manifests, and a new Vessel Entrance or Clearance Statement, Customs Form 1300. If only part of the inward foreign cargo is unladen, a new permit to proceed must be obtained and the inward foreign manifests must be attached to it.

(2) At the port where a LASH-type barge begins a coastwise movement with export cargo, a permit to proceed on the Vessel Entrance or Clearance Statement, Customs Form 1300, must be presented to the appropriate Customs officer. A single permit to proceed may be presented for all the barges proceeding from the same port of lading in the same tow. Required shipper's export declarations for LASH-type barges must be filed at the port where the barges will be taken aboard a barge-carrying vessel. At the next port, a report of arrival must be made immediately upon arrival and entry must be made within 48 hours by presentation of the permit to proceed received upon departure from the prior port and a newly executed Vessel Entrance or Clearance Statement, Customs Form 1300.

* * * * *

§ 4.84 [Amended]

10. Section 4.84 is amended:

a. At paragraph (a) by removing the second and third sentences and adding, in their place, a new sentence to read as follows:

(a) * * * Such a clearance shall be granted in accordance with the applicable provisions of § 4.61 of the regulations of this part, including clearance of a vessel simultaneously engaged in one or more of the transactions listed in § 4.90(a)(4), (5), or (6) of this part.* * *

b. At paragraph (c)(1) in the last sentence by removing the words "Master's Oath on Entry of Vessel in Foreign Trade" and adding, in their place, the words "Vessel Entrance or Clearance Statement'; and

c. At paragraph (d) in the second sentence by removing the words "General Customs Declaration, Customs Form 1301" and adding, in their place, the words "Vessel Entrance or Clearance Statement, Customs Form 1300".

11. In § 4.85, paragraph (a) is amended in the fourth sentence by removing the words "General Declaration, Customs Form 1301" and adding, in their place, the words "Vessel Entrance or Clearance Statement, Customs Form 1300'; and paragraphs (b) and (c) are revised to read as follows:

§ 4.85 Vessels with residue cargo for domestic ports.

* * * * *

(b)(1) Before a vessel proceeds from one domestic port to another with cargo or passengers on board as described in paragraph (a) of this section, the master must present to the director of such port of departure an application in triplicate on Customs Form 1300 for a permit to proceed to the next port. When a port director grants the permit on Customs Form 1300, the following legend must be endorsed on the form:

Port
Date
Permission is granted to proceed to the port named in item 12.

_____
Signature and title

(2) The duplicate must be attached to the traveling manifest and the triplicate (the permit to proceed to be delivered at the next port) must be returned to the master, together with the traveling manifest and the vessel's document, if on deposit. If no inward foreign cargo or passengers are to be discharged at the next port, that fact must be indicated on Customs Form 1300 by inserting "To load only" in parentheses after the name of the port to which the vessel is to proceed. The traveling Crew's Effects Declaration covering articles acquired abroad by officers and members of the crew, together with the unused crewmembers' declarations prepared for such articles, will be placed in a sealed envelope addressed to the appropriate Customs officer at the next port and given to the master for delivery.

(c)(1) Upon the arrival of a vessel at the next and each succeeding domestic port with inward foreign cargo or passengers still on board, the master must immediately report its arrival and make entry within 48 hours. To make such entry, he must deliver to the port director the vessel's document, the permit to proceed (Customs Form 1300 endorsed in accordance with paragraph (b) of this section), the traveling manifest, and the traveling Crew's Effects Declaration (Customs Form 1304), together with the crewmembers' declarations received on departure from the previous port. The master must also present an abstract manifest consisting of a newly executed Vessel Entrance or Clearance Statement, Customs Form 1300, a Cargo Declaration, Customs Form 1302, and a Passenger List, Customs and Immigration Form I–418, in such number of copies as may be required for local Customs purposes, of any cargo or passengers on board manifested for discharge at that port, a Crew's Effects Declaration in duplicate of all unentered articles acquired abroad by officers and crewmembers which are still on board, a Ship's Stores Declaration, Customs Form 1303, in duplicate of the sea or ship's stores remaining on board, and if applicable, the Cargo Declaration required by § 4.86. If no inward foreign cargo or passengers are to be discharged, the Cargo Declaration or Passenger List may be omitted from the abstract manifest, and

the following legend must be placed in item 15 of the Vessel Entrance or Clearance Statement:

Vessel on an inward foreign voyage with residue cargo/passengers for _____. No cargo or passengers for discharge at this port.

(2) The traveling manifest, together with a copy of the newly executed Vessel Entrance or Clearance Statement, will serve the purpose of a copy of an abstract manifest at the port where it is finally surrendered.

* * * * *

12. Section 4.87 is amended by revising paragraphs (b)–(d), (f), and (g) to read as follows:

§ 4.87 Vessels proceeding foreign via domestic ports.

* * * * *

(b) When applying for a clearance from the first and each succeeding port of lading, the master must present to the port director a Vessel Entrance or Clearance Statement, Customs Form 1300, in duplicate and a Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A, in accordance with § 4.63(a), of all the cargo laden for export at that port. The Vessel Entrance or Clearance Statement must clearly indicate all previous ports of lading.

(c) Upon compliance with the applicable provisions of § 4.61, the port director will grant the permit to proceed by making the endorsement prescribed by § 4.85(b) on the Vessel Entrance or Clearance Statement, Customs Form 1300. One copy will be returned to the master, together with any unused crewmembers' declarations returned to the master at the prior port, will be delivered by him to the port director.

* * * * *

(f) If a complete Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A (see § 4.63), and all required shipper's export declarations are not available for filing before departure of a vessel from any port, clearance on the Vessel Entrance or Clearance Statement, Customs Form 1300, may be granted in accordance with § 4.75, subject to the limitation specified in § 4.75(c).

(g) When the procedure outlined in paragraph (f) of this section is followed at any port, the owner or agent of the vessel must deliver to the director of that port within 4 business days after the vessel's clearance a Cargo Declaration Outward With Commercial Forms, Customs Form 1302–A (see § 4.63), and the export declarations to cover the cargo laden for export at that port.

13. Section 4.89 is amended:

a. At paragraph (b) by removing the words "General Declaration, Customs Form 1301" and adding, in their place, the words "on the Vessel Entrance or Clearance Statement, Customs Form 1300"; and

b. At paragraph (d) by removing the words "General Declaration, Customs Form 1301" and adding, in their place, the words "Vessel Entrance or Clearance Statement, Customs Form 1300".

14. Section 4.90(b) is amended in the first sentence, by removing the number "1301" and adding, in its place, the number "1300".

15. Section 4.91 is amended:

a. At paragraph (a) in the first sentence by removing within the parenthesis the number "1301" and adding, in its place, the number "1300"; and in the second sentence, by removing the number "1301" and adding, in its place, the number "1300"; and

b. At paragraph (b)(2) by removing the number "1378" and adding, in its place, the number "1300".

16. In § 4.99, paragraph (a), introductory text, and paragraph (a)(2)(ii) are amended by removing the number "1301,".

PART 18—TRANSPORTATION IN BOND AND MERCHANDISE IN TRANSIT

1. The general authority citation for part 18, and the specific authority citations for §§ 18.3, 18.7, and 18.13, continue to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1551, 1552, 1553, 1623.

* * * * *

Section 18.3 also issued under 19 U.S.C. 1565;

* * * * *

Section 18.7 also issued under 19 U.S.C. 1557, 1646a;

* * * * *

Section 18.13 also issued under 19 U.S.C. 1498(a);

* * * * *

2. Section 18.2(b) is amended in the first sentence, by removing the words "and Customs control card (Customs Form 7512–C),".

3. Section 18.2(c)(1) is amended:

a. In the first sentence, by removing the words "either the related Customs Form 7512–C (destination) or the" and adding, in their place, the words "any related"; and by removing the parenthetical words "(which cannot be used in conjunction with Customs Form 7512–C)"; and

b. In the second sentence, by removing the words "the Customs Form 7512–C (destination) shall accompany the first conveyance, and".

4. Section 18.2(d) is amended in the first sentence, by removing in the parenthesis the words "and related Customs Form 7512–C (destination) or the" and adding, in their place, the words "any related".

5. Section 18.3(b) is amended:

a. In the second sentence, by removing the words "and Customs Form 7512–C (destination)"; and

b. In the fourth sentence, by removing the words "and the related Customs Form 7512–C (destination)".

6. Section 18.7(a) is amended in the first sentence, by removing in the parenthesis the words "and related Customs Form 7512–C (destination) or the" and adding, in their place, the words "any related".

7. Section 18.13(b) is amended by removing the last sentence.

PART 122—AIR COMMERCE REGULATIONS

1. The authority citation for part 122 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58b, 66, 1433, 1436, 1448, 1459, 1590, 1594, 1623, 1624, 1644, 1644a.

2. Section 122.83(e) is amended:

a. In the first sentence, by removing the words "and a numbered Customs Form 7512–C shall be filled out and filed";

b. In the last sentence, by removing the words "and Customs Form 7512–C (duplicate)"; and

c. By removing the second and third sentences.

3. Section 122.92 is amended by removing paragraph (a)(2) and redesignating paragraph (a)(3) as paragraph (a)(2).

4. Section 122.92(b)(1) is amended:

a. In the first sentence, by removing the words ", and the duplicate copy of Customs Form 7512–C"; and

b. By removing the last sentence.

5. Section 122.92(b)(2) is amended by removing the words "one copy of Customs Form 7512–C or" and adding, in their place, the word "any".

6. Section 122.93(a) is amended in the first sentence, by removing the words "with Customs Form 7512–C attached".

7. Section 122.94(a) is amended in the second sentence, by removing the words ", Customs Form 7512 with Customs Form 7512–C attached," and adding, in their place, the words "and a Customs Form 7512".

8. Section 122.119(c) is amended:

a. By removing in the introductory text, the words ", and two copies of Customs Form 7512–C (original and duplicate)";

b. By adding a second sentence, at the end of the introductory text, as follows:

* * * * *

(c) * * * The permit copy is used and kept by Customs at the port of arrival.

* * * * *

c. By removing paragraphs (c)(1) and (2).

9. In § 122.120:

a. Paragraph (d) is amended in the introductory text, by removing the words "and a Customs Form 7512–C (original and duplicate)";

b. Paragraph (d)(1) is amended in the first sentence, by removing the words "and Customs Form 7512–C (original)" and by removing the second sentence; and

c. Paragraph (i) is amended by removing the words "Forms 7512 and 7512–C" and adding, in their place, the words "Form 7512".

PART 123—CUSTOMS RELATIONS WITH CANADA AND MEXICO

1. The general authority citation for part 123 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 20, Harmonized Tariff Schedule of the United States (HTSUS)), 1431, 1433, 1436, 1448, 1624.

* * * * *

2. Section 123.42(c)(1) is amended in the last sentence by removing the words "with the related Customs Form 7512–C (destination)".

3. Section 123.42(d) is amended in the first sentence by removing the words "and the related Customs Form 7512–C (destination)".

4. Section 123.64(b) is amended in the second sentence by removing the words "and related Customs Form 7512–C (destination)".

PART 144—WAREHOUSE AND REWAREHOUSE ENTRIES AND WITHDRAWALS

1. The general authority citation for part 144 continues to read as follows:

Authority: 19 U.S.C. 66, 1484, 1557, 1559, 1624.

* * * * *

2. Section 144.37(a) is amended in the first sentence by removing the words ", accompanied by Customs Form 7512–C (Transportation Entry and Manifest of Goods)".

PART 146—FOREIGN TRADE ZONES

1. The authority citation for part 146 continues to read as follows:

Authority: 19 U.S.C. 66, 81a–81u, 1202 (General Note 20, Harmonized Tariff Schedule of the United States), 1623, 1624.

2. Section 146.68(b) is amended:

a. In the fourth sentence by removing the words "and the destination copy (Customs Form 7512–C)"; and

b. In the last sentence by removing the words "and the origin copy (Customs Form 7512–C)".

Raymond W. Kelly,

Commissioner of Customs.

Approved: January 24, 2000.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 00–7557 Filed 3–28–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 93F–0132]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of a mixture of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin as a preservative in clay-type fillers for paper and paperboard intended for use in contact with aqueous and fatty food. This action is in response to a petition filed by Lonza, Inc.

DATES: This rule is effective March 29, 2000. Submit written objections and requests for a hearing by April 28, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Vivian M. Gilliam, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3094.

SUPPLEMENTARY INFORMATION:

I. Background

In a notice published in the **Federal Register** May 17, 1993 (58 FR 28882), FDA announced that a food additive petition (FAP 3B4367) had been filed by Lonza, Inc., c/o Delta Analytical Corp., 1414 Fenwick Lane, Silver Spring, MD 20910. The petition proposed to amend the food additive regulations in § 175.105 *Adhesives* (21 CFR 175.105), § 175.300 *Resinous and polymeric coatings* (21 CFR 175.300), and § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) to provide for the safe use of a mixture of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin as a preservative in adhesives, resinous and polymeric coatings and clay-type fillers for paper and paperboard in food-contact articles. Lonza, Inc., is currently represented by Lewis and Harrison, 122 C St. NW., suite 740, Washington, DC 20001. (Formerly represented by Delta Analytical Corp. whose current address is 7910 Woodmont Ave., Bethesda, MD 20814).

When the petition was filed on May 17, 1993, the petitioner proposed to amend the food additive regulations in §§ 175.105, 175.300, and 176.170. Subsequent to the filing of the petition, the petitioner amended the petition to limit the use of the additive to the manufacture of paper and paperboard under § 176.170.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive, a mixture of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin as a preservative in clay-type fillers for paper and paperboard intended to contact aqueous and fatty food is safe; (2) the additive will achieve its intended technical effect; and therefore, (3) the regulation in § 176.170(a)(5) should be amended as set forth below.

FDA's review of the petition indicates that the additive may contain trace amounts of formaldehyde as an impurity. The potential carcinogenicity of formaldehyde was reviewed by the Cancer Assessment Committee (the Committee) of FDA's Center for Food Safety and Applied Nutrition. The Committee noted that for many years, formaldehyde has been known to be a carcinogen by the inhalation route, but the Committee concluded that these inhalation studies are not appropriate for assessing the potential carcinogenicity of formaldehyde in food. The Committee's conclusion was based on the fact that the route of administration (inhalation) is not relevant to the safety of formaldehyde residues in food and the fact that tumors were observed only locally at the portal of entry (nasal turbinates). In addition, the agency has received literature reports of two-year drinking-water studies on formaldehyde: (1) A preliminary report of a carcinogenicity study purported to be positive by Soffritti et al. (1989), conducted in Bologna, Italy (Ref. 1); and (2) a negative study by Til et al. (1989), conducted in The Netherlands (Ref. 2). The Committee reviewed both studies and concluded, concerning the Soffritti study, "* * * that data reported were unreliable and could not be used in the assessment of the oral carcinogenicity of formaldehyde" (Ref. 3). This conclusion is based on a lack of critical detail in the study, questionable histopathological conclusions, and the use of unusual nomenclature to describe the tumors. Based on the Committee's evaluation, the agency has determined that there is no basis to conclude that formaldehyde is a carcinogen when ingested.

A mixture of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin intended as a preservative in clay-type fillers for paper and paperboard intended in contact with aqueous and fatty foods is regulated under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) as a food additive and not as a pesticide chemical under section 408 of the act (21 U.S.C. 346a). However, this intended use of a mixture of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin may nevertheless be subject to regulation as a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Therefore, manufacturers intending to market food-contact articles containing a mixture of hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin for this intended use should contact the Environmental Protection Agency to determine whether this use requires a pesticide registration under FIFRA.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

II. Objections

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by April 28, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Soffritti, M., C. Maltoni, F. Maffei, and R. Biagi, "Formaldehyde: An Experimental Multipotential Carcinogen," *Toxicology and Industrial Health*, vol. 5, No. 5, pp. 699–730, 1989.

2. Til, H. P., R. A. Woutersen, V. J. Feron, V. H. M. Hollanders, H. E. Falke, and J. J. Clary, "Two-Year Drinking-Water Study of Formaldehyde in Rats," *Food Chemical Toxicology*, vol. 27, No. 2, pp. 77–87, 1989.

3. Memorandum of Conferences concerning "Formaldehyde," Meeting of the Cancer Assessment Committee, FDA, April 24, 1991, and March 4, 1993.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 346, 348, 379e.

2. Section 176.170 is amended in the table in paragraph (a)(5) by alphabetically adding an entry under the headings "List of Substances" and "Limitations" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
. . . . .	. . . . .
Hydroxymethyl-5,5-dimethylhydantoin (CAS Reg. No. 27636–82–4), mixture with 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin (CAS Reg. No. 6440–58–0).	For use only as a preservative in clay-type fillers at a level not to exceed a combined total of 1,200 milligrams/kilograms hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimetbylhydantoin in the filler.
. . . . .	. . . . .

* * * * *

Dated: March 20, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–7655 Filed 3–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 862

[Docket No. 00P–0931]

Clinical Chemistry Devices; Classification of the Biotinidase Test System

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is classifying the biotinidase test system into class II (special controls). The special control that will apply to this device is restriction to sale, distribution, and use as a prescription device. The agency is taking this action in response to a petition submitted under the Federal Food, Drug, and Cosmetic Act (the act) as amended by the Medical Device Amendments of 1976, the Safe Medical Devices Act of 1990, and the Food and Drug Administration Modernization Act of 1997. The agency is classifying these devices into class II (special controls) in order to provide a reasonable assurance of the safety and effectiveness of the devices.

DATES: This rule is effective April 28, 2000.

FOR FURTHER INFORMATION CONTACT: Carol C. Benson, Center for Devices and Radiological Health (HFZ–440), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–1243.

SUPPLEMENTARY INFORMATION:

I. Background

In accordance with section 513(f)(1) of the act (21 U.S.C. 360c(f)(1)), devices that were not in commercial distribution before May 28, 1976, the date of enactment of the Medical Device Amendments of 1976 (the amendments), generally referred to as postamendments devices, are classified automatically by statute into class III without any FDA rulemaking process. These devices remain in class III and require premarket approval, unless and until the device is classified or reclassified into class I or class II or FDA issues an order finding the device to be substantially equivalent, in accordance with section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously marketed devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the FDA regulations.

Section 513(f)(2) of the act provides that any person who submits a premarket notification under section 510(k) of the act for a device that has not previously been classified may, within 30 days after receiving an order classifying the device in class III under section 513(f)(1) of the act, request FDA to classify the device under the criteria set forth in section 513(a)(1) of the act. FDA shall, within 60 days of receiving such a request, classify the device by written order. This classification shall be the initial classification of the device. Within 30 days after the issuance of an order classifying the device, FDA must publish a notice in the **Federal Register** announcing such classification.

In accordance with section 513(f)(1) of the act, FDA issued an order on November 19, 1999, classifying the Wallac Neonatal Biotinidase Test Kit in class III, because it was not substantially equivalent to a device that was introduced or delivered for introduction into interstate commerce for commercial distribution before May 28, 1976, or a device which was subsequently reclassified into class I or class II. On December 20, 1999, FDA filed a petition submitted by PerkinElmer requesting classification of the Wallac Neonatal Biotinidase Test Kit into class II under section 513(f)(2) of the act.

After review of the information submitted in the petition, FDA determined that the Wallac Neonatal Biotinidase Test Kit can be classified in class II with the establishment of special controls. This device is intended for use in the semiquantitative in vitro determination of biotinidase activity in blood specimens collected onto filter paper to screen newborns for biotinidase deficiency, an inborn error of metabolism. FDA believes that class II special controls, in addition to the general controls, will provide reasonable assurance of the safety and effectiveness of the device.

In addition to the general controls of the act, Wallac Neonatal Biotinidase Test Kit is subject to the following special control: The sale, distribution, and use of this device are restricted to prescription use in accordance with § 801.109 (21 CFR 801.109). Section 510(m) of the act provides that FDA may exempt a class II device from the premarket notification requirements under section 510(k) of the act, if FDA determines that premarket notification is not necessary to provide reasonable assurance of the safety and effectiveness of the device. FDA has determined that premarket notification is necessary to provide reasonable assurance of the safety and effectiveness of the device and, therefore, the device is not exempt from the premarket notification requirements. The test is widely used in newborn screening programs and FDA review of data sets and labeling ensure that minimum levels of performance are obtained before marketing and are subject to impartial external quality control before labeling is put into place. Thus, persons who intend to market this device must submit to FDA a premarket notification submission containing information on the biotinidase test system before marketing the device.

On February 15, 2000, FDA issued an order to the petitioner classifying the Wallac Neonatal Biotinidase Test Kit, and substantially equivalent devices of this generic type, into class II under the generic name, biotinidase test system. FDA identifies this generic type of device as a biotinidase test system, which is intended to measure the activity of the enzyme biotinidase deficiency, an inborn error of metabolism in infants, characterized by the inability to utilize dietary protein bound vitamin, or to recycle endogenous biotin, and may result in irreversible neurological impairment. This order also identifies the following special control applicable to this device: Sale, distribution, and use of this device are restricted in accordance with the prescription device requirements in § 801.109.

II. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

III. Analysis Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety and other advantages, distributive impacts, and equity). The agency believes that this final rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so it is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The agency knows of only one manufacturer of this device. Without this rule, the manufacturer would be required to obtain approval of a premarket approval application from FDA before marketing this device. Therefore, this rule reduces an economic burden for this manufacturer and any future manufacturers of this type of device. The agency, therefore, certifies that this final rule will not have a significant economic impact on a substantial number of small entities. In addition, this final rule will not impose costs of $100 million or more on either the private sector or state, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform act is not required.

IV. Paperwork Reduction Act of 1995

This final rule contains no collection of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Therefore, under the Federal Food, Drug, and Cosmetic Act under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 862 is amended as follows:

List of Subjects in 21 CFR Part 862

Medical devices.

PART 862—CLINICAL CHEMISTRY AND CLINICAL TOXICOLOGY DEVICES

1. The authority citation for 21 CFR part 862 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 862.1118 is added to subpart B to read as follows:

§ 862.1118 Biotinidase test system.

(a) *Identification.* The biotinidase test system is an in vitro diagnostic device intended to measure the activity of the enzyme biotinidase in blood. Measurements of biotinidase are used in the treatment and diagnosis of biotinidase deficiency, an inborn error of metabolism in infants, characterized by the inability to utilize dietary protein bound vitamin or to recycle endogenous biotin. The deficiency may result in irreversible neurological impairment.

(b) *Classification.* Class II (special controls). The special control is sale, distribution, and use in accordance with the prescription device requirements in § 801.109 of this chapter.

Dated: March 13, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–7541 Filed 3–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD08–00–003]

Drawbridge Operating Regulation; Pass Manchac, LA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, Eighth Coast Guard District, has issued a temporary deviation from the regulation governing the operation of the Illinois Central Railroad automated bridge, mile 6.7, at Manchac, Tangipahoa and St. John Parishes, Louisiana. This deviation allows the Canadian National/Illinois Central Railroad to close the bridge to navigation continuously from noon on Wednesday, April 12, 2000 until 8 p.m. on Thursday, April 13, 2000. This temporary deviation was issued to allow for the replacement of an electrical cable and to accomplish other general maintenance. Presently, the draw is maintained in the open position and closes for the passage of trains.

DATES: This deviation is effective from noon on Wednesday, April 12, 2000 through 8 p.m. on Thursday, April 13, 2000.

ADDRESSES: Unless otherwise indicated, documents referred to in this notice are available for inspection or copying at the office of the Eighth Coast Guard District, Bridge Administration Branch, Commander (ob), Eighth Coast Guard District, 501 Magazine Street, New Orleans, Louisiana 70130–3396. The Bridge Administration Branch of the Eighth Coast Guard District maintains the public docket for this temporary deviation.

FOR FURTHER INFORMATION CONTACT: David Frank, Bridge Administration Branch, telephone (504) 589–2965.

SUPPLEMENTARY INFORMATION: The Illinois Central Railroad automated bridge across Pass Manchac, mile 6.7, at Manchac, has a vertical clearance of one foot above mean high water in the closed-to-navigation position and 56 feet above mean high water in the open-to-navigation position. Navigation on the waterway consists of tugs with tows, fishing vessels, sailing vessels, and other recreational craft. The Canadian National/Illinois Central Railroad requested a temporary deviation from the normal operation of the drawbridge in order to accommodate the maintenance work, involving replacement of an underground

electrical cable and other general maintenance work.

This deviation allows the draw of the Illinois Central Railroad automated bridge across Pass Manchac, mile 6.7, at Manchac, Tangipahoa and St. John Parishes, Louisiana to remain closed to navigation continuously from noon on Wednesday, April 12, 2000, until 8 p.m. on Thursday, April 13, 2000.

Dated: March 15, 2000.

K.J. Eldridge,

Copt, USCG, Acting District Commander, Eighth CG District.

[FR Doc. 00–7644 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Tampa 00–016]

RIN 2115–AA97

Safety Zone Regulations: Saint Pete Beach, FL

AGENCY: Coast Guard, DOT

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone closing the waters of Blind Pass, Pinellas County, Florida. The zone will be placed into effect and terminated at different times by a broadcast notice to mariners to protect recovery personnel and vessels in the vicinity of pollution response operations. Entry into this zone is prohibited unless authorized by the Captain of the Port.

DATES: This regulation becomes effective at 9 a.m., on March 9, 2000 through 9 a.m., on May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Commanding Officer, Marine Safety Office Tampa, 155 Columbia Drive, Tampa, Florida 33606, Attention: Lieutenant Warren Weedon, or phone (813) 228–2189 ext 101.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B) and 553(d)(3), the Coast Guard finds that good cause exists for not publishing an NPRM and making these regulations effective less than 30 days after the **Federal Register** publication. Publishing a Notice of Proposed Rulemaking and delaying the effective date would be contrary to national safety interests since immediate action is needed to minimize potential danger to the public as the updated information concerning the channel blockage was received only one day prior.

Background and Purpose

A permit was granted by the U. S. Army Corp of Engineers to conduct dredging operations in Blind Pass. During the dredging operations it was determined that some oil was buried in the pass. The Coast Guard is now conducting oil recovery operations and has determined that a safety zone is needed to ensure the safety of personnel engaged in recovery operations. The Coast Guard is establishing a temporary safety zone closing the waters of Blind Pass, Pinellas County, Florida. The zone will be placed into effect and terminated at different times by a broadcast notice to mariners to protect recovery personnel and vessels in the vicinity of pollution response operations. Entry into this zone is prohibited unless authorized by the Captain of the Port.

Regulatory Evaluation

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of the order. It has been exempted from review by the Office of Management and Budget under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This regulation will only be in effect in a limited area of Saint Pete Beach.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612 *et seq.*), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "Small entities" comprises small businesses and not for profit organizations that are independently owned and operated and are not dominant in their field and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as the regulations will only be in effect in a limited area of Saint Pete Beach.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 et seq).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531—1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking disproportionately affect children.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Reporting and Record keeping requirements, Safety measures, Waterways.

Temporary Regulations: In consideration of the foregoing, the Coast Guard amends Subpart C of Part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Temporary § 165.T07–016 is added to read as follows:

§ 165.T07–016 Safety Zone; Tampa Bay, Florida

(a) *Regulated area.* A temporary fixed safety zone is established closing the entrance to Blind Pass, Saint Pete Beach, Florida from a line drawn across Blind Pass between Treasure Island and Long Key as defined by COLREGS Demarcation Line, 33 CFR 80.753 (a), to a line drawn 500 yards north, again crossing Blind Pass channel, during periods when oil spill recovery operations are being conducted in Blind Pass Channel.

(b) *Periods of closure.* The COTP will notify the maritime community and local agencies of periods when the safety zone is in effect by providing notice via telephone and/or Broadcast Notice to Mariners.

(c) *Regulations.* In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited to all vessels without the prior permission of the Coast Guard Captain of the Port.

(d) *Dates.* These regulations will remain in effect from between 9 a.m. on March 9, 2000, through 9 a.m. on May 1, 2000.

Dated: March 9, 2000.

D.M. Smith,

Commander, U.S. Coast Guard, Acting Captain of the Port, Tampa, Florida.

[FR Doc. 00–7750 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[FRL–6567–2]

Extension of Operating Permits Program Interim Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of direct final rule.

SUMMARY: Due to an adverse comment, EPA is withdrawing the February 14, 2000 direct final rule: "Extending Operating Permits Program Interim Approval Expiration Dates." This rule would extend the dates by which interim approval of State or local operating permits programs will expire until June 1, 2002. The withdrawal of the rule will only affect those programs with interim approval as opposed to full approval.

DATES: The direct final rule, published on February 14, 2000 (65 FR 7290), is withdrawn as of March 29, 2000.

ADDRESSES: Docket No. A–93–50 containing supporting information used in the development of this notice is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding holidays. The docket is located in EPA's Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500, 401 M Street, SW, Washington, DC 20460, or by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

FOR FURTHER INFORMATION CONTACT: Mr. Roger Powell at (919) 541–5331, Information Transfer and Program Integration Division (MD–12), Environmental Protection Agency, Research Triangle Park, North Carolina 27711, electronic mail address: powell.roger@epa.gov.

SUPPLEMENTARY INFORMATION: On February 14, 2000, EPA published a direct final rule (65 FR 7290) and a parallel proposal (65 FR 7333) to amend Appendix A of the 40 CFR part 70 operating permits regulations. This amendment would extend until June 1, 2002 the expiration dates of all interim approvals of State or local operating permits programs. The purpose of this action was to allow State and local permitting authorities to combine the operating permits program revisions necessary to correct interim approval deficiencies with program revisions necessary to implement the revisions to the part 70 regulations that are now anticipated to be promulgated in late 2001. This action would allow the permitting authorities to preserve resources by preparing and submitting to EPA only one program revision instead of two.

The EPA stated in the direct final rule (65 FR 7291, February 14, 2000) that if relevant, adverse comments were received by March 15, 2000, EPA would publish a notice to withdraw the direct final rule before its effective date of May 30, 2000. The EPA received an adverse comment on the direct final rule and, therefore, is withdrawing the direct final rulemaking action. The adverse comment stated that the action was contrary to the express terms of the Clean Air Act. The EPA will address this comment on the withdrawn amendment in the subsequent final action on the proposed amendment.

Dated: March 21, 2000.

Robert Perciasepe,

Assistant Administrator for Air and Radiation.

[FR Doc. 00–7735 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 258

[FRL–6565–6]

West Virginia: Final Determination of Partial Program Adequacy of the State's Municipal Solid Waste Landfill Permitting Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Determination of Partial Program Adequacy for the State of West Virginia's Municipal Solid Waste Landfill Permitting Program.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs or other systems to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised federal MSWLF criteria

(40 CFR part 258). Section 4005(c)(1)(C) of RCRA requires the U.S. Environmental Protection Agency (EPA) to determine whether states have adequate programs for MSWLFs.

On October 23, 1998, EPA published the final State Implementation Rule (SIR) which contains procedures by which EPA will approve or partially approve state landfill permit programs (63 FR 57025). Prior to that date, EPA processed state applications for EPA approval of their landfill permit programs based on draft SIR procedures. The procedures contained in the draft SIR did not significantly differ from the final SIR.

Owners/operators of MSWLFs located in states with EPA-approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the state permit program allows such flexibility. EPA notes that regardless of the approval status of a state and the permit status of any facility, the federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities. However, facilities in EPA-approved states may have more flexibility in meeting those criteria.

On June 17, 1994, the State of West Virginia applied for a determination of partial program adequacy for its municipal solid waste landfill permit program under section 4005 of RCRA. West Virginia submitted relevant regulations that corresponded to all sections of 40 CFR part 258 except for specific sections of the following four subparts:

1. Subpart A—General: West Virginia (WV) was not able to adopt all of the definitions listed under 40 CFR 258.2;

2. Subpart E—Groundwater Monitoring and Corrective Action: WV was not able to adopt the requirements of 40 CFR 258.51, Groundwater Monitoring Systems; 40 CFR 258.54, Detection Monitoring Program; and 40 CFR 258.55, Assessment Monitoring Program;

3. Subpart F—Closure and Post-Closure Care: WV was not able to adopt the criteria in 40 CFR 258.60, Closure Criteria, pertaining to the time allowed to apply the final cover;

4. Subpart G—Financial Assurance Criteria: West Virginia was not able to adopt any of the sections or provisions of this Subpart.

On March 8, 1996, EPA published a tentative determination of partial program adequacy for all portions of the State of West Virginia MSWLF permitting program that satisfied the federal provisions of 40 CFR part 258, with the exceptions mentioned above (61 FR 9451–9454). EPA delayed the final determination of partial program adequacy of West Virginia's program due to litigation that affected the state's solid waste management authorities. However, these issues were resolved by the passage of West Virginia Senate Bill 178 on March 2, 1998. Based on EPA's March 8, 1996 tentative determination and the amendment of West Virginia's solid waste management authorities, as provided in Senate Bill 178, EPA is today completing its decision making process by issuing a final determination of partial program adequacy of West Virginia's MSWLF permitting program.

EFFECTIVE DATE: This final determination of partial program adequacy for the State of West Virginia shall be effective on April 28, 2000.

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103–2029, Attn: Mr. Michael C. Giuranna, mailcode 3WC21, telephone (215) 814–3298. The contact for the West Virginia Division of Environmental Protection is Mr. Larry Atha, 1356 Hansford Street, Charleston, West Virginia 25301–1401, telephone (304) 558–6350.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised criteria for MSWLFs (40 CFR part 258). Section 4005(c)(1)(B) of Subtitle D of RCRA, as amended by HSWA, requires states to develop permitting or other similar programs that incorporate the federal criteria under 40 CFR part 258. Subtitle D also requires in Section 4005(c)(1)(C) that EPA determine the adequacy of state MSWLF permitting programs to ensure that facilities comply with the revised federal criteria. To fulfill this requirement, the Agency promulgated the State Implementation Rule on October 23, 1998 (63 FR 57025) which provides procedures by which EPA will approve or partially approve state landfill permit programs.

EPA interprets the requirements for states to develop "adequate" programs for permits, or other forms of prior approval, as imposing several minimum requirements. First, each state must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the state must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The state also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the state must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator who fails to comply with an approved MSWLF program.

EPA Regions determine whether state programs are "adequate" based on the criteria outlined above.

B. State of West Virginia

In a letter dated June 17, 1994, the West Virginia Division of Environmental Protection (WVDEP) submitted an application to EPA Region III for a determination of partial program adequacy. In response to EPA's comments on West Virginia's application, the WVDEP submitted additional information in letters dated April 10, 1995 and October 12, 1995. EPA reviewed WVDEP's application and this additional information and published a tentative determination of partial program adequacy for subparts B, C and D, and portions of subparts A, E and F of 40 CFR part 258, as described below, in the **Federal Register** on March 8, 1996 (61 FR 9451–9454).

A public comment period began on March 8, 1996, and ended on April 30, 1996. As announced in the notice of tentative determination, a public hearing was offered to be held on April 30, 1996, if sufficient interest was expressed by the public. Since only one commenter requested that a hearing be held, it was determined that sufficient interest did not exist, and therefore a public hearing was not held. This commenter submitted written comments which are addressed, along with all other comments, in Section C, Public Comments, of this notice. Following the close of the public comment period, WVDEP addressed all public comments which EPA received on its tentative determination. Based on WVDEP's response to comments, EPA was prepared to publish a final determination of partial program adequacy of the West Virginia MSWLF permitting program in late 1996. However, EPA delayed the final determination of partial program adequacy of West Virginia's program due to several rulings in the U.S. District Court for the Northern District of West Virginia which brought into question the implementation of portions of the West Virginia solid waste statutes. However, on March 2, 1998, the Governor of West Virginia signed into law Senate Bill 178 which corrected language in the State's solid waste laws that had previously been declared unconstitutional by the federal court rulings. The provisions of Senate Bill 178 eliminated EPA's concerns about the enforceability of West Virginia's solid waste statutes and allowed EPA to proceed with this final determination of partial program adequacy.

Listed below are the elements of the federal program that West Virginia's MSWLF permitting program satisfy for partial program approval. These elements of the federal program that West Virginia's MSWLF permitting program satisfy were listed in EPA's previous notice of tentative determination of partial program adequacy (61 FR 9451, March 8, 1996), and it is those corresponding provisions of West Virginia's MSWLF permitting program that are being approved by EPA today in this final determination of partial program adequacy.

Subpart A—General

Existing WVDEP requirements fully comply with 40 CFR sections 258.1, Purpose, Scope, and Applicability and § 258.3, Consideration of other Federal laws.

Subpart B—Location Restrictions

WVDEP requirements fully comply with § 258.10, Airport Safety, § 258.11, Floodplains; § 258.12, Wetlands; § 258.13, Fault Areas; § 258.14, Seismic Impact Zones; § 258.15, Unstable Areas; and § 258.16, Closure of Existing MSWLF Units.

Subpart C—Operating Criteria

WVDEP requirements fully comply with: § 258.20, Hazardous Waste Exclusion; § 258.21, Daily Cover; § 258.22, Disease Vectors Control; § 258.23, Explosive Gas Control; § 258.24, Air Criteria; § 258.25, Access requirements; § 258.26, Run-On/Run-Off Control Systems; § 258.27, Surface Water Requirements; § 258.28, Liquids Restrictions; and § 258.29, Recordkeeping Requirements.

Subpart D—Landfill Design

WVDEP requirements fully comply with: § 258.40, Design Criteria.

Subpart E—Groundwater Monitoring and Corrective Action

WVDEP requirements fully comply with: § 258.50, Applicability; § 258.53, Groundwater Sampling and Analysis requirements; § 258.56, Assessment of Corrective Measures; § 258.57, Selection of Remedy; and § 258.58, Implementation of the Corrective Action Program.

Subpart F—Closure and Post-Closure Care

WVDEP requirements fully comply with:

§ 258.61, Post-Closure Care Requirements.

In a similar manner, EPA's previous notice of tentative determination of partial program adequacy listed those elements of West Virginia's MSWLF permitting program that did not satisfy provisions of EPA's requirements at 40 CFR part 258. Those elements are again listed below and are not being approved in this notice. However, the federal program elements listed below are expected to be addressed in a future notice.

Subpart A—General

The definitions listed in § 258.2, Definitions.

Subpart E—Groundwater Monitoring and Corrective Action

The requirements of § 258.51, Groundwater Monitoring Systems; § 258.54, Detection Monitoring Program; and § 258.55, Assessment Monitoring Program.

Subpart F—Final Closure

The criteria in § 258.60, Closure Criteria, pertaining to the time allowed to apply the final cover.

Subpart G—Financial Assurance Criteria

§ 258 Subpart G, Financial Assurance requirements. This includes § 258.70, Applicability; § 258.71, Financial Assurance for Closure; § 258.72, Financial Assurance for Post-Closure Care; § 258.73, Financial Assurance for Corrective Action, § 258.74, Allowable Mechanisms and § 258.75, Discounting.

C. Public Comments

The reader is advised that West Virginia modified its numbering system for the Solid Waste Management Rule (the Rule) on June 2, 1996. Please note that within the following discussions, both old and new section numbers are provided for the Rule.

EPA Region III received written public comments on its tentative determination of partial program adequacy of the West Virginia MSWLF permitting program in April of 1996. At that time, two commenters raised several concerns over the incompatibility of the WVDEP solid waste regulations and the existing West Virginia Groundwater Protection Act, WV Code Section 22–12. Their primary concern was that the Groundwater Monitoring and Corrective Action Program portion of West Virginia's Solid Waste Management Rule at 47 Code of State Regulations (CSR) 38 section 4.11 presently 33 CSR 1 section 4.11 (as well as 40 CFR part 258, subpart E), were less protective than the West Virginia Groundwater Protection Act. WVDEP was aware of these deficiencies and had already addressed them by adding several references to the West Virginia Solid Waste Management Rule during the previous legislative rulemaking session. These references, which were added to the Solid Waste Facility Permitting Requirements of the Rule, were sections 33 CSR 1 sections 3.1e.1.D and 3.5.b, which require compliance with the West Virginia Groundwater Protection Act.

Another commenter questioned the wording of both 47 CSR 38 section 4.13.3 (presently 33 CSR 1 section 4.13.c) and 47 CSR 38 section 4.8.1.f (presently 33 CSR 1 section 4.8.a.6) of the Rule regarding leachate disposal as not conforming with the EPA requirements at 40 CFR 258.28. WVDEP was again already aware of the nonconformance in section 4.13.3 (presently section 4.13.c) and added Section 4.13.c.1.B to the Rule which incorporated the requirements of EPA regulations at 40 CFR 258.28. Section 4.8.1.f (presently section 4.8.a.6) of the Rule did not need to be revised to conform to federal requirements since this section, which covers the general practice of land application of treated leachate, is not an element of EPA regulations at 40 CFR 258.28. The leachate management provisions of 40 CFR 258.28 are limited to the placement of leachate onto or into the landfill itself for recirculation processes. This same commenter also questioned if the State's definition of a waste management facility boundary as defined in 47 CSR 38 section 4.11.1.f (presently 33 CSR 1 section 4.11.a.6.A) was in conflict with the EPA definition of the relative point of compliance for groundwater sampling purposes. The State was again already aware of this potential conflict and had revised 33 CSR 1 section 4.11.a.6.A to match the EPA regulation at 40 CFR 258.53(i)(1).

Two commenters noted that the presence of definitions for "Disposal" and "Solid Waste Disposal," as well as "Landfill" and "Solid Waste Landfill Facility" in the State regulations could cause confusion. EPA agrees that having duplicate definitions appears unnecessary, but EPA does not believe they are in conflict with each other or with the federal definitions. Therefore, revisions to these definitions are not required. Concerning the comment that changes in some definitions may limit the rule's application to landfills only, it is noted that this is consistent with federal rules at 40 CFR part 258 which only apply to municipal solid waste landfills. Lastly, EPA does not agree with the previous commenter that West Virginia's solid waste recycling exemption previously under 47 CSR 38 section 2.53.7 (presently 33 CSR 1

section 2.114.g) conflicts with the definition of solid waste under the federal requirements. West Virginia's recycling exemption from solid waste refers to materials which are being recycled or reused, while EPA's definition of solid waste refers to materials which are being discarded. EPA's 40 CFR part 258 regulations apply to solid wastes destined for disposal consistent with West Virginia's rules. If waste materials are recycled or reused, by definition, they are not destined for disposal.

Finally, another commenter raised the concern that the existing WVDEP regulations on bonding and financial assurance exempt several major categories of MSWLF owners. The WVDEP, in written communication to EPA Region III, dated August 2, 1996, replied that this commenter's interpretation of a "non-commercial" facility was incorrect, and confirmed that all landfills in West Virginia which are subject to 40 CFR part 258 fall under the State's financial assurance requirements.

Additionally, EPA received a comment which expressed concern over "weaknesses" in the WVDEP groundwater monitoring program. EPA was aware that the State's groundwater monitoring program was not in compliance with EPA requirements under 40 CFR 258.51, Ground Water Monitoring Systems; 40 CFR 258.54, Detection Monitoring Program; and 40 CFR 258.55, Assessment Monitoring Program. This is why EPA did not propose to approve those portions of West Virginia's Groundwater Monitoring program in its tentative determination and why EPA is not including these components in today's final determination of partial program adequacy. However, the Rule has since been amended to correct those weaknesses, and EPA plans to publish a separate **Federal Register** notice addressing the above-referenced regulatory revisions to West Virginia's groundwater monitoring program.

D. Decision

As discussed in the "Public Comment" section of this notice, WVDEP has responded to the public comments received in response to EPA's notice of tentative determination of partial program adequacy. EPA is satisfied that all of the comments and related concerns raised as a result of the tentative determination of partial program adequacy have been resolved to EPA's satisfaction by the WVDEP. Therefore, EPA is granting a final determination of partial program adequacy of West Virginia's MSWLF permitting program, for 40 CFR part 258, subparts B, C and D, and portions of subparts A, E and F as described in Section B of the "Supplementary Information Section" of this notice.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the federal MSWLF criteria in 40 CFR part 258 independent of any state enforcement program. As explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions of a state program approved by EPA should be considered to be in compliance with the federal criteria (56 FR 50978, 50995, October 9, 1991).

Compliance With Executive Order 12866—Regulatory Planning and Review

The Office of Management and Budget has exempted today's action from the requirements of Executive Order 12866.

Compliance With Executive Order 12898—Environmental Justice

EPA is committed to addressing environmental justice concerns and is assuming a leadership role in environmental justice initiatives to enhance environmental quality for all residents of the United States. The Agency's goals are to ensure that no segment of the population, regardless of race, color, national origin, or income bears disproportionately high and adverse human health and environmental effects as a result of EPA's policies, programs, and activities, and all people live in clean and sustainable communities. EPA does not believe that today's action will have a disproportionately high and adverse environmental or economic impact on any minority or low-income group, or on any other type of affected community.

Compliance With Executive Order 13045—Children's Health Protection

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks," applies to any rule that: (1) the Office of Management and Budget determines is "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is not an economically significant rule as defined by E.O. 12866, and because it does not involve decisions based on environmental health or safety risks.

Compliance With Executive Order 13084—Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

This rule is not subject to E.O. 13084 because it does not significantly or uniquely affect the communities of Indian tribal governments. West Virginia is not authorized to implement the MSWLF permitting program in Indian country.

Compliance With Executive Order 13132—Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under Section 6 of Executive Order 13132, EPA may not issue a regulation

that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by state and local governments, or EPA consults with state and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts state law unless the Agency consults with state and local officials early in the process of developing the proposed regulation.

This approval does not have federalism implications. It will not have a substantial direct effect on states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because this rule affects only one State. This action simply approves portions of West Virginia's MSWLF permitting program that the State has voluntarily chosen to operate. Thus, the requirements of Section 6 of the Executive Order do not apply.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) A small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this approval on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are owners or operators of municipal sold waste landfills are already subject to the regulatory requirements under the State laws which EPA is now approving. This action merely approves for the purpose of RCRA 4005(c) those existing State requirements.

Compliance With the Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801, *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each house of the Congress and to the Comptroller General of the United States. EPA will submit a report containing today's document and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of today's action in the **Federal Register**. Today's action is not a "major rule" as defined by section 5 U.S.C. 804(2).

Compliance With the Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for federal agencies to assess the effects of their regulatory actions on state, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "federal mandates" that may result in expenditures to state, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year.

Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

EPA has determined that section 202 and 205 requirements do not apply to today's action because this rule does not contain a federal mandate that may result in annual expenditures of $100 million or more for State, local, and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the West Virginia program, and today's action does not impose any additional obligations on regulated entities. In fact, EPA's approval of state programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may own or operate municipal solid waste landfills, they are already subject to the regulatory requirements under the existing State laws that are being approved by EPA, and, thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

Compliance With the National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, Sec. 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus

standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards. This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

List of Subjects in 40 CFR Part 258

Environmental protection, administrative practice and procedure, municipal solid waste landfills, non-hazardous solid waste, and state permit program approval.

Authority: This notice is issued under the authority of section 2002, 4005 and 4010(c) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912, 6945 and 6949(a).

Dated: March 14, 2000.

Bradley M. Campbell,

Regional Administrator, Region III.

[FR Doc. 00–7624 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6565–4]

Oklahoma: Final Authorization of State Hazardous Waste Management Program Revisions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: The State of Oklahoma has applied for Final authorization to revise its Hazardous Waste Program under the Resource Conservation and Recovery Act (RCRA). The EPA is now making an immediate final decision, subject to receipt of written comment that oppose this action, that Oklahoma's Hazardous Waste Program revision satisfies the requirements necessary to qualify for final authorization.

DATES: This immediate final rule is effective on May 30, 2000 without further notice, unless EPA receives adverse comments by April 28, 2000. Should EPA receive such comments, it will publish a timely document withdrawal informing the public that the rule will not take effect.

ADDRESSES: Written comments, referring to Docket Number OK–00–1, should be sent to Alima Patterson, Region 6 Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733. Copies of Oklahoma program revision application and the materials which EPA used in evaluating the revision are available for inspection and copying from 8:30 a.m. to 4:00 p.m. Monday through Friday at the following addresses: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180–7180 and EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444.

FOR FURTHER INFORMATION CONTACT: Alima Patterson, Region 6 Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

SUPPLEMENTARY INFORMATION:

A. Why Are Revision to State Programs Necessary?

States that receive final authorization from EPA under RCRA Section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal Hazardous Waste Program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code of Federal Regulations (CFR) parts 124, 260–266, 268, 270, 273, and 279.

B. What Is the Effect of Today's Authorization Decision?

The effect of this decision is that a facility in Oklahoma subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent federal requirements in order to comply with RCRA. Oklahoma has enforcement responsibilities under its state hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to: (1) Do inspections, and require monitoring, tests, analyses or reports, (2) Enforce RCRA requirements and suspend or revoke permits, and (3) Take enforcement actions regardless of whether the State has taken its own actions. This action does not impose additional requirements on the regulated community because the regulations for which Oklahoma is being authorized by today's action are already effective, and are not changed by today's action.

C. What Is the History of Oklahoma's Final Authorization and Its Revisions

Oklahoma initially received Final Authorization on January 10, 1985, (49 FR 50362) to implement its base hazardous waste management program. We authorized the following revisions: Oklahoma received authorization for revisions to its program on June 18, 1990 (55 FR 14280), effective November 27, 1990; (55 FR 39274), effective June 3, 1991; (56 FR 13411), effective November 19, 1991; (56 FR 47675) effective December 21, 1994; (59 FR 51116–51122) effective April 27, 1995; (60 FR 2699–2702) effective October 9, 1996; (61 FR 52884–52886) Technical Correction effective March 14, 1997; (62 FR 12100) and effective February 8, 1999 (63 FR 67800–67802). The authorized Oklahoma RCRA program was incorporated by reference into the CFR effective December 13, 1993, and July 14, 1998. On December 7, 1998, Oklahoma applied approval of its complete program revision. In this application, Oklahoma is seeking approval of its program revision in accordance with § 271.21(b)(3).

Oklahoma statutes provide authority for a single State agency, the Oklahoma Department of Environmental Quality (ODEQ), to administer the provisions of the State Hazardous Waste Management Program. These statutes are the Oklahoma Environmental Quality Act, 27 O.S. Supplement (Supp) 1997 §§ 1–1–101 *et seq.* General provisions of the Oklahoma Environmental Quality Code which may affect the Hazardous Waste Program, 27A O.S. Supp. 1997 §§ 2–1–101 through 2–3–507; and the Oklahoma Hazardous Waste Management Act (OHWMA), 27A O.S. Supp. 1997 §§ 2–7–101 *et seq.* No amendments were made to the above statutory authorities during the 1998 legislative session which will substantially affect the State Hazardous Waste Management Program; however, 27A O.S. § 2–14–305 has been added to allow for issuance of general permits.

On January 8, 1998, the Council voted to recommend amendments to Oklahoma Administrative Code (OAC) 252:200–3–1 and 252:200:3–2 to incorporate by reference, in accordance with Guidelines For State Adoption of Federal Regulations by Reference, the following EPA Hazardous Waste Management Regulations as amended through July 1, 1997: the provisions of 40 CFR part 124 which are required by 40 CFR 271.14 as well as 124.31, 124.32 and 124.33; 40 CFR parts 260–266, with the exception of 40 CFR 260.20 through 260.22, 40 CFR part 268, 40 CFR part 270, 40 CFR part 273 and 40 CFR part 279. The Board adopted these amendments on January 27, 1998, as emergency rules. The emergency rules became permanent rules effective June 1, 1998. On June 9, 1998, the Board adopted amendments to 252:200 which classified mercury-containing lamps as a Universal Waste in Oklahoma. The ODEQ remains the official agency of the State of Oklahoma, as designated by 27A O.S. Supp. 1997 § 2–7–105(13) to cooperate with Federal agencies for the purposes of hazardous waste regulations.

The OHWMA delegates authority to the ODEQ to administer the State Hazardous Waste Program, including the statutory and regulatory provisions necessary to administer the RCRA Cluster VII requirements.

D. What Revisions Are We Approving With Today's Action?

Oklahoma applied for final approval of its revision to its hazardous waste program in accordance with 40 CFR 271.21. Oklahoma's revisions consist of regulations which specifically govern RCRA Cluster VII. Oklahoma requirements are included in a chart with this document. EPA is now making a final decision, subject to receipt of written comments that oppose this action, that Oklahoma's revisions of its hazardous waste program satisfies all of the requirements necessary to qualify for final authorization. Therefore, we grant Oklahoma final authorization for the following program revisions:

Federal citation	State analog
1. Criteria for Classification of Solid Waste Disposal Facilities and Practices; Identification and Listing of Hazardous Waste, [61 FR 34252] July 1, 1996. (Checklist 153).	OAC 27A Oklahoma Statutes (O.S.), Supp. 1997, §2–2–104 laws added 1994, effective July 1,1994. 27A O.S. 1997 §2–7–106 Amended by Laws 1993, effective July 1, 1993; OHWMA, Rules 252:200–3–1 and 252:200–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, and permanent effective date June 1, 1998. Oklahoma 27A §2–10–301 is more stringent than the Federal rule 40 CFR parts 258, §§257.5 and 257.30 because the State prohibits disposal of hazardous waste in landfills approved to receive only solid waste.
2. Hazardous Waste Treatment, Storage, and Disposal Facilities and Hazardous Waste Generators; Organic Air Emission Standards for Tanks, Surface Impoundments, and Containers, Identification and Listing of Hazardous Waste, [61 FR 59931] November 25, 1996. [59 FR 62896] December 6, 1994, [60 FR 26828] May 19, 1995, (Checklists 154, 154.1,154.2, 154.3, 154.4, 154.5 and 154.6).	27A O.S. Supp. 1997 §2–2104 Added by Laws 1994, effective July 1, 1994, 27A O.S. Supp.1997 §2–7–106 Amended by Laws 1993, effective July 1, 1993; OHWMA Rules 252:200–3–1 and 252–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, permanent effective date June 1, 1998, and 252–200–3–5 adopted March 30, 1994, effective as permanent rules May 26, 1994.
3. Land Disposal Restrictions Phase III—Emergency Extension of the K088 Capacity Variance, [62 FR 1992] January 14, 1997. (Checklist 155).	27A O.S. Supp. 1997 §2–7–106 Amended by Law 1993, effective July 1, 1993; 27A O.S. Supp. 1997 §2–2–104 Added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 and 252:200–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, permanent effective date June 1, 1998. 252:200–3–4 Amended June 18, 1996, permanent effective date June 1, 1997; 252:200–3–5, 252:200–3–6 adopted March 30, 1994, effective as permanent rules May 26, 1994.
4. Military Munitions Rule; Hazardous Waste Identification and Management; Explosives Emergencies; Manifest Exemption for Transport of Hazardous Waste on Right-of-Ways on Contiguous Properties, [62 FR 6622] February 12, 1997. (Checklist 156).	OAC 27A O.S. Supp 1997 §2–7–106 Amended by Laws 1993, effective July 1, 1993; 27A O.S. Supp. 1997 §2–2–104 Added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 and 252:200–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, permanent effective date June 1, 1998; 252:200–3–4 Amended June 18, 1996, permanent effective date June 1, 1997; 252:200–3–5, and 252:200–3–6 adopted March 30, 1994, effective as permanent rules May 26, 1994.
5. Land Disposal Restrictions—Phase IV; Treatment Standards for Wood Preserving Wastes, Paperwork Reduction and Streamlining, Exemptions From RCRA for Certain Processed Materials; and Miscellaneous Hazardous Waste Provisions, [62 FR 25998] May 12, 1997. (Checklist 157).	OAC 27A O.S. Supp. 1997 §2–7–106 Amended by Laws 1993, effective July 1, 1993; 27A O.S. Supp. 1997 §2–2–104 Added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 and 252:200–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, permanent effective date June 1, 1998; 252:200–3–4 Amended June 18 1996, permanent effective date June 1, 1997 and 252:200–3–5 and 252:200–3–6 adopted March 30, 1994, effective as permanent rules May 26, 1994.
6. Hazardous Waste Management System; Testing and Monitoring Activities, [62 FR 32452] June 13, 1997. (Checklist 158).	OAC 27A O.S. Supp. 1997 §2–7–106 Amended by Laws 1993, effective July 1, 1993; 27A O.S. Supp. 1997 §2–2–104 Added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 and 252:200–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, permanent effective date June 1, 1998; 252:200–3–4 Amended June 18, 1996, permanent effective date June 1, 1997; 252:200–3–5 and 252:200–3–6 adopted March 30, 1994, effective as permanent rules May 26, 1994.

Federal citation	State analog
7. Hazardous Waste Management System; Carbamate Production, Identification and Listing of Hazardous Waste; Land Disposal Restrictions, [62 FR 32974] June 17, 1997. (Checklist 159).	27A O.S. Supp. 1997 §2–7–106 Amended by Laws 1993, effective July 1, 1993; 27A O.S. Supp. 1997 §2–2104 added by Laws 1994, effective July 1, 1994; OHWMA Rules 252:200–3–1 and 252:200–3–2 Amended January 27, 1998, emergency effective date March 23, 1998, permanent effective date June 1 1998; 252:200–3–4 Amended June 18, 1996, permanent effective date June 1, 1997; and 252:200–3–5, 252:200–3–6 adopted March 30, 1994, effective as permanent rules May 26, 1994.

E. What Decision Has EPA Made?

We conclude that Oklahoma's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Oklahoma final authorization to operate its hazardous waste program as revised, assuming we receive no adverse comments as discussed above. Upon effective final approval Oklahoma will be responsible for permitting treatment, storage, and disposal facilities within its borders (except in Indian Country) and for carrying out the aspects of the RCRA program described in its revised program application, subject to limitations of the Hazardous and Solid Waste Amendments 1984 (HSWA). New federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Oklahoma, including issuing permits, until the State is granted authorization to do so.

F. How Do the Revised State Rules Differ From the Federal Rules?

EPA considers the following State requirements to be more stringent than the Federal: Oklahoma 27A O.S. 1997 § 2–10–301 is more stringent than the Federal rule 40 CFR parts 258; because disposal of hazardous waste, including conditionally exempt small quantity generator waste, in Oklahoma landfills is approved to receive only solid waste is prohibited. These requirements are part of Oklahoma's authorized program and are federally enforceable. In this authorization of the State of Oklahoma's program revisions for RCRA Cluster VII, there are no provisions that are broader in scope. Broader in scope requirements are not part of the authorized program and EPA can not enforce them.

G. Who Handles Permits After This Authorization Takes Effect?

The EPA will administer any RCRA permits or portions of permits it has issued to facilities in the State until the State becomes authorized. At the time the State program is authorized for new rules, EPA will transfer all permits or portions of permits issued by EPA to the State. The EPA will not issue any more permits or portions of permits for the provisions listed in this document after the effective date of this authorization. The EPA will continue to implement and issue permits for HSWA requirements for which the State is not yet authorized.

H. Why Wasn't There a Proposed Rule Before Today's Notice?

The EPA is authorizing the State's changes through this immediate final action and is publishing this rule without a prior proposal to authorize the changes because EPA believes it is not controversial we expect no comments that oppose this action. The EPA is providing an opportunity for public comment now. In addition, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State changes. If EPA receives comments opposing this authorization, that document will serve as a proposal to authorize the changes.

I. Where Do I Send My Comments and When Are They Due?

You should send written comments to Alima Patterson, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533. Please refer to Docket Number OK–00–1. We must receive your comments by April 28, 2000. You may not have an opportunity to comment again. If you want to comment on this action, you must do so at this time.

J. What Happens if EPA Receives Comments Opposing This Action?

If EPA receives comments opposing this authorization, we will publish a second **Federal Register** document before the immediate final rule takes effect. The second notice may withdraw the immediate final rule or identify the issues raised, respond to the comments, and affirm that the immediate final rule will take effect as scheduled.

K. When Will This Approval Take Effect?

Unless EPA receives comments opposing this action, this final authorization approval will become effective without further notice on May 30, 2000.

L. Where Can I Review the State's Application?

You can review and copy the State of Oklahoma's application from 8:30 a.m. to 4 p.m. Monday through Friday at the following addresses: Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180–7180 and EPA, Region 6 Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444. For further information contact Alima Patterson, Region 6 Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–8533.

M. How Does Today's Action Affect Indian Country in Oklahoma?

Oklahoma is not authorized to carry out its Hazardous Waste Program in Indian country within the State. This authority remains with EPA. Therefore, this action has no effect in Indian country.

N. What Is Codification?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the CFR. The EPA does this by referencing the authorized State rules in 40 CFR part 272. The EPA reserves the amendment of 40 CFR part 272, Subpart LL for this codification of Oklahoma's program changes until a later date.

Regulatory Requirements

Compliance With Executive Order 12866

The Office of Management and Budget (OMB) has exempted this rule from the requirements of Executive Order 12866.

Compliance With Executive Order 13045

Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" applies to any rule that: (1) The OMB determines is "economically significant" as defined under Executive Order 12866, and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it is not an economically significant rule as defined by Executive Order 12866, and because it does not involve decisions based on environmental health or safety risks.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law No. 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This action does not involve technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector.

Under section 202 of the UMRA, the EPA must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with Federal mandates that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objective of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

The EPA has determined that sections 202 and 205 requirements do not apply to today's action because this rule does not contain a Federal mandate that may result in annual expenditures of $100 million or more for State, local and/or tribal governments in the aggregate, or the private sector. Costs to State, local and/or tribal governments already exist under the State of Louisiana's program, and today's action does not impose any additional obligations on regulated entities. In fact EPA's approval of State programs generally may reduce, not increase, compliance costs for the private sector. Further, as it applies to the State, this action does not impose a Federal intergovernmental mandate because UMRA does not include duties arising from participation in a voluntary federal program.

The requirements of section 203 of UMRA also do not apply to today's action because this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Although small governments may be hazardous waste generators, transporters, or own and/or operate Treatment, Storage, Disposal, Facilities, they are already subject to the regulatory requirements under the existing State laws that are being authorized by EPA, and thus, are not subject to any additional significant or unique requirements by virtue of this program approval.

Certification Under the Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organization, and small governmental jurisdictions.

For purposes of assessing the impacts of today's action on small entities, small entity is defined as: (1) a small business as specified in the Small Business Administration regulations; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of this action on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. This action does not impose any new requirements on small entities because small entities that are hazardous waste generators, transporters, or that own and/or operate Treatment, Storage, Disposal, Facilities are already subject to the regulatory requirements under the State laws which EPA is now authorizing. This action merely authorizes for the purpose of RCRA 3006 those existing State requirements.

Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General

of the United States. The EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the United States prior to publication of the rule in today's **Federal Register**. This rule is not a "major rule" defined by 5 U.S.C. 804(2).

Paperwork Reduction Act

Under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, Federal agencies must consider the paperwork burden imposed by any information request contained in a proposed rule or a final rule. This rule will not impose any information requirements upon the regulated community.

Executive Order 13084 Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance cost incurred by the tribal governments. If EPA complies with consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities".

This rule is not subject to Executive Order 13084 because it does not significantly or uniquely affect the communities of Indian governments. The State of Oklahoma is not authorized to implement the RCRA hazardous waste program in Indian country. This action has no effect on the hazardous waste program that EPA implements in the Indian country within the State.

Executive Order 13132 Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications". "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government'.

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that impose substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. The EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This action does not have federalism implication. It will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it affects only one State. This action simply approves Oklahoma's proposal to be authorized for updated requirements of the hazardous waste program that the State has voluntarily chosen to operate. Further, as result of this action, those newly authorized provisions of the State's program now apply in the State of Oklahoma in lieu of the equivalent Federal program provisions implemented by EPA under HSWA. Affected parties are subject only to those authorized State provisions, as opposed to being subject to both Federal and State regulatory requirements. Thus, the requirements of section 6 of the Executive Order do not apply.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended, 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: July 12, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Editorial Note: This document was received at the Office of the **Federal Register** on March 22, 2000.

[FR Doc. 00–7448 Filed 3–28–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 032300A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock Within the Shelikof Strait Conservation Area in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock within the Shelikof Strait conservation area in the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the B season allowance of the pollock total allowable catch (TAC) for the Shelikof Strait conservation area in the GOA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 25, 2000, until 1200 hrs, A.l.t., August 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.22(b)(3)(iii)(C), the B season allowance of the pollock TAC within the Shelikof Strait conservation area is 6,996 metric tons (mt) as established by the Final 2000 Harvest Specifications for Groundfish (65 FR 8298, February 18, 2000) and subsequent correction (65 FR 11909, March 7, 2000).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the B season allowance of the pollock TAC within the Shelikof Strait conservation area will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 6,696 mt, and is setting aside the remaining 300 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.22(b)(3)(iii)(A), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock within the Shelikof Strait conservation area in the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the seasonal allocation of pollock within the Shelikof Strait conservation area. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 23, 2000.

George H. Darcy,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7696 Filed 3–24–00; 4:29 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 61
Wednesday, March 29, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 111

[Notice 2000–6]

Administrative Fines

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Treasury and General Government Appropriations Act, 2000, amended the Federal Election Campaign Act of 1971 (hereinafter "the Act" or "FECA") to permit the Federal Election Commission to impose civil money penalties for violations of the reporting requirements of the FECA that occur between January 1, 2000, and December 31, 2001. The amendments are intended to expedite and streamline the Commission's enforcement procedures. The Commission is proposing amendments to its compliance procedure regulations to implement the new program. Please note that the proposed rules that follow do not represent a final decision by the Commission on the issues presented by this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before April 28, 2000.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up. Electronic mail comments should be sent to adminfine@fec.gov. Commenters sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The Commission will make every effort to have public comments posted on its website within ten (10) business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Mai T. Dinh, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Treasury and General Government Appropriations Act, 2000, Public Law No. 106–58, 106th Cong., § 640, 113 Stat. 430, 476–77 (1999), amended section 309(a)(4) of the FECA, 2 U.S.C. 437g(a)(4) to provide for a modified enforcement process for violations of reporting requirements. The amended procedure provides that if the Commission finds a violation of 2 U.S.C. 434(a) it may:

(i) require the person to pay a civil money penalty in an amount determined under a schedule of penalties which is established and published by the Commission and which takes into account the amount of the violation involved, the existence of previous violations by the person, and such other factors as the Commission considers appropriate.

(ii) The Commission may not make any determination adverse to a person under clause (i) until the person has been given written notice and an opportunity to be heard before the Commission.

(iii) Any person against whom an adverse determination is made under this subparagraph may obtain a review of such determination in the district court of the United States for the district in which the person resides, or transacts business, by filing in such court (prior to the expiration of the 30-day period which begins on the date the person receives notification of the determination) a written petition requesting that the determination be set aside.

The Commission is seeking public comments on the proposed rules at 11 CFR part 111, subpart B, that would implement this amendment to the Act and would establish a new streamlined procedure for only those enforcement matters that involve alleged violations of the reporting requirements of 2 U.S.C. 434(a). The new rules would also impose civil money penalties in accordance with the schedules of penalties. The current enforcement procedures in 11 CFR 111.1 through 111.24 would be designated as 11 CFR part 111, subpart A—Enforcement, and would continue to apply to other types of alleged violations of the FECA.

Applicability

The amendment to the Act applies only to violations that occur between January 1, 2000 and December 31, 2001. The Commission would have discretion to apply these new procedures to reporting violations of 2 U.S.C. 434(a). These reporting violations include failure to file or timely file monthly, quarterly, pre-election, post-general election, mid-year and year-end reports, and 48 hour notices regarding contributions after the 20th day but more than 48 hours before the election. While the Commission anticipates that it would use these new procedures to handle most of its non-filer and late filer enforcement matters, the Commission may decide not to apply the new procedures to certain violations because of unusual circumstances. The Commission also contemplates that complaint generated matters that deal only with alleged 2 U.S.C. 434(a) violations would be processed under the new procedures. Complaints that contain allegations of 2 U.S.C. 434(a) violation(s) as well as violation(s) of other provisions of the FECA would be processed under the current enforcement procedures.

Enforcement Procedures

1. Due Process Considerations

In developing the procedures to implement this amendment to the FECA, the Commission is taking into consideration the requirements of the Administrative Procedure Act (hereinafter "APA"), 5 U.S.C 551 *et seq.*, and the Due Process Clause of the U.S. Constitution, *U.S. Const.* amend. XIV, § 1, and the intent of Congress in enacting this amendment.

Because the only procedures specified in the amendment to section 434(a) of the FECA are "written notice and an opportunity to be heard by the Commission," it is quite clear that the statute on its face does not trigger the formal adjudication provisions of the APA. Section 554(a) of the APA states that the relevant program statute must require an opportunity for a hearing "on the record," before the APA's formal adjudication procedures are triggered.

Although the Supreme Court has never interpreted this language in section 554(a), it has so interpreted the almost identical language pertaining to formal rulemaking in section 553(c) of the APA in *United States* v. *Florida East Coast Railway Co.*, 410 U.S. 224 (1973). Furthermore, the leading court of appeals decisions, *City of West Chicago* v. *NRC*, 701 F.2d 632 (7th Cir. 1983), and *Chemical Waste Management, Inc.* v. *EPA*, 873 F.2d 1477 (D.C. Cir. 1989), have required the presence of the phrase "on the record" unless there is some extraordinary indication of congressional intent that formal APA procedures should apply. Nothing extraordinary in the amendment or the legislative history indicates that Congress intended to require the Commission to follow the formal APA adjudication procedures.

Although the FECA does not require a formal APA procedure, the U.S. Constitution requires the Commission to afford respondents adequate due process prior to assessment of a civil money penalty. Because the APA is silent on what type of procedure agencies must follow in informal adjudication, the Commission must look to case law to determine what procedure will satisfy the due process requirements. Under *Mathews* v. *Eldridge*, 424 U.S. 319, 334–335 (1976), the Supreme Court stated that courts must employ a balancing test to determine the adequacy of an agency's procedures, once a protected property or liberty interest has been shown to be affected. The balance involves the following three factors: (1) The private interest affected by the official action, (2) the risk of an erroneous result and the probable value of additional procedural safeguards, and (3) the government's interest in avoiding administrative burdens. Because the APA does not prescribe procedures for informal adjudications, the Commission is left with devising a procedure that meets the *Mathews* balancing test.

Another consideration is congressional intent. The legislative history suggests that a purpose for the amendment is to streamline the process for reporting violations in order to redirect more resources to more complex violations. Congressman William Thomas, Chairman of the Committee of House Administration, stated the following on the floor of the House of Representatives on September 15, 1999:

> Allowing the FEC to impose administrative fines for reporting violations without the lengthy procedural steps required in a normal enforcement case will free critical FEC resources for more important disclosure and enforcement efforts. The rights of those under these regulations are protected by preserving the option of appeal to a U.S. District Court for those who believe the FEC erred.

The Commission believes it has developed procedures in this proposed rule that address these considerations. The private interests involved in this rulemaking are protected. The risk of erroneous results is relatively low in most cases given that reporting violations are relatively straightforward. Absent extraordinary circumstances, there are basically only three issues—whether the respondent was required to submit a report, whether the report was timely filed, and whether the civil money penalty was calculated correctly. The opportunity for the respondent to submit a written response and to have the enforcement matter reviewed by an independent reviewing officer will protect the respondent from an erroneous result as will the opportunity for the respondents to appeal to federal district court. This streamlined process will ensure that the Commission does not devote too many resources to these relatively minor, straightforward violations. The streamlined process will also meet the requirements of the amendment. The Commission seeks comments on the adequacy of the procedures proposed to protect respondents' due process rights.

2. Notification to Respondents of Reason To Believe Finding

The amendment to the FECA did not change the 2 U.S.C. 437g(a)(2) requirements pertaining to reason to believe findings and notifying respondents of the reason to believe findings. Thus, under the proposed 11 CFR 111.32, the Commission would continue to authorize the Chairman or Vice-Chairman to notify the respondents in writing if it finds reason to believe that a violation has occurred. The notification would contain the factual and legal basis for the reason to believe finding and the proposed civil money penalty in accordance with the applicable schedule of penalties. Before the reports are due, the Commission intends to follow its current procedures of informing all committees of their duty to submit the reports and the filing deadlines. Thus, all committees will have prior notification of the requirements and an adequate opportunity to meet the requirements before the Commission finds reason to believe and commences an enforcement action.

Under the proposed 11 CFR 111.34, if the respondent does not wish to challenge the reason to believe finding, the respondent may pay the proposed civil money penalty within forty days of the Commission's reason to believe finding. The Commission would then send the respondent an acknowledgment of the payment and its final determination. The matter would then be closed and the information placed on the public record.

3. Respondent's Written Response

If, however, the respondent wants to challenge the reason to believe finding and/or the proposed civil money penalty, the respondent under the proposed 11 CFR 111.35 would be required to submit a written notice of intent to challenge the reason to believe finding and/or the proposed civil money penalty to the Commission within twenty days of the Commission's reason to believe finding. The respondent would also be required to submit a written response to the Commission within forty days of the Commission's reason to believe finding. The written response must set forth one or more of the following arguments: alleged factual and/or legal errors in the reason to believe finding; and/or reasons why the proposed civil money penalty was improperly calculated; and/or extraordinary circumstances that were out of the control of the respondent and that were for a duration of at least 48 hours and that prevented the respondent from filing the report in a timely manner. Extraordinary circumstances would not include negligence, illness of staff, computer failures, problems with contractors and vendors, and other similar occurrences. Respondents would be required to include all supporting documentation with their written response.

4. Reviewing Officer

The respondent's written response would be forwarded to a reviewing officer under proposed 11 CFR 111.36. To ensure impartiality, the reviewing officer would not be someone who was involved in developing the reason to believe finding. The reviewing officer would review the reason to believe finding with supporting documentation and the respondent's written response with supporting documentation. The reviewing officer would also be allowed to request that other Commission staff and the respondent submit supplemental information. The reviewing officer would draft a written recommended decision and forward it to the Commission along with the reason to believe finding with supporting documentation, the respondent's written response with the supporting documentation, and

supplemental information, if any. These materials along with the Commission's final determination and any statement(s) of reasons, subject to any claims of privilege, would constitute the entire administrative record.

The amendment to the FECA requires that a respondent have "an opportunity to be heard" before the Commission makes a final adverse determination. The Commission believes that this requirement would be satisfied by the respondent's opportunity to submit a written response to the reason to believe finding with a review by an impartial reviewing officer. The Commission recognizes, however, the possibility that respondents may want the opportunity for an oral hearing before the reviewing officer in those infrequent situations where there may be a disputed issue of material fact. The Commission seeks comments on whether oral hearings should be incorporated into the new procedural rules. If so, under what circumstances should an oral hearing be held? Who should preside over an oral hearing? What procedures should be followed? What topics should be addressed in an oral hearing?

A broader concern is that oral hearings would necessitate increasing the resources the Commission devotes to these straightforward reporting violations, thereby defeating the congressional intent to streamline the process. Hearings may also increase the respondent's expenses and unduly prolong the enforcement process. Comments are requested on ways to reduce the amount of resources needed if the process includes an opportunity for an oral hearing, and ways to avoid procedural delays.

5. Final Determination by the Commission

Proposed 11 CFR 111.37 contemplates that once the Commission receives the respondent's written response, if any, to the reason to believe finding, the reviewing officer's written recommendation, and all supporting and supplemental documents and information, the Commission would then make a final determination, by a vote of at least four of its members, as to whether a violation of 2 U.S.C. 434(a) has occurred. If the Commission determines that a violation has occurred, then it would assess a civil money penalty in accordance with the schedules of penalties in proposed 11 CFR 111.43. For purposes of judicial review, the final determination would be the final agency action.

The Commission would modify the proposed civil money penalty if the respondent can demonstrate that the proposed civil money penalty was incorrectly calculated. An example of an incorrectly calculated civil money penalty is when the respondent can convincingly demonstrate that it filed the required report earlier than the filing date alleged in the reason to believe finding, though the report is still filed late. Then the Commission would reduce the fine to the appropriate amount based on a recalculation of the number of days late.

The Commission may also determine that there was no violation. Finally, the Commission may determine, by a vote of at least four of its members, that a violation of 2 U.S.C. 434(a) has occurred but waive the civil money penalty because the respondent has convincingly demonstrated the existence of extraordinary circumstances that were beyond the respondent's control and that were for a duration of at least 48 hours.

The proposed rules do not include provisions for mitigating factors that may reduce the civil money penalty. The Commission believes that this is the simplest, most straightforward way to effectuate statutory intent, particularly since the new administrative fine program is limited to a two-year period. The Commission is also concerned that the inclusion of mitigating factors would result in a lack of uniformity and certainty in the imposition of civil money penalties. Nevertheless, comments are sought as to whether the Commission should include mitigating factors, what those factors should be and how the factors should be applied.

6. Failure To Submit Payment or Written Response

If the respondent fails to pay the proposed civil money penalty within forty days of the Commission's reason to believe finding or to submit a notice of intent to challenge the reason to believe finding or to submit the written response within the time stated in proposed 11 CFR 111.35, the Commission would, under proposed 11 CFR 111.40, issue a final determination with a civil money penalty consistent with the appropriate schedule of penalties. The respondent would then have thirty days from receipt of the final determination either to submit payment of the civil money penalty or to seek judicial review.

Judicial Review

As provided in the statutory amendments to the FECA and section 111.38 of the Commission's proposed regulations, the respondent may seek judicial review of the Commission's final determination within thirty (30) days of receipt of the final determination. The respondent may seek judicial review in a U.S. district court where the respondent resides or conducts business. The review would be limited to issues and facts raised during the enforcement process. This is consistent with the Commission's procedures for presidential repayment determinations at 11 CFR 9007.5(b) and 9038.5(b) where the failure to timely raise issues constitutes a waiver of the right to raise the issues in future proceedings.

Schedules of Penalties for Reports Other Than 48-Hour Notices

The amendment to the Act requires the Commission to take into account the amount of the violation and the existence of previous violations by the respondent in developing the schedules of penalties. In establishing the proposed schedules of penalties set forth in 11 CFR 111.43, the Commission considered its past enforcement of 2 U.S.C. 434(a) violations and the civil penalties involved in those enforcement cases and the fine schedules of state agencies for similar reporting violations. In addition, the Commission believes that it is vital that civil money penalties not be set at a level so low that they will be treated as merely "the cost of doing business." Conversely, the penalties must not be so high that they become unduly burdensome.

The Commission also considered the election sensitivity of a report. While it is important that all reports should be filed in a timely manner, it is especially important that reports due just before an election, i.e., pre-primary, pre-general, October quarterly, and October monthly, be filed in a timely manner to maintain the integrity of the campaign finance system. Therefore, the Commission proposes to subject these election sensitive reports, which are defined in proposed 11 CFR 111.43(e) as the October quarterly and October monthly, and the pre-election reports under 11 CFR 104.5 to a higher civil money penalty. Election sensitive reports and the pre-election reports under the schedules of penalties in proposed 11 CFR 111. 43 would be assessed an additional 50% of the base amounts. An alternative method of handling election sensitive reports would be to add a flat $1000 to the base amounts. The Commission seeks comments on which alternative the Commission should adopt.

The schedules of penalties in proposed 11 CFR 111.43 for late filers and non-filers would have four components. The first is a base amount depending on the level of activity on the report. The level of activity is the amount of receipts plus the amount of disbursements in the report. The base amounts would range from $100 to $5000 for all reports except for election sensitive reports and from $150 to $7500 for election sensitive reports. This component would satisfy the statutory requirement that the schedules of penalties take into account the amount of the violation.

The second component is a set amount depending on the level of activity on the report multiplied by the number of days the report is filed late up to thirty days. This set amount ranges from $25 per day to $200 per day for all reports. This component would also satisfy the statutory requirement that the schedules of penalties take into account the amount of the violation.

The third component is a set amount for respondents who are non-filers. The Commission considers respondents to be non-filers if they do not file their election sensitive reports prior to four (4) days before the election or if they do not file any other report within thirty days of its due date. This set amount ranges from $1,600 to $17,000 for all reports except election sensitive reports and from $1,650 to $19,500 for election sensitive reports. These amounts were achieved by doubling the per day penalty and multiplying this penalty by thirty days and then adding the base amount of the first component.

The fourth component is an additional premium for each prior civil money penalty that was assessed against the respondent for failure to file timely reports. This component would satisfy the requirement that the schedules of penalties take into account the existence of previous violations. This premium would be an additional 25% of the civil money penalty for each prior civil money penalty that had been assessed under this subpart during the current two-year election cycle and prior two-year election cycle.

For non-filers, the Commission would estimate their level of activity by adding the total receipts and total disbursements reported in the current election cycle and then dividing by the number of reports received in the current election cycle. If the respondents have not filed any reports in the current election cycle, then the Commission would estimate the level of activity by adding the total receipts and total disbursement reported in the most recent election cycle and then dividing by the number of reports received in the most recent election cycle.

Examples of Civil Money Penalties

Example 1: The respondent files an October quarterly report 20 days late. The level of activity on the report is $105,000. The civil money penalty would be calculated as follows. The base amount would be $900. The per day amount would be $125 multiplied by 20 days, which equals $2500. The civil money penalty would be the sum of these two amounts, which would be $3400.

Example 2: The respondent in the above example has one prior violation in the current two-year election cycle. The premium for the one prior violation would be 25% of the civil money penalty calculated in example 1, which would equal $850. The civil money penalty would be the sum of this premium and the civil money penalty from example 1, which would be $4250.

Example 3: Instead of being subject to the proposed schedule of penalties that adds 50% of the base to the civil money penalty, the respondent in example 1 would be subject to a schedule of penalties that adds $1000 to the base amounts for election sensitive reports. The civil money penalty would be calculated as follows. The base amount would be $1600. The per day amount would be $125 multiplied by 20 days, which equals $2500. The civil money penalty would be the sum of these two amounts, which would be $4100. Example 4: The respondent in the example 3 had one prior violation in the current two-year election cycle. The premium for the one prior violation would be 25% of the civil money penalty calculated in example 3, which would equal $1025. The civil money penalty would be the sum of this premium and the civil money penalty from example 3, which would be $5125.

The Commission believes that these proposed schedules of penalties reflect a reasonable approach. The additional premium that is added for those respondents who have had previous civil money penalty assessments is intended to ensure that the schedules of penalties would not be viewed as "the cost of doing business." The Commission seeks comments on the reasonableness of the schedules of penalties in the proposed rule; the comprehensiveness of the schedules of penalties; additional factors that the Commission should consider; and alternative means to develop the schedules of penalties.

Schedule of Penalties for 48-Hour Notices

Under 2 U.S.C. 434(a)(6), principal campaign committees are required to report within 48 hours contributions of $1000 or more that are received after the 20th day but more than 48 hours before an election. It has been the Commission's experience that in the cases regarding alleged violations of the 48-hour notice requirement, the respondents generally fail to file these notices rather than file them late. Also, because of the unique nature and timing of this reporting requirement, the Commission believes that failure to file these 48-hour notices in a timely manner is tantamount to failing to file them at all. Thus, the proposed schedule of penalties does not make a distinction between late filers and non-filers for violations of 2 U.S.C. 434(a)(6). The schedule of penalties set forth in proposed 11 CFR 111.44 would be calculated based on the number of previous civil money penalties assessed against the respondent in the current two-year election cycle and the prior two-year election cycle, as well as a percentage of contribution(s) not timely reported. The Commission seeks comments on this approach to handling the failure to file timely the 48 hour notices.

Debt Collection Improvement Act

The Debt Collection Improvement Act of 1996 (hereinafter "DCIA"), Pub. L. 104–134, 110 Stat. 1321–358 (1996), codified at 31 U.S.C. 3711(g), requires Federal agencies to transfer to the Department of the Treasury for debt collection action any non-tax debt that is over 180 days delinquent, subject to certain exemptions. The DCIA also permits the voluntary transfer of debts less than 180 days delinquent to the Department of the Treasury or, with the consent of the Department of the Treasury, to a Treasury-designated debt collection center for debt collection services. Section 111.44 of the proposed rules would incorporate, by reference, the Department of Treasury's debt collection regulations and the Federal Claims Collection Standards.

After a final determination as to the amount of the civil money penalty, the Commission intends to utilize the DCIA to collect civil money penalties from respondents who fail to pay within a reasonable time. This debt collection procedure, however, would not preclude the Commission from filing suit under 2 U.S.C. 437g(a)(6) in the appropriate United States district court to collect the civil money penalty where it determines that this is preferable to transferring the debt to the Department of Treasury for collection under the DCIA.

Conforming Amendments

The proposed rules contain conforming amendments to the existing regulations. The current sections of part 111 would be designated as "subpart A—Enforcement." Paragraph (d) would be added to 11 CFR 111.8 to allow the Commission to apply proposed subpart B of part 111 to internally generated matters relating to violations of 2 U.S.C.

434(a). Paragraph (c) would be added to 11 CFR 111.20 to provide for public disclosure of non-exempt 2 U.S.C. 437g investigatory materials within thirty (30) days after the final disposition of a civil action. This paragraph, if promulgated, would not be limited to civil actions arising from enforcement actions undertaken under subpart B of part 111 but would be applied to all civil actions.

The Commission welcomes comments on these and any other issues raised by the new statutory provisions on administrative fines for reporting violations.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that the attached proposed rules, if promulgated, would impose penalties which are scaled to take into account the size of the political committees. Thus, committees with less financial activity would be subject to lower fines than committees with more financial activity. Also, the Commission anticipates that there will not be a large number of small committees that would be subject to the process in the proposed rules. Therefore, the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement.

For reasons set out in the preamble, it is proposed to amend subchapter A, Chapter I of Title 11 of the Code of Federal Regulations as follows:

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. The authority for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a.

2. 11 CFR 104.5 would be amended by adding new paragraph (i) to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

* * * * *

(i) Committees should retain proof of mailing or other means of transmittal of the reports to the Commission.

PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))

3. The authority for part 111 continues to read as follows:

Authority: 2 U.S.C. 437g, 437d(a), 438(a)(8).

4. 11 CFR 111.8 would be amended by adding new paragraph (d) to read as follows:

§ 111.8 Internally generated matters; referrals (2 U.S.C. 437g(a)(2)).

* * * * *

(d) Notwithstanding §§ 111.9 through 111.19, for violations of 2 U.S.C. 434(a), the Commission, when appropriate, may review internally generated matters under subpart B of this part.

5. 11 CFR 111.20 would be amended by adding new paragraph (c) to read as follows:

§ 111.20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).

* * * * *

(c) For any compliance matter in which a civil action is commenced, the Commission will make public the non-exempt 2 U.S.C. 437g investigatory materials in the enforcement and litigation files no later than thirty (30) days from the date on which the Commission sends the complainant and the respondent(s) the required notification of the final disposition of the civil action. The final disposition may consist of a judicial decision which is not reviewed by a higher court.

6. 11 CFR 111.24(a) would be revised to read as follows:

§ 111.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).

(a) Except as provided in 11 CFR 111.44 and in paragraph (b) of this section, a civil penalty negotiated by the Commission or imposed by a court for a violation of the Act or chapters 95 or 96 of title 26 (26 U.S.C.) shall not exceed the greater of $5,500 or an amount equal to any contribution or expenditure involved in the violation. In the case of a knowing and willful violation, the civil penalty shall not exceed the greater of $11,000 or an amount equal to 200% of any contribution or expenditure involved in the violation.

* * * * *

7. 11 CFR 111.25 through 111.29 would be added and reserved.

8. Part 111 would be amended by designating 11 CFR 111.1 through 111.24 as subpart A—Enforcement—and by adding new subpart B to read as follows:

Subpart B—Administrative Fines

Sec.

111.30 When will subpart B apply?
111.31 Does this subpart replace subpart A of this part for violations of the reporting requirements of 2 U.S.C. 434(a)?
111.32 How will the Commission notify respondents of a reason to believe finding and a proposed civil money penalty?
111.33 What are the respondent's choices upon receiving the reason to believe finding and the proposed civil money penalty?
111.34 If the respondent decides to pay the civil money penalty and not to challenge the reason to believe finding, what should the respondent do?
111.35 If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?
111.36 Who will review the respondent's written response?
111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?
111.38 Can the respondent appeal the Commission's final determination?
111.39 When must the respondent transmit payment of the civil money penalty?
111.40 What happens if the respondent does not pay the civil money penalty pursuant to 11 CFR 111.34 and does not submit a written response to the reason to believe finding pursuant to 11 CFR 111.35?
111.41 To whom should the civil money penalty payment be made payable?
111.42 Will the enforcement file be made available to the public?
111.43 What are the schedules of penalties?
111.44 What is the schedule of penalties for 48-hour notices?
111.45 Will the Debt Collection Improvement Act of 1996 be used to collect unpaid civil money penalties?

§ 111.30 When will subpart B apply?

Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a) committed by political committees and their treasurers on or after [the effective date of the final rule], and on or before December 31, 2001.

§ 111.31 Does this subpart replace subpart A of this part for violations of the reporting requirements of 2 U.S.C. 434(a)?

(a) No; §§ 111.1 through 111.8 and 111.20 through 111.24 shall apply to all compliance matters. This subpart will apply, rather than §§ 111.9 through 111.19, when the Commission, on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, and when appropriate, determines that the compliance matter should be subject to this subpart. If the Commission determines that the violation should not be subject to this subpart, then the violation will be subject to all sections of subpart A of this part.

(b) Subpart B will apply to compliance matters resulting from a complaint filed pursuant to 11 CFR 111.4 through 111.7 if the complaint alleges a violation of 2 U.S.C. 434(a) and does not allege violations of any other provision of any statute or regulation over which the Commission has jurisdiction.

§ 111.32 How will the Commission notify respondents of a reason to believe finding and a proposed civil money penalty?

If the Commission determines, by an affirmative vote of at least four (4) of its members, that it has reason to believe that a respondent has violated 2 U.S.C. 434(a), it shall authorize the Chairman or Vice-Chairman to notify such respondent of the Commission's finding. The written notification shall set forth the following:

(a) The alleged factual and legal basis supporting the finding including the type of report that was due, the filing deadline, the actual date filed (if filed), and the number of days the report was late (if filed);

(b) The applicable schedule of penalties;

(c) The number of times the respondent has been assessed a civil money penalty under this subpart during the current two-year election cycle and the prior two-year election cycle;

(d) The amount of the proposed civil money penalty based on the schedules of penalties set forth in 11 CFR 111.43; and

(e) An explanation of the respondent's right to challenge both the reason to believe finding and the proposed civil money penalty.

§ 111.33 What are the respondent's choices upon receiving the reason to believe finding and the proposed civil money penalty?

The respondent must either send payment in the amount of the proposed civil money penalty pursuant to 11 CFR 111.34 or submit a written response pursuant to 11 CFR 111.35.

§ 111.34 If the respondent decides to pay the civil money penalty and not to challenge the reason to believe finding, what should the respondent do?

(a) The respondent shall transmit payment in the amount of the civil money penalty to the Commission within forty (40) days of the Commission's reason to believe finding.

(b) Upon receipt of the respondent's payment, the Commission shall send the respondent a final determination that the respondent has violated the statute or regulations and the amount of the civil money penalty and an acknowledgment of the respondent's payment.

§ 111.35. If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?

(a) Within twenty (20) days of the Commission's reason to believe finding, the respondent shall submit to the Commission a written notice of intent to challenge the reason to believe finding and/or the proposed civil money penalty.

(b) Within forty (40) days of the Commission's reason to believe finding, the respondent shall submit to the Commission a written response.

(c) The written response shall contain the following:

(1) Reason(s) why the respondent is challenging the reason to believe finding and/or civil money penalty which may consist of:

(i) The existence of factual errors; and/or

(ii) The improper calculation of the civil money penalty; and/or

(iii) The existence of extraordinary circumstances that were beyond the control of the respondent and that were for a duration of at least 48 hours and that prevented the respondent from filing the report in a timely manner;

(2) The factual basis supporting the reason(s); and

(3) Supporting documentation.

(4) Examples of circumstances that will not be considered extraordinary include, but are not limited to, the following:

(i) Negligence;

(ii) Problems with vendors or contractors;

(iii) Illness of staff;

(iv) Computer failures; and

(v) Other similar circumstances.

§ 111.36 Who will review the respondent's written response?

(a) The reviewing officer shall review the respondent's written response. The reviewing officer shall be a person who has not been involved in the reason to believe finding.

(b) The reviewing officer shall review the reason to believe finding with supporting documentation and the respondent's written response with supporting documentation. The reviewing officer may request supplemental information from the respondent and/or the Commission staff. The respondent shall submit the supplemental information to the reviewing officer within a time specified by the reviewing officer.

(c) Upon completion of the review, the reviewing officer shall forward a written recommendation to the Commission along with all documents required under this section and 11 CFR 111.32 and 111.35.

§ 111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?

(a) If the Commission, after having found reason to believe and after reviewing the respondent's written response and the reviewing officer's recommendation, determines by an affirmative vote of at least four (4) of its members, that the respondent has violated 2 U.S.C. 434(a) and the amount of the civil money penalty, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(b) If the Commission, after reviewing the reason to believe finding, the respondent's written response, and the reviewing officer's written recommendation, determines by an affirmative vote of at least four (4) of its members, that no violation has occurred, or otherwise terminates its proceedings, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(c) The Commission will modify the proposed civil money penalty only if the respondent is able to demonstrate that the amount of the proposed civil money penalty was calculated on an incorrect basis.

(d) The Commission may determine, by an affirmative vote of at least four of its members, that a violation of 2 U.S.C. 434(a) has occurred but waive the penalty because the respondent has convincingly demonstrated the existence of extraordinary circumstances that were beyond the respondent's control and that were for a duration of at least 48 hours. The Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

§ 111.38. Can the respondent appeal the Commission's final determination?

Yes; within thirty (30) days of receipt of the Commission's final determination under 11 CFR 111.37, the respondent may submit a written petition to the district court of the United States for the district in which the respondent resides, or transacts business, requesting that the final determination be modified or set aside. The respondent's failure to raise an argument in a timely fashion during

the administrative process shall be deemed a waiver of the respondent's right to present such argument in a petition to the district court under 2 U.S.C. 437g.

§ 111.39. When must the respondent transmit payment of the civil money penalty?

(a) If the respondent does not submit a written petition to the district court of the United States, the respondent must remit payment of the civil money penalty within thirty (30) days of receipt of the Commission's final determination under 11 CFR 111.37.

(b) If the respondent submits a written petition to the district court of the United States and, upon the final disposition of the civil action, is required to pay a civil money penalty, the respondent shall remit payment of the civil money penalty to the Commission within thirty (30) days of the final disposition of the civil action. The final disposition may consist of a judicial decision which is not reviewed by a higher court.

(c) Failure to pay the civil money penalty may result in the commencement of a collection action under 31 U.S.C. 3701 *et seq.* (1996), or a civil suit pursuant to 2 U.S.C. 437g(6)(A), or any other legal action deemed necessary by the Commission.

§ 111.40. What happens if the respondent does not pay civil money penalty pursuant to 11 CFR 111.34 and does not submit a written response to the reason to believe finding pursuant to 11 CFR 111.35?

(a) If the Commission, after the respondent has failed to pay the civil money penalty and has failed to submit a written response, determines by an affirmative vote of at least four (4) of its members that the respondent has violated 2 U.S.C. 434(a) and determines the amount of the civil money penalty, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(b) The respondent shall transmit payment of the civil money penalty to the Commission within thirty (30) days of receipt of the Commission's final determination.

(c) Failure to pay the civil money penalty may result in the commencement of a collection action under 31 U.S.C. 3701 *et seq.* (1996), or a civil suit pursuant to 2 U.S.C. 437g(6)(A), or any other legal action deemed necessary by the Commission.

§ 111.41. To whom should the civil money penalty payment be made payable?

Payment of civil money penalties shall be made in the form of a check or money order made payable to the Federal Election Commission.

§ 111.42. Will the enforcement file be made available to the public?

(a) Yes; the Commission shall make the enforcement file available to the public.

(b) If neither the Commission nor the respondent commences a civil action, the Commission shall make the enforcement file available to the public pursuant to 11 CFR 4.4(a)(3).

(c) If a civil action is commenced, the Commission shall make the enforcement file available pursuant to 11 CFR 111.20(c).

§ 111.43. What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

If the level of activity in the report was	And the report was filed late, the fine is	Or the report was not filed, the fine is
$1–24,999.99	[$100+($25×Number of days late)]×[1+(.25×Number of previous violations)].	$1600×[1+(.25×Number of previous violations)]
$25,000–49,999.99	[$200+($50×Number of days late)]×[1+(.25×Number of previous violations)].	$3200×[1+(.25×Number of previous violations)]
$50,000–74,999.99	[$300+($75×Number of days late)]×[1+(.25×Number of previous violations)].	$4800×[1+(.25×Number of previous violations)]
$75,000–99,999.99	[$400+($100×Number of days late)]×[1+(.25×Number of previous violations)].	$6400×[1+(.25×Number of previous violations)]
$100,000–149,999.99	[$600+($125×Number of days late)]×[1+(.25×Number of previous violations)].	$8100×[1+(.25×Number of previous violations)]
$150,000–199,999.99	[$800+($150×Number of days late)]×[1+(.25×Number of previous violations)].	$9800×[1+(.25×Number of previous violations)]
$200,000–249,999.99	[$1,000+($175×Number of days late)]×[1+(.25×Number of previous violations)].	$11,500×[1+(.25×Number of previous violations)]
$250,000–349,999.99	[$1500+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$13,500×[1+(.25×Number of previous violations)]
$350,000–449,999.99	[$2000+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$14,000×[1+(.25×Number of previous violations)]
$450,000–549,999.99	[$2500+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$14,500×[1+(.25×Number of previous violations)]
$550,000–649,999.99	[$3000+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$15,000×[1+(.25×Number of previous violations)]
$650,000–749,999.99	[$3500+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$15,500×[1+(.25×Number of previous violations)]
$750,000–849,999.99	[$4000+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$16,000×[1+(.25×Number of previous violations)]
$850,000–949,999.99	[$4500+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$16,500×[1+(.25×Number of previous violations)]
$950,000 or over	[$5000+($200×Number of days late)]×[1+(.25×Number of previous violations)].	$17,000×[1+(.25×Number of previous violations)]

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties:

If the level of activity in the report was	And the report was filed late, the fine is	Or the report was not filed, the fine is
$1–24,999.99	[$150 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1,650 × [1 + (.25 × Number of previous violations)]
$25,000–49,999.99	[$300 + ($50 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3,300 × [1 + (.25 × Number of previous violations)]
$50,000–74,999.99	[$450 + ($75 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4,950 × [1 + (.25 × Number of previous violations)]
$75,000–99,999.99	[$600 + ($100 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6,600 × [1 + (.25 × Number of previous violations)]
$100,000–149,999.99	[$900 + ($125 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8,400 × [1 + (.25 × Number of previous violations)]
$150,000–199,999.99	[$1,200 + ($150 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,200 × [1 + (.25 × Number of previous violations)]
$200,000–249,999.99	[$1,500 + ($175 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,000 × [1 + (.25 × Number of previous violations)]
$250,000–349,999.99	[$2,250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$14,250 × [1 + (.25 × Number of previous violations)]
$350,000–449,999.99	[$3,000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,000 × [1 + (.25 × Number of previous violations)]
$450,000–549,999.99	[$3,750 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$15,750 × [1 + (.25 × Number of previous violations)]
$550,000–649,999.99	[$4,500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$16,500 × [1 + (.25 × Number of previous violations)]
$650,000–749,999.99	[$5,250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$17,250 × [1 + (.25 × Number of previous violations)]
$750,000–849,999.99	[$6,000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$18,000 × [1 + (.25 × Number of previous violations)]
$850,000–949,999.99	[$6,250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$18,750 × [1 + (.25 × Number of previous violations)]
$950,000 or over	[$7,500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$19,500 × [1 + (.25 × Number of previous violations)]

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (e) of this section, then the civil money penalty shall be $5,500.

(d) *Definitions.* For this section only, the following definitions will apply:

Election Sensitive Reports means third quarter reports due on October 15th before the general election (unless the candidate does not participate in that general election), monthly reports due October 20th before the general election (unless the candidate does not participate in that general election), and pre-election reports under 11 CFR 104.5.

Estimated level of activity means total receipts and disbursements reported in the current election cycle divided by the number of reports filed to date covering the activity in the current two-year election cycle. If the respondent has not filed a report covering activity in the current two-year election cycle, estimated level of activity means total receipts and disbursements reported in the prior two-year election cycle divided by the number of reports filed covering the activity in the prior two-year election cycle.

Level of activity means the total amount of receipts and disbursements for the period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity.

Number of previous violations mean all prior final civil money penalties assessed under this subpart during the current two-year election cycle and the prior two-year election cycle.

(e) For purposes of the schedules of penalties in paragraphs (a) and (b) of this section,

(1) Reports that are not election sensitive reports are considered to be filed late if they are filed after their due dates but within thirty (30) days of their due dates. These reports are considered to be not filed if they are filed after thirty (30) days of their due dates or not filed at all.

(2) Election sensitive reports are considered to be filed late if they are filed after their due dates but prior to four (4) days before the primary election for pre-primary reports, or prior to four (4) days before the general election for all other election sensitive reports. These reports are considered to be not filed if they are not filed prior to four (4) days before the primary election for pre-primary reports, or prior to four (4) days before the general election for all other election sensitive reports.

§ 111.44. What is the schedule of penalties for 48-hour notice?

(a) If the respondent fails to file timely a notice regarding contribution(s) received after the 20th day but more than 48 hour hours before the election as required under 2 U.S.C. 434(a)(6), the civil money penalty will be calculated as follows:

(1) Civil money penalty = $100 + (.15 × amount of the contribution(s) not timely reported)

(2) The civil money penalty calculated in paragraph (a)(1) of this section shall be increased by twenty-five percent 25%) for each prior violation.

(b) For purposes of this section, prior violation means a civil money penalty that has been assessed against the respondent under this subpart in the current two-year election cycle or the prior two-year election cycle.

§ 111.45. Will the Debt Collection Improvement Act of 1996 be used to collect unpaid civil money penalties?

Yes; The debt collection regulations issued by the Department of Treasury at 31 CFR part 285 and the Federal Claims Collection Standards issued jointly by the Department of Justice and the Government Accounting Office at 4 CFR parts 101 through 104 also apply.

Dated: March 23, 2000.

Darryl R. Wold,

Chairman, Federal Election Committee.

[FR Doc. 00–7618 Filed 3–28–00; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 35

[Docket No. NE120; Notice No. 35–99–01–SC]

Special Conditions: Hamilton Sundstrand, Model NP2000 Propeller

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Hamilton Sundstrand model NP2000 constant speed propeller. This eight-bladed propeller uses a dual acting digital electro-hydraulic propeller control system and has blades constructed of composite materials. These design features are novel and unusual. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for these design features. This notice proposes the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before May 15, 2000.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Regional Counsel, Attn: Rules Docket No. NE120, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments must be marked: Docket No. NE120. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Jay Turnberg, FAA, Engine and Propeller Standards Staff, Engine and Propeller Directorate, Aircraft Certification Service, ANE–110, 12 New England Executive Park, Burlington, Massachusetts, 01803–5229; telephone (781) 238–7116; fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The proposal contained in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include a self-addressed, stamped postcard on which the following statetment is made: "Comments to Docket No. NE120." The postcard will be date stamped and returned to the commenter.

Background

On February 9, 1999, Hamilton Sundstrand applied for type certification for a new model NP2000 propeller. The NP2000 propeller uses a digital electro-hydraulic control system and blades that are constructed of composite material.

Conventional propellers on turboprop aircraft use a mechanical governor in the propeller control system that senses propeller speed and adjusts the pitch by directing hydraulic oil to the propeller actuator to increase or decrease pitch to maintain the propeller at the correct RPM. When the mechanical governor fails, the propeller pitch is controlled by a backup mechanical overspeed governor.

The Hamilton Sundstrand model NP2000 propeller uses a digital electronic governor in the propeller control system. The digital electronic governor is designed to operate a hydro-mechanical interface to direct hydraulic oil to the propeller actuator to increase or decrease pitch. The digital electronic governor logic commands speed governing, synchrophasing, failure monitoring and provides beta scheduling. The digital electronic governor introduces potential failures associated with electrical power, software commands, data, and environmental effects that can result in hazardous propeller effects. In addition to these features, the system has a backup mechanical overspeed governor.

The proposed special conditions would address the following airworthiness issues for the Hamilton Sundstrand model NP2000 propeller:

1. Safety assessment;
2. Propeller control system;
3. Centrifugal load tests;
4. Fatigue limits and evaluation;
5. Bird impact; and
6. Lightning strike.

The Hamilton Sundstrand model NP2000 propeller incorporates propeller blades constructed of composite material. This material has fibers that are woven or aligned in specific directions to give the material directional strength properties. These properties depend on the type of fiber, the orientation and concentration of fiber, and the resin matrix material that binds the fibers together. Composite materials introduce fatigue characteristics and failure modes that differ from metallic materials.

The requirements of part 35 were established to address the airworthiness considerations associated with metal propeller blades. Propeller blades constructed using composite material may be subject to damage due to the high impact forces associated with a bird strike. Thus, composite propellers must demonstrate propeller integrity following a bird strike.

Part 35 does not require a demonstration of propeller integrity following a lightning strike. Composite blades may not safely conduct or dissipate the electrical current from a lightning strike. Severe damage can result if the propellers are not properly protected. Therefore, composite blades must demonstrate propeller integrity following a lightning strike.

The existing certification requirements only address structural and fatigue evaluation of metal propeller blades or hubs, and those metal components of non-metallic blade assemblies. Allowable design stress limits for composite blades must consider the deteriorating effects of the environment and in-service use, particularly those effects from temperature, moisture, erosion and chemical attack. Composite blades also present new and different considerations for retention of the blades in the propeller hub.

Type Certification Basis

Under § 21.17, Hamiltion Sundstrand must show that the model NP2000 propeller meets the applicable provisions of § 21.21 and part 35.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, part 35), do not contain adequate or appropriate safety standards for the model NP2000 propeller because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design features, the special conditions would also apply to the other model under provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The novel and unusual design features are the dual acting digital electro-hydraulic propeller control system and blades constructed of composite materials. Special conditions for a safety assessment, the propeller control system, centrifugal load tests, fatigue limits and evaluation, bird impact, and lightning strike are proposed to address the novel and unusual design features. The special conditions are discussed below.

Safety Assessment

The proposed special conditions would require the applicant to conduct a safety assessment of the propeller in conjunction with the requirement for evaluating the digital electro-hydraulic control system. A safety assessment is necessary due to the increased complexity of these propeller designs and related controls systems. The ultimate objective of the safety assessment requirement is to ensure that the collective risk from all propeller failure conditions is acceptably low. The basis is the concept that an acceptable total propeller design a risk is achievable by managing the individual risks to acceptable levels. This concept emphasizes reducing the risk of an event proportionally with the severity of the hazard it represents.

The proposed special conditions are written at the propeller level for a typical aircraft. The typical aircraft may be the aircraft intended for installation of the propeller. It is advised that the propeller applicant have an understanding of the intended aircraft, not to show compliance with this requirement, but to design a propeller that will be acceptable for the intended aircraft. For example, a part 25 aircraft may require different failure effects and probability of failure than a part 23 aircraft. Showing compliance with the requirement without consideration of the intended aircraft may result in a propeller that cannot be installed on the intended aircraft.

Propeller Control System

Currently, part 35 does not adequately address propellers with combined mechanical, hydraulic, digital, and electronic control systems. Propeller mechanical control systems certified under the existing requirements incorporate a mechanical governor that senses propeller speed and adjusts the pitch to absorb the engine power to maintain the propeller at the selected rotational speed. Propellers with digital electronic control components perform the same basic function but use software, electronic circuitry, and electro-hydraulic actuators. The electronic control system may also incorporate additional functions such as failure monitoring, synchrophasing and beta scheduling. This addition of electronics to the control system may introduce new failure modes that can result in hazardous propeller effects.

Centrifugal Load Tests

Section 35.35 currently requires that the hub and blade retention arrangement of propellers with detachable blades be tested to a centrifugal load of twice the maximum centrifugal force to which the propeller would be subjected during operation. This requirement is limited to the blade and hub retention capacity and does not address composite materials and composite construction of the propeller assembly or changes in materials due to service degradation and environmental factors.

Fatigue Limits and Evaluation

The current requirement does not adequately address composite materials and is limited to metallic hubs and blades and primary load-carrying metal components of non-metallic blades. The proposed special conditions will expand the requirements to include all materials and components whose failure would cause a hazardous propeller effect and to take into account material degradation expected in service, material property variations, manufacturing variations, and environmental effects. The proposed special conditions will clarify that the fatigue limits may be determined by tests or analysis based on tests. The components whose failure may cause a hazardous propeller effect include control system components, when applicable.

The proposed special conditions will require the applicant to conduct fatigue evaluation on a typical aircraft or on an aircraft used during aircraft certification to conduct the vibration tests and evaluation required by either §§ 23.907 or 25.907. The typical aircraft may be one used to develop design criteria for the propeller or another appropriate aircraft.

Bird Impact

Currently there are no bird impact requirements in part 35. The existing requirements only address the airworthiness considerations associated with propellers that use wood and metal blades. Propeller blades of this type have demonstrated good service experience following a bird strike. Propeller blade and spinner construction now use composite materials that have a higher potential for damage from bird impact.

The need for bird impact requirements was recognized when composite blades were introduced in the 1970's; the safety issue has been addressed by special tests and special conditions for composite blade certifications. These special conditions were unique for each propeller and effectively stated that the propeller will withstand a four-pound bird impact without contributing to a hazardous propeller effect. These special tests and special conditions have been effective for over four million flight hours. There have not been any accidents attributed to bird impact on composite propellers. The selection of a four-pound bird has been substantiated by the extensive service history of blades that have been designed using the four-pound bird criteria.

Lightning Strike

Currently there are no lightning strike requirements in part 35. The need for lightning strike requirements was recognized when composite blades were first introduced in the 1970's; the safety issue has been addressed by special tests and special condition for each design using composite blades. The special tests and special condition, which were unique for each propeller, effectively stated that the propeller must be able to withstand a lightning strike without contributing to a hazardous propeller effect. These special tests and special conditions have been effective for over four million flight hours. There have not been any accidents attributed to a lightning strike on composite propellers.

Applicability

As discussed above, these special conditions are applicable to the Hamilton Sundstrand model NP2000 propeller. Should Hamilton Sundstrand apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design features, the special conditions would apply to the model as well under the provisions of § 21.101(a)(1).

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Conclusion

This action affects only certain novel or unusual design features on one model of propellers. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the propeller.

List of Subjects in 14 CFR Part 35

Air Transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(G), 40113, 44701–44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Hamilton Sundstrand model NP2000 propeller.

In addition to the requirements of part 35, the following requirements apply to the propeller.

(a) *Definitions.* Unless otherwise approved by the Administrator and documented in the appropriate manuals and certification documents, for the purpose of these special conditions the following definitions apply to the propeller:

(1) Propeller. The propeller is defined by the components listed in the type design.

(2) Propeller system. The propeller system consists of the propeller plus all the components necessary for its functioning, but not necessarily included in the propeller type design.

(3) Hazardous propeller effects. The following are regarded as hazardous propeller effects:

(i) A significant overspeed of the propeller.

(ii) The development of excessive drag.

(iii) Thrust in the opposite direction to that commanded by the pilot.

(iv) A release of the propeller or any major portion of the propeller.

(v) A failure that results in excessive unbalance.

(vi) The unintended movement of the propeller blades below the established minimum in-flight low pitch position.

(4) Major propeller effects. The following are regarded as major propeller effects;

(i) An inability to feather.

(ii) An inability to command a change in propeller pitch.

(iii) A significant uncommanded change in pitch.

(iv) A significant uncontrollable torque or speed fluctuation.

(b) *Safety analysis.*

(1)(i) An analysis of the propeller system must be carried out to assess the likely consequence of all failures that can reasonably be expected to occur. This analysis must consider the following:

(A) The propeller system is a typical installation. When the analysis depends on representative components, assumed interfaces, or assumed installed conditions, the assumptions must be stated in the analysis.

(B) Consequential secondary failures and latent failures.

(C) Multiple failures referred to in paragraph (b)(4) or that result in hazardous propeller effects.

(ii) A summary must be made of those failures that could result in major propeller effects or hazardous propeller effects, together with an estimate of the probability of occurrence of those effects.

(iii) It must be shown that hazardous propeller effects are not predicted to occur at a rate in excess of that defined as extremely remote (probability of 10^{-7} or less per propeller flight hour). The estimated probability for individual failures may be insufficiently precise to enable the total rate for hazardous propeller effects to be assessed. For propeller certification, it is acceptable to consider that the intent of this paragraph has been achieved if the probability of a hazardous propeller effect arising from an individual failure can be predicted to be not greater than 10^{-8} per propeller flight hour. It will also be accepted that, in dealing with probabilities of this low order of magnitude, absolute proof is not possible and reliance must be placed on engineering judgment and previous experience combined with sound design and test philosophies.

(iv) It must be shown that major propeller effects are not predicted to occur at a rate in excess of that defined as remote (probability of 10^{-5} or less per propeller flight hour).

(2) If significant doubt exists as to the effects of failures or likely combination of failures, any assumption of the effect may be required to be verified by test.

(3) It is recognized that the probability of primary failures of certain single elements (for example, blades) cannot be sensibly estimated in numerical terms. If the failure of such elements is likely to result in hazardous propeller effects, reliance must be placed on meeting the prescribed integrity requirements of part 35 and these special conditions. These instances must be stated in the safety analysis.

(4) If reliance is placed on a system or device, such as safety devices, feathering and overspeed systems, instrumentation, early warning devices, maintenance checks, and similar equipment or procedures, to prevent a failure from progressing to hazardous propeller effects, the possibility of a safety system failure in combination with a basic propeller failure must be covered. If items of a safety system are outside the control of the propeller manufacturer, the assumptions of the safety analysis with respect to the reliability of these parts must be clearly stated in the analysis and identified in the installation and operation instructions required under § 35.3.

(5) If the acceptability of the safety analysis is dependent on one or more of the following, it must be identified in the analysis and appropriately substantiated.

(i) Performance of mandatory maintenance actions at stated intervals required for certification and other maintenance actions. This includes the verification of the serviceability of items that could fail in a latent manner. These maintenance intervals must be published in the appropriate manuals. Additionally, if errors in maintenance of the propeller system could lead to hazardous propeller effects, the appropriate procedures must be published in the appropriate propeller manuals.

(ii) Verification of the satisfactory functioning of safety or other devices at pre-flight or other stated periods. The details of this satisfactory functioning must be published in the appropriate manuals.

(iii) The provisions of specific instrumentation not otherwise required.

(iv) A fatigue assessment.

(6) If applicable, the safety analysis must include the assessment of indicating equipment, manual and automatic controls, governors and propeller control systems, synchrophasers, synchronizers, and propeller thrust reversal systems.

(c) *Propeller control system.* The requirements of this section are applicable to any system or component that controls, limits or monitors propeller functions.

(1) The propeller control system must be designed, constructed and validated to show that:

(i) The propeller control system, operating in normal and alternative operating modes and transition between operating modes, performs the intended functions throughout the declared operating conditions and flight envelope.

(ii) The propeller control system functionality is not adversely affected by the declared environmental conditions, including temperature, electromagnetic interference (EMI), high intensity radiated fields (HIRF) and lightning. The environmental limits to which the system has been satisfactorily validated must be documented in the appropriate propeller manuals.

(iii) A method is provided to indicate that an operating mode change has occurred if flight crew action is required. In such an event, operating instructions must be provided in the appropriate manuals.

(2) The propeller control system must be designed and constructed so that, in addition to compliance with paragraph (b), Safety analysis:

(i) A level of integrity consistent with the intended aircraft is achieved.

(ii) A single failure or malfunction of electrical or electronic components in the control system does not cause a hazardous propeller effect.

(iii) Failures or malfunctions directly affecting the propeller control system in typical aircraft, such as structural failures of attachments to the control, fire, or overheat, do not lead to a hazardous propeller effect.

(iv) The loss of normal propeller pitch control does not cause a hazardous propeller effect under the intended operating conditions.

(v) The failure or corruption of data or signals shared across propellers does not cause a major or hazardous propeller effect.

(3) Electronic propeller control system imbedded software must be designed and implemented by a method approved by the Administrator that is consistent with the criticality of the performed functions and minimizes the existence of software errors.

(4) The propeller control system must be designed and constructed so that the failure or corruption of aircraft-supplied data does not result in hazardous propeller effects.

(5) The propeller control system must be designed and constructed so that the loss, interruption or abnormal characteristic of aircraft-supplied electrical power does not result in hazardous propeller effects. The power quality requirements must be described in the appropriate manuals.

(6) The propeller control system description, characteristics and authority, in both normal operation and failure conditions, and the range of control of other controlled functions must be specified in the appropriate propeller manuals.

(d) *Centrifugal load test.* It must be demonstrated that a propeller, accounting for environmental degradation expected in service, complies with paragraphs (d)(1), (d)(2) and (d)(3) of these special conditions without evidence of failure, malfunction, or permanent deformation that would result in a major or hazardous propeller effect. Environmental degradation may be accounted for by adjustment of the loads during the tests.

(1) The hub, blade retention system, and counterweights must be tested for a period of one hour to a load equivalent to twice the maximum centrifugal load to which the propeller would be subjected during operation at the maximum rated rotational speed.

(2) If appropriate, blade features associated with transitions to the retention system (e.g., a composite blade bonded to a metallic retention) may be tested either during the test required by paragraph (d)(1) or in a separate component test.

(3) Components used with or attached to the propeller (e.g., spinners, de-icing equipment, and blade erosion shields) must be subjected to a load equivalent to 159 percent of the maximum centrifugal load to which the component would be subjected during operation at the maximum rated rotational speed. This must be performed by either:

(i) Testing at the required load for a period of 30 minutes; or

(ii) Analysis based on test.

(e) *Fatigue limits and evaluation.*

(1) Fatigue limits must be established by tests or analysis based on tests, for propeller:

(i) Hubs;

(ii) Blades;

(iii) Blade retention components; and

(iv) Other components that are affected by fatigue loads and that are shown under paragraph (b), Safety analysis, as having a fatigue failure mode leading to hazardous propeller effects.

(2) The fatigue limits must take the following into account:

(i) All known and reasonable foreseeable vibration and cyclic load patterns that are expected in service; and

(ii) Expected service deterioration, variations in material properties, manufacturing variations, and environmental effects.

(3) A fatigue evaluation of the propeller must be conducted to show that hazardous propeller effects due to fatigue will be avoided throughout the intended operational life of the propeller on either:

(i) The intended aircraft, by complying with §§ 23.907 or 25.907 as applicable; or

(ii) A typical aircraft.

(f) *Bird impact.* It must be demonstrated, by tests or analysis based on tests or experience on similar designs, that the propeller is capable of withstanding the impact of a four pound bird at the critical location(s) and critical flight condition(s) of the intended aircraft without causing a major or hazardous propeller effect.

(g) *Lightning strike.* It must be demonstrated, by tests or analysis based on tests or experience on similar designs, that the propeller is capable of withstanding a lightning strike without causing a major or hazardous propeller effect.

Issued in Burlington, Massachusetts on March 20, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–7634 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–113572–99]

RIN 1545–AX33

Qualified Transportation Fringe Benefits; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to the notice of proposed rulemaking.

SUMMARY: This document contains corrections to a notice of proposed rulemaking which was published in the **Federal Register** on Thursday. January 27, 2000 (65 FR 4388), relating to qualified transportation fringe benefits.

FOR FURTHER INFORMATION CONTACT: John Richards at (202) 622–6040 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of these corrections reflect the changes to the law made by the Energy Policy Act of 1992, the Taxpayer Relief Act of 1997, and the Transportation Equity Act for the 21st Century.

Need for Correction

As published, this notice of proposed rulemaking contains errors in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking (REG–113572l–99), which was the subject of

FR Doc. 00–1859, is corrected as follows:

§ 1.132–9 [Corrected]

1. On page 4392, column 2, § 1.132–9(b), A–7, paragraph (d), line 3, the language "Q/A7" is corrected to read "Q/A–7".

2. On page 4293, column 1, § 1.132–9(b), Q–11, line 2, the language "fringes be provided pursuant to a" is corrected to read " fringes be provided to employees pursuant to a".

3. On page 4393, column 3, § 1.132–9(b), A–14, paragraph (d), line 4, the language "paragraph (a)(3) of the Q/A–14, an" is corrected to read "paragraph (c) of this Q/A–14, an".

4. On page 4395, column 1, § 1.132–9(b), A–16, paragraph (d)(2), line 8, the language " that it will be used it during the month." is corrected to read "that it will be used during the month.".

5. On page 4395, column 2, § 1.1320–9(b), A–21, paragraph (a), line 2, the language "Employer-and" is corrected to read "Employer and".

6. On page 4395, column 2, § 1.132–9(b), A–21, paragraph (b), line 8, the language "132(f)(5)(B) and Q/A–2 of this section." is corrected to read " 132(f)(5)(B) and Q/A–2 of this section.".

7. On page 4396, column 1, § 1.132–9(b), A–22, paragraph (b), line 7, the language "monthly limit under section 132(f) are" is corrected to read "monthly limit under section 132(f) is".

8. On page 4396, column 3, the title of the official signing the document, "Commissioner of Internal Revenue" is corrected to read "Deputy Commissioner of Internal Revenue Service".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5238 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–109101–98]

Special Rules Regarding Optional Forms of Benefit Under Qualified Retirement Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would permit qualified defined contribution plans to be amended to eliminate some alternative forms in which an account balance can be paid under certain circumstances, and would permit certain transfers between defined contribution plans that are not permitted under regulations now in effect. These proposed regulations affect qualified retirement plan sponsors, administrators, and participants. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by June 27, 2000. Requests to speak and outlines of oral comments to be discussed at the public hearing scheduled for June 27, 2000, at 10 a.m., must be received by June 6, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–109101–98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–109101–98), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option of the IRS Home Page, or by submitting comments directly to the IRS Internet site at: http://www.irs.gov/tax—regs/reglist.html. The public hearing will be held in room 6718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Linda S.F. Marshall, 202–622–6030; concerning submissions and the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke, 202–622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to 26 CFR part 1 under section 411(d)(6) of the Internal Revenue Code of 1986 (Code).

Section 411(d)(6) generally provides that a plan will not be treated as satisfying the requirements of section 411 if the accrued benefit of a participant is decreased by a plan amendment. Section 411(d)(6)(B), which was added by the Retirement Equity Act of 1984 (REA), Public Law 98–397 (98 Stat. 1426), provides that a plan amendment that eliminates an optional form of benefit is treated as reducing accrued benefits to the extent that the amendment applies to benefits accrued as of the later of the adoption date or the effective date of the amendment. However, section 411(d)(6)(B) authorizes the Secretary of the Treasury to provide exceptions to this requirement. This authority does not extend to a plan amendment that would have the effect of eliminating or reducing an early retirement benefit or a retirement-type subsidy.

Final regulations regarding section 411(d)(6)(B) were published in the **Federal Register** on July 8, 1988. Those final regulations, and subsequent amendments to the regulations, define the optional forms of benefit that are protected under section 411(d)(6)(B) and provide for certain exceptions to the general rule of section 411(d)(6)(B). In general, existing regulatory exceptions to the application of section 411(d)(6)(B) to optional forms of benefit have been developed to address certain specific practical problems. For example, § 1.411(d)–4, Q&A–3(b) permits a transfer between plans of a participant's entire nonforfeitable benefit to be made at the election of the participant, without a requirement that the transferee plan preserve all section 411(d)(6) protected benefits, but only if the participant is eligible to receive an immediate distribution and certain other conditions are satisfied. In addition, some regulatory exceptions to the application of section 411(d)(6)(B) to optional forms of benefit address plan amendments that are related to statutory changes. See Q&A–2(b) and Q&A–10 of § 1.411(d)–4.

The IRS and Treasury recognize that the accumulation of a variety of payment choices in a plan may increase the cost and complexity of plan operations. For example, an employer that initially adopted a plan for which the plan document was prepared by a prototype sponsor may now be using a different prototype plan that offers a different array of distribution forms. The requirement to preserve virtually all preexisting optional forms for benefits accrued up to the date of change in the prototype plan may present significant practical problems in certain cases.

Similar issues arise where employers merge with or acquire other businesses. These employers often face issues of whether to maintain separate plans, terminate one or more of the plans, or merge the plans. If the employer chooses to merge the plans, the resulting plan may accumulate a wide variety of optional forms, some of which may differ in insignificant ways or may entail special administrative costs. Because the existing elective transfer rule of § 1.411(d)–4, Q&A–3(b) applies only to situations in which a participant's benefits have become distributable, its applicability is limited.

In recent years, it has become easier for individuals to replicate the various payment choices available from qualified plans through other means. The Unemployment Compensation Amendments of 1992, Public Law 102–318 (106 Stat. 290), substantially expanded participants' ability to transfer distributions from qualified plans to individual retirement arrangements (IRAs) on a tax-deferred basis. Individuals who receive single-sum distributions from qualified plans frequently roll those distributions over directly to IRAs, under which distributions can be made in a wide variety of payment forms. There are also indications that the vast majority of participants in defined contribution plans who are given a choice of distribution forms that includes a single-sum distribution elect the single-sum distribution.

The IRS and Treasury have been weighing these considerations as they apply to various circumstances and various benefit forms. As a result, the IRS and Treasury have been considering the appropriateness of exercising the regulatory authority under section 411(d)(6)(B) to provide additional exceptions under that provision, in order to allow greater flexibility for sponsors to modify alternative forms of payment and simplify plan provisions and plan administration.

Notice 98–29 (1998–1 C.B. 1163) requested public comment on several ways of providing regulatory relief from the requirements of section 411(d)(6)(B) for defined contribution plans. Most of the public comments received in response to Notice 98–29 indicate that, particularly for defined contribution plans, the section 411(d)(6)(B) requirement that a plan continue to offer all existing payment options often imposes significant administrative burdens that are disproportionate to any corresponding benefit to participants. Accordingly, after considering the comments received in response to Notice 98–29, the IRS and Treasury are issuing these proposed regulations, which would provide relief from the requirements of section 411(d)(6)(B) in a wide range of circumstances.

As anticipated in Notice 98–29, the primary focus of these regulations is on defined contribution plans, and the provisions of these regulations relating to elimination of alternative forms of payment are limited to defined contribution plans. Defined benefit plans have special characteristics, including benefit payment calculation specifications, early retirement benefits, and other retirement-type subsidies (for which section 411(d)(6)(B) does not authorize the issuance of regulatory relief). Features such as these are not characteristic of defined contribution plans and provide important protections to participants. While limited comments relating to defined benefit plans were received in response to Notice 98–29, the IRS and Treasury remain open to further comment in this area. As discussed below, the provisions of these proposed regulations relating to elimination of in-kind distributions extend to both defined contribution plans and defined benefit plans, and the provisions of these proposed regulations relating to transfers between plans apply to defined contribution plans and, to some extent, to defined benefit plans.

These proposed regulations would not affect other requirements of the Code For example, a money purchase pension plan (or a plan otherwise described in section 401(a)(11)(B)) generally must satisfy certain requirements relating to qualified joint and survivor annuities and qualified preretirement survivor annuities. Similarly, these proposed regulations would not affect the requirements of section 401(a)(31) relating to direct rollovers.

Explanation of Provisions

A. Permitted Amendments to Alternative Forms of Payment Under a Defined Contribution Plan

The proposed regulations would simplify plan administration and allow greater flexibility by significantly expanding the permitted changes that may be made to alternative forms of payment under a defined contribution plan. Instead of requiring defined contribution plans to continue to maintain nearly all existing alternative forms of payment with only limited exceptions, these proposed regulations would permit defined contribution plans to be amended to eliminate nearly all existing forms of payment if certain specified forms of payment are available. Under the proposed regulations, a defined contribution plan would not violate the requirements of section 411(d)(6) merely because the plan was amended to eliminate or restrict the ability of a participant to receive payment of the participant's accrued benefit under a particular optional form of benefit if, after the plan amendment became effective with respect to the participant, the distribution choices available to the participant included both payment of the accrued benefit in a single-sum distribution form and payment of the accrued benefit in an extended distribution form, each of which is otherwise identical to the eliminated or restricted optional form of benefit.

Under the proposed regulations, a distribution form is an otherwise identical distribution form with respect to an optional form of benefit that is eliminated or restricted only if the distribution form is identical in all respects to the eliminated or restricted optional form of benefit except with respect to the timing of payments after commencement. For example, a single-sum distribution form is not an otherwise identical distribution form with respect to a specified installment form of benefit if the single-sum distribution form is not available for distribution on any date on which the installment form would have been available for commencement, is not available in the same medium of distribution as the installment form, does not apply to the benefit to which the installment form applied, imposes any condition of eligibility that did not apply to the installment form, or lacks any related election rights that were available with respect to the installment form. However, a distribution form does not fail to be identical just because it provides greater rights to the participant. Further, an otherwise identical distribution form need not retain rights or features of the optional form of benefit that is eliminated or restricted to the extent that those rights or features are not otherwise protected under section 411(d)(6). Moreover, in the case of an optional form of benefit that is in the form of an annuity and that provides for distribution of an annuity contract, a distribution form that is not in the form of an annuity would not fail to be an otherwise identical distribution form with respect to that optional form of benefit merely because the non-annuity distribution form does not provide for distribution of an annuity contract.

The requirement under the proposed regulations that an extended distribution form be retained would be satisfied if the plan provided either (1) a life annuity or (2) periodic payments over the participant's life expectancy (or, at the election of the participant, over the joint life expectancy of the participant and the participant's spouse). Thus, a defined contribution plan would not violate section 411(d)(6) merely because of a plan amendment that replaced an optional form of benefit payable under the plan with either of these two extended distribution forms, together with a single-sum distribution form, provided that the single-sum distribution form and the extended distribution form are each otherwise

identical to the replaced optional form of benefit. A plan providing for periodic payments over life expectancy could provide for the life expectancy to be fixed when payments begin or, alternatively, could provide for the life expectancy to be redetermined annually as described in section 401(a)(9)(D).

As noted above, the proposed regulations would not affect the survivor annuity requirements of sections 401(a)(11) and 417. Thus, for example, as required under sections 401(a)(11) and 417, any profit-sharing plan that provides for payment in the form of a life annuity (whether or not the life annuity was added to the plan in lieu of some other optional form) would also be required to offer payment in the form of a qualified joint and survivor annuity.

A third extended distribution form would generally be permitted under the proposed regulations for a plan amendment that did not eliminate any optional form of benefit that is an extended distribution form described above. For such an amendment, the requirement to provide an extended distribution form would be satisfied if the plan offered a distribution in the form of substantially equal periodic payments made (not less frequently than annually) over a period at least as long as the longest period over which the participant is entitled to receive a distribution under the plan before the plan amendment under any of the optional forms of benefit that are eliminated by the plan amendment. Thus, for example, a defined contribution plan that offers distributions in the form of a single-sum distribution, 5-year installment payments, 10-year installment payments, 15-year installment payments, and 20-year installment payments could be amended to offer only a single-sum distribution and 20-year installment payments, each of which is otherwise identical to the formerly available 5-year, 10-year, and 15-year distribution forms.

The provisions of the proposed regulations permitting payment forms to be eliminated if the defined contribution plan retains a single-sum distribution form and an extended distribution form are similar to one of the proposals outlined in Notice 98–29. In response to Notice 98–29, commentators generally stated that implementing this relief would be very helpful for plan sponsors, but there was also substantial comment urging further relief, so that a defined contribution plan with a single-sum distribution option would not also be required to continue to offer an extended distribution form. These commentators took the position that, in light of a participant's ability to roll over distributions to IRAs, which may offer multiple payment forms, there is only a marginal advantage to the participant in requiring the retention of an option to receive extended payments from a qualified defined contribution plan.

Some of these comments described plans that have been preserving a variety of payment options because the regulations require it, even though certain of the options have not been selected by a single participant for years. Commentators asserted that ultimately, employee demand would tend to shape the array of payment options offered by plan sponsors, and that plan sponsors generally would feel more free to offer or "test market" various payment form alternatives to participants if the sponsors were not legally prohibited from ever removing any option, once offered, even when participants in the plan have evidenced little or no interest in the option. Commentators observed that participants would in all events continue to have the option to leave their account balance in the plan (if above the $5,000 cashout threshold) until they were ready to begin receiving distributions. It was argued that the vast majority of participants are not ready to begin drawing lifetime retirement benefits at the time their employment with a particular plan sponsor terminates, and that, accordingly, a participant's rollover to a single IRA of the participant's benefits from a series of employer-sponsored plans over the course of the participant's working life is an effective and common means of achieving portability, consolidation, and preservation of retirement savings.

Commentators also asserted that the protections of section 411(d)(6)(B) may have adversely affected participants involved in corporate sale transactions. Specifically, some sellers and buyers that might otherwise have merged their plans, or transferred benefits under the seller's plan to the buyer's plan, instead have terminated the seller's plan or made distributions in order to avoid being required to preserve all of the distribution forms in the seller's plan.

Although the comments received in response to Notice 98–29 made a strong case that only a single sum distribution should be required to be retained, these proposed regulations reflect the view that the advantages to participants from retaining an extended distribution form may be worth the plan administration costs of retaining this additional option. These advantages include the benefits that participants, especially less sophisticated participants, can derive from employer involvement, which is subject to the fiduciary standards, in selecting and monitoring investment options under the plan after retirement distributions have begun. The IRS and Treasury are open to further comments on whether or not an extended distribution form should be required to be preserved, including comments that identify circumstances in which it may be acceptable for a plan not to preserve an extended distribution form. In particular, comments are requested on whether the final regulations should provide any of the following further relief:

- Should an extended distribution form be required to be retained only for participants who have reached a specified age, such as age 55, age 62, or normal retirement age, at the time of the distribution?
- Should there be an exception from this requirement for small businesses (e.g., employers with fewer than 100 employees or fewer than 25 employees)?
- Should a plan be treated as satisfying the requirement that it retain an extended distribution form if the plan allows a participant to elect to receive distribution by transfer of his or her vested account to a defined benefit plan for distribution in an extended distribution form?
- Should a plan be treated as satisfying the requirement that it retain an extended distribution form if the plan offers installment payments over a fixed period, such as 20 years?
- Should there be an exception from the requirement that an extended distribution form be retained if a plan with an extended distribution form is merged into another plan that does not offer an extended distribution form (for example, if the plan without the extended distribution form has a larger number of participants) in connection with an asset or stock acquisition, merger, or similar transaction involving a change in employer of the employees of a trade or business?
- If extended distribution forms are permitted to be eliminated, should there be additional protections, such as requiring that the amendment not go into effect for a specified period (such as two, four, or five years) or that the amendment not apply to participants who have reached a specified age (such as age 55, age 62, or normal retirement age) at the time of the amendment, or both?

Approaches such as these may be considered either independently of each other, as a series of coordinated alternatives, or in combination (such as permitting small businesses to limit the availability of extended distribution forms to participants who receive distributions after attaining a specified age, or such as permitting plan amendments that make extended distribution forms available only to participants who reach a specified age before a specified date, such as five years after the amendment). Commentators are requested to identify the burdens in plan administration that may be reduced by any of these approaches and the extent to which the approaches involve elimination of distribution alternatives that may be important to a participant.

B. Voluntary Direct Transfers Between Plans

The proposed regulations would make a number of changes in the existing regulations relating to elective transfers between qualified plans. Under certain circumstances, the existing regulations permit elimination of optional forms of benefit in connection with plan transfers with a participant's consent. The proposed regulations would significantly liberalize the application of these elective transfer provisions.

The existing regulations do not permit an elective transfer from one qualified plan to another unless the participant's benefit under the transferring plan is immediately distributable. This condition has precluded use of the elective transfer provision in the existing regulations in connection with merger and acquisition transactions involving plans with a cash or deferred arrangement under section 401(k) in cases in which benefits under the cash or deferred arrangement are not distributable because section 401(k)(10) is not applicable. Many commentators have stated that permitting elective transfers from the former employer's section 401(k) plan to the new employer's section 401(k) plan under these circumstances would allow employers to permit employees to keep their old retirement benefits in a qualified plan together with their newly earned retirement benefits, particularly in cases where the new employer chooses not to maintain the former employer's plan.

The proposed regulations would grant broad section 411(d)(6) relief for many types of elective transfers of a participant's entire benefit, without regard to whether the participant's benefit is immediately distributable. The elective transfer provision would be available for transfers made in connection with certain corporate transactions (such as a merger or acquisition), or in connection with the transfer of a participant to a different job (for example, to a different subsidiary or division of the employer) that is not covered by the transferor plan, even if the event is not one that allows a distribution. Insofar as the immediately distributable requirement of the existing regulations would be eliminated, the proposed regulations would permit an elective transfer even if the participant's benefit is not fully vested, provided that the requirements of section 411(a)(10) are satisfied. The proposed regulations would not restrict the permissible types of elective transfers to transfers between plans of the same employer. Accordingly, elective transfers could be made to plans that are within the employer's controlled group or to plans that are outside the employer's controlled group.

The proposed regulations would provide section 411(d)(6) relief for elective transfers involving corporate transactions or employee job transfers generally where the defined contribution plans are of the same type (e.g., from a qualified cash or deferred arrangement under section 401(k) to another qualified cash or deferred arrangement). The restrictions on the types of plans between which transfers would be permitted would ensure that amounts transferred to the receiving plan will be subject to similar legal restrictions with respect to in-service distributions. See Rev. Rul. 94–76 (1994–2 C.B. 46). In the case of transfers from plans that are subject to the survivor annuity requirements under sections 401(a)(11) and 417, those survivor annuity requirements would apply to the receiving plan with respect to the transferred amount in accordance with the transferee plan rules of section 401(a)(11)(B)(iii)(III).

The existing regulations relating to elective transfers were issued in 1988. Since then, section 401(a)(31) has been enacted. Under section 401(a)(31), any eligible rollover distribution may be directly rolled over to an IRA or to another eligible retirement plan. The section 411(d)(6) requirements do not apply to amounts that have been distributed, such as distributions that are directly rolled over to another plan under section 401(a)(31). Accordingly, the elective transfer rules of the existing regulations have largely been duplicated by the enactment of section 401(a)(31) because the same result generally is available through a direct rollover. The proposed regulations would eliminate this duplication by replacing the elective transfer rules of the existing regulations that apply to immediately distributable amounts, except for certain transfers of amounts that are not eligible rollover distributions (such as amounts attributable to after-tax employee contributions). Specifically, an elective transfer of an immediately distributable amount would be permitted to the extent the amount is not an eligible rollover distribution, if the participant's entire nonforfeitable accrued benefit is transferred by means of a combination of a section 401(a)(31) transfer and the elective transfer. This rule would apply to transfers between defined benefit plans, as well as transfers between defined contribution plans. Comments are requested regarding whether there are other situations (where direct rollovers are unavailable) to which the elective transfer approach should apply.

C. Rules Regarding In-Kind Distributions

The proposed regulations clarify and modify the rules regarding the application of the protections of section 411(d)(6)(B) to a right to receive benefit distributions in kind with respect to defined contribution plans and defined benefit plans. Provisions for distribution in kind are sometimes found in plans invested in annuity contracts or in marketable mutual funds. The right to a particular form of investment is not a protected optional form of benefit. However, the investments made by a plan generally are subject to fiduciary requirements, including the prudence requirement of section 404(a)(1)(B) of the Employee Retirement Income Security Act of 1974, Public Law 93–406 (88 Stat. 829). The existing regulations state that the right to a medium of distribution, such as cash or in-kind payments, is an optional form of benefit to which section 411(d)(6)(B) applies.

Under the proposed regulations, if a defined benefit plan includes an optional form of benefit under which benefits are distributed in the medium of an annuity contract, that optional form of benefit could be modified by substituting cash for the annuity contract. Thus, a defined benefit plan that provides for distribution of an annuity contract could be amended to substitute cash payments from the plan that are identical in all respects protected by section 411(d)(6) to the payments available from the annuity contract except with respect to the source of the payments. Comments are requested regarding whether any additional section 411(d)(6)(B) relief for non-cash distributions is appropriate for defined benefit plans.

The proposed regulations would permit a defined contribution plan to be amended to replace the ability to receive a distribution in the form of marketable securities (other than employer securities) with the ability to receive a

distribution in the form of cash. The right to distributions from a defined contribution plan in the form of cash, employer securities or other property that is not marketable securities would generally be protected. However, the proposed regulations would also permit a defined contribution plan that gives a participant the right to an in-kind distribution (including employer securities and property that is not marketable securities) to be amended to limit the types of property in which distributions could be made to the participant to specific types of property in which the participant's account is invested at the time of the amendment (and with respect to which the participant had the right to receive an in-kind distribution before the plan amendment). In addition, the proposed regulations would permit a defined contribution plan giving a participant the right to a distribution in a type of property to be amended to specify that the participant is permitted to receive a distribution in that type of property only to the extent that the plan assets held in the participant's account at the time of the distribution include that type of property. These provisions of the proposed regulations would not permit a plan to be amended in a way that would affect protected features of optional forms of benefit other than the medium of distribution. Thus, for example, a plan could not be amended to eliminate a participant's right to payments over a period of years, regardless of the plan's current investments, except as permitted under other provisions of the current or proposed regulations (such as the provisions described above relating to permitted plan amendments affecting alternative forms of payment under defined contribution plans).

Comments are requested on whether section 411(d)(6) protection for in-kind distributions of employer securities and property that is not marketable securities from defined contribution plans should be preserved or eliminated. Commentators are requested to address the extent to which these may be important rights for participants. For example, in a defined contribution plan that does not give participants the right to payment in kind, it is possible that a distribution made in cash for a particular asset may be in an amount that is less than the value that the participant assigns to the asset. Commentators are further requested to address the potential administrative burden if, as proposed, plans are prohibited from eliminating these media of distribution. Comments are also requested on whether section 411(d)(6)(B) protection should be retained for any form of in-kind distribution from a defined contribution plan other than employer securities and property that is not marketable securities.

Proposed Effective Date

The proposed regulations are proposed to be effective upon publication of final regulations in the **Federal Register** and cannot be relied upon before finalization.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulation does not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (preferably a signed original and eight (8) copies) that are submitted timely to the IRS. In addition to the other requests for comments set forth in this document, the IRS and Treasury also request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 27, 2000, at 10 a.m., in room 6718, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons who wish to present oral comments at the hearing must submit written comments by June 6, 2000, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by June 6, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Linda S. F. Marshall of the Office of the Associate Chief Counsel (Employee Benefits and Exempt Organizations). However, other personnel from the IRS and Treasury participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.411(d)1–4 is amended as follows:

1. In Q&A–1, paragraph (b)(1), the last sentence is amended by removing the language "§ 1.401(a)(4)–4(d)" and adding "§ 1.401(a)(4)–4(e)(1)" in its place.

2. Q&A–2 is amended by:

a. Revising paragraph (b)(2)(iii).

b. Adding paragraph (e).

3. Q&A–3 is amended by:

a. Revising paragraph (a)(3).

b. Adding paragraph (a)(4).

c. Revising paragraphs (b), (c), and (d).

d. Adding paragraph (e).

The additions and revisions read as follows:

§ 1.411(d)–4 Section 411(d)(6) protected benefits.

* * * * *

A–2: * * *

(b) * * *

(2) * * *

(iii) *In-kind distributions*—(A) *Distributions of annuity contracts payable under defined benefit plans.* If a defined benefit plan includes an optional form of benefit under which benefits are distributed in the medium of an annuity contract, that optional form of benefit may be modified by substituting cash for the annuity contract.

(B) *In-kind distributions payable under defined contribution plans in the form of marketable securities other than employer securities.* If a defined contribution plan includes an optional form of benefit under which benefits are distributed in the form of marketable securities, other than securities of the employer, that optional form of benefit may be modified by substituting cash for the marketable securities. For purposes of this paragraph (b)(2)(iii), the term *marketable securities* means marketable securities as defined in section 731(c)(2), and the term *securities of the employer* means securities of the employer as defined in section 402(e)(4)(E)(ii).

(C) *Amendments to defined contribution plans to specify medium of distribution.* If a defined contribution plan includes an optional form of benefit under which benefits are distributable to a participant in a medium other than cash, the plan may be amended to limit the types of property in which distributions may be made to the participant to the types of property specified in the amendment. For this purpose, the types of property specified in the amendment must include all types of property (other than types of property for which the plan may be amended to substitute cash under paragraph (b)(2)(iii)(B) of this Q&A–2) that are held in the participant's account on the effective date of the amendment and in which the participant would be able to receive a distribution immediately before the effective date of the amendment. In addition, a plan amendment may provide that the participant's right to receive a distribution in the form of specified types of property is limited to the property held in the participant's account at the time of distribution that consists of property of those specified types.

(D) *In-kind distributions after plan termination.* If a plan includes an optional form of benefit under which benefits are distributed in specified property, that optional form of benefit may be modified for distributions after plan termination by substituting cash for the specified property to the extent that, on plan termination, an employee has the opportunity to receive the optional form of benefit in the form of the specified property. This exception is not available, however, if the employer that maintains the terminating plan also maintains another plan that provides an optional form of benefit under which benefits are distributed in the specified property.

(E) *Examples.* The following examples illustrate the application of this paragraph (b)(2)(iii):

Example 1. (i) An employer maintains a profit-sharing plan under which participants may direct the investment of their accounts. One investment option available to participants is a fund invested in common stock of the employer. The plan provides that the participant has the right to a distribution in the form of cash upon termination of employment. In addition, the plan provides that, to the extent a participant's account is invested in the employer stock fund, the participant may receive an in-kind distribution of employer stock upon termination of employment. On September 1, 2000, the plan is amended, effective on January 1, 2001, to remove the fund invested in employer common stock as an investment option under the plan and to provide for the stock held in the fund to be sold. The amendment permits participants to elect how the sale proceeds are to be reallocated among the remaining investment options, and provides for amounts not so reallocated as of January 1, 2001, to be allocated to a specified investment option.

(ii) The plan does not fail to satisfy section 411(d)(6) solely on account of the plan amendment relating to the elimination of the employer stock investment option, which is not a section 411(d)(6) protected benefit. See paragraph (d)(7) of Q&A–1 of this section. Moreover, because the plan did not provide for distributions of employer securities except to the extent participants' accounts were invested in the employer stock fund, the plan is not required operationally to offer distributions of employer securities following the amendment. In addition, the plan would not fail to satisfy section 411(d)(6) on account of a further plan amendment, effective after the plan has ceased to provide for an employer stock fund investment option, to eliminate the right to a distribution in the form of employer stock. See paragraph (b)(2)(iii)(C) of this Q&A–2.

Example 2. (i) An employer maintains a profit-sharing plan under which a participant, upon termination of employment, may elect to receive benefits in a single-sum distribution either in cash or in kind. The plan's investments are limited to a fund invested in employer stock, a fund invested in XYZ mutual funds (which are marketable securities), and a fund invested in shares of PQR limited partnership (which are not marketable securities).

(ii) The following alternative plan amendments would not cause the plan to fail to satisfy section 411(d)(6):

(A) A plan amendment that limits non-cash distributions to a participant on termination of employment to a distribution of employer stock and shares of PQR limited partnership. See paragraph (b)(2)(iii)(B) of this Q&A–2.

(B) A plan amendment that limits non-cash distributions to a participant on termination of employment to a distribution of employer stock and shares of PQR limited partnership, and that also lists the participants that hold employer stock in their accounts as of the effective date of the amendment and provides that only those participants have the right to distributions in the form of employer stock, and lists the participants that hold shares of PQR limited partnership in their accounts as of the effective date of the amendment and provides that only those participants have the right to distributions in the form of shares of PQR limited partnership. See paragraphs (b)(2)(iii)(B) and (C) of this Q&A–2.

(C) A plan amendment that limits non-cash distributions to a participant on termination of employment to a distribution of employer stock and shares of PQR limited partnership to the extent that the participant's account is invested in those assets at the time of the distribution. See paragraphs (b)(2)(iii)(B) and (C) of this Q&A–2.

(D) A plan amendment that limits non-cash distributions to a participant on termination of employment to a distribution of employer stock and shares of PQR limited partnership, and that lists the participants that hold employer stock in their accounts as of the effective date of the amendment and provides that only those participants have the right to distributions in the form of employer stock, and lists the participants that hold shares of PQR limited partnership in their accounts as of the effective date of the amendment and provides that only those participants have the right to distributions in the form of shares of PQR limited partnership, and further provides that the distribution of that stock or those shares is available only to the extent that the participants' accounts are invested in those assets at the time of the distribution. See paragraphs (b)(2)(iii)(B) and (C) of this Q&A–2.

Example 3. (i) An employer maintains a stock bonus plan under which a participant, upon termination of employment, may elect to receive benefits in a single-sum distribution in employer stock. This is the only plan maintained by the employer under which distributions in employer stock are available. The employer decides to terminate the stock bonus plan.

(ii) If the plan makes available a single-sum distribution in employer stock on plan termination, the plan will not fail to satisfy section 411(d)(6) solely because the optional form of benefit providing a single-sum distribution in employer stock on termination of employment is modified to provide that such distribution is available only in cash. See paragraph (b)(2)(iii)(D) of this Q&A–2.

* * * * *

(e) *Permitted plan amendments affecting alternative forms of payment under defined contribution plans*—(1) *General rule.* A defined contribution plan does not violate the requirements of section 411(d)(6) merely because the plan is amended to eliminate or restrict the ability of a participant to receive payment of accrued benefits under a particular optional form of benefit if, after the plan amendment is effective with respect to the participant, the alternative forms of payment available

to the participant include payment in both a single-sum distribution form and an extended distribution form described in paragraph (e)(3) of this Q&A–2, each of which is an otherwise identical distribution form with respect to the optional form of benefit that is being eliminated or restricted.

(2) *Otherwise identical distribution form.* For purposes of this paragraph (e), a distribution form is an otherwise identical distribution form with respect to an optional form of benefit that is eliminated or restricted pursuant to paragraph (e)(1) of this Q&A–2 only if the distribution form is identical in all respects to the eliminated or restricted optional form of benefit (or would be identical except that it provides greater rights to the participant) except with respect to the timing of payments after commencement. For example, a single-sum distribution form is not an otherwise identical distribution form with respect to a specified installment form of benefit if the single-sum distribution form is not available for distribution on the date on which the installment form would have been available for commencement, is not available in the same medium of distribution as the installment form, does not apply to the benefit (or any portion of the benefit) to which the installment form applied, imposes any condition of eligibility that did not apply to the installment form, or lacks any related election rights that were available with respect to the installment form. However, the single-sum distribution form would not fail to be an otherwise identical distribution form with respect to the installment form merely because the single-sum distribution form is available for distribution on a date on which the installment form would not have been available for commencement, is available in media of distribution that the installment form was not, applies (if the participant so chooses) to a larger portion of the benefit than the installment form, has fewer or less stringent conditions of eligibility than the installment form, or has election rights that the installment form lacked. In addition, an otherwise identical distribution form need not retain rights or features of the optional form of benefit that is eliminated or restricted to the extent that those rights or features are not otherwise protected under section 411(d)(6). Moreover, in the case of an optional form of benefit that is in the form of an annuity and that provides for distribution of an annuity contract, a distribution form that is not in the form of an annuity does not fail to be an otherwise identical distribution form with respect to that optional form of benefit merely because the non-annuity distribution form does not provide for distribution of an annuity contract.

(3) *Extended distribution form*—(i) *In general.* For purposes of this paragraph (e), a distribution form is an extended distribution form if it is—

(A) An annuity payable for the life of the participant;

(B) Substantially equal periodic payments made (not less frequently than annually), at the election of the participant, over either the life expectancy of the participant or the joint life expectancy of the participant and the participant's spouse (with or without redetermination of those life expectancies, as described in section 401(a)(9)(D)); or

(C) For a plan amendment that does not eliminate any optional form of benefit that is an extended distribution form described in paragraph (e)(3)(i)(A) or (B) of this Q&A–2, substantially equal periodic payments made (not less frequently than annually) over a period at least as long as the longest period over which the participant is entitled to receive a distribution under the plan before the plan amendment under any of the optional forms of benefit that are eliminated by the plan amendment.

(ii) *Substantially equal periodic payments.* For purposes of this paragraph (e)(3), the rules of section 402(c)(4)(A)(ii) and § 1.402(c)–2, Q&A–5, apply in determining whether payments are substantially equal periodic payments (but without regard to the 10-year minimum period for payments and without regard to § 1.402(c)–2, Q&A–5(b), regarding certain periodic payments that decrease upon a participant's attainment of eligibility for social security benefits).

(4) *Examples.* The following examples illustrate the application of this paragraph (e):

Example 1. (i) P is a participant in Plan M, a qualified profit-sharing plan that is invested in mutual funds. The distribution forms available to P under Plan M include a distribution of P's vested account balance under Plan M in the form of distribution of various annuity contract forms (including a single life annuity and a joint and survivor annuity). The annuity payments under the annuity contract forms begin as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)). P has not previously elected payment of benefits in the form of a life annuity, and Plan M is not a direct or indirect transferee of any plan that is a defined benefit plan or a defined contribution plan that is subject to section 412. Plan M provides that distributions on the death of a participant are made in accordance with section 401(a)(11)(B)(iii)(I). Plan M is amended so that, after the amendment is effective, P is no longer entitled to any distribution in the form of the distribution of an annuity contract. However, after the amendment is effective, P is entitled to receive a single-sum cash distribution of P's vested account balance under Plan M payable as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, except as required by section 401(a)(9)). In addition, P is entitled to receive P's vested account balance under Plan M payable in substantially equal monthly payments made, at P's election, over either P's life expectancy or the joint life expectancies of P and P's spouse, beginning as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, except as required by section 401(a)(9)).

(ii) Plan M does not violate the requirements of section 411(d)(6) (or section 401(a)(11)) merely because the plan amendment has eliminated P's option to receive a distribution in any of the various annuity contract forms previously available.

Example 2. (i) P is a participant in Plan M, a qualified profit-sharing plan to which section 401(a)(11)(A) does not apply. Upon termination of employment, P is entitled to receive cash distributions from Plan M, payable as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, subject to the requirements of section 401(a)(9)), in the form of a single-sum distribution, or in substantially equal monthly installment payments over either 5, 10, 15, or 20 years. Plan M is amended so that, after the amendment is effective, P is no longer entitled to receive a distribution in the form of substantially equal monthly installment payments over 5, 10, or 15 years. However, after the amendment is effective, P continues to be entitled to receive cash distributions from Plan M, payable as of the first day of the month following P's termination of employment (or as of the first day of any subsequent month, except as required by section 401(a)(9)), in the form of a single-sum distribution or in substantially equal monthly installment payments over 20 years.

(ii) Plan M does not violate the requirements of section 411(d)(6) merely because the plan amendment has eliminated P's option to receive a distribution in the form of substantially equal monthly installment payments over 5, 10, or 15 years.

(5) *Effective date.* This paragraph (e) applies to plan amendments that are adopted and made effective after the date of publication of final regulations in the **Federal Register**.

* * * * *

A–3. (a) * * *

(3) *Waiver prohibition.* In general, except as provided in paragraph (b) of this Q&A–3, a participant may not elect to waive section 411(d)(6) protected benefits. Thus, for example, the elimination of the defined benefit feature of a participant's benefit under a defined benefit plan by reason of a transfer of such benefits to a defined contribution plan pursuant to a participant election, at a time when the benefit is not distributable to the participant, violates section 411(d)(6).

(4) *Direct rollovers.* A direct rollover described in Q&A–3 of § 1.401(a)(31)–1 that is paid to a qualified plan is not a transfer of assets and liabilities that must satisfy the requirements of section 414(l), and is not a transfer of benefits for purposes of applying the requirements under section 411(d)(6) and paragraph (a)(1) of this Q&A–3. Therefore, for example, if such a direct rollover is made to another qualified plan, the receiving plan is not required to provide, with respect to amounts paid to it in a direct rollover, the same optional forms of benefit that were provided under the plan that made the direct rollover. See § 1.401(a)(31)–1, Q&A–14.

(b) *Elective transfers of benefits between defined contribution plans*—(1) *General rule.* A transfer of a participant's entire benefit between qualified defined contribution plans (other than a direct transfer described in section 401(a)(31)) that results in the elimination or reduction of section 411(d)(6) protected benefits does not violate section 411(d)(6) if the following requirements are met:

(i) *Voluntary election.* The plan from which the benefits are transferred must provide that the transfer is conditioned upon a voluntary, fully-informed election by the participant to transfer the participant's entire benefit to the other qualified defined contribution plan. As an alternative to the transfer, the participant must be offered the opportunity to retain the participant's section 411(d)(6) protected benefits under the plan (or, if the plan is terminating, to receive any optional form of benefit for which the participant is eligible under the plan as required by section 411(d)(6)).

(ii) *Types of plans to which transfers may be made.* To the extent the benefits are transferred from a money purchase pension plan, the transferee plan must be a money purchase pension plan. To the extent the benefits being transferred are part of a qualified cash or deferred arrangement under section 401(k), the benefits must be transferred to a qualified cash or deferred arrangement under section 401(k). To the extent the benefits being transferred are part of an employee stock ownership plan as defined in section 4975(e)(7), the benefits must be transferred to another employee stock ownership plan. Benefits transferred from a profit-sharing plan other than from a qualified cash or deferred arrangement, or from a stock bonus plan other than an employee stock ownership plan, may be transferred to any type of defined contribution plan.

(iii) *Circumstances under which transfers may be made.* The transfer must be made in connection with an asset or stock acquisition, merger, or other similar transaction involving a change in employer of the employees of a trade or business (i.e., an acquisition or disposition within the meaning of § 1.410(b)–2(f)) or in connection with the participant's transfer of employment to a different job for which service does not result in additional allocations under the transferor plan.

(2) *Applicable qualification requirements.* A transfer described in this paragraph (b) is a transfer of assets or liabilities within the meaning of section 414(l)(1) that must meet the requirements of section 414(l) and all other applicable qualification requirements. Thus, for example, if the survivor annuity requirements of sections 401(a)(11) and 417 apply to the plan from which the benefits are transferred, as described in this paragraph (b), but do not otherwise apply to the receiving plan, the requirements of sections 401(a)(11) and 417 must be met with respect to the transferred benefits under the receiving plan. In addition, the vesting provisions under the receiving plan must satisfy the requirements of section 401(a)(10) with respect to the amounts transferred.

(c) *Elective transfers of certain distributable benefits between defined benefit plans or between defined contribution plans*—(1) *In general.* A transfer of a participant's benefits that are distributable between qualified defined benefit plans, or between defined contribution plans (other than the portion of such a transfer that is a direct transfer described in section 401(a)(31)), that results in the elimination or reduction of section 411(d)(6) protected benefits does not violate section 411(d)(6) if—

(i) The voluntary election requirement of paragraph (b)(1)(i) of this Q&A–3 is met; and

(ii) The amount of the benefit transferred, together with the amount of a contemporaneous section 401(a)(31) transfer to the transferee plan, equals the entire nonforfeitable accrued benefit under the plan of the participant whose benefit is being transferred, calculated to be at least the greater of the single-sum distribution provided for under the plan for which the participant is eligible (if any) or the present value of the participant's accrued benefit payable at normal retirement age (calculated by using interest and mortality assumptions that satisfy the requirements of section 417(e) and subject to the limitations imposed by section 415).

(2) *Treatment of transfer.* The transfer of benefits pursuant to this paragraph (c) generally is treated as a distribution for purposes of section 401(a). For example, the transfer is subject to the cash-out rules of section 411(a)(7), the early termination requirements of section 411(d)(2), and the survivor annuity requirements of sections 401(a)(11) and 417. However, the transfer is not treated as a distribution for purposes of the minimum distribution requirements of section 401(a)(9).

(3) *Distributable benefits.* For purposes of this paragraph (c), a participant's benefits are distributable on a particular date if, on that date, the participant is eligible, under the terms of the plan from which the benefits are transferred, to receive an immediate distribution of these benefits from that plan under provisions of the plan not inconsistent with section 401(a).

(d) *Status of elective transfer as optional form of benefit.* A right to a transfer of benefits pursuant to the elective transfer rules of paragraph (b) or (c) of this Q&A–3 is an optional form of benefit under section 411(d)(6). The availability of such optional form is subject to the nondiscrimination requirements of section 401(a)(4). However, a plan will not be treated as failing to satisfy § 1.401(a)(4)–4 merely because it restricts the transfer option to benefits that exceed the dollar limits on mandatory distributions that can be made without the consent of the participant under section 411(a)(11).

(e) *Effective date.* This Q&A–3 is applicable for transfers made after the date of publication of final regulations in the **Federal Register**.

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Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–6694 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–208280–86]

RIN 1545–AJ57

Exclusions From Gross Income of Foreign Corporations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Proposed rule; changes of date and location of the public hearing; and extension of time for public comments.

SUMMARY: This document changes the date and location of the public hearing and provides notice of an extension of time for submitting comments with respect to a notice of proposed rulemaking and notice of public hearing relating to exclusions from gross income of foreign corporations under section 883 of the Internal Revenue Code.

DATES: Written and electronically generated comments must be received by May 19, 2000. The public hearing is being held on Thursday, June 8, 2000, at 10 a.m. Requests to speak and outlines of topics to be discussed at the public hearing must be received by May 19, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–208280–86), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–208280–86), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternately, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/tax_regs/regslist.html. The public hearing originally scheduled in the Internal Revenue Building, room 2615, 1111 Constitution Avenue, NW., Washington, DC, is changed to room 4718, in the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC, beginning at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Patricia A. Bray, (202) 622–3880; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, contact Guy R. Traynor (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking and notice of public hearing appearing in the **Federal Register** on Tuesday, February 8, 2000, (65 FR 6065) announced that a public hearing on proposed regulations relating to exclusions from gross income of foreign corporations under section 883, would be held on Thursday, April 27, 2000, beginning at 10 a.m. in room 2615 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC, and that requests to speak and outlines of oral comments should be received by Wednesday, April 5, 2000.

The date and location of the public hearing has changed, and the deadline for submitting written comments, requests to speak with outlines of topics to be discussed at the hearing, has been extended. The hearing is scheduled for Thursday, June 8, 2000, beginning at 10 a.m. in room 4718 of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. The date by which written comments on proposed rules, requests to speak with outlines of topics to be discussed at the hearing must be delivered or mailed, is hereby extended to May 19, 2000.

The IRS will prepare an agenda showing the scheduling of speakers after the outlines are received from the persons testifying and make copies available free of charge at the hearing, or in the Freedom of Information Reading Room (Room 1621), approximately one week prior to the hearing.

Cynthia E. Grigsby,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 00–7667 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100, 110

[CGD07–00–014]

RIN 2115–AE46, AA98

OPSAIL 2000, Port of San Juan, PR

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish temporary regulations in the Port of San Juan, Puerto Rico for OPSAIL 2000 activities from May 19 through May 29, 2000. The Coast Guard proposes to establish temporary limited access areas and Special Local Regulations to control vessel traffic within the Port of San Juan during this event. This action is necessary to provide for the safety of life on navigable waters during OPSAIL 2000. This action will restrict vessel traffic in portions of the Port of San Juan during specific time periods.

DATES: Comments and related material must reach the Coast Guard on or before April 28, 2000.

ADDRESSES: Comments and related material may be mailed to the U.S. Coast Guard Marine Safety Office San Juan, PO Box 71526, San Juan, Puerto Rico 00936–8626, or may be delivered to Marine Safety Office San Juan Puerto Rico, between the hours of 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays. Marine Safety Office San Juan Puerto Rico is located in the Rodriguez & Del Valle Building, 4th Floor, Calle San Martin, Carr #2 km 4.9, Guaynabo, Puerto Rico 00968. Marine Safety Office, San Juan, Puerto Rico maintains the public docket for this rulemaking. Comments, and documents as indicated in this preamble, will become part of this docket and will be available for inspection or copying at the Coast Guard Marine Safety Office San Juan, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Le Fevers, U.S. Coast Guard Marine Safety Office, San Juan at (787) 706–2440, between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On January 13, 2000, we published an advanced notice of proposed rulemaking (ANRPM) in the **Federal Register** (65 FR 2095) entitled OPSAIL 2000, Port of San Juan, PR. We received no comments on our anticipated rulemaking. No public hearing was requested and none was held.

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting comments and related material. Please explain your reasons for each comment so that we can carefully weigh the consequences and impacts of any future requirements we may propose. Persons submitting comments should include their names and addresses, identify this rulemaking (CGD07–00–014) and the specific section of this document to which each comment applies. Please submit two copies of all comments and attachments in English and in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope. The Coast Guard will consider all comments received during the comment period. The Coast Guard may change this proposed rule in view of comments received. The comment period for this regulation is 30 days. This time period is adequate to allow local input because we previously published a ANPRM, no comments were received, the event is highly publicized, and the shortened comment period will allow the full 30 day publication requirement prior to the final rule becoming effective. Copies of this proposal will also be placed in the local notice to mariners.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to the U.S. Coast Guard Marine Safety Office at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

These proposed temporary regulations are for OPSAIL 2000 events in the Port of San Juan, in San Juan, Puerto Rico. These events will be held from May 19 through May 29, 2000, and the Coast Guard estimates many spectator craft and commercial vessels will be in the area during that period. This rule is proposed to provide for the safety of life on navigable waters and to promote maritime safety and protect participants and the Port of San Juan during this event. The restrictions stated for the proposed regulated areas will be enforced at various times throughout the OPSAIL 2000 event from May 19–29, 2000.

Discussion of Proposed Rule

The proposed regulations create temporary anchorage regulations and vessel movement controls. Special local regulations will be in effect for San Juan Bay including the waterways and adjacent piers along the Bar Channel, Anegado Channel, San Antonio Channel, Graving Dock Channel, Army Terminal Channel and Puerto Nuevo Channel for the period beginning at 6 a.m. on Friday, May 19 and ending at 6 p.m. on Monday, May 29. The safety of parade participants and spectators will require that spectator craft including, but not limited to, jet skis and sail boards be kept at a safe distance from participating tall ships while the vessels are in the harbor, whether moving, anchored, or tied up at their respective piers. The Bar Channel will be closed to inbound and outbound traffic to San Juan Harbor from 7 a.m. to 6 p.m. on Thursday, May 29 during the Parade of Sail. No vessel will be permitted to transit the entrance channel during that time without permission from the Captain of the Port. This is required to ensure the safety of Tall Ships during the Parade of Sail event. Vessel movements inside the Port of San Juan will be prohibited from 7 a.m. to 12 p.m. on May 29, 2000, except Tall Ships departing for the Parade of Sail, Law Enforcement Patrol vessels, and the Puerto Rico Ports Authority ferries. This is required to ensure the safety of participating Tall Ships as they queue up to depart San Juan Bay during the Parade of Sail. The San Juan Harbor entrance must be kept clear to ensure safety of participant vessels. Normal commercial vessel operations will resume within the harbor from noon to 6 p.m., and through the harbor entrance after all participant vessels have cleared the harbor.

The Coast Guard proposes to establish multiple limited access areas and to temporarily modify existing anchorage areas within the port area to provide for maximum spectator viewing areas and traffic patterns for deep draft and barge traffic.

The Parade of Sail route will extend from the EL MORRO Fortress, coastwise to Boca de Cangrejos Inlet where participants will turn to the west, set sail, and return to EL MORRO. The safety of parade participants and spectators will require that spectator craft including jet skis and sail boards be kept at a minimum of 300 yards from parade vessels while the vessels are in the parade route.

The vessel congestion due to the large number of participating and spectator vessels poses a significant threat to the safety of life. This proposed rulemaking is necessary to ensure the safety of life on the navigable waters of the United States.

Regulated Areas

The Coast Guard proposes to establish four regulated areas in the vicinity of the Port of San Juan. These proposed regulated areas are needed to protect the maritime public and participating vessels from possible hazards to navigation associated with the large number of participant and spectator craft transiting the waters of the Port of San Juan, Puerto Rico.

Regulated Area A is in the proximity of the fireworks launch area at the point of Isla Grande. This regulated area will be in effect from 9 P.M. to 9:30 P.M. daily from May 19 to May 29, 2000. An area within a 300-yard radius around the point of Isla Grande will be kept clear for the duration of the fireworks display. Any vessel traffic movements through the regulated area will be coordinated by the Patrol Commander to avoid conflict with the daily fireworks.

Regulated Area B covers all San Juan Harbor from 7 a.m. until 12 noon on Monday, May 29, 2000. No vessels other than OPSAIL 2000 vessels, their assisting tugs, and enforcement vessels, may enter or navigate within the boundaries of the Port of San Juan unless specifically authorized by the Coast Guard Captain of the Port, San Juan, or his on-scene representative. The operation of seaplanes, including taxiing, landing, and taking off, is prohibited without prior written authorization from the Captain of the Port. The Cataño Ferry will be authorized to continue to operate on its established route during this time. This regulated area is necessary to ensure maritime safety and protect the boating public and the participating Tall Ships as the Tall Ships form up in order during the Outbound Parade of Sail.

Regulated Area C comprises the Parade of Sail route. The Parade of Sail route will encompass an area starting at the Northeast point of Isla Las Cabras extending north to the Three Nautical Mile line then east to a point north of Boca de Congrejos then south to the twenty fathom line just north of Boca de Congrejos, then west to the Northeast point of Isla Las Cabras. A line of anchored official yachts will mark the southern portion of this parade of sail route. The safety of parade participants and spectators will require that spectator craft including jet skis and sail boards be kept at a minimum of 300 yards from parade vessels while the vessels are in the parade route.

Regulated Area D comprises Bar Channel, the entrance to San Juan Harbor. No vessel will be permitted to transit the Bar Channel to enter or depart San Juan Harbor from 7 a.m. to 6 p.m. on Monday, May 29, 2000 without the consent of the Captain of the Port or his on-scene representative.

Anchorage Regulations

The Coast Guard also proposes to establish temporary Anchorage Regulations for participating OPSAIL 2000 vessels and spectator craft. The Anchorage Grounds are needed to provide viewing areas for spectator vessels while maintaining a clear parade route for the participating OPSAIL vessels and to protect boaters and

spectator vessels. Rule 9 of the International Navigation Rules will be enforced. No vessel may anchor in any channel or otherwise impede the passage of a vessel, which can safely navigate only within a narrow channel or fairway. The Cataño Ferry will be authorized to continue to operate on its established route at all times. Spectator vessels will not anchor within 100 yards of the Cataño Ferry route. The Cataño Ferry route is defined by a line from the Cataño Ferry pier at Punta Cataño to pier two.

In addition to the existing anchorage regulations at 33 CFR 110.240 the following temporary anchorage regulations will be enforced between May 19 and May 29, 2000:

Anchorage "M"—Official Vessel Anchorage—Anchorage Permit Required. Temporary Anchorage M is a triangular area near EL MORRO bounded by a line starting at 18°28′0″N, 066°07.5′W then southeast to 18°27.92′N, 066°07.21′W, then south to 18°27.65′N, 066°07.15′W, then to the starting point.

Anchorage "C"—Spectator Anchorage—No Permit Required. Temporary anchorage area C is rectangular area near Cataño bounded by a line starting at 18°27′N, 066°07′W, then south to 18°26′7″N, 066°07′W, then west to 18°26′7″N, 066°07′55″W, then north to 18°27′N, 066°07′55″W, then east to the starting point.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Although the Coast Guard anticipates restricting traffic in San Juan Harbor on Monday, May 29, 2000 during the events, the effect of this regulation will not be significant for the following reasons: the limited duration that the regulated areas will be in effect and the extensive advance notifications that will be made to the maritime community via the **Federal Register**, the Local Notice to Mariners, facsimile, the internet, marine information broadcasts, maritime association meetings, and San Juan area newspapers, so mariners can adjust their plans accordingly. Based upon the Coast Guard's experiences learned from previous events of a similar magnitude, these proposed regulations have been narrowly tailored to impose the least impact on maritime interests yet provide the level of safety deemed necessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), we must consider whether this proposed rule would have a significant economic impact on a substantial number of small entities. "Small entities" include small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. For the reasons discussed in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of vessels intending to transit or anchor in portions of San Juan Harbor during May 29, 2000. These regulations would not have a significant economic impact on a substantial number of small entities for the following reasons. Before the effective period, the Coast Guard would make notifications to the public via mailings, facsimiles, the Local Notice to Mariners and use of the sponsors Internet site. In addition, the sponsoring organization, OPSAIL Inc., is planning to publish information of the event in local newspapers, pamphlets, and television and radio broadcasts. If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If you are a small entity and believe the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Coast Guard point of contact designated in the **FOR FURTHER INFORMATION CONTACT** section.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposed rule under Executive Order 13132 and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this action and have initially determined under figure 2–1, paragraph 34 (f and h), of Commandant Instruction M16475.1C; that this proposed rule will be categorically excluded from further environmental documentation. A Categorical Exclusion Determination will be available in the docket where indicated under **ADDRESSES**. By controlling vessel traffic during the event, this proposed rule is intended to minimize environmental impacts from increased vessel traffic during the parade of sail.

List of Subjects

33 CFR Part 100

Marine safety, Navigation (water), Reporting and recordkeeping requirements, Waterways.

33 CFR Part 110

Anchorage grounds.

In consideration of the foregoing, the Coast Guard proposes to amend 33 CFR parts 100, and 110 as follows:

PART 100—[AMENDED]

1. The authority for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46, and 33 CFR 100.35.

2. Temporary § 100.35T–07–014 is added to read as follows:

§ 100.35T–07–014 OPSAIL 2000, Port of San Juan, Puerto Rico.

(a) *Regulated Areas:*

(1) *Area A, fireworks exclusion area.*

(i) *Location.* All waters within a 300 yard radius around the point of Isla Grande in position 18°27.58′N, 066°06.33′W.

(ii) *Enforcement Period.* Paragraph (a)(1)(i) of this section is enforced from 9 p.m. to 9:30 p.m. daily from May 19, 2000 until May 29, 2000.

(2) *Regulated Area B, San Juan Harbor.*

(i) *Location.* All waters within San Juan Harbor.

(ii) *Enforcement Period.* Paragraph (a)(2)(i) of this section is enforced from 7 a.m. May 29, 2000 until 12 noon on May 29, 2000.

(3) *Regulated Area C, parade area.*

(i) *Location.* The Parade of Sail route will encompass an area starting at the Northeast point of Isla Las Cabras at 18°28.5′N, 066°08.4′W; then north to the Three Nautical Mile line at 18°31.5′N, 066°08.4′W; then east to a point north of Boca de Congrejos at 18°31.5′N, 066°00.0′W, then south to the twenty fathom line just north of Boca de Congrejos at 18°28.5′N, 066°00.0′W, then west to the starting point. All coordinates reference Datum NAD:83.

(ii) *Enforcement Period.* Paragraph (a)(3)(i) of this section is enforced from 7 a.m. May 29, 2000 until 6 p.m. May 29, 2000.

(4) *Regulated Area D, Bar Channel.*

(i) *Location.* Bar Channel, San Juan Harbor.

(ii) *Enforcement Period.* Paragraph (a)(4)(i) of this section is enforced from 7 a.m. May 29, 2000 until 6 p.m. May 29, 2000.

(b) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by Commander, Coast Guard Greater Antilles Section.

(c) *Special Local Regulations.*

(1) Entry into the regulated areas described in paragraph (a)(1), (a)(3) and (a)(4) of this section during enforcement periods is prohibited, unless otherwise authorized by the Patrol Commander.

(2) Entry into and movement by vessels already within the regulated area described in paragraph (a)(2) of this section will be prohibited from 7 a.m. to 12 p.m. on May 29, 2000, except for Tall Ships departing for the Parade of Sail, Law Enforcement Patrol vessels, and the Puerto Rico Ports Authority ferries.

(d) *Effective period.* This section becomes effective at 6 a.m. on May 19, 2000 and terminates at 6 p.m. on May 29, 2000.

PART 110—[AMENDED]

3. The authority for Part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 1221 through 1236, 2030, 2035, and 2071; 49 CFR 1.46, and 33 CFR 1.05–1(g).

4. In § 110.240, from 6 a.m. on May 19, 2000 through 6 p.m. on May 29, 2000, temporary new paragraphs (a)(3) and (a)(4) and (b)(3) and (b)(4) are added to read as follows:

§ 110.240 San Juan Harbor, P.R.

(a) * * *

(3) *Temporary Anchorage M.* A triangular area near El Morro bounded by a line starting at 18°28.0′N, 066°07.5′W then southeast to 18°27.92′N, 066°07.21′W, then south to 18°27.65′N, 066°07.15′W, then to the starting point.

(4) *Temporary Anchorage C.* A rectangular area near Catano bounded by a line starting at 18°27′N, 066°07′W, then south to 18°26′7″N, 066°07′W, then west to 18°26′7″N, 066°07′55″W, then north to 18°27′N, 066°07′55″W, then east to the starting point.

(b) * * *

(3)(i) Anchorage M is for Official Vessels and an Anchorage Permit from the Opsail 2000 organizers is required.

(ii) No vessel other than OPSAIL 2000 vessels and enforcement vessels may anchor, loiter, or approach any OPSAIL vessel navigating or at anchor in this area.

(iii) Mariners are cautioned that anchorage area M has not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. Vessels must display anchor lights as required by the navigation rules.

(4)(i) Anchorage C is a Spectator Anchorage and no permit is required.

(ii) Mariners are cautioned that anchorage area C has not been subject to any special survey or inspection and that charts may not show all seabed obstructions or the shallowest depths. Vessels must display anchor lights as required by the navigation rules.

Dated: March 21, 2000.

T.W. Allen,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 00–7646 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–6565–5]

Hazardous Waste Management Program: Final Authorization of State Hazardous Waste Management Program Revisions for State of Oklahoma

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and request for comment.

SUMMARY: The EPA (also, "the Agency" in this preamble) proposes to grant final authorization to the hazardous waste program revisions submitted by the State of Oklahoma Department of Environmental Quality (ODEQ) for its hazardous waste program revisions, specifically, revisions needed to meet the Resource Conservation and Recovery Act (RCRA) Cluster VII rules which contains Federal rules promulgated between July 1, 1996 through June 30, 1997. The RCRA Cluster VII rules are listed in the rules section of this **Federal Register** (FR). In the "Rules and Regulations" section of this FR, EPA is authorizing the State's program revisions as an immediate final rule without prior proposal because the EPA views this action as noncontroversial and anticipates no adverse comments. The Agency has explained the reasons for this authorization in the preamble to the immediate final rule. If the EPA does not receive adverse written comments, the immediate final rule will become effective and the Agency will not take further action on this proposal. If the EPA receives adverse written comments,

a second **Federal Register** document will be published before the time the immediate final rule takes effect. The second document may withdraw the immediate final rule or identify the issues raised, respond to the comments and affirm that the immediate final rule will take effect as scheduled. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before April 28, 2000.

ADDRESSES: Mail written comments to Alima Patterson, Region 6, Regional Authorization Coordinator, Grants and Authorization Section (6PD–G), Multimedia Planning and Permitting Division, at the address shown below. You can examine copies of the materials submitted by the State of Oklahoma during normal business hours at the following locations: EPA Region Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202–2733, (214) 665–6444; or Oklahoma Department of Environmental Quality, 707 North Robinson, Oklahoma City, Oklahoma 73101–1677, (405) 702–7180.

FOR FURTHER INFORMATION CONTACT: Alima Patterson (214) 665–8533.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules and Regulations" section of this **Federal Register.**

Dated: July 12, 1999.

Jerry Clifford,

Acting Regional Administrator, Region 6.

Editor's Note: This document was received at the Office of the **Federal Register** on March 22, 2000.

[FR Doc. 00–7449 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–539; MM Docket No. 99–207; RM–9626]

Radio Broadcasting Services; Kuna, ID

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 247C to Kuna, Idaho, as that locality's first local aural transmission service. Petitioner failed to establish that its proposal would provide a 70 dBu signal over the entire boundaries of Kuna, as required by Section 73.315 of the Commission's Rules. See 64 FR 31171, June 10, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–207, adopted March 1, 2000, and released March 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, D.C. 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7650 Filed 3–28–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–542, MM Docket No. 00–40, RM–9824]

Radio Broadcasting Services; Cobleskill and Saint Johnsville, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Clear Channel Broadcasting Licenses, Inc., seeking the reallotment of Channel 278B from Cobleskill to Saint Johnsville, NY, as the community's first local aural service, and the modification of Station WQBJ(FM)'s license to specify Saint Johnsville as its community of license. Channel 278B can be allotted to Saint Johnsville in compliance with the Commission's minimum distance separation requirements with a site restriction of 15.9 kilometers (9.9 miles) east, at coordinates 42–58–21 NL; 74–29–30 WL, to accommodate petitioner's desired transmitter site which is the present site of Station WQBJ. Saint Johnsville is located within 320 kilometers (200 miles) of the U.S.-Canadian border. However, prior concurrence by the Canadian Government is not required since no change in Station WQBJ's transmitter site is proposed.

DATES: Comments must be filed on or before May 1, 2000, and reply comments on or before May 16, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Marissa G. Repp, F. William LeBeau, Hogan & Hartson L.L.P., 555 13th Street, NW, Washington, D.C. 20004 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–40, adopted March 1, 2000, and released March 10, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7649 Filed 3–28–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–498; MM Docket No. 99–13; RM–9428]

Radio Broadcasting Services; Palacios, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; withdrawal.

SUMMARY: This document dismisses a petition for rule making filed by Prawn Broadcasting Company requesting the allotment of Channel 252A at Palacios, Texas. *See* 64 FR 5737, February 5, 1999. Prawn Broadcasting Company withdrew its interest in the allotment of Channel 252A at Palacios, Texas. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–13, adopted February 23, 2000, and released March 3, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7648 Filed 3–28–00; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Parts 222 and 229

[Docket Nos. FRA–1999–6439, Notice No. 4 FRA–1999–6440]

RIN 2130–AA71

Use of Locomotive Horns at Highway-Rail Grade Crossings

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Notice of public hearings.

SUMMARY: On January 13, 2000, FRA published a Notice of Proposed Rulemaking (NPRM) on the Use of Locomotive Horns at Highway-Rail Grade Crossings (Docket No. FRA–1999–6439). On the same date FRA released a Draft Environmental Assessment (DEIS)(Docket No. FRA–1999–6440) pertaining to the proposals contained in the NPRM. In both documents, FRA stated that public hearings would be held in a number of locations throughout the country. On February 15, 2000 (65 FR 7483), and March 22, 2000 (65 FR 15298) FRA published in the **Federal Register** documents regarding the locations of combined hearings on the NPRM and DEIS to be held in various cities. FRA stated that a further document will be published and posted on FRA's web site (*http://fra.dot.gov*) regarding specific times and locations of hearings to be held in the remaining locations listed in the NPRM: Berea, Ohio; South Bend, Indiana; and Chicago, Illinois. This document provides information pertaining to those hearing sites as well as repeating the information contained in the earlier hearing documents. .

DATES: *Public Hearings:* Public hearings will be held in:

1. Washington, D.C. on March 6, 2000, beginning at 9 am;
2. Los Angeles, California area on March 15, 2000, beginning at 9 am;
3. Pendleton, Oregon on March 17, 2000, beginning at 9 am;
4. Ft. Lauderdale, Florida on March 28, 2000, beginning at 9 am;
5. Salem, Massachusetts on April 3, 2000, beginning at 9 am;
6. South Bend, Indiana on April 10, 2000, beginning at 9 am;
7. Chicago, Illinois area on April 25, 2000, beginning at 12 noon;

   April 26, 2000, beginning at 9 am;

   April 27, 2000; beginning at 9 am; and
8. Berea, Ohio on May 1, 2000, beginning at 6 pm.

Please see **SUPPLEMENTARY INFORMATION** below for further information concerning participation in the public hearings.

ADDRESSES: *Public Hearings:* Public hearings will be held at the following locations:

1. *Washington, DC:* Federal Aviation Administration Auditorium, Third Floor, Federal Office Building 10A, 800 Independence Avenue, S.W., Washington, DC 20591;
2. *Los Angeles area:* Doubletree Hotel, Catalina II Room, 3050 Bristol Street, Costa Mesa, CA 92626;
3. *Pendleton, Oregon:* City Council Chambers, Pendleton City Hall, 500 Southwest Dorian Avenue, Pendleton, OR 97801;
4. *Ft. Lauderdale, Florida:* Doubletree Oceanfront Hotel, 440 Seabreeze Blvd, Fort Lauderdale, FL 33316;
5. *Salem, Massachusetts:* National Park Service Visitor Center—Auditorium, 2 New Liberty Street, Salem, MA 01970;
6. *South Bend, Indiana:* Century Center, Convention Hall C—North, 120 South St. Joseph Street, South Bend, Indiana 46601;
7. *Chicago, Illinois:* On April 25, 2000 at Lyons Township High School, South Campus, The Little Theater, 4900 Willow Springs Road, Western Springs, Illinois;

   On April 26, 2000 at The Field Museum of Natural History (James Simpson Theater) 1400 South Lake Shore Drive, Chicago, Illinois 60605;

   On April 27, 2000 at the Federal Aviation Administration (The Minnesota Room), 2300 East Devon Avenue, Des Plaines, Illinois 60018; and
8. *Berea, Ohio:* Baldwin-Wallace College, Kleist Center for Art and Drama, 95 E. Bagley Road, Berea, Ohio 44017.

FRA Docket Clerk: Docket Clerk, Office of Chief Counsel, Mail Stop 10, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590. E-mail address for the FRA Docket Clerk is renee.bridgers@fra.dot.gov.

FOR FURTHER INFORMATION CONTACT: Ron Ries, Office of Safety, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 (telephone: 202–493–6299); or Mark Tessler, Office of Chief Counsel, FRA, 1120 Vermont Avenue, NW, Washington, DC 20590 (telephone: 202–493–6038).

SUPPLEMENTARY INFORMATION: Any person wishing to provide testimony at one of the public hearings should notify FRA's Docket Clerk at the address above at least three working days prior to the date of the hearing. The notification should also provide either a telephone number or e-mail address at which the person may be contacted. If a participant will be representing an organization, please indicate the name of the organization.

FRA will attempt to accommodate all persons wishing to provide testimony, however depending on the number of people wishing to participate, FRA may find it necessary to limit the length of oral comments to accommodate as many people as possible. Participants may wish to submit a complete written statement for inclusion in the record, while orally summarizing the points made in that statement.

Issued in Washington, DC on March 24, 2000.

Michael T. Haley,

Deputy Chief Counsel, Federal Railroad Administration.

[FR Doc. 00–7749 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–06–P

Notices

Federal Register

Vol. 65, No. 61

Wednesday, March 29, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Proposed Posting of Stockyards

The Grain Inspection, Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in Section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

AR–175 4-State Horse & Equipment Auction, Springdale, Arkansas
KY–176 Ohio Valley Stockyard, South Shore, Kentucky
MS–172 Mid South, Edwards, Mississippi
MS–173 C & H Auction Co., Inc., Columbus, Mississippi
NY–173 Gavel Masters Equine Sales, Inc., Horsehead, New York
SC–158 Strickland Auction Co., Gaston, South Carolina
TX–346 Texas Cattle Exchange, Inc., Eastland, Texas

Pursuant to the authority under Section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Office of Policy/Litigation Support, Grain Inspection, Packers and Stockyards Administration, Room 3418-South Building, U.S. Department of Agriculture, Washington, D.C. 20250, by April 13, 2000.

All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Office of Policy/Litigation Support during normal business hours.

Done at Washington, D.C. this 21st day of March 2000.

Warren P. Preston,

Acting Director, Office of Policy/Litigation Support, Packers and Stockyards Programs.

[FR Doc. 00–7669 Filed 3–28–00; 8:45 am]

BILLING CODE 3410–EN–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: April 4, 2000; 9:30 a.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW, Washington, D.C. 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. The will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b. (c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)) In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b. (c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either Brenda Hardnett or John Lindburg at (202) 401–3736.

Dated: March 27, 2000.

John A. Lindburg,

Legal Counsel and Acting Executive Director.

[FR Doc. 00–7929 Filed 3–27–00; 3:45 pm]

BILLING CODE 8230–01–M

DEPARTMENT OF COMMERCE

Economic Development Administration

Notice of Petitions by Producing Firms for Determination of Eligibility To Apply for Trade Adjustment Assistance

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: To give firms an opportunity to comment.

Petitions have been accepted for filing on the dates indicated from the firms listed below.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 02/18/2000–03/15/2000

Firm name	Address	Date petition accepted	Product
Yates Foil USA, Inc	88 Route 130, Bordenton, NJ 08505	Feb 22, 2000	Copper foil for the circuit board industry.
Don-Lin Jewelry Company, Inc	39 Haskins Street, Providence, RI 02903.	Feb 22, 2000	Earrings, necklaces, pins, bracelets, pill boxes and cosmetic accessories.
Palmer Manufacturing Co., Inc	243 Medford Street, Malden, MA 02148	Feb 24, 2000	Jet engine components.
Esposito Jewelry, Inc	225 Dupont Drive, Providence, RI 02907.	Feb 24, 2000	Precious metal, sterling silver and plated base metal jewelry.
Barnhart Industries, Inc. and Orthoband Co., Inc.	3690 Highway M, Imperial, MO 63052	Feb 24, 2000	Sewing notions, garters and orthodontic headgear.

LIST OF PETITION ACTION BY TRADE ADJUSTMENT ASSISTANCE FOR PERIOD 02/18/2000–03/15/2000—Continued

Firm name	Address	Date petition accepted	Product
Hemingway Apparel Manufacturing, Inc	North Highway 41, Hemingway, SC 29554.	Feb 24, 2000	Women's briefs and panties, knitted or crocheted of man-made fibers and tee-shirts of cotton for men and women.
Shultz Steel Company	5321 Firestone Blvd., South Gate, CA 90280.	Feb 24, 2000 Titanium, stainless steel and aluminum aircraft parts.	
Edgewater Steel, Ltd	300 College Avenue, Oakmont, PA 15139.	Feb 29, 2000	Forged wheels for locomotives and industrial use.
Starbus, Ltd	91 Mellor Avenue, Baltimore, MD 21228	Feb 29, 2000	Jackets and wind shirts for the sporting industry.
Thomas Strahan, Inc	260 Maple Street, Chelsea, MA 02150	Feb 29, 2000	Surface printed wallpaper.
Jan Bar, Inc	1205 3rd Street, NW, Great Falls, MT 59404.	Mar 2, 2000	Caps of cotton, nylon, wool and polyester.
ByTec, Inc	44801 Cemter Court East, Clinton Township, MI 48038.	Mar 3, 2000	Electrical motors for lumbar systems, plastic switches and lighting, and metal clutch assembly and anti-theft devices.
Zenith Dyeing & Finishing Corporation ...	68 E. 24th Street, Patterson, NJ 78514	Mar 3, 2000	Commercial dyeing and finishing.
Mohawk Resources, Ltd	65 Vrooman Avenue, Amsterdam, NY 12010.	Mar 3, 2000	Vehicle service lifts.
Providence Metallizing Company, Inc	51 Fairlawn Avenue, Pawtucket, RI 02860.	Mar 3, 2000	Light fixture parts, key blanks, jewelry and candles.
BPC Industries, Inc	624 N. Rockford Avenue, Tulsa, OK 74106.	Mar 3, 2000	Bolts, nuts and gaskets.
Elk Valley Woodworking, Incorporated ...	Rt. 1, Box 87, Carter, OK 73627	Mar 3, 2000	Ornamental wooden plaques.
Looper Leather Goods Company, Inc	2124 S. Prospect Avenue, Oklahoma City, OK 73129.	Mar 8, 2000	Leather belts.
Lancaster Steel Service Company, Inc ...	3915 Walden Avenue, Lancaster, NY 14086.	Mar 15, 2000	Flat rolled carbon steel.

The petitions were submitted pursuant to Section 251 of the Trade Act of 1974 (19 U.S.C. 2341). Consequently, the United States Department of Commerce has initiated separate investigations to determine whether increased imports into the United States of articles like or directly competitive with those produced by each firm contributed importantly to total or partial separation of the firm's workers, or threat thereof, and to a decrease in sales or production of each petitioning firm.

Any party having a substantial interest in the proceedings may request a public hearing on the matter. A request for a hearing must be received by Trade Adjustment Assistance, Room 7315, Economic Development Administration, U.S. Department of Commerce, Washington, DC 20230, no later than the close of business of the tenth calendar day following the publication of this notice.

The Catalog of Federal Domestic Assistance official program number and title of the program under which these petitions are submitted is 11.313, Trade Adjustment Assistance.

Dated: March 21, 2000.

Anthony J. Meyer,

Coordinator,

[FR Doc. 00–7702 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–24–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 11–2000]

Foreign-Trade Zone 39—Dallas/Fort Worth, TX—Application for Subzone; Zale Corporation (Distribution/Processing of Jewelry and Accessories), Irving, TX

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, requesting special-purpose subzone status for the jewelry and accessories warehousing/distribution/processing facilities of Zale Corporation (Zale), located in Irving, TX, some 20 miles northwest of Dallas. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on March 21, 2000.

The Zale facility is located at 901 W. Walnut Hill Lane (430,000 sq. ft. on 15.22 acres). There are 80 employees within the distribution center. The facility is used for storage, inspection, packaging, repair and distribution of a wide variety of jewelry and accessories, watches and giftware. About 30 percent of the products are sourced from abroad. Subzone status is sought for quality inspection/distribution to Zale Canada. One hundred percent of foreign items admitted into the zone will be exported to Canada. Seventy percent of Zale Canada's inventory is NAFTA-qualified. No authority is being sought for activity conducted under FTZ procedures that would result in a change in tariff classification.

Zone procedures would exempt Zale from Customs duty payments on foreign products that are reexported. On any domestic sales, the company would be limited to deferral of duty payments until merchandise is shipped from the plant. The application indicates that the savings from zone procedures would help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ staff has been appointed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is May 30, 2000. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to June 12, 2000.)

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce Export Assistance Center, 2050 N. Stemmons Fwy., Suite 170, P.O. Box 420069, Dallas, Texas 75207

Office of the Executive Secretary, Foreign-Trade Zones Board, Room 4008, U.S. Department of Commerce, 14th & Constitution Avenues, NW, Washington, DC 20230

Dated: March 21, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–7765 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 27–98 and 28–98]

Withdrawal of Applications for Subzone Status for Hanover Direct, Inc. (Distribution of Consumer Goods); Foreign-Trade Zone 147—Reading, PA (Hanover, PA); Foreign-Trade Zone 204—Blountville, TN (Roanoke, VA)

Notice is hereby given of the withdrawal of the applications submitted by the Foreign-Trade Zone Corporation of Southeastern Pennsylvania, grantee of FTZ 147, Reading, PA, and Tri-Cities Airport Commission, grantee of FTZ 204, Blountville, TN, requesting special-purpose subzone status for the consumer goods distribution facilities of Hanover Direct, Inc., located in Hanover, PA (Docket 27–98) and Roanoke, VA (Docket 28–98). The applications were filed on June 1, 1998 (63 FR 29699, 6/1/98).

The withdrawals were requested because of changed circumstances, and the cases have been closed without prejudice.

Dated: March 17, 2000.

Dennis Puccinelli,

Acting Executive Secretary.

[FR Doc. 00–7764 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

University of Michigan; Notice of Decision on Application for Duty-Free Entry of Electron Microscope

This is a decision pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 00–002. *Applicant:* The Regents of the University of Michigan, Ann Arbor, MI 48109–2143. *Instrument:* Electron Microscope, Model JEM–2010F. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 65 FR 11986, March 7, 2000. *Order Date:* April 22, 1999.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as the instrument is intended to be used, was being manufactured in the United States at the time the instrument was ordered. *Reasons:* The foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States at the time of order of the instrument.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 00–7763 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 031400D]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Generic Amendment to the Fishery Management Plans for the Gulf of Mexico to Establish the Tortugas Marine Reserve

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmosphere Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a draft supplemental environmental impact statement (DSEIS); request for comments.

SUMMARY: NMFS announces the intent of the Gulf of Mexico Fishery Management Council (Council) to prepare a DSEIS for a Generic Amendment to the Fishery Management Plans for the Gulf of Mexico to Establish the Tortugas Marine Reserve (Generic Amendment). The Generic Amendment would amend all of the Council's fishery management plans (FMPs) in a manner necessary to establish a marine reserve in the exclusive economic zone (EEZ) in the vicinity of the Dry Tortugas, Florida, along with appropriate fishing restrictions. The purpose of this document is to solicit public comments on the scope of the issues to be addressed in the DSEIS.

DATES: Written comments on the scope of the DSEIS must be received on or before April 28, 2000.

ADDRESSES: Written comments on the scope of the DSEIS and requests for additional information on the Generic Amendment should be sent to Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301, North, Suite 1000, Tampa, Florida 33619.

FOR FURTHER INFORMATION CONTACT: Wayne Swingle, 813–228–2815, or Michael Barnette, 727–570–5305.

SUPPLEMENTARY INFORMATION: At the Council's November 1999 meeting, representatives of the Florida Keys National Marine Sanctuary (FKNMS) requested the Council to draft fishing regulations, under authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), for the EEZ for a proposed ecological reserve (marine reserve) in the Tortugas region. The proposed marine reserve is approximately 70 miles west of Key West, Florida.

Currently, the Council is considering proposed measures for the Generic Amendment that would prohibit all fishing (i.e., fishing for all species managed under its FMPs as well as fishing for Atlantic highly migratory species (HMS)) and anchoring of fishing vessels in the marine reserve. The expected benefits include: (1) Protection and conservation of essential fish habitat, including critical coral reef resources, as mandated by the Magnuson-Stevens Act; (2) establishment of a refuge and biological resource replenishment area to conserve

and to enhance the abundance and diversity of reef resources; (3) protection of critical spawning stock and fishing size-class recruits from overfishing, thus helping to ensure the continued abundance of fishery resources; and (4) improvement of opportunities for research on and monitoring of a coral reef ecosystem reference site. Disadvantages include displacement of fishing effort to other areas with associated crowding and possible short-term loss of revenues for commercial fishermen. The Generic Amendment would amend, as necessary, the Council's FMPs for stone crab, shrimp, corals, spiny lobster, coastal migratory pelagics, reef fish, and red drum.

The Council intends to prepare a DSEIS covering the expected environmental impacts of the Generic Amendment. The DSEIS would supplement the environmental reviews conducted previously by the Council and NMFS for each of the Council's FMPs. It is noted that the Council intends to assess, within its DSEIS, the expected environmental impacts of a management alternative prohibiting all fishing, including fishing for HMS.

Scoping Process

The FKNMS established a working group (Tortugas 2000) in 1998 consisting of representatives of various user groups that may be impacted by the establishment of a marine reserve in the Tortugas region. This working group conducted several public meetings in 1998 and 1999. Furthermore, the FKNMS held public hearings on the proposed marine reserve in 1998 and 1999 throughout Florida and in Washington, DC. Because of these previous opportunities for public input, the Council has scheduled no scoping meetings for the DSEIS for the Generic Amendment. However, the Council is requesting written comments on the scope of the issues to be addressed in the DSEIS.

Timetable for DSEIS Preparation and Decisionmaking Schedule

The Council intends to accept public comments on the completed DSEIS, prepare a final supplemental environmental impact statement (FSEIS), and submit the FSEIS to NMFS when it submits the final Generic Amendment for agency review, approval, and implementation, as provided by procedures of the Magnuson-Stevens Act. The Council intends to hold public hearings on the Draft Generic Amendment/DSEIS in June 2000; the specific times and locations for these hearings will be announced through publication of a separate **Federal Register** notice.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 23, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7707 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032200C]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) to hold a work session that is open to the public.

DATES: The work session will be held on Thursday, April 20, 2000 and Friday, April 21, 2000, from 8 a.m to 5 p.m. each day.

ADDRESSES: The work session will be held at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, Room D–203, La Jolla, CA.

Council address: Pacific Fishery Management Council, 2130 SW Fifth Avenue, Suite 224, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council, (503) 326–6352; or Dr. Doyle Hanan, California Department of Fish and Game, (619) 546–7170.

SUPPLEMENTARY INFORMATION: The primary purpose of this work session is to initiate several analyses requested by the Council. These include: (1) establish a capacity goal for the coastal pelagic species (CPS) finfish fishery and analyze transferability of CPS limited entry permits; (2) address disapproved portions of the CPS fishery management plan–develop alternatives for specifying maximum sustainable yield (MSY) and acceptable biological catch (ABC) for market squid, and management alternatives for assessing bycatch in CPS fisheries and measures to minimize bycatch and bycatch mortality in CPS fisheries; (3) initiate the 2000 stock assessment and fishery evaluation (SAFE) process for the CPS fishery, including preparation of the CPS SAFE document and consideration of developing a process to review Pacific sardine and Pacific mackerel stock assessments.

Although non-emergency issues not contained in the CPSMT meeting agenda may come before the CPSMT for discussion, those issues may not be the subject of formal CPSMT action during this meetings. CPSMT action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Mr. John Rhoton at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: March 22, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7706 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

[Docket No. 000317075–0075–01]

RIN 0651–XX22

Public Advisory Committees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice and request for nominations.

SUMMARY: On November 29, 1999, the President signed into law the Patent and Trademark Office Efficiency Act, Public Law 106–113, Title VI, Subtitle G, which, among other things, established Public Advisory Committees to review the policies, goals, performance, budget and user fees of the United States Patent and Trademark Office (USPTO) with respect to patents, in the case of the Patent Public Advisory Committee; and with respect to trademarks in the case of the Trademark Public Advisory Committee. To implement these statutory changes, the USPTO is requesting nominations for members to these Committees.

DATES: Nominations must be submitted on or before April 28, 2000.

ADDRESSES: Persons wishing to submit nominations should send the nominee's resume to Nicholas Flagler by electronic mail to nicholas.flagler@uspto.gov; by facsimile transmission marked to his attention at (703) 305–8664, or by mail marked to his attention and addressed to the Office of the Commissioner, United States Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Nicholas Flagler by telephone at (703) 305–8600, by electronic mail to nicholas.flagler@uspto.gov, by facsimile transmission marked to his attention at (703) 305–8664, or by mail marked to his attention and addressed to the Office of the Commissioner, U.S. Patent and Trademark Office; Washington, DC 20231.

SUPPLEMENTARY INFORMATION: Under the Patent and Trademark Office Efficiency Act, the Secretary of Commerce must appoint members of the Patent and Trademark Public Advisory Committees by June 29, 2000. The Advisory Committees will:

- Review and advise the Director of the United States Patent and Trademark Office (USPTO) on matters relating to policies, goals, performance, budget, and user fees of patents and trademarks, respectively; and
- Within 60 days after the end of each fiscal year, (1) prepare an annual report of the matters listed above, (2) transmit the report to the Secretary of Commerce, the President, and the Committees on the Judiciary of the Senate and the House of Representatives, and (3) publish the report in the Official Gazette of the USPTO.

Members of the Patent and Trademark Advisory Committees will be appointed by and serve at the pleasure of the Secretary of Commerce. The Secretary will designate a chair of each Advisory Committee, whose term as chair will be for 3 years. In making appointments to each Committee, the Secretary shall consider the risk of loss of competitive advantage in international commerce or other harm to U.S. companies as a result of such appointments.

Advisory Committees

The Patent Public Advisory Committee will be composed of nine voting members who represent small and large entity applicants located in the United States. The composition of the Advisory Committee will be proportional to the number of applications filed by small and large entity applicants. However, in no case will members who represent small entity patent applicants (*e.g.*, small businesses, independent inventors, and non-profit organizations) constitute less than 25 percent of the Patent Public Advisory Committee. The Advisory Committee will include at least one independent inventor and will include individuals with substantial experience and achievement in finance, management, labor relations, science, technology, and office automation.

The Trademark Public Advisory Committee will be composed of nine voting members and will include individuals with substantial experience and achievement in finance, management, labor relations, science, technology, and office automation.

In addition to the voting members, each Advisory Committee will include a representative of each labor organization recognized by the United States Patent and Trademark Office. Such representatives will be non-voting members of the Advisory Committee.

Procedures and Guidelines of the Patent and Trademark Public Advisory Committees

Each appointed member of the Patent and Trademark Advisory Committees will serve for a term of 3 years, with one-third of the members rotating out each year. Therefore, of the members first appointed, three will be appointed to a term of 1 year, and three will be appointed for a term of 2 years.

As required by the Act, members of the Patent and Trademark Advisory Committees will receive compensation for each day, including travel time, while the member is attending meetings or engaged in the business of that Advisory Committee. The rate of compensation is the daily equivalent of the annual rate of basic pay in effect for level III of the Executive Schedule under section 5314 of title 5, United States Code. While away from home or regular place of business, each member will be allowed travel expenses, including per diem in lieu of subsistence, as authorized by section 5703 of title 5, United States Code.

The United States Patent and Trademark Office will provide the necessary administrative support, including technical assistance, for the Committees. Members of each Advisory Committee will be provided access to records and information in the United States Patent and Trademark Office, except for personnel or other privileged information, and information concerning patent applications required to be kept in confidence by section 122.

Applicability of Certain Ethics Laws

Members of each Public Advisory Committee shall be special Government employees within the meaning of section 202 of title 18, United States Code. The following additional information assumes that members are not engaged in Public Advisory Committee business more than sixty days each calendar year:

- Each member will have to file a confidential financial disclosure form upon appointment. 5 CFR 2634.202(c), 2634.204, 2634.903, and 2634.904(b).
- Each member will be subject to many of the public integrity laws, including criminal bars against representing a party, 18 USC 203(c), or acting where the United States has an interest, 18 USC 205(c), in a particular matter that came before the member's committee and that involved at least one specific party. See also 18 USC 207 for post-membership bars. A member also must not act on a matter in which the member (or any of certain closely related entities) has a financial interest. 18 USC 208.
- Representation of foreign interests may also raise issues. 35 USC 5(a)(1) and 18 USC 219.

Meetings of the Patent and Trademark Public Advisory Committees

Meetings of each Advisory Committee will take place at the call of the chair to consider an agenda set by the chair. Meetings may be conducted in person, electronically through the Internet, or by other appropriate means. The meetings of each Advisory Committee will be open to the public except each Advisory Committee may, by majority vote, meet in executive session when considering personnel or other confidential matters. Nominees must also be available and have the ability to participate in Committee business through the Internet.

Procedure for Submitting Nominations

Submit resumes for nominations for the Patent Public Advisory Committee and the Trademark Public Advisory Committee to Nicholas Flagler (see **ADDRESSES**). Each nominee must (1) be a citizen of the United States, and (2) represent the interests of at least some of the diverse USPTO users, *e.g.*, either a large or small entity located in the United States, including—if the nominee represents small entity interests—small businesses, independent inventors, or nonprofit organizations.

Dated: March 23, 2000.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 00–7709 Filed 3–28–00; 8:45 am]

BILLING CODE 3510–16–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Form Number, and OMB Number: USAF Academy Candidate Writing Sample; USAFA Form 0–878; OMB Number 0701–[to be determined].

Type of Request: New Collection.

Number of Respondents: 4,100.

Responses Per Respondent: 1.

Annual Responses: 4,100.

Average Burden Per Response: 60 minutes.

Annual Burden Hours: 4,100.

Needs and Uses: The information collection requirement is necessary to obtain data on a candidate's background and aptitude in determining eligibility and selection to the Air Force Academy. Collection of information is authorized under 10 U.S.C. 9346. The respondents are students who are applying for admission to the United States Air Force Academy.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Officer of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Officer Building, Washington, DC 20503.

DOD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: March 23, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–7659 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Washington Headquarters Services, DOD.

ACTION: Notice.

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Washington Headquarters Services announces the proposed extension of a public information collection and seeks public comment on the provisions thereof. Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received by May 30, 2000.

ADDRESSES: Written comments and recommendations on the proposed information collection should be sent to the Washington Headquarters Services, Real Estate & Facilities Directorate, Defense Protective Service, Parking Management Office, ATTN: Ms. Tonya Tobe, Room 2E165, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: To request more information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address, or call the Parking Management Office, at (703) 697–6251.

Title; Associated Form; and OMB Number: Pentagon Reservation Parking Permit Application; DD Form 1199; OMB Number 0704–0395.

Needs and Uses: The information collection requirement is necessary for the administration and management of the Pentagon's parking control program, which is designed to meet the government mandated car pool program.

Affected Public: Individuals or households.

Annual Burden Hours: 833.

Number of Respondents: 10,000.

Responses Per Respondent: 1.

Average Burden Per Response: 5 minutes.

Frequency: On occasion and annually.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Respondents are Department of Defense and non-DoD personnel who utilize designated parking areas on the Pentagon Reservation. The Pentagon Reservation Parking Permit Application (PRPPA), DD Form 1199, is a machine read form that includes information, such as name, rank or grade, Social Security Number (SSN), and vehicle license plate number, required for the issuance and control of the parking permit. The DD Form 1199 is scanned into a computerized database designed for the administration of the Pentagon's parking control program. Each member of a Pentagon Reservation authorized car pool or individual parking permit holder is required to complete and submit the DD Form 1199 upon initial application and annually thereafter.

Dated: March 23, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–7660 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmittal No. 00–30]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of P.L. 104–164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604–6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 00–30 with attached transmittal and policy justification.

Dated: March 23, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Defense Security Cooperation Agency

6 Mar 2000

In reply refer to: I–00/002325

Honorable J. Dennis Hastert,

Speaker of the House of Representatives, Washington, D.C. 20515–6501.

Dear Mr. Speaker: Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, we are forwarding herewith Transmittal No. 00–30 and under separate cover the classified annex thereto. This Transmittal concerns the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Germany for defense articles and services estimated to cost up to $200 million. Soon after this letter is delivered to your office, we plan to notify the news media of the unclassified portion of this Transmittal.

Sincerely,

Michael S. Davison, Jr.,

Lieutenant General, USA, Director.

Attachments

Separate Cover: Classified Annex

Same ltr to:

House Committee on International Relations

Senate Committee on Appropriations

Senate Committee on Foreign Relations

House Committee on National Security

Senate Committee on Armed Services

House Committee on Appropriations

Transmittal No. 00–30

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

(i) *Prospective Purchaser:* Germany.

(ii) *Total Estimated Value:*

	AGM–88B (in millions)		AGM–88C (in millions)
Major Defense Equipment [1]	35		150
Other	15		50
Total	50	or	200

[1] As defined in Section 47(6) of the Arms Export Control Act.

(iii) *Description of Articles or Services Offered:* Two hundred fifty AGM–88B or AGM–88C HARM missiles, missile containers, spare and repair parts, publications and technical documentation, engineering technical assistance, and other related elements of logistics and program support.

(iv) *Military Department:* Navy (AKP and AKQ).

(v) *Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid:* None.

(vi) *Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold:* See annex attached.

(vii) *Date Report Delivered to Congress:* 6 March 2000.

Policy Justification

Germany–AGM–88B or AGM–88C HARM Missiles

The Government of Germany (GOG) has requested a possible sale of two hundred fifty AGM–88B or AGM–88C HARM missiles, missile containers, spare and repair parts, publications and technical documentation, engineering technical assistance, and other related elements of logistics and program support. The estimated total cost is $50 million (AGM–88B) or $200 million (AGM–88C).

This case will contribute to the foreign policy and national security objectives of the United States by improving the military capabilities of Germany to fulfill its NATO obligations; furthering NATO rationalization, standardization, and interoperability; and enhancing the defense of the Western Alliance.

The proposed sale will help replenish the GOG inventory, which was depleted during the Kosovo allied operations. Germany will have no difficulty absorbing these missiles into their armed forces. The proposed sale of this equipment and support will not affect the basic military balance in the region.

The prime contractor will be Raytheon Company, Tucson, Arizona. There are no offset agreements proposed in connection with this potential sale.

Implementation of this proposed sale will not require the assignment of any additional U.S. Government and contractor representatives to Germany.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

[FR Doc. 00–7661 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Intelligence Agency, Science and Technology Advisory Board Closed Panel Meeting

AGENCY: Department of Defense, Defense Intelligence Agency.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92–463, as amended by Section 5 of Public Law 94–409, notice is hereby given that a closed meeting of the DIA Science and Technology Advisory board has been scheduled as follows:

Date: 26 April 2000, (800 am to 1600 pm).

Address: The Defense Intelligence Agency, 7400 Defense Pentagon, Washington, DC 20301–7400.

Date: 27 April 2000 (900 am to 1500 pm).

Address: National Reconnaissance Office (NRO) Headquarters, 14675 Lee Road, Chantilly, VA.

FOR FURTHER INFORMATION CONTACT: Maj. Donald R. Culp, Jr., USAF, Executive Secretary, DIA Science and Technology Advisory Board, Washington, DC 20340–1328 (202) 231–4930.

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c)(1), Title 5 of the U.S. Code, and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, on related scientific and technical matters.

Dated: March 23, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–7662 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Joint Advisory Committee on Nuclear Weapons Surety; Meeting

ACTION: Notice of advisory committee meeting.

SUMMARY: The Joint Advisory Committee on Nuclear Weapons Surety will conduct a closed session on April 20, 2000 at the Institute for Defense Analyses, Alexandria, Virginia.

The Joint Advisory Committee is charged with advising the Secretaries of Defense and Energy, and the Joint Nuclear Weapons Council on nuclear weapons surety matters. At this meeting the Joint Advisory Committee will receive classified briefings on nuclear weapons security and surety options.

In accordance with the Federal Advisory Committee Act (Public Law 92–463, as amended, Title 5, U.S.C. App. II, (1988)), this meeting concerns matters sensitive to the interests of national security, listed in 5 U.S.C. 552b(c)(1) and accordingly this meeting will be closed to the public.

Dated: March 23, 2000.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–7663 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on April 28, 2000 unless comments are received which result in a contrary determination.

ADDRESSES: Privacy Act System Notice Manager, Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, Stop 5603, Ft. Belvoir, VA 22060-5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806-4390 or DSN 656-4390.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the record system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: March 23, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0040-400 DASG

SYSTEM NAME:

Entrance Medical Examination Files *(August 7, 1997, 62 FR 42532).*

CHANGES:

* * * * * .

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals who enroll in the Reserve Officers Training Corps (nonscholarship) program, enlist or are appointed in the active or reserve units of the Armed Forces. '

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'By individua's surname and Social Security Number.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Original SF 88 and SF 93 become permanent documents in individual's Health Record: 1 copy of these forms and supporting documentation is retained by the military entrance processing station examining facility for 2 years; 1 copy is forwarded to the Department of Defense Medical Review Board where it is retained until no longer needed then destroyed. Medical records on qualified applicants are retained for 2 years then destroyed. Records of individuals rejected for military service will be maintained until all requirements of Pub.L. 104-201 are met and until a records disposition is obtained from the National Archives and Records Administration.'

* * * * *

A0040-400 DASG

SYSTEM NAME:

Entrance Medical Examination Files.

SYSTEM LOCATION:

Army medical examining facilities; military entrance processing stations (for enlistees); Department of Defense Medical Review Board, U.S. Academy, CO 80840-2200 (except for reservists). Official mailing addresses are published as an appendix to the Army's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who enroll in the Reserve Officers Training Corps (nonscholarship) program, enlist or are appointed in the active or reserve units of the Armed Forces.

CATEGORIES OF RECORDS IN THE SYSTEM:

Entrance medical examination and resulting documentation such as SF 88, Report of Medical Examination, and SF 93, Report of Medical History, together with relevant and supporting documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 10 U.S.C., Chapter 55; Army Regulation 601-270, Military Entrance Processing Station; and E.O. 9397 (SSN).

PURPOSE(S):

To determine medical acceptance of applicant for military service and thereafter to properly assign and use individual. Management data are derived from and used by Health Services Command to evaluate effectiveness of procurement medical standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; selected management data are stored on word processing or magnetic discs and tapes.

RETRIEVABILITY:

By individual's surname and Social Security Number.

SAFEGUARDS:

Records are maintained in secured buildings, accessible only to authorized personnel.

RETENTION AND DISPOSAL:

Original SF 88 and SF 93 become permanent documents in individual's Health Record: 1 copy of these forms and supporting documentation is retained by the military entrance processing station examining facility for 2 years; 1 copy is forwarded to the Department of Defense Medical Review Board where it is retained until no longer needed then destroyed. Medical records on qualified applicants are retained for 2 years then destroyed. Records of individuals rejected for military service will be maintained until all requirements of Pub.L. 104-201 are met and until a records disposition is obtained from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Chief Information Officer, Office of the Surgeon General, U.S. Army Medical Command, 2050 Worth Road, Suite 13, Fort Sam Houston, TX 78234-6013.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the commander of the medical examining facility where physical examination was given. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should provide their full name, Social Security Number, home address, approximate date of the examination, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the commander of the medical examining facility where physical examination was given. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

For verification purposes, the individual should provide their full name, Social Security Number, home address, approximate date of the examination, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual; the physician and other medical personnel.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0351 DAPE

SYSTEM NAME:

Army Training Requirements and Resources System (ATRRS) *(February 22, 1993, 58 FR 10002).*

CHANGES:

* * * * *

PURPOSE:

Delete entry and replace with 'The Army Training Requirements and Resources System is the system of records for the management of personnel input to training for the Army; is the repository for training requirements, training programs, selected training cost data, and training personnel data; contains detailed class information on all courses taught and taken by Army personnel; and produces reports and analyses and can display selected data pertinent to training-requirements, programs, inputs, graduates, loads and associated information.

Training managers use this information to schedule classes, fill training seats, and train soldiers.

The major subsystems of the Army Training Requirements and Resources System include:

(a) The Mobilization Planning System is used to plan individual training requirements and training programs for all courses upon mobilization. The product of Mobilization Planning System is the Mobilization Army Program for Individual Training.

(b) The Structure Manning Decision Review (SMDR) is the process for reviewing training requirements and modifying them into executable training programs based on available resources. The product of the SMDR is the Army Program for Individual Training which is the mission and resourcing document used by schools and training centers to establish class schedule. Additionally, the Training Resource Arbitration Panel is used to adjust training programs during the execution year.

(c) The Student Trainee Management System-Enlisted manages initial entry training seats and provides projected graduate information to PERSCOM.

(d) The Quota Management System is used to allocate training quotas by class and redistribute those seats among components in order to maximize the fill of training seats.'

STORAGE:

Delete entry and replace with 'Electronic storage medium'.

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by individual's name and Social Security Number.'

SAFEGUARDS:

Delete entry and replace with 'Visitor registration system is in effect. Hard copy printouts which contain data by Social Security Number are maintained with an 'Official Use Only' cover. Access to the Army Training Requirements and Resources System is limited to authorized personnel and as determined by the system manager.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are destroyed when no longer needed for current operations.'

* * * * *

A0351 DAPE

SYSTEM NAME:

Army Training Requirements and Resources System (ATRRS).

SYSTEM LOCATION:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20310-0300; U.S. Army Personnel Command; major commands; Army Reserve Personnel Center; National Guard Bureau; Schools and Army Training Centers worldwide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the Army, Navy, Air Force, Marine Corps, Reserve Officers' Training Corps students, Department of Defense (DoD) civilian employees and approved foreign military personnel attending a course of instruction conducted under the auspices of all Army schools and some DoD schools.

CATEGORIES OF RECORDS IN THE SYSTEM:

The system contains records pertaining to course administrative data, course scope and prerequisites, course training requirements, course equipment, personnel and facilities constraints, requirements for instructors, class schedules, class quotas, prioritized order of merit list for input into Noncommissioned Officers Education System (NCOES) training, by name reservations, limited individual personnel data, and course input and completion data by name/Social Security Number. Data related to an individual is as follows:

Training course completion data and reason codes for attrition are maintained for an individual, as well as training seat reservations.

Limited personnel data is maintained on an individual as long as the individual has a valid reservation for

training or is currently in the training base.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 10 U.S.C. 3013, Secretary of the Army and 4301; and E.O. 9397 (SSN).

PURPOSE(S):

The Army Training Requirements and Resources System is the system of records for the management of personnel input to training for the Army; is the repository for training requirements, training programs, selected training cost data, and training personnel data; contains detailed class information on all courses taught and taken by Army personnel; and produces reports and analyses and can display selected data pertinent to training-requirements, programs, inputs, graduates, loads and associated information.

Training managers use this information to schedule classes, fill training seats, and train soldiers.

The major subsystems of the Army Training Requirements and Resources System include:

(a) The Mobilization Planning System is used to plan individual training requirements and training programs for all courses upon mobilization. The product of Mobilization Planning System is the Mobilization Army Program for Individual Training.

(b) The Structure Manning Decision Review (SMDR) is the process for reviewing training requirements and modifying them into executable training programs based on available resources. The product of the SMDR is the Army Program for Individual Training which is the mission and resourcing document used by schools and training centers to establish class schedule. Additionally, the Training Resource Arbitration Panel is used to adjust training programs during the execution year.

(c) The Student Trainee Management System-Enlisted manages initial entry training seats and provides projected graduate information to PERSCOM.

(d) The Quota Management System is used to allocate training quotas by class and redistribute those seats among components in order to maximize the fill of training seats.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage medium.

RETRIEVABILITY:

Retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Visitor registration system is in effect. Hard copy printouts which contain data by Social Security Number are maintained with an 'Official Use Only' cover. Access to the Army Training Requirements and Resources System is limited to authorized personnel and as determined by the system manager.

RETENTION AND DISPOSAL:

Records are destroyed when no longer needed for current operations.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters, Department of the Army, 300 Army Pentagon, Washington, DC 20310-0300.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves is contained in this system should address written inquiries to the local commander. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is received from DoD staff, field installations, and automated systems.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

A0601-270 USMEPCOM

SYSTEM NAME:

U.S. Military Entrance Processing Reporting System *(February 22, 1993, 58 FR 10002).*

CHANGES:

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CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All individuals who report to a military entrance processing station to be aptitudinally tested and/or medically examined to determine their fitness for entry into one of the Armed Forces.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'physical' and replace with 'medical' in the second sentence.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete 'and to National Guard for performance of its duties' from the entry.

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SAFEGUARDS:

Delete entry and replace with 'All data are retained in locked rooms/compartments with access limited to personnel designated as having official need therefor. Access to computerized data is by use of a valid user ID and password code assigned to the individual video display terminal operator.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Each military entrance processing station retains a copy of reporting system source documents for each enlistee for 90 days after shipment. For all other applicants, each station retains, if applicable, a copy of the Report of Medical Examination with supporting documentation, the Report of Medical History, and any other reporting source documents, for a period not to exceed 2 years, after which they are destroyed. Originals or copies of documents are filed permanently in Official Personnel Files for acceptable applicants and transferred to the gaining Armed Force. Information relating to the individualrquote s who become seriously ill or are injured while at MEPS, or were found disqualified for a condition considered dangerous to the individualrquote s health if left untreated, records will be maintained until all requirements of Pub.L. 104-201 are met and until a records disposition is obtained from the National Archives and Records Administration. '

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A0601-270 USMEPCOM

SYSTEM NAME:

U.S. Military Entrance Processing Reporting System.

SYSTEM LOCATION:

Primary location: United States Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064-3094. Segments exist at 65 military entrance processing stations in the continental United States, Alaska, Puerto Rico, and Hawaii. Official mailing addresses are published as an appendix to the Army's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All individuals who report to a military entrance processing station (MEPS) to be aptitudinally tested and/or medically examined to determine their fitness for entry into one of the Armed Services.

CATEGORIES OF RECORDS IN THE SYSTEM:

Various personnel data, such as individual's name, Social Security Number, date and place of birth, home address and telephone number, results of aptitude tests, physical examination, and relevant documentation concerning individual's acceptance/rejection for military service.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 601-270, Military Entrance Processing Station (MEPS); and E.O. 9397 (SSN).

PURPOSE(S):

To determine qualifications of applicants for the Armed Forces through aptitude testing, medical examination, and administrative processing.

To determine patterns and trends in the military population, and for statistical analyses.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information is disclosed to the Selective Service System (SSS) to update the SSS registrant data base.

Information may also be disclosed to local and state Government agencies for compliance with laws and regulations governing control of communicable diseases.

The 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and magnetic tapes/discs.

RETRIEVABILITY:

By name and Social Security Number.

SAFEGUARDS:

All data are retained in locked rooms/compartments with access limited to personnel designated as having official need therefor. Access to computerized data is by use of a valid user ID and password code assigned to the individual video display terminal operator.

RETENTION AND DISPOSAL:

Each military entrance processing station retains a copy of reporting system source documents for each enlistee for 90 days after shipment. For all other applicants, each station retains, if applicable, a copy of the Report of Medical Examination with supporting documentation, the Report of Medical History, and any other reporting source documents, for a period not to exceed 2 years, after which they are destroyed. Originals or copies of documents are filed permanently in Official Personnel Files for acceptable applicants and transferred to the gaining Armed Force. Information relating to the individual's who become seriously ill or are injured while at MEPS, or were found disqualified for a condition considered dangerous to the individual's health if left untreated, records will be maintained until all requirements of Pub.L. 104-201 are met and until a records disposition is obtained from the National Archives and Records Administration.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064-3094.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in this record system should address written inquiries to the Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064-3094.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Commander, U.S. Military Entrance Processing Command, 2834 Green Bay Road, North Chicago, IL 60064-3094.

Individual should provide the full name, Social Security Number, and military status or other information verifiable from the record itself.

On personal visits, individual should provide acceptable identification such as valid driver's license, employer identification card, building pass, etc.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in the Department of the Army Regulation 340-21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, physicians, results of tests, federal/state/local law enforcement activities/agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–7664 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Defense Logistics Agency

Privacy Act of 1974; Systems of Records

AGENCY: Defense Logistics Agency, DOD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on April 28, 2000, unless comments are received that

would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvior, VA 22060-6221.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 767-6183.

SUPPLEMENTARY INFORMATION: The Defense Logistics Agency notices for systems of records subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on [date] to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 23, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base *(November 4, 1999, 64 FR 60180).*

CHANGES:

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Add to entry '10 U.S.C. 1562, Database on Domestic Violence Incidents'.

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ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Amend paragraph 5.b. to read 'To the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SBV). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.'

* * * * *

S322.10 DMDC

SYSTEM NAME:

Defense Manpower Data Center Data Base.

SYSTEM LOCATION:

Primary location: Naval Postgraduate School Computer Center, Naval Postgraduate School, Monterey, CA 93943-5000.

Back-up location: Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Army, Navy, Air Force and Marine Corps officer and enlisted personnel who served on active duty from July 1, 1968, and after or who have been a member of a reserve component since July 1975; retired Army, Navy, Air Force, and Marine Corps officer and enlisted personnel; active and retired Coast Guard personnel; active and retired members of the commissioned corps of the National Oceanic and Atmospheric Administration; participants in Project 100,000 and Project Transition, and the evaluation control groups for these programs. All individuals examined to determine eligibility for military service at an Armed Forces Entrance and Examining Station from July 1, 1970, and later.

DoD civilian employees since January 1, 1972.

All veterans who have used the GI Bill education and training employment services office since January 1, 1971. All veterans who have used GI Bill education and training entitlements, who visited a state employment service office since January 1, 1971, or who participated in a Department of Labor special program since July 1, 1971. All individuals who ever participated in an educational program sponsored by the U.S. Armed Forces Institute and all individuals who ever participated in the Armed Forces Vocational Aptitude Testing Programs at the high school level since September 1969.

Individuals who responded to various paid advertising campaigns seeking enlistment information since July 1, 1973; participants in the Department of Health and Human Services National Longitudinal Survey.

Individuals responding to recruiting advertisements since January 1987; survivors of retired military personnel who are eligible for or currently receiving disability payments or disability income compensation from the Department of Veteran Affairs; surviving spouses of active or retired deceased military personnel; 100% disabled veterans and their survivors; survivors of retired Coast Guard personnel; and survivors of retired officers of the National Oceanic and Atmospheric Administration who are eligible for or are currently receiving Federal payments due to the death of the retiree.

Individuals receiving disability compensation from the Department of Veteran Affairs or who are covered by a Department of Veteran Affairs' insurance or benefit program; dependents of active duty military retirees, selective service registrants.

Individuals receiving a security background investigation as identified in the Defense Central Index of Investigation. Former military and civilian personnel who are employed by DoD contractors and are subject to the provisions of 10 U.S.C. 2397.

All Federal Civil Service employees.

All non-appropriated funded individuals who are employed by the Department of Defense.

Individuals who were or may have been the subject of tests involving chemical or biological human-subject testing; and individuals who have inquired or provided information to the Department of Defense concerning such testing.

CATEGORIES OF RECORDS IN THE SYSTEM:

Computerized personnel/employment/pay records consisting of name, Service Number, Selective Service Number, Social Security Number, compensation data, demographic information such as home town, age, sex, race, and educational level; civilian occupational information; civilian and military acquisition work force warrant location, training and job specialty information; military personnel information such as rank, assignment/deployment, length of service, military occupation, aptitude scores, post-service education, training, and employment information for veterans; participation in various inservice education and training programs; military hospitalization and medical treatment, immunization, and pharmaceutical dosage records; home and work addresses; and identities of individuals involved in incidents of child and spouse abuse, and information about the nature of the abuse and services provided.

CHAMPUS claim records containing enrollee, patient and health care facility, provided data such as cause of treatment, amount of payment, name and Social Security or tax identification number of providers or potential providers of care.

Selective Service System registration data.

Department of Veteran Affairs disability payment records.

Credit or financial data as required for security background investigations.

Criminal history information on individuals who subsequently enter the military.

Office of Personnel Management (OPM) Central Personnel Data File (CPDF), an extract from OPM/GOVT-1, General Personnel Records, containing employment/personnel data on all Federal employees consisting of name, Social Security Number, date of birth, sex, work schedule (full-time, part-time, intermittent), annual salary rate (but not actual earnings), occupational series, position occupied, agency identifier, geographic location of duty station, metropolitan statistical area, and personnel office identifier. Extract from OPM/CENTRAL-1, Civil Service Retirement and Insurance Records, including postal workers covered by Civil Service Retirement, containing Civil Service Claim number, date of birth, name, provision of law retired under, gross annuity, length of service, annuity commencing date, former employing agency and home address. These records provided by OPM for approved computer matching.

Non-appropriated fund employment/personnel records consist of Social Security Number, name, and work address.

Military drug test records containing the Social Security Number, date of specimen collection, date test results reported, reason for test, test results, base/area code, unit, service, status (active/reserve), and location code of testing laboratory.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. App. 3 (Pub.L. 95-452, as amended (Inspector General Act of 1978)); 10 U.S.C. 136, Under Secretary of Defense for Personnel and Readiness; 10 U.S.C. 1562, Database on Domestic Violence Incidents; 10 U.S.C. 2358, Research and Development Projects; and E.O. 9397 (SSN).

PURPOSE(S):

The purpose of the system of records is to provide a single central facility within the Department of Defense to assess manpower trends, support personnel and readiness functions, to perform longitudinal statistical analyses, identify current and former DoD civilian and military personnel for purposes of detecting fraud and abuse of pay and benefit programs, to register current and former DoD civilian and military personnel and their authorized dependents for purposes of obtaining medical examination, treatment or other benefits to which they are qualified, and to collect debts owed to the United States Government and state and local governments.

Information will be used by agency officials and employees, or authorized contractors, and other DoD Components in the preparation of the histories of human chemical or biological testing or exposure; to conduct scientific studies or medical follow-up programs; to respond to Congressional and Executive branch inquiries; and to provide data or documentation relevant to the testing or exposure of individuals

All records in this record system are subject to use in authorized computer matching programs within the Department of Defense and with other Federal agencies or non-Federal agencies as regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a).

Military drug test records will be maintained and used to conduct longitudinal, statistical, and analytical studies and computing demographic reports on military personnel. No personal identifiers will be included in the demographic data reports. All requests for Service-specific drug testing demographic data will be approved by the Service designated drug testing program office. All requests for DoD-wide drug testing demographic data will be approved by the DoD Coordinator for Drug Enforcement Policy and Support, 1510 Defense Pentagon, Washington, DC 20301-1510.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

1. To the Department of Veteran Affairs (DVA):

a. To provide military personnel and pay data for present and former military personnel for the purpose of evaluating use of veterans benefits, validating benefit eligibility and maintaining the health and well being of veterans and their family members.

b. To provide identifying military personnel data to the DVA and its insurance program contractor for the purpose of notifying separating eligible Reservists of their right to apply for Veteran's Group Life Insurance coverage under the Veterans Benefits Improvement Act of 1996 (38 U.S.C. 1968).

c. To register eligible veterans and their dependents for DVA programs.

d. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of:

(1) Providing full identification of active duty military personnel, including full-time National Guard/Reserve support personnel, for use in the administration of DVA's Compensation and Pension benefit program. The information is used to determine continued eligibility for DVA disability compensation to recipients who have returned to active duty so that benefits can be adjusted or terminated as required and steps taken by DVA to collect any resulting over payment (38 U.S.C. 5304(c)].

(2) Providing military personnel and financial data to the Veterans Benefits Administration, DVA for the purpose of determining initial eligibility and any changes in eligibility status to insure proper payment of benefits for GI Bill education and training benefits by the DVA under the Montgomery GI Bill (Title 10 U.S.C., Chapter 1606 - Selected Reserve and Title 38 U.S.C., Chapter 30 - Active Duty). The administrative responsibilities designated to both agencies by the law require that data be exchanged in administering the programs.

(3) Providing identification of reserve duty, including full-time support National Guard/Reserve military personnel, to the DVA, for the purpose of deducting reserve time served from any DVA disability compensation paid or waiver of VA benefit. The law (10 U.S.C. 12316) prohibits receipt of reserve pay and DVA compensation for the same time period, however, it does permit waiver of DVA compensation to draw reserve pay.

(4) Providing identification of former active duty military personnel who received separation payments to the DVA for the purpose of deducting such repayment from any DVA disability compensation paid. The law requires recoupment of severance payments before DVA disability compensation can be paid (10 U.S.C. 1174).

(5) Providing identification of former military personnel and survivor's financial benefit data to DVA for the purpose of identifying military retired pay and survivor benefit payments for use in the administration of the DVA's Compensation and Pension program (38

U.S.C. 5106). The information is to be used to process all DVA award actions more efficiently, reduce subsequent overpayment collection actions, and minimize erroneous payments.

e. To provide identifying military personnel data to the DVA for the purpose of notifying such personnel of information relating to educational assistance as required by the Veterans Programs Enhancement Act of 1998 (38 U.S.C. 3011 and 3034).

2. To the Office of Personnel Management (OPM):

a. Consisting of personnel/employment/financial data for the purpose of carrying out OPM's management functions. Records disclosed concern pay, benefits, retirement deductions and any other information necessary for those management functions required by law (Pub.L. 83-598, 84-356, 86-724, 94-455 and 5 U.S.C. 1302, 2951, 3301, 3372, 4118, 8347).

b. To conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a) for the purpose of:

(1) Exchanging personnel and financial information on certain military retirees, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military retired pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

(2) Exchanging personnel and financial data on civil service annuitants (including disability annuitants under age 60) who are reemployed by DoD to insure that annuities of DoD reemployed annuitants are terminated where applicable, and salaries are correctly offset where applicable as required by law (5 U.S.C. 8331, 8344, 8401 and 8468).

(3) Exchanging personnel and financial data to identify individuals who are improperly receiving military retired pay and credit for military service in their civil service annuities, or annuities based on the 'guaranteed minimum' disability formula. The match will identify and/or prevent erroneous payments under the Civil Service Retirement Act (CSRA) 5 U.S.C. 8331 and the Federal Employees' Retirement System Act (FERSA) 5 U.S.C. 8411. DoD's legal authority for monitoring retired pay is 10 U.S.C. 1401.

(4) Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and cannot be released for extended active duty in the event of mobilization. Employing Federal agencies are informed of the reserve status of those affected personnel so that a choice of terminating the position or the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Services.

3. To the Internal Revenue Service (IRS) for the purpose of obtaining home addresses to contact Reserve component members for mobilization purposes and for tax administration. For the purpose of conducting aggregate statistical analyses on the impact of DoD personnel of actual changes in the tax laws and to conduct aggregate statistical analyses to lifestream earnings of current and former military personnel to be used in studying the comparability of civilian and military pay benefits. To aid in administration of Federal Income Tax laws and regulations, to identify non-compliance and delinquent filers.

4. To the Department of Health and Human Services (DHHS):

a. To the Office of the Inspector General, DHHS, for the purpose of identification and investigation of DoD employees and military members who may be improperly receiving funds under the Aid to Families of Dependent Children Program.

b. To the Office of Child Support Enforcement, Federal Parent Locator Service, DHHS, pursuant to 42 U.S.C. 653 and 653a; to assist in locating individuals for the purpose of establishing parentage; establishing, setting the amount of, modifying, or enforcing child support obligations; or enforcing child custody or visitation orders; and for conducting computer matching as authorized by E.O. 12953 to facilitate the enforcement of child support owed by delinquent obligors within the entire civilian Federal government and the Uniformed Services work force (active and retired). Identifying delinquent obligors will allow State Child Support Enforcement agencies to commence wage withholding or other enforcement actions against the obligors.

Note 1: Information requested by DHHS is not disclosed when it would contravene U.S. national policy or security interests (42 U.S.C. 653(e)).

Note 2: Quarterly wage information is not disclosed for those individuals performing intelligence or counter-intelligence functions and a determination is made that disclosure could endanger the safety of the individual or compromise an ongoing investigation or intelligence mission (42 U.S.C. 653(n)).

c. To the Health Care Financing Administration (HCFA), DHHS for the purpose of monitoring HCFA reimbursement to civilian hospitals for Medicare patient treatment. The data will ensure no Department of Defense physicians, interns or residents are counted for HCFA reimbursement to hospitals.

d. To the Center for Disease Control and the National Institutes of Mental Health, DHHS, for the purpose of conducting studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members.

5. To the Social Security Administration (SSA):

a. To the Office of Research and Statistics for the purpose of conducting statistical analyses of impact of military service and use of GI Bill benefits on long term earnings.

b. To the Bureau of Supplemental Security Income for the purpose of verifying information provided to the SSA by applicants and recipients/beneficiaries, who are retired members of the Uniformed Services or their survivors, for Supplemental Security Income (SSI) or Special Veterans' Benefits (SBV). By law (42 U.S.C. 1006 and 1383), the SSA is required to verify eligibility factors and other relevant information provided by the SSI or SVB applicant from independent or collateral sources and obtain additional information as necessary before making SSI or SVB determinations of eligibility, payment amounts, or adjustments thereto.

6. To the Selective Service System (SSS) for the purpose of facilitating compliance of members and former members of the Armed Forces, both active and reserve, with the provisions of the Selective Service registration regulations (50 U.S.C. App. 451 and E.O. 11623).

7. To DoD Civilian Contractors and grantees for the purpose of performing research on manpower problems for statistical analyses.

8. To the Department of Labor (DOL) to reconcile the accuracy of unemployment compensation payments made to former DoD civilian employees and military members by the states. To the Department of Labor to survey military separations to determine the effectiveness of programs assisting veterans to obtain employment.

9. To the U.S. Coast Guard (USCG) of the Department of Transportation (DOT) to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purpose of exchanging personnel and financial information on certain retired USCG military members, who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and to permit adjustments of military retired pay by the U.S. Coast Guard and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

10. To the Department of Housing and Urban Development (HUD) to provide data contained in this record system that includes the name, Social Security Number, salary and retirement pay for the purpose of verifying continuing eligibility in HUD's assisted housing programs maintained by the Public Housing Authorities (PHAs) and subsidized multi-family project owners or management agents. Data furnished will be reviewed by HUD or the PHAs with the technical assistance from the HUD Office of the Inspector General (OIG) to determine whether the income reported by tenants to the PHA or subsidized multi-family project owner or management agent is correct and complies with HUD and PHA requirements.

11. To Federal and Quasi-Federal agencies, territorial, state, and local governments to support personnel functions requiring data on prior military service credit for their employees or for job applications. To determine continued eligibility and help eliminate fraud and abuse in benefit programs and to collect debts and over payments owed to these programs. To assist in the return of unclaimed property or assets escheated to states of civilian employees and military member and to provide members and former members with information and assistance regarding various benefit entitlements, such as state bonuses for veterans, etc. Information released includes name, Social Security Number, and military or civilian address of individuals. To detect fraud, waste and abuse pursuant to the authority contained in the Inspector General Act of 1978, as amended (Pub.L. 95-452) for the purpose of determining eligibility for, and/or continued compliance with, any Federal benefit program requirements.

12. To private consumer reporting agencies to comply with the requirements to update security clearance investigations of DoD personnel.

13. To consumer reporting agencies to obtain current addresses of separated military personnel to notify them of potential benefits eligibility.

14. To Defense contractors to monitor the employment of former DoD employees and members subject to the provisions of 41 U.S.C. 423.

15. To financial depository institutions to assist in locating individuals with dormant accounts in danger of reverting to state ownership by escheatment for accounts of DoD civilian employees and military members.

16. To any Federal, state or local agency to conduct authorized computer matching programs regulated by the Privacy Act of 1974, as amended, (5 U.S.C. 552a) for the purposes of identifying and locating delinquent debtors for collection of a claim owed the Department of Defense or the Unites States Government under the Debt Collection Act of 1982 (Pub.L. 97-365) and the Debt Collection Improvement Act of 1996 (Pub.L. 104-134).

17. To state and local law enforcement investigative agencies to obtain criminal history information for the purpose of evaluating military service performance and security clearance procedures (10 U.S.C. 2358).

18. To the United States Postal Service to conduct computer matching programs regulated by the Privacy Act of 1974, as amended (5 U.S.C. 552a), for the purposes of:

a. Exchanging civil service and Reserve military personnel data to identify those individuals of the Reserve forces who are employed by the Federal government in a civilian position. The purpose of the match is to identify those particular individuals occupying critical positions as civilians and who cannot be released for extended active duty in the event of mobilization. The Postal Service is informed of the reserve status of those affected personnel so that a choice of terminating the position on the reserve assignment can be made by the individual concerned. The authority for conducting the computer match is contained in E.O. 11190, Providing for the Screening of the Ready Reserve of the Armed Forces.

b. Exchanging personnel and financial information on certain military retirees who are also civilian employees of the Federal government, for the purpose of identifying those individuals subject to a limitation on the amount of retired military pay they can receive under the Dual Compensation Act (5 U.S.C. 5532), and permit adjustments to military retired pay to be made by the Defense Finance and Accounting Service and to take steps to recoup excess of that permitted under the dual compensation and pay cap restrictions.

19. To the Armed Forces Retirement Home (AFRH), which includes the United States Soldier's and Airmen's Home (USSAH) and the United States Naval Home (USNH) for the purpose of verifying Federal payment information (military retired or retainer pay, civil service annuity, and compensation from the Department of Veterans Affairs) currently provided by the residents for computation of their monthly fee and to identify any unreported benefit payments as required by the Armed Forces Retirement Home Act of 1991, Pub.L. 101-510 (24 U.S.C. 414).

20. To Federal and Quasi-Federal agencies, territorial, state and local governments, and contractors and grantees for the purpose of supporting research studies concerned with the health and well being of active duty, reserve, and retired personnel or veterans, to include family members. DMDC will disclose information from this system of records for research purposes when DMDC:

a. Has determined that the use or disclosure does not violate legal or policy limitations under which the record was provided, collected, or obtained;

b. Has determined that the research purpose (1) cannot be reasonably accomplished unless the record is provided in individually identifiable form, and (2) warrants the risk to the privacy of the individual that additional exposure of the record might bring;

c. Has required the recipient to (1) establish reasonable administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record, and (2) remove or destroy the information that identifies the individual at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the research project, unless the recipient has presented adequate justification of a research or health nature for retaining such information, and (3) make no further use or disclosure of the record except (A) in emergency circumstances affecting the health or safety of any individual, (B) for use in another research project, under these same conditions, and with written authorization of the Department, (C) for disclosure to a properly identified person for the purpose of an

audit related to the research project, if information that would enable research subjects to be identified is removed or destroyed at the earliest opportunity consistent with the purpose of the audit, or (D) when required by law;

d. Has secured a written statement attesting to the recipient's understanding of, and willingness to abide by these provisions.

21. To the Educational Testing Service, American College Testing, and like organizations for purposes of obtaining testing, academic, socioeconomic, and related demographic data so that analytical personnel studies of the Department of Defense civilian and military workforce can be conducted.

Note 3: Data obtained from such organizations and used by DoD does not contain any information which identifies the individual about whom the data pertains.

The 'Blanket Routine Uses' set forth at the beginning of the DLA compilation of record system notices apply to this record system.

Note 4: Military drug test information involving individuals participating in a drug abuse rehabilitation program shall be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. This statute takes precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DLA's 'Blanket Routine Uses' *do not* apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic storage media.

RETRIEVABILITY:

Retrieved by name, Social Security Number, occupation, or any other data element contained in system.

SAFEGUARDS:

Access to personal information at both locations is restricted to those who require the records in the performance of their official duties. Access to personal information is further restricted by the use of passwords which are changed periodically. Physical entry is restricted by the use of locks, guards, and administrative procedures.

RETENTION AND DISPOSAL:

Disposition pending.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Defense Manpower Data Center, DoD Center Monterey Bay, 400 Gigling Road, Seaside, CA 93955-6771.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address inquiries to the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

Written requests should contain the full name, Social Security Number, date of birth, and current address and telephone number of the individual.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records, for contesting contents and appealing initial agency determinations are contained in DLA Regulation 5400.21, 32 CFR part 323, or may be obtained from the Privacy Act Officer, Headquarters, Defense Logistics Agency, ATTN: CAAR, 8725 John J. Kingman Road, Suite 2533, Fort Belvoir, VA 22060-6221.

RECORD SOURCE CATEGORIES:

The military services, the Department of Veteran Affairs, the Department of Education, Department of Health and Human Services, from individuals via survey questionnaires, the Department of Labor, the Office of Personnel Management, Federal and Quasi-Federal agencies, and the Selective Service System.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–7665 Filed 3–28–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 30, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 23, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Part B, Individuals with Disabilities Education Act Implementation of FAPE Requirements 2000–01 School Year.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58;

Burden Hours: 272,890.

Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under IDEA-B that receive special education and related services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7690 Filed 3–28–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 30, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 23, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Revision.

Title: Report of Children with Disabilities Receiving Special Education under Part B of the Individuals with Disabilities Education Act (IDEA–B).

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 58

Burden Hours: 30,682.

Abstract: This package provides instructions and a form necessary for States to report the number of children with disabilities served under IDEA–B that receive special education and related services. It serves as the basis for distributing federal assistance, monitoring, implementing, and Congressional reporting.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila__Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7691 Filed 3–28–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 30, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2)

Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) Is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 23, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.
Title: The Impact of ICT on Learning: Quasi-Experimental Study.
Frequency: Three times a year.
Affected Public: Businesses or other for-profit; Not-for-profit institutions; Federal Government; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 7,572
Burden Hours: 7,572.
Abstract: Under auspices of the Organization for Economic Cooperation and Development, the Department of Education will participate in an international study to examine the impact of information and communication technology (ICT) on student learning. The study will use the following instruments: (a) ICT Skill Test, (b) Learning to Learn Test, (c) ICT Attitudes Survey—Students, (d) ICT Use Survey—Students, (e) ICT Attitude Survey—Teachers, (f) ICT Use Survey—Teachers, (g) Student Background Survey, and (h) Teacher Background Survey. Two thousand four hundred eleventh grade students will participate in this study from 24 schools. In addition, about 100 teachers and 24 school administrators will respond to the ICT Attitude and Use surveys.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 (fax) or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7692 Filed 3–28–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 30, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 23, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: Reinstatement
Title: Study for Class-Size Reduction Program.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs
Reporting and Recordkeeping Hour Burden:
Responses: 800
Burden Hours: 800
Abstract: This collection will be conducted to study the implementation of the Class-Size Reduction (CSR) Program from a sample of 800 school districts. The information obtained will be used to evaluate and describe the implementation of the second year of the CSR program.

Requests for copies of the proposed information collection request may be accessed from http://edicsweb.ed.gov, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Jacquelfne Montague at (202) 708–5359 or via her internet address Jackie__Montague@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7693 Filed 3–28–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Web-Based Education Commission; Hearing and Meeting

AGENCY: Office of Postsecondary Education, Education.

ACTION: Notice of hearing and meeting.

SUMMARY: This notice announces the next hearing and meeting of the Web-based Education Commission. Notice of this meeting is required under Section 10(a)(2) of the Federal Advisory Committee Act. Difficulties in scheduling the meeting caused delay in publishing this notice. This document is intended to notify the general public of their opportunity to attend this hearing and meeting.

DATES: The hearing and meeting will be held on April 7, 2000, from 8:00 a.m.–2:00 p.m.

LOCATION: The hearing and meeting will be held at Sun Microsystems, Inc., 10 Network Circle, Menlo Park, CA 94025.

FOR FURTHER INFORMATION CONTACT: David S. Byer, Executive Director, Web-based Education Commission, U.S. Department of Education, 1990 K Street, NW, Washington, DC 20006–8533. Telephone: (202) 502–7561. Fax: (202) 502–7873. Email: *david__byer@ed.gov*.

SUPPLEMENTARY INFORMATION: The Web-based Education Commission is authorized by Title VIII, Part J of the Higher Education Act Amendments of 1998, as amended by the Fiscal 2000 Appropriations Act for the Departments of Labor, Health, and Human Services, and Education, and Related Agencies. The Commission is required to conduct a thorough study to assess the critical pedagogical and policy issues affecting the creation and use of web-based and other technology-mediated content and learning strategies to transform and improve teaching and achievement at the K–12 and postsecondary education levels. The Commission must issue a final report to the President and the Congress, not later than 12 months after the first meeting of the commission, which occurred November 16–17, 1999. The final report will contain a detailed statement of the Commission's findings and conclusions, as well as recommendations.

The purpose of the April 7 hearing will be to capture the perspectives of the nation's top business, government and education leaders who are located in the Silicon Valley. These experts will explore the potential of digital technologies for empowering learners of all ages and in all environments. Testimony will be received on the following issues: (1) Using the Internet to transform learning: past educational challenges and new opportunities; (2) applying lessons from e business: what have we learned? what is transportable to education?; (3) identifying barriers to achieving the vision of the Internet for learning and offering solutions; and (4) moving from the "digital divide" to "digital opportunity." The testimony received will be used by the members of the Commission to help in the development of its policy recommendations.

The hearing and meeting are open to the general public. Records are kept of all Commission proceeding and are available for public inspection at the office of the Web-Based Education Commission, Room 8091, 1990 K Street, NW, Washington, DC 20006–8533 from the hours of 9:00 a.m. to 5:30 p.m.

Assistance to Individuals With Disabilities at the Hearing

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (*e.g.*, interpreting services, assisted listening device or materials in an alternate format) should notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although the Department will attempt to meet a request received after that date, the requested auxiliary aid or service may not be available because of insufficient time to arrange it.

Electronic Access To This Document

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http://ocfo.ed.gov/fedreg.htm

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To use the PDF you must have the Adobe Acrobat Reader Program with Search, which is available free at either of the previous sites. If you have questions about using the PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area, at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: http://www.access.gpo.gov/nara/index.html

Dated: March 23, 2000.

A. Lee Fritschler,

Assistant Secretary, Office of Postsecondary Education.

[FR Doc. 00–7694 Filed 3–28–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–178–A]

Application To Export Electric Energy; Citizens Power Sales LLC

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Citizens Power Sales LLP (CP Sales) has applied for renewal of its authority to transmit electric energy from the United States to Mexico pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before April 28, 2000.

ADDRESS: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Im/Ex (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: On May 29, 1998, the Office of Fossil Energy (FE) of the Department of Energy (DOE) authorized CP Sales to transmit electric energy from the United States to Mexico as a power marketer using the international electric transmission facilities of San Diego Gas and Electric Company, El Paso Electric Company, Central Power and Light Company and Comision Federal de Electricidad, the national electric utility of Mexico. That two-year authorization will expire on May 29, 2000. On March 21, 2000, CP Sales filed an application with FE for renewal of this export authority and requested that the Order be issued for a 5-year term.

DOE notes that the circumstances described in this application are virtually identical to those for which export authority had previously been granted in FE Order EA–178. Consequently, DOE believes that it has adequately satisfied its responsibilities under the National Environmental Policy Act of 1969 through the documentation of a categorical exclusion in the FE Docket EA–178 proceeding.

Procedural Matters

Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with the DOE on or before the date listed above.

Comments on CP Sales' request to export to Mexico should be clearly marked with Docket EA–178–A. Additional copies are to be filed directly with Jolanta Sterbenz, Hogan & Hartson L.L.P., 555 Thirteenth Street, NW, Washington, DC 20006–1109 and Donald S. McCauley, Senior Vice President and General Counsel, Citizens Power LLC, 160 Federal Street, Boston, Massachusetts 02110–1776.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at http://www.fe.doe.gov. Upon reaching the Fossil Energy Home page, select "Electricity" then "Pending Proceedings" from the options menus.

Issued in Washington, DC, on March 22, 2000.

Anthony J. Como,

Manager, Electric Power Regulation, Office of Coal & Power Im/Ex, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 00–7760 Filed 3–28–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Paducah

AGENCY: Department of Energy (DOE).

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Paducah. The Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) requires that public notice of these meetings be announced in the **Federal Register**.

DATE: Thursday, April 20, 2000: 5:30 p.m.–8:30 p.m.

ADDRESS: Paducah Information Age Park Resource Center, 2000 McCracken Boulevard, Paducah, Kentucky.

FOR FURTHER INFORMATION CONTACT: John D. Sheppard, Site Specific Advisory Board Coordinator, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001, (270) 441–6804.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration and waste management activities.

Tentative Agenda

5:30 p.m. Informal Discussion
6:00 p.m. Call to Order
6:10 p.m. Approve Minutes
6:20 p.m. Presentations/Board Response/Public Comments
7:20 p.m. Sub Committee Reports/ Board Response/Public Comment
8:15 p.m. Administrative Issues
8:30 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact John D. Sheppard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments at the end of the meeting.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available at the Department of Energy's Environmental Information Center and Reading Room at 175 Freedom Boulevard, Highway 60, Kevil, Kentucky between 8:00 a.m. and 5:00 p.m. on Monday thru Friday or by writing to John D. Sheppard, Department of Energy Paducah Site Office, Post Office Box 1410, MS–103, Paducah, Kentucky 42001 or by calling him at (270) 441–6804.

Issued at Washington, DC on March 23, 2000.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–7759 Filed 3–28–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–30–005

ANR Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 23, 2000.

Take notice that on March 17, 2000, ANR Pipeline Company (ANR) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, Substitute Twenty-Seventh Revised Sheet No. 17, with an effective date of March 1, 2000.

ANR states that the filing is being made to correct a reference to an incorrect GRI surcharge and a clerical error is pagination in the tariff sheet previously submitted on March 6, 2000 in Docket No. RP00–30–000.

ANR states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7674 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–217–000]

Cove Point LNG Limited Partnership; Notice of Request for Extension of Time

March 23, 2000.

Take notice that on March 13, 2000, pursuant to Rule 212 of the Commission's Rules of Practice and Procedure, 18 CFR 385.212, Cove Point LNG Limited Partnership (Cove Point) tendered for filing a request for an extension of time in which to comply with the requirement to make a *pro forma* tariff filing, by May 1, 2000, to implement certain tariff changes regarding scheduling, capacity segmentation and penalties, as mandated by Order No. 637.

Cove Point argues that reopening of Cove Point's LNG tanker discharging service will result in a significant increase in the volume of revaporized LNG and natural gas being delivered out of Cove Point's facilities into the natural gas pipelines interconnected with Cove Point. Cove Point states that the increased throughput will necessitate changes to operations at Cove Point which will involve those subject matters covered by Order No. 637.

Cove Point requests that it be granted an extension of time to comply with the requirements of Order No. 637 that have a May 1, 2000 compliance deadline, so that the required tariff changes would be effective on the date that the tariff sheets approved for the reactivation of the LNG discharging terminal are effective.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before March 30, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7676 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

[Docket No. RP00–115–001]

Federal Energy Regulatory Commission Panhandle Eastern Pipe Line Company; Notice of Filing of Reconciliation Report

March 23, 2000.

Take notice that on March 10, 2000, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing its reconciliation report in accordance with Article I, Section 3(e)(ii) of the April 18, 1996 Stipulation and Agreement in Docket No. RP95–411–000 (Settlement) and the Commission's letter order issued December 17, 1999 in Docket No. RP00–115–000.

Panhandle states that pursuant to the Commission's December 30, 1998 order in Docket No. RP99–175–000 it established the Second Carryover GSR Settlement Interruptible Rate Component to be effective during the twelve month period commencing January 1, 1999. On December 1, 1999 Panhandle filed in Docket No. RP00–115–000 to suspend the Second Carryover GSR Settlement Interruptible Rate Component applicable to Rate Schedules IT and EIT effective January 1, 2000. The Commission's letter order issued December 17, 1999 approving the filing in Docket No. RP00–115–000 required Panhandle to file a reconciliation report by March 31, 2000.

Panhandle states that copies of its filing are being served on all to the proceedings in Docket No. RP95–411–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before March 30, 2000. Protests will considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the wet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7675 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ES00–22–000]

Sun River Electric Cooperative, Inc; Notice of Filing

March 23, 2000.

Take notice that on March 20, 2000, Sun River Electric Cooperative, Inc. (SREC) submitted for filing an application pursuant to Section 204 of the Federal Power Act. SREC seeks authorization to borrow money pursuant to a loan agreement with the National Rural Utilities Cooperative Finance Corporation (CFC) in an amount not to exceed $28,500,000. SREC also seeks authorization to borrow under a revolving line of credit in place with CFC in an amount not to exceed $2,000,000.

SREC also requests a waiver of the Commission's competitive bidding and negotiated placement requirements in 18 CFR 34.2.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 5, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7677 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–127–000]

Transcontinental Gas Pipe Line Corporation; Notice of Application

March 23, 2000.

Take notice that on March 16, 2000, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed an application for a certificate of public convenience and necessity authorizing Transco to construct and operate certain facilities at its Compressor Station No. 120 in Henry County, Georgia in order to comply with the Clean Air Act Amendments of 1990, all as more fully set forth in the application on file with the Commission and open to public inspection. This filing may be viewed

on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Transco proposes to modify several of its existing reciprocating engines at Compressor Station No. 120 (Station 120) in order to comply with the State of Georgia plan to implement the Clean Air Act Amendments of 1990. Station 120 has 18 units including 15 reciprocating/compressor units, one Solar Centaur gas turbine, and two 12,000 HP Ansaldo electric motor driven centrifugal compressor units. The facilities at Station 120 are located within a fenced area of approximately 20 acres.

Transco states that it plans to install turbochargers and associated equipment on 8 of the 15 reciprocating engines in order to reduce NO_x emissions. Transco plans to modify the existing turbochargers at the other 7 reciprocating units to increase their capacity and install associated equipment in order to reduce NO_x emissions. Transco states that the 8 engines which will have turbochargers installed will have the potential to perform above their current operating horsepower. However, since Station 120 is automated, Transco says that it has the ability to shut down other engines or reduce its load to ensure that the station will not operate above the station's total certificated horsepower. Since Transco will install these turbochargers at Station 120 solely to achieve an environmental improvement, *i.e.*, lower NO_x emissions, Transco states that it has no intent or need to operate the station above its certificated horsepower. Therefore, when Transco installs these turbochargers at Station 120 Transco states that it will adjust the automation program at the station so that it will not operate above its certificated horsepower.

At the other 7 engines, Transco states that modification of the existing turbochargers to increase their capacity will not create the potential of these engines performing above their current operating horsepower because the engines are already operating at maximum horsepower and cannot operate at a higher horsepower output. Accordingly, Transco emphasizes that there will be no increase in the capacity of Transco's system in the vicinity of the station as a result of installing the 8 new turbochargers and modifying the 7 existing turbochargers.

Transco estimates that the proposed modifications will cost $25.4 million.

Transco states that it needs to commence the work at Station 120 on May 15, 2000 in order to complete the work on a timely basis with respect to the requirements of the Clean Air Act Amendments of 1990 and the state implementation plan, while at the same time accommodating the operational needs of its pipeline system and ensuring that Transco's gas service obligations are met. Accordingly, Transco requests that the Commission issue a certificate of public convenience and necessity by May 15, 2000.

Any questions regarding this application should be directed to Alfred E. White, Jr., Senior Attorney, Transcontinental Gas Pipe Line Corporation, P.O. Box 1396, Houston, Texas 77251 14203 at (713) 215–2000.

Any person desiring to be heard or to make a protest with reference to said application should on or before April 13, 2000, file with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214) and the regulations under the Natural Gas Act (NGA) (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's rules.

A person obtaining intervener status will be placed on the service list maintained by the Commission and will receive copies of all documents issued by the Commission, filed by the applicant, or filed by all other interveners. An intervener can file for rehearing of any Commission order and can petition for court review of any such order. However, an intervener must submit copies of comments or any other filing it makes with the Commission to every other intervener in the proceeding, as well as 14 copies with the Commission.

A person does not have to intervene, however, in order to have comments considered. A person, instead, may submit two copies of comments to the Secretary of the Commission. Commenters will be placed on the Commission's environmental mailing list, will receive copies of environmental documents and be able to participate in meetings associated with the Commission's environmental review process. Commenters will not required to serve copies of filed documents on all other parties. However, commenters will not receive copies of all comments filed by other parties or issued by the Commission and not have the right to seek rehearing or appeal the Commission's final order to a federal court.

The Commission will consider all comments and concerns equally, whether filed by commenters or those requesting intervener status.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Commission by Sections 7 and 15 of the NGA and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transco to appear or be represented at the hearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7671 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–64–000, et al.]

Cobisa-Person Limited Partnership, et al.; Electric Rate and Corporate Regulation Filings

March 22, 2000.

Take notice that the following filings have been made with the Commission:

1. Cobisa-Person Limited Partnership

[Docket No. EC00–64–000]

Take notice that on March 16, 2000, Cobisa-Person Limited Partnership (Cobisa-Person), 820 Gessner, Suite 930, Houston, Texas 77024, submitted for filing an application for approval under Section 203 of the Federal Power Act of the acquisition of Cobisa-Person by affiliates of Delta Power Company, LLC and John Hancock Life Insurance Company. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, Cobisa-Person is developing an approximately 140 MW natural gas and oil-fired generation facility in Bernalillo County, New Mexico. Cobisa-Person will sell all energy and capacity produced by the facility to Public Service Company of New Mexico at market-based rates pursuant to a long-term power purchase agreement that has been accepted for filing by the Commission.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Orion Power MidWest, LLC

[Docket No. EG00–115–000]

Take notice that on March 17, 2000, Orion Power MidWest, LLC, with an office located at c/o Orion Power Holdings, Inc., 7 E. Redwood Street, 10th Floor, Baltimore, Maryland 21202, filed with the Federal Energy Regulatory Commission (Commission) an application for determination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Western New York Wind Corp.

[Docket No. EG00–116–000]

Take notice that on March 21, 2000, Western New York Wind Corp. (Western Wind), a New York corporation with its headquarters in Wyoming County, New York, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations.

Western Wind is a New York corporation with no affiliates or subsidiaries. Western Wind will construct, own and operate wind power generators in upper New York state. No state EWG findings are required.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

4. Consolidated Edison Energy Massachusetts, Inc.

[Docket No. ER99–3248–003]

Take notice that on March 17, 2000, Consolidated Edison Energy Massachusetts, Inc. (CEEMI) tendered for filing its compliance filing with respect to Consolidated Edison Energy Massachusetts FERC Electric Tariff No. 1, Market Based Rates Tariff.

CEEMI states that a copy of this filing has been served by mail upon The New York State Public Service Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Unicom Investments, Inc.

[Docket No. EL00–54–000]

Take notice that on March 17, 2000, Unicom Investments, Inc. (UII), on behalf of itself and certain grantor trusts, business trusts or limited liability companies or partnerships of limited liability companies of which UII would be the sole beneficiary or member filed with the Federal Energy Regulatory Commission a petition for declaratory order disclaiming jurisdiction and request for expedited consideration.

The Applicants are seeking a disclaimer of jurisdiction on connection with a lease/leaseback financing involving three Facilities.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Southwestern Electric Power Company

[Docket No. ER00–1748–001]

Take notice that on March 17, 2000, Southwestern Electric Power Company (SWEPCO) tendered for filing a revised final return on common equity (Final ROE) to be used in redetermining or "truing-up" cost-of-service formula rates for wholesale service in Contract Year 1999 to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc., the City of Hope, Arkansas, and East Texas Electric Cooperative, Inc. SWEPCO provides service to these Customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity. The revised lower Final ROE reflects a minor adjustment to the original filing on March 1, 2000 in this proceeding.

SWEPCO continues to request an effective date of January 1, 1999.

Copies of the filing were served upon the affected wholesale Customers, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Avista Corporation

[Docket No. ER00–1903–000]

Take notice that on March 17, 2000, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to section 35.12 of the Commissions, 18 CFR Part 35.12, an executed Amendment to a Mutual Netting Agreement with Tractebel Energy Marketing, Inc., previously filed with the FERC under Docket No. ER99–61–000, Service Agreement No. 259, effective 10/1/98 changing billing and payment terms.

AVA requests waiver of the prior notice requirements and requests an effective date of March 1, 2000 for the amended terms for net billing of transactions.

Notice of the filing has been served upon the following: Mr. Trey Nixon, Tractebel Energy Marketing, Inc., 1177 West Loop South, Suite 800, Houston, TX 77027.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. PPL Electric Utilities Corporation

[Docket No. ER00–1904–000]

Take notice that on March 17, 2000, PPL Electric Utilities Corporation (PPL) filed a Service Agreement in substitution for the prior Service Agreement filed on July 14, 1999. The Service Agreement adds Edison Mission Marketing & Trading, Inc. (EMMT) as an eligible customer under the Tariff.

PPL states that copies of this filing have been supplied to EMMT and to the Pennsylvania Public Utility Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PPL Electric Utilities Corporation

[Docket No. ER00–1905–000]

Take notice that on March 17, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.) (PPL) filed a Service Agreement dated February 29, 2000, with The Detroit Edison Company (DEC) under PPL's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds DEC as an eligible customer under the Tariff.

PPL requests an effective date of March 17, 2000 for the Service Agreement.

PPL states that copies of this filing have been supplied to DEC and to the Pennsylvania Public Utility Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. PPL Electric Utilities Corporation

[Docket No. ER00–1906–000]

Take Notice that on March 17, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.) (PPL) filed a Service Agreement dated February 16, 2000 with ONEOK Power Marketing Company (ONEOK) under PPL's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds ONEOK as an eligible customer under the Tariff.

PPL requests an effective date of March 17, 2000 for the Service Agreement.

PPL states that copies of this filing have been supplied to ONEOK and to the Pennsylvania Public Utility Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. PPL Electric Utilities Corporation

[Docket No. ER00–1907–000]

Take notice that on March 17, 2000, PPL Electric Utilities Corporation d/b/a PPL Utilities (formerly known as PP&L, Inc.) (PPL) filed a Service Agreement dated March 6, 2000 with Citizens Power Sales LLC (Citizens) under PPL's Market-Based Rate and Resale of Transmission Rights Tariff, FERC Electric Tariff, Revised Volume No. 5. The Service Agreement adds Citizens as an eligible customer under the Tariff.

PPL requests an effective date of March 17, 2000 for the Service Agreement.

PPL states that copies of this filing have been supplied to Citizens and to the Pennsylvania Public Utility Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Allegheny Energy Service Corporation on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1908–000]

Take notice that on March 17, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Supplement No. 27 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of January 17, 2000 or on a date as determined by the Commission to El Paso Merchant Energy, L.P.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1909–000]

Take notice that on March 17, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply) filed Supplement No. 28 to add one (1) new Customer to the Market Rate Tariff under which Allegheny Energy Supply Company offers generation services; and filed Amendment No. 1 to Supplement No. 28 to incorporate a Netting Agreement with Tenaska Power Services Company into the tariff provisions.

Allegheny Energy Supply requests a waiver of notice requirements to make service available as of January 31, 2000 to Tenaska Power Services Company and make the Netting Agreement effective as of March 13, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1910–000]

Take notice that on March 17, 2000, Allegheny Energy Service Corporation on behalf of Monongahela Power Company, The Potomac Edison Company and West Penn Power Company (Allegheny Power), filed Supplement No. 74 to add Statoil Energy Services, Inc. to Allegheny Power Open Access Transmission Service Tariff which has been accepted for filing by the Federal Energy Regulatory Commission in Docket No. ER96–58–000.

The proposed effective date under the Service Agreement is April 1, 2000.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. South Carolina Electric & Gas Company

[Docket No. ER00–1911–000]

Take notice that on March 17, 2000, South Carolina Electric & Gas Company (SCE&G) submitted a service agreement establishing Allegheny Energy Supply Company, LLC as a customer under the terms of SCE&G's Negotiated Market Sales Tariff.

Copies of this filing were served upon Allegheny Energy Supply Company, LLC and the South Carolina Public Service Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. San Joaquin Cogen Limited

[Docket No. ER00–1912–000]

Take notice that on March 17, 2000, San Joaquin Cogen Limited (San Joaquin), an Exempt Wholesale Generator that owns and operates a 49 MW gas-filed electric generation plant in Lathrop, California, tendered for filing a Power Purchase and Sale Agreement between San Joaquin and El Paso Merchant Energy, L.P.

San Joaquin requests that the Agreement be permitted to become effective February 17, 2000.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Deseret Generation & Transmission Co-operative

[Docket No. ER00–1913–000]

Take notice that on March 17, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed umbrella non-firm point-to-point service agreement with American Electric Power Service Corporation, as agent for the utility subsidiaries of American Electric Power Company, Inc.(AEP) under its open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of February 24, 2000.

AEP has been provided a copy of this filing.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Deseret Generation & Transmission Co-operative

[Docket No. ER00–1914–000]

Take notice that on March 17, 2000, Deseret Generation & Transmission Co-operative, Inc. (Deseret), tendered for filing an executed umbrella short-term firm point-to-point service agreement with American Electric Power Service Corporation, as agent for the utility subsidiaries of American Electric Power Company, Inc.(AEP) under its open access transmission tariff.

Deseret requests a waiver of the Commission's notice requirements for an effective date of February 24, 2000.

AEP has been provided a copy of this filing.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

19. PECO Energy Company

[Docket No. ER00–1915–000]

Take notice that on March 17, 2000, PECO Energy Company (PECO) filed under Section 205 of the Federal Power Act, 16 U.S.C. S 792 *et seq.*, an Agreement dated March 16, 2000 with NRG Power Marketing, Inc. (NRGPM) under PECO's FERC Electric Tariff Original Volume No. 1 (Tariff).

PECO requests an effective date of March 20, 2000 for the Agreement.

PECO states that copies of this filing have been supplied to NRG Power Marketing, Inc. and to the Pennsylvania Public Utility Commission.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

20. New Century Services, Inc.

[Docket No. ER00–1916–000]

Take notice that on March 17, 2000, New Century Services, Inc. on behalf of Cheyenne Light, Fuel and Power Company, Public Service Company of Colorado, and Southwestern Public Service Company (the Companies) tendered for filing a service agreement under their Joint Open Access Transmission Service Tariff for Firm Point-to-Point Transmission Service between the Companies and Public Service Company of Colorado—Wholesale Merchant Function.

Comment date: April 7, 2000, in accordance with Standard Paragraph E at the end of this notice.

21. Puget Sound Energy, Inc.

[Docket No. ER00–1926–000]

Take notice that on March 9, 2000, Puget Sound Energy, Inc. filed a quarterly report for the quarter ended December 31, 1999.

Comment date: April 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7715 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1694–001, et al.]

Pacific Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

March 21, 2000.

Take notice that the following filings have been made with the Commission:

1. Pacific Gas and Electric Company

[Docket No. ER00–1694–001]

Take notice that on March 16, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing replacement revisions to Part V of Appendix A to the Interconnection Agreement between Pacific Gas And Electric And The City Of Santa Clara (IA). The IA was initially filed under FERC Docket No. ER84–6–000 and designated PG&E Rate Schedule FERC No. 85.

Copies of this filing were served upon City of Santa Clara and the Public Utilities Commission of the State of California.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Southern California Edison Company

[Docket No. ER00–1896–000]

Take notice that on March 16, 2000, Southern California Edison Company (SCE), tendered for filing an unexecuted Service Agreement for Wholesale Distribution Service and an unexecuted Interconnection Facilities Agreement between Atlantic Richfield Company (ARCO) and SCE.

These unexecuted Agreements specify the terms and conditions pursuant to which SCE will interconnect ARCO's generation to its electrical system and provide up to 34 MW of Distribution Service to ARCO.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. MidAmerican Energy Company

[Docket No. ER00–1897–000]

Take notice that on March 16, 2000, MidAmerican Energy Company (MidAmerican), 666 Grand Avenue, Des Moines, Iowa 50309, tendered with the Commission a First Amendment dated March 8, 2000, to a Network Operating Agreement with Montezuma Municipal Light and Power (Montezuma) entered into pursuant to MidAmerican's Open Access Transmission Tariff.

MidAmerican requests an effective date of March 8, 2000 for the First Amendment and accordingly seeks a waiver of the Commission's notice requirement. MidAmerican has served a copy of the filing on Montezuma, the Iowa Utilities Board, the Illinois Commerce Commission and the South Dakota Public Utilities Commission.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. CP&L Holdings, Inc. on Behalf of Its Public Utility Subsidiaries and Florida Progress Corporation on Behalf of Its Public Utility Subsidiaries

[Docket Nos. EC00–55–000 and ER00–1520–001]

Take notice that on March 14, 2000, CP&L Energy, Inc. and Florida Progress Corporation and their public utility subsidiaries (collectively the Applicants) tendered for filing an Amended and Restated Agreement and Plan of Exchange between CP&L and Florida Progress (the Amended Agreement). The Amended Agreement replaces the Agreement and Plan of Exchange dated August 22, 1999 (the Exchange Agreement) that was included in Exhibit H to the joint application for merger authorization in this docket.

Comment date: April 3, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. J. Aron & Company

[Docket No. ER95–34–022]

Take notice that on February 11, 2000, J. Aron & Company filed a quarterly report for information only.

6. Tennessee Power Company

[Docket No. ER95–581–020]

Take notice that on March 10, 2000, Tennessee Power Company filed a quarterly report for information only.

7. Cogentrix Energy Power Marketing, Inc.

[Docket No. ER95–1739–018]

Take notice that on March 17, 2000, Cogentrix Energy Power Marketing, Inc. filed a quarterly report for information only.

8. Northeast Energy Services, Inc. Puget Sound Energy, Inc.

[Docket No. ER97–4347–009 and ER99–845–002]

Take notice that on March 9, 2000, the above-mentioned power marketers filed quarterly reports with the Commission in the above-mentioned proceedings for information only.

9. Geysers Power Company

[Docket No. ER98–495–014]

Take notice that on March 16, 2000, Geysers Power Company, LLC (Geysers Power) filed its interim report regarding refunds for the reliability must-run (RMR) agreement under which Geysers Power provides RMR services to the ISO. Geysers Power submits the interim refund report in accordance with the Commission letter order dated January 31, 2000, Geysers Power Company, LLC, 90 FERC ¶ 61,096 (2000) approving the settlement among Geysers Power, Pacific Gas and Electric Company, the California Independent System Operator Corporation (ISO) and the California Electricity Oversight Board.

As required by the settlement, commencing with the Revised Estimated Invoice for January 2000, Geysers Power will adjust its invoices to the ISO by crediting refunds against future charges for RMR services. Geysers Power will continue to credit the ISO until the refund obligation is extinguished. Within fifteen days after the fulfillment of its refund obligation, Geysers Power will file a final refund report with the Commission.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Wisconsin Public Service Corporation

[Docket No. OA97–523–002]

Take notice that on March 16, 2000, Wisconsin Public Service Corporation (WPSC) tendered for filing on behalf of Upper Peninsula Power Co (UPPCO), a compliance report for refunds required due to settlement of transmission tariffs.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Tampa Electric Company

[Docket No. ER00–1898–000]

Take notice that on March 16, 2000, Tampa Electric Company (Tampa Electric), tendered for filing a Notice of Termination of a letter of commitment under interchange service Schedule D between Tampa Electric and the Reedy Creek Improvement District (RCID).

Tampa Electric proposes that the termination be made effective on January 1, 2000, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on RCID and the Florida Public Service Commission.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Tampa Electric Company

[Docket No. ER00–1899–000]

Take notice that on March 16, 2000, Tampa Electric Company (Tampa Electric), tendered for filing Notice of Termination of a letter of commitment under interchange service Schedule D between Tampa Electric and the Utilities Commission, City of New Smyrna Beach (New Smyrna Beach) and the related form of service agreement under Tampa Electric's open access transmission tariff.

Tampa Electric proposes that the terminations be made effective on March 1, 2000, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on New Smyrna Beach and the Florida Public Service Commission.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Connexus Energy

[Docket No. ER00–1900–000]

Take notice that on March 16, 2000, Connexus Energy (Connexus), tendered for filing an amendment to its rate schedule for service to Elk River Municipal Utilities (Elk River). Connexus states that the purpose of the amendment is to amend the rates and services applicable to Elk River under the December 20, 1990 all requirements Contract between Connexus and Elk River.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Pacific Gas and Electric Company

[Docket No. ER00–1901–000]

Take notice that on March 16, 2000, Pacific Gas and Electric Company (PG&E), tendered for filing a Notice of Termination of the "Special Facilities Agreement for Interconnection of NCPA's Combustion Turbine at Roseville," PG&E Rate Schedule FERC No. 132.

Copies of this filing have been served upon Northern California Power Agency and the California Public Utilities Commission.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Energy Corporation

[Docket No. ER00–1902–000]

Take notice that on March 16, 2000, Duke Energy Corporation (Duke), on behalf of Duke Electric Transmission, a division of Duke, tendered for filing an Interconnection and Operating Agreement with Rockingham Power, L.L.C., (Rockingham Power).

Duke requests an effective date of March 17, 2000.

Duke states that a copy of this filing is being sent to Rockingham Power.

Comment date: April 6, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7716 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 3131–032]

SR Hydropower, Inc., SR Hydropower of Brockway Mills, Inc.; Notice of Dismissing Application To Surrender Project License

March 23, 2000.

On August 16, 1996, John M. Rais filed an application to surrender the project license for the Brockways Mills Project No. 3131 on the Williams River in Windham County, in the Town of Rockingham, Vermont, purportedly on behalf of SR Hydropower of Brockway Mills, Inc., along with a copy of a certificate of dissolution of that corporation, issued by the State of Vermont on July 10, 1996.

On March 15, 1999, the Commission issued an interim order in the surrender proceeding, noting Rais's assertion that SR Hydropower of Brockway Mills, Inc., a Vermont corporation, was incorporated by a statutory merger with SR Hydropower, Inc., a New Hampshire corporation, the licensee of record for this project. However, the Commission noted that it had never approved a transfer of the license to SR Hydropower of Brockway Mills, Inc., or a name change of the licensee. Furthermore, the Commission concluded that, as a consequence of the dissolution of SR Hydropower of Brockway Mills, Inc., into which SR Hydropower, Inc. was merged, neither SR Hydropower, Inc., which remains the licensee of record, nor SR Hydropower of Brockway Mills, Inc., any longer existed. Under these circumstances, the Commission concluded that the surrender of the project license was by implication rather than upon application of the licensee. The Commission stated that, at the request of the Town of Rockingham, it would defer acceptance of the surrender for at least six months, and entertain applications from any proposed transferee to transfer the license to such applicant.[1]

On September 20, 1999, Christopher J. Kruger and Eileen J. Kruger filed an application seeking the transfer of the project license to themselves, and on December 14, 1999, the transfer application was approved by the Chief, Engineering and Compliance Branch of the Office of Hydropower Licensing.[2] Under these circumstances, the application to surrender filed by John M. Rais has become moot and is accordingly dismissed.

This notice constitutes final agency action. Requests for rehearing by the Commission of this rejection notice may be filed within 30 days of the date of issuance of this notice, pursuant to 18 CFR 385.713.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7673 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

[1] 86 FERC ¶ 61,279 (1999)

[2] 89 FERC ¶ 92,194. On October 28, 1999, Rais, as an agent for SR Hydropower of Brockway Mills, Inc., filed a motion to withdraw the surrender of license, which was rejected by the Secretary of the Commission (notice issued November 12, 1999) on the basis of the Commission's findings in its March 15, 1999 order.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1895–007 South Carolina]

South Carolina Electric & Gas Company; Notice of Intent To Conduct Public Scoping Meetings and Site Visit

MARCH 23, 2000. The Federal Energy Regulatory Commission (Commission or FERC) received an application from the South Carolina Electric & Gas Company (SCE&G or Applicant) to relicense the Columbia Hydroelectric Project No. 1895–007. The 10,600-kilowatt (kW) project is located on the Broad River and Congaree River in the City of Columbia and Richland County, South Carolina. The Commission will hold public and agency scoping meetings on April 12 and 13, 2000, for preparation of an Environmental Assessment (EA) under the national Environmental Policy Act (NEPA) for the issuance of a major license for the project.

Scoping Meetings

FERC staff will conduct one agency scoping meeting and one public meeting. The agency scoping meeting will focus on resource agency and non-governmental organization (NGO) concerns, while the public scoping meeting is primarily for public input. All interested individuals, organizations, and agencies are invited to attend one or both of the meetings, and to assist the staff in identifying the scope of the environmental issues that should be analyzed in the EA. The times and locations of these meetings are as follows:

Agency Scoping Meeting

Date: Thursday, April 13, 2000
Time: 9 a.m.
Place: South Carolina Department of Natural Resources, (Rm 335 of the Rembert Dennis Building)
Address: 1000 Assembly Street, Columbia, SC

Public Scoping Meeting

Date: Wednesday, April 12, 2000
Time: 7 p.m.
Place: South Carolina State Museum (Red Room)
Address: 301 Gervais Street, Columbia, SC

To help focus discussions, we will distribute a Scoping Document outlining the subject areas to be addressed at the meeting to the parties on the Commission's mailing list. Copies of this document will also be available at the scoping meetings.

Site Visit

The Applicant and FERC staff will conduct a project site visit beginning at 1:00 p.m. on April 12, 2000. All interested individuals, organizations, and agencies are invited to attend. All participants should meet at the parking lot of the Columbia Hydroelectric Plant off of Gervais Street. All participants are responsible for their own transportation to the site. Anyone with questions about the site visit should contact Christina Massey of SCE&G at 803–217–9198.

Objectives

At the scoping meetings, the staff will: (1) Summarize the environmental issues tentatively identified for analysis in the EA; (2) solicit from the meeting participants all available information, especially quantifiable data, on the resources at issue; (3) encourage statements from experts and the public on issues that should be analyzed in the EA, including viewpoints in opposition to, or in support of, the staff's preliminary views; (4) determine the relative depth of analysis for issues to be addressed in the EA; and (5) identify resources this project does not effect and, therefore, do not require detailed analysis.

Procedures

Statements made at the meetings will be recorded by a stenographer and will become part of the formal record of the Commission proceeding on the project. In addition, written scoping comments may be filed with the Secretary, Federal

Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, until May 15, 2000. All filings should contain an original and eight copies, and must clearly show at the top of the first page "Columbia Hydroelectric Project, FERC No. 1895–007".

Individuals, organizations, and agencies with environmental concerns related to the Columbia Hydroelectric Project are encouraged to attend the meetings and to assist the staff in defining the issues to be addressed in the EA. For further information, please contact Charles Hall at 202–219–2853, or e-mail *charles.hall@ferc.fed/us.*

Linwood A. Watson, Jr.

Acting Secretary.

[FR Doc. 00–7672 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Western Area Power Administration

Loveland Area Projects-Rate Order No. WAPA–89

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed extension of firm electric service rate.

SUMMARY: This action is a proposal to extend the existing Loveland Area Projects (LAP) firm electric service rate, Rate Order No. WAPA–51, through September 30, 2003. The existing firm electric service rate will expire January 31, 2001. This notice of proposed extension of the rate is issued pursuant to 10 CFR part 903.23(a)(1). In accordance with 10 CFR part 903.23(a)(2), Western will not have a consultation and comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Daniel T. Payton, Rates Manager, Rocky Mountain Customer Service Region, Western Area Power Administration, P.O. Box 3700, Loveland, CO 80539–3003, (970) 490–7442, or e-mail dpayton@wapa.gov.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a non-exclusive basis to the Administrator of the Western Area Power Administration (Western); (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary.

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in firm electric service rate adjustments at 10 CFR part 903, Western's LAP firm electric service rate was submitted to FERC for confirmation and approval on January 10, 1994. On July 14, 1994, in Docket No. EF94–5181–000 at 68 FERC ¶ 62,040, FERC issued an order confirming, approving, and placing into effect on a final basis the firm electric service rate for LAP. LAP consists of the Fryingpan-Arkansas Project and the Pick-Sloan Missouri Basin Program, Western Division. The rate set forth in Rate Order No. WAPA–51 was approved for a 5-year period beginning February 1, 1994, and ending January 31, 1999. On October 16, 1998, upon signing Rate Order No. WAPA–82, the Deputy Secretary extended the existing rate for a 2-year period beginning February 1, 1999, and ending January 31, 2001.

On January 31, 2001, the LAP firm electric service rate expires. This makes it necessary to extend the current rate pursuant to 10 CFR part 903. Upon its approval, Rate Order No. WAPA–51, previously extended under Rate Order No. WAPA–82, will be extended under Rate Order No. WAPA–89.

Western proposes to extend the existing rate of $2.85/kilowattmonth for capacity and 10.85 mills/kilowatthour for energy which is sufficient to recover project expenses (including interest) and capital requirements through September 30, 2003. Increased revenue from good hydrologic conditions and lower operation and maintenance expenses over the cost evaluation period have made this possible. For the Pick Sloan Missouri Basin Program, the ratesetting study projected the deficit to peak at $178 million in Fiscal Year (FY) 1994 and to be repaid in FY 2002. The deficit actually peaked at $171 million in FY 1993 and was totally repaid in FY 1997. The total annual revenue requirement of $44.3 million from firm power sales is sufficient to cover the expenses and capital requirements through September 30, 2003.

All documents made or kept by Western for developing this notice for proposed extension of the firm electric service rate will be made available for inspection and copying at the Rocky Mountain Customer Service Region, located at 5555 East Crossroads Boulevard, Loveland, Colorado.

Thirty days after publication of this notice, Rate Order No. WAPA–89 will be submitted to the Deputy Secretary for approval through September 30, 2003.

Dated: March 17, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–7743 Filed 3–28–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Pick-Sloan Missouri Basin Program—Eastern Division—Order No. WAPA–90

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed extension of firm power service and firm peaking power service rates.

SUMMARY: This action is a proposal to extend the existing Pick-Sloan Missouri Basin Program-Eastern Division (P–SMBP–ED) firm power service and firm peaking power service rates, Rate Order No. WAPA–60, through September 30, 2003. The existing firm power service and firm peaking power service rates will expire January 31, 2001. This notice of proposed extension of rates is issued pursuant to 10 CFR part 903.23(a)(1). In accordance with 10 CFR part 903.23(a)(2), Western will not have a consultation and comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Robert F. Riehl, Rates Manager, Upper Great Plains Customer Service Region, Western Area Power Administration, P.O. Box 35800, Billings, MT 59107–5800, (406) 247–7388, or e-mail riehl@wapa.gov.

SUPPLEMENTARY INFORMATION: By Amendment No. 3 to Delegation Order No. 0204–108, published November 10, 1993 (58 FR 59716), the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to the Administrator of the Western Area Power Administration (Western); and (2) the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove such rates to the Federal Energy Regulatory Commission (FERC). In Delegation Order No. 0204–172, effective November 24, 1999, the Secretary of Energy delegated the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary.

Pursuant to Delegation Order No. 0204–108 and existing Department of Energy procedures for public participation in firm power service rate adjustments at 10 CFR part 903, Western's P–SMBP–ED firm power service and firm peaking power service rates were submitted to FERC for confirmation and approval on January 10, 1994. On July 14, 1994, in Docket No. EF94–5031–000 at 68 FERC ¶ 62,040, FERC issued an order confirming, approving, and placing into effect on a final basis the firm power service and the firm peaking power service rates for the P–SMBP–ED. The rates set forth in Rate Order No. WAPA–60 were approved for a 5-year period beginning February 1, 1994, and ending January 31, 1999. On October 16, 1998, upon signing Rate Order No. WAPA–83, the Deputy Secretary extended the existing rates for a 2-year period beginning February 1, 1999, and ending January 31, 2001.

On January 31, 2001, the P–SMBP–ED firm power service and firm peaking power service rates will expire. This makes it necessary to extend the current rates pursuant to 10 CFR part 903. Upon its approval, Rate Order No. WAPA–60, previously extended under Rate Order No. WAPA–83, will be extended under Rate Order No. WAPA–90.

Western proposes to extend the existing rate of $3.20/kilowattmonth for capacity and the rate of 8.32 mills/kilowatthour for energy which are sufficient to recover project expenses (including interest) and capital requirements through September 30, 2003. Increased revenue from good hydrologic conditions and lower operation and maintenance expenses over the cost evaluation period have made this possible. For the Pick-Sloan Missouri Basin Program, the ratesetting study projected the deficit to peak at $178 million in Fiscal Year (FY) 1994 and to be repaid in FY 2002. The deficit actually peaked at $171 million in FY 1993 and was totally repaid in FY 1997. The total annual revenue requirement of $135.2 million from firm power sales is sufficient to cover the expenses and capital requirements through September 30, 2003.

All documents made or kept by Western for developing the proposed extension of the firm power service and firm peaking power service rates will be made available for inspection and copying at the Upper Great Plains Customer Service Region, located at 2900 4th Avenue North, Billings, Montana.

Thirty days after publication of this notice, Rate Order No. WAPA–90 will be submitted to the Deputy Secretary for approval through September 30, 2003.

Dated: March 9, 2000.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 00–7744 Filed 3–28–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6566–8]

Agency Information Collection Activities: Continuing Collection; Comment Request; Performance Evaluation Studies on Water and Wastewater Laboratories

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following continuing Information Collection Request (ICR) to the Office of Management and Budget (OMB):

Performance Evaluation Studies on Water and Wastewater Laboratories, EPA ICR #234.07, OMB Control #2080–0021, current expiration date is 9/30/2000. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before May 30, 2000.

ADDRESSES: National Exposure Research Laboratory, 26 W. Martin L. King Drive, Room 525, Cincinnati, OH 45268.

FOR FURTHER INFORMATION CONTACT: Ray Wesselman, (513) 569–7194, FAX to (513) 569–7115 or Email to WESSELMAN.RAY@EPA.GOV

SUPPLEMENTARY INFORMATION:

Affected entities: Entities potentially affected by this action are laboratories which produce results of official/required drinking water or wastewater analyses.

Title: Performance Evaluation Studies on Water and Wastewater Laboratories (OMB Control No. 2080–0021; EPA ICR NO. 234.07) currently expiring 9/30/2000.

Abstract: The EPA receives analytical results on drinking waters and wastewaters from a variety of laboratories and must rely on these data as a primary basis for many of its regulatory decisions. As a consequence, it has become desirable to have an objective demonstration that the contributing laboratories are capable of producing valid data. The subject Performance Evaluation Studies are designed to fulfill this need to document and improve the quality of analytical data for certain critical analyses within drinking water, major point-source discharge and ambient water quality samples. Participation in Water Pollution (WP) studies that relate to wastewater analyses, and Water Supply (WS) studies that relate to drinking water analyses, is only mandated by the EPA for those laboratories that receive federal funds to do such analyses; however successful performance in these studies is often required by states that certify laboratories for drinking water and wastewater analyses. Participation in the Discharge Monitoring Report—Quality Assurance (DMR–QA) studies is mandatory for those designated wastewater dischargers who are doing self-monitoring analyses required under a National Pollutant Discharge Elimination System (NPDES) permit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: The annual public reporting and record-keeping burden for this collection of information is estimated to total 241,619 hours and $9,853,259. The total number of annual responses is estimated to be 23,430, which leads to an estimated average of 10.3 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal

agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 20, 2000.

Jewel Morris,

Acting Director, National Exposure Research Laboratory, Office of Research and Development.

[FR Doc. 00–7737 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00274B; FRL–6552–6]

Voluntary Children's Health Chemical Testing Program, Stakeholder Involvement Process; Notice of Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA will hold a third public meeting to involve stakeholders in the design and development of a voluntary program to ensure that test data are publicly available for industrial chemicals to which children and prospective parents may have a high likelihood of exposure. The purpose of the voluntary testing program is to obtain data needed to assess the potential health risk of chemical exposure to children and prospective parents. At this meeting, stakeholders will have an opportunity to give their reactions to EPA's revised Framework Document for a testing program either as individuals or as representatives of organizations.

DATES: The meeting will be held on April 26 and 27, 2000, from 9 a.m. to 5 p.m. Requests to pre-register for the meeting must be received on or before April 21, 2000. Written comments on the Framework Document, identified by docket control number OPPTS–00274B, must be received on or before May 12, 2000.

ADDRESSES: The meeting will be held at the National Rural Electric Cooperative Association (NRECA) Conference Center at 4301 Wilson Boulevard, Arlington, VA.; telephone number: (703) 907–5500. Requests to pre-register for the meeting should be directed to the technical person listed under **FOR FURTHER INFORMATION CONTACT.** Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.D. To ensure proper receipt by EPA, your comments must identify docket control number OPPTS–00274B in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact:* Barbara Cunningham, Director, Office Program Management and Evaluation (7401), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Ward Penberthy, Chemical Control Division (7405), OPPT, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 260–0508; e-mail address: chem.rtk@epamail.epa.gov. Electronic messages must identify docket control number OPPTS–00274B and the heading, "Voluntary Children's Health Chemical Testing Program, Stakeholder Involvement Process," in the subject line on the first page of your message.

SUPPLEMENTARY INFORMATION:

I. General Information:

A. Does this Notice Apply To Me?

This action is directed to the public in general. This action may, however, be of interest to those chemical manufacturers and processors who are or may be required to conduct testing of chemical substances under section 4 of the Toxic Substances Control Act (TSCA), individuals or groups concerned with chemical testing and children's health, animal welfare groups, or other members of the general public. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access the revised Framework Document, additional information about the third stakeholder meeting, an electronic copy of this document, or information on the first and second stakeholder meetings, you may go directly to the website at http://www.epa.gov/chemrtk/childhlt.htm. The Framework Document and the meeting agenda should be on this website by April 12, 2000.

2. *In person.* The Agency has established an official record for this meeting under docket control number OPPTS–00274B. The official record consists of the documents specifically referenced in this notice, any public comments received during an applicable comment period, and other information related to the Voluntary Children's Health Chemical Testing Program, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents.

The public version of the official record, which includes printed, paper versions of any electronic comments that may be submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

3. *By telephone.* If you need additional information about this action, you may also contact the persons identified under **FOR FURTHER INFORMATION CONTACT.**

A copy of the Framework Document may be obtained by calling the TSCA Hotline at (202) 554–1404. A request to the TSCA Hotline can be made before April 12, 2000, but cannot be filled until April 12, 2000.

C. How Can I Pre-register for this Meeting?

You may request to pre-register for this meeting through the mail, by phone, or electronically. Direct your request to the technical person listed under **FOR FURTHER INFORMATION CONTACT.** Your request must be received by EPA on or before April 20, 2000, and must identify yourself, your organization, and a telephone number or e-mail address where you may be reached. To ensure proper receipt by EPA, you must identify docket control number OPPTS–00274B and the heading, "Voluntary Children's Health Chemical Testing Program, Stakeholder Involvement Process," in the subject line of the first page of your request.

D. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPTS–00274B in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), OPPT, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in East Tower Rm. G–099, Waterside Mall, 401 M St., SW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 260–7093.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified above. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPPTS–00274B. Electronic comments may also be filed online at many Federal Depository Libraries.

E. How Should I Handle CBI Information That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. Please note that, in the absence of steps by EPA leading to disclosure, none of the information marked "CBI" will be available for consideration in the Stakeholder Involvement Process; commenters may want to consider this point in developing their submissions. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

F. What Should I Consider as I Prepare My Comments for EPA?

We invite you to provide your views on the general approach presented in the "Framework Document" cited in Unit I.B. and discussed in Units II. and III. EPA also invites your views on new approaches we have not considered, the potential benefits or impacts of these various options (including possible unintended consequences), and any data or information that you would like the Agency to consider during the development of a voluntary testing program via the stakeholder process. You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns regarding benefits and impacts.

6. Offer alternative ways to improve the voluntary testing program.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number OPPTS–00274B in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

G. Are There Issues on Which EPA is Particularly Interested in Receiving Comment?

EPA encourages interested parties to submit comments on chemical toxicity testing and exposure information which are relevant to children's health and any aspect of this notice. Commenters are encouraged to identify other criteria for identifying children's exposure to industrial chemicals and additional relevant data sources. Comments on the test battery previously submitted to EPA's Scientific Advisory Panel (SAP) need not be resubmitted.

II. Background

EPA is holding a series of public meetings to involve stakeholders in the design and development of a voluntary program to ensure that toxicity test data and exposure information on industrial chemicals to which children and prospective parents may have a high likelihood of exposure are made publicly available. The toxicity and exposure data developed by the voluntary program will be used to assess the potential health risk to children and prospective parents associated with that chemical exposure. EPA is using a stakeholder involvement process to bring together and obtain the individual opinions of knowledgeable persons who represent parties that could be affected by any forthcoming program. The stakeholders that have provided their opinions so far include child health advocates, pediatricians, chemical manufacturers and processors, trade associations, Federal agencies, and animal welfare advocates. In the **Federal Register** notice announcing the stakeholder involvement process

published in the **Federal Register** of August 26, 1999 (64 FR 46673) (FRL–6089–1), EPA identified three issues on which the Agency would like to receive stakeholder input. These included:

1. Which chemicals should be tested?
2. Which tests should be used?
3. How should the program be implemented?

At the kickoff meeting held September 22, 1999, EPA oriented the stakeholders to the background and future plans and goals for this project. EPA informed the stakeholders of the Agency's initial efforts to identify the chemicals to which children and prospective parents may be highly exposed and the testing needed to assess the risk of that exposure. EPA then took comment on its initial efforts and on other issues which were of special interest to stakeholders. Also at the kickoff meeting, the Chemical Manufacturers Association (CMA) announced that its members had developed a voluntary testing program which would conduct the same testing contemplated by EPA but in three tiers and with hazard and exposure triggers. A summary of this meeting and the text of most of the presentations are available to the public; to access this information, see instructions provided in Units I.B.1. and I.B.2.

Following the first meeting, EPA initially developed a Framework Document which described how a voluntary program could be structured. The Framework Document addressed how chemicals could be selected for the program and how tests could be tiered and triggered. In mid November 1999, EPA released the Framework Document as a "strawman" proposal and announced it would be a major point of discussion at the second public stakeholder meeting on November 30–December 1, 1999. For the second stakeholder meeting, EPA invited participants from diverse stakeholder interests to participate in roundtable discussions with EPA. EPA had asked stakeholders to participate in the selection of the invited participants via a Nomination Process which had been announced at the first meeting and on the website: http://www.epa.gov/chemrtk/nominate.htm. EPA did not ask the invited participants to reach agreement or provide any collective recommendations. EPA's intent was to obtain information about their individual perspectives based on their unique experiences and background. Accordingly, EPA did not organize the stakeholder involvement process as an advisory committee as defined in the Federal Advisory Committee Act, 5 U.S.C. App. Although the meeting was centered around the discussions between EPA and the invited participants, this was a public meeting that other stakeholders and members of the public could attend and, at the conclusion of each discussion, present their opinions to the group. The primary focus of the second meeting was the Framework Document and how tiered testing and triggers could best be used to obtain needed toxicity data. A summary of this meeting is available to the public; to access this information, see instructions provided in Units I.B.1. and I.B.2.

III. Public Stakeholder Meeting

The third public meeting of the Stakeholder Involvement Process will be held April 26–27, 2000. This meeting will follow the format of the second meeting in which invited participants and EPA representatives discuss the issues of concern to stakeholders. EPA is preparing a revised Framework Document to reflect EPA's current thinking on how the voluntary program could be structured to meet EPA's objective of obtaining needed data to ensure that toxicity test data and exposure information are made publicly available. This Document will be the major focus of discussion at the third meeting, as it will serve as a second "strawman" proposal. The revised Framework Document and the meeting agenda will be made available by April 12, 2000. Instructions for obtaining a copy of the Framework Document are provided in Unit I.B. Instructions for obtaining the meeting agenda are provided in Units I.B.1. and I.B.2.

The meeting will be an open public meeting. As such, there will be opportunities for public comment from anyone who wishes to provide oral comments at the conclusion of each roundtable discussion between the invited participants and EPA. Oral comments from the public may be limited to 5 minutes to allow all those who wish to comment a chance to speak. Commenters with prepared statements are requested to provide at least 35 written copies of their statements. It is encouraged that commenters bring copies sufficient for the number of people who plan to attend the meeting; this number will be under "Meeting Information" on website www.epa.gov/chemrtk/childhlt.htm several days before the meeting. The written statements will become a part of the public version of the official record. To enable as many interested parties as possible to contribute their ideas and provide opinions, EPA plans to have a professional facilitator lead the meeting.

Although this is a public meeting, there may be space limitations. Therefore, EPA encourages those who wish to attend to register in advance by following the instructions in Unit I.C. Seating of others at the meeting will be on a first-come basis after those who have registered in advance of the meeting have been accommodated.

In addition to the opportunity to present oral comments at the meeting, the public may also submit written comments on the Framework Document. In order to provide sufficient time for persons interested in responding in writing, including those persons unable to attend the public meeting, the Agency will accept such comments until May 12, 2000. Instructions for submitting written comments are provided in Unit I.D.

The purpose of the meeting is for EPA to obtain information and the individual perspectives of the invited participants and the public. EPA is not asking the roundtable participants to reach agreement or provide any collective recommendations. Accordingly, EPA does not intend to organize the stakeholder involvement process as an advisory committee as defined in the Federal Advisory Committee Act, 5 U.S.C. App. The information which is obtained in the course of this process may also be considered in the development of a possible test rule under TSCA section 4.

List of Subjects

Environmental protection, Chemicals, Children, Hazardous substances, Health and safety.

Dated: March 24, 2000.

Susan H. Wayland,

Acting Assistant Administrator, Prevention, Pesticides and Toxics.

[FR Doc. 00–7738 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–34168A; FRL–6551–5]

Organophosphate Pesticide; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notices announces the availability of the revised risk assessments and related documents for one organophosphate pesticide, pirimiphos-methyl. In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management ideas or proposals. These actions are in response to a joint initiative between EPA and the Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for organophosphate pesticides.

DATES: Comments, identified by docket control number OPP–34168A, must be received by EPA on or before May 30, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34168A in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Karen Angulo, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address: angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on pirimiphos-methyl, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

A. Electronically. You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/.

B. In person. The Agency has established an official record for this action under docket control number OPP–34168A. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34168A in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34168A. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for one organophosphate pesticide, pirimiphos-methyl. These documents have been developed as part of the pilot public participation process that EPA and USDA are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual organophosphate pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The pilot public participation process was developed as part of the EPA-USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of

EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of organophosphate pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the pirimiphos- methyl preliminary risk assessments, which was released to the public January 8, 1999 (64 FR 5) (FRL–6055–9) through a notice in the **Federal Register**.

In addition, this notice starts a 60-day public participation period during which the public is encouraged to submit risk management proposals or otherwise comment on risk management for pirimiphos-methyl. The Agency is providing an opportunity, through this notice, for interested parties to provide written risk management proposals or ideas to the Agency on the chemical specified in this notice. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific pirimiphos-methyl use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("pre-harvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commentors may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non-target organisms. EPA will provide other opportunities for public participation and comment on issues associated with the organophosphate pesticide tolerance reassessment program. Failure to participate or comment as part of this opportunity will in no way prejudice or limit a commenter's opportunity to participate fully in later notice and comment processes. All comments and proposals must be received by EPA on or before May 30, 2000 at the addresses given under the "ADDRESSES" section. Comments and proposals will become part of the Agency record for the organophosphate pesticide specified in this notice.

List of Subjects

Environmental protection, Chemicals, Pesticides and pests.

Dated: March 23, 2000.

Jack E. Housenger,

Acting Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 00–7741 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–928; FRL–6498–5]

Notice of Filing Pesticide Petition to Establish Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the intial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–928, must be received on or before April 28, 2000.

ADDRESS: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–928 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Tompkins, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: Tompkins.Jim@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically*. You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person*. The Agency has established an official record for this action under docket control number PF–928. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record, does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–928 in the subject line on the first page of your response.

1. *By mail*. Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier*. Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically*. You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–928. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential wil be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT**.

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additivies, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 24, 2000

James Jones

Director, Registration Division, Office of Pesticide Programs.

American Cyanamid Company

0F6088

Summary of Petition

EPA has received a pesticide petition (0F6088) from American Cyanamid Company, P.O. Box 400, Princeton, NJ 08543-0400 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of the herbicide imazamox in or on the raw agricultural commodities alfalfa forage, seed and hay, canola seed, legume vegetable crop group and wheat forage, grain, bran, shorts, hay and straw at 2.0, 0.1, 4.0, 0.1, 0.1, 0.4, 0.3, 0.6, 0.6, 0.3, and 0.2 parts per million (ppm), respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism* . The qualitative nature of the residues of imazamox (AC 299263) in soybeans, alfalfa, canola, peas, and wheat is adequately understood. The metabolism of imazamox has been studied in soybeans, peas, and canola. EPA has concluded that the nature of the residue is adequately understood and the residues of concern are the parent imazamox only. The metabolism of imazamox was also studied in wheat. EPA has concluded that the nature of the residue is adequately understood and the residues of concern are the parent imazamox, and the desmethyl, hydroxymethyl metabolite CL 263284. The metabolism of imazamox was further studied in alfalfa. EPA has concluded that the nature of the residue is adequately understood and the residues of concern are the parent imazamox, metabolite CL 263284, the carboxylate of the CL 263284 metabolite, CL 312622 and the glucoside of the CL 263284 metabolite, CL 189215.

2. *Analytical method*. A practical analytical method for detecting and measuring levels of imazamox in soybean seed was submitted to and approved by EPA. This method (M 2248.01) is appropriate for enforcement purposes. A practical analytical method

for detecting and measuring levels of imazamox in canola seed was submitted to EPA. This method (M 3076) is appropriate for enforcement purposes. A practical analytical method for detecting and measuring levels of imazamox in legume vegetables (such as dry and succulent edible beans and peas) was submitted to EPA. This method (M 3076 with minor modifications) is appropriate for enforcement purposes. A practical analytical method for detecting and measuring levels of imazamox and its metabolite CL 263284 in wheat grain, forage, hay and straw was submitted to EPA. This method (M 3098) is appropriate for enforcement purposes. A practical analytical method for detecting and measuring levels of imazamox and its metabolites: CL 263284, its (CL 263284) glucose conjugate (CL 189215), and the carboxylate of AC 263284 (CL 312622) in alfalfa seed, forage and hay was submitted to EPA. This method (M 3178) is appropriate for enforcement purposes. All methods have undergone independent laboratory validation as required by PR Notices 88-5 and 96-1.

3. *Magnitude of residues—i. Magnitude of residues in crops*—a. Soybeans, legume, vegetables and canola: No apparent residues of imazamox were observed in soybeans, dry or succulent peas, or dry or succulent beans, or canola at or above 0.05 ppm (the limit of quantification for the analytical methods). The field studies, conducted at 1- 5x the highest intended label use rate, clearly support the proposed tolerances of 0.1 ppm. The requirement for a soybean processing study was waived by EPA based on the results of field trials at rates up to 5x the maximum label rate. In these trials, there was no measurable residue of imazamox in soybean seed above the validated sensitivity of the method (0.05 ppm). In addition, results from the plant metabolism study showed no detectable residues of imazamox in oil obtained from soybean seed that had been treated at an exaggerated use rate.

b. Wheat. A total of 20 field residue trials were conducted in 10 different states. Applications in the trials were consistent with the proposed label directions for use. Analysis of the treated samples showed that the maximum imazamox plus its metabolite CL 253284 was under the proposed tolerances of 0.3 ppm in the grain, 0.4 ppm in the forage, 0.3 ppm in the hay and 0.2 ppm in straw at the proposed labeled pre-harvest intervals (PHI). Wheat grain for processing was obtained from a 5x-rate field study and samples were processed into bran, middling, shorts, flour and aspirated grain fractions. Analysis of the treated samples showed that the total residue of the imazamox parent and the metabolite CL 263284 concentrated in bran and shorts. The appropriate concentration factor for bran and shorts is 2x. The proposed tolerance for these two fractions is at 2x the tolerance for the proposed grain tolerance of 0.3 ppm or 0.6 ppm.

c. *Alfalfa.* A total of 19 field residue trials were conducted in 12 different states. Applications in the trials were consistent with the proposed label directions for use. Analysis of the treated samples showed that the maximum residues of imazamox plus its three metabolites (CL 263284, CL 263284 glucose conjugate metabolite CL 189215, and CL 263284 carboxylate, CL312622) were under the proposed tolerances of 0.1 ppm in the seed, 2.0 ppm in the forage and 4.0 ppm in the hay at the proposed labeled (PHI)

ii. *Magnitude of the residue in animals—a. Ruminants.* The maximum dietary burden in beef and dairy cows results from a diet comprised of alfalfa hay and alfalfa forage for a total dietary burden that is significantly lower than levels that would require the proposal of tolerances in ruminants. This conclusion is based on exaggerated rate metabolism studies carried out on imazamox and its significant metabolites. Therefore, an exemption from tolerances in milk, meat and meat by-products under 40 CFR 180.6(a)(3) and (b) is proposed as it is not possible to establish with certainty whether finite residues will be incurred, but there is no reasonable expectation of finite residues.

d. Poultry. The maximum poultry dietary burden results from a diet composed of alfalfa hay (meal) and wheat grain for a total dietary burden that is significantly lower than the levels that would require the proposal of tolerances in poultry. This conclusion is based on the exaggerated rate metabolism studies carried out on imazamox and its significant metabolites. Therefore, an exemption from tolerances in poultry meat, meat by-products, fat and eggs under 40 CFR 180.6(a)(3) and (b) is proposed as it is not possible to establish with certainty whether finite residues will be incurred, but there is no reasonable expectation of finite residues.

B. Toxicological Profile

A complete battery of mammalian toxicity studies supports the tolerances for imazamox on soybeans and the rest of the legume vegetable crop grouping, canola, wheat and alfalfa. The data base is complete, valid and reliable, and all studies have been submitted to and approved by EPA. The toxicological data submitted to support the subject petition as amended include:

1. *Acute toxicity.* Imazamox technical is considered to be nontoxic (Toxicity Category IV) to the rat by the oral route of exposure. In the acute oral toxicity study in rats, the LD_{50} value of imazamox technical was greater than 5,000 milligrams/kilograms body weight (mg/kg bwt) for males and females. The results from the acute dermal toxicity study in rabbits indicate that imazamox is slightly toxic (Toxicity Category III) to rabbits by the dermal route of exposure. The dermal LD_{50} value of imazamox technical was greater than 4,000 mg/kg bwt for both male and female rabbits. Imazamox technical is considered to be nontoxic (Toxicity Category IV) to the rat by the respiratory route of exposure. The 4-hour LC_{50} value was greater than 6.3 mg/L (analytical) for both males and females. Imazamox technical was shown to be non-irritating to slightly irritating to rabbit skin (Toxicity Category IV). Based on the results of a dermal sensitization study (Buehler), imazamox technical is not considered a sensitizer in guinea pigs.

2. *Genotoxicty.* Imazamox technical was tested in the following four assays measuring several different endpoints of potential genotoxicity. Collective results from these studies indicate that imazamox does not pose a mutagenic or genotoxic risk.

i. Bacterial Mutagenicity assay - Negative.

ii. *In vitro* structural chromosomal aberration assay - Negative.

iii. *In vitro* CHO/HGPRT assay - Negative.

iv. *In vivo* micronucleus aberration assay - Negative.

3. *Reproductive and developmental toxicity.* The development toxicity study in rats conducted with imazamox technical showed no evidence of teratogenic effects in fetuses and no evidence of developmental toxicity. Thus, imazamox is neither a developmental toxicant nor a teratogen in the rat. The results from this study supported a no observed adverse effect level (NOAEL) for developmental toxicity of 1,000 mg/kg bwt day, the highest dose tested and limit dose. The NOAEL for maternal toxicity was 500 mg/kg bwt day, based on reduced mean body weights, weight gains and food consumption at 1,000 mg/kg bwt day. Results from a developmental toxicity study in rabbits conducted with imazamox technical also indicated no evidence of teratogenicity or developmental toxicity. Thus, imazamox technical is neither a developmental toxicant nor a teratogen in the rabbit. In the rabbit developmental toxicity study, the NOAEL for maternal toxicity was 300 mg/kg bwt day, based on decreased food consumption at 600 mg/kg bwt day, the next highest dose tested. The NOAEL for developmental toxicity was 900 mg/kg bwt day, the highest dose tested. The results from the two-generation reproduction toxicity study in rats with imazamox technical support a NOAEL for parental and reproductive toxicity of 20,000 ppm (or approximately 1,639 mg/kg bwt day, calculated from the food consumption data), the highest concentration tested. The NOAEL for growth and development of offspring is also 20,000 ppm (or approximately 1,639 mg/kg bwt day. Results from the reproduction study and the developmental toxicity studies conducted with imazamox technical show no increased sensitivity to developing offspring as compared to parental animals, because the NOAELs for growth and development of offspring were equal to or greater than the NOAELs for parental or maternal toxicity.

4. *Subchronic toxicity.* No treatment-related adverse effects were noted in subchronic toxicity studies at the highest doses tested. A short-term (28–day) dermal study in rabbits was conducted with imazamox technical. No dermal irritation or systemic toxicity was observed at dose levels up to and including 1,000 mg/kg bwt day (highest dose tested), supporting a NOAEL of 1,000 mg/kg bwt day. In a subchronic (13–week) dietary toxicity study in rats with imazamox technical, no signs of systemic toxicity were noted, supporting a NOAEL of 20,000 ppm (or approximately 1,661 mg/kg bwt day, calculated from food consumption data), the highest concentration tested. In a subchronic (90–day) dietary toxicity study in dogs with imazamox technical, no signs of systemic toxicity were noted, supporting a NOAEL of 40,000 ppm (or approximately 1,368 mg/kg bwt day, calculated from the food consumption data), the highest concentration tested.

5. *Chronic toxicity.* The low order of mammalian toxicity of imazamox technical is also evident from the chronic dietary toxicity studies. These studies showed no increased mortalities or clinical signs of toxicity attributed to imazamox treatment. Moreover, there were no treatment-related effects on food consumption, body weights, organ weights, or hematology, clinical chemistry, urinalysis or ophthalmologic parameters. There was no gross or microscopic evidence of treatment-related lesions or carcinogenicity in the three chronic studies conducted in dogs, mice, or rats.

A 1–year dietary study was conducted with imazamox technical in dogs at dietary concentrations of 0, 1,000, 10,000, and 40,000 ppm. The NOAEL for this study was 40,000 ppm (or approximately 1,165 mg/kg bwt day, based on food consumption), the highest concentration tested.

A chronic feeding/carcinogenicity study was conducted with imazamox technical in male and female rats at dietary concentrations of 0, 1,000, 10,000, and 20,000 ppm. The NOAEL for systemic toxicity and carcinogenicity was 20,000 ppm (or approximately 1,167 mg/kg bwt day, based on food consumption) the highest concentration tested.

A chronic feeding/carcinogenicity study was conducted with imazamox technical in male and female mice at dietary concentration of 500, 3,500, and 7,000 ppm. The NOAEL for systemic toxicity and carcinogenicity was 7,000 ppm (or approximately 1,201 mg/kg bwt day, based on food consumption), the highest concentration tested.

In the dietary exposure analysis for AC 299263 in/on Soybeans (PP 6F4649) dated March 24, 1997, EPA determined that AC 299263 cancer classification is classified as not likely (to induce tumors in humans) according to the proposed new guidelines.

6. *Animal metabolism.* The qualitative nature of the residues of imazamox and its metabolites CL 263284 and CL 263284 carboxylate CL 312622 in animals is adequately understood. Based on metabolism studies with goats, hens and rats, there is no reasonable expectation that measurable imazamox-related residues will occur in meat, milk, poultry or eggs from the proposed use.

7. *Metabolite toxicology.* No toxicologically significant metabolites were detected in plant or animal metabolism studies for soybeans or the rest of the crops in the legume vegetable crop grouping: (6) or canola. Therefore, no metabolites need to be regulated in these crops.

The plant metabolism study in wheat indicated very low residues of concern. A very small amount of the metabolite CL 263284 was found in the wheat grain.

The plant metabolism in alfalfa indicated very low residues in the alfalfa seed. However, the parent imazamox underwent metabolism to the metabolite CL 263284 (the same metabolite seen in wheat). This metabolite was captured by a glucose molecule to form the glucose conjugate CL 189215 and the hydroxymethyl AC 263284 was also further oxidized to the carboxylate metabolite CL 312622.

Both metabolites, CL 263284 and CL 312622 were present in the rat metabolism study.

No additional toxicologically significant metabolites were detected in any plant or animal studies.

8. *Endocrine disruption.* Collective organ weight data and histopathological findings from the two-generation rat reproductive study, as well as from the sub-chronic and chronic toxicity studies conducted in two or more animal species, demonstrate no apparent estrogenic effects or effects on the endocrine system. There is no information available that suggests that imazamox would be associated with endocrine effects.

C. Aggregate Exposure

1. *Dietary exposure.* The potential dietary exposure to imazamox has been calculated from the proposed tolerances for use on soybeans and other members of the legume vegetables crop grouping (6), canola, wheat and alfalfa. These very conservative chronic dietary exposure estimates used the tolerance value for all the raw agricultural commodities. In addition these estimates assume that 100% of the crops contain imazamox residues.

i. *Food.* The Theoretical Maximum Residue Concentrations (TMRC) of imazamox on or in soybeans and other members of the legume vegetable crop grouping (6), canola, alfalfa, wheat grain, and its processed fractions are; 0.00577 mg/kg bwt day for the general U.S. population; 0.000573 mg/kg bwt day for non-nursing infants; 0.001306 mg/kg bwt day for children 1 to 6 years of age; and 0.000887 mg/kg bwt day for children 7 to 12 years of age.

ii. *Drinking water.* As a screening level assessment for aggregate exposure, EPA evaluates Drinking Water Level of Comparison (DWLOC), which is the maximum concentration of a chemical in drinking water that would be acceptable in light of total aggregate exposure to that chemical. Based on the chronic reference dose (RfD) of 3.0 mg/kg bwt day, determined by EPA, and the EPA's default factors for body weight and drinking water consumption, the DWLOCs have been calculated to assess the potential dietary exposure from residues of imazamox in water. For the adult population, the chronic DWLOC was 104,980 parts per billion (ppb), and for children, the DWLOC was estimated to be 29,987 ppb.

Chronic drinking water exposure analyses were calculated using EPA screening models (SCI-GROW for ground, water and GENEEC for surface

water). The calculated peak GENEEC value is 0.44 ppb and the SCI-GROW value is 0.055 ppb. For the U.S. adult population, the estimated exposures of imazamox residues in surface water and ground, water are approximately 0.0004% and 0.00005%, respectively, of the DWLOC. For children, the estimated exposures of imazamox residues in surface water and ground water are approximately 0.002% and 0.0002%, respectively of the DWLOC. Therefore, the exposures to drinking water from imazamox use are negligible.

Based on the dietary and drinking water assessments, aggregate exposure to residues of imazamox in food and water can be considered to be negligible.

2. *Non-dietary exposure.* There is no available information quantifying non-dietary exposure to imazamox. However, based on the physical and chemical characteristics of the compound, the proposed use pattern and available information concerning its environmental fate, non-dietary exposure is not expected.

D. Cumulative Effects

Imazamox belongs to the imidazolinone class of compounds. The herbicidal activity of the imidazolinones is due to the inhibition of acetohydroxy acid synthase (AHAS), an enzyme only found in plants. AHAS is part of the biosynthetic pathway leading to the formation of branched chain amino acids. Animals lack AHAS and this biosynthetic pathway. This lack of AHAS contributes to the extremely low toxicity of imazamox in mammals. Although other registered imidazolinones have a similar herbicidal mode of action, there is no information available to suggest that these compounds exhibit a similar toxicity profile in the mammalian system. We are aware of no information to indicate or suggest that imazamox has any toxic effects on mammals that would be cumulative with those of any other chemical. Since imazamox is relatively non-toxic, cumulative effects of residues of imazamox and other compounds are not anticipated. Therefore, for the purposes of this tolerance petition no assumption has been made with regard to cumulative exposure with other compounds having a common mode of herbicidal action.

E. Safety Determination

1. *U.S. population.* Based on a RfD of 3.0 mg/kg bwt day determined from a NOAEL of 300 mg/kg bwt day, from the rabbit developmental toxicity study and a safety (uncertainty) factor of 100, the worse case estimate of chronic dietary exposure of imazamox from soybeans, the other members of the legume vegetable crop grouping (6), canola, wheat and alfalfa will utilize approximately 0.02% of the RfD for the general U.S. population. EPA generally has no concern for exposures below 100% of the RfD because the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. The complete and reliable toxicity data and the conservative chronic exposure assumptions support the conclusion that there is a reasonable certainty of no harm from dietary (food) exposure to imazamox residues. Moreover, as exposure to residues of imazamox via water is negligible, there is a reasonable certainty of no harm from aggregate exposure to imazamox residues.

2. *Infants and children.* The conservative estimates, as described above, indicate that dietary exposure of imazamox from soybeans, the other members of the legume vegetable crop grouping, canola, wheat and alfalfa will utilize: approximately 0.02% of the RfD for non-nursing infants; approximately 0.04% of the RfD for children ages 1 to 6; and approximately 0.03% of the RfD for children ages 7 to 12.

No developmental, reproductive, or fetotoxic effects were noted at the highest doses of imazamox tested in guideline reproductive or developmental toxicity studies. The only maternal effects in the rat and rabbit teratology studies were decreased body weights, body weight gains and/or absolute and relative feed consumption in the higher dose groups of each study.

Based on the current toxicological data requirements, the data base relative to prenatal and postnatal effects for children is complete, valid and reliable. Results from the teratology studies and the two-generation reproduction study support NOAELs for fetal/developmental effects or reproductive/offspring effects, respectively, equivalent to the highest concentrations tested. As such, there is no increased sensitivity of infants and children to residues of imazamox. Therefore, an additional safety (uncertainty) factor is not warranted, and the RfD of 3.0 mg/kg bwt day, which utilizes a 100-fold safety factor, is appropriate to assure a reasonable certainty of no harm to infants and children.

F. International Tolerances

There is no Codex Maximum Residue Level Established for Residues of Imazamox on any Crops.

[FR Doc. 00–7739 Filed 3–28–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–925; FRL–6496–9]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of a certain pesticide chemical in or on various food commodities.

DATES: Comments, identified by docket control number PF–925, must be received on or before April 28, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–925 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: James Tompkins, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–5697; e-mail address: Tompkins.Jim@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–925. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–925 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5697.

3. *Electronically.* You may submit your comments electronically by e-mail to: *"opp-docket@epa.gov,"* or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–925. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of a certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 21, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Bayer Corporation

0F6095

EPA has received a pesticide petition (0F6095) from Bayer Corporation, 8400 Hawthorn Road, Kansas City, MO 64120-0013 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR 180.527 by establishing a tolerance for residues of flufenacet, N-(4-fluorophenyl)-N-(1-methylethyl)-2-5-(trifluoromethyl)-1,3,4-thiadiazol-2-yl oxyacetamide and metabolites containing the 4-fluoro-N-methylethyl benzenamine moiety in or on the raw agricultural commodities (RAC) wheat grain, wheat forage, wheat hay, wheat bran, wheat germ, wheat straw, seed-grass forage, seed-grass forage from re-growth, seed-grass hay from re-growth, seed-grass straw, sweet corn kernel plus cob with husks removed at 0.5, 9.0, 1.0, 1.0, 0.5, 0.5, 18.0, 0.1, 0.5, 0.5, 0.05 parts per million (ppm), respectively. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The nature of the residue in field corn, sweet corn, wheat, seed-grasses, soybeans, rotational crops, and livestock is adequately understood. The residues of concern for the tolerance expression are flufenacet parent and its metabolites containing the 4-fluoro-N-methylethyl benzenamine moiety. Based on the results of animal metabolism studies it is unlikely that secondary residues would occur in animal commodities from the use of flufenacet on field corn, sweet corn, soybeans, wheat, and seed-grasses.

2. *Analytical method.* An adequate analytical method, gas chromatography/mass spectrometry (GC/MS) with selected ion monitoring, is available for enforcement purposes. Because of the long lead time from establishing these tolerances to publication of the enforcement methodology in the Pesticide Analytical Manual, Vol. II, the analytical methodology is being made available in the interim to anyone interested in pesticide enforcement when requested from: Calvin Furlow, Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703–305–5937).

3. *Magnitude of residues.* Time-limited tolerances exist for the combined residues of flufenacet, N-(4-fluorophenyl)-N-(1-methylethyl)-2-5-(trifluoromethyl)-1,3,4-thiadiazol-2-yloxyacetamide and metabolites containing the 4-fluoro-N-methylethyl benzenamine moiety in or on field corn grain at 0.05 ppm, field corn forage at 0.4 ppm, field corn stover at 0.4 ppm, soybean seed at 0.1 ppm, alfalfa forage at 0.1 ppm, alfalfa hay at 0.1 ppm, alfalfa seed at 0.1 ppm, clover forage at 0.1 ppm, clover hay at 0.1 ppm, Crop Group 15 (cereal grains) at 0.1 ppm, Crop Group 16 (forage, stover and hay of cereal grains) at 0.1 ppm, and Group 17 (grass forage and grass hay) at 0.1 ppm.

B. Toxicological Profile

1. *Acute toxicity*—i. Technical grade flufenacet has a low to moderate order of toxicity in rats by the oral route of exposure. The acute oral LD_{50} was 1,617 milligrams/kilograms (mg/kg) for males and 589 mg/kg for females.

ii. A dermal toxicity study on technical grade flufenacet revealed low acute toxicity to rats. The dermal LD_{50} for both sexes was > 2,000 mg/kg, the highest dose tested (HDT).

iii. An acute inhalation study on technical grade flufenacet showed low toxicity in rats with a 4–hour liquid aerosol LC_{50} for males and females of > 3,740 mg/m^3 air, the highest concentration tested.

iv. An eye irritation study on technical grade flufenacet in rabbits showed minimal irritation to the conjunctiva completely reversible within 7 days.

v. A dermal irritation study on technical grade flufenacet in rabbits did not produced any irritation.

vi. Skin sensitization studies on technical grade flufenacet in guinea pigs have produced equivocal results. A skin sensitization potential was exhibited under the conditions of a maximization test, whereby, there was no skin sensitization potential when tested by the Buehler topical closed patch technique.

2. *Genotoxicity.* Flufenacet was negative for mutagenic/genotoxic effects in a Gene mutation/*in vitro* assay in bacteria, a Gene mutation/*in vitro* assay in Chinese hamster (CH) lung fibroblasts cells, a Cytogenetics/*in vitro* assay in CH ovary cells, a Cytogenetics/*in vivo* mouse micronucleus assay, and an *in vitro* unscheduled DNA synthesis assay in primary rat hepatocytes.

3. *Reproductive and developmental toxicity*—i. A 2–generation rat reproduction study with a parental systemic no observed adverse effect level (NOAEL) of 20 ppm (1.4 mg/kg/day in males and 1.5 mg/kg/day in females) and a reproductive NOAEL of 20 ppm (1.3 mg/kg/day) and a parental systemic lowest observed adverse effect level (LOAEL) of 100 ppm (7.4 mg/kg/day in males and 8.2 mg/kg/day in females), based on increased liver weight in F_1 females and hepatocytomegaly in F_1 males, and a reproductive LOAEL of 100 ppm (6.9 mg/kg/day) based on increased pup death in early lactation (including cannibalism) for F_1 litters and the same effects in both F_1 and F_2 pups at the high dose level of 500 ppm (37.2 mg/kg/day in males and 41.5 mg/kg/day in females), respectively.

ii. A rat developmental study with a maternal NOAEL of 25 mg/kg/day and with a maternal LOAEL of 125 mg/kg/day based on decreased body weight gain initially and a developmental NOAEL of 25 mg/kg/day and a developmental LOAEL of 125 mg/kg/day based on decreased fetal body weight, delayed development mainly delays in ossification in the skull, vertebrae, sternebrae, and appendages, and an increase in the incidence of extra ribs.

iii. A rabbit developmental study with a maternal NOAEL of 5 mg/kg/day and a maternal LOAEL of 25 mg/kg/day based on histopathological finds in the liver and a developmental NOAEL of 25 mg/kg/day and a developmental LOAEL of 125 mg/kg/day based on increased skeletal variations.

4. *Subchronic toxicity*—i. A 84–day rat feeding study with a NOAEL less than 100 ppm (6.0 mg/kg/day) for males and a NOAEL of 100 ppm (7.2 mg/kg/day) for females and with a LOAEL of 100 ppm (6.8 mg/kg/day) for males based on suppression of thyroxine (T4) level, and a LOAEL of 400 ppm (28.8 mg/kg/day) for females based on hematology, and clinical chemistry findings.

ii. A 13–week mouse feeding study with a NOAEL of 100 ppm (18.2 mg/kg/day for males and 24.5 mg/kg/day for females), and a LOAEL of 400 ppm (64.2 mg/kg/day for males and 91.3 mg/kg/day for females) based on histopathology of the liver, spleen and thyroid.

iii. A 13–week dog dietary study with a NOAEL of 50 ppm (1.70 mg/kg/day for males and 1.67 mg/kg/day for females), and a LOAEL of 200 ppm (6.90 mg/kg/day for males and 7.20 mg/kg/day for females), based on evidence that the biotransformation capacity of the liver has been exceeded (as indicated by increase in LDH, liver weight, ALK and hepatomegaly), globulin and spleen pigment in females, decreased T4 and ALT values in both sexes, decreased albumin in males, and decreased serum glucose in females.

iv. A 21–day rabbit dermal study with the dermal irritation NOAEL of 1,000 mg/kg/day for males and females, and a systemic NOAEL of 20 mg/kg/day for males and 150 mg/kg/day for females, and a systemic LOAEL of 150 mg/kg/day for males and 1,000 mg/kg/day for females based on clinical chemistry data (decreased T4 and FT4 levels in both sexes) and centrilobular hepatocytomegaly in females.

5. *Chronic toxicity*—i. A 1–year dog chronic feeding study with a NOAEL was 40 ppm (1.29 mg/kg/day in males and 1.14 mg/kg/day in females), and a LOAEL of 800 ppm (27.75 mg/kg/day in males and 26.82 mg/kg/day in females) based on increased alkaline phosphatase, kidney, and liver weight in both sexes, increased cholesterol in males, decreased T2, T4 and ALT values in both sexes, and increased incidences of microscopic lesions in the brain, eye, kidney, spinal cord, sciatic nerve, and liver.

ii. A rat chronic feeding/carcinogenicity study with a NOAEL less than 25 ppm (1.2 mg/kg/day in males and 1.5 mg/kg/day in females), and a LOAEL of 25 ppm (1.2 mg/kg/day in males and 1.5 mg/kg/day in females) based on methemoglobinemia, and multi-organ effects in blood, kidney, spleen, heart, and uterus. Under experimental conditions the treatment did not alter the spontaneous tumor profile.

iii. In a mouse carcinogenicity study the NOAEL was less than 50 ppm (7.4 mg/kg/day) for males and the NOAEL was 50 ppm (9.4 mg/kg/day) for females. The LOAEL was 50 ppm (7.4 mg/kg/day) for males and the LOAEL was 200 ppm (38.4 mg/kg/day) for females based on cataract incidence and severity. There was no evidence of carcinogenicity for flufenacet in this study.

6. *Animal metabolism.* A rat metabolism study showed that radio-labeled flufenacet was rapidly absorbed and metabolized by both sexes. Urine was the major route of excretion at all dose levels and smaller amounts were excreted via the feces.

7. *Metabolite toxicology.* A 55–day dog study with subcutaneous administration of thiadone flufenacet metabolite supports the hypothesis that limitations in glutathione interdependent pathways and antioxidant stress result in metabolic lesions in the brain and heart following flufenacet exposure.

8. *Endocrine disruption.* EPA is required to develop a screening program to determine whether certain substances (including all pesticides and inerts) may have an effect in humans that is similar to an effect produced by a naturally occurring estrogen, or such other effect. The Agency is currently working with interested stakeholders, including other government agencies, public interest groups, industry and research scientists in developing a screening and testing program and a priority setting scheme to implement this program. Congress has allowed 3 years from the passage of FQPA (August 3, 1999) to implement this program. At that time, EPA may require further testing of this active ingredient and end use products for endocrine disrupter effects. Based on the toxicological findings for flufenacet relating to endocrine disruption effects, flufenacet should be considered as a candidate for evaluation as an endocrine disrupter when the criteria are established.

9. *Other studies*—i. An acute rat neurotoxicity study with a NOAEL less than 75 mg/kg/day and a LOAEL of 75 mg/kg/day based on decreased motor activity in males.

ii. A rat subchronic neurotoxicity study with a NOAEL of 120 ppm (7.3 mg/kg/day in males and 8.4 mg/kg/day in females), and a LOAEL of 600 ppm (38.1 mg/kg/day in males and 42.6 mg/kg/day in females) based on microscopic lesions in the cerebellum/medulla and spinal cords.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Dietary exposure to residues of a pesticide in a food commodity are estimated by multiplying the average daily consumption of the food forms of that commodity by the tolerance level or the anticipated pesticide residue level. In evaluating food exposures, varying consumption patterns of major identifiable subgroups of consumers, including infants and children is taken into account. A refined dietary risk assessment was performed and adjustments were made to account for market share and processing factors. The residues in the diet (food only) are calculated to be 0.000078 mg/kg bwt day or 1.9% of the RfD for the general U.S. population and 0.000174 mg/kg bwt day or 4.4% of the RfD for non-nursing infants (> 1–year)

ii. *Drinking water.* Residues of flufenacet in drinking water may comprise up to 0.0039 mg/kg bwt day (0.0040-0.000078 mg/kg bwt day) for the U.S. population and 0.0038 mg/kg bwt day (0.00400-0.000174 mg/kg bwt day) for children 1–6 years old.

The drinking water levels of concern (DWLOCs) for chronic exposure to flufenacet in drinking water calculated for the U.S. population was 136 parts per billion (ppb) assuming that an adult weighs 70 kg and consumes a maximum of 2 liters of water per day. For children (1–6 years old), the DWLOC was 37.7 ppb assuming that a child weighs 10 kg and consumes a maximum of 1 liter of water per day.

The drinking water estimated concentration (DWECs) for ground water (parent flufenacet and degradate thiadone) calculated from the monitoring data is 0.03 ppb for chronic concentrations which does not exceed DWLOC of 37.7 ppb for children (1–6 years old). The DWEC for surface water based on the computer models PRZM 2.3 and EXAMS 2.97.5 was calculated to be 14.2 ppb for chronic concentration (parent flufenacet and degradate thiadone) which does not exceed the DWLOC of 37.7 ppb for children (1–6 years old).

2. *Non-dietary exposure.* There are no non-food uses of flufenacet currently registered under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended. No non-dietary exposures are expected for the general population.

D. Cumulative Effects

Flufenacet is structurally a thiadiazole. EPA is not aware of any other pesticides with this structure. For flufenacet, EPA has not yet conducted a detailed review of common mechanisms to determine whether it is appropriate, or how to include this chemical in a cumulative risk assessment. After EPA develops a methodology to address common mechanism of toxicity issues to risk assessments, the Agency will develop a process (either as part of the periodic review of pesticides or otherwise) to reexamine these tolerance decisions. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, flufenacet does not appear to produce a toxic metabolite produced by other substances. For the purposes of these tolerance actions, therefore, EPA has not assumed that flufenacet has a common mechanism of toxicity with other substances.

E. Safety Determination

1. *U.S. population.* As presented previously, the exposure of the U.S. general population to flufenacet is low, and the risks, based on comparisons to the RfD, are minimal. The margins of safety from the use of flufenacet are within EPA's acceptable limits. Bayer

Corporation concludes that there is a reasonable certainty that no harm will result to the U.S. population from aggregate exposure to flufenacet residues.

2. *Infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of flufenacet, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2–generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from pesticide exposure during prenatal development to one or both parents. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals and data on systemic toxicity. FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Although there is no indication of increased sensitivity to young rats or rabbits following prenatal and/or postnatal exposure to flufenacet in the standard developmental and reproductive toxicity studies, an additional developmental neurotoxicity study, which is not normally required, is needed to access the susceptibility of the offspring in function/neurological development. Therefore, EPA has required that a developmental neurotoxicity study be conducted with flufenacet and a threefold safety factor for children and infants will be used in the aggregate dietary acute and chronic risk assessment. Although there is no indication of additional sensitivity to young rats or rabbits following prenatal and/or postnatal exposure to flufenacet in the developmental and reproductive toxicity studies; the Agency concluded that the FQPA safety factor should not be removed but instead reduced because: (i) There was no assessment of susceptibility of the offspring in functional/neurological developmental and reproductive studies; (ii) there is evidence of neurotoxicity in mice, rats, and dogs; (iii) there is concern for thyroid hormone disruption.

F. International Tolerances

Maximum residue levels are established or proposed for countries of the European Communities in the following commodities: cereals at 0.5 ppm, corn at 0.5 ppm, potato at 0.1 ppm, sunflower at 0.05 ppm, soybean at 0.05 ppm, animal meat at 0.05 ppm, animal edible offal's at 0.05 ppm, animal fat at 0.05 ppm, milk at 0.01 ppm, and eggs at 0.05 ppm.

[FR Doc. 00–7742 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–924; FRL–6495–5]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–924, must be received on or before April 28, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–924 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111	Crop production
	112	Animal production
	311	Food manufacturing
	32532	Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–924. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–924 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–924. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 15, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

The petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. EPA is publishing the petition summaries verbatim without editing them in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. Interregional research Project Number 4 (IR-4)

0E6097 and 7F4873

EPA has received pesticide petitions (0E6097 and 7F4873) from IR-4, Rutgers, The State University of New Jersey, 681 U.S. Highway No. 1 South, North New Brunswick, NJ 08902, and Valent USA Corporation, Walnut Creek, CA 94596-8025 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of clethodim in or on the following raw agricultural commodities (RAC): Root vegetables subgroup at 1.0 parts per million (ppm), leaves of root and tuber vegetables group at 2.0 ppm, leafy petiole vegetables subgroup at 0.5 ppm, melon subgroup at 2.0 ppm, squash/cucumber subgroup at 0.5 ppm, cranberry at 0.5 ppm, clover forage at 10 ppm, clover hay at 20.0 ppm, strawberry at 5.0 ppm, and fruiting vegetables group at 1.0 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of the petitions prepared by Valent USA Corporation, the registrant, Walnut Creek, CA 94596-8025.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of ^{14}C-clethodim labelled in the ring structure and in the side chain has been studied in carrots, soybeans, and cotton as well as in lactating goats and laying hens. The major metabolic pathway in plants is initial sulfoxidation, forming clethodim sulfoxide, followed by further oxidation to form clethodim sulfone. These reactions are apparently followed by elimination of the chloroallyloxy side chain to give the imine sulfoxide and sulfone, with further hydroxylation to form the 5-OH sulfoxide and 5-OH sulfone. Clethodim sulfoxide and

clethodim sulfone conjugates were also detected as major or minor metabolites, depending on plant species and subfractions. Once the side chain is cleaved from clethodim, the chloroallyloxy moiety undergoes extensive metabolism to eliminate chlorine and incorporate three-carbon moieties into natural plant components.

2. *Analytical method.* Practical analytical methods for detecting and measuring levels of clethodim and its metabolites have been developed and validated in/on all appropriate agricultural commodities, respective processing fractions, milk, animal tissues, and environmental samples. The methods have been validated at independent laboratories, and EPA has successfully performed an analytical method trial. For most commodities, the primary enforcement method is EPA-RM-26D-3, an high performance liquid chromotography method capable of distinguishing clethodim from the structurally related herbicide sethoxydim.

3. *Magnitude of residues.* A summary of field residue data supporting the proposed tolerances on root vegetables subgroup (carrot and radish), leaves of root and tuber vegetables (sugarbeet tops and radish tops), leafy petioles (celery), cucurbits (cantaloupe, summer squash, and cucumber), strawberry, cranberry, and clover is presented below.

i. *Root and tuber vegetables.* Eight field trials for carrots were treated with two post-emergent applications of 0.24 lb. to 0.26 lb. active ingredient/acre (a.i./acre) and harvested approximately 29 to 31 days after the application. Residues in carrots ranged from < 0.25 ppm to 0.39 ppm total clethodim. Four field trials, radishes were treated with one post-emergent application of 0.25 lb. a.i./acre and harvested approximately 14–15 days after application. All residues in radish roots were less than 0.45 ppm.

ii. *Leaves of root and tuber vegetables.* Twelve field trials for sugarbeets were treated with two post-emergent applications of 0.25 lb. each. Sugar beet tops were harvested approximately 40 days after the last application. Clethodim residues in/on sugarbeet tops ranged from < 0.10 ppm to 0.88 ppm total clethodim.

iii. *Leafy petioles.* Five field trials for celery was treated with two post-emergent applications of 0.25 lb. a.i./acre each, approximately 14 days apart, and harvested approximately 30 days after the last application. Residues in celery ranged from < 0.1 ppm to 0.33 ppm total clethodim.

iv. *Cucurbits.* Seven field trials for cantaloupes were treated with two post-emergent applications of 0.25 lb. a.i/acre each and harvested approximately 13–20 days after the last application. Residues in/on cantaloupe ranged from < 0.10 ppm to 1.2 ppm total clethodim. Six field trials for summer squash were treated with two post-emergent applications of 0.25 lb. a.i./acre each and harvested approximately 13–14 days after the last application. Total clethodim residues ranged from < 0.10 ppm to 0.11 ppm.

v. *Strawberry.* Seven field trials for strawberries were treated with two post-emergent applications of 0.23 lb. to 0.27 lb. a.i./acre each. Strawberry fruit was harvested approximately 4–7 days after the last application. Clethodim residues in/on sugar beet tops ranged from 0.38 ppm to 2.28 ppm total clethodim.

vi. *Cranberry.* Three field trials for cranberries were treated with two post-emergent applications of 0.24 lb. to 0.28 lb. a.i./acre each. Cranberries were harvested 29–30 days after the last application. Residues ranged from 0.13 ppm to 3.2 ppm total clethodim.

vii. *Clover.* Three field trials for clover was treated with one post-emergent application of 0.25 lb. a.i./acre. Clover forage and hay were harvested 5 days after the last application. Residues in forage ranged from 3.3 ppm to 6.1 ppm total clethodim and residues in hay ranged from 12.2 ppm to 15.3 ppm total clethodim.

viii. *Fruiting vegetables.* Six field trials for bell peppers were conducted using two applications of 0.25 lb .a.i./acre and harvested 19 to 21 days after application. Residues in bell peppers ranged from 0.14 ppm to 0.89 ppm total clethodim. Five non-bell pepper field trials were conducted using two applications of 0.25 lb. a.i./acre and harvested 20 to 22 days after application. Residues in non-bell peppers ranged from 0.12 ppm to 0.92 ppm total clethodim. Combining the data with previously conducted field trials for tomatoes gives an overall average residue in fruiting vegetables of 0.42 ppm and supports a tolerance for fruiting vegetables (except cucurbits) of 1.0 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Clethodim technical is slightly toxic to animals following acute oral (Toxicity Category III), dermal (Toxicity Category IV), or inhalation exposure (Toxicity Category IV). Clethodim is a moderate eye irritant (Category II), a skin irritant (Category III), and does not cause skin sensitization in the modified Buehler test in guinea pigs. In addition, an acute oral no-observed adverse effect level (NOAEL) has been determined in rats to be 300 milligrams/kilograms (mg/kg).

2. *Genotoxicity.* Clethodim does not present a genetic hazard. Clethodim technical did not induce gene mutation in microbial *in vitro* assays. A weak response in an *in vitro* assay for chromosome aberrations was not confirmed when clethodim was tested in an *in vivo* cytogenetics assay up to the maximally tolerated dose level, nor was the response observed *in vitro* using technical material of a higher purity. No evidence of unscheduled DNA synthesis was seen following *in vivo* exposure up to a dose level near the lethal doese LD_{50} (1.5 g/kg). This evidence indicates that clethodim does not present a genetic hazard to intact animal systems.

3. *Reproductive and developmental toxicity.* No reproductive toxicity was observed with clethodim technical at feeding levels up to 2,500 ppm. Developmental toxicity was observed in two rodent species, but only at maternally toxic dose levels. Clethodim is therefore, not considered a reproductive or developmental hazard. These studies indicate no unique toxicity to the developing fetus or young, growing animals.

The developmental toxicity study conducted with clethodim technical in the rat resulted in a developmental and maternal NOAEL and lowest observed adverse effect level (LOAEL) of 100 and 350 milligrams/kilograms/day (mg/kg/day), respectively. The NOAEL and LOAEL for developmental toxicity were based on reductions in fetal body weight and increases in skeletal anomalies. The developmental toxicity study conducted with clethodim technical in the rabbit resulted in a maternal toxicity NOAEL and LOAEL of 25 and 100 mg/kg/day, respectively. Maternal toxicity was manifested as clinical signs of toxicity and reduced weight gain and food consumption during treatment. Developmental toxicity was not observed, and therefore, the developmental toxicity NOAEL was 300 mg/kg/day, highest dose tested (HDT). The 2–generation reproduction study conducted with clethodim technical in the rat resulted in parental toxicity NOAEL and LOAEL of 500 ppm and 2,500 ppm, respectively, based on reductions in body weight in males, and decreased food consumption in both generations. The NOAEL for reproductive toxicity was 2,500 ppm, HDT.

4. *Subchronic toxicity.* Subchronic oral toxicity studies conducted with clethodim technical in the rat and dog indicate a low level of toxicity. Effects observed at high dose levels consisted primarily of decreased body weights, increased liver size (increased weight and cell hypertrophy), and anemia (decreased erythrocyte counts, hemoglobin, or hematocrit) in rats and dogs. The NOAELs from these studies were 500 ppm milligrams/kilograms bodyweight/day (ca. 25 mg/kg bwt day) in rats and 25 mg/kg bwt day in dogs. A 21–day dermal toxicity study in rats with clethodim technical showed a LOAEL at 100 mg/kg bwt day and a NOAEL at 1,000 mg/kg bwt day, HDT.

5. *Chronic toxicity.* Clethodim technical has been tested in chronic studies with dogs, rats and mice. In chronic studies compound-related effects noted at high doses included decreased body weight, increased liver size (liver weight and hypertrophy), and anemia (decreased hemoglobin, hematocrit, and erythrocyte count). Bone marrow hyperplasia was observed in dogs at the HDT. No treatment-related increases in incidence of neoplasms were observed in any study. Chronic NOAELs were 200 ppm for an 18–month feeding study in mice and 500 ppm for a 24–month study in rats. EPA has established a chronic population adjusted dose (cPAD) for clethodim of 0.01 mg/kg bwt day, based on the NOAEL in the 1–year oral dog study and an uncertainty factor of 100. Effects observed at the LOAEL include, alterations in hematology and increased absolute and relative liver weights at 75 mg/kg/day.

6. *Animal metabolism.* Ruminant and poultry metabolism studies demonstrated that transfer of administered ^{14}C-clethodim residues to tissues was low. Total ^{14}C-residues in goat milk, muscle and tissues accounted for less than 0.5% of the administered dose (24 ppm in diet for 3 days), and were less than 0.4 ppm in all cases. In poultry treated at 2.2 mg/kg/day for 5 days, total ^{14}C-residues in eggs, muscle, and most tissues were less than 0.3 ppm, although higher in liver, kidney and the GI tract. Residues in eggs were less than 0.2 ppm.

Comparing metabolites detected and quantified from plant and animal metabolism studies shows that there are no significant aglycones in plants which are not also present in the excreta or tissues of animals. Based on these metabolism studies, the residues of concern in crops and animal products are clethodim and its metabolites containing the cyclohexene moiety, and their sulfoxides and sulfones.

7. *Metabolite toxicology.* Metabolism studies of clethodim in rats, crop plants, goats and hens demonstrate that the parent is very rapidly metabolized and, in animals, eliminated. Because parent and metabolites are not retained in the body, the potential for acute toxicity from *in situ* formed metabolites is low. The potential for chronic toxicity is adequately tested by chronic exposure to the parent at the MTD and consequent chronic exposure to the internally formed metabolites.

Two metabolites of clethodim, clethodim imine sulfone and clethodim 5-hydroxy sulfone, have been tested in toxicity screening studies to evaluate the potential impact of these metabolites on the toxicity of clethodim. In general, these metabolites were found to be less toxic than clethodim technical for acute and oral toxicity studies; reproduction and teratology screening studies; and several mutagenicity studies.

8. *Endocrine disruption.* No special studies to investigate the potential for estrogenic or other endocrine effects of clethodim have been performed. However, a large and detailed toxicology data base exists for the compound including studies in all required categories. These studies include acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histology and histopathology of numerous tissues, including endocrine organs, following repeated or long-term exposure. The results of all of these studies show no evidence of any endocrine-mediated effects and no pathology of the endocrine organs. Consequently, Valent USA Corporation concludes that clethodim does not possess estrogenic or endocrine disrupting properties.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* Chronic dietary exposure to clethodim residues was calculated for the U.S. population and 26 population subgroups using anticipated residues (average residues from field residue studies) and accounting for the percent of the crop treated. A parallel analysis was performed assuming 100% of the crop treated. In addition to existing tolerances and those tolerances proposed in this notice, potential chronic dietary exposure to the following treated crops and crop groups is also included in this analysis: sunflower, canola, potato, sweet potato, yam (and other corm and tuberous vegetables), tomatoes, peppers (all) and other fruiting vegetables. These additional crops are being proposed for tolerances or registration by Valent USA Corporation in a separate petition. This chronic dietary exposure analysis can therefore be used to support both petitions.

Chronic dietary exposure was at or below 4.5% of the reference dose (RfD) when accounting for the percent of the crop treated. Calculated exposure increased to a maximum of 32.1% non-nursing infants (< 1–year old) using anticipated residues and assuming 100% of the crop treated. Generally speaking, the Agency has no cause for concern if total residue contribution for published and proposed tolerances is less than 100% of the cPAD.

ii. *Drinking water.* Since clethodim is applied outdoors postemergence to growing agricultural crops, the potential exists for clethodim and/or its metabolites to reach ground or surface water that may be used for drinking water. To model very conservative estimates of the potential concentrations of clethodim and its sulfoxide metabolite in drinking water, the Agency used SCI-GROW for ground water, and generic expected environmental concentration (GENEEC) for surface water. The sum of the parent and metabolite estimated concentrations in surface water greatly exceeded those in ground water. Dividing the GENEEC derived 56–day average concentration by three gives 10 micrograms per liter parts per billion (ppb) as the Agency's worse case estimate for drinking water contamination (April 8, 1998, 63 FR 1701) (FRL–5784–9). Using standard assumptions about body weight and water consumption, the chronic exposure from this drinking water would be 0.00029 and 0.001 mg/kg bwt day for adults and children, respectively; 10% of the cPAD for children. Based on this worse case analysis, the contribution of water to the chronic dietary risk exceeds food, but is still acceptable.

2. *Non-dietary exposure.* Clethodim is currently registered for use on the following residential non-food sites: ornamental plants, wooden containers for growing plants, along driveways, patios, golf course turf, walkways, trails, and paths. There are no indoor uses registered for clethodim. Clethodim kills grassey weeds and does not control broadleaf weeds. Therefore, clethodim is not used broadcast on turf, but only on edges and walkways, thus greatly reducing the risk of residential exposure. There is one exception, under several State 24(c) registrations clethodim can be used broadcast on winter dormant perennial turf to control annual grasses. It is conceivable that these outdoor uses could result in acute or short-term residential exposure. However, under current EPA criteria, the registered and proposed uses of clethodim would not constitute a chronic residential exposure scenario. The Agency did calculate that these potential exposures to homeowner

applicators and other potential exposed individuals lead to acceptable Margin of Exposure (MOE) (63 FR 1701). However, because the Agency did not identify short- or intermediate-term dermal toxic endpoints of concern, these risk analyses are no longer necessary.

D. Cumulative Effects

There are other pesticidal compounds that are structurally related to clethodim including sethoxydim, cycloxydim, and tralkoxydim. Analytical methods convert some of these herbicides and their metabolites to common moieties. Plant and animal metabolism data demonstrates that no common metabolites are formed. In consideration of potential cumulative effects of clethodim and other substances that may have a common mechanism of toxicity, there are currently no available data or other reliable information indicating that any toxic effects produced by clethodim would be cumulative with those of other chemical compounds. Thus, only the potential risks of clethodim have been considered in this assessment of aggregate exposure and effects.

Valent USA Corporation will submit information for EPA to consider concerning potential cumulative effects of clethodim consistent with the schedule established by EPA on August 4, 1997 (62 FR 42020) (FRL–5734–6), and other subsequent EPA publications pursuant to the Food Quality Protection Act.

E. Safety Determination

1. *U.S. population—chronic exposure and risk*—i. *Adult sub-populations.* Using the dietary exposure assessment procedures described above for clethodim, calculated chronic dietary exposure -- taking into account percent of crop treated and using anticipated residues -- from existing and proposed uses of clethodim is minimal. The estimated chronic dietary exposure from food for the overall U.S. population and many non-child/infant subgroups is 0.000151 to 0.000162 mg/kg bwt day, 1.5 to 1.6% of the cPAD. Addition of the small but worse case potential chronic exposure from drinking water (calculated above) increases exposure by 0.0003 mg/kg bwt day and the maximum occupancy of the cPAD from 1.6% to 4.6%. Generally, the Agency has no cause for concern if total residue contribution is less than 100% of the cPAD. It can be concluded that there is a reasonable certainty that no harm will result to the overall U.S. population and many non-child/ infant subgroups from aggregate, chronic exposure to clethodim residues.

ii. *Acute dietary exposure and risk—Adult sub-populations.* An acute dietary endpoint was not identified. Thus, the risk from acute aggregate dietary exposure to clethodim is considered to be negligible.

iii. *Non-dietary exposure and aggregate risk—Adult sub-populations.* Acute, short-term, and intermediate-term dermal and inhalation risk assessments for residential exposure to clethodim are not required because no significant toxicological effects were observed.

2. *Infants and children*—i. *Safety factor for infants and children.* In assessing the potential for additional sensitivity of infants and children to residues of clethodim, FFDCA section 408 provides that EPA shall apply an additional margin of safety, up to ten-fold, for added protection for infants and children in the case of threshold effects unless EPA determines that a different margin of safety will be safe for infants and children.

The toxicological data base for evaluating prenatal and postnatal toxicity for clethodim is complete with respect to current data requirements. There are no special prenatal or postnatal toxicity concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies or the 3-generation reproductive toxicity study in rats. Valent USA Corporation concludes that reliable data support use of the standard 100-fold uncertainty factor and that an additional uncertainty factor is not needed for clethodim to be further protective of infants and children.

ii. *Chronic exposure and risk—Infant and child sub-populations.* Using the conservative exposure assumptions described above (anticipated residues and percent of crop treated), the percentage of the cPAD that will be utilized by dietary (food only) exposure to residues of clethodim ranges from 0.7% for nursing infants (< 1–year old), up to 4.5% for children (1–6 years). Adding the worse case potential incremental exposure to infants and children from clethodim in drinking water (0.001 mg/kg bwt day) greatly increases the aggregate, chronic dietary exposure and the occupancy of the cPAD by 10.0% to 14.5% for children (1–6 years). EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It can be concluded that there is a reasonable certainty that no harm will result to infants and children from aggregate, chronic exposure to clethodim residues.

iii. *Acute dietary exposure and risk—Infant and child sub-populations.* An acute dietary endpoint was not identified. Thus, the risk from acute aggregate dietary exposure to clethodim is considered to be negligible.

iv. *Non-dietary exposure and aggregate risk—Infant and child sub-populations.* Acute, short-term, and intermediate-term dermal and inhalation risk assessments for residential exposure to clethodim are not required because no significant toxicological effects were observed.

F. International Tolerances

Although some have been proposed, there are no Canadian, Mexican, or Codex tolerances or maximum residue limits established for clethodim. There are no conflicts between this proposed action and international residue limits.

2. Interregional Research Project Number 4 New Jersey Agricultural Station

8E5026 and 9E6049

EPA has received pesticide petitions (8E5026 and 9E6049) from the Interregional Research Project Number 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903. The petitions propose, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing tolerances for residues of fludioxonil 4-(2,2-difluoro-1,3-benzodioxol-4-yl)-1H-pyrrole-3 carbonitrile).

1. *PP 8E5026* proposes the establishment of tolerances for strawberries at 2.0 ppm; dry bulb onion; great-headed garlic; shallot; and welsh onion at 0.2 ppm; and green onion and leek at 7.0 ppm.

2 *PP 9E6049* proposes the establishment of a tolerance for stone fruit group at 2.0 ppm.

EPA has determined that the petitions contain data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petitions. Additional data may be needed before EPA rules on the petitions. This notice includes a summary of petitions prepared by Novaris Crop Protection, Inc. (Novartis), Greensboro, North Carolina, 27419.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of fludioxonil is adequately understood

for the purpose of the proposed tolerances.

2. *Analytical method.* Novartis, has developed and validated analytical methodology for enforcement purposes. This method (Novartis Crop Protection Method AG-597B) has passed an Agency petition method validation for several commodities and is currently the enforcement method for fludioxonil. This method has also been forwarded to FDA for inclusion into PAM II. An extensive database of method validation data using this method on various crop commodities is available; acceptable method validation and concurrent method recovery data on stone fruits, strawberry, and onions were submitted. The validated limit of quantitation (LOQ) for residues of fludioxonil in/on stone fruit is 0.05 ppm and in/on strawberry and bulb vegetables is 0.02 ppm. For residues in/on representative rotational crop matrices is 0.01 ppm.

3. *Magnitude of residues.* The magnitude of residues for fludioxonil is adequately understood for the purpose of the proposed tolerances.

B. Toxicological Profile

1. *Acute toxicity.* Fludioxonil and end use formulations have very low toxicity to the mammalian species by the oral, dermal, or inhalation route. The dose needed to kill 50% of animals was calculated to be greater than 5,000 mg/kg (oral), 2,000 mg/kg (dermal), and 2.6 milligrams/liter (mg/L) (inhalation) in these studies. The eye and skin irritations seen in animals upon acute exposure indicate that no more than transient and slight irritation. No sensitizing potential was noted with either the technical material or the formulated product.

2. *Genotoxicity.* Mutagenicity potential of fludioxonil was tested in several studies. In the Chinese hamster ovary (CHO) cell assay, some clastogenic and polyploidogenic effects were seen at or near the precipitating concentration of the test substance. However, results were negative in the Ames assay, CHO V79 cell assay, hepatocyte DNA repair assay, rat hepatocyte micronucleus test, mouse bone marrow test, and Chinese hamster bone marrow test. A dominant lethal test conducted in the mouse was also negative.

3. *Reproductive and developmental toxicity.* Fludioxonil is not a developmental toxicant and does not affect reproduction or fertility. No fetal toxicity was observed even at the HDT in both the rabbit (300 mg/kg) and the rat (1,000 mg/kg) developmental toxicity studies. In a 2–generation rat reproduction study, a reduction of pup body weight was seen at the highest feeding level of 3,000 ppm in the presence of maternal toxicity. The NOAEL was 300 ppm for both maternal and fetal toxicity in this study.

4. *Subchronic toxicity.* In a 90–day dietary toxicity study the kidney and liver have been identified as target organs. In a subchronic study in rats, the NOAEL was 10 ppm based on liver toxicity. In a subchronic study in mice, the NOAEL was 100 ppm based on blue urine (a metabolite); the maximum tolerated dose was 7,000 ppm. In a subchronic study in dogs, the NOAEL was 200 ppm based on clinical observations; the maximum tolerated dose was 8,000 ppm.

5. *Chronic toxicity.* In an 1–year chronic toxicity study in dogs, the NOAEL was 100 ppm based on body weight effects; the maximum tolerated dose was 8,000 ppm. Two 18–month dietary carcinogenicity studies were performed in mice. While a NOAEL of 1,000 ppm was clearly established in the first study, its highest feeding level (3,000 ppm) did not meet the criteria for a maximum tolerated dose. In the second 18–month study, the maximum tolerated dose was determined to be 5,000 ppm based on kidney effects. There were no treatment-related increases in neoplasia at any dose level tested in either study. In a combined chronic toxicity/carcinogenicity study in rats, the incidence of liver tumors in top-dose females (3,000 ppm) was marginally higher than the concurrent controls but within historical control range. The NOAEL for chronic toxicity was 1,000 ppm in both sexes.

6. *Animal metabolism.* The metabolism of fludioxonil in rats is adequately understood.

7. *Metabolite toxicology.* The residues of concern for tolerance setting purposes is the parent compound. Consequently, there is no additional concern for toxicity of metabolites.

8. *Endocrine disruption.* Fludioxonil does not belong to a class of chemicals known for having adverse effects on the endocrine system. No estrogenic effects have been observed in the various short- and long-term studies conducted with various mammalian species.

C. Aggregate Exposure

1. *Dietary exposure*—i. *Food.* For purposes of assessing the potential dietary exposure under the proposed tolerance, Novartis has estimated aggregate exposure based on a Tier I assessment from the proposed tolerance level of 2.0 ppm in or on stone fruit and strawberry and 8.0 ppm in or on bulb vegetables including in these petitions, a pending 1.0 ppm grape tolerance, and all the currently established fludioxonil tolerances. This is deemed a worse case estimate of dietary exposure since it is assumed that 100% of all crops for which tolerances are proposed or established are treated except for strawberry and bulb vegetables where 50% and 28% market share estimates were utilized. Further, it was assumed that pesticide residues are present at the tolerance levels.

ii. *Drinking water.* Exposure of the general population to residues of fludioxonil from drinking water is considered unlikely since field dissipation studies demonstrate the movement of fludioxonil into ground water does not occur. In addition, EPA has not established a maximum contaminant level for residues of fludioxonil in drinking water.

2. *Non-dietary exposure.* Non-occupational exposure for fludioxonil has not been calculated since the current registration for fludioxonil is limited to commercial crop production. Since the chemical is not used in or around the home, Novartis considers the potential for non-occupational exposure to the general population to be non-existent.

D. Cumulative Effects

Consideration of a common mechanism of toxicity is not appropriate at this time since Novartis is unaware of any reliable information that indicates that toxic effects produced by fludioxonil would be cumulative with those of any other chemical compounds. Consequently, Novartis is considering the potential risks of only fludioxonil in its aggregate exposure assessment.

E. Safety Determination

1. *U.S. population*—i. *Acute risk.* The risk from acute dietary exposure to fludioxonil is considered to be very low. Using an acute reference dose (RfD) of 0.1 mg/kg taken from the maternal toxicology NOAEL from a rabbit teratology study and a 100 fold safety factor and highly conservative exposure assumptions, 43.4% of the aRfD is utilized for the general U.S. population.

ii. *Chronic risk.* Based on the available chronic toxicity data, EPA has set the RfD for fludioxonil at 0.03 mg/kg/day. This RfD is based on a 1–year feeding study in dogs with a NOAEL of 3.3 mg/kg/day (100 ppm) and an uncertainty factor of 100. No additional uncertainty factor was judged to be necessary as body weight was the most sensitive indicator of toxicity in that study. Based on the highly conservative exposure assumptions described above, only 7.5% of the RfD will be utilized by the U.S. general population. Therefore,

based on the completeness and reliability of the toxicity data supporting these petitions, there is a reasonable certainty that no harm will result from aggregate exposure to residues of fludioxonil as a result of these requested tolerances.

2. *Infants and children.* Infants and children are not expected to show any particular sensitivity to fludioxonil. This can be demonstrated by referencing several data points, including the equivalence of the maternal and fetal toxicity NOAEL in the fludioxonil 2–generation rat study.

i. *Acute risk.* The risk from acute dietary exposure to fludioxonil is considered to be very low. Under the highly conservative exposure assumptions of residue levels being at tolerance level and 100% market share for the majority of crops with proposed and established fludioxonil registrations, the utilization of the acute RfD of the most exposed group is 83.4% (children, 1–6 years).

ii. *Chronic risk.* Using highly conservative aggregate exposures 23.0% and 19.2% of the RfD were obtained for the most sensitive sub-populations, non-nursing infants (< 1–year old) and children (1–6 years), respectively. Therefore, a reasonable certainty exists that no harm will result from aggregate exposure to fludioxonil if the proposed uses are registered.

F. International Tolerances

There are no Codex maximum residue levels established for residues of fludioxonil in or on strawberry, dry bulb onion, green onion, and stone fruit crop fruit.

[FR Doc. 00–7740 Filed 3–28–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

PF–919; FRL–6493–8

Notice of Filing Pesticide Petitions To Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–919, must be received on or before April 28, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–919 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: The product manager listed in the table below:

Product Manager	Office location/telephone number/e-mail address	Address	Petition number(s)
Mary Waller (PM 21)	Rm. 249, CM #2, 703-308-9354, e-mail:waller.mary@epamail.epa.gov	1921 Jefferson Davis Hwy, Arlington, VA	PP 9F3727
Joe Travano (PM 10)	Rm. 214, CM #2, 703–305–6411, e-mail: travano.joe@epamail.epa.gov.	Do.	PP 0F6069

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–919. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–919 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–919. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received pesticide petitions as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemicals in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that these petitions contain data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 16, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Summaries of Petitions

Petitioner summaries of the pesticide petitions are printed below as required by section 408(d)(3) of the FFDCA. The summaries of the petitions were prepared by the petitioners and represent the views of the petitioners. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

1. McLaughlin Gormley King Company

0F6069

EPA has received a pesticide petition (0F6069) from McLaughlin Gormley King Company, 8810 Tenth Avenue North, Minneapolis, MN 55427-4372 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of pyriproxyfen in or on food products in food handling establishments at 0.1 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* Radiocarbon plant and animal metabolism studies have been conducted with pyriproxyfen. These studies demonstrate that the nature of the residues in these matrices is primarily pyriproxyfen.

2. *Analytical method.* An analytical method is available to detect residues of pyriproxyfen in or on food commodities. Pyriproxyfen can be extracted from samples and analyzed by high performance liquid chromotography (HPLC), or nitrogen phosphorous/gas liquid chromotography (NP-GLC). The HPLC method has been validated by an independent laboratory.

3. *Magnitude of residues.* Studies were conducted to determine levels of residues resulting from the application of Nylar to representative food commodities in simulated feed and/or food processing and simulated warehouse situations. The representative foods were potatoes, loaves of bread, flour, lettuce, meat, candy, butter, banana cream pies, navy beans, Spanish peanuts, dried prunes, and granulated sugar. No significant residues were found in covered samples; however, residues were detectable in uncovered samples and samples with permeable wrapping.

B. Toxicological Profile

1. *Acute toxicity.* The acute toxicity of technical grade pyriproxyfen is low by all routes. The compound is classified as Category III for acute dermal and

inhalation toxicity, and Category IV for acute oral toxicity, and skin/eye irritation. Pyriproxyfen is not a skin sensitizing agent.

2. *Genotoxicity.* Pyriproxyfen does not present a genetic hazard. Pyriproxyfen was negative in the following tests for mutagenicity: Ames assay with and without S9, *in vitro* unscheduled DNA synthesis (UDS) in HeLa S3 cells, *in vitro* gene mutation in V79 Chinese hamster cells (CHO), and *in vitro* chromosomal aberration with and without S9 in CHO cells.

3. *Reproductive and developmental toxicity.* Pyriproxyfen is not a developmental or reproductive toxicant. Developmental toxicity studies have been performed in rats and rabbits, and multi-generational effects on reproduction were tested in rats. These studies have been reviewed and found to be acceptable to the Agency.

In the developmental toxicity study conducted with rats, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 milligrams/kilograms bodyweight/day (mg/kg bwt/day) during gestation days 7-17. Maternal toxicity (mortality, decreased body weight gain and food consumption, and clinical signs of toxicity) was observed at doses of 300 mg/kg bwt/day and greater. The maternal no observed adverse effect level (NOAEL) was 100 mg/kg bwt/day. A transient increase in skeletal variations was observed in rat fetuses from females exposed to 300 mg/kg bwt/day and greater. These effects were not present in animals examined at the end of the postnatal period, therefore, the NOAEL for prenatal developmental toxicity was 100 mg/kg bwt/day. An increased incidence of visceral and skeletal variations was observed postnatally at 1,000 mg/kg bwt/day. The NOAEL for postnatal developmental toxicity was 300 mg/kg bwt/day.

In the developmental toxicity study conducted with rabbits, technical pyriproxyfen was administered by gavage at levels of 0, 100, 300, and 1,000 mg/kg bwt/day during gestation days 6-18. Maternal toxicity (clinical signs of toxicity including one death, decreased body weight gain and food consumption, and abortions or premature deliveries) was observed at oral doses of 300 mg/kg bwt/day or higher. The maternal NOAEL was 100 mg/kg bwt/day. No developmental effects were observed in the rabbit fetuses. The NOAEL for developmental toxicity in rabbits was > 1,000 mg/kg bwt/day.

In the rat reproduction study, pyriproxyfen was administered in the diet at levels of 0, 200, 1,000, and 5,000 ppm through 2 generations of rats. Adult systemic toxicity (reduced body weights, liver and kidney histopathology, and increased liver weight) was produced at the 5,000 ppm dose (453 mg/kg bwt/day in males, 498 mg/kg bwt/day in females) during the pre-mating period. The systemic NOAEL was 1,000 ppm (87 mg/kg bwt/day in males, 96 mg/kg bwt/day in females). No effects on reproduction were produced at 5,000 ppm, the highest dose tested (HDT).

4. *Subchronic toxicity.* Subchronic oral toxicity studies conducted with pyriproxyfen technical in the rat, mouse and dog indicate a low level of toxicity. Effects observed at high dose levels consisted primarily of decreased body weight gain; increased liver weights; histopathological changes in the liver and kidney; decreased red blood cell counts, hemoglobin and hematocrit; altered blood chemistry parameters; and, at 5,000 and 10,000 ppm in mice, a decrease in survival rates. The NOAELs from these studies were 400 ppm (23.5 mg/kg bwt/day for males, 27.7 mg/kg bw/day for females) in rats, 1,000 ppm (149.4 mg/kg bwt/day for males, 196.5 mg/kg bwt/day for females) in mice, and 100 mg/kg bwt/day in dogs.

In a 4-week inhalation study of pyriproxyfen technical in rats, decreased body weight and increased water consumption were observed at 1,000 mg/m^3. The NOAEL in this study was 482 mg/m^3.

A 21-day dermal toxicity study in rats with pyriproxyfen technical did not produce any signs of dermal or systemic toxicity at 1,000 mg/kg bwt/day, the HDT.

5. *Chronic toxicity.* Pyriproxyfen technical has been tested in chronic studies with dogs, rats and mice. EPA has established a reference dose (RfD) for pyriproxyfen of 0.35 mg/kg bwt/day, based on the NOAEL in female rats from the 2-year chronic/oncogenicity study. Effects cited by EPA in the RfD tracking report include negative trend in mean red blood cell volume, increased hepatocyte cytoplasm and cytoplasm nucleus ratios, and decreased sinusoidal spaces.

Pyriproxyfen is not a carcinogen. Studies with pyriproxyfen have shown that repeated high dose exposures produced changes in the liver, kidney, and red blood cells, but did not produce cancer in test animals. No oncogenic response was observed in a rat 2-year chronic feeding/oncogenicity study or in a 78-week study on mice. The oncogenicity classification of pyriproxyfen is "E" (no evidence of carcinogenicity for humans).

Pyriproxyfen technical was administered to dogs in capsules at doses of 0, 30, 100, 300, and 1,000 mg/kg bwt/day for 1-year. Dogs exposed to dose levels of 300 mg/kg bwt/day or higher showed overt clinical signs of toxicity, elevated levels of blood enzymes and liver damage. The NOAEL in this study was 100 mg/kg bwt/day.

Pyriproxyfen technical was administered to mice at doses of 0, 120, 600, and 3,000 ppm in diet for 78 weeks. The NOAEL for systemic effects in this study was 600 ppm (84 mg/kg bwt/day in males, 109.5 mg/kg bwt/day in females), and a lowest observed adverse effect level (LOAEL) of 3,000 ppm (420 mg/kg bwt/day in males, 547 mg/kg bwt/day in females) was established based on an increase in kidney lesions.

In a 2-year study in rats, pyriproxyfen technical was administered in the diet at levels of 0, 120, 600, and 3,000 ppm. The NOAEL for systemic effects in this study was 600 ppm (27.31 mg/kg bwt/day in males, 35.1 mg/kg bwt/day in females). A LOAEL of 3,000 ppm (138 mg/kg bwt/day in males, 182.7 mg/kg bwt/day in females) was established based on a depression in body weight gain in females.

6. *Animal metabolism.* The absorption, tissue distribution, metabolism and excretion of ^{14}C-labeled pyriproxyfen were studied in rats after single oral doses of 2 or 1,000 mg/kg bwt (phenoxyphenyl and pyridyl label), and after a single oral dose of 2 mg/kg bwt (phenoxyphenyl label only) following 14 daily oral doses at 2 mg/kg bwt of unlabeled material. For all dose groups, most (88–96%) of the administered radiolabel was excreted in the urine and feces within 2 days after radiolabeled test material dosing, and 92–98% of the administered dose was excreted within 7 days. Seven days after dosing, tissue residues were generally low, accounting for no more than 0.3% of the dosed ^{14}C. Radiocarbon concentrations in fat were higher than in other tissues analyzed. Recovery in tissues over time indicates that the potential for bioaccumulation is minimal. There were no significant sex or dose-related differences in excretion or metabolism.

7. *Metabolite toxicology.* Metabolism studies of pyriproxyfen in rats, goats, and hens, as well as the fish bioaccumulation study demonstrate that the parent is very rapidly metabolized and eliminated. In the rat, most (88–96%) of the administered radiolabel was excreted in the urine and feces within 2 days of dosing, and 92–98% of the administered dose was excreted within 7 days. Tissue residues were low 7 days after dosing, accounting for no more than 0.3% of the dosed ^{14}C. Because parent and metabolites are not retained in the body, the potential for acute toxicity from *in situ* formed metabolites is low. The potential for chronic toxicity is adequately tested by chronic exposure to the parent at the MTD and consequent chronic exposure to the internally formed metabolites.

Seven metabolites of pyriproxyfen, 4'-OH-pyriproxyfen, 5''-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, PYPAC, 2-OH-pyridine and 2,5-diOH-pyridine, have been tested for mutagenicity (Ames) and acute oral toxicity to mice. All seven metabolites were tested in the Ames assay with and without S9 at doses up to 5,000 micrograms per plate or up to the growth inhibitory dose. The metabolites did not induce any significant increases in revertant colonies in any of the test strains. Positive control chemicals showed marked increases in revertant colonies. The acute toxicity to mice of 4'-OH-pyriproxyfen, 5''-OH-pyriproxyfen, desphenyl-pyriproxyfen, POPA, and PYPAC did not appear to markedly differ from pyriproxyfen, with all metabolites having acute oral LD_{50} values greater than 2,000 mg/kg bwt. The two pyridines, 2-OH-pyridine and 2,5-diOH-pyridine, gave acute oral LD_{50} values of 124 (male) and 166 (female) mg/kg bwt, and 1,105 (male) and 1,000 (female) mg/kg/bwt, respectively.

8. *Endocrine disruption.* Pyriproxyfen is specifically designed to be an insect growth regulator and is known to produce juvenoid effects on arthropod development. However, this mechanism-of-action in target insects and some other arthropods has no relevance to any mammalian endocrine system. While specific tests, uniquely designed to evaluate the potential effects of pyriproxyfen on mammalian endocrine systems have not been conducted, the toxicology of pyriproxyfen has been extensively evaluated in acute, sub-chronic, chronic, developmental, and reproductive toxicology studies including detailed histopathology of numerous tissues. The results of these studies show no evidence of any endocrine-mediated effects, and no pathology of the endocrine organs. Consequently, it is concluded that pyriproxyfen does not possess estrogenic or endocrine disrupting properties applicable to mammals.

C. Aggregate Exposure

1. *Dietary exposure—i. Food.* An evaluation of chronic dietary exposure to potential pyriproxyfen residues in all foods that may be exposed to pyriproxyfen through agricultural and food handling establishment treatments, including exposure from drinking water, was estimated for the overall U.S. population and 26 sub-populations, including infants and children.

Chronic dietary exposure was estimated using the chronic module of the DEEM™ software. Residue data used in the analysis included current and pending tolerances for agricultural crops, results from warehouse simulation studies, and processing data. The data base providing levels of food consumption was the USDA Continuing Surveys of Food Intake by Individuals conducted from 1994 through 1996. MGK provided estimated marketshare information.

Chronic dietary exposure was estimated to be 0.000550 mg/kg bwt/day, or 0.2% of the RfD. Exposure for the most highly exposed population subgroup, non-nursing infants, was calculated to be 0.002438 mg/kg bwt/day, or 0.7% of the RfD.

ii. *Drinking water.* The generic expected environmental concentration (GENEEC) modeling was used to estimate potential pyriproxyfen residues in surface water and/or ground water. The chronic drinking water estimated concentration value of 0.053 parts per billion (ppb) for pyriproxyfen was compared to the drinking water levels of concern (DWLOC) calculated for pyriproxyfen for adult males, adult females, and toddlers, that were 12,545 ppb, 10,489 ppb, and 5,229 ppb, respectively. There is reasonable certainty that no harm will result from aggregate exposure to potential pyriproxyfen residues.

2. *Non-dietary exposure.* Many products for indoor, non-food applications such as pet care products and carpet treatments containing pyriproxyfen as an active ingredient are registered with EPA. Typically, the directions for use of these products describe intermittent application, with no resulting chronic exposures. Since neither acute oral, dermal, or inhalation toxicity endpoints, nor doses and endpoints for short- and intermediate-term dermal or inhalation exposures have been identified for pyriproxyfen, the Agency has concluded that there is reasonable certainty of no harm from non-dietary exposures to pyriproxyfen.

D. Cumulative Effects

There are no other compounds that are structurally related to pyriproxyfen and have similar effects on animals. No other data are available that indicate that any toxicological effects produced by pyriproxyfen would be cumulative with those of any other compound; so only the potential risks of pyriproxyfen have been considered in the risk assessment.

E. Safety Determination

1. *U.S. population.* Based on the estimated aggregate exposures to residues of pyriproxyfen from food and drinking water, and the reliable toxicology data base, the chronic exposure to pyriproxyfen for the overall U.S. population is 0.000550 mg/kg bwt/day, representing only 0.2% of the RfD. EPA has no concerns about exposure which are less than 100% of the RfD as the RfD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. It is therefore, safe to conclude that there is reasonable certainty that no harm to the overall U.S. population will result from chronic exposure to pyriproxyfen residues.

2. *Infants and children.* EPA has the right to apply an additional margin of safety, up to ten-fold, for the protection of infants and children due to their additional sensitivities, unless EPA can determine that a different margin of safety will adequately protect them. Rat and rabbit developmental toxicity studies and the 2–generation reproductive toxicity study in rats demonstrated that no special prenatal or postnatal toxicity concerns apply for exposure to pyriproxyfen. Therefore, an additional uncertainty factor does not need to be added for the safety determination of pyriproxyfen.

Based on the estimated aggregate exposures to residues of pyriproxyfen from food and drinking water, and the reliable toxicology data base, the chronic exposure to pyriproxyfen for infants and children ranged from 0.000739 mg/kg bwt/day for children 7–12 years old, representing 0.2% of the RfD, to 0.002438 mg/kg bwt/day for non-nursing infants < 1–year old, representing 0.7% if the RfD. It is safe to conclude that there is reasonable certainty that no harm to any subgroup of children will result from chronic exposure to pyriproxyfen residues.

F. International Tolerances

No Codex MRLs presently exist for pyriproxyfen, although they may be established in the future.

2. Uniroyal Chemical Company, Inc.

9F3727

EPA has received a pesticide petition (9F3727) from Uniroyal Chemical Company Inc., 74 Amity Rd, Bethany, CT proposing, pursuant to section 408(d) of the FFDCA, 21 U.S.C. 346a(d), to amend 40 CFR part 180 by

establishing a tolerance for residues of carboxin (5,6-dihydro-2-methyl-1,4-oxathiin-3-carboxanilide) and its sulfoxide metabolite (5,6-dihydro-3-carboxanilide-2-methyl-1,4-oxathiin-4-oxide) in or on the RAC onions (dry bulb) at 0.2 ppm. EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

A. Residue Chemistry

1. *Plant metabolism.* The metabolism of carboxin in plants is adequately understood. The major metabolites in all commodities of wheat were carboxin sulfoxide and sulfone. Metabolites in cotton seeds were at too low a level to be identified. The metabolism of carboxin in soybeans is characterized by the oxidation of sulfur (present as sulfoxides and sulfones), cleavage of the oxathiin ring, and conjugation with glucose.

2. *Analytical method.* The analytical method employed for analysis of residues of carboxin in the onions from the trials described below used a caustic reducing medium to hydrolyze extracted residues of carboxin and its sulfoxide metabolite to liberate aniline, which is distilled and concentrated. The aniline is analyzed with a gas chromatograph equipped with a microcoulometric nitrogen detector. The limit of detection by this method is 0.1 ppm. The current method for the analysis of residues of carboxin in animal tissues, milk and eggs employs alkaline hydrolysis with the liberated aniline derivatized with heptafluorobutyric anhydride. Analysis is by gas chromatography of the derivatized aniline, with mass selective detection (GC/MSD). Thus the sensivity of the method limit of quantitation (LOQ) in all tissue was 0.02 ppm, and the precision of the method as indicated by the coefficient of variation (COV) was 1.9%.

3. *Magnitude of residues.* Uniroyal Chemical Company has submitted data to determine residues of carboxin in mature onions grown from seed, which was treated prior to planting with PRO-GRO. Nine trials were conducted in the following States; Michigan (3), Oregon (2), Washington (1), New York (2), Illinois (1), and one trial was conducted in Ontario, Canada. At each trial site onion seed, which had been treated with 2.5 lbs. PRO-GRO containing 0.75 lbs. active ingredient per 100 lbs. seed (1x the label rate), was planted and onions were grown to maturity. Mature onions, depending upon variety, were harvested from 118 days to 197 days after treatment. Residues of carboxin, and its sulfoxide metabolite, both quantitated as carboxin, were as follows. Seventeen of 18 onion samples grown from seed treated at the 1x rate had residues of total carboxin less than the limit of detection of 0.1 ppm. One sample had a total carboxin residue value of 0.1 ppm. One onion sample grown from seed which had been treated with PRO-GRO at 2x the label rate had no carboxin residues above the 0.1 ppm limit of detection. The submitted field trial data indicate that residues of carboxin will not exceed the proposed tolerance of 0.2 ppm in mature onions grown from seed which had been treated with PRO-GRO at the label rate.

B. Toxicological Profile

1. *Acute toxicity.* Acute toxicity studies on carboxin demonstrate that the oral and dermal LD_{50} values for the technical material are 2.86 and > 4.0 g/kg, respectively. The 4-hour inhalation LC_{50} in rats is 4.7 milligrams/Liter (mg/L). Irritation tests in rabbits showed carboxin to be a mild eye irritant and non-irritating to the skin. Carboxin did not cause skin sensitization in studies with guinea pigs.

2. *Genotoxicity.* Bacterial/mammalian microsomal mutagenicity assays were performed and carboxin was found not to be mutagenic. Two chromosomal aberration assays were conducted, in CHO cells and in mouse bone marrow *in vivo*, and were also negative. A study was performed in rat hepatocytes and demonstated the induction of UDS.

3. *Reproductive and developmental toxicity.* In a developmental toxicity study in rats conducted in 1989, carboxin was administered by oral gavage to pregnant, Sprague Dawley rats at dosage levels of 10, 90, and 175 mg/kg/day. Decreased maternal body weight gain was seen at dose levels of 90 and 175 mg/kg/day. The report states that there was a slightly reduced mean fetal body weight in the high dose group compared to controls (3.3 g vs. 3.5 g). However, a recent evaluation of 59 studies of the historical control data in the final report shows that between 10/83 and 4/87, the range for fetal weight was 3.1 g to 5.1 g. Therefore, a mean fetal weight of 3.3 g in the 175 mg/kg/day group is within the historical control range. Maternal toxicity was also noted at this dosage level. Therefore, the NOAEL for developmental toxicity is greater than 175 mg/kg/day and the NOAEL for maternal toxicity, based on decreased body weight gain, is 10 mg/kg/day.

In a developmental toxicity study in rabbits, carboxin was administered by oral gavage to pregnant White rabbits at dosage levels of 75, 375, and 750 mg/kg/day. There were no treatment related effects at any dose level with the exception of three abortions in the high dose group and one abortion in the mid dose group. An evaluation of historical control data from 28 studies conducted at that time shows abortion rates of 3/17, and 5/16 in two studies, as well as a number of studies in which there were one or two abortions each. Therefore, considering that there was no maternal toxicity at dose levels of 375 or 750 mg/kg/day of carboxin, it would have to be concluded that the 1/16 and 3/16 abortions seen in the mid and high dose groups were spontaneous. The NOAEL for maternal and developmental toxicity was considered to be greater than 750 mg/kg/day.

In a dietary 2-generation rat reproduction study, carboxin was fed to male and female Sprague Dawley rats at dietary concentrations of 20, 200, and 400 ppm in males, and 20, 300 and 600 ppm in females. At the high dose level there was a decrease in body weight gain in parental males and females and a reduction in pup growth during lactation. No effects on reproduction were observed. The NOAEL for systemic, adult toxicity was 200 ppm (10 mg/kg/day). The NOAEL for offspring growth was 300 ppm (15 mg/kg/day) and the NOAEL for reproductive effects was greater than 400 ppm (20 mg/kg/day).

4. *Subchronic toxicity.* A 13-week rat feeding study was conducted at dietary concentrations of 200, 800, and 2,000 ppm. A reduction in body weight gain was seen in males at 800, and 2,000 ppm, and in females at 2,000 ppm. A reduction in blood levels of glucose, protein and/or globulin was seen in males at 800, and/or 2,000 ppm, and an increase in urea nitrogen was seen in females at 2,000 ppm. Nephritis was seen in males and females given 800 and 2,000 ppm and in males given 200 ppm. The NOAEL for subchronic toxicity in rats was 200 ppm (10 mg/kg/day) in females and less than 200 ppm in males.

5. *Chronic toxicity.* Carboxin was fed to Beagle dogs for 1–year at dietary concentrations of 40, 500 and 7,500 ppm. There was a reduction in body weight gain in female dogs at dose levels of 500 and 7,500 ppm. At a dose level of 7,500 ppm, there was a decreased hematocrit in males and an increase in serum alkaline phosphatase in males and females. The NOAEL for chronic toxicity was 1 mg/kg/day.

Carboxin was fed to Sprague Dawley rats for 2 years at dietary concentrations of 20, 200, and 400 ppm in males, and 20, 300, and 600 ppm in females in a study completed in 1991. Survival was reduced in high dose males and body weight gain was significantly reduced in high dose males and females. Chronic nephritis was seen in mid and high dose rats, and this effect was more severe in males. There was no treatment related increase in tumor incidence in rats. The NOAEL for chronic toxicity was 1 mg/kg/day.

Carboxin was fed to B6C3F1 mice for 18 months at dietary concentrations of 50, 2,500, and 5,000 ppm. At dosage levels of 2,500, and 5,000 ppm there was in increased incidence of liver hypertrophy. There was no treatment related increase in tumor incidence.

6. *Animal metabolism.* In the rat metabolism study, the percentage of dose did not exceed 0.21% in any tissue and the total percentage of dose in all tissues was 0.26-0.40%. The majority of the dose was excreted in the urine (about 80% within 72 hours). The predominant metabolite was *p*-hydroxy carboxin sulfoxide and the other major metabolite was 4-acetamidophenol. Unchanged carboxin was not detected in the excreta.

7. *Metabolite toxicology.* Although no toxicology studies have been conducted on carboxin metabolites per se, none of these would be expected to have significant toxicity. The residue of concern is the parent compound only.

8. *Endocrine disruption.* No specific studies have been conducted to evaluate potential estrogenic or endocrine effects; however, the standard battery of required studies has not demonstrated any evidence which is suggestive of hormonal effects. Evaluation of the rat multigenerational study demonstrated no effect on the time to mating or on the mating and fertility indices. Chronic and subchronic toxicity studies in rats and dogs did not demonstrate any evidence of toxicity to the male or female reproductive tract or to any endocrine organ associated with endocrine disruption.

C. Aggregate Exposure

1. *Dietary exposure.* The potential dietary exposure from food was assessed using the conservative assumptions that all residues would be at tolerance levels (existing tolerances and the proposed onion tolerance) and that all the commodities would contain residues (100% crop treated). Since onions are not a livestock feed item, the existing tolerances for animal commodities would be adequate.

i. *Food.* The dietary exposure estimate was determined using the tolerance assessment system (TAS) exposure 1® software (1977 food consumption data). The chronic RfD used in the analysis was 0.01 mg/kg/day, based on the NOAEL of 1 mg/kg/day in the rat and dog chronic studies and a 100-fold safety factor. The calculated exposure contribution from carboxin use on onions to the general population was 0.000021 mg/kg/day, 0.21% of the RfD. Infant exposure was 0.000008 mg/kg/day, < 0.1% of the RfD. For the population subgroup children 1–6, the exposure contribution from carboxin was 0.000036 mg/kg/day, 0.36% of the RfD. Total estimated dietary exposure to the general population from the combined existing carboxin uses and the proposed use on onions was determined as 0.001037 mg/kg/day (10.4% of the RfD). For infants and children, the exposure was 0.002444 mg/kg/day (24.4% of the RfD) and 0.002245 mg/kg/day (22.4% of the RfD), respectively.

ii. *Drinking water.* There are no established MCLs for residues of carboxin in drinking water. Health advisory (HA) levels for carboxin in drinking water for adults are 4 and 0.7 mg/L (longer term and life time HA levels respectively) and 1 day, 10 day, and longer term HA levels are all 1 mg/L for children. Seed treatment uses do not typically require a drinking water assessment. Use of carboxin as a seed treatment (at an application rate of < one half ounce active ingredient per acre) is not expected to impact ground water or surface waters or result in significant human exposure. The estimated acute and chronic DWLOC were compared to estimated maximum acute and chronic concentrations of carboxin in surface and ground water from the proposed onion use, as calculated using GENEEC and screning concentration in ground water (SCI-GRO) models. These maximum estimates were well below the DWLOC values by 2-6 orders of magnitude, indicating carboxin would not pose a drinking water concern.

2. *Non-dietary exposure.* Carboxin is registered only for commercial agricultural use, and not for homeowner use. Therefore, non-occupational exposure to the general population from carboxin is unlikely, and is not considered in the aggregate exposure assessments.

D. Cumulative Effects

The potential for cumulative effects of carboxin and other substances that have a common mechanism was considered. The mammalian toxicity of carboxin is well defined, with the kidney being identified as target organ. However, since the biochemical mechanism of toxicity of this compound is not known, it cannot be determined if toxic effects produced by carboxin would be cumulative with any other chemical compound. Thus, only the potential risk of carboxin is considered in the aggregate exposure assessment.

E. Safety Determination

1. *U.S. population.* Exposure to carboxin would occur primarily from the dietary route. Maximum theoretical levels of carboxin in drinking water were well below drinking water levels of concern for adults and children. Non-occupational exposure to the general population is not expected. Because calculation of the dietary exposure used tolerance levels for all crops and animal commodities and assumed 100% of the crop was treated, the exposure values are considered to be overestimates. Consideration of anticipated residues and actual percent crop treated would likely result in a significantly lower dietary exposure.

Chronic dietary exposure to the general U.S. population from existing uses and the proposed onion use of carboxin was 10.4% of the RfD. For infants and children, the exposure was 24.4% and 22.4% of the RfD, respectively. Therefore, there is a reasonable certainty that no harm will result from dietary exposure to carboxin residues.

2. *Infants and children.* The potential for carboxin to induce toxic effects in children at a greater sensitivity than the general population has been assessed by the rat and rabbit developmental and 2–generation reproduction studies. There was no evidence of embryotoxicity or teratogenicity, and no effects on reproductive parameters as a result of carboxin exposure. The lowest NOAEL for any developmental effect in these studies (15 mg/kg/day reduced pup growth during lactation in the rat reproduction study) is considerably greater than the NOAEL for systemic toxicity in rats (1 mg/kg/day for nephritis in the rat chronic feeding study) which demonstrates that there is no prenatal or postnatal sensitivity to carboxin. Therefore, it is inappropriate to assume that infants and children are more sensitive than the general population to the effects from exposure to carboxin residues.

F. International Tolerances

A MRL has not been established for carboxin by the Codex Alimentarius Commission.

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–00629; FRL–6499–9]

Indoor Residential Insecticide Product Label Statements; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of a draft Pesticide Registration (PR) Notice that is part of EPA's continuing effort to reduce unnecessary exposures of human and pets to insecticides used in residential settings and to improve the safety of their use. The draft PR Notice is a guidance document, the intent of which is to clarify certain portions of residential insecticide product labels. In addition to helping reduce unnecessary exposure, the proposed label modification will help provide the Agency with additional methods of estimating residential exposure to pesticides as is mandated by the Federal Food, Drug and Cosmetic Act (FFDCA) as amended by the Food Quality Protection Act (FQPA), August 3, 1996. Please note that the guidance in the draft PR Notice should not be viewed as a substitution for the policies required when completing residential risk assessments.

DATES: Comments, identified by docket control number OPP–00629, must be received on or before May 30, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00629 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Mark Dow or Tracy Keigwin, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone numbers: (703) 305–5533 and (703) 305–6605 respectively; fax number: (703) 305–6596; e-mail addresses: dow.mark@epa.gov; keigwin.tracy@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. This action may, however, be of interest to state regulatory agencies, medical personnel, pesticide registrants. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax on Demand.* You may request to receive a faxed copy of the draft PR Notice titled "Indoor Residential Insecticide Product Label Statements" by using a faxphone to call (202) 401–0527 and selecting item 6121. You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00629. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–00629 in the subject line on the first page of your response.

1. *By mail.* Submit written comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person.* Deliver written comments to: Public Information and Records Integrity Branch, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–00629. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the rule or collection activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

The Agency is providing a draft guidance document, for public comment, proposed for use by pesticide registrants so that labels for residential insecticide products may be modified to help reduce unnecessary exposure, and to help provide the Agency with additional means with which to assess human and pet exposure to residential insecticide products.

List of Subjects

Environmental protection.

Dated: March 16, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 00–7630 Filed 3–28–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00648; FRL–6498–2]

List of Pests of Significant Public Health Importance; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of a draft Pesticide Registration (PR) Notice that identifies pests of significant public health importance for the purpose of regulation under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). EPA, in coordination with the Department of Health and Human Services and the Department of Agriculture has identified pests of significant public health importance. The development of the list is required by FIFRA, but has no effect on the regulatory status of pesticide products used against the listed pests.

DATES: Written comments, identified by the docket control number OPP–00648, must be received on or before May 30, 2000.

ADDRESSES: Comments may be submitted by regular mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Kevin Sweeney, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Avenue, NW., Washington, DC 20460; telephone: (703) 305–5063, fax: (703) 305–6596, e-mail: sweeney.kevin@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Important Information

A. Does this Apply to Me?

This action is directed to the public in general, but may be of particular interest to manufacturers of pesticides intended for use against public health pests, and those responsible for public health programs involved in the control or regulation of public health pests. Since other entities may also be interested, the Agency has not attempted to describe all the specific entities that may be affected by the notice being made available today. If you have any questions regarding the applicability of the notice to a particular entity, consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

B. How Can I Get Additional Information or Copies of Support Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax on Demand.* You may request to receive a faxed copy of the draft PR Notice titled "List of Pests of Significant Public Health Importance" by using a faxphone to call (202) 401–0527 and selecting item 6125. You may also follow the automated menu.

3. *In person.* The official record for this notice, as well as the public version, has been established under docket control number OPP–00648, (including comments and data submitted electronically as described below). A public version of this record, including printed, paper versions of any electronic comments, which does not include any information claimed as CBI, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically:

1. *By mail.* Submit written comments to: "Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person.* Deliver written comments to: Public Information and Records Integrity Branch, Rm. 119, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

3. *Electronically.* Submit your comments and/or data electronically to opp-docket@epa.gov. Please note that you should not submit any information electronically that you consider to be Confidential Business Information (CBI). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comment and data will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. All comments and data in electronic form must be identified by the docket control number OPP–00648. Electronic comments on this notice may also be filed online at many Federal Depository Libraries.

D. How Should I Handle Information that I Believe is Confidential?

You may claim information that you submit in response to this document as confidential by marking any part or all of that information as CBI. Information

so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice.

II. Background

FIFRA section 28(d) charges EPA with identifying "pests of significant public health importance." This process is aided consjderably by FIFRA definitions of two key terms. First, FIFRA section 2 expressly defines the term "pest" as meaning:

(1) any insect, rodent, nematode, fungus, weed, or (2) any other form of terrestrial or aquatic plant or animal life or virus, bacteria, or other micro-organism (except viruses, bacteria, or other micro-organism on or in living man or other living animals) which the Administrator declares to be a pest under section 25(c)(1).

EPA in its regulations in 40 CFR 152.5 has broadly defined the term pest to cover each of the organisms mentioned except with respect to the organisms specifically excluded by the definition.

Second, although FIFRA does not define a "public health pest," it does define a "public health pesticide" and this definition supplies important information for interpreting the term "public health pest." Among other things, a "public health pesticide" must be used for "vector control or for other recognized health protection uses, including the mitigation of viruses, bacteria, or other microorganisms (other than viruses, bacteria, or other microorganisms on or in living man or other living animal) that pose a threat to public health." FIFRA section 2(oo) defines the term "vector" used in the above definition as "any organism capable of transmitting the causative agent of human disease or capable of producing human discomfort or injury, including mosquitoes, flies, fleas, cockroaches, or other insects and ticks, mites, or rats."

Moreover EPA's task of identifying pests of "significant" public health importance requires EPA to identify those FIFRA pests that are significant vectors or other significant pests affecting public health. The statute does not define what aspects of a vector render it of significant public health importance. Nonetheless, the definition of a "public health pesticide" identifies an important criterion for establishing the significance of a vector. Not only must a public health pesticide be a pesticide used for vector control, it must be a pesticide "used predominantly in public health programs." EPA believes that significant vectors can be identified by determining which vectors have been deemed sufficiently important that federal, state, or local public entities have devoted substantial resources to their eradication. Using this criterion, EPA has identified the pests in Appendix A of the draft PR Notice.

III. Use of the List of Pests of Significant Public Health Importance by the Agency

The Agency will use the list of pests of significant public health importance to:

1. Identify pesticide products with public health uses that are used predominantly in recognized public health programs. These may include pesticides to control, attract or repel these pests.

2. Identify critical public health minor uses.

3. Together with the Public Health Service, develop and implement programs to improve and facilitate the safe and necessary use of chemical, biological and other methods to control pests of significant public health importance.

IV. Specific Topics for Comment

Please comment on all aspects of the draft PR Notice. The Agency is particularly looking for comments to the following questions:

1. Should EPA also publish a list of public health pests which may become significant? This would be equivalent to identifying the universe of public health pests.

2. Is cockroach control in publicly funded housing a public health program *per se*, or is it merely a component of a building maintenance program?

3. Should the use of public funds for the purpose of controlling public health pests by pesticide application be the criterion for identifying a public health program?

4. For a pesticide product to qualify as predominantly used in a public health program, should more than half of the use of the pesticide product, taking into account all registered uses for the pesticide product, be used in a public health program?

V. Contents of Docket

The document referenced in this notice will be placed in the public docket under the docket control number "OPP–00648."

List of Subjects

Environmental protection, Public health pests, Public health pesticides.

Dated: March 22, 2000.

Marcia E. Mulkey,

Director, Office of Pesticide Programs.

[FR Doc. 00–7631 Filed 3–28–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 20, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before April 28, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–XXXX.

Title: Auditor's Annual Independence and Objectivity Certification.

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 7 respondents; 14 responses.

Estimated Time Per Response: 10 hours per response; filed twice annually.

Frequency of Response: On occasion reporting requirement and annual reporting requirement.

Total Annual Burden: 70 hours.

Total Annual Cost: N/A.

Needs and Uses: In the Responsible Accounting Officer (RAO) letter, the Accounting Safeguards Division (ASD), Common Carrier Bureau, is simply making a current GAAS (generally accepted auditing standards) requirement for financial statement audits explicitly applicable to the Section 64.904 audit, *i.e.*, applying the section 64.904 requirement that the audits be performed in accordance with GAAS. Specifically, the RAO requires that carriers' independent auditors: (a) disclose to the ASD, in writing, all relationships between the auditor and its related entities and the carrier and its related entities that in the auditor's professional judgement may reasonably be thought to bear on independence; (b) confirm in writing to ASD that in its professional judgement, it is independent of the carrier, and (c) discuss the auditor's independence with ASD.

The above requirements will be used by ASD to determine whether the independent auditors are performing their audits independently and unbiased of the carrier they audit.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7705 Filed 3–28–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Board of Governors of the Federal Reserve System.

SUMMARY:

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act, as per 5 CFR 1320.16, to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320 Appendix A.1. Board-approved collections of information are incorporated into the official OMB inventory of currently approved collections of information. Copies of the OMB 83–Is and supporting statements and approved collection of information instruments are placed into OMB's public docket files. The Federal Reserve may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Request for Comment on Information Collection Proposals

The following information collections, which are being handled under this delegated authority, have received initial Board approval and are hereby published for comment. At the end of the comment period, the proposed information collections, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority. Comments are invited on the following:

a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility;

b. The accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

c. Ways to enhance the quality, utility, and clarity of the information to be collected; and

d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Comments must be submitted on or before May 30, 2000.

ADDRESSES: Comments, which should refer to the OMB control number or agency form number, should be addressed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW, Washington, DC 20551, or delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments received may be inspected in room M–P–500 between 9 a.m. and 5 p.m., except as provided in section 261.14 of the Board's Rules Regarding Availability of Information, 12 CFR 261.14(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Alexander T. Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the proposed form and instructions, the Paperwork Reduction Act Submission (OMB 83–I), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below.

Mary M. West, Chief, Financial Reports Section (202–452–3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact Diane Jenkins (202–452–3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

Proposal To Approve Under OMB Delegated Authority the Extension for Three Years, Without Revision, of the Following Reports

1. *Report title:* Senior Loan Officer Opinion Survey on Bank Lending Practices.

Agency form numbers: FR 2018.

OMB control number: 7100–0058.

Frequency: Up to six times per year.

Reporters: Large U.S. commercial banks and large U.S. branches and agencies of foreign banks.

Annual reporting hours: 1,008.

Estimated average hours per response: 2.0.

Number of respondents: 84.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a), 324, 335, 3101, 3102, and 3105) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: The FR 2018 is conducted with a senior loan officer at each respondent bank, generally by means of a telephone interview, up to six times a year. The interview is administered by a Reserve Bank officer having in-depth knowledge of bank lending practices. The reporting panel consists of sixty large domestically chartered commercial

banks, distributed as evenly as possible across Federal Reserve Districts, and twenty-four large U.S. branches and agencies of foreign banks. The purpose of the survey is to provide primarily qualitative information pertaining not only to current price and flow developments but also to evolving techniques and practices in the U.S. banking sector. A significant fraction of the questions in each survey consists of unique questions on topics of timely interest. There is the option to survey other types of respondents (such as other depository institutions, bank holding companies, or corporations) should the need arise. The FR 2018 survey provides crucial information for monitoring and understanding the evolution of lending practices at banks and developments in credit markets generally.

2. *Report title:* Senior Financial Officer Survey.

Agency form number: FR 2023.

OMB control number: 7100–0223.

Frequency: Up to four times per year.

Reporters: Commercial banks, other depository institutions, corporations or large money-stock holders.

Annual reporting hours: 240.

Estimated average hours per response: 1.0.

Number of respondents: 60.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 225a, 248(a), and 263); confidentiality will be determined on a case-by-case basis.

Abstract: The FR 2023 requests qualitative and limited quantitative information about liability management and the provision of financial services from a selection of sixty large commercial banks or, if appropriate, from other depository institutions or corporations. Responses are obtained from a senior officer at each participating institution through a telephone interview conducted by Reserve Bank or Board staff. The survey is conducted when major informational needs arise and cannot be met from existing data sources. The survey does not have a fixed set of questions; each survey consists of a limited number of questions directed at topics of timely interest.

3. *Report title:* Consolidated Report of Condition and Income for Edge and Agreement Corporations.

Agency form number: FR 2886b.

OMB control number: 7100–0086.

Frequency: Quarterly.

Reporters: Edge and agreement corporations.

Annual reporting hours: 3,566.

Estimated average hours per response: 14.7 banking corporations, 8.5 investment corporations.

Number of respondents: 30 banking corporations, 53 investment corporations.

Small businesses are not affected.

General description of report: This information collection is mandatory (12 U.S.C. 602 and 625) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This report collects a balance sheet, income statement, and ten supporting schedules from banking Edge corporations and investment (nonbanking) Edge corporations. Information collected on the FR 2886b is used by the Federal Reserve to supervise Edge corporations, identify present and potential problems, and monitor and develop a better understanding of activities within the industry.

The Federal Reserve proposes to make several clarifying updates to the reporting instructions to reflect the implementation of FASB Statement No. 133, "Accounting for Derivative Instruments and Hedging Activities," to address the reporting of inactive corporations, and to clarify the reporting of certain International Banking Facility transactions.

Proposal To Approve under OMB Delegated Authority the Extension for Three Years, With Revision, of the Following Report:

1. *Report title:* Report of Repurchase Agreements (RPs) on U.S. Government and Federal Agency Securities with Specified Holders.

Agency form number: FR 2415.

OMB control number: 7100–0074.

Frequency: Weekly, quarterly, or annually.

Reporters: U.S.-chartered commercial banks, U.S. branches and agencies of foreign banks, and thrift institutions.

Annual reporting hours: 2,754.

Estimated average hours per response: 0.5.

Number of respondents: 84 weekly, 153 quarterly, and 528 annually.

Small businesses are not affected.

General description of report: This information collection is voluntary (12 U.S.C. 248(a)(2) and 3105(b)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

Abstract: This report collects one data item—repurchase agreements (RPs) in denominations of $100,000 or more, in immediately-available funds, on U.S. government and federal agency securities, transacted with specified holders. It is filed by three reporting panels of depository institutions with different reporting frequencies (weekly, quarterly, and annual). The weekly panel reports daily data once each week. The quarterly panel files daily data for four one-week reporting periods that contain quarter-end dates. The annual panel reports daily data only for the week encompassing June 30 each year. Data from the FR 2415 supply information necessary for construction of the M3 monetary aggregate.

Current Actions: The Federal Reserve proposes two changes to this report: (1) to raise the thresholds for re-screening existing respondents on two of the three reporting panels (weekly and quarterly) and (2) to adjust the cutoff for screening thrift institutions that do not file the FR 2415 to accommodate a definition change on the report of condition for thrift institutions. The Federal Reserve estimates the proposed revision would decrease the annual reporting burden by 314 hours and annual respondent costs by approximately $6,280.

Board of Governors of the Federal Reserve System, March 23, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7689 Filed 3–28–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 10 a.m. (EDT); April 10, 2000.

PLACE: 4th Floor, Conference Room 4506, 1250 H. Street, N.W. Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the March 13, 2000, Board member meeting.

2. Thrift Savings Plan activity report by the Executive Director.

3. Review of Arthur Andersen annual financial audit.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: March 27, 2000.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 00–7862 Filed 3–27–00; 2:45 pm]

BILLING CODE 6760–01–M

GENERAL SERVICES ADMINISTRATION

Office of Communications; Cancellation of a Standard Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The following Standard Form is cancelled because of low usage: OF 68, Record of Travel Expense.

DATES: Effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, General Services Administration, (202) 501–0581.

Dated: March 15, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Office.

[FR Doc. 00–7725 Filed 3–28–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–30]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. Hanford Community Health Project Survey—New—The Agency for Toxic Substances and Disease Registry (ATSDR) is mandated pursuant to the 1980 Comprehensive Environmental Response Compensation and Liability Act (CERCLA) and its 1986 Amendments, the Superfund Amendments and Re-authorization Act (SARA), to prevent or mitigate adverse human health effects and diminished quality of life resulting from the exposure to hazardous substances into the environment. These activities include conducting public health assessments at sites on the Environmental Protection Agency's (EPA) National Priorities List (NPL) to determine whether exposure to hazardous substances at these sites are harmful to human health.

The Hanford Nuclear Reservation, located in south central Washington State, is on EPA's National Priorities List. Between 1944 when it opened until its closing in 1972, an estimated 740,000 curies of radioactive Iodine were released to the air from chemical separation facilities used to produce plutonium for atomic weapons development. The Hanford Environmental Dose Reconstruction project (HEDR) estimates that the majority of releases of Iodine-131 occurred between 1944 and 1951. Radioactive Iodine accumulates in the thyroid gland. Studies indicate that exposure to radioactive Iodine is associated with an increased risk of developing thyroid cancers and other thyroid diseases. Children up to five years of age may be at higher risk than the general population of developing cancer after exposure.

The objective of this survey is to collect information on utilization of health care services, knowledge of and information needs related to radioactive Iodine releases from Hanford, health risk and exposure awareness, use of and interest in thyroid medical evaluations, and demographic information. This information will assist ATSDR staff in determining health education needs and planning effective health education activities for people exposed to radioactive Iodine and/or at risk for thyroid disease. This work may have applicability to other sites where exposure to radioactive Iodine has occurred. In previous ATSDR work (OMB No.0923–0006) approximately 6,000 people were located who were born between 1940 and 1951 in three counties (Benton, Franklin and Adams) nearest the Hanford site. For this proposed project, ATSDR plans to randomly select and complete 500 individual interviews from this cohort of 6,000 persons.

To reduce the amount of time required by the respondents, Computer Assisted Telephone Interviews (CATI) will be conducted. The information collected in this proposed survey will provide reliable baseline information for developing effective educational materials and outreach activities. Other than their time to participate, there are no costs to the respondents.

Respondents	Number of respondents per year	Number of responses per respondent	Avg. burden per response (in hrs.)	Total annual burden (in hrs.)
Individuals born near Hanford site	500	1	.25	125

Date: March 22, 2000.

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–7703 Filed 3–28–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1033]

Draft Guidance for Industry on Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft guidance for industry entitled "Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank." The draft guidance provides recommendations for sponsors of investigational new drug applications (IND's) on submitting information about clinical trials for serious or life-threatening diseases to a clinical trials data bank developed by the National Library of Medicine (NLM) at the National Institutes of Health (NIH). Section 113 of the Food and Drug Administration Modernization Act (Modernization Act) required the establishment of this data bank and specified what information was to be submitted for it.

DATES: Submit written comments on the draft guidance by May 30, 2000. The deadline for submission of comments on the information collection requirements is May 30, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this draft guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm or http://www.fda.gov/cber/guidelines.htm. Submit written requests for single copies of the draft guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research (CDER), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, or to the Office of Communication, Training, and Manufacturers Assistance (HFM–40), Center for Biologics Evaluation and Research (CBER), 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–3844, FAX 888–CBERFAX. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the draft guidance or on the collection of information requirements to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Requests and comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Theresa A. Toigo (HF–12), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4460.

SUPPLEMENTARY INFORMATION:

I. Description of Guidance

FDA is announcing the availability of a draft guidance for industry entitled "Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank." The draft guidance is intended to provide recommendations for sponsors of IND's on submitting information about clinical trials for serious or life-threatening diseases to a clinical trials data bank developed by the NLM, NIH.

The Modernization Act (Public Law 105–115), enacted on November 21, 1997, amends section 402 of the Public Health Service Act (the PHS Act) (42 U.S.C. 282) and directs the Secretary of Health and Human Services (the Secretary), acting through the Director of NIH, to establish, maintain, and operate a data bank of information on clinical trials for drugs for serious or life-threatening diseases and conditions (hereafter referred to as the Clinical Trials Data Bank).

The Clinical Trials Data Bank is intended to be a central resource, providing current information on clinical trials to individuals with serious or life-threatening diseases, to other members of the public, and to health care providers and researchers. Specifically, the Clinical Trials Data Bank will contain information about both federally and privately funded studies of experimental treatments for patients with serious or life-threatening diseases conducted under FDA's IND regulations (part 312 (21 CFR part 312)). This Clinical Trials Data Bank expands upon currently available information on federally-sponsored trials in various data bases within NIH (e.g., NIH Intramural Clinical Center Studies, Physician's Data Query/National Cancer Institute) and information about federally and privately sponsored human immunodeficiency virus/acquired immune deficiency syndrome HIV/AIDS trials made available through the AIDS Clinical Trials Information Service (ACTIS)

The NLM is developing the Clinical Trials Data Bank and implementing it in a phased approach. The first version of the Clinical Trials Data Bank was made available to the public on February 29, 2000. The new data base can be reached at http://clinicaltrials.gov. It includes primarily NIH-sponsored trials. Later in 2000, data from other Federal agencies and the private sector will be incorporated.

The draft guidance provides recommendations for industry on the submission of protocol information to the Clinical Trials Data Bank. It includes information on the types of clinical trials for which submissions will be required under section 113 of the Modernization Act, as well as the types of information to be submitted. An implementation plan, addressing procedural issues, will be available later in 2000. The implementation plan will include information on how to submit protocols to the Clinical Trials Data Bank, and how to provide certification to the Secretary that disclosure of information for a particular protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation. It will also discuss issues related to the voluntary submission of information not required by section 113 of the Modernization Act (e.g., study results, trials for non-serious or non-life-threatening diseases). Until the implementation guidance document is available, sponsors submitting clinical trials information for inclusion in the ACTIS data bank should continue to follow procedures currently in place. Non-NIH sponsors of clinical trials for other serious or life-threatening diseases need not provide clinical trials information to the data bank until after procedures are described in the implementation plan that will be available later this year. When the procedures are issued, we will establish a timeframe for submitting the information.

In developing a plan for making publicly available information from the Clinical Trials Data Bank, FDA and NIH considered comments submitted to Docket No. 98D–0293, "Section 113 NIH Data Bank—Clinical Trials for Serious Diseases." A phased approach was used for developing guidance. This first document addresses general information on the scope of the data bank. The second guidance will be on implementation and will be developed based on the initial data bank experience using NIH-sponsored trials.

In addition to NLM's development of the Clinical Trials Data Bank, NIH will be evaluating options for making available clinical trials information through a toll-free telephone system. Further, section 113(b) of the Modernization Act directed the Secretary to submit a report to Congress to determine the public health need, if any, for inclusion of device investigations in the data bank, and the adverse impact, if any, on device innovation and research in the United States if such information is required to be publicly disclosed. A report entitled "A Device Clinical Trials Data Bank—Public Health Need and Impact on Industry" was sent to Congress in November 1999. The report is available on the Modernization Act guidance page at http://www.fda.gov/cdrh/modact/modguid.html.

Section 113(a) of the Modernization Act requires that sponsors of IND's submit to the Clinical Trials Data Bank a description of the purpose of each experimental drug, eligibility criteria for participation in the trial, the location of clinical trial sites, and a point of contact for those wanting to enroll in the trial. The statute requires that the information be provided in a form that can be readily understood by members of the public. This draft guidance provides information on how IND sponsors can fulfil the requirements of section 113(a) of the Modernization Act by submitting information in the following four areas: (1) Descriptive information, (2) recruitment information, (3) location and contact information, and (4) administrative information. FDA and NIH developed these data elements based on the legislative requirements and comments submitted to Docket No. 98D–0293.

This draft guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The draft guidance represents the agency's current thinking on submitting information on clinical trials for serious or life-threatening diseases to a Clinical Trials Data Bank developed by the NLM. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes, regulations, or both.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m and 4 p.m., Monday through Friday.

II. The Paperwork Reduction Act of 1995

Under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of Information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3 and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information listed below in this document.

With respect to the following collection of information, FDA invites comment on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Draft Guidance for Industry on Information Program on Clinical Trials for Serious or Life-Threatening Diseases: Establishment of a Data Bank.

Description: FDA is issuing a draft guidance to industry on recommendations for IND sponsors on submitting information about clinical trials for serious or life-threatening diseases to a Clinical Trials Data Bank developed by the NLM, NIH. The draft guidance describes procedures for IND sponsors to submit information about clinical trials of experimental treatments for serious or life-threatening diseases. This information is especially important for patients and their families seeking opportunities to participate in clinical trials of new drug treatments for serious or life-threatening diseases.

The draft guidance describes three collections of information: Mandatory submissions, voluntary submissions, and certifications.

A. Mandatory Submissions

Section 113 of the Modernization Act requires that sponsors "shall" submit information to the Clinical Trials Data Bank when the clinical trial: (1) Involves a treatment for a serious or life-threatening disease and (2) is intended to assess the effectiveness of the treatment.

The draft guidance discusses how sponsors can fulfill the requirements of section 113 of the Modernization Act. Specifically, sponsors should provide: (1) Information about clinical trials, both federally and privately funded, of experimental treatments (drugs, including biological products) for patients with serious or life-threatening diseases; (2) a description of the purpose of the experimental drug; (3) patient eligibility criteria; (4) the location of clinical trial sites; and (5) a point of contact for patients wanting to enroll in the trial.

B. Voluntary Submissions

Section 113 of the Modernization Act also specifies that sponsors may voluntarily submit information pertaining to results of clinical trials, including information on potential toxicities or adverse effects associated with the use or administration of the investigational treatment. Sponsors may also voluntarily submit studies that are not trials to test effectiveness or not for serious or life-threatening diseases to the Clinical Trials Data Bank. This notice of proposed collection only applies to the voluntary submission of information pertaining to studies that are not trials to test effectiveness or not for serious or life-threatening diseases. Any paperwork burden associated with the voluntary submission of information pertaining to the results of clinical trials will be discussed in the implementation document.

C. Certifications

Section 113 of the Modernization Act specifies that the data bank will not include information relating to a trial if the sponsor certifies to the Secretary that disclosure of the information would substantially interfere with the timely enrollment of subjects in the investigation, unless the Secretary makes a determination to the contrary.

Description of Respondents: A sponsor of a drug or biologic product

regulated by the agency under the Federal Food, Drug, and Cosmetic Act or section 351 of the PHS Act who submits a clinical trial to test effectiveness of a drug or biologic product for a serious or life-threatening disease.

Burden Estimate: The information required under section 113(a) of the Modernization Act is currently submitted to FDA under part 312, and this collection of information is approved by OMB under Control Number 0910–0014 until September 30, 2002, and, therefore, does not represent a new information collection requirement. Instead, preparation of submissions under section 113 of the Modernization Act involves extracting and reformatting information already submitted to FDA. Although the procedures (where and how) for the actual submission of this information have not yet been developed, the agency believes it has an adequate basis for the determination of the hourly burden related to extracting and reformatting this information. The chart below provides an estimate of the annual reporting burden for the submission of information to satisfy requirements of section 113 of the Modernization Act .

CDER is currently receiving 99.2 new protocols per week (mean value, March through May, 1999), or 5,158 new protocols per year. CDER anticipates that protocol submission rates will remain at or near this level in the near future. Of these new protocols, an estimated two-thirds are for serious or life-threatening diseases and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 5,158 protocols per year is 3,439 new protocols per year. An estimated 65 percent of the new protocols for serious or life-threatening diseases submitted to CDER are for clinical trials involving assessment for effectiveness, and are subject to the mandatory reporting requirements under section 113 of the Modernization Act. Sixty-five percent of 3,439 protocols per year is 2,235 new protocols per year subject to mandatory reporting. The remaining 2,923 new protocols per year are subject to voluntary reporting.

CBER is currently receiving 29 new protocols per month, or 348 new protocols per year. CBER anticipates that protocol submission rates will remain at or near this level in the near future. An estimated two-thirds of the new protocols submitted to CBER are for clinical trials involving a serious or life-threatening disease, and would be subject to either voluntary or mandatory reporting requirements under section 113 of the Modernization Act. Two-thirds of 348 new protocols per year is 232 new protocols per year. An estimated sixty-five percent of the new protocols for serious or life-threatening diseases submitted to CBER are for clinical trials involving assessments for effectiveness. Sixty-five percent of 232 protocols per year is an estimated 151 new protocols per year subject to the mandatory reporting requirements under section 113. The remaining 197 new protocols per year are subject to voluntary reporting.

The estimated total number of new protocols for serious or life-threatening diseases subject to mandatory reporting requirements under section 113 of the Modernization Act is 2,235 for CDER plus 151 for CBER, or 2,386 new protocols per year. The remainder of protocols submitted to CDER or CBER will be subject to voluntary reporting, including clinical trials not involving a serious or life-threatening disease as well as trials in a serious or life-threatening disease but not involving assessment of effectiveness. Therefore, the total number of protocols (5,506) minus the protocols subject to mandatory reporting requirements (2,386) will be subject to voluntary reporting, or 3,120 protocols.

It is anticipated that original protocol submissions to the data bank will be updated 2.5 times each (mean value, based on an average of 1.5 updates for protocol changes or addition of investigational sites, plus one update regarding completion of recruitment for the protocol), for a total of 13,765 responses (5,965 mandatory responses and 7,801 voluntary responses) per year under section 113 of the Modernization Act.

The hours per response is the estimated number of hours that a respondent would spend preparing the information to be submitted under section 113(a) of the Modernization Act, including the time it takes to extract and reformat the information. FDA has been advised that some sponsors lack information system capabilities enabling efficient collection of company-wide information on clinical trials subject to reporting requirements under section 113(a) of the Modernization Act. The estimation of burden under section 113(a) reflects the relative inefficiency of this process for these firms.

Based on its experience reviewing IND's, and consideration of the above information, FDA estimates that approximately 5.6 hours on average would be needed per response (mean value), based on an estimated 3.2 hours for data extraction and 2.4 hours for reformatting. Expenditure of 5.6 hours per submission, for 13,765 submissions, results in a total of 77,084 hours spent per year by respondents in response to section 113(a) of the Modernization Act (33,404 hours for mandatory responses and 43,680 hours for voluntary responses).

A sponsor of a study subject to the requirements of section 113 of the Modernization Act will have the option of submitting data under that section or certifying to the Secretary that disclosure of information for a specific protocol would substantially interfere with the timely enrollment of subjects in the clinical investigation. FDA has no means to accurately predict the proportion of protocols subject to the requirements of section 113 of the Modernization Act that will be subject to a certification submission. However, it is anticipated that the burden associated with such certification will be comparable to that associated with submission of data regarding a protocol. Therefore, the overall burden is anticipated to be the same regardless of whether the sponsor chooses data submission or certification for nonsubmission. Table 1 of this document reflects the estimate of this total burden.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

Submissions	Number of CDER Respondents	Number of CBER Respondents	Total Number of Respondents	Number of Responses per Respondent	Total Annual Responses	Hours per Response	Total Hours
Total mandatory submissions	2,235	151	2,386	2.5	5,965	5.6	33,404
Total voluntary submissions	2,923	197	3,120	2.5	7,800	5.6	43,680
Total	5,158	348	5,506	2.5	13,765	5.6	77,084

[1] There are no capital costs associated with this collection of information.

Dated: March 20, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–7654 Filed 3–28–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Statement of Organization, Functions, and Delegations of Authority

This notice amends Part R of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (DHHS), Health Resources and Services Administration (60 FR 56605 as amended November 6, 1995, as last amended at 65 FR 12021–4, dated March 7, 2000).

This notice reflects the organizational and functional changes in the Bureau of Primary Health Care, Division of Program for Special Populations (RCA).

Delete the functional statement for the Division of Program for Special Populations in its entirety and replace with the following: This Division researches issues and develops program plans which identify and address the health care needs of special population groups. Specifically the Division: (1) Develops and implements health care policies and programs for homeless people, substance abusers, the elderly, residents of public housing, at-risk children and youth, Native Hawaiians, Asian Americans and Pacific Islanders, people living with Black Lung Disease, people with mental health disorders, immigrant populations and people living with the threat of lower extremity amputation; (2) coordinates the identification of issues and establishes Agency/Bureau priorities with other Department/ Agency/Bureau programs; (3) directs nationwide efforts to coordinate health care needs of special populations and stimulates State and local assistance in meeting needs; (4) provides guidance and direction in the development of health care partnerships and networks and coordinates management plans with field offices, other Federal programs, State and private organizations and foundations; (5) develops guidance materials and implements plans to assure attainment of measurable outcomes and desired results; (6) coordinates health needs of special populations with other Agency and Bureau programs, ensuring that funds are allocated according to Agency/Bureau priorities and legislative intent; (7) develops and conducts evaluations of service delivery programs for special populations preparing analytic reports and recommendations for increasing scope, effectiveness and efficiency; (8) administers the budget and related grant awards, contracts, and cooperative agreements; and (9) provides leadership and technical guidance in the development and expansion of community-based systems of care that increase access for all and reduce disparities for special populations.

Delegations of Authority

All delegations and redelegations of authority which were in effect immediately prior to the effective date hereof have been continued in effect in them or their successors pending further redelegation.

This reorganization is effective upon date of signature.

Dated: March 21, 2000.

Claude Earl Fox,

Administrator.

[FR Doc. 00–7656 Filed 3–28–00; 8:45 am]

BILLING CODE 4160–15–U

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review, Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved Information Collection (OMB Control Number 1010–0095).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), we are notifying you that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before April 28, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0095), 725 17th Street, NW, Washington, DC 20503. Copies of these comments should also be sent to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, PO Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. Email address is RMP.comments@mms.gov.

Public Comment Procedure: Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Request to Exceed Regulatory Allowance Limitation, Form MMS–4393, OMB Control Number 1010–0095, and your name and return address in your

Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov*. You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303) 231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email Dennis.C.Jones@mms.gov.

SUPPLEMENTARY INFORMATION:

Title: Request to Exceed Regulatory Allowance Limitation.

OMB Control Number: 1010–0095.

Abstract: The Department of the Interior is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior (Secretary) is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

MMS Royalty Management Program (RMP) is proposing to continue the use of Form MMS–4393, Request to Exceed Regulatory Allowance Limitation, to be used by royalty payors on Federal or Indian mineral leases. The payors will use the form when requesting MMS approval to exceed established transportation or processing allowance limits.

To request permission to exceed an allowance limit, royalty payors must write a letter to MMS providing the reasons why a higher allowance limit is necessary. Although the request to exceed an allowance limit is voluntary on the part of the payors and results in a benefit to them, many times payors have not provided all of the data needed by MMS to approve or deny a request. The followup necessary to obtain required information creates an additional burden for both the payor and the Government. RMP developed Form MMS–4393 to be included with the payor's request for approval to exceed the allowance limit. The form ensures that MMS receives the lease data required to make a decision on the request by including the Accounting Identification Number identifying the lease, the product code identifying the product being transported or processed, and the selling arrangement used to identify the marketing outlet for the product. These are the necessary data that have been missing from many of the requests in the past. We estimate the annual reporting and recordkeeping burden to complete this information collection per respondent is 30 minutes.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. A 60-day **Federal Register** Notice soliciting comments on this collection of information was published on December 8, 1999 (64 FR 68699). No comments were received.

Respondents/Affected Entities: Royalty payors.

Frequency of Response: Annually.

Estimated Number of Respondents: 75 payors.

Estimated Annual Reporting and Recordkeeping "Hour."

Burden: 37 burden hours. Refer to the following chart:

Citation	Reporting & recordkeeping requirements	Frequency	Number of respondents	Burden	Total annual burden hours
§ 206.104(b)(1); § 206.156(c)(3); and § 206.158(c)(3).	Submit request in writing and complete Form MMS–4393.	Annually	75	.50 hour	37
Total			75		37

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by April 28, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: March 24, 2000.

Lawrence E. Cobb,

Acting Associate Director for Royalty Management.

[FR Doc. 00–7758 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1820–01; GP0–0107; OR–06519]

Public land order No. 7438; Revocation of Public Land Order No. 2407; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes in its entirety the remaining 2,230 acres withdrawn by Public Land Order No. 2407. The original order withdrew National Forest System lands as a roadside zone. The lands are no longer needed for the purpose for which they were withdrawn. Of the lands being revoked, 225 acres are within an overlapping Forest Service withdrawal and will remain closed to surface entry, mining, and mineral leasing. The revocation is needed to make lands available for several land tenure adjustments in accordance with the provisions of Section 206 of the Federal Land Policy and Management Act of 1976. This action will open the lands to such forms of disposition as may by law be made of National Forest System lands and to mining, subject to valid existing rights. The lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: April 28, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Barnes, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–952–6155.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order No. 2407 dated June 21, 1961, which withdrew National Forest System lands for road side zone purposes, is hereby revoked in its entirety as to the remaining withdrawn lands described in the order published in **Federal Register** Volume 26 page 5756, dated June 28, 1961.

2. At 8:30 a.m. on April 28, 2000, the lands shall be opened to such forms of disposition as may by law be made of National Forest System lands, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by the State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: March 10, 2000.

Kevin Gover,

Assistant Secretary of the Interior.

[FR Doc. 00–7668 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submitted for Office of Management and Budget Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0135).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), we are notifying you that we have submitted an information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval. We are also soliciting your comments on this ICR which describes the information collection, its expected costs and burden, and how the data will be collected.

DATES: Written comments should be received on or before April 28, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0135), 725 17th Street, NW., Washington, DC 20503. Copies of these comments should also be sent to David S. Guzy, Chief, Rules and Publications Staff, Minerals Management Service, Royalty Management Program, P.O. Box 25165, MS 3021, Denver, Colorado 80225. Courier address is Building 85, Room A–613, Denver Federal Center, Denver, Colorado 80225. Email address is RMP.comments@mms.gov.

Public Comment Procedure: Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include Attn: Royalty-In-Kind Small Refiner Sale Program, OMB Control Number 1010–0135, and your name and return address in your Internet message. If you do not receive a confirmation from the system that we have received your Internet message, contact David S. Guzy directly at (303) 231–3432.

We will post public comments after the comment period closes on the Internet at *http://www.rmp.mms.gov*. You may arrange to view paper copies of the comments by contacting David S. Guzy, Chief, Rules and Publications Staff, telephone (303) 231–3432, FAX (303)231–3385. Our practice is to make comments, including names and addresses of respondents, available for public review on the Internet and during regular business hours at our offices in Lakewood, Colorado. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Dennis C. Jones, Rules and Publications Staff, phone (303) 231–3046, FAX (303) 231–3385, email *Dennis.C.Jones@mms.gov.*

SUPPLEMENTARY INFORMATION:

Title: Royalty-In-Kind Small Refiner Sale Program.

OMB Control Number: 1010–0135.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian Lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian Lands and the OCS; for collecting royalties from lessees who produce minerals; and for distributing the funds collected in accordance with applicable laws. MMS performs the royalty management functions for the Secretary.

When the Secretary determines that sufficient need exists among small refining companies to justify taking royalty oil in kind and offering this oil

for sale to eligible refiners, small refiners may apply to participate in this sale of Federal royalty oil and follow procedures under which contracts for the purchase of royalty oil will be awarded. Completed applications to participate in the sale bid proposals, signed contracts, and surety instruments must be submitted to MMS.

The application must be complete and timely filed, and applicants for royalty oil will be required to provide a surety instrument with their bid package. This surety instrument must be a Letter of Credit, Form MMS–4071, or a Royalty-In-Kind Contract Surety Bond, Form MMS–4072. We estimate the annual reporting burden for refiners submitting either surety document is 1 hour.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB Control Number. A 60-day **Federal Register** Notice soliciting comments on this collection of information was published on December 8, 1999 (64 FR 68699). No comments were received.

Respondents/Affected Entities: Royalty payors.

Frequency of Response: On occasion.

Estimated Number of Respondents: 25 payors.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 25 burden hours. Refer to the following chart:

Reporting and recordkeeping requirements	Frequency	Number of respondents	Burden	Annual burden hours
Complete and submit Forms MMS–4071 and MMS–4072	Yearly	25	25 × 1 hours	25 hours.

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Comments: Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information. * * *" Agencies must specifically solicit comments to: (a) Evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by April 28, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach (202) 208–7744.

Dated: March 7, 2000.

Lucy Querques Denett,

Associate Director for Royalty Management.

[FR Doc. 00–7682 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Agency Information Collection Activities: Submission for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of extension of a currently approved information collection (OMB Control Number 1010–0048).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501, *et seq.*), we are notifying you that we have submitted the information collection request (ICR) discussed below to the OMB for review and approval. We are also inviting your comments on this ICR.

DATES: Submit written comments by April 28, 2000.

ADDRESSES: You may submit comments directly to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (1010–0048), 725 17th Street, NW., Washington, DC 20503. Mail or handcarry a copy of your comments to the Department of the Interior; Minerals Management Service; Attention: Rules Processing Team; Mail Stop 4024; 381 Elden Street; Herndon, Virginia 20170–4817.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Alexis London, Rules Processing Team, telephone (703) 787–1600. You may also contact Alexis London to obtain a copy of the collection of information at no cost.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR part 251, Geological and Geophysical (G&G) Exploration of the OCS

OMB Control Number: 1010–0048.

Abstract: The Outer Continental Shelf (OCS) Lands Act, 43 U.S.C. 1331 *et seq.*, gives the Secretary of the Interior (Secretary) the responsibility to preserve, protect, and develop oil and gas resources in the OCS, consistent with the need to make such resources available to meet the Nation's energy needs as rapidly as possible; balance orderly energy resource development with protection of the human, marine, and coastal environments; ensure the public a fair and equitable return on the resources of the OCS; and preserve and maintain free enterprise competition.

The OCS Lands Act (43 U.S.C. 1340) also states that "any person authorized by the Secretary may conduct geological and geophysical explorations in the [O]uter Continental Shelf, which do not interfere with or endanger actual operations under any lease maintained or granted pursuant to this OCS Lands Act, and which are not unduly harmful to aquatic life in such area." The section further requires that, permits to conduct such activities may only be issued if it is determined that the applicant is qualified; the activities are not polluting, hazardous, or unsafe; they do not interfere with other users of the area; and do not disturb a site, structure, or object of historical or archaeological significance. Applicants for permits are required to submit form MMS–327 to provide the information necessary to evaluate their qualifications.

Regulations at 30 CFR part 251 implement these statutory requirements. We use the information to ensure there is no environmental degradation, personal harm or unsafe operations and conditions, damage to historical or archaeological sites, or interference with other uses; to analyze and evaluate preliminary or planned drilling activities; to monitor progress and activities in the OCS; to acquire G&G data and information collected under a Federal permit offshore; and to determine eligibility for reimbursement from the Government for certain costs. The information is necessary to determine if the applicants for permits or filers of notices meet the qualifications specified by the OCS Lands Act. MMS uses information collected to understand the G&G characteristics of oil-and-gas bearing physiographic regions of the OCS. It aids the Secretary in obtaining a proper balance among the potentials for environmental damage, the discovery of oil and gas, and adverse impacts on affected coastal states. Information from permittees is necessary to determine the propriety and amount of reimbursement.

We will protect information from respondents considered proprietary under the Freedom of Information Act (5 U.S.C. 552) and its implementing regulations (43 CFR part 2) and under regulations at 30 CFR parts 250, 251, and 252. No items of a sensitive nature are collected. Responses are mandatory or required to obtain or retain a benefit.

The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We published a **Federal Register** notice with the required 60-day comment period soliciting comments on this ICR on November 12, 1999 (64 FR 61659).

Frequency: On occasion, annually, or as specified in permits.

Estimated Number and Description of Respondents: Primarily, approximately 150 Federal OCS permittees or notice filers.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 8,109 burden hours, averaging approximately 54 hours per respondent. Refer to the following chart.

Citation 30 CFR 251	Reporting and recordkeeping requirement	Number	Burden	Annual burden hours
251.4; 251.5; 251.6(c)	Apply for permits (form MMS–327) or file notices; consult with other users of the area.	150 Notices or Applications	6 hours	900
251.6(b); 251.7(b)(5)(iii)	Notify MMS if specific actions should occur; report archaeological resources. (No instances reported since 1982.).	1 Notice	1 hour	1
251.7	Submit information on test drilling activities under a permit; including form MMS–123.	Burden included with 30 CFR 250.201, 250.203, & form MMS–123 (1010–0049 & 1010–0044)		0
251.7(c)	Enter into agreement for group participation in test drilling, including publishing summary statement; provide MMS copy of notice/list of participants. (No agreements submitted since 1989.).	1 Agreement	1 hour	1
251.7(d)	Submit bond on deep stratigraphic test	Burden included under 30 CFR part 256 regs (1010–0006)		
251.8(a)	Request reimbursement for certain costs associated with MMS inspections. (No requests in many years. OCS Lands Act requires Government reimbursement.).	1 Request	1 hour	1
251.8(b), (c)	Submit modifications to, and status/final reports on, activities conducted under a permit.	150 Respondents × 4 Reports = 600.	8 hours	4,800
251.9(c)	Notify MMS to relinquish a permit	8 Notices	.5 hour	4
251.10(c)	File appeals	Burden included with 1010–0121		0
251.11; 251.12	Submit to MMS G&G data/information collected under a permit; including license agreements/notifications to MMS.	50 Respondents × 2 Submissions = 100.	4 hours	400
251.13	Request reimbursement for certain costs associated with reproducing data/info.	50 Respondents × 2 Submissions = 100.	20 hours	2,000
251.14(c)(2)	Submit comments on MMS intent to disclose data/info.	1 Comment	1 hour	1
251.14(c)(4)	Contractor/agent submit written commitment not to sell, trade, license, or disclose data/info without MMS consent.	1 Commitment	1 hour	1
Total Reporting Burden		963 Responses		8,109

Estimated Annual Reporting and Recordkeeping "Non-Hour Cost" Burden: We have identified no cost burdens for this collection.

Comments: All comments are made a part of the public record. Section 3506(c)(2)(A) of the PRA requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to: (a) Evaluate whether the proposed

collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

Send your comments directly to the offices listed under the addresses section of this notice. The OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive public comments by April 28, 2000.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, (202) 208–7744.

Dated: February 24, 2000.

Elmer P. Danenberger,

Chief, Engineering and Operations Division.

[FR Doc. 00–7701 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–MR–U

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proclaiming Certain Lands as Reservation for the Jicarilla Apache Indian Tribe of New Mexico

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Reservation proclamation.

SUMMARY: The Assistant Secretary—Indian Affairs proclaimed approximately 14,138.983 acres, more or less, as an addition to the reservation of the Jicarilla Apache Indian Tribe of New Mexico on March 21, 2000. This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

FOR FURTHER INFORMATION CONTACT: Larry E. Scrivner, Bureau of Indian Affairs, Deputy Director, Office of Trust Responsibilities, MS–4510/MIB/Code 220, 1849 C Street, N.W., Washington, D.C. 20240, telephone (202) 208–7737.

SUPPLEMENTARY INFORMATION: A proclamation was issued according to the Act of June 18, 1934 (48 Stat. 986; 25 U.S.C. 467), for the tracts of land described below. The land was proclaimed to be an addition to and part of the reservation of the Jicarilla Apache Indian Tribe of New Mexico for the exclusive use of Indians on that reservation who are entitled to reside at the reservation by enrollment or tribal membership.

Reservation of the Jicarilla Apache Indian Tribe of Indians

Arriba County, New Mexico

All of the following described tracts, pieces, or parcels of land comprising 14,138.983 acres of land, more or less, situated in Rio Arriba County, New Mexico, to wit:

Tract I—14,117.08 acres, more or less

Beginning at a northeasterly corner of the herein described tract of land, a stone marked "BNE" on the west side of the Chama River, from whence N.M.S.E.O. brass cap stamped "Escondida 1973" and having New Mexico State Plane Coordinates, Central Zone, of x = 407,662.02′ y = 2,116,662.34′, bears S. 18° 14′ 50″ E., 7,645.65 feet; thence N. 89° 56′ 25″ E., 240.01 feet to the centerline of the Chama River and Point #1, this point is also common with an intersection between Points 63 and 64 on the Tyree survey done on 4/3/72 for Rio Chama Estate; thence S. 55° 24′ 45″ W. 377.69 feet (S. 54° 59′ 45″ W., 377.69 feet) along the centerline of the Chama River to Point #2, this point being common to Point #64 on the Tyree survey (This survey follows the Tyree survey from Point #1 to Point #36); thence following the centerline of the Chama River S. 27° 37′ 30″ W. 153.93 feet (S. 27° 12′ 30″ W., 153.93 feet) to Point #3; thence S. 15° 27′ 20″ E., 258.21 feet (S. 15° 52′ 20″ E., 258.21 feet) to Point #4; thence S.10° 04′ 00″ W., 338.53 feet (S. 09° 39′ 00″ W., 338.53 feet) to Point #5; thence S. 25° 34′ 35″ W., 289.37 feet (S. 25° 09′ 35″ W., 289.37 feet) to Point #6; thence S. 06° 53′ 00″ W., 122.21 feet (S. 06° 28′ 00″ W., 122.21 feet) to Point #7; thence S. 23° 38′ 45″ E., 193.39 feet (S. 24° 03′ 45″ E., 193.38 feet) to Point #8; thence S. 14° 37′ 25″ E., 504.54 feet (S. 15° 02′ 25″ E., 504.54 feet) to Point #9; thence S. 00° 20′ 05″ W., 111.57 feet (S. 00° 04′ 55″ E., 111.57 feet) to Point #10; thence S. 16° 43′ 55″ W., 184.67 feet (S. 16° 18′ 55″ W., 184.67 feet) to Point #11; thence S. 32° 19′ 35″ W., 172.40 feet (S. 31° 54′ 35″ W., 172.40 feet) to Point #12; thence S. 19° 36′ 45″ W., 138.92 feet (S.19° 11′ 45″ W., 138.92 feet) to Point #13; thence S.15° 43′ 55″ E., 142.65 feet (S. 16° 08′ 55″ E., 142.65 feet) to Point #14; thence S. 42° 38′ 25″ E., 192.23 feet (S. 43° 03′ 25″ E., 192.23 feet) to Point #15; thence S. 28° 21′ 40″ E., 285.93 feet (S. 28° 46′ 40″ E., 285.93 feet) to Point #16; thence S. 21° 10′ 30″ E., 336.34 feet) (S. 21° 35′ 30″ E., 336.34 feet) to Point #17; thence S. 01° 36′ 30″ W., 461.23 feet (S. 01° 11′ 30″ W., 461.23 feet) to Point #18; thence S. 01° 59′ 15″ W., 205.16 feet (S. 01° 34′ 15″ W., 205.16 feet) to Point #19; thence S. 24° 06′ 15″ W., 479.80 feet (S. 23° 41′ 15″ W., 469.80 feet) to Point #20; thence S. 00° 49′ 05″ W., 117.99 feet (S. 10° 24′ 05″ W., 117.99 feet) to Point #21; thence S. 15° 09′ 10″ E., 123.03 feet (S. 15° 34′ 10″ E., 123.03 feet) to Point #22; thence S. 40° 39′ 40″ E., 148.02 feet (S. 41° 04′ 40″ E., 148.02 feet) to Point #23; thence N. 77° 26′ 05″ E., 93.50 feet (N. 77° 01′ 05″ E., 93.50 feet) to Point #24; thence S. 77° 39′ 05″ E., 88.39 feet (S. 78° 04′ 05″ E., 72.96 feet) to Point #25; thence S. 00° 27′ 10″ E., 204.66 feet (S. 00° 52′ 10″ E., 204.66 feet) to Point #26; thence S. 21° 53′ 10″ W.,145.42 feet (S. 21° 28′ 10″ W., 145.42 feet) to Point #27; thence S. 03° 08′ 20″ W., 226.69 feet (S. 02° 43′ 20″ W., 226.69 feet) to Point #28; thence S. 34° 25′ 15″ W., 319.34 feet (S. 34° 00′ 15″ W., 319.34 feet) to Point #29; thence S. 45° 34′ 00″ W., 326.96 feet (S. 45° 09′ 00″ W., 326.96 feet) to Point #30; thence S. 33° 14′ 20″ W., 222.40 feet (S.32° 49′ 20″ W., 222.40 feet) to Point #31; thence S.14° 20′ 35″ W., 140.16 feet (S. 13° 55′ 35″ W., 140.16 feet) to Point #32; thence S. 10° 55′ 05″ E., 312.95 feet (S. 11° 20′ 05″ E., 312.95 feet) to Point #33; thence S. 32° 40, 00″ W., 230.31 feet (S. 32° 15′ 00″ W., 230.31 feet) to Point #34; thence S. 43° 23′ 50″ W., 231.85 feet (S.42° 58′ 50″ W., 231.85 feet) to Point #35; thence S. 23° 24, 05″ W., 178.78 feet (S. 22° 59′ 05″ W., 178.78 feet) to Point #36 in the middle of the Chama River, this point being common to Point #99 on the Tyree survey and also common to the northwest corner of the Valdez survey done in November 1981 for Leo Smith; thence following the centerline of the Chama River which is the common boundary line between the Willow Creek Ranch and the grantor's tract (This survey follows the Valdez survey of the centerline of the river from Point #36 to Point #40); thence S. 19° 25′ 27″ W., 307.13 feet to Point #37 (S. 19° 27′ 27″ W., 307.13 feet); thence S. 05° 21′ 22″ W., 532.35 feet to Point #38 (S. 05° 23′ 22″ W., 532.35 feet); thence S. 71° 17′ 59″ W.. 781.09 feet to Point #39 (S. 71° 19′ 59″ W., 781.09 feet); thence S. 22° 41′ 40″ W., 314.14 feet to Point #40 (S. 24° 16′ 58″ W., 318.28 feet) this point being the southwest corner of the Smith propeity at the centerline of the Chama River; thence following the south boundary of the Smith (Bren) property N. 88° 37′ 38″ E., 130.11 feet to a set 1/2″ rebar with cap at Point #111, a fence corner; thence S. 09° 16′ 46″ W., 252.69 feet to a found rebar at Point #110; thence S. 29° 47′ 59″ W., 489.91 feet to a set 1/2″ rebar at Point #109; thence S. 79° 29′ 04″ W., 219.61 feet to a found rebar with AGV cap at Point #108; thence S. 36° 19′ 32″ W., 115.97 feet to a found rebar with AGV cap at Point #107; thence N. 57° 47′ 39″ W. crossing the Chama River a distance of 217.15 feet to a found rebar at Point #52; thence S. 59° 38′ 51″ W. 437.01 feet to a found rebar at Point #53; thence S. 17° 01′ 47″ W., 166.31 feet to a found rebar with AGV cap at Point #84; thence S. 01° 45′ 46″ E., 111.60 feet to a found rebar with AGV cap at Point #85; thence S. 08° 22′ 24″ W., 47.35 feet to a found rebar with AGV cap at Point #86; thence S. 17° 13′ 50″ W., 213.91 feet to Point #87; thence S. 03° 13′ 21″ E., 625.01 feet to Point #88; thence S. 04°14′ 41″ W., 95.29 feet to Point #89; thence S. 02° 05′ 10″ W., 728.28 feet to Point #90; thence S. 08° 26′ 10″ W., 504.50 feet to Point #91; thence S. 04° 54′ 36″ W., 315.30 feet to Point #92; thence S. 12° 29′ 35″ E., 199.88 feet to a found rebar with AGV cap at Point #93; thence S. 03° 17′ 08″ W., 397.02 feet to a found rebar with AGV cap at Point #94; thence S. 19° 57′ 53″ E., 1139.15 feet to a found rebar with AGV cap at Point #95; thence S. 24° 26′ 26″ E., 1285.76 feet to a found rebar with AGV cap at Point #96; thence S. 41° 55′ 00″ W., 628.05 feet to Point #65, a 1/2″ iron pipe and the northwest corner of the Max Olivas tract at the top of the hill; thence following the top of the hill S. 34° 47′ 13″ E., 1024.10 feet to Point #66, a 1/2″ iron pipe; thence S. 48° 05′07″ E., 1918.11 feet to Point #67, a 1/2″ rebar; thence S. 43° 33′ 54″ E., 1261.04 feet to Point #68, a 5/8″ rebar set an angle point in fence; thence S. 36° 45′ 40″ E., 1245.58 feet to Point #69, a 1″ solid rod and being the southwest corner Blackmar Tract and the northwest corner of the Martinez tract; thence S. 36° 28′ 06″ W., 1697.90 feet to a 5/8″ rebar being a southwest corner; thence N. 37° 57′ 57″ W., 10,670.86 feet along the Theis fence line to a stone marked "TDB11," whence a blazed 24″ cedar bears S. 74° W., 115 feet; thence S. 89° 45′. 30″ W., 21,223.93 feet to a 1½″ iron pipe in a mound of limestone, whence a 30″ blazed pine bears S. 68° W., 100 feet; thence N. 48° 33′ 13″ W., 1410.94 feet to a 2″ perforated pipe and "TDB #4," whence an 18″ blazed pine bears N. 42° W., 116 feet; thence S. 89° 47′ 13″ W., 7574.33 feet to a 2″ iron pipe and "TDB #3," whence a double pine blazed bears N. 64° E., 18 feet; thence N . 48° 30′ 28″ W., 2242.57 feet to an angle point in the fence and a set 5/8″ rebar, "TDB #2," whence a blazed 20″ Pine bears S. 71° W., 93 feet; thence N. 69° 14′ 00″ W., 2444.57 feet to a 2″ flattened pipe and "TDB #1," whence a 20″ blazed pine tree bears N. 43° W., 122 feet; thence N. 70° 39′ 31″ W., 1995.81 feet to a 2″ flattened pipe and the southwest corner whence a spring bears N. 42° E., 45 feet, this corner is common to Theis and the New Mexico State Game and Fish property; thence N. 00° 00′ 21″ W., 15,572.90 feet along the New Mexico State Game and Fish line to a 2″ iron pipe and the northwest corner; thence S. 89° 58′43″ E., 17,856.35 feet to a northeast corner; thence S. 00° 04′ 57″ W., 4619.33 feet to a stone marked "SWH" thence S. 89° 54′ 38″ E., 29,955.52 feet to a stone marked "NWB"; thence S. 00° 03′ 30″ W., 2401.41 feet to a stone marked with a 6′ fence post; thence N. 89° 56′ 21″ E., 21,233.65 feet to a stone marked "BNE," the point of beginning, containing 14,558.88 acres within the boundary traverse, less 441.80 acres taken in the Azotea Willow Creek tracts by the U.S. Government, giving a net acreage of 14,117.08 acres, more or less.

Tract 2—21.903 acres, more or less

A tract of land in the Tierra Amarilla Land Grant, Rio Arriba County, New Mexico, being a part of Section 17, 8 and 9, Township 1 South, Range 2 East, of the Martin & Borders Subdivision as filed in the Rio Arriba County Courthouse, also lying in the projected reappraisal area of Township 31 North, Range 2 East, and Range 3 East, N.M.P.M.

This is the "Willow Creek Ranch Access Road" parcel and is more particularly described as follows:

Beginning at the Northeast corner, a point on the southerly right-of-way of U.S. Highway 84 whence USC&GS Brass Cap "Willow" bears S. 84–32–19E. a distance of 1156.09 feet; Thence southerly along the easterly boundary of the herein described access road as follows:

S. 01–33–16E. a distance of 1034.04 feet to a point;

S. 23–55–59W. a distance of 459.36 feet to a point;

S. 26–53–59W. a distance of 967.00 feet to a point;

S. 78–37–35W. a distance of 705.10 feet to a point;

S. 63–04–56W. a distance of 409.58 feet to a point;

S. 43–07–59W. a distance of 505.17 feet to a point;

S. 38–58–07W. a distance of 384.05 feet to a point;

S. 35–12–07W. a distance of 24.80 feet to a point;

S. 27–18–41W. a distance of 171.98 feet to a point;

S. 25–39–37W. a distance of 291.94 feet to a point;

S. 03–08–10W. a distance of 251.89 feet to a point;

S. 04–48–49E. a distance of 373.17 feet to a point;

S. 20–08–59W. a distance of 521.24 feet to a point;

S. 49–07–04W. a distance of 640.02 feet to a point;

S. 49–08–17W. a distance of 166.30 feet to a point;

S. 26–33–17E. a distance of 327.70 feet to a point;

S. 04–02–17E. a distance of 483.09 feet to-the southeast corner;

Thence N. 89–33–10W. a distance of 100.00 feet to the southeast corner;

Thence northerly along the westerly boundary of said access road as follows:

N. 04–02–17E. a distance of 714.20 feet to a point;

N. 48–17–22E. a distance of 933.48 feet to a point;

N. 32–06–23E. a distance of 301.04 feet to a point;

N. 00–46–08W. a distance of 745.07 feet to a point;

N. 24–41–14E. a distance of 682.37 feet to a point;

N. 42–23–22E. a distance of 1164.40 feet to a point;

N. 83–15–50E. a distance of 639.41 feet to a point;

N. 53–29–20E. a distance of 479.01 feet to a point;

N. 23–36–47E. a distance of 998.61 feet to a point;

N. 08–52–50E. a distance of 161.94 feet to a point;

N. 03–29–38E. a distance of 886.85 to the northwest corner, a point on the southerly right-of-way of said U.S. Highway 84;

Thence following said southerly right-of-way along a curve to the left having a delta of 03–01–12 and radius of 1972.45 feet a distance of 103.97 feet to the point and place of beginning. This parcel contains 21.903 acres, more or less.

This proclamation does not affect title to the land described above, nor does it affect any valid existing easements for public roads and highways, for public utilities and for railroads and pipelines and any other rights-of-way or reservations of record.

Dated: March 21, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–7658 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

National Park Service

Morristown National Historical Park, Morris & Somerset Counties, New Jersey; Notice of Intent To Prepare an Environmental Impact Statement and Notice of Public Meetings

In accordance with the National Environmental Policy Act of 1969 Pub. L. 91–109 section 102(c)), the National Park Service (NPS) is preparing an Environmental Impact Statement (EIS) for the Morristown National Historical Park (NHP), located in Morris and Somerset Counties, New Jersey. The purpose of the EIS is to assess the impacts of alternative management strategies that will be described in the general management plan for Morristown NHP. A range of alternatives will be formulated for natural and cultural resource protection, visitor use and interpretation, facilities development, and operations.

The NPS will hold two (2) public meetings during the week of April 10, 2000 which will provide an opportunity for public input into the scoping for the GMP/EIS. On Wednesday, April 12 at 4:00 PM, a meeting will be held at the Cross Estate, New Jersey Brigade Unit, Morristown NHP, 61C Old Jockey Hollow Road, Bernardsville, New Jersey. On Thursday, April 13 at 7:30 PM, a meeting will be held at the Morristown NHP Museum, Washington Headquarters Unit, 30 Washington Place, Morristown, New Jersey. The purpose of these meetings is to obtain both written and verbal comments concerning the future direction and development of Morristown NHP. Those persons who wish to comment verbally or in writing or who require further information should contact Michael D. Henderson, Superintendent, Morristown NHP, 30 Washington Place, Morristown, NJ, (973) 539–2016 ext. 205.

The draft GMP/EIS is expected to be completed and available for public review in mid 2001. After public and interagency review of the draft document comments will be considered, and a final EIS followed by a Record of Decision will be prepared.

Dated: March 16, 2000.

Michael D. Henderson,

Superintendent, Morristown National Historical Park.

[FR Doc. 00–7679 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Announcement of Subsistence Resource Commission Meeting

SUMMARY: The Superintendent of Aniakchak National Monument and the Chairperson of the Subsistence Resource Commission for Aniakchak National Monument announce a forthcoming meeting of the Aniakchak National Monument Subsistence Resource Commission. The following agenda items will be discussed:

(1) Call to order.

(2) SRC Roll Call and Confirmation of Quorum.

(3) Welcome and Introductions.

(4) Review and Adopt Agenda.

(5) Review and adopt minutes from the March 29–30, 1999 meeting.

(6) Commission Purpose.

(7) Status of Membership.

(8) Public and Agency Comments.

(9) Old Business:

a. Status of Air Taxi/Outfitter Guide Concession Permit Program.

b. Request For Resident Zone Community Status: Perryville and Ivanoff Bay.

c. Review Secretary's Response To Subsistence Hunting Program Recommendations:

1. Geographic Place Names Request.

2. Roster Regulation Proposed Rule Publication.

3. For Customary and Traditional Use Determinations: Unit 9E Brown Bear.

4. Cooperative Wildlife Studies: Unit 9E Moose and Caribou.

5. Aniakchak National Monument and Preserve Access Study Project Statement.

d. Aniakchak National Monument and Preserve Subsistence Management Plan Update.

(10) New Business:

a. October 1999 SRC Chairs Workshop Report.

1. NPS Customary Trade Regulations.

2. Resident Zone Community One-Year Residency Requirement.

3. Trapping With Firearms.

b. Federal Subsistence Program Update.

1. Bristol Bay Federal Subsistence Regional Advisory Council Report.

2. Federal Subsistence Board Proposals—Unit 9E.

(11) Public and Agency Comments.

(12) SRC Work Session (draft proposals, letters, and recommendations).

(13) Set time and place of next SRC meeting.

(14) Adjournment.

DATES: The meeting will begin at 1 p.m. on Tuesday, April 4, 2000 and conclude at approximately 6 p.m. The meeting will reconvene at 9 a.m. on Wednesday, April 5, 2000 and adjourn at approximately 1 p.m.

LOCATION: Community Subsistence Building, Chignik Lake, Alaska.

FOR FURTHER INFORMATION CONTACT: Deb Ligget, Acting Superintendent, or Donald Mike, Resource Specialist, Aniakchak National Monument, P.O. Box 7, King Salmon, Alaska 99613. Phone (907) 246–3305.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under Title VIII, Section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operates in accordance with the provisions of the Federal Advisory Committees Act.

Robert D. Barbee,

Regional Director.

[FR Doc. 00–7681 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–70–U

DEPARTMENT OF THE INTERIOR

National Park Service

Manzanar National Historic Site Advisory Commission; Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Manzanar National Historic Site Advisory Commission will be held at 1:00 p.m. on Friday April 28, 2000 at the Inyo County Administrative Center, Board of Supervisors' Chambers, 224 N. Edwards Street (U.S. Highway 395), Independence, California, to hear presentations on issues related to the planning, development, and management of Manzanar National Historic Site.

The Advisory Commission was established by Public Law 102–248, to meet and consult with the Secretary of the Interior or his designee, with respect to the development, management, and interpretations of the site, including preparation of a general management plan for the Manzanar National Historic Site.

Members of the Commission are as follows: Rose Ochi, Chairperson, William Michael, Vice Chairperson, Keith Bright, Martha Davis, Sue Kunitomi Embrey, Gann Matsuda, Vernon Miller, Mas Okui, Glenn Singley, and Richard Stewart.

The main agenda will include:

- Status reports on the development of Manzanar National Historic Site by Acting Superintendent Debbie Bird;
- General discussion of miscellaneous matters pertaining to future Commission activities and Manzanar National Historic Site development issues;
- Public comment period.

This meeting is open to the public. It will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Commission. A transcript will be available after June 1, 2000. For a copy of the minutes, contact the Superintendent, Manzanar National Historic Site, PO Box 426, Independence, CA 93526.

Dated: March 10, 2000.

Ross R. Hopkins,

Superintendent, Manzanar National Historic Site.

[FR Doc. 00–7680 Filed 3–28–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

Ocmulgee Old Fields Historic District; Determination of Eligibility for the National Register of Historic Places

ACTION: Discussion of previous determination of eligibility.

This is to advise that, on the basis of consideration of the comments received in response to the Federal Register notice dated November 5, 1999, as well as all other information collected by the National Park Service, including a visit to the site, the National Park Service has determined that it did not receive authoritative information which, evaluated in conjunction with documentation already on file, resulted in a finding that the boundary for the Ocmulgee Old Fields Historic District, in Bibb and Twiggs Counties, Georgia, as defined by the Keeper of the National Register of Historic Places on August 14, 1997, and July 23, 1999, does not accurately delineate the scope of the District in accordance with National Register standards. The determination of eligibility for the Ocmulgee Old Fields Historic District remains in effect.

Carol D. Shull,

Keeper of the National Register of Historic Places, National Register, History and Education.

[FR Doc. 00–7678 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Marina Coast Water District Recycled Water Pipeline Project

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental document (Environmental Impact Report/ Environmental Assessment or Environmental Impact Statement).

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, and § 21061 of the California Environmental Quality Act (CEQA), the Bureau of Reclamation (Reclamation) and the Marina Coast Water District (MCWD) propose to prepare an environmental document on constructing a new pipeline to deliver reclaimed wastewater for municipal and industrial use. The reclaimed water would be supplied by the Monterey Regional Water Pollution Control Agency (MRWPCA) as part of the Castroville Seawater Intrusion Project and the Salinas Valley Reclamation Project (SVRP) that currently provides agricultural users with recycled water to reduce use of groundwater in the Salinas Valley. The project is planned in order to provide up to 300 acre-feet/year of recycled water from the SVRP for municipal and industrial uses which may include a golf course, open space landscaping, and construction water uses.

At present, it is not clear whether the scope of the action and anticipated project impacts will require preparation of an environmental impact report/ environmental impact statement (EIR/ EIS) instead of an environmental impact report/environmental assessment (EIR/ EA). However, to ensure the timely and appropriate level of NEPA compliance and to limit potential future delays to the project schedule, Reclamation is proceeding as if the project impacts would require preparation of an EIR/EA. Reclamation will reevaluate the need for an EIR/EIS after obtaining written comments on the project scope, alternatives, and environmental impacts and after Reclamation's evaluation of potential impacts of the proposed project. Reclamation will publish a notice of change if a decision is made to prepare an EIR/EIS rather than an EIR/EA. However, the scoping process to be conducted will suffice for either course of action.

MCWD completed a CEQA Notice of Preparation on December 15, 1999. No scoping meetings have been scheduled.

DATES: Send any comments to assist in determining the scope of the environmental analysis and to identify the significant issues related to this proposed action to the address below by April 28, 2000.

ADDRESSES: Written comments on the scope of the environmental document should be sent to Dave Meza, Marina Coast Water District, 200 Twelfth Street, Building 2788, Marina CA 93933.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Dave Meza, Marina Coast Water District, at (831) 582–2665.

SUPPLEMENTARY INFORMATION: Reclamation provided a loan to the MRWPCA for construction of the SVRP. Reclamation completed an EIS on the SVRP in 1993 for construction of the SVRP, and delivery of reclaimed water as an agricultural supply for crop irrigation. The contract for the loan specified that reclaimed water from the SVRP could also be delivered for municipal and industrial water only if Reclamation completed additional NEPA documentation. The SVRP began operation in 1997, and began delivering recycled water to growers in 1998. In 1999, the SVRP produced 10,000 acre-feet of recycled water. The SVRP can produce up to about 33,200 acre-feet of reclaimed water per year.

The proposed action would consist of the following:

1. At the SVRP site, two 75-hp vertical turbine pumps would be installed at the SVRP contact basin. Approximately 850 linear feet (LF) of 24-inch pipeline would be installed from the pumps to the edge of the SVRP boundary.

2. From the edge of the SVRP boundary, approximately 4,300 LF of 12-inch pipeline would be installed above ground along an existing dirt service road that extends to the Armstrong Ranch boundary.

3. From the Armstrong Ranch boundary, approximately 10,000 LF of 30-inch pipeline would be installed along a route through the City of Marina Municipal Airport to Reservation Road with various water service turnouts.

The proposed project has design elements that could become part of a regional system, if that system were ever to be expanded. The feasibility of such a regional system, the regional urban recycled water distribution project, is currently being studied. This system would require a storage reservoir as outlined in the 1996 Annexation Agreement and Groundwater Mitigation Framework for Marina Area Lands (1996). In addition, other elements of the regional project are not clearly defined. These elements are discussed in the 1996 Monterey Peninsula Reclaimed Water Urban Reuse Feasibility Study Update as developed by the MRWPCA. The planning effort for a regional urban distribution system may serve sites within the Cities of Marina, Seaside, Del Rey Oaks, Sand City, and Monterey. Additional environmental documentation would be necessary to implement this regional system.

Dated: March 22, 2000.

Frank Michny,

Regional Environmental Officer.

[FR Doc. 00–7704 Filed 3–28–00; 8:45 am]

BILLING CODE 4310–94–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–474 and 475 (Review)]

Chrome-Plated Lug Nuts From China and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Notice of Commission determination to conduct full five-year reviews concerning the antidumping duty orders on chrome-plated lug nuts from China and Taiwan.

SUMMARY: The Commission hereby gives notice that it will proceed with full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) to determine whether revocation of the antidumping duty orders on chrome-plated lug nuts from China and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. In the course of considering the record in these expedited reviews, the Commission now determines that full reviews are warranted. The Commission will exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). A schedule for these reviews will be established and announced at a later date. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 22, 2000.

FOR FURTHER INFORMATION CONTACT: Vera Libeau (202–205–3176), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On November 4, 1999, the Commission determined that it should expedite these reviews pursuant to 751(c)(3)(B) of the Act. The Commission found that the domestic interested party group response to its notice of institution (64 FR 41949, August 2, 1999) was adequate and that the respondent interested party group response was inadequate. Therefore, it voted to conduct expedited reviews. The Commission has found, however, that circumstances warrant conducting full reviews. Therefore, on March 22, 2000, the Commission determined that it should proceed to full reviews in the subject five-year reviews pursuant to section 751(c)(5) of the Act. The Commission's statement on proceeding to full reviews and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 23, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7767 Filed 3–28–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–556 (Review)]

DRAMs of One Megabit and Above From Korea

AGENCY: United States International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the antidumping duty order on dynamic random access memory semiconductors (DRAMs) of one megabit and above from Korea.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty order on DRAMs of one megabit and above from Korea would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 22, 2000.

FOR FURTHER INFORMATION CONTACT: Bob Carr (202–205–3402), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On February 3, 2000, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (65 FR 7890, February 16, 2000). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Review and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the review will be placed in the nonpublic record on September 28, 2000, and a public version will be issued thereafter, pursuant to § 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on October 19, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before October 11, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on October 16, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is October 10, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is October 30, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before October 30, 2000. On November 22, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before November 27, 2000, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with § 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7768 Filed 3–28–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation 332–412]

The Year in Trade 1999

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation.

EFFECTIVE DATE: March 21, 2000.

SUMMARY: Following receipt of a request on February 14, 2000, from the Committee on Ways and Means of the U.S. House of Representatives (the Committee), the Commission instituted investigation No. 332–412, The Year In Trade 1999, a report to the Congress and the President on the operation of the U.S. trade agreements program, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Information may be obtained from Thomas F. Jennings, Project Leader (202–205–3260), Office of Economics, U.S. International Trade Commission, Washington, DC, 20436. For information on the legal aspects of this investigation, contact William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1810.

Background

The Committee requested the investigation and report pursuant to section 332(g) of the Tariff Act of 1930 and H.R. 3425 (enacted as part of Pub. L. 106–113 (Nov. 29, 1999)). Pursuant to Pub. L. 104–66 (Dec. 21, 1995), the requirement to submit such reports under section 163(c) was to terminate on December 21, 1999. Pub. L. 106–113 extended the requirement to May 15, 2000. As requested by the Committee, the Commission will provide a factual report on the operation of the trade agreements program and major trade-related activities for calendar year 1999. The report will be similar in scope to the annual report that the Commission has previously submitted under section 163(c) of the Trade Act of 1974 (19 U.S.C. 2213(c)).

The Commission plans to submit its report, The Year in Trade 1999: Operation of the Trade Agreements Program, in August 2000.

Written Submissions

The Commission has not scheduled a public hearing in connection with this investigation. However, interested parties are invited to submit written statements (original and 14 copies) concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's rules of practice and procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on May 30, 2000. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW, Washington, DC 20436. The Commission's rules do not authorize filing submissions with the Secretary by facsimile or electronic means.

General information concerning the Commission may also be obtained by accessing its Internet server (http://www.usitc.gov).

List of Subjects:

WTO, OECD, FTAA, NAFTA, APEC, GSP, CBERA, ATPA exports, imports, Canada, European Union, Mexico, China, Japan, Taiwan, Korea, and Brazil.

Issued: March 21, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7766 Filed 3–28–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree in Comprehensive Environmental Response, Compensation and Liability Act Cost Recovery Action

In accordance with the Departmental Policy, 28 CFR 50.7, notice is hereby given that a Consent Decree in *United States* v. *Wilbur S. Doyle and Lillie T. Doyle*, Civil Action No. 4:00CV–00014 was lodged with the United States District Court for the Western District of Virginia on March 15, 2000. This Consent Decree resolves the United States' claims against Wilbur S. Doyle and Lillie T. Doyle ("Settling Defendants") under Section 107(a) of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9607, for response costs incurred at the Doyle Wood Treating Superfund Site ("the Site") located near Martinsville, Virginia. The Consent Decree requires the Settling Defendants to pay $50,000 in reimbursement of response costs relating to the Doyle Wood Treating Superfund Site removal action.

The Department of Justice will accept written comments on the proposal Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environmental and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Wilber S. Doyle and Lillie T. Doyle*, DOJ #90–11–3–06367.

Copies of the proposed Consent Decree may be examined at the Office of the United States Attorney, Western District of Virginia, 105 Franklin Road, SW., Suite One, Roanoke, VA 24011; EPA Region III, 1650 Arch Street, Philadelphia, PA 19103; and at the U.S. Department of Justice, Consent Decree Library, 1425 New York Avenue, NW., Washington, DC 20005.

A copy of the proposed Consent Decree may be obtained by mail from U.S. Department of Justice, Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. When requesting a copy of the proposed Consent Decree, please enclose a check to cover the twenty-five cents per page reproduction costs payable to the "Consent Decree Library" in the amount of $8.75, and please reference *United States* v. *Wilbur S. Doyle and Lillie T. Doyle*, DOJ No. 90–11–3–06367.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division, Department of Justice.

[FR Doc. 00–7684 Filed 3–28–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

[INS No. 2044–00; AG Order No. 2295–2000]

RIN 1115–AE26

Designation of Angola Under the Temporary Protected Status Program

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice.

SUMMARY: The Attorney General is authorized to grant Temporary Protected Status (TPS) in the United States to eligible nationals of designated foreign states or parts of such states (or to eligible aliens who have no nationality and who last habitually resided in such designated states) upon a finding that such states are experiencing ongoing armed conflict, environmental disaster, or other extraordinary and temporary conditions. Due to the armed conflict in Angola, which prevents the safe return of nationals of that country, this notice designates Angola for the TPS program for a period of 12 months, until March 29, 2001. This notice provides information regarding eligibility and application procedures.

DATES: This designation is effective on March 29, 2000, and will remain in effect until March 29, 2001.

FOR FURTHER INFORMATION CONTACT: Michael Valverde, Residence and Status Branch, Adjudications, Immigration and Naturalization Service, 425 I Street, NW., room 3214, Washington, DC 20536, telephone (202) 514–4754.

SUPPLEMENTARY INFORMATION:

Why Did the Attorney General Decide To Designate Angola Under the TPS Program?

Based on a thorough review by the Departments of State and Justice, the Attorney General finds that there is significant ongoing armed conflict in Angola, and that the return of aliens who are nationals of Angola (as well as aliens having no nationality who last habitually resided in Angola) would pose a serious risk to their personal safety. A Department of State memorandum on Angola states that: "Fighting is now once again widespread throughout much of Angola. Some 70% of Angola's area is currently outside effective government control. The United Nations High Commissioner for Refugees has called for a moratorium on returns to Angola as a result of the conflict and resulting insecurity within the country."

Based on these and other findings, the Attorney General has determined that

the armed conflict in Angola and related extraordinary and temporary conditions prevent the safe return of aliens who are nationals of Angola (as well as aliens having no nationality who last habitually resided in Angola). The Attorney General further finds that permitting such aliens to remain temporarily in the United States is not contrary to the national interests of the United States.

Who Is Eligible for TPS Under This Designation?

In order to be eligible for TPS under this designation, an alien must:

- Be a national of Angola (or an alien having no nationality who last habitually resided in Angola);
- Have been continuously physically present in the United States since March 29, 2000.
- Have continuously resided in the United States since March 29, 2000.
- Be admissible as an immigrant except as provided under section 244(c)(2)(A) of the Act, and not ineligible under section 244(c)(2)(B) of the Act; and must
- Apply for TPS within the registration period which begins on March 29, 2000, and ends on March 29, 2001.

Does Applying for TPS Affect an Application for Asylum or Any Other Immigration Benefit?

No. Any national of Angola who has already applied for, or plans to apply for asylum, but whose asylum application has not yet been approved may also apply for TPS. An application for TPS does not affect an application for asylum or any other immigration benefit. Denial of an application for asylum or any other immigration benefit does not affect an alien's ability to register for TPS, although the grounds of denial of that application may also lead to denial of TPS. For example, an alien who has been convicted of an aggravated felony is not eligible for asylum or TPS.

How Do I Register for TPS?

Applicants from Angola may register for TPS by:

- Filing an Application for Temporary Protected Status, Form I–821, with a $50 filing fee and a $25 fingerprint fee;
- Providing two identification photographs (1½″ x 1½″);
- Providing supporting evidence, as provided in 8 CFR 244.9 (evidence of identity and nationality, and proof of residence); and
- Filing an Application for Employment Authorization, Form I–765.

The chart below contains information regarding payment of the $100 fee for filing Form I–765, and information regarding fee waivers.

If	Then
You are applying for employment authorization through March 29, 2001.	You must complete and file the Form I–765, Application for Employment Authorization, with the $100 fee.
You already have employment authorization or do not require employment authorization.	You must complete and file the Form I–765, Application for Employment Authorization, without a fee.
You are requesting a fee waiver for the $50 fee for the Form I–821 and/or the $100 fee for the Form I–765.	You must complete and file the Form I–821, the Form I–765, a the requisite fee waiver request and affidavit (and any other information), in accordance with 8 CFR 244.20.

Where Should I Submit My Application for TPS?

You should submit your application for TPS at the Service district office that has jurisdiction over your place of residence.

What Happens After March 29, 2000, the Date the Initial Designation Expires?

Pursuant to section 244(b)(3)(A) of the Act, the Attorney General will review, at least 60 days before March 29, 2001, the conditions in Angola to determine whether the conditions for designation of Angola under the TPS program continue to exist. Notice of that determination, including the basis for the determination, will be published in the **Federal Register**.

If the initial TPS designation is extended at that time, an alien who is granted TPS must register for any extension of the TPS program in order to maintain TPS. On the other hand, if the TPS designation is not extended after March 29, 2001, those aliens granted TPS will revert back to the immigration status they had prior to TPS, if still available, unless they have been granted another benefit.

Notice of Designation of Angola Under the Temporary Protected Status Program

By the authority vested in me as Attorney General under section 244 of the Immigration and Nationality Act, as amended (8 U.S.C. 1254a), I find, after consultation with the appropriate agencies of the Government, that:

(1) There is an ongoing armed conflict within Angola and, due to such conflict, requiring the return of aliens who are nationals of Angola (as well as aliens having no nationally who last habitually resided in Angola) would pose a serious threat to their personal safety;

(2) There exist extraordinary and temporary conditions in Angola that prevent aliens who are nationals of Angola (as well as aliens having no nationally who last habitually resided in Angola) from returning to Angola in safety; and

(3) Permitting nationals of Angola (or aliens having no nationality who last habitually resided in Angola) to remain temporarily in the United States is not contrary to the national interests of the United States. Accordingly, I order as follows:

(1) Angola is designated for TPS under section 244(b)(1)(A) and (C) of the Act. Nationals of Angola (or aliens having no nationality who last habitually resided in Angola) who have been "continuously physically present" and have "continuously resided" in the United States since March 29, 2000, may apply for TPS within the registration period, which begins on March 29, 2000, and ends on March 29, 2001.

(2) I estimate that there are no more than 1,700 nationals of Angola (or aliens having no nationality who last habitually resided in Angola) in the United States who are eligible for TPS.

(3) Information concerning the TPS program for nationals of Angola (or aliens having no nationality who last habitually resided in Angola) will be available at the Service website, located at http://www.ins.usdoj.gov, or at local Immigration and Naturalization Service offices upon publication of this notice.

Dated: March 22, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–7683 Filed 3–28–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Bureau of Justice Statistics

[OJP(BJS)–1265]

Statistical Methodologies for Analysis of Disproportionate Minority Confinement

AGENCY: Office of Justice Programs, Bureau of Justice Statistics (BJS), Justice.

ACTION: Notice of solicitation.

SUMMARY: The purpose of this notice is to announce a solicitation for a

methodological study that would examine how juvenile records can be used to better understand racial disparities in arrests and confinement of minority juveniles and the impact of such disparities on subsequent processing of the same people if they are arrested as adults.

DATES: Proposals are due by 5 p.m., ET on May 30, 2000.

ADDRESSES: Proposals should be mailed to: Timothy C. Hart, Bureau of Justice Statistics, 810 7th Street NW, Washington, DC 20531, (202) 307–6166. [This is not a toll free number].

FOR FURTHER INFORMATION CONTACT: Timothy C. Hart, Bureau of Justice Statistics, 810 7th Street NW, Washington, DC 20531, (202) 307–6166. [This is not a toll free number].

SUPPLEMENTARY INFORMATION:

Program Goals

The major purpose of this award is to support a methodological study of the use of records in investigating racial disparities in arrests and confinement of minority juveniles, and the impact of disparate treatment within the juvenile justice system on subsequent processing of the same individuals if and when they become exposed to the adult criminal justice system.

Background

For over a decade, the Juvenile Justice and Delinquency Prevention (JJDP) Act has required States to determine whether the proportion of juvenile minorities in confinement is greater than the proportion of juvenile minorities in the overall population. Furthermore, the "disproportionate minority confinement" requirement of the Act forces those States that do find disparate representation among juvenile minorities to advance efforts to reduce it (see "Juvenile Offenders and Victims: 1999 National Report" by Howard N. Snyder and Melissa Sickmund.). Since time-series data have been collected by States under OJJDP's Disproportionate Minority Confinement (DMC) Program, and research expertise in using these data has developed in the States, the Bureau of Justice Statistics (BJS) would like to capitalize on the data and expertise as a basis from which to better understand the complex factors that contribute to minority over-representation in the juvenile justice system, and how disparate treatment of minorities within the juvenile justice system can affect subsequent outcomes, net of legally-relevant factors, of the same people if they are arrested as adults. Additional information about OJJDP's DMC Program can be found at http://www.ojjdp.ncjrs.org/pubs/correctionsum.html. While studies which evaluate racial disparities in various stages of juvenile justice processing are widespread, few studies use and document rigorous statistical methodologies (see "Minorities and the Juvenile Justice System, Research Summary" by Carl E. Pope and William Feyerherm). Copies of this report can be downloaded from the OJJDP web site at http://www.ncjrs.org/pdffiles/minor.pdf. Moreover, little or no research examines the extent to which racial disparities in handling by the juvenile justice system may be identified and tested as an explanatory factor for disparate subsequent treatment of adults involved in criminal court processing. Thus, research based on this award should seek to design a methodology which could be used to answer the question of whether a youth's juvenile record acquired through disparate treatment has a carry-over effect on subsequent adult level encounters with the criminal justice system.

Scope of Work

The objective of the proposed project is to develop, test, and document statistical methodologies which are appropriate for examining the nature and extent of racial disparities in arrests and confinement of minority juveniles and for better understanding the impact of identifiable biases within the juvenile justice system on adults criminal court processing, recognizing the numerous interrelated decision points within the juvenile justice process. The methods must be tested using an actual data set, but it is not the intent of this solicitation to fund extensive data-collection activities. Analyses which demonstrate the conceptual capabilities of models or forecasts may be based on invented or simulated data but may not comprise the entire project.

Specifically, the recipient of funds will:

1. Identify the subgroups of the population, defined by race, ethnicity or other factor, that will be distinguished in the analysis, and specify definitions of the subgroups. Consideration to OMB's revised Statistical Policy Directive No. 15, Standards for Maintaining, Collecting, and Presenting Federal Data on Race and Ethnicity, should be given (see http://www.whitehouse.gov/OMB/fedreg/ombdir15.html).

2. Identify the stages of processing within the juvenile or adult justice system that will be incorporated in the analysis, and identify those factors which cannot be incorporated or measured.

3. Specify definitions and criteria that will be used in the study to quantify disparities among the studied subgroups and to distinguish between racial disparities and other factors explaining the disparities.

4. Specify a replicable statistical model to be used, conceptually and in the form of algorithms or software.

5. Identify and acquire one or more data sets suitable for the analysis. Demonstrate a knowledge of the data set(s) by defining and constructing relevant variables. If necessary, clean or augment the data so they are suitable for the study as designed, test the statistical model against the data set, and demonstrate the capability of the model to distinguish whether the data provide an indication of racial disparities. If the study uses only data about juvenile processing, it must discuss the relevance of the data and variable definitions to subsequent processing of juveniles who are arrested when they become adults.

6. Prepare the data and documentation in a format suitable for archiving without individual identifiers.

7. Prepare for public dissemination, a written report that describes in detail the issues, statistical methods, analysis, and conclusions of the study.

Appropriation and Assistance Program

Assistance will be made in the form of a cooperative agreement or interagency agreement which may be in the form of a BJS Fellowship. BJS Fellows are expected to spend a substantial portion of their research time at BJS's offices in Washington, DC, where they are provided with work space and necessary computing facilities. Further information about the BJS Fellowship program is available on the BJS web site at http://www.ojp.usdoj.gov/bjs/

Application and Award Process

An original and three (3) copies of a full proposal must be submitted on SF–424. Proposals must be accompanied by OJP Form 4000/3, 4061/6 and SF–LLL. In addition, fund recipients are required to comply with regulations designed to protect human subjects and ensure the confidentiality of data. In accordance with 28 CFR Part 22, a Privacy Certificate must be submitted to BJS. Furthermore, a Screening Sheet for Protection of Human Subjects must be completed prior to the award being issued. Copies of required forms, including the Screening Sheet for Protection of Human Subjects, can be obtained by contacting Timothy C. Hart, Bureau of Justice Statistics, 810 7th Street NW, Washington, D.C. 20531, (202) 307–6166.

Proposals must include both narrative descriptions and a detailed budget. The narrative shall describe activities as discussed in the previous sections. The budget shall contain detailed costs of personnel, travel, equipment, supplies, and other expenses.

Proposals should describe in appropriate detail the efforts to be undertaken in furtherance of each of the activities described in the Scope of Work. The application must demonstrate:

- A familiarity with relevant research on racial disparity, with particular reference to the technical difficulties of isolating the effect of the race variable.
- A conceptual understanding of the limitations of the past research and the kind of improvements that would be helpful in analysis of racial disparities.
- A familiarity with the stages in juvenile justice processing that are the focus of data collection in the DMC initiative.
- The feasibility of acquiring and analyzing a relevant data set or data sets, including any issues of confidentiality of the data and/or protection of the human subjects of research.
- The approximate numbers or proportions of individuals represented in the data set who belong to the subgroups being studied.
- A familiarity with any analyses that have already been conducted or are ongoing with the selected data set.

Applicants are encouraged to define the terms "racial disparity" or "racial discrimination" as they consider appropriate to the context. They may examine any subgroups defined by race, ethnicity, country of origin, or other factor which is believed to be a source of discrimination, and conceptual advances in defining "discrimination" are welcome.

Applications will be evaluated on the overall extent to which they respond to the goals of improving the methodological research in the area of disproportionate minority representation in the juvenile justice system; the quality and feasibility of the proposed design; their expertise in relation to the proposed activities; and the reasonableness of estimated costs for the total project and for individual cost categories.

Proposals should be mailed to: Timothy C. Hart, Bureau of Justice Statistics, 810 7th Street NW, Washington, D.C. 20531, (202) 307–6166.

Timing

This award will be made for a period of 12 months. Costs are estimated at not to exceed $200,000 for the 12-month period. Each element of the Scope of Work must be successfully completed within 12-months of this award.

Statutory Authority

The grant and/or Fellowship awarded through this solicitation will be funded by the Bureau of Justice Statistics consistent with its mandate under 42 U.S.C. § 3732(c) (Sec. 302.).

Eligibility Requirements

BJS especially invites applications from researchers who have been active at the national or state level in OJJDP's Disproportionate Minority Confinement (DMC) initiative. However, the solicitation is open to any applicant who can demonstrate statistical expertise related to improving current research focusing on disproportionate minority representation in the juvenile justice system. Individuals currently working for a State agency may be eligible for this award through a cooperative agreement with their agency or an interagency agreement.

Jan M. Chaiken,

Director, Bureau of Justice Statistics.

[FR Doc. 00–7688 Filed 3–28–00; 8:45 am]

BILLING CODE 4410–18–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

March 22, 2000.

The Department of Labor (DOL) has submitted the following public informaiton collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 219–5096 ext. 159 or by E-mail to Kurz-Karin@dol.gov). To obtain documentation of ESA, MSHA, OSHA, and VETS contact Darrin King (202) 219–5096 ext. 151 or by E-mail to King-Darrin@dol.gov).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the informaiton to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Agency: Occupational Safety and Health Administration (OSHA); Labor.

Title: Reports of Injuries to Employees Operating Mechanical Power Presses (29 CFR 1910.217(g)).

OMB Number: 1218–0070.

Frequency: On occasion.

Affected Public: Business or other for-profit; Not-for-profit institutions; Federal Government; State, Local or Tribal Government.

Number of Respondents: 123.

Estimated Time per Response: 20 minutes (0.33 hour).

Total Burden Hours: 41.

Description: The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents. (29 U.S.C. 657). In the event an employee is injured while operating a mechanical power press, 29 CFR 1910.217(g) requires the employer to provide information to OSHA regarding the accident within 30 days of the accident. This information includes the employer's and employee's names, workplace address, injury sustained, task being performed when the injury occurred, number of operators involved, cause of the accident, type of clutch and safeguard(s) used, and means used to actuate the press.

OSHA's Office of Electrical, Electronic, and Mechanical Engineering

Safety Standards collects and reviews the accident information for the purpose of monitoring the effectiveness of the Mechanical Power Press Standard. The accident information also is forwarded to the National Institute for Occupational Safety and Health for analysis and compilation of an epidemiology database on point-of-operation injuries. In addition, OSHA's Office of Compliance Programs is conducting a national emphasis program aimed at reducing the number and severity of power press injuries. It needs the accident information provided in these reports to evaluate the types of injuries that occur, and to identify the equipment and conditions associated with these injuries.

In summary, as production evolves and new technologies arise (or old ones decline), it is necessary to have up-to-date accident information. This information is useful in revising the standard, planning enforcement strategies, and training compliance officers, as well as for developing hazard alerts that address exceptionally hazardous equipment or operations.

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 00–7731 Filed 3–28–00; 8:45 am]

BILLING CODE 4510–26–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act, Title III, Demonstration Program: Comprehensive Incumbent/Dislocated Worker Retraining Demonstration Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGAs).

This notice contains all of the necessary information and forms need to apply for grant funding.

SUMMARY: The U.S. Department of Labor (DOL), Employment and Training Administration (ETA), announces a demonstration program to test the ability of the workforce development system to create projects or industry-led consortia for the purpose of upgrading current workers, designing or adapting training curricula in skills shortage occupational areas, or in regionally important business/industry areas including manufacturing and machining, and specialized industrial areas such as plastics, telecommunications and the environment, and to recruit/retrain workers in these occupations. The dislocated and/or incumbent workers who will be assisted by these efforts include specific groups such as agricultural workers, low skilled workers, and those needing assistance in overcoming barriers to employment. These barriers to employment may be caused by living in rural communities, having limited options for transportation to work, having inadequate or obsolete skills or having skills in declining occupations. The focus of these efforts will be on skills training in skills shortage occupations including welding and metals, new and growing occupations in technological fields such as information technology, telecommunications, and other fields in which technology skills are critical parts of the jobs emerging in their regional labor markets. Any consortia established as a result of this competition would also be expected to enhance the strategic planning efforts and policy efforts of local boards under the Workforce Investment Act in these areas.

DATES: The closing date for receipt of applications is Thursday, April 27, 2000. Applications must be received by 4 p.m. eastern standard time. No exceptions to the mailing and hand-delivery conditions set forth in this notice will be granted. Applications that do not meet the conditions set forth in this notice will not be considered. Telefacsimile (FAX) applications will not be honored.

ADDRESSES: Applications must be mailed or hand-delivered to: U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Marian G. Floyd, Reference: SGA/DFA 00–103; 200 Constitution Avenue, N.W., Room S–4203, Washington, DC 20210.

Hand-Delivered Proposals. Proposals should be mailed at least five (5) days prior to the closing date. However, if proposals are hand delivered, they must be received at the designated address by 4 p.m., Eastern Time on Thursday, April 27, 2000. All overnight mail will be considered to be hand-delivered and must be received at the designated place by the specified closing date and time. Telegraphed, electronic, or faxed proposals will not be honored. Failure to adhere to these instructions will be a basis for determination of nonresponsiveness.

Late Proposals. A proposal received at the office designated in the solicitation after the exact time specified for receipt will not be considered unless it is received before the award is made and was either:

(1) Sent by U.S. Postal Service Express Mail Next Day Service—Post Office to Addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for receipt of the proposals. The term "working days" excludes weekends and the U.S. Federal holidays.

(2) Sent by U.S. Postal Service registered or certified mail not later than the fifth calendar day before the date specified for receipt of application (e.g., an offer submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th). The only acceptable evidence to establish the date of mailing of a late proposal sent either by U.S. Postal Service registered or certified mail is the U.S. postmark both on the envelope or wrapper and on the original receipt from the U.S. Postal Service. Both postmarks must show a legible date or the proposal shall be processed as if mailed late. "Post-mark" means a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied and affixed by an employee of the U.S. Postal Service on the date of mailing. Therefore, offerors should request the postal clerk to place a legible hand cancellation "bull's eye" postmark on both the receipt and the envelope or wrapper. Both postmarks must show a legible date, or the application shall be processed as though it had been mailed late.

Withdrawal of Applications. Applications may be withdrawn by written notice or telegram (including mailgram) received at any time before an award is made. Applications may be withdrawn in person by the applicant or by an authorized representative thereof, if the representative's identity is made known and the representative signs a receipt for the proposal.

FOR FURTHER INFORMATION CONTACT: Fax questions to Marian G. Floyd, Division of Federal Assistance at (202) 219–8739 (this is not a toll-free number). All inquiries sent via fax should include the SGA /DFA–00–103 and contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's (ETA) Home Page at *http://www.doleta.gov*. Award notifications will also be published on the ETA Home Page.

SUPPLEMENTARY INFORMATION: ETA is soliciting proposals on a competitive basis for comprehensive incumbent and

dislocated worker retraining program. It is envisioned that the upgrading of current workers, designing or adapting training curricula in skills shortage occupational areas, or in regionally important business/industry areas including manufacturing and machining, and specialized industrial areas.

This announcement consist of six (6) parts.

(1) Part I—Background
(2) Part II—Eligible Applicants and Application Process
(3) Part III—Proposal Submission
(4) Part IV—Statement of Work/Government's Requirement
(5) Part V—Rating Criteria & Award Selection
(6) Part VI—Monitoring, Reporting & Evaluation Requirements

Part I. Background

A. Authority

Section 323(a)(6) of JTPA (29 U.S.C. 1662b) authorizes the use for demonstration programs of funds reserved under Section 302 of JTPA (29 U.S.C. 1652) and provided by the Secretary for that purpose under Section 322 of JTPA (29 U.S.C. 1662a). Demonstration program grantees must comply with all applicable federal and state laws and regulations in setting up and carrying out their programs.

B. Purpose

During periods of economic expansion, reports of robust growth often overshadow news about pockets of persistent worker dislocation. Each year, there are over 3.3 million people laid off from their jobs, with many of these individuals served by federal, State and local career services. At the same time, the demand to create a better educated, higher skilled labor force for the 21st Century continues to rise. With 70% of the workforce for the year 2020 already in place, many observers have recognized that workplace learning is a priority investment for businesses, as well as incumbent workers. With real wages and productivity on the decline in some rural and urban areas, partnerships forged by employers, labor, unions, community colleges, technology centers and Government provide both the support and the expertise to train and retrain workers.

Because technology and manufacturing are cornerstones of the economy, efforts to provide the highest levels of quality in meeting the training needs of workers are essential both to step-up productivity and to increase industrial competitiveness worldwide. Training machinists and engineers to replace workers who have retired or will be retiring from U.S. manufacturing industries during the next several years has created severe problems for both the industry and employed workers unable to move into more complex, skilled professions. Subsequently, expanding the manufacturing base is a key factor in moving people from poverty into skilled professions where rising standards of living will directly impact regional economies.

Building the capacity for workers to continually develop skill sets and to apply new learning to job specific tasks is a fundamental strategy in an era of global competition, trade deregulation, and rapid technological change. Developing critical thinking and problem solving abilities, while improving fluency in reading, writing, English as a Second Language and mathematics are requirements of today's high performance workplace. Bureau of Labor Statistics data report occupations that require at least an associates degree will account for 40 percent of all job growth out to 2008, compared to a one-quarter share of all jobs that existed in 1998. In a knowledge-driven economy, investing in worker skill advancement may be as important to competitiveness as investments in advanced machinery or technology or even the rise and fall interest rates. Greater schooling and training lead to higher wage rates. In fact, of all the factors studied, the wage premium for knowledge is highest. On average, wages go up about 10 percent to 15 percent as knowledge requirements go up one level and all other factors of the job are fixed.

In the Report on the American Workforce, 1999, the Secretary of Labor emphasized that "Workers must enter the workforce with strong basic and job-related skills, and they must be prepared to learn new skills continuously in their places of employment, over the course of their lives." Instruction for adult literacy and numeracy, and the integration of knowledge from computer-based training are essential elements of successful business practice that cut across geographic regions or employment sectors. Moreover, using community-based expertise to provide agricultural and business training in rural areas appears to parallel efforts in urban communities to move people from poverty into the skilled labor market by targeting funds for training in local skill shortage occupations. Furthermore, by fostering training consortia, the vast majority of the costs associated with training incumbent workers by companies involved in the consortium would be fully paid by the companies themselves.

A $7.2 million dislocated and incumbent worker demonstration program will support the creation of projects to respond to employer-identified skill shortages in regional labor markets. This program will build on the Department's June 1998 $7.7 million dislocated worker technology demonstration and the new $9.5 million manufacturing technology demonstration awarded in June 1999. In part, it will support the creation of industry-led projects which can design or adapt training curricula in skill shortage occupational areas or in key regional businesses.

Part II. Eligible Applicants and the Application Process

1. Eligible Applicants

Any organization capable of fulfilling the terms and conditions of this solicitation may apply. This is a risk free Federal program; therefore, all for profit organizations that apply will not be able to receive a fee if awarded a grant. All participants in projects funded under this demonstration program must be either:

(a) Eligible dislocated workers as defined at JTPA Section 301(a)(1), and 314(h)(1) of the Job Training Partnership Act. These sections of the law may be viewed at *http://doleta.gov/regs/statutes/jtpalaw.htm*. Proposed projects may target subgroups of the eligible population based on factors such as (but not limited to) occupation, industry, nature of dislocation, and reason for unemployment. Note: Individuals whose eligibility is based upon their status as long-term unemployed (Section 301(a)(1)(C)) must have a demonstrated attachment to the labor force; or

(b) Incumbent workers. These are currently-employed workers whose employers have determined that the workers require training in order to help keep their firms competitive and the subject workers employed, avert layoffs, upgrade workers' skills, increase wages earned by employees and/or keep workers skills competitive. Such training would support further job retention and career development for improved economic self-sufficiency for employed workers, especially those most vulnerable to job loss, and increase the capability of the employing firm(s) to access and retain skilled workers.

2. Allowable Activities

Funds provided through this demonstration may be used only to provide services of the types described at Section 314(c) and (d) of JTPA. Supportive services may be provided

when they are necessary to enable an individual who is eligible for training but cannot afford to pay for such supportive services, to participate in the training program. (Use ETA's web site referenced above to view.)

Grant funds may be used to reimburse employers for extraordinary costs associated with on-the-job training of program participants, in accordance with the provisions of 20 CFR 627.240. In addition to the limitations and requirements provided in JTPA, particularly at Part C of Title I, prospective applicants should be aware that grant funds may not be used for the following purposes:

(a) for training that an employer is in a position to provide and would have provided in the absence of the requested grant;

(b) to pay salaries for program participants; and

(c) for acquisition of production equipment. Applicants may budget limited amounts of grant funds to work with technical experts or consultants to provide advice and develop more complete project plans after a grant award, however, the level of detail in the project plan may affect the amount of funding provided.

Grant activities may include:

(a) development, testing and initial application of curricula focused on intensive, short-term training to get participants into productive, high demand employment as quickly as possible;

(b) working with employers to develop and apply worksite-based learning strategies that utilize cutting-edge technology and equipment;

(c) development of employer-based training programs that will take advantage of opportunities created by employers' needs for workers with new skills;

(d) development and initial application of contextual learning opportunities for participants to learn occupational theory in a classroom setting while applying that learning in an on-the-job setting;

(e) use of curriculum and skills training programs that are designed to impart learning to meet employer-specified or industry specific skill standards or certification requirements;

(f) convening of an Employer Advisory Board to identify skills gaps of job applicants and present workers affecting the ability of the employer to offer a competitive product and develop a strategy for retraining;

(g) innovative linkage and collaboration between employers and the local JTPA Substate Grantee and/or One-Stop/Career Center system to ensure a steady supply of targeted workers.

The above are illustrative examples and are not intended to be an exhaustive listing of possible demonstration project designs or approaches which may achieve the purpose of this solicitation. However, successful applicants must demonstrate the direct involvement by employers experiencing skill shortages in the design and operation of the project as well as provide substantive documentation about the existence of skill shortages for the industry or occupations to be targeted by the proposed project. Documentation should include a description of the employer involvement anticipated in the project. An employer advisory committee may be one means of accomplishing employer involvement.

3. Coordination

In order to maximize the use of public resources and avoid duplication of effort, applicants will coordinate the delivery of services under this demonstration with the delivery of services under other programs (public or private), available to all or part of the target group. Projects linking or collaborating with an existing USDOL funded One-Stop/Career Center initiative and/or local JTPA Substate Grantee located within a project area fulfill this requirement. The use of Pell Grants for eligible workers or the use of State training or education funds provided for dislocated workers or certain types of employers should also be addressed in the application. Where appropriate, partnerships should also include trade unions, manufacturing extension programs, economic development organizations, training institutions, and other local stakeholders. Any efforts proposed in isolation will not have the maximum impact on building capacity within that region or industry and are not likely to be funded.

4. Grant Awards

It is anticipated that $7.2 million will be available to fund these projects. Approximately six to ten grants will be awarded, with an estimated range of $200,000 to $3 million per grant, with no individual grant exceeding $3 million.

5. Period of Performance

The period of performance shall be 24 months from the date of execution by the Government.

6. Option To Extend

DOL may elect to exercise its option to extend these grants for an additional one (1) or two (2) years of operation, based on the availability of demonstration funding under the Workforce Investment Act, successful program operation, and the determination that a grantee's initial program findings could further inform the workforce development system through refinement of the present demonstration.

Part III. Proposal Submission

A. Contents

Applicants must submit four (4) copies of their proposal, with original signatures. The proposal must consist of two (2) distinct parts, Part I and Part II.

1. Financial Application

Part I of the proposal shall contain the Standard Form SF424, "Application for Federal Assistance" (Appendix # A) and Budget Information Form (Appendix # B). The Catalog of Federal Domestic Assistance number is 17.246. Applicants shall indicate on the SF424 the organization's IRS status, if applicable. According to the Lobbying Disclosure Act of 1995, section 18, an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan. The individual signing the SF424 on behalf of the applicant must represent the responsible financial and administrative entity for a grant should that application result in an award.

The budget must include on separate pages detailed breakouts of each proposed budget line item found in the budget information sheet including detailed administrative costs and costs for one or more of the following categories as applicable: basic readjustment services, supportive services, and retraining services. The Salaries line item shall be used to document the project staffing plan by providing a detailed listing of each staff position providing more than .05 FTE support to the project, by annual salary, number of months assigned to demonstration responsibilities, and FTE percentage to be charged to the grant. In addition, for the Contractual line item, list each of the planned contracts and the amount of the contract. For each budget line item that includes funds or in-kind contributions from a source other than the requested grant funds, identify the source, the amount, and in-kind contributions, including any restrictions that may apply to these funds.

Costs associated with the development of curriculum and other one-time costs should be noted separately in order for reviewers to identify costs associated with development and start-up as well as on-going participant costs.

In addition, the budget shall provide sufficient funds for approximately four persons' trips to meetings in Washington, DC and other locations.

2. Technical Proposal

Part II, the technical proposal shall demonstrate the offeror's capabilities in accordance with the Statement of Work in Part IV of this solicitation, and following the outline of the Rating Criteria in Part V, a grant application shall be limited to twenty (20) double-spaced, single-side, 8.5-inch x 11-inch pages with 1-inch margins. Attachments shall not exceed ten (10) pages. Text type shall be 11 point or larger. Each application must include the Checklist provided as Appendix C, a Time line outlining project activities provided as Appendix D, and an Executive Summary not to exceed two (2) pages. No cost data or reference to price shall be included in the technical proposal.

Part IV. Statement of Work

A. Background

Each grant application is required to fully address items A thru H of this Part as they relate to the rating criteria in Part V.

Information required under A and B below shall be provided separately for each labor market area where dislocated workers will be served. To the extent that the project design differs for different geographic areas, information required under section C below shall be provided for each geographic area.

A. Target Population

Describe the characteristics of the proposed target population for the project, *e.g.*, educational level, previous occupation, age range, likely transferrable skills, length of unemployment, and language limitations. Describe the size and needs of the target population in the local area as they relate to the services available to the grant. Provide documentation showing there is a significant number of dislocated workers with the target population's characteristics in the project area(s).

If the project seeks to serve under-represented subgroups such as minority groups, women, older workers (50 years of age and older), disabled individuals, within a particular occupation and the selected subgroup has unique characteristics or needs, such characteristics or needs should be identified. Substantive and timely documentation of the subgroup's under-representation must be included.

Indicate how the number of workers to be enrolled was determined. Sufficient documentation should be provided to show that workers with appropriate characteristics to meet the purposes of this grant are available in sufficient numbers to meet the recruitment goals of the grant recognizing that not all workers with appropriate characteristics will choose to participate.

B. Available Jobs

Describe the jobs that will be available and targeted for placement to project participants upon completion of training and placement services including the strategy(ies) for identifying job openings that appear appropriate to the training planned and meet the target wage-at-placement goals established in the proposal. Include information about the number and type of jobs, wage information and the specific set of skills, knowledge or duties (industry-sponsored standards of certifications). Provide documentation (footnote sources) that a shortage of qualified workers exists in the local area to fill positions in the targeted occupations in the absence of the proposed project. Anecdotal data should not be used. Information from the Bureau of Labor Statistics (BLS) available through a variety of web sites including BLS, O*NET and America's Labor Market Information System (ALMIS), should be considered as a key source of documentation. In addition, State Occupational Information Coordinating Committee (SOICC) and JTPA Substate Grantee local job training plans may also be considered. Other sources from the private sector such as Chamber of Commerce, local Technology Council surveys, as well as university studies, are also acceptable. Data must relate to local employment shortages. Substantive linkages with specific employers who are experiencing skill shortages among their present workforce and/or the demand for additional employees with skills in documented occupational shortages must be provided. Letters from employers who have made a commitment to the demonstration project are the most appropriate form of documentation.

If some placements will be made with employers who have not been identified at the time of application, describe the job development and placement strategy to be used to assure placement of demonstration participants.

C. Project Design

(1) Purpose. Describe the specific purpose or purposes of the proposed project.

(2) Service Plan. Describe the services to be provided from the time of selection of participants through placement of those participants in jobs. Describe any services to be provided subsequent to job placement. The descriptions shall provide a clear understanding of the services and support that will be necessary for participants to be placed successfully in jobs and to retain those jobs, including services not funded under the grant, and ways to address participants' financial needs during periods of training. Grant-funded activities should, at a minimum, include recruitment, eligibility determination, assessment, retraining, job placement, and supportive services.

(a) Outreach and recruitment. Describe how eligible dislocated workers will be identified and recruited for participation in the project. Recruitment efforts may address public service communications and announcements, use of media, coordination with the JTPA Service Delivery Area or Substate Grantee, use of community-based organizations and other service groups. Describe the applicant's experience in reaching dislocated workers, especially the targeted population. It is highly recommended that non-JTPA applicants partner with the appropriate JTPA Title III Substate Grantee(s) or local One-Stop Career Center System to plan and implement effective outreach and recruitment strategies.

(b) Eligibility determination. Describe the process to be used in determining the JTPA Title III eligibility of potential participants in the project. It is highly recommended that non-JTPA applicants partner with the appropriate JTPA Title III substate grantee(s)or local One-Stop Career Center System to carry out eligibility determination.

(c) Selection criteria. Describe the criteria and process to be used in selecting those individuals to be served by the project from among the total number of eligible persons recruited for the project. Explain how the selection criteria relate to the specific purpose of the proposed project. Identify any assessment tools that will be used as part of the selection process.

(d) Training Services. Describe the training to be provided-classroom, experiential, on-the-job, internships, etc. Include the length (days and hours) and schedule, any prerequisite courses, and

customization to account for transferable skills, previous education (note whether the training requires new and higher educational levels than previous skill training in the same industry), and particular circumstances of the target population and the skill needs of the hiring employer(s). Include information to demonstrate that any proposed training provider is qualified to deliver training that meets appropriate employment standards, and any applicable certification or licensing requirement. Past performance, qualifications of instructors, accreditation of curricula, and similar matters should be addressed, if appropriate. Address the costs of proposed training and other services relative to the costs of similar training and services including courses provided by both public and private providers in the local area. If the training is be customized to account for individual differences in skills levels of participants or employer hiring needs, describe how these considerations will be taken into account in the delivery of the training. The planned training must be supported by the information provided regarding skill shortages and demand for jobs using such skills.

(e) Job Placement. Describe the role of the employer linkages previously addressed in assuring the availability of jobs for participants completing training. If an Employer Advisory Committee is the primary employer linkage, the members of the committee should be listed and the type of expertise they bring to the committee noted. Provide a discussion of the role(s) of the advisory committee and its projected meeting frequency. A neutral chair (someone other than the grantee) should direct the advisory committee. Describe any additional job seeking skills training or assistance provided to participants completing training.

(f) Post placement services. Describe any post placement services to be provided and explain their value to the achievement of the project's purpose and planned outcomes.

(g) Supportive services. Describe those supportive services determined to be appropriate to the target population's needs. Describe policies and procedures to ensure that supportive services are provided only when they are necessary to enable an individual who is eligible for training but cannot afford to pay for such supportive services, to participate in the training program. Indicate how the participants' financial needs during the period of training will be addressed.

(h) Relocation. Describe the limitations and eligibility criteria for relocation assistance, if such assistance is included in the proposal.

(3) Participant flow. Provide a flowchart noting length of time for various activities (such as one day for assessment, *etc.*) to illustrate how the project will ensure access to necessary and appropriate reemployment and retraining services. Show the sequence of services and the criteria to be used to determine the appropriateness of specific services for particular participants. Note where service choice options will be available to participants. Indicate the average length of participation from eligibility determination and enrollment in the demonstration project to placement in an unsubsidized job.

(4) Relationship to prior experience. Discuss how the applicant's prior experience in working with dislocated individuals affects or influences the design of the proposed project. Note especially lessons learned or positive experiences that will be replicated.

D. Planned Outcomes

A description of the project outcomes and of the specific measures, and planned achievement levels, that will be used to determine the success of the project. These outcomes and measures must include, but are not limited to:

(1) The number of participants projected: to be enrolled in services, to successfully complete services through the project, and to be placed into new jobs (a minimum of 80 percent entered-employment rate is required); to retain their jobs after specified periods of time; to learn new skills which will assist them in retaining or upgrading their current positions or in moving to a new job; to be "placed" into new, enhanced jobs with their current employers, or jobs in another occupational class with their current employers, or another occupation.

(2) Measurable effects of the services provided to project participants as indicated by gains in individuals' skills, competencies, or other outcomes;

(3) Wages of participants prior to, at placement, and 90 days after placement: (a) for dislocated worker participants: a minimum of 90 percent wage replacement rate is required for at least 75 percent of the participants and an average 90 percent wage replacement for the overall demonstration project is required; (b) for incumbent worker participants: a minimum of 100 percent wage retention is required for all participants successfully completing training and meeting the competencies/skills levels specified by the employer prior to the training.

(4) As part of the targeted outcome for wage after training, each project should benchmark the average weekly wage in the relevant sector or industry in the labor market in which each project will operate. For projects serving dislocated workers, as part of the targeted outcome for wage at placement, each project should benchmark at least two key wage averages for the labor market in which each project will operate. Suggested benchmarks might include:

(a) The average weekly wage in the relevant sector; or the average weekly wage for technical and skilled trade jobs; and (b) the average wage at placement for the JTPA Title III, dislocated worker program operated by the local Substate Grantee. Provide an explanation of the particular benchmarks chosen for the project. For incumbent workers, indicate the present wage level of the workers to be trained, their projected wage after training, and discuss how these wage levels compare with the appropriate benchmark wage for the local labor market area.

(5) For each project serving dislocated workers, at least 80 percent of the individuals placed shall be placed at a wage that meets or exceeds (a) the average benchmarked wage in the labor market area, or (b) the average wage at placement for the last program year completed (currently 1998) for the JTPA Title III dislocated worker program operated by the local Substate Grantee in the targeted labor market, whichever is greater. Wages for labor markets may be obtained from the Covered Wages and Employment Program administered by each State's Employment Service.

(6) Customer satisfaction of participants with the project services at critical points in the service delivery process as well as upon placement, and employer satisfaction with the skills and preparation of the participants placed with their organization; participant and employer satisfaction with project services and with the participants' skill level and work, should be measured not only at the end of the project but also at critical points identified by the applicant during the progress of the demonstration's implementation in order to allow for service strategy correction as required.

(7) Planned average cost per placement (amount of the grant request divided by the number of program-related placements or continued placements); and

(8) Other additional measurable, performance-based outcomes that are relevant to the project and which may be readily assessed during the period of performance of the project, such as cost effectiveness of services and comparison with other available service strategies. Where possible, it would also be useful to look at production improvement and other measures the employer uses regarding efficiency, product quality and output. [**Note:** An explanation of how such additional measures are relevant to the purpose of the demonstration program shall be included in the application.]

E. Collaboration

Describe the nature and extent of collaboration and working relationships between the applicant and other workforce development partners in the design and implementation of the proposed project. Include services to be provided through resources other than grant funds under this demonstration. Provide documentation that the collaboration described can reasonably be expected to occur. Signed letters of agreement and/or the charter of a formally established advisory council are considered the strongest evidence, while letters of support are considered weaker evidence.

Describe the number and types of employers to be directly involved in implementation of the demonstration through activities as participation on an advisory council, provision of input to curriculum development and design, training provider, internship supervision, participation in establishment of local skill standards, etc. Describe activities, presently in place or to be undertaken to link activities to program interventions under this grant to employers, industry, or curriculum/learning centers currently designing and developing occupational/job skill standards and certifications. Collaboration should focus on linking employers involved in grant activities with any employer, industry, or trade and worker association that has already developed or is developing skill standards certifications. Employer linkages must be specifically addressed in the application and documentation provided of the specific role(s) the employer(s) will play in implementation of the grant provided.

Skill standards play an important role in ensuring participants are meeting the accepted standards of industries. Grant applicants may show how skills standards and O*NET are used to help dislocated/incumbent workers acquire training and new jobs. Skill standards can mean National Skill Standards (NSS) developed under the auspices of the NSS Board or other skill standards recognized by employers as valid requirements for jobs. O*NET refers to the Occupational Information Network that replaces the Dictionary of Occupational Titles and defines all jobs in terms of worker requirements, occupational requirements, experience requirements, worker characteristics, occupational characteristics and occupation-specific requirements. The applicant may request a brochure explaining O*NET at the following e-mail address: rrann@doleta.gov. Skill standards and O*NET are useful for structuring training curriculum, assessing dislocated/incumbent workers' skills and interests, and defining career paths from one occupation to another. Their application in the proposed project's training design would indicate close links to employers and an understanding of the demands faced by workers in high performance workplaces.

Applicants are encouraged to commit matching funds to the implementation and management of their proposed programs. Matches may be in the form of cash or in-kind contributions. These may include but are not limited to such contributions as the development of training modules; payment of tuition costs for training; support for child care or transportation; and provision of staff time at no cost to the project. Sources of matching funds may include but are not limited to employers, employer associations, labor organizations, and training institutions. With reference to the sources and amounts of project funds and in-kind contributions identified in the financial proposal as being other than those requested under the grant applied for, describe the basis for valuation of those funds and contributions.

Note: National Reserve Account grants for specific plant closures and layoffs may not be used to match demonstration grant funds, these grants provide sufficient funds to meet the needs of any worker in the targeted area. However, NRA grant funds may be used to purchase 50 percent or less of the total training slots in training developed with demonstration grant funds.

Documentation of consultation on the project concept from applicable labor organizations must be submitted when 20 percent or more of the targeted population is represented by one or more labor organizations, or where the training is for jobs where a labor organization represents a substantial number of workers engaged in similar work. Where the union has been involved in bargaining relative to the introduction of either technology or the addition of new skilled workers at the workplace, provide information as to any role the union played in the design and delivery of the training as well as any impact on the workers with respect to the growth or shrinkage in the number of jobs, the selection of workers for retraining.

F. Innovation

Describe key innovations in the proposed project, including (but not limited to) innovations in concept to be tested, type of participant to be served, services provided, delivery of services, training methods, job development, or job retention strategies. These innovations should be unique to the ongoing knowledge base of service delivery and training presently available to the workforce system. Explain the impact of such innovation on project costs to substantiate the budget items designated as development and start-up costs.

G. Previous Experience

If the applicant has had a demonstration grant with the Department of Labor, Education or HHS within the last three years, list the title of the grant, the amount of the grant, the funding agency, a Federal contact phone number and a brief summary of purpose of the grant. For those grants funded by the Department of Labor, explain how this grant application differs from the previous grant's activity. Explain how the proposed project is similar to and differs from the applicant's prior and current operations.

H. Project Management

(1) Structure. Describe the management structure for the project, including a staffing plan that describes each position and the percentage of its time to be assigned to this project and assures that sufficient staff are available to implement the project in a timely and effective manner. Provide an organizational chart showing the relationship among project management and operational components, including those at multiple sites of the project, in the overall structure of the applicant's organization. Note: It is highly recommended for applicants requesting $500,000 or more that a full-time project director be available to ensure timely and effective implementation of the project.

(2) Program Integrity. Describe the mechanisms to ensure financial accountability for grant funds and performance accountability relative to job placements, in accordance with standards for financial management and participant data systems in 29 CFR part 95 or 97, as appropriate, and 20 CFR 627.425. Explain the basis for the applicant's administrative authority over the management and operational components. Describe how information will be collected to determine the

achievement of project outcomes as indicated in section D of this part; and report on participants, outcomes, and expenditures.

(3) Monitoring and Reporting. Describe how the project will keep records of its activities, as required in 29 CFR parts 95 and 97 and 20 CFR 631.63 as appropriate, which will include information such as the following:

(a) Benchmarks. Provide a Timeline of implementation and projected performance benchmarks covering the period of performance of the project (Appendix E). Include a monthly schedule of planned implementation activities and start-up events (such as curriculum development, selection of advisory council, advisory council meetings, hiring of staff, and completion of lease arrangement for space, development of an internal program progress reporting system, design of customer satisfaction measures, initiation of customer satisfaction activities for participants/for employers); quarterly projections of planned participant activity, showing cumulative numbers of enrollments, participation in training and other services, placements, and terminations; and quarterly cumulative expenditure projections. The quarterly performance projection data may be shown in the same implementation benchmark timeline or separately.

(b) Participant progress. Describe how a participant's continuing participation in the project will be monitored, including determination of successful progress in training activities.

(c) Project performance. Identify the information on project performance that will be collected on a short-term basis (*e.g.*, weekly or monthly) by program managers for internal project management to determine whether the project is accomplishing its objectives as planned and whether project adjustments are necessary. Describe the process and procedures to be used to obtain feedback from participants, employers, and any other appropriate parties on the responsiveness and effectiveness of the services provided. The description shall identify the types of information to be obtained, the methods and frequency of data collection, and ways in which the information will be used in implementing and managing the project. Describe the process for effecting needed corrective action that may be identified through this feedback. Grantees may employ focus groups and surveys, in addition to other methods, to collect feedback information. Technical assistance in the design and implementation of customer satisfaction data collection and analysis may be provided by DOL.

(d) Impact of Collaboration and Innovation. Describe the process for assessing and reporting on the impact of collaboration and innovation in the project with respect to the purpose and goals of the demonstration program and the specific purpose and goals of the project.

(4) Grievance Procedure. If the applicant is a JTPA administrative entity or service provider, assure that a grievance procedure is presently in place. Otherwise, describe the grievance procedure to be used for grievances and complaints from participants, contractors, and other interested parties, consistent with the requirements at Section 144 of JTPA and 20 CFR 631.64(b) and (c).

(5) Previous Project Management Experience. Provide an objective demonstration of the grant applicant's ability to manage the project, ensure the integrity of the grant funds, and deliver the proposed performance. Indicate the grant applicant's past experience in the management of grant-funded projects similar to that being proposed, particularly regarding oversight and operating functions including financial management.

(6) Sustainability and Replicability. Provide assurances that if the project is successful, the demonstration grantee and partners will continue to improve and develop the demonstrated approach. Describe the aspects of the demonstration approach that will allow other workforce development entities to replicate the proposed project. Note: The cost per participant will be a consideration in any replication consideration by other entities. Discuss the potential applicability of the project, or aspects of the project (such as new assessment tools, *etc.*), to other dislocated worker programs.

V. Rating Criteria & Award Selection Process

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed in the SGA. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award grants with or without discussions with the offerors. In situations without discussions, an award will be based on the offeror's signature on the Standard Form SF 424, which constitutes a binding offer. The Government reserves the right to make awards under this section of the solicitation to ensure geographical balance. The Grant Officer will make final award decisions based upon what is most advantageous to the Federal Government in terms of technical quality, responsiveness to this Solicitation (including goals of the Department to be accomplished by this solicitation) and other factors.

Panelists shall evaluate proposals for acceptability based upon overall responsiveness in accordance with the factors below.

A. Target Population (10 Points)

The description of the characteristics of the target group to be served is clear and meaningful, and sufficiently detailed to determine the potential participants' service need. Documentation is provided showing that a significant number of eligible dislocated workers who possess these characteristics are available for participation within the project area. Sufficient information is provided to explain how the number of dislocated workers to be enrolled in the project was determined. The recruitment plan supports the number of planned enrollments. The target population is appropriate for the specific purpose of the proposed project. The project identifies under represented groups to be trained in the targeted occupation(s).

B. Targeted Jobs (15 Points)

The jobs are clearly available to workers who have received appropriate training and preparation given:

(1) The match between the documented skill shortage and the training planned;

(2) The documentation provided specifying that training meets or is developed based on industry driven skill standards or certifications;

(3) The substantial level of involvement of employers in making known their needs regarding requisite worker skills necessary for hiring program completers;

(4) The documentation and reliability of job availability is based upon recognized, reliable and timely sources of information;

(5) Where appropriate, the role of workers or representatives of a labor organization representing the workers in the design and/or delivery of training in enhancing worker skills during workplace change

C. Service Plan (20 Points)

The scope of services to be provided is consistent with the demonstration program and project purposes and goals. The scope of services to be provided is adequate to meet the needs of the target population given:

(1) Their characteristics and circumstances;

(2) The complexity of the training and the skills to be developed relative to their characteristics and previous job experience;

(3) The jobs in which they are to be placed relative to targeted wage at placement goals;

(4) The length of program participation planned prior to placement.

D. Costs (20 Points)

Proposed costs are reasonable in relation to the characteristics and circumstances of the target group, the services to be provided, planned outcomes, the management plan, and coordination/collaboration with other entities, including One-Stop/Career Center organizations. The cost information provided regarding similar training available through other training providers is within an acceptable range or sufficient rationale is provided for the cost differences. The impact of development/start-up and innovation on costs is explained clearly in the proposal and is reasonable.

Identification is provided of the specific sources and amounts of other funds which will be used, in addition to funds provided through this grant, to implement the project. The application must include information on any non-JTPA resources committed to this project, including employer funds, grants, and other forms of assistance, public and private. Value and level of external resources being contributed, including employer contributions, to achieve program goals will be taken into consideration in the rating process.

The degree to which other interested partners in the workforce development system invest resources to test the concepts put forth in the application.

E. Management (13 Points)

The project management plan is designed to track project performance in such a way as to assure that benchmarks are achieved in a timely manner, issues affecting performance such as employer involvement, collaboration partners commitments, *etc.* are quickly identified and addressed, and planned outcomes will be achieved in a cost effective manner.

The applicant (as a part of a collaborative approach) has experience working with the relevant training. The management structure and management plan for the proposed project will ensure the integrity of the funds requested. The project work plan demonstrates the applicant's ability to effectively track project progress with respect to planned expenditures. Sufficient procedures are in place to use the information obtained by the project operator(s) to take corrective action if indicated. In addition, review by appropriate labor organizations, where applicable, is documented.

The proposal includes a method of assessing customer feedback for both participants and employers involved, and establishes a mechanism to take into account the results of such feedback as part of a continuous system of management and operation of the project.

F. Collaboration (12 Points)

The proposal includes evidence of direct participation by JTPA SubState Grantees and One-Stop/Career Center entities (where present) in the planning and management of this grant. Evidence of participation of employers whose positions are targeted under the grant is present. Evidence of coordination with other programs and entities for project design or provision of services is also provided. Evidence is presented that ensures cooperation of coordinating entities, as applicable, for the life of the proposed project. The project includes a reasonable method of assessing and reporting on the impact of such coordination, relative to the demonstration purpose and goals and the specific purpose and goals of the proposed project.

G. Innovation (5 Points)

The proposal demonstrates innovation in the concept(s) to be tested, the project's design, and/or the services to be provided. "Innovation" refers to the degree to which such concept(s), design and/or services are not currently found in dislocated worker programs. The project includes a reasonable method of assessing and reporting on the impact of such innovation, relative to the demonstration program and project purposes and goals.

H. Sustainability and Replicability (5 Points)

The proposal provides evidence that, if successful, activities supported by the demonstration grant will be continued after the expiration date of the grant, using JTPA Title III formula-allotted funds or other public or private resources. The likelihood that the approach may be applicable to a broad range of dislocated worker programs across the country. The proposal provides evidence that the approach and training strategy(ies) used can be replicated by other workforce development partners to address skill shortages in their local area.

Grant applications will be evaluated for the reasonableness of proposed costs, considering the proposed target group, targeted jobs, services, outcomes, management plan, and coordination with other entities.

Applicants are advised that discussions may be necessary in order to clarify any inconsistency or ambiguity in their applications. The final decision on awards will be based on what is most advantageous to the Federal Government as determined by the ETA Grant Officer. The Government may elect to award grant(s) without discussion with the applicant(s). The applicant's signature on the Application for Federal Assistance SF424 constitutes a binding offer.

Part VI. Monitoring, Reporting and Evaluation

A. Monitoring

The Department shall be responsible for ensuring effective implementation of each competitive grant project in accordance with the Act, the Regulations, the provisions of this announcement and the negotiated grant agreement. Applicants should assume that at least one on-site project review will be conducted by Department staff, or their designees. This review will focus on the project's performance in meeting the grant's programmatic goals and participant outcomes, complying with the targeting requirements regarding participants who are served, expenditure of grant funds on allowable activities, collaboration with other organizations as required, and methods for assessment of the responsiveness and effectiveness of the services being provided. Grants may be subject to their additional reviews at the discretion of the Department.

B. Reporting

DOL will arrange for or provide technical assistance to grantees in establishing appropriate reporting and data collection methods and processes taking into account the applicant's project management plan. An effort will be made to accommodate and provide assistance to grantees to be able to complete all reporting electronically. Applicants selected as grantees will be required to provide the following reports:

1. Monthly progress reports, during initial start-up and implementation of the project, and Quarterly Progress Reports.

2. Standard Form 269, Financial Status Report Form, on a quarterly basis.

3. Final Project Report including an assessment of project performance. This report will be submitted in hard copy and on electronic disk utilizing a format and instructions to be provided by the Department. A draft of the final report is due to the Department 45 days prior to the termination of the grant.

C. Evaluation

DOL will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers as well as project financial and management data and to provide access to personnel, as specified by the evaluator(s) under the direction of the Department.

Signed at Washington, DC, this 24th day of March, 2000.

Laura A. Cesario,

Grant Officer, Division of Federal Assistance.

Appendices

1. Appendix A—Application for Federal Assistance SF 424
2. Appendix B—Budget Information
3. Appendix C—Checklist
4. Appendix D—Implementation Benchmarks and Time Line

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX A

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

17-246

TITLE: **Comprehensive Incumbent/Dislocated Worker Retraining Demonstration Program**

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. Federal	$ .00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____
b. Applicant	$ .00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW
c. State	$ .00	
d. Local	$ .00	
e. Other	$ .00	
f. Program Income	$ .00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No
g. TOTAL	$ .00	

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX B

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	*(B)*	*©)*
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual (Consultants)			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	*(B)*	*(C)*
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. ***Personnel:*** *Show salaries to be paid for project personnel which you are required to provide with W2 forms.*

2. ***Fringe Benefits:*** *Indicate the rate and amount of fringe benefits.*

3. ***Travel:*** *Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*

4. ***Equipment:*** *Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*

5. ***Supplies:*** *Include the cost of consumable supplies and materials to be used during the project period.*

6. ***Contractual:*** *Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*

7. ***Other:*** *Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*

8. ***Total, Direct Costs:*** *Add lines 1 through 7.*

9. ***Indirect Costs:*** *Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*

10. ***Training /Stipend Cost:*** *(If allowable)*

11. ***Total Federal funds Requested:*** *Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE: PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

Appendix C APPLICATION CHECKLIST

Name of Applying Organization: _____

Please complete and submit this checklist with your application. It should be used as a quick reference of key provisions of the solicitation. This document is not intended to be comprehensive or address every aspect of the solicitation.

Application Process (Please check below)

_____ Application is 20 pages or less.

_____ Attachments limited to 10 or fewer.

_____ An original and three copies submitted.

_____ SF424 (Appendix A) included.

_____ Budget Information Form (Appendix B) included.

_____ Checklist (Attachment C) included.

_____ Implementation schedule (Attachment D) included.

_____ Executive Summary of two pages or less included.

Financial and Technical Provisions (Provide page number in space below)

____ Target Population identified, with supportive documentation

____ Industry's jobs targeted are described and SIC codes are listed

____ Role & involvement of employers experiencing skill shortages discussed

____ Role of local JTPA Substate Grantee & 1-Stop/Career Center system discussed

____ Discussed number & type of targeted jobs & requisite skill sets for employment

____ Specific skill standards & certification for targeted occupations discussed.

- ___ Sources and credibility of labor market/job data cited.
- ___ Approach to identifying and recruiting eligible participants included.
- ___ Eligibility determination approach discussed.
- ___ Process in selecting eligible participants discussed.
- ___ Job placement strategy included.
- ___ Sequence of services and activities to be provided discussed.
- ___ Flowchart of participant services included.
- ___ Applicants' prior experience with dislocated workers addressed.
- ___ All project outcomes and measures of success specified are addressed.
- ___ Method of assessing impact of coordination included.
- ___ Coordination with other entities discussed.
- ___ Innovation and impact of the project discussed.
- ___ Management structure and staffing plan addressed
- ___ Organizational chart and relationships included.
- ___ Mechanism to ensure financial accountability discussed.
- ___ Basis for applicant's administrative authority addressed.
- ___ System to collect, track, manage, report,& utilize data on the project's progress
- ___ Ability to collect and submit SPIR data indicated.
- ___ Benchmarks to indicate planned implementation schedule included.
- ___ Method to obtain feedback from participants and employers discussed.
- ___ Past experience in Federal demonstration grant projects discussed.
- ___ Project's sustainability addressed.

Appendix D

COMPREHENSIVE INCUMBENT/DISLOCATED WORKER RETRAINING DEMONSTRATION GRANT IMPLEMENTATION STRATEGY BENCHMARKS AND TIMETABLE FORM

Below are examples of the types of tasks found in implementing a demonstration grant. The tasks, methodology and tangible results for any particular project may be different and probably include more tasks than those illustrated below. It is important, however, for any demonstration planning process to set forth the all of the necessary tasks to be accomplished and to think through the sequencing of subtasks and timing requirements necessary to assure the project can be accomplished effectively and efficiently within the period of performance. The time frames should be realistic ones that project administrators and operators can fulfill.

SPECIFIC TASKS TO BE COMPLETED	*(for use of grantee not to be included in application submittal)* ACCOUNTABLE PERSON (specify agency/ organization if outside grantee organization)	METHODOLOGY/APPROACH TO BE USED	TANGIBLE RESULT	TIME FRAME *(begin with Day 1 when notification of grant award is received)*	
				FROM	TO
1. Hire staff		a.Write job description b. Announce opening c. Interview candidates d. Select individual e. Individual reports for work f. All staff positions filled	a. Completed job description b. Announcement published c. Personnel papers completed on candidate d. Project at full staff complement		

2. Ensure adequate facilities to operate project		a. Determine space needs b. Arrange for space c. Negotiate lease d. Obtain necessary furniture and other equipment e. Review maintenance and security needs	Lease signed		
3. Establish participant reporting procedures		a. Review and identify participant data to be collected b. Form prepared to collect participant data or contract prepared for processing of data c. Staff trained in collection and coding of data d. Management report of data designed and tested			
4. Development of customer satisfaction measures		a. Identify the areas in which to determine customer satisfaction b.With consultant, design and test customer satisfaction survey c. Train staff in customer satisfaction philosophy e. Determine schedule for collection of customer satisfaction data f. Analyze and report on customer satisfaction findings g. Use findings to make appropriate program adjustments	a. Areas identified with regard to participant, employer and training provider satisfaction b & c. Surveys developed and pilot tests conducted d. Staff training completed on customer satisfaction e. Schedule for customer satisfaction data collection established f. Report analyzing customer satisfaction prepared and shared with appropriate staff g. Data used to initiate program adjustments		

5. Develop procedures for collection and reporting of financial data		a. Review required data and report forms to ensure that financial reporting system will collect required information. b. Develop internal report that will ensure that project personnel with operational responsibility will be able to keep informed of project expenditures c. Assign staff responsibility to review reports regularly d..... e....			
6. Develop and implement participant recruitment plan.		a. Establish responsibility for recruitment results b. Determine appropriate entities to participate in recruitment efforts c. Design recruitment materials			
7. Develop and implement agreements as necessary with other appropriate agencies and entities		a. Establish contact with ..... b. Develop draft agreements as necessary c. Negotiate and obtain necessary signatures....			

8. Develop and implement job development plan		a. Identify likely employers b. Survey of potential employers to determine need for additional workers and their characteristics c. ..... d.....			
9. Establish training needs, curriculum and select training provider(s)		a. Using information from employers, identify training required for placement with interested employers b. Ensure that curriculum to meet employers' needs is available or develop curriculum in collaboration with employers c. Determine method for selection of training providers	a. Areas most in need of trained workers per area's employers are identified b. Curriculum reviewed with employers c. Training provider(s) selected. d. Any necessary special arrangements with training provider(s) completed.		
10. Establish job search and placement assistance plan for participants		a.			
11. Establish Advisory Panel		a. Identify appropriate members b. Select desired members and issue invitation to participate c. Conduct training of panel regarding responsibilities to project d. Schedule meetings and tentative agendas			

12. Develop management benchmarks for program review and improvement		a. Identify data to be used to determine effectiveness of project activities (recruitment, assessment, training enrollments, training completions, job placements, wage rate, follow-up placement rate) b. Determine how data will be collected, the frequency of review, possible use of data collected, etc.			

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DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA), H–1B Technical Skill Training Grants

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of availability of funds and solicitation for grant applications (SGA).

SUMMARY: This notice contains all of the necessary information and forms needed to apply for grant funding. The Employment and Training Administration (ETA), U.S. Department of Labor (DOL), announces the availability of grant funds for skill training programs for unemployed and employed workers. Funding for these grants is coming from the user fee mandated for applicants for new H–1B nonimmigrant visa workers and established under the American Competitiveness and Workforce Improvement Act of 1998 (ACWIA). The grants will have the longer term goal of raising the skill levels of domestic workers so that they can fill high skill jobs which are presently being filled by temporary workers being admitted to the United States under the provisions of H–1B. Eligible applicants for these grants will be private industry councils (PICs) established under Section 102 of the Job Training Partnership Act (JTPA), local Workforce Investment Boards (WIBs) established under section 117 of the Workforce Investment Act (WIA) that will carry out such programs or projects through one-stop delivery systems established under section 121 of WIA, or regional consortia of PICs or local boards. Regional consortia may be interstate.

WIA provides a framework for a national workforce investment and employment system designed to meet both the needs of the nation's businesses and the needs of job seekers and workers who want to further their careers. ACWIA will provide resources for skill training in occupations that are in employer demand; one measure of this demand is employer H–1B applications for workers. In particular, industries that appear to generate the most H–1B demand include information technology and health. Appendix A to this Solicitation provides information on the kinds of occupations certified under the H–1B program by the Department of Labor for Fiscal Year 1999 (Oct.1, 1998 to May 1999), and the number of job openings certified in each occupation.

This notice describes the application submission requirements, the process that eligible entities must use to apply for funds covered by this solicitation, and how grantees will be selected. It is anticipated that about $40 million will be available for funding the projects covered in this second-round solicitation, that approximately fifteen projects will be selected for funding, and that the maximum grant award will not exceed $3.0 million.

This solicitation is one of a series. It is expected that the third-round solicitation will be announced in early August.

DATES: Applications for grant awards will be accepted commencing immediately. The closing date for receipt of applications shall be June 5, 2000, at 4:00 p.m. (Eastern Time) at the address below.

ADDRESSES: Applications shall be mailed to the U.S. Department of Labor, Employment and Training Administration, Division of Federal Assistance, Attention: Diemle Phan, SGA/DFA 00–104, 200 Constitution Avenue, NW, Room S–4203, Washington, D.C. 20210.

FOR FURTHER INFORMATION CONTACT: Questions should be faxed to Diemle Phan, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739. This is not a toll free number. All inquiries should include the SGA number (DFA 00–104) and a contact name, fax and phone number. This solicitation will also be published on the Internet on the Employment and Training Administration's Homepage at http://www.doleta.gov. Award notifications will also be published on this Homepage.

Background

This initiative will build on similar ETA initiatives that deal with the issue of skill shortages including the June 1998 dislocated worker technology demonstration, the new dislocated worker technology demonstration, the regional skills consortium building awards just announced, the individual training account demonstration grant awards just made and the skills strategies, partnership training/system building demonstration competitive procurement which was announced in the **Federal Register** on February 28. These efforts were intended to strengthen linkages between employers experiencing skill shortages in specific occupations and the publicly funded workforce development system. In June 1998, $7.5 million in JTPA Title III dislocated worker funds was awarded to 11 organizations throughout the country to train workers in skills related to the information technology industry. In June 1999, over $9.57 million was awarded to 10 grantees to train dislocated workers in the skills necessary to obtain work requiring advanced skills in occupations in manufacturing industry settings, including computers and electronics manufacturing, machinery and motor vehicles, chemicals and petroleum, specialized instruments and devices, and biomedics. On March 2, 2000, 23 awards totaling $15.2 million were announced for the regional skills consortium competition. Finally, this Solicitation is taking into account the experience gained from the first round of the H–1B competition for which 9 awards totaling $12.4 million were announced on February 10, 2000.

SUPPLEMENTARY INFORMATION: ETA is soliciting proposals on a competitive basis for the conduct of demonstration projects to provide technical skills training for workers, including both employed and unemployed workers.

This announcement consists of three parts:

- Part I Application Process.
- Part II Statement of Work/Reporting Requirements.
- Part III Review Process/Rating Criteria.

Legislative Mandate

The relevant portions of ACWIA dealing with the establishment of a fund for implementing a program of H–1B skill training grants state:

"Section 286(s)—H–1B Nonimmigrant Petitioner Account

(1) In General—There is established in the general fund of the Treasury a separate account, which shall be known as the 'H–1B Nonimmigrant Petitioner Account.' Notwithstanding any other section of this title, there shall be deposited as offsetting receipts into the account all fees collected under section 214(c)(9).

(2) Use of fees for job training—56.3 percent of amounts deposited into the H–1B Nonimmigrant Petitioner Account shall remain available to the Secretary of Labor until expended for demonstration programs and projects described in section 104(c) of the American Competitiveness and Workforce Improvement Act of 1998."

"Section 104(c) Demonstration Programs and Projects to Provide Technical Skills Training for Workers.—

(1) In general—In establishing demonstration programs under section 452(c) of the Job Training Partnership Act (29 U.S.C. 1732(c)), as in effect on the date of the enactment of this Act, or demonstration programs of projects under section 171(b) of the Workforce Investment Act of 1998, the Secretary of Labor shall use funds available under section 286(s) to establish demonstration programs or projects to provide technical skills training for workers, including both employed and unemployed workers.

(2) Grants—The Secretary of Labor shall award grants to carry out the programs and projects described in paragraph (1) to—

(A)(i) private industry councils established under section 102 of the Job Training Partnership Act (29 U.S.C.1512), as in effect on the date of the enactment of this Act; or

(ii) local boards that will carry out such programs or projects through one-stop delivery systems established under section 121 of the Workforce Investment Act of 1998; or

(B) regional consortia of councils or local boards described in subparagraph (A).

The Immigration and Nationality Act (INA)(section 101(a)(15)(H)(i) (b)) defines the "H–1B alien as one who is coming temporarily to the United States to perform services in a specialty occupation or as a fashion model."

The INA (Section 214(i)) sets criteria to define the term "specialty occupation:"

(1) For purposes of section 101(a)(15)(H)(i)(b) and paragraph 2, a "specialty occupation" means an occupation that requires—

(A) theoretical and practical application of a body of highly specialized knowledge and,

(B) attainment of a bachelor's or higher degree in the specific specialty (or its equivalent) as a minimum for entry into the occupation in the United States

(2) For purposes of section 101(a)(15)(H)(i)(b)), the requirements of this paragraph with respect to a specialty occupation are—

(A) full state licensure to practice in the occupation, if such licensure is required.

(B) completion of the degree described in paragraph (1)(B) for the occupation, or

(C)(i) experience in the specialty equivalent to the completion of such degree, and (ii) recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Part I—Application Process

A. Eligible Applicants

ACWIA specifies under Section 104(c)(2) that the Secretary shall award grants to private industry councils (PICs) established under section 102 of the Job Training Partnership Act (JTPA), or local boards that will carry out such programs or projects through one-stop delivery systems established under section 121 of the Workforce Investment Act (WIA) of 1998, or regional consortia of councils or local boards. This Solicitation contemplates that the local boards will designate a fiscal agent to be the recipient of grant funds.

While the statute is quite specific about the fact that only PICs, local boards (through their designated fiscal agents) and consortia may apply for and receive these grant awards, it does not preempt the participation of other concerned entities which are integral to the process of planning for and conducting skill training in skill shortage areas. The Department of Labor is requiring that eligible applicants must demonstrate that they have the involvement of a wide representation of the business community in their region. They are also strongly encouraged to reach out widely and involve a broad spectrum of other organizations such as labor unions, community colleges and other postsecondary educational institutions, and community based and faith based organizations in a partnership or consortium arrangement.

Applicants are encouraged to associate with entities which possess a sound grasp of the job marketplace in the region and which are in a position to address the issue of skill shortage occupations. Such organizations would include private, for profit businesses—including small-and medium-size businesses; business, trade, or industry associations such as local Chambers of Commerce and small business federations; and labor unions. Also, those entities should include businesses and business associations which have experienced first hand the problems of coping with skill shortages and which employ workers engaged in skill shortage occupations. This Solicitation will not prescriptively define the roles of individual entities within the partnership beyond requiring, as ACWIA states, that the PICs, local workforce investment boards, or consortia be the applicant and the recipient of(or fiscal agent for receiving) grant funds. It is anticipated, however, that the proposal will provide a detailed discussion of participating organizations' respective responsibilities. The proposal should describe a consortium of several employers that will lead the consortium and provide matching funds and who intend to employ workers participating in the technical skills training. Based on Department of Labor experiences, regional partnerships that actively engage a wide range of participation from community groups—particularly with strong private employer involvement—appear to be successful. In general, applicants will be encouraged to include a broad spectrum of stakeholder groups, including such employers, in their partnership effort. Also, PICs or local workforce investment boards or consortia thereof representing more than one region that share common economic goals may band together as one applicant rather than applying individually.

The application must clearly identify who the applicant is (or in the case of a local board, who the fiscal agent is). As part of this certification, the applicant must identify who the grant recipient (and/or fiscal agent) is and describe its capacity to administer this project; it shall also indicate that the project is consistent with and will be coordinated with the workforce investment system(s) that are involved in technical skills activities in the region(s) encompassed by the applicant.

Part III of this announcement enumerates and defines in depth a series of criteria that will be utilized to rate applicant submissions. Briefly, these criteria are:

- Statement of Need
- Service Delivery Strategy
- Target Population
- Sustainability
- Linkages with Key Partners
- Outcomes
- Cost Effectiveness

B. Submission of Proposals

Applicants must submit four (4) copies of their proposal, with original signatures. The proposal must consist of two (2) separate and distinct parts, Parts I and II.

- Part I of the proposal shall contain the Standard Form (SF) 424, "Application for Federal Assistance" (Appendix B) and the Budget Information Form (Appendix C). The individual signing the (SF) 424 on behalf of the applicant shall represent the responsible financial and administrative entity for a grant should that application result in an award. The individual who signs the application should be the same individual who signs the certification discussed in the previous section. According to the Lobbying Disclosure Act of 1995, Section 18, an organization described in

Section 501(c)4 of the Internal Revenue Code of 1986 which engages in lobbying activities shall not be eligible for the receipt of federal funds constituting an award, grant, or loan.

In preparing the Budget Information Form, the applicant must provide a concise narrative explanation to support the request. The statutory language of ACWIA is specific in stating that grant resources are to be expended for programs or projects to provide technical skills training. Therefore, ACWIA grant resources to be utilized for the costs of administration will be limited to no more than 10 percent of the request and should clearly support the goals of the project. Administrative costs include such items as project staff, travel, and fungible supplies. In general, however, this does not contemplate or permit the purchase of capital equipment. The budget narrative should discuss precisely how the administrative costs support those goals.

• Part II must contain a technical proposal that demonstrates the Offeror's capabilities in accordance with the Statement of Work contained in this announcement. A grant application is limited to twenty (20) double-spaced, single-side, 8.5 inch × 11 inch pages with 1-inch margins. The Offeror may provide statistical information and related material in attachments. Attachments may not exceed fifteen (15) pages. Letters of commitment from partners or from those providing matching resources may be submitted as attachments; however, letters of support are not required. Such letters will not count against the allowable maximum page total. The Applicant must briefly enumerate those entities in the text of the proposal. Text type shall be 11 point or larger. Applications that do not meet these requirements will not be considered. Each application must include a Time Line outlining project activities and an Executive Summary not to exceed two pages. The Time Line and the Executive Summary do not count against the 20 page limit. No cost data or reference to price is included in the technical proposal.

C. Hand Delivered Proposals

If proposals are hand delivered, they must be received at the address identified above by June 5, 2000, at 4:00 p.m., Eastern Time. All overnight mail will be considered to be hand delivered and must be received at the designated place by 2:00 on the specified closing date. Telegraphed and/or faxed proposals will not be honored. Failure to adhere to the above instructions will be a basis for a determination of nonresponsiveness.

D. Late Proposals

A proposal received at the designated office after the exact time specified for receipt will not be considered unless it is received before award is made and it:

• Was sent by registered or certified mail not later than the fifth calendar day before the date specified for receipt of applications (*e.g.*, a proposal submitted in response to a solicitation requiring receipt of applications by the 20th of the month must be mailed by the 15th);

• Was sent by U.S. Postal Service Express Mail Next Day Service, Post Office to addressee, not later than 5 p.m. at the place of mailing two working days prior to the date specified for proposals. The term "working days" excludes weekends and U.S. Federal holidays. The only acceptable evidence that an application was sent in accordance with these requirements is a printed, stamped, or otherwise placed impression (exclusive of a postage meter machine impression) that is readily identifiable without further action as having been supplied or affixed on the date of mailing by employees of the U.S. Postal Service.

E. Period of Performance

The initial period of performance will be up to 24 months from the date of execution of the grant documents. It is anticipated that about $40 million will be disbursed. Department of Labor may elect to exercise its option to extend these grants for an additional period not to exceed 36 months, based on the availability of funding and successful program operation.

F. Definitions

For purposes of this solicitation:

• Technical skills training includes occupational skills training—that may combine academic and work-place learning and related instruction, customized training with a commitment of an employer or group of employers to employ an individual upon successful completion of training, and that may be tailored to meet the needs of the individual participant. Section 134 (d)(4)(D) of WIA provides a definition of training services that shall be viewed as generally applicable to the term "technical skills training" in this Solicitation. This definition of technical skills training specifically allows the use of grant funds to provide necessary books.

• Region means an area which exhibits a commonality of economic interest. Thus, a region may comprise a few labor market areas, one large labor market, one labor market area joined together with a couple of adjacent rural districts, a few special purpose districts, or a few contiguous PICs or local boards. Clearly, if the region involves multiple economic or political jurisdictions, it is essential that they be contiguous to one another. A region may be either intrastate or interstate. Although the rating criteria will provide more detail, it is the applicant's responsibility to demonstrate the regional nature of the area which that application covers. Also, a region may be coterminous with a single PIC or local board.

G. Sustainability

No applicant may receive a grant unless that applicant agrees to provide resources equivalent to at least 25 percent of the grant award amount as a match. That match may be provided in cash or in kind, however, Federal resources may not be counted against the matching requirement. In view of the fact that the singular focus of grant resources is to provide skill training, ETA particularly encourages the provision of essential capital equipment, such as computer equipment, as part of the match. The match will not be tied to the drawdown of funds, however, the amount and nature of it must be clearly described in the application.

The 25 percent matching requirement should be viewed as a minimum designed to assist grantees in developing sustainability. The Department is particularly interested that applicants demonstrate clear evidence through matched and/or leveraged resources (those Federal resources which may not be counted against match but which are integral to strengthening the quality of technical skills training provided and which contribute materially to sustainability) that the project will have the capacity to continue its training activities after the expiration date of the grant.

Part II—Statement of Work/Reporting Requirements

A. Principles

Five basic key principles underlie this effort:

• *Partnership Sustainability:* The grant awards will be of relatively short duration—up to 24 months. Although the primary focus of these awards is technical skill training, ETA intends that regional partnerships sustain themselves over the long term—well after the federal resources from this initiative have been exhausted. The 25 percent non-Federal matching requirement is an integral part of ensuring sustainability; matching resources will help sustain the skill shortages training effort beyond the term of the grant. This concept relates to Links with Key Partners and Sustainability (What resources does each partner bring to the table and how does this contribution assist in building the foundation for a permanent partnership?)

• *Business Involvement:* Business is an essential partner. It articulates skill requirements, hires skilled workers, and provides support for lifelong learning. Under WIA, business plays a critical role in planning and overseeing training and employment activities. WIA requires that the majority of the membership of State and local boards be business representatives, and that the State and local board chairs be drawn from business. For the purpose of these grants, it is imperative that businesses represented include businesses with current skill shortages who intend to hire graduates of the technical skills training. This concept relates to three Rating Criteria: Statement of Need (Assists in determining what skill shortage occupations are in demand in the region), Linkages with Key Partners and Sustainability (What private sector involvement is there in the partnership; what resources does each of the partners bring to the table; how do contributions assist in building the foundation for a permanent partnership?), and Outcomes (Businesses involved in the partnerships will provide a key resource in hiring/upgrading workers who have been trained).

• *Current Skills Gap:* Current skill shortages are the immediate focus of this initiative. Training investments should be targeted in occupational areas that have been identified on the basis of H–1B occupations as skill shortage areas. This concept relates to Statement of Need (The most important issue to be addressed under this section is identifying the particular skill shortages that manifest themselves in the region.) and Service Delivery Strategy (How will skill training meet the skill needs of the region.)

• *Innovative and Effective Tools:* The grantees will use innovative or proven tools and approaches to close particular skills gaps and provide strategies for training that promote regional development. This concept relates to Service Delivery Strategy (There can be innovation in the way training services are provided.) and Cost Effectiveness (Innovative tools and approaches may more effectively deliver training services to individual participants thereby resulting in better employment outcomes and higher levels of skill achieved by those participants for the same cost.)

• *Target Population:* The primary emphasis of the ACWIA technical skills training will be to focus on employed and unemployed workers who can be trained and placed directly in the highly skilled H–1B occupations. As part of identifying people with the appropriate backgrounds that would benefit from such training, there should be a special outreach effort to target women, minorities, persons with disabilities, and other underrepresented groups. This relates to the rating criterion, Target Population (Discussion of who the targeted workers are.)

B. Skills Shortages

Section 104(c) of ACWIA mandates that the grants awarded under this authority be used for technical skill training to employed and unemployed workers. The basis of the funding for the grants, however, is a user fee paid by an employer seeking nonimmigrant alien workers (H–1B) that possess qualifications in occupations with skill shortages at high skill levels in American industry. Thus, training conducted under these auspices should be in occupations that have been demonstrated to be in short supply.

What is a skills shortage? In the simplest terms possible, such shortages occur in a market economy when the demand for skilled workers for a particular occupation is greater than the supply of workers who are qualified, available, and willing to do that job. Although, some of the explanations for why this demand or supply disequilibrium exists are fairly complex, the basic concept is straightforward. In many instances, labor markets adjust quickly and the skill shortage is resolved.

Problematic skills shortages occur when there is imbalance between worker supply and demand for an unusual period of time. The H–1B visa program is a response to those shortages, and this skill training grant program helps alleviate such shortages. It should be noted that the concept of skill shortages also may include an imbalance between the demand and supply of workers at some definable skill level.

C. Skills Standards

As noted earlier, the definition of the minimum proficiency level required to be considered an H–1B occupation, contained in section 214 (i) of INA, speaks to a very high skill level for these "specialty occupations" (8 U.S.C. 1184 (i)). To reiterate, these are occupations that require "theoretical and practical application of a body of highly specialized knowledge," and full state licensure to practice in the occupation (if it is required). These occupations also must require either completion of at least a bachelor's degree or experience in the specialty equivalent to the completion of such degree and recognition of expertise in the specialty through progressively responsible positions relating to the specialty.

Skill standards represent a benchmark by which an individual's achieved competence can be measured. Much work has been done in this area—some by private industry and trade associations, some by registered apprenticeship training systems, some by public and private partnerships, including local School-to-Work partnerships, and the Job Corps. Succinctly stated, well-defined skill standards can be a useful tool in matching training goals to targeted occupational areas. Applicants are encouraged to survey the progress to date in developing occupational skill standards in their communities. Do companies that will be seeking skilled workers for H–1B occupations have a clearly defined set of expectations for the requisite capabilities of those workers?

D. Regional Planning

Applicants must describe the local area or region that will be served with particular emphasis on its skill shortages. That discussion should include an articulation of the dimensions, nature and specifics of those skill shortages. The proposal must also identify the political jurisdictions to be included as well as provide an enumeration of the specific local areas under JTPA or WIA. Although comprehensive occupational vacancy data do not exist, current H–1B applicant data should be utilized to the extent feasible to describe occupational shortages. Attachment A to this Solicitation is a listing by occupation of the most current H–1B applicant data. Applicants may take into consideration that occupations listed in high demand among those for which H–1B visas were sought nationally also might be in short supply in their region. However, applicants should avail themselves of all available local data including data provided by area businesses and business associations in making determinations as to shortages. They are encouraged to research widely and be inclusive in utilization of labor market information. In addition to the sources already described, applicants are encouraged to analyze data made available by the Bureau of Labor Statistics and through the local One-Stop delivery system.

E. Service Delivery and Supportive Services

Applicants should carefully describe skill training that will be provided under the grant in context of the goals that are to be achieved by participants. These goals should be expressed in terms of targeted occupations. The Statement of Work should provide a detailed discussion of the kinds of training to be provided and the mechanisms to be used to provide it. Applicants also should build linkages to the One-Stop system established under WIA to reach out, inform, and recruit individuals to participate in the H–1B financed training. It is expected that the applicant's work statement will include a discussion of the types of skills being trained for, the necessary skill levels that are targeted, how they will be measured, and how skill shortages in the local area or region will be met through this training

The central role of the local boards or PICs in the planning and policy activity surrounding these grants is critical. WIA requires the local board to prepare a strategic workforce investment plan for the area that it embraces. The local board also designates One-Stop service center operators and selects eligible training providers. In short, local boards are already engaged in much of the necessary work that could provide a solid foundation for the training activities to be undertaken in ACWIA. The PIC under JTPA is very much in a similar role except that the PIC may provide direct services; under WIA however, the presumption is that local boards only provide services under certain circumstances and for a limited time period.

ACWIA requires that grant resources be used solely for technical skills training. However, ETA anticipates that applicants may need to make available a range of supportive services to enhance the quality and effectiveness of the skill training provided under the grant. Grant funds may not be used to provide supportive services. Appropriately focused services, however—such as transportation or child care and others defined by section 4(24) of JTPA and section 101(46) of WIA—could be viewed as an important factor enhancing the technical skills training package. To the extent that these services are provided utilizing non-Federal resources, applicants may present them as part of the proposed matching requirement. Federal resources such as coenrollment in WIA or JTPA while participating in ACWIA training for supportive services clearly cannot be counted toward the matching requirement; however, such coordinated coenrollment and services are clearly desirable features of these projects. Successful applicants are encouraged to leverage such Federal resources as part of making the technical skills training more effective.

F. Reporting Requirements

The Grantee is required to provide the reports and documents listed below:

- Quarterly Financial Reports. The grantee must submit to the Grant Officer's Technical Representative (GOTR) within the 30 days following each quarter, two copies of a quarterly Financial Status Report (SF269) until such time as all funds have been expended or the period of availability has expired.
- Progress Reports. The grantee must submit brief narrative quarterly reports to the GOTR within the 30 days following each quarter. Two copies are to be submitted; the report provides a detailed account of activities undertaken during that quarter including:

a. A discussion of occupational areas for which skill training is being provided,

b. Job placements in skill shortage occupations, and

c. An indication of any current problems which may affect performance and proposed corrective action.

- Final Report. A draft final report which summarizes project activities and employment outcomes and related results of the demonstration shall be submitted no later than the expiration date of the grant. The final report shall be submitted in 3 copies no later than 60 days after the grant expiration date.

G. Evaluation

ETA will arrange for or conduct an independent evaluation of the outcomes, impacts, and benefits of the demonstration projects. Grantees must agree to make available records on participants and employers and to provide access to personnel, as specified by the evaluator(s) under the direction of ETA.

Part III—Review Process & Rating Criteria

A careful evaluation of applications will be made by a technical review panel who will evaluate the applications against the criteria listed below. The panel results are advisory in nature and not binding on the Grant Officer. The Government may elect to award the grant with or without discussions with the offeror. In situations without discussions, an award will be based on the offeror's signature on the (SF) 424, which constitutes a binding offer. Awards will be those in the best interest of the Government.

A. Statement of Need (15 points)

The underlying statute authorizing this competitive grant program—ACWIA—is a response to skill shortages around the country in specific occupations. ETA has provided the most recent H–1B application data as an attachment to this solicitation. The most important issue to be addressed under this section is identifying, to the extent possible, the particular skill shortages that manifest themselves in the region that is encompassed by the application. Applicants are encouraged to utilize all available data resources—H–1B applications, newspaper want ads, expressed employer consortium hiring desires, and One Stop system's labor market information—in responding to this criterion.

To provide a focused backdrop for the discussion of skill shortages, applicants should describe clearly the region for which services are to be provided. What are the characteristics that make this area a cohesive region? What are the particular characteristics of the local political, economic and administrative jurisdictions—PICs, local workforce investment boards, labor market areas, special district authorities—that caused them to associate for the purpose of this application?

There are several useful items of information that could be provided to enhance the description of the region. A general discussion of the region should include socioeconomic data—with a particular focus on the general education and skill level prevalent in the area. Also, it is useful to include such items as transportation patterns, demographic information (such as age and general income of residents). Judicious use of statistical information is encouraged. Other pertinent questions that will provide greater depth of description include: What is the general business environment? What industries and occupations are growing, and which ones are cutting back contracting? What are the characteristics of the major employers in the region? What is the particular situation of the consortium member companies?

B. Service Delivery Strategy (30 points)

Applicants must lay out a comprehensive strategy for providing the technical skills training that is mandated as the core activity of these grant awards. Concomitantly, there needs to be a discussion of how this skill training will meet the skill needs of the region. Several specific issues must be focused on as part of this section. Those issues include:

What is the range of potential training providers, what kinds of skill training will be offered, how will that meet the regional skill needs, and how will training be provided? How will the types of training planned for project participants be determined? Also, although there is a separate section on outcomes, it is strongly recommended that some brief mention in context of the service delivery strategy, be made of them here. Such outcomes would include job placements in skill shortage occupations, increased salary, and measurable skill gains or certificates obtained that demonstrate how the training will alleviate skill shortages.

Supportive services, per se, are not an allowable activity with grant funds. However, making such services available on an as needed basis (utilizing other available resources) is encouraged. Innovation in the context of service delivery can represent a wide variety of items. There can be innovation in the way training services are provided—e.g., distance learning to provide instruction, interactive video self-instructional materials, and flexible class scheduling (sections of the same class scheduled at different times of the day to accommodate workers whose schedules fluctuate). Creativity in developing the service strategy is also encouraged.

C. Target Population (10 points)

The eligibility criterion for skill training enumerated in ACWIA is extremely broad—employed and unemployed workers. This section should include an extensive focused discussion of who the targeted workers are, including their characteristics, and why they are being targeted. A discussion of what assessment procedures are to be used is integral.

In the case of employed workers, there should be some articulation of what is to be accomplished. The applicant should address some specific issues relating to the target employed worker population such as:

—How many employed workers will be targeted for services and why?
—What are the technical skills training needs of those workers to fulfill skill shortage occupations?

In the case of unemployed workers, there needs to be an extensive discussion of criteria to be used to assess and enroll individuals. It is true that the target occupations and specific jobs to be trained for within the H–1B rubric are statutorily geared to a very high skill standard. It is extremely important that the selection process for workers be carefully described to make it clear how those individuals will possess the capacity after the completion of training to take jobs that previously were filled by resorting to the H–1B visa process. In particular, the applicant should describe with precision the methods that will be used to reach out and include minorities, women, and individuals with disabilities who can meet these standards.

D. Sustainability (5 Points)

There is a 25 percent matching requirement. To what extent does any of these partners provide matching funds or services and how does this contribution assist in building the foundation for a permanent partnership, *i.e.*, sustainability?

As noted earlier, Federal resources cannot be counted against the matching requirement; however, it is important that such resources be provided as part of the project because they certainly support and strengthen the quality of the technical skills training provided in the project and contribute materially toward sustainability. ACWIA resources are limited to training individuals to fill high skill H–1B jobs, however, applicants will be given preference for enumerating other resources—Federal and non Federal—because they can contribute materially toward sustainability. For example, local boards could commit through One-Stop centers such valuable participant services as participant assessment and case management. Applicants are encouraged to enumerate these resources under this section to support their discussion of sustainability.. This section should also enumerate any specific existing contractual commitments.

Briefly stated, the sustainability issue can be addressed by providing concrete evidence that activities supported by the demonstration grant will be continued after the expiration date of the grant using other public or private resources.

E. Linkages With Key Partners (15 Points)

The applicant should enumerate who the partners are in this endeavor and how they will link together—i.e., what role each will play. In particular, this section should articulate ties to the private sector, including ties with small- and medium-sized businesses and small business federations.

The Service Delivery Strategy section of the Statement of Work described the role each of the actors would play in providing services. This section looks at the linkages from a somewhat different more structural perspective with particular emphasis on the employers in the consortium that are experiencing skill shortages. What resources does each partner bring to the table? The application will specify a management entity (together with a staffing pattern and resumes of major staff members) and will articulate with some precision the roles of various actors. Each application MUST designate an individual who will serve as project director and who will devote a substantial portion of his/her time to it. (For purposes of this requirement, a substantial portion of time is defined as at least 40 percent.) A short portion of this discussion should dwell upon the organizational capacity and track record of the primary actors in the partnership.

F. Outcomes (15 Points)

Applicants must describe the predicted outcomes resulting from this training. It is posited that the projected results will be somewhat varied given the broad range of people that will probably be served. For example, employed workers may be trained to achieve a higher skill level than most unemployed workers. Their success could manifest itself through job placements in H–1B skill shortage occupations, increased wages, or skill attainment in H–1B occupations. There are, however, unemployed workers who may well already possess a very high skill level. They could receive refresher technical skills training to update their skills. The outcomes for this group may also be projected in terms of gaining employment and skills attainment; those outcomes would simply be at a somewhat higher level than for those unemployed workers who do not possess similar skills at the outset.

Ideally, the applicant's outcomes section will describe some version of a relatively cohesive mosaic that weaves together the outcomes for both employed and unemployed workers in the context described in the preceding three paragraphs. Additionally, the outcomes section should focus very specifically on the changes that occur because of the training. Thus, an applicant might state that a certain skill level is projected for a given group; but the applicant should couch that outcome in context of what the initial pre-training skill level had been for the group.

G. Cost Effectiveness (10 points)

Applicants will provide a detailed cost proposal including a discussion of the expected cost effectiveness of their proposal in terms of the expected cost

per participant compared to the expected benefits for these participants. Applicants should address the employment outcomes and the levels of skills to be achieved (such as attaining State licensing in an occupation) relative to the amount of training that the individual had to receive to achieve those outcomes. Benefits can be described both qualitatively in terms of skills attained and quantitatively in terms of wage gains. Cost effectiveness may be demonstrated in part by cost per participant and cost per activity in relation to services provided and outcomes to be attained.

This section MUST contain a detailed discussion of the size, nature, and quality of the non-Federal match. Proposals not presenting a detailed discussion of the non-Federal match or not meeting the 25 percent match requirement will be considered nonresponsive. Applicants are advised that discussions and/or site visits may be necessary in order to clarify any inconsistencies in their applications. The reviewers' evaluations are only advisory to the Grant Officer. The final decisions for grant award will be made by the Grant Officer after considering the panelists' scoring decisions. The Grant Officer's decisions will be based on what he or she determines is most advantageous to the Federal Government in terms of technical quality and other factors.

Signed in Washington, D.C. , this 24th day of March 2000.

Laura Cesario,

Grant Officer, Division of Federal Assistance.

Appendix A: Selected H–1B Professional, Technical and Managerial Occupations, and Fashion Models: Number of Job Openings Certified by the U.S. Department of Labor, Fiscal Year 1999 (Oct. 1, 1998–May 31, 1999)

Appendix B: (SF) 424—Application Form

Appendix C: Budget Information Form

APPENDIX A—SELECTED H–1B PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS, AND FASHION MODELS: NUMBER OF JOB OPENINGS CERTIFIED BY THE U.S. DEPARTMENT OF LABOR, FISCAL YEAR 1999

[Oct. 1, 1998—May 31, 1999]

Occupational code	Occupational title	Number of openings certified
030	Occupations In Systems Analysis And Programming	360,745
076	Therapists	181,665
160	Accountants, Auditors, And Related Occupations	35,665
039	Other Computer-Related Occupations	28,529
003	Electrical/Electronic Engineering Occupations	16,859
070	Physicians And Surgeons	11,264
019	Other Occupations In Architecture, Engineering And	11,175
090	Occupations In College And University Education	9,028
199	Miscellaneous Professional, Technical, And Manager	8,964
189	Miscellaneous Managers And Officials	8,824
007	Mechanical Engineering Occupations	7,115
050	Occupations In Economics	5,608
163	Sales And Distribution Management Occupations	5,368
033	Occupations In Computer Systems Technical Support	4,573
161	Budget And Management Systems Analysis Occupations	4,263
169	Other Occupations In Administrative Occupations	4,135
031	Occupations In Data Communications And Networks	4,121
041	Occupations In Biological Sciences	3,981
079	Other Occupations In Medicine And Health	3,764
012	Industrial Engineering Occupations	2,725
186	Finance, Insurance An Real Estate Managers And Off	2,624
020	Occupations In Mathematics	2,599
001	Architectural Occupations	2,490
141	Commercial Artists: Designers & Illustrators, Graphics	2,371
297	Fashion Models	2,367
092	Occupations In Preschool, Primary, Kindergarten Ed.	2,359
187	Service Industry Managers And Officials	2,347
022	Occupations In Chemistry	2,345
005	Civil Engineering Occupations	2,186
032	Occupations In Computer System User Support	1,595
091	Occupations In Secondary School Education	1,579
110	Lawyers	1,353
029	Other Occupations In Mathematics And Physical Sciences	1,306
131	Interpreters and Translators	1,270
166	Personnel Administration Occupations	1,229
165	Public Relations Management Occupations	1,216
185	Wholesale And Retail Trade Managers And Officials	1,183
008	Chemical Engineering Occupations	1,075
168	Inspectors And Investigators, Managerial & Public	974
142	Environmental, Product And Related Designers	955
119	Other Occupations In Law And Jurisprudence	882
099	Other Occupations In Education	841
023	Occupations In Physics	836
010	Mining And Petroleum Engineering Occupations	777
164	Advertising Management Occupations	773
132	Editors: Publication, Broadcast, And Script	748
078	Occupations In Medical And Dental Technology	699
183	Manufacturing Industry Managers And Officials	681

APPENDIX A—SELECTED H–1B PROFESSIONAL, TECHNICAL AND MANAGERIAL OCCUPATIONS, AND FASHION MODELS: NUMBER OF JOB OPENINGS CERTIFIED BY THE U.S. DEPARTMENT OF LABOR, FISCAL YEAR 1999—Continued

[Oct. 1, 1998—May 31, 1999]

Occupational code	Occupational title	Number of openings certified
184	Transportation, Communication, And Utilities Management	659
049	Other Occupations In Life Sciences	612
162	Purchasing Management Occupations	604
040	Occupations In Agricultural Sciences	574
074	Pharmacists	508
159	Other Occupations In Entertainment And Recreation	506

Technical Note: The Immigration and Nationality Act (Act) assigns responsibility to the Department of Labor with respect to the temporary entry of foreign professionals to work in specialty occupations in the U.S. under H–1B nonimmigrant status. Before the Immigration and Naturalization Service will approve a petition for an H–1B nonimmigrant worker, the employer must have filed and had certified by the Department a Labor Condition Application. The employer must indicate on the application the number of H–1B nonimmigrant workers sought, the rate of pay offered to the nonimmigrants, and the location where the nonimmigrants will work, among other things.

The Act limits the number of foreign workers who may be assigned H–1B status in each fiscal year, however, there is no limit on the number of job openings that may be certified by the Department. Historically, the actual number of job openings certified by the Department each year far exceeds the number of available visas. This excess in the number of certified openings is due to a number of factors: extension of status filings that are not subject to the annual cap; openings certified for anticipated employment that does not transpire; or movement from one employer to another (again, not subject to cap).

The occupational codes in the left-hand column represent the three-digit occupational groups codes for professional, technical and managerial occupations from the Dictionary of Occupational Titles (DOT).

BILLING CODE 4510–30–P

APPLICATION FOR FEDERAL ASSISTANCE

APPENDIX B

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction / Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name:	Organizational Unit:
Address (give city, county, State and zip code):	Name and telephone number of the person to be contacted on matters involving this application (give area code):

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐-☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State H. Independent School Dist.
B. County I. State Controlled Institution of Higher Learning
C. Municipal J. Private University
D. Township K. Indian Tribe
E. Interstate L. Individual
F. Intermunicipal M. Profit Organization
G. Special District N. Other (Specify): _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐

A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY.

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:

17-249

TITLE: H - 1B TECHNICAL SKILL TRAINING GRANTS

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, States, etc.):

13. PROPOSED PROJECT: Start Date	Ending Date	14. CONGRESSIONAL DISTRICTS OF: a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	00
b. Applicant	$	00
c. State	$	00
d. Local	$	00
e. Other	$	00
f. Program Income	$	00
g. TOTAL	$	00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Typed Name of Authorized Representative	b. Title	c. Telephone number

d. Signature of Authorized Representative	e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which ave established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3.	State use only (if applicable)
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake this assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided. - "New" means a new assistance award. - "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. - "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is required.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of the project.

Item:	Entry:
12.	List only the largest political entities affected (e.g., State, counties, cities.
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

APPENDIX C

PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	(A)	(B)	©)
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual (Consultants)			
7. Other			
8. Total, Direct Cost (Lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Cost/Stipends			
11. TOTAL Funds Requested (Lines 8 through 10)			

SECTION B - Cost Sharing/ Match Summary (if appropriate)

	(A)	(B)	(C)
1. Cash Contribution			
2. In-Kind Contribution			
3. TOTAL Cost Sharing / Match (Rate %)			

NOTE: Use Column A to record funds requested for the initial period of performance (i.e. 12 months, 18 months, etc.); Column B to record changes to Column A (i.e. requests for additional funds or line item changes; and Column C to record the totals (A plus B).

INSTRUCTIONS FOR PART II - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

1. *Personnel: Show salaries to be paid for project personnel which you are required to provide with W2 forms.*
2. *Fringe Benefits: Indicate the rate and amount of fringe benefits.*
3. *Travel: Indicate the amount requested for staff travel. Include funds to cover at least one trip to Washington, DC for project director or designee.*
4. *Equipment: Indicate the cost of non-expendable personal property that has a useful life of more than one year with a per unit cost of $5,000 or more. Also include a detailed description of equipment to be purchased including price information.*
5. *Supplies: Include the cost of consumable supplies and materials to be used during the project period.*
6. *Contractual: Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts/grants.*
7. *Other: Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.*
8. *Total, Direct Costs: Add lines 1 through 7.*
9. *Indirect Costs: Indicate the rate and amount of indirect costs. Please include a copy of your negotiated Indirect Cost Agreement.*
10. *Training /Stipend Cost: (If allowable)*
11. *Total Federal funds Requested: Show total of lines 8 through 10.*

SECTION B - Cost Sharing/Matching Summary

Indicate the actual rate and amount of cost sharing/matching when there is a cost sharing/matching requirement. Also include percentage of total project cost and indicate source of cost sharing/matching funds, i.e. other Federal source or other Non-Federal source.

NOTE:

PLEASE INCLUDE A DETAILED COST ANALYSIS OF EACH LINE ITEM.

[FR Doc. 00–7747 Filed 3–28–00; 8:45 am]
BILLING CODE 4510–30–C

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

The Sunshine Act Meeting

Monday, April 10, 2000–1:00–4:00 p.m.

1110 Vermont Avenue, NW, 8th floor, Washington, DC

DISCUSSION TOPIC

"Digital Divide" and the Role of the Commission

Tuesday, April 11, 2000—8:30 a.m.–4:30 p.m.

1110 Vermont Avenue, NW, 8th floor, Washington, DC.

MATTERS TO BE DISCUSSED

Administrative matters
Chairperson's report
Executive Director's report
Strategic planning for the Commission
NCLIS 30th anniversary celebration
NCLIS Program/committee updates
Sister Libraries, A White House Millennium Council Project
Update, The future of the National Technical Information Service

To request further information or to make special arrangements for persons with disabilities, contact Barbara Whiteleather (telephone: 202–606–9200; fax: 202–606–9203; e-mail: bwhiteleather@nclis.gov) no later than one week in advance of the meeting.

Dated: March 23, 2000.

Robert S. Willard,

NCLIS Executive Director.

[FR Doc. 00–7859 Filed 3–27–00; 2:00 pm]
BILLING CODE 7527–$$–M

NATIONAL COUNCIL ON DISABILITY

Sunshine Act Meeting

TYPE: Quarterly Meeting.
AGENCY: National Council on Disability.
SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming quarterly meeting of the National Council on Disability. Notice of this meeting is required under Section 522b(e)(1) of the Government in the Sunshine Act, (P.L. 94–409).
QUARTERLY MEETING DATES: May 22–24, 8:30 a.m. to 5:00 p.m.
LOCATION: Ritz Carlton San Juan Hotel, 6961 State Road No. 187, Isla Verde, Carolina, Puerto Rico.
FOR INFORMATION, CONTACT: Mark S. Quigley, Public Affairs Specialist, National Council on Disability, 1331 F Street NW, Suite 1050, Washington, DC 20004–1107; 202–272–2004 (Voice), 202–272–2074 (TTY), 202–272–2022 (Fax).

AGENCY MISSION: The National Council on Disability is an independent federal agency composed of 15 members appointed by the President and confirmed by the U.S. Senate. Its overall purpose is to promote policies, programs, practices, and procedures that guarantee equal opportunity for all people with disabilities, regardless of the nature of severity of the disability; and to empower people with disabilities to achieve economic self-sufficiency, independent living, and inclusion and integration into all aspects of society.

ACCOMMODATIONS: Those needing interpreters or other accommodations should notify the National Council on Disability prior to this meeting.

ENVIRONMENTAL ILLNESS: People with environmental illness must reduce their exposure to volatile chemical substances in order to attend this meeting. In order to reduce such exposure, we ask that you not wear perfumes or scents at the meeting. We also ask that you smoke only in designated areas and the privacy of your room. Smoking is prohibited in the meeting room and surrounding area.

OPEN MEETING: This quarterly meeting of the National Council on Disability will be open to the public.

AGENDA: The proposed agenda includes:

Reports from the Chairperson and the Executive Director
Committee Meetings and Committee Reports
Executive Session (closed)
Unfinished Business
New Business
Announcements
Adjournment

Records will be kept of all National Council on Disability proceedings and will be available after the meeting for public inspection at the National Council on Disability.

Signed in Washington, DC, on March 27, 2000.

Ethel D. Briggs,

Executive Director.

[FR Doc. 00–7820 Filed 3–27–00; 1:50 pm]
BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–317 and 50–318]

Baltimore Gas and Electric Company, Calvert Cliffs Nuclear Power Plant, Units 1 and 2; Notice of Issuance of Renewed Facility Operating Licenses Nos. DPR–53 and DPR–69 for an Additional 20-Year Period

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has issued (1) Renewed Facility Operating License No. DPR–53 (the Unit 1 license), and (2) Renewed Facility Operating License No. DPR–69 (the Unit 2 license) to Baltimore Gas and Electric Company (the licensee). The Unit 1 license authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit 1 by the licensee at reactor core power levels not in excess of 2700 megawatts thermal in accordance with the provisions of the Unit 1 license, its Technical Specifications (Appendices A and B), and the Additional Conditions in Appendix C to the license. The Unit 2 license authorizes operation of the Calvert Cliffs Nuclear Power Plant, Unit 2 by the licensee at reactor core power levels not in excess of 2700 megawatts thermal in accordance with the provisions of the Unit 2 license, its Technical Specifications (Appendices A and B), and the Additional Conditions in Appendix C to the license.

Calvert Cliffs Nuclear Power Plant, Units 1 and 2, are pressurized water nuclear reactors located at the licensee's site on the west shore of the Chesapeake Bay in Calvert County, Maryland.

The application for the renewed licenses complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I, which are set forth in each license. Prior public notice of the action involving the proposed issuance of these renewed operating licenses was published in the **Federal Register** on May 19, 1998 (63 FR 27601). A notice of opportunity for hearing regarding the proposed issuance of these renewed operating licenses was published in the **Federal Register** on July 8, 1998 (63 FR 36966).

For further details with respect to these actions, see (1) the Baltimore Gas and Electric Company's License Renewal Application for Calvert Cliffs Nuclear Power Plant, Units 1 and 2, dated April 8, 1998, as supplemented by letters dated July 17 and 30, September 25, November 2, 4, 9, 12, 16, 17, 19, and 20, and December 3 and 10, 1998; February 4 and 19, March 11, April 4, July 2 and 16, September 28, October 22, November 12, and December 6 and 30, 1999; and January 12, 2000; (2) Renewed Facility Operating License Nos. DPR–53 and DPR–69, with the appendices listed above; (3) the Commission's Safety Evaluation Reports dated March 21, November 16, and December 1999 (NUREG–1705); (4) the licensee's updated final safety analysis report; and (5) the Commission's Final Environmental Impact Statement (NUREG–1437, Supplement 1), dated October 1999. These items are available at the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555–0001, and can be viewed from the NRC Public Electronic Reading Room at *http://www.nrc.gov/NRC/ADAMS/index.html.*

A copy of the Renewed Facility Operating Licenses, Nos. DPR–53 and DPR–69, may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, D.C. 20555–0001, Attention: Director, Division of Licensing Project Management. Copies of the Safety Evaluation Report (NUREG–1705) and the Final Environmental Impact Statement (NUREG–1437, Supplement 1) may be purchased from the National Technical Information Service, Springfield, Virginia 22161–0002 (telephone number 703–487–4650, <*http://www.ntis.gov/ordernow*>), or the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20402–9328 (telephone number 202–512–4650, <*http://www.access.gpo.gov/sh__docs*>). All orders should clearly identify the NRC publication number and the requestor's Goverment Printing Office deposit account, or VISA or Mastercard number and expiration date.

Dated at Rockville, Maryland, this 23rd day of March 2000.

For the Nuclear Regulatory Commission.

David L. Solorio,

Project Manager, License Renewal and Standardization Branch, Division of Regulatory Improvement Programs.

[FR Doc. 00–7710 Filed 3–28–00; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–458]

Entergy Operations, Inc.; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Entergy Operations, Inc. (the licensee), to withdraw its October 25, 1999, application, as supplemented by letter dated January 12, 2000, for a proposed amendment to Facility Operating License No. NPF–47 for the River Bend Station, Unit 1, located in West Feliciana Parish, Louisiana.

The proposed amendment would have revised the reactor vessel material surveillance program capsule schedule, defined in Technical Requirements Manual, Table 3.4.11–1, as required by Title 10 of the Code of Federal Regulations Part 50, Appendix H, Section III. The licensee had originally requested that the schedule to remove its first surveillance capsule be changed from 10.4 effective full power years (EFPY) to 13.4 EFPY. The January 12, 2000, letter subsequently requested that the capsule removal schedule be 11.5 EFPY.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment, which was published in the **Federal Register** on December 15, 1999 (64 FR 70083). However, by letter dated March 2, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated October 25, 1999, supplemental letter dated January 12, 2000, and the licensee's letter dated March 2, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 23rd day of March 2000.

For the Nuclear Regulatory Commission.

Robert J. Fretz,

Project Manager, Section 1, Project Directorate IV & Decommissioning, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7712 Filed 3–28–00; 8:45 am]
BILLING CODE 7590–01–P

NUCLEAR REGISTER NOTICE

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.
DATES: Weeks of March 27, April 3, 10, 17, 24, and May 1, 2000.
PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.
STATUS: Public and Closed.
MATTERS TO BE CONSIDERED:

Week of March 27

Thursday, March 30

8:55 a.m. Affirmation Session (Public Meeting)
a: Petition for Leave to Intervene in Proceeding Regarding Commonwealth Edison Request for Exemption at Zion Facility.
9:00 a.m. Briefing on EEO Program (Public Meeting), (Contact: Irene Little, 301–415–7380).

Friday, March 31

9:30 a.m. Briefing on Risk-Informed Regulation Implementation Plan (Public Meeting) (Contact: Tom King, 301–415–5790.

Week of April 3—Tentative

There are no meetings scheduled for the Week of April 3.

Week of April 10—Tentative

There are no meetings scheduled for the Week of April 10.

Week of April 17—Tentative

There are no meetings scheduled for the Week of April 17.

Week of April 24—Tentative

There are no meetings scheduled for the Week of April 24.

Week of May 1—Tentative

Tuesday, May 2

9:30 a.m. Briefing on Oconee License Renewal (Public Meeting)

Wednesday, May 3

9:25 a.m. Affirmation Session (Public Meeting) (If needed)
9:30 a.m. Briefing on Efforts Regarding Release of Solid Material (Public Meeting)

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, DC 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov.

Dated: March 24, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–7818 Filed 3–27–00; 11:50 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Relocation of the NRC Public Document Room

AGENCY: Nuclear Regulatory Commission.

ACTION: Notification of relocation of the NRC Public Document Room.

SUMMARY: Notice is hereby given that the Nuclear Regulatory Commission (NRC) is planning to relocate the NRC's Public Document Room (PDR). The PDR is currently located at 2120 L Street, NW, in Washington DC. The NRC plans to relocate the PDR to the NRC's headquarters at the White Flint complex in Rockville, Maryland, by September 30, 2000. The NRC is requesting public comment from users of the PDR on how to best optimize service at this new location.

DATES: The comment period expires April 28, 2000. Comments received after this date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date.

ADDRESSES: Comments should be sent to David L. Meyer, Chief, Rules and Directives Branch, Office of Administration, Nuclear Regulatory Commission, Mail Stop T–6D59, Washington, DC 20555–00001.

Hand deliver comments to 11545 Rockville Pike, Rockville, MD, between 7:30 a.m. and 4:15 p.m. on Federal workdays.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission (NRC) is planning to relocate the NRC's Public Document Room (PDR). The PDR is currently located at 2120 L Street, NW, in Washington DC. The NRC plans to relocate the PDR to the NRC's headquarters at the White Flint complex in Rockville, Maryland, by September 30, 2000.

The NRC's headquarters offices are located at 11555 Rockville Pike, Rockville, Maryland, at the intersection of Rockville Pike and Marinelli Drive. These offices are conveniently located across Marinelli Drive from the White Flint Station on Metro's Red Line and are a short distance from the Capital Beltway (I–495) exits 34 and 35. All reference services currently provided at the Washington, DC, location will be available in the newly renovated space at NRC headquarters. Dining facilities, both inside and outside the headquarters complex, are available. Limited free perimeter parking is available at the rear of the building as well as on nearby streets. The new facility will have handicapped access and parking.

One function of the PDR is to manage the research collection of publicly available paper documents comprising those that pre-date the NRC's Agencywide Documents Access and Management System (ADAMS) (before November 1, 1999) and those ADAMS records that are provided to the PDR in paper. In a recent study of document usage, it was determined that most of the documents requested and copied by the public are less than 18 months old. At the time of the move, the PDR will have over a year's worth of documents in ADAMS, the NRC's full text-database. The NRC intends to retire the majority of the historical paper collection to an off-site storage facility with plans to provide no-cost, quick turn-around retrieval service. Paper copies of the more frequently requested documents will be kept on-site. As now, the 2.5 million documents in the ADAMS Legacy Library will be available for immediate viewing (and copying) on microfiche at the new facility.

Other On-Going PDR Services

The PDR technical reference librarians assist the public in identifying, retrieving, organizing, and evaluating NRC publicly available information and documents, as well as other resources, represented in electronic, microfiche, paper, and other formats. The PDR provides terminals for the public to access documents in the ADAMS, training, and other assistance in installing and using ADAMS. The PDR manages a contract that provides, for a fee, document duplication for the public. There will continue to be an "800" number for callers outside the Washington, DC, metropolitan area; however, that number will change when the move is finalized.

Although NRC's headquarters office is located in Rockville, Maryland, section 23 of the Atomic Energy Act of 1954, as amended, requires the NRC to maintain an office for the service of process and papers within the District of Columbia. The NRC has used its PDR at its current location in Washington, DC, to meet this requirement. However, in view of the fact that most NRC stakeholders currently serve papers at NRC headquarters in Rockville, Maryland, and that the NRC in the near future will permit electronic filings, the NRC has requested Congress to enact legislation that would eliminate the requirement that the NRC maintain an office in the District of Columbia. In the event that legislation is not enacted, the NRC will identify alternative means to satisfy the requirement in section 23. The NRC will make conforming changes to its regulations to reflect the new location of the agency's PDR.

FOR FURTHER INFORMATION CONTACT: Thomas E. Smith, Acting Chief of the PDR, Nuclear Regulatory Commission, telephone 202–634–3381, or toll-free 1–800–397–4209.

Dated at Rockville, Maryland, this 22nd day of March 2000.

For the Nuclear Regulatory Commission.

Francine F. Goldberg,

Director, Information Management Division, Office of the Chief Information Officer.

[FR Doc. 00–7711 Filed 3–28–00; 8:45 am]

BILLING CODE 7590–01–P

PENSION BENEFIT GUARANTY CORPORATION

Proposed Submission of Information Collection for OMB Review; Comment Request; Qualified Domestic Relations Orders Submitted to the PBGC

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of intention to request extension of OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") intends to request that the Office of Management and Budget ("OMB") extend approval, under the Paperwork Reduction Act, of an information collection (OMB control number 1212–0054; expires July 31, 2000) relating to model forms contained in the PBGC booklet, *Divorce Orders & PBGC*. The booklet provides guidance on how to submit a proper qualified domestic relations order (a "QDRO") to the PBGC. This notice informs the public of the PBGC's intent and solicits public comment on the collection of information.

DATES: Comments should be submitted by May 30, 2000.

ADDRESSES: Comments may be mailed to the Office of the General Counsel, suite 340, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, or delivered to that address between 9 a.m. and 4 p.m. on business days. Written comments will be available for public inspection at the PBGC's Communications and Public Affairs Department, suite 240 at the same address, between 9 a.m. and 4 p.m. on business days.

Copies of the collection of information may be obtained without charge by writing to the PBGC's Communications and Public Affairs Department at the address given above or calling 202–326–4040. (For TTY and TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

FOR FURTHER INFORMATION CONTACT: James L. Beller, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026, 202–326–4024. (For TTY and TDD users, call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4040.)

SUPPLEMENTARY INFORMATION: The PBGC intends to request a three-year extension of the paperwork approval relating to model forms contained in the PBGC booklet, *Divorce Orders & PBGC*. The collection of information has been approved through July 31, 2000, by OMB under control number 1212–0054.

A defined benefit pension plan that does not have enough money to pay benefits may be terminated if the employer responsible for the plan faces severe financial difficulty, such as bankruptcy, and is unable to maintain the plan. In such an event, the PBGC becomes trustee of the plan and pays benefits, subject to legal limits, to plan participants and beneficiaries.

The benefits of a pension plan participant generally may not be assigned or alienated. Title I of ERISA provides an exception for domestic relations orders that relate to child support, alimony payments, or marital property rights of an alternate payee (a spouse, former spouse, child, or other dependent of a plan participant). The exception applies only if the domestic relations order meets specific legal requirements that make it a qualified domestic relations order.

When the PBGC is trustee of a plan, it reviews submitted domestic relations orders to determine whether the order is qualified before paying benefits to an alternate payee. For several years the PBGC has provided the public with model QDROs (and accompanying guidance) in the booklet, *Divorce Orders & PBGC*, that attorneys and other professionals who are preparing QDROs for plans trusteed by the PBGC may submit to the PBGC after receiving court approval. The models and the guidance assist parties by making it easier to comply with ERISA's QDRO requirements in plans trusteed by the PBGC.

Before providing the model forms and the QDRO booklet, the PBGC received many inquiries on the requirements for QDROs. Furthermore, many domestic relations orders, both in draft and final form, did not meet the applicable requirements. The PBGC worked with practitioners on a case-by-case basis to ensure that their orders were amended to meet applicable requirements. This process was time-consuming for practitioners and for the PBGC.

Since making the booklet and the model forms available, the PBGC has experienced a decrease in (1) the number of inquiries about QDRO requirements, (2) the number of orders that do not meet the applicable requirements, and (3) the amount of time practitioners and the PBGC need to spend to ensure that the orders meet the applicable requirements.

The requirements for submitting a QDRO are established by statute. The model QDROs and accompanying guidance do not create any additional requirements and will result in a reduction of the statutory burden. The PBGC estimates that it will receive 300 QDROs each year from prospective alternate payees; that the average burden of preparing a QDRO with the assistance of the guidance and model QDROs in PBGC's booklet will be ¼ hour of the alternate payee's time and $400 in professional fees if the alternate payee hires an attorney or other professional to prepare the QDRO, or 10 hours of the alternate payee's time if the alternate payee prepares the QDRO without hiring an attorney or other professional; and that the total annual burden will be 104.25 hours and $118,800.

The PBGC is soliciting public comments to—

- Evaluate whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Issued in Washington, DC, this 23rd day of March, 2000.

Stuart Sirkin,

Director, Corporate Policy and Research Department, Pension Benefit Guaranty Corporation.

[FR Doc. 00–7713 Filed 3–28–00; 8:45 am]

BILLING CODE 7708–01–P

SECURITIES AND EXCHANGE COMMISSION

[SEC File No. 270–318]

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension:

Form ADV–E, *OMB Control No:* 3235–0361.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Form ADV–E is the cover sheet for accountant examination certificates filed pursuant to Rule 206(4)–2 under the Investment Advisers Act by investment advisers retaining custody of client securities or funds. Registrants each spend approximately three minutes, annually, complying with the requirements of the form.

The estimate of burden hours set forth above is made solely for the purposes of the Paperwork Reduction Act and is not derived from a comprehensive or even representative survey or study of the cost of SEC rules and forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: March 20, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7685 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24363; 811–2144]

Baker, Fentress & Company; Notice of Application

March 23, 2000.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application for deregistration under section 8(f) of the Investment Company Act of 1940 (the "Act").

SUMMARY OF APPLICATION: Baker, Fentress & Company ("Company") requests an order declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on September 8, 1999. Applicant has agreed to file an amendment during the notice period, the substance of which is reflected in the notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 23, 2000, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Applicant, 200 West Madison Street, Chicago, IL 60606.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Senior Counsel, at (202) 942–0574, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicant's Representations

1. The Company is a non-diversified closed-end management investment company registered under the Act. The Company's shares trade under the symbol "BKF" on the New York Stock Exchange.

2. In June 1996, the Company acquired Levin Management Co., Inc. ("Levin Management") and its subsidiaries, including John A. Levin & Co., Inc. ("Levco," together with Levin Management and Levco's subsidiaries, the "Levco Companies"), a registered investment adviser, as a vehicle through which the Company believed it could develop a broader financial services business.[1] The Company owns 100% of Levin Management, which in turn owns 100% of Levco. Levco owns 100% of LEVCO GP, Inc., which is the general partner of several investment partnerships managed by Levco, and LEVCO Securities, Inc., a registered broker-dealer. Levin Management provides administrative and management services to Levco and its subsidiaries.

3. The Company's investment portfolio consisted of the following: (a) a diversified portfolio of investments in publicly-traded, predominantly large-cap companies; (b) investment in private placement securities; (c) Levco Companies; and (d) a 78.5% interest in Consolidated-Tomoka Land Company ("CTO").

4. On June 17, 1999, the Board, including those directors who are not "interested persons" of the Company as defined in section 2(a)(19) of the Act, considered and unanimously approved the Plan for Distribution of Assets of the Company (the "Plan") and authorized the Plan's submission to the Company's shareholders. The Plan authorized the Company to: (a) stop investing in accordance with the Company's current investment objectives, restrictions and policies, liquidate the securities held in the public portfolio and continue liquidating the private portfolio; (b) invest the proceeds of the liquidation in short-term, liquid investments; (c) distribute the proceeds of the liquidation and the Company's shares of CTO to its shareholders; (d) prepare and file the documents necessary to deregister the Company as an investment company; and (e) continue in business as a holding company, the principal remaining asset of which will be the Levco Companies. On August 19, 1999, the Company's shareholders approved the Plan and the deregistration of the Company under the Act.

5. The Company states that it has completed implementing the Plan. The principal asset of the Company now are the Levco Companies.

Applicant's Legal Analysis

1. Section 8(f) of the Act provides that whenever the Commission, upon application or its own motion, finds that a registered investment company has ceased to be an investment company, the Commission shall so declare by order and upon the taking effect of such order, the registration of such company shall cease to be in effect.

2. Section 3(a)(1)(A) of the Act defines an investment company as an issuer which "is or holds itself out as being engaged primarily * * * in the business of investing, reinvesting, or trading in securities." The Company states that it is not an investment company as defined in section 3(a)(1)(A) of the Act, but is a holding company that owns the Levco Companies.

3. Section 3(a)(1)(C) of the Act defines an investment company as any issuer which "is engaged in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of Government securities and cash items) on an unconsolidated basis."[2] The Company states that it is not an investment company as defined in section 3(a)(1)(C) because the Company does not own, and does not propose to acquire, "investment securities" having a value exceeding 40% of the value of its total assets. The Company states that its interest in Levin Management, its wholly-owned subsidiary, represents approximately 96% of the Company's total assets on an unconsolidated basis. The Company further states that Levin Management's only asset is its 100% ownership interest in Levco. The Company states that Levco is not an investment company within the meaning of section 3(a) of the Act.

4. The Company thus states that it has ceased to be an investment company, and that it is entitled to an order deregistering the Company under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7727 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

[1] The Company received an exemptive order under the Act in connection with that transaction. See Baker, Fentress & Company, Investment Company Act Release Nos. 21890 (April 15, 1996) (Notice) and 21949 (May 10, 1996) (Order).

[2] Investment securities are defined in section 3(a)(2) of the Act to include all securities except (a) Government securities, (b) securities issued by employees' securities companies, and (c) securities issued by majority owned subsidiaries of the owner which are not investment companies, and are not relying on the exception from the definition of investment company in sections 3(c)(1) or 3(c)(7) of the Act.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24364; International Series Release No. 1218; 812–12036]

Cirsa Business Corporation, S.A.; Notice of Application

March 23, 2000.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under section 6(c) of the Investment Company Act of 1940 (the "Act") from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant requests an order under section 6(c) of the Act exempting a special purpose vehicle and any special purpose vehicle that applicant establishes in the future in the same manner and for the same purpose (each, "SPV") from all provisions of the Act. The order would permit SPV to sell certain debt securities ("Notes") and use the proceeds to finance the business activities of applicant and its operating subsidiaries ("Operating Subsidiaries").

FILING DATE: The application was filed on March 17, 2000.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on April 17, 2000 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicant, Carretera Castellar, 298, 08226 Terrassa, Barcelona, Spain.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Staff Attorney, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicant's Representations

1. Applicant, a limited liability corporation organized under the laws of the Kingdom of Spain, is a Spanish leisure and gaming company. Applicant conducts its business activities through the Operating Subsidiaries. The Operating Subsidiaries are limited liability companies organized under the laws of the Kingdom of Spain that manufacture, distribute and operate gaming machines and own and operate bingo halls, casinos and family entertainment centers.

2. SPV will be a public limited company formed under the laws of England and Wales. SPV will be organized specifically to raise funds for the operations of applicant and the Operating Subsidiaries by issuing the Notes and lending the proceeds to applicant and the Operating Subsidiaries for the development of their respective businesses and repayment of certain existing debts. SPV will be organized, and conduct its activities, in accordance with rule 3a–5 under the Act, with certain exceptions discussed below. Rule 3a–5 provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies.

3. Applicant has determined to raise capital through SPV because the direct issuance of the Notes by applicant would not be feasible under Spanish corporate law. Spanish corporate law restricts the direct issuance of the Notes by applicant or a finance subsidiary of applicant. For this reason, at least 95% of equity securities of SPV will be held by an English private limited company ("HoldCo SPV"). All of HoldCo SPV's equity securities will be held by a professional trust corporation ("TrustCo") under the terms of an English law charitable trust. Applicant anticipates that TrustCo will also hold the remaining interest in SPV (less than five percent) under the terms of the charitable trust. The declaration of trust establishing the charitable trust will give TrustCo discretion to apply any residual value held by it for such purposes as it may select, provided they constitute "charitable purposes" under English law. In any case, any charity selected to benefit from any residual value in HoldCo SPV's assets (including the shares it owns in SPV) will not pay any consideration in connection with such acquisition.

4. SPV intends to issue the Notes in reliance on Regulation S and Rule 144A under the Securities Act of 1933 ("1933 Act") and shortly thereafter file as registration statement under the 1933 Act to register a separate series of high-yield debt securities with identical terms to the initial Notes to be offered in exchange for the initial Notes. These Notes will be unconditionally guaranteed by applicant and, if the terms and conditions of the Notes so require, jointly and severally by one or more of the Operating Subsidiaries on an unsecured basis.

5. Applicant and SPV, in connection with the offering of the Notes, will submit to the jurisdiction of any state or federal court in the Borough of Manhattan in the City of New York, and will appoint an agent to accept any process which may be served, in any suit, action, or proceedings brought against applicant or SPV based upon their obligation under the Notes as described in the application. The consent to jurisdiction and appointment of an authorized agent to accept service of process will be irrevocable until all amounts due and to become due with respect to the Notes have been paid.

6. SPV will loan at least 85% of any cash or cash equivalents raised by SPV to applicant and the Operating Subsidiaries as soon as practicable, but in no event later than six months after SPV's receipt of the cash or cash equivalents. In the event SPV borrows amounts in excess of the amounts to be loaned to applicant and the Operating Subsidiaries at any given time, SPV will invest the excess in temporary investments pending lending the money to applicant and the Operating Subsidiaries. Consistent with rule 3a–5, all investments by SPV, including all temporary investments, will be made in government securities, securities of applicant or a company controlled by applicant, or debt securities which are exempted from the provisions of the 1933 Act by section 3(a)(3) of the 1933 Act.

7. SPV's articles of association and its memorandum of association and any trust indenture agreement will: (i) Limit its activities to issuing the Notes or other debt securities and loaning the proceeds to applicant and the Operating Subsidiaries; and (ii) prohibit the transfer of SPV's shares to any party other than HoldCo SPV or TrustCo.

8. HoldCo SPV's articles of association and its memorandum of association will: (i) Limit its activities to borrowing funds from applicant to purchase and hold shares of SPV; (ii) prohibit the transfer of HoldCo SPV's shares to any party other than TrustCo; (iii) prohibit the transfer of SPV's shares to any party other than TrustCo; and (iv) prohibit HoldCo SPV from issuing any securities (other than the initial issuance of its share capital to TrustCo) or otherwise incurring any indebtedness other than the loan from applicant sufficient to cover the costs of purchasing the shares of SPV and costs incidental to the maintenance of HoldCo SPV and SPV.

Applicant's Legal Analysis

1. Applicant states that SPV may be viewed as falling technically within the definition of an investment company under section 3(a)(1) of the Act. Applicant requests an exemption under section 6(c) of the Act exempting SPV from all provisions of the Act. Section 6(c) of the Act permits the SEC to grant an exemption from the provisions of the Act if, and to the extent, that such exemption is necessary and appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act.

2. Applicant states that rule 3a–5 under the Act provides an exemption from the definition of investment company for certain companies organized primarily to finance the business operations of their parent companies or companies controlled by their parent companies. Applicant states that SPV meets all of the requirements of rule 3a–5 except for one, which it cannot meet for Spanish corporate law reasons. Rule 3a–5(b)(1)(i) under the Act requires that all of SPV's common stock be owned by applicant or a company controlled by applicant. Applicant asserts that, while for Spanish corporate law reasons SPV's common stock will be held by HoldCo SPV, SPV will be organized to serve solely as a conduit for applicant's and the Operating Subsidiaries' capital raising activities. Applicant further states that SPV's functions will be limited by its constitutional documents and any trust indenture agreement to the activities of a traditional finance subsidiary.

Applicant's Conditions

Applicant agrees that any order granting the requested relief will be subject to the following conditions:

1. SPV will comply with all provisions of rule 3a–5 under the Act, except with respect to rule 3a–5(b)(1)(i), over 95% of SPV's common shares will be held by HoldCo SPV (all of whose shares will in turn be held under the terms of an English law charitable trust), with the rest held by TrustCo. For purposes of rule 3a–5 under the Act, applicant will be deemed to be SPV's "parent company" and each Operating Subsidiary will be deemed to be a "company controlled by the parent company."

2. SPV's articles of association and memorandum of association and any trust indenture agreement will: (i) Limit the SPV's activities to issuing the Notes or other debt securities and loaning the proceeds to applicant and the Operating Subsidiaries (as well as other activities incidental to the issuance of the Notes, loaning the proceeds thereof, and the day-to-day operations of the SPV); and (ii) prohibit the transfer of SPV's shares to any party other than HoldCo SPV or TrustCo.

3. HoldCo SPV's articles of association and its memorandum of association will: (i) Limit HoldCo SPV's activities to borrowing funds from applicant to purchase and hold shares of SPV; (ii) prohibit the transfer of HoldCo SPV's shares to any party other than TrustCo (pursuant to the terms of the charitable trust); (iii) prohibit transfer of SPV's shares to any party other than TrustCo; and (iv) prohibit HoldCo SPV from issuing any securities (other than the initial issuance of its share capital to TrustCo) or otherwise incurring any indetedness, other than a loan from applicant sufficient to cover the costs of purchasing the shares of SPV and costs and incidental to the maintenance of HoldCo SPV and SPV.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7726 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42558; File No. SR–CBOE–99–21]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval of Amendment Nos. 1 and 2 Relating to the Exchange's Firm Quote Rule

March 22, 2000.

I. Introduction

On May 27, 1999, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the exchange's Firm Quote Rule. The proposed rule change was published for comment in the **Federal Register** on July 6, 1999.[3] No comments were received on the proposal. On September 23, 1999, CBOE submitted Amendment No. 1 to the proposed rule change.[4] On January 11, 2000, CBOE submitted Amendment No. 2.[5] In this notice and order, the Commission is seeking comment from interested persons on Amendment Nos. 1 and 2 and is approving the proposed rule change and is approving Amendment Nos. 1 and 2 on an accelerated basis.

II. Description of the Proposal

The proposal would amend CBOE Rule 8.51 to specify to what extent multiple orders entered by the same beneficial owner and represented at a trading station at approximately the same time will be entitled to firm quote protection. Specifically, the proposal would amend CBOE Rule 8.51 to deny firm quote protection to those orders or portions of orders for the same class of options (whether for the same or different series) that are entered by the same beneficial owner and are represented at the trading station at approximately the same time and cumulatively exceed the firm quote requirement for that particular class of options.[6] Under the proposed new paragraph (a)(3) of CBOE Rule 8.51, only the first of these three orders would be entitled to firm quote protection. The crowd would be required to trade the other two ten lot orders at the displayed market or to change the market pursuant to the terms of the "trade or fade" policy set forth in paragraph (b) of the Rule.[7]

The Exchange also proposes to amend paragraph (b) of CBOE Rule 8.51 and Interpretation .06 to make them consistent with the change in the categories of orders proposed to be subject to the firm quote guarantee.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission finds that the proposed rule change meets the requirements of Section (6)(b)(5) of the Act[8] which states that, among other things, the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market.[9]

The Commission believes that providing for limits on the extension of the firm quote protection in cases where multiple orders for the same class of options are submitted at approximately the same time will prevent market makers from being subjected to undue risk arising from an inability to refresh their quotes in a timely manner. The proposal should also prevent orders from being broken up by series solely to qualify for firm quote protection. This, in turn, should ensure that all customer orders are treated consistently with respect to firm quote protection.

The Commission finds good cause for approving proposed Amendment Nos. 1 and 2 prior to the 30th day after the date of publication of notice of filing in the **Federal Register**. Amendment No. 1 made several changes to the portion of the proposed rule change that would have extended firm quote treatment to broker-dealer and firm orders. Amendment No. 2 then deleted that same portion of the proposed rule change, leaving only sections of the proposal which were published in the **Federal Register** for notice and comment. The Commission did not receive any comments on the proposed rule change. Accordingly, the Commission finds good cause pursuant to Section 6(b)(5) of the Act for accelerating approval of Amendment Nos. 1 and 2.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment Nos. 1 and 2, including whether the amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CBOE–99–21 and should be submitted by April 19, 2000.

V. Conclusion

It Is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[10] that the proposed rule change (SR–CBOE–99–21), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7687 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42566; File No. SR–CHX–99–31]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Stock Exchange, Inc. Relating to the Definition of Pre-Opening Orders in Dual Trading System Issues

March 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice hereby is given that on January 3, 2000, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange Proposes to amend Exchange Article XX, Rule 37(a)(4) governing the handling of pre-opening orders to define what constitutes a pre-opening order for purposes of that rule. The text of the proposed rule change follows, additions are italicized.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 41558 (June 24, 1999), 64 FR 36414.

[4] *See* Letter to Heather Traeger, Attorney, Division of Market Regulation, SEC, from Timothy Thompson, Director—Regulatory Affairs, CBOE, dated September 22, 1999 ("Amendment No. 1"). In Amendment No. 1, CBOE proposes to eliminate the discretion of the appropriate Floor Procedure Committee to determine whether or not to apply the firm quote requirement to firm or broker-dealer orders by establishing that: (1) the extension of the firm quote requirement will apply to all equity and narrow-based index options and (2) only non-broker-dealer customer orders are entitled to firm quote treatment in all other products. The amendment also clarifies the proposed rule's requirement that the trading crowd change its quotes if members of the crowd are unwilling to trade at the displayed quote with an order that is not entitled to firm quote treatment.

[5] *See* Letter to Heather Traeger, Attorney, Division of Market Regulation, SEC, from Timothy Thompson, Director—Regulatory Affairs, CBOE, dated January 5, 2000 ("Amendment No. 2"). In Amendment No. 2, CBOE proposes to delete that portion of the proposed rule change that would have extended firm quote treatment to broker-dealer and firm orders.

[6] For example, assume the firm quote requirement in option ABC is ten contracts and that a broker-dealer simultaneously sends orders to a floor broker in a crowd to buy ten at-the-money call options in each of three different series for that class ABC. The floor broker will likely represent each of these three orders one after another.

[7] Under the "trade or fade" policy, CBOE trading crowds and specialists or crowds on other exchanges have the option to trade a broker-dealer order at the displayed quote or to change the displayed bid (offer) to reflect that the previously displayed bid (offer) is no longer available. CBOE Rule 8.51(b).

[8] 15 U.S.C. 78f(b)(5).

[9] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

Chicago Stock Exchange Rules

Article XX

Rule 37. Guaranteed Execution System and Midwest Automated Execution System

(a) Guaranteed Executions.

4. Preopenings. Preopening orders in Dual trading System issues must be accepted and filled at the primary market opening *trade price*. In trading halt situations occurring in the primary market, orders will be executed based upon the reopening price. Preopening orders in Nasdaq/NM securities must be accepted and filled at the Exchange opening *trade price*. In trading halt situations, orders will be executed based on the Exchange reopening price. *For purposes of this rule, a pre-opening order in a Dual trading System issue is an order received prior to a primary market trade and prior to a primary market quote in the subject security.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received regarding the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to explicitly define pre-opening orders in Dual Trading System Issues.[3] Specifically, the proposed rule change will define pre-opening orders in Dual Trading System Issues as orders that are received before a primary market opens a subject security based on a print[4] or based on a quote.

The reason for the rule change stems from the wording of Exchange Article XX, Rule 37(a)(4); specifically, the requirement that pre-opening orders in Dual trading System Issues be accepted and filled at the primary market *opening*. Under this rule, orders received at the CHX before the first primary market *print* in a subject security are customarily filled at that first print price. The rule has always been applied in that manner because *prints* are the most common way of effecting the opening in a security. As such, it has been the practice at the CHX to treat orders received before the first primary market print as pre-opening orders. Nevertheless, on occasion a primary market will open a security by disseminating a *quote* without a corresponding print. When a security is opened in this fashion, subsequently received orders are, in fact, not pre-opening order.

However, because Rule 37(a)(4) does not explicitly define what constitutes a pre-opening order, the customary practice of treating all orders received before the first primary market print, including those received before the first primary market print but after the primary market opening quote, as recently been the cause of some confusion and unintended execution guarantees. Therefore, while the Exchange remains committed to ensuring that pre-opening orders sent to the CHX receive the same opening price execution on the CHX that they would have received had they been sent to a primary market, it believes it necessary to make clear what constitutes a pre-opening order. In doing so, the Exchange believes that both the CHX specialist community and their customers will benefit by eliminating any confusion that may exist regarding the execution responsibilities of specialists and expectations of customers.

As such, the proposed rule change will clarify that orders received after a primary market opens a security on a quote are not pre-opening orders for purposes of Rule 37(a)(4). Specifically, the proposed rule change provides that a pre-opening order in a Dual trading System Issue is an order received prior to a primary market trade and prior to a primary market quote in a subject security. Thus, under the proposed rule, an order received at the CHX after a primary market opens a security on a quote will not be entitled to be filled based on a subsequent primary market print.

2. Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b)(5)[5] of the Act because it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CHX–99–31 and should be submitted by April 19, 2000.

[3] Dual Trading System Issues are issues that are traded on the CHX, either through listing on the CHX or pursuant to unlisted trading privileges, and are also listed on either the New York Stock Exchange or American Stock Exchange.

[4] A print is defined as an executed trade. Telephone call between Dan Liberti, Vice President, Market Regulation, CHX and Kelly Riley, Attorney, Division of Market Regulation, SEC, on February 24, 2000.

[5] 15 U.S.C. 78f(b)(5).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7729 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42563; File No. SR–OCC–99–16]

Self Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Exercises by Put Holders in a "Short Squeeze" Situation

March 22, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on November 2, 1999, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would amend Article VI, Section 19 to eliminate OCC's authority to prohibit exercises by put holders who would be unable to deliver the underlying stock in a short squeeze situation and, in lieu thereof, to give OCC the same authority to protect put holders as OCC already has to protect call holders.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.[2]

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to amend Article VI, Section 19 of OCC's by-laws to eliminate OCC's authority to prohibit exercises by put holders who would be unable to deliver the underlying stock in a short squeeze situation and, in lieu thereof, to give OCC the same authority to protect put holders as OCC already has to protect call holders.

Currently, Article VI, Section 19 treats calls and puts differently in a short-squeeze situation. Section 19(a)(3) allows OCC to suspend the exercise settlement obligations of clearing members' assigned execution notice for their call option contracts until (i) OCC determines that there is no reasonable likelihood that a sufficient supply of the underlying security will become available, in which case OCC fixes a cash settlement price[3] or (ii) OCC determines that there is a sufficient supply of the underlying security available, in which case OCC either fixes a new exercise settlement date or, if delivery would be inequitable, a cash settlement price.[4]

In contrast, Article VI, Section 19 does not currently give OCC discretion to protect the benefit of a put holder's bargain in a short squeeze situation. Instead, as it is currently written, Article VI,Section 19(a)(2) gives OCC the limited power to prohibit the exercise of put option contracts by clearing members who will be unable to deliver the underlying securities on the exercise settlement date due to the short squeeze.[5] If OCC were to maintain such a prohibition through the option's expiration, a put holder who was unable to obtain the underlying stock would lose the benefit of the option even though the option is in the money.

Rather than allowing OCC to prohibit put exercises in a short squeeze situation, the proposed language would allow OCC to treat puts in the same manner as calls by giving OCC the right to suspend settlement until it can determine whether the unavailability of the underlying stock would extend past the option expiration date and, upon making that determination, to take the appropriate action under Article VI, Section 19(b) or (c). Thus, the proposed change allows OCC to protect the benefit of the put holder's bargain and to treat puts and calls equally in a short squeeze situation.

Because the proposed rule change would affect the fundamental obligations of put writers, OCC is making it effective only on a prospective basis with respect to new series of options introduced after the latter of (i) approval of the rule change by the Commission or (ii) commencement of distribution of a new or amended Options Disclosure Documents or an Options Disclosure Document[6] supplement disclosing the substance of the rule change.

Article XXIV, Section 5, which relates to buy-write options unitary derivatives (BOUNDs)[7] is proposed to be amended so that it conforms to the proposed new language for Article VI, Section 19.

OCC believes that the proposed rule change is consistent with the purposes and requirements of Section 17A of the Act because the proposed rule change will facilitate the prompt and accurate clearance and settlement of securities transactions, foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i)

[6] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified parts of these statements.

[3] Article VI, Section 19(c) of OCC's by-laws.

[4] Article VI, Section 19(b) of OCC's by-laws.

[5] The asymmetrical treatment of puts and calls was first addressed in 1979, when OCC believed that a call holder who is fully prepared to perform his obligation (*i.e.*, pay the exercise price) should not be disadvantaged merely because his exercise happens to be randomly assigned to an uncovered writer. Securities Exchange Act Release No. 16014 (Aug. 3, 1979), 44 FR 47424, (Aug. 13, 1979). OCC now believes that it is inappropriate to render a put holder's contract valueless when circumstances beyond his control (often a bankruptcy filing or other event adversely affecting the value of the underlying stock and thus validating the put holder's market judgment) disable him from obtaining the underlying stock. Such a result would generally be perceived as unfair and the desirability of avoiding a perception of unfairness outweighs the somewhat legalistic basis for the present rule.

[6] 17 CFR 240.9b–1.

[7] Securities Exchange Act Release No. 36960 (Mar. 13, 1996), 61 FR 11458.

as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which OCC consents, the Commission will:

(a) By order approve the proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of OCC. All submissions should refer to File No. SR–OCC–99–16 and should be submitted by April 19, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7686 Filed 3–28–00; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42557; File No. SR–PCX–98–30]

Self-Regulatory Organizations; Pacific Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 to the Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments 2 and 3 to the Proposed Rule Change Relating to Telephone Use on the Options Floor

March 21, 2000.

I. Introduction

On June 26, 1998, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to codify the Exchange's procedures and restrictions regarding telephone use on the Options Trading Floor. On November 12, 1998, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change, including Amendment No. 1 was published for comment in the **Federal Register** on February 6, 1999.[4] On August 4, 1999 and September 27, 1999, respectively, the Exchange filed Amendments 2[5] and 3[6] to the proposed rule change. No comments were received on the proposal. This order approves the proposal as amended.

II. Description of the Proposal

The purpose of this proposal is to establish rules and procedures for telephone use on the Options Floor. Proposed Rule 6.2(h) sets guidelines for the use of telephones by market makers, Lead Market Makers ("LMMs"), floor brokers, clerks, and floor managers.

The PCX is proposing to establish a formal rule requiring that Members and Member Firms must register, prior to use, any new telephone to be used on the Options Floor. Proposed Rule 6.2(h)(1) states that each phone registered with the Exchange must be registered by category of user (market maker, LMM, floor broker, clerk, or manager). If there is a change in the category of any user, the phone must be re-registered with the Exchange. At the time of registration, Members and Member Firm representatives must sign a statement indicating that they are aware of and understand the rules governing the use of telephones on the Options Floor.

The proposed Rule further states that no Member or Member Firm may employ any alternative communication device, including but not limited to e-mail, on the Options Floor without the prior approval of the Options Floor Trading Committee.

Capacity and Functionality

Proposed Rule 6.2(h)(2) specifies the capacity and functionality permitted for the use of telephones on the Options Floor. The Rule states specifically that no wireless telephone used on the Options Floor may have an output greater than one watt and that no person on the Options Floor may use any device for the purpose of maintaining an open line of continuous communication whereby a person not located in the trading crowd may continuously monitor the activities in the trading crowd. This prohibition covers intercoms, walkie-talkies and any similar devices. The Rule does not permit speed-dialing features for Member phones.

The proposed Rule states specific guidelines for each category of user on the Options Floor, as follows:

Market Makers and LMMs

Proposed Rule 6.2(h)(3) states that market makers and LMMs may use their own cellular and cordless phones to place calls to any person at any location (whether on or off the Options Floor). The Rule also states that market makers and LMMs may use the pit rep and LMM telephones located at the trading posts only for the purpose of marketing option issues, responding to customer inquiries, or otherwise conducting Exchange business. No person other than a pit rep, market maker[7] or an LMM may use the pit rep or LMM phones. This is to ensure that phones

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Robert Pacileo, Staff Attorney, Regulatory Policy, PCX, to David Sieradzki, Attorney, Division of Market Regulation, SEC, dated November 10, 1998 ("Amendment No. 1"). The substance of Amendment No. 1 is incorporated into this order.

[4] Securities Exchange Act Release No. 41018 (February 3, 1999), 64 FR 7681.

[5] *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to David Sieradzki, Special Counsel, Division of Market Regulation, SEC, dated August 3, 1999 ("Amendment No. 2"). In Amendment No. 2, the Exchange clarifies that subsections (d)–(g) of Rule 6.2 are reserved for future use.

[6] *See* letter from Michael D. Pierson, Director, Regulatory Policy, PCX, to David Sieradzki, Special Counsel, Division of Market Regulation, SEC, dated September 24, 1999 ("Amendment No. 3"). In Amendment No. 3, the Exchange amends Rule 6.2(h)(6) to indicate that floor managers may not use the pit rep or LMM phones.

[7] *See* Amendment No. 1, *supra* note 3.

will be accessible for customer inquiries and marketing.

Proposed Rule 6.2(h)(3)(C) states that market makers located off the Options Floor may not place an order by calling a floor broker who is present in a trading crowd. Market makers located off the Options Floor may not otherwise place an order by calling the pit rep or LMM phone in the trading crowd. Proposed Rule 6.2(h)(3)(C) also states that any telephonic order entered from off the Options Floor must be placed with a person located in a member firm booth. According to the PCX, the purpose of this restriction is to facilitate adequate surveillance of telephonic orders and ensure that there is a record of the order in the event that a problem arises in connection with the order. The PCX also noted that the prohibition is consistent with Rule 6.85, Commentary .03, which requires verbal orders from market makers to be written up outside of the trading crowd.[8]

Floor Brokers

Proposed Rule 6.2(h)(4)(A) states that floor brokers may use cellular and cordless phones, but only to communicate with persons located on the Options Floor. These phones may not include a call forwarding feature. According to the PCX, this portion of the proposed Rule codifies long-standing PCX policies regarding phone use by floor brokers, which are designed to ensure that orders are entered in a manner that allows for routine monitoring and surveillance by the Exchange. In addition, the Rule states that floor brokers are permitted to use headsets to communicate with persons located on the Options Floor, but if the Exchange determines that a floor broker is maintaining a continuous open line through the use of a headset, the floor broker will be prohibited from future use of any headset for a length of time to be determined by the Exchange.[9]

Proposed Rule 6.2(h)(4)(B) provides that floor brokers may receive orders over their phones from any persons located on the Options Floor. Floor brokers who receive telephonic orders while in the trading crowd must step outside of the crowd, wirte up an order ticket and time stamp it before representing the order in the crowd. This is consistent with Rule 6.67(a) which requires orders to be in written form when taken to the trading post for attempted execution.[10]

Proposed Rule 6.2(h)(4)(B) further provides that any telephonic order entered from off the Options Floor must be placed with a person located in a member firm booth. Proposed Rule 6.2(h)(4)(C) also prohibits the floor brokers from using the Pit Rep or LMM telephones under any circumstances. This is to ensure that telephones are available for marketing option issues, responding to customer inquiries, or otherwise conducting Exchange business relating to Market Makers and Lead Market Makers.

Clerks

Proposed Rule 6.2(h)(5) states that Floor Broker Clerks and Stock Executions Clerks are subject to the same terms and conditions on telephone use as Floor brokers and that Market Maker Clerks are subject to the same terms and conditions on telephone use as Market Makers. Proposed Rule 6.2(h)(5)(D) further states that the Options Floor Trading Committee reserves the right to prohibit clerks from using cellular or cordless phones on the floor at any time that it is necessary due to electronic interference problems[11] or capacity problems[12] resulting from the number of such phones then in use on the Options Floor. In such circumstances, the Committee will first consider restricting the use of such phones by Market Maker Clerks, then by Stock Execution Clerks, and then finally, by Floor Broker Clerks.

Floor Managers

Proposed Rule 6.2(h)(6) states that Member Firm Floor Managers may use any telephone except the Pit Rep or LMM phones,[13] including any cellular or cordless phones, for any business purpose relating to their management responsibilities.

General Access Phones, Telephone Records, and Exchange Liability

Proposed Rule 6.2(h)(7) states that the general access phones located outside the trading areas may be used by any Member, Clerk, or Member Firm Floor Manager to communicate with persons on the Options Floor. Proposed Rule 6.2(h)(8) states that Members must maintain their cellular or cordless telephone records, including logs of calls placed, for a period of not less than one year. Further, the Exchange reserves the right to inspect such records pursuant to Rule 10.2.[14]

Finally, proposed Rule 6.2(h)(9) states that the Exchange assumes no liability to Members or Member Firms due to conflicts between phones in use on the Options Floor or due to electronic interference problems resulting from the use of telephones on the Options Floor.

Minor Rule Plan

Currently, the PCX Minor Rule Plan ("MPR") includes as a minor rule violation, the unauthorized use of telephones located in the trading post areas.[15] The PCX is proposing to change the language in the Rule to refer to the proposed rule on telephone use on the Options Trading Floor (Rule 6.2(h)). Specifically, the provision will now state: Floor Member or Member Firm employee violated rules on telephones on the Options Floor. In addition, the PCX is proposing to increase the fine amount for a third violation from $750.00 to $1,000.00 to better reflect the seriousness of a third violation within two years.[16]

[8] PCX Rule 6.85, Commentary .03 provides in part: "When a Floor Broker receives a verbal order from a Market Maker, or when a Floor Broker is requested by a Market Maker to alter an order in his possession in any way, the Floor Broker shall immediately prepare an order ticket from outside the trading crowd and time-stamp it."

[9] The Commission notes that a member would have the right to appeal any decision to suspend a member from using a headset pursuant to Exchange Rule 11.7, *Hearings and Review of Committee Action.*

[10] *See* PCX Rule 6.67(a).

[11] The term "electronic interference" refers to a situation where, even though there are talk paths available, a user cannot get a good signal because of interference with monitors, static, or a bay station not working correctly. Amendment No. 1, *supra* note 3.

[12] The term "capacity problems" is used to describe a situation where a user cannot get a signal because no talk path is available on a bay station. Currently, there are 96 talk paths available. If all 96 talk paths are being used, the 97th user will be unable to get a signal because all talk paths are being used. Amendment No. 1, *supra* note 3.

[13] *See* Amendment No. 3, *supra* note 6.

[14] Exchange Rule 10.2(d) requires members, member organizations, and persons associated with members to cooperate with regulatory investigations; including, but not limited to, furnishing documentary materials.

[15] Rule 19d–1(c)(2) under the Act authorizes national securities exchanges to adopt minor rule violation plans for the summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. *See* Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984) (order approving amendments to paragraph (c)(2) of Rule 19d–1 under the Act). Pursuant to PCX Rule 10.13, the Exchange may impose a fine on any member or member organization for any violation of an Exchange rule that has been deemed to be minor in nature and epproved by the Commission for inclusion in the MRP. PCX Rule 10.13(h)–(j) sets forth the specific Exchange rules deemed to be minor in nature.

[16] As noted in PCX Rule 10.13(e), pursuant to Securities Exchange Act Release No. 30958, any person or organization found in violation of a minor rule under the MRP is not required to report such violation on SEC Form BD, provided that the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person or organization has not sought an adjudication, including a hearing, or otherwise exhausted the administrative remedies available with respect to the matter. Accordingly,

Continued

III. Discussion

The Commission finds that the proposed rule change is consistent with Section 6 of the Act [17] and the rules and regulations thereunder. In particular, the Commission believes that the proposal is consistent with the Section 6(b)(5) [18] requirements that the rules of an exchange be designed to prevent fraudent ad manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.[19]

In determining to approve the proposal, the Commission notes that the telephone registration requirement in proposed Rule 6.2(h)(1) is consistent with PCX Rule 4.22,[20] which requires Exchange approval of any electronic or telephonic communications devices on the floor of the Exchange. The Commission finds that it is resonable for the Exchange to limit the power and function of telephones used on the options floor to ensure that member telephones do not cause interference with each other or with Exchange systems. Further, to enable the Exchange to effectively monitor for abuses of its telephone usage restrictions, the Commission finds that it is reasonable for the Exchange, pursuant to proposed Rule 6.2(h)(8), to require Members to maintain cellular or cordless telephone records for a period not less than one year.

The PCX's proposed Rule contains restrictions regarding telephone use by market makers. Specifically, proposed Rule 6.2(h)(3)(A) permits market makers to use their cellular or cordless phones to call any location on or off of the trading floor. In addition, proposed Rule 6.2(h)(3)(B) states that only market makers, pit reps and LMMs may use the pit rep and LMM phones. Rule 6.2(h)(3)(B) further provides that these phones may only be used for marketing options issues, responding to customer inquiries, and otherwise conducting Exchange business. Because market makers generally do not deal directly with public customers, the Commission does not believe that allowing market makers to communicate with locations off of the trading floor raises the same regulatory concerns discussed below regarding telephone use by floor brokers.[21] As a result, the Commission finds that it is consistent with the Act for the Exchange to allow market makers to use cellular or cordless telephones to call locations off of the trading floor. The Commission also finds that it is reasonable and consistent with the maintenance of fair and orderly markets for the exchange to limit the availability of certain telephones to certain members to ensure that these telephones are available to members as needed to conduct Exchange business.

PCX proposed Rule 6.2(h)(3)(C) requires market makers placing orders from locations off of the trading floor do so at a member firm booth and not by calling a floor broker in the crowd or using the Pit Rep and LMM phones in the trading crowd. The proposed rule contains a similar restriction for floor brokers providing that all orders entered from locations off of e floor must be placed with a person in a member firm booth. This floor broker restriction is discussed in more detail below. For the reasons disscussed below, the Commission finds that it is reasonable and consistent with the Act for the Exchange to require orders being entered from locations off of the trading floor to be entered at a member firm booth.

PCX proposed Rule 6.2(h)(4)(A) prohibits floor brokers from using cellular or cordless Telephones to communicate with persons located off of the trading floor. As discussed above, PCX proposed Rule 6.2(h)(4)(B) requires telephonic orders entered from off of the trading floor to be entered at a member firm booth and not directly with a floor broker in the crowd. The Commission believes that the Exchange's prohibition on the use of telephones by floor brokers to call locations off of the floor or receive orders from off of the floor is justified by legitimate regulatory concerns. Specifically, the PCX must ensure compliance with rules requiring that members who accept orders directly from public customers, are qualified to do so. Accordingly, this proibition helps to provide adequate surveillance over this activity by requiring all orders to be taken at the member firm booth and restricting outside phone calls. In addition, preventing floor brokers from directly accessing market information that might only be available on the floor of the Exchange trading the securities underlying the options trading at the PCX helps to alleviate concerns about frontrunning and other forms of market manipulation. Finally, this prohibition also furthers the goal of preventing persons located off of the trading floor from having virtually direct access to the trading crowd and receiving certain time and place advantages over other customers.[22]

The PCX's proposed rule also contains restrictions involving floor broker's communications while in the trading crowd. Specifically, proposed Rule 6.2(h)(4)(A) prohibits a floor broker from maintaining a continuous open line with other locations on the floor through the use of a headset. In order for the Commission to approve such restrictions, it must find that they are consistent with the Act and do not impose an unnecessary burden on competition in violation of Section 6(b)(8) of the Act.[23] The Commission finds that prohibiting floor brokers from using headsets to maintain a continuous open line with other locations on the floor is reasonable and consistent with the Act. As the commission has noted in the past, there is a marked difference between allowing non-members to communicate with members near the crowd and members actually in the trading crowd. The ability of a customer to communicate directly with a floor broker in the trading crowd would provide a significant advantage to that customer unlike the smaller advantage accruing from access to member firm booths on the trading floor.[24] If the Exchange allowed floor brokers to maintain an open line with a member firm booth, it could result in allowing persons located off of trading virtually direct access to a trading crowd.

Pursuant to proposed Rule 6.2(h)(5) telephone use by market maker and floor broker clerks is subject to the same terms and conditions as market makers and floor brokers. In addition, telephone use by stock execution clerks is subject to the same terms and conditions as floor brokers. Finally, the Exchange's Options Floor Trading Committee reserves the right to restrict the use of cellular or cordless telephones by clerks at any time that it is necessary due to capacity or interference problems. For the reasons expressed above regarding telephone usage by market makers and floor brokers, the Commission finds that the proposed restrictions on phone usage by clerks on the floor of the Exchange are reasonable and consistent with the Act.

Proposed Rule 6.2(h)(6) provides that floor managers may use any phone except a Pit Rep or LMM phone,[25] including cordless or cellular phones for any business purpose relating to their management responsibilities. The Exchange represents that, due to the nature of their job and responsibilities on the trading floor, it is important that floor managers be able to use any available phone to effectively carry out their management responsibilities.[26] Based on this representation, the Commission finds this proposed rule reasonable and consistent with the Act.

The Commission supports the Exchange's efforts to codify existing Exchange policies to give its membership adequate notice of what conduct is prohibited. In regulating the PCX options trading floor and devising its structure, the Commission recognizes the PCX's right to restrict, under certain circumstances, the use of telephonic communications devices that are installed on its floor. While supporting the Exchange's efforts to monitor the types of communications that are on its options trading floor and regulate their use, the Commission expects the PCX to ensure that the rule being approved today is not used to limit access to services offered by the Exchange or applied in a manner inconsistent with Sections 6(b)(5)[27] and 6(b)(8)[28] of the Act.[29] Specifically, the Commission expects that proposed Rule 6.2(h) will not be interpreted in a manner that permits unfair discrimination between customers, issuers, brokers, or dealers or imposes any unnecessary or inappropriate burden on competition, or is otherwise used to limit member access to Exchange services.

The Commission believes that the Exchange's proposed changes to its minor rule plan are reasonable and provide fair procedures for appropriately disciplining members and member organizations for minor rule violations that warrant some type of punitive measure, but for which a full disciplinary hearing would be an inappropriate waste of resources in light of the minor nature of the violation. The Commission notes that violations of the Exchange's telephone policy are objective and easily verifiable, and thus, lend themselves to the use of expedited proceedings. Specifically, the issue of whether a member has improperly used a telephone on the options floor may be determined objectively and adjudicated quickly without complicated evidentiary and interpretive inquiries. The Commission believes that the proposed change to the existing fine schedule is appropriate and should serve to discourage violations of the Exchange's telephone policy on its options trading floor.

The Commission finds good cause for approving Amendment Nos. 2 and 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Amendment Nos. 2 and 3 make technical, non-substantive changes to the proposal. As a result, the Commission does not believe that Amendment Nos. 2 and 3 raise any new regulatory issues. Further, the Commission notes that the original proposal was published for the full 21-day comment period and the Commission received no comments regarding the proposal. Accordingly, the Commission believes there is good cause, consistent with Sections 6(b)(5) and 19(b) [30] of the Act, to approve Amendment Nos. 2 and 3 to the Exchange's proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendments 2 and 3, including whether the Amendments are consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned exchange. All submissions should refer to File No. SR–PCX–98–30 and should be submitted by April 19, 2000.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[31] that the proposed rule change (SR–PCX–98–30), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[32]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7728 Filed 3–28–00; 8:45 am]

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any fine imposed in excess of $2,500 will be subject to reporting on SEC Form BD in addition to the immediate, rather than periodic, reporting requirement of Section 19(d)(1) of the Act. *See* Securities Exchange Act Release No. 30280 (January 22, 1992), 57 FR 3452 (January 29, 1992) (noting that fines in excess of $2,500, assessed under New York Stock Exchange, Inc. ("NYSE") Rule 476A, are not considered pursuant to the NYSE's minor rule violation plan and are thus subject to the current reporting requirements of Section 19(d)(1) of the Act.)

[17] 15 U.S.C. 78f.

[18] 15 U.S.C. 78f(b)(5).

[19] In approving the proposed rule change, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] *See* Securities Exchange Act Release No. 40852 (December 29, 1998), 64 FR 1058 (January 7, 1999) (Order approving PCX Rule 4.22 in SR–PCX–98–16).

[21] Telephone conversation between Michael D. Pierson, Director, Regulatory Policy, PCX, and David Sieradzki, Special Counsel, Division of Market Regulation, SEC, on March 15, 2000.

[22] Securities Exchange Act Release No. 25842 (June 23, 1988), 53 FR 24539 (June 29, 1988).

[23] 15 U.S.C. 78f(b)(8).

[24] *See supra* note 22.

[25] *See* Amendment No. 3, *supra* note 6.

[26] Telephone conversation between Michael D. Pierson, Director, Regulatory Policy, PCX, and David Sieradzki, Special Counsel, Division of Market Regulation, SEC, on March 15, 2000.

[27] 15 U.S.C. 78f(b)(5).

[28] 15 U.S.C. 78f(b)(8).

[29] *See e.g., William J. Higgins*, 48 S.E.C. 713 (1987).

[30] 15 U.S.C. 78f(b)(5) and 15 U.S.C. 78s(b).

[31] 15 U.S.C. 78s(b)(2).

[32] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42564; File No. SR–Phlx–99–46]

Self-Regulatory Organizations; Order Granting Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to registration of Trading Floor Personnel

March 22, 2000.

I. Introduction

On November 19, 1999, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] a proposed rule change to require that all trading floor personnel be registered with the Exchange, trading floor personnel successfully complete specified examinations, and all member/participant organizations notify the Exchange of any change in the status of such personnel.

The proposed rule change was published for comment in the **Federal Register** on February 7, 2000.[3] No comments were received on the proposal. This order approves the proposal.

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] Securities Exchange Act Release No. 42365 (January 28, 2000), 65 FR 5922.

II. Description of the Proposal

The Phlx's proposed new Phlx Rule 620, Trading Floor Registration, requires that all trading floor personnel be registered with the Exchange, trading floor personnel successfully complete specified examinations, and all member/participant organizations notify the Exchange of any change in the status of such personnel. The Exchange also proposed amendments to Regulation 7(b), Required Filing for Floor Member Firm Employee Status Notices with the Exchange, to include members, non-members and clerks, to be consistent with the text of new Phlx Rule 620.[4] The Phlx believes that this will enable the Exchange to monitor more efficiently individuals on the Exchange's trading floors, as well as their current status.

Currently, Regulation 7(b) governs the termination of, or the initiation of change in the trading status of, an employee of a member/participant firm who has been issued an Exchange access card and trading floor badge. New Phlx Rule 620 codifies Regulation 7(b) into a more comprehensive Exchange Rule. Phlx Rule 620(a) sets forth a comprehensive rule that addresses registration, examinations, termination and change in status of trading floor members, which includes floor brokers, specialists, and market makers, including Registered Options Traders on any Exchange trading floor. Phlx Rule 620(b) addresses non-member/clerk registration of all trading floor personnel, including clerks, interns, stock execution clerks and any other associated persons of member/participant organizations who are not required to be registered pursuant to Phlx Rule 620(a).[5]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular, with the requirements of Section 6 of the Act.[6] Specifically, the Commission finds that the proposal is consistent with Sections 6(b)(5)[7] and 6(c)(3)(B)[8] of the Act.

The Commission finds that the proposal to require all floor personnel to be registered with the Exchange and to require all member/participant organizations to notify the Exchange of any change in the status of such personnel is consistent with Section 6(b)(5).[9] The Commission believes that by ensuring that trading floor personnel are properly registered and monitored on an ongoing basis through the notification mechanism, new Phlx Rule 620 promotes just and equitable principles of trade, removes impediments to and perfects the mechanism of a free and open market and a national market system and, in general, protects investors and the public interest in accordance with Section 6(b)(5).[10]

Moreover, the Commission further finds that the proposal is consistent with Section 6(c)(3)(B),[11] which empowers a national securities exchange to examine and verify the quantifications of an applicant to become a person associated with a member in accordance with procedures established by the rules of the exchange, and to require any person associated with a member, or any class of such persons, to be registered with the exchange in accordance with procedures so established. The Phlx's decision to expand its registration/notification requirements to all trading floor personnel, including non-member personnel such as clerks, is fully supported by the right of an Exchange to regulate associated persons pursuant to Section 6(c)(3)(B).[12]

IV. Conclusion

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act,[13] that the proposed rule change (SR–Phlx–99–46) be and hereby is approved.[14]

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7730 Filed 3–28–00; 8:45 am]

BILLING CODE 8010–01–M

[4] Regulation 7 was enacted pursuant to Phlx Rule 60, Assessments for Breach of Regulations. *See* Securities Exchange Act Release No. 27629 (January 16, 1990), 55 FR 2469 (January 24, 1990) (SR–Phlx–90–01).

[5] The Exchange presently requires the completion of forms and procedures for registering new floor members pursuant to various Phlx Rules, including Rule 202, Registrant (Specialist); Rule 214, Violations of Rules (Specialist); Rule 604, Registration and Termination of Registered Person; Rule 623, Fingerprinting; Rule 1020, Registration and Functions of Options Specialists; Rule 1014, Obligations and Restrictions Applicable to Specialists and Registered Options Traders; and Rule 1061, Registration of Floor Brokers.

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78f(c)(3)(B).

[9] 15 U.S.C. 78f(b)(5).

[10] *Id.*

[11] 15 U.S.C. 78f(c)(3)(B).

[12] *Id.*

[13] 15 U.S.C. 78s(b)(2).

[14] In approving this rule, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[15] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF STATE

[Public Notice 3268]

Culturally Significant Objects Imported for Exhibition Determinations: "Spirits of the Water: Art From Alaska and British Columbia"

AGENCY: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority of October 19, 1999, I hereby determine that the objects to be included in the exhibition "Spirits of the Water: Art from Alaska and British Columbia," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to loan agreements with foreign lenders. I also determine that the exhibition or display of the exhibit objects at the Menil Collection, Houston, Texas, from on or about May 5, 2000 to on or about August 13, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Carol Epstein, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6981). The address is U.S. Department of State, SA–44; 301–4th Street, SW, Room 700, Washington, DC 20547–0001.

Dated: March 22, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–7751 Filed 3–28–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7096]

National Boating Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meetings.

SUMMARY: The National Boating Safety Advisory Council (NBSAC) and its subcommittees on boat occupant protection, navigation lights, personal flotation device-life saving index, and prevention through people will meet to discuss various issues relating to recreational boating safety. All meetings will be open to the public.

DATES: NBSAC will meet on Monday, May 1, 2000, from 8:30 a.m. to 5 p.m. and Tuesday, May 2 from 8:30 a.m. to noon. The Personal Flotation Device-Life Saving Index Subcommittee will meet on Saturday, April 29, 2000, from 1:30 p.m. to 4 p.m. The Prevention Through People Subcommittee will meet on Sunday, April 30, 2000, from 8:30 a.m. to 10:30 a.m.; the Boat Occupant Protection Subcommittee will meet from 10:30 a.m. to 12:30 p.m.; and the Navigation Light Subcommittee will meet from 1:30 p.m. to 4:00 p.m. These meetings may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 14, 2000. Requests to have a copy of your material distributed to each member of the committee or subcommittees should reach the Coast Guard on or before April 7, 2000.

ADDRESSES: NBSAC will meet at the Wyndham Garden Hotel, 173 Jennifer Road, Annapolis, Maryland. The subcommittee meetings will be held at the same address. Send written material and requests to make oral presentations to Mr. Albert J. Marmo, Commandant (G–OPB–1), U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593–0001. You may obtain a copy of this notice by calling the U. S. Coast Guard Infoline at 1–800–368–5647. This notice is available on the Internet at http://dms.dot.gov or at the Web Site for the Office of Boating Safety at URL address www.uscgboating.org/.

FOR FURTHER INFORMATION CONTACT: Albert J. Marmo, Executive Director of NBSAC, telephone 202–267–0950, fax 202–267–4285.

SUPPLEMENTARY INFORMATION: Notice of these meetings is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agendas of Meetings

National Boating Safety Advisory Council (NBSAC)

The agenda includes the following:
(1) Executive Director's report.
(2) Chairman's session.
(3) Personal Flotation Device-Life Saving Index Subcommittee report.
(4) Prevention Through People Subcommittee report.
(5) Boat Occupant Protection Subcommittee report.
(6) Navigation Light Subcommittee report.
(7) Recreational Boating Safety Program report.
(8) Report on boat safety standards development and compliance.
(9) Report on the federal regulations process.
(10) Update on fire extinguisher carton labeling and ratings.
(11) Report on 1999 boating statistics.
(12) Report on the national recreational boating survey.
(13) Council discussion on federal requirements for wearing personal flotation devices.
(14) Presentation on risk management and human errors in recreational boating applications grant study.
(15) Council discussion on recreational boating accident reporting criteria.
(16) Report on marine industry boating safety initiatives.
(17) Report on national nonprofit public service organization grants.
(18) Report on life raft safety issues.

Personal Flotation Device-Life Saving Index Subcommittee

The agenda includes the following:
(1) Discuss the final report on the risk-informed compliance approval process study.
(2) Discuss inflatable personal flotation device (PFD) approval status.
(3) Discuss implications of differences between inflatable and inherently buoyant PFDs.
(4) Discuss current regulatory projects, grants and contracts dealing with PFDs.

Prevention Through People Subcommittee

The agenda includes the following:
(1) Discuss the process for continuing subcommittee guidance and advice concerning public safety awareness campaigns and materials dealing with various boating safety issues.
(2) Review and provide feedback on the new prototype "Federal Requirements and Safety Tips for Recreational Boats" brochure.
(3) Evaluate the results of test marketing of the Boating Under the Influence campaign.

Boat Occupant Protection Subcommittee

The agenda includes the following:
(1) Review subcommittee charges and develop a status update.
(2) Discuss ongoing risk management and human factors initiatives.
(3) Discuss current regulatory projects, grants and contracts impacting boat occupant protection.
(4) Discuss Personal Watercraft Standards Technical Panel activities.
(5) Discuss life raft safety issues.

Navigation Light Subcommittee

The agenda includes the following:
(1) Review subcommittee charges and develop a status update.
(2) Discuss issues coordinated with the Navigation Safety Advisory Council.
(3) Discuss status of navigation light certification rulemaking.
(4) Discuss navigation light grant projects.

Procedural

All meetings are open to the public. Please note that the meetings may close early if all business is finished. At the Chairs' discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation at a meeting, please notify the Executive Director no later than April 14, 2000. Written material for distribution at a meeting should reach the Coast Guard no later than April 14, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of a meeting, please submit 25 copies to the Executive Director no later than April 7, 2000.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: March 22, 2000.

Terry M. Cross,

Rear Admiral, U.S. Coast Guard, Director of Operations Policy.

[FR Doc. 00–7647 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7123]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Eye of the Needle.*

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is

authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before April 28, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7123. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW, Washington, DC 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name: *Eye of the Needle,* owner: Eye of the Needle, LLC.

(2) Size, capacity and tonnage of vessel: L.O.A.:56′, L.W.L.44′6″, Beam 15′6″, Draft 6′7″, Capacity 12, Tonnage: Gross 35, Net 33, Ballast 19,650 lbs. Internal.

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Intended use: Sailing charters to/from Sackets Harbor NY to/from Lake Ontario and the St. Lawrence Seaway. Charters are designed as day charters but may have an occasional overnight application for special occasions. Passengers will not exceed 12 persons."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1987. Place of original construction: Built in Taiwan by Ta Chaio Bros. Yacht Bldg. Co., LTD.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This waiver will not have an impact on other commercial passenger vessel operators. All present operators are power boats specializing in fishing charters. There are no other commercial passenger vessels operating out of Sackets Harbor, NY for sailing charters."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "The impact this waiver will have on U.S. shipyards is none. We have no intention of purchasing a U.S. built vessel for sailing charters in the event this waiver is not granted."

By Order of the Maritime Administrator.

Dated: March 23, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–7757 Filed 3–28–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket Nos. MC–F–20963 and MC–F–20965][1]

Stagecoach Holdings plc and Coach USA, Inc., et al.—Control—Century Airline Services, Inc. and All West Coachlines, Inc., et al.

AGENCY: Surface Transportation Board.

ACTION: Notice Tentatively Approving Finance Transactions.

SUMMARY: Stagecoach Holdings plc (Stagecoach), and its subsidiary, Coach USA, Inc. (Coach), both noncarriers that control motor passenger carriers, and various subsidiaries of each (collectively, applicants), filed an application under 49 U.S.C. 14303 for Stagecoach, related applicants, and its subsidiaries, Coach and Coach Canada, Inc. (Canada), to acquire control of Century Airline Services, Inc. (Century), and for Stagecoach, related applicants, and its subsidiaries, Coach and Coach USA West, Inc. (West), to acquire control of All West Coachlines, Inc. d/b/a All West Tours (All West) and Goodall's Charter Bus Service, Inc. (Goodall's). Persons wishing to oppose the application must follow the rules at 49 CFR 1182.5 and 1182.8. The Board has tentatively approved the transactions, and, if no opposing comments are timely filed, this notice will be the final Board action.

DATES: Comments must be filed by May 15, 2000. Applicants may file a reply by May 30, 2000. If no comments are filed by May 15, 2000, this notice is effective on that date.

ADDRESSES: Send an original and 10 copies of any comments referring to STB Docket No. MC–F–20963, *et al.* to: Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, send one copy of comments to applicants' representative: Betty Jo Christian, Steptoe & Johnson LLP, 1330 Connecticut Avenue, N.W., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Stagecoach is a public limited corporation organized under the laws of Scotland, and Coach is a Delaware corporation. Stagecoach and its

[1] These proceedings are not consolidated. A single decision is being issued for administrative convenience.

subsidiaries[2] currently control Coach and its noncarrier regional management subsidiaries (including Canada and West), as well as the motor passenger carriers jointly controlled by Coach and the management subsidiaries.[3] Coach acquired the companies that are the subject of these proceedings by purchasing all of the outstanding stock of Century[4] and Goodall's[5] in separate 1999 transactions and simultaneously placing the stock of each into independent voting trusts. In January 2000, Coach purchased the stock of All West[6] and again simultaneously placed the stock into an independent voting trust. Applicants submit that the federal and state operating authorities held by Century, All West and Goodall's will not be transferred from one entity to another as a result of the control transactions.

Under 49 U.S.C. 14303(b), we must approve and authorize a transaction we find consistent with the public interest, taking into consideration at least: (1) the effect of the transaction on the adequacy of transportation to the public; (2) the total fixed charges that result; and (3) the interest of affected carrier employees.

Applicants have submitted the information required by 49 CFR 1182.2, including information to demonstrate that the proposed transactions are consistent with the public interest under 49 U.S.C. 14303(b). Specifically, applicants have shown that the proposed transactions will have a postive effect on the adequacy of transportation to the public and will result in no increase in fixed charges, and no changes in employment. *See* 49 CFR 1182.2(a)(7). Additional information, including a copy of the application, may be obtained from the applicants' representative.

On the basis of the application, we find that the proposed transactions are consistent with the public interest and should be authorized. If any opposing comments are timely filed, this finding will be deemed vacated and, unless a final decision can be made on the record as developed, a procedural schedule will be adopted to reconsider the application. *See* 49 CFR 1182.6(c). If no opposing comments are filed by the expiration of the comment period, this decision will take effect automatically and will be the final Board action.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The proposed acquisitions of control are approved and authorized, subject to the filing of opposing comments.

2. If timely opposing comments are filed, the findings made in this decision will be deemed as having been vacated.

3. This decision will be effective on May 15, 2000, unless timely opposing comments are filed.

4. A copy of this notice will be served on: (1) the U.S. Department of Transportation, Federal Motor Carrier Safety Administration—HMCE–20, 400 Virginia Avenue, S.W., Suite 600, Washington, DC 20024; (2) the U.S. Department of Justice, Antitrust Division, 10th Street & Pennsylvania Avenue, N.W., Washington, DC 20530; and (3) the U.S. Department of Transportation, Office of the General Counsel, 400 7th Street, S.W., Washington, DC 20590.

Decided: March 23, 2000.

By the Board, Chairman Morgan, Vice Chairman Burkes, and Commissioner Clyburn.

Vernon A. Williams,

Secretary.

[FR Doc. 00–7773 Filed 3–28–00; 8:45 am]

BILLING CODE 4915–00–P

[2] The four noncarrier subsidiaries of Stagecoach that are intermediate in the corporate chain connecting Stagecoach with Coach are: SUS 1 Limited, SUS 2 Limited, Stagecoach Nevada (a Nevada general partnership formerly known as Stagecoach General Partnership), and SCH US Holdings Corp. (collectively, the Intermediate Subsidiaries).

[3] Control over Coach and its subsidiaries was approved in *Stagecoach Holdings plc—Control—Coach USA, Inc., et al.*, STB Docket No. MC–F–20948 (STB served July 22, 1999).

[4] Century is an Ontario corporation. It holds federally issued operating authority in Docket No. MC–293450, which authorizes it to provide charter and special services between points in the United States.

[5] Goodall's is a California corporation. It holds federally issued operating authority in Docket No. MC–148870, which authorizes it to provide charter and special services passenger transportation between points in the United States.

[6] All West is a California corporation. It holds federally issued operating authority in Docket No. MC–212056, which authorizes it to engage in charter and special operations between points in the United States (except Alaska and Hawaii) and to operate as a motor contract carrier under continuing contracts with persons requiring passenger service.

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 22, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 2000 to be assured of consideration.

Bureau of Alcohol, Tobacco and Firearms (BATF)

OMB Number: 1512–0052.
Form Number: ATF F 5130.9.
Type of Review: Extension.
Title: Brewer's Report of Operations.
Description: ATF F 5130.9 is a periodic report filed by brewers to account for taxable commodities. For this reason, ATF F 5130.9 is a method to protest tax revenue. The data collected on the form is also summarized by ATF in a statistical release.
Respondents: Business of other for-profit.
Estimated Number of Respondents: 879.
Estimated Burden Hours Per Respondent: 1 hour.
Frequency of Response: Quarterly.
Estimated Total Reporting Burden: 4,236 hours.

OMB Number: 1512–0524.
Form Number: ATF F 3310.11.
Type of Review: Extension.
Title: Federal Firearms License Theft/Loss Report.
Description: Theft and losses of firearms from the inventory or collection of a Federal firearms licensee must be reported to the Secretary of Treasury and the appropriate local authorities within 48 hours of discovery. This form contains the minimum information necessary for ATF to initiate criminal investigations.
Respondents: Individuals or households, Business or other for-profit.
Estimated Number of Respondents: 4,000.
Estimated Burden Hours Per Respondent: 24 minutes.
Frequency of Response: On occasion.
Estimated Total Reporting Burden: 1,600 hours.

OMB Number: 1512–0553.
Form Number: None.
Type of Review: Extension.
Title: Strategic Planning Environmental Assessment Outreach
Description: The outreach to ATF stakeholders is part of the Bureau's

triennial environmental assessment. The Strategic Planning Office at ATF will use the information to determine the agency's internal strengths and weaknesses and external opportunities and risks.

Respondents: Business or other for-profit, Not-for-profit institutions, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 1,500.

Estimated Burden Hours Per Respondent: 18 minutes.

Frequency of Response: Other (triennial).

Estimated Total Reporting Burden: 450 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, Room 3200 ,650 Massachusetts Avenue, N.W., Washington, DC 20226.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–7752 Filed 3–28–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 20, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1510.

Revenue Procedure Number: Revenue Procedure 96–60.

Type of Review: Extension.

Title: Procedure for Filing Forms W–2 in Certain Acquisitions.

Description: Information is required by the Internal Revenue Service to assist predecessor and successor employers in complying with the reporting requirements under Code sections 6051 and 6011 for Forms W–2 and 941.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 553,500.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 110,700 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–7753 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 21, 2000

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0817.

Regulation Project Number: EE–28–78 Final.

Type of Review: Extension.

Title: Inspection of Applications for Tax Exemption and Applications for Determination Letters for Pension Plans.

Description: Internal Revenue Code (IRC) section 6104 requires applications for tax exempt status, annual reports of private foundations, and certain portions of returns to be open for public inspection. Some information may be withheld from disclosure. IRS needs the information to comply with requests for public inspection of the above-named documents.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institution, Federal Government, State, Local or Tribal Government.

Estimated Number of Respondents: 42,370.

Estimated Burden Hours Per Respondent: 12 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,538 hours.

OMB Number: 1545–1507.

Regulation Project Number: INTL–656–87 Final.

Type of Review: Extension.

Title: Treatment of Shareholders of Certain Passive Foreign Investment Companies.

Description: The reporting requirements affect U.S. persons that are direct and indirect shareholders of passive foreign investment companies (PFICs). The IRS uses Form 8621 to identify PFICs, U.S. persons that are shareholders, and transactions subject to PFIC taxation and to verify income inclusions, excess distributions and deferred tax amounts.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents: 131,250.

Estimated Burden Hours Per Respondent: 45 minutes.

Frequency of Response: Other (one-time only).

Estimated Total Reporting Burden: 100,000 hours.

OMB Number: 1545–1528.

Revenue Procedure Number: Revenue Procedure 97–15.

Type of Review: Extension.

Title: Remedial Payment Closing Agreement Program.

Description: This information is required by the Internal Revenue Service to verify compliance with sections 57, 103, 141, 142, 144, 145, and 147 of the Internal Revenue Code (IRC) of 1986, as applicable (including any corresponding provision, if any, of the Internal Revenue Code of 1954). This information will be used by the Service to enter into a closing agreement with the issuer of certain state or local bonds and to establish the closing agreement amount.

Respondents: Not-for-profit institution, State, Local or Tribal Government.

Estimated Number of Respondents/Recordkeepers: 50.

Estimated Burden Hours Per Respondent/Recordkeeper: 1 hour, 30 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 75 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–7754 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 22, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1308.

Regulation Project Number: IA–17–90 Final.

Type of Review: Extension.

Title: Reporting Requirements for Recipients of Point Paid on Residential Mortgages.

Description: To encourage compliance with the tax laws relating to the mortgage interest deduction, the regulations require the reporting on Form 1098 of points paid on residential mortgages. Only businesses that receive mortgage interest in the course of a trade or business are affected by this reporting requirement.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 37,644.

Estimated Burden Hours Per Respondent/Recordkeeper: 7 hours, 41 minutes.

Frequency of Response: Annually.

Estimated Total Reporting/Recordkeeping Burden: 283,056 hours.

OMB Number: 1545–1669.

Notice Number: Notice 2000–3.

Type of Review: Extension.

Title: Guidance on Cash or Deferred Arrangements.

Description: This notice provides guidance to employers maintaining, or who are contemplating establishing, cash or deferred arrangements (CODAs) for their employees. It permits some degree of flexibility in using the safe harbor methods, described in sections 40(k)(12) and 401(m)(11) of the Code, to satisfy the nondiscrimination tests normally applicable to CODAs. As indicated in section III, Q&As 1 and 2, of the notice, to take advantage of this flexibility, employers must amend their CODAs accordingly and provide employees written notices of the benefits available to them under the CODA.

Respondents: Business or other for-profit, Not-for-profit institutions.

Estimated Number of Respondents: 6,000.

Estimated Burden Hours Per Respondent: 1 hour, 20 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 8,000 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–7755 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 22, 2000.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before April 28, 2000 to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–1668.

Form Number: IRS Form 8865 and Schedules.

Type of Review: Extension.

Title: Return of U.S. Persons With Respect to Certain Foreign Partnerships.

Description: The Taxpayer Relief Act of 1997 significantly modified the information reporting requirements with respect to foreign partnerships. The Act made the following three changes: (1) Expanded section 6038B to require U.S. persons transferring property to foreign partnerships in certain transactions to report those transfers; (2) expanded section 6038 to require certain U.S. partners of controlled foreign partnerships to report information about the partnerships; and (3) modified the reporting required under section 6046A with respect to acquisitions and dispositions of foreign partnership interests. Form 8865 will be used by U.S. persons to fulfill their reporting obligations under sections 6038B, 6038, and 6046A.

Respondents: Business or other for-profit, Individuals or households, Not-for-profit institutions.

Estimated Number of Respondents/Recordkeepers: 5,000.

ESTIMATED BURDEN HOURS PER RESPONDENT/RECORDKEEPER

Form	Recordkeeping	Learning about the law of the form	Preparing and sending the form to the IRS
8865	15 hr., 32 min	3 hr., 59 min	4 hr., 25 min.
Schedule O (Form 8865)	12 hr., 55 min	2 hr., 23 min	2 hr., 42 min.
Schedule P (Form 8865)	5 hr., 16 min	24 min	30 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 154,015 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt (202) 395–7860, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503.

Lois K. Holland

Departmental Reports Management Officer.

[FR Doc. 00–7756 Filed 3–28–00; 8:45 am]

BILLING CODE 4830–01–P



Federal Register

Wednesday,
March, 29, 2000

Part II

Department of Housing and Urban Development

24 CFR Parts 5, 880, et al.
Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 5, 880, 881, 884, 886, 891, 960, 966, 984 and 985

[Docket No. FR–4485–F–03]

RIN 2501–AC59

Changes to Admission and Occupancy Requirements in the Public Housing and Section 8 Housing Assistance Programs

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule implements changes to the admission and occupancy requirements for the public housing and Section 8 assisted housing programs made by the Quality Housing and Work Responsibility Act of 1998. These changes concern choice of rent, community service and self-sufficiency in public housing, and admission preferences and determination of income and rent in public housing and Section 8 housing assistance programs. This final rule follows a proposed rule published on April 30, 1999, and takes into consideration the public comments received on the proposed rule.

DATES: *Effective Date:* The provisions of this rule are effective on April 28, 2000, except for the provisions of § 5.661, which will become effective when the information collections it contains receive approval from the Office of Management and Budget. The announcement of approval and the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For the public housing and Section 8 tenant-based housing assistance programs—Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 4224, Washington, DC, 20410; telephone (202) 708–0744, or the Public and Indian Housing Resource Center at 1–800–955–2232.

For the Section 8 project-based programs—Willie Spearmon, Director, Office of Multifamily Business Products, Office of Housing, Department of Housing and Urban Development, 451 Seventh Street, SW, Room 6138, Washington, DC, 20410; telephone (202) 708–3000.

(With the exception of the telephone number for the PIH Resource Center, these are not toll-free telephone numbers.) Persons with hearing or speech impairments may access these numbers via TTY by calling the Federal Information Relay Service at (800) 877–8339. You also may contact the individuals listed above by e-mail: Patricia_S._Arnaudo@hud.gov and Willie_Spearmon@hud.gov.

SUPPLEMENTARY INFORMATION:

Organization of this Preamble

I. Background

II. Changes Made at the Final Rule Stage

A. Reorganization of program regulations
B. Common occupancy requirements
C. Section 8 project-based programs
D. Public housing program
E. Removal of outdated references to federal preferences
F. Summary of regulatory changes
1. Family disclosure of HUD notice concerning family income—§ 5.240 (proposed rule § 5.211)
2. Selection preferences—§§ 5.655 and 960.206 (proposed rule § 5.410)
3. Definition of economic self-sufficiency program—§ 5.603(b)
4. Income eligibility and income targeting for admission—(For most Section 8 project-based programs, § 5.653; for public housing, § 960.202) (proposed rule § 5.607)
5. Annual income—§ 5.609
6. Adjusted income—§ 5.611
7. Public housing self-sufficiency incentives—§ 960.255 (proposed rule § 5.612)
8. Choice of rent in public housing—§ 960.253 (proposed rule § 5.614)
9. Minimum rent—5.630(b) (proposed rule § 5.616)
10. Public housing and Section 8 tenant-based assistance programs: How welfare benefit reduction affects family income—§§ 5.603 and 5.615 (proposed rule § 5.618)
11. Occupancy by police officers in public housing and Section 8 project-based housing—§§ 5.661 and 960.503–505
12. How PHA administers service requirement—§ 960.605
13. Assuring resident compliance—§ 960.607
14. Definitions—§ 984.103
15. Administrative fees—§ 984.302
16. Utility reimbursements—§ 5.632
17. Family income and verification—§ 960.259

III. Discussion of the Public Comments

A. General
B. Using Computer Matching—Results—Family disclosure of income (proposed rule § 5.211; final rule § 5.240)
C. Repeal of Preference for Elderly, Disabled, and Displaced over Other Single Persons (proposed and final rule § 5.405)
D. Repeal of Federal Preferences (proposed rule: removed §§ 5.415, 5.420, 5.425 and 5.430 and revised § 5.410; final rule removes in addition to above §§ 5.405 and 5.410, adds a new § 5.655, and revises §§ 960.204–960.206)
E. Income Targeting (proposed rule § 5.607; final rule §§ 5.653 and 960.202)
F. Annual Income, Adjusted Income (proposed and final rule §§ 5.603, 5.609, and 5.611)
1. Exclusions vs. Deductions
2. Permissive Deductions—Applicable to Public Housing Only
G. Minimum Rents (proposed rule § 5.616; final rule § 5.630)
H. Self-Sufficiency Incentives—Public Housing Only (proposed rule § 5.612; final rule § 960.255)
1. Disallowance of Increases in Income as a Result of Employment
2. Individual Savings Account
I. Income Changes Resulting From Noncompliance with Welfare Program Requirements (proposed rule § 5.618; final rule §§ 5.603, 5.613, and 5.615)
J. Rents in Public Housing (proposed rule §§ 5.603 and 5.614; final rule §§ 5.603 and 960.253)
1. Income-Based Rents
2. Flat Rents
3. Family Choice
4. Switching Rent Methods to Lower Rent Because of Financial Hardship
5. Retaining Ceiling Rents
K. New Community Service and Self-Sufficiency Requirements for Public Housing (proposed rule §§ 960.603–960.611; final rule §§ 960.601–960.609)
1. General
2. Exemptions
3. Noncompliance
L. Reexamination and Verification of Family Income and Composition (proposed rule §§ 5.617 and 960.209; final rule §§ 5.657, 960.257, and 960.259)
M. Occupancy by Police Officers and Over-Income Families (proposed and final rule §§ 5.619 and 960.503–960.505)
N. Changes to Existing Self-Sufficiency Programs—Public Housing and Section 8 Certificate/Voucher Programs (proposed and final rule Part 984)
O. Lease Requirements (proposed and final rule § 966.4)
P. Escrow Deposits (proposed and final rule § 966.55)

IV. Findings and Certifications

I. Background

On April 30, 1999 (64 FR 23460), HUD published a proposed rule that addressed several changes related to admission and occupancy requirements in HUD's public housing and Section 8 assisted housing programs. These were made by the Quality Housing and Work Responsibility Act of 1998 (title V of the FY 1999 HUD appropriations Act, Public Law 105–276, 112 Stat. 2518, approved October 21, 1998) (referred to in this rule as "the 1998 Act") which amended the United States Housing Act of 1937 (42 U.S.C. 1437, *et seq.*, "the 1937 Act"). The 1998 Act made comprehensive changes to HUD's public housing, Section 8 tenant-based and project-based programs. Some of the reforms made by the 1998 Act affect public housing only, and others affect Section 8 tenant-based and project-based programs in addition to public housing.

The preamble to the April 30, 1999 proposed rule provided a detailed overview of the changes made to admission and occupancy requirements for the public housing and Section 8 housing assistance programs by the 1998 Act. The preamble to the proposed rule also addressed admission and occupancy provisions of the 1998 Act that are already in effect, and those admission and occupancy provisions proposed to be implemented through the April 30, 1999 rule. The preamble to the April 30, 1999 proposed rule also listed which sections of the 1998 Act were addressed by the proposed rule, and which HUD programs were affected by the changes. This information was described in the preamble to the April 30, 1999 proposed rule, and also presented in chart form (see 64 FR 23462). The preamble to this final rule does not repeat that information.

In addition to the rulemaking, HUD published a notice in the **Federal Register** on August 6, 1999 (64 FR 42956), which provided guidance pending publication of this final rule. That notice instructed PHAs to implement certain rent provisions effective October 1, 1999, based on the proposed rule. The notice stated that PHAs following the guidance would not be penalized for any changes made by HUD to the proposed rule provisions at the final rule stage and would be provided adequate time to adjust their policies.

The public comment period on the proposed rule closed on June 29, 1999. At the close of the public comment period, HUD had received 113 public comments. The commenters included housing authorities, national organizations representing housing authorities or residents, property managers, organizations representing victims of domestic violence, legal services organizations, policy organizations, and city and county organizations that provide housing or human services. All the comments were carefully considered and significant issues raised by the comments are addressed in Section III of this preamble. Section II of this preamble, which immediately follows, highlights the changes made at this final rule stage.

II. Changes Made at the Final Rule Stage

A. Reorganization of Program Regulations

At this final rule stage, HUD has reorganized the program regulations in a number of ways to make it easier to find and view specific requirements that apply to a particular program. Therefore, the provisions on preferences for admission and income targeting for the public housing and Section 8 tenant-based assistance programs, as well as public housing choice of rents, were moved from Part 5 to the applicable program regulations (24 CFR part 960 for public housing, and 24 CFR part 982 for the Section 8 tenant-based assistance programs). Provisions that only apply to Section 8 tenant-based assistance programs were covered in the Housing Choice Voucher Program final rule (amendments to 24 CFR part 982), published October 21, 1999 (64 FR 56894–56915). Most of the tenant-based program public comments were addressed in that rule.

B. Common occupancy requirements

Part 5 is reorganized by grouping common requirements for determination of "family income" and "family payments" that apply to both Section 8 and public housing.

The rule adds a heading for provisions on "family income" (§ 5.609 to § 5.632). The provisions under this heading cover determination of annual income (§ 5.609), adjusted income (§ 5.611), cooperation with welfare agency (§ 5.613), and effect of welfare benefits reduction on family income (§ 5.615).

The rule also adds a heading for provisions on "family payment" (§ 5.628 to § 5.632). The provisions under this heading cover determination of total tenant payment (§ 5.628), minimum rent (§ 5.630), and utility reimbursements (for the public housing and Section 8 programs, except for the Section 8 voucher program) (§ 5.632).

C. Section 8 Project-Based Programs

Before this rule, there was no place to group regulatory "occupancy requirements" that only apply to the Section 8 project-based assistance programs. This rule therefore adds a new heading in 24 CFR part 5 to consolidate occupancy requirements for the various Section 8 project-based assistance programs (§§ 5.653 to 5.661). The provisions for Section 8 project-based assistance under this heading cover determination of income eligibility and income targeting (§ 5.653), owner selection preferences (§ 5.655), family information and verification (§ 5.659), and approval for security personnel to live in a project (§ 5.661).

D. Public Housing Program

For a clearer presentation, the final rule reorganizes and consolidates public housing admission and occupancy requirements in the existing part 960.

Subpart A of part 960 specifies that part 960 applies to public housing and lists defined terms. Subpart A also states the requirement to administer public housing in accordance with applicable civil rights laws and regulations, the PHA duty to affirmatively further fair housing, and the requirement for the PHA to submit applicable equal opportunity certifications.

Subpart B of part 960 reorganizes, revises, and consolidates public housing admission requirements. This subpart covers:

—requirements for eligibility and for targeting assistance to extremely low income families (§ 960.202);
—policies and criteria for selecting families (§§ 960.204 and 960.205);
—waiting list and local preferences in admission (§ 960.206).

Subpart C of part 960 reorganizes and consolidates public housing requirements concerning reexamination of income and determination of rent for public housing residents. This subpart covers:

—the new choice of rent requirements under the 1998 Public Housing Reform Act, that allow the family to choose annually whether to pay a flat market-based rent or an income-based rent (§ 960.253);
—the requirement for the PHA to disregard increases in income as a result of employment in calculating income-based rent (§ 960.255);
—policies on regular and interim reexamination of family income and composition (§ 960.257);
—requirements for obtaining and verifying family information (§ 960.259); and
—restrictions on eviction when family income increases (§ 960.261).

A new subpart E of part 960 contains provisions describing the circumstances in which a PHA may permit occupancy of public housing units by persons who are not eligible for assistance in the public housing program:

—A PHA with a small public housing program (fewer than 250 units) may lease a public housing unit to "over-income" families—who are not income eligible for admission to the public housing program (§ 960.503).
—A PHA may allow professional police officers to reside in public housing to

increase security for public housing residents (§ 960.505).

Subpart F of part 960 states the requirements for PHA administration of the new community service and economic self-sufficiency requirements for public housing residents under the 1998 Public Housing Reform Act. The rule also incorporates related changes in the public housing lease and grievance requirements at 24 CFR part 966. These include amendments concerning the term and renewal of a public housing lease in accordance with the 1998 law (§ 966.4).

One change made to § 966.4(l) is to clarify the relationship between a revision to the lease and the right of a PHA to terminate tenancy. Section 966.3 provides that the PHA can modify the lease at any time during the lease term, so long as it follows the requirements of notice to tenants and resident organizations and consideration of their comments before adopting any new lease form. That remains unchanged. This rule does modify the provisions for a written rider executed by both parties (§ 966.4(o) and (p)) and moves it to a new location, § 966.4(a)(3). The revised § 966.4(a)(3) provides that the lease may be modified at any time by written agreement of the tenant and the PHA. The rule also adds a provision concerning termination of tenancy to § 966.4(l), to permit a PHA to terminate a tenancy if the tenant refuses to accept a revision to the lease after being given *at least* 60 days notice of its proposed effect and being allowed a reasonable time to respond to the offer.

E. Removal of Outdated References to Federal Preferences

A number of the regulations for Section 8 project-based programs continued to include a paragraph concerning the federal preferences, which have been eliminated by statute, and outdated references to parts 812 and 813, which no longer exist. Therefore, these superfluous references to Federal preferences are removed and the outdated references to parts 812 and 813 are corrected in this rule. (See the revisions to parts 880, 884, 886, and 891.) HUD will make any necessary conforming changes to parts 882 and 982, to reflect changes in income targeting, owner selection, and family information and verification in a separate rule.

F. Summary of Regulatory Changes

HUD also made the following changes to the April 30, 1999 proposed rule.

1. Family disclosure of HUD notice concerning family income—§ 5.240 (proposed rule § 5.211).

The final rule provides that a family must promptly furnish to the responsible entity (the PHA or owner responsible for determining family income) any letter from HUD concerning the amount or verification of family income. This requirement applies to a family that resides in a dwelling unit with assistance in the public housing program or the Section 8 tenant-based assistance program, or for which project-based assistance is provided under Section 8, Section 202, or Section 811. (The rule implements section 3(f) of the 1937 Act (42 U.S.C. 1437a(f)), as amended by the 1998 Public Housing Reform Act, and as further amended by the HUD FY 2000 appropriation act (Public Law 106–74, section 214(a), approved October 20, 1999. The FY 2000 appropriation extends applicability of this provision from just public housing and Section 8 tenant-based assistance, as provided under the 1998 act, to project-based assistance under Section 8, Section 202, and Section 811.)

The PHA or other responsible entity must verify the information received from the family and make appropriate adjustments in the amount of income, rent, or housing assistance payment. With respect to families no longer in occupancy, the PHA or other responsible entity should pursue abuses regarding excess rental assistance, such as reporting the deficiency of payments to credit bureaus, if it is practical to do so, and recovery of such amounts, if they have the resources to do so.

2. Selection Preferences—§§ 5.655 and 960.206 (proposed rule § 5.410).

Residency Preference

HUD has clarified at § 5.655 (for Section 8 projects) and § 960.206(b)(1)(i) (for public housing) that residency requirements are still prohibited, and that any residency preferences must be implemented in accordance with applicable nondiscrimination and equal opportunity requirements listed at § 5.105(a). The final rule provides that use of a residency preference may not have the "purpose or effect" of delaying or otherwise denying admission to a project or unit based on the race, color, ethnic origin, gender, religion, disability or age of any member of an applicant family.

"Residency preference" is defined as a preference for admission of persons who reside in a specified geographic area. For public housing, the rule provides that the PHA may adopt a preference for admission of a resident of a county or municipality. However, the PHA may not adopt a residency preference for an area smaller than a county or municipality.

A PHA that administers a public housing program or a Section 8 tenant-based program must include any PHA residency preference in its statement of PHA policies that govern eligibility, selection and admission to the program. (For public housing, see § 960.206(b)(1).) Such policies are included in the PHA Plan submitted to HUD, in accordance with 24 CFR part 903. HUD may disapprove the plan if any part of the plan is not consistent with applicable laws and regulations—including the applicable civil rights authorities and regulations. In the case of the Section 8 project-based assistance programs, the owner of a project must adopt a written tenant selection plan in accordance with HUD requirements, including civil rights authorities and regulations (see § 5.655(b)(2)).

If an owner adopts a residency preference, it must use one approved by HUD. There are several ways that a residency preference could be approved by HUD: (1) Prior approval in the owner's affirmative fair housing marketing plan; (2) prior approval in the jurisdiction's PHA Plan; or (3) modification of the owner's affirmative fair housing marketing plan. In applying any residency preference, the rule requires the owner to treat an applicant who is working or has been hired in the residency preference area as a resident of the residency preference area. The project owner may treat as residents applicants who are graduates of, or active participants in, education and training programs in the residency preference area if the education or training program is designed to prepare individuals for the job market.

Preference for Working Families

HUD also has clarified, in § 960.206(b)(2) (public housing) and in § 5.655 (Section 8 projects), that a PHA or Section 8 project owner may adopt a preference for working families (families where the head, spouse, or sole member, is employed). If the responsible entity chooses to adopt a working family preference, an applicant must be given the benefit of the working family preference if the head and spouse, or sole member, is age 62 or older, or is a person with disabilities, as defined for eligibility purposes (see § 5.403(a)). A working family preference cannot be based on the amount of earned income. (See § 5.655(c)(2)(ii).) By statute and this rule, the owner is prohibited from preferring higher income families over families of lower income to occupy a project or unit (§ 5.655(b)(3); 42 U.S.C. 1437n(c)(4)).

Preference for Person With Disabilities

A Section 8 owner or PHA administering public housing may adopt a preference for admission of families that include a person with disabilities, but not for persons with a specific disability (§§ 5.655(c)(3) and 960.206(b)(3)).

Preference for Victims of Domestic Violence

The PHA or owner should consider whether to adopt a preference for victims of domestic violence, as provided in §§ 5.655(c)(4) and 960.206(b)(4).

Preference for Single Persons

The law no longer mandates a federally directed priority for elderly or disabled over other single persons. The final rule specifies that the responsible entity may adopt a preference for admission of single persons who are elderly, displaced, homeless, or persons with disabilities over other single persons (§§ 5.655(c)(5) and 960.206(b)(5)).

3. Definition of economic self-sufficiency program—§ 5.603(b).

HUD has added a new definition of the term "economic self-sufficiency program". It is defined as any program designed to encourage, assist, train, or facilitate the economic independence of assisted families or to provide work for such families. Economic self-sufficiency programs can include job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any other program necessary to ready a participant to work (such as substance abuse or mental health treatment). As defined in this rule, "economic self-sufficiency program" includes any work activities as defined in the Social Security Act (42 U.S.C. 607(d)). (See the definition of work activities at § 5.603(c).)

The new definition of the term "economic self-sufficiency program" is used in the following regulatory provisions, pursuant to the Public Housing Reform Act:

- Provision that family income (for the public housing and Section 8 tenant-based assistance programs) includes welfare benefits reduced because of family failure to comply with welfare agency requirements to participate in an economic self-sufficiency program (§ 5.615); and
- The requirement for public housing residents to participate in an economic self-sufficiency program or other eligible activities (24 CFR part 960, subpart F).

4. Income eligibility and income targeting for admission—(For most Section 8 project-based programs, § 5.653; for public housing, § 960.202) (proposed rule § 5.607).

In the final rule, provisions concerning Section 8 project-based admission and income targeting are found in § 5.653, and for public housing in § 960.202.

Eligibility

The rule provides that no family other than a low income family is eligible for admission to the public housing program or the Section 8 project-based assistance program (other than the project-based voucher program) (§ 5.653(b); § 960.202(a)). The final rule adds a definition of the term "low income family" (in §§ 5.603), replacing a previous statutory reference. Generally, "low income" designates a family whose income does not exceed 80 percent of area median income, with certain adjustments.

Targeting

The Public Housing Reform Act targets available Section 8 and public housing units to families with incomes below thirty percent of the area median income (Section 513 of the Act). In the rule, such families are called "extremely low income families".

The law sets the minimum percent of Section 8 or public housing units that must be rented to extremely low income families each year. In the Section 8 tenant-based program, the PHA must generally target at least 75 percent of annual admissions to such families. In public housing, the PHA must generally target at least 40 percent of annual admissions to such families (with credit if the PHA exceeds the target number of admissions in its Section 8 tenant-based program). In the Section 8 project-based programs, the owner must target 40 percent of annual project admissions to units assisted under the program to extremely low income families.

As originally enacted, the Public Housing Reform Act provided that HUD was authorized to adjust the extremely low income (30 percent of median income) limit only "for smaller and larger families" (42 U.S.C. 1437n). However, the law was subsequently amended to also permit adjustments necessary "because of unusually high or low family incomes" (at section 205 of the fiscal year 2000 HUD appropriation act, Public Law 106–74, 10/20/99). In the final rule, the definition of the term "extremely low income family" is revised to incorporate this statutory change (§ 5.603). This definition applies to the three categories of 1937 Act housing subject to income targeting.

The final rule restates the provisions that specify public housing targeting requirements, including the calculation of public housing targeting credits for admission to the PHA's tenant-based voucher program (§ 960.202(b)).

The final rule provides that the responsible entity (PHA or owner) must comply with HUD prescribed reporting requirements, including income reporting requirements that will permit HUD to maintain the data necessary to monitor compliance with income-eligibility and income-targeting requirements (§ 5.653(f); § 960.202(d)).

5. Annual Income—§ 5.609.

a. Income of minors—§ 5.609(c)(1)). The proposed rule would have removed the existing provision that specifies that annual income does not include earned income of minors and made it a deduction instead. That proposal is not adopted in this final rule.

b. Resident stipend for member of PHA governing board (§ 5.609(c)(iv)). The Public Housing Reform Act provides that the governing board of a PHA must generally contain at least one member who is directly assisted by the PHA (42 U.S.C. 1437(b)). To support and facilitate implementation of this new statutory requirement, HUD is clarifying that the resident service stipend exclusion covers amounts received by residents who serve on the PHA governing board. HUD is concerned that without this clarification, residents may be discouraged from participating. This provision was not included in the April 30, 1999 proposed rule. However, the added language does not reflect any change in HUD's position, but instead clarifies what is permissible under current regulations.

6. Adjusted Income—§ 5.611.

The rule is revised (at § 5.611(a)(3)(ii)) to clarify that the allowance for unreimbursed reasonable attendant care and auxiliary apparatus expenses may not exceed the employment income received by family members (including the person with disabilities) who are 18 years of age or older and who are able to work as a result of the assistance to the person with disabilities.

7. Public housing self-sufficiency incentives—§ 960.255 (proposed rule § 5.612).

The final rule comprehensively restates and revises the provisions for disallowance of increases in income as a result of employment in calculation of annual income of a public housing family after a family member is first employed (§ 960.255). The new provisions include:

—Definitions of disallowance, previously unemployed, and qualified family (§ 960.255(a)).
—A revised technical description of the calculation of the disallowance during the initial twelve months, the second twelve month exclusion and phase in, and the maximum four year period of disallowance for increases in income as a result of employment of individual family members (§ 960.255(b)).
—Specification that the disallowance of increases in income as a result of employment only applies for calculation of rent after admission to the program, but does not apply in determination of income eligibility or income targeting for admission (§ 960.255(c)).
—Specification that the disallowance of increases in income as a result of employment applies to persons who are or were assisted, within 6 months, under any State program of temporary assistance for needy families funded under part A of title IV of the Social Security Act only if the amount of TANF-funded assistance, benefits or services is at least five hundred dollars.

During the first 12 months after commencement of employment of a family member, the PHA disallows the incremental increase in a family member's income as a result of employment. In the second 12-month period, the PHA disallows 50 percent of the incremental increase. The final rule clarifies that the amount of the incremental increase in income is calculated by comparing the amount of the family member's income before the beginning of qualifying employment to the amount of such income after beginning the employment. It is this amount that is subject to being disregarded.

The rule is revised to specify the maximum disallowance for income as a result of employment of an individual family member (§ 960.255(b)(3)). The family may receive the disallowance only as follows:

—Disallowance is limited to one forty-eight month period from the beginning of the first month after commencement of qualifying employment of an individual family member; and
—During this forty-eight month period, for a maximum of twelve months, the incremental increase is disregarded, and for a maximum of twelve months, 50 percent of the incremental increase is disregarded. (If the period of increased income does not last for 12 consecutive months, the disallowance period may be resumed at any time within the 48 month period. However, each qualifying family member is only entitled to a total of 12 months of each disallowance.)

The final rule also specifies that the disallowance of an incremental increase of income as a result of employment is only applied to determine the annual income of families residing in public housing units, not to determine annual income of applicants for purposes of income eligibility or targeting (§ 960.255(c)).

8. Choice of Rent in Public Housing—§ 960.253 (proposed rule § 5.614).

Once a year, the PHA must give a public housing tenant the opportunity to choose between paying a "flat rent," based on the unit's rental value, or an "income-based rent," based on family income. The final rule substantially revises and clarifies the regulatory requirements for choice of rent that are provided in the 1998 Public Housing Reform Act.

Flat rent (§ 960.253(b))

The final rule provides that the flat rent is based on the market rent. The market rent is the rent charged for comparable units in the private, unassisted rental market at which the PHA could lease the public housing unit after preparation for occupancy. In determining the flat rent, a PHA must consider:

—The location, quality, and the size, type and age of the unit; and
—Any amenities, housing services, maintenance, and utilities provided by the PHA.

The PHA must use a reasonable method to determine flat rent and must keep records that document this method. The PHA records must show how the PHA determines flat rents in accordance with its method and document flat rents offered to families.

For families who pay an income-based rent, the PHA reimburses the family if the allowance for tenant paid utilities is greater than the family's total tenant payment. This is called a "utility reimbursement." The final rule provides that the PHA will not pay a utility reimbursement for a family that has chosen to pay a flat rent for its home.

Income-based rent (§ 960.253(c))

If a family chooses to pay an "income-based rent," the tenant rent paid to the PHA is based on family income and the PHA rental policies. The PHA will use a percentage of family income or some other reasonable system to set income-based rents.

The PHA has broad flexibility in deciding how to set income-based rent for its tenants. However, the income-based tenant rent plus the PHA's allowance for tenant paid utilities may not exceed the "total tenant payment" as determined by a statutory formula.

The rule provides that if the utility allowance for tenant paid utilities exceeds the total tenant payment, the PHA must pay the excess as a "utility reimbursement" on behalf of the family. The rule provides that the PHA may choose to pay the utility reimbursement either to the family, or directly to the utility supplier for the utility bills on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier (§ 960.253(c)(3).

9. Minimum Rent—§ 5.630(b) (proposed rule § 5.616).

Section 8 and public housing families are required to pay a minimum rent (42 U.S.C. 1437a(a)(3); § 5.630(a)). However, the family is exempt from minimum rent if the family shows that it is unable to pay the minimum rent because of a "financial hardship" situation (§ 5.630(b)).

In the public housing program, the Section 8 certificate and voucher programs (including both tenant-based and project-based assistance under these programs), and the Section 8 moderate rehabilitation program, the PHA may establish a monthly minimum rent from $0 to $50 for a family (§ 5.630(a)). In the public housing and the Section 8 tenant-based assistance programs, the PHA policies for determining the amount of minimum rent up to this maximum are described in submissions with the PHA's annual plan, and in the PHA's Section 8 administrative plan (§ 903.7). In the other Section 8 programs, the owner is required to charge a fixed minimum rent of $25 set by HUD.

The final rule modifies the provision that allows a hardship exemption for a family that has lost eligibility or is awaiting an eligibility determination for a Federal, State, or local assistance program. The rule provides that the exemption applies to a family with a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996 (§ 5.630(b)(1)).

The final rule provides that hardship includes a situation where the family would be evicted "because it is unable to pay the minimum rent" (§ 5.630(b)(1)(ii)). The rule also provides that the financial hardship exemption only applies to payment of minimum rent—not to rent based on the other

branches of the formula for determining the total tenant payment (§ 5.630(b)(2)(iii)(C)).

10. Public housing and Section 8 tenant-based assistance programs: How welfare benefit reduction affects family income—§§ 5.603 and 5.615 (proposed rule § 5.618).

A welfare agency may reduce welfare benefit payments to sanction a family for noncompliance with welfare self-sufficiency or work activities requirements. The 1998 Public Housing Reform Act provides that the rental contribution of a family assisted in the public housing or tenant-based assistance programs "may not be decreased" if welfare benefits are reduced for this reason (Public Law 105–276, section 512(d); 42 U.S.C. 1437j(d)). This requirement is triggered when a family's rental contribution is calculated on the basis of family income. The law requires that family income include the amount of the welfare benefits that would have been paid if not for the welfare agency sanction. Therefore, the family rental contribution is not decreased because of the welfare sanction. The final rule substantially revises the proposed regulation to implement the statutory requirement.

For this purpose, the final rule (§ 5.615(b)) adds three defined terms to designate and describe key statutory and regulatory concepts.

Covered Families

The statutory term "covered families" designates the universe of families who are required to participate in a welfare agency economic self-sufficiency program and may, therefore, be the subject of a welfare benefit sanction for noncompliance with this obligation. As defined in the rule, "covered families" means families who receive welfare assistance or other public assistance benefits from a State or other public agency under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for the assistance.

Specified Welfare Benefit Reduction

The term "specified welfare benefit reduction" designates those reductions of welfare agency benefits (for a covered family) that may not result in a reduction of the family rental contribution. As defined in the rule, "specified welfare benefit reduction" means a reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

Imputed Welfare Income

The term "imputed welfare income" is defined in this rule, "imputed welfare income" means the amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income. This amount is included in family annual income and, therefore, reflected in the family rental contribution based on this income. The final rule provides that a family's annual income includes the amount of imputed welfare income plus the total amount of other annual income (§ 5.615(c)(1)). However, the rule provides that the amount of imputed annual income is offset by income from other sources received by the family that starts after the sanction is imposed.

The rule is revised to clarify the relationship between the welfare agency, which is responsible for determining the amount of any specified reduction in welfare benefits, and the PHA, which is responsible for determining family income (including any imputed welfare income because of the welfare agency's reduction of welfare benefits.

The 1998 Public Housing Reform Act provides that the PHA must count imputed welfare income of a covered family only after the PHA has received notice of the welfare reduction from the welfare agency (42 U.S.C. 1437j(d)(4)). Accordingly, the rule provides that the PHA bases its imputed welfare income on information provided to it by the welfare agency (§ 5.615(c)(1)). The rule provides that, at the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member and the reason for such reduction (§ 5.615(c)(2)). The welfare agency will also inform the PHA of any subsequent change in the term or amount of a specified benefit reduction.

The implementation of the statutory imputed rent requirement (i.e., the prohibition of a decrease in rent paid by the family because of the welfare sanction), as well as other efforts to promote economic independence of assisted families, requires close cooperation between the PHA and local welfare agencies. The final rule, therefore provides that PHAs must make their best efforts to enter into cooperation agreements with welfare agencies (§ 5.613). These cooperation agreements will be designed:

—To target public assistance, benefits and services for families assisted in the PHA's Section 8 and public housing programs to achieve self-sufficiency; and
—To verify information on welfare benefits for applicants and participants in these programs.

Function of PHA

The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income—which is used to determine maximum income-based rent for a public housing family—and the amount of the housing assistance payment for a voucher family (§ 5.615(c) and (e)(1)). During the term of the welfare agency's welfare benefit reduction, the PHA includes imputed welfare benefits in family income, as determined by the PHA at an interim or regular reexamination (§ 5.615(c)(3)). For this purpose, as provided in the law, the PHA uses the information provided to the PHA by the welfare agency. The welfare agency informs the PHA of the fact, amount, and reason for a welfare benefit reduction (§ 5.615).

Under the rule, the PHA is required to ask welfare agencies to inform the PHA of any welfare benefit reduction that may result in imputed welfare income, the term of the reduction, and the amount of a specified welfare benefit reduction. In computing a family's annual income, the PHA must include the imputed welfare income because of the welfare agency determination to reduce the family's welfare benefit. However, the final rule specifies that the PHA is not responsible for determining that a reduction of welfare benefits was correctly determined by the welfare agency in accordance with welfare agency requirements and procedures (§ 5.615(e)(2). The rule states that:

> Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefit reduction. (§ 5.615(e)(3)

Review of PHA decision

In the public housing program and the Section 8 tenant-based assistance programs, the family may seek an administrative hearing for review of the PHA determination of family income, or the calculation of the family rent or housing assistance payment, in

accordance with HUD requirements. The final rule specifies that the family may invoke the PHA's regular program hearing processes for review of a PHA determination of the amount of imputed welfare income in accordance with HUD requirements (§ 5.615(d)).

The final rule provides that if a family (public housing tenant or Section 8 participant) claims that the PHA has not correctly calculated the amount of imputed welfare income, and if the PHA denies the family's request to modify such amount, the PHA must give the family written notice of such denial, with a brief explanation of the basis for the PHA determination. The PHA notice must state that if the family does not agree with the PHA determination, the family may request a hearing in accordance with the applicable program hearing procedures (the public housing grievance procedures under part 966 or the Section 8 hearing procedures under § 982.555). In the case of public housing, the rule specifies that the tenant is not required to deposit the disputed amount in escrow in order to obtain a grievance hearing. (There is no parallel escrow requirement for Section 8. The participant may obtain a hearing without deposit of an escrow.)

11. Occupancy by police officers in public housing and Section 8 project-based housing—§§ 5.661 and 960.503–505.

Section 8 Projects

The final rule provides (§ 5.661) that a Section 8 project owner may ask the contract administrator (PHA or HUD) for approval to lease a Section 8 assisted unit to a police officer or other security personnel, for the purpose of increasing security for Section 8 families residing in the development. The rule defines the terms "security", "security personnel" and "police officer." Security includes the protection of project residents, including resident project management, from criminal or other activity that is a threat to person or property, or that arouses fear of such threat. Security personnel means a police officer or other qualified security officer. A police officer is a full-time duly licensed police officer. Other security personnel must have adequate training and experience to provide security for project residents.

The owner's application must include:

—A description of criminal activity in the project and community;
—The effect of criminal activity on resident security;
—Qualifications of proposed security personnel who will live in the housing;
—How the owner proposes to check their backgrounds and qualifications;
—Disclosure of a family relationship between the owner and any security personnel;
—How residence by security personnel will increase security of Section 8 residents;
—Rent to be paid and terms of occupancy by resident security personnel.

The contract administrator has discretion whether to approve or disapprove occupancy by security personnel in a Section 8 project, and such approval may be withdrawn at the discretion of the contract administrator. The amount of contract rent for a unit does not change when the unit is occupied by security personnel. However, the monthly housing assistance payment to owner equals the contract rent (as determined in accordance with the Housing Assistance Payments Contract and HUD requirements) minus the amount of monthly rent payable by security personnel residing in the housing.

Public housing

For public housing, before a PHA permits occupancy by police officers, the PHA must include in the PHA Plan or supporting documents a description of the terms and conditions for them to occupy units and a statement that this action was taken to increase security for public housing residents.

12. How PHA administers service requirement—§ 960.605. HUD has revised the rule to clarify that the PHA's notice to the resident on the community service and economic self-sufficiency requirements must also describe the process to change exemption status of family members.

13. Assuring Resident Compliance—§ 960.607. HUD has revised § 960.607(c) to clarify how a PHA should respond to a report that an individual covered by community service has moved from the household.

14. Definitions—§ 984.103. HUD has revised the definition of "welfare assistance" for the FSS program to refer only to cash maintenance payments for ongoing basic needs, funded under Federal or State welfare programs such as the TANF program. The definition borrows from the Department of Health and Human Services' TANF definition of "assistance" and excludes nonrecurring short term benefits designed to address individual crisis situations. For FSS purposes, the following do not constitute welfare assistance: food stamps; emergency rental and utilities assistance; and SSI, SSDI, and Social Security.

15. Administrative fees—§ 984.302. HUD has revised § 984.302(a) to delete the reference to the minimum program size of the public housing FSS programs. The performance funding system provides for the inclusion of reasonable eligible administrative costs for both mandatory and voluntary public housing FSS programs.

16. Utility Reimbursements—§ 5.632. HUD has revised the provision previously found at § 5.615, which required PHAs to get the consent of a public housing family before sending a utility reimbursement directly to the utility supplier. Section 5.632 now allows PHAs to send the utility reimbursement directly to the utility supplier without the consent of the public housing family that is paying an income-based rent. This change was first mentioned in the preamble to the proposed rule, Streamlining the Public Housing Admission and Occupancy Requirements, published in the **Federal Register** on May 9, 1997 (62 FR 25731). A similar provision has been in effect since July 3, 1995, for the tenant-based Section 8 program. In response to a comment received on that rule, § 5.632 also requires that the PHA notify the public housing family of the amount paid to the utility supplier.

17. Family Income and Verification—§ 960.259.

HUD has made a conforming change, at § 960.259, to mirror the Section 8 requirement for third party verification of information. If third party documentation is not available, the reason must be documented in the file.

In addition to these substantive changes, HUD has made editorial changes in some of the regulations, such as adding subheadings to certain paragraphs to make the subject matter of the paragraph easily identifiable, and dividing a lengthy paragraph into subparagraphs. As HUD proceeds with the rulemaking required under the 1998 Act to make the changes required to various components of the public housing and Section 8 program regulations, HUD may, at a later date reorganize Chapter IX of the HUD regulations, as well as certain subparts of part 5, to better reflect where requirements applicable to public housing and the Section 8 programs are identical and where they differ, and to better highlight the new additions to the regulations such as the PHA Plans, the Capital Fund and the Operating Fund.

III. Discussion of the Public Comments

A. General

This section presents HUD responses to the significant issues raised by the individuals and entities who submitted comments on the April 30, 1999 proposed rule. The organization of the discussion of public comments generally follows the organization of changes made to admission and occupancy requirements as set out in Section II of the preamble of the April 30, 1999 proposed rule. The heading "Comment" states the comment made by a commenter or commenters and the heading "Response" presents HUD's response to the issue or issues raised by the commenter or commenters.

There were certain concerns raised by the commenters that were directed to more than one change in admission and occupancy requirements. The majority of the commenters expressed concern about the administrative burden imposed by the changes, particularly the community service requirements. Some commenters also were concerned that the income targeting requirements will substantially reduce affordable housing for some persons, such as elderly families in need whose income may be above the targeting requirements. As the commenters recognized, these are statutory requirements and the flexibility that HUD has to implement these statutory requirements is very limited.

Other commenters recognized that there are limits to the amount of information that HUD can provide in regulatory text, and requested that HUD provide additional guidance and information on many of the new admission and occupancy requirements. HUD recognizes that the changes made by the 1998 Act to public housing and Section 8 programs are significant and there is much information to absorb. As HUD stated in its guidance published on February 18, 1999 (64 FR 8192), HUD staff, and especially staff of HUD's Office of Public and Indian Housing at Headquarters and in the Field Offices are ready to assist PHAs and owners in understanding the provisions of the 1998 Act, and with carrying out their responsibilities under the new statute. As noted in the February 18, 1999 guidance, HUD's Office of Public and Indian Housing has established a website that is devoted to providing additional information about the various provisions of the statute, as well as additional information and guidance on 1998 Act rules issued by HUD. (See http://www.hud.gov/pih/legistitlev.html; Public Housing Reform link; the Multifamily Tenant Characteristics System (MTCS) website can be found at http://www.hud.gov/pih/systems/mtcs/pihmtcs.html.) HUD intends to provide additional training and guidance during the coming year.

The following provides a discussion of specific issues raised by the commenters.

B. Using Computer Matching Results—Family Disclosure of Income (Proposed Rule § 5.211; Final Rule § 5.240)

Comment. The final rule should (1) provide for HUD to notify the PHA that the income discrepancy letter was sent to the family, and (2) specify the time limit for the family to contact the PHA. The rule should provide that PHAs be notified by HUD of the date that the family was sent an income discrepancy letter or mailed a copy of the letter, and that a time limit of less than 10 working days be established for the family to contact the PHA.

Response. PHAs or owners, as the responsible entity, have the primary responsibility for income verification, reexamination, and debt collection. The responsible entity can enforce § 5.240(b) and implement § 5.240(c) through their contractual relationships with assisted families. HUD's authority to use Federal tax return data from the Internal Revenue Service (IRS) is limited by statute to disclosure to tenants. HUD will provide responsible entities with a list of tenants to whom it has sent income discrepancy letters. The rule does require tenants who receive such letters, containing information about Federal tax return data, to disclose the letter to the responsible entity promptly. Usually, the responsible entity should interpret this prompt submission requirement to mean that the family must disclose the letter within 30 days of receipt.

Comment. The final rule should require PHAs to take appropriate action (for example, to recover excessive housing assistance received by tenants) only with respect to current residents and tenant-based participants and not former residents and participants.

Response. The final rule has been modified to reflect the language of section 508(d) of the 1998 Act by limiting application of the income matching provisions to families that (1) reside in a public housing dwelling unit; (2) receive Section 8 assistance; or reside in a project assisted under the Section 202 or Section 811 program. Responsible entities who have the resources to pursue abuses regarding recovery of excess rental assistance of former tenants may do so.

C. Repeal of Preference for Elderly, Disabled, and Displaced Over Other Single Persons (Proposed and Final Rule § 5.405) (Section 506 of the 1998 Act Amending Section 3(b) of the 1937 Act)

Comment. The repeal of the preference for elderly, persons with disabilities, and displaced persons over other single persons will cause a shortage of affordable housing for these persons. Without the preference, these groups will face a more difficult time in finding affordable housing.

Response. The 1998 Act eliminated the statutory preference for single persons who are elderly, have disabilities, or are displaced over other single persons. However, the repeal of federal preferences does not prevent a PHA from choosing to establish a local preference for single persons who are elderly, have disabilities, are displaced, or are homeless over other single persons.

Comment. While it was appropriate for HUD to implement the statutory elimination of Federal preferences, the result is the elimination of the rule in § 5.415(b) that PHAs must give households of elderly persons and persons with disabilities the benefits of any employment preference and not discriminate among applicants based on the amount of employment income.

Response. HUD revised § 960.206(b)(2) to include some of the language from former § 5.415, which states that if a working family preference is adopted as a local preference, the preference must be extended to households whose head and spouse, or sole member, is age 62 or older or meets the definition of a person with disabilities.

Comment. The final rule should: (1) Expand the implicit meaning of "disabled" in the old rule, as well as in the new § 5.410(c), to give the benefit of employment preferences to those who can provide evidence of a disability, but who may not be receiving benefit payments based on the inability to work; (2) broaden the employment preference exception to include individuals who satisfy the definition of "disabled" under section 3(b)(3)(E) of the U.S. Housing Act of 1937 or otherwise cannot comply with the terms of the preference due to a disability; and (3) exempt those individuals with serious disabilities lasting less than twelve months. These changes are needed to prevent discrimination based on disability status.

Response. As noted in the preceding response, HUD has retained some of the language previously found at § 5.415(b) and expanded the benefit to apply to

persons who meet the definition of "persons with a disability", regardless of whether they are receiving disability income. Sections 5.655 and 960.206 remind PHAs and owners that their admission preferences must comply with certain governing statutes, regulations and executive orders pertaining to nondiscrimination, including HUD's affirmative fair housing objectives. In addition, the PHA system of local preferences is included in the PHA Plan, which requires civil rights certifications. (Although § 5.410, which described nondiscrimination provisions has been removed in this final rule, § 5.105(a) lists the applicable requirements.)

D. Repeal of Federal Preferences (Proposed Rule Removed §§ 5.415, 5.420, 5.425 and 5.430 and Revised § 5.410; Final Rule Removes in Addition to Above §§ 5.405 and 5.410, Adds a new § 5.655, and Revises §§ 960.204–960.206)

Comment. With permanent repeal of Federal preferences, can owners still apply them voluntarily? When federal preferences were suspended, owners were advised that they could still use them if they so chose, and asked whether the permanent repeal of these preferences precludes owners from continuing to exercise this option.

Response. By law, the selection of tenants from among eligible applicants is left to the discretion of the owner. Now the owner may choose to use any or all of the federal preferences and may determine the hierarchy of any preferences it adopts.

Comment. Many PHAs will continue to use the formerly required federal admission preferences as part of their local preferences, and therefore the final rule should eliminate the duplicate tenant notification requirements when PHAs alter their federal admission preferences. It should be sufficient for PHAs to notify the public and tenants through resident advisory board consultation and the public inspection and hearing requirements associated with the PHA Plan.

Response. The public comment process for the PHA Plan provides the method of public consultation concerning the establishment of local preferences. The rule does eliminate a separate process just for approval of preferences, now that the statutory foundation for that provision has been eliminated.

Comment. The proposed rule was right to encourage consideration of preferences for individuals who are victims of domestic violence. The final rule should give battered women priority consideration for housing.

Response. The final rule keeps the language of the proposed rule concerning consideration of preferences for individuals who are victims of domestic violence. The final rule, consistent with the statute, eliminates Federal preferences and permits PHAs to establish local preferences, including preferences for victims of domestic violence.

Comment. The final rule should require that all preferences be based solely on the need for housing.

Response. Consistent with the statute, the rule requires that any local preferences be based on housing needs and priorities, not solely housing need.

Comment. The discretion of Section 8 owners to develop their own preferences must be limited to ensure that they do not exclude extremely low-income tenants, minority applicants, or victims of domestic violence.

Response. The statute urges PHAs to consider granting a preference for victims of domestic violence in public housing and Section 8 tenant-based programs. Section 8 owners may choose to adopt a preference for victims of domestic violence. Of course, under the new § 5.655, owner preferences are still subject to anti-skipping, residency preference, and fair housing requirements.

Comment. The final rule should require resident input on selection preferences for private owners.

Response. The law does not require the owner to solicit resident input regarding an owner's selection preferences. The law gives the owner the discretion to develop its own selection preferences. The owner, however, may provide opportunity for resident comment.

Comment. Section 5.410(b) needs to clarify that PHAs are not required to add preferences based on public comment regardless of merit.

Response. The language in § 960.206(a)(1), "as determined by the PHA," is clear that a PHA has the discretion to determine whether public comments should be adopted.

Comment. The admission preference information required to be provided to applicants by § 5.410(h) of the proposed rule should be required to include brief descriptions of the preferences.

Response. PHAs generally are aware that the preference information provided to applicants should clearly convey through description who is eligible for the preference. Section 5.410 has been removed in the final rule. The requirement for informing applicants has been moved to §§ 5.655 and 960.206.

Comment. The final rule should include the requirement that PHAs' local preferences must be consistent with the needs identified in the applicable Consolidated Plan(s) and the requirements of civil rights statutes and the obligation to affirmatively further fair housing. It is not sufficient, as the proposed rule states, that a PHA must consider public comments on the Consolidated Plan and the PHA Plan in setting local preferences. The preferences must be consistent with the needs identified in the applicable Consolidated Plans.

Response. The system of local preferences is included in the PHA Plan, which requires civil rights certifications. The PHA Plan is the vehicle in which PHAs describe any local preferences and the PHA Plan must be consistent with the Consolidated Plan for the jurisdiction in which the PHA is located.

Comment. The final rule should ensure that any local preferences do not result in discrimination against persons protected by civil rights laws by requiring: (1) The PHA or owner to consider the applicable Analysis of Impediments to Fair Housing Choice; (2) the PHA or owner to analyze the potential discriminatory effects of any proposed preference on the protected classes; and (3) the PHA or owner to refrain from setting a preference that will have a discriminatory effect, undermine the ability of the PHA or local jurisdiction to affirmatively further fair housing or remove impediments to fair housing choice, or impede implementation of an affirmative marketing plan.

Response. As noted earlier in this preamble, the final rule does require preferences to comply with nondiscrimination requirements. In addition, the final rule reinstates the language of former § 5.415(b) requiring that elderly families and persons with disabilities be given the same preference as working families (§§ 5.655(e)(2) and 960.206(b)(2)). "Working family" means a family whose head, spouse, or sole member is employed. If a Section 8 owner chooses to adopt a working family preference, the preference may not be based on the amount of earned income. This restriction does not apply to selection by a PHA for admission to public housing.

Comment. The final rule should provide for HUD approval of residency preferences for compliance with civil rights laws. Although the rule retains the prohibition against residency requirements, the rule fails to include the former requirement for the Section 8 tenant-based programs that HUD approve residency preferences after review for compliance with civil rights laws, and this omission may be inconsistent with section 511 of the 1998 Act.

Response. For both the public housing and Section 8 tenant-based programs, a PHA's residency preferences are part of the PHA's Annual Plan (see new § 903.7(c)). There is no separate HUD approval of a PHA's residency preferences, and the entire plan is subject to input by the Resident Advisory Board (§ 903.13), a public hearing, and public comments (§ 903.17). PHA plan approval requires certification by the PHA of its compliance with civil rights requirements (§ 903.7(o)). Part 960 states that public housing admission policies must contain a statement that any residency preferences will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family. The final rule provides that if an owner adopts a residency preference, it must comport with its Affirmative Fair Housing Marketing plan or be identical to the one in the PHA Plan for the jurisdiction. (See discussion above.)

E. Income Targeting (Proposed Rule § 5.607; Final Rule § 5.653 and 960.202) (Section 513 of the 1998 Act Amending Section 16 of the 1937 Act)

Comment. The targeting requirement will reduce affordable housing for elderly persons who are not extremely low-income. A significant number of elderly persons are not at or below 30% of median income, and they will lose access to affordable housing as a result of the targeting requirements. Voluntary income targeting should be adopted, not mandatory targeting.

Response. The targeting requirement is a statutory requirement, directed to providing housing to those most in need of housing. There are many elderly persons who will be assisted by the targeting requirements. In addition, other HUD programs, for example, HUD's Section 202 Program for Elderly Persons, and programs administered by other public and private entities, will work to maintain affordable housing for those elderly persons who are not at or below 30% of median income.

Comment. The Welfare Reform Act employment requirements will make it difficult to meet the public housing admission requirement for 40% extremely low income families, since many families are required to seek and maintain employment. Additionally, the 40% targeting requirement will cause major lease problems for PHAs who have high rent jurisdictions.

Response. The Welfare Reform Act has moved millions of families from welfare to work, but there are many families—including those remaining on welfare and those who have moved into entry level jobs—who remain in need of housing assistance. HUD believes that the reality for most jurisdictions is that it will not be difficult for a jurisdiction to meet the 40% targeting requirement.

Comment. The 40% targeting requirement will greatly reduce the number of public housing families who pay a reasonable portion of total tenant payment (TTP).

Response. The purpose of targeting is to ensure that some of the neediest families will continue to have access to housing assistance. The number of families served by funding for these programs is an issue not addressed in this rule.

Comment. The proposed rule provided, in § 5.607(b)(i), for a limitation of 30 percent of the area median income with "adjustments" for smaller and larger families. The final rule should clarify the type of adjustment that will be used. Additionally, the final rule omits any standard to govern HUD's discretion to determine a higher or lower percent of area median income as may be necessary because of unusually high or low family incomes.

Response. The adjustments for smaller and larger families are incorporated into the income limits for the public housing and Section 8 programs, which are issued by HUD each fiscal year.

Comment. The targeting requirement simply steers PHAs to focus on percentages rather than families. This will result in families on the waiting list being "skipped" in order to admit another family based solely on income.

Response. PHA admission policies to achieve both the goals of reducing poverty and income mixing in public housing may generally include skipping over certain applicants on the waiting list based on incomes. Skipping may be necessary to serve the required percentage of the neediest families (extremely low income). Such skipping is not new, however, with respect to assisted housing admissions; both federal and local preferences always have involved skipping of families on the waiting list in the public housing program, provided it is uniformly applied.

Comment. The final rule should exempt small PHAs and PHAs with high vacancy rates from income targeting requirements. The final rule must specify a standard for good cause requests made by PHAs to establish different targeting requirements, and what documentation the PHA must provide to HUD.

Response. HUD understands that some PHAs may have challenges regarding income targeting; however, these requirements are statutory. For most jurisdictions, it will not be difficult to meet the 40% targeting requirement for public housing.

Comment. The final rule should clarify whether the income targeting requirement is applicable to "move-in" actions only or also includes situations where an initial certification is done to move someone from a section 236 project to a section 8 project.

Response. The rule has been revised to clarify that the income targeting requirement applies upon initial admission to the Section 8 project-based assistance program.

Comment. The final rule should define the term "relatively low incomes," which is used in § 5.607(a)(3). Another comment suggests that the final rule needs to clearly express the prohibition against concentration in public housing.

Response. The rule, at § 960.202, is revised to refer to the deconcentration requirements (more detail is in the PHA Plan rule), as well as the targeting requirements. The term "relatively low incomes" is no longer referenced.

Comment. The final rule should clarify that income targeting standards are to be applied on a PHA-wide basis and not on a project-by-project basis.

Response. The rule, at § 960.202(b)(1)(i), requires that at least 40% of the admissions to the public housing program in each fiscal year must be extremely low income families. This language clearly reflects that the requirement is applied on a PHA-wide basis. The rule at § 960.202(b)(ii) also reflects that this requirement is applicable to PHAs on a PHA-wide basis.

Comment. HUD must be cognizant that PHAs will be in a quandry when attempting to simultaneously implement the skipping provision, associated with the deconcentration policy, and the targeting requirement for annual admissions to public housing. HUD should consider the income mix and deconcentration policies that agencies submit as part of their PHA Plan, and the HUD respect the "good faith efforts" that PHAs undertake to create mixed-income communities based on the PHA management discretion and local conditions.

Response. The deconcentration of poverty and income mixing requirements are discussed in the final rule on the PHA Plan.

Comment. In some jurisdictions, there are apparent discrepancies between SSI grant levels, minimum wage earnings, and the extremely low income level in some counties, but these discrepancies can be administratively addressed by HUD.

Response. HUD makes adjustments every year for areas with unusually high or low housing costs relative to means. HUD also has made further adjustments for unusually high or low incomes for income eligibility to take into account State Supplemental Security Income (SSI) benefit levels. HUD issued Notice PDR 99–04 on July 21, 1999, to make changes that relate to the "30 percent of area median income" limits. These income limits have been increased wherever necessary to ensure that the one-person 30 percent income limit is at least as high as the State Supplemental Security Income (SSI) benefit level. The SSI program provides a minimum entitlement income standard for elderly and disabled households.

HUD will not make further adjustments to fiscal year income limits to accommodate minimum wage households, because this would drastically alter the 30 percent standard and would be inconsistent with Congressional intent.

F. Annual Income, Adjusted Income (Proposed and Final Rule §§ 5.603, 5.609, and 5.611) (Section 508 of the 1998 Act Amending Section 3 of the 1937 Act)

1. Exclusions vs. Deductions

Comment. The mandatory deduction from income for the earned income of minors will have the consequences of reducing the number of households eligible to move in. HUD has the statutory authority discretion to exclude (not deduct) income from minors.

Response. HUD agrees with this comment. The final rule maintains the language § 5.609(c)(1) that excludes the income of minors from the definition of annual income. HUD provided advance notice of this provision to PHAs in its notice on "Public Housing Rent Policies; Guidance Pending Publication of Final Rule on Admission and Occupancy Requirements" published on August 6, 1999 (64 FR 42956). The change from the proposed rule applies to all Section 8 programs as well as to public housing.

Comment. HUD should revise the mandatory deduction language pertaining to the $480 for each dependent. Section 5.611(a)(1) should be modified to read as follows: "$480 for each member of the family residing in the household (other than the head of the household or his or her spouse) who is less than 18 years of age or is attending school or vocational training on a full-time basis, or who is 18 years of age or older and is a person with disabilities."

Response. The suggested revision is not necessary. The $480 deduction applies for each dependent. The term "dependent" is defined in § 5.603(d) and includes the recommended categories of dependent.

Comment. Section 5.611(a)(3)(ii) of the current rule places a limit on the amount of the deduction for unreimbursed reasonable attendant care and auxiliary apparatus expenses. It states that "this allowance may not exceed the employment income received by family members who are age 18 years of age or older." The proposed provision does not contain any limit on the amount of the deduction. The limitation language in the existing rule should be retained.

Response. HUD agrees with this comment and has revised § 5.611(a)(3)(ii) to clarify that the allowance may not exceed the employment income received by family members who are 18 years of age or older and who are able to work as a result of the assistance to the person with disabilities.

Comment. Section 508 of the 1998 Act does not support HUD's interpretation that certain exclusions from income be treated as deductions. Congress refers to the items listed in section 508 as mandatory exclusions from income not deductions. HUD's interpretation, as reflected in § 5.611, applies the permissive exclusions to adjusted income but not to annual income. Since PHAs do have the authority under the current regulation to exclude earned income from annual income, and this rule removes that authority, this rule renders certain families ineligible for assistance. The statutory grant of authority to PHAs—to adopt "permissive exclusions" (42 U.S.C. 1437a(b)(5)(B)—does not deprice HUD of the authority pursuant to which it granted PHAs the discretion to adopt non-mandatory exclusions for the purpose of ascertaining public housing income eligibility under § 5.609(d), which HUD now proposes to repeal.

Response. The language on "permissive exclusions" (found in section 508 of the 1998 Act, which amends section 3(b) of the 1937 Act) makes a change in the determination of "adjusted income" (which is used to determine rent), not in "annual income" (which is used to determine eligibility). HUD has distinguished between subtractions from these terms by calling the subtractions from annual income "exclusions" and the subtractions from adjusted income "deductions." Therefore, the statutory change directs that there be permissive deductions from adjusted income. Of course, adjusted income is an amount that is based on "annual income," so an exclusion from annual income also impacts "adjusted income."

Since the new statutory language mandates permitting a deduction from "adjusted income" and an exclusion from "annual income" on the same basis could result in a double benefit with respect to the same type of income, HUD has eliminated the permissive exclusion from annual income for earned income. However, HUD notes that the new permissive deduction is much broader than the language in the regulations regarding optional exclusions for earned income. Although the new rule provides flexibility with respect to the subsidy amount paid to the family as a result of the rent calculation rather than flexibility on what families are admitted (based on an eligibility determination), it permits a PHA to grant a permissive deduction for categories other than working families. Therefore, the proposed language in § 5.611 is not revised in this final rule.

Comment. The term "adult co-tenant" used in § 5.611(a)(5) should be added to the definition of "family head or spouse." The final rule should also clarify whether an adult co-tenant has the same status as a spouse for eligibility determination and other purposes.

Response. The rule does not currently define "family head or spouse," and HUD does not believe a definition of "adult co-tenant" is necessary. A PHA has the discretion to define "family" and a PHA can include in its definition of family the term "adult co-tenant."

2. Permissive Deductions—Applicable to Public Housing Only

Comment. Permissive deductions should be extended to the Section 8 tenant-based programs. Permissive deductions should not be limited to public housing.

Response. Section 508(a)(5)(B) of the 1998 Act explicitly provides that permissive deductions are applicable only to the income of families residing in public housing units. HUD therefore is precluded by statute from extending permissive deductions to the Section 8 tenant-based programs.

Comment. The statute provides several examples of permissive deductions for public housing such as excessive travel expenses up to $25 per week and earned income in certain situations, and these examples should be included in the rule.

Response. While HUD recognizes that examples are helpful, HUD believes that regulatory text generally is not the appropriate place to include examples, guidance and similar information. There are better formats other than codified regulations (which are updated only once a year) to provide this sort of information. HUD will provide examples in future guidance.

Comment. Section 5.611(b) of the rule provides that the PHA must describe its permissive deductions in its written policies. The final rule should provide that private entities administering public housing units are allowed to diverge from the PHA's plan, and these entities can implement permissive income exclusions without being included in the PHA's plan.

Response. The PHA and any private entity administering public housing units on behalf of a PHA must follow the PHA's written policies, which are required to be available to the public locally in connection with the PHA's Plan.

G. Minimum Rents (Proposed Rule § 5.616; Final Rule § 5.630) (Section 507 of the 1998 Act Amending Section 3(a) of the 1937 Act)

Comment. For project-based Section 8, there are a set of exemptions to minimum rent. It is unclear in this rulemaking whether these exemptions are eliminated and replaced by the financial hardship exemption, or is financial hardship being added to the list?

Response. The financial hardship exemption constitutes the only statutory exemption to minimum rent. The statute then establishes subcategories of financial hardship exemptions.

Comment. While HUD has taken the minimum rent requirements directly from the statute, these requirements, as written in the proposed rule, make the imposition and collection of minimum rent meaningless. Since the law (and proposed rule) would prohibit the eviction of any family who fails to pay the minimum rent. PHAs have no way to enforce collection. The impact of the no eviction policy on public housing will result in an increase in operating subsidy needs to offset uncollected rents. By prohibiting PHAs from evicting those who do not pay, PHAs will likely experience an increase in tenant accounts receivable. Additionally, the hardship exemption eliminates any need for minimum rent. The exemption from payment of minimum rent due to financial hardship will have the effect of causing PHAs to establish a minimum rent of $0, and a minimum rent of $0 should be allowed only for exceptional situations.

Response. The exemption that prohibits public housing and Section 8 evictions resulting from the minimum rent is statutorily required. PHAs still have the option to determine the level of minimum rent. For public housing and the Section 8 certificate, voucher and moderate rehabilitation programs, the minimum rent maybe set any where from $0 to $50. For other project-based Section 8, the minimum rent is $25.

Comment. The initial rent freeze for hardship determinations should be reduced from 90 days to 30 days. This will benefit the family should the PHA find that a hardship does not exist, resulting in the family having to pay retroactive rent for a period that the rent was frozen. If a hardship does exist, PHAs could extend the rent freeze in 30 day increments (with documentation from the family). A maximum limit for hardships should be established at the discretion of the PHA.

Response. The statute dictates the 90-day waiting period. This would not preclude a family from paying back amounts owed prior to that period.

Comment. Although the choice of minimum rents is discretionary on the part of the PHA, the final rule should be explicit that this discretionary decisionmaking is subject to all the due process protections of any lease change, especially given the fact that electing to institute a minimum rent affects residents' property rights.

Response. Protections regarding any lease changes are already provided under 24 CFR part 966.

Comment. The final rule should direct PHAs to make sure that they have procedures in place to prevent any eviction against a family in minimum rent status. The final rule should make clear that the tenants in minimum rent status my not be evicted for non-payment of the minimum rent in excess of the tenant rent otherwise payable; that is (1) eviction restriction is not limited to a 90-day period and (2) it does not apply to section 8 families.

Response. The rule already provides that PHAs must have written policies governing hardship. Those policies must include an exemption of payment of the minimum rent when the family would be evicted as a result of the imposition of the minimum rent requirement. (See § 5.630.)

Comment. The final rule should clarify that inability to pay minimum rent cannot be grounds to reject an applicant for housing if the applicant qualifies for a hardship exemption.

Response. Eligibility for housing is a separate determination from calculation of rent. If a family is income-eligible and meets the PHA of owner's screening criteria, then the family's applicant for housing would not be rejected. Once the family signs a lease, it has the same protections as all families with respect to hardship exemptions.

Comment. Notwithstanding the authority to set a minimum rent in project-based settings of not more than $50 per month, HUD has chosen to continue its previous decision to set a minimum rent amount of $25 for all project-based settings. In light of the burden and complexity of the decisionmaking process concerning hardship requests which HUD delegated to project-based owners, HUD should set the minimum rent at a maximum of $25 for project-based owners and let the private owner at its operation choose to impose a $0 minimum rent.

Response. The final rule maintains the language of the proposed rule. The statute directed HUD to establish the minimum rent for the project-based Section 8 assistance programs of not more that $50 month. HUD selected a mid-point figure of $25 as a reasonable minimum for these programs.

Comment. The statutory language is clearer than HUD's rule on the hardship exemption, and the rule should more closely mirror the statutory language. Another comment suggests that the final rule should make clear that § 5.616(b)(1) includes situations where a tenant has requested government assistance, been denied, and is appealing the denial, either through the administrative or a judicial process. Another comment states the proposed rule omitted language from the 1998 Act regarding families with a member who is an alien lawfully admitted for permanent resident, and suggests that § 5.616(b)(1) be revised accordingly.

Response. HUD has revised § 5.60(b)(1)(i) in this final rule to read as follows: "When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996." HUD believes that this revision will address the first and third

comments. HUD disagrees that additional language is necessary on the second matter regarding appeals. The language in the regulation mirrors the statutory language.

Comment. It is not clear why HUD established different standards in § 5.616 for public housing tenants and Section 8 tenants. For public housing this section provides that one a family requests an exemption, the PHA must immediately suspend the minimum rent until a hardship determination is made. With respect to Section 8 tenants, the rule provides that the PHA must suspend the minimum rent beginning the month following the request, not immediately. There seems no reason to provide less protection to section 8 tenants.

Response. HUD interprets "Immediately" to mean the month following the family's hardship request until the responsible entity determines whether there is a qualifying financial hardship, and whether or not it is temporary or long term. The rule now contains identical language regarding suspension of the minimum rent requirement beginning the month following the hardship request for both the public housing and Section 8 tenant-based programs (§ 5.630(b)(2)).

Comment. The final rule should clarify that temporary hardship is 90 days or less, and a long term hardship is one that is of more than 90 days duration. Once the hardship lasts 90 days, the rule should require the PHA to treat the hardship as long term, grant the exemption and make it retroactive to the beginning. The final rule should further provide that in situations where it is immediately clear that an income loss will last longer than 90 days or that income loss has already lasted more than 90 days, HUD should require the PHA to grant the exemption.

Response. The statute does not provide 90 days as an absolute in defining temporary hardship versus long term hardship. The 90 days relates to a prohibition on eviction commencing on the date of the family's request for exemption from the minimum rent in excess of the tenant rent otherwise payable.

Comment. The final rule should provide a specific time frame for notifying residents of their right to request a minimum rent hardship exemption.

Response. HUD declines to provide a specific time frame for notification to residents. The statute, and consequently the rule also, leave this decision to the PHA.

Comment. The minimum rent exception policy does not address (and should address) the family's inability to repay a retroactive rent without creating another hardship. The temporary hardship period should be debt free. Additionally, the rule needs to address more fully the repayment agreement process.

Response. HUD declines to adopt this suggestion, which is not supported by the statute. The language in the regulation that requires the PHA or owner to offer the family a reasonable repayment agreement addresses this concern in a manner consistent with the statute.

Comment. Allowing housing authorities to set a minimum rent based on local conditions is a good idea. However, the exemption from payment of the minimum rent due to financial hardship will result in housing authorities electing not to establish a minimum rent. A minimum rent of $0 should only be allowed for exceptional situations.

Response. The exemption for hardship cases is statutorily required.

H. Self-Sufficiency Incentives—Public Housing Only (Proposed Rule § 5.612; Final Rule § 960.255) (Section 508 of the 1998 Act Amending Section 3 of the 1937 Act)

1. Disallowance of Increases in Income as a Result of Employment

Comment. The April 30, 1999 proposed rule did not place a limit on the number of times a family or individual can benefit from disallowance of increases in income as a result of employment, but HUD specifically sought comment on that issue. The majority of commenters who commented on this issue favored a limit. Some commenters favored a limit but did not make suggestions on what the limit should be. One commenter simply opposed the disallowance. Specific suggestions on the limits that should be placed on claiming an income disregard were as follows: (1) Limit to fixed number of months, as opposed to some fixed number of times an individual could qualify to begin the period of earning disallowances; (2) limit one time per household; limit one time per household but allow family to retain welfare benefits longer; (3) limit two times per household; (4) limit two times in a five-year period; (5) limit 3 times and each time the 12 month period is decreased; and (6) allow PHAs to set limit.

Response. HUD appreciates and carefully considered all proposals. HUD has revised the rule to limit each member of a family to receipt of the benefit of the 12 month cumulative income disregard (and the subsequent 12 month phase in) for no more than twelve months of each benefit (the full disregard and the phase-in) over a four year period commencing the first time the individual is eligible for the benefit. After that 48-month period, there would be no further eligibility of the family member for this disregard. Additionally, the rule also limits eligibility for persons who are or were assisted, within 6 months, under any State program of temporary assistance under part A of title IV of the Social Security Act only when the amount of TANF-funded assistance, benefits or services during the 6 month period totals at least $500. The $500 floor was chosen because that amount demonstrated that the person was not receiving only minimal assistance. These limitations both recognize the potential administrative burden for PHAs, and support the self-sufficiency efforts by individuals who need to use this provision more than one time for valid reasons (newly working families often have changes in jobs and experience periods of unemployment, especially during the first few years of starting employment). A Congressional floor colloquy [144 Cong. Rec. S11840 (daily ed. October 8, 1998) (statement of Sen. Mack)] before enactment of the statute, suggested that the rules implementing the disallowance of increased income as a result of employment should provide flexibility but at the same time not encourage households to change their employment patterns to take advantage of the disregard.

Comment. HUD should not impose a limit on the income disregard. The statute imposes no limit on the availability of the income disregard, and neither should the rule.

Response. HUD has the authority to implement the disallowance of increases in income as a result of employment in a flexible manner that creates incentives for work, but does not allow for abuse of this benefit. The floor colloquy cited earlier directed HUD to do this.

Comment. PHAs should not have to wait to increase a family's rent and also be limited in the amount of increase.

Response. The new statute clearly requires PHAs to delay increase in the rent of a newly employed family for one year, and then limits the amount of increase for another year.

Comment. In § 5.612(a)(1), HUD should replace the phrase "established minimum wage" with the "highest applicable minimum wage." This change, if implemented, will account for variations in minimum wage among jurisdictions and where the state minimum wage is higher, assure that the higher wage is used in the calculation.

Response. HUD recognizes that the minimum wage may be higher in some states, and that the higher minimum wage of the state is the prevailing wage for HUD purposes. The language of the rule is clear on this point and no elaboration is needed.

Comment. The final rule should clarify the continued application of existing § 5.609(c)(13) for transition purposes. The preamble to the proposed rule repeats the statute's continued application of § 5.609(c) for residents qualified prior to October 1, 1999. This continued coverage should be stated in the final rule, to minimize difficulty with implementation of the income disregard.

Response. The continued application of § 5.609(c)(13) is clear and no elaboration of this point is needed in the rule.

Comment. HUD needs to develop a fool proof data tracking system for monitoring the periods used for this disregard. This tracking system could be incorporated into the HUD 50058 form and the Multifamily Tenant Characteristics System (MTCS).

Response. HUD is in the process of updating MTCS to capture all of the changes necessary as a result of the changes made by the 1998 Act.

Comment. The final rule should clarify that the burden is on the family to notify the PHA of eligibility for an income disallowance. Section 5.612 should contain language that requires a family to notify the PHA of its eligibility for a disallowance for increases in income as a result of employment, and to provide the requisite information in support of any requested disallowance.

Response. It is at the PHA's discretion to establish policies prescribing when and under what conditions a family must report changes in income, if other than at the annual re-examination, and to establish reasonable income verification. Additionally, under revised § 960.257(b), a family may request an interim reexamination of income at any time.

Comment. The final rule should provide a broad interpretation of participation in a self-sufficiency or job training program to include not only the phase of the program spent in job training or job preparation but also to include the work experience phase of self-sufficiency training in which participants are working full-time but still receive monitoring or counseling from the self-sufficiency program.

Response. There is nothing in the proposed rule or this final rule that limits the interpretation suggested by the comment. No additional clarification is needed.

Comment. The final rule should clarify that eligibility for the disallowance for increases in income as a result of employment begins at the time the income is earned.

Response. The rule is clear that eligibility for this disallowance begins on the date the employment starts or the date income from employment increases (see revised § 960.255(b)(1)).

Comment. To serve as a self-sufficiency incentive, the rule needs to accord favorable treatment to increased earnings that occur shortly after completion of a training program, rather than during participation in one. Section 5.612(a)(2) of the proposed rule leads one to the conclusion that increased earnings that occur after completion of a training program would not qualify for special treatment under the rule because the increase did not occur "during participation."

Response. The statute is clear regarding this provision. Eligible amounts to be excluded under § 960.255(a)(ii) are any income increases received by a family member during participation in any family self-sufficiency or other job training program and not increases that occur after participation in a self-sufficiency or other job training program. For example, a family member could be eligible for this exclusion if a component of the training program provides training, monitoring, or assistance after the person becomes employed. However, a family member whose income does not increase during participation in a family self-sufficiency or other job training program may still be eligible for a disallowance of increases in income under paragraph § 960.255(a)(i) or (a)(iii).

Comment. The rule should state clearly that families may qualify for the limit on rent increases when they begin employment or increase their earnings. The rule should clarify that for the purposes of determining eligibility for disregard of earned income, a family has been assisted within 6 months "under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act." The final rule should clarify that there are two programs under Part A of Title IV of the Social Security Act that qualify a family for the earned income disregard, and that there are several benefits and services funded from federal or state TANF funds.

Response. The two programs under Part A of Title IV of the Social Security Act include the TANF program administered by the State or local welfare agency and the Welfare-to-Work (WTW) program administered by the State or local WTW agency. Under the TANF program, the State or local welfare agency can use funds to pay for benefits or services, such as wage subsidies, child care, and transportation, as well as a one-time payment of assistance or diversion assistance funded from Federal or State TANF funds. Families assisted under any program under Part A of Title IV of the Social Security Act and who meet the other criteria under § 5.612 are eligible for the disallowance for increases in income as a result of employment. The PHA needs to coordinate and verify with its local welfare and WTW agencies to help the PHA determine who is eligible under § 5.612 for this disallowance.

Comment. The final rule should clarify that training includes technical schools and community colleges. The final rule also should clarify in § 5.612 that family self-sufficiency includes training programs for people with disabilities that provide stipends or very low wages in a sheltered workshop type of job prior to transitioning to competitive employment.

Response. There is nothing in the rule that would preclude technical schools, community colleges and training programs for persons with disabilities from being considered as family self-sufficiency or job training. The rule cannot list all eligible programs that may qualify as training, but this could be addressed further in future guidance issued by the Department.

2. Individual Savings Account

Comment. The final rule should clarify that individual savings accounts are permissive on the part of PHAs and not mandatory.

Response. The statute and regulation, at § 960.255(d), clearly state that a public housing agency *may* establish an individual savings account. The PHA has the option of offering individual savings accounts. The rule reflects the statutory language. Therefore, a family cannot require the PHA to establish an individual savings account.

Comment. Section 5.612(c) gives the PHA the choice of offering individual savings accounts to eligible families and the choice transfers to the residents. This is not what the statute provides. The statute places the choice first with the eligible family, not the PHA. The rule should be revised to conform to the statutory language.

Response. HUD disagrees with this comment. As noted in the preceding response, the statute clearly gives the PHA the option to offer individual

savings accounts. A family cannot compel the PHA to offer these accounts.

Comment. The final rule should clarify conditions of authorized withdrawals from the individual savings account, and specifically should provide guidance on the term "moving out."

Response. Sections 960.255(d)(3) and (6) of the rule address the conditions under which a family receives its account when moving out.

Comment. Section 5.612(c) states: "The PHA must provide that any balance in such an account when the family moves out is the property of the family unless the family is not in compliance with the lease." The rule language is not clear whether the family loses its savings account if the family is evicted for any reason.

Response. A family does not automatically lose its savings account if the family is not in compliance with the lease and is evicted. If a family is evicted for non-compliance with the lease, the family would receive its savings account, less any amounts the family owes the PHA.

Comment. HUD's individual savings accounts should be modeled on accounts developed by other Federal agencies or organizations.

Response. Both the statute and the regulation provide a PHA with flexibility in establishing individual savings accounts. Given this flexibility, HUD declines to require a PHA to establish an individual savings account in accordance with a specific model. However, the final rule does clarify that a PHA may not charge a fee for maintaining an account for a family, but it may pass along to the family any fee that a financial institution imposes on it for maintaining the account.

I. Income Changes Resulting From Noncompliance With Welfare Program Requirements (Proposed Rule § 5.618; Final Rule §§ 5.603, 5.613, and 5.615) (Section 512 of the 1998 Act Amending Section 12 of the 1937 Act)

Comment. Section 5.618(a) lists those households whose rental payments may not reflect welfare reductions. It includes failure to satisfy economic self-sufficiency requirements imposed by the welfare agency. This list should be expanded to include categories such as failure to comply with child support requirements.

Response. The statute is specific regarding compliance with welfare program requirements, including fraud eradication and support for economic self-sufficiency and work activity requirements. When determining tenant rent for families participating in the public housing and tenant-based Section 8 programs, PHAs are required not to consider reductions in income attributable to the welfare agency's sanctioning and enforcement of other welfare program requirements that are not related to economic self-sufficiency and work activity requirements. The statute contains a definition of economic self-sufficiency programs, which the regulation incorporates (§ 5.615).

Comment. The list of households exempt from the limitation on rent reduction should also include a household that may have lost welfare income due to economic self-sufficiency sanction, but has subsequently obtained income from new sources.

Response. The definition of "covered family" in the statute means a family that (1) receives benefits for welfare assistance or public assistance from a State, or other public agency under a program for which the Federal State, or local law relating to the program requires, as a condition of eligibility for assistance under the program, participation of a member of the family in an economic self-sufficiency program, and (2) resides in a public housing dwelling unit or is provided tenant-based assistance under Section 8. The comment suggests adding as an exemption, persons who were sanctioned but have since obtained employment or have gained other sources (of income).

This exception to the usual rent rules provided by the statute is for loss or reduction of welfare assistance or public assistance benefits due to sanctioning. The amount of income not actually received by the family as a result of sanctioning is included in the annual income as "imputed welfare income". If the member of the family is no longer receiving any such benefits (because the family member is now working) the exception is not applicable. If, however, the member of the family is still receiving some portion of welfare/public assistance benefits (due to a reduction and not a total loss of benefits as a result of sanctioning), the exception remains applicable, even if the member of the family has income from other sources. A PHA should continue to include the imputed welfare income until either the sanction term ends or the family's income from other resources is at least equal to the imputed welfare income.

Comment. It is not clear in § 5.618(a) that the only households subject to the rent reduction limitation at issue are those who meet the definition of "covered family" in the statute at 42 U.S.C. 1436j(d)(1). The final rule should clarify this point.

Response. HUD revised the rule, at § 5.615(b), to include a definition of "covered family" that tracks the statutory language.

Comment. The final rule should provide clarification of the term "fraud." PHA staff is not always knowledgeable about welfare law and the subtleties involved in welfare fraud issues, and therefore it may not be clear to a PHA employee that the allegation of fraud that results in restitution and participation in civil rehabilitation programs results in no welfare fraud allegation or conviction.

Response. As noted earlier, each State or local welfare agency determines for its program when a family has failed to comply with particular requirements or has committed fraud. The PHA must work with the State or local welfare agency to understand what constitutes fraud or noncompliance that results in a reduction of welfare assistance or public assistance benefits of a covered family.

Comment. Section 5.618(b) needs to clarify that a PHA cannot deny a rent reduction pursuant to the statutory requirements before the PHA obtains notice described in the statute that justifies application of 42 U.S.C. 1437j(d)(2) and (3) and justifies its denial of rent reduction.

Response. The final rule, at § 5.615(c)(2), is clear regarding the obligation of the PHA to obtain written verification from the welfare agency of the basis for the reduction of welfare assistance or public assistance benefits and the term of the reduction of benefits.

Comment. Section 5.618(b) should state with specificity that the PHA is bound by federal confidentiality laws as well as state and local data privacy and confidentiality laws in its sharing of information with the welfare agency.

Response. The verification of income or welfare benefits is covered under HUD existing regulations that provide for confidentially and use of information obtained from third parties.

Comment. HUD must provide clear guidance to PHAs on what information is appropriately required from the welfare agency. The PHA will probably need a release from the family to obtain the verification the statute and regulation require. HUD must provide guidance in clearly limiting the scope of the release to protect the resident and the housing authority staff from overreaching inquiries and unnecessary release of protected information that may leave the housing authority open to liability if information is carelessly handled. HUD should provide PHAs with a model release form.

Response. HUD is in the process of developing a model cooperation agreement, which can be used to specify the verification process to determine welfare assistance or public assistance benefits, as well as obtaining verification of any loss of benefits due to noncompliance or fraud. PHAs, however, may not delay the implementation of this provision based on the Department's timetable for design or issuance of a model cooperation agreement. The PHA is required to make its best efforts to enter into such cooperation agreements, with State, local or other agencies providing assistance to covered families under welfare assistance or public assistance programs, as may be necessary.

Comment. Section 5.618(c) references the hearing procedures in § 982.555, which are applicable to tenant-based Section 8 tenants. This section should also refer to the hearing procedures for public housing residents in § 966.55(e)(2).

Response. The rule was revised, at § 5.615(d)(1), to reference the public housing hearing procedures in part 966.

Comment. A PHA's notice to a family of the PHA's decision to deny the rent reduction after obtaining verification of income reduction for noncompliance with economic self-sufficiency requirements should be in writing, timely provided, specifically state the decision of the PHA and the basis for the decision in law and fact, and advise the family of the procedure for seeking review.

Response. The final rule, at § 5.615(d), provides that a PHA must notify the family in writing that they have a right to ask for an explanation stating the specific grounds of a PHA determination, and that the family may request a hearing under the grievance procedure if they disagree with the determination.

Comment. The rule should be revised to require final action on the part of the welfare agency before rent reduction can be refused. Section 5.618(b), as proposed, permits responsible entities to delay rent adjustments until verification is obtained from the welfare program. The proposed rule conflicts with the statutory basis for the rule, 42 U.S.C. 1437j(d), which states at subsection (d)(4) that the PHA may not refuse to take action to reduce rent until written notification is obtained from the welfare program.

Response. The final rule provides, at § 5.615(c)(2), that the PHA must rely on the written determination of the welfare agency to base its decision concerning rent reduction, which tracks the statutory requirement.

Comment. Rent reduction limitation also should apply to families for which other benefits are decreased due to fraud, for example, Social Security benefits which have decreased due to defrauding the Social Security Administration.

Response. The treatment of income changes resulting from welfare program requirements which prohibit the reduction of rent due to noncompliance or fraud is statutory and is applicable to welfare assistance and public assistance benefits specifically. HUD does not have the authority to expand this provision to other federal assistance programs.

Comment. The rent reduction process results in additional administrative burden, specifically, increased reporting requirements and tracking of eligible families.

Response. HUD is aware that the rent reduction process will require PHAs to obtain written verification of sanctioning from welfare agencies. HUD believes that the administrative responsibility imposed by the verification process can be simplified and minimized through cooperative relationships with the welfare agencies.

Comment. HUD must provide additional guidance for § 5.618 because of the complex nature of the various welfare programs and PHA unfamiliarity with their operation.

Response. The best guidance concerning the nature and operation of the various welfare programs comes from the welfare agencies who administer these programs. HUD anticipates that these welfare agencies will be cooperative in assisting PHAs in understanding their programs. HUD strongly encourages PHAs to coordinate with their State or local welfare agencies to improve the reporting of income and detection of fraud and to streamline the process where possible. Additionally, HUD encourages PHAs to use the cooperation agreements, as described in section 12(d)(7) of the 1937 Act, as amended by section 512 of the 1998 Act, to improve the service delivery between the two agencies to promote self-sufficiency and otherwise address the needs of low-income families.

J. Rents in Public Housing (Proposed Rule §§ 5.603 and 5.614; Final Rule §§ 5.603 and 960.253) (Section 523 of the 1998 Act Amending Section 3(a) of the 1937 Act)

1. Income-Based Rents

Comment. The preamble language in the proposed rule that stated HUD cannot provide assurance of its ability to subsidize ceiling rents is inappropriate. Whenever Congress has conditioned a commitment on the availability of future appropriations, it has explicitly said so. There is no such language conditioning the statutory commitment to provide a fair and equitable level of operating assistance for tenancies that pay flat rents or ceiling rents established in accordance with section 523 of the 1998 Act.

Response. While the 1998 Act does not explicitly condition this provision on the availability of future appropriations, the subsidy of either flat rents or ceiling rents is an issue being considered during the operating fund negotiated rulemaking because of the cost implications. The subsidy to pay for any particular level or type of rent cannot be assured.

2. Flat Rents

Comment. The language in § 5.614(a)(1) concerning the use of comparability studies to justify a flat rent system seems contrary to the Federal Government's policy disfavoring statements in the Code of Federal Regulations that give advice about what a regulated entity should do, rather than stating what it must do. With respect to the specific suggestion that a PHA should use a comparability study to justify a flat rent system, section 523 of the 1998 Act, which establishes the requirement for alternative rent systems, does not employ the term "comparability." To the extent that comparability studies may constitute one manner for developing flat rents, section 523 of the 1998 Act, makes it one method among equals.

Response. It is important that there be a uniform standard for setting flat rents, to ensure that the rents established meet the statutory requirements and are established in a comparable manner across all PHAs. The cost implications of flat rents further make a uniform policy necessary. HUD has revised § 960.253(b)(2) to more clearly articulate the statutory link between flat rents and the rental market. The rule has been further revised to clarify the requirement for documenting the method for setting the flat rents equal to comparable market rents. In addition, we note that to have adequate information about the income levels of families served by the 1937 Act programs, HUD may seek income information on a sampling basis from families paying flat rents, whose incomes are not regularly required to be examined more often than every three years.

Comment. If a comparability study is used, the rule needs to make sure that such study includes certain additional factors, such as crime level in the project and in the vicinity; drug activities in the project and in the vicinity; and gang activities in the project and in the vicinity, to name a few.

Response. Section 960.253(b)(3) broadly identifies the factors a PHA must consider when determining flat rents. HUD has clarified that the flat rent must be the estimated rent at which the PHA actually could rent the unit once it is prepared for occupancy.

3. Family Choice

Comment. The family's ability to choose between an income-based rent and a flat rent will be an administrative burden for the PHA.

Response. Choice of rent is required by section 523 of the 1998 Act. Section 523 increases a PHA's flexibility regarding rent policies, while also requiring that a family be given a choice of flat or income-based rent.

Comment. Section 523 of the 1998 Act requires that tenants who pay a ceiling or flat rent receive income reexaminations not less than once every three years. HUD should adopt the statutory three-year standard. While the statute allows the family to "elect annually" without showing hardship to change its rent-payment method, that is the family's choice, and in the absence of that election, a PHA should not be required to go through the costly, unnecessary task of conducting an annual income-based rent determination for a family who does not want one and does not need one.

Response. As stated in the comment, section 523 of the 1998 Act requires PHAs to provide families residing in public housing the choice to elect annually, which rent option they prefer, even if they are paying a ceiling rent or flat rent, but permits income to be reviewed every three years if the family chooses the flat rent. HUD emphasizes that a family must be offered a choice of rent options annually, and must be provided sufficient information to make an informed choice. To illustrate, if a family elected an income-based rent (because according to their calculations, the income based rent is less than the flat rent), but upon re-examination by the PHA discovered that the income-based rent is actually higher than the flat rent, the family should be allowed to opt for the flat rent at that time (because the information regarding choice of rents seems insufficient for the family to have made a reasonable choice). In response to the comment, however, the final rule provides that where a family previously has elected a flat rent (prior to the three year required reexamination), the PHA must provide the calculation of the income-based rent only at the family's request.

Comment. The PHA is responsible for providing the rent option to the family every year along with sufficient information for the family to make an informed choice. The rule should clarify the meaning of "sufficient information." Additionally, the preamble to the proposed rule provides that the PHA should provide each affected family a worksheet so that it may compute its own income-based alternative rent. The preamble language appears to contradict proposed § 5.614(c), which requires the PHA to conduct an annual rent determination for the family—as though the family had elected to pay rent based on income—and provide the family a copy of its policy on switching between rent systems.

Response. The preamble to the proposed rule provided a discussion of the minimum amount of information a PHA should, and the types of information a PHA could provide to a family regarding choice of rents. The regulation clearly states what minimum amount of "sufficient" information is necessary. The preamble suggested a worksheet as a possible alternative, in a manner similar to PHAs who provide residents worksheets at annual re-examination.

Comment. All residents should be notified by the PHA about the flat rent and income-based rent prior to implementation.

Response. HUD believes that a PHA's obligations concerning rent options and notification to families of their options is appropriately addressed in the rule. The rule requires the PHA to (1) establish written policies concerning rent policies, and (2) inform families of their rent options.

4. Switching Rent Methods to Lower Rent Because of Financial Hardship

Comment. Switching rents due to financial hardship creates a significant administrative burden.

Response. As noted earlier in this preamble, choice of rent is explicitly required by section 523 of the 1998 Act, as is the ability to switch rents because of financial hardship. Choice of rents is intended to provide increased amount of flexibility regarding rent policies for PHAs and residents, as families transition from welfare to work. Congress believed it necessary, however, to have hardship provisions for families who may need additional assistance at certain points in the transition.

Comment. Granting a rent waiver to one family penalizes other families who are meeting their obligations; additional rent collections will decrease. A sizable percentage of all households living in public housing experience financial hardship frequently, yet the PHA expects them to pay their rent in full, on time. In special circumstances, a family may sign a payment agreement to make up rent which is in arrears. However, granting a rent "waiver" to one family penalizes others who are meeting their rent obligation. Ultimately rent collection rates will go down.

Response. Section 960.257(b) now provides that families may request an interim reexamination of family income or composition because of any changes since the last determination. Families who experience an unanticipated reduction in income are able to request an interim reexamination, and have their rent adjusted accordingly. Therefore, these families are not penalized, as suggested by the comment.

Comment. The final rule should make clear that a family must specifically notify the PHA of its wish to switch rent methods due to financial hardship, and the rule should provide that the rent be lowered no later than the first of the month following the month the family reports the hardship is unreasonable and should be revised.

Response. As stated in the proposed rule, the PHA must switch the family's rental payment immediately if there is a hardship. However, HUD realizes that the PHA may not be able to immediately adjust its systems to switch a family's rental payment. When establishing its policies, a PHA should indicate the timeframe in which a family must notify the PHA of a financial hardship, and the need to switch rent systems, and the PHA should be able to act within 30 days, which includes verifying the financial hardship, before switching the family from one rent system to another. Such policies should attempt to maintain administrative simplicity while being responsive to unforeseen changes in family circumstances.

Comment. There should be a limit on the number of times within a specified period of time that a family or individual can claim the hardship exemption.

Response. The rule provides such a limitation. The rule provides that once a family switches to income based rent due to financial hardship, the family must wait until its next annual option to select the type of rent.

Comment. The final rule should clarify that circumstances for exemptions for death apply only to family members on the lease or principal wage earners, to prevent multiple requests for hardships due to death for other circumstances not envisioned by the Congress or HUD.

Response. The statute indicates that financial hardship policies must include situations where the family has experienced a decrease in income because of a death in the family. HUD does not believe that this was intended to be limited to the death of family members who are wage earners, but rather any family members on the lease for the unit, whose death created a loss of income in the household.

Comment. The statute requires a PHA to "immediately" provide for the family to switch to an income-based rent upon a determination that a family is unable to pay the previously chosen flat rent because of financial hardship. The rule seems to imply that the PHA can make its own policy on switching from a flat rent to income-based; however, it appears that the statute gives the PHA no choice in certain specific instances. HUD needs to clarify this matter.

Response. As stated in the proposed rule, the PHA must switch the family's rental payment immediately if there is a hardship. Though the PHA does not have discretion in determining whether or not to switch a family's rent because of hardship, the PHA does have discretion in establishing its hardship policies, including the time frame in which a family must notify the PHA of a financial hardship, and the need to switch, the type of verification required, etc. When establishing such policies, the PHA should attempt to maintain administrative simplicity while being responsive to unforeseen changes in the family circumstances.

5. Retaining Ceiling Rents

Comment. HUD should provide the option to use ceiling rents beyond three years. HUD's interpretation that the statute limits the retention of ceiling rents is wrong. The 1998 Act explicitly permits PHAs with ceiling rents to retain them, instead of developing flat rents based on neighborhood market rental levels for comparable housing.

Response. HUD is not revising the ceiling rent provision from that provided in the proposed rule. As stated in the proposed rule, PHAs that have already established ceiling rents may continue to use those ceiling rents in lieu of establishing a flat rent for those units for three years. After the three year period, ceiling rents will continue to be allowed as a cap on an income based rent, but not as an alternative to flat rents.

At the time the 1998 Act was enacted, a proposed rule was pending which would have resulted in a requirement that ceiling rents reflect the market in a manner similar to that required by the statute and this regulation for flat rents. That rule would have been finalized accordingly. HUD thus believes that a maximum 3-year time period on retention of ceiling rents as an alternative to flat rents is both reasonable and fully consistent with Congressional intent. Of course, the flat rents will have a similar effect to ceiling rents set at market. In addition, tenants for whom the flat rents are higher than the current ceiling rents always can choose to pay the income-based rent, which will not exceed thirty percent of their adjusted incomes.

K. New Community Service and Self-Sufficiency Requirements for Public Housing (Proposed Rule §§ 960.603–960.611; Final Rule §§ 960.601–960.609) (Section 512 of the 1998 Act Amending Section 12 of the 1937 Act)

1. General

Comment. There is a significant administrative burden associated with the new community service and self-sufficiency requirements. The community service requirement is punitive to public housing residents. The requirement to establish a community service program exceeds the PHA's charter. These requirements clearly constitute an unfunded mandate. HUD must take steps to minimize the burden to the fullest extent without compromising statutory intent.

Response. The new community service and self-sufficiency requirements are statutory. HUD has strived to provide as much flexibility as possible to PHAs to allow them to administer this provision without creating significant burden.

HUD urges implementation of this provision in a manner consistent with its intent, as discussed in the Senate Committee Report (S. Rep. No. 63, 105th Cong., 1st Sess. 1997). The Report states that the provision is not intended to be perceived as punitive, but rather considered as rewarding activity that will assist residents in improving their own and their neighbors' economic and social well-being and give residents a greater stake in their communities.

Comment. The final rule should eliminate the requirement for a PHA to identify and notify each individual of the community service status. The PHA should only be obligated to notify all families of the general requirements and exemptions and place the burden upon the family to notify the housing authority of the required participation of some of its family members, under the pain of lease violation and subsequent eviction actions. Additionally, the final rule should permit the resident to self-certify concerning his or her ability to comply with the community service requirement.

Response. HUD has revised §§ 960.605 and 960.607 to provide PHAs as much flexibility as possible, while still meeting the statutory requirement. The revision to § 960.605(c) requires PHAs to verify compliance annually, at least 30 days before the expiration of the lease term. Self-certification by residents is not acceptable; third party certification must be provided by the entity with whom the resident is working.

There are various community service models that PHAs may want to consider in developing their process for administration of the community service requirement. One of the models is based on a high school requirement for graduation used by high schools, that each student is required to perform a certain number of hours of community service in order to graduate. Similarly, PHAs could provide guidance lists of acceptable activities to residents, along with ways to contact various groups or PHA-sponsored activities that meet the requirement and intent of the community service provision. Residents could, perhaps two months prior to the end of the lease, have a signed certificate from the community service or self-sufficiency activity contact, that in fact they have provided the requisite amount of service.

Additionally, PHAs may, but are not required to, provide advance approval of a community service activity. Advance approval by the PHA may avoid the possibility of refusing to recognize the activity as eligible after it was performed by the resident. Advance approval also may help to ensure that the activity is not performed under conditions that would be considered hazardous, or that the work is not labor that would be performed by the PHA's employees responsible for essential maintenance and property services, or that the work is otherwise unacceptable.

Comment. Residents who are not exempt from community service should be provided a statement of rights and obligations.

Response. The rule provides, at § 960.605(c), for written notification of the provisions of the community service requirement to all residents, including a description of the service requirement, who is exempt, and how the exemption will be verified.

Comment. A community service contribution of 8 hours a month is too low. The requirement should be at least 16 hours a month. Another comment suggests that the rule should clarify whether required hours may be accrued.

Response. The statute is clear that the expectation is that each adult member of the family unless otherwise exempt is required to contribute eight hours per month of community service. HUD, however, believes that there should be some flexibility for PHAs to allow individuals, based on circumstances that may prevent the individual from performing the eight hours of community service/economic self-sufficiency each month, to remedy this requirement by performing the activity prior to the renewal of the lease or within a reasonable period determined by the PHA.

Comment. The final rule should go further and require residents to provide verification that they applied for employment in 3 different locations each week.

Response. This suggestion exceeds the requirement imposed by the statute. The rule reflects the statutory requirement to engage in community service.

Comment. The final rule should provide for duly-elected resident councils to administer community service requirements and have community service activities include activities to develop and strengthen the capacity of resident councils. Additionally, the final rule needs to address issue of acceptable community service providers.

Response. As noted earlier in this preamble, HUD's position is to allow PHAs as much flexibility as possible in administering the community service and self-sufficiency requirements. PHAs have the discretion to involve duly-elected resident councils in the administration of community service requirements. Additionally, PHAs are in the best position to determine acceptable community service activities within the broad parameters established. HUD encourages PHAs to involve qualified resident councils where they can facilitate effective implementation of the community service requirement.

Comment. HUD should provide funding from resident initiatives funds for third party administration of the community service requirement.

Response. This comment is outside the scope of this rulemaking. The purpose of this rulemaking is limited to implementing the changes in admission and occupancy requirements made by the 1998 Act.

Comment. With respect to § 960.607(d) that provides, in relevant part, "if the noncompliant adult moves from the unit, the lease may be renewed," the rule should explain how a PHA should respond to a report that a covered individual has moved from the household.

Response. HUD believes the following revision to § 960.607(c)(2) will address this issue. Section 960.607, which addresses "Assuring Resident Compliance," is revised at the final rule stage to add the following language: "All members of the family who are subject to the service requirement are complying with the service requirement or are no longer residing in the unit."

Comment. There is concern about liability that may be attributable to PHAs for requiring or explicitly approving community service activities. HUD and the Congress must fully consider the implications of this requirement and implement this provision so as to ensure maximum protection for PHAs against possible litigation in this regard.

Response. Again, PHAs are given considerable discretion to implement the community service and self-sufficiency requirements as they determine appropriate, taking into consideration their resident population and local circumstances (e.g., using local community service providers). PHAs can and should implement community service programs in a prudent manner that will minimize liability.

Comment. The final rule should provide no adverse action against a resident if a community service provider is not responsive. Since PHAs will rely on other agencies for verification of resident community service activity, it is essential that no adverse action be taken against a resident if the third party agency fails to respond to housing authority and resident requests for verification. Another comment suggests that the rule should provide owners and PHAs with the right to require tenants to provide reasonable documentation for activities that meet community service requirements. Another comment suggests that the rule also should require PHAs to provide notice to residents of programs in which the residents may participate to meet the community service requirement. Another comment suggests that the rule should provide that the 8 hour per month requirement can be a combination of the community service and economic self-sufficiency requirements. Another comment suggests that HUD should advise whether it will issue a form of certification to be executed by entities for which residents perform community service activities; if the certification appears valid on its face, may the PHA rely on the certification, or must it take any further action to confirm that the certification is accurate.

Response. The rule strikes the appropriate balance of setting out the basic requirements for community service (and the exemptions) and self-sufficiency, as required by the statute, and providing PHAs with the flexibility to establish the manner in which they will administer these requirements. HUD therefore declines to adopt all of these specific suggestions. The regulation has been revised to clarify that the eight hours can be a combination of the community service and economic self-sufficiency activities to meet the requirement.

Comment. The final rule needs to address the relationship between a person performing community service and the PHA or community service provider. The rule should clearly specify that: the resident performing community service is neither an employee of the PHA nor the community service provider; the resident is not entitled to a stipend, unemployment or worker's compensation or disability benefits.

Response. The statute and this regulation clearly do not create or contemplate an employer/employee relationship between the public housing resident performing community service and the PHA or other community service provider.

2. Exemptions

Comment. Persons with disabilities should not be exempt from community service requirements, because generally all persons with disabilities can perform some type of community service—for example, collating material for a nonprofit agency. In contrast to this first comment were the following comments. Persons with disabilities should be exempt on basis of any existing documentation already in place of their status, and not require new certification. There should not be a dual test to exempt persons with disabilities, i.e., disability and inability to work. The final rule must provide clear standards on how to determine that a person with disabilities is unable to work. The final rule should exempt persons with disabilities who are not yet officially labeled as such. Persons receiving disability assistance under a state disability program should be automatically exempt.

Exempt all persons with disabilities absent clear evidence to the contrary.

Response. The exemption from the community service requirement for persons with disabilities who are also not able to perform community service is statutory. In terms of documentation of a disability, standards already exist, as provided in the language of § 960.601. Existing documentation will be accepted as evidence of a disability, and disabled individuals will be permitted to self-certify that they can or cannot perform community service or self-sufficiency activities. The rule cannot exempt persons with disabilities who are not yet officially classified as such, because documentation is required, as provided in § 960.601 and in the statute. Persons receiving disability assistance under a State disability program may be exempt, if they meet the disability definition in section 12 of the 1937 Act and in § 960.601.

Comment. Any PHA verification of disability is not consistent with Fair Housing Act regulations.

Response. Verification of disability is not inconsistent with the Fair Housing Act regulations. The new law establishes a community service requirement and provides a definition of person with disabilities that is separate from the definition provided under the Fair Housing Act.

Comment. Documentation that a family is receiving assistance under the TANF Program should be sufficient verification of a family member's exemption from community service requirement. If PHAs verify that the resident family is receiving assistance under the TANF program without sanction for non-compliance with a work activity requirement, there should be no additional verification.

Response. To determine whether a family member is exempt from the community service requirement, the PHA must verify with the welfare agency that the person is complying with a work activities requirement. "Work activities" is broadly defined in Section 407(d) of the Social Security Act (42 U.S.C. 607(d)), and it is expected that individuals participating in these work activities will be exempt from community service requirements under this part. (HUD will make the definition of work activities available through its website and through additional guidance.) Additionally, the PHA has the discretion to adopt the verification process suggested by the commenter.

Comment. Exemption for welfare status will be difficult to determine and enforce because status can change frequently.

Response. To minimize burden to the PHA, HUD suggests that PHAs include the determination of welfare status in the cooperation agreement they enter into with the local welfare agency.

Comment. The final rule should provide that PHAs are to rely on documentary evidence from other agencies bearing responsibility for determining an exemption category. PHAs are not responsible for making an independent determination of status.

Response. Nowhere in the rule is a burden placed on PHAs to determine an exemption category of a family member that is related to welfare programs. That determination is clearly left to welfare agencies, and PHAs are to look to these agencies for the determination of exemption of a family member.

Comment. The process for qualification for an exemption needs to be addressed by the rule. The proposed rule did not adequately address how a PHA would determine whether an adult, non-elderly household member would establish qualification for an exemption from the community service requirement.

Response. As stated in an earlier response, the rule strikes the appropriate balance of setting out the basic requirements for community service (and the exemptions) and self-sufficiency as required by the statute, and providing PHAs with the flexibility to establish the manner in which they will administer these requirements. HUD declines to establish by rule a process for qualification for an exemption.

Comment. The final rule should exempt primary caregivers; retirees below the age of 62; homemakers; and pregnant women.

Response. The categories of individuals exempt from the community service and self-sufficiency requirements are statutory. HUD does not have the authority to add additional categories.

Comment. The final rule should codify in the regulatory text the preamble language that states that PHAs must establish policies that permit residents to change exemption status during the year if their situation changes. This language should be added to paragraph (2) of § 960.605(c).

Response. HUD has included language at § 960.605(c) that requires PHAs to establish and describe policies addressing categories of individuals exempt from the service requirement. The PHA policy should include how the PHA will deal with any changes in exemption status.

3. Noncompliance

Comment. The rule should clarify whether a person who has been declared to be required to participate in community service has the right to a grievance hearing to challenge the decision of the PHA.

Response. Section 512 of the 1998 Act contains the requirement of due process for residents when the PHA is reviewing and determining resident compliance with the community service and self-sufficiency requirements.

Comment. Notice of noncompliance and a copy of any agreement for cure should be given to both the noncompliant resident and the leaseholder. It is critical that the leaseholder be included because it is the leaseholder's obligation to ensure compliance.

Response. HUD agrees. The rule (at § 960.607(b)) already specifies that the noncompliant adult and the head of household must sign any noncompliance and cure agreement.

L. Reexamination and Verification of Family Income and Composition (Proposed Rule §§ 5.617 and 960.209; Final Rule §§ 5.657, 960.257, and 960.259)

Comment. For a family paying income-based rent, it is of paramount importance that the rent is income-based and that an interim reexamination be processed immediately, not "within a reasonable time after the family request." The responsible entity should be required to make the reexamination immediately, or within 5 working days of the family's request to prevent hardship to the family. Another comment suggests that § 5.617 should require that any reduction must be effective either in the month in which the family loses income or the following month and that reductions can be retroactive. Another comment suggests the final rule specify how long an interim reexamination must take, as the current regulations do, otherwise delays in decreases in rent can cause tenants to be able to afford rents and be evicted.

Response. HUD does not prescribe the time period between the reexamination and implementation of the new rent. Whatever action the responsible entity intends to take in this regard and the time periods involved should be reasonable, consistent with and according to State law. When establishing its lease policies, the responsible entity should attempt to maintain administrative simplicity, while being responsive to unforeseen changes in family's circumstances. Additionally, current regulations do not

specify how long an interim reexamination must take.

Comment. The rule requires strict annualization of interim income changes in every case, and annualization can cause substantial increases in rent for assisted tenants even where significant income reductions are quite foreseeable in the future. The rule should permit responsible entities to be able to "look back" at a family's historical income patterns in appropriate cases if available information is not reliable for predicting income for the reasonably foreseeable future.

Response. Annual income is defined in § 5.609(a)(2) as "all amounts monetary or not, which . . . are anticipated to be received from a source outside the family during the 12-month period following admission or annual reexamination effective date . . ." This definition always has allowed PHAs to base anticipated income for the next year on historical patterns rather than current or immediate past income, and PHAs will have an additional incentive to do this in situations where the family's income then will assist the PHA in meeting income targeting goals. To provide additional flexibility in this area, section 5.609 (e) of the existing rule, which permits PHAs to anticipate income for a shorter period when 12 months is not feasible, has been further revised in the new § 5.609(d). It now references seasonal or cyclic income and permits—but does not require—annualization when the PHA believes that past income is the best available indicator of expected future income. PHAs should consider the effect of their policy on the treatment of seasonal or cyclic income on their ability to satisfy the requirement for targeting admission to very low income families.

Comment. Section 5.617 requires at least annual income and family composition determinations for public housing residents paying income-based rent, but notes that the rule does not require this determination for public housing residents who have chosen flat rents. Annual reexaminations of income and family composition are necessary for families paying flat rents because PHAs must allow families to choose their rent structure annually.

Response. The statute specifically states that for families electing to pay a flat rent, the PHA need only reexamine their income every three years. As reflected in responses to other comments, during the three-year period, PHAs are required to provide families paying a flat rent with the calculation of the income-based rent only if the family requests that information.

Comment. Section 5.617(b)(2) should be revised to assure that any interim reporting process include oral and written explanation to the resident of the factors considered in the rent recalculation, particularly disregard of increases in income from employment, choice of rent, and child care and medical care deductions.

Response. A PHA must establish policies and procedures regarding interim reexaminations, and such policies are reported in connection with the PHA Annual Plan. It is at the PHA's discretion to establish policies on how it will conduct an interim reexamination, beyond what is specified in § 960.257(b) for the public housing program.

M. Occupancy by Police Officers and Over-Income Families (Proposed and Final Rule §§ 5.619 and 960.503–960.505) (Sections 524 and 548 of the 1998 Act Amending Sections 3 and 8 of the 1937 Act)

Comment. In light of the public nature of the PHA planning process, the portion of the plan that addresses police officer placement in public housing should not contain the level of detail demanded by the current rule with respect to the number and location of officers to be placed in particular projects.

Response. The regulation clarifies that the PHA Plan or supporting documents include the number and location of the public housing units to be occupied by police officers and the terms and conditions of their tenancies and a statement that the action is taken to increase security for public housing residents. The new law provided substantial relief to PHAs in this area compared to previous requirements found in 24 CFR part 960. Reporting of this limited information in connection with the PHA Plan is not unreasonable.

Comment. The rule requires owners of Section 8 project-based buildings to submit a written plan to the local HUD Field Office for authorization to lease a unit to over income police officers. Such plans should be submitted to the PHA for approval or disapproval in those instances where the housing authority is the contract administrator.

Response. HUD agrees with this comment and has revised the rule to adopt this suggestion.

N. Changes to Existing Self-Sufficiency Programs—Public Housing and Section 8 Certificate/Voucher Programs (Proposed and Final Rule Part 984) (Section 509 of the 1998 Act Amending Section 23 of the 1937 Act)

Comment. The change to the definition of "welfare assistance" for purposes of the Family Self-Sufficiency Program in § 984.103 (i.e., removing Medicaid and SSI from the definition) will assist low-income families by allowing working participants to complete the program successfully without sacrificing their family's health associated benefits.

Response. HUD agrees that the new definition of "welfare assistance" for purposes of the Family Self Sufficiency (FSS) program supports welfare reform. This definition remains basically unchanged in the final rule, except that we have borrowed language from the definition of assistance used in the TANF program. Additional clarifications are addressed in the following comments and responses.

Comment. The final rule should clarify whether the new definition of welfare assistance covers emergency assistance and food stamps.

Response. HUD has revised the language in § 984.103 to confirm that Food Stamps and emergency rental and utilities assistance are not included in welfare assistance for purposes of the FSS program.

Comment. The definition of welfare assistance in § 984.103 should be revised to read as follows: "Welfare assistance does not include the income assistance received by non-head-of-house family members for their disabilities (SSI, SSDI, etc.) or for Social Security." Without this change an FSS participant is penalized for having a disabled or elderly family member.

Response. HUD has revised the language at § 984.103 to confirm that SSDI, SSI, and Social Security benefits are not welfare assistance.

Comment. The final rule should clarify participants to which the new definition of "welfare assistance" is applicable.

Response. Guidance on this issue is more appropriate for implementing instructions and guidance documents than for this rule.

Comment. The definition of "welfare assistance" appears contradictory, because it states that the term "welfare assistance" does not include programs that provide "health care, child care, or other services to working families", but the TANF program provides these very services and the TANF program is included in the definition of welfare assistance.

Response. HUD has revised the definition of "welfare assistance" for purposes of the FSS program to clarify what is and is not included.

Comment. The rule should clarify that for voluntary or mandatory FSS programs, HUD reimburses PHAs for the cost of the FSS escrow.

Response. This comment is not within the scope of this rulemaking. The issue of reimbursement is a matter to be addressed by the negotiated rulemaking committees for the Section 8 Renewal Fund and the Public Housing Operating Fund.

Comment. The rule should include authorization for Section 8 FSS families to use their escrow accounts funds for homeownership through HUD programs, as well as other governmental programs.

Response. The rule does not provide any restriction to use escrow account funds for homeownership through HUD programs or other governmental programs. Therefore no explicit authorization is needed.

Comment. The rule should address PHA approval of portability moves during the initial year of the FSS contract. Additionally, the rule should clarify whether a tenant has a right to a hearing if a PHA denies the tenant's request to move outside of a PHA's jurisdiction during the first 12 months after the effective date of the contract.

Response. The rule is not the appropriate place to address the various situations in which a PHA should or should not approve requests for moves during the first year of the FSS contract. Specifying the circumstances in which a PHA must approve a move would unnecessarily limit the PHA's discretion in administering its programs. Although a PHA should not arbitrarily restrict moves where there is good cause for the tenant to move, the decision to approve or disapprove the move rests with the PHA. A hearing is not required if a PHA denies the tenant's request to move outside of a PHA's jurisdiction. Families, however, always have the option of bringing their complaints to HUD if they believe that the PHA has acted without justification. Also, see § 982.353 for portability restrictions during the first 12 months after admission.

Comment. The rule should contain a specific requirement that in determining whether to grant a FSS participant's request to move within the initial 12 month period of tenancy, the PHA must consider its duty to affirmatively further fair housing.

Response. The Department will not adopt this suggestion. A PHA's duty to affirmatively further fair housing is a consideration at the basis of many PHA decisions with respect to tenants. This is only one factor, however, considered by a PHA with respect to a tenant's request to move. Others include the availability of appropriate services, training, and employment opportunities.

O. Lease Requirements (Proposed and Final Rule § 966.4) (Section 512 of the 1998 Act Adding Section 6(l)(1) to the 1937 Act)

Comment. The requirement for a 12-month lease will adversely affect PHAs both financially and with respect to unit occupancy. The 12-month lease will have an adverse impact on Tenant Accounts Receivable. The 12-month lease term should be optional. Allow PHAs to establish lease terms based on local practices and conditions. The rule should provide exceptions to the 12-month lease term.

Response. The requirement for a 12-month lease is statutory, as well as the requirement that the PHA lease be renewable for all purposes except noncompliance with community service requirements. Regardless of the term of the lease, PHAs may allow for a 30-day (or less) notice period for tenants to notify the PHA that they wish to terminate the lease. This will eliminate any adverse impact on tenants or Tenant Accounts Receivable. In establishing the initial term, a PHA may extend the period a few days beyond 12 months to make the lease term extend to the end of a month.

P. Escrow Deposits (Proposed and Final Rule § 966.55)

Comment. Escrow deposits, as provided in § 966.55, should be required only when the PHA asserts that rent is due because of the family's act or failure to act.

Response. The regulatory language is clear that an escrow deposit is required only in instances where a hearing is scheduled in any grievance involving the amount of rent. The rule goes on to say that the escrow deposit is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act, or failure to act, took place. No additional clarification is necessary.

Comment. Escrow requirements should be waived whenever recent hardship or welfare benefit rent reductions are involved.

Response. The regulatory language is clear that the PHA must waive the requirement for an escrow deposit in cases where either (1) a family is appealing a financial hardship determination related to minimum rent requirements, or (2) the family is appealing a PHA's decision not to reduce the annual income of a family as a result of a reduction in welfare benefits attributable to fraud or a failure to participate in an economic self-sufficiency program or to comply with a work activities requirement. No additional clarification is necessary.

IV. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in this final rule are unchanged from the proposed rule. The final rule, however, reorganized certain regulatory sections of the proposed rule. The sections containing the information collections affected by the proposed and final rules are stated in the chart below. These information collections were reviewed by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and assigned OMB control number 2577–0230. In accordance with the Paperwork Reduction Act, no agency may conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Section of 24 CFR in Proposed Rule	Section of 24 CFR in final rule
5.410 Residency Preferences	5.655(c) 960.206(b)
5.611 New Deductions	5.611
5.612(c) Individual Savings Accounts	960.255(d)
5.614(c) Written Rent Options	960.253(e)
5.618(b) Welfare Rent Verification	5.615(c)
5.618(c) Welfare Rent Notice	5.615(d)

Section of 24 CFR in Proposed Rule	Section of 24 CFR in final rule
960.605(c) Community Service	960.605(c)
960.505 Over Income Families in Small PHAs	960.505

Regulatory Review

The Office of Management and Budget (OMB) reviewed this final rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this final rule is a "significant regulatory action," as defined in section 3(f) of the Order (although not economically significant, as provided in section 3(f)(1) of the Order). Any changes made to the final rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), has reviewed and approved this rule and in so doing certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule implements changes to admission and occupancy requirements in public housing made by the Quality Housing and Work Responsibility Act of 1998. These are statutory changes, and these admission and occupancy requirements apply to all families residing in public housing or receiving Section 8 assistance or applying for public housing or Section 8 assistance. The Congress did not provide exceptions for admission and occupancy requirements to families because the PHAs or responsible entities that administer the covered HUD programs are small entities. Admission and occupancy policies are the type of policies that should be uniform throughout HUD's programs, except to the extent that the type of program (i.e., public housing or Section 8 assistance) because of its statutory basis creates differences in this requirements. Because these are statutory requirements, HUD has no discretion to alter these requirements on the basis of the size of the entity administering the program, but has made every effort in this rule to minimize administrative burden for all entities whenever possible.

Environmental Finding

A Finding of No Significant Impact with respect to the environment was made at the proposed rule stage in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding remains applicable to this final rule, and is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street, S.W., Washington, DC 20410.

Federalism Impact

This final rule does not have federalism implications. It does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of Executive Order 13132 (entitled "Federalism").

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1532) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. This rule does not impose a Federal mandate that will result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, or $100 million or more in any one year.

Catalog

The Catalog of Federal Domestic Assistance numbers for these programs are 14.850, 14.855, and 14.857.

List of Subjects

24 CFR Part 5

Administrative practice and procedure, Aged, Claims, Drug abuse, Drug traffic control, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low and moderate income housing, Mortgage insurance, Pets, Public housing, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 880

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 881

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 884

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements, Rural areas.

24 CFR Part 886

Grant programs—housing and community development, Lead poisoning, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 891

Aged, Capital advance programs, Civil rights, Grant programs—housing and community development, Individuals with disabilities, Loan programs—housing and community development, Low- and moderate-income housing, Mental health programs, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

24 CFR Part 966

Grant programs—housing and community development, Public housing.

24 CFR Part 984

Grant programs—housing and community development, Rent subsidies, Reporting and recordkeeping requirements.

24 CFR Part 985

Grant programs—housing and community development, Housing, Rent subsidies, Reporting and recordkeeping requirements.

Accordingly, HUD amends parts 5, 880, 881, 884, 886, 891, 960, 966, 984, and 985 of title 24 of the Code of Federal Regulations as follows:

PART 5—GENERAL HUD PROGRAM REQUIREMENTS; WAIVERS

1. The authority citation for part 5 continues to read as follows:

Authority: 42 U.S.C. 3535(d), unless otherwise noted.

2. In part 5, revise all references to the term "HA" to read "PHA".

Subpart A—Generally Applicable Definitions and Federal Requirements; Waivers

3. Amend § 5.100 as follows:

a. Revise the introductory text to read as set forth below;

b. Remove the definition of "housing agency (HA)";

c. Add, in alphabetical order, definitions of the terms "public housing", and "responsible entity".

§ 5.100 Definitions.

The following definitions apply to this part and also in other regulations, as noted:

* * * * *

Public housing means housing assisted under the 1937 Act, other than under Section 8. "Public housing" includes dwelling units in a mixed finance project that are assisted by a PHA with capital or operating assistance.

* * * * *

Responsible entity means:

(1) For the public housing program, the Section 8 tenant-based assistance program (part 982 of this title), and the Section 8 project-based certificate or voucher programs (part 983 of this title), and the Section 8 moderate rehabilitation program (part 882 of this title), responsible entity means the PHA administering the program under an ACC with HUD;

(2) For all other Section 8 programs, responsible entity means the Section 8 project owner.

* * * * *

§ 5.105 [Amended]

4. Amend paragraph (a) of § 5.105 by adding, after the phrase "section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) and implementing regulations at", the phrase "part 8 of this title; title II of the Americans with Disabilities Act, 42 U.S.C. 12101 *et seq.*;".

Subpart B—Disclosure and Verification of Social Security Numbers and Employer Identification Numbers; Procedures for Obtaining Income Information

§ 5.210 [Amended]

5. Amend paragraph (b)(2) of § 5.210 by removing the phrase ", as provided in parts 813 and 913 of this title".

6. Amend § 5.214 as follows:

a. In the definition of "assistance applicant", revise paragraph (2) to read as set forth below;

b. In the definition of "participant", revise paragraph (2) to read as set forth below;

c. Revise the definition of the term "Processing entity" to read as set forth below:

§ 5.214 Definitions.

* * * * *

Assistance applicant. * * *

(2) For the public housing program: A family or individual that seeks admission to the program.

* * * * *

Participant. * * *

(2) For the public housing program: A family or individual that is assisted under the program;

* * * * *

Processing entity means the person or entity that, under any of the programs covered under this subpart B, is responsible for making eligibility and related determinations and an income reexamination. (In the Section 8 and public housing programs, the "processing entity" is the "responsible entity" as defined in § 5.100.)

* * * * *

7. In § 5.236, revise paragraphs (b)(1) and (b)(3)(i)(B) and (C) to read as follows:

§ 5.236 Procedures for termination, denial, suspension, or reduction of assistance based on information obtained from a SWICA or Federal agency.

* * * * *

(b) * * *

(1) *Procedures for independent verification.* (1) Any determination or redetermination of family income verified in accordance with this paragraph must be carried out in accordance with the requirements and procedures applicable to the individual covered program. Independent verification of information obtained from a SWICA or a Federal agency may be:

(i) By HUD;

(ii) In the case of the public housing program, by a PHA; or

(iii) In the case of any Section 8 program, by a PHA acting as contract administrator under an ACC.

* * * * *

(3) * * *

(i) * * *

(B) The responsible entity (as defined in § 5.100) in the case of the public housing program or any Section 8 program.

(C) The owner or mortgagee, as applicable, with respect to the rent supplement, Section 221(d)(3) BMIR, Section 235 homeownership assistance, or Section 236 programs.

* * * * *

8. Add new § 5.240 to read as follows:

§ 5.240 Family disclosure of income information to the responsible entity and verification.

(a) This section applies to families that reside in dwelling units with assistance under the public housing program, the Section 8 tenant-based assistance programs, or for which project-based assistance is provided under the Section 8, Section 202, or Section 811 program.

(b) The family must promptly furnish to the responsible entity any letter or other notice by HUD to a member of the family that provides information concerning the amount or verification of family income.

(c) The responsible entity must verify the accuracy of the income information received from the family, and change the amount of the total tenant payment, tenant rent or Section 8 housing assistance payment, or terminate assistance, as appropriate, based on such information.

Subpart C—Pet Ownership for the Elderly or Persons with Disabilities

9. In § 5.300 revise paragraph (a)(3) to read as follows:

§ 5.300 Purpose.

(a) * * *

(3) The public housing program.

* * * * *

§ 5.306 [Amended]

10. Amend § 5.306 by removing the definition of "public housing programs".

11. Revise the heading of Subpart D to read as follows:

Subpart D—Definitions for Section 8 and Public Housing Assistance Under the United States Housing Act of 1937

§ 5.400 [Amended]

12. Amend § 5.400 by removing the parenthetical phrase.

§ 5.403 [Amended]

13. Amend § 5.403 as follows:

a. Remove paragraph (a), the introductory text of paragraph (b), and the paragraph designation of paragraph (b);

b. Revise the definitions of "disabled family" and "elderly family" to read as set forth below; and

c. Add, in alphabetical order, the definition of "person with disabilities" to read as set forth below:

§ 5.403 Definitions.

* * * * *

Disabled family means a family whose head, spouse, or sole member is a

person with disabilities. It may include two or more persons with disabilities living together, or one or more persons with disabilities living with one or more live-in aides.

* * * * *

Elderly family means a family whose head, spouse, or sole member is a person who is at least 62 years of age. It may include two or more persons who are at least 62 years of age living together, or one or more persons who are at least 62 years of age living with one or more live-in aides.

* * * * *

Person with disabilities:

(1) Means a person who:

(i) Has a disability, as defined in 42 U.S.C. 423;

(ii) Is determined, pursuant to HUD regulations, to have a physical, mental, or emotional impairment that:

(A) Is expected to be of long-continued and indefinite duration;

(B) Substantially impedes his or her ability to live independently, and

(C) Is of such a nature that the ability to live independently could be improved by more suitable housing conditions; or

(iii) Has a developmental disability as defined in 42 U.S.C. 6001.

(2) Does not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome;

(3) For purposes of qualifying for low-income housing, does not include a person whose disability is based solely on any drug or alcohol dependence; and

(4) Means "individual with handicaps", as defined in § 8.3 of this title, for purposes of reasonable accommodation and program accessibility for persons with disabilities.

§§ 5.405, 5.410, 5.415, 5.420, 5.425, and 5.430 [Removed]

14. Remove §§ 5.405, 5.410, 5.415, 5.420, 5.425, and 5.430.

15. In part 5, revise the heading of subpart F to read as follows:

Subpart F—Section 8 and Public Housing: Family Income and Family Payment; Occupancy Requirements for Section 8 Project-Based Assistance

16. Revise § 5.601 to read as follows:

§ 5.601 Purpose and applicability.

This subpart states HUD requirements on these subjects:

(a) Determining annual and adjusted income of families who apply for or receive assistance in the Section 8 and public housing programs;

(b) Determining payments by and utility reimbursements to families assisted in these programs;

(c) Additional occupancy requirements that apply to the Section 8 project-based assistance programs. These additional requirements concern:

(1) Income-eligibility and income-targeting when a Section 8 owner admits families to a Section 8 project or unit;

(2) Owner selection preferences;

(3) Owner reexamination of family income and composition.

17. Amend § 5.603 as follows:

a. Remove paragraphs (b) and (c) and redesignate paragraph (d) as paragraph (b);

b. Revise paragraph (a) to read as set forth below;

c. Amend the definition of "owner" in newly designated paragraph (b) by removing the phrase "24 CFR part 885." and adding in its place "part 891 of this title."; and

d. Amend newly designated paragraph (b) by revising the definitions of "full-time student", "tenant rent", and "utility reimbursement"; and by adding, in alphabetical order, definitions of "economic self-sufficiency program", "extremely low income family", "imputed welfare income", "low income family", "very low income family", and "work activities" to read as set forth below:

§ 5.603 Definitions.

* * * * *

(a) *Terms found elsewhere in part 5*—(1) *Subpart A.* The terms *1937 Act, elderly person, public housing, public housing agency* (PHA), and *Section 8* are defined in § 5.100.

(2) *Subpart D.* The terms "disabled family", "elderly family", "family", "live-in aide", and "person with disabilities" are defined in § 5.403.

(b) * * *

Economic self-sufficiency program. Any program designed to encourage, assist, train, or facilitate the economic independence of HUD-assisted families or to provide work for such families. These programs include programs for job training, employment counseling, work placement, basic skills training, education, English proficiency, workfare, financial or household management, apprenticeship, and any program necessary to ready a participant for work (including a substance abuse or mental health treatment program), or other work activities.

Extremely low income family. A family whose annual income does not exceed 30 percent of the median income for the area, as determined by HUD, with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 30 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

* * * * *

Full-time student. A person who is attending school or vocational training on a full-time basis.

Imputed welfare income. See § 5.615.

Low income family. A family whose annual income does not exceed 80 percent of the median income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 80 percent of the median income for the area on the basis of HUD's findings that such variations are necessary because of unusually high or low family incomes.

* * * * *

Tenant rent. The amount payable monthly by the family as rent to the unit owner (Section 8 owner or PHA in public housing). (This term is not used in the Section 8 voucher program.)

* * * * *

Utility reimbursement. The amount, if any, by which the utility allowance for a unit, if applicable, exceeds the total tenant payment for the family occupying the unit. (This definition is not used in the Section 8 voucher program, or for a public housing family that is paying a flat rent.)

Very low income family. A family whose annual income does not exceed 50 percent of the median family income for the area, as determined by HUD with adjustments for smaller and larger families, except that HUD may establish income ceilings higher or lower than 50 percent of the median income for the area if HUD finds that such variations are necessary because of unusually high or low family incomes.

* * * * *

Work activities. See definition at section 407(d) of the Social Security Act (42 U.S.C. 607(d)).

§§ 5.605 and 5.607 [Removed]

18. Remove §§ 5.605 and 5.607.

19. Before § 5.609, add an undesignated center heading to read as follows:

Family Income

20. Amend § 5.609 as follows:

a. Remove and reserve paragraph (c)(13);

b. Revise paragraph (c)(8)(iv) to read as set forth below;

c. Revise paragraph (d) to read as set forth below; and

d. Remove paragraph (e).

§ 5.609 Annual income.

* * * * *

(c) * * *

(8) * * *

(iv) Amounts received under a resident service stipend. A resident service stipend is a modest amount (not to exceed $200 per month) received by a resident for performing a service for the PHA or owner, on a part-time basis, that enhances the quality of life in the development. Such services may include, but are not limited to, fire patrol, hall monitoring, lawn maintenance, resident initiatives coordination, and serving as a member of the PHA's governing board. No resident may receive more than one such stipend during the same period of time;

* * * * *

(d) *Annualization of income.* If it is not feasible to anticipate a level of income over a 12-month period (*e.g.*, seasonal or cyclic income), or the PHA believes that past income is the best available indicator of expected future income, the PHA may annualize the income anticipated for a shorter period, subject to a redetermination at the end of the shorter period.

21. Revise § 5.611 to read as follows:

§ 5.611 Adjusted income.

Adjusted income means annual income (as determined by the responsible entity) of the members of the family residing or intending to reside in the dwelling unit, after making the following deductions:

(a) *Mandatory deductions.* In determining adjusted income, the responsible entity must deduct the following amounts from annual income:

(1) $480 for each dependent;

(2) $400 for any elderly family or disabled family;

(3) The sum of the following, to the extent the sum exceeds three percent of annual income:

(i) Unreimbursed medical expenses of any elderly family or disabled family; and

(ii) Unreimbursed reasonable attendant care and auxiliary apparatus expenses for each member of the family who is a person with disabilities, to the extent necessary to enable any member of the family (including the member who is a person with disabilities) to be employed, but this allowance may not exceed the earned income received by family members who are 18 years of age or older who are able to work because of such attendant care or auxiliary apparatus; and

(4) Any reasonable child care expenses necessary to enable a member of the family to be employed or to further his or her education.

(b) *Permissive deductions—for public housing only.* For public housing only, a PHA may adopt additional deductions from annual income. The PHA must establish a written policy for such deductions.

22. Revise §§ 5.613 and 5.615 to read as follows:

§ 5.613 Public housing program and Section 8 tenant-based assistance program: PHA cooperation with welfare agency.

(a) This section applies to the public housing program and the Section 8 tenant-based assistance program.

(b) The PHA must make best efforts to enter into cooperation agreements with welfare agencies under which such agencies agree:

(1) To target public assistance, benefits and services to families receiving assistance in the public housing program and the Section 8 tenant-based assistance program to achieve self-sufficiency;

(2) To provide written verification to the PHA concerning welfare benefits for families applying for or receiving assistance in these housing assistance programs.

§ 5.615 Public housing program and Section 8 tenant-based assistance program: How welfare benefit reduction affects family income.

(a) *Applicability.* This section applies to covered families who reside in public housing (part 960 of this title) or receive Section 8 tenant-based assistance (part 982 of this title).

(b) *Definitions.* The following definitions apply for purposes of this section:

Covered families. Families who receive welfare assistance or other public assistance benefits ("welfare benefits") from a State or other public agency ("welfare agency") under a program for which Federal, State, or local law requires that a member of the family must participate in an economic self-sufficiency program as a condition for such assistance.

Economic self-sufficiency program. See definition at § 5.603.

Imputed welfare income. The amount of annual income not actually received by a family, as a result of a specified welfare benefit reduction, that is nonetheless included in the family's annual income for purposes of determining rent.

Specified welfare benefit reduction. (1) A reduction of welfare benefits by the welfare agency, in whole or in part, for a family member, as determined by the welfare agency, because of fraud by a family member in connection with the welfare program; or because of welfare agency sanction against a family member for noncompliance with a welfare agency requirement to participate in an economic self-sufficiency program.

(2) "Specified welfare benefit reduction" does not include a reduction or termination of welfare benefits by the welfare agency:

(i) at expiration of a lifetime or other time limit on the payment of welfare benefits;

(ii) because a family member is not able to obtain employment, even though the family member has complied with welfare agency economic self-sufficiency or work activities requirements; or

(iii) because a family member has not complied with other welfare agency requirements.

(c) *Imputed welfare income.*

(1) A family's annual income includes the amount of imputed welfare income (because of a specified welfare benefits reduction, as specified in notice to the PHA by the welfare agency), plus the total amount of other annual income as determined in accordance with § 5.609.

(2) At the request of the PHA, the welfare agency will inform the PHA in writing of the amount and term of any specified welfare benefit reduction for a family member, and the reason for such reduction, and will also inform the PHA of any subsequent changes in the term or amount of such specified welfare benefit reduction. The PHA will use this information to determine the amount of imputed welfare income for a family.

(3) A family's annual income includes imputed welfare income in family annual income, as determined at the PHA's interim or regular reexamination of family income and composition, during the term of the welfare benefits reduction (as specified in information provided to the PHA by the welfare agency).

(4) The amount of the imputed welfare income is offset by the amount of additional income a family receives that commences after the time the sanction was imposed. When such additional income from other sources is at least equal to the imputed welfare income, the imputed welfare income is reduced to zero.

(5) The PHA may not include imputed welfare income in annual income if the family was not an assisted resident at the time of sanction.

(d) *Review of PHA decision.* (1) *Public housing.* If a public housing tenant claims that the PHA has not correctly calculated the amount of imputed welfare income in accordance with HUD

requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the tenant written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. The PHA notice shall also state that if the tenant does not agree with the PHA determination, the tenant may request a grievance hearing in accordance with part 966, subpart B of this title to review the PHA determination. The tenant is not required to pay an escrow deposit pursuant to § 966.55(e) for the portion of tenant rent attributable to the imputed welfare income in order to obtain a grievance hearing on the PHA determination.

(2) *Section 8 participant.* A participant in the Section 8 tenant-based assistance program may request an informal hearing, in accordance with § 982.555 of this title, to review the PHA determination of the amount of imputed welfare income that must be included in the family's annual income in accordance with this section. If the family claims that such amount is not correctly calculated in accordance with HUD requirements, and if the PHA denies the family's request to modify such amount, the PHA shall give the family written notice of such denial, with a brief explanation of the basis for the PHA determination of the amount of imputed welfare income. Such notice shall also state that if the family does not agree with the PHA determination, the family may request an informal hearing on the determination under the PHA hearing procedure.

(e) *PHA relation with welfare agency.* (1) The PHA must ask welfare agencies to inform the PHA of any specified welfare benefits reduction for a family member, the reason for such reduction, the term of any such reduction, and any subsequent welfare agency determination affecting the amount or term of a specified welfare benefits reduction. If the welfare agency determines a specified welfare benefits reduction for a family member, and gives the PHA written notice of such reduction, the family's annual incomes shall include the imputed welfare income because of the specified welfare benefits reduction.

(2) The PHA is responsible for determining the amount of imputed welfare income that is included in the family's annual income as a result of a specified welfare benefits reduction as determined by the welfare agency, and specified in the notice by the welfare agency to the PHA. However, the PHA is not responsible for determining whether a reduction of welfare benefits by the welfare agency was correctly determined by the welfare agency in accordance with welfare program requirements and procedures, nor for providing the opportunity for review or hearing on such welfare agency determinations.

(3) Such welfare agency determinations are the responsibility of the welfare agency, and the family may seek appeal of such determinations through the welfare agency's normal due process procedures. The PHA shall be entitled to rely on the welfare agency notice to the PHA of the welfare agency's determination of a specified welfare benefits reduction.

§ 5.617 [Removed]

23. Remove § 5.617.

24. After § 5.615, add an undesignated center heading and new §§ 5.628, 5.630, 5.632, and 5.634 to read as follows:

Family Payment

§ 5.628 Total tenant payment.

(a) *Determining total tenant payment (TTP).* Total tenant payment is the highest of the following amounts, rounded to the nearest dollar:

(1) 30 percent of the family's monthly adjusted income;

(2) 10 percent of the family's monthly income;

(3) If the family is receiving payments for welfare assistance from a public agency and a part of those payments, adjusted in accordance with the family's actual housing costs, is specifically designated by such agency to meet the family's housing costs, the portion of those payments which is so designated; or

(4) The minimum rent, as determined in accordance with § 5.630.

(b) *Determining TTP if family's welfare assistance is ratably reduced.* If the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under paragraph (a)(3) of this section is the amount resulting from one application of the percentage.

§ 5.630 Minimum rent.

(a) *Minimum rent.* (1) The PHA must charge a family no less than a minimum monthly rent established by the responsible entity, except as described in paragraph (b) of this section.

(2) For the public housing program and the section 8 moderate rehabilitation, and certificate or voucher programs, the PHA may establish a minimum rent of up to $50.

(3) For other section 8 programs, the minimum rent is $25.

(b) *Financial hardship exemption from minimum rent.* (1) *When is family exempt from minimum rent?* The responsible entity must grant an exemption from payment of minimum rent if the family is unable to pay the minimum rent because of financial hardship, as described in the responsible entity's written policies. Financial hardship includes these situations:

(i) When the family has lost eligibility for or is awaiting an eligibility determination for a Federal, State, or local assistance program, including a family that includes a member who is a noncitizen lawfully admitted for permanent residence under the Immigration and Nationality Act who would be entitled to public benefits but for title IV of the Personal Responsibility and Work Opportunity Act of 1996;

(ii) When the family would be evicted because it is unable to pay the minimum rent;

(iii) When the income of the family has decreased because of changed circumstances, including loss of employment;

(iv) When a death has occurred in the family; and

(v) Other circumstances determined by the responsible entity or HUD.

(2) *What happens if family requests a hardship exemption?* (i) *Public housing.* (A) If a family requests a financial hardship exemption, the PHA must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption, and continuing until the PHA determines whether there is a qualifying financial hardship and whether it is temporary or long term.

(B) The PHA must promptly determine whether a qualifying hardship exists and whether it is temporary or long term.

(C) The PHA may not evict the family for nonpayment of minimum rent during the 90-day period beginning the month following the family's request for a hardship exemption.

(D) If the PHA determines that a qualifying financial hardship is temporary, the PHA must reinstate the minimum rent from the beginning of the suspension of the minimum rent. The PHA must offer the family a reasonable repayment agreement, on terms and conditions established by the PHA, for the amount of back minimum rent owed by the family.

(ii) *All section 8 programs.* (A) If a family requests a financial hardship exemption, the responsible entity must suspend the minimum rent requirement beginning the month following the family's request for a hardship exemption until the responsible entity determines whether there is a qualifying financial hardship, and whether such hardship is temporary or long term.

(B) The responsible entity must promptly determine whether a qualifying hardship exists and whether it is temporary or long term.

(C) If the responsible entity determines that a qualifying financial hardship is temporary, the PHA must not impose the minimum rent during the 90-day period beginning the month following the date of the family's request for a hardship exemption. At the end of the 90-day suspension period, the responsible entity must reinstate the minimum rent from the beginning of the suspension. The family must be offered a reasonable repayment agreement, on terms and conditions established by the responsible entity, for the amount of back rent owed by the family.

(iii) *All programs.* (A) If the responsible entity determines there is no qualifying financial hardship exemption, the responsible entity must reinstate the minimum rent, including back rent owed from the beginning of the suspension. The family must pay the back rent on terms and conditions established by the responsible entity.

(B) If the responsible entity determines a qualifying financial hardship is long term, the responsible entity must exempt the family from the minimum rent requirements so long as such hardship continues. Such exemption shall apply from the beginning of the month following the family's request for a hardship exemption until the end of the qualifying financial hardship.

(C) The financial hardship exemption only applies to payment of the minimum rent (as determined pursuant to § 5.628(a)(4) and § 5.630), and not to the other elements used to calculate the total tenant payment (as determined pursuant to § 5.628(a)(1), (a)(2) and (a)(3)).

(3) *Public housing: Grievance hearing concerning PHA denial of request for hardship exemption.* If a public housing family requests a hearing under the PHA grievance procedure, to review the PHA's determination denying or limiting the family's claim to a financial hardship exemption, the family is not required to pay any escrow deposit in order to obtain a grievance hearing on such issues.

§ 5.632 Utility reimbursements.

(a) *Applicability.* This section is applicable to:

(1) The Section 8 programs other than the Section 8 voucher program (for distribution of a voucher housing assistance payment that exceeds rent to owner, see § 982.514(b) of this title);

(2) A public housing family paying an income-based rent (see § 960.253 of this title). (Utility reimbursement is not paid for a public housing family that is paying a flat rent.)

(b) *Payment of utility reimbursement.* (1) The responsible entity pays a utility reimbursement if the utility allowance (for tenant-paid utilities) exceeds the amount of the total tenant payment.

(2) In the public housing program (where the family is paying an income-based rent), the Section 8 moderate rehabilitation program and the Section 8 certificate or voucher program, the PHA may pay the utility reimbursement either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount paid to the utility supplier.

(3) In the other Section 8 programs, the owner must pay the utility reimbursement either:

(i) To the family, or

(ii) With consent of the family, to the utility supplier to pay the utility bill on behalf of the family.

§ 5.634 Tenant rent.

(a) *Section 8 programs.* For Section 8 programs other than the Section 8 voucher program, tenant rent is total tenant payment minus any utility allowance.

(b) *Public housing.* See § 960.253 of this title for the determination of tenant rent.

25. Add an undesignated center heading, followed by §§ 5.653, 5.655, 5.657, 5.659, and 5.661 to read as follows:

Section 8 Project-Based Assistance: Occupancy Requirements

§ 5.653 Section 8 project-based assistance programs: Admission—income-eligibility and income-targeting.

(a) *Applicability.* This section describes requirements concerning income-eligibility and income-targeting that apply to the Section 8 project-based assistance programs, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) *Who is eligible?*

(1) *Basic eligibility.* An applicant must meet all eligibility requirements in order to receive housing assistance. At a minimum, the applicant must be a family, as defined in § 5.403, and must be income-eligible, as described in this section. Such eligible applicants include single persons.

(2) *Low income limit.* No family other than a low income family is eligible for admission to the Section 8 project-based assistance programs. (This paragraph (b) does not apply to the Section 8 project-based voucher program under part 983 of this title.)

(c) *Targeting to extremely low income families.* For each project assisted under a contract for project-based assistance, of the dwelling units that become available for occupancy in any fiscal year that are assisted under the contract, not less than 40 percent shall be available for leasing only by families that are extremely low income families at the time of admission.

(d) *Limitation on admission of non-very low income families.*

(1) *Admission to units available before October 1, 1981.* Not more than 25 percent of the Section 8 project-based dwelling units that were available for occupancy under Section 8 Housing Assistance Payments Contracts effective before October 1, 1981 and that are leased on or after that date shall be available for leasing by low income families other than very low income families. HUD reserves the right to limit the admission of low income families other than very low income families to these units.

(2) *Admission to units available on or after October 1, 1981.* Not more than 15 percent of the Section 8 project-based dwelling units that initially become available for occupancy under Section 8 Housing Assistance Payments (HAP) Contracts on or after October 1, 1981 shall be available for leasing by low income families other than families that are very low income families at the time of admission to the Section 8 program. Except with the prior approval of HUD under paragraphs (d)(3) and (d)(4) of this section, the owner may only lease such units to very low income families.

(3) *Request for exception.* A request by an owner for approval of admission of low income families other than very low income families to section 8 project-based units must state the basis for requesting the exception and provide supporting data. Bases for exceptions that may be considered include the following:

(i) Need for admission of a broader range of tenants to preserve the financial or management viability of a project because there is an insufficient number of potential applicants who are very low income families;

(ii) Commitment of an owner to attaining occupancy by families with a broad range of incomes;

(iii) Project supervision by a State Housing Finance Agency having a policy of occupancy by families with a broad range of incomes supported by evidence that the Agency is pursuing this goal throughout its assisted projects

in the community, or a project with financing through Section 11(b) of the 1937 Act (42 U.S.C. 1437i) or under Section 103 of the Internal Revenue Code (26 U.S.C. 103); and

(iv) Low-income families that otherwise would be displaced from a Section 8 project.

(4) *Action on request for exception.* Whether to grant any request for exception is a matter committed by law to HUD's discretion, and no implication is intended to be created that HUD will seek to grant approvals up to the maximum limits permitted by statute, nor is any presumption of an entitlement to an exception created by the specification of certain grounds for exception that HUD may consider. HUD will review exceptions granted to owners at regular intervals. HUD may withdraw permission to exercise those exceptions for program applicants at any time that exceptions are not being used or after a periodic review, based on the findings of the review.

(e) *Income used for eligibility and targeting.* Family annual income (see § 5.609) is used both for determination of income-eligibility and for income-targeting under this section.

(f) *Reporting.* The Section 8 owner must comply with HUD-prescribed reporting requirements, including income reporting requirements that will permit HUD to maintain the data necessary to monitor compliance with income-eligibility and income-targeting requirements.

§ 5.655 Section 8 project-based assistance programs: Owner preferences in selection for a project or unit.

(a) *Applicability.* This section applies to the section 8 project-based assistance programs. The section describes requirements concerning the Section 8 owner's selection of residents to occupy a project or unit, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) *Selection.* (1) *Selection for owner's project or unit.* Selection for occupancy of a project or unit is the function of the Section 8 owner. However, selection is subject to the income-eligibility and income-targeting requirements in § 5.653.

(2) *Tenant selection plan.* The owner must adopt a written tenant selection plan in accordance with HUD requirements.

(3) *Amount of income.* The owner may not select a family for occupancy of a project or unit in an order different from the order on the owner's waiting list for the purpose of selecting a relatively higher income family. However, an owner may select a family for occupancy of a project or unit based on its income in order to satisfy the targeting requirements of § 5.653(c).

(4) *Selection for particular unit.* In selecting a family to occupy a particular unit, the owner may match family characteristics with the type of unit available, for example, number of bedrooms. If a unit has special accessibility features for persons with disabilities, the owner must first offer the unit to families which include persons with disabilities who require such features (see §§ 8.27 and 100.202 of this title).

(5) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.

(c) *Particular owner preferences.* The owner must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(1) *Residency requirements or preferences.* (i) Residency requirements are prohibited. Although the owner is not prohibited from adopting a residency preference, the owner may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a).

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area ("residency preference area").

(iii) An owner's residency preference must be approved by HUD in one of the following methods:

(A) Prior approval of the housing market area in the Affirmative Fair Housing Marketing plan (in accordance with § 108.25 of this title) as a residency preference area;

(B) Prior approval of the residency preference area in the PHA plan of the jurisdiction in which the project is located;

(C) Modification of the Affirmative Fair Housing Marketing Plan, in accordance with § 108.25 of this title,

(iv) Use of a residency preference may not have the purpose or effect of delaying or otherwise denying admission to a project or unit based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(v) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(vi) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The owner may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) *Preference for working families.* (i) The owner may adopt a preference for admission of working families (families where the head, spouse or sole member is employed). However, an applicant shall be given the benefit of the working family preference if the head and spouse, or sole member, is age 62 or older, or is a person with disabilities.

(ii) If the owner adopts a preference for admission of working families, the owner must not give a preference based on the amount of earned income.

(3) *Preference for person with disabilities.* The owner may adopt a preference for admission of families that include a person with disabilities. However, the owner may not adopt a preference for admission of persons with a specific disability.

(4) *Preference for victims of domestic violence.* The owner should consider whether to adopt a preference for admission of families that include victims of domestic violence.

(5) *Preference for single persons who are elderly, displaced, homeless or persons with disabilities over other single persons.* The owner may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.

§ 5.657 Section 8 project-based assistance programs: Reexamination of family income and composition.

(a) *Applicability.* This section states requirements for reexamination of family income and composition in the Section 8 project-based assistance programs, except for the moderate rehabilitation and the project-based certificate or voucher programs.

(b) *Regular reexamination.* The owner must conduct a reexamination and redetermination of family income and composition at least annually.

(c) *Interim reexaminations.* A family may request an interim reexamination of family income because of any changes since the last examination. The owner must make the interim reexamination within a reasonable time after the family request. The owner may adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

§ 5.659 Family information and verification.

(a) *Applicability.* This section states requirements for reexamination of family income and composition in the Section 8 project-based assistance programs, except for the moderate rehabilitation program and the project-based certificate or voucher programs.

(b) *Family obligation to supply information.* (1) The family must supply any information that HUD or the owner determines is necessary in administration of the Section 8 program, including submission of required evidence of citizenship or eligible immigration status (as provided by part 5, subpart E of this title). "Information" includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the owner or HUD for use in a regularly scheduled reexamination or an interim reexamination of family income and composition in accordance with HUD requirements.

(3) For requirements concerning the following, see part 5, subpart B of this title:

(i) Family verification and disclosure of social security numbers;

(ii) Family execution and submission of consent forms for obtaining wage and claim information from State Wage Information Collection Agencies (SWICAs).

(4) Any information supplied by the family must be true and complete.

(c) *Family release and consent.* (1) As a condition of admission to or continued occupancy of a unit with Section 8 assistance, the owner must require the family head, and such other family members as the owner designates, to execute a HUD-approved release and consent form (including any release and consent as required under § 5.230 of this title) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the owner or HUD such information as the owner or HUD determines to be necessary.

(2) The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of the Section 8 program.

(d) *Owner responsibility for verification.* The owner must obtain and document in the family file third party verification of the following factors, or must document in the file why third party verification was not available:

(1) Reported family annual income;

(2) The value of assets;

(3) Expenses related to deductions from annual income; and

(4) Other factors that affect the determination of adjusted income.

§ 5.661 Section 8 project-based assistance programs: Approval for police or other security personnel to live in project.

(a) *Applicability.* This section describes when a Section 8 owner may lease a Section 8 unit to police or other security personnel with continued Section 8 assistance for the unit. This section applies to the Section 8 project-based assistance programs.

(b) *Terms.* (1) *Security personnel* means:

(i) A police officer, or

(ii) A qualified security professional, with adequate training and experience to provide security services for project residents.

(2) *Police officer* means a person employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments.

(3) *Security* includes the protection of project residents, including resident project management from criminal or other activity that is a threat to person or property, or that arouses fears of such threat.

(c) *Owner application.* (1) The owner may submit a written application to the contract administrator (PHA or HUD) for approval to lease an available unit in a Section 8 project to security personnel who would not otherwise be eligible for Section 8 assistance, for the purpose of increasing security for Section 8 families residing in the project. (2) The owner's application must include the following information:

(i) A description of criminal activities in the project and the surrounding community, and the effect of criminal activity on the security of project residents.

(ii) Qualifications of security personnel who will reside in the project, and the period of residence by such personnel. How owner proposes to check backgrounds and qualifications of any security personnel who will reside in the project.

(iii) Full disclosure of any family relationship between the owner and any security personnel. For this purpose, "owner" includes a principal or other interested party.

(iv) How residence by security personnel in a project unit will increase security for Section 8 assisted families residing in the project.

(v) The amount payable monthly as rent to the unit owner by security personnel residing in the project (including a description of how this amount is determined), and the amount of any other compensation by the owner to such resident security personnel.

(vi) The terms of occupancy by such security personnel. The lease by owner to the approved security personnel may provide that occupancy of the unit is authorized only while the security personnel is satisfactorily performing any agreed responsibilities and functions for project security.

(vii) Other information as requested by the contract administrator.

(d) *Action by contract administrator.* (1) The contract administrator shall have discretion to approve or disapprove owner's application, and to impose conditions for approval of occupancy by security personnel in a section 8 project unit.

(2) Notice of approval by the contract administrator shall specify the term of such approved occupancy. Such approval may be withdrawn at the discretion of the contract administrator, for example, if the contract administrator determines that such occupancy is not providing adequate security benefits as proposed in the owner's application; or that security benefits from such occupancy are not a sufficient return for program costs.

(e) *Housing assistance payment and rent.* (1) During approved occupancy by security personnel as provided in this section, the amount of the monthly housing assistance payment to the owner shall be equal to the contract rent (as determined in accordance with the HAP contract and HUD requirements) minus the amount (as approved by the contract administrator) of rent payable monthly as rent to the unit owner by such security personnel. The owner shall bear the risk of collecting such rent from such security personnel, and the amount of the housing assistance payment shall not be increased because of non-payment by such security personnel. The owner shall not be entitled to receive any vacancy payment for the period following occupancy by such security personnel.

(2) In approving the amount of monthly rent payable by security personnel for occupancy of a contract unit, the contract administrator may consider whether security services to be performed are an adequate return for housing assistance payments on the unit, or whether the cost of security services should be borne by the owner from other project income.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

26. The authority citation for part 880 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

27. Amend § 880.104 as follows:

a. Revise the section heading to read as set forth below;

b. Revise paragraph (c) to read as set forth below;

c. Amend paragraph (d) by removing the phrase "(concerning preferences for selection of applicants)".

§ 880.104 Applicability of part 880.

* * * * *

(c) Section 880.607 (Termination of tenancy and modification of leases) applies to all families.

* * * * *

28. Amend § 880.201 as follows:

a. Remove the introductory text;

b. Remove the definitions of the terms "Gross rent", "Household type", "Housing type", and "Housing Assistance Plan";

c. Add definitions, in alphabetical order, of the terms "Fair Market Rent (FMR)", "HUD", "NOFA", and "Public Housing Agency (PHA)";

d. Revise the definitions of "ACC (Annual Contributions Contract)", "Annual income", "Contract rent", "Elderly family", "Family", "Housing Assistance Payment", "Low income family", "Tenant rent", "Total tenant payment", "Utility allowance", "Utility reimbursement" and "Very low-income family" to read as set forth below.

§ 880.201 Definitions.

Annual Contributions Contract (ACC). As defined in part 5 of this title.

* * * * *

Annual income. As defined in part 5 of this title.

* * * * *

Contract rent. The total amount of rent specified in the contract as payable to the owner for a unit.

* * * * *

Elderly family. As defined in part 5 of this title.

Fair Market Rent (FMR). As defined in part 5 of this title.

Family. As defined in part 5 of this title.

* * * * *

Housing assistance payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a "vacancy payment". may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract.

HUD. Department of Housing and Urban Development.

* * * * *

Low income family. As defined in part 5 of this title.

NOFA. As defined in part 5 of this title.

* * * * *

Public Housing Agency (PHA). As defined in part 5 of this title.

* * * * *

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

* * * * *

Very low income family. As defined in part 5 of this title.

29. In § 880.501, revise paragraph (e) to read as follows:

§ 880.501 The contract.

* * * * *

(e) *Payment of utility reimbursement.* Where applicable, the owner will pay a utility reimbursement in accordance with § 5.632 of this title. HUD will provide funds for the utility reimbursement to the owner in trust solely for the purpose of paying the utility reimbursement.

30. In § 880.601, revise paragraph (b) to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions, including determining eligibility of applicants, selection of tenants, reexamination and verification of family income and composition, determination of family rent (total tenant payment, tenant rent and utility reimbursement), collection of rent, termination of tenancy and eviction, and performance of all repair and maintenance functions (including ordinary and extraordinary maintenance), and replacement of capital items. (See part 5 of this title.) All functions must be performed in accordance with applicable equal opportunity requirements.

* * * * *

§ 880.603 [Amended]

31. Amend § 880.603 as follows:

a. In the introductory text of paragraph (b), remove the phrase "in accordance with 24 CFR part 813" and "and 24 CFR part 813";

b. In paragraph (c)(1), remove the phrase "24 CFR part 813" and add in its place "part 5 of this title"; and

c. In paragraph (c)(3), remove the phrase "Gross Rent" and add in its place "contract rent plus any utility allowance".

§ 880.612a [Amended]

32. In § 880.612a, remove paragraph (g) and redesignate paragraph (h) as paragraph (g).

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

33. The authority citation for part 881 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), 12701, and 13611–13619.

34. Amend § 881.104 as follows:

a. Revise the section heading to read as set forth below;

b. Revise paragraph (c) to read as set forth below;

c. Amend paragraph (d) by removing the phrase "(concerning preferences for selection of applicants)".

§ 881.104 Applicability of part 881.

* * * * *

(c) Section 881.607 (Termination of tenancy and modification of leases) applies to all families.

* * * * *

35. Amend § 881.201 as follows:

a. Remove the introductory text;

b. Remove the definitions of the terms "Gross rent", "Household type", "Housing Assistance Plan", and "Housing type";

c. Add definitions, in alphabetical order, of the terms "Fair Market Rent (FMR)", "HUD", "NOFA", and "Public Housing Agency (PHA)";

d. Revise the definitions of "ACC (Annual Contributions Contract)", "Annual income", "Contract rent", "Elderly family", "Family", "Housing Assistance Payment", "Low income family", "Tenant rent", "Total tenant payment", "Utility allowance", "Utility reimbursement" and "Very low-income family" to read as set forth below.

§ 881.201 Definitions.

Annual Contributions Contract (ACC). As defined in part 5 of this title.

Annual income. As defined in part 5 of this title.

* * * * *

Contract rent. The total amount of rent specified in the contract as payable to the owner for a unit.

* * * * *

Elderly family. As defined in part 5 of this title.

Fair Market Rent (FMR). As defined in part 5 of this title.

Family. As defined in part 5 of this title.

* * * * *

Housing assistance payment. The payment made by the contract administrator to the owner of an assisted unit as provided in the contract. Where the unit is leased to an eligible family, the payment is the difference between the contract rent and the tenant rent. An additional payment is made to the family when the utility allowance is greater than the total tenant payment. A housing assistance payment, known as a "vacancy payment". may be made to the owner when an assisted unit is vacant, in accordance with the terms of the contract.

HUD. Department of Housing and Urban Development.

* * * * *

Low income family. As defined in part 5 of this title.

NOFA. As defined in part 5 of this title.

* * * * *

Public Housing Agency (PHA). As defined in part 5 of this title.

* * * * *

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

* * * * *

Very low income family. As defined in part 5 of this title.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

36. The authority citation for part 884 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

37. Amend § 884.102 as follows:

a. Remove the definition of "Gross rent"; and

b. Revise the definitions of "Annual income", "Family", "Tenant rent", "Total tenant payment", "Utility allowance", "Utility reimbursement", and "Very low-income family" to read as follows:

§ 884.102 Definitions.

* * * * *

Annual income. As defined in part 5 of this title.

* * * * *

Family. As defined in part 5 of this title.

* * * * *

Low-income family. As defined in part 5 of this title.

* * * * *

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Very low-income family. As defined in part 5 of this title.

§ 884.105 [Amended]

38. Amend § 884.105(a) by removing the phrase "Gross Rents" and adding in its place "Contract Rents plus any utility allowances".

§ 884.116 [Amended]

39. Amend § 884.116(b) by removing the phrase "24 CFR part 813" and adding in its place "part 5 of this title".

§ 884.118 [Amended]

40. Amend § 884.118 as follows:

a. In paragraph (a)(3), remove the phrase "24 CFR parts 5 and 813" and add in its place "part 5 of this title";

b. In paragraph (a)(7), remove the phrase "24 CFR part 813" and add in its place "part 5 of this title"; and

c. In paragraph (a)(8), remove the phrase "813 of this chapter" and add in its place "5 of this title".

§ 884.214 [Amended]

41. Amend § 884.214 as follows:

a. Paragraph (b)(2) is amended by removing from the second sentence the comma before the word "except", adding a period in its place, and removing the remainder of the sentence starting with the word "except" and ending with the period.

b. Paragraph (b)(8) is amended by removing the phrase "24 CFR 812.9, and also 24 CFR 812.10" and add in its place "part 5 of this title".

§ 884.218 [Amended]

42. Amend § 884.218 as follows:

a. In paragraph (a), remove the phrase "813 of this chapter" and add in its place "5 of this title"; and

b. In paragraph (c), remove the phrase "Gross Rent" and add in its place "Contract Rent plus any utility allowance".

§ 884.223a [Amended]

43. Amend § 884.223a by removing paragraph (g) and redesignating paragraph (h) as paragraph (g).

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

44. The authority citation for part 886 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, 3535(d), and 13611–13619.

45. Amend § 886.102 as follows:

a. Remove the definition of "Gross rent"; and

b. Revise the definitions of "Annual income", "Family", "Low-income family", "Tenant rent", "Total tenant payment", "Utility allowance", "Utility reimbursement", and "Very low-income family" to read as follows:

§ 886.102 Definitions.

* * * * *

Annual income. As defined in part 5 of this title.

* * * * *

Family. As defined in part 5 of this title.

* * * * *

Low-income family. As defined in part 5 of this title.

* * * * *

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Very low-income family. As defined in part 5 of this title.

§ 886.119 [Amended]

46. Amend § 886.119 as follows:

a. In paragraph (a)(3), remove the phrases "24 CFR parts 812 and 813" and "24 CFR part 5" and add in their place "part 5 of this title"; and remove the phrase "provision of Federal selection preferences"; and

b. In paragraphs (a)(7) and (a)(8), remove the phrase "813 of this chapter" and add in its place "5 of this title".

§ 886.121 [Amended]

47. Amend § 886.121 as follows:

a. In paragraph (b), remove the phrase "24 CFR part 812" and add in its place "part 5 of this title"; and

b. In paragraph (c), remove the phrase "24 CFR 812.9, and also 24 CFR 812.10" and add in its place "part 5, subpart E, of this title".

§ 886.124 [Amended]

48. Amend § 886.124 as follows:

a. In paragraph (a), remove the phrase "part 813 of this chapter" and add in its place "part 5 of this title";

b. In paragraphs (a) and (b), remove the phrase "24 CFR part 812" from the three places that it occurs, and add in its place "part 5, subpart E, of this title"; and

c. In paragraph (c), remove the phrase "24 CFR 812.9 and also 24 CFR 812.10" and add in its place "part 5, subpart E, of this title".

§ 886.128 [Amended]

49. Amend § 886.128 as follows:

a. Remove the phrase "24 CFR parts 247 and 812" and add in its place "parts 247 and 5 of this title"; and

b. Remove the phrase "24 CFR 812.10" and add in its place "part 5, subpart E, of this title".

§ 886.129 [Amended]

50. Amend § 886.129(e) by removing the phrase "24 CFR 812.9" from the one place it appears and by removing the phrase "24 CFR 812.10" from the two places it appears, and adding in each of those places "part 5, subpart E, of this title".

51. Revise § 886.132 to read as follows:

§ 886.132 Tenant selection.

Sections 5.653 through 5.661 of this title govern selection of tenants and occupancy requirements applicable under this subpart A.

§ 886.138 [Amended]

52. Amend § 886.138 by removing from paragraph (g)(1)(iii)(A)(*2*) the phrase "24 CFR 813.107" and by adding in its place "part 5 of this title".

53. Section 886.302 is amended as follows:

a. Remove the definition of "Gross rent"; and

b. Revise the definitions of "Annual income", "Family", "Low-income family", "Tenant rent", "Total tenant payment", "Utility allowance", "Utility reimbursement", and "Very low-income family" to read as follows:

§ 886.302 Definitions.

* * * * *

Annual income. As defined in part 5 of this title.

* * * * *

Family. As defined in part 5 of this title.

* * * * *

Low-income family. As defined in part 5 of this title.

* * * * *

Tenant rent. As defined in part 5 of this title.

Total tenant payment. As defined in part 5 of this title.

Utility allowance. As defined in part 5 of this title.

Utility reimbursement. As defined in part 5 of this title.

Very low-income family. As defined in part 5 of this title.

§ 886.318 [Amended]

54. Amend § 886.318 as follows:

a. Remove the phrase "parts 812 and 813" from paragraph (a)(3) and add "part 5 of this title" in its place;

b. Remove the phrase "provision of Federal selection preferences in accordance with § 886.337," from paragraph (a)(3);

c. In paragraph (a)(6), remove the phrase "part 813 of the chapter" and add in its place "part 5 of this title"; and

d. In paragraph (a)(7), remove the phrase "part 813 of this chapter" and add in its place "part 5 of this title".

55. Amend § 886.321 as follows:

a. Revise paragraph (b)(1) to read as set forth below;

b. In paragraph (b)(2), remove the phrase "or to accept applications only from families that claim a Federal preference under § 886.337" and remove the sentence starting with the word "Notwithstanding"; and

c. In paragraph (b)(7), remove the phrase "24 CFR 812.9, and 24 CFR 812.10" and add in its place "part 5 of this title":

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for taking applications, selecting families, and all related determinations, in accordance with part 5 of this title. (See especially, §§ 5.653 through 5.661.)

* * * * *

§ 886.324 [Amended]

56. Amend § 886.324 as follows:

a. In paragraph (a), remove the phrase "part 813 of this chapter" and add in its place "part 5 of this title", and remove the phrase "of part 812" and add in its place "of part 5 of this title";

b. In paragraphs (a) and (b), remove the phrase "24 CFR part 812" and add in its place "part 5 of this title";

c. In paragraph (c), remove the phrase "Gross Rent" and add in its place "Contract Rent plus any applicable Utility Allowance", and remove the phrase "24 CFR 812.9, and also 24 CFR 812.10" and add in its place "part 5, subpart E, of this title".

§ 886.328 [Amended]

57. Amend § 886.328 by removing the phrase "24 CFR parts 247 and 812" and by adding in its place "parts 247 and 5 of this title", and by removing the phrase "24 CFR 812.10" and by adding in its place "part 5, subpart E, of this title".

§ 886.329 [Amended]

58. Amend § 886.329(e) by removing the phrase "24 CFR 812.9" and by adding in its place "part 5, subpart E, of this title", and by removing the phrase "24 CFR 812.10" from the two places where it occurs and by adding in those places "part 5, subpart E, of this title".

§ 886.329a [Amended]

59. In § 886.329a, remove paragraph (g) and redesignate paragraph (h) as paragraph (g).

§ 886.334 [Amended]

60. Amend § 886.334 by removing from paragraph (b)(4) the phrase "Gross Rents" and adding in its place "Contract Rents plus any applicable Utility Allowances".

§ 886.338 [Amended]

61. Amend § 886.338 by removing from paragraph (g)(1)(iii)(A)(*2*) the phrase "24 CFR 813.107" and adding in its place "part 5 of this title".

PART 891—SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES

62. The authority citation for part 891 continues to read as follows:

Authority: 12 U.S.C. 1701q; 42 U.S.C. 1437f, 3535(d), and 8013.

§ 891.410 [Amended]

63. Amend § 891.410 by removing paragraph (h).

§ 891.550 [Removed]

64. Remove § 891.550.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

65. The authority citation for part 960 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, and 3535(d).

66. Amend part 960 by adding a new subpart A to read as follows:

Subpart A—Applicability, definitions, equal opportunity requirements.

Sec.
960.101 Applicability.
960.102 Definitions.
960.103 Equal opportunity requirements.

Subpart A—Applicability, Definitions, Equal Opportunity Requirements

§ 960.101 Applicability.

This part is applicable to public housing.

§ 960.102 Definitions.

(a) *Definitions found elsewhere:* (1) *General definitions.* The following terms are defined in part 5, subpart A of this title: *1937 Act, HUD, MSA, public housing, public housing agency* (PHA), *Section 8.*

(2) *Definitions under the 1937 Act.* The following terms are defined in part 5, subpart D of this title: *annual contributions contract* (ACC), *applicant, elderly family, elderly person, extremely low income family, family, low income family, person with disabilities.*

(3) *Definitions and explanations concerning income and rent.* The following terms are defined or explained in part 5, subpart F of this title: *Annual income* (see § 5.609); *economic self-sufficiency program, tenant rent, total tenant payment* (see § 5.628), *utility allowance.*

(b) *Additional definitions.* In addition to the definitions in paragraph (a), the following definitions and cross-references apply:

Ceiling rent. See § 960.253(d).

Designated housing. See part 945 of this chapter.

Disabled families. See § 5.403 of this title.

Eligible families. Low income families who are eligible for admission to the public housing program.

Flat rent. See § 960.253(b).

Income-based rent. See § 960.253(c).

Mixed population development. A public housing development, or portion of a development, that was reserved for elderly and disabled families at its inception (and has retained that character). If the development was not so reserved at its inception, the PHA has obtained HUD approval to give preference in tenant selection for all units in the development (or portion of development) to elderly families and disabled families. These developments were formerly known as elderly projects.

Over-income family. A family that is not a low income family. See subpart E of this part.

PHA plan. See part 903 of this chapter.

Residency preference. A preference for admission of persons who reside in a specified geographic area.

Tenant-based. See § 982.1(b) of this chapter.

§ 960.103 Equal opportunity requirements.

(a) *Applicable requirements.* The PHA must administer its public housing program in accordance with all applicable equal opportunity requirements imposed by contract or federal law, including the authorities cited in § 5.105(a) of this title.

(b) *PHA duty to affirmatively further fair housing.* The PHA must affirmatively further fair housing in the administration of its public housing program.

(c) *Equal opportunity certification.* The PHA must submit signed equal opportunity certifications to HUD in accordance with § 903.7(o) of this title, including certification that the PHA will affirmatively further fair housing.

67. Revise the heading of subpart B of part 960 to read as follows:

Subpart B—Admission

68. Revise §§ 960.201 and 960.202 to read as follows:

§ 960.201 Purpose.

(a) This subpart states HUD eligibility and selection requirements for admission to public housing.

(b) See also related HUD regulations in this title concerning these subjects:

(1) 1937 Act definitions: part 5, subpart D;

(2) Restrictions on assistance to noncitizens: part 5, subpart E;

(3) Family income and family payment: part 5, subpart F;

(4) Public housing agency plans: part 903;

(5) Rent and reexamination: part 960, subpart C;

(6) Mixed population developments: part 960, subpart D;

(7) Occupancy by over-income families or police officers: part 960, subpart E.

§ 960.202 Eligibility and targeting for admission.

(a) *Who is eligible?* (1) *Basic eligibility.* An applicant must meet all eligibility requirements in order to receive housing assistance. At a minimum, the applicant must be a family, as defined in § 5.403 of this title, and must be income-eligible, as described in this section. Such eligible applicants include single persons.

(2) *Low income limit.* No family other than a low income family is eligible for admission to a PHA's public housing program.

(b) *Targeting admissions to extremely low income families.*—(1) *Targeting requirement.* (i) Not less than 40 percent of the families admitted to a PHA's public housing program during the PHA fiscal year from the PHA waiting list shall be extremely low income families. This is called the "basic targeting requirement".

(ii) To the extent provided in paragraph (b)(2) of this section, admission of extremely low income families to the PHA's Section 8 voucher program during the same PHA fiscal year is credited against the basic targeting requirement.

(iii) A PHA must comply with both the targeting requirement found in this part and the deconcentration requirements found in part 903 of this chapter.

(2) *Credit for admissions to PHA voucher program.* (i) If admissions of extremely low income families to the PHA's voucher program during a PHA fiscal year exceeds the 75 percent minimum targeting requirement for the PHA's voucher program (see § 982.201(b)(2) of this chapter), such excess shall be credited (subject to the limitations in paragraph (b)(2)(ii) of this section) against the PHA's basic targeting requirement for the same fiscal year.

(ii) The fiscal year credit for voucher program admissions that exceed the minimum voucher program targeting requirement shall not exceed the lower of:

(A) Ten percent of public housing waiting list admissions during the PHA fiscal year;

(B) Ten percent of waiting list admission to the PHA's Section 8 tenant-based assistance program during the PHA fiscal year; or

(C) The number of qualifying low income families who commence occupancy during the fiscal year of PHA public housing units located in census tracts with a poverty rate of 30 percent or more. For this purpose, qualifying low income family means a low income family other than an extremely low income family.

(c) *Income used for eligibility and targeting.* Family annual income (see § 5.609) is used both for determination of income eligibility under paragraph (a) and for PHA income targeting under paragraph (b) of this section.

(d) *Reporting.* The PHA must comply with HUD-prescribed reporting requirements that will permit HUD to maintain the data, as determined by HUD, necessary to monitor compliance with income eligibility and targeting requirement.

69. Amend § 960.204 as follows:

a. Revise paragraph (a)(2)(i) to read as set forth below;

b. Remove existing paragraph (a)(2)(iii) and redesignate paragraph (a)(2)(iv) as new paragraph (a)(2)(iii);

c. Amend paragraph (a)(3)(ii) by inserting a semicolon after the words "waiting list", by removing the phrase "that includes the following:", and by removing paragraphs (a)(3)(ii)(A) through (D).

§ 960.204 Tenant selection policies.

(a) * * *

(2) * * *

(i) To provide for deconcentration and income-mixing in accordance with the PHA plan (see § 903.7 of this title).

* * * * *

70. Amend § 960.205 as follows:

a. Revise paragraph (b) introductory text to read as set forth below; and

b. Revise paragraph (c) to read as set forth below

§ 960.205 Selection criteria.

* * * * *

(b) In selection of families for admission to its public housing program, or to occupy a public housing development or unit, the PHA is responsible for screening family behavior and suitability for tenancy. The PHA may consider all relevant information, which may include, but is not limited to:

* * * * *

(c) The requirements with respect to deconcentrating poverty and producing a mix of incomes in the PHA's public housing developments are found in the PHA Plan rule, at part 903 of this title.

* * * * *

71. Revise § 960.206 to read as follows:

§ 960.206 Waiting list: Local preferences in admission to public housing program.

(a) *Establishment of PHA local preferences.* (1) The PHA may adopt a system of local preference for selection of families admitted to the PHA's public housing program. The PHA system of selection preferences must be based on local housing needs and priorities as determined by the PHA. In determining such needs and priorities, the PHA shall use generally accepted data sources. Such sources include public comment on the PHA plan (as received pursuant to § 903.17 of this chapter), and on the consolidated plan for the relevant jurisdiction (as received pursuant to part 91 of this title).

(2) The PHA may limit the number of applicants that qualify for any local preference.

(3) PHA adoption and implementation of local preferences is subject to HUD requirements concerning income-targeting (§ 960.202(b)), deconcentration and income-mixing (§ 903.7), and selection preferences for developments designated exclusively for elderly or disabled families or for mixed population developments (§ 960.407).

(4) The PHA must inform all applicants about available preferences and must give applicants an opportunity to show that they qualify for available preferences.

(b) *Particular local preferences.*—(1) *Residency requirements or preferences.*

(i) Residency requirements are prohibited. Although a PHA is not prohibited from adopting a residency preference, the PHA may only adopt or implement residency preferences in accordance with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title.

(ii) A residency preference is a preference for admission of persons who reside in a specified geographic area ("residency preference area"). A county or municipality may be used as a residency preference area. An area smaller than a county or municipality may not be used as a residency preference area.

(iii) Any PHA residency preferences must be included in the statement of PHA policies that govern eligibility, selection and admission to the program, which is included in the PHA annual plan (or supporting documents) pursuant to part 903 of this chapter. Such policies must specify that use of a residency preference will not have the purpose or effect of delaying or otherwise denying admission to the program based on the race, color, ethnic origin, gender, religion, disability, or age of any member of an applicant family.

(iv) A residency preference must not be based on how long an applicant has resided or worked in a residency preference area.

(v) Applicants who are working or who have been notified that they are hired to work in a residency preference area must be treated as residents of the residency preference area. The PHA may treat graduates of, or active participants in, education and training programs in a residency preference area as residents of the residency preference area if the education or training program is designed to prepare individuals for the job market.

(2) *Preference for working families.* The PHA may adopt a preference for admission of working families (families where the head, spouse, or sole member, is employed). However, an applicant must be given the benefit of the working family preference if the head and spouse, or sole member is age 62 or older, or is a person with disabilities.

(3) *Preference for person with disabilities.* The PHA may adopt a preference for admission of families that include a person with disabilities. However, the PHA may not adopt a preference for persons with a specific disability.

(4) *Preference for victims of domestic violence.* The PHA should consider whether to adopt a local preference for admission of families that include victims of domestic violence.

(5) *Preference for single persons who are elderly, displaced, homeless or a person with disabilities.* The PHA may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.

(c) *Selection for particular unit.* In selecting a family to occupy a particular unit, the PHA may match characteristics of the family with the type of unit available, for example, number of bedrooms. In selection of families to occupy units with special accessibility features for persons with disabilities, the PHA must first offer such units to families which include persons with disabilities who require such accessibility features (see §§ 8.27 and 100.202 of this title).

(d) *Housing assistance limitation for single persons.* A single person who is not an elderly or displaced person, or a person with disabilities, or the remaining member of a resident family may not be provided a housing unit with two or more bedrooms.

(e) *Selection method.* (1) The PHA must use the following to select among applicants on the waiting list with the same priority for admission:

(i) Date and time of application; or

(ii) A drawing or other random choice technique.

(2) The method for selecting applicants must leave a clear audit trail that can be used to verify that each applicant has been selected in accordance with the method specified in the PHA plan.

§ 960.208 [Removed]

72. Remove § 960.208.

§ 960.207 [Redesignated]

73. Redesignate § 960.207 as § 960.208.

§§ 960.209 and 960.210 [Removed]

74. Remove §§ 960.209 and 960.210.

75. In part 960, add new subpart C, to read as follows:

Subpart C—Rent and Reexamination

Sec.

960.253 Choice of rent.
960.255 Self-sufficiency incentives—Disallowance of increase in annual income.
960.257 Family income and composition: Regular and interim reexaminations.
960.259 Family information and verification.
960.261 Restriction on eviction of families based on income.

Subpart C—Rent and Reexamination

§ 960.253 Choice of rent.

(a) *Rent options.* (1) *Annual choice by family.* Once a year, the PHA must give each family the opportunity to choose between the two methods for determining the amount of tenant rent payable monthly by the family. The family may choose to pay as tenant rent either a flat rent as determined in accordance with paragraph (b) of this section, or an income-based rent as determined in accordance with paragraph (c) of this section. Except for financial hardship cases as provided in paragraph (d) of this section, the family may not be offered this choice more than once a year.

(2) *Relation to minimum rent.* Regardless of whether the family chooses to pay a flat rent or income-based rent, the family must pay at least the minimum rent as determined in accordance with § 5.630 of this title.

(b) *Flat rent.* (1) The flat rent is based on the market rent charged for comparable units in the private unassisted rental market. It is equal to the estimated rent for which the PHA could promptly lease the public housing unit after preparation for occupancy.

(2) The PHA must use a reasonable method to determine the flat rent for a unit. To determine the flat rent, the PHA must consider:

(i) The location, quality, size, unit type and age of the unit; and

(ii) Any amenities, housing services, maintenance and utilities provided by the PHA.

(3) The flat rent is designed to encourage self-sufficiency and to avoid creating disincentives for continued residency by families who are attempting to become economically self-sufficient.

(4) If the family chooses to pay a flat rent, the PHA does not pay any utility reimbursement.

(5) The PHA must maintain records that document the method used to determine flat rents, and also show how flat rents are determined by the PHA in accordance with this method, and document flat rents offered to families under this method.

(c) *Income-based rent.* (1) An income-based rent is a tenant rent that is based on the family's income and the PHA's rent policies for determination of such rents.

(2) The PHA rent policies may specify that the PHA will use percentage of family income or some other reasonable system to determine income-based rents. The PHA rent policies may provide for depositing a portion of tenant rent in an escrow or savings account, for imposing a ceiling on tenant rents, for adoption of permissive income deductions (see § 5.611(b) of this title), or for another reasonable system to determining the amount of income-based tenant rent.

(3) The income-based tenant rent must not exceed the total tenant payment (§ 5.628 of this title) for the family minus any applicable utility allowance for tenant-paid utilities. If the utility allowance exceeds the total tenant payment, the PHA shall pay such excess amount (the utility reimbursement) either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier, the PHA must notify the family of the amount of utility reimbursement paid to the utility supplier.

(d) *Ceiling rent.* Instead of using flat rents, a PHA may retain ceiling rents that were authorized and established before October 1, 1999, for a period of three years from October 1, 1999. After this three year period, the PHA must adjust such ceiling rents to the level required for flat rents under this section; however, ceiling rents are subject to paragraph (a) of this section, the annual reexamination requirements, and the limitation that the tenant rent plus any utility allowance may not exceed the total tenant payment.

(e) *Information for families.* For the family to make an informed choice about its rent options, the PHA must provide sufficient information for an informed choice. Such information must include at least the following written information:

(1) The PHA's policies on switching type of rent in circumstances of financial hardship, and

(2) The dollar amounts of tenant rent for the family under each option. If the family chose a flat rent for the previous year, the PHA is required to provide the amount of income-based rent for the subsequent year only the year the PHA conducts an income reexamination or if the family specifically requests it and submits updated income information. For a family that chooses the flat rent option, the PHA must conduct a reexamination of family income at least once every three years.

(f) *Switch from flat rent to income-based rent because of hardship.* (1) A family that is paying a flat rent may at any time request a switch to payment of income-based rent (before the next annual option to select the type of rent) if the family is unable to pay flat rent because of financial hardship. The PHA must adopt written policies for determining when payment of flat rent is a financial hardship for the family.

(2) If the PHA determines that the family is unable to pay the flat rent because of financial hardship, the PHA must immediately allow the requested switch to income-based rent. The PHA shall make the determination within a reasonable time after the family request.

(3) The PHA policies for determining when payment of flat rent is a financial hardship must provide that financial hardship include the following situations:

(i) The family has experienced a decrease in income because of changed circumstances, including loss or reduction of employment, death in the family, or reduction in or loss of earnings or other assistance;

(ii) The family has experienced an increase in expenses, because of changed circumstances, for medical costs, child care, transportation, education, or similar items; and

(iii) Such other situations determined by the PHA to be appropriate.

§ 960.255 Self-sufficiency incentives—Disallowance of increase in annual income.

(a) *Definitions.* The following definitions apply for purposes of this section.

Disallowance. Exclusion from annual income.

Previously unemployed includes a person who has earned, in the twelve months previous to employment, no more than would be received for 10 hours of work per week for 50 weeks at the established minimum wage.

Qualified family. A family residing in public housing:

(i) Whose annual income increases as a result of employment of a family member who was unemployed for one or more years previous to employment;

(ii) Whose annual income increases as a result of increased earnings by a family member during participation in any economic self-sufficiency or other job training program; or

(iii) Whose annual income increases, as a result of new employment or increased earnings of a family member, during or within six months after receiving assistance, benefits or services under any state program for temporary assistance for needy families funded under Part A of Title IV of the Social Security Act, as determined by the PHA in consultation with the local agencies administering temporary assistance for needy families (TANF) and Welfare-to-Work (WTW) programs. The TANF program is not limited to monthly income maintenance, but also includes such benefits and services as one-time payments, wage subsidies and transportation assistance—provided that the total amount over a six-month period is at least $500.

(b) *Disallowance of increase in annual income.* (1) *Initial twelve month exclusion.* During the cumulative twelve

month period beginning on the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income (as defined in § 5.609 of this title) of a qualified family any increase in income of the family member as a result of employment over prior income of that family member.

(2) *Second twelve month exclusion and phase-in.* During the second cumulative twelve month period after the date a member of a qualified family is first employed or the family first experiences an increase in annual income attributable to employment, the PHA must exclude from annual income of a qualified family fifty percent of any increase in income of such family member as a result of employment over income of that family member prior to the beginning of such employment.

(3) *Maximum four year disallowance.* The disallowance of increased income of an individual family member as provided in paragraph (b)(1) or (b)(2) of this section is limited to a lifetime 48 month period. It only applies for a maximum of twelve months for disallowance under paragraph (b)(1) and a maximum of twelve months for disallowance under paragraph (b)(2), during the 48 month period starting from the initial exclusion under paragraph (b)(1) of this section.

(c) *Inapplicability to admission.* The disallowance of increases in income as a result of employment under this section does not apply for purposes of admission to the program (including the determination of income eligibility and income targeting).

(d) *Individual Savings Accounts.* As an alternative to the disallowance of increases in income as a result of employment described in paragraph (b) of this section, a PHA may choose to provide for individual savings accounts for public housing residents who pay an income-based rent, in accordance with a written policy, which must include the following provisions:

(1) The PHA must advise the family that the savings account option is available;

(2) At the option of the family, the PHA must deposit in the savings account the total amount that would have been included in tenant rent payable to the PHA as a result of increased income that is disallowed in accordance with paragraph (b) of this section;

(3) Amounts deposited in a savings account may be withdrawn only for the purpose of:

(i) Purchasing a home;

(ii) Paying education costs of family members;

(iii) Moving out of public or assisted housing; or

(iv) Paying any other expense authorized by the PHA for the purpose of promoting the economic self-sufficiency of residents of public housing;

(4) The PHA must maintain the account in an interest bearing investment and must credit the family with the net interest income, and the PHA may not charge a fee for maintaining the account;

(5) At least annually the PHA must provide the family with a report on the status of the account; and

(6) If the family moves out of public housing, the PHA shall pay the tenant any balance in the account, minus any amounts owed to the PHA.

§ 960.257 Family income and composition: Regular and interim reexaminations.

(a) *When PHA is required to conduct reexamination.* (1) For families who pay an income-based rent, the PHA must conduct a reexamination of family income and composition at least annually and must make appropriate adjustments in the rent after consultation with the family and upon verification of the information.

(2) For families who choose flat rents, the PHA must conduct a reexamination of family composition at least annually, and must conduct a reexamination of family income at least once every three years.

(3) For all families who include nonexempt individuals, as defined in § 960.601, the PHA must determine compliance once each twelve months with community service and self-sufficiency requirements in subpart F of this part.

(4) The PHA may use the results of these reexaminations to require the family to move to an appropriate size unit.

(b) *Interim reexaminations.* A family may request an interim reexamination of family income or composition because of any changes since the last determination. The PHA must make the interim reexamination within a reasonable time after the family request. The PHA must adopt policies prescribing when and under what conditions the family must report a change in family income or composition.

(c) *PHA reexamination policies.* The PHA must adopt admission and occupancy policies concerning conduct of annual and interim reexaminations in accordance with this section, and shall conduct reexaminations in accordance with such policies. The PHA reexamination policies must be in accordance with the PHA plan.

§ 960.259 Family information and verification.

(a) *Family obligation to supply information.* (1) The family must supply any information that the PHA or HUD determines is necessary in administration of the public housing program, including submission of required evidence of citizenship or eligible immigration status (as provided by part 5, subpart E of this title). "Information" includes any requested certification, release or other documentation.

(2) The family must supply any information requested by the PHA or HUD for use in a regularly scheduled reexamination or an interim reexamination of family income and composition in accordance with HUD requirements.

(3) For requirements concerning the following, see part 5, subpart B of this title:

(i) Family verification and disclosure of social security numbers;

(ii) Family execution and submission of consent forms for obtaining wage and claim information from State Wage Information Collection Agencies (SWICAs).

(4) Any information supplied by the family must be true and complete.

(b) *Family release and consent.* (1) As a condition of admission to or continued assistance under the program, the PHA shall require the family head, and such other family members as the PHA designates, to execute a consent form (including any release and consent as required under § 5.230 of this title) authorizing any depository or private source of income, or any Federal, State or local agency, to furnish or release to the PHA or HUD such information as the PHA or HUD determines to be necessary.

(2) The use or disclosure of information obtained from a family or from another source pursuant to this release and consent shall be limited to purposes directly connected with administration of the program.

(c) *PHA responsibility for reexamination and verification.* (1) The PHA must obtain and document in the family file third party verification of the following factors, or must document in the file why third party verification was not available:

(i) Reported family annual income;

(ii) The value of assets;

(iii) Expenses related to deductions from annual income; and

(iv) Other factors that affect the determination of adjusted income or income-based rent.

§ 960.261 Restriction on eviction of families based on income.

No PHA shall commence eviction proceedings based on the income of the tenant family unless:

(a) It has determined that there is decent, safe, and sanitary housing of suitable size for the family available at a rent not exceeding the tenant rent; or

(b) It is required to do so by local law.

Subpart D—Preference for Elderly Families and Disabled Families in Mixed Population Projects

§ 960.405 [Removed]

76. Remove § 960.405.

77. Revise § 960.407 to read as follows:

§ 960.407 Selection preference for mixed population developments.

(a) The PHA must give preference to elderly families and disabled families equally in determining priority for admission to mixed population developments. The PHA may not establish a limit on the number of elderly families or disabled families who may be accepted for occupancy in a mixed population development.

(b) In selecting elderly families and disabled families to occupy units in mixed population developments, the PHA must first offer units that have special accessibility features for persons with disabilities to families who include persons with disabilities who require the accessibility features of such units (see §§ 8.27 and 100.202 of this title).

78. Revise subpart E to read as follows:

Subpart E—Occupancy by over-income families or police officers

Sec.
960.503 Occupancy by over-income families.
960.505 Occupancy by police officers to provide security for public housing residents.

Subpart E—Occupancy by over-income families or police officers

§ 960.503 Occupancy by over-income families.

A PHA that owns or operates fewer than two hundred fifty (250) public housing units, may lease a unit in a public housing development to an over-income family (a family whose annual income exceeds the limit for a low income family at the time of initial occupancy), in accordance with its PHA annual plan (or supporting documents), if all the following conditions are satisfied:

(a) There are no eligible low income families on the PHA waiting list or applying for public housing assistance when the unit is leased to an over-income family;

(b) The PHA has publicized availability of the unit for rental to eligible low income families, including publishing public notice of such availability in a newspaper of general circulation in the jurisdiction at least thirty days before offering the unit to an over-income family;

(c) The over-income family rents the unit on a month-to-month basis for a rent that is not less than the PHA's cost to operate the unit;

(d) The lease to the over-income family provides that the family agrees to vacate the unit when needed for rental to an eligible family; and

(e) The PHA gives the over-income family at least thirty days notice to vacate the unit when the unit is needed for rental to an eligible family.

§ 960.505 Occupancy by police officers to provide security for public housing residents.

(a) *Police officer.* For purpose of this subpart E, "police officer" means a person determined by the PHA to be, during the period of residence of that person in public housing, employed on a full-time basis as a duly licensed professional police officer by a Federal, State or local government or by any agency of these governments. An officer of an accredited police force of a housing agency may qualify.

(b) *Occupancy in public housing.* For the purpose of increasing security for residents of a public housing development, the PHA may allow police officers who would not otherwise be eligible for occupancy in public housing, to reside in a public housing dwelling unit. The PHA must include in the PHA annual plan or supporting documents the number and location of the units to be occupied by police officers, and the terms and conditions of their tenancies; and a statement that such occupancy is needed to increase security for public housing residents.

79. Add a new subpart F, to read as follows:

Subpart F—When Resident Must Perform Community Service Activities or Self-Sufficiency Work Activities

Sec.
960.600 Implementation.
960.601 Definitions.
960.603 General requirements.
960.605 How PHA administers service requirements.
960.607 Assuring resident compliance.
960.609 Prohibition against replacement of PHA employees.

Subpart F—When Resident Must Perform Community Service Activities or Self-Sufficiency Work Activities

§ 960.600 Implementation.

PHAs and residents must comply with the requirements of this subpart beginning with PHA fiscal years that commence on or after October 1, 2000. Unless otherwise provided by § 903.11 of this chapter, Annual Plans submitted for those fiscal years are required to contain information regarding the PHA's compliance with the community service requirement, as described in § 903.7 of this chapter.

§ 960.601 Definitions.

(a) *Definitions found elsewhere.*

(1) *General definitions.* The following terms are defined in part 5, subpart A of this title: *public housing, public housing agency* (PHA).

(2) *Definitions concerning income and rent.* The following terms are defined in part 5, subpart F of this title: *economic self-sufficiency program, work activities.*

(b) *Other definitions.* In addition to the definitions in paragraph (a) of this section, the following definitions apply:

Community service. The performance of voluntary work or duties that are a public benefit, and that serve to improve the quality of life, enhance resident self-sufficiency, or increase resident self-responsibility in the community. Community service is not employment and may not include political activities.

Exempt individual. An adult who:

(1) Is 62 years or older;

(2)(i) Is a blind or disabled individual, as defined under 216(i)(1) or 1614 of the Social Security Act (42 U.S.C. 416(i)(1); 1382c), and who certifies that because of this disability she or he is unable to comply with the service provisions of this subpart, or

(ii) Is a primary caretaker of such individual;

(3) Is engaged in work activities;

(4) Meets the requirements for being exempted from having to engage in a work activity under the State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the State in which the PHA is located, including a State-administered welfare-to-work program; or

(5) Is a member of a family receiving assistance, benefits or services under a State program funded under part A of title IV of the Social Security Act (42 U.S.C. 601 *et seq.*) or under any other welfare program of the State in which

the PHA is located, including a State-

claiming status as an exempt person and

(c) *Tenant agreement to comply with*

(iii) The term of the lease (lease term

violation of material terms of the lease,

PART 984—SECTION 8 AND PUBLIC

the PHA is located, including a State-administered welfare-to-work program, and has not been found by the State or other administering entity to be in noncompliance with such a program.

Service requirement. The obligation of each adult resident, other than an exempt individual, to perform community service or participate in an economic-self sufficiency program required in accordance with § 960.603.

§ 960.603 General requirements.

(a) *Service requirement.* Except for any family member who is an exempt individual, each adult resident of public housing must:

(1) Contribute 8 hours per month of community service (not including political activities); or

(2) Participate in an economic self-sufficiency program for 8 hours per month; or

(3) Perform 8 hours per month of combined activities as described in paragraphs (a)(1) and (a)(2) of this section.

(b) *Family violation of service requirement.* The lease shall specify that it shall be renewed automatically for all purposes, unless the family fails to comply with the service requirement. Violation of the service requirement is grounds for nonrenewal of the lease at the end of the twelve month lease term, but not for termination of tenancy during the course of the twelve month lease term (see § 966.4(l)(2)(i) of this chapter).

§ 960.605 How PHA administers service requirements.

(a) *PHA policy.* Each PHA must develop a local policy for administration of the community service and economic self-sufficiency requirements for public housing residents.

(b) *Administration of qualifying community service or self-sufficiency activities for residents.* The PHA may administer qualifying community service or economic self-sufficiency activities directly, or may make such activities available through a contractor, or through partnerships with qualified organizations, including resident organizations, and community agencies or institutions.

(c) *PHA responsibilities.* (1) The PHA policy must describe how the PHA determines which family members are subject to or exempt from the service requirement, and the process for determining any changes to exempt or non-exempt status of family members.

(2) The PHA must give the family a written description of the service requirement, and of the process for claiming status as an exempt person and for PHA verification of such status. The PHA must also notify the family of its determination identifying the family members who are subject to the service requirement, and the family members who are exempt persons.

(3) The PHA must review family compliance with service requirements, and must verify such compliance annually at least thirty days before the end of the twelve month lease term. If qualifying activities are administered by an organization other than the PHA, the PHA shall obtain verification of family compliance from such third parties.

(4) The PHA must retain reasonable documentation of service requirement performance or exemption in participant files.

(5) The PHA must comply with non-discrimination and equal opportunity requirements listed at § 5.105(a) of this title.

§ 960.607 Assuring resident compliance.

(a) *Third-party certification.* If qualifying activities are administered by an organization other than the PHA, a family member who is required to fulfill a service requirement must provide signed certification to the PHA by such other organization that the family member has performed such qualifying activities.

(b) *PHA notice of noncompliance.* (1) If the PHA determines that there is a family member who is required to fulfill a service requirement, but who has violated this family obligation (noncompliant resident), the PHA must notify the tenant of this determination.

(2) The PHA notice to the tenant must:

(i) Briefly describe the noncompliance;

(ii) State that the PHA will not renew the lease at the end of the twelve month lease term unless:

(A) The tenant, and any other noncompliant resident, enter into a written agreement with the PHA, in the form and manner required by the PHA, to cure such noncompliance, and in fact cure such noncompliance in accordance with such agreement; or

(B) The family provides written assurance satisfactory to the PHA that the tenant or other noncompliant resident no longer resides in the unit.

(iii) State that the tenant may request a grievance hearing on the PHA determination, in accordance with part 966, subpart B of this chapter, and that the tenant may exercise any available judicial remedy to seek timely redress for the PHA's nonrenewal of the lease because of such determination.

(c) *Tenant agreement to comply with service requirement.* If the tenant or another family member has violated the service requirement, the PHA may not renew the lease upon expiration of the term unless:

(1) The tenant, and any other noncompliant resident, enter into a written agreement with the PHA, i he form and manner required by the PHA, to cure such noncompliance by completing the additional hours of community service or economic self-sufficiency activity needed to make up the total number of hours required over the twelve-month term of the new lease, and

(2) All other members of the family who are subject to the service requirement are currently complying with the service requirement or are no longer residing in the unit.

§ 960.609 Prohibition against replacement of PHA employees.

In implementing the service requirement under this subpart, the PHA may not substitute community service or self-sufficiency activities performed by residents for work ordinarily performed by PHA employees, or replace a job at any location where residents perform activities to satisfy the service requirement.

PART 966—LEASE AND GRIEVANCE PROCEDURES

80. The authority citation for part 966 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437d note, and 3535(d).

81. Amend § 966.4 as follows:

a. Revise paragraph (a) to read as set forth below;

b. Revise paragraph (b)(1) to read as set forth below;

c. Add new headings for paragraphs (b)(2) to (b)(5) as set forth below;

d. Revise paragraph (l)(1) and paragraph (l)(2)(i) to read as set forth below;

e. Add paragraphs (l)(2)(iii) and (l)(2)(iv) to read as set forth below;

f. Remove paragraph (o) and paragraph (p).

§ 966.4 Lease requirements.

* * * * *

(a) *Parties, dwelling unit and term.* (1) The lease shall state:

(i) The names of the PHA and the tenant;

(ii) The unit rented (address, apartment number, and any other information needed to identify the dwelling unit);

(iii) The term of the lease (lease term and renewal in accordance with paragraph (a)(2) of this section);

(iv) A statement of what utilities, services and equipment are to be supplied by the PHA without additional cost, and what utilities and appliances are to be paid for by the tenant;

(v) The composition of the household as approved by the PHA (family members and any PHA-approved live-in-aide). The family must promptly inform the PHA of the birth, adoption or court-awarded custody of a child. The family must request PHA approval to add any other family member as an occupant of the unit.

(2) *Lease term and renewal.* (i) The lease shall have a twelve month term. Except as provided in paragraph (a)(2)(ii) of this section, the lease term must be automatically renewed for the same period.

(ii) The PHA may not renew the lease if the family has violated the requirement for resident performance of community service or participation in an economic self-sufficiency program in accordance with part 960, subpart F of this chapter.

(iii) At any time, the PHA may terminate the tenancy in accordance with § 966.4(l).

(3) *Execution and modification.* The lease must be executed by the tenant and the PHA, except for automatic renewals of a lease. The lease may modified at any time by written agreement of the tenant and the PHA.

(b) *Payments due under the lease.* (1) *Tenant rent.* (i) The tenant shall pay the amount of the monthly tenant rent determined by the PHA in accordance with HUD regulations and other requirements. The amount of the tenant rent is subject to change in accordance with HUD requirements.

(ii) The lease shall specify the initial amount of the tenant rent at the beginning of the initial lease term. The PHA shall give the tenant written notice stating any change in the amount of tenant rent, and when the change is effective.

(2) *PHA charges.* * * *

(3) *Late payment penalties.* * * *

(4) *When charges are due.* * * *

(5) *Security deposits.* * * *

* * * * *

(l) *Termination of tenancy and eviction.*

(1) *Procedures.* The lease shall state the procedures to be followed by the PHA and by the tenant to terminate the tenancy.

(2) *Grounds for termination of tenancy.* (i) The PHA may terminate the tenancy only for serious or repeated violation of material terms of the lease, such as failure to make payments due under the lease or to fulfill tenant obligations, as described in paragraph (f) of this section, or for other good cause (including failure to accept the PHA's offer of a lease revision in accordance with paragraph (l)(2)(iv) of this section).

* * * * *

(iii) Failure of a family member to comply with service requirement provisions of part 960, subpart F of this chapter, is grounds only for non-renewal of the lease and termination of tenancy at the end of the twelve month lease term.

(iv) The PHA may terminate the tenancy if the family fails to accept the PHA's offer of a revision to an existing lease. Such revision must be on a form adopted by the PHA in accordance with § 966.3. The PHA must give the family written notice of the offer of a revision at least 60 calendar days before it is scheduled to take effect. The offer must specify a reasonable time limit within that period for acceptance by the family.

* * * * *

82. Revise § 966.55(e) to read as follows:

§ 966.55 Procedures to obtain a hearing.

* * * * *

(e) *Escrow deposit.* (1) Before a hearing is scheduled in any grievance involving the amount of rent (as defined in § 966.4(b)) that the PHA claims is due, the family must pay an escrow deposit to the PHA. When a family is required to make an escrow deposit, the amount is the amount of rent the PHA states is due and payable as of the first of the month preceding the month in which the family's act or failure to act took place. After the first deposit, the family must deposit the same amount monthly until the family's complaint is resolved by decision of the hearing officer or hearing panel.

(2) A PHA must waive the requirement for an escrow deposit where required by § 5.630 of this title (financial hardship exemption from minimum rent requirements) or § 5.615 of this title (effect of welfare benefits reduction in calculation of family income). Unless the PHA waives the requirement, the family's failure to make the escrow deposit will terminate the grievance procedure. A family's failure to pay the escrow deposit does not waive the family's right to contest in any appropriate judicial proceeding the PHA's disposition of the grievance.

* * * * *

PART 984—SECTION 8 AND PUBLIC HOUSING FAMILY SELF-SUFFICIENCY PROGRAM

83. The authority citation for part 984 continues to read as follows:

Authority: 42 U.S.C. 1437f, 1437u, and 3535(d).

84. Throughout part 984, remove the terms "an HA" and "HA" and add in their place the terms "a PHA" and "PHA".

85. Amend § 984.101 as follows:

a. In paragraph (a)(1), remove the phrase "and Indian"; and

b. Revise paragraphs (b)(3) and (c) to read as set forth below:

§ 984.101 Purpose, scope, and applicability.

* * * * *

(b) * * *

(3) Unless the PHA receives an exemption under § 984.105:

(i) Each PHA for which HUD reserved funding (budget authority) for additional rental certificates or rental vouchers in FY 1993 through October 20, 1998 must operate a Section 8 FSS program.

(ii) Each PHA for which HUD reserved funding (budget authority) to acquire or construct additional public housing units in FY 1993 through October 20, 1998 must operate a public housing FSS program.

(c) *Applicability.* This part applies to:

(1) The public housing program, and

(2) The Section 8 certificate and voucher programs.

§ 984.102 [Amended]

86. Amend § 984.102 by removing the phrase "or Indian housing assistance".

87. Amend § 984.103 as follows:

a. Revise paragraph (a) as set forth below;

b. In paragraph (b), remove the parenthetical phrase from the definition of "Earned income";

b. Remove the definition of "HA" from paragraph (b); and

c. Revise the definitions of "Low-income family" and "welfare assistance" in paragraph (b) to read as follows:

§ 984.103 Definitions.

(a) The terms *1937 Act, Fair Market Rent, HUD, Public Housing, Public Housing Agency* (PHA), *Secretary,* and *Section 8,* as used in this part, are defined in part 5 of this title.

(b) * * *

Low-income family. As defined in part 5 of this title.

* * * * *

Welfare assistance means (for purposes of the FSS program only)

income assistance from Federal or State welfare programs, and includes only cash maintenance payments designed to meet a family's ongoing basic needs. Welfare assistance does not include:

(1) Nonrecurrent, short-term benefits that:

(i) Are designed to deal with a specific crisis situation or episode of need;

(ii) Are not intended to meet recurrent or ongoing needs; and

(iii) Will not extend beyond four months.

(2) Work subsidies (i.e., payments to employers or third parties to help cover the costs of employee wages, benefits, supervision, and training);

(3) Supportive services such as child care and transportation provided to families who are employed;

(4) Refundable earned income tax credits;

(5) Contributions to, and distributions from, Individual Development Accounts under TANF;

(6) Services such as counseling, case management, peer support, child care information and referral, transitional services, job retention, job advancement and other employment-related services that do not provide basic income support;

(7) Transportation benefits provided under a Job Access or Reverse Commute project, pursuant to section 404(k) of the Social Security Act, to an individual who is not otherwise receiving assistance;

(8) Amounts solely directed to meeting housing expenses;

(9) Amounts for health care;

(10) Food stamps and emergency rental and utilities assistance; and

(11) SSI, SSDI, or Social Security.

88. Amend § 984.105 as follows:

a. Revise paragraphs (a) and (b) to read as set forth below;

b. Redesignate paragraph (e) as paragraph (f); and

c. Add a new paragraph (e), to read as set forth below.

§ 984.105 Minimum program size.

(a) *FSS program size.* (1) *Minimum program size requirement.* A PHA must operate an FSS program of the minimum program size determined in accordance with paragraph (b) of this section.

(2) *Exception or reduction of minimum program size.* Paragraph (c) of this section states when HUD may grant an exception to the minimum program size requirement, and paragraph (d) states when the minimum program size may be reduced.

(3) *Option to operate larger FSS program.* A PHA may choose to operate an FSS program of a larger size than the minimum.

(b) *How to determine FSS minimum program size.* (1) *Public housing.* The minimum size of a PHA's public housing FSS program is equal to the number of public housing units specified below:

(i) The total number of public housing units reserved in FY 1993 through October 20, 1998; plus

(ii) The number of public housing units reserved in FY 1991 and FY 1992 under the FSS incentive award competitions; minus

(iii) The number of families that have graduated from the PHA's public housing FSS program on or after October 21, 1998, by fulfilling their FSS contract of participation obligations.

(2) *Section 8.* The minimum size of a PHA's Section 8 FSS program is equal to the number of Section 8 certificate and voucher program units as calculated below:

(i) *Units included.* (A) The number of rental certificates and rental voucher units reserved under the combined FY 1991/1992 FSS incentive award competition; plus

(B) The number of additional rental certificates and rental voucher units reserved in FY 1993 through October 20, 1998 (not including the renewal of funding for units previously reserved), minus such units that are excluded from minimum program size in accordance with paragraph (b)(2)(ii) of this section; minus

(C) The number of families who have graduated from the PHA's Section 8 FSS program on or after October 21, 1998, by fulfilling their contract of participation obligations.

(ii) *Units excluded.* When determining a PHA's minimum Section 8 FSS program size, funding reserved in FY 1993 through October 20, 1998 for the following program categories is excluded (except as provided in paragraph (b)(2)(ii)(B) of this section):

(A) Funding for families affected by termination, expiration or owner opt-out under Section 8 project-based programs;

(B) Funding for families affected by demolition or disposition of a public housing project or replacement of a public housing project;

(C) Funding for families affected by conversion of assistance from the Section 23 leased housing or housing assistance payments programs to the Section 8 program;

(D) Funding for families affected by the sale of a HUD-owned project; and

(E) Funding for families affected by the prepayment of a mortgage or voluntary termination of mortgage insurance.

(3) *Maintaining minimum program size.* The minimum program size for a PHA's public housing or Section 8 FSS program is reduced by one slot for each family that graduates from the FSS program by fulfilling its FSS contract of participation on or after October 21, 1998. If an FSS slot is vacated by a family that has not completed its FSS contract of participation obligations, the slot must be filled by a replacement family which has been selected in accordance with the FSS family selection procedures set forth in § 984.203.

* * * * *

(e) *Expiration of exception.* A full or partial exception to the FSS minimum program size requirement (approved by HUD in accordance with paragraph (c) or (d) of this section) expires three years from the date of HUD approval of the exception. If a PHA seeks to continue an exception after its expiration, the PHA must submit a new request and a new certification to HUD for consideration.

* * * * *

89. Revise paragraphs (a) and (c) of § 984.201 to read as follows:

§ 984.201 Action Plan.

(a) *Requirement for Action Plan.* A PHA must have a HUD-approved Action Plan that complies with the requirements of this section before the PHA implements an FSS program, whether the FSS program is a mandatory or voluntary program.

* * * * *

(c) *Plan submission.*—(1) *Initial submission.*

(i) *Mandatory program.* Unless the dates stated in paragraph (c) of this section are extended by HUD for good cause, a PHA that is establishing its first FSS program must submit an Action Plan to HUD for approval within 90 days after the PHA receives notice from HUD of:

(A) Approval of the PHA's application for incentive award units; or

(B) Approval of other funding that establishes the obligation to operate an FSS program, if the PHA did not receive FSS incentive award units.

(ii) *Voluntary program.* The PHA must submit its Action Plan and obtain HUD approval of the plan before the PHA implements a voluntary FSS program, including a program that exceeds the minimum size for a mandatory program.

(2) *Revision.* Following HUD's initial approval of the Action Plan, no further approval of the Action Plan is required unless the PHA proposes to make policy changes to the Action Plan or increase the size of a voluntary program; or HUD requires other changes. The PHA must submit any changes to the Action Plan to HUD for approval.

* * * * *

90. Amend § 984.301(a) as follows:

a. Redesignate paragraphs (a)(1), (a)(2), and (a)(3), as paragraphs (a)(2)(i), (a)(2)(ii), and (a)(2)(iii);

b. Add a new paragraph (a)(1) to read as set forth below; and

c. Add a new heading for paragraph (a)(2), to read as follows:

§ 984.301 Program implementation.

(a) *Program implementation deadline.* (1) *Voluntary program.* There is no deadline for implementation of a voluntary program. A voluntary program, however, may not be implemented before the requirements of § 984.201 have been satisfied.

(2) *Mandatory program.*

* * * * *

§ 984.302 Administrative fees.

91. Amend § 984.302(a) by removing the phrase "the minimum program size of".

92. Revise § 984.306(b) to read as follows:

§ 984.306 Section 8 residency and portability requirements.

* * * * *

(b) *Initial occupancy.*—(1) *First 12 months.* A family participating in the Section 8 FSS program must lease an assisted unit, for a minimum period of 12 months after the effective date of the contract of participation, in the jurisdiction of the PHA that selected the family for the FSS program. However, the PHA may approve a family's request to move outside the initial PHA jurisdiction under portability (in accordance with § 982.353 of this chapter) during this period.

(2) *After the first 12 months.* After the first 12 months of the FSS contract of participation, the FSS family may move outside the initial PHA jurisdiction under portability procedures (in accordance with § 982.353 of this chapter).

* * * * *

PART 985—SECTION 8 MANAGEMENT ASSESSMENT PROGRAM (SEMAP)

93. The authority citation for part 985 continues to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437f, and 3535(d).

94. Revise the second sentence of paragraph (o)(2) to read as follows:

§ 985.3 Indicators, HUD verification methods and ratings. * * *

* * * * *

(o) * * *

(2) * * * This number is divided by the number of mandatory FSS slots, as determined under § 984.105 of this chapter.

* * * * *

Dated: March 14, 2000.

Andrew Cuomo,

Secretary.

[FR Doc. 00–6898 Filed 3–28–00; 8:45 am]

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Part III

Department of Transportation

Federal Aviation Administration

14 CFR Parts 91, 121, 135
Terrain Awareness and Warning System; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, 135

[Docket No. 29312; Amendment No. 91–263; 121–273; 135–75]

RIN 2120–AG46

Terrain Awareness and Warning System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) is amending the operating rules to require that certain airplanes be equipped with an FAA-approved terrain awareness and warning system (also referred to as an enhanced ground proximity warning system). This final rule is a general aviation regulation that affects all U.S. registered turbine-powered airplanes with six or more passenger seats (exclusive of pilot and copilot seating). This change is in response to several accident investigations and studies that have shown a need to expand the safety benefits of ground proximity warning systems to certain additional operations. These investigations and studies have also shown that there is a need to increase the warning times and situational awareness of flight crews to decrease the risk of controlled flight into terrain accidents.

EFFECTIVE DATE: March 29, 2001.

FOR FURTHER INFORMATION CONTACT: Manuel Macedo, Aircraft Engineering Division, AIR–100, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–9566.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321–3339) or the Government Printing Office's (GPO) electronic bulletin board service (telephone: (202) 512–1661).

Internet users may reach the FAA's web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or the GPO's web page at *http://www.access.gpo.gov/nara* for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Communications must identify the amendment number or docket number of this final rule.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11–2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA on the FAA's web page at http://www.faa.gov/avr/arm/sbrefa.htm and may send electronic inquiries to the following Internet address: *9-AWA-SBREFA@faa.gov*

Background

Beginning in the early 1970's, a number of studies looked at the occurrence of "controlled flight into terrain" (CFIT) accidents, where a properly functioning airplane under the control of a fully qualified and certificated crew is flown into terrain (or water or obstacles) with no apparent awareness on the part of the crew.

Findings from these studies indicated that many such accidents could have been avoided if a warning device called a ground proximity warning system (GPWS) had been used. As a result of these studies and recommendations from the National Transportation Safety Board (NTSB), in 1974 the FAA required all part 121 certificate holders (*i.e.*, those operating large turbine-powered airplanes) and some part 135 certificate holders (*i.e.*, those operating large turbojet airplanes) to install Technical Standard Order (TSO) approved GPWS equipment (§§ 121.360 and 135.153). (39 FR 44439, December 18, 1974).

In 1978 the FAA extended the GPWS requirement to part 135 certificate holders operating smaller airplanes: turbojet-powered airplanes with 10 or more passenger seats. These operators were required to install TSO-approved GPWS equipment or alternative ground proximity advisory systems that provide routine altitude callouts whether or not there is any imminent danger (§ 135.153). (43 FR 28176, June 29, 1978). This requirement was considered necessary because of the complexity, size, speed, and flight performance characteristics of these airplanes. The GPWS equipment was considered essential in helping the pilots of these airplanes to regain altitude quickly and avoid what could have been a CFIT accident.

Installation of GPWS's or alternative FAA-approved advisory systems was not required on turbo-propeller powered (turboprop) airplanes operated under part 135 because, at that time, the general consensus was that the performance characteristics of turboprop airplanes made them less susceptible to CFIT accidents. For example, it was thought that turboprop airplanes had a greater ability to respond quickly in situations where altitude control was inadvertently neglected, as compared to turbojet airplanes. However later studies, including investigations by the NTSB, analyzed CFIT accidents involving turboprop airplanes and found that many of these accidents could have been avoided if GPWS equipment had been used.

Some of these studies also compared the effectiveness of the alternative ground proximity advisory system to the GPWS. GPWS was found to be superior in that it would warn only when necessary, provide maximum warning time with minimal unwanted alarms, and use command-type warnings.

Based on these reports and NTSB recommendations, in 1992 the FAA amended § 135.153 to require GPWS equipment on all turbine-powered airplanes with 10 or more passenger seats. (57 FR 9944, March 20, 1992).

After the current rules were issued, advances in terrain mapping technology permitted the development of a new type of ground proximity warning system that provides greater situational awareness for flight crews. The FAA has approved certain installations of this type of equipment, known as the enhanced ground proximity warning system (EGPWS). However, in this final rule, the FAA is using the broader term "terrain awareness and warning system" (TAWS) because the FAA expects that a variety of systems may be developed in the near future that would meet the improved standards contained in this final rule.

The TAWS improves on existing GPWS systems by providing the flight crew much earlier aural and visual warning of impending terrain, forward looking capability, and continued operation in the landing configuration. These improvements provide more time

for the flight crew to make smoother and gradual corrective action.

In 1998, the FAA issued Notice No. 98–11, Terrain Awareness and Warning System (63 FR 45628, August 26, 1998), proposing that all turbine-powered U.S.-registered airplanes type certificated to have six or more passenger seats (exclusive of pilot and copilot seating), be equipped with an FAA-approved terrain awareness and warning system. This final rule is based on Notice No. 98–11.

NTSB Recommendations

Following the investigation of a CFIT accident south of Dulles International Airport on June 18, 1994, involving a Learjet 25D in which there were 12 fatalities, the NTSB recommended (Recommendation A–95–35) that the FAA mandate that all turbojet-powered airplanes equipped with six or more passenger seats have an operating ground proximity warning system installed. That recommendation also made reference to an earlier, similar NTSB recommendation (Recommendation A–92–55) resulting from a 1991 CFIT accident involving a Beechjet 400. Both planes were corporate jets flying under part 91 and were not required to have GPWS equipment installed.

More recently, the NTSB issued Recommendation A–96–101, based on its investigation of a CFIT accident northeast of Cali, Columbia, on December 20, 1995, involving an American Airlines Boeing 757 airplane operating under part 121, which resulted in 159 fatalities. Although the airplane involved in the accident was equipped with the mandatory GPWS, the GPWS did not provide the warning in time for the crew to avoid the mountainous terrain. The NTSB recommended that the FAA examine the effectiveness of the enhanced ground proximity warning system, and if found effective, require all transport-category airplane to be equipped with this system.

Volpe National Transportation Systems Center Studies

In recent years, the FAA commissioned two studies by the Department of Transportation's (DOT) Volpe National Transportation Systems Center (VNTSC) to examine the effectiveness of GPWS and EGPWS in preventing CFIT accidents in various airplane categories and operations. The two studies, hereafter called the Volpe part 91 study and the Volpe part 121/135 study, analyzed CFIT accidents during the period 1985–1995 and found that EGPWS could have prevented 95–100 percent of these accidents. (For more detail on these studies, see: DOT-TSC-FA6D1–96–01, and DOT-TSC-FA6D1–96–03, both entitled, "Investigation of Controlled Flight Into Terrain", which are included in the public docket.)

In the Volpe part 91 study VNTSC concluded that "equipping aircraft with GPWS, or EGPWS when it becomes available, could be a particularly effective means of preventing CFIT accidents in the subject FAR Part 91 aircraft fleet." Likewise, in the Volpe part 121/135 study, VNTSC concluded that there was compelling evidence of the potential effectiveness of EGPWS in preventing CFIT accidents because the equipment would have provided the same or increased warning durations over GPWS. In addition, flight crews, given a continuous terrain display, could have responded to terrain threats well before an EGPWS alert.

Discussion of Comments

The FAA received over 200 comments in response to the Terrain Awareness and Warning System NPRM (63 FR 45628, August 26, 1998). After careful analysis of these comments, the FAA has made the following changes between the NPRM and the final rule:

1. The final rule is not applicable to parachute operations, aerial application operations, and firefighting operations.

2. The final rule is applicable to airplanes "configured" with 6 or more passenger seats, not to airplanes "type certificated" for 6 or more passenger seats.

3. The final rule addresses two classes of TAWS equipment, Class A and Class B. A new TSO, TSO–C151, includes the airworthiness requirements for both Class A and Class B equipment. Class A equipment will be required for airplanes operated under part 121 and part 135 of 10 or more passenger seats; this class of equipment will be the same as originally proposed. Class A equipment includes current GPWS required functions. Installers of Class A equipment required by this rule must install a terrain situational awareness display. Class B equipment will be required for airplanes operated under part 91 with 6 or more passenger seats and for airplanes operated under part 135 with 6–9 passenger seats. Class B equipment includes the basic TAWS safety features. These changes, in response to the comments, for airplanes operated under part 91 with 6 or more passenger seats and airplanes operated under part 135 with 6–9 passenger seats, will reduce the initial cost of purchasing and installing TAWS, while continuing to provide the desired level of safety.

A summary of the comments and an explanation of the changes made in the final rule in response to those comments appear below.

Approximately one-half of the comments were from individuals associated with parachute operations (skydivers and parachutists; skydiving and parachute operators; and associations). In addition, a total of 254 form letters from parachute participants and operators were submitted opposing the installation of TAWS or EGPWS in turbine-powered airplanes used in parachute activities. These commenters state that the proposed rule would be financially burdensome and would add no foreseeable safety benefit to parachute operations.

The remaining comments were from various part 91 and part 135 operators (*e.g.*, cargo, charter, and corporate operations) and their representative organizations; some part 121 operators and/or their representatives; and a comment from an EGPWS manufacturer, Allied Signal.

The following discussion summarizes these comments by the following issue areas: Applicability; Comments to NTSB recommendations; NPRM accident analysis; Comments on Cost of TAWS; GPWS/TAWS technology; TSO comments; supplemental type certificates; training; other government/industry efforts; compliance schedule; and miscellaneous comments.

Applicability

The FAA proposed adding §§ 91.223, 121.354, and 135.154 to require the installation of FAA-approved terrain awareness and warning systems (TAWS) on certain airplanes. For operations under part 121, the rule would apply to all turbine-powered airplanes. For all other operations (parts 91, 125, 129, and 135) the FAA proposed that the rule apply to all turbine-powered airplanes type certificated to have six or more passenger seats, excluding any pilot seat.

Applicability to the Parachute Industry

Parachute operators and parachutists say that they should be exempt from the proposed rule. They state that the nature of parachute operations makes GPWS and TAWS unnecessary. The U.S. Parachute Association (USPA) and the Parachute Industry Association strongly object to the mandatory installation of TAWS for airplanes used in parachute operations. The following arguments are presented by the parachute industry:

- Parachuting is primarily a visual flight rules (VFR) activity, conducted during the day, during which terrain is always visible and weather conditions

are good. Occasionally, parachute operators fly in instrument flight rules (IFR) conditions, *e.g.*, to ferry an airplane, but these operations are performed with no passengers.

• Parachuting is primarily done in the proximity of the departure airport (usually within a 10-mile radius) and the pilots are familiar with the obstacles and terrain features around their home fields.

• Parachutists are the passengers in these airplanes (not the traveling public, which the proposed rule is seeking to protect). These airplanes are used only as a means for the parachutists to get to altitude for jumping.

• Parachute operations have not been associated with CFIT accidents. Some commenters state that the NPRM cites no such accidents in parachute operations. Therefore, the commenters do not believe GPWS or TAWS would have made a difference in the outcomes of any accidents involving parachute operations.

USPA and other commenters from the parachute industry go on to say that since TAWS would provide no safety benefit to parachute operations, they should not have to bear the cost of installing TAWS on these airplanes. Some commenters add that these costs would be especially burdensome to small operators who already have a very small profit margin, which could result in their going out of business. Several commenters believe that the cost of installing TAWS on turbine-powered airplanes used in parachute operations could result in some operators switching back to using older and smaller non-turbine airplanes, which would have a negative effect on the growth and safety of the parachute industry.

The FAA agrees with the commenters. Parachute and skydiving operations are unique in that operations are conducted under VFR conditions, in close proximity to the home field, with constant reference to the ground. Furthermore, there are only a small number of airplanes involved in these types of operations. The FAA has changed § 91.223 in the final rule to exclude airplanes when used for parachute operations and operated within 50 miles of the home airport.

Applicability to Other Part 91 Operations

The National Business Aviation Association (NBAA) recommends that the FAA exempt turbine-powered airplanes operated under part 91 from the rule because part 91 allows operators the flexibility "to equip their aircraft as necessary to accomplish the missions set forth by the company." The NBAA cites the safety record of corporate operations under part 91. The Aircraft Owners and Pilots Association (AOPA) recommends applying the proposed rule only to large turbojet airplanes used in commercial passenger-carrying operations. Several other part 91 operators also state that they should be exempt from the proposed rule.

The FAA disagrees with these commenters for the following reasons: (1) Two of the three NTSB recommendations discussed earlier were based on CFIT accidents involving airplanes operating under part 91. (2) The number of CFIT accidents occurring in part 91 operations is excessively high. (3) The Volpe part 91 study provides evidence that TAWS would have prevented 95 percent of the CFIT accidents studied.

Raytheon Aircraft Company (Raytheon) recommends applying the proposed rule to airplanes operated under part 135 and part 121 and exempting part 91 operations. Raytheon requests that the FAA make available the data it compiled from the Volpe part 91 study of the forty-four accidents which was stated in the NPRM, before issuing any final rule for part 91 operations.

Raytheon proposes excluding turbo-propeller airplanes operated under part 91 from the requirement of installing TAWS. As a second alternative, Raytheon proposes applying this requirement to turbine airplanes categorized at a minimum gross weight of 19,000 pounds (maximum certificated weight for a commuter category airplane), or a minimum gross weight of 12,500 pounds (FAA's defined certificated weight of a large airplane). Some commenters state that CFIT accidents have not been a problem for part 91 operations and that GPWS/TAWS is therefore unnecessary.

The FAA disagrees with Raytheon and other commenters who oppose TAWS on turboprop airplanes and has determined that turboprop airplanes should continue to be covered. A study done for the FAA as part of the 1992 rulemaking amending part 135, requiring GPWS equipment, revealed that turboprop airplanes have just as many, if not more CFIT accidents than turbojet airplanes. In fact, the Volpe part 91 study shows that 33 of 44 CFIT accidents involved turboprop airplanes.

A part 91 turboprop airplane operator states that he operates his airplanes in familiar terrain and that GPWS is unnecessary for his operations. The operator is involved in aerial applications and states that his operations are within 50 feet of the ground which would result in continuous nuisance alerting from TAWS; therefore this equipment is unnecessary. This commenter adds that the rule should make exceptions for operations such as his which operate airplanes with a payload capacity in excess of 6,000 pounds.

The FAA agrees with the commenter that operations involving aerial applications should be excluded. Therefore the final rule has been changed in § 91.223 so that it does not apply to airplanes used in aerial applications or agricultural operations.

Raytheon and others recommend rewording "type certificated with * * * ." to read "configured with * * *." These commenters say that rewording the text will permit the type of TAWS equipment installed to be determined by the number of seats installed in the airplane, rather than the maximum number of seats permitted by the certification basis. Similarly, the Regional Airline Association (RAA) and a part 135 cargo operator, request that proposed §§ 91.223 and 135.154 be revised to replace "certificated to have" with "having."

Federal Express believes that airplanes type-certificated as cargo airplanes that do not carry passengers should not be required to install TAWS as proposed by the NPRM. Federal Express also believes that the Fokker airplanes, which were converted from a passenger to a cargo-only configuration, should not have been covered by the NPRM. Federal Express requests the FAA to amend the NPRM to expressly exclude cargo-only airplanes.

The FAA agrees with the commenters' recommendations that the equipment requirements be determined by the number of seats. The FAA has changed the final rule in §§ 91.223 and 135.154 so that the words "type-certificated to have six or more passenger seats" are changed to "configured with six or more passenger seats."

In response to Federal Express and others who state that passenger-carrying planes converted to cargo planes should not have to comply with the rule, the FAA partially agrees in that if the airplane (cargo carrying or not) is configured with fewer than 6 passenger seats and is operating under part 91, then TAWS is not required. However, for operations conducted under part 121 (cargo carrying or not), TAWS is required regardless of the number of passenger seats. Under existing rules, the FAA requires GPWS for part 121 regardless of the number of seats and is continuing to maintain the same safety standard.

In addition many airplanes operating under part 121 have older model GPWS equipment. Some of the NTSB recommendations discussed earlier include sub-recommendations that the FAA mandate replacement of the older equipment with more modern equipment. This final rule also responds to such recommendations.

The FAA disagrees with the commenter that cargo airplanes should be exempt from the rule. Specifically in § 121.360, the use of GPWS is required on turbine-powered airplanes operated under part 121. In this rule the FAA is maintaining the existing GPWS requirements (which also meets the ICAO requirements) by requiring TAWS that includes GPWS functions.

Applicability to Part 135 Operations

The National Air Transportation Association (NATA) and several part 135 operators ask why the FAA has put part 135 operators into the same category as part 91 operators. These commenters object to the FAA's use of part 91 accident statistics to justify requiring TAWS for them. The NATA states that the premise for this rulemaking is unfounded due to the FAA's failure to specifically review the part 135 on-demand community. The NATA contends that the lack of consideration of these specific types of airplanes and operations fails to provide complete data that is necessary to justify the application of a rule of this magnitude to this industry segment.

The NATA recommends that the FAA conduct a study of accidents involving airplanes operated on-demand under part 135. These commenters suggest that a new cost/benefit analysis, and a new Initial Regulatory Flexibility Determination and Analysis based on the study suggested would provide an accurate representation of the true cost to part 135 operators. The NATA's position is supported by a number of part 135 on-demand charter operators.

A charter operation states that turbine-powered airplanes with fewer than 10 seats should not be required to install GPWS/TAWS because most CFIT accidents have involved large commercial jets.

The Helicopter Association International (HAI) supports the position of the Alaska Air Carriers Association (AACA) and others who want part 135 operators exempt from the TAWS requirement. The HAI says that "industry and government resources are finite, and that TAWS does not promise to advance the cause of aviation safety enough to justify the costs involved at this time."

In the preliminary regulatory analysis the FAA did not specifically evaluate part 135 accidents. However, the FAA determined that the airplanes that are frequently found in part 135 on-demand operations are the same type that are typically operated in part 91. Therefore, the FAA extended the part 91 analysis to part 135 operations.

The operating rules of part 91 apply to all airplanes, including those operated under parts 121 and 135. The Volpe part 91 study supports the use of this equipment on the types of airplanes used by both parts 91 and 135.

In addition, the Volpe studies confirmed that compared to the GPWS, the TAWS equipment provides earlier audio and visual alerts. In fact, in the Volpe part 91 study the GPWS system used for comparison purposes was the most advanced GPWS system. In reality many of the GPWS systems in service are the older versions that have been plagued with nuisance and false alarms.

The HAI opposes any attempt to extend the TAWS requirement to rotorcraft and says that the decision whether to use TAWS should be left up to each rotorcraft operator "who is best able to weigh the substantial costs involved against the safety benefit that may be obtained."

In response to HAI's comment on requiring TAWS for rotorcraft, the FAA did not receive any comments that would justify extending this rule to rotorcraft at this time.

A commenter that operates a Pilatus/Fairchild PC–6 with a maximum of 11 seats, is against requiring TAWS for "charter in the bush" type operations. The commenter says that "the PC–6 was designed to land on most of the terrain a Ground Proximity Warning System would request a pilot to avoid."

The FAA disagrees. This type of operation is ideal for use of TAWS equipment because bush flying frequently involves operating over rugged terrain where TAWS is most valuable. However, for the landing phase of these types of operations, it is possible to customize the terrain data base during the installation approval process.

One commenter says that there are many part 135 small airplane freight operators who use airplanes that are not required to have radar equipment installed; and these airplanes often have entirely mechanical instrument panels. The commenter concludes that, these airplanes would not be equipped to provide a display.

The FAA has determined that airplanes configured for fewer than 6 seats and operated under part 91 or part 135 should continue to operate without a terrain awareness and warning system. These airplanes are not affected by this rulemaking action. In addition, the FAA has modified the requirement for airplanes configured with 10 or more seats under part 135. These airplanes must be operated with a terrain situational display to meet the requirements of this rule.

Applicability to Turbo-Propeller Airplanes

Piedmont Airlines, in conjunction with US Airways, proposes exempting turbo-propeller airplanes from the proposed rule because many of these airplanes have only recently been equipped with GPWS. This commenter questions the benefit of replacing later generation GPWS with TAWS when the effectiveness of the newly installed GPWS has yet to be tested.

Piedmont Airlines also points out that most CFIT accidents with GPWS equipped airplanes occurred in foreign territory and that due to their limited flying range, U.S. part 121 turboprop airplanes do not operate abroad. Piedmont Airlines asks the FAA to issue a supplemental notice of proposed rulemaking (SNPRM) to address turboprop airplanes separately.

The FAA agrees that the accident history data does not conclusively prove that the currently mandated GPWS is not effective in resolving the problem of CFIT accidents. However, the FAA has determined through the Volpe part 121 study that TAWS would have prevented CFIT accidents that current generation GPWS did not prevent. Due to the continued CFIT risk exposure with GPWS, the FAA is requiring TAWS.

The FAA acknowledges that the majority of CFIT accidents have occurred in foreign territory. However, a significant number of CFIT accidents still occur in the U.S. with turboprop airplanes equipped with GPWS. In regards to the commenter's assertion that U.S.-registered part 121 airplanes have a limited flying range, the FAA notes that many operators are located near and fly into foreign territory where CFIT accidents have occurred; *e.g.*, Canada, Mexico, and the Caribbean. The commenters have not provided any information to substantiate the need to further delay this action and there is no reason to believe new information would be obtained through publication of a supplemental notice.

Applicability to Reciprocating-Powered Airplanes

The FAA proposed that the rule apply only to turbine-powered airplanes. Additionally, the FAA specifically requested comments on whether it

should require the installation of TAWS on reciprocating engine-powered airplanes.

The General Aviation Manufacturers Association (GAMA) is against requiring TAWS on reciprocating-powered airplanes because the costs would be high (*e.g.*, "TAWS equipment would cost more than the hull value of the aircraft"), and the panel space for installing TAWS with a situational display is not available in these airplanes.

The FAA did not receive any comments that would justify undertaking a new rulemaking project to mandate TAWS for reciprocating-powered airplanes.

However, regarding the issue of panel space, the FAA knows of at least one manufacturer who has developed a complete TAWS unit that was designed to replace an existing panel instrument.

Applicability to Foreign-Registered Airplanes

The Aerospace Industries Association (AIA) says that the language under proposed § 91.223 makes reference only to U.S.-registered airplanes and provides an unstated exemption for airplanes of foreign registry. The AIA says that the proposed rule does not address those cases where "the production process requires that manufacturers operate production airplanes that have been issued a Standard Certificate of Airworthiness." The AIA adds that, "while at this time the equipment is not of U.S. nor foreign registry the manufacturer would appear to be in violation of FAR Part 91 requirements during the production process if terrain awareness and warning systems have not been installed." The AIA says that the rule language should be changed to address this issue.

The Independent Pilots Association (IPA) recommends that TAWS be a uniform requirement for all airplanes over which the FAA has jurisdiction and not exclude foreign-registered airplanes operating in the United States.

The FAA's response to these comments is that the FAA is addressing requirements for foreign-registered airplanes through the ICAO process, which may result in all nations adopting the TAWS standard. Regarding AIA's comment about airplanes that have been operating under a standard airworthiness certificate prior to foreign registry, the FAA does not agree that there is a problem here. The majority of the manufacturers are including TAWS as standard equipment in new production models. Also, there are rules that the FAA has in place for ferrying airplanes to foreign countries that would allow for airplanes being exported that do not meet U.S. requirements.

Comments to NTSB Recommendations

The NTSB states that the NPRM is responsive to recommendations A–95–35 and A–96–101 by proposing that TAWS be installed on all turbine-powered airplanes with 6 or more passenger seats. If implemented, the NTSB contends that the rule will "have a positive affect on aviation safety by reducing the opportunities for CFIT accidents."

The NBAA comments on NTSB recommendations A–92–55 and A–95–35, which recommended that all turbojet powered airplanes with six or more passenger seats have an operating GPWS system installed. The NBAA states that these recommendations are flawed, because the accidents prompting these recommendations were due to many contributing factors (a high-speed unstable approach, minimally experienced crew, fuel shortage, marginal weather conditions, low visibility). The NBAA does not believe TAWS equipment could have prevented these accidents.

The FAA is confident in both the validity of the Volpe part 91 study and its conclusion that the accidents could have been avoided if the airplanes had been equipped with TAWS. As described in the NPRM, a CFIT accident occurs when a properly functioning airplane under the control of a fully qualified and certificated crew is flown into terrain (or water or obstacles) with no apparent awareness on the part of the crew. By the nature of this definition, it is obvious that there had to be other contributing factors causing the crew to lose situational awareness, otherwise there would not have been a crash. However, the other contributing factors do not include airplane malfunctions or incapacitated crew; they generally include situations such as low visibility, inclement weather conditions, and being lost. The TAWS caution alert would have given the crew sufficient time to analyze the situation, then take corrective action. Finally, the warning alert to "pull up" would have allowed the crew to gain altitude and avoid hitting the terrain.

The GAMA says that NTSB recommendations A–92–55 and A–95–35 only recommended GPWS (not TAWS) on turbojet airplanes (not turboprop airplanes). The USPA points out that NTSB has never issued a recommendation to require GPWS or TAWS on part 91 turboprops. The USPA further asserts that the FAA proposal appears to use the NTSB recommendation A–95–35 as the basis for including part 91 turboprops in the NPRM. The commenter further asserts that NTSB recommendation A–96–101 would require EGPWS on transport category airplanes (not on general aviation part 91 airplanes). Similar comments were made by AOPA.

GAMA is correct in saying that the NTSB recommendations A–92–55 and A–95–35 did not refer specifically to TAWS nor to turboprop airplanes. The NTSB has recommended since then that all turbine-powered airplanes with six or more seats be equipped with an EGPWS or an TAWS (A–99–36). The FAA's decision to require TAWS instead of GPWS and to include turboprops are for the reasons already discussed in the preamble. The reasons are briefly restated here. At the time the NTSB prepared and issued its earlier recommendations, TAWS did not exist. In response to the earlier NTSB recommendations, the FAA commissioned Volpe to do a study to evaluate the effectiveness of GPWS on smaller airplanes operated strictly under part 91. After the FAA certificated TAWS, the FAA expanded the Volpe study to also evaluate TAWS and compare the effectiveness of TAWS and GPWS. This study convinced the FAA that TAWS is superior to GPWS in eliminating CFIT. In addition, a cost benefit analysis showed that TAWS did indeed provide a significant benefit to aviation safety. Furthermore, 33 of the 44 CFIT accidents analyzed in the Volpe part 91 study involved turboprop airplanes. This high rate of CFIT accidents involving turboprop airplanes confirm the results of earlier studies conducted by the FAA.

NPRM Accident Analysis

A number of part 91 and some part 135 operators say that GPWS/TAWS would do little to improve safety for their operations, and therefore is not worth the cost. Some of these commenters say that there is little factual data supporting the need for this equipment in their operations.

The RAA and USPA question the legitimacy and validity of the Volpe part 121/135 study and find the Volpe part 91 study inconclusive. These commenters say that, of the 44 accidents analyzed in the Volpe part 91 study, only 9 accidents may have been preventable using only EGPWS. The RAA believes the common causal link is the failure of the flight crews to follow procedures. The RAA believes that the accidents examined in the Volpe part 121/135 study should be more correctly categorized as "approach and landing,"

many of them affected by weather conditions.

The USPA believes there are major flaws in the Volpe part 91 study. Among the probable causes listed for the accidents studied by NTSB are improper planning/decisionmaking, improper IFR/VFR procedures, failure to execute missed approach procedures, continuation of VFR flight into instrument meteorological conditions (IMC), poor crew coordination, and failure to establish proper climb rate. Similarly, another commenter says that the Dulles, Virginia, and Rome, Georgia, accidents cited in the Volpe part 91 study were not the result of a CFIT, rather they were due to such factors as inexperienced crew, low visibility, and an unstable approach.

The NBAA also analyzed the same accidents studied by Volpe (1985–1994) and found only six accidents involving part 91 turbine-powered airplanes (not 44 accidents, as cited in the NPRM) that could have been related to CFIT. The NBAA found that most of these accidents were due to other factors, including improper or missed approach procedures, intentional descent below minimums, continued operations in below minimum weather, and VFR flight into IMC. The AOPA adds that "little is known about crew procedures, their mental state, and if the crew's actions would have been timely and accurate enough to avoid the accident once they responded to warnings estimated to be provided by the proposed TAWS equipment in that scenario."

In addition, NBAA studied turbine-powered airplane CFIT accidents from 1966–1997 and found a total of 34 accidents involving part 91 airplanes. These NBAA findings are also cited by GAMA.

In response to comments made by NBAA, USPA, RAA, AOPA, and others that the accidents cited in the Volpe part 91 study were not the result of a CFIT, but were due to other factors such as poor crew coordination, the FAA disagrees. No accidents are caused by one single element. Under the FAA's definition of CFIT, these were CFIT accidents, have been designated as CFIT by the NTSB, and thus formed the basis for the NTSB's recommendations.

The RAA also comments on the Volpe part 91 study's statement regarding 6 of the 9 CFIT accidents under part 91: "since airplane's gears and flaps were in landing condition, the Mode 4 warning of GPWS would have been desensitized." RAA states that "the procedure used in regional/commuter operations is to not commit to landing flaps until the field is in sight, so we believe that the Volpe study should have completed their geometric analysis on these six accidents as well, in order to determine whether there would have been a significant difference in pilot response time" between GPWS and TAWS.

The RAA believes that the FAA needs to determine whether the use of TAWS will lead to more approach and landing accidents that are characterized by the pilot's failure to adequately evaluate inflight weather conditions, failure to maintain sufficient altitude during the approach to land, etc.

In response to RAA's comments about the Volpe part 91 study, the FAA's position is that the Volpe part 91 study was done specifically to determine the effectiveness of TAWS, because that was the system the FAA was considering. The intent of the Volpe part 91 study was for the FAA to determine if TAWS was technically feasible. GPWS is a system using 1970's technology that has reached the limit of its usefulness. The FAA believes more modern technology is needed to gain more accident prevention potential to eliminate CFIT's. In the past the FAA has chosen not to require GPWS on airplanes operated under part 91 because of its technical limitations and costs. TAWS solves those limitations and has potential for future enhancements with lower cost for airplanes already equipped with GPWS.

In addition, the purpose of the Volpe part 91 study was to confirm that the TAWS system was superior to GPWS in eliminating CFIT. In fact, in the part 91 study the GPWS system used for comparison purposes was the most advanced GPWS system. In reality many of the GPWS systems in service are the older versions that have been plagued with nuisance and false alarms.

Similarly, GAMA references another study done outside of this rulemaking and refers to it as a second Volpe part 91 study. That study is dated July 1997, and examined all CFIT general aviation accidents (1983–1994) and concluded that CFIT is a small percentage of general aviation accidents. The GAMA says that the study showed 121 CFIT accidents in 1991, but that by 1994, such CFIT accidents had decreased to 68, which represented only 3.7% of all general aviation accidents.

In response to GAMA's comment that the second Volpe part 91 study concluded that CFIT is a small percentage of general aviation accidents, the same report also shows that the small percentage (3.7%) of accidents represents 17% of all fatalities and that accidents caused by CFIT and spins are the leading causes of general aviation fatalities. Furthermore, the FAA's cost-benefit analysis of TAWS equipment used for general aviation operations showed that TAWS did indeed provide a significant benefit to general aviation safety.

Some commenters state that the accident statistics provided in the NPRM do not justify requiring TAWS on turboprop airplanes. One-commenter points out that the NPRM says that TAWS will only avert 2.3 accidents per million flight hours in a 6–9 seat turboprop airplane. This commenter believes that this small number is justification for exempting this category of airplane from the TAWS rule. This commenter also comments that the Volpe part 91 study (table 10) said that 6 of the 33 turboprop accidents could have been prevented with TAWS. This commenter says that "5 of the 6 accidents involved aircraft on approach to landing. These accidents resulted from pilot error in being too low on glideslope, or descending below MDA."

As an example of the effectiveness of the current rule, Allied Signal cites differences in accident statistics between turboprops fitted with GPWS and turboprops without GPWS. After GPWS was required for part 135 turboprop operations, there was an estimated 20-to 30-times reduction in CFIT risk. Allied Signal further states that the results of the Volpe studies on the predicted effectiveness of TAWS correlate well with its own independent analysis.

In response to the comment that says that TAWS is not justified because it would avert only 2.3 accidents per million flight hours, the FAA emphasizes that its mission is to save lives. Studies show that TAWS does indeed save lives, is cost effective, and contributes significantly to general aviation safety.

The NATA and other operators comment that the nine CFIT accidents analyzed in the Volpe part 121/135 study did not include any airplanes with fewer than ten passenger seats conducted by part 135 on-demand air charter operators. The NATA says that these operations differ from scheduled operations, for example, airplanes with fewer than nine seats conduct few international operations where CFIT accidents are likely to occur. Therefore, TAWS should not be required for on-demand part 135 operations "until such time as a convincing and thorough data-based review is conducted with associated cost/benefit analysis."

The NATA and others are correct in their assertions that the Volpe part 121/135 study did not include airplanes with fewer than ten passenger seats in

part 135 operations. The study was conducted to determine the feasibility of retrofitting GPWS with TAWS. Currently, GPWS is not required for airplanes operated under part 135 with fewer than ten seats. The Volpe part 91 study shows compelling evidence supporting the use of TAWS, and the FAA has determined that the same types of airplanes are often operated under both parts 91 and 135. Therefore, the FAA is unable to justify setting a different standard based solely on the type of operation. The part 91 rule applies to all airplanes, including those operated under parts 121 and 135. The FAA is amending parts 121 and 135 to make it clear that airplanes operated under these parts will be required to replace current GPWS equipment with TAWS equipment. The Volpe part 91 study was conducted to consider installation of current GPWS or EGPWS on all part 91 turbine-powered airplanes of 6 or more passenger seats. The study concluded that GPWS could have avoided 33 of the 44 (75%) accidents and 96 fatalities, and EGPWS could have avoided 42 of the 44 (95%) accidents and 126 fatalities. These conclusions justify use of TAWS on all airplanes of 6 or more passenger seats.

In response to NATA's comment concerning the use of TAWS on airplanes used in part 135 on-demand operations, the FAA points out that the Volpe part 121/135 study was never intended to look at part 135 scheduled versus part 135 on-demand operations. The study was conducted to determine the effectiveness of TAWS on any airplane type, not the effectiveness in regard to the type of operation.

Comments on Costs of TAWS

Many commenters, including the Air Transport Association (ATA), RAA, USPA, Raytheon, Continental Airlines, and Aloha Airlines say that the NPRM's analysis vastly underestimates the installation, retrofit, and maintenance costs associated with GPWS and TAWS. They say that these costs would be prohibitive for part 91 and part 135 operators. Raytheon and USPA suggest that retrofit cost estimates would exceed the value of the small turbine-powered airplanes and would force unnecessary retirement of the airplanes. Some operators specifically address retrofit costs and state that their airplanes are not configured to be easily equipped with GPWS/TAWS equipment without major expense.

The RAA and USPA believe the FAA's cost estimates for complete TAWS installation are extremely low. Using GAMA avionics figures, these commenters estimate the installation of a TAWS on in-service turboprop airplanes used in parachute operations will range between $66,020 and $96,828, mostly because they lack the necessary prerequisite equipment.

The GAMA's comment included a cost analysis for part 91 newly manufactured and in-service turboprops and turbojets. The GAMA estimates the costs to install TAWS would be much higher than those estimated by the FAA. The following estimates were provided: (1) For newly manufactured turboprops, the range would be $24,600 to $108,163, depending on the additional equipage needed to meet TAWS; for existing turboprops, the range would be $34,600 to $141,163, depending on existing equipage; (2) For newly manufactured turbojets, the range would be $24,600 to $69,985, depending on equipage; for existing turbojets, the range would be $34,600 to $141,163, depending on equipage.

The NBAA and AOPA support GAMA's findings that TAWS costs would have a wide range, depending on the type of airplane operated. The NBAA also says that it was quoted, from an avionics repair station, an average cost of $105,000 for equipment, labor, installation, testing, and certification. The NBAA recommends that the FAA perform a new cost/benefit analysis which would include not only TAWS equipment, but the costs of system modifications necessary to accommodate TAWS, installation, labor, testing, and certification.

The HAI and other operators support the AACA's assertions that the FAA's cost projections for TAWS (purchase, installation, maintenance, and training) are significantly understated. The HAI says that the FAA's underestimation of costs, as well as its overestimation of safety benefits, echoes other recent rulemaking actions that affected the rotorcraft industry, including recent NPRM's on Digital Flight Data Recorders (DFDR) (61 FR 37144, July 16, 1996) and Type Certification Procedures for Changed Products (62 FR 24287, May 2, 1997).

The FAA acknowledges the cost to install TAWS and retrofit airplanes with TAWS is higher than originally estimated. The cost would be more burdensome for part 91 and some part 135 operators. The final rule provides relief to these operators. The FAA has changed TSO–C151 to include two acceptable classes of equipment. Class A equipment will be required for airplanes operated under part 121 and part 135 of 10 or more passenger seats; this class of equipment will be the same as originally proposed. Class B equipment will be required for airplanes operated under part 91 with 6 or more passenger seats and airplanes operated under part 135 with 6–9 passenger seats. Class B equipment includes basic TAWS safety features. The purchase and installation of Class B equipment reduces the costs to operators of airplanes operated under part 91 with 6 or more passenger seats and airplanes operated under part 135 with 6–9 passenger seats. In addition, the process of obtaining supplemental type certificates (STC's) will be greatly expedited. Unlike Class A equipment, Class B does not entail extensive installation procedures because it is not integrated with numerous airplane systems.

This final rule requires the use of Class A equipment on airplanes operated under part 121 and airplanes with ten or more passenger seats operated under part 135. The FAA made this decision for the following reasons. First, Class A equipment includes the functions of GPWS. The existing FAA and ICAO requirements are that these airplanes must install GPWS. The TAWS functions are in an addition to and separate from GPWS. Both TAWS and GPWS requirements are included in TSO–C151. Therefore, this rule does not eliminate the GPWS requirement. The ICAO, while also requiring TAWS, is also maintaining its GPWS requirements. The use of GPWS is a proven concept with over 20 years of preventing many CFIT accidents; however, the FAA is requiring TAWS to further reduce the number of CFIT accidents. Second, these airplanes also are required to carry windshear protection devices. Manufacturers have built the windshear protection into the GPWS equipment and are doing the same with the TAWS Class A equipment. Third, Class A equipment is packaged in a standard avionics box to fit into the avionics bay of these larger airplanes. Fourth, Class A equipment box is designed to meet the more rigorous requirements for electrical and electronic equipment such as 14 CFR sections 25.1301, 25.1309, 25.1321, 25.1351, 25.1353 and 25.1431. Fifth, Class A equipment is designed to be compatible with and to be integrated into other airplane systems typically found on large, commercial airplanes such as autopliot, flight management system, data bus, weather radar, flaps indicator, landing gear indicator, and instrument landing system glideslope.

This final rule requires, as a minimum, Class B equipment for airplanes operated under part 91 and airplanes with six to nine passenger seats operated under part 135. Class B equipment contains only TAWS functions, i.e. the comparison of the airplane's current position information to an onboard database. It is a very basic piece of equipment, packaged in a small box that can be placed almost anywhere in a small airplane where there is available space. It is designed to provide protection from CFIT accidents for airplanes that currently do not have such protection. These airplanes never had a requirement for GPWS and in the NPRM the FAA proposed requiring GPWS and TAWS but decided in the final rule to require only TAWS. The Class B equipment is designed as a less costly, small device for airplanes that do not have much space and for airplanes that may not be compatible with Class A equipment. The operators of these airplanes may install Class A equipment if they desire. In fact, one manufacturer of TAWS equipment has informed the FAA that operators of large airplanes operating under part 91 voluntarily are installing Class A equipment because of the features and benefits of GPWS. Operators of airplanes required to install Class A equipment do not have the option of installing Class B equipment because the Class B equipment does not contain the required GPWS functions.

GAMA also comments that the FAA underestimated the production of new general aviation turbine-powered airplanes. GAMA says that "in domestic production alone, American manufacturers of general aviation airplanes have already reported to GAMA deliveries of 282 new jets and 162 new turboprops through the third quarter of 1998."

One commenter, a part 91 turboprop operator, says that GPWS costs would constitute about 10% of the value of his airplanes. This commenter recommends that, if mandated, the rule should be on a 5 to 10 year time line so that more GPWS systems will be produced and they will become cheaper.

A part 91 operator points out that the costs associated with installing TAWS could result in more accidents because some operators would sell their turboprops and fly piston airplanes. This commenter says that these airplanes "are not as reliable, but can carry more passengers, are cheaper to operate, and will not be required to have TAWS."

In response to the comment that some operators of existing turboprop airplanes would switch to piston-engine airplanes because piston-engine airplanes will not be required to have TAWS, it is not the intention of the FAA to put an undue financial burden on owners/operators of small turboprop airplanes nor to cause them to take such drastic action. Therefore, as described above, the FAA is amending proposed §§ 91.233(b) and 135.154(b) " both having to do with existing planes " by allowing part 91 operators of airplanes with 6 or more passenger seats and part 135 operators of airplanes with 6–9 passenger seats to meet different TAWS requirements.

The NATA contends that the FAA has failed to provide an accurate picture of the equipment and installation costs for part 135 on-demand air charter operations. The NATA points out that the discounted prices used in the NPRM (for 10 or more units) would not apply to most part 135 on-demand air charter operations since they typically operate a small number of airplanes. The NATA adds that the FAA fails to adequately cover other costs including wiring/installation kits, radar altimeters, other instruments needed to communicate with TAWS, airplane downtime during installation, and installation labor costs. The NATA says that the above factors would result in an average TAWS cost of $100,000 per airplane for part 135 on-demand charter operations.

The United States Air Tour Association (USATA) comments that, in order to comply with the existing rule, its members purchased and installed GPWS equipment in their airplane fleets at a cost of more than $41,000 per airplane. This substantial capital investment by USATA members was made in spite of the fact that most of the airplanes are used in day VFR sightseeing applications. A TAWS requirement would require USATA members to essentially scrap their recent investments. USATA does not believe the TAWS retrofit is justified, given the GPWS safety record.

In response to USATA, by the time operators have to comply with this final rule, the 10-year amortization of the cost of the GPWS system will be completed.

Some commenters state that GPWS will not have a large trade-in value once TAWS becomes a requirement for all airplane markets for which a GPWS might be used.

In response to the comment regarding trade-in values, the FAA stands by its use of trade-in value in the regulatory evaluation. The FAA was again advised by the manufacturer that it would give trade-in value against the purchase of TAWS. Other manufacturers may also offer trade-in credits.

An Alaska-based operator adds that the Unfunded Mandates Act of 1995, which requires that the FAA assess the impact of regulatory changes on state, local, and tribal governments, has not been adequately addressed. The commenter says that the requirements of the Act were not adhered to in the commuter rule when many carriers had voiced concern that they would not be able to bear the economic burden of that rule. The commenter believes that the "requirements associated with this proposed rule will cause history to repeat itself in Alaska, thereby causing further disadvantage to the traveling public."

The costs of the final rule does not equal $100 million in any one year due to changes that have taken place since the proposal. Some of those changes are (1) The final rule is not applicable to certain segments such as parachute, aerial and firefighting operations, (2) The allowance of lower cost TAWS equipment with equivalent safety and (3) The decision by a significant proportion of manufactures/operators to voluntarily equip airplanes with TAWS. Consequently, the Unfunded Mandates Reform Act does not apply to this rule.

GPWS/TAWS Technology

The AIA comments on the section in the NPRM under "VNTSC Conclusion", which states that "The study emphasized that the CFIT accident prevention in all cases would have resulted not so much from increased warning durations following system detection of terrain threats, as from the fact that flight crews, given a continuous terrain display, would have perceived these terrain threats and responded to them well before EGPWS was required to generate warnings." The AIA comments that Boeing would object to a change in the GPWS intended function, and adds that the NPRM assumes that a flight crew would want to have terrain data continuously displayed.

In response to AIA's comment about a continuous terrain display, the FAA previously pointed out that the Volpe part 121/135 study stated that the continuous terrain display feature of EGPWS may be even more important than the terrain threat detection/alert/warning features in breaking the chain of decisions leading to CFIT. Flight crews lacking an outside visual perspective are given an internal continuous display of nearby terrain, greatly heightening situational awareness. Rather than a last ditch warning of imminent danger, the continuous terrain display would allow crews to maneuver to avoid terrain long before it ever becomes an obstruction to their flight path. TAWS represents a pivotal advance in providing flight crew terrain awareness. Thus, the FAA has determined that the terrain situation awareness display is a valuable function, and is requiring its use for all part 121 operations and for those part 135 operations conducted with

airplanes configured with 10 or more passenger seats. However, the FAA recognizes that in accomplishing normal piloting duties, the flight crew should not continuously stare at the terrain display. In addition, the display may be used for other information such as weather. The FAA therefore is not requiring the continuous use of the display.

The AIA also recommends that the preamble language under "Functions of TAWS," "Terrain Clearance Floor," should be changed to read "The terrain clearance floor creates an increasing terrain clearance envelope around the closest (not "intended") airport runway related to the distance from the runway * * *" The AIA says that the NPRM language assumes that the closest runway is the intended runway, and that "EGPWS has no way of knowing what the "intended" (*i.e.* destination) airport would be unless significant design changes were made.

In response to AIA's comment about the terrain clearance floor feature, the FAA agrees that, concerning one manufacturer's TAWS, the commenter is correct; the closest runway is not always the intended runway and on a landing approach when flying by a nearby unintended runway, the TAWS may temporarily build a terrain clearance envelope around the unintended runway. However, the FAA does not see this as a problem for four reasons. First, the TAWS will, in sufficient time, switch the terrain clearance floor to the intended runway as soon as it becomes the closest. Second, if the envelope around the unintended runway gives off an alert, this is an indication that the plane is obviously too close to terrain related to the unintended runway. Three, the clearance floor is not displayed so there would be no confusing information presented to the flight crew. Finally, not all TAWS systems have this method of operation.

The NBAA and GAMA say that there could be difficulty in integrating TAWS, (which is a digitally based piece of hardware) into the many airplanes that use analog-based systems. The GAMA and AOPA say that other systems required by TAWS include the air data computer, radar altimeter, global positioning system, as well as four annunciators (alarms) and a display for the information. The NBAA says that "it is unclear whether all of the modifications necessary to adapt such an advanced piece of hardware into a legacy avionics suite will result in a fully functional TAWS system." The NBAA, GAMA, and AOPA say that these integration difficulties would greatly affect the cost estimates for purchase, installation, and approval of TAWS.

Regarding comments by NBAA and GAMA about integrating TAWS into airplanes with analog based systems, the FAA is aware that manufacturers are designing digital and analog TAWS models. Thus, there should be an appropriate model for each airplane's existing configuration.

Some commenters, including a part 91 charter operation, say that current GPWS technology still presents the problem of false warnings, causing pilots to disregard these warnings (*e.g.*, when descending to an airport). One commenter says that GPWS technology should be further developed to insure that these kinds of problems are eliminated, and that the FAA should postpone this rule until the technology is improved.

In response to the commenters who says that false warnings are still a problem and the commenter who requested that the FAA postpone this rule until GPWS technology is improved, the FAA's position is that the proposed rule recognized the false warning problem in existing GPWS. As stated in the NPRM, GPWS equipment has been improved since it was first required in the 1970's. These advances include improvements in terrain detection logic that provides increased terrain warning durations in the order of 10–15 seconds on average, resulting in additional time for the pilot to maneuver that can be crucial in preventing accidents. In addition, the NTSB also recognized and addressed this issue by recommending to the FAA that early generation GPWS equipment be upgraded (NTSB recommendations A–92–39 through A–92–42). The final rule implements these NTSB recommendations to retrofit all GPWS with TAWS.

Another commenter responds to the FAA's statement in the NPRM that it "expects that manufacturers will provide (an alert) at least 20 seconds in advance of a potential impact." This commenter says that TAWS should provide a first alert of not less than 30 seconds prior to potential impact.

Regarding the comment about the TAWS alert time, the FAA addresses alert times in the TSO document. However, for clarity, the FAA restates the following concerning alert times from the NPRM:

"The function of the new proposed TAWS standard is to prevent CFIT by providing alerting times earlier than those provided by existing ground proximity warning systems manufactured in accordance with Technical Standard Order (TSO)–C92c. Typically GPWS aural and visual warnings occur about 20 seconds or less before potential impact with terrain. The visual warning is usually a blinking light and the aural warning is usually a message through the airplane's audio system.

"Studies indicate that average combined pilot and aircraft reaction time to avoid a CFIT after warning is within the 12 to 15 second range. The FAA has approved for installation a TAWS (the EGPWS) that provides an initial alert approximately 60 seconds before potential impact and another alert about 30 seconds before potential impact. These alerts are both aural and visual. These alerting times were based on data from actual CFIT accidents and were chosen by the manufacturer as the best compromise to provide timely alerts while still minimizing nuisance alarms. Human factors research and FAA experience show that, if an aural cockpit alarm sounds too often as a false alarm, the flight crew will either begin to ignore it or will be tempted to disable the system. Therefore, while the forward looking capability of TAWS could provide an alert far in advance of potential impact, the alerting time must be as short as possible, while still allowing an adequate time to avoid impact. The FAA will carefully evaluate the alerting times for each proposed TAWS, but expects that manufacturers will provide at least 20 seconds in advance of a potential impact."

The NTSB comments that standards for TAWS design should be developed to minimize the potential for misuse of the equipment. The NTSB says that the FAA alluded to this issue in the NPRM when it pointed to the possibility that pilots would be tempted to use TAWS for navigational purposes and that pilot training should be developed to prevent this occurrence. The NTSB states that pilot training should not be used to "compensate for potential deficiencies in the TAWS design." The NTSB adds that the design of TAWS should "reflect the results of a thorough human factors evaluation to obviate the need for training and other procedural requirements that compensate for design deficiencies or misuse of design principles."

In response to the NTSB's comment, the NPRM pointed out that the Volpe part 121/135 study recognized that the terrain display may present a new set of challenges to pilots. The TAWS's topographical map display could offer a temptation for pilots to use it for navigational purposes. Therefore, the FAA stated in the NPRM that pilot training should emphasize that other airplane systems are intended for this purpose, and any TAWS terrain display features are intended only to provide terrain awareness, not for aerial navigation. (The NPRM also cited Notice N8110.64, Enhanced Ground Proximity Warning System, which provides guidance on EGPWS and specifies that Airplane Flight Manuals should state that EGPWS shouldn't be used for navigational purposes.)

The Air Line Pilots Association (ALPA) strongly supports the NPRM's inclusion of the visual display of terrain as part of the overall TAWS system. The ALPA emphatically agrees with the Volpe part 121/135 study finding that the visual display is the most important function of the TAWS system because it provides flight crews with a picture of the surrounding terrain threat that can be responded to well before the system is required to generate warnings.

The ALPA supports the need for the TAWS system to have a backup to the synthetic terrain data, such as radar altimeter inputs for generating warnings in the event of erroneous terrain database information or erroneous navigational inputs.

The ALPA encourages the FAA to preclude delay of the final rule due to potential objections by part 91 operators. The ALPA feels the final rule should be applied to commercial operators as soon as possible in an effort to prevent future controlled-flight-into-terrain accidents.

In response to ALPA's first comment that supports mandating a terrain situational awareness display, the FAA agrees that such a display is a very valuable tool and therefore will continue to mandate such a display for part 121 operators and part 135 operators of airplanes with 10 or more passenger seating. However, the FAA is revising the final rule to make such a display optional for part 91 operators and part 135 operators of 6 to 9 passenger seating for the following reasons:

While the display adds an additional level of safety to large commercial transports (and this is in line with the FAA policy of requiring a higher level of safety for such airplanes), the display itself does not save lives. Once in a potential CFIT situation, what saves lives is the TAWS caution alerts and warning commands. Requiring a display on a smaller, older airplane in some instances will present such an oppressive financial burden that the owner/operator may either go out of business or convert to a less safe piston-engine airplane. Furthermore, there is promising new technology such as moving maps that in the near future will provide inexpensive additional terrain situational awareness to these smaller, older airplanes.

In response to ALPA's second comment to require a radar altimeter as a backup to the terrain database, the FAA is requiring TSO–C151 Class A equipment for part 121 operators and part 135 operators of 10 or more passenger seating and TSO–C151 Class B equipment for part 91 operators and part 135 operators of 6 to 9 passenger seating. Class A equipment requires a radar altimeter; Class B equipment does not. The reasons behind this decision are the same as mentioned above concerning the terrain situational awareness display.

In response to ALPA's third comment concerning not delaying the rule due to potential objections by part 91 operators by applying it to commercial operators as soon as possible, the FAA believes it is processing the rule as expeditiously as possible. The FAA further believes it can process the rule faster as currently defined and believes that redefining it at this time into two rules—one for commercial operators and one for part 91 operators—would actually delay its implementation.

The ATA recommends that the final rule clearly state that TAWS systems installed before adoption be considered compliant, including those installed under FAA-approved Supplemental or Amended Type Certificates, Service Bulletins or JAA approvals. ATA adds that the final rule should clearly state whether systems without a color terrain display, certificated and installed prior to the final rule, would be in compliance.

In response to ATA's first comment requesting that the FAA formally recognize as compliant TAWS systems installed before adoption of the final rule, the FAA recognizes and appreciates the significant voluntary action by ATA and its members as well as by other segments of the industry. It has been and still is the FAA's intention to recognize all FAA approved TAWS installations (*i.e.*, those that meet the requirements of TSO–C151) done voluntarily before issuance of the rule as being in compliance with the rule.

In response to ATA's second comment concerning a color display, the FAA believes that ATA misunderstands the display requirements. The FAA is not requiring only a color display; monochromatic displays have been allowed and will continue to be allowed. Therefore, the FAA sees no reason to reference this subject in the final rule.

TSO Comments

When the FAA published the TAWS NPRM, it also made available a draft of a proposed Technical Standard Order (TSO)–C151, entitled Terrain Awareness and Warning System. The proposed TSO was made available under a separate Notice of Availability in the **Federal Register** on November 4, 1998 (63 FR 59494), which requested public comments on the TSO. All comments related to the TSO, whether in response to the NPRM or the TSO Notice of Availability, were given to an FAA technical team to evaluate and use in developing the final TSO.

In response to the TSO notice of availability, commenters submitted a large number of suggested changes to the TSO. (The substance of these comments are discussed in the TSO disposition report.) In trying to be as flexible and as accommodating as technically feasible, the FAA accepted and included most of the suggested changes, and developed a revised version of the draft TSO. This proposed TSO was made available in a second notice of availability in the **Federal Register** on May 27, 1999 (64 FR 28770), which again requested public comments on the TSO.

Based on the above actions, the FAA issued a final version of TSO–C151 on August 16, 1999. This TSO will be the means to obtain approval of TAWS products and is described below.

TSO–C151 prescribes the minimum operational performance standards that TAWS equipment must meet to be identified with the TSO–C151 Class A or B marking. At present the TSO includes two classes of equipment: (1) Class A, intended for airplanes operated under part 121, and for airplanes of 10 or more passenger seating operated under part 135; and (2) Class B, intended for airplanes operated under part 91, and for airplanes of 6 to 9 passenger seating operated under part 135. TSO–C151 does not require the use of specific design criteria nor prescribe the use of specific components. The applicant is free to design its own system providing it meets the minimum operational performance requirements of the TSO.

Class B equipment includes basic TAWS safety features, such as: Forward looking terrain warnings; minimum ground clearance plane function; GPWS mode 1 (high descent rates), mode 3 (descents after takeoff), and mode 6 (the 500 foot voice callout). Optional TAWS features of Class B equipment include: radio altimeter; a landing gear position sensor input to TAWS; a flap position sensor input to TAWS; a glideslope

deviation input to TAWS; a flap override switch in the cockpit; a glideslope (mode 5) inhibit switch in the cockpit; a TAWS inhibit switch in the cockpit; a terrain display; and a weather/terrain switching function.

TAWS technology, as well as other avionics technology, is advancing at a very rapid pace. Because of this, the FAA expects to revise TSO–C151 periodically and amend the rule when necessary, to include other classes or subclasses as new technology is developed and proven. An example of a new class could be the addition of a Class C intended for piston-powered airplanes and turbine-powered airplanes of less than 6 passenger seating. An example of a new subclass could be a Class B, level 1 that could include geometric calculation of altitude using GPS/WAAS (Global Positioning System/Wide Area Augmentation System) when that system is operational. The FAA also realizes that technology may advance and prove itself faster than the FAA can keep TSO–C151 up to date. In these situations, the FAA will make use of the deviation process allowed under § 21.609, Approval for Deviation. The FAA intends to provide maximum flexibility for industry to continuously develop more advanced and less expensive TAWS equipment.

Supplemental Type Certificates (STC's)

The NATA says that the NPRM's estimate of 82 STC's for retrofitting the part 135 fleet with TAWS is low because in some cases, "a single aircraft model, particularly older aircraft models, may have evolved to a point where the cockpit/avionics panel and currently installed equipment vary greatly. As a result of this variance, "follow-ons" may not be available for many airplanes and many more "first of type" installations will be required for Part 135." This could result in STC approval delays and could significantly impede timely equipment installations. Other commenters questioned the number of estimated STC's.

FAA Response

The FAA disagrees with NATA's statement that there would be delays in STC approvals and equipment installations. When the FAA developed the compliance schedule, the FAA took into account the potential FAA STC approval workload. In addition manufacturers have obtained additional STC's since the NPRM was published and are making them available for their customers. Taking all this into consideration, the FAA has determined that the approval process will not hinder the implementation of this rule.

Training

The FAA did not propose changes to existing training requirements. However recent new training requirements on crew resource management (CRM) for flight crewmembers should provide additional safeguards in conjunction with the use of TAWS. This requirement applies to flight crewmembers operating under parts 121 and 135 and took effect on March 19, 1998. (60 FR 65940, December 20, 1995).

The Independent Pilots Association (IPA) criticizes the FAA for not changing current training requirements to specifically require training in the use of TAWS. IPA believes that without specific training in what TAWS is designed to do and what it is not designed to do, the full safety benefits and risk reduction will not be realized.

Alternatively, a number of commenters say that increased training for situational awareness and monitoring is needed, rather than "another expensive electronic box."

Raytheon points out that even in some of the part 121 CFIT accidents that involved airplanes that "were new generation and well equipped with the latest in technology", there was a loss of situational awareness by the flightcrew. Therefore, the best way for operators to reduce CFIT accident risk is through "improved training, emphasis on standardization of procedures, and review of human factors."

FAA Response

The FAA agrees that training is an important element to minimizing CFIT and recommends a three-pronged approach: (1) Proper pilot training; (2) Better decision-making tools; (3) Electronic hardware to assist the pilot. TAWS addresses the electronic hardware issue. The FAA's position is that training alone has not been successful in reducing CFIT accidents; therefore the FAA believes that it is necessary to require TAWS.

The fact that the final rule does not mention training does not mean that no TAWS training is required. Under existing §§ 121.415 and 135.293 certificate holders are required to insure that each crewmember is qualified in new equipment, procedures, and techniques, including modifications to airplanes. The effect of this requirement is that whenever an operator installs new equipment, part of the approval process for that equipment includes showing that crewmembers have been adequately trained to use the new equipment.

In addition, although not directly related to training, the final rule requires that operators include in their Airplane Flight Manuals the appropriate procedures for operating and responding to the audio and visual warnings of TAWS. Existing § 91.9 requires that the pilot operate the airplane in accordance with the approved flight manual.

Other Government/Industry Efforts

The NBAA recommends that the FAA delay action on this rule until it receives a report from the Joint Safety Analysis Team (JSAT). The NBAA is participating on the workgroup teams to study several root causes of general aviation accidents, including CFIT. The NBAA says that the JSAT's recommendations may include more cost effective alternatives to TAWS. A similar comment is also made by GAMA, which is the industry co-chair of the JSAT.

Raytheon strongly recommends that the FAA further investigate the effectiveness of TAWS in general aviation operations and consider alternatives to TAWS better suited to the general aviation environment. Raytheon states that further investigations are also supported by the Joint Industry/FAA Team, Proposed Action Plan, "Controlled Flight into Terrain (CFIT) Avoidance for General Aviation." The Joint Industry/FAA Team submitted five recommendations to the FAA for reducing CFIT accidents, including equipment enhancements, pilot education and improvement in decision making aids for pilots.

Similarly, AOPA recommends that the FAA implement the recommendations made by the "Controlled Flight Into Terrain (CFIT) Avoidance for General Aviation" report (August 1998). This report was put forth by a joint industry/FAA team which was established to respond to the "The White House Commission on Aviation Safety and Security" recommendation regarding EGPWS in general aviation airplanes. The team had concluded that there are a number of causes of CFIT accidents and that these factors can be addressed "in more affordable, practical, and effective solutions." AOPA states that these recommendations would lead to voluntary equipage and would be more effective in reducing CFIT accidents than would a mandate for TAWS.

GAMA encourages voluntary equipage of TAWS on general aviation turbine-powered airplanes.

FAA Response

In response to NBAA and GAMA comments that the FAA delay the rule until it receives a report from the Joint Safety Analysis Team (JSAT), the FAA does not believe such a delay is necessary, warranted or wise; the report was completed in April 1999. The NBAA and GAMA are valuable participants on the team and GAMA is a co-chair of the general aviation section of JSAT (GA–JSAT). The FAA is the other co-chair and also is a major participant, and as such, the FAA is aware of all JSAT transactions and activities. The FAA is aware that the GA–JSAT is emphasizing training. The FAA agrees that training is important, but as discussed earlier, training by itself, unfortunately will not solve the CFIT problem. The pilot needs a technical aid. The limitation of training is profoundly illustrated in the transport area. Commercial pilots have access to the best training in the world, yet CFIT accidents are the leading cause of fatalities in commercial aviation worldwide. In fact, the Transport Section of JSAT, in recognizing the limitations of training, has made TAWS its primary intervention strategy. There currently is a successful, cost effective technical aid available—TAWS—and it is incumbent upon the FAA to require this technical aid as expeditiously as possible.

Raytheon and AOPA make reference to another FAA sponsored activity and report, the joint FAA/industry team report titled "Controlled Flight into Terrain (CFIT) Avoidance for General Aviation." This team was organized by the FAA to supplement the TAWS rulemaking activity, not to replace it. The TAWS rule applies to U.S.-registered, turbine-powered airplanes of 6 or more passenger seating. The team was formed to investigate how to eliminate CFIT accidents in the remaining group of general aviation airplanes not covered by the proposed TAWS rule, specifically piston-powered airplanes regardless of number of passenger seats and other airplanes of less than 6 passenger seats. In preparing the report, the team became convinced that its recommendations could be applicable to all general aviation airplanes, not just the narrow group mentioned above, and stated this in its report. The FAA co-chaired the team and participated in its deliberations. The FAA supports the recommendations of the team and, in fact, is supporting and participating in all the recommendations. The FAA sees no conflict between this report and the TAWS rule. As mentioned in the discussion in the section addressing the TSO, the FAA is building in the flexibility to incorporate the new technologies identified in the report as those new technologies come on line. Therefore, in response to Raytheon's first comment that the FAA further investigate the effectiveness of TAWS, the FAA already is participating actively in ongoing CFIT research and investigations and will continue its participation. In the mean time, as mentioned in the FAA response concerning the JSAT report, there currently is a successful, cost effective technical aid available—TAWS—and it is incumbent upon the FAA to require this technical aid as expeditiously as possible.

In response to Raytheon's second comment that the FAA consider alternatives to TAWS, the FAA believes that Raytheon misunderstands the concept of TAWS. TAWS is a technical aid to eliminate CFIT accidents and is one of several integrated approaches; the others include improved training, better decision making information and better weather information. The new technologies, discussed in the report referenced by Raytheon, when integrated properly into an airplane, would be a TAWS and would provide TAWS functions.

In response to AOPA's first statement that the recommendations in the report would lead to voluntary equipage, the FAA recognizes the voluntary effort by industry. Unfortunately, many owners/operators do not take voluntary action, so the FAA must require them to take action.

In response to AOPA's second comment that the recommendations in the report will result in a more effective means of reducing CFIT accidents than would a mandate for TAWS, the FAA believes that, like Raytheon, AOPA misunderstands TAWS. The FAA believes that the technical recommendations in the report will lead to better and less expensive TAWS equipment. Much of this equipment will be available well before the compliance due dates. But the FAA and industry cannot keep waiting for better and less expensive equipment. CFIT accidents are tied with spins as the leading cause of fatalities in general aviation in the United States. There currently is a successful, cost effective technical aid available—TAWS—and it is incumbent upon the FAA to require this technical aid as expeditiously as possible. Waiting to do more research and investigations, or not using all available means at our disposal, including the use of cost effective technical aids, while additional people die in CFIT accidents, would be a dereliction of duty.

Compliance Schedule

The FAA proposed amending §§ 121.360 and 135.153 to add an expiration date of four years after the effective date of the final rule for the use of current GPWS systems. Thereafter, compliance with those sections would not be allowed in lieu of the provisions amended herein.

The FAA proposed that, beginning one year after the effective date of the final rule, U.S.-registered airplanes manufactured after that date be equipped with TAWS. The FAA also proposed that turbine-powered airplanes manufactured on or before that date be equipped with TAWS within four years after the effective date of the final rule.

The NATA states that, since there is only one TAWS product available that would meet FAA approval, there should be a longer compliance period for non-part 121 operations. This, coupled with the likelihood of changes to the TSO (based on incoming comments) will have a direct impact on the ability of current and future TAWS manufacturers to develop and offer their products in the marketplace. For these reasons, NATA says that the FAA should provide a ten-year timetable for part 135 on-demand air charter operations.

The NATA also states that, since the most significant safety benefits will occur with TAWS installation on part 121 airplanes, and since manufacturers will have limited production capabilities, the emphasis should be on supplying equipment to part 121 operations. Also, a longer timetable will allow "natural market development to help alleviate product supply, installation, certification, and cost dilemmas through increased manufacturer competition and the ability to absorb the substantial costs over time."

The RAA requests the compliance period be extended to a five year period for all 30+ seat turboprop airplanes; a seven year period for all 10 to 29 passenger seat turboprop airplanes; and eight year period for all 6 to 9 passenger seat turboprop airplanes; and extended to December 20, 2010, for all non-transport category airplanes that are classified as § 121.157(f) types that will be phased out of part 121 operations on the same date.

Likewise, Northwest Airlines requests that airplanes planned for retirement prior to 2008 be exempt from the final rule. This would allow Northwest to focus more on accelerated installation on airplanes in its long-term fleet plan.

The ATA comments that a one-year effective date after publication of the

final rule is necessary to accommodate realistic lead times for the productions ramp-up for piece parts and kits. The ATA also recommends that the final rule clearly state that TAW systems installed before the adoption of the final rule will be considered compliant. A related issue is whether systems certificated and installed before the adoption of the final rule without a color terrain display would be in compliance with the rule.

Trans World Airlines, in conjunction with ATA, believes that the NPRM public comment period should be connected to the TSO public comment period for complete project public comments.

Japan Airlines comments that the effective date of the final rule should be fixed on the basis of the progress made in manufacturing and installing TAWS, with special attention given to retrofit issues, such as changing from analog to digital.

FAA Response

In response to comments from NATA, RAA, ATA, and Japan Airlines, the FAA does not believe that the rule should be delayed. Since the proposed rule was published, several other manufacturers have developed TAWS. The initial manufacturer, in response to this competition, has already lowered the selling prices of its TAWS products and has developed several smaller, less expensive systems for older planes, both analog and digital.

When the FAA initially developed the compliance schedule, it took into account the production capability of only one manufacturer and the anticipated certification workload for the FAA. Since then, additional manufacturers have been developing and making available additional products beyond what was anticipated. Furthermore, TAWS manufacturers and airframe manufacturers are obtaining STC's and making them available to customers who install TAWS, thereby reducing the anticipated FAA certification workload. When taking these two factors into consideration, the FAA is convinced that the initially proposed compliance schedule can easily be met.

In response to Northwest Airline's comment about exempting airplanes planned for retirement, the FAA does not agree. The commenter has not provided adequate justification as to why these airplanes should be exempted. Although Northwest Airlines may intend to retire certain airplanes by 2008, there is no guarantee that this will happen. Further, even if Northwest does retire the airplanes, there is no guarantee that those airplanes will go out of service permanently. They may be sold and used by others and, therefore, will need TAWS protection.

Miscellaneous Comments

A commenter recommends that each airplane be given a rating system that indicates that it has a GPWS on board. It would then be up to the passenger to decide whether or not to fly on that airplane.

FAA Response

The FAA does not think such a rating system would be practical or workable. Given the complexity of all the equipment required on the airplane, it would be difficult to convey to a boarding passenger, how each piece of equipment contributes to the overall safety of the airplane.

Paperwork Reduction Act

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the FAA has submitted a copy of these sections to the Office of Management and Budget for its review. The collection of information was approved and assigned OMB Control Number 2120–0631. This final rule requires a Terrain Awareness and Warning System for all U.S.-registered turbine-powered airplanes of 6 or more passenger seating. TAWS is a passive, electronic, safety device located in the avionics bay of the airplane. TAWS alerts pilots when there is terrain in the airplanes' flight path. Since there is not an actual collection of information, we cannot estimate a burden hour total and no comments were received on this information collection submission. However, for the purpose of controlling this submission, we will assign an one-hour burden to the package. There is a total cost estimate of 340 million dollars, for purchase and installation of the passive, electronic, safety device.

An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization international standards and recommended practices and Joint Aviation Authorities requirements. TAWS is a new system recently developed by American industry. The FAA intends to work through the ICAO process to harmonize this rule with the international community.

Regulatory Evaluation Summary

Changes to Federal Regulations must undergo several economic analyses. First, Executive Order 12866 directs that each federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget (OMB) directs agencies to assess the effect of regulatory changes on international trade. And fourth, Title II of the Unfunded Mandates Reform Act of 1995 requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million in any one year. In conducting these analyses, the FAA has determined that this rule is "a significant regulatory action" under section 3(f) of Executive Order 12866 and, therefore, is subject to review by the Office of Management and Budget. This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034, February 26, 1979). This rule will have a significant impact on a substantial number of small entities, will not constitute a barrier to international trade, and does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year.

Economic Evaluation

Introduction to Cost/benefit Analysis

Since the publication of the NPRM, some important developments have occurred. The FAA received extensive cost information during the comment period (detailed information regarding the type of expenditures needed for specific airplane models and updated estimates of the size of the affected fleet) and developed alternatives to reduce costs while maintaining the increased level of safety expected from TAWS.

In response to the commenters, the FAA has examined ways to reduce costs for smaller operators and still maintain the incremental level of safety provided by TAWS. The FAA has determined that a TAWS unit with significantly less complexity will meet desired safety objectives at lower cost for all part 91, and for certain operators under part 135. The savings to part 91 operators alone will be well over $200 million.

The aviation industry has already moved to retrofit a large percentage of the existing fleet, and has placed orders that extend well into the future. The Air Transport Association (ATA) member airlines in particular have announced a voluntary program where they will equip their airplanes with TAWS. For domestic United States operators, there have already been nearly 4,500 TAWS deliveries. Over 2,200 TAWS units ordered are backlogged. Nearly half of the airplanes operating under part 121 are already in compliance with this rule. Given that ATA member airlines voluntarily committed to retrofit their in-service fleet and to order new airplanes equipped with TAWS, a significant portion of incremental compliance costs (and equivalent associated benefits) for current part 121 airplanes and all future equipment delivered (*i.e.*, future transport category airplanes) will not be counted in evaluating the regulatory impacts of this rulemaking.

The incremental benefits and costs of the rule depend on several fleet related factors. To determine the affected fleet the analysis begins with the existing fleet, subtracts expected retirements, subtracts voluntary compliance, and adds future airplane deliveries that will be impacted by the rule.

Estimates of lifecycle benefits were calculated on a per-airplane basis and summed over all affected airplanes to obtain an estimate of the expected fleet benefits. The calculations took into consideration passenger capacity, average load factors, proportion of fatalities given a CFIT accident, airplane value, and number of flight hours (see following discussion on part 121 for application of methodology).

The estimate of benefits and costs for TAWS is for the overall rulemaking. However, since the benefit and cost impacts vary so widely across operators and equipment, specific equipment costs and both benefits and costs for parts 121, 135, and 91 were analyzed separately and are presented accordingly. The part 135 benefits discussion is more detailed than that of parts 91 and 121, given the re-evaluation of the part 135 accident data included in this final rule.

Part 121

The FAA's database provides the estimate for the overall part 121 fleet of 6,907 airplanes, which includes 5,362 turbojets and 1,545 turboprops. The ATA membership fleet of 4,569 airplanes accounts for slightly more than 85 percent of the part 121 jet fleet. The ATA and the Regional Airline Association (RAA) provided the in-service part 121 fleet expense by equipment type incorporated in this analysis.

The FAA obtained information on the deliveries and orders for TAWS from AlliedSignal. As of May 31, 1999, AlliedSignal had delivered 2,881 TAWS units to United States domestic operators of part 121 passenger and cargo airplanes and to original equipment manufacturers (OEMs). The FAA reduced the OEMs' deliveries by fifty percent (to account for overseas sales) as a rough estimate of U.S. new equipment deliveries with TAWS units installed. For AlliedSignal's domestic backlog, the FAA included all operators' orders and excluded all OEMs' orders (*i.e.*, to be conservative, since exact information on overseas orders is not available). In total, 3,338 in-service part 121 airplanes have already been equipped with TAWS or have already placed orders with the manufacturer (based on data in mid-1999; several hundred more airplanes probably will have been equipped by the date of publication of the rule). Of the 3,338 airplanes counted as voluntarily complying, 3,173 are turbojets and 165 are large turboprops. Voluntary purchases of TAWS equipment before the implementation of the rule are not assumed to be an expense incurred due to regulation, but rather an independent industry decision to enhance operational safety. Thus, both the expected benefits and costs of this rule are reduced by the proportion of airplanes equipped with TAWS (or on order with TAWS included).

For future airplanes, voluntary compliance has a substantial impact on the affected fleet. Excluding ATA member fleets, the remaining jets are 20 percent of the total part 121 jet fleet. The future new delivery jet forecast averages 280 per year. The estimated affected future jet fleet is then 20 percent of the anticipated deliveries. Voluntary compliance is much lower for part 121 turboprops than for jets. The proportion of total turboprop equipment not in compliance is nearly 70 percent. Nevertheless, 30 percent compliance results in a significant reduction in the incremental costs of future deliveries (*i.e.*, from the standpoint of a "regulatory-required" cost-impact). Future turboprop deliveries are estimated to average 100 per year with the annual affected amount equaling 69 or 70 airplanes. (This is a conservative assumption, since operators of much more than 30 percent of part 121 turboprops would probably elect to equip their new airplanes with the most current GPWS/TAWS equipment)

The part 121 affected fleet equals the remaining in-service part 121 airplanes (*i.e.*, after subtracting-out airplanes retired and airplanes under voluntary compliance) combined with newly manufactured airplanes estimated to be sold to operators who would not have voluntarily complied with this rule. The affected in-service part 121 fleet equals 2,709 airplanes (or, 6,907 existing fleet, minus 860 retirements, and minus 3,338 airplanes under voluntary compliance). The number of affected jets equals 1,644, large turboprops 710, and small turboprops 355. Over the 2001 through 2010 period, future new deliveries are 560 jet transports and 690 turboprop transports for a total of 1,250 airplanes. The total affected part 121 fleet thus equals approximately 4,000 airplanes.

There has been a reduction in the CFIT accident rate since 1974, when the FAA first required GPWS in part 121 and certain part 135 airplanes. However, some risks remain—in part due to differences in the capabilities of various generations of GPWS technologies. Risk reduction estimates for 14 CFR part 121 operations are based on the Volpe part 121/135 study and analyses of accident data by FAA and industry experts. These appraisals are true measures of risk reduction in that they fully consider the effect of TAWS on accident outcomes, rather than simply assume that all accidents will be prevented. The analysis is complicated by the fact that two vintages of GPWS technology were employed during the period being studied. Although the NPRM considered the TAWS impact in comparison to both early and current generation systems, this final rule analysis assumes that all the airplanes currently equipped with the basic system are in fact "one level higher" (*i.e.*, have the current GPWS), a significantly more conservative assumption resulting in lower benefits. Risk reduction estimates were calculated by dividing the number of preventable accidents for a particular airplane/GPWS combination by the corresponding number of flight hours.

From an evaluation of part 121 accidents during the 10-year period, 1986–1995, the Volpe part 121/135 study concludes that TAWS would have prevented 6 CFIT accidents involving turbojet airplanes and 2 CFIT accidents involving turboprops.

With respect to turbojets, only one accident involved an airplane equipped with current-generation GPWS. However, the Volpe part 121/135 study concludes that in three other cases (involving airplanes equipped with early-generation systems), current-generation GPWS would not have prevented the accident. TAWS would

have prevented all four accidents. Therefore, the FAA estimates the risk reduction potential of TAWS relative to current-generation GPWS is approximately 0.038 accidents per million flight hours (4 ÷ 104.7 million flight hrs.). With respect to the turboprops, both accidents would have been prevented by TAWS, but not by GPWS; the comparable risk reduction rate is 0.118 accidents per million flight hours (2 ÷ 16.972 million flight hrs.).

After estimating the expected benefits for the fleet, total estimated present value benefits depends on the expected life after installation. The total present value benefits of this rule for part 121 airplanes equal nearly $494 million.

The FAA accepts the costs provided by the ATA for jets and by the RAA for turboprops. The combination of retirements and voluntary compliance substantially changes the affected fleet, especially for the impact on ATA member fleets operating in part 121. The FAA includes as part 121 operations all RAA turbine-powered airplanes classified as large cargo and passenger airplanes with more than 30 seats, plus nearly all of the RAA classified part 121/135 passenger airplanes with 10 to 29 seats. Retirements reduce the proportion of older airplanes in the fleet; these airplanes have the highest average retrofit cost.

After retirements and voluntary compliance, the expected jet fleet to be retrofitted equals 1,644 airplanes. Over the time period 2001 to 2004, the present value expense of retrofitting this fleet equals $108,580,000. Similarly, the present value expense of retrofitting 355 10 to 29 seat airplanes is estimated to be $9,660,000. Finally, the present value expense to retrofit 30+ seat airplanes (includes large cargo) is estimated to be $25,390,000. Over the period of 2001 to 2004 total present value cost of retrofitting the affected fleet is equal to nearly $144 million.

In addition to retrofitting the existing fleet, new airplanes will also incur the cost of installing TAWS. The FAA received a wide range of estimates for the cost of installing TAWS on new airplanes. Whereas the ATA cost estimate for new production airplanes is nearly $25,000, this rule imposes only the additional cost above the current GPWS equipment. The FAA estimate of $13,000 incremental cost for jets equals an incremental price increase of $10,000 for the TAWS, plus $1,000 installation kit, plus additional labor of $2,000. Future turboprops would have had GPWS, so the incremental cost is the relevant estimate. The $3,800 turboprop incremental cost equals the incremental price increase of $2,000, plus $800 installation kit, plus additional labor of $1,000. There are no incremental costs incurred for training, maintenance, and fuel with TAWS versus GPWS.

Over a ten year horizon for new deliveries, the present value of incremental expense for jets is nearly $5 million and for turboprops nearly $2 million. If the horizon is extended an additional ten years, the present value for new deliveries increases by approximately $3.4 million. The total present value cost equals $144 million for retrofitted airplanes plus $7 million for new airplanes, or $151 million.

With estimated present value benefits of $494 million and present value costs of $151 million, the rule is clearly cost-beneficial for airplanes operated under part 121.

Part 135

Similar to the case with part 121, incremental benefits and costs depend on several fleet-related factors, *i.e.*, the existing fleet (and associated hours flown), expected retirements, voluntary compliance, and non-compliant airplane deliveries. For the purposes of this rulemaking, the cost/benefit analysis separates airplanes with 10 or more seats from those with 6 to 9 seats.

The part 135 fleet today is composed of 2,455 airplanes with 6 to 9 seats, and 334 airplanes with 10 or more seats. These airplanes are assumed to have a 4 percent retirement rate.

There have been 421 TAWS units delivered to domestic United States operators and original equipment manufacturers (OEMs) for 6 to 9 seat airplanes. Operators have purchased 118 units and have ordered an additional 5 units. Fifty percent of OEM deliveries (152 of 303 total units) are assumed to be delivered to the existing 6 to 9 seat part 135 fleet. Thus from a fleet of 2,455 airplanes, 275 are estimated to have voluntarily complied. For the part 135 airplanes with 10 or more seats (total fleet equals 334 airplanes), 25 TAWS units have been purchased by operators and an estimated 111 units by OEMs.

After subtracting airplanes that are estimated to be retired or in voluntary compliance, the affected in-service fleet is estimated to be 1,833 airplanes with 6 to 9 seats, and 171 airplanes with ten or more seats.

Future annual airplane deliveries are assumed to equal five percent of the affected in-service fleet. The affected fleet equals 3,616 airplanes through the year 2011.

One of the main criticisms of the part 135 cost/benefit analysis in the NPRM was that the FAA used parts 91 and 121 accident rates for 6 to 9 and 10 or more seat part 135 airplanes, respectively. The main reason for this was that most of the larger part 135 airplanes (those in scheduled service) involved in the CFIT accidents during the 1985 through 1996 analysis period were "moved into" part 121 as a result of the 1995 commuter rule; thus the FAA excluded most of these earlier "part 135 accidents" from the part 135 analysis. In addition, time constraints negated analysis of CFIT accidents involving both the larger and smaller part 135 airplanes. Since publication of the NPRM, the Volpe Center re-evaluated the accident data (docket contains accident analyses) involving part 135 airplanes, again with the emphasis of assessing the effectiveness of TAWS compared to current generation GPWS; the results of this analysis are incorporated in the benefits discussion that follows.

Previous data on hours flown is "distorted" as a result of the part 121/135 "shifts" described above. In addition, FAA fleet data show that there has been a significant decline in the number of 10 or more seat turboprops and turbojets; there are only 111 turbojets and 223 turboprops currently operating with 10 or more seats in part 135. Thus, historical data on hours flown had to be adjusted to reflect the definitional/regulatory change in the part 135 category. The current level of activity is the basis for evaluating future accident probabilities. The relatively few relevant part 135 accidents (*i.e.*, due to the re-classification described above) and concomitantly fewer postulated future accidents logically reflect the reduced level of activity.

As a proxy for hours flown by 6 to 9 and 10 or more seat part 135 airplanes (the data was and still is not available by these specific size categories), the FAA used recently revised data on air taxi operations from its 1997 General Aviation and Air Taxi Survey. The earliest year for which revised annual hours are available is 1991. Since 1991 is approximately the mid-point of the 1985–96 accident evaluation period, hours flown for 1991 was applied to the current number of part 135 airplanes in the two size categories to approximate total annual hours for the fleet during the particular year(s) of the accident(s).

Only one avoidable CFIT accident occurred involving a passenger-carrying turboprop with 10 or more seats (all are non-scheduled). That accident occurred in Beluga, Alaska on December 22, 1989, and involved a Piper PA–31 airplane with 10 passenger seats; only the pilot, who was killed, was on board—the airplane was destroyed. Only TAWS would have prevented this accident. Another accident involved a cargo airplane; that accident occurred in Destin, Florida on May 16, 1991 and involved a Cessna CE–208B airplane with 2 cockpit seats; only one pilot, who was killed, was on board and the airplane was destroyed. Only TAWS would have prevented this accident. Even though most part 135 cargo airplanes are not covered by the TAWS rule, the FAA believes it is appropriate to include this accident in the analysis, since the same model airplane could just as well have been carrying passengers (circumstances involving a CFIT accident would not differ between a cargo-carrying vs. a passenger-carrying airplane).

Only one avoidable CFIT accident occurred involving part 135, 10 or more seat turbojets; the airplane involved was configured for cargo only. The accident occurred in Monroe, Louisiana on January 8, 1988, and involved a Learjet LJ–36A airplane with two cockpit crewmembers on board, both of whom were killed—the airplane was destroyed. Only TAWS would have prevented this accident. The FAA believes it is appropriate to include this accident in the analysis, since the same model airplane could just as well have been carrying passengers (see discussion above re turboprops also).

One avoidable CFIT accident occurred involving a passenger-carrying turboprop with 6 to 9 passenger seats (covered by the rule whether scheduled or non-scheduled). The accident occurred in Casper, Wyoming on December 22, 1989, and involved a Mitsubishi MU–2B–35 airplane with 6 passenger seats; 4 persons were on board and all were killed—the airplane was destroyed. TAWS (and current GPWS) would have prevented this accident.

Two avoidable CFIT accidents occurred involving passenger-carrying turbojets with 6 to 9 passenger seats (covered by the rule whether scheduled or non-scheduled). One accident occurred in Gulkana, Alaska on August 20, 1985, and involved a Learjet LJ–24D airplane with 8 passenger seats; 3 persons were on board and all were killed—the airplane was destroyed. TAWS (and current GPWS) would have prevented this accident. The second occurred in Juneau, Alaska on October 22, 1985, and also involved a Learjet LJ–24D airplane, this one with 6 passenger seats; 4 persons were on board and all were killed—the airplane was destroyed. TAWS (and current GPWS) would have prevented these accidents.

As noted earlier, lifecycle benefits per airplane equal the annualized benefit for that airplane (which is a function of seating capacity, load factor, annual flight hours, *etc.*) discounted over the number of remaining years of service life. Fleet benefits, in turn, are computed by summing per-airplane lifecycle benefits over all affected airplanes.

The results show benefits of $40.6 million for 6 to 9 seat airplanes and benefits of $47.9 million for 10 or more seat airplanes for total part 135 benefits of $88.5 million.

The cost of TAWS equipment for part 135 airplanes depends on the class of TAWS equipment required for the specific group of part 135 airplanes: Class B for airplanes with 6 to 9 seats and Class A for airplanes with ten or more seats. The Class B unit does not require an air data computer, radio altimeter, or a color display; these components (required in the units now identified as Class A) were largely responsible for the high compliance costs in the NPRM for airplanes with 6 to 9 seats. For newly produced 6 to 9 seat airplanes, the cost of TAWS equals the $7,000 unit price for TAWS plus $500 for installation. For existing 6 to 9 seat airplanes, the total retrofit cost is $12,500; this cost is comprised of a $7,000 price plus a dealer markup of $2,100, installation cost of $1,400, and an estimated STC cost of $2,000. The FAA estimates that the rule's incremental unit cost per 10 or more seat airplanes will equal the 10–29 seat part 121 turboprop unit cost of $34,400. For newly delivered airplanes with 10 or more seats, the incremental cost for TAWS is the additional cost above the GPWS that these airplanes would otherwise have been equipped with; this incremental unit cost equals $3,800, comprised of a price difference of $2,000, installation kit of $800, and installation labor of $1,000.

The total TAWS cost for part 135 operators equals the incremental unit cost multiplied by the affected fleet. The present value cost of approximately $18 million for the in-service 6 to 9 seat passenger airplanes, equals the affected fleet distributed equally over the four years multiplied by a unit cost of $12,500. Similarly, the present value cost of approximately $4.7 million for the in-service 10 or more passenger airplanes equals the affected fleet distributed equally over the four years multiplied by a unit cost of $34,400. Over the period 2000 to 2011, the incremental cost of 6 to 9 seat newly delivered airplanes equals approximately $7 million. Over the same period, the incremental cost for 10 or more seat newly delivered airplanes equals approximately $0.4 million. The total present value cost for part 135 airplanes is $30,121,000.

With present value benefits of approximately $88 million and present value costs of $30 million, the rule is clearly cost-beneficial for part 135 airplanes.

Part 91

The fleet referred to as the affected 14 CFR part 91 airplanes, for the purposes of this analysis, is an estimate of the total affected fleet of U.S.-registered turbine-powered airplanes that are not affected by 14 CFR parts 121 and 135. This fleet is estimated to be comprised of approximately 6,000 turbojets and 6,000 turboprops and includes general aviation airplanes operating under part 91 (corporate, business, personal, instruction, aerial application, and other), large airplanes (having a seating capacity of 20 or more or a maximum payload capacity of 6,000 pounds or more) operating under 14 CFR part 125, and U.S.-registered airplanes operating under 14 CFR part 129. Whereas the analysis of airplanes affected by parts 121 and 135 made use of specific airplane-category data, the analysis of the affected part 91 fleet uses aggregate-level estimates owing to the difficulty of gathering airplane or model specific data on airplanes operating under part 91.

Based on recent contacts with industry and government sources, the FAA projects that approximately 240 turboprops and 350 turbojets will be delivered each year to operators falling under the 14 CFR part 91 group. Benefit and cost estimates for newly manufactured airplanes are based on 10 years of deliveries. The conclusions of this report, with respect to the benefit/cost ratio for equipping newly manufactured airplanes, are not sensitive to these forecasts.

Some voluntary efforts to install TAWS systems in part 91 airplanes are already occurring. According to FAA certification officials and industry sources, STCs for TAWS have been approved for the Beech C90, the Canadair CL–601, the Falcon 900B, and the Gulfstream GV. Gulfstream and Bombardier will include TAWS as standard equipment on new Gulfstream V and Global Express long-range business jets. Orders for TAWS equipment for new part 91 airplanes total slightly more than 160 units, or approximately 30 percent of one year of deliveries.

Estimates of the benefits of the rule are based on a Volpe part 91 study of 44 accidents that met all of the following CFIT accident criteria: (1) Accident date between January 1, 1985 and December 31, 1994; (2) turbine-powered airplane having 6 or more

passenger seats operating under 14 CFR part 91 flight rules; (3) airplane in controlled flight at the time of accident; (4) all airplane systems operating normally at time of accident; and (5) pilot(s) not impaired.

Of the 44 accidents, 11 involved turbojets and 33 involved turboprops. Probable cause, as determined by the NTSB, was pilot error in all cases—principally through failure to maintain proper altitude, use of improper instrument flight rules or visual flight rules procedures, or poor planning/decision-making. Contributing factors included weather conditions and darkness in many cases. In two accidents, the NTSB assigned partial responsibility to FAA air traffic control problems. The 44 accidents resulted in 131 fatalities, 19 seriously injured passengers, and destruction of 37 airplanes and substantial damage to 7 airplanes.

The Volpe part 91 study determined that current-technology ground proximity warning systems could have prevented 33 of the 44 accidents (the 33 GPWS-preventable accidents accounted for 96 fatalities, 17 serious injuries, 18 minor injuries, 27 destroyed airplanes, and 6 substantially-damaged airplanes). Of the 11 accidents that were not likely to have been prevented by current-technology GPWS, the study found that 9 accidents could have been prevented by TAWS. In total, therefore, TAWS could have prevented 42 of the 44 accidents (all 33 of the accidents preventable by GPWS and the additional 9). The 42 TAWS-preventable accidents accounted for 126 fatalities, 19 serious injuries, 26 minor injuries, 35 destroyed airplanes, and 7 substantially damaged airplanes. Total part 91 present value benefits are $720.2 million. Adjusting (i.e., reducing) these estimated benefits by the 10 percent of the part 91 fleet voluntarily complying, results in benefits of approximately $648 million.

While there are some nonrecurring costs, most of the total system costs include the equipment with installation, and the operating and maintenance costs. The equipment cost is $7,000 for in-service or newly manufactured airplanes. The Class B TAWS unit (requiring significantly less interface with existing/or needed upgraded avionics) dramatically reduces the expense to part 91 operators from that reported in the NPRM. Installation cost is $3,500 for in-service airplanes and $500 for newly manufactured airplanes. The part 91 total present value cost is $164.2 million.

With estimated present value benefits of $648 million and present value costs of $164 million, the rule is clearly cost-beneficial for part 91 airplanes.

Conclusions

On the basis of the preceding analyses, the FAA concludes that, for each of the groups of affected airplanes operating under parts 121, 135, and 91, the benefits of TAWS exceed their costs. Total present value benefits of the rule are $1.23 billion, approximately 3.6 times the cost of $345 million. The benefit/cost ratios for the groups that are composed primarily of smaller airplanes (parts 91 and 135, which have a large number of 6 to 9 seat airplanes) are high in large part because of the development of the less costly Class B TAWS equipment that will be in effect under this final rule.

Final Regulatory Flexibility Determination and Analysis

The Regulatory Flexibility Act of 1980 establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a "significant economic impact on a substantial number of small entities." If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

Recently, the Office of the Small Business Administration (SBA) published new guidance for the use of Federal agencies in responding to the requirements of the Regulatory Flexibility Act, as amended. Application of that guidance to this rule indicates that it will have a significant impact on a substantial number of small entities. Accordingly, a full regulatory flexibility analysis was conducted.

1. A description of the reasons why action by the agency is being considered

The agency is considering this action in response to a history of controlled flight into terrain accidents, NTSB recommendations, and subsequent analysis performed at the request of the agency. This rule is an implementation of the agency's mission to improve aviation safety.

2. A succinct statement of the objectives of, and legal basis, for the rule

The objective of this rule is to improve aviation safety by requiring the installation or retrofit of terrain awareness and warning systems on turbine-powered airplanes with six or more passenger seats.

The legal basis for the rule derives from Title 49 U.S.C. 44701 which authorizes the FAA Administrator to promote the safety of flight of civil aircraft in air commerce by prescribing, in part, minimum standards governing the design and construction of aircraft, aircraft engines, and propellers, as may be required in the interest of safety.

3. A description of the projected reporting, recordkeeping, and other compliance requirements of the proposed rule

Recordkeeping will be minimal. Recordkeeping and other compliance requirements will be similar to those for radio-navigation equipment that is currently in use.

4. An identification, to the extent practicable, of all relevant federal rules that may duplicate, overlap, or conflict with the final rule

The FAA is unaware of any federal rules that would duplicate, overlap, or conflict with the final rule.

5. A description and estimate of the number of small entities to which the rule will apply

Entities (both large and small) potentially affected by the rule include manufacturers of transport category airplanes (North American Industry Classification System (NAICS) code 336411 "Aircraft Manufacturing"), manufacturers of ground proximity warning equipment (NAICS 334511 "Search, Detection, Navigation, Guidance, Aeronautical, and Nautical Systems and Instruments Manufacturing"), scheduled air carriers (NAICS 48111 and 481112 "Scheduled Passenger Air Transportation" and "Scheduled Freight Air Transportation"), and nonscheduled air carriers (NAICS 481212, 481211, and 48799, "Nonscheduled Chartered Freight Air Transportation," "Nonscheduled Chartered Passenger Air Transportation," and "Scenic and Sightseeing Transportation, Other").

More specifically, the rule will affect many small entities that operate turbine-powered airplanes seating six or more passengers under 14 CFR part 91 (*e.g.*, small businesses, governments, and individuals). There are thousands of operators of such airplanes, and, therefore, potentially thousands of entities representing hundreds of industries, organizations, and institutions. Costs per entity will be dependent on the number of airplanes affected and the (comparatively modest) cost of purchasing and installing Class B TAWS equipment.

An additional group of small entities who operate under 14 CFR part 135 that is likely to be affected by this regulation consists of operators of charter/on-demand air travel services, small operators of scheduled air service, and fixed-base operators (who often provide unscheduled air taxi service). Charter/on-demand operators typically have relatively few employees and low annual revenues. For this analysis the FAA classifies entities with 1,500 or fewer employees as a "small entity." There are believed to be only about 60 out of the approximately 2,800 part 135 operators that have more than 1,500 employees, so that more than 2,700 part 135 operators will be classified as "small entities." Half of these entities have less than 8 or 10 employees. The actual financial impact of the rule on any one of these entities will depend on the number of affected airplanes operated and whether Class A or B TAWS equipment will be required on these airplanes.

There are estimated to be more than 100 part 121 air carriers engaged in carrying passengers. Out of this total, over half are estimated to be small entities, based on having 1,500 or fewer employees. The actual financial impact on these entities will depend on the number of affected airplanes and the cost of purchasing and installing Class A TAWS equipment. As noted in previous discussions, a significant portion of the part 121 fleet operators, primarily the members of the Air Transport Association, is expected to voluntarily install the equipment required by this rule. The entities voluntarily complying with the rule are assumed to bear no costs as a direct result of this rule.

6. Affordability Analysis

In response to public comments and small business concerns, the initial proposed rule has been modified to reduce the compliance costs for operators with airplanes operating only under part 91, and under part 135 with 6 and 9 passenger seats. Most of these operators are expected to be small entities and will benefit from a higher level of safety with the lower cost Class B TAWS equipment. In the initial NPRM regulatory evaluation, the expected compliance cost to part 91 operators was estimated to be between $27,000 and $30,000 per airplane. In the final rule, Class B TAWS compliance cost is estimated to be slightly more than $10,000 per airplane. As an estimate of affordability, for general aviation turboprops with from one to nine seats and one or two engines, average airplane values are estimated to be $679,000 and $572,000, respectively. Thus the Class B TAWS equipment for these airplanes will cost between 1.5 percent and 2.0 percent of these airplanes' values. While it is very difficult to specify how affordable this rule will be for a small entity, the requirement of Class B TAWS (rather than Class A TAWS) substantially reduces the compliance cost for many small entities. Small entities which will be required to install Class A TAWS equipment will incur significantly higher costs than those required to install Class B TAWS equipment. Lastly, those operators engaged in chemical/agricultural applications, parachuting, and firefighting are excluded from the requirements of this rule. Most of these entities have fewer than 1,500 employees and thus are classified as small entities under this analysis.

7. Competitiveness Analysis

In the aviation industry, particular commercial market segments tend to be served by airplanes with similar seat size that operate under the same part of the CFR. For those markets served only by operators who will install equipment having roughly equal cost, much of the full cost of this rule could be passed on to their customers. In this case, there will be no significant change in the competitiveness among operators. For a market where competitors operate similar size airplanes but with different avionics, the cost incurred as a result of this rule may differ significantly among operators. Operators of airplanes with older avionics who will be required to install Class A TAWS equipment are expected to incur higher costs than those operating airplanes with newer equipment. Depending upon the mix of equipment serving a market, operators with older avionics equipment may be less able to pass on most of the cost of this rule.

8. Disproportionality Analysis

It is not clear that this rule imposes systematically higher or lower proportionate cost increases on smaller, as opposed to larger entities. The compliance cost of the rule depends upon the affected airplanes and how they are operated. The net impact on profitability to an operator may be affected by the costs imposed on competitors by the rule. The cost to an operator rises as the number of airplanes increases. In terms of the number of airplanes, the rule imposes proportional costs on operators under part 91 and those operating airplanes with 6 to 9 seats under part 135. It is expected that these operators are primarily small entities. The retrofit of Class A TAWS equipment will cost more to operators of airplanes with older avionics equipment. The age of the avionics within an airplane is not necessarily related to the size of the entity that operates the airplane. Thus, the FAA can not specify whether this rule will have a disproportionate impact on small entities.

9. Description of Alternatives

The agency has considered a number of alternatives to the rule. The FAA finds that the rule chosen will achieve a level of safety that is equivalent to or greater than that of the alternatives considered, and do this at a lower cost to the affected entities.

The alternatives that have been considered can be grouped into three categories:

- Exclude small entities
- Extend compliance deadline for small entities
- Establish lesser technical requirements for small entities

The FAA concludes that the option to exempt small entities from all the requirements of the rule is not justified. In fact, as noted in the preamble and in Section II of this document, the accident history of part 91 operators (many of whom are small entities) forms the basis of the NTSB's recommendation to require ground proximity warning systems on smaller turbojet and turboprop airplanes. However, the final rule does permit the use of TAWS equipment that meets the requirements for Class B equipment in TSO–C151 in airplanes operating under part 91 and for airplanes having 6 to 9 passenger seats operating under part 135. This requirement is somewhat less stringent as well as being less costly than the Class A equipment required for part 121 operations and larger airplanes operating under part 135; both pieces of equipment provide the same level of safety for the TAWS functions.

The FAA also considered options that will lengthen the compliance period for small operators. The FAA believes that the equipment chosen requirement will place a modest burden on small entities that arises from making expenditures on equipment at an earlier date. Small entities will have four years from the effective date of the rule to complete

retrofit work. Delaying the compliance deadline beyond the current proposal would not have resulted in significantly lower downtime or certification costs. Rather, the additional cost incurred will equal the modest return on capital (that will be spent on TAWS equipment) that would have been realized during the short time that the operator might have postponed the retrofit. Lengthening the compliance period would have exposed airplane occupants to significant safety risks for a longer period of time.

Finally, the FAA is not in favor of compliance options that will permit non-TAWS technologies. For airplanes not equipped with any ground proximity warning system, TAWS units will provide up to 23% greater CFIT risk reduction over current-generation GPWS at very little additional cost. For operators of part-91 airplanes, the use of a TAWS that is made possible with the use of data provided by GPS and an encoding altimeter, as is now permitted under the revised rule, will provide the benefits of a TAWS at significantly lower cost than with alternative technologies. It is noted that, in the NPRM, the present value of total costs for the part 91 fleet was estimated to be $415 million. Under the final rule, these costs are estimated to be $164 million, less than 40 percent of the level that would have been imposed under the initially proposed rule. It is estimated that several thousand part 91 operators will be affected by this rule. Similarly, approximately 2,800 part 135 (air taxi and similar) operators will be affected, as will approximately 100 part 121 (air carrier) operators. The precise impact on a particular operator will depend on the number of turbine-powered airplanes operated and will be larger for operators with greater numbers of airplanes.

The FAA has determined that this rule will impact small entities, has analyzed the impact of this rule on small entities, and has made efforts to reduce the impact. There are literally thousands of firms with less than 1,500 employees that will be affected by this rule. More than 1,000 of these firms are expected to have fewer than 10 employees. In response to public comments and with the availability of new technology, the FAA will require a substantially less expensive and easier to install TAWS for part 91 and some part 135 operators. It is expected most of the reduced compliance cost will benefit small entities.

International Trade Impact Assessment

Recognizing that domestic regulations often affect international trade, the Office of Management and Budget directs Federal Agencies to assess whether or not a rule or regulation will affect any trade-sensitive activity. It is recognized that the rule could potentially affect international trade by burdening domestic businesses or air carriers with requirements that are not applicable to their foreign competitors. In general, the FAA believes potential international trade impacts associated with the rule will be negligible. Many domestic and foreign air carriers are already voluntarily installing TAWS equipment in recognition of the substantial safety benefits. A summary of potential impacts follows.

Potential impact to domestic airplane manufacturers.

The FAA believes that the rule will have a negligible effect on the competitive position of domestic airframe manufacturers. Under the rule, domestic manufacturers could continue to offer basic GPWS units on airplanes sold to foreign customers (if the airplane is not U.S.-registered). Foreign airframe manufacturers, on the other hand, will be required to equip airplanes sold to U.S. customers (operating under 14 CFR parts 91, 121, or 135) with TAWS.

Potential impact to domestic airplane leasing firms.

Domestic firms leasing aircraft to foreign operators may be adversely affected by the part 91 provisions of the rule. Domestic leasing companies, for liability reasons or to position themselves to lease to both 14 CFR part 121 and foreign carriers, often choose to maintain U.S.-registered fleets. Thus, their lease prices may reflect TAWS retrofit costs while the prices of foreign competitors may not. (In some cases, the lessee is directly responsible for modifications required by airworthiness directive or regulations—but in either case the disincentive effect is the same).

Given the small cost of TAWS relative to average airplane values, however, the FAA believes the potential international trade impact to be small. Also, TAWS equipped airplanes will be safer and thus more attractive to potential lessees—and their passengers. Increased patronage attributable to the operation of safer airplanes will also partially offset the costs of compliance.

Potential impact to domestic air carriers.

The potential impact to air carriers is, again, a function of the aircraft registration. Foreign air carriers operating U.S.-registered airplanes will be required to install TAWS as will U.S. air carriers. To this extent, operators of U.S. registered airplanes will have costs that may not be required of non-U.S. registered competitors. Again, however, TAWS equipment costs will be a very small fraction of in-service airplane values, provide a known safety feature, and represent a negligible portion of new airplane values. Also, CFIT accidents are a leading cause of commercial aviation fatalities worldwide. It is likely that knowledgeable passengers would pay the small difference in price to travel on an airplane equipped with TAWS. Voluntary industry initiatives to install enhanced ground proximity warning systems are consistent with the view that TAWS benefits far exceed its costs, and could have beneficial effects for domestic airlines competing for international passenger traffic.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Pub. L. 104–4 on March 22, 1995 (the Act), codified in 2 U.S.C. 1501–1571, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments, in the aggregate, of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan that, among other things, provides for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity to provide input in the development of regulatory proposals or rules.

This final rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any one year.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) P.L. 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 91 and 135

Aircraft, Aviation safety.

14 CFR Part 121

Aircraft, Aviation safety, Safety.

The Amendment

In consideration of the foregoing, the Federal Aviation Administration amends parts 91, 121, and 135 of Title 14 Chapter 1, of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

2. Section 91.223 is added to read as follows:

§ 91.223 Terrain awareness and warning system.

(a) *Airplanes manufactured after March 29, 2002.* Except as provided in paragraph (d) of this section, no person may operate a turbine-powered U.S.-registered airplane configured with six or more passenger seats, excluding any pilot seat, unless that airplane is equipped with an approved terrain awareness and warning system that as a minimum meets the requirements for Class B equipment in Technical Standard Order (TSO)–C151.

(b) *Airplanes manufactured on or before March 29, 2002.* Except as provided in paragraph (d) of this section, no person may operate a turbine-powered U.S.-registered airplane configured with six or more passenger seats, excluding any pilot seat, after March 29, 2005, unless that airplane is equipped with an approved terrain awareness and warning system that as a minimum meets the requirements for Class B equipment in Technical Standard Order (TSO)–C151.

(Approved by the Office of Management and Budget under control number 2120–0631)

(c) *Airplane Flight Manual.* The Airplane Flight Manual shall contain appropriate procedures for—

(1) The use of the terrain awareness and warning system; and

(2) Proper flight crew reaction in response to the terrain awareness and warning system audio and visual warnings.

(d) *Exceptions.* Paragraphs (a) and (b) of this section do not apply to—

(1) Parachuting operations when conducted entirely within a 50 nautical mile radius of the airport from which such local flight operations began.

(2) Firefighting operations.

(3) Flight operations when incident to the aerial application of chemicals and other substances.

PART 121—OPERATING REQUIREMENTS; DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

4. Section 121.354 is added to read as follows:

§ 121.354 Terrain awareness and warning system.

(a) *Airplanes manufactured after March 29, 2002.* No person may operate a turbine-powered airplane unless that airplane is equipped with an approved terrain awareness and warning system that meets the requirements for Class A equipment in Technical Standard Order (TSO)–C151. The airplane must also include an approved terrain situational awareness display.

(b) *Airplanes manufactured on or before March 29, 2002.* No person may operate a turbine-powered airplane after March 29, 2005, unless that airplane is equipped with an approved terrain awareness and warning system that meets the requirements for Class A equipment in Technical Standard Order (TSO)–C151. The airplane must also include an approved terrain situational awareness display.

(Approved by the Office of Management and Budget under control number 2120–0631)

(c) *Airplane Flight Manual.* The Airplane Flight Manual shall contain appropriate procedures for—

(1) The use of the terrain awareness and warning system; and

(2) Proper flight crew reaction in response to the terrain awareness and warning system audio and visual warnings.

5. Section 121.360 is amended by adding paragraph (g) to read as follows:

§ 121.360 Ground proximity warning-glide slope deviation alerting system.

* * * * *

(g) This section expires on March 29, 2005.

PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS

6. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

7. Section 135.153 is amended by adding paragraph (f) to read as follows:

§ 135.153 Ground proximity warning system.

* * * * *

(f) This section expires on March 29, 2005.

8. Section 135.154 is added to read as follows:

§ 135.154 Terrain awareness and warning system.

(a) *Airplanes manufactured after March 29, 2002:*

(1) No person may operate a turbine-powered airplane configured with 10 or more passenger seats, excluding any pilot seat, unless that airplane is equipped with an approved terrain awareness and warning system that meets the requirements for Class A equipment in Technical Standard Order (TSO)–C151. The airplane must also include an approved terrain situational awareness display.

(2) No person may operate a turbine-powered airplane configured with 6 to 9 passenger seats, excluding any pilot seat, unless that airplane is equipped with an approved terrain awareness and

warning system that meets as a minimum the requirements for Class B equipment in Technical Standard Order (TSO)–C151.

(b) *Airplanes manufactured on or before March 29, 2002:*

(1) No person may operate a turbine-powered airplane configured with 10 or more passenger seats, excluding any pilot seat, after March 29, 2005, unless that airplane is equipped with an approved terrain awareness and warning system that meets the requirements for Class A equipment in Technical Standard Order (TSO)–C151. The airplane must also include an approved terrain situational awareness display.

(2) No person may operate a turbine-powered airplane configured with 6 to 9 passenger seats, excluding any pilot seat, after March 29, 2005, unless that airplane is equipped with an approved terrain awareness and warning system that meets as a minimum the requirements for Class B equipment in Technical Standard Order (TSO)–C151.

(Approved by the Office of Management and Budget under control number 2120–0631)

(c) *Airplane Flight Manual.* The Airplane Flight Manual shall contain appropriate procedures for—

(1) The use of the terrain awareness and warning system; and

(2) Proper flight crew reaction in response to the terrain awareness and warning system audio and visual warnings.

Issued in Washington, DC, on March 23, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–7595 Filed 3–27–00; 8:45 am]

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Federal Register

Wednesday,
March 29, 2000

Part IV

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 2, 3, 4, 9, 15, and 52
Federal Acquisition Regulation; Procurement Integrity Rewrite; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 2, 3, 4, 9, 15, and 52

[FAR Case 1998–024 (98–024)]

RIN 9000–AI61

Federal Acquisition Regulation; Procurement Integrity Rewrite

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to rewrite procurement integrity coverage in plain language.

DATES: Interested parties should submit comments in writing on or before May 30, 2000 to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Address e-mail comments submitted via the Internet to: farcase.1998–024@gsa.gov.

Please submit comments only and cite FAR case 1998–024 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Paul Linfield, Procurement Analyst, at (202) 501–1757. Please cite FAR case 1998–024.

SUPPLEMENTARY INFORMATION:

A. Background

Section 27 of the Office of Federal Procurement Policy Act (41 U.S.C. 423) is more commonly referred to as the Procurement Integrity Act. FAR 3.104 implements prohibitions, restrictions, and other requirements of the Procurement Integrity Act that are placed on certain agency officials that participate in Federal agency procurements.

Other statutes and regulations also govern the conduct of Government employees. In particular, the Office of Government Ethics (OGE) regulations provide interpretive guidance on the prohibitions in 18 U.S.C. 207 and 208 that also apply to Government employees that participate in procurement activities during the conduct of a Federal agency procurement. While FAR 3.104 does not implement these other statutes and regulations, it is very important for agency employees to be aware, not only of the prohibitions and restrictions in the Procurement Integrity Act, but also those contained in other statutes and regulations that deal with the same or related prohibited conduct. Criminal and administrative penalties can result if an employee violates the restrictions or otherwise engages in prohibited conduct.

It became apparent that we could improve FAR 3.104 by reorganizing and simplifying the text. Moreover, we clarify FAR 3.104 to alert agency officials that even if their participation does not meet the definition in FAR 3.104 of participating personally and substantially, they are precluded from participating in a Federal agency procurement if they engage in certain conduct otherwise prohibited by other statutes and regulations. We are adding this guidance in FAR 3.104–2(b), 3.104–3(c)(2), and 3.104–5(a) to alert these agency officials that they should seek advice from agency ethics officials before engaging in certain activities that could have serious consequences, including criminal prosecution. These revisions to FAR 3.104 do not change either the requirements of the Procurement Integrity Act or change, in any manner, who is covered by, or the activities covered in, OGE regulations interpreting conflict of interest statutes.

To avoid possible violations of 18 U.S.C. 208, agency employees need to be aware that while their participation in a Federal agency procurement may not be considered "participating personally and substantially in a Federal agency procurement" for purposes of certain requirements in the Procurement Integrity Act, nevertheless there will be instances where the employee will be considered to be participating personally and substantially for purposes of 18 U.S.C. 208. We are adding these revisions to FAR 3.104 to alert agency officials that, while participating in a Federal agency procurement, they must be aware of and comply with the applicable disqualification requirements of 5 CFR 2635.604 and 2635.606.

These revisions also may assist agency ethics officials in advising agency officials participating in a Federal agency procurement. Certain conduct by an agency official during the conduct of a Federal agency procurement requires the official's disqualification from participation irrespective of whether or not the official's participation meets the definition of participating personally and substantially for purposes of the Procurement Integrity Act.

This rule was not subject to Office of Management and Budget review under section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

This proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the clarification only applies to individuals that are Government officials. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subparts in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 98–024), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 2, 3, 4, 9, 15, and 52

Government procurement.

Dated: March 23, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR parts 2, 3, 4, 9, 15, and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 2, 3, 4, 9, 15, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 2—DEFINITIONS OF WORDS AND TERMS

2. Amend section 2.101 by adding, in alphabetical order, the definition "Source selection information" to read as follows:

2.101 Definitions.

* * * * *

Source selection information means any of the following information that is prepared for use by an agency for the purpose of evaluating a bid or proposal to enter into an agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Bid prices submitted in response to an agency invitation for bids, or lists of those bid prices before bid opening.

(2) Proposed costs or prices submitted in response to an agency solicitation, or lists of those proposed costs or prices.

(3) Source selection plans.

(4) Technical evaluation plans.

(5) Technical evaluations of proposals.

(6) Cost or price evaluations of proposals.

(7) Competitive range determinations that identify proposals that have a reasonable chance of being selected for award of a contract.

(8) Rankings of bids, proposals, or competitors.

(9) Reports and evaluations of source selection panels, boards, or advisory councils.

(10) Other information marked as "Source Selection Information—See FAR 2.101 and 3.104" based on a case-by-case determination by the head of the agency or the contracting officer that its disclosure would jeopardize the integrity or successful completion of the Federal agency procurement to which the information relates.

* * * * *

PART 3—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Revise sections 3.104 through 3.104–9 and remove sections 3.104–10 and 3.104–11 to read as follows:

3.104 Procurement integrity.

3.104–1 Definitions.

As used in this section—

Agency ethics official means the designated agency ethics official described in 5 CFR 2638.201 or other designated person, including—

(1) Deputy ethics officials described in 5 CFR 2638.204, to whom authority under 3.104–6 has been delegated by the designated agency ethics official; and

(2) Alternate designated agency ethics officials described in 5 CFR 2638.202(b).

Compensation means wages, salaries, honoraria, commissions, professional fees, and any other form of compensation provided directly or indirectly for services rendered. Compensation is indirectly provided if it is paid to an entity other than the individual, specifically in exchange for services provided by the individual.

Contractor bid or proposal information means any of the following information submitted to a Federal agency as part of or in connection with a bid or proposal to enter into a Federal agency procurement contract, if that information has not been previously made available to the public or disclosed publicly:

(1) Cost or pricing data (as defined by 10 U.S.C. 2306a(h)) with respect to procurements subject to that section, and section 304A(h) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 254b(h)), with respect to procurements subject to that section.

(2) Indirect costs and direct labor rates.

(3) Proprietary information about manufacturing processes, operations, or techniques marked by the contractor in accordance with applicable law or regulation.

(4) Information marked by the contractor as "contractor bid or proposal information" in accordance with applicable law or regulation.

(5) Information marked in accordance with 52.215–1(e).

Decision to award a subcontract or modification of subcontract means a decision to designate award to a particular source.

Federal agency procurement means the acquisition (by using competitive procedures and awarding a contract) of goods or services (including construction) from non-Federal sources by a Federal agency using appropriated funds. For broad agency announcements and small business innovative research programs, each proposal received by an agency constitutes a separate procurement for purposes of the Act.

In excess of $10,000,000 means—

(1) The value, or estimated value, at the time of award, of the contract, including all options;

(2) The total estimated value at the time of award of all orders under an indefinite-delivery, indefinite-quantity, or requirements contract;

(3) Any multiple award schedule contract, unless the contracting officer documents a lower estimate;

(4) The value of a delivery order, task order, or an order under a Basic Ordering Agreement;

(5) The amount paid or to be paid in settlement of a claim; or

(6) The estimated monetary value of negotiated overhead or other rates when applied to the Government portion of the applicable allocation base.

Official means—

(1) An officer, as defined in 5 U.S.C. 2104;

(2) An employee, as defined in 5 U.S.C. 2105;

(3) A member of the uniformed services, as defined in 5 U.S.C. 2101(3); or

(4) A special Government employee, as defined in 18 U.S.C. 202.

Participating personally and substantially in a Federal agency procurement means—

(1) Active and significant involvement of an official in any of the following activities directly related to that procurement:

(i) Drafting, reviewing, or approving the specification or statement of work for the procurement.

(ii) Preparing or developing the solicitation.

(iii) Evaluating bids or proposals, or selecting a source.

(iv) Negotiating price or terms and conditions of the contract.

(v) Reviewing and approving the award of the contract.

(2) *Participating personally* means participating directly, and includes the direct and active supervision of a subordinate's participation in the matter.

(3) *Participating substantially* means that the official's involvement is of significance to the matter. Substantial participation requires more than official responsibility, knowledge, perfunctory involvement, or involvement on an administrative or peripheral issue. Participation may be substantial even though it is not determinative of the outcome of a particular matter. A finding of substantiality should be based not only on the effort devoted to a matter, but on the importance of the effort. While a series of peripheral involvements may be insubstantial, the single act of approving or participating in a critical step may be substantial. However, the review of procurement documents solely to determine compliance with regulatory, administrative, or budgetary procedures, does not constitute substantial participation in a procurement.

(4) Generally, an official will not be considered to have participated personally and substantially in a procurement solely by participating in the following activities:

(i) Agency-level boards, panels, or other advisory committees that review program milestones or evaluate and make recommendations regarding alternative technologies or approaches for satisfying broad agency-level missions or objectives.

(ii) The performance of general, technical, engineering, or scientific effort having broad application not directly associated with a particular procurement, notwithstanding that such general, technical, engineering, or scientific effort subsequently may be incorporated into a particular procurement.

(iii) Clerical functions supporting the conduct of a particular procurement.

(iv) For procurements to be conducted under the procedures of OMB Circular A–76, participation in management studies, preparation of in-house cost estimates, preparation of "most efficient organization" analyses, and furnishing of data or technical support to be used by others in the development of performance standards, statements of work, or specifications.

Source selection evaluation board means any board, team, council, or other group that evaluates bids or proposals.

3.104–2 General.

(a) This section implements section 27 of the Office of Federal Procurement Policy Act (the Procurement Integrity Act) (41 U.S.C. 423) (hereinafter referred to as "the Act"). Agency supplementation of 3.104, including specific definitions to identify individuals who occupy positions specified in 3.104–3(d)(1)(ii), and any clauses required by 3.104 must be approved by the senior procurement executive of the agency, unless a law establishes a higher level of approval for that agency.

(b) Agency officials are reminded that there are other statutes and regulations that deal with the same or related prohibited conduct, for example—

(1) The offer or acceptance of a bribe or gratuity is prohibited by 18 U.S.C. 201 and 10 U.S.C. 2207. The acceptance of a gift, under certain circumstances, is prohibited by 5 U.S.C. 7353 and 5 CFR part 2635;

(2) Contacts with an offeror during the conduct of an acquisition may constitute "seeking employment," a term defined in subpart F of 5 CFR part 2635. Government officers and employees (employees) are prohibited by 18 U.S.C. 208 and 5 CFR part 2635 from participating personally and substantially in any particular matter that would affect the financial interests of any person with whom the employee is seeking employment. An employee who engages in negotiations or is otherwise seeking employment with an offeror or who has an arrangement concerning future employment with an offeror must comply with the applicable disqualification requirements of 5 CFR 2635.604 and 2635.606. The statutory prohibition in 18 U.S.C. 208 also may require an employee's disqualification from participation in the acquisition even if the employee's duties may not be considered "participating personally and substantially," as this term is defined in 3.104–1;

(3) Post-employment restrictions are covered by 18 U.S.C. 207 and 5 CFR parts 2637 and 2641 that prohibit certain activities by former Government employees, including representation of a contractor before the Government in relation to any contract or other particular matter involving specific parties on which the former employee participated personally and substantially while employed by the Government;

(4) Parts 14 and 15 place restrictions on the release of information related to procurements and other contractor information that must be protected under 18 U.S.C. 1905;

(5) Release of information both before and after award (see 3.104–4) may be prohibited by the Privacy Act (5 U.S.C. 552a), the Trade Secrets Act (18 U.S.C. 1905), and other laws; and

(6) Using nonpublic information to further an employee's private interest or that of another and engaging in a financial transaction using nonpublic information are prohibited by 5 CFR 2635.703.

3.104–3 Statutory and related prohibitions, restrictions, and requirements.

(a) *Prohibition on disclosing procurement information (subsection 27(a) of the Act).* (1) A person described in paragraph (a)(2) of this subsection must not, other than as provided by law, knowingly disclose contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates. (See 3.104–4(a).)

(2) Paragraph (a)(1) of this subsection applies to any person who—

(i) Is a present or former official of the United States, or a person who is acting or has acted for or on behalf of, or who is advising or has advised the United States with respect to, a Federal agency procurement; and

(ii) By virtue of that office, employment, or relationship, has or had access to contractor bid or proposal information or source selection information.

(b) *Prohibition on obtaining procurement information (subsection 27(b) of the Act).* A person must not, other than as provided by law, knowingly obtain contractor bid or proposal information or source selection information before the award of a Federal agency procurement contract to which the information relates.

(c) *Actions required of an agency official who contacts or is contacted by an offeror regarding non-Federal employment (subsection 27(c) of the Act).* (1) If an agency official, participating personally and substantially in a Federal agency procurement for a contract in excess of the simplified acquisition threshold, contacts or is contacted by a person who is an offeror in that Federal agency procurement regarding possible non-Federal employment for that official, the official must—

(i) Promptly report the contact in writing to the official's supervisor and to the agency ethics official; and

(ii) Either reject the possibility of non-Federal employment or disqualify himself or herself from further personal and substantial participation in that Federal agency procurement (see 3.104–5) until such time as the agency authorizes the official to resume participation in that procurement, in accordance with the requirements of 18 U.S.C. 208 and applicable agency regulations, because—

(A) The person is no longer an offeror in that Federal agency procurement; or

(B) All discussions with the offeror regarding possible non-Federal employment have terminated without an agreement or arrangement for employment.

(2) Conduct that complies with subsection 27(c) of the Act may be prohibited by other criminal statutes and the Standards of Ethical Conduct for Employees of the Executive Branch. (See 3.104–2(b)(2).)

(d) *Prohibition on former official's acceptance of compensation from a contractor (subsection 27(d) of the Act).* (1) A former official of a Federal agency may not accept compensation from a contractor as an employee, officer, director, or consultant of the contractor within a period of one year after such former official—

(i) Served, at the time of selection of the contractor or the award of a competitive or sole source contract to that contractor, as the procuring contracting officer, the source selection authority, a member of a source selection evaluation board, or the chief of a financial or technical evaluation team in a procurement in which that contractor was selected for award of a contract in excess of $10,000,000;

(ii) Served as the program manager, deputy program manager, or administrative contracting officer for a contract in excess of $10,000,000 awarded to that contractor; or

(iii) Personally made for the Federal agency a decision to—

(A) Award a contract, subcontract, modification of a contract or subcontract, or a task order or delivery order in excess of $10,000,000 to that contractor;

(B) Establish overhead or other rates applicable to a contract or contracts for that contractor that are valued in excess of $10,000,000;

(C) Approve issuance of a contract payment or payments in excess of $10,000,000 to that contractor; or

(D) Pay or settle a claim in excess of $10,000,000 with that contractor.

(2) The 1-year prohibition begins on the date—

(i) Of contract award for positions described in paragraph (d)(1)(i) of this subsection, or the date of contractor selection if the official was not serving in the position on the date of award;

(ii) The official last served in one of the positions described in paragraph (d)(1)(ii) of this subsection; or

(iii) The official made one of the decisions described in paragraph (d)(1)(iii) of this subsection.

(3) Nothing in paragraph (d)(1) of this subsection may be construed to prohibit a former official of a Federal agency from accepting compensation from any division or affiliate of a contractor that does not produce the same or similar products or services as the entity of the contractor that is responsible for the contract referred to in paragraph (d)(1) of this subsection.

3.104–4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

(a) Except as specifically provided for in this subsection, no person or other entity may disclose contractor bid or proposal information or source selection information to any person other than a person authorized, in accordance with applicable agency regulations or procedures, by the agency head or the contracting officer, to receive such information.

(b) Contractor bid or proposal information and source selection information must be protected from unauthorized disclosure in accordance with 14.401, 15.207, applicable law, and agency regulations.

(c) Individuals unsure if particular information is source selection information, as defined in 2.101, should consult with agency officials as necessary. Individuals responsible for preparing material that may be source selection information as described at paragraph (10) of the "source selection information" definition in 2.101 must mark the cover page and each page that the individual believes contains source selection information with the legend "Source Selection Information" See FAR 2.101 and 3.104." Although the information in paragraphs (1) through (9) of the definition in 2.101 is considered to be source selection information whether or not marked, all reasonable efforts must be made to mark such material with the same legend.

(d) Except as provided in paragraph (d)(3) of this subsection, the contracting officer must notify the contractor in writing if the contracting officer believes that proprietary information, contractor bid or proposal information, or information marked in accordance with 52.215–1(e) has been inappropriately marked. The contractor that has affixed the marking must be given an opportunity to justify the marking.

(1) If the contractor agrees that the marking is not justified, or does not respond within the time specified in the notice, the contracting officer may remove the marking and release the information.

(2) If, after reviewing the contractor's justification, the contracting officer determines that the marking is not justified, the contracting officer must notify the contractor in writing before releasing the information.

(3) For technical data marked as proprietary by a contractor, the contracting officer must follow the procedures in 27.404(h).

(e) This section does not restrict or prohibit—

(1) A contractor from disclosing its own bid or proposal information or the recipient from receiving that information;

(2) The disclosure or receipt of information, not otherwise protected, relating to a Federal agency procurement after it has been canceled by the Federal agency, before contract award, unless the Federal agency plans to resume the procurement;

(3) Individual meetings between a Federal agency official and an offeror or potential offeror for, or a recipient of, a contract or subcontract under a Federal agency procurement, provided that unauthorized disclosure or receipt of contractor bid or proposal information or source selection information does not occur; or

(4) The Government's use of technical data in a manner consistent with the Government's rights in the data.

(f) This section does not authorize—

(1) The withholding of any information pursuant to a proper request from the Congress, any committee or subcommittee thereof, a Federal agency, the Comptroller General, or an Inspector General of a Federal agency, except as otherwise authorized by law or regulation. Any release containing contractor bid or proposal information or source selection information must clearly identify the information as contractor bid or proposal information or source selection information related to the conduct of a Federal agency procurement and notify the recipient that the disclosure of the information is restricted by section 27 of the Act;

(2) The withholding of information from, or restricting its receipt by, the Comptroller General in the course of a protest against the award or proposed award of a Federal agency procurement contract;

(3) The release of information after award of a contract or cancellation of a procurement if such information is contractor bid or proposal information or source selection information that pertains to another procurement; or

(4) The disclosure, solicitation, or receipt of bid or proposal information or source selection information after award if disclosure, solicitation, or receipt is prohibited by law. (See 3.104–2(b)(5) and subpart 24.2.)

3.104–5 Disqualification.

(a) *Contacts.* Employment contacts between an offeror (including its agent or intermediary) and an agency official (including his or her agent or intermediary) that might not require disqualification under 3.104–3(c)(1)(ii) still may require disqualification under other statutes and regulations. (See 3.104–2(b)(2).)

(b) *Disqualification notice.* In addition to submitting the contact report required by 3.104–3(c)(1), an agency official who must disqualify himself or herself pursuant to 3.104–3(c)(1)(ii) must submit promptly to the head of the contracting activity (HCA) a written notice of disqualification from further participation in the procurement. The official must submit concurrently copies of the notice to the contracting officer, the source selection authority, if other than the contracting officer, and the agency official's immediate supervisor. As a minimum, the notice must—

(1) Identify the procurement;

(2) Describe the nature of the agency official's participation in the

procurement and specify the approximate dates or time period of participation; and

(3) Identify the offeror and describe its interest in the procurement.

(c) *Resumption of participation in a procurement.* (1) The individual must remain disqualified until such time as the agency, at its sole and exclusive discretion, authorizes the official to resume participation in the procurement in accordance with 3.104–3(c)(1)(ii).

(2) The HCA, after consultation with the agency ethics official, may authorize the disqualified individual to resume participation in the procurement, after whatever disqualification period the HCA determines is necessary to protect the integrity of the procurement process. In determining the disqualification period, the HCA must consider any factors that create an appearance that the disqualified official acted without complete impartiality in the procurement. The HCA's reinstatement decision should be in writing.

(3) A Government officer or employee must comply with the provisions of 18 U.S.C. 208 and 5 CFR part 2635 regarding any resumed participation in a procurement matter. A Government officer or employee may not be reinstated to participate in a procurement matter affecting the financial interest of someone with whom the individual is seeking employment, unless the individual receives—

(i) A waiver pursuant to 18 U.S.C. 208(b)(1) or (b)(3); or

(ii) An authorization in accordance with the requirements of subpart F of 5 CFR part 2635.

3.104–6 Ethics advisory opinions regarding prohibitions on a former official's acceptance of compensation from a contractor.

(a) An official or former official of a Federal agency who does not know whether he or she is or would be precluded by subsection 27(d) of the Act (see 3.104–3(d)) from accepting compensation from a particular contractor may request advice from the appropriate agency ethics official before accepting such compensation.

(b) The request for an advisory opinion must be in writing, include all relevant information reasonably available to the official or former official, and be dated and signed. The request must include information about the—

(1) Procurement(s), or decision(s) on matters under 3.104–3(d)(1)(iii), involving the particular contractor, in which the individual was or is involved, including contract or solicitation numbers, dates of solicitation or award, a description of the supplies or services procured or to be procured, and contract amount;

(2) Individual's participation in the procurement or decision, including the dates or time periods of that participation, and the nature of the individual's duties, responsibilities, or actions; and

(3) Contractor, including a description of the products or services produced by the division or affiliate of the contractor from whom the individual proposes to accept compensation.

(c) Within 30 days after receipt of a request containing complete information, or as soon thereafter as practicable, the agency ethics official should issue an opinion on whether the proposed conduct would violate subsection 27(d) of the Act.

(d)(1) If complete information is not included in the request, the agency ethics official may ask the requester to provide more information or request information from other persons, including the source selection authority, the contracting officer, or the requester's immediate supervisor.

(2) In issuing an opinion, the agency ethics official may rely upon the accuracy of information furnished by the requester or other agency sources, unless he or she has reason to believe that the information is fraudulent, misleading, or otherwise incorrect.

(3) If the requester is advised in a written opinion by the agency ethics official that the requester may accept compensation from a particular contractor, and accepts such compensation in good faith reliance on that advisory opinion, then neither the requester nor the contractor will be found to have knowingly violated subsection 27(d) of the Act. If the requester or the contractor has actual knowledge or reason to believe that the opinion is based upon fraudulent, misleading, or otherwise incorrect information, their reliance upon the opinion will not be deemed to be in good faith.

3.104–7 Violations or possible violations.

(a) A contracting officer who receives or obtains information of a violation or possible violation of subsection 27(a), (b), (c), or (d) of the Act (see 3.104–3) must determine if the reported violation or possible violation has any impact on the pending award or selection of the contractor.

(1) If the contracting officer concludes that there is no impact on the procurement, the contracting officer must forward the information concerning the violation or possible violation and documentation supporting a determination that there is no impact on the procurement to an individual designated in accordance with agency procedures.

(i) If that individual concurs, the contracting officer may proceed with the procurement.

(ii) If that individual does not concur, the individual promptly must forward the information and documentation to the HCA and advise the contracting officer to withhold award.

(2) If the contracting officer concludes that the violation or possible violation impacts the procurement, the contracting officer promptly must forward the information to the HCA.

(b) The HCA must review all information available and, in accordance with agency procedures, take appropriate action such as—

(1) Advise the contracting officer to continue with the procurement;

(2) Begin an investigation;

(3) Refer the information disclosed to appropriate criminal investigative agencies;

(4) Conclude that a violation occurred; or

(5) Recommend that the agency head determine that the contractor, or someone acting for the contractor, has engaged in conduct constituting an offense punishable under subsection 27(e) of the Act for the purpose of voiding or rescinding the contract.

(c) Before concluding that an offeror, contractor, or person has violated the Act, the HCA may consider that the interests of the Government are best served by requesting information from appropriate parties regarding the violation or possible violation.

(d) If the HCA concludes that section 27 of the Act has been violated, the HCA may direct the contracting officer to

(1) If a contract has not been awarded—

(i) Cancel the procurement;

(ii) Disqualify an offeror; or

(iii) Take any other appropriate actions in the interests of the Government.

(2) If a contract has been awarded—

(i) Effect appropriate contractual remedies, including profit recapture under the clause at 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity, or, if the contract has been rescinded under paragraph (d)(2)(ii) of this subsection, recovery of the amount expended under the contract;

(ii) Void or rescind the contract with respect to which—

(A) The contractor, or someone acting for the contractor, has been convicted for an offense where the conduct constitutes a violation of subsection 27(a) or (b) of the Act for the purpose of either—

(*1*) Exchanging the information covered by the subsections for anything of value; or

(*2*) Obtaining or giving anyone a competitive advantage in the award of a Federal agency procurement contract; or

(B) The agency head has determined, based upon a preponderance of the evidence, that the contractor or someone acting for the contractor has engaged in conduct constituting an offense punishable under subsection 27(e)(1) of the Act; or

(iii) Take any other appropriate actions in the best interests of the Government.

(3) Refer the matter to the agency suspending or debarring official.

(e) The HCA should recommend or direct an administrative or contractual remedy commensurate with the severity and effect of the violation.

(f) If the HCA determines that urgent and compelling circumstances justify an award, or award is otherwise in the interests of the Government, the HCA, in accordance with agency procedures, may authorize the contracting officer to award the contract or execute the contract modification after notifying the agency head.

(g) The HCA may delegate his or her authority under this subsection to an individual at least one organizational level above the contracting officer and of General Officer, Flag, Senior Executive Service, or equivalent rank.

3.104–8 Criminal and civil penalties, and further administrative remedies.

Criminal and civil penalties, and administrative remedies, may apply to conduct that violates the Act (see 3.104–3). See 33.102(f) for special rules regarding bid protests. See 3.104–7 for administrative remedies relating to contracts.

(a) An official who knowingly fails to comply with the requirements of 3.104–3 is subject to the penalties and administrative action set forth in subsection 27(e) of the Act.

(b) An offeror who engages in employment discussion with an official subject to the restrictions of 3.104–3, knowing that the official has not complied with 3.104–3(c)(1), is subject to the criminal, civil, or administrative penalties set forth in subsection 27(e) of the Act.

(c) An official who refuses to terminate employment discussions (see 3.104–5) may be subject to agency administrative actions under 5 CFR 2635.604(d) if the official's disqualification from participation in a particular procurement interferes substantially with the individual's ability to perform assigned duties.

3.104–9 Contract clauses.

In solicitations and contracts for other than commercial items that exceed the simplified acquisition threshold, insert the clauses at—

(a) 52.203–8, Cancellation, Rescission, and Recovery of Funds for Illegal or Improper Activity; and

(b) 52.203–10, Price or Fee Adjustment for Illegal or Improper Activity.

3.704 [Amended]

4. Amend section 3.704 in paragraph (c)(1) by removing "3.104–10" and adding "3.104–7" in its place.

PART 4—ADMINISTRATIVE MATTERS

5. Amend section 4.802: a. In paragraphs (a)(1), (a)(2), and (a)(3) by removing "which shall document" and adding "that documents" in their place;

b. In the introductory text of paragraph (c) and in paragraph (d) by removing "shall" each time it appears and adding "must" in their place; and

c. By revising paragraph (e) to read as follows:

4.802 Contract files.

* * * * *

(e) Contents of contract files that are contractor bid or proposal information or source selection information as defined in 2.101 must be protected from disclosure to unauthorized persons (see 3.104–4).

* * * * *

PART 9—CONTRACTOR QUALIFICATIONS

9.105–3 [Amended]

6. Amend section 9.105–3 in paragraph (c) by removing "3.104–3" and adding "3.104–4" in its place.

9.505 [Amended]

7. Amend section 9.505 in paragraph (b)(2) by removing "3.104–3" and adding "2.101" in its place.

PART 15—CONTRACTING BY NEGOTIATION

8. Amend section 15.404–2 by revising paragraph (a)(5) to read as follows:

15.404–2 Information to support proposal analysis.

(a) * * *

(5) Field pricing information and other reports may include proprietary or source selection information (see 2.101). This information must be appropriately identified and protected accordingly.

* * * * *

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.203–8 [Amended]

9. Amend section 52.203–8 in the introductory paragraph by removing "in solicitations and contracts".

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March 29, 2000

Part V

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 902 and 50 CFR Part 648
Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 12 and Framework Adjustment 32 to the Northeast Multispecies Fishery Management Plan; and Final Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 902

50 CFR Part 648

[Docket No. 990811218–0072–02; I.D. 050399A]

RIN 0648–AL27

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Amendment 12 to the Northeast Multispecies Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Amendment 12 to the Northeast Multispecies Fisheries Management Plan (FMP) to address the management of silver hake (whiting), red hake, offshore hake, and ocean pout and to implement the framework measure approved in Amendment 11 to the FMP regarding essential fish habitat. Amendment 12 and these regulations establish differential whiting possession limits based on the mesh size with which a vessel chooses to fish. The intended effect of this action is to reduce fishing mortality rates on whiting and red hake to eliminate overfishing and rebuild the biomass in accordance with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

DATES: This rule is effective April 28, 2000.

ADDRESSES: Copies of the Amendment 12 document, its Regulatory Impact Review (RIR), Initial Regulatory Flexibility Analysis (IRFA) and the July 1, 1999, supplement to the IRFA prepared by NMFS, the Final Supplemental Environmental Impact Statement (FSEIS), and other supporting documents for the FMP amendment, as well as all documents pertaining to Amendment 11, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, The Tannery-Mill 2, Newburyport, MA 01950.

Comments regarding burden-hour estimates for collection-of-information requirements or other aspects of the collection-of-information requirements contained in this final rule should be sent to NMFS and to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 (Attention: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, 978–281–9288.

SUPPLEMENTARY INFORMATION: This final rule implements Amendment 12 to the Northeast Multispecies FMP, which was partially approved by NMFS on behalf of the Secretary of Commerce (Secretary) on September 1, 1999. NMFS disapproved the limited access permit program and the associated open access permit category. All of the remaining measures contained in Amendment 12, as originally submitted, were approved. A proposed rule to implement these measures was published at 64 FR 49427, September 13, 1999. Comments were accepted through October 28, 1999.

The limited access permit program proposed in Amendment 12 was disapproved because NMFS determined that it was inconsistent with national standard 4 and section 304(e) of the Magnuson-Stevens Act. The qualification criteria would have allowed vessels that participated in either the Gulf of Maine whiting raised footrope or separator trawl experimental fisheries to qualify for a limited access permit under criteria different from those established for other vessels. Vessels that participated in the experiments would have qualified with 1,000 lb (453.6 kg) of landings over 3 years, rather than 50,000 lb (22,680 kg) of landings over 18 years. Vessels would have been subject to the same restrictions regardless of how the vessel qualified for the permit. This portion of the proposed limited access program is inconsistent with national standard 4 because different sectors of the industry could have qualified for the same level of fishing with different landings requirements. Further, vessels may have been excluded from participation in experimental fisheries because NMFS imposed participation restrictions, and these restrictive controls may have discouraged vessels from participating.

The limited access program also proposed that, at the beginning of year 6 of Amendment 12, unless otherwise extended, vessels would be eligible for limited access small-mesh multispecies permits without having to meet the landings criteria, provided the vessels possessed a limited access multispecies permit that was valid on the date the final rule for Amendment 12 is published and that continues to be valid in year 6. The sunset provision could have given vessel owners who would not qualify for the limited access permit unrealistic expectations that they may be able to participate in the whiting (small-mesh multispecies) fisheries as a limited access vessel when it is unlikely to happen. Further, there was no analysis of the potential effects of such effort on the rebuilding schedule. Amendment 12 is intended to end overfishing in Year 4 and to rebuild the stocks of whiting and red hake within 10 years. Because it is uncertain that the fishery could sustain additional vessel participation just 1 year beyond the target date to end overfishing, rebuilding goals may be compromised. This measure was, therefore, found to be inconsistent with section 304(e) of the Magnuson-Stevens Act that specifies that overfished fisheries be rebuilt within a period not to exceed 10 years.

This rule does not implement the open access permit category for small-mesh multispecies because this category serves no purpose without the limited access permit program.

Details concerning the justification for, and development of, Amendment 12 and the implementing regulations were provided in the notice of availability (NOA) of Amendment 12 at 64 FR 29257, June 1, 1999, corrected at 64 FR 34758, June 29, 1999, and in the preamble to the proposed rule and are not repeated here.

Approved Measures

Although possession limits and other measures contained in the Amendment 12 are specific to whiting and offshore hake, the measures to protect whiting will also provide similar protection for red hake because it is primarily caught as incidental catch along with whiting or in directed whiting fisheries.

The existing "Open Access Nonregulated Multispecies Permit" category is renamed the "Open Access Multispecies Permit" to avoid confusion that would result from the elimination of the definition of "Nonregulated Multispecies." The term "nonregulated" is no longer appropriate because Amendment 12 regulates whiting, red hake, and offshore hake. Vessels currently issued "Open Access Nonregulated Multispecies Permits" do not have to acquire a new "Open Access Multispecies Permit" this fishing year, but will have to obtain one for future years.

This rule amends the regulations so that the Cultivator Shoal Whiting Exemption Area fishing season begins on June 15 and ends on September 30 of each year. Vessels fishing in this exemption area with the appropriate letter of authorization from the Regional Administrator on board are restricted to a minimum mesh size of 3 inches (7.62 cm), subject to applicable codend restrictions. Such vessels are also subject to a possession limit of 30,000 lb (13,608 kg) of whiting and offshore hake. Vessels with a valid letter of authorization to fish in the Cultivator Shoal Whiting Exemption Area are allowed to fish in areas other than this exemption area, but they are subject to the more restrictive mesh and possession measures regardless of where they fish.

Vessels issued any category of Federal limited access multispecies permit or an "Open Access Multispecies Permit" are subject to a whiting and offshore hake possession limit of 3,500 lb (1,588 kg) while using a codend mesh size (defined at § 648.86(d)(1)(iv)) of less than 2.5 inches (6.35 cm) or while using any mesh size and not issued a letter of authorization as described at 648.86(d)(2). Vessels issued any category of Federal limited access multispecies permit or the "Open Access Multispecies Permit" are subject to the following whiting and offshore hake possession limits: 7,500 lb (3,402 kg), while using a codend mesh size of 2.5 inches (6.35 cm) or larger, provided the vessel has a letter of authorization from the Administrator, Northeast Region, NMFS (Regional Administrator) on board; and 30,000 lb (13,608 kg), while using a codend mesh size of 3 inches (7.62 cm) or larger, provided the vessel has a letter of authorization from the Regional Administrator on board. Letters of authorization for these mesh size categories are valid for a minimum of 30 days. However, vessels can withdraw from either minimum mesh size category after a minimum of 7 days, but they are subject to a possession limit of 3,500 lb (1,588 kg) regardless of the mesh size in use and may not re-enter the original authorization category for the remainder of the original 30 days.

To retain silver hake (whiting) and offshore hake while participating in the northern shrimp fishery, a vessel must have a Federal multispecies permit. Vessels issued a Federal multispecies permit and fishing in the Small-Mesh Northern Shrimp Fishery Exemption Area with an appropriate letter of authorization from the Regional Administrator on board are subject to a possession limit of silver hake and offshore hake, combined, equal to the weight of shrimp on board, but may not exceed 3,500 lb (1,588 kg).

This rule includes instructions for vessel owners to follow in order for them to receive the required letters of authorization to participate in one of the minimum mesh size and corresponding possession limit categories. To request a letter of authorization, vessel owners must call the Northeast Region Permit Office during normal business hours and provide the vessel name, owner name, permit number, the desired mesh size/possession limit category, and the period of time that the vessel is enrolled. Because letters of authorization are effective on the date of receipt, vessel owners should allow appropriate processing and mail time. To withdraw from a category, vessel owners must call the Northeast Region Permit Office. Withdrawals are effective upon date of request.

Vessels issued Federal multispecies permits may transfer up to 500 lb (226.8 kg) of small-mesh multispecies to another vessel at sea, provided the transferring vessel has a letter of authorization to transfer fish at sea on board the vessel. A total of 500 lb (226.8 kg) will automatically be deducted from the possession limit of the vessel the fish is transferred from, regardless of the actual amount transferred. Vessels receiving the small-mesh multispecies at sea do not have to have a multispecies permit but must have a receipt for the transferred fish.

For vessels less than or equal to 60 ft (18.29 m) in length overall, the minimum codend mesh size applies to the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net. For vessels greater than 60 ft (18.29 m) in length overall, the minimum codend mesh size applies to the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net. These restrictions do not apply to vessels using less than 2.5–inch (6.35–cm) mesh and subject to other Northeast Region codend specifications specified in 50 CFR part 648. Vessels using mesh less than 2.5 inches (6.35 cm) may continue to use net strengtheners as allowed in this 50 CFR part 648.

Unless a framework or amendment to address fishing mortality for whiting and red hake is implemented by May 1, 2002, the following default measures are applicable:

A regulated mesh area throughout the range of the species, with a 3–inch (7.62–cm) minimum mesh requirement for all fishing activities. Vessels participating in any fishery are required to use the minimum codend mesh or larger unless fishing in a fishery that has been determined exempt from the minimum mesh size.

A possession limit of whiting and offshore hake up to 10,000 lb (4,536 kg) for vessels possessing a Federal multispecies permit.

An allowance for vessels to fish with mesh less than 3 inches (7.62 cm), if fishing is determined to be exempted from the minimum mesh size by demonstrating a bycatch of small-mesh multispecies that is less than 10 percent of total catch.

A possession limit of 100 lb (45.36 kg) of whiting and offshore hake for vessels participating in an exempted fishery.

This rule allows the following measures to be implemented through the framework procedure in § 648.90: A total allowable landings limit of whiting (and appropriate seasonal adjustments) for vessels fishing in the northern area requiring that the fishery be closed when the limit is reached; modifications or adjustments to whiting grate/mesh configuration requirements; adjustments to whiting stock boundaries for management purposes; modifications to criteria defining fisheries as exempt from the minimum mesh requirements for small-mesh multispecies; adjustments to the season, declaration process, or participation requirements for the Cultivator Shoal whiting fishery; and measures to designate essential fish habitat. In addition, the following management measures can be implemented through a framework adjustment to the FMP, provided that they are accompanied by a full set of public hearings: Whiting Days at Sea (DAS) effort reduction program and a whiting total allowable catch (TAC), either by region or for the entire fishery.

This rule establishes the Whiting Monitoring Committee (WMC) to monitor the progress of the rebuilding of small-mesh multispecies stocks on an annual basis. The role, structure, and process for the WMC are identical to those of the Multispecies Monitoring Committee (MMC), with the exception that the WMC must include at least three industry representatives: One from New England, one from Southern New England, and one from the Mid-Atlantic regions. This final rule changes the proposed regulations to specify that the first meeting of the WMC will take place in 2001. Implementation of this final rule will occur only six months prior to the first scheduled meeting of the Whiting Monitoring Committee. Therefore, the Whiting Monitoring Committee would have an incomplete year under the management measures to review if they were to meet in 2000. Changing the first meeting date to 2001 will provide a full year of the initial management measures for the Whiting Monitoring Committee to consider.

Comments and Responses

Comment 1: Two commenters stated that the limited access permit program proposed in Amendment 12 represents the best compromise that could be reached to address the difficult and

complex problem of limiting access to small-mesh multispecies fisheries.

Response 1: The limited access permit program has some merits; however, the exemption from the landing criteria for vessels that participated in an experimental fishery is inequitable. Further, no analysis of the potential effects of the sunset provision on the rebuilding schedule exists. Amendment 12 proposes to end overfishing in Year 4 and to rebuild the stocks of whiting and red hake within 10 years. Because it is uncertain that the fishery could sustain additional vessel participation just 1 year beyond the target date to end overfishing, rebuilding goals may be compromised.

Comment 2: Several comments were received in support of the limited access permit program. Commenters felt that, since equity is a concern with any limited access program, implementing Amendment 12 without limited access should be of greater concern, that a limited access permit program would protect historical participants' interests in the fishery and ensure that as many people as possible who have participated in the whiting fishery would qualify, and that the limited access permit program should be implemented immediately, while the Council continues to work toward resolving concerns.

Response 2: The limited access permit program was disapproved on the basis of its inconsistency with national standard 4 and sec. 304(c) of the Magnuson-Stevens Act. The Council should proceed with developing a new limited access program that is equitable and supports the rebuilding goals of Amendment 12.

Comment 3: The Council commented that the exception from the 50,000 lb (22,680 kg) landing requirement for vessels that participated in an experimental fishery is not intended to exclude vessels that did not participate in experimental fisheries, but rather to include vessels that have demonstrated a clear intent to fish for small-mesh multispecies and may not have had the opportunity to land 50,000 lb (22,680 kg). The Council commented that every known vessel denied access to the experiment would at least qualify for the limited access possession limit permit. The Council commented that it is likely that unknown vessels having been denied participation would also qualify for at least the possession limit permit.

Response 3: The Council's intent to allow any vessel into the fishery that showed a clear intent to participate in whiting fisheries is misrepresented by the exemption from landing requirements for a small number of vessels that had participated in experimental fishing. Instead, this exception creates an inequitable provision by eliminating any vessel whose owner may have had an intent to participate but may have been discouraged from participating or may have been denied participation in the fishery or experimental fishing. The Council's argument that most vessels that were denied access to the experiment would still qualify for the possession limit permit does not justify the exemption from the landing requirement but, rather, appears to support not having an exemption at all.

Comment 4: The Council and two individuals commented that the inclusion of the sunset provision is appropriate because it is not an automatic condition and is conditional on the determination that whiting stocks can withstand additional pressure.

Response 4: Like the default management measures, the sunset provision would have been implemented unless the Council took action to prevent its implementation. Although it may have been the intent of the Council to review the status of the stocks before the sunset provision was implemented, the measure as proposed implied that vessels would be allowed entry. It would be appropriate to consider allowing additional vessels into the fishery only when it is determined that the stocks can withstand the additional effort.

Comment 5: The Council, the Mid-Atlantic Fishery Management Council (Mid-Atlantic Council), and one individual commented that open access and increasing regulations in other fisheries are reasons to expect a potential increase of effort in whiting fisheries, despite market conditions.

Response 5: NMFS agrees that increased participation over the long-term in an open access fishery is possible. However, market conditions and Amendment 12's increased restrictions on the whiting fisheries would likely discourage a large number of new vessels from entering the fishery. The measures approved by NMFS are designed to eliminate overfishing and allow the stocks to rebuild. If stocks begin to recover and market conditions improve and/or stabilize over time, vessels may find whiting fisheries more attractive. NMFS encourages the Council to develop a limited access system as soon as possible.

Comment 6: The Council commented that it is unfair to impose the default measure at the beginning of Year 4 if the tools to achieve the Year 1–3 reductions, including limited access permits, are not implemented in a timely manner. Some commenters feel that the Year 4 default measures should also be delayed.

Response 6: The default measure is necessary to reach rebuilding objectives within the time required by the Magnuson-Stevens Act as amended by the Sustainable Fisheries Act (SFA) and Amendment 12. The default measure, as demonstrated in the analyses in Amendment 12, is needed to meet rebuilding goals under either limited access or open access. The Council will have the opportunity under the annual review process to change management measures if needed.

Comment 7: The Mid-Atlantic Council commented that the conclusion that the elimination of the limited access permit program will not have an adverse effect on overfishing contradicts the reason for the disapproval of the sunset provision because both appear to allow additional vessels into the fishery and would have the same net effect on rebuilding goals. The Mid-Atlantic Council and one individual further commented that both the sunset provision and an open access fishery would compromise optimum yield (OY) and rebuilding goals.

Response 7: The assumptions are not the same when considering the sunset provision and an open access fishery. NMFS reasonably assumed that, in the short-term, participants in an open access fishery will not significantly increase due to current market conditions, status of the fishery, and restrictions of the management measures. The sunset provision, however, allows vessels into the fishery in the future without consideration of their effects on the rebuilding goals and without any compensating measures.

Comment 8: One commenter suggested that the supplemental analysis prepared to evaluate the management measures in an open access fishery is a "case of magic numbers."

Response 8: NMFS disagrees. However, NMFS recognizes that it is difficult to precisely predict the behavior of fisheries in an open access fishery. Nevertheless, NMFS' analysis is supported by current market conditions in the fishery and by new restrictions implemented by Amendment 12 that may dissuade vessel owners from entering the fishery. NMFS is aware that the level of uncertainty could be greatly reduced if effort is controlled over the long term with a limited access permit program. Accordingly, NMFS has encouraged the Council to develop a limited access permit program that is fair and equitable.

Comment 9: The Mid-Atlantic Council and another commenter supported using landings data dating back to 1980 to qualify for a limited access permit. The commenters feel that, because of declines in availability of fish in the Mid-Atlantic/Southern New England areas around 1988, a qualifying period beginning in 1987 would eliminate many vessels from qualification in the southern areas.

Response 9: This comment is moot because NMFS disapproved the limited access component of Amendment 12.

Comment 10: The Mid-Atlantic Council commented that the limited access qualifying criteria should be applied equally across all fisheries and the sunset provision should be disapproved. The Mid-Atlantic Council also commented that Amendment 12 should include an exemption for vessels that participated in the small-mesh shrimp fishery with separator grates that would not have qualified for limited access small-mesh multispecies permits.

Response 10: NMFS disapproved the limited access permit program in part because the qualifying criteria were not fair and equitable.

Comment 11: The Council commented that the proposed enrollment program for the mesh size/possession limit categories does not provide the industry the flexibility that was intended and that it would discourage vessels from fishing for whiting and other small-mesh species with the most appropriate gear. The Council suggested that NMFS make a technical change in the final rule to implement a call-in enrollment, which would be incorporated into the current call-in system for groundfish to provide industry the necessary flexibility.

Response 11: The rule accurately reflects the enrollment program developed by the Council in Amendment 12. While the Council may now feel that a call-in program is preferable, a technical amendment to the regulations is not the proper vehicle to make a change in the type of enrollment program. After its submission of Amendment 12 to NMFS, the Council developed Framework 32, which eliminates Amendment 12's enrollment program. The final rule for Framework 32 will be published concurrently with this rule and will override relevant portions of the Amendment 12 rule.

Comment 12: The Council recommended that NMFS implement an allowance for a net strengthener of mesh size that is twice that of the inside mesh (e.g., 5–inch (12.7 cm) for 2.5–inch (6.35–cm) inside mesh) as a technical change to the 2.5–inch (6.35–cm) minimum mesh size/possession limit category measure. The Council feels that vessels may not catch enough squid with 2.5–inch (6.35–cm) mesh to make a profitable trip and will use 1.875–inch (4.76–cm) mesh and discard whiting over 3,500 lbs (1,588 kg), creating an excessive amount of discarding that could compromise the objectives of Amendment 12 to reduce whiting mortality and discards. The Mid-Atlantic Council supported the use of net strengtheners for all mesh sizes provided they do not alter the intended selective properties of the minimum mesh specified in Amendment 12.

Response 12: A technical amendment to this rule is not an appropriate means of eliminating Amendment 12's limited prohibition on the use of net strengtheners. The Whiting Plan Development Team (PDT) expressed concern during the development of Amendment 12 that net strengtheners may have a detrimental impact on the selectivity of the net, increasing catch and discards. However, time constraints prevented a full analysis of the use of various net strengtheners prior to Amendment 12's submission for Secretarial review. As a result, it was determined that, given the uncertain impacts, allowing the use of net strengtheners may compromise the objectives of Amendment 12. The Council has since analyzed impacts of net strengtheners and submitted a framework adjustment action to implement a net strengthener allowance for vessels using 2.5–inch (6.35–cm) mesh, that will be implemented simultaneously with this amendment. Assuming that all vessels may choose to use a net strengthener whenever the best strategy is to use 2.5–inch (6.35–cm) mesh, the conservation benefits of Amendment 12 are expected to be reduced by only 3.6 percent in the northern area and 1.9 percent in the southern area. Under the alternative assumption that the net strengthener would be employed only on observed trips where squid revenues exceeded small mesh multispecies revenues, the conservation benefits are estimated to remain unchanged compared to the status quo in the northern area and are estimated to be reduced by 0.9 percent in the southern area.

Comment 13: One commenter suggested that the implementation of the proposed minimum mesh size/possession limit measures would result in increased discards. The commenter notes that the Council was considering a call-in enrollment procedure and the use of a net strengthener. Therefore, the commenter recommends that NMFS should wait to implement all Amendment 12 regulations until the Council acts on these issues.

Response 13: As noted in the response to comment 12, NMFS is publishing the Framework 32 final rule, which provides for the use of net strengtheners and new mesh possession limit measures, simultaneously with this final rule.

Comment 14: The Mid-Atlantic Council commented that Amendment 12 should require the use of square mesh, which has been demonstrated to greatly improve the escapement of small fish in a number of fisheries around the world similar to U.S. whiting fisheries.

Response 14: The Council and NMFS are not aware of any data to support the commenter's claims about the benefits of square mesh for small-mesh multispecies. The Mid-Atlantic Council may want to consider recommending this gear restriction to the Council for future consideration. The WMC would have an opportunity to review the effects of the current measures and recommend new measures as part of its first annual review.

Comment 15: Several commenters felt that, because the default measures do not currently specify a geographical extent, Amendment 12 would affect southern fisheries, such as southern shrimp trawl fishery. The commenters suggested that a southern limit at 39° or 39°30′ N. lat. be established to protect fisheries that have little interaction with whiting, red hake, and offshore hake. Further, the commenters expressed concern that the 3–inch (7.62–cm) minimum mesh size will shut down *Loligo*, *Illex*, herring, and Atlantic mackerel fisheries.

Response 15: In the years prior to the Year 4 default measure, the Councils and NMFS can work together to identify appropriate fisheries for exemption from the 3–inch (7.62–cm) minimum mesh size and to consider a southern limit to the measure, which was discussed by the Council in the development of Amendment 12.

Comment 16: One commenter opposes the Year 4 default measures. The commenter feels that the disapproval of the limited access permit program and the gaps in scientific information on the stocks should be addressed before implementing the Year 4 default measures.

Response 16: Sufficient scientific information exists on stock abundance of whiting and hakes to form the basis for concluding that the stocks are overfished and that the Year 4 default measures are necessary to ensure that rebuilding occurs in sufficient time to comply with the Magnuson-Stevens Act, while easing the economic burden in

Years 1–3. Meanwhile, prior to the actual implementation of the default measure in Year 4, there will be opportunities to review the scientific data and adjust management measures based on that review, if appropriate. Other management alternatives could be developed that would replace the default measures.

Comment 17: Two commenters felt that the economic impact analysis is inadequate with respect to the effects on non-whiting fisheries, such as squid, mackerel, and herring fisheries. An industry representative further stated that, because of the inadequacy, Amendment 12 does not comply with national standard 8.

Response 17: NMFS disagrees with the commenters' suggestion that regulations implementing Amendment 12 violate national standard 8 of the Magnuson-Stevens Act. National standard 8 states that "conservation and management measures shall, consistent with the conservation requirements of the Magnuson-Stevens Act (including the preventing of overfishing and rebuilding of overfished stocks), take into account the importance of fishery resources to fishing communities in order to: (1) Provide for the sustained participation of such communities; and (2) to the extent practicable, minimize adverse economic impacts on such communities." Economic impacts of the preferred management measures and alternatives on communities are described in Amendment 12 in section E.5.2, E.7.0, the RIR, and the IRFA. Section E.7.2.3, "Analysis of Fishery Impacts," describes the impacts of production losses associated with fisheries for large-mesh species, offshore hake, whiting, red hake, *Loligo* and *Illex* squid, shrimp, and small-mesh species (which include mackerel and herring) and identifies such losses in tables on pages 243 and 245 of Amendment 12. Community involvement in small-mesh multispecies fisheries and community impacts are discussed throughout Amendment 12 and its FSEIS.

Amendment 12 and this rule provide for the sustained participation of communities in small-mesh multispecies fisheries and minimizes economic impacts on them to the extent practicable in several ways, including the following. First, to reach the goal of ending overfishing, the rebuilding plan phases in reductions of the fishing mortality rate over the first 3 years, rather than requiring attainment of that goal immediately. Thus, they provide for the continued harvest of small-mesh species, albeit at reduced levels. Second, Amendment 12 sets up a rebuilding plan that meets the conservation requirements of the Magnuson-Stevens Act, yet provides for rebuilding over an extended period of time—the full 10 years allowed by the Magnuson-Stevens Act. Third, while the impacts of the Year 4 default measure are likely to be more severe than those of the Year 1–3 measures, the impacts of the Year 4 measure are short-lived relative to the negative impacts associated with maintaining the status quo and allowing fishing mortality to remain too high on stocks of whiting and red hake. By delaying the default measure to Year 4, Amendment 12 and this rule provide fishermen with the opportunity and incentive to modify their strategies for small mesh fishing in Years 1–3, which could make implementation of the Year 4 default measure unnecessary. Finally, Amendment 12 and this rule accommodated non-whiting fisheries by allowing possession of silver hake and offshore hake in amounts depending on mesh size. For these reasons, NMFS finds that Amendment 12 and this rule comply with national standard 8.

Comment 18: One commenter felt that Amendment 12 is inconsistent with national standards 4, 5, and 8 because it discriminates between sectors of the industry, does not foster efficiency in utilization of the fishery, and does not consider the importance of fishery resources to communities. Specifically, the commenter expressed a concern that large vessels would be unfairly disadvantaged by the possession limit in the Cultivator Shoal whiting fishery because trips to the area involve long travel time and 30,000 lb (13,608 kg) of whiting could not cover costs of operating the vessel. The commenter finds this inequitable because smaller vessels, which generally fish closer to shore, would be able to reach their fishing grounds in less time and, thus, have lower operating costs to cover.

With respect to national standard 5, the commenter stated that the proposed possession limits are contrary to the Council's intent in Amendment 12, which the commenter stated is to increase economic efficiency and allow a wide range of trip sizes. To address inequities associated with uniform possession limits, the commenter states that Amendment 12 should have used a "sliding scale" for possession limits where vessels would be allowed a possession limit based on the size of their vessel.

With respect to national standard 8, the commenter states that the FSEIS does not adequately address the significant economic and social consequences of the preferred alternative on fishermen and communities as compared to other options.

Response 18: NMFS disagrees that Amendment 12 is inconsistent with national standards 4, 5, and 8. A possession limit of 30,000 lb (13,608 kg) for the Cultivator Shoal whiting fishery was chosen because it provided for the required 63–percent reduction in exploitation by eliminating extremely large whiting trips in the area, some of which have historically exceeded 100,000 lbs (45,360 kg). The 30,000 lb (13,608 kg) possession limit would still result in profitable trips. Based on 1995 through 1997 landings data from the Cultivator Shoal whiting fishery, trips averaged about 10,000 lbs (4,536 kg). Further, with a 30,000 lb (13,608 kg) possession limit, market conditions during the fishery's season should be more stable, allowing more vessels to take advantage of the market and profit from trips that may otherwise have been negatively impacted by large trips flooding the market.

Vessel size and sliding scales were considered as possible criteria for possession limits, but were rejected because they were overly complex and would not have provided any significant benefits compared to the administration and enforcement difficulties associated with them, as described in section E.5.2, "Alternatives to the Proposed Action". Large vessels are not restricted to fishing in the Cultivator Shoal whiting fishery area. In fact, no vessels are restricted to certain areas where they can fish. Vessels of all sizes have the flexibility to modify their trips to reduce costs, if necessary.

Finally, NMFS finds Amendment 12 complies with national standard 8, as described in Comment Response 17.

Comment 19: One commenter felt that NMFS should articulate a program within the context of Amendment 12 to ensure the necessary information will be available to conduct a benchmark assessment.

Response 19: One of the goals of Amendment 12 is to increase scientific information on whiting, red hake, and offshore hake stocks. During the first 3 years that Amendment 12 is in effect, NMFS is hopeful that new stock assessments can be conducted on each species and the results will be used to modify management measures on an annual basis, if appropriate.

Comment 20: Three commenters noted that a composite net, utilizing large-mesh panels in the front of the net, is effective in reducing bycatch of whiting and other species in mixed trawl fisheries. They feel, however, that uniform small-mesh nets have a high bycatch. The commenters feel that NMFS should consider allowing the gear or authorizing experiments with the "composite" tail bag.

Response 20: NMFS will consider any request for an experimental fishery to evaluate the effectiveness of a composite net in the reduction of bycatch.

Comment 21: One commenter expressed concern regarding the inclusion of two measures on the list of measures that could be implemented by framework action: (1) The description and identification of essential fish habitat (EFH), and (2) the description and identification of habitat areas of particular concern (HAPC). The commenter is concerned that the framework process would allow changes to these measures to be published as a final rule, without publication first as a proposed rule. The commenter states that nonfishing interests lack representation at Council meetings and, therefore, will not have the opportunity to comment upon actions regarding EFH. The commenter also asserts that the framework adjustment process for these two measures will create inconsistencies in the measures among different NMFS Regions and the New England and Mid-Atlantic Fishery Management Councils (Councils), thereby complicating the EFH consultation process. The commenter requests that the inclusion of these measures be delayed until NMFS EFH interim final regulations and guidelines are revised.

Response 21: The framework adjustment process requires the Councils, when making allowed adjustments to the FMP, to develop and analyze them over the span of at least two Council meetings. The Councils must provide the public with advance notice of the meetings, the proposals, and the analysis. Publication of the meeting agenda in the **Federal Register** is required. The public is provided an opportunity to comment on the proposals in writing, and/or in person at the second Council meeting. Upon review of the analysis and written and verbal public comments, the Council may recommend to the Regional Administrator that the measures be published as a final rule, provided certain conditions are met. NMFS may publish the measures either as a final rule or as a proposed rule if either NMFS or the Council determines that additional public comment is needed.

The list of frameworkable measures included in the Amendment 12 and the final rule to implement it is inclusive to provide the Council maximum flexibility in responding quickly to fishery information as it becomes available and in adjusting the regulations accordingly. As such, modifications to EFH and HAPC can be implemented in a expedited manner if circumstances warrant, based upon Council and NMFS approval. The framework adjustment process requires adherence to all applicable law, and a framework adjustment requires full analysis to evaluate the impact of the measures. The degree of the required analysis will differ for each framework adjustment, depending upon the scope of the action and the degree to which the impacts have been previously analyzed. This process is considered to be adequate in providing the public opportunity to comment or be involved with any measures to address EFH concerns.

Comment 22: One commenter stated that the 15–percent reduction in catch associated with a 0.5–inch (1.27 cm) increase in mesh size from 2.5–inch (6.35 cm) mesh to 3–in (7.62 cm) mesh is not accurate and reported that industry feels that the reduction is 50 percent. The commenter feels that this would result in measures being more effective in achieving Amendment 12 objectives than anticipated.

Response 22: The Amendment 12 document takes this into account in the comparison of sensitivity trials. However, the Whiting PDT established the 15–percent reduction in catch based on scientific studies conducted by state agencies. There is no current evidence to show that the reduction in catch resulting from a ½-inch (1.27–cm) increase in mesh size is higher than that recommended by the Whiting PDT. If measures are more effective than anticipated, NMFS notes that framework action or an amendment addressing the new information may preclude the need to implement default measures in Year 4.

Comment 23: One commenter noted that, because whiting stocks cross US/Canadian boundaries, Canada should also be actively involved in the management of whiting.

Response 23: Annual reviews of the status of the stocks and the effectiveness of the management measures will take into account the possibility of stocks existing and migrating into Canadian waters, allowing NMFS and the Council to develop appropriate management, including coordination with Canada, if necessary.

Comment 24: One commenter feels that Amendment 12 is inconsistent with national standards 1 and 2 because possession limits would not allow achievement of OY and the management measures are not based on the best scientific information. The commenter states that the northern stock of whiting is approaching an overfished condition, and there is no determination that it is overfished. Further, the commenter states that, because long trips with 30,000 lb (13,608 kg) possession limits would not be economical, vessels would divert effort into the southern area, possibly compromising the rebuilding goals for whiting and red hake in that area.

Response 24: NMFS disagrees and finds Amendment 12 to be consistent with national standards 1 and 2. National standard 1 requires that conservation and management measures prevent overfishing while achieving, on a continuing basis, the OY from each fishery for the United States fishing industry. Also, sec. 304(e)(3)(B) of the Magnuson-Stevens Act requires the Council to develop a FMP amendment to prevent overfishing in a fishery identified as approaching an overfished condition. Amendment 12 concludes that the stock of whiting in the northern area is approaching an overfished condition and sets a fishing mortality rate of 0.36 (or a 63–percent reduction in the exploitation rate) to prevent overfishing. The possession limits and the selectivity of the minimum mesh sizes in both the northern area and the Cultivator Shoal whiting fishery exemption area are intended to achieve that fishing mortality target.

Amendment 12 also complies with national standard 1 because it sufficiently specifies OY. Amendment 12 specifies OY for whiting, red hake, and offshore hake as the amount of fish that results from fishing under the set of rules designed to achieve the plan objectives. It is the amount of fish caught by the fishery when fishing at target fishing mortality rates at current biomass levels, or when fishing in a manner intended to maintain or achieve biomass levels capable of producing maximum sustainable yield on a continuing basis. Given the definition of OY is tied to the fishing mortality rate, and the possession limits are designed to achieve the fishing mortality rates, the possession limits allow for the harvest of OY.

The majority of trips that landed 30,000 lbs or greater of whiting historically occurred in either the Cultivator Shoal whiting fishery or in Southern New England waters. Therefore, it is unlikely that the 30,000 lb possession limit would cause additional effort in the southern area that is not already considered in Amendment 12. Regarding the issue of trip profitability under a 30,000–lb limit, see the response to comment 18.

Section E.6.2 of Amendment 12 describes the data the Council used to

evaluate the potential impacts of the management measures on small-mesh multispecies fisheries. In summary, the Council considered information and analyses provided by scientific and technical groups including the Overfishing Definition Review Panel and the Whiting PDT. It also considered information provided by the Whiting Industry Advisory Panel and other industry representatives when systematically collected data were unavailable. While recent information is lacking, Amendment 12 can use only what is available. NMFS found, through review of Amendment 12, that this information was the best available scientific information.

Changes From the Proposed Rule

Changes made are related to technical and administrative needs and concerns and are made to clarify the intent of the regulations. In addition, the final rule for Amendment 9 to the FMP was published on October 15, 1999. Changes are made to make the final rule for Amendment 12 to the FMP consistent with the regulations as modified by the final rule for Amendment 9 to the FMP. The most notable changes from the proposed rule to the final rule implementing Amendment 12 are listed below in the order appearing in the regulations:

In § 648.2, in the definition for Northeast (NE) multispecies or multispecies, Atlantic halibut has been added by Amendment 9 to the FMP. The scientific name for yellowtail flounder in the definition is corrected to *Pleuronectes ferruginea*. In the proposed rule it was inadvertently specified as *Limanda ferruginea*, which was the old classification.

In § 648.6, paragraph (a) is revised to delete references to effective dates that have been passed.

In § 648.14, paragraph (a)(42) is revised to better reflect the intent of the referenced paragraphs. Paragraphs (b) and (c)(7) are revised to reflect revised references.

In § 648.80, paragraphs (a)(3)(i)(A), (a)(3)(i)(B), (a)(4)(i)(B), (a)(8)(i)(A), (a)(8)(i)(B), and (a)(9)(i)(D) are revised to reference additional American lobster possession limits imposed by § 697.17 of this chapter.

In § 648.80, paragraphs (a)(8)(i)(B), (a)(9)(i)(D)(2), and (b)(3)(i)(B) are revised, and paragraph (c)(2)(iii) is added to reflect the minimum mesh size implemented by the Year 4 default measures.

In § 648.80(g) the net strengthener provisions are clarified.

In § 648.80, paragraph (g)(4) is redesignated (g)(5) because a restriction on street sweeper gear is now designated as paragraph (g)(4).

In § 648.86 the paragraphs that were to be added as paragraphs (c) and (d) are added as paragraphs (d) and (e) because the possession limit for halibut is now designated as paragraph (c).

In § 648.86, the paragraphs that were to be redesignated as paragraphs (e) and (f) are redesignated as paragraphs (f) and (g).

In § 648.86, paragraphs (d)(1)(i) through (d)(1)(iii) are revised for clarity and to specify that net stowage applies to the entire trip, and paragraph (d)(1)(iv) is added to clarify that minimum mesh size applies to the last 50 meshes (100 bars if square mesh is used) for vessels 60 ft (18.28 m) and under and to the last 100 meshes (200 bars if square mesh is used) for vessels greater than 60 ft (18.28 m), as specified in Amendment 12.

In § 648.90, paragraph (a) is revised to specify that the first annual meeting of the Whiting Monitoring Committee will occur in 2001.

NOAA codifies its OMB control numbers for information collection at 15 CFR part 902. Part 902 collects and displays the control numbers assigned to information collection requirements of NOAA by OMB pursuant to the Paperwork Reduction Act (PRA). This final rule codifies OMB control number 0648–0391 for §§ 648.13 and 648.86.

Under NOAA Administrative Order 205–11, dated December 17, 1990, the Under Secretary for Oceans and Atmosphere has delegated to the Assistant Administrator for Fisheries, NOAA, the authority to sign material for publication in the **Federal Register**.

Classification

The Administrator, Northeast Region, NMFS, determined that the FMP, except for the disapproved measure, is necessary for the conservation and management of the northeast multispecies fisheries and that it is consistent with the Magnuson-Stevens Act and other applicable laws.

The Council prepared and NMFS has adopted a FSEIS for Amendment 12; a NOA was published at 64 FR 39990, July 23, 1999. Although short-term negative impacts will result from lowered allowed catches of small-mesh multispecies, the proposed management action will have long-term positive impacts on affected physical, biological, and human environments.

This proposed rule has been determined to be not significant for purposes of E.O. 12866.

Regulatory Flexibility Analysis

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA), the Council prepared an IRFA, and NMFS prepared a supplement, dated July 1, 1999, that describes the economic impacts of the proposed rule, if adopted, on small entities and discusses various alternatives considered by the Council. The final regulatory flexibility analysis (FRFA) consists of the IRFA, the supplement to the IRFA, public comments received on the amendment and proposed rule related to economic impacts on small entities and responses in this final rule, and the summary that follows.

In its September 1997 Report to Congress, NMFS determined that some stocks of whiting and red hake are overfished or approaching an overfished condition. NMFS is publishing this rule to comply with the Magnuson-Stevens Act, which requires that an amendment be developed and implemented to prevent overfishing of stocks declared to be approaching an overfished condition and to end overfishing and to rebuild overfished stocks. This rule intends to prevent overfishing by implementing whiting and offshore hake possession limits; minimum mesh sizes; and a Year 4 default measure to ensure that overfishing is eliminated. To ensure effective recordkeeping and compliance with the measures exist, this rule establishes two new collection-of-information requirements and includes one existing collection-of-information requirement in the FMP that was not previously approved by OMB. The two new requirements require a vessel owner or operator to call the Regional Administrator to request a letter of authorization to fish under one of the mesh size/possession limit categories and require a vessel owner or operator to provide/obtain a receipt for fish bought through a transfer of fish at sea. The requirement not previously approved by OMB is a requirement to call in to receive a letter of authorization to transfer fish other than regulated multispecies at sea. Measures analyzed in the IRFA include the full set of management measures with particular attention to mesh size and possession limits and the Year 4 default measure and various other alternatives considered by the Council. The entities affected by these regulations are all small entities; therefore, analysis of impacts of the regulations and of the alternatives considered in Amendment 12 constitutes an analysis of the impact of the regulations on small entities as required under the RFA. The small entities considered in this analysis are

1,156 vessels that reported landing one or more combined pounds of whiting, red hake, and offshore hake during the calendar years 1995 to 1997.

Other measures approved in Amendment 12, including minimum mesh and possession limit enrollment programs (not including the direct reductions of catch and landings caused by minimum mesh sizes and possession limits), codend specifications, the net strengthener provision, and the transfer at sea provision have no quantifiable economic impact but are intended, in part, to help mitigate all impacts of these measures on participants in the fishery. These measures are expected to have minimal economic impact on participating vessels because they will not result in the loss of catch or landings.

All of the alternatives considered by the Council have varying degrees of impact upon different sectors of the fishery, all of whom are small entities. These alternatives, their impacts on the participants in the fishery, and reasons they were not adopted are discussed in more detail at section E.5.0 of the FSEIS and are hereby incorporated into the FRFA. A summary of alternatives considered but rejected follows:

1. The Council considered a "no action" alternative that would result in no changes to the current measures under the Northeast Multispecies FMP. The no action alternative was rejected because it would not fulfill the requirements of the Magnuson-Stevens Act as amended by the SFA with respect to overfished stocks and stocks approaching an overfished condition. Further, evaluations of biological, social, and economic impacts suggest that the approved management measures would result in greater, long-term benefits to the industry.

2. The Council considered various management measures specific to northern, southern, and the Cultivator Shoal whiting fishery areas, using the boundary between the Gulf of Maine/Georges Bank and the Southern New England Regulated Mesh Areas to differentiate between the northern and southern areas. Management measures that were considered included minimum mesh sizes, eastern and western zone delineation in the southern area, and possession limits based on mesh size, areas fished, seasons, and vessel size. While the Council maintained the Cultivator Shoal Whiting Fishery Exemption Area, it rejected further area delineation because it felt uniform management measures for all areas, except the Cultivator Shoal Whiting exemption area, would be the least complex, the easiest to enforce and administer and would still provide for the necessary reductions in fishing mortality and exploitation.

3. Seasonal restrictions, including a reduction of the current season, were considered by the Council for management measures for the Cultivator Shoal whiting fishery. The Council had considered reducing the fishery season by 2 months by eliminating June and October. In addition, various possession limits and participation restrictions were considered. While Amendment 12 implements a 1-month reduction of the season that eliminates the month of October, the elimination of June from the season was rejected. Public comment during the public hearing stage suggested that landings from the fishery in June are of high value because of the lack of other available fish or whiting fisheries. The possession limits and other restrictions, other than the measures in this rule, were rejected for consideration in Amendment 12 because they were too complex or not feasible. Also, the Council felt that, while a possession limits less than 30,000 lbs in the Cultivator Shoal whiting fishery would ensure that fishing mortality goals relative to the Cultivator Shoal area would be reached quickly, it would be more likely that vessels would not be able to profit from trips to the Cultivator Shoal area with such low possession limits.

4. The Council considered three options for possible transfers of small-mesh multispecies at sea. One measure would prohibit transfers; a second would allow unlimited transfers; and a third would allow vessels to transfer limited amounts of small-mesh multispecies. The Council rejected the prohibition of transfers because it would not allow the needed flexibility in the industry. The unlimited transfer at sea option was also rejected because it would compromise the effectiveness of the possession limits it was developing.

5. The Council considered implementing minimum fish sizes for whiting, but rejected the idea due to the likelihood that measuring whiting would be impractical and difficult to enforce given the high-volume nature of the fishery. In addition, whiting is a highly perishable product. Implementing such a requirement would increase the time required to process the fish, thereby lessening the quality and value of retained fish.

6. The Council considered spawning season closures to protect spawning stocks of whiting and red hake, but rejected the measure because spawning data for whiting are incomplete. The data that are available suggest that existing large-mesh measures in the Northeast Multispecies FMP provide protection for known spawning fish.

Paperwork Reduction Act

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

This rule contains three new collection-of-information requirements subject to the Paperwork Reduction Act that have been approved by OMB. This rule also repeats an existing requirement that has been approved by OMB under control number 0648–0202. The OMB control numbers and public reporting burden are listed as follows:

Call-in to NMFS Region for Enrollments for Authorization Letter to Transfer at Sea, OMB No. 0648–0391 (2 minutes/response);

Written Receipt for At-Sea Transfers of Small-mesh Multispecies, OMB No. 0648–0391 (1 minute/response);

Call-in to NMFS Region for Enrollments for Mesh Size/ Possession Limit Authorization Letter, OMB No. 0648–0391 (2 minutes/response).

Call in to NMFS Region for Enrollment for the Cultivator Shoal Whiting Fishery Authorization Letter, OMB No. 0648–0202 (2 minutes/response).

The response times shown include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of the data requirements, including suggestions for reducing the burden, to NMFS and to OMB (see **ADDRESSES**).

List of Subjects

15 CFR Part 902

Reporting and recordkeeping requirements.

50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 22, 2000.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 15 CFR part 902, chapter IX, and 50 CFR part 648, chapter VI, are amended as follows:

15 CFR Chapter IX

PART 902—NOAA INFORMATION COLLECTION REQUIREMENTS UNDER THE PAPERWORK REDUCTION ACT; OMB CONTROL NUMBERS

1. The authority citation for part 902 continues to read as follows:

Authority: 44 U.S.C. 3501 *et seq.*

2. In § 902.1, the table in paragraph (b) under 50 CFR is amended by adding an entry for 648.13 in numerical order and revising the entry for 648.86 to read as follows:

§ 902.1 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

* * * * *

(b) * * *

CFR part or section where the information collection number is located	Current OMB control number (all numbers begin with 0648–)
50 CFR:	
648.13	–0391
648.86	–0202, –0391

50 CFR Chapter VI

PART 648 - FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.2, the definition for "Nonregulated multispecies" is removed, the definitions for "Dealer" and "Northeast (NE) multispecies or multispecies" are revised, and the definitions for "Small-mesh multispecies" and "Whiting Monitoring Committee (WMC)" are added to read as follows:

§ 648.2 Definitions.

* * * * *

Dealer means any person who receives, for a commercial purpose (other than solely for transport on land), from the owner or operator of a vessel issued a valid permit under this part, any species of fish, the harvest of which is managed by this part, unless otherwise exempted in this part.

* * * * *

Northeast (NE) multispecies or *multispecies* means the following species:

American plaice- *Hippoglossoides platessoides.*
Atlantic cod- *Gadus morhua.*
Atlantic halibut- *Hippoglossus hippoglossus.*
Haddock- *Melanogrammus aeglefinus.*
Ocean Pout- *Macrozoarces americanus.*
Offshore Hake- *Merluccius albidus.*
Pollock- *Pollachius virens.*
Redfish- *Sebastes fasciatus.*
Red hake- *Urophycis chuss.*
Silver hake (whiting)- *Merluccius bilinearis.*
White hake- *Urophycis tenuis.*
Windowpane flounder- *Scophthalmus aquosus.*
Winter flounder- *Pleuronectes americanus.*
Witch flounder- *Glyptocephalus cynoglossus.*
Yellowtail flounder- *Pleuronectes ferruginea.*

* * * * *

Small-mesh multispecies means the subset of Northeast multispecies that includes silver hake, offshore hake, and red hake.

* * * * *

Whiting Monitoring Committee (WMC) means a team appointed by the NEFMC to review, analyze, and recommend adjustments to the management measures addressing small-mesh multispecies. The team consists of staff from the NEFMC and MAFMC, NMFS Northeast Regional Office, the NEFSC, the USCG, at least one industry representative from each geographical area (northern New England, southern New England, and the Mid-Atlantic), and no more than two representatives, appointed by the Commission, from affected states.

3. In § 648.4, paragraph (a)(1)(ii) is revised to read as follows:

§ 648.4 Vessel and individual commercial permits.

(a) * * *

(1) * * *

(ii) *Open access permits.* A vessel of the United States that has not been issued a limited access multispecies permit is eligible for and may be issued an "open access multispecies", "handgear", or "charter/party" permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. A vessel that has been issued a valid limited access scallop permit, but that has not been issued a limited access multispecies permit, is eligible for and may be issued an open access scallop multispecies possession limit permit and may fish for, possess on board, and land multispecies finfish subject to the restrictions in § 648.88. The owner of a vessel issued an open access permit may request a different open access permit category by submitting an application to the Regional Administrator at any time.

* * * * *

4. In § 648.6, paragraph (a) is revised to read as follows:

§ 648.6 Dealer/processor permits.

(a) *General.* All NE multispecies, sea scallop, summer flounder, surf clam, ocean quahog, mackerel, squid, butterfish, scup, black sea bass, or spiny dogfish dealers and surf clam and ocean quahog processors must have been issued under this section, and have in their possession, a valid permit for these species. As of April 28, 2000, persons aboard vessels receiving small-mesh multispecies at sea for use exclusively as bait are deemed not to be dealers for purposes of receiving such small-mesh multispecies and are not required to possess a valid dealer's permit under this section, provided the vessel complies with the provisions specified under § 648.13.

* * * * *

5. In § 648.13, paragraph (b) is revised, and paragraph (e) is added to read as follows:

§ 648.13 Transfers at sea.

* * * * *

(b)(1) Except as provided in paragraph (b)(2) of this section, vessels issued a multispecies permit under § 648.4(a)(1) or a scallop permit under § 648.4(a)(2) are prohibited from transferring or attempting to transfer any fish from one vessel to another vessel, except that vessels issued a Federal multispecies permit under § 648.4(a)(1) and specifically authorized in writing by the Regional Administrator to do so, may transfer species other than regulated species from one vessel to another vessel.

(2) Vessels issued a Federal multispecies permit under § 648.4(a)(1) may transfer only up to 500 lb (226.8 kg) of combined small-mesh multispecies per trip for use as bait from one vessel to another, provided:

(i) The transferring vessel possesses a Federal multispecies permit as specified under § 648.4(a)(1);

(ii) The transferring vessel has a letter of authorization issued by the Regional Administrator on board; and

(iii) The receiving vessel possesses a written receipt for any small-mesh multispecies purchased at sea.

* * * * *

(e) Vessels issued a letter of authorization from the Regional Administrator to transfer small-mesh multispecies at sea for use as bait will

automatically have 500 lb (226.8 kg) deducted from the vessel's combined silver hake and offshore hake possession limit, as specified under § 648.86(c), for every trip during the participation period specified on the letter of authorization, regardless of whether a transfer of small-mesh multispecies at sea occurred or whether the actual amount that was transferred was less than 500 lb (226.8 kg). This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

6. In § 648.14, paragraphs (a)(42), (a)(43), (b), (c) introductory text, (c)(7) and (t) are revised, and paragraphs (x)(4)(iii) and (z) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(42) Fish within the areas described in § 648.80(a)(4) with nets of mesh smaller than the minimum size specified in § 648.80(a)(2), unless the vessel possesses on board a valid authorizing letter issued to the vessel under § 648.80(a)(4)(i) and the vessel complies with the requirements specified in § 648.80(a)(4).

(43) Violate any of the provisions of § 648.80, including paragraphs (a)(3), the small-mesh northern shrimp fishery exemption area; (a)(4), the Cultivator Shoal whiting fishery exemption area; (a)(8), Small-mesh Area 1/Small-mesh Area 2; (a)(9), the Nantucket Shoals dogfish fishery exemption area; (a)(11), the Nantucket Shoals mussel and sea urchin dredge exemption area; (a)(12), the GOM/GB monkfish gillnet exemption area; (a)(13), the GOM/GB dogfish gillnet exemption area; (b)(3), exemptions (small mesh); (b)(5), the SNE monkfish and skate trawl exemption area; (b)(6), the SNE monkfish and skate gillnet exemption area; (b)(7), the SNE dogfish gillnet exemption area; (b)(8), the SNE mussel and sea urchin dredge exemption area; or (b)(9), the SNE little tunny gillnet exemption area. A violation of any provision of the paragraphs in § 648.80 is a separate violation.

* * * * *

(b) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, it is unlawful for any owner or operator of a vessel holding a valid multispecies permit, or any person issued an operator's permit or issued a letter under § 648.4(a)(1)(i)(M)(*3*), to land or possess on board a vessel more than the possession or landing limits specified in § 648.86(a),(b),(c), (d) and (e) or to violate any of the other provisions of § 648.86, unless otherwise specified in § 648.17.

(c) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) and (b) of this section, it is unlawful for any owner or operator of a vessel issued a valid limited access multispecies permit or a letter under § 648.4(a)(1)(i)(M)(*3*), unless otherwise specified in § 648.17, to do any of the following:

* * * * *

(7) Possess or land per trip more than the possession or landing limits specified under § 648.86(a), (b), (c), (d), and (e) and under § 648.82(b)(3), if the vessel has been issued a limited access multispecies permit.

* * * * *

(t) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraphs (a) through (h) of this section, it is unlawful for any owner or operator of a vessel issued a valid open access multispecies permit to possess or land any regulated species as defined in § 648.2, or to violate any applicable provisions of § 648.88, unless otherwise specified in § 648.17.

* * * * *

(x) * * *

(4) * * *

(iii) All small-mesh multispecies retained or possessed on a vessel issued any permit under § 648.4 are deemed to have been harvested from the EEZ.

* * * * *

(z) *Small-mesh multispecies.* (1) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, and subject to paragraph (a)(32) of this section, it is unlawful for any person owning or operating a vessel issued a valid Federal multispecies permit to land, offload, or otherwise transfer, or attempt to land, offload, or otherwise transfer, small-mesh multispecies from one vessel to another in excess of the limits specified in § 648.13.

(2) In addition to the general prohibitions specified in § 600.725 of this chapter and in paragraph (a) of this section, beginning May 1, 2002, it is unlawful for an owner or operator of a vessel issued a valid Federal multispecies permit to do any of the following:

(i) Fish with, use or have available for immediate use within the areas described in §§ 648.80(a), (b), and (c), nets of mesh size smaller than 3–in (7.62–cm), unless otherwise exempted pursuant to § 648.80(a)(7).

(ii) If issued a Federal multispecies permit, land or possess on board a vessel, more than 10,000 lb (4,536 kg) of combined whiting and offshore hake.

7. In § 648.80, paragraphs (a)(3)(i), (a)(4)(i)(A) through (a)(4)(i)(D), (a)(7), (a)(8)(i), (a)(9)(i)(D), (b)(3)(i), (c)(4), (g)(1), and (g)(2)(i) are revised and (a)(4)(i)(E) through (a)(4)(i)(G), (c)(2)(iii), and (g)(5) are added to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(a) * * *

(3) * * *

(i) *Restrictions on fishing for, possessing, or landing fish other than shrimp.* (A) Through April 30, 2002, an owner or operator of a vessel fishing in the northern shrimp fishery described in this section under this exemption may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to an amount equal to the total weight of shrimp possessed on board or landed, not to exceed 3,500 lb (1,588 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(B) Beginning May 1, 2002, an owner or operator of a vessel fishing for northern shrimp may not fish for, possess on board, or land any species of fish other than shrimp, except for the following, with the restrictions noted, as allowable incidental species: Longhorn sculpin; combined silver hake and offshore hake—up to 100 lb (45.36 kg); and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

* * * * *

(4) * * *

(i) * * *

(A) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area under this exemption must have a valid letter of authorization issued by the Regional Administrator on board.

(B) Through April 30, 2002, an owner or operator of a vessel fishing in this area may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 30,000 lb (13,608 kg), except for the following, with the

restrictions noted, as allowable incidental species: Herring; longhorn sculpin; squid; butterfish; Atlantic mackerel; dogfish, and red hake—up to 10 percent each, by weight, of all other species on board; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Beginning May 1, 2002, an owner or operator of a vessel fishing in this area is subject to the mesh size restrictions specified in paragraph (a)(4)(i)(D) of this section and may not fish for, possess on board, or land any species of fish other than whiting and offshore hake combined—up to a maximum of 10,000 lb (4,536 kg), except for the allowable incidental species listed in paragraph (a)(4)(i)(B) of this section.

(D) Counting from the terminus of the net, all nets must have a minimum mesh size of 3 in (7.62 cm) square or diamond mesh applied to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) for vessels less than or equal to 60 ft (18.28 m) in length.

(E) Fishing is confined to a season of June 15 through September 30, unless otherwise specified by notification in the **Federal Register**.

(F) When transiting through the GOM/GB Regulated Mesh Area specified under paragraph (a)(1) of this section, any nets with a mesh size smaller than the minimum mesh specified in paragraph (a)(2) of this section must be stowed in accordance with one of the methods specified in § 648.23(b), unless the vessel is fishing for small-mesh multispecies under another exempted fishery specified in paragraph (a) of this section during the course of the trip.

(G) A vessel fishing in the Cultivator Shoal Whiting Fishery Exemption Area may fish for small-mesh multispecies in exempted fisheries outside of the Cultivator Shoal Whiting Fishery Exemption Area, provided that the vessel complies with the requirements specified in paragraph (a)(4)(i) of this section for the entire trip.

* * * * *

(7) *Addition or deletion of exemptions*--(i)(A) *Regulated multispecies.* An exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of regulated species bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of regulated species caught as bycatch is, or can be reduced to, less than 5 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of regulated species. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 5 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions or modifications are made through issuance of a rule in the **Federal Register**.

(B) *Small-mesh multispecies.* Beginning May 1, 2002, an exemption may be added in an existing fishery for which there are sufficient data or information to ascertain the amount of small-mesh multispecies bycatch, if the Regional Administrator, after consultation with the NEFMC, determines that the percentage of small-mesh multispecies caught as bycatch is, or can be reduced to, less than 10 percent, by weight, of total catch and that such exemption will not jeopardize fishing mortality objectives. In determining whether exempting a fishery may jeopardize meeting fishing mortality objectives, the Regional Administrator may take into consideration various factors including, but not limited to, juvenile mortality. A fishery can be defined, restricted, or allowed by area, gear, season, or other means determined to be appropriate to reduce bycatch of small-mesh multispecies. An existing exemption may be deleted or modified if the Regional Administrator determines that the catch of regulated species is equal to or greater than 10 percent, by weight, of total catch, or that continuing the exemption may jeopardize meeting fishing mortality objectives. Notification of additions, deletions, or modifications are made through issuance of a rule in the **Federal Register**.

(ii) The NEFMC may recommend to the Regional Administrator, through the framework procedure specified in § 648.90(b), additions or deletions to exemptions for fisheries, either existing or proposed, for which there may be insufficient data or information for the Regional Administrator to determine, without public comment, percentage catch of regulated species or small-mesh multispecies.

(8) * * *

(i)(A) Unless otherwise prohibited in § 648.81, through April 30, 2002, a vessel subject to the minimum mesh size restrictions specified in paragraph (a)(2) of this section may fish with or possess nets with a mesh size smaller than the minimum size, provided the vessel complies with the requirements of paragraphs (a)(3)(ii) or (a)(8)(ii) of this section, and, 648.86(d), from July 15 through November 15 when fishing in Small-mesh Area 1 and from January 1 through June 30 when fishing in Small-mesh Area 2. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to the amounts specified in § 648.86(d); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; and red hake; except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted: Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(B) Unless otherwise prohibited in § 648.81, beginning May 1, 2002, in addition to the requirements specified in paragraph (a)(8)(i)(A) of this section, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. An owner or operator of any vessel may not fish for, possess on board, or land any species of fish other than: Silver hake and offshore hake—up to 10,000 lb (4,536 kg); butterfish; dogfish; herring; Atlantic mackerel; ocean pout; scup; squid; and red hake; except for the following allowable incidental species (bycatch as the term is used elsewhere in this part) with the restrictions noted:

Longhorn sculpin; monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; and American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter.

(C) Small-mesh areas 1 and 2 are defined by straight lines connecting the following points in the order stated (copies of a chart depicting these areas are available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter)):

Small-mesh Area 1

Point	N. lat.	W. long.
SM1	43°03'	70°27'
SM2	42°57'	70°22'
SM3	42°47'	70°32'
SM4	42°45'	70°29'
SM5	42°43'	70°32'
SM6	42°44'	70°39'
SM7	42°49'	70°43'
SM8	42°50'	70°41'
SM9	42°53'	70°43'
SM10	42°55'	70°40'
SM11	42°59'	70°32'
SM1	43°03'	70°27'

Small-mesh Area 2

Point	N. lat.	W. long.
SM13	43°05.6'	69°55.0'
SM14	43°10.1'	69°43.3'
SM15	42°49.5'	69°40.0'
SM16	42°41.5'	69°40.0'
SM17	42°36.6'	69°55.0'
SM13	43°05.6'	69°55.0'

* * * * *

(9) * * *

(i) * * *

(D)(1) Through April 30, 2002, the following species may be retained, with the restrictions noted, as allowable incidental species in the Nantucket Shoals Dogfish Fishery Exemption Area: Longhorn sculpin; silver hake—up to 200 lb (90.72 kg); monkfish and monkfish parts—up to 10 percent, by weight, of all other species on board or up to 50 lb (23 kg) tail-weight/166 lb (75 kg) whole-weight of monkfish per trip, as specified in § 648.94(c)(4), whichever is less; American lobster—up to 10 percent, by weight, of all other species on board or 200 lobsters, whichever is less, unless otherwise restricted by landing limits specified in § 697.17 of this chapter; and skate or skate parts—up to 10 percent, by weight, of all other species on board.

(2) Beginning May 1, 2002, all nets must comply with a minimum mesh size of 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length. Vessels may retain the allowable incidental species listed in paragraph (a)(9)(i)(D)(1) of this section.

* * * * *

(b) * * *

(3) * * *

(i) *Species exemptions.* (A) Through April 30, 2002, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake, and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the mesh size and possession limit restrictions specified under § 648.86(d).

(B) Beginning May 1, 2002, owners and operators of vessels subject to the minimum mesh size restrictions specified in paragraph (b)(2) of this section may not use nets with mesh size less than 3 in (7.62 cm), unless exempted pursuant to paragraph (b)(4) of this section, and may fish for, harvest, possess, or land butterfish, dogfish (trawl only), herring, Atlantic mackerel, ocean pout, scup, shrimp, squid, summer flounder, silver hake and offshore hake—up to 10,000 lb (4,536 kg), and weakfish with nets of a mesh size smaller than the minimum size specified in the SNE Regulated Mesh Area, provided such vessels comply with requirements specified in paragraph (b)(3)(ii) of this section and with the possession limit restrictions specified under § 648.86. Nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

* * * * *

(c) * * *

(2) * * *

(iii) *Small mesh beginning May 1, 2002.* Beginning May 1, 2002, nets may not have a mesh size of less than 3 in (7.62 cm) square or diamond mesh counting the first 100 meshes (200 bars in the case of square mesh) from the terminus of the net for vessels greater than 60 ft (18.28 m) in length and the first 50 meshes (100 bars in the case of square mesh) from the terminus of the net for vessels less than or equal to 60 ft (18.28 m) in length.

* * * * *

(4) *Addition or deletion of exemptions.* Same as paragraph (a)(7) of this section.

* * * * *

(g) *Restrictions on gear and methods of fishing*—(1) *Net obstruction or constriction.* Except as provided in paragraph (g)(5) of this section, a fishing vessel subject to minimum mesh size restrictions shall not use any device or material, including, but not limited to, nets, net strengtheners, ropes, lines, or chafing gear, on the top of a trawl net except that one splitting strap and one bull rope (if present), consisting of line and rope no more than 3 in (7.62 cm) in diameter, may be used if such splitting strap and/or bull rope does not constrict in any manner the top of the trawl net. "The top of the trawl net" means the 50 percent of the net that (in a hypothetical situation) is not in contact with the ocean bottom during a tow if the net were laid flat on the ocean floor. For the purpose of this paragraph, head ropes are not considered part of the top of the trawl net.

(2) *Net obstruction or constriction.* (i) Except as provided in paragraph (g)(5) of this section, a fishing vessel may not use any mesh configuration, mesh construction, or other means on or in the top of the net subject to minimum mesh size restrictions, as defined in paragraph (g)(1) of this section, if it obstructs the meshes of the net in any manner.

* * * * *

(5) *Net strengthener restrictions when fishing for small-mesh multispecies.* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets of mesh size smaller than 2.5–in (6.35–cm) may use a net strengthener provided that the net strengthener complies with § 648.23(d).

* * * * *

8. In § 648.86, paragraphs (d) and (e) are redesignated as paragraphs (f) and (g) respectively and new paragraphs (d) and (e) are added to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(d) *Small-mesh multispecies through April 30, 2002.* (1) Vessels issued a valid Federal multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies:

(i) *Vessels using mesh size smaller than 2.5 in (6.35 cm) and vessels without a letter of authorization.* Owners or operators of vessels fishing for, in possession of, or landing small-mesh multispecies with, or having on board except as provided herein, nets of mesh size smaller than 2.5 in (6.35 cm) (as applied to the part of the net specified at (d)(1)(iv) of this section), and, vessels that have not been issued a letter of authorization pursuant to paragraph (d)(1)(ii) or (d)(1)(iii) of this section may possess on board and land up to only 3,500 lb (1,588 kg) of combined silver hake and offshore hake. This possession limit on small-mesh multispecies does not apply if all nets with mesh size smaller than 2.5 in (6.35 cm) have not been used to catch fish for the entire fishing trip and the nets have been properly stowed pursuant to § 648.81(e), and the vessel is fishing with a mesh size and a letter of authorization as specified in paragraphs (d)(1)(ii), (d)(1)(iii) and (d)(2) of this section. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(ii) *Vessels authorized to use nets of mesh size 2.5 in (6.35 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 2.5 in (6.35 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 7,500 lb (3,402 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 2.5 in (6.35 cm) (as applied to the part of the net specified in (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 2.5 in (6.35 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.81(e) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iii) *Vessels authorized to use nets of mesh size 3 in (7.62 cm) or greater.* Except as provided in paragraph (d)(3) of this section, owners and operators of vessels issued a valid letter of authorization pursuant to paragraph (d)(2) of this section authorizing the use of nets of mesh size 3 in (7.62 cm) or greater, may fish for, possess, and land small-mesh multispecies up to only 30,000 lb (13,608 kg) combined silver hake and offshore hake when fishing with nets of a minimum mesh size of 3 in (7.62 cm) (as applied to the part of the net specified in (d)(1)(iv) of this section), provided that any nets of mesh size smaller than 3 in (7.62 cm) have not been used to catch such fish and are properly stowed pursuant to § 648.81(e) for the entire trip. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to applicable restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i),(ii) and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.28 m) or less in length.

(2) *Letter of authorization.* To fish for, possess on board, or land silver hake and offshore hake in excess of 3,500 lb (1,588 kg), as specified in paragraphs (d)(1)(ii) or (d)(1)(iii) of this section, a vessel must be issued and carry on board a valid letter of authorization to fish in the applicable minimum mesh size/possession limit category. To request a letter of authorization, vessel owners must write to or call during normal business hours the Northeast Region Permit Office and provide the vessel name, owner name, permit number, the desired mesh size/possession limit category and the period of time that the vessel is enrolled. Since letters of authorization are effective on the date of receipt, vessel owners should allow appropriate processing and mail time. To withdraw from a category, vessel owners must write to or call the Northeast Region Permit Office. Withdrawals are effective upon date of request. Withdrawals may occur after a minimum of 7 days of enrollment in which case vessel owners may not re-enroll the vessel in any mesh size/possession limit category until 30 days after the beginning of the original enrollment period. Until the vessel owner re-enrolls, the vessel is subject to a silver hake and offshore hake possession limit of 3,500 lb (1,588 kg) regardless of the mesh size in use. For example, if a vessel owner enrolls in the 3–in (7.62 cm) mesh/30,000 lb (13,608 kg) possession limit category which is effective October 1 and chooses November 30 as the end date but withdraws on October 7, the vessel may not be re-enrolled in the 2.5–in (6.35 cm)/ 7,500 lb (3,402 kg) or 3–in (7.62 cm) mesh/30,000 lb (13,608 kg) possession limit category until October 31.

(3) *Possession limit for vessels participating in the Northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption Area, as described in § 648.80(a)(3) with a vessel issued a valid Federal multispecies permit specified under § 648.4(a)(1) may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(4) *Possession restriction for vessels electing to transfer small-mesh multispecies at sea.* Owners and operators of vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small-mesh multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit which is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

(e) *Small-mesh multispecies beginning on May 1, 2002*—(1) *Federal multispecies permit holders.* An owner or operator of a vessel issued a valid Federal multispecies permit specified under § 648.4 (a)(1) may possess on board or land up to 10,000 lb (4,536 kg) of combined silver hake and offshore hake. Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection. The vessel is subject to restrictions on gear, area, and time of fishing specified in § 648.80 and any other applicable provision of this part.

(2) *Possession limit for vessels participating in the Northern shrimp fishery.* Owners or operators of vessels fishing in the Small-mesh Northern Shrimp Fishery Exemption Area under the exemption described in § 648.80(a)(3), with a vessel issued a valid Federal multispecies permit specified under § 648.4(a)(1), may possess on board or land silver hake and offshore hake, combined, up to 100 lb (45.36 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh multispecies at sea.* Vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small-mesh multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.9 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

* * * * *

9. In § 648.90, paragraphs (a) introductory text, (a)(1) through (a)(4), and (b)(1) are revised to read as follows:

§ 648.90 Multispecies framework specifications.

(a) *Annual review.* The Multispecies Monitoring Committee (MSMC) shall meet on or before November 15 of each year to develop target TACs for the upcoming fishing year and to develop options for NEFMC consideration on any changes, adjustments, or additions to DAS allocations, closed areas, or on other measures necessary to achieve the NE Multispecies FMP goals and objectives. For the year 2000 and thereafter, the MSMC, and for the year 2001 and thereafter, the Whiting Monitoring Committee (WMC) shall meet separately on or before November 15 of each year to develop options for NEFMC consideration on any changes, adjustments, or additions to DAS allocations, if applicable, closed areas or other measures necessary to achieve the NE Multispecies FMP goals and objectives.

(1) The MSMC and WMC, as applicable, shall separately review available data pertaining to: Catch and landings, discards, DAS, and other measures of fishing effort, survey results, stock status, current estimates of fishing mortality, and any other relevant information.

(2) Based on this review, the MSMC shall recommend target TACs and develop options necessary to achieve the FMP goals and objectives, which may include a preferred option. The WMC shall recommend management options necessary to achieve FMP goals and objectives pertaining to small-mesh multispecies, which may include a preferred option. The MSMC and WMC must demonstrate through analyses and documentation that the options they develop are expected to meet the NE Multispecies FMP goals and objectives. The MSMC and WMC may review the performance of different user groups or fleet sectors in developing options. The range of options developed by the MSMC or WMC may include any of the management measures in the NE Multispecies FMP, including, but not limited to: Annual target TACs, which must be based on the projected fishing mortality levels required to meet the goals and objectives outlined in the NE Multispecies FMP for the 10 regulated species or small-mesh multispecies; DAS changes; possession limits; gear restrictions; closed areas; permitting restrictions; minimum fish sizes; recreational fishing measures; description and identification of essential fish habitat (EFH); fishing gear management measures to protect EFH; designation of habitat areas of particular concern within EFH; and any other management measures currently included in the NE Multispecies FMP. In addition, for the 2002 fishing year, the WMC must consider, and recommend as appropriate, management options other than the default measures for small-mesh multispecies management (mesh and possession limit restrictions for small-mesh multispecies beginning May 1, 2002).

(3) The NEFMC shall review the recommended target TACs recommended by the MSMC and all of the options developed by the MSMC and WMC, and other relevant information, consider public comment, and develop a recommendation to meet the NE Multispecies FMP objective pertaining to regulated species or small-mesh multispecies that is consistent with other applicable law. If the NEFMC does not submit a recommendation that meets the NE Multispecies FMP objectives and is consistent with other applicable law, the Regional Administrator may adopt any option developed by the MSMC or WMC, unless rejected by the NEFMC, as specified in paragraph (a)(6) of this section, provided the option meets the NE Multispecies FMP objectives and is consistent with other applicable law.

(4) Based on this review, the NEFMC shall submit a recommendation to the Regional Administrator of any changes, adjustments or additions to DAS allocations (if applicable), closed areas or other measures necessary to achieve the NE Multispecies FMP's goals and objectives. The NEFMC shall include in its recommendation supporting documents, as appropriate, concerning the environmental and economic impacts of the proposed action and the other options considered by the NEFMC.

* * * * *

(b) * * *

(1) *Adjustment process.* (i) After a management action has been initiated, the Council shall develop and analyze appropriate management actions over the span of at least two Council meetings. The Council shall provide the public with advance notice of the availability of both the proposals and the analyses and opportunity to comment on them prior to and at the second Council meeting. The Council's recommendation on adjustments or additions to management measures, other than to address gear conflicts, must come from one or more of the following categories: DAS changes, effort monitoring, data reporting, possession limits, gear restrictions, closed areas, permitting restrictions, crew limits, minimum fish sizes, onboard observers, minimum hook size and hook style, the use of crucifiers in the hook-gear fishery, fleet sector shares, recreational fishing measures, area closures and other appropriate measures to mitigate marine mammal entanglements and interactions, description and identification of essential fish habitat (EFH), fishing gear management measures to protect EFH, designation of habitat areas of particular concern within EFH, and any other management measures currently included in the FMP. In addition, the Council's recommendation on adjustments or additions to management measures pertaining to small-mesh multispecies, other than to address gear conflicts, must come from one or more of the following categories: Quotas and appropriate seasonal adjustments for vessels fishing in experimental or exempted fisheries that use small mesh in combination with a separator trawl/grate (if applicable), modifications to separator grate (if applicable) and mesh configurations for fishing for small-mesh multispecies, adjustments to whiting stock boundaries for management purposes, adjustments for

fisheries exempted from minimum mesh requirements to fish for small-mesh multispecies (if applicable), season adjustments, declarations, and participation requirements for the Cultivator Shoal Whiting Fishery Exemption Area

(ii) *Adjustment process for Whiting TACs and DAS.* The Council may develop recommendations for a Whiting DAS effort reduction program or a Whiting TAC through the framework process outlined in paragraph (c)(1) of this section only if these options are accompanied by a full set of public hearings that span the area affected by the proposed measures in order to provide adequate opportunity for public comment.

* * * * *

[FR Doc. 00–7697 Filed 3–28–00; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 000307061–0061–01; I.D. 013100D]

RIN 0648-AN46

Fisheries of the Northeastern United States; Northeast Multispecies Fishery; Framework Adjustment 32 to the Northeast Multispecies Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement measures contained in Framework Adjustment 32 to the Northeast Multispecies Fishery Management Plan (FMP) to address management measures for silver hake (whiting), red hake, and offshore hake. This final rule implementing Framework Adjustment 32 (Framework 32) establishes that a vessel's whiting and offshore hake possession limit shall be determined by the smallest codend mesh size the vessel has on board or the smallest mesh on board not incorporated into the body of a fully-constructed net, whichever is smaller. In addition, this final rule allows vessels fishing for small-mesh multispecies with 2.5–inch (6.35–cm) mesh codends to use a net strengthener. The intended effect of this action is to mitigate regulatory discards resulting from the whiting/offshore hake possession limits implemented in Amendment 12 and to reduce the administrative and compliance burdens associated with approved provisions of Amendment 12 to the FMP (Amendment 12).

DATES: This rule is effective April 28, 2000.

ADDRESSES: Copies of the Framework 32 document, its Regulatory Impact Review (RIR), the Environmental Assessment, and other supporting documents for the framework adjustment, are available from Paul J. Howard, Executive Director, New England Fishery Management Council, 50 Water Street, Mill 2, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Peter Christopher, Fishery Policy Analyst, 978–281–9288.

SUPPLEMENTARY INFORMATION: Amendment 12 was partially approved on September 1, 1999, and contains a measure requiring vessels to be issued and carry on board a letter of authorization (LOA) to fish under a particular mesh size/possession limit category. Under Amendment 12, vessels issued an LOA for the 3–inch (7.62–cm) or 2.5–inch (6.35–cm) minimum mesh size categories would be allowed a possession limit of 30,000 lb (13,608 kg) or 7,500 lbs (3,402 kg), respectively, of whiting and offshore hake. Those vessels using less than 2.5–inch (6.35–cm) mesh or vessels without the appropriate LOA would be allowed a 3,500–lb (1,588–kg) possession limit of whiting and offshore hake. Vessels could elect to fish under the specified mesh/possession limit category for a minimum of 30 days and could withdraw after 7 days, but would be restricted to a 3,500–lb (1,588–kg) possession limit of whiting and offshore hake for the remainder of the original 30 days. These requirements (hereinafter referred to as "the enrollment procedures") were designed to encourage vessel owners and captains to make extended decisions about their fishing activity and give more force to the minimum mesh sizes and possession limits. Also, Amendment 12 allows only vessels using nets with mesh sizes less than 2.5 inches (6.35 cm) to use net strengtheners.

In a letter to NMFS dated June 3, 1999, the New England Fishery Management Council (Council) expressed concern that the Amendment 12 enrollment procedures and restriction on net strengtheners would not provide flexibility for the industry and would encourage discarding of whiting by continued fishing with smaller mesh. The Council urged NMFS to proceed with a technical change to Amendment 12 to modify the enrollment procedures and to allow the use of net strengtheners for the larger mesh size nets. NMFS determined that the changes would be substantive, could have possible impacts on conservation goals and, therefore, would require a framework adjustment or amendment action to allow the Council to consider available options and conduct proper analysis of the impacts. As a result, the Council proceeded in developing Framework 32.

Framework 32 eliminates Amendment 12's enrollment procedures and instead bases possession limits on the smallest codend mesh on board (either stowed or available for fishing), or the smallest mesh on board not incorporated into a fully-constructed net, whichever is smaller. The restriction does not apply to nets or pieces of nets smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)), consistent with current minimum mesh size restrictions in the FMP. Under Amendment 12, minimum mesh size is applied to the first 50 meshes or 100 bars counted from the terminus of the net for vessels 60–ft (18.29 m) or smaller and the first 100 meshes or 200 bars counted from the terminus of the net for vessels greater than 60–ft (18.29 m) in length. The elimination of the enrollment procedures will allow vessel owners improved flexibility in the size of the mesh that they can use in the nets on a trip-to-trip basis and reduces the possibility of high regulatory discards of whiting and offshore hake. The application of the possession limit based on the smallest mesh size on board eliminates the administrative burden associated with implementing the enrollment procedures and may improve enforcement of the possession limits.

This final rule implementing Framework 32 also includes a measure that allows vessels fishing with 2.5–inch (6.35–cm) mesh-sized nets to use a net strengthener (a large mesh codend positioned around a small-mesh codend), provided that the net strengthener has a minimum mesh size of 6 inches (15.24 cm), has the same circumference and configuration (square or diamond mesh) as the inside codend, and that the inside codend is no more than 2 ft (61 cm) longer than the outside codend. The allowance of net strengtheners would help alleviate discards by providing some vessels with an incentive to use trawl net codends with mesh size of at least 2.5 inches (6.35 cm). Testimony during the comment period for Amendment 12 and throughout the development of Framework 32 suggests that vessel owners would discard whiting that would be caught over the allowed 3,500 lbs (1,588 kg) with less than 2.5–inch (6.35–cm) mesh nets because *Loligo* squid, which has a minimum mesh size requirement of 1.875 inches (4.76 cm), continue to be more valuable than whiting. Vessel owners felt that the 2.5–inch (6.35–cm) mesh would release too much squid and that there would be no incentive for these vessels to move up to a 2.5–inch (6.35–cm) mesh, which would promote conservation of whiting. Thus, some vessel owners would continue to use the smaller mesh and discard whiting. Allowing a net strengthener with 2.5–inch (6.35–cm) mesh provides an incentive for squid vessels to increase their mesh size to 2.5 inches (6.35 cm) by allowing squid catches similar to those caught with 1.875–inch (4.76–cm) mesh nets and allowing for a 7,500–lb (3,402–kg) possession limit of whiting and offshore hake. During the development of the strengthener options, industry commented that the use of a net strengthener with mesh sizes larger than 2.5 inches (6.35 cm) was not an issue because the concern was to find a solution for the small-mesh squid fishery. The provisions for the circumference, length, and composition of the net are intended to prevent vessels from using a combination of inside and outside codends that would reduce the effective inside mesh size, thereby compromising the effectiveness of whiting conservation measures.

Abbreviated Rulemaking

NMFS is making these adjustments to the regulations under the framework abbreviated rulemaking procedure codified in 50 CFR part 648, subpart F. This procedure requires the Council, when making specifically allowed adjustments to the Multispecies FMP, to develop and analyze the action over the span of at least two Council meetings where public comments are accepted. The Council must provide the public with advance notice of both the framework proposals and the associated analyses, and provide an opportunity to comment on them specifically prior to and at the second Council meeting. Upon review of the analyses and public comments, the Council may recommend to the Regional Administrator, Northeast Region (Regional Administrator), that the measures be published as a final rule, or as a proposed rule if additional public comment is necessary.

The initial and final meetings for Framework 32 at which public comment was received were on September 21–23, 1999, and November 16–18, 1999, respectively. The Council's Whiting and Enforcement Committees and Whiting Industry Advisory Panel also held meetings and took public comment on the proposals for Framework 32 during meetings in October 1999. Documents summarizing the Council's proposed action and the analyses of biological, economic, and social impacts of this action and alternative actions were available for public review 1 week prior to the final meeting, as is required under the framework adjustment process. No written comments were received.

To eliminate confusion to the industry and to reduce the administrative burdens that Amendment 12's enrollment procedures would cause, Framework 32 is published just after the final rule implementing Amendment 12. This final rule modifies the final rule implementing Amendment 12. This effectively eliminates implementation of the burdensome enrollment procedures created by Amendment 12.

Classification

The Regional Administrator determined that this framework adjustment to the FMP is necessary for the conservation and management of the Northeast multispecies fishery and that it is consistent with the Magnuson-Stevens Fishery Conservation and Management Act and other applicable laws.

This final rule eliminates a reporting requirement under the Paperwork Reduction Act estimated at 13.3 hours. The Call-in to NMFS Region for Enrollments for Mesh Size/Possession Limit Authorization (2 minutes/response) (part of the paperwork burden authorized by OMB No. 0648–0391) has been eliminated.

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 551 *et seq.*, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, a regulatory flexibility analysis has not been prepared. Nevertheless, the socioeconomic impacts on affected small entities were considered in the RIR contained in the supporting analyses for Framework 32. Relative to the status quo, expected average net returns would increase by less than one percent for the net strengthener provision implemented by this final rule. The minimum mesh size/possession limit provision implemented by this final rule is the simplest alternative available and improves flexibility for the industry. Further, it reduces costs to participating fishermen and the agency and may improve enforceability of the measure. Alternatives to this measure were also considered by the Council and were discussed in the framework adjustment document.

This final rule has been determined to be not significant for the purposes of E.O. 12866.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: March 22, 2000.

Gary C. Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.80, paragraph (g)(5) is revised to read as follows:

§ 648.80 Regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(g) * * *

(5) *Net strengthener restrictions when fishing for or possessing small-mesh multispecies.* (i) *Nets of mesh size less than 2.5 inches (6.35 cm).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets of mesh size smaller than 2.5 inches (6.35–cm), as measured by methods specified in § 648.80(f), may use net strengtheners (covers as described at § 648.23(d)) provided that the net strengthener for nets of mesh size smaller than 2.5 inches (6.35 cm) complies with the provisions specified under § 648.23(d).

(ii) *Nets of mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62).* A vessel lawfully fishing for small-mesh multispecies in the GOM/GB, SNE, or MA Regulated Mesh Areas as defined in paragraphs (a), (b), and (c) of this section with nets with mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62 cm) (as measured by methods specified in § 648.80(f), and as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) may use a net strengthener (i.e., outside net) provided the net strengthener does not have an effective mesh opening of less than 6 inches (15.24 cm), diamond or square

mesh, as measured by methods specified in § 648.80(f). The inside net (as applied to the part of the net specified in paragraph (d)(1)(iv) of this section) must not be more than 2 ft (61 cm) longer than the outside net, must be the same circumference or smaller than the smallest circumference of the outside net, and must be the same mesh configuration (i.e., both square or both diamond mesh) as the outside net.

3. In § 648.86, paragraph (d) is revised to read as follows:

§ 648.86 Multispecies possession restrictions.

* * * * *

(d) *Small-mesh multispecies through April 30, 2002.* (1) Vessels issued a valid Federal multispecies permit specified under § 648.4(a)(1) are subject to the following possession limits for small-mesh multispecies, which are based on the mesh size used by or on board vessels fishing for, in possession of, or landing small-mesh multispecies.

(i) *Vessels possessing on board or using nets of mesh size smaller than 2.5 inches (6.35 cm).* Owners or operators of a vessel may possess and land not more than 3,500 lb (1,588 kg) of combined silver hake and offshore hake if either of the following conditions are met:

(A) The mesh size of any net or any part of a net used by or on board the vessel is smaller than 2.5 inches (6.35 cm), as applied to the part of the net specified in paragraph (d)(1)(iv)of this section, as measured in accordance with 648.80(f); or,

(B) The mesh size of any net or part of a net on board the vessel not integrated into a fully constructed net is smaller than 2.5 inches (6.35 cm), as measured by methods specified in § 648.80(f). "Integrated into a fully constructed net" means that the mesh smaller than 2.5 inches (6.35 cm) occurs only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv), and, that the net into which the mesh is integrated is available for immediate use.

(ii) *Vessels possessing on board or using nets of mesh size equal to or greater than 2.5 inches (6.35 cm) but less than 3 inches (7.62 cm).* Owners or operators of a vessel, which is not subject to the possession limit specified in paragraph (d)(1)(i) of this section, may possess and land not more than 7,500 lb (3,402 kg) of combined silver hake and offshore hake if either of the following conditions are met:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); or,

(B) The mesh size of any net or part of a net on board the vessel not integrated into a fully constructed net is equal to or greater than 2.5 inches (6.35 cm) but smaller than 3 inches (7.62), as measured by methods specified in § 648.80(f). "Integrated into a fully constructed net" means that the mesh smaller than 2.5 inches (6.35 cm) occurs only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv), and, that the net into which the mesh is integrated is available for immediate use.

(iii) *Vessels using nets of mesh size equal to or greater than 3 inches (7.62 cm).* Owners or operators of a vessel, which is not subject to the possession limits specified in paragraphs (d)(1)(i) and (ii) of this section, may possess and land not more than 30,000 (13,608 kg) of combined silver hake and offshore hake if both of the following conditions are met:

(A) The mesh size of any net or any part of a net used by or on board the vessel is equal to or greater than 3 inches (7.62 cm), as applied to the part of the net specified in paragraph (d)(1)(iv) of this section, as measured by methods specified in § 648.80(f); and,

(B) The mesh size of any net or part of a net on board the vessel not integrated into a fully constructed net is equal to or greater than 3 inches (7.62), as measured by methods specified in § 648.80(f). "Integrated into a fully constructed net" means that the mesh smaller than 3 inches (7.62 cm) occurs only in the part of the net not subject to the mesh size restrictions as specified in paragraph (d)(1)(iv), and, that the net into which the mesh is integrated is available for immediate use.

(iv) *Application of mesh size.* Counting from the terminus of the net, the mesh size restrictions specified in paragraphs (d)(1)(i),(ii) and (iii) of this section are only applicable to the first 100 meshes (200 bars in the case of square mesh) for vessels greater than 60 ft (18.28 m) in length, and to the first 50 meshes (100 bars in the case of square mesh) for vessels 60 ft (18.28 m) or less in length. Notwithstanding any other provision of this section, the restrictions and conditions pertaining to mesh size do not apply to nets or pieces of net smaller than 3 ft (0.9 m) x 3 ft (0.9 m), (9 sq ft (0.81 sq m)).

(2) *Possession limit for vessels participating in the northern shrimp fishery.* Owners and operators of vessels participating in the Small-Mesh Northern Shrimp Fishery Exemption Area, as described in § 648.80(a)(3) with a vessel issued a valid Federal multispecies permit specified under § 648.4(a)(1) may possess and land silver hake and offshore hake, combined, up to an amount equal to the weight of shrimp on board, not to exceed 3,500 lb (1,588 kg). Silver hake and offshore hake on board a vessel subject to this possession limit must be separated from other species of fish and stored so as to be readily available for inspection.

(3) *Possession restriction for vessels electing to transfer small-mesh multispecies at sea.* Owners and operators of vessels issued a valid Federal multispecies permit and issued a letter of authorization to transfer small-mesh multispecies at sea according to the provisions specified in § 648.13(b) are subject to a combined silver hake and offshore hake possession limit that is 500 lb (226.8 kg) less than the possession limit the vessel otherwise receives. This deduction shall be noted on the transferring vessel's letter of authorization from the Regional Administrator.

* * * * *

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Wednesday, March 29, 2000

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FEDERAL REGISTER PAGES AND DATE, MARCH

10931–11196	1
11197–11454	2
11455–11734	3
11735–11858	6
11859–12060	7
12061–12426	8
12427–12904	9
12905–13234	10
13235–13658	13
13659–13864	14
13865–14206	15
14207–14430	16
14431–14780	17
14781–15052	20
15053–15202	21
15203–15520	22
15521–15822	23
15823–16116	24
16117–16296	27
16297–16508	28
16509–16782	29

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7276	11197
7277	11199
7278	11455
7279	11733
7280	12903
7281	15201
7282	16507
7283	16509

Executive Orders:

12170 (See Notice of March 13, 2000)	13863
12957 (Continued by Notice of March 13, 2000)	13863
12959 (See Notice of March 13, 2000)	13863
13059 (See Notice of March 13, 2000)	13863
13146	11201
13147	13233

Administrative Orders:

Memorandum of January 5, 2000	15823

Presidential Determinations:

No. 2000-15 of February 24, 2000	10931
No. 2000-16 of February 29, 2000	15797
No. 2000-17 of March 2, 2000	15821
No. 2000-18 of March 16, 2000	16297

Notices:

March 13, 2000	13863

4 CFR

27	15203
28	15203

5 CFR

Ch. LXXIII	15825
213	14431
315	14431
335	14431
531	15875
532	15521
792	13659
2640	16511

Proposed Rules:

3	14477
213	14477
315	14477

7 CFR

2	12427
75	15830
205	13512
210	12429
215	12429
220	12429
225	12429
226	12429
301	11203
457	11457
600	14781
601	14781
729	16117
761	14432
762	14432
915	15203
916	15205
917	15205
993	12061
955	12442
985	15832
989	15214
1301	16118
1304	16118
1305	16118
1306	16118
1307	16118
1308	16118
1421	13865
1427	13865
1464	10933
1710	14207, 14785
1721	10933
3019	14406

Proposed Rules:

6	14478
20	11483
27	10979
28	10979, 12140
29	13915
57	14652
97	13917
201	12952
205	15579
360	14926
930	15580
1140	10981
1160	14484
1205	12146
1210	14485
1306	12141
1307	12141
1309	12141
1710	12952
1717	12952
1718	12952

8 CFR

3	15835, 15846
212	14774, 15835, 15846
214	14774
240	15835, 15846
245	15835, 15846
248	14774
274a	15835, 15846
278A	14774
299	15835, 15846

9 CFR

74	15216

78.....12064
93.....15216
94.....15521
130.....16122
Proposed Rules:
71.....11485
77.....11485, 11912, 15877
78.....11485
93.....12486
98.....12486
113.....12151
130.....12486
317.....14486
318.....14486, 14489
319.....144867, 14489
327.....14489
381.....14486
590.....11486

10 CFR

72.....11458, 12444, 14790, 16299
170.....11204
600.....14406
810.....16124
820.....15218
Proposed Rules:
Ch. XVIII.....13700
21.....11488
50.....11488
52.....11488
54.....11488
100.....11488
170.....16250
171.....16250
430.....14128
431.....10984
960.....11755
963.....11755

11 CFR

108.....15221
Proposed Rules:
104.....16534
111.....16534
9038.....15273

12 CFR

Ch. IX.....13663
5.....12905
204.....12916
208.....14810, 15050
225.....14433, 14440, 15053, 16302, 16460
303.....15526
340.....14816
362.....15526
563.....16302
563c.....16302
563g.....16302
701.....15224
724.....10933
745.....10933
925.....13866
950.....13866
1500.....16460
1501.....12064, 14819
1510.....15050
Proposed Rules:
3.....12320
8.....15111
208.....12320
225.....12320
325.....12320
563.....16350
563c.....16350
563g.....16350
567.....12320
614.....14491
620.....14494
709.....11250
716.....10988
741.....10988
742.....15275
1750.....13251

13 CFR

Proposed Rules:
124.....12955

14 CFR

25.....13666, 16128, 16305
39.....10934, 10937, 10938, 11204, 11459, 11859, 11861, 12071, 12072, 12073, 12075, 12077, 12080, 12081, 12082, 12084, 12085, 12460, 12462, 12463, 13668, 13871, 13875, 13877, 14207, 14209, 14822, 14826, 14827, 14831, 14834, 14838, 14844, 14846, 14847, 14849, 14852, 15226, 15230, 15232, 15531, 15534, 15536, 15537, 15857, 15858, 16129, 16309, 16311
71.....11369, 11461, 11866, 12630, 12917, 12918, 14344, 14855, 14856, 14857, 15859, 15860, 15861, 16130, 16131
91.....16112, 16114, 16736
95.....14442
97.....13669, 13671, 13673, 15540, 15541, 15544
121.....16736
135.....16736
1260.....14406
Proposed Rules:
25.....13703
35.....16542
39.....11006, 11505, 11940, 11942, 12489, 12957, 13251, 13919, 13921, 13923, 14216, 14218, 15278, 15280, 15584, 15878, 15880, 15882, 16151, 16153, 16154, 16157, 16158, 16352
71.....12153, 12957, 13704, 13705, 13707, 14497, 15282, 15586
108.....15113
109.....15113
111.....15113
129.....15113
191.....15113
255.....11009

15 CFR

14.....14406
734.....12919
736.....14858
738.....12919, 14857
740.....12919, 14857
742.....12919, 14857
743.....12919
744.....12919, 14444
748.....12919
756.....14857, 14861
762.....14858
766.....14862
770.....14857
774.....12919, 13879, 14862
902.....16766

16 CFR

305.....16132
1615.....12924
1616.....12924
1630.....12929
1631.....12929
1632.....12935
Proposed Rules:
307.....11944
312.....11947
313.....11174

17 CFR

1.....12466
4.....10939, 12938
15.....14452
16.....14452
17.....14452
200.....12469
240.....13235
242.....13235
Proposed Rules:
4.....11253, 12318
228.....11507, 15043
229.....11507
230.....11507, 15500, 16160
232.....11507
239.....11507, 15500
240.....11507, 16160
243.....16160
248.....12354
249.....11507, 16160
250.....11507
259.....11507
260.....11507
269.....11507
270.....11507, 15500
274.....11507, 15500

18 CFR

35.....12088
157.....11461, 12115, 15234
380.....15234
1301.....16513

19 CFR

4.....16513
12.....12470
18.....16513
24.....13880
111.....13880
122.....16513
123.....16513
144.....16513
146.....16513
178.....13880
Proposed Rules:
101.....16354

20 CFR

220.....14458
322.....14459
404.....11866
416.....11866

21 CFR

20.....11881
101.....11205
173.....16312
176.....13675, 16518
177.....15057, 16313
178.....15545, 16314, 16315
524.....13904
558.....11888
640.....13678
862.....16520
868.....11464
870.....11465
1301.....13235
1308.....13235
Proposed Rules:
101.....14219
314.....12154

22 CFR

22.....14211
23.....14211
41.....14768
51.....14211
139.....14764
145.....14406
226.....14406
Proposed Rules:
22.....13253

23 CFR

1340.....13679

24 CFR

5.....16294, 16692
200.....15043
266.....16294
401.....15452
402.....15452
880.....16692
881.....16692
884.....16692
886.....16692
891.....16692
905.....14422
960.....16692
966.....16692
984.....16692
985.....16692
Proposed Rules:
81.....12632
990.....11525

25 CFR

290.....14461

26 CFR

1.....11205, 11467, 12471, 15547, 15548, 15862, 16143, 16316, 16317, 16318, 16319
301.....11211, 11215
601.....15862
602.....11205, 11211, 11215
Proposed Rules:
1.....11012, 11269, 15587, 16545, 16546, 16554
301.....11271, 11272

27 CFR

4.....11889
5.....11889
7.....11889
16.....11889
75.....15058
Proposed Rules:
00.....15115
4.....12490
70.....15115
75.....15115
90.....15115

28 CFR

70.....14406

29 CFR

95.....14406

4022.....14752, 14753
4044.....13905, 14752
4050.....14752
Proposed Rules:
1614.....11019
1910.....11948, 13254

30 CFR

202.....11467
206.....11467, 14022
250.....14469, 15862
938.....15553
Proposed Rules:
914.....11950, 12492

31 CFR

103.....13683

32 CFR

22.....14406
32.....14406
668.....13906
776.....15059
2001.....16320

33 CFR

26.....14863
95.....14223
100.....15558
110.....11892
117.....11893, 12943, 15238, 16521
127.....10943
140.....14226
141.....14226
142.....14226
143.....14226
144.....14226
145.....14226
146.....14226
147.....14226
154.....10943
155.....10943, 14470
159.....10943
161.....14863
164.....10943
165.....14864, 16522
167.....12944
177.....14223
183.....10943
320.....16486
326.....16486
331.....16486
Proposed Rules:
100.....11274, 13926, 14498, 17355, 16358, 16554
110.....13926, 14498, 16355, 16358, 16361, 16554
165.....13926, 14498, 14501, 14502, 15283, 15285, 16355, 16358, 16361
175.....11410
177.....11410
179.....11410
181.....11410
183.....11410

34 CFR

74.....14406
1100.....11894
Proposed Rules:
606.....15115
607.....15115
608.....15115

36 CFR

Ch. XV.....14760
1.....15077
3.....15077
13.....15077
701.....11735, 11736
1210.....14406
Proposed Rules:
212.....11680
261.....11680
295.....11680
1190.....12493
1191.....12493
1280.....15592

37 CFR

1.....14864
Proposed Rules:
201.....14227, 14505

38 CFR

3.....12116
19.....14471
20.....14471
21.....12117, 13693
Proposed Rules:
3.....13254

39 CFR

111.....12946
Proposed Rules:
20.....11023
111.....13258
913.....14229
952.....13707

40 CFR

9.....15090
30.....14406
51.....11222
52.....10944, 11468, 12118, 12472, 12474, 12476, 12481, 12948, 13239, 13694, 14212, 14873, 15240, 15244, 15864, 16320
55.....15867
60.....13242
62.....16320, 16323
63.....11231, 15690
68.....13243
70.....16523
86.....11898
136.....14344
141.....11372
148.....14472
180.....10946, 11234, 11243, 11736, 12122, 12129, 15248, 16143
258.....16523
261.....14472
262.....12378
268.....14472
271.....14472, 16528
300.....13697, 14475
302.....14472
431.....15091
445.....14344
Proposed Rules:
51.....11024, 16364
52.....11027, 11275, 11524, 12494, 12495, 12499, 12958, 13260, 13709, 14506, 14510, 14930, 15286, 15287, 15883, 16364, 16365
62.....16365
63.....11278
81.....14510
141.....11372
152.....15883
156.....15884
271.....16557
438.....11755
503.....11278
755.....16094

42 CFR

121.....15252
405.....13911
410.....13911
Proposed Rules:
410.....13082
493.....14510

43 CFR

12.....14406
3500.....11475

45 CFR

74.....14406
400.....15410
401.....15410
612.....11740
613.....11740

46 CFR

28.....10943
30.....10943
32.....10943
34.....10943
35.....10943
38.....10943
39.....10943
54.....10943
56.....10943
58.....10943
61.....10943
63.....10943
76.....10943
77.....10943
78.....10943
91.....11904
92.....10943
95.....10943
96.....10943
97.....10943
105.....10943
108.....10943
109.....10943
110.....10943
111.....10943
114.....10943
115.....11904
119.....10943
125.....10943
132.....11904
133.....11904
134.....11904
151.....10943
153.....10943
154.....10943
160.....10943
161.....10943
162.....10943
163.....10943
164.....10943
170.....10943
174.....10943
175.....10943
182.....10943
189.....11904
190.....10943
193.....10943
195.....10943
199.....10943, 11904
515.....15252
Proposed Rules:
2.....11410
10.....11410
15.....11410
24.....11410
25.....11410
26.....11410
28.....11410
30.....11410
70.....11410
90.....11410
114.....11410
169.....11410
175.....11410
188.....11410
199.....11410

47 CFR

1.....14476
20.....15559
22.....15559
24.....14213, 15559
25.....16327
27.....12483
32.....16328
54.....12135
64.....16328
73.....11476, 11477, 11750, 13250, 16149, 16335, 16336
76.....12135, 15559
80.....15559
90.....15559
99.....15559
Proposed Rules:
Ch. I.....15599
1.....13933
2.....14230
26.....14230
27.....14230
54.....13933
61.....13933
69.....13933
73.....11537, 11538, 11539, 11540, 11541, 11955, 12155, 13260, 13261, 15600, 15885, 15886, 16160, 16366, 16558, 16559

48 CFR

Ch. 1.....16285, 16286
Ch. 2.....14380
Ch. 5.....11246
1.....16285
6.....16285
9.....16285
15.....16285
19.....16275
32.....16276
52.....16276, 16285
202.....14397
204.....14397
207.....14397
208.....14397, 14400
212.....14400
222.....14397, 14402
244.....14400
247.....14400
252.....14397, 14400, 14402
1806.....12484
1808.....12484
1811.....12484
1813.....12484
1815.....12484
1825.....12484

1835.....12484
1837.....12484
1842.....12484
1848.....12484
1851.....12484
2409.....12950

Proposed Rules:
Ch. 9.....13416
2.....16758
3.....16758
4.....16758
9.....16758
15.....16758
52.....16758

49 CFR
19.....14406
193.....10950
350.....15092
355.....15092
385.....11904
571.....11751
572.....10961, 15254

Proposed Rules:
Ch I.....11541
40.....13261, 15118
171.....11028
172.....11028
173.....11028
174.....11028, 16161
175.....11028
176.....11028
177.....11028, 16161
178.....11028
179.....11028
180.....11028
190.....15290
191.....15290
192.....15290
195.....15290
222.....15298, 16559
229.....15298, 16559

50 CFR
17.....14876, 14886, 14896, 16052
300.....14907
622.....12136, 16336
635.....15873
648.....11478, 11909, 15110, 15576, 16341, 16345, 16532
660.....11480, 16346
679.....10978, 11247, 11481, 11909, 12137, 12138, 13698, 14918, 14924, 15271, 15272, 15577, 16150, 16532

Proposed Rules:
16.....11756
17.....12155, 12181, 13262, 13935, 14513, 14931, 14935, 15887
216.....11542
223.....12959
224.....12959, 13935
300.....13284
600.....11956
622.....11028, 14518
648.....11029, 11956, 14519
679.....11756, 11973, 12500

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 29, 2000

FEDERAL LABOR RELATIONS AUTHORITY
Equal Access to Justice Act; implementation:
Attorney fees regulations; published 2-28-00

GOVERNMENT ETHICS OFFICE
Government ethics:
Exemption under 18 U.S.C. 208 (B) (2); published 3-29-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Paper and paperboard components—
Hydroxymethyl-5,5-dimethylhydantoin and 1,3-bis(hydroxymethyl)-5,5-dimethylhydantoin; published 3-29-00

TENNESSEE VALLEY AUTHORITY
Freedom of Information Act; implementation; published 3-29-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 2-23-00
Israel Aircraft Industries, Ltd.; published 2-23-00
Israel Aircraft Industries, Ltd.; correction; published 3-28-00

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcoholic beverages:
Wine; labeling and advertising—
Flavored wine products; published 12-28-99

TREASURY DEPARTMENT
Customs Service
Customs forms; technical corrections; published 3-29-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Classification services to growers; 2000 user fees; comments due by 4-7-00; published 3-8-00
Cotton research and promotion order:
Imported content and cotton content of imported products; supplemental assessment calculation; comments due by 4-7-00; published 3-8-00
Meats, prepared meats, and meat products; grading, certification, and standards:
Imported beef, lamb, veal, and calf carcasses; official grading; comments due by 4-3-00; published 2-1-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Asian longhorned beetle; comments due by 4-3-00; published 2-2-00

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
National school lunch and school breakfast programs; alternatives to standard application and meal counting procedures; comments due by 4-7-00; published 2-7-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
International fisheries regulations:
Antarctic marine living resources; harvesting and dealer permits, and catch documentation; comments due by 4-7-00; published 3-13-00
Marine mammals:
Incidental taking—
Eastern Tropical Pacific Ocean; tuna purse seine vessels; compliance with International Dolphin Conservation Program; comments due by 4-3-00; published 1-3-00
Naval activities; USS Winston S. Churchill shock testing; comments due by 4-3-00; published 3-3-00

DEFENSE DEPARTMENT
Vocational rehabilitation and education:
Veterans education—
Educational assistance; new criteria for approving courses; comments due by 4-3-00; published 2-2-00

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural gas companies (Natural Gas Act):
Section 7 new service applications; optional certificate and abandonment procedures; comments due by 4-3-00; published 2-16-00
Practice and procedure:
Public utilities; annual charges; comments due by 4-3-00; published 2-3-00

ENVIRONMENTAL PROTECTION AGENCY
Air programs; State authority delegations:
Arizona; comments due by 4-3-00; published 3-2-00
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-3-00; published 3-2-00
Illinois; comments due by 4-3-00; published 3-3-00
Hazardous wastes:
Land disposal restrictions—
Polychlorinated biphenyls; underlying hazardous constituent in soil; Phase IV standards deferral; comments due by 4-3-00; published 2-16-00
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 4-4-00; published 2-4-00
Water supply:
National primary drinking water regulations—
Public water systems; unregulated contaminant monitoring regulation; comments due by 4-3-00; published 3-2-00
Public water systems; unregulated contaminant monitoring regulation; comments due by 4-3-00; published 3-2-00

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Montana; comments due by 4-3-00; published 2-25-00
Texas; comments due by 4-3-00; published 2-23-00
Wisconsin; comments due by 4-3-00; published 2-25-00

FEDERAL TRADE COMMISSION
Children's Online Privacy Protection Act; implementation
Safe harbor guidelines; comments due by 4-6-00; published 3-7-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Medical care and examinations:
Indian health—
Indian Self-Determination Act; contracts; comments due by 4-3-00; published 2-1-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Critical habitat determinations—
Coastal California gnatcatcher; comments due by 4-7-00; published 2-7-00

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 4-6-00; published 3-7-00

JUSTICE DEPARTMENT
Drug Enforcement Administration
Records, reports, and exports of listed chemicals:
Red phosphorus; comments due by 4-3-00; published 2-2-00

JUSTICE DEPARTMENT
Privacy Act; implementation; comments due by 4-3-00; published 2-23-00

MANAGEMENT AND BUDGET OFFICE
Federal Procurement Policy Office
Acquisition regulations:
Cost Accounting Standards Board—

Cost accounting standards coverage; applicability, thresholds, and waivers; comments due by 4-7-00; published 2-7-00

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:
- Uniformed Services Employment and Reemployment Rights Act and Veterans Employment Opportunities Act; implementation—
  - Appeals; comments due by 4-4-00; published 2-4-00

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records management:
- Computer tapes, rewind requirement; elimination; comments due by 4-3-00; published 2-3-00

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
- Involuntary liquidation; adjudication of creditor claims; comments due by 4-3-00; published 3-2-00

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:
- Barbour, Donald A.; comments due by 4-5-00; published 1-21-00

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
- Approved spent fuel storage casks; list additions; comments due by 4-5-00; published 1-21-00

SECURITIES AND EXCHANGE COMMISSION

Securities:
- Electronic Data Gathering, Analysis, and Retrieval System (EDGAR)—
  - Modernization; filing requirements; changes; comments due by 4-3-00; published 3-3-00

TRANSPORTATION DEPARTMENT

Coast Guard

Boating safety:
- Personal flotation devices; Federal requirements for wearing; comments due by 4-3-00; published 10-5-99
- Uninspected passenger vessels; comments due by 4-3-00; published 3-2-00

Outer Continental Shelf activities regulations; revision; comments due by 4-5-00; published 12-7-99

Practice and procedure:
- Adjudicative procedures consolidation; comments due by 4-3-00; published 10-5-99

Vocational rehabilitation and education:
- Veterans education—
  - New criteria for approving courses; comments due by 4-3-00; published 2-2-00

TRANSPORTATION DEPARTMENT

Workplace drug and alcohol testing programs:
- Procedures; revision; comments due by 4-7-00; published 12-9-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:
- Aviation security screening; comments due by 4-4-00; published 1-5-00

Airworthiness directives:
- Boeing; comments due by 4-3-00; published 2-3-00
- CFM International, S.A.; comments due by 4-3-00; published 3-3-00
- Dornier; comments due by 4-6-00; published 3-7-00
- Eurocopter Deutschland GMBH; comments due by 4-4-00; published 2-4-00
- Lockheed; comments due by 4-3-00; published 2-16-00
- McDonnell Douglas; comments due by 4-3-00; published 2-16-00

Class D and Class E airspace; comments due by 4-3-00; published 2-18-00

Class E airspace; comments due by 4-3-00; published 2-17-00

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:
- Lodi, CA; comments due by 4-7-00; published 2-7-00

TREASURY DEPARTMENT

Comptroller of the Currency

Electronic banking; facilitation of national banks' use of new technologies; advance notice; comments due by 4-3-00; published 2-2-00

TREASURY DEPARTMENT

Customs Service

Tariff-rate quotas:
- Sugar-containing products; export certificates; comments due by 4-4-00; published 2-4-00

TREASURY DEPARTMENT

Internal Revenue Service

Excise taxes:
- Deposits and tax returns; comments due by 4-6-00; published 1-7-00

Income taxes:
- Credit for increasing research activities; comments due by 4-5-00; published 1-4-00

Procedure and administration:
- Agriculture Department; return information disclosures for statistical purposes and related activities; cross reference; comments due by 4-3-00; published 1-4-00

TREASURY DEPARTMENT

Resolution Funding Corporation operations; comments due by 4-7-00; published 3-8-00

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:
- Veterans educations—
  - New criteria for approving courses; comments due by 4-3-00; published 2-2-00

LIST OF PUBLIC LAWS

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S. 376/P.L. 106–180

Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

Last List March 16, 2000

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Contents

Federal Register

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Contents

Federal Register
Vol. 65, No. 62 —
Thursday, March 30, 2000

Agricultural Marketing Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16871–16872

Agriculture Department
See Agricultural Marketing Service
See Forest Service
See Grain Inspection, Packers and Stockyards Administration
See Natural Resources Conservation Service

Arts and Humanities, National Foundation
See National Foundation on the Arts and the Humanities

Centers for Disease Control and Prevention
NOTICES
Committees; establishment, renewal, termination, etc.:
Injury Research Grant Review Committee; correction, 16920
Meetings:
Advisory Committee to Director, 16920–16921
Immunization Measurement Standards 2000 National Scientific Panel, 16921

Chemical Safety and Hazard Investigation Board
NOTICES
Meetings; Sunshine Act, 16873

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Colorado, 16873–16874
Rhode Island, 16874
Washington, 16874
West Virginia, 16874

Coast Guard
RULES
Outer Continental Shelf activities:
Platforms in Gulf of Mexico; safety zone, 16823–16825
Ports and waterways safety:
Fort Lauderdale, FL; safety zone, 16826–16827

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16874–16875

Commission of Fine Arts
NOTICES
Meetings, 16896

Consumer Product Safety Commission
NOTICES
Settlement agreements:
Standard Mattress Co., 16896–16899

Customs Service
NOTICES
Automation program test:
Prototype; funding continuation, 17002–17003
Customhouse broker license cancellation, suspension, etc.:
Airgo Freight Inc. et al., 17003
Uruguay Round Agreements Act (URAA):
Foreign entities violating textile transshipment and country of origin rules; list, 17003–17005

Defense Department
See Navy Department

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Celgene Corp., 16962–16963
Chirex Cauldron, 16963
Knoll Pharmaceuticals, 16963
Lilly Del Caribe, Inc., 16963–16964
Medeva Pharmaceuticals CA, Inc., 16964
Pharmacia & Upjohn Co., 16964

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16901–16903

Energy Department
See Federal Energy Regulatory Commission
See Western Area Power Administration

Environmental Protection Agency
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 16864–16869
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16913–16916
Meetings:
Science Advisory Board, 16916–16917
Reports and guidance documents; availability, etc.:
Tribal drinking water operator certification program guidelines; comment request, 16917
Water pollution; discharge of pollutants (NPDES):
Storm water multi-sector general permit for industrial activities, 17010–17107

Executive Office of the President
See Management and Budget Office

Federal Aviation Administration
RULES
Airworthiness directives:
Airbus, 16802–16804
Bell, 16804–16808
Class E airspace, 16808
PROPOSED RULES
Airworthiness directives:
New Piper Aircraft, Inc., 16845–16847

NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16996
Meetings:
Informal airspace meetings; correction, 16996–16997

Federal Election Commission
NOTICES
Meetings; Sunshine Act, 16918

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Avista Energy, Inc., et al., 16905–16906
Duke Energy Trenton, LLC, et al., 16906–16907
Environmental statements; availability, etc.:
El Dorado Irrigation District, 16907
Grand River Dam Authority, 16908
Environmental statements; notice of intent:
East Tennessee Natural Gas Co., 16908–16910
Hydroelectric applications, 16910–16912
Practice and procedure:
Off-the-record communications, 16912–16913
Reports and guidance documents; availability, etc.:
Interstate Natural Gas Facility on My Land? What I Need to Know; landowner pamphlet issuance, 16913
Applications, hearings, determinations, etc.:
Indicated Shippers and Independent Petroleum Association of America, 16903
Natural Fuel Gas Supply Corp., 16904
Neligh, NE, 16904
Pacific Gas & Electric Co., 16904

Federal Highway Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Congestion mitigation and air quality improvement program; high speed rail projects, 16997–17000

Federal Maritime Commission
NOTICES
Agreements filed, etc., 16918
Ocean transportation intermediary licenses:
AP Shipping, Inc., et al., 16918–16919

Federal Procurement Policy Office
NOTICES
Various Policy Letters; rescission, 16968

Federal Reserve System
RULES
Extensions of credit by Federal Reserve banks (Regulation A):
Discount rate change, 16802
NOTICES
Banks and bank holding companies:
Change in bank control, 16919
Formations, acquisitions, and mergers, 16919–16920

Federal Transit Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Congestion mitigation and air quality improvement program; high speed rail projects, 16997–17000

Fine Arts Commission
See Commission of Fine Arts

Fish and Wildlife Service
RULES
Marine mammals:
Incidental take during specified activities—
Beaufort Sea et al., AK; oil and gas industry operations; polar bears and walruses, 16828–16843
PROPOSED RULES
Endangered and threatened species:
San Diego ambrosia, 16869–16870
NOTICES
Endangered and threatened species permit applications, 16952–16953

Food and Drug Administration
RULES
Animal drugs, feeds, and related products:
Triamcinolone acetonide cream, 16817
Food additives:
Polymers—
2-propenoic acid, polymer with 2-ethyl-2-(((1-oxo-2-propenyl)oxy)methyl)-1,3-popanediyl di-2-propenoate and sodium 2-propenoate, 16816–16817
PROPOSED RULES
Mammography Quality Standards Act; implementation:
Mammography facilities; State certification, 16847–16859
NOTICES
Medical devices:
Premarket application approvals, list; safety and effectiveness summaries availability, 16921–16922
Reports and guidance documents; availability, etc.:
Court decisions, ANDA approvals, and 180-day exclusivity under Hatch-Waxman Amendments to Federal Food, Drug, and Cosmetic Act; industry guidance, 16922–16923
Institutional review boards, clinical investigators, and sponsors; exception from informed consent requirements for emergency research, 16923–16924

Forest Service
NOTICES
Environmental statements; notice of intent:
Lolo and Idaho Panhandle National Forests, MT and ID, 16872–16873
Meetings:
California Coast Provincial Advisory Committee, 16873

General Services Administration
RULES
Federal travel:
Travel charge card; mandatory use
Applicability date delay, 16828

Grain Inspection, Packers and Stockyards Administration
RULES
Fees:
Official inspection and weighing services, 16783–16787
Grain inspection:
Rice; fees increase, 16787–16789

Health and Human Services Department
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Care Financing Administration
See Health Resources and Services Administration
NOTICES
Meetings:
Vital and Health Statistics National Committee, 16920

Health Care Financing Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16924

Health Resources and Services Administration
NOTICES
Competitive comprehensive grants preview (1999 FY):
State and Local Data Utilization and Enhancement Cooperative Agreements; withdrawn, 16924–16925

Housing and Urban Development Department
RULES
Lead-based paint hazards in federally owned residential property and housing receiving Federal assistance; notification, evaluation, and reduction
Correction, 16818–16819
Low-income housing:
Housing assistance payments (Section 8)—
Tenant-based certificate and voucher programs merger into Housing Choice Voucher Program; correction, 16819–16823
Public and Indian housing:
Rental voucher and certificate programs (Section 8)—
Management assessment program; technical amendment; correction, 16823
Tenant-based Section 8 program; expiring annual contributions contracts renewal; housing assistance allocation formula; correction, 16817–16818
PROPOSED RULES
Manufactured home construction and safety standards:
Condensation control for exterior walls in humid and fringe climates; regulatory waiver, 17110–17112
Mortgage and loan insurance programs:
Title I Property Improvement and Manufactured Home Loan Insurance programs and Title I lender/Title II mortgagee approval requirements, 17120–17125
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16925–16951
Grants and cooperative agreements; availability, etc.:
Housing assistance payments (Section 8)—
Family self-sufficiency program coordinators for rental certificate and voucher programs, 17114–17118
Organization, functions, and authority delegations:
Assistant Secretary for Fair Housing and Equal Opportunity; order of succession, 16952

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See Minerals Management Service
See National Park Service
See Reclamation Bureau

International Trade Administration
NOTICES
Antidumping:
Polyester staple fiber from—
Korea, 16880–16882
Taiwan, 16877–16880
Antidumping and countervailing duties:
Administrative review requests, 16875–16877

International Trade Commission
NOTICES
Import investigations:
Electroluminescent flat panel displays from—
Japan, 16962
Meetings; Sunshine Act, 16962

Justice Department
See Drug Enforcement Administration

Labor Department
See Mine Safety and Health Administration
See Occupational Safety and Health Administration

Land Management Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16953–16954
Closure of public lands:
Nevada, 16954–16955
Environmental statements; notice of intent:
Gunnison and Uncompahgre Resource Areas, CO, 16955–16956
Lorton Correctional Complex, VA; exchange for land in Mason Neck area of Fairfax County, 16956
Resource management plans, etc.:
Kremmling Field Office, CO, 16956–16957

Management and Budget Office
See Federal Procurement Policy Office
NOTICES
Budget rescissions and deferrals
Cumulative reports, 16973–16976
Privacy Act:
Systems of records, 16976–16977

Maritime Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17000

Minerals Management Service
NOTICES
Outer Continental Shelf operations:
Oil and gas lease sales—
Restricted joint bidders list, 16957

Mine Safety and Health Administration
NOTICES
Petitions for safety standard modifications; summary of affirmative decisions, 16964–16965
Safety standard petitions:
Williams Brothers Coal Co., Inc., et al., 16965–16967

National Foundation on the Arts and the Humanities
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16968

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Northeastern United States fisheries—
Spiny Dogfish, 16844
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 16882–16883
Grants and cooperative agreements; availability, etc.:
Community-Based Restoration Program; guidelines, 16890–16894
Global Ocean Ecosystems Dynamics Project, 16883–16890
Permits:
Endangered and threatened species, 16894

Marine mammals, 16894–16895

Postal Service
PROPOSED RULES
Domestic Mail Manual:

See Saint Lawrence Seaway Development Corporation
See Transportation Statistics Bureau
RULES

Western Area Power Administration
RULES
Energy Planning and Management Program:

VOL
65
ISS
62
MR
30
2000
UMI

Marine mammals, 16894–16895

National Park Service
NOTICES
Native American human remains and associated funerary objects:
Chugach National Forest, Anchorage, AK—
Bone needles, etc., from Prince William Sound Region, AK, 16957–16958
Museum of Anthropology, University of Michigan, MI; inventory from Battle Point Site, Ottawa County, MI, 16958–16959
Pipestone National Monument, Pipestone, MN—
Pipe belonging to Osage Chief Roan Horse, 16959
San Diego Archaeological Center, San Diego, CA—
Pipe fragments and crystals from Santee, CA, 16959–16960
University of Alaska Museum, Fairbanks, AK—
Bone wedge and pumice, etc., from Kachemak Bay Region, AK, 16961
Worked bone from Kachemak Bay Region, AK, 16960–16961

National Science Foundation
NOTICES
Grants and cooperative agreements; availability, etc.:
Global Ocean Ecosystems Dynamics Project, 16883–16890

Natural Resources Conservation Service
NOTICES
Environmental statements; availability, etc.:
South Darlington Watershed, SC, 16873

Navy Department
NOTICES
Inventions, Government-owned; availability for licensing, 16899–16901

Nuclear Regulatory Commission
NOTICES
Environmental statements; availability, etc.:
Consumers Energy Co., 16971–16972
Entergy Nuclear Generation Co., 16972–16973
Applications, hearings, determinations, etc.:
Duke Energy Corp., 16968–16969
Wisconsin Public Service Corp., 16969–16971

Occupational Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16967

Office of Management and Budget
See Management and Budget Office

Patent and Trademark Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16895–16896

Personnel Management Office
NOTICES
Meetings:
Advisory Board, 16978

Postal Service
PROPOSED RULES
Domestic Mail Manual:
Sacking and palletizing periodicals nonletters and standard mail (A) flats, traying first-class flats, and labeling pallets, 16859–16864

Presidio Trust
NOTICES
Meetings, 16978

Public Health Service
See Centers for Disease Control and Prevention
See Food and Drug Administration
See Health Resources and Services Administration

Reclamation Bureau
NOTICES
Environmental statements; notice of intent:
Yakima Project, WA; Keechelus Dam; Safety of Dams Program modification, 16961–16962

Saint Lawrence Seaway Development Corporation
NOTICES
Meetings:
Advisory Board, 17000

Securities and Exchange Commission
RULES
Accounting bulletins, staff:
Financial statements—
Revenue recognition; implementation delay, 16811
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16978–16979
Self-regulatory organizations:
Clearing agency registration applications—
MBS Clearing Corp., 16980–16981
Self-regulatory organizations; proposed rule changes:
National Association of Securities Dealers, Inc., 16981–16995
Applications, hearings, determinations, etc.:
Public utility holding company filings, 16979–16980

Small Business Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 16995

Social Security Administration
RULES
Miscellaneous corrections, 16811–16816

State Department
NOTICES
Art objects; importation for exhibition:
Galleries for Crypriot Art, 16995
Kremlin Gold-1000 Years of Russian Gems and Jewels; correction, 16996
Triumph of the Baroque: Architecture in Europe (1600-1750), 16996

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Transit Administration
See Maritime Administration

See Saint Lawrence Seaway Development Corporation
See Transportation Statistics Bureau
RULES
Computer reservation systems, carrier-owned
Expiration date extension, 16808–16811

Transportation Statistics Bureau
NOTICES
Meetings:
Transportation Statistics Advisory Council, 17000–17001

Treasury Department
See Customs Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17001–17002
Boycotts, international:
Countries requiring cooperation; list, 17002

Veterans Affairs Department
RULES
Adjudication; pensions, compensation, dependency, etc.:
Eligibility reporting requirements, 16827–16828
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17005–17007

Western Area Power Administration
RULES
Energy Planning and Management Program:
Integrated resource planning approval criteria, 16789–16802

Separate Parts In This Issue

Part II
Environmental Protection Agency, 17009–17107

Part III
Department of Housing and Urban Development, 17109–17112

Part IV
Department of Housing and Urban Development, 17113–17118

Part V
Department of Housing and Urban Development, 17119–17125

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

Rules and Regulations

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
800 16783
868 16787

10 CFR
905 16789

12 CFR
201 16802

14 CFR
39 (2 documents) 16802, 16804
71 16808
255 16808
Proposed Rules:
39 16845

17 CFR
211 16811

20 CFR
401 16811
402 16811
404 16811
410 16811
416 16811
422 16811

21 CFR
177 16816
524 16817
Proposed Rules:
16 16847
900 16847

24 CFR
982 (3 documents) 16817, 16818, 16819
983 (2 documents) 16818, 16819
985 16823
Proposed Rules:
201 17120
202 17120
3280 17110

33 CFR
147 16823
165 16826

38 CFR
3 16827

39 CFR
Proposed Rules:
111 16859

40 CFR
Proposed Rules:
52 16864

41 CFR
301–51 16828
301–52 16828
301–54 16828
301–70 16828
301–71 16828
301–76 16828

50 CFR
18 16828
648 16844
Proposed Rules:
17 16869

Rules and Regulations

Federal Register
Vol. 65, No. 62
Thursday, March 30, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 800

RIN 0580–AA69

Fees for Official Inspection and Official Weighing Services

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) of the Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing fees by approximately 2.4 percent for all hourly rates, certain unit rates, and the administrative tonnage fee. These fees apply to official inspection and weighing services performed in the United States under the United States Grain Standards Act (USGSA), as amended. These increases are needed to cover increased operational costs resulting from the approximate 4.8 percent mandated January 2000 Federal pay increase.

EFFECTIVE DATE: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Dave Orr, Director, Field Management Division, at his E-mail address: *Dorr@gipsadc.usda.gov*, or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, James R. Baker, Administrator, GIPSA, has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost-saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. In fiscal year (FY) 1998, GIPSA's operating costs were $23,021,166 with revenue of $21,776,323, resulting in a loss of $1,244,843 and a reserve balance of $55,862. In FY 1999, GIPSA's operating costs were $22,883,063 with revenue of $22,971,204 that resulted in a positive margin of $88,141. As of December 31, 1999, GIPSA's FY 2000 operating costs were $6,066,322 with revenue of $6,333,381 that resulted in a positive margin of $267,059. Even with the positive margins for FY 1999 and thus far for FY 2000, the reserve balance was $569,669, below the desired 3-month operating reserve of approximately $5.7 million.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. A general and locality salary increase that averages 4.8 percent for GIPSA employees, effective January 2000, will increase program costs by approximately $691,613.

We have reviewed the financial position of our inspection and weighing program based on the increased salary and benefit costs, along with the projected FY 2000 workload. Based on the review, we have concluded that nearly half of the projected $691,613 salary increase can be absorbed through existing program efficiencies. Therefore, the other half needs to be covered through an increase in fees that will collect an estimated $390,000 in additional revenues.

The fee increase primarily applies to entities engaged in the export of grain. Under the provisions of the USGSA, grain exported from the United States must be officially inspected and weighed. Mandatory inspection and weighing services are provided by GIPSA on a fee basis at 37 export facilities. All of these facilities are owned and managed by multi-national corporations, large cooperatives, or public entities that do not meet the criteria for small entities established by the Small Business Administration.

Some entities who request nonmandatory official inspection and weighing services at other than export locations could be considered small entities. The impact on these small businesses is similar to any other business; that is, an average 2.4 percent increase in the cost of official inspection and weighing services. This nominal increase should not significantly affect any business requesting official inspection and weighing services. Furthermore, any of these businesses that wish to avoid the fee increase may elect to do so by using an alternative source for inspection and weighing services. Such a decision should not prevent the business from marketing its products.

There would be no additional reporting or record keeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements in Part 800 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this final rule.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. The USGSA provides in § 87g that no subdivision may require or impose any requirements or restrictions concerning the inspection, weighing, or description of grain under the Act. Otherwise, this final rule will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this final rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this final rule.

Background

On January 3, 2000, GIPSA proposed in the **Federal Register** (65 FR 75) to increase fees for official inspection and

weighing services performed under the USGSA by approximately 2.4 percent.

The USGSA (7 U.S.C. 71 *et seq.*) authorizes GIPSA to provide official grain inspection and weighing services and to charge and collect reasonable fees for performing these services. The fees collected are to cover, as nearly as practicable, GIPSA's costs for performing these services, including related administrative and supervisory costs. The current USGSA fees were published in the **Federal Register** on December 23, 1998 (63 FR 70990), and became effective on February 1, 1999. A correction to the minimum fees for stowage examinations was published in the **Federal Register** and became effective on February 11, 1999 (64 FR 6783).

GIPSA regularly reviews its user-fee financed programs to determine if the fees are adequate. While GIPSA continues to explore ways to reduce its costs, the existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. In FY 1998, GIPSA's operating costs were $23,021,166 with revenue of $21,776,323, resulting in a loss of $1,244,843 and a reserve balance of $55,862. In FY 1999, GIPSA's operating costs were $22,883,063 with revenue of $22,971,204, resulting in a positive margin of $88,141. As of December 31, 1999, GIPSA's FY 2000 operating costs were $6,066,322 with revenue of $6,333,381 that resulted in a positive margin of $267,059. Even with the positive margins for FY 1999 and thus far for FY 2000, the reserve balance was $569,669, below the desired 3-month operating reserve of approximately $5.7 million.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. The January 2000 general and locality salary increase that averages 4.8 percent for GIPSA employees will increase program costs by an estimated $691,613. Based on a review of projected FY 2000 workload and operating costs, the Agency has determined that approximately half of the projected $691,613 salary increase can be absorbed through existing program efficiencies. The other half needs to be covered through an increase in fees that will collect an estimated $390,000 in additional revenues.

The hourly fees covered by this rule will generate revenue to cover the basic salary, benefits, and leave for those employees providing direct service delivery. Other associated costs, including nonsalary related overhead, are collected through other fees contained in the fee schedule and are at levels that would not require any change under this rule.

The current hourly fees are:

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and overtime	Holidays
1-year contract	$25.20	$27.20	$35.40	$42.60
6-month contract	27.60	29.40	37.60	49.40
3-month contract	31.60	32.60	41.00	51.00
Noncontract	36.60	38.60	46.80	57.60

GIPSA has also identified certain unit fees, for services not performed at an applicant's facility, that contain direct labor costs and would require a fee increase. Further, GIPSA has identified those costs associated with salaries and benefits that are covered by the administrative metric tonnage fee. The 2.4 percent cost-of-living increase to salaries and benefits covered by the administrative tonnage fee results in an average overall increase of 2.4 percent to the administrative tonnage fee.

Comment Review

GIPSA received two comments during the 60-day comment period. The comments came from two grain trade associations. Both associations generally supported the proposed rule; however, each one encouraged the Agency to seek ways to streamline operations in an effort to reduce costs. One commentor suggested that GIPSA strive to reduce overall staffing, thereby reducing the impact of future cost-of-living raises. The commentor further suggested that GIPSA set a goal for administrative and supervisory costs not to exceed 20 percent of the total cost of service. Finally, one association suggested the fee increases only be applied to the hourly rates and certain unit rates and not to the administrative tonnage fee. This, in the association's view, would serve as a financial incentive to automate the inspection and weighing services at export facilities.

GIPSA has and will continue to explore ways to reduce costs. Current program improvements have enabled the Agency to avoid passing the full 4.8 percent salary increase on to its customers through increased fees. Similar efforts will continue in the future, including the introduction of new technology that improves program efficiencies and reduces staffing needs.

The Agency's efforts to reduce the number of employees providing service has been a direct result of program initiatives designed to streamline operations at export elevators. The Agency has and will continue to explore ways to streamline these operations. Over the past several years, automated material handling systems have been introduced at export locations. These systems have reduced the number of employees needed to perform service. Other efforts currently underway, including inspection automation and automation of specific administrative functions, will provide more timely and efficient service. These initiatives not only address future costs of providing service, but are designed to help improve the operational efficiencies of export facilities, thereby reducing the overall exporters' costs.

Increasing only the hourly and unit fees fails to address the increased supervision and administrative salary costs covered by the administrative tonnage fee. The recommendation to establish a 20 percent cap on supervision and administrative costs reflects a strong desire to control costs. The USGSA has had a 40 percent cap since FY 1985. Since that time, the Agency has operated well below that level and will continue to establish appropriate goals and objectives to address future supervision and administrative costs.

Efforts to contain and reduce these costs have and will continue to be taken. However, these efforts will not adequately cover the increased salary costs incurred by the pay raise. GIPSA, therefore, must increase all hourly fees, certain unit fees, and the administrative tonnage fee by 2.4 percent in order to recover the increased supervision administrative costs.

Final Action

Accordingly, GIPSA is applying an approximate 2.4 percent increase to

those hourly rates, certain unit rates, and the administrative tonnage fee, as proposed, in 7 CFR 800.71. Table 1—Fees for Official Services Performed at an Applicant's Facility in an Onsite GIPSA Laboratory; Table 2—Services Performed at Other Than an Applicant's Facility in a GIPSA Laboratory; and Table 3, Miscellaneous Services.

List of Subjects in 7 CFR Part 800

Administrative practice and procedure; Grain.

For the reasons set out in the preamble, 7 CFR Part 800 is amended as follows:

PART 800—GENERAL REGULATIONS

1. The authority citation for part 800 continues to read as follows:

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

2. Section 800.71 is amended by revising Schedule A in paragraph (a) to read as follows:

§ 800.71 Fees assessed by the Service.

(a) * * *

Schedule A.—Fees for Official Inspection and Weighing Services Performed in the United States.

TABLE 1.—FEES FOR OFFICIAL SERVICES PERFORMED AT AN APPLICANT'S FACILITY IN AN ONSITE FGIS LABORATORY [1]

	Monday to Friday (6 a.m. to 6 p.m.)	Monday to Friday (6 p.m. to 6 a.m.)	Saturday, Sunday, and Overtime [2]	Holidays
(1) Inspection and Weighing Services Hourly Rates (per service representative)				
1-year contract	$25.80	$28.00	$36.40	$43.60
6-month contract	28.40	30.20	38.60	50.60
3-month contract	32.40	33.40	42.00	52.20
Noncontract	37.60	39.60	48.00	59.00

(2) Additional Tests (cost per test, assessed in addition to the hourly rate) [3]	
(i) Aflatoxin (other than Thin Layer Chromatography)	$8.50
(ii) Aflatoxin (Thin Layer Chromatography method)	20.00
(iii) Corn oil, protein, and starch (one or any combination)	1.50
(iv) Soybean protein and oil (one or both)	1.50
(v) Wheat protein (per test)	1.50
(vi) Sunflower oil (per test)	1.50
(vii) Vomitoxin (qualitative)	7.50
(viii) Vomitoxin (quantitative)	12.50
(ix) Waxy corn (per test)	1.50
(x) Fees for other tests not listed above will be based on the lowest noncontract hourly rate.	
(xi) Other services	
(a) Class Y Weighing (per carrier)	
(1) Truck/container	.30
(2) Railcar	1.25
(3) Barge	2.50
(3) Administrative Fee (assessed in addition to all other applicable fees, only one administrative fee will be assessed when inspection and weighing services are performed on the same carrier).	
(i) All outbound carriers (per-metric-ton) [4]	
(a) 1–1,000,000	$0.1038
(b) 1,000,001–1,500,000	0.0947
(c) 1,500,001–2,000,000	0.0512
(d) 2,000,001–5,000,000	0.0379
(e) 5,000,001–7,000,000	0.0205
(f) 7,000,001+	0.0092

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] Overtime rates will be assessed for all hours in excess of 8 consecutive hours that result from an applicant scheduling or requesting service beyond 8 hours, or if requests for additional shifts exceed existing staffing.

[3] Appeal and reinspection services will be assessed the same fee as the original inspection service.

[4] The administrative fee is assessed on an accumulated basis beginning at the start of the Service's fiscal year (October 1 each year).

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]

(1) Original Inspection and Weighing (Class X) Services	
(i) Sampling only (use hourly rates from Table 1)	
(ii) Stationary lots (sampling, grade/factor, & checkloading)	
(a) Truck/trailer/container (per carrier)	$18.50
(b) Railcar (per carrier)	28.30
(c) Barge (per carrier)	178.50
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iii) Lots sampled online during loading (sampling charge under (i) above, plus):	
(a) Truck/trailer container (per carrier)	9.85
(b) Railcar (per carrier)	19.10
(c) Barge (per carrier)	108.10
(d) Sacked grain (per hour per service representative plus an administrative fee per hundredweight) (CWT)	0.02
(iv) Other services	
(a) Submitted sample (per sample—grade and factor)	10.90

TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]—Continued

(b) Submitted sample (per sample—grade only)	18.00

TABLE 3.— MISCELLANEOUS SERVICES [1]—Continued

(10) Special mailing (actual cost)	

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TABLE 2.—SERVICES PERFORMED AT OTHER THAN AN APPLICANT'S FACILITY IN AN FGIS LABORATORY [1] [2]—Continued

(b) Warehouseman inspection (per sample)	18.00
(c) Factor only (per factor—maximum 2 factors)	4.70
(d) Checkloading/condition examination (use hourly rates from Table 1, plus an administrative fee per hundredweight if not previously assessed) (CWT)	0.02
(e) Reinspection (grade and factor only. Sampling service additional, item (i) above)	11.90
(f) Class X Weighing (per hour per service representative)	49.20
(v) Additional tests (excludes sampling)	
(a) Aflatoxin (per test—other than TLC method)	26.30
(b) Aflatoxin (per test—TLC method)	104.00
(c) Corn oil, protein, and starch (one or any combination)	8.30
(d) Soybean protein and oil (one or both)	8.30
(e) Wheat protein (per test)	8.30
(f) Sunflower oil (per test)	8.30
(g) Vomitoxin (qualitative)	26.70
(h) Vomitoxin (quantitative)	31.80
(i) Waxy corn (per test)	9.60
(j) Canola (per test—00 dip test)	9.60
(k) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	204.80
(2) Special Compounds (per service representative)	102.40
(l) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(2) Appeal inspection and review of weighing service. [4]	
(i) Board Appeals and Appeals (grade and factor)	78.50
(a) Factor only (per factor—max 2 factors)	40.60
(b) Sampling service for Appeals additional (hourly rates from Table 1)	
(ii) Additional tests (assessed in addition to all other applicable fees)	
(a) Aflatoxin (per test, other than TLC)	26.30
(b) Aflatoxin (TLC)	104.00
(c) Corn oil, protein, and starch (one or any combination)	16.20
(d) Soybean protein and oil (one or both)	16.20
(e) Wheat protein (per test)	16.20
(f) Sunflower oil (per test)	16.20
(g) Vomitoxin (per test—qualitative)	37.00
(h) Vomitoxin (per test—quantitative)	42.10
(i) Vomitoxin (per test—HPLC Board Appeal)	131.10
(j) Pesticide Residue Testing [3]	
(1) Routine Compounds (per sample)	204.80
(2) Special Compounds (per service representative)	102.40
(k) Fees for other tests not listed above will be based on the lowest noncontract hourly rate from Table 1.	
(iii) Review of weighing (per hour per service representative)	71.40
(3) Stowage examination (service-on-request) [3]	
(i) Ship (per stowage space) (minimum $252.50 per ship)	50.50
(ii) Subsequent ship examinations (same as original) (minimum $151.50 per ship)	
(iii) Barge (per examination)	40.50
(iv) All other carriers (per examination)	15.50

[1] Fees apply to original inspection and weighing, reinspection, and appeal inspection service and include, but are not limited to, sampling, grading, weighing, prior to loading stowage examinations, and certifying results performed within 25 miles of an employee's assigned duty station. Travel and related expenses will be charged for service outside 25 miles as found in § 800.72 (a).

[2] An additional charge will be assessed when the revenue from the services in Schedule A, Table 2, does not cover what would have been collected at the applicable hourly rate as provided in § 800.72 (b).

[3] If performed outside of normal business, 1½ times the applicable unit fee will be charged.

[4] If, at the request of the Service, a file sample is located and forwarded by the Agency for an official agency, the Agency may, upon request, be reimbursed at the rate of $2.50 per sample by the Service.

TABLE 3.— MISCELLANEOUS SERVICES [1]

(1) Grain grading seminars (per hour per service representative) [2]	$49.20
(2) Certification of diverter-type mechanical samplers (per hour per service representative) [2]	49.20
(3) Special weighing services (per hour per service representative) [2]	
(i) Scale testing and certification	49.20
(ii) Evaluation of weighing and material handling systems	49.20
(iii) NTEP Prototype evaluation (other than Railroad Track Scales)	49.20
(iv) NTEP Prototype evaluation of Railroad Track Scales (plus usage fee per day for test car)	49.20
	110.00
(v) Mass standards calibration and reverification	49.20
(vi) Special projects	49.20
(4) Foreign travel (per day per service representative)	445.40
(5) Online customized data EGIS service	
(i) One data file per week for 1 year	500.00
(ii) One data file per month for 1 year	300.00
(6) Samples provided to interested parties (per sample)	2.50
(7) Divided-lot certificates (per certificate)	1.50
(8) Extra copies of certificates (per certificate)	1.50
(9) Faxing (per page)	1.50
(10) Special mailing (actual cost)	
(11) Preparing certificates onsite or during other than normal business hours (use hourly rates from Table 1)	

[1] Any requested service that is not listed will be performed at $49.20 per hour.

[2] Regular business hours—Monday through Friday—service provided at other than regular hours charged at the applicable overtime hourly rate.

* * * * *

Date: March 21, 2000.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 00–7880 Filed 3–29–00; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

7 CFR Part 868

RIN: 0580–AA70

Fees for Rice Inspection

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is increasing fees by approximately 4.8 percent for all hourly rates and certain unit rates. The fees apply to federal rice inspection performed under the Agricultural Marketing Act (AMA) of 1946. These increases are needed to cover increased operational costs resulting from the mandated January 2000 Federal pay increase.

EFFECTIVE DATE: May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Dave Orr, Director, Field Management Division, at his E-mail address: *Dorr@gipsadc.usda.gov*, or telephone him at (202) 720–0228.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, Regulatory Flexibility Act, and the Paperwork Reduction Act

This rule has been determined to be nonsignificant for the purpose of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

Also, pursuant to the requirements set forth in the Regulatory Flexibility Act, James R. Baker, Administrator, GIPSA, has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

GIPSA regularly reviews its user-fee-financed programs to determine if the fees are adequate. GIPSA has and will continue to seek out cost saving opportunities and implement appropriate changes to reduce costs. Such actions can provide alternatives to fee increases. However, even with these efforts, GIPSA's existing fee schedule will not generate sufficient revenues to cover program costs while maintaining an adequate reserve balance. In fiscal year (FY) 1998, GIPSA's operating costs were $3,820,820 with revenue of $4,011,446, resulting in a positive margin of $190,626 and a negative reserve balance of $895,584. In FY 1999, GIPSA's operating costs were $4,105,564 with revenue of $4,412,131 that resulted in a positive margin of $306,567 and a negative reserve balance of $508,628. As of December 31, 1999, GIPSA's FY 2000 operating costs were $1,246,614 with revenue of $1,429,461 that resulted in a positive margin of $182,847 and a negative reserve of $168,447.

Employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. A general and locality salary increase that averages 4.8 percent for GIPSA employees, effective January 2000, will increase program costs. This salary adjustment will increase GIPSA's costs by approximately $135,000, based on the projected FY 2000 work volume of 3.9 million metric tons.

We have reviewed the financial position of our rice inspection program based on the increased salary and benefit costs, along with the projected FY 2000 workload. Based on that review, we have concluded that we cannot absorb the increased costs due to the FY 2000 Federal salary increase with the current negative reserve balance. This fee increase will collect an estimated $138,000 in additional revenues.

This fee increase primarily applies to GIPSA customers that produce, process, and market rice for the domestic and international markets. There are approximately 550 such customers located primarily in the States of Arkansas, Louisiana, and Texas. Many of these customers meet the criteria for small entities established by the Small Business Administration criteria for small businesses. Even though the fees are being increased, the increase will not be excessive (4.8 percent) and should not significantly affect those entities. Those entities are under no obligation to use our service and, therefore, any decision on their part to discontinue the use of our service should not prevent them from marketing their products.

There will be no additional reporting or record keeping requirements imposed by this action. In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the information collection and record keeping requirements in Part 868 have been previously approved by the Office of Management and Budget under control number 0580–0013. GIPSA has not identified any other Federal rules which may duplicate, overlap, or conflict with this rule.

Executive Order 12988

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any State or local laws, regulations, or policies unless they present irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Background

On January 3, 2000, GIPSA proposed in the **Federal Register** (65 FR 78) to increase fees for official rice inspection services performed under the AMA by approximately 4.8 percent. Under the provisions of the AMA of 1946 (7 U.S.C. 1621, *et seq.*), rice inspection services are provided upon request and GIPSA must collect a fee from the customer to cover the cost of providing such services. Section 203 (h) of the AMA (7 U.S.C. 1622(h)) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA administrative and supervisory costs for the performance of official services, including personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

The rice inspection fees were last amended on February 12, 1999, and became effective March 1, 1999 (64 FR 7057). These fees were to cover, as nearly as practicable, the level of operating costs as projected for FY 1999. They presently appear at 7 CFR 868.91 in Tables 1 and 2.

GIPSA continually monitors its cost, revenue, and operating reserve levels to ensure that there are sufficient resources for operations. During FY 1998, GIPSA implemented cost-saving measures in an effort to provide more cost effective services. The purpose of these measures was to reduce operating costs in order to reduce the negative retained earnings in this program. The cost containment measures included employee buyouts and better cross utilization of personnel between programs.

In FY 1998, the program generated revenue of $4,011,446 with operating costs of $3,820,820, resulting in a positive margin of $190,626. Even though we generated a positive margin for the year, we continued to operate with a negative reserve balance of $895,584. The rice program's FY 1999 revenue was $4,412,131 with operating costs of $4,105,564, that resulted in a positive margin of $306,567 and a negative reserve balance of $508,628.

The rice inspection program has been slowly recovering from a long-standing deficit. Through a series of small fee increases and cost-cutting measures, GIPSA has reduced the level of the negative reserve balance from $939,147 in FY 1994 through FY 1999 to a negative level of $508,628. As of December 31, 1999, GIPSA's FY 2000 operating costs were $1,246,614 with revenue of $1,429,461 that resulted in a positive margin of $182,847 and a negative reserve of $168,447.

However, employee salaries and benefits are major program costs that account for approximately 84 percent of GIPSA's total operating budget. A general and locality salary increase that averages 4.8 percent for GIPSA employees, effective January 2000, will increase program costs. This salary adjustment will increase GIPSA's costs by approximately $135,000. GIPSA cannot absorb this increase in salary costs with a deficit in the reserve balance and, at the same time, continue our efforts to reduce costs to eliminate the existing deficit. In FY's 1998 and 1999, GIPSA inspected 3.9 million metric tons of rice, and projections indicate that similar amounts will be inspected for FY 2000. The Agency will continue its efforts to streamline costs associated with providing service to further reduce the negative reserve balance. However, we must recover the projected $135,000 increase in salaries and benefits in order to accomplish this goal. GIPSA estimates that the fee increase will generate an additional $138,000 in revenue, based on the projected FY 2000 work volume of 3.9 million metric tons.

The costs associated with salaries and benefits are recovered by the hourly rates for personnel performing direct service. Other associated costs, including non-salary related overhead, are collected through other fees contained in the fee schedule and are at levels that do not require any change. GIPSA is implementing a 4.8 percent increase to the hourly rates and certain unit rates in 7 CFR Part 868.91, Table 1—Hourly Rates/Unit Rate Per CWT and Table 2—Unit Rates. Currently, the regular workday contract and noncontract fees are $40.80 and $50.00, respectively, while the nonregular workday contract and noncontract fees are $56.80 and $69.00, respectively. The unit rate per hundredweight for export port services is currently $.05 per hundredweight. The other current unit rates are:

Service	Rough rice	Brown Rice for Processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$32.90	$28.40	$20.20
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	25.50	25.50	—
(b) All other factors (per factor)	12.10	12.10	12.10
Total oil and free fatty acid	—	40.00	40.00
Interpretive line samples:			
(a) Milling degree (per set)	—	—	85.10
(b) Parboiled light (per sample)	—	—	21.30
Extra copies of certificates (per copy)	3.00	3.00	3.00

Comment Review

GIPSA received no comments in response to the proposed rulemaking published January 3, 2000, at 65 FR 78.

Final Action

Section 203 of the AMA (7 U.S.C. 1622) provides for the establishment and collection of fees that are reasonable and, as nearly as practicable, cover the costs of the services rendered. These fees cover the GIPSA costs, including administrative and supervisory costs, for the performance of official services, including personnel compensation, personnel benefits, travel, rent, communications, utilities, contractual services, supplies, and equipment.

List of Subjects in 7 CFR Part 868

Administrative practice and procedure, Agricultural commodities.

For reasons set out in the preamble, 7 CFR Part 868 is amended as follows:

PART 868—GENERAL REGULATIONS AND STANDARDS FOR CERTAIN AGRICULTURAL COMMODITIES

1. The authority citation for part 868 continues to read as follows:

Authority: Secs. 202–208, 60 Stat. 1087, as amended (7 U.S.C. 1621 *et seq.*)

2. Section 868.91 is revised to read as follows:

§ 868.91 Fees for certain Federal rice inspection services.

The fees shown in Tables 1 and 2 apply to Federal rice inspection services.

TABLE 1.—HOURLY RATES/UNIT RATE PER CWT

[Fees for Federal Rice Inspection Services]

Service[1]	Regular workday (Monday-Saturday)	Nonregular workday (Sunday-Holiday)
Contract (per hour per Service representative)	$42.80	$59.60
Noncontract (per hour per Service representative)	52.40	72.40
Export Port Services (per hundredweight) [2]	.052	.052

[1] Original and appeal inspection services include: Sampling, grading, weighing, and other services requested by the applicant when performed at the applicant's facility.
[2] Services performed at export port locations on lots at rest.

TABLE 2.—UNIT RATES

Service[1 3]	Rough rice	Brown rice for processing	Milled rice
Inspection for quality (per lot, sublot, or sample inspection)	$34.50	$29.80	$21.20
Factor analysis for any single factor (per factor):			
(a) Milling yield (per sample)	26.75	26.75	—
(b) All other factors (per factor)	12.70	12.70	12.70
Total oil and free fatty acid	—	42.00	42.00
Interpretive line samples:[2]			
(a) Milling degree (per set)	—	—	89.20
(b) Parboiled light (per sample)	—	—	22.35
Extra copies of certificates (per copy)	3.00	3.00	3.00

[1] Fees apply to determinations (original or appeals) for kind, class, grade, factor analysis, equal to type, milling yield, or any other quality designation as defined in the U.S. Standards for Rice or applicable instructions, whether performed singly or in combination at other than at the applicant's facility.
[2] Interpretive line samples may be purchased from the U.S. Department of Agriculture, GIPSA, FGIS, Technical Services Division, 10383 North Executive Hills Boulevard, Kansas City, Missouri 64153–1394. Interpretive line samples also are available for examination at selected FGIS field offices. A list of field offices may be obtained from the Director, Field Management Division, USDA, GIPSA, FGIS, 1400 Independence Avenue, SW, STOP 3630, Washington, DC 20250–3630. The interpretive line samples illustrate the lower limit for milling degrees only and the color limit for the factor "Parboiled Light" rice.
[3] Fees for other services not referenced in table 2 will be based on the noncontract hourly rate listed in § 868.90, table 1.

Dated: March 21, 2000.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 00–7879 Filed 3–29–00; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF ENERGY

Western Area Power Administration

10 CFR Part 905

RIN 1901–AA84

Energy Planning and Management Program; Integrated Resource Planning Approval Criteria

AGENCY: Western Area Power Administration, DOE.

ACTION: Final rule.

SUMMARY: The Western Area Power Administration (Western) is publishing this final rule to adopt revisions to current regulations that require customers to prepare integrated resource plans. These amendments allow customers more alternatives in meeting the integrated resource planning requirements, thereby enhancing customer competitiveness through increased flexibility and reduced burdens in complying with this rule.

EFFECTIVE DATE: These regulations will become effective May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Simmons Buntin, Western Area Power Administration, P.O. Box 281213, Lakewood, CO 80228–8213. Mr. Buntin can also be reached by phone at (720) 962–7419, fax at (720) 962–7427, and electronic mail to buntin@wapa.gov.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background
II. Discussion of Comments
III. Procedural Requirements
A. Executive Order 12866
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under the National Environmental Policy Act
E. Review Under Executive Order 13132
F. Review Under the Unfunded Mandates Reform Act of 1995
G. Review Under Executive Order 12988
H. Treasury and General Government Appropriations Act, 1999
I. Review Under Executive Order 13084
J. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

I. Introduction and Background

Section 114 of the Energy Policy Act of 1992 (EPAct), Public Law 102–486, requires integrated resource planning (IRP) by Western's customers. Western implemented EPAct through the Energy Planning and Management Program (EPAMP) in October 1995. EPAMP was published in the Code of Federal Regulations at 10 CFR part 905.

Western's Administrator is required by EPAct to initiate a public process to review Western's IRP regulations within 1 year after January 1, 1999. The Administrator is authorized at that time to revise Western's criteria for approving integrated resource plans "to reflect changes, if any, in technology, needs, or other developments."

Both the wholesale and retail aspects of the electric utility industry are changing, and change is expected to continue. The 15 States within which Western markets power have taken very different approaches to deregulation with diverse schedules for implementing any changes to the status

quo. Additionally, the timing and scope of any Federal restructuring legislation

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now included in both the title of § 905.1 and in the text. This change more

the end of the first sentence in § 905.11(a). One commenter noted that,

provide a general outline for IRP that meets the spirit and intent of EPAct.

accommodate plain language, but keeping it in the rule allows customers

quo. Additionally, the timing and scope of any Federal restructuring legislation is uncertain. Given the increasingly competitive and deregulated electricity marketplace, Western's IRP regulations, which were adopted under the traditional utility planning framework, have been reviewed through a formal public process and consequently revised.

Western is adopting an approach that features customer choice and flexibility, and reflects the transition of the electric utility industry. Customers can choose to continue preparing IRPs, or can adopt approaches that are emerging in lieu of IRP requirements. These new approaches are (1) complying with a defined level of investment in demand-side management (DSM) and/or renewable energy, including a public benefits program, or (2) complying with mandated energy efficiency and/or renewable energy activities and related reporting requirements.

Only subparts A and B of the existing regulations are being revised.

Western published the notice of proposed rulemaking and public forum in the **Federal Register** at 64 FR 62604 on November 17, 1999. A formal public information and comment forum was held in Denver, Colorado, on November 30, 1999. Nine customer representatives attended, and formal transcripts were made available through Western's Corporate Services and Regional offices. The formal public comment period closed on December 30, 1999. Western received comments from 29 customers and other stakeholders. All comments were extensively reviewed and, where appropriate, incorporated into the Final Rule. The Discussion of Comments provides Western's response to all comments. Comments and related responses were consolidated where possible.

II. Discussion of Comments

General comments and discussion precede the comments relating to specific sections. Specific comments are grouped under the appropriate section heading and followed by Western's responses.

1. General

A. Comments

One commenter suggested that Western should continue to update the IRP process as the industry continues to restructure. Two commenters said that the proposed changes to the IRP rule seem to minimize requirements for small utilities while maintaining inflexible requirements for larger utilities. One commenter noted that Western should capitalize words such as "Customer" and "Integrated Resource Planning" to match contractual language.

B. Response

Western will continue to evaluate the changing utility industry and the impacts of the changes on IRP regulations, and initiate a public process to review the regulations at appropriate intervals. As Section 114 EPAct and § 905.24 of the final rule state, the regulations may be changed to reflect changes in technology, needs, or other developments.

It is not Western's intent to change the rule solely to benefit small customers. The rule has been revised to further accommodate multi-state entities, especially in the minimum investment report alternative (§ 905.16), and member-based associations (MBA) and IRP cooperatives. Western believes that large customers have considerable opportunities to perform streamlined IRP and alternative reporting based on the revised rule, especially in light of changes in the utility industry that impact large customers.

Western agrees that there is a strong relationship between contractual language and language incorporated into the IRP rule. However, the rule has been revised to comply with the President's initiative to use plain language in government writing. Capital letters for contractual terms are not used in this rule because their use does not meet plain language guidelines.

2. § 905.1 What Are the Purposes of the Energy Planning and Management Program?

A. Comments

One commenter suggested that the phrase "and to extend the long-term firm power resource commitments" be deleted from the first sentence. Another commenter said that Western should refer specifically to part 905 in the first paragraph.

B. Response

Section 905.1 describes the purposes of EPAMP, which includes both the IRP regulations in subpart B of part 905 (which is revised in this final rule) and the Power Marketing Initiative in subpart C of part 905 (which is not revised). It is inappropriate, therefore, to remove the phrase "and to extend the long-term firm power resource commitments" because the phrase describes the purpose of the Power Marketing Initiative.

The title of part 905, "Energy Planning and Management Program," is now included in both the title of § 905.1 and in the text. This change more clearly identifies the content of the paragraph while meeting plain language guidelines. Western believes it is unnecessary to otherwise refer specifically to part 905 within the subpart.

3. § 905.2 What Are the Key Definitions of This Part?

A. Comment

One commenter suggested that the phrase "at the lowest system cost" should still be included in the definition of "integrated resource planning."

B. Response

The definition of "integrated resource planning" in § 905.2 was shortened to ensure a more concise and easily understood definition, while having the same intended meaning as before. Western removed "at the lowest system cost" because its meaning was interpreted as a mandate to select the energy resources that had the lowest dollar price. As a result, it actually became a barrier to pursuing DSM and renewable energy activities, which are usually more expensive than purchasing non-renewable resources. Although this was not the intent of EPAct, Western has removed this and other similar language for clarity because Western is interested in fostering DSM and renewable energy. This change in no way invalidates an IRP that selects resources based on least cost; Western is simply not mandating this approach.

The sentence following the original definition, which was not part of the definition but an explanation of the process of preparing and IRP, was moved to § 905.11, where the process of preparing an IRP is more appropriately discussed.

4. § 905.11 What Must an IRP Include?

A. Comments

Some commenters said that the statutory criteria set forth in EPAct should be adhered to without modification, while many commenters applauded Western's willingness to consider changes to the criteria that accommodate changes in the electric utility industry. Some commenters noted that, despite streamlining, the IRP criteria are still too comprehensive and too restrictive given changes in the utility industry. Two commenters suggested Western accept more summary descriptions, decreasing its reliance on strict numerical data.

One comment suggested the phrase "for new energy resources" be added to the end of the first sentence in § 905.11(a). One commenter noted that, in § 905.11(a), "must" should be replaced with "should." One comment suggested Western should not drop the "least cost" criteria. One comment suggested that Western's proposal to allow customers to determine their own action planning horizons is inconsistent with EPAct.

Many comments requested Western add the modifier "to the extent practicable" to the first sentence of § 905.11(b)(3), as it is in the existing regulations. One comment requested Western add the modifier "ample opportunity" to the first sentence of § 905.11(b)(4), as it is in the existing regulations. Many commenters said that if additional load forecasting information is requested in the IRP review process, Western should accept any other required report containing this type of information that is submitted to the Department of Energy (DOE) or the Federal Energy Regulatory Commission (FERC). One commenter noted Western should require only the information necessary to define load characteristics, and not the specific nature of the use of that power, relating to the load forecasting criteria (§ 905.11(b)(5)).

B. Response

Section 114 of EPAct gives Western the authority to review its IRP program and to revise the IRP compliance criteria set forth in EPAct (42 U.S.C. 7276b(b)), which have been implemented through EPAMP at 10 CFR part 905, to reflect changes in technology, needs, or other development. Because Western's IRP regulations were developed under the traditional utility planning framework, which no longer applies to many customers due to wholesale and retail electric competition, Western believes it is essential to review and subsequently revise the criteria.

Additionally, Western's criteria revisions reduce reporting and paperwork burdens for customers and Western. Western streamlined the IRP criteria in § 905.11(b) to make them less comprehensive and restrictive, especially by changing the regulations to state that Western will accept summary information from customers rather than full data. While customers must include the criteria detailed in § 905.11(b), many of the items within in these criteria—for example, the list of what the options evaluated should relate to in § 905.11(b)(1)—are general guidelines and not strict requirements. Western's intent is not to dictate resource choices or specific mechanisms for resource planning, but rather to provide a general outline for IRP that meets the spirit and intent of EPAct. Reducing the criteria further would not meet the spirit or intent of EPAct even in light of the changing nature of the electric utility industry. Accepting even more summary information would not allow Western to adequately evaluate IRPs and annual reports and amendments.

It is not appropriate to add the phrase "for new energy resources" to the end of the first sentence in § 905.11(a) because EPAct makes no such limitation. IRPs may, at the customer's discretion, incorporate all energy resources. Limiting an IRP to only new energy resources may be contrary to sound resource planning.

"Must" has replaced "shall" in § 905.11(a) to meet plain language guidelines. The comment that "should" was used in the original language in § 905.11(a) is incorrect. The original language, which was taken from the sentence following the definition of "integrated resource planning" in EPAct and § 905.2, used the verb "shall." Because EPAct Section 201(2) mandates these components of IRP, Western will continue to use "must" rather than "should."

Western has dropped the "designation of least-cost options" criteria, previously located at § 905.11(b)(3), deleting some language that is no longer relevant and moving the remaining relevant language to the "identification of resource options" criteria (§ 905.11(b)(1)). Because least cost is no longer a deciding factor for many customers— and is often perceived as a barrier for some customers in further pursuit of DSM and renewable energy—Western believes it may impede effectively implementing IRP.

Because Section 114 of EPAct gives Western authority to revise its IRP criteria, allowing customers to determine their own action planning horizons in § 905.11(b)(2) is not inconsistent with EPAct. Moreover, determining action planning horizons is essential for customers facing wholesale competition. Many customers must make resource decisions on real-time bases that simply could not be planned for in advance and therefore included in either short-term or long-term action plans. Action planning flexibility is essential in the changing electric utility industry.

Western has returned the modifier "to the extent practicable" to § 905.11(b)(3), environmental effects, to reflect the language in EPAct. Western has returned the modifier "ample opportunity" to § 905.11(b)(4), public participation. It was removed to accommodate plain language, but keeping it in the rule allows customers to continue to meet the public involvement criteria in a manner consistent with the language of EPAct.

Western will accept information required by DOE, FERC, or another entity so long as it contains adequate load forecasting information. Western's intent is not to require duplicative efforts, but to ensure Western receives the specific customer information needed to fully evaluate the IRP. Western only requires the information necessary to define load characteristics, and will request information about the specific nature of the use of that power only in those rare cases where it is necessary to adequately evaluate the IRP.

5. § 905.12 How Must IRPs Be Submitted?

A. Comment

One commenter requested that the phrase "Such IRP or IRPs shall constitute the MBA's IRP where the MBA subcontracts or acts as an agent but does not assume power supply responsibility" be returned to § 905.12(b)(2), as it is in the existing regulations.

B. Response

Western agrees that under § 905.12(b)(2), the IRP may constitute the MBA's IRP where the MBA subcontracts or acts as an agent but does not assume power supply responsibility. The definition of MBA in § 905.2 meets the intent of the phrase, so in light of plain language guidelines and the need for clarity in the regulations, Western does not feel it is necessary to adopt this comment.

6. § 905.13 When Must IRPs Be Submitted?

A. Comment

One comment suggested that an existing IRP cooperative should be able to file the new report alternatives on behalf of its participants.

B. Response

Western agrees that an IRP cooperative should be able to file a minimum investment report on behalf of its participants, just as a consultant can now prepare and submit an IRP or small customer plan on behalf of a utility or end-use customer. Language has been added to § 905.12(b)(3) to this effect.

7. § 905.15 What Are the Requirements for the Small Customer Plan Alternative?

A. Comments

One commenter said that Western cannot extend the definition of small customer to include members of joint-action agencies (JAA) and generation and transmission (G&T) cooperatives with power supply responsibility because EPAct specifically excludes these entities, while some commenters noted that the ability of individual members of JAAs and G&T cooperatives to prepare small customer plans would greatly simplify the task of meeting Western's IRP requirements for a substantial number of customers.

One commenter suggested that "customer" should be added after "utility" in § 905.15(e)(1)(i) to mirror the language used in the definition of small customer (§ 905.2).

B. Response

After further review, Western determined that the best approach is not to include members of JAAs and G&T cooperatives with power supply responsibility within the small customer provision. However, Western does have the ability to change the criteria for determining IRP compliance, as set forth in Section 114 of EPAct. Western also noted that JAA and G&T cooperative members with less than 25 gigawatthours (GWh) use and sales may have limited managerial, economic, and resource capability, similar to other small customers. Their resource scenarios are often similar, and their ability to conduct IRP just as limited. Accordingly, Western has created new, reduced IRP compliance criteria for JAA and G&T cooperative customers not qualifying for "small customer" status and yet have less than 25 GWh use and sales and have limited managerial, economic, and resource capability, at § 905.11(c). These criteria mirror the criteria set forth in the small customer provision at § 905.15, and are consistent with the flexibilities provided to Western under EPAct. These certain customers must conduct IRP, but under less stringent criteria to reflect their limited capabilities. Unlike the small customer provision, qualifying customers do not need to notify Western in advance if complying through the use of these reduced IRP compliance criteria. Western will use qualifying customers' annual IRP progress reports to verify ongoing eligibility.

"Customer" has been added after "utility" in § 905.15(e)(1)(i) as suggested, to match the definition in § 905.2.

8. § 905.16 and § 905.17 General Comments on Minimum Investment Report, Public Benefits Report, and Energy Efficiency/Renewable Energy (EE/RE) Report Alternatives

A. Comments

Western received a number of general comments about the proposed new alternatives—minimum investment report, public benefits report, and EE/RE report. One commenter noted that the alternatives appear to be essentially the same, so they should be combined.

A number of comments suggested that eligibility for State, Tribal, and Federal Government mandates on these alternatives is too narrow, and that the alternatives should also be open to standard-setting by local governing boards such as city councils and utility boards. Another commenter said alternatives should include mandates set by either State law or State policy. One comment suggested Western should establish some of its own mandates for minimum investments and EE/RE reports. One commenter noted the proposed alternatives should only be applicable in States in which retail competition exists.

One commenter requested that in instances where the State, Tribal, or Federal Government has implemented a program that meets Western's alternatives, Western defer its review authority and accept every report on or stemming from these programs.

Some comments called for additional clarification as to how State, Tribal, or Federal mandates are to be applied for multi-state entities, such as MBAs and IRP cooperatives.

Some commenters noted that Western should add provisions to the alternatives to allow for joint reporting by a group of customers.

One commenter noted that Western was not requiring customers to submit revisions to approved alternative reports every 5 years, as provided for IRPs and small customer plans.

Several municipalities and rural electric cooperatives asked if preparing energy efficiency plans as required by their State's public utility commission could satisfy any of Western's alternative reporting requirements.

B. Response

Western believes that the EE/RE report alternative is clearly different from the minimum investment and public benefits report alternatives, in large part because it applies only to end-use customers. Western agrees that the minimum investment report and public benefits report are essentially the same. Western eliminated the separate public benefits report alternative and combined the relevant public benefits language with the minimum investment report alternative. Language noting that public benefits charges are included within the definition of minimum investment report has been added in § 905.2, as well.

Western does not agree that limiting the alternatives to mandates set only by State, Tribal, and Federal Governments is too narrow. Likewise Western believes it is inappropriate for it to set such mandates. Because of the broad and open nature of lawmaking and regulatory processes at the State and Federal levels in comparison to the processes of Western's customers, Western is reluctant to accept any lesser mandates. Additionally, as a Federal agency, Western defers to Tribes' sovereign authority to set their own minimum investment or EE/RE reporting requirements.

While Western always reviews submissions—whether IRP or alternatives—for reasonableness, Western is more comfortable with broad decision making (State or Federal) that customers must follow by law, and prefers to rest on the minimum investment and EE/RE requirements set at higher levels of government. Customers not under the jurisdiction of State, Tribal, or Federal Governments with minimum investment or EE/RE reporting requirements must meet the IRP or small customer provision, as applicable.

Similarly, Western does not agree that the energy efficiency and renewable energy mandates for all alternatives should be allowed by State policy. State law or State regulations developed by the public utilities commission or its equivalent must be the standard. Policy adopted by State end-use customers does not meet the intent of the alternative reporting requirements. Otherwise, State end-use customers are setting their own minimum investment or EE/RE requirements, which is contradictory to the intent of these regulations.

Western does not agree that the proposed alternatives should only be applicable in States where retail competition exists. The passage of EPAct created wholesale competition, followed by FERC's mandate for open access to transmission systems. These events have had a far larger impact on utility resource planning and use than retail competition. Wholesale competition drives resource decisions, especially real-time and short-term resource acquisition.

Western will not defer its authority in instances where the State, Tribal, or Federal Government has implemented a program that meets the alternatives, because this approach would not satisfy our obligations. EPAct mandates that Western collect, evaluate, and report on data to meet EPAct's IRP requirements. Western must report on the data annually to Congress, and, to meet this requirement, must receive adequate data from all customers. While Western will accept reports that fully meet the criteria contained in the alternative provisions (§ 905.16 and § 905.17, respectively), a request to submit the reports must be submitted and approved prior to submitting the report.

Western agrees that additional clarification is needed regarding application of the new alternatives to multi-state entities. Accordingly, Western has developed a new paragraph (c) in the minimum investment report alternative at § 905.16. A multi-state customer choosing to comply with the minimum investment alternative must apply the highest minimum investment level mandated by any State or Tribal jurisdiction within its service territory to all customers in States or Tribal jurisdictions without mandated minimum investments. In instances where more than one State or Tribal jurisdiction has a minimum investment requirement, those should be applied to customers within that State or Tribal jurisdiction. To qualify for the minimum investment alternative, however, the highest investment level must still be applied to customers in States or Tribal jurisdictions without requirements. Alternatively, multi-state entities can complete the streamlined IRP outlined in § 905.11. Western is willing to work with multi-state entities to ensure the most effective, and least burdensome, compliance mechanism.

Western will allow minimum investment reports to be submitted by MBAs on behalf of the MBA or one or more of its members, and by IRP cooperatives on behalf of its participants, as detailed in § 905.16(a). This is also demonstrated by applying the definitions of customers and MBAs in § 905.2, to statements in § 905.12(b) and (c).

Western agrees it should require customers to submit revisions to their approved alternative reports every 5 years, as provided for IRPs and small customer plans, and has revised the regulations accordingly.

Municipalities and rural electric cooperatives subject to State regulatory jurisdiction can potentially satisfy the requirements of the minimum investment report alternative based on energy efficiency plans prepared to comply with requirements established by their State's public utility commission. They must submit requests to prepare the minimum investment reports and, if Western approves the requests, must submit reports, meeting the requirements of these regulations, particularly § 905.16.

9. § 905.16 What Are the Requirements for the Minimum Investment Report?

A. Comment

One commenter requested that customers be allowed to continue meeting the levels of minimum investment established by State, Tribal, or Federal mandate once the mandate has expired or is otherwise no longer in effect. One comment suggested the minimum investment requirement should include the full array of DSM, including both energy efficiency and load management, instead of just energy efficiency.

B. Response

Because Western is allowing the State, Tribal, or Federal mandate to set the minimum level of investment and related parameters, subject to Western's review for reasonableness, Western cannot allow customers to continue applying the minimum investment once the mandate no longer exists. If the State, Tribal, or Federal Government chooses to terminate the mandate, Western sees no compelling reason to continue to recognize an expired standard.

Western agrees that it should not restrict the permissible demand-side minimum investment activities to just those that can be categorized as energy efficiency, so it has expanded the list of acceptable categories in § 905.16(b)(1) and elsewhere by changing the term "energy efficiency" to "DSM," which includes energy efficiency, load management, and other demand-side measures.

10. § 905.17 What Are the Requirements for the Energy Efficiency and/or Renewable Energy (EE/RE) Report Alternative?

A. Comments

Many comments suggested that Schedule 5 of Energy Information Administration (EIA) Report No. 861, EIA Report No. 412, and Federal Energy Regulatory Commission (FERC) Form No. 1, be acceptable as approved reports under the EE/RE report alternative. One commenter said that the EE/RE report is not a substitute for IRP, and should be withdrawn. One commenter noted that reports submitted by Federal agencies in accordance with Section 303 of Executive Order (EO) 13123 should be considered as meeting the EE/RE reporting requirement, while another comment suggested any reporting requirement should be waived for Federal customers under the mandate of EO 13123 because compliance with EO 13123 sufficiently satisfies the intended goals of EPAct.

B. Response

The intent underlying the EE/RE report was not clearly understood by customers and stakeholders, so additional clarifying language has been added to § 905.17. The language emphasizes that the EE/RE report applies only to end-use customers, and that it is based on a mandate by a State, Tribal, or Federal Government to implement energy efficiency and/or renewable energy activities within a specified timeframe, for which there is also an associated reporting requirement. Therefore, EIA Reports No. 861 and 412, and FERC Form No. 1 cannot be accepted because they have no mandated energy efficiency or renewable energy requirements. Western will, however, accept any of these reports as all or part of an annual IRP progress report so long as it meets by itself, or meets when supported by additional information, the IRP annual reporting criteria set forth in § 905.14, IRP annual reporting.

Western believes the EE/RE report is an acceptable alternative to the IRP because of the associated energy efficiency and/or renewable energy mandate.

In general, it is Western's belief that the reports for specific Federal end-use customers under EO 13123 will be acceptable as EE/RE reports. However, a requirement to comply with EO 13123 does not excuse a Federal end-use customer from complying with this rule. Western does not agree that a report submitted by a Federal agency in accordance with EO 13123 should automatically be considered as meeting the EE/RE reporting requirements. Any Federal end-use customer must first request EE/RE report status and then submit reports that provide data specific to that Federal end-use customer. Western must report to Congress annually about the activities undertaken by its customers, so the agency must receive adequate information, as specified in § 905.17, about the activities of the Federal end-use customer. Aggregate reports of the agency where the end-use customer is only a part are not acceptable. The EE/RE report must contain customer-specific data.

11. § 905.18 What Are the Criteria for Western's Approval of Submittals?

A. Comments

Some commenters noted that Western needs to clarify whether this section applies to the small customer plan and new alternatives as well as the IRP. A number of commenters said that there should be no IRP reporting obligation in those States that have adopted retail restructuring. Some commenters requested that water conservation measures be allowed in addition to energy efficiency and renewable energy in Western's alternatives. One commenter noted that "shall" was changed to "will," and that there should be a clarifying statement that this language change was editorial in nature.

B. Response

This section applies to small customer plans and new alternatives as well as IRP. To make this clearer, Western changed the word "IRP" in the title of the section to "plans and reports" and moved this section so that it follows the IRP, small customer provision, minimum investment report, and EE/RE report sections.

Western does not agree that there should be no IRP reporting obligation in those states that have adopted retail restructuring. Neither wholesale nor retail competition negate Section 114 of EPAct. Even though our customers may be subject to retail competition, Western will continue to require each of its customers to comply with the IRP or an applicable alternative under this rule.

Western has considered water planning, efficiency improvements, and conservation in the same manner it considers energy planning and efficiencies for IRP and small customer planning, as detailed in § 905.18(d). Accordingly, Western will consider water conservation measures for the new alternatives, so long as the mandates for the new alternatives extend to water conservation measures. Western will not allow measures other than those identified by alternative-related State, Tribal, or Federal mandates, and will additionally use the reasonableness criteria as detailed in Section 114 of EPAct and § 905.18(a) in reviewing all plans and reports.

Western changed "shall" to "will" to comply with the requirements for plain language. The change is editorial and does not suggest any substantive change.

12. § 905.19 How Are Plans and Reports Reviewed and Approved?

A. Comment

One comment suggested a time period for resubmittal of reports that is similar to language in "Western's review of IRPs" paragraph be included in § 905.19, as well.

B. Response

Western agrees that time periods for resubmitting plans and reports should be consistent. We have moved the "Western's review of IRPs" paragraph from § 905.13 to § 905.19, and added additional language to clearly indicate the resubmittal timing pertains to IRPs, small customer plans, minimum investment reports, and EE/RE reports.

13. § 905.20 When Are Customers in Noncompliance With This Rule, and How Does Western Ensure Compliance?

A. Comments

One comment suggested that instead of imposing the existing penalty scheme for non-compliant customers, Western should penalize customers up to the amount they "under-spent" on a given public benefits program. A commenter also suggested that, for penalties, Western should limit the liability to 10 percent of power charges and earmark the penalty funds to a public benefits fund for investment in energy efficiency and renewable energy in the non-complying customer's service territory. One commenter noted that Western should clarify that the 30-day good faith period for compliance applies to all plans and reports.

B. Response

Other than plain language revisions, and clarifications to ensure that the penalties and 30-day good faith period are applicable to all plans and reports, Western will not implement any changes to the penalty provisions. The penalty scheme is mandated in Section 114 of EPAct, and Western believes these standards are adequate to ensure compliance with the rule.

14. § 905.23 What Are the Opportunities for Using the Freedom of Information Act (FOIA) To Request Plan and Report Data?

A. Comment

One commenter said that a reference to the exemptions under FOIA should be added, and broadened to include 10 CFR part 1004.10. The intent should be further clarified by designating as proprietary any information that relates to State retail competition which state law and/or regulation has classified as proprietary. One commenter said that, if Western requests additional information to support Western's review of IRP submittals, Western should agree to use due diligence in protecting the information. The commenter also suggested Western ensure customers have flexibility in determining a reasonable level of data collection and reporting given individual situations.

B. Response

Western has removed the specific reference to 10 CFR part 1004.11, and will not include a specific reference to 10 CFR part 1004.10, recognizing that these references are too narrow, may change, and therefore may not remain accurate. Instead, Western has added the term "applicable" in front of FOIA, to make it clear that any FOIA exemptions may be requested and, if appropriate, granted. Western has also added the phrase, "recognizing that certain competition-related customer information may be proprietary," to the end of the last sentence.

Given customer concerns over proprietary and potentially proprietary information, Western will accept summary information in the IRP rather than full data. However, customers should not have unlimited discretion in determining the amount of data required by Western. Western is always willing to work with customers to ensure we receive adequate, but not unnecessary, data. However, Western must have access to sufficient data to verify that customers are meeting the intent of EPAct and the IRP regulations. Western understands customers' concerns over proprietary information, and will ensure that it applies FOIA protections to customer information.

III. Procedural Requirements

A. Executive Order 12866

Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this rulemaking by the Office of Management and Budget (OMB) is required.

B. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601, *et seq.*, requires Federal agencies to perform a regulatory flexibility analysis if a proposed regulation is likely to have a significant economic impact on a substantial number of small entities. Western's Administrator certified that the proposed rule would have no significant adverse impact on a substantial number of small entities because the proposed revisions to these regulations reduce paperwork and financial and other burdens, as well as reporting redundancies for small entities. Western did not receive any comments on this certification.

C. Review Under the Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, Western has received approval from OMB to collect customer information in this rule, under control number 1910–1200.

D. Review Under the National Environmental Policy Act

Western prepared an environmental impact statement (EIS) and record of decision (ROD) pursuant to NEPA for EPAMP, which established the existing IRP requirements for Western power customers. The EIS met the requirements of NEPA, 42 U.S.C. 4321, *et seq.*, the Council on Environmental Quality Regulations for implementing NEPA (40 CFR parts 1500–1508), and the DOE NEPA Implementing Procedures and Guidelines (10 CFR part 1021). Since the proposed revisions would modify the IRP requirements addressed in the EPAMP EIS, Western completed a review and determined a supplemental EIS is not required. A revised EPAMP ROD has been issued.

E. Review Under Executive Order 13132

Executive Order 13132 (64 FR 43255, August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the need for such actions. Western has examined this rule and determined that it does not preempt State law and does not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

F. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 requires each agency to assess the effects of Federal regulatory action on State, local, and Tribal governments and the private sector. Western has determined that this regulatory action does not impose an additional Federal mandate on State, local, or Tribal governments or on the private sector.

G. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, "Civil Justice Reform" (61 FR 4729, February 7, 1996), imposed on Executive agencies the general duty to adhere to the following requirements: (1) Eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that Executive agencies make every reasonable effort to ensure that the regulation: (1) Clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires Executive agencies to review regulations in light of applicable standards in section 3(a) and 3(b) to determine whether they are met or if it is unreasonable to meet one or more of them. Western has completed the required review and determined that, to the extent permitted by law, the regulations meet the relevant standards of Executive Order 12988.

H. Treasury and General Government Appropriations Act, 1999

Section 654 of the Treasury and General Government Appropriations Act, 1999 (Pub. L. 105–277) requires Federal agencies to issue a Family Policymaking Assessment for any proposed rule that may affect family well-being. The final rule has no impact on the autonomy or integrity of the family as an institution. Accordingly, Western has concluded that it is not necessary to prepare a Family Policymaking Assessment.

I. Review Under Executive Order 13084

Under Executive Order 13084 (Consultation and Coordination with Indian Tribal Governments), Western may not issue a discretionary rule that significantly or uniquely affects Indian tribal governments and imposes substantial direct compliance costs. The incremental amendments involved in this rulemaking would not have such effects. Accordingly, Executive Order 13084 does not apply to this rulemaking.

J. Review Under Small Business Regulatory Enforcement Fairness Act of 1996

As required by 5 U.S.C. 801, DOE will report to Congress on the promulgation of the rule prior to its effective date. The report will state that it has been determined that the rule is not a "major rule" as defined by 5 U.S.C. 804(3).

List of Subjects in 10 CFR Part 905

Electric power, Electric utilities, Energy, Energy conservation, Hydroelectric power and utilities.

Issued in Lakewood, CO on March 13, 2000.

Michael S. Hacskaylo,

Administrator.

For the reasons set forth in the preamble, 10 CFR part 905 is amended as set forth below:

PART 905—ENERGY PLANNING AND MANAGEMENT PROGRAM

1. The authority citation continues to read as follows:

Authority: 42 U.S.C. 7152 and 7191; 32 Stat. 388, as amended; and 42 U.S.C. 7275–7276c.

2. Subparts A and B are revised to read as follows:

Subpart A—General Provisions

Sec.

905.1 What are the purposes of the Energy Planning and Management Program?
905.2 What are the key definitions of this part?

Subpart B—Integrated Resource Planning

905.10 Who must comply with the integrated resource planning and reporting regulations in this subpart?
905.11 What must an IRP include?
905.12 How must IRPs be submitted?
905.13 When must IRPs be submitted?
905.14 Does Western require annual IRP progress reports?
905.15 What are the requirements for the small customer plan alternative?
905.16 What are the requirements for the minimum investment report alternative?
905.17 What are the requirements for the energy efficiency and/or renewable energy report (EE/RE report) alternative?
905.18 What are the criteria for Western's approval of submittals?
905.19 How are plans and reports reviewed and approved?
905.20 When are customers in noncompliance with the regulations in this subpart, and how does Western ensure compliance?

905.21 What is the administrative appeal process?
905.22 How does Western periodically evaluate customer actions?
905.23 What are the opportunities for using the Freedom of Information Act to request plan and report data?
905.24 Will Western conduct reviews of this program?

Subpart A—General Provisions

§ 905.1 What are the purposes of the Energy Planning and Management Program?

The purposes of the Energy Planning and Management Program (EPAMP) are to meet the objectives of Section 114 of the Energy Policy Act of 1992 (EPAct) and to extend long-term firm power resource commitments while supporting customer integrated resource planning (IRP); demand-side management (DSM), including energy efficiency, conservation, and load management; and the use of renewable energy. Subpart B, Integrated Resource Planning, allows customers of the Western Area Power Administration (Western) to meet the objectives of section 114 of EPAct through integrated resource planning or by other means, such as attaining a minimum level of investment in energy efficiency and/or renewable energy, collecting a charge to support defined public benefits, or complying with a mandated energy efficiency and/or renewable energy reporting requirement.

§ 905.2 What are the key definitions of this part?

Administrator means Western's Administrator.

Customer means any entity that purchases firm capacity, with or without energy, from Western under a long-term firm power contract. The term also includes a member-based association (MBA) and its distribution or user members that receive direct benefit from Western's power, regardless of which holds the contract with Western.

Energy efficiency and/or renewable energy (EE/RE) report means the report documenting energy efficiency and/or renewable energy activities imposed by a State, Tribal, or the Federal Government upon a State, Tribal, or Federal end-use customer within its jurisdiction.

Integrated resource planning means a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, to provide adequate and reliable service to a customer's electric consumers.

Integrated resource planning cooperative (IRP cooperative) means a group of Western's customers and/or their distribution or user members with geographic, resource supply, or other similarities that have joined together, with Western's approval, to complete an IRP.

Member-based association (MBA) means:

(1) An entity composed of member utilities or user members, or

(2) An entity that acts as an agent for, or subcontracts with, but does not assume power supply responsibility for its principals or subcontractors, who are its members.

Minimum investment report means the report documenting a mandatory minimum level of financial or resource investment in demand-side management (DSM) initiatives, including energy efficiency and load management, and/or renewable energy activities, such as investment of a set minimum percentage of the utility's gross revenues in renewable energy, which is imposed by State, Tribal, or Federal law upon a customer under its jurisdiction. For the purposes of this part, the minimum investment report includes reports about public benefits charges, as well.

Public benefits charge means a mandatory financial charge imposed by State, Tribal, or Federal law upon a customer under its jurisdiction to support one or more of the following: energy efficiency, conservation, or demand-side management; renewable energy; efficiency or alternative energy-related research and development; low-income energy assistance; and/or other similar programs defined by applicable State, Tribal, or Federal law. This term is also known as a public goods or system benefit charge in the utility industry.

Region means a Western regional office or management center, and the geographic territory served by that regional office or management center: the Desert Southwest Customer Service Region, the Rocky Mountain Customer Service Region, the Sierra Nevada Customer Service Region, the Upper Great Plains Customer Service Region, or the Colorado River Storage Project Management Center.

Renewable energy means any source of electricity that is self-renewing, including plant-based biomass, waste-based biomass, geothermal, hydropower, ocean thermal, solar (active and passive), and wind.

Small customer means a utility customer with total annual sales and usage of 25 gigawatthours (GWh) or less, as averaged over the previous 5 years, which is not a member of a joint-action agency or generation and transmission cooperative with power supply responsibility; or any end-use customer.

Western means the Western Area Power Administration.

Subpart B—Integrated Resource Planning

§ 905.10 Who must comply with the integrated resource planning and reporting regulations in this subpart?

(a) Integrated resource plans (IRP) and alternatives. Each Western customer must address its power resource needs in an IRP prepared and submitted to Western as described in this subpart. Alternatively, Western customers may submit a small customer plan, minimum investment report or EE/RE report as provided in this subpart.

(b) Rural Utility Service and state utility commission reports. For customers subject to IRP filings or other electrical resource use reports from the Rural Utilities Service or a state utility commission, nothing in this part requires a customer to take any action inconsistent with those requirements.

§ 905.11 What must an IRP include?

(a) General. Integrated resource planning is a planning process for new energy resources that evaluates the full range of alternatives, including new generating capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy resources, to provide adequate and reliable service to a customer's electric consumers. An IRP supports customer-developed goals and schedules. The plan must take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other risk factors; must take into account the ability to verify energy savings achieved through energy efficiency and the projected durability of such savings measured over time; and must treat demand and supply resources on a consistent and integrated basis.

(b) IRP criteria. IRPs must consider electrical energy resource needs and may consider, at the customer's option, water, natural gas, and other energy resources. Each IRP submitted to Western must include:

(1) Identification of resource options. Identification and comparison of resource options is an assessment and comparison of existing and future supply-and demand-side resource options available to a customer based upon its size, type, resource needs, geographic area, and competitive situation. Resource options evaluated by the specific customer must be identified. The options evaluated should relate to the resource situation unique to each Western customer as determined by profile data (such as service area, geographical characteristics, customer mix, historical loads, projected growth, existing system data, rates, and financial information) and load forecasts. Specific details of the customer's resource comparison need not be provided in the IRP itself. They must, however, be made available to Western upon request.

(i) Supply-side options include, but are not limited to, purchased power contracts and conventional and renewable generation options.

(ii) Demand-side options alter the customer's use pattern to provide for an improved combination of energy services to the customer and the ultimate consumer.

(iii) Considerations that may be used to develop potential options include cost, market potential, consumer preferences, environmental impacts, demand or energy impacts, implementation issues, revenue impacts, and commercial availability.

(iv) The IRP discussion of resource options must describe the options chosen by the customer, clearly demonstrating that decisions were based on a reasonable analysis of the options. The IRP may strike a balance among the applicable resource evaluation factors.

(2) Action plan. IRPs must include an action plan describing specific actions the customer will take to implement its IRP.

(i) The IRP must state the time period that the action plan covers, and the action plan must be updated and resubmitted to Western when this time period expires. The customer may submit a revised action plan with the annual IRP progress report discussed in § 905.14.

(ii) For those customers not experiencing or anticipating load growth, the action plan requirement for the IRP may be satisfied by a discussion of current actions and procedures in place to periodically reevaluate the possible future need for new resources. The action plan must include a summary of:

(A) Actions the customer expects to take in accomplishing the goals identified in the IRP;

(B) Milestones to evaluate accomplishment of those actions during implementation; and

(C) Estimated energy and capacity benefits for each action planned.

(3) Environmental effects. To the extent practical, the customer must minimize adverse environmental effects of new resource acquisitions and document these efforts in the IRP. Customers are neither precluded from nor required to include a quantitative analysis of environmental externalities as part of the IRP process. IRPs must include a qualitative analysis of environmental effects in summary format.

(4) Public participation. The customer must provide ample opportunity for full public participation in preparing and developing an IRP (or any IRP revision or amendment). The IRP must include a brief description of public involvement activities, including how the customer gathered information from the public, identified public concerns, shared information with the public, and responded to public comments. Customers must make additional documentation identifying or supporting the full public process available to Western upon request.

(i) As part of the public participation process, the governing body of an MBA and each MBA member (such as a board of directors or city council) must approve the IRP, confirming that all requirements have been met. To indicate approval, a responsible official must sign the IRP submitted to Western or the customer must document passage of an approval resolution by the appropriate governing body included or referred to in the IRP.

(ii) For Western customers that do not purchase electricity for resale, such as some State, Tribal, and Federal agencies, the customer can satisfy the public participation requirement by having a top management official with resource acquisition responsibility review and concur on the IRP. The customer must note this concurrence in the IRP.

(5) Load forecasting. An IRP must include a statement that the customer conducted load forecasting. Load forecasting should include data that reflects the size, type, resource conditions, and demographic nature of the customer using an accepted load forecasting method, including but not limited to the time series, end-use, and econometric methods. The customer must make the load forecasting data available to Western upon request.

(6) Measurement strategies. The IRP must include a brief description of measurement strategies for options identified in the IRP to determine whether the IRP's objectives are being met. These validation methods must include identification of the baseline from which a customer will measure the benefits of its IRP implementation. A reasonable balance may be struck between the cost of data collection and the benefits resulting from obtaining exact information. Customers must make performance validation and evaluation data available to Western upon request.

(c) IRP criteria for certain customers not qualifying for "small customer" status. Customers with limited economic, managerial, and resource capability and total annual sales and usage of 25 gigawatthours (GWh) or less who are members of joint-action agencies and generation and transmission cooperatives with power supply responsibility are eligible for the criteria specified in paragraphs (c)(1) and (c)(2) of this section.

(1) Each IRP submitted by a customer under paragraph (c) of this section must:

(i) Consider all reasonable opportunities to meet future energy service requirements using DSM techniques, renewable energy resources, and other programs; and

(ii) Minimize, to the extent practical, adverse environmental effects.

(2) Each IRP submitted by a customer under paragraph (c) of this section must include, in summary form:

(i) Customer name, address, phone number, email and Website if applicable, and contact person;

(ii) Customer type;

(iii) Current energy and demand profiles, and data on total annual energy sales and usage for the past 5 years, which Western will use to verify that customers qualify for these criteria;

(iv) Future energy services projections;

(v) How items in paragraphs (c)(1)(i) and (c)(1)(ii) of this section were considered; and

(vi) Actions to be implemented over the customer's planning timeframe.

§ 905.12 How must IRPs be submitted?

(a) Number of IRPs submitted. Except as provided in paragraph (c) of this section, one IRP is required per customer, regardless of the number of long-term firm power contracts between the customer and Western.

(b) Method of submitting IRPs. Customers must submit IRPs to Western under one of the following options:

(1) Customers may submit IRPs individually.

(2) MBAs may submit IRPs for each of their members or submit one IRP on behalf of all or some of their members. An IRP submitted by an MBA must specify the responsibilities and participation levels of individual members and the MBA. Any member of an MBA may submit an individual IRP

to Western instead of being included in an MBA IRP.

(3) Customers may submit IRPs as IRP cooperatives when previously approved by Western. IRP cooperatives may also submit small customer plans, minimum investment reports and EE/RE reports on behalf of eligible IRP cooperative members.

(c) Alternatives to submitting individual IRPs. Customers with Western approval to submit small customer plans, minimum investment or EE/RE reports may substitute the applicable plan or report instead of an IRP. Each customer that intends to seek approval for IRP cooperative, small customer, minimum investment report or EE/RE report status must provide advance written notification to Western. A new customer must provide this notification to the Western Regional Manager of the Region in which the customer is located within 30 days from the time it becomes a customer. Any customer may resubmit an IRP or notify Western of its plan to change its compliance method at any time so long as there is no period of noncompliance.

§ 905.13 When must IRPs be submitted?

(a) Submitting the initial IRP. Except as provided in paragraph (c) of this section, customers that have not previously had an IRP approved by Western must submit the initial IRP to the appropriate Regional Manager no later than 1 year after May 1, 2000, or after becoming a customer, whichever is later.

(b) Updates and amendments to IRPs. Customers must submit updated IRPs to the appropriate Regional Manager every 5 years after Western's approval of the initial IRP. Customers that complied with Western's IRP regulations in effect before May 1, 2000 must maintain their submission and resubmission schedules previously in effect. Customers may submit amendments and revisions to IRPs at any time.

(c) IRP cooperatives. Customers with geographic, resource supply, and other similarities may join together and request, in writing, Western's approval to become an IRP cooperative. Western will respond to IRP cooperative status requests within 30 days of receiving a request. If Western disapproves a request for IRP cooperative status, the requesting participants must maintain their currently applicable integrated resource or small customer plans, or submit the initial IRPs no later than 1 year after the date of the disapproval letter. Western's approval of IRP cooperative status will not be based on any potential participant's contractual status with Western. Each IRP cooperative must submit an IRP for its participants within 18 months after Western approves IRP cooperative status.

§ 905.14 Does Western require annual IRP progress reports?

Yes, customers must submit IRP progress reports each year within 30 days of the anniversary date of the approval of the currently applicable IRP. The reports must describe the customer's accomplishments achieved under the action plan, including projected goals and implementation schedules, and energy and capacity benefits and renewable energy developments achieved as compared to those anticipated. Western prefers measured values, but will accept reasonable estimates if measurement is infeasible or not cost-effective. Instead of a separate progress report, the customer may use any other annual report that the customer submits to Western or another entity, at the customer's discretion, if that report contains all required data for the previous full year and is submitted within 30 days of the approval anniversary date of the currently applicable IRP. With Western's approval, customers may submit reports outside of the 30-day anniversary date window.

§ 905.15 What are the requirements for the small customer plan alternative?

(a) Requesting small customer status. Small customers may submit a request to prepare a small customer plan instead of an IRP. Requests for small customer status from electric utilities must include data on total annual energy sales and usage for the 5 years prior to the request. Western will average this data to determine overall annual energy sales and usage so that uncontrollable events, such as extreme weather, do not distort levelized energy sales and usage. Requests from end-use customers must only document that the customer does not purchase electricity for resale. Western will respond to small customer status requests within 30 days of receiving the request. If Western disapproves a request, the customer must maintain its currently applicable IRP, or submit the initial IRP no later than 1 year after the date of the disapproval letter. Alternatively, the customer may submit a request for minimum investment report or EE/RE report status, as appropriate.

(b) Small customer plan contents. Small customer plans must:

(1) Consider all reasonable opportunities to meet future energy service requirements using demand-side management techniques, renewable energy resources, and other programs that provide retail consumers with electricity at reasonable cost;

(2) Minimize, to the extent practical, adverse environmental effects; and

(3) Present in summary form the following information:

(i) Customer name, address, phone number, email and Website if applicable, and contact person;

(ii) Type of customer;

(iii) Current energy and demand profiles and data on total annual energy sales and usage for the previous 5 years for utility customers, or current energy and demand use for end-use customers;

(iv) Future energy services projections;

(v) How items in paragraphs (b)(1) and (b)(2) of this section were considered; and

(vi) Actions to be implemented over the customer's planning timeframe.

(c) When to submit small customer plans. Small customers must submit the first small customer plan to the appropriate Western Regional Manager within 1 year after Western approves the request for small customer status. Small customers must submit, in writing, a small customer plan every 5 years.

(d) Maintaining small customer status. (1) Every year on the anniversary of Western's approval of the plan, small customers must submit a letter to Western verifying that either their annual energy sales and usage is 25 GWh or less averaged over the previous 5 years, or they continue to be end-use customers. The letter must also identify their achievements against targeted action plans, as well as the revised summary of actions if the previous summary of actions has expired.

(2) Western will use the letter for overall program evaluation and comparison with the customer's plan, and for verification of continued small customer status. Customers may submit annual update letters outside of the anniversary date if previously agreed to by Western so long as the letter contains all required data for the previous full year.

(e) Losing eligibility for small customer status. (1) A customer ceases to be a small customer if it:

(i) Is a utility customer and exceeds total annual energy sales and usage of 25 GWh, as averaged over the previous 5 years; or

(ii) Is no longer an end-use customer.

(2) Western will work with a customer that loses small customer status to develop an appropriate schedule for submitting an IRP or other report required under this subpart.

§ 905.16 What are the requirements for the minimum investment report alternative?

(a) Request to submit the minimum investment report. Customers may submit a request to prepare a minimum investment report instead of an IRP. Minimum investment reports may be submitted by MBAs on behalf of the MBA or its members, and by IRP cooperatives on behalf of its participants. Requests to submit minimum investment reports must include data on:

(1) The source of the minimum investment requirement (number, title, date, and jurisdiction of law);

(2) The initial, annual, and other reporting requirement(s) of the mandate, if any; and

(3) The mandated minimum level of investment or public benefits charge for DSM and/or renewable energy.

(b) Minimum investment requirement. The minimum investment must be either:

(1) A mandatory set percentage of customer gross revenues or other specific minimum investment in DSM and/or renewable energy mandated by a State, Tribal, or Federal Government with jurisdictional authority; or

(2) A required public benefits charge, including charges to be collected for and spent on DSM; renewable energy; efficiency and alternative energy-related research and development; low-income energy assistance; and any other applicable public benefits category, mandated by a State, Tribal, or Federal Government with jurisdictional authority. Participation in a public benefits program requires either a mandatory set percentage of customer gross revenues or other specific charges to be applied toward the programs as determined by the applicable State, Tribal, or Federal authority. The revenues from the public benefits charge may be expended directly by the customer, or by another entity on behalf of the customer as determined by the applicable State, Tribal, or Federal authority.

(c) Multi-state entities. For those customers with service territories lying in more than one State or Tribal jurisdiction, and where at least one of the States or Tribal jurisdictions has a mandated minimum investment requirement, to meet this alternative customers must use the highest requirement from the State or Tribe within the customer's service territory and additionally apply it to all members in those States or Tribal jurisdictions in which there is no requirement. Alternatively, if each State or Tribe has a requirement, customers may satisfy Western's requirement by reporting on compliance with each applicable minimum investment requirement. Western will work with multi-state entities to ensure the most effective, and least burdensome, compliance mechanism.

(d) Western's response to minimum investment report requests. Western will respond to requests to accept minimum investment reports within 30 days of receiving the request. If Western disapproves a request to allow use of the minimum investment report, the customer must maintain its currently applicable IRP or small customer plan, or submit its initial IRP no later than 1 year after the date of the disapproval letter. Alternatively, the customer may submit a request for small customer plan or EE/RE report status, as appropriate.

(e) Minimum investment report contents. Reports documenting compliance with a minimum level of investment in DSM and/or renewable energy must include:

(1) Customer name, address, phone number, email and Website if applicable, and contact person;

(2) Authority or requirement to undertake a minimum investment, including the source of the minimum investment requirement (number, title, date, and jurisdiction of law or regulation); and

(3) A description of the minimum investment, including:

(i) Minimum percentage or other minimum requirement for DSM and/or renewable energy, including any charges to be collected for and spent on DSM, renewable energy, efficiency or alternative energy-related research and development, low-income energy assistance, and any other applicable public benefits categories;

(ii) Actual or estimated energy and/or capacity savings resulting from minimum investments in DSM, if known;

(iii) Actual or estimated energy and/or capacity resulting from minimum investments in renewable energy, if known; and

(iv) A description of the DSM and/or renewable energy activities to be undertaken over the next 2 years as a result of the requirement for minimum investment, if known.

(f) Minimum investment report approval. Western will approve the minimum investment report when it meets the requirements in paragraph (e) of this section.

(g) When to submit the minimum investment report. The customer must submit the first minimum investment report to the appropriate Western Regional Manager within 1 year after Western approves the request to accept the minimum investment report. Customers choosing this option must maintain IRP or small customer plan compliance with Western's IRP regulations in effect before May 1, 2000, including submitting annual progress reports or update letters, until submitting the first minimum investment report, to ensure there is no gap in complying with section 114 of EPAct. Customers must submit, in writing, a minimum investment report every 5 years.

(h) Maintaining minimum investment reports. (1) Every year on the anniversary of Western's approval of the first minimum investment report, customers choosing this option must submit a letter to Western verifying that they remain in compliance with the minimum investment requirement. The letter must also contain summary information identifying annual energy and capacity savings associated with minimum investments in DSM, if known, and energy and capacity associated with minimum investments in renewable energy, if known. The letter must also include a revised description of customer DSM and/or renewable energy activities if the description from the minimum investment report has changed or expired.

(2) Western will use the letter for overall program evaluation and to ensure customers remain in compliance. Customers may submit letters outside of the anniversary date if previously agreed to by Western, and if the letter contains all required data for the previous full year. Instead of a separate letter, a customer choosing this option may submit the State, Tribal, or Federal required annual report documenting the minimum investment and associated DSM and/or renewable energy savings and/or use, if known.

(i) Loss of eligibility to submit the minimum investment report. (1) A customer ceases to be eligible to submit a minimum investment report if:

(i) A State, Tribal, or Federal mandate no longer applies to the customer, or

(ii) The customer does not comply with the minimum level of investment in applicable State, Tribal, or Federal law.

(2) Western will work with a customer no longer eligible to submit a minimum investment report to develop an appropriate schedule to submit an IRP or other plan or report required under this subpart.

§ 905.17 What are the requirements for the energy efficiency and/or renewable energy report (EE/RE report) alternative?

(a) Requests to submit an EE/RE report. End-use customers may submit a request to prepare an EE/RE report instead of an IRP. Requests to submit EE/RE reports must include data on:

(1) The source of the EE/RE reporting requirement (number, title, date, and jurisdiction of law or regulation);

(2) The initial, annual, and other reporting requirement(s) of the report; and

(3) A summary outline of the EE/RE report's required data or components, including any requirements for documenting customer energy efficiency and renewable energy activities.

(b) EE/RE report requirement. The EE/RE report is based on a mandate by a State, Tribal, or Federal Government to implement energy efficiency and/or renewable energy activities within a specified timeframe, for which there is also an associated reporting requirement. The EE/RE report may include only electrical resource use and energy efficiency and/or renewable energy activities, or may additionally include other resource information, such as water and natural gas data. At a minimum, the EE/RE report must annually document energy efficiency and/or renewable energy activities undertaken by the end-use customer.

(c) Western's response to EE/RE report requests. Western will respond to requests to accept EE/RE reports within 30 days of receiving the request. If Western disapproves a request to allow use of the EE/RE report, the customer must maintain its currently applicable IRP or small customer plan, or submit its initial IRP no later than 1 year after the date of the disapproval letter. Alternatively, the customer may submit a request for small customer plan or minimum investment report, as appropriate, within 30 days after the date of the disapproval letter.

(d) EE/RE report contents. EE/RE reports must include:

(1) Customer name, address, phone number, email and Website if applicable, and contact person;

(2) Authority or requirement to complete the EE/RE report, including the source of the requirement (number, title, date, and jurisdiction of law); and

(3) A description of the customer's required energy efficiency and/or renewable energy activities, including:

(i) Level of investment or expenditure in energy efficiency and/or renewable energy, and quantifiable energy savings or use goals, if defined by the EE/RE reporting requirement;

(ii) Annual actual or estimated energy and/or capacity savings, if any, associated with energy efficiency and resulting from the EE/RE reporting requirement;

(iii) Actual or estimated energy and/or capacity, if any, associated with renewable energy and resulting from the EE/RE reporting requirement;

(iv) A description of the energy efficiency and/or renewable energy activities to be undertaken over the next 2 years as a result of the EE/RE reporting requirement.

(e) EE/RE report approval. Western will approve the EE/RE report when the report meets the requirements in paragraph (d) of this section.

(f) When to submit the EE/RE report. The customer must submit the first EE/RE report to the appropriate Western Regional Manager within 1 year after Western approves the request to accept the EE/RE report. Customers choosing this option must maintain IRP or small customer plan compliance with Western's IRP regulations in effect before May 1, 2000, including submitting annual progress reports or update letters, until submitting the first EE/RE report to ensure there is no gap in complying with section 114 of EPAct. Customers must submit, in writing, an EE/RE report every 5 years.

(g) Maintaining EE/RE reports. (1) Every year on the anniversary of Western's approval of the first EE/RE report, customers choosing this option must submit an annual EE/RE letter to Western. The letter must contain summary information identifying customer annual energy and capacity savings associated with energy efficiency, if any, and annual customer energy and capacity associated with renewable energy, if any. The letter must also verify that the customer remains in compliance with the EE/RE reporting requirement. Additionally, the letter must include a revised description of customer DSM and/or renewable energy activities if the description from the EE/RE report has changed or expired. If this information is contained in an EE/RE report sent to another authority, the customer may submit that report instead of a separate letter.

(2) Customers may submit annual EE/RE letters outside of the anniversary date if previously agreed to by Western if the letter contains all required data for the previous full year.

(h) Loss of eligibility to submit the EE/RE report. (1) A customer ceases to be eligible to submit a EE/RE report if:

(i) The EE/RE reporting requirement no longer applies to the customer, or

(ii) The customer does not comply with the EE/RE reporting requirements in applicable State, Tribal, or Federal law.

(2) Western will work with a customer no longer eligible to submit an EE/RE report to develop an appropriate schedule to submit a small customer plan or other plan or report required under this subpart.

§ 905.18 What are the criteria for Western's approval of submittals?

(a) Approval criteria. Western will approve all plans and reports based upon:

(1) Whether the plan or report satisfactorily addresses the criteria in the regulations in this subpart; and

(2) The reasonableness of the plan or report given the size, type, resource needs, geographic area, and competitive situation of the customer.

(b) Review of resource choices. Western will review resource choices using section 114 of EPAct and this subpart. Western will disapprove plans and reports if Western deems that they do not meet the reasonableness criteria in paragraph (a)(2) of this section or the provisions of section 114 of EPAct.

(c) Accepting plans and reports under other initiatives. If a customer or group of customers implements integrated resource planning under a program responding to other Federal, Tribal, or State initiatives, Western will accept and approve the plan or report as long as it substantially complies with the requirements of this subpart.

(d) Water-based plans and reports. In evaluating a plan or report, Western will consider water planning, efficiency improvements, and conservation in the same manner it considers energy planning and efficiencies. Customers that provide water utility services and customers that service irrigation load as part of their overall load may include water conservation activities in their plans or reports. To the extent practical, customers should convert reported water savings to energy values.

§ 905.19 How are plans and reports reviewed and approved?

Western will review all plans and reports submitted under this subpart and notify the submitting entity of the plan's or report's acceptability within 120 days after receiving it. If a plan or report submittal is insufficient, Western will provide a notice of deficiencies to the entity that submitted the plan or report. Western, working together with the entity, will determine the time allowable for resubmitting the plan or report. However, the time allowed for resubmittal will not be greater than 9 months after the disapproval date, unless otherwise provided by applicable contract language.

§ 905.20 When are customers in noncompliance with the regulations in this subpart, and how does Western ensure compliance?

(a) Good faith effort to comply. If it appears that a customer's activities may be inconsistent with the applicable IRP, small customer plan, minimum investment report or EE/RE report, Western will notify the customer and offer the customer 30 days to provide evidence of its good faith effort to comply. If the customer does not correct the specified deficiency or submit such evidence, or if Western finds, after receiving information from the customer, that a good faith effort has not been made, Western will impose a penalty.

(b) Penalties for noncompliance. Western will impose a penalty on long-term firm power customers for failing to submit or resubmit an acceptable IRP and action plan, small customer plan, minimum investment report or EE/RE report as required by this subpart. Western will also impose a penalty when the customer's activities are not consistent with the applicable plan or report unless Western finds that a good faith effort has been made to comply with the approved plan or report.

(c) Written notification of penalty. Western will provide written notice of a penalty to the customer, and to the MBA or IRP cooperative when applicable. The notice will specify the reasons for the penalty.

(d) Penalty options. (1) Beginning with the first full billing period following the notice specified in paragraph (c) of this section, Western will impose a surcharge of 10 percent of the monthly power charges until the deficiency specified in the notice is cured, or until 12 months pass. However, Western will not immediately impose a penalty if the customer or its MBA or IRP cooperative requests reconsideration by filing a written appeal under § 905.21.

(2) The surcharge increases to 20 percent for the second 12 months and to 30 percent per year thereafter until the deficiency is cured.

(3) After the first 12 months of the surcharge and instead of imposing any further surcharge, Western may impose a penalty that would reduce the resource delivered under a customer's long-term firm power contract(s) by 10 percent. Western may impose this resource reduction either:

(i) When it appears to be more effective to ensure customer compliance, or

(ii) When such reduction may be more cost-effective for Western.

(4) The penalty provisions in existing contracts will continue to be in effect and administered and enforced according to applicable contract provisions.

(e) Assessing and ceasing penalties. Western will assess the surcharge on the total charges for all power obtained by a customer from Western and will not be limited to surcharges on only firm power sales. When a customer resolves the deficiencies, Western will cease imposing the penalty, beginning with the first full billing period after compliance is achieved.

(f) Penalties on MBAs and IRP cooperatives. In situations involving a plan or report submitted by an MBA on behalf of its members where a single member does not comply, Western will impose a penalty upon the MBA on a pro rata basis in proportion to that member's share of the total MBA's power received from Western. In situations involving noncompliance by a participant of an IRP cooperative, Western will impose any applicable penalty directly upon that participant if it has a firm power contract with Western. If the IRP cooperative participant does not have a firm power contract with Western, then Western will impose a penalty upon the participant's MBA on a pro rata basis in proportion to that participant's share of the total MBA's power received from Western.

§ 905.21 What is the administrative appeal process?

(a) Filing written appeals with Western. If a customer disagrees with Western's decision on the acceptability of its IRP, small customer plan, minimum investment report or EE/RE report submittal, its compliance with an approved plan or report, or any other compliance issue, the customer may request reconsideration by filing a written appeal with the appropriate Regional Manager. Customers may submit appeals any time such disagreements occur and should be specific as to the nature of the issue, the reasons for the disagreement, and any other pertinent facts the customer believes should be brought to Western's attention. The Regional Manager will respond within 45 days of receiving the appeal. If resolution is not achieved at the Regional Office level, the customer may appeal to the Administrator, who will respond within 30 days of receiving the appeal.

(b) Alternative dispute resolution. Upon request, Western will agree to use mutually agreeable alternative dispute resolution procedures, to the extent allowed by law, to resolve issues or disputes relating to compliance with the regulations in this subpart.

(c) Penalties during appeal. Western will not impose a penalty while an appeal process is pending. However, if the appeal is unsuccessful for the customer, Western will impose the penalty retroactively from the date the penalty would have been assessed if an appeal had not been filed.

(d) Meeting other requirements during appeal process. A written appeal or use of alternative dispute resolution procedures does not suspend other reporting and compliance requirements.

§ 905.22 How does Western periodically evaluate customer actions?

(a) Periodic review of customer actions. Western will periodically evaluate customer actions to determine whether they are consistent with the approved IRP or minimum investment report. Small customer plans and EE/RE reports are not subject to this periodic review.

(b) Reviewing representative samples of plans and reports. Western will periodically review a representative sample of IRPs and minimum investment reports, and the customer's implementation of the applicable plan or report from each of Western's Regions. The samples will reflect the diverse characteristics and circumstances of the customers that purchase power from Western. These reviews will be in addition to, and separate and apart from, the review of initial and updated IRPs and minimum investment reports to ensure compliance with this subpart.

(c) Scope of periodic reviews. Periodic reviews may consist of any combination of review of the customer's annual IRP progress reports, minimum investment letters, telephone interviews, or on-site visits. Western will document these periodic reviews and may report on the results of the reviews in Western's annual report.

§ 905.23 What are the opportunities for using the Freedom of Information Act to request plan and report data?

IRPs, small customer plans, minimum investment reports and EE/RE reports and associated data submitted to Western are subject to the Freedom of Information Act (FOIA) and may be made available to the public upon request. Customers may request confidential treatment of all or part of a submitted document under applicable FOIA exemptions. Western will make its own determination whether particular information is exempt from public access. Western will not disclose to the public information it has determined to

be exempt, recognizing that certain competition-related customer

Board acted on requests submitted by the Boards of Directors of the twelve

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS

improved FCPC's, which would terminate the repetitive operational

Comments

Interested persons have been afforded

For the reasons discussed above, I certify that this action (1) is not a

be exempt, recognizing that certain competition-related customer information may be proprietary.

§ 905.24 Will Western conduct reviews of this program?

Yes, Western may periodically initiate a public process to review the regulations in this subpart to determine whether they should be revised to reflect changes in technology, needs, or other developments.

[FR Doc. 00–7745 Filed 3–29–00; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 201

[Regulation A]

Extensions of Credit by Federal Reserve Banks; Change in Discount Rate

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors has amended its Regulation A on Extensions of Credit by Federal Reserve Banks to reflect its approval of an increase in the basic discount rate at each Federal Reserve Bank. The Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks.

DATES: The amendments to part 201 (Regulation A) were effective March 21, 2000. The rate changes for adjustment credit were effective on the dates specified in 12 CFR 201.51.

FOR FURTHER INFORMATION CONTACT: Jennifer J. Johnson, Secretary of the Board, at (202) 452–3259; for users of Telecommunications Device for the Deaf (TDD), contact Janice Simms, at (202) 872–4984, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Pursuant to the authority of sections 10(b), 13, 14, 19, et al., of the Federal Reserve Act, the Board has amended its Regulation A (12 CFR part 201) to incorporate changes in discount rates on Federal Reserve Bank extensions of credit. The discount rates are the interest rates charged to depository institutions when they borrow from their district Reserve Banks.

The "basic discount rate" is a fixed rate charged by Reserve Banks for adjustment credit and, at the Reserve Banks' discretion, for extended credit. In increasing the basic discount rate from 5.25 percent to 5.5 percent, the Board acted on requests submitted by the Boards of Directors of the twelve Federal Reserve Banks. The new rates were effective on the dates specified below. The 25-basis-point increase in the discount rate was associated with a similar increase in the federal funds rate approved by the Federal Open Market Committee and announced at the same time.

The Board and the Reserve Banks remain concerned that increases in demand will continue to exceed the growth in potential supply, which could foster inflationary imbalances that would undermine the economy's record economic expansion. Against the background of their long-run goals of price stability and sustainable economic growth and of the information currently available, the Board and the Reserve Banks believe the risks are weighted mainly toward conditions that may generate heightened inflation pressures in the foreseeable future.

Regulatory Flexibility Act Certification

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Board certifies that the change in the basic discount rate will not have a significant adverse economic impact on a substantial number of small entities. The rule does not impose any additional requirements on entities affected by the regulation.

Administrative Procedure Act

The provisions of 5 U.S.C. 553(b) relating to notice and public participation were not followed in connection with the adoption of the amendment because the Board for good cause finds that delaying the change in the basic discount rate in order to allow notice and public comment on the change is impracticable, unnecessary, and contrary to the public interest in fostering price stability and sustainable economic growth.

The provisions of 5 U.S.C. 553(d) that prescribe 30 days prior notice of the effective date of a rule have not been followed because section 553(d) provides that such prior notice is not necessary whenever there is good cause for finding that such notice is contrary to the public interest. As previously stated, the Board determined that delaying the changes in the basic discount rate is contrary to the public interest.

List of Subjects in 12 CFR Part 201

Banks, banking, Credit, Federal Reserve System.

For the reasons set out in the preamble, 12 CFR part 201 is amended as set forth below:

PART 201—EXTENSIONS OF CREDIT BY FEDERAL RESERVE BANKS (REGULATION A)

1. The authority citation for 12 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 343 *et seq.*, 347a, 347b, 347c, 347d, 348 *et seq.*, 357, 374, 374a and 461.

2. Section 201.51 is revised to read as follows:

§ 201.51 Adjustment credit for depository institutions.

The rates for adjustment credit provided to depository institutions under § 201.3(a) are:

Federal Reserve Bank	Rate	Effective
Boston	5.5	March 21, 2000.
New York	5.5	March 21, 2000.
Philadelphia	5.5	March 21, 2000.
Cleveland	5.5	March 21, 2000.
Richmond	5.5	March 21, 2000.
Atlanta	5.5	March 21, 2000.
Chicago	5.5	March 21, 2000.
St. Louis	5.5	March 22, 2000.
Minneapolis	5.5	March 21, 2000.
Kansas City	5.5	March 21, 2000.
Dallas	5.5	March 23, 2000.
San Francisco	5.5	March 21, 2000.

By order of the Board of Governors of the Federal Reserve System, March 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7893 Filed 3–29–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–185–AD; Amendment 39–11648; AD 2000–06–08]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A330 and A340 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Airbus Model A330 and A340 series airplanes, that currently requires repetitive operational tests of the override mechanism of the trimmable horizontal stabilizer (THS) to determine if the system functions correctly; and corrective action, if necessary. This amendment requires replacement of existing flight control primary computers (FCPC) with improved FCPC's, which would terminate the repetitive operational tests. This amendment is prompted by the issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent uncommanded movement of the THS, which could result in reduced controllability of the airplane.

DATES: Effective May 4, 2000.

The incorporation by reference of Airbus Service Bulletin A330–27–3056, Revision 01, dated May 5, 1998; and Airbus Service Bulletin A340–27–4061, Revision 02, dated May 5, 1998; as listed in the regulations, is approved by the Director of the Federal Register as of May 4, 2000.

The incorporation by reference of Airbus Service Bulletin A330–27–3051, dated February 13, 1997; and Airbus Service Bulletin A340–27–4058, dated February 13, 1997; as listed in the regulations, was approved previously by the Director of the Federal Register as of January 28, 1998 (63 FR 1909, January 13, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–01–15, amendment 39–10277 (63 FR 1909, January 13, 1998), which is applicable to certain Airbus Model A330 and A340 series airplanes, was published in the **Federal Register** on December 14, 1999 (64 FR 69674). The action proposed to continue to require repetitive operational tests of the override mechanism of the trimmable horizontal stabilizer (THS), and to require replacement of existing FCPC's with improved FCPC's, which would terminate the repetitive operational tests.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

None of the airplanes affected by this action are on the U.S. Register. All airplanes included in the applicability of this rule currently are operated by non-U.S. operators under foreign registry; therefore, they are not directly affected by this AD action. However, the FAA considers that this rule is necessary to ensure that the unsafe condition is addressed in the event that any of these subject airplanes are imported and placed on the U.S. Register in the future.

Should an affected airplane be imported and placed on the U.S. Register in the future, it will require approximately 1 work hour to accomplish the operational test required by AD 98–01–15, and retained in this AD, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the operational test on U.S. operators is estimated to be $60 per airplane, per test cycle.

It will require approximately 2 work hours to accomplish the FCPC replacements (or 9 work hours if the FCPC on-board replacement modules have been replaced or reprogrammed), at an average labor rate of $60 per work hour. Required parts will be provided to the operator at no charge. Based on these figures, the cost impact of the FCPC replacements required by this AD on U.S. operators will be $120 or $540 per airplane.

Accomplishment of the FCPC replacements required by this AD will allow operators to terminate the repetitive operational tests required by AD 98–01–15, thereby offsetting the cost of the actions required by this AD.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10277 (63 FR 1909, January 13, 1998), and by adding a new airworthiness directive (AD), amendment 39–11648, to read as follows:

2000–06–08 Airbus Industrie: Amendment 39–11648. Docket 99–NM–185–AD. Supersedes AD 98–01–15, Amendment 39–10277.

Applicability: The following airplanes, certificated in any category, equipped with Aerospatiale Flight Control Primary Computer (FCPC), part number (P/N) LA2K01500190000:

1. Model A330–301, –321, –322, –341, and 342 series airplanes; excluding those on which Aerospatiale FCPC's, P/N LA2K01500210000 (Airbus Modification 45631), have been installed.

2. Model A340–211, –212, –213, –311, –312, and –313 series airplanes; excluding those on which Aerospatiale FCPC's, P/N LA2K01500210000 (Airbus Modification 45485), have been installed.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance

of the requirements of this AD is affected, the

Alternative Methods of Compliance

DEPARTMENT OF TRANSPORTATION

SUPPLEMENTARY INFORMATION: Transport

tail boom for a crack is required prior

submitted in response to this rule must

VOL 65 ISS 62 MR 30 2000 UMI

of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent uncommanded movement of the trimmable horizontal stabilizer (THS), which could result in reduced controllability of the airplane, accomplish the following:

Restatement of Requirements of AD 98–01–15

(a) Within 500 flight hours after January 28, 1998 (the effective date of AD 98–01–15, amendment 39–10277), perform an operational test of the THS override mechanism to determine if the override system functions correctly, in accordance with paragraph (a)(1) or (a)(2) of this AD, as applicable. Repeat the operational test thereafter at intervals not to exceed 500 flight hours.

(1) For Model A330 series airplanes: Perform the test in accordance with Airbus Service Bulletin A330–27–3051, dated February 13, 1997; and, prior to further flight, repair any discrepancy in accordance with this service bulletin.

(2) For Model A340 series airplanes: Perform the test in accordance with Airbus Service Bulletin A340–27–4058, dated February 13, 1997; and, prior to further flight, repair any discrepancy in accordance with this service bulletin.

New Requirements of This AD

(b) Within 15 months after the effective date of this AD, accomplish the actions specified by either paragraph (b)(1) or paragraph (b)(2) of this AD, in accordance with Airbus Service Bulletin A330–27–3056, Revision 01, dated May 5, 1998 (for Model A330 series airplanes), or Service Bulletin A340–27–4061, Revision 02, dated May 5, 1998 (for Model A340 series airplanes); as applicable.

(1) Replace three Flight Control Primary Computers (FCPC) (2CE1, 2CE2, and 2CE3), P/N LA2K01500190000, with new FCPCs, P/N LA2K01500210000; in accordance with the applicable service bulletin. Such replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

(2) Replace the on-board replaceable module (OBRM) of the three FCPCs (2CE1, 2CE2, and 2CE3), P/N LA2K01500190000, with OBRMs that have been modified by converting FCPC P/N's to LA2K01500210000 in accordance with the applicable service bulletin. Such replacement constitutes terminating action for the requirements of paragraph (a) of this AD.

Spares

(c) As of the effective date of this AD, no person shall install on any airplane an FCPC, P/N LA2K01500190000.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Operations Inspector or Principal Avionics Inspector or Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) The actions shall be done in accordance with Airbus Service Bulletin A330–27–3051, dated February 13, 1997; Airbus Service Bulletin A340–27–4058, dated February 13, 1997; Airbus Service Bulletin A330–27–3056, Revision 01, dated May 5, 1998; or Airbus Service Bulletin A340–27–4061, Revision 02, dated May 5, 1998; as applicable.

(1) The incorporation by reference of Airbus Service Bulletin A330–27–3056, Revision 01, dated May 5, 1998; and Airbus Service Bulletin A340–27–4061, Revision 02, dated May 5, 1998; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Airbus Service Bulletin A330–27–3051, dated February 13, 1997; and Airbus Service Bulletin A340–27–4058, dated February 13, 1997; was approved previously by the Director of the Federal Register as of January 28, 1998 (63 FR 1909, January 13, 1998).

(3) Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 3: The subject of this AD is addressed in French airworthiness directives 98–124–069(B) (for Model A330 series airplanes) and 98–126–085(B) (for Model A340 series airplanes), both dated March 11, 1998.

(g) This amendment becomes effective on May 4, 2000.

Issued in Renton, Washington, on March 20, 2000.

Donald L. Riggin,

Acting Monoger, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7334 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–SW–75–AD; Amendment 39–11651; AD 2000–06–10]

RIN 2120–AA64

Airworthiness Directives; Bell Helicopter Textron Canada Model 407 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) applicable to Bell Helicopter Textron Canada (BHTC) Model 407 helicopters. This action requires preflight checking and repetitively inspecting the tail boom for a crack and replacing the tail boom if a crack is found. This amendment is prompted by four reports of cracks on the tail boom in the area of the horizontal stabilizer. The actions specified in this AD are intended to prevent separation of the tail boom and subsequent loss of control of the helicopter.

DATES: Effective April 14, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 14, 2000.

Comments for inclusion in the Rules Docket must be received on or before May 30, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 99–SW–75–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137.

The service information referenced in this AD may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sharon Miles, Aerospace Engineer, FAA, Rotorcraft Directorate, Regulations Group, 2601 Meacham Blvd., Fort Worth, Texas 76137, telephone (817) 222–5122, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: Transport Canada, the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on the BHTC Model 407 helicopters. Transport Canada advises that there have been several reports of cracks to the tail boom skin in the area of the horizontal stabilizer.

BHTC has issued Alert Service Bulletin 407–99–26, dated April 13, 1999 (ASB), which specifies a preflight check of the left-side of the tail boom before the next flight and before the first flight of every day thereafter. The ASB also specifies within the next 25 hours time-in-service (TIS) and thereafter every 50 hours inspecting any tail boom that has accumulated 600 or more hours TIS for a crack and replacing any cracked tail boom before further flight. Transport Canada classified this ASB as mandatory and issued AD CF–99–17, dated June 14, 1999, to ensure the continued airworthiness of these helicopters in Canada.

This helicopter model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other BHTC Model 407 helicopters of the same type design registered in the United States, this AD is being issued to prevent separation of the tail boom and subsequent loss of control of the helicopter. This AD requires a preflight check of the tail boom before further flight and thereafter before the first flight of each day. This AD also requires within 25 hours TIS and thereafter at intervals not to exceed 50 hours TIS, inspecting any tail boom that has accumulated 600 or more hours TIS for a crack with a 10X or higher magnifying glass and replacing any cracked tail boom with an airworthy tail boom before further flight. The actions are required to be accomplished in accordance with the ASB described previously. The short compliance time involved is required because the previously described critical unsafe condition can adversely affect the controllability and structural integrity of the helicopter. Therefore, checking the tail boom for a crack is required prior to further flight and this AD must be issued immediately.

An owner/operator (pilot) may perform the visual check required by this AD but must enter compliance with this AD in the aircraft records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v)). This AD allows a pilot to perform this check because it involves only a visual check for a crack in the tail boom and can be performed equally well by a pilot or a mechanic.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

The FAA estimates that 200 helicopters will be affected by this AD, that it will take approximately 4 work hours to accomplish the inspections, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $48,000 assuming no tail boom will be replaced.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 99–SW–75–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

AD 2000–06–10 Bell Helicopter Textron Canada: Amendment 39–11651. Docket No. 99–SW–75–AD.

Applicability: Model 407 helicopters, serial numbers 53000 through 53003, 53005 and higher, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent separation of the tail boom and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight and thereafter before the first flight of each day, check the left side of the tail boom for a crack in the areas shown in Figure 1: If a crack is found, replace the tail boom with an airworthy tail boom before further flight.

BILLING CODE 4910–13–P

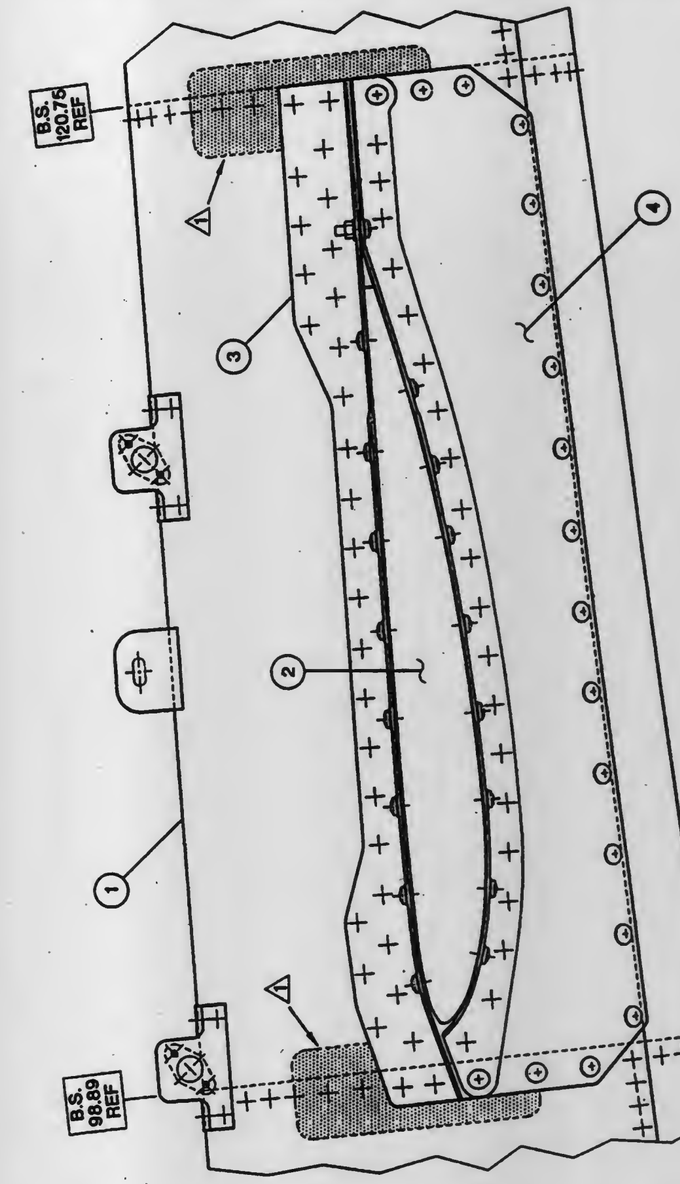


Figure 1. Preflight Check of the Tailboom

BILLING CODE 4910–13–C

(b) An owner/operator (pilot) holding at

DEPARTMENT OF TRANSPORTATION DEPARTMENT OF TRANSPORTATION

(b) An owner/operator (pilot) holding at least a private pilot certificate may perform the visual check required by paragraph (a) but must enter compliance with paragraph (a) into the aircraft records in accordance with 14 CFR 43.11 and 91.417(a)(2)(v)).

(c) Within 25 hours time-in-service (TIS) and thereafter at intervals not to exceed 50 hours TIS, visually inspect any tail boom with 600 or more hours TIS for a crack using a 10X or higher magnifying glass, in accordance with the Accomplishment Instructions, Part II, of Bell Helicopter Textron Canada Alert Service Bulletin 407–99–26, dated April 13, 1999, except that you are not required to contact Bell Helicopter Product Support Engineering. If a crack is found, replace the tail boom with an airworthy tail boom before further flight.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Regulations Group, Rotorcraft Directorate, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Regulations Group.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Regulations Group.

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) The inspection of the tail boom shall be done in accordance with the Accomplishment Instructions, Part II, of Bell Helicopter Textron Canada Alert Service Bulletin 407–99–26, dated April 13, 1999 This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bell Helicopter Textron Canada, 12,800 Rue de l'Avenir, Mirabel, Quebec JON1LO, telephone (800) 463–3036, fax (514) 433–0272. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, Room 663, Fort Worth, Texas, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on April 14, 2000.

Note 3: The subject of this AD is addressed in Transport Canada (Canada) AD CF–99–17, dated June 14, 1999.

Issued in Fort Worth, Texas, on March 21, 2000.

Henry A. Armstrong,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 00–7552 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ACE–49]

Amendment to Class E Airspace; Cameron, MO

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule which revises Class E airspace at Cameron, MO.

DATES: The direct final rule published at 64 FR 72925 is effective on 0901 UTC, April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Kathy Randolph, Air Traffic Division, Airspace Branch, ACE–520C, DOT Regional Headquarters Building, Federal Aviation Administration, 901 Locust, Kansas City, MO 64106; telephone: (816) 329–2525.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on December 29, 1999 (64 FR 72925). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on April 20, 2000. No adverse comments were received, and thus this notice confirms that this direct final rule will become effective on that date.

Issued in Kansas City, MO on March 24, 2000.

Herman J. Lyons, Jr.,

Manager, Air Traffic Division, Central Region.

[FR Doc. 00–7856 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 255

[Docket No. OST–2000–6984]

RIN 2105–AC75

Third Extension of Computer Reservations Systems (CRS) Regulations

AGENCY: Office of the Secretary, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Department is revising its rules governing airline computer reservations systems (CRSs), 14 CFR part 255, to change the rules' expiration date for a third time. This revision changes the date from March 31, 2000, to March 31, 2001, to keep the rules from terminating on March 31, 2000. The rules will thus remain in effect while the Department continues its reexamination of the need for CRS regulations. The Department finds that the current rules should be maintained because they are necessary for promoting airline competition and helping to ensure that consumers and their travel agents can obtain complete and accurate information on airline services. The Department previously extended the rules from December 31, 1997, to March 31, 1999, and from March 31, 1999, to March 31, 2000.

DATES: This rule is effective on March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Ray, Office of the General Counsel, Department of Transportation, 400 Seventh St. SW., Washington, DC 20590, (202) 366–4731.

SUPPLEMENTARY INFORMATION: To ensure that we periodically review the need for our CRS rules and their effectiveness, section 255.12 of the rules establishes a sunset date. The original sunset date was December 31, 1997. We have changed the rules' expiration date twice before, once to March 31, 1999, 62 FR 66272 (December 18, 1997), and then to March 31, 2000, 64 FR 15127 (March 30, 1999).

We are now changing the sunset date to March 31, 2001, because we have been unable to complete our reexamination of the current rules by March 31, 2000. Given our view that the current rules should be maintained pending our reexamination of the need for rules, we proposed to change the rules' expiration date to March 31, 2001, and gave interested persons an opportunity to comment on that proposal. 65 FR 11009 (March 1, 2000).

We received comments from Delta Air Lines, Amadeus Global Travel Distribution, Worldspan, and the American Society of Travel Agents, all of which supported the proposal.

Background

We adopted our CRS rules because they are necessary to protect airline competition and to ensure that consumers can obtain accurate and complete information on airline services. 65 FR at 11010–11011. Because almost all airlines found it essential to participate in each CRS, market forces did not discipline the price and quality of service offered airlines by the CRSs. Travel agents relied on CRSs to provide airline information and bookings for their customers, and almost all airlines received a large majority of their bookings from travel agencies. Travel agencies typically used only one system (or predominantly used one system even if they had access to two or more systems). Each airline therefore had to participate in an agency's system if it wished to have its services readily saleable by that agency. Each system, moreover, was controlled by airlines or airline affiliates, who could use them to unreasonably prejudice the competitive position of other airlines or to provide misleading or inaccurate information to travel agents and their customers. For these reasons, we adopted rules regulating CRS operations in the United States, 57 FR 43780 (September 22, 1992). 65 FR at 11009–11010.

Our rules included a sunset date, December 31, 1997, to ensure that we would reexamine whether the rules remained necessary and whether they were effective. 57 FR at 43829–43830 (September 22, 1992). We have begun a reexamination of our current rules by publishing an advance notice of proposed rulemaking that invited interested persons to comment on whether we should readopt the rules and, if so, with what changes. 62 FR 47606 (September 10, 1997). Almost all of the parties responding to our advance notice of proposed rulemaking have urged us to maintain CRS rules, and many of them argued that various changes should be made to the rules to strengthen them. 65 FR at 11010.

Our Proposed Extension of the CRS Rules

Because we have been unable to complete our reexamination of the rules, we have twice changed the sunset date, most recently to March 31, 2000. 64 FR 15127 (March 30, 1999). We proposed again to change the expiration date for the rules to March 31, 2001, so that they would remain in effect pending our reexamination of our rules, since we could not complete that reexamination by March 31, 2000. 65 FR 11009 (March 1, 2000). The proposed temporary extension of the current rules would maintain the status quo until we determine which rules, if any, should be adopted. As we explained, maintaining the rules in effect appeared to be necessary to protect airline competition and consumers against unreasonable practices in view of our earlier findings on the market power of the systems and each airline owner's potential interest in using its affiliated CRS to prejudice the competitive position of other airlines. Furthermore, allowing the current rules to expire could be disruptive, since the systems, airlines, and travel agencies have been conducting their operations in the expectation that each system will comply with the rules. 65 FR at 11010–11011.

Finally, maintaining the rules in effect appeared necessary to comply with the United States' obligations under various treaties and bilateral air services agreements to assure foreign airlines a fair and equal opportunity to compete. 65 FR at 11011.

As we stated, our inability to complete the rules' reexamination is unfortunate due to the importance of adapting our rules to current industry conditions. This inability has stemmed from the need to address other airline competition issues that appeared to be more urgent. In addition, recent developments in airline distribution practices, most notably the growing importance of the Internet, are requiring additional study by the staff. As we noted, moreover, our existing rules appear to prevent the practices that present serious threats to airline competition and to the ability of consumers to obtain unbiased and accurate information through the systems. We have been aware, however, that several parties are alleging that the compelling need for certain additional CRS regulations requires us to act promptly on those issues without waiting for the completion of the overall reexamination of the rules. 65 FR 11010.

Because we needed to make the proposed amendment effective by March 31, 2000, we shortened the comment period to ten days. 65 FR at 11009.

Comments

We received comments from four parties: Delta Air Lines, Worldspan, Amadeus Global Distribution System ("Amadeus"), and the American Society of Travel Agents ("ASTA"). The commenters agree that the rules should be extended as we proposed. Amadeus, however, urges us to act on its request that we prohibit the tying of a travel agency's access to an airline's corporate discount fares with the agency's use of the system affiliated with that airline (Docket OST–99–5888). ASTA contends that we should act quickly on its proposal that systems be prohibited from selling marketing data derived from travel agent bookings to airlines, which would require the amendment of section 255.10. Worldspan, on the other hand, asserts that we should reexamine the rules in one comprehensive proceeding rather than address selected issues in separate proceedings.

Final Rule

We are changing the rules' sunset date to March 31, 2001, as we proposed. Delta, Amadeus, Worldspan, and ASTA support our proposal, and no one has objected to it. We based our proposal on the findings made by us in earlier CRS rulemakings and the position of almost all parties in the underlying rulemaking Docket OST–97–2881 that CRS rules are still necessary. 65 FR at 11011. In our overall reexamination of the rules we will, of course, consider whether recent developments, such as the divestiture by several airlines of their CRS ownership interests, indicate that there may be little need for some or all of the CRS rules.

ASTA and Amadeus each urge us to act quickly on the specific rule proposals of interest to it. We will consider their requests as part of our consideration of procedures for completing the reexamination of the rules and for updating the rules to reflect current industry conditions. We also plan to announce soon procedures for moving forward with the overall reexamination of the rules.

Effective Date

We have determined for good cause to make this amendment effective on March 31, 2000, rather than thirty days after publication as required by the Administrative Procedure Act, 5 U.S.C. 553(d), except for good cause shown. To maintain the current rules in force, we must make this amendment effective by March 31, 2000. Since the amendment preserves the status quo, it will not require the systems, airlines, and travel agencies to change their operating methods. As a result, making the amendment effective less than thirty days after publication will not burden anyone.

Regulatory Process Matters

Regulatory Assessment

This rule is a nonsignificant regulatory action under section 3(f) of Executive Order 12866 and has not been reviewed by the Office of Management and Budget under that order. The proposal is also not significant under the regulatory policies and procedures of the Department of Transportation, 44 FR 11034 (February 26, 1979).

In our notice of proposed rulemaking, we tentatively determined that maintaining the current rules should impose no significant costs on the CRSs. The systems' continuing compliance with the rules on displays and functionality should not impose a substantial burden, since they have already taken the steps necessary to comply with those requirements. Keeping the rules in effect would benefit participating airlines, since they would otherwise be subjected to unreasonable terms for participation, and benefit consumers, who might otherwise be given incomplete or inaccurate information on airline services. The rules also contain provisions that are designed to prevent abuses in the systems' competition with each other for travel agency subscribers. 65 FR at 11011.

Our last comprehensive CRS rulemaking included an economic analysis, and we stated our belief that that analysis remains applicable to our extension of the rules' expiration date. We concluded that no new economic analysis appeared to be necessary, but we stated that we would consider comments from any party on that analysis before we again revised the rules' sunset date. 65 FR at 11011.

No one filed comments on the economic analysis, so we are basing this rule on the analysis used in our last comprehensive CRS rulemaking. We will prepare a new economic analysis as part of our review of the existing rules, if we determine that rules remain necessary.

This rule does not impose unfunded mandates or requirements that will have any impact on the quality of the human environment.

Small Business Impact

Congress enacted the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The act requires agencies to review proposed regulations that may have a significant economic impact on a substantial number of small entities. For purposes of this rule, small entities include smaller U.S. and foreign airlines and smaller travel agencies. Our notice of proposed rulemaking set forth the reasons for our proposed extension of the rules' expiration date and the objectives and legal basis for that proposed rule. 65 FR at 11011.

We also noted that keeping the current rules in force would not change the existing regulation of small businesses. We referred to the final rule in our last comprehensive CRS rulemaking, which contained an analysis underlying our determination that the rules would not have a significant economic impact on a substantial number of small entities. In proposing to revise the sunset date to March 31, 2001, we reasoned that that analysis appeared to remain valid for that proposed extension. We therefore adopted that analysis as our tentative regulatory flexibility statement but stated that we would consider any comments filed on that analysis in connection with the proposal. 65 FR at 11011.

We tentatively concluded that maintaining our existing CRS rules would primarily affect two types of small entities, smaller airlines and travel agencies. The rules would also affect all small entities that purchase airline tickets, since airline fares may be somewhat lower than they would otherwise be, although the amount may not be large, if our CRS rules allow airlines to operate more efficiently than they otherwise would. 65 FR at 11011.

Keeping the rules in effect would benefit smaller airlines that have no ownership interest in a CRS, since the rules prohibit certain potential system practices that could injure the smaller airlines' ability to operate profitably and compete successfully. The rules, for example, bar display bias and discriminatory booking fees. Without the rules, the systems' airline affiliates could use them to prejudice the competitive position of other airlines. 65 FR at 11011–11012.

The rules additionally affect the operations of smaller travel agencies, primarily by prohibiting certain CRS practices that could unreasonably restrict the travel agencies' ability to use more than one system or to switch systems. The rules prohibit CRS contracts that have a term longer than five years, give travel agencies the right to use third-party hardware and software, and prohibit certain types of contract clauses, such as minimum use and parity clauses, that restrict an agency's ability to use multiple systems. By prohibiting display bias based on carrier identity, the rules also enable travel agencies to obtain more useful displays of airline services. 65 FR at 11012.

We invited interested persons to address our tentative conclusions under the Regulatory Flexibility Act in their comments submitted in response to this notice of proposed rulemaking. 65 FR at 11012.

No one filed comments on our Regulatory Flexibility Act analysis. We will adopt the analysis set forth in the notice of proposed rulemaking.

Our proposed rule contained no direct reporting, record-keeping, or other compliance requirements that would affect small entities. There are no other federal rules that duplicate, overlap, or conflict with our proposed rules.

I certify under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this regulation will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This proposal contains no collection-of-information requirements subject to the Paperwork Reduction Act, Pub.L. No. 96–511, 44 U.S.C. Chapter 35.

Federalism Implications

We stated that we had reviewed this rule in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999, and determined that it will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. The rule will not limit the policymaking discretion of the States. Nothing in it would directly preempt any State law or regulation. We are adopting this amendment primarily under the authority granted us by 49 U.S.C. 41712 to prevent unfair methods of competition and unfair and deceptive practices in the sale of air transportation. In our notice of proposed rulemaking, we stated our belief that the policy set forth in the proposed rule is consistent with the principles, criteria, and requirements of the Federalism Executive Order and the Department's governing statute. We welcomed comments on our conclusions.

No one submitted comments on our federalism assessment. Therefore, we will make that assessment final. Because the rule will have no significant effect on State or local governments, as discussed above, no consultations with State and local governments on this rule were necessary.

List of Subjects in 14 CFR Part 255

Air carriers, Antitrust, Consumer protection, Reporting and recordkeeping requirements, Travel agents.

Accordingly, the Department of Transportation amends 14 CFR part 255, Carrier-owned Computer Reservations Systems, as follows:

PART 255—[AMENDED]

1. The authority citation for Part 255 continues to read as follows:

Authority: 49 U.S.C. 40101, 40102, 40105, 40113, 41712.

2. Section 255.12 is revised to read as follows:

§ 255.12. Termination.

The rules in this part terminate on March 31, 2001.

Issued in Washington, DC on March 27, 2000, under authority delegated by 49 CFR 1.56a (h) 2.

A. Bradley Mims,

Deputy Assistant Secretary for Aviation and International Affairs.

[FR Doc. 00–7861 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–64–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 211

[Release No. SAB 101A]

Staff Accounting Bulletin No. 101A

AGENCY: Securities and Exchange Commission.

ACTION: Publication of Staff Accounting Bulletin.

SUMMARY: Staff Accounting Bulletin No. 101 ("SAB 101") was released on December 3, 1999 (64 FR 68936 December 9, 1999) and provides the staff's views in applying generally accepted accounting principles to selected revenue recognition issues. Since the issuance of SAB 101, the staff received requests from a number of groups asking for additional time to study the guidance. Many registrants have calendar year-ends and may need more time to perform a detailed review of the SAB since its issuance on December 3, 1999. This staff accounting bulletin delays the implementation date of SAB 101 for registrants with fiscal years that begin between December 16, 1999 and March 15, 2000.

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Rodgers, Scott Taub, or Eric Jacobsen, Professional Accounting Fellows, Office of the Chief Accountant (202/942–4400) or Robert Bayless, Division of Corporation Finance (202/942–2960), Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549; electronic addresses: RodgerR@sec.gov; TaubS@sec.gov; JacobsenE@sec.gov; or BaylessR@sec.gov.

SUPPLEMENTARY INFORMATION: The statements in the staff accounting bulletins are not rules or interpretations of the Commission, nor are they published as bearing the Commission's official approval. They represent interpretations and practices followed by the Division of Corporation Finance and the Office of the Chief Accountant in administering the disclosure requirements of the Federal securities laws.

Dated: March 24, 2000.

Margaret H. McFarland,

Deputy Secretary.

PART 211—[AMENDED]

Accordingly, Part 211 of Title 17 of the Code of Federal Regulations is amended by adding Staff Accounting Bulletin No. 101A to the table found in Subpart B.

Staff Accounting Bulletin No. 101A

The staff hereby amends Question 2 of Section B of Topic 13 of the Staff Accounting Bulletin Series.

Topic 13: Revenue Recognition

* * * * *

B. Disclosures.

Question 1.

* * * * *

Question 2.

Question: Will the staff expect retroactive changes by registrants to comply with the accounting described in this bulletin?

Interpretive Response: All registrants are expected to apply the accounting and disclosures described in this bulletin. The staff, however, will not object if registrants that have not applied this accounting do not restate prior financial statements provided they report a change in accounting principle in accordance with APB Opinion No. 20, *Accounting Changes*, no later than the first fiscal quarter of the fiscal year beginning after December 15, 1999, except that registrants with fiscal years that begin between December 16, 1999 and March 15, 2000 may report a change in accounting principle no later than their second fiscal quarter of the fiscal year beginning after December 15, 1999 in accordance with FASB Statement No. 3, *Reporting Accounting Changes in Interim Financial Statements*. In periods subsequent to transition, registrants should disclose the amount of revenue (if material to income before income taxes) recognized in those periods that was included in the cumulative effect adjustment. If a registrant files financial statements with the Commission before applying the guidance in this bulletin, disclosures similar to those described in Staff Accounting Bulletin Topic 11–M, *Disclosure of the Impact that Recently Issued Accounting Standards Will Have on the Financial Statements of a Registrant When Adopted in a Future Period*, should be provided. With regard to question 10 of Topic 13–A and Topic 8–A regarding income statement presentation, the staff would normally expect retroactive application to all periods presented unless the effect of applying the guidance herein is immaterial.

However, if registrants have not previously complied with generally accepted accounting principles, for example, by recording revenue for products prior to delivery that did not comply with the applicable bill-and-hold guidance, those registrants should apply the guidance in APB Opinion No. 20 for the correction of an error.[1] In addition, registrants should be aware that the Commission may take enforcement action where a registrant in prior financial statements has violated the antifraud or disclosure provisions of the securities laws with respect to revenue recognition.

[FR Doc. 00–7839 Filed 3–29–00; 8:45 am]

BILLING CODE 8010–01–P

SOCIAL SECURITY ADMINISTRATION

20 CFR Parts 401, 402, 404, 410, 416, and 422

[Regs. Nos. 1, 2, 4, 10, 16, and 22]

RIN 0960–AF04

Miscellaneous Amendments

AGENCY: Social Security Administration.

ACTION: Final rule.

SUMMARY: We are correcting several invalid references and other minor

[1] APB Opinion No. 20, ¶ 13 and ¶ 36–37 describe and provide the accounting and disclosure requirements applicable to the correction of an error in previously issued financial statements. Because the term "error" as used in APB Opinion No. 20 includes "oversight or misuse of facts that existed at the time that the financial statements were prepared," that term includes both unintentional errors as well as intentional fraudulent financial reporting and misappropriation of assets as described in Statement on Auditing Standards No. 82, *Consideration of Fraud in a Financial Statement Audit*.

significant economic impact on a substantial number of small entities. For purposes of this rule, small entities

By prohibiting display bias based on carrier identity, the rules also enable travel agencies to obtain more useful

discussed above, no consultations with State and local governments on this rule were necessary.

Richard Rodgers, Scott Taub, or Eric Jacobsen, Professional Accounting Fellows, Office of the Chief Accountant

in accordance with FASB Statement No. 3, *Reporting Accounting Changes in Interim Financial Statements*. In periods

described in Statement on Auditing Standards No. 82, *Consideration of Fraud in a Financial Statement Audit*.

problems in parts 401, 402, 404, 410, 416, and 422, chapter III, revised as of April 1, 1999.

DATES: Effective March 30, 2000.

FOR FURTHER INFORMATION CONTACT: Daniel T. Bridgewater, Social Insurance Specialist, Office of Process and Innovation Management, L2109 West Low Rise Building, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235–6401; (410) 965–3298 or TTY (410) 966–5609 for information about this rule. For information on eligibility or claiming benefits, call our national toll-free numbers, 1–800–772–1213 or TTY 1–800–325–0778.

SUPPLEMENTARY INFORMATION: We are correcting several references and other minor problems found in the following parts under 20 CFR chapter III, revised as of April 1, 1999.

1. Part 401—*Privacy and Disclosure of Official Records and Information*. We are amending § 401.20(b)((1) to show correct cross-references.

2. Part 402—*Availability of Information and Records to the Public*. We are amending § 402.35(b)(2) to show correct cross-references.

3. Part 404—*Federal Old-Age, Survivors and Disability Insurance (1950–)*. We are correcting a typographical error in § 404.337(a), and we are amending §§ 404.401, 404.403(d)(1), 404.450(d), 404.456(c), 404.457(a)(3), 404.1275, 404.1408, and 404.1410(a) to show correct cross-references. Also, we are revising § 404.1201 to restore (a)(1) and (a)(2) which had been inadvertently removed. In addition, we are removing duplicate sentences in § 404.1597a(b)(3)(ii) and (h)(2)(ii).

4. Part 410—*Federal Coal Mine Health and Safety Act of 1969, Title IV—Black Lung Benefits (1969–)*. We are correcting §§ 410.240(g) and 410.601(a) and (b) to show correct cross-references. We are also correcting the authority citation for Subpart F to show the correct punctuation.

5. Part 416—*Supplemental Security Income for the Aged, Blind, and Disabled*. We are correcting cross-references in: §§ 416.428, 416.702("*Essential person*"); 416.929(d)(4); 416.993(a); 416.994a(g)(4) and (g)(6); 416.1104; 416.1202(a); 416.1323(a); 416.1336(b); 416.1442(f)(1); 416.1801(c) ("*Spouse*"); 416.2045(a); and 416.2096(c)(5).

6. Part 422—*Organization and Procedures*. We are correcting §§ 422.125, 422.135, and 422.135 to show correct cross-references.

Regulatory Procedures

Pursuant to section 702(a)(5) of the Act (42 U.S.C. 902(a)(5)), SSA follows the Administrative Procedure Act (APA) rulemaking procedures specified in 5 U.S.C. 553 in the development of its regulations. The APA provides exceptions to its prior notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for dispensing with the notice and public comment procedures in this case. Good cause exists because these are minor technical changes which make no substantive change in the regulations and have no effect on the public. Therefore, opportunity for prior comment is unnecessary, and we are issuing these changes to our regulations as a final rule. In addition, SSA is not providing a 30-day delay in the effective date of this final rule under 5 U.S.C. 553(d). This is not a substantive rule, and there is no change in policy. Accordingly, the requirements of 5 U.S.C. 553(d) are inapplicable.

Executive Order 12866

SSA has consulted with the Office of Management and Budget (OMB) and determined that this final rule does not meet the criteria for a significant regulatory action under Executive Order 12866. Thus, it was not subject to OMB review.

Regulatory Flexibility Act

SSA certifies that this final rule will not have a significant economic impact on a substantial number of small entities since it makes no changes in policy. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, as amended, is not required.

Paperwork Reduction Act

This final rule imposes no additional reporting or recordkeeping requirements subject to OMB clearance.

(Catalog of Federal Domestic Assistance Program Nos. 96.001 Social Security-Disability Insurance; 96.002 Social Security—Retirement Insurance; 96.003 Social Security—Special Benefits for Persons Aged 72 and Over; 96.004 Social Security—Survivors Insurance; 96.005 Special Benefits for Disabled Coal Miners; 96.006 Supplemental Security Income; 96.007 Social Security—Research and Demonstration)

List of Subjects

20 CFR Part 401

Administrative practice and procedure, Disclosure, Privacy, Social Security, Supplemental Security Income (SSI).

20 CFR Part 402

Administrative practice and procedure, Archives and records, Freedom of information.

20 CFR Part 404

Administrative practice and procedure, Blind, Old-Age, Survivors and Disability benefits, Old-Age, Survivors and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

20 CFR Part 410

Administrative practice and procedure, Black lung benefits, Claims, Investigations, and Workers' compensation.

20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Supplemental Security Income (SSI), Reporting and recordkeeping requirements.

20 CFR Part 422

Administrative practice and procedure, Freedom of information, Organization and functions (Government agencies), Social Security.

Dated: March 20, 2000.

Kenneth S. Apfel,

Commissioner of Social Security.

PART 401—PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION

1. The authority citation for part 401 continues to read as follows:

Authority: Secs. 205, 702(a)(5), 1106, and 1141 of the Social Security Act (42 U.S.C. 405, 902(a)(5), 1306, and 1320b–11); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 26 U.S.C. 6103; 30 U.S.C. 923.

2. Section 401.20 is amended by revising the first sentence of paragraph (b)(1) to read as follows:

§ 401.20 Scope.

* * * * *

(b) *Disclosure*—(1) *Program records.* Regulations that apply to the disclosure of information about an individual contained in SSA's program records are set out in §§ 401.100 through 401.200 of this part.

* * * * *

PART 402—AVAILABILITY OF INFORMATION AND RECORDS TO THE PUBLIC

1. The authority citation for 20 CFR part 402 is revised to read as follows:

Authority: Secs. 205, 702(a)(5), and 1106 of the Social Security Act; (42 U.S.C. 405, 902(a)(5), and 1306); 5 U.S.C. 552 and 552a; 8 U.S.C. 1360; 18 U.S.C. 1905; 26 U.S.C. 6103; 30 U.S.C. 923b; 31 U.S.C. 9701; E.O. 12600, 52 FR 23781, 3 CFR, 1987 Comp., p. 235.

2. Section 402.35 is amended by revising the second sentence of paragraph (b)(2) to read as follows:

§ 402.35 Publication.

* * * * *

(b) * * *

(2) * * * They are binding on all components of the Social Security Administration, except with respect to claims subject to the relitigation procedures established in 20 CFR 404.984, 410.610, and 416.1484.

* * * * *

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

Subpart D—[Amended]

1. The authority citation for subpart D of part 404 continues to read as follows:

Authority: Secs. 202, 203(a) and (b), 205(a), 216, 223, 225, 228(a)–(e), and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403(a) and (b), 405(a), 416, 423, 425, 428(a)–(e), and 902(a)(5)).

2. Section 404.337 is amended by revising paragraph (a) to read as follows:

§ 404.337 When widow's and widower's benefits begin and end.

(a) You are entitled to widow's or widower's benefits under § 404.335 or § 404.336 beginning with the first month covered by your application in which you meet all the other requirements for entitlement to such benefits.

* * * * *

Subpart E—[Amended]

3. The authority citation for subpart E of part 404 continues to read as follows:

Authority: Secs. 202, 203, 204(a) and (e), 205(a) and (c), 222(b), 223(e), 224, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 403, 404(a) and (e), 405(a) and (c), 422(b), 423(e), 424a, 425, and 902(a)(5)).

4. Section 404.401 is amended by revising the first sentence to read as follows:

§ 404.401 Deduction, reduction, and nonpayment of monthly benefits or lump-sum death payments.

Under certain conditions, the amount of a monthly insurance benefit (see §§ 404.380 through 404.384 of this part for provisions concerning special payments at age 72) or the lump-sum death payment as calculated under the pertinent provisions of sections 202 and 203 of the Act (including reduction for age under section 202(q) of a monthly benefit) must be increased or decreased to determine the amount to be actually paid to a beneficiary.

* * * * *

5. Section 404.403 is amended by revising the first sentence of paragraph (d–1)(1) to read as follows:

§ 404.403 Reduction where total monthly benefits exceed maximum family benefits payable.

* * * * *

(d–1) *Entitled to disability insurance benefits after June 1980.* * * *

(1) We take 85 percent of your average indexed monthly earnings and compare that figure with your primary insurance amount (see § 404.212 of this part).

* * * * *

6. Section 404.450 is amended by revising the second sentence in paragraph (d) to read as follows:

§ 404.450 Required reports of work outside the United States or failure to have care of a child.

* * * * *

(d) * * * (See § 404.614 of this part for procedures concerning place of filing and date of receipt of such a report.)

* * * * *

7. Section 404.456 is amended by revising the last sentence of paragraph (c) to read as follows:

§ 404.456 Current suspension of benefits because an individual works or engages in self-employment.

* * * * *

(c) * * * Subject to the limitations of this paragraph, a determination about deductions may be reopened under the circumstances described in § 404.907.

8. Section 404.457 is amended by revising paragraph (a)(3) to read as follows:

§ 404.457 Deductions where taxes neither deducted from wages of certain maritime employees nor paid.

(a) * * *

(3) The services, under the provisions of § 404.1041 of this part, constituted employment for the purposes of title II of the Social Security Act; and

* * * * *

Subpart M—[Amended]

9. The authority citation for subpart M of part 404 continues to read as follows:

Authority: Secs. 205, 210, 218, and 702(a)(5) of the Social Security Act (42 U.S.C. 405, 410, 418, and 902(a)(5)); sec. 12110, Pub. L. 99–272, 100 Stat. 287 (42 U.S.C. 418 note); sec. 9002, Pub. L. 99–509, 100 Stat. 1970.

10. Section 404.1201 is amended by revising paragraph (a) to read as follows:

§ 404.1201 Scope of this subpart regarding coverage and wage reports and adjustments.

* * * * *

(a) Coverage under section 218 of the Act—

(1) How a State enters into and modifies an agreement; and

(2) What groups of employees a State can cover by agreement.

* * * * *

11. Section 404.1275 is amended by revising the second sentence to read as follows:

§ 404.1275 Adjustment of employee contributions—for wages paid prior to 1987.

* * * The State shall show any correction of an employee's contribution on statements it furnishes the employee under § 404.1225 of this part.

* * * * *

Subpart O—[Amended]

12. The authority citation for subpart O of part 404 continues to read as follows:

Authority: Secs. 202(l), 205(a), (c)(5)(D), (i), and (o), 210 (a)(9) and (l)(4), 211(c)(3), and 702(a)(5) of the Social Security Act (42 U.S.C. 402(l), 405(a), (c)(5)(D), (i), and (o), 410 (a)(9) and (l)(4), 411(c)(3), and 902(a)(5)).

13. Section 404.1408 is revised to read as follows:

§ 404.1408 Compensation to be treated as wages.

(a) *General.* Where pursuant to the preceding provisions of this subpart, services rendered by an individual in the railroad industry are considered to be employment as defined in section 210 of the Social Security Act (see § 404.1027 of this part). Thus, any compensation (as defined in section 1(h) of the Railroad Retirement Act of 1974 or prior to the 1974 Act, section 1(h) of the Railroad Retirement Act of 1937) received by such individual for such services shall constitute wages, provided that the provisions of § 404.1406 do not operate to bar the payments of benefits under title II of the Social Security Act.

(b) *Military Service Exception.* An exception to paragraph (a) of this section applies to any compensation

attributable as having been paid during any month on account of military service creditable under section 1 of the Railroad Retirement Act of 1974 (or section 4 of the Railroad Retirement Act of 1937 prior to the 1974 Act). Such compensation shall not constitute wages for purposes of title II of the Social Security Act if, based on such services, wages are deemed to have been paid to such individual during such month under the provisions described in §§ 404.1350 through 404.1352 of this part.

14. Section 404.1410 is amended by revising paragraph (a) to read as follows:

§ 404.1410 Presumption on basis of certified compensation record.

(a) *Years prior to 1975.* Where the Railroad Retirement Board certifies to SSA a report of record of compensation, such compensation is treated as wages under § 404.1408. For periods of service which do not identify the months or quarters in which such compensation was paid, the sum of the compensation quarters of coverage (see § 404.1412) will be presumed, in the absence of evidence to the contrary, to represent an equivalent number of quarters of coverage (see § 404.101). No more than four quarters of coverage shall be credited to an individual in a single calendar year.

* * * * *

Subpart P—[Amended]

15. The authority citation for subpart P of part 404 continues to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 702(a)(5) of the Social Security Act (42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 902(a)(5)); sec. 211(b), Pub.L. 104–193, 110 Stat. 2105, 2189.

§ 404.1597a [Amended]

16. Section 404.1597a is amended by removing the last sentence (duplicates) in paragraphs (b)(3)(ii) and (h)(2)(ii).

PART 410—FEDERAL COAL MINE HEALTH AND SAFETY ACT OF 1969, TITLE IV—BLACK LUNG BENEFITS (1969–)

Subpart B—[Amended]

1. The authority citation for subpart B of part 410 continues to read as follows:

Authority: Sec. 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5)); sec. 402, 411, 412, 413, 414, 426(a), and 508, 83 Stat. 792; 30 U.S.C. 902, 921–924, 936(a), 957.

2. Section 410.240 is amended by revising paragraphs (g)(1), (g)(2), (g)(3), (g)(4), (g)(5), and (g)(6) to read as follows:

§ 410.240 Evidence.

* * * * *

(g) *Evidence of matters other than total disability or death due to pneumoconiosis.* * * *

(1) *Age:* §§ 404.715 through 404.716 of this part;

(2) *Death:* §§ 404.720 through 404.722 of this part;

(3) *Marriage and termination of marriage:* §§ 404.723 through 404.728 of this part;

(4) *Relationship of parent and child:* §§ 404.730 through 404.750 of this part;

(5) *Domicile:* § 404.770 of this part;

(6) *Living with or member of the same household:* § 404.760 of this part.

* * * * *

Subpart F—[Amended]

3. The authority citation for subpart F of part 410 is revised to read as follows:

Authority: Sec. 702(a)(5) of the Social Security Act (42 U.S.C. 902(a)(5)); 30 U.S.C. 923(b), 936(a), 956, and 957.

4. Section 410.601 is amended by revising paragraphs (a) and (b) to read as follows:

§ 410.601 Determinations of disability.

(a) *By State agencies.* In any State which has entered into an agreement with the Commissioner to provide determinations as to whether a miner is under a total disability (as defined in § 410.412) due to pneumoconiosis (as defined in § 410.110(n)). Determinations as to the date total disability began, and as to the date total disability ceases, shall be made by the State agency or agencies designated in such agreement on behalf of the Commissioner for all individuals in such State, or for such class or classes of individuals in the State as may be designated in the agreement.

(b) *By the Administration.* Determinations as to whether a miner is under a total disability (as defined in § 410.412) due to pneumoconiosis (as defined in § 410.110(n)), as to the date the total disability began, and as to the date the total disability ceases, shall be made by the Administration on behalf of the Commissioner. The Administration shall make such determinations for individuals in any State which has not entered into an agreement to make such determinations, for any class or classes of individuals to which such an agreement is not applicable, or for any individuals outside the United States. In addition, all other determinations as to entitlement to and the amounts of benefits shall be made by the Administration on behalf of the Commissioner.

* * * * *

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

Subpart D—[Amended]

1. The authority citation for subpart D of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611(a), (b), (c), and (e), 1612, 1617, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382(a), (b), (c), and (e), 1382a, 1382f, and 1383).

2. Section 416.428 is amended by revising the first sentence to read as follows:

§ 416.428 Eligible individual without an eligible spouse has an essential person in his home.

When an eligible individual without an eligible spouse has an essential person (as defined in § 416.222 of this part) in his home, the amount by which his rate of payment is increased is determined in accordance with §§ 416.220 through 416.223 and with 416.413 of this part.

* * * * *

Subpart G—[Amended]

3. The authority citation for subpart G of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611, 1612, 1613, 1614, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382a, 1382b, 1382c, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

4. Section 416.702 is amended by revising the second sentence of the definition for "*Essential person*" to read as follows:

§ 416.702 Definitions.

* * * * *

Essential person means * * * (See §§ 416.220 through 416.223 of this part.)

* * * * *

Subpart I—[Amended]

5. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 702(a)(5), 1611, 1614, 1619, 1631(a), (c), and (d)(1), and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1382, 1382c, 1382h, 1383(a), (c), and (d)(1), and 1383b); secs. 4(c) and 5, 6(c)–(e), 14(a), and 15, Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808 (42 U.S.C. 421 note, 423 note, 1382h note).

6. Section 416.929 is amended by revising the last sentence of paragraph (d)(4) to read as follows:

§ 416.929 How we evaluate symptoms, including pain.

* * * * *

(d) * * *

(4) * * * (See § 416.945 and §§ 416.924a through 416.924c.)

7. Section 416.993 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 416.993 Medical evidence in continuing disability review cases.

(a) * * * See §§ 416.987 and 416.994.

* * * * *

8. Section 416.994a is amended by revising paragraph (g)(4) and (g)(6) to read as follows:

§ 416.994a How we will determine whether your disability continues or ends, and whether you are and have been receiving treatment that is medically necessary and available, disabled children.

* * * * *

(g) * * *

(4) The first month in which you fail without good cause to follow prescribed treatment, when the rule set out in paragraph (f)(4) of this section applies;

* * * * *

(6) The first month in which you failed without good cause to do what we asked, when the rule set out in paragraph (f)(2) of this section applies.

* * * * *

Subpart K—[Amended]

9. The authority citation for subpart K of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

10. Section 416.1104 is amended by revising the sixth sentence to read as follows:

§ 416.1104 Income we count.

* * * These rules are described in §§ 416.1130 through 416.1148 of this part.

* * * * *

Subpart L—[Amended]

11. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383); sec. 211, Pub. L. 93–66, 87 Stat. 154 (42 U.S.C. 1382 note).

12. Section 416.1202 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 416.1202 Deeming of resources.

(a) *Married individual.* In the case of an individual who is living with a person not eligible under this part and who is considered to be the husband or wife of such individual under the criteria in §§ 416.1802 through 416.1835 of this part, such individual's resources shall be deemed to include any resources, not otherwise excluded under this subpart, of such spouse whether or not such resources are available to such individual.

* * * * *

Subpart M—[Amended]

13. The authority citation for subpart M of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1611–1615, 1619, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382–1382d, 1382h, and 1383).

14. Section 416.1323 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 416.1323 Suspension due to excess income.

(a) *Effective date.* Suspension of payments due to ineligibility for benefits because of excess income is effective with the first month in which "countable income" (see §§ 416.1100 through 416.1124 of this part) equals or exceeds the amount of benefits otherwise payable for such month (see subpart D of this part).

* * * * *

15. Section 416.1336 is amended by revising the fourth sentence in paragraph (b) to read as follows:

§ 416.1336 Notice of intended action affecting recipient's payment status.

* * * * *

(b) * * * Where the request for the appropriate appellate review is filed more than 10 days after the notice is received but within the 60-day period specified in § 416.1413 or § 416.1425 of this part, there shall be no right to continuation or reinstatement of payment at the previously established level unless good cause is established under the criteria specified in § 416.1411 of this part for failure to appeal within 10 days after receipt of the notice.

* * * * *

Subpart N—[Amended]

16. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1631, and 1633 of the Social Security Act (42 U.S.C. 902(a)(5), 1383, and 1383b); 31 U.S.C. 3720A.

17. Section 416.1442 is amended by revising paragraph (f)(1) to read as follows:

§ 416.1442 Prehearing proceedings and decisions by attorney advisors.

* * * * *

(f) * * *

(1) Authorize an attorney advisor to exercise the functions performed by an administrative law judge under §§ 416.920a, 416.927, and 416.946;

* * * * *

Subpart R—[Amended]

18. The authority citation for subpart R of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1614(b), (c), and (d), and 1631(d)(1) and (e) of the Social Security Act (42 U.S.C. 902(a)(5), 1382c(b), (c), and (d), and 1383(d)(1) and (e)).

19. Section 416.1801 is amended by revising the definition of "*Spouse*" in paragraph (c) to read as follows:

§ 416.1801 Introduction.

* * * * *

(c) * * *

Spouse means a person's husband or wife under the rules of §§ 416.1806 through 416.1835 of this part.

* * * * *

Subpart T—[Amended]

20. The authority citation for subpart T of part 416 continues to read as follows:

Authority: Secs. 702(a)(5), 1616, 1618, and 1631 of the Social Security Act (42 U.S.C. 902(a)(5), 1382e, 1382g, and 1383); sec. 212, Pub. L. 93–66, 87 Stat. 155 (42 U.S.C. 1382 note); sec. 8(a), (b)(1)–(b)(3), Pub. L. 93–233, 87 Stat. 956 (7 U.S.C. 612c note, 1431 note and 42 U.S.C. 1382e note); secs. 1(a)–(c) and 2(a), 2(b)(1), 2(b)(2), Pub. L. 93–335, 88 Stat. 291 (42 U.S.C. 1382 note, 1382e note).

21. Section 416.2045 is amended by revising the second sentence of paragraph (a) to read as follows:

§ 416.2045 Overpayments and underpayments; federally administered supplementation.

(a) * * * Rules and requirements (see §§ 416.550 through 416.586) in effect for recovery (or waiver) of supplemental security income benefit overpayments shall also apply to the recovery (or waiver) of federally administered State supplementary overpaid amounts.

* * * * *

22. Section 416.2096 is amended by revising the second sentence of paragraph (c)(5) to read as follows:

§ 416.2096 Basic pass-along rules.

* * * * *

(c) * * *

(5) * * * For purposes of § 416.2090 of this part, which discusses the rules for limitation on fiscal liability of States (hold harmless), these retroactive adjustments are State expenditures when made and shall be counted as a State expenditure in the fiscal year in which the adjustments are made.

* * * * *

PART 422—ORGANIZATION AND PROCEDURES

Subpart B—[Amended]

1. The authority citation for subpart B of part 422 continues to read as follows:

Authority: Secs. 205, 232, 702(a)(5), 1131, and 1143 of the Social Security Act (42 U.S.C. 405, 432, 902(a)(5), 1320b-1, and 1320b-13).

2. Section 422.125 is amended by revising paragraph (c) to read as follows:

§ 422.125 Statements of earnings; resolving earnings discrepancies.

* * * * *

(c) *Detailed earnings statements.* A more detailed earnings statement will be furnished upon request, generally without charge, where the request is program related under § 402.170 of this part. If the request for a more detailed statement is not program related under § 402.170 of this part, a charge will be imposed according to the guidelines set out in § 402.175 of this part.

* * * * *

3. Section 422.130 is amended by revising the third sentence of paragraph (a) to read as follows:

§ 422.130 Claim procedure.

(a) * * * See § 404.614 of this chapter for offices at which applications may be filed.

* * * * *

4. Section 422.135 is amended by revising the last sentence of paragraph (a) to read as follows:

§ 422.135 Reports by beneficiaries.

(a) * * * (See §§ 404.415 *et seq.* and 404.1571 of this chapter.)

* * * * *

[FR Doc. 00–7639 Filed 3–29–00; 8:45 am]

BILLING CODE 4191–02–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 97F–0157]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of 2-propenoic acid, polymer with 2-ethyl-2-(((1-oxo-2-propenyl)oxy)methyl)-1,3-propanediyl di-2-propenoate and sodium 2-propenoate (CAS Reg. No. 76774–25–9) as a fluid absorbent material intended for use in contact with food. This action responds to a petition filed by Japan Vilene Co., Ltd.

DATES: This rule is effective March 30, 2000. Submit written objections and requests for a hearing by May 1, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3095.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 22, 1997 (62 FR 19580), FDA announced that a food additive petition (FAP 7B4537) had been filed by Japan Vilene Co., Ltd., c/o Center for Regulatory Services, 2347 Paddock Lane, Reston, VA 20191 (current 5200 Wolf Run Shoals Rd., Woodbridge, VA 22192). The petition proposed to amend the food additive regulations to provide for the safe use of 2-propenoic acid, polymer with 2-ethyl-2-(((1-oxo-2-propenyl)oxy)methyl)-1,3-propanediyl di-2-propenoate and sodium 2-propenoate (CAS Reg. No. 76774–25–9) as a fluid absorbent material intended for use in contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and therefore, (3) the regulations in 21 CFR 177.1211 should be amended as set forth below in this document.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by May 1, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1211 is amended by revising paragraphs (a), (d), and the last sentence in paragraph (c) to read as follows:

§ 177.1211 Cross-linked polyacrylate copolymers.

* * * * *

(a) *Identity.* For the purpose of this section, the cross-linked polyacrylate copolymers consist of:

(1) The grafted copolymer of cross-linked sodium polyacrylate identified as 2-propenoic acid, polymers with *N,N*-di-2-propenyl-2-propen-1-amine and hydrolyzed polyvinyl acetate, sodium salts, graft (CAS Reg. No. 166164–74–5); or

(2) 2-propenoic acid, polymer with 2-ethyl-2-(((1-oxo-2-propenyl)oxy)methyl)-1,3-propanediyl di-2-propenoate and sodium 2-propenoate (CAS Reg. No. 76774–25–9).

* * * * *

(c) *Extractive limitations.* * * * The solvent used shall be at least 60 milliliters aqueous sodium chloride solution per gram of copolymer.

(d) *Conditions of use.* The copolymers identified in paragraph (a)(1) of this section are limited to use as a fluid absorbent in food-contact materials used in the packagiug of frozen or refrigerated poultry. The copolymers identified in paragraph (a)(2) of this section are limited to use as a fluid absorbent in food-contact materials used in the packaging of frozen or refrigerated meat and poultry.

Dated: March 20, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–7930 Filed 3–29–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 524

Ophthalmic and Topical Dosage Form New Animal Drugs; Triamcinolone Acetonide Cream

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Med-Pharmex, Inc. The ANADA provides for veterinary prescription use of triamcinolone acetonide cream on dogs for topical treatment of allergic dermatitis and summer eczema.

DATES: This rule is effective March 30, 2000.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209.

SUPPLEMENTARY INFORMATION: Med-Pharmex, Inc., 2727 Thompson Creek Rd., Pomona, CA 91767–1861, filed ANADA 200–275 that provides for veterinary prescription use of triamcinolone acetonide cream on dogs for topical treatment of allergic dermatitis and summer eczema. Med-Pharmex's ANADA 200–275 MEDALOG cream is approved as a generic copy of Fort Dodge Animal Health's NADA 46–146 VETALOG® cream. ANADA 200–275 is approved as of February 4, 2000, and 21 CFR 524.2481(b) is amended to reflect the approval. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 524 is amended as follows:

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 524 continues to read as follows:

Authority: 21 U.S.C. 360b.

§ 524.2481 [Amended]

2. Section 524.2481 *Triamcinolone acetonide cream* is amended in paragraph (b) by adding after "No." the phrase "051259 and".

Dated: March 20, 2000.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 00–7931 Filed 3–29–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 982

[Docket No. FR–4459–C–07]

RIN 2577–AB96

Renewal of Expiring Annual Contributions Contracts in the Tenant-Based Section 8 Program; Formula for Allocation of Housing Assistance; Correction

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Final rule.

SUMMARY: On October 21, 1999, HUD published a final rule that specified the method HUD will use in allocating housing assistance available to renew expiring contracts with public housing agencies (PHAs) for Section 8 tenant-based housing assistance. As required by statute, the October 21, 1999 final rule was the product of a negotiated rulemaking, following implementation, as further required by statute, of a HUD notice on this subject. The purpose of this document is to correct two typographical errors contained in the October 21, 1999 final rule.

DATES: *Effective Date:* November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, extension 4069 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On October 21, 1999 (64 FR 56882), HUD published a final rule that specified the method HUD will use in allocating housing assistance available to renew expiring contracts with public housing agencies (PHAs) for Section 8 tenant-based housing assistance. As required by statute, the October 21, 1999 final rule was the product of a negotiated rulemaking, following implementation, as further required by statute, of a HUD notice on this subject. The purpose of this document is to correct two typographical errors contained in the October 21, 1999 final rule. Specifically, this document corrects all references to a "CACC" to read "consolidated ACC." This document also inserts a missing hyphen in one of the references in § 982.102 to "project-based assistance."

Accordingly, in the final rule entitled "Renewal of Expiring Annual Contributions Contracts in the Tenant-Based Section 8 Program; Formula for Allocation of Housing Assistance," FR Document 99–27445, beginning at 64 FR 56882, in the issue of Thursday, October 21, 1999, the following corrections are made:

§ 982.102 [Corrected]

1. On page 56887, beginning in the second column, § 982.102 is corrected as follows:

a. Correct all references to "CACC" to read "consolidated ACC"; and

b. In paragraph (a), correct the reference to "project based assistance" to read "project-based assistance."

Dated: March 22, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–7643 Filed 3–29–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 982 and 983

[Docket No. FR–3482–C–08]

RIN 2501–AB57

Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Housing Receiving Federal Assistance and Federally Owned Residential Property Being Sold; Correction

AGENCY: Office of the Secretary—Office of Lead-Hazard Control, HUD.

ACTION: Correction.

SUMMARY: This document makes several corrections to HUD's September 15, 1999 final rule implementing sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. Specifically, this document corrects two typographical errors contained in the September 1, 1999 final rule that regard the Section 8 Housing Choice Voucher program and the Section 8 Project-Based Certificate program.

DATES: *Effective date:* September 15, 2000.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, extension 4069 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On September 15, 1999, HUD published a final rule (64 FR 50140) that implements sections 1012 and 1013 of the Residential Lead-Based Paint Hazard Reduction Act of 1992 (42 U.S.C. 4851 *et seq.*). The purpose of the rule is to ensure that Federally-owned or assisted housing does not pose lead-based paint hazards to young children. The majority of the provisions contained in the final rule will become effective on September 15, 2000 (one year following the date of publication). This document corrects two typographical errors contained in the September 15, 1999 final rule that regard the Section 8 Housing Choice Voucher program (codified at 24 CFR part 982) and the Section 8 Project-Based Certificate program (codified at 24 CFR part 983). The corrections made by this document are as follows:

1. *Correction to § 982.305 (PHA approval of assisted tenancy).* This document corrects a typographical error contained in § 982.305(b) of the September 15, 1999 final rule. The September 15, 1999 final rule amended paragraph (b)(3) of § 982.305 to reference the lead-based disclosure information required under 24 CFR 35.92(b). This reference is more appropriately set forth in paragraph (b)(1)(ii) of § 982.305. This document makes the necessary correction. As corrected by this document, 982.305(b)(1)(ii) provides that, before the beginning of the initial term of the lease for the unit, the landlord and the tenant must have executed the lease (including the HUD-prescribed tenancy addendum, and the lead-based paint disclosure information as required in 24 CFR 35.13(b)).

2. *Correction to § 983.1 (Purpose and applicability).* This document corrects a typographical error contained in § 983.1 of the September 15, 1999 final rule. Paragraph (b) of § 983.1 describes the provisions of 24 CFR part 982 that apply to the Section 8 Project-Based Certificate program. The September 15, 1999 final rule amended § 983.1(b) by adding a citation to § 982.401(j). However, the citation did not explain to readers that § 982.401(j) contains applicable lead-based paint requirements. This document adds a parenthetical after the citation to clarify this point.

Accordingly, in the final rule captioned "Requirements for Notification, Evaluation and Reduction of Lead-Based Paint Hazards in Federally Owned Residential Property and Housing Receiving Federal Assistance," FR Document 99–23016, beginning at 64 FR 50140, in the issue of Wednesday, September 15, 1999, the following corrections are made:

1. On page 50229, in the third column, regulatory amendment 88 is corrected to read as follows:

88. Revise § 982.305(b)(1)(ii) to read as follows:

§ 982.305 PHA approval of assisted tenancy.

* * * * *

(b) * * *

(1) * * *

(ii) The landlord and the tenant have executed the lease (including the HUD-prescribed tenancy addendum, and the lead-based paint disclosure information as required in § 35.13(b) of this title); and

* * * * *

2. On page 50230, in the first column, § 983.1(b)(2)(vii) is corrected to read as follows:

§ 983.1 Purpose and applicability.

* * * * *

(b) * * *

(2) * * *

(vii) In subpart I of this part, § 982.401(j) (lead-based paint requirements); § 982.402(a)(3), § 982.402(c) and (d) (Subsidy standards); and § 982.403 (Terminating HAP contract when unit is too small);

* * * * *

Dated: March 22, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–7641 Filed 3–29–00; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 982 and 983

[Docket No. FR–4428–C–06]

RIN 2577–AB91

Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs; Housing Choice Voucher Program; Correction

AGENCY: Office of the Secretary, HUD.

ACTION: Correction.

SUMMARY: This document makes various corrections to HUD's October 21, 1999 final rule implementing the statutory merger of the Section 8 tenant-based certificate and voucher programs into the new Housing Choice Voucher program. Additionally, this document corrects several regulatory provisions of the new Section 8 merger program that were not part of the October 21, 1999 final rule. These technical, non-substantive amendments will help to ensure that, once codified, the regulations for the Housing Choice Voucher program are free of error and consistent with other HUD program requirements.

DATES: *Effective date:* November 22, 1999.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, extension 4069 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION

I. Background

On October 21, 1999 (64 FR 56894), HUD published a final rule implementing the Section 8 tenant-based program provisions of the Quality Housing and Work Responsibility Act of 1998 (Title V of the FY 1999 HUD Appropriations Act; Pub.L. 105–276, approved October 21, 1998) (referred to as the "Public Housing Reform Act"). Of particular significance, the October 21, 1999 final rule implemented section 545 of the Public Housing Reform Act. Section 545 provides for the complete merger of the Section 8 tenant-based certificate and voucher programs. HUD's regulations for the new Section 8 merger program (known as the "Housing Choice Voucher program") are located at 24 CFR part 982.

The October 21, 1999 final rule became effective on November 22, 1999. The final rule was preceded by HUD's publication of an interim rule on May 14, 1999 (64 FR 56894). The October 21, 1999 final rule adopted without change the provisions of the interim rule. The final rule also took into consideration of the public comments received on the interim rule, and most of the changes made at the final rule stage were in response to public comment.

II. This Document

This document makes several corrections to the October 21, 1999 final rule. Additionally, this document corrects several regulatory provisions of the Housing Choice Voucher program that were not part of the October 21, 1999 final rule. These technical revisions correct typographical errors and inconsistencies with other HUD program requirements. These corrections are non-substantive, and do not modify or create any new program requirements. The corrections will help to ensure that, once codified in title 24 of the Code of Federal Regulations, the regulations for the new Section 8 merger program are free of error and consistent with other HUD program requirements.

For the convenience of readers, the following discussion of the corrections made by this document is organized in the order of the regulatory section being corrected.

1. *Definitions (§ 982.4).* This document corrects § 982.4, which sets forth the definitions applicable to the Housing Choice Voucher program. Currently, part 982 refers readers to section 3(b) of the United States Housing Act of 1937 (42 U.S.C. 1437a(b)) for the definitions of several terms applicable to the merger program. This document replaces the cross-reference to section 3(b) with a cross-reference to HUD's regulations at 24 CFR part 5, subpart D. HUD established 24 CFR part 5 to set forth the definitions and other program requirements that are generally applicable to HUD's programs. The definitions provided in part 5 are substantively identical to those located in section 3(b).

2. *How applicants are selected: General requirements (§ 982.202).* This document corrects § 982.202 to conform with § 982.207 of the October 21, 1999 final rule, since HUD approval is no longer required for the public housing agency (PHA) to adopt a residency preference. This document also corrects an erroneous regulatory citation contained in § 982.202.

3. *Waiting list: Administration of waiting list (§ 982.204).* This document corrects § 982.204 by removing paragraph (b)(5), which merely repeats the language of paragraph (b)(4).

4. *Waiting list: Different programs (§ 982.205).* This document corrects § 982.205(b)(1) to clarify the definition of "other housing assistance." This document also removes § 982.205(b)(3), which incorrectly refers to a PHA offer of assistance under "both the certificate program and the voucher program." As noted above, the new Housing Choice Voucher program merges the Section 8 tenant-based certificate and voucher programs into a single voucher program. Accordingly, PHAs no longer have two forms of Section 8 tenant-based assistance to offer families.

5. *Waiting list: Local preferences in admission to program (§ 982.207).* This document corrects § 982.207 to eliminate unnecessary redundancy. Specifically, paragraph (a)(1) of this section provides that the "system of local preferences must be consistent with the PHA plan . . . and with the consolidated plans for local governments in the jurisdiction." Preferences are already covered under HUD's PHA Plan regulations, which require consistency with the Consolidated Plan (see 24 CFR part 903). Accordingly, it is unnecessary to include the quoted provision in part 982.

This document also corrects a typographical error contained in § 982.207(b)(5) of the October 21, 1999 final rule. Specifically, this document adds a phrase to the end of paragraph (b)(5) that clarifies that single persons who are elderly, displaced, homeless, or persons with disabilities may be granted an admissions preference *over other single persons.* The phrase "over other single persons" was inadvertently omitted from the October 21, 1999 final rule. This correction will also clarify

that a PHA may continue to have a selection preference that was statutorily mandated prior to the enactment of the Public Housing Reform Act.

6. *PHA disapproval of owner (§ 982.306) and Owner breach of contract (§ 982.453).* This document corrects a typographical error contained in these two sections. Specifically, it replaces the phrase "housing assistance payments contract" with the phrase "HAP contract."

7. *Table of contents for Subpart K—Rent and Housing Assistance Payment.* This document corrects several typographical errors contained in the table of contents for part 982, subpart K. As corrected by this document, the table of contents now accurately reflects the sections contained in subpart K.

8. *Conversion to voucher program (§ 982.502).* This document corrects § 982.502(c) to clarify the elimination of the so-called "shopping incentive." Under the post-merger voucher subsidy formula (42 U.S.C. 1437f(o)(2), as amended by section 545 of the Public Housing Reform Act), the maximum subsidy for a family may not exceed the actual gross rent of the unit (rent to owner plus tenant-paid utilities) (§ 982.505(b)(2)). This change eliminates the old "shopping incentive" for a family that rents a unit below the applicable payment standard.

For a pre-merger voucher tenancy, the May 14, 1999 interim rule (which was adopted without change by the October 21, 1999 final rule) provides that the elimination of the shopping incentive (by application of § 982.505(b)(2) in the new voucher subsidy calculations) *does not apply* for calculation of the housing assistance payment *prior to* the second regular reexamination of family income on or after the merger date—but does not state explicitly that the elimination of the shopping incentive does apply in calculation of subsidy for such pre-merger voucher tenancies from that point on. The rule is now corrected to state positively, as originally intended, that the elimination of the shopping incentive (by application of § 982.505(b)(2)) is applicable for each interim or regular examination effective on or after the effective date of the second regular reexamination of family income and composition on or after the merger date.

9. *Voucher tenancy: Payment standard amount and schedule (§ 982.503).* This document makes two corrections to § 982.503. Under the Housing Choice Voucher program, the PHA adopts a "payment standard schedule" that sets "payment standard amounts" that are used to calculate the amount of subsidy for families assisted in the PHA's voucher program. This document corrects § 982.503(a)(3) to specify that the PHA schedule may set a single payment standard amount for a whole Fair Market Rent (FMR) area, or may establish a separate payment standard amount for each "designated part" of the FMR area.

The PHA voucher payment standard schedule establishes a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may establish a separate payment standard amount for each designated part of the FMR area.

Under the terms of the May 14, 1999 interim rule (which was adopted by the October 21, 1999 final rule without change), a PHA may apply for HUD approval to set a payment standard amount—for a part of the FMR area—that is higher than the "basic range" (i.e., the range from 90 percent to 110 percent of the published FMR). However, the October 21, 1999 final rule failed to specify that the PHA may set a payment standard amount for part of an FMR area *within or below the basic range.*

As corrected by this document, the final rule now provides that the PHA may set payment standard amounts for designated parts of the FMR area. The PHA may establish such payment standard amounts above, within or below the basic range. However, as provided in the May 14, 1999 interim rule, the PHA must request HUD approval to set any payment standard amount that is higher or lower than the basic range. The correction does not change the regulatory requirement for HUD approval of a payment standard amount higher than the basic range (called a "exception payment standard amount").

The October 21, 1999 final rule is also corrected by deleting § 982.503(b)(1)(iii) concerning authority to establish a higher payment standard if required as a reasonable accommodation for a family that includes a person with disabilities. This subject is now moved to § 982.505(d), since § 982.505 covers establishment of the payment standard for an individual family (whereas § 982.503 concerns the establishment of the PHA payment standard schedule for families in the PHA program).

10. *Rent to owner: Effect of rent control (§ 982.509).* This document corrects the section heading of § 982.509. The May 14, 1999 interim rule provided an incorrect designation for this section ("Rent to owner in subsidized projects"). The incorrect section heading was adopted by the October 21, 1999 final rule. As corrected, the section heading for § 982.509 reads: "Rent to owner: Effect of rent control."

11. *Distribution of housing assistance payment (§ 982.514).* This document corrects § 982.514, to clarify that if the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

12. *Family income and composition: Regular and interim examinations (§ 982.516).* This document corrects a typographical error contained in § 982.516(g)(1) of the October 21, 1999 final rule. Specifically, this document replaces an incorrect citation to 24 CFR part 760 with the correct citation to 24 CFR 5.230.

13. *Rent to owner in subsidized project (§ 982.521).* This document corrects § 982.521, by reinserting regulatory language that was accidentally deleted from the pre-merger regulations (at § 982.512).

14. *PHA denial or termination of assistance for family (§ 982.552).* This document corrects a typographical error contained in § 982.552(x) of the October 21, 1999 final rule. The final rule provides that a PHA may deny or terminate assistance to a welfare-to-work (WTW) family, if the family fails to fulfill its obligations under the WTW voucher program. The final rule inadvertently failed to include the necessary qualifier that a family must "willfully and persistently" fail to fulfill its WTW obligations in order for the PHA to deny or terminate assistance to the WTW family. This document makes the necessary correction.

15. *Informal hearing for participant (§ 982.555).* This document corrects two typographical errors contained in § 982.555. First, it corrects the paragraph (b)(5) to provide that a PHA is not required to provide a hearing if the PHA determines not to approve a unit or "tenancy" (rather than "lease"). Secondly, this document corrects the title of paragraph (e)(2) to read "Discovery" (rather than "Discover").

16. *Correction to 24 CFR part 983.* In addition to the corrections to the part 982 regulations, this document makes a correction to HUD's regulations at 24 CFR part 983. The part 983 regulations establish the requirements governing the Section 8 Project-Based Certificate program. This document removes an outdated statutory citation contained in § 983.1(a).

Accordingly, in the final rule entitled "Section 8 Tenant-Based Assistance; Statutory Merger of Section 8 Certificate and Voucher Programs; Housing Choice Voucher Program," FR Document 99–27519, beginning at 64 FR 56894, in the issue of Thursday, October 21, 1999, the following corrections are made:

1. On page 56911, in the second column, correct amendatory instruction 4 and the regulatory text to read as follows:

4. Amend § 982.4 as follows:

a. Remove paragraph (a)(1);

b. Redesignate paragraphs (a)(2), (a)(3), and (a)(4) as paragraphs (a)(1), (a)(2), and (a)(3), respectively;

c. Revise newly designated paragraphs (a)(2) and (a)(3);

d. In paragraph (b), add, in alphabetical order, definitions of the terms "family rent to owner", "utility reimbursement", and "welfare-to-work (WTW) families";

e. In paragraph (b), in the definition of "public housing agency" remove from the end of paragraph (1) of this definition the word "or" and add in its place the word "and", and remove from paragraph (2)(i) of this definition the word "consortia" and add in its place the word "consortium".

The revisions and additions read as follows:

§ 982.4 Definitions.

(a) * * *

(2) *Definitions under the 1937 Act.* The terms "annual contributions contract (ACC)," "disabled family," "displaced family," "elderly family," "family," "live-in aide," "near-elderly family" and "person with disabilities" are defined in part 5, subpart D of this title.

(3) *Definitions concerning family income and rent.* The terms "adjusted income," "annual income," "extremely low income family," "tenant rent," "total tenant payment," "utility allowance," and "utility reimbursement" are defined in part 5, subpart F of this title. The definitions of "tenant rent" and "utility reimbursement" in part 5, subpart F of this title, apply to the certificate program, but do not apply to the tenant-based voucher program under part 982.

(b) * * *

Family rent to owner. In the voucher program, the portion of rent to owner paid by the family. For calculation of family rent to owner, see § 982.515(b).

* * * * *

Utility reimbursement. In the voucher program, the portion of the housing assistance payment which exceeds the amount of the rent to owner. (See § 982.514(b)). (For the certificate program, "utility reimbursement" is defined in part 5, subpart F of this title.)

* * * * *

Welfare-to-work (WTW) families. Families assisted by a PHA with voucher funding awarded to the PHA under the HUD welfare-to-work voucher program (including any renewal of such WTW funding for the same purpose).

2. On page 56912, in the second column, add amendatory instruction 7a. to read as follows:

7a. In § 982.202(b)(1), revise the last sentence to read as follows:

§ 982.202 How applicants are selected: General requirements.

* * * * *

(b) * * *

(1) * * * However, the PHA may target assistance for families who live in public housing or other federally assisted housing, or may adopt a residency preference (see § 982.207).

* * * * *

3. On page 56912, in the second column, add amendatory instruction 7b. to read as follows:

7b. In § 982.204, remove paragraph (b)(5) and redesignate paragraph (b)(6) as paragraph (b)(5).

4. On page 56912, in the second column, add amendatory instruction 7c. to read as follows:

7c. In § 982.205, revise paragraph (b)(1) and remove paragraph (b)(3) to read as follows:

§ 982.205 Waiting list: Different programs.

* * * * *

(b) * * *

(1) For purposes of this section, "other housing subsidy" means a housing subsidy other than assistance under the voucher program. Housing subsidy includes subsidy assistance under a federal housing program (including public housing), a State housing program, or a local housing program.

* * * * *

5. On page 56912, in the second column, correct amendatory instruction 8. to read as follows:

8. Amend § 982.207 as follows:

a. Remove the last sentence of paragraph (a)(1);

b. Add paragraph (a)(4); and

c. Revise paragraphs (b) and (d) to read as set forth below:

6. On page 56912, in the third column, correct § 982.207(b)(5) to read as follows:

§ 982.207 Waiting list: Local preferences in admission to program.

* * * * *

(b) * * *

(5) *Preference for single persons who are elderly, displaced, homeless, or persons with disabilities.* The PHA may adopt a preference for admission of single persons who are age 62 or older, displaced, homeless, or persons with disabilities over other single persons.

* * * * *

7. On page 56913, in the first column, correct amendatory instruction 12. to read as follows:

§ 982.306 [Amended]

12. Amend § 982.306 as follows:

a. Revise the section heading;

b. In paragraph (c)(1), revise the phrase "housing assistance payments contract" to read "HAP contract";

c. Amend the introductory paragraph of paragraph (c)(5) to add the words "engaged in" after the words "for activity"; and

d. Amend paragraph (d) to add a new final sentence to that paragraph to read as follows:

8. On page 56914, in the second column, correct amendatory instruction 19. to read as follows:

§ 982.543 [Amended]

19. Amend § 982.453 as follows:

a. In paragraph (a)(2), revise the phrase "housing assistance payments contract" to read "HAP contract"; and

b. Add paragraph (a)(6) to read as follows:

9. On page 56914, in the second column, add amendatory instruction 19a. to read as follows:

19a. Revise the table of contents for Subpart K to read as follows:

Subpart K—Rent and Housing Assistance Payment

982.501 Overview.
982.502 Conversion to voucher program.
982.503 Voucher tenancy: Payment standard amount and schedule.
982.504 Voucher tenancy: Payment standard for family in restructured subsidized multifamily project.
982.505 Voucher tenancy: How to calculate housing assistance payment.
982.506 Negotiating rent to owner.
982.507 Rent to owner: Reasonable rent.
982.508 Rent to owner: Maximum family share at initial occupancy.
982.509 Rent to owner: Effect of rent control.
982.510 Other fees and charges.
982.514 Distribution of housing assistance payment.
982.515 Family share: Family responsibility.
982.516 Family income and composition: Regular and interim reexaminations.
982.517 Utility allowance schedule.
982.518 Regular tenancy: How to calculate housing assistance payment.
982.519 Regular tenancy: Annual adjustment of rent to owner.
982.520 Regular tenancy: Special adjustment of rent to owner.
982.521 Rent to owner in subsidized project.

10. On page 56914, in the second column, correct § 982.502(c)(2) to read as follows:

§ 982.502 Conversion to voucher program.

* * * * *

(c) * * *

(2) The payment standard for the family as calculated in accordance with § 982.505, except that § 982.505(b)(2) shall not be applicable until the effective date of the second regular reexamination of family income and composition on or after the merger date.

* * * * *

11. On page 56914, in the second column, correct regulatory instruction 21. and the regulatory text to read as follows:

21. Amend § 982.503 as follows:

a. Revise paragraph (a)(3);

b. Revise paragraph (b)(1)(ii);

c. Remove paragraph (b)(1)(iii)

d. Revise paragraph (d); and

e. Add paragraph (e):

§ 982.503 Voucher tenancy: Payment standard amount and schedule.

(a) * * *

(3) The PHA voucher payment standard schedule shall establish a single payment standard amount for each unit size. For each unit size, the PHA may establish a single payment standard amount for the whole FMR area, or may establish a separate payment standard amount for each designated part of the FMR area.

(b) * * *

(1) * * *

(ii) The PHA may establish a separate payment standard amount within the basic range for a designated part of an FMR area.

* * * * *

(d) *HUD approval of payment standard amount below the basic range.* HUD may consider a PHA request for approval to establish a payment standard amount that is lower than the basic range. At HUD's sole discretion, HUD may approve PHA establishment of a payment standard lower than the basic range. In determining whether to approve the PHA request, HUD will consider appropriate factors, including rent burden of families assisted under the program. HUD will not approve a lower payment standard if the family share for more than 40 percent of participants in the PHA's voucher program exceeds 30 percent of adjusted monthly income. Such determination may be based on the most recent examinations of family income.

(e) *HUD review of PHA payment standard schedules.* (1) HUD will monitor rent burdens of families assisted in a PHA's voucher program. HUD will review the PHA's payment standard for a particular unit size if HUD finds that 40 percent or more of such families occupying units of that unit size currently pay more than 30 percent of adjusted monthly income as the family share. Such determination may be based on the most recent examinations of family income.

(2) After such review, HUD may, at its discretion, require the PHA to modify payment standard amounts for any unit size on the PHA payment standard schedule. HUD may require the PHA to establish an increased payment standard amount within the basic range.

12. On page 56914, in the third column, correct amendatory instruction 22. and the regulatory text to read as follows:

22. Amend § 982.505 as follows:

a. Amend paragraph (b)(1) by removing the phrase "payment standard" and inserting instead the phrase "payment standard for the family";

b. Revise paragraph (c)(1) introductory text;

c. Revise paragraph (c)(2);

d. Amend paragraph (c)(3) by inserting "first 24 months of the" after the words "During the";

e. Redesignate paragraph (c)(4) as paragraph (c)(5);

f. Add new paragraph (c)(4); and

g. Add new paragraph (d).

The revisions and additions read as follows:

§ 982.505 Voucher tenancy: How to calculate housing assistance payment.

* * * * *

(c) * * *

(1) The payment standard for the family is the lower of:

* * * * *

(2) If the PHA has established a separate payment standard amount for a designated part of an FMR area in accordance with § 982.503 (including an exception payment standard amount as determined in accordance with § 982.503(b)(2) and § 982.503(c)), and the dwelling unit is located in such designated part, the PHA must use the appropriate payment standard amount for such designated part to calculate the payment standard for the family. The payment standard for the family shall be calculated in accordance with this paragraph and paragraph (c)(1) of this section.

* * * * *

(4) After the first 24 months of the HAP contract term, the payment standard for a family is the payment standard for the family as determined in accordance with paragraphs (c)(1) and (c)(2) of this section, as determined at the effective date of the most recent regular reexamination of family income and composition effective after the beginning of the HAP contract term.

* * * * *

(d) *PHA approval of higher payment standard for the family as a reasonable accommodation.* If the family includes a person with disabilities and requires a higher payment standard for the family, as a reasonable accommodation for such person, in accordance with part 8 of this title, the PHA may establish a higher payment standard for the family within the basic range.

13. On page 56914, in the third column, add amendatory instruction 23a. to read as follows:

23a. Revise the section heading of § 982.509 to read as follows:

§ 982.509 Rent to owner: Effect of rent control.

* * * * *

14. On page 56914, in the third column, correct amendatory instruction 24. to read as follows:

24. Revise § 982.514(b) to read as follows:

§ 982.514 Distribution of housing assistance payment.

* * * * *

(b) If the housing assistance payment exceeds the rent to owner, the PHA may pay the balance of the housing assistance payment ("utility reimbursement") either to the family or directly to the utility supplier to pay the utility bill on behalf of the family. If the PHA elects to pay the utility supplier directly, the PHA must notify the family of the amount paid to the utility supplier.

§ 982.516 [Corrected]

15. On page 56915, in the first column, correct § 982.516(g)(1) by revising the phrase "under part 760 of this title" to read "under § 5.230 of this title."

16. On page 56915, in the second column, add amendatory instruction 26a. to read as follows:

26a. Revise § 982.521 to read as follows:

§ 982.521 Rent to owner in subsidized project.

(a) *Applicability to subsidized project.* This section applies to a program tenancy in any of the following types of federally subsidized project:

(1) An insured or non-insured Section 236 project;

(2) A Section 202 project;

(3) A Section 221(d)(3) below market interest rate (BMIR) project; or

(4) A Section 515 project of the Rural Development Administration.

(b) *How rent to owner is determined.* The rent to owner is the subsidized rent as determined in accordance with

requirements for the applicable federal program listed in paragraph (a) of this section. This determination is not subject to the prohibition against increasing the rent to owner during the initial lease term (see § 982.309).

(c) *Certificate tenancy—Rent adjustment.* Rent to owner for a certificate tenancy is not subject to provisions governing annual adjustment (§ 982.519) or special adjustment (§ 982.520) of rent to owner.

17. On page 56915, in the second column, correct § 982.552(c)(1)(x) to read as follows:

§ 982.552 PHA denial or termination of assistance for family.

* * * * *

(c) * * *

(1) * * *

(x) If a welfare-to-work (WTW) family fails, willfully and persistently, to fulfill its obligations under the welfare-to-work voucher program.

* * * * *

§ 982.555 [Amended]

18. On page 56915, in the third column, add amendatory instruction 27a. to read as follows:

27a. Amend § 982.555 as follows:

a. In paragraph (b)(5), revise the reference to "or lease" to read "or tenancy";

b. Revise the heading for paragraph (e)(2) to read "Discovery."

19. On page 56915, in the third column, add amendatory instructions 29. and 30. to read as follows:

PART 983—SECTION 8 PROJECT-BASED CERTIFICATE PROGRAM

29. The authority citation continues to read as follows:

Authority: 42 U.S.C. 1437f and 3535(d).

§ 983.1 [Amended]

30. Amend § 983.1(a) by removing the phrase ", authorized under section 8(d)(2) of the 1937 Act (42 U.S.C. 1437f(d)(2))".

Dated: March 22, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–7642 Filed 3–29–00; 8:45 am]

BILLING CODE 4210–32–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 985

[Docket No. FR–4498–C–03]

RIN 2577–AC10

Technical Amendment to the Section 8 Management Assessment Program (SEMAP); Correction

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Correction.

SUMMARY: On December 3, 1999, HUD published a final rule amending its regulations for the Section 8 Management Assessment Program (SEMAP). The December 3, 1999 final rule adopted without change the amendments to the SEMAP regulations made by HUD's July 26, 1999 interim rule. The final rule also made several amendments to conform the SEMAP regulations to HUD's October 21, 1999 final rule implementing the statutory merger of the Section 8 tenant-based certificate and voucher programs. The purpose of this document is to make two typographical corrections to the December 3, 1999 final rule.

DATES: *Effective Date:* January 3, 2000.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, Room 4220, 451 Seventh Street, SW, Washington, DC 20410; telephone (202) 708–0477, extension 4069 (this is not a toll-free number). Hearing or speech impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION: On December 3, 1999 (64 FR 67982), HUD published a final rule amending its regulations for the Section 8 Management Assessment Program (SEMAP). The December 3, 1999 final rule adopted the amendments to the SEMAP regulations made by HUD's July 26, 1999 (64 FR 40496) interim rule. The July 26, 1999 interim rule made various technical amendments to the SEMAP regulations. The public comment period on the interim rule closed on September 24, 1999. No public comments were submitted on the interim rule. Accordingly, the December 3, 1999 final rule adopted the amendments made by the interim rule without change. The final rule became effective on January 3, 2000.

In addition to finalizing the July 26, 1999 interim rule, the December 3, 1999 final rule also made several amendments to conform the SEMAP regulations to HUD's October 21, 1999 (64 FR 56894) final rule implementing the statutory merger of the Section 8 tenant-based certificate and voucher programs into the new Housing Choice Voucher program (the regulations for this new program are codified at 24 CFR part 982).

The purpose of this document is to correct two typographical errors contained in the SEMAP regulations at 24 CFR part 985. Specifically, § 985.3 provides two incorrect percentages in the provisions regarding the rating of public housing agency (PHA) management performance. The corrections were intended to be part of the December 3, 1999 final rule, but were inadvertently omitted from that rule. This document makes the necessary correction to the December 3, 1999 final rule.

Accordingly, in the final rule entitled "Technical Amendment to the Section 8 Management Assessment Program (SEMAP)," FR Document 99–31440, beginning at 64 FR 67982, in the issue of Friday, December 3, 1999, the following corrections are made:

§ 985.5 [Corrected]

1. On page 67983, in the second column, amendatory instruction 2 is corrected by removing the word "and" after paragraph i., and adding new paragraphs k. and l. to read as follows:

k. In paragraph (l)(3)(i), revise the phrase "99 percent" to read "100 percent"; and

l. In paragraph (o)(3)(v), revise the phrase "70 percent" to read "79 percent."

Dated: March 22, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 00–7640 Filed 3–29–00; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 147

[CGD08–99–023]

RIN 2115–AF93

Safety Zone; Outer Continental Shelf Platforms in the Gulf of Mexico

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing safety zones around seven high-production, manned oil and natural gas platforms on the Outer Continental Shelf in the Gulf of Mexico. The seven platforms need to be protected from vessels operating outside the normal shipping channels and fairways. Placing safety zones around the platforms will significantly reduce the threat of allisions, oil spills, and releases of natural gas. The regulation prevents all vessels from entering or remaining in specified areas around the platforms except for the following: an attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth District Commander. The safety zones are necessary to protect the safety of life, property, and environment.

DATES: This rule will become effective May 1, 2000.

ADDRESSES: The public docket and all documents referred to in this rule are available for inspection or copying at the Eighth Coast Guard District Marine Safety Division, 501 Magazine Street, room 1341, New Orleans, Louisiana 70130, between 8:30 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Roderick Walker, Project Manager for Eighth District Commander, telephone (504) 589–3043.

SUPPLEMENTARY INFORMATION:

Regulatory History

A notice of proposed rulemaking [CGD 08–99–023] was published on November 26, 1999.

One comment was received from Shell Exploration and Production Company requesting that the latitude and longitude for each referenced facility be added into the regulation. The Coast Guard agrees and has made the additions.

Background and Purpose

The safety zones established by this regulation are in the deepwater area of the Gulf of Mexico. For the purposes of this regulation the deepwater area is considered to be waters of 304.8 meters (1,000 feet) or greater depth extending to the limits of the Exclusive Economic Zone (EEZ) contiguous to the territorial sea of the United States and extending to a distance up to 200 nautical miles from the baseline from which the breadth of the sea is measured. Navigation in the area of the safety zones consists of large commercial shipping vessels, fishing vessels, cruise ships, tugs with tows and the occasional recreational vessel. The deepwater area also includes an extensive system of fairways. The fairways include the Gulf of Mexico East-West fairway, the entrance and exit route of the Mississippi River, and the Houston-Galveston Safety Fairway. Significant amounts of vessel traffic occur in or near the various fairways in the deepwater area.

Shell Offshore, Inc. requested that the Coast Guard establish safety zones around the following Shell platforms in the Gulf of Mexico: the Boxer Platform, The Bulwinkle Platform, the Ursa Tension Leg Platform, the West Delta Platform, the Mars Tension Leg Platform, the Ram-Powell Tension Leg Platform, and the Auger Tension Leg Platform.

The request for the safety zones was made due to the high level of shipping activity around the platforms and the safety concerns for both the personnel aboard the platforms and the environment. Shell Offshore, Inc. indicated that the location, production level, and personnel levels on board the seven platforms make it highly likely that any allision with the platforms would result in a catastrophic event. Some of the platforms are located near the edge of a shipping safety fairway or fairway intersection. Others are located in open waters where no fixed structures previously existed. All are high production oil and gas drilling platforms producing from 100,000 to 250,000 barrels of oil per day, and are manned with crews ranging from approximately 130 to 156 people.

The Coast Guard has reviewed Shell Offshore Inc.'s concerns and agrees that the risk of allision to the platforms and the potential for loss of life and damage to the environment resulting from such an accident warrant the establishment of these safety zones. The West Delta 143 platform covered by this regulation did not meet the deepwater criteria; however, the Coast Guard believes its exposed location adjacent to a safety fairway and volume of throughput necessitated its inclusion into the rulemaking. The regulation would significantly reduce the threat of allisions, oil spills, and releases of natural gas and increase the safety of life, property, and the environment in the Gulf of Mexico.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full regulatory evaluation is unnecessary. The impacts on routine navigation are expected to be minimal.

Collection of Information

This rule contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism Assessment

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132 and has determined that it does not have federalism implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environmental

The Coast Guard considered the environmental impact of this rule and concluded that under section 2–1, paragraph (34)(g) of Commandant Instruction M16475.1C this proposal is categorically excluded from further environmental documentation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this regulation will have a significant economic impact on a substantial number of small entities. "Small entities" include small business and not-for-profit organizations that are independently owned and operated, that are not dominant in their field, and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Since alternate routes are available for the small number of vessels to be affected by this regulation, the Coast Guard expects the impact of this regulation on small entities to be minimal. Therefore, the Coast Guard certifies under 5 U.S.C. 605 (b) that this regulation will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 147

Marine safety, Navigation (water), Outer Continental Shelf.

Regulation

In consideration of the foregoing, the Coast Guard amends part 147 of title 33, Code of Federal Regulations as follows:

PART 147—[AMENDED]

1. The authority citation for Part 147 continues to read as follows:

Authority: 14 U.S.C. 85; 43 U.S.C. 1333; and 49 CFR 1.46.

§ 147.1101 [Redesignated and revised]

2. Section 147.1101 is redesignated § 147.20 and revised to read as follows:

§ 147.20 Definitions.

Unless otherwise stated, the term "attending vessel" refers to any vessel which is operated by the owner or operator of an OCS facility located in the safety zone, which is used for the purpose of carrying supplies, equipment or personnel to or from the facility, which is engaged in construction, maintenance, alteration, or repair of the facility, or which is used for further exploration, production, transfer or storage of natural resources from the seabed beneath the safety zone.

3. New sections § 147.801 through § 147.813 are added to read as follows:

§ 147.801 Boxer Platform safety zone.

(a) Description. The Boxer Platform is located at position 27° 56′ 48″ N, 90° 59′ 48″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge, not to extend into the adjacent East—West Gulf of Mexico Fairway is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

§ 147.803 Bullwinkle Platform safety zone.

(a) *Description.* The Bullwinkle Platform is located at position 27° 53′ 01″ N, 90° 54′ 04″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

§ 147.805 Ursa Tension Leg Platform safety zone.

(a) *Description.* The Ursa Tension Leg Platform (Ursa TLP) is located at position 28° 09′ 14.497″ N, 89° 06′ 12.790″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

§ 147.807 West Delta 143 Platform safety zone.

(a) *Description.* The West Delta 143 Platform is located at position 28° 39′ 42″ N, 89° 33′ 05″ W. The area within 500 meters (1640.4 feet) from each point on the structure's outer edge, not to extend into the adjacent Mississippi River Approach Fairway, is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except: (1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

§ 147.809 Mars Tension Leg Platform safety zone.

(a) *Description.* The Mars Tension Leg Platform (Mars TLP) is located at position 28° 10′ 10.29″ N, 89° 13′ 22.35″ W with two supply boat mooring buoys at positions 28° 10′ 18.12″ N, 89° 12′ 52.08″ W (Northeast) and 28° 09′ 49.62″ N, 89° 12′ 57.48″ W (Southeast). The area within 500 meters (1640.4 feet) from each point on the structure's outer edge and the area within 500 meters (1640.4 feet) of each of the supply boat mooring buoys is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

§ 147.811 Ram-Powell Tension Leg Platform safety zone.

(a) *Description.* The Ram-Powell Tension Leg Platform (Ram-Powell TLP) is located at position 29° 03′ 52.2″ N, 88° 05′ 30″ W with two supply boat mooring buoys at positions 29° 03′ 52.2″ N, 88° 05′ 12.6″ W (Northeast) and 29° 03′ 28.2″ N, 88° 05′ 10.2″ W (Southeast). The area within 500 meters (1640.4 feet) from each point on the structure's outer edge and the area within 500 meters (1640.4 feet) of each of the supply boat mooring buoys is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except:

(1) An attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

§ 147.813 Auger Tension Leg Platform safety zone.

(a) *Description.* The Auger Tension Leg Platform (Auger TLP) is located at position 27° 32′ 45.4″ N, 92° 26′ 35.09″ W with two supply boat mooring buoys at positions 27° 32′ 38.1″ N, 92° 26′ 04.8″ W (East Buoy) and 27° 32′ 58.14″ N, 92° 27′ 04.92″ W (West Buoy). The area within 500 meters (1640.4 feet) from each point on the structure's outer edge and an area within 500 meters (1640.4 feet) of each of the supply boat mooring buoys is a safety zone.

(b) *Regulation.* No vessel may enter or remain in this safety zone except:

(1) an attending vessel;

(2) A vessel under 100 feet in length overall not engaged in towing or fishing; or

(3) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: March 14, 2000.

K. J. Eldridge,

Captain, U.S. Coast Guard, Acting Commander, Eighth Coast Guard District.

[FR Doc. 00–7637 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Miami 00–030]

RIN 2115–AA97

Safety Zone Regulations; Fort Lauderdale, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard Captain of the Port is establishing a temporary fixed safety zone closing the Atlantic Intracoastal Waterway to all marine traffic at the Fort Lauderdale Southeast 17th Street (State Road A1A) highway bridge in Fort Lauderdale, FL. The safety zone will be in effect during construction activities associated with the disassembly of the temporary and existing drawbridges across the waterway. This safety zone is needed to protect all vessels from potential safety hazards associated with the removal of the bridge span sections. No vessels will be allowed to approach within 200 yards of the bridge during this period unless authorized by the Captain of the Port or his designated representative.

DATES: This rule is effective from 6 a.m. on April 3, 2000, until 7 a.m. on April 15, 2000.

FOR FURTHER INFORMATION CONTACT: Lieutenant Boudrow, at Coast Guard Marine Safety Office, Miami, Florida, tel: (305) 535–8701.

SUPPLEMENTARY INFORMATION:

Background and Purpose

The Coast Guard Captain of the Port is establishing a temporary safety zone closing the Intracoastal Waterway at the 17th Street Causeway Bridge, Mile Marker 1065.9, in Fort Lauderdale, FL to all marine traffic. This closure has been requested by the Florida Department of Transportation in order to remove portions of the temporary and existing drawbridges across the waterway by contractors. The work includes removal of a 150-ton bridge span and 179-ton counterweight and will be carried out from several large barges anchored within the waterway. The Coast Guard has reviewed the planned scope of work and has determined that a safety zone and waterway closure are necessary to protect all vessels from potential safety hazards posed by construction activities. The closure of the waterway is scheduled for weekday and evening periods to minimize the impact to the boating community. The Coast Guard will issue Broadcast Notice to Mariners and the Florida Department of Transportation will place electronic message signs at various locations on the Intracoastal Waterway to advise mariners of the scheduled closure. Boat traffic will be directed to Hillsboro Inlet and the Port of Palm Beach to the north and Port Everglades to the south as alternate routes. The closure will be strictly enforced by the Coast Guard and will also be monitored by the Florida Marine Patrol.

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this rule and good cause exists for making it effective in less than 30 days after **Federal Register** Publication. Publishing an NPRM and delaying its effective date would be contrary to public safety since immediate action is needed to minimize potential danger to the public.

Regulatory Evaluation

This proposal is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040: February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. The safety zone will only be in effect for two 12 hour periods at night, and a 72 hour weekday period during the removal of the temporary drawbridge. Further, mariners have been advised through local notices and have alternate ways around the closure.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this rule will have a significant economic effect upon a substantial number of small entities. "Small entities" include small business, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities as the regulations will only be in effect for three days during the temporary bridge removal, the closure will be publicized by broadcasts and signs, and mariners can get around the closure by using alternative inlets.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–221), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

We have analyzed this rule under Executive Order 13132 and have determined that this rule does not have implications for federalism under that order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those unfunded mandate costs. This rule will not impose an unfunded mandate.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking disproportionately affect children.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this action and has determined under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, that this rule is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Safety measures, Waterways.

Temporary Regulations

In consideration of the foregoing, the Coast Guard amends Subpart C of Part 165 of title 33, Code of Federal Regulations, as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. From 6 a.m. April 3, 2000, until 7 a.m., April 15, 2000, temporary § 165.T07–030 is added to read as follows:

§ 165.T07–030 Safety Zone; Fort Lauderdale, Florida

(a) *Regulated area.* All waters within 200 yards on either side of the 17th Street Causeway Bridge, Mile Marker 1065.9, in Fort Lauderdale, Florida.

(b) *Regulations.* In accordance with the general regulations in 165.23 of this part, anchoring, mooring or transiting in this zone is prohibited unless authorized by the Coast Guard Captain of the Port. The Captain of the Port will notify the public of any changes in the status of this zone by Marine Safety Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHz).

(c) *Effective dates.* This section is applicable from 6 a.m. on April 3, 2000, to 6 a.m. on April 6, 2000, and from 7 p.m. to 7 a.m. each night on April 12 and 13, 2000. In the event of inclement weather on April 12 or 13, this section is applicable from 7 p.m. on April 14 to 7 a.m., April 15, 2000.

Dated: March 20, 2000.

L.J. Bowling,

Captain, U. S. Coast Guard, Captain of the Port, Miami, Florida.

[FR Doc. 00–7854 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AJ09

Eligibility Reporting Requirements

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule the provisions of an interim final rule that amended the Department of Veterans Affairs (VA) adjudication regulations concerning eligibility verification reports (EVRs) for recipients of pension under programs in effect prior to January 1, 1979. The amendment reduces the number of circumstances under which VA requires such pensioners to furnish annual EVRs. The intended effect of this amendment is to reduce the reporting burden on these beneficiaries, reduce the workload at VA regional offices, and enable VA to use its resources more effectively.

DATES: *Effective Date:* March 30, 2000.

FOR FURTHER INFORMATION CONTACT: Don England, Chief, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW, Washington, DC 20420, telephone (202) 273–7210.

SUPPLEMENTARY INFORMATION: On October 6, 1998, VA published in the **Federal Register** an interim final rule generally exempting old law and section 306 pension beneficiaries from the requirement to submit annual eligibility verification reports (EVRs). (63 FR 53593–96, October 6, 1998.) The term "old law pension" means the disability and death pension programs that were in effect on June 30, 1960. The term "section 306 pension" means those disability and death pension programs in effect on December 31, 1978. VA uses EVRs to request information, such as income and marital status, that VA needs to determine or verify eligibility for its need-based benefit programs.

We requested interested persons to submit comments on or before December 7, 1998. We received no comments. Based on the rationale set forth in the interim final rule and in this document, we are adopting the interim final rule as a final rule without change, except that we are adding statements explaining that the information collections are approved by the Office of Management and Budget (OMB) under control number 2900–0101. We also affirm the information in the interim final rule document concerning the Regulatory Flexibility Act.

Paperwork Reduction Act

VA submitted the information collection provisions contained in the interim final rule to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). The only action concerning information collection is to eliminate certain collections of information. We requested interested parties to submit comments on the collection of information provisions to OMB by October 14, 1998. No comments were submitted. OMB has approved the information collection provisions under control number 2900–0101.

OMB assigns a control number for each collection of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

The Catalog of Federal Domestic Assistance program numbers are 64.104 and 64.105.

List of Subjects in 38 CFR Part 3

Administrative practice and procedure, Claims, Disability benefits, Health care, Pensions, Veterans, Vietnam.

Approved: February 29, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

Accordingly, the interim final rule amending 38 CFR part 3 which was published at 63 FR 53593 on October 6, 1998, is adopted as final with the following change:

PART 3—ADJUDICATION

Subpart A—Pension, Compensation, and Dependency and Indemnity Compensation

1. The authority citation for part 3, subpart A continues to read as follows:

Authority: 38 U.S.C. 501(a), unless otherwise noted.

§§ 3.256 and 3.277 [Amended]

2. In §§ 3.256 and 3.277, a parenthetical is added at the end of each section to read as follows:

(The Office of Management and Budget has approved the information collection

requirements in this section under control number 2900–0101.)

[FR Doc. 00–7913 Filed 3–29–00; 8:45 am]
BILLING CODE 8320–01–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–51, 301–52, 301–54, 301–70, 301–71 and 301–76

[FTR Amendment 90]

RIN 3090–AG92

Federal Travel Regulation; Mandatory Use of the Travel Charge Card

AGENCY: Office of Governmentwide Policy, GSA.

ACTION: Final rule; delay of applicability date.

SUMMARY: This document constitutes a deviation to the applicability date of the Federal Travel Regulation (FTR) provisions pertaining to payment by the Government of expenses connected with official Government travel published in the **Federal Register** of January 19, 2000 (65 FR 3054). Due to the difficulties involved in implementing the requirements of Public Law 105–264, October 19, 1998, regarding the required use of the travel charge card, collection of amounts owed, and reimbursement of travel expenses, the Associate Administrator for the Office of Governmentwide Policy hereby grants a class deviation that delays the applicability date until May 1, 2000, for mandatory use of the travel charge card and payment of associated penalties and interest. This delay will allow agencies time to work out the details of implementation of the mandatory use of the travel charge card regulations.

DATES: *Effective Date:* The effective date of this final rule remains July 16, 1999.

Applicability Date: The applicability date of the final rule published at 65 FR 3054 on January 19, 2000, is delayed from February 29, 2000, until May 1, 2000, or upon the issuance of agency implementing regulations, whichever occurs first.

FOR FURTHER INFORMATION CONTACT: Sandra Batton, Travel and Transportation Management Policy Division, at (202) 501–1538.

Dated: March 24, 2000.

G. Martin Wagner,

Associate Administrator for Governmentwide Policy.

[FR Doc. 00–7819 Filed 3–29–00; 8:45 am]
BILLING CODE 6820–34–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018–AF54

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: These regulations authorize the incidental, unintentional take of small numbers of polar bears and Pacific walrus during year-round oil and gas industry (Industry) exploration, development, and production operations in the Beaufort Sea and adjacent northern coast of Alaska.

We made a finding that the total expected takings of polar bear and Pacific walrus during oil and gas industry exploration, development, and production activities will have a negligible impact on these species and will have no unmitigable adverse impacts on the availability of these species of subsistence use by Alaska Natives. We base this finding on results from 6 years of monitoring interactions between marine mammals and Industry and using oil trajectory models and polar bear density models to determine the likelihood of impacts to polar bears should an accidental oil release occur.

DATES: This rule is effective March 30, 2000, and remains effective through March 31, 2003.

ADDRESSES: Comments and materials received in response to this action are available for public and inspection during normal working hours of 8:00 a.m. to 4:30 p.m. Monday through Friday, at the Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, AK 99503.

FOR FURTHER INFORMATION CONTACT: John Bridges, Office of Marine Mammals Management, U.S. Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503, Telephone 907–786–3810 or 1–800–362–5148, or Internet John_Bridges@fws.gov.

SUPPLEMENTARY INFORMATION:

Background

Section 101(a)(5)(A) of the Marine Mammal Protection Act (Act) gives the Secretary of the Interior (Secretary) through the Director of the U.S. Fish and Wildlife Service (We) the authority to allow the incidental, but not intentional, taking of small numbers of marine mammals, in response to requests by U.S. citizens (You) [as defined in 50 CFR 18.27(c)] engaged in a specified activity (other than commercial fishing) in a specified geographic region.

Under the provisions of the Act, and based on our finding and the best scientific evidence available that the total of such taking for the 3-year period will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for taking for subsistence use by Alaska Natives, we will allow the incidental taking of polar bears and Pacific walrus. These regulations set forth: (1) permissible methods of taking; (2) means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and (3) requirements for monitoring and reporting.

The term "take" as defined by the Act means to harass, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.

Harassment as defined by the Act, as amended in 1994, "* * * means any act of pursuit, torment, or annoyance which—

(i) has the potential to injure a marine mammal or marine mammal stock in the wild; or

(ii) has the potential to disturb a marine mammal or mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to, migration, breathing, nursing, breeding, feeding, or sheltering."

As a result of 1986 amendments to the Act, we amended 50 CFR 18.27 (i.e., regulations governing small takes of marine mammals incidental to specified activities) with a final rule published on September 29, 1989. Section 18.27(c) included, among other things, a revised definition of "negligible impact" and a new definition for "unmitigable adverse impact" as follows. Negligible impact is an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival. Unmitigable adverse impact means an impact resulting from the specified activity:

(1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by:

(i) causing the marine mammals to abandon or avoid hunting areas,

(ii) directly displacing subsistence users, or

(iii) placing physical barriers between the marine mammals and the subsistence hunters, and

(2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met.

Industry conducts activities such as oil and gas exploration, development, and production in marine mammal habitat, and risks violating the prohibitions on the taking of marine mammals. Although Industry is under no legal requirement to obtain incidental take authority, Industry has chosen to seek authorization to avoid the uncertainties associated with conducting activities in marine mammal habitat. Along with their request for incidental take authority, Industry has also developed and implemented polar bear conservation measures.

On December 17, 1991, BP Exploration (Alaska), Inc., for itself and for Amerada Hess Corporation, Amoco Production Company, ARCO Alaska, Inc., CGG American Service, Inc., Conoco Inc., Digicon Geophysical Corp., Exxon Corporation, GECO Geophysical Co., Halliburton Geophysical Services, Inc., Mobil Oil Corporation, Northern Geophysical of America, Texaco Inc. Unocal corporation, and Western Geophysical company requested that we promulgate regulations pursuant to Section 101(a)(5) of the Act.

The geographic region defined in Industry's 1991 application included offshore waters beginning at a north/south line at Barrow, Alaska, east to the Canadian border, including all Alaska state waters and all Outer Continental Shelf (OCS) waters. The onshore region was defined by the same north/south line at Barrow, extending 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge was excluded from Industry's application.

On November 16, 1993 (58 FR 60402), we issued final regulations to allow the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus when such taking(s) occurred during Industry activities during year-round operations in the Beaufort Sea Region as described in the preceding paragraph. The regulations were issued for 18 months. At the same time, the Secretary of the Interior directed us to develop, then begin implementation of, a polar bear habitat conservation strategy before extending the regulations beyond the initial 18 months for a total 5-year period as allowed by the Act. On August 14, 1995, we completed development of, and issued, our Habitat Conservation Strategy for Polar Bears in Alaska to ensure that the regulations met with the intent of the 1973 International Agreement on the conservation of Polar Bears. On August 17, 1995, we issued the final rule and notice of availability of a completed final polar bear habitat conservation strategy (60 FR 42805). We then extended the regulations for an additional 42 months to expire on December 15, 1998.

On August 28, 1997, BP Exploration (Alaska), Inc., submitted a petition for itself and for ARCO Alaska, Inc., Exxon Corporation, and Western Geophysical Company for rulemaking pursuant to Section 101(a)(5)(A) of the Act, and Section 553(e) of the Administrative Procedure Act (APA). Their request sought regulations to allow the incidental, but not intentional, take of small numbers of polar bears and Pacific walrus when takings occurred during Industry operations in Arctic Alaska. Specifically, they requested an extension of the incidental take regulations beginning at 50 CFR 18.121 for an additional 5-year term from December 16, 1998, through December 15, 2003. The geographic extent of the request was the same as that of previously issued regulations beginning at 50 CFR 18.121 that were in effect through December 15, 1998 (see above).

The petition to extend the incidental take regulations included two new oil fields (Northstar and Liberty). Plans to develop each field identified a need for an offshore gravel island and a buried subsea pipeline to transport crude oil to existing onshore infrastructure (Note: the term of these regulations will expire prior to the operation of Liberty; therefore, we neither analyzed nor authorized incidental take of polar bear and Pacific walrus at the Liberty prospect by this action, in part due to the preliminary and incomplete status of information available). Based on preliminary information related to subsea pipelines published in a Draft Environmental Impact Statement (DEIS) for the Northstar project, we were unable to make a finding of negligible impact and issue regulations for the full 5-year period. The information published in the Northstar DEIS suggested that the probability of an oil spill was 21–23 percent over the life of the project, and that up to 30 polar bears could be killed by a spill.

On November 17, 1998, we published proposed regulations (63 FR 63812) to allow the incidental, unintentional take of small numbers of polar bears and Pacific walrus in the Beaufort Sea and northern coast of Alaska. On January 28, 1999, we issued final regulations effective through January 30, 2000. These regulations did not authorize the incidental take of polar bears and Pacific walrus during construction or operation of subsea pipelines in the Beaufort Sea.

The U.S. Army Corps of Engineers finalized the Northstar Environmental Impact Statement in February 1999. Construction of the Northstar gravel island and subsea pipeline is scheduled for the winter of 1999–2000, with production beginning in the latter half of 2000. The Liberty development is proposed for early 2003. The Department of the Interior's Minerals Management Service (MMS) prepared a Preliminary Draft EIS for the Liberty development that was available as a working copy for participating and cooperating agencies. The MMS plans to issue a Draft EIS for Liberty this year.

Summary of Current Request

These regulations respond to the August 28, 1997, request by BP Exploration (Alaska), Inc. for the extension of ongoing incidental take regulations. That request was for a period of 5 years, from December 16, 1998, through December 15, 2003. As previously mentioned, we issued regulations for 1 year that expired on January 30, 2000. On February 3, 2000 (65 FR 5275), we reinstated these regulations effective through March 31, 2000, to ensure that we had adequate time to consider public comments on this final rulemaking. This rule is effective March 30, 2000 and remains effective through March 31, 2000.

Description of Regulations

These regulations are for a 3-year period from March 31, 2000 and include all activities associated with the Northstar project. These regulations do not authorize the actual activities associated with the oil and gas exploration, development, and production, but rather authorized the incidental, unintentional take of small numbers of polar bears and Pacific walrus associated with those activities. The MMS, the U.S. Army Corps of Engineers, and the Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands. The State of Alaska is responsible for activities on State lands and in State waters. These regulations allow Industry to incidentally take small numbers of polar bear and Pacific walrus within the same area as covered by our previous regulations as defined by a north/south line at Barrow, Alaska, including all Alaska State waters and all OCS waters, and east of that line to the Canadian border, with the onshore region being the same north/south line at Barrow, 25 miles inland and east to

the Canning River. The Arctic National Wildlife Refuge is excluded from these regulations.

This rule requires an applicant to obtain from us a Letter of Authorization (LOA) to conduct exploration, development, and production activities pursuant to the regulations. Each group or individual conducting an oil and gas industry-related activity within the area covered by these regulations may request an LOA.

Applicants for LOAs must submit a plan to monitor the effects on polar bears and walrus that are present during the authorized activities. Applicants for LOAs must also include a Plan of Cooperation. The purpose of the Plan is to ensure that the impact of oil and gas activity on the availability of the species or stock for subsistence uses is negligible. The Plan must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bears and Pacific walrus.

We will evaluate each request for an LOA on the specific activity and the specific location, and we will condition each LOA for that activity and location, if necessary. For example, a request to conduct activities on barrier islands with active bear dens or a history of polar bear denning may be conditioned to avoid the area until after the bears normally exit their dens.

Description of Activity

In accordance with 50 CFR 18.27, Industry submitted a request for the promulgation of incidental take regulations pursuant to Section 101(a)(5)(A) of the Act. Activities covered in this regulation include Industry exploration, development, and production of oil and gas, as well as wildlife monitoring associated with these activities.

Exploration activities include, but are not necessarily limited to, geological surveys; geotechnical site investigations; reflective seismic exploration; vibrator seismics data collection; airgun and water gun seismic data collection; explosive seismic data collection; vertical seismic profiles; geological surveys; construction and use of drilling structures such as artificial (gravel) islands, caisson-retained islands, ice islands, bottom-founded structures (concrete island drilling system—CIDS, and single steel drilling caisson—SSDC), ice pads and ice roads; oil spill prevention, response, and cleanup; site restoration and remediation. Exploratory drilling for oil and associated support activities includes, but is not necessarily limited to, transportation to site, setup to 90–100 person camps, support camps (lights, generators, snow removal, water plants, wastewater plants, dining halls, sleeping quarters, mechanical shops, fuel storage, camp moves, landing strips, aircraft support, health and safety facilities, data recording facility and communication equipment), building gravel pads, building gravel islands with sandbag and concrete block protection, ice islands, ice roads, gravel hauling, gravel mine sites, road building, pipelines, electrical lines, water lines, road maintenance, buildings, and facilities, operating heavy equipment, digging trenches, burying pipelines, and covering pipelines, sea lift, water flood, security operations, dredging, moving CIDS, moving floating drill units, helicopter support, and drill ships such as the CANMAR Explorer III and the Kulluk.

Development activities associated with oil and gas industry operations include, but are not necessarily limited to, road construction; pipeline construction; waterline construction; gravel pad construction; camp construction (personnel, dining, lodging, maintenance shops, water plants, wastewater plants); transportation (automobile, airplane, and helicopter traffic; runway construction; installation of electronic equipment); well drilling; drill rig transport; personnel support; and demobilization, restoration, and remediation.

Production activities include, but are not necessarily limited to, personnel transportation (automobile, airplane, helicopter, boats, rollagons, cat trains, and snowmobiles), and unit operations (building operations, oil production, oil spills, cleanup, restoration, and remediation).

A large number of variables influence exploration activities, therefore, predictions as to the exact dates and locations of exploratory operations that will take place over the next 3 years is speculative. However, requests for LOAs must include specific details regarding dates, duration, and geographic locations of proposed activities.

Alaska's North Slope encompasses an area of 88,280 square miles and contains 13 separate oil and gas fields in production: Prudhoe Bay, North Prudhoe Bay State, Kuparuk, Endicott, Point McIntyre, Lisburne, Milne Point, Cascade, West Beach, Niakuk, Schrader Bluff, Badami and Sag Delta North. Additional discoveries have been made at the Northstar and Alpine fields, both of which are now in the development phase.

During the period covered by the regulations, we anticipate a similar level of activity at existing production facilities as during the previous 6 years. The addition of new exploration, development, and production activities will increase human activity and the likelihood of polar bear sightings. We do not believe that the overall activity level will have a measurable impact on polar bears during the 3-year period covered by these regulations. One addition is the new Northstar project, the first offshore production facility on the North Slope which requires a subsea pipeline to transport crude oil to the Trans-Alaska Pipeline System.

Biological Information

Pacific Walrus

Pacific walrus *(Odobenus rosmarus)* typically inhabit the waters of the Chukchi and Bering seas. Most of the population congregates near the ice edge of the Chukchi Sea pack ice west of Point Barrow during the summer. In the winter, walrus inhabit the pack ice of the Bering Sea, with concentrations occurring in the Gulf of Anadyr, south of St. Lawrence Island, and south of Nunivak Island.

Walrus occur infrequently in the Beaufort Sea. Data from our Marking, Tagging, and Reporting Program show that, from 1994 through 1997, 73 walrus were reported killed by Barrow hunters. Tagging certificates show that nearly all of the 73 walrus were taken west of Barrow. In 6 years of monitoring Industry's activities in the Beaufort Sea, on-site monitors have observed only two walrus.

Polar Bear

Polar bears (*Ursus maritimus*) occur in the Northern Hemisphere, where their distribution is circumpolar and they live in close association with polar ice. In Alaska, their distribution extends from south of the Bering Strait to the U.S.-Canada border. Two stocks occur in Alaska: the Chukchi/Bering seas stock, whose size is unknown, and the Southern Beaufort Sea stock, which was estimated in 1992 to number about 1,800 bears.

Females without dependent cubs breed in the spring and enter maternity dens by late November. Females with cubs do not mate. An average of two cubs are usually born in December, and the family group emerges from the den in late March or early April. Only pregnant females den for an extended period during the winter; however, other polar bears may burrow out depressions to escape harsh winter winds. Reproductive potential (intrinsic rate of increase) is low. The average reproductive interval for a polar bear is 3–4 years. The maximum reported age of reproduction in Alaska is 18 years. Based on these data, a polar bear may produce about 8–10 cubs in her lifetime. The loss of whole litters of cubs would result in additional reproductive effort sooner than if cubs survived. Even though reproduction increases, however, survival decreases.

The fur and blubber of the polar bear protect it from the cold air and frigid water. Newly emerged cubs of the year may not have a sufficient layer of blubber to maintain boy heat when immersed in water for long periods of time. Cubs abandoned prior to the normal weaning age of 2.5 years likely will not survive.

Ringed seals (*Phoca hispida*) are the primary prey species of the polar bear; however, occasionally, polar bears hunt bearded seals (*Erignathus barbatus*) and walrus calves. Polar bears also scavenge on marine mammal carcasses washed up on shore and eat non-food items such as styrofoam, plastic, car batteries, antifreeze, and lubricating fluids.

Polar bears have no natural predators, and they do not appear to be prone to death by disease or parasites. The most significant source of mortality is humans. Since 1972, with the passage of the Act, only Alaska Natives are allowed to hunt polar bears in Alaska. Bears are used for subsistence purposes such as the manufacture of handicraft and clothing items. The Native harvest occurs without restrictions on sex, age, number, or season, providing the population is not depleted and takes are non-wasteful. From 1980–1997, the total annual harvest in Alaska averaged 103 bears. The majority of this harvest (70 percent) came from the Chukchi and Bering Seas area.

Polar bears in the near shore Alaskan Beaufort Sea ware widely distributed in low numbers across the area with an average density of about one bear per 30 to 50 square miles. However, polar bears have been observed congregating on barrier islands in the fall and winter because of available food and favorable environmental conditions. Polar bears will occasionally feed on bowhead whale carcasses on barrier islands. In November 1996, biologists from the U.S. Geological Survey observed 28 polar bears near a bowhead whale carcass on Cross Island, and approximately 11 polar bears within a 2-mile radius of another bowhead whale carcass near the village of Kaktovik on Barter Island. In October 1997, we observed 47 polar bears on barrier islands and the mainland from Prudhoe Bay to the Canadian border, a distance of approximately 100 miles.

Effects of Oil and Gas Industry Activities on Marine Mammals and on Subsistence Uses

Pacific Walrus

Oil and gas industry activities that generate noise such as air and vessel traffic, seismic surveys, ice breakers, supply ships, and drilling may frighten or displace Pacific walrus. Nonetheless, the primary range of the Pacific Walrus is west of Point Barrow. Pacific walrus do not normally range into the Beaufort Sea. Occasionally, a single walrus may be sighted east of Point Barrow. From 1994 to 1997, two Pacific walrus were sighted during an open-water seismic program. The program was conducted in the vicinity of Gwydyr Bay approximately 10 miles west of Prudhoe Bay. Marine mammal monitors sighted one sub-adult walrus approximately 5 miles northwest of Howe Island and BP Exploration's Endicott Unit. The second, a single adult walrus, was observed from a survey aircraft approximately 20 miles north of Pingok Island.

In winter, Pacific walrus inhabit the pack ice of the Bering Sea. As the winter range of the Pacific walrus is well beyond the geographic area covered by these regulations (as defined above), we do not expect any impacts to walrus from oil and gas activities during winter.

If walrus are present, their movements may be affected by stationary drilling structures. Walrus are attracted to certain activities and are repelled from others by noise or smell. In 1989 an incident occurred during a drilling operation in the Chukchi Sea where a young walrus surfaced in the center hole (i.e., moonpool) of a drill ship. The crew used a cargo net to remove the walrus from the drilling area, after which the walrus left the scene of the incident and was not seen again. No similar incidents have been reported in the area of these regulations.

Seismic surveys generally take place on solid ice or in open water. Since walrus activity occurs near the ice edge, interactions between walrus and seismic surveys are unlikely.

Due to the small number of walrus in the area covered by the regulations, any take reasonably likely to or reasonably expected to be caused by oil and gas activities will not result in more than a negligible impact on this species.

Subsistence Use of Pacific Walrus

As the primary range of Pacific walrus is west and south of the Beaufort Sea, it is not surprising that few walrus are harvested in the Beaufort Sea along the northern coast of Alaska. Walrus constitute a small portion of the total marine mammal harvest for the village of Barrow. In the past 6 years, 73 walrus were reported taken by Barrow hunters. Reports indicate that all but 1 of the 73 walrus were taken west of Point Barrow, beyond the limits of the incidental take regulations. Hunters from Nuiqsut and Kaktovik do not normally hunt walrus east of Point Barrow and have taken only one walrus in the last 10 years. Therefore, due to the small number of walrus in the Native subsistence hunting areas covered by the regulations, any take reasonably likely to or reasonably expected to be caused by oil and gas activities will have no unmitigable adverse impacts on the availability of the Pacific walrus for subsistence use by Alaska Natives.

Polar Bear

In the southern Beaufort Sea, polar bears spend the majority of their lives on the ice, which limits the opportunity for impacts from Industry. For example, although polar bears have been documented in open water, miles from the ice edge or ice floes, it is a relatively rare occurrence. Therefore, any takes resulting from exploration activities in the open-water season will not have more than a negligible impact on the polar bear.

Polar bears also spend a limited amount of time on land, coming ashore to feed, den, or move to other areas. At times when the ice edge is near shore and then quickly retreats northward, bears may remain along the coast or on barrier islands for several weeks until the ice returns. For those brief periods, the likelihood of interactions between polar bears and Industry activities increases. We have found that polar bear interaction planning and training requirements of the LOA process have increased polar bear awareness and have helped minimize these encounters. For example, in 1999 Exxon terminated work on Flaxman Island due to the presence of several polar bears in the vicinity of the work area.

Disturbances to denning females, either on land or on ice, are of particular concern. As part of the LOA application for seismic surveys during denning season, Industry provides us with the proposed seismic survey routes. To minimize the likelihood of disturbance to denning females, we evaluate these routes along with information about known polar bear dens, historic denning sites, and probable denning habitat. A standard condition of LOAs requires Industry to maintain a 1-mile buffer

between survey activities and known denning sites. In addition, we may require Industry to avoid denning habitat until bears have left their dens. To further reduce the potential for disturbance to denning females, we are conducting research in cooperation with Industry to evaluate the use of remote sensing techniques, such as Forward Looking Infrared (FLIR) imagery, to detect active dens.

Industry activities that occur on or near the ice have greater possibility for encountering polar bears. Depending upon the circumstances, bears can be either repelled from or attracted to sounds, smells, or sights associated with these activities. As mentioned above, the LOA process requires the applicant to develop a polar bear interaction plan for each operation. These plans outline the steps the applicant will take to minimize impacts, such as garbage disposal procedures to reduce the attraction of polar bears. Interaction plans also outline the chain of command for responding to a polar bear sighting. In addition to interaction plans, Industry personnel participate in polar bear interaction training while on site. The result of these polar bear interaction plans and training is that when a bear encounters Industry activities, it is detected quickly, and responded to appropriately. Most often, this response involves deterring the bear from the site, with minimal effect. Without such plans and training, an undesirable outcome could be lethal take in defense of human life.

Over the span of our incidental take regulations, Industry reported 103 polar bear sightings. Of these, only 29 were instances where a bear was attracted to and/or deterred from the site. We have no indication that encounters that merely alter the behavior and movement of individual bears have any long-term effects on those bears. It is therefore unlikely that the small number of benign encounters between polar bears and Industry will have a significant overall effect on the populations.

No lethal takes have occurred during the period covered by incidental take regulations. Even before regulations were issued, lethal takes by Industry were a rare occurrence. since 1968, there have been two documented cases of lethal take of polar bears associated with oil and gas activities. In both instances, the lethal take was in defense of human life.

Based on the above discussion, any take reasonably likely to or reasonably expected to be caused by oil and gas activities will not result in more than a negligible impact on this species.

Oil Spills

In addition to routine operations, the potential exists for polar bears to be impacted by oil spills. Spills of crude oil and petroleum products associated with onshore production facilities are usually minor spills that are contained and removed upon discovery. As polar bears spend the majority of their time offshore, they are unlikely to encounter oil from an onshore spill.

Oil spills are of concern in the marine environment, where spilled oil will accumulate at the ice edge, in leads, and similar areas of importance to polar bears. Oil spilled from offshore production activities was not considered in our previous regulations. The Northstar Project will transport crude oil from a reconstructed gravel island in the Beaufort Sea to shore via a 5.96-mile buried subsea pipeline. The pipeline will be buried in a trench in the sea floor deep enough to reduce the risk of damage from ice gouging and strudel scour. Construction of the Northstar project began in the winter of 1999–2000.

Polar bears are at risk from an oil spill in the Beaufort Sea. Limited data from a Canadian study suggest that polar bears experimentally oiled with crude oil may die. This finding is consistent with what is known of other marine mammals that rely on their fur for insulation. The Northstar FEIS concluded that mortality of up to 30 polar bears could occur as the result of an oil spill greater than 1,000 barrels. This estimate was based on observations of aggregations of polar bears on barrier islands in the Beaufort Sea.

Two independent lines of evidence support our determination that only a negligible impact to the Beaufort Sea polar bear stock will occur from Northstar, one largely anecdotal, and the other quantitative. The largely anecdotal information is based on observations of polar bear aggregations on barrier islands and coastal areas in the Beaufort Sea. This information suggests that polar bear aggregations may occur for brief periods in the fall. The presence and duration of these aggregations are influenced by the presence of sea ice near shore and the availability of marine mammal carcasses, notably bowhead whales. In order for significant impacts to polar bears to occur, an oil spill would have to occur, an aggregation of bears would have to be present, the spill would have to contact the aggregation, and many of the bears would have to be killed. We believe the probability of all these events occurring simultaneously is low.

The quantitative rationale for negligible impact is based on a risk assessment that considered oil spill probability estimates for the Northstar Project, an oil spill trajectory model, and a polar bear distribution model. The Northstar FEIS provides estimates of the probability that one or more spills greater than 1,000 barrels of oil will occur over the project's life of 15 years. We consider here only spill probabilities for the drilling platform and subsea pipeline as these are the spill locations that will affect polar bears. Using exposure variables and production estimates from the Northstar EIS, we estimate the likelihood of one or more spills greater than 1,000 barrels in size occurring in the marine environment is 3–10 percent during the 3-year period covered by the regulations.

Applied Sciences Associates, Inc., was contracted by BP Exploration Inc. to run the OILMAP oil spill trajectory model. The size of the modeled spill was set at 3,600 barrels, simulating rupture and drainage of the entire subsea pipeline. Each spill was modeled by tracking the location of 100 "spillets," each representing 36 barrels. Spillets were driven by wind, and their movements were stopped by the presence of sea ice. Open water and broken ice scenarios were each modeled with 250 simulations. A solid ice scenario was also modeled, in which oil was trapped beneath the ice and did not spread. In this event, we found it unlikely that polar bears will contact oil, and removed this scenario from further analysis. Each simulation was run for 96 hours with no cleanup of containment efforts simulated. At the end of each simulation, the size and location of each spill was represented in a geographic information system (GIS).

Telemetry data suggest that polar bears are widely distributed in low numbers across the Beaufort Sea with a density of about one bear per 30–50 square miles. Movement and distribution information was derived from radio and satellite relocations of collared adult females. The U.S. Geological Survey, Biological Resources Division, developed a polar bear distribution model based on an extensive telemetry data set of over 10,000 relocations. Using a technique called "kernel smoothing," they created a grid system centered over the Northstar production island and estimated the number of bears expected to occur within each 0.25km^2 grid cell. Each of the simulated oil spills was overlaid with the polar bear distribution grid. If a spillet passed through a grid cell, the bears in that cell were considered killed by the spill. In the open water scenario, the estimated number of bears killed ranged from less than 1 to 78,with a median of 8. In the broken ice scenario, results ranged from less than 1 to 108, with a median of 21. These results are based on an "average" distribution of polar bears and do not include potential aggregation of bears.

We estimated the likelihood of occurrence of mortality for various numbers of bears by multiplying the probability of mortality by the spill probability for each period of the year, and summing those probabilities over the entire year. We calculated that the probability of a spill that will cause mortality of one or more bears is 0.9–3.1 percent. As the threshold number of bears is increased, the likelihood of that event decreases; the likelihood of taking more bears becomes less and less. Thus the probability of a spill that will cause a mortality of 5 or more bears is 0.7–2.5 percent; for 10 or more bears is 0.6–2.0 percent; and for 20 or more bears is 0.3–1.1 percent.

The greatest source of uncertainty in our calculations is the probability of an oil spill occurring. The oil spill probability estimates for the Northstar Project were calculated using data for subsea pipelines outside of Alaska and outside of the Arctic. These spill probability estimates, therefore, do not reflect conditions that are routinely encountered in the Arctic, such as permafrost, ice gouging, and strudel scour. They may include other conditions unlikely to be encountered in the Arctic, such as damage from anchors and trawl nets. Consequently, there is some uncertainty about oil spill probabilities as presented in the Northstar FEIS. If the probability of a spill were actually twice the estimated value, however, the probability of a spill that will cause a mortality of one or more bears is still low (about 6 percent).

This analysis is dependent on numerous assumptions, some of which underestimate, while others overestimate, the potential risk to polar bears. These include variation in spill probabilities during the year, the length of time the oil spill trajectory model was run, whether or not containment occurred during the trajectory model, lack of efforts to deter wildlife during the model runs, contact with a spillet constitutes mortality, and that aggregations of bears were not included. We determined that the assumptions that will overestimate and underestimate mortalities were generally in balance.

We conclude that if an oil spill were to occur during the fall or spring broken-ice periods, a significant impact to polar bears could occur. However, in balancing the level of impact with the probability of occurrence, we conclude that the probability of serious impacts (large-volume spills that cause high polar bear mortalities) is low. Therefore, the total expected taking of polar bear during oil and gas industry exploration, development, and production activities will have No more than a negligible impact on this species.

Subsistence Use of Polar Bear

Within the area covered by the regulations, polar bears are taken in Barrow, Nuiqsut, and Kaktovik; however, it is not considered a primary subsistence species in these villages. Data from our Marking, Tagging, and Reporting Program indicate that from July 1, 1993, to June 30, 1998, a total of 94 polar bears was reported harvested by residents of Barrow; 7 by residents of the village of Nuiqsut; and 10 by residents of the village of Kaktovik. Hunting success varies considerably from year to year because of variable ice and weather conditions. Native subsistence polar bear hunting could be affected by an oil spill. Hunting areas where polar bears are historically taken may be viewed as tainted by an oil spill.

Industry works with local Native groups to achieve a cooperative relationship between oil and gas activities and subsistence activities. The Industry works with the local Native groups to develop a Plan of Cooperation to address subsistence mitigation measures to be incorporated into the Industry's plan of operation. Any taking of polar bears likely to result from oil and gas activities will not have an umitigable adverse impact on the availability of polar bears for taking for subsistence uses.

Cumulative Effects

Based on past LOA monitoring reports, we believe that any take resulting from the interactions between Industry and marine mammals (Pacific walrus and polar bears) has had a negligible impact on these species. Additional information, such as subsistence harvest levels and incidental observations of polar bears near shore, provides evidence that these populations have not been adversely affected. The projected level of activities during the period covered by the regulations (existing onshore development and proposed exploratory activities) are similar in scale to previous levels. Therefore, we conclude that any take reasonably likely to or reasonably expected to occur as a result of projected onshore activities will have a negligible impact on polar bears and Pacific walrus.

While the actual construction and operation of the Northstar development is not expected to significantly increase the impacts to Pacific walrus and polar bears, concern about potential oil spills in the marine environment was raised in the Northstar FEIS. We have analyzed the likelihood of an oil spill in the marine environment that will kill a significant number of polar bears and found it to be negligible. Thus, after considering the cumulative effects of existing onshore development, exploratory activities, and the new Northstar subsea pipeline, we find that the total expected takings of polar bears during oil and gas industry exploration, development, and production activities will have a negligible impact on polar bears and Pacific walrus and will have no unmitigable adverse impacts on the availability of these species for subsistence use by Alaska Natives.

Conclusions

Based on the previous discussion, we make the following findings regarding this action:

Impact on Species

We find, based on the best scientific information available, the results of monitoring data from our previous regulations and the results of our modeling assessments, that any take reasonably likely to result from the effects of oil and gas related exploration, development, and production activities from March 30, 2000 through March 31, 2003, in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on polar bears and Pacific walrus and their habitat. In making this finding, we are following Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. The specific Congressional direction that justifies balancing probabilities with impacts follows:

> If potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information. 53 FR at 8474; accord, 132 Cong. Rec. S 16305 (Oct. 15, 1986)

Even though the probability of an oil spill that will cause mortality to polar bears is extremely low, in the event of a catastrophic spill, we will reassess the impacts to the polar bear and walrus populations and reconsider the appropriateness of authorizations for incidental taking through Section 101(a)(5)(A) of the Act.

Our finding of "negligible impact" applies to oil and gas exploration, development, and production activities. The following are generic conditions intended to minimize interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. We may expand the conditions in the LOAs based upon site-specific and species-specific reasons.

(1) These regulations do not authorize intentional taking of polar bear or Pacific walrus.

(2) For the protection of pregnant polar bears during denning activities (den selection, birthing, and maturation of cubs) in known and confirmed denning areas, Industry activities may be restricted in specific locations during certain specified times of the year. These restrictions will be applied on a case-by-case basis in response to each LOA request. In potential denning areas, we may require pre-activity surveys (e.g., aerial surveys) to determine the presence or absence of denning activity.

(3) Each activity authorized by an LOA requires a site-specific plan of operation and a site-specific polar bear interaction plan. The purpose of the required plans is to ensure that the level of activity and possible takes will be consistent with our finding that the cumulative total of incidental takes will have a negligible impact on polar bear and Pacific walrus and their habitat and, where relevant, will not have an unmitigable adverse impact on the availability of these species for subsistence uses.

Impact on Subsistence Take

We find, based on the best scientific information available and the results of monitoring data, that the effects of oil and gas exploration, development, and production activities for the next 3 years in the Beaufort Sea and adjacent northern coast of Alaska will not have an unmitigable adverse impact on the availability of polar bears and Pacific walrus for taking for subsistence uses.

Polar bear and Pacific walrus represent a small portion, in terms of the number of animals, of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. The low numbers do not mean, however, that the harvest of these species is not important to Alaska Natives. Prior to receipt of an LOA, Industry must provide evidence to us that a Plan of Cooperation has been presented to the subsistence communities, the Eskimo Walrus Commission, the Alaska Nanuuq Commission, and the North Slope Borough. The plan will ensure that oil and gas activities will continue not to have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. This Plan of Cooperation must provide the procedures on how Industry will work with the affected Native communities and what actions will be taken to avoid interference with subsistence hunting of polar bear and walrus.

If there is evidence that oil and gas activities will affect, or in the future may affect, the availability of polar bear or walrus for take for subsistence uses, we will reevaluate our findings regarding permissible limits of take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

Monitoring plans are required to determine short-term and direct effects of authorized oil and gas activities on polar bear and walrus in the Beaufort Sea and the adjacent northern coast of Alaska. Monitoring plans must identify the methods used to assess changes in the movements, behavior, and habitat use of polar bear and walrus in response to Industry's activities. Monitoring activities are summarized and reported in a formal report each year. The applicant must submit an annual monitoring and reporting plan at least 90 days prior to the initiation of a proposed exploratory activity, and the applicant must submit a final monitoring report to us no later than 90 days after the completion of the activity. We base each year's monitoring objective on the previous year's monitoring results.

We require an approved plan for monitoring and reporting the effects of oil and gas industry exploration, development, and production activities on polar bear and walrus prior to issuance of an LOA. Since development and production activities are continuous and long-term, upon approval, LOAs and their required monitoring and reporting plans will be issued for the life of the activity or until the expiration of the regulations, whichever occurs first. Each year, prior to January 15, we will require that the operator submit development and production activity monitoring results of the previous year's activity. We require approval of the monitoring results for continued operation under the LOA.

Discussion of Comments on the Proposed Rule

The proposed rule and request for comments was published in the **Federal Register** on December 9, 1999 (64 FR 68973). The closing date for comments was January 10, 2000. During this period we received 265 comments. These comments can be broadly categorized as relating to Legislation, National Environmental Policy Act (NAPA), Geography, Potential Impacts, Risk Assessment, Oil Spill Response, and Monitoring. A summary of these comments, and their responses, follows.

Legislative Issues

Comment: Allowing incidental take is contrary to the Act.

Response: Incidental take is authorized under Section 101(a)(5)(A) of the Act. While the Act placed a moratorium on the taking of any maritime mammal, Section 101(a) of the Act identifies exceptions to the moratorium. Section 101(a)(5)(A) of the Act provides for the incidental, but not intentional, take of small numbers of marine mammals, provided that the total take will have a negligible impact on the population and will not affect the availability of the species for subsistence users.

Comment: Allowing incidental take is a violation of the 1973 International Agreement on the Conservation of Polar Bears.

Response: The Agreement on the Conservation of Polar Bears calls for the prohibition on taking of polar bears with certain limited exceptions. However, the definition of "taking" in the Agreement differs substantially from that set out in the Act, in that the treaty definition includes only hunting, killing, and capturing. The only "takings" that are reasonably expected to occur during the period covered by this regulation would consist of the harassment of polar bears, which requires an authorization under the Act but does not constitute a "take" for purposes of the treaty. Further, the risk of any lethal taking of a polar bear incidental to the authorized activities is negligible and, therefore, would not be inconsistent with the provision for taking prohibitions in Article I of the Agreement.

Comment: Polar bears should not be harassed.

Response: While the Act placed a moratorium on the taking of any marine mammal, Section 101(a) identifies exceptions to the moratorium. Section 101(a)(5)(A) of the Act provides for the incidental, but not intentional take by U.S. citizens of small numbers of marine mammals, provided that the total take will have a negligible impact on the population, and will not affect the availability of the species for subsistence users.

The term "take" means to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal. The term "harass" means any action that has the potential to injure or disturb a marine mammal. Incidental, but not intentional, taking means takings that are infrequent, unavoidable, or accidental. It does not mean that the taking must be unexpected.

This final regulation allows Industry (the U.S. citizen) to take polar bears and Pacific walrus incidental, but not intentional, to exploration, development, and production activities (specified activity) on the North Slope of Alaska (specified geographical area). We made a finding that the total taking of polar bear and Pacific walrus during the 3-years life of the regulation will have a negligible impact on polar bears and Pacific walrus and will not have an unmitigable impact on the availability of such species for taking for subsistence uses.

NEPA Comments

Comment: Significant new scientific information has shown that the impacts to polar bears would be greater than was expressed in the Northstar FEIS. Therefore, an EIS for the regulations is warranted.

Response: In developing our environmental analysis we utilized the best scientific information available. We evaluated information in the Northstar EIS as well as refining or supplementing this information. As a result of this effort we developed a better understanding of potential effects and the likelihood of these effects occurring. However, we are not aware of new scientific information that has shown that the impacts to polar bears would be greater than was expressed in the Northstar FEIS. Through the preparation of an Environmental Assessment (EA), we found that the proposed activity (issuance of implementing regulations) will not significantly affect the quality of the human environment, thereby resulting in a "Finding Of No Significant Impact (FONSI)." Therefore, in accordance with NEPA, an EIS is not required. Our analysis in the Final EA found that the total expected takings of polar bears during oil and gas industry exploration, development, and production activities will have a negligible impact on polar bears and will have no unmitigable adverse impacts on the availability of polar bears for subsistence use by Alaska Natives.

There appeared to be confusion between the potential impacts of these regulations and the potential impacts of the activities themselves. These incidental take regulations do not authorize the actual oil an gas activities. Those activities are authorized by other State and Federal agencies, and would likely occur even without incidental take authority. These regulations allow for the incidental take of marine mammals in accordance with the Act and provide us with a means of interacting with Industry to insure that the impacts to polar bears are as minimal as possible.

Our Final EA evaluated the impacts of the proposed incidental take regulations. The EA was not written to correct any perceived shortcoming of the Northstar EIS. We believe our EA adequately addresses the relevant issues with respect to the final regulations. As our NEPA document, the EA analyzes the affected environment and the environmental consequences of our action (i.e., the issuance of Federal implementing regulations).

Comment: Our NEPA analysis addressed an improper and insufficient array of alternatives.

Response: In order to issue regulations, we first had to assess if the sum total of all takings by all specified activities within the specified geographic region during the 3-year period covered by the proposed regulations would have a negligible impact on the species and would not have an unmitigable adverse impact on the availability of the species for taking for subsistence purposes. Since the regulations must consider the sum total of all takings, the only two relevant alternatives in the EA were to issue or not issue incidental take regulations.

Comment: Recommendations to conduct necessary studies of offshore oil development impacts on polar bears prior to and during the time of Northstar EIS preparation were ignored.

Response: The development of Federal regulations for the incidental take of marine mammals is a separate process from the Northstar EIS. For these regulations, we were required to make a determination of negligible or greater than negligible impact. With the cooperation of the U.S. Geological Survey's (USGS) Biological Resources Division, we facilitated the completion of a thorough analysis of the potential impacts of an Arctic oil spill on polar bears, which was included in our finding of negligible impact. That this analysis was not completed earlier and incorporated in the Northstar EIS does not change our finding of negligible impact, nor our ability to issue incidental take regulations.

Geographic Issues

Comment: The geographic scope of the regulations is overly broad and should be modified.

Response: Section 101(a)(5) of the Act states that incidental take regulations may be issued for "specified activities" and "specified geographical areas." Industry's original petition (of December 1991) requested regulations for: (1) open-water exploration operations—Beaufort Sea, (2) oil and gas development and production in Arctic Alaska, and (3) exploration operations during the ice-covered period—coastal Arctic Alaska and Beaufort Sea. Due to the similarity of the activities and the geographical areas, we made the decision to issue one set of regulations instead of three sets of regulations.

Comment: The Beaufort Sea area covered by these regulations far exceeds that requested by the petitioner, and therefore it should be modified.

Response: On December 17, 1991, Industry requested that we promulgate incidental take regulations for the following specific geographical area: (1) A north/south line at Barrow including all Alaska State waters and the OCS east of that line to the Canadian border; (2) an area extending approximately from Barrow on the west to the Canning River on the east and from 25 miles inland from the coast on the south to approximately 5 miles offshore; and (3) a north/south line at Barrow including all Alaska coastal areas, State waters, and OCS waters east of that line to the Canadian border. Instead of responding to three different petitions in the same general area, requesting the same general activities, we chose to combine the three petitions into one action. The "specified geographical area" is defined as a north/south line at Barrow, Alaska, including all Alaska State waters and all OCS waters, and east of that line to the Canadian border, with the onshore region being the same north/south line at Barrow, 25 miles inland and east to the Canning River. The scope of the petitions was limited to pre-lease and post-lease oil and gas activities on private, State, or Federal lands in coastal Arctic Alaska with the exception of lands within the Arctic National Wildlife Refuge. Therefore, the Arctic National Wildlife Refuge is excluded from the regulations.

Comment: The National Petroleum Reserve—Alaska (NPRA) should be excluded from these regulations.

Response: We considered the total takings in the total geographical area as

defined in the regulations when we developed our finding of negligible impact. The oil and gas industry activities as defined to include exploration, production, and development that will occur in NPRA will be similar to activities that have occurred in areas that have previously been developed and the NPRA area has been made available for leasing through Federal actions. Our finding made the determination that the sum total of all takings for all activities for the 3-year term of these regulations will have a negligible impact on polar bears and Pacific walrus. This determination is supported by our past monitoring results, which have indicated no adverse impacts to polar bears or Pacific walrus. "Important Habitat Areas" identified in our Habitat Conservation Strategy for Polar Bears in Alaska (Strategy) will be adequately protected by LOA special conditions. Our Alaska National Interest Lands Conservation Act (i.e., ANILCA) section 810 responsibilities were fulfilled as a result of our finding that the total takings during our 3-year regulations will not have an unmitigable adverse impact on the availability of polar bears and Pacific walrus for taking for subsistence uses. Section 18.124 of these regulations requires a Plan of Cooperation between Industry and the affected subsistence communities to mitigate potential conflicts between Industry's activities and subsistence hunting.

Comment: Specific areas should be protected, including the Arctic National Wildlife Refuge, offshore of the refuge, and other Important Habitat Areas identified in the Habitat Conservation Strategy for Polar Bears in Alaska.

Response: The Arctic National Wildlife Refuge is excluded from this rulemaking. Also, Lease Sale 170 does not allow further oil and gas leasing in the OCS area offshore of the Arctic National Wildlife Refuge. However, some oil and gas industry activity may occur in this area at existing leases. The area from the coast to 3 miles out is under the jurisdiction of the State of Alaska. A State of Alaska lease sale is planned for this area in the future. With incidental take regulations in place, we will have a greater degree of involvement with oil and gas operations off the coast of the refuge to monitor and mitigate potential impacts through the LOA process.

Important habitat areas identified in our Strategy are presently considered when LOAs are issued. Habitat values are protected through area and timing conditions incorporated into LOAs.

Comment: East Barrow, South Barrow, and Walakpa gas fields were not referenced because they are operated by the North Slope Borough and not the oil industry.

Response: This assumption is correct. Section 101(a)(5)(A) of the Act states that "Upon request * * * by citizens * * * who engage in a specified activity * * * within a specified geographical region, the Secretary shall allow * * * the incidental, but not intentional taking * * * by citizens while engaging in that activity * * *" Only the oil and gas industry on the North Slope has asked that implementing regulations be developed for the incidental take of polar bears and Pacific walrus. East Barrow, South Barrow, and Walakpa gas fields were not identified in Industry's request for regulations. However, when regulations are in place, anyone who engages in a specified oil and gas industry activity within a specified (as defined in the regulations) geographical region may be authorized to take small numbers of polar bears and Pacific walrus.

Comment: The proposed regulations do not describe how far north the area goes, only that it includes the OCS.

Response: The specific area defined in our regulations includes all OCS waters. Therefore, the regulations to authorize the incidental take of polar bears and Pacific walrus extend 200 miles offshore. This area has been clarified in the final regulations.

Potential Impacts

Comment: Industry should not be allowed to disturb denning females.

Response: We agree that denning female polar bears should not be disturbed. Applications for LOAs must include information regarding the area of Industry activities. We evaluate these work areas and compare them with known den locations, known denning habitat, and probable denning habitat. When we identify a conflict, we include conditions in the LOA to protect denning polar bears. For example, in 1999 we worked with Exxon Corporation to schedule the timing and location of their work activities to avoid known dens and areas of historical dens. In the past 6 years while incidental take regulations have been in place, no cases of disturbance to a denning polar bear have been documented. While it is true that we do not know the location of every polar bear den, we use all available information (i.e., local knowledge, satellite transmitters, historic data) and we continue to work with Industry to explore the use of new technology to locate dens.

Comment: Subsea pipelines are an intrusion into polar bear habitats.

Response: We agree that Industry activities occur within polar bear habitat. Our findings of negligible impact included a review of the effects of oil and gas industry intrusion into polar bear habitats. Since regulations were first issued for the incidental take of polar bears on the North Slope, we have not seen declines in the polar bear population or rates of recruitment and survival. We are concerned about future cumulative effects of development activities on polar bears and their habitat, and, therefore, we will continue to monitor ongoing activities, interactions with polar bears, and loss of polar bear habitat.

Comment: Industry should not be able to kill polar bears as a result of a spill.

Response: As authorized by section 101(a)(5)(A) of the Act, these regulations allow for the incidental, but not intentional, take (including lethal take) of small numbers of polar bears and Pacific walrus so long as the total of such taking during the specified time period will have a negligible impact on the species and will not have an unmitigable adverse impact on the availability of the species for subsistence purposes. Section 101(a)(5)(B) of the Act states that we shall withdraw, or suspend the permission to take polar bears if the taking allowed is having, or may have more than a negligible impact on polar bears. In addition, incidental take authorization does not override requirements or penalties of other environmental legislation, such as the Clean Water Act and the Oil Pollution Act. In the event of a catastrophic spill that results in the lethal take of polar bears or Pacific walrus, we will reassess the impacts to polar bear and Pacific walrus populations and reconsider the appropriateness of authorization for incidental taking through specific LOAs or this regulation. Damages are collected under the Natural Resource Damage Assessment provision within the Comprehensive Environmental Response, Compensation, and Liability Act. Our incidental take regulations do not override this responsibility.

Comment: Routine operations pose great risks to polar bears.

Response: Over the past 6 years while incidental take regulations have been in effect, no instances of lethal take have occurred. We feel the level of non-lethal incidental take in the form of harassment that has occurred, and is likely to occur in the future, does not constitute "great risk." With this regulation in place, we have established communication with Industry that fosters interactions that minimize potential impacts to polar bears.

Harassment that has been permitted defused incidents that otherwise may have resulted in lethal take in defense of human life.

Comment: Effects of chronic spills, transportation, and other spills and contaminants on polar bears were not considered.

Response: We did consider these indirect and direct effects and have clarified the types of activities analyzed and the scope of effects. The results of our monitoring program for the past 6 years shows that oil spills from any source have had no discernable impact on polar bears. In addition to our monitoring, onsite visits reveal that the oil and gas industry takes extensive precautions to avoid and reduce the release of petroleum products to the environment. Likewise, should a release of petroleum products occur, Industry is required to respond quickly and take corrective action. To date, we have no indication that the polar bears have been affected by spilled oil from any source.

Records from the Alaska Oil and Gas Conservation Commission (AOGCC) indicate that the release of hydrocarbons from a blowout has not occurred in the oil fields, onshore or offshore. During the 50-plus years of drilling on the North slope, AOGCC records show 6 gas blowouts and no oil blowouts. In the winter of 1991/92, an exploratory well (Cirque #1) in the Kuparuk Field west of the Colville River did experience a blowout. However, only gas and sands were released to the environment. When tested, no hydrocarbons were detected in the sands. Through December 1999, AOGCC records show 3,865 wells were permitted, and, through November 1999, 12,561,250,991 barrels of oil have been produced. Although the release of hydrocarbons from a blowout is unlikely, it could pose a risk to polar bears should it occur at an offshore site.

Comment: Polar bears are already stressed by climate change.

Response: We evaluated the size and trends of the Beaufort Sea polar bear population and did not detect changes caused by industrial effects. Recent re-analysis of long-term polar bear capture information indicates that the population grew during the 1970s and 1980s, and that the population is currently stable. Anecdotal information tends to support the position that the polar bear population is increasing. Our finding of negligible impact is made for 3 years, the life of the regulations. Climate change over time is a concern to us also. However, we have no evidence that the polar bear population is stressed by climate change. In the future, if climate change is shown to affect the polar bear population, this issue could affect future evaluations and findings.

Comment: The long-term cumulative impacts of harassment, disturbance, and oil spills on polar bear populations or habitat use, including selection of denning sites and success of reproduction were not considered.

Response: Long-term cumulative impacts were considered, and we remain cognizant and concerned regarding the potential effect of multiple offshore production facilities on the Beaufort Sea polar bear population in the future. Our efforts for this regulatory action apply through early 2003, and have focused on the location, level, frequency, and duration of Industry activities expected during this period as well as those activities having occurred in the past. Biological information we used in our assessment includes research publications and data, results from previous monitoring, information contained in our 1995 Strategy, traditional knowledge of polar bear habitat use, anecdotal observations, and professional judgment. We evaluated the sum total of impacts, both direct and indirect, subtle and acute, likely to occur from industrial activity. After considering all available sources of information, we have no indication, based on the best scientific information available, that cumulative effects of industrial activities had, or would have, population level effects on rates of recruitment or survival.

Existing data do not lend themselves to a quantitative assessment of cumulative effects of the indirect and subtle impacts of industrial activity. We have evaluated direct impacts, such as oiling, which have a quantifiable likelihood of occurrence. The more subtle impacts, such as habitat selection, harassment, disturbance, and stress and confounded by difficulties in detecting changes in life history parameters caused by human interaction and issues such as natural variation or harvest. In order to evaluate these types of impacts, either individual animals would need to be followed over time and a comparison of those exposed to human influence (e.g., hazing, presence of activities in denning habitat) versus those not exposed to human influence would have to be conducted, or a comparison of life history parameters prior to the presence of Industry activities with life history parameters in the presence of industrial activities would have to be done. We hope to obtain a better understanding through a concerted effort of various agency and public interests in the future.

Comment: the cumulative impact of the Liberty Development project should be considered.

Response: These regulations will authorize the incidental take of polar bears and Pacific walrus for a 3-year period ending in early 2003. The Liberty Project has been delayed and is proposed for startup in 2003. Under these regulations, no activities associated with the Liberty Project will be authorized for the incidental take of polar bears or Pacific walrus since information is incomplete or preliminary at this time. We are obligated to assess cumulative impacts for the duration of the proposed regulations and cannot include information that is speculative, incomplete, or beyond the term of these regulations.

Comment: Regulations are a "License to Kill" polar bears.

Response: During the past 6 years of incidental take regulations, no known instances have occurred where a polar bear was killed by Industry activities. Intentional take is not authorized by these regulations. When polar bears do encounter Industry activities, appropriate measures are taken to safeguard the lives of both humans and bears.

Comment: Polar bear and Pacific walrus populations are in decline.

Response: Our September 1998 Stock Assessment developed according to the provisions of Section 117 of the Act indicate that the Beaufort Sea polar bear populations has experienced growth since the 1970s and that the population is at a relatively high level. Recent reanalysis of long term polar bear capture information indicates that the population grew during the 1970s and 1980s and that the population is currently stable. Pacific walrus occur in extremely limited numbers in the area of the regulations. While some studies show evidence of low productivity in the walrus populations, we have no evidence of a population decline.

Comment: Higher rates of incidental take at production facilities, offshore operations, and past records of polar bear sightings during Northstar activities support a finding of significant impacts.

Response: We disagree that increases in the number of polar bear sightings constitute significant impacts. However, increases in the numbers of polar bear sightings to some degree may equate to increased levels of take. However, sightings do not necessarily equate to takes as defined in the regulations. Similarly, the scale of production and development activities is greater than exploration; therefore, it comes as no

surprise that the majority of polar bear sightings occur at those facilities; since the chance of detecting polar bears may be proportional to the number of observers. Also it is important to note that the increase in sighting may be related to multiple observations of the same bear as it transits the oil field and operations are year-round. However, it is inappropriate to conclude that development and production at Northstar constitutes a major expansion that will have significant population level effects.

We agree that increased incidental take associated with the construction of the Northstar production facility and sub-sea pipeline is likely, as well as with production activities. However, offshore developments occur in only a small portion of the overall range of the southern Beaufort Sea stock of polar bears. We do not consider all sightings to be takes and these levels of possible incidental take do not have population-level effects.

Comment: Despite a trend of increased level of oil and gas activities in polar bear habitats and greater incidental take, the level of take is assumed to be the same this year as last.

Response: We agree that the increase in numbers of LOAs issued indicates an increase in oil and gas industry activities. An increase in number of bears sighted, which is not necessarily a take, is therefore to be expected because we have more active monitoring plans in place. We do not agree, however, that the risk of death to polar bears and people is heightened. Note that, since our regulations have been in place (1993–1999), we have no record of an encounter resulting in injury to polar bears or humans. We credit this success to enhanced employee training and awareness about polar bear encounters.

In the proposed regulations, we stated that the types of activities would be similar to previous years, not that the level of activities and/or incidental take or types of take would be similar. The addition of new development, such as Northstar, will increase human activity and the likelihood of polar bear sightings. We do not believe that the overall activity level will have a measurable impact on polar bears during the 3-year period covered by these regulations.

Comment: Existing scientific information on long-term impacts of oil spill mortality to the population was not considered.

Response: All existing scientific information on long-term impacts of oil spill mortality to the populations was considered. We are unaware of additional information which should have been considered in our analysis. The commentor provides no indication of potential sources of additional information. A preliminary polar bear population model that estimates the response of the Beaufort sea polar bear stock to a one-time removal of polar bears, as could occur in the event of an oil spill, is under development and was tested using an oil spill scenario. While the underlying concepts of this model are sound, we consider it a work in progress that is very sensitive to the input parameters used. We continue to work on the model to refine those parameters.

Comment: Spills from the Endicott Production Facility were not considered in previous regulations.

Response: In developing implementing regulations and making the required finding of negligible impact to polar bears and Pacific walrus, and on the availability of polar bears and Pacific walrus for taking for subsistence uses, we considered all possible and probable impacts. Research conducted to date reveals that six documented cases of loss of secondary well control (blowouts) occurred during the period 1974–1997; no oil spills, fire, or loss of life occurred in any of the six events. To date, we have no record of a blowout directly or indirectly causing the take of a polar bear or Pacific walrus, Endicott has an above-surface pipeline similar in size and function as the other operating facilities on the North Slope. Pipelines located above ground increase the probability of rapid or timely leak detection, containment, and cleanup. We did consider the probability and effects of past activities, including Endicott, in making our negligible effect finding for polar bears and no unmitigable adverse effect for Native subsistence users. Therefore, Endicott was considered in the same detail as the Prudhoe Bay, Kuparuk, and other operating facilities.

Comment: Construction and operation of the Northstar facility may affect polar bear distribution, both directly and indirectly, by affecting ringed sealed distribution.

Response: We considered information contained in the Corps of Engineers' FEIS for the Northstar project. As required by NEPA, this document presents information on the overall environmental effect of the project in deciding if a Section 404 discharge permit should be issued. Our incidental take regulations provide for unintentional take of polar bear and Pacific walrus encountered during lawfully permitted activities provided that we find that the activity will have a negligible impact on the species' rates of recruitment or survival. Oil and gas activities in the Beaufort Sea occupy a small, yet expanding portion of the range of polar bears. In our evaluation of the best available scientific information, we find that even if the operation of Northstar would influence the distribution of ringed seals or polar bears, or increase interactions between humans and polar bears, the magnitude of these changes would not appreciably affect species' rates of recruitment or survival.

We have evaluated monitoring reports from other "like" type exploratory drilling activities during open water, freeze up with broken ice conditions, solid ice, and break-up and note that polar bears can be expected to occur near these facilities during all seasons, although the magnitude of these encounters varies within and between seasons. Thus, while we expect that the rate of polar bear and human interactions will increase from conditions without development, we do not expect the number or types of encounters to adversely affect rates of recruitment and survival.

Regarding the effects of development activities on ringed seals, we note that scientific information is limited and does not allow for quantitative assessment of the effects of these activities on ringed seals. The National Marine Fisheries Service (NMFS) is conducting monitoring programs on the Northstar facility focused on assessing the effects of industrial development on ringed seal distribution. We anticipate further discussions with the NMFS on this study and its application to questions about polar bear and prey relationships near the Northstar facility, and for coordinating future monitoring programs of mutual interest by our agencies. Consideration of the best available scientific information indicates that Northstar or other industrial activities considered within the scope of the regulation are not likely to and not reasonably expected to affect ringed seal populations to the point of measurably reducing polar bear rates of recruitment or survival. The NMFS states in its proposed "taking" regulations published in the **Federal Register** on October 22, 1999, (64 FR 57010) that because the taking of ringed seals incidental to Northstar activities will be almost exclusively by incidental harassment and no serious injury or mortality is expected as a result of Northstar construction and operation, fluctuating population levels should be of little consequence.

Assessment Risk

Comment: The number of bears potentially affected is unacceptable.

Response: Regulations that authorize the incidental take of polar bears and Pacific walrus have been in place on the North Slope of Alaska for 6 years. Our monitoring results during that period suggest that the impact of Industry activities have been negligible.

The greatest amount of concern appears to be in regard to the Northstar project and the use of a sub-sea pipeline. We acknowledge that, if an oil spill were to occur during the fall or spring broken-ice periods, a significant impact to polar bears could occur. In our risk assessment analysis, we followed Congressional direction in balancing the potential for a significant impact with the likelihood of that event occurring. For example, while our analysis showed that up to 108 polar bears could be killed by a spill, we estimate the likelihood of this event is roughly 1 in 30,000. The specific Congressional direction that justifies balancing probabilities with impacts follow:

> If the potential effects of a specified activity are conjectural or speculative, a finding of negligible impact may be appropriate. A finding of negligible impact may also be appropriate if the probability of occurrence is low but the potential effects may be significant. In this case, the probability of occurrence of impacts must be balanced with the potential severity of harm to the species or stock when determining negligible impact. In applying this balancing test, the Service will thoroughly evaluate the risks involved and the potential impacts on marine mammal populations. Such determination will be made based on the best available scientific information. 53 FR at 8474; accord, 132 Cong. Rec. S 16305 (Oct 15, 1986)

In the event of a catastrophic spill, Section 101(a)(5)(B) of the Act states that we may withdraw, or suspend the permission to take polar bears if the taking allowed is having, or may have more than a negligible impact on polar bears.

Comment: Oil spill probabilities presented in the Northstar FEIS contain considerable uncertainty.

Response: The probabilities of an oil spill presented in the Northstar FEIS were based on spill probabilities from other data sets in the Gulf of Mexico and Europe. Those data sets contain causes of oil spills that are unlikely to occur in the Arctic, such as damage from anchors and fishing trawlers. Conversely, they do not contain potential causes of oil spills unique to the Arctic, such as ice gouging and strudel scour. In addition, the Northstar pipeline will incorporate conservative design criteria, quality assurance programs, and internal inspection programs. While all these factors are likely to affect the actual Northstar spill probabilities, none of them can be quantified at this time. Therefore, we used oil spill probabilities calculated using the exposure variables presented in the Northstar FEIS.

Comment: The oil spill trajectory on polar bears provided shows major impacts from a spill.

Response: The oil spill trajectory analysis was designed to quantify the potential impacts of an oil spill from Northstar. The results are probabilistic and, therefore, cannot be directly compared to the mortality estimate in the Northstar FEIS, for which no probability was given.

Determination of risk involves two components: (1) The likelihood that an event will occur, and (2) the consequences of that event. The number of polar bears potentially impacted by a spill do not constitute "risk" without a measure of likelihood. We acknowledge that, if a spill were to occur during broken ice periods, major impacts to polar bears could result. However, the likelihood of this occurrence is sufficiently small to warrant a finding of negligible impact.

Comment: Oil spill trajectory information shows additional risk, such as spills during September or aggregations of bears, that were not considered in this analysis.

Response: Ice conditions in the Beaufort Sea are variable during September. In some years, the ice is adjacent to the shore, and in other years it remains offshore. The distribution of polar bears is largely dependent on the distribution of sea ice. Therefore, we chose to model a broken ice scenario in October when polar bear distributions are less variable. While the analysis could have been conducted on a month-by-month basis, we did not feel that this level of resolution would significantly improve the model.

Polar bear distribution data was based on over 10,000 radio and satellite-telemetry relocations. Anecdotal information on polar bear sightings is not suitable for incorporation into the analysis. Similarly, we did not have sufficient information (location, dates or occurrence, duration, number of bears, etc.) about polar bear aggregations to include them in the model. However, since capture and telemetry observations constitute a random sample of the population, the results reflect an "average" distribution of polar bears.

Comment: Oil spill trajectory analysis was not done for maximum-sized spill or for the full duration of time that oil would spread and be available in the environment.

Response: In the oil spill trajectory model, we modeled the spill that would be consistent with the oil spill probabilities presented in the Northstar FEIS. We did not choose to model the worst-case scenarios, as they are associated with well blowouts. While blowouts are possible, data from the Alaska Oil and Gas Conservation Committee indicate that only 6 gas blowouts, and no oil blowouts, have occurred during all North Slope drilling operations over the past 50 years. Therefore, we conclude that the likelihood of occurance for these worst-case scenarios are exceedingly small, constitute little risk to polar bears, and need not be modeled.

The trajectory model showed considerable variability in the spread of oil; some trajectories moved considerable distances, while others did not. This variability is reflected in the estimated numbers of polar bears that would be impacted by a spill. Therefore, the results of this analysis must be considered from a probabilistic perspective. The purpose of this modeling exercise was to quantify the risk to polar bears in general terms. We feel the level of detail included in the oil spill trajectory model, polar bear distribution model, and risk assessment was appropriate for the data at hand.

Comment: The Polar Bear Risk Analysis for the Northstar Project in the proposed rule is scientifically flawed, ignores available information, and cannot be used to overturn the results of the Northstar Draft and Final Environmental Impact Statements (EIS) prepared by the U.S. Army Corps of Engineers, nor to make findings of negligible impact to polar bear populations or subsistence.

Response: The Polar Bear Risk Analysis was favorably reviewed by other scientists, statisticians, and modeling experts. The oil spill probabilities used in the risk analysis were calculated based on exposure variables and oil production estimates from the Northstar EIS. Additional "important oil spill risks" could not be quantified and, therefore, were not included in the analysis.

We disagree with the stated opinion that "a risk analysis approach is inappropriate, given the devastating effects of a spill in the event that it occurs." Managing by the worst-case scenario without consideration of the likelihood of occurrence is not practical. Following that rationale, people would not fly on commercial airlines, as the worst-case scenario is for hundreds of

fatalities. To the contrary, risk analysis indicates that air travel is one of the safest modes of transportation available.

We acknowledge that the risk analysis was simplistic, but we believe the level of analysis used was appropriate for the available data. We disagree with the statement that the results "downgrade conclusions about impacts from a spill." In our opinion, the results provide the context necessary to interpret those impacts. We consider this approach to be an improvement over previous impact assessments.

Comment: Regardless of the probability of a major spill, or series of smaller spills, the effect on polar bear populations and habitats would be significant and cannot be ignored.

Response: We remain concerned about the impacts from a potential oil spill from Northstar. However, without some measure of probability, assessing the risk to polar bears is impossible. In this regard, we believe a risk assessment approach is appropriate.

The Northstar FEIS did not present a probability associated with the mortality estimate of 30 bears. The probability of an oil spill impacting an aggregation of polar bears is the product of: (1) the probability of a spill occurring; (2) the probability of an aggregation of bears being present; and (3) the probability of the spill contacting the aggregation.

Comment: Movement patterns and habitat use by females may not be representative of those of other demographic classes (i.e., males and juveniles) in the polar bear population.

Response: At this time, a technique to follow movements of adult males is not available, although some testing of ear tag transmitters and subcutaneous implanted transmitters has been attempted with limited success. Radio collars have not been successful on male polar bears due to the shape of their neck and head. Also, radio collars are not used to collect information on cubs because of their rapid rate of growth and possible injury to the bear. Without adequate information about these other demographic classes, we made the untested assumption that females were representative of the entire population. We acknowledge that additional data in this area would be desirable.

Comment: Cumulative impacts from Northstar should be considered beyond the 3-year period of the regulations.

Response: While operation of the Northstar facility is anticipated to last for at least 15 years, our cumulative impact assessment can only look 3 years into the future. We are obligated to assess cumulative impacts for the duration of the regulation and not to include information that is speculative, incomplete, or beyond the scope of the regulations. Any information and our assessment of effects on polar bears regarding future operations at the Northstar site would occur in future regulations.

Comment: Unpublished data, modeling activities, and reports used in determining the effects of oil and gas industry activities should be available for review

Response: The proposed rule announced that persons seeking further information on the proposed rulemaking should contact our Marine Mammals Management Office. Persons still seeking materials used in the production of these implementing regulations may request them from the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, AK 99503.

Oil Spill Response

Comment: It is impossible to clean up an oil spill during broken ice conditions.

Response: In our risk assessment analysis, we assumed that cleanup would not occur, but we also assumed that the chance of a spill is small and that containment would occur. Industry is working to develop better technology for cleanup and spill detection.

Comment: Spill response drill results and failure to comply with conditions of the Northstar Oil Spill Contingency Plan (C-Plan) provide reason for concern.

Response: The oil spill contingency plan was approved by the Alaska Department of Environmental Conservation, the U.S. Department of Transportation, the U.S. Coast Guard, and the Minerals Management Service. We were actively involved in the development of the Area Plan that establishes standards for the oil spill contingency plan and identifies sensitive resource areas. We believe the oil spill contingency plan does describe feasible techniques to minimize impacts of oil spills.

We are concerned about the efficacy of cleanup and containment efforts should a spill occur in the marine environment. Given the uncertainties associated with cleanup and containment, modeling all the possible cleanup and containment scenarios that could occur was not possible. Instead, we modeled a spill that was contained 72 hours after the final release of oil as required in the Northstar C-Plan. Any cleanup or containment that might occur prior to that point would decrease the size of the spill and, therefore, the potential impacts.

Comment: Incidental take associated with oil spill response activities was not considered.

Response: Incidental take associated with oil spill response activities was considered. Similar to mortality levels, the level of the type of incidental take, which includes harassment and deterrence, must be balanced with a likelihood of occurrence of a spill, which we believe to be small. However, in the event of a spill, we feel that nonlethal takes in the form of deterrence are preferable to the alternative.

Comment: Spilled oil trapped under solid ice may impact polar bears at a later time when the ice melts.

Response: In our modeling exercise, we believed that movement of oil during solid ice conditions and the potential for contact with polar bears is minimal and removed the scenario from further analysis. We recognized that movement of oil trapped beneath ice is possible over time, but believe that recovery of a portion of the oil trapped beneath ice and weathering of remaining oil would minimize potential impacts that may occur to polar bears at a later time. The indirect or latent effects of oiling are not qualified. We disagree with the assumption that no effective means exist for containing removing oil trapped beneath ice during the winter months. Review of the techniques for containment and removal of spilled oil in the solid ice conditions detailed in the oil spill contingency plan provides plausible explanation of the potential for greater effectiveness in cleanup of oil in these conditions. We acknowledge that 100 percent effectiveness of containment or cleanup is not possible. We believe that a greater potential impact to polar bears is illustrated in the open water or broken ice conditions scenarios, and we have chosen to focus our analysis on these scenarios. We have further clarified our rationale for excluding impact analysis for solid ice conditions within the final regulation and have included reference to the BPX oil spill contingency plan.

Monitoring

Comment: Monitoring results for 1998 and 1999 were not analyzed.

Response: In June 1998, we prepared a monitoring report, which is available for public review, that covered the period from 1994 to 1997. That monitoring report identifies activities that were recorded under the authority of an LOA. Our monitoring database is continually updated, and a new monitoring report will be prepared after monitoring results are compiled for the winter 1999/2000 season. Preliminary analysis of monitoring reports from

1998 and 1999 indicate that the number of encounters between polar bears and industry activities were comparable to 1997.

Comment: Monitoring and reporting requirements are vague and inadequate.

Response: The site-specific monitoring programs are designed to provide information on the number of bears encountered at or near industrial sites, how bears react, information regarding hazing of bears if necessary, and information on lethal interactions should they occur. It is true that existing site-specific monitoring observations, by themselves, do not entirely provide the type of information necessary to evaluate the long-term, indirect, subtle effects of the activity or provide a quantitative measurement of effect on the population. We are currently considering changes to monitoring and reporting requirements that, while not specified in these regulations, can be implemented as conditions to LOAs.

Required Determinations

We have prepared an Environmental Assessment (EA) in conjunction with this rulemaking and concluded in a Finding of No Significant Impact (FONSI) that this is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National environmental Policy Act of 1969. For a copy of the EA and FONSI, contact the individual identified above in the section entitled, **FOR FURTHER INFORMATION CONTACT.**

This document has not been reviewed by the Office of Management and Budget under Executive Order 12866 (Regulatory Planning and Review). This final rule will not have an annual effect of $100 million or more on the economy; will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not alter the budgetary effects or entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients; and does not raise novel legal or policy issues. Expenses will be related to, but not necessarily limited to, the development of applications for regulations and LOAs, monitoring, record keeping, and reporting activities conducted during Industry oil and gas operations, development of polar bear interaction plans, and coordination with Alaska Natives to minimize effects of operations on subsistence hunting. Compliance with the rule is not expected to result in additional costs to Industry that it has not already been subjected to for the previous 6 years. Realistically, these costs are minimal in comparison to those related to actual oil and gas exploration, development, and production operations. The actual costs to Industry to develop the petition for promulgation of regulations (originally developed in 1997) and LOA requests probably does not exceed $500,000 per year, short of the "major rule" threshold that would require preparation of a regulatory impact analysis. As is presently the case, profits will accrue to Industry; royalties and taxes will accrue to the Government; and the rule will have little or no impact on decisions by Industry to relinquish tracts and write off bonus payments.

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The rule is also not likely to result in a major increase in costs or prices for consumers, individual industries, or government agencies or have significant adverse effects on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We have also determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory flexibility Act, 5 U.S.C. 601 *et seq.* Oil companies and their contractors conducting exploration, development, and production activities in Alaska have been identified as the only likely applicants under the regulations. These potential applicants have not been identified as small businesses. The analysis for this rule is available from the person in Alaska identified above in the section entitled, **FOR FURTHER INFORMATION CONTACT.**

This final rule is not expected to have a potential takings implication under Executive Order 12630 because it will authorize the incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempt these companies from civil and criminal liability.

This final rule also does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132. In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501, *et seq.*), this rule will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. The Service had determined and certifies pursuant to the Unfunded Mandates Reform Act that this rulemaking will not impose a cost of $100 million or more in any given year on local or State governments or private entities. This rule will not produce a Federal mandate of $100 million or greater in any year, i.e., it is not a "significant regulatory action" under the Unfunded Mandates Reform Act.

The Departmental Solicitor's Office has determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

The information collection contained in this rule has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. The OMB approval of our collection of this information will expire in October 2001. Section 18.129 of this document contains the public notice information—including identification of the estimated burden and obligation to respond—required under the Paperwork Reduction Act. Information from our Marking, Tagging, and Reporting Program is cleared under OMB Number 1018–0066 pursuant to the Paperwork Reduction Act. For information on our Marking, Tagging, and Reporting Program, see 50 CFR 18.23(f)(12).

The Administrative Procedure Act, 5 U.S.C. 553(d), generally requires that the effective date of a final rule not be less than 30 days from publication date of the rule. Section 553(d)(1) provides that the 30-day period may be waived if the rule grants or recognizes an exemption or relieves a restriction. Since this rule relieves certain restrictions concerning take of marine mammals, and is expected to be published prior to expiration of existing regulations, we have determined that this final rule should be made effective upon date of publication.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Alaska, Imports, Indians, Marine mammals, Oil and gas exploration, Reporting and record keeping requirements, Transportation.

For the reasons set forth in the preamble, the Service amends part 18, Subchapter B of Chapter 1, Title 50 of the Code of Federal Regulations as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. Revise Subpart J to read as follows:

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.

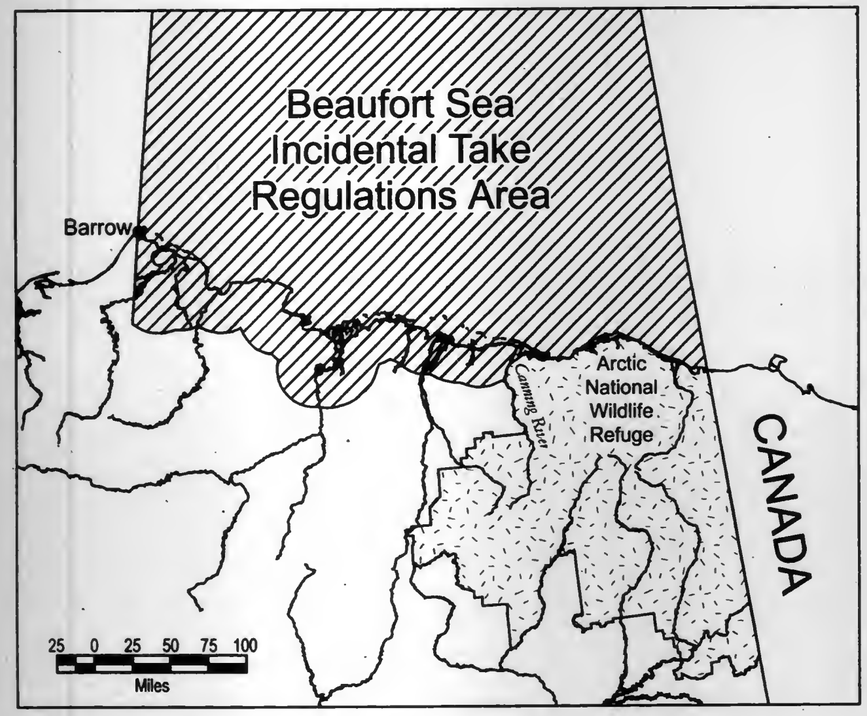
18.121 What specified activities does this rule cover?
18.122 In what specified geographic region does this rule apply?
18.123 When is this rule effective?
18.124 How do you obtain a Letter of Authorization?
18.125 What criteria do we use to evaluate Letter of Authorization requests?
18.126 What does a Letter of Authorization allow?
18.127 What activities are prohibited?
18.128 What are the monitoring and reporting requirements?
18.129 What are the information collection requirements?

§ 18.121 What specified activities does this rule cover?

Regulations in this subpart apply to the incidental, but not intentional, take of small numbers of polar bear and Pacific walrus by you (U.S. citizens as defined in § 18.27(c)) while engaged in oil and gas exploration, development, and production activities and environmental monitoring associated with oil and gas industry activities in the Beaufort Sea and adjacent northern coast of Alaska. The offshore exploration, development, and production facility, known as Northstar, is covered by this rule. Future offshore development and production, such as the proposed Liberty project, is not covered by this rule.

§ 18.122 In what specified geographic region does this rule apply?

This rule applies to the specified geographic region defined by a north/south line at Barrow, Alaska, and includes all Alaska coastal areas, State waters, and all Outer Continental Shelf waters east of that line to the Canadian border and an area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is excluded from this rule.



§ 18.123 When is this rule effective?

Regulations in this subpart are effective March 30, 2000 and remain effective through March 31, 2003, for year-round oil and gas exploration, development, and production activities.

§ 18.124 How do you obtain a Letter of Authorization?

(a) You must be a U.S. citizen as defined in § 18.27(c) of this part.

(b) If you are conducting an oil and gas exploration, development, or production activity in the specified geographic region described in § 18.122 that may take a polar bear or Pacific walrus in execution of those activities and desire incidental take authorization under this rule, you must apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for each development and production area. You must submit the application for authorization to our Alaska Regional Director (See 50 CFR 2.2 for address) at last 90 days prior to the start of the proposed activity.

(c) Your application for a Letter of Authorization must include the following information:

(1) A description of the activity, the dates and duration of the activity, the specific location, and the estimated area affected by that activity.

(2) A site-specific plan to monitor the effects of the activity on the behavior of polar bear and Pacific walrus that may be present during the ongoing activities. Your monitoring program must document the effects to these marine mammals and estimate the actual level and type of take. The monitoring requirements will vary depending on the activity, the location, and the time of year.

(3) A polar bear awareness and interaction plan. For the protection of human life and welfare, each employee on site must complete a basic polar bear encounter training course.

(4) A Plan of Cooperation to mitigate potential conflicts between the proposed activity and subsistence hunting. This Plan of Cooperation must identify measures to minimize adverse effects on the availability of polar bear and Pacific walrus for subsistence uses if the activity takes place in or near a traditional subsistence hunting area. You must contact affected subsistence communities to discuss potential conflicts caused by location, timing, and methods of proposed operations. You must make reasonable efforts to assure that activities do not interfere with subsistence hunting or that adverse effects on the availability of polar bear or Pacific walrus are properly mitigated.

§ 18.125 What criteria do we use to evaluate Letter of Authorization requests?

(a) When you request a Letter of Authorization, we will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographic location. We will determine whether the level of activity identified in the request exceeds that considered by us in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for take for subsistence uses. If the level of activity is greater, we will reevaluate our findings to determine if those findings continue to be appropriate based on the greater level of activity that you have requested. Depending on the results of the evaluation, we may allow the authorization to stand as is, add further conditions, or withdraw the authorization.

(b) In accordance with § 18.27(f)(5) of this part, we will make decisions concerning withdrawals of Letters of Authorization, either on an individual or class basis, only after notice and opportunity for public comment.

(c) The requirement for notice and public comment in § 18.125(b) will not apply should we determine that an emergency exists that poses a significant risk to the well-being of the species or stock of polar bear or Pacific walrus.

§ 18.126 What does a Letter of Authorization allow?

(a) Your Letter of Authorization may allow the incidental, but not intentional, take of polar bear and Pacific walrus when you are carrying out one or more of the following activities:

(1) Conducting geological and geophysical surveys and associated activities;

(2) Drilling exploratory wells and associated activities;

(3) Developing oil fields and associated activities;

(4) Drilling production wells and performing production support operations; and

(5) Conducting environmental monitoring activities associated with exploration, development, and production activities to determine associated impacts.

(b) You must use methods and conduct activities identified in your Letter of Authorization in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and Pacific walrus, their habitat, and on the availability of these marine mammals for subsistence uses.

(c) Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

§ 18.127 What activities are prohibited?

(a) Intentional take of polar bears or Pacific walrus; and .

(b) Any take that fails to comply with the terms and conditions of these specific regulations or of your Letter of Authorization.

§ 18.128 What are the monitoring and reporting requirements?

(a) We require holders of Letters of Authorization to cooperate with us and other designated Federal, State, and local agencies to monitor the impacts of oil and gas exploration, development, and production activities on polar bear and Pacific walrus.

(b) Holder of Letters of Authorization must designate a qualified individual or individuals to observe, record, and report on the effects of their activities on polar bear and Pacific walrus.

(c) We may place an observer on site of the activity on board drill ships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impacts of your activity on polar bear and Pacific walrus.

(d) For exploratory activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director within 90 days after completion of activities. For development and production activities, holders of a Letter of Authorization must submit a report to our Alaska Regional Director by January 15 for the preceding year's activities. Reports must include, at a minimum, the following information:

(1) Dates and times of activity;

(2) Dates and locations of polar bear or Pacific walrus activity as related to the monitoring activity; and

(3) Results of the monitoring activities including an estimated level of take.

§ 18.129 What are the information collection requirements?

(a) The collection of information contained in this subpart has been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. We need to collect information in order to describe the proposed activity and estimate the impacts of potential takings by all persons conducting the activity. We will use the information to evaluate the application and determine whether to issue specific regulations and, subsequently, Letters of Authorization.

(b) For the initial year, we estimate your burden to be 200 hours to develop an application requesting us to promulgate incidental take regulations. For the initial year and annually thereafter when you conduct operations under this rule, we estimate an 8-hour burden per Letter of Authorization, a 4-hour burden for monitoring, and an 8-hour burden per monitoring report. You must respond to this information collection request to obtain a benefit pursuant to Section 101(a)(5) of the Marine Mammal Protection Act. You should direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 222 ARLSQ, 1849 C Street, NW., Washington, D.C. 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018–0070), Washington, D.C. 20503.

Dated: March 23, 2000.

Donald J. Barry,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 00–7912 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 990713189–9335–02; I.D. 060899B]

RIN 0648–AK79

Fisheries of the Northeastern United States; Spiny Dogfish Fishery Management Plan

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; delay of effectiveness.

SUMMARY: NMFS delays the effective date of a final rule published January 11, 2000, from March 27, 2000, until April 3, 2000. The final rule was to have been effective February 10, 2000; however, its effectiveness was delayed until March 15, 2000, and again until March 27, 2000. The final rule will implement approved management measures for the spiny dogfish fishery, as contained in the Spiny Dogfish Fishery Management Plan (FMP). This action is being taken in order to provide the Secretary of Commerce with adequate time to evaluate the alternatives offered by the Mid-Atlantic and New England Fishery Management Councils (Councils) before proceeding with implementation of the FMP.

DATES: The effective date of the final rule implementing the Spiny Dogfish Fishery Management Plan (published on January 11, 2000, at 65 FR 1557) and whose effectiveness was delayed twice, first, to March 15, 2000 (65 FR 7461, February 15, 2000), and second, to March 27, 2000 (65 FR 15110, March 21, 2000), is further delayed until April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Pearson, Fishery Policy Analyst, at 978–281–0279.

SUPPLEMENTARY INFORMATION: The FMP was developed jointly by the Councils, with the Mid-Atlantic Council having the administrative lead. A Notice of Availability for the FMP was published in the **Federal Register** on June 29, 1999 (64 FR 34759), and solicited public comment through August 30, 1999. The proposed rule to implement the FMP was published in the **Federal Register** on August 3, 1999 (64 FR 42071), and solicited public comments through September 17, 1999. NMFS made the decision to partially approve the FMP on September 29, 1999. A final rule to implement the FMP was published in the **Federal Register** January 11, 2000 (65 FR 1557), to be effective on February 10, 2000. A delay in effectiveness of the final rule was filed on February 10, 2000, and published on February 15, 2000 (65 FR 7460), which made the effective date of this rule March 15, 2000. A second delay in effectiveness of the final rule was filed on March 15, 2000, and published on March 21, 2000 (65 FR 15110), which made the effective date of this rule March 27, 2000. The final rule will now be effective April 3, 2000.

Dated: March 27, 2000.

Andrew J. Kemmerer,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Services.

[FR Doc. 00–7860 Filed 3–27–00; 3:25 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 62
Thursday, March 30, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–CE–20–AD]

RIN 2120–AA64

Airworthiness Directives; The New Piper Aircraft, Inc. PA–42 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain The New Piper Aircraft, Inc. (Piper) PA–42 series airplanes. The proposed AD requires that you revise the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots. The proposed AD is the result of reports of in-flight incidents and an accident that occurred in icing conditions where the airframe pneumatic deicing boots were not activated. The actions specified by the proposed AD are intended to assure that flightcrews have the information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation. Without this information, flightcrews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

DATES: The Federal Aviation Administration (FAA) must receive any comments on this rule on or before June 2, 2000.

ADDRESSES: Submit comments in triplicate to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2000–CE–20–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

FOR FURTHER INFORMATION CONTACT: John P. Dow, Sr., Aerospace Engineer, FAA, Small Airplane Directorate, 1201 Walnut, suite 900, Kansas City, Missouri 64106; telephone: (816) 426–6932; facsimile: (816) 426–2169.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments in triplicate to the address specified under the caption **ADDRESSES.** The FAA will consider all comments received on or before the closing date. We may amend the proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the proposed AD action and determining whether we need to take additional rulemaking action.

The FAA is re-examining the writing style we currently use in regulatory documents, in response to the Presidential memorandum of June 1, 1998. That memorandum requires federal agencies to communicate more clearly with the public. We are interested in your comments on whether the style of this document is clearer, and any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of the proposed rule that might suggest a need to modify the rule. You may examine all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of the proposed AD.

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2000–CE–20–AD." We will date stamp and mail the postcard back to you.

Discussion

What events have caused this AD? On January 9, 1997, an Empresa Brazileira de Aeronautica, S.A. (EMBRAER) Model EMB–120RT series airplane was involved in an uncommanded roll excursion and consequent rapid descent that resulted in an accident near Monroe, Michigan. The post-accident investigation conducted by the National Transportation Safety Board (NTSB) concluded that the airplane had accumulated a thin, rough layer of ice on its lifting surfaces. That accumulation of ice, in combination with the slowing of the airplane to an airspeed inappropriate for the icing conditions in which the airplane was flying, resulted in loss of control that was not corrected before the airplane impacted the ground. The NTSB also concluded that the flight crew did not activate the wing and tail pneumatic deicing boots. An NTSB recommendation related to this accident requested that FAA mandate that pneumatic deicing boots be turned on as soon as the airplane enters icing conditions.

We reviewed the icing-related incident history of certain airplanes and we determined that icing incidents may have occurred because pneumatic deicing boots were not activated at the first evidence of ice accretion. As a result, the handling qualities or the controllability of the airplane may have been reduced due to the accumulated ice. That factor was present in the accident discussed previously and, as such, constitutes an unsafe condition.

Based on the incidents above, we initiated AD action against several make and model airplanes, including The New Piper Aircraft, Inc. (Piper) PA–31 series airplanes (Docket No. 99–CE–49–AD). The AD's required revising the Airplane Flight Manual (AFM) to include requirements for activation of the airframe pneumatic deicing boots.

Comments received on Docket No. 99–CE–49–AD indicated that the proposed actions should also apply to Piper PA–42 series airplanes. Rather than hold up the AD on the Piper PA–31 series airplanes, we decided to initiate a separate AD action (NPRM) for the Piper Models PA–42, PA42–720, PA42–720R, and PA42–1000 airplanes.

What are the consequences if the condition is not corrected? This condition, if not corrected, could lead to

reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

The FAA's Determination and an Explanation of the Provisions of the Proposed AD

What has FAA decided? After examining the circumstances and reviewing all available information related to the incidents described above, we have determined that:

—an unsafe condition referenced in this document exists or could develop on other Piper PA–42 series airplanes of the same type design; and

—AD action should be taken in order to prevent reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

What does this AD require? The proposed AD requires you to revise the Limitations Section of the AFM to include requirements for activation of pneumatic deicing boots at the first indication of ice accumulation on the airplane.

Cost Impact

How many airplanes does the proposed AD impact? We estimate that 120 airplanes in the U.S. registry would be affected by the proposed AD.

What is the cost impact of the initial inspection on owners/operators of the affected airplanes? We estimate that it would take approximately 1 workhour per airplane to accomplish the proposed AFM revisions. Accomplishing the proposed AFM revision requirements of this NPRM may be performed by the owner/operator holding at least a private pilot certificate as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), and must be entered into the aircraft records showing compliance with the proposed AD in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9). The only cost impact of the proposed AD is the time it would take each owner/operator of the affected airplanes to insert the information into the AFM.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposed rule would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive (AD) to read as follows:

The New Piper Aircraft, Inc.: Docket No. 2000–CE–20–AD.

(a) *What airplanes are affected by this AD?* Models PA–42, PA–42–720, PA–42–720R, and PA–42–1000 airplanes, all serial numbers, that are:

(1) Equipped with pneumatic deicing boots; and

(2) Certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the above airplanes on the U.S. Register. The AD does not apply to your airplane if it is not equipped with pneumatic de-icing boots.

(c) *What problem does this AD address?* The information necessary to activate the pneumatic wing and tail deicing boots at the first signs of ice accumulation is critical for flight in icing conditions. If we did not take action to include this information, flight crews could experience reduced controllability of the aircraft due to adverse aerodynamic effects of ice adhering to the airplane prior to the first deicing cycle.

(d) *What must I do to address this problem?* To address this problem, you must revise the Limitations Section of FAA-approved Airplane Flight Manual (AFM) to include the following requirements for activation of the ice protection systems. You must accomplish this action within the next 10 calendar days after the effective date of this AD, unless already accomplished. You may insert a copy of this AD in the AFM to accomplish this action:

"• Except for certain phases of flight where the AFM specifies that deicing boots should not be used (*e.g.*, take-off, final approach, and landing), compliance with the following is required.

• Wing and Tail Leading Edge Pneumatic Deicing Boot System, if installed, must be activated:

—At the first sign of ice formation anywhere on the aircraft, or upon annunciation from an ice detector system, whichever occurs first; and

—The system must either be continued to be operated in the automatic cycling mode, if available; or the system must be manually cycled as needed to minimize the ice accretions on the airframe.

• The wing and tail leading edge pneumatic deicing boot system may be deactivated only after:

—Leaving known or observed/detected icing that the flight crew has visually observed on the aircraft or was identified by the on-board sensors; and

—After the airplane is determined to be clear of ice."

Note: The FAA recommends periodic treatment of deicing boots with approved ice release agents, such as ICEX ™, in accordance with the manufacturer's application instructions.

(e) *Can the pilot accomplish the action?* Yes. Anyone who holds at least a private pilot certificate, as authorized by section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the AFM revisions required by this AD. You must make an entry into the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).

(f) *Can I comply with this AD in any other way?* Yes.

(1) You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager.

(2) This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(g) *Where can I get information about any already-approved alternative methods of compliance?* Contact the Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4121; facsimile: (816) 329–4091.

(h) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

Issued in Kansas City, Missouri, on March 22, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7878 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 16 and 900

[Docket No. 99N–4578]

RIN 0910–AB98

State Certification of Mammography Facilities

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to implement the patient notification provisions of the Mammography Quality Standards Act of 1992 (the MQSA). This action will permit FDA to authorize individual States to certify mammography facilities, to conduct the inspection of the facilities, to enforce the MQSA quality standards, and to administer other related functions. FDA retains oversight responsibility for the activities of the States to which this authority has been delegated and mammography facilities certified by those States must continue to meet the quality standards established by FDA for mammography facilities nationwide. The document proposes procedures for application, approval, evaluation, and withdrawal of approval of States as certification agencies. It also proposes standards to be met by States receiving this authority.

DATES: Submit written comments on the proposed rule by June 28, 2000. Written comments on the information collection requirements should be submitted by May 1, 2000.

ADDRESSES: Submit written comments on the proposed rule to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit written comments on the information collection requirements to the Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy A. Taylor, Desk Officer for FDA. The Regulatory Impact Study (RIS) and cost analysis is available at the Dockets Management Branch for review between 9 a.m. and 4 p.m., Monday through Friday. Requests for copies of the RIS should be submitted to the Freedom of Information Staff (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A-16, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Ruth A. Fischer, Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–594–3332, FAX 301–594–3306.

SUPPLEMENTARY INFORMATION:

I. Background

The MQSA (Public Law 102–539) was enacted on October 27, 1992. The purpose of the legislation was to establish minimum national quality standards for mammography. The MQSA required that to provide mammography services legally after October 1, 1994, all mammography facilities, except facilities of the Department of Veterans Affairs, had to be accredited by an approved accreditation body and certified by the Secretary of Health and Human Services (the Secretary). The authority to approve accreditation bodies and to certify facilities was delegated by the Secretary to FDA. The MQSA replaced a patchwork of Federal, State, and private standards with uniform Federal standards designed to ensure that all women nationwide receive adequate quality mammography services. On October 9, 1998, the Mammography Quality Standards Reauthorization Act (the MQSRA) (Public Law 105–248) was enacted to extend the MQSA through fiscal year 2002.

A. Provisions of the MQSA

The key requirements of MQSA to be met by the facilities in order to receive and maintain their FDA certification include:

(1) Compliance with quality standards for personnel, equipment, quality assurance programs, and reporting and recordkeeping procedures.

(2) Accreditation by private, nonprofit organizations or State agencies that have been approved by FDA as meeting standards established by the agency for accreditation bodies and that continue to pass annual FDA reviews of their activities. As part of the accreditation process, the accreditation body must evaluate for quality actual clinical mammograms from each unit in the facility, and determine that the facility quality standards have been met.

(3) Demonstration of continued compliance with the facility quality standards through annual inspections performed by FDA-certified Federal or State Inspectors.

B. Accomplishments to Date

Interim facility quality standards were published in the **Federal Register** of December 21, 1993 (58 FR 67558), and used as the basis for the initial certification of mammography facilities by October 1, 1994, the date by which mammography facilities had to have an FDA certificate in order to continue lawfully providing mammography services. In the **Federal Register** of October 28, 1997 (62 FR 55852), more comprehensive facility quality standards and accreditation body requirements were published, which became effective on April 28, 1999. Five accreditation bodies, the American College of Radiology (ACR) and the States of Arkansas, California, Iowa, and Texas, have been approved by FDA to accredit mammography facilities. Approximately 250 Federal and State inspectors were trained and certified to conduct the MQSA inspections, and the 5th year of inspections has now begun. The number of certified mammography facilities varies with time but typically is slightly under 10,000.

C. Role of the States

State agencies have played a very important role in the development and implementation of the MQSA program. As already noted, four of the five accreditation bodies are States, thus providing an alternative to the ACR for accreditation of facilities within the borders of the accrediting States. Most of the FDA-certified inspectors are State personnel who, working under contract with FDA, have conducted the great majority of the inspections. FDA currently has contracts for the performance of inspections with 46 States, the District of Columbia, Puerto Rico, and New York City.

MQSA also provides for an even more significant State role in the MQSA program. In accordance with section 354(q) of the Public Health Service Act (the PHS Act) (42 U.S.C. 263b(q)), States

may become the certifying agency for mammography facilities operating within their borders and also may be delegated other important responsibilities, such as the conduct of the inspections of the facilities they certify and enforcement of MQSA quality standards. The purpose of this proposed rule is to establish the requirements to be met by States as Certification Agencies (commonly known as and hereafter referred to as States as Certifiers (SAC's)) and the procedures for the application, approval, and withdrawal of approval of SAC's.

D. The Patient Notification Provisions

Section 354(q) of the PHS Act allows FDA to delegate to qualified States, the authority for: (1) Issuing, renewing, suspending, and revoking certificates, (2) conducting annual facility inspections and followup inspections, and (3) implementing and enforcing the MQSA quality standards for mammography facilities within the jurisdiction of the qualified State.

To be approved, a State must: (1) Have enacted laws and issued regulations equivalent to the MQSA standards and regulations, (2) have the legal authority and qualified personnel to enforce those laws and regulations, (3) devote adequate funds to the administration and enforcement of those laws and regulations, and (4) provide FDA with information and reports, as required.

FDA is to retain exclusive responsibility for: (1) Establishing quality standards, (2) approving accreditation bodies, (3) approving and withdrawing approval of State certification agencies, and (4) maintaining oversight over State certification programs. Moreover, FDA retains authority to suspend or revoke the certificate of facilities within an approved State, and to take other administrative and judicial actions against such facilities provided for in the MQSA.

E. Development of the SAC Proposed Rule

This proposed rule covers procedures for application for FDA approval as a certification agency and the requirements and responsibilities of such agencies. It also establishes procedures for oversight of approved States and for withdrawal of approval. Four sources of information were relied upon by FDA in developing these regulations, in addition to the expertise and research of FDA personnel.

First, the proposed SAC program was discussed with the National Mammography Quality Assurance Advisory Committee (NMQAAC). NMQAAC is a committee of health professionals, whose work focuses significantly upon mammography, and of representatives of consumer groups and State agencies. This committee has the responsibility of advising FDA on regulatory requirements implemented under the MQSA. Advice about the direction of the SAC program and the content of the proposed rule was provided by NMQAAC at meetings held in September 1994 and July 1996. NMQAAC has received updates on the proposed program at subsequent meetings.

Second, the SAC program and the proposed rule were discussed in meetings of a SAC Working Group formed by FDA in accordance with 21 CFR 20.88(e). Although NMQAAC was a source of valuable information from a wide segment of the mammography community, FDA partnership with the States would be an essential key to the future success of the SAC program. This second group was intended to serve as a means to begin building that partnership. Working group participants have included regional and headquarters FDA staff, representatives of the States of Arkansas, California, Florida, Illinois, Iowa, Massachusetts, Nevada, New Hampshire, New Jersey, and Texas, and the American College of Radiology. The State participants were chosen with the goal of obtaining input from all regions of the country and from States that are MQSA accreditation bodies. The Working Group met in June 1996, January and September 1997, May and November 1998, and May 1999 and has contributed greatly to the development of the proposed rules.

Third, FDA's experience over the last 4 years with the accreditation bodies has greatly influenced the proposed rule because there is similarity with respect to the objectives targeted, the problems to be solved, and the oversight needed for the delegation of accreditation and certification authority.

Finally, in August 1998, FDA established a SAC Demonstration Project in which certification authority was delegated to approved States for a 1 year period, with the possibility of renewal for a second year. The States of Illinois and Iowa applied for and received approval from FDA to participate in the demonstration project. The experience gained proved to be valuable in the development of the long term SAC program.

II. Provisions of the Proposed Rule

FDA is proposing to add subpart C, entitled States as Certifiers, to part 900 (21 CFR part 900—Mammography). This subpart will contain sections defining: (1) The requirements for application by a State for approval as a certification agency, (2) the requirements to be met and the responsibilities of the States delegated certification authority, (3) the process to be used by FDA in evaluating the performance of each certification agency, (4) the criteria for and the process to be followed to withdraw approval of a State as a certification agency, and (5) opportunities for hearings and appeals related to adverse actions taken by FDA with respect to certification agencies. FDA is also proposing conforming amendments to § 16.1(b)(2) (21 CFR 16.1(b)(2)), which deals with hearing procedures, and to § 900.2 Definitions.

In proposing this rule, and in all activities related to MQSA, FDA is guided by the intent of the MQSA to ensure access to high quality mammography services for all women in the United States. FDA believes that women in States with certification authority can be provided the same assurance of high quality mammography as women in States for which FDA retains that authority. There are also potential cost savings to the facilities and the public through a reduction in the inspection fee in States whose inspection costs are lower than the national average that is used to calculate the present national inspection fee. Other cost savings may be achieved through States being able to combine the MQSA program with other State mammography initiatives.

A. Scope

Proposed § 900.20 describes the scope of subpart C. The new subpart establishes procedures for a State to apply to become an FDA-approved certification agency for mammography facilities. It further defines the responsibilities to be met by the certification agencies and the oversight procedures to be used by FDA to ensure that the responsibilities are adequately fulfilled.

B. Application for Approval as a Certification Agency

Before FDA can approve a State as a certifying agency, the agency must have assurance that the State can adequately meet the associated responsibilities. Proposed § 900.21 summarizes the information to be provided by the State to FDA to enable the agency to make an informed decision on the likelihood that the State will be able to adequately carry out certification responsibilities. Under section 354(q) of the PHS Act, only FDA may establish quality standards. States retain authority under paragraph (m), however, to enact and enforce standards "as stringent as" those established under MQSA. The application must include a detailed description of the mammography quality standards the applicant will require facilities to meet and, if different from FDA's quality standards, information substantiating the equivalence of those standards to FDA standards. The application also must include information about the applicant's decision making process for issuing, suspending, and revoking a facility's certificate and its procedures for notifying facilities of inspection deficiencies and the monitoring of the correction of those deficiencies. Finally, information must be provided about the resources the State can devote to the program, including information about: (1) The qualifications of the State's professional staff; (2) adequacy of the State's staffing, finances, and other resources; (3) the State's ability to provide data and reports in an electronic format compatible with FDA data systems; and (4) the adequacy of the State's enforcement authority and compliance mechanisms.

FDA also plans to issue application guidance to prospective State certification agencies to further assist them in preparing the necessary materials and supporting documentation.

Proposed § 900.21(c) also provides a general description of the process that FDA will follow in arriving at a decision on whether or not to accept a State as a certification agency. Proposed § 900.20(d) notes that FDA may limit the types of facilities for which certification authority is being granted; for example, FDA does not expect to grant certification authority for Federal facilities to States.

FDA specifically invites comments on the nature and extent of the information collection burden that is included in § 900.21

C. Standards for Certification Agencies

Proposed § 900.22 proposes requirements and responsibilities to be met by States that have been approved as certification agencies.

Proposed § 900.22(a) would require the certification agency to have FDA-approved measures to reduce the possibility of conflict of interest or facility bias on the part of individuals acting on the agency's behalf.

Proposed § 900.22(b) would require that the statutory and regulatory requirements used by the certification agencies for the certification and inspection of mammography facilities be those of MQSA and part 900 or appropriate more stringent requirements.

Proposed § 900.22(c) would require that the scope, timeliness, disposition, and technical accuracy of completed inspections and related enforcement activities conducted by the certification agencies be adequate to ensure compliance with MQSA quality standards.

Proposed § 900.22(d) would require that the certification agencies have appropriate criteria and processes for the suspension and revocation of certificates and that the certification agencies promptly investigate and take regulatory action against facilities that operate without a certificate.

Proposed § 900.22(e) would require that there be means by which facilities can appeal adverse certification decisions made by a certification agency.

Proposed § 900.22(f) would require that approved certification agencies have processes for requesting additional mammography review from accreditation bodies for issues related to mammography image quality and clinical practice.

Proposed § 900.22.(g) would require that the certification agencies have procedures for patient notification for situations when the certification agency has determined that mammography quality has been compromised to the extent that there may be a serious risk to human health.

Proposed § 900.22(h) would require that approved certification agencies have processes to ensure the timeliness and accuracy of electronic transmission of inspection data and facility certification status in a format and timeframe determined by FDA. FDA believes that such electronic transfer is necessary in view of the need to transmit large amounts of data rapidly among the accreditation bodies, certification agencies, FDA, and other involved agencies such as the Health Care Financing Administration (HCFA). Without a rapid transfer of certification information, facilities may not be able to operate for a period of time or may face delays for Medicare and Medicaid reimbursement because HCFA has not been informed of their certification status. Similarly, without rapid transfer of data concerning inspection deficiencies and corrective actions, members of the public may be put at risk for an unacceptable period.

Proposed § 900.22(i) would require FDA authorization for any changes a certification agency proposes to make to any standards FDA previously accepted under § 900.21 or § 900.22. FDA believes that this is necessary to assure the standards for certification agencies continue to be met.

D. Evaluation

Section 900.23 proposes standards for the annual evaluation of the performance of each certification agency. The evaluation will be based on performance indicators related to the adequacy of the certification agency's performance in the areas of certification, inspection, and compliance. FDA plans to provide further guidance on the nature of these performance indicators. The experience gained during the SAC Demonstration Project is expected to be of significant value in developing this guidance.

During the evaluation, FDA will consider the responsiveness, timeliness, and effectiveness with which the certification agencies meet their various responsibilities. The evaluation also will include a review of any changes in the standards or procedures that the certification agency has made in the areas listed in §§ 900.21(b) and 900.22. The evaluation shall include a determination of whether there are major deficiencies in the certification agency's performance that, if not corrected, would warrant withdrawal by FDA of the agency's approval. The evaluation will also include identification of any minor deficiencies that require corrective action. In performing these evaluations, FDA will use the results of annual inspections, information from required reports from certification agencies, and any other appropriate source of information. For example, the agency may visit facilities or certification agencies as part of the evaluation and may request additional information from the certification agency or other sources.

E. Withdrawal of Approval

In § 900.24, FDA has proposed actions to be taken if evaluations carried out under proposed § 900.23 or other information leads to a determination that a certification agency is not adequately carrying out its responsibilities. If FDA determines that there are major deficiencies in the certification agency's performance, FDA may withdraw approval of the certification agency. Examples of major deficiencies include commission of fraud, willful disregard for the public health, failure to provide adequate resources for the program, performing or failing to perform a delegated function in a manner that may cause serious risk to the public health, or the submission of material false statements to FDA. If there are less serious deficiencies, termed minor deficiencies in the

regulations, FDA will establish a definite time period during which the certification agency must either take corrective measures as directed by FDA or submit to FDA for its approval the certification agency's own plan of corrective action. FDA may place the certification agency on probationary status while the minor deficiencies are being addressed. Probationary status would be used in situations where the certification agency is not implementing the corrective action satisfactorily or within the established schedule. FDA also may withdraw approval of the agency as a certification agency if corrective action is not taken or if the identified minor deficiencies have not been eliminated within the established schedule.

While an agency is developing and carrying out its corrective action plan, even if on probationary status, it will retain its certification authority. If a certification agency loses its approval, it must notify all facilities certified or seeking certification by it and appropriate accreditation bodies of its change in status. A certification agency that has lost its approval must also transfer facility records and other information required by FDA to a location and according to a schedule approved by FDA. The goal will be to return the facilities within its jurisdiction to the FDA certification program without an interruption in their certification status.

F. Hearings/Appeals

Under proposed § 900.25, FDA will provide an opportunity for a certification agency to challenge in an informal hearing an adverse action taken by FDA with respect to approval or withdrawal of approval of that certification agency. The opportunity for a hearing shall be provided in accordance with 21 CFR part 16. Certification agencies also are required to provide facilities that have been denied certification with the opportunity to appeal that decision. The appeals process of each certification agency shall be specified in writing and shall have been approved by FDA in accordance with proposed § 900.21.

G. Conforming Amendments

A conforming amendment to § 16.1 is proposed to add § 900.25 to the list of provisions under which regulatory hearings are available.

Conforming amendments to § 900.2 are also proposed to indicate that the definitions in that section applied to subpart C, as well as to subparts A and B of part 900. Two definitions, § 900.2 (zz) *Certification agency* and (aaa) *Performance indicator*, are proposed for addition to the definition list. In adding these definitions, FDA proposes to depart from its earlier practice of placing the definitions in alphabetical order and to simply add the new definitions to the end of the list. This was done to avoid the necessity of making numerous changes in the citations of the definitions in subparts A and B with all the potential for confusion and error that such citation changes would entail.

III. Environmental Impact

The agency has determined under 21 CFR 25.30(g) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

IV. Analysis of Impacts

FDA has examined the impact of the proposed rule under Executive Order 12866, under the Regulatory Flexibility Act (Public Law 96–354), and under the Unfunded Mandates Reform Act (Public Law 104–4). Executive Order 12866 directs agencies to prepare an assessment of all anticipated costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages, distributive impacts, and equity). The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. The Unfunded Mandates Reform Act requires (in section 202) that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation). The agency has conducted preliminary analyses of the proposed rule, and has determined that the proposed rule is consistent with the principles set forth in the Executive Order and in these two statutes. The regulatory impact study and cost analysis that details the agency's calculation of these economic aspects is available at the Dockets Management Branch for review.

FDA realized from the beginning that the cost impact of these regulations would be heavily dependent upon the number and characteristics of the States that choose to participate in the SAC program. However, because participation will be entirely voluntary on the part of the States, FDA cannot determine in advance which States will decide to become SAC States. The first assumptions that had to be made, therefore, were related to which States might become SAC States. Three separate scenarios were used to establish the possible range of the impact of these proposed regulations.

In scenario 1, FDA assumed only the States of Iowa and Illinois would choose to participate in the program. Iowa and Illinois are the current participants in the SAC Demonstration Project and have indicated a strong interest in continuing. In scenario 2, FDA assumed that Iowa and Illinois would be joined in the SAC program by six additional States. The States chosen have in the past indicated significant interest in becoming SAC States when the program is fully implemented. In scenario 3, FDA assumed that seven additional States would join the eight States included in the scenario 2 analysis. These additional States have indicated some interest in becoming SAC States when the program is fully implemented. The selection of the States for these scenarios does not indicate either a commitment by the States to participate or a commitment by FDA to accept their participation in a future SAC program.

Both the six States added in scenario 2 and the seven added in scenario 3 have a wide geographical distribution and the number of mammography facilities within their borders ranges from relatively large to relatively small. Thus, although the basis of selection was FDA's perception of the State's interest, the resulting groups are representative of the country as a whole.

The costs or savings from the SAC program were estimated by comparing the pre-SAC costs for performing the functions that would be affected by the program with the costs of performing them under each scenario. The proposed regulations would permit FDA to delegate to the SAC States the responsibility (with FDA oversight) for the function of MQSA certification as it applies to non-Federal mammography facilities within their borders, and shared responsibility for other functions such as enforcement. Control and execution of the annual inspections of mammography facilities also would be delegated to the SAC States; however, to permit effective oversight of an SAC State's inspection program, FDA would retain responsibility for inspection-related support functions including training the inspectors, calibration of their equipment, and functions related to the transfer of information

electronically between the States and FDA. Underlying all of these functions is the significant task of keeping the public and facilities informed about the MQSA activities. Because of the importance of this public information task, its cost was considered separately in the analysis.

Funding to support the MQSA activities pre-SAC comes from two sources: User fees and appropriated funds. Paragraph (r) of the MQSA provides for user fees to cover costs related to inspections, which FDA collects from each non-governmental mammography facility inspected in a year. Presently, the inspection fee is $1,549 per facility plus an additional $204 per mammography unit for each unit beyond the first 1 at the facility. Appropriated funds support all activities other than those that are covered by this fee. In addition, an amount equal to the inspection fee for each governmental facility is allotted from appropriated funds to support the inspection program for those facilities. These sources of funding will continue to be relied upon for support of MQSA activities in States that choose not to enter the SAC program.

If a State becomes a SAC State, the non-governmental facilities within that State will pay an inspection support fee to FDA to reimburse the agency, as required by the statute, for the inspection-related services that the agency has provided. This fee has been initially set at $509 per facility, regardless of the number of mammography units in the facility. As with the inspection fees in non-SAC States, this fee will be collected in a given year only from those facilities in SAC States that were actually inspected during that year. The same amount of $509 will also be provided from appropriated funds for each governmental facility inspection within the State.

The SAC State will determine how the responsibilities that it has assumed will be funded. The funding could come from State appropriations, from a fee charged by the State either under its own authority or under paragraph (r) of the MQSA, or some combination of these sources.

The baseline value (given in tables 1 and 2 of this document) used for the pre-SAC cost of the MQSA functions to be delegated to the SAC States is a total of the costs of the individual functions pre-SAC determined from review of recent FDA budgets. The total costs to the public as a whole under each of the three scenarios will be:

Post-SAC Costs to the public = Costs in non-SAC States + Costs in SAC States

The costs in non-SAC States are calculated as follows:

Costs in non-SAC States = Inspection Program Costs + Certification Costs + Compliance Costs + Public Information Costs

The Inspection Program Costs term was estimated for non-SAC States by subtracting from the baseline inspection costs the total of the inspection fees that will no longer be paid by the facilities (or, in the case of governmental facilities, from appropriated funds) located within the SAC States in each scenario. The other costs were obtained by multiplying the baseline costs for those functions by the percentage of the nation's mammography facilities remaining in non-SAC States. In other words, it was assumed, for example, that if only 80 percent of the nation's facilities remain in non-SAC States, the cost of carrying out these functions would be only 80 percent of the pre-SAC cost.

The costs in SAC States are calculated as follows:

Costs in SAC States = FDA Inspection Support Costs + State Costs

FDA's Inspection Support Costs term was obtained by multiplying the inspection support fee by the number of facilities within the SAC States that would be expected to be inspected during the year (in all these calculations an inspection rate of 82.8 percent was assumed in both non-SAC and SAC States, for reasons discussed in the regulatory impact study and cost analysis available at the Dockets Management Branch). The State Costs assumed by the SAC States could be funded either by State appropriations or a fee charged by the State under State law or the MQSA. If fees are used, they could be State certification fees, inspection fees collected by States under State law, inspection fees collected by States under MQSA, or some combination of these.

The two States currently in the SAC Demonstration Project both decided to fund their activities through a fee. Iowa set its fee at $850 per facility plus $300 for each additional unit beyond the first in the facility. Illinois's fee is $750 per facility. Both States decided to charge these fees to all non-Federal facilities within their borders, whether they were inspected in a given year or not, since the functions being funded are not all related to inspections. For scenario 1, the Total of Other Fees term was obtained by multiplying the number of facilities in the two States (and in Iowa, the number of additional units) by the fee or fees of that State.

The SAC States in scenarios 2 and 3, other than Iowa and Illinois, are not presently SAC States. There is no established fee, therefore, to serve as the basis for estimating their costs. The State Costs term thus had to be estimated using a series of assumptions. The equation used for the estimation was:

State Costs = Inspection Costs + Inspection Support Costs + Certification Costs + Enforcement Costs + Public Information Costs

To obtain the inspection costs term, it was assumed that the average cost per inspection would be the same as the State is presently receiving for performing inspections under contract with FDA; the inspection cost term would be the average per facility cost times the number of facilities inspected. The inspection support costs was the cost of the inspection-support services included in the delegation to the States. Like the last three terms in the equation, this cost related to functions that were new to the States. For all four of these terms, the estimate of cost was made by multiplying the pre-SAC baseline cost for the function by the percentage of the nation's facilities in each SAC State. For example, if 5 percent of the nation's facilities were located in a particular SAC State, the Certification Cost in that State would be estimated as five percent of the pre-SAC cost for the entire nation. For the personnel components of the costs of these functions, further correction factors were applied to take into account the fact that the cost of a State Full Time Employee (FTE) is typically less than that of a Federal FTE.

The analysis results summarized in tables 1 and 2 of this document support the initial statement that the potential net savings or cost to the public from the SAC program is heavily dependent upon the number and characteristics of the States that choose to become SAC States. All three of the scenarios show that there is the potential for savings to the public from the SAC program. However, the estimated amount of that savings is not proportional to either the number of States in the program or the number of facilities. In fact, the estimated savings in scenario 3, with 15 SAC States including 54 percent of the nation's facilities, is less than in scenario 2, with 8 States and a little more than 26 percent of the facilities.

TABLE 1.—COST OF CERTIFICATION IN NON-SAC[1] STATES

Scenario	Non-SAC States Facilities (%)	Non-SAC States Cost
Baseline	100.0	16,067,499
1	94.1	15,140,562
2	73.8	11,841,663
3	46.0	7,394,421

[1] SAC means States as certifiers.

TABLE 2.—COST OF CERTIFICATION IN NON-SAC[1] STATES

Scenario	SAC States Facilities (%)	SAC States Costs	Total Costs	Savings to Public
Baseline	0	0	16,067,499	0
1	5.9	709,870	5,850,432	217,067
2	26.2	3,650,563	15,492,226	575,273
3	54.0	8,180,723	15,575,444	492,055

[1] SAC means States as certifiers.

The explanation of why these results show the pattern that they do begins with the realization that the SAC program will save (or cost) the public more money than the pre-SAC program depending upon whether SAC States can carry out their delegated functions more economically than they were carried out within their borders pre-SAC. The biggest component of the cost to the public pre-SAC is the inspection fee. This fee is a national average fee that is the same for all facilities no matter where they are located. On the other hand, the actual cost of performing the inspection varies widely from State to State. If a State whose inspection cost is significantly lower than the national average becomes a SAC State, there is an increased probability that the total cost per facility for inspections, the other State functions, and the inspection support fee will be less than the inspection fee that the facility paid pre-SAC. If so, there will be a net savings to the public from that State becoming a SAC State. On the other hand, in States with high inspection costs, the combined cost per facility of the inspections, the other functions, and the inspection support fee may exceed the inspection fee, in which case there will be a net cost to the public arising from that State being in the SAC program.

The bulk of the SAC facilities in scenario 1 are in a State with an inspection cost below the national average. It is not surprising then to find a net savings in scenario 1. The inspection costs in the States added in scenario 2 range from lower than to a little higher than the average. Again, it is not surprising to find that there is a net savings and, since the number of facilities in SAC States is greatly increased, it is also not surprising to find that the total net savings is significantly increased over scenario 1. On the other hand, three of the States added to scenario 3 have per facility inspection costs that are well above the national average. Thus, there is an increase in cost to the public arising from these States being in the program. The impact of their participation is magnified because these three States include over two thirds of the facilities added in scenario 3. As a result, there are lower net savings in scenario 3 than in scenario 2.

One additional factor had to be taken into account to provide a more accurate evaluation of the cost to the public of the proposed SAC regulations. The initial round of calculations assumed that the inspection fee charged to the facilities in the non-SAC States will not change as the result of some States becoming SAC States. This is not necessarily true. The funds available for the FDA inspection program in the non-SAC States will decrease as more States become SAC States because facilities in SAC States will only be paying FDA the inspection support fee instead of the higher inspection fee. On the other hand, the cost of the FDA inspection program will also decrease because it will no longer include the cost of inspecting the facilities in the SAC States. However, as noted, the inspection cost varies greatly from State to State. If predominantly low inspection cost States become SAC States, the reduction in cost of the MQSA inspection program in the non-SAC States plus the inspection support fee paid by the SAC State facilities may not be as great as the reduction in the funds available to FDA to fulfill its MQSA inspectional responsibilities. In that case it will be necessary to raise the inspection fees in the non-SAC States or the inspection support fee for SAC State facilities, or both, because the FDA inspection program must be fee supported. On the other hand, if predominantly high inspection cost States become SAC States, the reverse would be true and it may be possible to reduce the inspection fees in the non-SAC States.

To refine the analysis, the funds needed by FDA to carry out its post-SAC MQSA inspection responsibilities were compared to the funds that would be available if the inspection and inspection support fees remained unchanged. It was found that estimated additional amounts of $127,593, $563,710, and $605,208, in scenarios 1, 2, and 3 respectively would have to be raised by increasing fees. The following table 3 shows the effect of applying these corrections to the previously estimated savings to the public as a whole. The savings to the public in scenario 1 are reduced but still significant, those in scenario 2 virtually disappear, and in scenario 3, there would be an increase in cost.

TABLE 3.—IMPACT OF NON-SAC[1] STATE INSPECTION FEE CHANGE

Scenario	Savings Before Fee Change	Savings/(Cost) After Fee Change
1	$217,067	$89,474
2	$575,273	$11,563
3	$492,055	($113,173)

[1] SAC means States as certifiers.

The above discussion provides estimates of the economic impact of the proposed SAC regulations on the public in general. In accordance with the Regulatory Flexibility Act, the economic impact on the portion of the public represented by the small entities was also evaluated. All of the approximately 10,000 mammography facilities in the country were considered to be small entities for the purposes of the analysis.

In the case of facilities in non-SAC States, any economic impact in the scenarios examined would appear as an increase or decrease in their inspection fee. As noted above, with the scenarios used in the analysis, additional funds would be needed for FDA's post-SAC MQSA inspection program. The decision on whether these additional funds would come from an increase in the inspection fee paid by non-SAC State facilities, the inspection support fee paid by SAC State facilities, or both would depend upon which fee(s) was (were) failing to cover the cost of the activities for which it was being assessed. However, as a worst case estimate for non-SAC State facilities, it was assumed that 100 percent of the needed funds would have to come from an increase in inspection fee. If the changes in fee are limited to changes in the facility inspection fee, leaving the fee for extra units unchanged, increases of $16.52, $93.16, and $160.23 respectively would be needed in scenarios 1, 2, and 43. Even the largest estimated increase, that for scenario 3, was only about 10 percent of the present $1,549 inspection fee.

Turning to the impact on State facilities, as of August 3, 1998, the SAC States in the three scenarios had within their borders 583; 2,613; and 5,374 mammography facilities respectively. The analysis of the economic impact on these small entities was performed by comparing their savings arising from no longer paying the FDA inspection fee to their costs for the inspection support fees and the State costs.

TABLE 4.—SMALL ENTITY ECONOMIC IMPACT

Scenario	SAC[1] State Facility Savings	SAC State Facility Costs	Net Cost to Small Entities	Net Savings to Small Entities
1	$797,580	$709,870		$87,710
2	$3,651,401	$3,650,563		$838
3	$7,489,128	$8,180,723	$691,595	

[1] SAC means States as certifiers.

If the savings/cost is divided by the number of facilities in each scenario, it is found that, on the average, a facility in scenario 1 would save about $150 per year, as compared to the present inspection fee. On the other hand, the average cost to a facility in scenario 3 would increase about $129 per year. The average cost per facility in scenario 2 is essentially unchanged.

The actual impact on an individual facility varies widely with the State. The extremes of this variation among the States in the analysis are illustrated by comparing the situation in the State with the highest inspection cost from among the 15 with the State with the lowest inspection cost. The facilities in the State with the lowest inspection cost would save, on the average, an estimated $200 per facility per year, over 10 percent of the FDA inspection fee, if their State became a SAC State. Facilities in the State with the highest inspection cost, however, would have to pay an average of about over $507 additional per year, an increase of one-third over the FDA inspection fee, if their State became a SAC State.

Interestingly, both of the States joined the SAC program in scenario 3, showing how much the impact varies with the State. Even with an overall increase in the cost to the public as a whole and to the part of the public represented by the mammography facilities, some facilities will see savings.

This great variation is a major reason why the nearly $700,000 cost to facilities in scenario 3 is a "worst case" situation that will probably never be reached. The States included in this analysis were States that had shown some level of interest in becoming a SAC State. This interest was primarily based on a belief that by becoming a SAC State they could provide a service to the facilities and mammography patients within their borders. The service that they expect to be able to provide was an assurance of quality mammography at least equal to that under the national program but at a lower cost. The analyses above indicate that such a belief may be too optimistic in the case of the States whose inspection costs are significantly higher than the national average. If such States realize that this is indeed the case when they conduct their own analysis, it is unlikely that they will apply to become SAC States unless there are other benefits to compensate for the increased costs.

Another encouraging factor is that there were still net savings to the small entities in scenario 1. Scenario 1, it should be remembered, is the scenario where the cost in the SAC States could be based upon the actual fees charged by the States in the Demonstration Project. It would be expected that this would lead to more accurate cost estimates than in scenarios 2 and 3 where a number of assumptions had to be substituted for actual experience. It is possible that these assumptions led to an overestimation of the costs and as other States enter the program they may be able to set their fees so as to adequately fund their activities but at a lower cost than in these estimates.

The evaluations discussed above are based on evaluating the average impact on the mammography facilities in the non-SAC and SAC States. However, mammography facilities, even though

all are considered to be small entities, vary greatly in size and thus their ability to bear additional costs of complying with the MQSA requirements. To further evaluate the impact on small entities, facility compliance costs were compared with facility revenues derived from mammography for a low volume mammography facility. For this comparison, a model developed by the Eastern Research Group was used. This model estimated that the lowest volume mammography facility (performing less than 300 mammograms annually) would have approximately $24,000 in annual revenues from mammography.

The following tables 5 and 6 present the average facility costs for facilities in both non-SAC and SAC States as a percentage of low volume facility revenues. For the non-SAC State facilities, the additional costs to the facilities through a worst case increase in the inspection fee (where all of the additional funds needed by FDA to fulfill its responsibilities for the MQSA inspection program must be raised by an increased inspection fee) is used for the comparison. It should be remembered that only the 82.4 percent of the non-SAC facilities inspected will see this impact. The 17.6 percent of these facilities that are not inspected in the year under consideration will pay no inspection fee and will not feel any impact from the increase. For the SAC State facilities, the average per facility cost in scenario 3 (as shown above, there would be a savings in scenarios 1 and 2) is compared to the facility revenues. These costs would be borne by all SAC State facilities.

TABLE 5.—COST/SAVINGS PER FACILITY IN NON-SAC[1] STATES

Scenario	Per Facility Increase in Inspection Fee	Inspection Fee Increase as Percentage of Facility Revenue
1	$16.52	<0.1%
2	$93.16	<1.0%
3	$160.23	<1.0%

[1] SAC means States as certifiers.

TABLE 6.—COST/SAVINGS PER FACILITY IN SAC STATES

Scenario	Net (Cost)/Savings to SAC[1] Small Entities	Average per Facility Net (Cost) Savings	Cost as a Percentage of Facility Revenues[2]
1	$87,710	$150.45	NA
2	$838	$0.33	NA
3	($691,595)	($128.69)	<1.0%

[1] SAC means States as certifiers.
[2] Revenues for a facility performing less than 300 mammograms annually with revenues of approximately $24,000.

The third aspect of the economic impact to be considered is the issue of unfunded mandates. The Unfunded Mandates Reform Act requires that agencies prepare an assessment of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million. Because participation in the SAC program is entirely voluntary on the part of the State and not mandated, and because the costs of those who choose to participate will be far less than $100 million, FDA concluded that the proposed SAC regulation is consistent with the principles of the Unfunded Mandates Reform Act without the need for further analysis.

Finally, in addition to the impact analyses discussed above, Executive Order 12866 requires agencies to select regulatory approaches that maximize net benefits while the Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. To fulfill these obligations, FDA considered and rejected the following three alternatives to the approach taken in the proposed rule: (1) Not implementing section 354(q) of the PHS Act; (2) recognizing existing State certification programs; and (3) implementing section 354(q) of the PHS Act through the issuance of more detailed regulations. The reasons for these rejections are discussed in detail in the regulatory impact study and cost analysis which is available at the Dockets Management Branch.

In summary, this analysis shows that the economic impact on both the public and the small entities from the SAC program will vary with how many and which States become SAC States. However, even in the scenario with the greatest adverse impact, the increased cost to the public as a whole was estimated to be less than 1 percent of the present cost of the MQSA activities that would be affected by the SAC program. The situation with respect to the component of the public represented by the mammography facilities was more complicated. For facilities in non-SAC States, it appears that the SAC program might lead to an increase in their inspection fee. The estimated amount of the increase ranges from about 1 percent of the present fee in scenario 1 up to approximately 10 percent of the present fee in scenario 3. For facilities in the SAC States, the estimated impact ranged from the total of their inspection support fee and any fee paid to the State being about 10 percent less than the present inspection fee in scenario 1 to being about 8 percent greater in scenario 3. When the average cost for either SAC or non-SAC facilities in the various scenarios was compared to the revenues of a very small mammography facility, in no case did it exceed 1 percent of the facility revenues.

Although the estimated average savings or increases for the facilities in both the non-SAC and SAC States vary with the scenario, they have in common the fact that they all represent small changes in the pre-SAC costs to the facilities from the inspection fee. However, it should be kept in mind that these averages camouflage much greater State by State variations in savings or added costs. As discussed above, FDA believes that a State is unlikely to apply

to become a SAC State if the costs to its facilities will be significantly increased by that action. The facilities in the States that do become SAC States are thus likely to experience a more favorable economic impact than that estimated in this analysis.

FDA also believes that the expected benefits that will be achieved in guaranteeing quality mammography and reducing breast cancer mortality will be no less after these proposed regulations are implemented than before. Facilities in SAC States will have to meet the same quality standards as facilities in non-SAC States. They will be accredited by the same FDA-approved accreditation bodies and they will be inspected by the same FDA-trained and equipped inspectors as would be the case if their State did not enter the SAC program. Because the benefits may actually increase, implementing these regulations will bring the administration of the delegated MQSA functions closer to the facilities and the public. With their closer proximity, State agencies may be able to respond more rapidly to assist mammography facilities seeking to improve the quality of their services or take enforcement actions against those relatively few facilities that present serious threats to the public health.

Based upon these considerations, FDA has determined that this proposed rule is consistent with the principles set forth in the Executive Order, the Regulatory Flexibility Act, and the Unfunded Mandates Act. The economic impact on the public as a whole or on the portion of the public represented by the mammography facilities will depend upon which States choose to enter the program. In the worst case revealed by the analysis, an insignificant increase in costs may be experienced. However, because States are not likely to enter the program unless such entry will be of benefit to the facilities within their borders, a scenario leading to savings to the public as a whole and to the mammography facilities is more likely to occur. Finally, because participation in this program is voluntary on the part of the States and costs incurred by the SAC States can be recouped through user fees, there are no unfunded mandates.

V. Executive Order 13132—Federalism

On August 4, 1999, the President issued Executive Order 13132, *Federalism*, in which he set forth certain principles to be followed by Executive departments and agencies in developing policies that affect the division of governmental responsibilities between the Federal Government and the States. For the reasons discussed below, and, to some extent described in more detail above, FDA believes that this proposed rule is consistent with the principles embodied in Executive Order 13132.

As noted above, section 354(q) of the PHS Act permits FDA to authorize qualified States to: (1) Issue, renew, suspend, and revoke certificates; (2) conduct annual facility inspections; and (3) enforce the MQSA quality standards for mammography facilities within the jurisdiction of the qualified State. FDA retains responsibility for: (1) Establishing quality standards, (2) approving accreditation bodies, (3) approving and withdrawing approval of State certification agencies, and (4) maintaining oversight of State-certification programs. FDA believes that this division of responsibilities provides for necessary uniformity of national standards, and, at the same time provides States that wish to become certification agencies with maximum flexibility in administering the program within their State.

Also, as previously noted, interested States have had several opportunities to participate in the development of this policy through NMQAAC, the SAC Working Group, as accreditation bodies, and through the SAC Demonstration Project. States will have an additional opportunity to participate by submitting comments on this proposed rule.

Participation in the SAC program is voluntary on the part of each State but subject to approval by FDA. The Federal Government will perform all the necessary functions for implementation of MQSA in States that chose not to serve as certification agencies.

If a State becomes a SAC State, the facilities within its borders will no longer pay Federal inspection fees nor will federally appropriated funds be used to support the inspection of governmental facilities within that State. Facilities will pay an inspection support fee to FDA to reimburse the agency, as required by the statute, for the inspection-related functions that the agency has retained. A State that becomes a certification agency will determine how the responsibilities that it has assumed will be funded. The funding could come from State appropriations or from a State fee assessed under either State or MQSA authority or some combination of these two sources.

VI. Paperwork Reduction Act of 1995

This proposed rule contains information collection provisions that are subject to review by OMB under the Paperwork Reduction Act of 1995 (the PRA) (44 U.S.C. 3501–3520). A description of these provisions is given below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing each collection of information.

FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Title: Requirements for States As Certification Agencies

Description: These information collection requirements apply to State certification agencies. In order to be an approved certification agency, State agencies must submit an application to FDA and must establish procedures that give adequate assurance that the mammography facilities that they certify will meet minimum national standards for mammography quality. The certifying agency also must provide such information as is needed by the FDA to carry out its ongoing responsibility to ensure that the certification agency is complying with the requirements. These actions are being taken to ensure the continued availability of safe, accurate, and reliable mammography on a nationwide basis.

Respondent Description: State Governments.

TABLE 7.—PROPOSED REQUIREMENTS FOR STATES AS CERTIFIERS DURING INITIAL YEAR (ESTIMATED ANNUAL REPORTING BURDEN) [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs
900.21(b)	13	1.0	13	50	650	$130.00
900.21(c)(2)	13	1.0	13	25	475	$65.00
900.22(i)	2.0	0.1	0.2	5	2.0	$2.00
900.23	2.0	1.0	2.0	20	40.0	$20.00
900.24(a)	2.0	0.05	0.1	10	1.0	$2.00
900.24(b)	2.0	0.2	0.4	20	8.0	$4.00
900.24(b)(2)	2.0	0.05	0.1	20	2.0	$2.00
900.25(a)	2.0	0.25	0.5	5	2.5	$5.00
Total					1,410.5	$230.00

[1] There are no operating and maintenance costs associated with this collection of information.

TABLE 8.—PROPOSED REQUIREMENTS FOR STATES AS CERTIFIERS DURING INITIAL YEAR (ESTIMATED ANNUAL RECORDKEEPING BURDEN) [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Capital Costs
900.22(a)	2.0	1.0	2.0	1.0	2.0	$5.00
900.22(d) through (g)	2.0	1.0	2.0	1.0	2.0	$5.00
900.25(b)	2.0	1.0	2.0	2.0	2.0	$5.00
Total					6.0	$15.00

[1] There are no operating and maintenance costs associated with this collection of information.

TABLE 9.—PROPOSED REQUIREMENTS FOR STATES AS CERTIFIERS DURING SECOND AND LATER YEARS (ESTIMATED ANNUAL REPORTING BURDEN) [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours	Total Capital Costs
900.22(i)	15.0	0.1	1.5	5	7.5	$15.00
900.23	15.0	1.0	15.0	20	300.0	$150.00
900.24(a)	15.0	0.05	0.75	10	7.5	$7.50
900.24(b)	15.0	0.2	3.0	20	60.0	$30.00
900.24(b)(2)	15.0	0.05	0.75	20	15.0	
900.25(a)	15.0	0.4	6.0	5	30.0	$60.00
Total					420.0	$262.50

[1] There are no operating and maintenance costs associated with this collection of information.

TABLE 10.—PROPOSED REQUIREMENTS FOR STATES AS CERTIFIERS DURING SECOND AND LATER YEARS (ESTIMATED ANNUAL RECORDKEEPING BURDEN) [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours	Total Capital Costs
900.22(a)	15	1.0	15.0	1.0	15.0	$37.50
900.22(d) through (g)	15	1.0	15.0	1.0	15.0	$37.50
900.25(b)	15	1.0	15.0	1.0	15.0	$37.50
Total					45	$112.50

[1] There are no operating and maintenance costs associated with this collection of information.

In contrast to the situation with the economic impact analysis, the additional reporting and recordkeeping burden will fall on the State Governments that choose to become certification agencies and not upon the approximately 10,000 mammography facilities in the country (all of whom are considered to be small entities). The mammography facilities will continue to provide the same reports that they are presently providing. The bulk of these reports will continue to go to the accreditation bodies that are currently receiving them. The occasional report (for example, if a facility appeals an adverse decision) that presently goes to FDA will in SAC States go to the State. The facility recordkeeping requirements also are unchanged.

The total of the additional reporting and recordkeeping burden on the State Governments from these regulations is dependent upon the States that choose to become certification agencies. Since this choice is voluntary on the part of the States, it is impossible to say with certainty how many will seek these responsibilities. However, for purposes of estimation of the possible maximum impact, it is assumed that the 15 States used in scenario 3 of the economic impact analysis will become certification agencies. This number included the 2 States currently participating in the SAC Demonstration Project (Iowa and Illinois) and 13 new States added.

A further complication is that the regulations will lead to two types of reporting and recordkeeping burdens. The first is the initial, one time burden resulting from applying for and obtaining approval as a State certification agency. The second is the ongoing burden arising from FDA fulfilling its oversight responsibilities. Because of the different nature and timeframes of these burdens, it is not possible to follow the usual practice of stating the burden on a single set of tables. For this reason, two sets of tables are provided. The first provides estimates of the burden during the first year of the program. During this year, it is assumed that the 13 new States will apply for and obtain approval as certification agencies and so during that year they will bear the initial one time burden associated with applying for and receiving approval as a SAC State under proposed § 900.21. Iowa and Illinois, having already received approval during the Demonstration Project, will not have this burden. However, during the first year, they will have the ongoing burdens of the evaluation process (proposed § 900.23) and possibly that associated with obtaining FDA approval for changes in previously approved standards (proposed § 900.22(i)) and correcting deficiencies (proposed §§ 900.24 through 900.25). The 13 new States will not have been approved in time to have to face this ongoing burden during the first years. The second set of tables estimates the recordkeeping and reporting burden in succeeding years when all 15 States have only the ongoing burden.

With respect to the ongoing burden, based upon the agency's experience with accreditation bodies, which must meet a similar requirement, it was estimated that a SAC State would seek approval for a change in previously approved standards once every 10 years. The annual frequency for reporting under proposed § 900.22(i) thus would be 0.1. Each SAC State will be evaluated annually so the annual frequency for reporting under proposed § 900.23 will be one. It was estimated that each State will have to respond to major deficiencies under proposed § 900.24(a) only once every 20 years and minor deficiencies under proposed § 900.24(b) only once every 5 years. The annual frequencies for reporting under those requirements were thus 0.05 and 0.2 respectively. In the cases where there are minor deficiencies, it was assumed that the State will in most cases make the necessary corrections, but once every 20 years (in other words, once out of every four times it has minor deficiencies), the State would face possible withdrawal of approval under proposed § 900.24(b)(2), so an annual of frequency of response of 0.05 was used there as well. Finally, it was assumed that once every 4 years (an annual frequency of 0.25) each SAC State would seek an informal hearing under proposed § 900.25(a) in responding to some adverse action against it.

The estimated recordkeeping burden was related to the maintenance of standard operating procedures (SOP's) in several areas. It was assumed that each State would spend an hour per year maintaining each SOP.

The total estimated annual burden for the final MQSA regulations that went into effect on April 28, 1999, was 184,510 hours. Adding a subpart C to part 900 Mammography to incorporate these proposed regulations would lead to an estimated additional annual burden of 1,416.5 hours during the first year after the regulations were effective and an estimated additional burden of 465.0 hours in each succeeding year. Again, it should be remembered that the actual burden is dependent upon how many States voluntarily choose to enter the SAC program. These estimates are based up 15 States becoming SAC States. They would be reduced or increased if fewer than or more than 15 States join the program.

In compliance with the PRA (44 U.S.C. 3507(d)), the agency has submitted the information collection provisions of this proposed rule to OMB for review. Interested persons are requested to send comments regarding information collection by May 1, 2000 to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy A. Taylor, Desk Officer for FDA.

List of Subjects

21 CFR Part 16

Administrative practice and procedure.

21 CFR Part 900

Electronic products, Health facilities, Medical devices, Radiation protection, Reporting and recordkeeping requirements, X-rays.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR parts 16 and 900 be amended as follows:

PART 16—REGULATORY HEARING BEFORE THE FOOD AND DRUG ADMINISTRATION

1. The authority citation for 21 CFR part 16 is revised to read as follows:

Authority: 15 U.S.C. 1451–1461; 21 U.S.C. 141–149, 321–394, 467f, 679, 821, 1034; 28 U.S.C. 2112; 42 U.S.C. 201–262, 263b, 364.

2. Section 16.1 is amended in paragraph (b)(2) by adding in numerical order an entry for § 900.25 to read as follows:

§ 16.1 Scope.

* * * * *

(b) * * *

(2) * * *

§ 900.25, relating to approval or withdrawal of approval of certification agencies.

* * * * *

PART 900—MAMMOGRAPHY

3. The authority citation for part 900 continues to read as follows:

Authority: 21 U.S.C. 360i, 360nn, 374(e); 42 U.S.C. 263b.

4. Section 900.2 is amended by revising the introductory paragraph and by adding paragraphs (zz) and (aaa) to read as follows:

§ 900.2 Definitions.

The following definitions apply to subparts A, B, and C of this part:

* * * * *

(zz) *Certification agency* means a State that has been approved by FDA under § 900.21 to certify mammography facilities.

(aaa) *Performance indicators* means the measures used to evaluate the certification agency's ability to conduct certification, inspection, and compliance activities.

5. Subpart C, consisting of §§ 900.20 through 900.25, is added to read as follows:

Subpart C—States as Certifiers

Sec.

900.20 Scope.
900.21 Application for approval as a certification agency.
900.22 Standards for certification agencies.
900.23 Evaluation.
900.24 Withdrawal of approval.
900.25 Hearings and appeals.

Subpart C—States as Certifiers

§ 900.20 Scope.

The regulations set forth in this part implement the Mammography Quality

Standards Act (MQSA) (42 U.S.C. 263b). Subpart C of this part establishes procedures whereby a State can apply to become an FDA-approved certification agency to certify facilities to perform mammography services. Subpart C of this part further establishes requirements and standards for State certification agencies to ensure that all mammography facilities under their jurisdiction are adequately and consistently evaluated for compliance with national quality standards established by FDA.

§ 900.21 Application for approval as a certification agency.

(a) *Eligibility.* State agencies capable of meeting the requirements of this subpart may apply for approval as certification agencies.

(b) *Application for approval.* (1) An applicant seeking FDA approval as a certification agency shall inform the Division of Mammography Quality and Radiation Programs (DMQRP), Center for Devices and Radiological Health (HFZ–240), Food and Drug Administration, Rockville, MD 20850, marked Attn: SAC[1] Coordinator, in writing, of its desire to be approved as a certification agency.

(2) Following receipt of the written request, FDA will provide the applicant with additional information to aid in the submission of an application for approval as a certification agency.

(3) The applicant shall furnish to FDA, at the address in paragraph (b) of this section, three copies of an application containing the following information, materials, and supporting documentation:

(i) Name, address, and phone number of the applicant;

(ii) Detailed description of the mammography quality standards the applicant will require facilities to meet and, for those standards different from FDA's quality standards, information substantiating their equivalence to FDA standards under § 900.12;

(iii) Detailed description of the applicant's review and decision making process for facility certification, including:

(A) Policies and procedures for notifying facilities of certificate denials and expirations;

(B) Procedures for monitoring and enforcement of the correction of deficiencies by facilities;

(C) Policies and procedures for suspending or revoking a facility's certification;

(D) Policies and procedures that will ensure processing certificates within a timeframe approved by FDA;

(E) A description of the appeals process for facilities contesting adverse certification status decisions;

(F) Education, experience, and training requirements of the applicant's professional and supervisory staff;

(G) Description of the applicant's electronic data management and analysis system;

(H) Fee schedules;

(I) Statement of policies and procedures established to avoid conflict of interest;

(J) Description of the applicant's mechanism for handling facility inquiries and complaints;

(K) Description of a plan to ensure that fully certified mammography facilities will be inspected according to statutory requirements and procedures and policies for notifying facilities of inspection deficiencies;

(L) Policies and procedures for enforcement of the correction of facility deficiencies discovered during inspections or by other means;

(M) Policies and procedures for additional mammography review and for requesting such reviews from accreditation bodies;

(N) Policies and procedures for patient notification; and

(O) Any other information that FDA identifies as necessary to make a determination on the approval of the State as a certification agency.

(c) *Rulings on applications for approval.* (1) FDA will conduct a review and evaluation to determine whether the applicant substantially meets the applicable requirements of this subpart and whether the certification standards the applicant will require facilities to meet are substantially the same as the quality standards published under subpart B of this part.

(2) FDA will notify the applicant of any deficiencies in the application and request that those deficiencies be rectified within a specified time period. If the deficiencies are not rectified to FDA's satisfaction within the specified time period, the application for approval as a certification agency may be denied.

(3) FDA shall notify the applicant whether the application has been approved or denied. The notification shall list any conditions associated with approval or State the bases for any denial.

(4) The review of any application may include a meeting between FDA and representatives of the applicant at a time and location mutually acceptable to FDA and the applicant.

(5) FDA will advise the applicant of the circumstances under which a denied application may be resubmitted.

(d) *Scope of authority.* FDA may limit the scope of certification authority delegated to the State in accordance with the MQSA.

§ 900.22 Standards for certification agencies.

The certification agency shall accept the following responsibilities in order to ensure safe and accurate mammography at the facilities it certifies and shall perform these responsibilities in a manner that ensures the integrity and impartiality of the certification agency's actions:

(a) *Conflict of interest.* The certification agency shall establish and implement measures that FDA has approved in accordance with § 900.21(b) of this section to reduce the possibility of conflict of interest or facility bias on the part of individuals acting on the certification agency's behalf.

(b) *Certification and inspection responsibilities.* Mammography facilities shall be certified and inspected in accordance with statutory and regulatory requirements that are equivalent to those of MQSA and this part 900.

(c) *Compliance with quality standards.* The scope, timeliness, disposition, and technical accuracy of completed inspections and related enforcement activities shall ensure compliance with facility quality standards required under § 900.12.

(d) *Enforcement actions.* (1) There shall be appropriate criteria and processes for the suspension and revocation of certificates.

(2) There shall be prompt investigation of and appropriate enforcement action for facilities performing mammography without certificates.

(e) *Appeals.* There shall be processes for facilities to appeal inspection findings, enforcement actions, and adverse accreditation or certification decisions.

(f) *Additional mammography review.* There shall be a process for the certification agency to request additional mammography review from accreditation bodies for issues related to mammography image quality and clinical practice.

(g) *Patient notification.* There shall be processes for the certification agency to conduct, or cause to be conducted, patient notifications should the State determine that mammography quality has been compromised to such an extent that it may present a serious risk to human health.

(h) *Electronic data transmission.* There shall be processes to ensure the timeliness and accuracy of electronic transmission of inspection data and facility certification status information in a format and timeframe determined by FDA.

(i) *Changes to standards.* A certification agency shall obtain FDA authorization for any changes it proposes to make in any standards that FDA has previously accepted under § 900.21 or this section.

§ 900.23 Evaluation.

FDA shall evaluate annually the performance of each certification agency. Such an evaluation shall include the use of performance indicators that address the adequacy of program performance in certification, inspection, and enforcement activities as well as any additional information deemed relevant by FDA that has been provided by the certification body or other sources or has been required by FDA as part of its oversight initiatives. The evaluation also shall include a review of any changes made in the standards or procedures in the areas listed in §§ 900.21(b) and 900.22 that have taken place since the original application or the last evaluation, whichever is most recent. The evaluation shall include a determination of whether there are major deficiencies in the certification agency's performance that, if not corrected, would warrant withdrawal of the approval of the certification agency under the provisions of § 900.24 or minor deficiencies that would require corrective action.

§ 900.24 Withdrawal of approval.

If FDA determines, through the evaluation activities of § 900.23, or through other means, that a certification agency is not in substantial compliance with this subpart, FDA may initiate the following actions:

(a) *Major deficiencies.* If FDA determines that a certification agency has demonstrated willful disregard for public health, has committed fraud, has failed to provide adequate resources for the program, has submitted material false statements to the agency, or has performed or failed to perform a delegated function in a manner that may cause serious risk to human health, FDA may withdraw its approval of that certification agency.

(1) FDA shall notify the certification agency of FDA's action and the grounds on which the approval was withdrawn.

(2) A certification agency that has lost its approval shall notify facilities certified or seeking certification by it as well as the appropriate accreditation bodies with jurisdiction in the State that its approval has been withdrawn. Such notification shall be made within a timeframe and in a manner approved by FDA.

(b) *Minor deficiencies.* If FDA determines that a certification agency has demonstrated deficiencies in performing certification functions and responsibilities that are less serious or more limited than the deficiencies in paragraph (a) of this section, including failure to follow its own procedures and policies as approved by FDA, FDA shall notify the certification agency that it has a specified period of time to take particular corrective measures as directed by FDA or to submit to FDA for approval the certification agency's own plan of corrective action addressing the minor deficiencies. If the corrective actions are not being implemented satisfactorily or within the established schedule, FDA may place the agency on probationary status for a period of time determined by FDA, or may withdraw approval of the certification agency.

(1) Probationary status shall remain in effect until such time as the certification agency can demonstrate to the satisfaction of FDA that it has successfully implemented or is implementing the corrective action plan within the established schedule, and that the corrective actions have substantially eliminated all identified problems, or

(2) If FDA determines that a certification agency that has been placed on probationary status is not implementing corrective actions satisfactorily or within the established schedule, FDA may withdraw approval of the certification agency. The certification agency shall notify all facilities certified or seeking certification by it, as well as the appropriate accreditation bodies with jurisdiction in the State, of its loss of FDA approval, within a timeframe and in a manner approved by FDA.

(c) *Transfer of records.* A certification agency that has its approval withdrawn shall transfer facility records and other related information as required by FDA to a location and according to a schedule approved by FDA.

§ 900.25 Hearings and appeals.

(a) Opportunities to challenge final adverse actions taken by FDA regarding approval of certification agencies or withdrawal of approval of certification agencies shall be communicated through notices of opportunity for informal hearings in accordance with part 16 of this chapter.

(b) A facility that has been denied certification is entitled to an appeals process from the certification agency. The appeals process shall be specified in writing by the certification agency and shall have been approved by FDA in accordance with §§ 900.21 and 900.22.

Dated: December 15, 1999.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–7653 Filed 3–29–00; 8:45 am]

BILLING CODE 4160–01–F

[1] SAC means States as certifiers.

POSTAL SERVICE

39 CFR Part 111

Amendments to Proposed Domestic Mail Manual Changes for Sacking and Palletizing Periodicals Nonletters and Standard Mail (A) Flats, for Traying First-Class Flats, and for Labeling Pallets

AGENCY: Postal Service.

ACTION: Proposed Rule; Amendment.

SUMMARY: This rule sets forth amendments to the proposed rule published in the **Federal Register** issue of February 29, 2000 (65 FR 10735). The Postal Service has determined to add a 5-digit scheme carrier routes sack and a 5-digit scheme carrier routes pallet to the proposed presort rules published in the aforementioned **Federal Register**.

Dates: Comments to this proposed rule amendment and to the proposed rule published February 29, 2000 (65 FR 10735) must be received on or before April 14, 2000.

ADDRESSES: Mail or deliver written comments to the Manager, Mail Preparation and Standards, USPS Headquarters, 475 L'Enfant Plaza SW, Room 6800, Washington, DC 20260–2413. Copies of all written comments will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday at the Postal Service Library, 475 L'Enfant Plaza SW, Room 11-N, Washington DC.

FOR FURTHER INFORMATION CONTACT: Lynn Martin, (202) 268–6351, or Linda Kingsley, (202) 268–2252.

SUPPLEMENTARY INFORMATION: On February 29, 2000, the Postal Service published a proposed rule in the **Federal Register** (65 FR 10735). This proposed rule set forth, along with other proposed Domestic Mail Manual (DMM) changes, the addition of new DMM section M720. This proposed DMM M720, if adopted, will allow mailers to place carrier route, 5-digit automation rate, and 5-digit Presorted rate packages of Periodicals and Standard Mail (A) in the same 5-digit container. The new 5-digit containers are named "merged 5-digit" and if scheme sortation is opted

by the mailer, "merged 5-digit scheme." To use this new sortation option, it was proposed that mailers be required to use a new "Carrier Route Indicators" Field in the AMS City State Product to determine when such merged 5-digit or merged 5-digit scheme containers may be prepared.

The Postal Service is hereby amending that proposal by adding a new sack and pallet level, 5-digit scheme carrier routes, when Periodicals and Standard Mail (A) mailings are prepared using the new "Carrier Route Indicators" Field in the AMS City State Product with 5-digit scheme sortation using Labeling List L001 under proposed Domestic Mail Manual (DMM) sections M720.1.5, M720.1.7, M720.2.5, and M720.2.7 that were contained in the February 29 **Federal Register** (65 FR 10735).

The original proposed rule instructed mailers to prepare containers as follows if the City State Product indicates that mailers are not allowed to merge carrier route packages with 5-digit packages for any of the 5-digit ZIP Codes in an L001 scheme. For palletized mail, mailers were instructed to prepare a merged 5-digit scheme pallet containing carrier route packages for the scheme and a 5-digit scheme pallet containing the 5-digit packages of automation rate and Presorted rate packages. For sacked mail, mailers were instructed to prepare a merged 5-digit scheme sack(s) containing the carrier route packages for all 5-digit ZIP Codes in the scheme and to prepare separate 5-digit sacks containing packages of automation rate and Presorted rate mail for each 5-digit ZIP Code in the scheme.

The original proposal was to identify sacks and pallets containing only carrier route packages for a scheme as "merged" if they are created under DMM M720, even though the City State Product indicates that mailers may not merge carrier route packages with 5-digit packages for any of the 5-digit ZIP Codes in an L001 scheme. Upon further consideration, the Postal Service believes this proposal is inconsistent with the concept of "merging." This amendment to the proposed rule ensures that a "merged" sack or pallet is created, and identified accordingly, only when there is the possibility, based on the "Carrier Route Indicators" field in the AMS City State Product, that carrier route packages are allowed to be merged with 5-digit automation and Presorted rate packages for at least one of the 5-digit ZIP Codes in a scheme.

In instances when no 5-digit ZIP Codes in a scheme are permitted to be merged with carrier route packages based on the "Carrier Route Indicators" field in the AMS City State product, the Postal Service is further proposing that mailers prepare and label any carrier route packages for the 5-digit ZIP Codes in the scheme as "5-digit scheme carrier routes" pallets or sacks. This new pallet and sack level is contained in amended DMM sections M720.1.5c, M720.1.7b, M7202.5c, and M720.2.7b set forth in this proposal. These new container levels would be also consistent with the contents and identification of scheme pallets containing only carrier route packages prepared under proposed DMM M045.4.1a and M045.4.2a, and of scheme sacks containing only carrier route packages prepared under current DMM M200.3.1c and M620.4.2c.

This notice also amends proposed DMM sections M720.1.5e, M720.1.7e, M720.1.7f, M720.2.5e, M720.2.7e, and M720.2.7f, to clarify that 5-digit carrier routes pallets and sacks would be prepared only for 5-digit ZIP Codes that are not part of a scheme in L001 and that have an indicator in the City State Product that does not allow co-containerization of carrier route packages and 5-digit packages. Proposed DMM sections M720.1.5f and M720.2.5f are also amended to clarify that 5-digit sacks would only prepared for 5-digit ZIP Codes that have an indicator in the City State Product that does not allow co-containerization of carrier route packages and 5-digit packages.

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 USC 553 (b), (c)) regarding rulemaking by 39 USC 410, the Postal Service hereby gives notice of the following proposed revisions to the Domestic Mail Manual (DMM), incorporated by reference in the Code of Federal Regulations (see 39 CFR Part 111).

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 414, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual (DMM) as set forth below:

Domestic Mail Manual

M720 Merged Containerization of Periodicals and Standard Mail (A) Carrier Route, Automation, and Presorted Rate Mail Packages for the Same 5–Digit ZIP Code or 5–Digit Scheme

1.0 PERIODICALS MAIL

* * * * *

[Amend proposed 1.5 to read as follows:]

1.5 Optional Sack Preparation and Labeling With Scheme Sort

When mailers choose to prepare mail under this option they must prepare sacks containing the individual carrier route and 5-digit packages from the carrier route, automation rate, and Presorted rate mailings in the mailing job in the following manner and sequence. All carrier route packages must be placed in sacks under 1.5a through e as described below. When sortation under this section is performed, merged 5-digit scheme sacks, 5-digit scheme carrier routes sacks, and merged 5-digit sacks must be prepared for all possible 5-digit schemes or 5-digit ZIP Codes as applicable, using L001 (merged 5-digit scheme and 5-digit scheme carrier routes sort only) and the Carrier Route Indicators field in the City State Product when there is enough volume for the 5-digit scheme or 5-digit ZIP Code to prepare such sacks under 1.5. Mailers must label sacks according to the Line 1 and Line 2 information listed below and under M032. If, due to the physical size of the mailpieces, the automation rate pieces are considered flat-size under C820 and the carrier route sorted pieces and Presorted rate pieces are considered irregular parcels under C050, "FLTS" must be shown as the processing category shown on the sack label. If a mailing job does not contain an automation rate mailing and the carrier route mailing and the Presorted rate mailing are irregular parcel shaped, use "IRREG" for the processing category on the contents line of the label.

a. Carrier Route. Required. May only contain carrier route packages. Must be prepared when there are 24 or more pieces for the same carrier route. Smaller volume not permitted.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "CR" for basic rate, "WSH" for high density rate, or "WSS" for saturation rate, followed by the route type and number.

b. Merged 5-Digit Scheme. Required and permitted only when there is at least one 5-digit ZIP Code in the scheme for which the City State Product indicates carrier route packages may be co-containerized with 5-digit packages. May contain carrier route packages for any 5-digit ZIP Code(s) in a single scheme listed in L001 as well as automation rate 5-digit packages and Presorted rate 5-digit packages for those 5-digit ZIP Codes in the scheme that are also identified in the City State Product as eligible for co-containerization of carrier route packages and 5-digit packages. When preparation of this sack level is permitted, a sack must be prepared if there are any carrier route package(s) for the scheme. If there is not at least one carrier route package for any 5-digit destination in the scheme, preparation of this sack is required at 24 pieces in 5-digit packages for any of the 5-digit ZIP Codes in the scheme that are identified in the City State Product as eligible for co-containerization of carrier route packages and 5-digit packages, and is optional with one six-piece 5-digit package or at least one 5-digit package of fewer pieces for the scheme in L001 under 1.3 (for any ZIP Codes that are identified in the City State Product as eligible for co-containerization of carrier route packages and 5-digit packages). For a 5-digit ZIP Code(s) in a scheme for which the indicator in the City State Product does not allow co-containerization of carrier route packages and 5-digit packages, prepare a 5-digit sack(s) for the automation rate and Presorted rate packages under 1.5f. For 5-digit ZIP Codes not included in a scheme, prepare sacks under 1.5d through g.

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "CR/5D SCH."

c. 5-Digit Scheme Carrier Routes. Required. May contain only carrier route packages for any 5-digit ZIP Code(s) in a single scheme listed in L001 when the indicator in the City State Product does not allow co-containerization of carrier route packages and 5-digit packages for any of the 5-digit ZIP Codes in the scheme. Must be prepared if there are any carrier route package(s) for the scheme.

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "CR–RTS SCH."

d. Merged 5-Digit. Required. Must be prepared only for those 5-digit ZIP Codes that are not part of a scheme and that have an indicator in the City State Product that allows carrier route packages to be co-containerized with 5-digit packages. May contain carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages. Must be prepared if there are any carrier route packages for the 5-digit. If there is not at least one carrier route package for the 5-digit destination, preparation of this sack is required at 24 pieces in 5-digit packages for the same 5-digit destination, and is optional with one six piece package or at least one package of fewer pieces under 1.3.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "CR–RTS."

e. 5-Digit Carrier Routes. Required. Sack only carrier route packages for a 5-digit ZIP Code remaining after preparing sacks under 1.5a through d to this level. May contain only carrier route packages for any 5-digit ZIP Code that is not part of a scheme listed in L001 and the indicator in the City State Product does not allow co-containerization of carrier route packages and 5-digit packages for the 5-digit ZIP Code. No sack minimum.

(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "CR–RTS."

f. 5-Digit. Required. May only contain automation rate 5-digit packages and Presorted rate 5-digit packages for any 5-digit ZIP Code when the indicator in the City State Product does not allow co-containerization of carrier route packages and 5-digit packages for the 5-digit ZIP Code. Must be prepared at 24 or more pieces, optional with one six-piece package or at least one package of fewer pieces under 1.3.

(1) Line 1 labeling: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).

(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS 5D BC/NBC", except if there are no automation rate packages in the mailing job, label under M200.3.2f.

g. Three-digit through mixed ADC sacks. Any 5-digit packages remaining after preparing sacks under 1.5a through f, and all 3-digit, ADC, and Mixed ADC packages, must be sacked and labeled according to the applicable requirements under M710.2.0 for co-sacking of automation rate and Presorted rate packages, except if there are no automation rate packages in the mailing job, sack and label under M200.3.0.

* * * * *

[Amend proposed 1.7 to read as follows:]

1.7 Optional Pallet Preparation and Labeling With Scheme (L001) Sort

When mailers choose to prepare mail under this option they must prepare pallets of packages and/or bundles in the manner and sequence listed below and under M041. When sortation under this option is performed, mailers must prepare all merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and/or the City State Product as applicable. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031. If, due to the physical size of the mailpieces, the automation rate pieces are considered flat-size under C820 and the carrier route sorted pieces and Presorted rate pieces are considered irregular parcels under C050, "FLTS" must be shown as the processing category shown on the sack label. If a mailing contains no automation rate pieces and the carrier route mailing and the Presorted rate mailing are irregular parcel shaped, use "IRREG" for the processing category on the contents line of the label.

a. Merged 5-Digit Scheme. Required and permitted only when there is at least one 5-digit ZIP Code in the scheme for which the City State Product indicates carrier route packages may be co-containerized with 5-digit packages. May contain carrier route packages for any 5-digit ZIP Code(s) in a single scheme listed in L001 as well as automation rate 5-digit packages and Presorted rate 5-digit packages for those 5-digit ZIP Codes in the scheme that are also identified in the City State Product as eligible for co-containerization of carrier route packages and 5-digit packages.

(1) Line 1: use L001, Column B.

(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "CR/5D SCHEME."

b. 5-Digit Scheme Carrier Routes. Required. May contain only carrier route packages and bundles for all carrier routes in an L001 scheme when the indicator in the City State Product does not allow co-containerization of carrier route packages and 5-digit packages for any of the 5-digit ZIP Codes in the scheme.

(1) Line 1: use L001, Column B.
(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "CR–RTS SCHEME."

c. 5-Digit Scheme. Required. May contain only 5-digit packages and bundles of automation rate and Presorted rate mail for the same 5-digit scheme under L001 for ZIP Codes in the scheme that have an indicator in the City State Product that does not allow carrier route packages to be co-containerized with 5-digit packages.
(1) Line 1: use L001, Column B.
(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "5D," followed by "BARCODED" or "BC" if the pallet contains automation rate mail, followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail, followed by "SCHEME" or "SCH."

d. Merged 5-Digit. Required. May contain carrier route packages and bundles, automation rate 5-digit packages and bundles, and Presorted rate 5-digit packages and bundles for those 5-digit ZIP Codes that are not part of a scheme and that have an indicator in the City State Product that allows co-containerization of carrier route packages and 5-digit packages.
(1) Line 1: use city, state abbreviation, and 5 -digit ZIP Code destination (see M031 for military mail).
(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or IRREG" as applicable, followed by "CR/5D."

e. 5-Digit Carrier Routes. Required. May contain only carrier route rate packages and bundles for the same 5-digit ZIP Code that is not part of a scheme and that has an indicator in the City State Product that does not allow co-containerization of carrier route packages and 5-digit packages.
(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).
(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "CARRIER ROUTES" or "CR–RTS."

f. 5-Digit. Required. May contain only automation rate 5-digit packages and bundles and Presorted rate 5-digit packages and bundles for the same 5-digit ZIP Code that is not part of a scheme and that has an indicator in the City State Product that does not allow co-containerization of carrier route packages and 5-digit packages.
(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).
(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "SCF," followed by "DDU" if DDU rates are claimed, followed by "DSCF" if SCF rates are claimed, followed by "BARCODED" or "BC" if the pallet contains automation rate mail, and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. 3-Digit. Optional. May contain carrier route rate, automation rate, and Presorted rate packages and bundles.
(1) Line 1: use L002, Column A.
(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "3D," followed by "DDU" if DDU rates are claimed, followed by "DSCF" if SCF rates are claimed, followed by "BARCODED" or "BC" if the pallet contains automation rate mail, and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

h. SCF. Required. May contain carrier route rate, automation rate, and Presorted rate packages and bundles.
(1) Line 1: use L002, Column C.
(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "SCF," followed by "DDU" if DDU rates are claimed, followed by "DSCF" if SCF rates are claimed, followed by "BARCODED" or "BC" if the pallet contains automation rate mail, and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

i. ADC. Required. May contain carrier route rate, automation rate, and Presorted rate packages and bundles.
(1) Line 1: use L004.
(2) Line 2: "PER" or "NEWS" as applicable, followed by "FLTS" or "IRREG" as applicable, followed by "ADC," followed by "BARCODED" or "BC" if the pallet contains automation rate mail, and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

2.0 STANDARD MAIL (A)

* * * * *

[Amend proposed 2.5 to read as follows:]

2.5 Optional Sack Preparation and Labeling With Scheme Sort

When mailers choose to prepare mail under this option they must prepare sacks containing the individual carrier route and 5-digit packages from the carrier route rate, automation rate, and Presorted rate mailings in the mailing job in the following manner and sequence. All carrier route packages must be placed in sacks under 2.5a through e as described below. When sortation under this section is performed, merged 5-digit scheme sacks, 5-digit scheme carrier routes sacks, and merged 5-digit sacks must be prepared for all possible 5-digit schemes or 5-digit ZIP Codes as applicable, using L001 (merged 5-digit scheme and 5-digit scheme carrier routes sort only) and the Carrier Route Indicators field in the City State Product when there is enough volume for the 5-digit scheme or 5-digit ZIP Code to prepare such sacks under 2.5. Mailers must label sacks according to the Line 1 and Line 2 information listed below and under M032.

a. Carrier Route. Required. May only contain carrier route packages. Must be prepared when there are 125 pieces or 15 pounds of pieces for the same carrier route. Smaller volume not permitted.
(1) Line 1 labeling: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).
(2) Line 2 labeling: "STD FLTS" followed by "ECRLOT," "ECRWSH" or "ECRWSS" as applicable for basic, high density, and saturation rate mail, followed by the route type and number.

b. Merged 5-Digit Scheme. Required and permitted only when there is at least one 5-digit ZIP Code in the scheme for which the City State Product indicates carrier route packages may be co-containerized with 5-digit packages. May contain carrier route packages for any 5-digit ZIP Code(s) in a single scheme listed in L001 as well as automation rate 5-digit packages and Presorted rate 5-digit packages for those 5-digit ZIP Codes in the scheme that are also identified in the City State Product as eligible for co-containerization of carrier route packages and 5-digit packages. When preparation of this sack level is permitted, a sack must be prepared if there are any carrier route package(s) for the scheme. If there is not at least one carrier route package for any 5-digit destination in the scheme, preparation of this sack is required when there are at least 125 pieces or 15 pounds of pieces in 5-digit packages for any of the 5-digit ZIP Codes in the scheme that are identified in the City State Product as eligible for co-containerization of carrier route packages and 5-digit packages (smaller volume not permitted). For a 5-digit ZIP Code(s) in a scheme for which the indicator in the City State Product does not allow co-containerization of carrier route packages and 5-digit packages, prepare a 5-digit sack(s) for the automation rate and Presorted rate packages under 2.5f. For 5-digit ZIP Codes not included in a scheme, prepare sacks under 2.5d through g.
(1) Line 1: use L001, Column B.
(2) Line 2: "STD FLTS CR–RTS SCH."

c. 5-Digit Scheme Carrier Routes. 5–Digit Scheme Carrier Routes. Required. May contain only carrier route packages for any 5-digit ZIP Code(s) in a single scheme listed in L001 when the indicator in the City State Product does not allow co-containerization of carrier route packages and 5-digit packages for any of the 5-digit ZIP Codes in the scheme. Must be prepared if there are any carrier route package(s) for the scheme.
(1) Line 1: use L001, Column B.
(2) Line 2: "STD FLTS CR–RTS SCH."

d. Merged 5-Digit. Required. Must be prepared only for those 5-digit ZIP Codes that are not part of a scheme and that have an indicator in the City State Product that allows carrier route packages to be co-containerized with 5-digit packages. May contain carrier route packages, automation rate 5-digit packages, and Presorted rate 5-digit packages. Must be prepared if there are any carrier route packages for the 5-digit. If there is not at least one carrier route package for the 5-digit destination, must be prepared when there are at least 125 pieces or 15 pounds of pieces in 5-digit packages for the same 5-digit destination (smaller volume not permitted).
(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).
(2) Line 2: "STD FLTS CR–5D."

e. 5-Digit Carrier Routes. Required. Sack only carrier route packages for a 5-digit ZIP Code remaining after preparing sacks under 2.5a through d to this level. May contain only carrier route packages for any 5-digit ZIP Code that is not part of a scheme listed in L001 and the indicator in the City State Product does not allow co-containerization of carrier route packages and 5-digit packages for the 5-digit ZIP Code. No sack minimum.
(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).
(2) Line 2: "STD FLTS CR–RTS."

f. 5-Digit. Required. May only contain automation rate 5-digit packages and Presorted rate 5-digit packages for any 5-digit ZIP Code when the indicator in the City State Product does not allow co-containerization of carrier route packages and 5-digit packages for the 5-digit ZIP Code. Must be prepared when there are at least 125 pieces or 15 pounds of pieces for the 5-digit ZIP Code. Smaller volume not permitted.
(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M032 for military mail).
(2) Line 2: "STD FLTS 5D BC/NBC," except if there are no automation rate packages in the mailing job use "STD FLTS 5D NON BC."

g. Three-digit through Mixed AADC Sacks. Any 5-digit packages remaining after preparing sacks under 2.5 a through f, and all 3-digit, ADC, and Mixed ADC packages, must be sacked and labeled according to the applicable requirements under M710.3.0 for co-sacking of automation rate and Presorted rate packages, except if there are no automation rate packages in the mailing job, sack and label under M610.

* * * * *

[Amend proposed 2.7 to read as follows:]

2.7 Optional Pallet Preparation and Labeling With Scheme (L002) Sort

When mailers choose to prepare mail under this option they must prepare pallets of packages and/or bundles in the manner and sequence listed below and under M041. When sortation under this option is performed, mailers must prepare all merged 5-digit scheme, 5-digit scheme carrier routes, 5-digit scheme, and merged 5-digit pallets that are possible in the mailing based on the volume of mail to the destination using L001 and/or the City State Product as applicable. Mailers must label pallets according to the Line 1 and Line 2 information listed below and under M031.

a. Merged 5-Digit Scheme. Required and permitted only when there is at least one 5-digit ZIP Code in the scheme for which the City State Product indicates carrier route packages may be co-containerized with 5-digit packages. May contain carrier route packages for any 5-digit ZIP Code(s) in a single scheme listed in L001 as well as automation rate 5-digit packages and Presorted rate 5-digit packages for those 5-digit ZIP Codes in the scheme that are also identified in the City State Product as eligible for co-containerization of carrier route packages and 5-digit packages. When preparation of this sack level is permitted, a sack must be prepared if there are any carrier route package(s) for the scheme. For 5-digit ZIP Codes in a scheme for which the indicator in the Carrier Route Indicators field does not allow co-containerization of carrier route and 5-digit packages, begin preparing pallets under 2.7c (5-digit scheme pallet). For 5-digit ZIP Codes not included in a scheme, begin preparing pallets under 2.7d (merged 5-digit pallet).
(1) Line 1: labeling: use L001, Column B.
(2) Line 2: "STD FLTS CR–5D SCHEME."

b. 5-Digit Scheme Carrier Routes. Required. May contain only carrier route packages and bundles for all carrier routes in an L001 scheme when the indicator in the City State Product does not allow co-containerization of carrier route packages and 5-digit packages for any of the 5-digit ZIP Codes in the scheme.
(1) Line 1: use L001, Column B.
(2) Line 2: "STD FLTS CR–RTS SCHEME."

c. 5-Digit Scheme. Required. May contain 5-digit packages and bundles of automation rate and 5-digit Presorted rate mail for the same 5-digit scheme under L001 for ZIP Codes in the scheme that do not have an indicator in the City State Product that allows co-containerization of carrier route packages and 5-digit packages.
(1) Line 1: use L001, Column B.
(2) Line 2: STD FLTS 5D," followed by "BARCODED" or "BC" if the pallet contains automation rate mail, followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail, followed by "SCHEME" or "SCH."

d. Merged 5-Digit. Required. May contain carrier route rate packages and bundles, automation rate 5-digit packages and bundles, and Presorted rate 5-digit packages and bundles for those 5-digit ZIP Codes that are not part of a scheme and that have an indicator in the City State Product that allows co-containerization of carrier route packages and 5-digit packages.
(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).
(2) Line 2: "STD FLTS CR/5D."

e. 5-Digit Carrier Routes. Required. May contain only carrier route rate packages and bundles for the same 5-digit ZIP Code for those 5-digit ZIP Codes that are not part of a scheme and that have an indicator in the City State Product that does not allow co-containerization of carrier route packages and 5-digit packages.
(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).
(2) Line 2: "STD FLTS," followed by "CARRIER ROUTES" or "CR–RTS."

f. 5-Digit. Required. May contain automation rate 5-digit packages and bundles and Presorted rate 5-digit packages and bundles for the same 5-digit ZIP Code for those 5-digit ZIP Codes that are not part of a scheme and that have an indicator in the City State Product that does not allow co-containerization of carrier route packages and 5-digit packages.
(1) Line 1: use city, state abbreviation, and 5-digit ZIP Code destination (see M031 for military mail).
(2) Line 2: "STD FLTS 5D," followed by "BARCODED" or "BC" if the pallet contains automation rate mail, and

followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

g. 3–Digit. Optional. May contain carrier route rate, automation rate, and Presorted rate packages and bundles.

(1) Line 1: use L002, Column A.

(2) Line 2: "STD FLTS 3D," followed by "DDU" if DDU rates are claimed, followed by "DSCF" if DSCF rates are claimed, followed by "BARCODED" or "BC" if the pallet contains automation rate mail, and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

h. SCF: Required. May contain carrier route rate, automation rate, and Presorted rate packages and bundles.

(1) Line 1: use L002, Column C.

(2) Line 2: "STD FLTS SCF;" followed by "DDU" if DDU rates are claimed, followed by "DSCF" if DSCF rates are claimed; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

i. If DBMC rates are not claimed: Destination BMC. Required. May contain carrier route rate, automation rate, and Presorted rate packages and bundles. Sort ADC packages and bundles to BMC pallets based on the "label to" ZIP Code shown for the ADC of the package or bundle in L004.

(1) Line 1: use L601.

(2) Line 2: "STD FLTS BMC," followed by "BARCODED" or "BC" if the pallet contains automation rate mail, and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

j. If DBMC rates are claimed: Destination ASF/BMC. May contain carrier route rate, automation rate, and Presorted rate packages and bundles. Destination ASF sortation allowed and required only if DBMC rate is claimed for mail deposited at an ASF, otherwise sort to Destination BMC. Sort ADC packages and bundles to ASF/BMC pallets based on the "label to" ZIP Code shown for the ADC of the package or bundle in L004.

(1) Line 1: use L602.

(2) Line 2: "STD FLTS," followed by "ASF" or "BMC" as applicable; followed by "BARCODED" or "BC" if the pallet contains automation rate mail; and followed by "NONBARCODED" or "NBC" if the pallet contains Presorted rate mail.

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes if the proposal is adopted.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–7838 Filed 3–29–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–225–0230; FRL–6567–3]

Proposed Approval and Promulgation of State Implementation Plans; California—Santa Barbara Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve Santa Barbara's 1998 Clean Air Plan (CAP), submitted by the California Air Resources Board (CARB). The Santa Barbara County Air Pollution Control District (SBCAPCD) adopted the plan to meet the Clean Air Act (CAA) requirements for ozone areas classified as serious. EPA is proposing to approve this revision to the California State Implementation Plan (SIP) under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards, and plan requirements for nonattainment areas.

DATES: We must receive your written comments on this proposal by May 1, 2000.

ADDRESSES: Please address your comments to the EPA contact below. You may inspect and copy the rulemaking docket for this notice at the following location during normal business hours. We may charge you a reasonable fee for copying parts of the docket.

Environmental Protection Agency, Region 9, Air Division, Air Planning Office (AIR–2), 75 Hawthorne Street, San Francisco, CA 94105–3901,

Copies of the SIP materials are also available for inspection at the addresses listed below:

California Air Resources Board, 2020 L Street, Sacramento, CA 92123–1095.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive B–23, Goleta, CA 93117.

Santa Barbara's 1998 Clean Air Plan is available electronically at: http://www3.sbcapcd.org/capes.htm

FOR FURTHER INFORMATION CONTACT: Dave Jesson, Air Planning Office (AIR–2), Air Division, U.S. EPA, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901. Telephone: (415) 744–1288. E-mail: *jesson.david@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. What Action Are We Proposing?

This Santa Barbara SIP revision addresses applicable CAA requirements for serious ozone nonattainment areas, including a demonstration of attainment by the statutory deadline of November 15, 1999.[1] We are proposing to approve the Santa Barbara ozone SIP with respect to its emissions inventories, control measures, 1999 rate-of-progress (ROP) plan, attainment plan, and transportation budgets. As discussed in section III.H., the 1998 CAP supersedes most portions of the 1994 ozone SIP for Santa Barbara, which we approved on January 8, 1997 (62 FR 1187–1190).

II. What Clean Air Act Provisions Apply to This Plan?

A. What Is the Ozone NAAQS?

Under section 109 of the CAA, we established NAAQS for ozone in 1979. 44 FR 8220 (February 8, 1979). The 1-hour NAAQS for ozone is 0.12 parts per million (ppm). Ground-level ozone is formed when nitrogen oxides (NO_X) and volatile organic compounds (VOCs) react in the presence of sunlight, generally at elevated temperatures.[2] Strategies for reducing smog typically require reductions in both VOC and NO_X emissions.

Ozone causes serious health problems, particularly in children, by damaging lung tissue and sensitizing the lungs to other irritants. Even at very low levels, ozone can cause acute respiratory problems; aggravate asthma; cause temporary decreases in lung capacity of 15 to 20 percent in healthy adults, cause inflammation of lung tissue; lead to hospital admissions and emergency room visits; and impair the body's immune system defenses, making people more susceptible to respiratory illnesses, including bronchitis and pneumonia. Children are most at risk from exposure to ozone because they breathe more air per pound of body weight than adults, their respiratory systems are still developing and thus are more susceptible to environmental threats, and children exercise outdoors more than adults.

B. What Requirements Apply to This SIP Revision?

The most fundamental of the CAA provisions for ozone nonattainment areas is the requirement that the State submit a SIP demonstrating attainment of the NAAQS as expeditiously as practicable but no later than the

[1] Santa Barbara County was originally classified as a moderate area, but failed to attain the ozone NAAQS by the November 15, 1996, statutory deadline, and was reclassified as serious on December 10, 1997 (62 FR 65025–65030).

[2] The 1998 CAP generally substitutes the terms reactive organic gases (ROG) for VOC. These terms are essentially synonymous and are used interchangeably throughout this document.

applicable CAA deadline. Such a demonstration must provide enforceable measures to achieve emission reductions each year leading to emissions at or below the level predicted to result in attainment of the NAAQS throughout the nonattainment area.

We have issued a "General Preamble" describing the Agency's preliminary views on how we intend to act on SIPs submitted under Title I of the Act. See generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992). You should refer to the General Preamble for a more detailed discussion of our preliminary interpretations of Title I requirements. In this action, we are applying these policies to the Santa Barbara ozone SIP submittal, taking into consideration the specific factual issues presented.

III. Does This SIP Submittal Meet CAA Requirements?

A. Does the 1998 CAP Satisfy the Procedural Requirements?

On December 29, 1998, the SBCAPCD adopted the 1998 CAP, after providing public notice and opportunity to comment. CARB approved the 1998 CAP (Executive Order 99–2a) and, on March 19, 1999, submitted the plan as a revision to the California SIP (letter from Michael P. Kenny, Executive Officer, to Felicia Marcus, EPA Regional Administrator). The SIP submittal includes proof of publication for the notice of SBCAPCD public hearing, as evidence that the hearing was properly noticed. We found this submittal to be complete on April 28, 1999.[3] We believe that the public process associated with the 1998 CAP meets the procedural requirements of CAA sections 110(a) and (l) and 40 CFR 51.102.

B. Are the Emissions Inventories in the Plan Approvable?

Chapter 3, Chapter 6, and Appendix A of the 1998 CAP include updated historic and projected emission inventories for the years 1990, 1996, and 1999. The inventories summarize emissions from all stationary and mobile source categories both onshore and in the Outer Continental Shelf (OCS), where there are significant emissions from petroleum production and marine vessels. The inventories include estimated emissions from anthropogenic activities, biogenic and geogenic sources, and wildfires. Appendix A of the 1998 CAP includes estimates of ozone precursor emissions—ROG, NO_X, and carbon monoxide (CO)— for the following: (1) 1990 base year annual emissions (Table A–3); (2) 1996 ozone season emissions (Tables A–7 and A–10); (3) 1996 annual emissions (Tables A–1 and A–2); and (4) 1999 ozone season emissions (Tables A–8 and A–11).[4] As part of the ROP plan, the 1998 CAP presents 1990 base year ozone season emissions in Table 9–1. For informational purposes only, the 1998 CAP also includes projected ozone season emissions for 2005.

The motor vehicle emissions in the 1998 CAP were generated using a group of models developed by CARB known as the Motor Vehicle Emission Inventory 7G1.0 corrected (MVEI7G1.0c). The Santa Barbara County Association of Governments (SBCAG) transportation model generated the area-specific data on motor vehicle population and usage. SBCAG also provided projections of population, employment, and housing, and the 1998 CAP identifies the source of other activity factors.

For 1999, SBCAG projected 9,459,848 vehicle miles traveled, 1,327,665 trips, and 2,213,431 starts, assuming State and local controls (1998 CAP, Appendix C, page C–29). The 1998 CAP (pages 5–4 and 5–5) also shows the motor vehicle emissions estimates for 1996 and 1999.

The revised and updated emissions inventories are comprehensive, accurate, and current estimates of actual emissions, as required by the CAA. The methodologies used to prepare the base and projected inventories conform to EPA guidance documents.[5] Our guidance allows approval of California's motor vehicle emissions factors in place of the corresponding federal emissions factors. Therefore, we propose to approve the 1998 CAP emissions inventories for 1990, 1996, and 1999, under CAA sections 172(c)(3) and 182(a)(1). We are not acting on the emissions inventories for 2005, which the CAA does not require.

C. Are the Control Measures Approvable?

CAA sections 110(a)(2)(A) and 172(c)(6) require that all measures and other elements in the SIP be enforceable. We have interpreted these provisions to allow for approval of attainment demonstrations that rely, in part, on commitments to adopt and implement rules in the future, so long as the commitments are specific and enforceable (see 57 FR 13556 and 13568, April 16, 1992; and 62 FR 1155–1157, January 8, 1997).

The attainment demonstration in the 1998 CAP rests primarily on emission reductions derived from adopted State and SBCAPCD measures, which the 1998 CAP describes in Chapter 4 (stationary sources) and Chapter 5 (transportation sources).

The transportation control measure (TCM) package for Santa Barbara County is summarized in Tables 5–1, 5–2, and 5–3. Table 5–1 summarizes each type of TCM, the adopting agency, the implementing agency, the commitments, and the monitoring mechanisms. Table 5–2 presents the specific projects, sponsors, and implementation status of all TCMs implemented as part of the 1994 Clean Air Plan while Table 5–3 summarizes all new projects, sponsors, and funding mechanisms as part of the 1998 Clean Air Plan. The information contained in these three tables adequately summarizes all TCMs applicable to Santa Barbara County.

To a small extent, both the ROP plan and attainment plan rely on reductions from 2 rules and 2 TCMs which SBCAPCD committed to adopt and implement in 1999. The 1998 CAP includes these 4 new control measures and 3 contingency measures, which are summarized in Table 1, entitled "Santa Barbara Measures."

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

[4] In Santa Barbara County, the ozone season covers the months of May through October.

[5] See, for example, Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone, Volume I: General Guidance for Stationary Sources, EPA—450/4–91–016; Procedures for Emission Inventory Preparation, Volume IV: Mobile Sources, EPA—450/5–9–026d Revised.

TABLE 1.—SANTA BARBARA MEASURES

Control Measures	Emission reductions (tons/avg. summer weekday)		Schedule		
	ROG	NO_X	Adoption	Implementation	Status as of 2/00
352—Residential & Commercial Space and Water Heaters	0	0.0047 (1999)	4/99	6/99	Adopted 9/16/99.
353—Control of ROG from Adhesives and Sealants	0.4228 (1999)	0	4/99	6/99	Adopted 8/19/99.
T13 Accelerated Retirement of Vehicles	0.06 (1999)	0.02 (1999)	(1)	99–01	Currently in force
T18 Alternative Fuels	0.0003 (1999)	0.002 (1999)			In Progress.
333—Control of Emissions from Reciprocating Internal Combustion Engines.	0	1.3656 (2005)	4/99	4/01	Contingency Measure.
T21—Enhanced Inspection & Maintenance	4.29 (2005)	3.07 (2005)			Contingency Measure.
T22—County-Wide Implementation of Tier III TDM Program.	30,840 VMT reduction				Contingency Measure.

[1] Adopted.

The measures 352, 353, T13, and T18 are relied upon in meeting the 1999 ROP and attainment demonstration requirements of the Act, while measures 333, T21, and T22 serve as contingency measures. Accordingly, and because the measures strengthen the SIP, we propose to approve all of the measures in Table 1 under CAA sections 110(k)(3) and 301(a).

D. Is the Rate-of-Progress Plan Approvable?

For ozone areas classified as serious or above, section 182(c)(2) requires that the SIP must provide for reductions in ozone-season, weekday VOC emissions of at least 3 percent per year net of growth averaged over each consecutive 3-year period beginning in 1996 until the attainment date. This is in addition to the 15 percent reduction over the first 6-year period required by CAA section 182(b)(1) for areas classified as moderate and above.

Chapter 9 of the 1998 CAP presents the 1999 ROP plan. As required by CAA sections 182(b)(1) and 182(c)(2)(B), the plan includes an adjusted 1990 base year ROG emission inventory and computes creditable 1999 emission reductions. The ROP plan must show that creditable reductions bring emissions below the required target level: a 24 percent reduction from 1990 emissions.[6]

Table 2 entitled "1999 ROP Demonstration" presents these calculations, demonstrating that creditable ROG reductions are achieved without the need for substituting NO_X reductions, as allowed by the CAA section 182(c)(2)(C). Consistent with CAA section 182(b)(1)(D), the ROP demonstration factors out reductions that would have been achieved by the Federal Motor Vehicle Control Program and Federal gasoline Reid Vapor Pressure regulations that were promulgated by November 15, 1990, or were required by CAA section 211(h).

TABLE 2.—1999 ROP DEMONSTRATION

	ROG emissions (tpd)
1990 ROP Base Year ROG Inventory	79.32
1990 Adjusted Base Year Inventory	56.72
24% ROP Adjusted Base Year	13.61
Federal Motor Vehicle Control Program and Reid Vapor Pressure Requirement	22.60
1999 ROP Target	43.11
1999 Inventory with Controls	38.93

Because the Santa Barbara ROP demonstration satisfies applicable requirements as discussed above, we propose to approve the 1998 CAP as meeting the progress requirements of CAA section 182(c)(2).

E. Is the Attainment Demonstration Approvable?

CAA section 181(a) requires serious ozone areas, including Santa Barbara, to demonstrate attainment as expeditiously as practicable but no later than November 15, 1999. The demonstration must show that VOC and NOx emissions will be (or have been) reduced to levels at which the ozone NAAQS will not be exceeded. Thus, the SIP must show that the projected design value will be less than or equal to 0.12 ppm at all locations within the nonattainment area.[7]

The measured design value concentration at the peak monitoring station in Santa Barbara was 0.13 ppm for the period 1994–1996. The SIP must show that sufficient emission reductions will occur by 1999 to reduce this level by at least 4 percent in order to achieve the NAAQS, since the rounding convention treats values up to 0.1249 ppm as not exceeding the 0.12 ppm standard.

Appendix D of the CAP discusses the attainment demonstration, which CARB prepared for the Santa Barbara area. The State employed the Urban Airshed Model, using the September 5–7, 1984 episode, with eastern boundary conditions based on measured concentrations during the 1984 field study. Base case simulations for September 6 and 7 met our performance guidelines with one exception: the normalized bias for September 6 was very slightly above EPA's guideline.

CARB determined 1999 ozone concentrations by scaling the design value (0.13 ppm) by the relative change in peak ozone concentrations between 1996 and 1999. Based on the simulation results, the projected design value for 1999 was .1247 ppm.

We propose to approve the attainment demonstration portion of the plan as meeting the requirements of CAA section 182(c)(2)(A), since it demonstrates that the area will attain the NAAQS before the applicable deadline of November 15, 1999. In fact, the Santa Barbara area did reach attainment in 1999, having recorded no more than 3 exceedances at any monitor during the period 1997–1999, as shown in Table 3 below labeled "Exceedances of the 1-Hour Ozone NAAQS in Santa Barbara County, 1997–1999."

TABLE 3.—EXCEEDANCES OF THE 1-HOUR OZONE NAAQS IN SANTA BARBARA COUNTY, 1997–1999

[1999 values are preliminary data from EPA's Aerometric Data System (AIRS)]

Monitoring station	1997	1998	1999	Total
Carpinteria	0	0	0	0
El Capitan*	0	0	0	0
Goleta*	0	0	0	0
Las Flores Canyon	1	1	1	3
Lompoc H S and P	0	0	0	0
Lompoc H Street*	0	0	0	0
Nojoqui Summit	0	0	0	0
Paradise Road	0	1	0	1
Santa Barbara*	0	0	0	0
Santa Maria*	0	0	0	0
Santa Rosa Island*	0	0	0	0
Santa Ynez*	0	0	0	0
Vandenberg Air Force Base	0	0	0	0

*Denotes part of the State and Local Air Monitoring System (SLAMS). Other stations are operated by industry, at the direction of the SBCAPCD, as a condition to permits issued under the Prevention of Significant Deterioration (PSD) program.

F. Are the Motor Vehicle Emissions Budgets Approvable?

Attainment demonstration submittals must specify the maximum motor vehicle emissions allowed in the attainment year and demonstrate that this emissions level, when considered with emissions from all other sources, is consistent with attainment. In order for us to find the budget adequate and approvable, the submittal must meet the conformity adequacy requirements of 40 CFR 93.118(e)(4) and be approvable under all pertinent SIP requirements.

The motor vehicle emissions caps defined by this and other plans when they are approved into the SIP are used to determine the conformity of transportation plans, programs, and projects to the SIP, as described by CAA section 176(c)(2)(A). For more detail on this part of the conformity requirements see 40 CFR 93.118. For transportation conformity purposes, the cap on motor vehicle emissions is known as the motor vehicle emissions budget. The budget must reflect all of the motor vehicle control measures contained in the attainment demonstration (40 CFR 93.118(e)(4)(v)).

The motor vehicle emissions budgets in the 1998 CAP for 1999 are 17.42 tpd VOC and 22.07 tpd NO_X, as shown below in Table 4 labeled "Santa Barbara Motor Vehicle Emissions Budgets."

TABLE 4.—SANTA BARBARA MOTOR VEHICLE EMISSIONS BUDGETS

[1999 Emissions in Tons per Day, Using EMFAC7G]

	Voc	NO_X
Emissions without TCMs	17.52	22.16
Emission Reductions from TCMs	0.10	0.09
Emissions Budget	17.42	22.07

These budgets were developed using the State's MVEI7G1.0c motor vehicle emissions factors. We have already determined that these budgets are adequate (see 64 FR 73549, December 30, 1999), and we now propose to approve the budgets as consistent with all of the adequacy criteria of 40 CFR 93.118(e)(4), including consistency with the 1999 baseline emissions inventory, the motor vehicle control measure emission reductions used in the attainment demonstration, and the reductions needed for attainment.

CARB is expected to issue refinements to the emissions factors for use in developing onroad mobile source emission inventories and for making transportation conformity determinations. The refinements would more accurately reflect emission reductions associated with the State's motor vehicle inspection and maintenance (I/M) program and other motor vehicle controls.[8] These refinements must be used in conformity determinations, in accordance with our transportation conformity regulations, which require use of the most current and accurate information (40 CFR 93.110(e), 122(a)(2)). Subsequent budgets will reflect these changes and any new or modified control measures adopted to ensure maintenance of the NAAQS.

[6] The assessment of whether an area has met the reasonable further progress requirement in the milestone year is based on whether the area is at or below the milestone year target level of emissions and not on whether the area has achieved a certain actual emissions reduction under the SIP control strategy. See General Preamble. 57 FR 13516.

[7] The design value is the fourth highest concentration at any monitor within the nonattainment area, over a 3-year period. You may find more details on the interpretation of the 1-hour ozone NAAQS at 40 CFR 50, Appendix H. If you wish to find out more about ozone modeling, attainment demonstrations, and applicable EPA guidance, please see 61 FR 10939–13940 (March 18, 1996) and 40 CFR 51, Appendix W.

[8] The updated emission reductions which, among other things, would reflect more accurately the I/M program as compared to the 1994 submittal, are necessary in the case of I/M to account for legislative change to the program in 1997. The Santa Barbara area is subject to the "basic" I/M requirement of CAA section 182(b)(4) rather than the "enhanced" I/M requirement of section 182(c)(3) because the 1980 urbanized area population was less than 200,000. See CAA section 182(c)(3)(A).

G. Has the Area Established an Enhanced Monitoring Program?

As a result of the reclassification of the County to serious, Santa Barbara became subject to the CAA section 182(c)(1) requirement that the area establish and implement a Photochemical Assessment Monitoring Station (PAMS) network. To support the implementation of this regulatory requirement, EPA provided in excess of $435,000 to SBCAPCD through the Section 105 Grant, from FY1998 through FY2000.

The District worked diligently to expedite the implementation of a PAMS network, consisting of a split-Type II maximum ozone precursor station. VOC and carbonyl concentrations are collected at SBCAPCD's office, and additional data, including ozone, NO_X, and meteorological parameters, are collected at SBCAPCD's SLAMS Goleta site. Upper air information is collected at the Santa Barbara Airport location. It was agreed that if Santa Barbara County remained in nonattainment status, the District would relocate all PAMS sampling to an optimum location in the foothills of Santa Barbara.

H. What Are the Implications of EPA's Proposed Plan Approval?

If we finalize the proposed approval of the 1998 CAP, this plan would replace and supersede the 1994 ozone SIP with the exception of the approved State control measures, the local control measures that are not amended by the 1998 CAP, and the local transportation control measures for which the 1998 CAP augments the TCM measures and projects included in the 1994 CAP. Our final approval would also make enforceable the SBCAPCD commitments to adopt and implement the control measures and contingency measures (if applicable) listed above in Table 1, to achieve the specified emissions reductions.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order (E.O.) 12866, Regulatory Planning and Review.

B. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to E.O. 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of E.O. 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under Section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under Section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing new regulations. To comply with NTTAA, the EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to this proposed action. Today's proposed action does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental regulations, Nitrogen oxides, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: March 20, 2000.

David P. Howekamp,

Acting Regional Administrator, Region IX.

[FR Doc. 00–7736 Filed 3–29–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AF86

Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on Proposed Endangered Status for Ambrosia Pumila (San Diego Ambrosia)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period.

SUMMARY: We, the Fish and Wildlife Service (Service), pursuant to the Endangered Species Act of 1973, as amended (Act), reopen the comment period on the proposal to list *Ambrosia pumila* (San Diego ambrosia) as an endangered species. The comment period is reopened in response to a request from the public for additional time to obtain biological information regarding the plant and formulate comments on the proposed rule. In addition, reopening of the comment period will allow further opportunity for all interested parties to submit comments on the proposal, which is available (see **ADDRESSES** section). We are seeking comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested parties concerning the proposed rule. Comments already submitted on the proposed rule need not be resubmitted as they will be fully considered in the final determination.

DATES: The reopened comment period closes May 30, 2000.

ADDRESSES: Comments and materials concerning this proposed rule should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Carlsbad Fish and Wildlife Office, 2730 Loker Avenue West, Carlsbad, California, 92008. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Gary Wallace, Carlsbad Fish and Wildlife Office (see **ADDRESSES** section) at (760) 431–9440.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1999, the Service published a rule proposing endangered status for *Ambrosia pumila* (San Diego ambrosia) in the **Federal Register** (64 FR 72993). The original comment period closed on February 28, 2000. The comment period now closes on May 30, 2000. Written comments should be submitted to the Service (see **ADDRESSES** section).

Ambrosia pumila is a herbaceous perennial plant with underground rhizome-like roots. This wind pollinated species is restricted to San Diego and western Riverside counties and from Colonet to Lake Chapala, in Baja California, Mexico. The species is currently known from 13 extant native occurrences in the U.S. *Ambrosia pumila* is threatened by the following; destruction, fragmentation, and degradation of habitat by recreational and commercial development; highway construction and maintenance; construction and maintenance activities associated with utility easements; competition from non-native plants; trampling by horses and humans; off-road vehicle (ORV) use; and inadequate regulatory mechanisms. Comments from the public regarding the accuracy of this proposed rule are sought, especially regarding:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location and condition of any additional occurrences of this species and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(3) Aditional information concerning the range, distribution, and population size of this species;

(4) Current or planned activities in the subject area and their possible impacts on *Ambrosia pumila* or its habitat;

Author

The primary author of this notice is Gary D. Wallace, Ph.D. (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: March 22, 2000.

Elizabeth H. Stevens,

Acting Manager, California/Nevada Operations Office.

[FR Doc. 00–7800 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 65, No. 62

Thursday, March 30, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. FV00–929–1NC]

Notice of Request for Information Collection

AGENCY: Agricultural Marketing Service, USDA

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), this notice announces the Agricultural Marketing Service's (AMS) intention to request approval of a new information collection for Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, Marketing Order No. 929.

DATES: Comments on this notice must be received by May 30, 2000.

ADDITIONAL INFORMATION OR COMMENTS: Contact Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S., Post Office Box 96456, Washington, DC 20090–6456; Tel: (202) 720–8139, Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov.

SUPPLEMENTARY INFORMATION: *Title:* Cranberries Grown in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, Marketing Order No. 929.

OMB Number: 0581–0103.

Expiration Date of Approval: September 30, 2002.

Type of Request: Revision of a currently approved information collection.

Abstract: Marketing order programs provide an opportunity for producers of fresh fruits, vegetables and specialty crops, in a specified production area, to work together to solve marketing problems that cannot be solved individually. Order regulations help ensure adequate supplies of high quality product and adequate returns to producers. Under the Agricultural Marketing Agreement Act of 1937 (AMAA), as amended (7 U.S.C. 601–674) industries enter into marketing order programs. The Secretary of Agriculture is authorized to oversee the order operations and issue regulations recommended by a committee of representatives from each commodity industry.

The information collection requirements in this request are essential to carry out the intent of the AMAA, to provide the respondents the type of service they request, and to administer the program, which has operated since 1962.

The cranberry marketing order regulates the handling of cranberries grown in the states of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York, hereinafter referred to as the "order." The order authorizes the issuance of allotment provisions for producers and regulates the quantities of cranberries handled. The order also has research and development authority.

The order, and rules and regulations issued thereunder, authorize the Cranberry Marketing Committee (Committee), the agency responsible for local administration of the order, to require handlers and producers to submit certain information. Much of this information is compiled in aggregate and provided to the industry to assist in marketing decisions.

Forms are developed as a means for persons to file required information with the Committee relating to cranberry supplies, shipments, dispositions, and other information needed to effectively carry out the purpose of the AMAA and order. The order permits the Committee to determine whether to use allotment percentage authority, in which producers are limited to a specified percentage of their cranberries that handlers may handle(purchase and/or sell) on their behalf. Individual producer allotments are based on their sales history, defined as the best four of the preceding six years total commercial sales of cranberries from their acreage. Use of these forms will ensure better administration of the order and grower compliance with the order, should allotment provisions of the order be implemented.

This notice announces the request for approval by OMB of two forms. The first form, "Growers Notice of Intent to Produce and Qualifying for Annual Allotment Form" (CMC—AL 1), is authorized under § 929.49 of the order. This form would be completed by growers in the event volume regulation is implemented. The Committee would require all growers to qualify for that allotment by filing with the Committee, on or before April 15 of each year. This form requires growers to provide certain information including: (1) The location of their cranberry producing acreage from which their annual allotment will be produced; (2) the amount of existing or new acreage which will be harvested; and (3) other information including: total acreage to be harvested during the crop year; crop harvested during previous year; and name(s) of handler(s) through which a grower has sold his or her crop. Authority for this collection is specified under § 929.49. This form helps ensure compliance of allotment regulations by growers.

The second form, the "Allotment Transfer and Disposition Agreement" form (CMC—T7), is authorized under § 929.151(c). Growers who complete this form may enter into an agreement with a handler or handlers as to the disposition of the grower's annual allotment. The terms of the agreement are required to be contained in this form and must include: the quantity of the allotment available to the handler for transfer; the effective date of the agreement; and the signature of the grower and the handler or their authorized representatives.

These forms are needed to ensure efficient administration of the order and permit all industry members the opportunity to plan transfers and dispositions of their cranberries.

The forms covered under this information collection require the minimum information necessary to effectively carry out the requirements of the order, and their use is necessary to

fulfill the intent of the AMAA as expressed in the order, and the rules and regulations issued under the order.

The information collected is used only by authorized representatives of the USDA, including AMS, Fruit and Vegetable Programs' regional and headquarter's staff, and authorized employees of the Committee. Authorized Committee employees and the industry are the primary users of the information, and AMS is the secondary user.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average .33 hours per response.

Respondents: Cranberry growers and handlers in the States of Massachusetts, Rhode Island, Connecticut, New Jersey, Wisconsin, Michigan, Minnesota, Oregon, Washington, and Long Island in the State of New York.

Estimated Number of Respondents: 1,285.

Estimated Number of Responses per Respondent: 2.

Estimated Total Annual Burden on Respondents: 848 hours.

Comments: Comments are invited on: (1) Whether the proposed collection of the information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Comments should reference OMB No. 0581–0103 and the Cranberry Marketing Order No. 929, and be mailed to Docket Clerk, Fruit and Vegetable Programs, AMS, USDA, P.O. Box 96456, Room 2525–S, Washington, D.C. 20090–6456; Fax (202) 720–5698; or E-mail: moab.docketclerk&usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register**. All comments received will be available for public inspection in the Office of the Docket Clerk during regular USDA business hours at 14th and Independence Ave., S.W., Washington, D.C., room 2525–S.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: March 24, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–7853 Filed 3–29–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Yellowstone Pipeline Missoula to Thompson Falls Reroute, Lolo and Idaho Panhandle National Forests; Mineral, Missoula, and Sanders Counties, Montana, and Shoshone County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; revision of notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service is revising previous notices of intent to prepare an environmental impact statement (EIS) regarding Yellowstone Pipe Line Company's proposals for a new petroleum products pipeline between Missoula and Thompson Falls, Montana, and to renew a special-use permit for an existing pipeline. The company has withdrawn its request for a new pipeline and now only seeks renewal of its special-use permit for its existing pipeline. In response, we have changed the schedule, scope, responsible official, and cooperating agencies for this EIS.

DATES: The final EIS should be released by July 2000.

ADDRESSES: Mail comments or inquiries regarding this notice to Terry Egenhoff, Environmental Coordinator, Lolo National Forest, Bldg. 24 Fort Missoula, MT 59804 7297.

FOR FURTHER INFORMATION CONTACT: Terry Egenhoff, (406) 329 3833.

SUPPLEMENTARY INFORMATION: This notice revises the Yellowstone Pipeline EIS notice published in the **Federal Register** on Friday, December 20, 1996 (61 FR 67302–67303), and revised in a notice published in the **Federal Register** on Thursday, May 20, 1999 (64 FR 27504–27505). The changes involve schedule, scope, responsible official, and cooperating agencies.

Background

The Draft EIS for this proposal was released on September 17, 1999. Since then, the Yellowstone Pipeline Company (YPL) has submitted two key changes affecting this EIS: (1) On November 9, 1999 YPL proposed to relocate five more miles of its existing line away from Prospect Creek and the North Fork Coeur d'Alene River, increasing the total proposed for relocation away from streams from the 3.5 miles YPL proposed in the Draft EIS to 9.8 miles; and (2) on February 15, 2000 YPL withdrew its application for a new pipeline route between Missoula and Thompson Falls. In January 2000 YPL requested that the Forest Service stop all work on the pending EIS. In February 2000 YPL requested that the Forest Service resume work to complete the EIS, but only for renewing the existing pipeline permit.

The Lolo National Forest will complete a Final EIS to renew the existing pipeline permit for National Forest System lands between Thompson Falls, Montana and Coeur d'Alene, Idaho. The Final EIS will focus on changes to the existing pipeline between Thompson Falls and Kingston, Idaho. All alternatives studied in detail in the Final EIS will assume that the current rail transportation of petroleum products between Missoula and Thompson Falls will continue.

Several alternatives in the Draft EIS released last September will be eliminated from detailed study in the Final EIS. Those are all the new-construction alternatives between Missoula and Thompson Falls and between Missoula and Kingston.

Schedule changes: The final EIS should be released by July 2000.

Scope changes: The scope of the final EIS will be limited to cover only modifications proposed to 60 miles of YPL's existing pipeline between Thompson Falls and Kingston, Idaho. The primary modification proposed is local relocation away from streams of about 10 miles of pipe in several separate locations. This reduced scope will involve only two counties: Sanders County, Montana and Shoshone County, Idaho. The only Federal lands involved in the new scope are National Forest System lands.

Responsible official changes: The responsible official for the decision resulting from this EIS is: Dale N. Bosworth, Regional Forester, USDA Forest Service, Northern Region, P.O. Box 7669, Missoula, MT 59807. No other Federal land management agencies are involved in the reduced scope. Therefore, the Bureau of Land Management no longer has any potential decision-making role.

Cooperating Agency changes: Formal EIS cooperating agencies (40 CFR 1501.6) include the Corps of Engineers, and the Montana Department of Environmental Quality (as lead agency for all Montana agencies). Other agencies with permitting or consulting roles that are involved in the preparation of this EIS include: USDOT Office of Pipeline Safety; USEPA, USFWS; FHWA; Montana DRNC; Montana DOT; Montana Fish, Wildlife, and Parks; Montana SHPO; Idaho DEQ; Idaho Dept. of Water Resources; Idaho Fish and Game, Idaho SHPO; Confederated Salish and Kootenai Tribes of the Flathead Nation; Sanders and Shoshone counties; and the Green Mountain Conservation District. The Bureau of Land Management and local agencies in Missoula and Mineral counties are no longer cooperating agencies since the current scope does not include their jurisdictions.

Authority: 40 CFR 1501.7; Forest Service Handbook 1909.15, sec. 21.2.

Dated: March 10, 2000.

Deborah L.R. Austin,

Forest Supervisor.

[FR Doc. 00–7896 Filed 3–29–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

California Coast Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The California Coast Provincial Advisory Committee (PAC) will meet on April 12 and 13, 2000, in the Agate Beach Room (Mezzanine Floor) in the Jolly Giant Commons (Building 62) at Humboldt State University in Arcata, California. The meeting will be held from 2 until 5 p.m. on Wednesday, April 12, and from 8 a.m. to 3 p.m. on Thursday, April 13. The University is located at 355 Granite Ave. in Arcata. Agenda items to be covered include: (1) PAC/PIEC effectiveness and issues criteria/process; (2) Regional Ecosystem Office (REO) update; (3) Aquatic/Riparian Effectiveness Monitoring Draft Plan presentation; (4) Megram Fire update; (5) Forest Service proposed road management policy presentation; (6) Recreation Fee Demonstration program presentation; and (7) Open public comment. All California Coast Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Daniel Chisholm, Forest Supervisor, or Phebe Brown, Province Coordinator, USDA, Mendocino National Forest, 825 N. Humboldt Avenue, Willows, CA 95988, (530) 934–3316.

Dated: March 21, 2000.

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 00–7895 Filed 3–29–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

South Darlington Watershed, Darlington County, SC

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant of Section 102(2)(c) of the National Environmental Policy Act of 1969, the Council of Environmental Quality Regulations (40 CFR Part 1500); and the Natural Resources Conservation Service Regulations (7 CFR Part 650); the Natural Resources Conservation Service, U.S. Department of Agriculture, gives notice than an environmental impact statement is not being prepared for the South Darlington Watershed, Darlington County, South Carolina.

FOR FURTHER INFORMATION CONTACT: Walter W. Douglas, Acting State Conservationist, Natural Resources Conservation Service, 1835 Assembly Street, Room 950, Columbia, South Carolina 29201, (803) 765–5681.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Walter W. Douglas, acting state conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are to reduce flooding and improve flow conditions on 6.7 miles of previously modified and/or new channels to facilitate the removal of stormwater in the South Darlington Watershed area.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Luke Nance.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register.**

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Walter W. Douglas,

Acting State Conservationist.

[FR Doc. 00–7897 Filed 3–29–00; 8:45 am]

BILLING CODE 3410–16–M

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

The United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10 a.m. local time on April 6, 2000, at the Defense Nuclear Facilities Safety Board, 625 Indiana Avenue, NW, Washington, DC, Third Floor. Topics to be discussed at the meeting are:

1. CSB Investigations update of the Morton, Tosco, and Sonat I cases
2. Review of CSB recommendations
3. Chemical incident selection criteria update
4. Hiring plan update
5. Review of contracting matters
6. Data base study update
7. Board member update
8. Future activities (Senate hearing, strategic planning, public meeting on the Morton case, future Board meeting dates)

The meeting will be open to the public. The Defense Nuclear Facilities Safety Board is a secure federal building and photo identification may be required for public admission. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of External Relations, (202) 261–7600, or visit our website at: *www.csb.gov.*

Christopher W. Warner,

General Counsel.

[FR Doc. 00–7942 Filed 3–27–00; 4:33 pm]

BILLING CODE 6350–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Colorado Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and

regulations of the U.S. Commission on Civil Rights, that a meeting of the Colorado Advisory Committee to the Commission will convene at 11:30 a.m. and adjourn at 3:30 p.m. on Thursday, May 11, 2000, at the Wellshire Inn, 3333 South Colorado Boulevard, Denver, Colorado 80222 (303–759–3333). The purpose of the meeting is to discuss follow-up to community forums in northern and southern Colorado and plan forum in western Colorado; roundtable discussion on civil rights issues in Colorado.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson or John Dulles, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 22, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–7902 Filed 3–29–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Rhode Island Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Rhode Island Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 8:00 p.m. on April 18, 2000, at the Providence Marriott, One Orms Street, Providence, Rhode Island 02904. The Committee will be briefed on police-community relations issues in Providence by invited civil rights advocates in preparation of its next proposed project, Police-Community Relations in Rhode Island. The Committee will also discuss and plan for the release of the report, *The Impact of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 on Legal Immigrants in Rhode Island.*

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Olga Noguera, 401–464–1876, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 20, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–7898 Filed 3–29–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Washington State Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Washington State Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 12:00 p.m. on April 19, 2000, at the Westin Seattle, 1900 Fifth Avenue, Seattle, Washington 98101. The purpose of the meeting is to plan future projects.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 22, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–7901 Filed 3–29–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the West Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the West Virginia Advisory Committee to the Commission will convene at 12:00 p.m. and adjourn at 7:00 p.m. on April 20, 2000, at the Embassy Suites Hotel, Salons A/B, 300 Court Street, Charleston, WV 25301. The Committee will hold a community forum with government and civic leaders on police-community relations and civil rights issues in Kanawha County from 12:00 p.m. to 5:45 p.m., followed by a planning session from 5:45 p.m. to 7:00 p.m.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Gregory T. Hinton, 304–367–4244, or Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 20, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–7899 Filed 3–29–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Institute of Standards and Technology (NIST).

Title: Evaluation of the Common Industry Format for Reporting the Results of Usability Tests.

Agency Form Numbers(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden Hours: 120.

Number of Respondents: 30.

Average Hours Per Response: 4.

Needs and Uses: The Industry Usability Reporting project sponsored by NIST has developed the Common Industry Format (CIF) to facilitate the exchange of usability testing data. The proposed format needs to be tested for utility and validity. The goal of this research project is to determine which types of metrics are best able to measure the effect of using the CIF to report usability data. Computer applications and websites are suitable targets for evaluation. The results will be evaluated by NIST researchers in to determine the degree of consistency among reports that target a common application or website and develop a set of metrics that can be used to predict utility for a software vendor company and/or software consumer company.

Frequency: Once.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DoC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at *Lengelmeier@doc.gov).*

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: March 24, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–7810 Filed 3–29–00; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. In accordance with the Department's regulations, we are initiating those administrative reviews. The Department of Commerce also received a request to revoke one antidumping duty order in part.

EFFECTIVE DATE: March 30, 2000.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–4737.

SUPPLEMENTARY INFORMATION:

Background

The Department has received timely requests, in accordance with 19 CFR 351.213(b)(1997), for administrative reviews of various antidumping and countervailing duty orders and findings with February anniversary dates. The Department also received timely requests to revoke in part the antidumping duty order on heavy forged hand tools (bars/wedges, hammers/sledges, and picks/mattocks) from the People's Republic of China.

Initiation of Reviews

In accordance with section 19 CFR 351.221(c)(1)(i), we are initiating administrative reviews of the following antidumping and countervailing duty orders and findings. We intend to issue the final results of these reviews not later than February 28, 2001.

	Period to be reviewed
Antidumping Duty Proceedings	
India:	
Certain Preserved Mushrooms, A–533–813	8/5/98–1/31/00
Agro Dutch Foods, Ltd.	
Alpine Biotech, Ltd.	
Mandeep Mushrooms, Ltd.	
Hindustan Lever Limited (formerly Ponds India, Ltd.)	
Saptarishi Agro Industries, Ltd.	
Techtran Agro Industries, Ltd.	
Transchem, Ltd.	
Premier Mushroom Farms	
Flex Foods, Ltd.	
Weikfield Agro Products, Ltd.	
Dinesh Agro Products, Ltd.	
Himalaya International, Ltd.	
Forged Stainless Steel Flanges, A–533–809	2/1/99–1/31/00
Echjay Forgings Limited	
Isibars, Ltd.	
Panchmahal Steel, Ltd.	
Patheja Forgings and Auto Parts, Ltd.	
Pushpaman Exports	
Viraj Forgings, Ltd.	
Stainless Steel Bar, A–533–810	2/1/99–1/31/00
Chandan Steel Ltd.	
Isibars Limited	
Panchmahal Steel Limited	
Viraj Impoexpo Ltd.	
Indonesia: Certain Preserved Mushrooms, A–560–802	8/5/98–1/31/00
PT Dieng Djaya	
PT Surya Jaya Abadi Perkasa	
PT Indo Evergreen Agro Business Corp.	
PT Zeta Agro Corporation	
Japan: Mechanical Transfer, Presses, A–588–810	2/1/99–1/31/00
Komatsu, Ltd.	
People's Republic of China:	

	Period to be reviewed
Axes/adzes, *A–570–803	2/1/99–1/31/00
Shandong Machinery Import & Export Corp.	
Fujian Machinery & Equipment Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
Bars/wedges, *A–570–803	2/1/99–1/31/00
Shandong Machinery Import & Export Corp.	
Fujian Machinery & Equipment Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
Hammers/sledges, * A–570–803	2/1/99–1/31/00
Shandong Machinery Import & Export Corp.	
Fujian Machinery & Equipment Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
Picks/mattocks,* A–570–803	2/1/99–1/31/00
Shandong Machinery Import & Export Corp.	
Fujian Machinery & Equipment Import & Export Corp.	
Tianjin Machinery Import & Export Corp.	
Liaoning Machinery Import & Export Corp.	
Shandong Huarong General Group Corp.	
* If one of the above named companies does not qualify for a separate rate, all other exporters of certain heavy forged hand tools from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part.	
Certain Preserved Mushrooms, * A–570–851	8/5/98–1/31/00
China Processed Food Import & Export Co.	
Gerber Food (Yunnan) Co., Ltd.	5/7/98–1/31/00
Mei Wei Food Industry Co., Ltd. **	5/7/98–1/31/00
Tak Fat Trading Co. **	
* If one of the above named companies does not qualify for a separate rate, all other exporters of certain preserved mushrooms from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of a single PRC entity of which the named exporters are a part	
** The review period for Tak Fat and Mei Wei is 5/7/98 through 1/31/00, because there was a critical circumstance finding, and liquidation was suspended 90 days prior to publication of the preliminary LTFV investigation.	
Coumarin, *A–570–830	2/1/99–1/31/00
Jiangsu Native Produce Import & Export Corp.	
* If the above named company does not qualify for a separate rate, all other exporters of coumarin from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporter is a part.	
Manganese Metal, * A–570–840	2/1/99–1/31/00
China National Electronics Import & Export Hunan Co.	
China Metallurgical Import & Export Hunan Corporation and Hunan Non Ferrous Metals Import & Export Assoc. Co.	
Minmetals Precious & Rare Minerals Import & Export Co.	
Shieldalloy Metallurgical Corporation.	
London & Scandinavian Metallurgical Co., Ltd.	
Sumitomo Canada, Ltd.	
* If one of the above named companies does not qualify for a separate rate, all other exporters of managanese metal from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Natural Bristle Paint Brushes, *A–57–0–501	2/1/99–1/31/00
Hunan Provincial Native Produce and Animal By-Products Import and Export Corporation	
Hebei Animal By-Products Import/Export Corp.	
* If one of the above named companies does not qualify for a separate rate, all other exporters of natural bristle paintbrushes from the People's Republic of China who have not qualified for a separate rate are deemed to be covered by this review as part of the single PRC entity of which the named exporters are a part.	
Countervailing Duty Proceedings	
None.	
Suspension Agreements	
None.	

During any administrative review covering all or part of a period falling between the first and second or third and fourth anniversary of the publication of an antidumping duty order under § 351.211 or a determination under § 351.218(d) (sunset review), the Secretary, if requested by a domestic interested party within 30 days of the date of publication of the notice of initiation of the review, will determine whether antidumping duties have been absorbed by an exporter or producer subject to the review if the subject merchandise is sold in the United States through an importer that is affiliated with such exporter or producer. The request must include the name(s) of the exporter or producer for which the inquiry is requested.

For transition orders defined in section 751(c)(6) of the Act, the Secretary will apply paragraph (j)(1) of this section to any administrative review initiated in 1998 (19 CFR 351.213(j)(1–2)).

Interested parties must submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)), and 19 CFR 351.221(c)(1)(i).

Dated: March 24, 2000.

Holly A. Kuga,

Acting Deputy Assistant Secretary, Group II, for Import Administration.

[FR Doc. 00–7927 Filed 3–29–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–833]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 8, 1999, the Department of Commerce published its preliminary determination of sales at not less than fair value of certain polyester staple fiber from Taiwan. The investigation covers two manufacturers/exporters. The period of investigation is April 1, 1998, through March 31, 1999.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled "Suspension of Liquidation."

EFFECTIVE DATE: March 30, 2000.

FOR FURTHER INFORMATION CONTACT: Cynthia Thirumalai or Gregory Campbell, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4087 or 482–2239, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to provisions of the Tariff Act of 1930 ("the Act") as amended by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to the regulations codified at 19 CFR Part 351 (April 1999).

Case History

Since the preliminary determination of this investigation (see 64 FR 60771 (November 8, 1999) ("Preliminary Determination")), the following events have occurred:

In December 1999, we received supplemental section D responses from the respondents, Far Eastern Textiles, Ltd. (FETL) and Nan Ya Plastics Corporation (Nan Ya). On January 6, 2000, we received revised U.S. and home market listings from FETL. Subsequently, in February FETL and Nan Ya submitted revised cost of production and constructed value databases.

Verification of the responses to the sales and cost questionnaires took place in January 2000 (see the "Verification" section below).

The petitioners [1] and the respondents filed case briefs on February 24, 2000. On February 29, 2000, the petitioners and both respondents filed rebuttal briefs. At the request of interested parties, the Department held a public hearing on March 10, 2000.

Scope of Investigation

For the purposes of this investigation, the product covered is certain polyester staple fiber ("PSF"). Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this investigation may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from this investigation. Also specifically excluded from this investigation are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting).

The merchandise subject to this investigation is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

For a discussion of scope comments and determinations, see the March 22, 2000, Issues and Decision Memorandum for the Investigation of Certain Polyester Staple Fiber from the Republic of Korea from Susan Kuhbach, Acting Deputy Assistant Secretary, Import Administration, to Richard W. Moreland, Acting Assistant Secretary for Import Administration, Comments 4 and 5, which is on file in the Central Records Unit, Room B–099 of the main Department building ("B–099") and on the Web at: www.ita.doc.gov/import_admin/records/frn.

Period of Investigation

The period of investigation ("POI") is April 1, 1998 through March 31, 1999. This period corresponds to each respondent's four most recent fiscal quarters prior to the filing of the petition.

Critical Circumstances

No comments were received regarding the Department's preliminary critical circumstances determination, and the Department has not made any changes to that determination.[2] As set forth in our preliminary determination, because imports from FETL and Nan Ya have not been "massive" within the meaning of section 733(e)(1) of the Act, the Department continues to find, for the purposes of this final determination, that critical circumstances do not exist for imports of PSF from Taiwan.

Product Comparisons

We compared the products sold by the respondents in the comparison market during the POI to the products sold in the United States during the POI using the methodology described in the *Preliminary Determination*, with the following exception:

At the *Preliminary Determination*, we included product grade as a matching

[1] Arteva Specialties S.a.r.l.,d/b/a KoSa; Wellman, Inc; and Intercontinental Polymers, Inc.

[2] We note that there was a correction to Nan Ya's reported shipment data for one month. See Memorandum to the Case File from Cynthia Thirumalai and Gregory Campbell; Results of sales verification of Nan Ya Plastics Corporation (February 11, 2000) ("Nan Ya's Sales Verification Report"). However, this does not alter the preliminary critical circumstances finding.

criterion for Nan Ya because it specified grade in both the U.S. and comparison markets. Upon further consideration of information provided by FETL, we have determined that it is also appropriate to include grade as a matching criterion for FETL.

Fair Value Comparisons

To determine whether sales of PSF from Taiwan to the United States were made at less than fair value, we compared the export price ("EP") to comparison market prices or CV, as described in the "Export Price" and "Normal Value" sections below. Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in the company-specific calculation memoranda dated March 22, 2000, which have been placed in the file in Room B–099.

Export Price

For the price to the United States, we used EP as defined in section 772 of the Act. We calculated EP based on the same methodology described in the *Preliminary Determination*, with the following exceptions:

General Issues

We corrected clerical errors in which we inadvertently double-converted U.S. packing expenses and excluded U.S. credit expenses. See the March 22, 2000, Issues and Decision Memorandum for the Investigation of Certain Polyester Staple Fiber from Taiwan from Susan Kuhbach, Acting Deputy Assistant Secretary, Import Administration, to Richard W. Moreland, Acting Assistant Secretary for Import Administration ("Decision Memorandum"), comment 2, which is on file in B–099 and on the Web at: www.ita.doc.gov/import_admin/record/frn/.

FETL

a. We excluded sales of infused antibacterial products from the U.S. sales database. See Decision Memorandum, comment 5.

b. We adjusted the reported amounts for bank charges, ocean freight, domestic inland freight and brokerage expenses by the weighted-average percentage deviation between the reported amounts and the amounts actually incurred on transactions examined during verification. For those transactions examined at verification, we used the actual amounts for the above-referenced expenses. See Decision Memorandum, comment 6.

c. Based on certain errors found at verification, we adjusted U.S. packing costs for all sales. See Memorandum to the Case File from Cynthia Thirumalai and Gregory Campbell; Results of sales verification of FETL (February 11, 2000) ("FETL's Sales Verification Report").

d. We made revisions to certain product codes correcting for errors identified by FETL in preparation for verification. See Decision Memorandum, comment 3.

Nan Ya

a. We recalculated the date of sale for certain U.S. sales. See Decision Memorandum, comment 17, and Memorandum to Richard Moreland from Case Team; Errors in Nan Ya's Reported Dates of Sale (March 22, 2000).

b. We increased foreign inland freight expense by adding an amount for general and administrative (G&A) expenses. See Decision Memorandum, comment 19.

c. We added an amount for foreign inland freight for two U.S. sales. See Decision Memorandum, comment 20.

d. We added a commission amount to one U.S. sale. See Decision Memorandum, comment 25.

e. We recalculated U.S. credit expense based on a revised short-term interest rate. See Decision Memorandum, comment 26.

f. Based on certain errors found at verification, we added bank fees to one observation that were originally unreported; we corrected the following expenses for certain U.S. sales: Domestic inland freight, ocean freight, bank charges, and brokerage. We excluded three sales from the U.S. database because they either were made outside the POI or were sample sales. See Nan Ya's Sales Verification Report.

Normal Value

We used the same methodology to calculate NV as that described in the *Preliminary Determination*, with the following exceptions:

1. Cost of Production Analysis

General Issues

We used grade to define separate products in the cost test. See Decision Memorandum, comment 2.

FETL

a. We adjusted the G&A ratio applied to the cost of manufacture for purified terephthalic acid (PTA), a major input in the production of PSF, purchased from an affiliate to include certain unreported expenses. We then revised the cost of the PTA purchased from the affiliate to reflect the cost of production of this input in accordance with the major input rule. See Decision Memorandum, comment 10.

b. We revised the cost of manufacture for ethylene glycol (EG), a major input in the production of PSF, purchased from an affiliate to include certain unreported expenses. We then revised the cost of the EG purchased from the affiliate to reflect the cost of production of this input in accordance with the major input rule. See Decision Memorandum, comment 11.

c. We adjusted the total cost of manufacture for each product to account for the difference between the reported value and the book value of FETL's net scrap input costs. See Decision Memorandum, comment 12.

d. We revised the G&A ratio to include certain foreign exchange gains and losses and to exclude packing expenses from the denominator. See Decision Memorandum, comments 13 and 14.

e. We revised the financial expense ratio to include certain exchange gains and losses. In addition, we applied the rate to the total cost of manufacture plus packing. See Decision Memorandum, comment 13 and comment 14.

Nan Ya

a. We have made no adjustment to the reported credit for recovered EG. See Decision Memorandum, comment 28.

b. We revised the G&A ratio to include certain foreign exchange gains and losses. We have excluded other operating costs from the denominator in the G&A ratio calculation and, instead, included these costs in the numerator of that calculation. In addition, we applied the G&A ratio to the total cost of manufacturing plus packing. See Decision Memorandum, comment 29; comment 32, and comment 34.

c. We increased the cost of manufacture for silicon-coated products by applying the highest cost of silicon reported by FETL as adverse facts available. Moreover, we did not allow a difference in merchandise adjustment when a home market silicon coated product was matched to a non-silicon coated product. See Decision Memorandum, comment 31.

d. We adjusted Nan Ya's financial expense ratio to include certain net foreign exchange gains and to exclude long-term interest income. In addition, we applied the financial expense ratio to the total cost of manufacturing plus packing. See Decision Memorandum, comment 33.

e. We increased the total cost of manufacturing to include certain unreported production costs that were incurred by Nan Ya. See Decision Memorandum, comment 35.

f. We adjusted Nan Ya's fiber scrap credit due to over-reporting. See Decision Memorandum, comment 38.

g. We revised the cost of production for PTA to include (i) the quantity and costs from an unreported plant, (ii) certain overhead costs, and (iii) an amount for other expenses. See Decision Memorandum, comment 39.

2. Calculation of NV Based on Comparison Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the comparison market that did not fail the cost test using the same methodology described in the *Preliminary Determination*, with the following exceptions:

FETL

a. We excluded certain sales to an affiliate from the home market database. See Decision Memorandum, comment 7.

b. Based on certain errors found at verification, we revised inland freight and credit days for certain home market sales. In addition, we revised the home market packing expenses for all home market sales. See FETL's Sales Verification Report.

c. We made revisions to certain product codes correcting for errors identified by FETL in preparation for verification. See Decision Memorandum, comment 3.

Nan Ya

We adjusted home market credit expense and inventory carrying costs due to a change in the short-term interest rate. (See Decision Memorandum, comment 27).

3. Calculation of NV Based on Constructed Value

We calculated CV in the same way as in the *Preliminary Determination*, with the following exceptions:

FETL

a. We made the changes identified in the "Cost of production analysis" section above.

b. We revised FETL's U.S. indirect selling expenses to reflect changes made during verification. See FETL's Sales Verification Report.

Nan Ya

We made the changes identified in the "Cost of Production Analysis" section above.

Level of Trade

We have made the same level of trade determinations described in the *Preliminary Determination*.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

Verification

As provided in section 782(i)(1) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the March 22, 2000, Decision Memorandum, which is hereby adopted. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in Room B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at: www.ita.doc.gov/import—admin/records/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

In accordance with section 735(c)(1)(A) of the Act, we are directing the U.S. Customs Service ("Customs") to suspend liquidation of all imports of the subject merchandise from Taiwan, except for subject merchandise produced and exported by Nan Ya (which has a *de minimis* weighted-average margin), that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. Customs shall require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
FETL	9.51	No.
Nan Ya	0.00	No.
All others	9.51	No.

The rate for all other producers and exporters applies to all entries of the subject merchandise except for entries from exporters that are identified individually above. In accordance with section 735(c)(5)(A) of the Act, we have excluded the *de minimis* margin for Nan Ya from the calculation of the "all others" rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 22, 2000.

Richard W. Moreland,

Acting Assistont Secretary for Import Administration.

APPENDIX

Appendix

List of Comments and Issues in the Decision Memorandum

I. Issues Applicable to Both Respondents
Comment 1: Adverse Facts Available
Comment 2: Errors in Computer Programing
II. Issues Specific to Far Eastern Textiles, Ltd.
A. General Issues
Comment 3: Pre-verification Revisions and Minor Errors
Comment 4: Product Coding
Comment 5: Antibacterial and Flame-Retardant Products
B. Sales Issues
Comment 6: Movement Expenses and Bank Charges on U.S. Sales
Comment 7: Commissions
Comment 8: Sales to Affiliate
Comment 9: Verification of Surprise Sales
C. Cost of Production/Constructed Value Issues
Comment 10: Major Inputs—PTA
Comment 11: Major Inputs—EG
Comment 12: Material Costs—Scrap Consumption

Comment 13: Foreign Exchange Gains and Losses
Comment 14: G&A Expenses
III. Issues Specific to Nan Ya Plastics Corporation
A. General Issues
Comment 15: Mis-coding of Regenerated and Virgin Products
Comment 16: Recoding of Sale
B. Sales Issues
Comment 17: Exchange Rates
Comment 18: Inland Freight—General Issues
Comment 19: Inland Freight—Adjustment for Affiliated Expenses
Comment 20: Inland Freight—Additional Freight to Factory
Comment 21: Inland Freight—Affiliated Transactions at Arm's Length
Comment 22: Indirect Selling Expenses
Comment 23: Imputed Credit Expenses on Certain Sales to the United States
Comment 24: Bank Charges
Comment 25: Commission and Marine Insurance
Comment 26: U.S. Short-Term Interest Rate
Comment 27: Home Market Short-Term Interest Rate
C. Cost of Production/Constructed Value Issues
Comment 28: Recovery of Inputs
Comment 29: Exchange Gains
Comment 30: Minor Verification Corrections
Comment 31: Product-Specific Costs
Comment 32: General and Administrative Cost
Comment 33: Long-term Interest Income
Comment 34: Packing Expenses
Comment 35: Unreported Costs
Comment 36: Revised Yields
Comment 37: Positive Yields
Comment 38: Scrap Credit
Comment 39: Inputs from Affiliates

[FR Doc. 00–7925 Filed 3–29–00; 8:45 am]
BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–839]

Notice of Final Determination of Sales at Less Than Fair Value: Certain Polyester Staple Fiber From the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On November 8, 1999, the Department of Commerce published its preliminary determination of sales at less than fair value of certain polyester staple fiber from the Republic of Korea. The investigation covers three manufacturers/exporters. The period of investigation is April 1, 1998, through March 31, 1999.

Based on our analysis of the comments received, we have made changes in the margin calculations. Therefore, the final determination differs from the preliminary determination. The final weighted-average dumping margins for the investigated companies are listed below in the section entitled "Continuation of Suspension of Liquidation."

EFFECTIVE DATE: March 30, 2000.

FOR FURTHER INFORMATION CONTACT: Craig Matney, Suresh Maniam, or Blanche Ziv, Import Administration, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–1778, 482–0176,or 482–4207, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated,all citations to the Department of Commerce's ("the Department's") regulations refer to the regulations codified at 19 CFR Part 351 (April 1998).

Case History

Since the preliminary determination of this investigation (*see* 64 FR 60776 (November 8, 1999) ("*Preliminary Determination*")), the following events have occurred:

On November 2 and 5, 1999, we received responses, including a revised U.S. sales listing, to our October 15, 1999, supplemental questionnaire from Samyang Corporation ("Samyang"). We verified Samyang's questionnaire responses in November 1999.

Geum Poong Corporation ("Geum Poong") submitted a section B response covering sales to third countries on January 5, 2000. On January 11, 2000, we rejected Geum Poong's section B response on the grounds that it contained untimely filed new factual information. Also on January 11, 2000, the Department solicited additional information from respondent Geum Poong and petitioners E.I. DuPont de Nemours, Inc.; Arteva Specialities S.a.r.l.; d/b/a KoSa; Wellman, Inc.; and Intercontinental Polymers, Inc. (hereinafter collectively referred to as "the petitioners") regarding the appropriate methodology for calculating Geum Poong's constructed value profit ratio. The petitioners objected to our soliciting additional information regarding this subject on January 31, 2000. Geum Poong submitted information concerning the constructed value profit ratio on February 8, 2000.

Verification of the responses submitted by Geum Poong and Sam Young Synthetics Co. ("Sam Young") took place in January 2000 (*see* the "Verification" section below). (We refer hereinafter to Samyang, Sam Young, and Geum Poong collectively as "the respondents".)

On February 18, 2000, we received comments from petitioners objecting to the request of Gates Formed-Fiber Products, Inc., ("Gates") a U.S. importer, to treat black automotive substrate ("BAS") as a separate class or kind of merchandise. The petitioners, the respondents and Gates filed case briefs on February 22, 2000. On February 28, 2000, petitioners and respondents filed rebuttal briefs. At the request of interested parties, the Department held a public hearing on March 2, 2000.

Scope of Investigation

For the purposes of this investigation, the product covered is certain polyester staple fiber ("PSF"). Certain polyester staple fiber is defined as synthetic staple fibers, not carded, combed or otherwise processed for spinning, of polyesters measuring 3.3 decitex (3 denier, inclusive) or more in diameter. This merchandise is cut to lengths varying from one inch (25 mm) to five inches (127 mm). The merchandise subject to this investigation may be coated, usually with a silicon or other finish, or not coated. PSF is generally used as stuffing in sleeping bags, mattresses, ski jackets, comforters, cushions, pillows, and furniture. Merchandise of less than 3.3 decitex (less than 3 denier) classified under the *Harmonized Tariff Schedule of the United States* ("HTSUS") at subheading 5503.20.00.20 is specifically excluded from this investigation. Also specifically excluded from this investigation are polyester staple fibers of 10 to 18 denier that are cut to lengths of 6 to 8 inches (fibers used in the manufacture of carpeting).

The merchandise subject to this investigation is classified in the HTSUS at subheadings 5503.20.00.40 and 5503.20.00.60. Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the merchandise under investigation is dispositive.

For a discussion of scope comments and determinations, *see* the March 22, 2000, memorandum from Susan H. Kuhbach, Acting Deputy Assistant Secretary, Import Administration, to Richard W. Moreland, Acting Assistant Secretary for Import Administration, ("Decision Memorandum"), Comments

4 and 5, which is on file in the Central Records Unit of the main Department building ("B–099") and on the Web at *www.ita.doc.gov/import_admin/records/frn*.

Period of Investigation

The period of investigation ("POI") is April 1, 1998 through March 31, 1999.

Critical Circumstances

In the *Preliminary Determination*, we found that critical circumstances within the meaning of section 773(e)(1) of the Act existed for each of the respondents because (1) there was a history of dumping and material injury, and (2) each of the respondents had more than a 15 percent increase in imports during the three-month period following the filing of the petition (as compared to the three-month period prior to the filing of the petition). We also preliminarily determined that critical circumstances did not exist for "all other" exporters.

At verification, we examined each company's monthly shipment data for November 1998 through August 1999. Based on a comparison of the five-month periods before and after the filing of the petition, we determine that imports have not been massive over a relatively short period for any respondent or for companies subject to the all other rate. Accordingly, we have reversed our preliminary finding of critical circumstances with regard to Samyang, Sam Young, and Geum Poong, and affirmed our negative preliminary finding for all other exporters. (*See* Decision Memorandum, Comment 1.)

Product Comparisons

We compared the products sold by the respondents in the comparison market during the POI to the products sold in the United States during the POI using the methodology described in the *Preliminary Determination*, with the following exception:

For the final determination we have determined that it is appropriate to include grade as a matching criterion for Sam Young.

Date of Sale

For the final determination, we have concluded that invoice date is the appropriate date of sale for Sam Young and Geum Poong. (*See* Decision Memorandum, Comment 2.)

Fair Value Comparisons

To determine whether sales of PSF from Korea to the United States were made at less than fair value, we compared the export price ("EP") to comparison market prices or CV, as described in the Export Price and Normal Value sections below. Our calculations followed the methodologies described in the *Preliminary Determination*, except as noted below and in the company-specific calculation memoranda dated March 22, 2000, which have been placed in the file in B–099.

1. Export Price

For the price to the United States, we used EP as defined in section 772 of the Act. We calculated EP based on the same methodology described in the *Preliminary Determination*.

2. Normal Value

We used the same methodology to calculate NV as that described in the *Preliminary Determination*, with the following exceptions:

(a) Cost of Production Analysis

As noted in the *Preliminary Determination*, the Department has investigated whether Samyang's and Sam Young's sales of PSF in their respective comparison markets were made at prices below the cost of production ("COP") during the POI. In accordance with section 773(b)(3) of the Act, we calculated the weighted-average COP for Samyang and Sam Young, by control number, based on the sum of each company's cost of materials, fabrication, general expenses, and packing costs. We have made the following changes to the COP calculations since the preliminary determination:

We have found that Sam Young's fiscal year 1998 COP provides a more accurate measure of its production costs than its POI-based COP. Therefore, we have calculated Sam Young's COP based on its fiscal year data. (*See* Decision Memorandum, Comment 13.)

(b) Calculation of NV Based on Comparison Market Prices

We performed price-to-price comparisons where there were sales of comparable merchandise in the comparison market that did not fail the cost test, using the same methodology described in the *Preliminary Determination*.

(c) Calculation of NV Based on Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on the constructed value ("CV"). Accordingly, for Samyang and Sam Young, where we could not determine the NV based on comparison market sales, either because (1) there were no sales of a comparable product or (2) all sales of comparison products failed the COP test, we based NV on the CV. In addition, for Geum Poong, which did not have a viable comparison market, we based NV on CV.

We calculated CV as in the *Preliminary Determination*, with the following exceptions:

For Geum Poong, we have changed our methodology for calculating CV profit. (*See* Decision Memorandum, Comment 15.)

Level of Trade

We have made the same level of trade determinations described in the *Preliminary Determination*.

Currency Conversions

We made currency conversions in accordance with section 773A of the Act in the same manner as in the *Preliminary Determination*.

Verification

As provided in section 782(i)(1) of the Act, we verified the information submitted by the respondents for use in our final determination. We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by the respondents.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the March 22, 2000, Decision Memorandum, which is hereby adopted. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memorandum, is attached to this notice as an appendix. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in B–099. In addition, a complete version of the Decision Memorandum can be accessed directly on the Web at: http://www.ita.doc.gov/import—admin/records/frn/. The paper copy and electronic version of the Decision Memorandum are identical in content.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(1)(A) of the Act, we are directing the U.S. Customs Service ("Customs") to continue to suspend liquidation of all imports of the subject merchandise from Korea, except for subject merchandise produced and exported by Samyang (which has a *de minimis* weighted-average margin), that are entered, or withdrawn from warehouse, for

consumption on or after November 8, 1999, the date of publication of the Preliminary Determination in the **Federal Register**. We will instruct Customs to refund all bonds and cash deposits posted on subject merchandise exported by Samyang. In addition, consistent with our reversal of our preliminary determination of critical circumstances, we will instruct Customs to refund all bonds and cash deposits posted on subject merchandise exported by Sam Young and Geum Poong that was entered, or withdrawn from warehouse, for consumption prior to November 8, 1999.

Customs shall continue to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage	Critical circumstances
Samyang Corporation	[1] 0.14	No.
Sam Young Synthetics Co	7.96	No.
Geum Poong Corporation	14.10	No.
All Others	11.38	No.

[1] (*de minimis*).

The rate for all other producers and exporters applies to all entries of the subject merchandise except for entries from exporters that are identified individually above. In accordance with section 735(c)(5)(A) of the Act, we have excluded the *de minimis* margin for Samyang from the calculation of the "all others" rate.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission ("ITC") of our determination. As our final determination is affirmative, the ITC will, within 45 days, determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. If the ITC determines that material injury, or threat of material injury does not exist, the proceeding will be terminated and all securities posted will be refunded or canceled. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order.

This determination is issued and published in accordance with sections 735(d) and 777(i)(1) of the Act.

Dated: March 22, 2000.

Richard W. Moreland,

Acting Assistant Secretary for Import Administration.

Appendix

List of Comments and Issues in the Decision Memorandum

I. General Issues

Comment 1: Critical circumstances
Comment 2: Date of sale methodology
Comment 3: Quarterly averaging periods
Comment 4: Regenerated PSF
Comment 5: Black automotive substrate

II. Issues Specific to Samyang Corporation

Comment 6: Major input value
Comment 7: Home market price changes
Comment 8: G&A and interest expense ratios
Comment 9: "P" channel sales
Comment 10: Coding of home market products
Comment 11: Duty drawback

III. Issues Specific to Sam Young Synthetics Co., Ltd.

Comment 12: Duty drawback
Comment 13: Cost of manufacture
Comment 14: Adjustment to production quantities

IV. Issues Specific to Geum Poong Corporation

Comment 15: Constructed value profit ratio
Comment 16: Duty drawback
Comment 17: G&A calculation

[FR Doc. 00–7926 Filed 3–29–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032400A]

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: National Marine Sanctuaries - Socioeconomic Impacts of Marine Reserves.

Agency Form Number(s): None.

OMB Approval Number: None.

Type of Request: New collection.

Burden Hours: 1,330.

Number of Respondents: 665.

Average Hours Per Response: 2 hours.

Needs and Uses: The National Marine Sanctuaries Act Authorizes the designation and management of National Marine Sanctuaries. NOAA has developed a process for establishing "no take" areas. The process includes establishing a Sanctuary Advisory Council (SAC) made up of representatives of all the stakeholders of a sanctuary; a working group; and scientists to provide analysis in developing alternatives for a "no-take area". However, no-take areas have been called Ecological Reserves, Marine Reserves or Sanctuary Preservation Areas.

Also, to implement the no-take areas, a set of regulations prohibiting certain activities must be created. This proposed data collection is designed to work with each user group to develop the necessary information.

Under this requirement, a person from the agency visits the establishment and uses the survey to guide the data collection effort. The following three (3) surveys will be used in evaluating alternative boundaries for Marine Reserves in the Channel Islands National Marine Sanctuary: (1) Commercial Fishing Operations; (2) Wholesale Processors (of commercial fish); and (3) Recreational for Hire Businesses. The objective is to minimize the socioeconomic impacts of Marine Reserves.

Finally, the Marine Reserves no-take areas are used to protect sanctuary resources and resolve user conflicts. As a result, NOAA would not be able to meet the requirements under the National Environmental Policy Act (NEPA) for evaluating the socioeconomic impacts of no-take regulations if this data collection were not conducted.

Frequency: One time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: March 21, 2000.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–7920 Filed 3–29–00; 8:45 am]

BILLING CODE 3510–08–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032400B]

Submission for OMB Review; Comment Request

The Department of Commerce (DoC) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Groundfish Tagging Program.

Agency Form Number(s): None.

OMB Approval Number: 0648–0276.

Type of Request: Extension of a currently approved collection.

Burden Hours: 346.

Number of Respondents: 1,200.

Average Hours Per Response: 5 minutes.

Needs and Uses: The National Marine Fisheries Service (NMFS) Groundfish Tagging Program provides scientists with information necessary for effective conservation, management, and scientific understanding of the groundfish fishery resources off Alaska. The data collected from the groundfish tagging program provides essential biological and movement used in groundfish stock assessment.

Scientist use tagging information to analyze the distribution of fish, growth, fishing and natural mortality, and direction of fish movement. Also, the results are used in the population assessment models and to develop allocation systems. Tagging groundfish for tracking and recovery is an important tool for managing fishery resources.

Finally, two forms are used with the tagging program: 1) sablefish form, and 2) groundfish form. Fisherman and processors recovering tagged fish are requested to supply—date of catch, location and tag number. The sablefish information is more valuable as part of a well advertised program. The information gathered provides data on the rates of migration between the west coast, British Columbia, and Alaska.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, 725 17th Street, NW, Washington, DC 20503.

Dated: March 21, 2000.

Linda Engelmeier,

Department Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–7921 Filed 3–29–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

National Science Foundation

Docket No. [000127019–0019–01; I.D. No. 011000D]

RIN: [0648–ZA77]

Announcement of Funding Opportunity for research project grants and cooperative agreements

AGENCIES: Center for Sponsored Coastal Ocean Research/Coastal Ocean Program (CSCOR/COP), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce; and the National Science Foundation (NSF), Directorate for Geosciences, Division of Ocean Sciences (OCE).

ACTION: Solicitation of research proposals for the Global Ocean Ecosystems Dynamics Project.

SUMMARY: The purpose of this Document is to advise the public that NOAA/NOS/CSCOR/COP and NSF are soliciting 5-year proposals for the Global Ocean Ecosystems Dynamics (GLOBEC) Programs as part of a Federal research partnership.

This notice solicits applications for research projects from eligible non-Federal and Federal applicants. In an effort to maximize the use of limited resources, applications from non-Federal, non-NOAA Federal and NOAA applicants will be competed against each other. Research proposals selected for funding from non-Federal researchers will be funded through a project grant. Research proposals selected for funding from non-NOAA Federal applicants will be funded through an interagency transfer provided legal authority exists for the federal applicant to receive funds from another agency. Research proposals selected for funding from NOAA will be funded through NOAA.

DATES: The deadline for receipt of proposals in the COP office is 3:00 pm local time May 1, 2000. It is anticipated that final recommendations for awards will be made early in FY 2001.

ADDRESSES: Submit the original and 19 copies of your proposal to Coastal Ocean Program Office (GLOBEC 2000), SSMC#3, 9th Floor, Station 9700, 1315 East-West Highway, Silver Spring, MD 20910. NOAA Standard Form Applications with instructions are accessible on the following COP Internet Site: http://www.cop.noaa.gov under the COP Grants Support Section, Part D, Application Forms for Initial Proposal Submission.

FOR FURTHER INFORMATION CONTACT: Technical Information: Elizabeth Turner, GLOBEC 2000 Program Manager, COP Office, 301–713–3338/ext 135, Internet: Elizabeth.Turner@noaa.gov; or Dr. Phillip Taylor, NSF Division of Ocean Sciences, 703–306–1584, Internet: prtaylor@nsf.gov; Business Management Information: Leslie McDonald, COP Grants Administrator, 301–713–3338/ext 137, Internet: Leslie.McDonald@noaa.gov.

Copies of U.S. GLOBEC Reports referenced later in this Document under **SUPPLEMENTARY INFORMATION** are available from the following address or homepage: U.S. GLOBEC Coordinating Office University of Maryland Center for Environmental Science Chesapeake Biological Laboratory, P.O. BOX 38,

Solomons, MD 20688; Phone: 410–326–7289; Fax: 410–326–7318; Internet:fogarty@cbl.umces.edu and http://www.usglobec.org.

Descriptions and points of contact of presently-funded GLOBEC Northeast Pacific (NEP) projects referenced later in this Document under **SUPPLEMENTARY INFORMATION** are available from the following address or homepage: U.S. GLOBEC Northeast Pacific Coordinating Office, Department of Integrative Biology, University of California, Berkeley, CA 94720–3140, Phone: 510–642–7452; Fax: 510–643–1142, Internet: halbatch@socrates.berkeley.edu, http://www.usglobec.berkeley.edu/nep/index.html.

A model format of NSF form 1239, discussed later in this document under Part I, Section (7) Current and Pending Support, is available at http://www.nsf.gov/cgi-bin/getpub?00form1239.

University-National Oceanographic Laboratory System (UNOLS) vessel requirements are identified later in this document under Part I, Section (5) Budget, and are to be separately scheduled via UNOLS at the following web site location: http://www.gso.uri.edu/unols/ship/shiptime.html.

SUPPLEMENTARY INFORMATION:

Background

Program Description

For complete Program Description and Other Requirements criteria for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual notice in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

Global Ocean Ecosystems Dynamics (U.S. GLOBEC) is a component of the U.S. Global Change Research Program, with the goals of understanding and ultimately predicting how populations of marine animal species (holozooplankton, fish and benthic invertebrates) respond to natural and anthropogenic changes in global climate. U.S. GLOBEC is also the U.S. component of the GLOBEC International program, a core project of the International Geosphere-Biosphere Program (IGBP), with co-sponsorship from the Scientific Committee on Oceanic Research and the Intergovernmental Oceanographic Commission.

This document is published under the auspices of the Global Ocean Ecosystems Dynamics (U.S. GLOBEC) program within NSF/OCE and the regional ecosystem studies and U.S. GLOBEC initiatives of NOAA's COP. U.S. GLOBEC has identified the Northeast Pacific (NEP), particularly the California Current System (CCS) and Coastal Gulf of Alaska (CGOA), as priorities for ecosystem studies in the next decade. Previous notices have solicited proposals to support modeling, retrospective studies, and field observations, including Long-Term Observation Programs (LTOPs), three-dimensional mesoscale surveys and process studies in the CCS.

This document solicits proposals to support three field activities in the Coastal Gulf of Alaska ecosystem: (1) process-oriented field studies; (2) mesoscale surveys; and (3) long-term observation projects; and two activities of broader scope: (4) modeling studies in the CCS and CGOA; and (5) retrospective studies in the CCS and CGOA.

To provide for continued long-term coordinated strategic planning of the NEP program, proposals are being solicited now for all future U.S. GLOBEC field research activities in the CGOA. This includes process-study research in the two field phases of the CGOA program. The major field process years will occur in 2001 and 2003, contingent on the availability of funding. In addition to soliciting research proposals for field work in the CGOA of the Northeast Pacific Ocean, this document requests proposals for modeling and retrospective analysis that augment or complement existing NEP efforts in these components. Modeling and retrospective proposals submitted in response to this document need not be CGOA-specific, but those that are peripheral to the core activities in the NEP will have low priority for funding. Research proposals that do not address these five specific activities will not be considered for funding.

U.S. GLOBEC's NEP program emphasizes studies on the biology and ecology of juvenile salmon, the dominant euphausiids, several large copepods, and forage fish (salmon prey) in coastal regions of the North Pacific; and how these populations are controlled by climatically variable physical forcing, especially at large-to meso-scales. The U.S. GLOBEC Northeast Pacific Implementation Plan (U.S. GLOBEC Report No. 17) was developed following several community-wide meetings at which U.S. scientists from the oceanographic and fisheries communities identified key scientific issues and research for the Northeast Pacific region.

Background information pertinent to the Northeast Pacific is found in U.S. GLOBEC Report Nos. 7, 11, 15 and 16, with Reports 15 and 16 providing information relevant to the CGOA. This notice provides the most up-to-date guidance about the NEP CGOA program. Investigators who plan to submit proposals in response to this Announcement should refer primarily to this GLOBEC notification, and secondarily to the Northeast Pacific Implementation Plan (U.S. GLOBEC Report No. 17). Note especially that the time line for NEP studies has changed from that shown in Report 17; there are now only 2 years of process studies planned for the California Current System (CCS)—not the three shown. Copies of these Documents are available under the address/homepage addresses listed earlier in this notice under **FURTHER INFORMATION.** The U.S. GLOBEC Northeast Pacific Implementation Plan (U.S. GLOBEC Report No. 17) presents a rationale for a coordinated study in the Northeast Pacific in two regions: the coastal Gulf of Alaska (CGOA) and the CCS ranging from Washington to Central California. Critical to that rationale is the observation that the salmon production domains in the CGOA and CCS covary, but are out of phase. U.S. GLOBEC proposes to investigate this coupling, and the biophysical mechanisms through which zooplankton and salmon populations respond to physical forcing and biological interactions in the coastal regions of the two gyres.

The Northeast Pacific CGOA study focuses on the continental shelf, but, where appropriate, also encompasses the processes and phenomena of the larger oceanic boundary region that affect the CGOA. Process studies in 2001 and 2003 will focus on the effects of near shore transports and cross-shelf exchange on the population dynamics of the target organisms in the northern Gulf of Alaska. Emphasis is on understanding the conditions that favor rapid growth and survival of juvenile pink salmon, so it will involve examining both bottom-up (productivity) and top-down (predation) processes.

Ultimately, the U.S. GLOBEC effort in the Northeast Pacific has an overall goal of improving predictability and management of living marine resources of the region through improved understanding of ecosystem interactions and the coupling between the physical environment and the living resources.

Program Goals

The over-arching goals of the Northeast Pacific studies are:

(1) To determine how biological processes and characteristics of zooplanktonic populations are affected by mesoscale features and dynamics in the Northeast Pacific; and

(2) To quantify the biological and physical processes that determine growth and survival of juvenile salmon in the coastal zone.

Within the overall goals outlined here, the Northeast Pacific/CGOA process-oriented field program has four general goals:

(1) To determine how changing climate, especially its impacts on local wind forcing, freshwater runoff, mixed layer depth, and basin-scale currents, affect spatial and temporal variability in mesoscale circulation and vertical stratification;

(2) To quantify how physical features in the CGOA impact zooplankton biomass, production, distribution, and the retention and exchange of zooplankton between coastal regions and oceanic waters, with particular emphasis on the targeted euphausiid and copepoda species. In turn, how do the zooplankton distributions influence the distributions of higher trophic level organisms (fish, seabirds, marine mammals);

(3) To quantify the importance of (a) local primary and secondary production, and (b) imported secondary production (e.g., cross-shelf import of large-bodied zooplankton [copepods and euphausiids] from deeper offshore waters in spring) for providing rapid growth and/or high survival of juvenile pink salmon in coastal waters of the Gulf of Alaska; and

(4) To determine the extent to which high and variable predation mortality on juvenile pink salmon in the coastal region of the Gulf of Alaska is responsible for large interannual variation in adult pink salmon populations, and the factors responsible for the variable predation intensity.

The geographic domain of the study is centered on the coastal shelf region southwest of Prince William Sound (off Seward, AK), but generally extends from approximately Shelikof Strait (in the west) to Yakutat Bay (in the east; approx. 143°–155°W). This is a major corridor for juvenile salmon migrations in the CGOA, both for pink salmon exiting from Prince William Sound, and for pink, sockeye, and chum salmon from SE Alaska stocks. Three-dimensional mesoscale surveys (via ship, drifter, mooring and satellite observations) and process studies will be conducted over a 7-month period (ca. April - October) in each of the two intensive, process-study years.

Mesoscale surveys of physical conditions and biological distributions in spring and fall will augment the less spatially-extensive LTOP observations, which will occur during all years (2001–2005) of the study. The surveys will provide the short-term spatial context for the focused process studies, and will provide three-dimensional data to supplement the predominantly two-dimensional LTOP data.

Key target species for U.S. GLOBEC process-oriented field studies in the CGOA are *euphausiids, calanoid copepods Neocalanus, Calanus*), and juvenile pink salmon. The most abundant *euphausiids* on the shelf in the Gulf of Alaska are *Euphausia pacifica, Thysanoessa spinifera, T. inermis*, and *T. raschii*. Of these, *T. inermis* is the most abundant in spring and summer, while *T. raschii* is distributed more inshore. *Euphausia pacifica* and *T. spinifera* are also common species in the CCS studies of the NEP, and are important subjects of study for developing comparisons between the two regions.

U.S. GLOBEC research in the NEP began in 1997, with integrated, multi-investigator, inter-disciplinary programs of modeling, retrospective analysis, and pilot-scale monitoring (henceforth referred to as the Long-Term Observation Program or LTOP). California Current field programs were funded in response to an AO released in early 1999. Proposers are advised to refer to descriptions of and preliminary results from these programs, and to consider already funded efforts underway in the CCS and CGOA prior to preparation of new proposals. Synthesis and new understanding of the large-scale and meso-scale forcing and responses in the NEP ecosystem will require integration of observations, models, and field experiments from the CCS and CGOA. Potential investigators should design observational programs, experiments and process-studies that will enable such comparisons between these two ecosystems of the NEP.

Specific information about the Northeast Pacific Study, including descriptions and points of contact of presently funded GLOBEC NEP projects, can be obtained from the address/homepage addresses listed earlier in this Document under **FURTHER INFORMATION.**

Structure of the CGOA Research Program

The NE Pacific Study will comprise five major components: (1) long-term observation programs (LTOP),

(2) mesoscale surveys,

(3) process-oriented field studies,

(4) modeling investigations, and

(5) retrospective/comparative analysis.

The large range of spatial and temporal scales of important forcing processes and responses in the NEP requires a nested sampling approach (and some associated tradeoffs), which is reflected in the descriptions of the LTOP, mesoscale surveys, and process-studies below.

Long-Term Observation Programs

Long-Term Observation Programs have been established by U.S. GLOBEC at two NEP sites: one along the Gulf of Alaska (GAK) transect extending offshore from Seward, AK, and the second encompassing several offshore extending transects off Newport and Coos Bay, OR, and off Northern California. In both regions, the programs are sampling ocean physics, nutrients, and biology at approximately bimonthly intervals (LTOP projects are described on the NEP web site).

Although GLOBEC focuses on zooplankton and juvenile salmon in the NEP, we encourage sampling of phytoplankton, nutrients, microzooplankton, and higher trophic levels. The LTOPs provide the fundamental seasonal description of the physical, chemical and biological environment that is required to complement the mesoscale surveys and process studies. Moreover, U.S. GLOBEC LTOPs will Document the low-frequency, large amplitude signals (e.g., regime shifts, El Ninos) that occur at the largest spatial scales in the Pacific.

LTOP projects may make use of multi-disciplinary moorings, long-term drifter deployments, and analysis of satellite data, in addition to seasonal ship observations. There is a continuing need for long-term mooring- and drifter-based observations and interpretation of regional satellite data, which provide the broadest temporal (moorings, drifters) and spatial (satellites) resolution and coverage.

This Document solicits proposals to continue, and perhaps augment, core LTOP observations along the GAK transect near Seward, AK. LTOP activities in other regions of the CGOA (e.g., Shelikof Strait or SE Alaska) might be considered if the observations are deemed critical to understanding the connection between large-scale atmospheric and ocean forcing and ecosystem responses, particularly of the target organisms. However, projects proposing LTOP activities beyond the core geographic region described earlier will have lower priority than activities within the core region.

Projects proposing to conduct LTOP observations should consider existing LTOP programs in place, both in the CGOA and elsewhere in the NEP. Present and prospective U.S. GLOBEC LTOP programs should consider (1) how

they meet future U.S. GLOBEC needs, particularly for process studies, and (2) how they mesh into the larger framework of a coast wide network of programs undertaking repeated observations of ocean physics and biology at all trophic levels. Moreover, potential LTOP projects should contact the principals of existing LTOP projects to ensure that methodologies are comparable (see the NEP web site) among all of the LTOP sites.

Three-Dimensional Mesoscale Surveys

Ship surveys are needed to determine the distribution and abundance of the target species in relation to their physical and biological environment during the period of euphausiid recruitment and juvenile salmon entry into the ocean, and during the period of possible onshore transport of large, oceanic copepods (March to September). Surveys would be desirable in April (period when large calanoid copepods are advected onshore), July, and September-October. The latter two periods correspond with the anticipated times of juvenile salmon trawling (see following paragraphs). The ship-based mesoscale sampling should encompass the near shore Alaska Coastal Current region (driven primarily by freshwater input distributed along the coast, along with down welling-favorable winds), and extend offshore beyond the shelf-edge break, to investigate potential exchanges of shelf and deep ocean waters. High priority will be given to proposals that would survey a region extending from approximately Kodiak Island to Yakutat Bay, i.e., about 500–600 km alongshore, and extending from near shore to 200–250 km offshore. The fundamental importance of the mesoscale studies is to provide the basis for comparisons of population processes and their coupling to the physical structure and variability of the environment.

The mesoscale studies will provide a regional context for the in situ, process studies described here and provide data for evaluating the environment for juvenile salmon. Mesoscale surveys will provide the spatially-resolved three-dimensional data required to evaluate how well local LTOP data generalize to a broader region. Data from the mesoscale surveys will be used to bridge the gap between the low spatial (2–dimensional), but annual and long-term coverage of the LTOPs, and the intensive, but spatially-limited process-studies.

Surveys will also provide data required to evaluate coupled circulation-ecosystem models being developed for the NEP study sites, and for assimilation of data into these models. It is anticipated that the mesoscale surveys will be conducted at a given site only in years of process-studies and that three mesoscale surveys per year focused on critical periods in the life history of the target species (April, July, Sept.-Oct.) will be done.

Salmon Sampling

Trawling and gillnet sampling of juvenile salmon and multi- frequency hydro acoustic assessment of both salmon and zooplankton has been conducted in the summers of the past 3 years as part of a pilot LTOP program on the GAK line.

Trawling of juvenile salmon in the broader region described here is a critical addition to the CGOA component of the NEP program, since it will help to identify potentially critical regions supporting the rapid growth and/or high survival of salmon in the coastal corridor. Trawl spatial surveys will document habitat utilization by juvenile salmon, and their competitors and predators, in relation to physical dynamics and structures, and provide samples for dietary and genetic studies.

Proposals are solicited that will provide spatial descriptions of juvenile pink salmon, and their forage prey in this region. Sampling is desired at the time of ocean entry of pink salmon from Prince William Sound (July) and at the end of the first summer in the ocean (approx. September-October).

These cruises would also collect salmon from other source regions that are transported through the coastal corridor, and will be useful for examining (1) trophic relationships in the near shore ecosystem, and (2) genetic structure/stock identity of the salmonids. Highest priority will be given to salmon sampling in the field during process-study years, but contingent on the availability of funding and perceived program needs, salmon sampling in "off" years might be supported as well. Investigators proposing to sample juvenile salmon in the CGOA should coordinate sampling plans/gear with existing CCS and CGOA salmon sampling efforts in the NEP and with other juvenile salmon trawling efforts on the west coast (e.g., National Marine Fisheries Service research).

Process Studies

The physical and biological processes that control the population dynamics of the target species will be examined in process studies. Detailed investigations of mechanisms linking biological response to physical forcing at the meso- and other scales is the goal of process-study cruises. Process studies will occur during the spring-setup and productive summer seasons (March-October), preferably in conjunction with other program activities (mesoscale surveys, fish trawling).

The continental shelf outside Prince William Sound is identified for detailed process studies because it is a region that has a large influx of hatchery released juvenile pink salmon. The thermal marks carried by these salmon provide advantages in tracking mortality of the juveniles in their first summer near shore. It is strongly suspected, but not certain, that most of the "surviving" juvenile salmon entering the coastal ocean are swept westward in the general transport of the Alaska Coastal Current. A large fraction of the juvenile salmon do not survive, but the exact agent of their mortality is not known. A goal of the CGOA process studies will be to track the progression of an entering cohort in the western flow, and identify the agents of mortality (starvation, vagrancy, predation by birds, mammals, other fish, etc.).

The exchange of physical and biological properties across the frontal zones associated with the coastal buoyancy flows, and down welling-favorable winds, can influence the supply of nutrients for primary production, the retention (loss) of the target species and their prey in (from) the coastal zone, and interactions between the target species, their prey, and their predators; this will be studied in process-oriented cruises. Fine-scale description of the physical and biological fields comprising fronts may reveal aggregations of phytoplankton and zooplankton associated with specific physical (e.g., density, temperature) structures. Determination of the population structure of target organisms within the study area is further identified as an area of critical research.

Because of the movement and migratory patterns of juvenile salmon, process studies of pink salmon may require work outside the domain highlighted earlier, perhaps to regions extending further to the west (beyond Kodiak Island) to ensure success. Proposals that focus in geographical locations outside the principal study area should closely consider the availability of complementary sampling programs to provide a broader geographical context for their studies. Proposers should recognize that process studies that address relevant issues within the specific region described will have higher funding priority than projects aimed at peripheral goals or targeted at other geographic regions. Proposers seeking additional information concerning related NEP programs should contact the U.S. GLOBEC Northeast Pacific Coordinating Office at the address given earlier in this Document under **FURTHER INFORMATION.**

Questions to be addressed by process studies in the CGOA include:

(1) What is the time-dependent three-dimensional circulation associated with the buoyancy-driven coastal current, and the fronts associated with this feature in the CGOA?

(2) How do mesoscale transport processes affect the recruitment, vital rates, and other measures of population dynamics of the target species?

(3) What are the exchange rates, due to frontal processes, of water properties and the target species between the coastal corridor and offshore waters? What are the consequences for individual and population growth rates of these exchanges?

(4) How do biological and physical processes interact to control cross-shelf exchange of target organisms?

(5) Does strong seasonal variation in freshwater input and buoyancy-driven near shore flow cause frontal movement, and what are the effects on the exchange of water and organisms across the fronts?

(6) How does distribution, growth and survival of juvenile pink salmon (assessed using otolith marked fish) depend on the timing and intensity of cross-shelf import of large zooplankton (e.g., copepods and euphausiids), either directly (as salmon prey) or indirectly (as alternative prey for juvenile salmon predators)?

(7) How are salmon distributed in relation to mesoscale physical features, and what are the mechanisms responsible for the observed patterns?

(8) What are the dominant predators, how are they distributed, and what are their feeding rates and impacts on juvenile salmon during the period they transit the coastal zone of the CGOA?

Modeling

The research conducted during the CGOA study will result in a significant archive of data concerning abundance and distribution of the target species, source regions, vital rates, and trophic interrelationships. Inverse modeling will provide specific estimates of population vital rates. These archives and tools will provide significant opportunities for hypothesis testing concerning biophysical processes.

The program is expected to progress toward a data-assimilative capability, wherein LTOP and mesoscale survey data are incorporated into coupled biophysical models. In addition, process-oriented model studies are encouraged. The field research supported by U.S. GLOBEC on euphausiids, copepods, and salmon in the CGOA, together with already funded research in the CCS, provide opportunities for larger (basin) scale modeling of coupled biological/physical dynamics.

This announcement is soliciting additional modeling proposals that complement existing projects (described on the GLOBEC NEP web site), that provide additional breadth to the program by examining responses at additional trophic levels, and that explore processes in other targeted regions of the northeast Pacific. Proposals responding to this request for additional modeling activities in the NEP may deal with either the CGOA, the CCS, or both. Priority will be given to projects that complement or significantly augment ongoing modeling efforts—for example, evaluating the impact of other prey (e.g., forage fish) on salmon survival and distribution.

Retrospective/Comparative Analysis

A number of retrospective projects in the NEP were funded by earlier Requests for Proposals (RFPs). (See summaries on the NEP web site). Projects proposing retrospective analysis should Document or address population variability of key species (see U.S. GLOBEC Report No. 17) in NEP ecosystems on several different time and space scales. These studies should also examine linkages between physical and biological processes on these different scales. NEP retrospective analysis should attempt to test the core GLOBEC NEP hypotheses relating to the linkage between climate and ocean variability and population variability.

Previous U.S. GLOBEC reports (see esp. U.S. GLOBEC Report Nos. 11 and 15) review some of the kinds of data sets and research approaches suitable for examining links between climate variability, ocean physics and marine animal populations in the NEP. Other research approaches and examinations of other existing data sets may be appropriate for retrospective examination provided that they address the critical NEP GLOBEC mandates highlighted above.

With the funding of the CGOA field work in this notice, U.S. GLOBEC will have funded ecosystem studies in the Northwest Atlantic (a tidally and event dominated shelf bank), in the California Current (wind-driven up welling and advective system), and the CGOA (a buoyancy-driven down welling system). Comparative studies among these coastal ecosystems and with others (Benguela, North Africa, Bering Sea, California Bight, Southern Ocean) across the globe are feasible and could be undertaken. Moreover, recent studies of *Calanus* in the North Atlantic and of *Euphausia superba* in the Southern Ocean provide opportunities for broader, global-scale comparisons of biophysical/population dynamics among congeners.

Part I: Schedule and Proposal Submission

The provisions for proposal preparation provided here are mandatory. Proposals received after the published deadline or proposals that deviate from the prescribed format will be returned to the sender without further consideration. This announcement and additional background information will be made available on the COP home page.

Full Proposals

Applications submitted to this announcement require an original proposal and 19 proposal copies at time of submission. This includes color or high-resolution graphics, unusually-sized materials (not 8.5" x 11" or 21.6 cm x 28 cm), or otherwise unusual materials submitted as part of the proposal. For color graphics, submit either color originals or color copies. The stated requirements for the number of original proposal copies provide for a timely review process because of the large number of technical reviewers. Facsimile transmissions and electronic mail submission of full proposals will not be accepted.

Required Elements

All recipients are to closely follow the instructions and requirements in the preparation of the standard NOAA Application Forms and Kit requirements listed in Part II: Further Supplementary Information, paragraph (10) of this document. Each proposal must also include the following eight elements:

(1) *Signed Summary title page*: The title page should be signed by the Principal Investigator (PI) and the institutional representative. The Summary Title page identifies the project's title starting with the acronym GLOBEC 2000, a short title (<50 characters), and the lead principal investigator's name and affiliation, complete address, phone, FAX, and E-mail information. The requested budget for each fiscal year should be included on the Summary Title page. Multi-institution proposals must include signed Summary Title pages from each institution.

(2) *One-page abstract/project summary*: The Project Summary

(Abstract) Form, which is to be submitted at time of application, shall include an introduction of the problem, rationale, scientific objectives and/or hypotheses to be tested, and a brief summary of work to be completed. The prescribed COP format for the Project Summary Form can be found on the COP Internet site under the COP Grants Support Section.

The summary should appear on a separate page, headed with the proposal title, institution(s), investigator(s), total proposed cost, and budget period. and should be written in the third person. The summary is used to help compare proposals quickly and allows the respondents to summarize these key points in their own words.

(3) *Statement of work/project description*: The proposed project must be completely described, including identification of the problem, scientific objectives, proposed methodology, relevance to the goals of the GLOBEC Program, and its scientific priorities. The project description section (including Relevant Results from Prior Support) should not exceed 15 pages.

Project management should be clearly identified with a description of the functions of each PI within a team. It is important to provide a full scientific justification for the research; do not simply reiterate justifications presented in this notice. Both page limits are inclusive of figures and other visual materials, but exclusive of references and milestone chart. This section should also include:

(a) The objective for the period of proposed work and its expected significance;

(b) The relation to the present state of knowledge in the field and relation to previous work and work in progress by the proposing principal investigator(s);

(c) A discussion of how the proposed project lends value to the program goals, and

(d) Potential coordination with other investigators.

NOAA has specific requirements that environmental data be submitted to the National Oceanographic Data Center; participating agencies may have additional requirements or guidelines for sharing of research materials and data.

(e) References cited: Reference information is required. Each reference must include the name(s) of all authors in the same sequence in which they appear in the publications, the article title, volume number, page numbers, and year of publications. While there is no established page limitation, this section should include bibliographic citations only and should not be used to provide parenthetical information outside of the 15–page project description.

(4) *Milestone chart*: Time lines of major tasks covering the 60-month duration of the proposed project.

(5) *Budget*: At time of proposal submission, all applicants shall submit the Standard Form, SF–424 (Rev 7–97), Application for Federal Assistance, to indicate the total amount of funding proposed for the whole project period. In lieu of the Standard Form 424A, Budget Information (Non-Construction), at time of original application, all proposers are required to submit a COP Summary Proposal Budget Form for each fiscal year increment (i.e., 2000, 2001 * * *2003). Multi-institution proposals must include budget forms from each institution.

Use of this budget form will provide for a detailed annual budget and the level of detail required by program staff to evaluate the effort to be invested by investigators and staff on a specific project. The COP budget form is compatible with forms in use by other agencies that participate in joint projects with COP; and can be found on the COP home page under COP Grants Support, Part D; or one may be requested by contacting the COP Grants Administrator listed earlier in this document under **FURTHER INFORMATION.**

All applicants shall include a budget narrative/justification that supports all proposed budget object class categories. The program office will review the proposed budgets to determine the necessity and adequacy of proposed costs for accomplishing the objectives of the proposed grant. The SF–424A, Budget Information (Non-Construction) Form, shall be requested from only those recipients subsequently recommended for award to the NOAA Grants Management Division after the competitive review process has been completed.

NSF requires information on ship requirements in order to schedule time on UNOLS vessels. Ship requirements should be identified in the proposal and separately scheduled via UNOLS at the web site location listed earlier in this Document under **FURTHER INFORMATION.** If no ship time is required, indicate so in the proposal. Information on ship time needs is not used in proposal evaluation, only in scheduling appropriate platform availability.

The investigator is responsible for sending copies to the UNOLS office and ship operators. Paper copies may be requested from UNOLS. The form is included in Appendix A of Instructions for Preparation of Proposals Requesting Support for Oceanographic Facilities,

However, the electronic version is strongly preferred for ease of information exchange and processing. The form has been available electronically since l994 on the web site listed earlier in this Document under **FURTHER INFORMATION.** The NSF guidelines and ship time form were included in the then-existing e-mail based Internet electronic dissemination system operated by NSF - Science and Technology Information System).

(6) *Biographical sketch*: Abbreviated curriculum vitae, two pages per investigator, are sought with each proposal. Include a list of up to five publications most closely related to the proposed project and up to five other significant publications. A list of all persons (including their organizational affiliation), in alphabetical order, who have collaborated on a project, book, article, or paper within the last 48 months should be included. If there are no collaborators, this should be so indicated. Students; post-doctoral associates, and graduate and postgraduate advisors of the PI should also be disclosed. This information is used to help identify potential conflicts of interest or bias in the selection of reviewers.

(7) *Current and pending support*: NSF requires information on current and pending support of all proposers. Describe all current and pending support for all PIs, including subsequent funding in the case of continuing grants. A model format of the NSF form 1239 can be obtained from the address/homepage addresses listed earlier in this document under **FURTHER INFORMATION.** Use of this form is optional. However, the categories of information included on the NSF Form 1239 must be provided.

All current support from whatever source (e.g., Federal, state or local government agencies, private foundations, industrial or other commercial organizations) must be listed. The proposed project and all other projects or activities requiring a portion of time of the PI and other senior personnel should be included, even if they receive no salary support from the project(s). The total award amount for the entire award period covered (including indirect costs) should be shown as well as the number of person-months per year to be devoted to the project, regardless of source of support.

(8) *Proposal format and assembly*: Clamp the proposal in the upper left-hand corner, but leave it unbound. Use one inch (2.5 cm) margins at the top, bottom, left and right of each page. Use

a clear and easily legible type face in standard 12 point size.

Part II: Further Supplementary Information

(1) *Program authorities*: For a list of all program authorities for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual notice in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page. Specific Authority cited for this Announcement is 33 U.S.C. 883(d) for Coastal Ocean Program and the National Science Foundation Act of 1950, as amended (42 U.S.C. 1861–75) for NSF.

(2) *Catalog of Federal Domestic Assistance Numbers*: 11.478 for the Coastal Ocean Program and 47.050 for the Directorate for Geosciences, National Science Foundation.

(3) *Program description*: For complete COP program descriptions, see the annual COP General Notice (64 FR 49162, September 10, 1999).

(4) *Funding availability*: Funding is contingent upon receipt of fiscal years 2001–2005 Federal appropriations and upon availability of funds. The anticipated maximum annual funding for NEP GLOBEC activities is $6 to $8 million, which may not occur until 2001; until then the program expects increments from its current level of $2.5 million per year. Of the annual total, approximately half will be devoted to CCS activities (funded in an earlier RFP), and half to CGOA research (present RFP).

If an application is selected for funding, NSF and NOAA have no obligation to provide any additional prospective funding in connection with that award in subsequent years. Renewal of an award to increase funding or extend the period of performance is based on satisfactory performance and is at the total discretion of the funding agencies. Not all proposals selected will receive funding for the entire duration of the CGOA program. Moreover, start dates for some proposals may be delayed, or proposals may be funded for the second of the two field years only. Proposals selected for funding by NSF must comply with NSF grants administration requirements for any additional budget forms required by that agency. NSF grants will be administered in accordance with the terms and conditions of NSF GC–1, "Grant General Conditions," or FDP-III, "Federal Demonstration Project General Terms and Conditions," depending on the grantee organization. More comprehensive information on the administration of NSF grant is contained in the Grant Policy Manual (NSF 95–26), available at http:www.nsf.gov/cgi-bin/getpub?nsf9526.

Publication of this document does not obligate any agency to any specific award or to any part of the entire amount of funds available. Recipients and subrecipients are subject to all Federal laws and agency policies, regulations, and procedures applicable to Federal financial assistance awards.

(5) *Matching requirements*: None.

(6) *Type of funding instrument*: Project Grants for non-Federal applicants; interagency transfer agreements or other appropriate mechanisms other than project grants or cooperative agreements for Federal applicants.

(7) *Eligibility criteria*: For complete eligibility criteria for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual document in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page. Proposals deemed acceptable from Federal researchers will be funded through a mechanism other than a grant or cooperative agreement where legal authority allows for such funding. Non-NOAA Federal applicants are required to submit certification or documentation which clearly shows that they can receive funds from the Department of Commerce (DOC) for research (i.e., legal authority exists allowing the transfer of funds from DOC to the non-NOAA Federal applicant's agency).

(8) *Award period*: Full Proposals should cover a project period for 5 years, FY 2001–05, all dependent on continuing appropriations and availability of funds.

(9) *Indirect costs*: If indirect costs are proposed, the following statement applies: The total dollar amount of the indirect costs proposed in an application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award.

(10) *Application forms*: For complete information on application forms for the Coastal Ocean Program, see COP's General Grant Administration Terms and Conditions annual notice in the **Federal Register** (64 FR 49162, September 10, 1999); the COP home page; and the information given earlier in this document under *Required Elements*, paragraph (5) Budget.

(11) *Project funding priorities*: For description of project funding priorities, see COP's General Grant Administration Terms and Conditions annual notice in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page. Those priorities are in addition to the priorities listed in this notice.

(12) *Evaluation criteria*: For complete information on evaluation criteria, see COP's General Grant Administration Terms and Conditions annual notice in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(13) *Selection procedures*: For complete information on selection procedures, see COP's General Grant Administration Terms and Conditions annual notice in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(14) *Other requirements*: For a complete description of other requirements, see COP's General Grant Administration Terms and Conditions annual notice in the **Federal Register** (64 FR 49162, September 10, 1999) and at the COP home page.

(15) Pursuant to Executive Orders 12876, 12900 and 13021, the Department of Commerce, National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in, and benefit from, Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

(16) Applicants are hereby notified that they are encouraged, to the greatest practicable extent, to purchase American-made equipment and products with funding provided under this program.

(17) This notification involves collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms 424, 424A, 424B, and SF-LLL have been approved by the Office of Management and Budget (OMB) under control numbers 0348–0043, 0348–0044, 0348–0040 and 0348–0046.

The COP Grants Application Package has been approved by OMB under control number 0648–0384 and includes the following information collections: a Summary Proposal Budget Form, a Project Summary Form, standardized formats for the Annual Performance

Report and the Final Report, and the submission of up to twenty copies of proposals. Copies of these forms and formats can be found on the COP Home Page under Grants Support section, Part F.

Proposals to NSF must include a one-page NSF-UNOLS Ship Time Request Form and the NSF Form 1239 for Current and Pending Support. Both NSF forms have been approved by OMB as follows: The UNOLS form, also titled NSF Form 831, has OMB clearance through June 2002 under control number OMB No. 3145–0058. The NSF Form 1239 for Current and Pending Support is also cleared as part of the NSF Grant Proposal Guide and Proposal Forms Kit under OMB Number. 3145–0058 with an expiration date of June 2002.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: March 23, 2000.

Ted I. Lillestolen,

Deputy Assistant Administrator, National Ocean Service, National Oceanic and Atmospheric Administration.

Dated: March 15, 2000.

G. Michael Purdy,

Director, Division of Ocean Sciences, National Science Foundation.

[FR Doc. 00–7922 Filed 3–29–00; 8:45 am]

BILLING CODE 3510–JS–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 990907250–0062–02; I.D. 063099B]

RIN 0648–ZA70

Community-based Restoration Program Guidelines

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of Program Guidelines.

SUMMARY: NOAA Fisheries began a new Community-based Restoration Program (Program) in 1996 to encourage local efforts to restore fish habitats. Since that time, NOAA has provided funding to 83 small-scale habitat restoration projects around coastal America. The Program is a systematic national effort to encourage partnerships with Federal agencies, states, local governments, non-governmental and non-profit organizations, businesses, industry and schools, to carry out locally important habitat restorations to benefit living marine resources. The Program has developed formal guidelines that will expand the financial instruments available to accomplish furtherance of this mission. This announcement provides program guidelines for the implementation of the Program in FY 2000 and beyond, which incorporates comments by the public and NOAA. This is not a solicitation of project proposals.

DATES: Guidelines are effective March 30, 2000.

ADDRESSES: Send comments to Director, NOAA Restoration Center, National Marine Fisheries Service, 1315 East West Highway (F/HC3), Silver Spring, MD 20910–3282.

FOR FURTHER INFORMATION CONTACT: Christopher D. Doley, (301) 713–0174, or by e-mail at Chris.Doley@noaa.gov.

SUPPLEMENTARY INFORMATION: Details concerning the justification for and development of this notification are provided at 64 FR 53339, October 1, 1999, and are repeated here. In that document, comments were sought on modifications to the Program that would allow greater flexibility to support community-based habitat restoration projects.

Comments and Responses

Comments were few, and all commenters supported the proposed modifications to the existing Program. Comments consisted of minor additions of explanatory detail or minor changes of word choices to clarify points. A summary of the comments and description of changes made to the proposed guidelines follows:

The eligibility requirements section was reworded to clarify that Federal agencies may be designated by a project sponsor as recipients of funding for selected projects, but may not apply for funding directly. To protect the Federal investment, projects on private lands will need to provide assurance that the project will remain intact throughout the useful life of the project, instead of the proposed rule's requirement that project proponents demonstrate a minimum 10-year conservation easement. Partnership arrangements will be pursued on a national level, as well as on a broad-based geographic and regional level, to be more inclusive. Text on pre-application format and process and on full proposal cost estimate requirements was deleted, as this information is presented in great detail in the NOAA grants application package available to all applicants and discussed in solicitations. Under "evaluation criteria", item number 3, Community Commitment and Partnership Development, the text "qualified youth conservation or service corps" has been added as an example of significant community involvement. And finally, to address environmental justice concerns expressed by one commenter and assure that all residents and citizens affected by the project have the opportunity to participate, under "evaluation criteria," text was added to state that proposed projects may be evaluated on their ability to demonstrate that they are incorporated into a regional or community planning process.

Background

Habitat loss and degradation are major, long-term threats to the sustainability of the Nation's fishery resources. Over 75 percent of commercial fisheries and 80 to 90 percent of recreational marine and anadromous fishes depend on estuarine or coastal habitats for all or part of their life-cycles. Protecting existing, undamaged habitat is a priority and should be combined with coastal habitat restoration to enlarge and enhance the functionality of degraded habitat. Restored coastal habitat will help rebuild fisheries stocks and recover threatened or endangered species. Restoring coastal habitats will help ensure that valuable resources will be available to future generations of Americans.

The guidelines that follow reflect modifications to the Program that allow greater flexibility to support community-based habitat restoration projects. The purpose of this document is to provide an outline of the goals, objectives, and structure of the Program for implementation in FY 2000 and beyond. The Program will provide **Federal Register** notifications on the availability of funds and will solicit project proposals once a year, or more. Each solicitation will provide detail on the criteria for project selection and/or on the weighting of the criteria.

Electronic Access

Information on the Program, including partnerships and projects that have been funded to date, can be found on the world wide web at: http://www.nmfs.gov/habitat/restoration.

Goals and Objectives

The Program's objective is to bring together citizen groups, public and non-profit organizations, industry, corporations and businesses, youth conservation corps, students, landowners, and local government, and state and Federal agencies to implement habitat restoration projects to benefit NOAA trust resources. Partnerships are sought at the national and local level to contribute funding, land, technical assistance, workforce support or other in-kind services to allow citizens to take responsibility for the improvement of locally important living marine resources.

The Program recognizes the significant role that communities play in habitat restoration and protection and acknowledges that habitat restoration is often best supported and implemented at a community level. Projects are successful because they have significant community support and depend upon citizens' "hands-on" involvement. The role of NMFS in the Program is to strengthen the development and implementation of sound restoration projects. NMFS anticipates maintaining the current focus of the Program by continuing to form strong national and local partnerships to fund grass-roots, bottom-up activities that restore habitat and develop stewardship and a conservation ethic for the Nation's living marine resources.

Eligibility Requirements

Any state, local or tribal government, regional governmental body, public or private agency or organization may sponsor a project for funding consideration. The sponsoring group or organization may be a recipient of the funds or may recommend that a Federal agency receive the funds for implementation. However, in the latter situation, NMFS would enter into a Memorandum of Agreement among NMFS, the sponsor, and the Federal agency. Federal agencies are not eligible to apply for funding; however, they are encouraged to work in partnership with state agencies, municipalities, and community groups. Successful applicants will be those whose projects demonstrate that significant, direct benefits are expected to NOAA trust resources within supportive, involved communities. Proponents who seek funding under the Program are not eligible to seek funding for the same project under other Restoration Center programs. The Program operates under statutory authority that precludes individuals from applying.

Eligible Restoration Activities

NMFS is interested in funding projects that will result in on-the-ground restoration of habitat to benefit living marine resources, including anadromous fish species. Habitat restoration is defined here as activities that directly result in the reestablishment or re-creation of stable, productive marine, estuarine or coastal river biological systems. Restoration may include, but is not limited to, improvement of coastal wetland tidal exchange or reestablishment of historic hydrology; dam or berm removal; fish passageway improvements; natural or artificial reef/substrate/habitat creation; establishment of riparian buffer zones and improvement of freshwater habitat features that support anadromous fishes; planting of native coastal wetland and submerged aquatic vegetation; and improvements of feeding, spawning, and growth areas essential to fisheries.

In general, proposed projects should clearly demonstrate anticipated benefits to such habitats as salt marshes, seagrass beds, coral reefs, mangrove forests and riparian habitat near rivers, streams and creeks used by anadromous fish. To protect the Federal investment, projects on private lands need to provide assurance that the project will be maintained for its intended purpose for the useful life of the project. Projects on permanently protected lands may be given priority consideration.

Projects must involve significant community support through an educational and/or volunteer component tied to the restoration activities. Implementation of on-the-ground habitat restoration projects must involve community outreach and post-restoration monitoring to assess project success and may involve limited pre-implementation activities, such as engineering and design and short-term baseline studies. Proposals emphasizing only research, outreach, monitoring, or coordination are discouraged, as are funding requests primarily for administration, salaries, overhead, and travel.

Although NMFS recognizes that water quality issues may impact habitat restoration efforts, this initiative is intended to fund physical habitat restoration projects rather than direct water quality improvement measures, such as wastewater treatment plant upgrades or combined sewer outfall corrections. Similarly, the following restoration projects will not be eligible for funding: (1) activities that constitute legally required mitigation for the adverse effects of an activity regulated or otherwise governed by state or Federal law; (2) activities that constitute restoration for natural resource damages under Federal or state law; and (3) activities that are required by a separate consent decree, court order, statute or regulation. Funds from this program may be sought to enhance restoration activities beyond the scope legally required by these activities.

Examples of Previously Funded Projects

The following examples are community-based restoration projects that have been funded with assistance from the Restoration Center. These examples are only illustrative and are not intended to limit the scope of future proposals in any way.

Submerged Aquatic Vegetation Restoration

Funding was provided to evaluate the feasibility of using volunteer divers to restore seagrass. A protocol was developed to train volunteers in water quality monitoring and seagrass transplantation techniques.

Fish Ladder Construction

An impediment to fish passage was corrected through the design and construction of a step-pool fish ladder, which now allows native steelhead trout to reach their historic spawning grounds.

Invasive Plant Removal

Funding was provided to a coalition of volunteer groups called "Pepperbusters" who worked to remove exotic Brazilian pepper plants and replant native shoreline vegetation.

Salt Marsh Restoration

Tidal flushing was restored to 20 acres of salt marsh by replacing an undersized culvert to increase the mean high water level in the restricted portion of the marsh.

Oyster Reef Restoration

Funding was provided to increase oyster reef habitat by reconstructing historic reefs and seeding them with hatchery-produced seed oysters grown in floating cages by students.

Kelp Forest Restoration

Funding was provided to train community dive groups in kelp reforestation activities, including the preparation, planting and maintenance of kelp sites, documentation of growth patterns, and changes in marine life attracted to the newly planted kelp areas.

Wetland Plant Nursery

Funding was provided to start an innovative wetland nursery program in

local high schools, where science and ecology classes build wetland nurseries on-campus to grow salt marsh grasses for local restoration efforts.

Riparian Habitat Restoration

Funding was provided to train youth corps in the use of biorestoration and stabilization techniques to restore eroding riverbanks and improve habitat for salmon smolt and other fish species.

Anadromous Fish Habitat Restoration

Highly functional salmonid and wildlife habitat was restored with the cooperation of private landowners by opening silted enclosures along a slough to provide refuge for juvenile salmonids during the winter flood flows.

Funding Sources and Dispersal Mechanisms

The Restoration Center envisions funding projects through joint project agreements, cooperative agreements and grants, and intra- and interagency transfers, as appropriate.

The Secretary of Commerce has authority to enter into joint project agreements with non-profit, research, or public organizations on matters of mutual interest, the cost of which is equitably apportioned. The principal purpose of a joint project agreement under this program is to engage in a collaborative and equitably apportioned effort with a qualified organization on matters of mutual interest.

For purposes of this Program, interagency agreements are written documents containing specific provisions of governing authorities, responsibilities, and funding, entered into between NMFS and a reimbursing Federal agency or between another Federal agency and NMFS when NMFS is the funding organization. Such agreements will also require inclusion of a local sponsor of the restoration project.

A cooperative agreement is a legal instrument reflecting a relationship between NMFS and a recipient whenever (1) the principal purpose of the relationship is to provide financial assistance to the recipient and (2) substantial involvement is anticipated between NMFS and the recipient during performance of the contemplated activity. A grant is similar to a cooperative agreement, except that in the case of grants, substantial involvement between NMFS and the recipient is not anticipated during the performance of the contemplated activity. Financial assistance is the transfer of money, property, services or anything of value to a recipient in order to accomplish a public purpose of support or stimulation which is authorized by Federal statute.

The instrument chosen will be based on such factors as degree of direct NOAA involvement with the project beyond the provision of financial assistance, the proportion of funds invested in the project by NOAA and the other organizations, and the efficiency of the different mechanisms to achieve the Program's goals and objectives. NMFS will determine which method is the most appropriate for funding individual projects based on the specific circumstances of each project.

NMFS reserves the right to fund individual projects directly, or through partnership arrangements. The Program will continue to create partnership arrangements at a national or broad-based, geographic or regional level with non-profit and other organizations that have similar goals for improving fisheries habitat. Partnerships are a key element that allows the Restoration Center to significantly leverage the funding available for on-the-ground restoration. Partnerships also encourage the sharing and distribution of technical expertise, often improve relations between diverse organizations with common goals, and allow NOAA to reach larger and more diverse communities that have vested interests in fishery habitat restoration.

The Restoration Center will also function in a clearinghouse capacity to help develop and link high quality proposals for habitat restoration with other potential funding sources whose evaluation criteria contain similar specifications for habitat enhancement. This will provide greater exposure for project ideas that increase the chances for project proponents to secure funding.

Each year, the Restoration Center Director will determine the proportion of the funds available to the Program that will be obligated to national or broad-based, geographic or regional partnerships and the proportion for direct project solicitation. The proportion will be established annually and will depend upon the amount of funds available from partnership organizations for habitat restoration activities that meet the goals and objectives of the Program, including the goal of funding a broad array of projects over a wide geographic distribution.

Funding Ranges

NMFS anticipates that typical project awards will range from $25,000 to $50,000, but NMFS will accept proposals ranging from $5,000 to $200,000. Final awards will be dependent on funding levels appropriated by Congress. Each solicitation issued for the Program will contain suggested ranges for funding requests and any specific criteria, including the weighting of selection criteria that will be used for proposal evaluation. The number of awards to be made in FY 2000 and beyond will depend on the amount of funds appropriated to the Program.

Match and Use of Funds

The focus of the Program is to provide seed money to leverage funds and other contributions from a broad public and private sector to implement locally important habitat restoration to benefit living marine resources. To this end, proposals are required to demonstrate a minimum 1:1 non-Federal match (equitable share, in the case of a joint project) for CRP funds requested to complete the proposed project. The Restoration Center may waive the requirement for 1:1 matching funds if the project meets the following three requirements: (1) The project is judged to be an outstanding match with NMFS and Restoration Center objectives; (2) there is a critical need to carry out the project in a timely fashion in order to benefit NOAA trust resources; and (3) the project sponsor has attempted to obtain matching funds but was unable to come up with the full 1:1 minimum match required. NOAA strongly encourages applicants to leverage as much investment as possible. The degree to which cost-sharing exceeds the minimum level may be taken into account in the final selection of projects to be funded. The match can come from a variety of public and private sources and can include in-kind goods and services. Federal funds may not be considered as matching funds. Applicants are permitted to combine contributions from additional project partners in order to meet the 1:1 required match (equitable share, in the case of a joint project) for the project. Applicants whose proposals are selected for funding will be obligated to account for the amount of cost-share reflected in the proposal and may be asked to provide letters of commitment identifying and precisely specifying match (or equitable share) to confirm stated contributions.

For each proposal accepted for funding, one award will be made. Funds awarded cannot necessarily pay for all the costs which the recipient might incur in the course of carrying out the project. Allowable costs for grants and cooperative agreements are determined by reference to the Office of Management and Budget Circulars A–122, "Cost Principles for Non-profit Organizations"; A–21, "Cost Principles for Education Institutions"; and A–87, "Cost Principles for State, Local and Indian Tribal Governments." Generally, costs that are allowable include salaries, equipment, supplies, and training, as long as these are reasonable, allowable, and allocable. However, in order to encourage on-the-ground restoration, if funding for salaries is requested, at least 75 percent of the total salary request must be used to support staff accomplishing the restoration work. Entertainment costs are an example of unallowable costs. Generally, the Program will make awards only to those projects where requested funding will be used to complete proposed restoration activities, with the exception of post-construction monitoring, within a period of 18 months from the time awards are distributed.

Project Selection Process

NOAA will publish, in the **Federal Register**, notifications soliciting letters of intent and project proposals once a year or more. Letters of intent submitted in response to these solicitation notices, when required, will be screened for eligibility and conformance with the Program guidelines, and guidance will be provided as to the most suitable funding mechanism that project proponents may pursue for further consideration. Applicants providing full proposals for financial assistance will be asked to follow standard NOAA Grants procedures. Full proposals will be screened to determine whether applicants meet the minimum Program requirements, and eligible restoration projects will undergo a technical review, ranking, and selection process. As appropriate during this process, the NOAA Restoration Center will solicit individual technical evaluations of each project and may consult with other NMFS and NOAA offices, the NOAA Grants Management Division, the U.S. Department of Commerce, the Regional Fishery Management Councils, such other Federal and state agencies as state coastal management agencies and state fish and wildlife agencies, and private and public sector subject experts or other interested parties, such as potential partners who have knowledge of a specific project or its subject matter. Reviews will be consolidated, and recommendations on the merits of funding each project and the level of funding NMFS should award will be presented to the Director of the NOAA Restoration Center for approval. Reviewers will assign scores to proposals ranging from 0 (unacceptable) to 100 (excellent) based on the following four evaluation criteria:

(1) Benefit to NOAA Trust Resources

NMFS is interested in funding projects where benefits to living marine resources can be realized. Therefore, NMFS will evaluate proposals based on the potential of the restoration project to restore, protect, conserve, and create habitats and ecosystems vital to self-sustaining populations of living marine resources under NOAA Fisheries stewardship. Locations where restoration projects may have high potential to benefit NOAA trust resources include areas identified as essential fish habitat (EFH) and areas within EFH identified as Habitat Areas of Particular Concern; areas identified as critical habitat for listed marine and anadromous species; areas identified as important habitat for marine mammals; areas located within National Marine Sanctuaries or National Estuarine Research Reserves; watersheds or other areas under conservation management, such as special management areas under state coastal management programs; and other important commercial or recreational marine fish habitat, including degraded areas that formerly were important habitat for living marine resources.

(2) Technical Merit and Adequacy of Implementation Plan

Proposals will be evaluated on the technical feasibility of the project from both biological and engineering perspectives and on the qualifications and past experience of the project leaders and/or partners. Communities and/or organizations developing their first locally driven restoration project may not be able to document past experience, and, therefore, will be evaluated on the basis of the availability of technical expertise to guide the project to a successful completion. Proposals will also be evaluated on their ability to (a) deliver the restoration objective stated in the proposal; (b) provide educational benefits; (c) incorporate post-restoration monitoring and assessment of project success in terms of meeting the proposed objectives; (d) demonstrate that the restoration activity will be sustainable and long-lasting;(e) provide assurance that implementation of the project will meet all Federal and state environmental laws and Federal consistency requirements by obtaining or proceeding to obtain applicable permits and consultations; and (f) provide mid-term and final project reports, including photo-documentation of the project site and restoration activities.

(3) Community Commitment and Partnership Development

Proposals will be evaluated on how well they describe the depth and breadth of the community's support. Projects must incorporate significant community involvement, which may include the following: (a) Hands-on training and restoration activities undertaken by volunteer students, qualified youth conservation or service corps, or other citizens; (b) input from local entities, such as businesses, conservation organizations, and others, either through in-kind goods and services (earth moving, technical expertise, easements) or cash contributions; (c) visibility within the community and demonstrated potential for public outreach and/or outreach products, including, but not limited to, an educational sign/poster at the project site, compilation of protocols into training manuals, guides, brochures, or videos; (d) cooperation with private landowners that set an example within the community for natural resource conservation; (e) support by state and local governments; (f) representation of those within the community who have an interest in or are affected by the project and seek the benefits of the restoration; (g) ability to achieve long-term stewardship for restored resources and generate a community conservation ethic; and/or (h) ability of a project to demonstrate that it is incorporated into a regional or community planning process or otherwise assure that all residents or citizens affected by the project are provided an opportunity to participate.

(4) Cost-effectiveness and Budget Justification

Projects will be evaluated on (a) their ability to demonstrate that a significant benefit will be generated for the most reasonable cost; (b) their importance to living marine resources under NOAA stewardship; (c) the extent of habitat and degree to which it will be restored; and (d) on their demonstration of partnership and collaboration. Projects will also be ranked in terms of their need for funding and the ability of NMFS to act as a catalyst to implement projects. NMFS will require cost sharing to leverage funding and to encourage partnerships among government, industry, and academia to address the needs of communities to restore important fisheries habitat.

The exact amount of funds awarded to a project and the funding instrument will be determined in pre-award negotiations between the applicant and NOAA/NMFS representatives. The

application and reporting requirements will differ depending upon the funding instrument selected. Projects receiving funds under this program will have to meet applicable NOAA/Department of Commerce/Federal policies, requirements, and laws.

Administrative Procedure Act

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act, (5 U.S.C. sec. 553), because these are agency guidelines. Because NMFS was interested in receiving comments on modifications to the Program that would allow greater flexibility to support community-based habitat restoration projects, NMFS solicited comments in the notice that was published in the **Federal Register** on October 1, 1999. This notice responds to those comments, and announces the final guidelines for the Program.

Statutory Authority

Fish and Wildlife Coordination Act of 1956, 16 U.S.C. 661–667; Joint Project Authority, 15 U.S.C. 1525; and the Economy Act, 31 U.S.C. 1535.

Dated: March 27, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–7919 Filed 3–29–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032200B]

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of an application for a scientific research permit (1247); issuance of modifications to existing permits (1051, 1189).

SUMMARY: Notice is hereby given of the following actions regarding permits for takes of endangered and threatened species for the purposes of scientific research and/or enhancement:

NMFS has received a permit application from Mr. Tom Savoy, of the Connecticut Department of Environmental Protection (CTDEP) (1247); and NMFS has issued modifications to scientific research permits to Mr. Jorgen Skjeveland, of the U.S. Fish and Wildlife Service (JS-FWS) (1051) and Dr. James Kirk, of the Corps of Engineers Waterways Experiment Station (COE-WES) (1189).

DATES: Comments or requests for a public hearing on the new application must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5:00pm eastern standard time on May 1, 2000.

ADDRESSES: Written comments on the new application should be sent to the Office of Protected Resources, Endangered Species Division, F/PR3, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the internet. The application and related documents are available for review by appointment in the Office of Protected Resources, F/PR3, NMFS, 1315 East-West Highway, Silver Spring, MD 20910–3226 (301–713–1401).

FOR FURTHER INFORMATION CONTACT: Terri Jordan, Silver Spring, MD (ph: 301–713–1401, fax: 301–713–0376, e-mail: Terri.Jordan@noaa.gov).

SUPPLEMENTARY INFORMATION:

Authority

Issuance of permits and permit modifications, as required by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) (ESA), is based on a finding that such permits/modifications: (1) Are applied for in good faith; (2) would not operate to the disadvantage of the listed species which are the subject of the permits; and (3) are consistent with the purposes and policies set forth in section 2 of the ESA. Authority to take listed species is subject to conditions set forth in the permits. Permits and modifications are issued in accordance with and are subject to the ESA and NMFS regulations governing listed fish and wildlife permits (50 CFR parts 222–226).

Those individuals requesting a hearing on the application listed in this notice should set out the specific reasons why a hearing on the application would be appropriate (see ADDRESSES). The holding of such hearing(s) is at the discretion of the Assistant Administrator for Fisheries, NOAA. All statements and opinions contained in the permit action summaries are those of the applicant and do not necessarily reflect the views of NMFS.

Species Covered in this Notice

The following species is covered in this notice: shortnose sturgeon (*Acipenser brevirostrum*).

New Application Received

CTDEP (1247) has requested a 5-year permit for annual lethal takes of up to 300 shortnose sturgeon spawned eggs and larvae; annually capture, examine, collect stomach contents samples via gastric lavage, PIT tag, and release up to 400 adult and 100 juvenile sturgeon; and implant sonic tags in up to 25 adult sturgeon annually. The research proposes to determine general seasonal movements and fine scale diurnal movement patterns as well as food habits and prey preferences of shortnose sturgeon in the Connecticut River below Holyoke Dam.

Permit Modifications Issued

Notice was published on October 22, 1999 (64 FR 57069), that JS-FWS had applied for a modification to permit 1051. Modification #2 to permit 1051 was issued on March 21, 2000, and authorizes the deployment of an additional 15 sonic tags on 15 of the shortnose sturgeon captured from the Delaware River, and to change the tagging methodology from external to completely internal. The purpose of the sonic tagging is to determine if there is migration back and forth via the Chesapeake and Delaware Canal. The sturgeon will be measured, tagged, have tissues sampled and released. Modification #2 to Permit 1051 is valid for the duration of the permit, which expires May 31, 2002.

Modification #1 to Permit 1189 was issued to COE-WES on March 21, 2000, and authorizes the addition of baited trotlines as a sampling method for shortnose sturgeon, thus increasing the effectiveness of seasonal sampling. Modification #1 to Permit 1189 is valid for the duration of the permit, which expires December 31, 2002.

Dated: March 23, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–7924 Filed 3–29–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032000A]

Marine Mammals; File No. 895–1450–00

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Rachel Cartwright, P.O. Box 1317, Lahaina, Hawaii 96767, has requested an amendment to Scientific Research Permit No. 895–1450–00.

DATES: Written or telefaxed comments must be received on or before May 1, 2000.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits and Documentation Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910 (301/713–2289);

Regional Administrator, Alaska Region, NMFS, 709 W 9th Street, Federal Building, Room 461, P.O. Box 21668, Juneau, AK 99802 (907–586–7235); and

Protected Species Program Manager, Pacific Islands Area Office, NMFS, NOAA, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, Hawaii 96814–4700 (808/973–2935).

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits and Documentation Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301) 713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Jeannie Drevenak or Trevor Spradlin, 301/713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 895–1450–00, issued on December 23, 1998 (64 FR 862) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR 222–226). Permit No. 895–1450–00 authorizes the permit holder to harass annually up to 1,100 humpback whales (*Megaptera novaeangliae*), including mother/calf pairs, during the conduct of scientific research on the whales in Hawaii waters. The purpose of the research is to study North Pacific humpback whale calf behavior and development. Research activities involve photo-identification and observation of the whales' surface and underwater behaviors. Activities are carried out between January and April, in the waters around the main Hawaiian Islands. The applicant is now requesting authorization to extend the study to Alaska waters. Extending the study to Alaska waters would allow documentation of the whole first year of the life of the humpback whale calf, incorporating the entire period of the calf's known association with the mother. The applicant is not requesting an increase in the number of animals authorized to be harassed under the Permit. The applicant proposes to initiate work in Alaska in early June 2000.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: March 24, 2000.

Ann D. Terbush,

Chief, Permits and Documentation Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–7923 Filed 3–29–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Invention Promoters/Promotion Firms Complaints

ACTION: Proposed Collection; comment request.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before May 30, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5027, 14th and Constitution Avenue, NW, Washington. DC 20230 or via the Internet at LEngelme@doc.gov.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of Richard J. Apley, Director, Office of Independent Inventor Programs, Crystal Park 2, Suite 906, Washington, DC 20231. In addition, written comments may be sent via e-mail to richard.apley@uspto.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Inventors' Rights Act of 1999 requires the Patent and Trademark Office (PTO) to publish complaints filed by independent inventors against invention promoters/promotion firms and publish any replies to such complaints. The Inventors' Rights Act requires the PTO to publish these complaints and replies, but it does not require the PTO to enforce the Act, to investigate the complaints, or to participate in any legal proceedings against the invention promoters/promotion firms. The PTO will accept complaints filed against invention promoters/promotion firms and forward those complaints to the invention promoters/promotion firms for response. Both the complaints and the responses will be published so that they will be publicly available as required by the Act. The primary purpose of this collection is to make complaints and responses publicly available; the PTO will not accept complaints submitted under this system if the complainant requests confidentiality. The PTO has developed a form for the purpose of lodging a complaint against a promotion invention firm; however, use of the form is not mandatory as long as the complaint is clearly marked as a complaint filed under the Inventors' Rights Act or the PTO's rules implementing this Act.

II. Method of Collection

By mail, facsimile, or hand carry when an individual is required to participate in the information collection.

III. Data

OMB Number: 0651–0044.
Agency Form Number(s): PTO/SB/XX.
Type of Review: Revision of a currently approved collection.

Affected Public: Individuals or households; businesses or other for-profit organizations; not-for-profit institutions; farms; Federal Government; and State, Local or Tribal Government.

Estimated Number of Respondents: 100 responses for a complaint regarding invention promoters/promotion firms and 100 responses for responding to the complaint per year.

Estimated Time Per Response: It is estimated to take approximately 15 minutes to submit a complaint and 15 minutes for the invention promoters/promotion firms to respond to a complaint.

Estimated Total Annual Burden Hours: 50 hours per year.

Estimated Total Annual Cost Burden: $0 (no capital start-up or maintenance expenditures are required). Using the professional hourly rate of $30.00 for paralegals (or professionals equal to paralegals) to prepare the complaint and the average hourly rate of $101.00 to prepare the response to the complaint, the PTO estimates $3,275.00 per year for salary costs associated with respondents.

Item	Estimated time for response (minutes)	Estimated annual burden hours	Estimated annual responses
Complaint Regarding Invention Promoter	15	25	100
Responses to the Complaints	15	25	100
Totals		50	200

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 24, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–7809 Filed 3–29–00; 8:45 am]

BILLING CODE 3510–16–P

THE COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 19 April 2000 at 10:00 a.m. in the Commission's offices at the National Building Museum (Pension Building), Suite 312, Judiciary Square, 441 F Street, N.W., Washington, D.C. 20001–2728. Items of discussion will include designs for projects affecting the appearance of Washington, D.C., including buildings and parks.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, D.C., 23 March 2000.

Charles H. Atherton,

Secretary.

[FR Doc. 00–7903 Filed 3–29–00; 8:45 am]

BILLING CODE 6330–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 00–C0008]

Standard Mattress Company, Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1605.13(4). Published below is a provisionally-accepted Settlement Agreement with Standard Mattress Company, containing a civil penalty of $60,000.[1]

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by April 14, 2000.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 00–C0008, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Michael J. Gidding, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626, 1344.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: March 24, 2000.

Sadye E. Dunn,

Secretary.

Consent Order Agreement

Standard Mattress Company ("Respondent"), enters into this Consent Order Agreement ("Agreement") with the staff of the Consumer Product Safety Commission (hereinafter, "Commission") pursuant to the procedures for Consent Order Agreements contained in section 1605.13 of the Commission's Procedures for Investigations, Inspections, and Inquiries under the Flammable Fabrics Act (FFA), 16 CFR 1605.13. This Agreement and Order are for the sole purpose of settling allegations of the staff that Respondent violated sections 3(a) and 5(c) of the Flammable Fabrics Act (FFA), as amended 15 U.S.C. 1192(a) and 1194(c), by failing to comply with requirements under the Standard for the Flammability of Mattresses and Mattress Pads, 16 CFR part 1632 (FF 4–72, amended) (the "Mattress Standard"), as is more fully set forth in the Complaint accompanying this Agreement. With respect to the matters alleged in the Complaint, the purpose of the Agreement is to settle all claims and potential claims that Respondent violated the FFA, the Federal Trade Commission Act (FTCA), 15 U.S.C. 41 *et seq.* (to the extent functions under that act related to the administration and enforcement of the FAA have been transferred to the Commission), the Consumer Product Safety Act (CPSA), 15 U.S.C. 2051, *et seq.*, and all regulations promulgated under those statutes.

Respondent and the Staff Agree

1. The Consumer Product Safety Commission has jurisdiction in this matter under the FFA, the FTCA, and the CPSA.

2. Respondent is a corporation organized under the laws of the State of Connecticut, with its principal place of business located at 261 Weston Street, Hartford, Connecticut. Respondent manufactures futons.

3. Respondent is now, and has been engaged in, the manufacture for sale, and the sale in commerce, of futons which are subject to the requirements of the Mattress Standard and the FFA.

4. Respondent denies the allegations of the Complaint that it knowingly or otherwise violated the Mattress Standard and sections 3(a) and 5(c) of the FFA, as amended, 15 U.S.C. 1192(a) and 1194(c), or any provision of the FTCA or the CPSA.

5. This Agreement is entered into for the purposes of settlement only and does not constitute a determination by the Commission that Respondent knowingly or otherwise violated the Mattress Standard, the FAA, the FTCA, or the CPSA.

6. Upon final acceptance of this Agreement, Respondent agrees to conduct a consumer level recall of style 605, 608, 611, and 613 futons sold by retailers from May 1, 1998 through October 31, 1998 by (1) joining with the Commission in issuing a joint press release that is mutually acceptable to the parties; (2) notifying all retailers to whom, during this period, Standard sold such futons of the terms of recall and providing those retailers with mutually agreed upon point-of-purchase posters describing those terms; and (3) offering each consumer who owns a futon described above a replacement futon upon completion of a form and return of the law label, brand name tag, and a portion of the old futon to demonstrate its destruction, and upon identification of the retailer from whom the consumer purchased the futon, provided that no consumer shall be required to document proof of purchase as a condition for obtaining a replacement futon.

7. Without admitting to the commission of any violation, Respondent agrees to pay, in settlement of the staff's allegations, a civil penalty of $60,000 as set forth in the attached incorporated Order.

8. This Agreement becomes effective only upon its final acceptance by the Commission and service of the incorporated Final Order upon Respondent.

9. Upon final acceptance of this Agreement by the Commission and issuance of the Final Order, Respondent knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Respondent failed to comply with the FFA or FTCA, (4) to a statement of findings of fact and conclusions of law by the Commission, (5) to any claims under the Equal Access to Justice Act, and (6) to a determination by the Commission under section 30(d) of the CPSA, 15 U.S.C. 2079(d), that it is in the public interest to regulate the risk of injury associated with futons manufactured by Respondent for the purpose of implementing the recall referenced in paragraph 6 of this Agreement.

10. Violation of the provisions of the Order may subject Respondent to a civil and/or criminal penalty for each such violation, as prescribed by law.

11. The Commission may disclose the terms of this Agreement to the public.

12. This Agreement may be used in interpreting the Provisional and Final Orders. Agreements, understandings, representations, or interpretations apart from those contained in this Agreement may not be used to vary or to contradict its terms.

13. Upon acceptance of this Agreement, the Commission shall issue the following Order incorporated herein.

Dated: March 8, 2000.

Standard Mattress Company

Robert Naboicheck,

President.

The Commission Staff

Alan H. Schoem,

Director, Office of Compliance.

Eric L. Stone,

Director, Legal Division.

Dated: March 7, 2000.

Michael J. Gidding,

Attorney.

Order

Upon consideration of the Consent Order Agreement entered into between Standard Mattress Company ("Respondent") and the staff of the Consumer Product Safety Commission; and it appearing that the Commission has jurisdiction over the subject matter and Respondent and that the Consent Order Agreement is in the public interest.

I

It Is Ordered That the Consent Order Agreement be and hereby is accepted, and

II

It Is Further Ordered That Respondent, and its successors and assigns, agents, representatives, and employees of the Respondent, acting directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device or instrumentality, do forthwith cease and desist from manufacturing for sale, selling, or offering for sale, in commerce, any futon or other product which is subject to, and fails to conform with, the requirements of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

III

It Is Further Ordered That Respondent conduct prototype testing for each futon design, prior to production, and conduct prototype testing or, if appropriate, obtain supplier certification to support any substitution of materials after initial prototype testing, in accordance with the applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

IV

It Is Further Ordered That Respondent prepare and maintain: (a) Written records of all prototype tests specified in paragraph III of this Order for each futon design, including photographs of the tested futons; (b) a written record of the manufacturing specifications of each

[1] Chairman Ann Brown and Commissioner Thomas H. Moore voted to provisionally accept the agreement. Vice Chairman Mary Sheila Gall voted to approve the agreement with the section VII delegation of authority deleted. Commissioner Moore accompanied his vote with a letter requesting that the staff brief him before exercising the section VII delegated authority.

futon prototype; and (c) written records of the manufacturing specifications of any material substituted for that used in the original prototype testing, in accordance with applicable provisions of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632.

V

It Is Further Ordered That Respondent prepare and maintain all other records required by the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632, for Respondent's futons, and comply with all applicable labeling requirements of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended), 16 CFR part 1632, with respect to those futons.

VI

It Is Further Ordered That Respondent conduct a consumer level recall of style 605, 608, 611, and 613 futons sold by retailers from May 1, 1998 through October 31, 1998 by (1) joining with the Commission in issuing a joint press release that is mutually acceptable to the parties; (2) notifying all retailers to whom, during this period, Respondent sold such futons of the terms of recall and providing those retailers with mutually acceptable point-of-purchase posters describing those terms; and (3) offering each consumer who owns a futon described above a replacement futon upon completion of a form and return of the law label, brand name tag, and a portion of the old futon to demonstrate its destruction, and upon identification of the retailer from whom the consumer purchased the futon, provided that no consumer shall be required to document proof of purchase as a condition for obtaining a replacement futon.

VII

It Is Further Ordered That, no later than one year after final acceptance of the Consent Order Agreement by the Commission, Respondent pay to the Commission a civil penalty in the amount of SIXTY THOUSAND AND 00/100 DOLLARS ($60,000.00). If Respondent's financial condition deteriorates to a degree that payment within the prescribed time period would impose an undue financial hardship on the company, Respondent may request an extension of the payment schedule. Upon a showing of good cause, the Commission delegates to the Director of the Office of Compliance the authority to modify the terms of this order to provide an alternative payment schedule. Upon failure by Respondent to make full payment in the time specified by this agreement or any modification thereto, interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. 1961 (a) and (b).

VIII

It Is Further Ordered That Respondent shall within 90 days of service upon it of this Order file with the Commission a written report setting forth in detail the manner and form in which it has complied with this Order.

IX

It Is Further Ordered That Respondent: (a) Maintain records identifying each retail customer notified of the recall pursuant to paragraph VI, each consumer who receives a replacement futon pursuant to paragraph VI, and any consumer who requests but does not receive a replacement futon and the reason therefore; (b) make such records available for inspection by the Commission staff upon request; and (c) provide the Commission staff with a monthly summary, in a form designated by the staff, of the number of consumer contacts and the number of replacement futons shipped during that period.

X

It Is Further Ordered That for a period of three (3) years from the date this Order becomes final pursuant to 16 CFR 1605.13(e), Respondent notify the Commission at least thirty (30) days prior to any material proposed change in the way Respondent does business which may adversely affect its compliance obligations arising out of this Order.

By direction of the Commission, this Consent Order Agreement is provisionally accepted pursuant to 16 CFR 1605.13, and shall be placed on the public record, and the Commission shall announce the provisional acceptance of the Consent Order Agreement in the Commission's Public Calendar and in the **Federal Register.**

So Ordered by the Commission, this 24th day of March 2000.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

Complaint

1. The staff of the Legal Division of the Office of Compliance, U.S. Consumer Product Safety Commission, brings this action for issuance of a cease and desist order against Respondent pursuant to section 5 of the Flammable Fabrics Act (FFA), 15 U.S.C. 1194, to section 5 of the Federal Trade Commission Act (FTCA), 15 U.S.C. 45, and to section 30(b) of the Consumer Product Safety Act, 15 U.S.C. 2079(b), which gives the Commission the authority to carry out certain functions under the FTCA related to the administration and enforcement of the FFA.

2. Respondent is a corporation organized under the laws of the State of Connecticut, with its principal place of business located at 261 Weston Street, Hartford, Connecticut. Respondent is a manufacturer of futons.

3. Respondent is now, and has been engaged in, the manufacture for sale and the sale in commerce, as the term "commerce" is defined in section 2(b) of the Flammable Fabrics Act (FFA), 15 U.S.C. 1191(b), of futons which are subject to the requirements of the Standard for the Flammability of Mattresses and Mattress Pads (FF 4–72, amended) (the "Mattress Standard"), 16 CFR part 1632, and sections 3, 4, and 5 of the FFA, 15 U.S.C. 1192, 1193, and 1194.

4. Each futon identified in paragraph 2 is intended or promoted for sleeping upon.

5. Each futon identified in paragraph 2, is therefore:

(a) A "mattress" within the meaning of section 1632.1(a) of the Mattress Standard (FF 4–72, as amended), 16 CFR 1632.1(a); and

(b) An "interior furnishing" and a "product" as defined in sections 2(e) and (h) of the FFA, as amended, 16 U.S.C. 1191(e), (h).

6. Between May, 1995 and October, 1998, Respondent manufactured futons that were subject to, and failed to comply with, the Mattress Standard in that:

(a) Respondent failed to conduct new prototype testing as required by section 1632.3 of the Mattress Standard, 16 CFR 1632.3, upon opening a new manufacturing facility.

(b) Respondent failed to maintain manufacturing and test records as required by sections 1632.31(c)(1), (2), (3), (10), and (12) of the Mattress Standard, 16 CFR 1632.31(c)(1), (2), (3), (10), and (12).

(c) Respondent failed to label the futons in accordance with section 1632.31(a)(3) of the Mattress Standard, 16 CFR 1632.31(a)(3).

7. Tests conducted in accordance with section 1632.4 of the Mattress Standard, 16 CFR 1632.4, by the California Bureau of Home Furnishings and by the Commission technical staff on futon models 605, 608, 611, and 613 manufactured by Respondent and offered for retail sale in August, 1998 demonstrated that certain futons failed to meet the ignition resistance requirements of section 1632.3 of the Mattress Standard, 16 CFR 1632.3.

8. The acts by Respondent set forth in paragraphs 5 and 6 of the complaint are unlawful and constitute an unfair method of competition and an unfair and deceptive practice in commerce under section 5(a) of the Federal Trade Commission Act (FTCA), 15 U.S.C. 45(a), in violation of section 3(a) of the FFA, 15 U.S.C. 1192(a), for which a cease and desist order may be issued against Respondent pursuant to section 5(b) of the FAA, 15 U.S.C. 1194(b), and section 5 of the FTCA, 15 U.S.C. 45.

Relief Sought

9. The staff seeks issuance of a cease and desist order against Respondent pursuant to section 5(b) of the FFA, 15 U.S.C. 1194(b), and section 5 of the FTCA, 15 U.S.C. 45.

Wherefore, the premises considered, the Commission hereby issues this Complaint on the ___ day of _____, 2000.

By direction of the Commission.

Dated: _____

Alan H. Schoem,

Director, Office of Compliance.

[FR Doc. 00–7786 Filed 3–29–00; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Availability of Government-Owned Inventions for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, D.C. 20231, for $3.00 each. Requests for copies of patents must include the patent number. Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

The following patents and patent applications are available for licensing:

Patent 5,895,629: RING OSCILLATOR BASED CHEMICAL SENSOR; filed 25 November 1997; patented 20 April 1999.//Patent 5,900,835: COHERENT HIDDEN MARKOV MODEL; filed 9 July 1998; patented 4 May 1999.//Patent 5,903,483: FREQUENCY DOMAIN KERNEL PROCESSOR; filed 12 August 1997; patented 11 May 1999.//Patent 5,917,458: FREQUENCY SELECTIVE SURFACE INTEGRATED ANTENNA SYSTEM; filed 8 September 1995; patented 29 June 1999.//Patent 5,919,333: BRAKED LINEAR NIPPER; filed 19 November 1997; patented 6 July 1999.//Patent 5,920,065: OPTICALLY ACTIVATED BACK-TO-BACK PIN DIODE SWITCH HAVING EXPOSED INTRINSIC REGION; filed 14 November 1997; patented 6 July 1999.//Patent 5,921,589: VIBRATION ISOLATING FLANGE ASSEMBLY; filed 29 September 1997; patented 13 July 1999./ /Patent 5,922,317: ACCELERATED GAS REMOVAL FROM DIVERS' TISSUES UTILIZING GAS METABOLIZING BACTERIA; filed 6 May 1997; patented 13 July 1999.//Patent 5,922,435: CERAMIC POLYMER COMPOSITE DIELECTRIC MATERIAL; filed 6 January 1999; patented 13 July 1999.// Patent 5,922,552: COMPOUNDS LABELED WITH CYANATE OR THIOCYANATE METAL COMPLEXES FOR DETECTING BY INFRARED SPECTROSCOPY; filed 9 June 1998; patented 13 July 1999.//Patent 5,923,030: SYSTEM AND METHOD FOR RECOVERING A SIGNAL OF INTEREST FROM A PHASE MODULATED SIGNAL USING QUADRATURE SAMPLING; filed 10 November 1997; patented 13 July 1999./ /Patent 5,923,175: APPARATUS FOR CONTACTLESS MEASUREMENT OF THE ELECTRICAL RESISTANCE OF A CONDUCTOR; filed 3 June 1997; patented 13 July 1999.//Patent 5,923,617: FREQUENCY-STEERED ACOUSTIC BEAM FORMING SYSTEM AND PROCESS; filed 5 February 1997; patented 13 July 1999.//Patent 5,923,776: OBJECT EXTRACTION IN IMAGES; filed 23 May 1996; patented 13 July 1999.//Patent 5,924,109: METHOD AND APPARATUS FOR AUTOMATIC GENERATION OF EXTERNAL INTERFACE SPECIFICATIONS; filed 3 March 1997; patented 13 July 1999.//Patent 5,924,453: PISTON AND CYLINDER ACTUATED POLYMER MIXING VALVE; filed 20 April 1998; patented 20 July 1999.//Patent 5,924,587: PERFORMANCE ORIENTED SHIPPING CONTAINER; filed 11 August 1997; patented 20 July 1999.//Patent 5,925,370: BIOREPELLENT MATRIX COATING; filed 4 December 1997; patented 20 July 1999.//Patent 5,925,475: PHTHALONITRILE THERMOSET POLYMERS AND COMPOSITES CURED WITH HALOGEN-CONTAINING AROMATIC AMINE CURING AGENTS; filed 2 October 1997; patented 20 July 1999.// Patent 5,926,270: SYSTEM AND METHOD FOR THE REMOTE DETECTION OF ORGANIC MATERIAL IN ICE IN SITU; filed 14 October 1997; patented 20 July 1999.//Patent 5,926,439: FLEXTENSIONAL DUAL-SECTION PUSH-PULL UNDERWATER PROJECTOR; filed 21 December 1998; patented 20 July 1999.//Patent 5,927,149: HIGH-TORQUE QUIET GEAR; filed 14 July 1995; patented 27 July 1999.//Patent 5,928,483: ELECTROCHEMICAL CELL HAVING A BERYLLIUM COMPOUND COATED ELECTRODE; filed 12 November 1997; patented 27 July 1999.//Patent 5,928,545: CURE SHRINKAGE MEASUREMENT; filed 23 July 1997; patented 27 July 1999.//Patent 5,929,199: FLUOROALIPHATIC CYANATE RESINS FOR LOW DIELECTRIC APPLICATIONS; filed 13 January 1998; patented 27 July 1999.// Patent 5,929,572: ELECTROLUMINESCENT ARRAYS LAYERED TO FORM A VOLUMETRIC DISPLAY; filed 19 September 1996; patented 27 July 1999.//Patent 5,930,165: FRINGE FIELD SUPERCONDUCTING SYSTEM; filed 31 October 1997; patented 27 July 1999.// Patent 5,930,201: ACOUSTIC VECTOR SENSING SONAR SYSTEM; filed 27 January 1998; patented 27 July 1999.// Patent 5,930,203: FIBER OPTIC HYDROPHONE ARRAY; filed 10 August 1998; patented 27 July 1999.// Patent 5,930,313: METHOD AND APPARATUS FOR TRANSPORTING AN INTENSE ION BEAM; filed 3 December 1991; patented 27 July 1999./ /Patent 5,930,580: METHOD FOR FORMING POROUS METALS; filed 30 April 1998; patented 27 July 1999.// Patent 5,931,248: DURABLE ROLL-STABILIZING KEEL SYSTEM FOR HOVERCRAFT; filed 15 September 1997; patented 3 August 1999.//Patent 5,932,006: BAF2/GAAS ELECTRONIC COMPONENTS; filed 25 March 1996; patented 3 August 1999.//Patent 5,932,091: OILY WASTE WATER TREATMENT SYSTEM; filed 22 January 1998; patented 3 August 1999.//Patent 5,932,335: OXIDATION RESISTANT FIBER-REINFORCED COMPOSITES WITH POLY (CARBORANE-SILOXANE/SILANE-ACETYLENE); filed 31 December 1996; patented 3 August 1999.//Patent 5,932,835: LINE

CHARGE INSENSITIVE MUNITION WARHEAD; filed 12 September 1997; patented 3 August 1999.//Patent 5,932,837: NON-TOXIC HYPERGOLIC MISCIBLE BIPROPELLANT; filed 22 December 1997; patented 3 August 1999.//Patent 5,933,117: FLEXIBLE FERRITE LOADED LOOP ANTENNA ASSEMBLY; filed 24 July 1996; patented 3 August 1999.//Patent 5,933,446: BEAMFORMER WITH ADAPTIVE PROCESSORS; filed 2 October 1995; patented 3 August 1999./ /Patent 5,933,808: METHOD AND APPARATUS FOR GENERATING MODIFIED SPEECH FROM PITCH-SYNCHRONOUS SEGMENTED SPEECH WAVEFORMS; filed 7 November 1995; patented 3 August 1999.//Patent 5,934,609: DEFORMABLE PROPELLER BLADE AND SHROUD; filed 1 April 1997; patented 10 August 1999.//Patent 5,934,622: MICRO-ELECTRODE AND MAGNET ARRAY FOR MICROTURBULENCE CONTROL; filed 1 May 1997; patented 10 August 1999./ /Patent 5,934,911: WATERPROOF QUICK DISCONNECT SLIP RING DEVICE; filed 14 April 1997; patented 10 August 1999.//Patent 5,936,025: CERAMIC POLYMER COMPOSITE DIELECTRIC MATERIAL; filed 6 March 1997; patented 10 August 1999.//Patent 5,937,078: TARGET DETECTION METHOD FROM PARTIAL IMAGE OF TARGET; filed 10 April 1996; patented 10 August 1999.//Patent 5,937,543: FOOTWEAR HAVING A VARIABLE SIZED INTERIOR; filed 22 August 1997; patented 17 August 1999.//Patent 5,938,545: VIDEO SYSTEM FOR DETERMINING A LOCATION OF A BODY IN FLIGHT; filed 5 June 1997; patented 17 August 1999.//Patent 5,938,999: WET-SPINNING FIBER PROCESS PROVIDING CONTROLLED MORPHOLOGY OF THE WET-SPUN FIBER; filed 14 February 1997; patented 17 August 1999.//Patent 5,939,665: BRISK MANEUVERING DEVICE FOR UNDERSEA VEHICLES; filed 12 February 1996; patented 17 August 1999.//Patent 5,939,958: MICROSTRIP DUAL MODE ELLIPTIC FILTER WITH MODAL COUPLING THROUGH PATCH SPACING; filed 18 February 1997; patented 17 August 1999.//Patent 5,940,046: STANDARDIZED MODULAR ANTENNA SYSTEM; filed 14 April 1997; patented 17 August 1999.//Patent 5,941,481: DEVICE FOR INTERACTIVE TURBULENCE CONTROL IN BOUNDARY LAYERS; filed 7 July 1997; patented 24 August 1999.//Patent 5,941,744: VECTORED PROPULSION SYSTEM FOR SEA-GOING VESSELS; filed 9 September 1997; patented 24 August 1999.//Patent 5,942,206: CONCENTRATION OF ISOTOPIC HYDROGEN BY TEMPERATURE GRADIENT EFFECT IN SOLUBLE METAL; filed 23 August 1991; patented 24 August 1999.//Patent 5,942,687: METHOD AND APPARATUS FOR IN SITU MEASUREMENT OF CORROSION IN FILLED TANKS; filed 1 April 1998; patented 24 August 1999.//Patent 5,942,712: METHOD AND APPARATUS FOR RETAINING WIRES IN A CYLINDRICAL TUBE; filed 9 October 1997; patented 24 August 1999.//Patent 5,942,748: LIQUID LEVEL SENSOR AND DETECTOR; filed 26 February 1997; patented 24 August 1999.//Patent 5,944,762: HIERARCHICAL TARGET INTERCEPT FUZZY CONTROLLER WITH FORBIDDEN ZONE; filed 1 April 1996; patented 31 August 1999.//Patent 5,944,784: OPERATING METHODS FOR A UNIVERSAL CLIENT DEVICE PERMITTING A COMPUTER TO RECEIVE AND DISPLAY INFORMATION FROM SEVERAL SPECIAL APPLICATIONS SIMULTANEOUSLY; filed 30 September 1997; patented 31 August 1999.//Patent 5,945,036: DUAL ENERGY DEPENDENT FLUIDS; filed 22 January 1992; patented 31 August 1999./ /Patent 5,945,666: HYBRID FIBER BRAGG GRATING/LONG PERIOD FIBER GRATING SENSOR FOR STRAIN/TEMPERATURE DISCRIMINATION; filed 19 May 1997; patented 31 August 1999.//Patent 5,945,966: COMPUTER PROGRAM FOR A THREE-DIMENSIONAL VOLUMETRIC DISPLAY; filed 2 October 1996; patented 31 August 1999.//Patent 5,946,272: IMAGE CONVERSION FOR A SCANNING TOROIDAL VOLUME SEARCH SONAR; filed 17 August 1998; patented 31 August 1999.//Patent 5,947,579: UNDERWATER CHEMILUMINESCENT DIVING LIGHT; filed 29 July 1997; patented 7 September 1999.//Patent 5,948,621: DIRECT MOLECULAR PATTERNING USING A MICRO-STAMP GEL; filed 30 September 1997; patented 7 September 1999.//Patent 5,948,959: CALIBRATION OF THE NORMAL PRESSURE TRANSFER FUNCTION OF A COMPLIANT FLUID-FILLED CYLINDER; filed 29 May 1997; patented 7 September 1999.//Patent 5,948,993: AMPLIFIED SHEAR TRANSDUCER; filed 2 March 1998; patented 7 September 1999.//Patent 5,949,016: ENERGETIC MELT CAST EXPLOSIVES; filed 29 July 1991; patented 7 September 1999.//Patent 5,949,361: MULTI-STAGE DELTA SIGMA MODULATOR WITH ONE OR MORE HIGH ORDER SECTIONS; filed 12 May 1997; patented 7 September 1999.//Patent 5,949,741: DUAL-SECTION PUSH-PULL UNDERWATER PROJECTOR; filed 21 December 1998; patented 7 September 1999.//Patent 5,949,835: STEADY-STATE, HIGH DOSE NEUTRON GENERATION AND CONCENTRATION APPARATUS AND METHOD FOR DEUTERIUM ATOMS; filed 1 July 1991; patented 7 September 1999.//Patent 5,949,935: INFRARED OPTICAL FIBER COUPLER; filed 26 November 1997; patented 7 September 1999.//Patent 5,950,004: MODEL-BASED PROCESS FOR TRANSLATING TEST PROGRAMS; filed 13 September 1996; patented 7 September 1999.// Patent 5,951,170: TAPERED RESILIENT SLEEVE BEARING ASSEMBLY; filed 3 April 1998; patented 14 September 1999.//Patent 5,951,346: AIR-DELIVERED POSITION MARKING DEVICE AND METHOD; filed 8 December 1997; patented 14 September 1999.//Patent 5,951,607: AUTONOMOUS CRAFT CONTROLLER SYSTEM FOR LANDING CRAFT AIR CUSHIONED VEHICLE; filed 6 March 1997; patented 14 September 1999.// Patent 5,952,458: PROCESS FOR PREPARING A VINYL TERMINATED POLYMER; filed 24 September 1998; patented 14 September 1999.//Patent 5,952,601: RECOILLESS AND GAS-FREE PROJECTILE PROPULSION; filed 23 April 1998; patented 14 September 1999.//Patent 5,952,957: WAVELET TRANSFORM OF SUPER-RESOLUTIONS BASED ON RADAR AND INFRARED SENSOR FUSION; filed 1 May 1998; patented 14 September 1999.//Patent 5,953,921: TORSIONALLY RESONANT TOROIDAL THERMOACOUSTIC REFRIGERATOR; filed 13 January 1998; patented 21 September 1999.//Patent 5,955,698: AIR-LAUNCHED SUPERCAVITATING WATER-ENTRY PROJECTILE; filed 28 January 1998; patented 21 September 1999.//Patent 5,955,849: COLD FIELD EMITTERS WITH THICK FOCUSING GRIDS; filed 25 February 1994; patented 21 September 1999.//Patent 5,956,171: ELECTRO-OPTIC MODULATOR AND METHOD; filed 31 July 1996; patented 21 September 1999.//Patent 5,957,077: GUIDE TUBE BEND FLUID BEARING; filed 23 May 1997; patented 28 September 1999.//Patent 5,957,427: ISOLATION MOUNTING DEVICE; filed 14 May 1996; patented 28 September 1999.//Patent 5,957,668: BRAKE ACTUATION MEANS FOR A ROTARY PUMP SYSTEM; filed 17 January 1996; patented 28 September 1999.//Patent 5,958,229: ELECTROLYTIC DISINFECTANT SYSTEM; filed 27 March 1998; patented 28 September 1999.//Patent 5,959,233: LINE CHARGE FASTENER AND DETONATING CORD GUIDE; filed 2 March 1998; patented 28 September 1999.//Patent 5,959,753: ULTRA HIGH BIT RATE ALL OPTICAL COMMUNICATION SYSTEM; filed 25 January 1994; patented 28 September 1999.//Patent 5,960,026: ORGANIC WASTE DISPOSAL SYSTEM; filed 9 September 1997; patented 28 September 1999.//Patent application 08/939,410: CORROSION-RESISTANT COATING PREPARED BY THE THERMAL DECOMPOSITION OF LITHIUM PERMANGANATE; filed 29 September 1997.//Patent application 08/982,892: ELECTROCHEMICAL FABRICATION OF CAPACITORS; filed 2 December 1997.//Patent application 09/105,087: CARBON-BASED COMPOSITES DERIVED FROM PHTHALONITRILE RESINS; filed 26 June 1998.//Patent application 09/115,073: TOW CABLE WITH CONDUCTING POLYMER JACKET FOR MEASURING THE TEMPERATURE OF WATER COLUMN; filed 6 July 1998.//Patent application 09/126,222: DEVICE FOR TENSIONING SHEET MEMBERS; filed 30 July 1998./ /Patent application 09/126,859: SHAPE MEMORY ACTUATOR SYSTEM; filed 31 July 1998.//Patent application 09/ 133,852: ADVANCED VERTICAL ARRAY BEAMFORMER; filed 13 August 1998.//Patent application 09/ 152,477: ACOUSTIC BOLT REMOVAL; filed 11 September 1998.//Patent application 09/158,974: CAVITATION-RESISTANT SONAR ARRAY; filed 17 September 1998.//Patent application 09/ 162,633: GROMMET HAVING METAL INSERT; filed 28 September 1998.// Patent application 09/173,612: QUADRIFILAR HELIX ANTENNA; filed 13 October 1998.//Patent application 09/226,628: BROADBAND DIRECT FED PHASED ARRAY ANTENNA COMPRISING STACKED PATCHES; filed 21 December 1998.//Patent application 09/246,195: LARGE PANEL SURFACE PLANER; filed 11 January 1999.//Patent application 09/246,208: FUZZY LOGIC BASED SYSTEM AND METHOD FOR INFORMATION PROCESSING WITH UNCERTAIN INPUT DATA; filed 20 January 1999.// Patent application 09/246,212: GUIDANCE SYSTEM; filed 15 January 1999.//Patent application 09/246,767: METHOD AND SYSTEM FOR TRANSIENT SIGNAL DETECTION; filed 1 February 1999.//Patent application 09/252,243: POWER ENVELOPE SHAPER; filed 14 January 1999.//Patent application 09/267,903: A RECONFIGURABLE ARRAY FOR POSITIONING MEDICAL SENSORS; filed 2 March 1999.//Patent application 09/267,904: PROPELLER DEFLECTION SNUBBER; filed 2 March 1999.//Patent application 09/267,905: MAGNESIUM-SOLUTION PHASE CATHOLYTE SEAWATER ELECTROCHEMICAL SYSTEM; filed 2 March 1999.//Patent application 09/267,908: TOW CABLE TEMPERATURE PROFILER; filed 8 March 1999.//Patent application 09/ 267,909: ROLLER GRAPNEL; filed 8 March 1999.//Patent application 09/ 267,916: CALIBRATED STOP BOLT FOR LONGITUDINAL SHOCK TEST FIXTURE; filed 2 March 1999.//Patent application 09/272,744: DATA ACQUISITION SYSTEM INCLUDING DATA TRANSMISSION CONTROLLER FOR OCTAVELY NESTED ACOUSTIC LINE ARRAYS; filed 10 March 1999.// Patent application 09/273,817: ACOUSTICALLY DRIVEN PLASMA ANTENNA; filed 22 March 1999.// Patent application 09/285,173: DATA REDUCTION SYSTEM FOR IMPROVEMENT CLASSIFIER PERFORMANCE; filed 18 March 1999./ /Patent application 09/285,175: PLASMA ANTENNA WITH CURRENTS GENERATED BY OPPOSED PHOTON BEAMS; filed 23 March 1999.//Patent application 09/285,176: HORIZONTAL PLASMA ANTENNA USING PLASMA DRIFT CURRENTS; filed 23 March 1999.//Patent application 09/286,844: FIBER OPTIC CABLE FURCATION UNIT; filed 6 April 1999.//Patent application 09/301,383: HYPOTHESIS SELECTION FOR EVIDENTIAL REASONING SYSTEMS; filed 27 April 1999.//Patent application 09/310,376: INFRARED FIBER IMAGER; filed 12 May 1999.//Patent application 09/ 310,681: HIGH RESOLUTION IMAGING USING OPTICALLY TRANSPARENT PHOSPHORS; filed 1 April 1999.// Patent application 09/311,900: ASSEMBLY AND METHOD FOR FURCATING OPTICAL FIBERS; filed 14 May 1999.//Patent application 09/ 313,311: DEPTH SENSITIVE MECHANICAL ACOUSTIC SIGNAL GENERATING DEVICE; filed 17 May 1999.//Patent application 09/313,575: FUZZY LOGIC-BASED MODEL ASSESSMENT SYSTEM FOR CONTACT TRACKING; filed 10 May 1999.//Patent application 09/317,084: STANDING WAVE PLASMA ANTENNA WITH PLASMA REFLECTOR; filed 21 May 1999.//Patent application 09/317,085: PLASMA ANTENNA WITH TWO-FLUID IONIZATION CURRENT; filed 21 May 1999.//Patent application 09/317,086: PLASMA ANTENNA WITH ELECTRO-OPTIC MODULATOR; filed 21 May 1999.//Patent application 09/317,088: SOFT-BODIED, TOWABLE, ACTIVE ACOUSTIC MODULE; filed 21 May 1999.//Patent application 09/317,089: METHOD AND SYSTEM FOR DETERMINING THE PROBABLE LOCATION OF A CONTACT; filed 21 May 1999.//Patent application 09/ 317,090: LOW VOLTAGE POWER SYSTEM FOR TOWED ACOUSTIC ARRAY; filed 21 May 1999.//Patent application 09/335,820: AN ASSEMBLY AND METHOD FOR POSITIONING A MEASUREMENT PROBE PROXIMATE A TEST BODY DISPOSED FOR A FLUID TUNNEL TEST; filed 18 June 1999.//Patent application 09/335,821: BOTTOM-DEPLOYED, UPWARD LOOKING HYDROPHONE ASSEMBLY; filed 18 June 1999.//Patent application 09/337,221: MULTI-DEPTH ACOUSTIC SIGNAL GENERATING DEVICE; filed 7 June 1999.//Patent application 09/ 339,917: METHODS AND MATERIALS FOR SELECTIVE MODIFICATION OF PHOTOPATTERNED POLYMER FILMS; filed 28 June 1999.//Patent application 09/349,355: SYSTEM AND METHOD FOR MONITORING RISK IN A SYSTEM DEVELOPMENT PROGRAM; filed 8 July 1999.//Patent application 09/ 349,356: AN INFORMATION SYSTEM FOR HANDLING CONTRACT DOCUMENTATION; filed 1 July 1999./ /Patent application 09/353,871: ELECTRONIC DEVICES GROWN ON OFF-AXIS SAPPHIRE SUBSTRATE; filed 15 July 1999.//Patent application 09/363,819: MOLECULARLY-IMPRINTED MATERIAL MADE BY TEMPLATE-DIRECTED SYNTHESIS; filed 30 July 1999.//Patent application 09/372,107: QUICK ZERO KNOB; filed 11 August 1999.//Patent application 09/ 372,108: SHOCK ABSORBING MOUNT FOR ADJUSTABLE BARREL; filed 11 August 1999.//Patent application 09/ 399,474: DEPTHIMETER; filed 13 September 1999.//

FOR FURTHER INFORMATION CONTACT: Mr. John G. Wynn, Associate Counsel, Intellectual Property, Office of Naval Research (Code 00CC), Arlington, VA 22217–5660, telephone (703) 696–4004.

(Authority: 35 U.S.C. 207; 37 CFR Part 404.)

Dated: March 22, 2000.

C.G. Carlson,

Major, U.S. Marine Corps, Alternote Federal Register Liaison Officer.

[FR Doc. 00–7904 Filed 3–29–00; 8:45 am]

BILLING CODE 3810–FF–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 1, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 24, 2000.

William Burrow,

Leader, Information Management GroupOffice of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.
Title: National Household Education Survey of 2001 (NHES: 2001).
Frequency: Weekly.
Affected Public: Individuals or households.
Reporting and Recordkeeping Hour Burden:
Responses: 3,100. Burden Hours: 465.
Abstract: The NHES:2001 will be a survey of households using random-digit-dialing and computer-assisted telephone interviewing. The topical components are Early Childhood Program Participation, Before-and After-School Programs and Activities, and Adult Education and Lifelong Learning. Respondents to the first two components will be parents of children from birth to age 6 who are not yet in kindergarten and children in kindergarten through grade 8, respectively. Respondents to the third component will be persons age 16 and older who are not enrolled in elementary or secondary school. This survey will provide NCES with current measures of educational participation for preschool children adn adults and will also provide much needed baseline information from a national sample on the out-of-school activities of school-age children.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7805 Filed 3–29–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 1, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 24, 2000.

William Burrow,

Leader, Information Management GroupOffice of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Extension.
Title: National Student Loan Data System (NSLDS).
Frequency: On Occasion, Weekly, Monthly, Quarterly.
Affected Public: Not-for-profit institutions; Businesses or other for-profit; State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 29,952.
Burden Hours: 179,712.
Abstract: The U.S. Department of Education will collect data from postsecondary schools and guaranty agencies about federal Perkins loans, federal family education loans, and William D. Ford direct student loans to be used to determine eligibility for Title IV student financial aid.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7806 Filed 3–29–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 1, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 24, 2000.

William Burrow,

Leader, Information Management GroupOffice of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.
Title: Technology Innovation Challenge Grant Program Online Annual Performance Reporting System.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 96.
Burden Hours: 3,840.
Abstract: The proposed interactive, on-line database provides the U.S. Department of Education and funded Technology Innovation Challenge Grant projects with up-to-date information on a number of key issues that include: Basic characteristics of the project and key contact information; project partners; project participants; the project focus; project goals and activities; professional development activities; dissemination of project products; lessons learned from the project; and the project's budget.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–9346 or via her internet address Kathy__Axt@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–7807 Filed 3–29–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM98–10–003; RM98–12–003]

Regulation of short-Term Natural Gas Transportation Services; Regulation of Interstate Natural Gas Transportation Services; Order Denying Stay

Issued March 24, 2000.

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr.

On February 9, 2000, The Federal Energy Regulatory Commission (Commission) issued a final rule [1] that amended the Commission's open access regulations to grant a waiver for a limited period of the price ceiling for released capacity transactions of less than one year.[2] The waiver takes effect on March 26, 2000. On March 15, 2000, Indicated Shippers and the Independent Petroleum Association of America filed a motion to stay the effective date of the waiver pending the Commission's consideration of the order and rehearing and any subsequent judicial review.

The Administrative Procedure Act provides that an agency may stay an action "when justice so requires." [3] The Commission finds that justice does not require the issuance of a stay, and denies the motion.

The Commission orders: The motion for stay is denied.

By the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7799 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–M

[1] Regulation of Short-Term Natural Gas Transportation Services and Regulation of Interstate Natural Gas Transportation Services, 63 FR 10156 (Feb. 25, 2000), III FERC Stats. & Regs. Regulations Preambles ¶ 31,091 (Feb. 9, 2000).

[2] 18 CFR 284.8 (i).

[3] 5 U.S.C. 705 (1994).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–331–013]

National Fuel Gas Supply Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 24, 2000.

Take notice that on March 21, 2000 National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Third Revised Sheet No. 12 and Second Revised Sheet No. 13 (reserved for future use), with a proposed effective date of April 1, 2000.

National Fuel states that the filing is made to implement firm storage and transportation agreements between National Fuel and TXU Energy Trading Company (TXU). National Fuel states that these agreements provide for negotiated rates pursuant to GT&C Section 17.2 of National Fuel's tariff and the Commission's policy regarding negotiated rates.

National Fuel states that copies of this filing were served upon its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 of 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7790 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–220–000]

Town of Neligh, Nebraska, v. K N Interstate Gas Transmission Company and KN Energy, a Division of Kinder-Morgan, Inc.; Notice of Complaint

March 24, 2000.

Take notice that on March 23, 2000, the Town of Neligh, Nebraska (Neligh) filed pursuant to 18 CFR 385.206 a Complaint under Section 5 of the Natural Gas Act ("NGA"), 15 U.S.C. 717d, against KN Interstate Gas Transmission Company (KNI), a Complaint and Request for Declaratory Relief against KN Energy (KNE), a division of Kinder-Morgan, Inc., and, in the alternative, an Application under Section 7(a) of the NGA, 15 U.S.C. 717f(a), to compel KNI to provide gas service to Neligh.

According to the Complainant, Neligh will acquire the local distribution facilities of KNE as a result of condemnation proceedings and will operate those facilities to provide gas distribution service to the residents and businesses located in Neligh and the surrounding community. Neligh has requested firm and no-notice transportation service from KNI, KNE's interstate pipeline affiliate, in an amount proportionate to that used historically by KNE to serve Neligh. KNI has rejected Neligh's request on the basis that KNI is fully subscribed.

Complainant seeks, on an expedited basis, the following alternative forms of relief:

(1) A Declaratory Order from the Commission declaring that the capacity in question was assigned to KNE by reason of its status as the incumbent provider of local distribution service to customers in Neligh, Nebraska during the restructuring of KNI, and ordering an assignment to Neligh of a proportionate amount of the FTS and NNS capacity on KNI, allocated to KNE in restructuring, adequate to serve Neligh.

(2) In the alternative, an order from the Commission pursuant to Sections 5, 7, and 16 of the NGA finding that KNI's refusal to provide service is unjust, unreasonable, unduly discriminatory, and preferential, and requiring KNI to provide gas transportation service to Neligh.

(3) In the alternative, a grant of Neligh's Application under Section 7(a) of the NGA to require KNI to extend and improve its transportation facilities to provide the transportation service sought by Neligh or provide such other relief as is authorized under the NGA to accommodate Neligh's need for interstate gas transportation service to serve the Neligh community.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 3, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copes of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before April 3, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7794 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Meeting

March 24, 2000.

Take notice of the following scheduled meeting of the Mokelumne Relicensing Collaborative. There will be a full group meeting on Wednesday, April 26, 2000, and Thursday, April 27, 2000.

All meetings will be from 9 a.m. to 4 p.m. at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696 so that they can get through security.

For further information, please contact Elizabeth Molloy at (202) 208–0771.

David P. Boergers,

Secretary.

[FR Doc. 00–7793 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC00–65–000, et al.]

Avista Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 24, 2000.

Take notice that the following filings have been made with the Commission:

1. Avista Energy, Inc.

[Docket No. EC00–65–000]

Take notice that on March 17, 2000, Avista Energy, Inc, (Avista Energy) submitted for filing an application for authorization under Federal Power Act Section 203 for the disposition of Avista Energy's rights and obligations under certain of its wholesale power agreements, and associated books and records, to Constellation Power Source, Inc. Avista Energy requests expedited approval of the application.

Comment date: April 17, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. PJM Interconnection, L.L.C.

[Docket No. ER00–1794–001]

Take notice that on March 22, 2000, PJM Interconnection, L.L.C. (PJM), supplemented its March 3, 2000 filing in this docket by tendering a Revised Exhibit 1 that corrects a typographical error in the originally filed exhibit.

Copies of this supplemental filing were served upon all PJM Members and the state electric regulatory commissions in the PJM Control Area.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Sun River Electric Cooperative, Inc.

[Docket Nos. ER00–1920–000]

Take notice that on March 20, 2000, Sun River Electric Cooperative, Inc. (SREC) submitted for filing its Agreement for Transmission Service between Montana Power Company and Sun River Electric Cooperative, Inc. (Agreement), pursuant to Section 205 of the Federal Power Act (FPA), 16 U.S.C. § 824d, and Section 35.12 of the Regulations of the Federal Energy Regulatory Commission (Commission), 18 CFR 35.12. SREC's filing is available for public inspection at its offices in Fairfield, Montana.

SREC requests that the Commission accept the Agreement with an effective date of March 24, 2000.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Allegheny Energy Service Corporation, on Behalf of Monongahela Power Company, The Potomac Edison Company, and West Penn Power Company (Allegheny Power)

[Docket No. ER00–1927–000]

Take notice that on March 21, 2000, Allegheny Energy Service Corporation on behalf of West Penn Power Company (Allegheny Power), filed an Interconnection Agreement (Agreement) with Allegheny Energy Unit 1 and Unit 2, LLC.

The proposed effective date under the Agreement is November 15, 1999.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, and the West Virginia Public Service Commission.

Comment date: April 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Western New York Wind Corp.

[Docket No. ER00–1928–000]

Take notice that on March 21, 2000, Western New York Wind Corp. (Western Wind), a New York corporation with its headquarters in Wyoming County, New York, tendered for filing, pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207, an initial rate schedule for the sale of electricity at market-based rates.

Western Wind requests that its tariff become effective May 18, 2000.

Comment date: April 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Central Illinois Light Company

[Docket No. ER00–1929–000]

Take notice that on March 21, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61602, tendered for filing with the Commission a substitute Index of Point-To-Point Transmission Service Customers under its Open Access Transmission Tariff and service agreements for one new customer, Allegheny Energy Supply Company, LLC.

CILCO requested an effective date of March 10, 2000 for the service agreements.

Copies of the filing were served on the affected customer and the Illinois Commerce Commission.

Comment date: April 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Allegheny Energy Service Corporation, on Behalf of Allegheny Energy Supply Company, LLC

[Docket No. ER00–1930–000]

Take notice that on March 21, 2000, Allegheny Energy Service Corporation on behalf of Allegheny Energy Supply Company, LLC (Allegheny Energy Supply Company) filed Amendment No. 3 to Supplement No. 9 to complete the filing requirement for one (1) new Customer of the Market Rate Tariff under which Allegheny Energy Supply offers generation services.

Allegheny Energy requests a waiver of notice requirements to make service available as of November 24, 1999, to Strategic Energy L.L.C.

Copies of the filing have been provided to the Public Utilities Commission of Ohio, the Pennsylvania Public Utility Commission, the Maryland Public Service Commission, the Virginia State Corporation Commission, the West Virginia Public Service Commission, and all parties of record.

Comment date: April 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. PJM Interconnection, L.L.C.

[Docket No. ER00–1931–000]

Take notice that on March 21, 2000, PJM Interconnection, L.L.C. (PJM) tendered for filing Southern Company Retail Energy Marketing L.P.'s signature page to the Reliability Assurance Agreement among Load Serving Entities in the PJM Control Area (RAA), and an amended Schedule 17 listing the parties to the RAA.

PJM states that it served a copy of its filing on all parties to the RAA, including Southern Company Retail Energy Marketing L.P., and each of the state electric regulatory commissions within the PJM Control Area.

Comment date: April 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. PJM Interconnection, L.L.C.

[Docket No. ER00–1932–000]

Take notice that on March 21, 2000, PJM Interconnection, L.L.C. (PJM), tendered for filing two executed service agreements. One agreement is a long-term firm point-to-point transmission service with Delmarva Power & Light Company, and the other is an umbrella service agreement for network integration transmission service under state required retail access programs with EconnergyEnergy Company, Inc.

Copies of this filing were served upon both Delmarva Power & Light Company and EconnergyEnergy Company, Inc.

The requested effective dates of the service agreements are March 7, 2000 for Delmarva Power & Light Company and March 3, 2000 for EconnergyEnergy Company, Inc.

Comment date: April 11, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7834 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1782–001, et al.]

Duke Energy Trenton, LLC, et al.; Electric Rate and Corporate Regulation Filings

March 23, 2000.

Take notice that the following filings have been made with the Commission:

1. Duke Energy Trenton, LLC

[Docket No. ER00–1782–001]

Take notice that on March 20, 2000, Duke Energy Trenton, LLC (Duke Trenton) tendered for filing a supplemental filing to its Application for authorization to engage in market-based rate sales submitted in the above-referenced docket on March 2, 2000.

The supplemental filing consolidates Duke Trenton's proposed Rate Schedules FERC Nos. 1, 2, and 3 into one tariff, FERC Electric Tariff No. 1.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. Duke Energy Vermillion, LLC

[Docket No. ER00–1783–001]

Take notice that on March 20, 2000, Duke Energy Vermillion, LLC (Duke Vermillion) tendered for filing a supplemental filing to its Application for authorization to engage in market-based rate sales submitted in the above-referenced docket on March 2, 2000.

The supplemental filing consolidates Duke Vermillion's proposed Rate Schedules FERC Nos. 1, 2, and 3 into one tariff, FERC Electric Tariff No. 1. In addition, the Test Power Purchase Agreement, referred to in the Application as Rate Schedule FERC No. 4, will be redesignated as Rate Schedule FERC No. 1.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Energy Madison, LLC

[Docket No. ER00–1784–001]

Take notice that on March 20, 2000, Duke Energy Madison, LLC (Duke Madison) tendered for filing a supplemental filing to its Application for authorization to engage in market-based rate sales submitted in the above-referenced docket on March 2, 2000.

The supplemental filing consolidates Duke Madison's proposed Rate Schedules FERC Nos. 1, 2, and 3 into one tariff, FERC Electric Tariff No. 1. In addition, the Test Power Purchase Agreement, referred to in the Application as Rate Schedule FERC No. 4, will be redesignated as Rate Schedule FERC No. 1.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Avista Corporation

[Docket No. ER00–1917–000]

Take notice that on March 20, 2000, Avista Corporation, tendered for filing with the Federal Energy Regulatory Commission pursuant to section 35.12 of the Commissions, 18 CFR Part 35.12, an executed Amendment to a Mutual Netting Agreement with Benton County PUD previously filed with the FERC under Docket No. ER99–4136–000, Service Agreement No. 274, effective 7/1/99 changing billing and payment terms.

AVA requests waiver of the prior notice requirements and requests an effective date of March 1, 2000 for the amended terms for net billing of transactions.

Notice of the filing has been served upon the following: Mr. James W. Sanders, General Manager, Benton County PUD, 2721 West 10th Avenue, P O Box 6270, Kennewick, WA 99336–0270.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. UtiliCorp United Inc.

[Docket No. ER00–1918–000]

Take notice that on March 20, 2000, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Allegheny Energy Supply Company, LLC for service under its Non-Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. UtiliCorp United Inc.

[Docket No. ER00–1919–000]

Take notice that on March 20, 2000, UtiliCorp United Inc. (UtiliCorp) filed service agreements with Allegheny Energy Supply Company, LLC for service under its Short-Term Firm Point-to-Point open access service tariff for its operating divisions, Missouri Public Service, WestPlains Energy-Kansas and WestPlains Energy-Colorado.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Central Illinois Light Company

[Docket No. ER00–1921–000]

Take notice that on March 20, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission an Index of Customers under its Market Rate Power Sales Tariff and name changes for three customers, from El Paso Power Services Company to El Paso Merchant Energy, L.P.; from Illinova Power Marketing, Inc. to Dynegy Power Marketing, Inc. and from Sonat Power Marketing, L.P. to El Paso Merchant Energy, L.P.

CILCO requested an effective date of March 13, 2000 for the new index.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Electric Power Company

[Docket No. ER00–1922–000]

Take notice that on March 20, 2000, Wisconsin Electric Power Company (Wisconsin Electric) , tendered for filing a notification indicating a name change for an electric service agreement under its Coordination Sales Tariff (FERC Electric Tariff, First Revised Volume No. 2) as requested by the customer.

Wisconsin Electric respectfully requests effective March 1, 2000, Service Agreement No. 78 with Williams Energy Service Company is changed to Williams Energy Marketing & Trading Company (Williams).

Copies of the filing have been served on Williams, the Michigan Public Service Commission, and the Public Service Commission of Wisconsin.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Central Illinois Light Company

[Docket No. ER00–1923–000]

Take notice that on March 20, 2000, Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, Illinois 61202, tendered for filing with the Commission a substitute Index of Customers under its Coordination Sales Tariff and name changes for four customers from Citizens Power Sales to Citizens Power Sales LLC.; from El Paso Power Services Company to El Paso Merchant Energy, L.P.; from Illinova Power Marketing, Inc. to Dynegy Power Marketing, Inc. and from Sonat Power Marketing, L.P. to El Paso Merchant Energy, L.P.

CILCO requested an effective date of March 13, 2000 for the new index.

Copies of the filing were served on the affected customers and the Illinois Commerce Commission.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. The Toledo Edison Company

[Docket No. ER00–1924–000]

Take notice that on March 20, 2000 The Toledo Edison Company tendered for filing, an amendment to the Interconnection and Service Agreement with American Municipal Power-Ohio, Inc. (AMP-Ohio) which deletes Section 2.04 to eliminate an obsolete reference, revises Section 1.09(a) of Schedule A to increase the permissible monthly deposit to or withdraw from the Base Capacity Bank by AMP-Ohio, and revises Schedule K to reflect the delivery points now served under the FirstEnergy Open Access Tariff. There is no rate effect associated with this filing. This filing is made pursuant to Section 205 of the Federal Power Act.

Comment date: April 20, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Southwestern Public Service Company

[Docket No. ER00–1925–000]

Take notice that on March 20, 2000, New Century Services, Inc., on behalf of Southwestern Public Service Company (Southwestern), submitted an executed umbrella service agreement under Southwestern's market-based sales tariff with South Plains Electric Cooperative, Inc. (South Plains). This umbrella service agreement provides for Southwestern's sale and South Plain's purchase of capacity and energy at market-based rates pursuant to Southwestern's market-based sales tariff.

Southwestern requests that this service agreement become effective on March 20, 2000.

Comment date: April 10, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7835 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–060]

El Dorado Irrigation District; Notice of Availability of Draft Environmental Assessment

March 24, 2000.

A draft environmental assessment (DEA) is available for public review. The DEA was prepared in support of Commission action on a proposed license amendment for the El Dorado Project. The proposed amendment would allow the reconstruction of the project's diversion dam and construction of a two-mile-long tunnel to bypass a section of the project's canal that is damaged and/or situated on unstable slopes. The DEA finds that approval of the proposed amendment, with staff's recommended mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment. The El Dorado Project is located on the South Fork of the American River, in El Dorado, Amador, and Alpine counties, California.

The DEA was written by staff in the Office of Energy Projects, Federal Energy Regulatory Commission. Copies of the DEA can be viewed at the Commission's Reference and Information Center, Room 2A, 888 First Street, NE., Washington, DC 20426, or by calling 202–208–1371. The document can be viewed on the web at http://rimsweb1.ferc.fed.us/rims (call 202–208–2222 for assistance). Copies can also be obtained by calling the project manager listed below.

Please submit any comments (an original and eight copies) on the DEA within 45 days from the date of this notice. Any comments, conclusions, or recommendations that draw upon studies, reports or other working papers of substance should be supported by appropriate documentation.

Comments should be addressed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Please affix Project No. 184–060 to all comments. For further information, please contact the project manager, John Mudre, at (202) 219–1208.

Federal, state, and local agencies are invited to file comments on the DEA. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments.

David P. Boergers,

Secretary.

[FR Doc. 00–7792 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1494–172 Oklahoma]

Grand River Dam Authority; Notice of Availability of Draft Environmental Assessment

March 24, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47910), the Office of Energy Projects has prepared a draft environmental assessment (DEA) on the Grand River Dam Authority's application for approval of a new commercial dock facility. The Grand River Dam Authority proposes to permit Lewis Perrault, d/b/a Lewie Development Company (permittee), to construct and operate a commercial dock facility on Grand Lake's Grand Craft Cove, about 2 miles from the Pensacola Dam. The proposed facility includes nine boat slips and an area for swimming and temporary boat mooring and will be used in conjunction with the permittee's planned commercial development on his adjoining property. The Pensacola Project is on the Grand River, in Craig, Delaware, Mayes, and Ottawa Counties, Oklahoma.

In the DEA, staff concludes that approval of the proposed action would not constitute a major Federal action significantly affecting the quality of the human environment. Copies of the DEA can be obtained by calling the Commission's Public Reference Room at (202) 208–1371. Copies of the DEA can also be obtained through the Commission's homepage at *http://www.ferc.fed.us.*

Please submit any comments within 30 days from the date of this notice. Comments should be addressed to: Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 1494–172 to all comments. For further information, please contact the project manager, Jon Cofrancesco at (202) 219–0079 or at e-mail address *Jon.Cofrancesco@ferc.fed.us.*

David P. Boergers,

Secretary.

[FR Doc. 00–7791 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–51–000]

East Tennessee Natural Gas Company; Notice of Intent To Prepare an Environmental Assessment for the Proposed Rocky Top Expansion Project, and Request for Comments on Environmental Issues

March 27, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare an environmental assessment (EA) that will discuss the environmental impacts of the construction, testing, operation, and abandonment of facilities proposed in the East Tennessee Natural Gas Company (East Tennessee) Rocky Top Expansion Project in various counties of Virginia and Tennessee.[1] These facilities would consist of about 15.1 miles of pipeline, about 0.7 mile of pipeline replacement at seventeen road crossings, three new meter stations and a modification to an existing meter station, mainline valves, uprating of four compressor units and four meter stations, hydrostatic testing of about 26.7 miles of pipeline to increase the maximum allowable operating pressure (MAOP), and the abandonment of about 0.7 mile of pipeline. The EA will be used by the Commission in its decision-making process to determine whether the project is in the public convenience and necessity.

If you are a landowner on East Tennessee's proposed route and receive this notice, you may be contacted by a pipeline company representative about the acquisition of an easement to construct, operate, and maintain the proposed facilities. The pipeline company would seek to negotiate a mutually acceptable agreement. However, if the project is approved by the Commission, that approval conveys with it the right of eminent domain. Therefore, if easement negotiations fail to produce an agreement, the pipeline company could initiate condemnation proceedings in accordance with state law.

A fact sheet prepared by the FERC entitled "An Interstate Natural Gas Facility On My Land? What Do I Need To Know?" was attached to the project notice East Tennessee provided to landowners along and adjacent to the proposed route. This fact sheet addresses a number of typically asked questions, including the use of eniment domain and how to participate in the Commission's proceedings. It is available for viewing on the FERC Internet website (www.ferc.fed.us).

This Notice of Intent (NOI) is being sent to landowners of property crossed by and adjacent to East Tennessee's proposed route; Federal, state, and local agencies; elected officials; environmental and public interest groups; Indian tribes that might attach religious and cultural significance to historic properties in the area of potential effects; local libraries and newspapers; and the Commission's list of parties to the proceeding. State and local government representatives are encouraged to notify their constituents of this proposed action and encourage them to comment on their areas of concern.

Additionally, with this NOI we[2] are asking those Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the EA. These agencies may choose to participate once they have evaluated East Tennessee's proposal relative to their agencies' responsibilities. Agencies who would like to request cooperating status should follow the instructions for filing comments described below.

Summary of the Proposed Project

East Tennessee is proposing the Rocky Top Expansion Project to satisfy the growing demand for natural gas in the western Virignia and eastern Tennessee regions. The project would provide new firm service to meet increased market demand of specific customers as well as provide system-wide benefits. East Tennessee is requesting authorization to increase its pipeline capacity by a total of 35,068 dekatherms (Dth) per day through the installation of additional pipeline, hydrostatic testing to increase MAOP, pipeline replacement, compressor horsepower and meter station uprates, and installation of additional metering facilities.

East Tennessee proposes to construct the following new facilities on its 3300 and 3100 Lines.

- About 15.1 miles of 12-inch-diameter pipeline loop[3] in Wythe, Smyth, and Washington Counties, Virginia;
- Four new meter stations—the Hawkins Meter Station in Greene County, Tennessee; the Lenoir City Meter Station in Roane County, Tennessee; the Etowah Meter Station in McMinn County, Tennessee; and a bi-directional meter station at the existing Citizens Meter Station in Morgan, County, Tennessee;

East Tennessee proposes to increase the MAOP of several sections on its 3100 and 3200 Lines through hydrostatic testing activities and pipeline replacements at road crossings:

- Uprate the MAOP of about 12.8 miles of 22-inch-diameter pipeline from main line valve (MLV) 3107–1A in Overton County, Tennessee to MLV 3108–1 in Fentress County, Tennessee, through hydrostatic testing, including pipeline replacements at six road crossings, and the installation of pressure control facilities at East Tennessee's Monterey Lateral;
- Uprate the MAOP of about 4.6 miles of 22-inch-diameter pipeline from MLV 3107–1 to MLV 3107–1A in Overton County, Tennessee, through hydrostatic testing of a pipeline replacement at one road crossing;[4]
- Uprate the MAOP of about 13.6 miles of 22-inch-diameter pipeline from MLV 3105–1 in Smith County, Tennessee to MLV 3105–1E2 in Jackson County, Tennessee, through hydrostatic testing, including pipeline replacement at ten road crossings, and the installation of pressure control facilities at East Tennessee's Carthage Lateral;
- Uprate the MAOP of the 0.3 mile dual 10-inch-diameter Tennessee River pipeline crossing in Hamilton County, Tennessee, through hydrostatic testing of the crossing, and the relocation of the river crossing valve assemblies; and
- Uprate the MAOPs of four existing meter stations on the 3200 Line in Hamilton County, Tennessee.

East Tennessee also proposes an uprate of horsepower (hp) at two compressor stations:

- Uprate of two turbine units from 1,000 hp to 1,450 hp, and one unit from 1000 hp to 1.360 hp at Station 3101 in Robertson County, Tennessee, and
- Uprate of the single turbine unit from 1,360 hp to 1,590 hp at Station 3210 in Marion County, Tennessee.

East Tennessee also proposes to replace 0.7 mile of pipeline at the seventeen road crossings in order to meet the applicable U.S. Department of Transportation strength and safety regulations applicable to the higher MAOP. As such, East Tennessee proposes to abandon by removal 0.6 mile and abandon in place 0.1 mile of pipeline to effect this replacement.

The general location of East Tennessee's proposed facilities is shown on the map attached as appendix 1.[5]

Land Requirement for Construction

Proposed Pipeline Looping—Virginia: Constructionof East Tennessee's proposed pipeline facilities would require about 241 acres of land. East Tennessee proposes to use a 100-foot-wide construction right-of-way, and retain a 50-foot wide permanent pipeline right-of-way. Total land requirements for the permanent right-of-way would be about 92 acres.

Proposed MAOP Increase and Hydrotest—Tennessee: The replacement of seventeen road crossings associated with the MAOP increase would affect about 43 acres of land during construction and would require about 7 acres of land during operation. The hydrostatic testing of about 26.7 miles of pipeline would require about 0.1 acre of temporary work space to install the proper facilities for testing. About 2.5 acres of land would be disturbed during the relocation of the existing valves at the Tennessee River crossing, of which about 0.2 acre would be permanently affected. All temporary work space would be allowed to revert to its original land use.

Proposed Meter Stations and Pressure Control Facilities—Tennessee: Construction and operation of three new meter stations would affect about 2 acres of land. About 0.2 acre of land within an existing meter station would be affected by the installation of a bi-directional meter. East Tennessee would disturb about 1 acre of land in the hydrostatic testing of its four existing meter stations, with no additional land required for operation. The installation of the pressure control facilities would require about 1.5 acres of land within the existing permanent right-of-way and would require no additional permanent operating acreage.

The EA Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from an action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping." The main goal of the scoping process is to focus the analysis in the EA on the important environmental issues. By this NOI, the Commission requests public comments on the scope of the issues it will address in the EA. All comments received are considered during the preparation of the EA.

Our independent analysis of the issues will be the EA. Depending on the comments received during the scoping process, the EA may be published and mailed to Federal, state, and local agencies, elected officials, affected landowners, regional public interest groups, Indian tribes, local newspapers and libraries, and the Commission's official service list for this proceeding. A comment period will be allotted for review if the EA is published. We will consider all comments on the EA before we make our recommendations to the Commission.

Currently Identified Environmental Issues

The EA will discuss impacts that could occur as a result of construction and operation of the proposed project. We have already identified a number of issues that was think deserve attention based on a preliminary review of the proposed facilities and the environmental information provided by East Tennessee. This preliminary list of issues may be changed based on your comments and our analysis.

- Geology and Soils
  - —Potential geologic hazards.
  - —Crossing of erosion prone soils.
- Water Resources and Wetlands
  - —Impact of groundwater and surface water resources.
  - —Impact on wetland hydrology.
- Biological Resources
  - —Impact on wildlife and fishery habitats.
  - —Potential impact on Federal- and State-listed threatened or endangered species.
- Cultural Resources
  - —Effect on prehistoric and historic sites.
  - —Native American concerns.
- Land Use
  - —Impact on residential areas (7 residences within 50 feet of the construction work area in Virginia).
  - —Impact on public lands and special use areas including the Tennessee River Park.

[1] East Tennessee's application was filed with the Commission on December 13, 1999, under Section 7 of the Natural Gas Act and Part 157 of the Commission's regulations.

[2] "We," "us," and "our" refer to the environment staff of the Office of Energy Projects, part of the Commission staff.

[3] A loop is a segment of pipeline that is installed adjacent to an existing pipeline and connected to it on both ends. The loop allows more gas to be moved through the pipeline system.

[4] In 1999, as part of the Virginia Expansion Project (Docket No. CP98–40–000], this 4.6 mile section was uprated by hydrostatic testing and replacing pipeline at all of the road crossings in this section, except for one.

[5] The appendices referenced in this notice are not being printed in the **Federal Register.** Copies are available on the Commission's website at the "RIMS" link or from the Commission's Public Reference and Files Maintenance Branch, 888 First Street, NE, Room 2A, Washington, DC 20426, or call (202) 208–1371. For instructions on connecting to RIMS refer to the last page of this notice. Copies of the appendices were sent to all those receiving this notice in the mail.

—Visual effect of the new aboveground facilities on surrounding areas.

- Air and Noise Quality
  —Impacts on local air quality and noise environment as a result of the operation of the uprated horsepower units at existing Compressor Stations 3101 and 3210.

Public Participation

You can make a difference by providing us with your specific comments or concerns about the project. By becoming a commentor, your concerns will be addressed in the EA and considered by the Commission. You should focus on the potential environmental effects of the proposal, alternatives to the proposal (including alternative locations or routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded.

- Send two copies of your letter to: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First St., N.E., Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Environmental Gas Group 1, PJ–11.1;
- Reference Docket No. CP00–51–000; and
- Mail your comments so that they will be received in Washington, DC on or before April 28, 2000.

[If you do not want to send comments at this time but still want to remain on our mailing list, please return the Information Request (appendix 3). If you do not return the Information Request, you will be removed from the environmental mailing list.]

Becoming an Intervenor

In addition to involvement in the EA scoping process, you may want to become an official party to the proceeding known as an "intervenor." intervenors play a more formal role in the process. Among other things, Intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide 14 copies of its filings to the Secretary of the Commission and must send a copy of its filings to all other parties on the Commission's service list for this proceeding. If you want to become an intervenor you must file a motion to intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) (see appendix 2). Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPS helpline can be reached at (202) 208–2474.

David P. Boergers,

Secretary.

[FR Doc. 00–7836 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

March 24, 2000.

a. *Application Type:* Application to Amend the (monor-part) License for the Donnels-Standard City Transmission Line Project.

b. *Project No:* 2118.

c. *Date Filed:* November 29, 1999.

d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* Donnells-Standard City Transmission Line Project.

f. *Location:* The Project is located in Tuolumne County, California. The project occupies lands of the United States in the Stanislaus National Forest.

g. *Filed Pursuant to:* Federal Energy Regulatory Commission Regulation, 18 CFR 4.200.

h. *Applicant Contact:* Kathyrn Petersen, Sr. License Coordinator, Electric Transmission Department, PG&E, 2730 Gateway Oaks Drive, Suite 120, Sacramento, CA 95833, (916) 923–7055.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jack Duckworth at (202) 219–2818 or by e-mail at jack.duckworth@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* 45 days from the date of this notice.

All documents (original and eight copies) should be filed with: David Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426.

Please include the project number (P–2118) on any comments or motions filed.

k. *Description of Filing:* PG&E proposes to delete non-jurisdictional transmission facilities from the project license. Specifically, PG&E states that the transmission lines extending from Curtis Substation to Spring Gap Powerhouse, including the Spring Gap Tap, are now used to serve distribution system load and are no longer subject to licensing as primary project lines within the meaning of § 3(11) of the Federal Power Act. PG&E further states that the remaining portions of the transmission facilities extending from Spring Gap Junction to Donnells Powerhouse, and the Beardsley Tap remain jurisdictional and should remain in the license. The licensee filed revised exhibit J and K drawings to show those the transmission facilities which remain jurisdictional and those which they propose be removed from the license. Project boundaries were modified accordingly to reflect these changes. The licensee also filed a Transmission Operating Diagram (one-line diagram) of the project. The acreage of federal lands encompassed by the Project will be reduced by 69.18 acres. PG&E has applied to the Forest Service for an easement to cover the continued operation and maintenance of the transmission lines to be removed from the project license.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–7795 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

a. *Application Type:* Application Amend the (monor-part) License for the Woodleaf-Powerhouse (Woodleaf-Palermo) Transmission Line Project.

b. *Project No:* 2281.

c. *Data Filed:* November 29, 1999.

d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* Woodleaf Powerhouse Transmission Line Project.

f. *Location:* The Project is located in Butte County, California. The project occupies lands of the United States in the Plumas National Forest.

g. *Filed Pursuant to:* Federal Energy Regulatory Commission Regulation, 18 CFR 4.200.

h. *Applicant Contact:* Kathryn Petersen, Sr. License Coordinator, Electirc Transmission Department, PG&E, 2730 Gateway Oaks Drive, Suite 120, Sacramento, CA 95833, (916) 923–7055.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jack Duckworth at (202) 219–2818 or by e-mail at jack.duckworth@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* 45 days from the date of this notice.

All documents (original and eight copies) should be filed with: David Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2281) on any comments or motions filed.

k. *Description of Filing:* PG&E proposes to delete non-jurisdictional transmission facilities from the project license. Specifically, PG&E states that the transmission line extending from Palermo Substation to Kanaka Junction is now used to serve distribution system load is no longer subject to licensing as primary project lines within the meaning of § 3(11) of the Federal Power Act. PG&E further states that the remaining portions of the transmission facilities extending from Kanaka Junction to Woodleaf Powerhouse, and the Forbestown Tap remain jurisdictional and should remain in the license. The licensee filed revised exhibit J and K drawings to show those transmission facilities which remain jurisdictional and those which they propose be removed from the license. Project boundaries were modified accordingly to reflect these changes. The licensee also filed a Transmission Operating Diagram (one-line diagram) of the project. The acreage of federal lands encompassed by the Project will be reduced by 18.81 acres. PG&E has applied to the Forest Service for an easement to cover the continued operation and maintenance of the transmission lines to be removed from the project license.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–7796 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

March 24, 2000.

a. *Application Type:* Application to Amend the (monor-part) License for the French Meadows (Middle Fork American River) Transmission Line Project.

b. *Project No:* 2479.

c. *Date Filed:* November 29, 1999.

d. *Applicant:* Pacific Gas and Electric Company (PG&E).

e. *Name of Project:* French Meadows Transmission Line Project.

f. *Location:* The Project is Placer and El Dorado Counties, California. The project occupies lands of the United States in the Tahoe and Eldorado National Forests.

g. *Filed Pursuant to:* Federal Energy Regulatory Commission Regulation, 18 CFR 4.200.

h. *Applicant Contact:* Kathryn Petersen, Sr. License Coordinator, Electric Transmission Department, PG&E, 2730 Gateway Oaks Drive, Suite 120, Sacramento, CA 95833, (916) 923–7055.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Jack Duckworth at (202) 219–2818 or by e-mail at jack.duckworth@ferc.fed.us.

j. *Deadline for filing comments and/or motions:* 45 days from the date of this notice.

All documents (original and eight copies) should be filed with: David Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Please include the project number (P–2479) on any comments or motions filed.

k. *Description of Filing:* PG&E proposes to delete non-jurisdictional transmission facilities from the project license. Specifically, PG&E states that the transmission lines extending from Middle Fork Powerhouse to Forest Hill Substation and from Middle Fork Powerhouse to Gold Hill Substation are now used to serve network reliability functions and are no longer subject to licensing as primary project lines within the meaning of § 3(11) of the Federal Power Act. PG&E further states that the remaining portions of the transmission facilities extending from French Meadows Powerhouse to Middle Fork Powerhouse, from Ralston Powerhouse to the Middle Fork-Gold Hill 230kV line, and the Oxbow Tap remain jurisdictional and should remain in the license. The licensee filed revised exhibit J and K drawings to show those the transmission facilities which remain jurisdictional and those which they propose be removed from the license. Project boundaries were modified accordingly to reflect these changes. The licensee also filed a Transmission Operating Diagram (one-line diagram) of the project. The acreage of federal lands encompassed by the Project will be reduced by 18.16 acres in Tahoe National Forest and 68.71 acres in Eldorado National Forest. PG&E has applied to the Forest Service for an easement to cover the continued operation and maintenance of the transmission lines to be removed for the project license.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–7797 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

March 24, 2000.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. The documents may be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

EXEMPT

1. CP00–67–000	3–10–00	Juan Polit.
2. Project No. 1927	3–1–00	Timothy C. O'Connor.
3. CP98–150–000	3–10–00	Stanley W. Gorski.
4. Project No. 2306	3–1–00	Gary L. Kellogg.
5. CP98–150–000	3–10–00	Joanne Wachholder, FERC.
6. CP00–36–000	12–20–99	Anne E. Haaker.
7. CP99–94–000	3–1–00	David L. Hankla.
8. CP99–94–000	3–15–00	State of Florida Department of Environmental Protection.
9. Project No. 2471–000	3–6–00	The Waucedah Township Board.
10. CP00–14–000, *et al*	3–14–00	Janet Rowe.
11. CP00–14–000, *et al*	3–14–00	Kim Jessen.
12. CP00–14–000, *et al*	3–14–00	Kim Jessen.
13. CP00–14–000, *et al*	3–14–00	Kim Jessen.
14. Project No. 1981–000	3–6–00	Charles Verhoeven.
15. CP00–36–000	3–16–00	Louis A. Olson.
16. CP00–36–000	3–13–00	Matthew C. Weidensee.
17. Project Nos. 10100 and 10416	2–9–00	John Phipps.
18. CP00–14–000	3–1–00	Andreas Mager, Jr.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–7798 Filed 3–29–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Revised Landowner Pamphlet

March 24, 2000.

The "most recent edition" of the Commission's pamphlet: "An Interstate Natural Gas Facility on My Land? What Do I Need to Know?" has been issued. It is dated March 2000. The revisions are marked by a blue triangle in the margin and were made to conform to the recent rehearing Order 609 A.

The revised pamphlet is available on the Commission's website. From the home page at *www.ferc.fed.us* select the link to the Office of External Affairs in the lower right column of links, or enter *www.ferc.fed.us/intro/oea* directly into your browser. The link to the revised pamphlet (*www.ferc.fed.us/intro/oea/6513gpo.pdf*) is on this page. This version should be used and may be copied until the full color version of the pamphlet is available through the Government Printing Office (GPO). The Commission will issue a further notice when the pamphlet may be obtained from the GPO.

Questions about the pamphlet should be directed to: Federal Energy Regulatory Commission, Office of External Affairs, 888 First Street, N.E., Washington, DC 20426, (202) 208–1088.

David P. Boergers,

Secretary.

[FR Doc. 00–7789 Filed 3–30–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6568–2]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Information Collection Request for the State Water Quality Program Management Gap Analysis

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Information Collection Request for the State Water Quality Program Management Gap Analysis; EPA ICR No.1945.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 1, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1945.01. For technical information about the collection contact Carol Crow at (202) 260–6742.

SUPPLEMENTARY INFORMATION:

Title: Information Collection Request for the State Water Quality Program Management Gap Analysis; EPA ICR No. 1945.01. This is a new collection.

Abstract: The Environmental Protection Agency (EPA), in partnership with States, is conducting the State Water Quality Management Gap Analysis (Gap Analysis) to help enumerate current and future funding needs and to help identify innovative strategies for reducing resource gaps. To gather preliminary information in a short time frame, the Gap Analysis was divided into two phases. Phase I consisted of the development of an initial, national estimate of the resource gap faced by water quality management programs to provide a general idea of the magnitude of the resource gap faced by States.

Phase II of the Gap Analysis involves developing a detailed, activity-based workload model to provide a common framework and consistent methodology for States and EPA to estimate what it costs the States to meet the objectives of the Clean Water Act (CWA). In order to complete the model, EPA's Office of Wastewater Management (OWM) needs to gather data on the resources needed

by each State for water quality management activities.

This is a one time collection effort by OWM and responses to this ICR are voluntary. The collection is necessary to develop a detailed activity-based workload model that will provide an estimate of the resource needs facing water quality management programs, both for individual States and the nation. EPA will use the collected information to estimate resource needs for water quality management activities.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 13, 2000 (65 FR 2162); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 180.15 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: State Water Quality Management Programs.

Estimated Number of Respondents: 20.

Frequency of Response: Once.

Estimated Total Annual Hour Burden: 3603 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1945.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503

Dated: March 22, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–7884 Filed 3–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6568–3]

Agency Information Collection Activities: Submission for OMB Review; Comment Request, Standard of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: NSPS Subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units, OMB No. 2060-0202, expires 6/30/00. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 1, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by E-Mail at Farmer.Sandy@epamail.epa.gov or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1564.05. For technical questions about the ICR contact Chris Oh at (202) 564–7004.

SUPPLEMENTARY INFORMATION: *Title:* NSPS-Subpart Dc, Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units (OMB Control No. 2060–0202; EPA ICR No. 1564.05) expiring June 30, 2000. This is a request for extension of a currently approved collection.

Abstract: Owners or operators of Small Industrial-Commercial-Institutional Steam Generating Units subject to NSPS subpart Dc must make one-time-only notification of construction/reconstruction, anticipated and actual startup, initial performance test, physical or operational changes, and demonstration of a continuous monitoring system. They must also submit a report on initial performance test results, monitoring results, and excess emissions. Records must be maintained of startups, shutdowns, malfunctions, periods when the continuous monitoring system is inoperative, and of various fuel combustion and pollutant emission parameters.

The required notifications are used to inform the Agency or delegated authority when a source becomes subject to the standard. Performance test reports are needed as these are the Agency's records of a source's initial capability to comply with the emission standard, and serve as a record of the operating conditions under which compliance was achieved. The monitoring and excess emissions reports are used for problem identification, as a check on source operation and maintenance, and for compliance determination. The information collected from recordkeeping and reporting requirements are used for targeting inspections, and for other uses in compliance and enforcement programs.

Responses to these information collections are deemed to be mandatory, per section 114(a) of the Clean Air Act. The required information consists of emissions data and other information that have been determined not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies se forth in Title 40, Chapter 1, part 2, subpart B-Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 4000, September 8, 1978; 43 FR 42251, September 20, 1978; 44 FR 17674, March 23, 1979)

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d),

soliciting comments on this collection of information was published on October 29, 1999 (64 FR 58396); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information are estimated to average 49 hours per response. A burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Owners/Operators of Small Industrial-Commercial-Institutional Steam Generating Units.

Estimated Number of Respondents: 708.

Frequency of Response: Quarterly and Semiannual.

Estimated Total Annual Hour Burden: 81,078 hours.

Estimated Total Annualized Capital, O&M Cost Burden: $7,680,000.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burdens, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1564.05 and OMB Control No. 2060–0202 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;

and

Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 20, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–7885 Filed 3–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6568–4]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Assess Compliance With EPCRA Section 312 Reporting Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Assess Compliance with EPCRA Section 312 Reporting Requirements, EPA ICR Number 1909.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 1, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1909.01. For technical questions about the ICR contact John Mason at (202) 564–7037, fax: (202) 564–0009, or email: mason.john@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Assess Compliance with EPCRA Section 312 Reporting Requirements, EPA ICR No. 1909.01. This is a new collection.

Abstract: The Emergency Planning and Community Right-to-know Act (EPCRA) section 312 requires facilities which are required to prepare or have available Material Safety Data Sheets (MSDS) as required by OSHA to submit an annual emergency and hazardous chemical inventory form containing the amount and location of hazardous chemicals stored at the facility. Although EPCRA section 312 is a federal requirement, State Emergency Response Commissions (SERCs) and Local Emergency Planning Committees (LEPCs) are the main recipients and benefactors of this information. The inventory reports allow "first responders" (*e.g.*, local fire departments) to be informed about the presence of hazardous chemicals in the community and help facilitate development of the local emergency response plan. They also enhance community awareness of chemical hazards in the local area.

EPA has initiated compliance projects among a number of industrial, service and/or government sectors including: the iron and steel industry, the primary nonferrous metals industry, metal services (electroplating and coating), the chemical preparation industry, pulp and paper mills, the telecommunications industry, coal-fired power plants, the automobile servicing industry, mining, the petroleum refineries, organic chemical manufacturers, and municipalities. These projects include, in some cases, efforts to enhance compliance with EPCRA section 312.

EPA will be working with states and facilities to assure and confirm compliance with EPCRA requirements. In particular, EPA will ask the states whether the facilities submitted their Tier I or II forms and when during the reporting year the forms were submitted. The information sought with this ICR is who among selected sectors that produce, use, or store hazardous chemicals (as defined by the Occupational Safety and Health Act of 1970) submitted Tier II forms to the SERC and/or the LEPC, and when did they submit them. This information is being sought to assess compliance with the requirements of EPCRA section 312.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on 08/27/99 (64 FR 46905); three comments were received.

Burden Statement: The annual public reporting burden for this collection of information is estimated to average 2.95 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources;

complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: States asked to review the Tier I or II submissions.

Estimated Number of Respondents: 53.

Frequency of Response: One time.

Estimated Total Annual Hour Burden: 2308 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1909.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 20, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–7886 Filed 3–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6567–9]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) Technical Subcommittee for Fine Particle Monitoring will meet on Tuesday and Wednesday, April 18–19, 2000 at the Governor's Inn, Route 54 and Davis Drive, Research Triangle Park, NC. The meeting will begin at 7:30 am and end no later than 5:00 pm on April 18th and begin at 9:00 am and end no later than 1:00 pm on April 19th. All times noted are Eastern Daylight Savings Time. The meeting is open to the public, however, due to limited space, seating will be on a first-come basis. For further information concerning specific meetings, please contact the individuals listed below.

Important Notice: Documents that are the subject of CASAC reviews are normally available from the originating EPA office and are not available from the CASAC Office—information concerning availability of documents from the relevant Program Office is included below.

Purpose of the Meeting—This technical subcommittee of CASAC was established in 1996 to provide advice and comment to EPA (through CASAC) on appropriate methods and network strategies for monitoring fine particles in the context of implementing the revised national ambient air quality standards (NAAQS) for particulate matter. The Subcommittee provided such advice on the Federal Reference Method and mass based fine particle network in July 1996 and is now meeting to examine EPA's plans and guidance for several components of the fine particle monitoring network and how these components are linked to research priorities for particulate matter.

At the meeting, staff from the Office of Air Quality Planning and Standards (OAQPS) and the Office of Research and Development (ORD) will provide briefings regarding status for the fine particle monitoring program with an emphasis on the chemical speciation and "Supersites" study programs. These briefings will include a review of the assessment of initial performance of chemical speciation samplers and progress reports on the chemical speciation and supersites networks. In addition, EPA will provide preliminary plans for developing coarse particle monitoring methods. The Agency staff and Subcommittee members will discuss the specific issues for the Charge to the Subcommittee during the meeting.

Availability of Review Materials: Hard copies of any background materials will be available from Ms. Brenda Millar, Office of Air Quality Planning and Standards (MD–14), U.S. EPA, Research Triangle Park, NC 27711. Ms. Millar can also be reached by telephone at (919) 541–4036 or by fax at (919) 541–1903. Electronic versions of the materials will be available on the Agency's TTN Bulletin Board, at http://www.epa.gov/ttn/amtic.

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about the meeting should contact Mr. Robert Flaak, Designated Federal Officer, Clean Air Scientific Advisory Committee, Science Advisory Board (1400A), Suite 6450, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4546; fax at (202) 501–0582; or via e-mail at <flaak.robert@epa.gov>. A copy of the draft agenda is available from Ms. Diana Pozun at (202) 564–4544 or by FAX at (202) 501–0582 or via e-mail at <pozun.diana@epa.gov>.

Members of the public who wish to make a brief oral presentation to the Subcommittee must contact Mr. Flaak in writing (by letter or by fax—see previously stated information) no later than 12 noon Eastern Daylight Savings Time, Tuesday, April 11, 2000 in order to be included on the Agenda. Public comments will be limited to ten minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (e.g., overhead projector, 35mm projector, chalkboard, etc), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in The Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Individuals requiring special accommodation at this meeting, including wheelchair access, should contact Mr. Flaak at least five business days prior to the meeting so that appropriate arrangements can be made.

Dated: March 22, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–7882 Filed 3–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6567–8]

Science Advisory Board; Notification of Public Advisory Committee Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Integrated Risk Project Peer Review Subcommittee of the Science Advisory Board will hold a public teleconference meeting on April 17, 2000, from 11:00–2:00 pm, Eastern Standard Time.

The meeting will be coordinated through a conference call connection located in Room 6013 of the Ariel Rios Building at the U.S. Environmental Protection Agency (EPA) located at 1200 Pennsylvania Avenue, NW, Washington, DC 20004. The building entrance is adjacent to the Federal Triangle Metro Stop on 12th Street. For directions and further information concerning the meeting, please contact the individuals given below. The public is welcome to attend the meeting physically or through a telephonic link. Seating and teleconference lines are limited and available on a first-come, first-served basis.

Purpose of the Meeting: At this meeting the Integrated Risk Project Subcommittee will review the revised report of the Integrated Risk Project: *Towards Integrated Environmental Decision-Making.*

FOR FURTHER INFORMATION CONTACT: Members of the public desiring additional information about this meeting should contact Dr. John R. Fowle III, Deputy Staff Director and Designated Federal Officer (DFO), Science Advisory Board (1400A), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4547; fax at (202) 501–0323; or via e-mail at fowle.jack@epa.gov or Ms. Wanda Fields, Management Assistant; telephone/voice mail at (202) 564–4539; fax at (202) 501–0582; or via email at fields.wanda@epa.gov. A copy of the draft agenda and copies of the background material will be available approximately two weeks prior to the meeting on the SAB website (www.epa.gov/sab) or from Ms. Wanda Fields at the fax or address noted above. Additional instructions about how to participate in the conference call can be obtained from Ms. Fields.

Making Oral Presentations During the Meetings

Members of the public who wish to make a brief oral presentation at the meeting must contact Dr. Fowle in writing (by email, by letter or by fax—see previously stated information) no later than 12 noon Eastern Time, April 10, 2000 in order to be included on the Agenda. Public comments will be limited to three minutes per speaker or organization. The request should identify the name of the individual making the presentation, the organization (if any) they will represent, any requirements for audio visual equipment (*e.g.*, overhead projector, 35mm projector, chalkboard, etc.), and at least 35 copies of an outline of the issues to be addressed or of the presentation itself.

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (http://www.epa.gov/sab) and in the Annual Report of the Staff Director which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: March 22, 2000.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 00–7883 Filed 3–29–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6566–4]

Notice of Availability of the Tribal Drinking Water Operator Certification Program Draft Guidelines

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is seeking comments from Tribes and other parties who will be affected by or are otherwise interested in the Tribal Drinking Water Operator Certification Program Draft Guidelines. EPA will consider the comments received when developing the final guidelines. There will be a 90-day comment period starting from the publication date of this notice of availability.

DATES: Comments should be postmarked or received via email by June 27, 2000.

ADDRESSES: Send comments to Attn: Staci Gatica (MC: 4606), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave. NW, Washington DC 20460. Comments can also be sent via email to gatica.staci@epamail.epa.gov. Typed comments are preferred.

AVAILABILITY: Please contact the Safe Drinking Water Hotline at 1–800–426–4791 to receive a copy of the Tribal Drinking Water Operator Certification Program Draft Guidelines. The draft guidelines are also available on the EPA Office of Ground Water and Drinking Water website at *http://www.epa.gov/safewater/tribal.html.*

FOR FURTHER INFORMATION CONTACT: The Safe Drinking Water Hotline, toll free (800) 426–4791, can be contacted for general information about and copies of this document. For technical inquiries, contact Staci Gatica, Implementation and Assistance Division, Office of Ground Water and Drinking Water (4606), Environmental Protection Agency, Ariel Rios Building, 1200 Pennsylvania Ave. NW, Washington DC 20460. The telephone number is (202) 260–3967 and the e-mail address is gatica.staci@epamail.epa.gov.

SUPPLEMENTARY INFORMATION: The Safe Drinking Water Act (SDWA) Amendments of 1996 direct the EPA, in cooperation with the States, to develop guidelines specifying minimum standards for certification and recertification of operators of State community and nontransient noncommunity public water systems. The requirements pertaining to States do not apply to Tribes but because having a certified operator is a key factor in public health protection, EPA is developing, in cooperation with Tribes, a voluntary Tribal Drinking Water Operator Certification Program. This program is intended to protect public health by providing Tribes with additional opportunities to become trained and certified, by developing base standards for non-State organizations certifying operators of tribal systems and by establishing a consistent method of assessing, tracking, and addressing certification and training needs on tribal lands.

Cynthia C. Dougherty,

Director, Office of Ground Water and Drinking Water, U.S. Environmental Protection Agency.

[FR Doc. 00–7629 Filed 3–29–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meetings

AGENCY: Federal Election Commission.

DATE AND TIME: Tuesday, April 4, 2000 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED: Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular, employee.

DATE AND TIME: Wednesday, April 5, 2000 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED: Correction and Approval of Minutes.

Notice of Proposed Rulemaking on Mandatory Electronic Filing: (11 CFR § 104.18).

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer, Telephone: (202) 694–1220.

Mary W. Dove,

Acting Secretary.

[FR Doc. 00–7987 Filed 3–28–00; 1:25 pm]

BILLING CODE 6715–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–010977–038.

Title: Hispaniola Discussion Agreement.

Parties: NPR, Inc., A.P. Moller-Maersk Sea-Land, Crowley Liner Services, Inc., Marine Express, U.S.A. Tecmarine Incorporated, Kent Line Limited, Seaboard Marine Ltd., Tropical Shipping and Construction Co., Ltd.

Synopsis: The parties are revising the admission, resignation, and expulsion provisions of their agreement.

Agreement No.: 203–011584–003.

Title: NYKNOS/HUAL Rate Discussion and Voluntary Rate Adherence Agreement.

Parties: Nippon Yusen Kaisha, Wallenius Wilhelmsen Lines AS, Hoegh-Ugland Auto Liners A/S.

Synopsis: The proposed amendment would authorize the parties to enter into joint service contracts and to discuss and agree upon voluntary guidelines with respect to their individual service contracts. It would also permit them to engage in ad hoc space chartering and would clarify the authority of the parties pertaining to the discussion of tariffs and other items. In addition, it changes the name of the Agreement to the NYK/WW Lines/HUAL Cooperative Working Agreement and restates the Agreement.

Agreement No.: 232–011698.

Title: CMA CGM/Norasia Slot Exchange, Sailing and Cooperative Working Agreement.

Parties: CMA CGM S.A., Norasia Lines (Malta) Ltd.

Synopsis: The proposed agreement authorizes the parties to exchange space on their respective vessels in the trade between United States West Coast ports and ports in the Far East, Sri Lanka, and the Mediterranean Sea.

Agreement No.: 201059–003.

Title: West Gulf Intermodal Marine Terminal Operator's Conference.

Parties: Barbours Cut Intermodal Services, Fairway Terminals Corporation, Port-Cooper/T. Smith Stevedoring Co., Shippers Stevedoring Co., Inc., Southern Stevedoring Co., Inc., Strachan Shipping Company.

Synopsis: The amendment provides for the indefinite suspension of the agreement.

Dated: March 24, 2000.

By Order of the Federal Maritime Commission.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–7777 Filed 3–29–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License; Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

AP Shipping, Inc., 19401 S. Main Street, #302, Gardena, CA 90248. Officer: Austin T. Park, President (Qualifying Individual).

Can-Med Lines (USA), Inc., 3915 Annandale Road, Annandale, VA 22003. Officers: Ibrahim Hazim, Director (Qualifying Individual), Elie M. Ibrahim, President.

Deluxe Freight, Inc., 8513 NW 72nd Street, Miami, FL 33166. Officers: William Munoz, President (Qualifying Individual), Ana M. Munoz, Treasurer.

JHJ International Ltd., Building 80, Room 215, Jamaica, NY 11430. Officer: Joseph Cho Ming Yu, President (Qualifying Individual).

Non-Vessel-Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Satellite Logistics Group, Inc., 12621 Featherwood, Suite 390, Houston, TX 77034–4902. Officers: Donald S. Lane, Vice President, Kevin D. Brady, President (Qualifying Individuals).

D & D Worldwide, Inc., 755 N. Route 83, Suite 216, Bensenville, IL 60106. Officer: Duke Hong, President (Qualifying Individual).

Cargo Express (Saipan), Inc., Airport Road, Dandan, P.O. Box 7447 SVRB, Saipan MP 96950. Officers: Liberato C. Legaspi, President (Qualifying Individual), Marie Christine T. Legaspi, Vice President.

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Marushin Group, Inc., 2720 Monterey Street, #405, Torrance, CA 90503. Officers: Honorato Soto, President, Yumiko Pobanz, Secretary (Qualifying Individuals).

Sarah Worldwide Shipping, Inc., 6 Bear Trail, Fairview, NC 28730. Officer: Kim Williams, President (Qualifying Individual).

New World Import Services, Inc., 1650 NW 94th Avenue, Miami, FL 33172. Officer: Francisco M. Ripoll, President (Qualifying Individual).

Dated: March 24, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–7776 Filed 3–29–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 13, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Leon Alper Felman, Clayton, Missouri; to retain voting shares of Allegiant Bancorp, Inc., St. Louis, Missouri, and thereby indirectly retain voting shares of Allegiant Bank, St. Louis, Missouri.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. John and Nancy Brown, New Rockford, North Dakota; Mark and Marlys Brown, Hannaford, North Dakota; Steven and Cheryl Steinborn, Jamestown, North Dakota; and Security State Bank of North Dakota Employee Stock Ownership Plan, New Rockford, North Dakota; to retain voting shares of Security State Bank Holding Company, New Rockford, North Dakota, and thereby indirected retain voting shares of Security State Bank of North Dakota, Hannaford, North Dakota.

Board of Governors of the Federal Reserve System, March 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7892 Filed 3–29–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 2000.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. Midland States Bancorp, Inc., Effingham, Illinois and CSB Acquisition Corporation, Effingham, Illinois, to acquire 100 percent of the voting shares of CSB Financial Group, Inc., Centralia, Illinois, and Centralia Savings Bank, Centralia, Illinois. In connection with this application CSB Acquisition Corporation, Effingham, Illinois, has applied to become a bank holding company.

Board of Governors of the Federal Reserve System, March 24, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7775 Filed 3–29–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 24, 2000.

A. Federal Reserve Bank of Boston (Richard Walker, Community Affairs Officer) 600 Atlantic Avenue, Boston, Massachusetts 02106–2204:

1. Fleet Boston Corporation, Boston, Massachusetts; to acquire 7 percent of the voting shares of North Fork Bancorporation, Melville, New York; and thereby indirectly acquire North Fork Bank, Mattituck, New York; and Superior Savings Bank of New England, Branford, Connecticut.

Board of Governors of the Federal Reserve System, March 27, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7891 Filed 3–29–00; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Committee on Vital and Health Statistics; Meeting

Pursuant to the Federal Advisory Committee Act, the Department of Health and Human Services announces the following advisory committee meeting.

Name: National Committee on Vital and Health Statistics (NCVHS), Subcommittee on Populations.

Time and Date: 9:30 a.m.–5:00 p.m., April 13, 2000; and 9:30 a.m.–2:00 p.m., April 14, 2000.

Place: Room 705A, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201.

Status: Open.

Purpose: The Subcommittee on Populations is holding this meeting to continue its discussions on the potential use of measures of functional status on health records, such as enrollment in health plans, records of medical encounters, and standardized attachments to such records. Panelists will discuss issues related to the measurement, collection, and classification of information on functional status and the potential uses of functional status measures for administrative records and data systems. This is the second of several public meetings planned by the Subcommittee to explore these issues.

Notice: In the interest of security, the Department has instituted stringent procedures for entrance to the Hubert H. Humphrey building by non-government employees. Thus, persons without a government identification card will need to have the guard call for an escort to the meetings.

Contact Person for More Information: Substantive program inforamtion as well as summaries of meetings and a roster of committee members may be obtained from Carolyn Rimes, Lead Staff Person for the NCVHS Subcommittee on Populations, Office of Research and Demonstrations, Health Care Financing Administration, MS–C4–13–01, 7500 Security Boulevard, Baltimore, Maryland 21244–1850, telephone (410) 786–6620; or Marjorie S. Greenberg, Executive Secretary, NCVHS, NCHS, CDC, Room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone (301) 458–4245. Information also is available on the NCVHS home page of the HHS website: http://www.ncvhs.hhs.gov/, where an agenda for the meeting will be posted when available.

Dated: March 22, 2000.

James Scanlon,

Director, Division of Data Policy, Office of the Assistant Secretary for Planning and Evaluation.

[FR Doc. 00–7868 Filed 3–29–00; 8:45 am]

BILLING CODE 4151–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Injury Research Grant Review Committee: Notice of Charter Renewal; Correction

ACTION: Notice; correction.

Correction

In the **Federal Register** of March 13, 2000, Volume 65, Number 49, Page 13391, on page (1) in the subject column, make the following correction to the subject: "Advisory Committee for Energy-Related Epidemiologic Research: Notice of Charter Renewal." Deleting "Injury Research Grant Review Committee: Notice of Renewal.

This gives notice under the Federal Advisory Committee Act (Public Law 92–463) of October 6, 1972, that the Advisory Committee for Energy-Related Epidemiologic Research, Centers for Disease Control and Prevention, of the Department of Health and Human Services, has been renewed for a 2-year period extending through February 28, 2002.

For further information, contact Michael Sage, Executive Secretary, Advisory Committee for Energy-Related Epidemiologic Research, Centers for Disease Control and Prevention, of the Department of Health and Human Services, 1600 Clifton Road, NE, M/S F–35–32, Atlanta, Georgia 30333, telephone 404/639–2524 or fax 404/639–2575.

The Director, Management and Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2000.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 00–7814 Filed 3–29–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention (CDC)

The Advisory Committee for the Director of the National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC); Notice of Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee to the Director, NCEH, Meeting.

Times and Dates: 10 a.m.–5:30 p.m. (EST), April 18, 2000; 8:30 a.m.–3 p.m. (EST), April 19, 2000.

Place: JW Marriott, 1331 Pennsylvania Avenue, Washington, DC 20155.

Status: Open to the public for observation and comment, limited only by the space available. The meeting room accommodates approximately 80 people.

Purpose: The Secretary, the Assistant Secretary for Health, and by delegation, the Director, Centers for Disease Control and Prevention, are authorized under Section 301 (42 U.S.C. 241) and Section 311 (42 U.S.C. 243) of the Public Health Service Act, as amended, to (1) conduct, encourage, cooperate with, and assist other appropriate public authorities, scientific institutions, and scientists in the conduct of research, investigations, experiments, demonstrations, and studies relating to the causes, diagnosis, treatment, control, and prevention of physical and mental diseases, and other impairments; (2) assist States and their political subdivisions in the prevention of infectious diseases and other preventable conditions, and in the promotion of health and well being; and (3) train State and local personnel in health work.

Matters To Be Discussed: Agenda items will include the NCEH vision for environmental health at CDC, the public health role in regulatory decision-making, and the role of the Office of Disabilities & Health at NCEH.

Contact Person for More Information: Marilyn R. DiSirio, Designated Federal Official, CDC, 4770 Buford Highway, NE, MS F–29, Atlanta, Georgia 30341–3724; telephone 770–488–7020, fax 770–488–7024; e-mail: *mrd2@cdc.gov*.

The Director, Management Analysis and Services Office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2000.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–7813 Filed 3–29–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Scientific Panel for Immunization Measurement Standards, 2000: Meeting

Name: National Scientific Panel for Immunization Measurement Standards, 2000.

Time and Date: 8 a.m.–5 p.m., May 1, 2000.

Place: Atlanta Marriott Century Center, 2000 Century Boulevard, NE., Atlanta, Georgia 30345–3377.

Status: Open to the public, limited only by the space available.

Purpose: There are two systems for measuring immunization coverage that are widely used. The Health Plan Employer Data and Information Set (HEDIS) measures quality of health care delivered by managed care organizations (MCOs) and enables comparisons of performance among MCOs. The National Immunization Survey (NIS) is a population-based survey of immunization coverage, conducted by CDC to assess how well children are immunized in the US. The inclusion of different vaccines and different measurement criteria has made direct comparison inaccurate and difficult. The Panel will review scientific and programmatic issues concerning immunization coverage measurement.

Matters To Be Discussed: The agenda will include discussion on the impact of various measurement specifications for calculating immunization coverage levels using NIS and HEDIS; the potential impact of various definitions of up-to-date immunization status in the two systems of immunization coverage measurement varying: (1) Age at ascertainment, (2) spacing criteria, (3) number of doses, (4) vaccines in combination measures; presentation of results of analysis of NIS data and datasets used for HEDIS estimates; consideration other ways to estimate vaccine coverage.

Contact Person for More Information: Mehran S. Massoudi, Senior Staff Epidemiologist, Immunization Services Division, National Immunization Program, CDC,1600 Clifton Road, NE., m/s E52, Atlanta, Georgia 30333. Telephone 404/639–8209.

The Director, Management Analysis and Services office has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: March 23, 2000.

John Burckhardt,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–7815 Filed 3–29–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 99M–4361, 99M–4277, 99M–4693, 99M–4278, 99M–4276, 99M–4281, 99M–4331, 99M–4279, 99M–4280, 99M–4776, 00M–0578, 99M–4330, 99M–4810, 99M–4692, 99M–5135, 99M–5327, and 99M–5539]

Medical Devices; Availability of Safety and Effectiveness Summaries for PMA

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket application (PMA) approvals. This list is intended to inform the public of the availability of safety and effectiveness summaries of approved PMA's through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Summaries of safety and effectiveness are available on the Internet at http://www.fda.gov/cdrh/pmapage.html. Copies of summaries of safety and effectiveness are also available by submitting a written request to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 in the **SUPPLEMENTARY INFORMATION** section of this document when submitting a written request.

FOR FURTHER INFORMATION CONTACT: Kathy M. Poneleit, Center for Devices and Radiological Health (HFZ–402), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–2186.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Instead, revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page on the Internet at http://www.fda.gov, by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch, and by publishing in the **Federal Register** after each quarter a list of available safety and effectiveness summaries of approved PMA's and denials announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)), notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant; in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of approved PMA's for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure explained previously from October 1, 1999, through December 31, 1999. There were no denial actions during this period. The list provides the manufacturer's name, the product's generic name or the trade name, and the approval date.

TABLE 1.—LIST OF SAFETY AND EFFECTIVENESS SUMMARIES FOR APPROVED PMA'S MADE AVAILABLE OCTOBER 1, 1999, THROUGH DECEMBER 31, 1999

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
P970010/99M–4361	Synthes (USA)	Norian Skeletal Repair System (SRS) Cancellous Bone Cement	December 23, 1998
P970015/99M–4277	Sofamor Danek	Inter Fix Threaded Fusion Device	May 14, 1999
P960033/99M–4693	Staar Surgical	Staarvisc™ Sodium Hyaluronate	July 2, 1999
P980053/99M–4278	Advanced Uroscience, Inc.	Durasphere Injectable Bulking Agent	September 13, 1999
P990008/99M–4276	Cook, Inc.	Cook MBC PTCA Balloon Dilatation Catheter	September 27, 1999
P990001/99M–4281	Vitatron, Inc.	Diva Platform Implantable Pulse Generators & Pro Vit Application Software Version 3.3.2	September 27, 1999
P990020/99M–4331	Medtronic Aneurx	Aneurx Stent Graft System	September 28, 1999
P980043/99M–4279	Medtronic, Inc.	Hancock II Bioprosthetic Heart Valve	September 28, 1999
P990017/99M–4280	Guidant Cardiac & Vascular Surgery	EVT Abdominal Aortic Tube/EVT Abdominal Aortic Bifurcated EGS System	September 28, 1999
P990004/99M–4776	Ethicon, Inc.	Surgifoam Absorbable Gelatin Sponge, USP	September 30, 1999
P940034 (S008)/99M–4782	Gen-Probe, Inc.	Gen-Probe® Amplified Mycobacterium Tuberculosis Direct Test (MTD Test)	September 30, 1999
P990002/99M–4330	Rochester Medical Corp.	Femsoft Urethral Insert	September 30, 1999
H980007/99M–4810	Shelhigh, Inc.	Shelhigh Pulmonic Valve Conduit Model NR–4000 with "No-React®" Treatment	September 30, 1999
P990033/99M–4692	Ceramed Corp.	PepGen P–15	October 25, 1999
P990014/99M–5135	Bausch & Lomb Surgical, Inc.	Hydroview Composite Hydrogel Foldable UV–Absorbing Posterior Chamber Intraocular Lens	November 12, 1999
H990007/99M–5327	CryoLife, Inc.	BioGlue® Surgical Adhesive	December 7, 1999
H980006/99M–5539	MDS Nordion, Inc.	TheraSphere®	December 10, 1999

Dated: March 14, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–7780 Filed 3–29–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1197]

Guidance for Industry on Court Decisions, ANDA Approvals, and 180-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Court Decisions, ANDA Approvals, and 180-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act." The purpose of this guidance is to inform the public of FDA's application of the abbreviated new drug application (ANDA) approval provisions and 180-day generic drug exclusivity provisions of the Federal Food, Drug, and Cosmetic Act (the act) in light of recent court decisions on these issues.

DATES: Submit written comments on the guidance by June 28, 2000. General comments on agency guidance documents are welcome at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of the guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Virginia G. Beakes, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled "Court Decisions, ANDA Approvals, and 180-Day Exclusivity Under the Hatch-Waxman Amendments to the Federal Food, Drug, and Cosmetic Act." This guidance is being issued in response to recent litigation. The guidance is intended to provide information to the pharmaceutical industry regarding: (1) The timing of approval of ANDA's following an unsuccessful patent infringement action by the patent owner or new drug application (NDA) holder and (2) the start of 180 days of generic drug exclusivity.

FDA's interpretation of two provisions of the act have been successfully challenged in *TorPharm, Inc.* v. *Shalala* and *Mylan Pharmaceuticals, Inc.* v. *Shalala*[1].

[1] *Torpharm* v. *Shalala*, No. 97–1925, 1997 U.S. Dist. LEXIS 21983 (D.D.C. September 15, 1997); *appeal withdrawn and remanded*, 1998 U.S. App. LEXIS 4681 (D.C. Cir. February 5, 1998); *vocated* No. 97–1925 (D.D.C. April 9, 1998); *Mylan Pharmaceuticals, Inc.* v. *Shalala*, No. 99–2995, slip op. (D.D.C. January 4, 2000).

These provisions apply the concept of a court decision to the timing of certain ANDA approvals and to the start of 180-day exclusivity. There is a 30-month statutory bar to approval of an ANDA that is the subject of patent infringement litigation except if "before the expiration of such period the court decides that such patent is invalid or not infringed, the approval will be made effective on the date of the court decision" (section 505(j)(5)(B)(iii)(I) of the act (21 U.S.C. 355(j)(5)(B)(iii)(I))). Certain court decisions are also important for 180-day generic drug exclusivity. The 180-day period of exclusivity can begin on either: (1) The date of first commercial marketing, or (2) the date of a decision of a court holding the patent which is the subject of the paragraph IV certification to be invalid or not infringed, whichever is earlier (section 505(j)(5)(B)(iv) of the act). For purposes of section 505(j)(5)(B)(iii)(I) and (j)(5)(B)(iv) of the act, FDA determined that "court" means "the court that enters final judgment from which no appeal can be or has been taken" (§ 314.107(e)(1) (21 CFR 314.107(e)(1)) (1999)).

FDA's interpretation of the term "court" has been successfully challenged in the context of both the timing of ANDA approvals and the commencement of 180-day exclusivity. These recent decisions add considerable uncertainty to FDA's implementation of the ANDA approval and 180-day generic drug exclusivity programs. Therefore, in determining its response to the *TorPharm* and *Mylan* decisions, a primary concern for the agency has been to identify an approach that will minimize further disruption and will provide the regulated industry with reasonable guidance for making future business decisions. The government has decided not to appeal the *Mylan* decision and will follow that court's interpretation of the statute in approving ANDA's and calculating the commencement of 180 days of exclusivity. The agency intends to formally amend § 314.107(e) and will incorporate the *TorPharm* and *Mylan* courts' interpretation of the statute into the final rule implementing the changes in 180-day exclusivity (64 FR 42873, August 6, 1999). FDA will implement the new interpretation of the term "court" prospectively.

FDA will interpret the term "court" as found in section 505(j)(5)(B)(iii)(I) and (j)(5)(B)(iv) of the act to mean the first court that renders a decision finding the patent at issue invalid, unenforceable, or not infringed. The new definition of "court" will be applied to approval and exclusivity determinations for all ANDA's containing a paragraph IV certification submitted after the publication of this guidance, where the ANDA cites a reference listed drug for which no other ANDA containing a paragraph IV certification has been submitted.

This Level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The guidance is being implemented immediately without prior public comment because the guidance is needed to explain FDA's application of the statute in light of recent court decisions. However, the agency wishes to solicit comments from the public and is providing a 90-day comment period and establishing a docket for the receipt of comments.

This guidance represents the agency's current thinking on section 505(j)(5)(B)(iii)(I) and (j)(5)(B)(iv) of the act. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the act.

Interested persons may submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 23, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–7823 Filed 3–29–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–0805]

Draft Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors: Exception From Informed Consent Requirements for Emergency Research; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a draft document entitled "Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research." The draft guidance document provides guidance for developing and implementing research in emergency settings when an exception from the informed consent requirements is requested under the Food and Drug Administration's (FDA's) emergency research rule.

DATES: Written comments on the draft guidance document are to be submitted by May 30, 2000. General comments on the agency guidance documents are welcome at any time.

ADDRESSES: Submit written requests for single copies of the draft guidance entitled "Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research" to the Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs (ORA), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist the office in processing your requests. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the draft guidance document.

Submit written comments on the draft guidance document to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Bonnie M. Lee, Division of Compliance Policy (HFC–230), Office of Enforcement, Office of Regulatory Affairs, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857,301–827–0415

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing the availability of a draft guidance document entitled "Guidance for Institutional Review Boards, Clinical Investigators, and Sponsors: Exception from Informed Consent Requirements for Emergency Research." In the **Federal Register** of October 2, 1996 (61 FR 51498), FDA published regulations that provide a narrow exception to the requirement for obtaining and documenting informed consent from each human subject, or his or her legally authorized representative, prior to initiation of an experimental intervention (§ 50.24 (21 CFR 50.24) in part 50 (21 CFR part 50)). The exception

would apply to a limited class of research activities involving human subjects who are in need of emergency medical intervention but who cannot give informed consent because of their life-threatening medical condition, and who do not have a legally authorized person to represent them. The preamble to part 50 stated that the agency intends to monitor and evaluate the implementation of these regulations on an ongoing basis. Since the effective date of these emergency research regulations (November 1, 1996), FDA has reviewed the efforts of sponsors, Institutional Review Boards, and clinical investigators to interpret and comply with these regulations and has determined that guidance is needed.

The draft guidance document, available for public comment, addresses issues pertinent to the implementation of FDA's emergency research regulations. The draft guidance document provides guidance on the development and conduct of community consultation and public disclosure activities; the establishment of informed consent procedures to be used when feasible; the need for the concurrence of a licensed physician; use of data monitoring committees; use of independent IRB's; documentation of efforts to contact a subject's legally authorized representative or family member regarding the subject's participation in the study; and other aspects of the emergency research regulations.

This draft Level 1 guidance document is being issued consistent with FDA's Good Guidance Practices (62 FR 8961, February 27, 1997). It represents the agency's current thinking on ways to effectively implement its emergency research regulations in order to protect the rights and welfare of human subjects participating in that research. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations. As with other guidance documents, FDA does not intend this document to be all-inclusive and cautions that not all information contained in the guidance document may be applicable to all situations.

II. Request for Comments

Interested persons may submit to the Dockets Management Branch (address above) written comments on the draft guidance document. Two copies of any comments are to be submitted, except individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. A copy of the draft guidance document and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

III. Electronic Access

Persons with access to the Internet may obtain the document using the Internet at http://www.fda.gov/ora/compliance_ref/bimo/default.html.

Dated: March 21, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–7778 Filed 3–29–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[Document Identifier: HCFA–R–295]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Health Care Financing Administration, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Revision of a currently approved collection;

Title of Information Collection: Medicare CAHPS Disenrollment Survey;

Form No.: HCFA–R–295 (OMB 0938–0779);

Use: This survey is used to collect information from Medicare beneficiaries who have disenrolled from their health plans during the past year. The purpose of this information is to obtain their ratings of their former plans and the reasons why they left. The survey results will be reported to all beneficiaries in print and on the Internet for the purpose of informed choices. Secondary uses of survey results include quality improvement and contract oversight;

Frequency: Quarterly, Annually;

Affected Public: Individuals or Households;

Number of Respondents: 112,800;

Total Annual Responses: 90,240;

Total Annual Hours: 39,744.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access HCFA's Web Site address at http://www.hcfa.gov/regs/prdact95.htm, or E-mail your request, including your address, phone number, OMB number, and HCFA document identifier, to Paperwork@hcfa.gov, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the HCFA Paperwork Clearance Officer designated at the following address: HCFA, Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards, Attention: Dawn Willinghan, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: March 20, 2000.

John P. Burke III

HCFA Reports Clearance Officer, HCFA Office of Information Services, Security and Standards Group, Division of HCFA Enterprise Standards.

[FR Doc. 00–7905 Filed 3–29–00; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Notice of Withdrawal

AGENCY: Health Resources and Services Administration.

ACTION: Notice; withdrawal.

SUMMARY: In the **Federal Register** notice of Wednesday, August 18, 1999, in FR Doc. 99–21257, on page 45025, the grant category beginning in the third column under the heading "State and Local Data Utilization and Enhancement (DUE) Cooperative Agreements, CFDA# 93.110U," is withdrawn from competition because of insufficient funds to support the full scope of proposed activities published in the announcement. Prospective applicants who have submitted letters of intent or requested application materials have been notified directly of this withdrawal.

DATES: A successor competition will be announced shortly in the **Federal Register** for funding in this grant category under modified guidelines that will adjust project expectations to available funding. Application guidance for the successor competition will be available by April 21, 2000, by telephoning 1–877–477–2123 (or 1–877–HRSA–123) and providing the CFDA number (CFDA# 93.110U). The deadline for receipt of applications is July 3, 2000.

FOR FURTHER INFORMATION CONTACT: Russ Scarato or Michael Kogan, Ph.D., Office of Data and Information Management, Maternal and Child Health Bureau, Health Resources and Services Administration, Room 18A–55, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857; telephone 1–301–443–0700 or 1–301–443–0701.

Dated: March 24, 2000.

James J. Corrigan,

Associate Administrator for Management and Program Support.

[FR Doc. 00–7821 Filed 3–29–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4563–N–03]

Notice of Proposed Information Collection for Public Comment for the Family Report

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 30, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, S.W., Room 4238, Washington, D.C. 20410–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

Background

The Department of Housing and Urban Development seeks comments on the revised Form HUD–50058 (changes to the Form are noted in italics). The revised Form HUD–50058 incorporates changes required for the sound management of HUD programs. This includes updates required by the passage of various laws, including the Quality Housing and Work Responsibility Act of 1998 (otherwise known as the Public Housing Reform Act), and other changes.

HUD worked with Public Housing Agencies (PHAs), trade organizations, vendors, and other interested parties to improve reporting to Multifamily Tenant Characteristics System (MTCS), the information system that collects electronic Form HUD–50058 data. In the past year, MTCS public housing reporting improved from 60 to 92 percent, and Section 8 reporting improved from 73 to 97 percent. It is critical that high reporting rates be sustained. HUD will provide technical assistance and training to Field Offices and PHAs to help sustain reporting.

To assure customer input, HUD conducted three industry consultation sessions to identify PHA needs for the revised Form HUD–50058. HUD held the first two sessions in November 1999 and January 2000. On February 10, 2000, the Department held a public forum in Washington, DC for software vendors and PHAs to brief them on the revised Form and MTCS enhancements. HUD seeks to work collaboratively with the user community to produce a user-friendly Form HUD–50058 that meets HUD, PHA, and other needs.

HUD is working to improve not only MTCS, but also the Form HUD–50058 implementation process. HUD will implement a test center to help software vendors and PHAs identify fatal errors prior to the MTCS release date. So that PHAs and software vendors have sufficient time to perform the necessary tests and sustain the high reporting rates, the Department will give them ample notice of the Form HUD–50058 modifications. In addition, HUD will implement a historical database so PHAs and HUD can track trends over time. This capability should provide PHAs greater flexibility and help them better meet local reporting needs.

Highlight of Changes

The revised Form HUD–50058 include changes that cover flat rents, earned income disregards, the Housing Choice Voucher Program, the Voucher Homeownership Program, and the Welfare-to-Work Program. To determine if there is a need for better PHA quality controls, the revised Form HUD–50058 asks PHAs to track the reason for corrections to family data. HUD added new section action codes for voucher issuance to analyze the movement and progression of families who receive rental subsidies. The revised Form HUD–50058 collects, for the first time, information about the family's gross income and any income discrepancy adjustments. The revised Form HUD–50058 also strives to fix certain problems that exist on the current form. Particularly, a PHA will be able to correct erroneous effective dates of action (line 2b) transmitted to MTCS.

This Notice also lists the following information:

Title of Proposal: Family Report.

OMB Control Number: 2577–0083.

Agency Form Number: HUD–50058.

Description of the need for the information and proposed use: Collection of this information is authorized by the U.S. Housing Act of 1937 (42 U.S.C. 1437, *et seq.*), Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), the Fair Housing Act (42 U.S.C. 3601–19), Section 214 of the Housing and Community Development Act of 1980.

Initially, PHAs will need ½ hour to input the data into each Form HUD–50058. After a one-year period, average input time should be reduced to 15 minutes per Form. The reduction in time is achieved by the pre-entering of key information on the Form (*i.e.*, income changes, change in family composition, etc). PHAs that administer the FSS and/or Welfare to Work voucher program(s) will require an additional 15 minutes per form for completion of the information.

Members of affected public: PHAs, State or Local Governments, Individuals or Households.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Information collection	Number of respondents	Responses per respondent	Total annual responses	Hours per response	Total hours	Regulatory reference
HUD–50058	4500	667.67	3,000,000	0.5	1,500,000	985.101

Projected One-Year Period: Hours per response will be reduced to 0.25 for total burden hour of 750,000.

Status of the proposed information collection: Revision and extension of a currently approved collection.

Authority: Section 3506 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 23, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

BILLING CODE 4210–33–M

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

Family Report U.S. Department of Housing and Urban Development Office of Public and Indian Housing

1. Agency

1a. Agency name	1a.
1b. PHA code	*1b.*
1c. Program (P= Public Housing CE= Sec. 8 Certificates VO= Sec. 8 Vouchers MR= Mod Rehab B= Indian Housing)	1c.
1d. Project number (PublicIndian Housing only) *Suffix:*	*1d.*
1e. Building number (PublicIndian Housing only)	*1e.*
1f. Unit number (PublicIndian Housing only)	*1f.*

2. Action

2a. Type of action 1 = New Admission 2 = Annual Reexamination 3 = Interim Reexamination 4 = Portability Move-in 5 = Portability Move-out 6 = End Participation 7 = Other Change of Unit *9 = FSS/WW Only 9 = Annual Reexamination Searching 10 = Issuance of Voucher 11 = Expiration of Voucher 12 = Flat Rent Annual Update 13 = Annual HQS Inspection Only 14 = V old Family*	2a.
2b. Effective date (mm/dd/yyyy) of action	2b.
2c. Correction? (Y or N)	*2c.*
2d. If correction: (check primary reason) ☐ *Family income correction* ☐ *PHA income correction* ☐ *Family correction (non-income)* ☐ *PHA correction (non-income)*	
2e. Correction date (mm/dd/yyyy)	*2e.*
2f. Back rent agreement? (Y or N)	*2f.*
2g. Monthly amount of back rent payment	$ *2g.*
2h. Date (mm/dd/yyyy) of admission to program	2h.
2i. Projected effective date (mm/dd/yyyy) of next reexamination	2i.
2j. Special program(s) (check all that apply): ☐ *FSS (now or in the last year)* ☐ *Enhanced Voucher* ☐ *Welfare to Work Voucher*	
2k. Other special programs: Number 01	*2k.*
2k. Other special programs: Number 02	*2k.*
2k. Other special programs: Number 03	*2k.*
2k. Other special programs: Number 04	*2k.*
2k. Other special programs: Number 05	*2k.*
2m. Use if instructed by HUD	2m.
2n. PHA use only	*2n.*
2p. PHA use only	*2p.*
2q. PHA use only	*2q.*
2r. PHA use only	*2r.*
2s. PHA use only	*2s.*

Previous editions are obsolete *(03/02/00)* Page 1 of 16 Form HUD-50058 (DRAFT)

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

3. Household

3a. Head of Household Member Number 01

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
	H			=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3a. Member Number 02

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3a. Member Number 03

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3a. Member Number 04

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3a. Member Number 05

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3a. Member Number 06

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

Codes:

3h. Relation:
H = head
S = spouse
K = co-head
F = foster child/foster adult
Y = other youth under 18
E = full-time student 18+
L = live-in aide
A = other adult

3i. Citizenship:
EC = eligible citizen
EN = eligible noncitizen
IN = ineligible noncitizen
PV = pending verification

3k. Race:
1 = White
2 = Black/African American
3 = American Indian/Alaska Native
4 = Asian
5 = Native Hawaiian/Other Pacific Islander

3m. Ethnicity:
1 = Hispanic or Latino
2 = Not Hispanic or Latino

3q. = Community Service
1 = n/a
2 = yes
3 = no
4 = pending
5 = exception

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

3a. Member Number

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3a. Member Number

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3a. Member Number

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3a. Member Number

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3a. Member Number

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

Codes:

3h. Relation:
H = head
S = spouse
K = co-head
F = foster child/foster adult
Y = other youth under 18
E = full-time student 18+
L = live-in aide
A = other adult

3i. Citizenship:
EC = eligible citizen
EN = eligible noncitizen
IN = ineligible noncitizen
PV = pending verification

3k. Race:
1 = White
2 = Black/African American
3 = American Indian/Alaska Native
4 = Asian
5 = Native Hawaiian/Other Pacific Islander

3m. Ethnicity:
1 = Hispanic or Latino
2 = Not Hispanic or Latino

3q. = Community Service
1 = n/a
2 = yes
3 = no
4 = pending
5 = exception

3r. Continued on an additional sheet? (Y or N) 3r.

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

3s. Reserved	
3t. Total number in household	3t.
3u. Family subsidy status under Noncitizen rule: C = Quelified for continuation of full assistance; E = Eligible for full assistance; F = Eligible for full assistance pending verification of status; T = Temporary deferral of termination; P = Prorated assistance	3u.
3v. Effective date (mm/dd/yyyy) if 3u = C or T	3v.
3w. If new head of household, former head of household's SSN	3w.

4. Background at Admission

4a. Date (mm/dd/yyyy) entered waiting list	4a.
4b. ZIP code before admission	4b.
4c. Homeless at admission? (Y or N)	4c.
4d. Does family qualify for admission over the very low-income limit? (Y or N)	4d.
4e. Continually assisted? (head of household only) (Y or N)	***4e.***

5. Unit to be Occupied on Effective Date of Action

5a. Unit address			
Number and street			Apt.
City	State	Zip code (+4)	
5b. Is mailing address same as unit address? (Y or N) (If yes, skip to 5d)			***5b.***
5c. Family's mailing address			
Number and street			Apt.
City	State	Zip code (+4)	
5d. Number of bedrooms in unit			5d.
5e. Has the PHA identified this unit as an accessible unit? *(Public/Indian Housing only)* (Y or N)			5e.
5f. Has the family requested accessibility features? *(Public/Indian Housing only)* (Y or N) *(If no, skip to 5h)*			5f.
5g. Has the family received requested accessibility features? *(Public/Indian Housing only)* ☐ a. Yes, fully ☐ b. Yes, partially ☐ c. No, not at all ☐ d. Action pending (can be checked in combination with b. or c.)			5g.
5h. Date (mm/dd/yyyy) unit last passed HQS inspection (Section 8 only, except Homeownership)			***5h.***
5i. Date (mm/dd/yyyy) of last annual HQS inspection (Section 8 only, except Homeownership)			***5i.***

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

6. Assets

6a. Family member name	No.	6b. Type of asset	6c. Calculation (PHA use)	6d. Cash value of asset	6e. Anticipated Income
				$	$
				$	$
				$	$
				$	$
				$	$
				$	$
				$	$
				$	$
6f, 6g. Column totals				$ 6f.	$ 6g.
6h. Passbook rate (written as decimal)					0. _____ 6h.
6i. Imputed asset income: 6f X 6h					$ 6i.
6j. Final asset income: Larger of 6g or 6i (If $5,000 or less, put 0)					$ 6j.

7. Income

7a. Family member name	No.	7b. Income code	7c. Calculation (PHA use)	7d. Dollars per year	***7e. Income exclusions (includes income disallowance and ISA-Public Housing only)***	7f. Income after exclusions (7d minus 7e)
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
7g. Column total						$ 7g.
7h. Reserved						
7i. Total annual income: 6j + 7g						$ 7i.

7b: Income Code

P = pension; B = own business; SS = social security; M = military pay; S = SSI; F = Federal wage; T = TANF; HA = HA wage; G = general assistance; W = other wage; C = child support; U = unemployment benefits; I = Indian trust/per capita; N = other nonwage sources; ***E = medical income***

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

8. Expected Income Per Year

8a. Total annual income: copy from 7j	$	8a.

Permissive Deductions

8b. Family member name	No.	*8c. Type of permissive deduction*	*8d. Amount*
			$
			$
			$
8e. Column total			$ ***8e.***

If head/spouse/co-head is under 62 and no family member disabled, skip to 8q		
8f. Medical/disability threshold: 8a X 0.03	$	8f.
8g. Total unreimbursed disability assistance expense (if no disability expenses, skip to 8k)	$	8g.
8h. Maximum disability allowance: If 8g minus 8f is positive or zero, put amount	$	8h.
If negative and head/spouse/co-head under 62 and head/spouse/co-head not disabled, put 0	$	8h.
If negative and head/spouse/co-head elderly or head/spouse/co-head disabled, copy from 8g	$	8h.
8i. Earnings in 7d made possible by disability assistance expense	$	8i.
8j. Allowable disability assistance expense: lower of 8h or 8i (if 8g is less than 8f and head/spouse/co-head elderly or head/spouse/co-head disabled, copy from 8h)	$	8j.
8k. Total out of pocket Medical Expense (if head/spouse/co-head under 62 and head/spouse/co-head not disabled, put 0)	$	8k.
8m. Total disability assistance and medical expenses: 8j + 8k (if no disability expenses, copy from 8k)	$	8m.
8n. Medical/disability assistance allowance: If no disability assistance expenses or if 8g is less than 8f, put 8m minus 8f (if 8m minus 8f is negative, put zero)	$	8n.
If disability assistance expenses and 8g is greater than or equal to 8f, copy from 8m	$	8n.
8p. Elderly/disability allowance (default = $400)	$	8p.
8q. Number of dependents (people under 18, or with disability, or full-time student. Don't count head, spouse, co-head, foster child/adult, or live-in aide).	$	8q.
8r. Allowance per dependent (default = $480)	$	8r.
8s. Dependent allowance: 8q X 8r	$	8s.
8t. Yearly childcare costs that are not reimbursed	$	8t.
8u. Travel cost to work *(Indian Housing only)*	$	8u.
8v. Reserved		
8w. Reserved		

8x. Total allowances: 8e + 8n + 8p + 8s + 8t +8u	$	8x.
8y. Total annual income minus total allowances: 8a minus 8w (if 8w is larger, put 0)	$	8y.
8z. Annual imputed welfare income (sanction as determined by TANF agency)	$	***8z.***
8aa. Adjusted annual income: 8x + 8y	$	8aa.

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

9. TTP

9a. Total monthly income: 8a + 12	$	9a.
9b. Reserved		
9c. TTP if based on annual income: 9a X 0.10	$	9c.
9d. Adjusted monthly income: 8z + 12	$	9d.
9e. Reserved		
9f. TTP if based on adjusted annual income: 9d X 0.30	$	9f.
9g. Welfare rent per month (if none, put 0)	$	9g.
9h. Minimum rent, put 0 if waived	$	9h.
9i. Enhanced Voucher TTP	$	***9i.***

9j. TTP, highest of lines 9c, 9f, 9g, or 9h (If enhanced Voucher, highest of 9c, 9f, 9g, 9h, or 9j)		$ 9j.
9k. Most recent TTP	$ 9k.	
9m. Qualify for minimum rent hardship? (Y or N)	***9m.***	

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

10. Public Housing, Indian Rental, and Turnkey III

10a. TTP: copy from 9k			$ 10a.	
10b. Flat rent			*$ 10b.*	
Rent Calculation (if prorated rent, skip to 10l)				
10c. Ceiling rent, if any			$ 10c.	
10d. Lower of TTP or ceiling rent (If no ceiling rent, put 10a)			$ 10d.	
10e. Utility allowance, if any			$ 10e.	
10f. Tenant rent: 10d minus 10e	If positive or 0, put tenant rent			10f.
	If negative, credit tenant	or CR		$ 10f.
10g. Reserved				
Prorated Rent Calculation				
10h. Public/Indian Housing maximum rent			$ 10h.	
10i. Family maximum subsidy: 10i minus 10a			$ 10i.	
10j. Total number eligible			10j.	
10k. Total number in family			10k.	
10m. Reserved				
10n. Eligible subsidy (10i ÷ 10k) X 10j			$ 10n.	
10p. Mixed family TTP: 10h minus 10n			$ 10p.	
10q. Reserved				
10r. Utility allowance, if any			$ 10r.	
10s. Mixed family tenant rent: 10p minus 10r	If positive or 0, put tenant rent			$ 10s.
	If negative, credit tenant	or CR		$ 10s.
10t Reserved				
Type of Rent				
10u. Type of rent selected: ☐ ***Income based*** ☐ ***Flat***				
10v. Reserved				

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

11. Section 8: Pre-merger Certificates Only (Except Owner-Occupied Manufactured Home on Rented Space/Pad)

11a. Number of bedrooms on certificate				11a.
11b. Is family now moving to this unit? *(project-based certificates only)* (Y or N)				11b.
11c. Reserved				
11d. Portability? (Y or N) *(If no, skip to 11g)*				11d.
11e. Cost billed per month (put 0 if absorbed)				$ 11e.
11f. PHA code billed				11f.
11g. Check all housing types that apply: ☐ Project-based certificate program unit ☐ IGR: has continual supportive services (prorate gross rent) ☐ SRO: 1 room occupied by 1 person				
11h. Owner name				11h.
11i. Owner TIN/SSN				11i.
11j. Reserved				
11k. Contract rent to owner (if unit has other subsidy, put subsidized rent)			$ 11k.	
11m. Utility allowance, if any			$ 11m.	
11n. Gross rent of unit: 11k + 11m			$ 11n.	
11p. Reserved				
11q. TTP: copy from 9k			$ 11q.	
Rent Calculation (If prorated rent, skip to 11aa)				
11r. Total HAP: 11n minus 11q. If 11q is larger, put 0			$ 11r.	
11s. Tenant rent: 11k minus 11r	If positive or 0, put tenant rent.		$ 11s.	
	If negative, credit tenant	or CR	$ 11s.	
11t. HAP to owner: lower of 11k or 11r				$ 11t.
Prorated Rent Calculation				
11aa. Normal total HAP: 11n minus 11q (skip to 11ae)			$ 11aa.	
11ab. Reserved				
11ac. Reserved				
11ad. Reserved				
11ae. Total number eligible			11ae.	
11af. Total number in family			11af.	
11ag. Proration percentage: 11ae ÷ 11af			11ag.	
11ah. Prorated total HAP: 11aa X 11ag			$ 11ah.	
11ai. Mixed family TTP: 11n minus 11ah			$ 11ai.	
11aj. Utility allowance: copy from 11m			$ 11aj.	
11ak. Mixed family tenant rent: 11ai minus 11aj	If positive or 0, put tenant rent			$ 11ak.
	If negative, credit tenant	or CR		$ 11am.
11am. Reserved				
11an. Prorated HAP to owner: 11k minus 11ak if 11ak is negative, put 11k				$ 11an.

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

12. Section 8 Vouchers

12a.	*Number of bedrooms on voucher*		*12a.*
12b.	*Is family now moving to this unit? (Y or N)*		*12b.*
12c.	*Does the family qualify as a Hard to House family? (Y or N)*		*12c.*
12d.	*Portability? (Y or N) (If no, skip to 12g)*		*12d.*
12e.	*Cost billed per month (put 0 if absorbed)*	*$*	*12e.*
12f.	*PHA code billed*		*12f.*

12g. Check all housing types that apply:

- ☐ *IGR: has continual supportive services (prorate gross rent)*
- ☐ *Project-based voucher program unit*
- ☐ *Own manufactured home, space lease*
- ☐ *SRO: 1 room occupied by 1 person*

12h.	*Owner name*		*12h.*
12i.	*Owner TIN/SSN*		*12i.*
12j.	*Voucher payment standard (if premerger voucher, see Instruction Booklet)*	*$* *12j.*	
12k.	*Rent to owner*	*$* *12k.*	
12m.	*Utility allowance, if any*	*$* *12m.*	
12n.	*Gross rent of unit: 12k + 12m (or "Space Rent")*	*$* *12n.*	
12p.	*Lower of 12j or 12n*	*$* *12p.*	
12q.	*TTP: copy from 9k*	*$* *12q.*	
12r.	*Total HAP: 12p minus 12q*	*$* *12r.*	

Rent Calculation (if prorated rent, skip to 12ab)

12s.	*Total family share: 12n minus 12r*	*$* *12s.*	
12t.	*HAP to owner: lower of 12k or 12r*	*$* *12t.*	
12u.	*Tenant rent to owner: 12k minus 12t*		*$* *12u.*
12v.	*Utility reimbursement to family: 12r minus 12t*		*$* *12v.*

Prorated Rent Calculation

12aa.	*Reserved*		
12ab.	*Normal total HAP: copy from 12r*		*$* *12ab.*
12ac.	*Total number eligible*	*12ac.*	
12ad.	*Total number in family*	*12ad.*	
12ae.	*Proration percentage: 12ac ÷ 12ad*	*12ae.*	
12af.	*Prorated total HAP: 12ab X 12ae*	*12af.*	
12ag.	*Mixed family total family contribution: 12n minus 12af*	*$* *12ag.*	
12ah.	*Utility allowance: copy from 12m*	*$* *12ah.*	
12ai.	*Mixed family tenant rent to owner: 12ag minus 12ah* — *If positive or 0, put tenant rent*		*$* *12ai.*
	If negative, credit tenant	*or CR*	*$* *12ai.*
12aj.	*Prorated HAP to owner: 12k minus 12ai. If 12ai is negative, put 12k*		*$* *12aj.*
12ak.	*Reserved*		

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

13. Section 8: Mod Rehab (Except Converted to Certificate)

13a.	HAP contract number ___-___-R___-___		13a.
13b.	Mod Rehab SRO Program for homeless? (Y or N)		13b.
13c.	Mod Rehab SRO unit (not homeless program)? (Y or N)		13c.
13d.	Owner name		13d.
13e.	Owner TIN/SSN		13e.
13f.	Current base rent	$ 13f.	
13g.	Rehabilitation debt service	$ 13g.	
13h.	Contract rent to owner: 13f + 13g	$ 13h.	
13i.	Utility allowance, if any	$ 13i.	
13j.	TTP: copy from 9k	$ 13j.	

Rent Calculation (If prorated, skip to 13p)

13k.	Tenant rent: 13j minus 13i (if 13j is greater than 13h + 13i, put 13h)	If positive or 0, put tenant rent		$ 13k.
		If negative, credit tenant	or CR	$ 13k.
13m.	HAP to owner: 13h minus 13k (if 13k is negative, put 13h)			$ 13m.
13n.	Reserved			

Prorated Rent Calculation

13p.	Gross rent: 13h + 13i	$ 13p.	
13q.	Normal total HAP: 13p minus 13j	$ 13q.	
13r.	Total number eligible	$ 13r.	
13s.	Total number in family	$ 13s.	
13t.	Proration percentage: 13r ÷ 13s	$ 13t.	
13u.	Prorated total HAP: 13q X 13t	$ 13u.	
13v.	Mixed family TTP: 13p minus 13u	$ 13v.	
13w.	Utility allowance: copy from 13i	$ 13w.	
13x.	Mixed family tenant rent: 13v minus 13w — If positive or 0, put tenant rent			$ 13x.
	If negative, credit tenant		or CR	$ 13x.
13y.	Reserved			
13z.	Prorated HAP to owner: 13h minus 13x. If 13x is negative, put 13h			$ 13z.

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

14. Manufactured Home Owner Renting the Space (pre-merger Certificates only)

14a.	Number of bedrooms on certificate		14a.
14b.	Reserved		
14c.	Portability? (Y or N) *(if no skip to 14g)*		14c.
14d.	Cost billed per month (put 0 if absorbed)		$ 14d.
14e.	PHA code billed		14e.
14f.	Reserved		
14g.	Space owner name		14g.
14h.	Space owner TIN/SSN		14h.
14i.	Reserved		
14j.	Furniture included in purchase price? (Y or N)		14j.
14k.	Monthly amortization payment	$ 14k.	
14m.	Deduction: if 14j = Y, 14k X .0.15. If 14j = N, put 0	$ 14m.	
14n.	Adjusted amortization: 14k minus 14m	$ 14n.	
14p.	Utility allowance, if any	$ 14p.	
14q.	Rent to owner (space rent)	$ 14q.	
14r.	Gross rent: 14n + 14p + 14q	$ 14r.	
14s.	TTP: copy from 9k	$ 14s.	
14t.	Gross rent minus TTP: 14r minus 14s	$ 14t.	
14u.	Reserved		
14v.	HAP to owner: lower of 14r or 14s		$ 14v.

Rent Calculation (if prorated rent, skip to 14aa)

14w.	Tenant rent: 14q minus 14v	$ 14w.
14x.	Reserved	

Prorated Rent Calculation

14aa.	Total number eligible	14aa.
14ab.	Total number in family	14ab.
14ac.	Proration percentage: 14aa ÷ 14ab	14ac.
14ad.	Prorated HAP to owner: 14v X 14ac	$ 14ad.
14ae.	Mixed family TTP: 14r minus 14ad	$ 14ae.
14af.	Reserved	
14ag.	Mixed family tenant rent: 14q minus 14ad	$ 14ag.

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

15. Section 8: Homeownership

15a.	*Is family now moving to this home? (Y or N)*		*15a.*
15b.	*Date (mmddlyyyy) of initial inspection*		*15b.*
15c.	*Portability? (Y or N) (if no, skip to 15f)*		*15c.*
15d.	*Cost billed per month (put 0 if absorbed)*		*15d.*
15e.	*PHA code billed*		*15e.*
15f.	*Monthly homeownership expense (PITI & MIP if applicable)*		*$ 15f.*
15g.	*Utility allowance*		*$ 15g.*
15h.	*Monthly maintenance allowance*		*$ 15h.*
15i.	*Monthly major repairlreplacement allowance*		*$ 15i.*
15j.	*Monthly principal and interest on debt for improvements, if any*		*$ 15j.*
15k.	*Gross homeownership expense: 15f + 15g + 15h + 15i + 15j*		*$ 15k.*
15m.	*Payment standard*		*$ 15m.*
15n.	*Lower of 15k and 15m*		*$ 15n.*
15p.	*TTP: copy from 9k*		*$ 15p.*
15q.	*HAP: 15n minus 15p (if 15p is larger, put 0)*		*$ 15q.*

Subsidy Calculation (if prorated, skip to 15aa)

15r.	*Total family share: 15k minus 15q*		*$ 15r.*

Prorated Subsidy Calculation

15aa.	*Normal total HAP: copy from 15q*	*15aa.*	
15ab.	*Total number eligible*	*15ab.*	
15ac.	*Total number in family*	*15ac.*	
15ad.	*Proration percentage: 15ab ÷ 15ac*	*15ad.*	
15ae.	*Prorated HAP: 15aa X 15ad*	*$ 15ae.*	
15af.	*Mixed family total family share: 15k minus 15ae*		*$ 15af.*
15ag.	*Reserved*		
15ah.	*Reserved*		

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

16. Indian Mutual Help

16a.	Adjusted monthly income: copy from 9d	$ 16a.		
16b.	Number between 0.15 and 0.30 corresponding to the % in the mutual help agreement	16b.		
16c.	Gross family cost: 16a X 16b	$ 16c.		
16d.	Utility allowance, if any	$ 16d.		
16e.	Net cost: 16c minus 16d (if 16d is larger, put 0)	$ 16e.		
16f.	Administration charge	$ 16f.		
16g.	Maximum monthly payment in agreement, if any (usually 16f + monthly debt service)	$ 16g.		
16h.	Family cost: higher of 16e and 16f, but not greater than 16g		$	16h.

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

17. FSS/Welfare to Work Voucher Addendum

17a.	***Participate in special programs? (check all that apply)*** ☐ ***FSS*** ☐ ***Welfare to Work Voucher***	
17b.	FSS report category *(check no more than one)* ☐ Enrollment ☐ Progress ☐ Exit	
17c.	FSS effective date (mm/dd/yyyy) of action	17c.
17d.	***PHA code of PHA Administering FSS contract***	***17d.***
17e.	***Welfare to Work report category (check no more than one)*** ☐ ***Enrollment*** ☐ ***Progress*** ☐ ***Exit***	
17f.	***WtW effective date (mmiddlyyyy) of action***	***17f.***
17g.	***PHA code of PHA that issued the WtW voucher***	***17g.***
17h.	General Information	

(1) Current employment status of head of household. Check the box to indicate the Head of Household's employment status at the time Addendum completed.

☐ Full-time (32 hours per week or more) ☐ Part-time ☐ Not employed seasonal

(2) Date (mmiyyyy) current employment began	***17h(2).***
(3) Benefits in current employment: ☐ ***Health*** ☐ ***Retirement Account*** ☐ ***Other*** ☐ ***None***	
(4) Years of school completed by the head of household. Enter the highest grade of education or years of formal schooling the head of household completed at the time Addendum submitted. (0-25)	17h(4).
(5) Assistance received by the Family: (check all that apply) ☐ ***TANF Income Assistance?*** ☐ ***General Assistance?*** ☐ ***Food Stamps?*** ☐ ***Medicaid/Children's Health Insurance Program?*** ☐ ***Earned Income Tax Credit?***	
(6) Number of children receiving child care services	***17h(6).***

17i. Family Services Table

	(1) Need (Y or N)	(2) Needs Met Through Program (Y or N)	(3) Service Provider
Education/Training			
GED			
High school			
Post secondary			
Vocational/Job training			
Job search/Job placement			
Job retention			
Transportation			
Health services			
Drug treatment/Rehabilitation			
Mentoring			
Homeownership counseling			
Individual Development Account (IDA)			
Child care			
None			

17I (3) Service Provider Codes:

P = PHA ***D = DOL grantee*** ***PR = For profit entity*** ***E = Employer***
T = TANF agency ***V = Voluntary organization*** ***N = Nonprofit agency*** ***C = Community college***

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

Family Self Sufficiency Program *(if not in FSS program, skip to 17n)*

17j.	**FSS Contract Information**	
	(1) Initial start date (mm/yyyy) of contract of participation *(FSS enrollment report only)*	17j(1).
	(2) Initial end date (mm/yyyy) of contract of participation *(FSS enrollment report only)*	17j(2).
	(3) Contract date (mm/yyyy) extended to (if applicable)	17j(3).
	(4) Number of family members with Individual Training and Services Plan	***17j(4).***
	(5) Did the Family receive selection preference because of an FSS related service program participation? (FSS enrollment report only) (Y or N)	***17j(5).***
17k.	**FSS account information**	
	(1) Current FSS account monthly credit	$ 17k(1).
	(2) Current FSS account balance	$ 17k(2).
	(3) FSS account amount disbursed to the family (cumulative as of end of reporting period)	***$ 17k(3).***
17m.	**FSS exit information (FSS Exit Report only)**	
	(1) Did family complete contract of participation? (Y or N)	$ 17m(1).
	(2) If (1) is Yes, did family move to homeownership? (Y or N)	$ 17m(2).

(3) If (1) is No, reason for exit: ☐ Left voluntarily ☐ Asked to leave program ☐ *Portability move-out*
☐ Left because essential service was unavailable ☐ Contract expired but family did not fulfill obligations

Welfare to Work Voucher Program

17n.	***WtW program information***	
	(1) Date (mm/yyyy) Voucher issued (WtW enrollment report only)	***17n(1).***
	(2) Number of days to find a unit (WtW enrollment report only))	***17n(2).***
	(3) Date (mm/yyyy) of initial lease/HAP contract under WtW	***17n(3).***

(4) Help in housing search from: ☐ *PHA* ☐ *TANF Agency* ☐ *Other*

17p. If assisted in a different unit, reason(s): (check all that appiy) (WtW enrollment report only))
☐ *Closer to day care* ☐ *Employment* ☐ *Transportation* ☐ *Closer to other services*
☐ *Pre-program unit would not meet HQS* ☐ *Pre-program unit rent above payment standard, tenant rent too high*
☐ *Owner of pre-program unit unwilling to participate* ☐ *Other*

17q. Welfare to Work exit information (WtW exit report only))

Reason for leaving program:
☐ *Portability move-out*
☐ *Family no longer needs subsidy*
☐ *Subsidy terminated for Section 8 program violation, other than WtW obligations*
☐ *Subsidy terminated for violation of WtW obligations*
☐ *Family voluntarily withdrew from Section 8 program*
☐ *Move to homeownership*
☐ *Other*

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

MTW Family Report

U.S. Department of Housing and Urban Development — Office of Public and Indian Housing

1. MTW Public Housing Agency

1a.	Agency name	1a.
1b.	***PHA code***	***1b.***
1c.	Program (P= Project-based T = Tenant-based H = Homeownership)	1c.
1d.	***Project number (Current Public Housing only)*** ***Suffix:***	***1d.***
1e.	***Building number (Current Public Housing only)***	***1e.***
1f.	***Unit number (Current Public Housing only)***	***1f.***

2. MTW Action

2a.	Type of action 1 = New Admission 2 = Annual Reexamination 3 = Interim Reexamination 4 = Portability Move-in 5 = Portability Move-out 6 = End Participation 7 = Other Change of Unit 8 = Self Sufficiency Program Only 9 = Annual Reexamination Searching 10 = Issuance of Voucher equivalent 11 = Expiration of Voucher equivalent 12 = Flat Rent Annual Update 13 = Annual HQS Inspection Only 14 = Void Family	2a.
2b.	Effective date (mm/dd/yyyy) of action	2b.
2c.	***Correction? (Y or N)***	***2c.***
2d.	***if correction: (check primary reason)*** ☐ ***Family income correction*** ☐ ***PHA income correction*** ☐ ***Family correction (non-income)*** ☐ ***PHA correction (non-income)***	
2e.	***Correction date (mm/dd/yyyy)***	***2e.***
2f.	***Back rent agreement? (Y or N)***	***2f.***
2g.	***Monthly amount of back rent payment***	***$ 2g.***
2h.	Date (mm/dd/yyyy) of admission to program	2h.
2i.	Projected effective date (mm/dd/yyyy) of next reexamination	2i.

2j. Special program(s) (check all that apply):
☐ *Traditional FSS* ☐ *Other*

2k. Other special programs: Number 01	***2k.***
2k. Other special programs: Number 02	***2k.***
2k. Other special programs: Number 03	***2k.***
2k. Other special programs: Number 04	***2k.***
2k. Other special programs: Number 05	***2k.***
2m. Use if instructed by HUD	2m.
2n. PHA use only	***2n.***
2p. PHA use only	***2p.***
2q. PHA use only	***2q.***
2r. PHA use only	***2r.***
2s. PHA use only	***2s.***

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

3. MTW Household Information

3a. Head of Household Member Number 01

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
	H			=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3r. Total years of school (0-25)

3a. Member Number 02

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3r. Total years of school (0-25)

3a. Member Number 03

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3r. Total years of school (0-25)

3a. Member Number 04

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3r. Total years of school (0-25)

3a. Member Number 05

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3r. Total years of school (0-25)

Codes:

3h. Relation:	3i. Citizenship:	3k. Race:	3m. Ethnicity:
H = head	EC = eligible citizen	1 = White	1 = Hispanic or Latino
S = spouse	EN = eligible noncitizen	2 = Black/African American	2 = Not Hispanic or Latino
K = co-head	IN = ineligible noncitizen	3 = American Indian/Alaska Native	
F = foster child/foster adult	PV = pending verification	4 = Asian	3q. = Community Service
Y = other youth under 18		5 = Native Hawaiian/Other Pacific Islander	1 = n/a
E = full-time student 18+			2 = yes
L = live-in aide			3 = no
A = other adult			4 = pending
			5 = exception

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

3a. Member Number

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3r. Total years of school (0-25)

3a. Member Number

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3r. Total years of school (0-25)

3a. Member Number

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3r. Total years of school (0-25)

3a. Member Number

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3r. Total years of school (0-25)

3a. Member Number

3b. Last Name & Sr, Jr. etc.	3c. First name	3d. MI	3e. Date of birth	3f. Age on effective date of action

3g. Sex	3h. Relation	3i. Citizenship	3j. Disability (Y/N)	3k. Race	3m. Ethnicity
				=1 =2 =3 =4 =5	

3n. Social Security Number	3p. Alien Registration Number	3q. Meeting community service requirement? (Public Housing only)
	A-	

3r. Total years of school (0-25)

Codes:

3h. Relation:	3i. Citizenship:	3k. Race:	3m. Ethnicity:
H = head	EC = eligible citizen	1 = White	1 = Hispanic or Latino
S = spouse	EN = eligible noncitizen	2 = Black/African American	2 = Not Hispanic or Latino
K = co-head	IN = ineligible noncitizen	3 = American Indian/Alaska Native	
F = foster child/foster adult	PV = pending verification	4 = Asian	3q. = Community Service
Y = other youth under 18		5 = Native Hawaiian/Other Pacific Islander	1 = n/a
E = full-time student 18+			2 = yes
L = live-in aide			3 = no
A = other adult			4 = pending
			5 = exception

3s. Continued on an additional sheet? (Y or N) 3s.

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

3t. Total number in household	3t.
3u. Family subsidy status under Noncitizen rule: C = Qualified for continuation of full assistance; E = Eligible for full assistance; F = Eligible for full assistance pending verification of status; T = Temporary deferral of termination; P = Prorated assistance	3u.
3v. Effective date (mm/dd/yyyy) if 3u = C or T	3v.
3w. If new head of household, former head of household's SSN	3w.

4. MTW Family Background at Admission

4a. Date (mm/dd/yyyy) entered waiting list	4a.
4b. ZIP code before admission	4b.
4c. Homeless at admission? (Y or N)	4c.
4d. Does family qualify for admission over the very low-income limit? (Y or N)	4d.
4e. Continually assisted? (head of household only) (Y or N)	***4e.***

5. MTW Unit Information

5a. Unit address			
Number and street			Apt.
City	State	Zip code (+4)	
5b. Is mailing address same as unit address? (Y or N) (If yes, skip to 5d)			***5b.***
5c. Family's mailing address			
Number and street			Apt.
City	State	Zip code (+4)	
5d. Number of bedrooms in unit			5d.
5e. Has the PHA identified this unit as an accessible unit? *(current Public Housing only)* (Y or N)			5e.
5f. Has the family requested accessibility features? *(current Public Housing only)* (Y or N) *(If no, skip to 5h)*			5f.
5g. Has the family received requested accessibility features? *(current Public Housing only)* ☐ a. Yes, fully ☐ b. Yes, partially ☐ c. No, not at all ☐ d. Action pending (can be checked in combination with b. or c.)			5g.
5h. Date (mm/dd/yyyy) unit last passed HQS inspection (Section 8 only, except Homeownership)			***5h.***
5i. Date (mm/dd/yyyy) of last annual HQS inspection (Section 8 only, except Homeownership)			***5i.***

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

6. MTW Asset Income

6a. Family member name	No.	6b. Type of asset	6c. Calculation (PHA use only)	6d. Cash value of asset (PHA use only)	6e. Asset Income	6f. Asset Income Excluded
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
				$	$	$
6g., 6h., 6i. Column totals				$ 6g.	$ 6h.	$ 6i.
6j. Total asset income: 6h minus 6i *(only include if more than $5000)*						$ 6j.

7. MTW Family Income

7a. Family member name	No.	7b. Income code	7c. Calculation (PHA use only)	7d. Dollars per year
				$
				$
				$
				$
				$
				$
				$
				$
				$
				$
				$
				$
				$
7e. Column total				$ 7e.

7f.	Income exclusions	$ 7f.
7g.	Income after income exclusions: 7e minus 7f	$ 7g.
7h.	Total annual income: 6j + 7g	$ 7h.
7i.	Deductions	$ 7i.
7j.	Total annual income minus deductions: 7h minus 7i	$ 7j.
7k.	***Annual imputed welfare income (sanction as determined by TANF agency)***	***$ 7k.***
7m.	Adjusted annual income: 7j + 7k	$ 7m.

7b. Income Code

P = pension	S = SSI	G = general assistance	I = Indian trust/per capita
B = own business	F = Federal wage	W = other wage	N = other nonwage sources
SS = social security	T = TANF	C = child support	***E = medical income***
M = military pay	HA = HA wage	U = unemployment benefits	***X = MTW income***

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

8. Project-Based Family Rental Information

8a.	Indicate if flat or income-based rent (F = Flat I = Income-based)	$	8a.
8b.	Tenant rent	$	8b.
8c.	Mixed family tenant rent	$	8c.
8d.	Utility allowance/estimate	$	8d.
8e.	Reserved		

9. Tenant-Based Family Rental Information

9a.	Indicate if flat subsidy or income-based rent (F = Flat subsidy I = Income-based)		9a.
9b.	Number of bedrooms on voucher/equivalent		9b.
9c.	Family is now moving to this unit? (Y or N)		9c.
9d.	Portability? (Y or N)		9d.
9e.	Cost billed per month		9e.
9f.	PHA code billed		9f.
9g.	Owner name		9g.
9h.	Owner TIN/SSN		9h.
9i.	Rent to owner	$	9i.
9j.	Utility allowance/estimate	$	9j.
9k.	Gross rent of unit	$	9k.
9m.	Flat subsidy amount, if any	$	9m.
9n.	Tenant rent	$	9n.
9p.	Mixed family tenant rent	$	9p.
9q.	Reserved		

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

10. MTW Home Ownership

10a.	Indicate if flat subsidy or income-based homeownership payment (F = Flat subsidy I = Income-based)		10a.	
10b.	Is family now moving to this home? (Y or N)		10b.	
10c.	Date (mm/dd/yyyy) of initial inspection		10c.	
10d.	Portability? Y or N (if no, skip to 10f)		10d.	
10e.	Cost billed per month (put 0 if absorbed)		10e.	
10f.	PHA code billed		10f.	
10g.	Monthly homeownership expense (PITI & MIP if applicable)	$	10g.	
10h.	Utility allowance/estimate	$	10h.	
10i.	Other monthly allowance, if any	$	10i.	
10j.	Reserved			
10k.	Reserved			
10m.	Gross homeownership expense: 10g + 10h + 10i	$	10m.	
10n.	Flat subsidy amount	$	10n.	
10p.	Tenant rent			$ 10p.
10q.	Mixed family tenant rent			$ 10q.
10r.	Reserved			

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

11. Self-Sufficiency Addendum

11a. Family participation in self sufficiency programs ☐ Traditional FSS ☐ MTW

11b. Report category *(check no more than one)* ☐ Enrollment ☐ Progress ☐ Exit

11c. Effective date (mm/dd/yyyy) of action — 11c.

11d. Reserved

11e. Reserved

11f. PHA code of PHA Administering FSS contract — 11f.

11g. Reserved

11h. General Information

(1) Current employment status of head of household. Check the box to indicate the head of household's employment status at the time Addendum completed.
☐ Full-time (32 hours per week or more) ☐ Part-time ☐ Not employed

(2) Date (mm/yyyy) current employment began — 11h(2).

(3) Benefits in current employment: ☐ Health ☐ Retirement Account ☐ Other ☐ None

(4) Reserved — 11h(4).

(5) Assistance received by the Family: (check all that apply)
☐ TANF Income Assistance? ☐ General Assistance? ☐ Food Stamps?
☐ Medicaid/Children's Health Insurance Program? ☐ Earned Income Tax Credit?

(6) Number of children receiving child care services — 11h(6).

11i. Family Services Table

	(1) Enrolled During Reporting Period (Y or N)	(2) Completed During Reporting Period (Y or N)	(3) Service Provider
Education/Training			
GED			
High school			
Post secondary			
Vocational/Job training			
Job search/Job placement			
Job retention			
Transportation			
Health services			
Drug treatment/Rehabilitation			
Mentoring			
Homeownership counseling			
Individual Development Account (IDA)			
Child care			
None			

11i (3) Service Provider Codes

P = PHA	D = DOL grantee	PR = For profit entity	E = Employer
T = TANF agency	V = Voluntary organization	N = Nonprofit agency	C = Community college

Head of Household Name	Social Security Number	Date Modified (mm/dd/yyyy)

11j. **Self-Sufficiency Contract Information**

(1) Initial start date (mm/yyyy) *(enrollment report only)* — 11j(1).

(2) Initial end date (mm/yyyy) *(enrollment report only)* — 11j(2).

(3) Program extension date (mm/yyyy) *(if applicable)* — 11j(3).

(4) Number of family members with Individual Training and Services Plan — 11j(4).

(5) Did the family receive selection preference because of a related service? (enrollment report only) (Y or N)

11k. **Escrow Account Information**

(1) Current monthly credit — $ 11k(1).

(2) Current account balance — $ 11k(2).

(3) Account amount disbursed to the family (cumulative as of end of reporting period) — $ 11k(3).

11m. Exit Information (complete only for Exit Report)

(1) Did family complete contract of participation? (Y or N)

(2) If (1) is Yes, did family move to homeownership? (Y or N)

(3) If (1) is No, reason for exit: ☐ Left voluntarily ☐ Asked to leave program ☐ Portability move-out
☐ Left because essential service was unavailable ☐ Contract expired but family did not fulfill obligations

[FR Doc. 00–7784 Filed 3–29–00; 8:45 am]
BILLING CODE 4210–33–C

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–02]

(3) Deputy Assistant Secretary for Operations and Management;
(4) Director, Policy and Program

Permit No. TE–24723

Applicant: Colorado River Indian Tribes, Ahakhav Tribal Preserve.

absence surveys for the following federally-listed species occurring on lands administered by the BLM:
razorback sucker (*Xyrauchen texanus*)
Pecos gambusia (*Gambusia nobilis*)
Gila topminnow (*Poeciliopsis*

Bureau of Land Management (BLM), acting for the Department of the Interior, announces its intention to request

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4572–D–02]

Order of Succession

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity (FHEO), HUD.

ACTION: Notice of Order of Succession for the Assistant Secretary for Fair Housing and Equal Opportunity.

SUMMARY: In this notice, the Assistant Secretary for Fair Housing and Equal Opportunity designates the Order of Successions for the position of Assistant Secretary for FHEO, and revokes the prior Order of Succession for this position.

EFFECTIVE DATE: March 17, 2000.

FOR FURTHER INFORMATION CONTACT: Deborah R. Harrison, Administrative Officer, Office of Fair Housing and Equal Opportunity, Budget and Administrative Support Division, Department of Housing and Urban Development, 451 7th Street, SW, Room 5124, Washington, DC 20410–2000; telephone (202) 708–2701. [This is not a toll-free number.] A telecommunications device for hearing impaired persons (TDD) is available at 1–800–543–8294.

SUPPLEMENTARY INFORMATION: In this document, the Assistant Secretary for Fair Housing and Equal Opportunity is issuing the Order of Succession of officials authorized to serve as Acting Assistant Secretary for FHEO when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for FHEO is not available to exercise the powers or perform the duties of the office. This revised Order of Succession is being issued due to a reorganization of the office of the Assistant Secretary for FHEO.

Accordingly, the Assistant Secretary for FHEO designates the following officials, in the order specified to act for and assume the powers of the Assistant Secretary for FHEO:

Section A. Order of Succession

During any period when, by reason of absence, disability, or vacancy in office, the Assistant Secretary for Fair Housing and Equal Opportunity is not available to exercise the powers or perform the duties of the Office of the Assistant Secretary for FHEO, the following are hereby designated to serve as Acting Assistant Secretary for FHEO:

(1) General Deputy Assistant Secretary;

(2) Deputy Assistant Secretary for Enforcement and Program;

(3) Deputy Assistant Secretary for Operations and Management;

(4) Director, Policy and Program Evaluation Staff;

(5) Director, Office of Enforcement;

(6) Director, Office of Programs;

(7) Director, Field Oversight Staff; and

(8) Director, Office of Management and Planning

Section B. Authority Revoked

The Order of Succession of the Assistant Secretary for FHEO, published in the **Federal Register** on December 13, 1996 at 61 FR 65591, is hereby revoked.

Authority: Sec. 7(d) Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: March 17, 2000.

Eva M. Plaza,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 00–7783 Filed 3–29–00; 8:45 am]

BILLING CODE 4210–28–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(a) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit No. TE–836329

Applicant: Blanton and Associates, Austin, Texas.

Applicant requests authorization for recovery purposes to conduct activities with the following federally-listed plants:

Slender rush pea (*Hoffmannseggia tenella*)
Black lace cactus (*Echinocereus reichenbachii var. albertii*)
Tobusch fishhook cactus (*Ancistrocactus tobuschii*)
Texas poppy mallow (*Callirhoe scabriuscula*)
Sneed pincushion cactus (*Coryphanthus sneedii var. sneedii*)
Terlingua Creek Cat's-Eye (*Cryptantha crassipes*)
Lloyd's hedgehog cactus (*Echinocereus lloydii*)
Davis' green pitaya (*Echinocereus viridiflora var. davisii*)
Texas snowbells (*Styrax texana*)

Permit No. TE–24723

Applicant: Colorado River Indian Tribes, Ahakhav Tribal Preserve.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) within the Colorado River Indian Tribes Ahakhav Tribal Preserve in La Paz County, Arizona.

Permit No. TE–24755

Applicant: Bureau of Land Management, Kingman Field Office, Kingman, Arizona.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) in Mohave and Yavapai Counties, Arizona.

Permit No. TE–821356

Applicant: Grand Canyon Monitoring and Research Center, Flagstaff, Arizona.

Applicant requests authorization for research and recovery purposes to conduct fish monitoring studies for the humpback chub (*Gila cypha*) in the Little Colorado River and the Colorado River mainstem.

Permit No. TE–24786

Applicant: Bureau of Indian Affairs-Western Regional Office, Phoenix, Arizona.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in any Indian Reservation that may have potential habitat in Maricopa, Yuma, Pima, Pinal, Gila, or Yavapai Counties, Arizona.

Permit No. TE–24788

Applicant: Animal and Plant Health Inspection Service/Wildlife Services, Phoenix, Arizona.

Applicant requests authorization to conduct presence/absence surveys for the following federally-listed species in various counties in Arizona:

bald eagle (*Haliaeetus leucocephalus*)
cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*)
southwestern willow flycatcher (*Empidonax traillii extimus*)
Yuma clapper rail (*Rallus longirostris yumanensis*)
black-footed ferret (*Mustela nigripes*)
jaguar (*Panthera onca*)
Mexican gray wolf (*Canis lupus baileyi*)

Permit No. TE–828830

Applicant: Bureau of Land Management (BLM), Tucson Field Office, Tucson, Arizona.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the following federally-listed species occurring on lands administered by the BLM:

Fish: Gila topminnow (*Poeciliopsis occidentalis*) desert pupfish (*Cyprinodon macularius macularius*) razorback sucker (*Xyrauchen texanus*)

Birds: southwestern willow flycatcher (*Empidonax traillii extimus*) cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*)

Mammals: lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*)

Permit No. TE–819473

Applicant: Grand Canyon National Park, Grand Canyon, Arizona.

Applicant requests authorization for recovery purposes to monitor the southwestern willow flycatcher (*Empidonax traillii extimus*) and the California condor (*Gymnogyps californianus*) in Grand Canyon National Park, Arizona.

Permit No. TE–24789

Applicant: Colby Henley, Tucson, Arizona.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in southern Arizona.

Permit No. TE–24791

Applicant: Freese and Nichols, Inc., Fort Worth, Texas.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the golden-cheeked warbler (*Dendroica chrysoparia*), black-capped vireo (*Vireo atricapillus*), and red-cockaded woodpecker (*Picoides borealis*) within Texas.

Permit No. TE–24792

Applicant: Deborah L. Brewster, Pine, Arizona.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (*Empidonax traillii extimus*) in Arizona and New Mexico.

Permit No. TE–4439

Applicant: Albuquerque Biological Park, Albuquerque, New Mexico.

Applicant requests authorization for scientific research and recovery purposes to collect, hold, spawn, and release the Rio Grande silvery minnow (*Hybognathus amarus*) and also collect from all river drainages in New Mexico, and hold for public display the following federally-listed fish species:

Gila trout (*Oncorhynchus gilae*)
Colorado pikeminnow (*Ptychocheilus lucius*)
razorback sucker (*Xyrauchen texanus*)
Pecos gambusia (*Gambusia nobilis*)
Gila topminnow (*Poeciliopsis occidentalis*)

Permit No. TE–799099

Applicant: Eagle Environmental, Inc.

Applicant requests authorization for recovery purposes to conduct presence/absence surveys for the cactus ferruginous pygmy-owl (*Glaucidium brasilianum cactorum*) in Arizona, New Mexico, and Texas.

DATES: Written comments on these permit applications must be received on or before May 1, 2000.

ADDRESSES: Written data or comments should be submitted to the Legal Instruments Examiner, Division of Endangered Species/Permits, Ecological Services, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: The U.S. Fish and Wildlife Service, Ecological Services, Division of Endangered Species/Permits, P.O. Box 1306, Albuquerque, New Mexico 87103. Please refer to the respective permit number for each application when requesting copies of documents. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents on or before May 1, 2000, to the address above.

Susan MacMullin,

Programmatic Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 00–7811 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–340–1220–PC–02–24 1A]

Extension of Currently Approved Information Collection, OMB Approval Number 1004–0165

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM), acting for the Department of the Interior, announces its intention to request approval to collect certain information from those people submitting nominations for significant caves under the Federal Cave Resources Protection Act of 1988 and those people requesting confidential cave information on federal lands administered by the Secretary of the Interior. This information is needed to: (1) Determine which caves will be listed as significant and (2) decide whether to grant access to confidential cave information.

DATES: Comments on the proposed information collection must be received by May 30, 2000 to be assured of consideration.

ADDRESSES: Comments may be mailed to: Regulatory Affairs Group (WO–630), Bureau of Land Management, 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Comments may be sent via the Internet to: *WOComment@blm.gov*. Please include "ATTN: 1004–0165" and your name and return address in your Internet message.

Comments may be hand delivered to: The Bureau of Land Management Administrative Record, Room 401, 1620 L St., NW, Washington, DC.

Comments will be available for inspection at the L Street address during regular business hours (7:45 am to 4:15 pm), Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Jim Goodbar, BLM, Carlsbad, New Mexico Field Office, (505) 234–5929.

SUPPLEMENTARY INFORMATION: In accordance with 5 CFR 1320.12(a), the BLM, on behalf of the Department, is required to provide a 60-day notice in the **Federal Register** concerning a collection of information contained in published current rules to solicit comments on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) the accuracy of the agency's estimate of the burden of collecting the information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of collecting the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. BLM will receive and

analyze comments sent in response to this notice and include them in the

number of responses is estimated to be about 200 per year. The frequency of

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Mt. Diablo Meridian

T. 21 N., R. 20 E.

and "limited seasonally", to "limited to existing roads and trails", in order to

currently "open" year-long and approximately 73,430 acres are "limited

analyze comments sent in response to this notice and include them in the request for approval from the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Nominations of Significant Caves

The Federal Cave Resources Protection Act of 1988, 102 Stat. 4546, 16 U.S.C. 4301, requires identifying, protecting and maintaining, to the extent possible, significant caves on lands managed by the Department of the Interior. The implementing regulations are found at 43 CFR 37—Cave Management. The regulations were issued on October 1, 1993. Federal agencies must consult with "cavers" and other interested parties and develop a listing of significant caves. The regulations establish criteria for identifying significant caves and integrate cave management into existing planning and management processes to protect cave resource information. Protecting the information will prevent vandalism and disturbance of significant caves.

The public and other government agencies provide (a) names and addresses, (b) name and phone number of a key contact, (c) cave name, (d) cave location, (e) topographic and/or cave maps, (f) name of the administering federal agency and agency filed office name and address where the cave is located, (g) description of the cave, and (h) description of the applicable criteria significant caves, such as biota, cultural, geologic/mineralogic/paleontologic, hydrologic, recreational, and/or educational or scientific. If the Department did not collect the information, it could not identify, manage, and protect significant caves in accordance with the law.

This collection of information is short, simple, and limited to the information necessary for efficient operation of the program. The information collected is a voluntary, non-recurring submission necessary to receive a benefit. There is no other source for the information, and failure to submit the necessary information could result in a significant cave not receiving appropriate protection. Respondents already maintain this information for their own recordkeeping purposes and need only compile it for submission.

Based on the Department's experience in administering cave resources as described above, the public reporting burden for this collection is estimated to average 3 hours per response. The estimate includes the time for research, time to transcribe and audit the data, and time to prepare the nomination. The number of responses is estimated to be about 200 per year. The frequency of response is once per nomination. The estimated total annual burden on new respondents is 600 hours.

Access to Confidential Cave Information

Other federal or state agencies, bona fide educational or research institutes, or individuals or organizations assisting the land management agencies with cave management activities may request access to confidential cave information. The written request should include: (a) name, address and telephone number of the person responsible for the security of the information, (b) a legal description of the cave location, (c) a statement of the purpose of the request, and (d) written assurance that the requesting party will maintain the confidentiality of the information and protect the cave and its resources. The Department uses the information provided to determine whether disclosure will create a substantial risk to cave resources. If the Department did not collect the information, it could not identify, manage or protect significant caves in accordance with the laws.

The collection of information is short, simple and convenient to the applicant. The information collected is a voluntary, non-recurring submission necessary to receive a benefit. The respondents already maintain this information for their own recordkeeping purposes and need only compile it.

Based on the Department's experience administering cave resources as described above, the information collection burden for confidential cave information requests is about 1 hour per request. The number of requests per year is ten. The frequency of response is once per request. The estimated total annual burden on new respondents is 10 hours.

All responses to this notice will be summarized and included in the request for Office of Management and Budget approval. All comments will also be a matter of public record.

Dated: March 27, 2000.

Carole Smith,

BLM Information Collection Officer.

[FR Doc. 00–7837 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–030–2822–JL–J787; Closure Notice No. NV–030–00–001]

Emergency Closure and Vehicle Restriction on Federal Lands

SUMMARY: Notice is hereby given that certain public lands south of Hungry Ridge and northwest of Spanish Springs Valley, Washoe County, Nevada, are closed to all motorized vehicles. This closure is necessary due to unauthorized construction of a motorcross track in a rehabilitated materials pit, and off-road vehicle use which is causing considerable adverse effects to soils and vegetation. In addition, motorized vehicle use is restricted to existing roads and trails on all public lands under the jurisdiction of the Carson City Field Office which were burned during the 1999 fire season. These fires were identified by the following names: (1) Sand Springs/Fairview; (2) Cold Springs; (3) Stillwater Complex; (4) Shoshone; (5) New Pass; (6) Cemetery; (7) Fish; (8) Wilcox; (9) Reservoir; (10) Red Rock; (11) Pah Rah; and (12) Sutro. This restriction is necessary in order to allow for recovery and revegetation of these lands.

DATES: This closure becomes effective immediately and these restrictions will go into effect on March 20, 2000, and will remain in effect until the Manager, Carson City Field Office, determines they are no longer needed.

FOR FURTHER INFORMATION CONTACT: John O. Singlaub, Manager, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701. Telephone (775) 885–6100.

SUPPLEMENTARY INFORMATION: The authorities for the closure and restrictions are 43 CFR 8341.2, 43 CFR 8342.3 and 43 CFR 8364.1. Any person who fails to comply with a closure or restriction order is subject to arrest and fines in accordance with applicable provisions of 18 U.S.C. 3571 and/or imprisonment not to exceed 12 months.

This order applies to all motorized vehicles excluding (1) any emergency or law enforcement vehicle while being used for emergency purposes, and (2) any vehicle whose use is expressly authorized in writing by the Manager, Carson City Field Office.

The public lands affected by the closure order are located approximately one mile west of Nevada Highway 445 at the south end of Hungry Ridge, and include all lands being used as an unauthorized motorcycle race course within:

Mt. Diablo Meridian

T. 21 N., R. 20 E.
Sec. 22, NE¼NE¼NW¼

The public lands affected by the restriction order constitute approximately 151,000 acres and are located throughout the area administered by the Carson City Field Office. These lands are depicted on maps posted in the Carson City Field Office. Copies of these maps also may be obtained from the Field Office.

Dated: March 8, 2000.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 00–7906 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–HC–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Intent To Prepare an Environmental Assessment for Amendments to the Gunnison and Uncompahgre Resource Management Plans Regarding Cross-Country Travel by Off Highway Vehicles and Mountain Bikes; 30-Day Scoping Period Announced

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Gunnison and the Uncompahgre Field Offices, Bureau of Land Management (BLM) in Colorado, propose to prepare an Environmental Assessment and amend their respective resource management plans to prohibit cross-country travel by off-highway vehicles and mountain bikes on certain lands managed by each of these agency offices. Cross-country travel is defined as travel off established, existing roads and trails. Established, existing roads and trails, for this proposal, are defined as: roads and trails that exist on the ground at the time agency decisions become effective, and are described in agency travel inventories, or are easily recognizable on the ground as a route, and have been traveled routinely by users. This action is interim in nature, and is necessary so these offices can responsibly manage the land and meet people needs by preventing the proliferation of new, user-created routes and help maintain a quality recreation experience until intensive travel management planning can be completed by the agencies for the affected lands. The affected BLM offices propose changing OHV designations under 43 CFR 8342.2 on BLM-managed lands currently designated "open" year-long, and "limited seasonally", to "limited to existing roads and trails", in order to prohibit cross-country travel by OHVs. In addition, under 43 CFR 8364.1 the offices propose to limit mountain bike use to "existing roads and trails" on all lands where use is not currently prohibited. Snowmobile use would not be addressed in this proposal. Implementing these proposed land use plan amendments would be an interim and temporary measure until the offices can conduct intensive and detailed travel management planning on the affected lands. After the completion of the EA, the BLM offices would then issue decisions amending existing resource management plans.

This effort is being undertaken in coordination with the Forest Service which is proposing similar measures on National Forest lands managed by the Gunnison and Paonia Ranger Districts within the Gunnison National Forest, Region 2.

The public is invited to comment on this proposal and to contact the local offices for additional information. The 30-day time period for receiving comments from the public will begin on the day this notice is published in the **Federal Register**, and will end 30 days after the publication of this notice in the **Federal Register**. Informal scoping occurred from February 24, 2000, through March 24, 2000. This notice will satisfy the requirement for the affected BLM offices to conduct formal scoping. Comments received during the scoping period will be considered during the preparation of the EA.

All alternatives to be considered during the EA process will be formulated after the scoping period is over and all comments are received.

DATES: Submit comments on or before May 1, 2000.

ADDRESSES: Address all comments concerning this notice to Bill Bottomly, Bureau of Land Management, 2465 South Townsend Avenue, Montrose, CO 81401. Electronic mail can be sent to bill_bottomly@co.blm.gov. The local addresses and telephone numbers of the affected BLM offices are: Gunnison Field Office, Bureau of Land Management, 216 N. Colorado, Gunnison, CO 81230 (970)641–0471; Uncompahgre Field Office, Bureau of Land Management, 2505 S. Townsend Avenue, Montrose, CO 81401 (970)240–5300.

FOR FURTHER INFORMATION CONTACT: Bill Bottomly at (970)240–5337.

SUPPLEMENTARY INFORMATION: The GFO manages approximately 585,000 acres in the study area. In the GFO, approximately 365,660 acres are currently "open" year-long and approximately 73,430 acres are "limited seasonally" to motorized use. Mountain bike use is currently unrestricted on approximately 537,000 acres. The UFO manages approximately 66,825 acres within the study area for this proposal. Of the lands managed by the UFO in the study area, approximately 27,060 acres are "open" year-long and 36,690 acres are "limited seasonally" to motorized use. Mountain bike use is currently unrestricted on all BLM-managed lands in the study area managed by the UFO.

The affected agency resource management plans were prepared prior to much of the recent increase in OHV and mountain bike use, and the new development of all terrain vehicle technology. One of the many opportunities on public land is traveling the back country for recreational pursuits, such as sight-seeing, wood cutting, fishing, hunting, and other activities. It is the goal of both offices to provide for a wide spectrum of dispersed recreation activities while minimizing environmental impacts and conflicts between user groups. Some of this use occurs on public lands where OHV use is currently limited to existing or designated roads and trails. However, there are large areas of public land that are open to cross-country travel off roads and trails by OHVs, including mountain bikes. This unrestricted use has the potential to continue the spread of noxious weeds, create user conflicts, cause erosion, damage cultural sites, and disrupt wildlife and wildlife habitat. With an increase in OHV and mountain bike traffic, and changes in OHV technology, the public, and the land management agencies, recognize the need to evaluate current management decisions for those areas where driving off roads and trails is allowed. A change in management direction would be accomplished through an EA and an amendment to the BLM resource management plans. The BLM plan amendments would address the use of wheeled, motorized vehicles designed for and/or capable of travel off roads and trails, and mountain bike use. The BLM proposes changing the areas currently open seasonally or year-long to cross-country OHV and mountain bike use to a designation that allows for travel only on existing roads and trails. These changes in designation would prohibit cross-country travel by wheeled, motorized vehicles designed for and/or capable of travel off roads and trails, and mountain bike. However, this would not change most of the current limited or closed designations, or designated intensive use areas.

Access allowed under the terms and conditions of a federal lease or permit

for private land of equal value in the Mason Neck area of Fairfax County. The

regulations, and policies. If identified through public participation, additional

Office, and would have no affect on private lands.

SRMA boundary. This would result in

Dated: March 24, 2000.

Access allowed under the terms and conditions of a federal lease or permit would not be affected by the proposal. This broad scale decision as proposed would be an interim decision until revision or completion of agency travel management plans. If necessary, as a part of a future travel management planning process, existing OHV designations that affect travel uses by OHVs and mountain bikes on the affected lands could be changed to a more appropriate designation, including identifying areas for trail development, or further limiting travel off roads and trails.

The 30-day scoping period covering this notice for the BLM plan amendments and EA is being provided so interested groups and the general public can comment on the proposal in this notice. Please see the information after the heading above titled "DATES" for the public comment period dates. No open houses or public meetings are planned during the comment period on this proposal. Proposed BLM plan amendments will be published during the EA process, and a 30-day protest period will apply to the BLM proposed amendments.

Authority: Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712), Sec. 6, Pub. L. 94–588, 90 Stat. 2949 (16 U.S.C. 1604).

Barry Tollefson and Allan Belt, Field Managers, Gunnison and Uncompahgre Field Offices, respectively.

Dated: March 24, 2000.

Barry A. Tollefson,

Field Manager, Gunnison Field Office.

Dated: March 24, 2000.

Allan J Belt,

Field Manager, Uncompahgre Field Office.

[FR Doc. 00–7816 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES–930–00–143HN LRTN]

Notice of Intent To Prepare Planning Analysis/Environmental Assessment and Notice of Exchange Proposal in Fairfax County, VA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM), Eastern States, will prepare a Planning Analysis/ Environmental Assessment (PAE/EA) to examine the proposed exchange of Federal land at the former Lorton Correctional Complex, Lorton, Virginia, for private land of equal value in the Mason Neck area of Fairfax County. The planning will follow the procedures set forth in 43 CFR, Subpart 1600. Processing the land exchange will take place pursuant to Section 206 of the Federal Land Policy and Management Act (43 USC 1716), as amended, and follow procedures set forth in 43 CFR Subpart 2200.

DATE: Comments will be accepted through May 12, 2000. To be considered in the planning analysis/environmental assessment of the proposed exchange and in processing the exchange, comments relating to the identification of planning issues, alternatives, and criteria must be made in writing to the State Director and be postmarked or delivered by May 12, 2000.

ADDRESS: Send comments to State Director, Bureau of Land Management, Eastern States (ES–930), 7450 Boston Blvd., Springfield, Virginia 22153.

FOR FURTHER INFORMATION CONTACT: Walt Rewinski at 703–440–1727.

SUPPLEMENTARY INFORMATION: The Lorton Technical Corrections Act of 1998 gave the Department of the Interior (DOI) the opportunity to select and receive lands managed by the General Services Administration (GSA) at the Lorton Correctional Complex in Lorton, Virginia. DOI assigned processing the proposed land exchange to BLM. GSA would transfer the requested land to BLM for a possible land exchange. The Act also required that the use of these lands be consistent with the Reuse Plan. The Fairfax County Comprehensive Plan was amended July 26, 1999, and became the Reuse Plan. The Reuse Plan identifies some of the land north of Silverbrook Road for residential development (about 205 acres) and an elementary school site (about 15 acres).

The Federal land at the Lorton Correctional Complex to be considered for exchange is the developable land north of Silverbrook Road as identified in the Reuse Plan.

In exchange, the United States would acquire all or a significant part of the property known as Meadowood Farm on Mason Neck at 10406 Gunston Road, Lorton, Virginia 22079. Both the Federal and non-Federal lands are in Fairfax County, Virginia. The private party participating in the exchange is the Meadowood Farm Limited Partnership, owner of Meadowood Farm.

The public is invited to participate in the land exchange and planning process, beginning with scoping to identify issues to be addressed, alternatives to be analyzed, and criteria to be considered in making a decision, Criteria include applicable laws, regulations, and policies. If identified through public participation, additional criteria may be developed. The scoping period is an opportunity to identify any liens, encumbrances or other title claims on both the Federal and non-Federal land.

Public participation is an integral and important part of the planning and exchange processes. We intend to involve all interested or affected parties. The planning team will seek input from groups and individuals through public meetings, direct mailings, personal contacts, and coordination with local, state and other federal agencies.

A public meeting will be held at 7:30 pm on Wednesday, April 12, 2000, at the BLM office located at 7450 Boston Blvd., Springfield, Virginia 22153. At the meeting BLM will present information about the planning and exchange processes, and gather public input.

The PA/EA will be prepared by an interdisciplinary team of cultural and natural resource specialists. Technical support and mapping will be provided as needed.

Records of the planning process will be available for public review at the BLM, Eastern States, 7450 Boston Blvd., Springfield, Virginia 22153.

Dated: March 27, 2000.

Walter Rewinksi,

Deputy State Director, Division of Resources Planning, use and Protection.

[FR Doc. 00–7928 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–GJ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–120–00–1610–DH–241A]

Notice of Availability of Proposed Resource Management Plan Amendments for Kremmling Field Office Resource Management Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notices of Availability.

SUMMARY: The Kremmling Field Office of the Bureau of Land Management is proposing to make two amendments to the Kremmling Resource Management Plan (RMP). One amendment would establish management direction for lands recently acquired through land acquisitions. The other amendment would expand the boundary of the Upper Colorado River Special Recreation Management Area (SRMA) and consider management changes for the SRMA. The amendments only affect public lands in the Kremmling Field Office, and would have no affect on private lands.

ADDRESSES: For further information contact Dave Atkins, Bureau of Land Management (BLM), 2815 H Road, Grand Junction, Colorado 81505; Telephone (970) 244–3074.

DATES: The final decision on the amendments will be made following a 60-day Governor's Consistency Review, a 30-day protest period, and resolution of inconsistencies and protests, if any. The 30-day protest period is initiated by this notice.

SUPPLEMENTAL INFORMATION: Notices of Intent for these two Plan amendments were published in the **Federal Register** on August 26, 1999. All comments received as a result of the Notices were considered In preparation of the Plan amendments and environmental assessments.

The first Plan amendment would establish land use planning prescriptions and land use priorities for fourteen separate parcels of land acquired by the Kremmling Field Office since the Kremmling RMP was completed in 1984. The RMP amendment would also facilitate establishing land management prescriptions and land use priorities for future land acquisitions during the environmental analysis process associated with each specific land acquisition.

The second Plan amendment would expand the boundary of the Upper Colorado River Special Recreation Management Area (SRMA) and consider management changes for the SRMA. The specific management changes include the following:

#1. Modify the boundary of the SRMA. The current SRMA boundary would be expanded to approximately ½ mile each side of the Colorado river, and would be extended approximately 7½ miles upstream to near Reeder Creek.

#2. Land use priorities would be changed for some public lands in the proposed SRMA. Of the 12,237 acres of public land in the SRMA, approximately 8,787 acres would be identified as a recreation priority, 2,542 acres as a wildlife priority, 833 acres as a soil priority, 35 acres as a protected area priority, and 40 acres with no priority. In addition, 20.8 miles of the Colorado River and associated tributaries would be designated as a water priority.

#3. Because of the recreation emphasis of the SRMA, the amendment would also address enlarging the existing No Surface Occupancy (NSO) area for oil and gas development within the river corridor, to that of the new SRMA boundary. This would result in 12,237 acres of NSO within the SRMA. There are currently 4,870 acres of NSO within the boundary of the existing SRMA boundary. Consequently, this action would increase the acreage of NSO by 7,367 acres. The amendment would also ensure that any future lands within the SRMA that are acquired by the Federal government would have an NSO stipulation for oil and gas development. There would be no affect on these lands unless acquired by the Federal government.

#4. The amendment would also withdraw the entire 12,237 acres of Federal surface estate within the SRMA from settlement, sale, location, or entry under the general land laws, including the mining laws. It would also withdraw 1,020 acres of private or state land with Federal minerals. The amendment would also identify additional private or State owned lands within the SRMA that would be withdrawn from the lands and mining laws if they were ever acquired by the Federal government. By including these private lands at this time, they would automatically be withdrawn if acquired by the Federal Government. There would be no affect on the private lands unless they were acquired by the Federal Government.

The above two alternatives as well as the no action alternative were analyzed in the environmental assessments associated with the amendments of the RMP.

The Bureau's planning regulations (43 CFR 1610.5–2) provide protest procedures for persons adversely affected by the approval of RMP amendments. Any person who participated in the planning process and has an interest which is or may be adversely affected by the amendment of an RMP may protest such amendments. A protest may only raise those issues which were submitted for the record during the planning process. The protest shall be in writing and shall be filed with the Director. The protest must be filed within 30 days of the date of this notice. Protests shall be filled with: Director, Bureau of Land Management, Attention: Ms Brenda Williams, Protest Coordinator (WO–210), WO–210/LS–1075, Department of the Interior, Washington DC 20240.

The overnight mail address is: Director, Bureau of Land Management, Attention: Ms Brenda Williams, Protest Coordinator (WO–210), 1620 L Street, NW, Rm. 1075, Washington, DC 20036, [Phone: 202/452–5110].

Dated: March 24, 2000.

Linda M. Gross,

Kremmling Field Manager.

[FR Doc. 00–7876 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Notice on Outer Continental Shelf Oil and Gas Lease Sales

AGENCY: Minerals Management Service, Interior.

ACTION: List of restricted joint bidders.

SUMMARY: Pursuant to the authority vested in the Director of the Minerals Management Service by the joint bidding provisions of 30 CFR 256.41, each entity within one of the following groups shall be restricted from bidding with any entity in any other of the following groups at Outer Continental Shelf oil and gas lease sales to be held during the bidding period May 1, 2000, through October 31, 2000. The List of Restricted Joint Bidders published October 18, 1999, in the **Federal Register** at 64 FR 56215 covered the period November 1, 1999, through April 30, 2000.

Group I: Exxon Mobil Corporation; and ExxonMobil Exploration Company.

Group II: Shell Oil Co.; Shell Offshore Inc.; SWEPILP; Shell Frontier Oil & Gas Inc.; Shell Consolidated Energy Resources Inc.; Shell Land & Energy Company; Shell Onshore Ventures Inc.; Shell Deepwater Development Inc.; Shell Deepwater Production Inc.; and Shell Offshore Properties and Capital Inc.

Group III: BP Exploration & Oil Inc.; BP Exploration (Alaska) Inc.; and Amoco Production Company.

Dated: March 24, 2000.

Thomas R. Kitsos,

Director, Minerals Management Service.

[FR Doc. 00–7869 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–MR–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from the Prince William Sound Region, AK in the Control of the Chugach National Forest, U.S. Forest Service, Anchorage, AK and in Possession of the University of Alaska Museum, Fairbanks, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items from the Prince William Sound Region, Alaska in the control of the Chugach National Forest, U.S. Forest Service, Anchorage, AK and in possession of the University of Alaska Museum, Fairbanks, AK which meet the definition of "unassociated funerary objects" under Section 2 of the Act.

The two cultural items consist of two bone needles.

In 1933, these two cultural items were recovered with a burial at the Palugvik Village site on Hawkins Island, AK during excavations conducted under the auspices of the University of Pennsylvania Museum by Frederica de Laguna. The human remains recovered with these cultural items have previously been repatriated from the Danish National Museum. Based on archeological evidence, the Palugvik Village site has been dated to c. 1500 A.D.

The three cultural items consist of a string of glass beads and two shell pendants.

In 1933, these three cultural items were recovered with a burial at Glacier Island, AK during excavations conducted under the auspices of the University of Pennsylvania Museum by Frederica de Laguna. The human remains recovered with these cultural items have previously been repatriated from the Danish National Museum. Based on archeological evidence, this Glacier Island burial has been dated to the post-contact period, post-1780 A.D.

In 1953, the cultural items mentioned above were sent to the University of Alaska Museum from the University of Pennsylvania Museum as part of an exchange collection.

Based on the above mentioned information, officials of the U.S. Forest Service have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these five cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the U.S. Forest Service have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Chugach Alaska Corporation.

This notice has been sent to officials of the Chugach Alaska Corporation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Linda Yarborough, Acting Forest Archaeologist, Chugach National Forest, 3301 C Street, Suite 300, Anchorage, AK 99503; telephone: (907) 271–2511, fax: (907) 271–2725 before May 1, 2000. Repatriation of these objects to the Chugach Alaska Corporation may begin after that date if no additional claimants come forward.

Dated: March 23, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–7852 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Unassociated Funerary Objects from the Battle Point Site, Ottawa County, MI in the Possession of the Museum of Anthropology, University of Michigan, Ann Arbor, MI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and unassociated funerary objects from the Battle Point site, Ottawa County, MI in the possession of Museum of Anthropology, University of Michigan, Ann Arbor, MI.

A detailed assessment of the human remains was made by Museum of Anthropology professional staff in consultation with representatives of the Little River Band of Ottawa Indians.

In 1955, human remains representing 11 individuals were recovered from the Battle Point site (20OT4), Ottawa County, MI. The 1955 excavations were conducted by Mr. George Davis and Mr. Edward Gillis of Grand Rapids, MI following their observation that human remains were eroding into the Grand River; and these human remains were donated to the University of Michigan Museum of Anthropology in 1962. No known individuals were identified. The funerary objects recovered with the human remains were not donated to the University of Michigan Museum of Anthropology.

In 1962, human remains representing one individual were recovered during surface collections from the Battle Point site (20OT4), Ottawa County, MI conducted by Richard Flanders of the University of Michigan Museum of Anthropology. No known individual was identified. No associated funerary objects can be identified.

The 18 cultural items consist of small iron fragments, a sample of wood, one iron nail, three silver fragments, one fish bone, and unidentified pieces of unmodified animal bone.

In 1962, these cultural items were recovered during surface collections conducted by Richard Flanders of the University of Michigan Museum of Anthropology. Based on age, types of cultural material, presence with human remains, and location at the Battle Point site, these cultural items have been determined to be unassociated funerary objects.

Based on historic documents, reports of associated funerary objects, and cultural material, the Battle Point site has been identified as an Ottawa settlement and cemetery dating to c. 1810-1830 A.D. Additionally, consultation evidence provided by representatives of the Little River Band of Ottawa Indians includes an *Abstract of Title* for the land parcel containing the Battle Point cemetery and specific mentions of this cemetery continue in a series of transactions. Further, the original 1864 abstract involved a member of the Little River Band of Ottawa.

Based on the above mentioned information, officials of the University of Michigan Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(1), the human remains listed above represent the physical remains of a minimum of 12 individuals of Native American ancestry. Officials of the University of Michigan Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these 18 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Lastly, officials of the University of Michigan Museum of Anthropology have determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and unassociated funerary objects and the Little River Band of Ottawa Indians.

This notice has been sent to officials of the Little River Band of Ottawa Indians, the Grand Traverse Band of Ottawa and Chippewa Indians, the Little Traverse Band of Odawa Indians, and a non-Federally recognized Indian group, the Grand River Bands of Ottawa Indians. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary objects should contact Karen O'Brien, Collections Manager, Museum of Anthropology, University of Michigan, Ann Arbor, MI 48109; telephone: (734) 764-6299, before May 1, 2000. Repatriation of the human remains and unassociated funerary objects to the Little River Band of Ottawa Indians may begin after that date if no additional claimants come forward.

Dated: March 22, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–7850 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item in the Possession of Pipestone National Monument, National Park Service, Pipestone, MN

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item in the possession of Pipestone National Monument, National Park Service, Pipestone, MN which meets the definition of "sacred object" under Section 2 of the Act.

The cultural item is a pipestone pipe fashioned in a generalized "T" shape with a long prow. The pipe stem is wood and fashioned in a flattened diamond shape with three notches cut into the stem, and attached to the bowl with a leather cord. Written on the shank of the pipe bowl in India ink are the words "Chief Roan Horse, Osage."

Catalog information in the possession of the National Park Service states that the item is an Osage Indian pipe and belonged to Chief Roan Horse in Oklahoma. Further information in the possession of the National Park Service indicates that the claimant, Mr. Raymond A. Lasley, Sr. is the oldest living grandchild of Chief Roan Horse (Kah-wah-ho-tsa). Mr. Lasley, Sr., recognized by the Osage Tribe as a traditional religious leader, identified this specific pipestone pipe as a sacred object, which he needs to perform various traditional ceremonies, including naming ceremonies.

Prior to 1964, the pipe was acquired by the Pipestone Indian Shrine Association. In April of 1964, the National Park Service purchased the pipe from the Pipestone Indian Shrine Association. The circumstances surrounding the original acquisition of this pipe are not clear. Whether the Pipestone Indian Shrine Association acquired the pipe from an individual or group possessing the authority to alienate such an object is unknown. According to members of the Lasley family, this pipestone pipe can not be transferred outside their family. These individuals further indicated that this pipe should only be passed down to family members who have taken-up various ceremonial duties. The lineal descendant, Mr. Lasley, Sr., has designated that his son, Mr. Raymond Lasley, Jr., is to be the next family member to whom the pipe would be passed.

The National Park Service possesses no knowledge of the pipe's original acquisition by the Pipestone Indian Shrine Association. On the basis of information supplied by the Lasley family regarding the nature of the pipe's transferability, as well as a lack of any evidence to the contrary, it is unclear whether the Pipestone Indian Shrine Association obtained a right of possession to the pipe through its initial acquisition. Accordingly, whether a right of possession to this pipe was assumed by the National Park Service when it was purchased from the Pipestone Indian Shrine Association in 1964 is uncertain. The National Park Service can not produce evidence to demonstrate that it holds a right of possession over the pipe, which could operate to overcome the claim Mr. Lasley Sr. brought to obtain this cultural item.

Based on the above-mentioned information, officials of the National Park Service have determined that pursuant to 43 CFR 10.2 (d)(3), this one cultural item is a specific ceremonial object needed by traditional Native American religious leaders for the practice of traditional Native American religion by their present-day adherents. Officials of the National Park Service, pursuant to 43 CFR 10.10 (a) (2), have also determined that the National Park Service is unable to demonstrate that it holds a right of possession over this cultural item. Finally, officials of the National Park Service have determined that, pursuant 43 CFR 10.2 (b) (1), Mr. Raymond A. Lasley, Sr. can trace his ancestry directly and without interruption by means of the traditional kinship system of the Osage Tribe and the common law system of descent to a known Native American individual who controlled this cultural item.

This notice has been sent to Mr. Raymond A. Lasley, Sr. and officials of the Osage Tribe, Oklahoma. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this cultural item should contact Jim LaRock, Superintendent, Pipestone National Monument, P.O. Box 727, 36 Reservation Avenue, Pipestone, MN 56164–0727; telephone: (507) 825–5464 before May 1, 2000. Repatriation of this cultural item to Mr. Raymond A. Lasley, Sr. may begin after the above date if no additional claimants come forward.

Dated: March 16, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–7851 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Santee, CA in the Possession of the San Diego Archaeological Center, San Diego, CA

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items from Santee, CA in the possession of the San Diego Archaeological Center, San Diego, CA which meet the definition of "sacred objects" under Section 2 of the Act.

The 41 cultural items consist of pipe fragments and crystals.

In 1973, these cultural items were recovered from site CA SDi 5699, known as "Santee Greens" during excavations conducted by Archaeological Consulting Technology, Inc. (ACT) for Time for Living, Inc., a residential development in the City of Santee, San Diego County, CA. ACT stored this collection until 1998, when the collection was donated to the San Diego Archaeological Center for curation.

Geographical location and site evidence indicate that site CA SDi 5699 was a Kumeyaay village site with two Late Archaic occupations (c. 760-1030 A.D.). Archaeological literature confirms

that this site is within the geographic

Band of Diegueno Mission Indians of

Band of Diegueno Mission Indians of California, the Santa Ysabel Band of

Officials of the University of Alaska Museum have also determined that,

In 1932, these two cultural items were recovered with a burial on Yukon

DEPARTMENT OF THE INTERIOR

that this site is within the geographic range of Kumeyaay people during this period. During consultation with the Kumeyaay Cultural Repatriation Committee, authorized representatives of the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California, these cultural items were identified as Kumeyaay sacred objects which are necessary to Kumeyaay traditional religious leaders for the practice of Native American religion by present-day adherents.

Based on the above-mentioned information, officials of the San Diego Archaeological Center have determined that, pursuant to 43 CFR 10.2 (d)(3), these 41 cultural items are specific ceremonial objects needed by traditional Native American religious leaders for the practice of traditional Native American religions by their present-day adherents. Officials of the San Diego Archaeological Center have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California.

This notice has been sent to officials of the Kumeyaay Cultural Repatriation Committee, the Campo Band of Diegueno Mission Indians of the Campo Reservation, the Capitan Grande Band of Diegueno Mission Indians of California, the Barona Group of Capitan Grande Band of Mission Indians of the Barona Reservation, the Viejas (Baron Long) Group of Capitan Grande Band of Mission Indians of the Viejas Reservation, the Cuyapaipe Community of Degueno Mission Indians of the Cuyapaipe Reservation, the Inaja Band of Diegueno Mission Indians of the Inaja and Cosmit Reservation, the La Posta Band of Diegueno Mission Indians of the La Posta Reservation, the Manzanita Band of Diegueno Mission Indians of the Manzanita Reservation, the Jamul Indian Village, the Mesa Grande Band of Diegueno Mission Indians of the Mesa Grande Reservation, the San Pasqual Band of Diegueno Mission Indians of California, the Santa Ysabel Band of Diegueno Mission Indians of the Santa Ysabel Reservation, and the Sycuan Band of Diegueno Mission Indians of California may begin after that date if no additional claimants come forward.

Dated: March 15, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–7849 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate a Cultural Item from the Kachemak Bay Region, AK in the Possession of the University of Alaska Museum, Fairbanks, AK

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate a cultural item from the Prince William Sound and Kachemak Bay Regions, AK in the possession of the University of Alaska Museum, Fairbanks, AK which meets the definition of "unassociated funerary object" under Section 2 of the Act.

The one cultural item consists of worked bone.

In 1931, this cultural item was recovered near a burial on Cottonwood Creek, AK during excavations conducted by Frederica de Laguna of the University of Pennsylvania Museum. In 1953, this cultural item was sent to the University of Alaska Museum from the University of Pennsylvania Museum as part of an exchange collection. The human remains recovered with this cultural item have previously been repatriated from the University of Pennsylvania.

Based on material culture, the Cotton Wood Creek site has been identified as Kachemak Bay period (c. 1500 A.D.) Chugach occupations.

Based on the above mentioned information, officials of the University of Alaska Museum have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), this one cultural item is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual.

Officials of the University of Alaska Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between this item and the Chugach Alaska Corporation.

This notice has been sent to officials of the Chugach Alaska Corporation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with this object should contact Gary Selinger, Special Projects Manager, University of Alaska Museum, 907 Yukon Drive, Fairbanks, AK 99775-1200; telephone: (907) 474-6117, fax: (907) 474-5469 before May 1, 2000. Repatriation of this object to the Chugach Alaska Corporation may begin after that date if no additional claimants come forward.

Dated: March 23, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–7846 Filed 3–29–00 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items From the Kachemak Bay Region, AK in the Control of the U.S. Fish and Wildlife Service and in Possession of the University of Alaska Museum, Fairbanks, AK

AGENCY: National Park Service, Interior.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items from the Kachemak Bay Region, Alaska in the control of the U.S. Fish and Wildlife Service and in possession of the University of Alaska Museum, Fairbanks, AK which meet the definition of "unassociated funerary object" under Section 2 of the Act.

The two cultural items consist of a bone wedge and pumice.

In 1931, these two cultural items were recovered with a burial at the Fox Farm Site, Yukon Island, AK during excavations conducted under the auspices of the University of Pennsylvania Museum by Frederica de Laguna. The human remains recovered with these cultural items have previously been repatriated from the University of Pennsylvania Museum.

The two cultural items consist of a bone eye and a slate point.

In 1932, these two cultural items were recovered with a burial on Yukon Island, Alaska during excavations conducted under the auspices of the University of Pennsylvania Museum by Frederica de Laguna. The human remains recovered with these cultural items have previously been repatriated from the University of Pennsylvania Museum.

In 1953, the four cultural items mentioned above were sent to the University of Alaska Museum from the University of Pennsylvania Museum as part of an exchange collection.

Based on material culture and oral history, the sites listed above have been identified as Kachemak Bay period occupations (c. 1500 AD).

Based on the above mentioned information, officials of the U.S. Fish and Wildlife Service have determined that, pursuant to 43 CFR 10.2 (d)(2)(ii), these four cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of a Native American individual. Officials of the U.S. Fish and Wildlife Service have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Chugach Alaska Corporation.

This notice has been sent to officials of the Chugach Alaska Corporation. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Deb Corbett, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone: (907) 786-3399, fax: (907) 786-3635 before May 1, 2000. Repatriation of these objects to the Chugach Alaska Corporation may begin after that date if no additional claimants come forward.

Dated: March 23, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–7847 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Keechelus Dam Safety of Dams Modification, Yakima Project, Washington

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, the Bureau of Reclamation (Reclamation) proposes to prepare an environmental impact statement (EIS) on structural and nonstructural alternatives to correct safety deficiencies at Keechelus Dam in the State of Washington. In June 1998, Reclamation's Safety of Dams (SOD) Program identified safety deficiencies from void sites and dam embankment deterioration which could lead to embankment failure. The SOD Program indicated that there is a need to correct dam safety deficiencies at Keechelus Dam to protect property and the lives of people living downstream of the dam.

DATES: Scoping meetings will be held on the following dates and times:

- North Bend, Washington: April 18, 2000, Open House 6 to 7 p.m.; Meeting 7 to 9 p.m.
- Ellensburg, Washington: April 19, Open House 12 noon to 1 p.m.; Meeting 1 to 3 p.m. and Open House 6 to 7 p.m.; Meeting 7 to 9 p.m.

Written comments will be accepted through April 24, 2000, for inclusion in the scoping summary document. Requests for sign language interpretation for the hearing impaired should be submitted to Dave Kaumheimer, as indicated below by April 11, 2000.

ADDRESSES: Comments and requests to be added to the mailing list may be submitted to Bureau of Reclamation, Upper Columbia Area Office, Attention: Dave Kaumheimer, Environmental Programs Manager, PO Box 1749, Yakima, Washington 98907–1749.

The scoping meetings will be held at the following locations:

- North Bend—North Bend (U.S. Forest Service) Ranger Station, 42404 SE North Bend Way, North Bend, Washington.
- Ellensburg—Ellensburg Inn, 1700 Canyon Road, Ellensburg, Washington.

Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which

we will honor to the extent allowable by

deficiencies in no way restricts potential

Issued: March 27, 2000.

factors in Title 21, United States Code,

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we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowed by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entirety.

FOR FURTHER INFORMATION CONTACT: Dave Kaumheimer, Environmental Programs Manager, Bureau of Reclamation, telephone: (509) 575–5848 x232; fax: (509) 454–5650.

The meeting facilities are physically accessible to people with disabilities. Please direct requests for sign language interpretation for the hearing impaired, or other auxiliary aids, to Dave Kaumheimer at (509) 575–5848 x232 via toll free TTY relay (800) 833–6388 by April 11, 2000.

SUPPLEMENTARY INFORMATION:

Background

Keechelus Dam was constructed at the lower end of a natural lake on the Yakima River about 10 miles northwest of Easton, Washington, in Kittitas County. This earthfill structure was constructed between 1913 and 1917 and is approximately 6,550 feet long with a maximum height of 128 feet. It creates a reservoir with an active storage capacity of 158,000 acre-feet.

In June 1998, during the excavation of a trench for a telephone line conduit, a void was found in the crest of Keechelus Dam. This discovery led to further geotechnical investigations, including ground penetrating radar and geologic exploration activities, to determine the condition of the overall dam. Subsequent investigations identified more than 40 potential void sites and significant evidence of dam embankment deterioration from seepage which could lead to embankment failure. As an interim safety measure, Keechelus Reservoir has been operated at a restricted full pool elevation 7 feet below the normal full pool elevation since November 1998, with increased technical monitoring and surveillance at the dam.

The scope of this document will focus on correcting the dam safety deficiencies at Keechelus Dam to protect property and the lives of people living downstream from the dam, and evaluating the potential impacts associated with the proposed alternatives. Correcting the SOD deficiencies in no way restricts potential future modifications to the structure.

Public Involvement

Reclamation plans to conduct public scoping meetings to solicit input on the alternatives developed to correct safety deficiencies at Keechelus Dam and to identify potential issues and impacts associated with those alternatives. Reclamation will summarize comments received during the scoping meetings and from letters of comment received during the scoping period, identified under **DATES**, into a scoping summary document which will be made available to the public.

Dated: March 24, 2000.

Max B. Gallegos,

Acting Regional Director, Pacific Northwest Region.

[FR Doc. 00–7812 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–469 (Review)]

Electroluminescent Flat Panel Displays From Japan

Determination

On the basis of the record [1] developed in the subject five-year review, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)), that revocation of the antidumping duty order on electroluminescent flat panel displays from Japan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2]

Background

The Commission instituted this review on August 2, 1999 (64 FR 41951, August 2, 1999) and determined on November 4, 1999 that it would conduct an expedited review (64 FR 62688, November 17, 1999). The Commission transmitted its determination in this review to the Secretary of Commerce on March 27, 2000. The views of the Commission are contained in USITC Publication 3285 (March 2000), entitled Electroluminescent Flat Panel Displays from Japan: Investigation No. 731–TA–469 (Review).

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioners Askey and Okun dissenting. Vice Chairman Miller did not participate in this five-year review.

Issued: March 27, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7833 Filed 3–29–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: United States International Trade Commission.

TIME AND DATE: April 14, 2000 at 10 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436, Telephone: (202) 205–2000.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda for future meeting: None.
2. Minutes.
3. Ratification List.
4. Inv. Nos. 731–TA–868–871 (Preliminary) (Steel Wire Rope from China, India, Malaysia, and Thailand)—briefing and vote. (The Commission will transmit its determination to the Secretary of Commerce on April 17, 2000.)
5. Outstanding action jackets: None.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

By order of the Commission.

Issued: March 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–7995 Filed 3–28–00; 2:05 pm]

BILLING CODE 7020–02–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlling Substances; Notice of Registration

By Notice dated December 16, 1999, and published in the **Federal Register** on December 28, 1999, (64 FR 248), Celgene Corporation, 7 Powder Horn Drive, Warren, New Jersey 07059, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of methylphenidate (1724), a basic class of controlled substance listed in Schedule II.

The firm plans to manufacturer methylphenidate for product research and development.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Celgene Corporation to manufacturer methylphenidate is consistent with the public interest at this time, DEA has investigated the Celgene Corporation on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR § 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: March 23, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–7872 Filed 3–29–00; 8:45 am]

BILLING CODE 4410 09 M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importation of Controlled Substances; Notice of Application

Pursuant to Section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1301.34 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on October 19, 1999, Chirex Technology Center, Inc., DBA Chirex Cauldron, 383 Phoenixville Pike, Malvern, Pennsylvania 19355, made application by letter to the Drug Enforcement Administration to be registered as an importer of amphetamine (1100), a basic class of controlled substance listed in Schedule II.

The firm plans to import the amphetamine for the manufacture of a finished product.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.43 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 1, 2000.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1301.34(b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1301.34(a), (b), (c), (d), (e), and (f) are satisfied.

Dated: March 23, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–7870 Filed 3–29–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 16, 1999, and published in the **Federal Register** on December 28, 1999 (64 FR 248), Knoll Pharmaceuticals, 30 North Jefferson Road, Whippany, New Jersey 07981, made application by renewal to the Drug Enforcement Administration to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Dihydromorphine (9145)	I
Hydromorphone (9150)	II

The firm plans to produce bulk product and finished dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Knoll Pharmaceuticals to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Knoll Pharmaceuticals on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 23, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–7873 Filed 3–29–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to § 1301.33(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on January 12, 2000, Lilly Del Caribe, Inc., Chemical Plant, Kilometer 146.7, State Road 2, Mayaguez, Puerto Rico 00680, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of dextropropoxyphene (9273) a basic class of controlled substance listed in Schedule II.

The firm plans to manufacture bulk product for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance

may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than May 30, 2000.

Dated: March 23, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–7871 Filed 3–29–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated December 16, 1999, and published in the **Federal Register** on December 28, 1999 (64 FR 248), Medeva Pharmaceuticals CA, Inc., 3501 West Garry Avenue, Santa Ana, California 92704, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Methylphenidate (1724)	II
Diphenoxylate (9170)	II

The firm plans to manufacture the listed controlled substances to make finished dosage forms for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Medeva Pharmaceuticals CA, Inc. to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Medeva Pharmaceuticals CA, Inc. on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history.

Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: March 23, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–7874 Filed 3–29–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By notice dated October 8, 1999, and published in the **Federal Register** on October 18, 1999, (64 FR 56227), Pharmacia & Upjohn Company, 7000 Portage Road, 2000–41–109, Kalamazoo, Michigan 49001, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of 2,5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture the listed controlled substance for distribution as bulk product to a customer.

DEA has considered the factors in Title 21, United States Code, Section 823(a) and determined that the registration of Pharmacia & Upjoun Company to manufacture 2,5-dimethoxyamphetamine is consistent with the public interest at this time. DEA has investigated the firm on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic class of controlled substance listed above is granted.

Dated: March 23, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–7875 Filed 3–29–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting In Whole or In Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term "FR Notice" appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated: March 16, 2000.

Carol J. Jones,

Director, Office of Standards, Regulations and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–1999–011–C.
FR Notice: 64 FR 16760.
Petitioner: D & D Coal Company.
Regulation Affected: 30 CFR 75.1202 and 75.1202–1(a).
Summary of Findings: Petitioner's proposal is to revise and supplement mine maps annually instead of every 6 months, and to update maps daily by hand notations. This is considered an acceptable alternative method for the 7′ Drift Mine. MSHA grants the petition for modification for the 7′ Drift Mine with conditions.

Docket No.: M–1999–033–C.
FR Notice: 64 FR 32552.
Petitioner: Snyder Coal Company.
Regulation Affected: 30 CFR 75.1202 and 75.1202–1(a).
Summary of Findings: Petitioner's proposal is to conduct mine surveys and revise and supplement mine maps annually instead of every 6 months, to update maps daily by hand notations, and to conduct surveys prior to commencing retreat mining and whenever a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. This is considered an acceptable alternative method for the Rattling Run Slope Mine. MSHA grants the petition for modification for the Rattling Run Slope Mine with conditions.

Docket No.: M–1999–047–C.
FR Notice: 64 FR 32554.
Petitioner: Little Buck Coal Company.
Regulation Affected: 30 CFR 75.1200(d), (h), and (i)
Summary of Findings: Petitioner's proposal is to use on its mine map cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, at 1,000 foot intervals of advance from the intake slope, and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. This is considered an acceptable alternative method for the #3 Slope Mtn. Mine. MSHA grants the petition for modification for the ւ3 Slope Mtn. Mine with conditions.

Docket No.: M–1999–048–C.
FR Notice: 64 FR 32554.
Petitioner: Little Buck Coal Company.
Regulation Affected: 30 CFR 75.1202 and 75.1202–1(a).
Summary of Findings: Petitioner's proposal is to conduct mine surveys and revise and supplement mine maps annually instead of every 6 months, to update maps daily by hand notations, and to conduct surveys prior to commencing retreat mining and whenever a drilling program under 30 CFR 75.388 or plan for mining into inaccessible areas under 30 CFR 75.389 is required. This is considered an acceptable alternative method for the #3 Slope Buck Mtn. Mine. MSHA grants the petition for modification for the #3 Slope Buck Mtn. Mine with conditions.

Docket No.: M–1999–056–C.
FR Notice: 64 FR 41140.
Petitioner: Monterey Coal Company.
Regulation Affected: 30 CFR 75.1909(b)(6).
Summary of Findings: Petitioner's proposal is to lower the blade on its road grader to stop and control the grader instead of adding front wheel brakes on the grader. This is considered an acceptable alternative method for the No. 1 Mine. MSHA grants the petition for modification for the No. 1 Mine with conditions.

Docket No.: M–1999–059–C.
Petitioner: Independence Coal Company, Inc..
Regulation Affected: 30 CFR 75.1002–1(a).
Summary of Findings: Petitioner's proposal is to use 4,160 volt cables to supply power to the permissible longwall face equipment. This is considered an acceptable alternative method for the Cedar Grove Mine No. 1. MSHA grants the petition for modification for the Cedar Grove Mine No. 1 with conditions.

Docket No.: M–1999–062–C.
FR Notice: 64 FR 49246.
Petitioner: PennAmerican Coal L.P.
Regulation Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: Petitioner's proposal is to use two fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using one portable fire extinguisher and 240 pounds of rock dust. This is considered an acceptable alternative method for the Burrell Mine. MSHA grants the petition for modification for the Burrell Mine.

Docket No.: M–1999–065–C.
FR Notice: 64 FR 49246.
Petitioner: Canterbury Coal Company.
Regulation Affected: 30 CFR 75.1100–2(e)(2).
Summary of Findings: Petitioner's proposal is to use two fire extinguishers or one fire extinguisher of twice the required capacity at all temporary electrical installations instead of using one fire extinguisher and 240 pounds of rock dust. This is considered an acceptable alternative method for the DiAnne Mine MSHA grants the petition for modification for the DiAnne Mine.

Docket No.: M–1999–075–C.
FR Notice: 64 FR 55492.
Petitioner: Independence Coal Company, Inc.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through oil and gas wells and to notify the District Manager or designee prior to mining within 300 feet of a plugged oil and gas well. This is considered an acceptable alternative method for the Cedar Grove Mine No. 1. MSHA grants the petition for modification for the Cedar Grove Mine No. 1 with conditions.

Docket No.: M–1998–115–C.
FR Notice: 64 FR 2519.
Petitioner: Primrose Coal #2.
Regulation Affected: 30 CFR 75.335.
Summary of Findings: Petitioner's proposal is to use wooden materials of moderate size and weight to construct seals due to difficulty in accessing previously driven headings and breasts containing inaccessible abandoned workings, to use a design criteria in the 10 psi range, and for seals installed in pairs, to permit the water trap to be installed only in the gangway seal and the sampling tube in the monkey seal. This is considered an acceptable alternative method for the Buck Mountain Vein Slope Mine. MSHA grants the petition for modification for the Buck Mountain Vein Slope with conditions.

[FR Doc. 00–7907 Filed 3–29–00; 8:45 am]

BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Williams Brothers Coal Company, Inc.

[Docket No. M–2000–012–C]

Williams Brothers Coal Company, Inc., 238 Cantrell Road, Mouthcard, Kentucky 41548 has filed a petition to modify the application of 30 CFR 75.1100–2(b) (quantity and location of firefighting equipment) to its No. 3 Mine (I.D. No. 15–16666) located in Pike County, Kentucky. The petitioner proposes to leave the fire hose outlets in

the entry adjacent to the conveyor belt entry. The petitioner states that in the event of a belt fire, the water line would be protected and the fire fighters would have safe access to the outlets. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

2. Europa Coal Company, Inc.

[Docket No. M–2000–013–C]

Europa Coal Company, Inc., 430 Harper Park Drive, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Europa Mine (I.D. No. 46–08798) located in Boone County, West Virginia. The petitioner proposes to use a 2,400 volt Joy 14CM continuous miner instead of a 1,000 volt continuous miner inby the last open crosscut and within 150 feet from pillar workings using the specific terms and conditions listed in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

3. Blue Mountain Energy, Inc.

[Docket No. M–2000–014–C]

Blue Mountain Energy, Inc., 3607 County Rd. #65, Rangely, Colorado 81648 has filed a petition to modify the application of 30 CFR 75.1908(a)(5) (nonpermissible diesel-powered equipment; categories) to its Deserado Mine (I.D. No. 05–03505) located in Rio Blanco County, Colorado. The petitioner requests a modification of the standard to permit the use of diesel-powered pickup trucks to tow diesel fuel transportation units. The petitioner proposes to only use diesel-powered pickup trucks to tow diesel fuel transportation units if the rated capacity of the truck exceeds the load by a fraction of 50 percent, and equip diesel fuel transportation units with automatic fire suppression devices when towed by the pickup trucks. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

4. RAG Cumberland Resources LP

[Docket No. M–2000–015–C]

RAG Cumberland Resources LP, One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, Pennsylvania 15219–1410 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its (I.D. No. 36–05018) located in Greene County, Pennsylvania. The petitioner requests a modification of the standard to permit the use of a 1,000 foot trailing cable on full-face continuous miners and other face equipment during development mining using the specific terms and conditions listed in this petition for modification. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

5. Elk Run Coal Company

[Docket No. M–2000–016–C]

Elk Run Coal Company, Box 497, Sylvester, West Virginia 25193 has filed a petition to modify the application of 30 CFR 75.350 (air courses and belt haulage entries) to its White Knight Mine (I.D. No. 46–08055) located in Boone County, West Virginia. The petitioner proposes to use air coursed through the conveyor belt entry at a velocity of at least 50 feet per minute to ventilate active working places using the specific terms and conditions listed in this petition for modification. The petitioner proposes to install a low-level carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to course intake air to a working place. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

6. FKZ Coal, Inc.

[Docket No. M–2000–017–C]

FKZ Coal, Inc., P.O. Box 62, Locust Gap, Pennsylvania 17840 has filed a petition to modify the application of 30 CFR 75.1202 and 75.1202–1(a) (temporary notations, revisions, and supplements) to its No. 1 Slope Mine (I.D. No. 36–08637) located in Northumberland County, Pennsylvania. The petitioner proposes to conduct mine surveys and revise and supplement mine maps annually instead of every 6 months as required, and to update maps daily by hand notations. The petitioner also proposes to conduct surveys prior to commencing retreat mining and whenever a drilling program under 30 CFR 75.388 or plan for mining into inaccessible area under 30 CFR 75.389 is required. The petitioner asserts that low production and slow rate of advance in anthracite mining make surveying on 6-month intervals impractical. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

7. FKZ Coal, Inc.

[Docket No. M–2000–018–C]

FKZ Coal, Inc., P.O. Box 62, Locust Gap, Pennsylvania 17840 has filed a petition to modify the application of 30 CFR 75.1200(d) and (i) (mine map) to its No. 1 Slope Mine (I.D. No. 36–08637) located in Northumberland County, Pennsylvania. The petitioner proposes to use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000 foot intervals of advance from the intake slope; and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels using the specific terms and conditions specified in the petition for modification. The petitioner asserts that due to the steep pitch encountered in mining anthracite coal veins, contours provide no useful information and their presence would make portions of the mine illegible. The petitioner further asserts that use of cross-sections in lieu of contour lines has been practiced since the late 1800's thereby providing critical information relative to the spacing between veins and proximity to other mine workings which fluctuate considerably. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the mandatory standard.

8. Basic Mining Corp.

[Docket No. M–2000–019–C]

Basic Mining Corp., P.O. Box 1197, Vansant, Virginia 24656 has filed a petition to modify the application of 30 CFR 75.1710–1(a) (canopies or cabs; self-propelled diesel-powered and electric face equipment; installation requirements) to its Mine No. 2 (I.D. No. 44–05032) located in Dickenson County, Virginia. The petitioner proposes to operate its Joy 21 SC Shuttle Cars without canopies in mining heights less than 50 inches. The petitioner asserts that the Lower Banner coal seam of the mine is 34 inches thick; the mining height ranges from 44–50 inches with the majority of the area being 47 inches; the shuttle car frames are 30 inches high and the installed canopy height is 38 inches creating a visibility problem for the operator by limiting field of vision to 4 inches, compromises the safety of the miners, and create pinch points for the shuttle car operators during the mining of cross-cut entries. The petitioner also asserts that the Lower Banner seam has a fire clay bottom with water in the mine floor that tends to break up and out, and that shuttle cars traveling over this uneven, undulating surface causes canopies to contact the mine roof and dislodge or shear off the permanent roof support resulting in a diminution of safety to the equipment operator.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "comments@msha.gov," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before May 1, 2000. Copies of these petitions are available for inspection at that address.

Dated: March 20, 2000.

Carol J. Jones,

Acting Director, Office of Standards, Regulations, and Variances.

[FR Doc. 00–7908 Filed 3–29–00; 8:45 am]

BILLING CODE 4510–43–U

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. ICR–1218–0126(2000)]

Acrylonitrile (AN) Standard (29 CFR 1910.1045); Extension of the Office of Management of Budget's (OMB) Approval of Information Collection (Paperwork) Requirements

AGENCY: Occupational Safety and Health Administration (OSHA); Labor.

ACTION: Notice of an opportunity for public comment.

SUMMARY: OSHA solicits comments concerning the extension of the information collection requirements contained in the Acrylonitrile Standard (the "AN" Standard) (29 CFR 1910.1045).

Request for Comment: The Agency has a particular interest in comments on the following issues:

- Whether the information collection requirements are necessary for the proper performance of the Agency's functions, including whether the information is useful;
- The accuracy of the Agency's estimate of the burden (time and costs) of the information-collection requirements, including the validity of the methodology and assumptions used;
- The quality, utility, and clarify of the information collected; and
- Ways to minimize the burden on employers who must comply; for example, by using automated or other technological information-collection and -transmission techniques.

DATES: Submit written comments on or before May 30, 2000.

ADDRESSES: Submit written comments to the Docket Office, Docket No. ICR–1218–0126(2000), Occupational Safety and Health Administration, U.S. Department of Labor, Room N2625, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2350. Commenters may transmit written comments of 10 pages or less in length by facsimile to (202) 693–1648.

FOR FURTHER INFORMATION CONTACT: Todd R. Owen, Directorate of Policy, Occupational Safety and Health Administration, U.S. Department of Labor, Room N–3641, 200 Constitution Avenue, NW, Washington, DC 20210; telephone: (202) 693–2444. A copy of the Agency's Information-Collection Request (ICR) supporting the need for the information collection requirements in the AN Standard is available for inspection and copying in the Docket Office, or you may request a mailed copy by telephoning Todd R. Owen at (202) 693–2444. For electronic copies of the ICR on the AN Standard, OSHA on the Internet at *http://www.osha.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and continuing information-collection requirements in accordance with the Paperwork Reduction Act of 1995 (PRA–95) (44 U.S.C. 3506(c)(2)(A)). This program ensures that information is in the desired format, reporting burden (time and costs) is minimal, collection instruments clearly understood, and OSHA's estimate of the information burden is correct. The Occupational Safety and Health Act of 1970 (the Act) authorizes information collection by employers as necessary or appropriate for enforcement of the Act or for developing information regarding the causes and prevention of occupational injuries, illnesses, and accidents (29 U.S.C. 657).

The information-collection requirements specified in the AN Standard protect employees from the adverse health effects that may result from their exposure to AN. The major information-collection requirements of the AN Standard include notifying employees of their AN exposures, implementing a written compliance program, providing examining physicians with specific information, ensuring that employees receive a copy of their medical-examination results, maintaining employees' exposure-monitoring and medical records for specific periods, and providing access to these records by OSHA, the National Institute for Occupational Safety and Health, the affected employees, and designated representatives.

II. Proposed Actions

OSHA proposes to reduce the existing burden hour estimate, and to extend OMB's approval, of the collection of information (paperwork) requirements contained in the AN Standard. The Agency is reducing its previous estimate, 6,857 hours, by 2,719 hours as a result of lowering the number of establishments affected by the paperwork requirements. OSHA will summarize the comments submitted in response to this notice, and will include this summary in the request to OMB to extend the approval of the information-collection requirements contained in the AN Standard.

Type of Review: Extension of currently approved information-collection requirements.

Title: Acrylonitrile Standards (29 CFR 1910.1045).

OMB Number: 1218–0126.

Affected Public: Business or other for-profit; Federal government; state, local or tribal government.

Number of Respondents: 23.

Frequency: On occasion.

Total Responses: 18,838.

Average Time per Response: Varies from 5 minutes to provide information to the examining physician to 2 hours for employers to provide OSHA-area offices with information about AN emergencies.

Estimated Total Burden Hours: 4,138.

Estimated Cost (Operations and Maintenance): $189,835.

III. Authority and Signature

Charles N. Jeffress, Assistant Secretary of Labor for Occupational Safety and Health, directed the preparation of this notice. The authority for this notice is the Paperwork Reduction Act of 1995 (44 U.S.C. 3506) and Secretary of Labor's Order No. 6–96 (62 FR 111).

Signed at Washington, DC, on March 24, 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–7785 Filed 3–30–00; 8:45 am]

BILLING CODE 4510–26–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Rescission of Office of Federal Procurement Policy; Policy Letters 77–2, 78–2, 78–3, 78–4, 79–1, 79–2, 80–3, 80–6, 80–8, 81–1, 81–2, 82–1, 83–1, 83–2, 83–3, 84–1, 85–1, 89–1, 91–2, 91–4, 92–5, and 95–1

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Rescission of Office of Federal Procurement Policy (OFPP) Policy Letters 77–2, 78–2, 78–3, 78–4, 79–1, 79–2, 80–3, 80–6, 80–8, 81–1, 81–2, 82–1, 83–1, 83–2, 83–3, 84–1, 85–1, 89–1, 91–2, 91–4, 92–5, and 95–1.

SUMMARY: Notice is hereby given that the Office of Federal Procurement Policy (OFPP) is rescinding the following OFPP Policy Letters: 77–2, Section 502(c) of Pub. L. 95–89; 78–2, Preventing "Wage Busting" for Professionals: Procedures for Evaluating Contractor Proposals for Service Contracts; 78–3, Requests for Disclosure of Contractor-Supplied Information Obtained in the Course of a Procurement; 78–4, Field Contract Support Cross-Servicing Program; 79–1, Implementation of Section 15(k) of the Small Business Act, as amended: Office of Small and Disadvantaged Business Utilization; 79–2, Boards of Contract Appeals: Position Allocation Pursuant to Public Law 95–563; 80–3, Regulatory Guidance on Pub. L. 95–563, the Contract Disputes Act of 1978; 80–6, Regulatory Guidance on Section 221 of Public Law 95–507; 80–8, Establishment of Procurement Data Reporting Requirements to Comply with Public Law 96–39 (as amended by Transmittal Memoranda Nos. 1, 2, and 3); 81–1, Procurement Procedures, Advance Procurement Planning, and Review of End-of-Year Purchases; 81–2, Policy Guidance for the Labor Surplus Area Programs; 82–1, Policy Guidance Concerning Government-wide Debarment, Suspension, and Ineligibility; 83–1, Withholding of Funds from Construction Contract Progress Payments; 83–2, Publicizing the Development of Procurement Policies and Regulations; 83–3, Procurement of Architect-Engineer Services, 84–1, Federally Funded Research and Development Centers; 85–1, Federal Acquisition Regulations System; 89–1, Conflict of Interest Policies Applicable to Consultants; 91–2, Service Contracting; 91–4, Use of Irrevocable Letters of Credit; 92–5, Past Performance Information; and 95–1, Subcontracting Plans for Companies Supplying Commercial Items.

EFFECTIVE DATE: March 30, 2000.

FOR FURTHER INFORMATION CONTACT: Michael Gerich, Office of Federal Procurement Policy, 202–395–3501.

SUPPLEMENTARY INFORMATION: OFPP issued a notice of proposed rescission of these 22 Policy Letters that was published in the **Federal Register** on September 15, 1999 (64 FR 50108). No comments were received in response to the notice of proposed rescission.

As indicated in the Supplementary Information section of that notice, the rescission of these 22 Policy Letters reflects OFPP's conclusion that the Federal Acquisition Regulation (FAR), as written, contains the current policy. Any policy embodied in the Policy Letters rescinded by this notice that is not reflected in the current FAR has been either superseded by subsequent statutory changes or is otherwise no longer necessary. Accordingly, OFPP Policy Letters 77–2, 78–2, 78–3, 78–4, 79–1, 79–2, 80–3, 80–6, 80–8, 81–1, 81–2, 82–1, 83–1, 83–2, 83–3, 84–1, 85–1, 89–1, 91–2, 91–4, 92–5, and 95–1 are hereby rescinded. No substantive FAR change is required by this action.

Eleven OFPP Policy Letters remain in effect. Copies of those Policy Letters can be obtained at the ARNet world wide website, http://www.arnet.gov/ Library/ OFPP/PolicyLetters.

Deidre A. Lee,

Administrator.

[FR Doc. 00–7803 Filed 3–29–00; 8:45 am]

BILLING CODE 3110–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

Proposed Collection; Comments Request

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA), as part of its continuing effort to reduce paperwork and respondent to burden, conducts a preclearance consultation program to provide the general public and federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the NEA is soliciting comments concerning the proposed information collection of: National Endowment for the Arts: Panelist Profile Form. A copy of the current information collection request can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before May 30, 2000. The NEA is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- Enhance the quality, utility; and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond.

ADDRESSES: A.B. Spellman, National Endowment for the Arts, 1100 Pennsylvania Avenue, N.W., Room 516, Washington, DC 20506–0001, telephone (202) 682–5421 (this is not a toll-free number), fax (202) 682–5049.

Murray Welsh,

Director, Administrative Services, National Endowment for the Acts.

[FR Doc. 00–7894 Filed 3–29–00; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–269, 50–270, and 50–287]

Duke Energy Corporation (Oconee Nuclear Station, Units 1, 2, and 3); Exemption

I

The Duke Energy Corporation (Duke/ the licensee) is the holder of Facility Operating License Nos. DPR–38, DPR–47, and DPR–55, that authorize operation of the Oconee Nuclear Station, Units 1, 2, and 3 (Oconee), respectively. The licenses provide, among other things, that the facilities are subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facilities consist of pressurized water reactors located on Duke's Oconee site in Seneca, Oconee County, South Carolina.

II

The proposed action is in accordance with the licensee's application for exemption contained in a submittal dated September 15, 1999, and is needed to allow the use of Framatome Cogema Fuels (FCF) "M5" advanced alloy as a fuel rod cladding material. This exemption is necessary since the chemical composition of M5 differs from the Zircaloy and ZIRLO cladding material specified in 10 CFR 50.44, 10 CFR 50.46, and Appendix K of 10 CFR Part 50. These regulations contain acceptance and analytical criteria regarding the light water nuclear reactor system performance during and following a postulated loss-of-coolant accident (LOCA). These regulations assume the use of only two types of fuel cladding material, Zircaloy and ZIRLO. However, the licensee has requested use of FCF M5 advanced alloy for fuel rod cladding at Oconee. The M5 alloy is a proprietary zirconium-based alloy comprised of primarily zirconium (~99 percent) and niobium (~1 percent). The elimination of tin has resulted in superior corrosion resistance and reduced irradiation-induced growth relative to both standard Zircaloy (1.7 percent tin) and low-tin Zircaloy (1.2 percent tin). The addition of niobium increases ductility, which is desirable to avoid brittle failures. Since the chemical composition of the M5 alloy differs from the specifications for Zircaloy or ZIRLO, a plant specific exemption is required to allow the use of the M5 alloy as a fuel cladding material at Oconee.

III

Section 50.12 of Title 10 of the Code of Federal Regulations, "Specific Exemptions," states, among other items, that the Commission may, upon application by any interested person or upon its own initiative, grant exemptions from the requirements of the regulations of this part, which are authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security. The Commission will not consider granting an exemption unless special circumstances are present. Special circumstances are present where application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The underlying purpose of 10 CFR 50.46 is to ensure that facilities have adequate acceptance criteria for emergency core cooling systems (ECCS). In its topical report BAW–10227–P, "Evaluation of Advanced Cladding and Structural Material (M5) in PWR Reactor Fuel," FCF demonstrated that the ECCS acceptance criteria applied to reactors fueled with Zircaloy clad fuel are also applicable to reactors fueled with M5 fuel rod cladding. The topical report (which was approved by the staff on February 4, 2000) also showed that the M5 fuel cladding was capable of satisfying this design and acceptance criteria. Therefore, the underlying purpose of 10 CFR 50.46 is achieved through the use of M5 as a fuel rod cladding material.

The underlying purposes of 10 CFR 50.44 and Appendix K to 10 CFR Part 50, paragraph I.A.5, are to ensure that the cladding oxidation and hydrogen generation are appropriately limited during a LOCA and conservatively accounted for in the ECCS evaluation model. Specifically, Appendix K requires that the Baker-Just equation (which assumes zirconium as the cladding material) be used in the ECCS evaluation model to determine the rate of energy release, hydrogen generation, and cladding oxidation from the metal/ water reaction. In their topical report, FCF demonstrated that the Baker-Just model is conservative in all post-LOCA scenarios with respect to the use of M5 advanced alloy as a fuel rod cladding material. Therefore, the underlying purposes of 10 CFR 50.44 and 10 CFR Part 50 Appendix K, paragraph I.A.5 are achieved through the use of M5 as a fuel rod cladding material.

Because there are properties of M5 that differ from the specifications for Zircaloy or ZIRLO, which are referenced in the regulations, the staff has determined that an exemption would be required to allow the use of M5 as a fuel rod cladding material. The proposed action would not exempt the licensee from complying with the acceptance and analytical criteria of 10 CFR 50.44, 10 CFR 50.46 and Appendix K to 10 CFR Part 50 applicable to the cladding. The exemption would only allow the application of the criteria set forth in these regulations to the M5 cladding material.

Since the acceptance and analytical criteria set forth in the applicable regulations would continue to be applicable to the M5 fuel cladding, the staff has concluded that the proposed exemption is authorized by law, does not present an undue risk to the public health and safety, and is consistent with the common defense and security. Further, since the underlying purposes of 10 CFR 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K are achieved through the use of the M5 advanced alloy as a fuel rod cladding material, the special circumstances required by 10 CFR 50.12(a)(2)(ii) for the granting of exemptions to 10 CFR 50.44, 10 CFR 50.46, and 10 CFR Part 50, Appendix K exist. Therefore, the staff concludes that the proposed exemption to 10 CFR 50.44, 10 CFR 50.46, and Appendix K of 10 CFR Part 50 related to the fuel cladding material for Oconee Nuclear Station Units 1, 2, and 3 is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12(a), the exemption is authorized by law, will not endanger life or property or common defense and security, and is, otherwise, in the public interest. Therefore, the Commission hereby grants Duke an exemption from the requirements of 10 CFR 50.44, 10 CFR 50.46, and Appendix K of 10 CFR Part 50, related to the fuel cladding material for the Oconee Nuclear Station, Units 1, 2, and 3.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not result in any significant effect on the quality of the human environment (65 FR 15859).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 23rd day of March 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Monagement, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7832 Filed 3–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Corporation; Notice of Consideration of Issuance of Amendment to Facility Operating License DPR–43; Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License DPR–43 issued to Wisconsin Public Service

Corporation (the licensee) for operation of the Kewaunee Nuclear Power Plant, located in Kewaunee County, Wisconsin.

The proposed amendment would change Technical Specification (TS) 3.8.a.5 to increase the minimum refueling boron concentration value to 2200 parts per million (ppm) from 2100 ppm. The increase in boron concentration is required to ensure 5% Δk/k shutdown margin during refueling due to the increased feed fuel loadings since the plant's change from 12 month to 18-month cycles in 1995.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does operation of the facility with the proposed amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The refueling boron concentration value is not an accident initiator. Therefore, the change will not increase the probability of an accident previously evaluated. The proposed change to the refueling boron concentration value does not alter the plant configuration, operating set points, or overall plant performance. As was the case prior to the change, when there is fuel in the reactor, a 5% Δk/k shutdown margin will be maintained in the reactor coolant system during reactor vessel head removal or while loading and unloading fuel from the reactor.

2. Does operation of the facility with the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed change in the refueling boron concentration value does not alter the plant configuration, operating set points, or overall plant performance. The proposed change will ensure a 5% Δk/k shutdown margin will be maintained as currently described in TS. Therefore, it does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does operation of the facility with the proposed amendment involve a significant reduction in a margin of safety?

The proposed change in the refueling boron concentration value continue to ensure that the current TS 3.8.a.5 shutdown requirement of 5% Δk/k shutdown margin will be maintained in the Reactor Coolant System during reactor vessel head removal or while loading and unloading fuel from the reactor. Design basis dilution events were re-evaluated with the proposed TS boron concentrations. It was determined that there remains a sufficient amount of time for the operator to recognize the event and stop the dilution. Therefore, this change will not involve a significant reduction in safety margin.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By May 1, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by close of business on the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Bradley D. Jackson, Foley and Lardner, P.O. Box 1497, Madison, WI 53701–1497, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 2, 2000, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 24th day of March 2000.

For the Nuclear Regulatory Commission.

Beth A. Wetzel,

Acting Chief, Section 1, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7830 Filed 3–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–255]

Consumers Energy Company; Palisades Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of Section III.O of Appendix R, 10 CFR Part 50 to Consumers Energy Company (the licensee), holder of Facility Operating License No. DPR–20, for operation of the Palisades Nuclear Plant, located in the town of Covert, Michigan, on the eastern shore of Lake Michigan.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirement of Section III.O of Appendix R, 10 CFR Part 50, regarding the design capacity of the lubricating oil collection systems for three of the four primary coolant pump (PCP) motors. Specifically, the exemption would apply to the requirement that a vented container for the collection of leakage "can hold the entire lube oil system inventory." The proposed action does not apply to the collection system for PCP P–50D, which, as a result of modifications during the 1999 refueling outage, has been brought into compliance with Section III.O. The proposed action is in accordance with the licensee's application for an exemption dated August 13, 1999, as revised and supplemented by letters dated November 3, 1999, and March 15, 2000.

The Need for the Proposed Action

Each of the four Palisades PCP motors has its own oil collection tank that receives the leakage from both the upper and lower bearing lubrication systems for that PCP motor. The usable volumes of the collection tanks for PCPs P–50A, P–50B, and P–50C, cannot hold the entire inventories of their respective lubricating oil systems as required by Section III.O of Appendix R, 10 CFR Part 50. By removing the need to modify or replace the oil collection tanks to meet the literal requirement of 10 CFR 50, Appendix R, Section III.O, the proposed action would avoid unnecessarily exposing workers to radiation. It would also spare resources.

Environmental Impacts of the Proposed Action

Each oil collection tank for PCPs P–50A, P–50B, and P–50C has a nominal capacity of 79 gallons. Each pump motor nominally has 87 gallons of lubricating oil in the upper-bearing lubricating oil system and 18 gallons in the lower-bearing lubricating oil system, for a total of 105 gallons. The upper and lower lubricating oil systems are independent of each other.

In the unlikely event that operators allowed leakage in a PCP upper oil system to drain the entire system without taking action to stop the pump, approximately 8 gallons of oil could overflow the oil collection tank onto the floor in containment. Approximately 26 gallons could overflow onto the floor in the less likely event that both the upper and lower oil systems developed gross leakage and operators took no action.

Any lubricating oil that overflowed an oil collection tank would remain inside the containment building and would not be released to the environment. A portion of the spilled oil could flow down to lower floor elevations and eventually into the containment sump. The motor oil has a flash point of over 400°F and the containment atmosphere is nominally 80 to 100°F when the PCPs are in operation. The oil would not come in contact with hot pipes, hot equipment surfaces, or electrical ignition sources in the tank areas or on the flow paths to the sump. The oil would not become a fire hazard, since it would drain to a safe location.

Cleanup of any oil spill would generate minor amounts of waste materials requiring disposal and expose plant workers to a small amount of radioactive material. However, the waste materials and radiation exposure from cleanup would be essentially the same as from routine lubricating oil system activities associated with normal plant operation and maintenance. Routine activities which generate waste oil and cleanup materials include periodic PCP oil changes, pumpdown of oil collection tanks, PCP oil system piping and equipment repairs, and cleaning of equipment and floors.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the proposed action does not involve any historic sites. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, there are no significant nonradiological environmental impacts associated with the proposed action. Accordingly, the Commission concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

1. Limiting the Amount of Oil in the PCP Lubrication Systems

Limiting the amount of oil in the PCP lubrication systems according to the capacity of the collection systems would violate the equipment operating requirements, which could lead to early equipment failure.

2. Modifying the Oil Collection Tank Capacity

Modifying the oil collection tank capacity would require significant resources and result in potential occupational exposure without a commensurate benefit to the environment.

3. Denying the Proposed Action

As an alternative to the proposed action, the NRC staff considered denying the proposed action (i.e., the "no action" alternative). Denying the application would not change the current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement related to the operation of Palisades Nuclear Generating Plant, dated June 1972, and the associated final addendum (NUREG–0343) dated February 1978.

Agencies and Persons Consulted

In accordance with its stated policy, on March 23, 2000, the staff consulted with the Michigan State official, Mr. Michael McCardy, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letters dated August 13 and November 3, 1999, and March 15, 2000, which are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, N.W., Washington, D.C., and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Dated at Rockville, Maryland, this 24th day of March 2000.

For the Nuclear Regulatory Commission.

Carl F. Lyon,

Project Manager, Section 1 Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7831 Filed 3–29–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Entergy Nuclear Generation Company; Pilgrim Nuclear Power Station Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption for Facility Operating License No. DPR–35, issued to Entergy Nuclear Generation Company (Entergy/the licensee), for operation of Pilgrim Nuclear Power Station, (Pilgrim), located in Plymouth County, Massachusetts.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirements of 10 CFR Part 50, Appendix E, Item IV.F.2.c regarding conduct of a full-participation exercise of the offsite emergency plan biennially. Under the proposed exemption, the licensee would reschedule the Federally-observed full-participation emergency exercise from December 2001 to May 2002 and all future Nuclear Regulatory Commission (NRC)—and Federal Emergency Management Agency (FEMA)—evaluated exercises would occur biennially from the year 2002.

The proposed action is in accordance with the licensee's application for exemption dated July 30, 1999, as supplemented on September 23, 1999.

The Need for the Proposed Action

Title 10 of the Code of Federal Regulation, (10 CFR) Part 50, Appendix E, Item IV.F.2.c requires each licensee at each site to conduct an exercise of its offsite emergency plan biennially. The NRC and FEMA observe these exercises and evaluate the performance of the licensee, State, and local authorities having a role under the emergency plan.

The licensee would be required to conduct an exercise of its onsite and offsite emergency plans in December 2001, which is at the end of the required interval. To support the efficient and effective use of Federal resources, as discussed during the annual NRC Region I and FEMA (Regions I, II, and III) exercise scheduling meeting held in White Plains, New York, in December 1998, the planned December 2001 exercise for Pilgrim was shifted to May 2002, which is beyond the required interval.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed action and concludes that the proposed action involves an administrative activity (a schedular change in conducting an exercise) unrelated to plant operations.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential non-radiological impacts, the proposed action does not involve any historic sites. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action (*i.e.*, the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the "Final Environmental Statement Related to the Operation of Pilgrim Nuclear Power Station, Boston Edison Company," dated May 1972 .

Agencies and Persons Consulted

In accordance with its stated policy, on August 5, 1999, the staff consulted with the Massachusetts State official, Mr. James Muckerhide of the Massachusetts Emergency Management Agency, regarding the environmental impact of the proposed action. The State official had no comments. In addition, staff members of NRC Region I and FEMA were contacted by phone and provided favorable recommendations to approve the requested exemption.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's letter dated July 30, 1999, as supplemented on September 23, 1999, which is available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC. Publically available records will be accessible electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (The Electronic Reading Room).

Dated at Rockville, Maryland, this 24 day of March 2000.

For the Nuclear Regulatory Commission.

Alan B. Wang,

Project Manager, Section 2, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–7829 Filed 3–29–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

March 1, 2000.

Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974 (Public Law 93–344) requires a monthly report listing all budget authority for the current fiscal year for which, as of the first day of the month, a special message had been transmitted to Congress.

This report gives the status, as of March 1, 2000, of three rescission proposals and two deferrals contained in one special message for FY 2000. The message was transmitted to Congress on February 9, 2000.

Rescissions (Attachments A and C)

As of March 1, 2000, three rescission proposals totaling $128 million have been transmitted to the Congress. Attachment C shows the status of the FY 2000 rescission proposals.

Deferrals (Attachments B and D)

As of March 1, 2000, $976 million in budget authority was being deferred from obligation. Attachment D shows the status of each deferral reported during FY 2000.

Information From Special Message

The special message containing information on the rescission proposals and deferrals that are covered by this cumulative report are printed in the edition of the **Federal Register** cited below:

65 FR 9017, Wednesday, February 23, 2000

Jacob J. Lew,

Director.

Attachment A.—Status of FY 2000 Rescissions

[In millions of dollars]

	Budgetary resources
Rescissions proposed by the President	128.0
Rejected by the Congress	
Currently before the Congress for less than 45 days	128.0

ATTACHMENT B.—STATUS OF FY 2000 DEFERRALS

[In millions of dollars]

	Budgetary resources
Deferrals proposed by the President	1,622.0
Routine Executive releases through February 2000 (OMB/Agency releases of $646.3 million)	–646.3
Overturned by the Congress	
Currently before the Congress	975.7

BILLING CODE 3110–01–C

ATTACHMENT C
Status of FY 2000 Rescission Proposals - As of March 1, 2000
(Amounts in thousands of dollars)

Agency/Bureau/Account	Rescission Number	Amounts Pending Before Congress: Less than 45 days	Amounts Pending Before Congress: More than 45 days	Date of Message	Previously Withheld and Made Available	Date Made Available	Amount Rescinded	Congressional Action
DEPARTMENT OF ENERGY								
Atomic Energy Defense Activities								
Defense Environmental Restoration and Waste Management..	R00-1	13,000		2-9-00	*			
Energy Programs								
SPR Petroleum Account.....	R00-2	12,000		2-9-00	*			
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Public and Indian Housing								
Housing Certificate Fund.....	R00-3	103,000		2-9-00	*			
TOTAL, RESCISSIONS.....		**128,000**						

* No funds are being withheld.

Page 1 03/08/2000

ATTACHMENT D
Status of FY 2000 Deferrals - As of March 1, 2000
(Amounts in thousands of dollars)

Agency/Bureau/Account	Deferral Number	Amounts Transmitted: Original Request	Amounts Transmitted: Subsequent Change (+)	Date of Message	Releases(-): Cumulative OMB/ Agency	Releases(-): Congressionally Required	Congressional Action	Cumulative Adjustments	Amount Deferred as of 3-1-00
DEPARTMENT OF STATE									
Other									
United States Emergency Refugee and Migration Assistance Fund.....	D00-1	172,858		2-9-00					172,858
INTERNATIONAL ASSISTANCE PROGRAMS									
International Security Assistance									
Economic Support Fund.....	D99-2	1,449,159		2-9-00	646,296				802,864
TOTAL, DEFERRALS.....		**1,622,017**			**646,296**				**975,721**

Page 1 03/07/2000

[FR Doc. 00–7804 Filed 3–29–00; 8:45 am]
BILLING CODE 3110–01–U

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974; Revisions to the Existing System of Records

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Proposed revisions to an existing system of records.

SUMMARY: The Office of Management and Budget (OMB) is deleting from its inventory eleven systems of records because the information is no longer maintained by OMB due to organizational changes. An additional three systems of records will be updated to more accurately reflect position titles, addresses, and descriptions of the systems.

DATES: This proposed action will be effective without further notice on March 30, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Darrell A. Johnson, Freedom of Information Act Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503. Comments up to three pages in length may be submitted via facsimile to (202) 395–3952. Electronic mail comments may be submitted via Internet to djohnson@omb.eop.gov. Please include the full body of electronic mail comments in the text and not as an attachment. Please include the name, title, organization, postal address, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Darrell A. Johnson, FOIA Officer, Office of Management and Budget, at (202) 395–5715.

SUPPLEMENTARY INFORMATION: In accordance with the Privacy Act of 1974, the Office of Management and Budget conducted a review of its Privacy Act systems of records and determined that eleven systems of records can be deleted from its inventory because the data is neither collected nor maintained by OMB. The systems of records to be deleted are: OMB/SPD/01, "Clearance Office Information System"; FAI–1, "Federal Procurement and Logistics Personnel Information System"; FAI–2, "Individual Credentialing Services Program"; OMB/LIBRY/01, "Library Circulation System"; OMB/BUDGO/01, "Payroll and Leave Records"; OMB/BUDGO/03, "Personnel Summary"; OMB/BUDGO/04, "Professional Staff Roster"; OMB/RECDS/01, "Researcher Request File"; OMB/ADSER/01, "Staff Directory Card"; OMB/BUDGO/02, "Staff Travel Records"; and OMB/CAVAD/01, "Veterans Education and Training Load Model." In addition, three other systems of records in OMB's inventory are being revised to incorporate address and title changes as well as to update descriptions of the systems and other data. These three systems are OMB/LEGIS/01, "Private Relief Legislation"; OMB/PERSL/01, "Recruiting and Applicant Records"; and OMB/ADSER/02, "Staff Parking Application File", and are published in their entirety. One of the revisions is the deletion from the routine use description of disclosures that are made internally within OMB. Those disclosures will continue to be made, but are authorized by 5 U.S.C. 552a(b)(1).

Robert L. Nabors II,
Executive Secretary and Assistant Director for Administration.

For the reasons discussed in the preamble, OMB is updating three systems of records which are being printed in their entirety as shown below.

OMB/LEGIS/01

SYSTEM NAME:
Private Relief Legislation.

SECURITY CLASSIFICATION:
None.

SYSTEM LOCATION:
Legislative Information Center, Office of Management and Budget, New Executive Office Building, 725 17th St., NW, Washington, DC 20503.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Individuals who are the subject of proposed or enacted private relief legislation.

CATEGORIES OF RECORDS IN THE SYSTEM:
The information contained in these records consists of only those private relief bills requiring Office of Management and Budget review as specified in OMB Circular No. A–19, Revised September, 1979. The information maintained may include copies of a draft bill proposed by an agency as defined in the Circular, copies of bills introduced in the Congress, and if applicable, Congressional committee reports, agency memorandums and letters, OMB memoranda and letters, and other documents as may be needed in connection with the legislative coordination and clearance process. Certain individual records may also contain correspondence from and to the individual about whom the information is maintained.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
Office of Management and Budget Circular No. A–19, Revised September, 1979.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:
Disclosure may be made to a congressional office from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
The records are stored in an electronically powered rotary file.

RETRIEVABILITY:
Information is retrieved by name of individual, bill number, or private law number.

SAFEGUARDS:
Access to the building is controlled and monitored by security personnel. Access to the records is limited to those whose official duties require access to the information.

RETENTION AND DISPOSAL:
Permanent records are maintained on private relief bills introduced during the current and prior two sessions of Congress and then transferred to the National Archives.

SYSTEM MANAGER(S) AND ADDRESS:
Supervisory Legislative Research Assistant, Legislative Information Center, Office of Management and Budget, New Executive Office Building, 725 17th St, NW, Washington, DC 20503.

NOTIFICATION PROCEDURE:
If you wish to determine whether a record exists regarding you in the systems of records, contact the Freedom of Information Act Officer, Office of Management and Budget, New Executive Office Building, 725 17th Street NW, Washington, DC 20503.

RECORD ACCESS PROCEDURES:
See Notification procedure.

CONTESTING RECORD PROCEDURES:
See Notification procedure.

RECORD SOURCE CATEGORIES:
See "Categories of records in the system."

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:
Not applicable.

OMB/ADSER/02

SYSTEM NAME:
Staff Parking Application File.

SECURITY CLASSIFICATION:
None.

SYSTEM LOCATION:
Administration Office, Office of Management and Budget, New Executive Office Building, 725 17th Street NW, Washington, DC 20503.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
OMB employees requesting a parking permit or joining a carpool.

CATEGORIES OF RECORDS IN THE SYSTEM:
The system contains completed OMB Form 73 submitted by OMB employees who desire a parking permit. The form contains the following information on person making the application: Name, office or division, room number, telephone extension, home address, home telephone number, zip code, and make of car. For each rider the following information is recorded, name, home address, and work location and office phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
Federal Property Management Regulation (FPMR) 41 CFR 101–20.104 and Office of Management and Budget Office Memorandum No. 91–14.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Forms are maintained in a file cabinet.

RETRIEVABILITY:
Records are kept by type of parking permit issued and by name. Access is limited to the Associate/Assistant Director for Administration, staff of the Administrative Services section, staff who wish to join a carpool, and upon request, the individual to which the information pertains.

SAFEGUARDS:
Access to the building is controlled and monitored by security personnel. Access to the records is limited to those whose official duties require access to the information.

RETENTION AND DISPOSAL:
Records are retained and disposed of in accordance with the National Archives and Records Administration records schedule.

SYSTEM MANAGER(S) AND ADDRESS:
Associate/Assistant Director for Administration, Office of Management and Budget, Old Executive Office Building, 17th and Pennsylvania Ave. NW, Washington, DC 20503.

NOTIFICATION PROCEDURE:
If you wish to determine whether a record exists regarding you in the systems of records, contact the Freedom of Information Act Officer, Office of Management and Budget, New Executive Office Building, 725 17th Street NW, Washington, DC 20503.

RECORD ACCESS PROCEDURES:
See Notification procedure.

CONTESTING RECORD PROCEDURES:
See Notification procedure.

RECORD SOURCE CATEGORIES:
See "Categories of records in the system."

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:
Not applicable.

OMB/PERSL/01

SYSTEM NAME:
Recruiting Records.

SECURITY CLASSIFICATION:
None.

SYSTEM LOCATION:
Administration Office, Office of Management and Budget, New Executive Office Building, 725 17th St. NW, Washington, DC 20503.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:
Persons identified through OMB's recruitment program have applied or who have been referred for employment consideration for a internship, summer employment or a permanent position.

CATEGORIES OF RECORDS IN THE SYSTEM:
These records contain information relating to the education and training; appraisal of potential; honors, awards, or fellowships; and home address of these persons and is obtained from resumes provided by the applicants.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:
Title 5, U.S.C. Section 3109, 3301, 3302, 3304, 3309, 3318, 3319, and Executive Orders 10577 and 11103.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM,
Including categories of users and the purpose of such uses:

a. Office of Personnel Management (OPM) to the extent the information is relevant to OPM's decision on a OMB request.

b. A congressional office in response to an inquiry from the congressional office made at the applicant's request.

c. A requesting Federal agency, Commission or other public office if that applicant has indicated to OMB that he or she is available for referral to other agencies for consideration.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:
Paper records and electronic media.

RETRIEVABILITY:
Individual records are indexed by name, by school, by area of interest, and by the type of appointment the applicant is seeking.

SAFEGUARDS:
Access to and use of the system and its records is limited to selected OMB staff whose official duties require having access. Files are kept in the OMB Administration Office and in the EOP computer center. Both facilities are locked and alarmed. Only OMB staff involved in recruiting or hiring personnel have access to this data.

RETENTION AND DISPOSAL:
Records are retained and disposed of in accordance with the National Archives and Records Administration records schedule.

SYSTEM MANAGER(S) AND ADDRESS:
Associate/Assistant Director for Administration, Office of Management and Budget, Old Executive Office Building, 17th and Pennsylvania Ave. NW, Washington, DC 20503.

NOTIFICATION PROCEDURE:
If you wish to determine whether a record exists regarding you in the systems of records, contact the Freedom of Information Act Officer, Office of Management and Budget, New Executive Office Building, 725 17th Street NW, Washington, DC 20503.

RECORD ACCESS PROCEDURE:
See Notification procedure.

CONTESTING RECORD PROCEDURES:
See Notification procedure.

RECORD SOURCE CATEGORIES:
See "Categories of records in the system."

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:
Not applicable.

[FR Doc. 00–7802 Filed 3–29–00; 8:45 am]
BILLING CODE 3110–01–U

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meetings

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on: Thursday, April 13, 2000; Thursday, April 27, 2000; and Thursday, May 11, 2000.

The meeting will start at 10:00 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chair, five representatives from labor unions holding exclusive bargaining rights for Federal blue-collar employees, and five representatives from Federal agencies. Entitlement to membership on the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

This scheduled meeting will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chair to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) and 5 U.S.C. 552b(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of a meeting.

Annually, the Chair compiles a report of pay issues discussed and concluded recommendations. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chair on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on this meeting may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 5559, 1900 E Street, NW., Washington, DC 20415 (202) 606–1500.

Dated: March 24, 2000.

John F. Leyden,

Chairman, Federal Prevailing Rate Advisory Committee.

[FR Doc. 00–7788 Filed 3–29–00; 8:45 am]

BILLING CODE 6325–01–U

PRESIDIO TRUST

Notice of Public Meeting

AGENCY: The Presidio Trust.

ACTION: Notice of public meeting.

SUMMARY: In accordance with § 103(c)(6) of the Presidio Trust Act, 16 U.S.C. 460bb note, Title I of Pub. L. 104–333, 110 Stat. 4097, and in accordance with the Presidio Trust's bylaws, notice is hereby given that a public meeting of the Presidio Trust Board of Directors will be held from 9 a.m. to 12 p.m. on Thursday, April 27, 2000, at the Presidio Golden Gate Club, Fisher Loop, Presidio of San Francisco, California. The Presidio Trust was created by Congress in 1996 to manage approximately eighty percent of the former U.S. Army base known as the Presidio, in San Francisco, California.

The purpose of this meeting is to discuss housing issues. Public comment on this topic will be received and memorialized in accordance with the Trust's Public Outreach Policy.

TIME: The meeting will be held from 9 a.m. to 12 p.m. on Thursday, April 27, 2000.

ADDRESSES: The meeting will be held at the Presidio Golden Gate Club, Fisher Loop, Presidio of San Francisco.

FOR FURTHER INFORMATION CONTACT: Craig Middleton, Deputy Director for Operations and Governmental Affairs, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, California 94129–0052, Telephone: (415) 561–5300.

Dated: March 24, 2000.

Karen A. Cook,

General Counsel.

[FR Doc. 00–7817 Filed 3–29–00; 8:45 am]

BILLING CODE 4310–4R–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 12b–1, SEC File No. 270–188, OMB Control No. 3235–0212

Notice is hereby given that under the Paperwork Reduction Act of 1995 [44 U.S.C. 3501], the Securities and Exchange Commission (the "Commission") is soliciting public comments on the collections of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget ("OMB").

Rule 12b–1 [17 CFR 270.12b–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Act") permits a registered open-end investment company ("mutual fund") to distribute its own shares and pay expenses of distribution provided, among other things, that the mutual fund adopts a written plan ("rule 12b–1 plan") and has in writing any agreements relating to the implementation of the rule 12b–1 plan. The rule in part requires that (i) the adoption or material amendment of a rule 12b–1 plan be approved by the mutual fund's directors and shareholders; (ii) the board review quarterly reports of amounts spent under the rule 12b–1 plan; and (iii) the board considers continuation of the rule 12b–1 plan at least annually. Rule 12b–1 also requires funds relying on the rule to preserve for six years, the first two years in an easily accessible place, copies of the rule 12b–1 plan, related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for adopting or continuing a rule 12b–1 plan.

The board and shareholder approval requirements of rule 12b–1 are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b–1 plan. The requirement of quarterly reporting to the board is designed to ensure that the rule 12b–1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule.

Based on information filed with the Commission by funds, Commission staff estimates that there are 4,500 mutual funds with rule 12b–1 plans. As discussed above, rule 12b–1 requires the board of each fund with a rule 12b–1 plan to (i) review quarterly reports of amounts spent under the plan and (ii) annually consider the plan's continuation (which generally is combined with the fourth quarterly review). This results in a total number of annual responses per fund of four and an estimated total number of industry responses of 18,000 (4,500 funds × 4 annual responses per fund=18,000 responses).

Based on conversations with fund industry representatives, Commission staff estimates that for each of the 4,500 mutual funds that currently have a rule 12b–1 plan, the average annual burden of complying with the rule is 50 hours to maintain the plan. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's annual consideration of the plan's continuation. Commission staff therefore estimates that the total burden of the rule's paperwork requirements is 225,000 hours (4,500 funds × 50 hours per fund = 225,000 hours).

The estimate of burden hours is made solely for the purposes of the Paperwork Reduction Act. The estimate is not derived from a comprehensive or even a representative survey or study of Commission rules.

If a currently operating fund seeks to (i) adopt a new rule 12b–1 plan or (ii) materially increase the amount it spends for distribution under its rule 12b–1 plan, rule 12b–1 requires that the fund obtain sharehold approval. As a consequence, the funds will incur the cost of a proxy. Commission staff estimates that four funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b–1 plan. Commission staff further estimates that the cost of each fund's proxy is $15,000. Thus the total annualized cost burden of rule 12b–1 to the fund industry is $60,000 (4 funds requiring a proxy × $15,000 per proxy).

The collections of information required by rule 12b–1 are necessary to obtain the benefits of the rule. Notices to the Commission will not be kept confidential. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Written comments are requested on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: March 24, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7841 Filed 3–29–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27158]

Filings Under the Public Utility Holding Company Act of 1935, as Amended ("Act")

March 24, 2000.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by April 18, 2000, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After April 18, 2000, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

American Electric Power Company, Inc., et al. (70–8307)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and AEP Resources Service Company ("RESCO"),[1] a wholly owned service subsidiary of AEP, both located in 1 Riverside Plaza, Columbus, Ohio 43215, have filed a post-effective amendment under sections 6(a), 7, 12(b) and 13(b) of the Act, and rules 45, 54, 90 and 91 under the Act, to their application-declaration filed under the Act.

By order dated April 12, 1982 (HCAR No. 22468) ("1982 Order"), RESCO was authorized to sell management, technical and training expertise and certain technical and procedural resources ("Consulting Services") to nonaffiliated entities. By order dated April 5, 1995 (HCAR No. 26267), the Commission authorized RESCO to provide project development, engineering, design, construction and construction management, operating fuel management, maintenance and power plant overhaul and other similar kinds of managerial and technical services ("Power Project Services"). Under the terms of the April 1995 Order, RESCO was authorized to provide Power Project Services to both affiliated and nonaffiliated exempt wholesale generators ("EWGs") (as defined in the Act and rules under the Act), foreign utility companies ("FUCOs") (as defined in the Act and rules under the Act), qualifying cogeneration facilities ("QFs") and small power production facilities (as defined in the Public Utility Regulatory Policies Act of 1978 ("PURPA") and rules under PURPA), and other projects relating to the generation, transmission and distribution of electric power (collectively, "Power Projects"). RESCO was also authorized in the April 1995 Order to provide Consulting Services and Power Project Services in foreign jurisdictions. In addition, the 1995 Order authorized RESCO to provide energy management and demand-side management services in the United States (collectively with Power Project Services and Consulting Services, "Authorized Services"). The April 1995 Order also authorized an exemption under section 13(b) from the requirements of rules 90 and 91 as applicable to transactions under certain

[1] RESCO's name was changed from AEP Energy Services, Inc. on March 7, 1997.

circumstances.[2] By Order dated March 7, 1997 (HCAR No. 26682), RESCO was authorized to form one or more partly or wholly owned subsidiaries ("New Subsidiaries") to provide one or more of the Authorized Services.

To the extent not exempt of otherwise authorized by the Commission, RESCO also requests an exemption from the "at-cost"requirements of rules 90 and 91 for Authorized Services rendered by RESCO or any New Subsidiary to any partially owned associate Power Project, exempt telecommunications company (as defined in section 34 of the Act), or energy-related company (as defined in Rule 58 under the Act) or New Subsidiary, provided that the ultimate purchaser of the Authorized Services is not an associate public utility company or a subsidiary of AEP whose activities and operations are primarily related to the provision of services or goods to associate public utility companies. In addition the Applicants request that the exemption apply to Authorized Services RESCO provides to any subsidiary of AEP Resources, Inc., ("Resources")[3] a nonutility subsidiary of AEP, (i) that is engaged solely in the business of developing, owning, operating and/or providing Authorized Services to those exempt Power Projects enumerated above, or (ii) that does not derive directly or indirectly, any material part of its income from sources within the United States and is not a public utility company operating within the United States.

By orders dated April 5, 1995, December 28, 1995 and December 16, 1998 (HCAR Nos. 26267, 26442 and 26952, respectively) the Commission authorized AEP to: (1) Guarantee the debt of RESCO in an amount not to exceed $51 million through December 31, 2001; and (2) issue guarantees and assumptions of liability on behalf of RESCO to third parties in an aggregate amount not to exceed $200 million through December 31, 2001 (collectively, the "Guarantee Authority").

Applicants now propose to extend the period of Guarantee Authority through June 30, 2004. Applicants also propose that the Guarantee Authority be increased to allow AEP to (1) guarantee the debt of RESCO to third parties in an amount not to exceed $400 million and (2) issue guarantees and assumptions of liability on behalf of RESCO to third parties in an amount not to exceed $400 million. Applicants state that the authority sought is necessary, in part, because RESCO has entered into an agreement with National Power Cooperative, Inc. ("National"), an affiliate of Buckeye Power, Inc., to design, engineer, procure all materials and equipment and construct for National a 510 megawatt gas-fired peaking unit. In addition, Applicants are investigating several opportunities to, among other things, design, engineer and procure equipment and materials to construct generating stations and other projects relating to the generation, transmission and distribution of electric power.

For the Commission by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7842 Filed 3–29–00; 8:45 am]

BILLING CODE 8010–01–M

[2] The exemption applies to a transaction when a Power Project entity is: (a) a FUCO, or an EWG which derives no part of its income, directly, or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States; or (b) an EWG which sells electricity at market-based rates which have been approved by the Federal Energy Regulatory Commission ("FERC") or the appropriate state public utility commission, provided that the purchaser of such electricity is not an associate company of RESCO within the AEP System; or (c) a QF that sells electricity exclusively (i) at rates negotiated at arms'-length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, and/or (ii) to an electricity utility company, other than any associate company of RESCO within the AEP System, at the purchaser's "avoided cost" as determined in accordance with the regulations under the Public Utility Regulatory Policies Act of 1978; or (d) an EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser of such electricity is not an associate company of RESCO with the AEP System.

[3] Resources is involved in preliminary development activities related to Power Projects.

SECURITIES AND EXCHANGE COMMISSION

[Release 34–42568; File No. 600–22]

Self-Regulatory Organizations; MBS Clearing Corporation; Notice of Filing and Order Extending Temporary Registration as a Clearing Agency

March 23, 2000.

Notice is hereby given that on February 8, 2000, MBS Clearing Corporation ("MBSCC") filed with the Securities and Exchange Commission ("Commission") an application pursuant to Section 19(a) of the Securities Exchange Act of 1934 ("Act")[1] requesting that the Commission grant MBSCC full registration as a clearing agency or in the alternative extend MBSCC's temporary registration as a clearing agency until such time as the Commission is able to grant MBSCC permanent registration.[2] The Commission is publishing this notice and order to solicit comments from interested persons and to extend MBSCC's temporary registration as a clearing agency through March 31, 2001.

On February 2, 1987, pursuant to Sections 17A(b) and 19(a) of the Act[3] and Rule 17Ab2–1 promulgated thereunder,[4] the Commission granted MBSCC registration as a clearing agency on a temporary basis for a period of eighteen months.[5] The Commission subsequently has extended MBSCC's registration through March 31, 2000.[6]

As discussed in detailed in the original order granting MBSCC's registration, one of the primary reasons for MBSCC's registration was to enable it to provide for the safe and efficient clearance and settlement of transactions in mortgage-backed securities. Since its original temporary registration order, MBSCC has implemented many improvements and continues to work towards enhancing the safety and efficiency of its operations. For example, during the past year, MBSCC amended its risk management rules to: (i) Implement a net-out report, (ii) modify financial reporting by participants, (iii) modify certain special provisions applicable to non-domestic participants, (iv) add a provision for additional assurances, and (v) clarify MBSCC's role as a agent in a liquidation.[7] MBSCC also modified its rules regarding letters of credit to implement the Uniform Letter of Credit developed by the Unified Clearing Group.[8] In addition, MBSCC amended its rules to add net position and net-out position components to the formula MBSCC uses to calculate market margin differential deposits to the participants fund.[9] MBSCC adopted rules to facilitate a smooth Year 2000 transition.[10]

MBSCC has functioned effectively as a registered clearing agency for over ten years. Accordingly, in light of MBSCC's past performance and the need for continuity in the services MBSCC provides to its participants, the Commission believes that it is necessary and appropriate in the public interest and for the prompt and accurate clearance and settlement of securities transactions to extend MBSCC's temporary registration through March 31, 2001. During this temporary registration period, the Commission anticipates that it will act on MBSCC's application for permanent registration. Any comments received during MBSCC's temporary registration will be considered in conjunction with the Commission's review of MBSCC's request for permanent registration as a clearing agency under Section 17A of the Act.[11]

Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments with respect to whether the Commission should grant MBSCC permanent registration as a clearing agency. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the request for permanent registration as a clearing agency that are filed with the Commission, and all written communications relating to the extension between the Commission and any person, other than those that may be withheld from the public in accordance with 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of MBSCC. All submissions should refer to File No. 600–22 and should be submitted by April 20, 2000.

Conclusion

It is therefore ordered pursuant to Sections 17A(b) and 19(a) of the Act that MBSCC's temporary registration as a clearing agency (File No. 600–22) be and hereby is extended through March 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

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[1] 15 U.S.C. 78s(a).

[2] Letter from Anthony Davidson, Managing Director and General Counsel, MBSCC (February 8, 2000).

[3] 15 U.S.C. 78q–1(b) and 78s(a).

[4] 17 CFR 240.17Ab2–1.

[5] Securities Exchange Act Release No. 24046 (February 2, 1987), 52 FR 4218.

[6] Securities Exchange Act Release Nos. 25957 (August 2, 1988), 53 FR 29537; 27079 (July 31, 1989), 54 FR 34212; 28492 (September 28, 1990), 55 FR 41148; 29751 (September 27, 1991), 56 FR 50602; 31750 (January 21, 1993), 58 FR 6424; 33348 (December 15, 1993), 58 FR 68183; 35132 (December 21, 1994) 59 FR 67743; 37372 (June 26, 1996) 61 FR 35281; 38784 (June 27, 1997), 62 FR 36587; 39776 (March 20, 1998), 63 FR 14740; and 41211 (March 24, 1999), 64 FR 15854.

[7] Securities Exchange Act Release No. 41714 (August 6, 1999), 64 FR 44250.

[8] Securities Exchange Act Release No. 41803 (August 27, 1999), 64 FR 48692.

[9] Securities Exchange Act Release No. 42173 (November 23, 1999), 64 FR 67363.

[10] Securities Exchange Act Release No. 41910 (September 23, 1999), 64 FR 52816.

[11] 15 U.S.C. 78q–1.

[12] 17 CFR 200.30–3(a)(16).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42573; File No. SR–NASD–99–53]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 4 to Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to the Establishment of Nasdaq Order Display Facility and to Modifications of the Nasdaq Trading Platform

March 23, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 23, 2000, the National Association of Securities Dealers, Inc. ("NASD"), through its wholly-owned subsidiary, the Nasdaq Stock Market, Inc. ("Nasdaq"), filed with the Securities and Exchange Commission ("Commission") Amendment No. 4 to the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Nasdaq. The proposed rule change and Amendment Nos. 1 and 2 were published for comment in the **Federal Register** on December 6, 1999.[3] On March 16, 2000, Nasdaq filed Amendment No. 3 to the proposal.[4] The Commission is publishing this notice to solicit comments on Amendment No. 4 to the proposed rule change from interested persons.[5]

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq and the NASD propose the following amendments in response to comment letters submitted to the Commission regarding the proposal as originally noticed. The amended rule language is as follows:[6]

Proposed additions are *italicized* and proposed deletions are placed in [brackets].

4720. SelectNet Service—Deleted

* * * * *

4611. Registration as a Nasdaq Market Maker

(a)–(e) No Change.

(f) Unless otherwise specified by the Association, each Nasdaq market maker that is registered as a market maker in a Nasdaq[National Market security]-*listed security* shall also at all times be registered as a market maker in the Nasdaq National Market Execution System (NNMS) with respect to that security and be subject to the NNMS Rules as set forth in the Rule 4700 Series. [Participation in the Small Order Execution System (SOES) shall be voluntary for any Nasdaq market maker registered to make a market in a Nasdaq SmallCap security.]

(g) No Change.

* * * * *

4613. Character of Quotations

(a) Two-Sided Quotations

(1) For each security in which a member is registered as a market maker, the member shall be willing to buy and sell such security for its own account on a continuous basis and shall enter and maintain *a* two-sided quotation[s] *("Principal Quote"), which is attributed to the market maker by a special maker participant identifier ("MMID") and is displayed in the Nasdaq Quotation Montage* [in The Nasdaq Stock Market] *at all times*, subject to the procedures for excused withdrawal set forth in Rule 4619.

(A) A registered market maker in a *Nasdaq-listed* security [listed on The Nasdaq Stock Market] must display a

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 42166 (Nov. 22, 1999), 64 FR 69125.

[4] *See* letter from Richard G. Ketchum, President, NASD, to Belinda Blaine, Associate Director, Division of Market Regulation ("Division"), Commission (March 15, 2000) ("Amendment No. 3"). In Amendment No. 3, the NASD responded to comment letters and submitted substantive, clarifying, and technical amendments to the proposal.

[5] This 19b–4 filing, representing Amendment No. 4 to SR–NASD–99–53, reflects the substantive amendments proposed in Amendment No. 3 to the filing, and contains some technical changes and clarifying information that the Commission has requested.

[6] The amended rule language contained in this notice reflects the Commission's recent approval of SR–NASD–99–11, regarding the establishment of the Nasdaq National Market System ("NNMS"). *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) (Order for File No. SR–NASD–99–11 functionally integrating the Small Order Execution System ("SOES") and SelectNet system to become the foundation of the NNMS.) In addition, the amended rule language replaces, in the entirety, the rule language contained in the original filing, as well as Amendment Nos. 1, 2 and 3.

quotation size for at least one normal unit of trading (or a larger multiple thereof) when it is not displaying a limit order in compliance with SEC Rule 11Ac1–4, provided, however, that a registered market maker may augment its displayed quotation size to display limit orders priced at the market maker's quotation. *Unless otherwise designated, a "normal unit of trading" shall be 100 shares.*

(2) No Change.

(b) Agency Quote—Amendments Pending Pursuant to SR–NASD–99–09.

(c)–(e) No Change.

IM–4613. Autoquote Policy—No Change

4618. Clearance and Settlement

(a)–(b) No Changes.

(c) All transactions through the *facilities of the* Nasdaq National Market Execution System[, SOES, and SelectNet services] shall be cleared and settled through a registered clearing agency using a continuous net settlement system.

* * * * *

4619. Withdrawal of Quotations and Passive Market Making

(a)–(b) No Change.

(c) Excused withdrawal status may be granted to a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction service, thereby terminating its registration as a market maker in Nasdaq issues. Provided however, that if the Association finds that the market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused pursuant to Rule 4620[, the Rules for the Small Order Execution System, as set forth in the Rule 4750 Series,] and the Rule 4700 Series governing the Nasdaq National Market Execution System.

(d) No Change.

* * * * *

4620. Voluntary Termination of Registration

(a) A market maker may voluntarily terminate its registration in a security by withdrawing its *Principal* [quotations] *Quote* from The Nasdaq Stock Market. A market maker that voluntarily terminates its registration in a security may not re-register as a market maker in that security for twenty (20) business days. Withdrawal from participation as a market maker in a Nasdaq [National Market]-*listed* security in the Nasdaq National Market Execution System shall constitute termination of registration as a market maker in that security for purposes of this Rule; provided, however, that a market maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency and is withdrawn from participation in the Automated Confirmation Transaction System and thereby terminates its registration as a market maker in Nasdaq-*listed* [National Market and SmallCap] issues may register as a market maker at any time after a clearing arrangement has been reestablished and the market maker has complied with ACT participant requirements contained in Rule 6100.

* * * * *

4632. Transaction Reporting

(a)–(d) No Change.

(e) Transactions Not Required To Be Reported.

The following types of transactions shall not be reported:

(1) transactions executed through the Computer Assisted Execution System (CAES), *or* the *facilities of the* Nasdaq National Market Execution System ("NNMS")[, or the SelectNet service];

(2)–(6) No Change.

(f) No Change.

4642. Transaction Reporting

(a)–(d) No Change.

(e) Transactions Not Required To Be Reported.

The following types of transactions shall not be reported:

(1) Transactions executed through the Computer Assisted Execution System (CAES)[; the Small Order Execution System (SOES) or the SelectNet service] *or facilities of the Nasdaq National Market Execution System ("NNMS").*

(2)–(5) No Change.

(f) No Change.

* * * * *

4700. NASDAQ NATIONAL MARKET EXECUTION SYSTEM (NNMS)

4701. Definitions—*Unless stated otherwise, the terms described below shall have the following meaning.*

[(d)] *(a)* The term "active NNMS securities" shall mean those NNMS eligible securities in which at least one NNMS Market Maker is currently active in NNMS.

[(i)] *(b)* The term "Agency Quote" shall mean the quotation that a registered NNMS Market Maker is permitted to display pursuant to the requirements of NASD Rule 4613(b).

(c) The term "Attributable Quote/Order" shall have the following meaning:

(i) For NNMS Market Makers and NNMS ECNs, a bid or offer Quote/Order that is designated for display (price and size) next to the participant's MMID in the Nasdaq Quotation Montage once such Quote/Order becomes the participant's best attributable bid or offer.

(ii) For UTP Exchanges, the best bid and best offer quotation with price and size that is transmitted to Nasdaq by the UTP Exchange, which is displayed next to the UTP Exchange's MMID in the Nasdaq Quotation Montage.

[(h)] *(d)* The term "Automated Confirmation Transaction" service or "ACT" shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which compares trade information entered by ACT Participants and submits "locked-in" trades to clearing.

[(g)] *(e)* The term "automatic refresh size" shall mean the default size to which an NNMS Market Maker's quote will be refreshed pursuant to NASD Rule 4710(b)(2), if the market maker *elects to utilize the Quote Refresh Functionality and* does not designate to Nasdaq an alternative refresh size. The [maximum] automatic refresh size default [size] shall be 1,000 shares.

(f) The term "Directed Order" shall mean an order that is entered into the system by an NNMS participant that is directed to a particular Quoting Market Participant.

(g) The term "Displayed Quote/Order" shall mean both Attributable and Non-Attributable (as applicable) Quotes/Orders transmitted to Nasdaq by Quoting Market Participants.

(h) The term "Firm Quote Rule" shall mean SEC Rule 11Ac1–1.

(i) The term "Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes an obligation to respond to such order in a manner consistent with the Firm Quote Rule.

(j) The term "limit order" shall mean an order to buy or sell a stock at a specified price or better.

(k) The term "market order" shall mean an unpriced order to buy or sell a stock at the market's current best price.

(l) The term "marketable limit order" shall mean a limit order that, at the time it is entered into the NNMS, if it is a limit order to buy, is priced at the current inside offer or higher, or if it is a limit order to sell, is priced at the inside bid or lower.

(m) The term "mixed lot" shall mean an order that is for more than a normal unit of trading but not a multiple thereof.

(n) The term "Non-Attributable Quote/Order" shall mean a bid or offer Quote/Order that is entered by a Nasdaq Quoting Market Participant and is designated for display (price and size) on an anonymous basis in the Nasdaq Order Display Facility.

(o) The term "Non-Directed Order" shall mean an order that is entered into the system by an NNMS participant and is not directed to any particular Quoting Market Participant.

(p) The term "Non-Liability Order" shall mean an order that when delivered to a Quoting Market Participant imposes no obligation to respond to such order under the Firm Quote Rule.

[(a)] *(q)* The term "Nasdaq National Market Execution System," [or] "NNMS," *or "system"* shall mean the automated system owned and operated by The Nasdaq Stock Market, Inc. which enables NNMS Participants to execute transactions in active NNMS authorized securities; to have reports of the transactions automatically forwarded to the National Market Trade Reporting System, if required, for dissemination to the public and the industry, and to "lock in" these trades by sending both sides to the applicable clearing corporation(s) designated by the NNMS Participant(s) for clearance and settlement; and to provide NNMS Participants with sufficient monitoring and updating capability to participate in an automated execution environment.

[(c)] *(r)* The term "NNMS eligible securities" shall mean designated Nasdaq-*listed* [National Market (NNM)] equity securities.

(s) The term "NNMS ECN" shall mean a member of the Association that meets all of the requirements of NASD Rule 4623, and that participates in the NNMS with respect to one or more NNMS eligible securities.

(i) The term "NNMS Auto-Ex ECN" shall mean an NNMS ECN that participates in the automatic-execution functionality of the NNMS system, and accordingly executes Non-Directed Orders via automatic execution for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or offer price.

(ii) The term "NNMS Order-Delivery ECN" shall mean an NNMS ECN that participates in the order-delivery functionality of the NNMS system, accepts delivery of Non-Directed Orders, and provides an automated execution of Non-Directed Orders (or an automated rejection of such orders if the price is no longer available) for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or offer price.

[(b)] *(t)* The term "NNMS Market Maker" shall mean a member of the Association that is registered as a Nasdaq Market Maker and as a Market Maker for purposes of participation in NNMS with respect to one or more NNMS eligible securities, and is currently active in NNMS and obligated to execute orders *through the automatic-execution functionality of the NNMS system* for the purchase or sale of an active NNMS security at the Nasdaq inside bid and/or [ask] *offer* price.

[(e)] *(u)* The terms "NNMS Participant" shall mean [either] an NNMS Market Maker, *NNMS ECN, UTP Exchange,* or NNMS Order Entry Firm registered as such with the Association for participation in NNMS.

[(f)] *(v)* The term "NNMS Order Entry Firm" shall mean a member of the Association who is registered as an Order Entry Firm for purposes of participation in NNMS which permits the firm to enter orders [of limited size] for execution against NNMS Market Makers.

(w) The term "Nasdaq Quotation Montage" shall mean the portion of Nasdaq WorkStation presentation that displays for a particular stock two columns (one for bid, one for offer), under which is listed in price/time priority the MMIDs for each NNMS Market Maker, NNMS ECN, and UTP Exchange registered in the stock and the corresponding quote (price and size) next to the related MMID.

(x) The term "Nasdaq Quoting Market Participant" shall include only the following: (1) NNMS Market Makers; or (2) NNMS ECNs.

(y) The term "odd-lot order" shall mean an order that is for less than a normal unit of trading.

(z) The term "Quote/Order" shall mean a single quotation or shall mean an order or multiple orders at the same price submitted to Nasdaq by a Nasdaq Quoting Market Participant that is displayed in the form of a single quotation. When this term is used in connection with a UTP Exchange, it shall mean the best bid and/or the best offer quotation transmitted to Nasdaq by the UTP Exchange.

(aa) The term "Quoting Market Participant" shall include any of the following: (1) NNMS Market Makers; (2) NNMS ECNs; and (3) UTP Exchange Specialists.

(bb) The term "Reserve Size" shall mean the system-provided functionality that permits a Nasdaq Quoting Market Participant to display in its Displayed Quote/Order part of the full size of a proprietary or agency order, with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part after the displayed part is executed.

(cc) The term "Nasdaq Order Display Facility" shall mean the portion of Nasdaq WorkStation presentation that displays without attribution to particular Quoting Market Participant's MMID the three best price levels in Nasdaq on both the bid and offer side of the market and the aggregate size of Attributable and Non-Attributable Quotes/Orders at each price level.

(dd) The term "UTP Exchange" shall mean any registered national securities exchange that has unlisted trading privileges in Nasdaq National Market securities pursuant to the Joint Self-Regulatory Organization Plan Governing the Collection, Consolidation and Dissemination Of Quotation and Transaction Information For Exchange-Listed Nasdaq/National Market System Securities Traded On Exchanges On An Unlisted Trading Privilege Basis ("Nasdaq UTP Plan").

4705. NNMS Participant Registration

(a) Participation in NNMS as an NNMS Market Maker requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Market Maker's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(3) registration as a market maker in The Nasdaq Stock Market pursuant to the Rule 4600 Series and compliance with all applicable rules and operating procedures of the Association and the Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Market Maker to prevent the *improper use or access to Nasdaq systems, including* unauthorized entry of information into NNMS; and

(5) Acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Market Maker, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(b) Pursuant to Rule 4611(f), participation as an NNMS Market Maker is required for any Nasdaq market maker

registered to make a market in an NNMS security.

(c) Participation in NNMS as an NNMS Order Entry Firm requires current registration as such with the Association. Such registration shall be conditioned upon the NNMS Order Entry Firm's initial and continuing compliance with the following requirements:

(1) execution of an NNMS Participant application agreement with the Association;

(2) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(3) compliance with all applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS Order Entry Firm to prevent the *improper use or access to Nasdaq systems, including* unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each NNMS trade that NNMS identifies as having been effected by such NNMS Order Entry Firm or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

(c) Participation in NNMS as an NNMS ECN requires current registration as an NASD member and shall be conditioned upon the following:

(1) the execution of an NNMS Participant application agreement with the Association.

(2) compliance with all requirements in NASD Rule 4623 and all other applicable rules and operating procedures of the Association and the Securities and Exchange Commission;

(3) membership in, or access arrangement with, a clearing agency registered with the Commission which maintains facilities through which NNMS compared trades may be settled;

(4) maintenance of the physical security of the equipment located on the premises of the NNMS ECN to prevent the improper use or access to Nasdaq systems, including unauthorized entry of information into NNMS; and

(5) acceptance and settlement of each trade that is executed through the facilities of the NNMS, or if settlement is to be made through another clearing member, guarantee of the acceptance and settlement of such identified NNMS trade by the clearing member on the regularly scheduled settlement date.

[(d)] *(e)* The registration required hereunder will apply solely to the qualification of an NNMS Participant to participate in NNMS. Such registration shall not be conditioned upon registration in any particular eligible or active NNMS securities.

[(e)] *(f)* Each NNMS Participant shall be under a continuing obligation to inform the Association of noncompliance with any of the registration requirements set forth above.

(g) The Association and its subsidiaries shall not be liable for any losses, damages, or other claims arising out of the NNMS or its use. Any losses, damages, or other claims, related to a failure of the NNMS to deliver, display, transmit, execute, compare, submit for clearance and settlement, or otherwise process an order, Quote/Order, message, or other data entered into, or created by, the NNMS shall be absorbed by the member, or the member sponsoring the customer, that entered the order, Quote/Order, message, or other data into the NNMS.

4706 Order Entry Parameters

(a) Non-Directed Orders—An NNMS Participant may enter a Non-Directed Order into the NNMS in order to access the best bid/best offer as displayed in Nasdaq. A Non-Directed Order must be a market or marketable limit order, must be a round lot or a mixed lot, and must indicate whether it is a short sale, short-sale exempt, or long sales. If after entry but before delivery, a Non-Directed Order becomes non-marketable, the system will hold the order for 90 seconds, after which the order will be returned to the NNMS participant entering the order. The system will not process a Non-Directed Order to sell short if the execution of such order would violate NASD Rule 3350. Limit orders may be entered into the system prior to the market's open, but will be held in queue, and if not marketable on the open, will be returned to the participant entering the order. Non-Directed Orders will be processed as described in Rule 4170(b). The NNMS shall not accept Non-Directed Orders that are All-or-None or have a minimum size of execution.

(b) Directed Orders—A participant may enter a Directed Order into the NNMS to access a specific Attributable Quote/Order displayed in the Nasdaq Quotation Montage. A Directed Order must be a Non-Liability Order, and as such, at the time of order entry must be designated as: (i) an "All-or-None" order ("AON") that is at least one normal unit of trading (e.g., 100 shares) in excess of the Attributable Quote/Order of the Quoting Market Participant to which the order is directed; or (ii) a "Minimum Acceptable Quantity" order ("MAQ"), with a MAQ value of at least one normal unit of trading in excess of Attributable Quote/Order of the Quoting Market Participant to which the order is directed. A Directed Order may have a time in force of 1 to 99 minutes.

(c) Entry of Agency and Principal Orders—NNMS Participants are permitted to enter into the NNMS both agency and principal orders for delivery and execution processing.

(d) Order Size—Any round or mixed lot order up to 999,999 shares may be entered into the NNMS for normal execution processing. Odd-lot orders, and the odd-lot portion of a mixed lot, are subject to a separate execution process, as described in Rule 4710(e).

(e) Open Quotes—The NNMS will only deliver an order or an execution to a Quoting Market Participant if that participant has an open quote.

(f) Odd-Lot Orders—The system will accept odd-lot orders for processing through a separate facility. Odd-lot orders must be Non-Directed Orders, and may be market, marketable limit or limit orders. The system shall accept odd-lot orders at a rate no faster than one order per/second from any single participant. Odd-lot orders, and the odd-lot portion of a mixed lot order, shall be processed as described in Rule 4170(e).

4707 Entry and Display of Quotes/Orders

(a) Entry of Quotes/Orders—Nasdaq Quoting Market Participants may enter Quotes/Orders into the NNMS subject to the following requirements and conditions:

(1) Nasdaq Quoting Market Participants shall be permitted to transmit to the NNMS multiple principal and agency Quotes/Orders at a single as well as multiple price levels. Such Quote/Order shall indicate whether its is an "Attributable Quote/Order" or "Non-Attributable Quote/Order," and the amount of Reserve Size (if applicable).

(2) Upon entry of a Quote/Order into the system, the NNMS shall time-stamp it, which time-stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders as described in Rule 4710(b).

(3) Consistent with Rule 4613, an NNMS Market Maker is obligated to maintain a two-sided Attributable Quote/Order (other that an Agency Quote) at all times, for at least one normal unit of trading.

(4) Nasdaq Quoting Market Participants may continue to transmit to the NNMS only their best bid and best offer Attributable Quotes/Orders. Notwithstanding NASD Rule 4613 and subparagraph (a)(1) of this rule, nothing in these rules shall require a Nasdaq Quoting Market Participant to transmit to the NNMS multiple Quotes/Orders.

(b) Display of Quotes/Orders in Nasdaq—The NNMS will display a Nasdaq Quoting Market Participant's Quotes/Orders as follows:

(1) Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's best priced Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID, and also will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Attributable Quote/Order falls within the best three price levels in Nasdaq on either side of the market. Upon execution or cancellation of the Nasdaq Quoting Market Participant's best-priced Attributable Quote/Order on a particular side of the market, the NNMS will automatically display the participant's next best Attributable Quote/Order on that side of the market.

(2) Non-Attributable Quotes/Orders—The price and size of a Nasdaq Quoting Market Participant's Non-Attributable Quote/Order on both the bid and offer side of the market will be displayed in the Nasdaq Order Display Facility as part of the aggregate trading interest at a particular price when the price of such Non-Attributable Quote/Order falls within the best three price levels in Nasdaq on either side of the market. A Non-Attributable Order will not be displayed in the Nasdaq Quotation Montage under the Nasdaq Quoting Market Participant's MMID. Non-Attributable Quotes/Orders that are the best priced Non-Attributable bids or offers in the system will be displayed in the Nasdaq Quotation Montage under an anonymous MMID, which shall represent and reflect the aggregate size of all Non-Attributable Quotes/Orders in Nasdaq at that price level. Upon execution or cancellation of a Nasdaq Quoting Market Participant's Non-Attributable Quote/Order, the NNMS will automatically display a Non-Attributable Quote/Order in the Nasdaq Order Display Facility (consistent with the parameters described above) if it falls within the is within the best three price levels in Nasdaq on either side of the market.

(c) Reserve Size—Reserve Size shall not be displayed in Nasdaq, but shall be electronically accessible as described in Rule 4710(b).

(d) Summary Scan—The "Summary Scan" functionality, which is a query-only non-dynamic functionality, displays without attribution to Quoting Market Participants' MMIDs the aggregate size of Attributable and Non-Attributable Quotes/Orders for all levels (on both the bid and offer side of the market) below the three price levels displayed in the Nasdaq Order Display Facility.

4710. Participant Obligations in NNMS

(a) Registration

Upon the effectiveness of registration as a NNMS Market Maker or, NNMS ECN, NNMS Order Entry Firm, the NNMS participant may commence activity within NNMS for exposure to orders or entry of orders, as applicable. The operating hours of NNMS may be established as appropriate by the Association. The extent of participation in Nasdaq by an NNMS Order Entry Firm shall be determined solely by the firm in the exercise of its ability to enter orders into Nasdaq.

(b) [Market Makers] *Obligations to and Processing of Non-Directed Orders*

(1) [An NNMS Market Maker] *General Provisions—A Quoting Market Participant* in an NNMS Security shall be subject to the following requirements *for Non-Directed Orders:*

(A) For each NNM security in which it is registered [as an NNMS Market Maker, the market maker], *a Quoting Market Participant* must *accept and* execute individual *Non-Directed* orders against its quotation including its Agency Quote (if applicable), in an amount equal to or smaller than the combination of the Displayed [quotation] *Quote/Order* and Reserve Size (*if applicable*) of such [quotation(s)] *Quote/Order, when the Quoting Market Participant is at the best bid/best offer in Nasdaq.* [For purposes of this rule, the term "reserved size" shall mean that a NNMS Market Maker or a customer thereof wishes to display publicly part of the full size of its order or interest with the remainder held in reserve on an undisplayed basis to be displayed in whole or in part as the displayed part is executed. To utilize the reserve size function, a minimum of 1,000 shares must initially be displayed in the market maker's quote (including the Agency Quote), and the quotation must be refreshed to 1,000 shares consistent with subparagraph (b)(2)(A) of this rule.] *Quoting Market Participants shall participate in the NNMS as follows:*

(i) NNMS Market Makers and NNMS Auto-Ex ECNs shall participate in the automatic-execution functionality of the NNMS, and shall accept the delivery of an execution up to the size of the participant's Displayed Quote/Order and Reserve Size.

(ii) NNMS Order-Delivery ECNs shall participate in the order-delivery functionality of the NNMS, and shall accept the delivery of an order up to the size of the NNMS Order-Delivery ECN's Displayed Quote/Order and Reserve Size. The NNMS Order-Delivery ECN shall be required to execute such order in a manner consistent with the Firm Quote Rule.

(iii) UTP Exchanges shall participate in the NNMS as described in subparagraph (f) of this rule and as otherwise described in the NNMS rules and the UTP Plan.

(B) Processing of Non-Directed Orders—Upon entry of a Non-Directed Order into the system, the NNMS will ascertain who the next Quoting Market Participant in queue to receive an order is and shall deliver an execution to NNMS Quoting Market Participants that participate in the automatic-execution functionality of the system, or shall deliver a Liability Order to Quoting Market Participants that participate in the order-delivery functionality of the system. Non-Directed Orders entered into the NNMS system shall be *delivered to or* automatically executed against *Quoting Market Participants'* Displayed [quotations] *Orders/Quotes* and Reserve Size, including Agency Quotes (if applicable), in price[/] *and then* time priority, *subject to the following processing.* For *Quotes/Orders* [quotations] at the same price level, the NNMS system will *attempt to access interest in the system in the following priority and order:*

(i) Displayed Quotes/Orders of NNMS Market Makers, NNMS ECNs that do not charge a quote-access fee to non-subscribers, and Non-Attributable agency quotes/orders of UTP Exchanges (as permitted by subparagraph (f) of this rule), in time priority between such participants;

(ii) Displayed Quotes/Orders of NNMS ECNs that charge a quote-access fee to non-subscribers, in time priority between such participants;

(iii) Reserve Size of NNMS Market Makers and NNMS ECNs that do not charge a quote-access fee to non-subscribers, in time priority between such participants;

(iv) Reserve Size of NNMS ECNs that charge a quote-access fee to non-subscriber, in time priority between such participants; and

(v) Principal Quotes/Orders of UTP Exchanges, in time priority between such participants[yield priority to all Displayed quotations over reserve size, so that the system will execute against Displayed quotations in time priority and then against reserve size in time priority].

The following exceptions shall apply to the above execution parameters. First, if a Nasdaq Quoting Market Participant enters a Non-Directed Order into the system, before sending such Non-Directed Order to the next Quoting Market Participants in queue, the NNMS will first attempt to match off the order against the Nasdaq Quoting Market Participant's own Quote/Order if the participant is at the best bid/best offer in Nasdaq. Second, if Displayed Quotes/Orders at a price level are simultaneously exhausted and there is Reserve Size available at that price, when Displayed Quotes/Orders are refreshed from Reserve Size the system will establish order-receipt priority for these refreshed Quotes/Orders based on the size of a participant's Displayed Quote/Order and then based on the original order-entry time for same-sized refreshed Displayed Quotes/Orders.

(C) Decrementation Procedures—The size of a [displayed quotation] *Quote/Order displayed in the Nasdaq Order Display Facility and/or the Nasdaq Quotation Montage* will be decremented upon the *delivery of a Liability Order or the delivery of an* execution of a[n NNMS] *Non-Directed* order in an amount equal to [or greater than one normal unit of trading] *the system-delivered order or execution*; provided, however, that [the execution of] *if* an NNMS order that is a mixed lot (*i.e.*, an order that is for more than a normal unit of trading but not a multiple thereof), *the system will only deliver a Liability Order or an execution for the number of round lots contained in the mixed lot order, and* will only decrement [a displayed quotation's] *the* size of a *Displayed Quote/Order* by the number of shares represented by the number of round lots contained in the mixed lot order. *The odd-lot portion of the mixed lot will be executed at the same price against the next NNMS Market Maker in the odd-lot rotation, as described in subparagraph (e) of this rule.*

(i) If an NNMS Auto-Ex ECN has its bid or offer Attributable Quote/Order and Reserve Size decremented to zero without transmission of another Attributable Quote/Order to Nasdaq, the system will zero out the side of the quote that is exhausted. If both the bid and offer are decremented to zero without transmission of a revised Attributable Quote/Order, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(ii) If an NNMS Order-Delivery ECN declines or partially fills a Non-Directed Order without immediately transmitting to Nasdaq a revised Attributable Quote/Order that is at a price inferior to the previous price, or if an NNMS Order-Delivery ECN fails to respond in any manner within 5 seconds of order delivery, the system will cancel the delivered order and send the order (or remaining portion thereof) back into the system for immediate delivery to the next Quoting Market Participant in queue. The system then will zero out the ECN's Quote/Orders at that price level on that side of the market, and the ECN's quote on that side of the market will remain at zero until the ECN transmits to Nasdaq a revised Attributable Quote/Order. If both the bid and offer are zeroed out, the ECN will be placed into an excused withdrawal state until the ECN transmits to Nasdaq a revised Attributable Quote/Order.

(iii) If an NNMS ECN's Quote/Order has been zeroed out or if the ECN has been placed into excused withdrawal as described in subparagraphs (b)(1)(C)(i) and (ii) of this rule, the system will continue to access the ECN's Non-Attributable Quotes/Orders that are in the NNMS, as described in Rule 4707 and subparagraph (b) of this rule.

(D) *Interval Delay*—After the NNMS system has executed *all Displayed Quotes/Orders and Reserve Size interest at a price level* [an order against a market maker's displayed quote and reserve size (if applicable), that market maker shall not be required to execute another order at its bid or offer in the same security until a predetermined time period has elapsed from the time the order was executed, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be modified upon Commission approval and appropriate notification to NNMS participants.], *the following will occur:*

(i) If the NNMS system cannot execute in full all shares of a Non-Directed Order against the Displayed Quotes/Orders and Reserve Size interest at the initial price level and a price two price levels (i.e., two minimum trading increments) away, the system will pause for 5 seconds before accessing the interest at the next price level in the system; provided, however, that once the Non-Directed order can be filled in full within two price levels, there will be no interval delay between price levels and the system will execute the remainder of order in full; or

(ii) If the Non-Directed Orders is specially designated by the entering market participant as a "sweep order," the system will execute against all Displayed Quotes/Orders and Reserve Size at the initial price level and the two price levels being displayed in the NODF without pausing between the displayed price levels. Thereafter, the system will pause 5 seconds before moving to the next price level, until the Non-Directed Order is executed in full.

The interval delay described in this subparagraph may be modified upon Commission approval and appropriate notification to NNMS Participants.

(E) All entries in NNMS shall be made in accordance with the requirements set forth in the NNMS User Guide, as published from time to time by Nasdaq.

(2) Refresh Functionality

(A) Reserve Size Refresh—Once *a Nasdaq Quoting Market Participant's* [an NNMS Market Maker's displayed quotation] *Displayed Quote/Order* size on either side of the market in the security has been decremented to zero due to NNMS [executions] processing Nasdaq will refresh the [market maker's] displayed size out of Reserve Size to a size-level designated by the *Nasdaq Quoting Market Participant* [NNMS Market Maker], or in the absence of such size-level designation, to the automatic refresh size. [If the market maker is using the reserve size function for its proprietary quote or Agency Quote the NNMS Market Maker must refresh to a minimum of 1,000 shares, consistent with subparagraph (b)(1)(A) of this rule]. *To utilize the Reserve Size functionality, a minimum of 1,000 shares must initially be displayed in the Nasdaq Quoting Market Participant's Displayed Quote/Order, and the Displayed Quote/Order must be refreshed to at least 1,000 shares. This functionality will not be available for use by UTP Exchanges.*

(B) [Auto]Quote Refresh *("QR")*—Once an NNMS Market Maker's Displayed *Quote/Order* [quotation] size and Reserve Size on either side of the market in the security has been decremented to zero due to NNMS executions, the NNMS Market Maker may elect to have The Nasdaq Stock Market refresh the market maker's quotation as follows:

(i) Nasdaq will refresh the market maker's quotation price on the bid or offer side of the market, whichever is decremented to zero, by an *price* interval designated by the NNMS Market Maker; and

(ii) Nasdaq will refresh the market maker's displayed size to a level

designated by the NNMS Market Maker, or in the absence of such size level designation, to the automatic refresh size.

(iii) This functionality shall produce an Attributable Quote/Order. In addition, if an NNMS Market Maker is utilizing the QR functionality but has an Attributable Quote/Order in the system that is priced at or better than the quote that would be created by the QR, the NNMS will display the Attributable Quote/Order, not the QR-produced quote.

(iv) An NNMS Market Maker's Agency Quote shall not be subject to the functionality described in this subparagraph, nor shall this functionality be available to Quoting Market Participants other than NNMS Market Makers.

(3) *Entry of Locking/Crossing Quotes/Orders* [Except as otherwise provided in subparagraph (b)(10) of this rule, at any time a locked or crossed market, as defined in Rule 4613(e), exists for an NNMS security, a market maker with a quotation for that security (including an Agency Quote) that is causing the locked or crossed market may have orders representing shares equal to the size of the bid or offer that is locked or crossed executed by the NNMS system against the market maker's quote (including an Agency Quote) at the quoted price if that price is the best price. During locked or crossed markets, the NNMS system will execute orders against those market makers that are locked or crossed in predetermined time intervals. This period of time initially shall be established as five (5) seconds, but may be modified upon approval by the Commission and appropriate notification to NNMS participants.] *The system shall process locking/crossing Quotes/Orders as follows:*

(A) Locked/Crossed Quotes/Orders During Market Hours—If during market hours, a Quoting Market Participant enters into the NNMS a Quote/Order that will lock/cross the market (as defined in NASD Rule 4613(e)), the system will not display the Quote/Order as a quote in Nasdaq; instead the system will treat the Quote/Order as a marketable limit order and enter it into the system as a Non-Directed Order for processing as follows:

(i) For locked-market situations, the order will be routed to the Quoting Market Participant next in queue whom would be locked, and the order will be executed at the lock price;

(ii) For crossed-market situations, the order will be entered into the system and routed to the next Quoting Market Participants in queue who would be crossed, and the order will be executed at the price of the Displayed Quote/Order that would have been crossed.

Once the lock/cross is cleared, if the participant's order is not completely filled, the system will reformat the order and display it in Nasdaq (consistent with the parameters of the Quote/Order) as a Quote/Order on behalf of the entering Quoting Market Participant.

(B) Locked/Crossed Quotes/Orders at the Open—If the market is locked or crossed at 9:30 a.m., Eastern Time, the NNMS will clear the locked and/or crossed Quotes/Order by executing the oldest bid(offer) against the oldest offer(bid) against which it is marketable at the price of the oldest Quote/Order. Nasdaq then will begin processing Non-Directed Orders as described in subparagraph (b) of this rule.

[(4) For each NNM security in which a market maker is registered, the market maker may enter orders into the NNMS for its proprietary account as well as on an agency or riskless principal basis.]

[(5)] *(4)* An NNMS Market Maker may terminate its obligation by keyboard withdrawal (or its equivalent) from NNMS at any time. However, the market maker has the specific obligation to monitor its status in NNMS to assure that a withdrawal has in fact occurred. Any transaction occurring prior to the effectiveness of the withdrawal shall remain the responsibility of the market maker.

[(6)] *(5)* [An NNMS Market Maker will be suspended from NNMS if its bid or offer has been decremented to zero due to NNMS executions and will be permitted a standard grace period, the duration of which will be established and published by the Association, within which to take action to restore a two-sided quotation in the security for at least one normal unit of trading. An NNMS Market Maker that fails to reenter a two-sided quotation within the allotted time will be deemed to have withdrawn as a market maker ("Timed Out of the Box"). Except as provided below in this subparagraph and in subparagraph (b)(7) of this rule, an NNMS Market Maker that withdraws in an NNM security may not re-register as a market maker in that security for twenty (20) business days.] *If an NNMS Market Maker's Attributable Quote/Order is reduced to zero on one side of the market due to NNMS executions, the NNMS will close the Market Maker's quote in the NNMS with respect to both sides of its market, and the NNMS Market Maker will be permitted a standard grace period of three minutes within which to take action to restore its Attributable Quote/Order, if the market maker has not authorized use of the QR functionality or does not otherwise have an Attributable Quote/Order on both sides of the market in the system. An NNMS Market Maker that fails to transmit an Attributable Quote/Order in a security within the allotted time will have its quotation restored by the system at the lowest bid price and the highest offer price in that security. Except as provided in subparagraph (b)(6) of this rule, an NNMS Market Maker that withdraws from a security may not re-register in the system as a market maker in that security for twenty (20) business days. The requirements of this subparagraph shall not apply to a market maker's Agency Quote.*

[(A) Notwithstanding the above, a market maker can be reinstated if:

(i) the market maker makes a request for reinstatement to Nasdaq Market Operations as soon as practicable under the circumstances, but within at least one hour of having been Timed Out of the Box, and immediately thereafter provides written notification of the reinstatement request;

(ii) it was a Primary Market Maker at the time it was Timed Out of the Box;

(iii) the market maker's firm would not exceed the following reinstatement limitations:

a. for firms that simultaneously made markets in less than 250 stocks during the previous calendar year, the firm can receive no more than four (4) reinstatements per year;

b. for firms that simultaneously made markets in 250 or more but less than 500 stocks during the previous calendar year, the firm can receive no more than six (6) reinstatements per year;

c. for firms that simultaneously made markets in 500 or more stocks during the previous calendar year, the firm can receive no more than twelve (12) reinstatements per year; and

(iv) the designated Nasdaq officer makes a determination that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market. In making this determination, the designated Nasdaq officer will consider, among other things:

a. whether the market conditions in the issue included unusual volatility or other unusual activity, and/or the market conditions in other issues in which the market maker made a market at the time the firm was Timed Out of the Box;

b. the frequency with which the firm has been Timed Out of the Box in the past;

c. procedures the firm has adopted to avoid being inadvertently Timed Out of the Box; and

d. the length of time before the market maker sought reinstatement.

(B) If a market maker has exhausted the reinstatement limitations in subparagraph[s] (b)(6)(A)(iii) above, the designated Nasdaq officer may grant a reinstatement request if he or she finds that such reinstatement is necessary for the protection of investors or the maintenance of fair and orderly markets and determines that the withdrawal was not an attempt by the market maker to avoid its obligation to make a continuous two-sided market in instances where:

(i) a member firm experiences a documented problem or failure impacting the operation or utilization of any automated system operated by or on behalf of the firm (chronic system failures within the control of the member will not constitute a problem or failure impacting a firm's automated system) or involving an automated system operated by Nasdaq;

(ii) the market maker is a manager or co-manager of a secondary offering from the time the secondary offering is announced until ten days after the offering is complete; or

(iii) absent the reinstatement, the number of market makers in a particular issue is equal to two (2) or less or has otherwise declined by 50% or more from the number that existed at the end of the prior calendar quarter, except that if a market maker has a regular pattern of being frequently Timed Out of the Box, it may not be reinstated notwithstanding the number of market makers in the issue.

[(7)] *(6)* Notwithstanding the provisions of subparagraph [(6)] *(5)* above:

(A) an NNMS Market Maker that obtains an excused withdrawal pursuant to Rule 4619 prior to withdrawing from NNMS may reenter NNMS according to the conditions of its withdrawal; and

(B) a NNMS Market Maker that fails to maintain a clearing arrangement with a registered clearing agency or with a member of such an agency, and is thereby withdrawn from participation in ACT and NNMS for NNM securities, may reenter NNMS after a clearing arrangement has been reestablished and the market maker has compiled with ACT participant requirements. Provided however, that if the Association finds that the ACT market maker's failure to maintain a clearing arrangement is voluntary, the withdrawal of quotations will be considered voluntary and unexcused.

[(8)] *(7)* The Market Operations Review Committee shall have jurisdiction over proceedings brought by market makers seeking review of their removal from NNMS pursuant to subparagraphs (b)*(5)*[(6) or (b)(7)] of this rule.

[(9)] *(8)* In the event that a malfunction in the [NNMS Market Maker's] *Quoting Market Participant's* equipment occurs, rendering [on-line] communications with NNMS inoperable, the [NNMS Market Maker] *Quoting Market Participant* is obligated to immediately contact Nasdaq Market Operations by telephone to request withdrawal from NNMS *and a closed-quote status,* and *if the Quoting Market Participants is an NNMS Market Maker* an excused withdrawal from Nasdaq[. Such request must be made] pursuant to Rule 4619. If withdrawal is granted, Nasdaq Market Operations personnel will enter the withdrawal notification into NNMS from a supervisory terminal *and shall close the quote.* Such manual intervention, however, will take a certain period of time for completion and, *unless otherwise permitted by the Association pursuant to its authority under Rule 11890,* the [NNMS Market Maker] *Quoting Market Participants* will continue to be obligated for any transaction executed prior to the effectiveness of [his] the withdrawal *and closed-quote status.*

[(10) In the event that there are no NNMS Market Makers at the best bid (offer) disseminated by Nasdaq, market orders to sell (buy) entered into NNMS will be held in queue until executable, or until 90 seconds has elapsed, after which such orders will be rejected and returned to their respective order entry firms.]

(c) Directed Order Processing—A participant may enter a directed order into the NNMS to access a specific Quote/Order in the Nasdaq Quotation Montage and to begin the negotiation process with a particular Quoting Market Participant. The system will deliver an order to the Quoting Market Participant designated as the recipient of the order. Upon delivery, the Quoting Market Participants shall owe no liability under the Firm Quote Rule to that order and the system will not decrement the receiving Quoting Market Participant's Quote/Order.

[(c)] *(d)* NNMS Order Entry Firms

All entries in NNMS shall be made in accordance with the procedures and requirements set forth in the NNMS User Guide. Orders may be entered in NNMS by the NNMS Order Entry Firm through either its Nasdaq terminal or computer interface. The system will transmit to the firm on the terminal screen and printer, if requested, or through the computer interface, as applicable, an execution report generated immediately following the execution.

[(d) Order Entry Parameters

(1) NNMS will only accept market and marketable limit orders for execution and will not accept market or marketable limit orders designated as All-or-None ("AON") orders; provided, however, that NNMS will not accept any limit orders, marketable or unmarketable, prior to 9:30 a.m., Eastern Time. For purposes of this subparagraph, an AON order is an order for an amount of securities equal to the size of the order and no less.

(2) Additionally, the NNMS will only accept orders that are unpreferenced, thereby resulting in execution in rotation against NNMS Market Makers, and will not accept preferenced orders.

(3) NNMS will not accept orders that exceed 9,900 shares, and no participant in the NNMS system shall enter an order into the system that exceeds 9,900.]

[(e) Electronic Communication Networks

An Electronic Communications Networks, as defined in SEC Rule 11Ac1–1(a)(8), may participate in the NNMS System if it complies with NASD Rule 4623 and executes with the Association a Nasdaq Workstation Subscriber Agreement, as amended, for ECNs.]

(e) Odd-Lot Processing

(1) Participation in Odd-Lot Process—All NNMS Market Makers may participate in the Odd-Lot Process for each security in which the market maker is registered.

(2) Execution Process

(a) Odd-lot orders will be executed against an NNMS Market Maker only if it has an odd-lot exposure limit in an amount that would fill the odd-lot order. A NNMS Market Maker may, on a security-by-security basis, set an odd-lot exposure limit from 0 to 999,999 shares.

(b) An odd-lot order shall be executed automatically against the next available NNMS Market Maker when the odd-lot order becomes executable (i.e., when the best price in Nasdaq moves to the price of the odd-lot limit order). Such odd-lot orders will execute at the best price available in the market, in rotation against NNMS Market Makers who have an exposure limit that would fill the odd-lot order.

(c) For odd-lots that are part of a mixed lot, once the round-lot portion is executed, the odd-lot portion will be executed at the round-lot price against the next NNMS Market Maker in rotation (as described in subparagraph (e)(2)(b) of this rule) even if the round-lot price is no longer the best price in Nasdaq.

(d) Odd-lot executions will decrement the odd-lot exposure limit of an NNMS Market Maker but will not decrement the size of NNMS Market Maker's Displayed Quote/Order.

(e) After the NNMS system has executed an odd-lot against an NNMS Market Maker, the system will not deliver another odd-lot order against the same market maker until a predetermined time period has elapsed from the time the last execution was delivered, as measured by the time of execution in the Nasdaq system. This period of time shall initially be established as 5 seconds, but may be increased upon Commission approval and appropriate notification to NNMS Participants or may be decreased to an amount less than five seconds by the NNMS Market Maker.

(f) UTP Exchanges

Unless specified otherwise in these rules or in the Nasdaq UTP Plan, UTP Exchanges shall participate in the NNMS as follows:

(1) Order Entry—UTP Exchanges shall be permitted to enter Directed and Non-Directed orders into the system subject to the conditions and requirements of Rules 4706. Directed and Non-Directed Orders entered by UTP Exchanges shall be processed (unless otherwise specified) as described subparagraphs (b) and (c) of this rule.

(2) Display of UTP Exchange Quotes/Orders in Nasdaq

(a) UTP Exchange Principal Orders/Quotes—UTP Exchanges shall be permitted to transmit to the NNMS a single bid Quote/Order and a single offer Quote/Order. Upon transmission of the Quote/Order to Nasdaq, the system shall time stamp the Quote/Order, which time stamp shall determine the ranking of the Quote/Order for purposes of processing Non-Directed Orders. The NNMS shall display the best bid and best offer Quote/Order transmitted to Nasdaq by a UTP Exchange in the Nasdaq Quotation Montage under the MMID for the UTP Exchange, and shall also display such Quote/Order in the Nasdaq Order Display Facility as part of the aggregate trading interest when the UTP Exchange's best bid/best offer Quote/Order falls within the best three price levels in Nasdaq on either side of the market.

(b) UTP Exchange Agency Quotes/Orders—A UTP Exchange may transmit to the NNMS orders that meet the following requirements: are for the benefit of the account of a natural person executing securities transactions with or through or receiving investment banking services from a broker/dealer; are not for the benefit of a broker and/or dealer; and are designated as Non-Attributable Quotes/Orders ("UTP Agency Order/Quote"). Upon transmission of a UTP Agency Quote/Order to Nasdaq, the system shall time stamp the order, which time stamp shall determine the ranking of these Quote/Order for purposes of processing Non-Directed Orders, as described in subparagraph (b) of this rule. A UTP Agency Quote/Order shall not be displayed in the Nasdaq Quotation Montage under the MMID for the UTP Exchange. Rather, UTP Agency Quotes/Orders shall be reflected in the Nasdaq Order Display Facility and Nasdaq Quotation Montage in the same manner in which Non-Attributable Quotes/Orders from Nasdaq Quoting Market Participants are reflected in Nasdaq, as described in Rule 4707(b)(2).

(3) Non-Directed Order Processing—UTP Exchanges shall participate in the automatic-execution functionality of the system, shall accept an execution of an order up to the size of the UTP Exchange's displayed Quote/Order, and shall otherwise participate in the Non-Directed Order processing described in subparagraph (b) of this rule. UTP Exchanges shall be subject to the decrementation procedures described in subparagraph (b)(1)(C) of this rule.

(4) Directed Order Processing—UTP Exchanges shall participate in the Directed Order processing as described in subparagraph (c) of this rule.

4711–4714—No Change

4718. Termination of System Service

The Association or its subsidiaries may, upon notice, terminate System service to a participant in the event that a participant fails to abide by any of the rules or operating procedures of the System or any other relevant rule or requirement, or fails to pay promptly for services rendered.

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4750. SMALLCAP SMALL ORDER EXECUTION SYSTEM (SOES)

4751–4757—Deleted

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD and Nasdaq included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD and Nasdaq have prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

In the original filing, the NASD and Nasdaq proposed enhancing the Nasdaq quotation montage and Nasdaq's main trading platform—the Nasdaq National Market System ("NNMS").[7] In particular, Nasdaq proposed to: (1) Add a new display to the Nasdaq Workstation II ("NWII") called the Nasdaq Order Display Facility ("NODF"), which would show the best bid/best offer in Nasdaq and two price levels away, accompanied by the aggregate size at each price level of the "displayed" trading interest of market makers, electronic communication networks ("ECN"), and UTP Exchanges; (2) make substantial enhancements to the NNMS, which would improve the efficiency of the current trading platform; (3) allow market makers and ECNs to designate orders for "display" in Nasdaq on either an attributable (*i.e.*, *not* anonymous) or non-attributable (*i.e.*, anonymous) basis; (4) establish the Order Collector Facility ("OCF") as part of the NNMS, which would allow Nasdaq market makers and ECNs to give the Nasdaq system multiple quotes/orders at a single as well as multiple price levels, which would be displayed in the Nasdaq Quotation Montage and the NODF, consistent with an order's parameters; (5) establish the OCF as a single point of order entry and single point of delivery of liability orders and executions; and (6) create an odd-lot processing facility in Nasdaq.

The Commission received approximately 21 comment letters.[8] In

[7] *See* note 3, *above.*

[8] *See* letters from: Investment Company Institute, dated January 11, 2000 ("ICI Letter"); Chicago Stock Exchange, dated January 11, 2000 ("CHX Letter"); Bloomberg, dated January 11, 2000 ("Bloomberg Letter"); Merrill Lynch, dated January 20, 2000 ("Merrill Letter"); Morgan Stanley Dean Witter, dated February 3, 2000 ("Morgan Stanley Letter"); Salomon Smith Barney, dated February 3, 2000 ("Salomon Letter"); Goldman, Sachs & Co., dated February 15, 2000 ("Goldman Letter"); ITG, dated January 10, 2000 ("ITG Letter"); BNY ESI & Co., dated January 11, 2000 ("BNY Letter"); Heartland Securities, Corp. dated December 17, 1999 ("Heartland Letter"); Automated Trading Desk, dated December 26, 1999 ("Automated Trading Desk Letter"); The Security Traders Association of New York, dated December 22, 1999 ("STANY Letter"); NexTrade Holdings, Inc., undated ("NexTrade Letter"); Thelen Reid & Priest, LLP on behalf of the Electronic Traders Association, dated

Continued

the NASD's and Nasdaq's view, the overwhelming majority of these comments were extremely positive. However, some commenters stated that notwithstanding their overall support, there were aspects of the proposal that raised concerns. A few commenters opposed the proposal in its entirety. In response to the commenters, the NASD and Nasdaq propose to amend the following aspects of the proposal: (1) Odd-lot processing; (2) five-second interval delay between price levels; (3) the order execution algorithm as it relates to ECNs and UTP Exchanges, and displayed size refreshed from reserve; and (4) UTP Exchange participation in the system. The NASD and Nasdaq are working to address concerns regarding Nasdaq technology, competition, system roll-out, and any other relevant comments.

A. Odd-Lot Processing

A number of the commenters raised concerns regarding the odd-lot process. As originally proposed, all market makers in a stock would execute odd-lots entered into the system at the inside bid/offer, in a "round-robin" rotation, regardless of whether the market maker is at the inside bid/offer. Odd-lot executions would not decrement or be driven off a market maker's quoted size in the NODF or the Nasdaq Quote Montage. One commenter stated that it would be unfair to execute odd-lots against dealers without current trading interest in a particular security.[9] Various commenters stated that the odd-lot process could be "gamed" by splitting up large round lot orders into multiple odd-lot orders in order to jump the processing queue for round lots (*e.g.*, a 1,000 share order would be split up into 10 orders for 99 shares) or to access size greater than the depth at the inside market. Commenters also thought that the originally proposed odd-lot process could create certain arbitrage opportunities.[10]

In light of the concerns raised in comment letters, the NASD and Nasdaq propose to amend the odd-lot process to: (1) Add an "odd-lot exposure limit" for market makers; (2) provide a market maker interval delay between odd-lot executions against the same market maker; and (3) establish an odd-lot order entry parameter of one order per second, per firm. While odd-lots would still be processed in a round-robin fashion against a market maker even if it is not at the inside, odd-lots would be processed only against those market makers who have an available exposure limit.

A market maker could set its exposure limit, on a security-by-security basis, from 0 to 999,999 shares. The system would not execute an odd-lot order against a market maker unless the market maker had a sufficient exposure limit to fill the odd-lot order. If no market maker had an odd-lot exposure, the system would suspend the processing of odd-lots until the exposure limit was refreshed. Odd-lot executions would decrement the exposure limit (but not the quote/order sizes displayed in the Nasdaq Quotation Montage and/or NODF) by the size of the odd-lot order. When a market maker's odd-lot exposure limit was reduced to zero, the participant would be taken out of the odd-lot rotation unless, and until, the market maker set a new exposure limit.

Next, there also would be a maximum five-second interval delay between executions against the same market maker in the same security. Once an odd-lot is executed against a market maker, if the market maker had an available exposure limit there would be a five-second interval delay before the market maker was subject to another odd-lot execution. During the five-second interval delay, the market maker could adjust its odd-lot exposure limit up or down. A market maker would also be able to adjust the interval-delay time down (*i.e.*, down to 0–4 seconds), so that it receives executions more frequently than five seconds apart. Lastly, the system would be programmed to accept odd-lot orders at a rate of, no faster than, one order per second from any single NNMS participant. This would prevent a single firm from flooding the system with odd-lots.[11]

B. Five-Second Interval Delay Between Price Levels

As originally proposed, if all trading interest is exhausted at a particular price level, there would be a five-second interval delay before the system would attempt to execute an order at a new price level (*e.g.*, the next tick down). Commenters believed the proposed five-second interval delay between price levels was too long and/or unnecessary for liquid stocks and could cause queuing of orders within the system.[12] The rationale underlying the five-second interval delay was the concern that in the present high-speed trading environment it is beneficial to allow sufficient time for market makers to automatically update their quotes to ensure that a series of orders do not exhaust the interest at or near the inside, resulting in a partial execution at a significantly inferior price. Nevertheless, the NASD and Nasdaq recognize that the concerns raised by commenters have merit. In response, the NASD and Nasdaq propose that the system have a more limited interval delay parameter, as follows.

First, the system would limit the five-second interval delay to situations where an order is partially filled at one price level, and the remaining shares of the order would not be filled in full at the next two trading increments ("ticks") away (*i.e.*, within ⅛ of a point for stocks currently priced above $10, or within 10 cents in a decimals environment with a five-cent minimum trading increment). In these situations, there would be a five-second interval delay or pause before the order moved to the next increment away from the original increment. At any point after a delay, if the remainder of the order could be filled in full within two ticks, there would be no further delays and the order would be filled completely. In other words, if a large market order moves through many prices, it would delay before every price move except for the last two. Additionally, orders would be processed in time sequence. Thus, if an order was in interval delay because it met the above parameters, the orders behind the "interval-delay order" would not jump the queue.

For example, assume that at 10:00:01 a.m., the inside market in Stock G is $104.50 to $104.55. At 10:00:02 a.m., Order 1, which is a market sell order for 2,000 shares, is entered into the system. At 10:00:03 a.m., Order 2, which is a market sell order for 5,000 shares is entered into the system, and one second later Order 3, also a 5,000 share market sell order, is entered into the system. Thus, the following quotes/orders are being displayed in the system.

MMA $104.50–100 (total, including reserve)
ECN1 $104.45–1,900 (total, including reserve)
MMC $104.40–1,000 (total, including reserve)
MMD $104.35–1,000 (total, including reserve)
MME $104.30–1,000 (total, including reserve)
MMF $104.25–2,000 (total, including reserve)

As amended, the first 100 shares for Order 1 executes against MMA at $104.50, and since there would be sufficient size at $104.45 to satisfy the remaining shares 1,900 shares of the order, the remaining shares executes against ECN1 at $104.45, with no delay.[13] As to Order 2, since it could not be filled in full at the $104.40 price level or within two ticks away, 1,000 shares would execute at $104.40 and there would be a five-second interval delay between each price level until the order can be filled within two ticks. Note that during the interim, Order 3 would remain in queue behind Order 2, until Order 2 is executed in full.

Second, a market participant would be able to set a parameter on an individual order so that the order would trade through all interest (*i.e.*, displayed and reserve interest) at the three price levels being displayed in the NODF at the time of entry, without pausing five seconds in between each displayed price ("Sweep Order"). However, a Sweep Order may only execute through a maximum of the two price levels displayed in the NODF (and into the third price level). If the Sweep Order were not executed in full at the third price level, the order would pause for five seconds between each subsequent price level. For example, if a 10,000 share market order were entered into the system and received the appropriate designation, the order would sweep all the shares at the three price levels in the NODF at the time of entry, and would pause for five seconds before moving to the fourth (as well as subsequent) price level(s) if the order were not fully executed at such level.

The NASD and Nasdaq believe that these two approaches provide a balance between the need of institutional investors and market professionals for speed, while providing greater price continuity for individual investors.

C. Processing of Non-Directed Orders and ECNs and UTP Exchange Participation

As originally proposed, the system would execute non-directed orders entered into the system in general price/time priority. However, within a price level, the system would execute non-directed orders against displayed quotes/orders of market makers and ECNs that participate in the automatic-execution functionality of the system ("Auto-Ex ECNs"), within time priority of this class of market participants. The system then would execute against the displayed quotes/orders of ECNs that participate in order-delivery ("Order-Delivery ECNs"). After displayed size of Nasdaq market makers and ECNs was exhausted, the system would execute against reserve size of market makers and Auto-Ex ECNs, and then reserve size of Order-Delivery ECNs. Lastly, the system would execute against the quotes of UTP Exchanges.

i. *ECNs.* Some commenters believe that Order-Delivery ECNs should have the same standing to receive non-directed orders against their quotes as market makers and Auto-Ex ECNs. These commenters believe that executing first against market makers and Auto-Ex ECNs and then against Order-Delivery ECNs who are displaying orders at the same price raises competitive concerns. In light of these concerns, the NASD and Nasdaq propose to alter the order execution algorithm with respect to ECNs. The NASD and Nasdaq believe that all ECNs (who are NASD members), market makers, and non-attributed UTP Exchange agency interest, at a given price level should be executed against in strict time priority, unless an ECN charges a fee to non-subscribers for accessing its quote. ECNs that charge an access fee should be executed after non-attributed UTP Exchange agency interest, market makers, and ECNs who do not charge an access fee because such a fee represents an increase in trading costs and clearly an inferior price.[14] This prioritization is consistent with common industry practice today, where a market participant would route its orders first to market makers and ECNs that do not charge a fee and then to ECNs that charge an access fee, to ensure the investor incurs the lowest possible trading costs. The NASD and Nasdaq believe that any other prioritization would be inconsistent with the statutory mandate of providing investors with best execution of their orders.

ii. *UTP Exchange Participation.* As noted above, as originally proposed, UTP Exchanges would receive non-directed orders behind market makers and ECNs who are at the same price. The system would deliver orders from UTP Exchanges to the next market participant in queue, even if the receiving market participant participates in the automatic execution functionality of the system. Some Nasdaq market participants stated that mandating order delivery for orders from UTP Exchanges was cumbersome from a technology prospective. In addition, the Chicago Stock Exchange ("CHX") believed that the system would disadvantage customer orders that reside on the floor of its exchange because such orders would be executed last even if they had time priority.

Subsequent to the filing of the original proposal, the NASD and Nasdaq have had constructive discussions with the CHX. First, the NASD and Nasdaq has offered to provide automatic execution (against market participants that accept auto-ex) for non-directed orders emanating from the floor of the CHX, if CHX agrees to provide automatic execution for orders directed to the CHX by Nasdaq.[15] This is consistent with Nasdaq's previously-articulated position that it is willing to provide automatic execution against its market if a UTP Exchange is willing to provide

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January 11, 2000 (ETA Letter); USbancorp, Piper Jaffray, dated December 30, 1999 ("USbancorp Letter"); Island, dated January 11, 2000 ("Island Letter"); Securities Traders Association, dated December 22, 1999 ("STA Letter"); American Century Investment Management, dated January 10, 2000 ("American Century Letter"); Instinet, dated February 16, 2000 ("Instinet Letter"); Franklin Portfolio on behalf of the Nasdaq Institutional Trader's Advisory Council ("ITAC Letter"); and Mount Pleasant Brokerage date December 27, 1999 ("Mount Pleasant Letter").

[9] *See e.g.*, STANY Letter; STA Letter; Morgan Stanley Letter; Salomon Smith Barney Letter; Merrill Lynch Letter; and USbancorp.

[10] In the NNMS (which Nasdaq expects will be implemented on May 15, 2000), odd-lots are processed against only those market makers who are at the inside bid or offer, in round-robin fashion. An odd-lot execution does not decrement a market maker's quote. However, if a market maker has reserve size in the system, an odd-lot execution will decrement the reserve size held in Nasdaq. The system cannot decrement displayed quotes in Nasdaq, because Nasdaq only can display round lots (*i.e.*, 100 shares or multiples thereof). Since reserve size is not displayed in the Nasdaq Quotation Montage, but rather is held within the system, it is possible to decrement reserve size by the amount of an odd-lot execution.

[11] Some commenters suggested that the system decrement a market maker's quote (as displayed in the Nasdaq Quotation Montage and the NODF) as a method of addressing the concerns with the odd-lot processing. Nasdaq considered this approach but determined that it would be extremely complex and difficult to approach from a systems perspective. For example, because Nasdaq only displays quotations in round lots, the system could not decrement a quote to reflect an odd-lot execution until there were enough odd-lot executions against the same quote to equal one round lot. Accordingly, Nasdaq has proposed the alternative outlined above, as it addresses the concerns raised by commenters and also is technologically more feasible.

[12] *See e.g.*, STA Letter; STANY Letter; American Century Letter; ICI Letter; ETA Letter; USbancorp Letter; Salomon Smith Barney Letter; and Merrill Lynch Letter.

[13] As explained in the original filing, if ECN1 were an ECN that participates in automatic execution, it could protect itself from incurring dual liability by using the request to cancel feature in the system, even though there was no interval delay between price levels. That is, if while Nasdaq was executing against ECN1's quote an internal subscriber also wished to execute against the 1,900 shares for $104.45 in the ECN, before filling the subscriber's order ECN1 could send a request to cancel the order to Nasdaq. If Nasdaq had executed against the 1,900 shares at $104.45, ECN1 would send a message to its customer declining the execution because the order had been filled.

[14] The NASD and Nasdaq note that Commission staff and at least one commentor raised concerns about ECN fees and best execution. *See* ITG Letter.

[15] To be clear, the NASD and Nasdaq are proposing to eliminate from the proposal the requirement that all non-directed orders entered into the system by UTP Exchanges be delivered to the next market participant in queue even if that market participant is a market maker or Auto-Ex ECN.

automatic execution against its specialist's quotes.

Second, the NASD and Nasdaq has offered the CHX, and will offer to all other UTP Exchanges, the ability to display agency interest on a non-attributable basis in the NODF. That is, a UTP Exchange's agency orders would be aggregated into the NODF. These orders would not be displayed next to the UTP Exchange's MMID in the Nasdaq Quotation Montage, but instead would be aggregated into the SIZE MMID (which represents all non-attributable/anonymous interest at the best price in the system). The system would execute against the UTP-Exchange's non-attributable agency interest in strict price/time priority with other orders/quotes from Nasdaq market makers and ECNs that do not charge a quote-access fee. This approach should assure that a customer's order in a Nasdaq security, regardless of where it is entered in the National Market System, would be executed on a price/time priority basis. A UTP Exchange's principal (*i.e.*, non-agency) interest would continue to be displayed next to its MMID in the Nasdaq Quotation Montage and accessed after Nasdaq market maker and ECN interest (as well as UTP Exchange agency interest). The NASD and Nasdaq believe that the CHX has preliminarily agreed to this approach. The NASD and Nasdaq intend to work with all relevant UTP Plan participants to resolve the linkage issue.

iii. *Reserve Size.* One commenter suggested that when displayed size is completely exhausted, quotes/orders refreshed out of reserve size should be accessed in a slightly different manner than as described in the original proposal. Specifically, the commenter suggested that after the displayed size of market participants quoting at the same price level is exhausted simultaneously and then displayed size is refreshed from reserve, the system should establish a quoting market participant's priority to receive non-directed orders based on the new size of the displayed quotes (instead of the market participant's time of original quote/order entry) with time priority governing as to any two (or more) market participants at the same size.[16] In this narrow instance, there would be parity among the market participants with none, arguably, having time priority because their displayed interest was taken out simultaneously. The NASD and Nasdaq proposes to amend the filing to incorporate this approach into the order execution algorithm since it appears logical, in this instance, to reward Nasdaq Quoting Market Participants displaying greater size.

For example, assume that MMA and MMB are each at the inside bid quoting 1,000 shares. MMA, who is first in time to receive an order, has a reserve refresh size of 1,000 shares, and MMB who is second in time has a reserve refresh size of 3,000. A sell market order for 2,000 shares is entered into the system, and the system executes against MMA for 1,000 shares and MMB for 1,000 shares. As originally proposed, MMA and MMB would now be refreshed out of reserve to 1,000 and 3,000 shares respectively, but MMA would have priority to receive the next non-directed order in the system because MMA had original time priority. As amended, because MMB would be displaying 3,000 shares and MMA only 1,000 shares, MMB would receive the next order, as it is displaying a larger size refreshed out of reserve. The NASD and Nasdaq believe that this could encourage market participants to display greater size to the market, which could enhance liquidity and transparency.

iv. *Order Execution Algorithm.* Based on the above, the NASD and Nasdaq propose to amend the order execution algorithm to execute non-directed orders entered into the system as follows: (1) displayed quotes of market makers, ECNs that do not charge a quote-access fee to non-subscribers, non-attributable agency quotes of UTP Exchanges, in time priority between such participants; (2) displayed quotes of ECNs that charge a quote-access fee to non-subscribers, in time priority between such participants; (3) reserve size of market makers and ECNs that do not charge a quote-access fee to non-subscribers in time priority between such participants; (4) reserve size of ECNs that charge a quote-access fee to non-subscribers in time priority between such participants; and (5) principal quotes of UTP Exchanges, in time priority between such participants. The exception to the above would be if a non-directed order was from a market maker or ECN at the inside, the system would match off a non-directed order against that market maker or ECN (in lieu of sending it to the next market participant in queue). Second, if displayed size is exhausted and there is still reserve size available at that price, for the purpose of delivering the next order, the system would determine priority first based on the displayed size of the refreshed quotes and then based on time.

[16] *See* Goldman Sachs Letter.

2. Statutory Basis

The NASD and Nasdaq believe that the proposed amendments are consistent with the provisions of Sections 15A(b)(6) and (b)(11) of the Act,[17] as well as Sections 11A(a)(1)(C) and 11A(a)(1)(D) of the Act.[18] Section 15A(b)(6)[19] requires that the rules of a registered national securities association be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest; and not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers. Section 15A(b)(11) of the Act[20] requires that the rules of a registered national securities association be designed to produce fair and informative quotations, prevent fictitious or misleading quotations and to promote orderly procedures for collecting, distributing, and publishing quotations. Section 11A(a)(1)(C) of the Act[21] states that is in the public interest and appropriate for the protection of investors and the maintenance of fair and order markets to assure (1) economically efficient execution of securities transactions; (2) fair competition among brokers and dealers; (3) the availability to brokers, dealers and investors of information with respect to quotations and transactions in securities; (4) the practicability of brokers executing investors' orders in the best market; and (5) an opportunity for investors' orders to be executed without the participation of a dealer. Section 11A(a)(1)(D)[22] states that Congress finds that the linking of all markets for qualified securities through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers, and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders.

The NASD and Nasdaq believe that the amendments to the odd-lot process balance the concerns raised by commenters regarding potential gaming and the need for a fair and orderly method of executing odd-lot orders. The NASD and Nasdaq believe this proposed change would prevent fraudulent and manipulative acts, since it would reduce the opportunity for gaming. Additionally, the proposed changes to the five-second interval delay, provide a balance between the need of institutional investors and market professionals for speed, while providing greater price continuity for individual investors. Thus, the NASD and Nasdaq believe the proposal is consistent with Sections 15A(b)(6) and (b)(11),[23] as well as Section 11A(a)(1)(C) of the Act.[24]

[17] 15 U.S.C. 78o–3(b)(6) and (b)(11).
[18] 15 U.S.C. 78k–1(a)(1)(C) and (a)(1)(D).
[19] 15 U.S.C. 78o–3(b)(6).
[20] 15 U.S.C. 78o–3(b)(11).
[21] 15 U.S.C. 78k–1(a)(1)(C).
[22] 15 U.S.C. 78k–1(a)(1)(D).

The NASD and Nasdaq believe the proposed changes to the order execution algorithm addresses competitive concerns raised by some ECNs, in that all ECNs that do not charge a quote-access fee (whether they accept automatic execution or order delivery) would be treated in time priority. Additionally, the change as it relates to ECNs that charge a fee addresses concerns about best execution. Specifically, this change ensures that an investor's order would be routed to the market participant in Nasdaq that is displaying the best price, when considering quote access fees. Accordingly, the NASD and Nasdaq believe that these changes are consistent with Sections 15A(b)(6) and (b)(11) of the Act,[25] and Sections 11A(a)(1)(C) and 11A(a)(1)(D).[26]

The NASD and Nasdaq believe that the changes regarding the handling of agency orders from UTP Exchanges is consistent with Congress view of a national market system. That is, this approach assures that a customer's order in a Nasdaq security, no matter where it is entered in the National Market System, would be executed on a price/time priority basis. Accordingly, the NASD and Nasdaq believe the proposal is consistent with Sections 11A(a)(1)(C) and 11A(a)(1)(D) of the Act.[27]

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD and Nasdaq do not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 4, including whether Amendment No. 4 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to Amendment No. 4 to file number NASD–99–53 and should be submitted by April 20, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[28]

Margaret H. McFarland,

Deputy Secretary.

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[23] 15 U.S.C. 78o–3(b)(6) and (b)(11).
[24] 15 U.S.C. 78k–1(a)(1)(C).
[25] 15 U.S.C. 78o–3(b)(6) and (b)(11).
[26] 15 U.S.C. 78k–1(a)(1)(C) and (a)(1)(D).
[27] 15 U.S.C. 78k–1(a)(1)(C) and (a)(1)(D).
[28] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42571; File No. SR–NASD–99–37]

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Use of Hard To Borrow Lists

March 23, 2000.

I. Introduction

On August 4, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association"), through its wholly owned subsidiary, NASD Regulation, Inc. ("NASD Regulation"), filed with the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NASD Rule 3370. The proposal permits the use of a "Hard to Borrow" list to comply with affirmative determination requirements for short sales. The NASD submitted Amendment No. 1 to the proposed rule change on November 1, 1999.[3] Notice of the proposed rule change, as amended, was published in the **Federal Register** on January 7, 2000.[4] The Commission received no comments on the proposal.[5] This order approves the proposed rule change.

II. Description of the Proposal

NASD Rule 3370 was designed to prevent abusive short selling and ensure that short sellers satisfy their settlement obligations. The rule currently requires a member or associated person to make an affirmative determination prior to executing certain short sales that it will receive delivery of the subject security, or be able to borrow or otherwise provide delivery of the security, by

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] *See* Letter from Alden Adkins, Senior Vice President and General Counsel, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated October 26, 1999.
[4] *See* Securities Exchange Act Release No. 42306 (January 3, 2000), 64 FR 49261 ("Notice").
[5] Per the Commission's request, NASD submitted an additional, technical amendment to the proposed rule change deleting a sentence from the descriptive portion of the Notice. The sentence stated that member firms that rely on "Hard to Borrow" lists would be required under the proposed rule change to maintain such lists. This requirement is not stated in the actual text of the proposed rule change, which was published as part of the Notice. *See* Letter from Mary N. Revell, Associate General Counsel, NASD Regulation, to Katherine England, Assistant Director, Division of Market Regulation, Commission, dated March 14, 2000.

settlement date. The rule also provides that the member or associated person must record the identity of both the individual and the firm contacted who offered assurances that the subject security would be delivered by settlement date or be available for borrowing by settlement date. The rule does not specify the manner in which compliance with its requirements must be recorded.

NASD Rule 3370 currently permits members and associated persons to rely on "blanket" or standing assurances that securities will be available for borrowing on settlement date to satisfy their affirmative determination obligations, provided that the information used to generate the "blanket" or standing assurance is less than 24 hours old and the member delivers the security on settlement date.[6] "Blanket" assurances are commonly referred to as "Easy to Borrow" lists. The rule further provides that if a member relying on a blanket or standing assurance fails to deliver the security on settlement date, the NASD will deem such conduct inconsistent with the terms of the rule, absent mitigating circumstances adequately documented by the member.

A "Hard to Borrow" list is a list that includes all securities of a given category that are difficult to borrow or unavailable for borrowing. A user of such list may believe it reasonable to infer, under appropriate circumstances, that a specific security absent from the list is easy to borrow. Currently, however, NASD Rule 3370 does not specifically allow a member to rely on a "Hard to Borrow" list in this way.

The proposed rule change will permit members and associated persons to rely on a "Hard to Borrow" list for any short sales executed in The Nasdaq Stock Market ("Nasdaq") National Market ("NM") or exchange-listed securities, provided that (a) the creator of the list attests in writing that any Nasdaq NM or exchange-listed securities not included on the list are easy to borrow or are available for borrowing, and (b) any securities restricted pursuant to Uniform Practice Code ("UPC") 11830 are included on the list.

Securities restricted pursuant to UPC 11830 are Nasdaq securities that, as published by the NASD, show an aggregate clearing short position of 10,000 shares or more and that are equal to at least 0.5% of the total shares outstanding of the issue. The NASD represents that in practice, securities falling into this category are difficult to borrow. By explicit terms of the proposal, a "Hard to Borrow" list must include all such securities in order to qualify for use.

Under the proposed rule change, the member will be able to refer to the "Hard to Borrow" list before executing a short sale in a given security. If that security is not on the list, the member or associated person will be considered to have made the requisite affirmative determination and will be permitted to execute the short sale without taking any further steps to satisfy the affirmative determination rule. Conversely, if the security is on the list, then a member or associated person will not be permitted to execute the short sale without taking additional steps to ensure the security's availability.

As with the current rule's provisions with respect to "Easy to Borrow" lists, a member or associated person will be permitted to use a "Hard to Borrow" list under the proposal only if the information used to generate the list is less than 24 hours old and the member delivers the security on settlement date. The proposal provides that if the member does not deliver the security on settlement date, the NASD shall consider such conduct—absent documented mitigating circumstances—inconsistent with the terms of NASD Rule 3370.

The proposed rule change will permit the use of "Hard to Borrow" lists only for Nasdaq NM and exchange-listed securities. For Nasdaq SmallCap and other over-the-counter equity securities not in this category, members will continue to be required to take active steps to determine stock availability. According to NASD Regulation, Nasdaq NM and exchange-listed securities are liquid and highly capitalized, and are less likely to be subject to shore sale abuses than Nasdaq SmallCap and other over-the-counter equity securities, which generally are more thinly traded and illiquid and potentially more vulnerable to short sale abuses.

III. Discussion

After careful review, the Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder, and, in particular, with the requirements of Section 15A[7] of the Act applicable to a registered securities association.[8] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 15A(b)(6)[9] of the Act, which requires, among other things, that the Association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

The Commission believes that the proposal is likely to reduce the time and effort required for a member or associated person to make the requisite determination that a security is available for borrowing. This is because a person using a "Hard to Borrow" list needs to check the security against what is usually a relatively short roster of unavailable issues rather than locate it in a long "Easy to Borrow" list that may include thousands of names.

Thus the Commission finds that the proposed rule change will promote the objectives of Section 15A(b)(6) by reducing the administrative burdens on members in complying with the affirmative determination rule, thereby expediting the execution of short sales on behalf of investors and possibly affording them better executions.

At the same time, the Commission believes that NASD Rule 3370 as amended under the proposal will continue to assure that short sales are effected only when the securities being sold are in fact readily available for borrowing, and will continue to protect against conduct inconsistent with the purposes of the rule.

When the creator of a "Hard to Borrow" list attests in writing, as the proposal requires, that any securities not included on the list are available for borrowing or are easy to borrow, reliance on such "Hard to Borrow" list is substantially similar to reliance on an "Easy to Borrow" list, which is already permitted under NASD Rule 3370.[10] The proposed rule change further stipulates that in order to qualify for use, a "Hard to Borrow" list must include any Nasdaq security that has a clearing short position large enough to warrant the special requirements of UPC 11830.[11]

As in the case of reliance on an "Easy to Borrow" list, a member or associated person will be permitted to rely upon a "Hard to Borrow" list only when the information on the list is no more than 24 hours old. Likewise, the member or associated person will be obligated to maintain a written record of the determination that the security was available for borrowing, including the identity of the individual and firm that offered the assurance that securities absent from the list were available for borrowing or easy to borrow.

Moreover, NASD Rule 3370, as amended, will put members on notice that even if they have relied on the information provided by a "Hard to Borrow" list, if they in fact fail to deliver the security by settlement date, they will be deemed to have acted in a manner inconsistent with the rule.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, and in particular with Section 15A(b)(6).

It is Therefore Ordered, pursuant to Section 19(b)(2)[12] of the Act, that the proposed rule change (SR–NASD–99–37) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7843 Filed 3–29–00; 8:45 am]

BILLING CODE 8010–01–M

[6] *See* Securities Exchange Act Release No. 36859 (February 20, 1996), 61 FR 7127 (February 26, 1996) (File No. SR–NASD–95–62), approving reliance on "blanket" assurances.

[7] 15 U.S.C. 78o–3

[8] In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f)

[9] 15 U.S.C. 78o–3(b)(6).

[10] According to NASD Regulation, it will be the responsibility of the member or associated person using the list to determine that the creator of the list is reliable. As noted below, if the security is not delivered by settlement date, the member or associated person will be deemed to have acted in a manner inconsistent with the terms of the rule, absent mitigating circumstances. In addition, NASD Regulation may investigate whether the creator of the list, if a member, has acted in a manner inconsistent with NASD Rule 2110 regarding standards of commercial honor and principles of trade. Telephone conversation between Thomas R. Gira, Vice President, Market Regulation, Mary N. Revell, Associate General Counsel, NASD Regulation, *et al.*, and Gordon Fuller, Special Counsel, and Ira Brandriss, Attorney, Division of Market Regulation, Commission (February 18, 2000).

[11] The Commission notes that because UPC 11830 applies only to Nasdaq securities, this extra measure of protection is provided only for Nasdaq securities.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Data Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Small Business Administration's intentions to request approval on a new, and/or currently approved information collection.

DATES: Submit comments on or before May 30, 2000.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Cynthia Pitts, Program Analyst, Office of Disaster Assistance, Small Business Administration, 409 3rd Street, S.W., Suite 6050.

FOR FURTHER INFORMATION CONTACT: Cynthia Pitts, Program Analyst, 202–205–6098 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Disaster Home Loan Application".

Form No's: 5C and 739.

Description of Respondents: Applicant's Requesting SBA Disaster Home Loan.

Annual Responses: 56,418.

Annual Burden: 89,140.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to Linda M. Roberts, Director, Office of Security Operations, Small Business Administration, 409 3rd Street, S.W., Suite 5600.

FOR FURTHER INFORMATION CONTACT: Linda M. Roberts, Director, 202–205–6223 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "Statement of Personal History".

Form No: 912.

Description of Respondents: Applicant's for Assistance or Temporary Employment in Disaster.

Annual Responses: 50,000.

Annual Burden: 12,500.

ADDRESSES: Send all comments regarding whether this information collection is necessary for the proper performance of the function of the agency, whether the burden estimate is accurate, and if there are ways to minimize the estimated burden and enhance the quality of the collection, to James Hammersley, Director, Office of Secondary Market & 504, Small Business Administration, 409 3rd Street, S.W., Suite 8300 .

FOR FURTHER INFORMATION CONTACT: James Hammersley, Director, 202–205–7505 or Curtis B. Rich, Management Analyst, 202–205–7030.

SUPPLEMENTARY INFORMATION:

Title: "7(a) Loan Closing Forms".

Form No's: 147, 148, 159, 160, 160A, 529B, 928 and 1059.

Description of Respondents: SBA Loan Applicants.

Annual Responses: 45,000.

Annual Burden: 135,000.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–7845 Filed 3–29–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 3271]

Culturally Significant Objects Imported for Exhibition; Determinations: "Galleries for Cypriot Art"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "Galleries for Cypriot Art," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with a foreign lender. I also determine that the exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY from on or about April 3, 2000, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul Manning, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–5997). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 24, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–7865 Filed 3–29–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3269]

Amendment to Culturally Significant Objects Imported for Exhibition; Determinations: "Kremlin Gold—1000 Years of Russian Gems & Jewels"

AGENCY: Department of State.
ACTION: Amendment.

SUMMARY: On March 2, 2000, Public Notice 3237 was published on page 11362 of the **Federal Register** (Volume 65, Number 42) by the Department of State pursuant to Pub. L. 89–259 relating to the exhibit "Kremlin Gold—1000 Years of Russian Gems & Jewels." In error, the notice places the Houston Museum in Chicago. The correct location is Houston, Texas.

Dated: March 22, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, U.S. Department of State.

[FR Doc. 00–7863 Filed 3–29–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 3270]

Culturally Significant Objects Imported for Exhibition; Determinations: "The Triumph of the Baroque: Architecture in Europe, 1600–1750"

AGENCY: Department of State.
ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999, as amended, I hereby determine that the objects to be included in the exhibition "The Triumph of the Baroque: Architecture in Europe, 1600–1750," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the exhibition or display of the exhibit objects at the National Gallery of Art, Washington, DC from May 21, 2000 through October 9, 2000 is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including the exhibit objects, contact Jacqueline Caldwell, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State (telephone: 202/619–6982). The address is U.S. Department of State, SA–44 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: March 23, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–7864 Filed 3–29–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Agency Information Collection Activities Under OMB Review

AGENCY: Federal Aviation administration (FAA), DOT.
ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Requests (ICR) abstracted below have been forwarded to the Office of Management and Budget (OMB) for extension of currently approved collections. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following collections of information was published on January 14, 2000, [FR 65, page 2454].

DATES: Comments must be submitted on of before May 1, 2000. A comment to OMB is most effective if OMB receives it within 30 days of publication.

FOR FURTHER INFORMATION CONTACT: Judy Street on (202) 267–9895.

SUPPLEMENTARY INFORMATION:

1. *Title:* Commercial Space Transportation Licensing Regulations.
Type of Request: Extension of a currently approved collection.
Control Number: 2120–0608.
Form(s): N/A.
Affected Public: An estimated 6 licensees authorized to conduct licensed launch activities.
Abstract: The required information will be used to determine if applicant proposals for conducting commercial space launches can be accomplished in a safe manner according to regulations and license orders issued by the Office of the Associate Administrator for Commercial Space Transportation.
Estimated Annual Burden Hours: 3236.

2. *Title:* Changes in Permissible Stage 2 Airplane Operations.
Type of Request: Extension of a currently approved collection.
OMB Control Number: 2120–0652.
Form(s): N/A.
Affected Public: 100 operators.
Abstract: Public Law amended the Airport Noise and Capacity Act (ANCA) of 1990. The primary focus of ANCA was the prohibition on stage 2 airplane flights in the contiguous U.S. after 12/31/99. The changes to ANCA give the FAA new authority to allow certain non-revenue Stage 2 flights after the statutory compliance date. Operators need a special flight authorization to bring Stage 2 airplanes into the United States. Operators only need to provide information when they need a special flight authorization after 12/31/99. Only minimal amount of data is requested to identify the affected parties and determine whether the purpose for the flight is only of the ones enumerated in the law.
Estimated Annual Burden Hours: 25 burden hours annually.

Address

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention: FAA Desk Officer.

Comments Are Invited On

Whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collections; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collections of information on respondents, including the use of automated collection techniques or other forms of information technology.

Issued in Washington, DC, on March 24, 2000.

Patricia W. Carter,

Acting Manager, Standards and Information Division, APF–100.

[FR Doc. 00–7857 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Modification of the Memphis Class B Airspace Area, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of public meetings; correction.

SUMMARY: This notice corrects the date comments are to be received after the two fact-finding informal airspace meetings (65 FR 13818, March 14, 2000). The purpose of these meetings is to provide interested parties an opportunity to present views, recommendations, and comments on the proposal to modify the Memphis Class B Airspace Area. All comments received during these meetings will be considered prior to any revision or issuance of a notice of proposed rulemaking.

TIMES AND DATES: *Meetings.* These informal airspace meetings will be held on Thursday, April 27, 2000, at 7 pm; and Thursday, May 4, 2000, at 7 pm. The comments were originally requested by March 30, 2000. However, an error was inadvertently made in the month. Comments must be received by June 5, 2000, in lieu of March 30, 2000.

ADDRESSES: On April 27, 2000, the meeting will be held at the FedEx World Tech Center, 50 FedEx Parkway (off Bailey Station Road), Collierville, TN. On May 4, 2000, the meeting will be held at the Memphis Airport Traffic Control Tower, Memphis, International Airport, 2515 Winchester Road, Memphis, TN. There is limited space available at the May 4th meeting.

Comments: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO–500, Federal Aviation Administration, 1701 Columbia Ave., College Park, GA 30337.

FOR FURTHER INFORMATION CONTACT: Brigitte Lewkowicz, Airspace Specialist, Air Traffic Division, ASO–500, FAA, Southern Regional Office, telephone (404) 305–5559.

SUPPLEMENTARY INFORMATION:

Meeting Procedures

(a) These meetings will be informal in nature and will be conducted by a representative of the FAA, Southern Region. A representative from the FAA will present a formal briefing on the proposed changes to the Class B airspace area. Each participant will be given an opportunity to deliver comments or make a presentation at the meetings.

(b) These meetings will be open to all persons on a space-available basis. There will be no admission fee or other charge to attend and participate.

(c) Any person wishing to make a presentation to the FAA panel will be asked to sign in and estimate the amount of time needed for such presentation. This will permit the panel to allocate an appropriate amount of time for each presenter.

(d) These meetings will not be adjourned until everyone on the list has had an opportunity to address the panel.

(e) Position papers or other handout material relating to the substance of these meetings will be accepted. Participants wishing to submit handout material should present three copies to the presiding officer. There should be additional copies of each handout available for other attendees.

(f) These meetings will not be formally recorded.

Agenda for the Meetings

Opening Remarks and Discussion of Meeting Procedures.
Briefing on Background for Proposals.
Public Presentations.
Closing Comments.

Issued in Washington, DC, on March 15, 2000.

Steve Rohring,

Acting Manager, Airspace and Rules Division.

[FR Doc. 00–7192 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Federal Transit Administration

[FHWA Docket No. FHWA–2000–6757]

Request for Comments on a High Speed Rail Proposal for the Congestion and Air Quality Improvement Program (CMAQ)

AGENCY: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.
ACTION: Notice; request for comments.

SUMMARY: This notice requests comments on the conditions under which high speed rail projects should be eligible for congestion mitigation and air quality improvement (CMAQ) funding. Eligibility under the CMAQ program has already been granted for high speed rail improvements located within air quality nonattainment and maintenance areas. At issue is if, and under what conditions, State Departments of Transportation (State DOTs) should be permitted to use the State's CMAQ allocation to fund high speed rail improvements located *outside* of nonattainment or maintenance areas. Several States have recently explored the possibility of using CMAQ funds for such projects prompting the need for this notice. Funding under the CMAQ program has generally been limited to expenditures within nonattainment and maintenance areas, and projects or programs located outside of such areas have not usually been eligible. However, it may be possible to realize emission reductions, the primary purpose of the CMAQ program, within nonattainment and maintenance areas even if the project is located outside of such areas. The FHWA and the FTA seek your input regarding whether, and under what conditions, these emission reductions might allow States to allocate CMAQ program funds for projects outside of nonattainment and maintenance areas to meet the statutory requirements and be eligible, and whether there are other considerations which make this proposition either more or less reasonable.

DATES: To assure consideration, comments on the high speed rail proposal for the CMAQ program must be received on or before May 1, 2000.

ADDRESSES: Submit written, signed comments to the docket number that appears in the heading of this document to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., et., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: For the FHWA program office: Mr. Michael J. Savonis, Office of Planning and Environment, (202) 366–2080; and for legal issues, Mr. Harold Aikens, Office of the Chief Counsel, (202) 366–0764. For the FTA program office: Mr. Abbe Marner, Office of Planning, (202) 366–4317; and for legal issues, Mr. Scott Biehl, Office of the Chief Counsel, (202) 366–0952. Office hours are from 8 a.m. to 4:30 p.m., et., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

Internet users may access all comments received by the U.S. DOT Dockets, Room PL–401, by using the universal resource locator (URL): *http://dms.dot.gov.* It is available 24 hours a day, 365 days each year. Please follow the instructions online for more information and help.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the **Federal Register**'s home page

at: *http://www.nara.gov/fedreg* and the Government Printing Office's database at: *http://www.access.gpo.gov/nara.*

Opportunity for Comment

The FHWA and the FTA seek your input on whether, and under what conditions, States should be permitted to use CMAQ funds for projects, such as high speed rail, located outside of nonattainment or maintenance area boundaries, if they can demonstrate air quality benefits within the nonattainment or maintenance area.

Several States have recently explored the possibility of using CMAQ funds for such projects prompting the need for this notice. Issues being considered include: (1) Should the project be required to demonstrate benefits "primarily" within the nonattainment or maintenance area boundary? (2) If the current policy is reasonable, what distance should constitute "close proximity"?

Background

This serves as a follow-up to a notice that was published on October 26, 1998 (63 FR 57154) where the FHWA and the FTA requested comments on the interim implementation guidance for the CMAQ program. Comments were requested by November 30, 1998. In addition, the FHWA and the FTA hosted five outreach forums across the country to provide an opportunity for those stakeholders and industry directly involved and affected by the program to also assist in developing the final guidance for the CMAQ program. Since the closing of that comment period of the October 26, 1998 notice, several States have requested permission from the FHWA and the FTA to use CMAQ funds for high speed rail projects, and some national organizations have expressed views in this area also. Because of this, the FHWA and the FTA have decided to solicit stakeholder input on this specific issue.

The CMAQ program, established under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, and reauthorized with some changes by section 1110 of the Transportation Equity Act for the 21st Century (TEA–21), Public Law 105–178, 112 Stat. 107, 142, was designed to assist nonattainment and maintenance areas in attaining the National Ambient Air Quality Standards (NAAQS) by funding transportation projects and programs that will improve air quality.

The primary purpose of the CMAQ program after reauthorization remains the same: to fund projects and programs which reduce transportation-related emissions in air quality nonattainment and maintenance areas. The CMAQ program is the only program under title 23, U.S.C., with funds dedicated to helping nonattainment and maintenance areas to achieve and maintain the NAAQS.

Current Policy

Both the FHWA and the FTA have generally limited funding under the CMAQ program to projects in nonattainment and maintenance areas, and projects located outside of such areas have not usually been eligible. The rationale behind this approach is based on several considerations evaluated collectively. First, under 23 U.S.C. 149(b), a State may use CMAQ funds for a transportation project or program if it is "for an area that is or was designated as a nonattainment area," and likely to contribute to the attainment of a national air quality standard or the maintenance of a national air quality standard. This plain language indicates that the primary focus of CMAQ funding is on assisting nonattainment and maintenance areas to achieve their air quality goals, rather than on assisting other parts of the country. Projects with emission benefits within those areas clearly meet the statutory test, while for projects located outside of those areas, some ambiguity is introduced.

Second, the formula by which CMAQ funds are apportioned under 23 U.S.C. 104(b)(2) is based solely on the population living in the States' nonattainment and maintenance areas and weighted by the severity of the pollution they face. Populations living outside of these areas are given no weight in the apportionment of CMAQ funds. Since funding is allocated on the basis of nonattainment and maintenance populations, the law sets up an expectation that funding will be targeted at projects that demonstrably benefit those areas. Again, the primary focus on nonattainment and maintenance areas is established.

Third, the conference report (H.R. Conf. Rep. No. 104–345, at 88 (1995)) to the National Highway System Designation Act of 1995, Public Law 104–5 109 Stat. 568, seems to contain language regarding congressional intent. The law specifically allowed the use of CMAQ funds in maintenance areas which had been left out of previous legislation. It states on page 88:

> [A] State [may] use its funds apportioned under the CMAQ program in any such maintenance area, as well as in other nonattainment areas, within a State.

This provision uses the word, "in," with respect to maintenance or nonattainment areas, instead of the legislative language in 23 U.S.C. 149(b) which cites that CMAQ funds are to be used "for" nonattainment and maintenance areas.

Finally, the transferability provisions in section 110(c) of title 23, U.S.C., which were added in 1998, contain references to "geographic areas" eligible for CMAQ funding. This section states that when national CMAQ authorizations exceed $1.35 billion, CMAQ funds may be used for other purposes than air quality improvement. But even then, "any * * * [CMAQ] funds * * * transferred under this section may only be obligated in geographic areas eligible for the obligation of funds eligible under the * * * [CMAQ program]." This provision appears to indicate in the first part that there are "geographic areas" (*i.e.*, nonattainment and maintenance areas) to which CMAQ funding is directed, and in the second part that even when greater flexibility is allowed in the use of CMAQ funds, those funds must be used for projects within those geographic areas.

Based on these considerations, the FHWA and the FTA have administered the program under a general policy that CMAQ funds should be used for projects in nonattainment and maintenance areas if there are any. Program guidance, however, was developed with one additional consideration in mind. Nonattainment (or maintenance) area boundaries do not always completely overlap metropolitan or urbanized area boundaries. As a result, on March 7, 1996, the FHWA and the FTA expanded the ability of States to fund certain projects by including the following provision in an updated, comprehensive CMAQ guidance: "Program funds may * * * not be used for projects which are outside of nonattainment and maintenance area boundaries * * * except in cases where the project is located in close proximity to the nonattainment or maintenance areas and the benefits will be realized primarily within the nonattainment or maintenance area boundaries." 61 FR 50890, 50897. The concern was the possibility that an otherwise eligible project could be located just outside of a nonattainment or maintenance area and might be ruled ineligible. An example of such a project could be a park and ride lot where vanpools form or a transit station where service extends into the central business district. For projects like these, it appears that the basic intent of the law was satisfied, and funding could be allowed. Before obligating funds to any project outside of the nonattainment and maintenance area boundary, an air quality analysis is required.

The 1996 policy quoted above is substantively unchanged in the current CMAQ guidance of the FHWA and the FTA, which was issued on April 28, 1999 (See FHWA web site: *http://www.fhwa.dot.gov/environment/cmaq—abs.htm).*

High Speed Rail Projects

Under current guidance, passenger rail, and in some cases freight rail, projects are eligible for CMAQ funding: (1) If they are located within, or within close proximity to, the nonattainment or maintenance area boundaries; (2) they can demonstrate an emission reduction; and (3) they meet the other criteria for CMAQ funding. CMAQ funds have already been used for a variety of freight and passenger rail services in New York, Ohio, Maine, and Illinois, to name a few.

High speed rail service is a passenger transportation option that usually links well-populated metropolitan areas that could be as much as 100 to 500 miles apart. It usually has few station stops since more would increase travel times. The metropolitan areas that service such links may, or may not, be in nonattainment or maintenance area boundaries. Supporters of high speed rail point out that, as population and income growth spurs additional travel demand, it can provide a viable transportation option to move people between highly congested areas with beneficial air quality impacts. The basic concept is that such a service could replace automobile and air trips with train travel and that the net impact could be a reduction in total emissions when the emissions reduced are compared with the increase in emissions from the new train service.

If a project to improve a high speed rail service is located within a nonattainment or maintenance area boundary, such as a station improvement regarding access or passenger amenities or a new station stop entirely, the eligibility (with regard to location) would not be in question. The project would, of course still have to meet the other eligibility criteria and title 23, U.S.C., requirements. Similarly, a high speed rail service may link two or more nonattainment (or maintenance) areas. If station stops occur in nonattainment or maintenance areas *only*, there may be justification for CMAQ funding since riders on that service must board in a nonattainment or maintenance area. Thus, the predominance of emission reductions will likely occur in those areas.

On the other hand, the project could be located well outside of any nonattainment or maintenance area boundaries. These might include buying right-of-way or laying track between stations or constructing new station stops in cities not designated as nonattainment or maintenance. Such projects may provide access to or from nonattainment or maintenance areas, in some cases, and thus reduce some emissions in these areas. But, in this case, the questions are raised, "to what extent are emissions reduced in these areas?" And, "does the project primarily produce benefits in the nonattainment or maintenance area?"

Finally, there is the question of the purchase of locomotives and rolling stock which may operate both within and outside of the nonattainment area. Should equipment purchases be deemed eligible, or should eligibility be pro-rated based on miles operated within the nonattainment or maintenance area, or should these purchases be ruled ineligible? Other questions that might be considered include the eligibility of facilities located outside the area that support operations within the area, such as dispatching and maintenance facilities. The FHWA and the FTA solicit your input on all of the above issues.

Some Key Issues To Consider

One of the most important issues regarding the eligibility of high speed rail projects outside of nonattainment and maintenance areas, is the rationale for funding this type of project in light of the CMAQ program's purpose: To assist attainment and maintenance of the NAAQS. Specifically, under what rationale could these projects be considered eligible for CMAQ funding, with respect to the factors discussed in the "Current Policy" section of this notice. If a project located outside of a nonattainment or maintenance area can reduce emissions by even one gram per day, should it be eligible for CMAQ funding? Should it be eligible if 50 percent of all its emission reductions accrue to the nonattainment or maintenance area? Should that performance standard be 95 percent, rather than 50 percent? Do the relative percentages matter, or should there be another performance standard that is based on a threshold level of emission reductions in the nonattainment or maintenance area above which the project is eligible? Does the cost of a project relative to expected emission reductions have a bearing? And finally, given the high data requirements and relatively rudimentary analytical methods that are currently in practice, can Federal, State, and local agencies discern with confidence what the actual emission reductions are both inside and outside of a nonattainment area?

A second issue to consider is that, if high speed rail projects outside of nonattainment and maintenance areas are considered eligible, it will likely set a precedent for other types of projects that extend significantly beyond existing nonattainment area boundaries. Freeway surveillance and management using Intelligent Transportation Systems (ITS) technology in key corridors like I–95 is one such possibility, as is a statewide emission inspection and maintenance program. Freight rail projects to raise bridge elevations and allow for double stack containers, which could potentially reduce truck traffic and emissions, is yet another.

A third issue to consider is the degree to which metropolitan areas participate in funding decisions under the CMAQ program. At the same time the CMAQ program was initially authorized in 1991 under the ISTEA, changes were introduced to the Federal-aid planning process that enhanced the role of metropolitan planning organizations (MPOs). By provided funding to many metropolitan areas, the CMAQ program has played a part in this. As noted in FHWA's publication, "CMAQ Indirect Benefits," (1997) (FHWA–PD–97–045), "CMAQ helped to bring transportation decision making to the local level." This has, in turn, assisted the funding flexibility that has been the hallmark of the CMAQ program. By allowing projects outside of nonattainment and maintenance areas, there is the potential to shift emphasis from a metropolitan focus to more of a Statewide program.

Fourth, the regional nature of some pollutants and the local nature of others may be relevant. Ozone can be transported over hundreds of miles. And, an emission reduction in volatile organic compounds, a precursor of ozone, that is well outside of any nonattainment area boundary may have an impact on the ozone levels within the boundary. This must be balanced by the concern that diesel engines, such as those used in high speed rail (if not electrified), are significant emitters of oxides of nitrogen, the other precursor of ozone. Unlike ozone, carbon monoxide pollution is predominantly a local phenomenon due to the existence of "hot spots" of high concentration. Should the eligibility of a project outside of a nonattainment or maintenance area depend on the nature of the State's air pollution problems? Specifically, could a justification be made for reducing emissions outside of an ozone area (but not outside of a

carbon monoxide area) that lead to ozone reductions inside nonattainment and maintenance area boundaries? Similar concerns may exist for coarse particulate matter (PM–10) which may be more hot spot oriented and fine particulate matter (PM–2.5) which may exhibit the same transport phenomenon as ozone.

Fifth, there is only a fixed amount of funds that are available for CMAQ projects in each State in each year. Any expansion of CMAQ eligibility to allow the expenditures for projects outside of nonattainment or maintenance areas will reduce the amount available in each State in each year. Any expansion of CMAQ eligibility to allow the expenditures for projects outside of nonattainment or maintenance areas will reduce the amount available in each State in each year. Any expansion of CMAQ eligibility to allow the expenditures for projects outside of nonattainment or maintenance areas will reduce the amount available for projects within such areas.

Both the FHWA and the FTA invite interested parties to submit comments on all of the issues mentioned above.

Authority: 23 U.S.C. 315; sec. 1110, Pub. L. 105–178, 112 Stat. 107 (1999); 49 CFR 1.48 and 1.51.

Issued on: March 24, 2000.

Walter L. Sutton, Jr.,

Acting Deputy Administrator,

Nuria I. Fernandez,

Acting Administrator.

[FR Doc. 00–7855 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration (MARAD)

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Maritime Administration, DOT.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the information collection abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. Described below is the nature of the information collection and its expected burden. The **Federal Register** notice with a 60-day comment period soliciting comments on the following collection was published on January 20, 2000 [65 FR 3266].

DATES: Comments must be submitted on or before May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Melvin Geller, Office of National Security Plans, Maritime Administration, 400 Seventh Street, SW, Room P1–1303, Washington, DC 20590, telephone number 202–366–5910. Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Maritime Administration

Title of Collection: "EUSC/Parent Company".

OMB Control Number: 2133–0511.

Type oc Request: Approval of an existing information collection.

Affected Public: Foreign register American vessel owners.

Form(s): None.

Abstract: The collection of information consists of an inventory of foreign register vessels owned by Americans. Specifically, the collection consists of responses from vessel owners verifying or correcting vessel ownership data and characteristics found in commercial publications. The information obtained could be vital in a national or international emergency, and is essential to the logistical support planning operations conducted by MARAD officials. The information obtained will be used for contingency planning for sealift requirements primarily as a source of ships to move essential oil and bulk cargoes in support of the national economy.

Annual Estimated Burden Hours: 46 hours.

Addressee

Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725–17th Street, NW, Washington, DC 20503, Attention MARAD Desk Officer.

Comments Are Invited on

Whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication.

Dated: March 27, 2000.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 00–7911 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Notice of Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463; 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation (SLSDC), to be held at 9:00 a.m. on Wednesday, April 12, 2000, at the Governor's Club, 777 South Flagler Drive, 1209e West Palm Beach, Florida. The agenda for this meeting will be as follows: Opening Remarks; Consideration of Minutes of Past Meeting; Review of Programs; New Business; and Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than April 7, 2000, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW, Washington, DC 20590; 202–366–6823.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on March 24, 2000.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 00–7787 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–61–U

DEPARTMENT OF TRANSPORTATION

Bureau of Transportation Statistics

Advisory Council on Transportation Statistics

AGENCY: Bureau of Transportation Statistics, DOT.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Section 10(A)(2) of the Federal Advisory Committee Act (Public law 72–363; 5 U.S.C. App.2) notice is hereby given of a meeting of the Bureau of Transportation Statistics (BTS) Advisory Council on Transportation Statistics (ACTS) to be held Monday, April 10, 2000, 10:00 to 4:00 pm. The meeting will take place at the U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC, in conference room 3202–04 of the Nassif Building.

The Advisory Council, called for under Section 6007 of Public Law 102–240, Intermodal Surface Transportation Efficiency Act of 1991, December 18, 1991, and chartered on June 19, 1995, was created to advise the Director of BTS on transportation statistics and analyses, including whether or not the statistics and analysis disseminated by the Bureau are of high quality and are based upon the best available objective information.

The agenda for this meeting will include, Director's programs update, data quality issues, safety conference, Committee on Transportation Statistics (CTSTAT), identification of substantive issues, review of plans and schedule, other items of interest, discussion and agreement of date(s) for subsequent meetings, and comments from the floor.

Since access to the DOT building is controlled, all persons who plan to attend the meeting must notify Ms. Lillian "Pidge" Chapman, Council Liaison, on (202) 366–1270 prior to April 5, 2000. Attendance is open to the interested public but limited to space available. With the approval of the Chair, members of the public may present oral statements at the meeting. Noncommittee members wishing to present oral statements, obtain information, or who plan to access the building to attend the meeting should also contact Ms. Chapman.

Members of the public may present a written statement to the Council at any time.

Persons with a disability requiring special services, such as an interpreter for the hearing impaired, should contact Ms. Chapman (202) 366–1270 at least seven days prior to the meeting.

Issued in Washington, DC, on March 22, 2000.

Ashish Sen,

Director.

[FR Doc. 00–7774 Filed 3–29–00; 8:45 am]

BILLING CODE 4910–FE–U

DEPARTMENT OF THE TREASURY

Submission for OMB review; comment request

March 24, 2000.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 1, 2000, to be assured of consideration.

Financial Management Service (FMS)

OMB Number: 1510–0008.

Form Number: None.

Type of Review: Extension.

Title: Pools and Associations—Annual Letter.

Description: The information is collected for the determination of an acceptable percentage for each pool and association to allow Treasury certified companies credit on their Schedule F for authorized ceded reinsurance in determining the companies underwriting limitations.

Respondents: Business or other for-profit.

Estimated Number of Respondents: 100.

Estimated Burden Hours Per Respondent: 1 hour, 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 150 hours.

OMB Number: 1510–0013.

Form Number: FMS Form 2208.

Type of Review: Extension.

Title: States Where Licensed for Surety.

Description: Information is collected from insurance companies in order to provide Federal bond approving officers with this information. The listing of states, by company, appear in Treasury's Circular 570, "Surety Companies Acceptable on Federal Bonds."

Respondents: Business or other for-profit.

Estimated Number of Respondents: 318.

Estimated Burden Hours Per Respondent: 1 hour.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 318 hours.

Clearance Officer: Juanita Holder, Financial Management Service, 3700 East West Highway, Room 144, PGP II, Hyattsville, MD 20782.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503, (202) 395–7860.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–7866 Filed 3–29–00; 8:45 am]

BILLING CODE 4810–35–U

DEPARTMENT OF THE TREASURY

Submission for OMB Review; Comment Request

March 23, 2000.

The Departmont of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2110, 1425 New York Avenue, NW., Washington, DC 20220.

DATES: Written comments should be received on or before May 1, 2000, to be assured of consideration.

Internal Revenue Service (IRS)

OMB Number: 1545–0013.

Form Number: IRS Form 56.

Type of Review: Extension.

Title: Notice Concerning Fiduciary Relationship.

Description: Form 56 is used to inform the IRS that a person is acting for another person in a fiduciary capacity so that the IRS may mail tax notices to the fiduciary concerning the person for whom he/she is acting. The data is used to ensure that the fiduciary relationship is established or terminated and to mail or discontinue mailing designated tax notices to the fiduciary.

Respondents: Business or other for-profit, individuals or households.

Estimated Number of Respondents/Recordkeepers: 25,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping: 8 min.

Learning about the law or the form: 32 min.

Preparing the form: 46 min.

Copying, assembling, and sending the form to the IRS: 15 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 292,800 hours.

OMB Number: 1545–0892.

Form Number: IRS Form 8300.

Type of Review: Extension.

Title: Report of Cash Payments Over $10,000 Received in a Trade or Business.

Description: Anyone in a trade or business who, in the course of such trade or business, receives more than $10,000 in cash or foreign currency in one or more related transactions must report it to the IRS and provide a

statement to the payor. Any transaction which must be reported under Title 31 on Form 4789 is exempted from reporting the same transaction on Form 8300.

Respondents: Business or other for-profit, farms, Federal Government.

Estimated Number of Respondents/Recordkeepers: 46,800.

Estimated Burden Hours per Respondent/Recordkeeper: 21 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 63,539 hours.

OMB Number: 1545–1225.

Form Number: IRS Form 5310–A.

Type of Review: Extension.

Title: Notice of Plan Merger or Consolidation, Spinoff, or Transfer of Plan Assets or Liabilities; Notice of Qualified Separate Lines of Business.

Description: Plan administrators are required to notify IRS of any plan mergers, consolidations, spinoffs, or transfer of plan assets or liabilities to another plan. Employers are required to notify IRS of separate lines of business for their deferred compensation plans. Form 5310–A is used to make these notifications.

Respondents: Business or other for-profit.

Estimated Number of Respondents/Recordkeepers: 15,000.

Estimated Burden Hours per Respondent/Recordkeeper:

	Recordkeeping	Learning about the law or the form	Preparing, copying, assembling, and sending the form to the IRS
Part I	1hr., 26 min	1hr., 35 min	1hr., 41 min.
Part II	3 hr., 50 min	12 min	16 min.
Part III	4 hr., 32 min	35 min	42 min.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 142,800 hours.

Clearance Officer: Garrick Shear, Internal Revenue Service, Room 5244, 1111 Constitution Avenue, NW, Washington, DC 20224.

OMB Reviewer: Alexander T. Hunt, Office of Management and Budget, Room 10202, New Executive Office Building, Washington, DC 20503; (202) 395–7860.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 00–7867 Filed 3–29–00; 8:45 am].

BILLING CODE 4830–01–U.

DEPARTMENT OF THE TREASURY

Office of the Secretary

List of Countries Requiring Cooperation With an International Boycott

In order to comply with the mandate of section 999(a)(3) of the Internal Revenue Code of 1986, the Department of the Treasury is publishing a current list of countries which may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

On the basis of the best information currently available to the Department of the Treasury, the following countries may require participation in, or cooperation with, an international boycott (within the meaning of section 999(b)(3) of the Internal Revenue Code of 1986).

Bahrain
Iraq
Kuwait
Lebanon
Libya
Oman
Qatar
Saudi Arabia
Syria
United Arab Emirates
Yemen, Republic of

Dated: March 23, 2000.

Philip West,

International Tax Counsel (Tax Policy).

[FR Doc. 00–7808 Filed 3–29–00; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF THE TREASURY

Customs Service

Continuation of the National Customs Automation Program Prototype

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document announces that funding has been made available to Customs for the continued operation of the National Customs Automation Program Prototype (NCAP/P). Consequently, notwithstanding publication of a recent notice announcing a scheduled termination of the NCAP/P due to a cessation of funding, funds have been made available and therefore the NCAP/P has remained in operation. The NCAP/P will continue to operate for the previously approved participants as long as funding remains available. Customs is no longer accepting new applications for participation in NCAP/P.

FOR FURTHER INFORMATION CONTACT: Keith Fleming, U.S. Customs Service, at (202) 927–1049, or Virginia Noordewier, U.S. Customs Service, at (202) 927–3296.

SUPPLEMENTARY INFORMATION:

Background

The vision of the Automated Commercial Environment (ACE) is to establish a Trade Compliance Process that achieves high levels of compliance and reduces the cycle time required for imports to clear Customs. The National Customs Automation Program Prototype (NCAP/P) is the prototype for the first implementation of this automated process.

On March 27, 1997, Customs published a notice in the **Federal Register** (62 FR 14731) announcing its intention to implement the NCAP/P on a test basis; on August 21, 1998, Customs published in the **Federal Register** (63 FR 44949) a notice which modified the test with updated procedures and which replaced the previous notice. On October 15, 1998, Customs also published in the **Federal Register** (63 FR 55426) a notice announcing the proposed expansion of the prototype to five additional ports of entry.

The NCAP/P plan called for a four-stage implementation of new cargo processing features over a period of up to three years. The NCAP/P commenced on April 27, 1998, with the implementation of the cargo release stage. On October 13, 1998, Customs implemented the second stage which provided for cargo release with examination. On February 10, 2000, Customs published a notice in the **Federal Register** (65 FR 6688) advising the public that, due to the cessation of necessary funding, the NCAP/P would conclude 30 days after publication of the notice and that, from that day forward, NCAP/P participants must revert to non-NCAP/P processing for all cargo shipments.

Following publication of the February 10, 2000, notice and prior to the scheduled termination date (March 13, 2000), funds became available for the continued operation of NCAP/P at its current locations through September 30, 2000. Each NCAP/P participant was individually advised by Customs that, due to this new availability of funds, the NCAP/P would not conclude as stated in the February 10, 2000, notice. The purpose of this notice is to advise the general public of the continued operation of the prototype.

Continuation of NCAP/P

For the reasons stated above, the NCAP/P has remained in operation at its current locations and will continue to operate for previously approved participants through September 30, 2000, or for any longer period during which funds for the operation of NCAP/P are available. Customs is not accepting new applications for participation in the NCAP/P.

Dated: March 24, 2000.

Robert J. McNamara,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–7801 Filed 3–29–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 00–21]

Cancellations of Customs Broker Licenses

AGENCY: Customs Service, Department of the Treasury.

ACTION: Brokers' licenses cancellations.

I, the Commissioner of Customs, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs brokers' licenses without prejudice.

Port	Individual	License No.
Seattle	Airgo Freight Inc.	15005
San Francisco	R.A. Leslie & Company, Inc.	08015
Boston	MBC Freight Consultants (USA), Inc.	12373
Chicago	Robson Enterprises, Inc.	09163
New York	Thyssen Haniel Logistics, Inc.	12132
New York	Majestic Customs House Broker, Inc.	11877
New York	V.A.B. Customs Brokers	12869

Dated: March 17, 2000.

Raymond W. Kelly,

Commissioner.

[FR Doc. 00–7910 Filed 3–29–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

List of Foreign Entities Violating Textile Transshipment and Country of Origin Rules

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This document notifies the public of foreign entities which have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws. This list is authorized to be published by section 333 of the Uruguay Round Agreements Act.

DATES: This document notifies the public of the semiannual list for the 6-month period starting March 31, 2000, and ending September 30, 2000.

FOR FURTHER INFORMATION CONTACT: For information regarding any of the operational aspects, contact Scott Greenberg, National Seizures and Penalties Officer, Seizures and Penalties Division, Office of Field Operations, (415) 782–9442. For information regarding any of the legal aspects, contact Alex Daman, Office of Chief Counsel, (202) 927–6900.

SUPPLEMENTARY INFORMATION:

Background

Section 333 of the Uruguay Round Agreements Act (URAA) (Pub. L. 103–465, 108 Stat. 4809) (signed December 8, 1994), entitled Textile Transshipments, amended Part V of title IV of the Tariff Act of 1930 by creating a section 592A (19 U.S.C. 1592a), which authorizes the Secretary of the Treasury to publish in the **Federal Register**, on a semiannual basis, a list of the names of any producers, manufacturers, suppliers, sellers, exporters, or other persons located outside the Customs territory of the United States, when these entities and/or persons have been issued a penalty claim under section 592 of the Tariff Act, for certain violations of the customs laws, provided that certain conditions are satisfied.

The violations of the customs laws referred to above are the following: (1) Using documentation, or providing documentation subsequently used by the importer of record, which indicates a false or fraudulent country of origin or source of textile or apparel products; (2) Using counterfeit visas, licenses, permits, bills of lading, or similar documentation, or providing counterfeit visas, licenses, permits, bills of lading, or similar documentation that is subsequently used by the importer of record, with respect to the entry into the Customs territory of the United States of textile or apparel products; (3) Manufacturing, producing, supplying, or selling textile or apparel products which are falsely or fraudulently labeled as to country of origin or source; and (4) Engaging in practices which aid or abet the transshipment, through a country other than the country of origin, of textile or apparel products in a manner which conceals the true origin of the textile or apparel products or permits the evasion of quotas on, or voluntary restraint agreements with respect to, imports of textile or apparel products.

If a penalty claim has been issued with respect to any of the above violations, and no petition in response to the claim has been filed, the name of the party to whom the penalty claim was issued will appear on the list. If a petition, supplemental petition or second supplemental petition for relief from the penalty claim is submitted under 19 U.S.C. 1618, in accord with the time periods established by §§ 171.32 and 171.33, Customs Regulations (19 CFR 171.32, 171.33) and the petition is subsequently denied or the penalty is mitigated, and no further petition, if allowed, is received within 30 days of the denial or allowance of mitigation, then the administrative action shall be deemed to be final and administrative remedies will be deemed to be exhausted. Consequently, the name of the party to whom the penalty

claim was issued will appear on the list. However, provision is made for an appeal to the Secretary of the Treasury by the person named on the list, for the removal of its name from the list. If the Secretary finds that such person or entity has not committed any of the enumerated violations for a period of not less than 3 years after the date on which the person or entity's name was published, the name will be removed from the list as of the next publication of the list.

Reasonable Care Required

Section 592A also requires any importer of record entering, introducing, or attempting to introduce into the commerce of the United States textile or apparel products that were either directly or indirectly produced, manufactured, supplied, sold, exported, or transported by such named person to show, to the satisfaction of the Secretary, that such importer has exercised reasonable care to ensure that the textile or apparel products are accompanied by documentation, packaging, and labeling that are accurate as to its origin. Reliance solely upon information regarding the imported product from a person named on the list is clearly not the exercise of reasonable care. Thus, the textile and apparel importers who have some commercial relationship with one or more of the listed parties must exercise a degree of reasonable care in ensuring that the documentation covering the imported merchandise, as well as its packaging and labeling, is accurate as to the country of origin of the merchandise. This degree of reasonable care must involve reliance on more than information supplied by the named party.

In meeting the reasonable care standard when importing textile or apparel products and when dealing with a party named on the list published pursuant to section 592A of the Tariff Act of 1930, an importer should consider the following questions in attempting to ensure that the documentation, packaging, and labeling is accurate as to the country of origin of the imported merchandise. The list of questions is not exhaustive but is illustrative.

(1) Has the importer had a prior relationship with the named party?

(2) Has the importer had any detentions and/or seizures of textile or apparel products that were directly or indirectly produced, supplied, or transported by the named party?

(3) Has the importer visited the company's premises and ascertained that the company has the capacity to produce the merchandise?

(4) Where a claim of an origin conferring process is made in accordance with 19 CFR 102.21, has the importer ascertained that the named party actually performed the required process?

(5) Is the named party operating from the same country as is represented by that party on the documentation, packaging or labeling?

(6) Have quotas for the imported merchandise closed or are they nearing closing from the main producer countries for this commodity?

(7) What is the history of this country regarding this commodity?

(8) Have you asked questions of your supplier regarding the origin of the product?

(9) Where the importation is accompanied by a visa, permit, or license, has the importer verified with the supplier or manufacturer that the visa, permit, and/or license is both valid and accurate as to its origin? Has the importer scrutinized the visa, permit or license as to any irregularities that would call its authenticity into question?

The law authorizes a semiannual publication of the names of the foreign entities and/or persons. On October 5, 1999, Customs published a Notice in the **Federal Register** (64 FR 54067) which identified 26 (twenty-six) entities which fell within the purview of section 592A of the Tariff Act of 1930.

592A List

For the period ending March 31, 2000, Customs has identified 25 (twenty-five) foreign entities that fall within the purview of section 592A of the Tariff Act of 1930. This list reflects no additions of new entities and 1 removal to the 26 entities named on the list published on October 5, 1999. The parties on the current list were assessed a penalty claim under 19 U.S.C. 1592, for one or more of the four above-described violations. The administrative penalty action was concluded against the parties by one of the actions noted above as having terminated the administrative process.

The names and addresses of the 25 foreign parties which have been assessed penalties by Customs for violations of section 592 are listed below pursuant to section 592A. This list supersedes any previously published list. The names and addresses of the 25 foreign parties are as follows (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Austin Pang Gloves & Garments Factory, Ltd., Jade Heights, 52 Tai Chung Kiu Road, Flat G, 19/F, Shatin, New Territories, Hong Kong. (10/99)
Beautiful Flower Glove Manufactory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 10–16, 4/F, Yuen Long, New Territories, Hong Kong. (10/99)
BF Manufacturing Company, Kar Wah Industrial Building, Leung Yip Street, Flat 13, 4/F, Yeun Long, New Territories, Hong Kong. (10/99)
Cupid Fashion Manufacturing Ltd., 17/F Block B, Wongs Factory Building, 368–370 Sha Tsui Road, Tsuen Wan, Hong Kong. (9/97)
Ease Keep, Ltd., 750 Nathan Road, Room 115, Kowloon, Hong Kong. (10/99)
Excelsior Industrial Company, 311–313 Nathan Road, Room 1, 15th Floor, Kowloon, Hong Kong. (9/98)
Eun Sung Guatemala, S.A., 13 Calle 3–62 Zona Colonia Landivar, Guatemala City, Guatemala. (3/98)
Everlast Glove Factory, Goldfield Industrial Centre, 1 Sui Wo Road, Room 15, 15th Floor, Fo Tan, Shatin, New Territories, Hong Kong. (3/99)
Fabrica de Artigos de Vestuario E–Full, Lda. Rua Um doi Bairro da Concordia, Deificio Industrial Vang Tai, 8th Floor, A–D, Macau. (10/99)
Fabrica de Artigos de Vestuario Fan Wek Limitada, Av. Venceslau de Morais, S/N 14 B–C, Centro Ind. Keck Seng (Torre 1), Macau. (10/99)
Fabrica de Artigos de Vestuario Pou Chi, Avenida General Castelo Branco, 13, Andar, "C" Edificio Wang Kai, Macau. (10/99)
Glory Growth Trading Company, No. 6 Ping Street, Flat 7–10, Block A, 21st Floor, New Trade Plaza, Shatin, New Territories, Hong Kong. (9/98)
Great Southern International Limited, Flat A, 13th floor, Foo Cheong Building, 82–86 Wing Lok Street, Central, Hong Kong. (9/98)
G.T. Plus Ltd., Kowloon Centre, 29–43 Ashley Road, 4/Fl, Tsimshatsui, Kowloon, Hong Kong. (3/99)
Jiangxi Garments Import and Export Corp., Foreign Trade Building, 60 Zhangqian Road, Nanchang, China. (3/98)
Liable Trading Company, 1103 Kai Tak Commercial Building, 62–72 Stanley Street, Kowloon, Hong Kong. (9/98)
Lucky Mind Industrial Limited, Lincoln Centre, 20 Yip Fung Street, Flat 11, 5/F, Fan Ling, New Territories, Hong Kong. (10/99)
Mabco Limited, 6/F VIP.Commercial Centre, 116–120 Canton Road, Kowloon, Hong Kong. (3/99)
McKowan Lowe & Company Limited, 1001–1012 Hope Sea Industrial Centre, 26 Lam Hing Street, Kowloon Bay, Kowloon, Hong Kong. (9/98)
Rex Industries Limited, VIP Commercial Center, 116–120 Canton Road, 11th Floor, Tsimshatsui, Kowloon, Hong Kong. (9/98)
Sannies Garment Factory, 35–41 Tai Lin Pai Road, Gold King Industrial Building, Flat A & B, 2nd Floor, Kwai Chung, New Territories, Hong Kong. (9/98)
Shing Fat Gloves & Rainwear, 2 Tai Lee Street, 1–2 Floor, Yuen Long, New Territories, Hong Kong. (9/98)
Sun Kong Glove Factory, 188 San Wan Road, Units 32–35, 3rd Floor, Block B, Sheung Shui, New Territories, Hong Kong. (9/98)
Sun Weaving Mill Ltd., Lee Sum Factory Building, Block 1 & 2, 23 Sze Mei Street, Sanpokong, Bk 1/2, Kowloon, Hong Kong. (9/97)
Takhi Corporation, Huvsgalchdyn Avenue, Ulaanbaatar 11, Mongolia. (3/98)

Any of the above parties may petition to have its name removed from the list. Such petitions, to include any documentation that the petitioner deems pertinent to the petition, should be forwarded to the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC. 20229.

Additional Foreign Entities

In the October 5, 1999, **Federal Register** notice, Customs also solicited information regarding the whereabouts of 32 foreign entities, which were identified by name and known address, concerning alleged violations of section 592. Persons with knowledge of the whereabouts of those 32 entities were requested to contact the Assistant Commissioner, Office of Field Operations, United States Customs Service, 1300 Pennsylvania Avenue, NW., Washington, DC 20229.

In this document, a new list is being published which contains the names and last known addresses of 32 entities. This reflects the addition of one new entity and the removal of one entity to the list of 32 entities published on October 5, 1999.

Customs is soliciting information regarding the whereabouts of the following 32 foreign entities concerning alleged violations of section 592. Their names and last known addresses are listed below (the parenthesis following the listing sets forth the month and year in which the name of the company was first published in the **Federal Register**):

Au Mi Wedding Dresses Company, Dragon Industry Building, 98, King Law Street, Unit F, 9/F, Lai Chi Kok, Kowloon, Hong Kong. (10/99)
Balmar Export Pte. Ltd., No. 7 Kampong Kayu Road, Singapore, 1543. (3/98)
Envestisman Sanayi A.S., Buyukdere Cad 47, Tek Is Merkezi, Istanbul, Turkey. (9/97)
Essence Garment Making Factory, Splendid Centre, 100 Larch Street, Flat D, 5th Floor, Taikoktsui, Kowloon, Hong Kong. (3/98)
Fabrica de Artigos de Vest. Dynasty, Lda., Avenida do Almirante Magalhaes Correia, Edificio Industrial Keck Seng, Block III, 4th Floor "UV", Macau. (3/98)
Fabrica de Artigos de Vestuario Lei Kou, No. 45 Estrada Marginal de Areia Preta, Edif.Ind.Centro Polytex, 6th Floor, D, Macau. (9/98)
Fabrica de Vestuario Wing Tai, 45 Estrada Marginal Da Areia Preta, Edif. Centro Poltex, 3/E, Macau. (3/98)
Galaxy Gloves Factory, Annking Industrial Building, Wang Yip East Street Room A, 2/F, Lot 357, Yuen Long Industrial Estate, Yuen Long, New Territories, Hong Kong. (3/98)
Golden Perfect Garment Factory, Wong's Industrial Building, 33 Hung To Road, 3rd Floor, Kwun Tong, Kowloon, Hong Kong. (9/98)
Golden Wheel Garment Factory, Flat A, 10/F, Tontex Industrial Building, 2–4 Sheung Hei Street, San Po Kong, Kowloon, Hong Kong. (10/99)
Grey Rose Maldives, Phoenix Villa, Majeedee Magu, Male, Republic of Maldives. (3/98)
K & J Enterprises, Witty Commercial Building, 1A–1L Tung Choi Street, Room 1912F, Mong Kok, Kowloon, Hong Kong. (9/98)
Konivon Development Corp., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)
Kwuk Yuk Garment Factory, Kwong Industrial Building, 39–41 Beech St., Flat A, 11th Floor, Tai Kok Tsui, Kowloon, Hong Kong. (3/98)
Land Global Ltd., Block c, 14/F, Y.P. Fat Building, Phase 1, 77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)
Lai Cheong Gloves Factory, Kar Wah Industrial Building, 8 Leung Yip Street, Room 101, 1–F, Yuen Long, New Territories, Hong Kong. (3/00)
Leader Glove Factory, Tai Ping Industrial Centre, 57, Ting Kok Road, 25/F, Block 1, Flat A, Tai Po, New Territories, Hong Kong. (3/98)
Maxwell Garment Factory, Unit C, 21/F, 78–84, Wang Lung Street, Tseun Wan, New Territories, Hong Kong. (3/99)
New Leo Garment Factory Ltd, Galaxy Factory Building, 25–27 Luk Hop Street, Unit B, 18th Floor, San Po Kong, Kowloon, Hong Kong. (9/98)
Patenter Trading Company, Block C. 14/F, Yip Fat Industrial Building, Phase 1, 77 Hoi Yuen Road, Kowloon, Hong Kong. (9/97)
Penta-5 Holding (HK) Ltd., Metro Center II, 21 Lam Hing Street, Room 1907, Kowloon Bay, Kowloon, Hong Kong. (9/98)
Round Ford Investments, 37–39 Ma Tau Wai Road, 13/f Tower B, Kowloon, Hong Kong. (9/97)
Shanghai Yang Yuan Garment Factory, 2 Zhaogao Road, Chuanshin, Shanghai, China. (9/97)
Silver Pacific Enterprises Ltd., Shun Tak Center, 200 Connaught Road, No. 3204, Hong Kong. (3/98)
Tak Hing Textile Company Limited, Wo Fung Industrial Building, 3/F, block D, Lot No. 5180, IN D.D 51, On Lok Village, Fanling, New Territories, Hong Kong. (3/99)
Tat Hing Garment Factory, Tat Cheong Industrial Building, 3 Wing Ming Street, Block C, 13/F, Lai Chi Kok, Kowloon, Hong Kong. (3/98)
Tientak Glove Factory Limited, 1 Ting Kok Road, Block A, 26/F, Tai Po, New Territories, Hong Kong. (3/98)
Wealthy Dart, Wing Ka Industrial Building, 87 Larch Street, 7th Floor, Kowloon, Hong Kong. (3/98)
Wilson Industrial Company, Yip Fat Factory Building, 77 Hoi Yuen Road, Room B, 3/F, Kwun Yong, Kowloon, Hong Kong. (3/98)
Wing Lung Manufactory, Hing Wah Industrial Building, Units 2, 5–8, 4th Floor YLTL 373, Yuen Long, New Territories, Hong Kong. (9/98)
Yogay Fashion Garment Factory Ltd, Lee Wan Industrial Building, 5 Luk Hop Street, San Po Kong, Kowloon, Hong Kong. (3/98)
Zuun Mod Garment Factory Ltd., Tuv Aimag, Mongolia. (9/97)

If you have any information as to a correct mailing address for any of the above 32 firms, please send that information to the Assistant Commissioner, Office of Field Operations, U.S. Customs Service, 1300 Pennsylvania Avenue, NW, Washington, DC 20229.

Dated: March 24, 2000.

Robert J. McNamara,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–7708 Filed 3–29–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0358]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on information needed to evaluate veterans' and other eligible person's suitability to change their program of education objectives.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 30, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0358" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Public Law 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: Supplemental Information for Change of Program or Reenrollment After Unsatisfactory Attendance, Conduct or Progress, VA Form 22–8873.

OMB Control Number: 2900–0358.

Type of Review: Extension of a currently approved collection.

Abstract: Veterans and other eligible persons may change their program of education under conditions prescribed by Title 38 U.S.C., Section 3691. Before VA may approve benefits for a second or subsequent change of program, VA must first determine that the new program is suitable to the claimant's aptitudes, interests, and abilities. VA Form 22–8873 is used to gather the necessary information only if the suitability of the proposed training program cannot be established from information already available in the claimant's VA file. Without the information, VA could not determine further entitlement to education benefits.

Affected Public: Individuals or households.

Estimated Annual Burden: 8,250 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 16,500.

Dated: March 13, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–7914 Filed 3–29–00; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0445]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Office of Small and Disadvantaged Business Utilization, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Office of Small and Disadvantaged Business Utilization (OSDBU), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of a currently approved collection, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to identify veteran-owned businesses.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 30, 2000.

ADDRESSES: Submit written comments on the collection of information to Lynette Simmons, Office of Small and Disadvantaged Business Utilization (00SB), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0445" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Lynette Simmons (202) 565–8136.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (P.L. 104–13; 44 U.S.C., 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, OSDBU invites comments on:

(1) Whether the proposed collection of information is necessary for the proper performance of OSDBU's functions, including whether the information will have practical utility; (2) the accuracy of OSDBU's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title and Form Number: VAAR Subpart 819.70, Veteran-Owned and Operated Small Business (Exceptions to Standard Forms 18 and 129).

OMB Control Number: 2900–0445.

Type of Review: Extension of a currently approved collection.

Abstract: The information will be used by VA to identify veteran-owned businesses and to ensure eligible veteran-owned firms are given an opportunity to participate in VA solicitations for goods and services. Without this information there would be no way to properly monitor this program.

Affected Public: Business or other for-profit.

Estimated Annual Burden: 4,727 hours.

Estimated Average Burden Per Respondent: Additional burden imposed on Standard Forms 18 and 129 is 5 seconds.

Frequency of Response: On occasion.

Estimated Number of Respondents: 3,403,500.

Dated: February 29, 2000.

By direction of the Secretary.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–7915 Filed 3–29–00; 8:45 am]

BILLING CODE 8320–01–U

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0565]

Proposed Information Collection Activity: Proposed Collection; Comment Request

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Veterans Benefits Administration (VBA), Department of Veterans Affairs (VA), is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act (PRA) of 1995, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed reinstatement, without change, of a previously approved collection for which approval has expired, and allow 60 days for public comment in response to the notice. This notice solicits comments on the information needed to determine eligibility for plot or interment allowance.

DATES: Written comments and recommendations on the proposed collection of information should be received on or before May 30, 2000.

ADDRESSES: Submit written comments on the collection of information to Nancy J. Kessinger, Veterans Benefits Administration (20S52), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420. Please refer to "OMB Control No. 2900–0565" in any correspondence.

FOR FURTHER INFORMATION CONTACT: Nancy J. Kessinger at (202) 273–7079 or FAX (202) 275–5947.

SUPPLEMENTARY INFORMATION: Under the PRA of 1995 (Pub. L. 104–13; 44 U.S.C., 3501—3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. This request for comment is being made pursuant to Section 3506(c)(2)(A) of the PRA.

With respect to the following collection of information, VBA invites comments on: (1) whether the proposed collection of information is necessary for the proper performance of VBA's functions, including whether the information will have practical utility; (2) the accuracy of VBA's estimate of the burden of the proposed collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or the use of other forms of information technology.

Title: State Application for Interment Allowance Under 38 U.S.C., Chapter 23, VA Form 21–530a.

OMB Control Number: 2900–0565.

Type of Review: Reinstatement, without change, for a previously approved collection for which approval has expired.

Abstract: VA Form 21–530a is used to gather information from a State seeking payment of benefits for plot-interment allowances for the burial of an eligible veteran in a cemetery owned by that State and used solely for the interment of persons eligible for burial in a national cemetery.

Affected Public: State, Local or Tribal Government.

Estimated Annual Burden: 20,000 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 40,000.

Dated: March 13, 2000.

Donald L. Neilson,

Director, Information Management Service.

[FR Doc. 00–7916 Filed 3–29–00; 8:45 am]

BILLING CODE 8320–01–U

Federal Register

Thursday,
March 30, 2000

Part II

Environmental Protection Agency

Proposed Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6562–5]

Proposed Reissuance of National Pollutant Discharge Elimination System (NPDES) Storm Water Multi-Sector General Permit for Industrial Activities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed NPDES general permit.

SUMMARY: EPA Regions 1, 2, 3, 4, 6, 8, 9, and 10 are today proposing to reissue EPA's NPDES Storm Water Multi-Sector General Permit (MSGP). This general permit was first issued on September 29, 1995 (60 FR 50804), and amended on February 9, 1996 (61 FR 5248), February 20, 1996 (61 FR 6412), September 24, 1996 (61 FR 50020), August 7, 1998 (63 FR 42534) and September 30, 1998 (63 FR 52430). Today's proposed MSGP is similar to the 1995 permit, as amended, and will authorize the discharge of storm water from industrial facilities consistent with the terms of the permit.

Public Comment Period: The public comment period for the proposed MSGP will be from today's date until May 30, 2000. All public comments must be submitted to: ATTN: MSGP–2000 Comments, W–99–26, MC 4101, U.S. EPA, Room EB57, 401 M Street SW, Washington, DC 20460.

Please submit the original and three copies of your comments and enclosures (including references). Comments must be received or postmarked by midnight no later than May 30, 2000. To ensure that EPA can read, understand and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or sections in the notice or supporting documents to which each comment refers. Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed stamped envelope. No fascimiles (faxes) will be accepted. Comments may also be submitted electronically to: ow-docket@epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and forms of encryption. Electronic comments must be identified by the docket number W–99–26 (MSGP–2000). No Confidential Business information (CBI) should be submitted through e-mail. Comments and data will also be accepted on disks in WordPerfect 6.1 format or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

The record for today's proposed MSGP has been established under docket number W–99–26, and includes supporting documentation as well as printed, paper versions of electronic comments. It does not include any information claimed as CBI.

Public Meetings: Public meetings on the proposed permit will be held at the locations listed below. The public meetings will include a presentation on the draft permits and a question and answer session. Written, but not oral, comments for the official permit record will be accepted at the public meetings.

Dallas, TX: May 1, 2000, 1:00 pm, EPA Region 6 Offices, 12th Floor, 1445 Ross Ave., Dallas, Texas.

Santa Fe, NM: April 24, 2000, 1:00 pm, New Mexico Environment Department Offices, Runnels Building Auditorium, 1190 St. Francis Dr., Santa Fe, New Mexico.

Additional public meets may be scheduled in one or more EPA regions. For times and locations, please visit our MSGP web site at www.epa.gov/owm/sw/industry/msgp/index.htm.

Public Hearings: EPA has not scheduled any public hearings to receive public comment concerning today's proposal in view of the limited attendance at previous hearings which have been held related to the existing MSGP. All persons will continue to have the right to provide written comments at any time during the public comment period. However, interested persons may request a public hearing pursuant to 40 CFR 124.12 concerning the proposed MSGP–2000. Requests for a public hearing must be sent or delivered in writing to the same address as provided above for public comments prior to the close of the comment period. Requests for a public hearing must state the nature of the issues proposed to be raised in the hearing. Pursuant to 40 CFR 124.12, EPA shall hold a public hearing if it finds, on the basis of requests, a significant degree of public interest in the proposed permit. If EPA decides to hold a public hearing, a public notice of the date, time and place of the hearing will be made at least 30 days prior to the hearing. Any person may provide written or oral statements and data pertaining to the proposed permit at the public hearing.

ADDRESSES: The index to the administrative record for the proposed MSGP is available at the appropriate Regional Office or from the EPA Water Docket Office in Washington, DC. The administrative record is stored in two locations. Documents immediately referenced in this reissuance notice are stored at the EPA Water Docket Office at the following address: Water Docket, MC–4101, U.S. EPA, 401 M Street SW, Washington, DC 20460. All other documents which were used to support the original issuance of the MSGP in 1995 are a supplement to the record for this reissuance and are stored at U.S. EPA, 401 M Street SW, Washington, DC 20460. These materials include, for example, the permit applications and sampling data provided to EPA by group applicants. The immediate and supplemental records are available for inspection from 9 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. For appointments to examine any portion of the administrative record, please call the Water Docket Office at (202) 260–3027. A reasonable fee may be charged for copying. Specific record information can also be made available at the appropriate Regional Office upon request.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed MSGP, contact the appropriate EPA Regional Office or Dan Weese at (202) 260–6809. The name, address and phone number of the EPA Regional Storm Water Coordinators are provided in Section VI.F of this fact sheet.

SUPPLEMENTARY INFORMATION: The following fact sheet provides background information and explanation for today's notice of proposed MSGP reissuance. The actual language of the proposed MSGP appears after this fact sheet.

Fact Sheet

Table of Contents

I. Background
- A. Pollutants in Storm Water Discharges Associated with Industrial Activities in General
- B. Summary of Options for Controlling Pollutants
- C. The Federal/Municipal Partnership: The Role of Municipal Operators of Large and Medium Municipal Separate Storm Sewer Systems

II. Organization of Today's Proposed MSGP and Summary of Proposed Changes
III. Geographic Coverage of Proposed MSGP
IV. Categories of Facilities Covered by Proposed MSGP
V. Limitations on Coverage
- A. Storm Water Discharges Subject to Effluent Guidelines, Including New Source Performance Standards
- B. Historic Preservation
- C. Endangered Species
- D. New Storm Water Discharges to Water-Quality Impaired Receiving Waters
- E. Storm Water Discharges Subject to Anti-Degradation Water Quality Standards
- F. Storm Water Discharges Previously Covered by an Individual Permit

VI. Summary of Common Permit Conditions
- A. Notification Requirements
- 1. Contents of NOIs
- 2. Deadlines
- 3. Municipal Separate Storm Sewer System Operator Notification
- 4. Notice of Termination
- 5. Conditional Exclusion for No Exposure
- B. Special Conditions
- 1. Prohibition of Non-storm Water Discharges
- 2. Releases of Reportable Quantities of Hazardous Substances and Oil
- 3. Co-located Industrial Facilities
- 4. Numeric Effluent Limitations
- 5. Compliance with Water Quality Standards
- C. Common Pollution Prevention Plan Requirements
- 1. Pollution Prevention Team
- 2. Description of the Facility and Potential Pollution Sources
- 3. Selection and Implementation of Storm Water Controls
- 4. Comprehensive Site Compliance Evaluation
- D. Special Requirements
- 1. Special Requirements for Storm Water Discharges Associated with Industrial Activity from Facilities Subject to EPCRA Section 313 Requirements
- 2. Special Requirements for Storm Water Discharges Associated with Industrial Activity from Salt Storage Facilities
- 3. Consistency With Other Plans
- E. Monitoring and Reporting Requirements
- 1. Analytical Monitoring Requirements
- 2. Compliance Monitoring
- 3. Alternate Certification
- 4. Reporting and Retention Requirements
- 5. Sample Type
- 6. Representative Discharge
- 7. Sampling Waiver
- 8. Quarterly Visual Examination of Storm Water Quality
- F. Regional Offices
- 1. Notice of Intent Address
- 2. Regional Office Addresses and Contacts

VII. Cost Estimates For Common Permit Requirements
VIII. Special Requirements for Discharges Associated with Specific Industrial Activities
IX. Economic Impact (Executive Order 12866)
X. Unfunded Mandates Reform Act
XI. Paperwork Reduction Act
XII. Regulatory Flexibility Act
XIII. Official Signatures

I. Background

EPA Regions 1, 2, 3, 4, 6, 8, 9, and 10 are today proposing to reissue EPA's NPDES Storm Water Multi-Sector General Permit (MSGP). The MSGP currently authorizes storm water discharges from a particular facility for most areas of the United States where the NPDES permit program has not been delegated. The MSGP was originally issued on September 29, 1995 (60 FR 50804), and amended on February 9, 1996 (61 FR 5248), February 20, 1996 (61 FR 6412), September 24, 1996 (61 FR 50020), August 7, 1998 (63 FR 42534) and September 30, 1998 (63 FR 52430).

The 1995 MSGP was the culmination of the group permit application process described at 40 CFR 122.26(c)(2). A group permit application was one of three options for obtaining an NPDES industrial storm water permit which were provided by the 1990 storm water permit application regulations (47 FR 47990). The 1990 regulations also provided that industrial facilities could apply for coverage under an existing general NPDES permit or apply for an individual permit. In 1992, EPA issued a baseline general permit (57 FR 41175 and 57 FR 44412) to cover industrial facilities which did not select the group application option or submit an application for an individual permit.

In response to the group application option, EPA received applications from approximately 1,200 groups representing nearly all of the categories of industrial facilities listed in the storm water regulations at 40 CFR 122.26(b)(14). To facilitate permit issuance for the group applications, EPA consolidated the groups into 29 industrial sectors, with subsectors also included in certain sectors as appropriate.

In developing the requirements for the 1995 MSGP, EPA utilized and built upon the storm water pollution control requirements of the 1992 baseline general permit. The baseline permit had required a storm water pollution prevention plan (SWPPP) with generic best management practice (BMP) requirements which applied to all facilities covered by the permit. In addition, certain categories of facilities were required to monitor storm water discharges based on EPA's best professional judgment concerning the risks posed by the facilities.

The group permit applications included information concerning the specific types of operations present at the different types of industrial facilities, potential sources of pollutants at the facilities, industry-specific BMPs which are available, and monitoring data from the different types of facilities. Using this information, EPA developed SWPPP requirements for the MSGP which consisted of the generic requirements of the baseline permit plus industry-specific requirements developed from the group application information. Also, the industries required to perform monitoring and the contaminants to be monitored for in the 1995 MSGP were developed using the monitoring data submitted with the group applications rather than EPA's best professional judgment.

On September 30, 1998 (63 FR 52430), EPA terminated the baseline general permit and required facilities which were previously covered by the baseline permit to seek coverage under the MSGP (or submit an individual permit application). EPA believed that the MSGP, with its industry-specific requirements, would provide improved water quality benefits as compared to the baseline permit.

For the reissuance of the MSGP, EPA has re-evaluated the industry-specific requirements of the MSGP. In a few instances, additional requirements have been proposed based on new information which has been obtained since the original MSGP issuance in 1995. These changes are discussed in more detail in Section VIII of this fact sheet. EPA also re-evaluated the monitoring requirements of the existing MSGP. Although no changes are being proposed in the monitoring requirements, EPA is interested in receiving comments on these requirements and exploring alternatives as discussed in Section VI.E of the fact sheet.

A. Pollutants in Storm Water Discharges Associated With Industrial Activities in General

The volume and quality of storm water discharges from a particular facility will depend on a number of factors, including the industrial activities occurring at the facility, the nature of the precipitation, and the degree of surface imperviousness. A discussion of these factors was provided in the fact sheet for the original proposed MSGP (58 FR 61146 Nov. 19, 1993), and is not being repeated here.

B. Summary of Options for Controlling Pollutants

Pollutants in storm water discharges from industrial plants may be reduced using several methods, including: Eliminating pollutant sources; implementing BMPs that prevent the generation of pollutant sources and/or control the discharge of pollutants; and end-of-pipe treatment. A general discussion of each of these was presented in the original MSGP proposal (58 FR 61146, Nov. 19, 1993), and is not being repeated here.

C. The Federal/Municipal Partnership: The Role of Municipal Operators of Large and Medium Municipal Separate Storm Sewer Systems

A key issue in developing a workable regulatory program for controlling pollutants in storm water discharges associated with industrial activity is the proper use and coordination of limited

regulatory resources. This is especially important when addressing the appropriate role of municipal operators of large and medium municipal separate storm sewer systems in the control of pollutants in storm water discharges associated with industrial activity which are conveyed through municipal separate storm sewer systems. The original proposed MSGP discussed several key policy factors (see 58 FR 61146).

II. Organization of Proposed MSGP and Summary of Proposed Changes

The organization of today's proposal has been revised from the 1995 MSGP to reduce the overall size of the permit. In Part XI of the 1995 MSGP, many requirements such as SWPPP and monitoring requirements which were common to each sector were repeated in each sector, greatly adding to length of the permit. For today's proposal, such requirements are found only once in expanded sections of the permit (Parts 4 and 5) which include requirements common to each sector. Requirements which are genuinely unique to a given sector or subsector are found in Part 6 in the permit. Similarly, Section VIII of the fact sheet for the 1995 MSGP repeated certain explanatory information in the discussions of sector-specific requirements, and also included considerable descriptive information about the various sectors. To reduce the length of today's notice, most of this information is not being repeated. Section VIII of today's fact sheet focuses on the changes (if any) which are being proposed for the various sectors. The reorganization and reduction of duplication have reduced the size of the permit by approximately 50%.

Also note that the section/paragraph identification scheme of the proposed MSGP–2000 has been modified from the existing MSGP. The original scheme utilized a sometimes lengthy combination of numbers, letters and Roman numerals (in both upper and lower cases) which many permittees found confusing. Today's proposal identifies sections/paragraphs, and hence permit conditions, using numbers only, except in Part 6 (which also incorporates the sector letters from the 1995 MSGP for consistency). Under the original permit, only the last digit or letter of the section/paragraph identifier appeared with its accompanying section title/paragraph, making it difficult to determine where you were in the permit. In today's proposal, the entire string of identifying numbers is listed at each section/paragraph to facilitate recognizing where you are and in citing and navigating through the permit. For example, paragraph number 1.2.3.5 tells you immediately that you are in Part 1, section 2, paragraph 3, subparagraph 5; whereas under the 1995 MSGP you would only see an "e", thereby forcing you to hunt back through the permit to determine that you were in Part I.B.3.e. The exception to the numbering rule is in Part 6, where the Sector letters from the 1995 MSGP have been retained to correspond to the sectors of industry covered by the permit and make it easy to tell that you are in a section of the permit which has conditions which only apply to a specific industrial sector. For example, paragraph 6.F.3.4 immediately tells you that you are in Part 6 and looking at conditions that only apply to sector "F" facilities. In some cases, requirements which previously appeared in a single paragraph are now found listed out as separate individual items. The proposed MSGP is also written in EPA's "readable regulations" style using terms like "you" and "your" in referring to permittees, etc.

Following below is a list of the major changes in today's proposal as compared to the existing MSGP. These changes are discussed in more detail later in this fact sheet.

1. Requirements for co-located activities clarified (Part 1.2.1.1).

2. Incidental cooling tower mist discharges included as an authorized non-storm water discharge, subject to certain requirements (Parts 1.2.2.2.13 and 4.4.2.3).

3. Provided eligibility for coverage of inactive mining activities occurring on Federal Lands where an operator has not been identified (Part 1.2.3).

4. Clarified language for situations where a discharge previously covered by an individual permit can be covered under the MSGP–2000 (Part 1.2.3.3).

5. Clarified/added language for compliance with water quality standards and requirements for follow-up actions if standards are exceeded (Parts 1.2.3.5 and 3.3).

6. ESA and NHPA eligibility requirements modified (Parts 1.2.3.6 and 1.2.3.7).

7. Eligibility requirements for discharges to water quality impaired/limited waterbodies added/clarified (Part 1.2.3.8).

8. Clarifies that discharges which do not comply with anti-degradation requirements are not authorized by the permit (Part 1.2.3.9).

9. Deadline of 30 days for submission of an NOT added (Part 1.4.2).

10. Opportunity for termination of permit coverage based on the "no exposure exemption" from the Phase II storm water regulations (64 FR 68722, 12/8/99) added (Parts 1.5 and 11.4).

11. Notice of Intent requirements and form modified (Part 2.2 and Addendum D).

12. Permit will accommodate electronic filing of NOIs, NOTs, or DMRs, should these options become available during the term of the permit (Parts 2.3, 7.1, and 11.3)

13. Prohibition on discharges of solid materials and floating debris and requirement to minimize off-site tracking of materials and generation of dust added (Part 4.2.7.2.3).

14. Requirement to include a copy of the permit with the storm water pollution prevention plan (SWPPP) was added (Part 4.7).

15. Special conditions for EPCRA 313 facilities were modified (Part 4.12).

16. Monitoring requirements reorganized and additional clarification/revisions on monitoring periods, waivers, default minimum monitoring for limitations added by State 401 certification, and reporting requirements added. Public specifically requested to comment on alternatives to proposed benchmark monitoring scheme (Parts 5 and 7).

17. Manufacturing of fertilizer from leather scraps (SIC 2873) moved from Sector Z—Leather Tanning and Finishing to Sector C—Chemical and Allied Products (Table 1 and Part 6.C).

18. New effluent limitations guidelines for landfills in Sectors K and L included; the final guidelines were published in the **Federal Register** on January 19, 2000 (65 FR 3007) (Parts 6.K.5 and 6.L.6).

19. Sector AD (Non-Classified Facilities) language clarified to say that facilities cannot choose coverage under Sector AD, but can only be so assigned by permitting authority (Part 6.AD).

20. Additional BMP requirements in Sectors S, T, and Y added (Parts 6.S, 6.T, and 6.Y).

21. NOI to continue coverage under the permit when it expires (without a replacement permit in place) is not required and the reapplication process has been clarified (Part 9.2).

22. Process for EPA to remove facilities from permit coverage clarified (Part 9.12).

In conjunction with the final permit, EPA anticipates making a "User's Guide" available that would answer common questions regarding how to obtain coverage and comply with the MSGP. This users guide would most likely be made available via the Internet.

III. Geographic Coverage of Proposed MSGP

The geographic coverage of today's proposed MSGP includes the following areas:

EPA Region 1—for the States of Maine, Massachusetts and New Hampshire; for Indian country located in Massachusetts, Connecticut, Rhode Island and Maine; and for Federal facilities in the State of Vermont.

EPA Region 2—for the Commonwealth of Puerto Rico.

EPA Region 3—for the District of Columbia and Federal facilities in the State of Delaware.

EPA Region 4—for the State of Florida; and for Indian country located in the State of Florida.

EPA Region 6—for the State of New Mexico; for Indian country located in the States of Louisiana, New Mexico, Texas and Oklahoma (except Navajo lands and Ute Mountain Reservation lands); for Oil and gas facilities under SIC codes 1311, 1381, 1382, and 1389 and 5171 and point source (but not non-point source) discharges associated with agricultural production, services, and silviculture in the State of Oklahoma, except those on Indian Country lands; and oil and gas facilities under SIC codes 1311, 1321, 1381, 1382, and 1389 in the State of Texas not on Indian Country lands.

EPA Region 8—for Federal facilities in the State of Colorado; for Indian Country lands in Colorado, Montana, North Dakota, South Dakota, Wyoming and Utah (except Goshute Reservation lands); for Ute Mountain Reservation lands in Colorado and New Mexico; and for Pine Ridge Reservation lands in South Dakota and Nebraska.

EPA Region 9—for the State of Arizona; for the Territories of Johnston Atoll, American Samoa, Guam, the Commonwealth of Northern Mariana Islands, Midway and Wake Islands; for Indian country located in Arizona, California, and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho, and the Fort McDermitt Reservation in Oregon and Nevada.

EPA Region 10—for the States of Alaska and Idaho; for Indian country located in Alaska, Oregon (except Fort McDermitt Reservation lands), Idaho (except Duck Valley Reservation lands) and Washington; and for Federal facilities in Washington.

For several reasons, the geographic area of coverage described above differs from the area of coverage of the 1995 MSGP. Indian country in Vermont and New Hampshire has been removed since there are no Federally recognized tribes in these States. Also, state NPDES permit programs have since been authorized in the States of South Dakota, Louisiana, Oklahoma (except for certain oil and gas facilities and agriculture-related point sources in Oklahoma) and Texas (again except for oil and gas facilities). In Oklahoma, EPA maintains NPDES permitting authority over oil and gas exploration and production related industries, and pipeline operations regulated by the Oklahoma Corporation Commission and point source (but not non-point source) discharges associated with agricultural production, services, and silviculture regulated by the Oklahoma Department of Agriculture, except those on Indian Country lands (See 61 FR 65049). Oklahoma received NPDES program authorization only for those discharges covered by the authority of the Oklahoma Department of Environmental Quality (ODEQ). In Texas, EPA maintains NPDES permitting authority over oil and gas discharges regulated by the Texas Railroad Commission (See 63 FR 51164). Texas received NPDES program authorization only for those discharges covered by the authority of the Texas Natural Resource Conservation Commission (TNRCC).

Federal facilities in Colorado, and Indian country located in Colorado (including the portion of the Ute Mountain Reservation located in New Mexico), Montana, North Dakota, South Dakota (including the portion of the Pine Ridge Reservation located in Nebraska), Utah (except for the Goshute and Navajo Reservation lands) and Wyoming were not included in the 1995 MSGP, but are now proposed to be included. At the present time, industrial facilities in these areas are largely covered under an extension of EPA's 1992 baseline general permit for industries (57 FR 41175).

Lastly, subsequent to the issuance of the MSGP in 1995, coverage was extended to the Island of Guam on September 24, 1996 (61 FR 50020) and the Commonwealth of the Northern Mariana Islands on September 30, 1998 (63 FR 52430).

There are some areas where the NPDES permit program has not been delegated (such as Indian country in states not listed above) where neither the MSGP nor an alternate general permit is available for authorization of storm water discharges associated with industrial activity. However, only a very small number of permittees exist in such areas and individual permits are issued as needed.

IV. Categories of Facilities Covered by the Proposed MSGP

The proposed MSGP would authorize storm water discharges associated with industrial activity from the categories of facilities shown in Table 1 below:

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE PROPOSED MSGP

Subsector	SIC code	Activity represented
Sector A. Timber Products		
1*	2421	General Sawmills and Planning Mills.
2	2491	Wood Preserving
3*	2411	Log Storage and Handling.
4*	2426	Hardwood Dimension and Flooring Mills.
	2429	Special Product Sawmills, Not Elsewhere Classified.
	2431–2439 (except 2434)	Millwork, Veneer, Plywood, and Structural Wood.
	2448, 2449	Wood Containers.
	2451, 2452	Wood Buildings and Mobile Homes.
	2493	Reconstituted Wood Products.
	2499	Wood Products, Not Elsewhere Classified.
Sector B. Paper and Allied Products Manufacturing		
1	2611	Pulp Mills.
2	2621	Paper Mills.

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE PROPOSED MSGP—Continued

Subsector	SIC code	Activity represented
3*	2631	Paperboard Mills.
4	2652–2657	Paperboard Containers and Boxes.
5	2671–2679	Converted Paper and Paperboard Products, Except Containers and Boxes.
Sector C. Chemical and Allied Products Manufacturing		
1*	2812–2819	Industrial Inorganic Chemicals.
2*	2821–2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Manmade Fibers Except Glass.
3	2833–2836	Medicinal chemicals and botanical products; pharmaceutical preparations; invitro and invivo diagnostic substances; biological products, except diagnostic substances.
4*	2841–2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations.
5	2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.
6	2861–2869	Industrial Organic Chemicals.
7*	2873–2879	Agricultural Chemicals, Including Facilities that Make Fertilizer Solely from Leather Scraps and Leather Dust.
8	2891–2899	Miscellaneous Chemical Products.
9	3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors.
Sector D. Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers		
1*	2951, 2952	Asphalt Paving and Roofing Materials.
2	2992, 2999	Miscellaneous Products of Petroleum and Coal.
Sector E. Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing		
1	3211	Flat Glass.
	3221, 3229	Glass and Glassware, Pressed or Blown.
	3231	Glass Products Made of Purchased Glass.
	3281	Cut Stone and Stone Products.
	3297	Abrasive, Asbestos, and Miscellaneous Nonmetallic Mineral Products.
2	3241	Hydraulic Cement.
3*	3251–3259	Structural Clay Products.
	3262–3269	Pottery and Related Products.
	3297	Non-Clay Refractories.
4*	3271–3275	Concrete, Gypsum and Plaster Products.
	3295	Minerals and Earth's, Ground, or Otherwise Treated.
Sector F. Primary Metals		
1*	3312–3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills.
2*	3321–3325	Iron and Steel Foundries.
3	3331–3339	Primary Smelting and Refining of Nonferrous Metals.
4	3341	Secondary Smelting and Refining of Nonferrous Metals.
5*	3351–3357	Rolling, Drawing, and Extruding of Nonferrous Metals.
6*	3363–3369	Nonferrous Foundries (Castings).
7	3398, 3399	Miscellaneous Primary Metal Products.
Sector G. Metal Mining (Ore Mining and Dressing)		
1	1011	Iron Ores.
2*	1021	Copper Ores.
3	1031	Lead and Zinc Ores.
4	1041, 1044	Gold and Silver Ores.
5	1061	Ferroalloy Ores, Except Vanadium.
6	1081	Metal Mining Services.
7	1094, 1099	Miscellaneous Metal Ores.
Sector H. Coal Mines and Coal Mining-Related Facilities		
NA*	1221–1241	Coal Mines and Coal Mining-Related Facilities.
Sector I. Oil and Gas Extraction		
1*	1311	Crude Petroleum and Natural Gas.
2	1321	Natural Gas Liquids.
3*	1381–1389	Oil and Gas Field Services.
4	2911	Petroleum refining

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE PROPOSED MSGP—Continued

Subsector	SIC code	Activity represented
Sector J. Mineral Mining and Dressing		
1*	1411	Dimension Stone.
	1422–1429	Crushed and Broken Stone, Including Rip Rap.
	1481	Nonmetallic Minerals, Except Fuels.
2*	1442, 1446	Sand and Gravel.
3	1455, 1459	Clay, Ceramic, and Refractory Materials.
4	1474–1479	Chemical and Fertilizer Mineral Mining.
	1499	Miscellaneous Nonmetallic Minerals, Except Fuels.
Sector K. Hazardous Waste Treatment Storage or Disposal Facilities		
NA*	HZ	Hazardous Waste Treatment, Storage or Disposal.
Sector L. Landfills and Land Application Sites		
NA*	LF	Landfills, Land Application Sites and Open Dumps.
Sector M. Automobile Salvage Yards		
NA*	5015	Automobile Salvage Yards.
Sector N. Scrap Recycling Facilities		
NA*	5093	Scrap Recycling Facilities.
Sector O. Steam Electric Generating Facilities		
NA*	SE	Steam Electric Generating Facilities.
Sector P. Land Transportation		
1	4011, 4013	Railroad Transportation.
2	4111–4173	Local and Highway Passenger Transportation.
3	4212–4231	Motor Freight Transportation and Warehousing.
4	4311	United States Postal Service.
5	5171	Petroleum Bulk Stations and Terminals.
Sector Q. Water Transportation		
NA*	4412–4499	Water Transportation.
Sector R. Ship and Boat Building or Repairing Yards		
NA	3731, 3732	Ship and Boat Building or Repairing Yards.
Sector S. Air Transportation Facilities		
NA*	4512–4581	Air Transportation Facilities.
Sector T. Treatment Works		
NA*	TW	Treatment Works.
Sector U. Food and Kindred Products		
1	2011–2015	Meat Products.
2	2021–2026	Dairy Products.
3	2032	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties.
4*	2041–2048	Grain Mill Products.
5	2051–2053	Bakery Products.
6	2061–2068	Sugar and Confectionery Products.
7*	2074–2079	Fats and Oils.
8	2082–2087	Beverages.
9	2091–2099	Miscellaneous Food Preparations and Kindred Products.
	2111–2141	Tobacco Products.
Sector V. Textile Mills, Apparel, and Other Fabric Product Manufacturing		
1	2211–2299	Textile Mill Products.
2	2311–2399	Apparel and Other Finished Products Made From Fabrics and Similar Materials.
	3131–3199 (except 3111)	Leather Products.

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE PROPOSED MSGP—Continued

Subsector	SIC code	Activity represented
Sector W. Furniture and Fixtures		
1	2434	Wood Kitchen Cabinets.
2	2511	Wood Household Furniture, Except Upholstered.
3	2512	Upholstered Household Furniture.
4	2521, 2531	Metal Office Furniture.
5	2541	Wood Office Furniture.
6	2542	Partitions and Fixtures, Except Wood.
7	2599	Furniture and Fixtures.
Sector X. Printing and Publishing		
1	2711	Newspapers.
2	2721	Periodicals.
3	2731	Books.
4	2732	Book Printing.
5	2741	Miscellaneous Publishing.
6	2752	Commercial Printing, Lithographic.
7	2754, 2759	Commercial Printing, Gravure and Commercial Printing.
8	2761	Manifold Business Forms.
9	2771	Greeting Cards.
Sector Y. Rubber and Miscellaneous Plastics Products		
1	3011	Tires and Inner Tubes.
2	3021	Rubber and Plastics Footwear.
3	3052	Rubber and Plastics Hose and Belting.
4	3053	Gaskets, Packing and Sealing Devices.
5	3061	Molded, Extruded and Lathe-Cut Mechanical Rubber Goods.
6	3069	Fabricated Rubber Products, Not Elsewhere Classified.
7	3081	Unsupported Plastics Film and Sheet.
8	3082	Unsupported Plastics Profile Shapes.
9	3083	Laminated Plastics Plate, Sheet and Profile Shapes.
10	3084	Plastics Pipe.
11	3085	Plastics Bottles.
12	3086	Plastics Foam Products.
13	3087	Custom Compounding of Purchased Plastics Resins.
14	3088	Plastics Plumbing Fixtures.
15	3089	Plastics Products, Not Elsewhere Classified.
Sector Z. Leather Tanning and Finishing		
1	3111	Leather Tanning and Finishing.
Sector AA. Fabricated Metal Products		
1	3411	Metal Cans.
2	3412	Metal Shipping Barrels, Drums, Kegs and Pails.
3	3421	Cutlery.
4	3423	Hand and Edge Tools.
5	3425	Saw Blades and Handsaws.
6	3429	Hardware.
7	3431	Metal Sanitary Ware.
8	3432	Plumbing Fixture Fittings and Trim.
9	3433	Heating Equipment.
10	3441	Fabricated Structural Metal.
11	3442	Metal Doors, Sash, Frames, Molding and Trim.
12	3443	Fabricated Plate Work (Boiler Shops).
13	3444	Sheet Metal Work.
14	3446	Architectural and Ornamental Metal Work.
15	3448	Prefabricated Metal Buildings and Components.
16	3449	Miscellaneous Metal Work.
17	3451	Screw Machine Products.
18	3452	Bolts, Nuts, Screws, Rivets and Washers.
19	3462	Iron and Steel Forgings.
20	3463	Nonferrous Forgings.
21	3465	Automotive Stampings.
22	3466	Crowns and Closures.
23	3469	Metal Stampings, Not Elsewhere Classified.
24	3471	Plating and Polishing.
25	3479	Coating, Engraving and Allied Services, Not Elsewhere Classified.
26	3482	Small Arms Ammunition.
27	3483	Ammunition, Except for Small Arms.
28	3484	Small Arms.
29	3489	Ordnance and Accessories, Not Elsewhere Classified.
30	3491	Industrial Valves.
31	3492	Fluid Power Valves and Hose Fittings.
32	3493	Steel Springs, Except Wire.
33	3494	Valves and Pipe Fittings, Not Elsewhere Classified.
34	3495	Wire Springs.
35	3496	Miscellaneous Fabricated Wire Products.
36	3497	Metal Foil and Leaf.
37	3498	Fabricated Pipe and Fittings.
38	3499	Miscellaneous Fabricated Metal Products.
Sector AB. Transportation Equipment, Industrial or Commercial Equipment and Computers		
1	3511	Steam, Gas and Hydraulic Turbines, and Turbine Generator Set Units.
2	3519	Internal Combustion Engines, Not Elsewhere Classified.
3	3523	Farm Machinery and Equipment.
4	3524	Lawn and Garden Equipment.
5	3531	Construction Machinery and Equipment.
6	3532	Mining Machinery and Equipment, Except Oil and Gas Field Machinery and Equipment.
7	3533	Oil and Gas Field Machinery and Equipment.
8	3534	Elevators and Moving Stairways.
9	3535	Conveyors and Conveying Equipment.
10	3536	Overhead Traveling Cranes, Hoists and Monorail Systems.
11	3537	Industrial Trucks, Tractors, Trailers and Stackers.
12	3541	Machine Tools, Metal Cutting Types.
13	3542	Machine Tools, Metal Forming Types.
14	3543	Industrial Patterns.
15	3544	Special Dies, Tools, Die Sets and Machine Tool Accessories.
16	3545	Machine Tool Accessories and Measuring Devices.
17	3546	Power-Driven Handtools.
18	3547	Rolling Mill Machinery and Equipment.
19	3548	Electric and Gas Welding and Soldering Equipment.
20	3549	Metalworking Machinery, Not Elsewhere Classified.
21	3552	Textile Machinery.
22	3553	Woodworking Machinery.
23	3554	Paper Industries Machinery.
24	3555	Printing Trades Machinery and Equipment.
25	3556	Food Products Machinery.
26	3559	Special Industry Machinery, Not Elsewhere Classified.
27	3561	Pumps and Pumping Equipment.
28	3562	Ball and Roller Bearings.
29	3563	Air and Gas Compressors.
30	3564	Blowers and Fans.
31	3565	Packaging Machinery.
32	3566	Speed Changers, Industrial High-Speed Drives and Gears.
33	3567	Industrial Process Furnaces and Ovens.
34	3568	Mechanical Power Transmission Equipment, Not Elsewhere Classified.
35	3569	General Industrial Machinery and Equipment, Not Elsewhere Classified.
36	3571	Electronic Computers.
37	3572	Computer Storage Devices.
38	3575	Computer Terminals.
39	3577	Computer Peripheral Equipment, Not Elsewhere Classified.
40	3578	Calculating and Accounting Machines, Except Electronic Computers.
41	3579	Office Machines, Not Elsewhere Classified.
42	3581	Automatic Vending Machines.
43	3582	Commercial Laundry, Dry Cleaning and Pressing Machines.
44	3585	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment.
45	3586	Measuring and Dispensing Pumps.
46	3589	Service Industry Machinery, Not Elsewhere Classified.
47	3592	Carburetors, Pistons, Piston Rings and Valves.
48	3593	Fluid Power Cylinders and Actuators.
49	3594	Fluid Power Pumps and Motors.
50	3596	Scales and Balances, Except Laboratory.
51	3599	Industrial and Commercial Machinery and Equipment, Not Elsewhere Classified.
Sector AC. Electronic and Other Electrical Equipment and Components		
1	3612	Power, Distribution and Specialty Transformers.
2	3613	Switchgear and Switchboard Apparatus.
3	3621	Motors and Generators.
4	3624	Carbon and Graphite Products.
5	3625	Relays and Industrial Controls.
6	3629	Electrical Industrial Apparatus, Not Elsewhere Classified.
7	3631	Household Cooking Equipment.
8	3632	Household Refrigerators and Home and Farm Freezers.
9	3633	Household Laundry Equipment.
10	3634	Electric Housewares and Fans.
11	3635	Household Vacuum Cleaners.
12	3639	Household Appliances, Not Elsewhere Classified.
13	3641	Electric Lamp Bulbs and Tubes.
14	3643	Current-Carrying Wiring Devices.
15	3644	Noncurrent-Carrying Wiring Devices.
16	3645	Residential Electric Lighting Fixtures.
17	3646	Commercial, Industrial and Institutional Electric Lighting Fixtures.
18	3647	Vehicular Lighting Equipment.
19	3648	Lighting Equipment, Not Elsewhere Classified.
20	3651	Household Audio and Video Equipment.
21	3652	Phonograph Records and Prerecorded Audio Tapes and Disks.
22	3661	Telephone and Telegraph Apparatus.
23	3663	Radio and Television Broadcasting and Communications Equipment.
24	3669	Communications Equipment, Not Elsewhere Classified.
25	3671	Electron Tubes.
26	3672	Printed Circuit Boards.
27	3674	Semiconductors and Related Devices.
28	3675	Electronic Capacitors.
29	3676	Electronic Resistors.
30	3677	Electronic Coils, Transformers and Other Inductors.
31	3678	Electronic Connectors.
32	3679	Electronic Components, Not Elsewhere Classified.
33	3691	Storage Batteries.
34	3692	Primary Batteries, Dry and Wet.
35	3694	Electrical Equipment for Internal Combustion Engines.
36	3695	Magnetic and Optical Recording Media.
37	3699	Electrical Machinery, Equipment and Supplies, Not Elsewhere Classified.
Sector AD. Transportation Equipment		
1	3711	Motor Vehicles and Passenger Car Bodies.
2	3713	Truck and Bus Bodies.
3	3714	Motor Vehicle Parts and Accessories.
4	3715	Truck Trailers.
5	3716	Motor Homes.
6	3721	Aircraft.
7	3724	Aircraft Engines and Engine Parts.
8	3728	Aircraft Parts and Equipment, Not Elsewhere Classified.
9	3731	Ship Building and Repairing.
10	3732	Boat Building and Repairing.
11	3743	Railroad Equipment.
12	3751	Motorcycles, Bicycles and Parts.
13	3761	Guided Missiles and Space Vehicles.
14	3764	Guided Missile and Space Vehicle Propulsion Units and Propulsion Unit Parts.
15	3769	Guided Missile and Space Vehicle Parts and Auxiliary Equipment, Not Elsewhere Classified.
16	3792	Travel Trailers and Campers.
17	3795	Tanks and Tank Components.
18	3799	Transportation Equipment, Not Elsewhere Classified.
Sector AE. Measuring, Analyzing and Controlling Instruments; Photographic, Medical and Optical Goods; Watches and Clocks		
1	3812	Search, Detection, Navigation, Guidance, Aeronautical and Nautical Systems and Instruments.
2	3821	Laboratory Apparatus and Furniture.
3	3822	Automatic Controls for Regulating Residential and Commercial Environments and Appliances.
4	3823	Industrial Instruments for Measurement, Display and Control of Process Variables; and Related Products.
5	3824	Totalizing Fluid Meters and Counting Devices.
6	3825	Instruments for Measuring and Testing of Electricity and Electrical Signals.
7	3826	Laboratory Analytical Instruments.
8	3827	Optical Instruments and Lenses.
9	3829	Measuring and Controlling Devices, Not Elsewhere Classified.
10	3841	Surgical and Medical Instruments and Apparatus.
11	3842	Orthopedic, Prosthetic and Surgical Appliances and Supplies.
12	3843	Dental Equipment and Supplies.
13	3844	X-Ray Apparatus and Tubes and Related Irradiation Apparatus.
14	3845	Electromedical and Electrotherapeutic Apparatus.
15	3851	Ophthalmic Goods.
16	3861	Photographic Equipment and Supplies.
17	3873	Watches, Clocks, Clockwork Operated Devices and Parts.
Sector AF. Miscellaneous Manufacturing Industries		
1	3911	Jewelry, Precious Metal.
2	3914	Silverware, Plated and Stainless Steel Flatware.
3	3915	Jewelers' Findings and Materials and Lapidary Work.
4	3931	Musical Instruments.
5	3942	Dolls and Stuffed Toys.
6	3944	Games, Toys and Children's Vehicles, Except Dolls and Bicycles.
7	3949	Sporting and Athletic Goods, Not Elsewhere Classified.
8	3951	Pens and Mechanical Pencils.
9	3952	Lead Pencils, Crayons and Artist's Materials.
10	3953	Marking Devices.
11	3955	Carbon Paper and Inked Ribbons.
12	3961	Costume Jewelry and Costume Novelties, Except Precious Metal.
13	3965	Fasteners, Buttons, Needles and Pins.
14	3991	Brooms and Brushes.
15	3993	Signs and Advertising Specialties.
16	3995	Burial Caskets.
17	3996	Linoleum, Asphalted-Felt-Based and Other Hard Surface Floor Coverings, Not Elsewhere Classified.
18	3999	Manufacturing Industries, Not Elsewhere Classified.

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE PROPOSED MSGP—Continued

Subsector	SIC code	Activity represented
Sector AG. Air Transportation, Scheduled and Nonscheduled		
1	4512	Air Transportation, Scheduled.
2	4513	Air Courier Services.
3	4522	Air Transportation, Nonscheduled.
4	4581	Airports, Flying Fields and Airport Terminal Services.
Sector AH. Electric, Gas and Sanitary Services		
1	4911	Electric Services.
2	4922	Natural Gas Transmission.
3	4923	Natural Gas Transmission and Distribution.
4	4924	Natural Gas Distribution.
5	4925	Mixed, Manufactured or Liquefied Petroleum Gas Production and/or Distribution.
6	4931	Electric and Other Services Combined.
7	4932	Gas and Other Services Combined.
8	4939	Combination Utilities, Not Elsewhere Classified.
9	4941	Water Supply.
10	4952	Sewerage Systems.
11	4953	Refuse Systems.
12	4959	Sanitary Services, Not Elsewhere Classified.
13	4961	Steam and Air-Conditioning Supply.
14	4971	Irrigation Systems.
Sector AI. Treatment Works		
NA*	TW	Treatment Works.

TABLE 1.—SECTOR/SUBSECTORS COVERED BY THE PROPOSED MSGP—Continued

Subsector	SIC code	Activity represented
	Sector W. Furniture and Fixtures	
NA	2511–2599	Furniture and Fixtures.
	2434	Wood Kitchen Cabinets.
	Sector X. Printing and Publishing	
NA	2711–2796	Printing, Publishing and Allied Industries.
	Sector Y. Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries	
1*	3011	Tires and Inner Tubes.
	3021	Rubber and Plastics Footwear.
	3052, 3053	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting.
	3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified.
2	3081–3089	Miscellaneous Plastics Products.
	3931	Musical Instruments.
	3942–3949	Dolls, Toys, Games and Sporting and Athletic Goods.
	3951–3955 (except 3952 as specified in Sector C).	Pens, Pencils, and Other Artists' Materials.
	3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal.
	3991–3999	Miscellaneous Manufacturing Industries.
	Sector Z. Leather Tanning and Finishing	
NA	3111	Leather Tanning and Finishing.
	Sector AA. Fabricated Metal Products	
1*	3411–3499	Fabricated Metal Products, Except Machinery and Transportation Equipment and Cutting, Engraving and Allied Services.
	3911–3915	Jewelry, Silverware, and Plated Ware.
2*	3479	Coating, Engraving, and Allied Services.
	Sector AB. Transportation Equipment, Industrial or Commercial Machinery	
NA	3511–3599 (except 3571–3579)	Industrial and Commercial Machinery (except Computer and Office Equipment—see Sector AC).
NA	3711–3799 (except 3731, 3732)	Transportation Equipment (except Ship and Boat Building and Repairing—see Sector R).
	Sector AC. Electronic, Electrical, Photographic and Optical Goods	
NA	3612–3699	Electronic, Electrical Equipment and Components, Except Computer Equipment.
	3812–3873	Measuring, Analyzing and Controlling Instrument; Photographic and Optical Goods, Watches and Clocks.
	3571–3579	Computer and Office Equipment.
	Sector AD. Reserved for Facilities Not Covered Under Other Sectors and Designated by the Director	

*Denotes subsector with analytical (chemical) monitoring requirements.
NA indicates those industry sectors in which subdivision into subsectors was determined to be not applicable.

The final MSGP modification of September 30, 1998 (63 FR 52430) expanded the coverage of the 1995 MSGP to include a small number of categories of facilities which had been covered by the 1992 baseline industrial general permit but excluded from the MSGP. In Table 1 above, these categories have been included in the appropriate sectors/subsectors of the MSGP as determined by the September 30, 1998 modification.

With the September 30, 1998 modification, EPA believes that the MSGP now covers all of the categories of industrial facilities which may discharge storm water associated with industrial activity as defined at 40 CFR 122.26(b)(14) (except construction activities disturbing five or more acres which are permitted separately). However, the September 30, 1998 modification also added another sector to the MSGP (Sector AD) to cover any inadvertent omissions. EPA is proposing to retain Sector AD in the reissued MSGP.

Sector AD is further intended to provide a readily available means for covering many of the storm water facilities which are designated for permitting in accordance with NPDES regulations at 40 CFR 122.26(g)(1)(i). These regulations provide that permit applications may be required within 180 days of notice for any discharges which contribute to a violation of a water

quality standard, or are determined to be significant sources of pollutants.

EPA also recognizes that a new North American Industry Classification System (NAICS) was recently adopted by the Office of Management and Budget (62 FR 17288, April 9, 1997). NAICS replaces the 1987 standard industrial classification (SIC) code system for the collection of statistical economic data. However, the use of the new system for nonstatistical purposes is optional. EPA considered the use of NAICS for the today's proposal, but elected to retain the 1987 SIC code system since the storm water regulations (40 CFR 122.26(b)(14)) reference the previous system and this system has generally proven to be adequate for identifying the facilities covered by storm water regulations. EPA will consider transitioning to the new NAICS system in future rule making.

V. Limitations on Coverage

A. Storm Water Discharges Subject to Effluent Guideline Limitations, Including New Source Performance Standards

The general prohibition on coverage of storm water subject to an effluent guideline limitation in the 1995 MSGP has been retained. Only those storm water discharges subject to the following effluent guidelines are eligible for coverage (provided they meet all other eligibility requirements):

TABLE 2.—EFFLUENT GUIDELINES APPLICABLE TO DISCHARGES THAT MAY BE ELIGIBLE FOR PERMIT COVERAGE

Effluent guideline	New source [1]	Sectors [2]
Runoff from material storage piles at cement manufacturing facilities [40 CFR Part 411 Subpart C (established February 23, 1977)].	Yes	E
Contaminated runoff from phosphate fertilizer manufacturing facilities [40 CFR Part 418 Subpart A (established April 8, 1974)].	Yes	C
Coal pile runoff at steam electric generating facilities [40 CFR Part 423 (established November 19, 1982)]	Yes	O
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas [40 CFR Part 429, Subpart I (established January 26, 1981)].	Yes	A
Mine dewatering discharges at crushed stone mines [40 CFR part 436, Subpart B]	No	J
Mine dewatering discharges at construction sand and gravel mines [40 CFR part 436, Subpart C]	No	J
Mine dewatering discharges at industrial sand mines [40 CFR part 436, Subpart D]	No	J
Runoff from asphalt emulsion facilities [40 CFR Part 443 Subpart A (established July 24, 1975)].	Yes	D
Runoff from landfills, [40 CFR Part 445, Subpart A and B (established February 2, 2000.]	Yes	K & L

[1] New Source Performance Standards Included in Effluent Guidelines?
[2] Sectors with Affected Facilitates.

Section 306 of the Clean Water Act (CWA) requires EPA to develop performance standards for all new sources described in that section. These standards apply to all facilities which go into operation after the date the standards are promulgated. Section 511(c) of the CWA Act requires the Agency to comply with the National Environmental Policy Act (NEPA) prior to issuance of a permit under the authority of section 402 of the CWA to facilities defined as a new source under Section 306.

The fact sheet for the existing MSGP described a process for ensuring compliance with NEPA for the MSGP (60 FR 50809). This process, which is repeated below, is proposed to be retained for the reissued MSGP. Additional guidance is found in a new Addendum C to the proposed MSGP.

Facilities which are subject to the performance standards for new sources as described in this section of the fact sheet must provide EPA with an Environmental Information Document pursuant to 40 CFR 6.101 prior to seeking coverage under this permit. This information shall be used by the Agency to evaluate the facility under the requirements of NEPA in an Environmental Review. The Agency will make a final decision regarding the direct or indirect impact of the discharge. The Agency will follow all administrative procedures required in this process. The permittee must obtain a copy of the Agency's final finding prior to the submission of a Notice of Intent to be covered by this general permit. In order to maintain eligibility, the permittee must implement any mitigation required of the facility as a result of the NEPA review process. Failure to implement mitigation measures upon which the Agency's NEPA finding is based is grounds for termination of permit coverage. In this way, EPA has established a procedure which allows for the appropriate review procedures to be completed by this Agency prior to the issuance of a permit under section 402 of the CWA to an operator of a facility subject to the new source performance standards of section 306 of the CWA. EPA believes that it has fulfilled its requirements under NEPA for this Federal action under section 402 of the CWA.

B. Historic Preservation

The National Historic Preservation Act (NHPA) requires Federal agencies to take into account the effects of Federal undertakings, including undertakings on historic properties that are either listed on, or eligible for listing on, the National Register of Historic Places. The term "Federal undertaking" is defined in the existing NHPA regulations to include any project, activity, or program under the direct or indirect jurisdiction of a Federal agency that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects for that project, activity, or program. See 36 CFR 800.2(a). Historic properties are defined in the NHPA regulations to include prehistoric or historic districts, sites, buildings, structures, or objects that are included in, or are eligible for inclusion in, the National Register of Historic Places. See 36 CFR 800.2(e).

Federal undertakings include the EPA's issuance of general NPDES permits. In light of NHPA requirements, EPA included a provision in the eligibility requirements of the 1995 MSGP for the consideration of the effects to historic properties. That provision provides that an applicant is eligible for permit coverage only if: (1) The applicant's storm water discharges and BMPs to control storm water runoff do not affect a historic property, or (2) the applicant has obtained, and is in compliance with, a written agreement between the applicant and the State Historic Preservation Officer (SHPO) that outlines all measures to be taken by the applicant to mitigate or prevent adverse effects to the historic property.

See Part I.B.6, 60 FR 51112 (September 29, 1995). When applying for permit coverage, applicants are required to certify in the NOI that they are in compliance with the Part I.B.6 eligibility requirements. Provided there are no other factors limiting permit eligibility, MSGP coverage is then granted 48 hours after the postmark on the envelope used to the mail the NOI.

The September 30, 1998 modification included two revisions of the original MSGP with respect to historic properties. First, EPA amended the original Part I.B.6.(ii) to include a reference to Tribal Historic Preservation Officers (THPOs) because MSGP coverage extends to Tribal lands and in recognition of the central role Tribal governments play in the protection of historic resources. Second, EPA included NHPA guidance and a list of SHPO and THPO addresses in a new Addendum I to the MSGP to assist applicants with the certification process for permit eligibility under this condition.

For the MSGP–2000, EPA is proposing to modify slightly the requirements of the first option for obtaining permit coverage to enhance the protection of historic properties. Permit coverage would only be available if storm water and allowable non-storm water discharges and "discharge-related activities" do not affect historic properties. "Discharge-related activities" are defined to include activities which cause, contribute to, or result in storm water and allowable non-storm water point source discharges, and measures such as the siting, construction and operation of BMPs to control, reduce of prevent pollution in the discharges. Discharge-related activity is included to ensure compliance with NHPA requirements to consider the effects of activities which are related to the activity which is permitted, *i.e.*, the storm water and non-storm water discharges.

Also, as discussed in Section VI.A.1 below, EPA is proposing to modify the Notice of Intent form to require that operators identify which of the above two options they are using to ensure eligibility for permit coverage under the MSGP. The NHPA guidance has also been modified to reflect the above changes, and appears in Addendum B in today's notice rather than Addendum I.

Facilities seeking coverage under the MSGP which cannot certify compliance with the NHPA requirements must submit individual permit applications to the permitting authority. For facilities already covered by the existing MSGP, the deadline for the individual applications is the same as that for NOIs requesting coverage under the reissued MSGP (December 29, 2000).

C. Endangered Species

The Endangered Species Act (ESA) of 1973 requires Federal Agencies such as EPA to ensure, in consultation with the U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (also known collectively as the "Services"), that any actions authorized, funded, or carried out by the Agency (*e.g.*, EPA issued NPDES permits authorizing discharges to waters of the United States) are not likely to jeopardize the continued existence of any Federally-listed endangered or threatened species or adversely modify or destroy critical habitat of such species (see 16 U.S.C. 1536(a)(2), 50 CFR part 402 and 40 CFR 122.49(c)).

For the 1995 MSGP, EPA conducted formal consultation with the Services which resulted in a joint Service biological opinion issued by the FWS on March 31, 1995, and by the NMFS on April 5, 1995, which concluded that the issuance and operation of the MSGP was not likely to jeopardize the existence of any listed endangered or threatened species, or result in the adverse modification or destruction of any critical habitat.

The existing MSGP contains a number of conditions to protect listed species and critical habitat. Permit coverage is only provided where:

- The storm water discharge(s), and the construction of BMPs to control storm water runoff, are not likely to adversely affect species identified in Addendum H of the permit; or
- The applicant's activity has received previous authorization under the Endangered Species Act and established an environmental baseline that is unchanged; or,
- The applicant is implementing appropriate measures as required by the Director to address adverse effects.

For the MSGP–2000, EPA is proposing to modify the ESA-related requirements for obtaining permit coverage to enhance the protection of listed species. First, permit coverage is only available if storm water and allowable non-storm water discharges and "discharge-related activities" avoid unacceptable effects to listed species. "Discharge-related activities" are defined to include activities which cause, contribute to or result in storm water and allowable non-storm water point source discharges, and measures such as the siting, construction and operation of BMPs to control, reduce or prevent pollution in the discharges. Inclusion of discharge-related activity is for compliance with ESA requirements to consider the effects of activities which are related to the activity which is permitted, *i.e.*, the storm water and non-storm water discharges. NOTE: The permit conditions, NOI requirements and/or related guidance for the final permit are subject to revision based on results of required ESA § 7 consultations with the Services over issuance of the permit.

In addition, operators seeking coverage under the proposed MSGP must certify that they are eligible for coverage under one of the following five options which are provided in Parts 1.2.3.6.3.1 through 5 of the permit:

1. No endangered or threatened species or critical habitat are in proximity to the facility or the point where authorized discharges reach the receiving water; or

2. In the course of a separate federal action involving the facility (*e.g.*, EPA processing request for an individual NPDES permit, issuance of a CWA Section 404 wetlands dredge and fill permit, etc.), formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service under section 7 of the ESA has been concluded and that consultation:

(a) Addressed the effects of the storm water and allowable non-storm water discharges and discharge-related activities on listed species and critical habitat and

(b) The consultation resulted in either a no jeopardy opinion or a written concurrence by the Service(s) on a finding that the storm water and allowable non-storm water discharges and discharge-related activities are not likely to adversely affect listed species or critical habitat; or

3. The activities are authorized under section 10 of the ESA and that authorization addresses the effects of the storm water and allowable non-storm water discharges and discharge-related activities on listed species and critical habitat; or

4. Using due diligence, the operator has evaluated the effects of the storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed endangered or threatened species and critical habitat and does not have reason to believe listed species or critical habitat would be adversely affected; or

5. The storm water and allowable non-storm water discharges and discharge-related activities were already addressed in another operator's certification of eligibility under Part 1.2.3.6.3.1 through 1.2.3.6.3.4 which included the facility's activities. By certifying eligibility under this Part, a permittee agrees to comply with any measures or controls upon which the other operator's certification was based.

The first four options listed above are similar to the eligibility provisions of the existing MSGP. Option 5 was added to account for situations such as an airport facility where one operator (*e.g.*, the airport authority) may have covered the entire airport through its certification. Option 5 would allow other operators to take advantage of such a certification without repeating the reviews conducted by the first operator. Options 1 and 4 are essentially the two halves of the 1995 MSGP's "unlikely to adversely effect" option. Option 1 would apply to operators who are not adversely affecting endangered species because listed species simply are not in proximity to their facility. Option 4 would apply to operators who have endangered species nearby and must look more closely at potential adverse effects and may need to adopt measures to reduce the risk of adverse effects on listed species or critical habitat. The separation of the two routes to determine that a facility is unlikely to adversely affect listed species, coupled with the new NOI requirement to indicate whether or not the Service was contacted in making the determination will also allow for better oversight of the permit. Under the 1995 permit, there was no way to tell from the NOI information whether the decision on eligibility was due to no species in the county, a discussion with the Service, or a simple unilateral decision by the operator.

Addendum H of the 1995 MSGP provided instructions to assist permittees in determining whether they meet the permit's ESA-related eligibility requirements. For today's proposed MSGP–2000, this guidance has been updated to reflect above requirements and appears as Addendum A. As noted in Section VI.A.1 below, EPA is also proposing to modify the Notice of Intent form to conform with new ESA requirements discussed above.

Addendum H of the 1995 MSGP contained a list of proposed and listed endangered and threatened species that could be affected by the discharges and measures to control pollutants in the discharges. EPA reinitiated and completed formal consultation with the Services for the September 30, 1998 modification of the MSGP. As a result of this consultation and in response to public comments on the modification, EPA updated the species list in Addendum H to include species that were listed or proposed for listing since the Addendum H list was originally compiled on March 31, 1995. EPA also decided to expand the list to include all of the terrestrial (*i.e.*, non-aquatic) listed and proposed species in recognition that those species may be impacted by permitted activities such as the construction and operation of the BMPs. The September 30, 1998 MSGP modification included the species list updated as of July 8, 1998 (63 FR 52494). The species list is also being updated on a regular basis and an electronic copy of the list is available at the Office of Wastewater Management website at "http://www.epa.gov/owm/esalst2.htm".

To be eligible for coverage under the reissued MSGP, facilities must review the updated list of species and their locations in conjunction with the Addendum A instructions for completing the application requirements under this permit. If an applicant determines that none of the species identified in the updated species list are found in the county in which the facility is located, then there is no likelihood of an adverse effect and they are eligible for permit coverage. Applicants must then certify that their storm water and allowable non-storm water discharges, and their discharge-related activities, are not likely to adversely affect species and will be granted MSGP permit coverage 48 hours after the date of the postmark on the envelope used to mail the NOI form, provided there are no other factors limiting permit eligibility.

If listed species are located in the same county as the facility seeking MSGP coverage, then the applicant must determine whether the species are in proximity to the storm water or allowable non-storm water discharges or discharge-related activities at the facility. A species is in proximity to a storm water or allowable non-storm water discharge when the species is located in the path or down gradient area through which or over which point source discharge flows from industrial activities to the point of discharge into the receiving water, and once discharged into the receiving water, in the immediate vicinity of, or nearby, the discharge point. A species is also in proximity if a species is located in the area of a site where discharge-related activities occur. If an applicant determines there are no species in proximity to the storm water or allowable non-storm water discharges, or discharge-related activities, then there is no likelihood of adversely affecting the species and the applicant is eligible for permit coverage.

If species are in proximity to the storm water or allowable non-storm water discharges or discharge-related activities, as long as they have been considered as part of a previous ESA authorization of the applicant's activity, and the environmental baseline established in that authorization is unchanged, the applicant may be covered under the permit. The environmental baseline generally includes the past and present impacts of all Federal, state and private actions that were occurring at the time the initial NPDES authorization and current ESA section 7 action by EPA or any other federal agency was taken. Therefore, if a permit applicant has received previous authorization and nothing has changed or been added to the environmental baseline established in the previous authorization, then

coverage under this permit will be provided.

In the absence of such previous authorization, if species identified in the updated species list are in proximity to the discharges or discharge-related activities, then the applicant must determine whether there is any likely adverse effect upon the species. This is done by the applicant conducting a further examination or investigation, or an alternative procedure, as described in the instructions in Addendum A of the permit. If the applicant determines that there is no likely adverse effect upon the species, then the applicant is eligible for permit coverage. If the applicant determines that there likely is, or will likely be an adverse effect, then the applicant is not eligible for MSGP coverage unless or until they can meet one of the other eligibility conditions.

All dischargers applying for coverage under the MSGP must provide in the application information on the Notice of Intent form: (1) A determination as to whether there are any listed species in proximity to the storm water or allowable non-storm water discharges or discharge related activity, and (2) An indication of which option under Part 1.2.3.6.3 of the MSGP they claim eligibility for permit coverage, and (3) a certification that their storm water and allowable non-storm water discharges and discharge-related activities are not likely to adversely affect listed species, or are otherwise eligible for coverage due to a previous authorization under the ESA. Coverage is contingent upon the applicant's providing truthful information concerning certification and abiding by any conditions imposed by the permit.

Dischargers who cannot determine if they meet one of the endangered species eligibility criteria cannot sign the certification to gain coverage under the MSGP and must apply to EPA for an individual NPDES storm water permit. For facilities already covered by the existing MSGP, the deadline for the individual applications is the same as that for NOIs requesting coverage under the reissued MSGP (December 29, 2000). As appropriate, EPA will conduct ESA section 7 consultation when issuing such individual permits.

Regardless of the above conditions, EPA may require that a permittee apply for an individual NPDES permit on the basis of possible adverse effects on species or critical habitats. Where there are concerns that coverage for a particular discharger is not sufficiently protective of listed species, the Services (as well as any other interested parties) may petition EPA to require that the discharger obtain an individual NPDES permit and conduct an individual section 7 consultation as appropriate.

In addition, the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his/her authorized representative, or the U.S. Fish and Wildlife Service (as well as any other interested parties) may petition EPA to require that a permittee obtain an individual NPDES permit. The permittee is also required to make the SWPPP, annual site compliance inspection report, or other information available upon request to the Assistant Administrator for Fisheries for the National Oceanic and Atmospheric Administration, or his/her authorized representative, or the U.S. Fish and Wildlife Service Regional Director, or his/her authorized representative.

These mechanisms allow for the broadest and most efficient coverage for the permittee while still providing for the most efficient protection of endangered species. They significantly reduce the number of dischargers that must be considered individually and therefore allow the Agency and the Services to focus their resources on those discharges that are indeed likely to adversely affect listed species. Straightforward mechanisms such as these allow applicants more immediate access to permit coverage, and eliminates "permit limbo" for the greatest number of permitted discharges. At the same time it is more protective of endangered species because it allows both agencies to focus on the real problems, and thus, provide endangered species protection in a more expeditious manner.

D. New Storm Water Discharges to Water Quality-Impaired or Water Quality-Limited Receiving Waters

Today's proposal includes a new provision (Part 1.2.3.8) which establishes eligibility conditions with regard to discharges to water quality-limited or water quality-impaired waters. For the purposes of this permit, "water quality-impaired" refers to a stream, lake, estuary, etc. that is not currently meeting its assigned water quality standards. These waters are also referred to as "303(d) waters" due to the requirement under that section of the CWA for States to periodically list all state waters that are not meeting their water quality standards. "Water quality-limited waters" refers to waterbodies for which a State had to develop individual Total Maximum Daily Loads (TMDLs), a tool which helps waterbodies meet their water quality standards. A TMDL is a calculation of the maximum amount of a pollutant that a waterbody can receive and still meet water quality standards, and an allocation of that amount to the pollutant's sources. Water quality standards are set by States, Territories, and Tribes. They identify the uses for each waterbody, for example, drinking water supply, contact recreation (swimming), and aquatic life support (fishing), and the scientific criteria to support that use. The Clean Water Act, section 303, establishes the water quality standards and TMDL programs.

Prior to submitting a Notice of Intent, any new discharger (see 40 CFR 122.2) to a 303(d) waterbody must be able to demonstrate compliance with 40 CFR 122.4(i). In essence, you are a new discharger if your facility started discharging after August 13, 1979 and your storm water was not previously permitted. Any discharger to a waterbody for which there is an approved TMDL must confirm that the TMDL allocated a portion of the load for storm water point source discharges. These provisions apply only to discharges containing the pollutant(s) for which the waterbody is impaired or the TMDL developed.

Part 1.2.3.8.1 (which applies to new storm water discharges and not to existing discharges) is designed to better ensure compliance with NPDES regulations at 40 CFR 122.4(i), which include certain special requirements for new discharges into impaired waterbodies. Lists of impaired waterbodies (sometimes referred to as 303(d) waterbodies) may be obtained from appropriate State environmental offices or their internet sites. NPDES regulations at 40 CFR 122.4(i) prohibit new discharges unless it can be shown that:

1. There are sufficient remaining pollutant load allocations to allow for the discharge; and
2. The existing dischargers into that segment are subject to compliance schedules designed to bring the segments into compliance with applicable water quality standards.

Part 1.2.3.8.2 (which applies to both new and existing storm water discharges) is designed to better ensure compliance with NPDES regulations at 40 CFR 122.4(d), which requires compliance with State water quality standards. The eligibility condition prohibits coverage of new or existing discharges of a particular pollutant where there is a TMDL, unless the discharge is consistent with the TMDL. Lists of waterbodies with TMDLs may be obtained from appropriate State environmental offices or their internet sites and from EPA's TMDL internet site at *http://www.epa.gov/owow/tmdl/index.html*. It should also be noted that EPA has recently proposed revisions to NPDES regulations pertaining to discharges to impaired receiving waters (64 FR 46058, August 23, 1999). How these revisions will ultimately apply to general permits is unclear at this time. However, the final MSGP may include additional requirements to ensure consistency with the final revisions.

E. Storm Water Discharges Subject to Anti-Degradation Provisions of Water Quality Standards

Part 1.2.3.9 of today's proposed MSGP includes a new provision which clarifies that discharges which do not comply with applicable anti-degradation provisions of State water quality standards are not eligible for coverage under the MSGP. This eligibility condition is designed to better ensure compliance with NPDES regulations at 40 CFR 122.4(d), which requires compliance with State water quality standards. Anti-degradation provisions may be obtained from the appropriate State environmental office or their internet sites.

F. Storm Water Discharges Previously Covered by an Individual Permit

The 1995 MSGP contained general prohibitions on coverage where a discharge was covered by another NPDES permit (Part I.B.3.d) and where a permit had been terminated other than at the request of the permittee (Part I.B.3.e.). It was therefore possible to obtain coverage by requesting termination of an individual permit and then submitting an NOI for coverage under the MSGP. This could be desirable from both the discharger's and EPA's perspective for a variety of reasons, for example, where a wastewater permit included storm water outfalls, but the wastewater outfalls had been eliminated. Being able to use the general permit would reduce the application cost to the permittee and the administrative burden of permit issuance to the Agency. Today's permit clarifies the conditions under which transfer from an individual permit to this general permit would be acceptable (Part 1.2.3.3.2).

In order to avoid conflict with the anti-backsliding provisions of the CWA, transfer from an individual permit to the MSGP will only be allowed where all of the following conditions are met:

- All wastewater discharges in the individual permit have been eliminated and only storm water discharges and eligible non-storm water discharges remain (*e.g.*, wastewater is now discharged to a municipal sanitary sewer); and
- The individual permit did not contain numeric water quality-based effluent limitations developed for the storm water component of the discharge; and
- The permittee includes any specific BMPs for storm water required under the individual permit in their storm water pollution prevention plan.
- Implementation of a comprehensive pollution prevention plan for the entire facility (as opposed to selected outfalls in an individual permit) and compliance will all other conditions of the MSGP is deemed to be at least as stringent a technology-based permit limit as the conditions of the individual permit. This assumption is only made where the previous permit did not contain any specific water quality-based effluent limitations on storm water discharges (*e.g.*, storm water contained high levels of zinc and the individual permit contained a zinc limit developed to assure compliance with the State water quality criteria).

VI. Summary of Common Permit Requirements

The following section describes the permit conditions common to discharges from all the industrial activities covered by today's proposal. These conditions are largely the same as the conditions of the existing MSGP.

A. Notification Requirements

General permits for storm water discharges associated with industrial activity must require the submission of a Notice of Intent (NOI) prior to the authorization of such discharges (see 40 CFR 122.28(b)(2)(i), April 2, 1992 (57 FR 11394)). Consistent with these regulatory requirements, today's proposed MSGP establishes NOI requirements. These requirements apply to facilities currently covered by the existing MSGP, as well as new facilities seeking coverage. However, as noted earlier, EPA is proposing to modify the NOI form to allow the discharger, the Agency and the public to more easily determine permit eligibility and the sector-specific conditions that will apply to the facility. The proposed revised NOI form is found in Addendum D of today's proposed MSGP, and is also currently being reviewed by the Office of Management and Budget under the Paperwork Reduction Act. The information requirements of the revised NOI form are described below:

1. Contents of NOIs

a. An indication of which permit the operator is filing the NOI for (*e.g.*, a facility in New Hampshire would be filing for coverage under permit NHR05*###, a facility located on Navajo Reservation lands in New Mexico under the AZR05*##I permit, a private contractor operating a federal facility in Colorado that is not located on Indian Country lands under the COR05*##F permit, etc.);

b. The name, address, and telephone number of the operator filing the NOI for permit coverage;

c. An indication of whether the owner of the site is a Federal, State, Tribal, private, or other public entity;

d. The name (or other identifier), address, county, and latitude/longitude of the facility for which the NOI is submitted (latitude/longitude will be accepted in either degree-minute-second or decimal format);

e. An indication of whether the facility is located on Indian Country lands;

f. An indication of whether the facility is a federal facility operated by the federal government;

g. The name of the receiving water(s);

h. The name of the municipal operator if the discharge enters a municipal separate storm sewer system prior to discharge to a water of the U.S.;

i. Up to four 4-digit Standard Industrial Classification (SIC) codes that best represent the principal products produced or services rendered, including hazardous waste treatment, storage, or disposal activities, land disposal facilities that receive or have received any industrial waste, steam electric power generating facilities, or treatment works treating domestic sewage;

j. Identification of applicable sector(s) in this permit, as designated in Table 1, for facility discharges associated with industrial activity the operator wishes to have covered under this permit;

k. Certification that a storm water pollution prevention plan (SWPPP) meeting the requirements of Part 4 has been developed (with a copy of the permit language to the plan);

l. Based on the instructions in Addendum A, whether any listed or proposed threatened or endangered species, or designated critical habitat, are in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit;

m. Under which Part(s) of Part 1.2.3.6 (Endangered Species) the applicant is certifying eligibility and whether the FWS or NMFS was involved in making the determination of eligibility;

n. Whether any historic property listed or eligible for listing on the National Register of Historic Places is located on the facility or in proximity to the discharge;

o. Under which Part(s) of Part 1.2.3.7 (Historic Properties) the applicant is

certifying eligibility and whether the SHPO or THPO was involved in the determination of eligibility;

p. A signed and dated certification, signed by a authorized representative of the facility as detailed in Part 9.7 that certifies the following:

"I certify under penalty of law that I have read and understand the Part 1.2 eligibility requirements for coverage under the multi-sector storm water general permit including those requirements relating to the protection of endangered or threatened species or critical habitat. To the best of my knowledge, the storm water and allowable non-storm discharges authorized by this permit (and discharged related activities), are not likely and will not likely, adversely affect endangered or threatened species or critical habitat, or are otherwise eligible for coverage under Part 1.2.3.6 of the permit. To the best of my knowledge, I further certify that such discharges and discharge related activities do not have an effect on properties listed or eligible for listing on the National Register or Historic Places under the National Historic Preservation Act, or are otherwise eligible for coverage under Part 1.2.3.7 of the permit. I understand that continued coverage under the multi-sector storm water general permit is contingent upon maintaining eligibility as provided for in Part 1.2"

The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOI. Completed NOI forms must be submitted to the Storm Water Notice of Intent (4203), 401 M Street, SW., Washington, DC 20460.

Under the 1995 MSGP, continued coverage under the general permit (should it expire without a replacement permit being issued) was available provided the permittee applied for the replacement general permit according to the deadlines established in that permit. The new MSGP has clarified this process at Part 9.2.

In the future (but not at the present time), EPA may also allow alternate means of NOI submission (such as electronic submission). An alternate means of NOI submission may be used by operators provided EPA has informed the operator of the acceptability of the alternative.

2. Deadlines

For facilities currently covered by the existing MSGP, the deadline for submission of an NOI requesting coverage under the MSGP–2000 is December 29, 2000 (90 days after expiration of the existing MSGP). For these facilities, the requirements of the existing MSGP are incorporated into the MSGP–2000 and would continue to apply during the interim period subsequent to the expiration of the existing MSGP, but prior to submission of the NOI requesting coverage under the reissued MSGP.

Facilities currently covered by the existing MSGP who cannot immediately determine if they are eligible for coverage under the MSGP–2000 may nevertheless be covered for up to 270 days provided an application for an alternative permit is submitted within 90 days. This interim coverage allows permit coverage while the permittee assesses their eligibility for the MSGP–2000 and, if necessary, still meet the 180 day lead time required for applications for individual permits.

For facilities commencing operations after reissuance of the MSGP, the NOI must be submitted at least two days prior to the commencement of the new industrial activity. New operators of existing facilities must also submit the NOI at least two days prior to assuming operational control at existing facilities.

Dischargers who submit a complete NOI in accordance with the MSGP requirements are authorized to discharge storm water associated with industrial activity two days after the date the NOI is postmarked, unless otherwise notified by EPA. EPA may deny coverage under the MSGP and require submission of an individual NPDES permit application based on a review of the completeness and/or content of the NOI or other information (*e.g.*, Endangered Species Act compliance, National Historic Preservation Act Compliance, water quality information, compliance history, history of spills, etc.). Where EPA requires a discharger authorized under the MSGP to apply for an individual NPDES permit (or an alternative general permit), EPA will notify the discharger in writing that a permit application (or different NOI) is required by an established deadline. Coverage under the MSGP will automatically terminate if the discharger fails to submit the required permit application in a timely manner. Where the discharger does submit a requested permit application, coverage under the MSGP will automatically terminate on the effective date of the issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee.

A discharger is not precluded from submitting an NOI at a later date than described above. However, in such instances, EPA may bring appropriate enforcement actions.

3. Municipal Separate Storm Sewer System Operator Notification

Operators of storm water discharges associated with industrial activity that discharge through a large or medium municipal separate storm sewer system (MS4) or a municipal system designated by the Director,[1] must (upon request of the MS4 operator) submit a copy of the NOI to the municipal operator of the system receiving the discharge. This proposed requirement differs from the existing MSGP which requires that a copy of the NOI be sent to the MS4 operator. The MSGP is proposed to be modified in this regard to reduce paperwork requirements, and in consideration of the fact that most large and medium MS4 operators already have good information concerning the industrial facilities discharging into their MS4s.

EPA wishes to ensure a coordinated program between EPA and operators of MS4s for controlling pollutants in storm water discharges associated with industrial activity which enter an MS4. Such a coordinated program was intended by EPA's original storm water permit application regulations of November 16, 1990 (47 FR 47990). Additional discussion of this matter can be found in the original proposed MSGP (58 FR 61146).

4. Notice of Termination

Where a discharger is able to eliminate the storm water discharges associated with industrial activity from a facility, the discharger may submit a Notice of Termination (NOT) form (or photocopy thereof) provided by the Director. Today's proposed MSGP also differs from the existing MSGP by requiring that an NOT be submitted within 30 days after one or both of the following two conditions having been met:

a. A new owner/operator has assumed responsibility for the facility; or

b. The permittee has ceased operations at the facility and there no longer are discharges of storm water associated with industrial activity from the facility;

A copy of the NOT and instructions for completing the NOT are included in

[1] The terms large and medium municipal separate storm sewer systems (systems serving a population of 100,000 or more) are defined at 40 CFR 122.26(b)(4) and (7). Some of the cities and counties in which these systems are found are listed in Appendices F, G, H, and I to 40 CFR Part 122. Other municipal systems have been designated by EPA on a case-by-case basis or have brought into the program based upon the 1990 Census.

Addendum E. The NOT form requires the following information:

a. Name, mailing address, and location of the facility for which the notification is submitted. Where a street address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter;

b. The name, address and telephone number of the operator addressed by the Notice of Termination;

c. The NPDES permit number for the storm water discharge associated with industrial activity identified by the NOT;

d. An indication of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

e. The following certification:

I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the industrial activity. I understand that by submitting this Notice of Termination I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an NPDES permit. I also understand that the submission of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

NOTs are to be sent to the Storm Water Notice of Termination (4203), 401 M Street SW, Washington, DC 20460.

The NOT must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements is provided in the instructions accompanying the NOT.

5. Conditional Exclusion for No Exposure

The proposed MSGP includes a special provision (Part 1.5 of the permit) which provides that a facility may discontinue permit coverage if the facility determines that it is eligible for the "no exposure" permit exemption which was created by EPA as part of the promulgation of the Phase II storm water regulations (64 FR 68722). A notice of termination is not required to discontinue permit coverage under these circumstances. However, in accordance with the Phase II regulations, a no exposure certification must be filed with the permitting authority.

It should also be noted that facilities operating under the existing MSGP are eligible, as of the effective date of the Phase II regulations, to submit no exposure certifications immediately if they meet the criteria for no exposure. No exposure certification renewals must be submitted five years from the time they are first submitted (assuming the facility still qualifies for the exemption). If conditions change at a facility such that renewed MSGP coverage is needed, the facility may submit an NOI requesting renewed coverage.

EPA is also requesting comment on whether including a copy of the "No Exposure" form and instructions as an addendum to the permit would be useful enough to outweigh the increase in length of the permit and cost of publication.

B. Special Conditions

The conditions of today's proposed MSGP have been designed to comply with the technology-based standards of the CWA (BAT/BCT). Based on a consideration of the appropriate factors for BAT and BCT requirements, and a consideration of the factors and options for controlling pollutants in storm water discharges associated with industrial activity, the proposed MSGP lists a set of tailored requirements for developing and implementing storm water pollution prevention plans (SWPPPs), and for selected discharges, numeric effluent limitations.[2] This is same approach as in the existing MSGP.

Section VIII of the fact sheet for the 1995 MSGP summarized the industry-specific BMP options for controlling pollutants in storm water discharges associated with industrial activity for the various industrial sectors covered by the MSGP. Section VIII of today's fact sheet does not repeat the information from the 1995 fact sheet; however, updates are provided as appropriate.

Section VI.B.4 of today's fact sheet discusses the storm water discharges which are subject to numeric effluent limitations. For other discharges covered by the proposed MSGP, the permit conditions reflect EPA's proposed decision to identify a number of BMP and traditional storm water management practices which prevent pollution in storm water discharges as the BAT/BCT level of control for the majority of storm water discharges covered by this permit. The permit conditions applicable to these discharges are not numeric effluent limitations, but rather are flexible requirements for developing and implementing site specific plans to minimize and control pollutants in storm water discharges associated with industrial activity.

EPA is authorized under 40 CFR 122.44(k)(2) to impose BMPs in lieu of numeric effluent limitations in NPDES permits when the Agency finds numeric effluent limitations to be infeasible. EPA may also impose BMPs which are "reasonably necessary * * * to carry out the purposes of the Act" under 40 CFR 122.44(k)(3). Both of these standards for imposing BMPs were recognized in *NRDC* v. *Costle*, 568 F.2d 1369, 1380 (D.C. Cir. 1977). The conditions in the proposed MSGP are issued under the authority of both of these regulatory provisions. The pollution prevention or BMP requirements in today's proposed permit operate as limitations on effluent discharges that reflect the application of BAT/BCT. This is because the BMPs identified require the use of source control technologies which, in the context of the MSGP, are the best available of the technologies economically achievable (or the equivalent BCT finding). See *NRDC* v. *EPA*, 822 F.2d 104, 122–23 (D.C. Cir. 1987) (EPA has substantial discretion to impose nonquantitative permit requirements pursuant to Section 402(a)(1)).

1. Prohibition of Non-Storm Water Discharges

Today's proposal includes basically the same provisions pertaining to non-storm water discharges as the current MSGP. Like the existing MSGP, the proposed MSGP does not authorize non-storm water discharges that are mixed with storm water except as provided below.

The proposed MSGP would authorize one additional non-storm water discharge: mist discharges which originate from cooling towers and which are deposited at an industrial facility and may be discharged. During the term of the existing MSGP, these discharges were brought to the attention of EPA with a request that the discharges be authorized under the reissued MSGP.

[2] Section 9.12.2 of the proposed MSGP provides that facilities with storm water discharges associated with industrial activity which, based on an evaluation of site specific conditions, believe that the appropriate conditions of this permit do not adequately represent BAT and BCT requirements for the facility may submit to the Director an individual application (Form 1 and Form 2F). A detailed explanation of the reasons why the conditions of the available general permits do not adequately represent BAT and BCT requirements for the facility as well as any supporting documentation must be included.

The mist discharges would be authorized under the proposed MSGP provided:

a. The permittee has evaluated the potential for the discharges to be contaminated by chemicals used in the cooling tower and determined that the levels of such chemicals in the discharges would not cause or contribute to a violation of an applicable water quality standard; and

b. The permittee has addressed this source of pollutants with appropriate BMPs in the SWPPP.

The other non-storm water discharges that would be authorized under today's proposed MSGP are the same as those in the existing MSGP and include discharges from fire fighting activities; fire hydrant flushings; potable water sources, including waterline flushings; irrigation drainage; lawn watering; routine external building washdown without detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; compressor condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents that are combined with storm water discharges associated with industrial activity.

To be authorized under the proposed MSGP, these other sources of non-storm water (except flows from fire fighting activities) must be identified in the SWPPP prepared for the facility. (SWPPP requirements are discussed in more detail below). Where such discharges occur, the SWPPP must also identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

Today's proposal does not require pollution prevention measures to be identified and implemented for non-storm water flows from fire-fighting activities because these flows will generally be unplanned emergency situations where it is necessary to take immediate action to protect the public.

The prohibition of unpermitted non-storm water discharges in this proposed MSGP ensures that non-storm water discharges (except for those classes of non-storm water discharges that are conditionally authorized in Part 1.2.2.2 of the proposed MSGP) are not inadvertently authorized by the permit. Where a storm water discharge is mixed with non-storm water that is not authorized by today's proposed MSGP or another NPDES permit, the discharger should submit the appropriate application forms (Forms 1, 2C, and/or 2E) to gain permit coverage of the non-storm water portion of the discharge.

2. Releases of Reportable Quantities of Hazardous Substances and Oil

As discussed below, today's proposed MSGP includes the same provisions pertaining to releases of reportable quantities of hazardous substances and oil as the existing MSGP.

a. The proposed MSGP provides that the discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the SWPPP developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR part 117, or 40 CFR part 302 during a 24-hour period, the following actions must be taken:

(1) Any person in charge of the facility that discharges hazardous substances or oil is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC, metropolitan area, 202–426–2675) in accordance with the requirements of 40 CFR part 117, and 40 CFR part 302 as soon as they have knowledge of the discharge.

(2) The SWPPP for the facility must be modified within 14 calendar days of knowledge of the release to provide a description of the release, an account of the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and it must be modified where appropriate.

(3) The permittee must also submit to EPA within 14 calendar days of knowledge of the release a written description of the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken to modify the SWPPP for the facility.

b. Anticipated discharges containing a hazardous substance in an amount equal to or in excess of reporting quantities are those caused by events occurring within the scope of the relevant operating system. Facilities that have more than 1 anticipated discharge per year containing a hazardous substance in an amount equal to or in excess of a reportable quantity are required to:

(1) Submit notifications of the first release that occurs during a calendar year (or for the first year of this permit, after submission of an NOI); and

(2) Provide a written description in the SWPPP of the dates on which such releases occurred, the type and estimate of the amount of material released, and the circumstances leading to the releases. In addition, the SWPPP must address measures to minimize such releases.

c. Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a non-storm water discharge (*e.g.*, a spill of oil into a separate storm sewer), that discharge is not authorized by the MSGP and the discharger must report the discharge as required under 40 CFR part 110, 40 CFR part 117, or 40 CFR part 302. In the event of a spill, the requirements of section 311 of the CWA and other applicable provisions of sections 301 and 402 of the CWA continue to apply. This approach is consistent with the requirements for reporting releases of hazardous substances and oil that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

3. Co-Located Industrial Facilities

Like the existing MSGP, today's proposal includes requirements pertaining to co-located industrial facilities. However, these requirements have been modified from the requirements of the existing MSGP to clarify their applicability. Co-located industrial activities occur when activities being conducted onsite fall into more than one of the categories of the industrial facilities listed in Part 1.2.1 of the proposed MSGP–2000 (*e.g.*, a landfill at a wood treatment facility). Facilities operating under the existing MSGP have sometimes been unclear whether certain limited activities (*e.g.*, minor vehicle maintenance activities at an industrial plant) would trigger the MSGP's requirements regarding co-located activities.

If you have co-located industrial activities on-site that are described in a sector(s) other than your primary sector, you must comply with all other applicable sector-specific conditions found in Part 6 for the co-located industrial activities. The extra sector-specific requirements are applied only to those areas of your facility where the extra-sector activities occur. An activity at a facility is not considered co-located if the activity, when considered separately, does not meet the description of a category of industrial activity covered by the storm water

regulations, and identified by the MSGP–2000 SIC code list. For example, unless you are actually hauling substantial amounts of freight or materials with your own truck fleet or are providing a trucking service to outsiders, simple maintenance of vehicles used at your facility is unlikely to meet the SIC code group 42 description of a motor freight transportation facility. Even though Sector P may not apply, the runoff from your vehicle maintenance facility would likely still be considered storm water associated with industrial activity. As such, your SWPPP must still address the runoff from the vehicle maintenance facility—although not necessarily with the same degree of detail as required by Sector P—but you would not be required to monitor as per Sector P.

In the event there truly are co-located activities at your facility, the proposed MSGP–2000 authorizes, as does the existing MSGP, all storm water discharges provided that your facility complies with all SWPPP and monitoring requirements for each co-located activity. By monitoring the discharges from the different industrial activities, you can better determine the effectiveness of your SWPPP for controlling all major pollutants of concern in your storm water discharges. However, if monitoring for the same parameter is required for more than one sector (and the different industrial activities drain to the same outfall), then only one sample analysis is required for that parameter.

4. Numeric Effluent Limitations

Today's proposal retains the numeric effluent limitations which are included in the existing MSGP, and also includes the effluent limitations guidelines which EPA recently finalized for certain storm water discharges from new and existing hazardous and non-hazardous landfills (65 FR 3007, January 19, 2000). The new effluent limitations guidelines for these landfills are discussed in more detail in the Sections VIII.K and L of this fact sheet (Special Requirements for Discharges Associated with Industry Activities).

The proposed MSGP–2000 retains the numeric effluent limitations from the existing MSGP for the following discharges: Coal pile runoff (including runoff from steam electric power plants subject to 40 CFR part 423 requirements), discharges from phosphate fertilizer manufacturing (40 CFR part 418), asphalt paving and roofing emulsions (40 CFR part 443), cement manufacturing materials storage pile runoff (40 CFR part 411), and discharges resulting from the spray down of lumber and wood products storage yards (wet decking) (40 CFR part 429). In addition, the proposed MSGP authorizes mine dewatering discharges from construction sand and gravel, industrial sand, and crushed stone facilities (40 CFR part 436) in EPA Regions 1, 2, 6, 10 and Arizona. The actual numeric effluent limitations can be found in Part 6 of the proposed MSGP.

5. Compliance With Water Quality Standards

The existing MSGP does not specifically address compliance with water quality standards (WQS), other than to exclude from coverage discharges which may contribute to an exceedance of WQS. Today's proposed MSGP includes the same restriction on eligibility, and in Part 3.3 also includes certain requirements if exceedances occur for discharges covered by the MSGP. If a discharge authorized under the proposed MSGP is later discovered to cause, or have the reasonable potential to cause or contribute to a violation of a WQS, the permitting authority will inform the permittee of the violation. The permittee must then take all necessary actions to ensure future discharges do not cause or contribute to the violation of WQS, and document these actions in the SWPPP. If violations remain or reoccur, coverage under the MSGP may be terminated by the permitting authority and an alternate permit issued. The proposed MSGP also clarifies that compliance with this requirement does not preclude enforcement actions as provided by the Clean Water Act for the underlying violation.

C. Common Pollution Prevention Plan Requirements

Like the existing MSGP, today's proposal requires that all facilities which intend to be covered by the MSGP for storm water discharges associated with industrial activity prepare and implement a SWPPP. The MSGP addresses pollution prevention plan requirements for a number of categories of industries. Following below is a discussion of the common permit requirements for all industries; special requirements for storm water discharges associated with industrial activity through large and medium MS4s; special requirements for facilities subject to EPCRA section 313 reporting requirements; and special requirements for facilities with outdoor salt storage piles. These are the permit requirements which apply to discharges associated with any of the industrial activities covered by today's proposed permit. These common requirements may be amended or further clarified in the industry-specific SWPPP requirements which are found in Part 6 of the proposed MSGP. These industry-specific requirements are additive for facilities where co-located industrial activities occur.

The pollution prevention approach in today's proposed MSGP focuses on two major objectives: (1) To identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from the facility; and (2) Ensure implementation of measures to minimize and control pollutants in storm water discharges associated with industrial activity from the facility.

The SWPPP requirements in today's proposed MSGP are intended to facilitate a process whereby the operator of the industrial facility thoroughly evaluates potential pollution sources at the site and selects and implements appropriate measures designed to prevent or control the discharge of pollutants in storm water runoff. The process involves the following four steps: (1) Formation of a team of qualified plant personnel who will be responsible for preparing the plan and assisting the plant manager in its implementation; (2) assessment of potential storm water pollution sources; (3) selection and implementation of appropriate management practices and controls; and (4) periodic evaluation of the effectiveness of the plan to prevent storm water contamination.

EPA believes the pollution prevention approach is the most environmentally sound and cost-effective way to control the discharge of pollutants in storm water runoff from industrial facilities. This position is supported by the results of a comprehensive technical survey EPA completed in 1979.[3] The survey found that two classes of management practices are generally employed at industries to control the nonroutine discharge of pollutants from sources such as storm water runoff, drainage from raw material storage and waste disposal areas, and discharges from places where spills or leaks have occurred. The first class of management practices includes those that are low in cost, applicable to a broad class of industries and substances, and widely considered essential to a good pollution control program. Some examples of practices in this class are good housekeeping, employee training, and spill response and prevention

[3] See "Storm Water Management for Industrial Activities," EPA, September 1992, EPA–832–R–92–006.

procedures. The second class includes management practices that provide a second line of defense against the release of pollutants. This class addresses containment, mitigation, and cleanup. Since publication of the 1979 survey, EPA has imposed management practices and controls in NPDES permits on a case-by-case basis. The Agency also has continued to review the appropriateness and effectiveness of such practices,[4] as well as the techniques used to prevent and contain oil spills.[5] Experience with these practices and controls has shown that they can be used in permits to reduce pollutants in storm water discharges in a cost-effective manner. In keeping with both the present and previous administration's objective to attain environmental goals through pollution prevention, pollution prevention has been and continues to be the cornerstone of the NPDES permitting program for storm water. EPA has developed guidance entitled "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," September 1992, to assist permittees in developing and implementing pollution prevention measures.

Note: The discussions of the SWPPP requirements are grouped in subject areas and do not follow the exact order of the permit conditions.

1. Pollution Prevention Team (Part 4.2.1)

As a first step in the process of developing and implementing a SWPPP, permittees are required to identify a qualified individual or team of individuals to be responsible for developing the plan and assisting the facility or plant manager in its implementation. When selecting members of the team, the plant manager should draw on the expertise of all relevant departments within the plant to ensure that all aspects of plant operations are considered when the plan is developed. The plan must clearly describe the responsibilities of each team member as they relate to specific components of the plan. In addition to enhancing the quality of communication between team members and other personnel, clear delineation of responsibilities will ensure that every aspect of the plan is addressed by a specified individual or group of individuals. Pollution Prevention Teams may consist of one individual where appropriate (*e.g.*, in certain small businesses with limited storm water pollution potential).

2. Description of the Facility and Potential Pollution Sources (Part 4.2.2)

Each SWPPP must describe activities, materials, and physical features of the facility that may contribute significant amounts of pollutants to storm water runoff or, during periods of dry weather, result in pollutant discharges through the separate storm sewers or storm water drainage systems that drain the facility. This assessment of storm water pollution risk will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aid in the selection of appropriate structural and nonstructural control techniques. Some operators may find that significant amounts of pollutants are running onto the facility property. Such operators should identify and address the contaminated runon in the SWPPP. If the runon cannot be addressed or diverted by the permittee, the permitting authority should be notified. If necessary, the permitting authority may require the operator of the adjacent facility to obtain a permit.

Part 6 of the proposed MSGP includes industry-specific requirements for the various industry sectors covered by today's proposed permit. All SWPPPs generally must describe the following elements:

a. Description of the Facility Site and Receiving Waters/Wetlands (Parts 4.2.2 & 4.2.3): The plan must contain a map of the site that shows the location of outfalls covered by the permit (or by other NPDES permits), the pattern of storm water drainage, an indication of the types of discharges contained in the drainage areas of the outfalls, structural features that control pollutants in runoff,[6] surface water bodies (including wetlands), places where significant materials[7] are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the date of the submission of an NOI to be covered under this permit. The map also must show areas where the following activities take place: Fueling, vehicle and equipment maintenance and/or cleaning, loading and unloading, material storage (including tanks or other vessels used for liquid or waste storage), material processing, and waste disposal. For areas of the facility that generate storm water discharges with a reasonable potential to contain significant amounts of pollutants, the map must indicate the probable direction of storm water flow and the pollutants likely to be in the discharge. Flows with a significant potential to cause soil erosion also must be identified. In order to increase the readability of the map, the inventory of the types of discharges contained in each outfall may be kept as an attachment to the site map.

b. Summary of Potential Pollutant Sources (Part 4.2.4): The description of potential pollution sources culminates in a narrative assessment of the risk potential that sources of pollution pose to storm water quality. This assessment should clearly point to activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to storm water. Any such activities, materials, or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the facility operator must consider the following activities: Loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The assessment must list any significant pollution sources at the site and identify the pollutant parameter or parameters (*i.e.*, biochemical oxygen demand, suspended solids, etc.) associated with each source.

c. Significant Spills and Leaks (Part 4.2.5): The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the 3 years prior to the date of the submission of an NOI to be covered under this permit. Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under section 311 of CWA (see 40 CFR 110.10 and 40 CFR 117.21) or section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (see 40 CFR 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or a hazardous substance.

The listing should include a description of the causes of each spill or leak, the actions taken to respond to each release, and the actions taken to prevent similar such spills or leaks in the future. This effort will aid the facility operator as she or he examines existing spill prevention and response procedures and develops any additional procedures necessary to fulfill the requirements set forth in Parts 4 and 6 of the proposed permit.

d. Allowable and Prohibited Non-storm Water Discharges (Part 4.4): Each SWPPP must include a certification, signed by an authorized individual, that discharges from the site have been tested or evaluated for the presence of non-storm water discharges. The certification must describe possible significant sources of non-storm water, the results of any test and/or evaluation conducted to detect such discharges, the test method or evaluation criteria used, the dates on which tests or evaluations were performed, and the onsite drainage points directly observed during the test or evaluation. Acceptable test or evaluation techniques include dye tests, television surveillance, observation of outfalls or other appropriate locations during dry weather, water balance calculations, and analysis of piping and drainage schematics.[8]

Except for flows that originate from fire fighting activities, sources of non-storm water that are specifically identified in the permit as being eligible for authorization under the general permit must be identified in the plan. SWPPPs must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water discharge.

EPA recognizes that certification may not be feasible where facility personnel do not have access to an outfall, manhole, or other point of access to the conduit that ultimately receives the discharge. In such cases, the plan must describe why certification was not feasible. Permittees who are not able to certify that discharges have been tested or evaluated must notify the Director in accordance with Part 4.4 of the proposed MSGP.

e. Sampling Data (Part 4.2.6): Any existing data on the quality or quantity of storm water discharges from the facility must be described in the plan, including data collected for Part 2 of the group application process. These data may be useful for locating areas that have contributed pollutants to storm water. The description should include a discussion of the methods used to collect and analyze the data. Sample collection points should be identified in the plan and shown on the site map.

3. Selection and Implementation of Storm Water Controls (Part 4.2.7, *et al.*)

Following completion of the source identification and assessment phase, the permit requires the permittee to evaluate, select, and describe the pollution prevention measures, BMPs, and other controls that will be implemented at the facility. BMPs include processes, procedures, schedules of activities, prohibitions on practices, and other management practices that prevent or reduce the discharge of pollutants in storm water runoff.

EPA emphasizes the implementation of pollution prevention measures and BMPs that reduce possible pollutant discharges at the source. Source reduction measures include, among others, preventive maintenance, chemical substitution, spill prevention, good housekeeping, training, and proper materials management. Where such practices are not appropriate to a particular source or do not effectively reduce pollutant discharges, EPA supports the use of source control measures and BMPs such as material segregation or covering, water diversion, and dust control. Like source reduction measures, source control measures and BMPs are intended to keep pollutants out of storm water. The remaining classes of BMPs, which involve recycling or treatment of storm water, allow the reuse of storm water or attempt to lower pollutant concentrations prior to discharge.

The SWPPP must discuss the reasons each selected control or practice is appropriate for the facility and how each will address one or more of the potential pollution sources identified in the plan. The plan also must include a schedule specifying the time or times during which each control or practice will be implemented. In addition, the plan should discuss ways in which the controls and practices relate to one another and, when taken as a whole, produce an integrated and consistent approach for preventing or controlling potential storm water contamination problems. The permit requirements included for the various industry sectors in Part 6 of today's proposed MSGP generally require that the portion of the plan that describes the measures and controls address the following minimum components.

When "minimize/reduce" is used relative to SWPPP measures, EPA means to consider and implement BMPs that will result in an improvement over the baseline conditions as it relates to the levels of pollutants identified in storm water discharges with due consideration to economic feasibility and effectiveness.

a. Nonstructural Controls

- Good Housekeeping. Good housekeeping involves using practical, cost-effective methods to identify ways to maintain a clean and orderly facility and keep contaminants out of separate storm sewers. It includes establishing protocols to reduce the possibility of mishandling chemicals or equipment and training employees in good housekeeping techniques. These protocols must be described in the plan and communicated to appropriate plant personnel.
- Minimizing Exposure. Where practicable, protecting potential pollutant sources from exposure to storm water is an important control option. Pollutants that are never allowed to contaminate storm water do not require development of "treatment" type BMPs. Elimination of all exposure to storm water may also make the facility for the "No Exposure Certification" exclusion from permitting at 40 CFR 122.26(g)
- Preventive Maintenance. Permittees must develop a preventive maintenance program that involves regular inspection and maintenance of storm water management devices and other equipment and systems. The program description should identify the devices, equipment, and systems that will be inspected; provide a schedule for inspections and tests; and address appropriate adjustment, cleaning, repair, or replacement of devices, equipment, and systems. For storm water management devices such as catch basins and oil/water separators, the preventive maintenance program should provide for periodic removal of debris to ensure that the devices are

[4] For example, see "Best Management Practices: Useful Tools for Cleaning Up," Thron, H. Rogoshewski, P., 1982, Proceedings of the 1982 Hazardous Material Spills Conference; "The Chemical Industries' Approach to Spill Prevention," Thompson, C., Goodier, J. 1980, Proceedings of the 1980 National Conference of Control of Hazardous Materials Spills; a series of EPA memorandum entitled "Best Management Practices in NPDES Permits—Information Memorandum," 1983, 1985, 1986, 1987, 1988; Review of Emergency Systems: Report to Congress," EPA, 1988; and "Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity," EPA, 1991.

[5] See for example, "The Oil Spill Prevention, Control and Countermeasures Program Task Force Report," EPA, 1988; and "Guidance Manual for the Development of an Accidental Spill Prevention Program," prepared by SAIC for EPA, 1986.

[6] Nonstructural features such as grass swales and vegetative buffer strips also should be shown.

[7] Significant materials include, but are not limited to the following: Raw materials; fuels; solvents, detergents, and plastic pellets; finished materials, such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); any chemical the facility is required to report pursuant to EPCRA section 313; fertilizers; pesticides; and waste products, such as ashes, slag, and sludge that have the potential to be released with storm water discharges. (See 40 CFR 122.26(b)(8)).

[8] In general, smoke tests should not be used for evaluating the discharge of non-storm water to a separate storm sewer as many sources of non-storm water typically pass through a trap that would limit the effectiveness of the smoke test.

operating efficiently. For other equipment and systems, the program should reveal and enable the correction of conditions that could cause breakdowns or failures that may result in the release of pollutants.

• Spill Prevention and Response Procedures. Based on an assessment of possible spill scenarios, permittees must specify appropriate material handling procedures, storage requirements, containment or diversion equipment, and spill cleanup procedures that will minimize the potential for spills and in the event of a spill enable proper and timely response. Areas and activities that typically pose a high risk for spills include loading and unloading areas, storage areas, process activities, and waste disposal activities. These activities and areas, and their accompanying drainage points, must be described in the plan. For a spill prevention and response program to be effective, employees should clearly understand the proper procedures and requirements and have the equipment necessary to respond to spills.

• Routine Inspections. In addition to the comprehensive site evaluation, facilities are required to conduct periodic inspections of designated equipment and areas of the facility. Industry-specific requirements for such inspections, if any, are set forth in Part 6 of the proposed MSGP. When required, qualified personnel must be identified to conduct inspections at appropriate intervals specified in the plan. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections must be maintained. These periodic inspections are different from the comprehensive site evaluation, even though the former may be incorporated into the latter. Equipment, area, or other inspections are typically visual and are normally conducted on a regular basis, *e.g.*, daily inspections of loading areas. Requirements for such periodic inspections are specific to each industrial sector in today's permit, whereas the comprehensive site compliance evaluation is required of all industrial sectors. Area inspections help ensure that storm water pollution prevention measures (*e.g.*, BMPs) are operating and properly maintained on a regular basis. The comprehensive site evaluation is intended to provide an overview of the entire facility's pollution prevention activities. Refer to Part VI.C.3.h. below for more information on the comprehensive site evaluation.

• Employee Training. The SWPPP must describe a program for informing personnel at all levels of responsibility of the components and goals of the SWPPP. The training program should address topics such as good housekeeping, materials management, and spill response procedures. Where appropriate, contractor personnel also must be trained in relevant aspects of storm water pollution prevention. A schedule for conducting training must be provided in the plan. Several sections in Part 6 of today's proposed MSGP specify a minimum frequency for training of once per year. Others indicate that training is to be conducted at an appropriate interval. EPA recommends that facilities conduct training annually at a minimum. However, more frequent training may be necessary at facilities with high turnover of employees or where employee participation is essential to the storm water pollution prevention plan.

b. Structural Controls

• Sediment and Erosion Control. The SWPPP must identify areas that, due to topography, activities, soils, cover materials, or other factors have a high potential for significant soil erosion. The plan must identify measures that will be implemented to limit erosion in these areas.

• Management of Runoff. The plan must contain a narrative evaluation of the appropriateness of traditional storm water management practices (i.e., practices other than those that control pollutant sources) that divert, infiltrate, reuse, or otherwise manage storm water runoff so as to reduce the discharge of pollutants. Appropriate measures may include, among others, vegetative swales, collection and reuse of storm water, inlet controls, snow management, infiltration devices, and wet detention/retention basins.

c. Example BMPs: Part 4.2.7.2.2 includes a list of example BMPs that could be considered for use in a SWPPP, for example: Detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices). These examples are not intended to limit the creativity of facility operators in developing alternative BMPs or applications for BMPs that increase cost effectiveness.

d. Selection of Controls: Based on the results of the evaluation, the plan must identify practices that the permittee determines are reasonable and appropriate for the facility. The plan also should describe the particular pollutant source area or activity to be controlled by each storm water management practice. Reasonable and appropriate practices must be implemented and maintained according to the provisions prescribed in the plan.

In selecting storm water management measures, it is important to consider the potential effects of each method on other water resources, such as ground water. Although storm water pollution prevention plans primarily focus on storm water management, facilities must also consider potential ground water pollution problems and take appropriate steps to avoid adversely impacting ground water quality. For example, if the water table is unusually high in an area, an infiltration pond may contaminate a ground water source unless special preventive measures are taken. Under EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPP). Efforts to control storm water should be compatible with State ground water objectives as reflected in CSGWPPs.

e. Other Controls: Today's proposed MSGP includes a new requirement that no solid materials, including floating debris may be discharged to waters of the United States, except as authorized by a permit under Section 404 of the Clean Water Act. In addition, off-site tracking of raw, final, or waste materials or sediment, and the generation of dust must be minimized. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas must be minimized. These requirements are similar to requirements included in EPA's construction general storm water permit (63 FR 7858, February 17, 1998) which EPA believes would be appropriate for industrial facilities as well.

f. Maintenance (Part 4.3): All BMPs identified in the SWPPP must be maintained in effective operating condition.

g. Controls for Allowable Non-Storm Water (Part 4.4.2): Where an allowable non-storm water has been identified, appropriate controls for that discharge must be included in the permit. In many cases, the same types of controls for contaminated storm water would suffice, but the nature and volume of potential pollutants in the non-storm water discharges must be taken into consideration in selection of controls.

h. Comprehensive Site Compliance Evaluation (Part 4.9): Today's proposed MSGP requires that the SWPPP describe the scope and content of the comprehensive site evaluations that qualified personnel will conduct to (1) confirm the accuracy of the description of potential pollution sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of the permit. Note that the comprehensive site evaluations are not the same as periodic or other inspections described for certain industries in Section VI.C.3.d of this fact sheet. However, in the instances when frequencies of inspections and the comprehensive site compliance evaluation overlap they may be combined allowing for efficiency, as long as the requirements for both types of inspections are met. The plan must indicate the frequency of comprehensive evaluations which must be at least once a year, except where comprehensive site evaluations are shown in the plan to be impractical for inactive mining sites, due to remote location and inaccessibility [9]. The individual or individuals who will conduct the comprehensive site evaluation must be identified in the plan and should be members of the pollution prevention team. Material handling and storage areas and other potential sources of pollution must be visually inspected for evidence of actual or potential pollutant discharges to the drainage system. Inspectors also must observe erosion controls and structural storm water management devices to ensure that each is operating correctly. Equipment needed to implement the SWPPP, such as that used during spill response activities, must be inspected to confirm that it is in proper working order.

The results of each comprehensive site evaluation must be documented in a report signed by an authorized company official. The report must describe the scope of the comprehensive site evaluation, the personnel making the comprehensive site evaluation, the date(s) of the comprehensive site evaluation, and any major observations relating to implementation of the SWPPP. Comprehensive site evaluation reports must be retained for at least 3 years after the date of the evaluation. Based on the results of each comprehensive site evaluation, the description in the plan of potential pollution sources and measures and controls must be revised as appropriate within 2 weeks after each comprehensive site evaluation, unless indicated otherwise in Part 6 of the permit. Changes in procedural operations must be implemented on the site in a timely manner for non-structural measures and controls not more than 12 weeks after completion of the comprehensive site evaluation. Procedural changes that require construction of structural measures and controls are allowed up to 3 years for implementation. In both instances, an extension may be requested from the Director.

i. Applicable State, Tribal, or Local Plans (Part 4.8): The SWPPP must be consistent with any applicable requirements of State, Tribal, or Local storm water, waste disposal, sanitary sewer or septic system regulations to the extent these apply to a facility and are more stringent than the requirements of this permit.

j. Documentation of Permit Eligibility with Regards to ESA and NHPA Requirements (Parts 4.5 & 4.6): To better ensure compliance with the requirements of the ESA and NHPA, Parts 4.5 and 4.6 of today's proposed MSGP require that documentation be included with the SWPPP demonstrating permit eligibility with regards to the requirements of the ESA and NHPA. The following information would be required for the ESA:

• Information on whether listed endangered or threatened species, or critical habitat, are found in proximity to the facility;

• Whether such species may be affected by the storm water discharges or storm water discharge-related activities;

• Results of the Addendum A endangered species screening determinations; and

• A description of measures necessary to protect listed endangered or threatened species, or critical habitat, including any terms or conditions that are imposed under the eligibility requirements of Part 1.2.3.6. The proposed MSGP notes that discharges from facilities which fail to describe and implement such measures are ineligible for coverage under the permit.

The following information would be required for the NHPA determination:

• Information on whether the storm water discharges or storm water discharge-related activities would have an affect on a property that is listed or eligible for listing on the National Register of Historic Places;

• Where effects may occur, any written agreements which have been made with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other Tribal leader to mitigate those effects;

• Results of the Addendum B historic places screening determinations; and

• A description of measures necessary to avoid or minimize adverse impacts on places listed, or eligible for listing, on the National Register of Historic Places, including any terms or conditions that are imposed under the eligibility requirements of Part 1.2.3.7 of this permit. The proposed MSGP notes that discharges from facilities which fail to describe and implement such measures are ineligible for coverage under the permit.

k. Keeping a Copy of the Permit with the SWPPP (Part 4.7): A new requirement to have a copy of the permit language in the SWPPP has been added to today's permit. The "confirmation" letter received from the NOI Processing Center is not the permit; it is essentially only the equivalent of a "receipt" for a facility's "registration" (NOI) to use the general permit. Since determining permit eligibility and preparing a SWPPP is required prior to obtaining permit coverage, a copy of the permit would be needed anyway. Requiring a copy of the permit in the SWPPP ensures that facility operators, and not just whoever prepared the SWPPP, will have ready access to all permit requirements.

l. Recordkeeping and Keeping the SWPPP Current (Parts 4.9.4, 4.10, et al.): Records must be kept with the SWPPP documenting the status and effectiveness of plan implementation. At a minimum, records must address results of the annual Comprehensive Site Compliance Evaluations, routine facility inspections, spills, monitoring, and maintenance activities. The plan also must describe a system that enables timely reporting of storm water management-related information to appropriate plant personnel. Inspectors or other enforcement officers will ask for records documenting permit compliance during inspections or facility compliance reviews.

The SWPPP must be updated whenever there is a change at the facility that would significantly affect the discharges authorized under the MSGP. The SWPPP must also be updated whenever an inspection by the permittee or by local, state, tribal, or federal officials indicates a portion of the SWPPP is proving to be ineffective in controlling storm water discharge quality.

m. Signature, Plan Review, and Access to the SWPPP (Part 4.11): The SWPPP must be signed and certified in accordance with Part 7 of the permit. A copy of the SWPPP must be kept on site at the facility or locally available for the use of the Director, a State, Tribe, or

[9] Where annual site inspections are shown in the plan to be impractical for inactive mining sites, due to remote location and inaccessibility, site inspections must be conducted at least once every 3 years.

local agency (*e.g.*, MS4 operator) at the time of an onsite inspection. The SWPPP must also be made available to the U.S. Fish and Wildlife Service or National Marine Fisheries Service upon request. Facilities are encouraged, but not required, to make the SWPPP directly available to the public for viewing during normal business hours. Since SWPPPs are living documents that change over time, access to the current version of the SWPPP is critical in assessing permit compliance.

The Director may notify you at any time that your SWPPP does not meet one or more of the minimum requirements of this permit. The notification will identify provisions of the permit which are not being met, as well as the required modifications. Required changes must be made within thirty (30) calendar days and a written certification submitted to the Director confirming that the changes were made.

D. Special Requirements

1. Special Requirements for Storm Water Discharges Associated With Industrial Activity From Facilities Subject to EPCRA Section 313 Requirements (Part 4.12)

Today's proposal replaces the special requirements of the existing MSGP for certain permittees subject to reporting requirements under section 313 of the EPCRA (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA)) with a requirement to identify areas with these pollutants. EPCRA section 313 requires operators of certain facilities that manufacture (including import), process, or otherwise use listed toxic chemicals to report annually their releases of those chemicals to any environmental media. Listed toxic chemicals include more than 500 chemicals and chemical classes listed at 40 CFR part 372 (including the recently added chemicals published November 30, 1994).

By requiring identification of EPCRA 313 chemicals in the summary of potential pollutant sources under the Pollution Prevention Plan (Part 4.2.4), the facility operator is then required to develop appropriate storm water controls for such areas (Part 4.2.7). EPA expects that many controls for EPCRA chemicals will continue to be driven by other state and federal environmental regulations such as Spill Prevention Control and Countermeasure (SPCC) plans required under section 311 of the CWA, *etc.* as long as such a requirement is incorporated into the SWPPP.

This reduction in permit complexity by eliminating redundant requirements was requested by members of the regulated community. The public is specifically requested to comment on this new approach to dealing with EPCRA chemicals exposed to storm water.

2. Special Requirements for Storm Water Discharges Associated With Industrial Activity From Salt Storage Facilities

Today's proposal retains the same special requirements as the existing MSGP for storm water discharges associated with industrial activity from salt storage facilities. Storage piles of salt used for deicing or other commercial or industrial purposes must be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. This requirement only applies to runoff from storage piles discharged to waters of the United States. Facilities that collect all of the runoff from their salt piles and reuse it in their processes or discharge it subject to a separate NPDES permit do not need to enclose or cover their piles. Permittees must comply with this requirement as expeditiously as practicable, but in no event later than 3 years from the date of permit issuance.

These special requirements have been included in today's permit based on human health and aquatic effects resulting from storm water runoff from salt storage piles compounded with the prevalence of salt storage piles across the United States.

3. Consistency With Other Plans

SWPPPs may reference the existence of other plans for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under section 311 of the CWA or BMP programs otherwise required by an NPDES permit for the facility as long as such requirement is incorporated into the SWPPP.

E. Monitoring and Reporting Requirements

The proposed MSGP–2000 retains basically the same monitoring requirements as the existing MSGP. However, EPA also recognizes the concerns that have been raised in determining the effectiveness of a facility's SWPPP regarding the usefulness of these monitoring requirements (particularly analytical monitoring) and whether facility resources are being diverted away from other activities, such as more effective implementation of the SWPPPs, which might provide greater environmental benefits. In view of such concerns, EPA is specifically requesting comments on these monitoring requirements and whether better alternatives are available for evaluating the overall effectiveness of the industrial storm water pollution control program.

One alternative which has been suggested is the submission of an annual report to EPA describing a permittee's storm water pollution control activities during the previous year. The existing MSGP already requires that permittees conduct periodic facility inspections and prepare inspection reports which are retained as part of the SWPPPs. The MSGP also sets forth certain basic and industry-specific requirements for the inspections and establishes the minimum inspection frequencies. The preparation of an annual report could conceivably enhance the pollution control program at an industrial facility by requiring a more formal review of the program than required by the existing MSGP. Inspection frequencies might also be increased as compared to the requirements of the existing MSGP. The submission of an annual report would also provide EPA and interested members of the public with readily available information from which to evaluate the pollution control program of a given facility. EPA is requesting comments on the merits of submitting an annual report as an alternative to analytical monitoring, including the type of information to be submitted and level of detail to be required.

EPA is also interested in receiving comments on other alternatives to the monitoring requirements of the existing MSGP. One possibility would be group monitoring, in which a representative group of facilities within a sector would monitor (similar to the group permit applications for the original MSGP). Yet another possibility would be watershed monitoring, in which industrial facilities in a given area would cooperate among themselves, or with other dischargers, in a regional watershed monitoring program which would focus on receiving water impacts.

In addition, EPA is requesting comments on whether alternate test methods should be allowed (such as the field test methods which were allowed for Part 1 of the permit applications for municipal separate storm sewer systems) rather than test methods approved under 40 CFR part 136. A number of field test options exist including colorimetric test kits, titrimetric test kits and spectrophotometric field test instruments. Test accuracy, according to industry literature, typically ranges from 0.1 to 20%. Field test methods are

available for all the parameters in the existing MSGP except BOD5, Cd, Mg, Hg, Se and TSS. Of these parameters, however, only TSS is a commonly monitored parameter in the existing MSGP. For TSS, another monitoring option would be transparency tubes which are currently being used in some areas to assess turbidity and TSS. These tubes consist of long narrow plastic tubes in which a sample is placed. Like a Secchi disc, the tube measures turbidity by the length of the tube through which the bottom of the tube cannot be seen. These field test methods are typically cheaper and easier to use than methods approved under 40 CFR part 136, and EPA is requesting comments on whether such methods are appropriate for the industrial storm water program.

EPA is also interested in receiving comments on the role of alternate environmental indicators in the industrial storm water program such as those discussed in the publication entitled "Environmental Indicators to Assess Stormwater Control Programs and Practices" (Clayton, R. and W. Brown, 1996, Center for Watershed Protection, Silver Spring, MD).

Another alternative to the existing monitoring requirements which has been suggested is to limit the monitoring requirements to discharges to impaired waterbodies, such as those on the section 303(d) list, where additional pollution control efforts are most clearly needed. EPA also welcomes any other suggestions for alternatives to the monitoring requirements of the existing MSGP.

The MSGP (as proposed) includes three general types of monitoring: Analytical monitoring or chemical monitoring; compliance monitoring for effluent guidelines compliance, and visual examinations of storm water discharges. A general description of each of these types of monitoring which was provided with the original MSGP is repeated below.

Analytical monitoring requirements involve laboratory chemical analyses of samples collected by the permittee. The results of the analytical monitoring are quantitative concentration values for different pollutants, which can be easily compared to the results from other sampling events, other facilities, or to national benchmarks. Section VI.E.1 below describes the proposed analytical monitoring requirements and the process and criteria by which an industry sector or subsector was selected for analytical monitoring. Compliance monitoring requirements are imposed under today's proposed permit to ensure that discharges subject to numeric effluent limitations under the storm water effluent limitations guidelines are in compliance with those limitations. The compliance monitoring requirements are discussed in Section VI.E.2.

Visual examinations of storm water discharges are the least burdensome type of monitoring requirement under the proposed MSGP. Visual examinations are described in Section VI.E.8.

Actual monitoring requirements for a given facility under the permit vary depending upon the industrial activities that occur at a facility and the results of the industry-supplied discharge characterization data that was used to develop the original MSGP. Part 5 of the proposed MSGP sets forth the common monitoring requirements which apply to all sectors; the industrial-specific requirements are found in Part 6 of the proposed MSGP. These are minimum monitoring requirements and a permittee may choose to conduct additional sampling to acquire more data to improve the statistical validity of the results. Through increased analytical or visual monitoring the permittee may be able to better ascertain the effectiveness of their SWPPP.

1. Analytical Monitoring Requirements

The categories of facilities subject to analytical monitoring in the proposed MSGP are noted in Table 1 of this fact sheet. The MSGP requires analytical monitoring for the industry sectors or subsectors that demonstrated in the group application data a potential to discharge pollutants at concentrations of concern, or, in certain State-specific cases, to satisfy those States' requirements. The data submitted with the group permit applications were reviewed by EPA to determine the industry sectors and subsectors listed in Table 1 of this fact sheet that are to be subject to analytical monitoring requirements. First, EPA divided the Part 1 and Part 2 application data by the industry sectors listed in Table 1. Where a sector was found to contain a wide range of industrial activities or potential pollutant sources, it was further subdivided into the industry subsectors listed in Table 1. Next, EPA reviewed the information submitted in Part 1 of the group applications regarding the industrial activities, significant materials exposed to storm water, and the material management measures employed. This information helped identify potential pollutants that may be present in the storm water discharges. Then, EPA entered into a database, the sampling data submitted in Part 2 of the group applications. That data was arrayed according to industrial sector and subsector for the purposes of determining when analytical monitoring would be appropriate.

To conduct a comparison of the results of the statistical analyses to determine when analytical monitoring would be required, EPA established "benchmark" concentrations for the pollutant parameters on which monitoring results had been received. The "benchmarks" are the pollutant concentrations above which EPA determined represents a level of concern. The level of concern is a concentration at which a storm water discharge could potentially impair, or contribute to impairing water quality or affect human health from ingestion of water or fish. The benchmarks are also viewed by EPA as a level, that if below, a facility represents little potential for water quality concern. As such, the benchmarks also provide an appropriate level to determine whether a facility's storm water pollution prevention measures are successfully implemented. The benchmark concentrations are not effluent limitations and should not be interpreted or adopted as such. These values are merely levels which EPA has used to determine if a storm water discharge from any given facility merits further monitoring to insure that the facility has been successful in implementing a SWPPP. As such these levels represent a target concentration for a facility to achieve through implementation of pollution prevention measures at the facility. Table 3 lists the parameter benchmark values and the sources used for the benchmarks. Additional explanation information concerning the derivation of the benchmarks can be found in the fact sheet for the 1995 MSGP (60 FR 50825).

TABLE 3.—PARAMETER BENCHMARK VALUES

Parameter name	Benchmark level	Source
Biochemical Oxygen Demand (5)	30 mg/L	4
Chemical Oxygen Demand	120 mg/L	5

TABLE 3.—PARAMETER BENCHMARK VALUES—Continued

Parameter name	Benchmark level	Source
Total Suspended Solids	100 mg/L	7
Oil and Grease	15 mg/L	8
Nitrate + Nitrite Nitrogen	0.68 mg/L	7
Total Phosphorus	2.0 mg/L	6
pH	6.0–9.0 s.u.	4
Acrylonitrile (c)	7.55 mg/L	2
Aluminum, Total (pH 6.5–9)	0.75 mg/L	1
Ammonia	19 mg/L	1
Antimony, Total	0.636 mg/L	9
Arsenic, Total (c)	0.16854 mg/L	9
Benzene	0.01 mg/L	10
Beryllium, Total (c)	0.13 mg/L	2
Butylbenzyl Phthalate	3 mg/L	3
Cadmium, Total (H)	0.0159 mg/L	9
Chloride	860 mg/L	1
Copper, Total (H)	0.0636 mg/L	9
Dimethyl Phthalate	1.0 mg/L	11
Ethylbenzene	3.1 mg/L	3
Fluoranthene	0.042 mg/L	3
Fluoride	1.8 mg/L	6
Iron, Total	1.0 mg/L	12
Lead, Total (H)	0.0816 mg/L	1
Manganese	1.0 mg/L	13
Mercury, Total	0.0024 mg/L	1
Nickel, Total (H)	1.417 mg/L	1
PCB–1016 (c)	0.000127 mg/L	9
PCB–1221 (c)	0.10 mg/L	10
PCB–1232 (c)	0.000318 mg/L	9
PCB–1242 (c)	0.00020 mg/L	10
PCB–1248 (c)	0.002544 mg/L	9
PCB–1254 (c)	0.10 mg/L	10
PCB–1260 (c)	0.000477 mg/L	9
Phenols, Total	1.0 mg/L	11
Pyrene (PAH,c)	0.01 mg/L	10
Selenium, Total (*)	0.2385 mg/L	9
Silver, Total (H)	0.0318 mg/L	9
Toluene	10.0 mg/L	3
Trichloroethylene (c)	0.0027 mg/L	3
Zinc, Total (H)	0.117 mg/L	1

Sources:
1. "EPA Recommended Ambient Water Quality Criteria." Acute Aquatic Life Freshwater
2. "EPA Recommended Ambient Water Quality Criteria." LOEL Acute Freshwater
3. "EPA Recommended Ambient Water Quality Criteria." Human Health Criteria for Consumption of Water and Organisms
4. Secondary Treatment Regulations (40 CFR 133)
5. Factor of 4 times BOD5 concentration—North Carolina benchmark
6. North Carolina storm water benchmark derived from NC Water Quality Standards
7. National Urban Runoff Program (NURP) median concentration
8. Median concentration of Storm Water Effluent Limitation Guideline (40 CFR Part 419)
9. Minimum Level (ML) based upon highest Method Detection Limit (MDL) times a factor of 3.18
10. Laboratory derived Minimum Level (ML)
11. Discharge limitations and compliance data
12. "EPA Recommended Ambient Water Quality Criteria." Chronic Aquatic Life Freshwater
13. Colorado—Chronic Aquatic Life Freshwater—Water Quality Criteria

Notes:
(*) Limit established for oil and gas exploration and production facilities only.
(c) carcinogen
(H) hardness dependent
(PAH) Polynuclear Aromatic Hydrocarbon
Assumptions:
Receiving water temperature—20 C
Receiving water pH—7.8
Receiving water hardness CaCO3 100 mg/L
Receiving water salinity 20 g/kg
Acute to Chronic Ratio (ACR)—10

EPA prepared a statistical analysis of the sampling data for each pollutant parameter reported within each sector or subsector. (Only where EPA did not subdivide an industry sector into subsectors was an analysis of the entire sector's data performed.) The statistical analysis was performed assuming a delta log normal distribution of the sampling data within each sector/subsector. The analyses calculated median, mean, maximum, minimum, 95th, and 99th percentile concentrations for each parameter. The results of the analyses can be found in the appropriate section of Section VIII of the fact sheet accompanying the 1995 MSGP. From this analysis, EPA was able to identify pollutants for further evaluation within each sector or subsector.

EPA next compared the median concentration of each pollutant for each sector or subsector to the benchmark concentrations listed in Table 3. EPA also compared the other statistical results to the benchmarks to better ascertain the magnitude and range of the discharge concentrations to help identify the pollutants of concern. EPA did not conduct this analysis if a sector had data for a pollutant from less than three individual facilities. Under these circumstances, the sector or subsector would not have this pollutant identified as a pollutant of concern. This was done to ensure that a reasonable number of facilities represented the industry sector or subsector as a whole and that the analysis did not rely on data from only one facility.

For each industry sector or subsector, parameters with a median concentration higher than the benchmark level were considered pollutants of concern for the industry and identified as potential pollutants for analytical monitoring under today's permit. EPA then analyzed the list of potential pollutants to be monitored against the lists of significant materials exposed and industrial activities which occur within each industry sector or subsector as described in the Part I application information. Where EPA could identify a source of a potential pollutant which is directly related to industrial activities of the industry sector or subsector, the permit identifies that parameter for analytical monitoring. If EPA could not identify a source of a potential pollutant which was associated with the sector/subsector's industrial activity, the permit does not require monitoring for the pollutant in that sector/subsector. Industries with no pollutants for which the median concentrations are higher than the benchmark levels are not required to perform analytical monitoring under this permit, with the exceptions explained below.

In addition to the sectors and subsectors identified for analytical monitoring using the methods described above, EPA determined, based upon a review of the degree of exposure, types of materials exposed, special studies and in some cases inadequate sampling data in the group applications, that the following industries also warrant analytical monitoring not withstanding the absence of data on the presence or absence of certain pollutants in the group applications: Sector K (hazardous waste treatment storage and disposal facilities), and Sector S (airports which use more than 100,000 gallons per year of glycol-based fluids or 100 tons of urea for deicing). The proposed MSGP–2000 would retain the monitoring requirements of the existing MSGP due to the high potential for contamination of storm water discharge, which EPA believes was not adequately characterized by group applicants in the information they provided in the group application process. It should also be noted that like the existing MSGP, exemptions for the proposed MSGP–2000 would be on a pollutant-by-pollutant and outfall-by-outfall basis.

EPA analyzed the monitoring data which have been submitted under the MSGP for year 2 (year 4 data are due in March, 2000) both on a sector-and pollutant-basis. For the pollutant-basis, the need for year 4 monitoring (determined by whether the monitoring benchmarks—see Section Table 4 below—were exceeded) was performed on both a facility-wide and outfall-specific basis (*i.e.*, many facilities submitted DMR data for more than one outfall). The facility-wide basis determined whether any of the year 2 average discharge concentrations for any of the outfalls at the given facility exceeded the benchmark value. The outfall-specific basis evaluated each outfall independently. The results of these two analyses are presented in Table 4.

TABLE 4.—1995 MGSP DMR DATA ABOVE BENCHMARK VALUES (POLLUTANT-BASIS)

Pollutant	Benchmark value	Facility-wide basis		Outfall-specific basis	
		Total number of facilities	Above benchmark	Total number of outfalls	Above benchmark
TSS	100 mg/L	111	59 (53.2%)	185	86 (46.5%)
COD	120 mg/L	30	15 (50.0%)	52	25 (48.1%)
Nitrate+Nitrite Nitrogen	0.68 mg/L	30	14 (46.7%)	52	31 (59.6%)
Aluminum	0.75 mg/L	51	38 (74.5%)	86	57 (66.3%)
Arsenic	0.16854 mg/L	1	0 (0%)	1	0 (0%)
Copper	0.0636 mg/L	8	1 (12.5%)	23	1 (4.3%)
Iron	1.0 mg/L	84	58 (69.0%)	148	95 (64.2%)
Lead	0.0816 mg/L	22	6 (27.3%)	33	6 (18.2%)
Zinc	0.117 mg/L	58	43 (74.1%)	127	94 (74.0%)

As seen in Table 4, approximately 50 percent of the facilities and outfalls exceeded benchmark values for non-metallic pollutants (*i.e.*, TSS, COD, and Nitrate + Nitrite Nitrogen) while exceedances of the benchmark values for the metals were, for the most part, slightly higher. EPA intends to evaluate year 4 data for facilities that were required to monitor both years to identify possible trends in pollutant concentrations.

For Table 5, EPA evaluated by sector the number of facilities that monitored during year 2 that would also be required to monitor in year 4. The initial analysis focused on the facility as a whole. Specifically, Table 5 identifies the number of facilities submitting DMRs during year 2 in the 13 sectors that had DMR data for any pollutants required to be analyzed for which benchmark values exist. The omission of sectors from this list may be for one or more reasons. For example, no Sector G facilities (Metal Mining) are included in the analysis since all the facilities reviewed by EPA were "no discharge" facilities and thus did not submit monitoring data. Another reason, such as for Sector B (Paper and Allied Products), is that EPA did not evaluate any DMRs from facilities within the sector that monitored for any pollutants with benchmark values.

TABLE 5.—1995 MGSP DMR DATA ABOVE BENCHMARK VALUES

[Sector-Basis]

Sector	Total number of facilities	At least one average above benchmark	Above benchmark (in percent)
A	36	19	52.8
C	10	8	80
D	8	5	62.5
E	7	5	71.4
F	8	8	100
H	6	6	100
J	10	7	70
L	20	19	95
M	22	18	81.8
O	6	1	16.7
S	1	1	100
Y	2	2	100
AA	25	25	100
Total	161	124	77.0

As seen from this analysis, 77 percent of the facilities surveyed would be required to monitor during year 4 for at least one pollutant at a minimum of one outfall. While EPA considers this to be a somewhat limited data set, the Agency does believe that the numbers indicate that a small percentage of facilities are being excluded from year 4 monitoring based on year 2 data.

EPA believes that the year 2 data, in combination with year 4 data, should provide a better understanding of the synergy between analytical monitoring and SWPPP effectiveness, although, more information regarding steps that facilities took in response to year 2 data above benchmark values will be needed to fully understand this relationship. As such, EPA is soliciting information on the activities undertaken by permittees in response to elevated levels of pollutants above benchmark values to compare with the year 2 and year 4 data to fully evaluate the effectiveness of analytical monitoring requirements in the MSGP. This type of information would also be useful in evaluating suggestions from the public in response to EPA's specific request for comments on possible alternatives or modifications to analytical monitoring (discussed earlier in Part VI.E).

The current MSGP requires that all facilities, save for Sector G, within an industry sector or subsector identified for analytical monitoring must, at a minimum, monitor their storm water discharges quarterly during the second year of permit coverage, unless the facility exercises the Alternative Certification described in Section VI.E.3 of this fact sheet. At the end of the second year of coverage under the current permit, a facility was required to calculate the average concentration for each parameter for which the facility is required to monitor. If the average concentration for a pollutant parameter was less than or equal to the benchmark value, then the permittee was not required to conduct analytical monitoring for that pollutant during the fourth year of the permit. If, however, the average concentration for a pollutant is greater than the benchmark value, then the permittee was required to conduct quarterly monitoring for that pollutant during the fourth year of permit coverage. Analytical monitoring was not required during the first, third, and fifth year of the permit. The exclusion from analytical monitoring in the fourth year of the permit was conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

For today's proposed MSGP, EPA is also proposing to require analytical monitoring in the second and fourth year of the permit. For purposes of this monitoring, year 2 runs from October 1, 2001 to September 30, 2002; year 4 runs from October 1, 2003 to September 30, 2004.

2. Compliance Monitoring

Today's proposal retains the same compliance monitoring requirements of the existing MSGP, and also includes compliance monitoring requirements for certain storm water discharges from new and existing hazardous and non-hazardous landfills. As noted earlier, EPA has recently finalized effluent limitations guidelines for these landfills (65 FR 3007, January 19, 2000) and the compliance monitoring would be required to ensure compliance with the guidelines. These discharges must generally be sampled annually (in some cases quarterly) and tested for the parameters which are limited by the permit. Discharges subject to compliance monitoring include (in addition to the landfills discharges): Coal pile runoff, contaminated runoff from phosphate fertilizer manufacturing facilities, runoff from asphalt paving and roofing emulsion production areas, material storage pile runoff from cement manufacturing facilities, and mine dewatering discharges from crushed stone, construction sand and gravel, and industrial sand mines located in EPA Regions 1, 2, 6, 10 and Arizona. All samples are to be grabs taken within the first 30 minutes of discharge where practicable, but in no case later than the first hour of discharge. Where practicable, the samples shall be taken from the discharges subject to the numeric effluent limitations prior to mixing with other discharges.

Monitoring for these discharges is required to determine compliance with numeric effluent limitations. It should also be noted that discharges covered under today's proposed MSGP which are subject to numeric effluent limitations are not eligible for the alternative certification described in Section VI.E.3 of this fact sheet.

Where a State or Tribe has imposed a numeric effluent limitation as a condition for certification under CWA section 401, a default minimum monitoring frequency of once per year has been proposed. This default monitoring frequency would only apply if a State failed to provided a monitoring frequency along with their conditional § 401 certification.

3. Alternate Certification

Today's proposed MSGP–2000 retains the provision in the existing MSGP for an alternative certification in lieu of analytical monitoring. The MSGP includes monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative certification described below is included in the permit to ensure that monitoring requirements are only imposed on those facilities which do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if there are no sources of a pollutant exposed to storm water at the site then the potential for that pollutant to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the analytical monitoring requirements provided the discharger makes a certification for a given outfall, on a pollutant-by-pollutant basis, that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the SWPPP, and submitted to EPA in lieu of monitoring reports required under Part 7 of the permit. The permittee is required to complete any and all sampling until the exposure is eliminated. If the facility is reporting for a partial year, the permittee must specify the date exposure was eliminated. If the permittee is certifying that a pollutant was present for part of the reporting period, nothing relieves the permittee from the responsibility to sample that parameter up until the exposure was eliminated and it was determined that no significant materials remained. This certification is not to be confused with the low concentration sampling waiver. The test for the application of this certification is whether the pollutant is exposed, or can be expected to be present in the storm water discharge. If the facility does not and has not used a parameter, or if exposure is eliminated and no significant materials remain, then the facility can exercise this certification.

As noted above, the MSGP does not allow facilities with discharges subject to numeric effluent limitations guidelines to submit alternative certification in lieu of compliance monitoring requirements. The permit also does not allow air transportation facilities or hard rock mines subject to the analytical monitoring requirements in Part 6 of the proposed MSGP to exercise an alternative certification.

A facility is not precluded from exercising the alternative certification in lieu of analytical monitoring requirements in the second or fourth year of the reissued MSGP, even if that facility has failed to qualify for a low concentration waiver thus far. EPA encourages facilities to eliminate exposure of industrial activities and significant materials where practicable.

4. Reporting and Retention Requirements

Like the existing MSGP, today's proposed MSGP requires that permittees submit all analytical monitoring results obtained during the second and fourth year of permit coverage. As noted earlier, year 2 runs from October 1, 2001 to September 30, 2002; year 4 runs from October 1, 2003 to September 30, 2004. Monitoring results must be submitted by January 28, 2003 for year 2 monitoring and January 28, 2005 for year 4 monitoring.

For each outfall, one Discharge Monitoring Report (DMR) form must be submitted per storm event sampled. For facilities conducting monitoring beyond the minimum requirements an additional DMR form must be filed for each analysis. The permittee must include a measurement or estimate of the total precipitation, volume of runoff, and peak flow rate of runoff for each storm event sampled. Permittees subject to compliance monitoring requirements are required to submit all compliance monitoring results annually by October 28 following each annual sampling period (which run from October 1 of each year to September 30 of the following year). Compliance monitoring results must be submitted on signed DMR forms. For each outfall, one DMR form must be submitted for each storm event sampled.

Permittees are not required to submit records of the visual examinations of storm water discharges unless specifically asked to do so by the Director. Records of the visual examinations must be maintained at the facility. Records of visual examination of storm water discharge need not be lengthy. Permittees may prepare typed or hand written reports using forms or tables which they may develop for their facility. The report need only document: the date and time of the examination; the name of the individual making the examination; and any observations of color, odor, clarity, floating solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution.

The address for submission of DMR forms for today's proposed MSGP is as follows: MSGP DMR (4203), U.S. EPA, 401 M Street, SW, Washington, D.C. 20460.

Under the existing MSGP, DMRs had been sent to the EPA Regional Offices. However, to facilitate review of all DMRs from facilities operating under the MSGP, the proposed MSGP–2000 requires that they be sent to the one location specified above.

Today's proposal also retains the requirement in the existing MSGP that permittees submit signed copies of DMRs to the operator of a large or medium MS4 (those which serve a population of 100,000 or more), if there are discharges of storm water associated with industrial activity through the MS4.

The location for submission of all reports (other than DMRs) for today's proposal MSGP remains the EPA Regional Offices as found in Part 8.3 of the proposed permit. Consistent with Office of Management and Budget Circular A–105, facilities located on the following Federal Indian Reservations, which cross EPA Regional boundaries, should note that permitting authority for such lands is consolidated in one single EPA Region.

a. Duck Valley Reservations lands, located in Regions 9 and 10, are handled by Region IX.

b. Fort McDermitt Reservation lands, located in Regions 9 and 10, are handled by Region IX.

c. Goshute Reservation lands, located in Regions 8 and 9, are handled by Region IX.

d. Navajo Reservation lands, located in Regions 6, 8, and 9, are handled by Region 9.

e. Ute Mountain Reservation lands, located in Regions 6 and 8, are handled Region VIII.

Pursuant to the requirements of 40 CFR 122.41(j), today's proposal (like the existing MSGP) requires permittees to retain all records for a minimum of 3 years from the date of the sampling, examination, or other activity that generated the data.

5. Sample Type

Today's proposal retains the same requirements regarding the type of sampling as the existing MSGP. A general description is provided below. Certain industries have different requirements, however, permittees should check the industry-specific requirements in Part 6 of the proposed permit to confirm these requirements. Grab samples may be used for all monitoring unless otherwise stated. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The required 72-hour storm event interval may be waived by the permittee where the preceding measurable storm event did not result in a measurable discharge from the facility. The 72-hour requirement may also be waived by the permittee where the permittee documents that less than a 72-hour interval is representative for local storm events during the season when sampling is being conducted. The grab sample must be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger must submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. A minimum of one grab is required. Where the discharge to be sampled contains both storm water and non-storm water, the facility shall sample the storm water component of the discharge at a point upstream of the location where the non-storm water mixes with the storm water, if practicable.

6. Representative Discharge

The proposed MSGP–2000 retains the same provision as the existing MSGP regarding substantially identical outfalls

which allows a facility to reduce its overall monitoring burden. This representative discharge provision provides facilities with multiple storm water outfalls, a means for reducing the number of outfalls that must be sampled and analyzed. This may result in a substantial reduction of the resources required for a facility to comply with analytical monitoring requirements. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes in the SWPPP a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (*e.g.*, low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan. Facilities that select and sample a representative discharge are prohibited from changing the selected discharge in future monitoring periods unless the selected discharge ceases to be representative or is eliminated. Permittees do not need EPA approval to claim discharges are representative, provided they have documented their rationale within the SWPPP. However, the Director may determine the discharges are not representative and require sampling of all non-identical outfalls.

The representative discharge provision in the permit is available to almost all facilities subject to the analytical monitoring requirements (not including compliance monitoring for effluent guideline limit compliance purposes) and to facilities subject to visual examination requirements.

The representative discharge provisions described above are consistent with Section 5.2 of NPDES Storm Water Sampling Guidance Document (EPA 833–B–92–001, July 1992).

7. Sampling Waiver

Today's proposal retains the same provisions for sampling waivers (as discussed below) which are found in the existing MSGP:

a. Adverse Weather Conditions. The proposed MSGP–2000 allows for temporary waivers from sampling based on adverse climatic conditions. This temporary sampling waiver is only intended to apply to insurmountable weather conditions such as drought or dangerous conditions such as lightning, flash flooding, or hurricanes. These events tend to be isolated incidents and should not be used as an excuse for not conducting sampling under more favorable conditions associated with other storm events. The sampling waiver is not intended to apply to difficult logistical conditions, such as remote facilities with few employees or discharge locations which are difficult to access. When a discharger is unable to collect samples within a specified sampling period due to adverse climatic conditions, the discharger shall collect a substitute sample from a separate qualifying event in the next sampling period as well as a sample for the routine monitoring required in that period. Both samples should be analyzed separately and the results of that analysis submitted to EPA. Permittees are not required to obtain advance approval for sampling waivers.

b. Unstaffed and Inactive Sites—Chemical Sampling Waiver. Today's proposal allows for a waiver from sampling for facilities that are both inactive and unstaffed. This waiver is only intended to apply to these facilities where lack of personnel and locational impediments hinder the ability to conduct sampling (*i.e.*, the ability to meet the time and representative rainfall sampling specifications). This waiver is not intended to apply to remote facilities that are active and staffed, nor to facilities with just difficult logistical conditions. When a discharger is unable to collect samples as specified in this permit, the discharger shall certify to the Director in the DMR that the facility is unstaffed and inactive and the ability to conduct samples within the specifications is not possible. Permittees are not required to obtain advance approval for this waiver.

c. Unstaffed and Inactive Sites—Visual Monitoring Waiver. The proposed MSGP–2000 allows for a waiver from sampling for facilities that are both inactive and unstaffed. This waiver is only intended to apply to these facilities where lack of personnel and locational impediments hinder the ability to conduct visual examinations (*i.e.*, the ability to meet the time and representative rainfall sampling specifications). This monitoring waiver is not intended to apply to remote facilities that are active and staffed, nor to facilities with just difficult logistical conditions. When a discharger is unable to perform visual examinations as specified in this permit, the discharger shall maintain on site with the pollution prevention plan a certification stating that the facility is unstaffed and inactive and the ability to perform visual examinations within the specifications is not possible. Permittees are not required to obtain advance approval for visual examination waivers.

8. Quarterly Visual Examination of Storm Water Quality

Today's proposal retains the requirements of the existing MSGP for quarterly visual examinations of storm water discharges which EPA continues to believe provide a useful an inexpensive means for permittees to evaluate the effectiveness of their SWPPPs (with immediate feedback) and make any necessary modifications to address the results of the visual examinations. All sectors of today's proposed MSGP are required to conduct these examinations. In the existing MSGP all sectors except Sector S (which covers air transportation) are required to conduct the examinations.

Basically, the MSGP requires that grab samples of storm water discharges be taken and examined visually for the presence of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen or other obvious indicators of storm water pollution. The grab samples must be taken within the first 30 minutes after storm water discharges begin, or as soon as practicable, but not longer than 1 hour after discharges begin. The sampling must be conducted quarterly during the following time periods: January–March, April–June, July–September and October–December of each year. The reports summarizing these quarterly visual storm water examinations must be maintained on-site with the SWPPP.

The examination of the sample must be made in well lit areas. The visual examination is not required if there is insufficient rainfall or snow-melt to runoff or if hazardous conditions prevent sampling. Whenever practicable the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible in recording observations.

When conducting a storm water visual examination, the pollution prevention team, or team member, should attempt to relate the results of the examination to potential sources of storm water contamination on the site. For example, if the visual examination reveals an oil sheen, the facility personnel (preferably members of the pollution prevention team) should conduct an inspection of the area of the site draining to the examined discharge to look for obvious sources of spilled oil, leaks, *etc.* If a source can be located, then this information allows the facility operator to immediately conduct a clean-up of the pollutant source, and/or to design a change to the SWPPP to eliminate or minimize the contaminant source from occurring in the future.

Other examples include: If the visual examination results in an observation of floating solids, the personnel should carefully examine the solids to see if they are raw materials, waste materials or other known products stored or used at the site. If an unusual color or odor is sensed, the personnel should attempt to compare the color or odor to the colors or odors of known chemicals and other materials used at the facility. If the examination reveals a large amount of settled solids, the personnel may check for unpaved, unstabilized areas or areas of erosion. If the examination results in a cloudy sample that is very slow to settle-out, the personnel should evaluate the site draining to the discharge point for fine particulate material, such as dust, ash, or other pulverized, ground, or powdered chemicals.

To be most effective, the personnel conducting the visual examination should be fully knowledgeable about the SWPPP, the sources of contaminants on the site, the industrial activities conducted exposed to storm water and the day to day operations that may cause unexpected pollutant releases.

If the visual examination results in a clean and clear sample of the storm water discharge, this may indicate that no pollutants are present. This would be a indication of a high quality result, however, the visual examination will not provide information about dissolved contamination. If the facility is in a sector or subsector required to conduct analytical (chemical) monitoring, the results of the chemical monitoring, if conducted on the same sample, would help to identify the presence of any dissolved pollutants and the ultimate effectiveness of the pollution prevention plan. If the facility is not required to conduct analytical monitoring, it may do so if it chooses to confirm the cleanliness of the sample.

While conducting the visual examinations, personnel should constantly be attempting to relate any contamination that is observed in the samples to the sources of pollutants on site. When contamination is observed, the personnel should be evaluating whether or not additional BMPs should be implemented in the SWPPP to address the observed contaminant, and if BMPs have already been implemented, evaluating whether or not these are working correctly or need maintenance. Permittees may also conduct more frequent visual examinations than the minimum quarterly requirement, if they so choose. By doing so, they may improve their ability to ascertain the effectiveness of their plan. Using this guidance, and employing a strong knowledge of the facility operations, EPA believes that permittees should be able to maximize the effectiveness of their storm water pollution prevention efforts through conducting visual examinations which give direct, frequent feedback to the facility operator or pollution prevention team on the quality of the storm water discharge.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. EPA recommends that the visual examination be conducted at different times than the chemical monitoring, but is not requiring this. In addition, more frequent visual examinations can be conducted if the permittee so chooses. In this way, better assessments of the effectiveness of the pollution prevention plan can be achieved. The frequency of this visual examination will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the examinations. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on examination will enhance the staff's understanding of the site's storm water problems and the effects of the management practices that are included in the plan.

F. Regional Offices

1. Notice of Intent Address

Notices of Intent to be authorized to discharge under the MSGP should be sent to: Storm Water Notice of Intent (4203), USEPA 401 M Street, SW, Washington, DC 20460.

2. EPA Regional Contacts

For further information, please call the appropriate EPA Regional storm water contacts listed below:

- ME, MA, NH, Indian country in CT, MA, ME, RI, and Federal Facilities in VT.

EPA Region 1, Office of Ecosystem Protection, One Congress Street—CMU, Boston, MA 02114, Contact: Thelma Murphy (617) 918–1615.

- PR

U.S. EPA, Region 2, Caribbean Environmental Protection Division, Centro Europa Building, 1492 Ponce de Leon Avenue, Suite 417, San Juan, Puerto Rico 00907–4127, Contact: Sergio Bosques (787) 729–6951.

- DC and Federal Facilities in DE

EPA Region 3, Water Protection Division (3WP13), Storm Water Coordinator, 1650 Arch Street, Philadelphia, PA 19103, Contact: Mary Letzkus, (215) 814–2087.

- FL and Indian country in FL

EPA Region 4, Water Management Division, Surface Water Permits Section (SWPFB), 61 Forsyth Street, SW, Atlanta, GA 30303–3104, Contact: Floyd Wellborn (404) 562–9296.

- NM; Indian country in LA, OK, TX and NM (Except Navajo and Ute Mountain Reservation Lands); oil and gas exploration and production related industries and pipeline operations and point source discharges associated with agricultural production, services, and silviculture in OK (which under State law are regulated by the Oklahoma Corporation Commission or the Oklahoma Department of Agriculture and not the Oklahoma Department of Environmental Quality); and oil and gas sites in TX.

EPA Region 6, NPDES Permits Section (6WQ–PP) 1445 Ross Avenue, Dallas, TX 75202–2733, Contact: Brent Larsen (214) 665–7523.

- Federal facilities in the State of Colorado; Indian Country in CO, MT, ND, SD, WY and UT (except Goshute Reservation lands); Ute Mountain Reservation lands in CO and NM ; and Pine Ridge Reservation lands in SD and NE.

EPA Region 8, Ecosystems Protection Program (8EPR–EP), 999 18th Street, Suite 500, Denver, CO 80202–2466, Contact: Vern Berry (303) 312–6071.

- AZ, American Samoa, Commonwealth of Northern Mariana Islands, Johnston Atoll, Guam, Midway Island and Wake Island; all Indian country in AZ, CA, and NV; those portions of the Duck Valley, Fort McDermitt and Goshute Reservations that are outside NV; those portions of the Navajo Reservation that are outside AZ.

EPA Region 9, Water, Management Division, (WTR–5), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105, Contact: Eugene Bromley (415) 744–1906.

• AK and ID; Indian country in AK, ID (except the Duck Valley Reservation), OR (except the Fort McDermitt Reservation), and WA; and Federal facilities in WA.

EPA Region 10, Office of Water (OW–130), Storm Water Staff, 1200 Sixth Avenue, Seattle, WA 98101.

VII. Cost Estimates

Cost estimates for the MSGP were included with the final fact sheet accompanying the issuance of the MSGP on September 29, 1995 and are not being repeated here. However, additional costs for facilities seeking coverage under the reissued MSGP should be minor since the proposed MSGP includes few changes from the existing MSGP. Costs may actually decrease for those facilities required to perform analytic monitoring under the original MSGP if the Agency opts to forgo analytic monitoring in the MSGP–2000 (pending receipt of fourth-year monitoring data and public comments).

VIII. Special Requirements for Discharges Associated With Specific Industrial Activities

Section VIII of the fact sheet accompanying the 1995 MSGP included a detailed description of the industrial sectors covered by the permit, sources of pollutants from the different types of industries, available industry-specific BMPs, and a description of the industrial-specific permit requirements. As noted previously, EPA is not repeating all this information due to its considerable length. Table 1 in Section IV of this fact sheet listed the industrial sectors and subsectors covered by the proposed MSGP. For today's proposed MSGP, EPA reviewed the various sectors and subsectors to determine whether additional BMP opportunities have been identified subsequent to the issuance of the 1995 MSGP which would be appropriate to include in the reissued MSGP.

To update the various sectors and subsectors, EPA reviewed a variety of sources of information. As noted in Section VI.C of this fact sheet, pollution prevention is the cornerstone of the NPDES storm water permit program, and as such, EPA focused on new pollution prevention opportunities in updating the sectors. EPA itself has several ongoing programs directed toward identifying additional pollution prevention opportunities for different industrial sectors. One example would be the "sector notebooks" which EPA's Office of Compliance has published covering 28 different industries, including many of those covered by the MSGP. EPA's Design for the Environment Program and Common Sense Initiative would be additional examples. States, municipalities, industry trade associations and individual companies have also been active in recent years in trying to identify additional pollution prevention opportunities for different types of industries.

In reviewing the new information, however, EPA has identified only a few sectors where there appear to be additional storm water BMPs which would be appropriate for the reissued MSGP. For many industries, while considerable work has been conducted to reduce the environmental effects of these industries, little of the work has focused specifically on storm water. Rather the efforts have focused more in areas such as manufacturing process changes to reduce hazardous waste generation or to reduce pollutant discharges in process wastewater. Where additional storm water BMPs have been identified and are proposed to be incorporated into the reissued MSGP, these new requirements are discussed below by sector. In some sectors, additional language clarifying the permit requirements has been added and these changes are also discussed below.

A. Sector C—Chemical and Allied Products Facilities

Industry-specific requirements for the manufacture of fertilizer from leather scraps (SIC 2873) was moved from Sector Z (Leather Tanning and Finishing) to Sector C. This change places the requirements for SIC 2873 in the same sector as other manufacturers of fertilizers.

B. Sector G—Metal Mining (Ore Dressing and Mining)

To clarify the applicability of the MSGP with regards to construction activity at metal mining sites, Sector G has been modified to indicate that earth-disturbing activities which disturb 5 or more acres may require permit coverage under EPA's construction general permit (63 FR 7858, February 17, 1998), or an alternate NPDES permit authorizing storm water discharges associated with construction activity. The discharges requiring such alternate permitting would primarily occur during exploration and start-up of a metal mining activity, but may also apply to expansion of an existing mine into new areas.

Today's proposal also incorporates the MSGP modifications of August 7, 1998 (63 FR 42534) regarding storm water discharges from waste rock and overburden piles. On October 10, 1995, the National Mining Association challenged the interpretation set forth in Table G–4 of the 1995 MSGP that runoff from waste rock and overburden piles would categorically be considered mine drainage subject to effluent limitations guidelines (ELGs) at 40 CFR part 440. The litigation was settled on August 7, 1998 with a revised interpretation by EPA of the applicability of the ELGs which is incorporated into the proposed MSGP–2000. Under the revised interpretation, runoff from waste rock and overburden piles is not subject to ELGs unless it naturally drains (or is intentionally diverted) to a point source and combines with "mine drainage" that is otherwise subject to the ELGs.

The August 7, 1998 modification of the MSGP provided permit coverage for storm water discharges from waste rock and overburden piles which are not subject to ELGs. However, due to concerns regarding potential pollutants in the discharges, additional monitoring requirements were included in the permit to determine the pollutant concentrations in the discharges. These monitoring requirements are also included in today's proposed MSGP.

C. Sector J—Mineral Mining and Processing

EPA has re-evaluated the provisions of the current MSGP for industrial facilities in Sector J to determine whether these provisions need to be updated for the reissued MSGP. Although neither additional BMP nor additional monitoring requirements are being proposed, the permit language has been clarified to indicate that earth-disturbing activities which disturb 5 or more acres may require permit coverage under EPA's construction general permit (63 FR 7858, February 17, 1998), or an alternate NPDES permit authorizing storm water discharges associated with construction activity. The discharges requiring such alternate permitting would primarily occur during exploration and start-up of a mineral mining activity, but may also apply to expansion of an existing mine into new areas.

D. Sector K—Hazardous Waste Treatment, Storage or Disposal Facilities

EPA has re-evaluated the provisions of the current MSGP for industrial facilities in Sector K to determine whether these provisions need to be updated for the reissued MSGP. On January 19, 2000 (65 FR 3008), EPA promulgated final effluent limitations guidelines (ELGs) for "contaminated storm water discharges" from new and existing hazardous landfill facilities regulated under RCRA Subtitle C at 40 CFR parts 264 (subpart N) and 265 (subpart N), except for the following "captive" landfills:

(a) Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

(b) Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

(c) Landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR part 437 so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

(d) Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

For Sector K of the new MSGP, EPA is proposing to include the new ELGs (40 CFR part 445 subpart A) for hazardous landfill facilities.

The term "contaminated storm water" is defined in the ELGs as "storm water which comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater." (40 CFR 445.2). Contaminated storm water may originate from areas at a landfill including (but not limited to): "the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.". (40 CFR 445.2).

The term "non-contaminated storm water" is defined in the ELGs as "storm water which does not come in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater." (40 CFR 445.2). Non-contaminated storm water includes storm water which "flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill." [40 CFR 445.2].

The term "landfill wastewater" is defined in the ELGs as "all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility."

The existing MSGP authorizes discharges of storm water associated with industrial activity which includes contaminated storm water discharges (as defined above) as well as other non-contaminated storm water discharges (also defined above). The proposed MSGP would continue to authorize storm water associated with industrial activity; however, for contaminated storm water discharges as defined above, the proposed MSGP would require compliance with the promulgated ELGs for such discharges (with monitoring once/year during each year of the term of the proposed MSGP). The ELGs for the new and existing hazardous landfills are found in Table K–1 below:

TABLE K–1.—EFFLUENT LIMITATIONS GUIDELINES FOR CONTAMINATED STORM WATER DISCHARGES

[mg/l]

Pollutant	Maximum for 1 day	Monthly average maximum
BOD5	220	56
TSS	88	27
Ammonia	10	4.9
Alpha Terpineol	0.042	0.019
Aniline	0.024	0.015
Benzoic Acid	0.119	0.073
Naphthalene	0.059	0.022
p-Cresol	0.024	0.015
Phenol	0.048	0.029
Pyridine	0.072	0.025
Arsenic (total)	1.1	0.54
Chromium (total)	1.1	0.46
Zinc (total)	0.535	0.296
pH	within the range of 6–9 pH units	

Today's proposed MSGP (like the existing MSGP) would not authorize non-storm water discharges such as leachate and vehicle and equipment washwater. These and other landfill-generated wastewaters are subject to the ELGs. The proposed MSGP would, however, continue to authorize certain minor non-storm water discharges (listed in Part 1.2.2.2) which are very similar to the existing MSGP.

E. Sector L—Landfills, Land Application Sites and Open Dumps

EPA has re-evaluated the provisions of the current MSGP for industrial facilities in Sector L to determine whether these provisions need to be updated for the reissued MSGP. The SWPPP requirements of the existing MSGP already include several special BMPs for this industry in addition to the MSGP's basic BMP requirements.

On January 19, 2000 (65 FR 3008), EPA promulgated final effluent limitations guidelines (ELGs) for "contaminated storm water discharges" from new and existing non-hazardous landfill facilities regulated under RCRA Subtitle D (40 CFR part 445 subpart B). For Sector L of today's proposed MSGP, EPA is proposing to include the ELGs as they apply to facilities covered by this sector. For Sector L facilities, the ELGs apply to:

Municipal solid waste landfills regulated under RCRA Subtitle D at 40 CFR part 258 and those landfills which are subject to the provisions of 40 CFR part 257, except for any of the following "captive" landfills:

(a) Landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

(b) Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

(c) Landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR part 437 so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

(d) Landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

EPA is not proposing to modify Sector L for the discharges which are not subject to the ELGs. In addition, EPA would like to call attention to a new EPA publication entitled "Guide for Industrial Waste Management" (EPA 530–R–99–001, June, 1999) which provides a useful information resource for permittees in complying with the MSGP, and in minimizing the impact of landfills to the environment overall.

The term "contaminated storm water" is defined in the ELGs as "storm water which comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater." (40 CFR 445.2). Contaminated storm water may originate from areas at a landfill including (but not limited to): "the open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas." (40 CFR 445.2).

The term "non-contaminated storm water" is defined in the ELGs as "storm water which does not come in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater." (40 CFR 445.2). Non-contaminated storm water includes storm water which "flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill." (40 CFR 445.2).

The term "landfill wastewater" is defined in the ELGs as "all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility." (40 CFR 445.2).

The existing MSGP authorizes discharges of storm water associated with industrial activity from landfills including contaminated storm water discharges as defined in the ELGs as well as non-contaminated storm water. Today's proposal would continue to authorize storm water associated with industrial activity; however, for contaminated storm water discharges as defined above, the proposed MSGP would require compliance with the promulgated ELGs for such discharges (with monitoring once/year during each year of the term of the proposed MSGP). The ELGs are found in Table L–1 below:

TABLE L–1.—EFFLUENT LIMITATIONS GUIDELINES FOR CONTAMINATED STORM WATER DISCHARGES

(mg/l)

Pollutant	Maximum for 1 day	Monthly average maximum
BOD5	140	37
TSS	88	27
Ammonia	10	4.9
Alpha Terpineol	0.033	0.016
Benzoic Acid	0.12	0.071
p-Cresol	0.025	0.014
Phenol	0.026	0.015
Zinc (Total)	0.20	0.11
pH	within the range of 6–9 pH units	

The proposed MSGP (like the existing MSGP) would not authorize non-storm water discharges such as leachate and vehicle and equipment washwater. These and other landfill-generated wastewaters are subject to the ELGs. The proposed MSGP would, however, continue to authorize the same minor non-storm water discharges (listed in Part 1.2.2.2) as the existing MSGP.

F. Sector S—Air Transportation Facilities

EPA has re-evaluated the provisions of the current MSGP for industrial facilities in Sector S to determine whether these provisions need to be updated for the reissued MSGP. The SWPPP requirements of the existing MSGP include several special BMP requirements for airports in addition to the MSGP's basic BMP requirements. However, additional technologies have been developed since the original MSGP

issuance for deicing operations which are proposed to be included in today's MSGP. First, with regards to deicing compounds, the existing MSGP requires that permittees consider only one compound (potassium acetate) in lieu of ethylene glycol, propylene glycol and urea. Part 6.S.5.3.6 of today's proposed MSGP also requires a consideration of magnesium acetate, calcium acetate and anhydrous sodium acetate as additional deicing alternatives which (like potassium acetate), EPA believes would be environmentally preferable.

Part 6.S.5.3.6.2 of today's proposed MSGP also requires a consideration of new technologies for aircraft deicing including infra-red treatment, hot air treatment and sonic treatment. Other new deicing options which must be considered include deicing aircraft in a dedicated area or pad with a runoff collection/recovery system, and using a deicer gantry that delivers controlled amounts of chemical to specific areas of the aircraft.

G. Sector T—Treatment Works

EPA has re-evaluated the provisions of the current MSGP for industrial facilities in Sector T to determine whether these provisions need to be updated for the reissued MSGP. The SWPPP requirements of the existing MSGP already include a few special BMP requirements for this industry in addition to the MSGP's basic BMP requirements. In reviewing the information which EPA has available on this industry, EPA has identified several additional areas at treatment works facilities which we believe should be considered more closely for potential storm water controls. As a result, EPA has included additional or modified permit requirements which we believe would be appropriate to include in Sector T.

The proposed MSGP–2000 requires that operators of Sector T treatment works include the following additional areas or activities, where they are exposed to precipitation, in their SWPPP site map, summary of potential pollutant sources, and inspections: Grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage and/or hauled waste receiving stations. An additional BMP that permittees must consider is routing storm water to into the treatment works, or covering exposed materials from these additional areas or activities.

H. Sector Y—Rubber, Miscellaneous Plastic Products and Miscellaneous Manufacturing Industries

EPA has re-evaluated the provisions of the current MSGP for industrial facilities in Sector Y. The existing MSGP includes several special BMP requirements for rubber manufacturers to control zinc in storm water discharges. However, no special BMPs beyond the MSGP's basic SWPPP requirements are included in the existing MSGP for manufacturers of miscellaneous plastic products or miscellaneous manufacturing industries.

EPA has several ongoing programs directed toward identifying additional pollution prevention opportunities for different industrial sectors. For example, EPA's Office of Compliance has published "sector notebooks" for a number of industries, including the rubber and miscellaneous plastics industry (EPA 310–R–95–016). The sector notebooks are intended to facilitate a multi-media analysis of environmental issues associated with different industries and include a review of pollution prevention opportunities for the industries. As discussed below, EPA's sector notebook for the rubber and plastic products industry identifies a number of additional BMPs (beyond those in the existing MSGP) which could further reduce pollutants in storm water discharges from these facilities, and which are proposed for the reissued MSGP.

1. Rubber Manufacturing Facilities

The proposed MSGP–2000 requires that rubber manufacturing facility permittees consider the following additional BMPs (which were selected from those in the sector notebook) for the rubber product compounding and mixing area:

(1) Consider the use of chemicals which are purchased in pre-weighed, sealed polyethylene bags. The sector notebook points out that some facilities place such bags directly into the banbury mixer, thereby eliminating a formerly dusty operation which could result in pollutants in storm water discharges.

(2) Consider the use of containers which can be sealed for materials which are in use; also consider ensuring an airspace between the container and the cover to minimize "puffing" losses when the container is opened.

(3) Consider the use of automatic dispensing and weighing equipment. The sector notebook observes that such equipment minimizes the chances for chemical losses due to spills.

2. Plastic Products Manufacturing Facilities

For plastic products manufacturing facilities, the proposed MSGP–2000 requires that permittees consider and include (as appropriate) specific measures in the SWPPP to minimize loss of plastic resin pellets to the environment. These measures include (at a minimum) spill minimization, prompt and thorough cleanup of spills, employee education, thorough sweeping, pellet capture and disposal precautions. Additional specific guidance on minimizing loss can be found in the EPA publication entitled "Plastic Pellets in the Aquatic Environment: Sources and Recommendations" (EPA 842–B–92–010, December, 1992) and at the website of the Society of the Plastics Industry (www.socplas.org).

3. Industry-Sponsored Efforts

Both the rubber manufacturing and plastic products industries are also active in sponsoring studies designed to reduce the environmental impacts associated with the production, use and ultimate disposal of their products. However, in reviewing recent work in this regard, EPA has not identified any additional BMPs for storm water discharges which would be appropriate for the reissued MSGP. Therefore, only the additional BMPs noted above are proposed for the reissued MSGP for these industries.

IX. Economic Impact (Executive Order 12866)

Under Executive Order 12866 (58 FR 51735 (October 4, 1993)), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

EPA has determined that the proposed MSGP is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to formal OMB review prior to proposal.

X. Unfunded Mandates Reform Act

Section 201 of the Unfunded Mandates Reform Act (UMRA), Pub L. 104–4, generally requires Federal agencies to assess the effects of their "regulatory actions" on State, local, and tribal governments and the private sector. UMRA uses the term "regulatory actions" to refer to regulations. (See, *e.g.*, UMRA section 201, "Each agency shall * * * assess the effects of Federal regulatory actions * * * (other than to the extent that such regulations incorporate requirements specifically set forth in law)" (emphasis added)). UMRA section 102 defines "regulation" by reference to 2 U.S.C. 658 which in turn defines "regulation" and "rule" by reference to section 601(2) of the Regulatory Flexibility Act (RFA). That section of the RFA defines "rule" as "any rule for which the agency publishes a notice of proposed rulemaking pursuant to section 553(b) of (the Administrative Procedure Act (APA)), or any other law* * * *"

As discussed in the RFA section of this notice, NPDES general permits are not "rules" under the APA and thus not subject to the APA requirement to publish a notice of proposed rulemaking. NPDES general permits are also not subject to such a requirement under the CWA. While EPA publishes a notice to solicit public comment on draft general permits, it does so pursuant to the CWA section 402(a) requirement to provide "an opportunity for a hearing." Thus, NPDES general permits are not "rules" for RFA or UMRA purposes.

EPA has determined that today's proposal would not result in expenditures of $100 million or more for State, local and Tribal governments, in the aggregate, or the private sector in any one year.

The Agency also believes that the proposed MSGP–2000 will not significantly nor uniquely affect small governments. For UMRA purposes, "small governments" is defined by reference to the definition of "small governmental jurisdiction" under the RFA. (See UMRA section 102(1), referencing 2 U.S.C. 658, which references section 601(5) of the RFA.) "Small governmental jurisdiction" means governments of cities, counties, towns, etc., with a population of less than 50,000, unless the agency establishes an alternative definition.

The proposed MSGP also will not uniquely affect small governments because compliance with the proposed permit conditions affects small governments in the same manner as any other entities seeking coverage under the proposed permit.

XI. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities resulting from the proposed MSGP under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of the MSGP have already been approved in previous submissions made for the NPDES permit program under the provisions of the Clean Water Act.

XII. Regulatory Flexibility Act

The Agency has determined that the proposed MSGP being published today is not subject to the Regulatory Flexibility Act ("RFA"), which generally requires an agency to conduct a regulatory flexibility analysis of any significant impact the rule will have on a substantial number of small entities. By its terms, the RFA only applies to rules subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act ("APA") or any other statute. Today's proposed MSGP is not subject to notice and comment requirements under the APA or any other statute because the APA defines "rules" in a manner that excludes permits. See APA section 551 (4), (6), and (8).

APA section 553 does not require public notice and opportunity for comment for interpretative rules or general statements of policy. In addition to proposing the new MSGP to be reissued, today's notice repeats an interpretation of existing regulations promulgated almost twenty years ago. The action would impose no new or additional requirements.

XIII. Official Signatures

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: March 6, 2000.

Linda M. Murphy,

Director, Office of Ecosystem Protection, EPA—Region I.

Dated: March 10, 2000.

Kathleen C. Callahan,

Director, Division of Environmental Planning and Protection, Region 2.

Dated: March 3, 2000.

Jon M. Capacasa,

Acting Director, Water Protection Division, EPA, Region 3.

Dated: March 6, 2000.

Beverly H. Banister,

Deputy Division Director, Region 4.

Dated: March 2, 2000.

William B. Hathaway,

Director, Water Quality Protection Division, EPA Region 6.

Dated: March 6, 2000.

Kerrigan G. Clough,

Assistant Regional Administrator, Office of Pollution Prevention, State and Tribal Assistance, Region 8.

Dated: March 2, 2000.

Alexis Strauss,

Director, Water Division, EPA, Region 9.

XIII. Official Signatures

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: March 6, 2000.

Randall F. Smith,

Director, Office of Water, EPA Region 10.

[Note to the Public: "Notes" appearing in brackets [...] are used to highlight an area the Agency is particularly interested in soliciting public comment. These bracketed notes will not appear in the final permit. "Notes" or "Cautions" that do not appear in brackets are part of the proposed permit and are used to highlight or clarify permit conditions.]

NPDES Multi-Sector General Permits For Storm Water Discharges Associated With Industrial Activities

Cover Page

Permit No. (See Part 1.1)

Authorization to Discharge Under the National Pollutant Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et. seq.), operators of discharges associated with industrial activities that submit a complete Notice of Intent in accordance with part 2.2 for a discharge that is located in an area specified in part 1.1 and eligible for permit coverage under part 1.2 are authorized to discharge pollutants to

waters of the United States in accordance with the conditions and requirements set forth herein.

This permit becomes effective on March 30, 2000.

This permit and the authorization to discharge expire at midnight, March 30, 2005.

Region 1

Signed and issued this _____ day of _____, 2000
(reserved for final permit decision)

_____
(Signature of Water Management Division Director)

Region 2

Signed and issued this _____ day of _____, 2000
(reserved for final permit decision)

_____
(Signature of Water Management Division Director)

Region 3

Signed and issued this _____ day of _____, 2000
(reserved for final permit decision)

_____
(Signature of Water Management Division Director)

Region 4

Signed and issued this _____ day of _____, 2000
(reserved for final permit decision)

_____
(Signature of Water Management Division Director)

Region 6

Signed and issued this _____ day of _____, 2000
(reserved for final permit decision)

_____
(Signature of Water Management Division Director)

Region 8

Signed and issued this _____ day of _____, 2000
(reserved for final permit decision)

_____
(Signature of Water Management Division Director)

Region 9

Signed and issued this _____ day of _____, 2000
(reserved for final permit decision)

_____
(Signature of Water Management Division Director)

Region 10

Signed and issued this _____ day of _____, 2000
(reserved for final permit decision)

_____
(Signature of Water Management Division Director)

NPDES Multi-Sector General Permits for Storm Water

Table of Contents

1. Coverage Under This Permit
1.1 Permit Area
1.2 Eligibility
1.3 How to Obtain Authorization Under This Permit
1.4 Terminating Coverage
1.5 Conditional Exclusion for No Exposure

2. Notice of Intent Requirements
2.1 Notice of Intent (NOI) Deadlines
2.2 Contents of Notice of Intent (NOI)
2.3 Use of NOI Form
2.4 Where to Submit
2.5 Additional Notification

3. Special Conditions
3.1 Hazardous Substances or Oil
3.2 Additional Requirements for Salt Storage
3.3 Discharge Compliance With Water Quality Standards

4. Storm Water Pollution Prevention Plans
4.1 Storm Water Pollution Prevention Plan Requirements
4.2 Contents of Plan
4.3 Maintenance
4.4 Non-Storm Water Discharges
4.5 Documentation of Permit Eligibility Related to Endangered Species
4.6 Documentation of Permit Eligibility Related to Historic
4.7 Copy of Permit Requirements
4.8 Applicable State, Tribal or Local Plans
4.9 Comprehensive Site Compliance Evaluation
4.10 Maintaining Updated SWPPP
4.11 Signature, Plan Review and Making Plans Available

5. Monitoring Requirements and Numeric Limitations
5.1 Types of Monitoring Requirements and Limitations
5.2 Monitoring Instructions
5.3 General Monitoring Waivers
5.4 Monitoring Required the Director
5.5 Reporting Monitoring Results

6. Sector-Specific Requirements for Industrial Activity
6.A Sector A—Timber Products
6.B Sector B—Paper and Allied Products Manufacturing
6.C Sector C—Chemical and Allied Products Manufacturing
6.D Sector D—Asphalt Paving and Roofing Materials and Lubricant Manufacturers.
6.E Sector E—Glass Clay, Cement, Concrete, and Gypsum Products
6.F Sector F—Primary Metals
6.G Sector G—Metal Mining (Ore Mining and Dressing)
6.H Sector H—Coal Mines and Coal Mining Related Facilities
6.I Sector I—Oil and Gas Extraction
6.J Sector J—Mineral Mining and Dressing
6.K Sector K—Hazardous Waste Treatment, Storage or Disposal Facilities
6.L Sector L—Landfills, Land Application Sites and Open Dumps
6.M Sector M—Automobile Salvage Yards
6.N Sector N—Scrap Recycling and Waste Recycling Facilities
6.O Sector O—Steam Electric Generating Facilities
6.P Sector P—Land Transportation and Warehousing
6.Q Sector Q—Water Transportation
6.R Sector R—Ship and Boat Building or Repair Yards
6.S Sector S—Air Transportation
6.T Sector T—Treatment Works
6.U Sector U—Food and Kindred Products
6.V Sector V—Textile Mills, Apparel and Other Fabric Products
6.W Sector W—Furniture and Fixtures
6.X Sector X—Printing and Publishing
6.Y Sector Y—Rubber, Miscellaneous Plastic Products and Miscellaneous Manufacturing Industries
6.Z Sector Z—Leather Tanning and Finishing
6.AA Sector AA—Fabricated Metal Products
6.AB Sector AB—Transportation Equipment, Industrial or Commercial Machinery
6.AC Sector AC—Electronic, Electrical Equipment and Components, Photographic and Optical Goods
6.AD Storm Water Discharges Designated By the Director As Requiring Permits

7. Reporting
7.1 Reporting Results of Monitoring
7.2 Additional Reporting for Dischargers to a Large or Medium Municipal Separate Storm Sewer System
7.3 Miscellaneous Reports

8. Retention of Records
8.1 Documents
8.2 Accessibility
8.3 Addresses
8.4 State, Tribal, and Other Agencies

9. Standard Permit Conditions
9.1 Duty to Comply
9.2 Continuation of the Expired General Permit
9.3 Need to Halt or Reduce Activity Not a Defense
9.4 Duty to Mitigate
9.5 Duty to Provide Information
9.6 Other Information
9.7 Signatory Requirements
9.8 Penalties for Falsification of Reports
9.9 Oil and Hazardous Substance Liability
9.10 Property Rights
9.11 Severability
9.12 Requiring Coverage Under an Individual Permit or an Alternative General Permit
9.13 State/Tribal Environmental Laws
9.14 Proper Operation and Maintenance
9.15 Inspection and Entry
9.16 Monitoring and Records
9.17 Permit Actions

10. Reopener Clause
10.1 Water Quality Protection
10.2 Procedures for Modification or Revocation

11. Transfer or Termination of Coverage
11.1 Transfer of Permit Coverage
11.2 Notice of Termination (NOT)
11.3 Addresses
11.4 Facilities Eligible for "No Exposure" Exemption for Storm Water Permitting

12. Definitions

13. Permit Conditions Applicable to Specific States, Indian Country Lands, or Territories

Addendum A—Endangered Species Guidance

Addendum B—Historic Properties Guidance

Addendum D—Notice of Intent Form

Addendum E—Notice of Termination Form

Addendum F—No Exposure Certification Form

Note: In the Spirit of the Agency's "Readable Regulations" policy, this permit was written as much as practicable in a more reader-friendly, plain language format that should make it easier for people less familiar with traditional EPA permits and regulations to read and understand the permit requirements. Terms like "you" and "your" are used to refer to the party(ies) that are operators of a discharge, applicants, permittees, etc. Terms like "must" are used instead of "shall." Phrasing such as "If you. * * *" is used to identify conditions that may not apply to all permittees.

1. Coverage Under This Permit

1.1 Permit Area

The permit language is structured as if it were a single permit, with State, Indian Country land or other area-specific conditions contained in Part 13. Permit coverage is actually provided by legally separate and distinctly numbered permits, all of which are contained herein, and which cover each of the areas listed in Parts 1.1.1 through 1.1.10. Note: EPA can only provide permit coverage for areas and classes of discharges not within the scope of a State's NPDES authorization. For discharges not described in an area of coverage below, please contact the appropriate State NPDES permitting authority to obtain a permit.

1.1.1 EPA Region 1: CT, MA, ME, NH, RI, VT

The states of Connecticut, Rhode Island, and Vermont are the NPDES Permitting Authority for the majority of discharges within their respective states.

Permit No.	Areas of Coverage/Where EPA is Permitting Authority
CTR05*##I	Indian Country lands within the State of Connecticut.
MAR05*###	Commonwealth of Massachusetts, except Indian Country lands.
MAR05*##I	Indian Country lands within the Commonwealth of Massachusetts.
MER05*###	State of Maine, except Indian Country lands.
MER05*##I	Indian Country lands within the State of Maine.
NHR05*###	State of New Hampshire.
RIR05*##I	Indian Country lands within the State of Rhode Island.
VTR05*##F	Federal Facilities in the State of Vermont.

1.1.2 EPA Region 2: NJ, NY, PR, VI

The state of New York is the NPDES Permitting Authority for the majority of discharges within that state. New Jersey and the Virgin Islands are the NPDES Permitting Authority for all discharges within their respective states.

Permit No.	Areas of Coverage/Where EPA is Permitting Authority
NYR05*##I	Indian Country lands within the State of New York.
PRR05*###	The Commonwealth of Puerto Rico.

1.1.3 EPA Region 3: DE, DC, MD, PA, VA, WV

The state of Delaware is the NPDES Permitting Authority for the majority of discharges within that state. Maryland, Pennsylvania, and Virginia, West Virginia are the NPDES Permitting Authority for all discharges within these states.

Permit No.	Areas of Coverage/Where EPA is Permitting Authority
DCR05*###	The District of Columbia.
DER05*##F	Federal Facilities in the State of Delaware.

1.1.4 EPA Region 4: AL, FL, GA, KY, MS, NC, SC, TN

The states of Alabama, Mississippi, and North Carolina are the NPDES Permitting Authority for the majority of discharges within their respective states. Georgia, Kentucky, South Carolina and Tennessee are the NPDES Permitting Authority for all discharges within their respective states.

Permit No.	Areas of Coverage/Where EPA is Permitting Authority
ALR05*##I	Indian Country lands within the State of Alabama.
FLR05*###	State of Florida.
FLR05*##I	Indian Country lands within the State of Florida.
MSR05*##I	Indian Country lands within the State of Mississippi.
NCR05*##I	Indian Country lands within the State of North Carolina.

1.1.5 EPA Region 5: IL, IN, MI, MN, OH, WI

Coverage Not Available.

1.1.6 EPA Region 6: AR, LA, OK, TX, NM (Except See Region 9 for Navajo Lands, and See Region 8 for Ute Mountain Reservation Lands)

The states of Louisiana, Oklahoma, and Texas are the NPDES Permitting Authority for the majority of discharges within their respective states. Arkansas is the NPDES Permitting Authority for all discharges within that state.

Permit No.	Areas of Coverage/Where EPA is Permitting Authority
LAR05*##I	Indian Country lands within the State of Louisiana.
NMR05*###	The State of New Mexico, except Indian Country lands.
NMR05*##I	Indian Country lands within the State of New Mexico, except Navajo Reservation Lands that are covered under Arizona permit AZR05*##I listed in Part 1.1.9 and Ute Mountain Reservation Lands that are covered under Colorado permit COR05*##I listed in Part 1.1.8.
OKR05*##I	Indian Country lands within the State of Oklahoma.
OKR05*##F	Oil and gas facilities under SIC codes 1311, 1381, 1382, and 1389 and 5171 and point source (but not non-point source) discharges associated with agricultural production, services, and silviculture in the State of Oklahoma, except those on Indian Country lands (i.e., discharges not under the authority of the Oklahoma Department of Environmental Quality).
TXR05*##F	Oil and gas facilities in the State of Texas under SIC codes 1311, 1321, 1381, 1382, and 1389, except those on Indian Country lands (i.e., discharges not under the authority of the Texas Natural Resource Conservation Commission).
TXR05*##I	Indian Country lands within the State of Texas.

1.1.7 EPA Region 7: IA, KS, MO, NE

Coverage Not Available.

1.1.8 EPA Region 8: CO, MT, ND, SD, WY, UT (Except See Region 9 for Goshute Reservation and Navajo Reservation Lands), the Ute Mountain Reservation in NM, and the Pine Ridge Reservation in NE

The states of Colorado, Montana, North Dakota, South Dakota, Utah, and Wyoming are the NPDES Permitting Authority for the majority of discharges within their respective states.

Permit No.	Areas of Coverage/Where EPA is Permitting Authority
COR05*##F	Federal Facilities in the State of Colorado, except those located on Indian Country lands.
COR05*##I	Indian Country lands within the State of Colorado, including the portion of the Ute Mountain Reservation located in New Mexico.
MTR05*##I	Indian Country lands within the State of Montana.
NDR05*##I	Indian Country lands within the State of North Dakota, including that portion of the Standing Rock Reservation located in South Dakota except for the Lake Traverse Reservation that is covered under South Dakota permit SDR05*##I listed below.
SDR05*##I	Indian Country lands within the State of South Dakota, including the portion of the Pine Ridge Reservation located in Nebraska and the portion of the Lake Traverse Reservation located in North Dakota except for the Standing Rock Reservation that is covered under North Dakota permit NDR05*##I listed above.
UTR05*##I	Indian Country lands within the State of Utah, except Goshute and Navajo Reservation lands that are covered under Arizona permit AZR05*##I (Goshute) listed in Part 1.1.9 and Nevada permit NVR05*##I (Navaho) listed in Part 1.1.9.
WYR05*##I	Indian Country lands within the State of Wyoming.

1.1.9 EPA Region 9: AZ, CA, HI, NV, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in ID, and the Fort McDermitt Reservation in OR

The states of California and Nevada are the NPDES Permitting Authority for the majority of discharges within their respective states. Hawaii is the NPDES Permitting Authority for all discharges within that state.

Permit No.	Areas of Coverage/Where EPA is Permitting Authority
ASR05*###	The Island of American Samoa.
AZR05*###	The State of Arizona, except Indian Country lands.
AZR05*##I	Indian Country lands within the State of Arizona, including Navajo Reservation lands in New Mexico and Utah.
CAR05*##I	Indian Country lands within the State of California.
GUR05*###	The Island of Guam.

Permit No.	Areas of Coverage/Where EPA is Permitting Authority
JAR05*###	Johnston Atoll.
MWR05*###	Midway Island and Wake Island.
NIR05*###	Commonwealth of the Northern Mariana Islands.
NVR05*##I	Indian Country lands within the State of Nevada, including the Duck Valley Reservation in Idaho, the Fort McDermitt Reservation in Oregon and the Goshute Reservation in Utah.

1.1.10 Region 10: AK, ID (Except See Region 9 for Duck Valley Reservation Lands), OR (Except See Region 9 for Fort McDermitt Reservation), WA

The states of Oregon and Washington are the NPDES Permitting Authority for the majority of discharges within their respective states.

Permit No.	Areas of Coverage/Where EPA is Permitting Authority
AKR05*###	The State of Alaska, except Indian Country lands.
AKR05*##I	Indian Country lands within Alaska.
IDR05*###	The State of Idaho, except Indian Country lands.
IDR05*##I	Indian Country lands within the State of Idaho, except Duck Valley Reservation lands which are covered under Nevada permit NVR05*##I listed in Part 1.1.9.
ORR05*##I	Indian Country lands within the State of Oregon except Fort McDermitt Reservation lands that are covered under Nevada permit NVR10*#I listed in Part 1.1.9.
WAR05*##I	Indian Country lands within the State of Washington.
WAR05*##F	Federal Facilities in the State of Washington, except those located on Indian Country lands.

1.2 Eligibility

You must maintain permit eligibility to discharge under this permit. Any discharges that are not compliant with the eligibility conditions of this permit are not authorized by the permit and you must either apply for a separate permit to cover those ineligible discharges or take necessary steps to make the discharges eligible for coverage.

1.2.1 Facilities Covered

Your permit eligibility is limited to discharges from facilities in the "sectors" of industrial activity based on Standard Industrial Classification (SIC) codes and Industrial Activity Codes summarized in Table 1–1. References to "sectors" in this permit (*e.g.*, sector-specific monitoring requirements, etc.) refer to these sectors.

TABLE 1–1.—SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT

SIC Code or activity code [1]	Activity represented
Sector A: Timber Products	
2411	Log Storage and Handling (Wet deck storage areas only authorized if no chemical additives are used in the spray wator or applied to the logs).
2421	General Sawmills and Planning Mills.
2426	Hardwood Dimension and Flooring Mills.
2429	Special Product Sawmills, Not Elsewhere Classified.
2431–2439 (except 2434)	Millwork, Veneer, Plywood, and Structural Wood (see Sector W).
2448, 2449	Wood Containers.
2451, 2452	Wood Buildings and Mobile Homes.
2491	Wood Preserving.
2493	Reconstituted Wood Products.
2499	Wood Products, Not Elsewhere Classified.
Sector B: Paper and Allied Products	
2611	Pulp Mills.
2621	Paper Mills.
2631	Paperboard Mills.
2652–2657	Paperboard Containers and Boxes.
2671–2679	Converted Paper and Paperboard Products, Except Containers and Boxes.
Sector C: Chemical and Allied Products	
2812–2819	Industrial Inorganic Chemicals.
2821–2824	Plastics Materials and Synthetic Resins, Synthetic Rubber, Cellulosic and Other Man-made Fibers Except Glass.
2833–2836	Medicinal chemicals and botanical products; pharmaceutical preparations,; in vitro and in vivo diagnostic substances; biological products, except diagnostic substances.
2841–2844	Soaps, Detergents, and Cleaning Preparations; Perfumes, Cosmetics, and Other Toilet Preparations.
2851	Paints, Varnishes, Lacquers, Enamels, and Allied Products.
2861–2869	Industrial Organic Chemicals.
2873–2879	Agricultural Chemicals.

TABLE 1–1.—SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT—Continued

SIC Code or activity code [1]	Activity represented
2873	Facilities that Make Fertilizer Solely from Leather Scraps and Leather Dust.
2891–2899	Miscellaneous Chemical Products.
3952 (limited to list)	Inks and Paints, Including China Painting Enamels, India Ink, Drawing Ink, Platinum Paints for Burnt Wood or Leather Work, Paints for China Painting, Artist's Paints and Artist's Watercolors.
Sector D: Asphalt Paving and Roofing Materials and Lubricants	
2951, 2952	Asphalt Paving and Roofing Materials.
2992, 2999	Miscellaneous Products of Petroleum and Coal.
Sector E: Glass Clay, Cement, Concrete, and Gypsum Products	
3211	Flat Glass.
3221, 3229	Glass and Glassware, Pressed or Blown.
3231	Glass Products Made of Purchased Glass.
3241	Hydraulic Cement.
3251–3259	Structural Clay Products.
3262–3269	Pottery and Related Products.
3271–3275	Concrete, Gypsum and Plaster Products.
3295	Minerals and Earth's, Ground, or Otherwise Treated.
3297	Non-Clay Refractories.
Sector F: Primary Metals	
3312–3317	Steel Works, Blast Furnaces, and Rolling and Finishing Mills.
3321–3325	Iron and Steel Foundries.
3331–3339	Primary Smelting and Refining of Nonferrous Metals.
3341	Secondary Smelting and Refining of Nonferrous Metals.
3351–3357	Rolling, Drawing, and Extruding of Nonferrous Metals.
3363–3369	Nonferrous Foundries (Castings).
3398,3399	Miscellaneous Primary Metal Products
Sector G: Metal Mining (Ore Mining and Dressing)	
1011	Iron Ores.
1021	Copper Ores.
1031	Lead and Zinc Ores.
1041,1044	Gold and Silver Ores.
1061	Ferroalloy Ores, Except Vanadium.
1081	Metal Mining Services.
1094,1099	Miscellaneous Metal Ores.
Sector H: Coal Mines and Coal Mining Related Facilities	
1221–1241	Coal Mines and Coal Mining-Related Facilities.
Sector I: Oil and Gas Extraction	
1311	Crude Petroleum and Natural Gas.
1321	Natural Gas Liquids.
1381–1389	Oil and Gas Field Services.
2911	Petroleum Refineries.
Sector J: Mineral Mining and Dressing	
1411	Dimension Stone.
1422–1429	Crushed and Broken Stone, Including Rip Rap.
1442,1446	Sand and Gravel.
1455,1459	Clay, Ceramic, and Refractory Materials.
1474–1479	Chemical and Fertilizer Mineral Mining.
1481	Nonmetallic Minerals Services, Except Fuels.
1499	Miscellaneous Nonmetallic Minerals, Except Fuels.
Sector K: Hazardous Waste Treatment, Storage, or Disposal Facilities	
HZ	Hazardous Waste Treatment Storage or Disposal.
Sector L: Landfills and Land Application Sites	
LF	Landfills, Land Application Sites, and Open Dumps.

TABLE 1–1.—SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT—Continued

SIC Code or activity code [1]	Activity represented
Sector M: Automobile Salvage Yards	
5015	Automobile Salvage Yards.
Sector N: Scrap Recycling Facilities	
5093	Scrap Recycling Facilities.
Sector O: Steam Electric Generating Facilities	
SE	Steam Electric Generating Facilities.
Sector P: Land Transportation and Warehousing	
4011, 4013	Railroad Transportation.
4111–4173	Local and Highway Passenger Transportation.
4212–4231	Motor Freight Transportation and Warehousing.
4311	United States Postal Service.
5171	Petroleum Bulk Stations and Terminals.
Sector Q: Water Transportation	
4412–4499	Water Transportation.
Sector R: Ship and Boat Building or Repairing Yards	
3731, 3732	Ship and Boat Building or Repairing Yards.
Sector S: Air Transportation	
4512–4581	Air Transportation Facilities.
Sector T: Treatment Works	
TW	Treatment Works.
Sector U: Food and Kindred Products	
2011–2015	Meat Products.
2021–2026	Dairy Products.
2032	Canned, Frozen and Preserved Fruits, Vegetables and Food Specialties.
2041–2048	Grain Mill Products.
2051–2053	Bakery Products.
2061–2068	Sugar and Confectionery Products.
2074–2079	Fats and Oils.
2082–2087	Beverages.
2091–2099	Miscellaneous Food Preparations and Kindred Products.
2111–2141	Tobacco Products.
Sector V: Textile Mills, Apparel, and Other Fabric Product Manufacturing, Leather and Leather Products	
2211–2299	Textile Mill Products.
2311–2399	Apparel and Other Finished Products Made From Fabrics and Similar Materials.
3131–3199 (except 3111)	Leather and Leather Products, except Leather Tanning and Finishing (see Sector Z).
Sector W: Furniture and Fixtures	
2434	Wood Kitchen Cabinets
2511–2599	Furniture and Fixtures.
Sector X: Printing and Publishing	
2711–2796	Printing, Publishing, and Allied Industries.
Sector Y: Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries	
3011	Tires and Inner Tubes.
3021	Rubber and Plastics Footwear.
3052, 3053	Gaskets, Packing, and Sealing Devices and Rubber and Plastics Hose and Belting.
3061, 3069	Fabricated Rubber Products, Not Elsewhere Classified.
3081–3089	Miscellaneous Plastics Products.
3931	Musical Instruments.
3942–3949	Dolls, Toys, Games and Sporting and Athletic Goods.

TABLE 1–1.—SECTORS OF INDUSTRIAL ACTIVITY COVERED BY THIS PERMIT—Continued

SIC Code or activity code [1]	Activity represented
3951–3955 (except 3952 facilities as specified in Sector C).	Pens, Pencils, and Other Artists' Materials.
3961, 3965	Costume Jewelry, Costume Novelties, Buttons, and Miscellaneous Notions, Except Precious Metal.
3991–3999	Miscellaneous Manufacturing Industries.
Sector Z: Leather Tanning and Finishing	
3111	Leather Tanning and Finishing.
Sector AA: Fabricated Metal Products	
3411–3499	Fabricated Metal Products, Except Machinery and Transportation Equipment.
3911–3915	Jewelry, Silverware, and Plated Ware.
Sector AB: Transportation Equipment, Industrial or Commercial Machinery	
3511–3599 (except 3571–3579)	Industrial and Commercial Machinery (except Computer and Office Equipment) (see Sector AC).
3711–3799 (except 3731, 3732)	Transportation Equipment (except Ship and Boat Building and Repairing) (see Sector R).
Sector AC: Electronic, Electrical, Photographic, And Optical Goods	
3571–3579	Computer and Office Equipment.
3612–3699	Electronic, Electrical Equipment and Components, except Computer Equipment.
3812	Measuring, Analyzing and Controlling Instrument; Photographic and Optical Goods.
Sector AD: Non-Classified Facilities	
N/A	Other storm water discharges designated by the Director as needing a permit (see 40 CFR 122.26(g)(1)(l)) or any facility discharging storm water associated with industrial activity not described by any of Sectors A–AC. NOTE: Facilities may not elect to be covered under Sector AD. Only the Director may assign a facility to Sector AD.

[1] A complete list of SIC codes (and conversions from the newer North American Industry Classification System" (NAICS)) can be obtained from the Internet at *www.census.gov/epcd/www/naics.html* or in paper form from various locations in the document entitled "Handbook of Standard Industrial Classifications," Office of Management and Budget, 1987. Industrial activity codes are provided on the Multi-Sector General Permit Notice of Intent (NOI) application form (EPA Form Number xxxxx).

1.2.1.1 Co-located Activities. If you have co-located industrial activities on-site that are described in a sector(s) other than your primary sector, you must comply with all other applicable sector-specific conditions found in Part 6 for the co-located industrial activities. The extra sector-specific requirements are applied only to those areas of your facility where the extra-sector activities occur. An activity at a facility is not considered co-located if the activity, when considered separately, does not meet the description of a category of industrial activity covered by the storm water regulations, and identified by the MSGP–2000 SIC code list. For example, unless you are actually hauling substantial amounts of freight or materials with your own truck fleet or are providing a trucking service to outsiders, simple maintenance of vehicles used at your facility is unlikely to meet the SIC code group 42 description of a motor freight transportation facility. Even though Sector P may not apply, the runoff from your vehicle maintenance facility would likely still be considered storm water associated with industrial activity. As such, your SWPPP must still address the runoff from the vehicle maintenance facility—although not necessarily with the same degree of detail as required by Sector P—but you would not be required to monitor as per Sector P.

If runoff from co-located activities commingle, you must monitor the discharge as per the requirements of all applicable sectors (regardless of the actual location of the discharge). If you comply with all applicable requirements from all applicable sections of Part 6 for the co-located industrial activities, the discharges from these co-located activities are authorized by this permit.

1.2.2 Discharges Covered

1.2.2.1 Allowable Storm Water Discharges. Subject to compliance with the terms and conditions of this permit, you are authorized to discharge pollutants in:

1.2.2.1.1 Discharges of storm water runoff associated with industrial activities as defined in 40 CFR 122.26 (b)(14)((i)–(ix) and (xi)) from the sectors of industry described in Table 1–1, and that are specifically identified by outfall or discharge location in the pollution prevention plan (see Part 4.2.2.3.7);

1.2.2.1.2 Non-storm water discharges as noted in Part 1.2.2.2 or otherwise specifically allowed by the permit;

1.2.2.1.3 Discharges subject to an effluent guideline listed in Table 1–2 that also meet all other eligibility requirements of the permit. Discharges subject to a New Source Performance Standard (NSPS) effluent guideline must also meet the requirements of Part 1.2.4;

1.2.2.1.4 Discharges designated by the Director as needing a storm water permit under 40 CFR 122.26(a)(1)(v) or under 122.26(a)(9) and 122.26(g)(1)(i); and

1.2.2.1.5 Discharges comprised of a discharge listed in Parts 1.2.2.1.1 to 1.2.2.1.4 above commingled with a discharge authorized by a different NPDES permit. Also authorized are discharges not needing authorization by an NPDES permit commingled with discharges authorized by this permit.

TABLE 1–2.—EFFLUENT GUIDELINES APPLICABLE TO DISCHARGES THAT MAY BE ELIGIBLE FOR PERMIT COVERAGE

Effluent guideline	New source [1]	Sectors [2]
Runoff from material storage piles at cement manufacturing facilities [40 CFR Part 411, Subpart-C (established February 23, 1977)].	Yes	E
Contaminated runoff from phosphate fertilizer manufacturing facilities [40 CFR Part 418, Subpart A (established April 8, 1974)].	Yes	C
Coal pile runoff at steam electric generating facilities [40 CFR Part 423 (established November 19, 1982)]	Yes	O
Discharges resulting from spray down or intentional wetting of logs at wet deck storage areas [40 CFR Part 429, Subpart I (established January 26, 1981)].	Yes	A
Mine dewatering discharges at crushed stone mines [40 CFR Part 436, Subpart B]	No	J
Mine dewatering discharges at construction sand and gravel mines [40 CFR Part 436, Subpart C]	No	J
Mine dewatering discharges at industrial sand mines [40 CFR Part 436, Subpart D]	No	J
Runoff from asphalt emulsion facilities [40 CFR Part 443, Subpart A (established July 24, 1975)].	Yes	D
Runoff from landfills [40 CFR Part 445, Subpart A and B (established February 2, 2000.)]	Yes	K & L

[1] New Source Performance Standards Included in Effluent Guidelines?
[2] Sectors with Affected Facilities.

1.2.2.2 Allowable Non-Storm Water Discharges. You are also authorized for the following non-storm water discharges, provided the non-storm water component of your discharge is in compliance with Part 4.4.2 (non-storm water discharges):

1.2.2.2.1 Discharges from fire fighting activities;

1.2.2.2.2 Fire hydrant flushings;

1.2.2.2.3 Potable water including drinking fountain water and water line flushings;

1.2.2.2.4 Uncontaminated air conditioning or compressor condensate;

1.2.2.2.5 Irrigation drainage;

1.2.2.2.6 Landscape watering provided all pesticides, herbicides, and fertilizer have been applied in accordance with manufacturer's instructions;

1.2.2.2.7 Pavement wash waters where no detergents are used and no spills or leaks of toxic or hazardous materials have occurred (unless all spilled material has been removed);

1.2.2.2.8 Routine external building wash down which does not use detergents;

1.2.2.2.11 Uncontaminated ground water or spring water;

1.2.2.2.12 Foundation or footing drains where flows are not contaminated with process materials such as solvents;

1.2.2.2.13 Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of your facility, but NOT intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown or drains).

1.2.3 Limitations on Coverage

1.2.3.1 Prohibition on Discharges Mixed with Non-Storm Water. You are not authorized for discharges that are mixed with sources of non-storm water. This exclusion does not apply to discharges identified in Part 1.2.2.2, provided the discharges are in compliance with Part 4.4.2 (pollution prevention plan requirements for authorized non-storm water discharges), and to any discharge explicitly authorized by the permit.

1.2.3.2 Storm Water Discharges Associated with Construction Activity. You are not authorized for storm water discharges associated with construction activity as defined in 40 CFR 122.26(b)(14)(x) or 40 CFR 122.26(b)(15).

1.2.3.3 Discharges Currently or Previously Covered by Another Permit

You are not authorized for the following:

1.2.3.3.1 Storm water discharges associated with industrial activity that are currently covered under an individual permit or an alternative general permit.

1.2.3.2 Discharges previously covered by an individual permit or alternative general permit (except the 1992 "Baseline" or the 1995 Multi-Sector NPDES General Permits for Storm Water Discharges Associated With Industrial Activity) that has expired, or been terminated at the request of the permittee unless:

1.2.3.3.2.1 All wastewater discharges in the individual permit have been eliminated and only storm water discharges and eligible non-storm water discharges remain (e.g., wastewater is now discharged to a municipal sanitary sewer); and

1.2.3.3.2.2 The individual permit did not contain numeric water quality-based limitations developed for the storm water component of the discharge; and

1.2.3.3.2.3 The permittee includes any specific BMPs for storm water required under the individual permit in the SWPPP required under Part 4 of this permit.

1.2.3.3.3 Storm water discharges associated with industrial activity from facilities where any NPDES permit has been or is in the process of being denied, terminated, or revoked by the Director (other than in a replacement permit issuance process). Upon request, the Director may waive this exclusion if operator of the facility has since passed to a different owner/operator and new circumstances at the facility justify a waiver.

1.2.3.4 Discharges Subject to Effluent Limitations Guidelines. You are not authorized for discharges subject to any effluent limitation guideline that is not included in Table 1–2. For discharges subject to a New Source Performance Standard (NSPS) effluent guideline identified in Table 1–2, you must comply with Part 1.2.4 prior to being eligible for permit coverage.

1.2.3.5 Discharge Compliance with Water Quality Standards. You are not authorized for storm water discharges that the Director determines will cause, or have reasonable potential to cause or contribute to, violations of water quality standards. Where such determinations have been made, the Director may notify you that an individual permit application is necessary in accordance with Part 9.12. However, the Director may authorize your coverage under this permit after you have included appropriate controls and implementation procedures designed to bring your discharges into compliance with water quality standards in your storm water pollution prevention plan.

1.2.3.6 Endangered and Threatened Species or Critical Habitat Protection. You are not authorized for discharges that do not avoid unacceptable effects on Federally listed endangered and threatened ("listed") species or designated critical habitat ("critical habitat")

[Note: This Section Is Likely to Change as a Result of Consultations Under the Endangered Species Act On Issuance of The Permit.]

CAUTION: Additional endangered and threatened species have been listed and critical habit designated since the 1995 MSGP was issued. Even if you were previously covered by the 1995 MSGP, you must determine eligibility for this permit through the processes described below and in Addendum A. Where applicable, you may incorporate information from your previous endangered species analysis in your documentation of eligibility for this permit.

1.2.3.6.1 Coverage under this permit is available only if your storm water discharges, allowable non-storm water discharges, and discharge-related activities avoid unacceptable effects on Federally listed endangered and threatened ("listed") species or designated critical habitat ("critical habitat"). Submission of a signed NOI will be deemed to also constitute your certification of eligibility.

1.2.3.6.2 "Discharge-related activities" include: activities which cause, contribute to, or result in storm water point source pollutant discharges; and measures to control storm water discharges including the siting, construction and operation of best management practices (BMPs) to control, reduce or prevent storm water pollution.

1.2.3.6.3 Determining Eligibility: You must use the most recent Endangered and Threatened Species County-Species List available from EPA and the process in Addendum A (ESA Screening Process) to determine your eligibility *PRIOR* to submittal of your NOI. As of the effective date of this permit, the most current version of the List is located on the EPA Office of Water Web site at *www.epa.gov/owm/esalst2.htm*. You must meet one or more of the criteria in 1.2.3.6.3.1 through 1.2.3.6.3.5 below for the entire term of coverage under the permit. You must include a certification of eligibility and supporting documentation on the eligibility determination in your pollution prevention plan.

1.2.3.6.3.1 Criteria A: No endangered or threatened species or critical habitat are in proximity to your facility or the point where authorized discharges reach the receiving water; or

1.3.6.3.2 Criteria B: In the course of a separate federal action involving your facility (e.g., EPA processing request for an individual NPDES permit, issuance of a CWA Section 404 wetlands dredge and fill permit, etc.), formal or informal consultation with the Fish and Wildlife Service and/or the National Marine Fisheries Service (the "Services") under section 7 of the Endangered Species Act (ESA) has been concluded and that consultation:

(a) Addressed the effects of your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat and

(b) The consultation resulted in either a no jeopardy opinion or a written concurrence by the Service on a finding that your storm water discharges, allowable non-storm water discharges, and discharge-related activities are not likely to adversely affect listed species or critical habitat; or

1.2.3.6.3.3 Criteria C: Your activities are authorized under section 10 of the ESA and that authorization addresses the effects of your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat; or

1.2.3.6.3.4 Criteria D: Using due diligence, you have evaluated the effects of your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed endangered or threatened species and critical habitat and do not have reason to believe listed species or critical habitat would be adversely affected.

1.2.3.6.3.5 Criteria E: Your storm water discharges, allowable non-storm water discharges, and discharge-related activities were already addressed in another operator's certification of eligibility under Part 1.2.3.6.3.1 through 1.2.3.6.3.4 which included your facility's activities. By certifying eligibility under this Part, you agree to comply with any measures or controls upon which the other operator's certification was based;

1.2.3.6.4 The Director may require any permittee or applicant to provide documentation of the permittee or applicant's determination of eligibility for this permit using the procedures in Addendum A where EPA or the Fish and Wildlife and/or National Marine Fisheries Services determine that there is a potential impact on endangered or threatened species or a critical habitat.

1.2.3.6.5 You are not authorized to discharge if the discharges or discharge-related activities cause a prohibited "take" of endangered or threatened species (as defined under section 3 of the Endangered Species Act and 50 CFR 17.3), unless such takes are authorized under sections 7 or 10 of the Endangered Species Act.

1.2.3.6.6 You are not authorized for any discharges where the discharges or discharge-related activities are likely to jeopardize the continued existence of any species that are listed as endangered or threatened under the ESA or result in the adverse modification or destruction of habitat that is designated or proposed to be designated as critical under the ESA.

1.2.3.6.7 The Endangered Species Act (ESA) provisions upon which part 1.2.3.7 is based do not apply to state-issued permits. Should administration of all or a portion of this permit be transfer to a State as a result of that State assuming the NPDES program pursuant to Clean Water Act section 402(b), Part 1.2.3.6 will not apply to any new NOIs submitted to the State after the State assumes administration of the permit (unless otherwise provided in the state program authorization agreement). Likewise, any other permit conditions based on Part 1.2.3.6 will no longer apply to new NOIs accepted by the NPDES-authorized state.

1.2.3.7 Storm water Discharges and Storm Water Discharge-Related Activities with Unconsidered Adverse Effects on Historic Properties.

[**Note:** This Section Is Likely to Change as a Result of Consultations Under the National Historic Preservation Act.]

1.2.3.7.1 Determining Eligibility: In order to be eligible for coverage under this permit, you must be in compliance with the National Historic Preservation Act. Your discharges may be authorized under this permit only if:

1.2.3.7.1.1 Criteria A: your storm water discharges, allowable non-storm water discharges, and discharge-related activities do not affect a property that is listed or is eligible for listing on the National Register of Historic Places as maintained by the Secretary of the Interior; or

1.2.3.7.1.2 Criteria B: you have obtained and are in compliance with a written agreement with the State Historic Preservation Officer (SHPO) or Tribal Historic Preservation Officer (THPO) that outlines all measures you will undertake to mitigate or prevent adverse effect to the historic property.

1.2.3.7.2 Addendum B of this permit provides guidance and references to assist you with determining your permit eligibility concerning this provision.

1.2.3.7.3 The National Historic Preservation Act (NHPA) provisions upon which the provisions in Part 1.2.3.7 are based do not apply to state-issued permits. Should administration of all or a portion of this permit be transferred to a State as a result of that State assuming the NPDES program pursuant to Clean Water Act § 402(b), Part 1.2.3.7 will not apply to any new NOIs submitted to the State after the State assumes administration of the permit (unless otherwise provided in the state program authorization agreement). Likewise, any other permit conditions based on Part 1.2.3.7 will no longer apply to new NOIs accepted by the NPDES-authorized state.

1.2.3.8 Discharges to Water Quality-Impaired or Water Quality-Limited Receiving Waters.

1.2.3.8.1 You are not authorized for new discharges to waters identified by the State under section 303(d) of the Clean Water Act as not meeting applicable water quality standards (a "303(d) waterbody"), except as provided under 40 CFR 122.4(i). This provision applies only to discharges containing the pollutant(s) for which the waterbody is impaired. State 303(d) waterbody lists can be obtained from the appropriate State environmental office or their Internet sites. You are a new discharger if your facility started discharging after August 13, 1979 and your storm water was not previously permitted (see 40 CFR 122.2 for full regulatory definition of "New Discharger").

1.2.3.8.2 You are not authorized to discharge any pollutant into any water for which a Total Maximum Daily Load (TMDL) has been either established or approved by the EPA unless your discharge is consistent with that TMDL.

1.2.3.9 Storm Water Discharges Subject to Anti-degradation Water Quality Standards. You are not authorized for discharges that do not comply with your State's anti-degradation policy for water quality standards. State anti-degradation policies can be obtained from the appropriate State environmental office or their Internet sites.

1.2.3.10 Dischargers Notified of Permit In-eligibility. Unless otherwise specified by the Director, you are not authorized for discharges after you have been notified that you do not meet the eligibility conditions of this permit.

1.2.4 Discharges Subject to New Source Performance Standards (NSPS).[10] [11]

1.2.4.1 Documentation of New Source Review. If you have a discharge(s) subject to a NSPS effluent guideline, you must obtain and retain the following on site prior to the submittal of your Notice of Intent:

1.2.4.1.1 Documentation from EPA of "No Significant Impact" or

1.2.4.1.2 A completed Environmental Impact Statement in accordance with an environmental review conducted by EPA pursuant to 40 CFR 6.102(a)(6).

1.2.4.2 Initiating a New Source Review. If the Agency's decision has not been obtained, you may use the format and procedures specified in Addendum C to submit information to EPA to initiate the process of the environmental review.

To maintain eligibility, you must implement any mitigation required of the

[10] NSPS apply only to discharges from those facilities or installations that were constructed after the promulgation of NSPS. For example, storm water discharges from areas where the production of asphalt paving and roofing emulsions occurs are subject to NSPS only if the asphalt emulsion facility was constructed after July 24, 1975.

[11] The provisions specified in Part 1.2.2.3 and Part 1.2.4 related to documenting New Source reviews are requirements of Federal programs under the National Environmental Policy Act of 1969 and will not apply to such facilities in the event that authority for the NPDES program has been assumed by the State/Tribe agency and administration of this permit has been transferred to the State Tribe.

facility as a result of the National Environmental Policy Act (NEPA) review process. Failure to implement mitigation measures upon which the Agency's NEPA finding is based is grounds for termination of permit coverage.

1.2.4.3 NEPA Requirements after State Assumption of this Permit. The National Environmental Policy Act (NEPA) provisions upon which part 1.2.4 is based do not apply to state-issued permits. Should administration of all or a portion of this permit be transfer to a State as a result of that State assuming the NPDES program pursuant to Clean Water Act section 402(b), Part 1.2.4 will no longer apply to any new NOIs submitted to the State after the State assumes administration of the permit. Likewise, any other permit conditions based on Part 1.2.4 will no longer apply to new NOIs accepted by the NPDES-authorized state.

1.3 How To Obtain Authorization Under This Permit

1.3.1 Basic Eligibility

You may be authorized under this permit only if you have a discharge of storm water associated with industrial activity from your facility. In order to obtain authorization under this permit, you must:

1.3.1.1 Meet the Part 1.2 eligibility requirements; and

1.3.1.2 Develop and implement a storm water pollution prevention plan (SWPPP) (see definition in Part 12) according to the requirements in Part 4 of this permit.

1.3.1.3 Submit a complete Notice of Intent (NOI) in accordance with the requirements of Part 2 of this permit. Any new operator at a facility, including those who replace an operator who has previously obtained permit coverage, must submit an NOI to be covered for discharges for which they are the operator.

1.3.2 Effective Date of Permit Coverage

Unless notified by the Director to the contrary, if you submit a correctly completed NOI in accordance with the requirements of this permit, you are authorized to discharge under the terms and conditions of this permit two (2) days after the date that the NOI is postmarked (but in no event, earlier than the effective date of the permit). The Director may deny coverage under this permit and require submission of an application for an individual NPDES permit based on a review of your NOI or other information (see Part 9.12). Authorization to discharge is *not* automatically granted two days after the NOI is mailed if your NOI is materially incomplete (e.g., critical information left off, NOI unsigned, etc.) or if your discharge(s) is not eligible for coverage by the permit.

1.4 Terminating Coverage

1.4.1 Submitting a Notice of Termination

If you wish to terminate coverage under this permit, you must submit a Notice of Termination (NOT) in accordance with Part 11 of this permit. You must continue to comply with this permit until you submit an NOT. Your authorization to discharge under the permit terminates at midnight of the day the NOT is signed.

1.4.2 When To Submit an NOT

You must submit an NOT within thirty (30) days after one or more of the following conditions have been met:

1.4.2.1 A new owner/operator has assumed responsibility for the facility

1.4.2.2 You have ceased operations at the facility and there no longer are discharges of storm water associated with industrial activity from the facility

1.4.3 Discharges After the NOT Is Submitted

Enforcement actions may be taken if you submit an NOT without meeting one or more of these conditions, unless you have obtained coverage under an alternate permit or have satisfied the requirements of Part 1.5.

1.5 Conditional Exclusion for No Exposure

If you are covered by this permit, but later are able to file a "no exposure" certification to be excluded from permitting under 40 CFR 122.26(g), you are no longer authorized by nor required to comply with this permit. If you are no longer required to have permit coverage due to a "no exposure" exclusion, you are not required to submit a Notice of Termination.

2. Notice of Intent Requirements

2.1 Notice of Intent (NOI) Deadlines

Your NOI must be submitted in accordance with the deadlines in Table 2–1. You must meet all applicable eligibility conditions of Part 1.2 before you submit your NOI.

TABLE 2–1.—DEADLINES FOR NOI SUBMITTAL

Category	Deadline
1. Existing discharges covered under the 1995 MSGP (see also Part 2.1.2—Interim Coverage).	December 29, 2000.
2. New discharges	Two (2) days prior to commencing operation of the facility with discharges of storm water associated with industrial activity.
3. New owner/operators of existing discharges.	Two (2) days prior to taking operational control of the facility.
4. Continued coverage when the permit expires in 2005.	See Part 9.2.

Only one NOI need be submitted to cover all of your activities at the facility (*e.g.*, you do not need to submit a separate NOI for each separate type of industrial activity located at a facility or industrial complex, provided your SWPPP covers each area for which you are an operator).

2.1.1 Submitting a Late NOI

You are not prohibited from submitting an NOI after the dates provided in Table 2–1. If a late NOI is submitted, your authorization is only for discharges that occur after permit coverage is granted. The Agency reserves the right to take appropriate enforcement actions for any unpermitted discharges.

2.1.2 Interim Permit Coverage for 1995 MSGP Permittees

If you had coverage for your facility under the 1995 MSGP, you may be eligible for continued coverage under this permit on an interim basis.

2.1.2.1 Discharges Authorized Under the 1995 MSGP. If permit coverage for your facility under the 1995 MSGP was effective as of the date the 1995 MSGP expired (or the date this permit replaced the 1995 MSGP if earlier), your authorization is automatically continued into this replacement permit on an interim basis for up to ninety (90) days from the effective date of the permit. Interim coverage will terminate earlier than the 90 days contingent on: an NOI submitted and coverage either granted or denied; or after submittal of an NOI.

2.1.2.2 Discharges Authorized Under the 1995 MSGP, But Not Clearly Eligible for Coverage Under This Permit. If you were previously covered by the 1995 MSGP, but cannot meet (or cannot immediately determine if you meet) the eligibility requirements of this permit, you may nonetheless be authorized under this permit for a period not to exceed 270 days from the date this permit is published in the **Federal Register**, provided you submit an application for an alternative permit within 90 days from the permit publication date.

2.1.2.3 Interim Coverage Permit Requirements. While you are operating under interim coverage status , you must:

2.1.2.3.1 Submit a complete NOI (see Part 2.2) by the deadlines listed in Table 2–1 or Part 2.1.2.2 above.

2.1.2.3.2 Comply with the terms and conditions of the 1995 MSGP.

2.1.2.3.3 Update your storm water pollution prevention plan to comply with the requirements of this permit within 90 days after the effective date of this permit.

2.2 Contents of Notice of Intent (NOI)

Your NOI for coverage under this permit must include the following information:

2.2.1 Owner/Operator Information

2.2.1.1 The name, address, and telephone number of the operator (*e.g.*, your company, etc.) filing the NOI for permit coverage;

2.2.1.2 an indication of whether you are a Federal, State, Tribal, private, or other public entity;

2.2.2 Facility Information

2.2.2.1 The name (or other identifier), address, county, and latitude/longitude of the facility for which the NOI is submitted;

2.2.2.2 An indication of whether the facility is located on Indian Country lands;

2.2.2.3 Certification that a storm water pollution prevention plan (SWPPP) meeting the requirements of Part 4 has been developed (including attaching a copy of this permit to the plan;

2.2.2.4 The name of the receiving water(s);

2.2.2.5 The name of the municipal operator if the discharge is through a municipal separate storm sewer system;

2.2.2.6 Identification of applicable sector(s) in this permit, as designated in Table 1–1, that cover the discharges associated with industrial activity you wish to cover under this permit;

2.2.2.7 Up to four 4-digit Standard Industrial Classification (SIC) codes or the 2-letter Activity Codes for hazardous waste treatment, storage, or disposal activities (HZ); land/disposal facilities that receive or have received any industrial waste (LF); steam electric power generating facilities (SE); or treatment works treating domestic sewage (TW) that best represent the principal products produced or services rendered by your facility and major co-located activities;

2.2.2.8 The permit number of the permit for which you are filing the NOI. Your facility must be located within the area of coverage for that permit. (*e.g.*, a facility located on Navajo Reservation lands in New Mexico would be filing for coverage under the AZR05*##I permit, a private contractor operating a federal facility in Colorado that is not located on Indian Country lands would be filing for coverage under the COR05*##F permit). See Part 1.1 for the coverage areas of the various permits.

2.2.3 Eligibility Screening

2.2.3.1 Based on the instructions in Addendum A, whether any listed or proposed threatened or endangered species, or designated critical habitat, are in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit;

2.2.3.2 Under which Part(s) of Part 1.2.3.6 (Endangered Species) you are certifying eligibility and whether the USFWS or NMFS was involved in making the determination of eligibility;

2.2.3.3 Whether any historic property listed or eligible for listing on the National Register of Historic Places is located on the facility or in proximity to the discharge;

2.2.3.4 Under which Part(s) of Part 1.2.3.7 (Historic Properties) you are certifying eligibility and whether the SHPO or THPO was involved in making the determination of eligibility;

2.2.3.5 A signed and dated certification, signed by a authorized representative of your facility as detailed in Part 9.7 that certifies the following:

I certify under penalty of law that I have read and understand the Part 1.2 eligibility requirements for coverage under the multi-sector storm water general permit including those requirements relating to the protection of endangered or threatened species or critical habitat. To the best of my knowledge, the storm water and allowable non-storm discharges authorized by this permit (and discharged related activities), are not likely and will not likely, adversely affect endangered or threatened species or critical habitat, or are otherwise eligible for coverage under Part 1.2.3.6 of the permit. To the best of my knowledge, I further certify that such discharges and discharge related activities do not have an effect on properties listed or eligible for listing on the National Register or Historic Places under the National Historic Preservation Act, or are otherwise eligible for coverage under Part 1.2.3.7 of the permit. I understand that continued coverage under the multi-sector storm water general permit is contingent upon maintaining eligibility as provided for in Part 1.2"

2.3 Use of NOI Form

You must submit the information required under Part 2.2 on the latest version of the NOI form (or photocopy thereof) contained in Addendum D. Your NOI must be signed and dated in accordance with Part 7.7 of this permit.

Note: If EPA notifies dischargers (either directly, by public notice, or by making information available on the Internet) of other NOI form options that become available at a later date (e.g., electronic submission of forms), you may take advantage of those options to satisfy the NOI use and submittal requirements of Part 2.

2.4 Where To Submit

Your NOI must be signed in accordance with Part 9.7 of this permit and submitted to the Director of the NPDES Permitting Program at the following address: Storm Water Notice of Intent (4203), US EPA 401 M. Street, SW, Washington, D.C. 20460.

2.5 Additional Notification

If your facility discharges through a large or medium municipal separate storm sewer system (MS4), or into a MS4 that has been designated by the permitting authority, you must also submit a signed copy of the NOI to the operator of that MS4 upon request by the MS4 operator.

3. Special Conditions

3.1 Hazardous Substances or Oil

You must prevent or minimize the discharge of hazardous substances or oil in your discharge(s) in accordance with the storm water pollution prevention plan for your facility. This permit does not relieve you of the reporting requirements of 40 CFR part 110, 40 CFR part 117 and 40 CFR part 302 relating to spills or other releases of oils or hazardous substances.

Where a release containing a hazardous substance or oil in an amount equal to or in excess of a reportable quantity established under either 40 CFR part 110, 40 CFR part 117 or 40 CFR part 302, occurs during a 24 hour period:

3.1.1 You must notify the National Response Center (NRC) (800–424–8802; in the Washington, DC, metropolitan area call 202–426–2675) in accordance with the requirements of 40 CFR part 110, 40 CFR part 117 and 40 CFR part 302 as soon as he or she has knowledge of the discharge;

3.1.2 You must modify your storm water pollution prevention plan required under Part 4 within 14 calendar days of knowledge of the release to: Provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, you must review your plan to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and you must modify your plan where appropriate.

3.2 Additional Requirements for Salt Storage

If you have storage piles of salt used for deicing or other commercial or industrial purposes and those piles generate a storm water discharge associated with industrial activity, they must be enclosed or covered to prevent exposure to precipitation (except for exposure resulting from adding or removing materials from the pile). Piles do not need to be enclosed or covered where storm water from the pile is not discharged to waters of the United States or the discharges from the piles are authorized under another permit.

3.3 Discharge Compliance With Water Quality Standards

Your discharges must not be causing or have the reasonable potential to cause or contribute to a violation of a water quality standard. Where a discharge is already authorized under this permit and is later determined to cause or have the reasonable potential to cause or contribute to the violation of an applicable water quality standard, the Director will notify you of such violation(s). You must take all necessary actions to ensure future discharges do not cause or contribute to the violation of a water quality standard and document these actions in the storm water pollution prevention plan. If violations remain or re-occur, then coverage under this permit may be terminated by the Director, and an alternative general permit or individual permit may be issued. Compliance with this requirement does not preclude any enforcement activity as provided by the Clean Water Act for the underlying violation.

4. Storm Water Pollution Prevention Plans

4.1 Storm Water Pollution Prevention Plan Requirements

You must prepare a storm water pollution prevention plan (SWPPP) for your facility before submitting your Notice of Intent for permit coverage. Your SWPPP must be prepared in accordance with good engineering practices. Use of a registered professional engineer for SWPPP preparation is not required by the permit, but may be independently required under state law and/or local ordinance. Your SWPPP must:

4.1.1 Identify potential sources of pollution which may reasonably be expected to affect the quality of storm water discharges from your facility;

4.1.2 Describe and ensure implementation of practices which you will use to reduce the pollutants in storm water discharges from the facility; and

4.1.3 Assure compliance with the terms and conditions of this permit.

4.2 Contents of Plan

4.2.1 Pollution Prevention Team

You must identify the staff individual(s) (by name or title) that comprise the facility's storm water Pollution Prevention Team. Your Pollution Prevention Team is responsible for assisting the facility/plant manager in developing, implementing, maintaining and revising the facility's SWPPP. Responsibilities of each staff individual on the team must be listed.

4.2.2 Site Description

Your SWPPP must include the following:

4.2.2.1 Activities at Facility. description of the nature of the industrial activity(ies) at your facility;

4.2.2.2 General Location Map. a general location map (e.g., U.S.G.S. quadrangle, or other map) with enough detail to identify the location of your facility and the receiving waters within one mile of the facility;

4.2.2.3 A legible site map identifying the following:

4.2.2.3.1 Directions of storm water flow (e.g, use arrows to show which ways storm water will flow);

4.2.2.3.2 Locations of all existing structural BMPs

4.2.2.3.3 Locations of all surface water bodies

4.2.2.3.4 Locations of potential pollutant sources identified under 4.2.4 and where significant materials are exposed to precipitation;

4.2.2.3.5 Locations where major spills or leaks identified under 4.2.5 have occurred;

4.2.2.3.6 Locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, and liquid storage tanks;

4.2.2.3.7 Locations of storm water outfalls and an approximate outline of the area draining to each outfall;

4.2.2.3.8 Location and description of non-storm water discharges;

4.2.2.3.9 Locations of the following activities where such activities are exposed to precipitation: processing and storage areas; access roads, rail cars and tracks; the location of transfer of substance in bulk; and machinery;

4.2.2.3.10 Location and source of runoff from adjacent property containing significant quantities of pollutants of concern to the facility (an evaluation of how the quality of the runoff impacts your storm water discharges may be included).

4.2.3 Receiving Waters and Wetlands

You must provide the name of the nearest receiving water(s), including intermittent streams, dry sloughs, arroyos and the areal extent and description of wetland or other "special aquatic sites" (see Part 12 for definition) that may receive discharges from your facility;

4.2.4 Summary of Potential Pollutant Sources

You must identify each separate area at your facility where industrial materials or activities are exposed to storm water. Industrial materials or activities include, but are not limited to, material handling equipment or activities, industrial machinery, raw materials, intermediate products, by-products, final products, or waste products. Material handling activities include the storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, final product or waste product. For each, separate area identified, the description must include:

4.2.4.1 Activities in Area. A list of the activities (e.g., material storage, equipment fueling and cleaning, cutting steal beams); and

4.2.4.2 Pollutants. A list of the associated pollutant(s) or pollutant parameter(s) (e.g., crankcase oil, iron, biochemical oxygen demand, pH, etc.) for each activity. The pollutant list must include all significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of three (3) years before being covered under this permit and the present.

4.2.5 Spills and Leaks

You must clearly identify areas where potential spills and leaks, which can contribute pollutants to storm water discharges, can occur, and their accompanying drainage points. For areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility to be covered under this permit, you must provide a list of significant spills and leaks of toxic or hazardous pollutants that occurred during the three (3) year period prior to the date of the submission of a Notice of Intent (NOI). Your list must be updated if significant spills or leaks occur in exposed areas of your facility during the time you are covered by the permit.

Significant spills and leaks include, but are not limited to releases of oil or hazardous substances in excess of quantities that are reportable under CWA section 311 (see 40 CFR 110.10 and 40 CFR 117.21) or section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements.

4.2.6 Sampling Data

You must provide a summary of existing storm water discharge sampling data taken at your facility. All storm water sampling data collected during the term of this permit must also be summarized and included in this part of the SWPPP.

4.2.7 Storm Water Controls

4.2.7.1 Description of Existing and Planned BMPs. Describe the type and location of existing non-structural and structural best management practices (BMPs) selected for each of the areas where industrial materials or activities are exposed to storm water. All the areas identified in Part 4.2.4 should have a BMP(s) identified for the area's discharges. For areas where BMPs are not currently in place, describe appropriate BMPs that you will use to control pollutants in storm water discharges. Selection of BMPs should take into consideration:

4.2.7.1.1 The quantity and nature of the pollutants, and their potential to impact the water quality of receiving waters;

4.2.7.1.2 Opportunities to combine the dual purposes of water quality protection and local flood control benefits (including physical impacts of high flows on streams—e.g., bank erosion, impairment of aquatic habitat, etc.);

4.2.7.1.3 Opportunities to offset the impact of impervious areas of the facility on ground water recharge and base flows in local streams (taking into account the potential for ground water contamination—See "User's Guide to the MSGP–2000" section on groundwater considerations).

4.2.7.2 BMP Types to be Considered. The following types of structural, non-structural and other BMPs must be considered for implementation at your facility. Describe how each is, or will be, implemented. This requirement may have been fulfilled with the area-specific BMPs identified under Part 4.2.7.2, in which case the previous description is sufficient. However, many of the following BMPs may be more generalized or non site-specific and therefore not previously considered. If you determine that any of these BMPs are not appropriate for your facility, you must include an explanation of why they are not appropriate. The BMP examples listed below are not intended to be an exclusive list of BMPs that you may use. You are encouraged to keep abreast of new BMPs or new applications of existing BMPs to find the most cost effective means of permit compliance for your facility. If BMPs are being used or planned at the facility which are not listed here (*e.g.*, replacing a chemical with a less toxic alternative, adopting a new or innovative BMP, etc.), include descriptions of them in this section of the SWPPP.

4.2.7.2.1 *Non-Structural BMPs*

4.2.7.2.1.1 Good Housekeeping: You must keep all exposed areas of the facility in a clean, orderly manner where such exposed areas could contribute pollutants to storm water discharges. Common problem areas include: around trash containers, storage areas and loading docks. Measures must also include: a schedule for regular pickup and disposal of garbage and waste materials; routine inspections for leaks and conditions of drums, tanks and containers.

4.2.7.2.1.2 Minimizing Exposure: Where practicable, industrial materials and activities should be protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt, or runoff. Note: Eliminating exposure at all industrial areas may make the facility eligible for the 40 CFR 122.26(g) "No Exposure" exclusion from needing to have a permit.

4.2.7.2.1.3 Preventive Maintenance: You must have a preventive maintenance program which includes timely inspection and maintenance of storm water management devices, (*e.g.*, cleaning oil/water separators, catch basins) as well as inspecting, testing, maintaining and repairing facility equipment and systems to avoid breakdowns or failures that may result in discharges of pollutants to surface waters.

4.2.7.2.1.4 Spill Prevention and Response Procedures: You must describe the procedures which will be followed for cleaning up spills or leaks. Those procedures, and necessary spill response equipment, must be made available to those employees that may cause or detect a spill or leak. Where appropriate, you must explain existing or planned material handling procedures, storage requirements, secondary containment, and equipment (*e.g.*, diversion valves), which are intended to minimize spills or leaks at the facility. Measures for cleaning up hazardous material spills or leaks must be consistent with applicable RCRA regulations at 40 CFR part 264 and 40 CFR part 265.

4.2.7.2.1.5 Routine Facility Inspections: In addition to or as part of the comprehensive site evaluation required under Part 4.9, you must have qualified facility personnel inspect all areas of the facility where industrial materials or activities are exposed to storm water. The inspections must include an evaluation of existing storm water BMPs. Your SWPPP must identify how often these inspections will be conducted. You must correct any deficiencies in implementation of your SWP3 you find as soon as practicable, but not later than within 14 days of the inspection. You must document in your SWPPP the results of your inspections and the corrective actions you took in response to any deficiencies or opportunities for improvement that you identify.

4.2.7.2.1.6 Employee Training : You must describe the storm water employee training program for the facility. The description should include the topics to be covered, such as spill response, good housekeeping and material management practices, and must identify periodic dates (*e.g.*, every 6 months during the months of July and January) for such training. You must provide employee training for all employees that work in areas where industrial materials or activities are exposed to storm water, and for employees that are responsible for implementing activities identified in the SWPPP (*e.g.*, inspectors, maintenance people). The employee training should inform them of the components and goals of your SWPPP.

4.2.7.2.2 Structural BMPs

4.2.7.2.2.1 Sediment and Erosion Control: You must identify the areas at your facility which, due to topography, land disturbance (e.g., construction), or other factors, have a potential for significant soil erosion. You must describe the structural, vegetative, and/or stabilization BMPs that you will be implementing to limit erosion.

4.2.7.2.2.2 Management of Runoff: You must describe the traditional storm water management practices (permanent structural BMPs other than those which control the generation or source(s) of pollutants) that currently exist or that are planned for your facility. These types of BMPs typically are used to divert, infiltrate, reuse, or otherwise reduce pollutants in storm water discharges from the site. All BMPs that you determine are reasonable and appropriate, or are required by a State or local authority; or are necessary to maintain eligibility for the permit (see Part 1.2.3—Limitations on Coverage) must be implemented and maintained. Factors to consider when you are selecting appropriate BMPs should include: (1) The industrial materials and activities that are exposed to storm water, and the associated pollutant potential of those materials and activities; and (2) the beneficial and potential detrimental effects on surface water quality, ground water quality, receiving water base flow (dry weather stream flow), and physical integrity of receiving waters. [See "User's Guide to the MSGP–2000" for Considerations in Selection of BMPs]. Structural measures should be placed on upland soils, avoiding wetlands and floodplains, if possible. Structural BMPs may require a separate permit under section 404 of the CWA before installation begins.

4.2.7.2.2.3 Example BMPs: BMPs you could use include but are not limited to: Storm water detention structures (including wet ponds); storm water retention structures; flow attenuation by use of open vegetated swales and natural depressions; infiltration of runoff onsite; and sequential systems (which combine several practices).

4.2.7.2.3 Other Controls

No solid materials, including floatable debris, may be discharged to waters of the United States, except as authorized by a permit issued under section 404 of the CWA. Off-site vehicle tracking of raw, final, or waste materials or sediments, and the generation of dust must be minimized. Tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas must be minimized. Velocity dissipation devices must be placed at discharge locations and along the length of any outfall channel to provide a non-erosive flow velocity from the structure to a water course so that the natural physical and biological characteristics and functions are maintained and protected (e.g., no significant changes in the hydrological regime of the receiving water).

4.3 Maintenance

All BMPs you identify in your SWPPP must be maintained in effective operating condition. If site inspections required by Part 4.9 identify BMPs that are not operating effectively, maintenance must be performed before the next anticipated storm event, or as necessary to maintain the continued effectiveness of storm water controls. If maintenance prior to the next anticipated storm event is impracticable, maintenance must be scheduled and accomplished as soon as practicable. In the case of non-structural BMPs, the effectiveness of the BMP must be maintained by appropriate means (e.g., spill response supplies available and personnel trained, etc.).

4.4 Non-Storm Water Discharges

4.4.1 Certification of Non-Storm Water Discharges

4.4.1.1 Your SWPPP must include a certification that all discharges (i.e., outfalls) have been tested or evaluated for the presence of non-storm water. The certification must be signed in accordance with Part 9.7 of this permit, and include:

4.4.1.1.1 The date of any testing and/or evaluation;

4.4.1.1.2 Identification of potential significant sources of non-storm water at the site;

4.4.1.1.3 A description of the results of any test and/or evaluation for the presence of non-storm water discharges;

4.4.1.1.4 A description of the evaluation criteria or testing method used; and

4.4.1.1.5 A list of the outfalls or onsite drainage points that were directly observed during the test.

4.4.1.2 You do not need to sign a new certification if one was already completed for either the 1992 baseline Industrial General Permit or the 1995 Multi-sector General Permit and you have no reason to believe conditions at the facility have changed.

4.4.1.3 If you are unable to provide the certification required (testing for non-storm water discharges), you must notify the Director 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification must describe:

4.4.1.3.1 Reason(s) why certification was not possible;

4.4.1.3.2 The procedure of any test attempted;

4.4.1.3.3 The results of such test or other relevant observations; and

4.4.1.3.4 Potential sources of non-storm water discharges to the storm sewer.

4.4.1.4 A copy of the notification must be included in the SWPPP at the facility. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

4.4.2 Allowable Non-Storm Water Discharges

4.4.2.1 Certain sources of non-storm water are allowable under this permit (see 1.2.2.2—Allowable Non-Storm Water Discharges). In order for these discharges to be allowed, your SWPPP must include:

4.4.2.1.1 Identification of each allowable non-storm water source;

4.4.2.1.2 The location where it is likely to be discharged; and

4.4.2.1.3 Descriptions of appropriate BMPs for each source.

4.4.2.2 Except for flows from fire fighting activities, you must identify in your SWPPP all sources of allowable non-storm water that are discharged under the authority of this permit.

4.4.2.3 If you include mist blown from cooling towers amongst your allowable non-storm water discharges, you must specifically evaluate the potential for the discharges to be contaminated by chemicals used in the cooling tower and determined that the levels of such chemicals in the discharges would not cause or contribute to a violation of an applicable water quality standard after implementation of the BMPs you have selected to control such discharges.

4.5 Documentation of Permit Eligibility Related to Endangered Species

Your SWPPP must include documentation supporting your determination of permit eligibility with regard to Part 1.2.3.6 (Endangered Species), including:

4.5.1 Information on whether listed endangered or threatened species, or critical habitat, are found in proximity to your facility;

4.5.2 Whether such species may be affected by your storm water discharges or storm water discharge-related activities;

4.5.3 Results of your Addendum A endangered species screening determinations; and

4.5.4 A description of measures necessary to protect listed endangered or threatened species, or critical habitat, including any terms or conditions that are imposed under the eligibility requirements of Part 1.2.3.6. If

you fail to describe and implement such measures, your discharges are ineligible for coverage under this permit.

4.6 Documentation of Permit Eligibility Related to Historic Places

Your SWPPP must include documentation supporting your determination of permit eligibility with regard to Part 1.2.3.7 (Historic Places), including:

4.6.1 Information on whether your storm water discharges or storm water discharge-related activities would have an effect on a property that is listed or eligible for listing on the National Register of Historic Places;

4.6.2 Where effects may occur, any written agreements you have made with the State Historic Preservation Officer, Tribal Historic Preservation Officer, or other Tribal leader to mitigate those effects;

4.6.3 Results of your Addendum B historic places screening determinations; and

4.6.4 Description of measures necessary to avoid or minimize adverse impacts on places listed, or eligible for listing, on the National Register of Historic Places, including any terms or conditions that are imposed under the eligibility requirements of Part 1.2.3.7 of this permit. If you fail to describe and implement such measures, your discharges are ineligible for coverage under this permit.

4.7 Copy of Permit Requirements

You must include a copy of the permit requirements (attaching a copy of this permit is acceptable) in your SWPPP.

Note: The confirmation of coverage letter you receive from the NOI Processing Center assigning your permit number IS NOT your permit—it merely acknowledges that your NOI has been accepted and you have been authorized to discharge subject to the terms and conditions of today's permit.

4.8 Applicable State, Tribal or Local Plans

Your SWPPP must be consistent (and updated as necessary to remain consistent) with applicable State, Tribal and/or local storm water, waste disposal, sanitary sewer or septic system regulations to the extent these apply to your facility and are more stringent than the requirements of this permit.

4.9 Comprehensive Site Compliance Evaluation

4.9.1 Frequency and Inspectors

You must conduct facility inspections at least once a year. The inspections must be done by qualified personnel provided by you. The qualified personnel you use may be either your own employees or outside consultants that you have hired, provided they are knowledgeable and possess the skills to assess conditions at your facility that could impact storm water quality and assess the effectiveness of the BMPs you have chosen to use to control the quality of your storm water discharges. If you decide to conduct more frequent inspections, your SWPPP must specify the frequency of inspections.

4.9.2 Scope of the Compliance Evaluation

Your inspections must include all areas where industrial materials or activities are exposed to storm water, as identified in 4.2.4, and areas where spills and leaks have occurred within the past 3 years. Inspectors should look for: (a) Industrial materials, residue or trash on the ground that could contaminate or be washed away in storm water; (b) leaks or spills from industrial equipment, drums, barrels, tanks or similar containers; (c) offsite tracking of industrial materials or sediment where vehicles enter or exit the site; (d) tracking or blowing of raw, final, or waste materials from areas of no exposure to exposed areas and (e) for evidence of, or the potential for, pollutants entering the drainage system. Storm water BMPs identified in your SWPPP must be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they must be inspected to see whether BMPs are effective in preventing significant impacts to receiving waters. Where discharge locations are inaccessible, nearby downstream locations must be inspected if possible.

4.9.3 Followup Actions

Based on the results of the inspection, you must modify your SWPPP as necessary (*e.g.*, show additional controls on map required by Part 4.4.2.4; revise description of controls required by Part 4.4.5) to include additional or modified BMPs designed to correct problems identified. You must complete revisions to the SWPPP within 14 calendar days following the inspection. If existing BMPs need to be modified or if additional BMPs are necessary, implementation must be completed before the next anticipated storm event. If implementation before the next anticipated storm event is impracticable, they must be implemented as soon as practicable.

4.9.4 Compliance Evaluation Report

You must insure a report summarizing the scope of the inspection, name(s) of personnel making the inspection, the date(s) of the inspection, and major observations relating to the implementation of the SWPPP is completed and retained as part of the SWPPP for at least three years from the date permit coverage expires or is terminated. Major observations should include: The location(s) of discharges of pollutants from the site; location(s) of BMPs that need to be maintained; location(s) of BMPs that failed to operate as designed or proved inadequate for a particular location; and location(s) where additional BMPs are needed that did not exist at the time of inspection. You must retain a record of actions taken in accordance with 4.9 of this permit as part of the storm water pollution prevention plan for at least three years from the date that permit coverage expires or is terminated. The inspection reports must identify any incidents of non-compliance. Where an inspection report does not identify any incidents of non-compliance, the report must contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. Both the inspection report and any reports of follow-up actions must be signed in accordance with Part 6 (reporting) of this permit.

4.9.5 Credit As a Routine Facility Inspection

Where compliance evaluation schedules overlap with inspections required under Part 4.2.7.5, your annual compliance evaluation may also be used as one of the Part 4.2.7.5 routine inspections.

4.10 Maintaining Updated SWPPP

You must amend the storm water pollution prevention plan whenever:

4.10.1 There is a change in design, construction, operation, or maintenance at your facility which has a significant effect on the discharge, or potential for discharge, of pollutants from your facility;

4.10.2 During inspections or investigations by you or by local, State, Tribal or Federal officials it is determined the SWPPP is ineffective in eliminating or significantly minimizing pollutants from sources identified under 4.2.4, or is otherwise not achieving the general objectives of controlling pollutants in discharges from your facility.

4.11 Signature, Plan Review and Making Plans Available

4.11.1 You must sign your SWPPP in accordance with Part 9.7, and retain the plan on-site at the facility covered by this permit (see Part 8 for records retention requirements).

4.11.2 You must keep a copy of the SWPPP on-site or locally available to the Director for review at the time of an on-site inspection. You must make your SWPPP available upon request to the Director, a State, Tribal or local agency approving storm water management plans, or the operator of a municipal separate storm sewer receiving discharge from the site. Also, in the interest of public involvement, EPA encourages you to make your SWPPPs available to the public for viewing during normal business hours.

4.11.3 The Director may notify you at any time that your SWPPP does not meet one or more of the minimum requirements of this permit. The notification will identify provisions of this permit which are not being met, as well as the required modifications. Within thirty (30) calendar days of receipt of such notification, you must make the required changes to the SWPPP and submit to the Director a written certification that the requested changes have been made.

4.11.4 You must make the SWPPP available to the USFWS or NMFS upon request.

4.12 Additional Requirements for Storm Water Discharges Associated With Industrial Activity From Facilities Subject to EPCRA Section 313 Reporting Requirements.

Potential pollutant sources for which you have reporting requirements under EPCRA 313 must be identified in your summary of potential pollutant sources as per Part 4.2.4. Note this additional requirement only applies to you if you are subject to reporting requirements under EPCRA 313.

5. Monitoring Requirements and Numeric Limitations

[**Note:** EPA is requesting comment on the monitoring requirements presented in this section. Specifically, EPA is requesting input on the value of benchmark monitoring in meeting its intended goal, as well as alternative approaches that are more efficient and cost-effective. Unlike compliance monitoring where results are use to determine compliance with numerical effluent limitations, the purpose of benchmark monitoring is to determine the overall effectiveness of a facility's storm water pollution prevention plan in controlling the discharge of pollutants to receiving waters. The goal of benchmark monitoring is to provide facility operators with information on whether additional or alternative best management practices are necessary at their facility, as well as identify specific areas that need additional attention. EPA is requesting input on alternatives to benchmark monitoring that are more effective in assisting facility operators in evaluating the effectiveness of their storm water pollution prevention plans.

Presentation of the benchmark monitoring option in the proposed permit language is included simply to allow the public and permittees familiar with the process used in the current permit to better comment on ways EPA has identified that benchmark monitoring, if selected for use in the final permit, could be improved. A decision on whether to continue use of benchmark monitoring, and if so, with what modifications, will NOT be made until considering all input received during the public comment period. The Fact Sheet section of today's notice provides more detail on potential alternatives to benchmark monitoring to encourage comment on this issue.]

There are five individual and separate categories of monitoring requirements and numeric limitations that your facility may be subject to under this permit. The monitoring requirements and numeric limitations applicable to your facility depend on a number of factors, including: (1) The types of industrial activities generating storm water runoff from your facility, and (2) the state or tribe where your facility is located. Part 6 identifies monitoring requirements applicable to specific sectors of industrial activity. Part 13 contains additional requirements that apply only to facilities located in a particular State or Indian Country land. You must review Parts 5, 6 and 13 of the permit to determine which monitoring requirements and numeric limitations apply to your facility. Unless otherwise specified, limitations and monitoring requirements under Parts 5, 6, and 13 are additive.

Sector-specific monitoring requirements and limitations are applied discharge by discharge at facilities with co-located activities. Where storm water from the co-located activities are co-mingled, the monitoring requirements and limitations are additive. Where more than one numeric limitation for a specific parameter applies to a discharge, compliance with the more restrictive limitation is required. Where monitoring requirements for a monitoring quarter overlap (e.g., need to monitor TSS 1/year for a limit and also 1/quarter for benchmark monitoring), you may use a single sample to satisfy both monitoring requirements.

5.1 Types of Monitoring Requirements and Limitations

5.1.1 Quarterly Visual Monitoring

The requirements and procedures for quarterly visual monitoring are applicable to all facilities covered under this permit, regardless of your facility's sector of industrial activity.

5.1.1.1 You must perform and document a quarterly visual examination of a storm water discharge associated with industrial activity from each outfall, except discharges exempted below. The visual examination must be made during daylight hours (e.g., normal working hours). If no storm event resulted in runoff from the facility during a monitoring quarter, you are excused from visual monitoring for that quarter provided you document in your monitoring records that no runoff occurred. You must sign and certify the documentation in accordance with Part 9.7.

5.1.1.2 Your visual examinations must be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging from your facility. The examination must document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The examination must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples must be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for the entire permit term. If no qualifying storm event resulted in runoff from the facility during a monitoring quarter, you are excused from visual monitoring for that quarter provided you document in your monitoring records that no qualifying storm event occurred that resulted in storm water runoff during that quarter. You must sign and certify the documentation in accordance with Part 9.7.

5.1.1.3 You must maintain your visual examination reports onsite with the pollution prevention plan. The report must include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

5.1.1.4 Inactive and Unstaffed Sites: When you are unable to conduct visual storm water examinations at an inactive and unstaffed site, you may exercise a waiver of the monitoring requirement as long as the facility remains inactive and unstaffed. If you exercise this waiver, you must maintain a certification with the pollution prevention plan stating that the site is inactive and unstaffed and that performing visual examinations during a qualifying event is not feasible. You must sign and certify the waiver in accordance with Part 9.7.

5.1.2 Benchmark Monitoring of Discharges Associated With Specific Industrial Activities

Table 5–1 identifies the specific industrial sectors subject to the Benchmark Monitoring requirements of this permit and the industry-specific pollutants of concern. You must refer to the tables found in the individual Sectors in Part 6 for Benchmark Monitoring Cut-Off Concentrations. If your facility has co-located activities (see Part 1.2.1.1) described in more than one sector in Part 6, you must comply with all applicable benchmark monitoring requirements from each sector.

The results of benchmark monitoring are primarily for your use to determine the overall effectiveness of your SWPPP in controlling the discharge of pollutants to receiving waters. Benchmark values, included in Part 6 of this permit, are not viewed as effluent limitations. An exceedence of a benchmark value does not, in and of itself, constitute a violation of this permit. While exceedence of a benchmark value does not automatically indicate that violation of a water quality standard has occurred, it does signal that modifications to the SWPPP may be necessary. In addition, exceedence of benchmark values may identify facilities that would be more appropriately covered under an individual, or alternative general permit where more specific pollution prevention controls could be required.

TABLE 5–1.—INDUSTRY SECTORS/SUB-SECTORS SUBJECT TO BENCHMARK MONITORING

MSGP sector [1]	Industry Sub-sector	Required parameters for benchmark Monitoring
A	General Sawmills and Planing Mills	COD, TSS, Zinc.
	Wood Preserving Facilities	Arsenic, Copper.
	Log Storage and Handling	TSS.
	Hardwood Dimension and Flooring Mills	COD, TSS.
B	Paperboard Mills	COD.
C	Industrial Inorganic Chemicals	Aluminum, Iron, Nitrate + Nitrite N.
	Plastics, Synthetic Resins, etc.	Zinc.

TABLE 5–1.—INDUSTRY SECTORS/SUB-SECTORS SUBJECT TO BENCHMARK MONITORING—Continued

MSGP sector [1]	Industry Sub-sector	Required parameters for benchmark Monitoring
	Soaps, Detergents, Cosmetics, Perfumes	Nitrate + Nitrite N, Zinc.
	Agricultural Chemicals	Nitrate + Nitrite N, Lead, Iron, Zinc, Phosphorus.
D	Asphalt Paving and Roofing Materials	TSS.
E	Clay Products	Aluminum.
	Concrete Products	TSS, Iron.
F	Steel Works, Blast Furnaces, and Rolling and Finishing Mills.	Aluminum, Zinc.
	Iron and Steel Foundries	Aluminum, TSS, Copper, Iron, Zinc.
	Non-Ferrous Rolling and Drawing	Copper, Zinc.
	Non-Ferrous Foundries (Castings)	Copper, Zinc.
G [2]	Copper Ore Mining and Dressing	COD, TSS, Nitrate + Nitrite N.
H	Coal Mines and Coal-Mining Related Facilities	TSS, Aluminum, Iron.
J	Dimension Stone, Crushed Stone, and Nonmetallic Minerals (except fuels).	TSS.
	Sand and Gravel Mining	Nitrate + Nitrite N, TSS.
K	Hazardous Waste Treatment Storage or Disposal	Ammonia, Magnesium, COD, Arsenic, Cadmium, Cyanide, Lead, Mercury, Selenium, Silver.
L	Landfills, Land Application Sites, and Open Dumps	Iron, TSS.
M	Automobile Salvage Yards	TSS, Aluminum, Iron, Lead.
N	Scrap Recycling	Copper, Aluminum, Iron, Lead, Zinc, TSS, COD.
O	Steam Electric Generating Facilities	Iron.
Q	Water Transportation Facilities	Aluminum, Iron, Lead, Zinc.
S	Airports with deicing activities [3]	BOD, COD, Ammonia, pH.
U	Grain Mill Products	TSS.
	Fats and Oils	BOD, COD, Nitrate + Nitrite N, TSS.
Y	Rubber Products	Zinc.
AA	Fabricated Metal Products Except Coating	Iron, Aluminum, Zinc, Nitrate + Nitrite N.
	Fabricated Metal Coating and Engraving	Zinc, Nitrate + Nitrite N.

[1] Table does not include parameters for compliance monitoring under effluent limitations guidelines.
[2] See Sector G (Part 6.G) for additional monitoring discharges from waste rock and overburden piles from active ore mining or dressing facilities.
[3] Monitoring requirement is for airports with deicing activities that utilize more than 100 tons of urea or more than 100,000 gallons of ethylene glycol per year.

5.1.2.1 Monitoring Periods for Benchmark Monitoring. Unless otherwise specified in Part 6, benchmark monitoring periods are October 1, 2001 to September 30, 2002 (year two of the permit) and October 1, 2003 to September 30, 2004 (year four of the permit). If your facility falls within a Sector(s) required to conduct benchmark monitoring, you must monitor quarterly (4 times a year) during at least one, and potentially both, monitoring periods; unless otherwise specified in the sector-specific requirements of Part 6. Depending on the results of the 2001–2002 monitoring year, you may not be required to conduct benchmark monitoring in the 2003–2004 monitoring year (see Part 5.1.2.2).

5.1.2.2 Benchmark Monitoring Year 2003–2004 Waivers for Facilities Testing Below Benchmark Values. All of the provisions of Part 5.1.2.2 are available to permittees except as noted in Part 6. Waivers from benchmark monitoring are available to facilities whose discharges are below benchmark values, thus there is an incentive for facilities to improve the effectiveness of their SWPPPs in eliminating discharges of pollutants and avoid the cost of monitoring.

On both a parameter by parameter and outfall by outfall basis, you are not required to conduct sector-specific benchmark monitoring in the 2003–2004 monitoring year provided:

- You collected samples for all four quarters of the 2001–2002 monitoring year and the average concentration was below the benchmark value in Part 6; and
- You are not subject to a numeric limitation or State/Tribal-specific monitoring requirement for that parameter established in Part 5.2 or Part 13; and
- You include a certification in the SWPPP that based on current potential pollutant sources and BMPs used, discharges from the facility are reasonable expected to be essentially the same (or cleaner) compared to when the benchmark monitoring for the 2001–2002 monitoring year was done.

5.1.3 Coal Pile Runoff

5.1.3.1 If your facility has discharges of storm water from coal storage piles , you must comply with the limitations and monitoring requirements of Table 5–2 for all discharges containing the coal pile runoff, regardless of your facility's sector of industrial activity.

TABLE 5–2.—NUMERIC LIMITATIONS FOR COAL PILE RUNOFF

Parameter	Limit	Monitoring frequency	Sample type
Total Suspended Solids (TSS)	50 mg/l, max	1/year	Grab.
pH	6.0—9.0, min. and max	1/year	Grab.

5.1.3.2 You must not dilute coal pile runoff with storm water or other flows in order to meet this limitation.

5.1.3.3 If your facility is designed, constructed and operated to treat the volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event, any untreated overflow of coal pile runoff from the treatment unit is not subject to the 50 mg/L limitation for total suspended solids.

5.1.3.4 You must collect and analyze your samples in accordance with Parts 5.2.2. Results of the testing must be retained and reported in accordance with Part 8 and 9.16.

5.1.4 Compliance Monitoring for Discharges Subject to Numerical Effluent Limitation Guidelines

Table 1–2 of Part 1.2.2.1.3 of the permit identifies storm water discharges subject to effluent limitation guidelines that are authorized for coverage under the permit. Facilities subject to storm water effluent limitation guidelines are required to monitor such discharges to evaluate compliance with numerical effluent limitations. Industry-specific numerical limitations and compliance monitoring requirements are described in Part 6 of the permit.

5.1.5 Monitoring for Limitations Required by a State or Tribe

Unless otherwise specified in Part 13 (state/tribal-specific permit conditions), you must sample once per year for any permit limit established as a result of a state or tribe's conditions for certification of this permit under CWA § 401.

5.2 Monitoring Instructions

5.2.1 Monitoring Periods

If you are required to conduct monitoring on an annual or quarterly basis, you must collect your samples within the following time periods (unless otherwise specified in Part 6):

- the monitoring year is from October 1 to September 30
- if your permit coverage was effective less than one month from the end of a quarterly or yearly monitoring period, your first monitoring period starts with the next respective monitoring period. (e.g., if permit coverage begins June 5th, you would not need to start quarterly sampling until the July–September quarter, but you would only have from June 5th to September 30th to complete that year's annual monitoring)

5.2.2 Collection and Analysis of Samples

You must assess your sampling requirements on an outfall by outfall basis. You must collect and analyze your samples in accordance with the requirements of Part 9.16.

5.2.2.1 When and How to Sample. Take a minimum of one grab sample from the discharge associated with industrial activity resulting from a storm event with at least 0.1 inch of precipitation (defined as a "measurable" event), providing the interval from the preceding measurable storm is at least 72 hours. The 72-hour storm interval is waived when the preceding measurable storm did not yield a measurable discharge, or if you are able to document that less than a 72-hour interval is representative for local storm events during the sampling period.

Take the grab sample during the first 30 minutes of the discharge. If it is not practicable to take the sample during the first 30 minutes, sample during the first hour of discharge and describe why a grab sample during the first 30 minutes was impracticable. Submit this information on or with the discharge monitoring report (see Part 7.1). If the sampled discharge commingles with process or non-process water, attempt to sample the storm water discharge before it mixes with the non-storm water.

To get help with monitoring, consult the Guidance Manual for the Monitoring and Reporting Requirements of the NPDES Storm Water Multi-Sector General Permit which can be down loaded from the EPA Web Site at *www.epa.gov/OWM/sw/industry/index.htm*. It can also be ordered from the Office of Water Resource Center by calling 202–260–7786.

5.2.3 Storm Event Data

Along with the results of your monitoring, you must provide the date and duration (in hours) of the storm event(s) samples; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event samples and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge samples.

5.2.4 Representative Outfalls—Essential Identical Discharges

If your facility has two (2) or more outfalls that you believe discharge substantially identical effluents, based on similarities of the industrial activities, significant materials or storm water management practices occurring within the outfalls' drainage areas, you may test the effluent of just one of the outfalls and report that the quantitative data also applies to the substantially identical outfall(s). For this to be permissible, you must describe in the pollution prevention plan and include in the Discharge Monitoring Report the following: locations of the outfalls; why the outfalls are expected to discharge substantially identical effluents; estimates of the size of the drainage area (in square feet) for each of the outfalls; and an estimate of the runoff coefficient of the drainage areas (low: under 40 percent; medium: 40 to 65 percent; high: above 65 percent).

5.3 General Monitoring Waivers

The following waivers may be applied to any monitoring required under this permit.

5.3.1 Adverse Climatic Conditions Waiver

When adverse weather conditions prevent the collection of samples, take a substitute sample during a qualifying storm event in the next monitoring period. Adverse conditions (i.e., those which are dangerous or create inaccessibility for personnel) may include such things as local flooding, high winds, electrical storms, or situations which otherwise make sampling impracticable such as drought or extended frozen conditions.

5.3.2 Alternative Certification of "Not Present or No Exposure"

You are not subject to the analytical monitoring requirements of this Part provided:

5.3.2.1 you make a certification for a given outfall, or on a pollutant-by-pollutant basis in lieu of monitoring required under Part 5, that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period; and

5.3.2.2 your certification is signed in accordance with Part 9.7, retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part 6. In the case of certifying that a pollutant is not present, the permittee must submit the certification along with the monitoring reports required Part 6; and

5.3.2.3 if you cannot certify for an entire period, you must submit the date exposure was eliminated and any monitoring required up until that date; and

5.3.2.4 no numeric limitation or State-specific monitoring requirement for that parameter is established in Part 5 or Part 12.

5.4 Monitoring Required the Director

The Director may provide written notice to any facility, including those otherwise exempt from the sampling requirements of Parts 5, 6 and 12, requiring discharge sampling for a specific monitoring frequency for specific parameters. Any such notice will briefly state the reasons for the monitoring, parameters to be monitored,

frequency and period of monitoring, sample types, and reporting requirements.

5.5 Reporting Monitoring Results

Deadlines and procedures for submitting monitoring reports are contained in Part 7.

6. Sector-Specific Requirements for Industrial Activity

You only need to comply with the additional requirements of Part 6 that apply to the sector(s) of industrial activity at your facility. These sector-specific requirements are in addition to the "basic" requirements specified in Parts 1–5 and 7–13 of this permit.

6.A Sector A—Timber Products

6.A.1 Covered Storm Water Discharges

The requirements in Part 6.A apply to storm water discharges associated with industrial activity from Timber Products facilities as identified by the SIC Codes specified under Sector A in Table 1–1 of Part 1.2.1.

6.A.2 Industrial Activities Covered by Sector A

The types of activities that permittees under Sector A are primarily engaged in are:

6.A.2.1 Cutting timber and pulpwood (those that have log storage or handling areas);

6.A.2.2 Mills, including merchant, lath, shingle, cooperage stock, planing, plywood and veneer;

6.A.2.3 Producing lumber and wood basic materials;

6.A.2.4 Wood preserving;

6.A.2.5 Manufacturing finished articles made entirely of wood or related materials except wood kitchen cabinet manufacturers (covered under Part 6.23);

6.A.2.6 Manufacturing wood buildings or mobile homes.

6.A.3 Special Coverage Conditions.

6.A.3.1 Prohibition of Discharges. (See also Part 1.2.3.1)

Not covered by this permit: Storm water discharges from areas where there may be contact with the chemical formulations sprayed to provide surface protection. These discharges must be covered by a separate NPDES permit.

6.A.3.2 Authorized Non-Storm Water Discharges.

(See also Part 1.2.3.1) Also authorized by this permit, provided the non-storm water component of the discharge is in compliance with SWPPP requirements in Part 4.2.7 (Controls): Discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage.

6.A.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements.

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.A.4.1 Drainage Area Site Map. (See also Part 4.2.2.3) Also identify where any of the following may be exposed to precipitation/surface runoff: Processing areas; treatment chemical storage areas; treated wood and residue storage areas; wet decking areas; dry decking areas; untreated wood and residue storage areas; and treatment equipment storage areas.

6.A.4.2 Inventory of Exposed Materials. (See also Part 4.2.4) Where such information exists, if your facility has used chlorophenolic, creosote or chromium-copper-arsenic formulations for wood surface protection or preserving, identify the following: Areas where contaminated soils, treatment equipment and stored materials still remain, and the management practices employed to minimize the contact of these materials with storm water runoff.

6.A.4.3 Description of Storm Water Management Controls. (See also Part 4.2.7). Describe and implement measures to address the following activities/sources: Log, lumber and wood product storage areas; residue storage areas; loading and unloading areas; material handling areas; chemical storage areas; and equipment/vehicle maintenance, storage and repair areas. If your facility performs wood surface protection/preservation activities, address the specific BMPs for these activities.

6.A.4.4 Good Housekeeping. (See also Part 4.2.7.2.1.1). In areas where storage, loading/unloading and material handling occur, perform good housekeeping to limit the discharge of wood debris; minimize the leachate generated from decaying wood materials; and minimize the generation of dust.

6.A.4.5 Inspections. (See also Part 4.2.7.2.1.5). If your facility performs wood surface protection/preservation activities, inspect processing areas, transport areas and treated wood storage areas monthly to assess the usefulness of practices to minimize the deposit of treatment chemicals on unprotected soils and in areas that will come in contact with storm water discharges.

6.A.5 Monitoring and Reporting Requirements. (See also Part 5)

TABLE A–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

[Sector of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation [3]
General Sawmills and Planning Mills (SIC 2421)	Chemical Oxygen Demand (COD).	120.0 mg/L.	
	Total Suspended Solids (TSS).	100 mg/L.	
	Total Zinc	0.117 mg/L.	
Wood Preserving (SIC 2491)	Total Arsenic	0.16854 mg/L.	
	Total Copper	0.0636 mg/L.	
Log Storage and Handling (SIC 2411)	Total Suspended Solids (TSS).	100 mg/L.	
Wet Decking Discharges at Log Storage and Handling Areas (SIC 2411).	pH		6.0–9.0 s.u.
	Debris (woody material such as bark, twigs, branches, heartwood, or sapwood).		No Discharge of debris that will not pass through a 2.54 cm (1") diameter round opening.

TABLE A–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING—Continued

[Sector of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation [3]
Hardwood Dimension and Flooring Mills; Special Products Sawmills, not elsewhere classified; Millwork, Veneer, Plywood and Structural Wood; Wood Containers; Wood Buildings and Mobile Homes; Reconstituted Wood Products; and Wood Products Facilities not elsewhere classified (SIC Codes 2426, 2429, 2431–2439 (except 2434), 2448, 2449, 2451, 2452, 2493, and 2499)	Chemical Oxygen Demand (COD).	120.0 mg/L..	
	Total Suspended Solids (TSS).	100.0 mg/L..	

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 monitoring years.
[3] Monitor once per year for each monitoring year.

6.B Sector B. Paper and Allied Products Manufacturing

6.B.1 Covered Storm Water Discharges

The requirements in Part 6.B apply to storm water discharges associated with industrial activity from Paper and Allied Products Manufacturing facilities as identified by the SIC Codes specified under Sector B in Table 1–1 of Part 1.2.1.

6.B.2 Industrial Activities Covered by Sector B

The types of activities that permittees under Sector B are primarily engaged in are:

6.B.2.1 manufacture of pulps from wood and other cellulose fibers and from rags;

6.B.2.2 manufacture of paper and paperboard into converted products, *i.e.* paper coated off the paper machine, paper bags, paper boxes and envelopes;

6.B.2.3 manufacture of bags of plastic film and sheet.

6.B.3 Monitoring and Reporting Requirements

(See also Part 5)

TABLE B–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

[Part of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation
Paperboard Mills (SIC Code 2631)	COD	120.0 mg/L.	

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 monitoring years.

6.C Sector C—Chemical and Allied Products Manufacturing

6.C.1 Covered Storm Water Discharges

The requirements in Part 6.C apply to storm water discharges associated with industrial activity from Chemical and Allied Products Manufacturing facilities as identified by the SIC Codes specified under Sector C in Table 1–1 of Part 1.2.1.

6.C.2 Industrial Activities Covered by Sector C

The requirements listed under this part apply to storm water discharges associated with industrial activity from a facility engaged in manufacturing the following products:

6.C.2.1 basic industrial inorganic chemicals;

6.C.2.2 plastic materials and synthetic resins, synthetic rubbers, and cellulosic and other human made fibers, except glass;

6.C.2.3 soap and other detergents, including facilities producing glycerin from vegetable and animal fats and oils; speciality cleaning, polishing and sanitation preparations; surface active preparations used as emulsifiers, wetting agents and finishing agents, including sulfonated oils; and perfumes, cosmetics and other toilet preparations;

6.C.2.4 paints (in paste and ready mixed form); varnishes; lacquers; enamels and shellac; putties, wood fillers, and sealers; paint and varnish removers; paint brush cleaners; and allied paint producers;

6.C.2.5 industrial organic chemicals;

6.C.2.6 industrial and household adhesives, glues, caulking compounds, sealants, and linoleum, tile and rubber cements from vegetable, animal or synthetic plastic materials; explosives; printing ink, including gravure, screen process and lithographic inks; miscellaneous chemical preparations such as fatty acids, essential oils, gelatin (except vegetable), sizes, bluing, laundry sours, writing and stamp pad ink, industrial compounds such as boiler and heat insulating compounds, and chemical supplies for foundries;

6.C.2.7 ink and paints, including china painting enamels, indian ink, drawing ink, platinum paints for burnt wood or leather work, paints for china painting, artists' paints and artists' water colors.

6.C.3 Limitations on Coverage

6.C.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.3)

Not covered by this permit: non-storm water discharges containing inks, paints or substances (hazardous, nonhazardous, *etc.*) resulting from an onsite spill, including materials collected in drip pans; washwater from material handling and processing areas; and washwater from drum, tank or container rinsing and cleaning.

6.C.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.C.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3)

Also identify where any of the following may be exposed to precipitation/surface runoff: Processing and storage areas; access roads, rail cars and tracks; areas where substances are transferred in bulk; and operating machinery.

6.C.4.2 *Potential Pollutant Sources.* (See also Part 4.2.4)

Describe the following sources and activities that have potential pollutants associated with them: Loading, unloading and transfer of chemicals; outdoor storage of salt, pallets, coal, drums, containers, fuels, fueling stations; vehicle and equipment maintenance/cleaning areas; areas where the treatment, storage or disposal (on-or off-site) of waste/wastewater occur; storage tanks and other containers; processing and storage areas; access roads, rail cars and tracks; areas where the transfer of substances in bulk occurs; and areas where machinery operates.

6.C.4.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

As part of your good housekeeping program, include a schedule for regular pickup and disposal of garbage and waste materials, or adopt other appropriate measures to reduce the potential for discharging storm water that has contacted garbage or waste materials. Routinely inspect the condition of drums, tanks and containers for potential leaks.

6.C.5 Monitoring and Reporting Requirements

(See also Part 5)

TABLE C–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

[Part of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric Limitation [3]
Phosphate Subcategory of the Fertilizer Manufacturing Point Source Category (40 CFR § 418.10)—applies to precipitation runoff, that during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products or waste product (SIC 2874).	Total Phosphorus (as P) ...	.....	105.0 mg/L, daily max. 35 mg/L, 30-day avg.
	Fluoride	.....	105.0 mg/L, daily max. 25.0 mg/L, 30-day avg.
Agricultural Chemicals (2873–2879)	Nitrate plus Nitrite Nitrogen	0.68 mg/L.	
	Total Recoverable Lead	0.0816 mg/L.	
	Total Recoverable Iron	1.0 mg/L.	
	Total Recoverable Zinc	0.117 mg/L.	
Industrial Inorganic Chemicals (2812–2819)	Phosphorus	2.0 mg/L.	
	Total Recoverable Aluminum.	0.75 mg/L.	
	Total Recoverable Iron	1.0 mg/L.	
	Nitrate plus Nitrite Nitrogen	0.68 mg/L.	
Soaps, Detergents, Cosmetics, and Perfumes (SIC 2841–2844).	Nitrate plus Nitrite Nitrogen	0.68 mg/L.	
	Total Recoverable Zinc	0.117 mg/L.	
Plastics, Synthetics, and Resins (SIC 2821–2824)	Total Recoverable Zinc	0.117 mg/L.	

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 Monitoring Years.
[3] Monitor once/year for each Monitoring Year.

6.D Sector D—Asphalt Paving and Roofing Materials and Lubricant Manufacturers

6.D.1 Covered Storm Water Discharges

The requirements in Part 6.D apply to storm water discharges associated with industrial activity from Asphalt Paving and Roofing Materials and Lubricant Manufacturers facilities as identified by the SIC Codes specified under Sector D in Table 1–1 of Part 1.2.1.

6.D.2 Industrial Activities Covered by Sector D.

The types of activities that permittees under Sector D are primarily engaged in are:

6.D.2.1 manufacturing asphalt paving and roofing materials;

6.D.2.2 portable asphalt plant facilities;

6.D.2.3 manufacturing lubricating oils and greases.

6.D.3 Limitations on Coverage

The following storm water discharges associated with industrial activity are not authorized by this permit:

6.D.3.1 discharges from petroleum refining facilities, including those that manufacture asphalt or asphalt products that are classified as SIC code 2911;

6.D.3.2 discharges from oil recycling facilities;

6.D.3.3 discharges associated with fats and oils rendering.

6.D.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.D.4.1 *Inspections.* (See also Part 4.2.7.2.1.5) Inspect at least once per month, as part of the maintenance program, the following areas: Material storage and handling areas, liquid storage tanks, hoppers/silos, vehicle and equipment maintenance, cleaning and fueling areas, material handling vehicles, equipment and processing areas. Ensure appropriate action is taken in response to the inspection by implementing tracking or follow up procedures.

6.D.5 Monitoring and Reporting Requirements

(See also Part 5)

TABLE D–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

[Sector of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation [3]
Asphalt Paving and Roofing Materials (SIC 2951, 2952)	Total Suspended Solids (TSS).	100 mg/L.	
Discharges from areas where production of asphalt paving and roofing emulsions occurs (SIC 2951, 2952).	TSS	.....	23.0 mg/L, daily max. 15.0 mg/L 30-day avg.
	Oil and Grease	.....	15.0 mg/L daily max. 10 mg/L, 30-day avg.
	pH	.....	6.0–9.0.

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 monitoring years.
[3] Monitor once per year for each monitoring year.

6.E Sector E—Glass Clay, Cement, Concrete, and Gypsum Products

6.E.1 Covered Storm Water Discharges

The requirements in Part 6.E apply to storm water discharges associated with industrial activity from Glass, Clay, Cement, Concrete, and Gypsum Products facilities as identified by the SIC Codes specified under Sector E in Table 1–1 of Part 1.2.1.

6.E.2 Industrial Activities Covered by Sector E

The requirements listed under this permit apply to storm water discharges associated with industrial activity from a facility engaged in either manufacturing the following products or performing the following activities:

6.E.2.1 flat, pressed, or blown glass or glass containers;

6.E.2.2 hydraulic cement;

6.E.2.3 clay products including tile and brick;

6.E.2.4 Pottery and porcelain electrical supplies;

6.E.2.5 concrete products;

6.E.2.6 gypsum products;

6.E.2.7 minerals and earths, ground or otherwise treated;

6.E.2.8 non-clay refractories.

6.E.3 Limitations on Coverage

Facilities engaged in the following activities are not eligible for coverage under this permit:

6.E.3.1 lime manufacturing;

6.E.3.2 cut stone and stone products;

6.E.3.3 asbestos products;

6.E.3.4 mineral wool and mineral wool insulation products.

6.E.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements.

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.E.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3)

Identify the locations of the following, as applicable: Bag house or other dust control device; recycle/sedimentation pond, clarifier or other device used for the treatment of process wastewater, and the areas that drain to the treatment device.

6.E.4.2 *Good Housekeeping Measures.* (See also Part 4.2.2.3)

With good housekeeping prevent or minimize the discharge of: Spilled cement; aggregate (including sand or gravel); kiln dust; fly ash; settled dust; or other significant material in storm water from paved portions of the site that are exposed to storm water. Consider using regular sweeping or other equivalent measures to minimize the presence of these materials. Indicate in your SWPPP the frequency of sweeping or equivalent measures. Determine the frequency from the amount of industrial activity occurring in the area and the frequency of precipitation, but it must be performed at least once a week if cement, aggregate, kiln dust, fly ash or settled dust are being handled/processed. You must also prevent the exposure of fine granular solids (cement, fly ash, kiln dust, etc.) to storm water where practicable, by storing these materials in enclosed silos/hoppers, buildings or under other covering.

6.E.4.3 *Inspections.* (See also Part 4.2.7.2.1.5)

Perform inspections while the facility is in operation and include all of the following areas exposed to storm water: Material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, truck wash down/ equipment cleaning areas.

6.E.4.4 *Certification.* (See also Part 4.4.1)

For facilities producing ready-mix concrete, concrete block, brick or similar products, include in the non-storm water discharge certification a description of measures that insure that process waste water resulting from truck washing, mixers, transport buckets, forms or other equipment are discharged in accordance with NPDES requirements or are recycled.

6.E.5 Monitoring and Reporting Requirements

(See also Part 5)

TABLE E–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

[Sector of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation [3]
Clay Product Manufacturers (SIC 3251–3259, 3262–3269).	Total Recoverable Aluminum.	0.75 mg/L	

[1] Discharge may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 monitoring years.
[3] Monitor once per year for each monitoring year.

TABLE E–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

[Sector of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation [3]
Concrete and Gypsum Product Manufacturers (SIC 3271–3275).	TSS	100 mg/L.	
	Total Recoverable Iron	1.0 mg/L.	
Cement Manufacturing Facility, Material Storage Runoff: Any discharge composed of runoff that derives from the storage of materials including raw materials, intermediate products, finished products, and waste materials that are used in or derived from the manufacture of cement.	Total Suspended Solids (TSS).		50 mg/L, daily max.
	pH		6.0–9.0 S.U.

[1] Discharge may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 monitoring years.
[3] Monitor once per year for each monitoring year.

6.F Sector F—Primary Metals

6.F.1 Covered Storm Water Discharges

The requirements in Part 6.F apply to storm water discharges associated with industrial activity from Primary Metals facilities as identified by the SIC Codes specified under Sector F in Table 1–1 of Part 1.2.1.

6.F.2 Industrial Activities Covered by Sector F

The types of activities under this Part are facilities primarily engaged in are:

6.F.2.1 steel works, blast furnaces, and rolling and finishing mills including: Steel wire drawing and steel nails and spikes; cold-rolled steel sheet, strip, and bars; and steel pipes and tubes;

6.F.2.2 iron and steel foundries, including: Gray and ductile iron, malleable iron, steel investment, and steel foundries not elsewhere classified;

6.F.2.3 primary smelting and refining of nonferrous metals, including: Primary smelting and refining of copper, and primary production of aluminum;

6.F.2.4 secondary smelting and refining of nonferrous metals;

6.F.2.5 rolling, drawing, and extruding of nonferrous metals, including: Rolling, drawing, and extruding of copper; rolling, drawing and extruding of nonferrous metals except copper and aluminum; and drawing and insulating of nonferrous wire;

6.F.2.6 nonferrous foundries (castings), including: Aluminum die-casting, nonferrous die-casting, except aluminum, aluminum foundries, copper foundries, and nonferrous foundries, except copper and aluminum;

6.F.2.7 miscellaneous primary metal products, not elsewhere classified, including: Metal heat treating, and primary metal products not elsewhere classified;

Activities covered include but are not limited to storm water discharges associated with cooking operations, sintering plants, blast furnaces, smelting operations, rolling mills, casting operations, heat treating, extruding, drawing, or forging all types of ferrous and nonferrous metals, scrap and ore.

6.F.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.F.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Also identify where any of the following activities may be exposed to precipitation/surface runoff: Storage or disposal of wastes such as spent solvents/baths, sand, slag/dross; liquid storage tanks/drums; processing areas including pollution control equipment (*e.g.*, baghouses); and storage areas of raw material such as coal, coke, scrap, sand, fluxes, refractories or metal in any form. In addition, indicate where an accumulation of significant amounts of particulate matter could occur from such sources as furnace or oven emissions, losses from coal/coke handling operations, etc., and which could result in a discharge of pollutants to waters of the United States.

6.F.3.2 *Inventory of Exposed Material.* (See also Part 4.2.4) Include in the inventory of materials handled at the site that potentially may be exposed to precipitation/runoff, areas where deposition of particulate matter from process air emissions or losses during material handling activities are possible.

6.F.3.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1) As part of your good housekeeping program, include: A cleaning/maintenance program for all impervious areas of the facility where particulate matter, dust or debris may accumulate, especially areas where material loading/unloading, storage, handling and processing occur; the paving of areas where vehicle traffic or material storage occur but where vegetative or other stabilization methods are not practicable (institute a sweeping program in these areas too). For unstabilized areas where sweeping is not practicable, consider using storm water management devices such as sediment traps, vegetative buffer strips, filter fabric fence, sediment filtering boom, gravel outlet protection or other equivalent measures that effectively trap or remove sediment.

6.F.3.4 *Inspections.* (See also Part 4.2.7.2.1.5) Conduct inspections routinely, or at least on a quarterly basis, and address all potential sources of pollutants, including (if applicable): Air pollution control equipment (*e.g.*, baghouses, electrostatic precipitators, scrubbers and cyclones) for any signs of degradation (*e.g.*, leaks, corrosion or improper operation) that could limit their efficiency and lead to excessive emissions. Consider monitoring air flow at inlets/outlets (or use equivalent measures) to check for leaks (*e.g.*, particulate deposition) or blockage in ducts. Also inspect all process and material handling equipment (*e.g.*, conveyors, cranes and vehicles) for leaks, drips or the potential loss of material; and material storage areas (*e.g.*, piles, bins or hoppers for storing coke, coal, scrap or slag, as well as chemicals stored in tanks/drums) for signs of material losses due to wind or storm water runoff.

6.F.4 Monitoring and Reporting Requirements (See also Part 5)

TABLE F–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

[Sector of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [1] [2]	Numeric limitation
Steel Works, Blast Furnaces, and Rolling and Finishing Mills (SIC 3312–3317).	Total Recoverable Aluminum.	0.75 mg/L.	
	Total Recoverable Zinc	0.117 mg/L.	
Iron and Steel Foundries (SIC 3321–3325)	Total Recoverable Aluminum.	0.75 mg/L.	
	Total Suspended Solids	100 mg/L.	
	Total Recoverable Copper	0.0636 mg/L.	
	Total Recoverable Iron	1.0 mg/L.	
	Total Recoverable Zinc	0.117 mg/L.	
Rolling, Drawing, and Extruding of Non-Ferrous Metals (SIC 3351–3357).	Total Recoverable Copper	0.0636 mg/L.	
	Total Recoverable Zinc	0.117 mg/L.	
Non-Ferrous Foundries (SIC 3363–3369)	Total Recoverable Copper	0.0.636 mg/L.	
	Total Recoverable Zinc	0.117 mg/L.	

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.G Sector G—Metal Mining (Ore Mining and Dressing)

6.G.1 Covered Storm Water Discharges

The requirements in Part 6.G apply to storm water discharges associated with industrial activity from active, temporarily inactive and inactive metal mining and ore dressing facilities, including mines abandoned on Federal Lands, as identified by the SIC Codes specified under Sector G in Table 1–1 of Part 1.2.1. Coverage is required for storm water discharges that have come into contact (directly or indirectly) with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the operation.

6.G.1.1 *Covered Discharges from Inactive Facilities:* All storm water discharges.

6.G.1.2 *Covered Discharges from Active and Temporarily Inactive Facilities:* Only the discharges from these following areas are covered: Waste rock/overburden piles if composed entirely of storm water and not combined with mine drainage; topsoil piles; offsite haul/access roads; onsite haul roads constructed of waste rock/overburden/spent ore if composed entirely of storm water and not combining with mine drainage; onsite haul roads not constructed of waste rock/overburden/spent ore except if mine drainage is used for dust control; runoff from tailings dams/dikes not constructed of waste rock/tailings if no process fluids are present; runoff from dams/dikes constructed of waste rock/tailings if no process fluids are present, and not combining with mine drainage; concentration building if no contact with material piles; mill site, if no contact with material piles; office/administrative building and housing if mixed with storm water from industrial area; chemical storage piles; docking facility if no excessive contact with waste product that would otherwise constitute mine drainage; explosive storage; fuel storage; vehicle/equipment maintenance area/buildings; parking areas (if necessary); power plant; truck wash areas if no excessive contact with waste product that would otherwise constitute mine drainage; unreclaimed disturbed areas outside of active mining area; reclaimed areas released from reclamation bonds prior to December 17, 1990; partially/inadequately reclaimed areas; areas not released from reclamation bonds.

6.G.2 Industrial Activities Covered by Sector G

Note: "metal mining" will connote any of the separate activities listed in Part 6.G.2.

The types of activities that permittees under Sector G are primarily engaged in are:

6.G.2.1 exploring for metallic minerals (ores), developing mines and the mining of ores;

6.G.2.1 ore dressing and beneficiating, whether performed at co-located, dedicated mills or separate (*i.e.*, custom) mills.

6.G.3 Limitations on Coverage

6.G.3.1 *Prohibition of Storm Water Discharges:* Storm water discharges not authorized by this permit: Discharges from active metal mining facilities which are subject to effluent limitation guidelines for the Ore Mining and Dressing Point Source Category (40 CFR part 440).

Note: discharges that come in contact with overburden/waste rock are subject to 40 CFR part 440, providing: The discharges drain to a point source (either naturally or as a result of intentional diversion) and they combine with "mine drainage" that is otherwise regulated under the part 440 regulations. Discharges from overburden/waste rock can be covered under this permit if they are composed entirely of storm water, do not combine with sources of mine drainage that are subject to 40 CFR Part 440, and meet other eligibility criteria contained in Part 1.2.2.1.

6.G.3.2 *Prohibition of Non-Storm Water Discharges.* Not authorized by this permit: Adit drainage and contaminated springs or seeps (see also the standard Limitations on Coverage in Part 1.2.3).

6.G.4 Definitions

6.G.4.1 *Mining operation*—typically consists of three phases, any one of which individually qualifies as a "mining activity." The phases are the exploration and construction phase, the active phase, and the reclamation phase.

6.G.4.2 *Exploration and construction phase*—entails exploration and land disturbance activities to determine the financial viability of a site. Construction includes the building of site access roads and removal of overburden and waste rock to expose mineable minerals.

6.G.4.3 *Active phase*—activities including each step from extraction through production of a salable product.

6.G.4.4 *Reclamation phase*—activities intended to return the land to its pre-mining state.

The following definitions are not intended to supercede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

6.G.4.5 *Active Metal Mining Facility*—a place where work or other activity related to the extraction, removal or recovery of metal ore is

being conducted. For surface mines, this definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun.

6.G.4.6 *Inactive Metal Mining Facility*—a site or portion of a site where metal mining and/or milling occurred in the past but is not an active facility as defined above, and where the inactive portion is not covered by an active mining permit issued by the applicable State or Federal government agency.

6.G.4.7 *Temporarily Inactive Metal Mining Facility*—a site or portion of a site where metal mining and/or milling occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable State or Federal government agency.

6.G.5 Clearing, Grading and Excavation Activities

Clearing, grading and excavation (activities typically associated with the exploration and construction phase of a mining operation, but may also apply to active mining operations such as the expansion of existing pits) cannot be covered under this permit if these activities will disturb 5 or more acres of land. If the land disturbance is from 1 to 5 acres, you may or may not be able to utilize the MSGP–2000 to cover your clearing, grading and excavation activities. All mining activities disturbing less than 1 acre must continue to comply with the requirements of this permit. The 5-acre cut-off may not be simply determined by the extent of earth disturbance at a given time, rather it could depend on whether there is a "common plan of development or sale" totaling 5 acres (*i.e.*, a plan to disturb, or the possibility of disturbing, at least 5 acres at some later date). For further information on common plan of development or sale, refer to the EPA's General Permit for Storm Water Discharges from Construction Activities (the "Construction General Permit;" **Federal Register**, Vol. 63, p. 7858).

6.G.5.1 *Requirements for Activities Disturbing 5 or More Acres of Earth.* If the 5-acre limit as defined in Part 6.G.5 is attained, coverage for these activities must be under the latest version of EPA's General Permit for Storm Water Discharges from Construction Activities (the "Construction General Permit"), or an applicable State-issued permit. You must obtain and comply with the Construction General Permit's requirements before submitting the separate Construction General Permit Notice of Intent (NOI) form (EPA Form 3510–9) to obtain coverage. The February 17, 1998 version of the permit can be downloaded from the EPA's Web Site at *www.epa.gov/owm/sw/construction/cgp/cgp-nat.pdf* or obtained from the Office of Water Resource Center at 202.260.7786. The NOI form is also available from the Web Site at *www.epa.gov/owm/sw/construction/connoi.pdf* or from your EPA Regional office at the address listed under Part 8.3. Discharges in compliance with the provisions of the Construction General Permit are also authorized under the MSGP.

6.G.5.2 *Requirements for Activities Disturbing From 1 to 5 Acres of Earth.* For earth disturbances of 1 to 5 acres, coverage of mining activities under a construction permit may be required pursuant to the Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges (also known as the Storm Water Phase II Rule; see **Federal Register**, Vol. 64, p. 68722). Under these regulations there are provisions that allow certain dischargers to waive out of the Phase II construction permit requirement, so you must refer to the Phase II Rule to determine the waivers' applicability to your site. If you choose to waive out of the Phase II construction permit requirement, you still must maintain compliance with the MSGP–2000. As of the publication date of the MSGP–2000, there is not yet available a construction permit for land disturbances of 1 to 5 acres. This permit may be available at any time up to March 10, 2003. Until such time when application for coverage under the Phase II construction permit is required, compliance with the MSGP–2000 must be maintained. Alternatively, you may opt to apply for coverage under the CGP as per Part 6.G.5.1 at any time. Information and updates on the Phase II Rule can be obtained from the EPA's Web Site at *www.epa.gov/owm/sw/phase2/index.htm.*

6.G.5.3 *Cessation of Earth Disturbing Activities.* If exploration phase clearing, grading and excavation activities are completed and no further mining activities will occur at the site, you must comply with the requirements for terminating the Construction General Permit (*i.e.*, stabilize the disturbed land, submit a Notice of Termination, etc.). If further mining activities will occur, you may opt for either of the following: Maintain coverage under the CGP (*i.e.*, maintain necessary BMPs, perform inspections, etc.) and apply for coverage under the MSGP for those discharges associated with mineral mining and dressing activities that will occur under the active and reclamation phases; or terminate coverage under the CGP and apply for coverage under the MSGP for all discharges from the site.

6.G.6 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.G.6.1 *SWPPP Requirements for Active and Temporarily Inactive Metal Mining Facilities.*

6.G.6.1.1 *Nature of Industrial Activities.* (See also Part 4.2.2.1) Briefly describe the mining and associated activities that can potentially affect the storm water discharges covered by this permit, including: The total acreage within the mine site; the estimated acreage of disturbed land; the estimated acreage of land proposed to be disturbed throughout the life of the mine; and a general description of the location of the site relative to major transportation routes and communities.

6.G.6.1.2 *Site Map.* (See also Part 4.2.2.3) Also identify the locations of the following (as appropriate): Mining/milling site boundaries; access and haul roads; outline of the drainage areas of each storm water outfall within the facility and indicate the types of discharges from the drainage areas; equipment storage, fueling and maintenance areas; materials handling areas; outdoor manufacturing, storage or material disposal areas; chemicals and explosives storage areas; overburden, materials, soils or waste storage areas; location of mine drainage (where water leaves mine) or other process water; tailings piles/ponds (including proposed ones); heap leach pads; off-site points of discharge for mine drainage/process water; surface waters; and boundary of tributary areas that are subject to effluent limitations guidelines.

6.G.6.1.3 *Potential Pollutant Sources.* (See also Part 4.2.4)

For each area of the mine/mill site where storm water discharges associated with industrial activities occur, identify the types of pollutants (e.g., heavy metals, sediment) likely to be present in significant amounts. Consider these factors: The mineralogy of the ore and waste rock (*e.g.*, acid forming); toxicity and quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; vegetation of site (if any); history of significant leaks/spills of toxic or hazardous pollutants. Also include a summary of any existing ore or waste rock/overburden characterization data and test results for potential generation of acid rock. If any new data is acquired due to changes in ore type being mined, update your SWPPP with this information.

6.G.6.1.4 *Site Inspections.* (See also Part 4.2.7.2.1.5)

Inspect active mining sites at least monthly. Inspect temporarily inactive sites at least quarterly unless adverse weather conditions make the site inaccessible.

6.G.6.1.5 *Employee Training.* (See also Part 4.2.7.2.1.6)

Conduct employee training at least annually at active mining and temporarily inactive sites.

6.G.6.1.6 *Controls.* (See also Part 4.2.7)

Consider each of the following BMPs. The potential pollutants identified in Part 6.G.6.1.3 shall determine the priority and appropriateness of the BMPs selected. If you determine that one or more of these BMPs are not appropriate for your facility, explain why it is not appropriate. If BMPs are implemented or planned but are not listed here (*e.g.*, substituting a less toxic chemical for a more toxic one), include descriptions of them in your SWPPP.

6.G.6.1.6.1 *Storm Water Diversions.* Consider diverting storm water away from potential pollutant sources. BMP options: Interceptor/diversion controls (*e.g.*, dikes, swales, curbs or berms); pipe slope drains; subsurface drains; conveyance systems (*e.g.*, channels or gutters, open top box culverts and waterbars; rolling dips and road sloping; roadway surface water deflector, and culverts); or their equivalents.

6.G.6.1.6.2 *Sediment and Erosion Control.* (See also Part 4.2.7.2.2.1)

At active and temporarily inactive sites consider a range of erosion controls within the broad categories of: Flow diversion (*e.g.*, swales); stabilization (*e.g.*, temporary or permanent seeding); and structural controls (*e.g.*, sediment traps, dikes, silt fences).

6.G.6.1.6.3 *Management of Runoff.* (See also Part 4.2.7.2.2.2)

Consider the potential pollutant sources given in Part 6.G.6.1.3 when determining reasonable and appropriate measures for managing runoff.

6.G.6.1.6.4 *Capping.* When capping is necessary to minimize pollutant discharges in storm water, identify the source being capped and the material used to construct the cap.

6.G.6.1.6.5 *Treatment.* If treatment of storm water (*e.g.*, chemical or physical systems, oil/water separators, artificial wetlands, etc.) from active and temporarily inactive sites is necessary to protect water quality, describe the type and location of treatment used.

6.G.6.1.6.6 *Certification of Discharge Testing.* (See also Part 4.4.1)

Test for specific mining-related discharges such as seeps or adit discharges or discharges subject to effluent limitations guidelines (*e.g.*, 40 CFR part 440), such as mine drainage or process water. Alternatively (if applicable), you may certify in your SWPPP that a particular discharge comprised of commingled storm water and non-storm water is covered under a separate NPDES permit; and that permit subjects the non-storm water portion to effluent limitations prior to any commingling. This certification shall identify the non-storm water discharges, the applicable NPDES permit(s), the effluent limitations placed on the non-storm water discharge by the permit(s), and the points at which the limitations are applied.

6.G.6.2 SWPPP Requirements for Inactive Metal Mining Facilities

6.G.6.2.1 *Nature of Industrial Activities.* (See also Part 4.2.2.1)

Briefly describe the mining and associated activities that took place at the site that can potentially affect the storm water discharges covered by this permit. Include: Approximate dates of operation; total acreage within the mine and/or processing site; estimate of acres of disturbed earth; activities currently occurring onsite (*e.g.*, reclamation); a general description of site location with respect to transportation routes and communities.

6.G.6.2.2 *Site Map.* (See also Part 4.2.2.3)

See Part 6.G.6.1.2 for requirements.

6.G.6.2.3 *Potential Pollutant Sources.*

(See also Part 4.2.4) See Part 6.G.6.1.3 for requirements.

6.G.6.2.4 *Controls.* (See also Part 4.2.7)

Consider each of the following BMPs. The potential pollutants identified in Part 6.G.6.2.3 shall determine the priority and appropriateness of the BMPs selected. If you determine that one or more of these BMPs are not appropriate for your facility, explain why it is not appropriate. If BMPs are implemented or planned but are not listed here (*e.g.*, substituting a less toxic chemical for a more toxic one), include descriptions of them in your SWPPP. The non-structural controls in the general requirements at Part 4.2.7.2.1 are not required for inactive facilities.

6.G.6.2.4.1 *Storm Water Diversions.* See Part 6.G.6.1.6.2 for requirements.

6.G.6.2.4.2 *Sediment and Erosion Control.* (See also Part 4.2.7.2.2.1)

See Part 6.G.6.1.6 for requirements.

6.G.6.2.4.3 *Management of Runoff.* (See also Part 4.2.7.2.2.2)

Also consider the potential pollutant sources as described in Part 6.G.6.2.3 (Summary of Potential Pollutant Sources) when determining reasonable and appropriate measures for managing runoff.

6.G.6.2.4.4 *Capping.* See Part 6.G.6.1.7 for requirements.

6.G.6.2.4.5 *Treatment.* See Part 6.G.6.1.8 for requirements.

6.G.6.2.5 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9)

Annual site compliance evaluations may be impractical for inactive mining sites due to remote location/inaccessibility of the site; in which case conduct the evaluation at least once every 3 years. Document in the SWPPP why annual compliance evaluations are not possible. If the evaluations will be conducted more often than every 3 years, specify the frequency of evaluations.

6.G.7 Monitoring and Reporting Requirements

(See also Part 5)

6.G.7.1 *Analytic Monitoring for Copper Ore Mining and Dressing Facilities.* Active copper ore mining and dressing facilities must sample and analyze storm water discharges for the pollutants listed in Table G–1.

TABLE G–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING FOR COPPER ORE MINING AND DRESSING FACILITIES

[Part of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation
Copper Ore Mining and Dressing Facilities	Total Suspended Solids (TSS).	100 mg/L.	
	Nitrate plus Nitrite Nitrogen	0.68 mg/L.	

TABLE G–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING FOR COPPER ORE MINING AND DRESSING FACILITIES—Continued

[Part of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation
(SIC 1021)	Chemical Oxygen Demand (COD).	120 mg/L.	

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.G.7.2 *Analytic Monitoring Requirements for Discharges From Waste Rock and Overburden Piles.* For discharges from waste rock and overburden piles, perform analytic monitoring at least twice annually for the parameters listed in Table G–2. Sample once between January 1 and June 30 and once between July 1 and December 31, with at least 3 months separating the storm events. A parameter whose level is below the benchmark value in Table G–2 for the first monitoring period of the year does not have to be monitored for a second time that year. The director may, however, notify you that you must perform additional monitoring to accurately characterize the quality and quantity of pollutants discharged from your waste rock/overburden piles. Monitoring requirements for discharges from waste rock and overburden piles are not eligible for the waivers in Part 5.3.

TABLE G–2.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING FOR DISCHARGES FROM WASTE ROCK AND OVERBURDEN PILES FROM ACTIVE ORE MINING OR DRESSING FACILITIES

[Part of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation
Iron Ores; Copper Ores; Lead and Zinc Ores; Gold and Silver Ores; Ferroalloy Ores Except Vanadium; Miscellaneous Metal Ores (SIC Codes 1011, 1021,1031, 1041, 1044, 1061, 1081, 1094, 1099).	Total Suspended Solids (TSS).	100 mg/L.	
	Turbidity (NTUs)	5 NTUs above background.	
	pH	6.0–9.0 standard units.	
	Hardness (as $CaCO_3$)	No benchmark value.	
See above, as applicable	Antimony, Total	0.636 mg/L.	
	Arsenic, Total	0.16854 mg/L.	
	Beryllium, Total	0.13 mg/L.	
	Cadmium, Total (hardness dependent).	0.0159 mg/L.	
	Copper, Total (hardness dependent).	0.0636 mg/L.	
	Iron, Total	1.0 mg/L.	
	Lead, Total (hardness dependent).	0.0816 mg/L.	
	Manganese, Total	1.0 mg/L.	
	Mercury, Total	0.0024 mg/L.	
	Nickel, Total (hardness dependent).	1.417 mg/L.	
	Selenium, Total	0.2385 mg/L.	
	Silver, Total (hardness dependent).	0.0318 mg/L.	
	Zinc, Total (hardness dependent).	0.117 mg/L.	

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor twice annually.

6.G.7.2.1 *Additional Analytic Monitoring Requirements for Discharges From Waste Rock and Overburden Piles.* Table G–3 contains additional monitoring requirements for specific ore mine categories. Perform the monitoring biannually using the schedule established in Part 6.G.7.2. The initial sampling event for a pollutant parameter required in Table G–2 satisfies the requirement for the first sample of any pollutant measurement in Table G–3. Compare with the benchmarks as given in Table G–2.

TABLE G–3.—ADDITIONAL MONITORING REQUIREMENTS FOR DISCHARGES FROM WASTE ROCK AND OVERBURDEN PILES FROM ACTIVE ORE MINING OR DRESSING FACILITIES

[Supplemental requirements]

Type of ore mined	Pollutants of concem		
	Total Suspended solids (TSS)	pH	Metals, total
Tungsten Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Nickel Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead (H), Zinc (H).
Aluminum Ore	X	X	Iron.
Mercury Ore	X	X	Nickel (H).
Iron Ore	X	X	Iron (Dissolved).
Platinum Ore			Cadmium (H), Copper (H), Mercury, Lead (H), Zinc (H).
Titanium Ore	X	X	Iron, Nickel (H), Zinc (H).
Vanadium Ore	X	X	Arsenic, Cadmium (H), Copper (H), Lead, Zinc (H).
Copper, Lead, Zinc, Gold, Silver and Molybdenum	X	X	Arsenic, Cadmium (H), Copper (H), Lead, Mercury, Zinc (H).
Uranium, Radium and Vanadium	X	X	Chemical Oxygen Demand, Arsenic, Radium (Dissolved and Total), Uranium, Zinc (H).

Note:(H) indicates that hardness must also be measured when this pollutant is measured.

6.G.7.2.2 *Reporting Requirements Storm Water Discharges From Waste Rock And Overburden Piles From Active Ore Mining or Dressing Facilities.* From active ore mining and dressing facilities, submit monitoring results for each outfall discharging storm water from waste rock and overburden piles, or certifications in accordance with Part 7. Submit monitoring reports on discharge monitoring report (DMR) forms postmarked no later than January 28 of the next year after the samples were collected.

6.H Sector H—Coal Mines and Coal Mining Related Facilities

6.H.1 Covered Storm Water Discharges

The requirements in Part 6.H apply to storm water discharges associated with industrial activity from Coal Mines and Coal Mining Related facilities as identified by the SIC Codes specified under Sector H in Table 1–1 of Part 1.2.1.

6.H.2 Industrial Activities Covered by Sector H

Storm water discharges from the following portions of coal mines may be eligible for this permit:

6.H.2.1 haul roads (nonpublic roads on which coal or coal refuse is conveyed);

6.H.2.2 access roads (nonpublic roads providing light vehicular traffic within the facility property and to public roadways);

6.H.2.3 railroad spurs, siding and internal haulage lines (rail lines used for hauling coal within the facility property and to offsite commercial railroad lines or loading areas);

6.H.2.4 conveyor belts, chutes and aerial tramway haulage areas (areas under and around coal or refuse conveyer areas, including transfer stations); and

6.H.2.5 equipment storage and maintenance yards, coal handling buildings and structures, and inactive coal mines and related areas (abandoned and other inactive mines, refuse disposal sites and other mining-related areas).

6.H.3 Limitation on Coverage

6.H.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.2.2) Not covered by this permit: Discharges from pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not result from precipitation events; and discharges from floor drains in maintenance buildings and other similar drains in mining and preparation plant areas.

6.H.3.2 *Discharges Subject to Storm Water Effluent Guidelines.* (See also Part 1.2.3.4) Not authorized by this permit: Storm water discharges subject to an existing effluent limitation guideline at 40 CFR part 434.

6.H.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4 of the MSGP.

6.H.4.1 *Other Applicable Regulations.* Most active coal mining-related areas (SIC Codes 1221–1241) are subject to sediment and erosion control regulations of the U.S. Office of Surface Mining (OSM) that enforces the Surface Mining Control and Reclamation Act (SMCRA). OSM has granted authority to most coal producing states to implement SMCRA through State SMCRA regulations. All SMCRA requirements regarding control of storm water-related pollutant discharges must be addressed in the SWPPP (directly or by reference).

6.H.4.2 *Drainage Area Site Map.* (See also Part 4.2.2.3) Also identify where any of the following may be exposed to precipitation/surface runoff: All applicable mining related areas described in Part 6.H.2; acidic spoil, refuse or unreclaimed disturbed areas, and liquid storage tanks containing pollutants such as caustics, hydraulic fluids and lubricants.

6.H.4.3 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following sources and activities that have potential pollutants associated with them: Truck traffic on haul roads and resulting generation of sediment subject to runoff and dust generation; fuel or other liquid storage; pressure lines containing slurry, hydraulic fluid or other potential harmful liquids; and loading or temporary storage of acidic refuse/spoil.

6.H.4.4 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1) As part of your good housekeeping program, consider: Using sweepers; covered storage; watering haul roads to minimize dust generation; and conserving vegetation (where possible) to minimize erosion.

6.H.4.5 *Preventive Maintenance.* (See also Part 4.2.7.2.1.3) Also perform inspections of storage tanks and pressure lines of fuels, lubricants, hydraulic fluid or slurry to prevent leaks due to deterioration or faulty connections; or other equivalent measures.

6.H.4.6 *Inspections of Active Mining-Related Areas and Inactive*

Areas Under SMCRA Bond Authority. (See also Part 4.2.7.2.1.5) Perform quarterly inspections of areas covered by this permit, corresponding with the inspections, as performed by SMCRA inspectors, of all mining-related areas required by SMCRA. Also maintain the records of the SMCRA authority representative.

6.H.4.7 *Sediment and Erosion Control.* (See also Part 4.2.7.2.2.1) As indicated in Part 6.H.4.1 above, SMCRA requirements regarding sediment and erosion control measures are primary requirements of the SWPPP for mining-related areas subject to SMCRA authority.

6.H.4.8 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9.2) Include in your evaluation program, inspections for pollutants entering the drainage system from activities located on or near coal mining-related areas. Among the areas to be inspected: Haul and access roads; railroad spurs, sliding and internal hauling lines; conveyor belts, chutes and aerial tramways; equipment storage and maintenance yards; coal handling buildings/structures; and inactive mines and related areas.

6.H.6 Monitoring and Reporting Requirements

(See also Part 5).

TABLE H–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

[Part of Permit Affected/Supplemental Requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation
Coal Mines and Related Areas (SIC 1221–1241)	Total Recoverable Aluminum.	0.75 mg/L.	
	Total Recoverable Iron	1.0 mg/L.	
	Total Suspended Solids	100 mg/L.	

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.I Sector I—Oil and Gas Extraction

6.I.1 Covered Storm Water Discharges

The requirements in Part 6.I apply to storm water discharges associated with industrial activity from Oil and Gas Extraction facilities as identified by the SIC Codes specified under Sector I in Table 1–1 of Part 1.2.1.

6.I.2 Industrial Activities Covered By Sector I

The types of activities that permittees under Sector I are primarily engaged in are:

6.I.2.1 oil and gas exploration, production, processing or treatment operations, or transmission facilities;

6.I.2.2 extraction and production of crude oil, natural gas, oil sands and shale; the production of hydrocarbon liquids and natural gas from coal; and associated oil field service, supply and repair industries.

6.I.3 Limitations On Coverage

6.I.3.1 *Prohibition of Storm Water Discharges.* This permit does not authorize contaminated storm water discharges from petroleum refining or drilling operations that are subject to nationally established BAT or BPT guidelines found at 40 CFR parts 419 and 435, respectively. Note: Most contaminated discharges at petroleum refining and drilling facilities are subject to these effluent guidelines and are not eligible for coverage by this permit.

6.I.3.2 *Prohibition of Non-Storm Water Discharges.* Not authorized by this permit: Discharges of vehicle and equipment washwater, including tank cleaning operations. Alternatively, washwater discharges must be authorized under a separate NPDES permit, or be discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.

6.I.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.I.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: Reportable Quantity (RQ) releases; locations used for the treatment, storage or disposal of wastes; processing areas and storage areas; chemical mixing areas; construction and drilling areas; all areas subject to the effluent guidelines requirements for "No Discharge" in accordance with 40 CFR 435.32; and the structural controls to achieve compliance with the "No Discharge" requirements.

6.I.4.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Also describe the following sources and activities that have potential pollutants associated with them: Chemical, cement, mud or gel mixing activities; drilling or mining activities; and equipment cleaning and rehabilitation activities. In addition, include information about the RQ release that triggered the permit application requirements; the nature of release (*e.g.*, spill of oil from a drum storage area); the amount of oil or hazardous substance released; amount of substance recovered; date of the release; cause of the release (*e.g.*, poor handling techniques and lack of containment in the area); areas affected by the release (*i.e.*, land and water); procedure to clean up release; actions or procedures implemented to prevent or improve response to a release; and remaining potential contamination of storm water from release (taking into account human health risks, the control of drinking water intakes and the designated uses of the receiving water).

6.I.4.3 *Inspections.* (See also Part 4.2.7.2.1.5)

6.I.4.3.1 *Inspection Frequency.* Inspect all equipment and areas addressed in the SWPPP at a minimum of 6-month intervals. Routinely (but not less than quarterly) inspect equipment and vehicles which store, mix (including all on and offsite mixing tanks) or transport chemicals/hazardous materials (including those transporting supplies to oil field activities).

6.I.4.3.2 *Temporarily or Permanently Inactive Oil and Gas Extraction Facilities.* For these facilities that are remotely located and unstaffed, perform the inspections at least annually.

6.I.4.4 *Sediment and Erosion Control.* (See also Part 4.2.7.2.2.1) Unless covered by the General Permit for Construction Activity, the additional sediment and erosion control requirements for well drillings, and sand/shale mining areas include the following:

6.I.4.4.1 *Site Description:* Also include: a description of the nature of the exploration activity; estimates of the total area of site and area disturbed due to exploration activity; an estimate of runoff coefficient of the site; site drainage map, including approximate slopes; and the name of all receiving waters. All sediment and erosion control measures must be inspected once every seven days.

6.I.4.4.2 *Vegetative Controls:* Describe and implement vegetative practices designed to preserve existing vegetation where attainable and re-vegitate open areas as soon as practicable after grade drilling. Consider the following (or equivalent measures): temporary or permanent seeding, mulching, sod stabilization, vegetative buffer strips, tree protection practices. Begin implementing appropriate vegetative practices on all disturbed areas within 14 days following the last activity in that area.

6.I.4.5 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.I.4.5.1 *Vehicle and Equipment Storage Areas.* Confine vehicles/equipment awaiting or having undergone maintenance to designated areas (as marked on site map). Describe and implement measures to minimize contaminants from these areas (*e.g.*, drip pans under equipment, indoor storage, use of berms or dikes, or other equivalent measures).

6.I.4.5.2 *Material and Chemical Storage Areas.* Maintain these areas in good conditions to prevent contamination of storm water. Plainly label all hazardous materials.

6.I.4.5.3 *Chemical Mixing Areas.* (See also Part 4.4) Describe and implement measures that prevent or minimize contamination of storm water runoff from chemical mixing areas.

6.J Sector J—Mineral Mining and Dressing

6.J.1 Covered Storm Water Discharges

The requirements in Part 6.J apply to storm water discharges associated with industrial activity from active and inactive mineral mining and dressing facilities as identified by the SIC Codes specified under Sector J in Table 1–1 of Part 1.2.1.

6.J.2 Industrial Activities Covered by Sector J

The types of activities that permittees under Sector J are primarily engaged in are:

6.J.2.1 exploring for minerals (*e.g.*, stone, sand, clay, chemical and fertilizer minerals, non-metallic minerals, etc.), developing mines and the mining of minerals; and

6.J.2.2 mineral dressing, and non-metallic mineral services.

6.J.3 Limitations on Coverage

Not authorized by this permit: most storm water discharges subject to an existing effluent limitation guideline at 40 CFR part 436. The exceptions to this limitation and which are therefore covered by the MSGP–2000 are mine dewatering discharges composed entirely of storm water or ground water seepage from: construction sand and gravel, industrial sand, and crushed stone mining facilities in Arizona.

6.J.4 Definitions

6.J.4.1 *Mining Operation*—typically consists of three-phases, any one of which individually qualifies as a "mining activity." The phases are the exploration and construction phase, the active phase and the reclamation phase.

6.J.4.2 *Exploration and Construction Phase*—entails exploration and land disturbance activities to determine the financial viability of a site. Construction includes the building of site access roads and removal of overburden and waste rock to expose mineable minerals.

6.J.4.3 *Active Phase*—activities including each step from extraction through production of a salable product.

6.J.4.4 *Reclamation phase*—activities intended to return the land to its pre-mining state.

Note: The following definitions are not intended to supercede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii).

6.J.4.5 *Active Mineral Mining Facility*—a place where work or other activity related to the extraction, removal or recovery of minerals is being conducted. This definition does not include any land where grading has returned the earth to a desired contour and reclamation has begun.

6.J.4.6 *Inactive Mineral Mining Facility*—a site or portion of a site where mineral mining and/or dressing occurred in the past but is not an active facility as defined above, and where the inactive portion is not covered by an active permit issued by the applicable State or Federal government agency.

6.J.4.7 *Temporarily Inactive Mineral Mining Facility*—a site or portion of a site where mineral mining and/or dressing occurred in the past but currently are not being actively undertaken, and the facility is covered by an active mining permit issued by the applicable State or Federal government agency.

6.J.5 Clearing, Grading and Excavation Activities

Clearing, grading and excavation (activities typically associated with the exploration and construction phase of a mining operation, but may also apply to active mining operations such as the expansion of existing pits) cannot be covered under this permit if these activities will disturb 5 or more acres of land. If the land disturbance is from 1 to 5 acres, you may or may not be able to utilize the MSGP–2000 to cover your clearing, grading and excavation activities. All mining activities disturbing less than 1 acre must continue to comply with the requirements of this permit. The 5-acre cut-off may not be simply determined by the extent of earth disturbance at a given time, rather it could depend on whether there is a "common plan of development or sale" totaling 5 acres (i.e., a plan to disturb, or the possibility of disturbing, at least 5 acres at some later date). For further information on common plan of development or sale, refer to the EPA's General Permit for Storm Water Discharges from Construction Activities (the "Construction General Permit;" **Federal Register**, Vol. 63, p. 7858).

6.J.5.1 *Requirements for Activities Disturbing 5 or More Acres of Earth.* If the 5-acre limit as defined in Part 6.G.5 is attained, coverage for these activities must be under the latest version of EPA's General Permit for Storm Water Discharges from Construction Activities (the "Construction General Permit"), or an applicable State-issued permit. You must obtain and comply with the Construction General Permit's requirements before submitting the separate Construction General Permit Notice of Intent (NOI) form (EPA Form 3510–9) to obtain coverage. The February 17, 1998 version of the permit can be downloaded from the EPA's Web Site at *www.epa.gov/owm/sw/construction/cgp/cgp-nat.pdf* or obtained from the Office of Water Resource Center at 202.260.7786. The NOI form is also available from the Web Site at *www.epa.gov/owm/sw/construction/connoi.pdf* or from your EPA Regional office at the address listed under Part 8.3. Discharges in compliance with the provisions of the Construction General Permit are also authorized under the MSGP.

6.J.5.2 *Requirements for Activities Disturbing From 1 to 5 Acres of Earth.* For earth disturbances of 1 to 5 acres, coverage of mining activities under a construction permit may be required pursuant to the Regulations for Revision of the Water Pollution Control Program Addressing Storm Water Discharges (also known as the Storm Water Phase II Rule; see **Federal Register**, Vol. 64, p. 68722). Under these regulations there are provisions that allow certain dischargers to waive out of the Phase II

construction permit requirement, so you must refer to the Phase II Rule to determine the waivers' applicability to your site. If you choose to waive out of the Phase II construction permit requirement, you still must maintain compliance with the MSGP–2000. As of the publication date of the MSGP–2000, there is not yet available a construction permit for land disturbances of 1 to 5 acres. This permit may be available at any time up to March 10, 2003. Until such time when application for coverage under the Phase II construction permit is required, compliance with the MSGP–2000 must be maintained. Alternatively, you may opt to apply for coverage under the CGP as per Part 6.G.5.1 at any time. Information and updates on the Phase II Rule can be obtained from the EPA's Web Site at *www.epa.gov/owm/sw/phase2/index.htm*.

6.J.5.3 *Cessation of Earth Disturbing Activities.* If exploration phase clearing, grading and excavation activities are completed and no further mining activities will occur at the site, you must comply with the requirements for terminating the Construction General Permit (*i.e.*, stabilize the disturbed land, submit a Notice of Termination, *etc.*). If further mining activities will occur, you may opt for either of the following: maintain coverage under the CGP (*i.e.*, maintain BMPs, perform inspections, *etc.*) and apply for coverage under the MSGP for those discharges associated with mineral mining and dressing activities that will occur under the active and reclamation phases; or terminate coverage under the CGP and apply for coverage under the MSGP for all discharges from the site.

6.J.6 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4 of the MSGP.

6.J.6.1 *Inspections.* (See also Part 4.2.7.2.1.5) Conduct quarterly visual inspections of all BMPs at active mining facilities. At temporarily or permanently inactive facilities, perform annual inspections. Include in your inspection program: assessment of the integrity of storm water discharge diversions, conveyance systems, sediment control and collection systems and containment structures; inspections to determine if soil erosion has occurred at, or as a result of vegetative BMPs, serrated slopes and benched slopes; inspections of material handling and storage areas and other potential sources of pollution for evidence of actual or potential discharges of contaminated storm water.

6.J.7 Monitoring and Reporting Requirements. (See also Part 5)

TABLE J–2.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

[Part of Permit Affected/Supplemental Requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation [3]
Mine Dewatering Activities at Construction Sand and Gravel Stone Mining Facilities (SIC 1422–1429, 1442, 1446).	Total Suspended Solids	.....	45 mg/L, daily max.
	pH	.....	6.0–9.0.
Sand and Gravel Mining (SIC 1442, 1446)	Nitrate plus Nitrite Nitrogen	0.68 mg/L.	
	Total Suspended Solids	100 mg/L.	
Dimension and Crushed Stone and Nonmetallic Minerals (except fuels) (SIC 1411, 1422–1429, 1481, 1499).	Total Suspended Solids	100 mg/L.	

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 Monitoring Years.
[3] Monitor once/year for Each Monitoring Year.

6.K Sector K—Hazardous Waste Treatment, Storage or Disposal Facilities

6.K.1 Covered Storm Water Discharges

The requirements in Part 6.K apply to storm water discharges associated with industrial activity from Hazardous Waste Treatment, Storage or Disposal facilities as identified by the Activity Code specified under Sector K in Table 1–1 of Part 1.2.1.

6.K.2 Industrial Activities Covered by Sector K

This permit authorizes storm water discharges associated with industrial activity from facilities that treat, store or dispose of hazardous wastes, including those that are operating under interim status or a permit under subtitle C of RCRA.

6.K.3 Limitations on Coverage

For facilities located in Region 6, coverage is limited to Hazardous Waste Treatment Storage or Disposal Facilities (TSDF's) that are self-generating or handle residential wastes only and to those facilities that only store hazardous wastes and do not treat or dispose. Those permits are issued by EPA Region 6 for Louisiana (LAR05*###), New Mexico (NMR05*###), Oklahoma (OKR05*###), and Federal Indian Reservations in these States (LAR05*##F, NMR05*##F, OKR05*##F, or TXR05*##F). Coverage under this permit is not available to commercial hazardous waste disposal / treatment facilities located in Region 6 that dispose and treat on a commercial basis any produced hazardous wastes (not their own) as a service to generators.

6.K.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1) Not authorized by this permit: Leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory-derived wastewater and contact washwater from washing truck and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

6.K.4 Definitions

6.K.4.1 *Contaminated storm water*—storm water which comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in Part 6.K.4.5. Some specific areas of a landfill that may produce contaminated storm water include (but are not limited to): The open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

6.K.4.2 *Drained free liquids*—aqueous wastes drained from waste containers (*e.g.*, drums, etc.) prior to landfilling.

6.K.4.3 *Land treatment facility*—a facility or part of a facility at which hazardous waste is applied onto or incorporated into the soil surface; such facilities are disposal facilities if the waste will remain after closure.

6.K.4.4 *Landfill*—an area of land or an excavation in which wastes are placed for permanent disposal, that is not a land application or land treatment unit, surface impoundment, underground injection well, waste pile, salt dome formation, a salt bed formation, an underground mine or a cave as these terms are defined in 40 CFR 257.2, 258.2 and 260.10.

6.K.4.5 *Landfill wastewater*—as defined in 40 CFR part 445 (Landfills Point Source Category) all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment, and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

6.K.4.6 *Leachate*—liquid that has passed through or emerged from solid waste and contains soluble, suspended, or miscible materials removed from such waste.

6.K.4.7 *Non-contaminated storm water*—storm water which does not come into direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater as defined in Part 6.K.4.5. Non-contaminated storm water includes storm water which flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

6.K.4.8 *Pile*—any non-containerized accumulation of solid, nonflowing hazardous waste that is used for treatment or storage and that is not a containment building.

6.K.4.9 *Surface impoundment*—a facility or part of a facility which is a natural topographic depression, man-made excavation or diked area formed primarily of earthen materials (although it may be lined with man-made materials), which is designed to hold an accumulation of liquid wastes or wastes containing free liquids, and which is not an injection well. Examples of surface impoundments are holding, storage, settling, and aeration pits, ponds and lagoons.

6.K.5 Numeric Limitations, Monitoring and Reporting Requirements

(See also Part 5)

TABLE K–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK AND COMPLIANCE MONITORING

[Part of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cutoff concentration [2]	Numeric limitation [3]
ALL—Industrial Activity Code "HZ" (Note: permit coverage limited in some States)	Ammonia	19.0 mg/L.	
	Total Recoverable Magnesium.	0.0636 mg/L.	
	Chemical Oxygen Demand (COD).	120.0 mg/L.	
	Total Recoverable Arsenic	0.16854 mg/L.	
	Total Recoverable Cadmium.	0.0159 mg/L.	
	Total Cyanide	0.0636 mg/L.	
	Total Recoverable Lead	0.0816 mg/L.	
	Total Recoverable Mercury	0.0024 mg/L.	
	Total Recoverable Selenium.	0.2385 mg/L.	
	Total Recoverable Silver ...	0.0318 mg/L.	
ALL—Industrial Activity Code "HZ" Subject to the Provisions of 40 CFR Part 445 Subpart A.	BOD5	.....	220 mg/l, daily max. 56 mg/l, monthly avg maximum.
	TSS	.....	88 mg/l, daily max.P27 mg/l, monthly ave maximum.
	Ammonia	.....	10 mg/l, daily maximum.
	.....	.....	4.9 mg/l, monthly avg. maximum.
	Alpha Terpineol	.....	0.042 mg/l, daily max. 0.019 mg/l, monthly avg. maximum.
	Aniline	.....	0.024 mg/l, daily max. 0.015 mg/l, monthly avg. maximum.
	Benzoic Acid	.....	0.119 mg/l, daily max. 0.073 mg/l, monthly avg. maximum.
	Naphthalene	.....	0.059 mg/l, daily max. 0.022 mg/l, monthly avg. maximum.
	p-Cresol	.....	0.024 mg/l, daily max. 0.015 mg/l, monthly avg. maximum.
	Phenol	.....	0.048 mg/l, daily max. 0.029 mg/l, monthly avg. maximum.
	Pyridine	.....	0.072 mg/l, daily max. 0.025 mg/l, monthly avg. maximum.

TABLE K–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK AND COMPLIANCE MONITORING—Continued

[Part of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cutoff concentration [2]	Numeric limitation [3]
	Arsenic (Total)		1.1 mg/l, daily maximum. 0.54 mg/l, monthly avg. maximum.
	Chromium (Total)		1.1 mg/l, daily maximum. 0.46 mg/l, monthly avg. maximum.
	Zinc (Total)		0.535 mg/l, daily max. 0.296 mg/l, monthly avg. maximum.
	pH		Within the range of 6–9 pH units.

[1] Discharges may be subject to requirements for more than one sector/subsector.

[2] These benchmark monitoring cutoff concentrations apply to storm water discharges associated with industrial activity other than contaminated storm water discharges from landfills subject to the numeric effluent limitations set forth in Table K–1. Monitor once/quarter for the year 2 and year 4 monitoring years.

[3] As set forth at 40 CFR part 445 subpart A, these numeric limitations apply to contaminated storm water discharges from hazardous waste landfills subject to the provisions of RCRA Subtitle C at 40 CFR parts 264 (subpart N) and 265 (subpart N) except for any of the facilities described below:

(a) landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

(b) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

(c) landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR part 437 so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

(d) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

For the discharges subject to the numeric effluent limitations, monitoring for the specified parameters is required once/year during each year of the term of the permit.

6.L Sector L—Landfills, Land Application Sites and Open Dumps

6.L.1 Covered Storm Water Discharges

The requirements in Part 6.L apply to storm water discharges associated with industrial activity from Landfills and Land Application Sites and Open Dumps as identified by the Activity Codes specified under Sector L in Table 1–1 of Part 1.2.1.

6.L.2 Industrial Activities Covered by Sector L

This permit may authorize storm water discharges for Sector L facilities associated with waste disposal at landfills, land application sites and open dumps that receive or have received industrial waste, including sites subject to regulation under Subtitle D of RCRA.

6.L.3 Limitations on Coverage

6.L.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1)

Not authorized by this permit: Leachate, gas collection condensate, drained free liquids, contaminated ground water, laboratory wastewater, and contact washwater from washing truck and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

6.L.4 Definitions

6.L.4.1 *Contaminated storm water*—storm water which comes in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater. Some specific areas of a landfill that may produce contaminated storm water include (but are not limited to): The open face of an active landfill with exposed waste (no cover added); the areas around wastewater treatment operations; trucks, equipment or machinery that has been in direct contact with the waste; and waste dumping areas.

6.L.4.2 *Drained free liquids*—aqueous wastes drained from waste containers (*e.g.*, drums, *etc.*) prior to landfilling.

6.L.4.3 *Landfill wastewater*—as defined in 40 CFR part 445 (Landfills Point Source Category) all wastewater associated with, or produced by, landfilling activities except for sanitary wastewater, non-contaminated storm water, contaminated groundwater, and wastewater from recovery pumping wells. Landfill process wastewater includes, but is not limited to, leachate, gas collection condensate, drained free liquids, laboratory derived wastewater, contaminated storm water and contact washwater from washing truck, equipment and railcar exteriors and surface areas which have come in direct contact with solid waste at the landfill facility.

6.L.4.4 *Leachate*—liquid that has passed through or emerged from solid waste and contains soluble, suspended or miscible materials removed from such waste.

6.L.4.5 *Non-contaminated storm water*—storm water which does not come in direct contact with landfill wastes, the waste handling and treatment areas, or landfill wastewater. Non-contaminated storm water includes storm water which flows off the cap, cover, intermediate cover, daily cover, and/or final cover of the landfill.

6.L.5 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in part 4.

6.L.5.1 *Drainage Area Site Map.* (See also Part 4.2.2.3)

Identify where any of the following may be exposed to precipitation/ surface runoff: Active and closed landfill cells or trenches, active and closed land application areas, locations where open dumping is occurring or has occurred, locations of any known leachate springs or other areas where uncontrolled leachate may commingle with runoff, leachate collection and handling systems.

6.L.5.2 *Summary of Potential Pollutant Sources.* (See also Part 4.2.4)

Describe the following sources and activities that have potential pollutants associated with them: Fertilizer, herbicide and pesticide application; earth/soil moving; waste hauling and loading/unloading; outdoor storage of significant materials including daily, interim and final cover material stockpiles as well as temporary waste storage areas; exposure of active and inactive landfill and land application areas; uncontrolled leachate flows; failure or leaks from leachate collection and treatment systems.

6.L.5.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

As part of your good housekeeping program, consider providing protected storage areas for pesticides, herbicides, fertilizer and other significant materials.

6.L.5.4 *Preventative Maintenance Program.* (See also Part 4.2.7.1)

As part of your preventive maintenance program, maintain: All containers used for outdoor chemical/ significant materials storage to prevent leaking; all elements of leachate collection and treatment systems to prevent commingling of leachate with storm water; the integrity and effectiveness of any intermediate or final cover (including repairing the cover as necessary to minimize the effects of settlement, sinking and erosion).

6.L.5.5 Inspections.

6.L.5.5.1 *Inspections of Active Sites.* (See also Part 4.2.7.2.1.2) Inspect operating landfills, open dumps and land application sites at least once every 7 days. Focus on areas of landfills that have not yet been finally stabilized, active land application areas, areas used for storage of material/wastes that are exposed to precipitation, stabilization and structural control measures, leachate collection and treatment systems, and locations where equipment and waste trucks enter/exit the site. Ensure that sediment and erosion control measures are operating properly. For stabilized sites and areas where land application has been completed, or where the climate is seasonally arid (annual rainfall averages from 0 to 10 inches) or semi-arid (annual rainfall averages from 10 to 20 inches), conduct inspections at least once every month.

6.L.5.5.2 *Inspections of Inactive Sites.* (See also Part 4.2.7.2.1.5) Inspect inactive landfills, open dumps and land application sites at least quarterly. Qualified personnel must inspect landfill (or open dump) stabilization and structural erosion control measures and leachate collection and treatment systems, and all closed land application areas.

6.L.5.6 *Recordkeeping and Internal Reporting.* Implement a tracking system for the types of wastes disposed of in each cell or trench of a landfill or open dump. For land application sites, track the types and quantities of wastes applied in specific areas.

6.L.5.7 *Non-Storm Water Discharge Test Certification.* (See also Part 4.) The discharge test and certification must also be conducted for the presence of leachate and vehicle washwater.

6.L.5.8 *Sediment and Erosion Control Plan.* (See also Part 4.2.7.2.2.1) Provide temporary stabilization (*e.g.*, consider temporary seeding, mulching and placing geotextiles on the inactive portions of stockpiles): For materials stockpiled for daily, intermediate and final cover; for inactive areas of the landfill or open dump; for any landfill or open dump area that have gotten final covers but where vegetation has yet to established itself; and where waste application has been completed at land application sites but final vegetation has not yet been established.

6.L.5.9 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9.2) Evaluate areas contributing to a storm water discharge associated with industrial activities at landfills, open dumps and land application sites for evidence of, or the potential for, pollutants entering the drainage system.

6.L.6 Numeric Limitations, Monitoring and Reporting Requirements

(See also Part 5)

TABLE L–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK AND COMPLIANCE MONITORING

[Section of Permit Affected/Supplemental Requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation [3]
All Landfill, Land Application Sites and Open Dumps (Industrial Activity Code "LF").	Total Suspended Solids (TSS).	100 mg/L.	
All Landfill, Land Application Sites and Open Dumps, Except Municipal Solid Waste Landfill (MSWLF) Areas Closed in Accordance with 40 CFR 258.60 (Industrial Activity Code "LF").	Total Recoverable Iron	1.0 mg/L.	
All Landfills Which are Subject to the Requirements of 40 CFR Part 445 Subpart B (Industrial Activity Code "LF").	BOD5		140 mg/l, daily max. 37 mg/l, monthly ave maximum.
	TSS		88 mg/l, daily max. 27 mg/l, monthly ave maximum.
	Ammonia		10 mg/l, daily max. 4.9 mg/l, monthly ave maximum.
	Alpha Terpineol		0.033 mg/l, daily max. 0.016 mg/l, monthly ave maximum.
	Benzoic Acid		0.12 mg/l, daily max. 0.071 mg/l, monthly ave maximum.
	p-Cresol		0.025 mg/l, daily max. 0.014 mg/l, monthly ave maximum.

TABLE L–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK AND COMPLIANCE MONITORING—Continued

[Section of Permit Affected/Supplemental Requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation [3]
	Phenol		0.026 mg/l, daily max. 0.015 mg/l, monthly ave maximum.
	Zinc (Total)		0.20 mg/l, daily max. 0.11 mg/l, monthly ave maximum.
	pH		Within the range of 6–9 pH units.

[1] Discharges may be subject to requirements for more than one sector/subsector.

[2] These benchmark monitoring cutoff concentrations apply to storm water discharges associated with industrial activity other than contaminated storm water discharges from landfills subject to the numeric effluent limitations set forth in Table L–1. Monitor once/quarter for the year 2 and year 4 monitoring years.

[3] As set forth at 40 CFR part 445 subpart B, these numeric limitations apply to contaminated storm water discharges from MSWLFs which have not been closed in accordance with 40 CFR 258.60, and contaminated storm water discharges from those landfills which are subject to the provisions of 40 CFR part 257 except for discharges from any of facilities described in (a) through (d) below:

(a) landfills operated in conjunction with other industrial or commercial operations when the landfill only receives wastes generated by the industrial or commercial operation directly associated with the landfill;

(b) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes generated by the industrial or commercial operation directly associated with the landfill and also receives other wastes provided the other wastes received for disposal are generated by a facility that is subject to the same provisions in 40 CFR Subchapter N as the industrial or commercial operation or the other wastes received are of similar nature to the wastes generated by the industrial or commercial operation;

(c) landfills operated in conjunction with Centralized Waste Treatment (CWT) facilities subject to 40 CFR part 437 so long as the CWT facility commingles the landfill wastewater with other non-landfill wastewater for discharge. A landfill directly associated with a CWT facility is subject to this part if the CWT facility discharges landfill wastewater separately from other CWT wastewater or commingles the wastewater from its landfill only with wastewater from other landfills; or

(d) landfills operated in conjunction with other industrial or commercial operations when the landfill receives wastes from public service activities so long as the company owning the landfill does not receive a fee or other remuneration for the disposal service.

For the discharges subject to the numeric effluent limitations, monitoring for the specified parameters is required once/year during each year of the term of the permit.

6.M Sector M—Automobile Salvage Yards

6.M.1 Covered Storm Water Discharges

The requirements in Part 6.M apply to storm water discharges associated with industrial activity from Automobile Salvage Yards as identified by the Activity Code specified under Sector M in Table 1–1 of Part 1.2.1.

6.M.2 Industrial Activities Covered by Sector M

The types of activities that permittees under Sector M are primarily engaged in are dismantling or wrecking used motor vehicles for parts recycling/resale and for scrap.

6.M.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.M.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Indicate the location of each monitoring point, and estimate the total acreage used for industrial activity including, but not limited to, dismantling, storage and maintenance of used motor vehicle parts. Also identify where any of the following may be exposed to precipitation/surface runoff: dismantling areas; parts (*e.g.*, engine blocks, tires, hub caps, batteries, hoods, mufflers) storage areas; liquid storage tanks and drums for fuel and other fluids.

6.M.3.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Assess the potential for the following to contribute pollutants to storm water discharges: Vehicle storage areas; dismantling areas; parts storage area (*e.g.*, engine blocks, tires, hub caps, batteries, hoods, mufflers); fueling stations.

6.M.3.3 *Spill and Leak Prevention Procedures.* (See also Part 4.2.7.2.1.4) Drain vehicles intended to be dismantled of all fluids upon arrival at the site (or as soon thereafter as feasible); or employ some other equivalent means to prevent spills/leaks.

6.M.3.4 *Inspections.* (See also Part 4.2.7.2.1.5) Immediately (or as soon thereafter as feasible) inspect vehicles arriving at the site for leaks. Inspect quarterly for signs of leakage, all equipment containing oily parts, hydraulic fluids or any other types of fluids. Also inspect quarterly for signs of leakage, all vessels and areas where fluids are stored, including, but not limited to, brake fluid, transmission fluid, radiator water and antifreeze.

6.M.3.5 *Employee Training.* (See also Part 4.2.7.2.1.6) If applicable to your facility, address the following areas (at a minimum) in your employee training program: proper handling (collection, storage, and disposal) of oil, used mineral spirits, anti-freeze and solvents.

6.M.3.6 *Management of Runoff.* (See also Part 4.2.7.2.2.2) Consider the following management practices: Berms or drainage ditches on the property line (to help prevent run-on from neighboring properties); berms for uncovered outdoor storage of oily parts, engine blocks and above-ground liquid storage; installation of detention ponds; and the installation of filtering devices and oil/water separators.

6.M.4 Monitoring and Reporting Requirements

(See also Part 5)

TABLE M–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

[Sector of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation
Automobile Salvage Yards (SIC 5015)	Total Suspended Solids (TSS).	100.0 mg/L.	
	Total Recoverable Aluminum.	0.75 mg/L.	
	Total Recoverable Iron	1.0 mg/L.	
	Total Recoverable Lead	0.0816 mg/L.	

[1] Discharges may be subject to requirements for more than one sector/subsector.

[2] Monitor once/quarter for the year 2 and year 4 monitoring years.

6.N Sector N—Scrap Recycling and Waste Recycling Facilities

6.N.1 Covered Storm Water Discharges

The requirements in Part N apply to storm water discharges associated with industrial activity from Scrap Recycling and Waste Recycling facilities as identified by the SIC Codes specified under Sector N in Table 1–1 of Part 1.2.1.

6.N.2 Industrial Activities Covered by Sector N

The types of activities that permittees under Sector N are primarily engaged in are:

6.N.2.1 processing, reclaiming and wholesale distribution of scrap and waste materials such as ferrous and nonferrous metals, paper, plastic, cardboard, glass, animal hides;

6.N.2.2 reclaiming and recycling liquid wastes such as used oil, antifreeze, mineral spirits and industrial solvents.

6.N.3 Coverage Under This Permit

Separate permit requirements have been established for recycling facilities that only receive source-separated recyclable materials primarily from non-industrial and residential sources (*i.e.*, common consumer products including paper, newspaper, glass, cardboard, plastic containers, aluminum and tin cans). This includes recycling facilities commonly referred to as material recovery facilities (MRF).

6.N.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.2.2) Not covered by this permit: Non-storm water discharges from turnings containment areas (see also Part 6.N.5.1.3). Discharges from containment areas in the absence of a storm event are prohibited unless covered by a separate NPDES permit.

6.N.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4 of the MSGP. Part 6.N.4.1 contains a requirement that applies to all recycling facilities and is followed by Parts 6.N.4.2 to 6.N.4.4.4, which have requirements for specific types of recycling facilities. Implement and describe in your SWPPP a program to address those items that apply. Included are lists of BMP options which, along with any functional equivalents, should be considered for implementation. Selection or deselection of a particular BMP or approach is up to the best professional judgement of the operator, as long as the objective of the requirement is met.

6.N.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3)

Identify the locations of any of the following activities or sources which may be exposed to precipitation/surface runoff: Scrap and waste material storage, outdoor scrap and waste processing equipment, and containment areas for turnings exposed to cutting fluids.

6.N.4.2 *Scrap and Waste Recycling Facilities (Non-Source Separated, Non-Liquid Recyclable Materials).* Requirements for facilities that receive, process and do wholesale distribution of non-liquid recyclable wastes (*e.g.*, ferrous and nonferrous metals, plastics, glass, cardboard and paper). These facilities may receive both nonrecyclable and recyclable materials. This section is not intended for those facilities that only accept recyclables from primarily non-industrial and residential sources.

6.N.4.2.1 *Inbound Recyclable and Waste Material Control Program.* Minimize the chance of accepting materials that could be significant sources of pollutants by conducting inspections of inbound recyclables and waste materials. BMP options: (a) Provide information/education to suppliers of scrap and recyclable waste materials on draining and properly disposing of residual fluids (*e.g.*, from vehicles and equipment engines, radiators and transmissions, oil filled transformers and individual containers or drums), prior to delivery to your facility; (b) procedures to minimize the potential of any residual fluids from coming into contact with precipitation/runoff; (c) procedures for accepting scrap lead-acid batteries (additional requirements for the handling, storage and disposal or recycling of batteries are contained in the scrap lead-acid battery program provisions in N.5.1.6); (d) training targeted for those personnel engaged in the inspection and acceptance of inbound recyclable materials. In addition, (e) liquid wastes, including used oil, must be stored in materially compatible and non-leaking containers and disposed or recycled in accordance with RCRA.

6.N.4.2.2 *Scrap and Waste Material Stockpiles/Storage (Outdoor).* Minimize contact of storm water runoff with stockpiled materials, processed materials and non-recyclable wastes. BMP options: (a) Permanent or semi-permanent covers; (b) to facilitate settling or filtering of pollutants: Sediment traps, vegetated swales and strips, catch basin filters and sand filters; (c) divert runoff away from storage areas via dikes, berms, containment trenches, culverts and surface grading; (d) silt fencing; (e) oil/water separators, sumps and dry absorbents for areas where potential sources of residual fluids are stockpiled (*e.g.*, automobile engine storage areas).

6.N.4.2.3 *Stockpiling of Turnings Exposed to Cutting Fluids (Outdoor).* Minimize contact of surface runoff with residual cutting fluids. BMP options (use singularly or in combination): (a) Store all turnings exposed to cutting fluids under some form of permanent or semi-permanent cover. Storm water discharges from these areas are permitted provided the runoff is first treated by an oil/water separator or its equivalent. Identify procedures to collect, handle and dispose/recycle residual fluids which may be present; (b) establish dedicated containment areas for all turnings that have been

exposed to cutting fluids. Storm water runoff from these areas can be discharged provided: The containment areas are constructed of either concrete, asphalt or other equivalent types of impermeable material; there is a barrier around the perimeter of the containment areas (*e.g.*, berms, curbing, elevated pads, etc.) to prevent contact with storm water run-on; there is a drainage collection system for runoff generated from containment areas; you have a schedule to maintain the oil/water separator (or its equivalent); and you identify procedures for properly disposing or recycling collected residual fluids.

6.N.4.2.4 *Scrap and Waste Material Stockpiles/Storage (Covered or Indoor Storage).* Minimize contact of residual liquids and particulate matter from materials stored indoors or under cover with surface runoff. BMP options: (a) Good housekeeping measures including the use of dry absorbent or wet vacuuming to contain or dispose/recycle residual liquids originating from recyclable containers; (b) not allowing washwater from tipping floors or other processing areas to discharge to the storm sewer system; (c) disconnect or seal off all floor drains connected to the storm sewer system.

6.N.4.2.5 *Scrap and Recyclable Waste Processing Areas.* Minimize surface runoff from coming in contact with scrap processing equipment. Pay attention to operations that generate visible amounts of particulate residue (*e.g.*, shredding) to minimize the contact of accumulated particulate matter and residual fluids with runoff (*i.e.*, through good housekeeping, preventive maintenance, *etc.*). BMP options: (a) Regularly inspect equipment for spills/leaks, and malfunctioning/worn/corroded parts or equipment; (b) a preventive maintenance program for processing equipment; (c) use of dry-absorbents or other cleanup practices to collect and dispose/recycle spilled/leaking fluids; (d) on unattended hydraulic reservoirs over 150 gallons in capacity, install such protection devices as low-level alarms or other equivalent devices, or, alternatively, secondary containment that can hold the entire volume of the reservoir; (e) containment or diversion structures such as dikes, berms, culverts, trenches, elevated concrete pads, grading to minimize contact of storm water runoff with outdoor processing equipment or stored materials; (f) oil/water separators or sumps; (g) permanent or semi-permanent covers in processing areas where there are residual fluids and grease; (h) retention/detention ponds or basins; sediment traps, vegetated swales or strips (for pollutant settling/filtration); (i) catch basin filters or sand filters.

6.N.4.2.6 *Scrap Lead-Acid Battery Program.* Properly handle, store and dispose of scrap lead-acid batteries. BMP options: (a) Segregate scrap lead-acid batteries from other scrap materials; (b) proper handling, storage and disposal of cracked or broken batteries; (c) collect and dispose leaking lead-acid battery fluid; (d) minimize/eliminate (if possible) exposure of scrap lead-acid batteries to precipitation or runoff; (e) employee training for the management of scrap batteries.

6.N.4.2.7 *Spill Prevention and Response Procedures.* (See also Part 4.2.7.2.1.4)

Minimize storm water contamination at loading/unloading areas, and from equipment or container failures. BMP options: (a) Prevention and response measures for areas that are potential sources of fluid leaks/spills; (b) immediate containment and clean up of spills/leaks. If malfunctioning equipment is responsible for the spill/leak, repairs should also be conducted as soon as possible; (c) cleanup measures including the use of dry absorbents. If this method is employed, there should be an adequate supply of dry absorbent materials kept onsite and used absorbent must be properly disposed of; (d) store drums containing liquids—especially oil and lubricants—either: Indoors, in a bermed area, in overpack containers or spill pallets, or in other containment devices; (e) install overfill prevention devices on fuel pumps or tanks; (f) place drip pans or equivalent measures under leaking stationary equipment until the leak is repaired. The drip pans should be inspected for leaks and potential overflow and all liquids must be properly disposed of (as per RCRA); (g) install alarms and/or pump shut off systems on outdoor equipment with hydraulic reservoirs exceeding 150 gallons in the event of a line break. Alternatively, a secondary containment system capable of holding the entire contents of the reservoir plus room for precipitation can be used.

6.N.4.2.8 *Quarterly Inspection Program.* (See also Part 4.2.7.2.1.5)

Inspect all designated areas of the facility and equipment identified in the plan quarterly.

6.N.4.2.9 *Supplier Notification Program.* As appropriate, notify major suppliers which scrap materials will not be accepted at the facility or are only accepted under certain conditions.

6.N.4.3 *Waste Recycling Facilities (Liquid Recyclable Materials).*

6.N.4.3.1 *Waste Material Storage (Indoor).* Minimize/eliminate contact between residual liquids from waste materials stored indoors and surface runoff. The plan may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR part 112. BMP options: (a) Procedures for material handling (including labeling and marking); (b) clean up spills/leaks with dry-absorbent materials or a wet vacuum system; (c) appropriate containment structures (trenching, curbing, gutters, etc.); (d) a drainage system, including appurtenances (*e.g.*, pumps or ejectors, manually operated valves), to handle discharges from diked or bermed areas. Drainage should be discharged to an appropriate treatment facility, sanitary sewer system, or otherwise disposed of properly. These discharges may require coverage under a separate NPDES wastewater permit or industrial user permit under the pretreatment program.

6.N.4.3.2 *Waste Material Storage (Outdoor).* Minimize contact between stored residual liquids and precipitation or runoff. The plan may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR part 112. Discharges of precipitation from containment areas containing used oil must also be in accordance with applicable sections of 40 CFR part 112. BMP options: (a) Appropriate containment structures (*e.g.*, dikes, berms, curbing, pits) to store the volume of the largest tank with sufficient extra capacity for precipitation; (b) drainage control and other diversionary structures; (c) for storage tanks, provide corrosion protection and/or leak detection systems; (d) use dry-absorbent materials or a wet vacuum system to collect spills.

6.N.4.3.3 *Trucks and Rail Car Waste Transfer Areas.* Minimize pollutants in discharges from truck and rail car loading / unloading areas. Include measures to clean up minor spills/leaks resulting from the transfer of liquid wastes. BMP options: (a) Containment and diversionary structures to minimize contact with precipitation or runoff; (b) use dry-clean up methods, wet vacuuming, roof coverings, or runoff controls.

6.N.4.3.4 *Quarterly Inspections.* (See also Part 4.2.7.2.1.5)

At a minimum, the inspections must also include all areas where waste is generated, received, stored, treated or disposed and that are exposed to either precipitation or storm water runoff.

6.N.4.4 *Recycling Facilities (Source Separated Materials).* The following identifies considerations for facilities that receive only source-separated

recyclables, primarily from non-industrial and residential sources.

6.N.4.4.1 *Inbound Recyclable Material Control.* Minimize the chance of accepting non-recyclables (*e.g.*, hazardous materials) which could be a significant source of pollutants by conducting inspections of inbound materials. BMP options: (a) Information/education measures to inform suppliers of recyclables which materials are acceptable and which are not; (b) training drivers responsible for pickup of recycled material; (c) clearly marking public drop-off containers regarding which materials can be accepted; (d) reject non-recyclable wastes or household hazardous wastes at the source; (e) procedures for handling and disposal of non-recyclable material.

6.N.4.4.2 *Outdoor Storage.* Minimize exposure of recyclables to precipitation and runoff. Use good housekeeping measures to prevent accumulation of particulate matter and fluids, particularly in high traffic areas. Other BMP options: (a) Provide totally-enclosed drop-off containers for the public; (b) install a sump/pump with each container pit and treat or discharge collected fluids to a sanitary sewer system; (c) provide dikes and curbs for secondary containment (*e.g.*, around bales of recyclable waste paper); (d) divert surface water runoff away from outside material storage areas; (e) provide covers over containment bins, dumpsters, roll-off boxes; (f) store the equivalent one days's volume of recyclable material indoors.

6.N.4.4.3 *Indoor Storage and Material Processing.* Minimize the release of pollutants from indoor storage and processing areas. BMP options: (a) Schedule routine good housekeeping measures for all storage and processing areas; (b) prohibit tipping floor washwater from draining to the storm sewer system; (c) provide employee training on pollution prevention practices.

6.N.4.4.4 *Vehicle and Equipment Maintenance.* BMP options for those areas where vehicle and equipment maintenance are occurring outdoors: (a) Prohibit vehicle and equipment washwater from discharging to the storm sewer system; (b) minimize or eliminate outdoor maintenance areas whenever possible; (c) establish spill prevention and clean-up procedures in fueling areas; (d) avoid topping off fuel tanks; (e) divert runoff from fueling areas; (f) store lubricants and hydraulic fluids indoors; (g) provide employee training on proper handling, storage of hydraulic fluids and lubricants.

6.N.5 Monitoring and Reporting Requirements

(See also Part 5)

TABLE N–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

[Part of Permit Affected/Supplemental Requirements]

Subsector[1]	Parameter	Benchmark monitoring cut-off concentration[2]	Numeric limitation
Scrap Recycling Facility (SIC 5093)	Chemical Oxygen Demand (COD).	120 mg/L.	
	Total Suspended Solids (TSS).	100 mg/L.	
	Total Recoverable Aluminum.	0.75 mg/L.	
	Total Recoverable Copper	0.0636 mg/L.	
	Total Recoverable Iron	1.0 mg/L.	
	Total Recoverable Lead	0.0816 mg/L.	
	Total Recoverable Zinc	0.117 mg/L.	

[1] Discharge may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.O Sector O—Steam Electric Generating Facilities

6.O.1 Covered Storm Water Discharges

The requirements in Part 6.O apply to storm water discharges associated with industrial activity from Steam Electric Power Generating Facilities as identified by the Activity Code specified under Sector O in Table 1–1 of Part 1.2.1.

6.O.2 Industrial Activities Covered by Sector O.

This permit authorizes storm water discharges from the following industrial activities at Sector O facilities:

6.O.2.1 Steam electric power generation using coal, natural gas, oil, nuclear energy, etc. to produce a steam source, including coal handling areas;

6.O.2.2 Coal pile runoff, including effluent limitations established by 40 CFR Part 423;

6.O.2.3 Dual fuel co-generation facilities.

6.O.3 Limitations on Coverage

6.O.3.1 *Prohibition of Non-Storm Water Discharges.* Not covered by this permit: Non-storm water discharges subject to effluent limitations guidelines.

6.O.3.2 *Prohibition of Storm Water Discharges.* Not covered by this permit: Storm water discharges from ancillary facilities (*e.g.*, fleet centers, gas turbine stations and substations) that are not contiguous to a stream electric power generating facility; and heat capture co-generation facilities.

6.O.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.O.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify the locations of any of the following activities or sources which may be exposed to precipitation/surface runoff: Storage tanks, scrap yards, general refuse areas; short and long term storage of general materials (including but not limited to: supplies, construction materials, paint equipment, oils, fuels, used and unused solvents, cleaning materials, paint, water treatment chemicals, fertilizer and pesticides); landfills, construction sites; stock piles areas (*e.g.*, coal or limestone piles).

6.O.4.2 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.O.4.2.1 *Fugitive Dust Emissions.* Describe and implement measures that prevent or minimize fugitive dust emissions from coal handling areas. Consider such procedures to minimize the tracking of coal dust offsite as installing specially designed tires, or washing vehicles in a designated area before they leave the site and controlling the wash water.

6.O.4.2.2 *Delivery Vehicles.* Describe and implement measures that prevent or minimize contamination of storm water

runoff from delivery vehicles arriving at the plant site. Consider the following: procedures to inspect delivery vehicles arriving at the plant site and ensure overall integrity of the body or container; and procedures to deal with leakage/spillage from vehicles or containers.

6.O.4.2.3 *Fuel Oil Unloading Areas.* Describe and implement measures that prevent or minimize contamination of precipitation/surface runoff from fuel oil unloading areas. Consider, at a minimum (or their equivalents): Using containment curbs in unloading areas; having personnel familiar with spill prevention and response procedures present during deliveries to ensure that any leaks/spills are immediately contained and cleaned up; using spill and overflow protection (*e.g.*, drip pans, drip diapers or other containment devices placed beneath fuel oil connectors to contain potential spillage during deliveries or from leaks at the connectors).

6.O.4.2.4 *Chemical Loading/Unloading.* Describe and implement measures that prevent or minimize contamination of precipitation/surface runoff from chemical loading/unloading areas. Consider, at a minimum (or their equivalents): Using containment curbs at chemical loading/unloading areas to contain spill; having personnel familiar with spill prevention and response procedures present during deliveries to ensure that any leaks/spills are immediately contained and cleaned up; and load/unload in covered areas and store chemicals indoors.

6.O.4.2.5 *Miscellaneous Loading/Unloading Areas.* Describe and implement measures that prevent or minimize contamination of precipitation/surface runoff from loading/unloading areas. Consider, at a minimum (or their equivalents): Covering the loading area; grading, berming, or curbing around the loading area to divert run-on; or locating the loading/unloading equipment and vehicles so leaks are contained in existing containment and flow diversion systems.

6.O.4.2.6 *Liquid Storage Tanks.* Describe and implement measures that prevent or minimize contamination of surface runoff from above ground liquid storage tanks. Consider using, at a minimum (or their equivalents): Protective guards around tank; containment curbs; spill and overflow protection; and dry cleanup methods.

6.O.4.2.7 *Large Bulk Fuel Storage Tanks.* Describe and implement measures that prevent or minimize contamination of surface runoff from large bulk fuel storage tanks. Consider, at a minimum, using containment berms (or its equivalent). You must also comply with applicable State and Federal laws, including Spill Prevention Control and Countermeasures (SPCC).

6.O.4.2.8 *Spill Reduction Measures.* Describe and implement measures to reduce the potential for an oil/chemical spill or reference the appropriate Part of your SPCC plan. At a minimum, visually inspect on a weekly basis, the structural integrity of all above ground tanks, pipelines, pumps and other related equipment, and effect any necessary repairs immediately.

6.O.4.2.9 *Oil Bearing Equipment in Switchyards.* Describe and implement measures that prevent or minimize contamination of surface runoff from oil bearing equipment in switchyard areas. Consider using level grades and gravel surfaces to retard flows and limit the spread of spills or collecting runoff in perimeter ditches.

6.O.4.2.10 *Residue Hauling Vehicles.* Inspect all residue hauling vehicles for proper covering over the load, adequate gate sealing and overall integrity of the container body. Repair as soon as practicable, vehicles without load covering or adequate gate sealing, or with leaking containers or beds.

6.O.4.2.11 *Ash Loading Areas.* Describe and implement procedures to reduce or control the tracking of ash/residue from ash loading areas. Where practicable, clear the ash building floor and immediately adjacent roadways of spillage, debris and excess water before departure of each loaded vehicle.

6.O.4.2.12 *Areas Adjacent to Disposal Ponds or Landfills.* Describe and implement measures that prevent or minimize contamination of surface runoff from areas adjacent to disposal ponds or landfills. Develop procedures to reduce ash residue that may be tracked on to access roads traveled by residue handling vehicles, and reduce ash residue on exit roads leading into and out of residue handling areas.

6.O.4.2.13 *Landfills, Scrap yards, Surface Impoundments, Open Dumps, General Refuse Sites.* Address these areas in your SWPPP and include appropriate BMPs as referred to in Part 4.

6.O.4.2.14 *Vehicle Maintenance Activities.* For vehicle maintenance activities performed on the plant site, use the applicable BMPs outlined in Part 6.P.

6.O.4.2.15 *Material Storage Areas.* Describe and implement measures that prevent or minimize contamination of storm water runoff from material storage areas (including areas used for temporary storage of miscellaneous products and construction materials stored in lay-down areas). Consider using (or their equivalents): Flat yard grades; collecting runoff in graded swales or ditches; erosion protection measures at steep outfall sites (e.g., concrete chutes, riprap, stilling basins); covering lay-down areas; storing materials indoors; and covering materials temporarily with polyethylene, polyurethane, polypropylene or hypalon. Storm water run-on may be minimized by constructing an enclosure or building a berm around the area.

6.O.4.3 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9.3) As part of your evaluation, inspect the following areas on a monthly basis: Coal handling areas, loading / unloading areas, switchyards, fueling areas, bulk storage areas, ash handling areas, areas adjacent to disposal ponds and landfills, maintenance areas, liquid storage tanks, and long term and short term material storage areas.

6.O.5 Monitoring and Reporting Requirements

(See also Part 5)

TABLE O–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

[Part of Permit Affected/Supplemental Requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation
Steam Electric Generating Facilities (Industrial Activity Code "SE").	Total recoverable iron	1.0 mg/L.	

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 monitoring years.

6.P Sector P—Land Transportation and Warehousing

6.P.1 Covered Storm Water Discharges

The requirements in Part 6.P apply to storm water discharges associated with industrial activity from Land Transportation and Warehousing facilities as identified by the Activity Code specified under Sector P in Table 1–1 of Part 1.2.1.

6.P.2 Industrial Activities Covered by Sector P

The types of activities that permittees under Sector P are primarily engaged in are:

6.P.2.1 vehicle and equipment maintenance (vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication);

6.P.2.2 equipment cleaning.

6.P.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.P.3.1 *Drainage Site Map.* (See also Part 4.2.2.3) Identify the locations of any of the following activities or sources: Fueling stations; vehicle/equipment maintenance or cleaning areas; storage areas for vehicle/equipment with actual or potential fluid leaks; loading/unloading areas; areas where treatment, storage or disposal of wastes occur; liquid storage tanks; processing areas; storage areas; and all monitoring areas.

6.P.3.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe and assess the potential for the following to contribute pollutants to storm water discharges: Onsite waste storage or disposal; dirt/gravel parking areas for vehicles awaiting maintenance; and fueling areas.

6.P.3.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.P.3.3.1 *Vehicle and Equipment Storage Areas.* Confine the storage of leaky or leak-prone vehicles/equipment awaiting maintenance to designated areas. Consider the following (or other equivalent measures): The use of drip pans under vehicles/equipment, indoor storage of vehicles and equipment, installation of berms or dikes, use of absorbents, roofing or covering storage areas, and cleaning pavement surfaces to remove oil and grease.

6.P.3.3.2 *Fueling Areas.* Implement and describe measures that prevent or minimize contamination of storm water runoff from fueling areas. Consider the following (or other equivalent measures): Covering the fueling area; using spill/overflow protection and cleanup equipment; minimizing storm water runon/runoff to the fueling area; using dry cleanup methods; and treating and/or recycling collected storm water runoff.

6.P.3.3.3 *Material Storage Areas.* Maintain all material storage vessels (e.g., for used oil/oil filters, spent solvents, paint wastes, hydraulic fluids) to prevent contamination of storm water and plainly label them (*e.g.*, "Used Oil," "Spent Solvents," *etc.*). Consider the following (or other equivalent measures): Storing the materials indoors; installing berms/dikes around the areas; minimizing runoff of storm water to the areas; using dry cleanup methods; and treating and/or recycling collected storm water runoff.

6.P.3.3.4. *Vehicle and Equipment Cleaning Areas.* Implement and describe measures that prevent or minimize contamination of storm water runoff from all areas used for vehicle/equipment cleaning. Consider the following (or other equivalent measures): Performing all cleaning operations indoors; covering the cleaning operation, ensuring that all washwater drains to a proper collection system (i.e., not the storm water drainage system unless NPDES permitted); treating and/or recycling collected storm water runoff, or other equivalent measures. Note: The discharge of vehicle/equipment washwater, including tank cleaning operations, are not authorized by this permit and must be covered under a separate NPDES permit or discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.

6.P.3.3.5 *Vehicle and Equipment Maintenance Areas.* Implement and describe measures that prevent or minimize contamination of storm water runoff from all areas used for vehicle/equipment maintenance. Consider the following (or other equivalent measures): Performing maintenance activities indoors; using drip pans; keeping an organized inventory of materials used in the shop; draining all parts of fluid prior to disposal; prohibiting wet clean up practices if these practices would result in the discharge of pollutants to storm water drainage systems; using dry cleanup methods; treating and/or recycling collected storm water runoff, minimizing run on/runoff of storm water to maintenance areas.

6.P.3.3.6 *Locomotive Sanding (Loading Sand for Traction) Areas.* Consider the following (or other equivalent measures): Covering sanding areas; minimizing storm water run on/runoff; or appropriate sediment removal practices to minimize the offsite transport of sanding material by storm water.

6.P.3.4 *Inspections.* (See also Part 4.2.7.2.1.4) Inspect all the following areas/activities: Storage areas for vehicles/equipment awaiting maintenance, fueling areas, indoor and outdoor vehicle/equipment maintenance areas, material storage areas, vehicle/equipment cleaning areas and loading/unloading areas.

6.P.3.5 *Employee Training.* (See also Part 4.2.7.2.1.5) Train personnel at least once a year and address the following, as applicable: Used oil and spent solvent management; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

6.P.3.6 *Vehicle and Equipment Washwater Requirements.* (See also Part 4.4) Attach to or reference in your SWPPP, a copy of the NPDES permit issued for vehicle/equipment washwater or, if an NPDES permit has not been issued, a copy of the pending application. If an industrial user permit is issued under a pretreatment program, attach a copy to your SWPPP. In any case, address all non-storm water permit conditions or pretreatment conditions in your SWPPP. If washwater is handled in another manner (e.g., hauled offsite), describe the disposal method and attach all pertinent documentation/information (e.g., frequency, volume, destination, etc.) in the plan.

6.Q Sector Q—Water Transportation

6.Q.1 Covered Storm Water Discharges

The requirements in Part 6.Q apply to storm water discharges associated with industrial activity from Water Transportation facilities as identified by the Activity Code specified under Sector Q in Table 1–1 of Part 1.2.1.

6.Q.2 Industrial Activities Covered by Sector Q

The requirements listed under this part apply to storm water discharges associated with the following activities:

6.Q.2.1 water transportation facilities classified in SIC Code major group 44 that have vehicle (vessel) maintenance shops and/or equipment cleaning operations including:

6.Q.2.1.1 water transportation industry includes facilities engaged in foreign or domestic transport of freight or passengers in deep sea or inland waters;

6.Q.2.1.2 marine cargo handling operations;

6.Q.2.1.3 ferry operations;

6.Q.2.1.4 towing and tugboat services;

6.Q.2.1.5 marinas.

6.Q.3 Limitations on Coverage

6.Q.3.1 Prohibition of Non-Storm Water Discharges. (See also Part 1.2.3.1) Not covered by this permit: Bilge and ballast water, sanitary wastes, pressure wash water and cooling water originating from vessels.

6.Q.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.Q.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: Fueling; engine maintenance/repair; vessel maintenance/repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (*e.g.*, paint, solvents, resins); and material storage areas (*e.g.*, blasting media, aluminum, steel, scrap iron).

6.Q.4.2 *Summary of Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following additional sources and activities that have potential pollutants associated with them: Outdoor manufacturing or processing activities (*i.e.*, welding, metal fabricating); and significant dust or particulate generating processes (*e.g.*, abrasive blasting, sanding, painting)

6.Q.4.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.Q.4.3.1 *Pressure Washing Area.* If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted by a separate NPDES permit. Describe in the SWPPP: The measures to collect or contain the discharges from the pressures washing area; the method for the removal of the visible solids; the methods of disposal of the collected solids; and where the discharge will be released.

6.Q.4.3.2 *Blasting and Painting Area.* Implement and describe measures to prevent spent abrasives, paint chips and over spray from discharging into the receiving water or the storm sewer systems. Consider containing all blasting/painting activities or use other measures to prevent or minimize the discharge the contaminants (*e.g.*, hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). Where necessary, regularly clean storm water conveyances of deposits of abrasive blasting debris and paint chips. Detail in the SWPPP any standard operating practices relating to blasting/painting (*e.g.*, prohibiting uncontained blasting/painting over open water, or prohibiting blasting/painting during windy conditions which can render containment ineffective).

6.Q.4.3.3 *Material Storage Areas.* Store and plainly label all containerized materials (*e.g.*, fuels, paints, solvents, waste oil, antifreeze, batteries) in a protected, secure location away from drains. Implement and describe measures to prevent or minimize the contamination of precipitation/surface runoff from the storage areas. Specify which materials are stored indoors and consider containment or enclosure for those stored outdoors. If abrasive blasting is performed, discuss the storage and disposal of spent abrasive materials generated at the facility. Consider implementing an inventory control plan to limit the presence of potentially hazardous materials onsite.

6.Q.4.3.4 *Engine Maintenance and Repair Areas.* Implement and describe measures to prevent or minimize the contamination of precipitation/surface runoff from all areas used for engine maintenance and repair. Consider the following (or their equivalents): Performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluid prior to disposal; prohibiting the practice of hosing down the shop floor; using dry cleanup methods; and treating and/or recycling storm water runoff collected from the maintenance area.

6.Q.4.3.5 *Material Handling Area.* Implement and describe measures to prevent or minimize the contamination of precipitation/surface runoff from material handling operations and areas (*e.g.*, fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). Consider the following (or their equivalents): Covering fueling areas; using spill/overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimize runoff of storm water to material handling areas.

6.Q.4.3.6 *Drydock Activities.* Describe your procedures for routinely maintaining/cleaning the drydock to prevent or minimize pollutants in storm water runoff. Address the cleaning of accessible areas of the drydock prior to flooding, and final cleanup following removal of the vessel and raising the dock. Include procedures for cleaning up oil, grease or fuel spills occurring on the drydock. Consider the following (or their equivalents): Sweeping rather than hosing off debris/spent blasting material from accessible areas of the drydock prior to flooding, and having absorbent materials and oil containment booms readily available to contain/cleanup any spills.

6.Q.4.3.7 *General Yard Area.* Implement and describe a schedule for routine yard maintenance and cleanup. Regularly remove from the general yard area: scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc.

6.Q.4.4 *Preventative Maintenance.* (See also Part 4.2.7.2.1.4)

As part of your preventive maintenance program, perform timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators and sediment traps to ensure that spent abrasives, paint chips and solids will be intercepted and retained prior to entering the storm drainage system) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

6.Q.4.5 *Inspections.* (See also Part 4.2.7.2.1.5)

Include the following areas in all monthly inspections: Pressure washing area; blasting, sanding and painting areas; material storage areas; engine maintenance/repair areas; material handling areas; drydock area; and general yard area.

6.Q.4.6 *Employee Training.* (See also Part 4.2.7.2.1.6)

As part of your employee training program, address, at a minimum, the following activities (as applicable): Used oil management; spent solvent management; disposal of spent abrasives; disposal of vessel wastewaters; spill prevention and control; fueling procedures; general good housekeeping practices; painting and blasting procedures; and used battery management.

6.Q.4.7 *Comprehensive Site Compliance Evaluation.*

(See also Part 4.9) Conduct regularly scheduled evaluations at least once a year and address those areas contributing to a storm water discharge associated with industrial activity (e.g., pressure washing area, blasting/sanding areas, painting areas, material storage areas, engine maintenance/repair areas, material handling areas, and drydock area). Inspect these sources for evidence of, or the potential for, pollutants entering the drainage system.

6.Q.5 Monitoring and Reporting Requirements

(See also Part 5)

TABLE Q–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

[Part of Permit Affected/Supplemental Requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation
Water Transportation Facilities (SIC 4412–4499)	Total recoverable aluminum.	0.75 mg/L.	
	Total recoverable iron	1.0 mg/L.	
	Total recoverable lead	0.0816 mg/L.	
	Total recoverable zinc	0.117 mg/L.	

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 monitoring years.

6.R Sector R—Ship and Boat Building or Repair Yards

6.R.1 Covered Storm Water Discharges

The requirements in Part 6.R apply to storm water discharges associated with industrial activity from Ship and Boat Building or Repair Yards as identified by the Activity Codes specified under Sector R in Table 1–1 of Part 1.2.1.

6.R.2 Industrial Activities Covered by Sector R

The types of activities that permittees under Sector R are primarily engaged in are:

6.R.2.1 ship building and repairing and boat building and repairing.[12]

6.R.3 Limitations on Coverage

6.R.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1) Not covered by this permit: discharges containing bilge and ballast water, sanitary wastes, pressure wash water and cooling water originating from vessels.

6.R.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.R.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: Fueling; engine maintenance/repair; vessel maintenance/repair; pressure washing; painting; sanding; blasting; welding; metal fabrication; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; liquid storage tanks; liquid storage areas (*e.g.*, paint, solvents, resins); and material storage areas (*e.g.*, blasting media, aluminum, steel, scrap iron).

6.R.4.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following additional sources and activities that have potential pollutants associated with them (if applicable): Outdoor manufacturing/processing activities (*e.g.*, welding, metal fabricating); and significant dust/particulate generating processes (*e.g.*, abrasive blasting , sanding, painting).

6.R.4.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.R.4.3.1 *Pressure Washing Area.* If pressure washing is used to remove marine growth from vessels, the discharge water must be permitted as a process wastewater by a separate NPDES permit.

6.R.4.3.2 *Blasting and Painting Area.* Implement and describe measures to prevent spent abrasives, paint chips and over spray from discharging into the receiving water or the storm sewer systems. Consider containing all blasting/painting activities or use other measures to prevent or minimize the discharge the contaminants (*e.g.*, hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris). Where necessary, regularly clean storm water conveyances of deposits of abrasive blasting debris and paint chips. Detail in the SWPPP any standard operating practices relating to blasting/painting (*e.g.*, prohibiting uncontained blasting/painting over open water, or prohibiting blasting/painting during windy conditions which can render containment ineffective).

6.R.4.3.3 *Material Storage Areas.* Store and plainly label all containerized materials (e.g., fuels, paints, solvents, waste oil, antifreeze, batteries) in a protected, secure location away from drains. Implement and describe measures to prevent or minimize the contamination of precipitation/surface runoff from the storage areas. Specify which materials are stored indoors and consider containment or enclosure for those stored outdoors. If abrasive blasting is performed, discus the storage and disposal of spent abrasive materials generated at the facility. Consider implementing an inventory control plan to limit the presence of potentially hazardous materials onsite.

6.R.4.3.4 *Engine Maintenance and Repair Areas.* Implement and describe measures to prevent or minimize the contamination of precipitation/surface runoff from all areas used for engine maintenance and repair. Consider the following (or their equivalents): Performing all maintenance activities indoors; maintaining an organized inventory of materials used in the shop; draining all parts of fluid prior to disposal; prohibiting the practice of hosing down the shop floor; using dry cleanup methods; and treating and/or recycling storm water runoff collected from the maintenance area.

6.R.4.3.5 *Material Handling Area.* Implement and describe measures to prevent or minimize the contamination of precipitation/surface runoff from material handling operations and areas (*e.g.*, fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). Consider the following (or their equivalents): Covering fueling areas; using spill/overflow protection; mixing paints and solvents in a designated area (preferably indoors or under a shed); and minimize runon of storm water to material handling areas.

6.R.4.3.6 *Drydock Activities.* Describe your procedures for routinely maintaining/cleaning the drydock to prevent or minimize pollutants in storm water runoff. Address the cleaning of accessible areas of the drydock prior to flooding, and final cleanup following removal of the vessel and raising the dock. Include procedures for cleaning up oil, grease or fuel spills occurring on the drydock. Consider the following (or their equivalents): sweeping rather than hosing off debris/spent blasting material from accessible areas of the drydock prior to flooding, and having absorbent materials and oil containment booms readily available to contain/cleanup any spills.

6.R.4.3.7 *General Yard Area.* Implement and describe a schedule for routine yard maintenance and cleanup. Regularly remove from the general yard area: Scrap metal, wood, plastic, miscellaneous trash, paper, glass,

[12] According to the U.S. Coast Guard, a vessel 65 feet or greater in length is referred to as a ship, and a vessel smaller than 65 feet is a boat.

industrial scrap, insulation, welding rods, packaging, etc.

6.R.4.4 *Preventative Maintenance.* (See also Part 4.2.7.2.1.4) As part of your preventive maintenance program, perform timely inspection and maintenance of storm water management devices (*e.g.*, cleaning oil/water separators and sediment traps to ensure that spent abrasives, paint chips and solids will be intercepted and retained prior to entering the storm drainage system) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters.

6.R.4.5 *Inspections.* (See also Part 4.2.7.2.1.5) Include the following areas in all monthly inspections: Pressure washing area; blasting, sanding and painting areas; material storage areas; engine maintenance/repair areas; material handling areas; drydock area; and general yard area.

6.R.4.6 *Employee Training.* (See also Part 4.2.7.2.1.6) As part of your employee training program, address, at a minimum, the following activities (as applicable): Used oil management; spent solvent management; disposal of spent abrasives; disposal of vessel wastewaters; spill prevention and control; fueling procedures; general good housekeeping practices; painting and blasting procedures; and used battery management.

6.R.4.7 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9) Conduct regularly scheduled evaluations at least once a year and address those areas contributing to a storm water discharge associated with industrial activity (*e.g.*, pressure washing area, blasting/sanding areas, painting areas, material storage areas, engine maintenance/repair areas, material handling areas, and drydock area). They must be visually inspected for evidence of, or the potential for, pollutants entering the drainage system.

6.S Sector S—Air Transportation

6.S.1 Covered Storm Water Discharges

The requirements in Part 6.S apply to storm water discharges associated with industrial activity from Air Transportation facilities as identified by the SIC Codes specified under Sector S in Table 1–1 of Part 1.2.1.

6.S.2 Industrial Activities Covered by Sector S

The types of activities that permittees under Sector S are primarily engaged in are:

6.S.2.1 air transportation, scheduled, and air courier;

6.S.2.2 air transportation, non scheduled;

6.S.2.3 airports; flying fields, except those maintained by aviation clubs; and airport terminal services including: Air traffic control, except government; aircraft storage at airports; aircraft upholstery repair; airfreight handling at airports; airport hangar rental; airport leasing, if operating airport; airport terminal services; and hangar operations.

6.S.2.4 airport and aircraft service and maintenance including: aircraft cleaning and janitorial service; aircraft servicing/repairing, except on a factory basis; vehicle maintenance shops; material handling facilities; equipment clearing operations; and airport and aircraft deicing/anti-icing.

Note: "deicing" will generally be used to imply both deicing (removing frost, snow or ice) and anti-icing (preventing accumulation of frost, snow or ice) activities, unless specific mention is made regarding anti-icing and/or deicing activities.

6.S.3 Limitations on Coverage

Only those portions of the facility that are involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling and lubrication), equipment cleaning operations or deicing operations are addressed in Part 6.S.

6.S.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1) Not covered by this permit: Aircraft, ground vehicle, runway and equipment washwaters; and dry weather discharges of deicing chemicals. These discharges must be covered by a separate NPDES permit.

6.S.4 Special Conditions

6.S.4.1 *Hazardous Substances or Oil.* (See also Part 3.1) Each individual permittee is required to report spills equal to or exceeding the reportable quantity (RQ) levels specified at 40 CFR, parts 110, 117 and 302 as described at Part 3.2. If an airport authority is the sole permittee, then the sum total of all spills at the airport must be assessed against the RQ. If the airport authority is a co-permittee with other deicing operators at the airport, such as numerous different airlines, the assessed amount must be the summation of spills by each co-permittee. If separate, distinct individual permittees exist at the airport, then the amount spilled by each separate permittee must be the assessed amount for the RQ determination.

6.S.5 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4 of the MSGP.

(See also Part 4.1) If an airport's tenant has a SWPPP for discharges from their own areas of the airport, that SWPPP must be integrated with the plan for the entire airport. Tenants of the airport facility include air passenger or cargo companies, fixed based operators and other parties who have contracts with the airport authority to conduct business operations on airport property and whose operations result in storm water discharges associated with industrial activity.

6.S.5.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: Aircraft and runway deicing operations; fueling stations; aircraft, ground vehicle and equipment maintenance / cleaning areas; storage areas for aircraft, ground vehicles and equipment awaiting maintenance.

6.S.5.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Include in your inventory of exposed materials a description of the potential pollutant sources from the following activities: Aircraft, runway, ground vehicle and equipment maintenance and cleaning; aircraft and runway deicing operations (including apron and centralized aircraft deicing stations, runways, taxiways and ramps). If you conduct deicing operations, you must maintain a record of the types [including the Material Safety Data Sheets (MSDS)] and monthly quantities of deicing chemicals used. Tenants and fixed-based operations who conduct deicing operations must provide the above information to the airport authority for inclusion in the SWPPP for the entire facility.

6.S.5.3 *Good Housekeeping Measures.* (See also 4.2.7)

6.S.5.3.1 *Aircraft, Ground Vehicle and Equipment Maintenance Areas.* Describe and implement measures that prevent or minimize the contamination of storm water runoff from all areas used for aircraft, ground vehicle and equipment maintenance (including the maintenance conducted on the terminal apron and in dedicated hangers). Consider the following practices (or their equivalents): Performing maintenance activities indoors; maintaining an organized inventory of material used in the maintenance areas; draining all parts of fluids prior to disposal; preventing the practice of hosing down the apron or hanger floor; using dry cleanup methods; and collecting the storm water runoff from the maintenance area and providing treatment or recycling.

6.S.5.3.2 *Aircraft, Ground Vehicle and Equipment Cleaning Areas.* Clean equipment only in the areas identified in the SWPPP and site map and clearly demarcate these areas on the ground. Describe and implement measures that prevent or minimize the contamination of storm water runoff from cleaning areas.

6.S.5.3.3 *Aircraft, Ground Vehicle and Equipment Storage Areas.* Store all aircraft, ground vehicles and equipment awaiting maintenance in designated areas only. Consider the following BMPs (or their equivalents): Storing aircraft and ground vehicles indoors; using drip pans for the collection of fluid leaks; and perimeter drains, dikes or berms surrounding the storage areas.

6.S.5.3.4 *Material Storage Areas.* Maintain the vessels of stored materials (*e.g.*, used oils, hydraulic fluids, spent solvents, and waste aircraft fuel) in good condition, to prevent or minimize contamination of storm water. Also plainly label the vessels (*e.g.*, "used oil," "Contaminated Jet A," *etc.*). Describe and implement measures that prevent or minimize contamination of precipitation/runoff from these areas. Consider the following BMPs (or their equivalents): Storing materials indoors; storing waste materials in a centralized location; and installing berms/dikes around storage areas.

6.S.5.3.5 *Airport Fuel System and Fueling Areas.* Describe and implement measures that prevent or minimize the discharge of fuel to the storm sewer/surface waters resulting from fuel servicing activities or other operations conducted in support of the airport fuel system. Consider the following BMPs (or their equivalents): Implementing spill and overflow practices (*e.g.*, placing absorptive materials beneath aircraft during fueling operations); using dry cleanup methods; and collecting storm water runoff.

6.S.5.3.6 *Source Reduction.* Consider alternatives to the use of urea and glycol-based deicing chemicals to reduce the aggregate amount of deicing chemicals used and/or lessen the environmental impact. Chemical options to replace ethylene glycol, propylene glycol and urea include: Potassium acetate; magnesium acetate; calcium acetate; anhydrous sodium acetate.

6.S.5.3.6.1 Runway Deicing Operation: Regarding runway deicing, evaluate, at a minimum: Whether over-application of deicing chemicals occurs by analyzing present application rates, and adjusting as necessary. Also consider these BMP options (or their equivalents): Metered application of chemicals; pre-wetting dry chemical constituents prior to application; installing a runway ice detection system; implementing anti-icing operations as a preventive measure against ice buildup.

6.S.5.3.6.2 Aircraft Deicing Operations: As in Part 6.S.5.4.6.1, determine if excessive application of deicing chemicals occurs and adjust as necessary. Also consider these BMP options (or their equivalents): Pretreating aircraft with hot water prior to the application of deicing chemical; infra-red treatment; hot air treatment; and sonic treatment. Other deicing options: Deicing aircraft in a dedicated area or pad, with a runoff collection/recovery system; and using a deicer gantry that delivers controlled amounts of chemical to specific areas of the aircraft.

6.S.5.3.7 *Management of Runoff.* Where deicing operations occur, describe and implement a program to control or manage contaminated runoff to reduce the amount of pollutants being discharged from the site. Consider these BMP options (or their equivalents): A dedicated deicing facility with a runoff collection/recovery system; using vacuum/collection trucks; storing contaminated storm water/deicing fluids in tanks and releasing controlled amounts to a publicly owned treatment works; collecting contaminated runoff in a wet pond for biochemical decomposition (be aware of attracting wildlife that may prove hazardous to flight operations); and directing runoff into vegetative swales or other infiltration measures. Also consider recovering deicing materials when these materials are applied during non-precipitation events (*e.g.*, covering storm sewer inlets, using booms, installing absorptive interceptors in the drains, *etc.*) to prevent these materials from later becoming a source of storm water contamination. Used deicing fluid should be recycled whenever possible.

6.S.5.4 *Inspections.* (See also 4.2.7.2.1.5) Specify the frequency of inspections in your SWPPP. At a minimum they must be conducted once per week during deicing application periods for areas where deicing operations are being conducted.

6.S.5.5 *Comprehensive Site Compliance Evaluation.* (See also 4.9) Using only qualified personnel, conduct your annual site compliance evaluations during periods of deicing operations.

6.S.6 Monitoring and Reporting Requirements.

(See also Part 5.)

TABLE S–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

[Sector of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation
Facilities at airports that use more than 100,000 gallons of glycol-based deicing/anti-icing chemicals and/or 100 tons or more of urea on an average annual basis: monitor ONLY those outfalls from the airport facility that collect runoff from areas where deicing/anti-icing activities occur (SIC 45XX).	Biochemical Oxygen Demand (BOD_5).	30 mg/L.	
	Chemical Oxygen Demand (COD).	120.0 mg/L.	
	Ammonia	19 mg/L.	
	pH.	6.0 to 9 s.u	

[1] Discharge may be subject to requriements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 monitoring years.

6.T Sector T—Treatment Works

6.T.1 Covered Storm Water Discharges

The requirements in Part 6.T apply to storm water discharges associated with industrial activity from Treatment Works as identified by the Activity Code specified under Sector T in Table 1–1 of Part 1.2.1.

6.T.2 Industrial Activities Covered by Sector T

The requirements listed under this Part apply to all existing point source storm water discharges associated with the following activities:

6.T.2.1 treatment works treating domestic sewage;

6.T.2.2 any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling and reclamation of municipal or domestic sewage;

6.T.2.3 lands dedicated to the disposal of sewage sludge that are located within the confines of the facility with a design flow of 1.0 MGD or more;

6.T.2.4 facilities required to have an approved pretreatment program under 40

CFR Part 403.

6.T.3 Limitations on Coverage

Not covered by this permit: farm lands; domestic gardens or lands used for sludge management where sludge is beneficially reused and which are not physically located within the facility; or areas that are in compliance with Section 405 of the CWA.

6.T.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1) Not authorized by this permit: Sanitary and industrial wastewater; and equipment/vehicle washwater.

6.T.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.T.4.1 *Site Map.* (See also Part 4.2.2.3.6) Identify where any of the following may be exposed to precipitation/surface runoff: Grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and storage areas for process chemicals, petroleum products, solvents, fertilizers, herbicides and pesticides.

6.T.4.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following additional sources and activities that have potential pollutants associated with them, as applicable: Grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station; and access roads/rail lines.

6.T.4.3 *Best Management Practices (BMPs).* (See also Part 4.2.7.2) In addition to the other BMPs considered, consider the following: Routing storm water to the treatment works; or covering exposed materials (i.e., from the following areas: Grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station).

6.T.4.4 *Inspections.* (See also Part 4.2.7.2.1.5) Include the following areas in all inspections: Access roads/rail lines; grit, screenings and other solids handling, storage or disposal areas; sludge drying beds; dried sludge piles; compost piles; septage or hauled waste receiving station areas.

6.T.4.5 *Employee Training.* (See also Part 4.2.7.2.1.6) At a minimum, must address the following areas when applicable to a facility: Petroleum product management; process chemical management; spill prevention and controls; fueling procedures; general good housekeeping practices; proper procedures for using fertilizer, herbicides and pesticides.

6.T.4.6 *Wastewater and Washwater Requirements.* (See also Part 4.4) Attach to your SWPPP a copy of all your current NPDES permits issued for wastewater, industrial, vehicle and equipment washwater discharges or, if an NPDES permit has not yet been issued, a copy of the pending applications. Address any requirements/conditions from the other permits, as appropriate, in the SWPPP. If the washwater is handled in another manner, the disposal method must be described and all pertinent documentation must be attached to the plan.

6.U Sector U—Food and Kindred Products

6.U.1 Covered Storm Water Discharges

The requirements in Part 6.U apply to storm water discharges associated with industrial activity from Food and Kindred Products facilities as identified by the SIC Codes specified in Table 1–1 of Part 1.2.1.

6.U.2 Industrial Activities Covered by Sector U

The types of activities that permittees under Sector U are primarily engaged in are:

6.U.2.1 meat products;

6.U.2.2 dairy products;

6.U.2.3 canned, frozen and preserved fruits, vegetables, and food specialties;

6.U.2.4 grain mill products;

6.U.2.5 bakery products;

6.U.2.6 sugar and confectionery products;

6.U.2.7 fats and oils;

6.U.2.8 beverages;

6.U.2.9 miscellaneous food preparations and kindred products and tobacco products manufacturing.

6.U.3 Limitations on Coverage

Not covered by this permit: Storm water discharges identified under Part 1.2.3 from industrial plant yards, material handling sites; refuse sites; sites used for application or disposal of process wastewaters; sites used for storage and maintenance of material handling equipment; sites used for residential wastewater treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; and storage areas for raw material and intermediate and finished products. This includes areas where industrial activity has taken place in the past and significant materials remain. "Material handling activities" include the storage, loading/unloading, transportation or conveyance of any raw material, intermediate product, finished product, by-product or waste product.

6.U.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.2.2) Not authorized by this permit: discharges subject to Part 1.2.2.2 include discharges containing: boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging and vehicle washing/clean-out operations.

6.U.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.U.4.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify the locations of the following activities if they are exposed to precipitation/runoff: Vents/stacks from cooking, drying and similar operations; dry product vacuum transfer lines; animal holding pens; spoiled product; and broken product container storage areas.

6.U.4.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe, in addition to food and kindred products processing-related industrial activities, application and storage of pest control chemicals (*e.g.*, rodenticides, insecticides, fungicides, etc.) used on plant grounds.

6.U.4.3 *Inspections.* (See also Part 4.2.7.2.1.5) Inspect on a regular basis, at a minimum, the following areas where the potential for exposure to storm water exists: Loading and unloading areas for all significant materials; storage areas including associated containment areas; waste management units; vents and stacks emanating from industrial activities; spoiled product and broken product container holding areas; animal holding pens; staging areas; and air pollution control equipment.

6.U.4.4 *Employee Training.* (See also Part 4.2.7.2.1.6) Address pest control in the training program.

6.U.5 Monitoring and Reporting Requirements

(See also Part 5)

TABLE U–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

[Part of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation
Grain Mill Products (SIC 2041–2048)	Total Suspended Solids (TSS).	100 mg/L.	
Fats and Oils Products (SIC 2074–2079)	Biochemical Oxygen Demand (BOD_5).	30 mg/L.	
	Chemical Oxygen Demand (COD).	120 mg/L.	
	Nitrate plus Nitrite Nitrogen	0.68 mg/L.	
	Total Suspended Solids (TSS).	100 mg/L.	

[1] Discharges may be subject to requirements for more than one Sector/Subsector.
[2] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.V Sector V—Textile Mills, Apparel and Other Fabric Products

6.V.1 Covered Storm Water Discharges

The requirements in Part 6.V apply to storm water discharges associated with industrial activity from Textile Mills, Apparel, and Other Fabric Product Manufacturing as identified by the Activity Code specified under Sector V in Table 1–1 of Part 1.2.1.

6.V.2 Industrial Activities Covered by Sector V

The types of activities that permittees under Sector V are primarily engaged in are:

6.V.2.1 textile mill products, of and regarding facilities and establishments engaged in the preparation of fiber and subsequent manufacturing of yarn, thread, braids, twine, and cordage, the manufacturing of broadwoven fabrics, narrow woven fabrics, knit fabrics, and carpets and rugs from yarn;

6.V.2.2 processes involved in the dyeing and finishing of fibers, yarn fabrics, and knit apparel;

6.V.2.3 the integrated manufacturing of knit apparel and other finished articles of yarn;

6.V.2.4 the manufacturing of felt goods (wool), lace goods, non-woven fabrics, miscellaneous textiles, and other apparel products.

6.V.3 Limitations on Coverage

6.V.3.1 *Prohibition of Non-Storm Water Discharges.* (See also Part 1.2.3.1) Not authorized by this permit: Discharges of wastewater (*e.g.*, wastewater resulting from wet processing or from any processes relating to the production process); reused/recycled water; and waters used in cooling towers. If you have these types of discharges from your facility, you must cover them under a separate NPDES permit.

6.V.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.V.4.1 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following additional sources and activities that have potential pollutants associated with them: Industrial-specific significant materials and industrial activities (*e.g.*, backwinding, beaming, bleaching, backing bonding, carbonizing, carding, cut and sew operations, desizing, drawing, dyeing locking, fulling, knitting, mercerizing, opening, packing, plying, scouring, slashing, spinning, synthetic-felt processing, textile waste processing, tufting, turning, weaving, web forming, winging, yarn spinning, and yarn texturing).

6.V.4.2 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.V.4.2.1 *Material Storage Area.* Plainly label and store all containerized materials (*e.g.*, fuels, petroleum products, solvents, dyes, *etc.*) in a protected area, away from drains. Describe and implement measures that prevent or minimize contamination of the storm water runoff from such storage areas, including a description of the containment area or enclosure for those materials stored outdoors. Also consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances. For storing empty chemical drums/containers, ensure the drums/containers are clean (consider triple-rinsing) and there is no contact of residuals with precipitation/runoff. Collect and dispose of washwater from these cleanings properly.

6.V.4.2.2 *Material Handling Area.* Describe and implement measures that prevent or minimize contamination of storm water runoff from material handling operations and areas. Consider the following (or their equivalents): Use of spill/overflow protection; covering fueling areas; and covering/enclosing areas where the transfer of material may occur. Where applicable address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, dyes or wastewater.

6.V.4.2.3 *Fueling Areas.* Describe and implement measures that prevent or minimize contamination of storm water runoff from fueling areas. Consider the following (or their equivalents): Covering the fueling area, using spill and overflow protection, minimizing runon of storm water to the fueling areas, using dry cleanup methods, and treating and/or recycling storm water runoff collected from the fueling area.

6.V.4.2.4 *Above Ground Storage Tank Area.* Describe and implement measures that prevent or minimize contamination of the storm water runoff from above ground storage tank areas, including the associated piping and valves. Consider the following (or their equivalents): Regular cleanup of these areas; preparation of the spill prevention control and countermeasure

program, provide spill and overflow protection; minimizing runoff of storm water from adjacent areas; restricting access to the area; insertion of filters in adjacent catch basins; providing absorbent booms in unbermed fueling areas; using dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

6.V.4.3 *Inspections.* (See also Part 4.2.7.2.1.5) Inspect, at least on a monthly basis, the following activities and areas (at a minimum): Transfer and transmission lines; spill prevention; good housekeeping practices; management of process waste products; all structural and non structural management practices.

6.V.4.4 *Employee Training.* (See also Part 4.2.7.2.1.6) As part of your employee training program, address, at a minimum, the following activities (as applicable): use of reused/recycling waters; solvents management; proper disposal of dyes; proper disposal of petroleum products and spent lubricants; spill prevention and control; fueling procedures; and general good housekeeping practices.

6.V.4.5 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9) Conduct regularly scheduled evaluations at least once a year and address those areas contributing to a storm water discharge associated with industrial activity for evidence of, or the potential for, pollutants entering the drainage system. Inspect, at a minimum, as appropriate: Storage tank areas; waste disposal and storage areas; dumpsters and open containers stored outside; materials storage areas; engine maintenance and repair areas; material handing areas and loading dock areas.

6.W Sector W—Furniture and Fixtures

6.W.1 Covered Storm Water Discharges

The requirements in Part 6.W apply to storm water discharges associated with industrial activity from Furniture and Fixtures facilities as identified by the Activity Code specified under Sector W in Table 1–1 of Part 1.2.1.

6.W.2 Industrial Activities Covered by Sector W

The types of activities that permittees under Sector W are primarily engaged in the manufacturing of:

6.W.2.1 wood kitchen cabinets;
6.W.2.2 household furniture;
6.W.2.3 office furniture;
6.W.2.4 public buildings and related furniture;
6.W.2.5 partitions, shelving, lockers, and office and store fixtures;
6.W.2.6 miscellaneous furniture and fixtures.

6.W.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.W.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: Material storage (including tanks or other vessels used for liquid or waste storage) areas; outdoor material processing areas; areas where wastes are treated, stored or disposed; access roads; and rail spurs.

6.X Sector X—Printing and Publishing

6.X.1 Covered Storm Water Discharges

The requirements in Part 6.X apply to storm water discharges associated with industrial activity from Printing and Publishing facilities as identified by the Activity Code specified under Sector X in Table 1.1 of Part 1.2.1.

6.X.2 Industrial Activities Covered by Sector X

The types of activities that permittees under Sector X are primarily engaged in are:

6.X.2.1 book printing;
6.X.2.2 commercial printing and lithographics;
6.X.2.3 plate making and related services;
6.X.2.4 commercial printing, gravure;
6.X.2.5 commercial printing not elsewhere classified.

6.X.3 Storm Water Pollution Prevention Plan Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.X.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: Above ground storage tanks, drums and barrel permanently stored outside.

6.X.3.2 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following additional sources and activities that have potential pollutants associated with them, as applicable: Loading and unloading operations; outdoor storage activities; significant dust or particulate generating processes; and onsite waste disposal practices (*e.g.*, blanket wash). Also identify the pollutant or pollutant parameter (*e.g.*, oil and grease, scrap metal, *etc.*) associated with each pollutant source.

6.X.3.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.X.3.3.1 *Material Storage Areas.* Plainly label and store all containerized materials (*e.g.*, skids, pallets, solvents, bulk inks, and hazardous waste, empty drums, portable/mobile containers of plant debris, wood crates, steel racks, fuel oil, *etc.*) in a protected area, away from drains. Describe and implement measures that prevent or minimize contamination of the storm water runoff from such storage areas, including a description of the containment area or enclosure for those materials stored outdoors. Also consider an inventory control plan to prevent excessive purchasing of potentially hazardous substances.

6.X.3.3.2 *Material Handling Area.* Describe and implement measures that prevent or minimize contamination of storm water runoff from material handling operations and areas (*e.g.*, blanket wash, mixing solvents, loading/unloading materials). Consider the following (or their equivalents): Use of spill/overflow protection; covering fueling areas; and covering/enclosing areas where the transfer of materials may occur. Where applicable address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals or wastewater.

6.X.3.3.3 *Fueling Areas.* Describe and implement measures that prevent or minimize contamination of storm water runoff from fueling areas. Consider the following (or their equivalents): Covering the fueling area, using spill and overflow protection, minimizing runoff of storm water to the fueling areas, using dry cleanup methods, and treating and/or recycling storm water runoff collected from the fueling area.

6.X.3.3.4 *Above Ground Storage Tank Area.* Describe and implement measures that prevent or minimize contamination of the storm water runoff from above ground storage tank areas, including the associated piping and valves. Consider the following (or their equivalents): Regular cleanup of these areas; preparation of the spill prevention control and countermeasure program, provide spill and overflow protection; minimizing runoff of storm water from adjacent areas; restricting access to the area; insertion of filters in adjacent catch basins; providing absorbent booms in unbermed fueling areas; using dry cleanup methods; and permanently sealing drains within critical areas that may discharge to a storm drain.

6.X.3.4 *Employee Training.* (See also Part 4.2.7.2.1.6) As part of your employee training program, address, at a minimum, the following activities (as applicable): Spent solvent management; spill prevention and control; used oil management; fueling procedures; and general good housekeeping practices.

6.Y Sector Y—Rubber, Miscellaneous Plastic Products and Miscellaneous Manufacturing Industries

6.Y.1 Covered Storm Water Discharges

The requirements in Part 6.Y apply to storm water discharges associated with industrial activity from Rubber, Miscellaneous Plastic Products and Miscellaneous Manufacturing Industries facilities as identified by the Activity Code specified under Sector Y in Table 1–1 of Part 1.2.1.

6.Y.2 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.Y.2.1 *Potential Pollutant Sources.* (See also Part 4.2.4) Review the use of zinc at your facility and the possible pathways through which zinc may be discharged in storm water runoff.

6.Y.2.2 *Controls for Rubber Manufacturers.* (See also Part 4.2.7) Describe and implement specific controls to minimize the discharge of zinc in your storm water discharges. Parts 6.Y.2.2.1 to 6.Y.2.2.5 give possible sources of zinc to be reviewed and list some specific BMPs to be considered for implementation (or their equivalents). Some general BMP options to consider: Using chemicals which are purchased in pre-weighed, sealed polyethylene bags; storing materials which are in use in sealable containers; ensuring an airspace between the container and the cover to minimize "puffing" losses when the container is opened; and using automatic dispensing and weighing equipment.

6.Y.2.2.1 *Inadequate Housekeeping.* Review the handling and storage of zinc bags at your facility. BMP options: Employee training on the handling/storage of zinc bags; indoor storage of zinc bags; cleanup zinc spills without washing the zinc into the storm drain, and the use of 2,500-pound sacks of zinc rather than 50- to 100-pound sacks;

6.Y.2.2.2 *Dumpsters.* Reduce discharges of zinc from dumpsters. BMP options: Covering the dumpster; moving the dumpster indoors; or provide a lining for the dumpster.

6.Y.2.2.3 *Malfunctioning Dust Collectors or Baghouses.* Review dust collectors/baghouses as possible sources in zinc in storm water runoff. Replace or repair, as appropriate, improperly operating dust collectors/baghouses.

6.Y.2.2.4 *Grinding Operations.* Review dust generation from rubber grinding operations and, as appropriate, install a dust collection system.

6.Y.2.2.5 *Zinc Stearate Coating Operations.* Detail appropriate measures to prevent or clean up drips/spills of zinc stearate slurry that may be released to the storm drain. BMP option: using alternate compounds to zinc stearate.

6.Y.2.3 *Controls for Plastic Products Manufacturers.* Describe and implement specific controls to minimize the discharge of plastic resin pellets in your storm water discharges. BMPs to be considered for implementation (or their equivalents): Minimizing spills; cleaning up of spills promptly and thoroughly; sweeping thoroughly; pellet capturing; employee education and disposal precautions.

6.Y.3 Monitoring and Reporting Requirements

(See also Part 5)

TABLE Y–1.—SECTOR-SPECIFIC NUMERIC EFFLUENT LIMITATIONS AND BENCHMARK MONITORING

[Part of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation
Tires and Inner Tubes; Rubber Footwear; Gaskets, Packing and Sealing Devices; Rubber Hose and Belting; and Fabricated Rubber Products, Not Elsewhere Classified (SIC 3011–3069, rubber manufacturing only).	Total Recoverable Zinc	0.117 mg/L.	

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.Z Sector Z—Leather Tanning and Finishing

6.Z.1 Covered Storm Water Discharges

The requirements in Part 6.Z apply to storm water discharges associated with industrial activity from Leather Tanning and Finishing facilities as identified by the Activity Code specified under Sector Z in Table 1–1 of Part 1.2.1.

6.Z.2 Industrial Activities Covered by Sector Z

The types of activities that permittees under Sector Z are primarily engaged are leather tanning, curry and finishing;

6.Z.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.Z.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3)

Identify where any of the following may be exposed to precipitation/surface runoff: Processing and storage areas of the beamhouse, tanyard, and re-tan wet finishing and dry finishing operations; and haul roads, access roads and rail spurs.

6.Z.3.2 *Potential Pollutant Sources.* (See also Part 4.2.4)

At a minimum, describe the following additional sources and activities that have potential pollutants associated with them (as appropriate): Temporary or permanent storage of fresh and brine cured hides; extraneous hide substances and hair; leather dust, scraps, trimmings and shavings; chemical drums, bags, containers and above ground tanks; empty chemical containers and bags; spent solvents; floor sweepings/washings; refuse, waste piles and sludge; and significant dust/particulate generating processes (e.g., buffing).

6.Z.3.3 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.Z.3.3.1 *Storage Areas for Raw, Semiprocessed or Finished Tannery Byproducts.* Pallets/bales of raw, semiprocessed or finished tannery byproducts (*e.g.*, splits, trimmings, shavings, *etc.*) should be stored indoors or protected by polyethylene wrapping, tarpaulins, roofed storage, etc. Consider placing materials on an impermeable surface, and enclosing or putting berms (or equivalent measures) around the area to prevent storm water runon/runoff.

6.Z.3.3.2 *Material Storage Areas.* Label storage containers of all materials (*e.g.*, specific chemicals, hazardous materials, spent solvents, waste materials). Describe and implement measures that prevent/minimize contact with storm water.

6.Z.3.3.3 *Buffing and Shaving Areas.* Describe and implement measures that

prevent or minimize contamination of storm water runoff with leather dust from buffing/shaving areas. Consider dust collection enclosures, preventive inspection/maintenance programs or other appropriate preventive measures.

6.Z.3.3.4 *Receiving, Unloading, and Storage Areas.* Describe and implement measures that prevent or minimize contamination of storm water runoff from receiving, unloading, and storage areas. If these areas are exposed, consider (or their equivalent): Covering all hides and chemical supplies; diverting drainage to the process sewer; or grade berming/curbing area to prevent runoff of storm water.

6.Z.3.3.5 *Outdoor Storage of Contaminated Equipment.* Describe and implement measures that prevent or minimize contact of storm water with contaminated equipment. Consider (or their equivalent): Covering equipment; diverting drainage to the process sewer; and cleaning thoroughly prior to storage.

6.Z.3.3.6 *Waste Management.* Describe and implement measures that prevent or minimize contamination of storm water runoff from waste storage areas. Consider (or their equivalent): Inspection/maintenance programs for leaking containers or spills; covering dumpsters; moving waste management activities indoors; covering waste piles with temporary covering material such as tarpaulins or polyethylene; and minimizing storm water runoff by enclosing the area or building berms around the area.

6.AA Sector AA—Fabricated Metal Products

6.AA.1 Covered Storm Water Discharges

The requirements in Part 6.AA apply to storm water discharges associated with industrial activity from Fabricated Metal Products facilities as identified by the Activity Code specified under Sector AA in Table 1–1 of Part 1.2.1.

6.AA.2 Industrial Activities Covered by Sector AA

The types of activities that permittees under Sector AA are primarily engaged in are:

6.AA.2.1 fabricated metal products; except for electrical related industries;

6.AA.2.2 fabricated metal products; except machinery and transportation equipment;

6.AA.2.3 jewelry, silverware, and plated ware.

6.AA.3 Storm Water Pollution Prevention Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.AA.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: Raw metal storage areas; finished metal storage areas; scrap disposal collection sites; equipment storage areas; retention and detention basins; temporary/permanent diversion dikes or berms; right-of-way or perimeter diversion devices; sediment traps/barriers; processing areas including outside painting areas; wood preparation; recycling; and raw material storage.

6.AA.3.2 *Spills and Leaks.* (See also Part 4.2.5) When listing significant spills/leaks, pay attention to the following materials at a minimum: Chromium, toluene, pickle liquor, sulfuric acid, zinc and other water priority chemicals and hazardous chemicals and wastes.

6.AA.3.3 *Potential Pollutant Sources.* (See also Part 4.2.4) Describe the following additional sources and activities that have potential pollutants associated with them: Loading and unloading operations for paints, chemicals and raw materials; outdoor storage activities for raw materials, paints, empty containers, corn cob, chemicals, and scrap metals; outdoor manufacturing or processing activities such as grinding, cutting, degreasing, buffing, brazing, etc; onsite waste disposal practices for spent solvents, sludge, pickling baths, shavings, ingots pieces, refuse and waste piles.

6.AA.3.4 *Good Housekeeping Measures.* (See also Part 4.2.7.2.1.1)

6.AA.3.4.1 *Raw Steel Handling Storage.* Describe and implement measures controlling or recovering scrap metals, fines and iron dust. Include measures for containing materials within storage handling areas.

6.AA.3.4.2 *Paints and Painting Equipment.* Describe and implement measures to prevent or minimize exposure of paint and painting equipment to storm water.

6.AA.3.5 *Spill Prevention and Response Procedures.* (See also Part 4.2.7.2.1.4) Ensure the necessary equipment to implement a clean up is available to personnel. The following areas should be addressed:

6.AA.3.5.1 *Metal Fabricating Areas.* Describe and implement measures for maintaining clean, dry, orderly conditions in these areas. Consider the use of dry clean-up techniques.

6.AA.3.5.2 *Storage Areas for Raw Metal.* Describe and implement measures to keep these areas free of condition that could cause spills or leakage of materials. Consider the following (or their equivalents): Maintaining storage areas such that there is easy access in the event of a spill; and labeling stored materials to aid in identifying spill contents.

6.AA.3.5.3 *Receiving, Unloading, and Storage Areas.* Describe and implement measures to prevent spills and leaks; plan for quick remedial clean up; and instruct employees on clean-up techniques and procedures.

6.AA.3.5.4 *Storage of Equipment.* Describe and implement measures for preparing equipment for storage and the proper storage of equipment. Consider the following (or their equivalents): Protecting with covers; storing indoors; and cleaning potential pollutants from equipment to be stored outdoors.

6.AA.3.5.5 *Metal Working Fluid Storage Areas.* Describe and implement measures for storage of metal working fluids.

6.AA.3.5.6 *Cleaners and Rinse Water.* Describe and implement measures: To control/cleanup spills of solvents and other liquid cleaners; control sand buildup and disbursement from sand-blasting operations; and prevent exposure of recyclable wastes. Substitute environmentally-benign cleaners when possible.

6.AA.3.5.7 *Lubricating Oil and Hydraulic Fluid Operations.* Consider using monitoring equipment or other devices to detect and control leaks/overflows. Consider installing perimeter controls such as dikes, curbs, grass filter strips or other equivalent measures.

6.AA.3.5.8 *Chemical Storage Areas.* Describe and implement proper storage methods that prevent storm water contamination and accidental spillage. Include a program to inspect containers and identify proper disposal methods.

6.AA.3.6 *Inspections.* (See also Part 4.2.7.2.1.5) Include, at a minimum, the following areas in all inspections: Raw metal storage areas; finished product storage areas; material and chemical storage areas; recycling areas; loading and unloading areas; equipment storage areas; paint areas; vehicle fueling and maintenance areas.

6.AA.3.7 *Comprehensive Site Compliance Evaluation.* (See also Part 4.9.2) As part of your evaluation, also inspect: Areas associated with the storage of raw metals; storage of spent solvents and chemicals; outdoor paint areas; and drainage from roof. Potential pollutants include chromium, zinc, lubricating oil, solvents, aluminum, oil and grease, methyl ethyl ketone, steel and other related materials.

6.AA.4 Monitoring and Reporting Requirements

(See also Part 5)

TABLE AA–1.—SECTOR-SPECIFIC NUMERIC LIMITATIONS AND BENCHMARK MONITORING

[Part of permit affected/supplemental requirements]

Subsector [1]	Parameter	Benchmark monitoring cut-off concentration [2]	Numeric limitation
Fabricated Metal Products Except Coating (SIC 3411–3471, 3482–3499, 3911–3915).	Total Recoverable Aluminum.	0.75 mg/L.	
	Total Recoverable Iron	1.0 mg/L.	
	Total Recoverable Zinc	0.117 mg/L.	
	Nitrate plus Nitrite Nitrogen	0.68 mg/L.	
Fabricated Metal Coating and Engraving (SIC 3479)	Total Recoverable Zinc	0.117 mg/L.	
	Nitrate plus Nitrite Nitrogen	0.068 mg/L.	

[1] Discharges may be subject to requirements for more than one sector/subsector.
[2] Monitor once/quarter for the year 2 and year 4 Monitoring Years.

6.AB Sector AB—Transportation Equipment, Industrial or Commercial Machinery

6.AB.1 Covered Storm Water Discharges

The requirements in Part 6.AB apply to storm water discharges associated with industrial activity from Transportation Equipment, Industrial or Commercial Machinery facilities as identified by the Activity Code specified under Sector AB in Table 1–1 of Part 1.2.1.

6.AB.2 Industrial Activities Covered by Sector AB

The types of activities that permittees under Sector AB are primarily engaged in are:

6.AB.2.1 industrial plant yards;
6.AB.2.2 material handling sites;
6.AB.2.3 refuse sites;
6.AB.2.4 sites used for application or disposal of process wastewaters;
6.AB.2.5 sites used for storage and maintenance of material handling equipment;
6.AB.2.6 sites used for residual treatment, storage, or disposal;
6.AB.2.7 shipping and receiving areas;
6.AB.2.8 manufacturing buildings;
6.AB.2.9 storage areas for raw material and intermediate and finished products;
6.AB.2.1 areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

6.AB.3 Storm Water Pollution Plan (SWPPP) Requirements

In addition to the following requirements, you must also comply with the requirements listed in Part 4.

6.AB.3.1 *Drainage Area Site Map.* (See also Part 4.2.2.3) Identify where any of the following may be exposed to precipitation/surface runoff: Vents and stacks from metal processing and similar operations.

6.AB.3.2 *Non-Storm Water Discharges.* (See also Part 4.4) If your facility has a separate NPDES permit (or has applied for a permit) authorizing discharges of wastewater, attach a copy of the permit (or the application) to your SWPPP. Any new wastewater permits issued/reissued to you must then replace the old one in your SWPPP. If you discharge wastewater, other than solely domestic wastewater, to a Publicly Owned Treatment Works (POTW), you must notify the POTW of the discharge (identify the types of wastewater discharged, including any storm water). As proof of this notification, attach to your SWPPP a copy of the permit issued to your facility by the POTW or a copy of your notification to the POTW.

6.AC Sector AC—Electronic, Electrical Equipment and Components, Photographic and Optical Goods

6.AC.1 Covered Storm Water Discharges

The requirements in Part 6.AC apply to storm water discharges associated with industrial activity from facilities that manufacture Electronic, Electrical Equipment and Components, Photographic and Optical Goods as identified by the SIC Codes specified in Table 1–1 of Part 1.2.1.

6.AC.2 Industrial Activities Covered by Sector AC

The types of manufacturing activities that permittees under Sector AC are primarily engaged in are:

6.AC.2.1 measuring, analyzing, and controlling instruments;
6.AC.2.2 photographic, medical and optical goods;
6.AC.2.3 watches and clocks; and
6.AC.2.4 computer and office equipment.

6.AC.3 Additional Requirements

No additional sector-specific requirements apply to this sector.

6.AD Storm Water Discharges Designated By the Director As Requiring Permits

6.AD.1 Covered Storm Water Discharges

Sector AD is used to provide permit coverage for facilities designated by the Director as needing a storm water permit, or any discharges of industrial activity that do not meet the description of an industrial activity covered by Sectors A–AC. Therefore, almost any type of storm water discharge could be covered under this sector. You must be assigned to Sector AD by the Director and may NOT choose sector AD as the sector describing your activities on your own.

6.AD.1.1 *Eligibility for Permit Coverage.* Because this Sector only covers discharges designated by the Director as needing a storm water permit (which is an atypical circumstance) or your facility's industrial activities were inadvertently left out of Sectors A–AC, and your facility may or may not normally be discharging storm water associated with industrial activity, you must obtain the Director's written permission to use this permit prior to submitting a Notice of Intent. If you are authorized to use this permit, you will be required to ensure your discharges meet the basic eligibility provisions of this permit at Part 1.2.

6.AD.4 Storm Water Pollution Prevention Plan (SWPPP) Requirements

The Director will establish any additional storm water pollution prevention plan requirements for your facility at the time of accepting your Notice of Intent to be covered by this

permit. Additional requirements would be based on the nature of activities at your facility and your storm water discharges.

6.AD.5 Monitoring and Reporting Requirements

The Director will establish any additional monitoring and reporting requirements for your facility at the time of accepting your Notice of Intent to be covered by this permit. Additional requirements would be based on the nature of activities at your facility and your storm water discharges.

7. Reporting

7.1 Reporting Results of Monitoring

Depending on the types of monitoring required for your facility, you may have to submit the results of your monitoring or you may only have to keep the results with your pollution prevention plan. You must follow the reporting requirements and deadlines in Table 7–1 that apply to the types of monitoring that apply to your facility.

If required, you must submit analytical monitoring results obtained from each outfall associated with industrial activity (or a certification as per 5.3.1) on a Discharge Monitoring Report (DMR) form (one form must be submitted for each storm event sampled). An example of a form is found in the *Guidance Manual for the Monitoring and Reporting Requirements of the NPDES Storm Water Multi-Sector General Permit.* A copy of the DMR is also available on the Internet at *www.epa.gov/owm/sw/permits-and-forms/index.htm* The signed DMR must be sent to: MSGP DMR (4203), US EPA, 401 M Street, SW, Washington, DC 20460.

Note: If EPA notifies dischargers (either directly, by public notice or by making information available on the Internet) of other DMR form options that become available at a later date (e.g., electronic submission of forms), you may take advantage of those options to satisfy the DMR use and submission requirements of Part 7.

TABLE 7–1.—DMR/ALTERNATIVE CERTIFICATION SUBMISSION DEADLINES

Type of monitoring	Reporting deadline (postmark)
Monitoring for numeric limitations	Submit results by the 28th day of the month following the monitoring period.
Benchmark monitoring:.	
Monitoring year 2001–2002	Save and submit all results for year in one package by January 28, 2003.
Monitoring year 2003–2004	Save and submit all results for year in one package by January 28, 2005.
Biannual monitoring for metal mining facilities (see Part 6.G)	Save and submit all results for year in one package by January 28 of the year following the monitoring year.
Visual monitoring	Retain results with SWPPP—do not submit unless requested to do so by permitting authority.
State/Tribal/Territory-specific monitoring	See Part 13 (conditions for specific States, indian country, and territories).

7.2 Additional Reporting for Dischargers to a Large or Medium Municipal Separate Storm Sewer System

If you discharge storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more), you must also submit signed copies of your discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in Table 7–1.

7.3 Miscellaneous Reports

You must submit any other reports required by this permit to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part 8.3.

8. Retention of Records

8.1 Documents

You must retain copies of storm water pollution prevention plans and all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, for a period of at least three years from the date that the facility's coverage under this permit expires or is terminated. This period may be extended by request of the Director at any time.

8.2 Accessibility

You must retain a copy of the storm water pollution prevention plan required by this permit (including a copy of the permit language) at the facility (or other local location accessible to the Director, a State, Tribal or Territorial agency with jurisdiction over water quality protection; local government officials; or the operator of a municipal separate storm sewer receiving discharges from the site) from the date of permit coverage to the date of permit coverage ceases.

8.3 Addresses

Except for the submittal of NOIs and NOTs (see Parts 2.1 and 11.2, respectively), all written correspondence concerning discharges in any State, Indian Country land, Territory, or from any Federal facility covered under this permit and directed to the EPA, including the submittal of individual permit applications, must be sent to the address of the appropriate EPA Regional Office listed below:

8.3.1 Region 1: CT, MA, ME, NH, RI, VT

EPA Region 1, Office of Ecosystem Protection, One Congress Street—CMU, Boston, MA 02114.

8.3.2 Region 2: NJ, NY, PR, VI

United States EPA, Region 2, Caribbean Environmental Protection Division, Environmental Management Branch, Centro Europa Building, 1492 Ponce de Leon Ave., Suite 417, San Juan, PR 00907–4127.

8.3.3 Region 3: DE, DC, MD, PA, VA, WV

EPA Region 3, Water Protection Division (3WP13), Storm Water Coordinator, 1650 Arch Street, Philadelphia, PA 19103.

8.3.4 Region 4: AL, FL, GA, KY, MS, NC, SC, TN

Environmental Protection Agency, Region 4, Clean Water Act Enforcement Section, Water Programs Enforcement Branch, Water Management Division, Atlanta Federal Center, 61 Forsyth Street, SW, Atlanta, GA 30303.

8.3.5 Region 5: IL, IN, MI, MN, OH, WI (Coverage Not Available Under this Permit)

8.3.6 Region 6: AR, LA, OK, TX, NM (except see Region 9 for Navajo lands, and see Region 8 for Ute Mountain Reservation lands)

United States EPA, Region 6, Storm Water Staff, Enforcement and Compliance Assurance Division (GEN–WC), EPA SW Construction GP, P.O. Box 50625, Dallas, TX 75205.

8.3.7 Region 7: (Coverage Not Available Under this Permit)

8.3.8 Region 8: CO, MT, ND, SD, WY, UT (except see Region 9 for Goshute Reservation and Navajo Reservation lands), the Ute Mountain Reservation in NM, and the Pine Ridge Reservation in NE

United States EPA, Region 8, Ecosystems Protection Program (8EPR–EP), Storm Water Staff, 999 18th Street, Suite 500, Denver, CO 80202–2466.

8.3.9 Region 9: AZ, CA, HI, NV, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in ID, Fort McDermitt Reservation in OR

United States EPA, Region 9, Water Management Division, WTR–5, Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105.

8.3.10 Region 10: AK, WA, ID (except see Region 9 for Duck Valley Reservation lands), OR (except see Region 9 for Fort McDermitt Reservation)

United States EPA, Region 10, Office of Water OW–130, Storm Water Staff, 1200 6th Avenue, Seattle, WA 98101.

8.4 State, Tribal, and Other Agencies

The following addresses are provided for convenience and to accommodate any special reporting requirements under Part 13 of the Permit.
Reserved

9. Standard Permit Conditions

9.1 Duty To Comply

9.1.1 You must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of CWA and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

9.1.2 Penalties for Violations of Permit Conditions: The Director will adjust the civil and administrative penalties listed below in accordance with the Civil Monetary Penalty Inflation Adjustment Rule (**Federal Register:** December 31, 1996, Volume 61, Number 252, pages 69359–69366, as corrected, March 20, 1997, Volume 62, Number 54, pages 13514–13517) as mandated by the Debt Collection Improvement Act of 1996 for inflation on a periodic basis. This rule allows EPA's penalties to keep pace with inflation. The Agency is required to review its penalties at least once every four years thereafter and to adjust them as necessary for inflation according to a specified formula. The civil and administrative penalties listed below were adjusted for inflation starting in 1996.

9.1.2.1 Criminal Penalties

9.1.2.1.1 *Negligent Violations.*
The CWA provides that any person who negligently violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

9.1.2.1.2 *Knowing Violations.*
The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

9.1.2.1.3 *Knowing Endangerment.*
The CWA provides that any person who knowingly violates permit conditions implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

9.1.2.1.4 *False Statement.*
The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than two years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than four years, or by both. (See section 309(c)(4) of the Clean Water Act).

9.1.2.2 Civil Penalties

The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $27,500 per day for each violation.

9.1.2.3 Administrative Penalties

The CWA provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

9.1.2.3.1 *Class I Penalty.*
Not to exceed $11,000 per violation nor shall the maximum amount exceed $27,500.

9.1.2.3.2 *Class II Penalty.*
Not to exceed $11,000 per day for each day during which the violation continues nor shall the maximum amount exceed $137,500.

9.2 Continuation of the Expired General Permit

If this permit is not reissued or replaced prior to the expiration date, it will be administratively continued in accordance with the Administrative Procedures Act and remain in force and effect. Any permittee who was granted permit coverage prior to the expiration date will automatically remain covered by the continued permit until the earlier of:

9.2.1 Reissuance or replacement of this permit, at which time you must comply with the Notice of Intent conditions of the new permit to maintain authorization to discharge; or

9.2.2 your submittal of a Notice of Termination; or

9.2.3 issuance of an individual permit for your discharges; or

9.2.4 a formal permit decision by the Director not to reissue this general permit, at which time you must seek coverage under an alternative general permit or an individual permit.

9.3 Need To Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

9.4 Duty To Mitigate

You must take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

9.5 Duty To Provide Information

You must furnish to the Director or an authorized representative of the Director any information which is requested to determine compliance with this permit or other information.

9.6 Other Information

When you becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the Notice of Intent or in any other report to the Director, he or she must promptly submit such facts or information.

9.7 Signatory Requirements

All Notices of Intent, Notices of Termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director or the operator of a large or medium municipal separate storm sewer system, or that this permit requires be maintained by you, must be signed as follows:

9.7.1 All Notices of Intent and Notices of Termination must be signed as follows:

9.7.1.1 for a corporation: By a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: A president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

9.7.1.2 for a partnership or sole proprietorship: By a general partner or the proprietor, respectively; or

9.7.1.3 for a municipality, State, Federal, or other public agency: By either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

9.7.2 All reports required by this permit and other information must be signed as follows:

9.7.2.1 all reports required by this permit and other information requested by the Director or authorized representative of the Director must be signed by a person described in Part 9.7.1 or by a duly authorized representative of that person.

9.7.2.2 A person is a duly authorized representative only if the authorization is made in writing by a person described Part 9.7.1 and submitted to the Director.

9.7.2.3 The authorization must specify either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

9.7.3 Changes to Authorization

If the information on the NOI filed for permit coverage is no longer accurate because a different operator has responsibility for the overall operation of the facility, a new Notice of Intent satisfying the requirements of Part 2 must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative. The change in authorization must be submitted within the time frame specified in Part 2.1, and sent to the address specified in Part 2.4.

9.7.4 Certification

Any person signing documents under Part 9.7 must make the following certification:

"I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

9.8 Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than two years, or by both.

9.9 Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve you from any responsibilities, liabilities, or penalties to which you are or may be subject under section 311 of the CWA or section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

9.10 Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State or local laws or regulations.

9.11 Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

9.12 Requiring Coverage Under an Individual Permit or an Alternative General Permit

9.12.1 Eligibility for this permit does not confer a vested right to coverage under the permit. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. Where the Director requires a permittee authorized to discharge under this permit to apply for an individual NPDES permit, the Director will notify you in writing that a permit application is required. This notification will include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for you to file the application, and a statement that on the effective date of

issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit will automatically terminate. Applications must be submitted to the appropriate Regional Office indicated in Part 8.3 of this permit. The Director may grant additional time to submit the application upon request of the applicant. If a permittee fails to submit in a timely manner an individual NPDES permit application as required by the Director under this paragraph, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified by the Director for application submittal.

9.12.2 Any permittee authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. In such cases, you must submit an individual application in accordance with the requirements of 40 CFR 122.26(c)(1)(ii), with reasons supporting the request, to the Director at the address for the appropriate Regional Office indicated in Part 8.3 of this permit. The request may be granted by issuance of any individual permit or an alternative general permit if the reasons cited by you are adequate to support the request.

9.12.3 When an individual NPDES permit is issued to a permittee otherwise subject to this permit, or the permittee is authorized to discharge under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

9.12.4 The Director's notification that coverage under an alternative permit is required does not imply that any discharge that did not or does not meet the eligibility requirements of Part 1.2 is or has been covered by this permit.

9.13 State/Tribal Environmental Laws

9.13.1 Nothing in this permit will be construed to preclude the institution of any legal action or relieve you from any responsibilities, liabilities, or penalties established pursuant to any applicable State/Tribal law or regulation under authority preserved by section 510 of the Act.

9.13.2 No condition of this permit releases you from any responsibility or requirements under other environmental statutes or regulations.

9.14 Proper Operation and Maintenance

You must at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by you to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of this permit.

9.15 Inspection and Entry

You must allow the Director or an authorized representative of EPA, the State/Tribe, or, in the case of a construction site which discharges through a municipal separate storm sewer, an authorized representative of the municipal owner/operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to:

9.15.1 Enter upon the your premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit;

9.15.2 Have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and

9.15.3 Inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

9.16 Monitoring and Records

9.16.1 Representative Samples/ Measurements

Samples and measurements taken for the purpose of monitoring must be representative of the monitored activity.

9.16.2 Retention of Records

9.16.2.1 You must retain records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the application of this permit for a period of at least three (3) years from the date of sample, measurement, evaluation or inspection, report, or application. This period may be extended by request of the Director at any time. Permittees must submit any such records to the Director upon request.

9.16.2.2 You must retain the pollution prevention plan developed in accordance with Part 4 of this permit until a date 3 years after the last modification or amendment is made to the plan, and at least 1 year after coverage under this permit terminates.

9.16.3 *Records Contents.* Records of monitoring information must include:

9.16.3.1 The date, exact place, and time of sampling or measurements;

9.16.3.2 The initials or name(s) of the individual(s) who performed the sampling or measurements;

9.16.3.3 The date(s) analyses were performed;

9.16.3.4 The time(s) analyses were initiated;

9.16.3.5 The initials or name(s) of the individual(s) who performed the analyses;

9.16.3.6 References and written procedures, when available, for the analytical techniques or methods used; and

9.16.3.7 The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

9.16.4 Approved Monitoring Methods

Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

9.17 Permit Actions

This permit may be modified; revoked and reissued; or terminated for cause. Your filing of a request for a permit modification; revocation and reissuance; or your submittal of a notification of planned changes or anticipated non-compliance also does not stay any permit condition

10. Reopener Clause

10.1 Water Quality Protection

If there is evidence indicating that the storm water discharges authorized by this permit cause, have the reasonable potential to cause, or contribute to a violation of a water quality standard, you may be required to obtain an individual permit or an alternative general permit in accordance with Part 3.3 of this permit, or the permit may be modified to include different limitations and/or requirements.

10.2 Procedures for Modification or Revocation

Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64 and 124.5.

11. Transfer or Termination of Coverage

11.1 Transfer of Permit Coverage

Automatic transfers of permit coverage under 40 CFR 122.61(b) are not allowed for this general permit.

11.1.1 Transfer of coverage from one operator to a different operator (*e.g.*, facility sold to a new company): The new owner/operator must complete and file an NOI in accordance with Part 1.3 at least 2 days prior to taking over operational control of the facility. The old owner/operator may file an NOT (Notice of Termination) following acceptance of operational control by the new owner/operator.

11.1.2 Simple name changes of the permittee (*e.g.*, Company "A" changes name to "ABC, Inc." or Company "B" buys out Company "A") may be done by filing an amended NOI referencing the facility's assigned permit number and requesting a simple name change.

11.2 Notice of Termination (NOT)

You must submit a completed Notice of Termination (NOT) that is signed in accordance with Part 9.7 when one or more of the conditions contained in Part 1.4 (Terminating Coverage) have been met. The NOT form found in Addendum E will be used unless it has been replaced by a revised version by the Director. The Notice of Termination must include the following information:

11.2.1 The NPDES permit number for the storm water discharge identified by the Notice of Termination;

11.2.2 An indication of whether the storm water discharges associated with industrial activity have been eliminated (*i.e.*, regulated discharges of storm water are being terminated); you are no longer an operator of the facility; or you have obtained coverage under an alternative permit;

11.2.3 The name, address and telephone number of the permittee submitting the Notice of Termination;

11.2.4 The name and the street address (or a description of location if no street address is available) of the facility for which the notification is submitted;

11.2.5 The latitude and longitude of the facility; and

11.2.6 The following certification, signed in accordance with Part 9.7 (signatory requirements) of this permit. For facilities with more than one permittee and/or operator, you need only make this certification for those portions of the facility where the you were authorized under this permit and not for areas where the you were not an operator:

"I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that authorized by a general permit have been eliminated or that I am no longer the operator of the facility or construction site. I understand that by submitting this notice of termination, I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by a NPDES permit. I also understand that the submittal of this Notice of Termination does not release an operator from liability for any violations of this permit or the Clean Water Act."

11.3 Addresses

All Notices of Termination must be submitted using the form provided by the Director (or a photocopy thereof) to the address specified on the NOT form.

11.4 Facilities Eligible for "No Exposure" Exemption for Storm Water Permitting

By filing a certification of "No Exposure" under 40 CFR 122.26(g), you are automatically removed from permit coverage and a NOT to terminate permit coverage is not required.

12. Definitions

"Best Management Practices" ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the discharge of pollutants to waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control plant site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

"Control Measure" as used in this permit, refers to any Best Management Practice or other method used to prevent or reduce the discharge of pollutants to waters of the United States.

"Commencement of Construction" the initial disturbance of soils associated with clearing, grading, or excavating activities or other construction activities.

"CWA" means the Clean Water Act or the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*

"Director" means the Regional Administrator of the Environmental Protection Agency or an authorized representative.

"Discharge" when used without qualification means the "discharge of a pollutant."

"Discharge of Storm Water Associated with Construction Activity" as used in this permit, refers to a discharge of pollutants in storm water runoff from areas where soil disturbing activities (e.g., clearing, grading, or excavation), construction materials or equipment storage or maintenance (e.g., fill piles, borrow areas, concrete truck washout, fueling), or other industrial storm water directly related to the construction process (e.g., concrete or asphalt batch plants) are located. (See 40 CFR 122.26(b)(14)(x) and 40 CFR 122.26(b)(15) for the two regulatory definitions on regulated storm water associated with construction sites)

"Discharge of Storm Water Associated with Industrial Activity" is defined at 40 CFR 122.26(b)(14).

"Facility or Activity" means any NPDES "point source" or any other facility or activity (including land or appurtenances thereto) that is subject to regulation under the NPDES program.

"Flow-Weighted Composite Sample" means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

"Industrial Activity" as used in this permit refers to the eleven categories of industrial activities included in the definition of "discharges of storm water associated with industrial activity".

"Industrial Storm Water" as used in this permit refers to storm water runoff associated with the definition of "discharges of storm water associated with industrial activity".

"Large and Medium Municipal Separate Storm Sewer System"—means all municipal separate storm sewers that are either:

1. Located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR part 122); or

2. Located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR part 122); or

3. Owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

"Municipal Separate Storm Sewer" is defined at 40 CFR 122.26.

"No exposure" means that all industrial materials or activities are protected by a storm resistant shelter to prevent exposure to rain, snow, snowmelt and/or runoff.

"NOI" means Notice of Intent to be covered by this permit (see Part 2 of this permit.)

"NOT" means Notice of Termination (see Part 11.2 of this permit).

"Owner or operator" means the owner or operator of any "facility or activity" subject to regulation under the NPDES program.

"Point source" means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharged. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

"Pollutant" is defined at 40 CFR 122.2. A partial listing from this definition includes: Dredged spoil, solid waste, sewage, garbage, sewage sludge, chemical wastes, biological materials, heat, wrecked or discarded equipment, rock, sand, cellar dirt, and industrial or municipal waste.

"Runoff coefficient" means the fraction of total rainfall that will appear at the conveyance as runoff.

"Special Aquatic Sites," as defined at 40 CFR 230.3(q–1), means those sites identified in 40 CFR part 230 Subpart E. They are geographic areas, large or small, possessing special ecological characteristics of productivity, habitat, wildlife protection, or other important and easily disrupted ecological values. These areas are generally recognized as significantly influencing or positively contributing to the general overall environmental health or vitality of the entire ecosystem of a region. (See 40 CFR 230.10(a)(3)).

"Storm Water" means storm water runoff, snow melt runoff, and surface runoff and drainage.

"Storm Water Associated with Industrial Activity" refers to storm water, that if allowed to discharge, would constitute a "discharge of storm water associated with industrial activity" as defined at 40 CFR 122.26(b)(14) and incorporated here by reference. Most relevant to this permit is 40 CFR 122.26(b)(14)(x), which relates to construction activity including clearing, grading and excavation activities that result in the disturbance of five (5) or more acres of total land area, or are part of a larger common plan of development or sale.

"Waters of the United States"—means:

1. All waters which are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters which are subject to the ebb and flow of the tide;

2. All interstate waters, including interstate "wetlands";

3. All other waters such as interstate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

a. Which are or could be used by interstate or foreign travelers for recreational or other purposes;

b. From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

c. Which are used or could be used for industrial purposes by industries in interstate commerce;

4. All impoundments of waters otherwise defined as waters of the United States under this definition;

5. Tributaries of waters identified in paragraphs (1) through (4) of this definition;

6. The territorial sea; and

7. Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs 1. through 6. of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of the CWA (other than cooling ponds for steam electric generation stations per 40 CFR 423) which also meet the criteria of this definition) are not waters of the United States. Waters of the United States do not include prior converted cropland. Notwithstanding the determination of an area's status as prior converted cropland by any other federal agency, for the purposes of the Clean Water Act, the final authority regarding Clean Water Act jurisdiction remains with EPA.

"You" and "Your" as used in this permit is intended to refer to the permittee, the operator, or the discharger as the context indicates and that party's facility or responsibilities. The use of "you" and "your" refers to a particular facility and not to all facilities operated by a particular entity. For example, "you must submit" means the permittee must submit something for that particular facility. Likewise, "all your discharges" would refer only to discharges at that one facility.

13. Permit Conditions Applicable to Specific States, Indian Country Lands, or Territories

The provisions of Part 13 provide modifications or additions to the applicable conditions of Parts 1 through 12 of this permit to reflect specific additional conditions required as part of the State or Tribal CWA Section 401 certification process, or Coastal Zone Management Act certification process, or as otherwise established by the permitting authority. The additional revisions and requirements listed below are set forth in connection with, and only apply to, the following States, Indian Country lands and Federal facilities.

[Reserved for Final Permit Decision Pending Completion of Required Consultations and State/Tribal Certification Processes]

Addendum A—Endangered Species Guidance

Note: The following is a model of what the Endangered Species Guidance may look like. Final guidance will be prepared to reflect any requirements resulting from any required consultations under the Endangered Species Act on issuance of this permit. This example is based on the general process used in the 1995 MSGP and the 1998 Construction General Permits issued by EPA.

I. Assessing Permit Eligibility Regarding Endangered Species

A. Background

To meet its obligations under the Clean Water Act and the Endangered Species Act (ESA) and to promote those Acts' goals, the Environmental Protection Agency (EPA) is seeking to ensure the activities regulated by this Multi-sector General Permit (MSGP) avoid unacceptable effects on endangered and threatened species and critical habitat. To ensure that those goals are met, applicants for MSGP coverage are required under Part 1.2.3.6 to assess the impacts of their storm water discharges, allowable non-storm water discharges, and discharge-related activities on Federally listed endangered and threatened species ("listed species") and designated critical habitat ("critical habitat") by following the process listed below. EPA strongly recommends that you follow these steps at the earliest possible stage to ensure that measures to protect listed species and critical habitat are incorporated early in your planning process.

You also have an independent ESA obligation to ensure that your activities do not result in any prohibited "takes" of listed species.[13] Many of the measures required in the MSGP and in these instructions to protect species may also assist you in ensuring that your activities do not result in a prohibited take of species in violation of section 9 of the ESA. If you have or plan activities in areas that harbor endangered and threatened species, you may wish to ensure that you are protected from potential takings liability under ESA section 9 by obtaining an ESA section 10 permit or, if there is a separate federal action regarding the facility, by requesting formal consultation under ESA section 7 regarding that action. If you are not sure whether to pursue a section 10 permit or a section 7 consultation for takings protection, you should confer with the appropriate Fish and Wildlife Service (FWS) and/or National Marine Fisheries Service (NMFS) (collectively the "Services") office.

B. How Does The Basic Eligibility Assessment Process Work?

In order to determine if you are eligible to use the permit, you need to go through a series of steps to determine:

1. Are there any listed endangered or threatened species or critical habitat in proximity to your facility or the point where your discharges reach a receiving water?

2. If there are listed species in proximity, are your discharges or discharge-related activities going to adversely affect them?

3. If adverse effects on listed species or critical habitat are likely, what can you do to eliminate or reduce these effects?

4. Have any adverse effects already been addressed under the Endangered Species Act?

5. Which, if any, of the eligibility criteria make you eligible for permit coverage?

C. What Are the Eligibility Criteria?

The Part 1.2.3.6 eligibility requirement may be satisfied by documenting that one or more of the following criteria has been met:

[13] Section 9 of the ESA prohibits any person from "taking" a listed species (e.g., harassing or harming it) unless: (1) The taking is authorized through a "incidental take statement" as part of undergoing ESA section 7 formal consultation; (2) where an incidental take permit it obtained under ESA section 10 (which requires the development of a habitat conservation plan); or (3) where otherwise authorized or exempted under the ESA. This prohibition applies to all entities including private individuals, businesses, and governments.

Criteria A. *No Listed Species or Critical Habitat are in Proximity to Your Facility or the Point Where Authorized Discharges Reach a Water of the United States (See Part 1.2.3.6.3.1)*

Using the latest County Species List available from EPA and any other relevant information sources, you have determined that no listed species or critical habitat are in proximity to your facility. Listed species and critical habitat are in proximity to a facility when they are:

- Located in the path or immediate area through which or over which contaminated point source storm water flows from industrial activities to the point of discharge into the receiving water. This may also include areas where storm water from your facility enters groundwater that has a direct hydrological connection to a receiving water (e.g., groundwater infiltrates at your facility and re-emerges to enter a surface waterbody within a short period of time.)
- Located in the immediate vicinity of, or nearby, the point of discharge into receiving waters.
- Located in the area of a facility where storm water BMPs are planned or are to be constructed.

Please be aware that no protection from incidental takings liability is provided under this criteria.

Criteria B. *An ESA Section 7 Consultation has Been Performed for a Separate Federal Action Regarding Your Facility (See Part 1.2.3.6.3.2)*

A formal or informal ESA section 7 consultation on a separate federal action (e.g., New Source review under NEPA, application for a dredge and fill permit under CWA section 404, application for an individual NPDES permit, etc.) addressed the effects of your discharges and discharge-related activities on listed species and critical habitat. If your facility was the subject of a formal consultation, it must have resulted in either a "no jeopardy opinion" or a "jeopardy opinion" and you agree to implement any reasonable and prudent alternatives or other conditions upon which the consultation was based. If your facility was the subject of an informal consultation, it must have resulted in a written concurrence by the Service(s) on a finding that the applicant's activities are not likely to adversely affect listed species or critical habitat (for informal consultation, see 50 CFR 402.13).

Criteria C. *An Incidental Taking Permit Under Section 10 of the ESA was Issued for Your Facility (See Part 1.2.3.6.3.3)*

You have a permit under section 10 of the ESA and that authorization addresses the effects of your wastewater and storm water discharges and discharge-related activities on listed species and critical habitat. Note: You must follow FWS/NMFS procedures when applying for an ESA section 10 permit (see 50 CFR 17.22(b)(1)).

Criteria D. *You have Determined Adverse Effects are Not Likely (See Part 1.2.3.6.3.4)*

Using due diligence, you have investigated potential effects your discharges and discharges-related activities may have on listed species and critical habitat and have no reason to believe there would be adverse effects. Any terms and/or conditions to protect listed species and critical habitat you relied on in order to determine adverse effects would be unlikely must be incorporated into your Pollution Prevention Plan (required by the permit) and implemented in order to maintain permit eligibility.

Please be aware that no protection from incidental takings liability is provided under this criteria.

Criteria E. *Your Facility Was Covered Under the Eligibility Certification of Another Operator for the Facility Area (See Part 1.2.3.6.3.5)*

Your storm water discharges, allowable non-storm water discharges, and discharge-related activities were already addressed in another operator's certification of eligibility under Part 1.2.3.6.3 which covered your facility. By certifying eligibility under Part 1.2.3.6.3.4, you agree to comply with any measures or controls upon which the other operator's certification under Part 1.2.3.6.3 was based.

Please be aware that in order to meet the permit eligibility requirements by relying on another operator's certification of eligibility, the other operator's certification must apply to the location of your facility and must address the effects from your storm water discharges, allowable non-storm water discharges, and discharge-related activities on listed species and critical habitat. This situation will typically occur where an ownership of a facility covered by this permit changes or when there are multiple operators within an industrial park or an airport. However, before you rely on another operator's certification, you should carefully review that certification along with any supporting information. You also need to confirm that no additional species have been listed or critical habitat designated in the area of your facility since the other operator's endangered species assessment was done. If you do not believe that the other operator's certification provides adequate coverage for your facility, you should provide your own independent endangered species assessment and certification.

Please be aware that no protection from incidental takings liability is provided under this criteria.

D. What Procedures Do I Use To Determine if an Eligibility Criteria Can Be Satisfied?

CAUTION: Additional endangered and threatened species have been listed and critical habit designated since the 1995 MSGP was issued and will continue to be added after the effective date of this permit. You must verify any earlier determination of eligibility is still valid before relying on that assessment to certify eligibility for this permit. Where applicable, you may incorporate information from your previous endangered species analysis in your documentation of eligibility for this permit.

To determine eligibility, you must assess (or have previously assessed) the potential effects of your storm water discharges, allowable non-storm water discharges and discharge-related activities on listed species and critical habitat. PRIOR to completing and submitting Notice of Intent (NOI) form, you must follow the steps outlined below and document the results of your eligibility determination.

Step One: Are there any endangered species or critical habitat in your county (or other area) and if so, are they in proximity to your facility or discharge locations?

1–A. *Check for Listed Species.* Look in the latest county species list to see if any listed species are found where your facility and discharge point(s) are located. If you are located in close to the border of a county or your facility is located in one county and your discharge points are located in another, you must look under both counties. Since species are listed and de-listed periodically, you will need the most current list at the time you are doing your endangered species assessment. EPA's most current county-species list is on the Internet at *www.epa.gov/owm/esalst2.htm.*

=>Proceed to 1–B

1–B. *Check for Critical Habitat.* Some (but not all) listed species have designated critical habitat. Exact locations of such habitat is provided in the endangered species regulations at 50 CFR part 17 and part 226. To determine if facility or discharge locations are within designated critical habitat, you should either:

- Review those regulations (which can be found in many larger libraries); or
- Contact the nearest Fish and Wildlife Service (FWS) and National Marine Fisheries Service (NMFS) Office. A list of FWS and NMFS offices is found at section II of this Addendum, or
- Contact the State Natural Heritage centers. These centers compile and disseminate information on Federally listed and other protected species. They frequently have the most current information on listed species and critical habitat. A list of these centers is provided in section III of the Addendum.

=>Proceed to 1–C.

1–C. *Check for Proximity.* If there are listed species in your county, are they in proximity to your facility or discharge locations? You will need to use the proximity criteria in Eligibility Criteria A to determine if the listed species are in your part of the county. The area in proximity to be searched/surveyed for listed species will vary with the size of the facility, the nature and quantity of the storm water discharges, and the type of receiving waters. Given the number of facilities potentially covered by the MSGP, no specific method to determine whether species are in proximity is required for permit coverage under the MSGP. Instead, you should use the method or methods which best allow you to determine to the best of their knowledge whether species are in proximity to your particular facility. These methods may include:

- *Conducting visual inspections.* This method may be particularly suitable for facilities that are smaller in size, facilities located in non-natural settings such as highly urbanized areas or industrial parks where there is little or no nature habitat; and facilities that discharge directly into municipal storm water collection systems. For other facilities, a visual survey of the facility site and storm water drainage areas may be insufficient to determine whether species are likely to be located in proximity to the discharge.
- *Contacting the nearest State Wildlife Agency or U.S. Fish and Wildlife Service (FWS) or National Marine Fisheries Service (NMFS) offices.* Many endangered and threatened species are found in well-defined areas or habitats. That information is frequently known to state or federal wildlife agencies. FWS has offices in every state. NMFS has regional offices in: Gloucester, Massachusetts; St. Petersburg, Florida; Long Beach, California; Portland, Oregon; and Juneau, Alaska.
- *Contacting local/regional conservation groups.* These groups inventory species and their locations and maintain lists of sightings and habitats.
- *Conducting a formal biological survey.* Larger facilities with extensive storm water discharges may choose to conduct biological surveys as the most effective way to assess whether species are located in proximity and whether there are likely adverse effects.

If neither your facility nor discharge locations are located in designated critical habitat, then you need not consider impacts to critical habitat when following Steps Two through Five below. If your facility or discharge locations are located within critical habitat, then you must look at impacts to critical habitat when following Steps Two through Five. EPA notes that many measures imposed to protect listed species under these steps will also protect critical habitat. However, obligations to protect habitat under this permit are separate from those of protecting listed species. Thus, meeting the eligibility requirements of this permit may require measures to protect critical habitat that are separate from those to protect listed species.

=>Proceed to 1–D

1–D. *Check for Criteria "A" Eligibility.* IF NO SPECIES WERE LISTED FOR YOUR COUNTY OR THE SPECIES THAT WERE LISTED WERE NOT IN PROXIMITY TO YOUR DISCHARGE *AND* YOUR FACILITY AND DISCHARGE LOCATIONS WERE NOT IN PROXIMITY TO CRITICAL HABITAT, YOU ARE ELIGIBLE UNDER CRITERIA "A". Document your endangered species assessment and certify eligibility under Part 1.2.3.6.3.1 of the permit. Congratulations, go to Step Five!

=> If There Were Listed Species or Critical Habitat, Proceed to Step Two

Step Two: Can You Meet Eligibility Criteria "B", "C", or "E"?

2–A *Check for Criteria "B", "C", or "E"* Basis Do one of the following apply:

- There was a competed consultation under ESA section 7 for your facility (Criteria B) => proceed to 2–B
- There is a previously issued ESA section 10 permit for your facility (Criteria C) => proceed to 2–C
- Another operator previously certified eligibility for the area where your facility is located (Criteria E) => proceed to 2–D

=> If no, Proceed to Step Three

2–B *Check for Criteria "B" Eligibility* Did the previously completed ESA section 7 consultation consider all currently listed species and critical

Signature and submittal of the NOI is

III. National Marine Fisheries Service

available to State and Tribal Historic

habitat and address your storm water, allowable non-storm water, and discharge related activities?

=> If no, Proceed to Step Three

2–B–1 Did the ESA section 7 consultation result in a either a "no jeopardy" opinion by the Service (for formal consultations) or a concurrence by the service that your activities would be "unlikely to adversely affect" listed species or critical habitat?

=> If no, Proceed to Step Three

2–B–2 IF YOU AGREE TO IMPLEMENT ANY MEASURES UPON WHICH THE CONSULTATION WAS CONDITIONED, YOU ARE ELIGIBLE UNDER CRITERIA "B". Incorporate any necessary measures into your Storm Water Pollution Prevention Plan, document your endangered species assessment, and certify eligibility under Part 1.2.3.6.3.2. Congratulations, go to Step Five!

=> If You Do Not Agree to Implement Conditions Upon Which the Consultation was Based, Proceed to Step Three

2–C *Check for Criteria "C" Eligibility* IF YOUR ESA SECTION 10 PERMIT CONSIDERED ALL CURRENTLY LISTED SPECIES AND CRITICAL HABITAT AND ADDRESSES YOUR STORM WATER, ALLOWABLE NON-STORM WATER, AND DISCHARGE RELATED ACTIVITIES, YOU ARE ELIGIBLE UNDER CRITERIA "C". Incorporate any necessary measures into your Storm Water Pollution Prevention Plan, document your endangered species assessment, and certify eligibility under Part 1.2.3.6.3.3 of the permit. Congratulations, go to Step Five!

=> If Your ESA Section 10 Permit Did Not Meet These Criteria, Proceed to Step Three

2–D *Check for Criteria "E" Eligibility* Did the other operator's certification of eligibility consider all currently listed species and critical habitat and address your storm water, allowable non-storm water, and discharge related activities?

=> If no, Proceed to Step Three

2–D–1 IF YOU AGREE TO IMPLEMENT ANY MEASURES UPON WHICH THE OTHER OPERATOR'S CERTIFICATION WAS BASED, YOU ARE ELIGIBLE UNDER CRITERIA "E". Incorporate any necessary measures into your Storm Water Pollution Prevention Plan, document your endangered species assessment, and certify eligibility under Part 1.2.3.6.3.5 of the Permit. Congratulations, go to Step Five!

=> If You Do Not Agree to Implement Conditions Upon Which Other Operator's Certification Was Based, Proceed to Step Three

Step Three: Are Listed Species or Critical Habitat Likely to be Adversely Affected by Your Facility's Storm Water Discharges, Allowable Non-storm Water Discharges, or Discharge-related Activities?

If you unable to certify eligibility under Criteria A, B, C, or E, you must assess whether their storm water discharges, allowable non-storm water discharges, and discharge-related activities are likely to adversely affect listed species or critical habitat. "Storm water discharge-related activities" include:

- Activities which cause, contribute to, or result in point source storm water pollutant discharges; and
- Measures to control storm water discharges and allowable non-storm water discharges including the siting, construction, operation of best management practices (BMPs) to control, reduce or prevent water pollution.

Potential adverse effects from storm water discharges, allowable non-storm water discharges, and discharge-related activities include:

- *Hydrological.* Wastewater or storm water discharges may cause siltation, sedimentation or induce other changes in receiving waters such as temperature, salinity or pH. These effects will vary with the amount of wastewater or storm water discharged and the volume and condition of the receiving water. Where a discharge constitutes a minute portion of the total volume of the receiving water, adverse hydrological effects are less likely.
- *Habitat.* Excavation, site development, grading, and other surface disturbance activities, including the installation or placement of wastewater or storm water ponds or BMPs, may adversely affect listed species or their habitat. Wastewater or storm water associated with facility operation may drain or inundate listed species habitat.
- *Toxicity.* In some cases, pollutants in wastewater or storm water may have toxic effects on listed species.

The scope of effects to consider will vary with each facility. If you are having difficulty in determining whether your facility is likely to adversely effect a listed specie or critical habitat, then the appropriate office of the FWS, NMFS, or Natural Heritage Center listed in Sections II and III of this Addendum should be contacted for assistance.

Document the results of your assessment and make a preliminary determination on whether or not there would likely be adverse effects on listed species or critical habitat. You will need to determine that your activities are either "unlikely to adversely affect" or "may adversely affect". Your determination may be based on measures that you implement to avoid, eliminate, or minimize adverse affects.

=> Proceed to Step Four

Step Four: Can You Meet Eligibility Criteria "D"?

Using due diligence, can you determine your facility's storm water discharges, allowable non-storm water discharges, and discharge-related activities are unlikely to have adverse affects on listed species or critical habitat?

4–A IF STEP THREE DETERMINATION IS "UNLIKELY TO ADVERSELY AFFECT", YOU ARE ELIGIBLE UNDER CRITERIA "D". Incorporate appropriate measures upon which your eligibility was based into your Storm Water Pollution Prevention Plan and certify eligibility under Part 1.2.3.6.3.4 of the permit. Congratulations, go to Step Five.

=> If There May Be Adverse Effects, Proceed to Step 4–B

4–B *Step Three (or Step 4–A–1) Determination is "May Adversely Affect"* You must contact the Service(s) to discuss your findings and measures you could implement to avoid, eliminate, or minimize adverse affects.

4–B–1 IF YOU AND THE SERVICE(S) REACH AGREEMENT ON MEASURES TO AVOID ADVERSE EFFECTS, YOU ARE ELIGIBLE UNDER CRITERIA "D". Incorporate appropriate measures upon which your eligibility was based into your Storm Water Pollution Prevention Plan and certify eligibility under Part 1.2.3.6.3.4 of the permit. Congratulations, go to Step Five.

4–C *Endangered Species Issues Cannot be Resolved* If you cannot reach agreement with the Service(s) on measures to avoid, eliminate, or reduce adverse effects to an acceptable level; and if any likely adverse effects cannot otherwise be addressed through meeting the other criteria of Part 1.2.3.6; then you are not eligible for coverage under the MSGP at this time and must seek coverage under an individual permit. Proceed to 40 CFR 122.26(c) for individual permit application requirements.

Step Five: Submit Notice of Intent and Document Results of the Eligibility Determination.

Once all other Part 1.2 eligibility requirements have been met, you may submit the Notice of Intent (NOI).

Signature and submittal of the NOI is also deemed to constitute your certification, under penalty of law, of your eligibility for permit coverage.

You must include documentation of Part 1.2.3.6 eligibility in the pollution prevention plan required for the facility. Documentation required for the various eligibility criteria are as follows:

Criteria A—A copy of the County-Species List pages with the county(ies) where your facility and discharges are located and a statement on how you determine no listed species or critical habitat was in proximity to your discharge.

Criteria B—A copy of the Service(s)'s Biological Opinion or concurrence on a finding of "unlikely to adversely effect" regarding the ESA section 7 consultation.

Criteria C—A copy of the Service(s)'s letter transmitting the ESA section 10 authorization.

Criteria D—Documentation on how you determined adverse effects on listed species and critical habitat were unlikely.

Criteria E—A copy of the documents originally used by the other operator of your facility (or area including your facility) to satisfy the documentation requirement of Criteria A, B, C or D.

E. Duty To Implement Terms and Conditions Upon Which Eligibility Was Determined

You must comply with any terms and conditions imposed under the eligibility requirements of Part 1.2.3.6.3 to ensure that your storm water discharges, allowable non-storm water discharges, and discharge-related activities avoid unacceptable effects on listed species and/or critical habitat. You must incorporate such terms and conditions in the your facility's pollution prevention plan as required by the permit. If the eligibility requirements of Part 1.2.3.6 cannot be met, then you may not receive coverage under this permit. You should then consider applying to the permitting authority for an individual permit.

II. U.S. Fish and Wildlife Service Offices

National Website for Endangered Species Information

Endangered Species Home page: http://www.fws.gov/~r9endspp/endspp.html

Regional, State, Field and Project Offices

<<<RESERVED FOR ADDRESSES>>>

III. National Marine Fisheries Service Offices

<RESERVED FOR ADDRESSES>

IV. Natural Heritage Centers

The Natural Heritage Network comprises 85 biodiversity data centers throughout the Western Hemisphere. These centers collect, organize, and share data relating to endangered and threatened species and habitat. The network was developed to inform land-use decisions for developers, corporations, conservationists, and government agencies and is also consulted for research and educational purposes. The centers maintain a Natural Heritage Network Control Server Website (http://www.heritage.tnc.org) which provides website and other access to a large number of specific biodiversity centers. Some of these centers are listed below:

<<<RESERVED FOR ADDRESSES>>>

Addendum B—Historic Properties Guidance

Note: The following is a model of what the Historic Properties Guidance may look like. Final guidance will be prepared to reflect any requirements resulting from any required consultations under the National Historic Preservation Act on issuance of this permit. This example is based on the general process initially proposed, but not finalized (section reserved in final permit), for use in the 1998 Construction general Permits issued by EPA.

In order to do this, applicants must determine whether their facility's storm water discharges, allowable non-storm water discharges, or construction of best management practices (BMPs) to control such discharges, has potential to affect a property that is either listed or eligible for listing on the National Register of Historic Places.

For existing dischargers who do not need to construct BMPs for permit coverage, a simple visual inspection may be sufficient to determine whether historic properties are affected. However, for facilities which are new industrial storm water dischargers and for existing facilities which are planning to construct BMPs for permit eligibility, applicants should conduct further inquiry to determine whether historic properties may be affected by the storm water discharge or BMPs to control the discharge. In such instances, applicants should first determine whether there are any historic properties or places listed on the National Register or if any are eligible for listing on the register (*e.g.*, they are "eligible for listing").

Due to the large number of entities seeking coverage under this permit and the limited number of personnel available to State and Tribal Historic Preservation Officers nationwide to respond to inquiries concerning the location of historic properties, EPA suggests that applicants to first access the "National Register of Historic Places" information listed on the National Park Service's web page (see Part I of this addendum). Addresses for State Historic Preservation Officers and Tribal Historic Preservation Officers are listed in Parts II and III of this addendum, respectively. In instances where a Tribe does not have a Tribal Historic Preservation Officer, applicants should contact the appropriate Tribal government office when responding to this permit eligibility condition. Applicants may also contact city, county or other local historical societies for assistance, especially when determining if a place or property is eligible for listing on the register.

The following three scenarios describe how applicants can meet the permit eligibility criteria for protection of historic properties under this permit:

(1) If historic properties are not identified in the path of a facility's storm water and allowable non-storm water discharges or where construction activities are planned to install BMPs to control such discharges (*e.g.*, diversion channels or retention ponds), then the applicant has met the permit eligibility criteria under Part 1.2.3.7.1.

(2) If historic properties are identified but it is determined that they will not be affected by the discharges or construction of BMPs to control the discharge, the applicant has met the permit eligibility criteria under Part 1.2.3.7.1.

(3) If historic properties are identified in the path of a facility's storm water and allowable non-storm water discharges or where construction activities are planned to install BMPs to control such discharges, and it is determined that there is the potential to adversely affect the property, the applicant can still meet the permit eligibility criteria under Part 1.2.3.7.2 if he/she obtains and complies with a written agreement with the appropriate State or Tribal Historic Preservation Officer which outlines measures the applicant will follow to mitigate or prevent those adverse effects. The contents of such a written agreement must be included in the facility's storm water pollution prevention plan.

In situations where an agreement cannot be reached between an applicant and the State or Tribal Historic Preservation Officer, applicants should contact the Advisory Council on Historic Preservation listed in Part IV of this addendum for assistance.

The term "adverse effects" includes

IV. Advisory Council on Historic

and the general area

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The term "adverse effects" includes but is not limited to damage, deterioration, alteration or destruction of the historic property or place. EPA encourages applicants to contact the appropriate State or Tribal Historic Preservation Officer as soon as possible in the event of a potential adverse effect to a historic property.

Applicants are reminded that they must comply with applicable State, Tribal and local laws concerning the protection of historic properties and places.

I. Internet Information on the National Register of Historic Places

An electronic listing of the "National Register of Historic Places," as maintained by the National Park Service on its National Register Information System (NRIS), can be accessed on the Internet at "http://www.nr.nps.gov/nrishome.htm". Remember to use small case letters when accessing Internet addresses.

II. State Historic Preservation Officers (SHPO)

(....RESERVED FOR CONTACT INFORMATION....)

III. Tribal Historic Preservation Officers (THPO)

In instances where a Tribe does not have a Tribal Historic Preservation Officer, please contact the appropriate Tribal government office when responding to this permit eligibility condition.

(....RESERVED FOR CONTACT INFORMATION....)

IV. Advisory Council on Historic Preservation

Advisory Council on Historic Preservation, 1100 Pennsylvania Avenue, NW., Suite 809, Washington, DC 20004, Telephone: (202) 606–8503/8505, Fax: (202) 606–8647/8672, E-mail: achp@achp.gov

Addendum C—New Source Environmental Assessments

Basic Format for Environmental Assessment

This is the basic format for the Environmental Assessment prepared by EPA from the review of the applicant's Environmental Information Document (EID) required for new source NPDES permits. Comprehensive information should be provided for those items or issues that are affected; the greater the impact, the more detailed information needed. The EID should contain a brief statement addressing each item listed below, even if the item is not applicable. The statement should at least explain why the item is not applicable.

A. General Information
1. Name of applicant
2. Type of facility
3. Location of facility
4. Product manufactured

B. Description Summaries
1. Describe the proposed facility and construction activity
2. Describe all ancillary construction not directly involved with the production processes
3. Describe briefly the manufacturing processes and procedures
4. Describe the plant site, its history, and the general area

C. Environmental Concerns
1. Historical and Archeological (include a statement from the State Historical Preservation Officer)
2. Wetlands Protection and 100-year Floodplain Management (the Army Corps of Engineers must be contacted if any wetland area or floodplain is affected)
3. Agricultural Lands (a prime farmland statement from the Soil Conservation Service must be included)
4. Coastal Zone Management and Wild and Scenic Rivers
5. Endangered Species Protection and Fish and Wildlife Protection (a statement from the U.S. Fish and Wildlife Service must be included)
6. Air, Water and Land Issues: Quality, effects, usage levels, municipal services used; discharges and emissions, runoff and wastewater control, geology and soils involved, land-use compatibility, solid and hazardous waste disposal, natural and man-made hazards involved.
7. Biota concerns: Floral, faunal, aquatic resources, inventories and effects
8. Community Infrastructures available and resulting effects: Social, economic, health, safety, educational, recreational, housing, transportation and road resources.

Addendum D—Notice of Intent Form

BILLING CODE 6560–50–U

NPDES FORM ------

EPA

United States Environmental Protection Agency
Washington, DC 20460

Form Approved
OMB No. ____-____

Notice of Intent for Storm Water Discharges Associated with INDUSTRIAL ACTIVITY Under the Multi-sector NPDES General Permit

Submission of this completed Notice of Intent constitutes notice that the entity in Section B intends to be authorized to discharge pollutants to waters of the United States, from the facility or site identified in Section C, under EPA's Storm Water Multi-sector General Permit (MSGP) identified in Section A of this form. Submission of the NOI also constitutes notice that the party identified in Section B of this form has read, understands, and meets the eligibility conditions of Part I of the MSGP; agrees to comply with all applicable terms and conditions of the MSGP; understands that continued authorization under the MSGP is contingent on maintaining eligibility for coverage, and that implementation of the permittee's pollution prevention plan is required two days after a complete NOI is mailed. In order to be granted coverage, all information required on this form must be completed. Please read and make sure you comply with all permit requirements, including the requirement to prepare and implement a storm water pollution prevention plan. AN NOI FOR COVERAGE UNDER A GENERAL PERMIT IS IN EFFECT A "REGISTRATION" UNDER THE GENERAL PERMIT WHICH HAS ALREADY BEEN PUBLISHED IN THE FEDERAL REGISTER. THE PERMIT LANGUAGE FROM THE FEDERAL REGISTER IS YOUR PERMIT. THE CONFIRMATION LETTER PROVIDED BY THE NOI PROCESSING CENTER THAT ASSIGNS YOUR FACILITY'S PERMIT NUMBER IS ESSENTIALLY JUST A "RECEIPT" FOR YOUR NOI "REGISTRATION."

A. Permit Selection

Permit Coverage Requested Under Permit No. ☐☐ RO5*## ☐ (Enter Permit Area Number from Part 1.1 of the MSGP)

B. Facility Operator Information

1. Name: _____ 2. Phone: _____
3. Mailing Address: a. Street or P.O. Box: _____
b. City: _____ c. State: ☐☐ d. Zip Code: _____-_____
4. Permit Applicant: ☐ Federal ☐ State ☐ Tribal ☐ Private ☐ Other public entity

C. Facility/Site Information

1. Facility/Site Name: _____
2. Location Address: a. Street: _____
b. City: _____ c. County: _____
d. State: ☐☐ e. Zip Code: _____-_____
3. a. Latitude: ☐☐° ☐☐' ☐☐.☐☐☐☐☐" b. Longitude: ☐☐☐° ☐☐' ☐☐.☐☐☐☐☐"
4. Is the facility located on Indian Country lands? Yes ☐ No ☐
5. Is this a Federal facility (e.g., operated for the federal government)? Yes ☐ No ☐
6. Does the facility discharge storm water into:
a. Receiving water(s)? Yes ☐ No ☐
If yes, name(s) of receiving water(s): _____
b. A municipal separate storm sewer system (MS4)? Yes ☐ No ☐
If yes, name of the MS4 operator: _____
7. The 4-digit Standard Industrial Classification (SIC) codes or the 2-letter Activity Codes that best represent the principal products produced or services rendered by your facility and major co-located activities:
Primary: ☐☐☐☐ Secondary (if applicable): ☐☐☐☐ ☐☐☐☐ ☐☐☐☐
8. The applicable sector(s) of industrial activity, as designated in Part 1.2.1 of the MSGP, that include the discharges associated with industrial activity that you seek to have covered under the permit: (check all that apply, up to three)

☐ Sector A	☐ Sector F	☐ Sector K	☐ Sector P	☐ Sector U	☐ Sector Z
☐ Sector B	☐ Sector G	☐ Sector L	☐ Sector Q	☐ Sector V	☐ Sector AA
☐ Sector C	☐ Sector H	☐ Sector M	☐ Sector R	☐ Sector W	☐ Sector AB
☐ Sector D	☐ Sector I	☐ Sector N	☐ Sector S	☐ Sector X	☐ Sector AC
☐ Sector E	☐ Sector J	☐ Sector O	☐ Sector T	☐ Sector Y	☐ Sector AD

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D. Certification

1. a. Based on the instructions in Addendum A of the MSGP, are any listed or proposed threatened or endangered species, or designated critical habitat, in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit? Yes ☐ No ☐

   b. Under which subpart of Part 1.2.3.6.3 (Endangered Species) of the permit are you certifying eligibility?

   ☐ Part 1.2.3.6.3.1 — Not in proximity

   ☐ Part 1.2.3.6.3.2 — Past consultation under Section 7 of the Endangered Species Act

   ☐ Part 1.2.3.6.3.3 — Authorized under Section 10 of the Endangered Species Act

   ☐ Part 1.2.3.6.3.4 — In proximity, but adverse effects unlikely

   ☐ Part 1.2.3.6.3.5 — Addressed in previous certification covering the facility

   c. Was the U.S. Fish and Wildlife Service (FWS) and/or the National Marine Fisheries Service (NMFS) consulted in making your determination of eligibility? Yes ☐ No ☐

2. a. Based on the instructions in Addendum B of the MSGP, are any historic properties listed or eligible for listing on the National Register of Historic Places located on the facility property or in proximity to the discharge? Yes ☐ No ☐

   b. Under which subpart of Part 1.2.3.7.1 (Historic Properties) of the permit are you certifying eligibility?

   ☐ Part 1.2.3.7.1.1 — No adverse effect

   ☐ Part 1.2.3.7.1.2 — Obtained and in compliance with written agreement with SHPO/THPO

   c. Was the State or Tribal Historic Preservation Officer (SHPO or THPO) consulted in making your determination of eligibility? Yes ☐ No ☐

3. Do you certify that a storm water pollution prevention plan (SWPPP) meeting the requirements of Part 4 of the permit has been developed (including attaching a copy of the applicable permit language to the plan)? Yes ☐ No ☐

4. Do you certify under penalty of law that this document and all attachments were prepared under your direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted? Based on your inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, do you certify that the information submitted is, to the best of your knowledge and belief, true, accurate, and complete? Do you certify that you are aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations? Yes ☐ No ☐

Print Name: |_|_|_|

NPDES FORM ---------

EPA

Instructions for Completing the Notice of Intent for Storm Water Discharges Associated with INDUSTRIAL ACTIVITY Under the Multi-sector NPDES General Permit

Form Approved OMB No. ----------

LF = Landfills, land application sites, and open dumps that receive or have received any industrial wastes, including those that are subject to regulation under subtitle D of RCRA [40 CFR 122.28(b)(14)(v)];

SE = Steam electric power generating facilities, including coal handling sites [40 CFR 122.26(b)(14)(vii)];

TW = Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage [40 CFR 122.26(b)(14)(ix)]; or

Alternatively, if your facility or site was specifically designated by your NPDES permitting authority (EPA), enter "**AD.**"

8. Indicate the applicable sector(s) of industrial activity, as designated in Part 1.2.1 of the MSGP, that describe the industrial activity(ies) that you seek to have covered under the permit. The SIC codes or Activity Codes entered in (7) of Section C must coincide with the codes covered by the sector(s) you check here. If your facility has more than one industrial activity requiring permit coverage YOU MUST CHECK EACH SECTOR IN WHICH THE ACTIVITY IS FOUND. For example, an industrial inorganic chemical facility (Sector C) may also have an area used for repair and maintenance of trucks used for transportation of raw materials and finished products (Sector P). The facility operator, therefore, must check both Sector C and Sector P, and comply with both sets of requirements as found in the permit and incorporate the requirements into a comprehensive storm water pollution prevention plan. You may check up to three different sectors.

Section D. Certification

1a. Based on the instructions in Addendum A of the MSGP, indicate if there are any listed or proposed threatened or endangered species, or designated critical habitat, in proximity to the storm water discharges or storm water discharge-related activities to be covered by this permit. Coverage under the MSGP is available only if your storm water discharges and discharge-related activities avoid unacceptable effects on Federally listed endangered and threatened species or designated critical habitat.

b. Indicate under which subpart of Part 1.2.3.6.3 (Endangered Species) of the MSGP you are certifying eligibility to discharge with regard to protection of endangered or threatened species, or designated critical habitat. You must use the process in Addendum A of the permit to determine your eligibility and then keep documentation of your determination with your SWPPP. Addendum A includes a more detailed description of the five choices.

c. Indicate whether you conferred with the U.S. Fish and Wildlife Service (USFWS) and/or the National Marine Fisheries Service (NMFS) regarding the effects of your facility's discharge on listed endangered species and critical habitat and your eligibility to discharge under this permit.

2a. Indicate if there are any historic properties listed or eligible for listing on the National Register of Historic Places located on your facility's property or in proximity to your discharge point to be covered by this permit. In order to be eligible for coverage under the MSGP you must be in compliance with the National Historic Preservation Act.

b. Indicate under which subpart of Part 1.2.3.7.1 (Historic Properties) of the MSGP you are certifying eligibility to discharge with regard to protection of historic properties. You must use the process in Addendum B of the permit to determine your eligibility and then keep documentation of your determination with your SWPPP. Addendum B includes a more detailed description of the two choices.

c. Indicate whether you conferred with the State or Tribal Historic Preservation Officer (SHPO or THPO) regarding the effects of your facility's discharge on historic properties and your eligibility to discharge under this permit.

3. Check "Yes" or "No" as appropriate to certify whether a storm water pollution prevention plan (SWPPP) meeting the requirements of Part 4 of the permit has been developed for your facility or site. The development effort must include attaching a copy of the applicable sections of the MSGP to the plan. The plan must be prepared before you are eligible to obtain permit coverage, therefore, do not submit this NOI until you are able to check "yes" to this certification question.

4. Certification statement and signature. (CAUTION: An unsigned or undated NOI form will prevent the granting of permit coverage.) Federal statues provide for severe penalties for submitting false information on this application form. Federal regulations require this application to be signed as follows:

For a corporation: by a responsible corporate officer, which means:

(i) president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision making functions for the corporation, or

(ii) the manager of one or more manufacturing, production, or operating facilities, provided the manager is authorized to make management decisions which govern the operation of the regulated facility including having the explicit or implicit duty of making major capital investment recommendations, and initiating and directing other comprehensive measures to assure long term environmental compliance with environmental laws and regulations; the manager can ensure that the necessary systems are established or actions taken to gather complete and accurate information for permit application requirements; and where authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

For a partnership or sole proprietorship: by a general partner or the proprietor; or

For a municipal, State, Federal, or other public facility: by either a principal executive or ranking elected official.

Paperwork Reduction Act Notice

Public reporting burden for this certification is estimated to average 3.7 hours per certification, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose to provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. Send comments regarding the burden estimate, any other aspect of the collection of information, or suggestions for improving this form, including any suggestions which may increase or reduce this burden to: Director, OPPE Regulatory Information Division (2137), USEPA, 401 M Street, SW, Washington, D.C. 20460. Include the OMB control number of this form on any correspondence. Do not send the completed NOI form to this address.

EPA Form XXXX-XX (12-99) Page 4 of 4

BILLING CODE 6560-50-C

Addendum E—Notice of Termination Form

EPA does not plan to change the current NOT form—a copy will be included with the final permit.

Addendum F—No Exposure Certification Form

In conjunction with the new Phase II storm water rule, EPA created a "No Exposure" permitting exclusion option for Phase I storm water discharges associated with industrial activity (other than construction). In order to claim this exclusion, a discharger must meet the eligibility conditions at 40 CFR 122.26(g) and submit, once every five years, a certification of eligibility. While a copy of the "No Exposure" form was published along with the Phase II storm water rule (64 FR 68722, December 8, 1999), EPA requests comment on whether an additional copy should be provided as an addendum to the MSGP.

[FR Doc. 00-7203 Filed 3-29-00; 8:45 am]

BILLING CODE 6560-50-U

Federal Register

Thursday,
March 30, 2000

Part III

Department of Housing and Urban Development

24 CFR Part 3280

Condensation Control for Exterior Walls of Manufactured Homes Sited in Humid and Fringe Climates; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 3280

[Docket No. FR–4578–P–01]

Manufactured Home Construction and Safety Standards; Condensation Control for Exterior Walls of Manufactured Homes Sited In Humid and Fringe Climates; Notice of Proposed Regulatory Waiver

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Proposal of waiver; request for comments.

SUMMARY: This notice advises the public of HUD's proposal to issue a waiver of its regulations regarding manufactured home construction and safety standards. HUD may issue a final regulatory waiver after reviewing the public comments received in response to this notice. HUD proposes to waive certain provisions of these regulations when manufacturers, at their option, utilize the alternatives provided in this notice to reduce the problems currently being experienced in humid and fringe climate areas. Presently, there are no provisions in HUD's regulations that separately address condensation control and vapor retarder requirements for manufactured homes sited in warm, moist climates of the South Atlantic and Gulf Regions. The states have provided HUD with information that indicates there is an immediate need to consider alternate requirements for exterior walls in these humid and fringe climate areas, to prevent moisture damage due to condensation. HUD intends for this waiver to be in place for no more than 24 months, as permanent changes to the regulations are being considered.

DATES: *Comment due date:* May 1, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Rebecca J. Holtz, Acting Director, Office of Consumer and Regulatory Affairs, Room 9146, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410–8000; telephone (202) 708–0502 (this is not a toll-free telephone number). Hearing or speech-impaired individuals may access this telephone number via TTY by calling the toll-free Federal Information Relay Service at 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

Manufacturers and State Administrative Agencies (SAAs) in southeastern States have recently reported an increase in the number and severity of consumer complaints caused primarily by moisture build-up and condensation in homes located in the south. They suggest this increase in complaints coincides with the Department's implementing more stringent energy efficiency requirements in its regulations regarding manufactured home construction and safety standards located at 24 CFR part 3280 (referred to as the "Standards").

At present, the Standards at 24 CFR 3280.504 do not distinguish between climates for requirements for condensation control and installation of vapor retarders. Thus, for example, the Standards do not separately address homes placed in humid and fringe environments or climates, which are predominantly located in the southeastern part of the United States. In these climates, it may be beneficial to prevent the outside, moisture laden air from entering through the warm (exterior) side of the home's exterior wall and condensing and collecting on the cold (living space or interior) side of the wall assembly. One means of preventing moisture from entering the exterior wall cavity from the outside, would be to install a vapor retarder on the warm or exterior side of the wall instead of on the interior or living space side of the exterior wall.

The interior surface of the exterior wall should also then be constructed of a permeable material. This would permit any moisture-laden air that may have entered the wall cavity through a discontinuity in the exterior vapor retarder to be dissipated through the interior permeable material. In such cases, use of vapor retarder paints, vinyl covered gypsum wallboard, or other impermeable materials or finishes on the interior side of exterior walls would be detrimental, because they would trap moisture within the wall.

II. This Notice

To address these concerns, HUD is considering issuing a waiver to the current condensation control and vapor barrier installation requirements for exterior walls in humid and fringe climates. Specifically, this waiver would allow for manufacturers, in humid and fringe climates, to install the vapor retarder on the exterior rather than interior or living space side of the exterior wall. The proposed waiver will permit manufacturers to locate the vapor retarder on the exterior side of the wall assembly provided there is no vapor retarder on the interior and the interior finish or interior wall panels are designed with a three perms or higher rating. The waiver will also require manufacturers to add a statement and a map to the data plate indicating that the home is only suitable for installation in humid and fringe climates and provide a map to designate the acceptable locations.

The Department intends for the final waiver to be effective for a period not to exceed 24 months. This will permit the Department to consider recommendations received from the National Fire Protection Association (NFPA), research, field data obtained from the use of this waiver, and other information to effectuate changes to the standards of a more permanent nature.

III. NFPA Consensus Standards Process

HUD has designated the NFPA to undertake a consensus process in developing recommendations for new manufactured housing standards. Participants in the NFPA process met in December 1999, to discuss comments received on recommended standards changes. One such recommendation that was discussed involved changes to HUD's regulation at 24 CFR 3280.504(b)(1) for homes sited in "humid climates" or "fringe climates" as set forth in figure 16, Chapter 21, 1989 ASHRAE Handbook of Fundamentals. (The Humid and Fringe Climate Map being proposed in this waiver is based on figure 16 in ASHRAE.) HUD looks forward to receiving the results of the consensus process and does not intend for this proposed waiver to undermine a consensus approach to standards revisions on this matter.

IV. Alternative Methods

This proposed waiver is not intended to limit alternate approaches by manufactured home producers in utilizing other solutions to assure that homes built and sited in warm humid and fringe climates are durable and free of moisture related problems. Other methods of moisture control that meet the intent of the 24 CFR part 3280 and this proposed waiver may be submitted for review and consideration in accordance with 24 CFR 3282.14 (entitled "Alternate Construction of Manufactured Homes").

V. Comments Requested

Comments are specifically requested on the Department's decision to proceed with a waiver in warm humid and fringe climates to permit the vapor retarder to be located on the warm side of exterior walls.

VI. Proposed Waiver

In accordance with 24 CFR 3280.8, the Secretary hereby proposes to waive the specific requirements of 24 CFR 3280.504(b)(1) for homes to be sited in a humid or fringe climate as identified in section VI.F. of this waiver. Manufacturers who elect to utilize this alternative rather than to follow the requirements of the existing standards in 24 CFR 3280.504(b)(1), must produce homes in accordance with the following requirements (all other requirements of the Standards continue to apply):

A. Exterior walls must be constructed with a vapor retarder of not greater than 1.0 perm (dry cup method) or an exterior finish and sheathing with a combined permeance of not greater than 1.0 perm installed on the exterior (warm side) of the wall assembly.

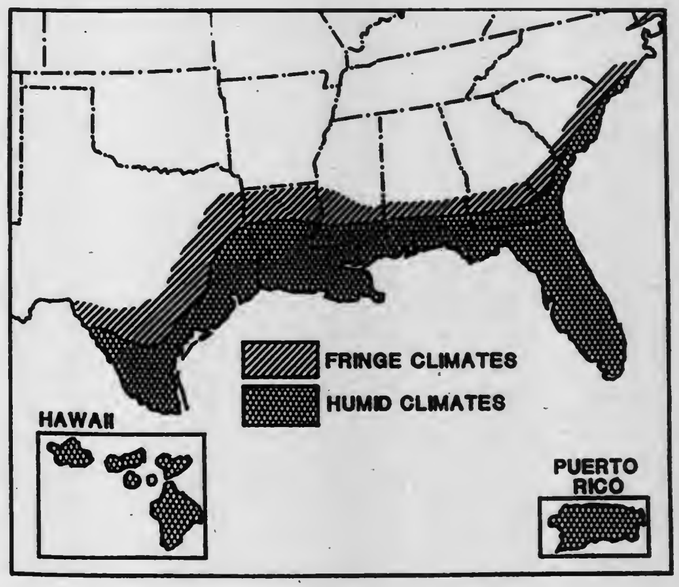
B. The interior finish and interior wall panel materials shall be designed to have a combined vapor permeance greater than 3.0 perms (dry cup method). Vapor retarder paint, vinyl covered gypsum wall panels, and other impermeable interior surfaces or finishes that have a combined rating less than 3.0 perms (dry cup method) shall be prohibited.

C. Exterior wall cavities shall not be ventilated to the outdoors.

D. An additional statement shall be provided on the data plate required by 24 CFR 3280.5 that indicates: "As designed and constructed, this home is suitable for installation only in humid and fringe climates as shown on the Humid and Fringe Climate Map provided with this data plate." The statement is to be typed in bold face using letters at least ¼ inch in size.

E. A reproduction of the following Humid and Fringe Climate Map is to be provided on the data plate.

Humid and Fringe Climate Map



F. The following areas of local governments (listed by State) are deemed to be within the humid and fringe climate areas shown on the Humid and Fringe Climate Map, and this waiver would apply to homes built to be sited within these jurisdictions:

Alabama

Baldwin, Barbour, Bullock, Butler, Chootaw, Clarke, Cofee, Conecuh, Covington, Crenshaw, Dale, Escambia, Geneva, Henry, Houston, Lowndes, Marengo, Mobile, Monroe, Montgomery, Pike, Washington, Wilcox.

Florida

All counties and locations within the State of Florida.

Georgia

Appling, Atkinson, Bacon, Baker, Ben Hill, Berrien, Brantley, Brooks, Bryan, Calhoun, Camden, Charlton, Chatham, Clay, Clinch, Coffee, Colquitt, Cook, Crisp, Decatur, Dougherty, Early, Echols, Effingham, Evans, GlynnWayne, Grady, Irwin, Jeff Davis, Lanier, Lee, Liberty, Long, Lowndes, McIntosh, Miller, Mitchell, Pierce, Quitman,

Randolph, Seminole, Tattnall, Terrell, Thomas, Tift, Turner, Ware, Worth.

Louisiana

All counties and locations within the State of Louisiana.

Mississippi

Adams, Amite, Clairborne, Clarke, Copiah, Covington, Forrest, Franklin, George, Greene, Hancock, Harrison, Hinds, Issaquena, Jackson, Jasper, Jefferson, Jefferson Davis, Jones, Lamar, Lawrence, Lincoln, Pearl River, Perry, Pike, Rankin, Simpson, Smith, Stone, Walthall, Warren, Wayne, Wilkinson.

North Carolina

Brunswick, Carteret, Columbus, New Hanover, Onslow, Pender.

South Carolina

Jasper, Beaufort, Colleton, Dorchester, Charleston, Berkeley, Georgetown, Horry.

Texas

Anderson, Angelina, Aransas, Atascosa, Austin, Bastrop, Bee, Bexar, Brazoria, Brazos, Brooks, Burleson, Caldwell, Calhoun, Cameron, Camp, Cass, Chambers, Cherokee, Colorado, Comal, De Witt, Dimmit, Duval, Falls, Fayette, Fort Bend, Franklin, Freestone, Frio, Gavelston, Goliad, Gonzales, Gregg, Grimes, Guadalupe, Hardin, Harris, Harrison, Hays, Henderson, Hidalgo, Hopkins, Houston, Jackson, Jasper, Jefferson, Jim Hogg, Jim Wells, Karnes, Kaufman, Kennedy, Kinney, Kleberg, La Salle, Lavaca, Lee, Leon, Liberty, Limestone, Live Oak, Madison, Marion, Matagorda, Maverick, McMullen, Medina, Milam, Montgomery, Morris, Nacogdoches, Navarro, Newton, Nueces, Orange, Panola, Polk, Rains, Refugio, Robertson, Rusk, Sabine, San Augistine, San Jacinto, San Patricio, Shelby, Smith, Starr, Titus, Travis, Trinity, Tyler, Upshur, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Washington, Webb, Wharton, Willacy, Williamson, Wilson, Wood, Zapata, Zavala.

Dated: March 23, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–7782 Filed 3–29–00; 8:45 am]

BILLING CODE 4210–27–P

Federal Register

Thursday,
March 30, 2000

Part IV

Department of Housing and Urban Development

Section 8 Rental Certificate and Rental Voucher Programs, FY 2000; Family Self-Sufficiency Program Coordinators; Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4546–N–01]

Notice of Funding Availability Family Self-Sufficiency (FSS) Program Coordinators for the Section 8 Rental Certificate and Rental Voucher Programs for Fiscal Year 2000

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of Funding Availability for Fiscal Year (FY) 2000 for Section 8 Family Self-Sufficiency Program Coordinators.

SUMMARY: *Purpose of Program:* The Section 8 FSS program is intended to promote the development of local strategies to coordinate the use of assistance under the Section 8 certificate and voucher programs with public and private resources to enable participating families to achieve economic independence and self-sufficiency. An FSS program coordinator assures that program participants are linked to the supportive services they need to achieve self-sufficiency.

Available Funds: This NOFA announces the availability of up to $29 million in Fiscal Year (FY) 2000 to fund Section 8 Family Self-Sufficiency (FSS) program coordinators.

Eligible Applicants: Public housing agencies (PHAs) eligible to receive funding under this NOFA are only those that received funding under one of the FY 99 NOFAs for Section 8 FSS Program Coordinators and that continue to operate a Section 8 FSS program.

Application Deadline: The application deadline for FSS Program Coordinator funding under this NOFA is May 30, 2000, at the time described under section I of Additional Information of this NOFA.

ADDITIONAL INFORMATION

I. Application Due Date, Application Kits, and Technical Assistance

Application Due Date: The application deadline for Section 8 FSS Program Coordinator funding under this NOFA is May 30, 2000, at the time described in section I of this NOFA. The application deadline is firm as to date and hour. In the interest of fairness to all competing PHAs, HUD will treat as ineligible for consideration any application that is not received by the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. HUD will not accept, at any time during the NOFA competition, application materials sent via facsimile (FAX) transmission.

Official Place of Application Receipt: The original and a copy of the application should be submitted to Michael E. Diggs, Director of the PIH Grants Management Center, U.S. Department of Housing and Urban Development, 501 School Street, Suite 804, Washington, DC 20024 and one copy to the local HUD Field Office. In the interest of fairness to all competing applicants, HUD will not consider any application that is not submitted to and received by the PIH Grants Management Center at the address indicated above. For ease of reference, the term "GMC" will be used throughout the NOFA to mean the PIH Grants Management Center.

Mailed Applications: Applications will be considered timely filed if postmarked on or before 12 midnight on the application due date and received by the PIH Grants Management Center on or within ten (10) days of the application due date.

Applications Sent by Overnight/Express Mail Delivery: Applications sent by overnight delivery or express mail will be considered timely filed if received by the appropriate PIH Grants Management Center before or on the application due date, or upon submission of documentary evidence that they were placed in transit with the overnight delivery service by no later than the specified application due date.

Hand Carried Applications: Applications must be delivered to the PIH Grants Management Center by 5 pm on the due date. Hand carried applications will be accepted during normal business hours before the application due date.

For Application Kits, Further Information and Technical Assistance: There is no application kit for this NOFA. For answers to your questions, you may contact either the Public and Indian Housing Resource Center at 1–800–955–2232 or the HUB Director of Public Housing or the Program Center Coordinator in the local HUD Field Office. Hearing- or speech-impaired individuals may call HUD's TTY number 1–800–877–8339 (the Federal Information Relay Service TTY). Information can be accessed via the Internet at http://www.hud.gov. Prior to the application deadline, staff at the numbers given above will be available to provide general guidance, but not guidance in actually preparing the application. Following selection, but prior to award, HUD staff will be available to assist in clarifying or confirming information that is a prerequisite to the offer of an award by HUD.

II. Amount Allocated

For FY 2000, up to $29 million is available for PHA administrative fees for Section 8 FSS program coordinators. This amount is composed of $25.1 million from the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 2000 (Pub. L. 106–74, enacted October 21, 1999), and approximately $3.4 million in FY 1999 carryover authority from the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105–276, approved October 21, 1998). All of the approximately $29 million being made available in FY 2000 will be provided to those PHAs that received funds in response to the FY 99 Section 8 FSS program coordinator NOFAs. This is the seventh fiscal year of funding for Section 8 FSS program coordinators.

HUD Corrections to Funding Provided Under the FY 99 NOFA

If prior to award of funding under the FY 2000 Section 8 FSS NOFA, HUD determines that any PHAs have been underfunded in amounts awarded under the FY 99 FSS Program Coordinator NOFAs, before funding any applications under the FY 2000 NOFA, the Department will increase funding to the amount that the PHAs should have received under the FY 99 FSS NOFAs with funding available under the FY 2000 FSS NOFA.

III. Program Description; Eligible Applicants; Eligible Activities

(A) Program Description

In the earliest FSS program coordinator NOFAs, HUD provided funding for Section 8 FSS program coordinators only to PHAs with Section 8 programs of fewer than 1,000 units. The FY 1994 and FY 1995 funds were awarded to these PHAs based on a request for funding, and all complete applications were funded. The FY 1996 funds were awarded based on a competitive NOFA. In FY 1996, state and regional PHAs that administered more than 1,000 rental vouchers and certificates, but fewer than 1,000 mandatory FSS slots, were also eligible to apply, and some received funding. In FY 1997, HUD allocated funds for Section 8 FSS program coordinators to allow PHAs that were previously

funded to continue to pay a Section 8 FSS coordinator. Since funding for Section 8 FSS program coordinators was limited, HUD did not accept applications from PHAs that were not previously funded. In FY 1998 HUD awarded funds to PHAs that were funded for Section 8 FSS program coordinators in FY 1997 to continue to pay for an FSS coordinator for another year and was also able to fund additional eligible small PHAs and state and regional PHAs that did not receive Section 8 FSS program coordinator funding in the previous year. HUD extended eligibility for funding under the FY 98 NOFA to include PHAs operating voluntary Section 8 FSS programs as well as those with mandatory Section 8 FSS programs.

In FY 99, HUD published two Section 8 FSS NOFAs that made a sufficient amount available to continue funding for another year to those PHAs that received funding under the FY 98 NOFA. In FY 99 HUD was also able to fund applications from PHAs (including state and regional HAs) that were not funded in FY 98, for PHAs with approval to administer voluntary or mandatory Section 8 FSS programs of at least 25 slots.

Under the FY 99 NOFAs, for the first time, there was no maximum Section 8 rental certificate/voucher program size limit for PHAs eligible to apply for funding under the NOFA.

The response to the FY '99 NOFA was so strong that HUD expects to need all available funds in FY 2000 for renewals of Section 8 FSS program coordinators funded under the FY 99 NOFAs to allow PHAs to continue to pay a Section 8 FSS program coordinator for another year.

(B) Eligible Applicants

Subject to the availability of sufficient funding, all PHAs that received funding under one of the FY 99 NOFAs for Section 8 FSS program coordinators that are still operating Section 8 FSS programs will be funded in FY 2000, except those PHAs submitting applications that are ineligible under Section VII.(C) of this NOFA, provided the PHA continues to operate a Section 8 FSS program, has hired a Section 8 FSS program coordinator with funding awarded for that purpose under one of the FY '99 FSS program coordinator NOFAs, and has made progress in implementing the FSS program demonstrated by having completed activities in each of the categories in section 2 of the required Attachment A certification of this NOFA. Subject to the availability of funds, the eligible PHAs funded in FY 99 will receive 103 percent of FY 99 funding (not to exceed $47,700) unless the PHA requests a lower amount or the salary comparability information submitted by the PHA supports approval of a lower amount. HUD will not provide FY 2000 funding to any PHA that received Section 8 FSS Program Coordinator funding in FY 99 that does not comply with all of the above requirements.

(C) Eligible Activities

Funds are available under this NOFA to employ or otherwise retain the services of up to one Section 8 FSS program coordinator for one year. A part-time Section 8 FSS program coordinator may be retained where appropriate. Under the Section 8 FSS program, PHAs are required to use Section 8 rental assistance together with public and private resources to provide supportive services to enable participating families to achieve economic independence and self-sufficiency. Effective delivery of supportive services is a critical element in a successful FSS program.

IV. Program Requirements

(A) Program Coordinator Role

PHAs administering the FSS program use program coordinating committees (PCCs) to assist them to secure resources and implement the FSS program. The PCC is made up of representatives of local government, job training and employment agencies, local welfare agencies, educational institutions, child care providers, nonprofit service providers, and businesses.

An FSS program coordinator works with the PCC and with local service providers to assure that program participants are linked to the supportive services they need to achieve self-sufficiency. The FSS program coordinator may ensure, through case management, that the services included in participants' contracts of participation are provided on a regular, ongoing and satisfactory basis, and that participants are fulfilling their responsibilities under the contracts.

(B) Staffing Guidelines

Under normal circumstances, a full-time FSS program coordinator should be able to serve approximately 50 FSS participants, depending on the coordinator's case management functions.

(C) Other Requirements

(1) Compliance With Fair Housing and Civil Rights Laws.

All applicants must comply with all fair housing and civil rights laws, statutes, regulations, and executive orders as enumerated in 24 CFR 5.105(a). If an applicant: (a) Has been charged with a systemic violation of the Fair Housing Act by the Secretary alleging ongoing discrimination; (b) is the defendant in a Fair Housing Act lawsuit filed by the Department of Justice alleging an ongoing pattern or practice of discrimination; or (c) has received a letter of noncompliance findings under Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, or section 109 of the Housing and Community Development Act of 1974, the applicant's application will not be evaluated under this NOFA if, prior to the application deadline, the charge, lawsuit, or letter of findings has not been resolved to the satisfaction of the Department. HUD's decision regarding whether a charge, lawsuit, or a letter of findings has been satisfactorily resolved will be based upon whether appropriate actions have been taken necessary to address allegations of ongoing discrimination in the policies or practices involved in the charge, lawsuit, or letter of findings.

(2) Additional Nondiscrimination Requirements.

Applicants must comply with the Americans with Disabilities Act, and Title IX of the Education Amendments Act of 1972. In addition to compliance with the civil rights requirements listed at 24 CFR section 5.105, each successful applicant must comply with the nondiscrimination in employment requirements of Title VII of the Civil Rights Act of 1964, U.S.C. sections 2000e *et seq.*; the Equal Pay Act, 29 U.S.C. section 206(d); the Age Discrimination in Employment Act of 1967, 29 U.S.C. sections 621 *et seq.*, and Titles I and V of the Americans with Disabilities Act, 42 U.S.C. sections 12101 *et seq.*

(3) Affirmatively Furthering Fair Housing.

Each successful applicant will have a duty to affirmatively further fair housing. After the application is approved, applicants will be required to identify the specific steps that they will take to: (a) Address the elimination of impediments to fair housing that were identified in the jurisdiction's Analysis of Impediments (AI) to Fair Housing Choice; (b) remedy discrimination in housing; or (c) promote fair housing rights and fair housing choice. Further, applicants have a duty to carry out the specific activities cited in their responses in a manner which will affirmatively further fair housing.

V. Application Selection Process

The funds available under this NOFA are not being awarded on a competitive basis. The Department anticipates that there will be sufficient funds available under the NOFA to fund all applications that meet the NOFA requirements. Applications will be reviewed by the GMC to determine whether or not they are technically adequate based on the NOFA requirements. Categories of applications that will not be funded are stated in section VII(C) of this NOFA.

All technically adequate applications will be funded to the extent funds are available. If HUD receives applications for funding greater than the amount made available under this NOFA, HUD will fund eligible applicants in size order starting from the smallest PHAs first (*i.e.*, those PHAs with the smallest combined rental voucher and certificate programs first). Section 8 program size will be determined by HUD using baseline data developed by the Department. If there are not sufficient monies to fund all applications from PHAs with the same combined Section 8 rental certificate voucher program size, funding will be provided based on the size of the PHA's Section 8 FSS program, reflected in the PHA's HUD-approved Section 8 FSS Action Plan, starting with the largest approved Section 8 FSS program. If there is insufficient money remaining to fully fund the last application funded, HUD will provide residual funding to that application in an amount less than the amount requested by the PHA, unless the PHA is unwilling to accept the lower amount.

VI. Application Submission Requirements

(A) Each PHA that received funding for a Section 8 FSS program coordinator under one of the FY 99 NOFAs that wishes to receive funding under this NOFA must complete a certification in the format shown as "Attachment A" of this NOFA, which includes all information required in "Attachment A." The completed Attachment A certification along with the Fair Housing Certification (Attachment B of this NOFA) and the Certification Regarding Lobbying (Attachment C of this NOFA) constitute the entire HA application for funding under this section. These three certifications and supporting documents must be submitted to the GMC by the due date.

(B) *Fair Housing Certification and Certification Regarding Lobbying:* All PHAs applying for funding under this NOFA must submit the Certification Regarding Fair Housing and Equal Opportunity which is included as Attachment B of this NOFA and the Certification Regarding Lobbying which is Attachment C of this NOFA.

VII. Corrections to Deficient Applications

(A) Acceptable Applications

To be eligible for processing, an application must be received by the GMC no later than the date and time specified in this NOFA. The GMC will initially screen all applications and notify PHAs of technical deficiencies by letter.

(B) Correction of Deficient Applications

After the application due date, HUD may not, consistent with 24 CFR part 4, subpart B, consider unsolicited information from an applicant. HUD may contact an applicant, however, to clarify an item in the application or to correct technical deficiencies. Applicants should note, however, that HUD may not seek clarification of items or responses that improve the substantive quality of the applicant's response to any eligibility or selection criterion. *Examples* of curable technical deficiencies include failure to submit the proper certifications or failure to submit an application containing an original signature by an authorized official. In each case, HUD will notify the applicant in writing by describing the clarification or technical deficiency. HUD will notify applicants by facsimile or by return receipt requested. Applicants must submit clarifications or corrections of technical deficiencies in accordance with the information provided by HUD within 14 calendar days of the date of receipt of the HUD notification. If the deficiency is not corrected within this time period, HUD will reject the application as incomplete.

(C) Unacceptable Applications

(1) After the 14-calendar day technical deficiency correction period, the GMC will disapprove PHA applications that it determines are not acceptable for processing. The HUD notification of rejection letter must state the basis for the decision.

(2) Applications from PHAs that fall into any of the following categories are ineligible for funding under this NOFA and will not be processed:

(a) An PHA application submitted after the deadline date for this NOFA.

(b) An application from a PHA that is not an eligible PHA under III.(B) of this NOFA or an application that does not comply with the requirements of VI.(A) or VI.(B) of this NOFA.

(c) An application from a PHA that does not meet the requirements of IV.C.(1) of this NOFA, Compliance with Fair Housing and Civil Rights Laws.

(d) An application from a PHA that at the end of the 14-calendar day technical correction period has not made progress satisfactory to HUD in resolving serious outstanding Inspector General audit findings, or serious outstanding HUD management review findings for one or more of the following programs: Rental Voucher, Rental Certificate or Moderate Rehabilitation. Serious program management findings are those that would cast doubt on the capacity of the PHA to administer its Section 8 programs in accordance with applicable HUD regulatory and statutory requirements.

VIII. Findings and Certifications

(A) Paperwork Reduction Act

The Section 8 information collection requirements contained in this notice were submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520) and have been assigned OMB control number 2577–0198. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

(B) Environmental Requirements

In accordance with provisions of 24 CFR part 50.19(c)(5)(ii), a finding of no significant impact is not required under this Notice. This NOFA provides funding under 24 CFR part 984, which does not contain environmental review provisions because it concerns activities that are listed in 24 CFR 50.19(b) as categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 CFR 4321) ("NEPA"). Accordingly, under 24 CFR 50.19(c)(5), this NOFA is categorically excluded from environmental review under NEPA. No environmental review is required in connection with the award of assistance under this NOFA, because the NOFA only provides funds for employing a coordinator that provides public and supportive services, which are categorically excluded under 24 CFR 50.19(b)(4) and (12).

(C) Catalog of Federal Domestic Assistance Numbers

The catalog of Federal Domestic Assistance number for the Section 8 rental certificate program is 14.855. The number for the Section 8 rental voucher program is 14.857.

(D) Executive Order 13132, Federalism

This notice does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order. The NOFA makes funds available for HAs to employ or otherwise retain the services of up to one FSS program coordinator for one year. As such, there are no direct implications on the relationship between the national government and the states or on the distribution of power and responsibilities among various levels of government.

(E) Accountability in the Provision of HUD Assistance

Section 102 of the Department of Housing and Urban Development Reform Act of 1989 (HUD Reform Act) and the final rule codified at 24 CFR part 4, subpart A, published on April 1, 1996 (61 FR 1448), contain a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. On January 14, 1992, HUD published, at 57 FR 1942, a notice that also provides information on the implementation of section 102. The documentation, public access, and disclosure requirements of section 102 are applicable to assistance awarded under this NOFA as follows:

Documentation and Public Access Requirements

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate that basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis.

Disclosures

HUD will make available to the public for five years all applicant disclosure reports (HUD Form 2880) submitted in connection with this NOFA. Update reports (also Form 2880) will be made available along with the applicant disclosure reports, but in no case for a period of less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15.

(F) Section 103 HUD Reform Act

HUD will comply with section 103 of the Department of Housing and Urban Development Reform Act of 1989 and HUD's implementing regulations in subpart B of 24 CFR part 4 with regard to the funding competition announced today. These requirements continue to apply until the announcement of the selection of successful applicants. HUD employees involved in the review of applications and in the making of funding decisions are limited by section 103 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under section 103 and subpart B of 24 CFR part 4.

Applicants or employees who have ethics related questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) For HUD employees who have specific program questions, such as whether particular subject matter can be discussed with persons outside HUD, the employee should contact the appropriate Field Office Counsel.

(G) Prohibition Against Lobbying Activities

Applicants for funding under this NOFA are subject to the provisions of section 319 of the Department of Interior and Related Agencies Appropriation Act for Fiscal Year 1991 (31 U.S.C. 1352) (the Byrd Amendment) and to the provisions of the Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995).

The Byrd Amendment, which is implemented in regulations at 24 CFR part 87, prohibits applicants for Federal contracts and grants from using appropriated funds to attempt to influence Federal executive or legislative officers or employees in connection with obtaining such assistance, or with its extension, continuation, renewal, amendment, or modification. The Byrd Amendment applies to the funds that are the subject of this NOFA. Therefore, applicants must file a certification stating that they have not made and will not make any prohibited payments and, if any payments or agreement to make payments of nonappropriated funds for these purposes have been made, a form SF–LLL disclosing such payments must be submitted. The certification and the SF–LLL are included as Attachment D of this NOFA.

The Lobbying Disclosure Act of 1995 (Pub. L. 104–65; approved December 19, 1995), which repealed section 112 of the HUD Reform Act, requires all persons and entities who lobby covered executive or legislative branch officials to register with the Secretary of the Senate and the Clerk of the House of Representatives and file reports concerning their lobbying activities.

IX. Authority

The Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2000 (Pub. L. No. 106–74, enacted October 21, 1999) allows funding for program coordinators under the Section 8 FSS program. As a result, the Department determined to make a sufficient amount available under this NOFA, under Part 984, in accordance with section 984.302(b), to enable PHAs to employ up to one Section 8 FSS program coordinator for one year at a reasonable cost as determined by the PHA and HUD, based on salaries for similar positions in the locality.

Dated: March 23, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

Attachment A—Required Certification Format for FY 2000 Section 8 FSS Program Coordinator Funding [1]

Mr. Michael E. Diggs, Director, Grants Management Center, 501 School Street, Suite 804, Washington, DC 20024.

Dear Mr. Diggs: In connection with the FY 2000 NOFA for Section 8 FSS program coordinators, I hereby certify for the _____ (enter PHA name) [2] that:

(1) The PHA which received funding under a FY '99 FSS program coordinator NOFA, continues to operate a Section 8 FSS program and has hired a Section 8 FSS program coordinator using HUD funds provided for

[1] To be eligible for funding under this NOFA, PHAs must have received Section 8 FSS Program Coordinator funding under a FY 99 FSS NOFA, must have hired an FSS program coordinator with funding awarded under that NOFA, must demonstrate activities in each of the categories in section 2(a), 2(b), and 2(c) of this Attachment A certification and must still be operating a Section 8 FSS program.

[2] For joint applications, please indicate the names of all co-applicants and identify the lead PHA that received and administered funds received under the FY '99 NOFA.

that purpose on _____ (enter the ACC effective date of Section 8 FY 99 FSS program coordinator funding increment), and

(2) The PHA has (check all that apply):

__ (a) Formed and convened an FSS program coordinating committee,

__ (b) Obtained HUD approval of its Section 8 FSS action plan,

__ (c) Executed contracts of participation with FSS participants.

(3) Total number of Section 8 FSS program slots based on the number of (both voluntary and mandatory) FSS slots identified in the PHA's HUD-approved Action Plan OR, when HAs are applying jointly, the combined total of Section 8 FSS program slots in the HUD-approved Action Plans of the PHAs: _____.

(4) Amount requested under the FY 2000 Section 8 FSS NOFA: _____.

(5) Section 8 FSS Program Coordinator Salary:

a. *Salary level*, based on salaries for comparable jobs (modified by number of hours worked) _____.

b. *Annual salary* plus Fringe Benefits: _____ Hours/Week; _____ $/Hour; _____ Fringe Rate (%); Annual Salary: _____.

(6) Attachment: Evidence demonstrating salary comparability to similar positions in the local jurisdiction.

If there are any questions, please contact _____ at _____.

Sincerely,

Executive Director.

Attachments

Attachment B—Fair Housing and Equal Opportunity Certifications

The housing agency (PHA) certifies that in administering the funding for the Section 8 Family Self-Sufficiency program coordinators it will comply with the requirements of the Fair Housing Act, Title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975, and will affirmatively further fair housing. CDBG recipients also must certify to compliance with section 109 of the Housing and Community Development Act.

_____

Name of PHA

_____

Signature and Title of PHA Representative

_____

Date

Attachment C—Certification Regarding Lobbying

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form–LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1342, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature of PHA Representative _____
Name of Signatory (print or type) _____
Name of PHA _____
Date signed _____

[FR Doc. 00–7781 Filed 3–29–00; 8:45 am]

BILLING CODE 4210–33–P



Federal Register

Thursday,
March, 30, 2000

Part V

Department of Housing and Urban Development

24 CFR Parts 201 and 202

Strengthening the Title I Property Improvement and Manufactured Home Loan Insurance Programs and Title I Lender/Title II Mortgagee Approval Requirements; Proposed Rule

II. Proposed Regulatory Changes to the bearing escrow account until they are of cash (or its equivalent acceptable to

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Parts 201 and 202

[Docket No. FR–4246–P–01]

RIN: 2502–AG95

Strengthening the Title I Property Improvement and Manufactured Home Loan Insurance Programs and Title I Lender/Title II Mortgagee Approval Requirements

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend HUD's regulations for the Title I Property Improvement and Manufactured Housing Loan Insurance programs. The changes are designed to enhance program controls and strengthen the financial viability of the programs. Among other amendments, this proposed rule would require that lenders disburse the proceeds of a direct property improvement loan in excess of $7,500 using a draw system, similar to that used in construction lending; expand and strengthen the on-site inspection requirements applicable to dealer and direct property improvement loans; and require that a lien securing a property improvement loan in excess of $7,500 must occupy no less than a second lien position. The proposed rule would also require that a lender disburse Title I dealer property improvement loan proceeds either solely to the borrower, or jointly to the borrower and dealer or other parties to the transaction. HUD also proposes to increase the insurance charge for Title I property improvement and manufactured housing loan insurance. Additionally, the proposed rule would also conform the liquidity requirements applicable to the Title I program to those currently applicable to the Title II Single Family Mortgage Insurance program. Finally, the rule would increase the net worth requirements applicable to both the Title I and Title II programs.

DATES: Comments due date: May 30, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Regulations Division, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–0500. Communications should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Office of Single Family Program Development, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

A. Title I Loan Insurance

Section 2 of Title I of the National Housing Act (12 U.S.C. 1703) authorizes HUD to insure approved lenders against losses sustained as a result of borrower defaults on property improvement loans and manufactured home loans. The regulations implementing the Title I Loan Insurance programs are located in 24 CFR part 201. Additionally, the HUD regulations at 24 CFR part 202 establish minimum standards and requirements for approval by the Secretary of HUD of lenders and mortgagees to participate in both the Title I programs and the Title II Single Family Mortgage Insurance program. The programs are administered by HUD's Office of Housing-Federal Housing Administration (FHA).

B. Property Improvement Loans

The Title I property improvement loan program is often the most viable, cost-effective mechanism for individuals to finance property improvements. Under the program, HUD–FHA makes it easier for consumers to obtain affordable loans by insuring such loans made by private lenders to improve properties that meet certain requirements. Title I loans may be used to finance permanent property improvements that protect or improve the basic livability or utility of the property. Only lenders approved by HUD specifically for the program can make loans covered by Title I insurance. Eligible borrowers include the owner of the property to be improved, the person leasing the property (with a fixed lease term that expires not less than 6 calendar months after the final maturity of the loan), or someone purchasing the property under a land installment contract.

C. Manufactured Home Loans

HUD has been insuring loans on manufactured homes under Title I since 1969. By protecting lenders against the risk of default, HUD's participation has encouraged them to finance manufactured homes, which had traditionally been financed as personal property through comparatively high-interest, short term consumer installment loans. The Title I manufactured home loan program, therefore, increases the availability of affordable financing for buyers of manufactured homes. All buyers who plan to purchase manufactured homes as their principal place of residence are eligible to participate in the program. Approved lending institutions are eligible for insurance on loans made under the program. Buyers of manufactured homes may obtain insured loans for insurance through HUD-approved lenders or through approved dealers.

D. Changes to the Title I Programs

While HUD believes that Title I property improvement and manufactured home loans fill an important role otherwise unserved by either public or private lending products, HUD also believes that the program can be strengthened by implementing new financial and program controls. HUD recently conducted a comprehensive review of the Title I programs and concluded that several changes are necessary to strengthen the financial viability of the programs. Accordingly, HUD is issuing this proposed rule, which would make several changes to the Title I and lender approval program regulations at 24 CFR parts 201 and 202, respectively. HUD believes these amendments are needed to protect the financial interests of the FHA, taxpayers, and the vast majority of borrowers and lenders who comply fully with the requirements of the Title I programs. The proposed changes to the Title I program regulations are discussed in section II of this preamble.

E. Net Worth Requirements for the Title I and Title II Programs

In addition to the changes described above (which would only apply to the Title I programs), this proposed rule would also revise 24 CFR part 202 to raise the current minimum net worth requirements applicable to loan correspondents under both the Title I and Title II programs. This proposed change is discussed in section III of this preamble.

II. Proposed Regulatory Changes to the Title I Program Regulations

The changes that would be made by this proposed rule to HUD's Title I regulations are as follows. As noted, some of the changes would be applicable to both the property improvement and manufactured home loan programs. Other changes would apply solely to Title I property improvement loans.

1. *Two party disbursements of dealer property improvement loan proceeds (§§ 201.2 and 201.26).* The proposed rule would amend the definition of "dealer loan" in § 201.2 to prohibit lenders from disbursing property improvement loan proceeds solely to a dealer. The proposed rule would require that a lender disburse the proceeds either solely to the borrower or jointly to the borrower and dealer or other parties to the transaction. The proposed rule would also make a conforming change to § 201.26, which describes the conditions for disbursement of property improvement loan proceeds.

This regulatory amendment will reduce the risk that property improvement loan proceeds might be released without the borrower's consent. Further, by requiring that the borrower agrees to the payment of funds to the contractor, the proposed amendment will ensure that all property improvement work is completed in an acceptable manner. The proposed requirement will also assure that any disagreements between the borrower and contractor are brought to the lender's attention as quickly as possible.

2. *Lien position for property improvement loans in excess of $7,500 (§ 201.24).* The proposed rule would amend § 201.24 (which describes security requirements) to require that a lien securing a property improvement loan in excess of $7,500 must occupy no less than a second lien position. The current regulation does not specify the position that such a lien must occupy, other than to state that the Title I property improvement loan must have priority over any lien securing an uninsured loan made at the same time.

3. *Disbursement of direct property improvement loan proceeds in excess of $7,500 (§ 201.26).* This proposed rule would amend § 201.26 (which describes the conditions for loan disbursement) to modify the disbursement procedures for direct property improvement loans in excess of $7,500. The proposed rule would require that such disbursements be made using a "draw" system, similar to that used in construction lending. Lenders would be required to deposit all of the loan proceeds in an interest bearing escrow account until they are disbursed. The draws would be made in accordance with criteria established by the Secretary. The loan proceeds would be disbursed in three draws—an initial disbursement of 40 percent of the loan proceeds, a subsequent 40 percent disbursement, and a final 20 percent disbursement.

This regulatory amendment will help to reduce opportunities for misuse of funds. However, HUD recognizes that the use of a draw system will impose some additional administrative and other costs on lenders. Accordingly, this proposed rule would only require the use of this disbursement procedure only for direct loans in excess of $7,500.

The proposed draw system would not apply to dealer loans. As explained elsewhere in this preamble, HUD would establish other requirements to safeguard the proper use of dealer loan proceeds. These protections include the prohibition on the disbursement of Title I loan proceeds solely to a dealer (see the discussion of proposed change number 1 above). Further, the proposed rule would establish a telephone interview requirement for the disbursement of dealer loan proceeds (see the discussion of proposed change number 4 below).

4. *Telephone interviews for dealer property improvement loan disbursements (§ 201.26).* The proposed rule would amend § 201.26 to require that the lender must conduct a telephone interview with the borrower before the disbursement of dealer property improvement loan proceeds. The lender, at a minimum, must obtain an oral affirmation from the borrower to release funds to the dealer. As with the proposed dual disbursement requirement discussed above (see proposed change number 1), it is expected that the telephone interview will help to ensure borrower satisfaction with the work being performed by the dealer/contractor. The lender shall document the borrower's oral affirmation.

5. *Liquidity requirement (§§ 201.27, 202.6, 202.7, and 202.8).* The proposed rule would amend the regulations at 24 CFR parts 201 and 202 to conform the liquidity requirements applicable to the Title I program to those currently applicable to the Title II Single Family Mortgage Insurance program. The proposed liquidity requirement would apply to Title I supervised lenders (§ 202.6), Title I unsupervised lenders (§ 202.7), Title I loan correspondent lenders (§ 202.8), and Title I dealers (§ 201.27). Under the proposed rule, these Title I participants would be required to have liquid assets consisting of cash (or its equivalent acceptable to the Secretary) in the amount of 20 percent of their net worth, up to a maximum liquidity requirement of $100,000. For purposes of this proposed rule, HUD will not consider lines of credit to be liquid assets, nor loans or mortgages held for resale by the mortgagee. Liquid assets include cash on hand, checking accounts, savings accounts, certificates of deposit, and marketable securities.

HUD believes that the proposed liquidity requirement will protect the interests of the FHA and consumers by ensuring that only financially sound program participants are eligible to participate in the Title I programs. Further, the liquidity requirement would provide Title I lenders, dealers, and loan correspondents with a reserve of cash upon which to draw if unexpected expenditures arise. HUD believes the new requirement would reduce the temptation to misuse trust funds and escrow accounts. The proposed liquidity requirements would not become applicable until six months after the effective date of the final rule. This delayed effective date will provide Title I lenders, dealers and loan correspondents with adequate time to meet the new requirement.

6. *Reporting of loans for insurance (§ 201.30).* The proposed rule would amend § 201.30 to clarify that required loan reports must be submitted on the form prescribed by the Secretary, and must contain the data prescribed by HUD. This change will ensure that information vital to the proper monitoring of Title I loans (such as the address of the borrower and the applicable interest rate) is properly collected and transmitted to HUD.

7. *Increase in insurance charge for property improvement and manufactured home loans (§ 201.31).* The proposed rule would revise § 201.31(a) to increase the insurance charge for Title I property improvement and manufactured home loan insurance. Currently, Title I lenders are required to pay an insurance charge of 0.50 percent of the loan amount, multiplied by the number of years of the loan term. This proposed rule would increase the applicable percentage to 1.00 percent of the loan amount. The current charge amount has proven insufficient in covering the costs of insurance claims paid by HUD under the program. The proposed increase is necessary to strengthen the financial viability of the Title I program.

Further, the proposed rule would amend § 201.31(b) to conform the procedures governing the payment of the insurance charge for manufactured

home loans with the insurance charge

III. Increased Net Worth Requirements

New Executive Office Building,

lien position for certain loans) would

proposed rule would not have

home loans with the insurance charge payment procedures for property improvement loans. The current regulations establish an accelerated payment schedule for manufactured home loans with a maturity in excess of 25 months. Given the proposed increase in the insurance charge, HUD also proposes to eliminate this "front loading" system for manufactured home loans. Under the proposed rule, the payment schedule for manufactured homes loans with a maturity in excess of 25 months would be identical to that applicable to comparable property improvement loans. Specifically, insurance charge payments for both types of loans would be made in annual installments of 1.00 percent of the loan amount until the insurance charge is paid.

8. *Inspection requirements for all dealer and direct property improvement loans (§ 201.40).* HUD proposes to expand the current on-site inspection requirements for dealer and direct property improvement loans at § 201.40. Specifically, the proposed rule would require that on-site inspections be conducted for all dealer and direct property improvement loans (not just for loans where the principal obligation is $7,500 or more, or where the borrower fails to submit a completion certificate). In the case of dealer and direct property improvement loans of $7,500 or less, the lender would be required to conduct two inspections—a pre-construction inspection and a post-construction inspection. For dealer and direct loans in excess of $7,500 the lender would also be required to conduct a third inspection. Additionally, the proposed rule would also require that photographs of the site be taken as part of all required inspections. The pre-construction inspection and photograph requirements do not apply where emergency action is needed to repair damage resulting from a disaster, as described in § 201.20(b)(3)(ii). The proposed rule would also authorize HUD to grant exceptions to the pre-construction inspection and photograph requirements.

The expanded inspection requirements will protect the interests of borrowers and the FHA by helping to verify that all property improvement work has been completed in a satisfactory manner. In addition, the proposed regulatory amendments will help to ensure that no funding is extended for improvements that were completed prior to obtaining the Title I loan.

III. Increased Net Worth Requirements

In addition to the regulatory changes described in Section II of this preamble (which would only apply to the Title I property improvement and manufactured home programs), this proposed rule would also increase the net worth requirements for both Title I and Title II loan correspondents. Specifically, the rule would amend § 202.8 to raise the minimum net worth requirement for Title II loan correspondent mortgagees and Title I loan correspondent lenders from $50,000 to $75,000. The proposed rule would also amend § 201.27 to raise the current minimum net worth requirements for Title I property improvement loan and manufactured home dealers from $25,000 and $50,000, respectively, to $75,000.

The net worth reforms proposed by this rule are directed toward this goal of ensuring that only responsible and adequately capitalized entities are program participants. In HUD's experience there is less stress on well capitalized companies to misuse restricted funds such as insurance premiums or escrows for operating expenses. The net worth requirements were last raised in 1992 and HUD believes they need to be raised again to take into account inflation as well as increased losses per claim. Since fiscal year 1991, the average Title I claim has increased from $7,020 to $15,314 while the average loss has increased from $6,318 to $13,783. The average Title II claim has increased from $54,905 to $82,226, and the average loss has increased from $24,140 to $31,800. Even with this modest increase in required net worth, a lender would only be able cover indemnification for five Title I loans or two Title II mortgages.

The proposed net worth requirements would not become applicable until six months after the effective date of the final rule. This delayed effective date will provide dealers and loan correspondents with adequate time to meet the new requirements.

IV. Performance-Based Standards for the Title I Program

HUD is planning to develop performance-based standards for determining the continued eligibility of lenders, correspondents and dealers in the Title I program. These would identify objective criteria for loan performance and would ensure management quality. While HUD is still developing data collection and measurement systems for this purpose and is not proposing any requirements in this area under this proposed rule, it is interested in the public's views on using this tool.

V. Findings and Certifications

Public Reporting Burden

The information collection requirements contained in § 201.26(a)(7) (the new telephone interview requirement for dealer property loan disbursements) has been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). This is the only new information collection requirement that would be established by this proposed rule. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

The average number of dealer transactions per year is 22,000. A single response to the information collection requirement would be required per dealer transaction. HUD estimates that the average time per response would be no more than five minutes. Accordingly, the estimated annual burden that would be imposed by the proposed information collection requirement is 1,833 hours.

In accordance with 5 CFR 1320.8(d)(1), HUD is soliciting comments from members of the public and affected agencies concerning this collection of information to:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Interested persons are invited to submit comments regarding the information collection requirements in this proposal. Comments must be received within sixty (60) days from the date of this proposal. Comments must refer to the proposal by name and docket number (FR–4246) and must be sent to:

Joseph F. Lackey, Jr., HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503;

and

Ethelene Washington, Reports Liaison Officer, Office of the Assistant Secretary for Housing-Federal Housing Commissioner, Department of Housing and Urban Development, 451—7th Street, SW, Room 9114, Washington, DC 20410

Regulatory Planning and Review

The Office of Management and Budget (OMB) reviewed this rule under Executive Order 12866, *Regulatory Planning and Review*. OMB determined that this rule is a "significant regulatory action" as defined in section 3(f) of the Order (although not an economically significant regulatory action under the Order). Any changes made to this rule as a result of that review are identified in the docket file, which is available for public inspection in the office of the Department's Rules Docket Clerk, Room 10276, 451 Seventh Street, SW, Washington, DC 20410–0500.

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4223). The Finding of No Significant Impact is available for public inspection between the hours of 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC.

Regulatory Flexibility Act

The Secretary has reviewed this proposed rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this proposed rule would not have a significant economic impact on a substantial number of small entities. The reasons for HUD's determination are as follows.

With one exception (the increased net worth requirements for loan correspondents), the amendments made by this proposed rule exclusively relate to the Title I program. The majority of financial institutions participating in the Title I program are large depositary institutions and thus the proposed changes pose only minimum burdens for smaller entities seeking to conduct Title I loan transactions. Some of these proposed requirements (such as two-party disbursements for dealer loan proceeds, and ensuring at least a second lien position for certain loans) would impose minimal, or no, economic costs.

Where the proposed rule would impose an economic burden (such as the increased net worth and liquidity requirements), HUD has attempted to minimize the costs to lenders. For example, the proposed increased net worth and liquidity requirements would be "phased-in," and not take effect until six months after the effective date of the other new regulatory requirements. This delayed effective date will provide lenders with additional time to meet the new requirements.

The proposed rule would also increase the net worth requirements for all Title I and Title II loan correspondents from $50,000 to $75,000. HUD is proposing to make this modest increase for a variety of reasons, including the need to make adjustments for inflation since the net worth requirements were last updated—in 1991 for the Title I program (October 18, 1991; 56 FR 52414); and 1992 for the Title II program (December 9, 1992; 57 FR 58326).

Although the primary purpose of setting minimum net worth standards is not to ensure that a lender can absorb the costs of fines or indemnifications, HUD notes that the proposed net worth requirement will cover only three Title I loans, assuming a maximum loan value of $25,000. The proposed net worth requirement would cover only five average Title I loans (assuming a $13,000 average loss). The proposed net worth requirement will cover less than one Title II loan, assuming a maximum loan value of $219,849. The proposed net worth requirement would cover two average Title II loans (assuming a $31,000 average loss). Therefore, the proposed net worth value is not significant in comparison to the typical size of a Title I and Title II loan.

Notwithstanding HUD's determination that this rule will not have a significant economic effect on a substantial number of small entities, HUD specifically invites comments regarding any less burdensome alternatives to this rule that will meet HUD's objectives as described in this preamble.

Executive Order 13132, Federalism

Executive Order 13132 (entitled "Federalism") prohibits an agency from publishing any rule that has federalism implications if the rule either imposes substantial direct compliance costs on State and local governments and is not required by statute, or the rule preempts State law, unless the agency meets the consultation and funding requirements of section 6 of the Executive Order. This proposed rule would not have federalism implications and would not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments, and on the private sector. This proposed rule would not impose any Federal mandates on any State, local, or tribal governments, or on the private sector, within the meaning of the Unfunded Mandates Reform Act of 1995.

Catalog of Federal Domestic Assistance Numbers

The Catalog of Federal Domestic Assistance program numbers applicable to the 24 CFR parts 201 and 202 are:

14.110 Manufactured Home Loan Insurance— Financing Purchase of Manufactured Homes as Principal Residences of Borrowers;

14.142 Structures and Building of New Nonresidential Structures; and

14.162 Mortgage Insurance—Combination and Manufactured Home Lot Loans.

List of Subjects

24 CFR Part 201

Health facilities, Historic preservation, Home improvement, Loan programs—housing and community development, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 202

Administrative practice and procedure, Home improvement, Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, for the reasons described in the preamble, HUD proposes to amend 24 CFR parts 201 and 202 to read as follows:

PART 201—TITLE I PROPERTY IMPROVEMENT AND MANUFACTURED HOME LOANS

1. The authority citation for 24 CFR part 201 continues to read as follows:

Authority: 12 U.S.C. 1703 and 3535(d).

2. In § 201.2, revise the definition of "*Dealer loan*" to read as follows:

§ 201.2 Definitions.

* * * * *

Dealer loan means a loan where a

§ 201.26 Conditions for loan disbursement.

Secretary, up to a maximum required

on the 25th calendar day after the date

completion certificate, or as soon as the

10. Revise § 202.7(b)(2) to read as

Dealer loan means a loan where a dealer, having a direct or indirect financial interest in the transaction between the borrower and the lender, assists the borrower in preparing the credit application or otherwise assists the borrower in obtaining the loan from the lender. In the case of a property improvement loan, the lender may disburse the loan proceeds solely to the borrower, or jointly to the borrower and the dealer or other parties to the transaction. In the case of a manufactured home loan, the lender may disburse the loan proceeds solely to the dealer or the borrower, or jointly to the borrower and the dealer or other parties to the transaction.

* * * * *

3. Revise § 201.24(a) to read as follows:

§ 201.24 Security requirements.

(a) *Property improvement loans.* (1) *Property improvement loans in excess of $7,500.* (i) Any property improvement loan in excess of $7,500 shall be secured by a recorded lien on the improved property. The lien shall be evidenced by a mortgage or deed of trust, executed by the borrower and all other owners in fee simple.

(ii) If the borrower is a lessee, the borrower and all owners in fee simple must execute the mortgage or deed of trust. If the borrower is purchasing the property under a land installment contract, the borrower, all owners in fee simple, and all intervening contract sellers must execute the mortgage or deed of trust.

(iii) The lien need not be a first lien on the property; however, the lien securing the Title I loan must hold no less than the second lien position.

(2) *Property improvement loans of $7,500 or less.* Any property improvement loan for $7,500 or less (other than a manufactured home improvement loan) shall be similarly secured if, including such loan, the total amount of all Title I loans on the improved property is more than $7,500.

(3) *Manufactured home improvement loans.* Manufactured home improvement loans need not be secured.

* * * * *

4. Amend § 201.26 as follows:

a. Redesignate paragraphs (a) and (b) as paragraphs (b) and (c), respectively;

b. Add new paragraph (a);

c. Redesignate newly designated paragraphs (b)(6) and (b)(7) as paragraphs (b)(8) and (b)(9), respectively; and

d. Add new paragraphs (b)(6) and (b)(7).

§ 201.26 Conditions for loan disbursement.

(a) *Disbursement of direct property improvement loans in excess of $7,500.* (1) *Escrow account.* For all direct property improvement loans in excess of $7,500, the lender must deposit all of the loan proceeds in an interest-bearing escrow account until they are disbursed in accordance with the requirements of this section.

(2) *Disbursement schedule.* Disbursement of the loan proceeds will be made in a series of "draws," in accordance with criteria established by the Secretary. Disbursement of the loan proceeds will be made using the following schedule:

(i) The lender will disburse 40% of the loan proceeds upon the completion of the pre-construction inspection required under § 201.40(c)(3)(i).

(ii) Subsequent to the initial 40% draw (but before the final draw of the loan proceeds) the borrower may draw up to an additional 40% of the property improvement loan proceeds.

(iii) The lender will disburse the balance of the loan proceeds upon the completion of the inspection required under § 201.40(c)(3)(ii).

(b) * * *

(6) In the case of a dealer loan, the lender may disburse the loan proceeds solely to the borrower, or jointly to the borrower and the dealer or other parties to the transaction.

(7) In the case of a dealer loan, the lender must conduct a telephone interview with the borrower before the disbursement of the loan proceeds. The lender, at minimum, must obtain an oral affirmation from the borrower to release funds to the dealer. The lender shall document the borrower's oral affirmation.

* * * * *

5. Revise § 201.27(a)(1) to read as follows:

§ 201.27 Requirements for dealer loans.

(a) *Dealer approval and supervision.* (1) The lender shall approve only those dealers which, on the basis of experience and information, the lender considers to be reliable, financially responsible, and qualified to satisfactorily perform their contractual obligations to borrowers and to comply with the requirements of this part. However, in no case shall the lender approve a dealer that is unable to meet the following minimum qualifications:

(i) *Net worth.* All property improvement and manufactured home dealers shall have and maintain a net worth of not less than $75,000, plus an additional $25,000 for each branch office, in assets acceptable to the Secretary, up to a maximum required net worth of $250,000.

(ii) *Liquid assets.* A dealer shall have liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20 percent of its net worth, up to a maximum liquidity requirement of $100,000.

(iii) *Business experience.* All property improvement loan and manufactured home dealers must have demonstrated business experience as a property improvement contractor or supplier, or in manufactured home retail sales, as applicable.

* * * * *

6. Revise § 201.30(a) to read as follows:

§ 201.30 Reporting of loans for insurance.

(a) *Date of reports.* The lender shall transmit a loan report on each loan reported for insurance within 31 days from the date of the loan's origination or purchase from a dealer or another lender. The loan report must be submitted on the form prescribed by the Secretary, and must contain the data prescribed by HUD. Any loan refinanced under this part shall similarly be reported on the prescribed form within 31 days from the date of refinancing. When a loan insured under this part is transferred to another lender without recourse, guaranty, guarantee, or repurchase agreement, a report on the prescribed form shall be transmitted to the Secretary within 31 days from the date of the transfer. No report is required when a loan insured under this part is transferred with recourse or under a guaranty, guarantee, or repurchase agreement.

* * * * *

7. Amend § 201.31 as follows:

a. Revise the first sentence of paragraph (a); and

b. Revise paragraph (b)(2).

§ 201.31 Insurance charge.

(a) *Insurance charge.* For each eligible property improvement loan and manufactured home loan reported and acknowledged for insurance, the lender shall pay to the Secretary an insurance charge equal to 1.00 percent of the loan amount, multiplied by the number of years of the loan term.

* * * * *

(b) * * *

(2)(i) For any loan having a maturity in excess of 25 months, payment of the insurance charge shall be made in annual installments, with the first installment due on the 25th calendar day after the date the Secretary acknowledges the loan report, and the second and successive installments due on the 25th calendar day after the date of billing by the Secretary.

(ii) For any loan having a maturity in excess of 25 months, payment shall be made in annual installments of 1.00 percent of the loan amount until the insurance charge is paid.

* * * * *

8. In § 201.40, revise the section heading and paragraph (c) to read as follows:

§ 201.40 Pre- and Post-disbursement loan requirements.

* * * * *

(c) *Inspection requirement on dealer and direct property improvement loans.* (1) *General.* The lender or its agent shall conduct on-site inspections on all dealer and direct property improvement loans.

(2) *Inspections for dealer and direct property improvement loans of $7,500 or less.* For dealer and direct property improvement loans of $7,500 or less, the lender or its agent shall conduct:

(i) A pre-construction inspection within 30 days before the start of construction; and

(ii) A post-construction inspection within 60 days after the receipt of the completion certificate, or as soon as the lender determines that the borrower is unwilling to cooperate in submitting a completion certificate, as required under paragraph (b) of this section.

(3) *Inspections for dealer and direct property improvement loans in excess of $7,500.* For dealer and direct property improvement loans in excess of $7,500, the lender or its agent shall conduct:

(i) A pre-construction inspection within 30 days before the start of construction;

(ii) An inspection within 60 days before the disbursement of the loan proceeds (in the case of a dealer loan), or within 60 days before the final draw of the loan proceeds (in the case of a direct loan—see § 200.26(a)(2)(iii)); and

(iii) A post-construction inspection within 60 days after the receipt of the completion certificate, or as soon as the lender determines that the borrower is unwilling to cooperate in submitting a completion certificate, as required under paragraph (b) of this section.

(4) *Purpose of inspections.* The purpose of the inspections is to verify the eligibility of the improvements and whether the work has been completed. Photographs of the site must be taken as part of all inspections. If the borrower will not cooperate in permitting an on-site inspection, the lender shall report this fact to the Secretary.

(5) *Exceptions.* The pre-construction inspection and photograph requirements do not apply where emergency action is needed to repair damage resulting from a disaster, as described in § 201.20(b)(3)(ii). Exceptions to the pre-construction inspection and photograph requirements can be granted in other circumstances if the prior approval of the Secretary is obtained.

* * * * *

PART 202—APPROVAL OF LENDING INSTITUTIONS AND MORTGAGEES

8. The authority citation for part 202 continues to read as follows:

Authority: 12 U.S.C. 1703, 1709 and 1715b; 42 U.S.C. 3535(d).

9. Revise § 202.6(b)(2) to read as follows:

§ 202.6 Supervised lenders and mortgagees.

* * * * *

(b) * * *

(2) *Liquid assets.* The lender or mortgagee shall have liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20 percent of its net worth, up to a maximum liquidity requirement of $100,000.

* * * * *

10. Revise § 202.7(b)(2) to read as follows:

§ 202.7 Nonsupervised lenders and mortgagees.

* * * * *

(b) *Liquid assets.* The lender or mortgagee shall have liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20 percent of its net worth, up to a maximum liquidity requirement of $100,000.

* * * * *

11. Amend § 202.8 by revising paragraphs (b)(1) and (b)(4) to read as follows:

§ 202.8 Loan correspondent lenders and mortgagees.

* * * * *

(b) * * *

(1) *Net worth.* A loan correspondent lender or mortgagee shall have a net worth of not less than $75,000 in assets acceptable to the Secretary, plus an additional $25,000 for each branch office authorized by the Secretary, up to a maximum requirement of $250,000, except that a multifamily mortgagee shall have a net worth of not less than $250,000 in assets acceptable to the Secretary.

* * * * *

(4) *Liquid assets.* A loan correspondent lender or mortgagee shall have liquid assets consisting of cash or its equivalent acceptable to the Secretary in the amount of 20 percent of its net worth, up to a maximum liquidity requirement of $100,000.

* * * * *

Dated: March 7, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

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Vol. 65, No. 62

Thursday, March 30, 2000

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FEDERAL REGISTER PAGES AND DATE, MARCH

10931–11196	1
11197–11454	2
11455–11734	3
11735–11858	6
11859–12060	7
12061–12426	8
12427–12904	9
12905–13234	10
13235–13658	13
13659–13864	14
13865–14206	15
14207–14430	16
14431–14780	17
14781–15052	20
15053–15202	21
15203–15520	22
15521–15822	23
15823–16116	24
16117–16296	27
16297–16508	28
16509–16782	29
16783–17126	30

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR

Proclamations:

7276	11197
7277	11199
7278	11455
7279	11733
7280	12903
7281	15201
7282	16507
7283	16509

Executive Orders:

12170 (See Notice of March 13, 2000)	13863
12957 (Continued by Notice of March 13, 2000)	13863
12959 (See Notice of March 13, 2000)	13863
13059 (See Notice of March 13, 2000)	13863
13146	11201
13147	13233

Administrative Orders:

Memorandum of January 5, 2000	15823

Presidential Determinations:

No. 2000-15 of February 24, 2000	10931
No. 2000-16 of February 29, 2000	15797
No. 2000-17 of March 2, 2000	15821
No. 2000-18 of March 16, 2000	16297

Notices:

March 13, 2000	13863

4 CFR

27	15203
28	15203

5 CFR

Ch. LXXIII	15825
213	14431
315	14431
335	14431
531	15875
532	15521
792	13659
2640	16511

Proposed Rules:

3	14477
213	14477
315	14477

7 CFR

2	12427
75	15830
205	13512
210	12429
215	12429
220	12429
225	12429
226	12429
301	11203
457	11457
600	14781
601	14781
729	16117
761	14432
762	14432
800	16783
868	16787
915	15203
916	15205
917	15205
993	12061
955	12442
985	15832
989	15214
1301	16118
1304	16118
1305	16118
1306	16118
1307	16118
1308	16118
1421	13865
1427	13865
1464	10933
1710	14207, 14785
1721	10933
3019	14406

Proposed Rules:

6	14478
20	11483
27	10979
28	10979, 12140
29	13915
57	14652
97	13917
201	12952
205	15579
360	14926
930	15580
1140	10981
1160	14484
1205	12146
1210	14485
1306	12141
1307	12141
1309	12141
1710	12952
1717	12952
1718	12952

8 CFR

3	15835, 15846
212	14774, 15835, 15846
214	14774
240	15835, 15846
245	15835, 15846
248	14774
274a	15835, 15846
278A	14774
299	15835, 15846

9 CFR

74 15216
78 12064
93 15216
94 15521
130 16122

Proposed Rules:

71 11485
77 ..... 11485, 11912, 15877
78 11485
93 12486
98 12486
113 12151
130 12486
317 14486
318 ..... 14486, 14489
319 ..... 144867, 14489
327 14489
381 14486
590 11486

10 CFR

72 ..... 11458, 12444, 14790, 16299
170 11204
600 14406
810 16124
820 15218
905 16789

Proposed Rules:

Ch. XVIII 13700
21 11488
50 11488
52 11488
54 11488
100 11488
170 16250
171 16250
430 14128
431 10984
960 11755
963 11755

11 CFR

108 15221

Proposed Rules:

104 16534
111 16534
9038 15273

12 CFR

Ch. IX 13663
5 12905
201 16802
204 12916
208 ..... 14810, 15050
225 ..... 14433, 14440, 15053, 16302, 16460
303 15526
340 14816
362 15526
563 16302
563c 16302
563g 16302
701 15224
724 10933
745 10933
925 13866
950 13866
1500 16460
1501 ..... 12064, 14819
1510 15050

Proposed Rules:

3 12320
8 15111
208 12320
225 12320
325 12320
563 16350
563c 16350
563g 16350
567 12320
614 14491
620 14494
709 11250
716 10988
741 10988
742 15275
1750 13251

13 CFR

Proposed Rules:

124 12955

14 CFR

25 ..... 13666, 16128, 16305
39 ..... 10934, 10937, 10938, 11204, 11459, 11859, 11861, 12071, 12072, 12073, 12075, 12077, 12080, 12081, 12082, 12084, 12085, 12460, 12462, 12463, 13668, 13871, 13875, 13877, 14207, 14209, 14822, 14826, 14827, 14831, 14834, 14838, 14844, 14846, 14847, 14849, 14852, 15226, 15230, 15232, 15531, 15534, 15536, 15537, 15857, 15858, 16129, 16309, 16311, 16802, 16804
71 ..... 11369, 11461, 11866, 12630, 12917, 12918, 14344, 14855, 14856, 14857, 15859, 15860, 15861, 16130, 16131, 16808
91 ..... 16112, 16114, 16736
95 14442
97 ..... 13669, 13671, 13673, 15540, 15541, 15544
121 16736
135 16736
255 16808
1260 14406

Proposed Rules:

25 13703
35 16542
39 ..... 11006, 11505, 11940, 11942, 12489, 12957, 13251, 13919, 13921, 13923, 14216, 14218, 15278, 15280, 15584, 15878, 15880, 15882, 16151, 16153, 16154, 16157, 16158, 16352, 16845
71 ..... 12153, 12957, 13704, 13705, 13707, 14497, 15282, 15586
108 15113
109 15113
111 15113
129 15113
191 15113
255 11009

15 CFR

14 14406
734 12919
736 14858
738 ..... 12919, 14857
740 ..... 12919, 14857
742 ..... 12919, 14857
743 12919
744 ..... 12919, 14444
748 12919
756 ..... 14857, 14861
762 14858
766 14862
770 14857
774 ..... 12919, 13879, 14862
902 16766

16 CFR

305 16132
1615 12924
1616 12924
1630 12929
1631 12929
1632 12935

Proposed Rules:

307 11944
312 11947
313 11174

17 CFR

1 12466
4 ..... 10939, 12938
15 14452
16 14452
17 14452
200 12469
211 16811
240 13235
242 13235

Proposed Rules:

4 ..... 11253, 12318
228 ..... 11507, 15043
229 11507
230 ..... 11507, 15500, 16160
232 11507
239 ..... 11507, 15500
240 ..... 11507, 16160
243 16160
248 12354
249 ..... 11507, 16160
250 11507
259 11507
260 11507
269 11507
270 ..... 11507, 15500
274 ..... 11507, 15500

18 CFR

35 12088
157 ..... 11461, 12115, 15234
380 15234
1301 16513

19 CFR

4 16513
12 12470
18 16513
24 13880
111 13880
122 16513
123 16513
144 16513
146 16513
178 13880

Proposed Rules:

101 16354

20 CFR

220 14458
322 14459
401 16811
402 16811
404 ..... 11866, 16811
410 16811
416 ..... 11866, 16811
422 16811

21 CFR

20 11881
101 11205
173 16312
176 ..... 13675, 16518
177 ..... 15057, 16313, 16816
178 ..... 15545, 16314, 16315
524 ..... 13904, 16817
558 11888
640 13678
862 16520
868 11464
870 11465
1301 13235
1308 13235

Proposed Rules:

16 16847
101 14219
314 12154
900 16847

22 CFR

22 14211
23 14211
41 14768
51 14211
139 14764
145 14406
226 14406

Proposed Rules:

22 13253

23 CFR

1340 13679

24 CFR

5 ..... 16294, 16692
200 15043
266 16294
401 15452
402 15452
880 16692
881 16692
884 16692
886 16692
891 16692
905 14422
960 16692
966 16692
982 ..... 16817, 16818, 16819
983 ..... 16818, 16819
984 16692
985 ..... 16692, 16823

Proposed Rules:

81 12632
201 17120
202 17120
990 11525
3280 17110

25 CFR

290 14461

26 CFR

1 ..... 11205, 11467, 12471, 15547, 15548, 15862, 16143, 16316, 16317, 16318, 16319
301 ..... 11211, 11215
601 15862
602 ..... 11205, 11211, 11215

Proposed Rules:

1 ..... 11012, 11269, 15587, 16545, 16546, 16554
301 ..... 11271, 11272

27 CFR

4 11889
5 11889
7 11889
16 11889
75 15058

Proposed Rules:

00 15115
4 12490
70 15115
75 15115
90 15115

28 CFR

70 14406

29 CFR

95 14406
4022 ..... 14752, 14753
4044 ..... 13905, 14752
4050 14752

Proposed Rules:

1614 11019
1910 ..... 11948, 13254

30 CFR

202 11467
206 ..... 11467, 14022
250 ..... 14469, 15862
938 15553

Proposed Rules:

914 ..... 11950, 12492

31 CFR

103 13683

32 CFR

22 14406
32 14406
668 13906
776 15059
2001 16320

33 CFR

26 14863
95 14223
100 15558
110 11892
117 ..... 11893, 12943, 15238, 16521
127 10943
147 16823
140 14226
141 14226
142 14226
143 14226
144 14226
145 14226
146 14226
147 14226
154 10943
155 ..... 10943, 14470
159 10943
161 14863
164 10943
165 ..... 14864, 16522, 16826
167 12944
177 14223
183 10943
320 16486
326 16486
331 16486

Proposed Rules:

100 ..... 11274, 13926, 14498, 17355, 16358, 16554
110 ..... 13926, 14498, 16355, 16358, 16361, 16554
165 ..... 13926, 14498, 14501, 14502, 15283, 15285, 16355, 16358, 16361
175 11410
177 11410
179 11410
181 11410
183 11410

34 CFR

74 14406
1100 11894

Proposed Rules:

606 15115
607 15115
608 15115

36 CFR

Ch. XV 14760
1 15077
3 15077
13 15077
701 ..... 11735, 11736
1210 14406

Proposed Rules:

212 11680
261 11680
295 11680
1190 12493
1191 12493
1280 15592

37 CFR

1 14864

Proposed Rules:

201 ..... 14227, 14505

38 CFR

3 ..... 12116, 16827
19 14471
20 14471
21 ..... 12117, 13693

Proposed Rules:

3 13254

39 CFR

111 12946

Proposed Rules:

20 11023
111 ..... 13258, 16859
913 14229
952 13707

40 CFR

9 15090
30 14406
51 11222
52 ..... 10944, 11468, 12118, 12472, 12474, 12476, 12481, 12948, 13239, 13694, 14212, 14873, 15240, 15244, 15864, 16320
55 15867
60 13242
62 ..... 16320, 16323
63 ..... 11231, 15690
68 13243
70 16523
86 11898
136 14344
141 11372
148 14472
180 ..... 10946, 11234, 11243, 11736, 12122, 12129, 15248, 16143
258 16523
261 14472
262 12378
268 14472
271 ..... 14472, 16528
300 ..... 13697, 14475
302 14472
431 15091
445 14344

Proposed Rules:

51 ..... 11024, 16364
52 ..... 11027, 11275, 11524, 12494, 12495, 12499, 12958, 13260, 13709, 14506, 14510, 14930, 15286, 15287, 15883, 16364, 16365, 16864
62 16365
63 11278
81 14510
141 11372
152 15883
156 15884
271 16557
438 11755
503 11278
755 16094

41 CFR

302-51 16828
302-52 16828
302-54 16828
302-70 16828
302-71 16828
302-76 16828

42 CFR

121 15252
405 13911
410 13911

Proposed Rules:

410 13082
493 14510

43 CFR

12 14406
3500 11475

45 CFR

74 14406
400 15410
401 15410
612 11740
613 11740

46 CFR

28 10943
30 10943
32 10943
34 10943
35 10943
38 10943
39 10943
54 10943
56 10943
58 10943
61 10943
63 10943
76 10943
77 10943
78 10943
91 11904
92 10943
95 10943
96 10943
97 10943
105 10943
108 10943
109 10943
110 10943
111 10943
114 10943
115 11904
119 10943
125 10943
132 11904
133 11904
134 11904
151 10943
153 10943
154 10943
160 10943
161 10943
162 10943
163 10943
164 10943
170 10943
174 10943
175 10943
182 10943
189 11904
190 10943
193 10943
195 10943
199 ..... 10943, 11904
515 15252

Proposed Rules:

2 11410
10 11410
15 11410
24 11410
25 11410
26 11410
28 11410
30 11410
70 11410
90 11410
114 11410
169 11410
175 11410
188 11410
199 11410

47 CFR

1 14476
20 15559
22 15559
24 ..... 14213, 15559
25 16327
27 12483
32 16328
54 12135
64 16328
73 ..... 11476, 11477, 11750, 13250, 16149, 16335, 16336
76 ..... 12135, 15559
80 15559
90 15559
99 15559

Proposed Rules:

Ch. I 15599
1 13933
2 14230
26 14230
27 14230
54 13933
61 13933
69 13933

73 ..... 11537, 11538, 11539, 11540, 11541, 11955, 12155, 12156, 12157, 12158, 12159, 12160, 12161, 12162, 12163, 12164, 12165, 12166, 12167, 12168, 12169, 12170, 12171, 12172, 12173, 12174, 12175, 12176, 12177, 12178, 12179, 12180, 12181, 12182, 12183, 12184, 12185, 12186, 12187, 12188, 12189, 12190, 12191, 12192, 12193, 12194,

73 .....11537, 11538, 11539, 11540, 11541, 11955, 12155, 13260, 13261, 15600, 15885, 15886, 16160, 16366, 16558, 16559

48 CFR

Ch. 1.....16285, 16286
Ch. 2.....14380
Ch. 5.....11246
1.....16285
6.....16285
9.....16285
15.....16285
19.....16275
32.....16276
52.....16276, 16285
202.....14397
204.....14397
207.....14397
208.....14397, 14400
212.....14400
222.....14397, 14402
244.....14400
247.....14400
252 .....14397, 14400, 14402
1806.....12484
1808.....12484
1811.....12484
1813.....12484
1815.....12484
1825.....12484
1835.....12484
1837.....12484
1842.....12484
1848.....12484
1851.....12484
2409.....12950

Proposed Rules:

Ch. 9.....13416
2.....16758
3.....16758
4.....16758
9.....16758
15.....16758
52.....16758

49 CFR

19.....14406
193.....10950
350.....15092
355.....15092
385.....11904
571.....11751
572.....10961, 15254

Proposed Rules:

Ch I.....11541
40.....13261, 15118
171.....11028
172.....11028
173.....11028
174.....11028, 16161
175.....11028
176.....11028
177.....11028, 16161
178.....11028
179.....11028
180.....11028
190.....15290
191.....15290
192.....15290
195.....15290
222.....15298, 16559
229.....15298, 16559

50 CFR

17 .....14876, 14886, 14896, 16052
18.....16828
300.....14907
622.....12136, 16336
635.....15873
648 .....11478, 11909, 15110, 15576, 16341, 16345, 16532, 16844
660.....11480, 16346
679 .....10978, 11247, 11481, 11909, 12137, 12138, 13698, 14918, 14924, 15271, 15272, 15577, 16150, 16532

Proposed Rules:

16.....11756
17 .....12155, 12181, 13262, 13935, 14513, 14931, 14935, 15887, 16869
216.....11542
223.....12959
224.....12959, 13935
300.....13284
600.....11956
622.....11028, 14518
648 .....11029, 11956, 14519
679 .....11756, 11973, 12500

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 30, 2000

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Food stamp program:
Coupons issuance and use; electronic benefits transfer systems; audit requirements; published 2-29-00

ENVIRONMENTAL PROTECTION AGENCY
Air pollution control:
Operating permits programs; interim approval expiration dates; extension; published 2-14-00
Air quality implementation plans; approval and promulgation; various States:
California; published 2-29-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Animal drugs, feeds, and related products:
Triamcinolone acetonide cream; published 3-30-00
Food additives:
Polymers—
2-propenoic acid, polymer with 2-ethyl-2-(((1-oxo-2-propenl)oxy)methyl)-1,3-propanediyl di-2-propenoate and sodium 2-propenoate; published 3-30-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Marine mammals:
Incidental take during specified activities—
Beaufort Sea, AK; year-round oil and gas insdustry operations; polar bears and Pacific walrus; published 3-30-00

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nonimmigrant classes:
Nonimmigrant workers (H-1B category); petition; fee schedule and filing requirements; published 2-29-00

SOCIAL SECURITY ADMINISTRATION
Miscellaneous corrections; published 3-30-00

TRANSPORTATION DEPARTMENT
Coast Guard
Anchorage regulations:
California; published 2-29-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Airbus; published 2-24-00
British Aerospace; published 2-24-00
Fokker; published 2-24-00
Sikorsky; published 3-15-00

TREASURY DEPARTMENT
Customs Service
Merchandise, special classes:
Import sanctions—
Toxic Substances Control Act; chemicals importation; certifications; published 2-29-00

VETERANS AFFAIRS DEPARTMENT
Adjudication; pensions, compensation, dependency, etc.:
Eligibility reporting requirements; published 3-30-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Classification services to growers; 2000 user fees; comments due by 4-7-00; published 3-8-00
Cotton research and promotion order:
Imported content and cotton content of imported products; supplemental assessment calculation; comments due by 4-7-00; published 3-8-00
Meats, prepared meats, and meat products; grading, certification, and standards:
Imported beef, lamb, veal, and calf carcasses; official grading; comments due by 4-3-00; published 2-1-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Asian longhorned beetle; comments due by 4-3-00; published 2-2-00

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
National school lunch and school breakfast programs; alternatives to standard application and meal counting procedures; comments due by 4-7-00; published 2-7-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
International fisheries regulations:
Antarctic marine living resources; harvesting and dealer permits, and catch documentation; comments due by 4-7-00; published 3-13-00
Marine mammals:
Incidental taking—
Eastern Tropical Pacific Ocean; tuna purse seine vessels; compliance with International Dolphin Conservation Program; comments due by 4-3-00; published 1-3-00
Naval activities; USS Winston S. Churchill shock testing; comments due by 4-3-00; published 3-3-00

DEFENSE DEPARTMENT
Vocational rehabilitation and education:
Veterans education—
Educational assistance; new criteria for approving courses; comments due by 4-3-00; published 2-2-00

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural gas companies (Natural Gas Act):
Section 7 new service applications; optional certificate and abandonment procedures; comments due by 4-3-00; published 2-16-00
Practice and procedure:
Public utilities; annual charges; comments due by 4-3-00; published 2-3-00

ENVIRONMENTAL PROTECTION AGENCY
Air programs; State authority delegations:
Arizona; comments due by 4-3-00; published 3-2-00
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-3-00; published 3-2-00
Illinois; comments due by 4-3-00; published 3-3-00
Hazardous wastes:
Land disposal restrictions—
Polychlorinated biphenyls; underlying hazardous constituent in soil; Phase IV standards deferral; comments due by 4-3-00; published 2-16-00
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 4-4-00; published 2-4-00
Water supply:
National primary drinking water regulations—
Public water systems; unregulated contaminant monitoring regulation; comments due by 4-3-00; published 3-2-00
Public water systems; unregulated contaminant monitoring regulation; comments due by 4-3-00; published 3-2-00

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Montana; comments due by 4-3-00; published 2-25-00
Texas; comments due by 4-3-00; published 2-23-00
Wisconsin; comments due by 4-3-00; published 2-25-00

FEDERAL TRADE COMMISSION
Children's Online Privacy Protection Act; implementation
Safe harbor guidelines; comments due by 4-6-00; published 3-7-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Medical care and examinations:
Indian health—
Indian Self-Determination Act; contracts; comments due by 4-3-00; published 2-1-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:

Critical habitat determinations—
Barbour, Donald A.; comments due by 4-5-00; published 2-4-00
CFM International, S.A.; comments due by 4-3-00; published 2-2-00
Veterans educations—

Microfiche Editions Available...

Critical habitat determinations—
Coastal California gnatcatcher; comments due by 4-7-00; published 2-7-00

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 4-6-00; published 3-7-00

JUSTICE DEPARTMENT
Drug Enforcement Administration
Records, reports, and exports of listed chemicals:
Red phosphorus; comments due by 4-3-00; published 2-2-00

JUSTICE DEPARTMENT
Privacy Act; implementation; comments due by 4-3-00; published 2-23-00

MANAGEMENT AND BUDGET OFFICE
Federal Procurement Policy Office
Acquisition regulations:
Cost Accounting Standards Board—
Cost accounting standards coverage; applicability, thresholds, and waivers; comments due by 4-7-00; published 2-7-00

MERIT SYSTEMS PROTECTION BOARD
Practice and procedure:
Uniformed Services Employment and Reemployment Rights Act and Veterans Employment Opportunities Act; implementation—
Appeals; comments due by 4-4-00; published 2-4-00

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION
Records management:
Computer tapes, rewind requirement; elimination; comments due by 4-3-00; published 2-3-00

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Involuntary liquidation; adjudication of creditor claims; comments due by 4-3-00; published 3-2-00

NUCLEAR REGULATORY COMMISSION
Rulemaking petitions:
Barbour, Donald A.; comments due by 4-5-00; published 1-21-00
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list additions; comments due by 4-5-00; published 1-21-00

SECURITIES AND EXCHANGE COMMISSION
Securities:
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR)—
Modernization; filing requirements; changes; comments due by 4-3-00; published 3-3-00

TRANSPORTATION DEPARTMENT
Coast Guard
Boating safety:
Personal flotation devices; Federal requirements for wearing; comments due by 4-3-00; published 10-5-99
Uninspected passenger vessels; comments due by 4-3-00; published 3-2-00
Outer Continental Shelf activities regulations; revision; comments due by 4-5-00; published 12-7-99
Practice and procedure:
Adjudicative procedures consolidation; comments due by 4-3-00; published 10-5-99
Vocational rehabilitation and education:
Veterans education—
New criteria for approving courses; comments due by 4-3-00; published 2-2-00

TRANSPORTATION DEPARTMENT
Workplace drug and alcohol testing programs:
Procedures; revision; comments due by 4-7-00; published 12-9-99

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Air carrier certification and operations:
Aviation security screening; comments due by 4-4-00; published 1-5-00
Airworthiness directives:
Boeing; comments due by 4-3-00; published 2-3-00
CFM International, S.A.; comments due by 4-3-00; published 3-3-00
Dornier; comments due by 4-6-00; published 3-7-00
Eurocopter Deutschland GMBH; comments due by 4-4-00; published 2-4-00
Lockheed; comments due by 4-3-00; published 2-16-00
McDonnell Douglas; comments due by 4-3-00; published 2-16-00
Class D and Class E airspace; comments due by 4-3-00; published 2-18-00
Class E airspace; comments due by 4-3-00; published 2-17-00

TREASURY DEPARTMENT
Alcohol, Tobacco and Firearms Bureau
Alcohol; viticultural area designations:
Lodi, CA; comments due by 4-7-00; published 2-7-00

TREASURY DEPARTMENT
Comptroller of the Currency
Electronic banking; facilitation of national banks' use of new technologies; advance notice; comments due by 4-3-00; published 2-2-00

TREASURY DEPARTMENT
Customs Service
Tariff-rate quotas:
Sugar-containing products; export certificates; comments due by 4-4-00; published 2-4-00

TREASURY DEPARTMENT
Internal Revenue Service
Excise taxes:
Deposits and tax returns; comments due by 4-6-00; published 1-7-00
Income taxes:
Credit for increasing research activities; comments due by 4-5-00; published 1-4-00
Procedure and administration:
Agriculture Department; return information disclosures for statistical purposes and related activities; cross reference; comments due by 4-3-00; published 1-4-00

TREASURY DEPARTMENT
Resolution Funding Corporation operations; comments due by 4-7-00; published 3-8-00

VETERANS AFFAIRS DEPARTMENT
Vocational rehabilitation and education:
Veterans educations—
New criteria for approving courses; comments due by 4-3-00; published 2-2-00

LIST OF PUBLIC LAWS

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S. 376/P.L. 106–180

Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

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Contents

Federal Register
Vol. 65, No. 63
Friday, March 31, 2000

African Development Foundation
NOTICES
Meetings; Sunshine Act, 17249

Agricultural Research Service
NOTICES
Patent licenses; non-exclusive, exclusive, or partially exclusive:
Azure Waves Seafood, Inc., 17252–17253

Agriculture Department
See Agricultural Research Service
See Farm Service Agency
See Food Safety and Inspection Service
See Natural Resources Conservation Service
See Rural Business-Cooperative Service
See Rural Housing Service
See Rural Utilities Service
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17249–17251
Privacy Act:
Systems of records, 17251–17252

Architectural and Transportation Barriers Compliance Board
PROPOSED RULES
Electronic and information technology accessibility standards, 17346–17367

Army Department
NOTICES
Agency information collection activities:
Proposed collection; comment request; correction, 17343

Blind or Severely Disabled, Committee for Purchase From People Who Are
See Committee for Purchase From People Who Are Blind or Severely Disabled

Coast Guard
PROPOSED RULES
Pollution:
Hazardous substances; marine transportation-related facility response plans, 17416–17434

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17255–17256

Committee for Purchase From People Who Are Blind or Severely Disabled
NOTICES
Procurement list; additions and deletions, 17254–17255

Defense Department
See Army Department

Employment and Training Administration
NOTICES
Adjustment assistance:
Cadillac Curtain Corp., 17314
Georgia Pacific et al., 17314–17315
Key Manufacturing Co., 17315
Adjustment assistance and NAFTA transitional adjustment assistance:
Kellogg Co., 17311–17312
Simonds Industries et al., 17312–17314
Grants and cooperative agreements; availability, etc.:
Job Training Partnership Act—
Skills Shortages, Partnership Training/System Building Demonstration Program, 17315
NAFTA transitional adjustment assistance:
Cadillac Curtain Corp., 17315

Employment Standards Administration
NOTICES
Minimum wages for Federal and federally-assisted construction; general wage determination decisions, 17315–17316

Energy Department
See Federal Energy Regulatory Commission

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Missouri, 17164–17166
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Glufosinate ammonium, 17170–17179
Water programs:
Water quality planning and management; listing requirements, 17166–17170
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 17229–17236
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Fenthion, etc., 17236–17239
Water pollution control:
Ocean dumping; site designations—
Coos Bay, OR, 17240–17246
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17258–17263
Submission for OMB review; comment request, 17263–17264
Air pollutants, hazardous; national emission standards:
Maximum achievable control technology standards—
Indiana, 17264
Air pollution control:
Clean Air Act grants—
Nevada, 17264–17265
Environmental statements; availability, etc.:
Agency statements—
Comment availability, 17266
Weekly receipts, 17265

Reports and guidance documents; availability, etc.:
Food Quality Protection Act; science policy issues—
Non-detected/non-quantified pesticide residues; value assignments, 17266–17268

Executive Office of the President
See Trade Representative, Office of United States

Farm Service Agency
PROPOSED RULES
Program regulations:
Loans to Indian Tribes and tribal corporations, 17206

Federal Aviation Administration
RULES
Class E airspace, 17133–17134
PROPOSED RULES
Airworthiness directives:
Bombardier, 17206–17211

Federal Communications Commission
RULES
Radio stations; table of assignments:
Arkansas, 17179
Kansas, 17180
Louisiana, 17179–17180
PROPOSED RULES
Frequency allocations and radio treaty matters:
Software defined radios; inquiry, 17246–17248
Radio stations; table of assignments:
Louisiana, 17248
NOTICES
Common carrier services:
Wireless telecommunications services—
800 MHz specialized mobile service licenses auction; 851-854 MHz band; reserve prices or minimum opening bids, etc., 17268–17272
800 MHz specialized mobile service licenses auction; lower 80 channels; reserve prices or minimum opening bids, etc., 17272–17276

Federal Energy Regulatory Commission
RULES
Electric utilities (Federal Power Act):
Open access same-time information system (OASIS) and standards of conduct—
Uniform business practices, 17370–17413
NOTICES
Applications, hearings, determinations, etc.:
CNG Transmission Corp., 17258
Texas Gas Transmission Corp., 17258

Federal Highway Administration
NOTICES
Meetings:
Intelligent Transportation Society of America, 17332–17333

Federal Labor Relations Authority
NOTICES
Amici curiae briefs in negotiability proceeding pending before FLRA; opportunity to submit
Withdrawn, 17276–17277

Federal Reserve System
RULES
Truth in lending (Regulation Z):
Short-term cash advances (payday loans), 17129–17132
NOTICES
Meetings; Sunshine Act, 17277

Federal Trade Commission
NOTICES
Premerger notification waiting periods; early terminations, 17277–17282

Food and Drug Administration
RULES
Administrative practice and procedure:
New animal drug applications; designated journals list; removals; effective date, 17134
Food additives:
Polymers—
Ethylene-vinyl acetate-vinyl alcohol copolymers, 17134–17135
Medical devices:
Cigarettes and smokeless tobacco products; restriction of sale and distribution to protect children and adolescents; revocation, 17135–17136
Information processing procedures; obtaining, submitting, executing, and filing of forms; change of addresses, 17136–17138
Reclassification of 28 preamendments class III devices into class II, 17138–17148
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17282–17284
Submission for OMB review; comment request, 17284–17285
Medical devices:
Premarket approval applications, list; safety and effectiveness summaries availability, 17285–17286

Food Safety and Inspection Service
RULES
Meat and poultry inspection:
Sodium diacetate, sodium acetate, sodium lactate and potassium lactate; use as food additives
Effective date, 17128–17129

Health and Human Services Department
See Food and Drug Administration
See Health Resources and Services Administration

Health Resources and Services Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Health insurance coverage; State planning grants, 17286–17289

Housing and Urban Development Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17289
Submission for OMB review; comment request, 17289–17292
Grants and cooperative agreements; availability, etc.:
Facilities to assist homeless—
Excess and surplus Federal property, 17292–17293

Immigration and Naturalization Service
RULES
Nationality:
Naturalization grants; revocation, 17127–17128
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17309–17310

Indian Affairs Bureau
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17293–17294
Indian tribes, acknowledgment of existence determinations, etc.:
Eastern Pequot Indians of Connecticut, 17299–17304
Paucatuck Eastern Pequot Indians of Connecticut, 17294–17299

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Reclamation Bureau
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
RULES
Excise taxes:
Kerosene, aviation fuel, heavy trucks and trailers, and highway vehicle use taxes; taxable fuel measurement and reporting, 17149–17164
Income taxes:
Retirement plans; new technologies; electronic transmission of notices and consents
Correction, 17148–17149
PROPOSED RULES
Excise taxes:
Diesel fuel dye injection systems; partially withdrawn, 17211

International Trade Administration
NOTICES
Antidumping:
Circular welded non-alloy steel pipe from—
Mexico, 17256
Collated roofing nails from—
Taiwan, 17256–17257
Preserved mushrooms from—
China, 17257–17258

International Trade Commission
NOTICES
Import investigations:
Pipe and tube from—
Various countries, 17307–17308
Welded stainless steel pipe from—
Korea and Taiwan, 17308–17309

Justice Department
See Immigration and Naturalization Service
See National Institute of Corrections

Labor Department
See Employment and Training Administration
See Employment Standards Administration
See Occupational Safety and Health Administration
NOTICES
Meetings:
North American Agreement on Labor Cooperation National Advisory Committee, 17311

Land Management Bureau
NOTICES
Coal leases, exploration licenses, etc.:
Montana, 17304–17305
Recreation management restrictions, etc.:
Wonder Valley, CA; recreational shooting restriction; supplemental rule, 17305

National Highway Traffic Safety Administration
RULES
Anthropomorphic test devices:
Occupant crash protection—
12-month-old infant crash test dummy, 17180–17196
Motor vehicle safety standards:
Occupant crash protection—
Offset deformable barrier, 17196–17204
NOTICES
Motor vehicle theft prevention standards; exemption petitions, etc.:
General Motors Corp., 17333–17335

National Institute of Corrections
NOTICES
Grants and cooperative agreements; availability, etc.:
Comprehensive Objective Prison Classification Systems Development, 17310–17311

National Oceanic and Atmospheric Administration
RULES
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Groundfish, 17204–17205
Pollock, 17205

National Park Service
NOTICES
Native American human remains and associated funerary objects:
Bernice Pauahi Bishop Museum, Honolulu, HI—
Tobacco pipe, etc., from Oahu, HI, 17305–17307

Natural Resources Conservation Service
NOTICES
Field office technical guides; changes:
Texas, 17253

Nuclear Regulatory Commission
NOTICES
Decommissioning plans; sites:
Aberdeen Proving Ground, MD; U.S. Army Research Laboratory; Depleted Uranium Study Area, Transonic Range, 17321–17322
Picatinny Arsenal, NJ; U.S. Army Tank-Automotive and Armaments Command; Building 611B, 17322–17323
Applications, hearings, determinations, etc.:
Quivira Mining Co., 17321

Occupational Safety and Health Administration
NOTICES
Grants and cooperative agreements; availability, etc.:
Susan Harwood Training Grant Program, 17316–17321

Office of United States Trade Representative
See Trade Representative, Office of United States

Patent and Trademark Office
PROPOSED RULES
Patent cases:
Twenty-year patent term; patent term adjustment; implementation, 17215–17229

Public Health Service
See Food and Drug Administration

See Health Resources and Services Administration

Reclamation Bureau
NOTICES
Meetings:
CALFED Bay-Delta Ecosystem Restoration Program; pre-submittal workshop, 17307

Research and Special Programs Administration
NOTICES
Hazardous materials transportation:
Preemption determinations—
American Trucking Associations, Inc., 17335–17340

Rural Business-Cooperative Service
PROPOSED RULES
Program regulations:
Loans to Indian Tribes and tribal corporations, 17206
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17253–17254

Rural Housing Service
PROPOSED RULES
Program regulations:
Loans to Indian Tribes and tribal corporations, 17206

Rural Utilities Service
PROPOSED RULES
Program regulations:
Loans to Indian Tribes and tribal corporations, 17206

Securities and Exchange Commission
NOTICES
Self-regulatory organizations; proposed rule changes:
Cincinnati Stock Exchange, Inc., 17323–17325
New York Stock Exchange, Inc., 17325–17328
Options Clearing Corp., 17328–17329
Pacific Exchange, Inc., 17329–17330

Small Business Administration
RULES
Business loans:
Liquidation of collateral and sale of disaster assistance loans, 17132–17133
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17330–17331
Disaster loan areas:
Alabama, 17331
Georgia, 17331
Louisiana, 17331

Surface Mining Reclamation and Enforcement Office
PROPOSED RULES
Permanent program and abandoned mine land reclamation plan submissions:
North Dakota, 17211–17213
Oklahoma, 17213–17215

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Burlington Northern & Santa Fe Railway Co., 17341
Union Pacific Railroad Co., 17341

Tennessee Valley Authority
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17331–17332

Trade Representative, Office of United States
NOTICES
World Trade Organization:
Trade Agreements Act; government procurement thresholds, 17332

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board

Treasury Department
See Internal Revenue Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17341–17342

Separate Parts In This Issue

Part II
Architectural and Transportation Barriers Compliance Board, 17345–17367

Part III
Federal Energy Regulatory Commission, 17369–17413

Part IV
Department of Transportation, Coast Guard, 17415–17434

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
770.....17206
1823.....17206
1956.....17206
8 CFR
340.....17127
9 CFR
424.....17128
12 CFR
226.....17129
13 CFR
120.....17132
14 CFR
71.....17133
Proposed Rules:
39 (2 documents).....17206, 17208
18 CFR
37.....17370
21 CFR
10.....17134
12.....17134
177.....17134
510.....17134
801.....17135
803 (2 documents).....17135, 17136
807 (2 documents).....17135, 17136
812.....17136
814.....17136
820.....17135
860.....17136
864.....17138
866.....17138
870.....17138
872.....17138
874.....17138
876.....17138
878.....17138
884.....17138
886.....17138
888.....17138
897.....17135
1005.....17136
1010.....17136
1020.....17136
1040.....17136
26 CFR
1.....17148
35.....17148
40.....17149
41.....17149
47.....17149
48.....17149
145.....17149
602.....17148
Proposed Rules:
48.....17211
30 CFR
Proposed Rules:
934.....17211
936.....17213
33 CFR
Proposed Rules:
154.....17416
36 CFR
Proposed Rules:
1194.....17346
37 CFR
Proposed Rules:
1.....17215
40 CFR
52.....17164
130.....17166
180.....17170
Proposed Rules:
52 (2 documents).....17229, 17231
70.....17231
180.....17236
228.....17240
47 CFR
73 (3 documents).....17179, 17180
Proposed Rules:
2.....17246
73.....17248
49 CFR
572.....17180
587.....17196
50 CFR
679 (2 documents).....17204, 17205

UMI

VOL
65

ISS
63

MR
31

2000

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Rules and Regulations

Federal Register
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Friday, March 31, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 340

[INS No. 1858–97]

RIN 1115–AF63

Revoking Grants of Naturalization

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations relating to administrative revocation of naturalization by changing the burden of proof the Service must satisfy in order to administratively revoke a grant of naturalization and clarifying the 180-day period for the rendering of the district director's decision. This rule clarifies these issues in the final rule that was published in the **Federal Register** on October 28, 1996, at 61 FR 55550.

DATES: *Effective date:* This rule is effective March 31, 2000.

Comment date: Written comments must be submitted on or before May 30, 2000.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW, Room 5307, Washington, DC 20536. To ensure proper handling, please reference INS No. 1858–97 on your correspondence. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Janice B. Podolny, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street, NW, Room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION: Section 310(a) of the Immigration and Nationality Act (the Act), 8 U.S.C. 1421(a), gives the Attorney General the sole authority to grant a person naturalization as a United States citizen. As a concomitant to the authority under section 310(a), section 340(h) of the Act, 8 U.S.C. 1451(h), preserves the Attorney General's authority to "correct, reopen, alter, modify, or vacate an order naturalizing [a] person" as a United States citizen. On October 28, 1996, the Service published a final rule in the **Federal Register** at 61 FR 55550 promulgating regulations at 8 CFR 340.1, to provide a regulatory procedure for exercising this authority.

The Service's final rule provided that the Service could reopen a naturalization proceeding and revoke naturalization if the Service obtained "credible and probative evidence" that the individual's naturalization was subject to revocation. The regulation provided that after this initial showing by the Service, the burden of proof shifted to the individual whose naturalization was subject to revocation to establish that he or she was, in fact, eligible for naturalization. The Service, however, determined that it would adhere to the higher standard of proof applicable in judicial denaturalization proceedings, rather than the credible and probative standard. Accordingly, the Service has only initiated revocation proceedings where it has obtained clear, unequivocal, and convincing evidence and has revoked naturalization only in cases where the Service is able to sustain this burden throughout the administrative proceeding.

Consistent with this approach, the Service has made every effort, including review of all proposed revocation cases at the Headquarters level, to ensure that revocation of naturalization be pursued only if the evidence meets this higher standard. This interim rule changes the applicable burden of proof to conform with Service practice. This interim rule provides that the Service will only initiate revocation proceedings based on clear unequivocal, and convincing evidence with the burden of proof remaining with the Service throughout the administrative process. If it comes to the attention of the Service that in any case that became final before March 31, 2000, the Service relied on the lower standard of proof, the Service will, on its own motion, reconsider the decision under the clear, unequivocal, and convincing standard of proof.

In addition, this interim rule clarifies that the expiration of the 180-day period for the district director's decision does not preclude the district director from making a final decision on the merits. Consequently, this interim rule indicates that the Service should, where practicable, render a decision within 180 days of service of the notice of intent to reopen naturalization proceedings and to revoke naturalization. This ensures that the Service is able to carefully review all of the evidence in every administrative revocation case and render a correct decision without overly rigid and artificial time restrictions. Since this naturalized citizen continues to enjoy the rights of citizenship until the decision to reopen and revoke naturalization becomes administratively final, this amendment does not adversely affect the rights of the naturalized citizen.

Notice and Comment

Since this regulation simply restates the higher burden of proof that the Service has been applying in administrative revocation proceedings, this rule is a general statement of policy. The change to the 180-day period to render a decision is an interpretative rule of agency practice and procedure. The Service, therefore, has authority under 5 U.S.C. 553 to adopt this rule without prior notice and comment. The Commissioner, nevertheless, considers it appropriate to seek public comments on this rule, and has established a 60-day comment period.

Despite the comment period, this rule is an interim rule that will enter into force upon publication in the **Federal Register**. Because the current 8 CFR 340.1 places the burden of proof on the naturalized citizen, naturalized citizens may, in good faith, misunderstand the evidentiary standards and procedural requirements that the Service must satisfy in order to reopen and revoke a grant of naturalization. The Service has already ensured that each notice of intent to reopen naturalization proceedings and to revoke naturalization states the burden of proof as clear, unequivocal, and convincing

VOL 65 ISS 63 MR 31 2000 UMI

evidence. By clarifying the burden of proof that the Service has been adhering to in practice, this interim rule provides full protection of the naturalization citizen's rights. For this reason, the Commissioner finds that it would be contrary to the public interest for the Service to observe the 30-day delay that must ordinarily apply before a new regulation may enter into force. The Commissioner, therefore, also finds that good cause exists for making this rule effective upon publication in the **Federal Register.**

Regulatory Flexibility Act

The Commissioner of the Immigration and Naturalization Service, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that the rule will not have a significant economic impact on a substantial number of small entities. This rule proposes a procedure for the Service to revoke grants of naturalization. The affected parties are not small entities, and the impact of the regulation is not an economic one.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure, in the aggregate, of $100 million of more in any 1 year, by State, local, and tribal government, or by the private sector, and the rule will not significantly or uniquely affect small government. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Fairness Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in cost or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Office of Management and Budget to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, the Service has submitted this regulation to the Office of Management and Budget for review.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988 Civil Justice Reform

This rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

List of Subjects in 8 CFR Part 340

Citizenship and naturalization, Law enforcement.

Accordingly, part 340 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 340 continues to read as follows:

Authority: 8 U.S.C. 1103, 1443.

2. Section 340.1 is amended by:

a. Revising paragraph (a) introductory text;

b. Revising paragraph (b)(6); and by

c. Revising paragraph (d)(1), to read as follows:

§ 340.1 Reopening of a naturalization application by a district director pursuant to section 340(h) of the Act.

(a) *Reopening general.* On its own motion, the Service may reopen a naturalization proceeding and revoke naturalization in accordance with this section, if the Service obtains clear, convincing, and unequivocal evidence which:

* * * * *

(b) * * *

(6) *Burden of proof.* Upon service of a notice of intent to reopen naturalization proceedings and to revoke naturalization, the Service bears the burden of proof by clear, convincing, and unequivocal evidence that the grounds for reopening and revoking set forth in the notice have been met.

* * * * *

(d) * * *

(1) The district director shall render, where practicable, a written decision on the reopened naturalization application within 180 days of service of the notice of intent to reopen naturalization proceedings and to revoke naturalization. The decision shall consist of findings of fact, conclusions of law, and a final determination on the naturalization application. Notice of decision shall be served on the applicant or his or her attorney or representative, if applicable.

* * * * *

Dated: March 24, 2000.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 00–7963 Filed 3–30–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR part 424

[Docket No. 99–028N]

Food Additives for Use in Meat and Poultry Products: Sodium Diacetate, Sodium Acetate, Sodium Lactate and Potassium Lactate

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Affirmation of effective date for direct final rule.

SUMMARY: On January 20, 2000, the Food Safety and Inspection Service (FSIS) published a direct final rule "Food Additives for Use in Meat and Poultry Products: Sodium Diacetate, Sodium Acetate, Sodium Lactate and Potassium Lactate" in the **Federal Register.** This direct final rule notified the public of FSIS' intention to amend the Federal meat and poultry products inspection regulations to allow the use of these additives in meat and poultry products.

EFFECTIVE DATE: March 20, 2000.

FOR FURTHER INFORMATION CONTACT: Robert Post, Director, Labeling and Additives Policy Division, Office of Policy, Program Development and Evaluation, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250–3700; (202) 205–0279.

SUPPLEMENTARY INFORMATION:

Background

FSIS published a direct final rule, "Food Additives for Use in Meat and Poultry Products: Sodium Diacetate, Sodium Acetate, Sodium Lactate and Potassium Lactate" (65 FR 3121, 1/20/00). This direct final rule amended the Federal meat and poultry products inspection regulations by increasing the permissible levels of sodium acetate as a flavor enhancer in meat and poultry products and of sodium diacetate as a flavor enhancer and as an inhibitor of the growth of pathogens. This direct final rule also permitted the use of sodium lactate and potassium lactate in meat and poultry products, except for infant formulas and infant food, for purposes of inhibiting the growth of certain pathogens. This direct final rule was in response to petitions received by Armour Swift-Ekrich and Purac America, Inc.

FSIS provided for a 30-day comment period ending on February 22, 2000. FSIS received no comments in response to the direct final rule. Therefore, the amendments to the regulations will be effective on March 20, 2000.

Done at Washington, DC, on: March 27, 2000.

Thomas J. Billy,

Administrator.

[FR Doc. 00–8007 Filed 3–30–00; 8:45 am]

BILLING CODE 3410–DM–P

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Regulation Z; Docket No. R–1050]

Truth in Lending

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing revisions to the official staff commentary to Regulation Z (Truth in Lending). The commentary applies and interprets the requirements of Regulation Z. The revisions address short-term cash advances commonly called "payday loans." The Board is also publishing technical corrections to the commentary and regulation.

DATES: This rule is effective March 24, 2000. Compliance is optional until October 1, 2000.

FOR FURTHER INFORMATION CONTACT: Natalie E. Taylor, Counsel, or Michael L. Hentrel or David A. Stein, Staff Attorneys; Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for users of Telecommunications Device for the Deaf (TDD) *only*, contact Janice Simms at (202) 872–4984.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Lending Act (TILA; 15 U.S.C. 1601 *et seq.*) is to promote the informed use of consumer credit by providing for disclosures about its terms and cost. The act requires creditors to disclose the cost of credit as a dollar amount (the finance charge) and as an annual percentage rate (APR). Uniformity in creditors' disclosures is intended to assist consumers in comparison shopping. TILA requires additional disclosures for loans secured by consumers' homes and permits consumers to rescind certain transactions that involve their principal dwelling. The act also regulates certain practices of creditors.

TILA is implemented by the Board's Regulation Z (12 CFR part 226). The Board's official staff commentary (12 CFR part 226 (Supp. I)) interprets the regulation, and provides guidance to creditors in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically to address significant questions that arise.

In November 1999, the Board published proposed amendments to the commentary (64 FR 60368, November 5, 1999). The Board received more than 50 comment letters. Most of the comments were from financial institutions, other creditors, and their representatives. Comments were also received from state attorneys general, state regulatory agencies, and consumer advocates. The comment letters were focused on the proposed comment concerning payday loans. Most commenters supported the proposal. A few commenters, mostly payday lenders and their representatives, were opposed.

As discussed below, the commentary is being adopted substantially as proposed. Some revisions have been made for clarity in response to commenters' suggestions. The commentary revision concerning payday loans clarifies that when such transactions involve an agreement to defer payment of a debt, they are within the definition of credit in TILA and Regulation Z. Several technical corrections are being made to the commentary and regulation.

II. Regulatory Revisions

Subpart B—Open-End Credit

Section 226.5a—Credit and Charge Card Applications and Solicitations

5a(a) General Rules.

5a(a)(3) Exceptions.

Section 226.5a(a)(3) is republished to correct a technical error. This section was published in its entirety in 1989. (54 FR 13865, April 6, 1989.) A portion of the text was inadvertently omitted from subsequent publications of the Code of Federal Regulations (54 FR 24670, June 9, 1989).

Section 226.12–Special Credit Card Provisions

12(g) Relation to Electronic Fund Transfer Act and Regulation Z.

Section 226.12(g) contains a reference and citation to the Board's Regulation E (Electronic Fund Transfers), 12 CFR Part 205. Technical amendments have been made to conform the citation in section 226.12(g) with organizational changes made to Regulation E in 1996. The references to sections 205.5 and 205.6 of Regulation E are replaced by a reference to section 205.12(a).

III. Commentary Revisions

Subpart A—General

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

2(a)(14) Credit.

The Board proposed to add comment 2(a)(14)–2 to clarify that transactions commonly known as "payday loans" constitute credit for purposes of TILA. These transactions may also be known as "cash advance loans," "check advance loans," "post-dated check loans," "delayed deposit checks," or "deferred deposit checks."

Typically in such transactions, a cash advance is made to a consumer in exchange for the consumer's personal check, or the consumer's authorization to debit the consumer's deposit account electronically. In either case, the consumer pays a fee in connection with the advance. Both parties understand that the amount advanced is not, or may not be, available from the consumer's deposit account at the time of the exchange. The parties agree, therefore, that the consumer's check will not be cashed or deposited for collection (or the consumer's deposit account debited) until a designated future date. On that date, the consumer may have the option of repaying the obligation or further deferring repayment of the advance. The consumer may repay the obligation in various ways, for example, by providing cash or by allowing the obligee to deposit the consumer's check or electronically debit the consumer's deposit account.

Most commenters supported the proposal because they believed that payday loans are credit transactions. A few commenters opposed the proposal. These commenters questioned whether payday loans should be covered under TILA when applicable state law does not treat such transactions as credit. They were concerned that Regulation Z would preempt state law where, for example, the transactions are regulated under check-cashing laws, and they also

asserted that providing TILA disclosures would result in unnecessary compliance costs. These commenters also questioned whether disclosure of the APR in such transactions provides consumers with useful information. One commenter asserted that the proposed comment's scope was unclear, and believed the comment might be interpreted too broadly, resulting in the application of Regulation Z to noncredit transactions. This commenter also suggested that payday lenders will be unable to determine whether transactions are consumer credit or for an exempt purpose, such as business credit.

For the reasons discussed below, comment 2(a)(14)–2 is adopted to clarify that payday loans, and similar transactions where there is an agreement to defer payment of a debt, constitute credit for purposes of TILA. Some revisions have been made for clarity to address commenters' concerns.

Consistent with section 103(e) of TILA, section 226.2(a)(14) of Regulation Z defines "credit" as the right to defer the payment of debt or the right to incur debt and defer its payment. Comment 2(a)(14)–2 is intended to provide an example of a specific transaction that involves an agreement to defer payment of a debt. In these transactions, the consumer receives a cash advance in exchange for the consumer's check or authorization to debit the consumer's deposit account. Because there is also an agreement to defer presentment of the check or defer debiting the consumer's account, there is an agreement to defer payment of the debt. Such agreements are deemed to be "credit" as defined by section 226.2(a)(14), however they are described—as payday loans, cash advances, check advance loans, deferred presentment transactions, or by another name. Contemporaneous check-cashing transactions will not be affected where there is no agreement to defer presentment of the consumer's check; the routine delay in debiting a consumer's deposit account during the check collection process does not constitute credit.

TILA, as implemented by Regulation Z, reflects the intent of the Congress to provide consumers with uniform cost disclosures to promote the informed use of credit and assist consumers in comparison shopping. This purpose is furthered by applying the regulation to transactions, such as payday loans, that fall within the statutory definition of credit, regardless of how such transactions are treated or regulated under state law. The fact that some creditors may have to comply with state laws as well as with Regulation Z, and that creditors may bear compliance costs, is not a sufficient basis to disregard TILA's applicability to the covered transactions. Where a creditor is unable to determine if a transaction is primarily for an exempt purpose, such as business-purpose credit, the creditor is free to make disclosures under TILA, and the fact that disclosures are made would not be controlling on the question of whether the transaction was exempt. See Comment 3(a)–1.

A few commenters questioned the effect of the proposed comment on state laws that regulate payday loans and similar transactions. Section 226.28 of Regulation Z describes the effect of TILA on state laws. As a general matter, state laws are preempted if they are inconsistent with the act and regulation, and then only to the extent of the inconsistency. A state law is inconsistent if it requires or permits creditors to make disclosures or take actions that contradict the requirements of federal law. A state law may not be deemed inconsistent if it is more protective of consumers.

TILA does not impair a state's authority to regulate or prohibit payday lending activities. Persons that regularly extend payday loans and otherwise meet the definition of creditor (§ 226.2(a)(17)) are required, however, to provide disclosures to consumers consistent with the requirements of Regulation Z. The Board notes that a number of state statutes expressly require payday lenders to provide federal TILA disclosures. The Board will review any issues brought to its attention regarding the effect of TILA and Regulation Z on particular state laws. Appendix A to Regulation Z outlines the Board's procedures for making such determinations.

Some commenters expressed concern that by referring specifically to "payday loans," the proposed comment might be limited to transactions labeled as such. Comment 2(a)(14)–2 has been modified to address this concern. Transactions in which the parties agree to defer payment of a debt are "credit" transactions regardless of the label used to describe them.

In describing payday loan transactions, the proposed comment referred to the fact that consumers typically must pay a fee. Some commenters questioned whether such fees are finance charges for purposes of Regulation Z. These commenters noted that under some state laws, the fees charged for payday loans and similar transactions are not considered interest or finance charges.

A fee charged in connection with a payday loan may be a finance charge for purposes of TILA pursuant to section 226.4 of Regulation Z, regardless of how the fee is characterized for state law purposes. Where the fee charged constitutes a finance charge under TILA, and the person advancing funds regularly extends consumer credit, that person is a creditor covered by Regulation Z. See § 226.2(a)(17). Comment 2(a)(14)–2 has been revised to reflect this guidance.

A few commenters sought clarification on whether payday lenders obtain a security interest in the check provided by a consumer. Under Regulation Z, the existence of a security interest is determined by the applicable state law. See § 226.2(a)(25). Once a security interest is determined to exist, it must be disclosed according to section 226.6(c) for open-end credit plans, or section 226.18(m) for closed-end transactions. If a creditor is unsure whether a particular interest is a security interest under applicable law, the creditor may at its option treat it as a security interest for purposes of TILA. See Comment 2(a)(25)–1.

Comment 2(a)(14)–2 has been added as an example of a specific type of transaction that involves an agreement to defer payment of a debt. Because such a transaction falls within the existing statutory and regulatory definition of "credit," the comment does not represent a change in the law. Generally, updates to the Board's staff commentary are effective upon publication. Consistent with the requirements of section 105(d) of TILA, however, the Board typically provides an implementation period of six months or longer. During that period, compliance with the published update is optional so that creditors may adjust their documents to accommodate TILA's disclosure requirements.

Subpart B—Open-End Credit

Section 226.13—Billing Error Resolution

13(i) Relation to Electronic Fund Transfer Act and Regulation E.

A technical amendment has been made to comment 13(i)–3 to conform a citation to Regulation E with organizational changes made to that regulation. The reference to section 205.11(e) of Regulation E has been replaced with a reference to section 205.11(c).

Subpart C—Closed-End Credit

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

19(b) Certain variable-rate transactions.

The Board is adopting technical amendments to comments 19(b)–5, 19(b)(2)–4, 19(b)(2)(vi)–1, and 19(b)(2)(vii)–1 to conform the citations in those comments to section 226.19(b)(2) of Regulation Z, as amended. No substantive change is intended.

Subpart E—Special Rules for Certain Home Mortgage Transactions

Section 226.32—Requirements for Certain Closed-end Home Mortgages

32(a) Coverage.
32(a)(1)(ii).

TILA, as amended by the Home Ownership and Equity Protection Act of 1994 (HOEPA), imposes additional disclosure requirements and substantive limitations on certain closed-end mortgage loans bearing rates or fees above a certain percentage or amount. See § 226.32. Such loans are covered by HOEPA if the total points and fees payable by the consumer at or before loan closing exceed the greater of $400 or 8 percent of the total loan amount. HOEPA requires the Board to adjust the $400 amount annually on January 1 by the annual percentage change in the Consumer Price Index (CPI) that was reported on the preceding June 1. (15 U.S.C. 1602(aa)(3) and 12 CFR 226.32(a)(1)(ii)). The adjusted amount for 2000 ($451), published on November 5, 1999 (64 FR 60335), is added to comment 32(a)(1)(ii)–2.

32(c) Disclosures.
32(c)(4) Variable-rate.

The Board is revising comment 32(c)(4)–1 to conform the citations in the comment to section 226.19(b)(2) of Regulation Z, as amended. No substantive change is intended.

List of Subjects in 12 CFR Part 226

Advertising, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements, Truth in lending.

For the reasons set forth in the preamble, the Board amends 12 CFR part 226 as follows:

PART 226—TRUTH IN LENDING (REGULATION Z)

1. The authority citation for part 226 continues to read as follows:

Authority: 12 U.S.C. 3806; 15 U.S.C. 1604 and 1637(c)(5).

2. Section 226.5a(a)(3) is revised to read as follows:

Subpart B—Open-End Credit

§ 226.5a Credit and charge card applications and solicitations

(a) * * *

(3) *Exceptions.* This section does not apply to home-equity plans accessible by a credit or charge card that are of the type subject to the requirements of § 226.5b; overdraft lines of credit tied to asset accounts accessed by check-guarantee cards or by debit cards; or lines of credit accessed by check-guarantee cards or by debit cards that can be used only at automated teller machines.

* * * * *

3. In § 226.12, paragraph (g) is revised to read as follows:

* * * * *

§ 226.12 Special credit card provisions.

* * * * *

(g) *Relation to Electronic Fund Transfer Act and Regulation E.* For guidance on whether Regulation Z (12 CFR part 226) or Regulation E (12 CFR part 205) applies in instances involving both credit and electronic fund transfer aspects, refer to Regulation E, 12 CFR 205.12(a) regarding issuance and liability for unauthorized use. On matters other than issuance and liability, this section applies to the credit aspects of combined credit/electronic fund transfer transactions, as applicable.

4. In Supplement I to Part 226:

a. Under *Section 226.2—Definitions and Rules of Construction*, under *2(a)(14) Credit.*, paragraph 2. is added.

b. Under *Section 226.13—Billing Error Resolution*, under *13(i) Relation to Electronic Fund Transfer Act and Regulation E.*, paragraph 3. is revised.

c. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *19(b) Certain variable-rate transactions*, paragraph 5. is revised.

d. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *Paragraph 19(b)(2)*, paragraph 4. is amended by removing "§ 226.19(b)(2)(xi)" and adding "§ 226.19(b)(2)(x)" in its place.

e. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *Paragraph 19(b)(2)(vi)*, paragraph 1. is amended by removing "comments 19(b)(2)(viii)–7 and 19(b)(2)(x)–4" and adding "comments 19(b)(2)(viii)(A)–7 and 19(b)(2)(viii)(B)–4" in its place.

f. Under *Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions*, under *Paragraph 19(b)(2)(vii)*, paragraph 1. is amended by removing "comments 19(b)(2)(viii)–6 and 19(b)(2)(x)–3" and adding "comments 19(b)(2)(viii)(A)–6 and 19(b)(2)(viii)(B)–3" in its place.

g. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under *paragraph 32(a)(1)(ii)*, the second sentence of paragraph 2. is revised and paragraph 2.v. is added; and

h. Under *Section 226.32—Requirements for Certain Closed-End Home Mortgages*, under *paragraph 32(c)(4)*, paragraph 1. is amended by removing "§ 226.19(b)(2)(x)" and adding "§ 226.19(b)(2)(viii)(B)" in its place.

SUPPLEMENT I TO PART 226 OFFICIAL STAFF INTERPRETATIONS

* * * * *

Subpart A—General

* * * * *

Section 226.2—Definitions and Rules of Construction

2(a) Definitions.

* * * * *

2(a)(14) Credit.

* * * * *

2. *Payday loans; deferred presentment.* Credit includes a transaction in which a cash advance is made to a consumer in exchange for the consumer's personal check, or in exchange for the consumer's authorization to debit the consumer's deposit account, and where the parties agree either that the check will not be cashed or deposited, or that the consumer's deposit account will not be debited, until a designated future date. This type of transaction is often referred to as a "payday loan" or "payday advance" or "deferred presentment loan." A fee charged in connection with such a transaction may be a finance charge for purposes of § 226.4, regardless of how the fee is characterized under state law. Where the fee charged constitutes a finance charge under § 226.4 and the person advancing funds regularly extends consumer credit, that person is a creditor and is required to provide disclosures consistent with the requirements of Regulation Z. See § 226.2(a)(17).

* * * * *

Subpart B-Open-End Credit

* * * * *

Section 226.13—Billing Error Resolution

* * * * *

13(i) Relotion to Electronic Fund Transfer Act and Regulation E.

* * * * *

3. *Application to debit/credit transactions-examples.* If a consumer withdraws money at an automated teller machine and activates an overdraft credit feature on the checking account:

i. An error asserted with respect to the transaction is subject, for error resolution purposes, to the applicable Regulation E provisions (such as timing and notice) for the entire transaction.

ii. The creditor need not provisionally credit the consumer's account, under

§ 205.11(c)(2)(i) of Regulation E, for any portion of the unpaid extension of credit.

iii. The creditor must credit the consumer's account under § 205.11(c) with any finance or other charges incurred as a result of the alleged error.

iv. The provisions of § 226.13(d) and (g) apply only to the credit portion of the transaction.

* * * * *

Subpart C—Closed-End Credit

* * * * *

Section 226.19—Certain Residential Mortgage and Variable-Rate Transactions

* * * * *

19(b) Certain variable-rate transactions.

* * * * *

5. *Examples of variable-rate transactions.*

i. The following transactions, if they have a term greater than one year and are secured by the consumer's principal dwelling, constitute variable-rate transactions subject to the disclosure requirements of § 226.19(b).

A. Renewable balloon-payment instruments where the creditor is both unconditionally obligated to renew the balloon-payment loan at the consumer's option (or is obligated to renew subject to conditions within the consumer's control) and has the option of increasing the interest rate at the time of renewal. (See comment 17(c)(1)–11 for a discussion of conditions within a consumer's control in connection with renewable balloon-payment loans.)

B. Preferred-rate loans where the terms of the legal obligation provide that the initial underlying rate is fixed but will increase upon the occurrence of some event, such as an employee leaving the employ of the creditor, and the note reflects the preferred rate. The disclosures under §§ 226.19(b)(1) and 226.19(b)(2)(v), (viii), (ix), and (xii) are not applicable to such loans.

C. "Price-level-adjusted mortgages" or other indexed mortgages that have a fixed rate of interest but provide for periodic adjustments to payments and the loan balance to reflect changes in an index measuring prices or inflation. The disclosures under § 226.19(b)(1) are not applicable to such loans, nor are the following provisions to the extent they relate to the determination of the interest rate by the addition of a margin, changes in the interest rate, or interest-rate discounts: Section 226.19(b)(2)(i), (iii), (iv), (v), (vi), (vii), (viii), and (ix). (See comments 20(c)–2 and 30–1 regarding the inapplicability of variable-rate adjustment notices and interest-rate limitations to price-level-adjusted or similar mortgages.)

ii. Graduated-payment mortgages and step-rate transactions without a variable-rate feature are not considered variable-rate transactions.

* * * * *

Subpart E—Special Rules for Certain Home Mortgage Transactions

* * * * *

Section 226.32—Requirements for Certain Closed-End Home Mortgages

32(a) Coverage

* * * * *

Paragraph 32(a)(1)(ii)

* * * * *

2. *Annual adjustment of $400 amount.* * * * The $400 figure is adjusted annually on January 1 by the annual percentage change in the CPI that was in effect on the preceding June 1. * * *

* * * * *

v. For 2000, $451, reflecting a 2.3 percent increase in the CPI–U from June 1998 to June 1999, rounded to the nearest whole dollar.

* * * * *

By order of the Board of Governors of the Federal Reserve System, acting through the Director of the Division of Consumer and Community Affairs and the Secretary of the Board under delegated authority, March 24, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–7714 Filed 3–30–00; 8:45 am]

BILLING CODE 6210–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Liquidation of Collateral, Sale of Loans

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: With this rule, SBA amends its regulation regarding the liquidation and sale of loans. As part of a government-wide initiative, federal credit agencies are being directed by the Office of Management and Budget (OMB) to sell their loan portfolios. Previously, SBA amended its regulations to permit the sale of direct and purchased loans made under the authorities of the 7(a) and 501, 502, 503, and 504 programs (64 FR 44109). This final rule will permit SBA to sell its physical disaster home loans, physical disaster business loans and economic injury disaster loans (collectively referred to as Disaster Assistance Loans) in addition to direct and purchased commercial loans. This will include sales of both secured and unsecured Disaster Assistance Loans in performing and non-performing status. The Disaster Assistance Loans will be sold to qualified bidders by means of competitive procedures at publicly advertised sales. Bidder qualifications will be set for each sale in accordance with the terms and conditions of each sale.

DATES: This rule is effective May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Richard Blewett, 202–205–4202.

SUPPLEMENTARY INFORMATION: SBA promulgates without change, a rule which it proposed on January 10, 2000 (65 FR 1349). SBA received no comments on the proposed rule and thus, is publishing the final rule as proposed.

13 CFR 120.540 sets forth SBA's policy for the liquidation of collateral and the sale of commercial loans. SBA amends and expands this rule to include the sale of Disaster Assistance Loans in asset sales. Public Law 104–134, the "Debt Collection Improvement Act of 1996," enacted on April 26, 1996, provides that, "the head of an executive * * * agency may sell, subject to section 504(b) of the Federal Credit Reform Act of 1990 and using competitive procedures, any non-tax debt owed to the United States that is delinquent for more than 90 days." 31 U.S.C. 3711(i)(1).

The Small Business Act, 15 U.S.C. 634(b)(2), provides that "[The Administrator] may sell at public or private sale * * * in [her] discretion . . . any evidence of debt * * * personal property, or security * * *." It further provides in 15 U.S.C. 634(b)(7) that the Administrator may "take any and all actions * * * when [she] determines such actions are necessary or desirable in * * * liquidating or otherwise dealing with or realizing on loans * * *." Pursuant to this statutory authority, SBA is establishing an Asset Sales Program to sell portions of its direct and participation loan portfolios.

Compliance With Executive Orders 13132, 12988, and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

SBA has determined that this final rule is not a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual economic effect of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA has determined that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. This regulation concerns the ability of SBA to sell disaster loans as part of SBA's Asset Sales Program. There will be no economic impact upon the small businesses that received those loans because the loans that will be sold are merely changing ownership, so no new funding is involved. The purchaser of the loans will be bound by the terms of the loan documents in the same manner as SBA. The Agency does not anticipate that any additional costs will be placed upon small entities. Therefore, SBA believes that there will be no economic impact on small businesses.

Nevertheless, even if it is assumed that there is an economic impact, this rule would still only have a minimal effect on an insubstantial number of small businesses. This is because SBA's total disaster business loan portfolio at the end of FY 1999 was 64,832 loans, as contrasted with an estimated total of 24 million small businesses in the United States (as estimated by SBA's Office of Advocacy).

SBA has determined that this final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C., chapter 35.

For purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications.

For purposes of Executive Order 12988, SBA has determined that this final rule is drafted, to the extent practicable, to accord with the standards set forth in section 3 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—business.

For the reasons stated in the preamble, SBA amends 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

1. The authority citation for part 120 continues to read as follows:

Authority: 15 U.S.C. 634 (b)(6) and 636(a) and (h).

2. In § 120.540, revise the section heading and amend the first sentence of paragraph (b)(4) as follows:

§ 120.540 What are SBA's policies concerning the liquidation of collateral and the sale of business loans and physical disaster assistance loans, physical disaster business loans and economic injury disaster loans?

* * * * *

(b) * * *

(4) Sell direct and purchased 7(a) and 501, 502, 503 and 504 loans and physical disaster home loans, physical disaster business loans and economic injury disaster loans in asset sales.

* * *

* * * * *

Dated: March 21, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–7944 Filed 3–30–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 00–ASO–4]

Establishment of Class E Airspace; Andrews—Murphy, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Andrews—Murphy, NC. A Global Positioning System (GPS) Standard Instrument Approach Procedure (SIAP), helicopter point in space approach, has been developed for Andrews—Murphy, NC. As a result, additional controlled airspace extending upward from 700 feet Above Ground Level (AGL) is needed to accommodate the SIAP.

DATES: Effective 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy B. Shelton, Manager, Airspace Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5627.

SUPPLEMENTARY INFORMATION:

History

On February 14, 2000, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by establishing Class E airspace at Andrews—Murphy, NC (65 FR 7320). This action provides adequate Class E airspace for IFR operations at Andrews—Murphy, NC. Designations for Class E airspace extending upward from 700 feet or more above the surface are published in Paragraph 6005 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR part 71.1. The Class E designation listed in this document will be published subsequently in the Order.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) establishes Class E airspace at Andrews—Murphy, NC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation, as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by Reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; EO 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. the incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E Airspace Areas Extending Upward from 700 feet or More above the Surface of the Earth.

* * * * *

ASO NC E5 Andrews—Murphy, NC [New]

Andrews—Murphy, NC

Point in Space Coordinates

(Lat. 34°11′10″N, long. 83°52′57″W)

That airspace extending upward from 700 feet or more above the surface within a 6-mile radius of the point in space (lat.

34°11'10"N, long 83°52'57"W) serving Andrews—Murphy, NC

* * * * *

Issued in College Park, Georgia, on March 20, 2000.

Nancy B. Shelton,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 00–7959 Filed 3–30–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 10, 12, and 510

[Docket No. 99N–4957]

Removal of Designated Journals; Confirmation of Effective Date

AGENCY: Food and Drug Administration, HHS.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Food and Drug Administration (FDA) is confirming the effective date of April 24, 2000 for the final rule that appeared in the **Federal Register** of December 10, 1999 (64 FR 69188). The direct final rule amends the regulation that lists the veterinary and scientific journals available in FDA's library. The purpose of the list is to allow individuals to reference articles from listed journals in new animal drug application documents submitted to Dockets Management Branch, and objections and requests for hearing on a regulation or order instead of submitting a copy or reprint of the article. FDA is taking this action because this list of journals is outdated and because individuals rarely use the regulation. This document confirms the effective date of the direct final rule.

DATES: Effective date confirmed: April 24, 2000.

FOR FURTHER INFORMATION CONTACT: Gail L. Schmerfeld, Center for Veterinary Medicine (HFV–100), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0205.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 10, 1999 (64 FR 69188), FDA solicited comments concerning the direct final rule for a 75-day period ending February 23, 2000. FDA stated that the effective date of the direct final rule would be on April 24, 2000, 60 days after the end of the comment period, unless any significant adverse comment was submitted to FDA during the comment period. FDA did not receive any significant adverse comments.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the amendments issued thereby will go into effect on April 24, 2000.

Dated: March 24, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–7936 Filed 3–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 94F–0246]

Indirect Food Additives: Polymers

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of ethylene-vinyl acetate-vinyl alcohol copolymers with revised specifications that provide for a decreased minimum acceptable ethylene content and an increased maximum permitted level of migration of ethylene-vinyl acetate-vinyl alcohol oligomers for use as articles or components of articles intended for contact with food. This action responds to a petition filed by Kuraray Co., Ltd.

DATES: This rule is effective March 31, 2000. Submit written objections and requests for a hearing by May 1, 2000. The Director of the Office of the Federal Register approves the incorporation by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 of a certain publication in 21 CFR 177.1360(d), as of March 31, 2000.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Mitchell A. Cheeseman, Center for Food Safety and Applied Nutrition (HFS–215), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–418–3083.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 17, 1994 (59 FR 42277), FDA announced that a food additive petition (FAP 4B4421) had been filed by Kuraray Co., Ltd., c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed to amend § 177.1360 *Ethylene-vinyl acetate-vinyl alcohol copolymers* (21 CFR 177.1360) of the food additive regulations to provide for the safe use of ethylene-vinyl acetate-vinyl alcohol copolymers with revised specifications that provide for a decreased minimum acceptable ethylene content and an increased maximum permitted level of migration of ethylene-vinyl acetate-vinyl alcohol oligomers for use as articles or components of articles intended for contact with food.

FDA has evaluated data in the petition and other relevant material. Based on this information, the agency concludes that: (1) The proposed use of the additive is safe, (2) the additive will achieve its intended technical effect, and (3) the regulations in § 177.1360 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in § 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

Any person who will be adversely affected by this regulation may at any time file with the Dockets Management Branch (address above) written objections by May 1, 2000. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents are to be submitted and are to be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging, Incorporation by reference.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: 21 U.S.C. 321, 342, 348, 379e.

2. Section 177.1360 is amended by revising paragraphs (a)(3) and (d) to read as follows:

§ 177.1360 Ethylene-vinyl acetate-vinyl alcohol copolymers.

* * * * *

(a) * * *

(3) Those copolymers containing 17 to 40 percent ethylene and 60 to 83 percent vinyl alcohol units by weight may be used in contact with foods as described in paragraph (d) of this section.

* * * * *

(d) The finished food-contact article shall not exceed 0.018 centimeter (0.007 inch) thickness and may contact all foods, except those containing more than 8 percent alcohol, under conditions of use B through H described in table 2 of § 176.170(c) of this chapter. Film samples of 0.018 centimeter (0.007 inch) thickness representing the finished articles shall meet the following extractive limitation when tested by ASTM method F34–76 (Reapproved 1980), "Standard Test Methods for Liquid Extraction of Flexible Barrier Materials," which is incorporated by reference. The availability of this incorporation by reference is given in paragraph (b) of this section. The film when extracted with distilled water at 100 °C (212 °F) for 30 minutes yields ethylene-vinyl acetate-vinyl alcohol oligomers not to exceed 0.093 milligram per square centimeter (0.6 milligram per square inch) of food contact surface as determined by a method entitled "Analytical Method of Determining the Amount of EVOH in the Extractives Residue of EVOH Film," dated March 23, 1987, as developed by the Kuraray Co., Ltd., which is incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Office of Premarket Approval (HFS–200), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204, or may be examined at the Center for Food Safety and Applied Nutrition's Library, 200 C St. SW., rm. 3321, Washington, DC, or at the Office of the Federal Register, 800 North Capitol St. NW., suite 700, Washington, DC.

* * * * *

Dated: March 20, 2000.

L. Robert Lake,

Director of Regulations and Policy, Center for Food Safety and Applied Nutrition.

[FR Doc. 00–8037 Filed 3–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 801, 803, 807, 820, and 897

[Docket No. 95N–0253]

RIN 0910–AA48

Regulations Restricting the Sale and Distribution of Cigarettes and Smokeless Tobacco to Protect Children and Adolescents; Revocation

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking its regulations governing access to and promotion of nicotine-containing cigarettes and smokeless tobacco to children and adolescents. This action is being taken in response to the Supreme Court decision of March 21, 2000 in which the court held that Congress has not given FDA the authority to regulate tobacco products as customarily marketed. This action will result in the removal of the regulations.

DATES: This rule is effective March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Anne Kirchner, Office of the Commissioner (HF–13), 5600 Fishers Lane, Rockville, MD 20857, 301–827–0585.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of August 11, 1995 (60 FR 41314), We (FDA) issued proposed regulations to restrict the sale and distribution of cigarettes and smokeless tobacco to children and adolescents. In addition, we issued a jurisdictional determination that cigarettes and smokeless tobacco products are combination products consisting of a drug (nicotine) and device components intended to deliver nicotine to the body. We issued final regulations based on this proposal in the **Federal Register** of August 28, 1996 (61 FR 44398).

On March 21, 2000, in *Food and Drug Administration vs. Brown & Williamson Tobacco Corp., et al.*, the Supreme Court ruled that Congress has not granted FDA jurisdiction to regulate tobacco products as customarily marketed. In accordance with this ruling, we are hereby removing our regulations restricting the sale and distribution of cigarettes and smokeless tobacco to children and adolescents. Publication of this document constitutes final action under the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B)). We are also addressing the additional steps necessitated by the courts ruling, such as termination of state contracts to help enforce the age and photo identification requirements of the regulations.

List of Subjects

21 CFR Part 801

Labeling, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 803

Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 820

Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 897

Advertising, Cigarettes, Labeling, Sale and distribution, Smokeless tobacco.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 801, 803, 807, and 820 are amended and part 897 is removed as follows:

PART 801—LABELING

1. The authority citation for 21 CFR part 801 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 360i, 360j, 371, 374.

§ 801.126 [Removed]

2. Remove § 801.126.

PART 803—MEDICAL DEVICE REPORTING

3. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

4. Amend § 803.19 by removing paragraphs (f) and (g).

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL DISTRIBUTORS OF DEVICES

5. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360e, 360c, 360i, 360j, 371, 374.

6. Amend § 807.65 by removing paragraph (j).

PART 820—QUALITY SYSTEM REGULATION

7. The authority citation for 21 CFR part 820 continues to read as follows:

Authority: 351, 352, 360, 360c, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, 383.

8. Amend § 820.1 by removing paragraphs (e) and (f).

PART 897—[REMOVED]

9. Remove part 897.

Dated: March 28, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–7960 Filed 3–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 803, 807, 812, 814, 860, 1005, 1010, 1020, and 1040

[Docket No. 00N–0784]

Medical Devices; Information Processing Procedures; Obtaining, Submitting, Executing, and Filing of Forms: Change of Addresses

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending procedural regulations that pertain to obtaining, submitting, executing, and filing certain documents to reflect new addresses in the agency. All filings and other documents subject to these regulations must be directed to the new address. This action is being taken to ensure the accuracy of FDA's regulations.

DATES: This rule is effective March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Domini H. Cassis, Center for Devices and Radiological Health (HFZ–215), Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850, 301–827–2964.

SUPPLEMENTARY INFORMATION: This rule reflects the relocation of certain component offices within the agency that are responsible for processing documents relating to medical devices. This administrative action is limited to changing specific addresses for obtaining, submitting, executing, and filing certain documents, but it makes no other changes in filing requirements.

This document is published as a final rule with the effective date shown above. Because the final rule is an administrative action to update addresses for certain agency offices, FDA has determined that it has no substantive impact on the public. It imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations (CFR) for the convenience of the public. FDA, therefore, for good cause, finds under 5 U.S.C. 553(b)(3)(B) and (d)(3) that notice and public comment are unnecessary and that this rule may take effect upon publication.

List of Subjects

21 CFR Part 803

Imports, Medical devices, Recordkeeping requirements.

21 CFR Part 807

Confidential business information, Imports, Medical devices, Reporting and recordkeeping requirements.

21 CFR Part 812

Health records, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 814

Administrative practice and procedure, Confidential business information, Medical devices, Medical research, Reporting and recordkeeping requirements.

21 CFR Part 860

Administrative practice and procedure, Medical devices.

21 CFR Part 1005

Administrative practice and procedure, Electronic products, Imports, Radiation protection, Surety bonds.

21 CFR Part 1010

Administrative practice and procedure, Electronic products, Exports, Radiation protection.

21 CFR Part 1020

Electronic products, Medical devices, Radiation protection, Reporting and recordkeeping requirements, Television, X-rays.

21 CFR 1040

Electronic products, Labeling, Lasers, Medical devices, Radiation protection, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 803, 807, 812, 814, 860, 1005, 1010, 1020, and 1040 are amended as follows:

PART 803—MEDICAL DEVICE REPORTING

1. The authority citation for 21 CFR part 803 continues to read as follows:

Authority: 21 U.S.C. 352, 360, 360i, 360j, 371, 374.

2. Section 803.11 is revised to read as follows:

§ 803.11 Obtaining the forms.

User facilities and manufacturers must submit all reports of individual adverse events on FDA Form 3500A (MEDWATCH form) or in an electronic equivalent as approved under § 803.14. This form and all other forms referenced in this section can also be obtained from the Consolidated Forms and Publications Office, Washington

Commerce Center, 3222 Hubbard Rd., Landover, MD 20875; from the Food and Drug Administration, MEDWATCH (HF–2), 5600 Fishers Lane, Rockville, MD 20857, 301–827–7240; from the Division of Small Manufacturers Assistance, Office of Health and Industry Programs, Center for Devices and Radiological Health (HFZ–220), 1350 Piccard Dr. Rockville, MD 20850, FAX 301–443–8818; or from http://www.fda.gov/opacom/morechoices/fdaforms/cdrh.html on the Internet.

PART 807—ESTABLISHMENT REGISTRATION AND DEVICE LISTING FOR MANUFACTURERS AND INITIAL IMPORTERS OF DEVICES

3. The authority citation for 21 CFR part 807 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 360, 360c, 360e, 360i, 360j, 371, 374.

4. Section 807.90 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 807.90 Format of a premarket notification submission.

* * * * *

(a)(1) For devices regulated by the Center for Devices and Radiological Health, be addressed to the Food and Drug Administration, Center for Devices and Radiological Health (HFZ–401), 9200 Corporate Blvd., Rockville, MD 20850.

(2) For devices regulated by the Center for Biologics Evaluation and Research, be addressed to the Food and Drug Administration, Center for Biologics Evaluation and Research, Document Control Room (HFM–99), 1401 Rockville Pike, Rockville, MD 20852–1448. Information about devices regulated by the Center for Biologics Evaluation and Research is available at http://www.fda.gov/cber/dap/devlst.htm on the Internet.

* * * * *

PART 812—INVESTIGATIONAL DEVICE EXEMPTIONS

5. The authority citation for 21 CFR part 812 continues to read as follows:

Authority: 21 U.S.C. 331, 351, 352, 353, 355, 360, 360c–360f, 360h–360j, 371, 372, 374, 379e, 381, 382, 383; 42 U.S.C. 216, 241, 262, 263b–263n.

6. Section 812.19 is revised to read as follows:

§ 812.19 Address for IDE correspondence.

If you are sending an application, supplemental application, report, request for waiver, request for import or export approval, or other correspondence relating to matters covered by this part, you must address it to the Center for Devices and Radiological Health, Document Mail Center (HFZ–401), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850. You must state on the outside wrapper of each submission what the submission is, for example, an "IDE application," a "supplemental IDE application," or a "correspondence concerning an IDE (or an IDE application)."

PART 814—PREMARKET APPROVAL OF MEDICAL DEVICES

7. The authority citation for 21 CFR part 814 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 353, 360, 360c–360j, 371, 372, 373, 374, 375, 379, 379e, 381.

8. Section 814.20 is amended by revising paragraphs (g) and (h) to read as follows:

§ 814.20 Application.

* * * * *

(g) FDA has issued a PMA guideline to assist the applicant in the arrangement and content of a PMA. This guideline is available upon request from the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance (HFZ–220), 1350 Piccard Dr. Rockville, MD 20850, FAX 301–443–8818.

(h) If you are sending a PMA, PMA amendment, PMA supplement, or correspondence with respect to a PMA, you must send it to the Document Mail Center (HFZ–401), Center for Devices and Radiological Health, Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850.

PART 860—MEDICAL DEVICE CLASSIFICATION PROCEDURES

9. The authority citation for 21 CFR part 860 continues to read as follows:

Authority: 21 U.S.C. 360c, 360d, 360e, 360i, 360j, 371, 374.

10. Section 860.123 is amended by revising paragraph (b)(1) to read as follows:

§ 860.123 Reclassification petition: Content and form.

* * * * *

(b) * * *

(1) Addressed to the Food and Drug Administration, Center for Devices and Radiological Health, Regulations Staff (HFZ–215), 1350 Piccard Dr., Rockville, MD 20850;

* * * * *

PART 1005—IMPORTATION OF ELECTRONIC PRODUCTS

11. The authority citation for 21 CFR part 1005 continues to read as follows:

Authority: 42 U.S.C. 263d, 263h.

12. Section 1005.25 is amended by revising paragraph (b) to read as follows:

§ 1005.25 Service of process on manufacturers.

* * * * *

(b) A manufacturer designating an agent must address the designation to the Center for Devices and Radiological Health, 9200 Corporate Blvd., Rockville, MD 20850. It must be in writing and dated; all signatures must be in ink. The designation must be made in the legal form required to make it valid and binding on the manufacturer under the laws, corporate bylaws, or other requirements governing the making of the designation by the manufacturer at the place and time where it is made, and the persons or person signing the designation shall certify that it is so made. The designation must disclose the manufacturer's full legal name and the name(s) under which the manufacturer conducts the business, if applicable, the principal place of business, and mailing address. If any of the products of the manufacturer do not bear his legal name, the designation must identify the marks, trade names, or other designations of origin which these products bear. The designation must provide that it will remain in effect until withdrawn or replaced by the manufacturer and shall bear a declaration of acceptance duly signed by the designated agent. The full legal name and mailing address of the agent must be stated. Until rejected by the Secretary, designations are binding on the manufacturer even when not in compliance with all the requirements of this section. The designated agent may not assign performance of his function under the designation to another.

* * * * *

PART 1010—PERFORMANCE STANDARDS FOR ELECTRONIC PRODUCTS: GENERAL

13. The authority citation for 21 CFR part 1010 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 371, 381; 42 U.S.C. 263b–263n.

14. Section 1010.4 is amended by revising paragraph (b) to read as follows:

§ 1010.4 Variances.

* * * * *

(b) *Applications for variances.* If you are submitting an application for variances or for amendments or

extensions thereof, you must submit an original and two copies to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

* * * * *

15. Section 1010.5 is amended by revising paragraph (c) to read as follows:

§ 1010.5 Exemptions for products intended for United States Government use.

* * * * *

(c) *Application for exemption.* If you are submitting an application for exemption, or for amendment or extension thereof, you must submit an original and two copies to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. For an exemption under the criteria prescribed in paragraph (a)(1) of this section, the application shall include the information prescribed in paragraphs (c)(1) through (c)(13) of this section. For an exemption under the criteria prescribed in paragraph (a)(2) of this section, the application shall include the information prescribed in paragraphs (c)(3) through (c)(13) of this section. An application for exemption, or for amendment or extension thereof, and correspondence relating to such application shall be made available for public disclosure in the Dockets Management Branch, except for confidential or proprietary information submitted in accordance with part 20 of this chapter. Information classified for reasons of national security shall not be included in the application. Except as indicated in this paragraph, the application for exemption shall include the following:

* * * * *

PART 1020—PERFORMANCE STANDARDS FOR IONIZING RADIATION EMITTING PRODUCTS

16. The authority citation for 21 CFR part 1020 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360e–360j, 360gg–360ss, 371, 381.

17. Section 1020.30 is amended by revising paragraph (d)(1) to read as follows:

§ 1020.30 Diagnostic x-ray systems and their major components.

* * * * *

(d) * * *

(1) *Reports of assembly.* All assemblers who install certified components shall file a report of assembly, except as specified in paragraph (d)(2) of this section. The report will be construed as the assembler's certification and identification under §§ 1010.2 and 1010.3 of this chapter. The assembler shall affirm in the report that the manufacturer's instructions were followed in the assembly or that the certified components as assembled into the system meet all applicable requirements of §§ 1020.30 through 1020.33. All assembler reports must be on a form prescribed by and available from the Director, Center for Devices and Radiological Health, 9200 Corporate Blvd., Rockville, MD 20850. Completed reports must be submitted to the Director, the purchaser, and, where applicable, to the State agency responsible for radiation protection within 15 days following completion of the assembly.

* * * * *

PART 1040—PERFORMANCE STANDARDS FOR LIGHT–EMITTING PRODUCTS

18. The authority citation for 21 CFR part 1040 continues to read as follows:

Authority: 21 U.S.C. 351, 352, 360, 360e–360j, 371, 381; 42 U.S.C. 263b–263n.

19. Section 1040.10 is amended by revising paragraph (a)(3)(i) to read as follows:

§ 1040.10 Laser products.

(a) * * *

(3) * * *

(i) Registers, and provides a listing by type of such laser products manufactured that includes the product name, model number, and laser medium or emitted wavelength(s), and the name and address of the manufacturer. The manufacturer must submit the registration and listing to the Director, Office of Compliance (HFZ–300), Center for Devices and Radiological Health, 2094 Gaither Rd., Rockville, MD 20850.

* * * * *

Dated: March 22, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–8038 Filed 3–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 864, 866, 870, 872, 874, 876, 878, 884, 886, and 888

[Docket No. 99N–0035]

Medical Devices; Reclassification of 28 Preamendments Class III Devices into Class II

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reclassifying 28 preamendments devices from class III (premarket approval) into class II (special controls). FDA is also identifying the special controls that the agency believes will reasonably ensure the safety and effectiveness of the devices. This reclassification is being undertaken on the agency's own initiative based on new information under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Safe Medical Devices Act of 1990 and the FDA Modernization Act of 1997. The agency is also revising the identification of six of the devices subject to this rule to more accurately reflect the characteristics of devices actually being marketed. FDA is withholding action on 11 devices, which the agency proposed to reclassify, pending further action.

DATES: This rule is effective May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Janet L. Scudiero, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–594–1184.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of March 15, 1999 (64 FR 12774), FDA published a proposed rule to reclassify 38 preamendments class III devices into class II and to establish special controls for these devices. FDA invited interested persons to comment on the proposed rule by June 14, 1999.

FDA received one request to reopen the comment period for six devices. The request noted that FDA had not made the guidance documents that were proposed as special controls for these six devices available for comment through FDA's Good Guidance Practices (GGP's). The request further said that it was impossible to comment on the proposed reclassification without the guidance documents being available. Therefore, the requestor asked that FDA extend the comment period until at least 90 days after the guidance documents are publicly available.

FDA agrees with the request. FDA has also identified an additional three devices for which FDA had not issued the guidance documents proposed as special controls in accordance with the GGP policy. Therefore, FDA is withholding action on the devices listed in table 1 of this document at this time. FDA will make the guidance documents for these devices available for comment through the GGP process and will reopen the comment period on the reclassification of these devices when the guidance documents are available.

FDA also received a request for an extension of the comment period for the cutaneous oxygen monitor (§ 868.2500 (21 CFR 868.2500)) on behalf of a foreign manufacturer. The manufacturer needed additional time to translate the proposed special controls documents to prepare their comments. FDA granted this request and will withhold action on this device and reopen the comment period.

TABLE 1.—DEVICES NOT SUBJECT OF THIS RECLASSIFICATION

21 CFR Section	Device Name
868.1150	Indwelling blood carbon dioxide partial pressure (Pco^2) analyzer
868.1170	Indwelling blood hydrogen ion concentration (pH) analyzer
868.1200	Indwelling blood oxygen partial pressure (Po^2) analyzer
868.2500	Cutaneous oxygen monitor
870.3450	Vascular graft prosthesis of less than 6 millimeters diameter
870.3620	Pacemaker lead adaptor
870.3800	Annuloplasty ring
870.4230	Cardiopulmonary bypass defoamer
870.4260	Cardiopulmonary bypass arterial blood line filter
870.4350	Cardiopulmonary bypass oxygenator

II. Comments

FDA received five comments on the proposal. The following is a summary of the comments and FDA's response:

(Comment 1) One comment supported the proposal to reclassify four orthopedic devices: The elbow joint metal/polymer constrained cemented prosthesis (§ 888.3150 (21 CFR 888.3150)), the knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis (§ 888.3540 (21 CFR 888.3540)), the shoulder joint metal/polymer non-constrained cemented prosthesis (§ 888.3650 (21 CFR 888.3650)), and the shoulder joint metal/polymer semi-constrained cemented prosthesis (§ 888.3660 (21 CFR 888.3660)).

FDA agrees with this comment.

(Comment 2) One comment supported the proposed reclassification and special controls for the tinnitus masker (§ 874.3400 (21 CFR 874.3400)).

FDA agrees with this comment.

(Comment 3) A third comment addressed the vascular graft prosthesis of less than 6 millimeters diameter (§ 870.3450).

As noted above, FDA is withholding action on this device, until the proposed guidance document intended to be a special control is made available for comment. FDA will address this comment when it takes final action on this device.

(Comment 4) One manufacturer agreed with the proposal to reclassify the over-the-counter (OTC) denture cushion or pad (§ 872.3540 (21 CFR 872.3540)) but recommended that it be reclassified from class III into class I. The manufacturer submitted data on the device to support the claim that general controls are adequate to provide reasonable assurance of the safety and effectiveness of the device. The comment agreed that proper labeling is important to control risks to health associated with the use of this device.

FDA disagrees with this comment. FDA believes it is necessary that consumers have appropriate directions for use to correctly prepare denture material for a properly fitted denture. The guidance document describes the information necessary to provide reasonable assurance of the safe and effective use of the OTC dental pad or cushion. In particular, it includes descriptive information on the indications for use, contraindications, cautions, and potential adverse effects for the device, as well as the directions for use information regarding adequate mixing, preparation, and use of the product. The guidance document also provides ways that a manufacturer can establish that there is reasonable assurance that an OTC denture cushion or pad with a new intended use, chemical composition, labeling claims, or method of preparation is safe and effective.

(Comment 5) One comment raised three issues concerning the proposed reclassification of the high permeability hemodialysis system (§ 876.5860 (21 CFR 876.5860)) as follows:

1. The comment recommended changing the name and the section heading of § 876.5860 to include three additional therapies: Hemofiltration, hemoconcentration, and hemodiafiltration.

FDA notes that it has cleared these three additional renal therapies identified by the comment under § 876.5860. FDA will not revise the name of the device but it will revise the first sentence of the identification section (§ 876.5860(a)) as follows: "A high permeability hemodialysis system is a device intended for use as an artificial kidney system for treatment of patients with renal failure, fluid overload, or toxemic conditions by performing such therapies as hemodialysis, hemofiltration, hemoconcentration, and hemodiafiltration."

2. The comment also recommended further revising the identification of the high permeability hemodialysis system to state that the hemofiltration, hemoconcentration, and hemodiafiltration ultrafiltration coeficient (K_{uf}) should be changed from "greater than 12 ml/hr/mmHg" to "greater than 8 ml/hr/mmHg".

FDA agrees with the comment with the provision that the bovine or expired human blood be used to measure the K_{uf}. In the final rule, § 876.5860(a)(1) is revised to read:

The hemodialyzer consists of a semipermeable membrane with an *in vitro* ultrafiltration coefficient (K_{uf}) greater than 8 milliliters per hour per conventional millimeter of mercury, as measured with bovine or expired human blood, and is used with either an automated ultrafiltration controller or another method of ultrafiltration control to prevent fluid imbalance.

3. The comment also recommended that any revisions to the hemodialysis-related guidance documents be implemented as Level 1 guidance documents under FDA's GGP's.

FDA will follow its GGP's in issuing revisions to guidance documents used as special controls for this device as well as for all devices.

(Comment 6) FDA also made the following changes on its own initiative for accuracy and clarity:

1. FDA incorrectly cited the title of its biocompatibility guidance and is correcting the title of the guidance to read, "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices Part I: Evaluation and Testing'."

The special control is the FDA guidance document and not the ISO consensus standard itself.

2. In § 874.3930—*Tympanostomy tube with semipermeable membrane* (21 CFR 874.3930), FDA deleted the proposed special controls except the device specific guidance document. FDA believes that the guidance document adequately addresses the other proposed special controls.

3. In § 876.4480—*Electrohydraulic lithotriptor* (21 CFR 876.4480), FDA deleted the proposed special controls except the device specific FDA guidance document. FDA believes that the guidance document adequately addresses the other proposed special controls.

4. In § 876.5860—*High permeability hemodialysis system*, FDA deleted the American National Standards Institute (ANSI)/Association for the Advancement in Medical Instrumentation (AAMI) and United States Pharmacopeia (USP) standards because FDA believes that these standards are adequately addressed in the FDA sterility guidance.

5. In § 884.1060—*Endometrial aspirator* (21 CFR 884.1060); 21 CFR 884.1110—*Endometrial brush*; and § 884.1185—*Endometrial washer* (21 CFR 884.1185), FDA clarified the wording of the labeling and design and testing special controls.

6. In § 884.4100—*Endoscopic electrocautery and accessories* (21 CFR 884.4100), and § 884.4150—*Bipolar endoscopic coagulator-cutter and accessories* (21 CFR 884.4150), FDA added the complete titles and years of the standards and clarified the labeling and treatment instructions. In the preamble to the proposed rule, FDA identified the sterility guidance as a special control for these two devices but did not include it in the regulatory text. FDA has included the sterility guidance in the regulatory text of the final rule.

7. In some device identifications, FDA made minor editorial changes.

III. FDA's Conclusion

FDA has concluded, based on a review of the available information, that the special controls identified in tables 2 and 3 of this document provide reasonable assurance of the safety and effectiveness of these 28 devices. The two tables summarize the special controls to be applied to each device.

TABLE 2.—SUMMARY OF FDA GUIDANCE SPECIAL CONTROLS LISTED BY DEVICE

21 CFR Section	Device Name	FDA Sterility Review Guidance[1]	FDA Biocompatibility Guidance[2]	Other FDA Guidance
864.7250	Erythropoietin Assay			3
864.7300	Fibrin monomer paracoagulation test			4
870.3375	Cardiovascular intravascular filter	X	X	5
872.3540	OTC denture cushion or pad		X	6
872.3560	OTC denture reliner		X	6
872.3570	OTC denture repair kit		X	6
872.3600	Partially fabricated denture kit		X	6
874.3930	Tympanostomy tube with semipermeable membrane			7
876.4480	Electrohydraulic lithotriptor			8
876.5860	High permeability hemodialysis system		X	9,10,11,12
876.5955	Peritoneo-venous shunt	X	X	
878.3610	Esophageal prosthesis			13
878.3720	Tracheal prosthesis			13
884.1060	Endometrial aspirator	X	X	
884.1100	Endometrial brush	X	X	
884.1185	Endometrial washer	X	X	
884.4100	Endoscopic electrocautery and accessories	X	X	14
884.4150	Bipolar endoscopic coagulator-cutter	X	X	14
886.3400	Keratoprosthesis	X	X	15
886.3920	Eye valve implant	X	X	16
888.3150	Elbow joint metal/polymer constrained cemented prosthesis	X	X	17,18,19
888.3540	Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis	X	X	17,18,19
888.3650	Shoulder joint metal/polymer non-constrained cemented prosthesis	X	X	17,18,19
888.3660	Shoulder joint metal/polymer semi-constrained cemented prosthesis	X	X	17,18,19

(1) "510(k) Sterility Review Guidance of 2/12/90 (K90–1)"
(2) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices Part I: Evaluation and Testing,' "
(3) " Document for Special Controls for Erythropoietin Assay Premarket Notification [510(k)s],"
(4) "In Vitro Diagnostic Fibrin Monomer Paracoagulation Test, "
(5) "Guidance for Cardiovascular Intravascular Filters 510(k) Submissions,"
(6) "OTC Denture Reliners, Repair Kits, and Partially Fabricated Denture Kits,"
(7) "Tympanostomy Tubes, Submission Guidance for a 510(k) Premarket Notification,"
(8) "Guidance for the Content of Premarket Notifications for Intracorporal Lithotripters,"

TABLE 2.—SUMMARY OF FDA GUIDANCE SPECIAL CONTROLS LISTED BY DEVICE

21 CFR Section	Device Name	FDA Sterility Review Guidance[1]	FDA Biocompatibility Guidance[2]	Other FDA Guidance

(9) "Guidance for the Content of 510(k)s for Conventional and High Permeability Hemodialyzers,"
(10) "Guidance for Industry and CDRH Reviewers on the Content of Premarket Notifications for Hemodialysis Delivery Systems,"
(11) "Guidance for the Content of Premarket Notifications for Water Purification Components and Systems for Hemodialysis,"
(12) "Guidance for Hemodialyzer Reuse Labeling,"
(13) "Guidance for the Content of Premarket Notification Submissions for Esophageal and Tracheal Prostheses,"
(14) "Guidance ('Guidelines') for Evaluation of Laproscopic Bipolar and Thermal Coagulators (and Accessories),"
(15) "Guidance on 510(k) Submissions for Keratoprosthesis,"
(16) "Aqueous Shunt-510(k) Submissions,"
(17) "Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement,"
(18) "Guidance Document for Testing Non-articulating, 'Mechanically Locked' Modular Implant Components," and
(19) "Guidance Document for the Preparation of Premarket Notification [510(k)] Applications for Orthopedic Devices."

TABLE 3.—OTHER SPECIAL CONTROLS LISTED BY DEVICE

21 CFR Section	Device Name	Labeling	Standards	Design and Performance Testing
866.3510	Rubella virus serological reagents		*NCCLS*[1] 1/LA6, October 1997, 1/LA18, December 1994, D13, October 1993, EP5, February 1999, EP10, May 1998. *CDC*[2] Low Titer Rubella Standard, Reference Panel of Well Characterized Rubella Sera. *WHO*[3] Rubella Standard.	
870.5550	External transcutaneous cardiac pacemaker (noninvasive)		*ANSI/AAMI*[4] DF–2	The maximum pulse amplitude should not exceed 200 mA. The maximum pulse duration should not exceed 50 msec.
872.6080	Airbrush		*IEC*[5] 60601–1–AM2 (1995–03), Amendment 2	
874.3400	Tinnitus masker	Patient labeling re: hearing health care professional diagnosis, fitting and followup care; risks; benefits; warnings; and specifications.		
876.5955	Peritoneo-venous shunt			Backflow specifications to prevent reflux of blood into the shunt.
884.1060	Endometrial aspirator	INDICATION: Only to evaluate the endometrium. CONTRAINDICATIONS: pregnancy, history of recent uterine perforation, and recent cesarean section.		Sampling component is covered within the vagina.
884.1100	Endometrial brush	INDICATION: Only to evaluate the endometrium. CONTRAINDICATIONS: Pregnancy, history of recent uterine perforation, and recent cesarean section.		Sampling component is covered within the vagina. Adherence of bristles and brush head.
884.1185	Endometrial washer	INDICATION: Only to evaluate the endometrium. CONTRAINDICATIONS: Pregnancy, history of recent uterine perforation, and recent cesarean section. Warning: Do not attach to wall or any external suction.		Maximum intrauterine pressure should not exceed 50 millimeters of mercury. Sampling component is covered within the vagina

TABLE 3.—OTHER SPECIAL CONTROLS LISTED BY DEVICE—Continued

21 CFR Section	Device Name	Labeling	Standards	Design and Performance Testing
884.4100	Endoscopic electrocautery and accessories	INDICATION: For female tubal sterilization. INSTRUCTIONS FOR USE: Destroy at least 2 cm of the fallopian tube; Use a cut (or undampened sinusoidal) wave form; and Use a minimum power of 25 watts. For devices with ammeters: continue electrode activation for 5 seconds after the visual endpoint (tissue blanching) is reached or current flow ceases indicating adequate tissue destruction.	*ANSI/AAMI* HF–18 *IEC* 60601–1–1–AM2 (1995–03) Amendment 2	
884.4150	Bipolar endoscopic coagulator-cutter	INDICATION: For female tubal sterilization. INSTRUCTIONS FOR USE: Destroy at least 2 cm of the fallopian tube; Use a cut (or undampened sinusoidal) wave form; and Use a minimum power of 25 watts. For devices with ammeters: continue electrode activation for 5 seconds after the visual endpoint (tissue blanching) is reached or current flow ceases indicating adequate tissue destruction.	*ANSI/AAMI* HF–18 *IEC* 60601–1–1–AM2 (1995–03) Amendment 2	
888.3150	Elbow joint metal/polymer constrained cemented prosthesis		*ASTM*[6] F 75–92, F 648–98, F 799–96, F 981–93, F 1044–95, F 1108–97, F 1147–95, F 1537–94. *ISO*[7] 5832–3,4, & 12:1996, 5833:1992, 5834–2;1998, 6018:1997, 9001:1994, 14630:1997.	
888.3540	Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis		*ASTM* F 75–92, F 648–98 F 799–96, F 1044–95 F 1108–97, F 1147–95, F 1537–94, F 1672–95. *ISO* 5832–3,4, & 12:1996, 5833:1992, 5834–2:1998, 6018:1987, 7207–2:1998, 9001:1994.	

TABLE 3.—OTHER SPECIAL CONTROLS LISTED BY DEVICE—Continued

21 CFR Section	Device Name	Labeling	Standards	Design and Performance Testing
888.3650	Shoulder joint metal/polymer non-constrained cemented prosthesis		*ASTM* F 75–92, F 648–98, F 799–96, F 1044–95, F 1108–97, F 1147–95; F–1378–97, F 1537–94. *ISO* 5832–3,4 & 12:1996, 5833:1992, 5834–2:1998, 6018:1987, 9001:1994.	
888.3660	Shoulder joint metal/polymer semi-constrained cemented prosthesis		*ASTM* F 75–92, F 648–98, F 799–96, F 1044–95, F 1108–97, F 1147–95; F 1378–97, F 1537–94. *ISO* 5832–3,4 & 12:1996, 5833:1992, 5834–2:1998, 6018:1987, 9001:1994.	

[1] National Committee for Clinical Laboratory Standards, 940 West Valley Rd., suite 1400, Wayne, PA 19087, 610–688–0100, http://www.nccls.org.
[2] Centers for Disease Control and Prevention, Mail Stop G18, 1600 Clifton Rd. NE., Atlanta, GA 30333.
[3] World Health Organization International Laboratory for Biological Standards, Statens Seruminstitut, Center for Prevention and Control of Infectious Diseases and Congenital Disorders, 5 Artillerivej, DK–2300 Copenhagen S, Denmark.
[4] American National Standards Institute and Association for the Advancement of Medical Instrumentation, 11 West 42d St., New York, NY 10036.
[5] International Electrotechnical Commission, AT3, Rue de Varembe, P.O. Box 131, Geneva, Switzerland CH–1211, http://www.iec.ch.
[6] American Society for Testing and Materials, Customer Services, 100 Barr Harbor Dr., West Conshohocken, PA 19428.
[7] International Organization for Standardization, Case Postale, Geneva, Switzerland CH–1121.

IV. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this classification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Analysis of Impacts

FDA has examined the impacts of the rule under Executive Order 12866, and the Regulatory Flexibility Act (5 U.S.C 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4)). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this rule is consistent with the regulatory philosophy and principles identified in the Executive Order. In addition, the final rule is not a significant regulatory action as defined by the Executive Order and so is not subject to review under the Executive Order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III will relieve all manufacturers of these devices of the cost of complying with the premarket approval requirements in section 515 of the act. Moreover, compliance with special controls proposed for these devices will not impose significant new costs on affected manufacturers as most of these devices already comply with the proposed special controls. Because reclassification will reduce regulatory costs with respect to these devices, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, this proposed rule will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement of analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

VI. Paperwork Reduction Act of 1995

FDA concludes that this proposed rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

List of Subjects

21 CFR Part 864

Biologics, Blood, Laboratories, Medical devices, Packaging and containers.

21 CFR Part 866

Biologics, Laboratories, Medical devices.

21 CFR Parts 870, 872, 874, 876, 878, 884, and 888

Medical devices.

21 CFR Part 886

Medical devices, Ophthalmic goods and services.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR parts 864, 866, 870, 872, 874, 876, 878, 884, 886, and 888 are amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR part 864 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 864.7250 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 864.7250 Erythropoietin assay.

* * * * *

(b) *Classification.* Class II. The special control for this device is FDA's "Document for Special Controls for Erythropoietin Assay Premarket Notification (510(k)s)."

3. Section 864.7300 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 864.7300 Fibrin monomer paracoagulation test.

* * * * *

(b) *Classification.* Class II. The special control for this device is FDA's "In Vitro Diagnostic Fibrin Monomer Paracoagulation Test."

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

4. The authority citation for 21 CFR part 866 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

5. Section 866.3510 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 866.3510 Rubella virus serological reagents.

* * * * *

(b) *Classification.* Class II. The special controls for this device are:

(1) National Committee for Clinical Laboratory Standards':

(i) 1/LA6 "Detection and Quantitation of Rubella IgG Antibody: Evaluation and Performance Criteria for Multiple Component Test Products, Speciment Handling, and Use of the Test Products in the Clinical Laboratory, October 1997,"

(ii) 1/LA18 "Specifications for Immunological Testing for Infectious Diseases, December 1994,"

(iii) D13 "Agglutination Characteristics, Methodology, Limitations, and Clinical Validation, October 1993,"

(iv) EP5 "Evaluation of Precision Performance of Clinical Chemistry Devices, February 1999," and

(v) EP10 "Preliminary Evaluation of the Linearity of Quantitive Clinical Laboratory Methods, May 1998,"

(2) Centers for Disease Control's:

(i) Low Titer Rubella Standard,

(ii) Reference Panel of Well Characterized Rubella Sera, and

(3) World Health Organization's International Rubella Standard.

PART 870—CARDIOVASCULAR DEVICES

6. The authority citation for 21 CFR part 870 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

7. Section 870.3375 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.3375 Cardiovascular intravascular filter.

* * * * *

(b) *Classification.* Class II. The special controls for this device are:

(1) "Use of International Standards Organization's ISO 10993 'Biological Evaluation of Medical Devices Part I: Evaluation and Testing,' " and

(2) FDA's:

(i) "510(k) Sterility Review Guidance and Revision of 2/12/90 (K90–1)" and

(ii) "Guidance for Cardiovascular Intravascular Filter 510(k) Submissions."

8. Section 870.5550 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 870.5550 External transcutaneous cardiac pacemaker (noninvasive).

* * * * *

(b) *Classification.* Class II. The special controls for this device are:

(1) "American National Standards Institute/American Association for Medical Instrumentation's DF–21 'Cardiac Defibrillator Devices' " 2d ed., 1996, and

(2) "The maximum pulse amplitude should not exceed 200 milliamperes. The maximum pulse duration should not exceed 50 milliseconds."

PART 872—DENTAL DEVICES

9. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

10. Section 872.3540 is amended by revising paragraph (b)(2) and by removing paragraph (c) to read as follows:

§ 872.3540 OTC denture cushion or pad.

* * * * *

(b) * * *

(2) Class II if the OTC denture cushion or pad is made of a material other than wax-impregnated cotton cloth or if the intended use of the device differs from that described in paragraph (b)(1) of this section. The special controls for this device are FDA's:

(i) "Use of International Standard ISO 10993 'Biological Evaluation of Medical—Devices Part I: Evaluation and Testing,' " and

(ii) "OTC Denture Reliners, Repair Kits, and Partially Fabricated Denture Kits."

11. Section 872.3560 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 872.3560 OTC denture reliner.

* * * * *

(b) *Classification.* Class II. The special controls for this device are FDA's:

(1) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' " and

(2) "OTC Denture Reliners, Repair Kits, and Partially Fabricated Denture Kits."

12. Section 872.3570 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 872.3570 OTC denture repair kit.

* * * * *

(b) *Classification.* Class II. The special controls for this device are FDA's:

(1) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' " and

(2) "OTC Denture Reliners, Repair Kits, and Partially Fabricated Denture Kits."

13. Section 872.3600 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 872.3600 Partially fabricated denture kit.

* * * * *

(b) *Classification.* Class II. The special controls for this device are FDA's:

(1) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' " and

(2) "OTC Denture Reliners, Repair Kits, and Partially Fabricated Denture Kits."

14. Section 872.6080 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 872.6080 Airbrush.

* * * * *

(b) *Classification.* Class II. The special control for this device is International Electrotechnical Commission's IEC 60601–1–AM2 (1995–03), Amendment 2, "Medical Electrical Equipment—Part 1: General Requirements for Safety."

PART 874—EAR, NOSE, AND THROAT DEVICES

15. The authority citation for 21 CFR part 874 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

16. Section 874.3400 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 874.3400 Tinnitus masker.

* * * * *

(b) *Classification.* Class II. The special control for this device is patient labeling regarding:

(1) Hearing health care professional diagnosis, fitting of the device, and followup care,

(2) Risks,

(3) Benefits,

(4) Warnings for safe use, and

(5) Specifications.

17. Section 874.3930 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 874.3930 Tympanostomy tube with semipermeable membrane.

* * * * *

(b) *Classification.* Class II. The special control for this device is FDA's "Tympanostomy Tubes, Submission Guidance for a 510(k)."

PART 876—GASTROENTEROLOGY–UROLOGY DEVICES

18. The authority citation for 21 CFR part 876 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

19. Section 876.4480 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 876.4480 Electrohydraulic lithotriptor.

* * * * *

(b) *Classification.* Class II. The special control for this device is FDA's "Guidance for the Content of Premarket Notifications for Intracorporeal Lithotripters."

20. Section 876.5860 is revised to read as follows:

§ 876.5860 High permeability hemodialysis system.

(a) *Identification.* A high permeability hemodialysis system is a device intended for use as an artificial kidney system for the treatment of patients with renal failure, fluid overload, or toxemic conditions by performing such therapies as hemodialysis, hemofiltration, hemoconcentration, and hemodiafiltration. Using a hemodialyzer with a semipermeable membrane that is more permeable to water than the semipermeable membrane of the conventional hemodialysis system (§ 876.5820), the high permeability hemodialysis system removes toxins or excess fluid from the patient's blood using the principles of convection (via a high ultrafiltration rate) and/or diffusion (via a concentration gradient in dialysate). During treatment, blood is circulated from the patient through the hemodialyzer's blood compartment, while the dialysate solution flows countercurrent through the dialysate compartment. In this process, toxins and/or fluid are transferred across the membrane from the blood to the dialysate compartment. The hemodialysis delivery machine controls and monitors the parameters related to this processing, including the rate at which blood and dialysate are pumped through the system, and the rate at which fluid is removed from the patient. The high permeability hemodialysis system consists of the following devices:

(1) The hemodialyzer consists of a semipermeable membrane with an in vitro ultrafiltration coefficient (K_{uf}) greater than 8 milliliters per hour per conventional millimeter of mercury, as measured with bovine or expired human blood, and is used with either an automated ultrafiltration controller or anther method of ultrafiltration control to prevent fluid imbalance.

(2) The hemodialysis delivery machine is similar to the extracorporeal blood system and dialysate delivery system of the hemodialysis system and accessories (§ 876.5820), with the addition of an ultrafiltration controller and mechanisms that monitor and/or control such parameters as fluid balance, dialysate composition, and patient treatment parameters (e.g., blood pressure, hematocrit, urea, etc.).

(3) The high permeability hemodialysis system accessories include, but are not limited to, tubing lines and various treatment related monitors (e.g., dialysate pH, blood pressure, hematocrit, and blood recirculation monitors).

(b) *Classification.* Class II. The special controls for this device are FDA's:

(1) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Device—Part I: Evaluation and Testing,' "

(2) "Guidance for the Content of 510(k)s for Conventional and High Permeability Hemodialyzers,"

(3) "Guidance for Industry and CDRH Reviewers on the Content of Premarket Notifications for Hemodialysis Delivery Systems,"

(4) "Guidance for the Content of Premarket Notifications for Water Purification Components and Systems for Hemodialysis," and

(5) "Guidance for Hemodialyzer Reuse Labeling."

21. Section 876.5955 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 876.5955 Peritoneo-venous shunt.

* * * * *

(b) *Classification.* Class II. The special controls for this device are FDA's:

(1) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' "

(2) "510(k) Sterility Review Guidance of 2/12/90 (K90–1)," and

(3) Backflow specification and testing to prevent reflux of blood into the shunt.

PART 878—GENERAL AND PLASTIC SURGERY DEVICES

22. The authority citation for 21 CFR part 878 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 360l, 371.

23. Section 878.3610 is revised to read as follows:

§ 878.3610 Esophageal prosthesis.

(a) *Identification.* An esophageal prosthesis is a rigid, flexible, or expandable tubular device made of a plastic, metal, or polymeric material that is intended to be implanted to restore the structure and/or function of the esophagus. The metal esophageal prosthesis may be uncovered or covered with a polymeric material. This device may also include a device delivery system.

(b) *Classification.* Class II. The special control for this device is FDA's "Guidance for the Content of Premarket Notification Submissions for Esophageal and Tracheal Prostheses."

24. Section 878.3720 is revised to read as follows:

§ 878.3720 Intrauterine aspiration device.

(a) *Identification.* An intrauterine aspiration device is a device intended for use in the uterus to aspirate fluid or tissue. This device includes the following:

(i) Indication: Only to evaluate the endometrium, and

(ii) Indication: For female tubal sterilization, and

§ 886.3400 Keratoprosthesis.

(a) *Identification.* A keratoprosthesis

(i) "Use of International Standard ISO 10993 'Biological Evaluation of Medical

(vii) F 1147–95 "Test Method for Tension Testing of Porous

24. Section 878.3720 is revised to read as follows:

§ 878.3720 Tracheal prosthesis.

(a) *Identification.* The tracheal prosthesis is a rigid, flexible, or expandable tubular device made of a silicone, metal, or polymeric material that is intended to be implanted to restore the structure and/or function of the trachea or trachealbronchial tree. It may be unbranched or contain one or two branches. The metal tracheal prosthesis may be uncovered or covered with a polymeric material. This device may also include a device delivery system.

(b) *Classification.* Class II. The special control for this device is FDA's "Guidance for the Content of Premarket Notification Submissions for Esophageal and Tracheal Prostheses."

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

25. The authority citation for 21 CFR part 884 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

26. Section 884.1060 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 884.1060 Endometrial aspirator.

* * * * *

(b) *Classification.* Class II. The special controls for this device are:

(1) FDA's:

(i) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' " and

(ii) "510(k) Sterility Review Guidance of 2/12/90 (K90–1),"

(2) Labeling:

(i) Indication: Only to evaluate the endometrium, and

(ii) Contraindications: Pregnancy, history of uterine perforation, or a recent cesarean section, and

(3) The sampling component is covered within vagina.

27. Section 884.1100 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 884.1100 Endometrial brush.

* * * * *

(b) *Classification.* Class II. The special controls for this device are:

(1) FDA's:

(i) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' " and

(ii) "510(k) Sterility Review Guidance of 2/12/90 (K90–1),"

(2) Labeling:

(i) Indication: Only to evaluate the endometrium, and

(ii) Contraindications: Pregnancy, history of uterine perforation, or a recent cesarean section, and

(3) Design and testing:

(i) The sampling component is covered within the vagina, and

(ii) For adherence of the bristles and brush head.

28. Section 884.1185 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 884.1185 Endometrial washer.

* * * * *

(b) *Classification.* Class II. The special controls for this device are:

(1) FDA's:

(i) "Use of International Organization for Standardization's ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' " and

(ii) "510(k) Sterility Review Guidance of 2/12/90 (K90–1),"

(2) Labeling:

(i) Indication: Only to evaluate the endometrium, and

(ii) Contraindications: Pregnancy, history of uterine perforation, or a recent cesarean section, and

(iii) Warning: Do not attach to a wall or any external suction, and

(3) Design and Testing:

(i) The sampling component is covered within the vagina, and

(ii) Intrauterine pressure should not exceed 50 millimeters of mercury.

29. Section 884.4100 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 884.4100 Endoscopic electrocautery and accessories.

* * * * *

(b) *Classification.* Class II. The special controls for this device are:

(1) FDA's:

(i) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' " and

(ii) "510(k) Sterility Review Guidance 2/12/90 (K–90)," and

(iii) "Guidance ('Guidelines') for Evaluation of Laproscopic Bipolar and Thermal Coagulators (and Accessories),"

(2) International Electrotechnical Commission's IEC 60601–1–AM2 (1995–03), Amendment 2, "Medical Electrical Equipment—Part 1: General Requirements for Safety,"

(3) American National Standards Institute/American Association for Medical Instrumentation's HF–18, 1993, "Electrosurgical Devices,"

(4) Labeling:

(i) Indication: For female tubal sterilization, and

(ii) Instructions for use:

(A) Destroy at least 2 centimeters of the fallopian tubes,

(B) Use a cut or undampened sinusoidal waveform,

(C) Use a minimum power of 25 watts, and

(D) For devices with ammeters: continue electrode activation for 5 seconds after the visual endpoint (tissue blanching) is reached or current flow ceases indicating adequate tissue destruction.

30. Section 884.4150 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 884.4150 Bipolar endoscopic coagulator-cutter and accessories.

* * * * *

(b) *Classification.* Class II. The special controls for this device are:

(1) FDA's:

(i) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' "

(ii) "510(k) Sterility Review Guidance 2/12/90 (K–90)," and

(iii) "Guidance ('Guidelines') for Evaluation of Laproscopic Bipolar and Thermal Coagulators (and Accessories),"

(2) International Electrotechnical Commission's IEC 60601–1–AM2 (1995–03), Amendment 2, "Medical Electrical Equipment—Part 1: General Requirements for Safety,"

(3) American National Standards Institute/American Association for Medical Instrumentation's HF–18, 1993, "Electrosurgical Devices,"

(4) Labeling:

(i) Indication: For female tubal sterilization, and

(ii) Instructions for use:

(A) Destroy at least 2 centimeters of the fallopian tubes,

(B) Use a cut or undampened sinusoidal waveform,

(C) Use a minimum power of 25 watts, and

(D) For devices with ammeters: continue electrode activation for 5 seconds after the visual endpoint (tissue blanching) is reached or current flow ceases indicating adequate tissue destruction.

PART 886—OPHTHALMIC DEVICES

31. The authority citation for 21 CFR part 886 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

32. Section 886.3400 is revised to read as follows:

§ 886.3400 Keratoprosthesis.

(a) *Identification.* A keratoprosthesis is a device intended to provide a transparent optical pathway through an opacified cornea, either intraoperatively or permanently, in an eye that is not a reasonable candidate for a corneal transplant.

(b) *Classification.* Class II. The special controls for this device are FDA's:

(1) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' "

(2) "510(k) Sterility Review Guidance of 2/12/90 (K90–1)," and

(3) "Guidance on 510(k) Submissions for Keratoprostheses."

33. Section 886.3920 is revised to read as follows:

§ 886.3920 Aqueous shunt.

(a) *Identification.* An aqueous shunt is an implantable device intended to reduce intraocular pressure in the anterior chamber of the eye in patients with neurovascular glaucoma or with glaucoma when medical and conventional surgical treatments have failed.

(b) *Classification.* Class II. The special controls for this device are FDA's:

(1) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' "

(2) "510(k) Sterility Review Guidance of 2/12/90 (K90–1)," and

(3) "Aqueous Shunts—510(k) Submissions."

PART 888—ORTHOPEDIC DEVICES

34. The authority citation for 21 CFR part 888 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

35. Section 888.3150 is revised to read as follows:

§ 888.3150 Elbow joint metal/polymer constrained cemented prosthesis.

(a) *Identification.* An elbow joint metal/polymer constrained cemented prosthesis is a device intended to be implanted to replace an elbow joint. It is made of alloys, such as cobalt-chromium-molybdenum, or of these alloys and of an ultra-high molecular weight polyethylene bushing. The device prevents dislocation in more than one anatomic plane and consists of two components that are linked together. This generic type of device is limited to those prostheses intended for use with bone cement (§ 888.3027).

(b) *Classification.* Class II. The special controls for this device are:

(1) FDA's:

(i) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' "

(ii) "510(k) Sterility Review Guidance of 2/12/90 (K90–1),"

(iii) "Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement,"

(iv) "Guidance Document for the Preparation of Premarket Notification (510(k)) Application for Orthopedic Devices,"

(v) "Guidance Document for Testing Non-articulating, 'Mechanically Locked' Modular Implant Components,"

(2) International Organization for Standardization's (ISO):

(i) ISO 5832–3:1996 "Implants for Surgery—Metallic Materials—Part 3: Wrought Titanium 6-Aluminum 4-Vandium Alloy,"

(ii) ISO 5832–4:1996 "Implants for Surgery—Metallic Materials—Part 4: Cobalt-Chromium-Molybdenum Casting Alloy,"

(iii) ISO 5832–12:1996 "Implants for Surgery—Metallic Materials—Part 12: Wrought Cobalt-Chromium-Molybdenum Alloy,"

(iv) ISO 5833:1992 "Implants for Surgery—Acrylic Resin Cements,"

(v) ISO 5834–2:1998 "Implants for Surgery—Ultra High Molecular Weight Polyethylene—Part 2: Moulded Forms,"

(vi) ISO 6018:1987 "Orthopaedic Implants—General Requirements for Marking, Packaging, and Labeling,"

(vii) ISO 9001:1994 "Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation, and Servicing," and

(viii) ISO 14630:1997 "Non-active Surgical Implants—General Requirements,"

(3) American Society for Testing and Materials':

(i) F 75–92 "Specification for Cast Cobalt-28 Chromium-6 Molybdenum Alloy for Surgical Implant Material,"

(ii) F 648–98 "Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants,"

(iii) F 799–96 "Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants,"

(iv) F 981–93 "Practice for Assessment of Compatibility of Biomaterials (Nonporous) for Surgical Implant with Respect to Effect of Material on Muscle and Bone,"

(v) F 1044–95 "Test Method for Shear Testing of Porous Metal Coatings,"

(vi) F 1108–97 "Specification for Titanium-6 Aluminum-4 Vanadium Alloy Castings for Surgical Implants,"

(vii) F 1147–95 "Test Method for Tension Testing of Porous Metal Coatings, " and

(viii) F 1537–94 "Specification for Wrought Cobalt-28 Chromium-6 Molybdenum Alloy for Surgical Implants."

36. Section 888.3540 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 888.3540 Knee joint patellofemoral polymer/metal semi-constrained cemented prosthesis.

* * * * *

(b) *Classification.* Class II. The special controls for this device are:

(1) FDA's:

(i) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,"

(ii) "510(k) Sterility Review Guidance of 2/12/90 (K90–1),"

(iii) "Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement,"

(iv) "Guidance Document for the Preparation of Premarket Notification (510(k)) Applications for Orthopedic Devices," and

(v) "Guidance Document for Testing Non-articulating, 'Mechanically Locked' Modular Implant Components," and

(2) International Organization for Standardization's (ISO):

(i) ISO 5832–3:1996 "Implants for Surgery—Metallic Materials—Part 3: Wrought Titanium 6-Aluminum 4-Vandium Alloy,"

(ii) ISO 5832–4:1996 "Implants for Surgery—Metallic Materials—Part 4: Cobalt-Chromium-Molybdenum Casting Alloy,"

(iii) ISO 5832–12:1996 "Implants for Surgery—Metallic Materials—Part 12: Wrought Cobalt-Chromium-Molybdenum Alloy,"

(iv) ISO 5833:1992 "Implants for Surgery—Acrylic Resin Cements,"

(v) ISO 5834–2:1998 "Implants for Surgery—Ultra-high Molecular Weight Polyethylene—Part 2: Moulded Forms,"

(vi) ISO 6018:1987 "Orthopaedic Implants—General Requirements for Marking, Packaging, and Labeling,"

(vii) ISO 7207–2:1998 "Implants for Surgery—Components for Partial and Total Knee Joint Prostheses—Part 2: Articulating Surfaces Made of Metal, Ceramic and Plastic Materials," and

(viii) ISO 9001:1994 "Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation, and Servicing," and

(3) American Society for Testing and Materials':

(i) F 75–92 "Specification for Cast Cobalt-28 Chromium-6 Molybdenum Alloy for Surgical Implant Material,"
(ii) F 648–98 "Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants,"
(iii) F 799–96 "Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants,"
(iv) F 1044–95 "Test Method for Shear Testing of Porous Metal Coatings,"
(v) F 1108–97 "Titanium-6 Aluminum-4 Vanadium Alloy Castings for Surgical Implants,"
(vi) F 1147–95 "Test Method for Tension Testing of Porous Metal Coatings,"
(vii) F 1537–94 "Specification for Wrought Cobalt-28 Chromium-6 Molybdenum Alloy for Surgical Implants," and
(viii) F 1672–95 "Specification for Resurfacing Patellar Prosthesis."

37. Section 888.3650 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 888.3650 Shoulder joint metal/polymer non-constrained cemented prosthesis.

* * * * *

(b) *Classification.* Class II. The special controls for this device are:
(1) FDA's:
(i) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' "
(ii) "510(k) Sterility Review Guidance of 2/12/90 (K90–1),"
(iii) "Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement,"
(iv) "Guidance Document for the Preparation of Premarket Notification (510(k)) Application for Orthopedic Devices," and
(v) "Guidance Document for Testing Non-articulating, 'Mechanically Locked' Modular Implant Components,"
(2) International Organization for Standardization's (ISO):
(i) ISO 5832–3:1996 "Implants for Surgery—Metallic Materials—Part 3: Wrought Titanium 6-Aluminum 4-Vandium Alloy,"
(ii) ISO 5832–4:1996 "Implants for Surgery—Metallic Materials—Part 4: Cobalt-Chromium-Molybdenum Casting Alloy,"
(iii) ISO 5832–12:1996 "Implants for Surgery—Metallic Materials—Part 12: Wrought Cobalt-Chromium-Molybdenum Alloy,"
(iv) ISO 5833:1992 "Implants for Surgery—Acrylic Resin Cements,"
(v) ISO 5834–2:1998 "Implants for Surgery—Ultra-high Molecular Weight Polyethylene—Part 2: Moulded Forms,"
(vi) ISO 6018:1987 "Orthopaedic Implants—General Requirements for Marking, Packaging, and Labeling," and
(vii) ISO 9001:1994 "Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation, and Servicing," and
(3) American Society for Testing and Materials':
(i) F 75–92 "Specification for Cast Cobalt-28 Chromium-6 Molybdenum Alloy for Surgical Implant Material,"
(ii) F 648–98 "Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants,"
(iii) F 799–96 "Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants,"
(iv) F 1044–95 "Test Method for Shear Testing of Porous Metal Coatings,"
(v) F 1108–97 "Titanium-6 Aluminum-4 Vanadium Alloy Castings for Surgical Implants,"
(vi) F 1147–95 "Test Method for Tension Testing of Porous Metal Coatings,"
(vii) F 1378–97 "Specification for Shoulder Prosthesis," and
(viii) F 1537–94 "Specification for Wrought Cobalt-28 Chromium-6 Molybdenum Alloy for Surgical Implants."

38. Section 888.3660 is amended by revising paragraph (b) and by removing paragraph (c) to read as follows:

§ 888.3660 Shoulder joint metal/polymer semi-constrained cemented prosthesis.

* * * * *

(b) *Classification.* Class II. The special controls for this device are:
(1) FDA's:
(i) "Use of International Standard ISO 10993 'Biological Evaluation of Medical Devices—Part I: Evaluation and Testing,' "
(ii) "510(k) Sterility Review Guidance of 2/12/90 (K90–1),"
(iii) "Guidance Document for Testing Orthopedic Implants with Modified Metallic Surfaces Apposing Bone or Bone Cement,"
(iv) "Guidance Document for the Preparation of Premarket Notification (510(k)) Application for Orthopedic Devices," and
(v) "Guidance Document for Testing Non-articulating, 'Mechanically Locked' Modular Implant Components,"
(2) International Organization for Standardization's (ISO):
(i) ISO 5832–3:1996 "Implants for Surgery—Metallic Materials—Part 3: Wrought Titanium 6-aluminum 4-vandium Alloy,"
(ii) ISO 5832–4:1996 "Implants for Surgery—Metallic Materials—Part 4: Cobalt-chromium-molybdenum casting alloy,"
(iii) ISO 5832–12:1996 "Implants for Surgery—Metallic Materials—Part 12: Wrought Cobalt-chromium-molybdenum alloy,"
(iv) ISO 5833:1992 "Implants for Surgery—Acrylic Resin Cements,"
(v) ISO 5834–2:1998 "Implants for Surgery—Ultra-high Molecular Weight Polyethylene—Part 2: Moulded Forms,"
(vi) ISO 6018:1987 "Orthopaedic Implants—General Requirements for Marking, Packaging, and Labeling," and
(vii) ISO 9001:1994 "Quality Systems—Model for Quality Assurance in Design/Development, Production, Installation, and Servicing," and
(3) American Society for Testing and Materials':
(i) F 75–92 "Specification for Cast Cobalt-28 Chromium-6 Molybdenum Alloy for Surgical Implant Material,"
(ii) F 648–98 "Specification for Ultra-High-Molecular-Weight Polyethylene Powder and Fabricated Form for Surgical Implants,"
(iii) F 799–96 "Specification for Cobalt-28 Chromium-6 Molybdenum Alloy Forgings for Surgical Implants,"
(iv) F 1044–95 "Test Method for Shear Testing of Porous Metal Coatings,"
(v) F 1108–97 "Titanium-6 Aluminum-4 Vanadium Alloy Castings for Surgical Implants,"
(vi) F 1147–95 "Test Method for Tension Testing of Porous Metal Coatings,"
(vii) F 1378–97 "Specification for Shoulder Prosthesis," and
(viii) F 1537–94 "Specification for Wrought Cobalt-28 Chromium-6 Molybdenum Alloy for Surgical Implants."

Dated: March 2, 2000.

Linda S. Kahan,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 00–7779 Filed 3–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 35 and 602

[TD 8873]

RIN 1545–AW78

New Technologies in Retirement Plans; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to final regulations which were published in the **Federal Register** on Tuesday, February 8, 2000 (65 FR 6001), relating to amendments to the regulations governing certain notices and consents required in connection with distributions from retirement plans.

DATES: This correction is effective February 8, 2000.

FOR FURTHER INFORMATION CONTACT: Catherine Livingston Fernandez at (202) 622–6030 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to these corrections are under sections 402(f), 411(a)(11) and 3405(e)(10)(B) of the Internal Revenue Code.

Need for Correction

As published, the final regulations (TD 8873) contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the final regulations (TD 8873), which were the subject of FR Doc. 00–1897, is corrected as follows:

1. On page 6004, column 2, line 24 from the top of the column, the language "I.R.B.) provides that, pending" is corrected to read "I.R.B. 413) provides that, pending".

§ 35.3405–1 [Corrected]

2. On page 6008, column 1, § 35.3405–1 d–35, lines 4 and 5 of A, the language, "and the annual notice described in d–31) to a payee either on a written paper" is corrected to read "of § 35.3405–1T and the annual notice described in d–31 of § 35.3405–1T) to a payee either on a written paper".

3. On page 6008, column 2, § 35.3405–1 d–36 A., the first line of *Example 5*, the language, "*Example 5.* (I) Same facts as *Example 1*," is corrected to read "*Example 5.* (i) Same facts as *Example 1*,".

4. On page 6008, column 2, § 35.3405–1 d–36A., the first line of *Example 5* (ii), the language, "(ii) In this *Example 5*, Plan A does not" is corrected to read "(ii) In this *Example 5*, the plan administrator does not".

§ 602.101 [Corrected]

5. On page 6008, column 3, instructional Par. 7. and the table in § 602.101(b) are corrected to read as follows:

Par. 7. In § 602.101, paragraph (b) is amended by revising the entries for 1.402(f)–1 and 1.411(a)–11 in the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described					Current OMB control No.
•	•	•	•	•	
1.402(f)–1					1545–1341 1545–1632
•	•	•	•	•	
1.411(a)–11					1545–1471 1545–1632
•	•	•	•	•	

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–5243 Filed 3–30–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40, 41, 47, 48, 145, and 602

[TD 8879]

RIN 1545–AV71; RIN 1545–AT18

Kerosene Tax; Aviation Fuel Tax; Taxable Fuel Measurement and Reporting; Tax on Heavy Trucks and Trailers; Highway Vehicle Use Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations; conforming amendments to temporary regulations; and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the kerosene and aviation fuel excise taxes, the tax on the use of certain highway vehicles, and the tax on the first retail sale of certain tractors and truck, trailer, and semitrailer chassis and bodies (highway vehicles). The regulations relating to kerosene affect the tax liability of certain refiners, terminal operators, and persons that sell, buy, or use kerosene. The regulations relating to aviation fuel affect certain producers and retailers of aviation fuel. The regulations relating to the taxes on highway vehicles affect vehicle manufacturers, dealers, and owners.

DATES: *Effective Dates:* These regulations are effective March 31, 2000.

Applicability Dates: For dates of applicability of these regulations, see §§ 48.4052–1(c), 48.4081–1(f), 48.4081–2(f), 48.4081–3(j), 48.4082–2(c), 48.4082–4(d), 48.4082–5(h), 48.4082–6(f), 48.4082–7(f), 48.4101–1(i), 48.4101–2(b), 48.6427–8(f), 48.6427–9(g), 48.6427–10(h), and 48.6427–11(g).

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information in these final regulations have been reviewed in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545–1418.

The collections of information in these regulations are in §§ 48.4052–1, 48.4081–2, 48.4081–3, 48.4081–7, 48.4082–2, 48.4082–6, 48.4082–7, 48.4091–3, 48.4101–1, 48.4101–2, 48.6427–8, 48.6427–9, 48.6427–10, and 48.6427–11. This information is required to support exempt transactions, claims for credits and refunds, and to inform consumers of the type of fuel that is being purchased. The likely respondents are businesses and other for-profit organizations.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by May 30, 2000. Comments are specifically requested concerning:

Whether the collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collections of information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of service to provide information.

Estimated total annual reporting and/or recordkeeping burden: 97,583 hours.

The estimated annual burden per respondent is 17 minutes.

Estimated number of respondents: 346,080.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 4081 imposes a tax on certain removals, entries, and sales of taxable fuel. Before July 1, 1998, taxable fuel meant gasoline and diesel fuel. As of that date, however, the definition of taxable fuel was expanded by the Taxpayer Relief Act of 1997 (Public Law 105–34, 111 Stat. 788 (the 1997 Act)) to include kerosene.

Temporary regulations (TD 8774) relating to this change were published in the **Federal Register** on July 1, 1998 (63 FR 35799) along with a notice of proposed rulemaking (REG–119227–97) cross-referencing the temporary regulations (63 FR 35893). Written comments responding to these proposed regulations were received and a public hearing was held on November 4, 1998.

Proposed regulations (REG–209753–95; PS–6–95)) were published in the **Federal Register** (61 FR 10490) on March 14, 1996, relating to, among other things, the measurement of taxable fuel. Written comments responding to these proposed regulations were received and a public hearing was held on June 20, 1996.

After consideration of written comments and comments made at the public hearings, the proposed regulations are adopted as revised by this Treasury decision. Comments and revisions are discussed below. Also, a partial withdrawal of the March 14, 1996, proposed regulations is published in the Proposed Rules section of this issue of the **Federal Register**.

Explanation of Provisions

Definition of Kerosene. The temporary regulations define kerosene as the two grades of kerosene (No. 1–K and No. 2–K) described in ASTM specification D 3699 and certain kerosene-type jet fuel. This ASTM specification describes kerosene in terms of several properties including distillation range, sulfur content, and color. For example, No. 1–K kerosene has a sulfur content not greater than 400 parts per million.

Several commentators noted, however, that there are many liquids that are never commercially known or sold as kerosene but that nevertheless might meet the broad specifications of ASTM specification D 3699. These liquids, which are used in the production of products such as paints and coatings, usually cost more to produce than kerosene that is sold for fuel uses. Because of these differences, the commentators concluded that it is highly unlikely that these liquids would be diverted for use in highway vehicles. Thus, the commentators suggested that these liquids should not be treated as kerosene.

The final regulations adopt the suggestion of the commentators by excluding liquids with certain described properties from the definition of kerosene.

Exemption for Aviation-grade Kerosene. The 1997 Act provides that undyed aviation-grade kerosene may be removed from a terminal tax free if the kerosene is received by a person that is registered for purposes of the aviation fuel tax imposed by section 4091. As a transitional rule, the temporary regulations provide that tax does not apply to a removal of aviation-grade kerosene that will be used as a fuel in an aircraft, even if the person receiving the kerosene is not registered.

The IRS Restructuring and Reform Act of 1998 (Public Law 105–206, 112 Stat. 685 (the 1998 Act)), which was enacted after publication of the temporary regulations, revised the exemption for aviation-grade kerosene. Under the 1998 Act, tax is not imposed on aviation-grade kerosene that the Secretary determines is destined for use as a fuel in an aircraft.

Under the final regulations, existing rules relating to tax-free transactions within the bulk transfer/terminal system will continue to apply to aviation-grade kerosene even if the kerosene will be used as a fuel in an aircraft. Thus, a sale of aviation-grade kerosene within a pipeline to an airline for aircraft use may be made tax free only if the airline is a taxable fuel registrant. In this regard, the final regulations also reflect Announcement 99–40 (1999–16 I.R.B. 10), which provides a transitional registration rule for certain throughputters and kerosene terminal operators.

Removals and entries of undyed aviation-grade kerosene may be made tax free under the final regulations if (1) the person otherwise liable for tax (such as the position holder) delivers the kerosene into the fuel supply tank of its own aircraft or (2) the kerosene is sold and the buyer certifies to the person otherwise liable for tax that the kerosene will be used by the buyer as a fuel in an aircraft or resold for such use. Any later sale of the aviation-grade kerosene will be subject to tax unless the subsequent seller receives a similar certificate from its buyer or delivers the kerosene into the fuel supply tank of the buyer's aircraft. In addition, the IRS may withdraw the right of a buyer to provide a certificate in the future if the buyer uses the aviation-grade kerosene other than as a fuel in an aircraft.

A commentator noted that airlines often use a small percentage of their purchases of aviation-grade kerosene as a fuel in airport ground equipment, thus making it impossible for them to certify that all of this fuel will be for aircraft use. The commentator suggested that a buyer should be allowed to certify that only a percentage of its purchases will be used as a fuel in an aircraft. The final regulations adopt this suggestion. Thus, if an airline certifies to a position holder that 99 percent of all of its purchases of aviation-grade kerosene from a certain terminal will be for use as a fuel in an aircraft, then the position holder will be liable for the section 4081 tax on one percent of all its sales to the airline at that terminal.

A commentator suggested that tax should not be imposed on the nonbulk removal of aviation-grade kerosene from an approved terminal if the kerosene is received at another approved terminal or is sold for use in an aircraft outside the United States. Under the final regulations, both removals may be made tax free if the proper certification regarding aircraft use is given by the buyer or the person otherwise liable for tax delivers the aviation-grade kerosene into the fuel supply tank of its own aircraft.

A commentator noted that aviation-grade kerosene is aviation fuel and thus is subject to tax under section 4091 when it is sold by its producer. Section 4092 exempts a sale from the aviation fuel tax if the buyer is a registered producer or certifies that it will use the fuel in a nontaxable use such as use other than as a fuel in an aircraft.

The commentator suggested that if the section 4081 tax is imposed on the removal of any aviation-grade kerosene because the buyer of the kerosene does not certify that it will be used in an aircraft, then an exemption from the section 4091 tax automatically should apply regardless of the status of the buyer. Thus, for example, if the section 4081 tax is imposed on a removal of aviation-grade kerosene at the terminal rack, the section 4091 tax should not be imposed on any subsequent sale to an unregistered person that buys the kerosene for resale for nonaircraft use, such as in highway vehicles or as heating oil. The commentator contends that this suggestion would ease compliance and administrative burdens by eliminating the need to certify for section 4091 purposes.

The final regulations do not adopt this suggestion because section 4092 allows tax-free sales of aviation fuel only to registered producers and persons buying for their own nontaxable use. This suggestion, in contrast, would allow tax-free sales to resellers that are not producers. The IRS has published guidance regarding the aviation fuel tax imposed by section 4091 in Notice 88–30 (1988–1 C.B. 497), Notice 88-132 (1988–2 C.B. 552), and Notice 89–38 (1989–1 C.B. 678).

Exemption for Feedstock Purpose. Under the 1997 Act and the temporary regulations, tax is not imposed on undyed kerosene that is received from a pipeline or vessel by a registered person for the person's use as a feedstock; that is, use in the manufacture or production of any substance other than gasoline, diesel fuel, or special fuels referred to in section 4041.

The 1997 Act also provides that, to the extent provided in regulations, undyed kerosene may be removed from a terminal tax free if the kerosene is removed for use as a feedstock. The temporary regulations do not implement this latter provision. However, several commentators suggested that, without the application of this provision, small feedstock users that buy kerosene at a terminal rack bear the burden of the tax and then must claim a credit or refund. This puts the small users at a competitive disadvantage compared to larger users that may buy bulk quantities of kerosene tax free for their facilities that are connected to a pipeline.

The final regulations adopt the suggestion of the commentators by generally allowing tax-free removals of kerosene from a terminal if the person receiving the kerosene is registered and certifies that it will use the kerosene for a feedstock purpose. The IRS may revoke this person's registration if the person uses the kerosene other than for a feedstock purpose, such as to power machinery in a factory where paint is produced.

A commentator suggested that the packaging of kerosene into any container that is less than 55 gallons should be treated as a feedstock purpose. This suggestion is not adopted in the final regulations because this activity is not the manufacture or production of a nonfuel substance.

Exemption for Certain Wholesale Distributors. The 1997 Act provides that, to the extent provided in regulations, undyed kerosene may be removed from a terminal tax free if the kerosene is received by a registered wholesale distributor that sells kerosene exclusively to ultimate vendors that sell kerosene from a pump that is not suitable for use in fueling any diesel-powered highway vehicle or train (a blocked pump). The temporary regulations do not provide rules for this provision.

A commentator suggested that the final regulations should implement this provision because it would reduce the number of refund claims that are filed by ultimate vendors and reduce the costs of the fuel for these vendors, many of whom are small businesses. Another commentator suggested, on the other hand, that the provision would increase the availability of untaxed, undyed kerosene and thus increase opportunities for diversion of this fuel for taxable purposes.

The final regulations do not implement this provision because Treasury and the IRS share the concern of the latter commentator. Treasury and the IRS will, however, continue to monitor the matter to determine if it is appropriate to provide rules for the provision at a later date.

Claims Relating to Sales of Kerosene from Blocked Pumps. Under the 1997 Act, a credit or refund is allowed to a registered ultimate vendor that sells taxed, undyed kerosene from a blocked pump. The temporary regulations define a blocked pump as a retail fuel pump at a fixed location that is used to dispense undyed kerosene for use by the buyer in a nontaxable use and cannot be used to dispense kerosene directly into the fuel supply tank of a diesel-powered highway vehicle or train (because, for example, of its distance from a road surface or train track or the length of its delivery hose). In addition, blocked pumps must display a prescribed notice.

Treasury and the IRS received many comments relating to the definition of blocked pump. Several commentators noted that many kerosene pumps are on an island next to gasoline pumps so that vehicular access cannot be restricted. Requiring blocked pumps to be on a separate island would not be practical because many service stations do not have the physical space for such an arrangement. Shortening the delivery hose on these pumps would not be practical because doing so would prevent a container from resting on the ground while it is being filled, as safety rules require.

Several commentators suggested expanding the definition to include pumps that are activated by an on-site attendant before each use and are within the direct line of sight of the attendant authorizing the sale to the customer. Other commentators noted that many people who use kerosene for heating purposes do not buy it from a retail pump. So that these customers could obtain undyed kerosene at a tax-excluded price, these commentators suggested that a credit or refund should be allowed to registered ultimate vendors that make home deliveries of undyed kerosene for heating purposes and that sell kerosene in small containers.

Under the final regulations, a blocked pump is a pump that, because of the pump's physical limitations (for example, a short hose), cannot be used to fuel a vehicle, or a pump that is locked by the vendor after each sale and unlocked by the vendor in response to a request by a buyer for undyed kerosene for use other than as a fuel in a diesel-powered highway vehicle or train. As a condition to making a claim with regard to kerosene sold from this latter type of blocked pump, the vendor must obtain the name and address of anyone who buys more than five gallons of kerosene in a single sale. A vendor's registration may be revoked if it allows anyone to fuel a highway vehicle from a blocked pump.

There is no authority in the Internal Revenue Code (Code) to allow ultimate vendor refunds for kerosene solely because the kerosene is delivered to homes for heating purposes or is sold in small containers. Thus, the final regulations do not contain such a provision.

Claims Relating to Sales of Kerosene for Blending During Periods of Extreme Cold. The 1997 Act provides that, to the extent provided in regulations, a credit or refund is allowed to a registered ultimate vendor that sells kerosene for blending with heating oil to be used during periods of extreme or unseasonable cold. The temporary regulations do not provide rules for this provision.

A commentator suggested that the final regulations should implement this provision and define the phrase "period of extreme or unseasonable cold" as including "all the days in November through February."

Under the final regulations, if the IRS declares an area to be affected by extremely cold weather conditions, a credit or refund generally will be allowed to a registered ultimate vendor

that sells undyed kerosene for blending with diesel fuel in that affected area if the blended fuel is to be used for heating purposes. It is expected that the periods during which any declaration of extreme cold issued under this provision will be in effect will be limited.

Registration of Heavy Vehicle Manufacturers and Retailers. The tax on the sale of heavy vehicles imposed by section 4051 applies to the first retail sale by the manufacturer, importer, or retailer of a vehicle. The tax is not imposed if a vehicle is sold for resale or for leasing on a long-term basis. Under regulations issued in 1988, this tax-free treatment applied only if both the seller and the buyer were registered by the IRS. The 1997 Act provides, however, that the Secretary shall prescribe regulations so that sales between unregistered parties may be made tax-free if the buyer states under penalties of perjury that the vehicle will be resold. This provision of the 1997 Act is effective January 1, 1998. The temporary regulations implementing the provision are effective on July 1, 1998, the publication date of the temporary regulations.

Several commentators suggested that the final regulations should be effective on January 1, 1998, because the commentators believe that the 1997 Act eliminated the registration requirement as of that date.

The IRS and Treasury are concerned that the suggested change might disqualify sales that would have been tax free under the 1988 regulations. Accordingly, the final regulations retain the July 1, 1998, effective date. They provide, however, that sales (including sales between unregistered parties) that occurred after December 31, 1997, and before July 1, 1998, and otherwise satisfy the requirements of the final regulations may be made tax free.

Measurement of Taxable Fuel. Existing regulations provide that gallons of taxable fuel may be measured on the basis of actual volumetric gallons, gallons adjusted to 60 degrees Fahrenheit, or any other temperature adjustment method approved by the Commissioner.

The March 14, 1996, proposed regulations proposed to modify this rule so that taxable fuel would be measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit, whichever is the basis for measurement under the position holder's terminaling agreement with the terminal operator. A commentator suggested that measurement at a particular terminal should be applied consistently on an annual basis.

Under the final regulations, annual consistency is required, on a terminal-by-terminal basis, within each one year period beginning on July 1. Thus, a position holder may use only one of the above described bases of measurement with respect to all taxable fuel removed from any particular terminal during each one year period.

Highway Use Tax. Section 4481 imposes a tax on the use of certain highway vehicles. A State to which an application is made to register a highway vehicle generally must receive from the applicant proof of payment of this tax. Proof of payment consists of a receipted Schedule 1 of Form 2290, "Heavy Highway Vehicle Use Tax Return," that is returned to the taxpayer by the IRS after the taxpayer has paid tax on the vehicle. In most cases, the Schedule 1 must include the vehicle identification number (VIN) of each vehicle for which the taxpayer is reporting tax. However, existing regulations provide that a taxpayer reporting tax on more than 21 vehicles need not list the VIN of any vehicle.

Effective July 1, 2000, the final regulations remove this provision. In addition, the instructions for Form 2290 will be changed to require the listing of the VIN of each vehicle reported. The final regulations also remove several obsolete provisions relating to the highway use tax.

Information Reporting. Section 4101(d) allows the IRS to require information reporting by (1) any person registered under section 4101 and (2) such other persons as the IRS deems necessary to administer the taxes on taxable fuel and aviation fuel.

The IRS is developing an information reporting program (Excise Summary Terminal Activity Reporting System (ExSTARS)) for terminal operators and pipeline and vessel operators. The IRS anticipates that ExSTARS will begin later in 2000.

Under the final regulations, information reports to be required by the IRS under section 4101(d) will cover a one month period and a report will be due by the end of the month following the month to which it relates. As a transitional rule, reports under the new rules relating to any month in 2000 will not be due until February 28, 2001.

Registration of pipeline and vessel operators. Effective April 1, 2001, operators of pipelines and vessels in the bulk transfer/terminal system will be required to be registered by the IRS.

Effect on Other Documents

The following publications are obsolete as of March 31, 2000:
Rev. Rul. 57–259, 1957–1 C.B. 423.
Rev. Rul. 57–499, 1957–2 C.B. 788.
Rev. Rul. 73–292, 1973–2 C.B. 376.
Rev. Rul. 78–218, 1978–1 C.B. 367.
Rev. Rul. 86–62, 1986–1 C.B. 325.
Announcement 99–40, 1999–16 I.R.B. 10.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that the collection of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that the time required to prepare and submit the exemption certificates described in these regulations (many of which are similar to certificates that are already in use) is minimal and will not have a significant impact on those small entities that choose to provide the certificates. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the Code, the notices of proposed rulemaking preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information: The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Parts 40, 48, and 145

Excise taxes, Reporting and recordkeeping requirements.

26 CFR Part 41

Excise taxes, Motor vehicles, Reporting and recordkeeping requirements.

26 CFR Part 47

Biologics, Excise taxes, Gasoline, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, and under the authority of 26 U.S.C. 7805, 26 CFR chapter I is amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 40.6011(a)–1 [Amended]

Par. 2. Section 40.6011(a)–1 is amended as follows:

1. In paragraph (b)(2) introductory text, the language "Effective January 1, 1994, the" is removed and "The" is added in its place.

2. In paragraph (b)(2)(v), the language "and kerosene" is added after "diesel fuel".

PART 41—EXCISE TAX ON USE OF CERTAIN HIGHWAY MOTOR VEHICLES

Par. 3. The authority citation for part 41 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 41.0–1 is revised to read as follows:

§ 41.0–1 Introduction.

The regulations in this part are designated "Highway Use Tax Regulations." The regulations in this part relate to the tax on the use of certain highway vehicles imposed by section 4481 and to certain associated administrative provisions.

§§ 41.0–2 and 41.0–3 [Removed]

Par. 5. Sections 41.0–2 and 41.0–3 are removed.

Par. 6. Section 41.4481–1 is amended as follows:

1. Paragraphs (a) and (b) are revised.

2. Paragraph (c)(1) introductory text, is amended by removing the language "taxable periods beginning after June 30, 1984," and adding "a taxable period" in its place.

3. Paragraph (c)(3) is amended by revising the introductory text.

4. Paragraph (d)(1) is amended by removing from the last sentence the language "Form 843 (Claim)" and adding "Form 8849 (or such other form as the Commissioner may designate)" in its place.

5. Paragraph (e) introductory text, is amended by adding the language "section 4481 and" after "The application of".

The revisions read as follows:

§ 41.4481–1 Imposition of tax.

(a) *In general.* Tax is imposed on the use during a taxable period of any registered highway motor vehicle that (together with the semitrailers and trailers customarily used in connection with highway motor vehicles of the same type as such highway motor vehicle) has a taxable gross weight of at least 55,000 pounds.

(b) *Rate of tax.* For the rate of tax generally, see section 4481(a). For the rate of tax for certain vehicles used in logging, see section 4483(e). For the rate of tax for certain vehicles base-plated in Canada or Mexico, see section 4483(f). For a special rule for the taxable period in which the tax terminates, see section 4482(d).

(c) * * *

(3) If the taxable gross weight of a vehicle increases during the month in which the vehicle is first used in a taxable period, the tax for the vehicle for the taxable period is computed on the basis of the increased weight. If the taxable gross weight of a vehicle increases after the month in which the vehicle was first used in a taxable period, the additional tax liability, if any, that results from the increased weight is calculated according to the following formula:

* * * * *

§ 41.4481–1T [Removed]

Par. 7. Section 41.4481–1T is removed.

Par. 8. In § 41.4481–2, paragraph (a)(1) is revised to read as follows:

§ 41.4481–2 Persons liable for tax.

(a) * * * (1)(i) A person is liable for the tax imposed by section 4481 with respect to the use of a highway motor vehicle in a taxable period if the vehicle is registered in the person's name—

(A) At the time of the first use of the vehicle in the taxable period;

(B) In the case of a vehicle under a suspension of tax described in § 41.4483–3(a), at the time the use on the public highways during the taxable period exceeds 5,000 miles (7,500 miles for agricultural vehicles);

(C) At the time that an increase in the taxable gross weight of the vehicle results in an additional tax liability (as computed under § 41.4481–1(c)(3)) if the increase occurs after the month in which the vehicle was first used in the taxable period; or

(D) At the time of any use during the taxable period that is after the first use during the period, but only to the extent that the tax or any installment payment of the tax has not previously been paid.

(ii) In any case in which more than one person is liable for the tax for a taxable period, the liability of all persons is satisfied to the extent that the tax is paid by any person liable for the tax.

* * * * *

§ 41.4482(a)–1 [Amended]

Par. 9. Section 41.4482(a)–1 is amended as follows:

1. Paragraph (a)(2) is amended by removing the language "paragraph (c) of this section" and adding "§ 48.4061(a)–1(d) of this chapter" in its place.

2. Paragraph (c) is removed.

Par. 10. Section 41.4482(b)–1 is amended as follows:

1. Paragraph (a) is revised.

2. Paragraphs (b), (c), and (d) are removed.

3. Paragraph (e) is redesignated as paragraph (b) and amended as follows:

a. The heading is revised.

b. In newly designated paragraph (b)(1), the first sentence is revised and the second sentence is removed.

c. In newly designated paragraph (b)(2), the language "paragraph (a)" is removed and "paragraph (b)(1)" is added in its place.

4. Paragraph (f) is redesignated as paragraph (c).

5. The undesignated authority citation at the end of the section is removed.

The revisions read as follows:

§ 41.4482(b)–1 Definition of taxable gross weight.

(a) *Actual unloaded weight*—(1) *In general. Actual unloaded weight* means the empty (or tare) weight of the truck, truck-tractor, or bus, fully equipped for service.

(2) *Trucks and truck-tractors.* A truck or truck-tractor fully equipped for service includes the body (whether or not designed and adapted primarily for transporting cargo, as for example, concrete mixers); all accessories; all equipment attached to or carried on such truck or truck-tractor for use in connection with the movement of the vehicle by means of its own motor or for use in the maintenance of the vehicle; and a full complement of lubricants, fuel, and water. It does not include the driver, any equipment (not including the body) attached to or carried on the vehicle for use in handling, protecting, or preserving cargo, or any special equipment (such as an air compressor, crane, specialized oilfield machinery, etc.) mounted on the vehicle for use on construction jobs, in oilfield operations, etc.

(3) *Buses.* A bus fully equipped for service includes the body; all accessories; all equipment attached to or carried on such bus for use in connection with the movement of the

vehicle by means of its own motor, for use in the maintenance of the vehicle, or for the accommodation of passengers or others (such as air conditioning equipment and sanitation facilities, etc.); and a full complement of lubricants, fuel, and water. It does not include the driver.

(b) *Determination of taxable gross weight*—(1) *In general.* The taxable gross weight of a highway motor vehicle is the sum of the actual unloaded weight of the vehicle fully equipped for service, the actual unloaded weight of any semitrailers or trailers fully equipped for service customarily used in combination with the vehicle, and the weight of the maximum load customarily carried on the vehicle and on any semitrailers or trailers customarily used in combination with the vehicle. * * *

* * * * *

§ 41.4482(b)–1T [Removed]

Par. 11. Section 41.4482(b)–1T is removed.

Par. 12. Section 41.4482(c)–1 is amended as follows:

1. The section heading is revised.

2. Paragraphs (a), (b), and (d) are revised.

The revisions read as follows:

§ 41.4482(c)–1 Definition of State, taxable period, use, and customarily used.

(a) *State. State* includes any State, any political subdivision of a State, the District of Columbia, and, to the extent provided by section 7871, any Indian tribal government.

(b) *Taxable period.* For the definition of *taxable period,* see section 4482(c).

* * * * *

(d) *Customarily used.* A semitrailer or trailer is treated as *customarily used* in connection with a highway motor vehicle if the vehicle is equipped to tow the semitrailer or trailer.

Par. 13. Section 41.4483–1 is revised to read as follows:

§ 41.4483–1 State exemption.

Use of a highway motor vehicle by a State is exempt from the tax imposed by section 4481. For this purpose, the term *use by a State* means the operation by a State on the public highways in the United States of any highway motor vehicle, whether or not such highway motor vehicle is owned by the State.

Par. 14. Section 41.4483–2 is amended as follows:

1. Paragraph (a) is amended by removing the language "section 6421(b)(2), as set forth in".

2. Paragraph (e) is amended as follows:

a. Paragraph (e) introductory text, is amended by removing the language "set forth in section 6421(b)(2)".

b. Paragraph (e)(1) is amended by removing the language "(rather than any different period prescribed in section 6421(b)(2))".

c. Paragraph (e)(2), first sentence, is amended by removing the language "(see section 4263(a))".

d. Paragraph (e)(2), last sentence, is revised.

3. Paragraph (f) *Example (1),* penultimate sentence, is amended by removing the language "(not including any tax on the transportation of persons imposed by section 4261)".

The revision reads as follows:

§ 41.4483–2 Exemption for certain transit-type buses.

* * * * *

(e) * * *

(2) * * * In determining the total of such passenger fare revenue, revenue from sources such as charter fees, rentals of property, advertising receipts, etc., is not taken into account.

* * * * *

§ 41.4483–3 [Amended]

Par. 15. Section 41.4483–3 is amended as follows:

1. Paragraph (a)(2) is amended by removing the language "(Federal Heavy Vehicle Use Tax Return)".

2. Paragraph (b) is amended as follows:

a. The first sentence is amended by removing the language "shall pay" and adding "is liable for" in its place.

b. The last two sentences are removed.

3. Paragraph (f) is amended as follows:

a. The second sentence is removed.

b. The last sentence is amended by adding the language "and § 41.6011(a)–1(a)(3) for a requirement that certain transferees described in this paragraph (f) must file a return" after "suspension from tax".

§ 41.4483–5 [Removed]

Par. 16. Section 41.4483–5 is removed.

§ 41.4484–1 [Removed]

Par. 17. Section 41.4484–1 is removed.

§ 41.6001–1 [Amended]

Par. 18. Section 41.6001–1 is amended as follows:

1. Paragraph (a)(6) is amended by removing the language "for taxable periods after June 30, 1984".

2. Paragraph (a)(7) is amended as follows:

a. The first sentence is amended by removing the language "or, for taxable periods after June 30, 1984," and adding "or" in its place.

b. The last sentence is removed.

3. Paragraph (b) is amended by removing the language "whether he meets" and adding "whether it meets" in its place.

§ 41.6001–2 [Amended]

Par. 19. Section 41.6001–2 is amended as follows:

1. Paragraph (a), second sentence, is amended by removing the language "104(b)(5)" and adding "104(b)(4)" in its place.

2. Paragraph (c)(1)(ii) introductory text, is amended by removing the language "If a receipted" and adding "With respect to taxable periods beginning before July 1, 2000, if a receipted" in its place.

3. Paragraph (c)(1)(iii), first sentence, is amended by removing the language "If a Schedule 1" and adding "With respect to taxable periods beginning before July 1, 2000, if a Schedule 1" in its place.

4. Paragraph (d) is amended as follows:

a. *Example (1),* seventh sentence, is amended by removing the language "§ 41.4482(b)–1(e)" and adding "§ 41.4482(b)–1" in its place.

5. *Example (2),* second sentence, is amended by removing the language "§ 41.4482(b)–1(e)" and adding "§ 41.4482(b)–1" in its place.

6. *Example (4)* is removed.

Par. 20. Section 41.6011(a)–1 is revised to read as follows:

§ 41.6011(a)–1 Returns.

(a) *In general.* (1) A person that is liable for tax under § 41.4481–2(a)(1)(i)(A), (B), or (C) must file a return for the taxable period with respect to the tax imposed by section 4481.

(2) A person that is liable for tax under § 41.4481–2(a)(1)(i)(D) must file a return for a taxable period with respect to the tax imposed by section 4481 if the Commissioner notifies the person that the tax for the taxable period has not been paid in full.

(3) A transferee of a vehicle that receives a statement described in the first sentence of § 41.4483–3(f) must file a return with the statement attached.

(b) *Form 2290.* The return required under paragraph (a) of this section is Form 2290, "Heavy Highway Vehicle Use Tax Return," or such other return as the Commissioner may prescribe. The return is made in accordance with the instructions applicable to the form.

Par. 21. Section 41.6071(a)–1 is amended as follows:

1. Paragraph (a) is revised.

2. Paragraph (b) is removed.

3. Paragraph (c) is redesignated as paragraph (b).

4. Newly designated paragraph (b) is amended by removing the language "(but in no event earlier than the time prescribed in paragraph (a)(1) of this section for filing a return)".

5. Paragraphs (d), (e), and (f) are removed.

The revision reads as follows:

§ 41.6071(a)–1 Time for filing returns.

(a) *In general.* Except as provided in paragraph (b) of this section, a return described in § 41.6011(a)–1 must be filed by the last day of the month following the month in which—

(1) A person becomes liable for tax under § 41.4481–2(a)(1)(i)(A), (B), or (C);

(2) A person that is liable for tax under § 41.4481–2(a)(1)(i)(D) is notified by the Commissioner that the tax has not been paid in full; or

(3) A transferee described in § 41.4483–3(f) acquires the vehicle.

* * * * *

§ 41.6081(a)–1 [Removed]

Par. 22. Section 41.6081(a)–1 is removed.

Par. 23. Section 41.6091–1 is revised to read as follows:

§ 41.6091–1 Place for filing returns.

(a) *In general.* Except as provided in paragraph (b) of this section, returns must be filed in accordance with the instructions applicable to the form on which the return is made.

(b) *Hand-carried returns*—(1) *Persons other than corporations.* Returns of persons other than corporations that are filed by hand carrying must be filed with the Commissioner in the internal revenue district in which is located the principal place of business or legal residence of the person.

(2) *Corporations.* Returns of corporations that are filed by hand carrying must be filed with the Commissioner in the internal revenue district in which is located the principal place of business or principal office or agency of the corporation.

Par. 24. Section 41.6101–1 is revised to read as follows:

§ 41.6101–1 Period covered by returns.

Each return is for a taxable period as defined in section 4482.

Par. 25. Section 41.6109–1 is revised to read as follows:

§ 41.6109–1 Identifying numbers.

Every person required under § 41.6011(a)–1 to make a return must provide the identifying number required by the instructions to the form on which the return is made.

Par. 26. Section 41.6151(a)–1 is revised to read as follows:

§ 41.6151(a)–1 Time and place for paying tax.

The tax must be paid at the time prescribed in § 41.6071(a)–1 for filing the return and at the place prescribed in § 41.6091–1 for filing the return.

§§ 41.6161(a)(1)–1, 41.6302(b)–1, and 41.7805–1 [Removed]

Par. 27. Sections 41.6161(a)(1)–1, 41.6302(b)–1, and 41.7805–1 are removed.

PART 47—[REMOVED]

Par. 28. Part 47 is removed.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 29. The authority citation for part 48 is amended by removing the entries for Sections 48.4081–7 and 48.4081–9(e); 48.4082–6T, 48.4082–7T, and 4082–8T; 48.4101–2; 48.4101–3T; 48.6427–8; 48.6427–9; and 48.6427–10T and 48.6427–11T and adding entries in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 48.4052–1 also issued under 26 U.S.C. 4052(g). * * *

Section 48.4081–7 also issued under 26 U.S.C. 4081(e). * * *

Section 48.4082–6 also issued under 26 U.S.C. 4082(d).

Section 48.4082–7 also issued under 26 U.S.C. 4082(d). * * *

Section 48.4101–2 also issued under 26 U.S.C. 6071(a). * * *

Section 48.6427–8 also issued under 26 U.S.C. 6427(m).

Section 48.6427–9 also issued under 26 U.S.C. 6427(m).

Section 48.6427–10 also issued under 26 U.S.C. 6427(m).

Section 48.6427–11 also issued under 26 U.S.C. 6427(m).

Par. 30. The undesignated editorial note and its authority citation at the end of the authority citation are removed.

§ 48.0–2 [Amended]

Par. 31. In § 48.0–2, paragraph (a)(2) is removed and reserved.

§ 48.4041–21 [Amended]

Par. 32. Section 48.4041–21, paragraph (c)(1), first sentence, is amended by removing the language "§ 48.4082–4(c)(1) through (c)(4)(i) or (c)(5) through (c)(10)." and adding "section 4041(a)(3)(B), (b)(1), (f), (g), or (h)." in its place.

Par. 33. In Subpart H, § 48.4052–1 is added under the undesignated centerheading "Motor Vehicles" to read as follows:

§ 48.4052–1 Heavy trucks and trailers; certification requirement.

(a) *In general.* Tax is not imposed by section 4051 on the sale of an article for resale or leasing in a long-term lease if, by the time of sale, the seller has in good faith accepted from the buyer a statement that the buyer executed in good faith and that is in substantially the same form, and subject to the same conditions, as the certificate described in § 145.4052–1(a)(6) of this chapter, except that the certificate must be signed under penalties of perjury and need not refer to Form 637 or include a registration number.

(b) *References to § 145.4052–1(a)(2) of this chapter.* References to § 145.4052–1(a)(2) of this chapter appearing in § 145.4052–1 of this chapter apply also to paragraph (a) of this section.

(c) *Effective date.* This section is applicable after June 30, 1998. In addition, tax is not imposed on a sale occurring after December 31, 1997, and before July 1, 1998, if the conditions of paragraph (a) of this section are satisfied.

Par. 34. Section 48.4081–1 is amended as follows:

1. Paragraph (b) is amended by:

a. Revising the definition of Aviation gasoline.

b. Removing the definition of Diesel-powered boat.

c. Adding the definition of Excluded liquid in alphabetical order.

d. Adding the definition of Kerosene in alphabetical order.

e. Revising the definition of Rack.

f. Removing the language "(as defined in § 48.4041–8(f))" in the definition of Removal, first sentence.

g. Removing the language "subject to the limitations of section 7871, any Indian tribal government." and adding "to the extent provided by section 7871, any Indian tribal government." in its place in the definition of State.

h. Revising the definition of Taxable fuel.

i. Adding the language "as such" after "is registered" in the definition of Taxable fuel registrant.

j. Removing the language "operated by a taxable fuel registrant if all of the finished gasoline and diesel fuel (other than diesel fuel dyed in accordance with § 48.4082–1(b))" and adding "where finished gasoline, undyed diesel fuel, or undyed kerosene is stored if the facility is operated by a taxable fuel registrant and all such taxable fuel" in its place in the definition of Terminal, last sentence.

2. Paragraph (c)(1)(i) introductory text, is amended by removing the

language "and (c)(iii)" and adding "and (c)(1)(iii)" in its place.

3. Paragraph (c)(1)(i)(A) is amended by adding the language "(other than taxable fuel for which a credit or payment has been allowed)" after "4081(a)".

4. Paragraphs (c)(2) and (d) are revised.

5. Paragraphs (e) and (f) are added.

The revisions and additions read as follows:

§ 48.4081–1 Taxable fuel; definitions.

* * * * *

(b) * * *

Aviation gasoline means all special grades of gasoline that are suitable for use in aviation reciprocating engines and covered by ASTM specification D 910 or military specification MIL–G–5572. For availability of ASTM and military specifications, see paragraph (d) of this section.

* * * * * *

Excluded liquid means any liquid that—

(1) Contains less than four percent normal paraffins; or

(2) Has a—

(i) Distillation range of 125° F. or less;

(ii) Sulfur content of 10 ppm or less; and

(iii) Minimum color of +27 Saybolt.

* * * * * *

Kerosene means any liquid that meets the specifications for kerosene or would meet those specifications but for the presence in the liquid of a dye of the type described in § 48.4082–1(b). A liquid meets the specifications for kerosene if it is one of the two grades of kerosene (No. 1–K and No. 2–K) covered by ASTM specification D 3699, or kerosene-type jet fuel covered by ASTM specification D 1655 or military specification MIL–DTL–5624T (Grade JP–5) or MIL–DTL–83133E (Grade JP–8). For availability of ASTM and military specifications, see paragraph (d) of this section. However, the term does not include *excluded liquid*.

* * * * * *

Rack means a mechanism capable of delivering taxable fuel into a means of transport other than a pipeline or vessel.

* * * * * *

Taxable fuel means gasoline, diesel fuel, and kerosene.

* * * * * *

(c) * * *

(2) *Diesel fuel*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, *diesel fuel* means any liquid that, without further processing or blending, is suitable for use as a fuel in a diesel-powered highway vehicle or diesel-powered train.

(ii) *Exclusion. Diesel fuel* does not include gasoline, kerosene, excluded liquid, No. 5 and No. 6 fuel oils covered by ASTM specification D 396, or F–76 (Fuel Naval Distillate) covered by military specification MIL–F–16884. For availability of ASTM and military specifications, see paragraph (d) of this section.

* * * * * *

(d) *ASTM and military specifications.* ASTM specifications may be obtained from the American Society for Testing and Materials, 100 Barr Harbor Drive, West Conshohocken, PA 19428. Military specifications may be obtained from the Standardization Document Order Desk, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111.

(e) *Other definitions.* For other definitions relating to taxable fuel, see §§ 48.4081–6(b), 48.4082–5(b), 48.4082–6(b), 48.4082–7(b), 48.4101–1(b), 48.6427–9(b), 48.6427–10(b), and 48.6427–11(b).

(f) *Effective date.* (1) Except as provided in paragraph (f)(2) of this section, this section is applicable after December 31, 1993.

(2) In paragraph (b) of this section, the definition of aviation gasoline and the third sentence in the definition of terminal are applicable after January 1, 1998, and the definitions of kerosene, excluded liquid, and taxable fuel are applicable after June 30, 1998. Paragraph (c)(2) of this section is applicable after December 31, 1997.

§ 48.4081–1T [Removed]

Par. 35. Section 48.4081–1T is removed.

Par. 36. Section 48.4081–2 is amended as follows:

1. Paragraph (b) is amended by removing the language "Except as provided in § 48.4081–4 (relating to gasoline blendstocks) and § 48.4082–1 (relating to dyed diesel fuel), tax" and adding "Tax" in its place.

2. Paragraph (c)(3) is amended by adding the language "or kerosene" after "diesel fuel" each place it appears.

3. Paragraph (e) is revised.

4. Paragraph (f) is added.

The addition and revision read as follows:

§ 48.4081–2 Taxable fuel; tax on removal at a terminal rack.

* * * * * *

(e) *Exemptions.* For exemptions from the tax imposed under this section, see §§ 48.4081–4 (relating to gasoline blendstocks), 48.4082–1 (relating to dyed diesel fuel and dyed kerosene), 48.4082–5 (relating to diesel fuel and kerosene used in Alaska), 48.4082–6 (relating to aviation-grade kerosene), and 48.4082–7 (relating to kerosene used for a feedstock purpose).

(f) *Effective date.* This section is applicable after December 31, 1993.

Par. 37. Section 48.4081–3 is amended as follows:

1. Paragraph (a) is amended by removing the last sentence.

2. Paragraph (b)(1) is amended as follows:

a. In the introductory text, the language "Except as provided in paragraph (b)(2) of this section (relating to an exemption for certain refineries), § 48.4081–4 (relating to gasoline blendstocks), and § 48.4082–1 (relating to dyed diesel fuel), tax" is removed and "Tax" is added in its place.

b. In paragraph (b)(1)(i), the language "of taxable fuel" is added after "A removal".

c. In paragraph (b)(1)(ii), the language "of taxable fuel" is added after "A removal".

d. In paragraph (b)(1)(iii), third sentence, the language "§ 40.6302(c)-1(e)(4)" is removed and "§ 40.6302(c)-1(f)(4)" is added in its place.

3. In paragraph (c)(1) introductory text, the language "Except as provided in § 48.4081–4 (relating to gasoline blendstocks) and § 48.4082–1 (relating to dyed diesel fuel), a tax" is removed and "Tax" is added in its place.

4. In paragraph (d)(1), the language "A tax is imposed" is removed and "Tax is imposed" is added in its place.

5. In paragraph (e)(1) introductory text, the language "Except as provided in § 48.4081–4 (relating to gasoline blendstocks) and § 48.4082–1 (relating to dyed diesel fuel), a tax" is removed and "Tax" is added in its place.

6. In paragraph (f)(1), the language "Except as provided in paragraph (f)(2) of this section and § 48.4082–1 (relating to dyed diesel fuel), a tax" is removed and "Tax" is added in its place.

7. Paragraph (i) is revised.

8. Paragraph (j) is added.

The revision and addition read as follows:

§ 48.4081–3 Taxable fuel; taxable events other than removal at the terminal rack.

* * * * * *

(i) *Exemptions.* For exemptions from the taxes imposed under this section, see §§ 48.4081–4 (relating to gasoline blendstocks), 48.4082–1 (relating to dyed diesel fuel and dyed kerosene), 48.4082–5 (relating to diesel fuel and kerosene used in Alaska), 48.4082–6 (relating to aviation-grade kerosene), and 48.4082–7 (relating to kerosene used for a feedstock purpose).

(j) *Effective date.* This section is applicable January 1, 1994.

Par. 38. In § 48.4081–6, paragraph (b)(3) is revised to read as follows:

§ 48.4081–6 Gasoline; gasohol.

* * * * * *

(b) * * *

(3) *Gasohol blender.* Gasohol blender means any person that regularly produces gasohol outside of the bulk transfer/terminal system for sale or use in its trade or business.

* * * * * *

§ 48.4081–7 [Amended]

Par. 39. Section 48.4081–7 is amended as follows:

1. In paragraph (c)(2), First Taxpayer's Report, the following language is removed:

"7._____
Location of IRS service center where this report is filed"

2. In paragraph (c)(4)(v), the language "gasoline" is removed each place it appears and "taxable fuel" is added in its place.

3. In paragraph (f) *Example 1*, the language "gasoline registrant" is removed and "taxable fuel registrant" is added in its place in the following locations:

a. Paragraph (i), first sentence.

b. Paragraph (i), second sentence.

c. Paragraph (ii), first sentence.

Par. 40. In § 48.4081–8, paragraph (a) is revised to read as follows:

§ 48.4081–8 Taxable fuel; measurement.

(a) *In general.* Volumes of taxable fuel may be measured on the basis of actual volumetric gallons or gallons adjusted to 60 degrees Fahrenheit. However, beginning July 1, 2000, for each period from July 1 through the following June 30—

(1) A person liable for the tax on removal may use only one of the two bases of measurement with respect to all taxable fuel removed during the period from any particular terminal, refinery, or blending facility;

(2) A person liable for the tax on entry may use only one of the two bases of measurement with respect to all taxable fuel entered into the United States during the period at any particular point of entry; and

(3) A person liable for the tax on sale may use only one of the two bases of measurement with respect to all taxable fuel sold during the period to any particular buyer.

* * * * * *

§ 48.4081–9 [Removed]

Par. 41. Section 48.4081–9 is removed.

Par. 42. Section 48.4082–1 is amended as follows:

1. The section heading is revised.

2. In paragraph (a) introductory text, the language "or kerosene" is added after "diesel fuel".

3. In paragraph (a)(3), the language "or kerosene" is added after "diesel fuel".

4. In paragraph (b), the introductory text is revised.

5. In paragraph (b)(1), the language "or kerosene" is added after "diesel fuel".

The revisions read as follows:

§ 48.4082–1 Diesel fuel and kerosene; exemption for dyed fuel.

* * * * * *

(b) * * * Diesel fuel or kerosene satisfies the dyeing requirement of this paragraph (b) only if the diesel fuel or kerosene contains—

* * * * * *

Par. 43. Sections 48.4082–2 and 48.4082–3 are revised to read as follows:

§ 48.4082–2 Diesel fuel and kerosene; notice required for dyed fuel.

(a) *In general.* A legible and conspicuous notice stating *"DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE"* must be posted by a seller on any retail pump or other delivery facility where it sells dyed diesel fuel for use by its buyer. A legible and conspicuous notice stating *"DYED KEROSENE, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE"* must be posted by a seller on any retail pump or other delivery facility where it sells dyed kerosene for use by its buyer. Any seller that fails to post the required notice on any retail pump or other delivery facility where it sells dyed fuel is, for purposes of the penalty imposed by section 6715, presumed to know that the fuel will not be used for a nontaxable use.

(b) *Cross reference; terminal operators.* For the requirement that terminal operators provide a notice with respect to dyed fuel, see § 48.4101–1(h)(3) (relating to terms and conditions of registration for terminal operators).

(c) *Effective date.* This section is applicable with respect to diesel fuel after December 31, 1993, and with respect to kerosene after June 30, 1998.

§ 48.4082–3 Diesel fuel and kerosene; visual inspection devices. [Reserved]

Par. 44. Section 48.4082–4 is amended as follows:

1. The section heading is revised.

2. Paragraph (a)(1) is revised.

3. Paragraph (a)(2)(i) is amended by removing the language "or boat".

4. Paragraphs (b) heading and (b)(1) are revised.

5. Paragraph (c) is amended by:

a. Removing paragraphs (c)(4) and (c)(10);

b. Redesignating paragraphs (c)(5), (c)(6), (c)(7), (c)(8), and (c)(9) as paragraphs (c)(4), (c)(5), (c)(6), (c)(7), and (c)(8), respectively.

c. Adding the language "or" at the end of newly designated paragraph (c)(7).

d. Removing the language "highway; or" at the end of newly designated paragraph (c)(8) and adding "highway." in its place.

6. Paragraph (d) is revised.

The revisions read as follows:

§ 48.4082–4 Diesel fuel and kerosene; back-up tax.

(a) *Imposition of tax*—(1) *In general.* Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered highway vehicle (other than a diesel-powered bus) of—

(i) Any diesel fuel or kerosene on which tax has not been imposed by section 4081;

(ii) Any diesel fuel or kerosene for which a credit or payment has been allowed under section 6427; or

(iii) Any liquid (other than taxable fuel) for use as fuel.

* * * * * *

(b) *Tax on diesel fuel and kerosene; buses and trains*—(1) *In general.* Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered bus or a diesel-powered train of—

(i) Any diesel fuel or kerosene on which tax has not been imposed by section 4081;

(ii) Any diesel fuel or kerosene for which a credit or payment has been allowed under section 6427; or

(iii) Any liquid (other than taxable fuel) for use as fuel.

* * * * * *

(d) *Effective date.* This section is applicable after December 31, 1993, except that references to kerosene are applicable after June 30, 1998.

Par. 45. Section 48.4082–5 is amended as follows:

1. The section heading is revised.

2. Paragraph (a) is amended by adding "or kerosene" after "diesel fuel".

3. Paragraph (b), definition of Exempt area of Alaska, is amended by removing the language "Clear" and adding "Clean" in its place.

4. Paragraphs (b), (c), (d), and (g) are amended by adding "or kerosene" after "diesel fuel" in the following locations:

a. Paragraph (b), definition of Qualified dealer, paragraph (1).

b. Paragraph (c) introductory text.

c. Paragraph (c)(3).

d. Paragraph (d)(1) introductory text.
e. Paragraph (d)(2).
f. Paragraph (g).

5. Paragraph (h), first sentence, is revised.

The revisions read as follows:

§ 48.4082–5 Diesel fuel and kerosene; Alaska.

* * * * *

(h) *Effective date.* This section is applicable with respect to diesel fuel removed or entered after December 31, 1996, and with respect to kerosene removed or entered after June 30, 1998.

* * *

Par. 46. Sections 48.4082–6 and 48.4082–7 are added to read as follows:

§ 48.4082–6 Kerosene; exemption for aviation-grade kerosene.

(a) *Overview.* This section prescribes the conditions under which tax does not apply to the removal or entry of aviation-grade kerosene that is destined for use as a fuel in an aircraft.

(b) *Definition.* For purposes of this section, *aviation-grade kerosene* means kerosene-type jet fuel covered by ASTM specification D 1655 or military specification MIL–DTL–5624T (Grade JP–5) or MIL–DTL–83133E (Grade JP–8). For availability of ASTM and military specifications, see § 48.4081–1(d).

(c) *Exemption for certain removals and entries.* Tax is not imposed under § 48.4081–2(b), 48.4081–3(b)(1)(ii), or 48.4081–3(c)(1)(ii) on the removal or entry of aviation-grade kerosene if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3)(i) The person otherwise liable for tax delivers the kerosene into the fuel supply tank of an aircraft and this delivery is not in connection with a sale; or

(ii) The kerosene is sold for use as a fuel in an aircraft and, at the time of the sale, the person otherwise liable for tax has an unexpired certificate (described in paragraph (e) of this section) from the buyer and has no reason to believe any information in the certificate is false.

(d) *Certain later sales*—(1) *In general.* Paragraph (c) of this section does not apply with respect to kerosene that is sold as described in paragraph (c)(3)(ii) of this section if there is a later disqualifying sale of the kerosene. A later disqualifying sale is any later sale other than a later sale—

(i) By a person that, at the time of the sale, has an unexpired certificate (described in paragraph (e) of this section) from the buyer and has no reason to believe that any information in the certificate is false; or

(ii) In connection with the delivery of the kerosene into the fuel supply tank of an aircraft.

(2) *Imposition of tax; liability for tax.* Notwithstanding §§ 48.4081–2 and 48.4081–3, in any case in which paragraph (d)(1) of this section applies, tax is imposed with respect to that kerosene at the time of the first later disqualifying sale and the seller in that sale is liable for the tax.

(3) *Rate of tax.* For the rate of tax, see section 4081.

(e) *Certificate*—(1) *In general.* The certificate described in this paragraph (e) is a statement by a buyer that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (e)(3) of this section, and contains all information necessary to complete the model certificate. A new certificate or notice that the current certificate is invalid must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(ii) The date the buyer provides the seller a new certificate or notice that the current certificate is invalid.

(iii) The date the Internal Revenue Service or the buyer notifies the seller that the buyer's right to provide a certificate has been withdrawn.

(2) *Withdrawal of the right to provide a certificate.* The Internal Revenue Service may withdraw the right of a buyer of aviation-grade kerosene to provide a certificate under this section if the buyer uses the aviation-grade kerosene to which a certificate relates other than as a fuel in an aircraft or sells the kerosene without first obtaining a certificate from its buyer. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(3) *Model certificate.*

CERTIFICATE OF PERSON BUYING AVIATION-GRADE KEROSENE FOR USE AS A FUEL IN AN AIRCRAFT

(To support tax-free removals and entries of aviation-grade kerosene under section 4082 of the Internal Revenue Code.)

Name of Buyer _____ (Buyer) certifies the following under penalties of perjury:

The aviation-grade kerosene to which this certificate applies will be used by Buyer as a fuel in an aircraft or resold by Buyer for that use.

This certificate applies to _____ percent of Buyer's purchases from _____ (name, address, and employer identification number of seller) as follows (complete as applicable):

1. A single purchase on invoice or delivery ticket number _____.

2. All purchases between _____ (effective date) and _____ (expiration date) (period not to exceed one year after the effective date) under account or order number(s) _____. If this certificate applies only to Buyer's purchases for certain locations, check here _____ and list the locations.

_____

_____

_____

Buyer is buying the kerosene for (check either or both as applicable): ____ Buyer's use as a fuel in an aircraft. ____ Resale for use as a fuel in an aircraft.

Buyer will provide a new certificate to the seller if any information in this certificate changes.

If Buyer sells the aviation-grade kerosene to which this certificate relates and does not deliver it into the fuel supply tank of an aircraft, Buyer will be liable for tax unless Buyer obtains a certificate from its buyer stating that the aviation-grade kerosene will be used as a fuel in an aircraft.

If Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

The fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

(f) *Effective date.* This section is applicable after March 30, 2000, except that paragraph (d) of this section is applicable after June 30, 2000.

§ 48.4082–7 Kerosene; exemption for feedstock purposes.

(a) *Overview.* This section prescribes the conditions under which tax does not apply to the removal or entry of kerosene for use for a feedstock purpose.

(b) *Definitions.* The following definitions apply to this section:

Feedstock purpose means the use of kerosene for nonfuel purposes in the manufacture or production of any substance other than gasoline, diesel fuel, or special fuels referred to in section 4041. Thus, for example, kerosene is used for a feedstock purpose when it is used as an ingredient in the production of paint and is not used for a feedstock purpose when it is used to power machinery at a factory where paint is produced.

Feedstock user means a person that uses kerosene for a feedstock purpose.

Registered feedstock user means a feedstock user that is—

(1) Registered under section 4101 as a feedstock user; or

(2) With respect to removals and entries before October 1, 2000, a taxable fuel registrant.

(c) *Exemption for removals and entries.* Tax is not imposed on the removal or entry of kerosene if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3)(i) The person otherwise liable for tax uses the kerosene for a feedstock purpose; or

(ii) The kerosene is sold for use by the buyer for a feedstock purpose and, at the time of the sale, the person otherwise liable for tax has an unexpired certificate (described in paragraph (e) of this section) from the buyer and has no reason to believe any information in the certificate is false.

(d) *Later sale*—(1) *In general.* Paragraph (c) of this section does not apply with respect to kerosene that is sold as described in paragraph (c)(3)(ii) of this section if the buyer in that sale (the certifying buyer) sells the kerosene.

(2) *Imposition of tax; liability for tax.* Notwithstanding §§ 48.4081–2 and 48.4081–3, in any case in which paragraph (d)(1) of this section applies, tax with respect to that kerosene is imposed at the time of the sale by the certifying buyer and the certifying buyer is liable for the tax.

(3) *Rate of tax.* For the rate of tax, see section 4081.

(e) *Certificate*—(1) *In general.* The certificate described in this paragraph (e) is a statement by a buyer that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (e)(2) of this section, and contains all information necessary to complete the model certificate. A new certificate or notice that the current certificate is invalid must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(i) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(ii) The date the buyer provides the seller a new certificate or notice that the current certificate is invalid.

(iii) The date the seller is notified by the Internal Revenue Service or the buyer that the buyer's registration has been revoked or suspended.

(2) *Model certificate.*

CERTIFICATE OF REGISTERED FEEDSTOCK USER

(To support tax-free removals and entries of kerosene under section 4082 of the Internal Revenue Code.)

_____(Buyer) certifies the following under penalties of perjury:

Name of Buyer _____

Buyer is a registered feedstock user with registration number _____. Buyer's registration has not been revoked or suspended.

The kerosene to which this certificate applies will be used by Buyer for a feedstock purpose.

This certificate applies to _____ percent of Buyer's purchases from _____ (name, address, and employer identification number of seller as follows (complete as applicable):

1. A single purchase on invoice or delivery ticket number _____.

2. All purchases between _____ (effective date) and _____ (expiration date) (period not to exceed one year after the effective date) under account or order number(s) _____. If this certificate applies only to Buyer's purchases for certain locations, check here _____ and list the locations.

_____

_____

_____

If Buyer sells the kerosene to which this certificate relates, Buyer will be liable for tax on that sale.

Buyer will provide a new certificate to the seller if any information in this certificate changes.

If Buyer violates the terms of this certificate, the Internal Revenue Service may revoke Buyer's registration.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making any fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

_____

(f) *Effective date.* This section is applicable after March 30, 2000, except that paragraph (d) of this section is applicable after June 30, 2000.

§§ 48.4082–6T, 48.4082–7T, 48.4082–8T, 48.4082–9T, and 48.4082–10T [Removed]

Par. 47. Sections 48.4082–6T, 48.4082–7T, 48.4082–8T, 48.4082–9T, and 48.4082–10T are removed.

Par. 48. Section 48.4083–1 is amended as follows:

1. In paragraph (c)(2), first sentence, the language "vehicle, train, or boat" is removed and "vehicle or train" is added in its place.

2. Paragraph (d) is revised.

The revision reads as follows:

§ 48.4083–1 Taxable fuel; administrative authority.

* * * * *

(d) *Refusal to submit to inspection.* For the penalty for any refusal to permit an entry or inspection authorized by this section, see section 4083(c)(3). This penalty is in addition to any tax that may be imposed by section 4041 or 4081 and any penalty that may be imposed by section 6715.

* * * * *

§ 48.4091–3T [Redesignated as § 48.4091–3]

§ 48.4091–3 [Amended]

Par. 49. Section 48.4091–3T is redesignated as § 48.4091–3 and the language "(temporary)" is removed from the section heading.

Par. 50. Section 48.4101–1 is amended as follows:

1. The section heading is revised.

2. Paragraph (a)(1) is amended by removing the language "registered ultimate vendors of diesel fuel" and adding "certain ultimate vendors of diesel fuel and kerosene" in its place.

3. Paragraph (a)(2) is amended by adding a sentence to the end of the paragraph.

4. Paragraph (a)(6) is added.

5. Paragraphs (b)(7), (b)(8), and (b)(9) are added.

6. Paragraph (c)(1) is revised.

7. Paragraph (d) is revised.

8. Paragraph (f)(1)(i) heading is revised.

9. Paragraph (f)(1)(ii) heading and introductory text are revised.

10. Paragraph (h)(1)(iii) is amended by removing the language "and § 48.4101–2".

11. Paragraph (h)(2)(iii) is revised.

12. Paragraph (h)(2)(iv) is added.

13. Paragraph (h)(3)(i) is revised.

14. Paragraph (h)(3)(ii) is amended by adding "or kerosene" after "diesel fuel" in the heading and the introductory text.

15. Paragraph (h)(3)(v) is amended by adding "or kerosene" after "diesel fuel" each place it appears.

16. Paragraphs (i)(2)(ii) and (i)(2)(iii) are amended by removing the language

"vendor" and adding "vendor or an ultimate vendor (blocked pump)" in its place.

17. Paragraph (k) is amended by adding a sentence to the end of the paragraph.

18. Paragraph (l)(2) is amended by adding the language ", except that paragraphs (c)(1)(iii) and (c)(1)(vi) of this section are applicable after March 31, 2001" after "January 1, 1995".

19. Paragraph (l)(4) is added.

The revisions and additions read as follows:

§ 48.4101–1 Taxable fuel; registration.

(a) * * *

(2) * * * However, the United States is treated as registered under section 4101.

* * * * *

(6)(i) A person is treated as a taxable fuel registrant if on June 30, 1998, the person—

(A) Is an enterer, refiner, terminal operator, or throughputter with respect to kerosene and is registered under section 4101 as a producer or importer of aviation fuel;

(B) Operates one or more terminals that store kerosene (and no other type of taxable fuel); or

(C) Is a commercial airline, an operator of aircraft in noncommercial aviation, or a fixed base operator and is also a position holder with respect to kerosene.

(ii) A person treated as registered under paragraph (a)(6)(i) of this section is treated as registered from July 1, 1998, until the earlier of—

(A) The date of a subsequent denial of an application for registration under paragraph (g)(2) of this section;

(B) The effective date of a subsequent registration issued under paragraph (g)(3) of this section;

(C) The effective date of a subsequent revocation or suspension of registration under paragraph (i) of this section; or

(D) July 1, 1999.

(b) * * *

(7) *Pipeline operator.* A *pipeline operator* is any person that operates a pipeline within the bulk transfer/terminal system.

(8) *Vessel operator.* A *vessel operator* is any person that operates a vessel within the bulk transfer/terminal system. However, for purposes of this definition, *vessel* does not include a deep draft ocean-going vessel (as defined in § 48.4042–3(a)).

(9) *Other definitions.* For other definitions relating to taxable fuel, see §§ 48.4081–1, 48.4081–6(b), 48.4082–5(b), 48.4082–6(b), 48.4082–7(b), 48.6427–9(b), 48.6427–10(b), and 48.6427–11(b).

(c) * * * (1) *In general.* A person is required to be registered under section 4101 if the person is—

(i) A blender;

(ii) An enterer;

(iii) A pipeline operator;

(iv) A position holder;

(v) A terminal operator; or

(vi) A vessel operator.

* * * * *

(d) *Persons that may, but are not required to, be registered.* A person may, but is not required to, be registered under section 4101 if the person is—

(1) A feedstock user;

(2) A gasohol blender;

(3) An industrial user;

(4) A throughputter that is not a position holder;

(5) An ultimate vendor; or

(6) An ultimate vendor (blocked pump).

* * * * *

(f) * * *

(1) * * *

(i) *Persons other than ultimate vendors, pipeline operators, and vessel operators.* * * *

* * * * *

(ii) *Ultimate vendors, pipeline operators, and vessel operators.* The district director will register an applicant as an ultimate vendor, ultimate vendor (blocked pump), pipeline operator, or vessel operator only if the district director—

* * * * *

(h) * * *

(2) * * *

(iii) Make any false statement on, or violate the terms of, any certificate given to another person to support an exemption from, or a reduced rate of, the tax imposed by section 4081; or

(iv) In the case of an ultimate vendor (blocked pump), deliver kerosene (or allow kerosene to be delivered) into the fuel supply tank of a diesel-powered highway vehicle or diesel-powered train from a blocked pump.

(3) * * * (i) *Notice required with respect to dyed diesel fuel and dyed kerosene.* A legible and conspicuous notice stating "*DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE*" must be provided by each terminal operator to any person that receives dyed diesel fuel at a terminal rack of that operator. A legible and conspicuous notice stating "*DYED KEROSENE, NONTAXABLE USE QNLY, PENALTY FOR TAXABLE USE*" must be provided by each terminal operator to any person that receives dyed kerosene at a terminal rack of that operator. These notices must be provided by the time of the removal and must appear on all shipping papers, bills of lading, and similar documents that are provided by the terminal operator to accompany the removal of the fuel.

* * * * *

(k) * * * For rules relating to claims by registered ultimate vendors (blocked pump), see § 48.6427–10.

(l) * * *

(4) References in this section to kerosene are applicable after June 30, 1998.

Par. 51. Section 48.4101–2 is revised to read as follows:

§ 48.4101–2 Information reporting.

(a) *In general.* Each information report under section 4101(d) must be—

(1) Made in the form required by the Commissioner;

(2) Made for a period of one calendar month; and

(3) Filed by the last day of the first month following the month for which the report is made, except that a report relating to any month during 2000 must be filed by February 28, 2001.

(b) *Effective date.* This section is applicable after March 30, 2000.

§§ 48.4102–2T and 48.4101–3T [Removed]

Par. 52. Sections 48.4102–2T and 48.4101–3T are removed.

§ 48.4221–1 [Amended]

Par. 53. In § 48.4221–1, paragraph (a)(2)(ii) is amended by removing the language "(gasoline and diesel fuel tax)" and adding "(taxable fuel tax)" in its place.

§ 48.4222(b)–1 [Amended]

Par. 54. In § 48.4222(b)–1, paragraph (c), first sentence, is amended by removing the language "paragraph (f)" and adding "paragraph (b)" in its place.

§ 48.6416(b)(2)–1 [Amended]

Par. 55. Section 48.6416(b)(2)–1 is amended by removing the third sentence.

Par. 56. In § 48.6416(b)(2)–2, paragraph (a) is revised to read as follows:

§ 48.6416(b)(2)–2 Exportations, uses, sales, and resales included.

(a) *In general.* The tax paid under chapter 32 (or under section 4041(a) or (d) in respect of sales or under section 4051) with respect to any article is considered to be an overpayment in the case of any exportation, use, sale, or resale described in this section. This section applies only in those cases in which the exportation, use, sale, or resale (or any combination thereof) referred to in this section occurs before any other use. In addition, the following

restrictions must be taken into account in applying the regulations under section 6416(b)(2):

(1) Sections 6416(b)(2)(C) and (D) do not apply to any tax paid under section 4064 (gas guzzler tax).

(2) Sections 6416(b)(2)(B), (C), and (D) do not apply to any tax paid under section 4131 (vaccine tax) and section 6416(b)(2)(A) applies only to the extent prescribed in paragraph (b)(2) of this section.

(3) Section 6416(b)(2) does not apply to any tax paid under section 4041(a)(1) or 4081 on diesel fuel or kerosene, section 4091 (aviation fuel tax), or section 4121 (coal tax).

* * * * *

§ 48.6420–7 [Removed]

Par. 57. Section 48.6420–7 is removed.

§ 48.6420(c)–2 [Removed]

Par. 58. Section 48.6420(c)–2 is removed.

§ 48.6421–2 [Amended]

Par. 59. In § 48.6421–2, paragraph (a) is amended by removing the last sentence.

Par. 60. Section 48.6427–8 is amended as follows:

1. The section heading and paragraphs (a) and (b)(1) are revised.

2. Paragraph (b)(2) *Example 1,* paragraph (i) is amended as follows:

a. In the first and second sentences, the language "1996" is removed and "2000" is added in its place.

b. In the fourth sentence, the language "§ 48.4081–1(h)" is removed and "§ 48.4081–1(b)" is added in its place.

3. Paragraph (b)(2) *Example 1,* paragraph (ii) is amended by removing the language "(b)(1)(vi)(C)" and adding "(b)(1)(vii)(C)" in its place.

4. Paragraph (b)(2) *Example 2,* paragraph (i) is amended as follows:

a. In the first sentence, the language "1996" is removed and "2000" is added in its place.

b. In the third sentence, the language "or diesel-powered boat" is removed.

5. Paragraph (d) is amended as follows:

a. By removing from paragraph (d)(1) the language "covered by the claim"

b. By revising paragraphs (d)(2) and (d)(3).

c. By adding the language "or kerosene" after "diesel fuel" in paragraphs (d)(4) and (d)(5).

6. Paragraph (f) is revised.

The revisions read as follows:

§ 48.6427–8 Diesel fuel and kerosene; claims by ultimate purchasers.

(a) *Overview.* This section provides rules under which ultimate purchasers of taxed diesel fuel and kerosene may claim the income tax credits or payments allowed by section 6427(l). Generally, these claims relate to diesel fuel and kerosene used in nontaxable uses. Claims relating to diesel fuel and kerosene sold for use on a farm for farming purposes and by a State are made by registered ultimate vendors under § 48.6427–9; claims relating to kerosene sold from a blocked pump are made by registered ultimate vendors (blocked pump) under § 48.6427–10; and claims relating to kerosene sold during certain periods of extreme cold for blending with diesel fuel to be used for heating purposes are made by registered ultimate vendors (blending) under § 48.6427–11.

(b) *Conditions to allowance of credit or payment*—(1) *In general.* Except as provided in section 6427(l)(5), a claim for an income tax credit or payment with respect to diesel fuel or kerosene is allowed under section 6427(l) only if—

(i) Tax was imposed by section 4081 on the diesel fuel or kerosene to which the claim relates;

(ii) The claimant produced or bought the diesel fuel or kerosene and did not sell it in the United States;

(iii) The claimant has filed a timely claim for a credit or payment that contains the information required under paragraph (d) of this section;

(iv) The diesel fuel or kerosene was not bought under a certificate described in § 48.6427–9(e)(2) (relating to Certificate of Farming Use or State Use);

(v) The diesel fuel or kerosene was not used on a farm for farming purposes (as defined in § 48.6420–4) or by a State;

(vi) With respect to kerosene, the kerosene was not sold from a blocked pump or sold for blending with diesel fuel under the conditions described in § 48.6427–11; and

(vii) The diesel fuel or kerosene was either—

(A) Used in a use described in § 48.4082–4(c)(3) through (c)(8);

(B) Exported;

(C) Used other than as a fuel in a propulsion engine of a diesel-powered highway vehicle; or

(D) Used as a fuel in the propulsion engine of a diesel-powered bus if the bus was engaged in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)).

* * * * *

(d) * * *

(2) A statement by the claimant that—

(i) The diesel fuel or kerosene did not contain visible evidence of dye; or

(ii) In the case of diesel fuel or kerosene that contains visible evidence of dye, explains the circumstances under which tax was imposed on that fuel.

(3) The use made of the diesel fuel or kerosene covered by the claim described by reference to specific categories listed in paragraph (b)(1)(vii) of this section (such as use in a qualified local bus or the exclusive use of a nonprofit educational organization).

* * * * *

(f) *Effective date.* This section is applicable with respect to diesel fuel after December 31, 1993, except for paragraph (b)(1)(iv) of this section, which is applicable to diesel fuel bought by ultimate purchasers after June 30, 1994. This section is applicable with respect to kerosene after June 30, 1998.

Par. 61. Section 48.6427–9 is amended as follows:

1. The section heading and paragraph (a) are revised.

2. Paragraph (b) is amended by:

a. Adding the language "or undyed kerosene" after "diesel fuel" in the introductory text.

b. Revising paragraph (b)(2).

3. Paragraph (c) is amended by revising the introductory text, paragraph (c)(1), and paragraph (c)(2) introductory text.

4. Paragraph (e) is amended by adding "or kerosene" after "diesel fuel" in the following locations:

a. Paragraph (e)(1) introductory text.

b. Paragraph (e)(1)(iv).

c. Paragraph (e)(1)(v)(A).

5. Paragraphs (e)(1)(i) and (e)(1)(ii) are revised.

6. Paragraph (e)(1)(vi) is amended by removing the language "For claims relating to sales by the claimant after March 31, 1994, a statement" and adding "A statement" in its place.

7. Paragraph (e)(1)(vii) is removed.

8. Paragraph (e)(2)(ii), Certificate of Farming Use or State Use, is amended by adding or "or kerosene" after "diesel fuel" each place it appears.

9. Paragraph (g) is revised.

The revisions read as follows:

§ 48.6427–9 Diesel fuel and kerosene; claims by registered ultimate vendors (farming and State use).

(a) *Overview.* This section provides rules under which certain registered ultimate vendors of taxed diesel fuel and kerosene may claim the income tax credits or payments allowed by section 6427(l)(5)(A). These claims relate to diesel fuel and kerosene sold for use on a farm for farming purposes and by a State. Claims relating to diesel fuel and kerosene used for other nontaxable purposes are made by ultimate purchasers under § 48.6427–8; claims relating to kerosene sold from a blocked

pump are made by registered ultimate vendors (blocked pump) under § 48.6427–10; and claims relating to kerosene sold during certain periods of extreme cold for blending with diesel fuel to be used for heating purposes are made by registered ultimate vendors (blending) under § 48.6427–11.

(b) * * *

(2) A *registered ultimate vendor* is an ultimate vendor that is registered under section 4101 as an ultimate vendor.

(c) * * * A claim for an income tax credit or payment with respect to diesel fuel or kerosene is allowed by section 6427(l)(5)(A) only if—

(1) Tax was imposed by section 4081 on the diesel fuel or kerosene to which the claim relates;

(2) The claimant sold the diesel fuel or kerosene to—

* * * * *

(e) * * * (1) * * *

(i) The total number of gallons.

(ii) A statement by the claimant that—

(A) The diesel fuel or kerosene did not contain visible evidence of dye; or

(B) In the case of diesel fuel or kerosene that contains visible evidence of dye, explains the circumstances under which tax was imposed on that fuel.

* * * * *

(g) *Effective date.* This section is applicable with respect to diesel fuel after December 31, 1993, and with respect to kerosene after June 30, 1998.

Par. 62. Sections 48.6427–10 and 48.6427–11 are added to read as follows:

§ 48.6427–10 Kerosene; claims by registered ultimate vendors (blocked pumps).

(a) *Overview.* This section provides rules under which certain registered ultimate vendors of taxed kerosene may claim the income tax credits or payments allowed by section 6427(l)(5)(B)(i). These claims relate to kerosene sold from a blocked pump. Claims relating to kerosene sold for use on a farm for farming purposes and by a State are made by registered ultimate vendors under § 48.6427–9; claims relating to kerosene sold during certain periods of extreme cold for blending with diesel fuel to be used for heating purposes are made by registered ultimate vendors (blending) under § 48.6427–11; and claims relating to kerosene used for nontaxable purposes are made by ultimate purchasers under § 48.6427–8.

(b) *Definitions.* The following definitions apply to this section:

(1) A *blocked pump* is a fuel pump that—

(i) Is used to dispense undyed kerosene that is sold at retail for use by the buyer in any nontaxable use;

(ii) Is at a fixed location;

(iii) Is identified with a legible and conspicuous notice stating "UNDYED UNTAXED KEROSENE, NONTAXABLE USE ONLY"; and

(iv)(A) Cannot reasonably be used to dispense fuel directly into the fuel supply tank of a diesel-powered highway vehicle or diesel-powered train (because, for example, of its distance from a road surface or train track or the length of its delivery hose); or

(B) Is locked by the vendor after each sale and unlocked by the vendor only in response to a request by a buyer for undyed kerosene for use other than as a fuel in a diesel-powered highway vehicle or diesel-powered train.

(2) A *registered ultimate vendor (blocked pump)* is a person that is registered under section 4101 as an ultimate vendor (blocked pump).

(3) An *ultimate vendor (blocked pump)* is a person that sells undyed kerosene from a blocked pump.

(c) *Conditions to allowance of credit or payment.* A claim for an income tax credit or payment with respect to undyed kerosene is allowed by section 6427(l)(5)(B)(i) only if—

(1) Tax was imposed by section 4081 on the kerosene to which the claim relates;

(2) The claimant sold the kerosene from a blocked pump for its buyer's use other than as a fuel in a diesel-powered highway vehicle or diesel-powered train and the claimant has no reason to believe that the kerosene will not be so used;

(3) The claimant is a registered ultimate vendor (blocked pump);

(4) With respect to each sale of more than five gallons of kerosene from a blocked pump that does not meet the conditions of paragraph (b)(1)(iv)(A) of this section, the claimant has in its possession the date of the sale, name and address of the buyer, and the number of gallons sold to the buyer; and

(5) The claimant has filed a timely claim for a credit or payment that contains the information required under paragraph (e) of this section.

(d) *Form of claim.* Each claim for an income tax credit under this section must be made on Form 4136 (or such other form as the Commissioner may designate) in accordance with the instructions for that form. Each claim for a payment under this section must be made on Form 8849 (or such other form as the Commissioner may designate) in accordance with the instructions for that form.

(e) *Content of claim.* Each claim for a credit or payment under this section must contain the following information with respect to all of the kerosene covered by the claim:

(1) The claimant's ultimate vendor (blocked pump) registration number.

(2) The total number of gallons.

(3) A statement by the claimant that—

(i) The kerosene did not contain visible evidence of dye; or

(ii) In the case of kerosene that contains visible evidence of dye, explains the circumstances under which tax was imposed on that kerosene.

(4) With respect to each sale of more than five gallons of kerosene from a blocked pump that does not meet the conditions of paragraph (b)(1)(iv)(A) of this section, a statement by the claimant that it has in its possession the date of the sale, name and address of the buyer, and the number of gallons sold to the buyer.

(5) A statement by the claimant that it—

(i) Has not included the amount of the tax in its sales price of the kerosene and has not collected the amount of the tax from its buyer;

(ii) Has repaid the amount of the tax to its buyer; or

(iii) Has obtained the written consent of its buyer to the allowance of the claim.

(f) *Time and place for filing claim.* For rules relating to the time for filing a claim under section 6427, see section 6427(i). A claim under this section is not filed unless it contains all the information required by paragraph (e) of this section and is filed at the place required by the form.

(g) *Cross reference.* For a rule prohibiting a registered ultimate vendor (blocked pump) from delivering kerosene from a blocked pump into the fuel supply tank of a diesel-powered highway vehicle or diesel-powered train, see § 48.4101–1(h)(2)(iv).

(h) *Effective date.* This section is applicable after March 30, 2000.

§ 48.6427–11 Kerosene; claims by registered ultimate vendors (blending).

(a) *Overview.* This section provides rules under which certain registered ultimate vendors of taxed kerosene may claim the income tax credits or payments allowed by section 6427(l)(5)(B)(ii). These claims relate to kerosene sold during certain periods of extreme cold for blending with diesel fuel to be used for heating purposes. Claims relating to kerosene sold for use on a farm for farming purposes and by a State are made by registered ultimate vendors under § 48.6427–9; claims relating to kerosene sold from a blocked pump for nontaxable uses are made by registered ultimate vendors (blocked pump) under § 48.6427–10; and other claims relating to kerosene used for nontaxable purposes are made by ultimate purchasers under § 48.6427–8.

(b) *Definitions.* The following definitions apply to this section:

(1) A *declaration of extreme cold* is a declaration by the Commissioner that a specific geographic area (such as a state or a county within a state) is affected by extremely or unseasonably cold weather conditions. A declaration will be in effect during the period determined by the Commissioner.

(2) A *cold weather blend* is a blend of kerosene and diesel fuel that is produced in an area described in a declaration of extreme cold and that is sold for use or used for heating purposes.

(3) A *registered ultimate vendor (blending)* is a taxable fuel registrant, a registered ultimate vendor, or a registered ultimate vendor (blocked pump).

(c) *Conditions to allowance of credit or payment.* A claim for an income tax credit or payment with respect to kerosene is allowed by section 6427(l)(5)(B)(ii) only if—

(1) Tax was imposed by section 4081 on the kerosene to which the claim relates;

(2) The claimant sold the kerosene in an area described in a declaration of extreme cold for the production of a cold weather blend;

(3) The claimant is a registered ultimate vendor (blending); and

(4) The claimant has filed a timely claim for an income tax credit or payment that contains the information required under paragraph (e) of this section.

(d) *Form of claim.* Each claim for an income tax credit under this section must be made on Form 4136 (or such other form as the Commissioner may designate) in accordance with the instructions for that form. Each claim for a payment under this section must be made on Form 8849 (or such other form as the Commissioner may designate) in accordance with the instructions for that form.

(e) *Content of claim*—(1) *In general.* Each claim for credit or payment under this section must contain the following information with respect to all of the kerosene covered by the claim:

(i) The claimant's registration number.

(ii) The total number of gallons.

(iii) A statement by the claimant that—

(A) The kerosene did not contain visible evidence of dye; or

(B) In the case of kerosene that contains visible evidence of dye, explains the circumstances under which tax was imposed on that kerosene.

(iv) A statement by the claimant that it—

(A) Has not included the amount of the tax in its sales price of the kerosene and has not collected the amount of the tax from its buyer;

(B) Has repaid the amount of the tax to its buyer; or

(C) Has obtained the written consent of its buyer to the allowance of the claim.

(v) A statement that the claimant has in its possession an unexpired certificate described in paragraph (e)(2) of this section and the claimant has no reason to believe any information in the certificate is false.

(2) *Certificate*—(i) *In general.* The certificate described in this paragraph (e) is a statement by a buyer that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (e)(2)(iii) of this section, and contains all information necessary to complete the model certificate. A certificate must be given for each purchase of kerosene. The certificate may be included as part of any business records normally used to document a sale.

(ii) *Withdrawal of the right to provide a certificate.* The Internal Revenue Service may withdraw the right of a buyer of kerosene to provide a certificate under this section if the buyer uses the kerosene to which a certificate relates other than for producing a cold weather blend. The Internal Revenue Service may notify any seller to whom the buyer has provided a certificate that the buyer's right to provide a certificate has been withdrawn.

(iii) *Model certificate.*

CERTIFICATE OF BUYER FOR PRODUCTION OF A COLD WEATHER BLEND

(To support vendor's claim for a credit or payment under section 6427 of the Internal Revenue Code.) Name of Buyer _____ (Buyer) certifies the following under penalties of perjury:

The kerosene to which this certificate applies will be used by Buyer to produce a blend of kerosene and diesel fuel in an area described in a declaration of extreme cold and the blend will be sold for use or used for heating purposes.

This certificate applies to _____ percent of Buyer's purchases from _____ (name, address, and employer identification number of seller) as follows (complete as applicable):

1. A single purchase on invoice or delivery ticket number _____.

2. All purchases between _____ (effective date) and _____ (expiration date) (period not to exceed one year after the effective date) under account or order number(s) _____. If this certificate applies only to Buyer's purchases for certain locations, check here _____ and list the locations.

_____

_____

_____

If Buyer violates the terms of this certificate, the Internal Revenue Service may withdraw Buyer's right to provide a certificate.

Buyer has not been notified by the Internal Revenue Service that its right to provide a certificate has been withdrawn.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Buyer

_____

Employer identification number

_____

Address of Buyer

_____

Signature and date signed

(f) *Time and place for filing claim.* For rules relating to the time for filing a claim under section 6427, see section 6427(i). A claim under this section is not filed unless it contains all the information required by paragraph (e) of this section and is filed at the place required by the form.

(g) *Effective date.* This section is applicable after March 30, 2000.

§§ 48.6427–10T and 48.6427–11T [Removed]

Par. 63. Sections 48.6427–10T and 48.6427–11T are removed.

§ 48.6715–1 [Amended]

Par. 64. Section 48.6715–1 is amended as follows:

1. The section heading is amended by removing the language "diesel".

2. Paragraph (a) is amended by adding "or kerosene" after "diesel fuel" in the following locations:

a. Paragraph (a)(1).

b. Paragraph (a)(2), each place it appears.

c. Paragraph (a)(4), each place it appears.

3. Paragraph (a)(4) is amended by removing the language "§ 48.6427–8(b)(vi)(C), (D), or (E)" and adding "§ 48.6427–8(b)(1)(vii)(C) or (D)" in its place.

PART 145—TEMPORARY EXCISE TAX REGULATIONS UNDER THE HIGHWAY REVENUE ACT OF 1982 (PUB. L. 97–424)

Par. 65. The authority citation for part 145 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 145.4051–1 [Amended]

Par. 66. In § 145.4051–1, paragraph (f), the first sentence is removed.

Par. 67. Section 145.4052–1 is amended as follows:

1. Paragraph (a)(2)(ii) is revised.
2. Paragraph (a)(7) is removed.

The revision reads as follows:

§ 145.4052–1 Special rules and definitions.

(a) * * *

(2) * * *

(ii) [Reserved]. For sales after June 30, 1998, see § 48.4052–1 of this chapter.

* * * * *

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 68. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 69. In § 602.101, paragraph (b) is amended by:

1. Removing the following entries from the table:

41.4481–1T
41.4482(b)–1T
48.4081–2(c)(3)
48.4081–3(d)(2)(iii)
48.4081–3(e)(2)(ii)
48.4081–3(f)(2)(ii)
48.4081–9
48.4082–7T
48.4082–8T
48.4091–3T
48.4101–2T
48.4101–3T
48.6420(c)–2
48.6420–7
48.6427–11T

2. Revising the entries for 48.4081–7 and 145.4052–1 and adding entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
48.4052–1	1545–1418
* * * * *	
48.4081–2	1545–1270 1545–1418
48.4081–3	1545–1270 1545–1418
* * * * *	
48.4081–7	1545–1270 1545–1418
* * * * *	
48.4082–6	1545–1418
48.4082–7	1545–1418
48.4091–3	1545–1418
* * * * *	
48.6427–10	1545–1418
48.6427–11	1545–1418
145.4052–1	1545–0120 1545–0745 1545–1076
* * * * *	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: March 15, 2000.

Jonathan Talisman,

Acting Assistant Secretary of the Treasury.

[FR Doc. 00–7351 Filed 3–30–00; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MO 099–1099; FRL–6568–8]

Approval and Promulgation of Implementation Plans; State of Missouri

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is taking final action to approve a revision to the Missouri State Implementation Plan (SIP). This action approves a revision to Missouri's fugitive dust rule. This action also responds to comments submitted during the public comment period for the proposed approval action published on May 28, 1999. This action makes the state rule Federally enforceable.

DATES: This rule is effective on May 1, 2000.

ADDRESSES: Copies of the state submittals are available at the following address for inspection during normal business hours: Environmental Protection Agency, Air Planning and Development Branch, 901 North 5th Street, Kansas City, Kansas 66101.

FOR FURTHER INFORMATION CONTACT: Wayne Kaiser at (913) 551–7603.

SUPPLEMENTARY INFORMATION: Throughout this document whenever "we, us, or our" is used, we mean EPA. This section provides additional information by addressing the following questions:

What is a SIP?
What is the Federal approval process for a SIP?
What does Federal approval of a state regulation mean to me?
What is being addressed in this action?
Have the requirements for approval of a SIP revision been met?
What action is EPA taking?

I. Background

What Is a SIP?

Section 110 of the Clean Air Act (CAA) requires states to develop air pollution regulations and control strategies to ensure that state air quality meets the national ambient air quality standards established by EPA. These ambient standards are established under section 109 of the CAA, and they currently address six criteria pollutants. These pollutants are: Carbon monoxide, nitrogen dioxide, ozone, lead, particulate matter, and sulfur dioxide.

Each state must submit these regulations and control strategies to EPA for approval and incorporation into the Federally enforceable SIP.

Each Federally approved SIP protects air quality primarily by addressing air pollution at its point of origin. These SIPs can be extensive, containing state regulations or other enforceable documents and supporting information such as emission inventories, monitoring networks, and modeling demonstrations.

What Is the Federal Approval Process for a SIP?

In order for state regulations to be incorporated into the Federally enforceable SIP, states must formally adopt the regulations and control strategies consistent with state and Federal requirements. This process generally includes a public notice, public hearing, public comment period, and a formal adoption by a state-authorized rulemaking body.

Once a state rule, regulation, or control strategy is adopted, the state submits it to EPA for inclusion into the SIP. EPA must provide public notice and seek additional public comment regarding the proposed Federal action on the state submission. If adverse comments are received, they must be addressed prior to any final Federal action by EPA.

All state regulations and supporting information approved by EPA under section 110 of the CAA are incorporated into the Federally approved SIP. Records of such SIP actions are maintained in the Code of Federal Regulations (CFR) at Title 40, Part 52, entitled "Approval and Promulgation of Implementation Plans." The actual state regulations which are approved are not reproduced in their entirety in the CFR outright but are "incorporated by reference," which means that EPA has approved a given state regulation with a specific effective date.

What Does Federal Approval of a State Regulation Mean to Me?

Enforcement of the state regulation before and after it is incorporated into the Federally approved SIP is primarily a state responsibility. However, after the regulation is Federally approved, EPA is authorized to take enforcement action against violators. Citizens are also offered legal recourse to address violations as described in the CAA.

What Is Being Addressed in This Document?

EPA is taking final action to approve a revision to the Missouri fugitive dust rule, 10 CSR 10–6.170, Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin. EPA proposed approval of this revision in 64 FR 28947 (May 28, 1999). The revision exempts from the rule certain fugitive emissions which occur under circumstances which are deemed by Missouri to be "adverse weather conditions" as described in the rule.

EPA received comments from two commenters on the proposal. One commenter represents the Missouri Ag Industries Council, and the other represents the Missouri Limestone Producers Association. One of the comment letters was received after the close of the comment period. However, since the comments are nearly identical, EPA is responding to the issues raised by both commenters.

Both commenters stated that they supported the revision to Missouri's fugitive dust rule to provide for the exemption which is the subject of this rulemaking. However, the commenters stated that they do not believe that the Missouri fugitive dust rule should be included in the Missouri SIP, primarily based on the argument that the emission reductions attributable to the rule cannot be quantified, and that reductions due to the rule would be insignificant.

The objections to the underlying rule raised by the commenters involve issues which are not the subject of this rulemaking. EPA first approved the Missouri rule in 1972, and has approved various revisions to the rule since that time. In fact, the commenters raised issues similar to those raised in connection with this rulemaking, in a recent EPA rulemaking on prior state revisions to the fugitive dust rule, and EPA provided responses to those comments in connection with that rulemaking. See 63 FR 3037 (January 21, 1998). The commenters petitioned the U.S. Court of Appeals for the Eighth Circuit for review of the 1998 rulemaking, although the commenters elected not to litigate these specific arguments, and the Court denied the petition. See *Missouri Limestone Producers Ass'n* v. *Browner*, 165 F. 3d 619 (8th Cir. 1999).

The scope of today's action is limited to approval of Missouri's revision to the fugitive dust rule to add the exemption discussed above in this notice. Issues relating to the underlying rule are not relevant to this action and have previously been adequately addressed by EPA in a prior rulemaking. This approval does not reopen any aspects of the underlying rule.

Have the Requirements for Approval of a SIP Revision Been Met?

The state submittal has met the public notice requirements for SIP submissions in accordance with 40 CFR 51.102. The submittal also satisfied the completeness criteria of 40 CFR Part 51, Appendix V. In addition, the revision meets the substantive SIP requirements of the CAA, including section 110 and implementing regulations as explained in detail in the notice of proposed rule making published May 28, 1999.

What Action Is EPA Taking?

EPA is taking final action to approve a revision to the Missouri SIP. EPA is approving Missouri revised rule 10 CSR 10–6.170, submitted by the Director of the Missouri Department of Natural Resources on November 13, 1998, with a state effective date of August 30, 1998. This action makes the state rule Federally enforceable and ensures consistency between the state rules and the Federally approved SIP.

Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves preexisting requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by May 31, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Particulate matter.

Dated: March 17, 2000.

William Rice,

Acting Regional Administrator Region 7.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart AA—Missouri

2. In § 52.1320 the table in paragraph (c) is amended by revising the entry for 10–6.170, under Chapter 6, to read as follows:

§ 52.1320 Identification of plan.

* * * * *

(c) * * *

EPA-APPROVED MISSOURI REGULATIONS

Missouri citation	Title	State effective date	EPA approval date	Explanation
Missouri Department of Natural Resources				
Chapter 6—Air Quality Standards, Definitions, Sampling and Reference Methods, and Air Pollution Control Regulations for the State of Missouri				
10–6.170	Restriction of Particulate Matter to the Ambient Air Beyond the Premises of Origin.	August 30, 1998	65 FR 17166 and March 31, 2000.	

[FR Doc. 00–7881 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 130

[FRL–6569–7]

Revision to the Water Quality Planning and Management Regulation Listing Requirements

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is revising the Water Quality Planning and Management regulation to remove the requirement in most cases that States, Territories and authorized Tribes submit to EPA for review by April 1, 2000, lists of water quality limited waterbodies. EPA's current regulations interpret the provision in section 303(d) of the Clean Water Act for submission of lists to EPA "from time to time" to require States, Territories and authorized Tribes to submit lists on April 1 of every even-numbered year. EPA is not, however, changing the existing requirement to submit a list in 2000 if a court order or consent decree, or commitment in a settlement agreement dated prior to January 1, 2000, expressly requires EPA to take action related to a State's, Territory's, or authorized Tribe's year 2000 list. Also, EPA is not at this time changing the existing regulatory requirement that subsequent lists be submitted on April 1, 2002, and on April 1 of subsequent even numbered years.

EFFECTIVE DATE: March 31, 2000.

ADDRESSES: This rule's administrative record is available for review and copying from 9:00 to 4:00 p.m., Monday through Friday, excluding legal holidays, at the Water Docket (W–99–25), East Tower Basement, Room EB–57, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460. The administrative record includes a Response to Comments document which includes a response to all timely comments that EPA received on the proposal for this rule. For access to materials, please call (202) 260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: James Pendergast, U.S. EPA, Office of Wetlands, Oceans and Watersheds (4503F), 1200 Pennsylvania Ave., NW., Washington, DC 20640, (202) 260–9549.

SUPPLEMENTARY INFORMATION:

Authority: Clean Water Act Section 303.

I. Potentially Regulated Entities

Category	NAIAS codes	SIC codes	Examples of potentially regulated entities
State, Local, Tribal Government	N/A	N/A	States, Territories, and authorized Tribes.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. This table lists the types of entities that EPA is now aware could potentially be regulated by this action. Other types of entities not listed in the table could also be regulated. To determine whether you are regulated by this action, you should carefully examine the applicability criteria in § 130.1 of title 40 of the Code of Federal Regulations. If you have questions regarding the applicability of this action to you, please consult the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

II. Background

A. Existing Requirement

Section 303(d)(1) of the CWA requires States, Territories and authorized Tribes to submit to EPA "from time to time" a list of waterbodies for which existing pollution effluent limitations are not stringent enough to attain and maintain State, Territorial and authorized Tribal water quality standards. The statute requires EPA to review and approve or disapprove the lists within 30 days of the time they are submitted. If EPA disapproves a list, EPA must establish the list for the State, Territory or authorized Tribe.

In 1992, EPA revised the regulations implementing section 303(d)(1) to require States, Territories, and authorized Tribes to submit lists of water quality limited waterbodies to EPA every two years, with the 1992 lists due to EPA no later than October 22, 1992, and subsequent lists due on April 1 of even-numbered years. The most recent listing deadline was April 1, 1998, and all States, Territories, and authorized Tribes have now submitted 1998 section 303(d) lists to EPA. As of March 2000, EPA had approved all but one list.

B. Proposed Rule

On February 2, 2000, EPA proposed to eliminate the regulatory requirement that States, Territories, and authorized Tribes submit to EPA by April 1, 2000, their lists of water quality limited waterbodies, unless EPA has been required by a court order or consent decree, or commitment in a settlement agreement to take action based on a year 2000 list. (EPA used the term "impaired and threatened" in the proposal; however the precise term from the current regulations is "water quality limited.") This proposed rule was published in the **Federal Register** on February 2, 2000, with a 30 day comment period. The public comments are available for review in the Water Docket, Room EB–57 (East Tower Basement), 401 M Street, SW, Washington, DC 20460.

The February 2, 2000, proposal only affected the April 1, 2000, list; it retained the existing regulatory requirement that subsequent lists be submitted on April 1, 2002, and on April 1 of subsequent even-numbered years. EPA proposed applying the changed regulation to instances where EPA has been required by a court order or consent decree, or commitment in a settlement agreement to take action based on a State's, Territory's or authorized Tribe's year 2000 list. EPA made this proposal to avoid unsettling a commitment embodied in documents filed in or entered by a court.

C. Comments Sought

EPA sought comments in the proposal on whether to eliminate the April 1, 2000, listing deadline in light of the comprehensive improvements and clarifications proposed to the existing listing requirements on August 23, 1999 (see 64 FR 46012). EPA also requested comments on whether to move the April 2000 list submission date to another date prior to April 2002. EPA also requested comments on whether to include in the final rule the limited exception which would require a State, Territory, and authorized Tribe to submit a list in the year 2000 only if a court order or consent decree dated prior to January 1, 2000, expressly requires (or if a similarly dated settlement agreement committed) EPA to take action related to that year 2000 list. Finally, EPA sought comments on whether it should promulgate in this rule the requirements for removing a waterbody from the section 303(d) list that EPA proposed on August 23, 1999.

III. Summary of Final Rule

A. Removing the Requirement To Submit the April 1, 2000, List

EPA is today amending its regulations at 40 CFR 130.7(d)(1) to remove the requirement that States, Territories, and authorized Tribes submit a section 303(d) list by April 1, 2000. After review of comments, EPA still believes that its reasons for removing the year 2000 list, as proposed, are valid. Many comments supported the proposal by pointing out that States need additional resources to establish the large numbers of TMDLs required by the 1998 list. Three States noted that the rule would have no effect on them because they would submit a list by April 2000; however, these States did not oppose the rule. Of the comments opposing the proposal, all but two supported the proposal on the condition that EPA simultaneously promulgate regulations to require that a waterbody attain water quality standards before it can be removed from the list. Two other comments opposing the rule suggested that most States would have already developed the information for a year 2000 list and thus there would be no savings in resources to redirect towards TMDL development. However, of the 32 States submitting (or joining with submitted) comments, only three said they had developed the information for a year 2000 section 303(d) list. Another comment noted the value of an updated list for citizens to use to highlight where environmental problems require more attention. EPA recognizes this value of the section 303(d) lists, but does not believe it outweighs the benefit of affording States, Territories, and authorized Tribes flexibility to make further progress in establishing TMDLs on already-listed waterbodies instead of submitting the section 303(d) list in the year 2000. Two comments questioned whether States would actually use the additional time to collect and analyze data for the next section 303(d) list. EPA notes that a comment submitted by a State specifically discussed using the time to evaluate biological information that would otherwise have been directed towards preparing a year 2000 list. Another State comment pointed to the data collection efforts it had underway.

One comment opposing the proposal claimed it was contrary to Congressional intent that all TMDLs be established prior to the Clean Water Act requirement that effluent limitations attain water quality standards by July 1, 1977. EPA disagrees with the assertion that the Clean Water Act required all TMDLs be established by July 1, 1977. Regardless, this assertion is irrelevant to EPA's decision to remove the requirement (codified by EPA by regulation in 1992) that States, Territories and authorized Tribes submit a section 303(d) list in the year 2000.

Nevertheless, EPA recognizes the statements in the Congressional Record and that section 301 of the Clean Water Act cited by the commenter indicates that certain benchmarks should be met by July 1, 1977. EPA notes, however, that section 301 applies to effluent limitations whereas section 303 applies to TMDLs. Furthermore, EPA has stated previously that water quality based effluent limits can be set in the absence of a TMDL. 43 FR 60664. To codify this, EPA has published National Pollutant Discharge Elimination System (NPDES) regulations that clearly require NPDES permit authorities to ensure that effluent limitations are derived from and comply with all applicable water quality standards; this requirement does not depend on whether there exists an applicable TMDL. 54 FR 23879.

Another comment claimed that persons with interests in impaired but unlisted waterbodies receive no benefits if a State delays listing their waterbody in lieu of establishing a TMDL for another water. EPA believes that establishing TMDLs speeds up the process towards attaining water quality standards, which is the underlying principal of the Clean Water Act. Thus, EPA believes that the overall interests of residents will be better served if States, Territories, and authorized Tribes focus their efforts on establishing TMDLs before the next section 303(d) list is due.

EPA received comments suggesting that EPA should take action on lists that States, Territories, and authorized Tribes voluntarily submit by April 2000 or thereafter. EPA also received one comment requesting that EPA take no action on a section 303(d) list that a State may submit in the year 2000. EPA interprets section 303(d) to require EPA to review and either approve or disapprove a final section 303(d) list whenever submitted by a State, Territory, or authorized Tribe.

EPA received only four comments on its proposal to require a year 2000 list where EPA has been required by a court order or consent decree, or commitment in a settlement agreement to take action based on a year 2000 list. Two comments supported this. The other two suggested that EPA condition this requirement to where it is infeasible to amend the court order or consent decree, or commitment in a settlement agreement. When EPA published the proposal, EPA stated that it believed that this provision would only apply to the State of Georgia and solicited comment on whether this would apply to others. EPA received no comment or information identifying any other State. EPA continues to believe that a State, Territory, and authorized Tribe should submit a section 303(d) list if a court order or consent decree, or commitment in a settlement agreement dated prior to January 1, 2000, expressly requires EPA to take action related to that year 2000 list. Therefore, EPA is promulgating this regulation as proposed. Information available to EPA indicates that this requirement only affects Georgia. EPA understands that Georgia intends to submit a list in the year 2000.

EPA received several comments suggesting dates on which States, Territories, and authorized Tribes should be required to submit the next section 303(d) list. After reviewing those comments, and considering the fact that EPA intends to publish the final rules for the TMDL program fairly soon, EPA will establish the date for the next 303(d) list when the final TMDL rules are published. Until then, the date for the next list is April 1, 2002.

EPA received many comments discussing whether EPA should require in this final rule that a State must keep each impaired waterbody on the list until water quality standards are attained for that waterbody and may remove a previously listed impaired waterbody only if new data or information indicates that the waterbody has attained water quality standards. Many comments asked that EPA make this change in this rule and roughly an equal number of comments opposed making this change now instead as of part of the revisions to the Water Quality Planning and Management Regulation later. After reviewing those comments, and considering the fact that EPA intends to publish the final rules for the TMDL program fairly soon, EPA has decided to not take action on this issue in today's final rule. EPA believes that it can better consider the aspects of this issue in conjunction with decisions on the other issues that were proposed in the August 23, 1999 proposal. This belief is consistent with the recommendation of the Federal Advisory Committee Act (FACA) Committee report on page 9 that cautioned readers of the report to not take individual recommendations out of context because many recommendations are interrelated. Because EPA relied on the FACA Committee report for many of the elements of the August 23, 1999, proposal, EPA believes it is better to consider the issue of criteria for removing a waterbody from the section 303(d) list in conjunction with the other elements of the August 23, 1999, proposal.

As stated in the proposal to this rule, EPA intends to carefully review any proposed removal of a waterbody from a section 303(d) list to ensure there is information specific to the waterbody to support the removal. 65 FR 4921. In particular, where a waterbody was previously listed based on certain data or information, and the State removes the waterbody without developing or obtaining any new information, EPA will carefully evaluate the State's re-evaluation of the available information, and would not approve such removals unless the State's submission describes in detail why it is appropriate under the current regulations to remove each affected waterbody. EPA has the authority to disapprove the list if EPA identifies existing and readily available information that was existing and readily available at the time the State submitted the list and that data shows that a waterbody does not attain water quality standards.

B. Other Comments

EPA received comments on other issues germane only to the August 23, 1999, proposal and for which EPA did not solicit comment in the February 2, 2000, proposal. EPA is deferring decision on those issues until the time when EPA publishes the final rule for the comprehensive TMDL program.

C. Effective Date of the Final Rule

EPA has decided to make this rule effective upon publication. The Administrative Procedure Act allows the effective date of a rule to be less than 30 days from the publication. 5 U.S.C. 553(d)(1)–(3). Section 553(d)(1) allows the effective date to be less than 30 days from the publication date if the rule grants an exemption or relieves a restriction. EPA believes that the part of this rule that removes the obligation that States, Territories, and authorized Tribes submit section 303(d) lists for the year 2000 satisfies section 553(d)(1). Because it relieves an obligation for a list submission on April 1, 2000, EPA believes the rule should be effective before that date. Furthermore, section 553(d)(3) allows the effective date to be less than 30 days from the publication date for good cause if the agency expresses the reasons and publishes them with the rule.

IV. Regulatory Assessment Requirements

A. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act

or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions. For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as: (1) A small business according to the RFA default definition for small business (based on the Small Business Administration size standards); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field. For purposes of the RFA, States, Territories and tribal governments are not considered small governments jurisdictions since they are independent sovereigns.

The RFA requires analysis of the impacts of a rule on the small entities *subject to the rule's requirements.* See *United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C.Cir. 1996); *Mid-Tex Electric Co-op., Inc.* v. *FERC*, 773 F.2d 327 (D.C. Cir. 1985); *Motor & Equipment Manufacturers Ass'n* v. *Nichols*, 142 F.3d 449 (D.C. Cir. 1998). Today's rule establishes requirements for only States, Territories and authorized Tribes. It establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as prescribed by the RFA. "[N]o [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule." *United Distribution* at 1170, quoting *Mid-Tex Elec. Co-op., Inc.* v. *FERC*, 773 F.2d 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court). After considering the economic impacts of today's final rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

This final rule will not impose any requirements on small entities. It eliminates the current regulatory requirement which directs States, Territories and authorized Tribes (and EPA, if it disapproves the State's, Territory's or authorized Tribe's efforts) to establish lists of impaired waterbodies in the year 2000.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this final rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

C. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal Mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA rule for which a written statement is needed, section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that attains the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the rule an explanation why that alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

Today's final rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local, and tribal governments or the private sector. The final rule imposes no enforceable duty on any State, local, or tribal governments or the private sector. The final rule is deregulatory because it eliminates the current regulatory requirement that States, Territories, and authorized Tribes submit lists of impaired waterbodies in 2000. Thus, today's final rule is not subject to the requirements of section 202 and 205 of UMRA.

For the same reasons discussed in the section on the Regulatory Flexibility Act, EPA has determined that this final rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus, today's final rule is not subject to the requirements of section 203 of UMRA.

D. Paperwork Reduction Act

This final rule does not contain any information collection, reporting, or record keeping requirements. Thus, this final rule is not subject to the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* This final rule could actually streamline and reduce existing OMB-approved requirements by 25,424 hours in the year 2000.

E. Executive Order 13132: Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999) requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6 of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance

costs, and that is not required by statute, unless the federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law, unless EPA consults with State and local officials early in the process of developing the proposed regulation.

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As discussed above, the final rule that removes the obligation that States, Territories, and authorized Tribes submit a section 303(d) list is deregulatory because it eliminates a current requirement. Thus, the requirements of section 6 of the Executive Order do not apply to this final rule.

F. Executive Order 13084: Consultation and Coordination With Indian Tribal Governments

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to OMB, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities."

Today's final rule does not significantly or uniquely affect the communities of Indian tribal governments nor does it impose substantial direct compliance costs on them. Currently, there are no tribes authorized to establish TMDLs or lists of impaired waterbodies. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to today's final rule.

G. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This final rule is not subject to Executive Order 13045 because it is not "economically significant'and further, it does not establish an environmental standard intended to mitigate health or safety risks.

H. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d)(15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

This final rule does not involve any technical standards. Therefore, EPA did not consider the use of any voluntary consensus standards.

I. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective March 31, 2000, for reasons discussed previously in this preamble.

List of Subjects in 40 CFR Part 130

Environmental protection, Intergovernmental relations, Reporting and recordkeeping requirements, Water pollution control.

Dated: March 27, 2000.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, EPA is amending title 40, chapter I of the Code of Federal Regulations as follows:

PART 130—[AMENDED]

1. The authority citation for part 130 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Amend Section 130.7 by adding a new sentence after the third sentence in paragraph (d)(1) as follows:

§ 130.7 Total maximum daily loads (TMDL) and individual water quality-based effluent limitations.

* * * * *

(d) * * * (1) * * * For the year 2000 submission, a State must submit a list required under paragraph (b) of this section only if a court order or consent decree, or commitment in a settlement agreement dated prior to January 1, 2000, expressly requires EPA to take action related to that State's year 2000 list. * * *

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[FR Doc. 00–7986 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300986; FRL–6498–1]

2070–AB78

Glufosinate Ammonium; Pesticide Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes tolerances for combined residues of glufosinate ammonium (butanoic acid, 2-amino-4-(hydroxymethylphosphinyl)-mono ammonium salt) and metabolites (3-methylphosphinico-propionic acid and 2-acetamido-4-methylphosphinico-butanoic acid), expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid equivalents in or on transgenic canola meal and seed and trangenic sugar beet molasses, roots and tops. AgrEvo USA Company requested these tolerances under the Federal Food, Drug, and Cosmetic Act, as amended by the Food Quality Protection Act of 1996. Revoked/expired tolerances under § 180.473 (b) are deleted from the regulation.

DATES: This regulation is effective March 31, 2000. Objections and requests for hearings, identified by docket control number OPP–300986, must be received by EPA on or before May 30, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–6224 and e-mail address: miller.joanne@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300986. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of October 8, 1997, (62 FR 52544) (FRL– 5746–9) and July 14, 1999 (64 FR 37973) (FRL–6085–5), EPA issued notices pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d) as amended by the Food Quality Protection Act of 1996 (FQPA) (Public Law 104–170) announcing the filing of a pesticide petition (PP) for tolerance by AgrEvo USA Company, Little Falls Centre One, 2711 Centerville Road, Wilmington, DE 19808. These notices included a summary of the petition prepared by AgrEvo USA Company, the registrant. There were no comments received in response to the notices of filing.

These petitions requested that 40 CFR 180.473 be amended by establishing permanent tolerances for combined residues of the herbicide glufosinate ammonium and its metabolites expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid in or on almond hulls at 0.50 part per million (ppm), apples at 0.05 ppm, bananas at 0.3 ppm (not more than 0.2 ppm shall be present in the pulp after peel is removed), cattle, fat and meat at 0.05 ppm; cattle, meat-by-products at 0.10 ppm; eggs at 0.05 ppm, goats, fat and meat at 0.05 ppm; goats, meat-by-products at 0.10 ppm; grapes at 0.05 ppm; hogs, fat and meat at 0.05 ppm; hogs, meat-by-product at 0.10 ppm; horses, fat and meat at 0.05 ppm; horses, meat-by-products at 0.10 ppm; milk at 0.02 ppm, potatoes at 0.8 ppm, potato chips at 1.6 ppm, potato granules/flakes at 2.0 ppm; poultry, fat and meat at 0.05 ppm; poultry, meat-by-products at 0.10 ppm; sheep, fat and meat at 0.05 ppm; sheep, meat-by-products at 0.10 ppm; transgenic aspirated grain fractions at 25.0 ppm; transgenic corn, field, forage at 4.0 ppm; trangenic corn, field, grain at 0.2 ppm; transgenic corn, field stover at 6.0 ppm; transgenic soybeans hulls at 5.0 ppm; transgenic soybeans at 2.0 ppm and tree nut group at 0.1 ppm.

This list included transgenic beet, sugar, tops (leaves) at 1.5 ppm; transgenic beet, sugar, root at 0.9 ppm; transgenic beet, sugar, molasses at 5.0 ppm; transgenic canola meal at 1.1 ppm and transgenic canola seed at 0.4 ppm. Tolerances were established for the former list of commodities on November 4, 1999 (64 FR 60112–60121). As EPA was not able to validate the analytical method submitted in support of tolerances for the commodities derived from transgenic canola and transgenic sugar beets, tolerances were not established at that time. AgrEvo USA Company revised the analytical method for determining residues in these commodities and the EPA has been able to validate the revised method and found it adequate for determining residues in these commodities. The level of the residues were also found appropriate.

The tolerances for canola and sugar beet commodities are listed under § 180.473(b) as commodities derived from transgenic canola and transgenic sugar beets and with commodities derived from transgenic corn and trangenic soybeans because the registered use-sites are for tolerant (transgenic) canola and tolerant (transgenic) sugar beets; and the metabolite residue 2-acetamido-4-methylphosphinico-butanoic acid is common to these tolerant (transgenic) crop plants cultured with the used of

glufosinate ammonium as a post-emergent herbicide.

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue.* * *"

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. For further discussion of the regulatory requirements of section 408 and a complete description of the risk assessment process, see the final rule on Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997) (FRL–5754–7).

III. Aggregate Risk Assessment and Determination of Safety

Consistent with section 408(b)(2)(D), EPA has reviewed the available scientific data and other relevant information in support of this action. EPA has sufficient data to assess the hazards of and to make a determination on aggregate exposure, consistent with section 408(b)(2), for permanent tolerances for combined residues of glufosinate ammonium and its metabolite(s) in or on transgenic canola meal at 1.1 ppm, tansgenic canola seed at 0.4 ppm transgenic beet, sugar, tops (leaves) at 1.5 ppm; transgenic beet, sugar, root at 0.9 ppm; transgenic beet, sugar, molasses at 5.0 ppm. EPA's assessment of the dietary exposures and risks associated with establishing these tolerances follows.

A. Toxicological Profile

EPA has evaluated the available toxicity data and considered its validity, completeness, and reliability as well as the relationship of the results of the studies to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. The nature of the toxic effects caused by glufosinate ammonium are discussed in this unit.

1. Glufosinate ammonium (also referred to as DL-glufosinate ammonium or HOE 039866) is toxicity category III for acute oral, dermal, and eye irritation toxicities. It is toxicity category III for inhalation toxicity. It is not a dermal irritant (toxicity category IV) nor is it a dermal sensitizer.

2. In a sub-chronic oral toxicity study, glufosinate-ammonium (95.3% a.i.) was administered to 10 NMRI mice/sex/dose in the diet at levels of 0, 80, 320 or 1,280 ppm (equivalent to 0, 12, 48 or 192 mg/kg/day) for 13 weeks. Significant ($p<0.05$) increases were observed in serum aspartate aminotransferase and in alkaline phosphatase in high-dose (192 mg/kg/day) males. Also observed were increases in absolute and relative liver weights in mid- (48 mg/kg/day) and high-dose males. The no-observed-adverse effect level (NOAEL) is 12 mg/kg/day, the lowest-observe-adverse effect level (LOAEL) is 48 mg/kg/day based on the changes in clinical biochemistry and liver weights.

3. In a 21- day repeated dose dermal toxicity study, groups of 6 male and 6 female Wistar rats were treated with HOE 039866 (95.3%) in deionized water by dermal occlusion at doses of 0, 100, 300 or 1,000 mg/kg/day, 6 hours/day, 5 days/week for 21 applications in 30 days. An additional five males and five females/dose group were dose and observed for 44 days in a "recovery study". Two of 6 LDT males at 300 mg/kg/day, and 4 of 11 males and 2 of 11 females at 1,000 mg/kg/day displayed aggressive behavior, piloerection and a high startle response. There were no effects of toxicological importance on body weights, food consumption, hematology, clinical chemistry, urinalysis, organ weights, or gross or microscopic pathology. Based on clinical observations, the LOAEL is 300 mg/kg/day and the NOAEL is 100 mg/kg/day.

4. In an oncogenicity study, HOE 039866 (glufosinate ammonium) was administered to 50 NMRI mice/sex/dose in the diet at dose levels of 0, 80, 160 (males only) or 320 (females only) ppm for 104 weeks. Dose levels corresponded to 0, 2.83, 10.82, 22.60 mg/kg/day in males and 0, 4.23, 16.19, 66.96 mg/kg/day in females. The NOAEL for systemic toxicity is 80 ppm (10.82/16.19 mg/kg/day in M/F), and the LOAEL is 160/320 ppm (22.60 / 63.96 mg/kg/day in M/F), based on increased mortality in males, increased glucose levels in males and females, and consistent changes in glutathione levels in males. No increase in tumor incidence was found in any treatment group.

5. In a chronic feeding study, HOE 039866 technical was fed to male and female beagle dogs for 12 months in the diet at levels of 2.0, 5.0 or 8.5 mg/kg/day. There were no overt signs of toxicity or dose-related effects on body weight, food consumption, ophthalmology, hematology, clinical chemistry, urinalyses or organ weights. Two dogs receiving 8.5 mg/kg/day died during the study as a result of heart and circulatory system failure from rapid diet consumption and necrotizing aspiration pneumonia. Electrocardiogram results of dosed males and females indicated a dose-related decrease in heart rate at 6 months; heart rates of dosed animals at 12 months were considered to be normal. The NOAEL is 5.0 mg/kg/day, the LOAEL is 8.5 mg/kg/day based on mortality.

6. In a rat oncogenicity study, glufosinate-ammonium (95.2–96.0% a.i.) was administered to Wistar rats (60/sex/group) for up to 24 months at 0, 1,000, 5,000, or 10,000 ppm (equivalent to 0, 45.4, 228.9, or 466.3 mg/kg/day in males and 0, 57.1, 281.5, or 579.3 mg/kg/day in females). The LOAEL for chronic toxicity is 5,000 ppm (equivalent to 228.9 mg/kg/day for male rats and 281.5 mg/kg/day for females), based on increased incidences of retinal atrophy. The chronic NOAEL is 1,000 ppm. Under the conditions of this study, there was no evidence of carcinogenic potential. Dosing was considered adequate based on increased incidences of retinal atrophy.

7. In a combined chronic toxicity/oncogenicity study, glufosinate ammonium was administered to 50 Wistar rats/sex/dose in the diet for 24 months at dose levels of 0, 40, 140, or 500 ppm (mean compound intake in males was 0, 1.9, 6.8, and 24.4 mg/kg/day and for females was 0, 2.4, 8.2 and 28.7 mg/kg/day, respectively). The LOAEL is 2.4 mg/kg/day (LDT) based on the increase in kidney glutamine synthetase activity and increased kidney weights in females. A NOAEL was not established. There was no clear demonstration of increased tumor incidence following exposure to glufosinate ammonium. Dosing was considered adequate based on the increase in kidney glutamine synthetase activity and increased kidney weights in females.

8. In a developmental toxicity study, groups of 20 pregnant female Wistar rats were administered HOE 039866 (glufosinate ammonium, 96.9 a.i.) by gavage at doses of 0, 0.5, 2.24 10, 50 and 250 mg/kg/day from days 7 to 16 of pregnancy. The no-observed-adverse effect level (NOAEL) for maternal toxicity is 10 mg/kg/day; the LOAEL is 50 mg/kg/day based on vaginal bleeding and hyperactivity in dams. In the fetus, the NOAEL is 50 mg/kg/day, based on dilated renal pelvis at the LOAEL of 250 mg/kg/day.

9. In a developmental toxicity study, groups of 15 pregnant female Himalayan rabbits were administered HOE 039866 by gavage at doses of 0, 2.0, 6.3 or 20.0 mg/kg/day from days 7 to 19 of pregnancy. The NOAEL for both maternal toxicity and developmental toxicity was 2.0 mg/kg/day. The LOAEL is 6.3 mg/kg/day based on reduced food consumption, body weight and weight gains and increased kidney weights in dams, and incomplete ossification in fetuses with fetal death at 20 mg/kg/day.

10. In a multigeneration reproduction study, glufosinate ammonium was administered to groups of 30 male and 30 female Wistar/Han rats in the diet at concentrations of 0, 40, 120 or 360 ppm (approximately 2.0, 6.0, 18.0 mg/kg). The LOAEL for systemic toxicity is 120 ppm (6 mg/kg/day) based on increased kidney weights in both sexes and generations. The systemic toxicity NOAEL is 40 ppm (2 mg/kg/day). The LOAEL for reproductive/developmental toxicity is 360 ppm (18 mg/kg/day) based on decreased number of viable pups in all generations. The NOAEL is 120 ppm.

11. There is no concern for mutagenic activity in several studies, including: *Salmonella spp., E. coli, in vitro* mammalian cell gene mutation assays, mammalian cell chromosome aberration assays, *in vivo* mouse bone marrow micronucleus assays, and unscheduled DNA synthesis assays.

12. A rat metabolism study with dermal application showed that about 50% of the given radioactivity is absorbed 48 hours after a single dose application. In other metabolism studies, it was shown that over 80% of administered radioactivity is excreted within 24 to 48 hours as the parent compound in the feces and kidneys. Highest tissue levels were found in liver, kidney and gonads.

A consistent pattern of neurotoxicity was seen in several studies, including the subchronic, developmental and chronic studies in rats, mice and dogs. In addition to the clinical signs such as hyperactivity, aggressive behavior, piloerection, high startle response, retinal atrophy was observed. Changes in glutamine synthetase levels were observed in liver, kidney and brain in rats. These occurrences raise concern for the mechanism of neurotoxicity in these studies, an area where there are data gaps. It is expected that the requested neurotoxicity studies will provide the information needed for further characterization of these effects.

Additional testing was conducted with the major metabolites, HOE 061517 and HOE 099730, as well as the L-isomer, identified as HOE 058192. These compounds, tested in subchronic rat, mouse and dog studies, and in developmental toxicity studies in rat and rabbit showed a similar profile of toxicity as the parent compound (HOE 039866).

B. Toxicological Endpoints

1. *Acute toxicity.* An acute RfD was not established for the general population. No appropriate toxicological endpoint attributable to a single exposure was identified in the available toxicity studies. However, an acute RfD of 0.063 mg/kg/day was established for the females 13+ subgroup, based on a developmental NOAEL of 6.3 mg/kg/day in the rabbit and a 100x uncertainty factor (10x inter- 10x intra-species extrapolation). The developmental LOAEL (20 mg/kg/day) was based on reduced fetal body weight and increased fetal death. The FQPA safety factor of 10x was reduced to 3x because there was no qualitative or quantitative indication of increased susceptibility in the prenatal developmental toxicities in rats and rabbits or in the two generation reproductive study in rats with parent compound, the isomer or metabolites of concern. Toxicological studies showed neurological effects in short term studies described as aggressive behavior, piloerection and a high startle response at dosages of 300 mg/kg/day. Based on these effects, EPA determined that a 3x FQPA safety factor was appropriate for the risk assessment for the food and feed used of glufosinate ammonium. Using the 3x FQPA safety factor, the acute population adjusted dose (aPAD) for glufosinate ammonium is 0.021 mg/kg/day.

2. *Short- intermediate- and long-term toxicity*—i. *Dermal.* Short- and intermediate-term dermal toxicity risk assessments were recommended based on neurological clinical signs (hyperactivity, aggressive behavior, piloerection) observed in the 21- day dermal study at 300 mg/kg/day (LOAEL). The NOAEL was 100 mg/kg/day. A long-term dermal risk assessment was recommended based on the NOAEL of 2.1 mg/kg/day established in the 2-year chronic study in rats (see chronic dietary; 50% dermal absorption).

ii. *Inhalation.* With the exception of an acute inhalation study, no other inhalation studies were available. Therefore, oral NOAELs were selected for inhalation risk assessments. Because an oral dose was used, the exposure assessments was conducted by converting the application rate to oral equivalents and assuming 100% absorption.

Short-term inhalation risk assessments were recommended based on the developmental NOAEL of 6.3 mg/kg/day in the rabbit (see acute dietary endpoint). Intermediate-term inhalation risk assessments were recommended based on the NOAEL of 2.1 mg/kg/day from the 2- year chronic rat study (see chronic dietary endpoint below).

3. *Chronic toxicity.* EPA has established the RfD for glufosinate ammonium at 0.021 mg/kg/day based on the NOAEL of 2.1 mg/kg/day in the 2-year chronic study in rats and a 100x uncertainty factor (10x inter- 10x intra-species extrapolation). The LOAEL in the study was based on increased kidney weight and kidney/brain weight in males at 52 weeks (6.8 mg/kg/day) and decreased survival in females at 130 weeks (8.2 mg/kg/day). Using the 3x FQPA safety factor, the chronic population adjusted dose (cPAD) for glufosinate ammonium is 0.007 mg/kg/day.

4. *Carcinogenicity.* Based on a lack of mutagenic potential as assessed in a battery of mutagenicity assays and the absence of treatment-related tumors in rats and mice at dose levels adequate for assessment, the EPA has determined that glufosinate ammonium is not likely a carcinogen; and has classified it as a "Group E—Evidence of Non- - Carcinogenicity for Humans" chemical.

C. Exposures and Risks

1. *From food and feed uses.* Tolerances have been established (40 CFR 180.473 for the combined residues of glufosinate ammonium and its metabolites, in or on a variety of raw agricultural commodities. All tolerances listed under Unit III of this preamble, except those for canola meal at 1.1 ppm, canola seed at 0.4 ppm, sugar beet, molasses at 5.0 ppm; sugar beet, roots at 0.9 ppm and sugar beet tops (leaves) at 1.5 ppm, were established as permanent tolerances on November 4, 1999 (64 FR 60112–61121). This rule addresses the pending petition for establishing permanent tolerances in these commodities. Risk assessments were conducted by EPA to assess dietary exposures from tolerance levels of residue as follows:

Section 408(b)(2)(F) states that the Agency may use data on the actual percent of crop treated (PCT) for assessing chronic dietary risk only if the

Agency can make the following findings: Condition 1, that the data used are reliable and provide a valid basis to show what percentage of the food derived from such crop is likely to contain such pesticide residue, Condition 2, that the exposure estimate does not underestimate exposure for any significant sub-population group and Condition 3. that if data are available on pesticide use and food consumption in a particular area, the exposure estimate does not understate exposure for the population in such area. In addition, the Agency must provide for periodic evaluation of any estimates used. To provide for the periodic evaluation of the estimate of PCT as required by section 408(b)(2)(F), EPA may require registrants to submit data on PCT. The Agency used PCT information as follows:

The chronic dietary exposure analysis assumed tolerance level residues for all registered and proposed commodities. The weighted average percent crop treated was incorporated for all registered commodities. Sweet corn and proposed commodities were maintained at 100% crop treated.

The Agency believes that the three conditions listed above have been met. With respect to (Condition 1), percent of crop treated estimates are derived from Federal and private market survey data, which are reliable and have a valid basis. EPA uses a weighted average percent crop treated for chronic dietary exposure estimates. This weighted average percent crop treated figure is derived by averaging state-level data for a period of up to 10 years, and weighting for the more robust and recent data. A weighted average of the percent crop treated reasonably represents a person's dietary exposure over a lifetime, and is unlikely to underestimate exposure to an individual because of the fact that pesticide use patterns (both regionally and nationally) tend to change continuously over time, such that an individual is unlikely to be exposed to more than the average percent crop treated over a lifetime. For acute dietary exposure estimates, EPA uses an estimated maximum percent crop treated. The exposure estimates resulting from this approach reasonably represent the highest levels to which an individual could be exposed, and are unlikely to underestimate an individual's acute dietary exposure. The Agency is reasonably certain that the percentage of the food treated is not likely to be an underestimation. As to Condition 2 and Condition 3, regional consumption information and consumption information for significant subpopulations is taken into account through EPA's computer-based model for evaluating the exposure of significant subpopulations including several regional groups. Use of this consumption information in EPA's risk assessment process ensures that EPA's exposure estimate does not understate exposure for any significant subpopulation group and allows the Agency to be reasonably certain that no regional population is exposed to residue levels higher than those estimated by the Agency. Other than the data available through national food consumption surveys, EPA does not have available information on the regional consumption of food to which pesticide glufosinate ammonium may be applied in a particular area.

i. *Acute exposure and risk.* The acute dietary exposure analysis for females 13+ (no acute dietary endpoint was identified for the general U.S. population including infants and children) assumed tolerance level residues and 100% crop treated for all registered and proposed commodities (Tier 1 analysis). The most highly exposed population was females 13+/ nursing at 58% of the aPAD (95th percentile). Acute dietary food exposure to glufosinate ammonium is below EPA's level of concern.

ii. *Chronic exposure and risk.* The chronic dietary exposure analysis assumed tolerance level residues for all registered and proposed commodities. The weighted average percent crop treated was incorporated for all registered commodities. Sweet corn and proposed commodities were maintained at 100% crop treated. The most highly exposed population was children 1–6 years old at 71% of the cPAD (0.004974 mg/kg/day). Chronic dietary food exposure to glufosinate ammonium is below EPA's level of concern.

2. *From drinking water.* Aggregate exposures are generally calculated by summing dietary (food and water) and residential exposures. If the aggregate exposure is less than the specified PAD, the exposure is not expected to be a concern. Because EPA does not have ground and surface water monitoring data to calculate a quantitative aggregate exposure, a DWLOC was calculated. The DWLOC is the upper limit of a chemical's concentration in drinking water that will result in an acceptable aggregate exposure. The DWLOC is used as a point of comparison against model estimates of a pesticide's concentration in water. DWLOC values are not regulatory standards for drinking water. They do have indirect regulatory impact through aggregate exposure and risk assessments.

To calculate the acceptable acute and chronic exposure to glufosinate ammonium in drinking water, the dietary food exposure estimate was subtracted from the appropriate PAD (only short-term residential exposure). A DWLOC was then calculated by using default body weights and drinking water consumption figures (70 kg/2L (adult male), 60 kg/2L (adult female) and 10 kg/1L (infant/child)).

The estimated maximum and average concentration of glufosinate ammonium in ground and surface water are less than EPA's DWLOC for glufosinate ammonium as a contribution to acute and chronic aggregate exposure (for all population subgroups).

i. *Acute exposure and risk.* The Agency's analysis based on the information available is presented in the following table 1:

TABLE 1.—ACUTE DWLOCS

Population Subgroup [1]	aPAD mg/kg/day	Food Exposure mg/kg/day	Maximum Water Exposure [2] mg/kg/day	DWLOC [3] ppb	SCI-GROW ppb	PRZM-EXAMS ppb
Females (13+, nursing)	0.021	0.012131	0.008869	270	1.16	34.1

[1] Highest exposed subgroup among females 13+
[2] Maximum water exposure (mg/kg/day) = 0.021 mg/kg/day - acute food exposure (mg/kg/day)
[3] DWLOC = [(maximum water exposure mg/kg/day)(body weight kg)/(water consumption liters)] * 1,000

ii. *Chronic exposure and risk.* The Agency's analysis based on the information available is presented in the following table 2:

TABLE 2.—CHRONIC (NON-CANCER) DWLOC

Population Subgroup [1]	cPAD mg/kg/day	Food Exposure mg/kg/day	Maximum Water Exposure [2] mg/kg/day	DWLOC [3] ppb	SCI-GROW ppb	PRZM-EXAMS ppb
U.S. Population	0.007	0.002120	0.004880	170	1.16	0.79
Non-Hispanic blacks	0.007	0.002246	0.004754	170	1.16	0.79
Non-Hispanic/non-white/non-black	0.007	0.002256	0.004744	170	1.16	0.79
Non-Hispanic whites	0.007	0.002132	0.004868	170	1.16	0.79
Children 1–6 yrs	0.007	0.004974	0.002026	20	1.16	0.79
Females 13+ nursing	0.007	0.002035	0.004965	150	1.16	0.79
Males 13–19 yrs	0.007	0.002449	0.004551	160	1.16	
0.79:						

[1] The subgroups listed above are the following: (1) US Population, (2) the other general subgroups for which the %cPAD is greater than that of the US Population and (3) the most highly exposed population among infants and children, females, and males.
[2] maximum water exposure (mg/kg/day) = (0.007 mg/kg/day - acute food exposure, (mg/kg/day)); no residential exposure
[3] DWLOC = [(maximum water exposure mg/kg/day)(body weight kg)/(water consumption liters)]* 1,000

3. *From non-dietary exposure.* Glufosinate ammonium is currently registered for use on the following non-food sites: areas around ornamentals, shade trees, Christmas trees, shrubs, walks, driveways, flower beds, farmstead buildings, in shelter belts, and along fences. It is also registered for use as a post-emergent herbicide on farmsteads, areas associated with airports, commercial plants, storage and lumber yards, highways, educational facilities, fence lines, ditch banks, dry ditches, schools, parking lots, tank farms, pumping stations, parks, utility rights-of -way, roadsides, railroads, and other public areas and similar industrial and non-food crop areas. It is also registered for lawn renovation uses.

In a pharmacokinetics study with dermal application in rats radioactive glufosinate ammonium was used at levels of 0.1, 1.0, or 10.0 mg/rat on 6 cm square of shaved skin and exposed for 0.5, 1, 2, 4, 10, 24, or 168 hrs. At the low dose (0.1 mg), 42.5 to 50.8% of the applied radioactivity was absorbed whereas at the high dose (10.0 mg) 26% was absorbed. After removal and washing of the treated skin a substantial amount of the radioactivity still remained in the skin. and it was gradually absorbed and eliminated. Radioactivity was found in both feces and urine samples, but the majority of glufosinate ammonium was eliminated in the urine. In all organs/tissues examined, radioactivity was found to reach a maximum level either at 4 or 10 hours after exposure. Subsequently, the radioactivity dropped rapidly. The amount of radioactivity found in the brain was minimal relative to that of kidneys and liver. Based on this study, a 50% dermal absorption factor was determined based on the range of 42.5% to 50.8% of radioactivity absorbed at 0.10 mg/kg.

i. *Acute exposure and risk.* There are no acute non-dietary exposure scenarios.

ii. *Chronic exposure and risk.* There are no chronic non-dietary exposure scenarios.

iii. *Short- and intermediate-term exposure and risk.* It is not appropriate to aggregate short- and intermediate-term non-dietary exposure with dietary exposures in this risk assessment because the end-points are different.

iv. *Cumulative exposure to substances with common mechanism of toxicity.* Section 408(b)(2)(D)(v) requires that, when considering whether to establish, modify, or revoke a tolerance, the Agency consider "available information" concerning the cumulative effects of a particular pesticide's residues and "other substances that have a common mechanism of toxicity."

EPA does not have, at this time, available data to determine whether glufosinate ammonium has a common mechanism of toxicity with other substances or how to include this pesticide in a cumulative risk assessment. Unlike other pesticides for which EPA has followed a cumulative risk approach based on a common mechanism of toxicity, glufosinate ammonium does not appear to produce a toxic metabolite produced by other substances. For the purposes of this tolerance action, therefore, EPA has not assumed that glufosinate ammonium has a common mechanism of toxicity with other substances. For information regarding EPA's efforts to determine which chemicals have a common mechanism of toxicity and to evaluate the cumulative effects of such chemicals, see the final rule for Bifenthrin Pesticide Tolerances (62 FR 62961, November 26, 1997).

D. Aggregate Risks and Determination of Safety for U.S. Population

1. *Acute risk.* The acute dietary exposure analysis assumed tolerance level residues and 100% crop treated for all commodities derived from glufosinate ammonium treated crops. For the most highly exposed subgroup among females 13+ (nursing females), 58% of the aPAD is occupied by dietary (food) exposure, an acute RfD was not established for the general population including infants and children. The estimated glufosinate ammonium concentration in surface and ground water are less than EPA's DWLOC (for all population subgroups). Acute aggregate exposure to glufosinate ammonium and related metabolites, as a result of all registered and proposed uses, is below EPA's level of concern.

2. *Chronic risk.* There are no chronic non-dietary exposure scenarios. Therefore, only food and water are included in the chronic aggregate risk. The chronic dietary exposure analysis assumed tolerance level residues for all commodities derived from the crop use of glufosinate ammonium and incorporated the weighted average percent crop treated for all commodities derived from glufosinate ammonium treated crops, except for sweet corn, registered under section 18 of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), as amended. For the most highly exposed subgroup (children, 1–6 years), 71% of the cPAD is occupied by dietary (food) exposure. The estimated glufosinate ammonium concentrations in surface and ground water are less than EPA's DWLOC for all population subgroups. Chronic

aggregate exposure to glufosinate ammonium as a result of all registered and proposed uses is below EPA's level of concern. EPA generally has no concern for exposures below 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a life time will not pose appreciable risks to human health. Despite the potential for chronic exposure to glufosinate ammonium in drinking water, after calculating a DWLOC (236 ppb) for the U.S. population and comparing it to conservative model estimates of concentrations of glufosinate ammonium in surface and ground water (59.43 ppb and 1.16 ppb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

3. *Short- and intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential exposure. There are registered residential uses for glufosinate ammonium. The potential dermal exposures were not aggregated because the toxic effects for short- and intermediate-term exposure (neurological clinical signs) and chronic exposure (increases in absolute and relative kidney weights) are different.

4. *Aggregate cancer risk for U.S. population.* There is no cancer concern based on negative results observed in three guideline studies available for the carcinogenicity screen: a chronic feeding study in rats, a carcinogenicity study in rats and a carcinogenicity study in mice, each described under the "Toxicology Profile", Unit III.A. of this preamble. Glufosinate ammonium has been classified as a "not likely" carcinogen according to the EPA Proposed Guidelines for Carcinogn Risk Assessment. Therefore, a cancer risk assessment was not necessary.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result from aggregate exposure to glufosinate ammonium residues.

E. Aggregate Risks and Determination of Safety for Infants and Children

1. *Safety factor for infants and children—i. In general.* In assessing the potential for additional sensitivity of infants and children to residues of glufosinate ammonium, EPA considered data from developmental toxicity studies in the rat and rabbit and a 2-generation reproduction study in the rat. The developmental toxicity studies are designed to evaluate adverse effects on the developing organism resulting from maternal pesticide exposure during gestation. Reproduction studies provide information relating to effects from exposure to the pesticide on the reproductive capability of mating animals, and data on systemic toxicity.

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for pre- and post-natal toxicity and the completeness of the data base unless EPA determines that a different margin of safety will be safe for infants and children. Margins of safety are incorporated into EPA risk assessments either directly through use of a margin of exposure (MOE) analysis or through using uncertainty (safety) factors in calculating a dose level that poses no appreciable risk to humans. EPA believes that reliable data support using the standard uncertainty factor (usually 100 for combined inter- and intra-species variability) and not the additional tenfold MOE/uncertainty factor when EPA has a complete data base under existing guidelines and when the severity of the effect in infants or children or the potency or unusual toxic properties of a compound do not raise concerns regarding the adequacy of the standard MOE/safety factor.

ii. *Developmental toxicity studies.* Two studies were described in the Toxicology Profile, Unit III.A.8. and 9. of this preamble.

iii. *Reproductive toxicity study.* A reproductive toxicity study was described in the Toxicology Profile, Unit III.A.10. of this preamble.

iv. *Pre- and post-natal sensitivity.* The toxicological data base for evaluating prenatal and postnatal toxicity for glufosinate ammonium is complete with respect to current data requirements. There are no prenatal or postnatal susceptibility concerns for infants and children, based on the results of the rat and rabbit developmental toxicity studies and the 2-generation reproduction study.

v. *Other studies.* Based on clinical signs of neurological toxicity in short- and intermediate-dermal toxicity studies with rats, EPA has determined that an added FQPA safety factor of 3x is appropriate for the risk assessment for the tolerances in the commodities listed in this Final Rule. The FQPA safety factor of 10x was reduced to 3x because there were no qualitative or quantitative indications of increased susceptibility in the prenatal developmental toxicities in rats and rabbits, or in the two-generation reproductive studies in rats with the parent compound, the isomer or metabolites of concern.

vi. *Conclusion.* There is a complete toxicity database for glufosinate ammonium, and exposure data is complete or is estimated based on data that reasonably accounts for potential exposures.

2. *Acute risk.* The acute dietary exposure analysis assumed tolerance level residues and 100% crop treated for all registered and proposed commodities. For the most highly exposed subgroup among females 13–50 (nursing females), 58% of the aPAD is occupied by dietary (food) exposure (no acute RfD was established for the general population including infants and children). The estimated glufosinate ammonium concentration in surface and ground water are less than EPA's DWLOC (for all population subgroups). Acute aggregate exposure to glufosinate ammonium and related metabolites, as a result of all registered and proposed uses, is below EPA's level of concern.

3. *Chronic risk.* Based on exposure assumptions described above, EPA has concluded that aggregate exposure to glufosinate ammonium from food will utilize 71% of the cPAD for children 1–6 years of age, the most highly exposed subgroup. EPA generally has no concern for exposures blow 100% of the cPAD because the cPAD represents the level at or below which daily aggregate dietary exposure over a lifetime will not pose appreciable risks to human health. Despite the potential for chronic exposure to glufosinate ammonium in drinking water, after calculating a DWLOC (64 ppb) for non-nursing infants and comparing it to conservative model estimates of concentrations of glufosinate ammonium in surface and ground water (59.43 ppb and 11.16 ppb, respectively), EPA does not expect the aggregate exposure to exceed 100% of the cPAD.

4. *Short- or intermediate-term risk.* Short- and intermediate-term aggregate exposure takes into account chronic dietary food and water (considered to be a background exposure level) plus indoor and outdoor residential uses. There are registered residential uses for glufosinate ammonium, however, the potential dermal exposures were not aggregated because the toxic effects for short- and intermediate-term exposure (neurological clinical signs) and chronic exposure (increases in absolute and relative kidney weights) are different.

5. *Determination of safety.* Based on these risk assessments, EPA concludes that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to residues of glufosinate ammonium residues.

F. Metabolism in Plants and Animals

1. *Plants.* The nature of the residues of glufosinate ammonium is considered to be understood. The Agency has concluded that the residues of concern are glufosinate ammonium and its metabolites 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid expressed as glufosinate ammonium free acid equivalents.

2. *Animals.* A rat metabolism study with dermal application indicated that about 50% of the given radioactivity was absorbed 48 hours after a single dose application. In other metabolism studies, it was shown that over 80% of administered radioactivity is excreted within 24 to 48 hours as the parent compound in the feces and kidneys. Highest tissue levels were found in liver, kidney and gonads. The nature of glufosinate ammonium residues in lactating goats and hens is considered to be understood. Glufosinate ammonium and its metabolite (3-methylphosphinico propionic acid) are largely excreted and do not accumulate too any great degree in animal tissues. The only identifiable compounds in feces, urine, milk, eggs and tissues were the parent and 3-methylphosphinico propionic acid. EPA has concluded that the residues of concern in commodities derived from ruminants and poultry are glufosinate ammonium and its metabolite 3-methylphospinico propionic acid, expressed as glufosinate ammonium free acid equivalents.

G. Analytical Enforcement Methodology

In Pesticide Analytical Manual II (PAM II), method HRAV–5A describes an adequate analytical method for determining residues of glufosinate ammonium and its metabolite 3-methylphosphinico propionic acid in or on apples, bananas, grape, potatoes and tree nuts. In PAM II, method HRAV–12, is an adequate method for determining residues of glufosinate ammonium and its metabolite 3-methylphosphinico-propionic acid in or on milk, eggs and tissues of ruminants and poultry. Method BK/01/99 is an adequate method for determining residues of glufosinate ammonium and its metabolites in or on commodities derived from transgenic canola, transgenic field corn, transgenic soybeans and transgenic sugar beets. This method detects and measures total residues of parent and metabolites and allows detection and measurement of parent compound residues separately from residues of the metabolites. Final determination is made by gas chromatography with flame photometric detection (GC/FPD) operating in the phosphorus selective mode (p-mode). Residues are expressed as glufosinate ammonium free acid equivalents.

Adequate enforcement methodology (gas chromatography with mass spectrophotometry) is available to enforce the tolerances for commodities derived from transgenic canola and transgenic sugar beets. These methods may be requested from: Calvin Furlow, PRRIB, IRSD (7502C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; telephone number: (703) 305–5229; e-mail address: furlow.calvin@epa.gov.

H. Magnitude of Residues

The residues established by this regulation are qualified and quantified in Unit IV. of this preamble.

I. International Residue Limits

The Codex Alimentarius Commission has established maximum residue limits (CODEX MRLs) for the combined residues of glufosinate ammonium and metabolites 3-methylphosphinico-propionic acid and, when used in culture of genetically modified glufosinate ammonium tolerant crops, *N*-acetyl glufosinate (2-acetamido-4-methylphosphinico-butanoic acid) expressed as glufosinate free acid equivalents. A CODEX MRL is established in or on rape seed (canola seed) at 5 ppm. Canada has established a maximum residue limit (MRL) for the combined residues of glufosinate ammonium and 3-methylphosphinico-propionic acid in/on canola seed at 3.0 ppm. Because the CODEX and Canadian MRLs for canola seed are significantly greater than the appropriate U.S. tolerance for canola seed established by this Final Rule, and because there are no MRLs for canola meal harmonization is not possible. CODEX MRLs are established in or on sugar beets at 0.05 ppm and sugar beet leaves or tops at 0.1 ppm. There is no CODEX MRL for sugar beet molasses and there are no Canadian MRLs for sugar beet commodities. Because the appropriate tolerances for sugar beet roots and tops (leaves) established by this Final Rule are greater than the CODEX MRLs and there is no CODEX MRL for molasses, harmonization is also not possible. As this Rule establishes tolerances for transgenic canola and transgenic sugar beet commodities and includes the metabolite 2-acetamido-4-methylphosphinico-butanoic acid expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid equivalents, harmonization is also not possible. These differences in residues are due to differences in the use-patterns represented in the data bases used in establishing these different levels of residues found in the raw agricultural commodities derived from transgenic canola and transgenic sugar beets, cultured with the use of glufosinate ammonium as a herbicide for weed control.

IV. Conclusion

Therefore, permanent tolerances are established for combined residues of glufosinate ammonium and its metabolites in or on transgenic canola meal at 1.1 ppm, transgenic canola seed at 0.4 ppm, transgenic sugar beet tops (leaves) at 1.5 ppm, transgenic sugar beet root at 0.9 ppm and transgenic sugar beet molasses at 5.0 ppm.

V. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. The EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–300986 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before May 30, 2000.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any

evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit V.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–300986, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 file format or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

VI. Regulatory Assessment Requirements

This final rule establishes a tolerance under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled Consultation and Coordination with Indian Tribal Governments (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerance in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

VII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 17, 2000

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), (346a), and 371.

2. In § 180.473 by revising paragraph (a)(2) and by removing and reserving paragraph (b) to read as follows:

§ 180.473 Glufosinate ammonium; tolerances for residues.

(a) * * *

(2) Tolerances are established for the combined residues of glufosinate ammonium (butanoic acid, 2-ammino-4-(hydroxymethylphosphinyl)-monoammonium salt) and its metabolites, 2-acetamido-4-methylphosphinico-butanoic acid and 3-methylphosphinico-propionic acid, expressed as 2-amino-4-(hydroxymethylphosphinyl) butanoic acid equivalents, in or on the following food commodities derived from transgenic canola, transgenic field corn, transgenic soybeans and transgenic sugar beets that are tolerant to the herbicide glufosinate ammonium as follows:

Commodity	Parts per million
Aspirated grain fractions	25.0
Canola meal	1.1
Canola seed	0.4
Corn, field, forage	4.0
Corn, field, grain	0.2
Corn, field, stover	6.0
Soybean hulls	5.0
Soybeans	2.0
Sugar beet, molasses	5.0
Sugar beet, roots	0.9
Sugar beet, tops (leaves)	1.5

(b) *Section 18 emergency exemptions.* [Reserved]

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[FR Doc. 00–8000 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–585; MM Docket No. 99–280; RM–9672]

Radio Broadcasting Services; Elaine, AR

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 238A to Elaine, Arkansas, as that community's first local aural transmission service in response to a petition for rule making filed on behalf of Phillips County Broadcasting. *See* 64 FR 51285, September 22, 1999. Coordinates used for Channel 238A at Elaine, Arkansas, are 34–22–52 NL and 90–45–56 WL. With this action, the proceeding is terminated.

DATES: Effective May 1, 2000. A filing window for Channel 238A at Elaine, Arkansas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–280, adopted March 8, 2000, and released March 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Arkansas, is amended by adding Elaine, Channel 238A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7827 Filed 3–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–585; MM Docket No. 99–281; RM–9684]

Radio Broadcasting Services; Ringgold, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 253C3 to Ringgold, Louisiana, as that community's first local aural transmission service in response to a petition for rule making filed on behalf of Black Lake Broadcasting. *See* 64 FR 51285, September 22, 1999. Coordinates used for Channel 253C3 at Ringgold, Louisiana, are 32–19–49 NL and 93–12–33 WL. With this action, the proceeding is terminated.

DATES: Effective May 1, 2000. A filing window for Channel 253C3 at Ringgold, Louisiana, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–281, adopted March 8, 2000, and released March 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Louisiana, is amended by adding Ringgold, Channel 253C3.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7826 Filed 3–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–585; MM Docket No. 99–283; RM–9711]

Radio Broadcasting Services; Hays, KS

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 289C2 to Hays, Kansas, as that community's third local FM transmission service in response to a petition for rule making filed on behalf of Gatoradio Media Group, Inc. See 64 FR 51286, September 22, 1999. Coordinates used for Channel 289C2 at Hays, Kansas, are 38–57–15 NL and 99–26–43 WL. With this action, the proceeding is terminated.

DATES: Effective May 1, 2000. A filing window for Channel 289C2 at Hays, Kansas, will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent Order.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–283, adopted March 8, 2000, and released March 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Kansas, is amended by adding Channel 289C2 at Hays.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7824 Filed 3–30–00; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 572

[Docket No. NHTSA–00–7052]

RIN 2127–AG78

Anthropomorphic Test Devices; 12-Month-Old Child Dummy

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document adopts design and performance specifications for a new 12-month-old infant dummy. The new dummy is especially needed to evaluate the effects of air bag deployment on children who are in rear-facing child restraints installed in the front passenger seat of vehicles. It will also provide greater and more useful information in a variety of crash environments to evaluate child safety. Adopting the dummy is a step toward using it in the tests we conduct to determine compliance with our safety standards. The use of the dummy in our compliance tests is being addressed in separate rulemaking proceedings.

DATES: The amendment is effective on May 30, 2000. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 30, 2000.

Petitions for reconsideration of the final rule must be received by May 15, 2000.

ADDRESSES: Petitions for reconsideration should refer to the docket number and notice number of the notice and be submitted to: Administrator, room 5220, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For nonlegal issues: Stan Backaitis, Office of Crashworthiness Standards (telephone: 202–366–4912). For legal issues: Deirdre R. Fujita, Office of the Chief Counsel (202–366–2992). Both can be reached at the National Highway Traffic Safety Administration, 400 Seventh St., S.W., Washington, D.C., 20590.

SUPPLEMENTARY INFORMATION: This document amends our regulation for Anthropomorphic Test Devices (49 CFR Part 572) by adding Subpart R, containing specifications for a new, more advanced 12-month-old infant test dummy. The new dummy is more representative of humans than the dummies representing younger infants in Part 572, and allows the assessment of the potential for more types of injuries in automotive crashes. The new dummy can be used to evaluate the effects of air bag deployment on children in rear-facing child restraints and potentially on out-of-position children, and can provide a fuller evaluation of the performance of child restraint systems in protecting young children.

NHTSA has already specified a number of child test dummies in Part 572, including dummies representing a newborn, a 6-month-old and a 9-month-old child (subparts K, D and J, respectively). The dummies have been used to test child restraint systems to the requirements of Federal Motor Vehicle Safety Standard No. 213 (49 CFR 571.213). These test devices enable NHTSA to evaluate motor vehicle safety systems dynamically, in a manner that is both measurable and repeatable.

Today's final rule is part of NHTSA's effort to add to and improve the child dummies specified in Part 572. We recently amended Part 572 to add new, more advanced, Hybrid III-type test dummies representing a 6-year-old and a 3-year-old child. Together with the dummy adopted today, the new child test dummies will be used in tests we are specifying in our occupant crash protection standard (49 CFR 571.208) to assess the risks of air bag deployment for children, particularly unrestrained, improperly restrained, and improperly located children. The new child test dummies may also be incorporated into Standard No. 213 (49 CFR 571.213) for use in compliance testing of child restraint systems. Today's final rule only concerns adding the new 12-month-old dummy to Part 572. Issues relating to whether this and the other new dummies should be incorporated into the compliance tests for the motor vehicle safety standards are being addressed in separate rulemaking actions.

Summary of Final Rule

The 12-month-old dummy was developed as a child restraint air bag interaction dummy (hereinafter referred to as the CRABI 12 dummy). Its specifications consist of a drawing package that shows the component parts, the subassemblies, and the assembly of the complete dummy. It also defines materials and material treatment processes for all the dummy's component parts, and specifies the dummy's instrumentation and instrument installation methods. In addition, there is a manual containing disassembly, inspection, and assembly procedures, and a dummy drawings list. These drawings and specifications ensure that the dummies will vary little from each other in their construction and are capable of consistent and repeatable responses in the impact environment. The parts list and drawings are available for inspection in NHTSA's docket (room 5108, 400 Seventh St., S.W., Washington, D.C. 20590, telephone (202) 366–4949). (We are using NHTSA's docket because the drawings cannot be electronically scanned into the DOT Docket Management System.) Copies may also be obtained from Reprographic Technologies, 9000 Virginia Manor Road, Beltsville, MD 20705; Telephone: (301) 210–5600.

In addition to the drawings and specifications, we are establishing impact performance criteria for the CRABI 12 dummy. These criteria will serve as calibration checks and further assure the kinematic uniformity of the dummy and the absence of structural damage and functional deficiency from previous use. The criteria address head, neck, and thorax impact responses. This rule does not adopt the torso flexion requirements that we had proposed.

We have adopted generic specifications for all of the dummy-based sensors. For dummies incorporated into Part 572 in years past, the agency specified sensors by make and model. However, we believe that approach is unnecessarily restrictive and limits innovation and competition. Accordingly, consistent with the new approach taken for the sensors for the new Hybrid III-type 3-year-old, 6-year-old child and 5th percentile female adult dummies, we are adopting generic specifications for the sensors. These generic specifications reflect performance characteristics of sensors used in our evaluation tests of the dummy, which are identified by make and model in a NHTSA technical report "Development and Evaluation of the CRABI 12-month-old Infant Dummy." A copy of this report is in the docket for the notice of proposed rulemaking that we published for this final rule (Docket No. 99–5156). Those sensor characteristics were also the basis for our discussions with a special task force of the SAE J211 Instrumentation Committee concerning the dummy.

Background

Air bag fatalities of children have raised serious concerns about how best to evaluate the safety of children in a variety of crash environments. We have been working with the automotive industry to assure greater safety in motor vehicles through the development, evaluation and application of significantly improved occupant protection technologies. As part of our overall program to achieve greater safety, we have sought to evaluate, for possible inclusion into our safety standards, new and improved test devices to evaluate the relationship between observed injuries and the forces causing them. One of the new test devices is a 12-month-old infant dummy.

The dummy was developed through the efforts of the Society of Automotive Engineers (SAE) Child Restraint Air Bag Interaction (CRABI) Task Force. The CRABI Task Force had determined that a new infant dummy was needed for testing and evaluating the effects of child restraints and air bags, as well as their interaction, on infants. The new dummy had to be capable of evaluating both rear facing and forward facing child restraints, as well as the injury potential of air bags on out-of-position children.

The SAE subsequently developed a 12-month-old infant dummy. The dummy's initial configuration and biomechanical response corridors were based on anthropometry and mass distribution of 12-month-old infants and on scaling techniques from the larger size Hybrid III-type dummies. The scaling reflected differences in geometry and dimensional characteristics of particular body segments and their elastic properties. Our initial evaluation of the dummy in 1996 revealed some structural and performance deficiencies which the SAE later remedied with substantial modifications to the dummy. The dummy continued to be modified until September 1998.

In the latter part of 1998, based on the results of an agency test program evaluating the 12-month-old dummy, we tentatively concluded that the dummy was ready for incorporation into Part 572. On March 8, 1999, we published an NPRM proposing to incorporate the CRABI 12 dummy into Part 572 as Subpart R, and invited comments (64 FR 10965)(Docket NHTSA–99–5156). The original 45-day comment period was extended on April 22, 1999, to June 22, 1999 (64 FR 19742), in response to a request for an extension of the comment period.

Comments on the NPRM

We received comments from seven organizations and one individual: Robert A. Denton, Inc. (Denton), TRW Vehicle Safety Systems Inc. (TRW), Advocates for Highway and Auto Safety (Advocates), Toyota Technical Center, USA, Inc. (Toyota), Transportation Research Center, Inc. (TRC), the Alliance of Automobile Manufacturers (Alliance), the SAE Dummy Testing Equipment Subcommittee (DTES), and Gelsys Perez, a private citizen. General Motors (GM) submitted test data to the docket for this rulemaking on January 25, 2000.

Advocates and Gelsys Perez expressly supported the incorporation of the CRABI 12 dummy into our regulations. The Alliance, Toyota, and Denton (a manufacturer of load cells used in crash dummies) generally supported the proposal with technical comments to correct or clarify various specifications in the regulatory text proposed for the dummy. TRC and TRW commented on technical aspects of the proposal. GM submitted neck calibration test data to supplement data provided by the Alliance. In general, the comments addressed the following issues: calibration requirements and procedures, instrumentation specifications, dimensional changes to dummy drawings, and the dummy's user's manual.

In addition to comments on specific aspects of the proposal, TRW suggested that it is premature for the agency to proceed with rulemaking and suggested "a delay of at least 12 months to allow the industry time to test the dummy * * * to assess the appropriateness of the dummy as a compliance tool." TRW believes that the industry has had insufficient time to test the CRABI 12 to ascertain performance and reliability

due to the unavailability of the latest dummy configuration from the manufacturer. The commenter contends that it has been unable to test the dummy under the requirements proposed in the agency's advanced air bag rulemaking (Docket NHTSA 98–4405, Notice 1) and therefore cannot make judgments as to the suitability of the CRABI 12 dummy for these test conditions.

We do not agree that this rulemaking should be delayed a year. Since the issuance of the NPRM, TRW has had sufficient time to procure a dummy and conduct enough tests to assess the dummy's appropriateness as a compliance tool. The dummy specified today differs very little from the dummy specified in the NPRM. There has been an ample supply of the dummy for parties to test and a sufficient amount of time to test. Since publication of the NPRM, GM has tested two dummies and has submitted its data to the docket (see 99–5156–14). Delaying this rulemaking would postpone use of the dummy in our compliance tests evaluating the injury causing potential of air bags on infants. Because the dummy has been shown to be a reliable test instrument time after time in rigorous testing, as discussed in a technical report cited in the NPRM,[1] we believe that delays in using the dummy for evaluating the safety of air bags cannot be justified.

Calibration Requirements and Procedures

Head

To calibrate the dummy's head, the agency proposed requirements for the head's response in drops onto the forehead and onto the rear of the head (§ 572.152). The head response on the forehead was proposed to be unimodal (*i.e.*, consisting of an acceleration-time curve which has only one prominent peak) and not less than 100 g or more than 120 g; the response on the back of the head was proposed to be not less than 55 g or not more than 71 g. The regulatory text proposed for the CRABI 12 dummy stated that the resultant acceleration versus time history curve shall be unimodal, and the oscillations occurring after the main pulse must be less than 10 percent of the peak resultant acceleration.

In its comments, TRW states that results from head drop tests indicate that a 10 percent limit on subsequent peaks after the first peak resultant acceleration is not sufficient for the dummy. TRW believes that none of the data presented by the agency, except for one rear impact test, met the 10 percent oscillation limit of the peak resultant head acceleration. The commenter suggests that a 15 to 20 percent oscillation limit of subsequent peaks would be more appropriate.

Similarly, TRC (a test facility that uses and calibrates test dummies) notes that the oscillation requirement should be changed because the 10 percent-of-peak definition does not fit the data beyond the primary peak. The commenter further states that truncating the time frame does not seem advisable. The commenter provided test data consisting of two head drop resultant acceleration plots, one front and one rear, that illustrate typical curves which have second or third peaks exceeding 10 percent of the first peak. The commenter states that the DTES has determined that 17 percent for front and 16 percent for rear would be more appropriate and suggests changing the requirement to reflect these values.

The Alliance also believes that the 10 percent limit on subsequent oscillations cannot be met. The commenter suggests that a limit of 20 percent is appropriate.

We agree that the 10 percent oscillation limit should be widened for this dummy. We proposed the 10 percent unimodal requirement based on our experience with dummies having metallic skulls. However, the CRABI 12 dummy's head has a non-metallic skull which responds in drop tests with a lower natural frequency and with less structural damping than heads with aluminum skulls,[2] which makes it more difficult to meet the 10 percent limit on oscillatory responses. Upon reevaluation of our test data, we agree that oscillatory head accelerations following the primary response peak could be as high as 14.5 percent in frontal impacts and 13.6 percent in rear impacts, as compared to an aluminum skull (with a vinyl skin cover) at less than 10 percent. Considering the head drop test data on a statistical basis, values of subsequent accelerations at 2 standard deviations (s.d.) could result in oscillation peaks as high as 16.4 percent in frontal impacts and 15.4 percent in rear impacts. Accordingly, this final rule specifies that for both frontal and rear head drop tests, oscillations occurring after the main pulse must be less than 17 percent of the peak resultant acceleration.

The regulatory text proposed for the CRABI 12 dummy specifies in section 572.152(c)(5) a two-hour wait between successive tests on the same head. TRC suggests that the waiting period should be changed to apply only to successive tests on the same side of the head (front or rear). We agree that the two-hour waiting time need apply to only head drops on the same side. The skin on the head needs a recovery period between tests, but a recovery time is not needed if the test is conducted on the opposite sides of the head. Thus, to allow testing of the head to proceed more expeditiously, this rule specifies that the two-hour waiting period applies to successive tests of the head assembly "at the same impact point."

Neck Flexion and Extension

For calibration, the agency proposed a pendulum mounted headform-neck assembly impact test and corresponding neck flexion and extension performance requirements (§ 572.153).

Neck Flexion Calibration Requirements

For flexion, the regulatory text proposed for the CRABI 12 dummy stated that:

(1) plane D of the headform must rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline not less than 75 degrees and not more than 89 degrees occurring between 42 milliseconds (ms) and 56 ms from time zero; (2) the peak moment about the occipital condyles must not be less than 37 Newton meters (N-m) and not more than 45 N-m occurring within the minimum and maximum rotation interval; and (3) the positive moment shall decay for the first time to 5 N-m in the time frame between 60 ms and 80 ms.

TRW, TRC and the Alliance suggest that according to DTES-compiled data, some of the proposed calibration corridors need to be adjusted to incorporate a larger sampling of tested necks. The commenters recommend the following adjustments: Maximum rotation between 75 and 86 degrees; time at peak rotation between 49 and 57 ms; peak moment during the specified rotation interval not less than 34 and not more than 47 Nm; and moment decay time to 5 N-m (from time zero) not less than 66 and not more than 78 ms. The commenters state that these corridors are based on the statistical average of the DTES data ± two standard deviations.

Maximum rotation. We are lowering the upper limit of the headform peak rotation corridor by three degrees from the proposal of 89 degrees to 86 degrees while retaining the lower limit at 75 degrees. The suggested narrower rotation range is based on a statistical analysis of a much larger data base than that available to the agency at the time the NPRM was published and thus is likely to be more representative of actual performance. Further, it limits variability to approximately 7 percent which is in the "good" performance range. It also is in agreement with the range proposed by the commenters.

Time at peak rotation. The regulatory text proposed for the CRABI 12 dummy specified headform rotation versus time requirements in § 572.153(b)(1)(i) that were identical in concept to the requirements for the 3-year-old child dummy specified in Subpart C of Part 572. TRW, TRC and the Alliance suggested changes to the requirements. Upon further consideration, we have decided to delete the headform rotation versus time requirement altogether. When the Subpart C dummy was added to Part 572 in 1979, a means of measuring bending moments in the neck and combining them with the motion of the head was not available. However, in 1991 a moment-measuring load cell became available for this dummy. With the availability of a six-axis load cell for the CRABI 12 dummy, it became possible to measure the peak moment and to relate it to the rotation of the headform. This made the headform displacement-rotation versus time requirement redundant. We believe that specifying a minimum-maximum peak moment within a maximum headform rotation window is sufficient to control the dynamic properties of the neck (to control head kinematics), and that headform rotation in time requirement would serve no purpose. Accordingly, this final rule does not adopt the proposed headform rotation versus time requirements.

Peak moment during rotation interval. TRW, TRC and the Alliance suggested that the proposed peak moment of 37–45 N-m within the maximum headform rotation corridor should be revised to a range between 34 and 47 N-m. The commenters indicate that the recommendation of the wider peak moment corridor is based on DTES-compiled data ± 2 s.d. However, they do not indicate if the moments listed by DTES were peak moments at the maximum headform rotation or peak moments within the allowed time corridor. Upon receiving these comments, we reviewed the DTES reported data summary in Attachment 11 of the DTES meeting minutes of April 14, 1999 (a copy of which is in the docket for the NPRM, Docket 99–5156). The data indicate that the average performance for 23 necks was 40.19 N-m ± a 2.31 s.d., leading to a response range of 35.56 N-m to 44.81 N-m. It is accepted practice in the biomechanics community to judge the adequacy of a component's variability in subsystems tests as 0–5% being in the excellent range, 5–8% good, 8–10% marginally acceptable and above 10% not acceptable. Using the 10% value as the maximum allowable variability and rounding the values to the lowest and the highest next numbers, we believe that the existing data support neck performance at 36 N-m at the lower limit and 45 N-m at the upper limit. We are accordingly specifying that range.

Moment decay time to 5 N-m (from time zero). TRW, TRC and the Alliance suggested reducing the time corridor for the positive moment decay at the first 5 N-m from the proposed range of 60–80 ms to 66–78 ms. While these test value recommendations are supported by the test data, we believe the data sample is still too small to justify the adoption of narrower corridor limits. Also, we do not know how narrowing the corridor might affect the rejection rate of manufactured necks. Further, we see no evidence that narrowing the corridor would lead to better performing necks. Accordingly, we are adopting the time duration for moment decay as proposed in the NPRM.

TRC suggested that the requirements be clarified to specify that the peak moment occurs during the time the angle is between the "passing" head displacement-rotation limits, rather than time limits. The commenter also suggested it would be clearer to specify that the moment of interest is not the Y-axis moment which reads directly from the load cell, but is a calculated moment reflecting its correction to the occipital condyle. TRC suggested including the actual equation for moment calculation.

The regulatory text proposed for the CRABI 12 dummy specifies in section 572.153(b)(1)(ii) that the moment is to be calculated about the occipital condyle. While the proposed regulatory text does not expressly provide the equation to be used, the proposed text incorporates by reference SAE J1733 "Sign Convention for Vehicle Crash Testing," which includes the equation for moment calculation. The document also defines the proper polarities of the signal measured in a crash test which are critical to the calculation of the moment about the occipital condyle. Nonetheless, because the regulatory text for the Hybrid III-type 6-year-old child and 5th percentile female adult dummies include an equation for moment calculation, we have added the equation to the text for the CRABI 12 dummy. Accordingly this final rule adopts the following language in new § 572.153(b)(1)(iii): "The moment shall be calculated by the following formula: Moment (Nm) = My – (0.005842m)×(Fx), where My is the moment about the y-axis, Fx is the shear force measured by the neck transducer (drawing SA572–S23) and 0.005842m is the distance from the point at which the load cell measures the force to the occipital condyle."

Neck Extension Calibration Requirements

For extension, the regulatory text proposed for the CRABI 12 dummy specified that: (1) Plane D of the head must rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline not less than 78 degrees and not more than 90 degrees occurring between 58 ms and 66 ms from time zero; (2) the peak negative moment about the occipital condyles must have a value not more than −11 N-m and not less than −23 N-m occurring within the minimum and maximum rotation interval; the negative moment shall decay for the first time to −5 N-m in the time frame between 78 and 90 ms after time zero.

TRW, TRC and the Alliance, referring to DTES data, indicate that some of the calibration corridors need to be adjusted to reflect a larger sampling of tested necks. These commenters believe that the neck extension calibration corridors be based on DTES-developed values as follows: Maximum rotation should be 81–92 degrees; time at peak rotation should be 67–78 ms; peak moment during the specified rotation interval should be −12 to −23 Nm; and moment decay time to −5 N-m (from time zero) should be 76–84 ms. The commenters state that these corridors are based on the statistical average of the DTES data ±2 s.d.

Maximum rotation. The three commenters recommended adjusting the headform peak rotation corridor from the proposed 78–90 degree range to 81–92 degrees. Our review of the furnished additional data support an upward shift of the proposed range. However, the data also show that the lower limit should be set at 80 degrees rather than at 81 degrees. Setting the limit at 81 degrees would fail a greater number of necks, even though those necks would be considered satisfactory on a statistical basis. Accordingly, the new rotation corridor is set at 80–92 degrees.

Time at peak rotation. The regulatory text proposed for the CRABI 12 dummy specified headform extension rotation versus time requirements in

[1] "Development and Evaluation of the CRABI 12-Month-Old Infant Crash Test Dummy (January, 1999 version)."

[2] We do not believe the lower natural frequency of this dummy's head has any significant consequences on the test results, unless the dummy's head was going to impact rigid objects. Test results in a variety of child restraints with and without head impact as well as in air bag out-of-position deployments did not indicate any resonance-associated problems that would have affected the impact measurements.

§ 572.153(b)(2)(i) that were identical in concept to the requirements for the 3-year-old child dummy specified in Subpart C of Part 572. As discussed in the previous section on neck flexion requirements, we believe that specifying a minimum-maximum peak moment within a maximum headform rotation window is sufficient to control the dynamic properties of the neck (to control of head kinematics) without the need to establish redundant specifications for headform rotation versus time. Accordingly, this final rule does not adopt the proposed headform rotation versus time requirements.

Peak moment during rotation interval. The three commenters suggested that the NPRM's proposed peak moment of −11(−)−23 N-m within the maximum headform rotation corridor should be revised to −12(−)−23 N-m. Based on our analysis of all of the available test data, we agree with the suggestion to reduce the width of the peak moment corridor, and accordingly adopt acorridor of −12(−)−23 N-m.

Moment decay time to 5 N-m (from time zero). TRW, TRC and the Alliance suggested that we reduce the time corridor for the negative moment decay at the first −5 N-m from 78–90 ms to 76–84 ms. We agree that the data show that the lower limit of the time corridor should be lowered to 76 ms. However, we see no benefit in narrowing its range. Narrowing the range would fail a greater number of necks, even though those necks perform satisfactorily in all other respects. The commenters have not provided nor do we have any evidence that a narrower corridor at 76–84 ms would lead to better performing necks. Accordingly, this final rule reduces the lower limit to 76 ms while retaining the upper time limit at 90 ms.

In response to TRC's comment, as we did with regard to the neck flexion requirements, this final rule adopts new section 572.153(b)(2)(iii) to set forth the equation for calculating the moment. The reason for adding the equation is to clarify how the moment is calculated.

Issues Relating to Neck-Headform Test Procedure

The proposed regulatory text for the CRABI 12 dummy stated in § 572.153(c)(4)(i) that "Time zero is defined as the time of initial contact between the pendulum striker plate and the honeycomb material. The pendulum accelerometer data channel should be at the zero level at this time."

Toyota suggests that all data channels for the neck extension and flexion tests be set at the zero level at time zero, rather than only the pendulum accelerometer data channel, as was done for the Hybrid III-type 6-year-old and 5th percentile adult female dummies. We disagree. The CRABI 12 dummy neck is considerably more flexible than those of the 6-year-old and 5th percentile female adult dummies. As a result, the head-neck complex of the CRABI 12 dummy experiences considerable pre-impact kinematic lag as the pendulum accelerates downward towards the vertical. If all data channels, including rotation and moment channels, were made zero at impact, as Toyota suggests, the pre-impact neck rotation lag would not be accounted for in the total rotation of the neck, which would not be in line with the method by which biomechanical moment-rotation corridors were established.

The neck biomechanical response corridors were based on "flexion" and "extension" kinematics, or forward and backward bending of the neck from its neutral position, respectively, due to inertial forces of the head. In order to measure true flexion and extension of the dummy during calibration tests, the zero level of the data channels must be established prior to initiation of the drop test, when the longitudinal centerlines of the neck and pendulum are parallel to each other, i.e., when the pendulum hangs down in a vertical position. The pendulum accelerometer data channel, on the other hand, must be zeroed at time zero (the instant the pendulum engages the hexcell) in order to get the correct integrated velocity curve from which the velocity readings are taken at specific time intervals. Accordingly, as proposed in the NPRM, the final rule retains the time zero setting procedure for the pendulum data channel, but not for the neck data channels.

Toyota requested that the regulatory text specify a 30-minute recovery time between successive neck tests. The proposed regulatory text in § S572.156(m) specified a separation of 30 minutes between performance tests of the same component, segment, or assembly, which includes the neck. Accordingly, no change is needed to meet Toyota's concerns and the text is adopted as proposed.

Thorax

For calibration, we proposed a thorax response corridor in terms of peak resistance force exerted by the dummy's sternum on the penetrating impactor. The regulatory text proposed a peak force response corridor between 1600 N and 1700 N.

TRW, TRC and the Alliance believe that there is no need for this test. TRW states that the thorax consists of a rigid steel substructure with a foam pad attached to it. "Since there are no moving parts within the chest area as well as no method by which chest displacement can be measured, a dynamic calibration test would seem inappropriate." TRW suggests that if NHTSA believes that a test is needed to check the foam pad, a standard ASTM compression test would be more appropriate. Further, TRW states that the proposed corridor of 1600 to 1700 N is not accurate because it was developed based on only four tests conducted on a single dummy. TRW's tests of its own dummy found that the average peak resistive force was 1830 N.

TRC states that the dummy was designed with no deflecting rib components and that a "torso impact test when there is no chest deflection to measure gives little data; the compression characteristics of the foam can be determined without a dynamic test or by simply spelling them out as a manufacturer's specification of foam density/compression characteristics." The Alliance states "It is our belief that the performance of the thorax in impact is best assured by specifying the ratio of the reactants for the foam from which the insert is molded, the method used by the manufacturer of the dummy. The foam-in-place reactant ratio is adjusted until a test block of the material exhibits the required compression force-deflection characteristic. The insert is then molded from the same mix of reactants."

We do not agree with the suggestion to abolish the proposed thorax impact response requirement. In each of the Federal motor vehicle safety standards that use test dummies in compliance tests, one of the key injury assessment parameters is the thorax acceleration response. The suggestion that a periodic inspection test can be used in place of the proposed thorax impact test provides no assurance that the available material in conjunction with the supporting thorax structure will be capable of consistent and repeatable impact response. This assurance is particularly needed for thorax impacts because foams degrade with the number of test applications, different loading levels, and time. We do not know of any ASTM load-deflection tests for foams that would consistently correlate with dynamic-impact responses as installed and used on the dummy over time, and no information on that issue has been provided by the commenters. Accordingly, we are adopting a dynamic impact response requirement in the regulatory text for the CRABI 12 dummy.

The Alliance and TRW disagree with the peak force measurements proposed

in the regulatory text for the dummy. The Alliance suggests revising the thorax impact specification from the proposed 1600–1700 N level to 1526–1880 N. While TRW states that it ran impact tests on its own dummy and found the average peak resistance force to be 1830 N, TRW did not provide data to support this claim. Data in the minutes of the DTES meeting of June 2, 1999, provide a compilation of impact test results from three groups of dummies tested at three different facilities. The average response value for those test was 1695 N with a s.d. of 89 N, suggesting a response corridor, based on 2 s.d., between 1517 N and 1872 N. The majority of the data (16 dummies) were from FTSS, and three were from other users.

An indication of what can be expected from a reasonably controlled batch of foams is found in early data from the combined NHTSA and FTSS tests, as reported in DTES minutes of April 14, 1999. NHTSA tested one dummy and FTSS tested three. These tests yielded an average response of 1670 N with a s.d. of 63. Subsequently reported data from General Motors (DTES minutes of June 2, 1999), based on two dummies, yielded an average response 1622 N with an s.d. of 54. The latter two test series suggest corridor widths based on 2 s.d. at 1544–1796 N for the former and 1514–1730 for the latter. Based on these two test series, we believe that with some controls at the dummy manufacturer level, the dummies can meet a response range of 1514–1796 N. This suggested corridor would be larger than that proposed in the regulatory text, but it would reflect a more realistic data base, and it would be in the good to marginal acceptance range at 8.5 percent.

TRC states that the pendulum used in the thorax impact test should be specified in "generic" terms. We agree. In response to similar comments in our rulemakings on the Hybrid III-type 3-year-old, 6-year-old and 5th percentile adult female dummies, we have developed generic impactor specifications for those new dummies. Similar to what we have done with respect to the impactor specifications in those rulemakings, this final rule describes the thorax impactor using generic specifications.

TRC suggests that the positioning of the dummy in the thorax assembly test procedure needs to be modified to match the placement shown in proposed Figure R5. The proposed regulatory text (§ 572.154(c)(3)) stated that the dummy is positioned with fingers barely touching the seating surface plane. However, Figure R5 showed the dummy's fingers as well above the seating surface. We agree that the dummy's arms are too short for the fingers to touch the seating surface plane and have made the necessary corrections to § 572.154(c)(3).

The regulatory text proposed for the CRABI 12 dummy specifies that the dummy is dressed in a light-weight cotton stretch short-sleeve shirt and above-the-knee pants for the thorax impact test (§ 572.154(c)(2)). TRC states that these specifications for the clothing do not match the drawing package for the dummy. The commenter also states that it believes that all tests of the dummy have been run with the dummy in long-sleeved and ankle length clothing. Upon reviewing our testing experience with the dummy, we agree that the clothing that has been used consisted of long-sleeved shirt and long-legged pants. We have revised the paragraph in question to refer to such clothing, and have included a limit on how much the clothing may weigh. That specification more precisely describes the clothing that is used on this dummy.

Torso

The regulatory text proposed for the CRABI 12 dummy specified in § 572.155 the following torso flexion test and performance requirements: (1) When the torso is flexed 45 degrees from vertical, the resistance force must not be less than 90 N and not more than 120 N, and (2) upon removal of the force, the upper torso assembly returns to within 10 degrees of its initial position.

TRW, TRC and the Alliance question the need for this procedure in view of the anticipated use of the CRABI 12 test dummy in compliance tests. These commenters believe that the dummy will likely be used only when restrained in a rear-facing child restraint system, and thus there is no need to determine the flexion articulation between upper and lower halves of the torso assembly. The commenters suggest that periodic inspections would be adequate to assure the dummy's performance instead of a calibration test.

While we agree with the commenters that the dummy in crash tests will likely be restrained in a rear-facing child restraint, we had proposed the torso flexion test primarily to address an overall variability problem. At the time the NPRM was issued, we believed that a dummy's torso flexion stiffness could substantially influence the variability of the dummy's impact response when the dummy's upper torso moved considerably with respect to the lower half of the torso. In response to the comments received on this issue, we conducted additional sled tests in January 2000 and found that the dummy's response variability we had initially observed was caused by insufficient support of the child restraint seat back on the standard seat assembly. Once the child restraint was provided sufficient support, there was a substantial reduction in the dummy's impact response variability. (We have placed a report of this testing in the docket for this final rule.) Accordingly, we agree with the commenters that the torso flexion stiffness test is not needed, and that periodic inspections will be adequate to assure the dummy's structural integrity and performance consistency. Such inspection will be included in the Procedures for Assembly, Disassembly and Inspection (PADI) document (see discussion below on the PADI). Accordingly, we have not adopted the torso flexion requirement as proposed in § 572.155.

Other Issues Relating to Calibration Requirements and Procedures

Post-Test Calibration Requirement

The Alliance suggests that the specifications for the CRABI 12 dummy should include a requirement that the dummy meet calibration specifications following a NHTSA compliance test. The commenter states that Part 572 has such a requirement for dummies adopted in years past, while recent rulemakings on the new Hybrid III-type 3-year-old, 6-year-old, and 5th percentile female adult have not included such a requirement. The Alliance believes that the post-test dummy state of compliance is very important because test results indicating a noncompliance may be dummy-related. Without post-test dummy verification (calibration), the commenter claims, no one can determine with reasonable certainty whether a non-compliance is due to a test dummy anomaly or to the vehicle's safety deficiency.

We disagree. The pre-test calibration should adequately address the suitability of the dummy for testing. We are concerned that the post-test calibration requirement could handicap and delay our ability to resolve a potential vehicle or motor vehicle equipment test failure solely because the post-test dummy might have experienced a component failure and might no longer conform to all of the specifications. On several occasions during the past few years, a dummy has been damaged during a compliance test such that it could not satisfy all of the post-test calibration requirements. Yet the damage to the dummy at the time it occurred did not affect the dummy's

Weight Specifications

Title and Features of the Procedures for

gamma, etc., to assure that

drawings. The specific hole patterns are

ability to accurately measure the performance requirements of the standard. We are also concerned that the interaction between the vehicle or equipment and the dummy could be directly responsible for the dummy's inability to meet calibration requirements. In such an instance, the failure of the test dummy should not preclude the agency from seeking a compliance investigation. Thus, we conclude that a post-calibration requirement would not be in the public interest, since it could impede our proceeding with a compliance investigation in those cases where the test data indicate that the dummy measurements were not markedly affected by the dummy damage or that some aspect of the vehicle or its equipment design were responsible for the dummy failure.

TRC also asks that a provision be added to the test procedure to specify that a light coat of talcum powder is applied to the headform skin to reduce the tackiness of the urethane. The agency has addressed the powdering question during the formulation of the Part 572 Subpart B rulemaking (50th percentile male) and has evaluated its merits in this rulemaking. We rejected the powdering issue on the basis of subjectivity of the procedure, which could unnecessarily complicate compliance tests in which the CRABI 12 dummy is used. Additionally, we believe that powder is neither needed nor helps to assure consistent head performance. We found no benefits or advantages in using the powder. Accordingly, we have not adopted the suggested change.

Instrumentation

The agency proposed generic specifications for all of the dummy-based sensors, which included—

(1) head, thorax, and pelvis accelerometers designated in drawing SA572–S4 and shown in drawing 921022–000;

(2) force and/or moment transducers:

(a) pubic load cell SA572–S24,

(b) lumbar spine and neck force moment transducer SA572–S23, and

(c) shoulder load cell SA572–S25.

Comments on proposed generic sensors were received from the Alliance and Denton. The Alliance supports the intent of the agency in proposing generic specifications, but finds the specifications not sufficiently generic. Denton commented on the need to revise specifications in drawings SA572–S23, –S24, –25, and 921022–35 (pelvis structure weldment).

Weight Specifications

Denton recommends changing the weights of the specified load cells in SA572–S23, –S24 and –S25. Denton also believes that several drawings should indicate a maximum weight, and not a nominal weight. We concur with this suggestion. While we would prefer to establish nominal weights for the load cells,[3] there is no acceptable method of weighing the load cells, particularly those containing integral cables. Because of this, weight tolerances for the load cells could not be established. Until an acceptable weighing procedure is developed, dummy manufacturers must take into account the variabilities of load cell weights to assure that each subsystem weight specification, as shown in sheet 5 of drawing 921022–000, is met. Accordingly, we have specified in the sensor drawings only maximum weights, as follows:

—Drawing SA572–23 (neck and lumbar spine)—0.34 lb maximum (each);
—Drawing SA572–24 (pubic)—0.58 lb maximum; and
—Drawing SA572–25 (shoulder)—0.14 lb maximum.

Denton also suggests that the load cell weight specifications should clarify that the specified weight does not include any cable or mounting hardware, except as noted. We disagree with this suggestion. All of the load cells specified by the agency include weights associated with 8 in. of cable length.

Accelerometer Specifications

The Alliance supports our intent to propose generic specifications for sensors to reduce the restrictive nature of instrumentation specifications seen in the past. However, the commenter believes that the proposed sensor specifications are not sufficiently generic. The commenter states that the generic specifications would require the use of a certain model made by a specific manufacturer, having a particular seismic mass and mounting hole configuration. The commenter notes that other accelerometers might be acceptable but can not be used under the proposed specification. The Alliance suggests that the agency develop a more functional description.

We are aware of at least two manufacturers that have in the past or are now marketing accelerometers that match the specifications listed in the drawings. The specific hole patterns are needed for mounting the accelerometers in several locations in this dummy as well as all of the other Part 572 dummies. Although the sensing mass of the accelerometer is defined relative to its attachment surface, hole patterns and mounting platform dimensions need to be known to assure the existence of compatible space, mating surfaces and methods of attachment in the areas where the accelerometers are to be mounted. In addition, shock and vibration standards require that matching mounting surfaces and attachments have structural integrity for vibration control purposes which we believe are sufficiently defined in the drawing package. While the Alliance's suggestion that the agency develop a "more functional description" of the sensors is attractive as a concept and warrants further study, we do not believe that the technology is sufficiently developed for implementation at the present time.

Pubic Load Cell Mounting

Denton suggests changes to drawing 921022–035 to specify an orientation of two tapped holes in the pelvic structure weldment to accommodate the mounting of the pubic load cell SA572–S24. If that is not done, Denton states, it will not be possible to insert a wrench through the access holes in the load cell to loosen the set screws which thread into detail 3 of drawing 921022–035. Denton suggests that "the top surface of the weldment (which is ground flat to within 0.001) be indicated as datum A, and that a callout be added indicating that the centerlines of the holes are perpendicular to the datum surface A within 0.020 inches."

We agree with the comment and have revised drawing 921022–35 in line with the suggested changes.

Accelerometer Frequency Response

Denton, in its comments on frequency response for the Hybrid III-type 5th percentile female adult dummy (Docket No. NHTSA–1998–4283–10), suggests adding a note on each of the sensor drawings indicating "* * *what CFC channel class should be used for recording data with that type of transducer." This is a reasonable suggestion, since the SAE J211 clearly deals with the entire data channel and not with a particular sensor within the data channel. Accordingly, a note has been added to the drawings saying that "Signal output must be compatible with and recordable in the data channel defined by SAE J211."

[3] Load cell weights with only "maximum" weight designations could vary considerably. While not specifying a minimum load cell weight may not matter much for larger adult test dummies, lack of such a specification poses a potentially larger problem for the smaller child test dummies.

Title and Features of the Procedures for Assembly, Disassembly and Inspection

The preamble for the NPRM on the CRABI 12 dummy notes that the final rule package will contain a "User's Manual" for the dummy. The manual would contain identified procedures on how to inspect, assemble and disassemble the dummy, similar to procedures published for other Part 572 dummies. Responding to this issue, DTES noted that it has developed a User's Manual for this dummy and suggested its incorporation into Part 572. There are a number of reasons why we decline to incorporate the DTES User's Manual as a reference document.

DTES's manual contains, besides inspection and assembly procedures, several calibration procedures and response requirements. Calibration procedures and response requirements are set forth by this final rule in Part 572. It is not advisable to reference a document which could contain calibration procedures and response requirements that may be inconsistent or in conflict with the Part 572 requirements. Further, while the DTES manual appears to be reasonably well developed and well suited for research use, it has a number of redundancies and ambiguities which render it less suited for regulation and compliance testing purposes. Further, the DTES User's Manual is copyrighted by both the SAE and FTSS, which restrict its use and distribution as a public document.

Because we concluded that the DTES manual should not be incorporated into Part 572, we generated and incorporated into Part 572 our own document which is limited to addressing procedures for inspection, assembly and disassembly of the CRABI 12 test dummy. We have titled the document *Procedures for Assembly, Disassembly and Inspection (PADI), Subpart R, CRABI 12-month-old Infant Crash Test Dummy (CRABI–12, Alpha version), March 2000.* Our incorporation of the PADI does not prevent anyone from using the procedures contained in the DTES User's Manual. However, persons using the DTES document in tests assuring compliance with our safety standards are responsible for ensuring that the test dummies they use meet the specifications adopted today and are suitable for compliance testing.

Nomenclature

The CRABI 12 test dummy is incorporated in Part 572 as Subpart R. Today's final rule designates the dummy adopted today as the alpha version. Further significant changes to the dummy will be designated as beta, gamma, etc., to assure that modifications can be easily tracked and identified.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

This document amends 49 CFR Part 572 by adding design and performance specifications for a new 12-month-old child dummy that we may later incorporate into Federal motor vehicle safety standards. This rule indirectly imposes requirements on only those businesses which choose to manufacture or test with the dummy, in that the agency will only use dummies for compliance testing that meet all of the criteria specified in this rule. It may affect vehicle and air bag manufacturers if it is incorporated by reference into the advanced air bag rulemaking, and may affect child restraint manufacturers if it is incorporated into the child restraint system standard.

The cost of an uninstrumented 12-month-old dummy is approximately $19,000. Instrumentation would add $15,000 to $43,000 to the cost, depending on the amount of instrumentation the user chooses to add.

Because the economic impacts of this proposal are minimal, no further regulatory evaluation is necessary.

Executive Order 13132

We have analyzed this rule in accordance with Executive Order 13132 ("Federalism"). We have determined that this rule does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866. It also does not involve decisions based on health risks that disproportionately affect children.

Executive Order 12778

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this rule will have any retroactive effect. This rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it does preempt a state regulation that is in actual conflict with the federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the federal statute.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) and certify that this rule will not have a significant economic impact on a substantial number of small entities. The rule does not impose or rescind any requirements for anyone. The Regulatory Flexibility Act does not, therefore, require a regulatory flexibility analysis.

National Environmental Policy Act

We have analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not have any new information collection requirements.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The CRABI 12 test dummy that is the subject of this document was developed under the auspices of the SAE. All relevant SAE standards were reviewed as part of the development process. The following voluntary consensus standards have been used in developing the dummy: SAE Recommended Practice J211, Rev. Mar95 "Instrumentation for Impact Tests"; and SAE J1733 of 1994–12 "Sign Convention for Vehicle Crash Testing."

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule.

This rule does not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule does not meet the definition of a Federal mandate because it does not impose requirements on anyone. Further, it will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 572

Incorporation by reference, Motor vehicle safety.

In consideration of the foregoing, 49 CFR Part 572 is amended as follows:

PART 572—ANTHROPOMORPHIC TEST DUMMIES

1. The authority citation for Part 572 continues to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117 and 30166; delegation of authority at 49 CFR 1.50.

2. 49 CFR Part 572 is amended by adding a new Subpart R consisting of 572.150–572.155, to read as follows:

Subpart R—CRABI 12-Month-Old Infant Crash Test Dummy, Alpha Version

Sec.

572.150 Incorporation by reference.
572.151 General description.
572.152 Head assembly and test procedure.
572.153 Neck-headform assembly and test procedure.
572.154 Thorax assembly and test procedure.
572.155 Test condition and instrumentation.

Subpart R—12-Month-Old Infant, Alpha Version

§ 572.150 Incorporation by reference.

(a) The following materials are incorporated by reference in this subpart R.

(1) A drawings and specifications package entitled "Parts List and Drawings, Subpart R, CRABI 12-Month-Old Infant Crash Test Dummy, (CRABI–12, Alpha version), March 2000" and consisting of :

(i) Drawing No. 921022–001, Head Assembly, incorporated by reference in §§ 572.151, 572.152, 572.154, and 572.155;

(ii) Drawing No. 921022–041, Neck Assembly, incorporated by reference in §§ 572.151, 572.153, 572.154, and 572.155;

(iii) Drawing No. TE–3200–160, Headform, incorporated by reference in §§ 572.151 and 572.153;

(iv) Drawing No. 921022–060, Torso Assembly, incorporated by reference in §§ 572.151, 572.154, and 572.155;

(v) Drawing No. 921022–055, Leg Assembly, incorporated by reference in §§ 572.151, and 572.155 as part of a complete dummy assembly;

(vi) Drawing No. 921022–054, Arm Assembly, incorporated by reference in §§ 572.151, and 572.155 as part of the complete dummy assembly;

(2) A procedures manual entitled "Procedures for Assembly, Disassembly and Inspection (PADI), Subpart R, CRABI 12-month-old Infant Crash Test Dummy (CRABI–12, Alpha version), March 2000," incorporated by reference in § 572.151;

(3) SAE Recommended Practice J211/1, Rev. Mar95 "Instrumentation for Impact Tests—Part 1—Electronic Instrumentation", incorporated by reference in § 572.155;

(4) SAE J1733 1994–12 "Sign Convention for Vehicle Crash Testing", incorporated by reference in § 572.155.

(b) The Director of the Federal Register approved those materials incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies of the materials may be inspected at NHTSA's Docket Section, 400 Seventh Street S.W., room 5109, Washington, DC, or at the Office of the Federal Register, 800 North Capitol Street, NW, Suite 700, Washington, DC.

(c) The incorporated materials are available as follows:

(1) The drawings and specifications package referred to in paragraph (a)(1) of this section and the procedures manual referred to in paragraph (a)(2) of this section are available from Reprographic Technologies, 9000 Virginia Manor Road, Beltsville, MD 20705 (301) 419–5070.

(2) The SAE materials referred to paragraphs (a)(3) and (a)(4) of this section are available from the Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096.

§ 572.151 General description.

(a) The 12-month-old-infant crash test dummy is described by drawings and specifications containing the following materials:

(1) Technical drawings and specifications package 921022–000

(refer to § 572.150(a)(1)), the titles of which are listed in Table A of this section;

(2) Procedures for Assembly, Disassembly and Inspection document (PADI) (refer to § 572.150(a)(2)).

(b) The dummy consists of the component assemblies set out in the following Table A:

TABLE A

Component assembly	Drawing number
Head Assembly	921022–001.
Neck Assembly (complete).	921022–041.
Torso Assembly	921022–060.
Leg Assembly	921022–055 R&L.
Arm Assembly	921022–054 R&L.

(c) Adjacent segments of the dummy are joined in a manner such that, except for contacts existing under static conditions, there is no contact between metallic elements throughout the range of motion or under simulated crash impact conditions.

(d) The structural properties of the dummy are such that the dummy shall conform to this Subpart in every respect before its use in any test under this chapter.

§ 572.152 Head assembly and test procedure.

(a) The head assembly (refer to § 572.150(a)(1)(i)) for this test consists of the assembly (drawing 921022–001), triaxial mount block (SA572–80), and 3 accelerometers (drawing SA572–S4).

(b) Frontal and rear impact.

(1) Frontal impact. When the head assembly in paragraph (a) of this section is dropped from a height of 376.0±1.0 mm (14.8±0.04 in) in accordance with paragraph (c)(3)(i) of this section, the peak resultant acceleration measured at the head CG shall not be less than 100 g or more than 120 g. The resultant acceleration vs. time history curve shall be unimodal, and the oscillations occurring after the main pulse shall be less than 17 percent of the peak resultant acceleration. The lateral acceleration shall not exceed ±15 g's.

(2) Rear impact. When the head assembly in paragraph (a) of this section is dropped from a height of 376.0±1.0 mm (14.8±0.04 in) in accordance with paragraph (c)(3)(ii) of this section, the peak resultant acceleration measured at the head CG shall be not less than 55 g and not more than 71 g. The resultant acceleration vs. time history curve shall be unimodal, and the oscillations occurring after the main pulse shall be less than 17 percent of the peak resultant acceleration. The lateral acceleration shall not exceed ±15 g's.

(c) Head test procedure. The test procedure for the head is as follows:

(1) Soak the head assembly in a controlled environment at any temperature between 18.9 and 25.6 °C (66 and 78 °F) and at any relative humidity between 10 and 70 percent for at least four hours prior to a test. These temperature and humidity levels shall be maintained throughout the entire testing period specified in this section.

(2) Before the test, clean the impact surface of the head skin and the steel impact plate surface with isopropyl alcohol, trichlorethane, or an equivalent. Both impact surfaces shall be clean and dry for testing.

(3)(i) For a frontal impact test, suspend the head assembly with its midsagittal plane in vertical orientation as shown in Figure R1 of this subpart. The lowest point on the forehead is 376.0±1.0 mm (14.8 ±0.04 in) from the impact surface. The 3.30 mm (0.13 in) diameter holes located on either side of the dummy's head are used to ensure that the head is level with respect to the impact surface. The angle between the lower surface plane of the neck transducer mass simulator (drawing 910420–003) and the plane of the impact surface is 45 ±1 degrees.

(ii) For a rear impact test, suspend the head assembly with its midsagittal plane in vertical orientation as shown in Figure R2 of this subpart. The lowest point on the back of the head is 376.0±1.0 mm (14.8 ±0.04 in) from the impact surface. The 3.30 mm (0.13 in) diameter holes located on either side of the dummy's head are used to ensure that the head is level with respect to the impact surface. The angle between the lower surface plane of the neck transducer structural replacement (drawing 910420–003) and the impact surface is 90 ±1 degrees.

(4) Drop the head assembly from the specified height by a means that ensures a smooth, instant release onto a rigidly supported flat horizontal steel plate which is 50.8 mm (2 in) thick and 610 mm (24 in) square. The impact surface shall be clean, dry and have a micro finish of not less than 203.2×10^{-6} mm (8 micro inches) (RMS) and not more than 2032.0×10^{-6} mm (80 micro inches) (RMS).

(5) Allow at least 2 hours between successive tests of the head assembly at the same impact point. For head impacts on the opposite side of the head, the 30-minute waiting period specified in § 572.155(m) does not apply.

§ 572.153 Neck-headform assembly and test procedure.

(a) The neck and headform assembly (refer to §§ 572.150(a)(1)(ii) and 572.150(a)(1)(iii)) for the purposes of this test consists of parts shown in CRABI neck test assembly (drawing TE–3200–100);

(b) When the neck and headform assembly, as defined in § 572.153(a), is tested according to the test procedure in § 572.153(c), it shall have the following characteristics:

(1) Flexion.

(i) Plane D referenced in Figure R3 of this subpart shall rotate in the direction of pre-impact flight with respect to the pendulum's longitudinal centerline not less than 75 degrees and not more than 86 degrees. Within this specified rotation corridor, the peak positive moment about the occipital condyles shall be not less than 36 N-m (26.6 ft-lbf) and not more than 45 N-m (33.2 ft-lbf).

(ii) The positive moment about the occipital condyles shall decay for the first time to 5 N-m (3.7 ft-lbf) between 60 ms and 80 ms after time zero.

(iii) The moment about the occipital condyles shall be calculated by the following formula: Moment (N-m) = My − (0.005842m) × (Fx), where My is the moment about the y-axis, Fx is the shear force measured by the neck transducer (drawing SA572 –S23) and 0.005842m is the distance from the point at which the load cell measures the force to the occipital condyle.

(2) Extension.

(i) Plane D referenced in Figure R4 of this subpart shall rotate in the direction of preimpact flight with respect to the pendulum's longitudinal centerline not less than 80 degrees and not more than 92 degrees. Within the specified rotation corridor, the peak negative moment about the occipital condyles shall be not more than −12 Nm (−8.9 ft-lbf) and not less than −23 N-m (−17.0 ft-lbf) within the minimum and maximum rotation interval.

(ii) The negative moment about the occipital condyles shall decay for the first time to −5 Nm (−3.7 lbf-ft) between 76 ms and 90 ms after time zero.

(iii) The moment about the occipital condyles shall be calculated by the following formula: Moment (N-m) = My − (0.005842m) × (Fx), where My is the moment about the y-axis, Fx is the shear force measured by the neck transducer (drawing SA572 –S23) and 0.005842m is the distance from the point at which the load cell measures the force to the occipital condyle.

(c) Test procedure.

assembly in triaxial configuration as

(i) The outputs of accelerometers

(1) Soak the neck assembly in a controlled environment at any temperature between 20.6 and 22.2 °C (69 and 72 °F) and at any relative humidity between 10 and 70 percent for at least four hours prior to a test. These temperature and humidity levels shall be maintained throughout the testing period specified in this section.

(2) Torque the jam nut (drawing 9001336) on the neck cable (drawing ATD–6206) to 0.2 to 0.3 Nm (2–3 in-lbf).

(3) Mount the neck-headform assembly, defined in paragraph (b) of this section, on the pendulum so the midsagittal plane of the headform is vertical and coincides with the plane of motion of the pendulum as shown in Figure R3 for flexion and Figure R4 for extension tests.

(i) The moment and rotation data channels are defined to be zero when the longitudinal centerline of the neck and pendulum are parallel.

(ii) The test shall be conducted without inducing any torsion of the neck.

(4) Release the pendulum and allow it to fall freely to achieve an impact velocity of 5.2 ±0.1 m/s (17.1 ±0.3 ft/s) for flexion and 2.5 ±0.1 m/s (8.2 ±0.3 ft/s) for extension measured at the center of the pendulum accelerometer at the instant of contact with the honeycomb.

(i) Time-zero is defined as the time of initial contact between the pendulum striker plate and the honeycomb material. The pendulum data channel shall be defined to be zero at this time.

(ii) Stop the pendulum from the initial velocity with an acceleration vs. time pulse which meets the velocity change as specified in the following table. Integrate the pendulum acceleration data channel to obtain the velocity vs. time curve as indicated in Table B:

TABLE B.—PENDULUM PULSE

Time	Flexion		Time	Extension	
m/s	m/s	ft/s	ms	m/s	ft/s
10	1.6–2.3	5.2–7.5	6	0.8–1.2	2.6–3.9
20	3.4–4.2	11.2–13.8	10	1.5–2.1	4.9–6.9
25	4.3–5.2	14.1–17.1	14	2.2–2.9	7.2–9.5

§ 572.154 Thorax assembly and test procedure.

(a) Thorax Assembly (refer to § 572.150(a)(1)(iv)) . The thorax consists of the part of the torso assembly shown in drawing 921022–060.

(b) When the thorax of a completely assembled dummy (drawing 921022–000) is impacted by a test probe conforming to § 572.155(a) at 5.0 ±0.1m/s (16.5 ±0.3 ft/s) according to the test procedure in paragraph (c) of this section, the peak force, measured by the impact probe in accordance with paragraph § 572.155(a), shall be not less than 1514 N (340.7 lbf) and not more than 1796 N (404.1 lbf).

(c) Test procedure.

(1) Soak the dummy in a controlled environment at any temperature between 20.6 and 22.2 °C (69 and 72 °F) and at any relative humidity between 10 and 70 percent for at least four hours prior to a test. These temperature and humidity levels shall be maintained throughout the entire testing period specified in this section.

(2) The test dummy is clothed in a cotton-polyester based tight fitting sweat shirt with long sleeves and ankle long pants whose combined weight is not more than 0.25 kg (.55 lbs).

(3) Seat and orient the dummy on a level seating surface without back support as shown in Figure R5 of this subpart, with the lower limbs extended forward, parallel to the midsagittal plane and the arms 0 to 5 degrees forward of vertical. The dummy's midsagittal plane is vertical within ±/1 degree and the posterior surface of the upper spine box is aligned at 90±/1 degrees from the horizontal. (Shim material may be used under the upper legs to maintain the dummy's specified spine box surface alignment).

(4) Establish the impact point at the chest midsagittal plane so that the impact point of the longitudinal centerline of the probe coincides with the dummy's midsagittal plane, is centered on the torso 196 ±/2.5 mm (7.7 ±/0.1 in) vertically from the plane of the seating surface, and is within 0.5 degrees of a horizontal plane.

(5) Impact the thorax with the test probe so that at the moment of contact the probe's longitudinal center line falls within 2 degrees of a horizontal line in the dummy's midsagittal plane.

(6) Guide the test probe during impact so that there is no significant lateral, vertical or rotational movement.

§ 572.155 Test conditions and instrumentation.

(a) The test probe for thoracic impacts shall be of rigid metallic construction, concentric in shape, and symmetric about its longitudinal axis. It shall have a mass of 2.86±0.02 kg (6.3±0.05 lbs) and a minimum mass moment of inertia of 622 kg-cm^2 (0.55 lbs-in-sec^2) in yaw and pitch about the CG. Up to 1/3 of the weight of the suspension cables and their attachments to the impact probe may be included in the calculation of mass, but such components may not exceed five percent of the total weight of the test probe. The impacting end of the probe, perpendicular to and concentric with the longitudinal axis, must be at least 12.7 mm (0.5 in) thick, and have a flat, continuous, and non-deformable 101.6 ± 0.25 mm (4.00±0.01 in) diameter face with an edge radius of 12.7±0.25 mm (0.5±0.01 in). The probe's end opposite to the impact face must have provisions for mounting of an accelerometer with its sensitive axis collinear with the longitudinal axis of the probe. No concentric portions of the impact probe may exceed the diameter of the impact face. The impact probe shall have a free air resonant frequency of not less than 1000 Hz.

(b) Head accelerometers shall have the dimensions, response characteristics, and sensitive mass locations specified in drawing SA572–S4 and be mounted in the head as shown in drawing 921022–000.

(c) The neck force-moment transducer shall have the dimensions, response characteristics, and sensitive axis locations specified in drawing SA572–S23 and shall be mounted for testing as shown in drawing 921022–000 and in figures R3 and R4 of this subpart.

(d) The shoulder force transducers shall have the dimensions and response characteristics specified in drawing SA572–S25 and are allowed to be mounted as optional instrumentation in place of part No. 921022–022 in the torso assembly as shown in drawing 921022–000.

(e) The thorax accelerometers shall have the dimensions, response characteristics, and sensitive mass locations specified in drawing SA572–S4 and be mounted in the torso

assembly in triaxial configuration as shown in drawing 921022–000.

(f) The lumbar spine and lower neck force/moment transducer shall have the dimensions and response characteristics specified in drawing SA572–S23 and are allowed to be mounted as optional instrumentation in the torso assembly in place of part No. 910420–003 as shown in drawing 921022–000.

(g) The pelvis accelerometers shall have the dimensions, response characteristics, and sensitive mass locations specified in drawing SA572–S4 and are allowed to be mounted as optional instrumentation in the pelvis in triaxial configuration as shown in drawing 921022–000.

(h) The pubic force transducer shall have the dimensions and response characteristics specified in drawing SA572–S24 and is allowed to be mounted as optional instrumentation in place of part No. 921022–050 in the torso assembly as shown in drawing 921022–000.

(i) The outputs of acceleration and force-sensing devices installed in the dummy and in the test apparatus specified by this part are recorded in individual data channels that conform to the requirements of SAE Recommended Practice J211/1, Rev. Mar95 "Instrumentation for Impact Tests—Part 1—Electronic Instrumentation" (refer to § 572.150(a)(3)), with channel classes as follows:

(1) Head and headform acceleration—Class 1000.

(2) Neck :

(i) Forces—Class 1000;

(ii) Moments—Class 600;

(iii) Pendulum acceleration—Class 180;

(3) Thorax:

(i) Spine and pendulum accelerations—Class 180;

(ii) Shoulder forces—Class 600;

(4) Lumbar:

(i) Forces—Class 1000;

(ii) Moments —Class 600;

(5) Pelvis:

(i) Accelerations—Class 1000;

(ii) Pubic—Class 1000.

(j) Coordinate signs for instrumentation polarity shall conform to SAE J1733, 1994–12, "Sign Convention For Vehicle Crash Testing, Surface Vehicle Information Report," (refer to § 572.150(a)(4)).

(k) The mountings for sensing devices shall have no resonance frequency within a range of 3 times the frequency range of the applicable channel class.

(l) Limb joints shall be set at l g, barely restraining the weight of the limb when it is extended horizontally. The force required to move a limb segment shall not exceed 2 g throughout the range of limb motion.

(m) Performance tests of the same component, segment, assembly, or fully assembled dummy shall be separated in time by period of not less than 30 minutes unless otherwise noted.

(n) Surfaces of dummy components may not be painted except as specified in this subpart or in drawings referenced in § 572.150.

BILLING CODE 4910–59–P

Figure R 1
FRONTAL HEAD DROP TEST SET-UP SPECIFICATIONS

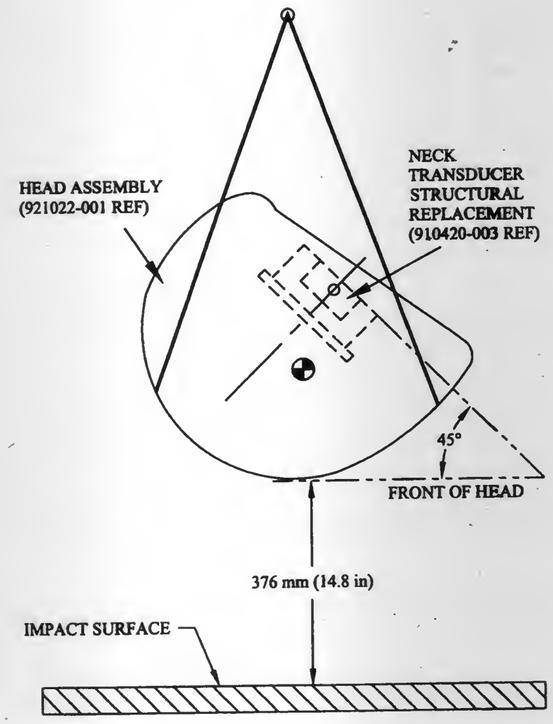


Figure R 2
REAR HEAD DROP TEST SET-UP SPECIFICATIONS

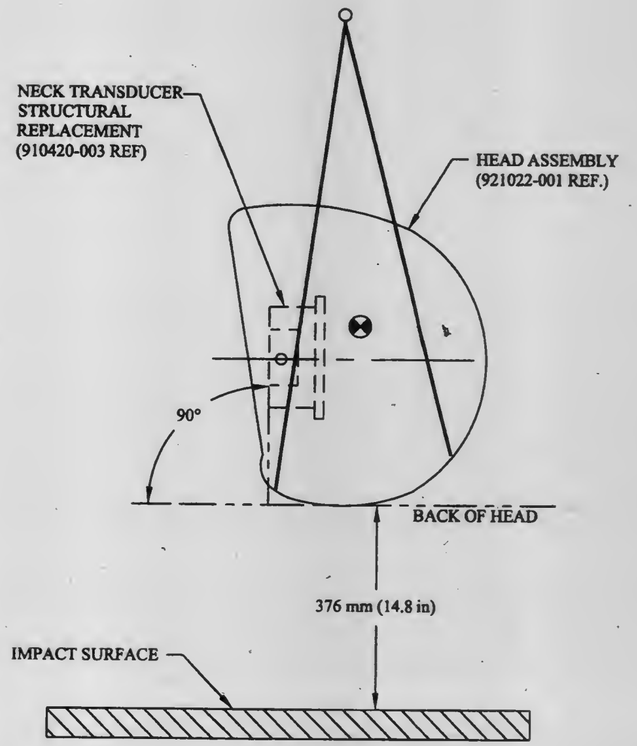
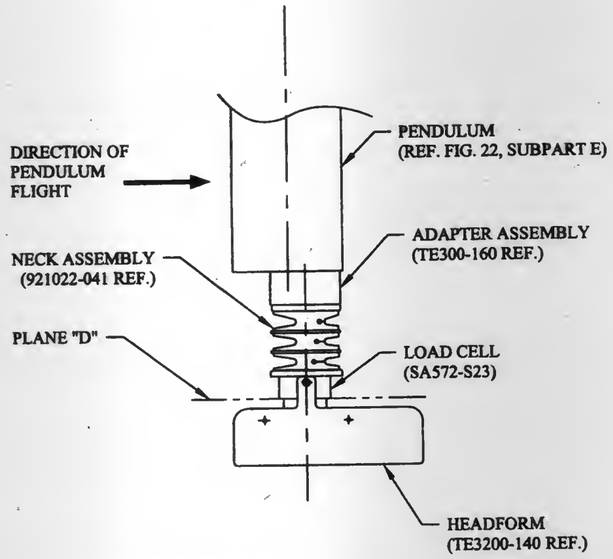
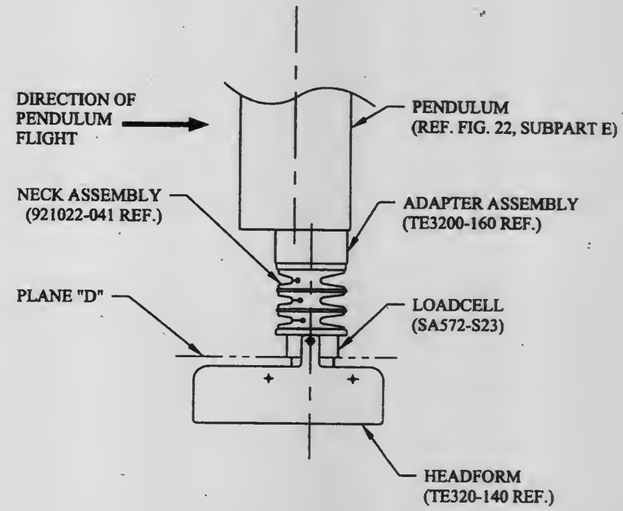


Figure R3
NECK FLEXION TEST SET-UP SPECIFICATIONS



NOTE: MOUNT NECK AT LEADING EDGE OF PENDULUM TO AVOID INTERFERENCE.

Figure R4
NECK EXTENSION TEST SET-UP SPECIFICATIONS



NOTE: MOUNT NECK AT LEADING EDGE OF PENDULUM TO AVOID INTERFERENCE.

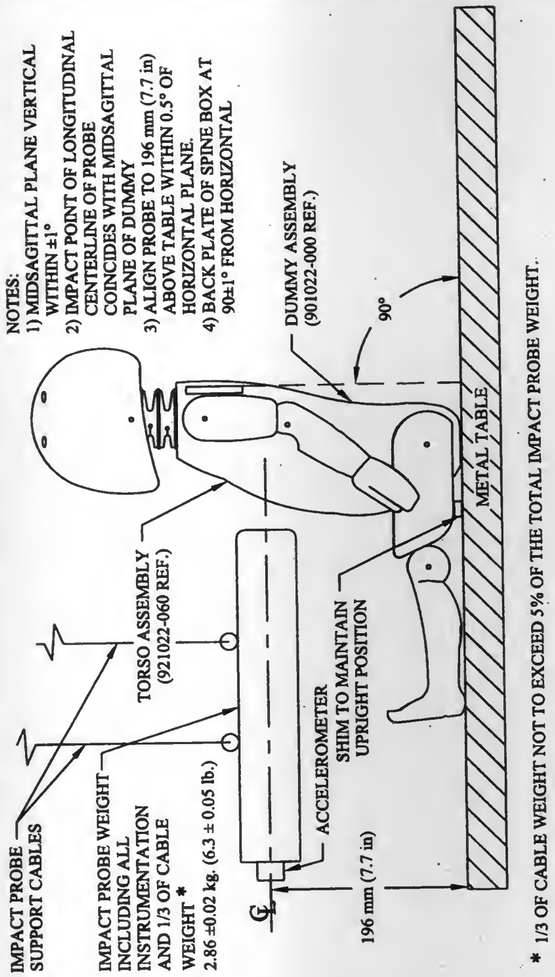


Figure R 5
IMPACT TEST SET-UP SPECIFICATIONS

BILLING CODE 4910–59–C

Issued: March 27, 2000.

Rosalyn G. Millman,

Acting Administrator.

[FR Doc. 00–7955 Filed 3–30–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 587

[Docket No. NHTSA–2000–7142]

RIN 2127–AH93

Offset Deformable Barrier

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule.

SUMMARY: This document amends 49 CFR Part 587 by adding specifications for an offset deformable barrier. This barrier is used in offset deformable barrier tests to evaluate the crashworthiness of vehicles. In this type of test, one side of a vehicle's front end is crashed into a barrier with a deformable face that absorbs some of the crash energy.

Adding the offset deformable barrier to Part 587 is the first step toward using it to evaluate the crashworthiness of vehicles. The issue of specifying use of the barrier as part of the performance requirements of specific safety standards is being addressed in separate rulemaking documents, most notably those concerning requirements for advanced air bags.

DATES: *Effective Date:* This regulation becomes effective May 1, 2000. The incorporation by reference of the publications listed in the rule is approved by the Director of the Federal Register as of May 1, 2000.

Petitions: Petitions for reconsideration must be received by May 15, 2000.

ADDRESSES: Petitions for reconsideration should refer to the docket number of this rule and be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

For non-legal issues, you may call John Lee, Office of Crashworthiness Standards, at 202–366–2264.

For legal issues, you may call Edward Glancy, Office of the Chief Counsel, at 202–366–2992.

You may send mail to both of these officials at National Highway Traffic Safety Administration, 400 Seventh St., SW., Washington, DC, 20590.

SUPPLEMENTARY INFORMATION:

On September 18, 1998, we published in the **Federal Register** (63 FR 49958) a notice of proposed rulemaking (NPRM) to upgrade Standard No. 208, *Occupant Crash Protection*, to require advanced air bags. As part of that document, we proposed specifications for an offset deformable barrier to be used in offset deformable barrier tests. In this type of test, one side of a vehicle's front end is crashed into a barrier with a deformable face that absorbs some of the crash energy.

On November 5, 1999, we published in the **Federal Register** (64 FR 60556) a supplemental notice of proposed rulemaking (SNPRM) for advanced air bags. In the SNPRM, we updated and refined the amendments under consideration. As to the offset deformable barrier, we stated in the SNPRM that we were not republishing the proposed specifications for the barrier but expected to proceed to a final rule in a separate document. We also stated that we did not expect any significant changes from the NPRM.

As we discussed in the SNPRM, the offset deformable barrier we proposed is already used in various parts of the world in several ways. Europe uses it in 56 km/h (35 mph) offset tests, using belted 50th percentile adult male dummies, pursuant to EU Directive 96/79 EC. It is also used in higher speed offset tests as part of the European and Australian New Car Assessment Programs, and by the Insurance Institute for Highway Safety in this country. Transport Canada uses it in offset tests at impact speeds up to 40 km/h (25 mph), using belted 5th percentile adult female dummies, to evaluate air bag sensor performance and air bag aggressivity.

We received only one comment concerning the proposed specifications for the offset deformable barrier, from DaimlerChrysler. That company identified several errors in the specifications.

In this document, we are adopting as final, with minor modifications, the proposed specifications for the offset deformable barrier. We have corrected the errors identified by DaimlerChrysler and have also made a number of editorial changes for purposes of clarity.

The issue of specifying the use of the offset deformable barrier as part of the performance requirements of specific safety standards is being addressed in separate rulemaking documents, most notably those concerning requirements for advanced air bags. In particular, comments concerning the specific offset deformable barrier tests we proposed as part of the advanced air bag rulemaking, including comments raising issues about the suitability of this barrier for testing heavier light trucks and SUVs, are being addressed as part of the final rule for advanced air bags.

Regulatory Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rule is not considered a significant regulatory action under section 3(f) of the Executive Order 12866. Consequently, it was not reviewed by the Office of Management and Budget. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866, "Regulatory Planning and Review." The rulemaking action is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034, February 26, 1979).

This document amends 49 CFR Part 587 by adding specifications for an offset deformable barrier that the agency may separately decide to use in the Federal motor vehicle safety standards. This rule indirectly imposes requirements on only those businesses that choose to manufacture or test with the barrier, in that the agency will only use barriers for compliance testing that meet all of the criteria specified in this rule. It may indirectly affect vehicle and air bag manufacturers if it is incorporated by reference into the final rule for advanced air bags.

The cost of the deformable face, which is destroyed with each test, is approximately $1,025.

Because the economic impacts of this rule are so minimal, no further regulatory evaluation is necessary.

Executive Order 13132

We have analyzed this rule in accordance with Executive Order 13132 ("Federalism"). We have determined that this rule does not have sufficient Federalism impacts to warrant the preparation of a federalism assessment.

Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in

E.O. 12866. It also does not involve decisions based on health risks that disproportionately affect children.

Executive Order 12778

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this rule will have any retroactive effect. This rule does not have any retroactive effect. A petition for reconsideration or other administrative proceeding will not be a prerequisite to an action seeking judicial review of this rule. This rule does not preempt the states from adopting laws or regulations on the same subject, except that it does preempt a state regulation that is in actual conflict with the federal regulation or makes compliance with the Federal regulation impossible or interferes with the implementation of the federal statute.

Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

I have considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) and certify that this proposal will not have a significant economic impact on a substantial number of small entities. The rule does not impose or rescind any requirements for anyone. The Regulatory Flexibility Act does not, therefore, require a regulatory flexibility analysis.

National Environmental Policy Act

We have analyzed this amendment for the purposes of the National Environmental Policy Act and determined that it will not have any significant impact on the quality of the human environment.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This rule does not propose any new information collection requirements.

National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies, such as the Society of Automotive Engineers (SAE). The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

The following voluntary consensus standard has been used in developing specifications for the barrier:

- SAE Recommended Practice J211/1, Rev. Mar95 "Instrumentation for Impact Tests."

Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This rule does not impose any unfunded mandates under the Unfunded Mandates Reform Act of 1995. This rule does not meet the definition of a Federal mandate because it does not impose requirements on anyone. Further, it will not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

List of Subjects in 49 CFR Part 587

Incorporation by reference, Motor vehicle safety.

In consideration of the foregoing, NHTSA amends 49 CFR Part 587 as follows:

PART 587—DEFORMABLE BARRIERS

1. The authority citation for part 587 is revised to read as follows:

Authority: 49 U.S.C. 322, 30111, 30115, 30117, and 30166; delegation of authority at 49 CFR 1.50.

2. The heading of part 587 is revised to read as set forth above.

3. The heading "Subpart A—General" is added immediately before § 587.1.

4. Section 587.1 is revised to read as follows:

§ 587.1 Scope.

This part describes deformable impact barriers that are to be used for testing compliance of motor vehicles with motor vehicle safety standards.

5. Section 587.3 is revised to read as follows:

§ 587.3 Application.

This part does not in itself impose duties or liabilities on any person. It is a description of tools that are used in compliance tests to measure the performance of occupant protection systems required by the safety standards that refer to these tools. It is designed to be referenced by, and become part of, the test procedures specified in motor vehicle safety standards such as

Standard No. 208, *Occupant Crash Protection*, and Standard No. 214, *Side Impact Protection*.

Subpart B—[Amended]

6. The heading "Subpart B—Side Impact Moving Deformable Barrier" is added immediately after the end of § 587.3.

§§ 587.7 through 587.10 [Reserved]

7. Sections 587.7 through 587.10 are reserved.

Subpart C—[Amended]

8. The heading "Subpart C—Offset Deformable Barrier" is added immediately after the end of § 587.10.

§ 587.11 [Reserved]

9. Section 587.11 is reserved.

10. Sections 587.12 through 587.19 are added to read as follows:

§ 587.12 Incorporation by reference.

Society of Automotive Engineers (SAE) Recommended Practice J211/1 Rev. MAR 95, Instrumentation for Impact Tests-Part 1—Electronic Instrumentation, is incorporated by reference in § 587.15 in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy may be obtained from SAE at Society of Automotive Engineers, Inc., 400 Commonwealth Drive, Warrendale, PA 15096. A copy of the material may be inspected at NHTSA's Docket Section, 400 Seventh Street, S.W., room 5109, Washington, DC, or at the Office of Federal Register, 800 North Capitol Street, N.W., Suite 700, Washington, DC.

§ 587.13 General description.

The offset deformable barrier is comprised of two elements: a fixed rigid barrier and a deformable face (Figure 1). The fixed rigid barrier is adequate to not deflect or displace more than 10 mm during the vehicle impact. The deformable face consists of aluminum honeycomb and aluminum covering.

§ 587.14 Deformable face component dimensions and material specifications.

The dimensions of the deformable face are illustrated in Figure 1 of this subpart. The dimensions and materials of the individual components are listed separately below. All dimensions allow a tolerance of ± 2.5 mm (0.1 in) unless otherwise specified.

(a) Main honeycomb block.

(1) *Dimensions.* The main honeycomb block has a height of 650 mm (25.6 in) (in the direction of honeycomb ribbon axis), a width of 1,000 mm (39.4 in), and a depth of 450 mm (17.7 in)(in the direction of honeycomb cell axis).

(2) *Material.* The main honeycomb block is constructed of the following material. The honeycomb is manufactured out of aluminum 3003, with a foil thickness of 0.076 mm (0.003 in) ± 0.004 mm (0.002 in) a cell size of 19.14 mm (0.75 in), a density of 28.6 kg/m^3 (1.78 lb/ft^3) ± 2kg/m^3 (0.25 1b/ft^3), and a crush strength of 0.342 MPa (49.6 psi) + 0% − 10%, measured in accordance with the certification procedure described in § 587.15.

(b) Bumper element honeycomb.

(1) *Dimensions.* The bumper element honeycomb has a height of 330 mm (13 in)(in the direction of honeycomb ribbon axis), a width of 1,000 mm (39.4 in), and a depth of 90 mm (3.5 in) (in the direction of honeycomb cell axis).

(2) *Material.* The bumper element honeycomb is constructed of the following material. The honeycomb is manufactured out of aluminum 3003, with a foil thickness of 0.076 mm (0.003 in) ± 0.004 mm (0.0002 in), a cell size of 6.4 mm (0.25 in) ± 1 mm (0.040 in), a density of 82.6 kg/m^3 (5.15 lb/ft^3) ± 3 kg/m^3 (0.19 lb/ft^3), and a crush strength of 1.711 MPa (248 psi) + 0% −10%, measured in accordance with the certification procedure described in § 587.14.

(c) Backing sheet.

(1) *Dimensions.* The backing sheet has a height of 800 mm (31.5 in), a width of 1,000 mm (39.4 in), and a thickness of 2.0 mm (0.08 in) ± 0.1 mm (0.004 in).

(2) *Material.* The backing sheet is manufactured out of aluminum 5251/5052.

(d) Cladding sheet.

(1) *Dimensions.* The cladding sheet of the main honeycomb block has a total length of 1,700 mm (66.9 in), a width of 1,000 mm (39.4 in), and a thickness of 0.81 mm (0.03 in) ± 0.07 mm (0.003 in). It is shaped as indicated in Figure 1.

(2) *Material.* The cladding sheet of the main honeycomb block is manufactured out of aluminum 5251/5052.

(e) Bumper element honeycomb facing sheet.

(1) *Dimensions.* The bumper facing sheet has a height of 330 mm (13 in), a width of 1,000 mm (39.4 in), and a thickness of 0.81 mm (0.03 in) ± 0.07 mm (0.003 in).

(2) *Material.* The bumper element honeycomb facing sheet is manufactured out of aluminum 5251/5052.

(f) Adhesive. The adhesive used throughout is a two-part polyurethane. (such as Ciba-Geigy XB5090/1 resin with XB5304 hardener, or equivalent).

§ 587.15 Verification of aluminum honeycomb crush strength

The following procedure is used to ascertain the crush strength of the main honeycomb block and the bumper element honeycomb, as specified in §§ 587.14(a)(2) and 587.14(b)(2).

(a) *Sample locations.* To ensure uniformity of crush strength across the whole of the deformable face, 8 samples are taken from 4 locations evenly spaced across the honeycomb material. Seven of these 8 samples must meet the crush strength requirements when tested in accordance with the following sections. The location of the samples depends on the size of the honeycomb material being tested. Four samples, each measuring 300 mm (11.8 in) × 300 mm (11.8 in) × 25 mm (1 in) thick are cut from the honeycomb material. (See Figure 2 for how to locate these samples on two different sizes of honeycomb material.) Each of these larger samples is cut into samples of the size specified in § 587.15(b). Verification is based on the testing of two samples from each of the four locations. The other two samples are retained for future verification, if necessary.

(b) *Sample size.* Samples of the following size are used for testing. The length is 150 mm (5.9 in) ± 6 mm (0.24 in), the width is 150 mm (5.9 in) ± 6 mm (0.24 in), and the thickness is 25 mm (1 in) ± 2 mm (0.08 in). The walls of incomplete cells around the edge of the sample are trimmed as follows (See Figure 3). In the width ("W") direction, the fringes ("f") are no greater than 1.8 mm (0.07 in); in the length ("L") direction, the fringes ("e") are at least half the length of one bonded cell wall ("d") (in the ribbon direction).

(c) *Area measurement.* The length of the sample is measured in three locations, 12.7 mm (0.5 in) from each end and in the middle, and recorded as L1, L2, and L3 (Figure 3). In the same manner, the width is measured and recorded as W1, W2, and W3 (Figure 3). These measurements are taken on the centerline of the thickness. The crush area is then calculated as:

$$A = \frac{(L1+L2+L3)}{3} X \frac{(W1+W2+W3)}{3}$$

(d) *Crush rate and distance.* The sample is crushed at a rate of not less than 5.1 mm/min (0.2 in/ min) and not more than 7.6 mm/min (0.29 in/min). The minimum crush distance is 16.5 mm (0.65 in). Force versus deflection data are collected in either analog or digital form for each sample tested. If analog data are collected, a means of converting the data to digital data must be made available. All digital data are collected at a rate consistent with SAE Recommended Practice J211/1 Rev. MAR 95 (see § 587.12).

(e) *Crush strength determination.* Ignore all data prior to 6.4 mm (0.25 in) of crush and after 16.5 mm (0.65 in) of crush. Divide the remaining data into three sections or displacement intervals (n = 1, 2, 3) (see Figure 4) as follows. Interval one is from 6.4–9.7 mm (0.25–0.38 in) deflection, inclusive. Interval two is from 9.7–13.2 mm (0.38–0.52 in) deflection, exclusive. Interval three is from 13.2–16.5 mm (0.52–0.65 in) deflection, inclusive. Find the average for each section as follows:

$$F(n) = \frac{[F(n)1 + \ldots + F(n)m]}{m}; n = 1,2,3$$

where m represents the number of data points measured in each of the three intervals. Calculate the crush strength of each section as follows:

$$S(n) = \frac{F(n)}{A}; n = 1,2,3$$

(f) *Sample crush strength specification.* For a honeycomb sample to meet crush strength requirements, the following condition must be met. For the 0.342 MPa (49.6 psi) material, the strength must be equal to or greater than 0.308 MPa (45 psi) but less than or equal to 0.342 MPa (49.6 psi) for all three compression intervals. For the 1.711 MPa (248 psi) material the strength must be equal to or greater than 1.540 MPa (223 psi) but less than or equal to 1.711 MPa (248 psi) for all three compression intervals.

(g) *Testing hardware.*

(1) The hardware used to verify crush strength is capable of applying a load of 13.3 kN (3,000 lb), over at least a 16.5 mm (0.65 in) stroke. The crush rate is constant and known. To ensure that the load is applied to the entire sample, the top and bottom crush plates are no smaller than 165 mm by 165 mm (6.5 in × 6.5 in). The engaging surfaces of the crush plates have a roughness approximately equivalent to 60 grit sandpaper. The bottom crush plate is marked to ensure that the applied load is centered on the sample.

(2) The crush plate assemblies have an average angular rigidity (about axes normal to the direction of crush) of at least 1017 Nm/deg (750 ft-lb/deg), over the range of 0 to 203 Nm (0 to 150 ft-lb) applied torque.

§ 587.16 Adhesive bonding procedure.

Immediately before bonding, aluminum sheet surfaces to be bonded are thoroughly cleaned using a suitable solvent, such as 1-1-1 Trichloroethane. This is carried out at least twice and more often if required to eliminate grease or dirt deposits. The cleaned surfaces are abraded using 120 grit abrasive paper. Metallic/silicon carbide abrasive paper is not to be used. The surfaces are thoroughly abraded and the abrasive paper changed regularly during the process to avoid clogging, which could lead to a polishing effect. Following abrading, the surfaces are thoroughly cleaned again, as above. In total, the surfaces are solvent-cleaned at least four times. All dust and deposits left as a result of the abrading process are removed, as these can adversely affect bonding. The adhesive is applied to one surface only, using a ribbed rubber roller. In cases where honeycomb is to be bonded to aluminum sheet, the adhesive is applied to the aluminum sheet only. A maximum pressure of 0.5 kg/m² (11.9 lb/ft²) is applied evenly over the surface, giving a maximum film thickness of 0.5 mm (0.02 in).

§ 587.17 Construction.

(a) The main honeycomb block is bonded to the backing sheet with adhesive such that the cell axes are perpendicular to the sheet. The cladding sheet is adhesively bonded to the front surface of the main honeycomb block. The top and bottom surfaces of the cladding sheet are not bonded to the main honeycomb block but are positioned close to it. The cladding sheet is adhesively bonded to the backing sheet at the mounting flanges. The bumper element honeycomb is adhesively bonded to the front of the cladding sheet such that the cell axes are perpendicular to the sheet. The bottom of the bumper element honeycomb is flush with the bottom surface of the cladding sheet. The bumper facing sheet is adhesively bonded to the front of the bumper element honeycomb.

(b) The bumper element honeycomb is divided into three equal sections by means of two horizontal slots. These slots are cut through the entire depth of the bumper element and extend the whole width of the bumper. The slots are cut using a saw; their width is the width of the blade used which do not exceed 4.0 mm (0.16 in).

(c) Clearance holes for mounting the deformable face are drilled in the cladding sheet mounting flanges (shown in Figure 5). The holes are 20 mm (0.79 in) in diameter. Five holes are drilled in the top flange at a distance of 40 mm (1.57 in) from the top edge of the flange and five holes in the bottom flange at a distance of 40 mm (1.6 in) from the bottom edge of the flange. The holes are spaced at 100 mm (3.9 in), 300 mm (11.8 in), 500 mm (19.7 in), 700 mm (27.5 in), 900 mm (35.4 in) horizontally, from either edge of the barrier. All holes are drilled within ±1 mm (0.04 in) of the nominal distances.

§ 587.18 Dimensions of fixed rigid barrier.

(a) The fixed rigid barrier has a mass of not less than 7×10^4 kg (154,324 lb).

(b) The height of the fixed rigid barrier is at least as high as the highest point on the vehicle at the intersection of the vertical transverse plane tangent to the forwardmost point of both front tires, when the tires are parallel to the longitudinal centerline of the vehicle, and the vertical plane through the longitudinal centerline of the vehicle.

§ 587.19 Mounting.

(a) The deformable face is rigidly attached to the edge of the fixed rigid barrier or to some rigid structure attached thereto. The front of the fixed rigid barrier to which the deformable face is attached is flat (continuous over the height and width of the face and vertical ±1 degree and perpendicular ±1 degree to the axis of the run-up track). The edge of the deformable face is aligned with the edge of the fixed rigid barrier appropriate for the side of the vehicle to be tested.

(b) The deformable face is attached to the fixed rigid barrier by means of ten bolts, five in the top mounting flange and five in the bottom, such that the bottom of the bumper element honeycomb is 200 mm (7.8 in) ±15 mm (0.6 in) from the ground. These bolts are at least 8 mm (0.3 in) in diameter. Steel clamping strips are used for both the top and bottom mounting flanges (Figure 1). These strips are 60 mm (2.4 in) high and 1000 mm (39.4 in) wide and have thickness of at least 3 mm (0.12 in). Five clearance holes of 20 mm (0.8 in) diameter are drilled in both strips to correspond with those in the mounting flange on the deformable face cladding sheet (see § 586.17(c)).

11. The heading "Figures to Subpart C of 49 CFR Part 587" is added immediately after the end of § 587.19.

12. Figures 1 through 5 are added at the end of Part 587 to read as follows:

BILLING CODE 4910–59–P

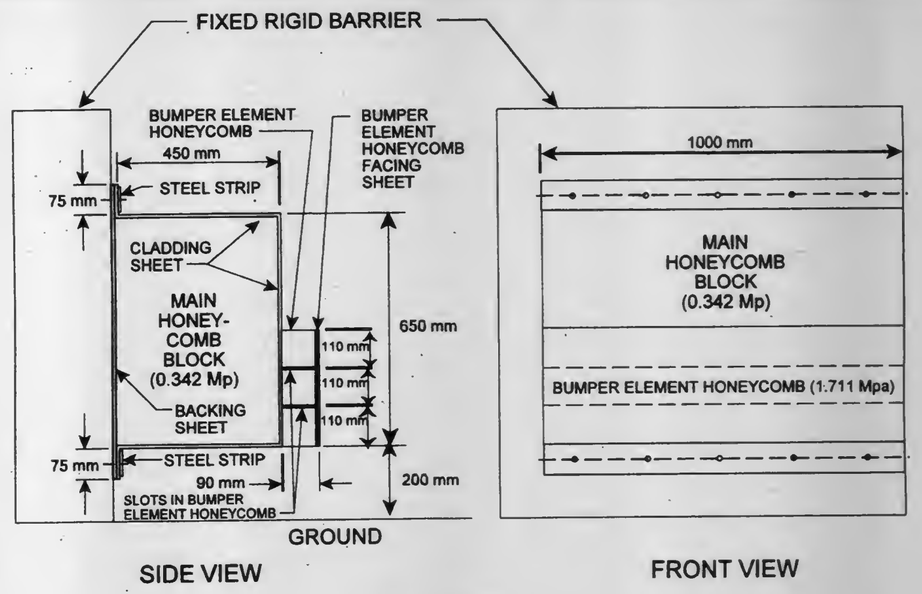
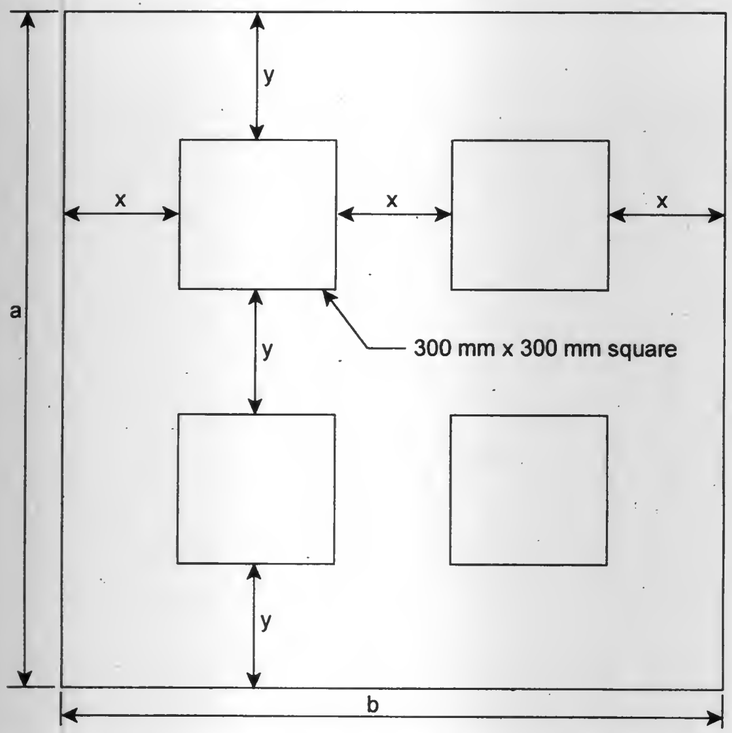
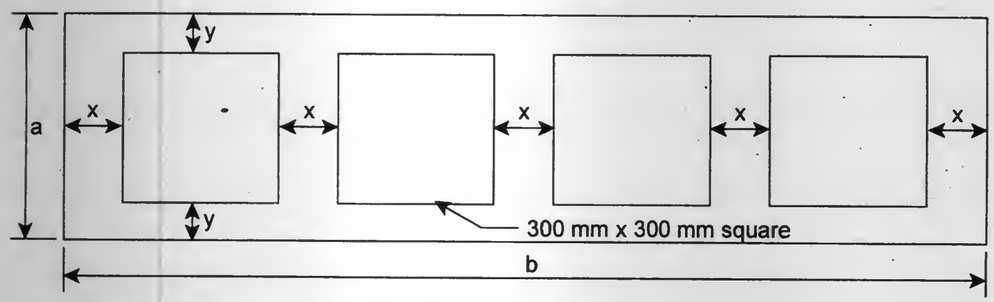


FIGURE 1
OFFSET BARRIER



If a ≥ 900 mm: x = 1/3 (b - 600) mm and y = 1/3 (a - 600) mm (for a < b)



If a < 900 mm: x = 1/5 (b - 1200) mm and y = 1/2 (a - 300) mm (for a ≤ b)

FIGURE 2

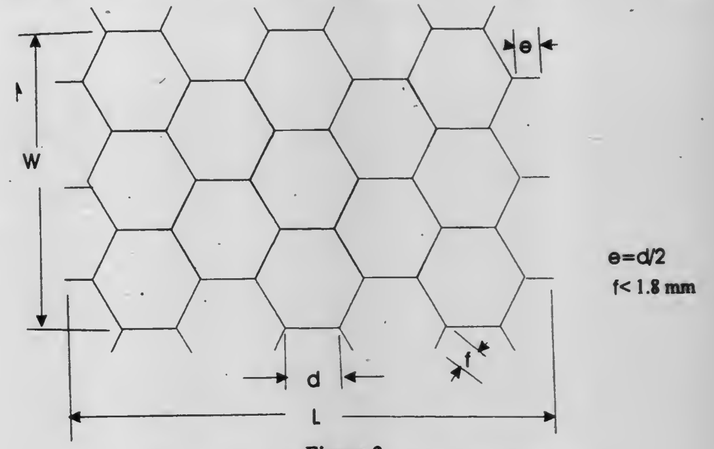


Figure 3
Honeycomb Axes and Measured Dimensions

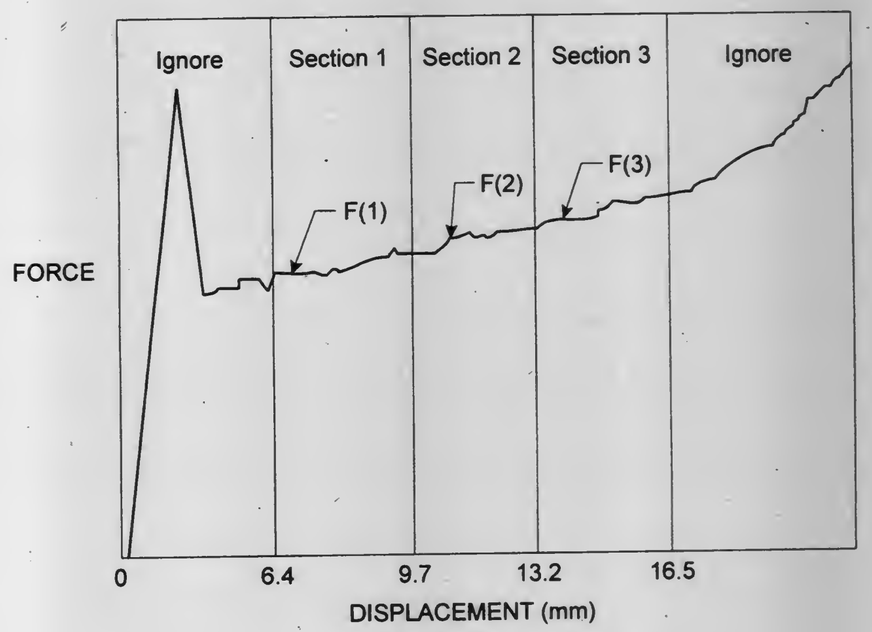


FIGURE 4
CRUSH FORCE AND DISPLACEMENT

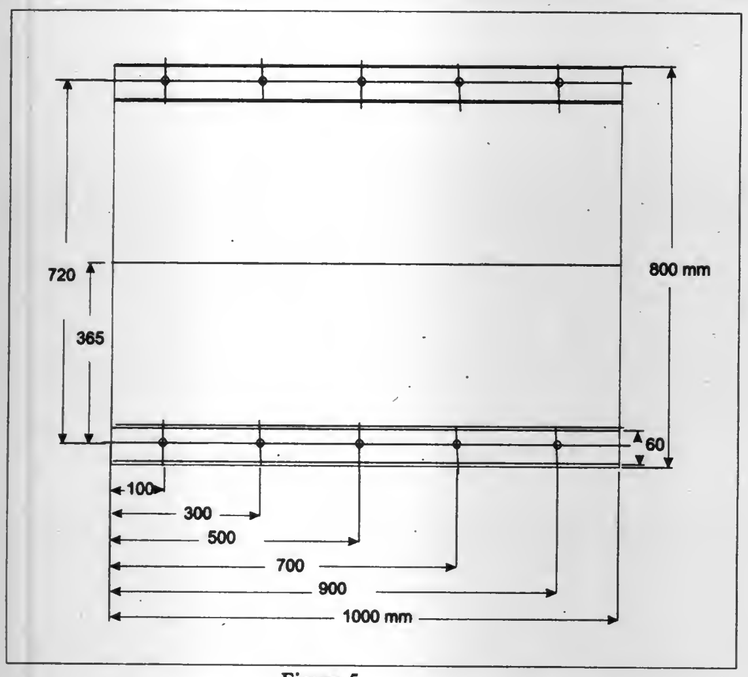


Figure 5
Positions of Holes for Deformable Face Mounting

Issued on: March 28, 2000.
Rosalyn G. Millman,
Acting Administrator.
[FR Doc. 00–8009 Filed 3–30–00; 8:45 am]
BILLING CODE 4910–59–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 991228352–0012–02; I.D. 032700E]

Fisheries of the Exclusive Economic Zone Off Alaska; Opens Directed Fishing for Several Groundfish Species in the Central Regulatory Area in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for flathead sole, shallow water flatfish, arrowtooth flounder, and deep water flatfish by catcher vessels that are non-exempt under the American Fisheries Act (AFA) in the Central Regulatory Area of the Gulf of Alaska (GOA). This action is necessary to allow non-exempt catcher vessels to participate in these fisheries consistent with regulations implementing the AFA.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 28, 2000.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 2000 GOA AFA catcher vessel sideboards in the Central Regulatory Area was established by the Emergency Interim Rule to Implement Major Provisions of the American Fisheries Act (65 FR 4520, January 28, 2000) in accordance with § 679.20(c)(2)(i) as follows: For flathead sole, 49 metric tons (mt), shallow water flatfish, 544 mt, arrowtooth flounder, 515 mt and deep water flatfish, 168 mt.

The Administrator, Alaska Region, NMFS (Regional Administrator), has established, in accordance with § 679.20(d)(iv), a directed fishing allowance for these fisheries as follows: For flathead sole, 40 mt, shallow water flatfish, 500 mt, arrowtooth flounder, 500 mt and deep water flatfish, 150 mt, and set aside the remaining amounts as bycatch to support other anticipated fishing activity by the non-exempt catcher vessels in the Central Regulatory Area. This area of the GOA was closed to directed fishing for Pacific cod by non-exempt AFA vessels on January 21, 2000 (65 FR 4520, January 28, 2000).

NMFS has determined that as of March 23, 2000, sufficient amounts remain in the directed fishing allowances for these species and species groups in the Central Regulatory Area to sustain a directed fishery. Therefore, NMFS is terminating the previous closure and is opening directed fishing for flathead sole, shallow water flatfish, arrowtooth flounder, and deep water flatfish by catcher vessels that are non-exempt under the AFA in the Central Regulatory Area of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow participation of catcher vessels that are non-exempt under the AFA. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 28, 2000.
Gary C. Matlock,
Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 00–7989 Filed 3–28–00; 3:53 pm]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 032700B]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the Gulf of Alaska (GOA). This action is necessary to prevent exceeding the pollock total allowable catch (TAC) specified for the West Yakutat District established by the Final 2000 Harvest Specifications for Groundfish.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), March 28, 2000, until 2400 hrs, A.l.t., December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The pollock TAC in the West Yakutat District was established by the Final 2000 Harvest Specifications for Groundfish (65 FR 8298, February 18, 2000) as 2,340 metric tons (mt), determined in accordance with § 679.20(c)(3)(ii).

In accordance with § 679.20(d)(1)(i), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the TAC of pollock in the West Yakutat District will soon be reached. Therefore, the Regional Administrator is establishing a directed fishing allowance of 2,140 mt, and is setting aside the remaining 200 mt as bycatch to support other anticipated groundfish fisheries. In accordance with § 679.20(d)(1)(iii), the Regional Administrator finds that this directed fishing allowance will soon be reached. Consequently, NMFS is prohibiting directed fishing for pollock in the West Yakutat District of the GOA.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. It must be implemented immediately to prevent overharvesting the pollock TAC in the West Yakutat District. Providing prior notice and an opportunity for public comment is impracticable and contrary to the public interest. Further delay would only result in overharvest. NMFS finds for good cause that the implementation of this action should not be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 27, 2000.
George H. Darcy,
Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.
[FR Doc. 00–7988 Filed 3–28–00; 3:53 pm]
BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 63
Friday, March 31, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

7 CFR Part 770

Rural Housing Service

Rural Business-Cooperative Service

Rural Utilities Service

7 CFR Parts 1823 and 1956

[RIN 0560–AF43]

Loans to Indian Tribes and Tribal Corporations

AGENCY: Farm Service Agency, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The comment period for the proposed rule is being extended in order to provide opportunities to further comment on this rule and its criteria as requested by several parties. This proposed rule was initially published in the **Federal Register** on November 2, 1999, (64 FR 59131). This proposed rule will consolidate into one part and to revise the Indian Tribal Land Acquisition Program (ITLAP) regulations to allow borrowers to use the loan reserve accounts to purchase additional real estate and to give borrowers additional servicing options. The proposed rule also would allow ITLAP funds to be used for certain refinancing activities; limit the requirement for reserve accounts to loans not secured by a general assignment of Tribal income; expand the uses borrowers may make of land purchased with ITLAP funds; require ITLAP loan applications, in most cases, include a copy of the borrower's option to purchase the land; and provide for subsequent loans to be made to ITLAP borrowers.

DATES: Comments on the proposed rule must be received on or before May 1, 2000 to be assured of consideration.

ADDRESSES: Mail comments on the proposed rule to: Arthur Veldon Hall, Director, Farm Loan Programs, Loan Servicing and Property Management Division, Farm Service Agency, USDA, 1400 Independence Avenue, S.W., STOP 0523, Washington, D.C. 20250–0523, fax number: (202) 690–0949, or hand deliver them to room 5449-South at the address listed above during normal business hours.

FOR FURTHER INFORMATION CONTACT: Gary West, Senior Loan Officer, Farm Loan Programs, Loan Servicing and Property Management Division, Farm Service Agency, USDA, 1400 Independence Avenue, S.W., STOP 0523, Washington, D.C. 20250–0523, telephone (202) 690–4008, facsimile (202) 690–0949, electronic mail: gwest@wdc.usda.fsa.gov.

SUPPLEMENTARY INFORMATION

I. Extension of Comment Period

In the **Federal Register** of November 2, 1999, FSA published a proposed rule to enunciate eligibility criteria for debt relief options for ITLAP loans. The comment period closed December 2, 1999, FSA is soliciting comments from interested persons concerning these elements.

FSA received one request from an indebted FSA ITLAP borrower to extend the comment period an additional 30 days. In response to the request, FSA is extending the comment period an additional 30 days.

II. Comments

Interested persons may, on or before May 1, 2000 submit to the Farm Loan Programs, Loan Servicing and Property Management Division (address above) written comments regarding the proposed rule. Two copies of any comments are to be submitted except that individuals may submit one copy. All written comments are available for public inspection from 9 a.m. to 4 p.m., Monday through Friday at the address listed above.

Signed at Washington, D.C., on March 23, 2000.

August Schumacher, Jr.,

Under Secretary for Farm and Foreign Agricultural Services.

[FR Doc. 00–8004 Filed 3–30–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–NM–380–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model DHC–8–100 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model DHC–8–100 and –300 series airplanes. This proposal would require revising the Aircraft Log Book to correct the airplane Production Modification List; performing an inspection to determine which bonded skin panels on the airplane require bonding integrity inspections (BII); and revising the Airworthiness Limitations List of the Approved Maintenance Plan to include the BII requirements. This proposal also would, for certain airplanes, require repetitive ultrasonic bond inspections to detect disbonding of airplane skin panels, and repair, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent damage to bonded skin panels to go undetected, which could result in failure of the bonded skin panels, and consequent loss of controllability of the airplane.

DATES: Comments must be received by May 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–380–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7526; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98–NM–380–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 98–NM–380–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model DHC–8–100 and –300 series airplanes. TCCA advises that, during a Bombardier investigation of an operator query, inconsistencies were found between the effectivity tables for the bonding integrity inspection (BII) in the non-destructive testing manuals and the modification status record in the airplane Modification Log. As a result of these inconsistencies, some of the bonded skin panels on affected DHC–8 aircraft were not being inspected under the BII program even though they were manufactured with panels that require a bonding integrity inspection. Failure to conduct these inspections could allow damage to bonded skin panels to go undetected, which could result in failure of the bonded skin panels, and consequent loss of controllability of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Service Bulletin S.B. 8–51–2, Revision 'A,' dated September 19, 1998, which describes procedures for revising the Aircraft Log Book to correct the airplane Production Modification List; performing an inspection to determine which bonded skin panels on the airplane require the BII program; and revising the Airworthiness Limitations List of the Approved Maintenance Plan to include the BII requirements.

Bombardier also has issued Part 5, sections 55–00–01 and 57–30–01 of Bombardier Production Support Manual (PSM) 1–8–7A, dated December 15, 1998 (for Model DHC–8–100 series airplanes); and Part 5, sections 55–00–01 and 57–30–01 of Bombardier PSM 1–83–7A, dated April 30, 1999 (for Model DHC–8–300 series airplanes) which describe procedures for repetitive ultrasonic bond inspections to detect disbonding of the affected airplane skin panels and repair, if necessary.

Accomplishment of the actions specified in the service bulletin and service information is intended to adequately address the identified unsafe condition. TCCA classified this service bulletin and service information as mandatory and issued Canadian airworthiness directive CF–98–31, dated September 1, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service information described previously, except as discussed below.

Differences Between Proposed Rule and Service Information

Operators should note that, although the service information specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Operators also should note that, although the Canadian airworthiness directive affects Bombardier Model DHC–8–314 series airplanes, Bombardier Model DHC–8–314 series airplanes are not type certificated in the United States. Therefore, the proposed AD does not affect those airplanes.

Cost Impact

The FAA estimates that 41 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed revisions to the Aircraft Log Book, Approved Maintenance Plan, and inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the actions proposed by this AD on U.S. operators is estimated to be $2,460, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier Inc. (Formerly de Havilland, Inc.): Docket 98–NM–380–AD.

Applicability: DHC–8–100 and –300 series airplanes, serial numbers 215 through 341 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent damage to bonded skin panels to go undetected, which could result in failure of the bonded skin panels, and consequent loss of controllability of the airplane; accomplish the following:

Revision to Aircraft Log Book and Airworthiness Limitations List

(a) Within 30 days after the effective date of this AD, perform the actions required by paragraphs (a)(1), (a)(2), and (a)(3) of this AD.

(1) Revise the Aircraft Log Book to correct the airplane Production Modification List in accordance with the Accomplishment Instructions in Part A of Section III of Bombardier Service Bulletin S.B. 8–51–2, Revision 'A,' dated September 19, 1998.

(2) Perform an inspection to determine which bonded skin panels on the airplane require bonding integrity inspections (BII) in accordance with the Accomplishment Instructions in Part B of Section III of Bombardier Service Bulletin S.B. 8–51–2, Revision 'A,' dated September 19, 1998.

(3) Revise the Airworthiness Limitations List of the Approved Maintenance Plan by inserting the bonding integrity inspections identified as de Havilland Maintenance Task 5500/01 and de Havilland Maintenance Task 5700/01 into the Airworthiness Limitations List. Except as provided by paragraph (e) of this AD: After the actions specified in paragraph (a)(3) of this AD have been accomplished, no alternative replacement times or structural inspection intervals may be approved for the bonded panels of the empennage and wings specified in de Havilland Maintenance Task 5500/01 and de Havilland Maintenance Task 5700/01.

On-Condition Repetitive Inspections

(b) For airplanes on which the bonded skin panels require BII's, as determined in paragraph (a)(2) of this AD: At the next required maintenance visit, but no later than 12 months after the effective date of this AD, perform an initial ultrasonic bond inspection to detect disbonding of the skin panels, in accordance with Part 5, sections 55–00–01 and/or 57–30–01, of Bombardier Production Support Manual (PSM) 1–8–7A, dated December 15, 1998 (for Model DHC–8–100 series airplanes); or Part 5, sections 55–00–01 and 57–30–01 of Bombardier PSM 1–83–7A, dated April 30, 1999 (for Model DHC–8–300 series airplanes); as applicable. Thereafter, repeat the ultrasonic inspection at the interval specified in the applicable PSM.

On-Condition Repair

(c) Except as provided by paragraph (d) of this AD, if any disbonding is detected during any inspection required by paragraph (b) of this AD, prior to further flight, repair in accordance with Part 5, sections 55–00–01 and 57–30–01 of Bombardier PSM 1–8–7A, dated December 15, 1998 (for Model DHC–8–100 series airplanes); or Part 5, sections 55–00–01 and 57–30–01 of Bombardier PSM 1–83–7A, dated April 30, 1999 (for Model DHC–8–300 series airplanes); as applicable.

(d) If any disbonding is detected during any inspection required by paragraph (b) of this AD; and the applicable service information specifies to contact Bombardier for appropriate action: Prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. For a repair method to be approved by the Manager, New York ACO, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in Canadian airworthiness directive.

Issued in Renton, Washington, on March 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8020 Filed 3–30–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–26–AD]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–1A11 (CL–600) and CL–600–2A12 (CL–601) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bombardier Model CL–600–1A11 (CL–600) and CL–600–2A12 (CL–601) series airplanes. This proposal would require modification of the main landing gear (MLG) brake units and inboard MLG wheels; and a revision to the Airplane Flight Manual (AFM) to include the increased cooling times for the modified brakes. This proposal also would allow, for certain cases, removal of the inboard and/or outboard wheel discs by installation of a placard to limit airplane operation on the ground and a revision to the AFM to include information for operating the airplane with the wheel discs removed. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent water freezing on the brake while the airplane is in flight due to water, slush, or snow from the runway entering into the brake assemblies during takeoff, and consequently, a tire burst during landing of the airplane.

DATES: Comments must be received by May 1, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bombardier, Inc., Canadair, Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C 3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: James E. Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–26–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–26–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, notified the FAA that an unsafe condition may exist on certain Bombardier Model CL–600–1A11 (CL–600) and CL–600–2A12 (CL–601) series airplanes. TCCA advises that a tire burst occurred on a number of airplanes during landing. Investigation revealed that the existing design of the main landing gear (MLG) allows water, slush, or snow from the runway to enter into the brake assemblies during takeoff. This condition, if not corrected, could result in the water freezing on the brake while the airplane is in flight, and consequently, a tire burst during landing of the airplane.

Explanation of Relevant Service Information

Bombardier has issued Canadair Challenger Service Bulletins 600–0369, Revision 4, dated June 27, 1984, including Attachment 1, dated December 6, 1983, and Attachment 2, dated January 11, 1984 [for Model CL–600–1A11 (CL–600) series airplanes]; and 601–0024, Revision 3, dated November 27, 1984, including Attachment 1, dated June 21, 1984, Attachment 2, dated December 6, 1983, and Attachment 3, dated January 11, 1984 [for Model CL–600–2A12 (CL–601) series airplanes). These service bulletins describe procedures for modification of the MLG brake units and inboard MLG wheels; and a revision to the Normal and Limitation Sections of the Airplane Flight Manual (AFM) to include the increased cooling times for the brakes. The modification involves installation of a wheel disc on each inboard MLG wheel; replacement of screws securing the wheel disc on each outboard MLG wheel with longer screws; installation of a water barrier shield and water deflector to each MLG brake unit assembly; removal of balance weights, if fitted, from the main wheel assemblies; and reidentification of brake unit and main wheel assemblies. For certain airplanes, a sealing cap is also installed on each MLG trailing arm aperture.

Bombardier also has issued Canadair Challenger Service Bulletins 600–0662, dated November 30, 1995 [for Model CL–600–1A11 (CL–600) series airplanes]; and 601–0467, dated November 30, 1995 [for Model CL–600–2A12 (CL–601) series airplanes]. These service bulletins describe procedures for removal of the inboard and/or outboard wheel discs by installation of a placard to limit airplane operation on the ground and a revision to the Normal Procedures Section of the AFM to include information for operating the airplane with the wheel discs removed.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. TCCA classified these service bulletins as mandatory and issued Canadian airworthiness directive CF–84–04R2, dated July 24, 1998, in order to assure the continued airworthiness of these airplanes in Canada.

FAA's Conclusions

These airplane models are manufactured in Canada and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral

airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletins described previously.

Cost Impact

The FAA estimates that 131 airplanes of U.S. registry would be affected by this proposed AD.

It would take approximately 33 work hours [for Model CL–600–1A11 (CL–600) series airplanes] or 26 work hours [for Model CL–600–2A12 (CL–601) series airplanes] per airplane to accomplish the proposed modification, at an average labor rate of $60 per work hour. Required parts would cost approximately $2,977 per airplane. Based on these figures, the cost impact of this action proposed by this AD on U.S. operators is estimated to be $649,367 or $4,957 per airplane [for Model CL–600–1A11 (CL–600) series airplanes], and $594,347 or $4,537 per airplane [for Model CL–600–2A12 (CL–601) series airplanes].

It would take approximately 1 work hour per airplane to accomplish the proposed AFM revision, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the AFM revision proposed by this AD on U.S. operators is estimated to be $7,860, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional placard installation and AFM revision, it would take approximately 5 work hours per airplane to accomplish these actions, at an average labor rate of $60 per work hour. Required parts would cost approximately $75 per airplane. Based on these figures, the cost impact of these actions is estimated to be $375 per airplane, per modification cycle.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bombardier, Inc. (Formerly Canadair): Docket 99–NM–26–AD.

Applicability: Model CL–600–1A11 (CL–600) series airplanes, serial numbers 1004 through 1066 inclusive and 1068 through 1085 inclusive; and Model CL–600–2A12 (CL–601) series airplanes, serial numbers 3001 through 3050 inclusive; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent water freezing on the brake while the airplane is in flight due to water, slush, or snow from the runway entering into the brake assemblies during takeoff, and consequently, a tire burst during landing of the airplane, accomplish the following:

Modification and AFM Revision

(a) Except as required by paragraph (b) of this AD, within 300 flight cycles after the effective date of this AD, accomplish the actions required by paragraphs (a)(1) and (a)(2) of this AD in accordance with the Accomplishment Instructions of Canadair Challenger Service Bulletins 600–0369, Revision 4, dated June 27, 1984, including Attachment 1, dated December 6, 1983, and Attachment 2, dated January 11, 1984 [for Model CL–600–1A11 (CL–600) series airplanes]; or 601–0024, Revision 3, dated November 27, 1984, including Attachment 1, dated June 21, 1984, Attachment 2, dated December 6, 1983, and Attachment 3, dated January 11, 1984 [for Model CL–600–2A12 (CL–601) series airplanes]; as applicable.

(1) Modify the main landing gear (MLG) brake units and inboard MLG wheels.

Note 2: Part A of the Accomplishment Instructions of Canadair Challenger Service Bulletin 600–0369, Revision 4, dated June 27, 1984, including Attachment 1, dated December 6, 1983, and Attachment 2, dated January 11, 1984; has been accomplished on airplane serial number 1072 in production.

(2) Revise the Normal Procedures Section of the FAA-approved Airplane Flight Manual (AFM) to include the brake cooling times for the modification specified in paragraph (a)(1) of this AD. This AFM revision may be accomplished by inserting the applicable AFM revision listed in the applicable service bulletin listed in paragraph (a) of this AD. Subsequent AFM revisions may be inserted in the AFM provided that the brake cooling information is identical to the applicable AFM revision listed in the applicable service bulletin listed in paragraph (a) of this AD.

(b) Operation of the airplane from contaminated runways (*i.e.*, wet, snow covered, or slush covered surfaces) is prohibited until the actions required by paragraph (a) of this AD are accomplished.

Optional Placard Installation and AFM Revision

(c) For airplanes that do not operate from a wet runway where the ambient temperature is below 10 degrees Celsius: It is permissible to remove the inboard and/or outboard wheel discs upon accomplishment of the actions specified in paragraphs (c)(1) and (c)(2) of this AD, in accordance with Canadair Challenger Service Bulletins 600–0662, dated November 30, 1995 [for Model CL–600–1A11 (CL–600) series airplanes]; or 601–0467, dated November 30, 1995 [for Model CL–600–2A12 (CL–601) series airplanes]; as applicable. The placard and AFM revision required by paragraphs (c)(1) and (c)(2) of this AD may be removed upon reinstallation of the inboard and outboard wheel discs.

(1) Install a placard on the instrument panel that states the following: "WHEEL DISCS ARE REMOVED—REFER TO AFM FOR LIMITATIONS"

(2) Revise the Limitations Section of the AFM to include information for operating the airplane with the wheel discs removed. This AFM revision may be accomplished by inserting the applicable AFM revision specified in the applicable service bulletin listed in paragraph (a) of this AD. Subsequent AFM revisions may be inserted in the AFM provided that the information for operating the airplane with the wheel discs removed is identical to the applicable AFM revision specified in the applicable service bulletin listed in paragraph (a) of this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 4: The subject of this AD is addressed in Canadian airworthiness directive CF–84–CF–84–04R2, dated July 24, 1998.

Issued in Renton, Washington, on March 24, 2000.

Donald L. Riggin,

Acting Manager Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8019 Filed 3–30–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 48

[PS–6–95; REG–209753–95]

RIN 1545–AT18

Diesel Fuel Excise Tax; Dye Injection Systems

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Partial withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws the notice of proposed rulemaking as it relates to diesel fuel dye injection systems which was published on March 14, 1996. It affects certain enterers, refiners, terminal operators, and throughputters.

FOR FURTHER INFORMATION CONTACT: Frank Boland, (202) 622–3130 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

On March 14, 1996, the IRS issued proposed regulations (PS–6–95; REG–209753–95) relating to diesel fuel dye injection systems and the measurement of taxable fuel (61 FR 10490). The Treasury Department does not have any plans at the present time to issue final regulations relating to dye injection systems.

List of Subjects in 26 CFR Part 48

Excise taxes, Reporting and recordkeeping requirements.

Withdrawal of Notice of Proposed Rulemaking

Accordingly, under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking as it relates to dye injection systems that was published in the **Federal Register** on March 14, 1996 (61 FR 10490) is withdrawn.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 00–7352 Filed 3–30–00; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 934

[SPATS No. ND–040–FOR; ND State Program Amendment XXIX]

North Dakota Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: Office of Surface Mining Reclamation and Enforcement (OSM) is announcing receipt of a proposed amendment to the North Dakota regulatory program (hereinafter, the "State program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). North Dakota proposes revisions to its revegetation policy document, "Standards for Evaluation of Revegetation Success and Recommended Procedures for Pre- and Postmining Vegetation Assessments," as discussed in **SUPPLEMENTARY INFORMATION**, II. Proposed Amendment. It intends to revise its program to improve operational efficiency.

DATES: We will accept written comments on this amendment until 4:00 p.m., m.s.t. May 1, 2000. If requested, we will hold a public hearing on the amendment on April 25, 2000. We will accept requests to speak until 4:00 p.m., m.s.t. on April 17, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Guy Padgett at the address listed below.

You may review copies of the North Dakota program, this amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office, Office of Surface Mining Reclamation and Enforcement, 100 East "B" Street, Casper, Wyoming 82601–1918

James R. Deutsch, Director, Reclamation Division, Pubic Service Commission, 600 E. Boulevard Avenue, Bismarck, North Dakota 58505–0480, Telephone: 701/328–2400

FOR FURTHER INFORMATION CONTACT: Guy Padgett, Telephone: 307/261–6550. Internet: GPADGETT@OSMRE.GOV

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the North Dakota Program

North Dakota: On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program. You can find background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program in the December 15, 1980 **Federal Register** (45 FR 82214). You can also find later actions concerning North Dakota's program and program amendments at 30 CFR 934.15 and 934.16.

II. Description of the Proposed Amendment

By letter dated March 16, 2000, North Dakota sent to us a proposed amendment to its program (Amendment number XXIX), administrative record No. ND–DD–01 under SMCRA (30 U.S.C. 1201 *et seq.*). North Dakota sent the amendment to include changes made at its own initiative. The full text of the program amendment is available for you to read at the locations listed above under **ADDRESSES.**

Specifically, North Dakota proposes to revise its revegetation policy document to reflect changes in its approved State Program as follows: (1) to give mining companies the option of proving reclamation success for three out of five consecutive years, starting no sooner than the eighth year of the responsibility period; (2) that the time-in-place requirement for tree and shrub standards will be deemed satisfied if the mine operator demonstrates that no tree, shrub or half-shrub replanting has occurred during the last six years of the responsibility period; (3) to clarify the objectives section; (4) to add new provisions for adjusting North Dakota Agricultural Statistical Service crop yield to reflect certain management practices; (5) to include other factors, in addition to precipitation and temperature, in developing a cropland and/or tame pastureland regression equation to clinically adjust yield standards; (6) to add a statement to the native grassland section that established plant species must be predominantly native; (7) to provide more consistency for the standards on native grassland diversity and seasonality, (8) to clarify sampling procedures regarding when plant growth forms must be weighed separately; and (9) miscellaneous minor changes and additions.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are requesting your comments on whether the amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the North Dakota program.

Written Comments

Send your written comments to OSM at the address given above. We will make comments, including names and addresses of respondents, available for public review during normal business hours. We will not consider anonymous comments. If Individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their name or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions form organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public review in their entirety.

Please submit Internet comments as an ASCII file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. ND–040–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Casper Field Office at 307/261–6555.

Your written comments should be specific and pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendations. In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Casper Field office.

Public Hearing

If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4:00 p.m., m.s.t. on April 17, 2000. If you are disabled and need special accommodations to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.** We will arrange the location and time of the hearing with those persons requesting the hearing. We will not hold the public hearing if no one requests an opportunity to speak.

To assist the transcriber and ensure an accurate record, we request, if possible, that each person who speaks at a public hearing provide us with a written copy of his or her comments. The public hearing will continue on the specified date until everyone scheduled to speak has been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after everyone scheduled to speak and others present in the audience who wish to speak, have been heard.

Public Meeting

If only one person requests an opportunity to speak, we may hold a public meeting rather than a public hearing. If you wish to meet with us to discuss the amendment, please request a meeting by contracting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will make a written summary of each meeting a part of the administrative record.

IV. Procedural Determinations

Executive Order 12866

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

Executive Order 12988

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal that is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 934

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 24, 2000.

Brent Wahlquist,

Regional Director, Western Regional Coordinating Center.

[FR Doc. 00–8011 Filed 3–30–00; 8:45 am]

BILLING CODE 4310–05–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

[SPATS No. OK–027–FOR]

Oklahoma Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing.

SUMMARY: OSM is announcing receipt of a proposed amendment to the Oklahoma regulatory program (Oklahoma program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). Oklahoma proposes revisions to and/or additions of rules concerning restrictions on the financial interests of State employees, specifically, authority, where to file, what to report, and resolving prohibited interests. Oklahoma intends to revise its program to clarify the responsibilities of the Director of the Oklahoma Department of Mines, advisory board members, commissions, and employees regarding restrictions on the financial interest of State employees.

This document gives the times and locations that the Oklahoma program and the amendment to that program are available for your inspection, the comment period during which you may submit written comments on the amendment, and the procedures that we will follow for the public hearing, if one is requested.

DATES: We will accept written comments until 4:00 p.m., c.d.t., May 1, 2000. If requested, we will hold a public hearing on the amendment on April 25, 2000. We will accept requests to speak at the hearing until 4:00 p.m., c.d.t. on April 17, 2000.

ADDRESSES: You should mail or hand deliver written comments and requests to speak at the hearing to Michael C. Wolfrom, Director, Tulsa Field Office, at the address listed below.

You may review copies of the Oklahoma program, the proposed amendment, a listing of any scheduled public hearings, and all written comments received in response to this document at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Tulsa Field Office.

Michael C. Wolfrom, Director, Tulsa Field Office, Office of Surface Mining, 5100 East Skelly Drive, Suite 470, Tulsa, Oklahoma 74135–6547, Telephone: (918) 581–6430.

Oklahoma Department of Mines, 4040 N. Lincoln Blvd., Suite 107, Oklahoma City, Oklahoma 73105, Telephone: (405) 521–3859.

FOR FURTHER INFORMATION CONTACT: Michael C. Wolfrom, Director, Tulsa Field Office. Telephone: (918) 581–6430. Internet: mwolfrom@tokgw.osmre.gov.

SUPPLEMENTARY INFORMATION:

I. Background on the Oklahoma Program

On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program. You can find background information on the Oklahoma program, including the Secretary's findings, the disposition of comments, and the conditions of approval in the January 19, 1981, **Federal Register** (46 FR 4902).You can find later actions concerning the Oklahoma program at 30 CFR 936.15 and 936.16.

II. Description of the Proposed Amendment

By letter dated January 13, 2000 (Administrative Record No. OK–985.01), Oklahoma sent us an amendment to its program under SMCRA. Oklahoma sent the amendment in response to our letter dated December 6, 1999 (Administrative Record No. OK–985), that we sent to Oklahoma concerning regulation changes in its program that we did not approve. Oklahoma proposes to amend the Oklahoma Administrative Code (OAC). Below is a summary of the changes proposed by Oklahoma. The full text of the program amendment is available for your inspection at the locations listed above under **ADDRESSES.**

A. Section 460:20–5–3. Authority

Oklahoma proposes to add new paragraph (4) to read as follows:

File all statements and supplements received pursuant to 45 O.S. Supp. 1980, Section 765, from members of advisory boards and the Oklahoma Mining Commission with the Oklahoma Governor's Office, Director of Appointments.

B. Section 460:20–5–9. Where to File

Oklahoma proposes to revise paragraph (a) and to add new paragraphs (b) and (c) to read as follows:

(a) The Director shall file his or her statement with the Director of OSM.

(b) Members of advisory boards and commissions representing multiple interests as provided in Section 460:20–

5–7, shall file their statement with the Governor's Office, Director of Appointments, or such other official as may be designated by State law or regulation.

(c) All other employees shall file his or her statement with the Department of Mines Director pursuant to the requirements of 45 O.S. Supp. 786 and this Subchapter.

C. Section 460:20–5–10. What To Report

Oklahoma proposes to revise paragraph (c)(3) to read as follows:

(3) The exceptions shown in the employee certification of the form must provide enough information for the Director of the Department or the Governor's Office, Director of Appointment, for Commission members, to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

D. Section 460:20–5–12. Resolving Prohibited Interests

Oklahoma proposes to make an editorial correction in the title of this section so that the title reads, "Resolving prohibited interests," instead of "Resolving prohibited interstate." Oklahoma also proposes to revise paragraph (b)(1) so that the second sentence reads:

Violations of the regulations in this subchapter by the Director will be cause for remedial action by the Governor of the State or other appropriate State official based on recommendations from the Director of OSM on behalf of the Secretary.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the Oklahoma program.

Written Comments: If you submit written or electronic comments on the proposed rule during the 30-day comment period, they should be specific, should be confined to issues pertinent to the notice, and should explain the reason for your recommendation(s). We may not be able to consider or include in the Administrative Record comments delivered to an address other than the one listed above (see **ADDRESSES**).

Electronic Comments: Please submit Internet comments as an ASCII, WordPerfect, of Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS NO. OK–027–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Tulsa Field Office at (918) 581–6430.

Availability of Comments: Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours at OSM's Tulsa Field Office (see **ADDRESSES**). Individual respondents may request that we withhold their home address from the administrative record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

Public Hearing: If you wish to speak at the public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., c.d.t. on April 17, 2000. We will arrange the location and time of the hearing with those persons requesting the hearing. If no one requests an opportunity to speak at the public hearing, the hearing will not be held.

To assist the transcriber and ensure an accurate record, we request that you provide us with a written copy of your testimony if you speak at the public hearing. The public hearing will continue on the specified date until all persons scheduled to speak have been heard. If you are in the audience and have not been scheduled to speak and wish to do so, you will be allowed to speak after those who have been scheduled. We will end the hearing after all persons scheduled to speak and persons present in the audience who wish to speak have been heard.

If you are disabled and need a special accommodation to attend a public hearing, contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Public Meeting: If only one person requests an opportunity to speak at a hearing, a public meeting, rather than a public hearing, may be held. If you wish to meet with us to discuss the proposed amendment, request a meeting by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings are open to the public and, if possible, we will post notices of meetings at the locations listed under **ADDRESSES.** We will also make a written summary of each meeting a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulation.

Executive Order 13132—Federalism

This rules does not have federalism implications. SMCRA delineates the roles of the federal and state governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that state laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that state programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of this section. However, these standards are not applicable to the actual language of state regulatory programs and program amendments since each such program is drafted and promulgated by a specific state, not OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed state regulatory programs and program amendments submitted by the states must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing federal regulations and whether the other requirements of 30 CFR Parts 730, 731, and 732 have been met.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed state regulatory program provision does not constitute a major federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Therefore, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the state. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5. U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule:

a. Does not have an annual effect on the economy of $100 million.

b. Will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions.

c. Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S. based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the state submittal which is the subject of this rule is based upon counterpart federal regulations for which an analysis was prepared and a determination made that the federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year any government entity or the private sector.

List of Subjects in 30 CFR Part 936

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 23, 2000.

Richard J. Seibel,

Acting Regional Director, Mid-Continent Regional Coordinating Center.

[FR Doc. 00–8010 Filed 3–30–00; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 1

[Docket No.: 000308066–0066–01]

RIN 0651–AB06

Changes to Implement Patent Term Adjustment Under Twenty-Year Patent Term

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing changes to the rules of practice in patent cases to implement certain provisions of section 4402 of the "American Inventors Protection Act of 1999." These provisions of the "American Inventors Protection Act of 1999" provide patent term adjustment to compensate patentees for certain delays in the application examination process.

DATES: *Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before May 30, 2000. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message over the Internet addressed to: patentterm.comments@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 872–9411 or (703) 308–6916, marked to the attention of Karin L. Tyson. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Special Program Law Office, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, located at Room 3–C23 of Crystal Plaza 4, 2201 South Clark Place, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: http://www.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: Karin L. Tyson, Robert W. Bahr, or Robert A. Clarke by telephone at (703) 305–1383, or by mail addressed to: Box Comments—Patents, Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 872–9411 or (703) 308–6916, marked to the attention of Karin L. Tyson.

SUPPLEMENTARY INFORMATION: The "American Inventors Protection Act of 1999" (Title IV of the "Intellectual Property and Communications Omnibus Reform Act of 1999" (S. 1948) as introduced in the 106th Congress on November 17, 1999) was incorporated and enacted into law on November 29, 1999, by § 1000(a)(9), Division B, of Public Law 106–113, 113 Stat. 1501 (1999). The "American Inventors Protection Act of 1999" contains a number of changes to title 35, United States Code. This notice proposes changes to the rules of practice to implement the provisions of §§ 4401 and 4402 of the "American Inventors Protection Act of 1999." These provisions are effective on the date that is six months after the date of enactment of the "American Inventors Protection Act of 1999" (May 29, 2000) and apply to applications, other than for a design patent, filed on or after the date that is six months after the date of enactment of the "American Inventors Protection Act of 1999" (May 29, 2000).

Section 532 of the Uruguay Round Agreements Act (Public Law 103–465, 108 Stat. 4809 (1994)) amended 35 U.S.C. 154 to provide that the term of patent protection begins on the date of patent grant and ends on the date twenty years from the filing date of the application, or the earliest filing date for which a benefit is claimed under 35 U.S.C. 120, 121, or 365(c). Public Law 103–465 also contained provisions, codified at 35 U.S.C. 154(b), for patent term extension due to certain examination delays.

Section 4402 of the "American Inventors Protection Act of 1999" amends 35 U.S.C. 154(b)(1) to provide

day-by-day patent term adjustment if the Office fails, within specified time periods, to: (1) initially act on the application; (2) respond to a reply or appeal to the Board of Patent Appeals and Interferences by the applicant; (3) act on an application containing allowed claims after a decision by the Board of Patent Appeals and Interferences or a Federal court; or (4) issue the application after the issue fee is paid in reply to a notice of allowance and all outstanding requirements are satisfied (35 U.S.C. 154(b)(1)(A)). Section 4402 of the "American Inventors Protection Act of 1999" also amends 35 U.S.C. 154(b)(1) to provide day-by-day patent term adjustment if, subject to a number of limitations, the Office fails to issue a patent within three years of the actual filing date of the application (35 U.S.C. 154(b)(1)(B)). Finally, § 4402 of the "American Inventors Protection Act of 1999" also amends 35 U.S.C. 154(b)(1) to provide day-by-day patent term adjustment for delays due to interference proceedings under 35 U.S.C. 135(a), imposition of a secrecy order under 35 U.S.C. 181, or successful appellate review by the Board of Patent Appeals and Interferences or a Federal court (35 U.S.C. 154(b)(1)(C)).

Section 4402 of the "American Inventors Protection Act of 1999" amends 35 U.S.C. 154(b)(2) to place limitations on the period of patent term adjustment granted under 35 U.S.C. 154(b)(1). First: to the extent that the periods of delay attributed to the grounds specified in 35 U.S.C. 154(b)(1) overlap, the period of adjustment shall not exceed the actual number of days the issuance of the patent was delayed. Second: no patent, the term of which has been disclaimed beyond a specified date, may be adjusted under 35 U.S.C. 154(b) beyond the expiration date specified in the disclaimer. Third: the period of patent term adjustment under 35 U.S.C. 154(b)(1) shall be reduced by a period equal to the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution (or processing or examination) of the application. Section 4402 of the "American Inventors Protection Act of 1999," however, does not contain any limit (*e.g.*, of five or ten years) on the total extension or adjustment that may be granted under 35 U.S.C. 154(b).

An applicant is deemed to have failed to engage in reasonable efforts to conclude prosecution of the application with respect to any patent term adjustment under 35 U.S.C. 154(b)(1)(B) (failure to issue a patent within three years of the actual filing date of the application) for the cumulative total of any periods of time in excess of three months that are taken to reply to a notice of any rejection, objection, argument, or other request, measuring the three-month period from the date the notice was mailed or given. In addition, 35 U.S.C. 154(b)(2) directs the Office to prescribe regulations establishing the circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of the application.

Section 4402 of the "American Inventors Protection Act of 1999" also amends 35 U.S.C. 154(b)(3) to establish procedures for patent term adjustment determinations. 35 U.S.C. 154(b)(3) directs the Office to prescribe regulations establishing procedures for the application for and determination of patent term adjustment under 35 U.S.C. 154(b). 35 U.S.C. 154(b)(3), however, requires the Office to: (1) make a patent term adjustment determination and transmit a notice of that determination with the notice of allowance; and (2) provide the applicant with one opportunity to request reconsideration of that patent term adjustment determination. 35 U.S.C. 154(b)(3) also provides that the Office shall reinstate all or part of the cumulative period of time of an adjustment reduced under 35 U.S.C. 154(b)(2)(C) (for failure to reply to a notice of any rejection, objection, argument, or other request within three months of the date the notice was mailed or given) if, prior to issuance of the patent, the applicant makes a showing that, in spite of all due care, the applicant was unable to reply within the three-month period, except that the Office may not reinstate more than three additional months for each reply beyond the original three-month period. Section 4402 of the "American Inventors Protection Act of 1999" also amends 35 U.S.C. 154(b)(3) to provide that the Office shall proceed to grant the patent after completing its patent term adjustment determination, and amends 35 U.S.C. 154(b)(4) to provide for judicial review in the event that the applicant is dissatisfied with that patent term adjustment determination.

Section 4405(a) of the "American Inventors Protection Act of 1999" provides that § 4402 shall take effect on the date that is six months after the date of enactment of the "American Inventors Protection Act of 1999" (May 29, 2000) and shall apply to any application (other than a reissue or design) filed on or after the date that is six months after the date of enactment of the "American Inventors Protection Act of 1999" (May 29, 2000). Therefore, patents (other than reissue or design) issued on applications filed on or after June 8, 1995, but before May 29, 2000, are subject to the patent term extension provisions of 35 U.S.C. 154(b) as amended by § 532(a)(1) of Public Law 103–465 and § 1.701, whereas patents (other than reissue or design) issued on applications filed on or after May 29, 2000, are subject to the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by § 4402 of the "American Inventors Protection Act of 1999" (as it is proposed to be implemented in §§ 1.702 through 1.705).

The filing date of a continued prosecution application (CPA) under § 1.53(d) is the date that the request for CPA is filed (§ 1.53(d)(2)), even though the Office uses the filing date of the prior application for identification purposes. Therefore, the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by § 4402 of the "American Inventors Protection Act of 1999" apply to any CPA filed on or after May 29, 2000, regardless of the filing date of the prior application of the CPA. While an applicant may file a continuing application under § 1.53(b) on or after May 29, 2000, for the application to be subject to the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by § 4402 of the "American Inventors Protection Act of 1999," an applicant need only file a CPA under § 1.53(d) on or after May 29, 2000, for the application to be subject to the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by § 4402 of the "American Inventors Protection Act of 1999." The filing of a CPA on or after May 29, 2000, does not, however, entitle an applicant to receive term adjustment for Office delays before May 29, 2000.

The six-month lead time provided in § 4405(a) for implementing the patent term adjustment provisions of § 4402 of the "American Inventors Protection Act of 1999" is not sufficient to conduct a notice and comment rulemaking (giving a 60-day comment period) and adopt final rules by the effective date (May 29, 2000) of the patent term adjustment provisions of § 4402 of the "American Inventors Protection Act of 1999." Nevertheless, the Office does not anticipate that any patent entitled to patent term adjustment based upon the provisions of § 4402 of the "American Inventors Protection Act of 1999" will issue until December of 2000, at the earliest. This notice of proposed rulemaking, however, places applicants on notice as to the actions or inactions that are considered by the Office (and may be adopted in the final rules) as circumstances constituting a failure to engage in reasonable efforts to conclude prosecution (processing or examination) of the application, and which will result in a reduction of any patent term adjustment.

Discussion of Specific Rules

Section 1.18(e) is proposed to be added to provide a $200.00 fee for filing an application for patent term adjustment under § 1.705. Section 1.18(f) is proposed to be added to provide a $450.00 fee for filing a request for reinstatement of all or part of the term reduced pursuant to § 1.704(b)(1) in an application for patent term adjustment under § 1.705. Section 1.18(d) is proposed to be added in a rulemaking to implement the eighteen-month publication provisions of the "American Inventors Protection Act of 1999." The fees in proposed § 1.18(e) and (f) are set to recover the estimated average cost to the Office for processing and evaluating an application for patent term adjustment under § 1.705 ($200.00), and for processing and evaluating a request under 35 U.S.C. 154(b)(3)(C) for reinstatement of term reduced under 35 U.S.C. 154(b)(2)(C) ($450.00), respectively. *See* 35 U.S.C. 41(d). In view of these proposed additions to § 1.18, the heading of § 1.18 is also proposed to be amended to refer to patent "post-allowance (including issue) fees" instead of only patent "issue fees").

Subpart F of 37 CFR Part 1 is proposed to be amended to include a first undesignated center heading to read "ADJUSTMENT OF PATENT TERM DUE TO EXAMINATION DELAY" followed by an amended § 1.701 and newly added §§ 1.702 through 1.705 concerning patent term adjustment under 35 U.S.C. 154(b), and a second undesignated center heading to read "EXTENSION OF PATENT TERM DUE TO REGULATORY REVIEW" followed by current § 1.710 *et seq.* concerning patent term extension under 35 U.S.C. 156.

Section 1.701 is proposed to be amended by revising its heading to indicate that its provisions concern the term provisions of the Uruguay Round Agreements Act (Public Law 103–465), and to add a paragraph (e) to specify that the provisions of § 1.701 apply only to original patents issued on applications filed on or after June 8, 1995, and before May 29, 2000. As discussed above, the provisions of 35 U.S.C. 154(b) as amended by § 532(a)(1) of Public Law 103–465 and current § 1.701 apply to applications (other than for a reissue or design patent) filed on or after June 8, 1995, but before May 29, 2000, and the provisions of § 4402 of the "American Inventors Protection Act of 1999" and proposed §§ 1.702 through 1.705 apply to applications (other than for a reissue or design patent) filed on or after May 29, 2000.

Section 1.702 is proposed to be added to set forth the bases for patent term adjustment under 35 U.S.C. 154(b)(1). Section 1.702(a) as proposed indicates that a patent is entitled to patent term adjustment if the Office fails to perform certain acts of examination within specified time frames (35 U.S.C. 154(b)(1)(A)). Section 1.702(b) as proposed indicates that a patent is entitled to patent term adjustment if, subject to a number of limitations, the Office fails to issue a patent within three years of the actual filing date of the application (35 U.S.C. 154(b)(1)(B)). Section 1.702(c) as proposed indicates that a patent is entitled to patent term adjustment if the issuance of the patent was delayed by an interference proceeding (35 U.S.C. 154(b)(1)(C)(i)). Section 1.702(d) as proposed indicates that a patent is entitled to patent term adjustment if the issuance of the patent was delayed by the application being placed under a secrecy order under 35 U.S.C. 181 (35 U.S.C. 154(b)(1)(C)(ii)). Section 1.702(e) as proposed indicates that a patent is entitled to patent term adjustment if the issuance of the patent was delayed by successful appellate review under 35 U.S.C. 134, 141, or 145 (35 U.S.C. 154(b)(1)(C)(iii)). Section 1.702(f) as proposed provides that the provisions of §§ 1.702 through 1.705 apply only to original applications, except applications for a design patent, filed on or after May 29, 2000, and patents issued on such applications.

Section 1.703 as proposed specifies the period of adjustment if a patent is entitled to patent term adjustment under 35 U.S.C. 154(b)(1) and § 1.702.

Section 1.703(a) as proposed indicates that the period of adjustment under § 1.702(a) is the sum of the following periods (to the extent that such periods are not overlapping): (1) The number of days, if any, in the period beginning on the date fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the mailing date of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first (a written restriction requirement, a written election of species requirement, and an action under *Ex parte Quayle*, 1935 Comm'r Dec. 11 (1935) are each an action under 35 U.S.C. 132); (2) the number of days, if any, in the period beginning on the date four months after the date a reply under § 1.111 was filed and ending on the mailing date of an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first; (3) the number of days, if any, in the period beginning on the date four months after the date a reply in compliance with § 1.113 (*i.e.*, only an after final reply that cancels all of the rejected claims and removes all outstanding objections and requirements or otherwise places the application in condition for allowance) was filed and ending on the date of mailing of an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first; (4) the number of days, if any, in the period beginning on the date four months after the date a notice of appeal to the Board of Patent Appeals and Interferences under 35 U.S.C. 134 and § 1.191 was filed and ending on the mailing date of an examiner's answer under § 1.193, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first; (5) the number of days, if any, in the period beginning on the date four months after the date of a final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145 or 146 in an application containing allowable claims and ending on the mailing date of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first; and (6) the number of days, if any, in the period beginning on the date four months after the date the issue fee was paid and all outstanding requirements were satisfied (*i.e.*, the date the issue fee was paid or the date all outstanding requirements were satisfied, whichever is later) and ending on the date a patent was issued.

Section 1.703(b) as proposed indicates that the period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the date three years after the actual filing date of the application and ending on the date a patent was issued. Section 1.703(b) as proposed also sets forth the limitations on patent term adjustment specified in 35 U.S.C. 154(b)(1)(B)(i) and (ii). Section 1.703(b) as proposed specifically provides that the period of adjustment of the term of a patent under § 1.703(b) shall not include the period equal to the sum of the following periods: (1) The period of pendency consumed by continued examination of the application under 35 U.S.C. 132(b) (35 U.S.C. 154(b)(1)(B)(i)); (2) the period of pendency consumed by interference proceedings (35 U.S.C. 154(b)(1)(B)(ii)); (3) the period of pendency consumed by

imposition of a secrecy order (35 U.S.C. 154(b)(1)(B)(ii)); and (4) the period of pendency consumed by appellate review under 35 U.S.C. 134, 141, 145, whether successful or unsuccessful (35 U.S.C. 154(b)(1)(B)(ii)). The provisions of 35 U.S.C. 154(b)(1)(B)(iii) concerning the period of pendency consumed by delays in the processing of the application requested by the applicant are treated in § 1.704 as such delays are also circumstances constituting a failure of an applicant to engage in reasonable efforts to conclude processing or examination of the application.

Section 1.703(c) as proposed indicates that the period of adjustment under § 1.702(c) is the sum of the following periods (to the extent that such periods are not overlapping): (1) The number of days, if any, in the period beginning on the date an interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application; and (2) the number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension.

Section 1.703(d) as proposed indicates that the period of adjustment under § 1.702(d) is the sum of the following periods (to the extent that such periods are not overlapping): (1) The number of days, if any, the application was maintained in a sealed condition under 35 U.S.C. 181; (2) the number of days, if any, in the period beginning on the date of mailing of an examiner's answer under § 1.193 in the application under secrecy order and ending on the date the secrecy order was removed; (3) the number of days, if any, in the period beginning on the date applicant was notified that an interference would be declared but for the secrecy order and ending on the date the secrecy order was removed; and (4) the number of days, if any, in the period beginning on the date of notification under § 5.3(c) and ending on the date of mailing of the notice of allowance under § 1.311.

Section 1.703(e) as proposed indicates that the period of adjustment under § 1.702(e) is the sum of the number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 1.191 and ending on the date of a final decision in favor of the applicant by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

Section 1.703(f) as proposed indicates that the adjustment will run from the expiration date of the patent as set forth in 35 U.S.C. 154(a)(2). Section 1.703(f) also indicates that to the extent that periods of adjustment attributable to the grounds specified in § 1.702 overlap, the period of adjustment will not exceed the actual number of days the issuance of the patent was delayed (35 U.S.C. 154(b)(2)(A)). Section 1.703(f) as proposed also specifically indicates that the term of a patent entitled to adjustment under § 1.702 and this section shall be adjusted for the sum of the periods calculated under § 1.703(a) through (e), to the extent that such periods are not overlapping, less the sum of the periods calculated under § 1.704. Section 1.703(f) as proposed also provides that the date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation. That is, while the date indicated on any certificate of mailing or transmission under § 1.8 will continue to be taken into account in determining timeliness, the date of filing (§ 1.6) will be the date used in a patent term adjustment calculation. Applicant may wish to consider the use of the "Express Mail Post Office to Addressee" service of the United States Postal Service (§ 1.10) for replies (as well as original applications) to be accorded the earliest possible filing date for patent term adjustment calculations.

Section 1.703(g) as proposed indicates that no patent, the term of which has been disclaimed beyond a specified date, shall be adjusted under §§ 1.702 and 1.703 beyond the expiration date specified in the disclaimer (35 U.S.C. 154(b)(2)(B)).

Section 1.704 as proposed implements the provisions of 35 U.S.C. 154(b)(2)(C). 35 U.S.C. 154(b)(2)(C) specifies certain circumstances as constituting a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application, and also provides for the Office to prescribe regulations establishing circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of the application.

Section 1.704(a) as proposed implements the provisions of 35 U.S.C. 154(b)(2)(C)(i) and indicates that the period of adjustment shall be reduced by a period equal to the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution (*i.e.*, processing or examination) of the application.

Section 1.704(b) as proposed provides that with respect to the ground for adjustments set forth in § 1.702(a) though (e), and in particular § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude prosecution for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant. A Notice of Omitted Items (PTO–1669) is not a notice or action by the Office making a rejection, objection, argument, or other request within the meaning of 35 U.S.C. 154(b)(2)(C)(ii) or § 1.704(b), since the Office does not require a reply to that notice to continue the processing and examination of the application. The three-month period in 35 U.S.C. 154(b)(2)(C)(ii) and § 1.704(b) applies regardless of the period for reply set in the Office action or notice. For example, if an Office action sets a one-month period for reply (restriction requirement), the applicant may obtain a two-month extension of time under § 1.136(a) before being subject to a reduction of patent term adjustment under 35 U.S.C. 154(b)(2)(C)(ii) and § 1.704(b). If, however, an Office action set a six-month period for reply, as is commonly set in applications subject to secrecy orders (see section 130 of the *Manual of Patent Examining Procedure* (7th ed. 1998) (MPEP)), the applicant is subject to a reduction of patent term adjustment under 35 U.S.C. 154(b)(2)(C)(ii) and § 1.704(b) if the applicant does not reply to the Office action within three months, notwithstanding that a reply may be timely filed six months after the mailing date of the Office action. Section 1.704(b) as proposed indicates that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date three months after the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

Section 1.704(c) as proposed also establishes further circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of the application. Section 1.704(c)(1) through (c)(16) set forth actions or inactions by an applicant that interfere with the Office's ability to process or examine an application (and thus circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of the application), as well as the period by which a period of adjustment set forth in § 1.703 shall be reduced if an applicant engages in any of the enumerated actions or inactions. Sections 1.704(c)(1) through 1.704(c)(16) address situations that occur with sufficient frequency to warrant being specifically provided for in the rules of practice. An attempt to provide an exhaustive listing of actions or inactions that interfere with the Office's ability to process or examine an application, but do not occur with great frequency (*e.g.*, applicant files and persists in requesting reconsideration of a meritless petition under § 1.10 or when the scope of the broadest claim in the application at the time an application is placed in condition for allowance is substantially the same as suggested or allowed by the examiner more than six months earlier than the date the application was placed in condition for allowance), is impractical. Thus, the actions or inactions set forth in § 1.704(c) are exemplary circumstances that constitute a failure of an applicant to engage in reasonable efforts to conclude processing or examination of the application. The Office may also reduce a period of adjustment provided in § 1.703 on the basis of conduct that interferes with the Office's ability to process or examine an application under the authority provided in 35 U.S.C. 154(b)(2)(C)(iii), even if such conduct is not specifically addressed in § 1.704(c).

Section 1.704(c)(1) as proposed establishes suspension of action under § 1.103 at the applicant's request as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Obviously, if action is suspended at the applicant's request, the Office is precluded from processing or examining the application as a result of an action by the applicant. Section 1.704(c)(1) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date a request for suspension of action under § 1.103 was filed and ending on the date of the termination of the suspension.

Section 1.704(c)(2) as proposed establishes deferral of issuance of a patent under § 1.314 as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Obviously, if issuance of the patent is deferred under § 1.314, the Office is precluded from issuing the application as a result of an action by the applicant. When a petition under § 1.314 is granted, the petition decision generally states that the application will be held for a period of a month to await the filing of a paper. At the end of the period, the application is returned to the issue process without a further communication from the Office to the applicant. Section 1.704(c)(2) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date a request for deferral of issuance of a patent under § 1.314 was filed and ending on the issue date of the patent.

Section 1.704(c)(3) as proposed establishes abandonment of the application or late payment of the issue fee as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Obviously, if the application is abandoned (either by failure to prosecute or late payment of the issue fee), the Office is precluded from processing or examining the application as a result of an action or inaction by the applicant. Section 1.704(c)(3) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date of abandonment or the date after the day the issue fee was due and ending on the date of mailing of the decision reviving the application or accepting late payment of the issue fee.

Section 1.704(c)(4) as proposed establishes failure to file a petition to withdraw a holding of abandonment or to revive an application within two months from the mailing date of a notice of abandonment as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Any applicant who considers an application to have been improperly held abandoned (the reduction in § 1.704(c)(3) is applicable to the revival of an application properly held abandoned) is expected to file a petition to withdraw the holding of abandonment (or to revive the application) within two months from the mailing date of a notice of abandonment. *See* MPEP 711.03(c)(I). Section 1.704(c)(4) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date two months from the mailing date of a notice of abandonment and ending on the date a petition to withdraw the holding of abandonment or to revive the application was filed.

Section 1.704(c)(5) as proposed establishes conversion of a provisional application under 35 U.S.C. 111(b) to a nonprovisional application under 35 U.S.C. 111(a) (pursuant to 35 U.S.C. 111(b)(5)) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Section 4801(a) of the "American Inventors Protection Act of 1999" provides for the conversion of a provisional application under 35 U.S.C. 111(b) and § 1.53(c) to a nonprovisional application under 35 U.S.C. 111(a) and § 1.53(b), and it is being implemented in a separate rulemaking. Conversion of a provisional application to a nonprovisional application will require the Office to reprocess the application (as a nonprovisional application) up to one year after the filing date that will be accorded to such nonprovisional application as a result of an action by the applicant. Section 1.704(c)(5) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date the application was filed under 35 U.S.C. 111(b) and ending on the date a request in compliance with § 1.53(c)(3) to convert the provisional application into a nonprovisional application was filed.

Section 1.704(c)(6) as proposed establishes failure to file the basic filing fee (§ 1.16(a) or (g)), any English translation required by § 1.52(d), or an oath or declaration (§ 1.63) executed by all of the inventors in an application under 35 U.S.C. 111(a) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The Office cannot act on an application until the applicant files the basic filing fee, an English translation (if the application is filed in a language other than English), and an oath or declaration (§ 1.63) executed in compliance with § 1.64 (by all of the inventors or applicants under §§ 1.42, 1.43, or 1.47). The rules of practice (§ 1.53(f) and 1.136(a)), however, currently permit an applicant to delay filing the basic filing fee, any English translation required by § 1.52(d), and oath or declaration by up to seven months from the date the applicant is notified that the application is missing the basic filing fee, English translation, or oath or declaration. To avoid changing these provisions and

requiring that the basic filing fee and oath or declaration be filed when an application is filed under 35 U.S.C. 111(a), the Office is setting forth failure to file the basic filing fee (§ 1.16(a) or (g)), any English translation required by § 1.52(d), or an oath or declaration (§ 1.63) executed by all of the inventors in an application under 35 U.S.C. 111(a) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing of the application. Section 1.704(c)(6) as proposed provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date the application was filed and ending on the later of the date the applicant supplied the basic filing fee (§ 1.16), an English translation (§ 1.52(d)), and an oath or declaration (§ 1.63) executed in compliance with § 1.64 and, if the oath or declaration was not executed by all of the inventors, the earliest of the date the application was accorded status under § 1.47, or four months after a grantable petition under § 1.47 was filed.

Section 1.704(c)(7) as proposed establishes failure to fulfill the requirements of 35 U.S.C. 371(c) and § 1.494 or § 1.495 in an international application as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing of an application. The three-year period in 35 U.S.C. 154(b)(1)(B) is measured from the "actual filing date of the application in the United States" and 35 U.S.C. 363 provides that an international application designating the United States has the same effect from its international filing date as a national application regularly filed in the United States (except as provided in 35 U.S.C. 102(e)). Nevertheless, the Office cannot act on an international application until the applicant fulfills the requirements of 35 U.S.C. 371(c) and § 1.494 or § 1.495, and the legislative history of 35 U.S.C. 154(b) makes clear that an applicant may not use the Patent Cooperation Treaty (PCT) application filing system to have the time period set forth in § 1.494 or § 1.495 count against the three-year time period in 35 U.S.C. 154(b)(1)(B). *See* 145 Cong. Rec. S14708, S14718 (daily ed. November 17, 1999) (statement of Sen. Lott); *see also* H.R. Rep. No. 106–464 at 126 (1999). Section 1.704(c)(7) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date the international application was filed under 35 U.S.C. 363 and the later of the date the application fulfilled the requirements of 35 U.S.C. 371(c) and §§ 1.494 or 1.495 and, if the oath or declaration was not executed by all of the inventors (§ 1.497), the earliest of the date the application was accorded status under § 1.47, or four months after a grantable petition under § 1.47 was filed.

Section 1.704(c)(8) as proposed establishes failure to request the national stage of processing in an international application if the application fulfills the requirements of 35 U.S.C. 371(c) and § 1.494 or § 1.495 before the expiration of the applicable time period set forth in § 1.494(b) or § 1.495(b) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The Office cannot act on an international application before the expiration of the applicable time period set forth in § 1.494(b) or § 1.495(b) without the applicant's express request (35 U.S.C. 371(f)), even if the application fulfills the requirements of 35 U.S.C. 371(c) and § 1.494 or § 1.495 prior to the expiration of the applicable time period set forth in § 1.494(b) or § 1.495(b). Section 1.704(c)(8) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date the international application was filed under 35 U.S.C. 363 and the earlier of the date of expiration of the applicable time period in § 1.494(b) or § 1.495(b) or the date on which an express request for national stage of processing is filed.

Section 1.704(c)(9) as proposed establishes failure to file an application with a specification on papers in compliance with § 1.52 and having a title and abstract in compliance with § 1.72, drawings in compliance with § 1.84 (if applicable), and a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The Office must require these items during its preexamination processing of an application to implement the pre-grant publication provisions of the "American Inventors Protection Act of 1999." Therefore, the Office cannot act on an application until it contains a specification on papers in compliance with § 1.52 and having an abstract (§ 1.72(b)), drawings in compliance with § 1.84 (if applicable), and a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable). Section 1.704(c)(9) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the filing date of the application and ending on the date the application contains a specification on papers in compliance with § 1.52 and having an abstract (§ 1.72(b)), drawings in compliance with § 1.84 (if applicable), and a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable).

Section 1.704(c)(10) as proposed establishes submission of a preliminary amendment or other preliminary paper less than one month before the mailing of an Office action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 that requires the mailing of a supplemental Office action or notice of allowance as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. If the submission of a preliminary amendment or other paper requires the Office to issue a supplemental Office action or notice of allowance, the submission of that preliminary amendment or other paper has interfered with the processing and examination of an application. Section 1.704(c)(10) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the mailing date of the original Office action or notice of allowance and ending on the mailing date of the supplemental Office action or notice of allowance.

Section 1.704(c)(11) as proposed establishes submission of a reply having an omission (§ 1.135(c)) as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. Submitting a reply having an omission requires the Office to issue an action under § 1.135(c) and await and process the applicant's reply before the initial reply (as completed) can be treated on its merits. Section 1.704(c)(11) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date the reply having an omission was filed and ending on the date that the omission was filed.

Section 1.704(c)(12) as proposed establishes submission of a supplemental reply or other paper after a reply has been filed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The submission of a supplemental reply or other paper (*e.g.*, IDS or petition) after an initial reply was filed requires the Office to restart consideration of the initial reply in view of the supplemental reply or other paper, which will result in a delay in the Office's response to the initial reply. Section 1.704(c)(12) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date the initial reply was filed and ending on the date that the supplemental reply or such other paper was filed.

Section 1.704(c)(13) as proposed establishes failure to file an appeal brief (and brief fee) in compliance with § 1.192 with the notice of appeal to the Board of Patent Appeals and Interferences under 35 U.S.C. 134 and § 1.191 as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The examiner cannot prepare an examiner's answer in response to an appeal until the applicant files an appeal brief in compliance with § 1.192, and the rules of practice (§§ 1.192(a) and 1.136(a)) now allow the applicant to delay filing an appeal brief for up to seven months from the filing date of the notice of appeal under § 1.191. Thus, to continue to permit this time frame for filing an appeal brief, the Office must establish the failure to file an appeal brief (and brief fee) in compliance with § 1.192 with the notice of appeal to the Board of Patent Appeals and Interferences under 35 U.S.C. 134 and § 1.191 as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of the application. Section 1.704(c)(13) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date a notice of appeal under 35 U.S.C. 134 and § 1.191 was filed and ending on the day an appeal brief (and brief fee) in compliance with § 1.192 was filed, or, if no appeal brief under § 1.192 is filed, ending on the day an amendment in compliance with § 1.113 was filed.

Section 1.704(c)(14) as proposed establishes submission of an amendment or other paper in an application containing allowed claims after a decision by the Board of Patent Appeals and Interferences (other than a decision containing a rejection under § 1.196(b)) or a Federal court less than one month before the mailing of an Office action under 35 U.S.C. 132 or notice of allowance under 35 U.S.C. 151 that requires the mailing of a supplemental Office action or notice of allowance as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of the application. The submission of an amendment or other paper (*e.g.*, IDS or petition) in an application after a Board of Patent Appeals and Interferences or court decision requires the Office to restart consideration of the application in view of the amendment or other paper, which will result in a delay in the Office's taking action on the application. Section 1.704(c)(14) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the mailing date of the original Office action or notice of allowance and ending on the mailing date of the supplemental Office action or notice of allowance.

Section 1.704(c)(15) as proposed establishes submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of an application. The submission of amendments (or other papers) after an application is allowed causes substantial interference with the patent issue process. *See Filing of Continuing Applications, Amendments, or Petitions after Payment of Issue Fee*, Notice, 1221 *Off. Gaz. Pat. Office* 14 (April 6, 1999); and *Patents to Issue More Quickly After Issue Fee Payment*, Notice, 1220 *Off. Gaz. Pat. Office* 42 (March 9, 1999). Thus, to continue to permit applicants to submit an amendment or other paper after a notice of allowance is mailed or given, the Office must establish submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of the application. Section 1.704(c)(15) as proposed also provides that in such a case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of: (1) The number of days, if any, beginning on the date the amendment under § 1.312 was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or (2) four months. The "lesser of * * * or four months" provision is to provide a four-month cap for reductions under § 1.704(c)(15).

Section 1.704(c)(16) as proposed establishes further prosecution via a continuing application as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of the application. Currently, a continuing application may be used to: (1) Obtain further examination of an invention disclosed and claimed in the prior application (continuation application); (2) obtain examination (for the first time) of an invention disclosed but not claimed or not elected for examination in the prior application (divisional application); or (3) obtain examination of an invention neither disclosed nor claimed in the prior application (continuation-in-part application). The provisions of 35 U.S.C. 132(b) (which are being implemented in a separate rulemaking) will permit an applicant to obtain further or continued examination of an invention disclosed and claimed in an application, which renders it unnecessary for an applicant whose application is eligible for patent term adjustment under 35 U.S.C. 154(b) to file a continuing application to obtain further examination of an invention disclosed and claimed in an application. If an applicant is filing a continuing application to obtain examination (for the first time) of an invention disclosed but not claimed or not elected for examination in the prior application or an invention neither disclosed nor claimed in the prior application, it is not appropriate for that applicant to obtain any benefit in the continuing application for examination delays that might have occurred in the prior application. Thus, the Office is establishing further prosecution via a continuing application as a circumstance that constitutes a failure of an applicant to engage in reasonable efforts to conclude processing or examination of the application, in that the period of adjustment set forth in § 1.703 shall not include any period that is prior to the actual filing date of the application that resulted in the patent. Thus, if the application that resulted in the patent is a CPA, the period of adjustment set forth in § 1.703 (if any) will not include any period that is prior to the filing date of the request for that CPA.

As discussed above, an applicant may file a CPA under § 1.53(d) on or after May 29, 2000, for the application to be subject to the patent term adjustment provisions of 35 U.S.C. 154(b) as amended by § 4402 of the "American Inventors Protection Act of 1999." The period of patent term adjustment § 1.703

(if any), however, will not include any period that is prior to the filing date of the request for that CPA.

These are three examples of how 35 U.S.C. 154(b) and the proposed rules to implement 35 U.S.C. 154(b) would apply. For purposes of clarity and ease of calculation, the examples illustrate mailing of some Office actions on non-business days, and granting of patents on days other than Tuesdays.

In a first example: (1) A first application ("Application A") is filed on January 2, 1998; (2) a second application ("Application B") is filed as a continued prosecution application (CPA under § 1.53(d)) of Application A on May 29, 2000, without payment of the filing fee or providing a deposit account authorization for payment of the filing fee; (3) a "Notice to File Missing Parts of Application (CPA)" is mailed on July 25, 2000, requiring the filing fee, and setting a two-month period for reply; (4) the filing fee is paid on September 25, 2000; (5) a written restriction requirement is mailed on November 13, 2000; (6) a petition for a four-month extension of time and an election are filed on April 6, 2001; (7) an Office action (first action on the merits) is mailed on September 10, 2001; (8) an amendment is filed in reply (§ 1.111) to that Office action on November 1, 2001; (9) a notice of allowability requiring a biological material deposit (§ 1.809(c)) and notice of allowance are mailed on December 3, 2001; (10) the issue fee is paid on February 28, 2002; (11) the biological material deposit is made on March 15, 2002, with a one-month extension of time; and (12) the patent issues on July 9, 2002.

The fourteen-month time period set forth in 35 U.S.C. 154(b)(1)(A)(i)(§ 1.702(a)(1) and § 1.703(a)(1)) was met by the mailing of the written restriction requirement on November 13, 2000, within fourteen months of the filing date of the application (May 29, 2000). The four-month time period set forth in 35 U.S.C. 154(b)(1)(A)(ii)(§ 1.702(a)(2) and § 1.703(a)(2)) was not met for acting on the reply (election) of April 6, 2001, but was met for acting on the reply (amendment) of November 1, 2001. The four-month time period for acting on the reply of April 6, 2001, expired on August 6, 2001; however, the Office's response to the reply of April 6, 2001, was not mailed until September 10, 2001, the difference in time between August 6, 2001, and September 10, 2001, being 35 days. The four-month time period set forth in 35 U.S.C. 154(b)(1)(A)(iii)(§ 1.702(a)(2) through (a)(3) and § 1.703(a)(3) through (a)(4)) is not applicable in this example. The four-month time period set forth in 35 U.S.C. 154(b)(1)(A)(iv)(§ 1.702(a)(4) and § 1.703(a)(6)) was met as all formal requirements were satisfied on March 15, 2002, and the patent was issued on July 9, 2002 (within four months of March 15, 2002). As the application (Application B) was pending for less than three years (from May 29, 2000, until July 9, 2002), there is no adjustment pursuant to 35 U.S.C. 154(b)(1)(B)(§ 1.702(b) and § 1.703(b)). In addition, as there was also no interference, secrecy order or appellate review in the application, there is no adjustment pursuant to 35 U.S.C. 154(b)(1)(C)(§ 1.702(b) through (e) and § 1.703(c) through (e)).

35 U.S.C. 154(b)(2)(C)(i) provides that the period of adjustment shall be reduced by the period of time during which applicant failed to engage in reasonable efforts to conclude prosecution of the application. Section 1.704(b) as proposed sets forth that any time periods in excess of three months taken to reply to any notice or action by the Office shall each be deemed failures to engage in reasonable efforts to conclude prosecution of an application, and that the period of adjustment shall be reduced by the period of time beginning on the date three months after the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. In this example, the period of time from three months after the written restriction (February 13, 2001) until the reply (April 6, 2001) is 52 days, and the period of time from three months after the notice of allowance (March 3, 2002) and the date the biological material deposit was made (March 15, 2002) is 12 days, for a total reduction under § 1.704(b) of 64 days. Sections 1.704(c)(1) through 1.704(c)(16) as proposed set forth actions or inactions, each of which further constitutes a failure by the applicant to engage in reasonable efforts to conclude prosecution of an application. As applicable in this example, proposed § 1.704(c)(6) provides that a failure to file the basic filing fee of an application on filing will result in a reduction of any period of adjustment (§ 1.703) by the period between the application filing date and the submission of the basic filing fee, and proposed § 1.704(c)(16) provides that the period of adjustment (§ 1.703) shall not include any period that is prior to the actual filing date of the application that resulted in the patent. In this example, the period of time from filing of Application B (May 29, 2000) until submission of the basic filing fee (September 25, 2000) is 119 days, and the period of adjustment does not include any period that is prior to May 29, 2000 (the actual filing date of Application B).

Accordingly, the total period during which applicant failed to engage in reasonable efforts to conclude prosecution would be 64 days (1.704(b)) plus 119 days (1.704(c)) for a total of 183 days. It should be noted that the reduction attributed to the extension of time (§ 1.704(b)) may be reduced if a proper showing pursuant to § 1.705(c) is submitted after mailing of the notice of allowance and before or with payment of the issue fee.

In this example, the period of adjustment pursuant to 35 U.S.C. 154(b)(1)(§ 1.702 and § 1.703) is 35 days, which is reduced by the 183-day period in which applicant failed to engage in reasonable efforts to conclude prosecution (§ 1.704). Since 35 is less than 183, there is no adjustment to the term of the patent issuing on Application B, whose projected expiration date remains January 2, 2018.

In a second example: (1) An application is filed which includes a sequence listing as required by § 1.821(c) on March 1, 2001; (2) a PTOL–1661 Notice stating that the computer readable form (CRF) was not in compliance with the requirements of § 1.824 was mailed by the Office on April 1, 2001; (3) Applicant submits a substitute or corrected CRF on May 1, 2001; (4) a second PTOL–1661 Notice stating that the corrected or substitute CRF is not in compliance with the requirements of § 1.824 was mailed by the Office on June 1, 2001; (5) a second corrected CRF is submitted on July 1, 2001; (6) a third PTOL–1661 Notice stating that the corrected or substitute CRF is not in compliance with the requirements of § 1.824 was mailed by the Office on September 1, 2001; (7) a third corrected CRF is submitted on October 1, 2001; (8) a fourth PTOL–1661 Notice stating that the corrected or substitute CRF is not in compliance with the requirements of § 1.824 was mailed by the Office on December 1, 2002; (9) a fourth corrected CRF is submitted on January 1, 2002; (10) a fifth PTOL–1661 Notice stating that the corrected or substitute CRF is not in compliance with the requirements of § 1.824 was mailed by the Office on February 1, 2002; (11) a proper CRF submission is filed on March 1, 2002; (12) an Office action (first action on the merits) is mailed on July 1, 2002; (13) an amendment is filed in reply (§ 1.111) to that Office action on October 1, 2002; (14) a second Office action is mailed on February 1, 2003; (15) an amendment is filed in reply to the second Office action on May 1, 2003; (16) a third (final) Office action is mailed on September 1, 2003; (17) an amendment is filed, which adopts the allowable subject matter noted in the final Office action, on November 1, 2003; (18) a notice of allowance and notice of allowability are mailed by the Office on December 1, 2003; (19) applicant provides the issue fee on January 1, 2004; (20) the patent issues on March 1, 2004.

The fourteen-month period set forth in 35 U.S.C. 154(b)(1)(A)(i)(§§ 1.702(a)(1) and 1.703(a)(1)) was not met by the mailing of the first Office action on July 1, 2002, by a 61-day period. The four-month time period set forth in 35 U.S.C. 154(b)(1)(A)(ii)(§ 1.702(a)(2) and § 1.703(a)(2)) was met for acting on the replies of October 1, 2002, May 1, 2003, and November 1, 2003. The four-month time period set forth in 35 U.S.C. 154(b)(1)(A)(iv)(§ 1.702(a)(4) and § 1.703(a)(6)) was met as all formal requirements were satisfied on January 1, 2004, and the patent was issued on March 1, 2004 (within four months of January 1, 2004). As the application was pending for three years (from March 1, 2001, to March 1, 2004), there is no adjustment pursuant to 35 U.S.C. 154(b)(1)(B)(§ 1.702(b) and § 1.703(b)). In addition, as there was also no interference, secrecy order or appellate review in the application, there is no adjustment pursuant to 35 U.S.C. 154(b)(1)(C)(§ 1.702(b) through (e) and § 1.703(c) through (e)).

35 U.S.C. 154(b)(2)(C)(i) provides that the period of adjustment shall be reduced by the period of time during which applicant failed to engage in reasonable efforts to conclude prosecution of the application. Sections 1.704(b) and 1.704(c)(1) through 1.704(c)(16) as proposed set forth actions or inactions, each of which constitutes a failure by the applicant to engage in reasonable efforts to conclude prosecution of an application. As applicable in this example, proposed § 1.704(c)(9) provides that a failure to file an application with a sequence listing in compliance with §§ 1.821 through 1.825 will result in a reduction of any period of adjustment (§ 1.703) by the period between the application filing date and the date a sequence listing in compliance with §§ 1.821 through 1.825 is submitted. In this example, the period of time from filing date (March 1, 2001) and the filing of the correct CRF submission (March 1, 2002) is 365 days.

In this example, the period of adjustment pursuant to 35 U.S.C. 154(b)(1)(§ 1.702 and § 1.703) is 61 days, which is reduced by the 365-day period in which applicant failed to engage in reasonable efforts to conclude prosecution (§ 1.704). Since 61 is less than 365, there is no adjustment to the term of the patent, whose projected expiration date remains March 1, 2021.

In a third example: (1) An international application is filed in the United States Receiving Office on January 1, 2001; (2) a Demand for international preliminary examination is filed on July 1, 2002; (3) the documents and fees to fulfill the requirements of 35 U.S.C. 371(c)(§ 1.495) were filed on July 1, 2003; (4) an Office action is mailed on November 1, 2003; (5) a reply to the first Office action is filed May 1, 2004, with a three-month extension of time; (6) a notice of allowance and notice of allowability are mailed on February 1, 2009; (7) applicant pays the issue fee on March 1, 2009; (8) patent issues on July 1, 2010.

The fourteen-month period set forth in 35 U.S.C. 154(b)(1)(A)(i)(§§ 1.702(a)(1) and 1.703(a)(1)) was met by the mailing of the first Office action on November 1, 2003, since the fourteen-month period is measured from the date on which the international application fulfilled the requirements of 35 U.S.C. 371 (35 U.S.C. 154(b)(1)(A)(i)(II)). The four-month time period set forth in 35 U.S.C. 154(b)(1)(A)(ii) (§ 1.702(a)(2) and § 1.703(a)(2)) was not met for acting on the reply of May 1, 2004, by a period of 1,614 days. The four-month time period set forth in 35 U.S.C. 154(b)(1)(A)(iv)(§ 1.702(a)(4) and § 1.703(a)(6)) was not met as all formal requirements were satisfied on March 1, 2009, and the patent was issued on July 1, 2010, 365 days after the expiration of the four-month time period (on July 1, 2009) for issuing the patent. The application was pending for more than three years from January 1, 2001, to July 1, 2010, without continued examination under 35 U.S.C. 132(b), a proceeding under 35 U.S.C. 135(a) (interference), an order under 35 U.S.C. 181 (secrecy order), or appellate review.

Therefore, there is an adjustment pursuant to 35 U.S.C. 154(b)(1)(B)(§ 1.702(b) and § 1.703(b)) of 2,373 days. As there was no interference, secrecy order or appellate review in the application, there is no adjustment pursuant to 35 U.S.C. 154(b)(1)(C)(§ 1.702(c) through (e) and § 1.703(c) through (e)).

35 U.S.C. 154(b)(2)(C)(i) provides that the period of adjustment shall be reduced by the period of time during which applicant failed to engage in reasonable efforts to conclude prosecution of the application. Section 1.704(c) as proposed sets forth that any time periods in excess of three months taken to reply to any notice or action by the Office shall each be deemed failures to engage in reasonable efforts to conclude prosecution of an application, and that the period of adjustment shall be reduced by the period of time beginning on the date three months after the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed. In this example, the period of time from three months after the Office action (November 1, 2003) until the reply (May 1, 2004) is 90 days. Sections 1.704(c)(1) through 1.704(c)(16) as proposed set forth actions or inactions, each of which further constitutes a failure by the applicant to engage in reasonable efforts to conclude prosecution of an application. As applicable in this example, proposed § 1.704(c)(7) provides that a failure to fulfill the requirements of 35 U.S.C. 371(c) and § 1.494 or § 1.495 in an international application will result in a reduction of any period of adjustment (§ 1.703) by the period between the date the application was filed under 35 U.S.C. 363 and the later date the application fulfilled the requirements of 35 U.S.C. 371(c) and § 1.494 or § 1.495 or, if the oath or declaration (§ 1.497) is not executed by all of the inventors, the earliest of the date the application was accorded status under § 1.47, or four months after a grantable petition under § 1.47 was filed. In this example, the period of time from filing (January 1, 2001) and fulfillment of 35 U.S.C. 371(c) and § 1.494 or § 1.495 (July 1, 2003) is 911 days. The total period during which applicant failed to engage in reasonable efforts to conclude prosecution would be 90 days (1.704(b)) plus 911 days (1.704(c)) for a total of 1,001 days.

As set forth in § 1.703(f), the term adjustment is the sum of the periods calculated under § 703(a)–(e), to the extent the periods are not overlapping, less the sum of the periods calculated under § 1.704. In this example, the period of adjustment pursuant to 35 U.S.C. 154(b)(1)(§ 1.703(b)) of 2,373 days overlaps entirely with the period of adjustment pursuant to 35 U.S.C. 154(b)(1)(§ 1.703(a)) of 1,979 days. Consequently, 1,001 days (the sum of the periods in which applicant failed to engage in reasonable efforts to conclude prosecution (§ 1.704)) is deducted from 2,373 days, which leaves a term adjustment of 1,372 days. As a result,

the projected expiration date of the patent is adjusted from January 1, 2021, to October 4, 2024.

Section 1.705 as proposed implements the provisions of 35 U.S.C. 154(b)(3) and (b)(4)(B).

Section 1.705(a) as proposed indicates that the notice of allowance will include notification of any patent term adjustment under 35 U.S.C. 154(b) (35 U.S.C. 154(b)(3)(B)(i)).

Section 1.705(b) as proposed provides that any request for review or reconsideration of the patent term adjustment indicated in the notice of allowance (except as provided in § 1.705(d)) and any request for reinstatement of all or part of the term reduced pursuant to § 1.704(b)(1) must be filed no later than payment of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance. Section 1.705(b) as proposed provides that any such request must be by way of an application for patent term adjustment accompanied by the fee set forth in § 1.18(e) and a statement of the facts involved. Section 1.705(b) as proposed also provides that such statement of facts must specify: (1) The basis or bases under § 1.702 for the adjustment; (2) the relevant dates as specified in § 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled; (3) whether the patent is subject to a terminal disclaimer and any expiration date specified in the terminal disclaimer; and (4) any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704 (or that there were no such circumstances). Since the Office must complete its determination of patent term adjustment before proceeding to issue the patent (35 U.S.C. 154(b)(3)(D)), the Office must require that such application for patent term adjustment be filed within a non-extendable time period and set forth with particularity why the Office's patent term adjustment determination is not correct. In the absence of these requirements, the issuance of the patent will be further delayed by a protracted patent term adjustment determination proceeding.

Section 1.705(c) as proposed implements the provisions of 35 U.S.C. 154(b)(3)(C). Section 1.705(c) as proposed specifically provides that a request for reinstatement of all or part of the time reduced pursuant to § 1.704(b)(1) for failing to reply to a rejection, objection, argument, or other request within three months of the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request must include: (1) the fee set forth in § 1.18(f); and (2) a showing to the satisfaction of the Director that, in spite of all due care, the applicant was unable to reply to the rejection, objection, argument, or other request within three months of the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request. Section 1.705(c) as proposed also provides that the Office shall not grant any request for reinstatement for more than three additional months for each reply beyond three months of the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request (35 U.S.C. 154(b)(3)(C)).

Since the Office is obligated to provide a determination of patent term adjustment under 35 U.S.C. 154(b) in the notice of allowance (*i.e.*, before the actual patent issue date), the Office must project (or estimate) the actual patent issue date and base its patent term adjustment determination on that projection. Thus, § 1.705(d) as proposed provides for a request to change the period of patent term adjustment in the event that the patent is issued on a date other than the projected date of issue and this change necessitates a revision of the patent term adjustment indicated in the notice of allowance. Section 1.705(d) specifically provides that if the patent is issued on a date other than the projected date of issue and this change necessitates a revision of the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. Section 1.705(d) also provides that if the patent indicates a revised patent term adjustment due to the patent being issued on a date other than the projected date of issue, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within thirty days of the date the patent issued and must comply with the requirements of § 1.705(b)(1) and § 1.705(b)(2).

Section 1.705(e) as proposed provides that the periods set forth in this section are not extendable. As discussed above, the Office must set non-extendable time periods in § 1.705 to avoid delay in the issuance of the patent.

Section 1.705(f) as proposed implements the provisions of 35 U.S.C. 154(b)(4)(B), and provides that no submission or petition on behalf of a third party concerning patent term adjustment under 35 U.S.C. 154(b) will be considered by the Office, and that any such submission or petition, will be returned to the third party, or otherwise disposed of, at the convenience of the Office.

Classification

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes proposed in this notice, if adopted, would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). This rulemaking implements the provisions of §§ 4401 and 4402 of the "American Inventors Protection Act of 1999." The changes proposed in this notice (if adopted) would provide procedures for the Office's patent term adjustment determination and for filing an application to request reconsideration of the Office's patent term adjustment determination.

The Office mails a notice of allowance in roughly 160,000 applications each year. The Office's patent term adjustment determination will be a calculation based upon time periods involving the dates of various actions by the Office and the applicant during the application process. Because of the number of actions by the Office and the applicant during the application process, the Office anticipates that there will be disagreement on at least one of these dates in roughly fifteen percent of applications (24,000). Based upon the percentage of applicants who are small entities (thirty percent), the Office expects that 7,200 small entities will file an application requesting reconsideration of a patent term adjustment determination each year. Since a small entity applicant who exercises reasonable due care or diligence should be able to reply to any Office action or notice within three months, the Office does not anticipate that any small entities will file a request for reinstatement of reduced patent term adjustment (based upon a showing that the applicant was unable to reply to an Office action or notice within three months in spite of all due care).

Filing an application requesting reconsideration of a patent term adjustment determination (as well as a request for reinstatement of reduced patent term adjustment) is optional. To obtain any benefit from an application requesting reconsideration of the Office's patent term adjustment determination, the applicant must plan to pay the three maintenance fees required by law (35 U.S.C. 41(b)) to maintain a patent in force until the end of the non-adjusted patent term as specified in 35 U.S.C. 154. The current first, second, and third maintenance fees are $415.00, $950.00, and $1,455.00, respectively. Since the fee ($200.00) for filing an application requesting reconsideration of the Office's patent term adjustment determination is less than one-tenth of the combined cost of these three maintenance fees (and the fee ($450.00) for filing a request for reinstatement of reduced patent term adjustment is less than one-sixth of the combined cost of these three maintenance fees), there will not be a significant economic impact on a substantial number of small entities due to the procedures for requesting reconsideration of the Office's patent term adjustment determination.

Executive Order 13132

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act

This notice of proposed rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collection of information involved in this notice of proposed rulemaking has been reviewed and previously approved by OMB under OMB control number 0651–0020.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Patent and Trademark Office has submitted an information collection package to OMB for its review and approval of the proposed information collections under OMB control number 0651-0020. The Patent and Trademark Office is submitting this information collection to OMB for its review and approval because this notice of proposed rulemaking will add the request for reconsideration of a patent term adjustment determination by the Patent and Trademark Office and the request for reinstatement of reduced patent term adjustment (based upon a showing that the applicant was unable to reply to an Office action or notice within three months in spite of all due care) provided for in 35 U.S.C. 154(b)(3) to that collection.

The title, description, and respondent description of the information collection is shown below with an estimate of the annual reporting burdens. Included in this estimate is the time for reviewing instructions, gathering, and maintaining the data needed, and completing and reviewing the collection of information. The principal impact of the changes in this notice of proposed rulemaking is to implement the changes to Office practice necessitated by § 4402 of the "American Inventors Protection Act of 1999" (enacted into law by § 1000(a)(9), Division B, of Public Law 106–113).

OMB Number: 0651–0020.

Title: Patent Term Extension.

Form Numbers: None.

Type of Review: Approved through September of 2001.

Affected Public: Individuals or households, businesses or other for-profit, not-for-profit institutions, farms, Federal Government, and state, local, or tribal governments.

Estimated Number of Respondents: 26,857.

Estimated Time Per Response: 1.15 hour.

Estimated Total Annual Burden Hours: 30,902 hours.

Needs and Uses: The information supplied to the Patent and Trademark Office by an applicant requesting reconsideration of a patent term adjustment determination under 35 U.S.C. 154(b) (proposed § 1.702 *et seq.*) is used by the Patent and Trademark Office to determine whether its determination of patent term adjustment under 35 U.S.C. 154(b) is correct, and whether the applicant is entitled to reinstatement of reduced patent term adjustment. The information supplied to the Patent and Trademark Office by an applicant seeking a patent term extension under 35 U.S.C. 156 (§ 1.710 *et seq.*) is used by the Patent and Trademark Office, the Department of Health and Human Services, and the Department of Agriculture to determine the eligibility of a patent for extension and to determine the period of any such extension. The applicant can apply for patent term and interim extensions, petition the Patent and Trademark Office to review final eligibility decisions, withdraw patent term applications, and declare his or her eligibility to apply for a patent term extension.

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Special Program Law Office, Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503, Attention: Desk Officer for the Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects in 37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

For the reasons set forth in the preamble, 37 CFR Part 1 is proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.18 is amended by revising the section heading, adding and reserving paragraph (d), and adding paragraphs (e) and (f) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

* * * * *

(d) [Reserved]

(e) For filing an application for patent term adjustment under § 1.705—$200.00

(f) For filing a request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) in an application for patent term adjustment under § 1.705—$450.00

Subpart F—Adjustment and Extension of Patent Term

3. The heading of subpart F is revised to read as set forth above.

4. An undesignated center heading is added to Subpart F § 1.701 to read as follows:

ADJUSTMENT OF PATENT TERM DUE TO EXAMINATION DELAY

5. Section 1.701 is amended by revising the section heading and adding paragraph (e) to read as follows:

§ 1.701 Extension of patent term due to examination delay under the Uruguay Round Agreements Act (original applications, other than designs, filed on or after June 8, 1995, and before May 29, 2000).

* * * * *

(e) The provisions of this section apply only to original patents, except for design patents, issued on applications filed on or after June 8, 1995.

6. Sections 1.702 through 1.705 are added to read as follows:

§ 1.702 Grounds for adjustment of patent term due to examination delay under the Patent Term Guarantee Act of 1999 (original applications, other than designs, filed on or after May 29, 2000).

(a) *Failure to take certain actions within specified time frames.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to:

(1) Mail at least one of a notification under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151 not later than fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371;

(2) Respond to a reply under 35 U.S.C. 132 or to an appeal taken under 35 U.S.C. 134 not later than four months after the date on which the reply was filed or the appeal was taken;

(3) Act on an application not later than four months after the date of a decision by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or 135 or a decision by a Federal court under 35 U.S.C. 141, 145, or 146 where allowable claims remain in the application; or

(4) Issue a patent not later than four months after the date on which the issue fee was paid under 35 U.S.C. 151 and all outstanding requirements were satisfied.

(b) *Failure to issue a patent within three years of the actual filing date of the application.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the failure of the Office to issue a patent within three years after the actual filing date of the application, not including:

(1) Any time consumed by continued examination of the application under 35 U.S.C. 132(b);

(2) Any time consumed by an interference proceeding under 35 U.S.C. 135(a);

(3) Any time consumed by the imposition of a secrecy order under 35 U.S.C. 181;

(4) Any time consumed by review by the Board of Patent Appeals and Interferences or a Federal court; or

(5) Any delay in the processing of the application by the Office that was requested by the applicant.

(c) *Delays caused by interference proceedings.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to interference proceedings under 35 U.S.C. 135(a).

(d) *Delays caused by secrecy order.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to the application being placed under a secrecy order under 35 U.S.C. 181.

(e) *Delays caused by successful appellate review.* Subject to the provisions of 35 U.S.C. 154(b) and this subpart, the term of an original patent shall be adjusted if the issuance of the patent was delayed due to review by the Board of Patent Appeals and Interferences under 35 U.S.C. 134 or by a Federal court under 35 U.S.C. 141 or 145, if the patent was issued pursuant to a decision reversing an adverse determination of patentability.

(f) The provisions of this section and §§ 1.703 through 1.705 apply only to original applications, except applications for a design patent, filed on or after May 29, 2000, and patents issued on such applications.

§ 1.703 Period of adjustment of patent term due to examination delay.

(a) The period of adjustment under § 1.702(a) is the sum of the following periods, to the extent that the periods are not overlapping:

(1) The number of days, if any, in the period beginning on the date fourteen months after the date on which the application was filed under 35 U.S.C. 111(a) or fulfilled the requirements of 35 U.S.C. 371 and ending on the date of mailing of either an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(2) The number of days, if any, in the period beginning on the date four months after the date a reply under § 1.111 was filed and ending on the date of mailing of an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(3) The number of days, if any, in the period beginning on the date four months after the date a reply in compliance with § 1.113 was filed and ending on the date of mailing of an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(4) The number of days, if any, in the period beginning on the date four months after the date a notice of appeal to the Board of Patent Appeals and Interferences under 35 U.S.C. 134 and § 1.191 was filed and ending on the date of mailing of an examiner's answer under § 1.193, an action under 35 U.S.C. 132, or a notice of allowance under 35 U.S.C. 151, whichever occurs first;

(5) The number of days, if any, in the period beginning on the date four months after the date of a final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145 or 146 in an application containing allowable claims and ending on the date of mailing of either an action under 35 U.S.C. 132 or a notice of allowance under 35 U.S.C. 151, whichever occurs first; and

(6) The number of days, if any, in the period beginning on the date four months after the date the issue fee was paid and all outstanding requirements were satisfied and ending on the date a patent was issued.

(b) The period of adjustment under § 1.702(b) is the number of days, if any, in the period beginning on the date three years after the actual filing date of the application and ending on the date a patent was issued, but not including the sum of the following periods:

(1) The number of days, if any, in the period beginning on the date on which a request for continued examination of the application under 35 U.S.C. 132(b) was filed and ending on the date the patent was issued;

(2)(i) The number of days, if any, in the period beginning on the date an interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application; and

(ii) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension;

(3)(i) The number of days, if any, the application was maintained in a sealed condition under 35 U.S.C. 181;

(ii) The number of days, if any, in the period beginning on the date of mailing of an examiner's answer under § 1.193 in the application under secrecy order and ending on the date the secrecy order was removed;

(iii) The number of days, if any, in the period beginning on the date applicant was notified that an interference would be declared but for the secrecy order and ending on the date the secrecy order was removed; and

(iv) The number of days, if any, in the period beginning on the date of notification under § 5.3(c) of this chapter and ending on the date of mailing of the notice of allowance under § 1.311; and,

(4) The number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 1.191 and ending on the date of a final decision by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

(c) The period of adjustment under § 1.702(c) is the sum of the following periods, to the extent that the periods are not overlapping:

(1) The number of days, if any, in the period beginning on the date an interference was declared or redeclared to involve the application in the interference and ending on the date that the interference was terminated with respect to the application; and

(2) The number of days, if any, in the period beginning on the date prosecution in the application was suspended by the Office due to interference proceedings under 35 U.S.C. 135(a) not involving the application and ending on the date of the termination of the suspension.

(d) The period of adjustment under § 1.702(d) is the sum of the following periods, to the extent that the periods are not overlapping:

(1) The number of days, if any, the application was maintained in a sealed condition under 35 U.S.C. 181;

(2) The number of days, if any, in the period beginning on the date of mailing of an examiner's answer under § 1.193 in the application under secrecy order and ending on the date the secrecy order was removed;

(3) The number of days, if any, in the period beginning on the date applicant was notified that an interference would be declared but for the secrecy order and ending on the date the secrecy order was removed; and

(4) The number of days, if any, in the period beginning on the date of notification under § 5.3(c) of this chapter and ending on the date of mailing of the notice of allowance under § 1.311.

(e) The period of adjustment under § 1.702(e) is the sum of the number of days, if any, in the period beginning on the date on which a notice of appeal to the Board of Patent Appeals and Interferences was filed under 35 U.S.C. 134 and § 1.191 and ending on the date of a final decision in favor of the applicant by the Board of Patent Appeals and Interferences or by a Federal court in an appeal under 35 U.S.C. 141 or a civil action under 35 U.S.C. 145.

(f) The adjustment will run from the expiration date of the patent as set forth in 35 U.S.C. 154(a)(2). To the extent that periods of adjustment attributable to the grounds specified in § 1.702 overlap, the period of adjustment granted under this section shall not exceed the actual number of days the issuance of the patent was delayed. The term of a patent entitled to adjustment under § 1.702 and this section shall be adjusted for the sum of the periods calculated under paragraphs (a) through (e) of this section, to the extent that such periods are not overlapping, less the sum of the periods calculated under § 1.704. The date indicated on any certificate of mailing or transmission under § 1.8 shall not be taken into account in this calculation.

(g) No patent the term of which has been disclaimed beyond a specified date shall be adjusted under § 1.702 and this section beyond the expiration date specified in the disclaimer.

§ 1.704 Reduction of period of adjustment of patent term.

(a) The period of adjustment of the term of a patent under § 1.703(a) through (e) shall be reduced by a period equal to the period of time during which the applicant failed to engage in reasonable efforts to conclude prosecution (processing or examination) of the application.

(b) With respect to the ground for adjustment set forth in § 1.702(a) through (e), and in particular the ground of adjustment set forth in § 1.702(b), an applicant shall be deemed to have failed to engage in reasonable efforts to conclude processing or examination of the application for the cumulative total of any periods of time in excess of three months that are taken to reply to any notice or action by the Office making any rejection, objection, argument, or other request, measuring such three-month period from the date the notice or action was mailed or given to the applicant, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date three months after the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request and ending on the date the reply was filed.

(c) Circumstances that constitute a failure of the applicant to engage in reasonable efforts to conclude processing or examination of the application also include the following circumstances, which will result in the following reduction of the period of adjustment set forth in § 1.703 to the extent that the periods are not overlapping:

(1) Suspension of action under § 1.103 at the applicant's request, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date a request for suspension of action under § 1.103 was filed and ending on the date of the termination of the suspension;

(2) Deferral of issuance of a patent under § 1.314, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date a request for deferral of issuance of a patent under § 1.314 was filed and ending on the date the patent was issued;

(3) Abandonment of the application or late payment of the issue fee, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date of abandonment or the date after the day the issue fee was due and ending on the date of mailing of the decision reviving the application or accepting late payment of the issue fee;

(4) Failure to file a petition to withdraw the holding of abandonment or to revive an application within two months from the mailing date of a notice of abandonment, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date two months from the mailing date of a notice of abandonment and ending on the date a petition to withdraw the holding of abandonment or to revive the application was filed;

(5) Conversion of a provisional application under 35 U.S.C. 111(b) to a nonprovisional application under 35 U.S.C. 111(a) pursuant to 35 U.S.C. 111(b)(5), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date the application was filed under 35 U.S.C. 111(b) and ending on the date a request in compliance with § 1.53(c)(3) to convert the provisional application into a nonprovisional application was filed;

(6) Failure to file the basic filing fee (§ 1.16(a) or (g)), any English language translation required by § 1.52(d), or an oath or declaration (§ 1.63) executed by all of the inventors in an application under 35 U.S.C. 111(a), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date the application was filed and ending on the later of the date the applicant supplied the basic filing fee (§ 1.16), supplied any English language translation required by § 1.52(d), and either supplied an oath or declaration (§ 1.63) executed in compliance with § 1.64 or, if the oath or declaration was not executed by all of the inventors, the earliest of date the application was accorded status under § 1.47 or four months after a grantable petition under § 1.47 was filed;

(7) Failure to fulfill the requirements of 35 U.S.C. 371(c) and § 1.494 or § 1.495 in an international application, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date the application was filed under 35 U.S.C. 363 and the later of the date the application fulfilled the requirements of 35 U.S.C. 371(c) and § 1.494 or § 1.495 or, if the oath or declaration (§ 1.497) is not executed by all of the inventors, the earliest of date the application was accorded status under § 1.47 or four months after a grantable petition under § 1.47 was filed;

(8) Failure to request the national stage of processing in an international application if the application fulfills the requirements of 35 U.S.C. 371(c) and § 1.494 or § 1.495 before the expiration of the applicable time period set forth in § 1.494(b) or § 1.495(b), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date the application was filed under 35 U.S.C. 363 and ending on the earlier of date of expiration of the applicable time period in § 1.494(b) or § 1.495(b) or the date on which an express request for national stage of processing is filed;

(9) Failure to file an application with a specification on papers in compliance with § 1.52 and having a title and abstract in compliance with § 1.72, drawings in compliance with § 1.84 (if applicable), and a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the filing date of the application and ending on the date the application contains a specification on papers in compliance with § 1.52 and having an abstract (§ 1.72(b)), drawings in compliance with § 1.84 (if applicable), and a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable);

(10) Submission of a preliminary amendment or other preliminary paper less than one month before the mailing of an Office action under 35 U.S.C. 132 or notice of allowance under 35 U.S.C. 151 that requires the mailing of a supplemental Office action or notice of allowance, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the mailing date of the original Office action or notice of allowance and ending on the mailing date of the supplemental Office action or notice of allowance;

(11) Submission of a reply having an omission under § 1.135(c), in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date the reply having an omission was filed and ending on the date that the omission was filed;

(12) Submission of a supplemental reply or other paper after a reply has been filed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date the initial reply was filed and ending on the date that the supplemental reply or other such paper was filed;

(13) Failure to file an appeal brief (and brief fee) in compliance with § 1.192 with a notice of appeal to the Board of Patent Appeals and Interferences under 35 U.S.C. 134 and § 1.191, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the date a notice of appeal to the Board of Patent Appeals and Interferences under 35 U.S.C. 134 and § 1.191 was filed and ending on the day an appeal brief in compliance with § 1.192 was filed, or, if no appeal brief under § 1.192 is filed, ending on the day an amendment in compliance with § 1.113 was filed;

(14) Submission of an amendment or other paper after a decision by the Board of Patent Appeals and Interferences, other than a decision designated as containing a new ground of rejection under § 1.196(b) or statement under § 1.196(c), or a decision by a Federal court less than one month before the mailing of an Office action under 35 U.S.C. 132 or notice of allowance under 35 U.S.C. 151 that requires the mailing of a supplemental Office action or supplemental notice of allowance, in which case the period of adjustment set forth in § 1.703 shall be reduced by the number of days, if any, beginning on the mailing date of the original Office action or notice of allowance and ending on the mailing date of the supplemental Office action or notice of allowance;

(15) Submission of an amendment under § 1.312 or other paper after a notice of allowance has been given or mailed, in which case the period of adjustment set forth in § 1.703 shall be reduced by the lesser of:

(i) The number of days, if any, beginning on the date the amendment under § 1.312 or other paper was filed and ending on the mailing date of the Office action or notice in response to the amendment under § 1.312 or such other paper; or

(ii) Four months; and

(16) Further prosecution via a continuing application, in which case the period of adjustment set forth in § 1.703 shall not include any period that is prior to the actual filing date of the application that resulted in the patent.

§ 1.705 Patent term adjustment determination.

(a) The notice of allowance will include notification of any patent term adjustment under 35 U.S.C. 154(b).

(b) Any request for reconsideration of the patent term adjustment indicated in the notice of allowance, except as provided in paragraph (d) of this section, and any request for reinstatement of all or part of the term reduced pursuant to § 1.704(b) must be by way of an application for patent term adjustment. An application for patent term adjustment under this section must be filed no later than payment of the issue fee but may not be filed earlier than the date of mailing of the notice of allowance. An application for patent term adjustment under this section must be accompanied by:

(1) The fee set forth in § 1.18(e); and

(2) A statement of the facts involved, specifying:

(i) The correct patent term adjustment and the basis or bases under § 1.702 for the adjustment;

(ii) The relevant dates as specified in § 1.703(a) through (e) for which an adjustment is sought and the adjustment as specified in § 1.703(f) to which the patent is entitled;

(iii) Whether the patent is subject to a terminal disclaimer and any expiration date specified in the terminal disclaimer; and

(iv)(A) Any circumstances during the prosecution of the application resulting in the patent that constitute a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704; or

(B) That there were no circumstances constituting a failure to engage in reasonable efforts to conclude processing or examination of such application as set forth in § 1.704.

(c) Any application for patent term adjustment under this section that requests reinstatement of all or part of the term reduced pursuant to § 1.704(b) for failing to reply to a rejection, objection, argument, or other request within three months of the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request must also be accompanied by:

(1) The fee set forth in § 1.18(f); and

(2) A showing to the satisfaction of the Director that, in spite of all due care, the applicant was unable to reply to the rejection, objection, argument, or other request within three months of the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request. The Office shall not grant any request for reinstatement for more than three additional months for each reply beyond three months of the date of mailing of the Office communication notifying the applicant of the rejection, objection, argument, or other request.

(d) If the patent is issued on a date other than the projected date of issue and this change necessitates a revision of the patent term adjustment indicated in the notice of allowance, the patent will indicate the revised patent term adjustment. If the patent indicates a revised patent term adjustment due to the patent being issued on a date other than the projected date of issue, any request for reconsideration of the patent term adjustment indicated in the patent must be filed within thirty days of the date the patent issued and must comply with the requirements of paragraphs (b)(1) and (b)(2) of this section.

(e) The periods set forth in this section are not extendable.

(f) No submission or petition on behalf of a third party concerning patent term adjustment under 35 U.S.C. 154(b) will be considered by the Office. Any such submission or petition will be returned to the third party, or otherwise disposed of, at the convenience of the Office.

7. A undesignated center heading is added to Subpart F before § 1.710 to read as follows:

EXTENSION OF PATENT TERM DUE TO REGULATORY REVIEW

Dated: March 24, 2000.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 00–7938 Filed 3–30–00; 8:45 am]

BILLING CODE 3510–16–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–207–0228; FRL–6570–3]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Antelope Valley Air Pollution Control District and South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a disapproval of revisions to the California State Implementation Plan (SIP) in the Antelope Valley Air Pollution Control District (AVAPCD) and South Coast Air Quality Management District (SCAQMD). These revisions would allow the district the discretion to suspend district rules, regulations or orders in the event of a state or federally declared state of emergency. EPA has evaluated these revisions and is proposing to disapprove them because they would weaken the SIP.

DATES: Comments on this proposed action must be received by May 1, 2000.

ADDRESSES: Comments may be mailed to: Andrew Steckel, Chief, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rules are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rules are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 L Street, Sacramento, CA 95812

Antelope Valley Air Pollution Control District, 315 W. Pondera Street, Lancaster, California 93534

South Coast Air Quality Management District, 21865 E. Copley Drive, Diamond Bar, CA 91765

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone (415) 744–1189.

SUPPLEMENTARY INFORMATION:

I. Applicability

The rules being proposed for disapproval are Antelope Valley Air Pollution Control District (AVAPCD) and South Coast Air Quality Management District (SCAQMD) Rule 118, Emergencies. Rule 118 was submitted to EPA by the California Air Resources Board on March 10, 1998 and May 18, 1998, respectively.

II. Background

This document addresses EPA's proposed action for Antelope Valley Air Pollution Control District (AVAPCD) and South Coast Air Quality Management District (SCAQMD) Rule 118, Emergencies. These rules were adopted by AVAPCD on August 19, 1997 and by SCAQMD on December 7, 1995. These rules were found to be complete on May 21, 1998 for AVAPCD and on July 17, 1998 for SCAQMD, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V.[1]

III. EPA Evaluation and Proposed Action

In determining the approvability of a rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption and Submittal of Implementation Plans). EPA's interpretation of these requirements, which forms the basis for this action, appears in EPA policy guidance documents. In general, the guidance documents have been set forth to ensure that submitted rules meet Federal requirements, are fully enforceable, and strengthen or maintain the SIP.

There is currently no version of Antelope Valley or South Coast Rule 118, Emergencies, in the SIP. The submitted rules include the following:

- Definitions of various terms used in the rule;
- Executive Officer authority to suspend AQMD rules; regulations, or orders in the event of a state or federally-declared State of Emergency; and
- Guidelines for suspending or modifying compliance with existing rules, regulations, or permit conditions, and provisions allowing extension of suspension beyond the state of emergency.

Rules submitted to EPA for approval as revisions to the SIP must be fully enforceable, must maintain or strengthen the SIP, and must conform with EPA policy in order to be approved by EPA. AVAPCD and SCAQMD Rules 118 weaken, rather than strengthen or

[1] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(l)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

maintain the SIP. Under the Clean Air Act, EPA does not have the authority to approve SIP provisions which would allow Executive Officers' discretion to suspend federally enforceable requirements. AVAPCD and SCAQMD Rule 118, if approved, would impact EPA's ability to seek injunctive relief and penalties in appropriate instances and would allow the districts to waive federally enforceable requirements contrary to section 110 of the Clean Air Act. These deficiencies undermine the prerogatives retained by EPA for protecting the NAAQS, PSD increments, and other air quality related values under section 110 and part D. Therefore, in order to maintain the SIP, EPA is proposing a disapproval of these rules. Because these rules are not required under section 110 or part D, their disapproval will not trigger sanctions or FIP requirements pursuant to section 179.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

C. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule

that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 17, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–7993 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 70

[AD–FRL–6569–2]

Clean Air Act Proposed Interim Approval of the Operating Permits Program; Proposed Approval of State Implementation Plan Revision for the Issuance of Federally Enforceable State Operating Permits; Antelope Valley Air Pollution Control District, California

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes interim approval of the title V operating permits program submitted by the Antelope Valley Air Pollution Control District (Antelope Valley, or "District") for the purpose of complying with federal requirements that mandate that states develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources. There are two deficiencies in Antelope Valley's program, as specified in the Technical Support Document and outlined below, that must be corrected before the program can be fully approved. EPA is also proposing to approve a revision to Antelope Valley's portion of the California State Implementation Plan (SIP) regarding synthetic minor regulations for the issuance of federally enforceable state operating permits (FESOP). In order to extend the federal enforceability of state operating permits to hazardous air pollutants (HAPs), EPA is also proposing approval of Antelope Valley's synthetic minor regulations pursuant to section 112 of the Clean Air Act ("Act"). Today's action also proposes approval of Antelope Valley's mechanism for receiving straight delegation of section 112 standards.

DATES: Comments on these proposed actions must be received in writing May 1, 2000.

ADDRESSES: Comments should be addressed to Duong Nguyen, Mail Code Air-3, U.S. Environmental Protection Agency, Region IX, Air Division, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the District's submittal and other supporting information used in developing the proposed interim approval are available for inspection during normal business hours at the following location: U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Duong Nguyen (telephone 415/744–1142), Mail Code Air-3, U.S. Environmental Protection Agency, Region IX, Air & Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

SUPPLEMENTARY INFORMATION:

I. Background and Purpose

As required under title V of the Clean Air Act (Act) as amended (1990), EPA has promulgated rules that define the minimum elements of an approvable state operating permits program and the corresponding standards and procedures by which the EPA will approve, oversee, and withdraw approval of state operating permits programs (see 57 FR 32250 (July 21, 1992)). These rules are codified at 40 CFR part 70 (part 70). Title V requires states to develop, and submit to EPA, programs for issuing operating permits to all major stationary sources and to certain other sources.

The Act requires that states develop and submit title V programs to EPA by November 15, 1993, and that EPA act to approve or disapprove each program within 1 year after receiving the submittal. The EPA's program review occurs pursuant to section 502 of the Act and the part 70 regulations, which together outline criteria for approval or disapproval. Where a program substantially, but not fully, meets the requirements of part 70, EPA may grant the program interim approval for a period of up to 2 years. If EPA has not fully approved a program by the end of an interim program, it must establish and implement a federal program.

On June 28, 1989 (54 FR 27274), EPA published criteria for approving and incorporating into the SIP regulatory programs for the issuance of federally enforceable state operating permits. Permits issued pursuant to an operating permit program meeting these criteria and approved into the SIP are considered federally enforceable. EPA has encouraged states to consider developing such programs in conjunction with title V operating permit programs for the purpose of creating federally enforceable limits on a source's potential to emit. This mechanism would enable sources to reduce their potential to emit to below the title V applicability thresholds and avoid being subject to title V. (See the guidance document entitled, "Limitation of Potential to Emit with Respect to Title V Applicability Thresholds", dated September 18, 1992, from John Calcagni, Director of EPA's Air Quality Management Division.) On November 3, 1993, EPA announced in a guidance document entitled, "Approaches to Creating Federally Enforceable Emissions Limits," signed by John S. Seitz, Director of EPA's Office of Air Quality Planning and Standards (OAQPS), that this mechanism could be extended to create federally enforceable limits for emissions of hazardous air pollutants (HAPs) if the program were approved pursuant to section 112(l) of the Act.

II. Proposed Action and Implications

Antelope Valley is a new air district created by the state legislature in 1997. Sources in Antelope Valley were previously under the jurisdiction of the South Coast Air Quality Management District. This document focuses on specific elements of Antelope Valley's title V operating permits program submittal that must be corrected to meet the minimum requirements of 40 CFR part 70. The full program submittal, the Technical Support Document containing a detailed analysis of the full

program, and other relevant materials are available as part of the public docket.

A. Analysis of State Submission

1. Title V Support Materials

Antelope Valley's title V program was submitted by the California Air Resources Board (CARB) on January 26, 1999 and found by EPA to be complete on March 26, 1999. The Governor's letter requesting source category-limited interim approval, California enabling legislation, and Attorney General's legal opinion were submitted by CARB for all districts in California and therefore were not included separately in Antelope Valley's submittal. The Antelope Valley submission does contain a complete program description, District implementing and supporting regulations, and all other program documentation required by § 70.4.

2. Title V Operating Permit Regulations and Program Implementation

The Antelope Valley's title V regulations were adopted on March 17, 1998. They consist of Regulation XXX (Federal Operating Permits). The District also submitted supporting materials including the following rules: Rule 219 (Equipment Not Requiring a Permit, adopted July 21, 1998), Rule 225 (Federal Operating Permit Requirement, adopted March 17, 1998), Rule 226 (Limitation on Potential to Emit, adopted July 21, 1998), Rule 301 (Permit Fees, adopted March 17, 1998), Rule 312 (Fees for Federal Operating Permits, adopted May 19, 1998), and Rule 430 (Breakdown Provisions, adopted March 17, 1998). These regulations "substantially meet" the requirements of 40 CFR 70.2 and 70.3 for applicability; §§ 70.4, 70.5, and 70.6 for permit content, including operational flexibility; § 70.7 for public participation and minor permit modifications; § 70.5 for complete application forms; and § 70.11 for enforcement authority. While the regulations substantially meet part 70 requirements, there are several program deficiencies, or interim approval issues. These issues are outlined below. Recommended changes are detailed further in the Technical Support Document.

Variances—Antelope Valley has authority under State and local law to issue a variance from State and local requirements. Sections 42350 *et seq.* of the California Health and Safety Code and District Regulation 1, sections 431–433 allow the District to grant relief from enforcement action for permit violations. The EPA regards these provisions as wholly external to the program submitted for approval under part 70, and consequently, is proposing to take no action on these provisions of State and local law.

The EPA has no authority to approve provisions of state or local law, such as the variance provisions referred to, that are inconsistent with the Act. The EPA does not recognize the ability of a permitting authority to grant relief from the duty to comply with a federally enforceable part 70 permit, except where such relief is granted through procedures allowed by part 70. A part 70 permit may be issued or revised (consistent with part 70 permitting procedures) to incorporate those terms of a variance that are consistent with applicable requirements. A part 70 permit may also incorporate, via part 70 permit issuance or modification procedures, the schedule of compliance set forth in a variance. However, EPA reserves the right to pursue enforcement of applicable requirements notwithstanding the existence of a compliance schedule in a permit to operate. This is consistent with 40 CFR 70.5(c)(8)(iii)(C), which states that a schedule of compliance "shall be supplemental to, and shall not sanction noncompliance with, the applicable requirements on which it is based."

Insignificant Activities—§ 70.4(b)(2) requires states to include in their part 70 programs any criteria used to determine insignificant activities or emission levels for the purpose of determining complete applications. Section 70.5(c) states that an application for a part 70 permit may not omit information needed to determine the applicability of, or to impose, any applicable requirement, or to evaluate appropriate fee amounts. Section 70.5(c) also states that EPA may approve, as part of a state program, a list of insignificant activities and emissions levels which need not be included in permit applications. Under part 70, a state must request and EPA must approve as part of that state's program any activity or emission level that the state wishes to consider insignificant. Part 70, however, does not establish appropriate emission levels for insignificant activities, relying instead on a case-by-case determination of appropriate levels based on the particular circumstances of the part 70 program under review.

In Rule 219 (Equipment Not Requiring a Permit) Antelope Valley provided both threshold emissions levels and a list of specific equipment which would not require a permit. This rule also clearly states that equipment need not be listed in a permit application for a federal operating permit if it falls below the threshold, is on the list of equipment in the rule, is not subject to an applicable requirement, and is not included in the equipment list solely due to size or production rate.

Rule 219 set the threshold criteria for equipment to be exempt from a federal operating permit as 10% of the applicable threshold for determination of a major source, or 5 tons per year of any regulated air pollutant (whichever is less), and for HAPs any *de minimis* level, any significance level, or 0.5 tons per year (whichever is less). The levels established by Rule 219 exceed levels EPA has accepted for other state and district programs: 2 tons per year for criteria pollutants and the lesser of 1000 pounds per year, section 112(g) *de minimis* levels, or other title I significant modification levels for HAPs and other toxics (40 CFR 52.21(b)(23)(i)).

During discussions between Antelope Valley and EPA staff on this issue, the District stated that the District would wait for a CAPCOA/EPA Workgroup on insignificant activities to publish its recommendations, before revising Rule 219 to address EPA's concerns. On February 19, 1999, the Workgroup issued the "Model List of Insignificant Activities for Title V Permit Program." In this document, the general insignificant activity criteria for emissions were set as: no more than 0.5 ton/year of a federal HAP and no more than 2 tons/year of a regulated pollutant that is not a HAP. Consequently, the District stated that Rule 219 will be amended to lower the insignificant activity threshold to 2 tons per year for a regulated air pollutant. This issue is identified below as an interim approval deficiency.

3. Title V Permit Fee Demonstration

Section 502(b)(3) of the Act requires that each permitting authority collect fees sufficient to cover all reasonable direct and indirect costs required to develop and administer its title V operating permits program. Each title V program submittal must contain either a detailed demonstration of fee adequacy or a demonstration that aggregate fees collected from title V sources meet or exceed $33.82 per ton of emissions per year (adjusted from 1989 by the Consumer Price Index (CPI)). The $33.82 per ton amount is presumed, for program approval, to be sufficient to cover all reasonable program costs and is thus referred to as the "presumptive minimum." See § 70.9(b)(2)(i).

Antelope Valley has opted to make a presumptive minimum fee demonstration. Antelope Valley's existing fee schedule (Element 7) requires title V facilities to pay an amount approximately equal to $217 per ton in annual operating fees. This amount meets EPA's presumptive minimum (CPI adjusted). The $217 per ton amount is based on dividing the current fee revenues for title V work (40% of the total permit fees) plus a flat annual surcharge that covers the additional costs posed by title V by the total emissions (based on the 1996 inventory). It should be noted that the $217 per ton figure may change as Antelope Valley is a new district with no prior operating history and a fee structure inherited from the South Coast Air Quality Management District, from which it separated in 1997. The annual fee number will be adjusted to reflect actual and more accurate operating data as it becomes available. Antelope Valley will maintain an accounting system and is prepared to increase fees, as needed, to reflect actual program implementation costs.

4. Provisions Implementing the Requirements of Other Titles of the Act

a. Section 112—Antelope Valley has demonstrated in its title V program submittal adequate legal authority to implement and enforce all section 112 requirements through the title V permit. This legal authority is contained in the State of California enabling legislation and in regulatory provisions defining "applicable requirements" and "federally enforceable" and mandating that all federal air quality requirements must be incorporated into permits. EPA has determined that this legal authority is sufficient to allow Antelope Valley to issue permits that assure compliance with all section 112 requirements. For further discussion, please refer to the Technical Support Document accompanying this action and the April 13, 1993 guidance memorandum entitled, "Title V Program Approval Criteria for Section 112 Activities," signed by John Seitz.

b. Title IV—Antelope Valley Governing Board adopted Rule 3010 (Acid Rain Provision of Federal Operating Permits) on March 17, 1998, which incorporates the pertinent provisions of part 72, either by reference or in specific language in the rule. EPA interprets "pertinent provisions" to include all provisions necessary for the permitting of affected sources.

B. Proposal for and Implications of Interim Approval

1. Title V Operating Permits Program

a. *Proposed Interim Approval*—The EPA is proposing to grant interim approval to the operating permits program submitted by CARB on behalf of Antelope Valley on January 26, 1999. Following interim approval, Antelope Valley must make the following changes to receive full approval:

(1) Section 70.7(f)(1)(i) provides that no reopening of the permit is required if the effective date of a new, applicable requirement is later than the permit expiration date, unless the original permit or any of its terms and conditions has been extended per § 70.4(b)(10). Section 70.4(b)(10) provides that the original permit shall remain in effect until the renewal permit has been issued or denied, if a timely and complete application is submitted for a permit renewal.

Antelope Valley's Rule 3006(A)(1)(a)(i) states that no reopening is required if an additional requirement's effective date is later than the permit's expiration date, unless the permit or any of its terms has been extended per Rule 3002(E)(2)(b). However, Rule 3002(E)(2)(b) only provides that all terms and conditions in the original permit shall remain in effect, until a permit renewal has been issued, denied, or the original permit has been terminated for cause. This provision did not address the important § 70.4(b)(10) requirement that the original permit can only remain in effect, if a timely and complete application is submitted for a permit renewal. Still, a broader examination of Rule 3002(E)(2) reveals that the timely application requirement is covered in 3002(E)(2)(a). Therefore, in order to ensure complete compliance with § 70.4(b)(10) requirements, Antelope Valley must revise Rule 3006(A)(1)(a)(i) to state that no reopening is required if an additional requirement's effective date is later than the permit's expiration date, unless the permit or any of its terms has been extended per Rule 3002(E)(2). (Antelope Valley indicated that this was an oversight and will be corrected at the earliest opportunity to revise Rule 3002.)

(2) Revise Antelope Valley's Rule 219 to lower the insignificant activity emission cutoff for a regulated pollutant that is not a HAPs to 2 tons/year, as recommended by EPA and the CAPCOA/EPA Workgroup on Insignificant Activities.

b. *Legislative Source Category—Limited Interim Approval Issue*—In addition to the District-specific issues arising from Antelope Valley's program submittal and locally adopted regulations, California State law currently exempts agricultural production sources from permit requirements. Because of this exemption, California programs are only eligible for source category-limited interim approval. In order for this program to receive full approval (and avoid a disapproval upon the expiration of this interim approval), the California Legislature must revise the Health and Safety Code to eliminate the exemption of agricultural production sources from the requirement to obtain a permit.

c. *Implications of Interim Approval*—The above described program and legislative deficiencies must be corrected before Antelope Valley can receive full program approval. For additional information, please refer to the Technical Support Document, which contains a detailed analysis of Antelope Valley's operating permits program, and California's enabling legislation.

Interim approval, which may not be renewed, would extend for a period of 2 years. During the interim approval period, the District would be protected from sanctions, and EPA would not be obligated to promulgate a federal permits program in Antelope Valley. Permits issued under a program with interim approval would have full standing with respect to part 70, and the 1-year time period for submittal of permit applications by subject sources would begin upon EPA's final rulemaking granting interim approval, as would the 3-year time period for processing initial permit applications.

Following final interim approval, if Antelope Valley should fail to submit a complete corrective program for full approval by the date 6 months before expiration of the interim approval, EPA would start an 18-month clock for mandatory sanctions. Then, if Antelope Valley should fail to submit a corrective program that EPA found complete before the expiration of that 18-month period, EPA would be required to apply one of the sanctions in section 179(b) of the Act, which would remain in effect until EPA determined that the District has corrected the deficiency by submitting a complete corrective program. If, six months after application of the first sanction, the Antelope Valley still had not submitted a corrective program that EPA found complete, a second sanction would be required.

If, following final interim approval, EPA were to disapprove Antelope Valley's complete corrective program, EPA would be required to apply one of the section 179(b) sanctions on the date 18 months after the effective date of the disapproval unless prior to that date the District submitted a revised program and EPA determined that it corrected the deficiencies that prompted the disapproval. Again, if, six months after EPA applied the first sanction, Antelope

Valley had not submitted a revised program that EPA determined corrected the deficiencies, a second sanction would be required. In addition, discretionary sanctions may be applied where warranted any time after the end of an interim approval period if a state or district has not submitted a timely and complete corrective program or EPA has disapproved a submitted corrective program. Moreover, if EPA has not granted full approval to a state or district program by the expiration of an interim approval, EPA must promulgate, administer and enforce a federal permits program for that state or district upon interim approval expiration.

2. Section 112(g) Implementation

EPA has decided that it is not reasonable to expect the states and districts to implement section 112(g) before a rule is issued. EPA therefore published an interpretive document in the **Federal Register** regarding section 112(g) of the Act: 60 FR 8333 (February 14, 1995). This document outlines EPA's revised interpretation of 112(g) applicability prior to EPA's issuing the final 112(g) rule. The document states that major source modifications, constructions, and reconstructions will not be subject to 112(g) requirements until the final rule is promulgated.

The document further explains that EPA is considering whether the effective date of section 112(g) should be delayed beyond the date of promulgation of the Federal rule so as to allow States and Districts time to adopt rules implementing the Federal rule, and that EPA will provide for any such additional delay in the final section 112(g) rulemaking. Unless and until EPA provides for such an additional postponement of section 112(g), Antelope Valley must be able to implement section 112(g) during the period between promulgation of the Federal section 112(g) rule and adoption of implementing District regulations. For this reason, EPA is proposing to approve the use of Antelope Valley's preconstruction review programs as a mechanism to implement section 112(g) during the transition period between promulgation of the section 112(g) rule and adoption by the nineteen districts of rules specifically designed to implement section 112(g). However, since approval is intended solely to confirm that Antelope Valley has a mechanism to implement section 112(g) during the transition period, the approval itself will be without effect if EPA decides in the final section 112(g) rule that there will be no transition period. The EPA is limiting the duration of its approval of the use of preconstruction programs to implement 112(g) to 12 months following promulgation by EPA of the section 112(g) rule.

3. Program for Delegation of Section 112 Standards as Promulgated

Requirements for part 70 program approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) requirements for approval of a program for delegation of section 112 standards as promulgated by EPA as they apply to part 70 sources. Section 112(l)(5) requires that the District's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, the EPA is also proposing to grant approval under section 112(l)(5) and 40 CFR 63.91 of Antelope Valley's program for receiving delegation of section 112 standards that are unchanged from the federal standards as promulgated. California Health and Safety Code section 39658 provides for automatic adoption by CARB of section 112 standards upon promulgation by EPA. Section 39666 of the Health and Safety Code requires that districts then implement and enforce these standards. Thus, when section 112 standards are automatically adopted pursuant to section 39658, Antelope Valley will have the authority necessary to accept delegation of these standards without further regulatory action by the District.

4. State Operating Permit Program for Synthetic Minors

On March 31, 1995, CARB submitted for approval into the Antelope Valley's portion of the California State Implementation Plan (SIP) a local operating permit program designed to create federally enforceable limits on a source's potential to emit. This District program is referred to as a synthetic minor operating permit program, and it consists of regulations that will be integrated with the District's existing, non-federally enforceable, operating permit program. Such programs are also referred to as federally enforceable state operating permit (FESOP) programs. This synthetic minor or FESOP mechanism will allow sources to reduce their potential to emit to below the title V applicability thresholds and avoid being subject to title V.

Antelope Valley's synthetic minor regulations were adopted on March 17, 1998 and codified in Rule 225 (Federal Operating Permit Requirement). EPA found the initial SIP submittal administratively complete by default.

The five criteria for approving a state operating permit program into a SIP were set forth in the June 28, 1989 **Federal Register** notice (54 FR 27282): (1) The program must be submitted to and approved by EPA; (2) the program must impose a legal obligation on the operating permit holders to comply with the terms and conditions of the permit, and permits that do not conform with the June 28, 1989 criteria shall be deemed not federally enforceable; (3) the program must contain terms and conditions that are at least as stringent as any requirements contained in the SIP or enforceable under the SIP or any other section 112 or other Clean Air Act standard or requirement; (4) permits issued under the program must contain conditions that are permanent, quantifiable, and enforceable as a practical matter; and (5) permits issued under the program must be subject to public participation.

Permits issued under an approved program are federally enforceable and may be used to limit the potential to emit of sources of criteria pollutants. Antelope Valley's synthetic minor provisions of Rule 225 meet the June 28, 1989 criteria by ensuring that the limits will be permanent, quantifiable, and practically enforceable and by providing adequate notice and comment to EPA and the public. Therefore, EPA is proposing to approve, pursuant to part 52 and the approval criteria specified in the June 28, 1989 **Federal Register** notice, Rule 225 (Federal Operating Permit Requirement), which was submitted to create the synthetic minor operating permit program. Please refer to the Technical Support Document for a thorough analysis of the June 28, 1989 criteria as applied to the Antelope Valley's syntheticminor program.

On November 10, 1999, Antelope Valley requested approval of its synthetic minor program, consisting of the rule specified above, under section 112(l) of the Act for the purpose of creating federally enforceable limitations on the potential to emit of hazardous air pollutants (HAPs). The separate request for approval under section 112(l) is necessary because the proposed SIP approval discussed above only provides a mechanism for controlling criteria pollutants. While federally enforceable limits on criteria pollutants (*i.e.*, VOCs or PM–10) may have the incidental effect of limiting certain HAPs listed pursuant to section 112(b),[1] section 112 of the Act provides the underlying authority for controlling HAPs emissions that are not criteria pollutants. As a legal matter, no additional program approval by EPA is required in order for these criteria pollutant limits to be recognized as federally enforceable. EPA has determined that the five approval criteria for approving FESOP programs into the SIP, as specified in the June 28, 1989 **Federal Register** notice, are also appropriate for evaluating and approving the programs under section 112(l). The June 28, 1989 notice does not address HAPs because it was written prior to the 1990 amendments to section 112 (which injected the concept of major HAPs sources versus non-major or area HAPs sources into the permit) and not because it establishes requirements unique to criteria pollutants. Hence, the five criteria outlined above are applicable to FESOP approvals under section 112(l).

In addition to meeting the criteria in the June 28, 1989 notice, a FESOP program that will control HAPs emissions must meet the statutory criteria for approval under section 112(l)(5). Section 112(l)(5) allows EPA to approve a program only if it: (l) contains adequate authority to assure compliance with any section 112 standard or requirement; (2) provides for adequate resources; (3) provides for an expeditious schedule for assuring compliance with section 112 requirements; and (4) is otherwise likely to satisfy the objectives of the Act.

The EPA plans to codify the approval criteria for programs limiting potential to emit of HAPs in subpart E of part 63 (subpart E), the regulations promulgated to implement section 112(l) of the Act. The EPA currently anticipates that these criteria, as they apply to FESOP programs controlling HAPs, will mirror those set forth in the June 28, 1989 document, with the addition that the state's authority must extend to all HAPs, instead of, or in addition to, VOCs and PM–10. The EPA currently anticipates that FESOP programs that are approved pursuant to section 112(l) prior to the subpart E revisions will have had to meet these criteria, and hence, will not be subject to any further approval action.

The EPA believes it has authority under section 112(l) to approve programs to limit potential to emit of HAPs directly under section 112(l) prior to this revision to subpart E. Section 112(l)(5) requires EPA to disapprove programs that are inconsistent with guidance required to be issued under section 112(l)(2). This might be read to suggest that the "guidance" referred to in section 112(l)(2) was intended to be a binding rule. Even under this interpretation, the EPA does not believe that section 112(l) requires this rulemaking to be comprehensive. That is, it need not address all instances of approval under section 112(l). Given the severe timing problems posed by impending deadlines set forth in MACT standards and for submittal of title V applications, EPA believes it is reasonable to read section 112(l) to allow for approval of programs to limit potential to emit prior to issuance of a rule specifically addressing this issue.

EPA proposes approval of Antelope Valley's synthetic minor program pursuant to section 112(l) because the program meets all of the approval criteria specified in the June 28, 1989 **Federal Register** notice and in section 112(l)(5) of the Act. Please refer to the Technical Support Document for a complete discussion of how the June 28, 1989 criteria are met by Antelope Valley. Regarding the statutory criteria of section 112(l)(5) referred to above, the EPA believes Antelope Valley's synthetic minor program contains adequate authority to assure compliance with section 112 requirements since the third criterion of the June 28, 1989 notice is met: The program does not provide for waiving any section 112 requirement. Sources would still be required to meet section 112 requirements applicable to non-major sources. Furthermore, EPA believes that Antelope Valley's synthetic minor program provides for an expeditious schedule for assuring compliance because it allows a source to establish a voluntary limit on potential to emit and avoid being subject to a federal Clean Air Act requirement applicable on a particular date. Nothing in Antelope Valley's program would allow a source to avoid or delay compliance with a federal requirement if it fails to obtain the appropriate federally enforceable limit by the relevant deadline. Finally, Antelope Valley's synthetic minor program is consistent with the objectives of the section 112 program because its purpose is to enable sources to obtain federally enforceable limits on potential to emit to avoid major source classification under section 112. The EPA believes this purpose is consistent with the overall intent of section 112, which is to decrease the amount of HAPs being emitted; by committing to stay below a certain emission level for HAPs, a source with a synthetic minor permit is achieving this goal.

III. Administrative Requirements

A. Request for Public Comments

The EPA is requesting comments on all aspects of this proposed interim approval. Copies of Antelope Valley's submittal and other information relied upon for the proposed interim approval are contained in a docket maintained at the EPA Regional Office. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed interim approval. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the approval process, and

(2) To serve as the record in case of judicial review. The EPA will consider any comments received by May 1, 2000.

B. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

C. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), revokes and replaces Executive Orders 12612, Federalism, and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255,

[1] The EPA intends to issue guidance addressing the technical aspects of how these criteria pollutant limits may be recognized for purposes of limiting a source's potential to emit of HAPs to below section 112 major source levels.

August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

D. Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. This rule is not subject to Executive Order 13045 because it is does not involve decisions intended to mitigate environmental health or safety risks.

E. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions. This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 17, 2000.

Laura Yoshii,

Acting Regional Administrator, Acting Region IX.

[FR Doc. 00–7999 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300985; FRL–6497–7]

RIN 2070–AB78

Fenthion, Methidathion, Naled, Phorate, and Profenofos; Proposed Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to revoke 67 meat, milk, poultry, and egg tolerances for residues of the organophosphate pesticides fenthion, methidathion, naled, phorate, and profenofos. EPA determined that there are no reasonable expectations of finite residues in or on meat, milk, poultry, or eggs for the aforementioned organophosphate pesticides and announced on August 2, 1999, that those tolerances were reassessed under the Federal Food, Drug, and Cosmetic Act (FFDCA). The regulatory actions proposed in this document are part of the Agency's reregistration program under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), and the tolerance reassessment requirements of the FFDCA. By law, EPA is required to reassess 66% of the tolerances in existence on August 2, 1996, by August 2002, or about 6,400 tolerances. Since those 67 tolerances were previously reassessed, those reassessments were counted at that time. Consequently, no reassessments are counted here toward the August 2002 review deadline of FFDCA section 408(q), as amended by the Food Quality Protection Act (FQPA) of 1996.

DATES: Comments, identified by docket control number OPP–300985, must be received on or before May 30, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–300985 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Dan Helfgott, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8054; fax number: (703) 308–8041; e-mail address: helfgott.daniel@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does This Action Apply to Me?

You may be potentially affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of This Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300985. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–300985 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "opp-docket@epa.gov," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–300985. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the proposed rule or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Background

A. What Action Is the Agency Taking?

EPA is proposing to revoke specific meat, milk, poultry and egg tolerances for residues of fenthion, methidathion, naled, phorate, and profenofos because the Agency has concluded that there is no reasonable expectation of finite residues in or on the commodities associated with those tolerances.

The determinations to revoke the tolerances listed in this document were made based on feeding studies submitted since the time that the tolerances were originally established. These feeding studies used exaggerated amounts of the compound (10x the dietary burden) and did not show measurable residues of the pesticides tested. Because there is no reasonable expectation of finite residues, these 67 tolerances are not required under the FFDCA and can be revoked. The Agency originally made the determination that there is no reasonable expectation of finite residues on fenthion, methidathion, naled, phorate, or profenophos for the 67 commodities listed below on July 11, 1999. EPA published a notice in the **Federal Register** on August 2, 1999 (64 FR 41933) (FRL–6097–3) that these 67 tolerances were considered reassessed and had already been counted toward meeting the tolerance reassessment requirements listed in FFDCA section 408(q).

1. *Fenthion.* EPA is proposing to revoke the tolerances in 40 CFR 180.214 for residues of fenthion in or on poultry, fat; poultry, meat byproducts (mbyp); and poultry, meat. In 40 CFR 180.214, EPA is also proposing to remove the "N" designation from all entries to conform to current Agency administrative practice ("N" designation means negligible residues).

2. *Methidathion.* EPA is proposing to revoke the tolerances in 40 CFR 180.298 for residues of methidathion in or on cattle, fat; cattle, mbyp; cattle, meat; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; poultry, fat; poultry, mbyp; poultry, meat; sheep, fat; sheep, mbyp; sheep, meat; milk; and eggs. In 40 CFR 180.298, EPA is also proposing to remove the "N" designation from all entries to conform to current Agency administrative practice.

3. *Naled.* EPA is proposing to revoke the tolerances in 40 CFR 180.215 for residues of naled in or on cattle, fat; cattle, mbyp; cattle, meat; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; poultry, fat; poultry, mbyp; poultry, meat; sheep, fat; sheep, mbyp; sheep, meat; milk; and eggs.

4. *Phorate.* EPA is proposing to revoke the tolerances in 40 CFR 180.206 for residues of phorate in or on cattle, fat; cattle, mbyp; cattle, meat; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; poultry, fat; poultry, mbyp; poultry, meat; sheep, fat; sheep, mbyp; sheep, meat; milk; and eggs.

5. *Profenofos.* EPA is proposing to revoke the tolerances in 40 CFR 180.404 for residues of profenofos in or on poultry, fat; poultry, mbyp; poultry, meat; and eggs.

B. What Is the Agency's Authority for Taking This Action?

A "tolerance" represents the maximum level for residues of pesticide chemicals legally allowed in or on raw agricultural commodities and processed foods. Section 408 of FFDCA, 21 U.S.C. 301 *et seq.*, as amended by the FQPA of 1996, Public Law 104–170, authorizes the establishment of tolerances, exemptions from tolerance requirements, modifications in tolerances, and revocation of tolerances for residues of pesticide chemicals in or on raw agricultural commodities and processed foods (21 U.S.C. 346(a)). Without a tolerance or exemption, food containing pesticide residues is considered to be unsafe and therefore "adulterated" under section 402(a) of the FFDCA. If food containing pesticide residues is considered to be "adulterated," you may not distribute the product in interstate commerce (21 U.S.C. 331(a) and 342(a)). For a food-use pesticide to be sold and distributed, the pesticide must be registered under FIFRA (7 U.S.C. *et seq.*) Food-use pesticides not registered in the United States have tolerances for residues of pesticides in or on commodities imported into the United States.

When EPA establishes tolerances for pesticide residues in or on raw agricultural commodities, consideration must be given to the possible residues of those chemicals in meat, milk, poultry, and/or eggs produced by animals that are fed agricultural products (for example, grain or hay) containing pesticide residues (40 CFR 180.6). When considering this possibility, EPA can conclude that:

1. Finite residues will exist in meat, milk, poultry and/or eggs.

2. There is a reasonable expectation that finite residues will exist.

3. There is a reasonable expectation that finite residues will not exist. If there is no reasonable expectation of finite pesticide residues in or on meat, milk, poultry, or eggs, tolerances do not need to be established for these commodities (40 CFR 180.6(b) and 40 CFR 180.6(c)).

EPA has evaluated the meat, milk, poultry, and egg tolerances listed in the table in this proposed rule and has concluded that there is no reasonable expectation of finite residues of the listed organophosphate pesticides in or on those commodities.

C. When Do These Actions Become Effective?

EPA is proposing that these actions become effective 90 days following publication of a final rule in the **Federal Register**. EPA has proposed delaying the effectiveness of these revocations for 90 days following the publication of a final rule to ensure that all affected parties receive notice of EPA's actions. If you have comments regarding the effective date, please submit comments as described under the **SUPPLEMENTARY INFORMATION** section of this document.

D. What Is the Contribution to Tolerance Reassessment?

By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. EPA is also required to assess the remaining tolerances by August 2006. As of February 1, 2000, EPA has reassessed 3,430 tolerances. While this document proposes to revoke 67 tolerances, those 67 tolerances have been previously counted as reassessed and none are counted here toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

III. Are the Proposed Actions Consistent With International Obligations?

The tolerance revocations in this proposal are not discriminatory. EPA has evaluated the meat, milk, poultry, and egg tolerances listed in the table in the regulatory text and has concluded that there is no reasonable expectation of finite residues of the listed organophosphate pesticides in or on those commodities, whether domestic or imported.

EPA is working to ensure that the U.S. tolerance reassessment program under FQPA does not disrupt international trade. EPA considers Codex Maximum Residue Limits (MRLs) in setting U.S. tolerances and in reassessing them. MRLs are established by the Codex Committee on Pesticide Residues, a committee within the Codex Alimentarius Commission, an international organization formed to promote the coordination of international food standards. It is EPA's policy to harmonize U.S. tolerances with Codex MRLs to the extent possible, provided that the MRLs achieve the level of protection required under FFDCA. EPA's effort to harmonize with Codex MRLs is summarized in the tolerance reassessment section of individual Reregistration Eligibility Decision documents.

IV. How Do the Regulatory Assessments Requirements Apply to This Action?

In this document, EPA is proposing to revoke specific meat, milk, poultry, and egg tolerances established under FFDCA section 408. The Office of Management and Budget (OMB) has exempted this type of action, i.e., a tolerance revocation for which extraordinary circumstances do not exist, from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any prior consultation as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 19, 1998); special considerations as required by Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or require OMB review or any Agency action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Agency previously assessed whether revocations of tolerances might significantly impact a substantial number of small entities and concluded that, as a general matter, these actions do not impose a significant economic impact on a substantial number of small entities. The factual basis and the Agency's certification under section 605(b) for tolerance revocations published on December 17, 1997 (62 FR 66020), and was provided to the Chief Counsel for Advocacy of the Small Business Administration. Since no extraordinary circumstances exist as to the present revocation that would change EPA's previous analysis, the Agency is able to reference the general certification. Any comments about the Agency's determination should be submitted to EPA along with comments on the proposal, and will be addressed prior to issuing a final rule.

In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 23, 2000.

Jack E. Housenger, Acting

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

§ 180.206 [Amended]

2. In § 180.206, by removing from the table in paragraph (a) the entries for cattle, fat; cattle, mbyp; cattle, meat; eggs; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; milk (negligible residue); poultry, fat; poultry, mbyp; poultry, meat; sheep, fat; sheep, mbyp; and sheep, meat.

§ 180.214 [Amended]

3. In § 180.214, by removing the entries for poultry, fat; poultry, mbyp; and poultry, meat; and by removing the "(N)" designation from the entry "milk" in the table under paragraph (a).

§ 180.215 [Amended]

4. In § 180.215, by removing from the table in paragraph (a) the entries for cattle fat; cattle, mbyp; cattle, meat; eggs; goats, fat; goats, mbyp; goats, meat; hogs, fat; hogs, mbyp; hogs, meat; horses, fat; horses, mbyp; horses, meat; milk; poultry, fat; poultry, mbyp; poultry, meat; sheep, fat; sheep, mbyp; and sheep, meat.

§ 180.298 [Amended]

5. In § 180.298, by removing paragraph (a)(2), and redesignating paragraph (a)(1) as (a), and by removing the "(N)" designation wherever it appears from any entry in the table under paragraph (a).

§ 180.404 [Amended]

6. In § 180.404, by removing the entries for poultry, fat; poultry, mbyp; poultry, meat; and eggs; and redesignating the existing paragraph as paragraph (a) and adding and reserving paragraphs (b), (c), and (d) to read as follows:

(b) *Section 18 emergency exemptions.* [Reserved]

(c) *Tolerances with regional registrations.* [Reserved]

(d) *Indirect or inadvertent residues.* [Reserved]

[FR Doc. 00–8001 Filed 3–30–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–6567–7]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA today proposes to designate an ocean dredged material disposal site located offshore of Coos Bay, Oregon, for the disposal of dredged material removed from the federal navigation project at Coos Bay, Oregon, and for materials dredged during other actions authorized by, and in accordance with, section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA). This action is necessary to provide a acceptable ocean dumping site for the current and future disposal of this dredged material. This proposed site designation is for an indefinite period of time, but the site is subject to continuing monitoring to insure that unacceptable, adverse environmental impacts do not occur.

DATES: Comments must be received on or before May 15, 2000.

ADDRESSES: Comments on this proposed rule should be sent to: John Malek, Dredging and Ocean Dumping Coordinator, EPA Region 10 MS: ECO–083, 1200 Sixth Avenue, Seattle, WA 98101.

The file supporting this proposed designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street Southwest, Washington, DC.
EPA Region 10, 1200 Sixth Avenue, Seattle, Washington 98101.
U.S. Army Corps of Engineers, Northwestern Division, U.S. Customs House, 220 Northwest Eighth, Portland, Oregon.
U.S. Army Corps of Engineers, Portland District, Robert Duncan Plaza, 333 S.W. First Avenue, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: John Malek, Ocean Dumping Coordinator, U.S. Environmental Agency, Region X (ECO–083), 1200 Sixth Avenue, Seattle, WA 98191–1128, telephone (206) 553–1286, e-mail malek.john@epa.gov.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972 (MPRSA), as amended, 33 U.S.C. 1403 *et seq.*, gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made persuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, subchapter H, section § 228.4) state that ocean dumping sites will be designated by publication in part 228. A list of "Approved and Final Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last updated on July 1, 1999 (40 CFR 228.15(n)(2), (n)(3), and (n)(4)). A total of three ocean dumping sites off of Coos Bay (Site E, Site F, and site H) were designated in 1986 (51 FR 29927 *et seq.*). This proposed rule designates a new Site F which incorporates the 1986-designated Site F but appreciably expands it. Interested persons may participate in this proposed rulemaking by submitting written comments within 45 days of the date of this publication to the address given above.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions.

The U.S. Army Corps of Engineers (Corps) has prepared the *Feasibility Report on Navigation Improvements with Environmental Impact Statement (1994)* (Channel Deepening) for Coos Bay, Oregon, with the EPA Region 10 as a cooperating agency in the EIS preparation. The action discussed in the EIS is the designation of a larger Site F for ocean disposal of dredged material. The other two sites (E and H) are not affected by this rule. The purpose of the designation is to provide an environmentally acceptable location for ocean disposal of dredged material. The appropriateness of ocean disposal is determined on a case-by-case basis as part of the process of issuing permits for ocean disposal.

Existing Site F was designated in 1986 and in 1989 the area available for disposal of dredged material was doubled by the Corps using its section 103 authority of the MPRSA. The expansion was to the north to prevent excessive mounding and to reduce potential sediment transport back into the entrance channel. In 1995 Site F was again expanded by the Corps in order to accommodate less than anticipated sediment dispersion and to prevent excessive mounding. The size and location of Site F herein proposed for final designation is the same as that established by the Corps 103 action in 1995.

The EIS provides documentation to support final designation of a larger Site F as an ocean dredged material disposal site (ODMDS) for continuing use. Site designation studies were conducted by the Portland District, Corps of Engineers, in consultation with EPA, Region 10. The ODMDS site proposed for designation is located in the area best suited for dredged material disposal in terms of environmental and navigational safety factors. No significant or long-term adverse environmental effects are predicted to result from the designation. The designated ODMDS would continue to receive sediments dredged by the Corps to maintain the federally authorized navigation project at Coos Bay, Oregon, and for disposal of material dredged during other actions authorized in accordance with section 103 of the MPRSA. Before any disposal may occur, a specific evaluation by the Corps must be made using EPA's ocean dumping criteria. EPA makes an independent evaluation of the proposal and can disapprove the actual disposal.

The studies and final designation process are being conducted in accordance with the MPRSA, the Ocean Dumping Regulations, and other applicable federal environmental legislation.

C. Proposed Site Description

The center of the proposed site is located approximately 1.6 miles offshore with an east-west site dimension of 14,500 feet and a north-south site dimension of 8,000 feet (Figure 1.) The coordinates of the site are as follows (NAD 83):

43°22'58" N, 124°19'32" W
43°21'50" N, 124°20'29" W
43°22'52" N, 124°23'28" W
43°23'59" N, 124°22'31" W

If at any time disposal operations at the site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are

selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at a site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate sites can be designated. The general criteria are given in 40 CFR 228.5 of the EPA Ocean Dumping Regulations. Eleven specific criteria, given in 40 CFR 228.6, are used in evaluating a proposed disposal site to assure that the general criteria are met. The evaluations of the general and specific criteria, given below, are based on information published in the site designation EIS, monitoring studies, and the Channel Deepening EIS.

General Criteria (40 CFR 228.5)

1. Minimal Interference With Other Activities

The location of proposed ODMDS F is based on reasonable distance from the Coos Bay entrance, depth of water, biological conditions, historical use, and estimated amount and type of dredged material. Disposal activities are not expected to result in more than minimal interference with the typical marine activities such as navigation and commercial and recreational fishing. Use of the nearshore portion could conflict with crab fishing, but timing of disposal to occur after the season closes minimizes interference.

2. Minimize Changes in Water Quality

The material to be disposed consists of clean sand and silt. As described in the EIS, sediment test results indicate this material is suitable for ocean disposal. Testing and evaluation of material proposed for disposal would occur as necessary to insure sujtability.

3. Interim Sites Which Do Not Meet Criteria

Not applicable; the existing Site F was designated on an interim basis in 1977 and received final designation status in 1986. The site did not have sufficient capacity to meet long-term need without mounding, leading to the need for an expanded site.

4. Size of Sites

The size of the designated Site F has proven to be inadequate. By the Corps' Section 103 authority, Site F was twice expanded (1989 and 1995) to its presently proposed dimensions to limit mound development caused by inadequate sediment dispersion. The enlarged Site F proposed for designation is anticipated to adequately accommodate disposal of current and future maintenance dredging by using a larger placement area and by using the more active nearshore dispersal areas.

5. Sites Off the Continental Shelf

Such sites were eliminated during site evaluation for the 1986 site designation EIS. Conditions have not changed to offer any environmental advantage to the use of a site off the continental shelf. Transportation costs, sampling and testing costs, and post-disposal monitoring costs associated with disposal at a continental shelf site would greatly increase over present costs. In addition, there is greater uncertainty over impacts associated with continental shelf disposal, compared to disposal at existing sites which are known low impact areas. Therefore, disposal at a site off the continental shelf is not considered necessary or practical.

Transporting dredged material off the continental shelf presents potentially significant environmental concerns. Benthic and pelagic ecosystems near the shelf contain important fishery resources and the effects of disposal operations on them are not well understood. Fine-grained sediment and rocky habitats would be directly impacted by disposal. These deep-water areas are stable and generally not disturbed by wave action or sediment movement. Consequently, the benthic invertebrate communities in these deep, offshore environments are adapted to very stable conditions and would be less able to survive disturbance from the immediate impact of disposal and the long-term alteration of substrate type. Little is known of the ecology of benthic communities on the continental slope; however, disposal onto those communities would cause severe and long-term impacts. Bottom gradients can be 5 to 25 percent on the continental slope, making accumulated unconsolidated sediments susceptible to slumping. Deposited sediments could be transported long distances downslope as turbidity currents and offshore by near-bottom currents, potentially affecting organisms outside of any designated site.

The cost for site evaluation necessary to designate a site and subsequent baseline and monitoring, along with unanswered environmental concerns about the effects of disposal in such areas, makes off-shelf disposal undesirable as well as infeasible. Further, disposal off the continental shelf would remove natural sediments from the nearshore littoral transport system, a system that functions with largely non-renewable quantities of sand.

Specific Criteria (40 CFR 228.6)

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast

The proposed site lies in 20 to 160 feet (6 to 51 m) of water, approximately 1.6 miles offshore with an east-west dimension of 14,500 feet and a north-south dimension of 8,000 feet. Coordinates are (NAD 83):

43°22'58" N, 124°19'32" W
43°21'50" N, 124°20'29" W
43°22'52" N, 124°23'28" W
43°23'59" N, 124°22'31" W

In general, bottom contours of the proposed site slope at a rate of 10/1000 feet to the WNW.

Sediments in proposed Site F and adjoining areas are clean fine sands of marine origin with median grain diameters of 0.15 to 0.20 millimeters.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Area of Living Resources in Adult and Juvenile Phases

Aquatic resources of the proposed Site F are described in detail in the EISs (1986, 1994). The inshore high-dispersive area (depth to 15 meters) are populated by species tolerant of a high energy wave environment that are adapted to continued disturbance. Deeper areas are generally less dispersive and are populated by species generally less adapted to continued disturbance. Most organisms display seasonal changes of abundance typical of coastal Oregon and Pacific Northwest waters.

Based on analyses of benthic samples, proposed Site F and vicinity contains benthic fauna characteristic of oceanic coastal Pacific Northwest environs. By utilizing the more dispersive shallower areas and, when appropriate, deeper areas of the proposed site, the disturbance or burial of benthic organisms would be minimized. Various management options described in the site Management and Monitoring plan (SMMP) over a larger site area would further avoid or minimize these impacts. Most organisms and communities which are adapted to a higher energy environment tend to recolonize quickly following the disposal operation. No unique biological communities would be impacted.

The dominant commercially and recreationally important macroinvertebrate species in the coastal area are shellfish, Dungeness crab and

shrimp. A variety of demersal and

For the present, proposed disposal

site under Department of the Army

disposed at Site H. No nuisance species

sea turtles, Snake River sockeye salmon,

those governments. If EPA complies by

shrimp. A variety of demersal and pelagic fish species are present. Common demersal fish are flatfish, sole, and smelt. Anadromous salmon, herring, and anchovy are representative of pelagic fishes present in the coastal waters.

The proposed Site F is in an area where numerous species of birds and marine animals occur in the pelagic nearshore and shoreline habitats.

In summary, the proposed ODMDS contains living resources that could be affected by disposal activities. However, evaluation of past disposal activities does not indicate that unacceptable adverse effects to these resources have occurred. Appropriate future management should minimize the potential of adverse impacts and make this proposed site acceptable for final designation.

3. Location in Relation to Beaches and Other Amenity Areas

The nearshore limit of proposed Site F is located within 2000 feet of the shoreline. Sediments disposed near that site boundary would be in an active transport zone and would disperse rapidly both onshore and alongshore. Limited onshore transport would be expected due to the nature of currents and wave transport in that vicinity. Proper management could detect any onshore effects and modify disposal actions accordingly. Placement in the nearshore could help to reduce erosion on the beach near the Coos Bay North Jetty.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, if Any

For purposes of maintaining the existing federal channel, an average of approximately 1.38 million cubic yards (cy) of sediment is annually dredged from the estuary and placed in designated ODMDSs (Sites F and H) offshore of the entrance to Coos Bay. About half is classified as sand and the remainder as fine-grained material (silt). In the recent past the fine-grained material has been disposed at Site H and the sand at Site F although both sites have been designated to receive sand and silt. Since the recent channel deepening, Site H has shown evidence of mounding and its long-term viability to receive significant disposal volumes, without exceeding site boundaries, is being analyzed. Whether expansion of Site H, a shift to greater reliance on proposed Site F, or another management option is appropriate, is presently being studied.

For the present, proposed disposal site F will receive dredged materials transported by either government or private contractor hopper dredges or ocean-going barges. The dredges typically release dredged material while moving slowly through the disposal site. Mounding should be minimized by dispersing the disposal in such a manner and by placing material in both the nearshore and the offshore part of the proposed site, as appropriate.

Small quantities of non-Federal material are annually disposed at site F or H in accordance with Department of the Army permits. These disposals are determined to comply with the ocean dumping criteria.

5. Feasibility of Surveillance and Monitoring

Surveillance of the proposed disposal site can be made from shore facilities or vessels. Approaches to the Coos Bay entrance, including the disposal area, are surveyed annually by the Corps. Surveillance during heavy weather conditions is expected to be unnecessary since heavy sea conditions curtail ocean disposal operations.

The Corps and EPA have developed a site management plan which addresses post-disposal monitoring.

6. Disposal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction, and Velocity

Average currents in the region generally flow parallel to the bathymetric contours with downslope components predominating over upslope components near the bottom. Local current strength and direction, however, reflect the variability of local winds. During disposal operations in the summer months the predominant direction of material transport is southward, but with a stronger northward component the remainder of the year. At proposed site F dispersal characteristics range greatly depending on depth; the nearshore areas are very dispersive whereas dispersion in the offshore areas is minimal.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects)

Disposal at designated Site F has resulted in significant mounding, as much as 20 feet by 1989, and in the Corps' 103 expanded Site F (1989) as much as 24 feet by 1994. No material from the Federal navigation project has been disposed in the designated Site F and the 1989 expansion area since 1994. Dredged material from other dredging has been placed at the EPA designated site under Department of the Army permits. Material dredged from the Federal navigation project has been managed since 1995 by placement further offshore, nearshore, and to the north within the area of the presently proposed for designation. Material placed into the nearshore portion of the proposed site has moved out between dredging cycles.

No significant biological impacts have been associated with any disposal at the Coos Bay sites.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean

The only known commercial and recreational uses occurring in the vicinity of proposed Site F are fishing and marine navigation. No significant impact to these activities has occurred in the past or is anticipated for the future. Commercial crabbing occurs in the area, especially in the nearshore portion. Timing of disposal in that portion has been scheduled to occur after the crabbing season has closed to minimize interference.

9. The Existing Water Quality of the Site as Determined by Available Data or Trend Assessment of Baseline Survey

Water and sediment quality analyses conducted in the study area and experience with past disposals in this region have not identified any adverse water quality impacts from ocean disposal of dredged material.

The ecology of the offshore area is a Northeast Pacific mobile sand community. This determination is based mainly on fisheries and benthic data. Neither the pelagic or benthic communities should sustain irreparable harm due to their mobility and widespread occurrence off the Oregon coast.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site

Nuisance species are considered as any undesirable organism not previously existing at the disposal site. They are either transported to or recruited to the site because the disposal of dredged material created an environment where they could establish. The major component of dredged material which might attract nuisance species is the organic material. The only material containing any appreciable amounts of organic material is that dredged between RM 12 and 15. This material has historically been

disposed at Site H. No nuisance species have been observed at this site in more than 10 years of monitoring.

11. Existence at or in Close Proximity to the Site of any Significant Natural or Cultural Features of Historical Significance

The cutural resource most likely to be directly impacted by the proposed project would be submerged shipwrecks at or near proposed Site F. Potential impacts may include exposure and destruction of remnants of shipwrecks if present in the location of areas scheduled for dredging or impacts from disposal at the disposal site. Proposed Site F and vicinity has been investigated and no shipwrecks have been found.

E. Proposed Action

The 1994 EIS concluded that the proposed site may be appropriately designated for use. The proposed site is compatible with the general criteria and specific factors used for site evaluation.

The designation of the larger Coos Bay Site F as approved Ocean Dumping Site is being published as proposed rulemaking. Management of this site will be delegated to the Regional Administrator of EPA Region 10.

It should be emphasized that, if an ocean dumping site is designated, such a designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate the proposed Corps action or a permit application according to EPA's ocean dumping criteria. EPA has the right to disapprove the actual dumping, if it determines that environmental concerns under MPRSA have not been met.

F. Regulatory Assessment

1. Consistency With the Coastal Zone Management Act

The designation of proposed Site F has been determined by the Corps and EPA to be consistent with the acknowledged local comprehensive plans and the State of Oregon Coastal Zone Management Program. The State of Oregon; Department of Land Conservation and Development, reviewed this consistency determination and concurred (1994 EIS).

2. Endangered Species Act Consultation

Federally listed species, under the administration of the National Marine Fishery Service (NMFS), which may occur in or near the proposed disposal site include: gray, fin, humpback, blue, sei, sperm and right whales, Steller sea lions, leatherback, loggerhead and green sea turtles, Snake River sockeye salmon, Snake River fall and spring/summer chinook salmon and Sacramanto River winter-run chinook salmon. They are normally present in offshore waters and occur in limited numbers on a seasonal basis. Biological Assessments have been prepared and concurrence letters from NMFS received.

Five Federally listed species administered by the U.S. Fish and Wildlife Service (USFWS) occur in the coastal area. Species present are the brown pelican, peregrine falcon, bald eagle, western snowy plover, and the marbled murrelet. The peregrine falcon and the bald eagle are proposed for de-listing. Biological Assessments have been prepared and concurrence received.

G. Administrative Review

1. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4,1993), EPA must determine whether the regulatory action is "significant", and therefore subject to OMB review and other requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to lead to a rule that may:

(a) Have an annual effect on the economy of $100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(b) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(c) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(d) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

This proposed rule does not entail "significant regulatory action" as defined. Consequently EPA has determined that this proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866.

2. Executive Order 13084

Under Executive Order 13084, EPA may not issue a regulation that is not required by statute that significantly or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments, or EPA consults with those governments. If EPA complies by consulting, Executive Order 13084 requires EPA to provide to the Office of Management and Budget in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation. In addition, Executive Order 13083 requires EPA to develop an effective process permitting elected officials and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities".

This proposed rule does not significantly or uniquely affect the communities of Indian tribal governments. Tribal governments are not affected in any fashion. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

3. Regulatory Flexibility

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA), federal agencies generally are required to conduct an initial regulatory flexibility analysis (IRFA) describing the impact of the regulatory action on small entities as part of a proposed rulemaking. However, under section 605(b) of the RFA, if the Administrator for the agency certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities, the agency is not required to prepare an IRFA. The Administrator certifies, pursuant to section 605(b) of the RFA, that this proposed rule will not have a significant economic impact on a substantial number of small entities. Therefore, the agency did not prepare an initial regulatory flexibility analysis.

The RFA requires analysis of the impacts of a rule on the small entities subject to the rule's requirements. *See United States Distribution Companies* v. *FERC*, 88 F.3d 1105, 1170 (D.C. Cir. 1996). Today's proposed rule establishes no requirements applicable to small entities, and so is not susceptible to regulatory flexibility analysis as described by the RFA. ("No [regulatory flexibility] analysis is necessary when an agency determines that the rule will not have a significant economic impact on a substantial number of small entities that are subject to the requirements of the rule," *United Distribution at 1170,*

quoting Mid-Tex Elec. Co-op v. *FERC*, 773 F. 2d. 327, 342 (D.C. Cir. 1985) (emphasis added by *United Distribution* court).) The Agency is thus certifying that today's proposed rule will not have a significant economic impact on substantial number of small entities, within the meaning of the RFA.

4. Paperwork Reduction Act

The Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, is intended to minimize the reporting and record-keeping burden on the regulated community, as well as to minimize the cost of Federal information collection and dissemination. In general, the Act requires that information requests and record-keeping requirements affecting ten or more non-Federal respondents be approved by OPM. Since the proposed Rule does not establish or modify any information or record-keeping requirements, but only clarifies existing requirements, it is not subject to the provisions of the Paperwork Reduction Act.

5. Unfunded Mandates

Title II of the Unfunded Mandates Reform Act (UMRA) of 1995 (Pub. L. 104–4) establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local and tribal governments and the private sector. Under section 202 of the UMRA, EPA generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any year. Before promulgating an EPA rule for which a written statement is needed, Section 205 of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule, the provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why the alternative was not adopted. Before EPA establishes any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, it must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

This proposed rule contains no Federal mandates (under the regulatory provisions of Title II of the UMRA) for State, local or tribal governments or the private sector. It imposes no new enforceable duty on any State, local or tribal governments or the private sector. Similarly, EPA has also determined that this Rule contains no regulatory requirements that might significantly or uniquely affect small government entities. Thus, the requirements of section 203 of the UMRA do not apply to this rule.

6. Executive Order 12875

Today's proposed rule does not create a mandate on State, local or tribal governments. The rule does not impose any enforceable duties on these entities. Accordingly, the requirements of section 1(a) of the Executive Order do not apply to this Rule.

7. Executive Order 13045

The Executive Order applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) Concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children.

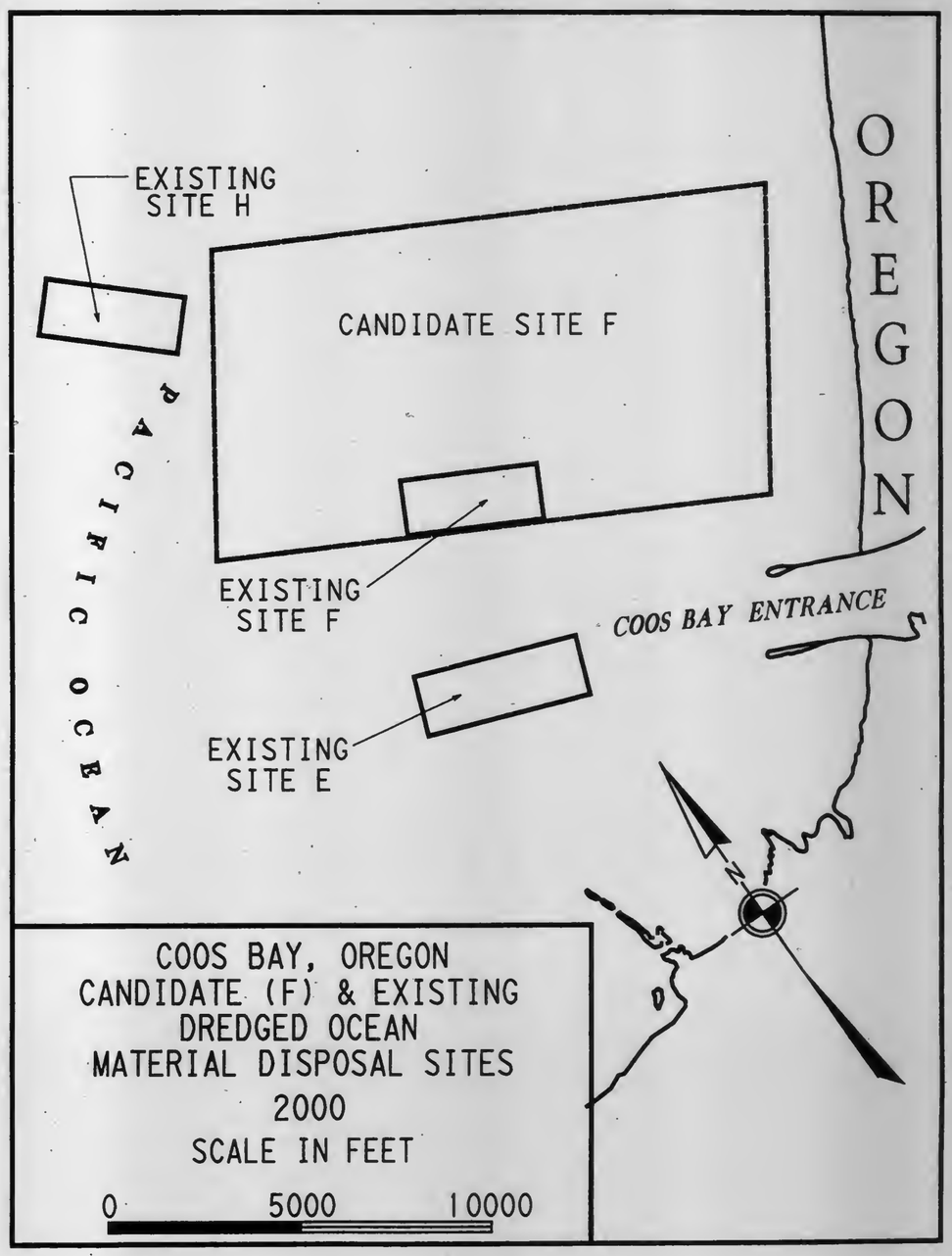
EPA interprets E.O. as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. This proposed rule is not subject to E.O. 13045 because it is not economically significant as defined under E.O. 12866 and, further, it does not establish an environmental standard intended to mitigate health or safety risks.

8. Executive Order 12898

To the greatest extent practicable and permitted by law, and consistent with the principles set forth in the report on the National Performance Review, each Federal agency must make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health and environmental effects of its programs, policies, and activities on minority populations and low-income populations in the United States and its territories and possessions, the District of Columbia, the Commonwealth of Puerto Rico, and the Commonwealth of the Mariana Islands.

Because this proposed rule addresses ocean dumping (away from inhabited land areas), with no anticipated significant adverse human health or environmental effects, the rule is not subject to Executive Order 12898.

BILLING CODE 6560–50–P



BILLING CODE 6560–50–C

List of Subjects in 40 CFR Part 228

spectrum. The Commission believe's

necessary to facilitate the deployment of

lack of common transmission standards

offered and technology employed in the

of 1934, as amended, authorizes the

List of Subjects in 40 CFR Part 228.

Environmental protection, Water pollution control.

Dated: March 15, 2000.

Chuck Clarke,

Regional Administrator for Region X.

For the reasons set out in the preamble, Chapter I of title 40 is amended as set forth below:

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by revising paragraphs (n) (4) (i), (ii), (iii), (iv), (v), and (vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(n) * * *

(4) * * *

(i) Location: 43°22′58″ N., 124°19′32″ W.; 43°21′50″ N., 124°20′29″ W.; 43°22′52″ N., 124°23′28″ W.; 43°23′59″ N., 124°22′31″ W. (NAD 83)

(ii) Size: 4.42 kilometers long and 2.44 kilometers wide.

(iii) Depth: Ranges from 6 to 51 meters.

(iv) Primary Use: Dredged material.

(v) Period of Use: Continuing Use.

(vi) Restriction: Disposal shall be limited to dredged material determined to be suitable for unconfined disposal and any other restrictions contained in the then-currently approved site monitoring and management plan.

* * * * *

[FR Doc. 00–7734 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 2

[ET Docket No. 00–47, FCC 00–103]

Inquiry Regarding Software Defined Radios

AGENCY: Federal Communications Commission.

ACTION: Notice of inquiry.

SUMMARY: This document requests comments on "software defined radio", which the Commission believes could have wide range implications for radio technology and our regulatory policies. Software defined radios have the potential to change the way users can communicate across traditional services and to promote efficient use of spectrum. The Commission believe's that software defined radios could significantly affect a number of Commission functions, including spectrum allocation, spectrum assignment, and equipment approval. The purpose of this inquiry is to gather information on the state of software defined radio technology, interoperability issues, spectrum efficiency issues, equipment authorization processes, and other relevant issues.

DATES: Comments June 14, 2000; and reply comments July 14, 2000.

ADDRESSES: All filings must be sent to the Commission's Secretary, Magalie Roman Salas, Office of the Secretary, Federal Communications Commission, 415 12th Street, SW, TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Hugh Van Tuyl, Office of Engineering and Technology, (202) 418–7506.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Inquiry*, ET Docket 00–47, FCC 00–103, adopted March 17, 2000, and released March 22, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center, Room Cy-A257, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's duplication contractor, International Transcription Services, Inc. (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Summary of Notice of Inquiry

1. The Commission initiated this *Notice of Inquiry* ("NOI") to obtain comments from the public on a variety of issues related to software defined radios. Software defined radios could offer tremendous advantages to consumers over currently available wireless equipment. These benefits include lower cost, a greater variety of features, and the ability to adapt to multiple communication standards. They could also offer advantages to manufacturers, such as increased economies of scale in production, increased worldwide market opportunities, and a decrease in the number of devices that must be maintained in inventory. Software defined radios could expand access to broadband communications for all persons and increase competition among telecommunication service providers. Through this inquiry, we seek input to help us evaluate the current state of software defined radio technology, and to determine whether changes to the Commission's rules are necessary to facilitate the deployment of this technology. Upon review of the responses to this inquiry, we will determine whether to propose any changes to the rules.

2. Software defined radio technology was originally developed for the United States military. The "SPEAKeasy" project was undertaken by the Department of Defense with the goal of developing a multi-band, multi-mode software. The SPEAKeasy project showed that a software defined radio is feasible. Nevertheless, there are many technological hurdles that must be overcome before software defined radios can be widely deployable. For example, there are limitations on the speed and dynamic range of current analog to digital converters, physical limitations on the frequency range over which an antenna can operate, and speed and cost constraints on digital signal processing circuitry. In addition, standards that would allow interoperability between hardware and software produced by different manufacturers are still under development. Therefore, in order to assist us in understanding the current state of software defined radio technology, we seek comment in the following areas.

- What features in a radio are apt to be controlled by software? For example, could the operating frequency, output power, and modulation format be software controlled?
- What are the specific limitations of current software defined radio technology? What are the cost implications?
- What capabilities could software defined radios have that are not found in current radio technology?
- When could software defined radios be deployed commercially, and for what services or purposes?
- What work is being done on software defined radios internationally, and are there any steps the Commission should take to encourage this work?

3. Interoperability. The Commission's rules are divided up into a number of parts that contain the requirements for various licensed radio services. The rules for each service specify the operating frequencies and other technical requirements for radio equipment in that particular service. In some cases there is overlap between these frequencies and other requirements, so equipment can be developed to operate in more than one service. However, in most cases, equipment designed to operate in one service can not communicate with equipment designed to operate in another service, and in some cases can not even communicate with other equipment in the same service due to lack of common transmission standards or operating frequencies.

4. The inability of users to communicate due to non-uniform standards within services or between services can be a serious problem. The ability of software defined radios to change frequency and transmission standards would appear to be a way to overcome the lack of interoperability between different wireless systems. We are therefore asking for comment on the following questions.

- To what extent can software defined radios improve interoperability between different public safety agencies?
- To what extent can software defined radios improve interoperability between equipment and services using differing transmission standards?
- To what extent would software defined radios move toward uniformity in standards within or across bands?
- To what extent can software defined radios be used to facilitate transitions from one technical standard to another, such as the transition mandated by the land mobile "refarming" proceeding?
- What particular means could be employed by software defined radios to facilitate interoperability?

5. Improving spectrum efficiency and spectrum sharing. The Commission allocates bands of spectrum to the various radio services in the rules, and maintains a table of these frequency allocations. In order to operate within a service, a license issued by the Commission is required. The rules for each service specify eligibility requirements for obtaining a license, and the technical requirements for operation, including location, power and frequency. Licenses may be issued through an application process, or through a competitive bidding process.

6. Because of the ability to be easily reprogrammed, a software defined radio would not be limited to operation within a single fixed frequency band or on a limited set of pre-programmed channels. It could have the capability of operating on any frequency within the limits of its design, and could operate on channels of varying widths with varying modulation formats. Further, it should be possible to design the equipment with some "intelligence," which would let it monitor the spectrum to detect usage by other parties and transmit on open frequencies. These capabilities could open up new possibilities in the area of spectrum allocation and licensing.

7. The use of software defined radios may also enable new types of spectrum sharing that are currently precluded by today's conventional equipment. For example, our PCS rules permit wide flexibility in terms of the services offered and technology employed in the PCS spectrum. In the event that a PCS licensee has spectrum available in excess of its immediate needs, it could lease that spectrum on a short-term basis to a third party. Software defined radio could facilitate such sharing. A third party could, for example, acquire from a manufacturer software defined radio equipment capable of being configured to offer different services in the various frequency ranges. Having negotiated for spectrum use, it would be in a position to rent a package of equipment and "airtime" to end users needing communications capacity on a short-term basis. It would load the appropriate software to properly configure the equipment at the time the end user enters into the rental agreement. Another alternative would be for the end user to contract directly with the licensee for the necessary spectrum and then rent the properly configured software defined radio equipment. With today's technology, such short-term sharing is difficult or impossible to accomplish due to the difficulties associated with quickly configuring radios for different applications in novel spectrum configurations. As a result, we believe that significant public benefits might flow from software defined radio technology. The public benefits include increased communications capacity for end users and better utilization of the spectrum resource. We seek comments regarding these potential benefits and what regulatory steps we might take to

8. Functions described in the NOI have the potential to allow spectrum to be utilized more efficiently. We are therefore seeking comment on the following areas related to frequency allocation and licensing.

- To what extent could software defined radios improve the efficiency of spectrum usage?
- What particular functions related to spectrum usage could a software defined radio perform? Could it locate free spectrum, dynamically allocate bandwidth, and enable better sharing of the spectrum?
- How specifically could it carry out these functions?
- What are the benefits of the spectrum sharing arrangements described above, and what steps might we take to permit the use of software defined radios to enable such sharing arrangements?
- What changes may be appropriate for the way the Commission currently allocates spectrum?
- If changes are warranted, how could we make the transition from the current allocation and licensing model to a new model?

9. Equipment approval process. Section 302 of the Communications Act of 1934, as amended, authorizes the Commission to make reasonable regulations, consistent with the public interest, governing the interference potential of equipment that emits radio frequency energy. The Commission carries out its responsibilities under this section by establishing technical regulations for transmitters and other equipment to minimize their potential for causing interference to radio services, and by administering an authorization program to ensure that equipment reaching the market complies with the technical requirements. The authorization program requires that equipment be tested either by the manufacturer or at a private test laboratory to ensure that it complies with the technical requirements. The majority of radio transmitters require the submission of an application that must be reviewed and approved before the equipment can be marketed, although certain transmitters may be authorized through a manufacturer's self-approval process.

10. A transmitter is approved to a specific set of technical parameters, including the operating frequencies, output power, and types of radio frequency emissions. If a manufacturer changes these parameters after a piece of equipment has been authorized, the FCC issues a new approval before the unit may be marketed with the changes. By design, the operating parameters of a software defined radio can be readily changed in the field by altering its software. Such a change could violate the terms of the transmitter's equipment authorization by causing it to operate in modes for which it has not been approved. Also, our rules do not allow parties other than the grantee of the equipment authorization to make modifications to approved equipment without obtaining a new approval. Even if a new approval were obtained by the original grantee, the rules require the modified transmitter to be labeled with a new FCC identification number, which would be impractical for software modification of equipment that is already in the field. We therefore seek comments on the following issues related to the authorization of software defined radio transmitters.

- Should we approve the radio hardware, the software or the combination of them?
- Are the currently required measurements in Part 2 of the rules appropriate for software defined radios?
- How should software defined radio equipment be tested for compliance, including compliance with SAR requirements? What type of approval process and labeling would be appropriate?

- Should we regulate who changes the software and the manner in which it is done? If so, should the Commission maintain records of such modifications?
- What are the various means that may be used to download new software? We anticipate, for example, that software could be downloaded by methods such as direct connection to a programming device or over the airwaves. To what extent will the software interfaces be standardized?
- Should we require anti-tampering or other security features? How would such security features work? Could equipment be designed to prevent it from transmitting in certain designated frequency bands, such as those allocated exclusively for government use, as a safeguard against causing interference?
- Do we need to adopt additional requirements for software defined radios to ensure the privacy of users' communications?

11. One possible scenario for an approval process for software defined radios could be as follows. The software could be tested and approved to ensure that the transmitter meets the applicable technical requirements under all operating conditions. In order to ensure that untested and unapproved software could not be loaded, such transmitters would have an authentication system that checks the software for an authentication code added to it by the FCC or a Telecommunications Certification Body (TCB). The software itself would be submitted for approval in a process similar to today's application process except that a copy of the object code would be supplied in machine-readable form. Upon approving the software application, which would involve a test of the hardware and software together similar to today's tests, the FCC or TCB would compute the authentication code for the submitted source code and send it to the applicant. The authentication system would be a two key system in which the key needed to compute the authentication code would be known to only the FCC or TCB, and the key needed to check in a transmitter object code which is being loaded would be publicly available.

12. In an analogy to the current requirement for labeling a transmitter, there may be a need for a method to allow users to determine whether the desired operating software is currently loaded in a transmitter, and to allow Commission enforcement personnel to verify that the software has been approved. To meet this need, the transmitter could display information about the software installed by a means such as a liquid crystal display (LCD) screen in response to an input from a keypad. The identification information about the software installed in the radio could include such information as the technical operating parameters, the source of the software, and the name of the body that approved it. The user manual and the authorization application would describe how to access this information. Since such radios are expected to have displays for user information and input mechanisms for the user in normal use, we do not think this requirement would be burdensome. We seek comments on the following questions about this possible approval method.

- Is there a need for such an approval system, and is it feasible and practical?
- What type of authentication system should be used? Should there be one system or alternative systems? Who should have responsibility for generating the authentication codes: the FCC, TCBs, equipment manufacturers, or some other party?
- In the case of transmitters subject to verification how should authentication of software be handled? For example, could an "authentication only" service be offered in which the FCC or TCB computes the authentication code for the software after all elements of compliance with the FCC rules are verified by the manufacturer?
- How should simple changes to software be handled that do not affect the operating parameters of the equipment but require the computation of a new authentication code? Could an "authentication only" service be offered for them?
- Is there a need for a method to display information about the software loaded in a transmitter? If so, what method should be used and what information should be displayed?

13. Other matters. The questions raised in this notice are intended to solicit information to assist the Commission in deciding whether to propose rule changes as a result of the developing software defined radio technology. We realize that these questions do not necessarily encompass all of the issues raised by this technology. Commenters may want to address whether software defined radio technology could help parties comply with Sections 255 and 251(a) of the Communications Act. These sections require manufacturers of telecommunications equipment and providers of telecommunications services to ensure that such equipment and services are accessible to persons with disabilities, if readily achievable. Commenters may also wish to address how we would enforce any new rules for software defined radios. Accordingly, comments are invited on any other matters or issues that may be pertinent to software defined radios.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–7967 Filed 3–30–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–586; MM Docket No. 99–212; RM–9640]

Radio Broadcasting Services; Amelia, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: This document denies a petition for rule making filed by Mountain West Broadcasting proposing the allotment of FM Channel 249C3 to Amelia, Louisiana, as that locality's first local aural transmission service. Petitioner failed to establish the availability of a suitable location for tower construction as the required site restriction located 18.4 kilometers south of the community at coordinates 29–30–21 NL and 91–03–46 WL to accommodate Channel 249C3 at Amelia is in marshland. See 64 FR 31173, June 10, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–212, adopted March 8, 2000, and released March 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–7828 Filed 3–30–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register

Vol. 65, No. 63

Friday, March 31, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AFRICAN DEVELOPMENT FOUNDATION

Board of Directors Meeting; This Supercedes the Announcement Published on December 1, 1999

Time: 1:00 p.m. to 4:00 p.m.

Place: ADF Headquarters, 1400 Eye St., NW., 10th Floor, Washington, DC 20005.

Date: Wednesday, 12 April 2000.

Status: Open.

Agenda

1:00 p.m.—Chairman's Report.
1:30 p.m.—President's Report.
2:30 p.m.—New Business.
3:00 p.m.—Closed Session.
4:00 p.m.—Adjournment.

If you have any questions or comments, please direct them to Dick Day, Coordinator, Office of Policy, Planning and Outreach, who can be reached at (202) 673–3916.

William R. Ford,

President.

[FR Doc. 00–8085 Filed 3–28–00; 4:49 pm]

BILLING CODE 6116–01–U

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

March 27, 2000.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, D.C. 20503 *and* to Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, D.C. 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Farm Service Agency

Title: Disaster Assistance—General (7 CFR part 1945–A).

OMB Control Number: 0560–0170.

Summary of Collection: Subtitle C of the Consolidated Farm and Rural Development Act of 1972, as amended, authorizes emergency loss (EM) loans for the purpose of assisting farmers and ranchers who have suffered weather-related physical and production losses in areas declared by the President, designated by the Secretary of Agriculture, or named for physical loss loans by the Farm Service Agency (FSA) Administrator. For EM production loss loan, applicants must show a 30% loss in at least one basic farming enterprise. For Physical losses, applicants must show that property damaged or destroyed is essential to the continued operation of the farming or ranching operations. Applicant must be unable to obtain commercial credit or recover from the disaster and meet the specific eligibility and repayment requirements. FSA will collect information to evaluate requests for a Secretarial natural disaster designation.

Need and Use of the Information: FSA will collect information on determining whether sufficient losses have been suffered to warrant a Secretarial natural disaster designation, determine whether extenuating circumstances exist to grant a natural disaster designation under the Secretary's discretionary authority. The information will be used by FSA to process State Governor requests for Secretarial natural disaster designations.

Description of Respondents: Farms; Federal Government; State, Local or Tribal Government.

Number of Respondents: 2,236.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 988.

Food and Nutrition Service

Title: Status of Claims Against Households.

OMB Control Number: 0584–0069.

Summary of Collection: Section 11, 13, and 16 of the Food Stamp Act of 1977, as amended (the Act) and appropriate Food Stamp Program Regulation are the basis for the information collected on FNS–209. Food Stamp Program regulations require that State agencies submit quarterly form FNS–209, Status of Claims Against Households, reports. The required information provided on this report must be obtained from a State accountable system responsible for establishing claims, sending demand letters, collecting claims, and managing other claim activity.

Need and Use of the Information: The Food and Nutrition Service (FNS) will collect information on the outstanding aggregate claim balance; claims established; collections; any balance and collection adjustments; and the amount to be retained for collecting non-agency error claims. The information will be used by State agencies to ascertain aggregate claim balance and collections for determining overall performance, the collection amounts to return to FNS, and claim retention amounts. FNS will receive collections and report collection activity to Treasury.

Description of Respondents: State, Local or Tribal Government.

Number of Respondents: 53.

Frequency of Responses: Recordkeeping; Reporting: Quarterly.

Total Burden Hours: 742.

Forest Service

Title: Airplane Pilot Qualifications and Approval Record, Helicopter Pilot Qualifications and Approval Record, Airplane Data Record, and Helicopter.

OMB Control Number: 0596–0015.

Summary of Collection: The Forest Service (FS) is the largest owner and operator of aircraft in the federal government outside of the Department of Defense. In conducting the Forest Service land management mission they use 44 owned aircraft with 306 aircraft on loan to 18 States for fire suppression activities. The majority of FS flying is in support of wildland fire suppression. In addition to the agency owned aircraft, the FS contracts with approximately 400 vendors for aviation services used in resource protection and administrative projects. Contractor aircraft and pilots are used to place water and chemical retardants on fires, provide aerial delivery of firefighters to fires, perform reconnaissance, resource surveys, search for lost personnel, and fire detection. Contracts for such services established rigorous qualification requirements for pilots and specific condition/equipment/performance requirements for aircraft. The authority is granted under the Federal Aviation Administration Regulations in Title 14 (Aeronautics and Space) of the Code of Federal Regulations. FS will collect information using forms FS 5700–20 & 20a and FS 5700–21 & 21a.

Need and Use of the Information: FS will collect information to document the basis for approval of contract pilot and aircraft for use in specific FS aviation missions. The information collected from contract pilots in face to face meetings (such as name, age, pilots license number, number of hours flown in type of aircraft, *etc.*) is based on the length and type of contract but is usually done on a reoccurring annual basis. Without the information supplied on these forms, FS contracting officers and pilot/aircraft inspectors cannot determine if pilots and aircraft meet the detailed qualification, equipment, and condition requirements essential to safe, efficient accomplishment of FS specified flying missions and which are included in contract specifications.

Description of Respondents: Individuals or households; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 988.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 248.

Rural Utilities Service

Title: 7 CFR 1980–I, Community Programs Guaranteed Loans.

OMB Control Number: 0572–NEW.

Summary of Collection: The Rural Utilities Service (RUS) is authorized by Section 306 of the Consolidated Farm and Rural Development Act (7 U.S.C. 1926) to make loans to public agencies, nonprofit corporations, and Indian tribes for the development of water and waste disposal facilities primarily serving rural residents. Implementation of the Community Program guaranteed loan program was effected to comply with the Appropriations Act of 1990 when Congress allocated funds for this authority. The guaranteed loan program encourages lender participation and provides specific guidance in the processing and servicing of guaranteed Water and Waste Disposal loans.

Need and Use of the Information: RUS will collect information to determine applicant/borrower eligibility, project feasibility, and to ensure borrowers operate on a sound basis and use loan funds for authorized purposes. Failure to collect proper information could result in improper determinations of eligibility, improper use of funds, and/or unsound loans.

Description of Respondents: Not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 10.

Frequency of Responses: Reporting: On occasion; Annually.

Total Burden Hours: 1,352.

Agricultural Marketing Service

Title: Customer Service Survey (Meat Grading and Certification Services).

OMB Control Number: 0581–NEW.

Summary of Collection: The Agricultural Marketing Act (AMA) of 1946, as amended, authorizes the Secretary of Agriculture to provide consumers with voluntary Federal meat grading and certification services that facilitate the marketing of meat and meat products. The Meat Grading and Certification (MGC) Branch provides these services under the authority of 7 CFR Part 54B Meats, Prepared Meats, and Meat Products (Grading, Certification, and Standards). Applicants (individuals or businesses with financial interest in the product) may request MGC Branch services. Once services are provided, the MGC Branch does not have any way of determining the quality of service that is being provided to its customers. Therefore, the MGC Branch would like to annually conduct a customer service survey to gather information from its customers.

Need and use of the Information: The Agricultural Marketing Service will collect information to evaluate services and assist in planning and managing the program. The information will be used to continually improve the MGC Branch services.

Description of Respondents: Business or other for-profit.

Number of Respondents: 428.

Frequency of Responses: Reporting: Annually.

Total Burden Hours: 36.

Agricultural Marketing Service

Title: Federal-State Shipping Point Inspection Program Customer Service Survey.

OMB Control Number: 0581–NEW.

Summary of Collection: The Agricultural Marketing Service (AMS) provides federal oversight of grading and product certification services of fresh fruits and vegetables at shipping point locations under authority of 7 CFR Part 51, Regulations Governing Inspection, Certification and Standards for Fresh Fruits, Vegetables, and Other Products. These services are provided through cooperative agreements with all State grading and certification services by providing Federal oversight to the state grading programs, including training, license certification, and indirect supervisory oversight of shipping point graders employed by the states. To maintain and improve the quality of these services, AMS has sought to make this process more customer-driven and therefore is seeking opinion from the users of these services. AMS will distribute the FV–600, A Federal-State Shipping Point Inspection Program Customer Service Survey. AMS will collect information using a survey for customers that use the USDA Federal-State Shipping Point Inspection Program services.

Need and Use of the Information: AMS will collect information to maintain and improve grading and certification services through the revision of current grading and certification services and by the development of new and improved services that respond to customer needs while maintaining program integrity. Information collected will be shared with each participating State in a cooperative effort to seek improvements in the delivery of services to the customers and to design new grading and certification services that meet customer needs. If the information is not collected AMS will not be able to obtain timely and accurate information about its services from the customers that use them.

Description of Respondents: Business or other for-profit; farms.

Number of Respondents: 18,000.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 3,000.

William McAndrew,

Departmental Clearance Officer.

[FR Doc. 00–8006 Filed 3–30–00; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act: Proposed New System of Records

AGENCY: Office of the Secretary, USDA.

ACTION: Notice of proposed new System of Records—USDA/FNS–10, entitled Persons Doing Business with the Food and Nutrition Service.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the United States Department of Agriculture (USDA), Food and Nutrition Service (FNS), is giving notice that it proposes to add a new system of records.

FNS is creating a new system of records to include the names, addresses and Social Security Numbers of persons involved in a direct payment relationship with FNS, including program sponsors, contractors and other individuals. The Debt Collection Improvement Act of 1996 (DCIA), Public Law 104–134, requires FNS to collect taxpayer identifying numbers (TINs) from all individuals and entities with which FNS does business, and to furnish the TIN with each certified voucher requesting payment. The Privacy Act of 1974, in turn, requires that before personal identifying information may be shared with other entities, a Privacy Act notice must be published. Therefore, FNS is publishing the accompanying notice announcing the establishment of a system of records providing routine uses to allow FNS to provide TINs to the Department of the Treasury for the purposes required under the Law.

EFFECTIVE DATE: This notice will be effective, without further notice, May 10, 2000 unless modified by a subsequent notice to incorporate comments received by the public. Comments must be received by the contact person listed below on or before May 1, 2000 to be assured consideration.

ADDRESSES: Comments should be addressed to: Lou Pastura, Director, Grants Management Division, Food and Nutrition Service, USDA, Room 407, 3101 Park Center Drive, Alexandria, Virginia 22302.

FOR FURTHER INFORMATION CONTACT: Mark Porter at (703) 305–2048.

SUPPLEMENTARY INFORMATION: The Debt Collection Act of 1982 (Pub. L. 97–365), as amended, provides statutory authority for Federal agencies to collect debts through administrative offset. The Debt Collection Improvement Act of 1996 (Pub. L. 104–134), expanded that statutory authority by requiring Federal agencies to obtain TINs from all individuals and entities doing business with it, and to furnish the TIN with each certified voucher requesting payment. This requirement enables the TINs of Federal payment recipients to be made available to match against a debtor masterfile to facilitate debt collection by administrative offset under the DCIA, and for income reporting to the Internal Revenue Service.

As a prerequisite to making TINs available for such purposes, the Privacy Act of 1974, as amended, requires that agencies that maintain a system of records must publish a notice in the **Federal Register** of the existence and character of the system of records. This includes each routine use of the records contained in the system including categories of users and the purpose of such use. Thus, FNS is proposing the following routine uses for this system of records, so that FNS can fully comply with the legislative mandate cited above.

This system of records contains personal information from individuals and entities who receive payments directly from FNS under any of the various nutrition and nutrition education programs FNS administers. The following information regarding individuals and entities is contained in the system: Name, home address, Social Security Number (SSN), and Employer Identification Number (EIN). The system may also include information such as company or sponsor name, and financial data such as amounts of payments to be made.

This system of records is not a financial management system that is used to track and identify financial payments which become delinquent; however, for FNS to be in compliance with the law as required by the DCIA, FNS must share with the Department of the Treasury the personal identifying information (such as the debtor's/payee's name, home address, SSN, and EIN (which is not considered a personal item of information)) of those individuals in this system to whom FNS is providing direct payment. As stated previously, FNS must publish a Privacy Act notice before personal identifying information may be shared with the Department of the Treasury.

A "Report on a New System," required by 5 U.S.C. 552a(r), as implemented by OMB Circular A–130, was sent to the Chairman, Senate Committee on Governmental Affairs, the Chairman, House Committee on Government Reform and Oversight, and to the Administrator, Office of Information and Regulatory Affairs, of the Office of Management and Budget on March 27, 2000.

Signed at Washington, D.C. on March 27, 2000.

Dan Glickman,

Secretary of Agriculture.

USDA/FNS–10

SYSTEM NAME:

USDA/FNS–10 Persons Doing Business with the Food and Nutrition Service (FNS).

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

This system of records is under the control of the Deputy Administrator, Financial Management, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302. The data is maintained in the Agency Financial Management System (AFMS), FNS's automated financial system.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system consists of information on individuals who receive payments directly from FNS under any of the various nutrition and nutrition education programs FNS administers. These individuals may include program sponsors, contractors, and other individuals. They do not include program benefit recipients or State agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

The information in the system consists of individuals' names, addresses, Social Security Numbers, Employer Identification Numbers, and amounts of payments to be made. The system may also include information such as company or sponsor name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 7701(c)(1), the Debt Collection Improvement Act of 1996 (Pub. L. 104–134), Debt Collection Act of 1982 as amended (Pub. L. 97–365), the Child Nutrition Act of 1966 as amended the National School Lunch Act as amended, and the Food Stamp Act of 1977 as amended.

PURPOSE:

To facilitate the Congressional mandate under the DCIA to provide taxpayer identification numbers on all appropriate requests for payment to facilitate debt collection by administrative offset under the DCIA, and for income reporting to the IRS.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

(1) USDA/FNS may disclose information from this system of records to the appropriate agency, whether Federal, State, or local, charged with the responsibility of investigating or prosecuting a violation of law, or of enforcing or implementing a statute, rule, regulations, or order issued pursuant thereto, of any record within this system when information available indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by rule, regulation, or order issued pursuant thereto.

(2) USDA/FNS may disclose information from this system of records to a court, magistrate, or administrative tribunal, or to opposing counsel in a proceeding before any of the above, of any record within the system which constitutes evidence in that proceeding, or which is sought in the course of discovery.

(3) USDA/FNS may disclose information from this system of records to a congressional office from the record of an individual provided that individual gave the congressional office permission to inquire on his or her behalf.

(4) USDA/FNS may disclose information from this system of records of the Internal Revenue Service, for the purpose of reporting canceled debts of $600 or more for violations committed under FNS programs. Canceled debts will be reported to the Internal Revenue Service on Form 1099–C (Cancellation of Debt) under the authority of the Income Tax Regulations (26 CFR parts 1 and 602) under section 6050P of the Internal Revenue Code.

(5) USDA/FNS may disclose information from this system of records to the Department of the Treasury on requests for payments for purposes of administrative offset, to be effected in cases where entities participating in FNS programs owe delinquent debts to other Federal agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in the Agency's AFMS system on magnetic tapes, on data disks, and in file folders at FNS Headquarters and at the National Computer Center facility in Kansas City.

RETRIEVABILITY:

Records are retrievable by name, vendor number, and Social Security Number or Employer Identification Number.

SAFEGUARDS:

Access to records is limited to those persons who process the records for the specific routine uses stated above. Records in such formats as magnetic tape and disks are kept in physically secured rooms or cabinets. Various methods of computer security limit access to records in automated databases. Paper records are segregated and physically secured in locked cabinets.

RETENTION AND DISPOSAL:

Records are maintained in the automated AFMS system indefinitely. Paper records, where they are held, are maintained for three years and then destroyed pursuant to the applicable document retention and disposal schedule.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Accounting Division, Food and Nutrition Service, United States Department of Agriculture, 3101 Park Center Drive, Room 415, Alexandria, Virginia, 22302.

NOTIFICATION PROCEDURE:

Individuals may request from the system manager identified above information regarding this system of records or whether the system contains records pertaining to them. Any individual requesting such information must provide his or her name, address, and Social Security Number.

RECORD ACCESS PROCEDURE:

Individuals may obtain information about records in the system pertaining to them by submitting a written request to the system manager listed above. The envelope and letter should be marked "Privacy Act Request," and should include the name, address, and Social Security Number of the individual for which the request is made.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in the system should direct their requests to the system manager listed above, state the reason(s) for contesting the information, and provide any available documentation to support the requested action.

RECORD SOURCE CATEGORIES:

Information in this system is provided by the applications and contracts entered into by entities participating in the programs FNS administers. Personal information in this system is also obtained from the owners and officers of such entities as reported on the program applications and contracts for services provided under these programs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–8005 Filed 3–30–00; 8:45 am]
BILLING CODE 3410–30–M

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Azure Waves Seafood, Inc., of Cincinnati, Ohio, an exclusive license for certain uses in the field of seafood breading and batters of U.S. Patent Application Serial No. 08/233,173, filed April 26, 1994, and U.S. Patent No. 5,676,994, issued October 14, 1997, both entitled, "Non-Separable Starch-Oil Compositions," and U.S. Patent No. 5,882,713, issued March 16, 1999, entitled "Non-Separable Compositions of Starch and Water-Immiscible Organic Materials," and their foreign equivalents. Notice of Availability for U.S. Patent Application No. 08/233,173 was published in the **Federal Register** on October 24, 1994; Patent No. 5,676,994 and Patent No. 5,882,713 are a continuation and continuation-in-part, respectively of Serial No. 08/233,173.

DATES: Comments must be received on or before May 30, 2000.

ADDRESSES: Send comments to: USDA, ARS, Office of the Director, National Center for Agricultural Utilization Research, Room 2042, 1815 N. University Street, Peoria, Illinois 61604.

FOR FURTHER INFORMATION CONTACT: Andrew Watkins of the National Center for Agricultural Utilization Research at the Peoria address given above; telephone: 309–681–6545.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to these inventions are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license these inventions as Azure Waves Seafood, Inc., has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty (60) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Richard M. Parry, Jr.,
Assistant Administrator.
[FR Doc. 00–7943 Filed 3–30–00; 8:45 am]
BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Field Office Technical Guide (FOTG) of the Natural Resources Conservation Service in Texas

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in Section IV of the FOTG of the NRCS in Texas for review and comment.

SUMMARY: It is the intention of the NRCS in Texas to issue a revised conservation practice standard in Section IV of the FOTG for the following practice: Nutrient Management (code 590).

DATES: Comments must be received on or before May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to John P. Burt, State Conservationist, Natural Resources Conservation Service (NRCS), 101 South Main Street, Temple, Texas 76501. Copies of the practice standard will be made available upon request.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: March 21, 2000.

John P. Burt,
State Conservationist, Temple, Texas 76501.
[FR Doc. 00–8027 Filed 3–30–00; 8:45 am]
BILLING CODE 3410–16–U

DEPARTMENT OF AGRICULTURE

Rural Business—Cooperative Service

Notice of Request for Extension of a Currently Approved Information Collection

AGENCY: Rural Business—Cooperative Service, USDA.

ACTION: Proposed collection; Comments requested.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Rural Business-Cooperative Service's intention to request an extension for a currently approved information collection in support of the program for 7 CFR Part 1942–G Rural Business Enterprise Grants and Television Demonstration Grants.

DATES: Comments on this notice must be received by May 30, 2000 to be assured of consideration.

FOR FURTHER INFORMATION CONTACT: Carole Boyko, Rural Developmet Loan Specialist, Rural Business-Cooperative Service, USDA, Specialty Lenders Division, Stop 3325, 1400 Independence Avenue SW, Washington, DC 20250–3325. Telephone: (202) 720–0661.

SUPPLEMENTARY INFORMATION:

Title: RBS/Rural Business Enterprise Grants and Television Demonstration Grants.

OMB Number: 0570–0022.

Expiration Date of Approval: May 31, 2000.

Type of Request: Extension of a currently approved information collection.

Abstract: The objective of the RBEG program is to facilitate the development of small and emerging private businesses in rural areas. This purpose is achieved through grants made by RBS to public bodies and nonprofit corporations. Television Demonstration grants are available to private nonprofit public television systems to provide information on agriculture and other issues of importance to farmers and the rural residents. The regulations contain various requirements for information from the grantees, and some requirements may cause the grantees to require information from other parties. The information requested is vital for RBS to be able to process applications in a responsible manner, make prudent program decisions, and effectively monitor the grantees' activities to protect the Government's financial interest and ensure that funds obtained from the Government are used appropriately. It includes information used to determine eligibility; the specific purposes for which grant funds will be used; timeframes; who will be carrying out the grant purposes; project priority; applicant experience; employment improvement; and mitigation of economic distress.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 1.95 hours per response.

Respondents: Non-profit corporations, public bodies.

Estimated Number of Respondents: 720.

Estimated Number of Responses per Respondent: 28.94.

Estimated Total Annual Burden on Respondents: 40,650 hours.

Copies of this information collection can be obtained from Jean Mosley, Regulations and Paperwork Management Branch at (202) 692–0041.

Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of Rural Business-Cooperative Service, including whether the information will have practical utility; (b) the accuracy of Rural Business-Cooperative Service estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to Jean Mosley, Regulations and Paperwork Management Branch, U.S. Department of Agriculture, Rural Development, STOP 0742, 1400 Independence Ave. SW, Washington, DC 20250. All responses to this notice

will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Dated: February 25, 2000.

Dayton J. Watkins,

Administrator, Rural Business—Cooperative Service.

[FR Doc. 00–7952 Filed 3–30–00; 8:45 am]

BILLING CODE 3410–XY–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from the procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List a commodity and a service previously furnished by such agencies.

EFFECTIVE DATE: May 1, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: On February 18, 2000, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (65 FR 8336 and 8337) of proposed additions to and deletions from the Procurement List:

Additions

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the services and impact of the additions on the current or most recent contractors, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Document Image Conversion, U.S. Department of Housing & Urban Development Enforcement Center, Richard B. Russell Federal Building, 75 Spring Street, SW, Atlanta, Georgia.

Grounds Maintenance, Basewide, Marine Corps Air Station, Cherry Point, North Carolina.

Janitorial/Custodial, Portland Air Traffic Control Tower (ATCT) and Base Building, 7108 NE Airport Way, Portland, Oregon.

This action does not affect current contracts awarded prior to the effective date of this addition or options that may be exercised under those contracts.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action may not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will not have a severe economic impact on future contractors for the commodity and service.

3. The action may result in authorizing small entities to furnish the commodity and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodity and service deleted from the Procurement List.

After consideration of the relevant matter presented, the Committee has determined that the commodity and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following commodity and service are hereby deleted from the Procurement List:

Commodity

Light-Marker, Distress (with pouch), 6230–00–067–5209, 6230–00–938–1778.

Service

Administrative Services, Defense Reutilization & Marketing Office, Building 4291, Fort Hood, Texas.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–7990 Filed 3–30–00; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities and services previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: May 1, 2000.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Gateway 3, Suite 310, 1215 Jefferson Davis Highway, Arlington, Virginia 22202–4302.

FOR FURTHER INFORMATION CONTACT: Louis R. Bartalot (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Fossfill Pillows, M.R. 770, M.R. 771, M.R. 772, NPA: *Raleigh Lions Clinic for the Blind, Inc.*, Raleigh, North Carolina.

Sac Saver, M.R. 1010, NPA: Signature Works, Inc., Hazlehurst, Mississippi.

Blanket Set, Bed, 6545–00–911–1300, NPA: Ontario County Chapter, NYSARC Abbey Industries, Canandaigua, New York.

First Aid Kit, Gun Crew, 6545–00–920–7125, NPA: Ontario County Chapter, NYSARC Abbey Industries, Canandaigua, New York.

First Aid Kit, Small Craft 6545–00–168–6893 NPA: Ontario County, Chapter, NYSARC Abbey Industries, Canandaigua, New York.

Medical Equipment, 6545–01–191–8970, NPA: Ontario County Chapter, NYSARC Abbey Industries, Canandaigua, New York.

Medical Equipment, 6545–01–191–8971, NPA: Ontario County Chapter, NYSARC Abbey Industries, Canandaigua, New York.

Medical Equipment Set, Ground Ambulance, 6545–01–141–9476, NPA: Ontario County Chapter, NYSARC Abbey Industries, Canandaigua, New York.

Medical Equipment Set, Trauma, Field, 6545–01–191–8972, NPA: Ontario County Chapter, NYSARC Abbey Industries, Canandaigua, New York.

Field Pack, Firefighters, 8465–01–169–3996, NPA: Helena Industries, Inc., Helena, Montana.

Services

Janitorial/Custodial, Veterans Affairs Outpatient Clinic, 3420 Veterans Circle, Beaumont, Texas, NPA: Statewide Consolidated Community Development Corporation, Inc., Beaumont, Texas.

Janitorial/Custodial, Naval and Marine Corps Reserve Center, Fort Douglas, 116 Pollock Road, Salt Lake City, Utah, NPA: Community Foundation for the Disabled, Inc., Salt Lake City, Utah.

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.

2. The action will result in authorizing small entities to furnish the commodities and services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for deletion from the Procurement List.

The following commodities and services have been proposed for deletion from the Procurement List:

Commodities

Cleaning Compound, Windshield, 6850–00–926–2275.

Cleaning Compound, Rug and Upholstery, 7930–00–113–1913, 7930–01–393–6762, 7930–01–393–6757.

Trousers, Men's, Medical Assistant, 8405–00–110–8290, 8405–00–110–8291, 8405–00–110–8292, 8405–00–110–8293,8405–00–110–8294,8405–00–110–8295,8405–00–110–8296,8405–00–110–8297,8405–00–110–8298,8405–00–110–8299,8405–00–110–8301,8405–00–110–8302,8405–00–110–9468,8405–00–110–9469,8405–00–110–9470,8405–00–110–9471,8405–00–110–9472,8405–00–110–9473,8405–00–110–9474,8405–00–110–9475,8405–00–110–9476,8405–00–110–9477,8405–00–110–9478,8405–00–110–9479,8405–00–110–9480,8405–00–110–9481,8405–00–110–9482,8405–00–110–9483,8405–00–110–9484,8405–00–110–9485,8405–00–110–9486,8405–00–110–9487,8405–00–110–9488,8405–00–110–9489,8405–00–110–9490,8405–00–110–9697, 8405–00–113–5418,8405–00–008–8848.

Services

Administrative Services, Defense Reutilization and Marketing Office, Sheppard Building, Sheppard Air Force Base, Texas.

Food Service Attendant, Keyport Naval Undersea Warfare Center, Building 35, Keyport, Washington.

Janitorial/Custodial, U.S. Courthouse, 500 State Avenue, Kansas City, Kansas.

Janitorial/Custodial, Federal Building, 500 Quarrier Street, Charleston, West Virginia.

Mail and Messenger Service, U.S. Army Garrison-Fitzsimons, Aurora, Colorado.

Restocking Parts, Kelly Air Force Base, Texas.

Scrap Breakdown, Defense Reutilization and Marketing Office, Kelly Air Force Base, Texas.

Louis R. Bartalot,

Deputy Director (Operations).

[FR Doc. 00–7991 Filed 3–30–00; 8:45 am]

BILLING CODE 6353–01–P

DEPARTMENT OF COMMERCE

Submission for OMB Review; Comment Request

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: U.S. Census Bureau.

Title: Census 2000 Evaluation: Response Process for Selected Language Groups.

Form Number(s): None.

Agency Approval Number: None.

Type of Request: New collection.

Burden: 1,667 hours.

Number of Respondents: 5,000.

Avg Hours Per Response: 20 minutes.

Needs and Uses: The Census Bureau would like to better understand how non-English speaking respondents cope with the census. The Census 2000 Evaluation of Response Process for Selected Language Groups will consist of a follow-up survey of census long form responding households that indicate Spanish, Vietnamese, or Russian is spoken at home. Questions asked in this follow-up survey will evaluate the respondents' awareness of the census in general, its purposes, the language assistance programs, and the respondents' use of such programs. Some of these programs include, but are not limited to, questionnaires and Be Counted forms in Spanish, Korean, Chinese, Tagalog, and Vietnamese; Questionnaire Assistance Centers (QACs), which provide Language Assistance Guides (LAGs) in 49 additional languages and some bilingual clerks; bilingual enumerators during follow-up operations; and Telephone Questionnaire Assistance (TQA) in Spanish, Korean, Chinese, Tagalog, and Vietnamese. Results from this study will help evaluate the effectiveness of the language assistance programs, and will help in the planning of the 2010 Census.

The follow-up survey will be conducted by telephone with specially trained bilingual interviewers. Approximately 4,500 cases will be drawn equally from each of the three language groups under study. Approximately 500 households that indicate only English is spoken at home will also be interviewed for comparison purposes. Half of the sample will be interviewed in early to mid-June, 2000, from the universe of households responding to the census through the mail, and half will be interviewed in early to mid-August, 2000, from the universe of households responding to the census through an enumerator.

Affected Public: Individuals or households.

Frequency: One time.

Respondent's Obligation: Voluntary.

Legal Authority: Title 13 USC, Sections 141 and 193.

OMB Desk Officer: Susan Schechter, (202) 395–5103.

Copies of the above information collection proposal can be obtained by calling or writing Linda Engelmeier, DOC Forms Clearance Officer, (202) 482–3272, Department of Commerce, room 5027, 14th and Constitution Avenue, NW, Washington, DC 20230 (or via the Internet at LEngelme@doc.gov).

Written comments and recommendations for the proposed information collection should be sent within 30 days of publication of this notice to Susan Schechter, OMB Desk Officer, room 10201, New Executive Office Building, Washington, DC 20503.

Dated: March 27, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–8003 Filed 3–30–00; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–805]

Circular Welded Non-Alloy Steel Pipe From Mexico: Extension of Time Limit for Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: March 31, 2000.

FOR FURTHER INFORMATION CONTACT: John Drury (202) 482–0195 or Charles Rast at (202) 482–1324, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, D.C. 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to make a preliminary determination within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On December 23, 1998, the Department published a notice of initiation of administrative review of the antidumping duty order on Circular Welded Non-Alloy Steel Pipe from Mexico covering the period November 1, 1997 through October 31, 1998 (63 FR 71091). On August 12, 1999, the Department published a notice of extension of the time limit for the preliminary results in this case to November 30, 1999 (64 FR 43982). On December 9, 1999, the Department published the preliminary results of review (64 FR 68995). The final results are currently due no later than April 7, 2000.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore the Department is extending the time limit for completion of the final results until no later than June 6, 2000. See Decision Memorandum from Richard O. Weible to Joseph A. Spetrini, dated March 23, 2000, which is on file in the Central Records Unit, Room B–099 of the main Commerce building.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: March 23, 2000.

Richard O. Weible,

Acting Deputy Assistant Secretary, AD/CVD Enforcement, Group III.

[FR Doc. 00–8013 Filed 3–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–826]

Collated Roofing Nails From Taiwan: Rescission of Second Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Rescission of the Second Antidumping Duty Administrative Review.

SUMMARY: On December 28, 1999, in response to a November 29, 1999, request made by Dinsen Fastening System, Inc., a producer/exporter of collated roofing nails from Taiwan, the Department of Commerce published the initiation of an administrative review of the antidumping duty order on collated roofing nails from Taiwan, covering the period November 1, 1998 through October 31, 1999. Since no other party requested a review, the Department is rescinding this review as a result of the timely withdrawal of the request for review by Dinsen Fastening System, Inc.

EFFECTIVE DATE: March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Brian Smith or Brian Ledgerwood, AD/CVD Enforcement, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–1766 and (202) 482–3836, respectively.

SUPPLEMENTARY INFORMATION: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 ("the Act") by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's ("the Department's") regulations refer to 19 CFR part 351 (1999).

Background

On November 19, 1997, the Department published an antidumping duty order on collated roofing nails from Taiwan (62 FR 61730). On November 29, 1999, the above-mentioned producer/exporter requested an administrative review of the antidumping duty order on collated roofing nails from Taiwan covering the period of November 1, 1998, through October 31, 1999. In accordance with 19 CFR 351.221(c)(1)(i), we published the initiation of the review on December 28, 1999 (64 FR 72644). On February 3, 2000, Dinsen Fastening System, Inc. ("Dinsen") withdrew its request for review.

Rescission of Review

The Department's regulations, at 19 CFR 351.213(d)(1), provide that the Department will rescind an administrative review if a party that requested the review withdraws its request within 90 days of the date of publication of the notice of initiation of the requested review. Dinsen withdrew its request for an administrative review on February 3, 2000, which is within the 90-day deadline. Therefore, the Department has determined to rescind this administrative review with respect to Dinsen.

This notice also serves as a reminder to parties subject to administrative protective order ("APO") of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published in accordance with 19 CFR 351.213(d)(4) and section 777(i) of the Act.

Dated: March 23, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–8014 Filed 3–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–851]

Certain Preserved Mushrooms From the People's Republic of China: Initiation of New Shipper Antidumping Duty Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce has received a request to conduct a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China. In accordance with 19 C,F.R. 351.214(d), we are initiating this review.

EFFECTIVE DATE: March 31, 2000.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Katherine Johnson, Import Administration, International Trade Administration, Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230; telephone (202) 482–4136 or 482–4929, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("the Department") regulations are to the provisions codified at 19 CFR part 351 (1999).

SUPPLEMENTARY INFORMATION:

Background

The Department has received a timely request from Raoping Xingyu Foods Co., Ltd. ("Raoping Xingyu"), in accordance with 19 CFR 351.214(c), for a new shipper review of the antidumping duty order on certain preserved mushrooms from the People's Republic of China ("PRC"), which has a February anniversary date. As required by 19 CFR 351.214(b)(2)(i) and (iii)(A), Raoping Xingyu ("the respondent") has certified that it did not export certain preserved mushrooms to the United States during the period of investigation ("POI"), and that it has never been affiliated with any exporter or producer which exported certain preserved mushrooms during the POI. Raoping Xingyu further certified that its export activities are not controlled by the central government of the PRC, pursuant to 19 CFR 351.214(b)(2)(iii)(B). Pursuant to the Department's regulations at 19 CFR 351.214(b)(2)(iv), Raoping Xingyu submitted documentation establishing the date on which it first shipped the subject merchandise to the United States, the volume of that first shipment, and the date of its first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Act, as amended, and 19 CFR 351.214(b), and based on information on the record, we are initiating the new shipper review as requested.

It is the Department's usual practice in cases involving non-market economies to require that a company seeking to establish eligibility for an antidumping duty rate separate from the country-wide rate provide *de jure* and *de facto* evidence of an absence of government control over the company's export activities. Accordingly we will issue a separate rates questionnaire to the above-named respondent. If respondent Raoping Xingyu provides sufficient evidence that it is not subject to either *de jure* or *de facto* government control with respect to its exports of certain preserved mushrooms, this review will proceed. If, on the other hand, Raoping Xingyu does not meet its burden to demonstrate its eligibility for a separate rate, then Raoping Xingyu will be deemed to be affiliated with other companies that exported during the POI and that did not establish entitlement to a separate rate. This review will then be terminated due to failure of the exporter or producer to meet the requirements of section 751(a)(2)(B)(i)(II) of the Act and 19 CFR 351.214(iii)(B).

Initiation of Review

In accordance with section 751(a)(2)(B)(ii) of the Act and 19 CFR 351.214(d)(1), we are initiating a new shipper review of the antidumping duty order on certain preserved mushrooms from the PRC. On March 17, 2000, Raoping Xingyu agreed to waive the time limits in order that the Department, pursuant to 19 CFR 351.214(j)(3), may conduct this review concurrently with the first annual administrative review of this order, that is being conducted pursuant to section 751(a)(1) of the Act. Therefore, we intend to issue the final results of this review not later than 245 days after the last day of the anniversary month.

Antidumping duty proceeding	Period to be reviewed
PRC: Certain Preserved Mushrooms, A–570–851: Raoping Xingyu Foods Co., Ltd.	08/05/1998–01/31/2000

Based upon the receipt of an adequate separate rates questionnaire response from the respondent, we will instruct the U.S. Customs Service to allow, at the option of the importer, the posting of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by the above-listed company until the completion of the review. This action is in accordance with 19 CFR 351.214(e) and (j)(3).

Interested parties that need access to the proprietary information in this new shipper review should submit applications for disclosure under administrative protective orders in accordance with 19 CFR 351.305 and 351.306.

This initiation and this notice are in accordance with section 751(a) of the

Act (19 U.S.C. 1675(a)) and 19 CFR 351.214(d).

Dated: March 27, 2000.

Richard W. Moreland,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 00–8012 Filed 3–30–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–221–000]

CNG Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

March 27, 2000.

Take notice that on March 22, 2000, CNG Transmission Corporation ("CNG") tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1A, the tariff sheets listed on Attachment A to the filing. CNG requests an effective date of April 1, 2000 for its proposed tariff sheets.

CNG states that the purpose of the filing is to modify CNG's FERC Gas Tariff to reflect the reclassification of certain transmission lines to gathering and to correct certain administrative errors. Exhibit A is listing of the reasons for the addition, deletion or correction of the tariff.

CNG states that copies of its letter of transmittal and enclosures are being served upon its customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7941 Filed 3–30–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–83–003]

Texas Gas Transmission Corporation; Notice of Filing of Pro Forma Tariff Sheets

March 27, 2000.

Take notice that on March 22, 2000, Texas Gas Transmission Corporation (Texas Gas) tendered for filing as part of its FEERC Gas Tariff, First Revised Volume No. 1, the following pro forma tariff sheets to become effective January 14, 2000:

First Revised Sheet No. 79
Original Sheet No. 80
Original Sheet No. 80G
Original Sheet No. 80H

On November 29, 1999, Texas Gas filed proposed tariff sheets to establish a new Summer No-Notice Service (SNS). The Commission order issued January 12, 2000, suspended the effective date of those tariff sheets until June 14, 2000, subject to refund, the conditions set forth within the order, and the outcome of a technical conference. The pro forma tariff sheets submitted herein reflect changes to the SNS Rate Schedule, which Texas Gas agreed to as a result of the recent technical conference.

Texas Gas also requests withdrawal of the tariff sheets that were filed on March 10, 2000 in Docket No. RP00–83–002 and noticed by the Commission on March 15, 2000. Texas Gas states that the pro forma tariff sheets will replace and reflect the identical revisions previously filed on March 10, 2000.

Texas Gas states that copies of the revised tariff sheets are being mailed to all parties on the Commission's official service list as well as to Texas Gas's jurisdictional customers and interested state commissions.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make Protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–7940 Filed 3–30–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6569–3]

Agency Information Collection Activities: Proposed Collection; Comment Request; ICRs Planned To Be Submitted

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following 5 continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB). Before submitting the ICRs to OMB for review and approval, EPA is soliciting comments on specific aspects of the information collections as described at the beginning of Supplementary Information.

DATES: Comments must be submitted on or before May 30, 2000.

ADDRESSES: U.S. EPA, 1200 Pennsylvania Avenue, Mail Code 2223A, Washington, D.C. 20460. A hard copy of an ICR may be obtained without charge by calling the identified information contact individual for each ICR in section B of the Supplementary Information.

FOR FURTHER INFORMATION CONTACT: For specific information on the individual ICRs see section B of the Supplementary Information.

SUPPLEMENTARY INFORMATION:

For All ICRs

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9.

The EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the Agency's estimate of the burden of the proposed collection of information;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

In general, the required information consists of emissions data and other information deemed not to be private. However, any information submitted to the Agency for which a claim of confidentiality is made will be safeguarded according to the Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 39999, September 8, 1978; 43 FR 42251, September 28, 1978; 44 FR 17674, March 23, 1979).

A. List of ICRs Planned To Be Submitted

In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that EPA is planning to submit the following five continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB):

(1) NSPS Smelter Regulations Including: NSPS subpart M, Secondary Brass and Bronze Production Plants; NSPS Subpart P, Primary Copper Smelters; NSPS Subpart Q, Primary Zinc Smelters; NSPS Subpart R, Primary Lead Smelters; NSPS Subpart S; Primary Aluminum Production Plants; and NSPS Subpart Z, Ferroalloy Production Facilities. EPA ICR Number No.1604.06. OMB Control No. 2060–0110. Expiration date September 30, 2000.

(2) NSPS Subpart AAA; Standards of Performance for New Stationary Sources, New Residential Wood Heaters. EPA ICR Number 1176. OMB Control Number 2060–0161. Expiration Date: September 30, 2000.

(3) NSPS Subpart SSS, Magnetic Tape Coating Facilities. EPA ICR Number 1135. OMB Control Number 2060–0171. Expiration Date: September 30, 2000.

(4) MACT subpart DDD, Mineral Wool Production. EPA ICR No. 1799, OMB Control No. 2060–0362. Expiration Date: July 31, 2000.

(5) MACT subpart GGG; Pharmaceuticals Production. EPA ICR No. 1781.01. OMB Control No. 2060–0357. Expiration Date: July 31, 2000.

B. Contact Individuals for ICRs

(1) NSPS Smelter Regulations Including: NSPS subpart M, Secondary Brass and Bronze Production Plants; NSPS Subpart P, Primary Copper Smelters; NSPS Subpart Q, Primary Zinc Smelters; NSPS Subpart R, Primary Lead Smelters; NSPS Subpart S; Primary Aluminum Production Plants; and NSPS Subpart Z, Ferroalloy Production Facilities. Deborah Thomas at (202) 564–5041 or via E-mail at *thomas.deborah@epa.gov*. EPA ICR Number No. 1604.06. OMB Control No. 2060–0110. Expiration Date: September 30, 2000.

(2) NSPS Subpart AAA, New Residential Wood Heaters. Bob Marshall at (202) 564–7021 or via e-mail at *marshall.robert@epa.gov*. EPA ICR Number 1176. OMB Control Number 2060–0161. Expiration Date: September 30, 2000.

(3) NSPS Subpart SSS, Magnetic Tape Coating Facilities. Anthony Raia at (202) 564–6045 or via e-mail at raia.anthony@epa.gov. EPA ICR Number 1135. OMB Control Number 2060–0171. Expiration Date: September 30, 2000.

(4) MACT subpart DDD, Mineral Wool Production. Gregory Fried at (202) 564–7016/(202) 564–0050 (fax) or via e-mail at *fried.gregory@epa.gov*. OMB Control No. 2060–0362, EPA ICR No. 1795. Expiration Date: July 31, 2000.

(5) MACT subpart GGG; Pharmaceuticals Production. Marcia B. Mia, phone number, 202–564–7042; facsimile, 202–564–0009; or by e-mail at mia.marcia@epamail.epa.gov. EPA ICR No. 1781.01. OMB Control No. 2060–0357. Expiration Date: July 31, 2000.

C. Individual ICRs

Smelters

(1) NSPS Smelter Regulations Including: NSPS subpart M, Secondary Brass and Bronze Production Plants; NSPS Subpart P, Primary Copper Smelters; NSPS Subpart Q, Primary Zinc Smelters; NSPS Subpart R, Primary Lead Smelters; NSPS Subpart S; Primary Aluminum Production Plants; and NSPS Subpart Z, Ferroalloy Production Facilities. EPA ICR Number No. 1604.06. OMB Control No. 2060–0110. Expiration date: September 30, 2000.

This ICR will combine the ICRs for several related smelter ICRs. The EPA number and OMB number for NSPS subpart M, Brass and Bronze will be retained for the entire collection.

Brass and Bronze

Affected Entities: Entities potentially affected by this action are Secondary Brass and Bronze Production Plants that commenced construction, modification, or reconstruction after the date of proposal (June 11, 1973). Specifically, the affected facilities in each brass and bronze plant are any reverberatory and electric furnaces of 1,000 kg (2205 lb) or greater production capacity and blast (cupola) furnaces of 250 kg/h (550 lb/h) or greater production capacity. This subpart does not apply to furnaces from which molten brass or bronze are cast into the shape of finished products, such as foundry furnaces.

Abstract: Secondary brass and bronze production plants emit metallic particulate matter in quantities that, in the Administrator's judgement, cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards rely on the proper installation, operation and maintenance of particulate control devices such as fabric filters or electrostatic precipitators.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years.

Industry Burden Statement: In the previously approved ICR, the average annual burden to industry to meet these record-keeping and reporting requirements was estimated at 7.5 person-hours. This is based on an estimated 5 respondents. This is because virtually all reporting requirements apply to new facilities only, and no new facilities at secondary brass or bronze plants are expected to be constructed over the next three years. There is a chance that some existing facility might need to report a physical or operational change; however, these reports are very rare, and might only involve one facility over the three-year period.

Primary Copper Smelters, Primary Zinc Smelters, and Primary Lead Smelters

Affected Entities: Entities potentially affected by this action are Primary Copper Smelters, Primary Lead Smelters, and Primary Zinc Smelters that commenced construction, modification, or reconstruction after the date of proposal (October 16, 1974). The affected facilities in each primary copper smelter are each dryer, roaster, smelting furnace or copper converter. The affected facilities in each primary lead smelter are each sintering machine, sintering machine discharge end, blast furnace, dross reverberatory furnace, electric smelting furnace and converter. The affected facilities in each primary zinc smelter are each roaster and sintering machine.

Abstract: Primary copper, lead and zinc smelters emit metallic particulate matter and sulfur dioxide in quantities that, in the Administrator's judgement, cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards rely on the proper installation, operation and maintenance of particulate control devices such as scrubbers or electrostatic precipitators.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep daily records of average sulphur dioxide concentrations, and records of all startups, shutdowns, and malfunctions. Excess emissions must be reported semi-annually. For copper smelters only, owners or operators must keep monthly records of the smelter charge rate and weight percent (dry basis) of arsenic, antimony, lead and zinc.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years.

Industry Burden Statement: In the previously approved ICR, the average annual burden to industry to meet these recordkeeping and reporting requirements was estimated at 1445 person-hours. This is based on an estimated 15 respondents. No new smelters are expected to be constructed over the next three years. The estimate includes daily and monthly recordkeeping as well as records of startup, shutdown, and malfunction events, Since there are no new sources anticipated, the only reporting burden for this industry is the semi-annual reporting of excess emissions which is estimated at 8 hours per report.

Aluminum Reduction Plants

Affected Entities: Entities potentially affected by this action are Primary Aluminum Production Plants that commenced construction, modification, or reconstruction after the date of proposal (October 23, 1974). The affected facilities in each aluminum production plant are potroom groups and anode bake plants.

Abstract: Primary aluminum reduction plants emit gaseous hydrogen fluoride and particulate fluorides, alumina, carbon monoxide, volatile organic compounds and sulfur dioxide in quantities that, in the Administrator's judgement, cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards rely on the proper installation, operation and maintenance of particulate control devices such as scrubbers or electrostatic precipitators.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep records of all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years.

Industry Burden Statement: In the previously approved ICR, the average annual burden to industry to meet these recordkeeping and reporting requirements was estimated at 4,365 person-hours. This is based on an estimated 6 respondents. No new plants or potlines are expected to be constructed over the next three years.

Ferroalloy Production Plants

Affected Entities: Entities potentially affected by this action are Ferroalloy Production Facilities that commenced construction, modification, or reconstruction after the date of proposal (October 21, 1974). The affected facilities in each ferroalloy production plant are: electric submerged arc furnaces that produce silicon metal, ferrosilicon, calcium silicon, silicomanganese zirconium, ferrochrome silicon, silvery iron, high-carbon ferrochrome, charge chrome, standard ferromanganese, silicomanganese, ferromanganese silicon, or calcium carbide; and dust-handling equipment.

Abstract: Ferroalloy Production Facilities emit particulate matter and carbon monoxide in quantities that, in the Administrator's judgement, cause or contribute to air pollution that may endanger public health or welfare. Consequently, New Source Performance Standards were promulgated for this source category. These standards rely on the proper installation, operation and maintenance of particulate control devices such as scrubbers, filters or electrostatic precipitators.

In order to ensure compliance with the standards, adequate recordkeeping and reporting is necessary. This information enables the Agency to: (1) Identify the sources subject to the standard; (2) ensure initial compliance with emission limits; and (3) verify continuous compliance with the standard. Specifically, the rule requires an application for approval of construction, notification of startup, notification and report of the initial emissions test, and notification of any physical or operational change that may increase the emission rate. In addition, sources are required to keep daily records of operating parameters and records of all startups, shutdowns, and malfunctions.

In the absence of such information collection requirements, enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act. Consequently, these information collection requirements are mandatory, and the records required by this NSPS must be retained by the owner or operator for two years.

Industry Burden Statement: In the previously approved ICR, the average annual burden to industry to meet these record-keeping and reporting requirements was estimated at 177 person-hours. This is based on an estimated 1 respondent. No new plants are expected to be constructed over the next three years. There is no anticipated reporting burden for this industry over the next three years as a result of these standards.

New Residential Wood Heaters

(2) NSPS Subpart AAA; Standards of Performance for New Stationary Sources, New Residential Wood Heaters. EPA ICR Number 1176. OMB Control Number 2060–0161. Expiration Date: September 30, 2000.

Affected entities: Entities potentially affected by this action are those which manufacture or sell new residential wood heaters.

Abstract: Information is supplied to the Agency under the applicable rule by emission testing laboratories, manufacturers and commercial owners (*e.g.*, distributors, retailers).

The information supplied by manufacturers to the Agency is used: (1) To ensure that the best demonstrated technology is being used to reduce emissions from wood heaters; (2) to ensure that the wood heater tested for certification purposes is in compliance with the applicable emission standards; (3) to provide evidence that production-line wood heaters have emission performance characteristics similar to tested models and; (4) to provide assurance of continued compliance.

Manufacturers submit a notification to the Agency stating the dates of certification testing, perform the certification testing at an accredited laboratory, supply detailed component drawings including manufacturing tolerances to the Agency, reapply for certification every five years, seal/store each tested model and maintain all necessary certification test records.

For each certified model line, manufacturers are required to: (1) Submit biennially, a statement certifying that no material or dimensional changes have been made to the model line that affects emission performance; (2) affix both permanent and temporary labels to each new wood heater manufactured; (3) disclose, to the consumer, instructions for operation and maintenance of the wood heater; (4) notify the Agency that a quality assurance emission test will be conducted within one week of the mailing; (5) maintain, for each model line, records of certification test reports including raw field, laboratory, and instrument calibration data; (6) perform and document quality assurance parameter inspections conducted on assembly-line wood heaters; (7) perform and document emission audit tests performed on assembly-line wood heaters; (8) maintain records of the quantity and model type of wood heaters produced and sold; (9) maintain records and storage locations of all wood heaters exempt from certification requirements; and (10) retain for the life of the model line wood heater units tested for certification purposes.

Emission testing laboratories seeking accreditation are required to: (1) Apply to the Agency for accreditation before conducting certification tests; (2) pass a standardized proficiency test; and (3) notify the Agency prior conducting the required test.

The regulation requires currently accredited laboratories to: (1) Participate in proficiency test programs on an annual basis, (2) report within ten days the results of random compliance audits in the form of a preliminary test report, (3) report to the Agency the failure of any manufacturer to submit a wood heater for testing, (4) report any interruptions or postponements in the testing schedule and advise the Agency of the new testing date; (5) retain all certification test records and documentation; (6) retain all certification test records and associated documentation.

Commercial owners are required to maintain records of previous owners of wood heaters to enable the Agency to confirm whether the stove should be categorized as a used stove or an affected facility.

Most recordkeeping and reporting provisions of the rule consists of emissions-related data and other information not considered confidential. However, the confidentiality of certain information obtained by the Agency is safeguarded according to Agency policies set forth in Title 40, Chapter 1, part 2, subpart B—Confidentiality of Business Information (see 40 CFR part 2; 41 FR 36902, September 1, 1976; amended by 43 FR 3999, September 8, 1978; 43 FR 42251, September 20, 1987; 44 FR 17674, March 23, 1979).

Industry Burden Statement: As of August 31, 1997, there were an estimated 50 wood manufacturers producing approximately 150,000 wood heaters per year under approximately 200 certified model lines. On average, a manufacturer produced four model lines. Each manufacturer produced an average of 3,000 wood heaters per year (150,000 wood heaters/50 manufacturers), and approximately 750 wood heaters for each certified model line (3,000 wood heaters/4 model lines).

In the referenced ICR, the total recordkeeping and reporting burden for this industry equaled 7,653 person-hours per year with laboratories incurring approximately 20 percent of the total; manufacturers, 75 percent; and commercial owners, 5 percent.

The person-hours required by manufacturers, as a group, for those activities associated with labeling and inspections is 3,325 hours/year. Activities associated with the certification of new wood heater model lines, as a group, required about 1,732 hours per year; and the research stoves report, the retained stoves report and biennial reports, as a group, take an estimated 682 hours per year.

Laboratories, as a group, are required to invest approximately 732 hours per year to obtain and maintain their accreditation, and 832 hours per year documenting certification test runs.

Commercial owners (*i.e.*, retail establishments), as a group, that sell wood heaters to the general public spend approximately 350 hours per hours maintaining the required used-stove records.

The industry expense to perform the above recordkeeping and reporting each year is estimated to be $1,348,000. This is comprised of two components: (1) The annual capital/startup costs and (2) the annual reporting and recordkeeping costs.

The total annualized capital/startup costs total approximately $528,000, and consist of the following for manufacturers; (1) certification test notification ($4,465), (2) certification test ($498,750), (3) application for certification ($18,625); and the following for laboratory accreditation: (1) application for accreditation ($1,400), (2) proficiency test ($4,726), and (3) notice of proficiency test ($35).

The annual operation and maintenance (O & M) costs total $820,000 and consist of the following for manufacturers: (1) Biennial reporting for certified model lines ($1,750), (2) cost of permanent labels ($300,000), (3) cost of temporary labels ($156,087), (4) cost of owner's manual ($35,010), (5) quality assurance emission test notification ($2,800), (6) test documentation and emissions test ($171,068), (7) quality assurance parameter inspections ($70,020), (8) research stove reports, retained stoves recordkeeping ($22,126). For laboratories, the O & M cost include: (1) the annual proficiency test ($18,905), (2) rescheduling of the proficiency test ($560), and (3) records of the certification test runs performed ($29,128). For commercial owners, the recordkeeping costs are estimated to be ($12,253).

The costs to the respondents are based on average salary rate of $16.23 per hour plus 110 percent overhead (*i.e.*, total of $34.08 per hour).

Magnetic Tape Coating Facilities

(3) NSPS Subpart SSS, Magnetic Tape Coating Facilities. EPA ICR Number 1135. OMB Control Number 2060–0171. Expiration Date: September 30, 2000.

Affected entities: Entities potentially affected by this action are those magnetic tape manufacturing facilities (which perform each coating operations) for which construction, modification or reconstruction commenced after January 22, 1986.

Abstract: The Administrator has judged that VOC emissions from magnetic tape coating facilities cause or contribute to air pollution that may reasonably be anticipated to endanger public health or welfare. Owners/operators of magnetic tape coating facilities must notify EPA of construction, modification, startups, shut downs, date and results of initial performance test and provide semiannual reports of excess emissions. In order to ensure compliance with the standards promulgated to protect public health, adequate reporting and recordkeeping is necessary. In the absence of such information enforcement personnel would be unable to determine whether the standards are being met on a continuous basis, as required by the Clean Air Act.

Industry Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3982.2 hours. The total annualized cost burden for this collection of information is estimated to be $139,377. The proposed frequency of response is 2, and the estimated number of likely respondents is 14.

(4) MACT subpart DDD, Mineral Wool Production. EPA ICR No. 1799, OMB Control No. 2060–0362, Expiration Date: July 31, 2000.

Affected Entities: Entities potentially affected by this action are mineral wool production facilities that emit or have the potential to emit any single HAP at a rate of 10 tons or more per year or any combination of HAPs at a rate of 25 tons or more per year. The rule applies to each cupola and/or curing oven at these facilities and to any new, modified, or reconstructed facilities.

Abstract: The MACT for mineral wool production was proposed on May 8, 1997 and promulgated on June 1, 1999. Owners or operators of mineral wool production facilities are required to comply with the notification, reporting, and recordkeeping requirements for MACT standards in the NESHAP general provisions (40 CFR part 63, subpart A). The general provisions require: (1) Initial notifications (*e.g.*, notification of applicability, notification of performance test, and notification of compliance status); (2) monitoring plans (*e.g.*, an operations, maintenance, and monitoring plan, a startup, shutdown, and malfunction plan, and a quality improvement plan); (3) a report of performance test results; and (4) semiannual reports of deviations from established parameters. When deviation in operating parameters established during performance testing are reported, the owner or operator must report quarterly until a request to return to semiannual reporting is approved by the Administrator.

In addition to the requirements of the general provisions, subpart DDD requires owners or operators to install fabric filter bag leak detection systems and initiate corrective action procedures in the event of an operating problem. The rule also requires owners or operators to continuously monitor and record the operating temperature of each thermal incinerator. Additionally, owners or operators are required to continuously monitor and record the cupola production (melt) rate, and for facilities with affected curing ovens, monitor and record the formaldehyde content of each binder formulation used to manufacture bonded products. The NESHAP general provisions (40 CFR part 63, subpart A) requires that records be maintained for at least 5 years from the date of each record. The owner or operator must retain the records onsite for at least 2 years but may retain the records offsite for the remaining 3 years. The files may be retained on microfilm, on microfiche, on a computer, on computer disks, or on magnetic tape disks. Reports may be made on paper or on a labeled computer disk using commonly available and EPA-compatible computer software.

Burden Statement: There are 14 facilities subject to this standard. The total annual hours are estimated to be 6,107 or approximately 436 hours per facility. The total annual cost is estimated to be $196,206 or approximately $14,015 per facility per year. The following is a breakdown of burden used in this ICR. EPA estimated a 2-hour burden for notification of applicability and notification of the date of the performance test, and a 4-hour burden for the notification of compliance status. EPA estimated a 40-hour burden for each of the following plans: a startup, shutdown, and malfunction plan; an operations, maintenance, and monitoring plan; and a quality improvement plan. EPA also estimated an 16-hour burden for excess emission reports and 8-hour burdens for both startup, shutdown, and malfunction reports and reports of no excess emissions.

EPA estimated a 577-hour burden for initial performance tests and assumed that 20% of all affected facilities would require retests. Finally, EPA estimated that it would take 4½ hours to record all information required by the standard.

The total capital costs associated with monitoring equipment for 14 facilities are estimated at $309,400. This corresponds to an annual capital cost of $14,700 per year over the first 3 years. Annual operations and maintenance costs are estimated to be $5,700 per year over the first 3 years.

(5) MACT subpart GGG; Pharmaceuticals Production. EPA ICR No. 1781.01. OMB Control No. 2060–0357. Expiration Date July 31, 2000.

Affected entities: Entities potentially affected by this action are those which manufacture a pharmaceutical product; are located at a plant site that is a major source as defined in section 112(a) of the Act; and process, use or produce HAP. The standard applies to new and existing sources.

Abstract: This ICR contains recordkeeping and reporting requirements that are mandatory for compliance with 40 CFR 63.1250–63.1261, hazardous air pollutant emissions from process vents, storage vessels, wastewater systems and equipment leaks. The standards require recordkeeping and reporting to document process information related to the source's ability to comply with the standards. This information is used by the Agency to identify sources subject to the standards and to insure that the maximum achievable control is being properly applied. Respondents are owners or operators of new and existing facilities that manufacture pharmaceuticals at major sources and that use, produce or process hazardous air pollutants. Section 112 of the Clean Air Act, as amended in 1990, requires that EPA establish standards to limit emissions of hazardous air pollutants (HAPs) from stationary sources. The sources subject to these provisions emit the HAPs methanol and methylene chloride, predominately. In the Administrator's judgment, hazardous air pollutant (HAP) emissions in this industry cause or contribute to air pollution that may be reasonably anticipated to endanger public health or welfare. Therefore, NESHAPs have been promulgated for this source category as required under section 112 of the Clean Air Act.

Industry Burden Statement: There are approximately 101 facilities which must comply with these provisions. The average burden per facility per year is estimated to be 694 hours. This includes the burden for daily wastewater monitoring, and additional hours for recordkeeping, reporting and notifications related to compliance status, leak detection and repair, startup/shutdown and malfunction events, process changes, emissions exceedances, and construction/reconstruction and startups. Because this is not a new information collection, it assumes that most facilities will have already developed the recordkeeping and reporting mechanisms to maintain and report the required data except for process additions or changes. It should be noted that the Agency is not anticipating any changes in burden as the result of the settlement discussions and language changes to the rule as an outcome of the settlement with the Pharmaceutical and Research Manufacturers Association (PhRMA) and the Chemical Manufacturers Association (CMA). Those changes will be proposed in a later **Federal Register** document.

Dated: March 23, 2000.

Michael Stahl,

Acting Director, Office of Compliance.

[FR Doc. 00–7996 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6569–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local and Tribal Agencies

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local and Tribal Agencies, OMB Control No. 2060–0264, ICR no. 1643.04, expiration date 03/31/2000. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before May 1, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epamail.epa.gov, or download off the Internet at http://www.epa.gov/icr and refer to EPA ICR No. 1643.04. For technical questions about the ICR contact Ms. Holly Reid, (919) 541–5344, or electronic mail at reid.holly@epa.gov.

SUPPLEMENTARY INFORMATION:

Title: Application Requirements for the Approval and Delegation of Federal Air Toxics Programs to State, Territorial, Local and Tribal Agencies (OMB Control No. 2060–0264, EPA ICR No. 1643.04) expiring 03/31/2000. This is a request for extension of a currently approved collection.

Abstract: A rule developed under the authority of section 112 of the Clean Air Act, as amended in 1990, calls for us, EPA, to "publish guidance that would be useful to States [also Territorial, local and Tribal agencies (S/L/T)] in developing programs * * * allowing for delegation of the Administrator's authorities and responsibilities to implement and enforce emissions standards and prevention requirements." The intent of this voluntary program is to encourage S/L/T to accept delegation of the Federal section 112 standards, and to allow them to adjust or substitute S/L/T requirements when they can be shown to be at least as stringent as the Federal requirements. These provisions for alternatives will help preserve existing S/L/T programs and prevent dual regulation of sources.

The ICR reflects the approval process codified in 40 CFR 63, subpart E, which we proposed to amend on January 12, 1999 (64 FR 1880). Under the amended process, the S/L/T can select one of five delegation options to implement and enforce the Federal section 112 rule, requirement, or program.

This collection of information is authorized under 42 U.S.C. 7401–7671q. We will safeguard any information we obtain for which a claim of confidentiality is made according to our policies outlined in title 40, chapter 1, part 2, subpart B, Confidentiality of Business Information.

Note that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information, was published on October 29, 1999 (64 FR 58401); no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 29 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: 127.

Estimated Number of Respondents: 127.

Frequency of Response: 4,555.

Estimated Total Annual Hour Burden: 130,198 hours.

Estimated Total Annualized Capital and Operating & Maintenance Cost Burden: $5.3.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1643.04 and OMB Control No. 2060–0264 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 20, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–7994 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6568–7]

Approval oOf Section 112(l) Delegation of Maximum Achievable Control Technology Standards; Indiana

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to announce that EPA is approving a request for delegation of the Maximum Achievable Control Technology (MACT) standards for gasoline distribution, organic hazardous air pollutants, off-site waste recovery operations, and primary aluminum reduction (*i.e.*, 40 CFR Part 63, Subparts R, F, G, H, I, DD, and LL, respectively) pursuant to section 112(l) of the Clean Air Act (CAA). The State's mechanism of delegation involves State rule adoption of all existing and future section 112 standards unchanged from the Federal standards. The actual delegation of authority of individual standards was a letter from EPA to the Indiana Department of Environmental Management (IDEM) dated January 6, 2000.

DATES: This action will become effective January 6, 2000.

ADDRESSES: Copies of the State's submittal and other supporting information used in developing the approval are available for inspection during normal business hours at the following location:

EPA Region 5, 77 West Jackson Boulevard, AR–18J, Chicago, Illinois, 60604.

Please contact Sam Portanova at (312) 886–3189 to arrange a time if inspection of the submittal is desired.

FOR FURTHER INFORMATION CONTACT: Sam Portanova, AR–18J, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886–3189.

SUPPLEMENTARY INFORMATION:

I. What Action Is EPA Taking Today?

EPA is notifying the public that delegation of the authority to implement and enforce the MACT standards for gasoline distribution, hazardous organic national emission standard for hazardous air pollutants, off-site waste recovery operations, and primary aluminum reduction was approved in a letter from EPA to IDEM dated January 6, 2000.

All notifications, reports and other correspondence required under section 112 standards should be sent to the State of Indiana rather than to the EPA, Region 5, in Chicago. Affected sources should send this information to: Indiana Department of Environmental Management, Office of Air Management, 100 North Senate Avenue, P.O. Box 6015, Indianapolis, Indiana 46206–6015.

II. EPA is Approving the Delegation Under What Authority?

Section 112(l) of the CAA enables the EPA to approve State air toxics programs or rules to operate in place of the Federal air toxics program. The Federal air toxics program implements the requirements found in section 112 of the CAA pertaining to the regulation of hazardous air pollutants. Approval of an air toxics program is granted by the EPA if the Agency finds that the State program: (1) Is "no less stringent" than the corresponding Federal program or rule, (2) the State has adequate authority and resources to implement the program, (3) the schedule for implementation and compliance is sufficiently expeditious, and (4) the program is otherwise in compliance with Federal guidance. Once approval is granted, the air toxics program can be implemented and enforced by State or local agencies, as well as EPA.

On February 7, 1996, Indiana submitted to EPA a request for delegation of authority to implement and enforce the air toxics program under section 112 of the CAA exactly as promulgated by EPA. On July 8, 1997, **Federal Register** (62 FR 36460), EPA approved Indiana's program of delegation.

III. IDEM Submitted Which Standards to EPA for Approval Under Indiana's Air Toxics Program Delegation Mechanism?

On December 8, 1999, IDEM requested delegation of implementation and enforcement authority of the MACT standards for gasoline distribution, organic hazardous air pollutants, off-site waste recovery operations, and primary aluminum reduction (i.e., 40 CFR Part 63, Subparts R, F, G, H, I, DD, and LL, respectively). The State of Indiana's rules 326 Indiana Administrative Code (IAC) 20–10, 326 IAC 20–11, 326 IAC 20–12, 326 IAC 20–23, and 326 IAC 20–24 incorporate these MACT standards into the State's rules unchanged from the Federal regulations.

Dated: March 21, 2000.

Francis X. Lyons,

Regional Administrator, Region 5.

[FR Doc. 00–7998 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6569–4]

Air Pollution Control; Proposed Actions on Clean Air Act Grants to the Washoe County District Health Department

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; proposed determination with request for comments and notice of opportunity for public hearing.

SUMMARY: The U.S. EPA has made a proposed determination that reductions in expenditures of non-Federal funds for the Washoe County District Health Department (WCDHD) in Reno, Nevada are a result of non-selective reductions in expenditures. This determination, when final, will permit the WCDHD to keep their financial assistance for FY 1999 by EPA, under section 105(c) of the Clean Air Act (CAA).

DATES: Comments and/or requests for a public hearing must be received by EPA at the address stated below by May 1, 2000.

ADDRESSES: All comments and/or requests for public hearing should be mailed to: Roy Ford, Grants and Program Integration Office (Air-8), Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901; FAX (415)744–1076.

FOR FURTHER INFORMATION CONTACT: Roy Ford, Grants and Program Integration Office (Air-8), Air Division, U.S. EPA Region IX, 75 Hawthorne Street, San Francisco, California 94105–3901 at (415) 744–1233.

SUPPLEMENTARY INFORMATION: Under the authority of section 105 of the CAA, EPA provides financial assistance (grants) to the WCDHD's to aid in the operation of its air pollution control programs. In FY–98, EPA awarded the WCDHD $839,758, which represented approximately 42% Of the WCDHD budget. In FY–99, EPA awarded $698,213, which represented approximately 36% of the WCDHD's budget.

Section 105(c)(1) of the CAA, 42 U.S.C. 7405(c)(1), provides that "(n)o agency shall receive any grant under this section during any fiscal year when its expenditures of non-Federal funds for recurrent expenditures for air pollution control programs will be less than its expenditures were for such programs during the preceding fiscal year. In order for [EPA] to award grants under this section in a timely manner each fiscal year, [EPA] shall compare an agency's prospective expenditure level to that of its second preceding year." EPA may still award financial assistance to an agency not meeting this requirement, however, if EPA, "after notice and opportunity for public hearing, determines that a reduction in expenditures is attributable to a non-selective reduction in the expenditures in the programs of all Executive branch agencies of the applicable unit of Government." CAA section 105(c)(1). These statutory requirements are repeated in EPA's implementing regulations at 40 CFR 35.210(a).

In its FY–99 section 105 Final FSR the WCDHD MOE was $1,161,276. This amount represents a shortfall of $48,016 from the actual FY–98 MOE of $1,209,292. In order for the WCDHD to be eligible to be awarded its FY–1999 grant, EPA must make a determination under section 105(c)(2) to keep the FY–1999 grant for WCDHD.

The reason for the lower MOE level in FY–99 is that the Washoe County District Board outlined a spending reduction plan totaling $316,384 for the Health District, $50,000 (0.4% decrease of the Health District budget) of which was allocated to be reduced by the Air Quality Management Division in the professional services line item account. The WCDHD submitted documentation to EPA which states that the district MOE reduction resulted from agency non-selective reduction in spending applied to Washoe County departments and required by action of the Washoe County Commissioners and adopted by the Washoe County District Board of health which governs the Air Quality management Division's programs.

Therefore, the WCDHD's MOE reduction resulted from a loss of revenues from the County to all agencies due to circumstances beyond its control. EPA proposes to determine that the WCDHD lower FY–99 MOE level meets the section 105(c)(2) criteria as resulting from a non-selective reduction of expenditures. Pursuant to 40 CFR 35.210, this determination will allow the WCDHD to keep the financial assistance for FY–1999.

This document constitutes a request for public comment and an opportunity for public hearing as required by the Clean Air Act. All written comments received by May 1, 2000 on this proposal will be considered. EPA will conduct a public hearing on this proposal only if a written request for such is received by EPA at the address above by May 1, 2000. If no written request for a hearing is received, EPA will proceed to the final determination. While notice of the final determination will not be published in the **Federal Register**, copies of the determination can be obtained by sending a written request to Roy Ford at the above address.

Dated: March 17, 2000.

David P. Howekamp,

Director, Air Division, Region 9.

[FR Doc. 00–7997 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6252–6]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or www.epa.gov/oeca/ofa.

Weekly receipt of Environmental Impact Statements

Filed March 20, 2000 Through March 24, 2000

Pursuant to 40 CFR 1506.9.

EIS No. 000080, Final EIS, AFS, UT, Pretty Tree Bench Vegetation Project, Implementation, Dixie National Forest, Escalante Ranger District, Garfield County, UT, Due: May 01, 2000, Contact: Kevin R. Schulkoski (435) 826–5400.

EIS No. 000081, Final EIS, IBR, CA, Groundwater Replenishment System, Implementation to Repurifying Water from Orange County Water District (OCWD) Orange County Sanitation District (OCSD), Funding and COE Section 404 Permit, Orange County, CA, Due: May 01, 2000, Contact: Mr. Del Kidd (702) 293–8698.

EIS No. 000082, Final EIS, TVA, TN, Addition of Electric Generation Peaking and Baseload Capacity at Greenfield Sites, Construction and Operation of Combustion Turbines (CTs), Haywood County, TN, Due: May 01, 2000, Contact: Gregory L. Askew (865) 632–6418.

EIS No. 000083, Final Supplement, FHW, KS, South Lawrence Trafficway Construction, Kansas Turnpike, I–70 to KS–10/Noria Road, New Information concerning KS–10 on the East and US 59 on the West, Funding, COE Section 404 Permit and Right-of-Way Acquisition, Douglas County, KS, Due: May 01, 2000, Contact: David R. Geiger (785) 267–7281.

EIS No. 000084, Draft Supplement, AFS, CO, Legislative—DSEIS—North Fork of the South Platte Rivers Wild and Scenic River Study for the Designation or Non-Designation into the National Wild and Scenic Rivers System, Pike and San Isabel National Forests, Comache and Cimarron National Grasslands, Douglas, Jefferson, Park and Teller Counties, CO, Due: June 29, 2000, Contact: Abigail R. Kimbell (719) 545–8737.

EIS No. 000085, Final EIS, FTA, VA, Norfolk-Virginia Beach Light Rail Transit System East/West Corridor Project, Transportation Improvements, Funding and COE Section 404 Permit, Tidewater Transportation District Commission, City of Norfolk and City of Virginia Beach, VA, Due: May 01, 2000, Contact: Michael McCollum (215) 656–7100.

EIS No. 000086, Final EIS, FTA, CA, Downtown Sacramento—Folsom Corridor, Improvement of Transit Services, US 50/Folsom Boulevard, Funding and COE Section 404 Permit, Transportation Systems Management (TSM) and Light Rail Transit (LRT), City and County of Sacramento, CA, Due: May 01, 2000, Contact: Bob Hom (415) 744–3133.

Dated: March 28, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–8022 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6252–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared March 13, 2000 Through March 17, 2000 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167. An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 9, 1999 (63 FR 17856).

Draft EISs

ERP No. D–AFS–L65340–AK

Rating EC2, Finger Mountain Timber Sales, Timber Harvesting, Implementation, US Coast Guard, NPDES and COE Section 10 and 404 Permits, Tongass National Forest, Sitka Ranger District, AK.

Summary: EPA expressed environmental concerns regarding the maintenance of existing and proposed roads, the cumulative impacts of log transfer facilities to the substrate, water quality, and the benthic environment. EPA also requested that the EIS include a discussion of essential fish habitat.

ERP No. D–AFS–L65343–ID

Rating EC2, Whiskey Campo Resource Management Project, Implementation, Elmore County, ID.

Summary: EPA expressed environmental concerns about potential sediment impacts, the lack of measures to mitigate sediment impacts and a restricted range of alternatives. EPA recommended the EIS use the framework outlined in the Forest Service Protocol for Addressing 303(d) Waters.

ERP No. D–NPS–J26002–MT

Rating EC2, Lake McDonald/Park Headquarters Wastewater Treatment System Rehabilitation, Implementation, COE Section 404 Permit, Glacier National Park, A Portion of Waterton-Glacier International Peach Park, Flathead and Glacier Counties, MT.

Summary: EPA expressed concerns about potential impacts to water quality. EPA requested additional information on treatment system capacity, treatment units, flow volumes, waste streams, chemical addition streams, and sludge disposal. EPA also provided effluent limitations that the discharge locations must meet.

ERP No. D–SFW–J64007–00

Rating EC2, Plum Creek Native Fish Habitat Conservation Plan, Issuance of an Incidental Take Permit for Federally Protected Native Fish Species, MT, ID and WA.

Summary: EPA expressed environmental concerns regarding the adequacy of the proposed monitoring and adaptive management program, particularly cumulative effects, and about the adequacy of proposed riparian management prescriptions. EPA believes additional information should be provided regarding integration of the program with overall conservation efforts, availability of resources for oversight and evaluation of the program, and consistency between the program and TMDLs.

Final EISs

ERP No. F–AFS–J65279–MT Wayup Mine/Fourth of July Road Access, Right-of-Way Grant, Kootenai National Forest, Libby Ranger District, Lincoln County, MT.

Summary: EPA continues to be concerned about potential water quality impacts from sedimentation.

ERP No. F–AFS–J65290–UT Snowbird Ski and Summer Resort Master Development Plan, Implementation, Special-Use-Permit and COE Section 404 Permit, Salt Lake and Lake Counties, Salt Lake City, UT.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. F–AFS–L65316–ID Coeur d'Alene River Ranger District Noxious Weed Control Project, Treating 76 Specific Sites across District, Kootenai and Shoshone Counties, ID.

Summary: No formal comment letter was sent to the preparing agency.

ERP No. FS–NAS–A12031–00 Programmatic EIS—Sounding Rocket Program (SRP), Updated Information concerning Programmatic Changes since the 1973 FEIS, Site-Specific to Wallops Flight Facility (WFF), Wallops Island, VA; Poker Flat Research Ranger (PFRR), Fairbanks, AK and White Sands Missile Range (WSMR), White Sands, NM and on a Global Scale.

Summary: EPA has no objection to the action as proposed.

Dated: March 28, 2000.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 00–8023 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00570A; FRL–6493–7]

Pesticides; Policy Issues Related to the Food Quality Protection Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability.

SUMMARY: EPA is announcing the availability of the revised version of the pesticide science policy document entitled "Assigning Values to Non-Detected/Non-Quantified Pesticide Residues." This notice is the sixteenth in a series concerning science policy documents related to the Food Quality Protection Act of 1996 and developed through the Tolerance Reassessment Advisory Committee.

FOR FURTHER INFORMATION CONTACT: Kathleen Martin, Environmental Protection Agency (7509C), Ariel Rios Bldg., 1200 Pennsylvania, Ave., NW., Washington, DC 20460; telephone number: (703) 308–2857; fax number: (703) 305–5147; e-mail address: martin.kathleen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be potentially affected by this action if you manufacture or formulate pesticides. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS	Examples of potentially affected entities
Pesticide Producers	32532	Pesticide manufacturers Pesticide formulators

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this notice affects certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, the science policy documents, and certain other related documents that might be available from the Office of Pesticide Programs' Home Page at http://www.epa.gov/pesticides/. On the Office of Pesticide Programs' Home Page select "FQPA" and then look up the entry for this document under "Science Policies." You can also go directly to the listings at the EPA Home page at http://www.epa.gov. On the Home Page select "Laws and Regulations" and then look up the entry to this document under "**Federal Register**--Environmental Documents." You can go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *Fax on demand.* You may request a faxed copy of the science policy papers, as well as supporting information, by using a faxphone to call (202) 401–0527. Select item 6047 for the paper entitled "Assigning Values to Non-Detected/Non-Quantified Pesticide Residues." Select item 6048 for the paper entitled "Responses to Public Comments on the Office of Pesticide Program's Draft Science Policy Documents." You may also follow the automated menu.

3. *In person.* The Agency has established an official record for this action under docket control number OPP–00570A. In addition, the documents referenced in the framework notice, which published in the **Federal Register** on October 29, 1998 (63 FR 58038) (FRL–6041–5) have also been inserted in the docket under docket control number OPP–00557. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background for the Tolerance Reassessment Advisory Committee

On August 3, 1996, the Food Quality Protection Act of 1996 (FQPA) was signed into law. Effective upon signature, the FQPA significantly amended the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Among other changes, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection from unacceptable pesticide exposure; provided heightened health protections for infants and children from pesticide risks; required expedited review of new, safer pesticides; created incentives for the development and maintenance of effective crop protection tools for farmers; required reassessment of existing tolerances over a 10-year period; and required periodic re-evaluation of pesticide registrations and tolerances to ensure that scientific data supporting pesticide registrations will remain up-to-date in the future.

Subsequently, the Agency established the Food Safety Advisory Committee (FSAC) as a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT) to assist in soliciting input from stakeholders and to provide input to EPA on some of the broad policy choices facing the Agency and on strategic direction for the Office of Pesticide Programs (OPP). The Agency has used the interim approaches developed through discussions with FSAC to make regulatory decisions that met FQPA's standard, but that could be revisited if additional information became available or as the science evolved. As EPA's approach to implementing the scientific provisions of FQPA has evolved, the Agency has sought independent review and public participation, often through presentation of many of the science policy issues to the FIFRA Scientific Advisory Panel (SAP), a group of independent, outside experts who provide peer review and scientific advice to OPP.

In addition, as directed by Vice President Albert Gore, EPA has been working with the U.S. Department of Agriculture (USDA) and another subcommittee of NACEPT, the Tolerance Reassessment Advisory Committee (TRAC), chaired by the EPA Deputy Administrator and the USDA Deputy Secretary, to address FQPA issues and implementation. TRAC comprised more than 50 representatives of affected user, producer, consumer, public health, environmental, states and other interested groups. The TRAC met seven times as a full committee from May 27, 1998 through October 21, 1999.

The Agency worked with the TRAC to ensure that its science policies, risk assessments of individual pesticides, and process for decision making are transparent and open to public participation. An important product of these consultations with TRAC was the development of a framework for addressing key science policy issues. The Agency decided that the FQPA implementation process and related policies would benefit from initiating notice and comment on the major science policy issues.

The TRAC identified nine science policy issue areas it believes were key to implementation of FQPA and tolerance reassessment. The framework calls for EPA to provide one or more documents for comment on each of the nine issues by announcing their availability in the **Federal Register**. In accordance with the framework described in a separate notice published in the **Federal Register** of October 29, 1998 (63 FR 58038), EPA is announcing through the **Federal Register** the availability of a series of draft documents concerning nine science policy issues identified by the TRAC related to the implementation of FQPA. After receiving and reviewing comments from the public and others, EPA is also issuing revised science policy documents which reflect changes made in response to comments. In addition to comments received in response to these **Federal Register** notices, EPA will consider comments received during the TRAC meetings. Each of these issues is evolving and in a different stage of refinement. Accordingly, as the issues are further refined by EPA in consultation with USDA and others, they may also be presented to the SAP.

III. Summary of Revised Science Policy Guidance Document

Residue data are used by the EPA's Office of Pesticide Programs to support the establishment or reassessment of a pesticide tolerance associated with a particular food use. In some cases, a portion of the measurements of the levels of pesticide residue present on food shows no detection of residues. These "nondetects" (NDs) do not necessarily mean that the pesticide is not present at any level, but simply that any amount of pesticide present is below the level that could be detected or reliably quantified using a particular analytical method.

The primary science policy issue concerning NDs is what value the EPA should assign to them when estimating dietary exposure and risk from a pesticide. The reason this is an important issue stems from the new requirements that the FQPA impose on EPA. Among other things, FQPA established a stringent health-based standard ("a reasonable certainty of no harm") for pesticide residues in foods to assure protection of the public health, including sensitive populations such as infants and children, from unacceptable pesticide exposure and risks. OPP's goal is to make exposure and risk assessments as accurate and realistic as possible while not underestimating exposure or risk, so that all humans, including infants and children, are fully protected. The specific issues addressed in this paper concern the values the Agency should assign to NDs in order to meet this goal.

In general, the OPP recommends use of a default value of ½ the Limit of Detection (LOD) or ½ the Limit of Quantitation (LOQ) for commodities which have been treated but for which no detectable residues are measured. This paper also describes the OPP's policy of performing a "sensitivity analysis" to determine the impact of using different assumptions (e.g., assuming NDs = full LOD or full LOQ versus NDs = zero), on the OPP's risk assessment for the pesticide under evaluation. If it is demonstrated through the sensitivity analysis that the default assumptions have no effect on the final OPP risk decision, then there is little reason for OPP to attempt to further refine these default assignments.

If OPP finds that these default assignments do have a significant effect on the risk estimate or risk decision or decides that a more refined risk estimate is needed, a second set of statistical methods can be used instead to determine the values or distribution of values for NDs. These statistical methods provide a more accurate way of estimating dietary exposure and risk than assuming that, for NDs, exposure occurs at ½ LOD or some other single, finite value and allowing risk assessors to impute a series of values which represent concentrations below the stated detection limit. These methods would generally be used only in situations where the NDs comprise a significant (but less than half) portion of the data set and the rest of the data are normally or lognormally distributed, but exceptions can be considered on a case-by-case basis.

This revised document was developed from two previous draft documents entitled "Assigning Values To Nondetected/Nonquantified Pesticide Residues into Human Health Dietary Exposure Assessments"(docket control number OPP–00570) and "A Statistical Method for Incorporating Nondetected Pesticide Residues into Human Health Dietary Exposure Assessments" (docket control number OPP–00571) that were released for public comment December 4, 1998 (63 FR 67063) (FRL–6048–2). The Agency received comments from various organizations. Each of the commenters offered recommendations for improving the science policy. All comments were extensively evaluated and considered by the Agency. This revised version embodies many of the sentiments and recommendations of the commenters. A summary of the public comments, as well as the Agency's response to the comments, are being made available as described in Units I.B.1. and I.B.2.

IV. Policies Not Rules

The policy document discussed in this notice is intended to provide guidance to EPA personnel and decision-makers, and to the public. As a guidance document and not a rule, the policy in this guidance is not binding on either EPA or any outside parties. Although this guidance provides a starting point for EPA risk assessments, EPA will depart from its policy where the facts or circumstances warrant. In such cases, EPA will explain why a different course was taken. Similarly, outside parties remain free to assert that a policy is not appropriate for a specific pesticide or that the circumstances surrounding a specific risk assessment demonstrate that a policy should be abandoned.

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests.

Dated: March 23, 2000.

Susan H. Wayland,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 00–7889 Filed 3–30–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–34–A (Auction No. 34); DA 00–667]

Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Service General Category Frequencies in the 851–854 MHz Band Scheduled for August 23, 2000; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of licenses for the 800 MHz SMR Service General Category Frequencies in the 851–854 MHz Band (Auction No. 34) scheduled to commence on August 23, 2000 and seeks comment on the reserve prices or minimum opening bids and other auction procedural issues for the upcoming auction of licenses.

DATES: Comments are due on or before April 5, 2000 and reply comments are due on or before April 12, 2000.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Federal Communications Commission, 445 12th Street, SW, TW–A325, Washington, D.C. 20554. In addition, parties must submit one copy to M. Nicole Oden, Attorney, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 4–A337, 445 12th Street SW, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY–A257, 445 12th Street SW, Washington, D.C. 20554.

FOR FURTHER INFORMATION CONTACT: M. Nicole Oden, Auctions Attorney, Auctions and Industry Analysis Division, at (202) 418–0660, Nancy Gilbert or Bob Reagle, Auction Operations, Auctions and Industry Analysis Division, at (717) 338–2888.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released March 23, 2000. The complete text of the public notice, including Attachment A, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, DC 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, DC 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

1. By this Public Notice, the Wireless Telecommunications Bureau ("Bureau") announces the auction of licenses for the 800 MHz SMR Service General Category Frequencies ("Auction No. 34") scheduled to begin on August 23, 2000. *See* Amendment of part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency (*First Report and Order*) 61 FR 6212 (February 16, 1996), (*Second Report and Order*) 62 FR 41190 (July 31, 1997) and (Reconsideration Order) 64 FR 71042 (December 20, 1999). As discussed in greater detail herein, the Bureau proposes that Auction No. 34 be composed of 1,050 licenses in the 851–854 MHz band. Six contiguous 25 channel blocks (1.25 MHz bandwidth) will be offered in each of 172 Economic Areas (EAs) and 3 EA-like areas, covering the United States, possessions or territories in the Northern Mariana Islands and Guam, American Samoa, the United States Virgin Islands and Puerto Rico.

2. The following table contains the proposed Block/Frequency Band Limits Cross-Reference List for the 800 MHz SMR Service General Category Frequencies:

800 MHz SMR Service General Category Frequencies—(851–854 MHz Band)

Channel block	Channel No.	Base station frequencies (channel centers)
D	1 through 25	851.0125 through 851.6125.
DD	26 through 50	851.6375 through 852.2375.
E	51 through 75	852.2625 through 852.8625.
EE	76 through 100	852.8875 through 853.4875.
F	101 through 125	853.5125 through 854.1125.
FF	126 through 150	854.1375 through 854.7375.

The Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (Budget Act) requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." Consistent with the provisions of the Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific provisions that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. *See* Amendment of Part 1 of the Commission's Rules—Competitive Bidding Proceeding (*Part 1 Order*) 62 FR 13540 (March 21, 1997), Amendment of Part 1 of the Commission's Rules—Competitive Bidding Procedures (*Part 1 Third Report and Order*) 63 FR 770 (January 7, 1998). We therefore seek comment on the following issues relating to Auction No. 34.

I. Auction Structure

A. Simultaneous Multiple Round Auction Design

3. We propose to award the licenses in a single, simultaneous multiple-round auction to allow bidders to take advantage of any synergies that exist among licenses. This methodology offers every license for bid at the same time in successive bidding rounds. We seek comment on this proposal.

B. Upfront Payments and Initial Maximum Eligibility for Each Bidder

4. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the end of the auction. *See* Implementation of section 309(j) of the Communications Act-Competitive Bidding (*Second Report and Order*) 59 FR 22980 (May 4, 1994). With these guidelines in mind, we propose for Auction No. 34 the following upfront payment formula.

License population * $0.005 (the result rounded to the nearest hundred for levels below $10,000 and to the nearest thousand for levels above $10,000) with a minimum of no less than $2500.00 per license.

All licenses, including the related license area population and upfront payment, are listed in Attachment A. We seek comment on this proposal. We further propose that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. Thus, in calculating the upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment covering that number of bidding units. We seek comment on this proposal.

C. Activity Rules

5. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

6. We propose to divide the auction into three stages: Stage One, Stage Two and Stage Three, each characterized by an increased activity requirement. The auction will start in Stage One. We propose that the auction will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately ten percent or below for three consecutive rounds of bidding in Stages One and Two. However, we further propose that the Bureau retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity including, but not limited to, the auction activity level, the

percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

7. For Auction No. 34, we propose the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths (50/49).

We seek comment on these proposals.

D. Activity Rule Waivers and Reducing Eligibility

8. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid elimination from the auction.

9. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless:

(i) There are no activity rule waivers available; or

(ii) The bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

10. A bidder with insufficient activity that wants to reduce its bidding eligibility, rather than use an activity rule waiver, must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

11. A bidder may proactively apply an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. Note: an automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

12. We propose that each bidder in Auction No. 34, be provided with five activity rule waivers that may be used in up to five separate rounds at the bidder's discretion during the course of the auction. We seek comment on this proposal.

E. Information Relating to Auction Delay, Suspension or Cancellation

13. For Auction No. 34, we propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: Resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

II. Bidding Procedures

A. Round Structure

14. The Commission will use its Automated Auction System to conduct the electronic simultaneous multiple round auction format for Auction No. 34. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

15. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

16. The Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction

17. Normally, a reserve price is an absolute minimum price below, which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which *no bids* are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

18. In anticipation of this auction and in light of the Budget Act, the Bureau proposes to establish minimum opening bids for Auction No. 34. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool. *See* Auction of 800 MHz SMR, Minimum Opening Bids or Reserve Prices (DA 97–2147) 62 FR 55251 (October 23, 1997), Auction of the Phase II 220 MHz Service Licenses (DA 98–1010) 63 FR 35213 (June 29, 1998). A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility.

19. Specifically, for Auction No. 34, the Commission proposes the following formula for calculating minimum opening bids for each license, based on the population ("pops") of the relevant EA:

> License population * $0.005 (the result rounded to the nearest hundred for results less than $10,000 and to the nearest thousand for results greater than $10,000) with a minimum of no less than $2500.00 per license.

We seek comment on this proposal. All licenses including the related license area population and the proposed minimum opening bid, are listed in Attachment A. If commenters believe the formula proposed above for minimum opening bids will result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the formula for minimum opening bids, we particularly seek comment on such factors as, among other things, the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 800 MHz band. Alternatively, comment is sought on whether, consistent with the Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Accepted Bids and Bid Increments

20. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For Auction No. 34, we propose to use a smoothing methodology to calculate bid increments, as we have done in several other auctions. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. We seek comment on these proposals.

21. The exponential smoothing formula calculates the bid increment for each license based on a weighted average of the activity received on each license in all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established using the exponential smoothing formula.

22. The calculation of the percentage bid increment for each license in a given round is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1, and the maximum percentage increment at 0.2.

Equations

$A_i = (C * B_i) + ((1 - C) * A_{i-1})$

I_{i+1} = smaller of $((1 + A_i) * N)$ and M

Where,

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bids in the current round (round i)

A_{i-1} = activity index from previous round (round i-1), A_0 is 0

I_{i+1} = percentage bid increment for the next round (round i+1)

N = minimum percentage increment or bid increment floor

M = maximum percentage increment or bid increment ceiling

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable I_{i+1} from above times the high bid). This result will be rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

C = 0.5, N = 0.1, M = 0.2

Round 1 (2 New Bids, High Bid = $1,000,000)

i. Calculation of percentage increment for round 2 using exponential smoothing:
$A_1 = (0.5 * 2) + (0.5 * 0) = 1$
I_2 = The smaller of $(1 + 1) * 0.1 = 0.2$ or 0.2 (the maximum percentage increment)
ii. Minimum bid increment for round 2 using the percentage increment (I_2 from above)
0.2 * $1,000,000 = $200,000
iii. Minimum acceptable bid for round 2 = 1,200,000

Round 2 (3 New Bids, High Bid = 2,000,000)

i. Calculation of percentage increment for round 3 using exponential smoothing:
$A_2 = (0.5 * 3) + (0.5 * 1) = 2$
I_3 = The smaller of $(1 + 2) * 0.1 = 0.3$ or 0.2 (the maximum percentage increment)
ii. Minimum bid increment for round 3 using the percentage increment (I_3 from above)
0.2 * $2,000,000 = $400,000
iii. Minimum acceptable bid for round 3 = 2,400,000

Round 3 (1 New Bid, High Bid = 2,400,000)

i. Calculation of percentage increment for round 4 using exponential smoothing:
$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$
I_4 = The smaller of $(1 + 1.5) * 0.1 = 0.25$ or 0.2 (the maximum percentage increment)
ii. Minimum bid increment for round 4 using the percentage increment (I_4 from above)
0.2 * $2,400,000 = $480,000
iii. Minimum acceptable bid for round 4 = 2,880,000

D. Information Regarding Bid Withdrawal and Bid Removal

23. For Auction No. 34, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments.

24. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw

standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions. We seek comment on these bid removal and bid withdrawal procedures.

25. In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

26. Applying this reasoning, we propose to limit each bidder in Auction No. 34, to withdraw standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on this proposal.

E. Stopping Rule

27. For Auction No. 34, the Bureau proposes to employ a simultaneous stopping rule approach. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time". A simultaneous stopping rule means that all licenses remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals are received. After the first such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license.

28. The Bureau seeks comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used unilaterally or only in Stage Three of the auction.

29. We propose that the Bureau retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

30. Finally, we propose that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We seek comment on these proposals.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions & Industry Analysis Division.

[FR Doc. 00–7968 Filed 3–30–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. AUC–00–36–A (Auction No. 36); DA 00–668]

Auction of Licenses for 800 MHz Specialized Mobile Radio (SMR) Frequencies in the Lower 80 Channels Scheduled for September 13, 2000; Comment Sought on Reserve Prices or Minimum Opening Bids and Other Auction Procedural Issues

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: This document announces the auction of licenses for the 800 MHz SMR frequencies in the lower 80 channels, the 856–860 MHz Band, (Auction No. 36) scheduled to commence on September 13, 2000 and seeks comment on the reserve prices or minimum opening bids and other auction procedural issues for the upcoming auction of licenses.

DATES: Comments are due on or before April 5, 2000 and reply comments are due on or before April 12, 2000.

ADDRESSES: Office of the Secretary, Federal Communications Commission, Federal Communications Commission, 445 12th Street, SW, TW–A325, Washington, D.C. 20554. In addition, parties must submit one copy to M. Nicole Oden, Attorney, Auctions and Industry Analysis Division, Wireless Telecommunications Bureau, Federal Communications Commission, Room 4–A337, 445 12th Street SW, Washington, D.C. 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Public Reference Room, Room CY-A257, 445 12th Street SW, Washington, D.C. 20554.

SUPPLEMENTARY INFORMATION: This is a summary of a Public Notice released March 23, 2000. The complete text of the public notice, including Attachment A, is available for inspection and copying during normal business hours in the FCC Reference Center (Room CY–A257), 445 12th Street, SW, Washington, D.C. 20554. It may also be purchased from the Commission's copy contractor, International Transcription Services, Inc. (ITS, Inc.) 1231 20th Street, NW, Washington, D.C. 20036, (202) 857–3800. It is also available on the Commission's web site at *http://www.fcc.gov.*

1. By this Public Notice, the Wireless Telecommunications Bureau ("Bureau") announces the auction of licenses for the 800 MHz SMR lower 80 channels ("Auction No. 36") scheduled to begin

on September 13, 2000. *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency (*First Report and Order*) 61 FR 6212 (February 16, 1996), (*Second Report and Order*) 62 FR 41190 (July 31, 1997) and (Reconsideration Order) 64 FR 71042 (December 20, 1999). As discussed in greater detail herein, the Bureau proposes that Auction No. 36 be composed of 2,800 licenses in the 856–860 MHz band. Sixteen non-contiguous 5 channel blocks (0.25 MHz bandwidth) will be offered in each of 172 Economic Areas (EAs) and 3 EA-like areas, covering the United States, possessions or territories in the Northern Mariana Islands and Guam, American Samoa, the United States Virgin Islands and Puerto Rico.

2. The following table contains the Block/Frequency Band Limits Cross-Reference List for the 800 MHz SMR lower 80 channels:

800 MHz SMR Lower 80 Channels (856–860 MHz Band)

Channel block	Channel No.	Base station frequencies (channel centers)
G	201, 241, 281, 321, 361	856–860.0125
H	202, 242, 282, 322, 362	856–860.0375
I	203, 243, 283, 323, 363	856–860.0625
J	204, 244, 284, 324, 364	856–860.0875
K	205, 245, 285, 325, 365	856–860.1125
L	206, 246, 286, 326, 366	856–860.1375
M	207, 247, 287, 327, 367	856–860.1625
N	208, 248, 288, 328, 368	856–860.1875
O	221, 261, 301, 341, 381	856–860.5125
P	222, 262, 302, 342, 382	856–860.5375
Q	223, 263, 303, 343, 383	856–860.5625
R	224, 264, 304, 344, 384	856–860.5875
S	225, 265, 305, 345, 385	856–860.6125
T	226, 266, 306, 346, 386	856–860.6375
U	227, 267, 307, 347, 387	856–860.6625
V	228, 268, 308, 348, 388	856–860.6875

The Balanced Budget Act of 1997, Public Law 105–33, 111 Stat. 251 (Budget Act) requires the Commission to "ensure that, in the scheduling of any competitive bidding under this subsection, an adequate period is allowed * * * before issuance of bidding rules, to permit notice and comment on proposed auction procedures * * *." Consistent with the provisions of the Budget Act and to ensure that potential bidders have adequate time to familiarize themselves with the specific provisions that will govern the day-to-day conduct of an auction, the Commission directed the Bureau, under its existing delegated authority, to seek comment on a variety of auction-specific procedures prior to the start of each auction. *See* Amendment of Part 1 of the Commission's Rules-Competitive Bidding Proceeding (*Part 1 Order*) 62 FR 13540 (March 21, 1997), Amendment of Part 1 of the Commission's Rules-Competitive Bidding Procedures (*Part 1 Third Report and Order*) 63 FR 770 (January 7, 1998). We therefore seek comment on the following issues relating to Auction No. 36.

I. Auction Timing and Structure

A. Timing of the Auction

3. By this Public Notice, the Bureau proposes to schedule the start of Auction No. 36 on September 13, 2000. The scheduled start date for Auction No. 34, 800 MHz SMR general category frequencies, is August 23, 2000. The Bureau recognizes the interrelated nature of these two auctions and that interested parties may want to bid in both Auction No. 34 and Auction No. 36. As such, some licensees may find a different date for Auction No. 36 more convenient. We seek comment on the September 13, 2000, start date for Auction No. 36.

B. Simultaneous Multiple Round Auction Design

4. We propose to award the licenses in a single, simultaneous multiple-round auction to allow bidders to take advantage of any synergies that exist among licenses. This methodology offers every license for bid at the same time in successive bidding rounds. We seek comment on this proposal.

C. Upfront Payments and Initial Maximum Eligibility for Each Bidder

5. The Bureau has delegated authority and discretion to determine an appropriate upfront payment for each license being auctioned, taking into account such factors as the population in each geographic license area, and the value of similar spectrum. The upfront payment is a refundable deposit made by each bidder to establish eligibility to bid on licenses. Upfront payments related to the specific spectrum subject to auction protect against frivolous or insincere bidding and provide the Commission with a source of funds from which to collect payments owed at the end of the auction. *See* Implementation of section 309(j) of the Communications Act-Competitive Bidding (*Second Report and Order*) 59 FR 22980 (May 4, 1994). With these guidelines in mind, we propose for Auction No. 36 the following upfront payment formula.

License population * $0.001 (the result rounded to the nearest hundred for levels below $10,000 and to the nearest thousand for levels above $10,000) with a minimum of no less than $1000.00 per license.

All licenses, including the related license area population and upfront payment, are listed in Attachment A. We seek comment on this proposal. We further propose that the amount of the upfront payment submitted by a bidder will determine the initial maximum eligibility (as measured in bidding units) for each bidder. Upfront payments will not be attributed to specific licenses, but instead will be translated into bidding units to define a bidder's initial maximum eligibility, which cannot be increased during the auction. Thus, in calculating the upfront payment amount, an applicant must determine the *maximum* number of bidding units it may wish to bid on (or hold high bids on) in any single round, and submit an upfront payment

covering that number of bidding units.

maintain its current eligibility is

F. Information Relating to Auction

exclusive applications for those

minimum opening bid levels or

Commission will initially set the

covering that number of bidding units. We seek comment on this proposal.

D. Activity Rules

6. In order to ensure that the auction closes within a reasonable period of time, an activity rule requires bidders to bid actively on a percentage of their maximum bidding eligibility during each round of the auction rather than waiting until the end to participate. A bidder that does not satisfy the activity rule will either lose bidding eligibility in the next round or must use an activity rule waiver (if any remain).

7. We propose to divide the auction into three stages: Stage One, Stage Two and Stage Three, each characterized by an increased activity requirement. The auction will start in Stage One. We propose that the auction will generally advance to the next stage (*i.e.*, from Stage One to Stage Two, and from Stage Two to Stage Three) when the auction activity level, as measured by the percentage of bidding units receiving new high bids, is approximately ten percent or below for three consecutive rounds of bidding in Stages One and Two. However, we further propose that the Bureau retain the discretion to change stages unilaterally by announcement during the auction. In exercising this discretion, the Bureau will consider a variety of measures of bidder activity including, but not limited to, the auction activity level, the percentages of licenses (as measured in bidding units) on which there are new bids, the number of new bids, and the percentage increase in revenue. We seek comment on these proposals.

8. For Auction No. 36, we propose the following activity requirements:

Stage One: In each round of the first stage of the auction, a bidder desiring to maintain its current eligibility is required to be active on licenses representing at least 80 percent of its current bidding eligibility. Failure to maintain the requisite activity level will result in a reduction in the bidder's bidding eligibility in the next round of bidding (unless an activity rule waiver is used). During Stage One, reduced eligibility for the next round will be calculated by multiplying the current round activity by five-fourths (5/4).

Stage Two: In each round of the second stage, a bidder desiring to maintain its current eligibility is required to be active on 90 percent of its current bidding eligibility. During Stage Two, reduced eligibility for the next round will be calculated by multiplying the current round activity by ten-ninths (10/9).

Stage Three: In each round of the third stage, a bidder desiring to maintain its current eligibility is required to be active on 98 percent of its current bidding eligibility. In this final stage, reduced eligibility for the next round will be calculated by multiplying the current round activity by fifty/forty-ninths (50/49).

We seek comment on these proposals.

E. Activity Rule Waivers and Reducing Eligibility

9. Use of an activity rule waiver preserves the bidder's current bidding eligibility despite the bidder's activity in the current round being below the required minimum level. An activity rule waiver applies to an entire round of bidding and not to a particular license. Activity waivers are principally a mechanism for auction participants to avoid elimination from the auction.

10. The FCC auction system assumes that bidders with insufficient activity would prefer to use an activity rule waiver (if available) rather than lose bidding eligibility. Therefore, the system will automatically apply a waiver (known as an "automatic waiver") at the end of any bidding period where a bidder's activity level is below the minimum required unless:

(i) There are no activity rule waivers available; or

(ii) The bidder overrides the automatic application of a waiver by reducing eligibility, thereby meeting the minimum requirements.

11. A bidder with insufficient activity that wants to reduce its bidding eligibility, rather than use an activity rule waiver, must affirmatively override the automatic waiver mechanism during the bidding period by using the reduce eligibility function in the software. In this case, the bidder's eligibility is permanently reduced to bring the bidder into compliance with the activity rules. Once eligibility has been reduced, a bidder will not be permitted to regain its lost bidding eligibility.

12. A bidder may proactively apply an activity rule waiver as a means to keep the auction open without placing a bid. If a bidder submits a proactive waiver (using the proactive waiver function in the bidding software) during a bidding period in which no bids are submitted, the auction will remain open and the bidder's eligibility will be preserved. Note: an automatic waiver invoked in a round in which there are no new valid bids will not keep the auction open.

13. We propose that each bidder in Auction No. 36, be provided with five activity rule waivers that may be used in up to five separate rounds at the bidder's discretion during the course of the auction. We seek comment on this proposal.

F. Information Relating to Auction Delay, Suspension or Cancellation

14. For Auction No. 36, we propose that, by public notice or by announcement during the auction, the Bureau may delay, suspend or cancel the auction in the event of natural disaster, technical obstacle, evidence of an auction security breach, unlawful bidding activity, administrative or weather necessity, or for any other reason that affects the fair and competitive conduct of competitive bidding. In such cases, the Bureau, in its sole discretion, may elect to: resume the auction starting from the beginning of the current round; resume the auction starting from some previous round; or cancel the auction in its entirety. Network interruption may cause the Bureau to delay or suspend the auction. We emphasize that exercise of this authority is solely within the discretion of the Bureau, and its use is not intended to be a substitute for situations in which bidders may wish to apply their activity rule waivers. We seek comment on this proposal.

II. Bidding Procedures

A. Round Structure

15. The Commission will use its Automated Auction System to conduct the electronic simultaneous multiple round auction format for Auction No. 36. The initial bidding schedule will be announced in a public notice to be released at least one week before the start of the auction, and will be included in the registration mailings. The simultaneous multiple round format will consist of sequential bidding rounds, each followed by the release of round results. Details regarding the location and format of round results will be included in the same public notice.

16. The Bureau has discretion to change the bidding schedule in order to foster an auction pace that reasonably balances speed with the bidders' need to study round results and adjust their bidding strategies. The Bureau may increase or decrease the amount of time for the bidding rounds and review periods, or the number of rounds per day, depending upon the bidding activity level and other factors. We seek comment on this proposal.

B. Reserve Price or Minimum Opening Bid

17. The Budget Act calls upon the Commission to prescribe methods by which a reasonable reserve price will be required or a minimum opening bid established when FCC licenses are subject to auction (*i.e.*, because the Commission has accepted mutually exclusive applications for those licenses), unless the Commission determines that a reserve price or minimum bid is not in the public interest. Consistent with this mandate, the Commission has directed the Bureau to seek comment on the use of a minimum opening bid and/or reserve price prior to the start of each auction

18. Normally, a reserve price is an absolute minimum price below, which an item will not be sold in a given auction. Reserve prices can be either published or unpublished. A minimum opening bid, on the other hand, is the minimum bid price set at the beginning of the auction below which no bids are accepted. It is generally used to accelerate the competitive bidding process. Also, in a minimum opening bid scenario, the auctioneer generally has the discretion to lower the amount later in the auction. It is also possible for the minimum opening bid and the reserve price to be the same amount.

19. In anticipation of this auction and in light of the Budget Act, the Bureau proposes to establish minimum opening bids for Auction No. 36. The Bureau believes a minimum opening bid, which has been utilized in other auctions, is an effective bidding tool. *See* Auction of 800 MHz SMR, Minimum Opening Bids or Reserve Prices (DA 97–2147) 62 FR 55251 (October 23, 1997), Auction of the Phase II 220 MHz Service Licenses (DA 98–1010) 63 FR 35213 (June 29, 1998). A minimum opening bid, rather than a reserve price, will help to regulate the pace of the auction and provides flexibility.

20. Specifically, for Auction No. 36, the Commission proposes the following formula for calculating minimum opening bids for each license, based on the population ("pops") of the relevant EA:

> License population * $0.001 (the result rounded to the nearest hundred for results less than $10,000 and to the nearest thousand for results greater than $10,000) with a minimum of no less than $1000.00 per license.

We seek comment on this proposal. All licenses including the related license area population and the proposed minimum opening bid, are listed in Attachment A. If commenters believe the formula proposed for minimum opening bids will result in substantial numbers of unsold licenses, or is not a reasonable amount, or should instead operate as a reserve price, they should explain why this is so, and comment on the desirability of an alternative approach. Commenters are advised to support their claims with valuation analyses and suggested reserve prices or minimum opening bid levels or formulas. In establishing the formula for minimum opening bids, we particularly seek comment on such factors as, among other things, the amount of spectrum being auctioned, levels of incumbency, the availability of technology to provide service, the size of the geographic service areas, issues of interference with other spectrum bands and any other relevant factors that could reasonably have an impact on valuation of the 800 MHz band. Alternatively, comment is sought on whether, consistent with the Budget Act, the public interest would be served by having no minimum opening bid or reserve price.

C. Minimum Accepted Bids and Bid Increments

21. Once there is a standing high bid on a license, a bid increment will be applied to that license to establish a minimum acceptable bid for the following round. For Auction No. 36, we propose to use a smoothing methodology to calculate bid increments, as we have done in several other auctions. The Bureau retains the discretion to change the minimum bid increment if it determines that circumstances so dictate. The Bureau will do so by announcement in the Automated Auction System. We seek comment on these proposals.

22. The exponential smoothing formula calculates the bid increment for each license based on a weighted average of the activity received on each license in all previous rounds. This methodology will tailor the bid increment for each license based on activity, rather than setting a global increment for all licenses. For every license that receives a bid, the bid increment for the next round for that license will be established using the exponential smoothing formula.

23. The calculation of the percentage bid increment for each license in a given round is made at the end of the previous round. The computation is based on an activity index, which is calculated as the weighted average of the activity in that round and the activity index from the prior round. The activity index at the start of the auction (round 0) will be set at 0. The current activity index is equal to a weighting factor times the number of new bids received on the license in the most recent bidding round plus one minus the weighting factor times the activity index from the prior round. The activity index is then used to calculate a percentage increment by multiplying a minimum percentage increment by one plus the activity index with that result being subject to a maximum percentage increment. The Commission will initially set the weighting factor at 0.5, the minimum percentage increment at 0.1, and the maximum percentage increment at 0.2.

Equations

$A_i = (C * B_i) + ((1 - C) * A_{i-1})$

I_{i+1} = smaller of $((1 + A_i) * N)$ and M

Where,

A_i = activity index for the current round (round i)

C = activity weight factor

B_i = number of bids in the current round (round i)

A_{i-1} = activity index from previous round (round i – 1), A_0 is 0

I_{i+1} = percentage bid increment for the next round (round i+1)

N = minimum percentage increment or bid increment floor

M = maximum percentage increment or bid increment ceiling

Under the exponential smoothing methodology, once a bid has been received on a license, the minimum acceptable bid for that license in the following round will be the new high bid plus the dollar amount associated with the percentage increment (variable I_{i+1} from above times the high bid). This result will be rounded to the nearest thousand if it is over ten thousand or to the nearest hundred if it is under ten thousand.

Examples

License 1

C=0.5, N = 0.1, M = 0.2

Round 1 (2 New Bids, High Bid = $1,000,000)

i. Calculation of percentage increment for round 2 using exponential smoothing:

$A_1 = (0.5 * 2) + (0.5 * 0) = 1$

I_2 = The smaller of $(1 + 1) * 0.1 = 0.2$ or 0.2 (the maximum percentage increment)

ii. Minimum bid increment for round 2 using the percentage increment (I_2 from above)

0.2 * $1,000,000 = $200,000

iii. Minimum acceptable bid for round 2 = 1,200,000

Round 2 (3 New Bids, High Bid = 2,000,000)

i. Calculation of percentage increment for round 3 using exponential smoothing:

$A_2 = (0.5 * 3) + (0.5 * 1) = 2$

I_3 = The smaller of $(1 + 2) * 0.1 = 0.3$ or 0.2 (the maximum percentage increment)

ii. Minimum bid increment for round 3 using the percentage increment (I_3 from above)

0.2 * $2,000,000 = $400,000

iii. Minimum acceptable bid for round 3 = 2,400,000

Round 3 (1 New Bid, High Bid = 2,400,000)

i. Calculation of percentage increment for round 4 using exponential smoothing:

$A_3 = (0.5 * 1) + (0.5 * 2) = 1.5$

I_4 = The smaller of $(1 + 1.5) * 0.1 = 0.25$ or 0.2 (the maximum percentage increment)

ii. Minimum bid increment for round 4 using the percentage increment (I_4 from above)

0.2 * $2,400,000 = $480,000

iii. Minimum acceptable bid for round 4 = 2,880,000

D. Information Regarding Bid Withdrawal and Bid Removal

24. For Auction No. 36, we propose the following bid removal and bid withdrawal procedures. Before the close of a bidding period, a bidder has the option of removing any bids placed in that round. By using the remove bid function in the software, a bidder may effectively "unsubmit" any bid placed within that round. A bidder removing a bid placed in the same round is not subject to withdrawal payments.

25. Once a round closes, a bidder may no longer remove a bid. However, in the next round, a bidder may withdraw standing high bids from previous rounds using the withdraw bid function. A high bidder that withdraws its standing high bid from a previous round is subject to the bid withdrawal payment provisions. We seek comment on these bid removal and bid withdrawal procedures.

26. In the *Part 1 Third Report and Order*, the Commission explained that allowing bid withdrawals facilitates efficient aggregation of licenses and the pursuit of efficient backup strategies as information becomes available during the course of an auction. The Commission noted, however, that, in some instances, bidders may seek to withdraw bids for improper reasons. The Bureau, therefore, has discretion, in managing the auction, to limit the number of withdrawals to prevent any bidding abuses. The Commission stated that the Bureau should assertively exercise its discretion, consider limiting the number of rounds in which bidders may withdraw bids, and prevent bidders from bidding on a particular market if the Bureau finds that a bidder is abusing the Commission's bid withdrawal procedures.

27. Applying this reasoning, we propose to limit each bidder in Auction No. 36, to withdraw standing high bids in no more than two rounds during the course of the auction. To permit a bidder to withdraw bids in more than two rounds would likely encourage insincere bidding or the use of withdrawals for anti-competitive purposes. The two rounds in which withdrawals are utilized will be at the bidder's discretion; withdrawals otherwise must be in accordance with the Commission's rules. There is no limit on the number of standing high bids that may be withdrawn in either of the rounds in which withdrawals are utilized. Withdrawals will remain subject to the bid withdrawal payment provisions specified in the Commission's rules. We seek comment on this proposal.

E. Stopping Rule

28. For Auction No. 36, the Bureau proposes to employ a simultaneous stopping rule approach. The Bureau has discretion "to establish stopping rules before or during multiple round auctions in order to terminate the auction within a reasonable time." A simultaneous stopping rule means that all licenses remain open until the first round in which no new acceptable bids, proactive waivers or withdrawals are received. After the first such round, bidding closes simultaneously on all licenses. Thus, unless circumstances dictate otherwise, bidding would remain open on all licenses until bidding stops on every license.

29. The Bureau seeks comment on a modified version of the simultaneous stopping rule. The modified stopping rule would close the auction for all licenses after the first round in which no bidder submits a proactive waiver, a withdrawal, or a new bid on any license on which it is not the standing high bidder. Thus, absent any other bidding activity, a bidder placing a new bid on a license for which it is the standing high bidder would not keep the auction open under this modified stopping rule. The Bureau further seeks comment on whether this modified stopping rule should be used unilaterally or only in Stage Three of the auction.

30. We propose that the Bureau retain the discretion to keep an auction open even if no new acceptable bids or proactive waivers are submitted and no previous high bids are withdrawn. In this event, the effect will be the same as if a bidder had submitted a proactive waiver. The activity rule, therefore, will apply as usual and a bidder with insufficient activity will either lose bidding eligibility or use a remaining activity rule waiver.

31. Finally, we propose that the Bureau reserve the right to declare that the auction will end after a specified number of additional rounds ("special stopping rule"). If the Bureau invokes this special stopping rule, it will accept bids in the final round(s) only for licenses on which the high bid increased in at least one of the preceding specified number of rounds. The Bureau proposes to exercise this option only in certain circumstances, such as, for example, where the auction is proceeding very slowly, there is minimal overall bidding activity, or it appears likely that the auction will not close within a reasonable period of time. Before exercising this option, the Bureau is likely to attempt to increase the pace of the auction by, for example, moving the auction into the next stage (where bidders would be required to maintain a higher level of bidding activity), increasing the number of bidding rounds per day, and/or increasing the amount of the minimum bid increments for the limited number of licenses where there is still a high level of bidding activity. We seek comment on these proposals.

Federal Communications Commission.

Louis J. Sigalos,

Deputy Chief, Auctions & Industry Analysis Division.

[FR Doc. 00–7969 Filed 3–30–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL LABOR RELATIONS AUTHORITY

[FLRA Docket No. 0–NG–2353]

Notice of Opportunity To Submit Amicus Curiae Briefs in a Negotiability Proceeding Pending Before the Federal Labor Relations Authority; Withdrawal of Notice

AGENCY: Federal Labor Relations Authority.

ACTION: Notice of withdrawal of the request (65 FR 13763) for amicus curiae briefs in a proceeding before the Federal Labor Relations Authority.

SUMMARY: The Federal Labor Relations Authority had previously invited all interested parties to file briefs as amici curiae on significant issues arising in a case pending before the Authority. Because that case is no longer pending, the Authority withdraws its requests for briefs.

FOR FURTHER INFORMATION CONTACT: Peter Constantine, Director, Case Control Office, Federal Labor Relations Authority, (202) 482–6540.

SUPPLEMENTARY INFORMATION: On March 14, 2000, the Authority issued a notice, which was published in the **Federal Register** on March 14, 2000 (65 FR 13763), inviting interested parties to submit briefs in a proceeding before the Federal Labor Relations Authority in which the Authority has been asked to reconsider how management's statutory rights to direct employees and to assign work should be interpreted in relation to proposals that establish the number of performance rating levels for individual job elements and summary ratings. After this notice was published, the agency withdrew its allegation of non-negotiability, and the union withdrew its petition for review of negotiability issues. Accordingly, on March 27, the Authority dismissed the case and no longer requests amicus briefs.

Dated: March 28, 2000.

For the Authority.

Peter Constantine,

Director of Case Control.

[FR Doc. 00–7954 Filed 3–30–00; 8:45 am]

BILLING CODE 6727–01–P

FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 10:00 a.m., Wednesday, April 5, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any matters carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 29, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8086 Filed 3–29–00; 10:08 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION

Trans No. and acquiring	Acquired	Entities
JAN. 18, 2000		
20000877—Brian L. Roberts	Mr. H.F. Lenfest	Lenfest Communications, Inc.
20000878—Brian L. Roberts	AT&T Corp	Lenfest Communications, Inc.
20001218—E.I du Pont de Nemours and Company	Burmah Castrol plc	Castrol Indsutrial North America, Inc.
JAN. 19, 2000		
20001217—Burman Castrol plc	E.I. du Pont de Nemours and Company.	E.I. du Pont de Nemours and Company.
20001268—Safeguard International Fund, L.P	Golden Bear Oil Specialties, Inc	Golden Bear Oil Specialties, Inc.
20001297—Tenet Healthcare Corporation	Tendex, Inc	Tendex, Inc.
20001303—Centre Capital Investors III, L.P	Kjell Inge Rokke	American Seafoods Company. Frionor U.S.A., Inc. Resource Group International, Inc.
20001305—Centre Capital Investors III, L.P	Jaeger Investment Company	NJ Vessel Corporation.
20001352—Gerald Gorman	Netmoves Corporation	Netmoves Corporation.
20001355—The AES Corporation	The AES Corporation	BV Partners.
20001371—Kirtland Capital Partners III L.P	Donald and Barbara Battis	Accurate Fabricators, Inc. Profile Realty, Inc., Profile Metal Forming, Inc. S&H Precision Manufacturing Co., Inc., Profile, Inc.
20001372—Global Crossing Ltd	StorageNetworks, Inc	StorageNetworks, Inc.
20001373—Dell Computer Corporation	StorageNetworks, Inc	StorageNetworks, Inc.
20001387—Ralcorp Holdings, Inc	Cascade Acquisition, Inc	Cascade Acquisition, Inc.
JAN. 20, 2000		
20001266—Office Specialties, Inc. d/b/a/ INSCAPE	SMED International Inc	SMED International Inc.
20001378—Thomas H. Lee Foreign Fund IV–B, L.P	MJD Communications, Inc	MJD Communications, Inc.
20001383—Thomas H. Lee Equity Fund IV, L.P	MJD Communications, Inc	MJD Communications, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

Trans No. and acquiring	Acquired	Entities
JAN. 21, 2000		
20001231—Bristol-Myers-Squibb Company	OXiGENE, Inc	OXiGENE, Europe, AB.
20001286—PPG Industries, Inc	The Monarch Paint Company	Monarch Paint Company I, Ltd.
20001306—SOFTBANK Corp.	Law.com, Inc	Law.com, Inc.
20001357—Nortel Networks Corporation	Qtera Corporation	Qtera Corporation.
JAN. 24, 2000		
20001255—SunGard Data Systems Inc	Michael J. & Marianne Cassidy	Cassidy Jones & Co., Inc.
20001256—Consolidated Electrical Distributors, Inc	Dauphin Associates, Inc. Employee Stock Ownership Plan.	Dauphin Associates, Inc.
20001260—El Paso Energy Corporation	MCN Energy Group, Inc	MCNIC CSG Pipeline Company
20001307—The Associates First Capital Corporation	KeyCorp	Key Bank USA, N.A.
20001334—CheckFree Holdings Corporation	BlueGill Technologies, Inc	BlueGill Technologies, Inc.
20001359—Bill Gross' idealab!, Inc	GoTo.com, Inc	GoTo.com, Inc.
20001362—Qwest Communications International Inc	USInternetworking, Inc	USInternetworking, Inc.
20001364—Qwest Communications International Inc	Global Crossing Ltd	Global Crossing Ltd.
20001376—WPG Corporate Development Associates V, LLC*	Leonard N. Stern	City Pages, Inc Cleveland Free Times, Inc. Long Island Voice, Inc. Los Angeles Weekly, Inc. OC Weekly, Inc. Quickfish Media, Inc. Stern Publishing, Inc. VV Publishing Corporation.
20001381—Isle of Capri Casinos, Inc	Lady Luck Gaming Corporation	Lady Luck Gaming Corporation.
20001384—Corporacion Patricio Echeverria, S.A	Ingersoll-Rand Company	The Corona Clipper Division Clipper of Harrow Products, Inc.
20001388—NOVA Corporation	Frank L. Farrar	First Savings Bank Merchant Division, Inc.
20001430—Drugstore.com, Inc	Roger Barnett	Beauty.com, Inc.
20001431—Roger Barnett	Drugstore.com, Inc	Drugstore.com, Inc.
JAN. 27, 2000		
20001304—BYOWC Partners LLC	Bridgeport Holdings Inc	Bridgeport Holdings Inc.
20001316—FS Equity Partners IV, L.P	Bridgeport Holdings Inc	Bridgeport Holdings Inc.
20001348—Blackstone CCC Capital Partners L.P	Sirius Satellite Radio Inc	Sirius Satellite Radio Inc.
20001379—Interpublic Group of Companies, Inc (The)	NFO Worldwide, Inc	NFO Worldwide, Inc.
20001389—BCI Growth V, L.P	ATG Group, Inc	ATG Group, Inc.
20001395—Warren A. Hood, Jr	Owens Corning	Falcon Foam Corporation.
20001396—Clayton, Dublier & Rice Fund VI L.P	Carl A. Albert	Fairchild Aerospace Corporation.
20001399—Merrill Lynch & Co., Inc	Multex.com, Inc	Multex.com, Inc.
20001406—WellPoint Health Networks Inc	Rush-Presbyterian-St. Luke's Medical Center.	Rush Prudential Health Plans.
20001407—WellPoint Health Networks Inc	The Prudential Insurance Company of America.	Rush Prudential Health Plans.
20001409—Churchill Environmental & Industrial Equity Partners, L.P.	Allied Waste Industries, Inc	Browning-Ferris Industries of Hawaii/ Maui Disposal Co., Inc. Maui Disposal Co., Inc.
20001411—L–3 Communications Holdings, Inc	Raytheon Company	AMI Instruments, Inc. Raytheon Company.
20001416—Amercian Standard Companies, Inc	Howell E. Adams, Jr	Georgia Air Conditioning Company, Inc.
20001417—United Rentals, Inc	Ronald D. Offutt	RDO Rental Co.
20001418—Mohr, Davidow Ventures, IV, L.P	ChannelPoint, Inc	ChannelPoint, Inc.
20001419—Landmark Communications, Inc	David Altomare	Brento Coporation
20001420—Cox Enterprises, Inc	David Altomare	Brento Corporation.
20001424—CMGI, Inc	Raging Bull, Inc	Raging Bull, Inc.
20001428—Knight Transportation, Inc	John R. Fayard	John Fayard Fast Freight, Inc.
20001429—Willis Stein & Partners II, L.P	SOFTBANK Corp	ZD Inc.
20001432—Whittman-Hart, Inc	USWeb Corporation	USWeb Corporation, a Delaware corporation.
20001435—Green Equity Investors III, L.P	InterDent, Inc	InterDent, Inc.
20001438—Magellan Health Services, Inc	Vivra Holdings, Inc	Vivra, Inc.
20001442—Heritage Fund II, L.P	Gerald Yablans	P.O.P. Displays, Inc.
20001443—Mr. Robert Alpert	Castle Harian Partners III, L.P	LNS Holding Corp.
20001445—Deutsche Bank AG	Richard L. Gelb	The Charter Corporation.
20001446—Deutsche Bank AG	Bruce S. Gelb	The Charter Corporation.
20001450—Expro International Group PLC	TriPoint, Incorporated	Tri Point, Incorporated.
20001460—Gilat Communications Ltd	The Times Mirror Company	Allen Communication.
20001464—Career Education Corporation	California Culinary Academy, Inc	California Culinary Academy, Inc.
20001468—Mazda Motor Corporation	Transnational Motors, Inc	Transnational Motors, Inc.
20001474—Safeguard International Fund, L.P	Richard W. Bowen II	International Filler Corp.
20001475—Cliffstar Corporation	Northland Cranberries, Inc	Northland Cranberries, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

Trans No. and acquiring	Acquired	Entities
20001479—Kleiner Perkins Caufield & Byer VIII, L.P	Redback Networks Inc	Redback Networks Inc.
20001480—KPCB VIII Founders Fund, L.P	Redback Networks Inc	Redback Networks Inc.
20001481—KPCB Information Sciences Zaibatsu Fund II, L.P	Redback Networks Inc	Redback Networks Inc.
20001482—St. Ives plc	Global Financial Press, a New York Corporation.	Global Financial Press, a New York Corporation.
20001488—Thoma Cressey Fund VI, L.P	PennCorp Financial Group, Inc	Occidental Life Insurance Company of North Carolina. Pioneer Security Life Insurance Company.
20001490—Torch Acquisition Company	Oracle Corporation	Oracle Corporation.
20001492—Advance Communications Group, Inc	Richard O'Neal	Big Stuff, Inc.
20001497—MVP.com, Inc	SportsLine.com, Inc	Golf Club Trader, Inc. International Gold Outlet, Inc. TennisDirect.com, Inc.
20001498—SportsLine.com, Inc	MPV.com, Inc	MVP.com, Inc.
JAN. 28, 2000		
20001393—Richard A. Bernstein	I. Epstein & Sons, Inc	I. Epstein & Sons/New York, Inc.
20001415—Bell Atlantic Master Trust	Bridgeport Holdings Inc	Bridgeport Holdings Inc.
JAN. 30, 2000		
20001520—William S. Morris III and Mary Sue Ellis (husband and wife).	Mediacom Communications Corporation.	Mediacom Communications Corporation.
20001521—Rocco B. Commisso	Mediacom Communications Corporation.	Mediacom Communications Corporation.
JAN. 31, 2000		
20001319—Healtheon/WebMD Corporation	Electronic Data Systems Corporation.	Kinetra LLC.
20001408—Money's Mushrooms Ltd	Vlasic Foods International Inc	Vlasic Foods International Inc.
20001473—George G. Beasley	George G. Beasley	Beasley Reed Acquisition Partnership.
20001500—Cox Enterprises, Inc	Rapid Communications Partners, L.P.	Rapid Communications Partners, L.P.
20001510—Elisabeth Badinter	Bernard and Miriam Frankel (husband and wife).	Frankel & Company.
20001511—Washington Mutual, Inc	Lehman Brothers Holdings, Inc	Alta Residential Mortgage, Inc.
20001513—Citizens Utilities Company	GTE Corporation	GTE Midwest Incorporated, GTE North Incorporated.
20001539—DICOM Group plc	Imaging Components Corporation.	Imaging Components Corporation.
FEB. 1, 2000		
20001382—Goodman Manufacturing Company, L.P	William H. Hegamyer	Pioneer Metals, Inc.
20001507—AT&T Corp	AT&T Corp	United Cable Television of Baltimore Limited Partnership.
20001512—Fremont Partners L.P	QualPro, Inc	QualPro, Inc.
20001517—Crosspoint Venture Partners-1999 L.P	SiteLine, Inc	SiteLine, Inc.
20001523—ASCo Group plc	Mary Lou Conrad	Venture Transport Inc.
20001524—Daniel S. Aegerter	Ariba, Inc	Ariba, Inc.
20001526—Siemens Aktiengesellschaft	Moore Products Co	Moore Products Co.
20001531—SOFTBANK Corp	AllAdvantage.com	AllAdvantage.com.
20001541—Transhumance Employee Stock Ownership Trust	Donald DeBey	Mountain Meadows Lamb Corporation.
20001542—Transhumance Employee Stock Ownership Trust	Verner W. Averch	Mountain Meadows Lamb Corporation.
20001543—Star Gas Partners, L.P	All Star Gas Corp	All Star Gas Corp.
20001545—Outsourcing Services Group, Inc	David G. Knust and Susan L. Purkrabek.	K.P. Properties. Precision Packaging and Services, Inc.
20001547—Quanta Services, Inc	Dennis G. Klumb	Arby Construction, Inc.
20001548—RCBA Strategic Partners, L.P	Playtex Products, Inc	Playtex Products, Inc.
20001552—Peco Energy Company	NorthEast Optic Network, Inc	NEON Communications, Inc.
20001553—Jorge Mas	MasTec, Inc	MasTec. Inc.
20001559—Cypress Merchant Banking Partners II L.P	Hannaford Bros. Co	Home Runs.com. Inc.
20001562—Phillip Morris Companies, Inc	Boca Holdings, Inc	Boca Holdings, Inc.
20001563—Edward S. Rogers	AT&T Corp	At Home Corporation.
FEB. 2, 2000		
19994747—Allied Waste Industries, Inc	James E. Galante	Advanced Recycling Corp. Advanced Waste Systems, Inc. Automated Waste Disposal, Inc. Diversified Waste Disposal, Inc. Environmental systems, Inc. Ny-Conn Waste Recycling, Inc. Superior Waste Disposal, Inc.
20001440—Blackstone CCC Capital Partners L.P	Arunas A. Chesonis	PaeTec Corp.
20001441—Madison Dearborn Capital Partners III, L.P	Arunas A. Chesonis	PaeTec Corp.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

Trans No. and acquiring	Acquired	Entities
200011489—Odyssey Investment Partners Fund, LP	IWO Holdings, Inc	IWO Holdings, Inc.
FEB. 3, 2000		
20001444—Carl C. Icahn	Prison Realty Trust, Inc	Prison Realty Trust, Inc.
20001486—Bank Austria Aktiengesellschaft	Rice partners II, L.P	Cherokee Sanford Group, LLC.
20001487—Koceram N.V	Rice Partners II, L.P	Cherokee Sanford Group, LLC.
FEB. 4, 2000		
20000612—Thyssen-Bomemisza Continuity Trust	Vertex Communications Corporation.	Vertex Communications Corporation.
20001397—Voest-Alpine Stahl A.G	Barlow W. Brooks, Jr	Roll Forming Corporation.
20001398—Voest-Alpine Stahl A.G	J. William Brooks	Roll Forming Corporation.
FEB. 7, 2000		
20001394—MJD Communications, Inc	TPG Partners, L.P	TPG Communications, Inc.
20001400—BASF Aktiengesellschaft	Rohm and Haas Company	Morton International, Inc.
20001410—Kyocera Corporation	QUALCOMM Incorporated	QUALCOMM Incorporated.
20001421—Entravision Communications Company, L.L.C	Latin Communications Group Inc	Latin Communications Group Inc.
20001433—Emerson Electric Co	Knaack Manufacturing Company	Knaack Manufacturing Company.
20001434—MAPFRE Mutualidad	Allchurches Trust Limited	Chatham Holdings, Inc.
20001437—Federal Signal Corporation	PCS Company	PCS Company.
20001448—Telephone and Data Systems, Inc. Voting First	Southeast Telephone Company of Wisconsin, Inc.	Southeast Telephone Company of Wisconsin, Inc.
20001455—Solectron Company	Alcatel	Alcatel USA Sourcing, L.P. DSC of Puerto Rico, Inc.
20001456—James N. Blue	Unicom Corporation	Cotter Corporation.
20001457—Albert J. Latner	Dr. Robert Adams	LabSouth, Inc.
20001465—SOFTBANK Corp	SmartAge Corp	SmartAge Corp.
20001469—Electronic Arts Inc	Dreamworks L.L.C	Dreamworks Interactive L.L.C.
20001472—McLeod USA Incorporated	Spiltrock Services, Inc	Splitrock Services, Inc.
20001476—VHA Southwest Community Health Corporation	Memorial Hermann Healthcare System.	Baptist Hospital, Orange. Baptist Hospital of Southeast Texas.
20001491—Resurrection Health Care Corporation	The Catholic Bishop of Chicago	Catholic Charities of the Archdiocese of Chicago.
20001494—William L. Sauder	Joseph S. Palencar	M&M Sale Corp.
20001495—ReliaStar Financial Corp	The BISYS Group, Inc	BISYS Brokerage Services, Inc. BWC Investment Services, Inc.
20001499—Salton, Inc	George Foreman	George Foreman.
20001501—United News & Media plc	Carlton Communications Plc	Carlton Communications Plc.
20001502—Phillip R. Bennett	Barry J. Lind	Lind-Waldock & Company.
20001528—EarthCare Company	World Fuel Services Corp	International Petroleum Corporation.
20001589—Morgan Stanley Dean Witter & Co	Commerce One, Inc	Commerce One, Inc.
20001590—Wells Fargo & Company	Redback Networks Inc	Redback Networks, Inc.
20001591—First Reserve Fund VIII, L.P	COR–VAL, Inc	COR–VAL, Inc.
FEB. 8, 2000		
20001459—Warmer Chilcott Public Limited Company	Bristol-Myers Squibb Company	Bristol-Myers Squibb Company.
20001529—Sanmina Corporation	Alcatel	Alcatel USA Sourcing, L.P.
20001532—Robert A. Daly	News Corporation Limited (The)	Fox Baseball Holdings, Inc.
20001533—The Great Universal Stores P.L.C	Mr. Timothy J. Keane	Retail Target Marketing Systems, Inc.
20001540—The St. Paul Companies, Inc	MMI Companies, Inc	MMI Companies, Inc.
20001549—Flextronics International Ltd	Cabletron Systems, Inc	Cabletron Systems, Inc.
20001564—Vignette Corporation	DataSage, Inc.	DataSage, Inc.
20001566—Aliant Inc	N.V. Koninklijke Nederlandsche Petroleum Maatschappij.	Shell Offshore Service Company
20001567—Robert Wood Johnson IV	The Estate of Leon Hess	The New York Jets Football Club, Inc.
20001568—Edward Wanandi	Frank Katz	Strick Corporation.
20001570—Prudential plc	Susan Zolla	Packaging Advantage Corp.
20001572—Avant! Corporation	Analogy, Inc	Analogy, Inc.
20001573—Lady Lucky Gaming Corporation	Andrew H. Tompkins	Gemini, Inc. International Marco Polo's Services, Inc.
20001574—USFreightways Corporation	Transport Corporation of America, Inc.	Transport Corporation of America, Inc.
20001577—Hoganas A.B	ChemFirst Inc	FRM Industries, Inc.
20001580—Fabri-Steel Products Incorporated	TRW Inc	Nelson Stud Welding Division of TRW.
20001584—Clear Channel Communications, Inc	Faith Broadcasting, L.P	Faith Broadcasting, L.P.
20001585—Prudential Insurance Company of America (The)	St. Paul Companies, Inc. (The)	THI Holdings (Delaware), Inc.
20001588—Haworth International, Ltd	LaCasse Inc	LeCasse Inc.
20001594—Loews Corporation	Gowin Holdings International Limited.	Gowin Holdings International Limited.
20001595—LaSalle Re Holdings Limited	Trenwick Group Inc	Trenwick Group Inc.
20001596—DLJ Merchant Banking Partner II, L.P	James D. & Margaret M. Brady-Nallo.	Precision Offset Printing Company, Inc. Precision Ollan Seal, Inc.

TRANSACTIONS GRANTED EARLY TERMINATION—Continued

Trans No. and acquiring	Acquired	Entities
20001600—The Western and Southern Life Insurance Company	ARM Financial Group, Inc	Integrity Life Insurance Company.
20001602—The Shelly Company	Ira L. Morris	Waco Oil & Gas., Inc.
20001606—Guidant Corporation	Impulse Dynamics, LLC	Impulse Dynamics N.V.
20001607—First Reserve Fund VIII, L.P	Preferred Industries, Inc	Preferred Industries, Inc.
20001609—Gerald W. Schwartz	Jannock Limited	Jannock Limited.
20001612—AutoNation, Inc	Dennis E. Breen	Horizon Chevrolet, Inc.
20001615—GPU, Inc	MYR Group Inc	MYR Group Inc.
20001617—Paul G. Desmarais	Allmerica Financial Corporation	First Allmerica Financial Life Insurance Company.
20001618—Flextronics International, Ltd	Palo Alto Products International (Pte.) Ltd. ("PAPI").	Palo Alto Products International (Pte.) Ltd. ("PAPI").
20001622—Mail-Well, Inc	American Business Products, Inc.	American Business Products, Inc.
20001623—Golden State Bancopr Inc	Downey Financial Corp	Downey Finance Corp.
20001626—Isle of Capri Casinos, Inc	BRDC, Inc	BRDC, Inc.
20001627—Robert S. Goldstein and Susan J. Goldstein (husband & wife).	Isle of Capri Casinos, Inc	Isle of Capri Casinos, Inc.
20001628—Bernard Goldstein and Irene S. Goldstein (husband & wife).	Isle of Capri Casinos, Inc	Isle of Capri Casinos, Inc.
20001634—Sigma Partners III, L.P	Vignette Corporation	Vignette Corporation
20001638—John Steven Late	AutoNation, Inc	Jack Sherman Chevrolet
20001640—Komatsu Ltd	Road Machinery Company	Road Machinery Company
20001651—Richard G Haworth	SMED International, Inc	SMED International, Inc.
20001652—CMGI, Inc	yesmail.com, inc	yesmail.com, inc.
20001656—Jerry Herbst	Alexander W. Rangos	Car Spa, Inc.
20001659—Charterhouse Equity Partners III, L.P	Whitehall Associates, L.P	reSOURCE PARTNER, Inc.
20001664—Baker Communications Fund, L.P	Sequoia Software Corporation	Sequoia Software Corporation
20001670—Captec Net Lease Realty, Inc	Patrick L. Beach	Captec Financial Group, Inc.
20001672—Industrial Services Group, Inc	Dale Smith	Palestine Concrete Tile Company
20001673—Industrial Services Group, Inc	Danny Smith	Palestine Concrete Tile Company
20001674—Centre Capital Investors III, L.P	Michael Lee Malamut	Autoland, Inc.
20001690—Bracknell Corporation	Michael L. Morrissey	Sylvan Industrial Piping Of N.J., Inc. Sylvan Industrial Piping of Tennessee, Inc. Sylvan Industrial Piping, Inc.
FEB. 9, 2000		
20001179—WHX Corporation	Bethlehem Steel Corporation	Bethlehem Steel Corporation.
20001402—CBS Corporation	SportsLine.com, Inc	SportLine.com, Inc.
20001466—Smiths Industries plc	SIHI/EMC Investors LLC	EMC Technology LLC
20001555—American Tower Corporation	James A.R. Veeder	U.S. Electrodynamics, Inc.
20001582—The Edward W. Scripps Trust	Freedom Communications, Inc	Florida Freedom Newspapers, Inc.
20001597—CPL Long Term Care Real Estate Investment Trust	Renaissance Healthcare Corporation.	Oakridge Nursing Home, Inc. Renaissance-Chapel Hill, Inc. Renaissance-Fox Chase, Inc. Renaissance-Hamilton Plaza, Inc. Renaissance-Iliff, Inc. Renaissance-Park Manor, Inc. Renaissance-Valley View, Inc.
20001605—Estate of Charles A. Sammons	Estate of Charles C. Carson	E.R. Craven Company.
20001613—BG Distribution Partners, Ltd	Terk Distributing Company, Inc	Terk Distributing Company, Inc.
20001616—Bank of America Corporation	VeloCom Inc	VeloCom Inc.
20001636—General Electric Company	Macklanburg-Duncan Co	Macklanburg-Duncan Co.
20001642—Baxter International Inc	XOMA Ltd	XOMA Ireland Limited.
20001687—Telefonos de Mexico, S.A. de C.V	Grupo Carso, S.A.. de C.V	TPC Acquisition Corp.
FEB. 10, 2000		
20001556—KKR 1996 Fund L.P	Intermedia Communications Inc	Intermedia Communications Inc.
20001657—Berkshire Hathaway, Inc	CORT Business Services Corporation.	CORT Business Services Corporation.
FEB. 11, 2000		
20001449—Gerald W. Schwartz	International Business Machines Corporation.	International Business Machines Corporation.
20001483—Compaq Computer Corporation	InaCom Corp	InaCom Corp. InaCom International, Inc. Sysorex Corporation. Vanstar Corporation.
20001579—Atlantic Equity Partners International II, L.P	Trust u/w/o Edward S. Litchfield	Poly-Seal Corporation.
20001599—Apple Computer, Inc	Earthlink Network, Inc	Earthlink Network, Inc.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Parcellena P. Fielding, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–7971 Filed 3–30–00; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1072]

Agency Information Collection Activities: Proposed Collection; Comment Request; Administrative Detention and Banned Medical Devices

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements imposed on entities that have had products detained during an establishment inspection that are believed to be adulterated or misbranded, or have had products banned.

DATES: Submit written comments on the collection of information by May 30, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Administrative Detention and Banned Medical Devices—21 CFR 800.55(g), 800.55(k), 895.21, and 895.22 (OMB No. 0910–0114)—Extension

FDA has the statutory authority under section 304(g) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 334(g)), to detain during establishment inspections devices that are believed to be adulterated or misbranded. On March 9, 1979, FDA issued a final regulation on administrative detention procedures, which includes, among other things, certain reporting requirements (§ 800.55(g) (21 CFR 800.55(g))) and recordkeeping requirements (§ 800.55(k)). Under § 800.55(g), an applicant of a detention order must show documentation of ownership if devices are detained at a place other than that of the appellant. Under § 800.55(k), the owner or other responsible person must supply records about how the devices may have become adulterated or misbranded, as well as records of distribution of the detained devices. These recordkeeping requirements for administrative detentions allow FDA to trace devices for which the detention period expired before a seizure is accomplished or injunctive relief is obtained.

FDA also has the statutory authority under section 516 of the act (21 U.S.C. 360f) to ban devices that present substantial deception or an unreasonable and substantial risk of illness or injury. The final regulation for banned devices contains certain reporting requirements (§§ 895.21(d) and 895.22(a) (21 CFR 895.21(d) and 895.22(a))). Section 895.21(d) states that if the Commissioner of Food and Drugs (the Commissioner) decides to initiate a proceeding to make a device a banned device, a notice of proposed rulemaking will be published in the **Federal Register**, and this notice will contain the finding that the device presents a substantial deception or an unreasonable and substantial risk of illness or injury. The notice will also contain the reasons why the proceeding was initiated, an evaluation of data and information obtained under other provisions of the act, any consultations with the panel, and a determination as to whether the device could be corrected by labeling or change of labeling, or change of advertising, and if that labeling or change of advertising has been made. Under § 895.21(d), any interested person may request an informal hearing and submit written comments. Under § 895.22, a manufacturer, distributor, or importer of a device may be required to submit to FDA all relevant and available data and information to enable the Commissioner to determine whether the device presents substantial deception, unreasonable and substantial risk of illness or injury, or unreasonable, direct, and substantial danger to the health of individuals.

Respondents to this collection of information are those manufacturers, distributors, or importers whose products FDA seeks to detain or ban.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
800.55(g)	1	1	1	25	25
895.21(d) and 895.22(a) and (c)	26	1	26	16	416
TOTALS					441

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
800.55(k)	1	1	1	20	20

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Over the past 3 years, there has been an average of one new administrative detention action per year. Each administrative detention will have varying amounts of data and information that must be maintained. Historically, FDA's Center for Devices and Radiological Health (CDRH) has had very few or no annual responses for this information collection and normally reports one response per year. CDRH is anticipating a banning action in Fiscal Year 2000 that will involve 26 firms.

Dated: March 24, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–7932 Filed 3–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1061]

Agency Information Collection Activities: Proposed Collection; Comment Request; Resource Assessment of Programs and Services in Food Safety

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on a project supported by FDA to collect information on food safety programs and services and the resources devoted thereto by State and local agencies nationwide.

DATES: Submit written comments on the collection of information by May 30, 2000.

ADDRESSES: Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: JonnaLynn P. Capezzuto, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–4659.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Assessment of Local and State Resources in Food Safety Programs and Services

In 1998, FDA began an effort, in cooperation with local, State, and other Federal agencies, to develop an integrated national food safety system. The system would coordinate the activities and resources of all levels of government devoted to regulatory food safety programs to maximize the impact of available resources, reduce overlapping functions, coordinate responses to foodborne disease outbreaks, share information, improve communications and training, establish minimum national uniform standards and identify gaps in food safety controls for correction at any level of government. The effort is consistent with the "farm to table" approach and sound scientific and risk-based priorities called for by the National Academy of Science's Report of August 20, 1998, and the President's Council on Food Safety, established by Executive Order 13100 on August 25, 1998. A number of workgroups of local, State,

and Federal officials have been formed to address the integration effort including one on roles and responsibilities of Federal, State, and Local agencies.

The Roles and Responsibilities Work Group, consisting of local, State, and Federal officials as part of the National Food Safety System (NFSS), has recommended the preparation of a resource assessment survey to determine the capacity and needs of State and local government agencies involved in food safety. The information will be collected by a contractor, to be determined, using a resource assessment questionnaire developed by the Roles and Responsibilities Work Group. The information gathered by the survey will help to determine what capabilities can be coordinated in each State and nationally and where there are gaps or insufficiencies that need to be addressed. The questionnaire will be provided electronically to State and local agencies for automated responses to minimize the reporting burden. Mail or facsimile hard copies will only be used for those jurisdictions that do not have electronic response capability. The resulting information will be computerized for analysis and reporting.

The survey will include questions on laws and regulations in effect; staffing; information systems; funding sources, mechanisms and amounts; staff training, certification, and qualifications; consumer and industry education; emergency response systems; laboratory resources and capabilities; epidemiology resources; official establishment inventories; routine inspection frequencies; surveillance sampling; minimum performance standards; program scope; and types of assistance needed from State and/or Federal agencies.

The questionnaire is intended to be a one-time effort but may involve additional contacts with respondents to clarify information supplied or to encourage participation. Responses to this questionnaire are voluntary. It should be noted that the State and local members of the Roles and Responsibilities Work Group have strongly endorsed the need for this survey so that informed and balanced recommendations can be made to policymaking and funding officials.

Authority for providing such assistance is derived from section 311(a) of the Public Health Service Act (42 U.S.C. 243) and delegation of authority from the Public Health Service to the Commissioner of Food and Drugs relative to food protection is contained in 21 CFR 5.10(a)(2) and (a)(4). Assistance to local, State, and Federal agencies is also based on FDA's authorities and responsibilities under the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 301). Under 31 U.S.C. 1535, FDA provides assistance to other Federal agencies.

There are approximately 4,200 local jurisdictions conducting food safety activities, about 150 State agencies, and an estimated 150 tribal agencies. More accurate counts will be available after the survey because one of the purposes will be to identify the local, State, and tribal agencies involved in food safety.

This will be a one-time survey with followup contacts to clarify responses or to elicit information from initial nonrespondents. Contact will be by electronic means whenever possible to minimize the burden on the respondent. Computerized data will be encouraged. FDA will likely contract with a third party to conduct the information gathering and compilation/analysis.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
4,500	1	4,500	4	18,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

Dated: March 24, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–7934 Filed 3–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 99N–5222]

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Notice of a Claim for GRAS Exemption Based on a GRAS Determination

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by May 1, 2000.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Wendy Taylor, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance.

Notice of a Claim for GRAS Exemption Based on a GRAS Determination (OMB No. 0910–0342—Extension)

Section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348) establishes a premarket approval requirement for "food additives;" section 201(s) of that act (21 U.S.C. 321(s)) provides an exemption from the definition of "food additive" and thus from the premarket approval requirement, for uses of substances that are generally recognized as safe (GRAS) by qualified experts. FDA is proposing a voluntary procedure whereby members of the food industry who determine that use of a substance satisfies the statutory exemption may notify FDA of that determination. The notice would include a detailed summary of the data and information that support the GRAS determination, and the notifier would maintain a record of such data and information. FDA would make the information describing the GRAS claim, and the agency's response to the notice, available in a publicly accessible file; the entire GRAS notice would be publicly available consistent with the Freedom of Information Act and other Federal disclosure statutes.

Description of Respondents:. Manufacturers of Substances Used in Food and Feed.

In the **Federal Register** of December 17, 1999 (64 FR 70714 at 70715), the agency requested comments on the proposed collections of information. No significant comments were received.

FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN [1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
170.36	50	1	50	150	7,500
570.36	10	1	10	150	1,500
Total					9,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN [1]

21 CFR Section	No. of Recordkeepers	Annual Frequency of Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
170.36(c)(1)(v)[2]	50	1	50	15	750
570.36(c)(1)(v)[2]	10	1	10	15	150
Total					900

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.
[2] Due to a clerical error, the CFR cites that appeared in table 2 of the FEDERAL REGISTER of December 17, 1999 (64 FR 70714) were incorrect. Table 2 of this document contains the correct CFR cite.

The reporting requirement is for a proposed rule that has not yet been issued as a final rule. In developing the proposed rule, FDA solicited input from representatives of the food industry on the reporting requirements, but could not fully discuss with those representatives the details of the proposed notification procedure. FDA received no comments on the agency's estimate of the hourly reporting requirements, and thus has no basis to revise that estimate at this time. During 1998, FDA received 12 notices that were submitted under the terms of the proposed rule; between January 1, 1999, and November 30, 1999, FDA received 23 notices. To date, the number of annual notices is less than FDA's estimate; however, the number of annual notices could increase when the proposed rule becomes final.

Dated: March 24, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–7933 Filed 3–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket Nos. 00M–1031 and 00M–1032]

Medical Devices Regulated by the Center for Biologics Evaluation and Research; List of Premarket Approval Actions

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is publishing a list of premarket approval application (PMA) approvals. This list is intended to inform the public of the existence and the availability of summaries of safety and effectiveness of approved PMA's through the Internet and the agency's Dockets Management Branch.

ADDRESSES: Summaries of safety and effectiveness are available on the Internet at http://www.fda.gov/cber/appr1999/1999approv.htm. Copies of summaries of safety and effectiveness are also available by submitting a written request to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Please cite the appropriate docket number as listed in table 1 in the **SUPPLEMENTARY INFORMATION** section of this document, when submitting a written request.

FOR FURTHER INFORMATION CONTACT: Nathaniel L. Geary, Center for Biologics Evaluation and Research (CBER) (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 30, 1998 (63 FR 4571), FDA published a final rule to revise §§ 814.44(d) and 814.45(d) (21 CFR 814.44(d) and 814.45(d)) to discontinue publication of individual PMA approvals and denials in the **Federal Register**. Revised §§ 814.44(d) and 814.45(d) state that FDA will notify the public of PMA approvals and denials by posting them on FDA's home page on the Internet at http://www.fda.gov, by placing the summaries of safety and effectiveness on the Internet and in FDA's Dockets Management Branch, and by publishing in the **Federal Register** after each quarter a list of the PMA approvals announced in that quarter.

FDA believes that this procedure expedites public notification of these actions because announcements can be placed on the Internet more quickly than they can be published in the **Federal Register**, and FDA believes that the Internet is accessible to more people than the **Federal Register**.

In accordance with section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)),

notification of an order approving, denying, or withdrawing approval of a PMA will continue to include a notice of opportunity to request review of the order under section 515(g) of the act. The 30-day period for requesting reconsideration of an FDA action under § 10.33(b) (21 CFR 10.33(b)) for notices announcing approval of a PMA begins on the day the notice is placed on the Internet. Section 10.33(b) provides that FDA may, for good cause, extend this 30-day period. Reconsideration of a denial or withdrawal of approval of a PMA may be sought only by the applicant: in these cases, the 30-day period will begin when the applicant is notified by FDA in writing of its decision.

The following is a list of the PMA applications reviewed within CBER, for which summaries of safety and effectiveness were placed on the Internet in accordance with the procedure as explained previously through September 30, 1999. There were no denial actions during this period. The list is in order by PMA number and provides the manufacturer's name, the generic name or trade name, and the approval date.

TABLE 1.—LIST OF APPROVAL PMA'S FROM JULY 2, 1999, THROUGH SEPTEMBER 30, 1999

PMA Number/Docket No.	Applicant	Trade Name	Approval Date
BP 97–0001/01/00M–1031	Nexell Therapeutics, Inc.	Isolex 300 Magnetic Cell Selection System and Isolex 300i Magnetic Cell Selection System	July 2, 1999
BP 97–0003/00M–1032	Dendreon Corp.	DACS™SC	July 23, 1999

Dated: March 23, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–7935 Filed 3–30–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

State Planning Grants

AGENCY: Health Resources and Services Administration.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of $15 million to support up to10 State grants for the development of plans to provide access to health insurance coverage for all State residents. This funding has been appropriated under the Fiscal Year (FY) 2000 HHS Appropriations Act.

In FY 2000, HRSA, through its State Planning Grants Program (SPG), will accept applications from States for fiscal year (FY 2000) grants to conduct a one year, in-depth analysis and related activities necessary to develop the most effective methods for providing access to affordable health insurance coverage to all its citizens. States will be expected to design approaches that provide affordable health insurance benefits similar in scope to the Federal Employees Health Benefit Plan, Medicaid, coverage offered to State employees or other similar quality benchmarks. Each State receiving such grants must submit the study and analysis results in the form of a report to the Secretary that identifies the characteristics of the uninsured within the State and proposals for providing them with access to health insurance coverage. Together, these reports will provide additional data about the characteristics of the uninsured generally and potential models for other States seeking to provide comprehensive coverage.

DATES: The time line for application submission, review, and award is follows:

April 10, 2000—Application kits (PHS 5161, OMB 0920–0528) and additional guidance will be available through the HRSA Grants Application Center (GAC). To receive a complete application kit, contact the GAC at 1–877–HRSA–123.

April 26 and 28, 2000—Two pre-application workshops are anticipated at Denver, CO (April 26, 2000) and Philadelphia, PA (April 28, 2000). For more information concerning these workshops, contact the State Planning Grant Program Office at 301–443–4619.

July 10, 2000—Applications due.

August 1–4, 2000—Applications reviewed.

September 30, 2000—Grant awards announced.

ADDRESSES: To receive a complete application kit (*i.e.*, application instructions, necessary forms, and application review criteria), contact the HRSA GAC at: HRSA, GAC, 1815 N. Fort Meyer Drive, Suite 300, Arlington, VA 22209, Phone: 1–877–HRSA–123, Fax: 1–877–HRSA–345, E-Mail: hrsagac@hrsa.gov

FOR FURTHER INFORMATION CONTACT: For further information contact Dr. Marcia Brand, Health Resources and Services Administration, Parklawn Building, Room 11–25, 5600 Fishers Lane, Rockville, MD 20857, Phone: (301) 443–4619, Fax: (301) 443–0643.

SUPPLEMENTARY INFORMATION: In 1998, 44.5 million people in the United States did not have health insurance. This is roughly one out of every six non-elderly Americans. Of these, 24.6 million were employed—18.7 million worked full time and 5.9 million worked part time. Nationally, over 11 million children (i.e., one in seven) are uninsured. Every year, approximately a million Americans lose their health coverage. A poll conducted for Health Coverage 2000 and released in October showed that seven out of ten Americans believe government must address the problem of the uninsured and state that they support $100 in new taxes to help provide additional health coverage. There is considerable public and private support for examining and implementing new models for providing access to affordable health coverage.

Many States have expressed interest in expanding coverage for the uninsured. Every State has responded to the opportunity provided by the State Children's Health Insurance Program (SCHIP) to design a program that provides health insurance coverage for uninsured low-income children. Many States have also expanded Medicaid coverage to uninsured children and adults, using existing options, such as section 1115 waiver authority, as well as increased flexibility under welfare reform to cover working parents. In addition, many States are assessing State policy in light of recent changes in Medicare. Some States are working towards enhancing coordination of publicly-funded health programs, such as health departments and community health centers. States have also undertaken activities that seek to expand insurance coverage through mechanisms other than Federally-financed programs (*e.g.*, high risk pools and insurance market changes).

The private sector has expressed an interest in supporting States' efforts to expand coverage for the uninsured. The Robert Wood Johnson Foundation has implemented the State Coverage Initiatives (SCI), a major new technical assistance endeavor that will build on the successes and lessons learned in its earlier States Initiatives in Health Care Reform. The new program seeks to improve the practical capacity of State governments in their quest to decrease the number of uninsured Americans and has an emphasis on policy development and technical assistance. The SCI Program provides resources for technical assistance that States can use to analyze data, diagnose problems, identify solutions, and develop new strategies and policies. It offers small policy planning grants and for a few States, larger scale demonstration grants.

In January 2000, the Robert Wood Johnson Foundation, with the Health Insurance Association of America and Families USA, announced its Health Coverage 2000—Meeting the Challenge of the Uninsured initiative. Through this effort, eight of the nation's leading trade, professional and consumer organizations joined representatives of business, labor, physicians, nurses, hospitals, insurance companies and consumers to propose specific solutions for expanding access to health coverage. During this national conference, these organizations agreed that it is critically important for the health insurance industry to join with other organizations to find ways to promote health coverage for uninsured individuals. Of the eight proposals to expand health insurance coverage to low-income individuals developed at the conference, seven would expand Medicaid, SCHIP, or other government programs to increase coverage.

At the Federal level, the DHHS is committed to assisting States as they examine their options for expanding health insurance benefits. By providing State planning grants, the HRSA State Planning Grants Program intends to encourage States to provide access to affordable health insurance coverage for all its citizens. Each grantee State will receive resources for necessary planning and a coordinated DHHS policy environment. Together, the results of each State's analysis of its uninsured population and its proposals for providing these individuals with access to health insurance coverage will provide additional data about the characteristics of the uninsured generally and present models for other States seeking to provide such comprehensive coverage.

SPG shares some of the same goals as and focus of the Robert Wood Johnson Foundation's State Coverage Initiatives and the Health Policy Studies Division of the National Governors' Association Center for Best Practices. Thus, whenever possible, SPG will coordinate its efforts with activities of these programs to share information about insurance trends, best practices, data and analyses, and technical assistance.

State Planning Grants

Program Purpose

The purpose of SPG is to have each grantee State develop a plan or propose options that would ensure every citizen in that State access to affordable health insurance benefits similar in scope to the Federal Employees Health Benefit Plan, Medicaid, benefits offered to State employees or other similar quality benchmarks. Not only will the grantee State benefit from its analysis, but by submitting a summary of this analysis and proposed plan at the end of the grant period in a report to the Secretary, other States may learn about successful or innovative ways to provide access to coverage. In addition, DHHS will have the opportunity to review these reports and gain insight into effective methods of supporting such endeavors.

Program Goal

The overarching SPG goal is to encourage States to provide access to health insurance coverage to all citizens by providing the resources needed to develop successful plans and to provide a number of data collection and planning strategies, along with viable insurance expansion options to consider. The immediate goal of SPG is to assist States as they collect and analyze data, develop coverage options or design programs that provide health insurance coverage to all uninsured citizens in the State through expanded State, Federal, and private partnerships.

Program Description

The $15 million in available funding has been appropriated under the FY 2000 Labor-HHS Appropriations Act. The HRSA, Office of the Administrator, State Planning Grants Program, will oversee the program. Up to 10 awards are anticipated and will vary in size, with a typical grant not to exceed $1.3 million. Preference will be given to States with lower rates of uninsured, unless the applicant shows a potential for a significant decrease in its uninsured population. Grant awards will reflect diverse State characteristics (*e.g.*, rural/frontier/urban areas and high/low penetration of managed care) and represent a variety of geographic areas of the country.

During FY 2000, SPG will support one-year planning grants to States to (1) collect and analyze data that describe the characteristics of their uninsured and assist in the design of approaches to provide access to affordable coverage, (2) design a program that would provide all uninsured with access to insurance benefits similar in care to State employee coverage, Federal Employees Health Benefit Plan, Medicaid or other similar quality benchmarks, through a State, Federal, and private partnership, (3) prepare a report to the Secretary describing these findings, and (4) by September 30, 2001, provide the report to the Secretary describing proposals for an expanded State, Federal, and private partnership to cover all of their uninsured.

The successful State applicant will have a demonstrated commitment to reducing its uninsured population; will demonstrate commitment by its Governor and Executive Branch to studying the possibilities for providing health insurance coverage to all uninsured; and will present a comprehensive proposal for the kinds of data to be collected, analysis of that data, use of the analyses to create an approach for covering all uninsured, and a strategy for implementing and funding that approach. The successful applicant will work with all appropriate health-related State agencies, including the Medicaid agency, the budget office, and other relevant departments (*e.g.*, insurance, public health, human services, mental health and substance abuse, and aging). If possible, the applicant should demonstrate communication with the health committees in the State legislature about the proposal. Formal collaboration must exist with private sector organizations (including both business and the health care provider communities), consumer groups, and researchers.

We are looking for applicants with a clear commitment to the goal of providing coverage to all uninsured and an operational plan for using these planning grants to help achieve that goal. As such, funded State planning grants will contain these common elements:

A goal of providing access to affordable health insurance coverage to all citizens in the State—Access to affordable coverage for this grant program means that individuals or families have the opportunity to purchase health insurance coverage or participate in a program that provides

adequate benefits at an affordable cost. States may ensure "affordability" by determining cost-sharing based on the beneficiary's income level and applying a sliding scale related to income, or implementing other cost-sharing protections such as spending caps. For example, in non-Medicaid SCHIP programs, for children in families with income levels above 150 percent of the Federal poverty line, cost-sharing may be imposed on a sliding scale related to income, but the total annual aggregate cost-sharing for all targeted low-income children in the family cannot exceed 5 percent of the family's annual income.

Citizens of the State—If Federal funds are proposed to be used, States should plan their coverage options based on existing Federal eligibility criteria for participation in the Medicaid, SCHIP, and Medicare programs. States may use State funds or other resources to cover non-citizen residents.

Commitment to eliminating the number of uninsured—Grantee States must demonstrate prior efforts, whether or not approved by their State Legislatures, to reduce their number of uninsured through program expansions, data collection activities to support further expansions and/or other activities demonstrating a commitment to providing increased access to health insurance.

Low rates of uninsured—Grantee States should have low rates of uninsured at the time of application submission or the potential for a significant decrease in their uninsured population.

Collaboration among State, Federal, and private partners—Grantee States should build upon current collaborations among State, Federal, and private partners for expanding health insurance coverage to all citizens within the State. States are encouraged to consult with Tribal governments, where appropriate. These collaborations should be formal and should include the leadership of public and private partners.

Capacity for data collection and analysis—Grantee States should demonstrate data collection and analytical capacity or a detailed plan for acquiring this technical assistance, including a commitment from the agency/organization to provide this technical assistance. States are encouraged to work with the many existing Federal and State data collection activities, as well as ongoing efforts in the private, non-profit sector.

Eligible Applicants

Eligibility is limited to States with only one application per State permitted. The Governor of each State is invited to apply. Each Governor is asked to designate an individual or agency responsible for preparing the State's grant application. A letter from the Governor authorizing this individual or agency to prepare the State's application should accompany the application.

Funding Criteria

Review criteria that will be used to evaluate applications includes:

Evidence that the State has a low rate of uninsured or a justification for its ability to significantly decrease a relatively high level of uninsured.

Evidence of commitment by the Governor, State agencies, and public and private health care providers to provide coverage to all uninsured.

Evidence of prior data collection and analysis resulting in efforts to expand coverage to the uninsured.

Evidence of meaningful collaboration between the agencies and constituencies in the public and private sectors necessary to successfully complete the analysis and submit the required report to the Secretary.

A demonstrated understanding of the technical capacity, resources, and collaboration necessary to successfully carry out the proposed analysis and provide the required report to the Secretary.

·An accountable management and budget plan with time lines, demonstrating readiness of the State government to conduct the data collection, analyze the data, develop approaches to providing access to coverage, and determine strategies for implementing and funding such approaches. States should provide an explanation of how they will contract for needed technical assistance, if necessary.

Report Contents

This grant funding will assist States to develop models for providing access to health insurance coverage for all citizens of the State. As a result, each grantee State will prepare a report to the Secretary that provides:

A detailed plan for data collection and analysis, upon which the State will base its design for covering its uninsured.

Its strategy for gaining collaboration and consensus among State, Federal, and private partners on options to expand health insurance coverage to all citizens.

Options for expanding health insurance coverage through State, Federal, and private partnerships. For each option, the grantee State will describe how it proposes to address these issues: (1) targeting expansion groups such as parents of SCHIP children, young adults ages 19–20, and early retirees; (2) delivery systems; (3) administration; (4) outreach; (5) eligibility levels; (6) eligibility determination process; (7) enrollment process; (8) marketing plan; (9) coverage and benefits (similar to State, Federal employees, Medicaid, and other credible coverage); (10) portability; (11) cost-sharing (co-pays, premiums); (12) integration with existing public and private programs (*e.g.*, Medicaid, Medicare, and SCHIP coverage, State programs, projects proposed through the Community Access Program, *See* **Federal Register** notice, February 4, 2000); (13) plans for studying or avoiding crowd-out-interaction with employer-sponsored insurance; (14) cost-containment; (15) ensuring quality; (16) ensuring access; (17) data collection; (18) audits; (19) program budget; (20) program evaluations; (21) funding; (22) maintenance of effort; (23) necessary waivers (under existing program authority); (24) necessary State or Federal legislative changes (not under current authority); and (25) private sector options (*e.g.*, high risk pools, employer options, market reforms). States that propose or prepare waivers or State plan amendments (*e.g.*, Medicaid waivers, SCHIP amendments) as a result of their grant activities must submit their requests through existing review processes established by the Health Care Financing Administration.

Use of Grant Funds

Funding provided through this program may not be used to substitute for or duplicate funds currently supporting similar activities. In addition, grant funds may not be used to support construction, renovation or modernization costs. However, grant funds may support costs such as project staff salaries, consultants, project-related travel, project evaluation, limited equipment and software purchases or leases and coordinating project-related meetings.

Expected Results

The implementation of State Planning grants is expected to result in the development of a plan that the State might subsequently implement to provide health insurance coverage to all citizens of the State. In addition, the grantee States will provide information about data collection activities, partnerships, and options that other States may draw from in their efforts to expand health insurance coverage.

Dated: March 27, 2000.

Claude Earl Fox,

Administrator, Health Resources and Services Administration.

[FR Doc. 00–8039 Filed 3–30–00; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4565–N–10]

Notice of Proposed Information Collection: Comment Request; Housing Development Grant Program Project Settlement Procedures

AGENCY: Office of the Assistant Secretary for Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 30, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, L'Enfant Building, Room 8202, Washington, D.C. 20410, telephone (202) 708–5221 (this is not a toll-free number) for copies of the proposed forms and other available information.

FOR FURTHER INFORMATION CONTACT: Willie Spearmon, Multifamily Housing, Office of Business Products, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410, telephone (202) 708–3000, (this is not a toll free number) for copies of the proposed forms and other available information.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including the use of appropriate automated collection techniques or other forms of information technology, e.g., permitted electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Housing Development Grant Program Project Settlement Procedures.

OMB Control Number, if applicable: 2502–0382.

Description of the need for the information and proposed use: The collection of project settlement information is necessary to implement the program regulation at 24 CFR Part 850—Housing Development Grant. This section of the regulation requires, upon construction completion, that the program respondents account for funds expended. Such accounting is provided through the project settlement process.

Agency form numbers, if applicable: HUD–90024, HUD–90025, HUD–90026, HUD–90028, HUD–90028, HUD–90031.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The estimated number of respondents are 15, the frequency of responses is one, the annual responses are 15, the estimated burden for each form is HUD–90024 (.50 hours per response); HUD–90025 (6 hours per response); HUD–90026 (.50 hours per response); HUD–90027 (.50 hours per response); HUD–90028 (.50 hours per response); and HUD–90031 (8 hours per response); and the annual burden hours requested is 240 per application package.

Status of the proposed information collection: Reinstatement without change.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C., Chapter 35, as amended.

Dated: March 24, 2000.

William C. Apgar,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 00–7947 Filed 3–30–00; 8:45 am]

BILLING CODE 4210–27–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4566–N–03]

Notice of Submission of Proposed Information Collection to OMB; Emergency Comment Request Youthbuild Program

AGENCY: Officer of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for emergency review and approval, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* April 7, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal.Comments should refer to the proposal by name or OMB approval number (2506–0142) and should be sent to: Joseph F. Lackey, Jr., HUD Desk Officer, Officer of Management and Budget, New Executive Office Building, Washington, DC 20410 (202) 395–7316.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins, 451 Seventh Street, SW, Washington, DC 20410, telephone (202) 708–5221. This is not a toll-free number. Copies of available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department is submitting the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) Enhance the quality, utility, and clarity of the

information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Youthbuild Program.

OMB Control Number, if applicable: 2506–0142.

Description of the need for the information and proposed use: Information collected from NOFA will be used by HUD to select grant awardees as required by the HUD Reform Act. Information collected from reports will be used to monitor and evaluate progress of grantees and programs.

Agency form numbers, if applicable: Youthbuild Application, HUD–40202, SF1199A, HUD–27054.

Members of affected public. Not-for-profit institutions, and state or local governments.

Estimation of the total numbers of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response:

Number of Respondents: 250.

Frequency of Reports: Semi-annually.

Hours of Response: Hours per response—45.

Status of the proposed information collection: reinstatement, with change, of a previously approved collection for which approval has expired.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: March 27, 2000.

Wayne Eddins,

Reports Management Office Director, Office of the Chief Information Officer.

[FR Doc. 00–8031 Filed 3–30–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–16]

Notice of Submission of Proposed Information Collection to OMB; Public Housing Construction Report

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 1, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2577–0027) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410, e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Public Housing Construction Report.

OMB Approval Number: 2577–0027.

Form Numbers: HUD–5378.

Description Of The Need For The Information and Its Proposed use: Public and Indian Housing are responsible for contract administration during project development and the hiring or architects or other persons licensed under the State law to assist and to advise them. Contract administration includes the submission of Form HUD–5378 to PHAs by the architects or other licensed persons so the PHA can monitor the status of construction.

Respondents: Business or other-for-profit, States, Local or Tribal Government.

Frequency of Submission: Recordkeeping.

Reporting Burden:

	Number of respondents	×	Frequency of Response	×	Hours per response	=	Burden hours
HUD–5378	158		2		.15		568

Total Estimated Burden Hours: 720.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 27, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–8033 3–30–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–17]

Notice of Submission of Proposed Information Collection to OMB; Secondary Market for Non-Conforming Loans to Low Wealth Borrowers

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 1, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0535) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__ Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available document submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Secondary Market Non-Conforming Loans to Low Wealth Borrowers.

OMB Approval Number: 2502–0535.

Description of the Need For The Information and Its Proposed Use: To collect information from grantees (non-profits) to assess their ability to participate in demonstration program. Information will also be collected on a quarterly basis and at the conclusion of the demonstration to assess the outcome of the program.

Respondents: Not-for-profit.

Frequency of Submission: At application, quarterly, at conclusion of demonstration.

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Reporting Burden	36		4		18.3		825

Total Estimated Burden Hours: 825.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995. 44 U.S.C. 35, as amended.

Dated: March 27, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–8034 Filed 3–30–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4561–N–18]

Notice of Submission of Proposed Information Collection to OMB; Single Family Application for Insurance Benefits

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* May 1, 2000.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0429) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, Q, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail Wayne__Eddins@HUD.gov; telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Single Family Application for Insurance Benefits

OMB Approval Number: 2502–0429

Form Numbers: HUD–5378

Description of the Need for the Information and Its Proposed Use: Information collected from mortgages claiming insurance benefits on single family mortgages.

Respondents: Business or Other-for-.

Frequency of Submission: on occasion of a claim.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–5378	8,000		11.25		1.33		119,700

Total Estimated Burden Hours: 119,700 hours

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: March 27, 2000.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 00–8035 Filed 3–30–00; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4557–N–13]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

FOR FURTHER INFORMATION CONTACT: Clifford Taffet, room 7266, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 24 CFR part 581 and section 501 of the Stewart B, McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Brian Rooney, Division of Property Management, Program Support Center, HHS, room 5B–41, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 24 CFR part 581.

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Clifford Taffet at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register,** the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.,* acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: ENERGY: Mr. Tom Knox, Department of Energy, Office of Contract and Resource Management, MA–53, Washington, DC 20585; (202) 586–8715; GSA: Mr. Brian K. Polly, Assistant Commissioner, General Services Administration, Office of Property Disposal, 18th and F Streets, NW, Washington, DC 20405; (202) 501–0052; NAVY: Mr. Charles C. Cocks, Department of the Navy, Director, Real Estate Policy Division, Naval Facilities Engineering Command, Washington Navy Yard, 1322 Patterson Ave., SE, Suite 1000, Washington, DC 20374–5065; (202) 685–9200; (These are not toll-free numbers).

Dated: March 23, 2000.

Fred Karnas, Jr.,

Deputy Assistant Secretary for Special Needs Assistance Programs.

TITLE V. FEDERAL SURPLUS PROPERTY PROGRAM FEDERAL REGISTER REPORT FOR 3/31/00

Suitable/Available Properties

Land (by State)

Idaho

25′ × 100′ Site
1520 N St. & 2290 E St.
Rogerson Co: Twin Falls ID 00000–
Landholding Agency: GSA
Property Number: 54200010007
Status: Unutilized
Comment: Lot too small to meet minimum size for residence, zoning/agriculture, no sewer service.
GSA Number: 9–A–ID–545.

Unsuitable Properties

Buildings (by State)

New Mexico

Bldg. 1, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010029
Status: Unutilized
Reason: Secured Area.

Bldg. 2, TA–8
Los Alamos National Lab
Los Alamos Co: NM 87545–
Landholding Agency: Energy
Property Number: 41200010030
Status: Unutilized
Reasons: Secured Area; Extensive deterioration.

North Carolina

Bldg. TC–817
Camp Lejeune
Camp Lejeune Co: Onslow NC 28542–0004
Landholding Agency: Navy
Property Number: 77200010101
Status: Excess
Reason: Extensive deterioration.

Unsuitable Properties

Buildings (by State)

Washington

Whitney Point Complex
Brinnon Co: Jefferson WA 98320–9899
Landholding Agency: Navy
Property Number: 77200010102
Status: Excess
Reason: Extensive deterioration.

Land (by State)

Washington

Tract B–201
Geiger Heights Lagoon
Spokane Co: WA 99210–
Landholding Agency: GSA
Property Number: 18199930014
Status: Excess
Reason: Within 2000 ft. of flammable or explosive material
GSA Number: 9–D–WA–1180.

[FR Doc. 00–7657 Filed 3–30–00; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice announces that the Information Collection Request for Documented Petitions for Federal Acknowledgment as an Indian Tribe will expire July 31, 2000. As required by the Paperwork Reduction Act of 1995, we are seeking comments on this information collection before we seek extension from the Office of Information and Regulatory Affairs, Office of Management and Budget.

DATES: Submit comments on or before May 30, 2000.

ADDRESSES: Send your written comments to R. Lee Fleming, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs, 1849 C Street, NW, MS–4660 MIB, Washington, D.C. 20240. If you wish to submit comments by facsimile, the number is (202) 219–3008. You may submit comments electronically by contacting R. Lee Fleming at (202) 208–3592. Please mention OMB Number 1076–0104.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information or copies of the information collection submission should be directed to R. Lee Fleming, Chief, Branch of Acknowledgment and Research, Bureau of Indian Affairs, 1849 C Street, NW, MS–4660 MIB, Washington, D.C. 20240, or call (202) 208–3592.

All written comments will be available for public inspection in Room 4660 of the Main Interior Building, 1849 C Street, NW, Washington, D.C. from 9:00 a.m. until 3:00 p.m., Monday through Friday, excluding legal holidays.

SUPPLEMENTARY INFORMATION:

I. Abstract

The information collection is needed to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a government-to-government relationship with the United States. Federal recognition makes the group eligible for benefits from the Federal government.

II. Method of Collection

The acknowledgment regulations at 25 CFR Part 83 contain seven criteria (§ 83.7) which unrecognized groups seeking Federal acknowledgment as Indian tribes must demonstrate that they meet. Information collected from petitioning groups under these regulations provide anthropological, genealogical and historical data used by the Assistant Secretary—Indian Affairs to establish whether a petitioning group has the characteristics necessary to be acknowledged as having a government-to-government relationship with the United States. Respondents are not required to retain copies of information submitted to the Bureau of Indian Affairs but will probably maintain copies for their own use. No periodic reports are required which would impose a record-keeping requirement.

III. Data

Title: Collection of Information for Federal Acknowledgment Under 25 CFR Part 83.

OMB Number: 1076–0104.

Expiration Date: July 31, 2000.

Type of Review: Extension of a currently approved collection.

Affected Entities: Groups petitioning for Federal acknowledgment as Indian tribes.

Estimated Number of Petitioners: 10.

Estimated Time per Petition: 2,075 hours.

Estimated Total Annual Burden Hours: 20,750.

Estimated Annual Costs: $830,000 (2,075 hours × $40.00 per hour).

IV. Request for Comments

You are invited to comment on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information, including the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or the forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record. Individual respondents may request confidentiality. If you wish to

request that we consider withholding your name, street address, and other contact information (such as Internet address, FAX, or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Dated: March 24, 2000.

Kevin Gover.

Assistant Secretary—Indian Affairs.

[FR Doc. 00–8042 Filed 3–30–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding for Federal Acknowledgment of the Paucatuck Eastern Pequot Indians of Connecticut

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary—Indian Affairs proposes to determine that the Paucatuck Eastern Pequot Indians of Connecticut, c/o Ms. Agnes E. Cunha, P.O. Box 370, North Stonington, Connecticut 06359, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the historical Eastern Pequot tribe satisfies criteria 83(b) and 83.7(c) through 1973 and that the petitioner satisfies the remainder of the criteria set forth in 25 CFR 83.7 and, therefore, meets the requirements for a government-to-government relationship with the United States. A specific finding concerning whether one tribe or two tribes, as successors to the historical Eastern Pequot tribe, have occupied the reservation since 1973 will be made as part of the final determination, after receipt of comment on this proposed finding.

DATES: As provided by 25 CFR 83.10(i), any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 180 calendar days from the date of publication of this notice. As stated in the regulations, 25 CFR 83.10(i), interested and informed parties who submit arguments and evidence to the Assistant Secretary must also provide copies of their submissions to the petitioner.

ADDRESSES: Comments on the proposed finding and/or requests for a copy of the report of the summary evaluation of the evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1849 C Street, N.W., Washington, D.C. 20240, Attention: Branch of Acknowledgment and Research. Mail Stop 4660–MIB.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Introduction

The Paucatuck Eastern Pequot Indians of Connecticut submitted a letter of intent to petition for Federal acknowledgment on June 20, 1989, and was assigned #113. Both the Paucatuck Eastern Pequot Indians of Connecticut and another petitioner, the Eastern Pequot Indians of Connecticut, assert descent and tribal continuity from the historical Eastern Pequot tribe. Both petitioners are derived from families which have been associated with the Lantern Hill reservation since the 19th century.

The Assistant Secretary—Indian Affairs (AS–IA) had placed the Eastern Pequot Indians of Connecticut (EP, #35) petition on active consideration January 1, 1998. After consideration and notification of #35 and other petitioners on the "ready, waiting for active consideration" list, the AS–IA on April 2, 1998, waived the priority provisions of 25 CFR § 83.10(d) in order to consider the petition of the Paucatuck Eastern Pequot Indians of Connecticut (Petitioner #113) simultaneously with the petition of the Eastern Pequot Indians of Connecticut (Petitioner #35). This waiver was made under the authority granted to the Secretary in 25 CFR § 1.2, and delegated to the Assistant Secretary in 290 DM 8.1, based on a finding that the waiver was in the best interest of the Indians.

This finding has been completed under the terms of the AS–IA's directive of February 7, 2000, published in the **Federal Register** on February 11, 2000 (65 FR 7052). Under the terms of the directive, this finding focuses on evaluating the specific conclusions and description of the group presented by the petitioner to show that it has met the seven mandatory criteria and maintained a tribal community up until the present. Because evaluation of this petition was begun under the previous internal procedures, this finding includes some analyses which go beyond evaluation of the specific positions of the petitioner. Consistent with the directive, draft technical reports, begun under previous internal procedures, were not finalized.

The evaluation of these petitions pertains to Indian groups which have had both continuous recognition by the State of Connecticut and continuous existence of a state reservation since the colonial period. These unique factors provide a defined thread of continuity through periods when other forms of documentation are sparse or do not pertain directly to a specific criterion. State recognition under these circumstances is more than the identification of an entity, because it reflects the existence of a tribe. The general body of evidence has been interpreted in the context of the tribe's relationship to the colony and state.

The Paucatuck Eastern Pequot and Eastern Pequot petitioners are the continuation of a historically state-recognized tribe whose relationship with the State of Connecticut goes back to the early 1600's, possessing a common reservation. Members of the tribe occupied a somewhat different status than non-Indians within Connecticut. This evidence provides a common backbone and consistent backdrop for interpreting the evidence of continued tribal existence. When weighed in combination with this historical and continuous existence, evidence on community and political influence carries greater weight that would be the case under circumstances where there was no evidence of a longstanding relationship with the state based on being a distinct community. The greater weight is assigned for the following reasons in combination:

The historical Eastern Pequot tribe has maintained a continuous historical government-to-government relationship with the State of Connecticut since colonial times;

The historical Eastern Pequot tribe had a state reservation established in colonial times, and has retained its land area under the protection and administration of the state to the present;

The historical Eastern Pequot tribe had members enumerated specifically as tribal members on the Federal Census, Special Indian Population Schedules, for 1900 and 1910.

Past Federal acknowledgment decisions under 25 CFR Part 83 provide no precedents for dealing with a tribe which is presently state recognized with a state reservation and has been so continuously since early colonial times. The closest parallel is the Penobscot and Passmaquoddy Tribes of Maine. The Federal Government in the *Passmaquoddy* case stipulated to tribal existence, based on the historical state relationship (*Joint Tribal Council of the Passmaquoddy Tribe* v. *Morton* 528 F.2d 370 (1st Cir. 1975)). That precedent provides guidance in this matter. A different standard of tribal existence is not being applied here. Rather, the evidence, when weighed in the context of this continuous strong historical relationship, carries greater weight.

Evaluation Under the Criteria in 25 CFR 83.7

Criterion 83.7(a) requires that the petitioner have been identified as an American Indian entity on a substantially continuous basis since 1900. The majority of the external identifications specifically included the petitioner's direct or collateral ancestors as members of that entity. There were no external identifications of the entity as other than Indian or other than Eastern Pequot. From the 1970's through the present, almost no external identifications mentioned the existence of only one or the other of the two current petitioners. Almost every identification mentioned both and described them as rival groups within the context of the Lantern Hill reservation and the historical Eastern Pequot tribe.

In this case, identifications of the petitioner exist frequently and appear concurrently in multiple forms of evidence. Briefly, examples include Federal identifications on the Special Indian Population schedules of the 1900 and 1910 census, a 1934 Bureau of Indian Affairs report, and two reports in 1947 and 1948 published by the Government Printing Office; records generated by a continuous relationship with the State including overseer's reports, documents generated by the State Parks and Forests Commission, documents generated by the Office of the Commissioner of Welfare and Department of Environmental Protection, documents generated by the Connecticut Indian Affairs Council, and legislation pertaining to Connecticut's tribes; descriptions by anthropologists and other scholars; and numerous descriptive, feature-type newspaper articles from 1924 to the present. A significant example of identification of the Eastern Pequot was the June 9, 1933, order from the Superior Court of New London County, Connecticut, which defined the tribal membership and regulated residency on the Lantern Hill reservation (In re Ledyard Tribe 1933) (3/26/1938).

The combination of the various forms of evidence, taken in historical context, provides sufficient external identification of the Eastern Pequot as an American Indian entity from 1900 until the present, and of the petitioner as a group which has existed within that entity. Therefore, the petitioner meets criterion 83.7(a).

The evidence for 83.7(b) and 83.7(c) have been evaluated in the light of the essential requirement of the Federal acknowledgment regulations under 83.7 to show tribal continuity. Particular documents are evaluated by examination in the context of evidence of continuity of existence of community and political processes over time and descent from the historical tribe. For earlier historical periods, where the nature of the record limits the documentation, the continuity can be seen more clearly by looking at combined evidence than by attempting to discern whether an individual item provides the level of information to show that the petitioner meets a specific criterion at a certain date. Between first sustained contact and 1883 much of the specific evidence cited is evidence for both community and political influence. Under the regulations, evidence about historical political influence can be used as evidence to establish historical community (83.7(b)(1)(ix)) and vice versa (83.7(c)(1)(iv)). The evaluation is done in accord with the provision of the regulations provide that, "Evaluation of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available. * * * Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time." (83.6(e)).

This proposed finding and that being issued simultaneously for petitioner #35 conclude that both of the petitioners before the Department, the Paucatuck Eastern Pequot Indians of Connecticut (#113) and the Eastern Pequot Indians of Connecticut (#35), have evolved in recent times from the historical Eastern Pequot tribe which has existed continuously since first sustained contact with Europeans. Positive proposed findings to acknowledge both petitioners are therefore being issued. However, for the period from 1973 to the present, with regard to criteria 83.7(b) and 83.7(c), the Department finds that the petitioners and third parties have not provided sufficient information and analysis to enable the Department to determine that there is only one tribe with political factions.

The acknowledgment regulations provide that: "A petitioner may be denied acknowledgment if the evidence available demonstrates that it does not meet one or more criteria. A petitioner may also be denied if there is insufficient evidence that it meets one or more of the criteria" (83.6(d)). The reason that this provision of the regulations is not now resulting in two proposed negative findings is that the major question currently remaining to be decided does not pertain to the availability of evidence that the petitioners meet the criteria, but to the nature of the potentially acknowledgeable entity for the period from 1973 to the present. Following an evaluation of evidence and argument submitted during the comment period, the Department, as part of the final determination, will complete the analysis from 1973 to the present under criteria 83.7(b) and (c).

There is no serious dispute as to the existence of the historical Pequot tribe at the time of first contact, so the proposed finding has discussed and analyzed early colonial developments only insofar as they provide context for the development of the current petitioners. The division of the historical Pequot tribe into the modern Eastern and Western groups stemmed from the establishment of separate reservations, in close (less than two miles from one another) geographic proximity, during the later 17th century. There is no question that the Eastern Pequot, or Lantern Hill reservation, purchased by the Colony of Connecticut for the use of the Pequots under the leadership of Mamoho in 1683, has continued to exist under Connecticut state supervision and jurisdiction, and to be inhabited, until the present day.

Criterion 83.7(b) requires that a predominant portion of the petitioning community comprise a distinct community and have existed as a community from historical times until the present.

Records of colony actions and actions of other tribes from first contact through 1637 clearly identify a distinct Pequot tribal body, which occupied a defined territory acted in concert in opposing or making alliances with other tribes and the English through the end of the Pequot War. Under precedents for

evaluating tribes in early years of contact with Europeans, before substantial cultural and political changes had occurred (Narragansett PF 1982, 1; Mohegan PF 1989, 2; Miami PF 1990, 3–4, 7–8), this is sufficient evidence to demonstrate that 83.7(b) is met for the undifferentiated historical Pequot tribe as a whole, predecessor group to the later historical Eastern Pequot tribe, for the period prior to 1637.

From 1638 through 1654, the records of the United Colonies referred to the Pequots frequently and specifically referred to the Pequots assigned to the custody of the Eastern Niantic sachem Ninigret. The Commissioners of the United Colonies removed them from Ninigret as a body in 1654 and assigned Harmon Garret as governor over that body in 1655. After the death of Harmon Garret, colonial authorities appointed Momoho as his successor over a specific, named, group, "Momohoe [sic] and the Pequots with him in those parts," which then undertook efforts to have a specific piece of land set aside for its use (Hurd 1882, 32; Wheeler 1887, 16; Trumbull 1859, 8n, 81–82 117n, 809). Under precedents for evaluating tribes in early years of contact with Europeans, before substantial cultural changes had occurred, even after tribes had become politically subject to colonial authorities, the material cited is sufficient evidence to show that criterion 83.7(b) is met.

From the establishment of the Lantern Hill reservation in 1685 to the end of the Civil War, the documents show a continuous reservation community, with a distinct land base. There was an essentially continuous population, allowing for normal processes of inmarriage, outmarriage, off-reservation work, and interaction with neighboring tribes.

Petitions in 1723 and 1749 reflected both the existence of an ongoing residential community of Eastern Pequot Indians on the Lantern Hill reservation and a broader community of off-reservation Eastern Pequot. Descriptions in 1749–1751 indicate specifically that the tribal affiliation of these individuals was recognized by the tribe itself. That off-reservation residency does not negate the existence of community has been established by precedent in prior findings (Narragansett PF 1982, 9; Gay Head PF 1985, 2).

Community in the late 18th and 19th centuries is shown by a variety of evidence. This included petitions from the group to the overseers, the consistency of membership in the tribe, descriptions of a distinct community at several points and other data which taken together show a distinct community which self-identified as Pequot. A portion of the group occupied the reservation continuously. Occupation of a distinct territory by a portion of a group provides evidence for community, even where it is not demonstrated that more than 50 percent of the total group resides thereon (Snoqualmie PF). By comparing a wide variety of documents, it does not appear that in the colonial and early Federal period the Eastern Pequot tribe, or its overseers, added to the membership lists any persons who were not qualified to be included and who were not accepted by the continuing tribal population. Documentation throughout this period contributes to a showing of community under 83.7(b)(1)(vii), "The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes of name," whether they are called Momoho's band, or the Pequots at Stonington, or by other phrases.

From the end of the Civil War through the early 1880's, the overseers' reports were highly consistent in their listing of Eastern Pequot individuals associated with the Lantern Hill reservation. Consistency of membership by itself does not demonstrate community but provides supporting evidence when weighed together, as here, with other factors.

At a number of points from 1763 through 1883, the Eastern Pequot presented petitions to the state, indicating a coordinated group action. Because the community as a whole, throughout this period, had a residential focus on the reservation, and maintained a very high rate of intermarriage and patterned outmarriage, particularly with the Western Pequot and with the Narragansett, the Eastern Pequot tribe meets criterion 83.7(b) for the period through 1883.

Additional evidence for community until the 1930's is found in the overseers' reports, although these were not available for the years between 1891 and 1910. The overseers were knowledgeable observers of the group, because of their interaction with it. Allegations by petitioner #113 and the third parties that the overseers were not knowledgeable, or were corrupt, were not sustained by the body of data in the record. Although their reports provide few details, they are premised, particularly the identification of who was and who was not a member, on knowledge that a social group existed.

The Eastern Pequot tribe as a whole, including the ancestors of petitioner #113 as well as petitioner #35, meets the requirements of criterion 83.7(b) between 1883 and 1920. Important evidence for this is the kinship based social ties which derive from the substantial number of marriages in existence in this time period which linked the several family lines. Between 1880 and 1920 the Pequot family lines were linked together both by extant marriages and by ties from marriages in the preceding two generations. They formed a set of families linked by many different kinship ties. In addition, because marriages occurred between Eastern Pequot individuals who were not living in the same town, this provides evidence that social contact was being maintained, and was the basis for locating marriage partners. The documentation throughout the period from 1883 to the 1920's shows "The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes of name" evidence for community under 83.7(b)(1)(vii).

Supporting evidence to that based on kinship is the geographical concentration of much of the membership on or near the reservation at Lantern Hill. While not forming a distinct settlement, except for the small proportion living on the reservation, much of the membership was close enough that, consistent with past decisions, social interaction was easily possible. This geographical pattern thus supports more direct evidence of social ties.

The Eastern Pequot meet the requirements of criterion 83.7(b) for the time period between 1920 and 1940. There continued to be kinship based social ties which derived from the number of marriages in existence in this time period which linked the several family lines and from marriages in the previous generations. In this period also, that evidence is supplemented by the substantial number of marriages with neighboring tribes, particularly the Narragansett. These provide additional evidence that the group was part of the Indian society of the region.

Important additional evidence for community were the "Fourth Sunday" gatherings on the reservation. These were held regularly, and drew a substantial number of members, from different parts of the several family lines. They were both social and political gatherings, and were claimed as activities by both petitioners.

Supporting evidence to that based on kinship and the "Fourth Sunday" gatherings for this time period is that there continued to be a geographical concentration of much of the membership on or near the reservation at Lantern Hill. While not forming a distinct settlement, except for the small proportion living on the reservation, much of the membership was still close enough that, consistent with precedents of past decisions, social interaction was easily possible. This geographical pattern thus supports more direct evidence of social ties.

Additional evidence for community is found in the overseers' reports, which was useful evidence until 1936, when the overseer system ended, and to a lesser extent through the end of the 1930's, as the former overseer continued to act as agent for the State Park and Forests Commission. Although their reports provide few details, they are premised, particularly the identification of who was and who was not a member, on knowledge that a social group existed.

As evaluated under the standard articulated for a historical state recognized tribe, the petitioner meets criterion 83.7(b) from 1940 to 1973, based on the conclusion that there was a single community, including the Sebastians. Although there is evidence of divisions, there was not evidence to show whether and, if so, when, the historical tribe separated into two communities.

There is insufficient evidence in the record to enable the Department to determine that the petitioners formed a single tribe after 1973. The Department consequently makes no specific finding for the period 1973 to the present because there were not sufficient analysis and information provided by the petitioners or third parties to determine if there is only one tribe with political factions (see for example, *Paucatuck Eastern Pequot Indians of Connecticut et al.* v. *Connecticut Indian Affairs Council et al.* 555 A.2d 1003 (App. Ct. 1989), decided March 28, 1989, which describes each current petitioner as a "faction of the tribe"). This question reflects in part the apparent recentness of the political alignments reflected in the petitioners after their formal organization in the early 1970's.

The historical Eastern Pequot tribe, which includes the petitioner as one of its component subgroups, meets criterion 83.7(b) through 1973. A specific finding concerning community from 1973 until the present will be presented in the final determination after receipt of comments from the petitioner and interested parties.

Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

Throughout its history, the context for administration of the Lantern Hill reservation has been set by the legislation passed by Connecticut and the administrative systems established by that legislation. The documents generated showed tribe's external relationship with the non-Indian administrative authorities, providing evidence that there was a political relationship between an Indian political entity and the non-Indian government, although they provided little information about internal political processes. These individual political documents have been interpreted in light of the general continuity of the reservation population as shown by a wide variety of other documents. The major specific evidence for political authority or influence between first sustained contact and 1883 is to be read together with the overall evidence of tribal existence and the discussion of the evidence for criterion 83.7(b).

The evidence submitted for the early contact period, 1620–1637, consisted primarily of historical narratives, written mainly by modern anthropologists based in part on colonial era documents which described dealings with the tribe by the colonial authorities and listed some leaders. Precedent does not required detailed information concerning the internal political processes of the historical tribes which were predecessors of New England petitioners in the early contact period (Narragansett PF 1982, 11; Gay Head PF 1987, 10; Mohegan PF 1989, 5). This material meets 83.7(c) for the undifferentiated historical Pequot tribe as a whole, predecessor group to the later historical Eastern Pequot tribe, for the period prior to 1637.

The evidence indicates that the modern Eastern Pequot evolved primarily from those Pequot subject neither to the Mohegan nor the Narragansett after the Pequot War, but rather those who were placed in charge of the Eastern Niantic. The precedents clearly indicate that the acknowledgment process allows for the historical combination and division of tribal subgroups and bands, and that temporary subjection to another Indian tribe does not result in a permanent cessation of tribal autonomy (Mohegan PF 1989, 26–27; Narragansett FD, 48 **Federal Register** 29 2/10/1983, 6177; Narragansett PF 1982, 2). The events of this period do not indicate that the petitioner fails to meet the "autonomous entity" requirement under 83.7(c).

Historical records and narratives indicate that for approximately 330 years, the predecessors of the Eastern Pequot tribe antecedent to the current petitioners were under supervision of non-Indian authorities, appointed Indian governors from 1655 to 1695 and under colony-appointed and state-appointed non-Indian overseers through much of the 18th through the 20th centuries. From its establishment in 1683 until 1989, the Eastern Pequot reservation was under the direct administration of Connecticut, first as a British colony and then, after the American Revolution, as a state. The AS-IA concluded in the Mohegan case that: "[T]he autonomy requirement is solely concerned with autonomy from other Indian tribes, not non-Indian systems of government that were imposed on the Mohegan by the State of Connecticut." (Mohegan PF 1989, 26–27; for related precedents, see Narragansett PF 1982, 11; Narragansett PF 1982, 2; Gay Head PF, 4). The petitioners meet the "autonomy" requirement of 83.7(c) as long as the state was dealing with a group as a group which had named leaders or the evidence shows that the group was acting in concert and thus was exercising political influence internally.

Documents from the period through 1751 named the leaders with whom the colony of Connecticut was dealing and provided limited information concerning internal political processes identifying both a leader and the existence of a group actively defending its land base.

Precedents also indicate that the defense of a tribe's economic position is a significant indicator of political processes (Snoqualmie PF 1993, 25; Tunica-Biloxi PF 1980, 4). On the basis of precedent, this material is adequate to meet 83.7(c) during the colonial period.

After 1751, there is no evidence in Eastern Pequot petitions that any one individual held the position of sachem, or a comparable office. Precedent indicates no requirement under the regulations that such a formal office has been maintained (Mohegan PF 1989, 5), and the petitions from the tribe to the colony and stated indicate that the tribe did maintain some type of political structure capable of representing its wishes in dealing with colonial authorities. The appointment of overseers for the Eastern Pequot reservation by the colony of Connecticut in itself provides data about the continuous existence of the tribal entity, but no specific information about internal political leadership or

influence. However, the initiative of the Eastern Pequot Indians in requesting particular persons as overseers in 1763 and 1788, combined with the signatures on the petitions, indicates that the Indians on the Lantern Hill reservation at this time did have internal political processes and that they utilized the overseers appointed by the state to serve certain purposes which they themselves desired. On the basis of precedent, this material is adequate to meet 83.7(c) for a tribe during the second half of the 18th century.

The evidence of petitions from overseers for group purposes, together with accounts which identified "principal men" and a religious leader, in the context of a group with a distinct territory, is adequate to show that the petitioner meets criterion 83.7(c) for the period from 1800 to 1822.

Petitions from the group in 1839 and 1841, sought the appointment of a new overseer and objected to the actions of the existing one. The 1839 initiative of the Indians in requesting the replacement of an inadequate overseer indicated that the Indians themselves still, as in the later 18th century, expected the state-appointed overseers as agents to carry out their wishes in some matters. Of the four men who signed, two (Cyrus Shelly and Samuel Shuntaup) had been identified as "principal men" of the Eastern Pequot by Jedediah Morse nearly 20 years earlier. The regulations do not require that in order to demonstrate political process, a petition must be signed by the entire tribe. Petitions which show a portion of the tribe expressing an opinion or preference are also evidence of political process (Mohegan PF 1989, 6).

Petitions and lists generated by a proposed sale of reservation land are evidence indicating that from 1873 through 1883 the tribe was able to generate organized protests against a governmental initiative which they regarded as contrary to its economic interests, and to present documents to this effect to the non-Indian authorities. This evidence shows that the petitioner meets 83.7(c) for the period from 1873–1883.

There was no information in the record which specifically named or identified formal or informal leaders between 1883 and 1920 with the single exception of a 1913 obituary of Calvin Williams, a petition signer from the 1870's and early 1880's, who continued to serve as reservation preacher until his death in 1913. There is evidence from oral history and some records that he may have continued as tribal preacher, holding religious and social meetings on the reservation in the first decade of the 20th century. Under the regulations, evidence about community may be used as supporting evidence to demonstrate political processes, especially where a community is closely knit and distinct (see 83.7(c)(1)(iv)). Given the extensive intermarriage within the tribe and with neighboring tribes, the petitioner has strong evidence demonstrating community in this time period. The evidence is sufficient to demonstrate that criterion 83.7(c) is met between 1883 and 1920 as evaluated under the principle that it is entitled to greater weight because the petitioners are, singly and together, a continuously existing state-recognized tribe and with a continuous land base since colonial times.

The amount of data concerning political authority and influence in the record overall, including conflicts between the two groups, is considerably more extensive than that relating to internal political processes within petitioner #113 alone. As evaluated under the standard articulated for a historical state recognized tribe, the petitioner meets criterion 83.7(c) from 1883 to 1973, based on the conclusion that there was a single tribe, the entirety of whose actions reflected political influence, including the Gardners as one subgroup.

Because the two petitioners derive from a single historical tribe with a continuous state relationship since colonial times, the conflicts between the two, which have focused on their relationship with the State of Connecticut, are relevant evidence for political influence. However, it is unclear if the conflict is within one tribe, or between two. Both groups derive from the historical Eastern Pequot tribe which was recognized by the State of Connecticut. The State continues to recognize a successor to the historical Eastern Pequot tribe, but has not taken a position as to the present leaders of that successor. The petitioners and third parties have failed to provide adequate evidence and analysis to permit the Department to determine if the political processes since 1973 are those of factions of one tribe.

There are insufficient evidence and analysis in the record to enable the Department to determine that the petitioners formed a single tribe in this time period. The Department consequently makes no specific finding for the period 1973 to the present because there was not sufficient information to determine if there is only one tribe with political factions (see for example, *Paucatuck Eastern Pequot Indians of Connecticut et al.* v. *Connecticut Indian Affairs Council et al.* 555 A.2d 1003 (App. Ct. 1989), decided March 28, 1989, which describes each current petitioner as a "faction of the tribe"). This question reflects in part the apparent recentness of the political alignments reflected in the petitioners after their formal organization in the early 1970's.

The historical Eastern Pequot tribe, which includes the petitioner as one of its component subgroups, meets criterion 83.7(c) through 1973. A specific finding concerning political influence from 1973 until the present will be presented in the final determination after receipt of comments from the petitioner and interested parties.

Criterion 83.7(d) requires that the petitioner provide copies of the group's current constitution and by-laws. The Paucatuck Eastern Pequot petitioner meets criterion 83.7(d).

Criterion 83.7(e) states that the petitioner's membership must consist of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. Extensive genealogical material submitted by the petitioner, by petitioner #35, and by the third parties indicates that the petitioner's current members are descendants of Marlboro and Eunice (Wheeler) Gardner and of Rachel (Hoxie) Jackson. As those individuals were, during their lives, members of the Eastern Pequot tribe as ascertained by evidence acceptable to the Secretary, the descendants of these individuals descend from the historical tribe.

The lines of descent for individual families have been verified through Federal census records from 1850 through 1920; public vital records of births, marriages, and deaths; and to a lesser extent through church records of baptisms, marriages, and burials, as well as through use of state records concerning the Lantern Hill reservation. These are the same types of records which have been used to verify descent for prior Federal acknowledgment decisions. Therefore, the petitioner meets criterion 83.7(e).

Criterion 83.7(f) states that the petitioner's membership must be composed principally of persons who are not members of any acknowledged North American Indian tribe. The Paucatuck Eastern Pequot petitioner meets criterion 83.7(f).

Criterion 83.7(g) states that neither the petitioner nor its members can have been the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The Paucatuck Eastern Pequot petitioner meets criterion 83.7(g).

Based on this preliminary factual determination, the Paucatuck Eastern Pequot Indians of Connecticut, should be granted Federal acknowledgment under 25 CFR Part 83.

This positive proposed finding for the Paucatuck Eastern Pequot and the positive proposed finding for the Eastern Pequot petitioner which is being issued simultaneously do not prevent the Department, in the final determination stage, from recognizing a combined entity, or both petitioners, or either one of the current petitioners but not the other, or neither of the current petitioners, depending upon the evidence and analysis developed during the comment periods by both petitioners and all interested and informed parties, as verified and evaluated by Bureau of Indian Affairs staff.

As provided by 25 CFR 83.10(h) of the regulations, a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision will be provided to the petitioner and interested parties, and is available to other parties upon written request. Under the Assistant Secretary's directive, the technical report prepared in addition to this summary evaluation report of the evidence will not be completed but will remain in draft.

Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, Bureau of Indian Affairs, 1849 C Street, N.W., Washington, D.C. 20240, Attention: Branch of Acknowledgment and Research, Mail Stop 4660–MIB. Comments on the proposed finding should be submitted within 180 calendar days from the date of publication of this notice. The period for comment on a proposed finding may be extended for up to an additional 180 days at the Assistant Secretary's discretion upon a finding of good cause (83.10(i)). Comments by interested and informed parties must be provided to the petitioner as well as to the Federal Government (83.10(h)). After the close of the 180-day comment period, and any extensions, the petitioner has 60 calendar days to respond to third-party comments (83.10(k)). This period may be extended at the Assistant Secretary's discretion if warranted by the extent and nature of the comments.

The proposed finding takes into consideration only materials from the petitioner and all interested parties submitted through April 5, 1999. Subsequent submissions have been held by the Bureau of Indian Affairs and will be considered during preparation of the final determination.

In addition to evidence and argument on the proposed findings in general, petitioners, interested parties and informed parties may submit comments as to the Secretary's authority, under the circumstances of recent separation of the two petitioners, to acknowledge two tribes or only one tribe which encompasses them both as the continuation of the historical tribe.

After the expiration of the comment and response periods described above, the Bureau of Indian Affairs will consult with the petitioner concerning establishment of a time frame for preparation of the final determination. After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after beginning preparation of the final determination, the Assistant Secretary—Indian Affairs will publish the final determination of the petitioner's status in the **Federal Register** as provided in 25 CFR 83.10(1).

Dated: March 24, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–8040 Filed 3–30–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Proposed Finding for Federal Acknowledgment of the Eastern Pequot Indians of Connecticut

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: Pursuant to 25 CFR 83.10(h), notice is hereby given that the Assistant Secretary—Indian Affairs proposes to determine that the Eastern Pequot Indians of Connecticut, Holly Green Plaza Unit 2A East, 391 Norwich Westerly Road, PO Box 208, North Stonington, Connecticut 06359, c/o Ms. Mary E. Sebastian, exists as an Indian tribe within the meaning of Federal law. This notice is based on a determination that the historical Eastern Pequot tribe satisfies criteria 83(b) and 83.7(c) through 1973 and that the petitioner satisfies the remainder of the criteria set forth in 25 CFR 83.7 and, therefore, meets the requirements for a government-to-government relationship with the United States. A specific finding concerning whether one tribe or two tribes, as successors to the historical Eastern Pequot tribe, have occupied the reservation since 1973 will be made as part of the final determination, after receipt of comment on this proposed finding.

DATES: As provided by 25 CFR 83.10(i), any individual or organization wishing to challenge the proposed finding may submit factual or legal arguments and evidence to rebut the evidence relied upon. This material must be submitted within 180 calendar days from the date of publication of this notice. As stated in the regulations, 25 CFR 83.10(i), interested and informed parties who submit arguments and evidence to the Assistant Secretary must also provide copies of their submissions to the petitioner.

ADDRESSES: Comments on the proposed finding and/or requests for a copy of the report of the summary evaluation of the evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, 1849 C Street, N.W., Washington, D.C. 20240, Attention: Branch of Acknowledgment and Research. Mail Stop 4660–MIB.

FOR FURTHER INFORMATION CONTACT: R. Lee Fleming, Chief, Branch of Acknowledgment and Research, (202) 208–3592.

SUPPLEMENTARY INFORMATION: This notice is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Introduction

The Eastern Pequot Indians of Connecticut submitted a letter of intent to petition for Federal acknowledgment on June 28, 1978, and was assigned #35. Both the Eastern Pequot Indians of Connecticut and another petitioner, the Paucatuck Eastern Pequot Indians of Connecticut, assert descent and tribal continuity from the historical Eastern Pequot tribe. Both petitioners are derived from families which have been associated with the Lantern Hill reservation since the 19th century.

The Assistant Secretary—Indian Affairs (AS–IA) placed the Eastern Pequot Indians of Connecticut (EP, #35) petition on active consideration January 1, 1998. After consideration and notification of #35 and other petitioners on the "ready, waiting for active consideration" list, the AS–IA on April 2, 1998, waived the priority provisions of 25 CFR 83.10(d) in order to consider the petition of the Paucatuck Eastern Pequot Indians of Connecticut (Petitioner #113) simultaneously with the petition of the Eastern Pequot Indians of Connecticut (Petitioner #35). This waiver was made under the authority granted to the Secretary in 25 CFR 1.2, and delegated to the Assistant

Secretary in 290 DM 8.1, based on a finding that the waiver was in the best interest of the Indians.

This finding has been completed under the terms of the AS–IA's directive of February 7, 2000, published in the **Federal Register** on February 11, 2000 (65 FR 7052). Under the terms of the directive, this finding focuses on evaluating the specific conclusions and description of the group presented by the petitioner to show that it has met the seven mandatory criteria and maintained a tribal community up until the present. Because evaluation of this petition was begun under the previous internal procedures, this finding includes some analyses which go beyond evaluation of the specific positions of the petitioner. Consistent with the directive, draft technical reports, begun under previous internal procedures, were not finalized.

The evaluation of these petitions pertains to Indian groups which have had both continuous recognition by the State of Connecticut and continuous existence of a state reservation since the colonial period. These unique factors provide a defined thread of continuity through periods when other forms of documentation are sparse or do not pertain directly to a specific criterion. State recognition under these circumstances is more than the identification of an entity, because it reflects the existence of a tribe. The general body of evidence has been interpreted in the context of the tribe's relationship to the colony and state.

The Eastern Pequot and Paucatuck Eastern Pequot petitioners are the continuation of a historically state-recognized tribe whose relationship with the State of Connecticut goes back to the early 1600's, possessing a common reservation. Members of the tribe occupied a somewhat different status than non-Indians within Connecticut. This evidence provides a common backbone and consistent backdrop for interpreting the evidence of continued tribal existence. When weighed in combination with this historical and continuous existence, evidence on community and political influence carries greater weight that would be the case under circumstances where there was no evidence of a longstanding relationship with the state based on being a distinct community. The greater weight is assigned for the following reasons in combination:

The historical Eastern Pequot tribe has maintained a continuous historical government-to-government relationship with the State of Connecticut since colonial times;

The historical Eastern Pequot tribe had a state reservation established in colonial times, and has retained its land area under the protection and administration of the state to the present;

The historical Eastern Pequot tribe had members enumerated specifically as tribal members on the Federal Census, Special Indian Population Schedules, for 1900 and 1910.

Past Federal acknowledgment decisions under 25 CFR Part 83 provide no precedents for dealing with a tribe which is presently state recognized with a state reservation and has been so continuously since early colonial times. The closest parallel is the Penobscot and Passmaquoddy Tribes of Maine. The Federal Government in the *Passmoquoddy* case stipulated to tribal existence, based on the historical state relationship (*Joint Tribal Council of the Passmaquoddy Tribe* v. *Morton* 528 F.2d 370 (1st Cir. 1975)). That precedent provides guidance in this matter. A different standard of tribal existence is not being applied here. Rather, the evidence, when weighed in the context of this continuous strong historical relationship, carries greater weight.

Evaluation Under the Criteria in 25 CFR 83.7

Criterion 83.7(a) requires that the petitioner have been identified as an American Indian entity on a substantially continuous basis since 1900. The majority of the external identifications specifically included the petitioner's direct or collateral ancestors as members of that entity. There were no external identifications of the entity as other than Indian or other than Eastern Pequot. From the 1970's through the present, almost no external identifications mentioned the existence of only one or the other of the two current petitioners. Almost every identification mentioned both and described them as rival groups within the context of the Lantern Hill reservation and the historical Eastern Pequot tribe.

In this case, identifications of the petitioner exist frequently and appear concurrently in multiple forms of evidence. Briefly, examples include Federal identifications on the Special Indian Population schedules of the 1900 and 1910 census, a 1934 Bureau of Indian Affairs report, and two reports in 1947 and 1948 published by the Government Printing Office; records generated by a continuous relationship with the State including overseer's reports, documents generated by the State Parks and Forests Commission, documents generated by the Office of the Commissioner of Welfare and Department of Environmental Protection, documents generated by the Connecticut Indian Affairs Council, and legislation pertaining to Connecticut's tribes; descriptions by anthropologists and other scholars; and numerous descriptive, feature-type newspaper articles from 1924 to the present. A significant example of identification of the Eastern Pequot was the June 9, 1933, order from the Superior Court of New London County, Connecticut, which defined the tribal membership and regulated residency on the Lantern Hill reservation (In re Ledyard Tribe 1933) (3/26/1938).

The combination of the various forms of evidence, taken in historical context, provides sufficient external identification of the Eastern Pequot as an American Indian entity from 1900 until the present, and of the petitioner as a group which has existed within that entity. Therefore, the petitioner meets criterion 83.7(a).

The evidence for 83.7(b) and 83.7(c) have been evaluated in the light of the essential requirement of the Federal acknowledgment regulations under 83.7 to show tribal continuity. Particular documents are evaluated by examination in the context of evidence of continuity of existence of community and political processes over time and descent from the historical tribe. For earlier historical periods, where the nature of the record limits the documentation, the continuity can be seen more clearly by looking at combined evidence than by attempting to discern whether an individual item provides the level of information to show that the petitioner meets a specific criterion at a certain date. Between first sustained contact and 1883 much of the specific evidence cited is evidence for both community and political influence. Under the regulations, evidence about historical political influence can be used as evidence to establish historical community (83.7(b)(1)(ix)) and vice versa (83.7(c)(1)(iv)). The evaluation is done in accord with the provision of the regulations provide that, "Evaluation of petitions shall take into account historical situations and time periods for which evidence is demonstrably limited or not available. * * * Existence of community and political influence or authority shall be demonstrated on a substantially continuous basis, but this demonstration does not require meeting these criteria at every point in time." (83.6(e)).

This proposed finding and that being issued simultaneously for petitioner #113 conclude that both of the petitioners before the Department, the Eastern Pequot Indians of Connecticut (#35) and the Paucatuck Eastern Pequot Indians of Connecticut (#113), have evolved in recent times from the historical Eastern Pequot tribe which has existed continuously since first sustained contact with Europeans. Positive proposed findings to acknowledge both petitioners are therefore being issued. However, for the period from 1973 to the present, with regard to criteria 83.7(b) and 83.7(c), the Department finds that the petitioners and third parties have not provided sufficient information and analysis to enable the Department to determine that there is only one tribe with political factions.

The acknowledgment regulations provide that: "A petitioner may be denied acknowledgment if the evidence available demonstrates that it does not meet one or more criteria. A petitioner may also be denied if there is insufficient evidence that it meets one or more of the criteria" (83.6(d)). The reason that this provision of the regulations is not now resulting in two proposed negative findings is that the major question currently remaining to be decided does not pertain to the availability of evidence that the petitioners meet the criteria, but to the nature of the potentially acknowledgeable entity for the period from 1973 to the present. Following an evaluation of evidence and argument submitted during the comment period, the Department, as part of the final determination, will complete the analysis from 1973 to the present under criteria 83.7(b) and (c).

There is no serious dispute as to the existence of the historical Pequot tribe at the time of first contact, so the proposed finding has discussed and analyzed early colonial developments only insofar as they provide context for the development of the current petitioners. The division of the historical Pequot tribe into the modern Eastern and Western groups stemmed from the establishment of separate reservations, in close (less than two miles from one another) geographic proximity, during the later 17th century. There is no question that the Eastern Pequot, or Lantern Hill reservation, purchased by the Colony of Connecticut for the use of the Pequots under the leadership of Mamoho in 1683, has continued to exist under Connecticut state supervision and jurisdiction, and to be inhabited, until the present day.

Criterion 83.7(b) requires that a predominant portion of the petitioning community comprise a distinct community and have existed as a community from historical times until the present.

Records of colony actions and actions of other tribes from first contact through 1637 clearly identify a distinct Pequot tribal body, which occupied a defined territory acted in concert in opposing or making alliances with other tribes and the English through the end of the Pequot War. Under precedents for evaluating tribes in early years of contact with Europeans, before substantial cultural and political changes had occurred (Narragansett PF 1982, 1; Mohegan PF 1989, 2; Miami PF 1990, 3–4, 7–8), this is sufficient evidence to demonstrate that 83.7(b) is met for the undifferentiated historical Pequot tribe as a whole, predecessor group to the later historical Eastern Pequot tribe, for the period prior to 1637.

From 1638 through 1654, the records of the United Colonies referred to the Pequots frequently and specifically referred to the Pequots assigned to the custody of the Eastern Niantic sachem Ninigret. The Commissioners of the United Colonies removed them from Ninigret as a body in 1654 and assigned Harmon Garret as governor over that body in 1655. After the death of Harmon Garret, colonial authorities appointed Momoho as his successor over a specific, named, group, "Momohoe [sic] and the Pequots with him in those parts," which then undertook efforts to have a specific piece of land set aside for its use (Hurd 1882, 32; Wheeler 1887, 16; Trumbull 1859, 8n, 81–82 117n, 809). Under precedents for evaluating tribes in early years of contact with Europeans, before substantial cultural changes had occurred, even after tribes had become politically subject to colonial authorities, the material cited is sufficient evidence to show that criterion 83.7(b) is met.

From the establishment of the Lantern Hill reservation in 1685 to the end of the Civil War, the documents show a continuous reservation community, with a distinct land base. There was an essentially continuous population, allowing for normal processes of inmarriage, out marriage, off-reservation work, and interaction with neighboring tribes.

Petitions in 1723 and 1749 reflected both the existence of an ongoing residential community of Eastern Pequot Indians on the Lantern Hill reservation and a broader community of off-reservation Eastern Pequot. Descriptions in 1749–1751 indicate specifically that the tribal affiliation of these individuals was recognized by the tribe itself. That off-reservation residency does not negate the existence of community has been established by precedent in prior findings (Narragansett PF 1982, 9; Gay Head PF 1985, 2).

Community in the late 18th and 19th centuries is shown by a variety of evidence. This included petitions from the group to the overseers, the consistency of membership in the tribe, descriptions of a distinct community at several points and other data which taken together show a distinct community which self-identified as Pequot. A portion of the group occupied the reservation continuously. Occupation of a distinct territory by a portion of a group provides evidence for community, even where it is not demonstrated that more than 50 percent of the total group resides thereon (Snoqualmie PF). By comparing a wide variety of documents, it does not appear that in the colonial and early Federal period the Eastern Pequot tribe, or its overseers, added to the membership lists any persons who were not qualified to be included and who were not accepted by the continuing tribal population. Documentation throughout this period contributes to a showing of community under 83.7(b)(1)(vii), "The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes of name," whether they are called Momoho's band, or the Pequots at Stonington, or by other phrases.

From the end of the Civil War through the early 1880's, the overseers' reports were highly consistent in their listing of Eastern Pequot individuals associated with the Lantern Hill reservation. Consistency of membership by itself does not demonstrate community but provides supporting evidence when weighed together, as here, with other factors.

At a number of points from 1763 through 1883, the Eastern Pequot presented petitions to the state, indicating a coordinated group action. Because the community as a whole, throughout this period, had a residential focus on the reservation, and maintained a very high rate of intermarriage and patterned out marriage, particularly with the Western Pequot and with the Narragansett, the Eastern Pequot tribe meets criterion 83.7(b) for the period through 1883.

Additional evidence for community until the 1930's is found in the overseers' reports, although these were not available for the years between 1891 and 1910. The overseers were knowledgeable observers of the group, because of their interaction with it.

Allegations by petitioner #113 and the third parties that the overseers were not knowledgeable, or were corrupt, were not sustained by the body of data in the record. Although their reports provide few details, they are premised, particularly the identification of who was and who was not a member, on knowledge that a social group existed.

The Eastern Pequot tribe as a whole, including the ancestors of petitioner #113 as well as petitioner #35, meets the requirements of criterion 83.7(b) between 1883 and 1920. Important evidence for this is the kinship based social ties which derive from the substantial number of marriages in existence in this time period which linked the several family lines. Between 1880 and 1920 the Pequot family lines were linked together both by extant marriages and by ties from marriages in the preceding two generations. They formed a set of families linked by many different kinship ties. In addition, because marriages occurred between Eastern Pequot individuals who were not living in the same town, this provides evidence that social contact was being maintained, and was the basis for locating marriage partners. The documentation throughout the period from 1883 to the 1920's shows "The persistence of a named, collective Indian identity continuously over a period of more than 50 years, notwithstanding changes of name" evidence for community under 83.7(b)(1)(vii).

Supporting evidence to that based on kinship is the geographical concentration of much of the membership on or near the reservation at Lantern Hill. While not forming a distinct settlement, except for the small proportion living on the reservation, much of the membership was close enough that, consistent with past decisions, social interaction was easily possible. This geographical pattern thus supports more direct evidence of social ties.

The Eastern Pequot meet the requirements of criterion 83.7(b) for the time period between 1920 and 1940. There continued to be kinship based social ties which derived from the number of marriages in existence in this time period which linked the several family lines and from marriages in the previous generations. In this period also, that evidence is supplemented by the substantial number of marriages with neighboring tribes, particularly the Narragansett. These provide additional evidence that the group was part of the Indian society of the region.

Important additional evidence for community were the "Fourth Sunday" gatherings on the reservation. These were held regularly, and drew a substantial number of members, from different parts of the several family lines. They were both social and political gatherings, and were claimed as activities by both petitioners.

Supporting evidence to that based on kinship and the "Fourth Sunday" gatherings for this time period is that there continued to be a geographical concentration of much of the membership on or near the reservation at Lantern Hill. While not forming a distinct settlement, except for the small proportion living on the reservation, much of the membership was still close enough that, consistent with precedents of past decisions, social interaction was easily possible. This geographical pattern thus supports more direct evidence of social ties.

Additional evidence for community is found in the overseers' reports, which was useful evidence until 1936, when the overseer system ended, and to a lesser extent through the end of the 1930's, as the former overseer continued to act as agent for the State Park and Forests Commission. Although their reports provide few details, they are premised, particularly the identification of who was and who was not a member, on knowledge that a social group existed.

As evaluated under the standard articulated for a historical state recognized tribe, the petitioner meets criterion 83.7(b) from 1940 to 1973, based on the conclusion that there was a single community, including the Sebastians. Although there is evidence of divisions, there was not evidence to show whether and, if so, when, the historical tribe separated into two communities.

There is insufficient evidence in the record to enable the Department to determine that the petitioners formed a single tribe after 1973. The Department consequently makes no specific finding for the period 1973 to the present because there was not sufficient analysis and information provided by the petitioners or third parties to determine if there is only one tribe with political factions (see for example, *Paucatuck Eastern Pequot Indians of Connecticut et al.* v. *Connecticut Indian Affairs Council et al.* 555 A.2d 1003 (App. Ct. 1989), decided March 28, 1989, which describes each current petitioner as a "faction of the tribe"). This question reflects in part the apparent recentness of the political alignments reflected in the petitioners after their formal organization in the early 1970's.

The historical Eastern Pequot tribe, which includes the petitioner as one of its component subgroups, meets criterion 83.7(b) through 1973. A specific finding concerning community from 1973 until the present will be presented in the final determination after receipt of comments from the petitioner and interested parties.

Criterion 83.7(c) requires that the petitioner has maintained political influence or authority over its members as an autonomous entity from historical times until the present.

Throughout its history, the context for administration of the Lantern Hill reservation has been set by the legislation passed by Connecticut and the administrative systems established by that legislation. The documents generated showed tribe's external relationships with the non-Indian administrative authorities, providing evidence that there was a political relationship between an Indian political entity and the non-Indian government, although they provided little information about internal political processes. These individual political documents have been interpreted in light of the general continuity of the reservation population as shown by a wide variety of other documents. The major specific evidence for political authority or influence between first sustained contact and 1883 is to be read together with the overall evidence of tribal existence and the discussion of the evidence for criterion 83.7(b).

The evidence submitted for the early contact period, 1620–1637, consisted primarily of historical narratives, written mainly by modern anthropologists based in part on colonial era documents which described dealings with the tribe by the colonial authorities and listed some leaders. Precedent does not required detailed information concerning the internal political processes of the historical tribes which were predecessors of New England petitioners in the early contact period (Narragansett PF 1982, 11; Gay Head PF 1987, 10; Mohegan PF 1989, 5). This material meets 83.7(c) for the undifferentiated historical Pequot tribe as a whole, predecessor group to the later historical eastern Pequot tribe, for the period prior to 1637.

The evidence indicates that the modern Eastern Pequot evolved primarily from those Pequot subject neither to the Mohegan nor the Narragansett after the Pequot War, but rather those who were placed in charge of the Eastern Niantic. The precedents clearly indicate that the acknowledgment process allows for the historical combination and division of tribal subgroups and bands, and that temporary subjection to another Indian tribe does not result in a permanent cessation of tribal autonomy (Mohegan PF 1989, 26–27; Narragansett FD, 48 **Federal Register** 29 2/10/1983, 6177; Narragansett PF 1982, 2). The events of this period do not indicate that the petitioner fails to meet the "autonomous entity" requirement under 83.7(c).

Historical records and narratives indicate that for approximately 330 years, the predecessors of the Eastern Pequot tribe antecedent to the current petitioners were under supervision of non-Indian authorities, appointed Indian governors from 1655 to 1695 and under colony-appointed and state-appointed non-Indian overseers through much of the 18th through the 20th centuries. From its establishment in 1683 until 1989, the Eastern Pequot reservation was under the direct administration of Connecticut, first as a British colony and then, after the American Revolution, as a state. The AS–IA concluded in the Mohegan case that: "[T]he autonomy requirement is solely concerned with autonomy from other Indian tribes, not non-Indian systems of government that were imposed on the Mohegan by the State of Connecticut." (Mohegan PF 1989, 26–27; for related precedents, see Narragansett PF 1982, 11; Narragansett PF 1982, 2; Gay Head PF, 4). The petitioners meet the "autonomy" requirement of 83.7(c) as long as the state was dealing with a group as a group which had named leaders or the evidence shows that the group was acting in concert and thus was exercising political influence internally.

Documents from the period through 1751 named the leaders with whom the colony of Connecticut was dealing and provided limited information concerning internal political processes identifying both a leader and the existence of a group actively defending its land base.

Precedents also indicate that the defense of a tribe's economic position is a significant indicator of political processes (Snoqualmie PF 1993, 25; Tunica-Biloxi PF 1980, 4). On the basis of precedent, this material is adequate to meet 83.7(c) during the colonial period.

After 1751, there is no evidence in Eastern Pequot petitions that any one individual held the position of sachem, or a comparable office. Precedent indicates no requirement under the regulations that such a formal office have been maintained (Mohegan PF 1989, 5), and the petitions from the tribe to the colony and stated indicate that the tribe did maintain some type of political structure capable of representing its wishes in dealing with colonial authorities. The appointment of overseers for the Eastern Pequot reservation by the colony of Connecticut in itself provides data about the continuous existence of the tribal entity, but no specific information about internal political leadership or influence. However, the initiative of the Eastern Pequot Indians in requesting particular persons as overseers in 1763 and 1788, combined with the signatures on the petitions, indicates that the Indians on the Lantern Hill reservation at this time did have internal political processes and that they utilized the overseers appointed by the state to serve certain purposes which they themselves desired. On the basis of precedent, this material is adequate to meet 83.7(c) for a tribe during the second half of the 18th century.

The evidence of petitions from overseers for group purposes, together with accounts which identified "principal men" and a religious leader, in the context of a group with a distinct territory, is adequate to show that the petitioner meets criterion 83.7(c) for the period from 1800 to 1822.

Petitions from the group in 1839 and 1841, sought the appointment of a new overseer and objected to the actions of the existing one. The 1839 initiative of the Indians in requesting the replacement of an inadequate overseer indicated that the Indians themselves still, as in the later 18th century, expected the state-appointed overseers as agents to carry out their wishes in some matters. Of the four men who signed, two (Cyrus Shelly and Samuel Shuntaup) had been identified as "principal men" of the Eastern Pequot by Jedediah Morse nearly 20 years earlier. The regulations do not require that in order to demonstrate political process, a petition must be signed by the entire tribe. Petitions which show a portion of the tribe expressing an opinion or preference are also evidence of political process (Mohegan PF 1989, 6).

Petitions and lists generated by a proposed sale of reservation land are evidence indicating that from 1873 through 1883 the tribe was able to generate organized protests against a governmental initiative which they regarded as contrary to its economic interests, and to present documents to this effect to the non-Indian authorities. This evidence shows that the petitioner meets 83.7(c) for the period from 1873–1883.

There was no information in the record which specifically named or identified formal or informal leaders between 1883 and 1920 with the single exception of a 1913 obituary of Calvin Williams, a petition signer from the 1870's and early 1880's, who continued to serve as reservation preacher until his death in 1913. There is evidence from oral history and some records that he may have continued as tribal preacher, holding religious and social meetings on the reservation in the first decade of the 20th century. Under the regulations, evidence about community may be used as supporting evidence to demonstrate political processes, especially where a community is closely knit and distinct (see 83.7(c)(1)(iv)). Given the extensive intermarriage within the tribe and with neighboring tribes, the petitioner has strong evidence demonstrating community in this time period. The evidence is sufficient to demonstrate that criterion 83.7(c) is met between 1883 and 1920 as evaluated under the principle that it is entitled to greater weight because the petitioners are, singly and together, a continuously existing state-recognized tribe and with a continuous land base since colonial times.

The amount of data concerning political authority and influence in the record overall, including conflicts between the two groups, is considerably more extensive than that relating to internal political processes within petitioner #35 alone. As evaluated under the standard articulated for a historical state recognized tribe, the petitioner meets criterion 83.7(c) from 1883 to 1973, based on the conclusion that there was a single tribe, the entirety of whose actions reflected political influence, including the Sebastians as one subgroup, rather than as the entire entity evaluated.

Because the two petitioners derive from a single historical tribe with a continuous state relationship since colonial times, the conflicts between the two, which have focused on their relationship with the State of Connecticut, are relevant evidence for political influence. However, it is unclear if the conflict is within one tribe, or between two. Both groups derive from the historical Eastern Pequot tribe which was recognized by the State of Connecticut. The State continues to recognize a successor to the historical Eastern Pequot tribe, but has not taken a position as to the present leaders of that successor. The petitioners and third parties have failed to provide adequate evidence and analysis to permit the Department to determine if the political processes since 1973 are those of factions of one tribe.

There is insufficient evidence and analysis in the record to enable the Department to determine that the petitioners formed a single tribe in this

time period. The Department consequently makes no specific finding for the period 1973 to the present because there was not sufficient information to determine that there is only one tribe with political factions (see for example, *Paucatuck Eastern Pequot Indians of Connecticut et al.* v. *Connecticut Indian Affairs Council et al.* 555 A.2d 1003 (App. Ct. 1989), decided March 28, 1989, which describes each current petitioner as a "faction of the tribe"). This question reflects in part the apparent recentness of the political alignments reflected in the petitioners after their formal organization in the early 1970's.

The historical Eastern Pequot tribe, which includes the petitioner as one of its component subgroups, meets criterion 83.7(c) through 1973. A specific finding concerning political influence from 1973 until the present will be presented in the final determination after receipt of comments from the petitioner and interested parties.

Criterion 83.7(d) requires that the petitioner provide copies of the group's current constitution and bylaws. The Eastern Pequot meets criterion 83.7(d).

Criterion 83.7(e) states that the petitioner's membership must consist of individuals who descend from a historical Indian tribe or from historical Indian tribes which combined and functioned as a single autonomous political entity. Extensive genealogical material submitted by the petitioner, by petitioner #113, and by the third parties indicates that the petitioner's current members are descendants of Tamar (Brushell) Sebastian and of Laura (Fagins) Watson. As those individuals were, during their lives, members of the Eastern Pequot tribe as ascertained by evidence acceptable to the Secretary, the descendants of these individuals, as well as the descendants of any descendants of Abby (Fagins) Randall now included on the petitioner's membership list, descend from the historical tribe.

The lines of descent for individual families have been verified through Federal census records from 1850 through 1920; public vital records of births, marriages, and deaths; and to a lesser extent through church records of baptisms, marriages, and burials, as well as through use of state records concerning the Lantern Hill reservation. These are the same types of records which have been used to verify descent for prior Federal acknowledgment decisions. Therefore, the petitioner meets criterion 83.7(e).

Criterion 83.7(f) states that the petitioner's membership must be composed principally of persons who are not members of any acknowledged North American Indian tribe. The Eastern Pequot meets criterion 83.7(f).

Criterion 83.7(g) states that neither the petitioner nor its members can have been the subject of congressional legislation that has expressly terminated or forbidden the Federal relationship. The Eastern Pequot meets criterion 83.7(g).

Based on this preliminary factual determination, the Eastern Pequot should be granted Federal acknowledgment under 25 CFR Part 83.

This proposed positive finding for the Eastern Pequot and the positive proposed finding for the Paucatuck petitioner which is being issued simultaneously do not prevent the Department, in the final determination stage, from recognizing a combined entity, or both petitioners, or either one of the current petitioners but not the other, or neither of the current petitioners, depending upon the evidence and analysis developed during the comment periods by both petitioners and all interested and informed parties, as verified and evaluated by Bureau of Indian Affairs staff.

As provided by 25 CFR 83.10(h) of the regulations, a report summarizing the evidence, reasoning, and analyses that are the basis for the proposed decision will be provided to the petitioner and interested parties, and is available to other parties upon written request. Under the Assistant Secretary's directive, the technical report prepared in addition to this summary evaluation report of the evidence will not be completed but will remain in draft.

Comments on the proposed finding and/or requests for a copy of the report of evidence should be addressed to the Office of the Assistant Secretary—Indian Affairs, Bureau of Indian Affairs, 1849 C Street, NW, Washington, DC 20240, Attention: Branch of Acknowledgment and Research, Mail Stop 4660—MIB. Comments on the proposed finding should be submitted within 180 calendar days from the date of publication of this notice. The period for comment on a proposed finding may be extended for up to an additional 180 days at the Assistant Secretary's discretion upon a finding of good cause (83.10(i)). Comments by interested and informed parties must be provided to the petitioner as well as to the Federal Government (83.10(h)). After the close of the 180-day comment period, and any extensions, the petitioner has 60 calendar days to respond to third-party comments (83.10(k)). This period may be extended at the Assistant Secretary's discretion if warranted by the extent and nature of the comments.

The proposed finding takes into consideration only materials from the petitioner and all interested parties submitted through April 5, 1999. Subsequent submissions have been held by the Bureau of Indian Affairs and will be considered during preparation of the final determination.

In addition to evidence and argument on the proposed findings in general, petitioners, interested parties and informed parties may submit comments as to the Secretary's authority, under the circumstances of recent separation of the two petitioners, to acknowledge two tribes or only one tribe which encompasses them both as the continuation of the historical tribe.

After the expiration of the comment and response periods described above, the Bureau of Indian Affairs will consult with the petitioner concerning establishment of a time frame for preparation of the final determination. After consideration of the written arguments and evidence rebutting the proposed finding and within 60 days after beginning preparation of the final determination, the Assistant Secretary—Indian Affairs will publish the final determination of the petitioner's status in the **Federal Register** as provided in 25 CFR 83.10(1).

Dated: March 24, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–8041 Filed 3–30–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–00–1320–EL–P; MTM 89848]

Notice of Invitation—Coal Exploration License Application MTM 89848

AGENCY: Bureau of Land Management, Montana State Office, Interior.

SUMMARY: Members of the public are hereby invited to participate with Western Minerals, Inc., and KCP, Inc., a joint venture d/b/a Decker Coal Company, in a program for the exploration of coal deposits owned by the United States of America in the following-described lands located in Big Horn County, Montana:

T. 9 S., R. 40 E., P.M.M.

Sec. 4: Lot 4, SW¼NW¼,
Sec. 5: S½ of Lot 1, S½NE¼, N½N½SE¼.
220.355 acres.

SUPPLEMENTARY INFORMATION: Any party electing to participate in this exploration program shall notify, in writing, both the State Director, Bureau of Land Management, P.O. Box 36800, Billings, Montana 59107–6800; and Decker Coal Company, P.O. Box 12, Decker, Montana 59025. Such written notice must refer to serail number MTM 89848 and be received no later than 30 calendar days after publication of this Notice in the **Federal Register** or 10 calendar days after the last publication of this Notice in the Big Horn County News newspaper, whichever is later. This Notice will be published once a week for two (2) consecutive weeks in the Big Horn County News, Hardin, Montana.

The proposed exploration program is fully described, and will be conducted, pursuant to an exploration plan to be approved by the Bureau of Land Management. The exploration plan, as submitted by Decker Coal Company, is available for public inspection at the Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana, during regular business hours (9 a.m. to 4 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Either Robert Giovanini, Mining Engineer, or Bettie Schaff, Land Law Examiner, Branch of Solid Minerals (MT–921), Bureau of Land Management, Montana State Office, P.O. Box 36800, Billings, Montana 59017–6800, telephone (406) 896–5084 or (406) 896–5063, respectively.

Dated: March 27, 2000.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 00–7953 Filed 3–30–00; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–680–00–1220–HQ]

The Proposal of a Supplemental Rule Restricting Recreational Shooting to Protect Human Health and Safety in the Populated Western Portion of Wonder Valley California

AGENCY: Bureau of Land Management, Department of the Interior, Barstow Field Office, Desert District, California.

ACTION: This notice proposes that on those public lands administered by the BLM and bounded to the west by the corporate limits of the City of Twentynine Palms California, the south by Joshua Tree National Park, the north by the Marine Corps Air Ground Combat Center and the east by Range 11 East, San Bernardino Meridian, it would be prohibited to fire any firearm except shotguns with shot shells containing shot no larger than one-half the diameter of the bore. This proposed supplemental rule would not affect the legitimate and legal pursuit of game or shooting at controlled, permitted ranges.

SUMMARY: In accordance with Title 43, Code of Federal Regulations Section 8365.1–6, the State Director may establish supplementary rules in order to provide for the protection of persons, property and public lands and resources. This authority was delegated to the District Managers and Field Managers pursuant to BLM Manual 1203, California Supplement. Failure to comply with this proposed supplementary rule would be punishable by a fine not to exceed $100,000 and/or imprisonment not to exceed twelve months. The environmental effects of the proposed rule will be analyzed separately by Environmental Assessment CA–680–00–29.

DATES: Comments must be received in writing to the BLM no later than thirty days after the publishing of this proposed supplementary rule.

ADDRESSES: Written comments shall be mailed to the following addresses: Mr. Tim Read, Field Manager, Bureau of Land Management, Barstow Field Office, 2601 Barstow Road, Barstow, CA 92311.

SUPPLEMENTARY INFORMATION: Uncontrolled recreational shooting on public land create a public health and safety hazard by firing solid projectile firearms (such as rifles and pistols), that have a long range, into and about a populated rural area. The area of concern also receives heavy recreational use by equestrians, recreational miners and off-highway vehicles. BLM has received complaints from area residents and recreationist that have nearly been struck by stray bullets from recreational shooting. This proposed supplemental rule would prohibit the firing of any firearm except shotguns with shot shells containing shot no larger than one-half the diameter of the bore. Rounds of this type have less energy and travel considerably shorter distanced than solid projectiles (such as those fired from a rifle or pistol). By prohibiting all but low energy, short range gunfire a safer environment on both public and private lands within this populated area will be created. This proposed supplementary rule only affects public lands administered by BLM and would not affect the legitimate and legal pursuit of game or shooting at controlled, permitted ranges. This proposed supplemental rule will not infringe upon Constitutional rights of an individual to own or possess a lawful firearm.

FOR ADDITIONAL INFORMATION CONTACT: BLM Barstow Field Office, 2601 Barstow Road, Barstow, CA 92231, telephone (760) 252–6000.

Tim Read,

Field Manager.

[FR Doc. 00–8017 Filed 3–31–00; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent To Repatriate Cultural Items From the Island of Oahu, HI In the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10(a)(3), of the intent to repatriate cultural items from the Island of Oahu, HI in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI which meet the definition of "unassociated funerary object" under Section 2 of the Act.

The 94 cultural items include a tobacco pipe (B.1451), a stone mortar or bait cup ("kapu ahi kuni ana ana", B.06374), part of a canoe (B.07852), four pieces of tapa (B.7886) and part of a canoe (B.7885), a wooden digging stick (o'o, B.008866), marble or konane stones (B.09256), stone and china beads (C.0505), a partially broken clay tobacco pipe (C.3233), a stone lamp (C.4380), a calcite pendant (C.9589), three niho palaoa pendants (C.9776–9778), two pieces of a coffin (C.9817–9818), a wooden mixer or tapa implement (C.9972), a section of a canoe (1950.136), a carved bowl with human support figures (D.0565), a piece of cordage (Oa–38), a gourd fragment (Oa–95), a basalt adz chip (Oa–96), four tapa fragments (Oa–97, Oa–99, Oa–100), cordage (Oa–101), cordage (Oa–102), two wood pipes (Oa–21, Oa–22), cordage (Oa–23), a ceramic ink jar (D.2099), a necklace of bone and glass beads (D.2100), a wood pipe and a piece of brown cloth (Oa–43), a broken wooden spear (Oa–57), a section of a wooden canoe used as a coffin (D.02829), a stone pounder (D.02978), a wooden tobacco pipe (Oa–69), metal and wood pieces of a tobacco pipe (Oa–70), a knife handle and blade of ivory and steel (Oa–71), an ivory wrist ornament (Oa–72), a double-sided

tortoise shell comb (Oa–73), a glass and wood hand-mirror (Oa–74), large red-glazed ceramic beads (Oa–75), small red-glazed ceramic beads (Oa–76), medium clear glass beads (Oa–77), medium blue glass beads (Oa–78), medium yellow glass beads (Oa–79), wood fragments and a cane knife handle (1971.182), a basalt lamp (1977.158), a copper medallion, one hand-wrought brass nail, and 17 purplish-pink glass beads (1981.033), a game stone (1981.052), a length of cordage, a mat fragment, and 17 pieces of patterned tin (1991.352), and a coconut shell bowl (1994.030).

In 1898, a tobacco pipe (B.1451) was found with human remains on the "Cooper tract" in Manoa. In 1918, this cultural item was donated to the Bishop Museum by Henry E. Cooper.

Around 1910, the stone mortar or bait cup (B.06374, "kapu ahi kuni ana ana") was found in the hand of an individual during an excavation in Waikiki. In 1923, this cultural item was donated to the Bishop Museum by Mrs. A.A. Meyer.

In 1924, part of a canoe (B.07852) was removed from a burial cave between Wai'anae and Makaha and was donated to the Bishop Museum by C.S. Judd.

In 1924, part of a canoe (B.07884), and four pieces of tapa (B.7885A–C and B.7886) were all removed from a burial cave between Wai'anae and Makaha and donated to the Bishop Museum by C.S. Judd.

In 1926, a wood digging stick or o'o (B.08866) was removed from a burial cave, possibly in Wailupe, and donated to the Bishop Museum by Ft. Commander Gray.

In 1926, marble stones or konane stones (B.09256) were found near human remains on Ehrhorn's lot in Mills Tract, Manoa, Oahu; and were donated to the Bishop Museum by E.M. Ehrhorn.

In 1927, stone and china beads (C.0505), attributed to a burial cave on the grounds of the Royal Hawaiian Hotel, were donated to the Bishop Museum as part of the Albert Koehele collection, by W.M. Giffard.

In 1931, a partially broken clay tobacco pipe (C.3233) was removed from a Niu burial cave by J.G. McAllister of the Bishop Museum.

In 1931, a stone lamp (C.4380) was removed from a burial in Halawa, near the north gate of Pearl Harbor, and was purchased by the Bishop Museum from Paul Crackel.

In 1943, a calcite pendant, found with eight skeletons near the Kahuku Airfield, was donated to the Bishop Museum by Peter H. Vogel.

In 1946, three niho palaoa pendants (C.9776–C.9778), recovered from a burial vault in Hakipu'u, were donated to the Bishop Museum by A.F. Judd.

In 1946, two pieces of wood probably from a coffin (C.9817), C.9818) were collected by J.G. McAllister of the Bishop Museum from Kamailo cave, district unknown.

In 1947, a wooden mixer or tapa implement (C.9972), removed from a burial cave in Liliha, Kapalama in 1909, was donated to the Bishop Museum by James Hammond.

In 1950, a section of canoe (1950.136) which had contained human remains and other associated funerary objects from a Wailupe Valley burial cave were collected and donated to the Bishop Museum by William Davenport. Bishop Museum staff were able to locate the canoe, but unable to locate the canoe's recorded contents, including the human remains.

In 1953, a carved bowl with human support figures (D.0565), recovered from a burial cave in Waimalu Valley, were collected and donated to the Bishop Museum by Richard Nishino and Rodney Minami.

In 1953, a piece of cordage (Oa–38) was collected from a burial cave in Wimalu by K.P. Emory of the Bishop Museum.

In 1955, a gourd fragment (Oa–95), a basalt adz chip (Oa–96), four tapa fragments (Oa–97–Oa–100), and two cordage fragments (Oa–101–Oa102) were removed for a burial cave in Wailupe by George Arnemann of the Bishop Museum.

In 1957, two wood pipes (Oa–21–Oa–22) and cordage (Oa–23) were removed from a burial site in Waimalu by Robert Bowen and Blackburn of the Bishop Museum.

In 1959, a ceramic ink jar (D.2099) and a necklace of bone and glass beads (D.2100) were found with a burial on Mr. Larry Kamada's land in Wai'anae and donated by him to the Bishop Museum.

In 1960, a wood pipe and a small piece of brown cloth (Oa–43) were removed from a Wailupe Valley burial cave by Robert Bowen of the Bishop Museum. The human remains reported with these cultural items have not been located by the Bishop Museum.

In 1962, a broken wooden spear (Oa–57) was collected from a small burial in "Ewa and is now in collections of the Bishop Museum.

In 1963, a section of wood canoe used as a coffin (D.02829), recovered from a tree near Waimea Bay, was donated to the Bishop Museum by John E. Fergus.

In 1964, a stone pounder (D.02978), removed from a shallow burial in 1931–1932 in McCully, was donated to the Bishop Museum by Oswald Sheather.

In 1965, a wooden tobacco pipe (Oa–69), metal and wood pieces of a tobacco pine (Oa–70), a knife handle and blade of ivory and steel (Oa–71), an ivory wrist ornament (Oa–72), a double-sided tortoise shell comb (Oa–73), a glass and wood hand-mirror (Oa–74), large red-glazed ceramic beads (Oa–75), small red-glazed ceramic beads (Oa–76), medium clear glass beads (Oa–77), medium blue glass beads (Oa–78), medium yellow glass beads (Oa–79) were removed from a Ka'a'awa burial cave by Lloyd Soehren of the Bishop Museum.

In 1971, wood fragments and a cane knife handle (1971.182), were removed from a Makiki Valley burial cave by Pat McCoy of the Bishop Museum.

In 1977, a basalt lamp (1977.158) which had been removed from a burial cave in Kahuku circa 1971–1918 by Mrs. Alda H. Jett of California was purchased from her by the Bishop Museum.

In 1981, a copper medallion, one hand-wrought brass nail, and 17 purplish glass beads (1981.033) were removed from a Punchbowl burial and donated to the Bishop Museum by Dr. Don Thomas.

In 1981, a game stone or ulumaika (1981.052) had been placed in or near a burial and was found in the yard of Dora Jacroux of the Bishop Museum, in Manoa during the early 1950s.

In 1991, one length of cordage, a fragment of mat, and 17 pieces of patterned tin (1991.352) were removed from a Wailupe Valley burial Cave.

In 1994, a coconut shell bowl (1994.030), apparently removed from a burial ground in the hills of Makakilo, was donated to the Bishop Museum by an anonymous donor.

Based on types of items, accession records, or known burial contexts, all the cultural items listed above have been determined to have come from burials. Excavation records for some of the cultural items indicate that the human remains with whom these cultural items were associated were not collected, or were collected but have not been located within the Bishop Museum's collections.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these 94 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual.

Officials of the Bishop Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and Hui Malama I Na Kupuna O Hawai'i Ne, Ka Lahui Hawai'i, Kamehameha Schools, Office of Hawaiian Affairs, and Pa Ku'i-a-Lua.

This notice has been sent to officials of Hui Malama I Na Kupuna O Hawai'i Ne, Ka Lahui Hawai'i, Kamehameha Schools, Koa Mana, Ko'olauloa Hawaiian Civic Club, Mauna Ala Mausoleum, O'ahu Island Burial Council, Office of Hawaiian Affairs, and Pa Ku'i-a-Lua. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Valerie Free, Unit Manager, Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817, telephone: (808) 847–8205 before May 1, 2000. Repatriation of these objects to Hui Malama I Na Kupuna O Hawai'i Ne, Ka Lahui Hawai'i, Kamehameha Schools, Office of Hawaiian Affairs, and Pa Ku'i-a-Lua may begin after that date if no additional claimants come forward.

Dated: March 9, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–7848 Filed 3–30–00; 8:45 am]

BILLING CODE 4316–70–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Ecosystem Restoration Program Pre-Submittal Workshop for the 2001 Proposal Solicitation Package

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of meeting.

SUMMARY: The CALFED Bay-Delta Ecosystem Restoration Program will hold a Pre-Submittal Workshop for the 2001 Proposal Solicitation Package (PSP). This workshop is an opportunity for the public to ask questions regarding the PSP. Adaptive management and conceptual models will be discussed. Shortly after the workshop, CALFED staff will provide a written response to common questions from all attendees at the workshop and those who have received this proposal solicitation package via mail. This will also be posted on the CALFED website at calfed.ca.gov.

DATES: The Pre-Submittal Workshop will be held from 1 p.m. to 4 p.m. on Wednesday, April 12, 2000.

ADDRESSES: The Pre-Submittal Workshop will meet at the Resources Building Auditorium, 1416 Ninth Street, Sacramento, CA 95814.

FOR FURTHER INFORMATION CONTACT: Wendy Halverson Martin, CALFED Bay-Delta Program, at (916) 657–2666. If reasonable accommodation is needed due to a disability, please contact the Equal Employment Opportunity Office at (916) 653–6952 or TDD (916) 653–6934 at least one week prior to the meeting.

SUPPLEMENTARY INFORMATION: The San Francisco Bay/Sacramento-San Joaquin Delta Estuary (Bay-Delta system) is a critically important part of California's natural environment and economy. In recognition of the serious problems facing the region and the complex resource management decisions that must be made, the state of California and the Federal government are working together to stabilize, protect, restore, and enhance the Bay-Delta system. The State and Federal agencies with management and regulatory responsibilities in the Bay-Delta system are working together as CALFED to provide policy direction and oversight for the process.

One area of Bay-Delta management includes the establishment of a joint State-Federal process to develop long-term solutions to problems in the Bay-Delta system related to fish and wildlife, water supply reliability, natural disasters, and water quality. The intent is to develop a comprehensive and balanced plan which addresses all of the resource problems. This effort, the CALFED Bay-Delta Program (Program), is being carried out under the policy direction of CALFED. The Program is exploring and developing a long-term solution for a cooperative planning process that will determine the most appropriate strategy and actions necessary to improve water quality, restore health to the Bay-Delta ecosystem, provide for a variety of beneficial uses, and minimize Bay-Delta system vulnerability. The Ecosystem Restoration Program is a program element of CALFED which is currently soliciting proposals for ecosystem restoration activities.

Dated: March 27, 2000.

Kirk C. Rodgers,

Deputy Regional Director, Mid-Pacific Region, Bureau of Reclamotion, Department of the Interior.

[FR Doc. 00–7948 Filed 3–30–00; 8:45 am]

BILLING CODE 4310–94–M

INTERNATIONAL TRADE COMMISSION

Certain Pipe and Tube From Argentina, Brazil, Canada, India, Korea, Mexico, Singapore, Taiwan, Thailand, Turkey, and Venezuela [1]

AGENCY: United States International Trade Commission.

ACTION: Revised schedule for the subject 5-year reviews.

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Brian R. Allen (202–708–4728), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION: On September 28, 1999, the Commission established a schedule for the conduct of the subject 5-year reviews (64 FR 54354, October 6, 1999). The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B), and is hereby revising its schedule.

The Commission's new schedule for the reviews is as follows: the Commission will make its final release of information on May 30, 2000; and final party comments are due on June 1, 2000.

For further information concerning the reviews see the Commission's notice cited above and the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201),

[1] The products and investigation numbers for the various countries are: Argentina: light-walled rectangular tube (731–TA–409); Brazil: circular welded nonalloy steel pipe (731–TA–532); Canada: oil country tubular goods (731–TA–276); India: welded carbon steel pipe and tube (731–TA–271); Korea: circular welded nonalloy steel pipe (731–TA–533); Mexico: circular welded nonalloy steel pipe (731–TA–534); Singapore: small diameter standard and rectangular pipe and tube (731–TA–296); Taiwan: small diameter carbon steel pipe and tube (731–TA–132), oil country tubular goods (731–TA–277), light-walled rectangular tube (731–TA–410), and circular welded nonalloy steel pipe (731–TA–536); Turkey: welded carbon steel pipe and tube (701–TA–253 and 731–TA–273); Thailand: welded carbon steel pipe and tube (731–TA–252); and Venezuela: circular welded nonalloy steel pipe (731–TA–537).

and part 207, subparts A and F (19 CFR part 207).

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.21 of the Commission's rules.

Issued: March 24, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8029 Filed 3–30–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–540 and 541 (Review)]

Certain Welded Stainless Steel Pipe From Korea and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders on certain stainless steel pipe from Korea and Taiwan.

SUMMARY: The Commission hereby gives notice of the scheduling of full reviews pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders on certain welded stainless steel pipe from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: March 24, 2000.

FOR FURTHER INFORMATION CONTACT: Woodley Timberlake (202–205–3188), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background.—On October 1, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 55961, October 15, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the reviews and public service list.—Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff report.—The prehearing staff report in the reviews will be placed in the nonpublic record on July 12, 2000, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing.—The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on August 1, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 24, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 27, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written submissions.—Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is July 21, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is August 10, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before August 10, 2000. On August 30, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 1, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

By order of the Commission.

Issued: March 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8028 Filed 3–30–00; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities Proposed Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Petition for Nonimmigrant Worker.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 30, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Revision of currently approved collection.

(2) *Title of the Form/Collection:* Petition for Nonimmigrant Worker.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–129. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This form is used to petition for temporary workers and for the admission of treaty traders and investors. It is also used in the process of an extension of stay or for a change of nonimmigrant status.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 368,948 responses at 1 hour and 55 minutes (1.916 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 706,904 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW, Washington, DC 20536. Additionally, comments and/or suggestion regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required, contact Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center Building, 1001 G Street, NW, Washington, DC 20530.

Dated: March 27, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–7961 Filed 3–30–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities: Comment Request

ACTION: Notice of Information Collection Under Review; H–1B Data Collection and Filing Fee Exemption.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until May 30, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* H–1B Data Collection and Filing Fee Exemption.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form I–129W. Adjudications Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Business or other for-profit. This addendum to Form I–129 will be used by the INS to determine if

an H–1B petitioner is exempt from the additional filing fee of $500, as provided by the American Competitiveness and Workforce Improvement Act of 1998.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 128,092 responses at 30 minutes (.50) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 64,046 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan, 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestions regarding item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact: Mr. Robert B. Briggs, Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center, 1001 G Street, NW., Washington, DC 20530.

Dated: March 27, 2000.

Richard A. Sloan,

Department Clearance Officer, Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–7962 Filed 3–30–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Development of Comprehensive Objective Prison Classification Systems

AGENCY: National Institute of Corrections, Department of Justice.

ACTION: Solicitation for a cooperative agreement.

SUMMARY: This project will provide technical assistance to correctional agencies to update and improve objective classification systems; to build capacities in correctional agencies that will enable them to continue improvements; to validate or re-validate classification risk instruments; to expand the knowledge of research and strategies for appropriate and effective correctional classification practices that respond to emerging issues and management concerns; and to encourage the development of comprehensive objective classification systems.

The components of comprehensive objective prison classification systems will include external classification (security and custody for facility placement and supervision, including validation of risk instruments); internal classification (systems for guiding housing, work and program assignments within facilities); identification of desirable enhancements to the classification systems through information technology; development of gender-responsive strategies to appropriately classify women offenders; as well as to promote effective correctional practices for such areas as intake, needs assessment, community transition, and management of high risk offenders.

The recipient of this cooperative agreement award will provide on-site technical assistance to six to eight state correctional agencies that are assessing, validating and improving objective prison classification systems. This work will emphasize the importance of strategic planning and development of comprehensive objective prison classification systems that incorporate a strategically planned continuum of management strategies linking the essential and desirable elements of objective prison classification.

This project will also facilitate a two-day training program at the NIC Training Academy in Longmont, CO, and produce a record of proceedings of the peer training with practitioners.

Project Objectives: The primary objectives of this cooperative agreement are to provide concentrated on-site technical assistance to selected correctional agencies requesting assistance and to advance the development of comprehensive objective prison classification systems.

Scope of Work: There will be three major components in the scope of work:

1. Technical Assistance

On-site technical assistance will be provided to at least six correctional agencies through a clear, well-organized work plan that is responsive to each agency's needs and level of sophistication. This will require classification experts that are knowledgeable of correctional operations and principles of objective prison classification; have expertise in assessment, evaluation and validation research; understand the needs of practitioners and correctional agencies; are informed and sensitive to requirements for addressing gender-specific issues; and have demonstrated effectiveness in project management.

2. Training Program

Peer training will be conducted at the NIC Training Academy in Longmont, CO, with practitioners from a number of state correctional agencies that have recently received assistance through NIC. This will provide knowledgeable classification practitioners exposure to national issues through peer discussions facilitated by classification experts. The program will provide a forum for sharing developments in objective prison classification and provide an opportunity to broaden the understanding of better practices in prison classification. A report will be developed through the cooperative agreement to record the proceedings of the of the peer training.

NIC will provide funding for participant travel for the training program separately from the award.

3. Guidelines and Other Publications or Reports

A guidelines publication will be written on the development and management of comprehensive objective prison classification systems by utilizing classification experts, recommendations from practitioners, and knowledge developed in previous multi-year projects. The publication will focus on the development of comprehensive systems and represent the current thinking on objective prison classification. The document must be well-organized and written in understandable language for people with classification and non-classification experience. All parts should be illustrated by case examples and lessons learned from NIC's recent state projects, state reports and training programs.

Each state that receives technical assistance through this cooperative agreement will be provided with a full report with analysis of the data, recommendations and detailed summaries of the work.

At the conclusion of the cooperative agreement, a final report, not to exceed 50 pages, will be submitted for publication describing the issues and developments with states receiving technical assistance.

In consultation with NIC, documents developed through the cooperative agreement must be submitted as an edited final camera-ready copy for NIC publication in accordance with the NIC Preparation of Printed Materials for Publication. All products from this

funding effort will be in the public domain and available to interested parties through the National Institute of Corrections.

Submission of Proposals: Applicants must provide goals, objectives, and methods of implementation for the project that are consistent with the announcement. Objectives should be clear, measurable, attainable, and focused on the methods used to conduct the project. Work activities will be coordinated closely with the NIC Program Manager.

Applicants should submit an implementation plan for the project to begin immediately following an award with a schedule in chart form which will demonstrate milestones for significant tasks. The timetable for the first quarter of the project must include making preparations for the training program that is scheduled for September 2000, the initial selection of sites, and starting on-site assistance.

Authority: Public Law 93–415.

Funds Available: The award will be limited to $300,000 (direct and indirect costs) and project activity must begin within 30 days of the date of award and be completed within 15 months. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Prisons Division.

Deadline for Receipt of Applications: Applications must be received by 4:00 PM on Friday, April 28, 2000. They should be addressed to: Director, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call Bobbi Tinsley at (202) 307–3106, extension 0 for pickup.

Executive Order 12372: This program is subject to the provisions of Executive Order 12372. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than Federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOC), a list of which is included in the application Kit, along with further instructions on proposed projects serving more than one State.

Addresses and Further Information: Requests for the application kit should be directed by Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 159, 202–307–3106, ext. 159, or e-mail: *jevens@bop.gov*. A copy of this announcement and application forms may be obtained through the NIC web site: *http://www.nicic.org* (click on "What's New," and "Cooperative Agreements"). Additional documents can be found through this web site under "Publications." All technical and/or programmatic questions concerning this announcement should be directed to Sammie Brown, Program Manager, at 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 126, 202–307–3106, ext. 126, or e-mail: *sbrown@bop.gov*.

Eligibility Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project. Collaborative teams involving practitioners, researchers, and other individuals with expertise and experience in specialized prison classification functional areas are encouraged.

Review Considerations: Applications received under this announcement will be subjected to an NIC 3 to 5 member Peer Review Process.

Number of Awards: One (1)

NIC Application Number: 00P13. This number should appear as a reference line in your cover letter and also in box 11 of Standard Form 424.

(Catalog of Federal Domestic Assistance Number: 16.603)

Dated: March 27, 2000.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 00–7946 Filed 3–30–00; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Bureau of International Labor Affairs; U.S. National Administrative Office; National Advisory Committee for the North American Agreement on Labor Cooperation; Notice of Open Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of open teleconference April 20, 2000.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. 94–463), the U.S. National Administrative Office (NAO) gives notice of a meeting of the National Advisory Committee for the North American Agreement on Labor Cooperation (NAALC), which was established by the Secretary of Labor.

The Committee was established to provide advice to the U.S. Department of Labor on matters pertaining to the implementation and further elaboration of the NAALC, the labor side accord to the North American Free Trade Agreement (NAFTA). The Committee is authorized under Article 17 of the NAALC.

The Committee consists of 12 independent representatives drawn from among labor organizations, business and industry, educational institutions, and the general public.

DATES: The Committee will meet on April 20, 2000 from 1:00 p.m. to 3 p.m.

ADDRESSES: U.S. Department of Labor, 200 Constitution Avenue NW, Conference Room B at C–5515, Washington, DC 20210. The meeting is oipen to the public on a first-come, first served basis.

FOR FURTHER INFORMATION CONTACT: Lewis Karesh, designated Federal Officer, U.S. NAO, U.S. Bureau of International Labor Affairs, U.S. Department of Labor, 200 Constitution Avenue, NW, Room C–4327, Washington, DC 20210. Telephone 202–501–6653 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Please refer to the notice published in the **Federal Register** on December 15, 1994 (59 FR 64713) for supplementary information.

Signed at Washington, DC on March 27, 2000.

Lewis Karesh,

Deputy Secretary, U.S. National Administrative Office.

[FR Doc. 00–7985 Filed 3–30–00; 8:45 am]

BILLING CODE 4510–28–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37, 063 and NAFTA–3605]

Kellogg Company, South Operations Plant, Battle Creek, Michigan; Notice of Affirmative Determination Regarding Application for Reconsideration

By letter of March 8, 2000, Local #3 of the Bakery, Confectionery, Tobacco Workers and Grain Millers International Union requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance and North American Free Trade Agreement-Transitional Adjustment Assistance for workers of the subject firm. The notices were signed on February 10, 2000, and will

soon be published in the **Federal Register**.

The Department has reviewed the Union's request and has determined that further investigation regarding the Union's assertions regarding the effects of a transfer of production equipment to Mexico is warranted.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC this 21st day of March 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7982 Filed 3–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance and NAFTA Transitional Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974, as amended, the Department of Labor herein presents summaries of determinations regarding eligibility to apply for trade adjustment assistance for workers (TA–W) issued during the period of March, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for worker adjustment assistance to be issued, each of the group eligibility requirements of Section 222 of the Act must be met.

(1) That a significant number of proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm of sub-division have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations for Worker Adjustment Assistance

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–37, 194; Simonds Industries, Newcomerstown, OH
TA–W–37, 281; Appleton Papers, Inc., Harrisburg Plant, Camp Hill, PA
TA–W–37, 308; Tweco Products, A subsidiary of Thermadyne Holdings Corp., Wichita, KS
TA–W–37, 209; Agco Corp., Coldwater, OH
TA–W–37, 045; Atlas Tubular, Inc., Robstown, TX
TA–W–37, 357; Alliant Techsystems, Inc., Totowa, NJ
TA–W–37, 314; Shell Chemical Co., Point Pleasant Polyester Plant, Apple Grove, WV
TA–W–37, 241; Contour Energy Co., (Previousely Kelley Oil and Gas Corp), Houston, TX

In the following cases, the investigation revealed that the criteria for eligibility have not been met for the reasons specified.

TA–W–37, 345; Sause Bros/South Oregon Marine, Inc., Coos Bay, OR
TA–W–37, 168; North Star Steel Kentucky, Inc., Calvert City, KY
TA–W–37, 303; Motor Coils Manufacturing, Emporium, PA
TA–W–37, 393; Preston Trucking Co., Pittsburgh, PA
TA–W–37, 394; Corporate Expressions Group, Ltd, Salisbury, NC
TA–W–37, 224; Foster Wheeler Constructors, Inc., Playas, NM
TA–W–37, 367; KeyBank USA, Retail Collection and Recovery Dept, Albany, NY
TA–W–37, 130A; Hamilton Sunstrand Plant #6, East Windsor, CT

The workers firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–37, 354; ITW Signode Metals, Weirton, WV
TA–W–37, 297; Smiley Container Plant of Russell Stover Candies, Inc., Poplar Bluff, MO
TA–W–37, 296; BICC General, Williamstown, MA
TA–W–37, 969; Louisiana Pacific Corp., Ketchikan Pulp Co., Ketchikan Pulp Mill, Ketchikan, AK
TA–W–37, 306; Ordovician Association, Midland, TX
TA–W–37, 130; Hamilton Sunstrand, Plant #3, Windsor Locks, CT
TA–W–37, 054; Kearfott Guidance & Navigation Corp., Wayne, NJ
TA–W–37, 300; Award Window, Inc., Ferndale, WA
TA–W–37, 351; B. Braun Medical, Inc., Medical Div., St. Clair, PA
TA–W–37, 190; Tempset, Inc., St. Louis, MO
TA–W–37, 067; Packaging Corp. of America (formerly Tenneco Packaging), South Brunswick, NJ
TA–W–37, 347; Devro-Teepak, Inc., Plastic Converting Dept. Danville, IL
TA–W–37, 427; Kongsberg Automotive, Livonia, MI
TA–W–37, 302; Schmalbach-Lubec Plastic Containers USA, Inc., Novi, MI
TA–W–37, 243; Whizard Protective Wear Corp., Birmingham, OH

Increased imports did not contribute importantly to worker separations at the firm.

TA–W–37, 307; Vivid Publishing, Inc., Montoursville, PA

The investigation revealed that criteria (2) and criteria (3) have not been met. Sales or production did not decline during the relevant period as required for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or an appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA–W–37, 225 & A; Middle Bay Oil Co., Inc., Wichita, KS and Houston, TX

The investigation revealed that criteria (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations for Worker Adjustment Assistance

The following certifications have been issued; the date following the company name and location of each determination references the impact date for all workers of such determination.

TA–W–37, 114; ASARCO, Inc., Leadville, CO: November 10, 1998
TA–W–37, 328; Thaw Corp. Snow Creek Div, Wenatchee, WA: January 28, 1999.
TA–W–37, 321; Cedar Brook Mfg Corp., Burnett Mfg Div., Philadelphia, PA: January 29, 1999.
TA–W–37, 271; Dynamic Detail, Inc., Colorado Springs, CO: January 11, 1999.
TA–W–37, 350; Scotts Hill Leisurewear, Scotts Hill, TN: January 26, 1999.
TA–W–37, 341 & A; Komag, Inc., San Jose, CA and Santa Clara, CA: January 19, 1999
TA–W–37, 227; Noblesville Casting, Inc., Noblesville, IN: December 29, 1998.
TA–W–37, 326; Monterey, Inc., The Mill and Consumer Products Div. Janesville, WI: January 25, 1999
TA–W–37, 287; American Timber, Olney, MT: January 1999.
TA–W–37,255; Otis Elevator Co., Bloomington, IN: January 7, 1999.
TA–W–37,199; Sulzer Pumps, Portland, OR: December 7, 1999.
TA–W–37,220; The Owenby Co., Sports Stuf Apparel, Inc., Tellico Plains, TN: December 21, 1998.
TA–W–37,283; The Nordic Group LLC, Hubbard, OR: January 12, 1999.
TA–W–37,315; The Nordic Group LLC, Vancouver, WA: January 25, 1999.
TA–W–37,336; ISA Cutting Room Service, El Paso, TX: February 4, 1999.
TA–W–37,282; Hewlett Packard Co., Vancouver Div., Vancouver, WA: March 20, 2000.
TA–W–37,276; Gatesville Walls Industries, Inc., Gatesville, TX: January 12, 1999.
TA–W–37,398; Kenro, Inc., A Carlisle Co., Fiberglass Div., Fredonia, WI: February 17, 1999.
TA–W–37,270; Charles Industries Ltd, Jasonville, IN: January 11, 1999.
TA–W–37,364 & A; Robinson Mfg Co., Inc., Madisonville, TN and Gruethi-Laager, TN: December 13, 1998.
TA–W–37,275; Walls Industries, Inc., Carthage, MO: January 4, 1999.
TA–W–37,360; GEO Drilling Fluids, Bakersfield, CA: February 7, 1999.
TA–W–37,343 & A; Ro-An Jewelry, Johnston, RI and Carol Pearl Co., Johnston, RI: February 2, 1999.
TA–W–37,358; Epson Portland, Inc., Hillsboro, OR: February 11, 1999.
TA–W–37,266; Tecumseh Products Co., Trenton, TN: January 7, 1999.
TA–W–37,356; U.S. Electrical Motors, Div. of Emerson Electric Co., Philadelphia, PA: January 31, 1999.
TA–W–37,311; Gale River Designs Ltd, Franconia, NH: January 26, 1999.
TA–W–37,231; Laurel Mould, Inc., Jeannette, PA: December 15, 1999.
TA–W–37,223; Linden Apparel, Inc., Allentown, PA: December 22, 1998.
TA–W–37,288; Custom Packaging Systems, Inc., Sewn Bag Dept, Manistee, MI: January 11, 1999.

Also, pursuant to Title V of the North American Free Trade Agreement Implementation Act (Pub. L. 103–182) concerning transitional adjustment assistance hereinafter called (NAFTA–TAA) and in accordance with Section 250(a), Subchapter D, Chapter 2, Title II, of the Trade Act as amended, the Department of Labor presents summaries of determinations regarding eligibility to apply for NAFTA–TAA issued during the month of March, 2000.

In order for an affirmative determination to be made and a certification of eligibility to apply for NAFTA–TAA the following group eligibility requirements of Section 250 of the Trade Act must be met:

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof (including workers in any agricultural firm or appropriate subdivision thereof) have become totally or partially separated from employment and either—

(2) That sales or production, or both, of such firm or subdivision have decreased absolutely,

(3) That imports from Mexico or Canada of articles like or directly competitive with articles produced by such firm or subdivision have increased, and that the increases in ports contributed importantly to such workers' separations or threat of separation and to the decline in sales or production of such firm or subdivision; or

(4) That there has been a shift in production by such workers' firm or subdivision to Mexico or Canada of articles like or directly competitive with articles which are produced by the firm or subdivision.

Negative Determinations NAFTA–TAA

In each of the following cases the investigation revealed that criteria (3) and (4) were not met. Imports from Canada or Mexico did not contribute importantly to workers' separations. There was no shift in production from the subject firm to Canada or Mexico during the relevant period.

NAFTA–TAA–03704; Linden Apparel, Inc., Allentown, PA
NAFTA–TAA–03775; Award Windows, Inc., Ferndale, WA
NAFTA–TAA–03668; Barrick Goldstrike, Inc., Elko, NV
NAFTA–TAA–03640; The Boeing Company, Melbourne, AR
NAFTA–TAA–03722; ITT Industries, Jabsco, Springfield, OH
NAFTA–TAA–03653; Goss Graphics Systems, Inc., Wyomissing, PA
NAFTA–TAA–03729; American Sewn Products, Bremerton, WA
NAFTA–TAA–03676; BICC General, Williamstown, MA
NAFTA–TAA–03621, Tempset, Inc., St. Louis, MO

The investigation revealed that the criteria for eligibility have not been met for the reasons specified.

NAFTA–TAA–3740; Preston Trucking Co., Pittsburgh, PA
NAFTA–TAA–03724; KeyBank USA, Retail Recovery and Collection Dept., Albany, NY
NAFTA–TAA–03688; Motor Coils Manufacturing, Emporium, PA
NAFTA–TAA–03735; Corporate Expressions Group, Ltd, Salisbury, NC
NAFTA–TAA–03579; North Star Steel Kentucky, Inc., Calvert City, KY
NAFTA–TAA–03714; Eastman Kodak Co., US & Canada Region Customer Order Services Operations, Rochester, NY
NAFTA–TAA–03756; Vermont Castings Majestic Products Co., Huntington, IN
NAFTA–TAA–03786; Royal Bank of Canada, Credit Administration, New York, NY

The investigation revealed that workers of the subject firm did not produce an article within the meaning of Section 250(a) of the Trade Act, as amended.

Affirmative Determinations NAFTA–TAA

NAFTA–TAA–03637; Laurel Mould, Inc., Jeannette, PA: December 15, 1998.
NAFTA–TAA–03349; New Tees Manufacturing, Greeleyville, SC: July 27, 1998.
NAFTA–TAA–03768; Donaldson Co., Inc., Oelwein, IA: January 18, 1999.
NAFTA–TAA–03674; Florence Eiseman, Milwaukee, WI: January 18, 1999.
NAFTA–TAA–03682; Colorado Greenhouse, Estancia, NM: January 19, 1999.
NAFTA–TAA–03778; Caretek, Inc., Denver, CO: February 28, 1999.
NAFTA–TAA–03728; Sullivan Die Casting, Inc., Kenilworth, NJ: February 9, 1999.
NAFTA–TAA–03717; Mitec Wireless, Inc., Tinton Falls, NJ: January 21, 1999.
NAFTA–TAA–03661; Fasco Motors, Eldon, MO: January 3, 1999.
NAFTA–TAA–03706; Danskin, Inc., York, PA: February 1, 1999.
NAFTA–TAA–03744; Kenro, Inc., A Carlisle Co., Fiberglass Div., Fredonia, WI: February 21, 1999.
NAFTA–TAA–03687; Hewlett Packard Co., Vancouver Div., Vancouver, WA: March 20, 2000.
NAFTA–TAA–03746; Brunswick Bicycles, Olney, IL: February 28, 1999.
NAFTA–TAA–03701; Monterey, Inc., The Mill and Consumer Products Div., Janesville, WI: January 25, 1999.
NAFTA–TAA–03379; Sun Country Industries, Albuquerque, NM: August 5, 1998.
NAFTA–TAA–03662; Gatesville Walls Industries, Inc., Gatesville, TX: January 12, 1999.
NAFTA–TAA–03699; Griffin Pipe Products Co., Lynchburg, VA: January 31, 1999.
NAFTA–TAA–03752; Epson Portland, Inc., Hillsboro, OR: February 22, 1999.

NAFTA–TAA–03696; North Carolina Embroidery Co., High Point, NC: January 28, 1999.
NAFTA–TAA–03707; Custom Packaging Systems, Inc., Sewn Bag Dept., Manistee, MI: January 11, 1999.
NAFTA–TAA–03663; Walls Industries, Inc., Carthage, MO: January 4, 1999.

I hereby certify that the aforementioned determinations were issued during the month of March, 2000. Copies of these determinations are available for inspection in Room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons who write to the above address.

Dated: March 23, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7981 Filed 3–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Docket No. TA–W–37,330]

Cadillac Curtain Corp. Dyer, Tennessee; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 14, 2000, in response to a worker petition which was filed on the same date on behalf of workers at Cadillac Curtain Corp., Dyer, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, D.C. this 20th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7979 Filed 3–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under Section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Division of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to Section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Division of Trade Adjustment Assistance, at the address show below, not later than April 10, 2000.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Division of Trade Adjustment Assistance, at the address shown below, not later than April 10, 2000.

The petitions filed in this case are available for inspection at the Office of the Director, Division of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210.

Signed at Washington, DC this 13th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

Appendix

PETITIONS INSTITUTED ON 03/13/2000

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,438	Georgia Pacific (PACE)	Woodland, ME	03/01/2000	Panels.
37,439	National Ceramics (Wkrs)	Cunningham, KY	02/28/2000	Lamp Shades and Vases.
37,440	Terry Products, Inc (Wkrs)	Kannapolis, NC	03/02/2000	Infant and Children's Sleepers.
37,441	Kobe Precision, Inc (Wkrs)	Hayward, CA	02/23/2000	Aluminum Substrates.
37,442	Cannon Knits (Wrks)	Andrews, SC	02/29/2000	Tee Shirts.
37,443	Jerzees Activewear (Co.)	Geneva, AL	02/25/2000	Knit Apparel.
37,444	Kobratech Design (Wkrs)	N. Canton, OH	02/27/2000	Tire Model Makers.
37,445	Gorham—Lenox (Co.)	Smithfield, RI	02/29/2000	Stainless Steel Place Settings.
37,446	Mulay Plastics, Inc (Wkrs)	Casa Grande, AZ	02/29/2000	Cabinetry for Computer Monitors.
37,447	Powerex, Inc (co.)	Youngwood, PA	02/15/2000	Semiconductors.
37,448	Regal Ware (Co.)	Jacksonville, AR	02/23/2000	Aluminum Cookware.
37,449	New River Apparel (Wkrs)	Fries, VA	02/28/2000	Shirts, Pants, Sweatshirts, Jackets.
37,450	Xomox Corporation (Co.)	Cincinnati, OH	03/03/2000	Ball Valves.
37,451	Cross Creek Apparel (Co.)	Mount Airy, NC	02/21/2000	Knit Shirts, Pants.
37,452	EZA Technology (Co.)	Conyers, GA	02/28/2000	Computer Cases.
37,453	Jantzen, Inc (Co.)	Seneca, SC	02/29/2000	Warehoused & Cut Apparel Fabric.
37,454	Corson Manufacturing Co (Wkrs)	Lockport, NY	03/01/2000	Folding Cartons.
37,455	McCain Foods USA (Co.)	Burley, ID	02/05/2000	Frozen French Fries.
37,456	General Electric Services (UE)	Ontario, CA	03/05/2000	Overall & Repair Jet Engines.
37,457	Best Manufacturing Co (Co.)	Johnson City, TN	03/06/2000	Synthetic Disposable Gloves.
37,458	Williston Manufacturing (Co.)	Williston, SC	01/21/2000	Girl's & Boy's Shorts, Tops.
37,459	Rohm and Haas Co. (IUOE)	Philadelphia, PA	03/03/2000	Ion Exchange Resins.
37,460	Mr. Louis Manufacturing (Wkrs)	Hialeah, FL	03/03/2000	Ladies' Jackets.
37,461	Epic Components Co (Co.)	New Boston, MI	02/23/2000	Plastic Automobile Components.
37,462	Brandon Manufacturing (Co.)	Shreveport, LA	02/16/2000	Metal Parts for Electrical Switches.
37,463	LaCrosse Footwear, Inc (USWA)	LaCrosse, Wi	02/24/2000	Rubber Footwear.
37,464	Republic Supply Co (Wkrs)	Sidney, MT	02/28/2000	Oil Pipe Fittings.

PETITIONS INSTITUTED ON 03/13/2000—Continued

TA–W	Subject firm (petitioners)	Location	Date of petition	Product(s)
37,465	Quaker Oats Co. (BCTGM)	Shiremanstown, PA	02/27/2000	Cereals and Granola Bars.
37,466	Rochester Button Co. (Co.)	Kenbridge, VA	03/01/2000	Polyester Buttons.
37,467	Hartz and Co., Inc. (UNITE)	Baltimore, MD	03/06/2000	Men's Suits, Trousers and Sport and Coats.
37,468	Great American Knitting (Co.)	Pottstown, PA	03/06/2000	Men's Gold Toe Socks.
37,469	Sherwood Market House (UNITE)	Alliance, OH	03/06/2000	Ladies' Coats.

[FR Doc. 00–7983 Filed 3–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,804]

Key Manufacturing Co., Jasper, AL; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18(C) an application for administrative reconsideration was filed with the Director of the Division of Trade Adjustment Assistance for workers at the Key Manufacturing Co., Jasper, Alabama. The application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–36,804; Key Manufacturing Co., Jasper, Alabama (January 5, 2000)

Signed at Washington, DC this 23rd day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7980 Filed 3–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

Solicitation for Grant Applications (SGA) Job Training Partnership Act, Title III–B: Skills Shortages, Partnership Training/System Building Demonstration Program

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice of extension of closing date.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of February 28, 2000 (65 FR 10547), concerning the availability of grant funds to respond to employers' identified skills shortages through the establishment or strengthening of regional consortia. The document's closing date is being extended.

FOR FURTHER INFORMATION CONTACT: B. Jai Johnson, Grants Management Specialist, Division of Federal Assistance, Fax (202) 219–8739.

Date Extension

In the **Federal Register** of February 28, 2000, in FR Doc. 00–4580, on page 10548, in the second column, correct the **DATES** caption to read:

DATES: The closing date for receipt of the application is Wednesday, April 19, 2000 at 4:00 p.m. (Eastern Time) at the address listed.

Dated: March 27, 2000.

Laura Cesario,

Grant Officer,

[FR Doc. 00–8015 Filed 3–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[NAFTA–3711]

Cadillac Curtain Corp., Dyer, Tennessee; Notice of Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on February 7, 2000, in response to a worker petition which was filed by a company official on behalf its workers at Cadillac Curtain Corp., Dyer, Tennessee.

The petitioner has requested that the petition be withdrawn. Consequently further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed in Washington, DC this 20th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–7984 Filed 3–30–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large

volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, N.W., Room S–3014, Washington, D.C. 20210.

Withdrawn General Wage Determination Decisions

This is to advise all interest parties that the Department of Labor is withdrawing, from the date of this notice, the following General Wage Determinations:

IA000045—See IA000040
IA000053—See IA000015
IA000056—See IA000036
IA000060—See IA000040
ND000033—See ND000031
ND000035—See ND000031
ND000036—See ND000031
ND000037—See ND000031
ND000038—See ND000031
ND000039—See ND000031
ND000040—See ND000031
ND000042—See ND000031
ND000043—See ND000031
ND000044—See ND000031
ND000045—See ND000031
ND000046—See ND000031
ND000048—See ND000031

Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is less than ten (10) days from the date of this notice, this action shall be effected unless the agency finds that there is insufficient time to notify bidders of the change and the finding is documented in the contract file.

Modifications to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

None

Volume II

None

Volume III

None

Volume IV

Michigan
MI000003 (Feb. 11, 2000)
MI000030 (Feb. 11, 2000)
MI000034 (Feb. 11, 2000)
MI000063 (Feb. 11, 2000)
MI000068 (Feb. 11, 2000)
MI000069 (Feb. 11, 2000)
MI000073 (Feb. 11, 2000)
MI000077 (Feb. 11, 2000)
MI000004 (Feb. 11, 2000)
Wisconsin
WI000004 (Feb. 11, 2000)

Volume V

Iowa
IA000007 (Feb. 11, 2000)
IA000012 (Feb. 11, 2000)
IA000015 (Feb. 11, 2000)
IA000036 (Feb. 11, 2000)
IA000040 (Feb. 11, 2000)

Volume VI

North Dakota
ND000031 (Feb. 11, 2000)
ND000041 (Feb. 11, 2000)
Oregon
OR000001 (Feb. 11, 2000)
OR000004 (Feb. 11, 2000)
OR000017 (Feb. 11, 2000)
Washington
WA000001 (Feb. 11, 2000)
WA000002 (Feb. 11, 2000)
WA000003 (Feb. 11, 2000)
WA000006 (Feb. 11, 2000)
WA000007 (Feb. 11, 2000)
WA000010 (Feb. 11, 2000)
WA000013 (Feb. 11, 2000)

Volume VIII

California
CA000028 (Feb. 11, 2000)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

The general wage determinations issued under the Davis-Bacon and related Acts are available electronically by subscription to the FedWorld Bulletin Board System of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402, (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the seven separate volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates are distributed to subscribers.

Signed at Washington, D.C. this 23rd day of March 2000.

John Frank,

Acting Chief, Branch of Construction Wage Determinations.

[FR Doc. 00–7724 Filed 3–30–00; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Susan Harwood Training Grant Program

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice of availability of funds and request for grant applications.

SUMMARY: The Occupational Safety and Health Administration (OSHA) awards funds to nonprofit organizations to conduct safety and health training and education in the workplace. This notice announces grant availability for two different types of Susan Harwood Training Grants. Strategic Plan Grants support training in occupational safety and health programs for several different industries targeted in OSHA's Strategic Plan. Institutional Competency Building Grants assist organizations to develop their occupational safety and health training, education and related assistance capacity over a three-to-five year competency building period. The two types of grants are described below.

1. Strategic Plan Grants

Grants are available for training in safety and health programs for several industries targeted in OSHA's Strategic Plan. The targeted industries for this year's competition are: construction, including residential construction; food processing (SIC 20); and nursing homes (SIC 8051/8052).

These grants are awarded for a 12-month period. If first year performance is satisfactory and funds are available, grants will be renewed for an additional twelve-month period. There is approximately $2.7 million available for Strategic Plan Grants. The average Federal award will be $150,000. A non-Federal matching share of 20% is required.

2. Institutional Competency Building Grants

Grants are available to nonprofit organizations to assist them in developing and/or expanding their safety and health training, education and related assistance capacity over a three-to-five year competency building period. To be eligible to apply for this grant program, organizations must serve clients nationally or in multi-state areas, and provide or plan to provide safety and health training, education and services to their clients. Preference will be given to organizations that propose to reach and serve one or more categories of workers within the target audience. The target audience includes vulnerable workers, small business employers and employees, and workers who are employed in high hazard industries and in industries affected by new OSHA standards. Organizations will be expected to institutionalize safety and health training, education, and related assistance in their organization in order to assist these workers on an ongoing basis.

Institutional Competency Building Grants will be awarded for up to five years. Annual funding will be dependent on satisfactory performance and the availability of funds. There is approximately $3 million available for this program and an average Federal award will be $250,000. A minimum non-Federal matching share of 10% is required for the first year of the grant. The required non-Federal matching share will be increased by 5% each subsequent year of the grant.

The notice describes the scope of the grant program and provides information about how to get detailed grant application instructions. Applications should not be submitted without the applicant first obtaining the detailed grant application instructions mentioned later in the notice. Separate grant applications must be submitted by organizations interested in applying for more than one grant topic or type of grant.

Section 21(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) authorizes this program.

DATES: Applications must be received by May 19, 2000.

ADDRESSES: Submit grant applications to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Cynthia Bencheck, Program Analyst, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (847) 297–4810, e-mail cindy.bencheck@osha.gov.

SUPPLEMENTARY INFORMATION:

What Is the Purpose of the Harwood Training Grant Program?

OSHA's Strategic Plan contains strategic goals to improve workplace safety and health for all workers, change the workplace culture to increase employer and worker awareness of, commitment to, and involvement in safety and health, and to secure public confidence through excellence in the development and delivery of OSHA's programs and services. OSHA's intent is to reduce the number of worker injuries, illnesses and fatalities by focusing nationwide attention and Agency resources on the most prevalent types of workplace injuries and illnesses, the most hazardous industries, and the most hazardous workplaces. The Susan Harwood Training Grants Program is one of the mechanisms OSHA is using to achieve its strategic goals.

Information about OSHA's Strategic Plan is available on OSHA's *web site at www.osha.gov* in the About OSHA category. OSHA has selected Food Processing, Nursing Homes, Logging, Shipyards and Construction as the five industries it will focus its attention on during the performance period of the Strategic Plan. The three injuries/illnesses OSHA has targeted for reduction are amputations, lead exposures, and silica exposures.

Susan Harwood Training Grants provide funds to train workers and employers to recognize, avoid, and prevent safety and health hazards in their workplaces. The program emphasizes three areas.

- Educating workers and employers in small businesses. A small business has 250 or fewer workers.
- Training workers and employers about new OSHA standards.
- Training workers and employers about high risk activities or hazards identified by OSHA through its Strategic Plan, or as part of an OSHA special emphasis program.

Grantees are expected to provide occupational safety and health services, develop safety and health training and/or educational programs, recruit workers and employers for the training, and conduct the training. Grantees are also expected to follow up with people trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

What Are the Two Grant Categories This Year?

1. Strategic Plan Grants.
2. Institutional Competency Building Grants.

What Are the Training Topics for the Strategic Plan Grants?

Grant funds are available for Strategic Plan Grants to fund training addressing hazards in three industries. The three selected industries were chosen based on injuries and illnesses as identified in OSHA's Strategic Plan. Each grant application must address one of the following areas.

1. Construction, including residential construction. Programs that train workers and employers in the recognition and avoidance of construction hazards, especially those most frequently involved in construction fatalities (falls, struck-by, crushed-by, and electrocutions and electrical injuries). Applications that propose training and education programs addressing ergonomic hazards and abatement for the construction industry will also be eligible for consideration.

2. Food Processing, Standard Industrial Code (SIC) 20. Programs that train workers and employers in the recognition and prevention of safety and health hazards in the food processing industry. Preference will be given to programs that target workers in the food processing operations of canning, packaging, freezing, and chopping

produce (SIC 203), bakery products (SIC 205) and beverages (SIC 208).

3. Nursing Homes, Standard Industrial Code (SIC) 8051/8052. Programs that train workers and employers in the recognition and prevention of safety and health hazards in nursing homes, especially ergonomic hazards.

What Are the Requirements for the Institutional Competency Building Grants?

Nonprofit organizations that serve clients nationally or in multi-state areas and provide or plan to provide safety and health training, education and services may apply for these competency building grants. Preference will be given to organizations that can reach and serve one or more categories of workers within the target audience. The target audience includes vulnerable workers, small business employers and employees, and workers who are employed in high hazard industries and in industries affected by new OSHA standards.

Institutional Competency Building Grants may be funded for project periods of up to five years. Grant applicants must indicate the number of years, typically three-to-five, needed to fully integrate safety and health services into their organizations. Grantee organizations will be expected to establish or expand the occupational safety and health training, education and related assistance they provide to their clients. Grantees will be expected to follow up with people trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training. Organizations also will be expected to institutionalize safety and health training, education and related services in their organizations in order to assist workers on an ongoing basis and to ensure that the services will continue after the grant ends.

Grant applicants must provide a detailed budget and workplan describing planned activities for the first year of their competency building grant. A summary plan outlining the future development of their safety and health program must be provided as a part of the original application. The summary plan must clearly indicate the number of years, typically three-to-five, the organization will require grant funds in order to institutionalize safety and health services into its organization as well as proposed grant goals and activities for each year. To be eligible to apply, organization must meet the following criteria.

- Organizations must be nonprofit and serve workers nationally or in multi-state areas.
- Organizations must provide or plan to provide safety and health training, education and services to workers. Preference will be given to organizations that propose to reach and serve workers from one or more of the following groups.

a. Vulnerable workers: entry-level workers, immigrants, migrants, non-English speaking workers, illiterate workers, and recently employed inner city youth.

b. Small business employers and employees. A small business has 250 or fewer workers.

c. Workers who are employed in jobs with high risk activities or hazards or who are affected by new OSHA standards.

Applicants may propose safety and health topics for their programs that will meet the needs of their target audience. However, preference will be given to applicants that propose programs addressing one or more of OSHA's Strategic Plan topics, or other agency priorities, such as ergonomics.

Organizations should develop relationships with OSHA Area Offices, Committees on Occupational Safety and Health (COSH), and other appropriate agencies that can assist workers with safety and health problems. Applicants should describe how they will reach their target audience, their expertise in serving that audience, and how they will tailor their programs to meet the needs of their workers. Organizations should also tell us how they plan to conduct a follow-up evaluation with people trained by their program to determine what, if any, changes were made to reduce hazards in their workplaces as a result of the training.

Who Is Eligible To Apply for a Grant?

Any nonprofit organization is eligible to apply. State or local government supported institutions of higher education are eligible to apply in accordance with 29 CFR 97.4(a)(1).

Applicants other than State or local government supported institutions of higher education will be required to submit evidence of nonprofit status, preferably from the Internal Revenue Service (IRS).

What Can Grant Funds Be Spent On?

Grant funds can be spent on the following.

- Conducting training.
- Conducting other activities that reach and inform workers and employers about occupational safety and health hazards and hazard abatement.
- Developing educational materials for use in the training.

Are There Restrictions on How Grant Funds Can Be Spent?

OSHA will not provide funding for the following activities.

1. Any activity that is inconsistent with the goals and objectives of the Occupational Safety and Health Act of 1970.

2. Training involving workplaces that are not covered by the Occupational Safety and Health Act. Examples include State and local government workers in non-State Plan States and workers covered by section 4(b)(1) of the Act.

3. Production, publication, reproduction or use of training and educational materials, including newsletters and instructional programs, that have not been reviewed by OSHA for technical accuracy.

4. Activities that address issues other than recognition, avoidance, and prevention of unsafe or unhealthy working conditions. Examples include workers' compensation, first aid, and publication of materials prejudicial to labor or management.

5. Activities that provide assistance to workers in arbitration cases or other actions against employers, or that provide assistance to employers and/or workers in the prosecution of claims against Federal, State or local governments.

6. Activities that directly duplicate services offered by OSHA, a State under an OSHA-approved State Plan, or consultation programs provided by State designated agencies under section 21(d) of the Occupational Safety and Health Act.

7. Activities intended to generate membership in the grantee's organization. This includes activities to acquaint nonmembers with the benefits of membership, inclusion of membership appeals in materials produced with grant funds, and membership drives.

What Other Grant Requirements Are There?

1. OSHA review of educational materials. OSHA will review all educational materials produced by the grantee for technical accuracy during development and before final publication. OSHA will also review training curricula and purchased training materials for accuracy before they are used.

When grant recipients produce training materials, they must provide copies of completed materials to OSHA before the end of the grant period. OSHA has a lending program that circulates grant-produced audiovisual materials. Audiovisual materials produced by the grantee as a part of its grant program will be included in this lending program. In addition, all materials produced by grantees may be placed on the Internet by OSHA.

2. OMB and regulatory requirements. Grantees are required to comply with the following documents.

- 29 CFR part 95, which covers grant requirements for nonprofit organizations, including universities and hospitals. These are the Department of Labor regulations implementing OMB Circular A–110.
- OMB Circular A–21, which describes allowable and unallowable costs for educational institutions.
- OMB Circular A–122, which describes allowable and unallowable costs for other nonprofit organizations.
- OMB Circular A–133, which provides information about audit requirements.

3. Certifications. All applicants are required to certify to a drug-free workplace in accordance with 29 CFR part 98, to comply with the New Restrictions on Lobbying published at 29 CFR part 93, to make a certification regarding the debarment rules at 29 CFR part 98, and to complete a special lobbying certification.

4. Matching share. The program requires the grantee to provide a matching share of funds. The matching share requirements are different for the two grant programs being announced. The requirements are listed below.

- *Strategic Plan Grants.* Grant recipients must provide a minimum of 20% of the total grant budget. This matching share may be in-kind, rather than a cash contribution, or a combination of cash and in-kind. For example, if the Federal share of the grant is $80,000 (80% of the grant), then the matching share will be $20,000 (20% of the grant), for a total grant of $100,000. The matching share may exceed 20%.
- *Institutional Competency Building Grants.* Grant recipients must provide a minimum of 10% of the total grant budget in the first year of the grant. This matching share may be in-kind, rather than a cash contribution, or a combination of cash and in-kind. For example, if the Federal share of the grant is $180,000 (90% of the grant), then the matching share will be $20,000 (10% of the grant), for a total grant of $200,000. The first year matching share may exceed 10%.

Grant recipients will be required to increase their non-Federal matching share by at least 5% each subsequent year of the grant. Competency building grant funding will be provided for up to five years. For example, if the grant recipient requests three years for a competency building grant, the non-Federal matching share minimum is 10% the first year, 15% the second year, and 20% the third year of the grant.

5. Other. In compliance with the President's Executive Orders 12876, 12900, 12928, and 13021, the grantee is strongly encouraged to provide subgranting opportunities to Historically Black Colleges and Universities, Hispanic Serving Institutions and Tribal Colleges and Universities.

How Are Applications Reviewed and Rated?

OSHA staff will review grant applications and present the results to the Assistant Secretary who will make the selection of organizations to be awarded grants.

OSHA will give preference to applications that:

- Address multiple safety and health subjects. For example, an application for a Strategic Plan Grant for the food processing target which stresses ergonomic issues as well as other safety and health issues that affect food processing workers would be preferred over one that only addresses ergonomic issues.
- Plan to conduct train-the-trainer programs and gather data concerning the courses and the number of students trained by the new trainers as a part of their grant.
- Train managers and/or supervisors in addition to workers.
- Serve multiple employers. OSHA is interested in reaching more than one employer with each grant awarded.

The following factors will be considered in evaluating grant applications.

1. Program Design

For Strategic Plan Grants

a. The proposed training and education program addresses one of the following topics.

i. Safety and health hazards in construction, including residential construction, especially programs focusing on the four leading causes of fatalities (falls, struck-by, crushed-by, and electrocutions and electrical injuries). Applications proposing training and education programs addressing ergonomic hazards and abatement for the construction industry will also be eligible for consideration.

ii. Safety and health hazards in food processing operations (SIC 20). Preference will be given to programs that target workers and employers in the food processing operations of canning, packaging, freezing, and chopping produce (SIC 203), bakery products (SIC 205), and beverages (SIC 208).

iii. Safety and health hazards in nursing homes (SIC 8051/8052), especially ergonomic hazards.

b. The proposal plans to train workers and/or employers and clearly estimates the numbers to be trained, and clearly identifies the types of workers and employers to be trained.

c. If the proposal contains a train-the-trainer program, the following information must be provided:

—What ongoing support the grantee will provide to new trainers;
—The outline of the course curriculum that will be used by the new trainers to teach their students;
—A schedule of the courses to be conducted by the new trainers;
—The estimated number of students to be trained by these new trainers; and
—A description of how the new trainers will report back to the grantee about their classes and student numbers.

d. The planned activities and training are tailored to the needs and levels of the workers and/or employers to be trained.

e. There is a plan to recruit trainees for the program.

f. If the proposal includes developing educational materials, there is a plan for OSHA to review the materials during development.

g. There is a plan to evaluate the program's effectiveness and impact to determine if the training resulted in workplace change.

h. The planned work can be accomplished in the projected time frames.

i. There is a description of the target population, the hazards that will be addressed, the barriers that have prevented adequate training for the target population, why the program cannot be completed without Federal funds, and why funding sources currently available cannot be used for this purpose.

For Institutional Competency Building Grants

a. The proposed competency building program will provide ongoing safety and health training, education and services. Preference will be given to organizations serving one or more of the following target audiences.

i. Vulnerable workers.

ii. Small business employers and employees.

iii. Workers employed in high hazard industries and in industries affected by new OSHA standards.

b. The application describes the occupational safety and health services and training to be provided and the plan to institutionalize those services into the organization. The first year budget and workplan is detailed and describes planned activities. The summary plan indicates the number of years grant funding will be required to institutionalize safety and health services into the organization and outlines future program goals and activities.

c. Organizations must serve members nationally or in multi-state areas. Information about the geographical area to be served must be provided.

d. The application clearly estimates the numbers of workers and employers to be reached and/or trained, and describes the types of workers and employers to be reached and/or trained.

e. There is a plan to recruit program participants.

f. The planned activities and training are tailored to the needs and levels of the target audience.

g. If the proposal contains a train-the-trainer program, the following information must be provided:

—What ongoing support the grantee will provide to new trainers;
—The outline of the course curriculum that will be used by the new trainers to teach their students;
—A schedule of the courses to be conducted by the new trainers;
—The estimated number of students to be trained by these new trainers; and
—A description of how the new trainers will report back to the grantee about their classes and student numbers.

h. If the proposal includes developing educational materials, there is a plan for OSHA to review the materials during development.

i. There is a plan to evaluate the program's effectiveness and impact to determine if the safety and health services provided resulted in workplace change. This includes a description of the evaluation plan to follow up with trainees to determine the impact the program has had in abating hazards and reducing worker injuries.

j. There is a description of the target population, the hazards that will be addressed, the barriers that have prevented adequate training for the target population, why the program cannot be completed without Federal funds, and why funding sources currently available cannot be used for this purpose.

2. Program Experience

The following elements apply to both types of grants, Strategic Plan Grants and Institutional Competency Building Grants.

a. The organization applying for the grant demonstrates experience with occupational safety and health and/or its ability to develop and institutionalize its safety and health capacity.

b. The organization applying for the grant demonstrates experience training adults in work-related subjects and/or in providing services to its target audience.

c. The staff to be assigned to the project have experience in occupational safety and health, the specific topic chosen, and training adults.

d. The organization applying for the grant demonstrates experience in recruiting, training, and working with the population it proposes to serve under the grant.

3. Administrative Capability

The following elements apply to both types of grants.

a. The applicant organization demonstrates experience managing a variety of programs.

b. The applicant organization has administered, or will work with an organization that has administered, a number of different Federal and/or State grants over the past five years.

c. The application is complete, including forms, budget detail, narrative and workplan, and required attachments.

4. Budget

The following elements apply to both types of grants.

a. The budgeted costs are reasonable.

b. The proposed non-Federal matching share is at least 20% of the total budget for Strategic Plan Grant applications. The proposed non-Federal matching share for the first year is at least 10% of the total budget for Institutional Competency Building Grant applications.

c. The budget complies with Federal cost principles (which can be found in applicable OMB Circulars) and with OSHA budget requirements contained in the grant application instructions.

d. The cost per trainee is less than $500 and the cost per training hour is reasonable.

In addition to the factors listed above, the Assistant Secretary will take other items into consideration, such as the geographical distribution of the grant programs and the coverage of populations at risk.

How Much Money Is Available for Grants?

There is approximately $2.7 million available for the Strategic Plan Grants. The average Federal award will be $150,000.

There is approximately $3 million available for the Institutional Competency Building Grants. The average Federal award will be $250,000. Grants will be awarded annually for competency building programs for periods of up to five years.

How Long Are Grants Awarded For?

1. *Strategic Plan Grants.* Grants are awarded for a twelve-month period. If first year performance is satisfactory and funds are available, grants will be renewed for an additional twelve-month period.

2. *Institutional Competency Building Grants.* This multi-year grant program will fund selected organizations for a period of up to five years in order to assist them in developing their safety and health training, education and related assistance capacity. Annual refunding is dependent on satisfactory performance, the availability of funds, and an increasing non-Federal matching share.

How Do I Get a Grant Application Package?

Grant application instructions may be obtained from the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018. The application instructions are also available at http://www.osha-slc.gov/Training/sharwood/sharwood.html.

When and Where Are Applications To Be Sent?

The application deadline is 4:30 p.m. Central Time, Friday, May 19, 2000.

Applications are to be sent to the Division of Training and Educational Programs, OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, IL 60018. Applications may be sent by fax to (847) 297–6636.

How Will I Be Told if My Application Was Selected?

Organizations selected as grant recipients will be notified by a representative of the Assistant Secretary, usually from an OSHA Regional Office. An applicant whose proposal is not selected will be notified in writing.

Notice that an organization has been selected as a grant recipient does not constitute approval of the grant application as submitted. Before the actual grant award, OSHA will enter into negotiations concerning such items as program components, funding levels, and administrative systems. If the negotiations do not result in an acceptable submittal, the Assistant Secretary reserves the right to terminate the negotiation and decline to fund the proposal.

Signed at Washington, DC, this 24th day of March 2000.

Charles N. Jeffress,

Assistant Secretary of Labor.

[FR Doc. 00–8021 Filed 3–30–00; 8:45 am]

BILLING CODE 4510–26–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 40–8905]

Quivira Mining Company

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of receipt of a request from Quivira Mining Company to revise a site-reclamation milestone in License No. SUA–1473 for the Ambrosia Lake, New Mexico, facility and notice of opportunity for a hearing.

SUMMARY: Notice is hereby given that the U.S. Nuclear Regulatory Commission (NRC) has received, by letter dated December 30,1999, a request from Quivira Mining Company to amend License Condition (LC) 40 B(1) of Source Material License SUA–1473 for the Ambrosia Lake, New Mexico, facility. The license amendment request proposes to modify LC 40 B.(1) to change the completion date for placement of the erosion protection to December 31, 2001.

FOR FURTHER INFORMATION CONTACT: Jill Caverly, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555. Telephone (301) 415–6699.

SUPPLEMENTARY INFORMATION: The portion of LC 40 B.(1) with the proposed change would read as follows:

B: Reclamation, to ensure required longevity of the covered tailing and groundwater protection, shall be completed as expeditiously as is reasonably achievable, in accordance with the following target dates for completion:

(1) Placement of erosion protection as part of reclamation to comply with Criterion 6 of Appendix A of 10 CFR Part 40—

For impoundment No. 1—December 31, 2001

For impoundment No. 2, excluding portions used for approved byproduct material disposal—December 31, 2001

Quivira's request to amend LC 40 B.(1) of Source Material License SUA–1473, which describes the proposed changes to the license condition and the reason for the request, is being made available for public inspection at the NRC's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC 20555.

The NRC hereby provides notice of an opportunity for a hearing on the license amendment under the provisions of 10 CFR Part 2, Subpart L, "Informal Hearing Procedures for Adjudications in Materials and Operator Licensing Proceedings." Pursuant to § 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing. In accordance with § 2.1205(c), a request for hearing must be filed within 30 days of the publication of this notice in the **Federal Register**. The request for a hearing must be filed with the Office of the Secretary, either:

(1) By delivery to the Docketing and Service Branch of the Office of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852; or

(2) By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch.

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

(1) The applicant, Quivira Mining Company, 6305 Waterford Blvd., Suite 325, Oklahoma City, Oklahoma 73118, Attention: William Paul Goranson; and

(2) The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

(1) The interest of the requestor in the proceeding;

(2) How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing, with particular reference to the factors set out in § 2.1205(g);

(3) The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

(4) The circumstances establishing that the request for a hearing is timely in accordance with § 2.1205(c).

The request must also set forth the specific aspect or aspects of the subject matter of the proceeding as to which petitioner wishes a hearing.

In addition, members of the public may provide comments on the subject application within 30 days of the publication of this notice in the **Federal Register**. The comments may be provided to David L. Meyer, Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington DC 20555.

Dated at Rockville, Maryland, this 23rd day of March 2000.

For the U.S. Nuclear Regulatory Commission.

Thomas H. Essig,

Chief, Uranium Recovery, and Low-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–7966 Filed 3–30–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–06394]

Consideration of Amendment Request for Decommissioning of Department of the Army , U.S. Army Research Laboratory, Depleted Uranium Study Area of the Transonic Range, Aberdeen Proving Ground, Maryland, and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for decommissioning of Department of the Army, U.S. Army Research Laboratory, Depleted Uranium Study Area of the Transonic Range, Aberdeen Proving Ground, Maryland, and Opportunity for a Hearing.

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Source Material License No. SMB–141 (SMB–141), issued to the Department of the Army, U.S. Army Research Laboratory, Aberdeen Proving Ground (the licensee), to authorize decommissioning of the Depleted Uranium Study Area (DUSA) of the Transonic Range at their facility in Aberdeen Proving Ground, Maryland.

On December 15, 1999, the licensee submitted a Decommissioning Plan for the DUSA that summarized the decommissioning activities that will be undertaken to remediate the structures and areas of the surrounding soil at

Aberdeen Proving Ground. Some remaining structures and some areas of soil are contaminated with depleted uranium (DU) resulting from licensed operations conducted during the period 1973 to 1979.

The NRC will require the licensee to remediate the DUSA to meet NRC's decommissioning criteria, and during the decommissioning activities, to maintain effluents and doses within NRC requirements and as low as reasonably achievable.

Prior to approving the decommissioning plan, the NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. Approval of the Decommissioning Plan for the DUSA will be documented in an amendment to License No. SMB–141.

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to 10 CFR 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with 10 CFR 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of the **Federal Register** Notice.

The request for the hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(g);

3. The requesters areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Department of the Army, U.S. Army Research Laboratory, Aberdeen Proving Ground, Maryland 21005–5066, Attention: David W. Ore, Site Manager; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the decommissioning plan for building 611B is available for inspection at the NRC's Public Document Room, 2120 L Street N.W., Washington, DC 20555.

Dated at King of Prussia, Pennsylvania, this 21st day of March, 2000.

For the Nuclear Regulatory Commission.

Francis M. Costello,

Deputy Director, Division of Nuclear Materials Safety, RI.

[FR Doc. 00–7965 Filed 3–30–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 040–06377]

Consideration of Amendment Request for Decommissioning of Department of the Army , U. S. Army Tank-Automotive and Armaments Command, Building 611B at Picatinny Arsenal, New Jersey, and Opportunity for a Hearing

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of consideration of amendment request for decommissioning of Department of the Army, U.S. Army Tank-Automotive and Armaments Command, Building 611B at Picatinny Arsenal, New Jersey, and opportunity for a hearing.

The U.S. Nuclear Regulatory Commission is considering issuance of an amendment to Source Material License No. SUB–348 (SUB–348), issued to the Department of the Army, U.S. Army Tank-Automotive and Armaments Command, Armament Research, Development and Engineering Center (the licensee), to authorize decommissioning of Building 611B at their facility in Picatinny Arsenal, New Jersey.

On November 29, 1999, the licensee submitted a Decommissioning Plan for Building 611B that summarized the decommissioning activities that will be undertaken to remediate the building and areas of the surrounding soil at Picatinny Arsenal. In and around Building 611B, the building surfaces, equipment, and some areas of soil are contaminated with depleted uranium (DU) resulting from licensed operations conducted mainly from 1979 to 1984.

The NRC will require the licensee to remediate Building 611B and the surrounding area to meet NRC's decommissioning criteria, and during the decommissioning activities, to maintain effluents and doses within NRC requirements and as low as reasonably achievable.

Prior to approving the decommissioning plan, the NRC will have made findings required by the Atomic Energy Act of 1954, as amended, and NRC's regulations. Approval of the Decommissioning Plan for Building 611B will be documented in an amendment to License No. SUB–348.

The NRC hereby provides notice that this is a proceeding on an application for amendment of a license falling within the scope of Subpart L "Informal Hearing Procedures for Adjudication in Materials Licensing Proceedings," of NRC's rules and practice for domestic licensing proceedings in 10 CFR Part 2. Pursuant to 10 CFR 2.1205(a), any person whose interest may be affected by this proceeding may file a request for a hearing in accordance with 10 CFR 2.1205(c). A request for a hearing must be filed within thirty (30) days of the date of publication of the **Federal Register** Notice.

The request for the hearing must be filed with the Office of the Secretary either:

1. By delivery to the Docketing and Service Branch of the Secretary at One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738; or

2. By mail or telegram addressed to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch.

In addition to meeting other applicable requirements of 10 CFR Part 2 of the NRC's regulations, a request for a hearing filed by a person other than an applicant must describe in detail:

1. The interest of the requester in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requester should be permitted a hearing, with particular reference to the factors set out in 10 CFR 2.1205(g);

3. The requesters areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for a hearing is timely in accordance with 10 CFR 2.1205(c).

In accordance with 10 CFR 2.1205(e), each request for a hearing must also be served, by delivering it personally or by mail, to:

1. The applicant, Department of the Army, U.S. Army Tank-Automotive and Armaments Command, Armament Research, Development and Engineering Center, Picatinny Arsenal, NJ 07806–5000, Attention: Richard W. Fliszar; and

2. The NRC staff, by delivery to the Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852, or by mail, addressed to the Executive Director for Operations, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

For further details with respect to this action, the decommissioning plan for building 611B is available for inspection at the NRC's Public Document Room, 2120 L Street N.W., Washington, DC 20555.

Dated at King of Prussia, Pennsylvania, this 21st day of March, 2000.

For the Nuclear Regulatory Commission.

Francis M. Costello,

Deputy Director, Division of Nuclear Materials Safety, RI.

[FR Doc. 00–7964 Filed 3–30–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42576; File No. SR–CSE–99–06]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 by the Cincinnati Stock Exchange, Inc., To Extend Limit Order Protection to GTX Orders

March 24, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 1999, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. On March 9, 2000, the Exchange filed an amendment to the proposal.[3] On March 21, 2000, the Exchange filed two additional amendments to the proposal.[4] The Exchange has filed this proposal pursuant to Section 19(b)(3)(A) of the Act[5] and rule 19b–4(f)(6)[6] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposal rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend Interpretation and Policy .02 to CSE Rule 11.9(u) to ensure execution of limit orders on the books of CSE Designated Dealers by extending the CSE's limit order protection interpretation to orders eligible for execution in a primary market's after-hours trading session. The text of the proposed rule change is available at the CSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See March 2, 2000 letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE, to Constance Kiggins, Special Counsel, Division of Market Regulation, SEC ("Amendment No. 1"). In Amendment No. 1, the Exchange provided the date on which the CSE's Executive Committee of the Board of Trustees approved the proposed rule change.

[4] See March 7, 2000 letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE, to Alton Harvey, Chief, Office of Market Watch, Commission ("Amendment No. 2"). In Amendment No. 2, the CSE added a summary of the purpose of the proposed rule change in Section I of the proposal. *See also* March 20, 2000 letter from Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE, to Alton Harvey, Chief, Office of Market Watch, Commission ("Amendment No. 3"). In Amendment No. 3, the CSE requested that the proposal be effective upon filing with the Commission pursuant to Section 19(b)(3)(A) of the Act and Rule 19b–4(f)(6) thereunder. The Exchange further requested that the Commission waive the requirement that the proposed rule change not become operative before 30 days from the date of filing pursuant to Rule 19b–4(f)(6)(iii), and that the Commission accept the Exchange's original filing as satisfying the requirement under Rule 19b–4(f)(6)(iii) that the Exchange provide the Commission with five business days notice of its intent to file the proposed rule change. 15 U.S.C. 78s(b)(3)(A) and 17 CFR 240.19b–4(f)(6)(iii).

[5] 15 U.S.C. 78s(b)(3)(A).

[6] 17 CFR 240.19b–4(f)(6).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The CSE proposal is designed to ensure execution of limit orders on the books of CSE Designated Dealers by extending the CSE's limit order protection interpretation to orders eligible for execution in a primary market's after-hours trading session.[7] The Exchange believes that its proposal presents no novel issues and is substantially similar to those primary market print protection rules previously approved by the Commission.[8]

Under the proposal, during the extended period, Designated Dealers will hold within their systems GTX orders in any security traded on the Exchange pursuant to unlisted trading privileges ("UTP") and deliver the orders to the CSE after 5 p.m.[9] These orders will be executed by the CSE on a first-in, first-out ("FIFO") basis after 5 p.m.

The CSE does not propose to establish a separate after-hours trading session to compete with NYSE's Crossing Session I. Instead, it proposes to amend the limit order protection requirements to require

[7] The NYSE's Crossing Session I, which permits the execution of single-stock, single-sided closing-price orders and crosses of single-stock closing-price buy and sell orders, was approved by the Commission on May 20, 1991, and began operation on June 13, 1991. See Securities Exchange Act Release No. 29237 (May 24, 1991), 56 FR 24853 (May 31, 1991) (SR–NYSE–90–52 and SR–NYSE–90–53). The American Stock Exchange, LLC's ("Amex") After-Hours Trading ("AHT") facility was approved by the Commission on August 2, 1991. See Securities Exchange Act Release No. 29515 (August 2, 1991), 56 FR 37736 (August 8, 1991) (SR–Amex–91–15).

[8] Procedures established by the other regional exchanges in 1991 require their specialists to provide primary market protection to limit orders based on the volume that prints in the primary market's after-hours session. See Securities Exchange Act Release Nos. 29301 (June 13, 1991), 56 FR 28182 (June 19, 1991) (SR–BSE–91–4) ("Boston Stock Exchange Approval Order"); 29297 (June 13, 1991), 56 FR 28191 (June 19, 1991) (SR–MSE–91–11) ("MSE Approval Order"); 29300 (June 13, 1991), 56 FR 28212 (June 19, 1991) (SR–Phlx–91–26) ("Philadelphia Stock Exchange Approval Order"); 29749 (September 27, 1991), 56 FR 50405 (October 4, 1991) (SR–Phlx–91–32) ("Philadelphia Stock Exchange Amendment"); 29305 (June 13, 1991), 56 FR 28208 (June 19, 1991) (SR–PSE–91–21) ("Pacific Strock Exchange Approval Order"); and 29543 (August 9, 1991), 56 FR 40929 (August 16, 1991) (SR–PSE–91–28) ("Pacific Stock Exchange Amendment"). While CSE Interpretation and Policy .02 to Rule 11.9(u) requires similar primary market print protection during regular trading hours, the Chapter 11 rules are applicable currently only to the regular trading session.

[9] All references to time are Eastern Time unless noted otherwise. Presently, the primary markets for CSE securities traded according to UTP, the NYSE and the Amex, end their regular trading sessions and report closing prices shortly after 4 p.m.

its Designated Dealers to fill certain limit orders (orders which satisfy certain stated criteria) after the close of the regular CSE auction market trading session based upon CSE Rule 11.1(b) which permits CSE to execute orders during the hours which a security is traded on a principal exchange.[10]

Under the proposal, CSE Designated Dealers will scan their limit order books at 4 p.m. for limit orders that are priced at the primary market's closing price and have been designated as "GTX" ("good 'til cancelled, executable in the after-hours session").[11] The CSE proposal would give customers the option of deciding whether they want their limit orders to be designated as GTX orders and thus eligible for execution after the close of the regular primary market.[12] If a limit order meets these criteria, then it would become eligible for a fill at the primary market closing price based on volume that prints in the primary market's after-hours session. The only two situations under which a CSE Designated Dealer would not be obligated to fill customer limit orders, designated as GTX, based on volume that prints in the primary market's after-hours session are: (1) If it can be demonstrated that the order would not have been executed if it had been transmitted to the primary market; and (2) if a customer cancels a GTX order.[13] GTX orders will retain the priority among themselves that exists on the Designated Dealers' books and would be entitled to an execution based on that priority. If a limit order that is eligible for limit order protection in an after-hours session does not get executed, it will remain on the limit order books of the CSE Designated Dealer and would retain its priority during the next day's regular trading session.

Designated Dealers will deliver to the CSE for execution GTX orders once the appropriate volume in a particular security in the primary market's crossing session has been determined. The Exchange proposes to implement trade reporting for GTX orders by reporting each execution immediately after the primary market's after-hours session. As executions occur between 5:00 p.m. and 5:05 p.m., they will be reported to the consolidated tape as "Out-of-Sequence" (or "Sold" sale) transactions. Because other exchanges may be operating during this time, printing the GTX after-hours crossing session trades in this manner will ensure that the transaction reports do not update the consolidated last sale.

Clearance and Settlement

Clearance and settlement of trades that result from after-hours limit order protection will occur in the same manner and at the same time as regular way trading session transactions. Once the CSE Control Room Staff have completed their end-of-day procedures at approximately 5:15 p.m., they inform the Operations area to bring down the National Securities Trading System ("NSTS").[14] Operations will initiate the process of bringing down the system, which includes clearing out the book and running roll files to update the Dealer of the Day obligations. Approximately one hour after the initiation of bringing down the system, the clearing files are delivered to National Securities Clearing Corporation.

Trading Halts in Eligible Securities

Executions of GTX orders will not be available for any issue that remained halted as of the close of the traditional trading session on the primary market. In addition, executions will be prohibited if a market-wide "circuit breaker" trading half remained in effect at the close of the primary market traditional trading session.

Surveillance and Oversight

The Exchange will conduct surveillance and oversee all GTX orders in the same manner and using the same techniques as used during the traditional trading session. These systems should reduce the possibility for intentional or inadvertent mishandling of orders and should detect any trading abuses.

Exemptive Relief

The Exchange requested, and was granted, an exemption from Rule 10a-1 under the Act, the Commission's short sale rule.[15]

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[16] in general, and furthers the objectives of Section 6(b)(5)[17] in particular. The Exchange believes the proposed rule is consistent with Section 6(b)(5) in that it is designed to promote just and equitable principles of trade and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received in connection with the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[18] and Rule 19b–4(f)(6)[19] thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission accelerate the operative date. The Commission finds good cause to designate the proposal to become immediately operative upon filing, because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will provide investors immediately with a choice of having GTX orders filled at a primary market or at the CSE. For these reasons, the Commission finds good cause to designate that the proposal become operative immediately.[20]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–CSE–99–06 and should be submitted by April 21, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7976 Filed 3–30; 8:45 am]

BILLING CODE 8010–01–M

[10] Currently, pursuant to CSE Rule 11.1(b), the hours of trading for any security traded on the Exchange which is also traded on another national securities exchange ("dually traded") or exchanges ("multiply traded") shall be, in addition to the hours of trading set forth in paragraph (a) of this rule 9:30 a.m. to 4:05 p.m.), *the hours during which the security is traded on the principal exchange* (emphasis added). Therefore, trades may be executed immediately after the primary exchange's after-hours session.

[11] Members will designate limit orders that are eligible for limit order protection based on the volume that prints in a primary market's after-hours trading session as "GTX" orders. Any customer Good 'til Cancelled ("GTC") limit orders on the book of the member during the regular trading session of 9:30 a.m. to 4:05 p.m. will remain there and will not be eligible for limit order protection based on the volume that prints in the primary market's after-hours session.

[12] CSE will use its existing systems to implement the proposed rule change and execute GTX orders. The CSE has no systems capacity concerns regarding the execution of GTX orders.

[13] Under the CSE proposal, a customer can cancel a GTX order during the regular 8:30 a.m. to 3:05 p.m. (Central Time) session and at any time up until the execution based on the NYSE Crossing Session I print.

[14] NSTS is the CSE's electronic communication and execution facility through which bids and offers of competing dealers, as well as public orders, are consolidated for review and execution by system users. NSTS is the platform supporting the CSE's regular trading session and will be the platform supporting the proposed limit order protection of GTX orders. Use of NSTS in this manner will not adversely impact the capacity or operation of NSTS during the regular trading session.

[15] The Commission has granted the Exchange an exemption from Rule 10a-1 under the Act for limit orders for NYSE listed securities that are priced at the NYSE's closing price and have been designated for execution based on the volume that prints in NYSE's Crossing Session I. *See* March 23, 2000 letter to Jeffrey T. Brown, Vice President Regulation and General Counsel, CSE, from James A. Brigagliano, Assistant Director, Division of Market Regulation, Commission. The Exchange must seek further exemptive relief should it expand the scope of limit order protection to include orders for securities that are priced at the close and designated for execution based on volume that prints on additional primary markets.

[16] 15 U.S.C. 78f(b).

[17] 15 U.S.C. 78f(b)(5).

[18] 15 U.S.C. 78s(b)(3)(A).

[19] 17 CFR 240.19b–4(f)(6).

[20] In reviewing this rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[21] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42572; File No. SR–NYSE–00–09]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Exchange Rule 123B

March 23, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 28, 2000, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") file with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change. The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves two amendments to Exchange Rule 123B. The first amendment relates to commission-free execution or orders received by specialists through the SuperDOT System, and the second amendment clarifies the status of an order that is canceled and replaced.[3]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On October 4, 1999, the Exchange filed a proposed rule change with the Commission consisting of three amendments to Exchange Rule 123B. On November 30, 1999, the Commission approved the proposed rule change as a pilot through February 26, 2000.[4]

One of the amendments to Rule 123B provided for the commission-free execution of all orders received by Exchange specialists through the SuperDOT system if such orders were executed within five minutes. Under former Exchange Rule 123B(b)(1), specialists were not permitted to charge floor brokerage (*i.e.*, a commission imposed on exchange floor brokers) for executing market and marketable limit orders[5] received by means of the Exchange's automated order routing system known as SuperDOT. The Exchange proposed to amend Rule 123B and add .10 in the Supplementary Material to the Rule to extend the no commission policy to all orders received by specialists via SuperDOT that are executed within five minutes of receipt. This proposal extended the commission-free execution to include limit orders that are not marketable at the time of receipt by the specialist but that are executed within the five-minute timeframe. The proposed rule change

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The Commission approved these two amendments to Exchange Rule 123B on a pilot basis on November 30, 1999. *See* Exchange Act Release No. 42184 (November 30, 1999), 64 FR 68710 (December 8, 1999), File No. SR–NYSE–99–40. In SR–NYSE–99–40, a third amendment to Exchange Rule 123B relating to execution reports of stopped orders was also proposed and approved by the Commission. However, the Exchange did implement this third amendment upon the Commission's approval, and is not seeking to implement this third amendment at this time. *See* letter from James E. Buck, Senior Vice President and Secretary, Exchange, to Richard Strasser, Assistant Director, Division of Market Regulation, Commission, dated February 25, 2000. Additionally, in File No. SR–NYSE–00–13, filed with the Commission on March 21, 2000, the Exchange has requested an extension of this pilot program for an additional 60 days or until April 26, 2000, and has requested permanent approval of this pilot program on an accelerated basis.

[4] *See* Exchange Act Release No. 42184 (November 30, 1999), 64 FR 68710 (December 8, 1999). The third proposed change to Rule 123B related to reports of executions within two minutes for orders stopped by specialists. The Exchange is not implementing this third proposed change to Rule 123B at this time. *See* Footnote 3, *infra*. Therefore, the Commission is not seeking comment on this third amendment.

[5] A marketable limit order is defined as an order with a limit price which is at or better than the prevailing quotation at the time the order is received by the specialist. *See* Exchange Rule 123B(b)(1).

eliminated reference to "market" and "marketable limit orders" since all orders received through SuperDOT would be eligible for commission-free execution. The provision allowing the specialist to charge a commission on orders to sell short was also eliminated. The Exchange instituted the pricing initiative of commission-free executions, in conjunction with the Exchange's specialist community, effective with trades executed on December 29, 1999. To date, the procedure has worked well. The Exchange has not received any complaints concerning this policy.

A second amendment added language to Rule 123B to clarify that if an order that had been placed with the specialist is canceled and replaced, the replacement order is considered a new order for purposes of the Rule. Since the implementation of the pilot program, the Exchange is not aware of any problems associated with the clarifying language.

2. Statutory Basis

The Exchange believes that the basis for the proposed rule change is the requirement under Section 6(b)(5) of the Act[6] that an Exchange have rules that are designed to promote just and equitable principles of trade, facilitate transactions in securities, remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest. In accordance with Section 11A(a)(1)(C) of the Act,[7] the Exchange also believes that the proposed rule change will foster the economically efficient execution of securities transactions, fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets.

B. Self-Regulatory Organization's Statement on Burden on Competition

These enhancements will provide the Exchange the opportunity to compete more effectively for order flow with other marketplaces. Thus, the Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78k–1(a)(1)(c).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange reviewed the proposed rule change with members and organizations representing various constituencies of the Exchange and the responses to the proposed rule changes were positive. The Exchange has not otherwise solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve the proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room.

Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–NYSE–00–09 and should be submitted April 21, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7974 Filed 3–30–00; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42574; File No. SR–NYSE–99–14]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2 Thereto Relating to Amendments to the Listed Company Manual

March 24, 2000.

I. Introduction

On April 12, 1999, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to amendments to the NYSE's Listed Company Manual ("Manual") regarding the Exchange's procedures and oversight of listed companies. On October 25, 1999, the Exchange submitted Amendment No. 1 to the proposed rule change.[3] On December 16, 1999, the Exchange submitted Amendment No. 2.[4]

The proposed rule change, as amended, as published for comment in the **Federal Register** on February 9, 2000.[5] No comments were received on

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the NYSE made several clarifications to the proposed rule change, incorporated appropriate provisions for Non-U.S. issuers, and revised the procedures for the annual report requirement. *See* Letter to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated October 22, 1999 ("Amendment No. 1").

[4] In Amendment No. 2, the NYSE made several technical changes to the text of the proposed rule change and clarified that the supplemental listing application ("SLAP") provision applies to Non-U.S. issuers. *See* Letter to Richard Strasser, Assistant Director, Division, SEC, from James E. Buck, Senior Vice President and Secretary, NYSE, dated December 14, 1999 ("Amendment No. 2"). In Amendment No. 2, the Exchange also requested accelerated approval of the proposed rule change. The Exchange withdrew this request as per telephone conversation between Amy Bilbija, Counsel, NYSE, and Terri Evans, Special Counsel, and Heather Traeger, Attorney, Division, SEC, on January 4, 2000.

[5] Securities Exchange Act Release No. 42364 (January 28, 2000), 65 FR 6432.

the proposal. This order approves the NYSE proposal, as amended.

II. Description of the Proposal

The proposal would make several changes to the Exchange's procedures and oversight of listed companies. First, the proposal would institute a regularly review procedure for listing applicants whereby Exchange staff would access media outlets, run Central Registration Depository checks, and consult with staff in the SEC's Division of Enforcement to identify any potential issues of concern regarding the applicant company's board members, officers (as the term "Officer" is defined in Section 16 of the Act),[6] and non-institutional shareholders with an interest in excess of 10 percent. The proposal also would require each applicant company to submit a letter from inside or outside counsel representing that, to the company's knowledge, no officer, board member, or non-institutional shareholder with more than 10 percent ownership in the company has been convicted of a felony or misdemeanor relating to financial issues (*e.g.*, embezzlement, fraud, or theft) in the past 10 years.

In addition, the proposal would amend the Exchange's procedures for processing SLAPs submitted for consideration by companies that have been identified as being below the Exchange's continued listing criteria.[7] Upon receipt of a SLAP from such a company, Exchange staff would first determine whether or not the SLAP is for an issuance to current shareholders (*e.g.*, a stock split). If so, the application would be authorized. If, however, the SLAP is for an issuance to new shareholders, the application will be reviewed against the Exchange-approved plan pursuant to which the company is operating to return to financial compliance with the Exchange's listing standards. If the proposed issuance is within the scope of the plan, or furthers the goals of the plan, it will be approved. Conversely, the Exchange will deny authorization if the proposed issuance is outside the scope of the plan or contradicts its goals.[8]

Third, the proposal would amend the Exchange's annual report requirements. The proposal would require that a company mail to shareholders by the specified date either an annual report or a Form 10–K (Form 20–F for Non-U.S. issuers) with an indication that it is in lieu of the annual report.[9] Due to longer mailing and processing time, international companies will have a maximum period following the SEC filing deadlines of 45 days to mail either the annual report or Form 20–F (with an indication that it is in lieu of the annual report), where domestic issuers would have 30 days.[10]

Furthermore, for companies that are unable to timely file a Form 10–K (or Form 20–F), the proposal would allow the Exchange to consider why the filing cannot be made, evaluate the continued listing status of the company in light of the specific facts presented, and require that the company issue a press release. Once the Form 10–K (or Form 20–F) is filed, the proposal would require a mailing of the Form 10–K (or Form 20–F) or an annual report to shareholders within 15 days (30 days for a Non-U.S. issuer).[11]

Finally, the proposal would permit companies to distribute annual reports or SEC forms electronically to beneficial holders who give prior written consent. Such consent must be in writing, which may be in the form of electronic mail.[12]

The proposal would also provide that failure to comply with these requirements will result in presentation of the company's situation to Exchange staff for appropriate action, which could include the determination to proceed with suspension of trading and application to the SEC to delist the security.

III. Discussion

The Commission finds that the proposal is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[13] Specifically, the Commission believes that the proposal is consistent with the requirements of Section 6(b)(5) of the Act[14] because it is designed to promote just and equitable principles of trade, to remove impediments to, and perfect the mechanism of a free and open market and, in general, to protect investors and the public interest. The Commission believes that the proposal, by codifying and expanding the Exchange's procedures and oversight of listed companies, strikes a reasonable balance between the Exchange's obligation to protect investors and investor confidence in the market, and its parallel obligation to perfect the mechanism of a free and open market.

The NYSE proposes several amendments to the Manual. First, the Exchange proposes to implement regulatory reviews of key personnel associated with listing applicants. Specifically, the proposal provides for a procedure where Exchange staff would attempt to identify, through a variety of sources, any possible issues of concern regarding an applicant's board members, officers, and certain non-institutional shareholders. The Commission believes that such reviews should strengthen and improve the effectiveness of the procedures for reviewing listing applicants, and enhance investor protection by screening out those companies that the Exchange believes are unsuitable for listing.

The proposal also codifies the Exchange's procedures regarding SLAPs for companies identified as being below continued listing standards. Specifically, the proposal requires that SLAPs concerning an issuance to new shareholders must not conflict with the company's Exchange-approved plan under which it is operating to return to compliance with the Exchange's financial listing standards. The Commission believes that codifying the procedures applicable to the SLAPs of such companies should enhance investor protection by ensuring that SLAPs which fail to satisfy the procedures are denied authorization.

The proposal further amends the Exchange's disclosure requirements for listed companies late in filing Form 10–Ks or annual reports. A company that is unable to make a timely filing will be required to explain its reasons for such lateness and will be required to issue a press release. Furthermore, the continued listing status of the company will be evaluated with regard to the specific facts presented. The proposal also allows companies to electronically distribute annual reports or SEC forms to beneficial shareholders who give prior written consent. Finally, the proposal provides that failure to comply with these requirements could result in the NYSE's determination to suspend trading and apply to the Commission to delist the security. The Commission believes that this proposed change should ensure that companies distribute

[6] 15 U.S.C. 80a–16.

[7] This provision will apply to both U.S. and Non-U.S. issuers. *See supra* note 4.

[8] In this context, the Exchange would recognize that employee stock option plans, although rarely a specific element of a financial plan, are customarily in furtherance of the company's objectives and are thereby consistent with any approved plan.

[9] *See* Amendment No. 1, *supra*, note 3. Domestic companies are required to submit their annual filings on Form 10–K to the SEC within 90 days of the fiscal year end. International companies are required to submit their annual filings on Form 20–F within 180 days of the fiscal year end.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] In approving this rule, the Commission has considered the proposed rule change's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f(b)(5).

their annual reports to investors in a timely manner or provide investors with an explanation for any delay, and provide issuers with explicit notice that a failure to comply with these requirements could result in suspension and delisting from the NYSE. The proposal also should provide investors with faster access to a company's forms or annual reports by allowing electronic distribution to those investors who give express consent to such distribution.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[15] that the proposed rule change (SR–NYSE–99–14), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[16]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7975 Filed 3–30–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42575; File No. SR–OCC–00–01]

Self-Regulatory Organizations; The Options Clearing Corporation; Notice of Filing of Proposed Rule Change Relating to Exercise Settlement Values for Expiring Index Options

March 24, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on January 19, 2000, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") and on March 14, 2000, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by OCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow OCC to conform the method used to establish settlement values for expiring stock index options with the method used to value futures on the underlying index when the primary market(s) for one or more component securities of an index is closed on the last trading day before expiration.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, OCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. OCC has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of these statements.[2]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to add new subparagraph (3) to Article XVII, Section 4(a) of OCC's By-Laws. The new subparagraph would permit OCC to conform the exercise settlement value for expiring options on a security index to the final settlement value used for related index futures and options on index futures when the primary market(s) for one or more component securities of the index is closed on the last trading day before expiration. The present default method for setting the exercise settlement amount for the underlying index, as specified in the current version of Article XVII, Section 4(a)(2) and disclosed in the current Options Disclosure Document, is to use the reported level of the stocks in the underlying index at the close of trading on the last preceding day for which a closing index level was reported.

However, this is not the valuation method that would be used under the same circumstances by the Chicago Mercantile Exchange ("CME"), which would determine the settlement value of the index by using the opening values for index stocks affected by the closing as reported when the primary market for such stocks reopens. For example, under CME rule 4003, "[i]f the New York Stock Exchange (NYSE) does not open on the day scheduled for the determination of the Final Settlement Price [of S&P 500 index futures], then the NYSE-stock component of the Final Settlement Price shall be based on the next opening prices of NYSE stocks." The use of different dates and hence potentially different index values for fixing the final settlement values for index options and futures on the same index creates uncertainty and risk for investors who use trading strategies involving index options and index futures based on the expectation that their settlement values will have a predictable relationship. Therefore, OCC is proposing that if the primary market(s) for one or more component securities of an index did not open for trading on the last trading day before expiration of a series of options on such index, an adjustment panel acting pursuant to Article XVII may fix the exercise settlement amount for such options using the opening prices of the affected security or securities when the primary market reopens.

OCC is also amending Article XVII to make clear that (1) OCC has the discretion to determine which market is a security's primary market and (2) when OCC fixes a settlement price based on an index level at the close of trading, the price will be fixed based on the index level at the close of regular trading hours, as determined by OCC.

OCC believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to OCC, and in particular with Section 17A of the Act[3] because it fosters cooperation and coordination with persons engage in the clearance and settlement of securities transactions, removes impediments to and perfects the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions, and, in general, protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

OCC does not believe that the proposed rule change would impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were not and are not intended to be solicited with respect to the proposed rule change, and none have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and

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[15] 15 U.S C. 78s(b)(2).

[16] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1)

[2] The Commission has modified the text of the summaries prepared by OCC.

[3] 15 U.S.C. 78q–1.

publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approved such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Perosns making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of OCC.

All submissions should refer to File No. SR–OCC–00–01 and should be submitted by April 21, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7978 Filed 3–30–00; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42577; File No. SR–PCX–00–2]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Communications With Customers and Members of the Public

March 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on February 11, 2000, the Pacific Exchange, Inc. ("PCX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. On March 8, 2000, the PCX filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to allow members, member organizations, and associated persons to distribute more than one type of options worksheet to customers or members of the public. The text of the proposed rule change is available at the Office of the Secretary, CBOE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend PCX Rule 9.28 ("Advertisements, Market Letters and Sales Literature Relating to Options") to allow members, member organizations, and associated persons to distribute to customers or members of the public more than one type of options worksheet to indicate possible outcomes under various market conditions. The proposed rule change: (i) Incorporates worksheets into the definition of "sales literature" and establishes that worksheets must comply with the requirements applicable to sales literature; (ii) adds references to members and associated persons; (iii) deletes references to "standard" worksheets and deletes prohibitions on "nonstandard" worksheets; and (iv) deletes the requirement that worksheets must be uniform within a member organization for each product type. These changes are discussed below.

First, the Exchange proposes to remove the word "standard" from PCX Rule 9.28(e)(ii) to incorporate all worksheets communicated to customers or the public into the definition of 'sales literature." Under rule 9.28(e)(ii), these worksheets are defined as sales literature and must comply with the requirements applicable to sales literature.

Second, the Exchange proposes to modify PCX Rule 9.28, Commentary .03(E) to require that any (not just standard form) options worksheets must comply with the requirements applicable to sales literature. Under the current rule, once a member organization adopts a "standard" worksheet for a particular options strategy or product type (*e.g.*, equities, foreign currencies, indexes, etc.), it may only distribute that standard worksheet to a client, and may not illustrate different market conditions through other worksheets.

Third, the Exchange proposes to add references to members and associated persons to PCX Rule 9.28, Commentary .03(E) to clarify that members and associated persons, and not just member organizations, are responsible for utilizing worksheets that comply with requirements applicable to sales literature. Fourth, the Exchange proposes to delete PCX Rule 9.28, Commentary .03(F), which requires that member organizations use a standard form of worksheet for a particular options strategy, to make the Exchange's rules consistent with this proposal. Finally, the Exchange proposes to renumber PCX Rule 9.28, Commentary .03(G) as new PCX Rule 9.28, Commentary .03(F).

The Exchange believes that the proposed rule change will allow members, member organizations, and associated persons to use Exchange or industry-produced worksheets or to tailor worksheets to specific clientele. The Exchange believes the proposed rule change also ensures that when

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[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, PCX requested that the Commission grant accelerated approval to the proposed rule change. *See* letter from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Richard Strasser, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 7, 2000. The PCX also changed Exhibit 1 of the proposed rule change to reflect the request for accelerated approval. *See* e-mail from Robert P. Pacileo, Staff Attorney, Regulatory Policy, PCX, to Joseph P. Corcoran, Attorney, Division, Commission, on March 16, 2000.

members, member organizations, and associated persons use options worksheets, all such worksheets will comply with the requirements applicable to sales literature.[4]

In addition, the Exchange believes that the proposed rule change will improve the quality of options worksheets that customers or members of the public receive from members, member organizations, and associated persons.The Exchange also believes that the proposed rule change should enhance members' ability to describe properly the risks and benefits of options trading, and should enhance the ability of customers or members of the public to understand these risks and benefits.

2. Statutory Basis

The exchange believes that the proposal is consistent with Section 6(b)[5] of the Act, in general, and further the objectives of Section 6(b)(5),[6] in particular, in that it is designed to facilitate transactions in securities and remove impediments to and perfect the mechanism of a free and open market and national market system, and to protect investors and the public interest by allowing the distribution of worksheets that are tailored for specific options strategies.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–00–02 and should be submitted by April 21, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful review, the Commission finds that the proposal is consistent with the requirements of the Act.[7] In particular, the Commission finds the proposal is consistent with Section 6(b)(5)[8] of the Act. Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to promote just and equitable principles of trade and to protect investors and the public interest.

The Commission believes that the proposal is consistent with the Act because it provides flexibility to PCX member firms while still providing for investor protection. In particular, the proposal provides flexibility to PCX members and their associated persons by allowing them to create options worksheets that match the investment objectives of their clients. At the same time, however, the proposal provides for investor protection by continuing the requirement that a registered options principal first approve the worksheet before its use.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register.** The Commission approved a virtually identical proposal by the Chicago Board Options Exchange ("CBOE"), SR–CBOE–99–27.[9] This proposal was published in the **Federal Register** for the full 21-day comment period and the Commission received no public comments.[10] The current proposal follows the changes approved in SR–CBOE–99–27. The Commission believes, therefore, that granting accelerated approval to the proposed rule change is appropriate and consistent with Section 6[11] of the Act.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–PCX–00–02), as amended, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–7977 Filed 3–30–00; 8:45 am]

BILLING CODE 8010–01–M

[4] *See* Exchange Rule 9.28.

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] In addition, pursuant to Section 3(f) of the Act, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78f(b)(5).

[9] *See* Release No. 34–42443 (February 18, 2000), 65 FR 10574 (February 28, 1999) (order approving SR–CBOE–99–27.)

[10] *See* Release No. 34–42186 (November 30, 1999), 64 FR 68707 (December 8, 1999) (notice of filing of SR–CBOE–99–27.)

[11] 15 U.S.C. 78f.

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Small Business Administration.

ACTION: Notice of Reporting Requirements Submitted for OMB Review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission.

DATES: Submit comments on or before May 1, 2000. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

Copies: Request for clearance (OMB 83–1), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer.

ADDRESSES: Address all comments concerning this notice to: Agency Clearance Officer, Jacqueline White, Small Business Administration, 409 3rd Street, SW, 5th Floor, Washington, DC 20416; and OMB Reviewer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Jacqueline White, Agency Clearance Officer, (202) 205–7044.

SUPPLEMENTARY INFORMATION:

Title: BIC Customer Satisfaction Survey.

Form No.: 1916.

Frequency: On Occasion.

Description of Respondents: New, established and prospective Small Business Owners using the services and programs offered by the Business Information Center Program.

Annual Responses: 1,806.

Annual Burden: 68.

Jacqueline White,

Chief, Administrative Information Branch.

[FR Doc. 00–7945 Filed 3–30–00; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3247]

State of Alabama

As a result of the President's major disaster declaration on March 17, 2000, I find that Jefferson and Tuscaloosa Counties in the State of Alabama constitute a disaster area due to damages caused by severe storms and flooding that occurred on March 10–11, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 16, 2000, and for economic injury until the close of business on December 17, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Bibb, Blount, Fayette, Greene, Hale, Pickens, Shelby, St. Claire, and Walker in the State of Alabama may be filed until the specified date at the above location.

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere—*7.625%*
Homeowners Without Credit Available Elsewhere—*3.812%*
Businesses With Credit Available Elsewhere—*8.000%*
Businesses and Non-Profit Organizations Without Credit Available Elsewhere—*4.000%*
Others (Including Non-Profit Organizations) With Credit Available Elsewhere—*6.750%*

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—*4.000%*

The number assigned to this disaster for physical damage is 324706 and for economic injury the number is 9G9300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 23, 2000.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 00–8025 Filed 3–30–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3237]

State of Georgia; Amendment #2

In accordance with a notice from the Federal Emergency Management Agency dated March 21, 2000, the above-numbered Declaration is hereby amended to include Turner County, Georgia as a disaster area due to damages caused by severe storms and tornadoes that occurred on February 14, 2000.

In addition, applications for economic injury loans from small businesses located in the contiguous Counties of Ben Hill, Crisp, and Wilcox in the State of Georgia may be filed until the specified date at the previously designated location. Any counties contiguous to the above-named primary county and not listed herein have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is April 15, 2000 and for economic injury the deadline is November 15, 2000.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 23, 2000.

Bernard Kulik,

Associate Administrator for Disaster Assistance.

[FR Doc. 00–8026 Filed 3–30–00; 8:45 am]

BILLING CODE 8025–01–U

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3248]

State of Louisiana

Terrebonne Parish and the contiguous parishes of Assumption, Lafourche, and St. Mary in the State of Louisiana constitute a disaster area as a result of damages caused by severe storms and tornadoes that occurred on March 15, 2000. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on May 22, 2000, and for economic injury until the close of business on December 21, 2000 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155

The interest rates are:

For Physical Damage

Homeowners With Credit Available Elsewhere—7.625%
Homeowners Without Credit Available Elsewhere—3.812%
Businesses With Credit Available Elsewhere—8.000%
Businesses and Non-Profit Organizations Without Credit Available Elsewhere—4.000%
Others (Including Non-Profit Organizations) With Credit Available Elsewhere—6.750%

For Economic Injury

Businesses and Small Agricultural Cooperatives Without Credit Available Elsewhere—4.000%

The numbers assigned to this disaster are 324812 for physical damage and 9G9400 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: March 21, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–8024 Filed 3–30–00; 8:45 am]

BILLING CODE 8025–01–U

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1995, as Amended by Public Law 104–13; Submission for OMB Review; Comment Request

AGENCY: Tennessee Valley Authority.

ACTION: Submission for OMB Review: comment request.

SUMMARY: The proposed information collection described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended). The Tennessee Valley Authority is soliciting public comments on this proposed collection as provided by 5 CFR Section 1320.8(d)(l). Requests for information, including copies of the information collection proposed and supporting documentation should be directed to the Agency Clearance Officer: Wilma H. McCauley, Tennessee Valley Authority, 1101 Market Street (WR 4Q), Chattanooga, Tennessee 37402–2801; (423) 751–2523.

Comments should be sent to the OMB Office of Information and Regulatory Affairs, Attention: Desk Officer for

Tennessee Valley Authority no later than May 1, 2000.

SUPPLEMENTARY INFORMATION:

Type of Request: Regular submission.

Title of Information Collection: Foreign Line Crossing Data.

Frequency of Use: On Occasion.

Type of Affected Public: State or local governments, small businesses or organizations, businesses or other for-profit.

Small Businesses or Organizations Affected: Yes.

Federal Budget Functional Category Code: 271.

Estimated Number of Annual Responses: 100.

Estimated Total Annuol Burden Hours: 1000.

Estimated Average Burden Hours Per Response: 10.

Need For and Use of Information: When a company wishes to build a line over or under a power transmission line owned by TVA, TVA must review certain engineering data to ensure reliability of the power system and to protect the public by ensuring that the crossing meets the National Electrical Safety Code. The information collection provides such engineering data.

Jacklyn J. Stephenson,

Manager, Enterprise Operations, Information Services.

[FR Doc. 00–7909 Filed 3–30–00; 8:45 am]

BILLING CODE 8120–08–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Procurement Thresholds for Implementation of Trade Agreements Act

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of procurement thresholds under the WTO Government Procurement Agreement and Chapter 10 of the North American Free Trade Agreement.

SUMMARY: Executive Order 12260 requries the U.S. Trade Representative to set the U.S. dollar thresholds for application of Title III of the Trade Agreements Act of 1979 (19 U.S.C. 2511 *et seq.*), which implements U.S. obligations under the World Trade Organization Government Procurement Agreement (GPA) and Chapter 10 of the North American Free Trade Agreement (NAFTA). These obligations apply to covered procurements valued at or above the specified U.S. dollars thresholds. The U.S. Trade Representative has determined that the thresholds are as follows:

I. WTO Government Procurement Agreement

A. Central Government Entities Listed in U.S. Annex 1

(1) Procurement of goods and services—$177,000.

(2) Procurement of construction services—$6,806,000.

B. Sub-Central Government Entities Listed in U.S. Annex 2

(1) Procurement of goods and services—$483,000.

(2) Procurement of construction services—$6,806,000.

C. Other Entities Listed in U.S. Annex 3

(1) Procurement of goods and services—$545,000.

(2) Procurement of construction services—$6,806.000.

II. Chapter 10 of the NAFTA

A. Federal Government Entities Listed in the U.S. Schedule to Annex 1001.1a–1

(1) Procurement of goods and services—$54,372.

(2) Procurement of construction services—$7,068,419.

B. Government Enterprises Listed in the U.S. Schedule to Annex 1001.1a–2

(1) Procurement of goods and services—$271,862.

(2) Procurement of construction services—$8,700.000.

FOR FURTHER INFORMATION CONTACT: Questions relating to the implementation of NAFTA Chapter 10 may be directed to John Ellis, USTR Director for International Procurement Negotiations (202/395–3063), Office of the U.S. Trade Representative, 600 Seventeenth Street, NW, Washington, DC 20508.

Carmen Suro-Bredie,

Chairman, Trade Policy Staff Committee.

[FR Doc. 00–7937 Filed 3–30–00; 8:45 am]

BILLING CODE 3190–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Public Meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Board of Directors on Thursday, May 4, 2000. The meeting begins at 1:00 p.m. The letter designations that follow each item mean the following: (I) is an information item; (A) is an action item; (D) is a discussion item. The General Session includes the following items: (1) Introductions and ITS America Antitrust Policy and Conflict of Interest Statements (I); (2) Review & Acceptance of Election Results: Installation of New Board Members (A); (3) Presentation of Nominees for Officers of the Board (I); (4) Acceptance of Other Nominations for Officers and Directors of the 2000–2001 Board of Directors (A); (5) Introductions (I); (6) Review & Approval of January 13, 2000 Board Meeting #33 Minutes; (7) Appointment of the Coordinating Council Officers & At-Large (I/A); (8) Report on New Coordinating Council Committee/Task Force Chairmen; (9) Appointment of State Chapters Council Officers (I); (10) Federal ITS Initiatives Report (I/D); (11) Coordinating Council Report (I); (12) State Chapters Council Report/Reorganization Proposal (I); (13) International Affairs Council Report (I); (14) ITS Research Agenda Activity (I); (15) Reports of the Board Task Force Chairpersons (I/D/A as appropriate): 5.9 Gigahertz—Deliberation on 5.9GHz Advice Letter to U.S.DOT; Wireless—Report on Wireless Opportunities; Marketing Strategy for ITS America; TEA–21 Revisited; (16) Report on June 2000 Legislative Conference (I/D); (17) President's Report (External Issues) (I); (18) Other Business.

Business Session (US DOT participants excused; Board Members, ITS America Members and Staff Only.) (19) Report of the Audit Committee (I); (20) Report of the ITS America Trade Association (I/D/A); (21) Nominating Committee Recommendations on Board Size and Composition (I/A); (22) President's Report (Internal Issues) (I); (23) Appointment of New Board of Directors Committees (I/A); (24) Other Business; (25) Adjournment until August 6–8, 2000, Board of Directors Workshop & Meeting #35 in Miami, Florida. Board of Directors, Annual Meeting & World Congress Schedules (I).

ITS AMERICA provides a forum for national discussion and recommendations on ITS activities including programs, research needs, strategic planning, standards, international liaison, and priorities.

The charter for the utilization of ITS AMERICA establishes this organization as an advisory committee under the Federal Advisory Committee Act (FACA) 5 USC app. 2, when it provides advice or recommendations to DOT officials on ITS policies and programs. (56 FR 9400, March 6, 1991).

DATES: The Board of Directors of ITS AMERICA will meet on Thursday, May 4, 2000, from 1 p.m.–5 p.m. Room TBA.

ADDRESSES: Sheraton Boston Hotel, 39 Dalton Street, Boston, MA. Phone: (617) 236–2000 and Fax: (617) 236–1702.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue SW, Suite 800, Washington, DC 20024. Persons needing further information or who request to speak at this meeting should contact Marlene Vence-Crampton at ITS AMERICA by telephone at (202) 484–2904 or by FAX at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, DC 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: March 27, 2000.

Jeffrey Paniati,

Deputy Director, ITS Joint Program Office.

[FR Doc. 00–7957 Filed 3–30–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Intelligent Transportation Society of America; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Public Meeting.

SUMMARY: The Intelligent Transportation Society of America (ITS AMERICA) will hold a meeting of its Coordinating Council meeting on Sunday, April 30, 2000. The following designations are made for each item: (A) Is an "action" item; (I) is an "information item;" and (D) is a "discussion" item. The agenda includes the following: (1) Call to Order and Introductions (I); (2) Statements of Antitrust Compliance and Conflict of Interest (A); (3) Approval of Previous Meeting's Minutes (A); (4) Federal Report (I); (5) President's Report (I); (6) Advice to U.S. DOT on DSRC at 5.9Hz (A); (7) Cell Phones as ITS Enablers; ITS Research Agenda Activity; Prior activities of ITS America; the Coordinating Council; and ITSA Committees (current and future); and the July Coordinating Council Workshop; (8) Committee Reports; (9) Future Coordinating Council Meeting Dates; and (10) Adjournment.

DATES: The Coordinating Council of ITS AMERICA will meet on Sunday, April 30, 2000, from 1 p.m.–5 p.m. (Eastern Standard time). Room TBA.

ADDRESSES: Sheraton Boston Hotel, 39 Dalton Street, Boston, MA. Phone: (617) 236–2000 and Fax: (617) 236–1702.

FOR FURTHER INFORMATION CONTACT: Materials associated with this meeting may be examined at the offices of ITS AMERICA, 400 Virginia Avenue, SW., Suite 800, Washington, D.C. 20024. Persons needing further information or to request to speak at this meeting should contact Marlene Vence-Crampton at ITS AMERICA by telephone at (202) 484–4847, or by Fax at (202) 484–3483. The DOT contact is Kristy Frizzell, FHWA, HOIT, Washington, D.C. 20590, (202) 366–9536. Office hours are from 8:30 a.m. to 5:00 p.m., e.t., Monday through Friday, except for legal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: Monday, March 27, 2000.

Jeffrey Paniati,

Deputy Director, ITS Joint Program Office.

[FR Doc. 00–7958 Filed 3–30–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Petition for Exemption From the Federal Motor Vehicle Theft Prevention Standard; General Motors

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Grant of petition for exemption.

SUMMARY: This document grants in full the petition of General Motors Corporation (GM) for an exemption of a high-theft line, the Chevrolet Malibu, from the parts-marking requirements of the Federal Motor Vehicle Theft Prevention Standard. This petition is granted because the agency has determined that the antitheft device to be placed on the line as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the Theft Prevention Standard.

DATES: The exemption granted by this notice is effective beginning with model year (MY) 2001.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalind Proctor, Office of Planning and Consumer Programs, NHTSA , 400 Seventh Street, S.W., Washington, D.C. 20590. Ms. Proctor's telephone number is (202) 366–0846. Her fax number is (202) 493–2290.

SUPPLEMENTARY INFORMATION: In a petition dated November 19, 1999, General Motors Corporation (GM), requested an exemption from the parts-marking requirements of the Theft Prevention Standard (49 CFR Part 541) for the Chevrolet Malibu and Chevrolet Venture car lines beginning with MY 2001. The petition is pursuant to 49 CFR Part 543, Exemption From Vehicle Theft Prevention Standard, which provides for exemptions based on the installation of an antitheft device as standard equipment on a car line.

Section 33106(b)(2)(D) of Title 49, United States Code, authorized the Secretary of Transportation to grant an exemption from the parts marking requirements for not more than one additional line of a manufacturer for MYs 1997—2000. However, for a model year after MY 2000, the number of lines for which the agency can grant an exemption is to be decided after the Attorney General completes a review of the effectiveness of parts marking and antitheft devices and finds that antitheft devices are an effective substitute for parts marking. 49 U.S.C. 33103(d)(3). The Attorney General has not yet made a finding and has not decided the number of lines, if any, for which the agency will be authorized to grant an exemption. Therefore, until this decision has been made by the Attorney General, the agency will continue to grant an exemption for not more than one additional line of any manufacturer. On December 21, 1999, the agency informed GM that until an authorization level for granting parts-marking exemptions has been established by the Attorney General, GM must determine which of the two lines for MY 2001 it seeks an exemption from the parts-marking requirements. In response, on January 4, 2000, GM withdrew its petition for exemption of the Chevrolet Venture car line and requested the agency to process its petition for exemption of the Chevrolet Malibu car line for MY 2001.

GM's submittal is considered a complete petition, as required by 49 CFR Part 543.7, in that it met the general requirements contained in § 543.5 and the specific content requirements of § 543.6.

In its petition, GM provided a detailed description and diagram of the identity, design, and location of the components of the antitheft device for the new line. GM will install its Passlock antitheft device as standard equipment on its MY 2001 Chevrolet Malibu car line. GM stated that the Passlock device provides the same kind of functionality as the PASS-Key and PASS-Key II devices, which have been the basis for

exemptions previously granted to GM, but features an electronically-coded lock cylinder rather than an electrically-coded ignition key. Specifically, when the sensor detects proper lock rotation, it sends a code to the body function controller. If the correct code is received, fuel is enabled. If an incorrect code is received, fuel will be disabled for a ten-minute lockout period during which any attempts to start the vehicle will be unsuccessful.

In order to ensure the reliability and durability of the device, GM conducted tests, based on its own specified standards. GM provided a detailed list of the tests conducted. GM states its belief that the device is reliable and durable since it complied with the specified requirements for each test.

The Passlock device utilizes a special lock assembly and decoder module to determine if fuel is to be enabled or disabled. Inserting and rotating the conventional key with the proper mechanical cut into the lock cylinder unlocks and releases the transmission shift lever. However, the vehicle can only be operated when the proper resistive element in the lock housing is sensed and decoded by the module. A magnet encased in the lock sensor will enable the resistive code to be read by the decoder module. If a valid resistive code is received, the decoder module sends an encoded signal to the Power Control Module to start the flow of fuel.

GM also stated that the Passlock device is designed to provide protection against any attempts to defeat it by overriding its lock assembly with an external magnet, forcibly removing the ignition lock cylinder, forcibly rotating the lock, applying a torque to the lock cylinder or its keyway, bypassing the vehicle's lock assembly electronics, or removing its battery power.

GM compared the Passlock device proposed for the Chevrolet Malibu line with its first generation PASS-Key device, which the agency has determined to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts-marking requirements. GM stated that its Passlock device is activated when the owner/operator turns off the ignition of the vehicle and removes the key. According to GM, no other intentional action is necessary to achieve protection of the vehicle other than removing the key from the ignition. The PASS-Key devices are activated in the same manner. GM believes that, considering the electrical and mechanical challenges associated with defeating the Passlock, this antitheft device will be at least as effective as its PASS-Key devices.

The following GM car lines have the Passlock device as standard equipment and have been granted a full exemption from the parts-marking requirements: the Chevrolet Cavalier, beginning with MY 1997 (see 61 FR 12132, March 25, 1996), the Pontiac Sunfire, beginning with MY 1998 (see 62 FR 20240, April 25, 1997), the Oldsmobile Alero, beginning with MY 1999 (see 63 FR 24587, May 4, 1998) and the Pontiac Grand Am, beginning with MY 2000 (see 63 FR 68503, December 11, 1998). GM stated that the theft rates, as reported by the National Crime Information Center, are lower for GM models equipped with PASS-Key-like devices which have been granted exemptions from the parts-marking requirements than theft rates for similar, earlier models that have been parts-marked. Therefore, GM concludes that the PASS-Key-like devices are more effective in deterring motor vehicle theft than the parts-marking requirements of 49 CFR Part 541. GM also concluded that based on the system performance of PASS-Key-like devices on other GM models, and the similarity of design and functionality of the Passlock device on the Chevrolet Malibu to the PASS-Key device, it believes that the agency should determine that the proposed device will be at least as effective in deterring theft as the parts-marking requirements of 49 CFR Part 541.

Based on comparison of the reduction in theft rates of Chevrolet Corvettes using a passive antitheft device and an audible/visible alarm with the reduction in theft rates for the Chevrolet Camaro and Pontiac Firebird models equipped with a passive antitheft device without an alarm, GM believes that an alarm or similar attention attracting device is not necessary and does not compromise the antitheft performance of these systems.

The agency notes that the reason that the vehicle lines whose theft data GM cites in support of its petition received only a partial exemption from parts-marking was that the agency did not believe that the antitheft device on these vehicles (PASS-Key and PASS-Key II) by itself would be as effective as parts-marking in deterring theft because it lacked an alarm system. On that basis, it decided to require GM to mark the vehicle's most interchangeable parts (the engine and transmission), as a supplement to the antitheft device. Like those earlier antitheft devices GM used, the new Passlock device on which this petition is based also lacks an alarm system. Accordingly, it cannot perform one of the functions listed in 49 CFR Part 543.6(a)(3), that is, it cannot call attention to unauthorized attempts to enter or move the vehicle.

After deciding those petitions, however, the agency obtained theft data that show declining theft rates for GM vehicles equipped with either version of the PASS-Key system. Based on that data, it concluded that the lack of a visible or audible alarm had not prevented the antitheft device from being effective protection against theft and granted three GM petitions for full exemptions for car lines equipped with the PASS-Key II device. The agency granted in full the petition for the petition for the Buick Riviera and Oldsmobile Aurora car lines beginning with model year 1995, (see 58 FR 44874, August 25, 1993); the Chevrolet Lumina and Buick Regal car lines beginning with model year 1996, (see 60 FR 25938, May 15, 1995); and, the petition for the Cadillac Seville car line beginning with model year 1998, (see 62 FR 20058, April 24, 1997). In all three of those instances, the agency concluded that a full exemption was warranted because PASS-Key II had shown itself as likely as parts-marking to be effective protection against theft despite the absence of a visible or audible alarm.

The agency concludes that, given the similarities between the Passlock device and the PASS-Key and PASS-Key II systems, it is reasonable to assume that Passlock, like those systems, will be as effective as parts-marking in deterring theft. The agency believes that the device will provide the other types of performance listed in 49 CFR 543.6(a)(3): Promoting activation; preventing defeat or circumvention of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by 49 U.S.C. 33106 and 49 CFR 543.6(a)(4) and (5), the agency finds that GM has provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information GM provided about its antitheft device. This confidential information included a description of reliability and functional tests conducted by GM for the antitheft device and its components. GM requested confidential treatment for some of the information and attachments submitted in support of its petition. In a letter to GM dated February 28, 2000, the agency granted the petitioner's request for confidential treatment of most aspects of its petition.

For the foregoing reasons, the agency hereby grants in full GM's petition for exemption for the MY 2001 Chevrolet Malibu car line from the parts-marking requirements of 49 CFR Part 541.

If GM decides not to use the exemption for this line, it must formally notify the agency, and, thereafter, must fully mark the line as required by 49 CFR 541.5 and 541.6 (marking of major component parts and replacement parts).

NHTSA notes that if GM wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. § 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this part and equipped with the antitheft device on which the line's exemption is based. Further, § 543.9(c)(2) provides for the submission of petitions "to modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change to the components or design of an antitheft device. The significance of many such changes could be *de minimis*. The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. Therefore, NHTSA suggests that if the manufacturer contemplates making any changes the effects of which might be characterized as *de minimis*, it should consult the agency before preparing and submitting a petition to modify.

Authority: 49 U.S.C. 33106; delegation of authority at 49 CFR 1.50.

Issued on: March 27, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–7956 Filed 3–30–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–00–7092 (PDA–22(R))]

Application by American Trucking Associations, Inc. for a Preemption Determination as to New Mexico Requirements for the Transportation of Liquefied and Compressed Gases

AGENCY: Research and Special Programs Administration (RSPA).

ACTION: Public Notice and Invitation to Comment.

SUMMARY: Interested parties are invited to submit comments on an application by the American Trucking Associations, Inc. for an administrative determination whether Federal hazardous materials transportation law preempts certain New Mexico requirements concerning the transportation of liquefied petroleum gas and compressed natural gas within New Mexico.

DATES: Comments received on or before May 15, 2000, and rebuttal comments received on or before June 29, 2000 will be considered before an administrative ruling is issued by RSPA's Associate Administrator for Hazardous Materials Safety. Rebuttal comments may discuss only those issues raised by comments received during the initial comment period and may not discuss new issues.

ADDRESSES: The application and all comments received may be reviewed in the Dockets Office, U.S. Department of Transportation, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590–0001. The application and all comments are also available on-line through the home page of DOT's Docket Management System at "http://dms.dot.gov."

Comments must refer to Docket No. RSPA–00–7092 and may be submitted to the Dockets Office either in writing or electronically. Send three copies of each written comment to the Dockets Office at the above address. If you wish to receive confirmation of receipt of your written comments, include a self-addressed, stamped postcard. To submit comments electronically, log onto the Docket Management System website at "http://dms.dot.gov" and click on "Help & Information" to obtain instructions.

A copy of each comment must also be sent to: (1) Mr. Paul M. Bomgardner, Director, Hazardous Materials Policy, American Trucking Associations, Inc., 2200 Mill Road, Alexandria, Virginia 22314–4677; and (2) Mr. Michael Chapman, Chairman, Construction Industries Commission, P.O. Box 25101, Santa Fe, New Mexico 87504. A certification that a copy has been sent to these persons must also be included with the comment. (The following format is suggested: "I certify that copies of this comment have been sent to Mr. Bomgardner and Mr. Chapman at the addresses specified in the **Federal Register**.")

A list and subject matter index of hazardous materials preemption cases, including all inconsistency rulings and preemption determinations issued, are available through the home page of RSPA's Office of the Chief Counsel at "http://rspa-atty.dot.gov." You may ask for a paper copy of this list and index by contacting Nancy Machado by mail or by telephone as provided below under the heading **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Nancy Machado, Office of the Chief Counsel, Research and Special Programs Administration, 400 Seventh Street, SW, Washington DC 20590–0001 (Tel. No. 202–366–4400).

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

The American Trucking Associations, Inc. (ATA) has applied for a determination that Federal hazardous material transportation law (federal hazmat law), 49 U.S.C. 5101 *et seq.*, preempts certain requirements contained in the State of New Mexico's 1978 "LPG and CNG Act," 5 New Mexico Statutes Annotated (NMSA) chapter 70, article 5, and in the corresponding regulations in the New Mexico Construction Industries Division Liquefied Petroleum Gas Standards, 19 New Mexico Annotated Code (NMAC), chapter 15, part 4. ATA asserts that the New Mexico requirements at issue apply to interstate carriers transporting liquefied petroleum gases and liquefied natural gases within New Mexico.

The test of ATA's application, a list of the exhibits to the application, and ATA's March 15, 2000 Addendum to Application are set forth in Appendix A to this notice. A paper copy of the exhibits to ATA's application (which have been placed in the public docket) will be provided at no cost upon request to Nancy Machado, at the address and telephone number set forth above under the heading "For Further Information Contact."

In the application for preemption, ATA challenges:

(1) NMSA section 70–5–7 ("Requiring competent employees in transporting, dispensing, installation, service or repair") and the corresponding regulations at 19 NMAC 15.4.9.1 through 15.4.9.5 ("Examination"). 19 NMAC 15.4.15.13 ("Licensing examination fee"), and 19 NMAC 15.4.15.14 ("License re-examination fee").

NMSA section 70–5–7 states,

> The [New Mexico Liquefied Petroleum and Compresses Gas] Bureau may require each person, firm, or corporation that transports or dispenses LP gas * * * to have all persons who perform these activities pass an appropriate examination based on the safety requirements of the [Construction Industries] commission.

19 NMAC 15.4.9.1 states,

> All personnel whose duties require that they transport or dispense LP Gas shall prove by passing an examination, as required by the [New Mexico Liquefied Petroleum and Compressed Gas] Bureau that they are familiar with minimum safety standards and

practices with regard to handling of LP Gas. LP Gas may not be dispensed by any person who has not passed the examination by the Bureau.

19 NMAC 15.4.9.2 and 15.4.9.5 relate to identification cards for those who successfully pass the examination, to identification card annual renewal, and to re-examination requirements. 19 NMAC 15.4.15.13 and 19 NMAC 15.4.15.14 impose a $25 fee for license examinations and a $25 fee for license re-examinations.

ATA asserts that the New Mexico Liquefied Petroleum and Compressed Gas Bureau ("Bureau") requires any person who operates, loads, or unloads an LP gas transport vehicle, including drivers in interstate commerce who are domiciled outside of the state, to take a safety examination at a facility located in New Mexico before being allowed to perform LP gas related-functions within the state. ATA contends that compliance with the New Mexico examination requirements imposes costs and administrative burdens on transporters, creates confusion, reduces compliance, and decreases safety. Furthermore, ATA argues that the New Mexico examination requirements are in addition to the HMR training and testing requirements at 49 CFR part 172 Subpart H and 49 CFR 177.816, present an obstacle to the objectives of the HMR, and are preempted under federal hazmat law.

(2) NMSA section 70–5–9(A) ("Annual license fees; inspection fees"), NMSA 70–5–10 ("Revenue; suspense fund"), and the corresponding regulations at 19 NMAC 15.4.15.1 ("Wholesale sale or delivery of LP Gas") and 19 NMAC 15.4.15.12 ("Annual renewal fee per qualifying party identification card").

Specifically, ATA states that, under 19 NMAC 15.4.15.1, interstate carriers must pay an annual flat license fee of $125 to conduct the wholesale sale or delivery of LP gas in New Mexico. NMSA section 70–5–9(A) indicates that the fees are intended to defray the state's costs to administer the laws relating to the LP gas industry. In addition, when the motor carrier pays its annual $125 license fee, 19 NMAC 15.4.15.12 requires that it also pay a $10 annual identification care renewal fee for each of its drivers who has successfully completed the state's safety examination. Finally, ATA notes that NMSA section 70–5–10 requires the state to deposit the fees collected under the provisions of the LPG and CNG Act into the state general fund.

ATA argues in its application that New Mexico's $125 annual license fee and $10 annual identification care renewal fee are flat fees that discriminate against interstate carriers. Specifically, ATA argues that the fees place a disproportionate share of the costs of administering New Mexico's LP Gas program on interstate carriers how have less of presence in the state than intrastate carriers. Consequently, ATA argues that the fees are unfair, violate the commerce clause, and are preempted under Federal hazmat law. Additionally, ATA argues that the fees are preempted because they are deposited in the state general fund and are not earmarked for hazardous materials transportation purposes.

(3) NMSA Section 70–5–9(C) ("Annual license fees; inspection fees") and the corresponding regulations at 19 NMAC 15.4.10.1 ("Annual inspections") and 19 NMAC 15.4.14.3(C) ("LP Gas Visual Cargo Tank and Equipment Inspection Form" and "Re-inspection of Cargo Tank and Equipment and additional charge for re-inspection").

NMSA section 70–5–9(C) requires a reasonable inspection fee to be paid to the Bureau for the safety inspection of the LP gas equipment on each vehicular unit used for transportation of LP gas in bulk quantities. 19 NMAC 15.4.10.1 requires that the Bureau conduct annual inspections of the safety equipment on each vehicular unit used for transportation of LP gas in bulk quantities. 19 NMAC 15.4.14.3(C) assesses a $37.50 fee for the safety inspection and a $37.50 fee for re-inspection.

ATA asserts that there is no written process that outlines the means of obtaining this safety inspection from the Bureau. ATA contends that, in practice, an interstate carrier has to present each of its LP gas trailers to inspectors in New Mexico at a preset date and location, regardless of the fact that the carrier's principal place of business may be in another state. Furthermore, ATA argues that under New Mexico's regulations, an interstate carrier must either take a vehicle out of service or vary its route when loaded in order to accommodate the inspection, thus causing unnecessary delays in the transportation of hazardous materials. ATA's application contains the affidavit of an interstate carrier executive who states that twice his company has tried out been unable to schedule a vehicle inspection in time to make a delivery into or through New Mexico. Also, ATA submits that motor carriers are already subject to Federal annual and random roadside inspections. Consequently, ATA argues that New Mexico's annual inspection is redundant, causes unnecessary delays, and is preempted under Federal hazmat law.

II. Federal Preemption

Section 5125 of Title 49 U.S.C. contains the preemption provisions that are relevant to ATA's application. Subsection (a) provides that—in the absence of a waiver of preemption by DOT under § 5125(e) or specific authority in another Federal law—a requirement of a State, political subdivision of a State, or Indian tribe if preempted if:

(1) Complying with a requirement of the State, political subdivision or tribe and a requirement of this chapter or a regulation issued under this chapter is not possible; or

(2) The requirement of the State, political subdivision, or Indian tribe, as applied or enforced, is an obstacle to the accomplishing and carrying out this chapter or a regulation prescribed under this chapter.

These two paragraphs set forth the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings prior to 1990, under the original preemption provision in the Hazardous Materials Transportation Act (HMTA). Pub. L. 93–633 § 112(a), 88 Stat. 2161 (1975). The dual compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Inc.*, 435 U.S. 151 (1978).

Subsection (b)(1) of 49 U.S.C. 5125 provides that a non-Federal requirement concerning any of the following subjects, that is not "substantively the same as" a provision of federal hazmat law or a regulation prescribed under that law, is preempted unless it is authorized by another Federal law or DOT grants a waiver of preemption:

(A) The designation, description, and classification of hazardous material.

(B) The packing, repacking, handling, labeling, marking, and placarding of hazardous material.

(C) The preparation, execution, and use of shipping documents related to hazardous material and requirements related to the number, contents, and placement of those documents.

(D) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material.

(E) The design, manufacturing, fabricating, marking, maintenance, reconditioning, repairing, or testing of a packaging or a container represented, marked, certified, or sold as qualified for use in transporting hazardous material.

To be "substantively the same," the non-Federal requirement must "conform[] in every significant respect to the Federal requirement. Editorial and other similar de minimis changes are permitted." 49 CFR 107.202(d).

Subsection (g)(1) of 49 U.S.C. 5125 provides that a State, political subdivision, or Indian tribe may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material, including enforcement and planning, developing, and maintaining a capability for emergency response. RSPA has found that a fee is fair if it is: (a) based on a fair approximation of use of state facilities; (b) not excessive in relation to benefits conferred; and (c) does not discriminate against interstate commerce. Preemption Determination (PD)–21(R), 64 FR 54474, 54478 (Oct 6, 1999), citing *Evansville-Vanderburgh Airport Authority* v. *Delta Airlines, Inc.*, 405 U.S. 707, 717, 92 S Ct. 1349, 1355 (1972) and *Northwest Airlines, Inc.* v. *Kent*, 510 U.S. 355, 367–68, 114 S. Ct. 855, 864 (1994). If a fee is not fair or is not used for hazardous materials transportation purposes, the fee is preempted under federal hazmat law. *See* PD–21(R) at 54478 and PD–9(R), 60 FR 8773, 8782 (Feb. 15, 1995).

The preemption provisions in 49 U.S.C. 5125 carry out Congress's view that a single body of uniform Federal regulations promotes safety in the transportation of hazardous materials. In considering the HMTA, the Senate Commerce Committee "endorse[d] the principle of preemption in order to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation."

S. Rep. No. 1102, 93rd Cong. 2nd Sess. 37 (1974). When it amended the HMTA in 1990, Congress specifically found that:

(3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,

(4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,

(5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

Pub. L. 101–615 § 2,104 Stat. 3244. A Federal Court of Appeals has found that uniformity was the "linchpin" in the design of the HMTA, including the 1990 amendments that expanded the original preemption provisions. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). (In 1994, Congress revised, codified and enacted the HMTA "without substantive change," at 49 U.S.C. Chapter 51. Pub. L. 103–272, 108 Stat. 745.)

III. Preemption Determinations

Under 49 U.S.C. 5125(d)(1), any directly affected person may apply to the Secretary of Transportation for a determination whether a State, political subdivision or Indian tribe requirement is preempted. The Secretary of Transportation has delegated authority to make determinations of preemption that concern highway routing to FMCSA and those concerning all other hazardous materials transportation issues to RSPA. 49 CFR 1.53(b) and 1.73(d)(2) (as added October 9, 1999, 64 FR 56720, 56721 [Oct. 19, 1999], and revised January 1, 2000, 65 FR 220,221 [Jan. 4, 2000]). Because ATA's application concerns non-highway routing issues, RSPA's Associate Administrator for Hazardous Materials Safety will address the issues raised in ATA's application.

Section 5125(d)(1) requires that notice of an application for a preemption determination be published in the **Federal Register**. Following the receipt and consideration of written comments, RSPA will publish its determination in the **Federal Register**. *See* 49 CFR 107.209(d). A short period of time is allowed for filing of petitions for reconsideration. 49 CFR 107.211. Any party to the proceeding may seek judicial review in a Federal district court. 49 U.S.C. 5125(f).

Preemption determinations do not address issues of preemption arising under the Commerce Clause, the Fifth Amendment or other provisions of the Constitution or under statutes other than the Federal hazardous material transportation law unless it is necessary to do so in order to determine whether a requirement is authorized by another Federal law, address, "fairness" of fees, or interpret relevant statutory language. A State, local or Indian tribe requirement is not authorized by another Federal law merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making preemption determinations under 49 U.S.C. 5125(d), RSPA is guided by the principles and policies set forth in Executive Order No. 13132, entitled "Federalism" (64 FR 43255 (August 4, 1999). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other clear evidence that Congress intended to preempt State law, or the exercise of State authority directly conflicts with the exercise of Federal authority. Section 5125 contains express preemption provisions, which RSPA has implemented through its regulations.

IV. Public Comments

All comments should be limited to the issue of whether 49 U.S.C. 5125 preempts the New Mexico requirements applicable to the transportation of liquefied petroleum gas and compressed natural gas. Comments should specifically address the preemption criteria detailed in Part II, above, and set forth in detail the manner in which the New Mexico requirements are applied and enforced.

Persons intending to comment should review the standards and procedures governing consideration of applications for preemption determinations set forth at 49 CFR 107.201–107.211.

Issued in Washington, DC on March 27, 2000.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration.

Appendix A

American Trucking Associations
Alexandria, VA
January 18, 2000.

Mr. Robert McGuire
Acting Associate Administrator for Hazardous Materials Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street, SW, Washington, DC 20590–0001.

Attention: Hazardous Materials Preemption Docket

Re: Application for Preemption Determination in accordance with 49 CFR Part 107, Subpart C. Section 107.203, regarding provisions of New Mexico "LPG and CNG Act" (N.M. Stat. Ann. §§ 70–5–1 to 70–5–23 (1998)) and corresponding regulations of the New Mexico Construction Industries Division, Liquefied Petroleum Gas Bureau (Title 19, Chapter 15, Part 4 [19NMAC 15.4]).

Dear Mr. McGuire: The American Trucking Associations, Inc. ("ATA"), with offices located at 2200 Mill Road, Alexandria, VA 22314, is the trade association for the trucking industry.

Together with our affiliated conferences, councils, and state associations, ATA represents over 30,000 motor carriers of all types and sizes throughout the United States. ATA files this application for preemption determination on behalf of our member companies affected by the provisions of the LPG and CNG Act.

ATA is requesting a determination of preemption of certain requirements of the State of New Mexico's 1978 "LPG and CNG Act" as found in Chapter 70 Article 5 of the New Mexico Statute Annotated (NMSA 1978 Chapter 70, Article 5) and in the corresponding regulations of the New Mexico Construction Industries Division's Liquefied Petroleum Gas Standards as found in Title 19 Chapter 15, Part 4 of the New Mexico Annotated Code (19NMAC 15.4). Specifically, ATA requests consideration of the following provisions of the NMSA 1978 and 19NMAC:

1. NMSA 1978 70–5–7 (Liquefied Petroleum Gas Handling License)(19 NMAC 15.4.9.1 through 15.4.9.5);

2. NMSA 1978 70–5–9 (New Mexico Liquefied Petroleum Gas Tank Inspection)(19 NMAC 15.4.10.1); and

3. NMSA 70–50–10 (Revenue; Suspense Fund)(19 NMAC 15.4.14.3C, 15.4.15.1., 15.4.15.13, and 15.4.15.14).

As discussed below, certain of the requirements contained in sections of the New Mexico Statute Annotated (NMSA) and the New Mexico Annotated Code (NMAC) regarding transportation of Liquefied Petroleum Gases (LPG) and/or Liquefied Natural Gases (LNG) are obstacles to the accomplishment of the objectives of the Hazardous Materials Transportation Act (HMTA) and the Hazardous Materials Regulations (HMR) and should be preempted according to the provisions of 49 U.S.C. § 5125(a)(2).

I. Background

NMSA 1978 70–5–6–(A) General License states that:

"No person, firm or corporation shall engage in this state * * *, nor shall any person, firm or corporation engage in the manufacture, sale, *transportation*, dispensing or storage of LP gases within this state, * * * without having first obtained from the bureau a license to do so for each main and branch office or businesses operated within the state pursuant to the LPG and CNG Act [this article] [emphasis added]."

19 NMAC 15.4.15.1 (LP–1) *Wholesale Sale or Delivery of LP Gas* states:

"A licensee under this classification is authorized to wholesale, *transport*, and/or deliver gas * * *"

Consequently, motor carriers transporting LPG and CNG in New Mexico must obtain a license from the State to do so and as licensees are then subject to all of the requirements provided for in 19 NMAC 15.4 (Code). These additional requirements go beyond those contained in 49 CFR Parts 100–180 of the Hazardous Materials Regulations (HMR), create confusion, and impose burdens on transporters to such an extent that they are obstacles to the accomplishment of the Hazardous Materials Transportation Act's (HMTA) [49 U.S.C. 5101, *et seq.*] objectives, and should, therefore be preempted.

II. New Mexico Stat. Ann. § 70–5–7 Requiring Competent Employees in Transporting, Dispensing, Installation, Service or Repair and 19 NMAC 15.4.9.1 Examination

New Mexico Stat. Ann. § 70–5–7(A) states:

"The bureau may require each person, firm or corporation that transports or dispenses LP gas or that installs, repairs or services appliances, containers, equipment or piping for the use of LP gas to have all persons who perform these activities pass an appropriate examination based on the safety requirements of the commission."

19 NMAC 15.4.9.1 *Examination* states:

"All personnel whose duties require that they transport or dispense LG Gas shall prove by passing an examination, as required by the Bureau, that they are familiar with minimum safety standards and practices with regard to handling of LP Gas. LP Gas may not be dispensed by any person who has not passed the examination by the Bureau."

Under the authority of this provision, the New Mexico Liquefied Petroleum and Compressed Gas Bureau ("Bureau") requires any person who operates, loads, or unloads an LP gas transport vehicle, including drivers in interstate commerce, to take an examination before being allowed to perform those functions as they relate to LP gas within the State of New Mexico. These tests are scheduled at various times at different locations throughout the State. All applicants for licensure, whether domiciled inside or outside of New Mexico, must take the test at one of the designated locations within the State. Consequently, compliance with the New Mexico testing requirement imposes cost and administrative burdens on transporters, confusion, reduced compliance, and decreased safety would result if transporters faced a multiplicity of such requirements.

The requirement to test at the state level in order to be able to transport, load, or unload LP gas, which is a Division 2.1 Flammable Gas, and therefore a hazardous material, is in addition to the training and testing requirements in the Hazardous Materials Regulations ("HMR") at 49 CFR Part 172 Subpart H, § 172.702(a) and (d) and § 172.704(2) through (c). While 49 CFR § 172.701 allows states to improse more stringent training requirements, they are permitted to do so only if those requirements do not conflict with the requirements of Part 172 Subpart H and Part 177 § 177.816, and "[a]*pply only to drivers domiciled in that State*". New Mexico's requirement for testing is stricter than the training requirements of the HMR and is applied to drivers that are domiciled outside of New Mexico. It, therefore, represents an obstacle to accomplishing the full purposes and objectives of the HMTA and must be preempted.

The New Mexico requirement for motor vehicle operators loading, unloading or transporting LP gas is similar in nature to the State of Maryland requirement that was preempted by the Research and Special Programs Administration (RSPA) in PD–7(R), 59 *FR* 28913, 28919 (June 3, 1994) (noting that "operators potentially would be subject to numerous sets of training requirements, with resulting confusion, cost and paperwork burdens," RSPA found that training requirements as applied to "operators not domiciled in Maryland" were an "obstacle to accomplishing the full objectives and purposes of the HMTA and [were] preempted."); see also, PD–13(R), 63 *FR* 45283 (August 25, 1998) (preempting requirement that motor vehicle drivers obtain certificate of fitness to be eligible to deliver LPG.)

Because the additional "testing" requirement reaches beyond the domiciliaries of the State of New Mexico, NM Stat. Ann. § 70–5–7(A) and 19 NMAC 15.4.9.1 as they apply interstate operators domiciled in other states should be preempted.

III. New Mexico Stat. Ann § 70–5–9 Annual License Fees; Inspection Fees and § 70–5–10 Revenue; Suspense Fund and 19 NMAC 15.4.15.1 LP–1 Wholesale Sale or Delivery of LP Gas and 19 NMAC 15.4.15.12 Annual Renewal Fee Per Qualifying Party Identification Card

New Mexico Stat. Ann, § 70–5–9 (A) states:

"For the purpose of defraying the expenses of administering the laws relating to the use of CNG motor vehicles or the LP gas industry, each person, firm or corporation, at the time of application for a license and annually thereafter on or before December 31 of each calendar year, shall pay the bureau

reasonable license fees as set, classified and defined by the bureau for each operating location."

Additionally, NM Stat. Ann § 70–5–10 states, regarding fees:

"All fees and money collected under the provisions of the LPG and CNG Act [this article] shall be remitted by the bureau to the director of the division to be deposited in the general fund of the state. The bureau may maintain a "special suspense fund" with the division in an amount of one thousand dollars ($1,000) budgeted by the bureau for the purpose of making any necessary refunds. The bureau shall, with the advice of consent of the director of the division, employ inspectors, assistants and other necessary help as may be required to carry out its lawful duties."

19 NMAC 15.4 *License Classifications, Scopes, and Fees* states:

"License classifications are defined and *annual* license fees are set as follows:

15.1 LP–1 Wholesale sale or delivery of LP Gas: $125.00 A licensee under this classification is authorized to wholesale, transport, and/or deliver gas in vehicular units into or out of any location except that of an ultimate consumer.

15.12 Annual renewal fee per qualifying part) identification card: $10.00."

Motor carriers who deliver LP gas in New Mexico are in category LP–1 and must pay an annual flat fee of $125.00, plus $10.00 for each "Qualifying Party Card." These fees are then placed into the State's *general fund* and are not earmarked for purposes related to the transportation of hazardous material.

The HMTA provides that a "State * * * may impose a fee related to transporting hazardous material only if the fee is fair and used for a purpose related to transporting hazardous material * * * " [49 U.S.C. 5125(g)(1)]. The New Mexico fees fail both requirements.

First, because the fees are annual, flat charges that are unapportioned to the level of a motor carrier's presence or activities in the State, they are structurally discriminatory and violate the Commerce Clause. A state fee that violates the Commerce Clause cannot be considered to be "fair." See, PD–21(R), 64 *FR* 54474 (October 6, 1999) ("Because Tennessee's remedial action fee imposed on hazardous waste transporters is not based on some fair approximation of the use of the facilities and discriminates against interstate commerce, it is not fair and violates 49 U.S.C. 5125(g)(1) and is preempted * * * ").

Flat annual fees, like New Mexico's, discriminate against and impose an undue burden on interstate motor carriers and thus violate the Commerce Clause. The privilege of conducting LPG and CNG transportation in New Mexico is inherently more valuable to intrastate carriers and conduct all of their operations in the State than it is to those carriers that operate predominantly in interstate commerce. Therefore, the practical effect of collecting regulatory costs on a per-company basis is to place a disproportionate share of those cost on interstate motor carriers. "[I]mposition of [a] flat tax [] for a privilege that is several times more valuable to a local business than it is to its out-of-state competitors is unquestionably discriminatory and thus offends the Commerce Clause." *American Trucking Associations, Inc.* v. *Scheiner*, 483 U.S. 266, 296 (1987). Moreover, flat charges, like the New Mexico fees, inevitably expose interstate trucks to duplicative taxation. "[T]he interstate carrier will be subject to the privilege taxes of several States, even though his entire use of the highways is not significantly greater than that of intrastate operators who are subject to only one privilege tax." Scheiner. at 282 (citation omitted).

Flat fees imposed on hazardous materials and hazardous waste haulers have been routinely struck down as violative of the Commerce Clause. See, *American Trucking Associations, Inc.* v. *Secretary of State*, 595 A.2d 1014 (Me. 1991) ($25 per-truck hazardous material transporter annual charge struck down); *American Trucking Associations, Inc.* v. *Secretary of Administration*, 613 NE 2d 95 (Mass. 1993) ($200 per-truck annual hazardous waste transporter fee held unconstitutional); *American Trucking Associations, Inc.* v. *Wisconsin*, 556 N.W.2d 761 (Wis. App. Ct. 1996) ($400 per-company, per-activity hazardous material transporter annual fee found to violate the Commerce Clause).

The New Mexico $125 per-company annual LPG/CNG delivery fee (and associated $10 Qualifying Party Card fee) are unquestionably flat, unapportioned charges that discriminate and burden interstate commerce as discussed above. Accordingly, such charges cannot be considered "fair" as contemplated by Section 5125 (g)(1) and must be preempted.

Second, the fees are placed into the State of New Mexico's general fund and are not earmarked for hazardous materials transportation purposes. Although NM Stat. Ann. section 70–5–10 states generally that the Bureau may employ staff to carry out its lawful duties, there is no tracking of fees paid by motor carriers and no assurance that the moneys paid by motor carriers will actually be used for purposes related to hazardous materials transportation, including enforcement and planning, development and maintenance of emergency response capability.

Because the fees collected from transporters as required by 19 NMAC 15.4.15.1 and .15.12 and deposited in the general fund of the State per NM Stat. Ann. section 70–5–10 are not specifically earmarked for those purposes set forth in 49 U.S.C. 5125(g), they should be preempted.

IV. New Mexico Stat. Ann. section 70–5–9 (C) Annual License Fees; Inspection Fees

New Mexico Stat. Ann. section 70–5–9 (C) states:

"In addition, there shall be paid a reasonable fee for the safety inspection, made by a representative of the bureau, of each LP gas bulk storage plant, LP gas liquid transfer facility and of the LP gas equipment on each vehicular unit used for transportation of LP gas in bulk quantities."

19 NMAC 15.4.10.1 *Annual Inspections* states:

"There shall be an annual safety inspection, made by an inspector of the Bureau, of each bulk storage plant facility, dispensing station, vehicle fuel dispenser, and cargo container and safety equipment on each vehicular unit used for transportation of LP gas in bulk quantities. Each bulk plant, dispenser, and vehicular unit shall display a current decal showing it has passed the required inspection."

19 NMAC 15.4.14 *Printed Forms, Permits, and Fees* requires in:

.3.C LP Gas Visual Cargo Tank and Equipment Inspection Form, an accompanying fee of $37.50; and for Re-inspection of Cargo Tank Equipment and additional charge for re-inspection a fee of $37.50.

While the statute and Code make reference to "safety inspections" of "LP gas equipment on each vehicular unit used for transportation of LP gas in bulk quantities," there is no mention as to the process by which the inspection should be completed. According to one company, though, each LP gas trailer must be presented to inspectors in New Mexico at a preset date and location, regardless of the location of the motor carrier's principal place of business. A fee of $37.50 must be prepaid for each such inspection. See Affidavit of Lloyd Dean, Vice President of Operations, Basin Western, Inc.

ATA is aware that RSPA has, in the past, approved inspections and related fees relative to permits. See PD–13(R), 63 FR 45283, 45286 (approving

inspection and fee where fee covered the cost of conducting the inspection and actually issuing the permit). However, the proliferation of inspection requirements (*e.g.*, in New Orleans, LA; Houston, TX; Nassau County, NY; Broward County, FL; and Cleveland, OH) is alarming and is causing disruptions in motor carrier operations. Because there is a need to either take the vehicle out of service, or vary the route when loaded, in order to accommodate the inspection, there are unnecessary delays in the transportation of hazardous materials.

We believe that RSPA has erred in not considering the impact on the interstate transportation of hazardous materials of multiple jurisdictions requiring fee supported annual inspections. Under the U.S. Supreme Count's "internal consistency" test, a law's impact on interstate commerce is examined in the context of its impact if every other jurisdiction imposed an identical requirement. *Oklahoma Tax Comm'n* v. *Jefferson Lines*, 115 S. Ct. 1331, 1338 (1997). There can be little dispute that interstate hazardous materials transporting commerce would come to a halt if every jurisdiction in which a truck operated (perhaps thousands of cities, counties, and states) required that the truck undergo a separate, duplicative fee-supported inspection. If RSPA is concerned about the theoretical nature of the internal consistency analysis, it need look no further than the inspection requirements cited above to assure itself that the burden of cumulative inspections and fees is already occurring.

The multiple inspections and fees a hazardous materials transporting vehicle now faces cannot help but result in unreasonable transportation delays and thus are contrary to the HMR's mandate that shipments of hazardous materials be transported without unnecessary delay (see 49 CFR 177.800(d)).

Motor carriers are already subject to Federal annual and random roadside vehicle inspections according to 49 CFR Part 396 and to inspection, repair and maintenance requirements for cargo tanks in 49 CFR 180.401 through 180.417. Therefore, New Mexico's requirement for safety inspections is redundant, causes unnecessary delay in the transportation of hazardous materials, and should be preempted as an obstacle to the accomplishment of the full purposes and objectives of the HMTA.

V. Conclusion

Based on the information provided in this application, ATA urges RSPA to preempt certain aspects of the State of New Mexico's requirements found in NM Stat. Ann. Chapter 70 Oil and Gas, Article 5 Liquefied and Compressed Gases and in 19 NMAC 15.4 as they relate to:

(1) Examinations for drivers of interstate motor carriers;

(2) Fees for motor carriers regarding permits and inspections; and

(3) Safety inspections of vehicles used to transport LP gas.

Thank you for the opportunity to submit this application. If you have any questions regarding information supplied in this application, please contact the undersigned at: 703–838–1849 (Phone); 703–683–1934 (FAX); or by e-mail at: pbomgard@trucking.org.

VI. Certification of Notice as Required in 49 CFR Part 107 Section 107.205(a).

I certify that a copy of this application has been sent this 18 "day of January, 2000 to: Mr. Michael Chapman, Chairman, Construction Industries Commission, at P.O. Box 25101, Sante Fe, New Mexico 87504.

Signature
Date:
Respectfully submitted:

Paul M. Bomgardner,
Director, Hazardous Materials Policy, American Trucking Associations, Inc.
Attachments:

Affidavit of: Mr. Lloyd Dean, VP Operations, Basin Western, Inc.
State of New Mexico Construction Industries Division Liquefied Petroleum Gas Standards, Title 19: Chapter 15: Part 4
State of New Mexico Statute Annotated, Article 5. Liquefied and Compressed Gasses, 70–5–1 through 70–5–23, NMSA 1978

List of Exhibits

1. Affidavit of Lloyd Dean.
2. LPG and CNG Act, 5 New Mexico Statutes Annotated Chapter 70, Article 5 (1978).
3. State of New Mexico, Construction Industries Division, Liquefied Petroleum Gas Standards, title 19: Chapter 15: Part 4 (Nov. 15, 1997).

March 15, 2000

From: Paul Bomgardner, Director for Hazardous Materials Policy
To: Nancy Machado, Senior Attorney
Subject: Addendum to Application for Preemption Determination of certain rules of the State of New Mexico

First, I want to thank you for taking the time to review the original application and discussing the issues of importance. I also want to apologize for any confusion that I may have caused through some oversight in the original application. Therefore, I request that this correspondence be added to the file for the purpose of clarification of intent on the part of the American Trucking Associations (ATA).

Following is a listing of the specific sections of both the New Mexico LPG and GNG Act (N.M. Stat. Ann. §§ 70–5–1 through 70–5–23 (1998) and the corresponding regulations of the New Mexico Construction Industries Division, Liquefied Petroleum Gas bureau (Title 19, Chapter 15, Part 4 [19NMAC 15.4]) that are in question:

1. N.M Stat. Ann. § 70–5–7 *Requiring competent employees in transporting, dispensing, installation, service or repair;* as it applies to drivers domiciled in states other than New Mexico.
2. N.M. Stat. Ann. § 70–5–7 *Annual license fees; inspection fees;* as it applies to interstate motor carriers.
3. N.M. Stat. Ann. § 70–5–10 *Revenue; suspense fund;* as it applies to the use of fees collected by the State.
4. 19 NMAC 15.4.9 *Examinations*, .1 through .5; as they apply to drivers domiciled in states other than New Mexico.
5. 19 NMAC 15.4.10 *Annual Inspections*, .1; as it applies to the inspection of equipment (eg. Cargo tanks) operated by interstate motor carriers.
6. 19 NMAC 15.4.14 *Printed Forms, Permits and Fees*, .3.C *LP Gas Visual Cargo Tank and Equipment and Inspection Form $37.50* and *Re-inspection of Cargo Tank and Equipment and additional charge for re-inspection $37.50;* as they apply to inspection and/or re-inspection of equipment operated by interstate motor carriers.
7. 19 NMAC 15.4.15 *License Classifications, Scopes and Fees*, .1 LP–1 *Wholesale sale or delivery of LP Gas $125.00* and .12 *Annual renewal fee per qualifying party identification card $10.00;* as they apply to interstate motor carriers.
8. 19 NMAC 15.4.15 *License Classifications, Scopes and Fees*, .13 *Licensing examination fee $25.00* and .14 *Licensing re-examination fee $25.00*; as they apply to drivers domiciled in states other than New Mexico.

Thank you for this opportunity to clarify ATA's intent. If you need to contact me, please do so at: 703–838–1849 (phone) or *pbomgard@trucking.org* (e-mail)

[FR Doc. 00–7992 Filed 3–30–00; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33855]

Mohall Railroad, Inc.—Acquisition and Operation Exemption—Line of The Burlington Northern and Santa Fe Railway Company

Mohall Railroad, Inc. (MRI), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by purchase) and operate approximately 42.55 miles of rail line, known as the Mohall Line,[1] owned by The Burlington Northern and Santa Fe Railway Company (BNSF)[2] between milepost 5.25 north of Granville, ND, and milepost 47.8 near Mohall, ND, together with associated spur tracks and sidings.[3]

The purpose of this transaction is to permit MRI to assume responsibility for providing rail service to the two presently active shippers located at Mohall and Lansford, ND, and any other parties desiring rail service by entering into an operating agreement with Northern Plains Railroad (NPR), which currently operates a line of railroad through Lansford. MRI indicates that its acquisition of the Mohall line will not result in significant changes in carrier operations, except to the extent that rail operations will be resumed over lines currently embargoed. MRI states that it will construct a new connection between NPR and the Mohall Line at Lansford, and will undertake to perform the necessary maintenance and rehabilitation work to place the trackage in condition for resumption of safe railroad operations.

MRI reports that it intends to consummate the transaction upon the effective date of the exemption. The earliest the transaction could be consummated was March 13, 2000 (7 days after the exemption was filed).

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

[1] The line is currently embargoed due to track conditions.

[2] MRI states that, on November 22, 1999, an agreement was signed between it and BNSF for the sale of certain assets, rights and obligations for the line and that it will assume full common carrier responsibility and maintenance of the line as soon as the exemption becomes effective and the transaction is closed.

[3] MRI certifies that its projected revenues as a result of this transaction will not exceed those that would qualify it as a Class III rail carrier.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33855, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Byron D. Olsen, Felhaber, Larson, Fenlon & Vogt, P.A., 601 Second Avenue South, Suite 4200, Minneapolis, MN 55402.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 24, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–7917 Filed 3–30–00; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33865]

Illinois & Midland Railroad, Inc.—Trackage Rights Exemption—Union Pacific Railroad Company

Union Pacific Railroad Company (UP) has agreed to grant nonexclusive bridge trackage rights to Illinois & Midland Railroad, Inc. (I&M) approximately from milepost 8.9, at the Illinois River Bridge, to milepost 51.0, at Barr, IL, a distance of approximately 42.1 miles.

The transaction is scheduled to be consummated on or after March 20, 2000.

The purpose of the trackage rights is to promote operating efficiencies by providing I&M with an alternate route between Springfield, IL, and UP's Illinois River Bridge.

As a condition to this exemption, any employees affected by the trackage rights will be protected by the conditions imposed in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.-Lease and Operate*, 360 I.C.C. 653 (1980).

This notice is filed under 49 CFR 1180.2(d)(7). If it contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33865, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Rose-Michele Weinryb, Esq., Weiner, Brodsky, Sidman & Kider, P.C., 1350 New York Avenue, N.W., Suite 800, Washington, DC 20005–4797.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 27, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–8016 Filed 3–30–00; 8:45 am]
BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Financial Crimes Enforcement Network; Agency Information Collection Activities; Proposed Collection; Comment Request; Currency Transaction Report

AGENCY: Financial Crimes Enforcement Network ("FinCEN").

ACTION: Notice.

SUMMARY: To comply with the requirements of the Paperwork Reduction Act of 1995 concerning proposed extensions of information collection requirements, FinCEN is soliciting comments on currency transactions on the Currency Transaction Report ("CTR"). Internal Revenue Service Form 4789.

DATES: Submit written comments by May 30, 2000 to be assured of consideration.

ADDRESSES: Direct all written comments to the Financial Crimes Enforcement Network, Office of Chief Counsel, ATTN: CTR Comments, Suite 200, 2070 Chain Bridge Road, Vienna, VA 22182–2536.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or for a copy of the form should be directed to Therese Wiese, Deputy Assistant Director, Office of Compliance and Regulatory Enforcement, FinCEN at 202–354–6400 or Cynthia L. Clark, Deputy Chief Counsel, FinCEN at 905–3590. A copy of the CTR form can be obtained through the Internet at http://www.treas.gov/fincen/forms.html#4789.

SUPPLEMENTARY INFORMATION: The Bank Secrecy Act, Titles I and II of Public Law 91–508, as amended, codified at 12 U.S.C. 1829b, 12 U.S.C. 1951–1959, and 31 U.S.C. 5311–5314, 5316–5330, authorizes the Secretary of the Treasury, *inter alia*, to issue regulations requiring records and reports that are determined to have a high degree of usefulness in

criminal, tax, and regulatory matters. Regulations implementing Title II of the Bank Secrecy Act (codified at 31 U.S.C. 5311–5314, 5316–5330) appear at 31 CFR part 103. The authority of the Secretary to administer the Bank Secrecy Act regulations has been delegated to the Director of FinCEN.

The Bank Secrecy Act specifically provides the Secretary the authority to issue regulations that require a report when "a domestic financial institution is involved in a transaction for the payment, receipt, or transfer of United States coins or currency (or other monetary instruments the Secretary of the Treasury prescribes), in an amount, denomination, or amount and denomination, or under circumstances the Secretary prescribes * * *" 31 U.S.C. 5913(a). The authority of 31 U.S.C. 5313(a) has been implemented through regulations promulgated at 31 CFR 103.22 and through the instructions to the CTR, Internal Revenue Service Form 4789.

Information collected on the CTR is made available, in accordance with strict safeguards, to appropriate criminal law enforcement and regulatory personnel in the official performance of their duties. The information contained is of use in investigations involving international and domestic money laundering, tax evasion, fraud, and other financial crimes.

In accordance with requirements of the Paperwork Reduction Act of 1995, 44 U.S.C. 3506(c)(2)(A), and its implementing regulations, 5 CFR 1320, the following information concerning the collection of information on Form 4789 is presented to assist those persons wishing to comment on the information collection. (The number of respondents has significantly varied each year; the estimates below are based on an average.)

Title: Currency Transaction Report.

Form Number: IRS Form 4789.

OMB Number: 1506–0004.

Description of Respondents: Certain United States financial institutions, other than casinos.

Estimated Number of Respondents: 10,000,000.

Frequency: As required.

Estimate of Burden: Reporting average of 19 minutes per response; recordkeeping average of 5 minutes per response.

Estimate of Total Annual Burden on Respondents: Reporting burden estimate = 3,166,667 hours; recordkeeping burden estimate = 833,333 hours. Estimated combined total of 4,000,000 hours.

Type of Request: Extension, without revision.

FinCEN specifically invites comments on the following subjects: (a) Whether the proposed collection of information is necessary for the proper performance of the mission of FinCEN, including whether the information shall have practical utility; (b) the accuracy of FinCEN's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimate of capital or startup costs of operation, maintenance, and purchase of services to provide information.

Dated: March 27, 2000.

James F. Sloan,

Director, Financial Crimes Enforcement Network.

[FR Doc. 00–8036 Filed 3–30–00; 8:45 am]

BILLING CODE 4820–03–P

Corrections

Federal Register
Vol. 65, No. 63
Friday, March 31, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Proposed Collection; Comment Request

Correction

In notice document 00–6999 appearing on page 15136 in the issue of Tuesday, March 21, 2000, make the following correction:

1. On page 15136, in the second column, in the first paragraph, in the 19th line, after "information", add "collection on repondents, including through the use of automated collection".

2. On the same page, in the same column, in the **ADDRESSES:** section, in the eighth line, "Kathleen A. Dillion" should read "Kathleen A. Dillon".

[FR Doc. C0–6999 Filed 3–30–00; 8:45 am]

BILLING CODE 1505–01–D



Federal Register

Friday,
March 31, 2000

Part II

Architectural and Transportation Barriers Compliance Board

36 CFR Part 1194
Electronic and Information Technology Accessibility Standards; Proposed Rule

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Part 1194

[Docket No. 2000–01]

RIN 3014–AA25

Electronic and Information Technology Accessibility Standards

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) proposes accessibility standards for electronic and information technology covered by section 508 of the Rehabilitation Act Amendments of 1998. Section 508 requires the Access Board to publish standards setting forth a definition of electronic and information technology and the technical and functional performance criteria necessary for accessibility for such technology. Section 508 requires that when Federal agencies develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology allows Federal employees with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by Federal employees who are not individuals with disabilities, unless an undue burden would be imposed on the agency. Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from a Federal agency, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities, unless an undue burden would be imposed on the agency.

DATES: Comments should be received by May 30, 2000; however, late comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent to the Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., suite 1000, Washington, DC 20004–1111. Comments sent by e-mail will be considered only if they include the full name and address of the sender in the text. E-mail comments should be sent to section508nprm@access-board.gov. Comments will be available for inspection at the above address from 9:00 a.m. to 5:00 p.m. on regular business days.

FOR FURTHER INFORMATION CONTACT: Doug Wakefield, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 139 (voice); (202) 272–5449 (TTY). Electronic mail address: wakefield@access-board.gov.

SUPPLEMENTARY INFORMATION:

Availability of Copies and Electronic Access

Single copies of this publication may be obtained at no cost by calling the Access Board's automated publications order line (202) 272–5434, by pressing 2 on the telephone keypad, then 1, and requesting publication S–38 (Electronic and Information Technology Accessibility Standards Notice of Proposed Rulemaking). Persons using a TTY should call (202) 272–5449. Please record a name, address, telephone number and request publication S–38. This document is available in alternate formats upon request. Persons who want a copy in an alternate format should specify the type of format (cassette tape, Braille, large print, or ASCII disk). This document is also available on the Board's Internet site (http://www.access-board.gov/rules/508nprm.htm).

This proposed rule is based on recommendations of the Board's Electronic and Information Technology Access Advisory Committee. The report is available on the Board's Internet site (http://www.access-board.gov/pubs/eitaacrpt.htm).

Background

On August 7, 1998, the President signed into law the Workforce Investment Act of 1998, which includes the Rehabilitation Act Amendments of 1998. Section 508 of the Rehabilitation Act Amendments requires that when Federal agencies develop, procure, maintain, or use electronic and information technology, they shall ensure that the electronic and information technology allows Federal employees with disabilities to have access to and use of information and data that is comparable to the access to and use of information and data by Federal employees who are not individuals with disabilities, unless an undue burden would be imposed on the agency.[1] Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from a Federal agency, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities.

Section 508 was originally added to the Rehabilitation Act in 1986. It required the Secretary of Education and the Administrator of the General Services Administration to develop and establish guidelines for Federal agencies for electronic and information technology accessibility and required that such guidelines be revised, as necessary, to reflect technological advances or changes.[2] Section 508 also required each Federal agency to comply with the guidelines. However, there was no enforcement mechanism to provide for compliance. The changes to section 508 contained in the Rehabilitation Act Amendments of 1998 were designed to strengthen the previous law.

Access Board Responsibilities

Section 508(a)(2)(A) of the Rehabilitation Act Amendments of 1998 requires the Architectural and Transportation Barriers Compliance Board (Access Board)[3] to publish standards setting forth a definition of electronic and information technology and the technical and functional performance criteria necessary for accessibility for such technology. If an agency determines that meeting these standards, when procuring electronic and information technology, imposes an undue burden, it must explain why meeting these standards creates an undue burden.

The definition of electronic and information technology is required to be

[1] Section 508 does not apply to national security systems, as that term is defined in section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

[2] In October 1987, the Department of Education and the General Services Administration (GSA) issued section 508 guidelines which addressed management responsibilities and functional performance specifications for input, output, and documentation access to electronic equipment. On January 1, 1991, after receiving further comment from agencies, vendors, and individuals with disabilities, the GSA issued Bulletin C–8 containing these guidelines as amended, in the Federal Information Resources Management Regulations (FIRMR). In 1996 the FIRMR was eliminated.

[3] The Access Board is an independent Federal agency established by section 502 of the Rehabilitation Act (29 U.S.C. 792) whose primary mission is to promote accessibility for individuals with disabilities. The Access Board consists of 25 members. Thirteen are appointed by the President from among the public, a majority of who are required to be individuals with disabilities. The other twelve are heads of the following Federal agencies or their designees whose positions are Executive Level IV or above: The departments of Health and Human Services, Education, Transportation, Housing and Urban Development, Labor, Interior, Defense, Justice, Veterans Affairs, and Commerce; the General Services Administration; and the United States Postal Service.

consistent with the definition of information technology in section 5002(3) of the Clinger-Cohen Act of 1996.[4] (40 U.S.C. 1401(3)). Information technology under that law means "any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information" by a Federal agency.

In developing its standards, the Access Board is required to consult with various Federal agencies,[5] the electronic and information technology industry, and appropriate public or nonprofit agencies or organizations, including organizations representing individuals with disabilities. The Access Board is also required to periodically review and, as appropriate, amend the standards to reflect technological advances or changes in electronic and information technology. The General Services Administration and the Access Board are required to provide technical assistance to individuals and Federal agencies concerning the requirements of section 508.

Other Section 508 Requirements

The Access Board was required to publish standards by February 7, 2000. For several reasons, the Board has not met that statutory deadline. Because the Board was required to consult with various affected interests, it created a Federal advisory committee. The advisory committee met from October 1998 through May 1999. Since then, the Board has met through an ad hoc group consisting of several Board members and Federal agency representatives to review the committee's recommendations and develop the proposed rule. Additionally, the Board contracted to prepare the regulatory assessment for the proposed rule. After the Board submitted the proposed rule to the Office of Management and Budget (OMB) for review under Executive Order 12866, OMB distributed the proposed rule twice to the Chief Information Officers for review and comment. The Board has also been coordinating its efforts with the Federal Acquisition Regulatory Council. Section 508(a)(3) provides that within six months after the Board publishes its standards, the Federal Acquisition Regulatory Council is required to revise the Federal Acquisition Regulation, and each Federal agency is required to revise the Federal procurement policies and directives under its control to incorporate the Board's standards.[6] The Board expects that the final standards and the revised Federal Acquisition Regulation will be issued at the same time.

Because of the delay in publishing the standards, the Board is considering making the standards effective six months after publication in the **Federal Register**. The Board believes that this action will provide Federal agencies with an opportunity to more fully understand these new requirements and will allow manufacturers of electronic and information technology time to ensure that their products comply with the standards. The Board also believes that this action is consistent with the Congressional intent underlying section 508. As discussed above, Congress provided a six month period between the publication of the Board's standards and the incorporation of the standards in the Federal Acquisition Regulation. This six month period would have allowed Federal agencies to understand the standards and manufacturers time to ensure that their products would be accessible.

Question 1: The Board seeks comment on the advisability of making the standards effective six months after publication in the **Federal Register.** This action would not affect the right of individuals with disabilities to file complaints for electronic and information technology procured after August 7, 2000 since that right is established by the statute.

Section 508(a)(4) provides that if a Federal agency determines that compliance with the standards imposes an undue burden, any documentation by the agency supporting a procurement shall explain why compliance creates an undue burden. Additionally, when it is determined that compliance with the standards imposes an undue burden, the Federal agency shall provide individuals with disabilities with the information and data involved by an alternative means of access that allows the individual to use the information and data.[7]

Section 508(a)(6)(A) states that when the Federal government provides access to the public to information or data through electronic and information technology, a Federal agency is not required to make equipment available or to purchase equipment at a location other than that where the electronic and information technology is provided to the public. Also, specific accessibility-related software or the attachment of specific accessibility-related peripheral devices are not required to be installed at workstations of Federal employees without disabilities.[8]

Section 508(c) provides that by February 7, 1999, each Federal agency shall evaluate the extent to which the electronic and information technology of the agency is accessible to and usable by individuals with disabilities and submit a report containing the evaluation to the Attorney General.

Section 508(d) provides that by February 7, 2000, the Attorney General shall prepare and submit to the President a report containing information on and recommendations regarding the extent to which the electronic and information technology of the Federal government is accessible to and usable by individuals with disabilities.[9] By August 7, 2001, and every two years thereafter, the Attorney General shall submit to the President and Congress a report containing information on and recommendations regarding the state of Federal agency compliance with the requirements of section 508, including actions regarding individual complaints.

Section 508(f) provides that beginning August 7, 2000, any individual with a disability may file a complaint alleging that a Federal agency fails to comply with section 508 in providing accessible electronic and information technology.[10] Complaints shall be filed with the Federal agency alleged to be in noncompliance. The Federal agency receiving the complaint shall apply the complaint procedures established to implement section 504 of the Rehabilitation Act for resolving

[4] The Clinger-Cohen Act was designed to ensure consistency across Federal agencies in the acquisition, use, and disposal of information technology. It requires each Executive agency to establish a process to select, manage, and evaluate the results of their information technology investments; report annually to Congress on progress made toward agency goals; and link information technology performance measures to agency programs.

[5] The Access Board is required to consult with the Secretary of Education, the Administrator of General Services, the Secretary of Commerce, the Chairman of the Federal Communications Commission, the Secretary of Defense, and the head of any other Federal agency that the Access Board determines to be appropriate.

[6] Whenever the Access Board revises its standards, the Council is required to revise the Federal Acquisition Regulation, and each appropriate Federal agency is required to revise its procurement policies and directives within six months to incorporate the revisions.

[7] Section 508(a)(1)(B).

[8] Section 508(a)(6)(B).

[9] On April 2, 1999, the Department of Justice (DOJ) released its self-evaluation materials for section 508. The self-evaluations were required to be submitted to the DOJ by June 15, 1999. The final report was not available prior to the publication of this proposed rule. It will be available through the Department of Justice Section 508 Home Page (http://www.usdoj.gov/crt/508/508home.html).

[10] This provision applies only to electronic and information technology that is procured by a Federal agency on or after August 7, 2000.

allegations of discrimination in a federally conducted program or activity. Under section 504, individuals may also sue an agency in Federal court to correct an alleged violation.

Electronic and Information Technology Access Advisory Committee

This proposed rule is based on recommendations of the Electronic and Information Technology Access Advisory Committee (Committee or EITAAC). The Committee was convened by the Access Board in September 1998 to assist the Board in fulfilling its mandate under section 508.

On September 29, 1998, the Access Board published a notice appointing members to the Committee. 63 FR 51891 (September 29, 1998). Between October 1998 and May 1999, the Committee held 6 meetings, each of two working days in length, during which members worked to develop recommendations for implementing requirements under section 508. In selecting members of the Committee, the Access Board sought to ensure representation from all parties interested in the promulgation of electronic and information technology accessibility standards. The Committee was composed of representatives of the electronic and information technology industry; organizations representing the access needs of individuals with disabilities; and other persons affected by accessibility standards for electronic and information technology. Representatives of Federal agencies, including the departments of Commerce, Defense, Education, Justice, Veterans Affairs, the Federal Communications Commission, and the General Services Administration, served as ex-officio members or observers of the Committee. The following organizations served on the Committee:

American Council of the Blind
American Foundation for the Blind
Arkenstone, Inc.
Association of Access Engineering Specialists
Association of Tech Act Projects
Compaq
Easter Seals
Electronic Industries Alliance
FutureForms
Georgia Institute of Technology
IBM Special Needs Center
Information Technology Industries Council
Meeting the Challenge, Inc.
Microsoft Corporation
NCR Corporation
National Association of the Deaf
National Federation of the Blind
National Industries for the Blind
National Science Foundation
Pitney Bowes
Self Help for Hard of Hearing People, Inc.
Sun Microsystems
Trace Research and Development Center
United Cerebral Palsy Associations
WGBH National Center for Accessible Media
WebABLE! Solutions
World Wide Web Consortium, Web Accessibility Initiative

Each organization selected a principal member and an alternate. The Committee formed several subcommittees and task groups in which alternates and nonmembers were invited to participate. As a result, the actual group which developed the recommendations was broader than the formal membership. The result of the Committee's work was a report containing recommendations to the Access Board for implementing section 508 of the Rehabilitation Act Amendments of 1998. The Committee presented its report to the Board on May 12, 1999. This proposed rule is based primarily on the recommendations of chapters three "Definitions", four "Section 508 Implementation", and five "Proposed Standards" of the Committee report.

Section-by-Section Analysis

This section of the preamble contains a concise summary of the rule which the Access Board is proposing. The text of the proposed rule follows this section.

Subpart A—General

Section 1194.1 Purpose

This section describes the purpose of the standards which is to implement section 508 of the Rehabilitation Act Amendments of 1998. The goal of section 508 is to introduce accessibility features into mainstream electronic and information technology products purchased by the Federal government to reduce the need for individual, customized accommodations and to make those accommodations which are still needed more efficient and easier to implement.

Section 1194.2 Application

This section specifies what electronic and information technology is covered by the standards. Paragraph (a) states the general statutory requirement for electronic and information technology that must comply with the standards unless doing so would result in an undue burden. The term "undue burden" is defined at 1194.4, Definitions, and is discussed in the preamble under that section.

By statute, the enforcement provisions of section 508 apply only to products procured on or after August 7, 2000. (See section 508(f)(1)(B)). As a result, Section 508 does not authorize complaints or lawsuits to retrofit electronic and information technology products procured prior to August 7, 2000 to meet these standards. See a further discussion of the application of these standards to web sites maintained, developed, used or procured by the Federal government under 1194.23(c).

Paragraph (a)(1) states the statutory obligation of a Federal agency to make the information and data available by an alternative means when complying with the standards would result in an undue burden. For example, a Federal agency wishes to purchase a computer program that generates maps denoting regional demographics. If the agency determines that it would constitute an undue burden to purchase an accessible version of such a program, the agency would be required to make the information provided by the program available in an alternative means to users with disabilities. In addition, the requirements to make reasonable accommodations for the needs of an employee with a disability and to provide overall program accessibility under section 504 of the Rehabilitation Act also apply.

Paragraph (a)(2) sets forth the statutory requirement for an agency to document any claim of undue burden in a procurement. Such documentation must explain in detail which provision or provisions of this rule imposes an undue burden and the extent of such a burden. The agency should discuss each of the factors elaborated below which are to be considered an undue burden. By statute, the requirement to document an undue burden applies only to procurements.

Paragraph (b) applies this rule to electronic and information technology developed, procured, maintained, or used by an agency directly or used by a contractor pursuant to a contract with an agency. Consistent with section 5002(3)(C) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452) and as further discussed in 1194.3(b) below, products used by a contractor which are incidental to a contract are not covered by this rule. For example, a Federal agency enters into a contract to have a web site developed for the agency. The contractor uses its own office system to develop the web site. The web site is required to comply with this rule, however, the contractor's office system does not have to comply with these standards.

Paragraph (c) clarifies that procurement of products complying with this part is subject to commercial availability. That is, an agency is not expected to procure products that have not been developed. Documentation of an undue burden is not required in this case. This section also applies the provisions of this part to products that will be available in time to meet delivery requirements, or are developed by or on behalf of the government. This is based on existing provisions in the Federal Acquisition Regulations (see 48 CFR 2.101, Definitions of Words and Terms: Commercial item, paragraph (b)). For example, an agency may be planning a major software upgrade to be installed in the next year. If advances in technology or performance will be available to render the software compliant in time to meet the installation requirement, the product will be considered commercially available, despite the fact that a compliant version was not available at the time of the original solicitation. Of course, products developed in response to a Government solicitation are expected to be fully compliant.

The determination of commercial availability is to be applied on a provision by provision basis. That is, each provision is judged independently. Agencies cannot claim a product as a whole is not commercially available because it fails to meet some of the applicable provisions of these standards. It must still meet those provisions that are commercially available.

For example, some pagers may be available with a vibrating alert, but no model has voice output. A Federal agency would still be required to purchase the model with the vibrator even though a model with all the features necessary for accessibility may not exist. Similarly, if a software program that meets all of the provisions of 1194.23(b) is not available, but one that meets most of the provisions is (*e.g.*, it does not provide 8 foreground and 8 background colors), the agency must purchase that product that meets most of the applicable software provisions. The software program as a whole is not excused from the standards because a program meeting all of the provisions is not commercially available.

Paragraph (d) explains how each section of this rule is to be applied. In general, the requirements in 1194.21, 1194.23 and 1194.25 are assumed to satisfy the functional performance criteria in 1194.27. Therefore, when evaluating the compliance of any product, first look to compliance with 1194.21, 1194.23 and 1194.25, then apply the performance criteria in 1194.27 to elements or technologies not covered in those sections and to the overall product functions. Where there is overlap, the specific provisions in 1194.21, 1194.23 and 1194.25 prevail over the general provisions in 1194.27.

In developing these standards, the Board considered the issue of when accessibility features must be built-in and when the product need only be compatible, that is, have the ability to add on assistive technology or accessible features in the future as needed. Because the goal of section 508 is to introduce accessibility features into mainstream electronic and information technology, the proposed standards require that the accessibility features be built-in where reasonable and appropriate given the nature of the product and its intended use. For example, the standards require that the accessibility features be built-in for information kiosks because the public cannot be expected to attach an assistive technology device each time the kiosk is used. Because copy machines seldom allow for the loading of special software or the attachment of accessibility related peripherals, the standards require that the accessible features be built-in.

In general, where accessibility features are not built-in, the standards require that the system be compatible to make those accommodations which are still needed more efficient and easier to implement. For example, workstations are subject to the statutory exception that assistive technology devices are not required at workstations of persons without a disability. The standards require that these systems be compatible with the addition of assistive technology on an as needed basis.

The following paragraphs delineate those provisions where accessibility features are required to be built-in and those which permit compatibility in lieu of built-in features.

Section 1194.21 contains general requirements to be applied to all products, regardless of the specific technology involved. For example, the prohibition on using color coding exclusively is applicable to kiosks, web pages, copiers, software applications, or any other product that controls a visual display. The requirements in section 1194.21 pertain to built-in features.

Section 1194.23 provides requirements for specific components, such as keypads, software, web applications, and telecommunications. All but the simplest products will likely have more than one component and the requirements in section 1194.23 are to be applied to each component. For example, the keypad of a single line telephone can generally be made accessible to a person with a visual impairment by having a standard key layout and placing a nib on the five key. The keypad of a multi-line telephone can be made accessible in a similar fashion but the telephone may have visual indicators for availability of different lines and hold status. Each component for which there is a specific provision must be evaluated for compliance with this section.

The requirements in 1194.23(a), (d)(6)–(9), (e) and (f) are written to ensure built-in accessibility of keyboard, keypads and other mechanically operated controls, telecommunications equipment and information kiosks. The requirements in 1194.23(b), (c) and (d)(1)–(5) will ensure that software applications, web pages and certain telecommunications features are compatible with assistive technology.

Section 1194.25 provides requirements for compatibility of products with assistive technology commonly used by individuals with disabilities. Since any specific product cannot necessarily be made accessible to all disabilities, it must be able to accommodate assistive technology. For example, all computers are not expected to be equipped with a refreshable Braille display, but they are expected to be compatible with such equipment. Assistive technology may be part of a reasonable accommodation required by section 501 or section 504 of the Rehabilitation Act in response to a request made by a person with a disability.

Section 1194.27 provides functional performance criteria for overall product evaluation and for technologies or components for which there is no specific requirement under other sections. As in the example of the multi-line telephone discussed above, the keypad has specific requirements under section 1194.23, but the other functions, such as line availability or status, must be evaluated by applying the performance criteria. These criteria are also intended to ensure that the individual accessible components work together to create an accessible product. Section 1194.27(a), (b), (c) and (e) allow for the support of assistive technology to satisfy the criteria, whereas section 1194.27 (d) and (f) are functions that must be built into a product.

Finally, section 1194.31 provides requirements for information, documentation, and support. Products may meet all of the technical requirements of this part, but will not be usable to a person with a disability if information about the accessible features or how to use them is not available in a format the individual can use. Obviously, the format is critical to

usability, since providing Braille to a person who does not read Braille is worthless, as is providing enhanced audio to a person who is deaf and does not rely on any residual hearing.

Section 1194.3 General Exceptions

This section provides general exceptions from the standards. Paragraph (a) provides an exception for telecommunications or information systems operated by agencies, the function, operation, or use of which involves intelligence activities, cryptologic activities related to national security, command and control of military forces, equipment that is an integral part of a weapon or weapons system, or systems which are critical to the direct fulfillment of military or intelligence missions. This exception is statutory under section 508 and is consistent with a similar exception in section 5142 of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452). This exception does not apply to a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications). For example, software used for payroll, word processing software used for production of routine documents, ordinary telephones, copiers, fax machines, and web applications must still comply with the standards even if they are developed, procured, maintained, or used by an agency engaged in intelligence or military activities. On the other hand, a computer designed to provide early missile launch detection would not be subject to these standards.

Paragraph (b) provides an exception for electronic and information technology that is acquired by a contractor incidental to a Federal contract. That is, the products a contractor develops, procures, maintains, or uses which are not specified as part of a contract with a Federal agency are not required to comply with this part. For example, a consulting firm that enters into a contract with a Federal agency to produce a report is not required to procure accessible computers and word processing software to produce the report regardless of whether those products were used exclusively for the government contract or used on both government and non-government related activities. On the other hand, if such products were specified as contract deliverables (*i.e.*, they would become government property at the end of the contract) or if a Federal agency purchased the products to be used by the contractor as part of the project, those products would have to meet the standards. Similarly, if a firm is contracted to develop a web site for a Federal agency, the web site created must be fully compliant with this part, but the firm's own web site would not be covered. This exception is consistent with a similar exception in section 5002(3)(C) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1452).

Paragraph (c) clarifies that, except as required to comply with these standards, this part does not require the installation of specific accessibility-related software or the attachment of an assistive technology device at a workstation of a Federal employee who is not an individual with a disability. Specific accessibility related software means software which has the sole function of increasing accessibility for persons with disabilities to other software programs (*e.g.*, screen magnification software). The purpose of section 508 and these standards is to build as much accessibility as is reasonably possible into general products developed, procured, maintained, or used by agencies. However, it is not expected that every computer will be equipped with a refreshable Braille display, or that every software program will have a built-in screen reader. Such assistive technology may be required as part of a reasonable accommodation for an employee with a disability or to provide program accessibility. To the extent that such technology is necessary, products covered by this part must not interfere with the operation of the assistive technology.

Paragraph (d) specifies that when agencies provide access to information or data to the public through electronic and information technology, agencies are not required to make equipment owned by the agency available for access and use by individuals with disabilities at a location other than that where the electronic and information technology is provided to the public, or to purchase equipment for access and use by individuals with disabilities at a location other than that where the electronic and information technology is provided to the public. For example, if an agency provides an information kiosk in a Post Office, a means to access the kiosk information for a person with a disability need not be provided in any location other than at the kiosk itself.

Paragraph (e) states that compliance with this part does not require a fundamental alteration in the nature of a product or its components. Fundamental alteration means a change in the fundamental characteristic of the product, not merely a cosmetic or aesthetic change. For example, an agency intends to procure pocket-sized pagers for their field agents. Adding a large display to a small pager may fundamentally alter the device by significantly changing its size to such an extent that it no longer meets the purpose for which it was intended, that is to fit in a shirt or jacket pocket.

Section 1194.4 Definitions

Accessible: The term accessible is defined in terms of compliance with the standards in this part, as is common with other accessibility standards. That is, if a product complies with the standards in this part, it is accessible; if it does not comply, it is not accessible.

Agency: Section 508 applies to any Federal department or agency, including the United States Postal Service (section 508(a)(1)(A)). The term "agency" as used in this rule includes all of these entities.[11]

Alternate Formats and Alternate Modes: These terms are given the same meaning here as in the Board's Telecommunications Act Accessibility Guidelines (36 CFR part 1193). Certain product information is required to be made available in alternate formats to be usable by individuals with various disabilities. Common forms of alternate formats are Braille, large print, ASCII text, and audio cassettes. Alternate modes are different means of providing information to users of products including product documentation and information about the status or operation of controls. For example, if product instructions are provided on a video cassette, captioning would be required.

Assistive Technology: Assistive technology means any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is commonly used to increase, maintain, or improve functional capabilities of individuals with disabilities. The definition is derived from a definition of assistive technology in the Assistive Technology Act of 1998 (29 U.S.C. 3001 *et seq.*).

Examples of assistive technology include, but are not limited to, (1) Screen readers which allow persons who cannot see a visual display to either hear screen content or read the content in Braille; (2) a specialized one-handed keyboard which allows an individual to operate a computer with only one hand; and (3) specialized audio amplifiers that allow persons with limited hearing to receive an enhanced audio signal.

[11] A government depository library is not considered a Federal agency.

Electronic and Information Technology: This is the statutory term for the products intended to be covered by the standards in this part. The statute explicitly required the Board to define this term, and required that the definition be consistent with the definition of "information technology" in the Clinger-Cohen Act of 1996 (40 U.S.C. 1401(3)). Therefore, this definition includes information technology as defined by that Act, as well as any equipment or interconnected system or subsystem of equipment, that is used in the creation, conversion, or duplication of data or information.

Electronic and information technology includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, web sites, multimedia, and office equipment such as copiers and fax machines. Consistent with the Federal Acquisition Regulations,[12] electronic and information technology does not include any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

Information Technology: The definition of information technology is the same as the definition of information technology in section 5002(3) of the Clinger-Cohen Act. Information technology includes computers, ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

Operable Controls: Operable controls are those components of a product that require manipulation or contact for operation of the device. Controls include on/off switches, buttons, dials and knobs, mice, keypads and other input devices, copier paper trays (both for inserting paper to be copied and retrieving finished copies), coin and card slots, card readers, and similar components. Operable controls do not include voice-operated controls.

[12] 48 CFR Chapter 1, part 2, section 2.101 Definitions Information Technology (c).

Product: Product is used as a shorthand for electronic and information technology throughout this part.

TTY: The term TTY is defined to be consistent with the Board's ADA Accessibility Guidelines (36 CFR part 1191) and Telecommunications Act Accessibility Guidelines.

Telecommunications: This term is defined consistent with the Board's Telecommunications Act Accessibility Guidelines and the definition of telecommunications in the Telecommunications Act (47 U.S.C. 153).

Undue Burden: The term "undue burden" is based on caselaw interpreting section 504 of the Rehabilitation Act (*Southeastern Community College* v. *Davis*, 442 U.S. 397 (1979)), and has been included in agency regulations issued under section 504 since the *Davis* case. See, *e.g.*, 28 CFR 39.150. The term "undue burden" is also used in Title III of the Americans with Disabilities Act. (ADA), 42 U.S.C. 12182(b)(2)(A)(iii). The legislative history of the ADA states that the term "undue burden" is derived from section 504 and the regulations thereunder, and is analogous to the term "undue hardship" in Title I of the ADA, which Congress defined as "an action requiring significant difficulty or expense." 42 U.S.C. 12111(10)(A). See, H. Rept. 101–485, pt. 2, at 106. The Board has adopted this definition for "undue burden."

Title I of the ADA lists factors to be considered in determining whether a particular action would result in an undue hardship. 42 U.S.C. 12111(10)(B)(i)–(iv). Since Title I of the ADA addresses employment, not all of the factors are directly applicable to section 508 except for the financial resources of the covered facility or entity. In determining whether a particular action is an undue burden under section 508, the rule provides that the resources available to an agency or component for which the product is being developed, procured, maintained, or used is a factor to be considered. An agency's entire budget may not be available for purposes of complying with section 508. Many parts of agency budgets are authorized for specific purposes, and/or are provided as grants to non-Federal entities, and are thus not available for other purposes. Because available financial resources vary greatly from one agency to another, what constitutes an undue burden for a smaller agency may not be an undue burden for another, larger agency having more resources to commit to a particular procurement. Each procurement would necessarily be determined on a case-by-case basis.

The Board is considering including two additional factors in the final rule to determine whether an action is an undue burden.

Factor (2): An agency may consider the extent to which a product meeting the standards is compatible with the agency's or component's technology infrastructure, including security, and the difficulty of integrating the accessible product. For example, an agency wishes to contract with a digital cellular provider in order to provide cellular phone service to its employees. The agency's digital cellular network is not compatible with TTYs. Since these two products are incompatible with each other, it will result in an undue burden. The agency would not be prohibited from contracting with the digital provider. However, accommodations for TTY users could be made through an analog cellular phone, if needed. Should compatibility become feasible over time, this no longer would be viewed as an undue burden.

Factor (3): An agency may also consider the functionality needed from the product and the technical difficulty involved in making such a product accessible. For example, an agency needs to purchase a computer assisted design (CAD) software program. The function of the CAD program is to produce visual drawings. Technology is available to produce basic tactile images usable by an employee with a visual impairment, but to apply this technology to a CAD program would be extraordinarily difficult and have limited functionality, making it an undue burden.

Question 2: The Board seeks comment on whether factors (2) and (3) discussed above are appropriate factors for consideration in determining whether an action would be an undue burden under these standards.

Section 1194.5 Equivalent Facilitation

This section allows the use of designs or technologies as alternatives to those prescribed in this part provided that they result in substantially equivalent or greater access to and use of a product for people with disabilities. This provision is not a "waiver" or "variance" from the requirement to provide accessibility, but a recognition that future technologies may be developed, or existing technologies could be used in a particular way, that could provide the same functional access in ways not envisioned by these standards. In evaluating whether a technology results in "substantially equivalent or greater access," it is the functional outcome,

not the form, which is important. For example, an information kiosk which is not accessible to a person who is blind might be made accessible by having a telephone handset that connects to a computer that responds to touch-tone commands and delivers the same information audibly.

Subpart B—Accessibility Standards

This proposed rule is based primarily on the recommendations of chapter five of the EITAAC report. The proposed rule rearranges and renames sections from the EITAAC report. Although the Board has reorganized the committee's recommendations, the Board believes that the concepts and most of the committee's recommended requirements have been preserved. The generic standards (EITAAC 5.2) are now labeled as functional performance criteria (1194.27). The Board made this change because it believes this group of specifications are yardsticks to use to measure performance as opposed to objective standards. Section 1194.27 contains the functional performance criteria against which all products will be judged. Sections 1194.23 and 1194.25 are the component specific and compatibility standards for accessibility. Where the Board has not included a recommendation from the committee's report it is noted.

Section 1194.21—General Requirements

The requirements under this section are general, because they do not apply to any specific product. For example, the requirements relating to displays apply to any display whether on a computer, a copier, or information kiosk and transaction machine.

Question 3: The Board seeks comment on the current organization of sections 1194.21 and 1194.23. Other ways of organizing functions may be more appropriate. The Board seeks comment on other approaches to organizing functions and requirements that might be easier to understand and implement.

Paragraph (a) provides that color coding shall not be used as the only means of identifying a visual element. This requirement applies to all products, whether web based or free standing office equipment. Relying on color as a singular method for identifying screen elements or controls poses serious problems, not only for people with limited or no vision, but also for those who are color blind. This requirement does not prohibit the use of color to help with component identification. It does however, require that some other method of identification, such as text labels, be combined with the use of color. While this provision is consistent with the recommendations of the advisory committee, the committee also recommended including a similar functional performance requirement. The functional performance criterion was not included in the proposed standards as it was duplicative of this requirement.

Paragraph (b) provides provisions for the physical characteristics of large office equipment including reach ranges and the general physical accessibility of controls and features. A large, free standing copier would be an example of a product addressed by this provision. This requirement is consistent with the recommendations of the advisory committee and is based on the Americans with Disabilities Act Accessibility Guidelines (ADAAG 4.2 Space Allowance and Reach Ranges). Two figures are provided to help explain the application of the provision.

Paragraph (c) provides that flashing visual displays and indicators shall not exceed a frequency of two Hertz. In 1988, the Board sponsored two research projects on visual fire alarms that found that individuals with photosensitive epilepsy can have a seizure triggered by displays which flicker or flash, particularly if the flash has a high intensity and is within certain frequency ranges. This provision limits the frequency of flashing visual displays and indicators to avoid triggering a seizure in an individual with photosensitive epilepsy. This requirement is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (d) provides that where a timed response is required, at least one mode which does not require users to respond within a timed interval shall be provided; or at least one mode which allows users to adjust the response times to at least 5 times the default setting shall be provided. Requiring a user to respond within a certain length of time is a method commonly used by interactive menu driven systems. If a person is calling through a telephone relay service, or has a dexterity related disability, entering information such as a social security number within a specified time may be difficult or impossible. This provision is consistent with the recommendations of the advisory committee.

Question 4: The Board seeks information on whether a system is commercially available that would allow an individual user to adjust the response time interval, and if so, whether 5 times the default setting is the correct standard. If available, what is the cost of such a system? The Board is also interested in comments addressing any security concerns raised by this requirement. For example, would the security of an information kiosk which allowed individuals to access personal information be compromised by allowing for the adjustment of the time-out feature?

Paragraph (e) provides that where biometric forms of user identification or activation are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided. Identification by biometric forms such as retina scan, fingerprint or palm print are growing in popularity. They are used for building access as well as electronic system access. However, such identification measures create access problems for some persons with disabilities. For example, if a system relies on fingerprint identification for access, a person with prosthetic hands would not be able to use the system. As a result, the Board is proposing to require that an alternative form of identification be provided which does not rely on particular biological characteristics. Under section 504 of the Rehabilitation Act, an employee who is unable to access a system due to the constraints of a biological characteristic may be entitled to a reasonable accommodation which would enable him or her to access the system through an alternative measure. This provision would require that an alternative measure be in place when the system is procured. This requirement is consistent with the recommendations of the advisory committee.

Question 5: The Board may consider requiring multiple forms of biological identification as an alternative to requiring non-biological identification in the final rule. Would this be a better solution? What would be the cost impact of requiring multiple forms of biological identification? Does requiring an alternative mode of identification which is not based on biological characteristics lessen security? The proposed standards require that an alternative form of identification be built-in whenever biometric identification is used. The Board is seeking comment on whether the final rule should permit the alternative method of identification to be added on at a later date rather than built-in at the time of procurement. If so, should compatibility be limited to workstations or to all systems that use biometric identification?

Paragraph (f) requires touchscreen and touch-operated controls to be operable without requiring body contact or close body proximity. This requirement addresses the difficulty that individuals who have artificial hands or use headsticks or mouthsticks to operate products have with capacitive or heat-operated controls which require contact with a person's body. Touch-operated is not the same as a control which is operated by pushing a button or sliding a switch. Touch-operated controls are activated by merely touching them or placing a body part, usually a finger, in very close proximity. They often depend on the body acting as an electrical conductor which changes the capacitance of the switch. In addition, some touch operated controls are designed to detect the heat from a finger. In both of these instances, the control cannot be activated by a prosthetic limb, a mouthstick, or even a gloved hand.

Alternative access modes which do not require body contact or close body proximity may include keypad input and voice input and different types of touchscreens or touch-operated controls which do not require bodily contact or proximity to operate. This provision is consistent with the recommendations of the advisory committee.

Section 1194.23 Component Specific Requirements

The requirements in the following paragraphs address specific components of products. Paragraph (a) applies to mechanically operated controls, keyboards or keypads. These provisions address controls which require a user to physically manipulate or press a switch, button, or knob, to operate a product.

Paragraph (a)(1) provides that controls and keys shall be tactilely discernible without activating the controls or keys. Tactilely discernible means that individual keys can be located and distinguished from adjacent keys. To comply with this requirement, controls that must be touched to activate, must be distinguishable from each other. This can be accomplished by using various shapes, spacing, or tactile markings. Because touch is necessary to discern tactile features, this provision provides that the control should not be activated by mere touching. For example, the standard desktop computer keyboard would meet this requirement because the tactile mark on the "j" and "f" keys permits a user to locate all other keys tactilely. The geographic spacing of the function, "numpad" and cursor keys make them easy to locate by touch. In addition, most keyboards require some pressure before they transmit a keystroke. Conversely, "capacitance" keyboards that react as soon as they are touched and have no raised marks or actual keys would not meet this requirement. A "membrane" keypad with keys that must be pressed can be made tactilely discernible by separating keys with raised ridges so that individual keys can be distinguished by touch. This provision is consistent with the recommendations of the advisory committee.

Paragraph (a)(2) provides that the status of toggle controls such as the "caps lock" or "scroll lock" keys be determined by both visual means and by touch or sound. For example, adding audio patterns such as ascending and descending pitch tones that indicate when a control is turned on or off would alleviate the problem of a person who is blind inadvertently pressing the locking or toggle controls. Also, buttons which remain depressed when activated or switches with distinct positions would meet this provision. This provision is consistent with the recommendations of the advisory committee.

Paragraph (a)(3) provides that controls shall be accessible to persons with limited dexterity. Individuals with tremor, cerebral palsy, paralysis, arthritis, or artificial hands may have difficulty operating systems which require fine motor control, assume a steady hand, or require two hands or fingers to be used simultaneously for operation. Individuals with high spinal cord injuries, arthritis, and other conditions may have difficulty operating controls which require significant strength. The provision limits the force required to five pounds and is based on section 4.27.4 of the ADA Accessibility Guidelines and is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (a)(4) provides that access to all program functions shall be available through keyboard or keypad commands. Keyboard or keypad commands provide a viable alternative for those who cannot use a pointing device or touchscreen. This provision does not require that every product have a keyboard. It requires that where a keyboard or keypad is provided, the program functions shall be available through keyboard or keypad commands. This provision is consistent with the recommendations of the advisory committee.

Paragraph (a)(5) establishes requirements for key repeat rate where an adjustable keyboard repeat rate is supported. It requires that the keyboard delay before repeat shall be adjustable to at least two seconds per character. This provision is consistent with the recommendations of the advisory committee.

The advisory committee also recommended three provisions that the Board has not included in this proposed rule. The committee recommended that assigned keyboard access (e.g., Ctrl+P for Print, Escape for cancel) be provided for commonly used functions or commands and that the keyboard map not change except under user control, so that a user memorizing key locations shall be able to rely on those locations. The Board has not included these provisions since they are user convenience issues not accessibility issues. The committee also recommended that all keyboard access functionality be documented with a product or follow documented operating system conventions. This provision is not included since documentation is already addressed by section 1194.31.

Paragraph (b) applies to non-embedded software applications and operating systems. All electronic and information technology products operate by following programming instructions referred to as software. Software can be divided into two broad categories: software that is embedded in a chip mounted in a product and software that is loaded onto a storage device such as a hard disk and can be erased, replaced or updated. The provisions in this section address requirements for accessible "installable, non-embedded" software.

Paragraph (b)(1) requires the use of keystrokes for navigation among interface elements. For persons with vision impairments who cannot use a pointing device such as a mouse, having access to program controls through keyboard navigation is essential. An example of this feature would be the ability to tab through the choices in a dialog box rather than requiring that a user move a pointer to a particular selection and click on it. This provision is consistent with the recommendations of the advisory committee.

Paragraph (b)(2) prohibits applications from disabling access features of applications or the operating system. There are commercially available software applications and operating systems that have accessibility features built-in that can be turned on or off by a user. These include features that can reverse the color scheme, show an image when an error tone is generated, or provide for "sticky keys" that allow a user to hit key combinations (such as control-C) sequentially rather than simultaneously. This provision prohibits other software programs from disabling these features when selected. This requirement is

consistent with the recommendations of the advisory committee.

Paragraph (b)(3) requires that a well-defined on-screen indication of the current focus be provided that moves among interactive interface elements as the input focus changes. The focus is the point on a screen where an action will occur when a keystroke or mouse click is activated. For example, when an individual displays a file directory on the screen, the focus point shows what file will be activated when the enter key is pressed. The focus must be programmatically exposed so that assistive technology can track the focus and focus changes and be easily seen by the user. The focus point must be identified in the program language. Making the identification of the focus point in the software programmatically available allows programmers of assistive technology software such as screen readers, to let the user know where the current focus is placed. This provision is consistent with the recommendations of the advisory committee.

Paragraph (b)(4) requires that programs provide sufficient information about a user interface element, including the identity, operation and state of the element, to assistive technology software. User interface elements can include, but are not limited to, buttons, checkboxes, menu bars, or tool bars. For assistive technology to operate efficiently, it must have access to the information about a user interface from the program to be able to inform the user of the existence, location, and status of all interface elements. This provision is consistent with the recommendations of the advisory committee.

Paragraph (b)(5) provides requirements for accessing images that represent an action. For example, a push button, checkbox or other action point is often represented by a graphic. Assistive technology however, cannot describe pictures or graphics. This provision requires that programs provide text such as a "tooltip" for the assistive technology to interpret the pictures so that a user of assistive technology can identify what action will occur when an element is activated by a keystroke or mouse click. This provision is consistent with the recommendations of the advisory committee.

Paragraph (b)(6) provides that the use of an image will be consistent throughout an application. Most screen reading programs allow users to assign text names to bitmap images. If the bitmap image should change meaning during the running of an application, the assigned identifier is no longer valid. This provision prohibits the changing of the meaning of a bitmap image during an application and is consistent with the recommendations of the advisory committee.

Paragraph (b)(7) provides that software must follow standard programming techniques applicable for the specific operating system when software programs supply text to assistive technology programs. If programs are written using nonstandard code, other programs such as software for assistive technology may not be able to receive information from the application. At a minimum, the types of text information that must be available include text content, text input caret location, and text attributes. This provision is consistent with the recommendations of the advisory committee.

Paragraph (b)(8) requires that a minimum of eight foreground and eight background color selections capable of producing a variety of contrast levels be provided. This provision requires more than just providing color choices. The available choices must also allow for different levels of contrast. Many people experience a high degree of sensitivity to bright displays. Someone with this condition cannot focus on a bright screen for long because they will soon be unable to distinguish individual letters. An overly bright background causes a visual "white-out". To alleviate this problem, the user must be able to select a softer background and appropriate foreground colors.

In addition to requiring different levels of colors and contrasts, the advisory committee recommended providing a "wide variety" of font size and style settings. The proposed provision does not require variations of font sizes and styles because those who would benefit from increased font size will also need an increase in the size of all screen elements. This can best be accomplished by adding screen enlargement software to the system.

Question 6: The Board seeks comment on whether eight foreground and eight background colors is sufficient to give the user ample selections. If a larger number of choices were required, is software commercially available from more than one manufacturer?

Paragraph (b)(9) prohibits applications from overriding user selected contrast and color selections. This provision addresses the problem of applications refusing to respect system-wide settings and is consistent with the recommendations of the advisory committee. Often persons with disabilities prefer to select color, contrast, keyboard repeat rate, and keyboard sensitivity settings in an operating system. When an application disables these settings, accessibility is reduced. This provision allows the user to select personalized settings which cannot be disabled by software programs.

Paragraph (b)(10) requires that people with disabilities have access to electronic forms. Electronic forms are a popular method used by many agencies to gather information or permit a person to apply for services, benefits, or employment. The 1998 Government Paperwork Elimination Act requires that Federal agencies make electronic versions of their forms available online and allows individuals and business to use electronic signatures to file these forms electronically. This provision requires that when an agency uses a form that cannot be read and manipulated by assistive technology, an alternative form must also be provided that is accessible. An example of a form which is not accessible is one which is graphical in nature and cannot be translated into meaningful text by assistive technology. This provision is consistent with the recommendations of the advisory committee.

Paragraph (b)(11) establishes requirements for handling animated text. The use of animation on a screen can pose serious access problems for users of screen readers or other assistive technology. When important elements such as push buttons or relevant text are animated, the user of assistive technology cannot access the application. This provision requires that in addition to the animation, an application provide the elements in a static form. This provision is consistent with the recommendations of the advisory committee.

The advisory committee also recommended that system startup and restart be accessible, however, the Board has not included that provision in the proposed rule since no measurable standards were recommended.

Paragraph (c) applies to web-based information and applications. These standards do not apply to external web sites, including search engines, which are not developed or procured by a Federal agency. For example, an employee of an agency may use a search engine which is based on a commercial web site. That search engine does not have to comply with these standards.

By statute, when a Federal agency develops, procures, maintains or uses electronic and information technology, including web-based information and applications, they must comply with these standards unless to do so would be an undue burden (section 508(a)(1)(A)). The enforcement provisions of section 508, however, are limited to those web-based information and applications that are procured on or after August 7, 2000. (See section 508(f)(1)(B)). The enforcement provisions are silent with respect to products which are not procured, but are developed, used or maintained by a Federal agency (*e.g.*, an agency develops a web page in house). However, even though the enforcement mechanisms provided in section 508 do not authorize complaints or lawsuits for inaccessible products which are developed, used or maintained by an agency, the Board expects that these products, including web pages, will be accessible. (See section 508(a)(1)(A) which addresses the development, procurement, maintenance, or use of electronic and information technology by the Federal government.) The Board notes that section 504 of the Rehabilitation Act imposes a duty on the Federal government to make programs conducted by the Federal government (*e.g.*, an agency web site) accessible and that both sections 501 and 504 of that Act requires that Federal agencies address the needs of employees with disabilities. (29 U.S.C. 794 (section 504); 29 U.S.C. 791 (section 501)). It is possible that in determining compliance with these statutory obligations, the standards issued by the Board under section 508 of the Rehabilitation Act will be used as a yardstick to measure whether a program is accessible. Furthermore, under section 508 of the Rehabilitation Act, the Department of Justice has an obligation to prepare biennial reports assessing compliance by Federal agencies with these standards (section 508(d)(2)). That report would address products developed, procured, maintained or used by the Federal government, as well as actions regarding individual complaints.

Example 1: On January 1, 2001, a Federal agency enters into a procurement contract with an outside entity for the development of an agency web site. That web site would have to meet these standards, unless to do so would be an undue burden. Because it is a procurement on or after August 7, 2000, the agency would be subject to a complaint or civil action if the web site was not accessible. Suppose however, the agency develops its own web site. That web site would have to be accessible under section 508(a)(1)(A), unless it was an undue burden, but because it was not a procurement, the enforcement provisions under section 508(f) of the Rehabilitation Act would not apply. While there may not be a remedy under section 508, there would be recourse under section 504 of the Rehabilitation Act in that the agency was conducting a program that was not accessible.

Example 2: An agency has an existing web site and enters into a procurement contract with an outside entity to develop new pages to be added to its web site to address a new program. The content of the new pages would have to meet these standards unless to do so would be an undue burden. If the procurement was on or after August 7, 2000, the accessibility of the new pages could be the subject of a complaint or civil action. With respect to the preexisting web site, it would be subject to the agency's obligations under section 504 of the Rehabilitation Act which may require that the agency develop a plan to update the web site and make it accessible over a period of time.

The advisory committee recommended that the Board's standards reference the World Wide Web Consortium's (W3C) Web Accessibility Initiative's (WAI) [13] Web Content Accessibility Guidelines, User Agent Accessibility Guidelines, and Authoring Tool Accessibility Guidelines, including requirements from priority levels one and two for each document.

Rather than referencing the WAI guidelines, the proposed standards include provisions which are based generally on priority level one checkpoints of the Web Content Accessibility Guidelines 1.0, as well as other agency documents on web accessibility and additional recommendations of the advisory committee. The Board's rephrasing of language from the Web Content Accessibility Guidelines 1.0 in paragraph (c) of the proposed rule has not been reviewed by the W3C, since proposed rules are not made public until published in the **Federal Register**.

The advisory committee also included specific recommendations for browsers and web authoring tools. Because web browsers and web authoring tools, (as well as web pages) are software in nature, they must also comply with the requirements of section 1194.23(b).

Paragraph (c)(1) requires that a text equivalent be provided for every non-text element. For example, a link or graphic on a web page that indicates an action or a URL cannot be interpreted by assistive technology. This provision would require that an alternative text label be assigned to that link or graphic. This provision is consistent with the recommendations of the advisory committee.

Paragraph (c)(2) requires alternatives for color based prompting. The creative use of color can enhance the look of web pages. However, a person who has either low vision or is color blind would have difficulty activating color based prompts. Web pages therefore, are required to indicate with text that which is evident by using color. For example, a statement such as "press the green button to begin," should read "press the green button labeled start to begin," and the word "start" should be associated with the green button. This provision is consistent with the recommendations of the advisory committee.

Paragraph (c)(3) provides that the user be alerted to a change in the natural language of a web page. For example, this requirement can be met by adding a line of text to a web page which changes from English to French by adding text which reads "the following paragraph is presented in French." Most screen readers used by blind and visually impaired persons only have rules for pronouncing one language. If the web site did not alert the user to a language change, the user would be at a loss as to why the page had become unintelligible. This provision is consistent with the recommendations of the advisory committee.

Paragraph (c)(4) provides that documents must be organized so they are readable without requiring style sheets. Style sheets are a relatively new technology that allows web site designers to easily control formatting (such as font size and color and text alignment) throughout their web pages. This provision does not prohibit the use of style sheets (which can often be used to enhance accessibility) provided that web pages using style sheets can be viewed by browsers not supporting style sheets and by browsers that have disabled support for style sheets. In addition, certain newer browsers allow users to define their own style sheets to improve the accessibility of web pages. This provision prohibits the use of style sheets that interfere with user defined style sheets. This provision is consistent with the recommendations of the advisory committee.

Paragraph (c)(5) requires that when alternative access to web page content, such as captioning of audio programs or multimedia, is provided, that alternative

[13] The Web Accessibility Initiative (WAI), in coordination with organizations around the world, is pursuing accessibility of the web through five primary areas of work: technology, guidelines, tools, education and outreach, and research and development. Additional resources are available at http://www.w3.org/WAI, including the Web Content Accessibility Guidelines 1.0, available at http://www.w3.org/TR/WCAG10.

must be updated on the screen every time the content changes. This provision is consistent with the recommendations of the advisory committee.

Paragraph (c)(6) provides that redundant text links must be provided for each active region of a server-side image map. When a web page uses server-side maps as navigation aids, the individual browser cannot communicate the URL that will be followed when a region of the map is activated. Therefore, the redundant text link will be necessary to provide access to the page for anyone not able to see or load the map. This provision is consistent with the recommendations of the advisory committee.

Paragraph (c)(7) provides that client-side image maps must be used whenever possible in place of server-side image maps. When a web page downloads a client-side image map to a browser, it also sends all the information about what action will happen when a region of the map is pressed. For this reason, client-side image maps, even though graphical in nature, will show the links related to the map in a text format. This provision is consistent with the recommendations of the advisory committee.

Paragraphs (c)(8) and (9) permit the use of tables, but require that the tables be coded according to proper HTML rules. Many assistive technology applications can interpret the HTML coding of tables. When tables are coded inaccurately or table codes are used for non tabular material, the assistive technology cannot accurately read the content.

Paragraph (c)(10) establishes requirements for the use of frames. Frames can be an asset to users of screen readers if the labels on the frames are explicit. Such labels as top, bottom, or left, provide few clues as to what is contained in the frame. Labels such as "navigation bar" or "main content" are more meaningful and facilitate frame identification and navigation. This provision is consistent with the recommendations of the advisory committee.

Paragraph (c)(11) provides that scripts, applets, or other plug-ins must not be essential to reading or navigating a web page. When the content or navigation of a web page relies on scripts or requires that a user have a specific plug-in installed, the result can be an inaccessible page. If the page cannot be created with text attributes for navigation and content that do not require a plug-in, then an alternate text page may be the only solution. The Board recommends that access features be incorporated into all web pages without resorting to alternative text pages. This provision is consistent with the recommendations of the advisory committee.

Paragraph (c)(12) provides that when features such as captioning for audio output or descriptive audio for graphics is provided, the captioning or description must be presented in a synchronous manner. This provision is consistent with the recommendations of the advisory committee.

Paragraph (c)(13) provides that an appropriate method must be used to facilitate the easy tracking of page content that provides users of assistive technology the option to skip repetitive navigation links. It is common for web authors to place navigation links at the top, bottom, or side of every new page. This technique can render use of a web site very difficult for persons using a screen reader as screen readers move through pages reading from top to bottom. The use of repetitive navigation links forces persons with visual impairments to re-read these links when moving to every new page. This provision allows the user to more efficiently read the contents of a page. This provision is consistent with the recommendations of the advisory committee.

The advisory committee also recommended that if extensive ASCII art is used, a link should be provided to allow a user to jump to the end of the ASCII art. The Board has not included this provision since it is a user convenience issue not an accessibility issue.

Paragraph (d) applies to telecommunications functions. These provisions address products which involve the transmission of information without changing the form or content of the information as sent and received. "Telecommunications" is further defined in section 1194.4, Definitions.

Paragraph (d)(1) requires that products shall provide a standard non-acoustic connection point for TTYs when they have a function that allows voice communication and do not provide a TTY functionality. It shall also be possible for the user to easily turn any microphone on the product on and off to enable the user who can talk to intermix speech with TTY use. Individuals who use TTYs to communicate must have a non-acoustic way to connect TTYs to telephones in order to obtain clear TTY connections, such as through a direct RJ–11 connector, a 2.5 mm audio jack, or automatic switching. When a TTY is connected directly into the network, it must be possible to turn off the acoustic pickup (microphone) to avoid having background noise in a noisy environment mixed with the TTY signal. Since some TTY users make use of speech for outgoing communications, the microphone on/off switch must be easy to flip back and forth or a push-to-talk mode should be available. This provision is consistent with the Board's Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (d)(2) requires products providing voice communication functionality to be able to support use of all cross-manufacturer non-proprietary standard signals used by TTYs. Some products compress the audio signal in such a manner that standard signals used by TTYs are distorted or attenuated, preventing successful TTY communication. Use of such technology is not prohibited as long as the compression can be turned off to allow undistorted TTY communication. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (d)(3) provides that voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs. Voice mail systems are available which allow TTY users to retrieve and leave TTY messages. This provision does not require that phone systems have voice to text conversion capabilities so that a person who is deaf can retrieve a voice mail message directly with their TTY without relying on a relay service or an interpreter, but it does require that TTY users can retrieve and leave TTY messages. This provision is consistent with the recommendations of the advisory committee.

Paragraph (d)(4) prohibits telecommunications services, such as interactive systems, from imposing time limits for responses. For example, a person accessing a Federal agency's automated menu from a TTY may need additional time to read the options and respond. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (d)(5) provides that functions such as caller identification must be accessible for users of TTYs, telecommunications relay services, and for users who cannot see displays. This provision is consistent with the recommendations of the advisory committee.

Paragraph (d)(6) requires products to be equipped with volume control that provides an adjustable amplification up to a minimum of 20 dB of gain. If a volume adjustment is provided that allows a user to set the level anywhere from 0 to the upper requirement of 20 dB, there is no need to specify a lower limit. If a stepped volume control is provided, one of the intermediate levels must provide 12 dB of gain. The gain applies to the voice output not Baudot, ASCII, or other machine codes. The proposed level of amplification is different from that required under the Hearing Aid Compatibility Act and the Federal Communications Commission's (FCC) regulations (47 CFR 68.317 (a)). The FCC requires volume control that provides, through the receiver in the handset or headset of the telephone, 12 dB of gain minimum and up to 18 dB of gain maximum, when measured in terms of Receive Objective Loudness Rating.

In accordance with the National Technology Transfer and Advancement Act, this provision is consistent with the 1998 ANSI A117.1 document, "Accessible and Usable Buildings and Facilities." ANSI is the voluntary standard-setting body which issues accessibility standards used by the nation's model building codes. The Board has issued a separate NPRM to harmonize the existing ADAAG provision with the ANSI standard. This provision is consistent with the Telecommunications Act Accessibility Guidelines. Tests conducted by two independent laboratories found high gain phones without special circuitry currently on the market which had 90 dB and 105 dB at maximum volume setting. This is a 20 dB gain over the standard 85 dB ambient noise level. (See Harry Teder Ph.D., Consulting in Hearing Technology; Harry Levitt, Ph.D., Director, Rehabilitation Engineering and Research Center on Hearing Enhancement and Assistive Devices, Lexington Center).

Paragraph (d)(7) requires that an automatic reset be installed on any telephone that allows the user to adjust the volume higher then the normal level. This is a safety feature to protect people from suffering damage to their hearing if they accidentally answer a telephone with the volume turned too high. This provision is consistent with the recommendations of the advisory committee.

Paragraph (d)(8) requires products that provide auditory output by an audio transducer normally held up to the ear, to provide a means for effective wireless coupling to hearing aids. Generally, this means the earpiece generates sufficient magnetic field strength to induce an appropriate field in a hearing aid T-coil. The output in this case is the direct voice output of the transmission source, not the "machine language" such as tonal codes transmitted by TTYs. For example, a telephone must generate a magnetic output so that the hearing aid equipped with a T-coil can accurately receive the message. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (d)(9) requires that interference to hearing technologies shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize a telecommunications product. Individuals who are hard of hearing use hearing aids and other assistive listening devices, but they cannot be used if products introduce noise into the listening aids because of electromagnetic interference. The American National Standards Institutes (ANSI) has established a task group under its subcommittee on medical devices to work toward the development of methods of measurement and defining the limits for hearing aid compatibility and accessibility to wireless telecommunications. The ANSI C63.19 task group is continuing to develop its standard, C63.19–199X, American National Standard for Methods of Measurement for Hearing Aid Compatibility with Wireless Communications Devices. When the standard is completed, the Board may reference it. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Question 7: The Board seeks comment on how to better quantify the "lowest possible level" of interference.

Paragraph (e) applies to video or multimedia products. Multimedia products involve more than one media and include, but are not limited to, video programs, narrated slide production, and computer generated presentations.

Paragraph (e)(1) requires any system with a screen larger than 13 inches to be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals. The FCC has standards for televisions 13 inches or larger, but video capabilities are now becoming popular in computers as well. This provision addresses these new video technologies. This provision is consistent with the recommendations of the advisory committee.

Paragraph (e)(2) requires that television tuners, including tuner cards for use in computers, be equipped with the circuitry needed to carry the secondary audio channel. The secondary audio channel is commonly used for audio description. This provision is consistent with the recommendations of the advisory committee.

Paragraphs (e)(3) and (4) require that when an agency develops or procures multimedia productions that are intended to be shown repeatedly to audiences that may include persons who would need the captioning or audio description features, those productions must contain captioning or audio description. Audio description involves the insertion into a multimedia program, such as a video tape, of narrated descriptions of settings and actions that are not otherwise reflected in the dialogue, such as the movement of a person in the scene. Audio description is typically provided through the use of the Secondary Audio Programming (SAP) channel so that it is audible only when that channel is activated through a TV set, computers with a tuner card, or a VCR with SAP capability.

Under these provisions, the requirements to have a videotape or multimedia production captioned or audio described would depend on its intended use. For example, an agency produces, or contracts to have produced, a videotape on government ethics. This videotape is made available for many agencies to purchase and use in training sessions. Since the tape is intended to be shown multiple times and to varied audiences, the composition of which may include people with hearing or vision impairments, it must be captioned and audio described, unless it is an undue burden to do so. On the other hand, a small agency or single office purchases a videotape on some aspect of acoustics which it intends to show to its staff to help understand a technical issue. Since the videotape is not intended to be shown on a repeated basis, and the agency knows that none of its staff have a hearing or vision impairment, the videotape would not need to be captioned or audio described. If however, the video was to be shown to an employee who is deaf, the agency would be required to accommodate that individual by providing an interpreter even though the videotape would not be required to be captioned. Such accommodations would be required

under section 501 or 504 of the Rehabilitation Act, not section 508.

Question 8: The Board seeks information on the technical feasibility of making various computer generated presentations that comply with these provisions. Based on the proposed rule, computer based narrated slide presentations must be both captioned and audio described if they are shown multiple times and to varied audiences, the composition of which may include people with hearing or vision impairments.

Paragraph (e)(5) provides that viewers must be able to turn captioning or video description features on or off. A person who can hear the audio may find the captioning of conversation intrusive, and people who can see the screen and can hear may find the audio description distracting. For this reason, it is important that an individual have the ability to select or deselect a particular feature.

The advisory committee also recommended that digital television receivers meet the EIA–708–A standard for the transmission of captioning on a digital television signal. The Board has not included this provision since in July 1999, the Federal Communications Commission proposed to amend its rules to include requirements for the display of closed captioned text on digital television receivers. The FCC took this action to ensure that closed captioning services are available in the transition from analog to digital broadcasting. The Board may address this issue in future changes to the standards.

Paragraph (f) applies to information kiosks and information transaction machines. This category of products includes, but is not limited to, automatic teller machines and information kiosks. On November 16, 1999, the Board published a Notice of Proposed Rulemaking to revise and update its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act of 1990 (ADA) and the Architectural Barriers Act of 1968 (ABA). 64 FR 62248 (November 16, 1999). Included in that proposed rule are extensive revisions to the requirements for access to automatic teller machines (ATMs) and fare machines. (See sections 707.1;–707.8.3). The proposed revisions to the ADA and ABA guidelines provide more specific guidance on access to such equipment for people with vision impairments. In that proposed rule, the Board requested comment on whether the final rule should cover all types of interactive transaction machines, such as point-of-sale machines and information kiosks, among others, rather than be limited to automatic teller machines and fare vending machines. If the Board decides to broaden the requirements to other types of information transaction machines in the final rule for the ADA and ABA guidelines, the final rule for access to electronic and information technology may not include requirements for information transaction machines since the ADA and ABA rulemaking would apply to the Federal government as well as the private sector.

Paragraph (f)(1) provides that access features must be built into the system rather than requiring users to attach an assistive device to the product. Personal headsets are not considered an assistive device and may be required to use the product. This provision is consistent with the recommendations of the advisory committee.

Paragraph (f)(2) provides that information kiosks and information transaction machines that deliver audio output, including speech, shall provide a mechanism for private listening and user interruptability. A mechanism for private listening means providing either a telephone type handset or a standard jack for headphones. These mechanisms allow users to hear information in private. Allowing the user to interrupt long spoken phrases increases the product's usability and saves time for the user and others who may be waiting to access the product. This provision is consistent with the recommendations of the advisory committee.

Paragraph (f)(3) provides that information kiosks and information transaction machines that deliver voice output, shall provide incremental volume control with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable. According to the Occupational Safety and Health Administration, and the American Speech, Language, and Hearing Association, 65 dB is the volume level for normal speech. This provision requires that audio output from a kiosk type product shall have a minimum level of 65 dB. For people with reduced hearing, voice levels must be 20 dB above the surround sound level to be understandable. This means that as long as the noise level in the surrounding environment is below 45 dB, the 65 dB output level would be sufficient. If the product is in an environment with a high noise level, the user must be able to raise the volume to a setting of 20 dB higher than the ambient level. This provision is consistent with the recommendations of the advisory committee.

The advisory committee also recommended standards for remote wireless access to these products. The Board has not included those recommendations since compliant technology is still in development.

Other Issues

The advisory committee recommended other provisions that the Board did not include in this rule. For example, the committee considered methods for making a personal digital assistant (PDA), such as a "palmtop," accessible for a segment of people with disabilities. The Board has not included such a provision because the technology to make PDAs accessible does not exist at this time.

The committee also recommended that the connection of cables, mounting, and attaching external elements of products (*e.g.*, connecting an external monitor or accessory), require less than 5 pounds of force and that cables be differentiable by touch or keyed for corresponding connections. These provisions are not included since members of the public seeking information from an agency would not be expected to attach or disconnect cables and employees are also covered by sections 501 and 504 of the Rehabilitation Act which require reasonable accommodation to the needs of an employee. Also, connecting and disconnecting cables is not generally an employee task. In the few instances where it is, such as attaching a refreshable Braille display to a laptop, the connections are usually made with standard parallel and serial connectors which are polarized or shaped to prevent incorrect connections. Section 1194.25(b) restricts the use of proprietary connectors.

Section 1194.25 Requirements for Compatibility With Assistive Technology

Compliant products must be accessible either inherently or by being compatible with add-on assistive technology. The provisions in this section address the requirements for compatibility.

Paragraph (a) provides that all products that act as a transport or conduit for information or communication shall pass all codes, translation protocols, formats, or any other information necessary to provide information or communication in an accessible format. In particular, signal compression technologies shall not remove information needed for access or shall restore it upon decompression.

Some transmissions include codes or tags embedded in "unused" portions of the signal to provide accessibility. For example, closed captioning information is usually included in portions of a video signal not seen by users without decoders. This section prohibits products from stripping out such information or requires the information to be restored at the end point. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (b) requires that, where provided, one of each type of expansion slot, port and connector must comply with publicly available industry standards. This provision applies to hardware products that may require the attachment of assistive technology devices to make them accessible. Examples of publicly available industry standards may include RS–232, Centronics, SCSI interfaces, PCMCIA, or USB.

Paragraph (c) prohibits operating system software from interfering with assistive technology. If an operating system preempts the use of keyboard assignments or the use of specific ports, it can be difficult or impossible to operate the system with assistive technology. This provision requires operating systems to permit the background operation of assistive technology products. This provision is consistent with the recommendations of the advisory committee.

Paragraph (d) requires products with auditory output to provide the auditory signal through an industry standard connector at a standard signal level. Individuals using personal headphones, amplifiers, audio couplers, and other audio processing devices need a place to tap into the audio generated by the product in a standard fashion. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Section 1194.27 Functional Performance Criteria

This section requires that a product's operation and information retrieval functions be operable through at least one mode which meets each of the following paragraphs.

Paragraph (a) provides that at least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who are blind or visually impaired shall be provided. It is not expected that every software program will be self-voicing or have its own built-in screen reader. Providing keyboard access as specified in 1194.23(a) and software that complies with section 1194.23(b) would satisfy this requirement. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (b) provides that at least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 (when corrected with glasses) must be provided in audio and enlarged print output that works together or independently. In the alternative, support for assistive technology used by people who are visually impaired must be provided. Although visual acuity of 20/200 is considered "legally blind," there are actually millions of Americans with vision below the 20/200 threshold who can still see enough to operate and get output from technology, often with just a little additional boost in contrast or font size. This paragraph requires either the provision of screen enlargement and voice output or, that the product support assistive technology. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (c) provides that at least one mode of operation and information retrieval that does not require user hearing must be provided or, in the alternative, support for assistive technology used by people who are deaf or hard of hearing shall be provided. This requirement is met when a product provides visual redundancy for any audible cues or audio output. If this redundancy cannot be built into a product then the product shall support the use of assistive technology that complies with section 1194.25, Requirements for Compatibility with Assistive Technology. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (d) requires that audio information important for the use of a product, must be provided in an enhanced auditory fashion by allowing for an increase in volume and/or altering the tonal quality or increasing the signal to noise ratio. For example, increasing the output would assist persons with limited hearing to receive information. Audio information that is important for the use of a product includes, but is not limited to, error tones, confirmation beeps and tones, and verbal instructions. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (e) provides that at least one mode of operation and information retrieval which does not require user speech must be provided, or support for assistive technology shall be provided. Most products do not require speech input, however, if speech input is required to operate a product, this paragraph requires that at least one alternative input mode also be provided. For example, an interactive telephone menu that requires the user to say or press "one" would meet this requirement. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (f) provides that at least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and which is operable with limited reach and strength must be provided. Products that meet the requirements in sections 1194.21(b) and 1194.23(a)(3) would comply with this requirement. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

The advisory committee also recommended provisions that address limited cognitive or memory abilities and limited language and learning disabilities. Although it is important to be cognizant of issues for all people with disabilities, we believe that it is difficult for a manufacturer or procurement official to know if the criteria the committee recommended were met. Also, many of the features required to accommodate other disabilities, can be very useful to people with learning and language related disabilities. For example, features such as voice output and highlighting a focus tracking helps those with reading difficulties.

Subpart C—Information, Documentation, and Support

Section 1194.31 Information, Documentation, and Support

In order for a product or system to be fully accessible, the information about the product and product support services must also be accessible. These issues are addressed in this section.

Paragraph (a) provides that when an agency provides end-user documentation to users of technology, the agency must ensure that the documentation is available upon request in alternate formats. Alternate formats

are defined in section 1194.4, Definitions. Except as provided in paragraph (b) below, this provision does not require alternate formats of documentation that is not provided by the agency to other users of technology. This provision is consistent with the recommendations of the advisory committee.

Paragraph (b) requires that agencies supply end-users with information about accessibility or compatibility features that are built into a product, upon request. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

Paragraph (c) provides that help desks and other support services serving an agency must be capable of accommodating the communications needs of persons with disabilities. For example, an agency help desk may need to communicate through a TTY. The help desk or support service must also be familiar with such features as keyboard access and other options important to people with disabilities. This provision is consistent with the Telecommunications Act Accessibility Guidelines and the recommendations of the advisory committee.

The advisory committee also recommended that any training provided by manufacturers, providers or other parties, accommodate the functional capabilities of all participants. The Board has not included this provision since Federal employees already have a right to accessible training under section 504 and other provisions of the Rehabilitation Act.

Regulatory Process Matters

Executive Order 12866: Regulatory Planning and Review and Congressional Review Act

This proposed rule is an economically significant regulatory action under Executive Order 12866 and has been reviewed by the Office of Management and Budget (OMB). The proposed rule is also a major rule under the Congressional Review Act. The Board has prepared a regulatory assessment for the proposed rule which has been placed in the docket and is available for public inspection. The regulatory assessment is also available on the Board's Internet site (http://www.access-board.gov/rules/508nprm.htm).

Section 508 covers the development, procurement, maintenance or use of electronic and information technology by Federal agencies. Exemptions are provided by statute for national security systems and for instances where compliance would impose an undue burden on an agency. The proposed rule improves the accessibility of electronic and information technology used by the Federal government and will affect Federal employees with disabilities, as well as members of the public with disabilities who seek to use Federal electronic and information technologies to access information. The proposed rule is based largely on the recommendations of the Electronic and Information Technology Access Advisory Committee.

The standards in the proposed rule will be incorporated into the Federal Acquisition Regulation (FAR). Failure of a Federal agency to comply with the standards may result in a complaint under the agency's existing complaint procedures under section 504 of the Rehabilitation Act or a civil action seeking to enforce compliance with the standards.

Estimated Baseline of Federal Spending for Electronic and Information Technology

According to OMB projections, Federal government expenditures for information technology products will be $38 billion in fiscal year 2000. The defense agencies appear to have the highest information technology budgets, while civilian agency budgets are expected to increase rapidly. It was not possible however, to disaggregate this data such that it was useful for purposes of a regulatory assessment. Instead, the regulatory assessment uses annual sales data collected from the General Services Administration (GSA) as a proxy for the actual number of products in each applicable technology category. Using the GSA data, the regulatory assessment estimates that the Federal government spends approximately $12.4 billion annually on electronic and information technology products covered by the proposed rule. This estimate likely understates the actual spending by the Federal government because it is limited to the GSA data. Agencies are not required to make purchases through the GSA supply service, thus many items are purchased directly from suppliers. As a result, the government costs for software and compatible hardware products may actually be higher than estimates would indicate.

The regulatory assessment also examines historical budgetary obligations for information technology tracked by OMB until 1998. Two scenarios were examined to develop an upper and lower bound to represent the proportion expected to be potentially affected by the proposed rule. During a five year period from fiscal year 1994 through fiscal year 1998, the average proportion of the total information technology obligations potentially covered by the proposed rule ranged between 25 percent and 50 percent. The $12.4 billion GSA estimate falls within this range, representing 33 percent of the total fiscal year 1999 information technology obligations of $38 billion. One limitation of these ranges is that they are based on gross classifications of information technology obligations and do not provide the level of disaggregation necessary to parallel the GSA data assessment. As a result, the two scenarios likely include expenditures on products and services that would not be effected by the proposed rule to a higher degree than the data obtained from GSA.

The degree to which the potential understatement of baseline spending leads to an understatement of the cost of the proposed rule is unclear. Some of the components of the estimated cost of the proposed rule rely heavily on the level of Federal spending while others are independent of this number.

Question 9: The Board seeks information, other than that collected from GSA, which would provide additional product specific data to further assess the cost impact of this rule. The data should cover either the entire, or at least a representative majority, of Federal government acquisitions of electronic and information technology; or capture non-GSA procurements.

Estimated Cost of Proposed Rule

The regulatory assessment includes both direct and opportunity costs associated with the proposed rule. Major sources of cost include:

- Costs of modifying electronic and information technology to meet the substantive requirements of the standards;
- Training of staff, both Federal and manufacturers, to market, support, and use technologies modified in response to the standards; and
- Translation of documentation and instructions into alternate formats.

The direct costs that were quantified are shown in Table 1. The total quantified costs to society range from $177 million to $1,068 million annually. The Federal proportion of these costs is estimated to range between $85 million and $691 million. The ability of manufacturers, especially software manufacturers, to distribute these costs over the general consumer population will determine the actual proportion shared by the Federal government.

Assuming that the addition of accessibility features add value to the products outside the Federal government, it is expected that the costs will be distributed across society thereby setting a lower bound cost to the Federal government of $85 million. If manufacturers do not distribute the costs across society, the upper bound of the Federal cost will increase to an estimated $1,068 million. These costs must be placed in appropriate context by comparing them with the total Federal expenditures for information technology. By comparison, the lower and upper bound of the incremental costs represent a range of 0.23 percent to 2.8 percent of the $38 billion spent by the Federal government on information technology in fiscal year 1999. Although the regulatory assessment does not analyze the timing of expenditures or reductions in costs over time, it is expected that the costs will decrease over time as a proportion of total electronic and information technology spending.

TABLE 1

Electronic and information technology	Lower bound cost estimates (millions)	Upper bound cost estimates (millions)
General Office Software	$110	$456
Mission Specific Software	10	52
Compatible Hardware Products	.....	337
Document Management Products	56	222
Microphotographic Products	0.1	0.4
Other Miscellaneous Products	0.2	1
Total Social Cost	177	1,068
Estimated Federal Proportion ..	85	[1]691

[1] As noted above, if manufacturers do not distribute the costs across society, the upper bound of the Federal cost will increase to an estimated $1,068 million.

Accessible alternatives are available to satisfy the requirements of the proposed rule for many types of electronic and information technologies, particularly computers and software products. Some electronic and information technology products will require modifications to meet the requirements of the proposed standards.

For many types of electronic and information technology, the proposed rule focuses on compatibility with existing and future assistive devices, such as screen readers. The proposed rule does not require that assistive technologies be provided universally. Provision of assistive technologies is still governed by the reasonable accommodation requirements contained in sections 501 and 504 of the Rehabilitation Act. Section 508 does not require that assistive devices be purchased, but it does require that covered electronic and information technology be capable of having such devices added at some later time as necessary.

Software products represent the largest part of the estimated costs. The regulatory assessment assumes that Federal software expenditures can be divided into two major subcategories: general office applications and mission-specific applications. Internet applications are assumed to be represented within each of these subcategories. General office applications include operating systems, wordprocessors, and spreadsheets, and are assumed to represent 80 percent of the total software category. The remaining 20 percent covers mission-specific or proprietary applications that have limited distribution outside the Federal government. Within each subcategory, the estimated costs of the proposed rule are distributed according to the level or degree of accessibility already being achieved in the private sector.

The general office application subcategory is broken into three groups based on discussions with several industry experts. The first 30 percent is expected to require very little modification to satisfy the proposed standards and therefore no incremental cost is associated with this group. The middle 40 percent is expected to require minor to medium alterations to satisfy the proposed rule. The cost of modifying a particular general office application in this category is estimated to be in the range of 0.4 percent to 1 percent based on discussions with several manufacturers. This assumption is based on the ratio of employees dedicated to accessibility issues. The methodology uses employee classification as a proxy for cost or expense of accessibility research and development, labor, and design that are all factored into the final product cost. The remaining 30 percent is expected to require significant modifications to meet the requirements of the proposed rule, which is estimated to cost in the range of 1 percent to 5 percent based on discussion with industry experts.

The regulatory assessment assumes that the remaining 20 percent of the software products purchased by the Federal government represent proprietary or mission-specific software with limited distribution outside the government. These products will require significant modification to satisfy the proposed rule. Based on discussions with industry experts, the cost increase associated with achieving the level of accessibility required by the proposed rule is estimated to range from 1 percent to 5 percent.

Question 10: The Board requests comments on the assumptions applied to determine the cost associated with software products. The Board also seeks comment on alternative methods or data sources for evaluating the Federal government's expenditure on software products.

Estimated Benefits of Proposed Rule

The benefits associated with the proposed rule results from increased access to electronic and information technology for Federal employees with disabilities and members of the public seeking Federal information provided using electronic and information technology. This increased access reduces barriers to employment in the Federal government for persons with disabilities, reduces the probability that Federal employees with disabilities will be underemployed, and increases the productivity of Federal work teams. The proposed standards may also have benefits for people outside the Federal workforce, both with and without disabilities, as a result of spillover of technology from the Federal government to the rest of society.

Two methods are presented in the regulatory assessment for evaluating the quantifiable benefits of the proposed rule. The first is a wage gap analysis that attempts to measure the difference in wages between the general Federal workforce and Federal workers with disabilities (*i.e.*, targeted and reportable). While this analysis is limited to white collar Federal workers due to data constraints, the potential change in productivity is measured by the difference between the weighted average salary for all white collar Federal employees and the average within the two disability classes. This assumes that an increase in accessibility will help diminish this wage gap by increasing worker productivity.

The alternative is a team based approach for measuring the productivity of Federal workers. This approach is

based on the assumption that a Federal workers wage rate reflects their productivity and the scarcity of their skills in the labor market. However this may not apply to Federal wage rates, thus the average productivity of a Federal team is assumed to be equivalent to the average Federal wage rate. Based on this average rate, it is assumed that the proposed rule will produce an increase in productivity ranging between 5 percent and 10 percent.

Since no data have been identified to support the increase in productivity in the team based approach, the wage gap analysis is used to represent the benefits generated by the proposed rule shown in Table 2. Keeping in mind certain data limitations with this analysis, the benefits derived from the wage gap method do not account for benefits that may be accrued by the general public or other Federal workers due to spillover effects of increased accessibility resulting from the proposed standards.

TABLE 2

Productivity increase	Aggregate benefits range (millions)
Lower Bound	.....
Upper Bound	$466

Not all government policies are based on maximizing economic efficiency. Some policies are based on furthering the rights of certain classes of individuals to achieve more equitable results, regardless of the effect on economic efficiency. Accessibility to electronic information and technology is an essential component of civil rights for persons with disabilities. The proposed rule will ensure that Federal employees with disabilities will have access to electronic and information technology used by the Federal government that is comparable to that of Federal employees without disabilities; and that members of the public with disabilities will have comparable access to information and services provided to members of the public without disabilities through the use of Federal electronic and information technology.

Based on Bureau of Census statistics from 1994,[14] 20.6 percent or 54 million persons in the United States have some level of disability. By increasing the accessibility of electronic and information technology used by the Federal government, the proposed rule may also improve future employment opportunities in the Federal government for persons with disabilities currently employed by the Federal government, and for persons that are working in the private sector or are classified as not being active in the labor force. Increasing the accessibility of electronic and information technology increases the productivity and mobility of the disabled sector of the labor pool that, under existing conditions, may face barriers to their employment and advancement within the Federal workforce and in the private sector.

Question 11: The Board requests comment on the sufficiency of the benefits assessment and seeks recommendations for alternative methods of evaluating the benefits generated by the proposed rule for persons with disabilities, including the public as a whole.

Executive Order 13132: Federalism

By its terms, this proposed rule focuses on the development, procurement, maintenance or use by Federal agencies of electronic and information technology. As such, the Board believes that it does not have federalism implications within the meaning of Executive Order 13132. The Board is aware, however, that the Department of Education interprets the Assistive Technology Act (the "AT Act"), 29 U.S.C. 3001, to require that States receiving assistance under the AT State Grants program to comply with section 508, including these standards. The Department of Education, the agency responsible for administering the AT Act, has advised the Board that it plans to issue guidance to explain specifically how these proposed standards would apply to the States for purposes of the AT Act. In this regard, the Department of Education plans to consult with State and local governments in a manner consistent with the requirements of Executive Order 13132, and to urge them to comment to the Access Board on the content of the proposed rule during the public comment period. The Board recommends that any other Federal agency considering whether (or how) to apply these standards to non-Federal entities, or any agency required to apply these standards to non-Federal entities by provision of law, should similarly conduct an appropriate consultation process with all affected stakeholders. The Board welcomes comment on any federalism implications associated with this proposed rule.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act does not apply to proposed or final rules that enforce constitutional rights of individuals or enforce any statutory rights that prohibit discrimination on the basis of race, color, sex, national origin, age, handicap, or disability. Since the proposed rule is issued under the authority of section 508, part of title V of the Rehabilitation Act of 1973 which establishes civil rights protections for individuals with disabilities, an assessment of the rule's effects on State, local, and tribal governments, and the private sector is not required by the Unfunded Mandates Reform Act.

List of Subjects in 36 CFR Part 1194

Civil rights, Communications equipment, Computer technology, Electronic products, Government employees, Government procurement, Individuals with disabilities, Reporting and recordkeeping requirements, Telecommunications.

Thurman M. Davis, Sr.,
Chair, Architectural and Transportation Barriers Compliance Board.

For the reasons set forth in the preamble, the Board proposes to add part 1194 to Chapter XI of title 36 of the Code of Federal Regulations to read as follows:

PART 1194—ELECTRONIC AND INFORMATION TECHNOLOGY ACCESSIBILITY STANDARDS

Subpart A—General

Sec.
1194.1 Purpose.
1194.2 Application.
1194.3 General exceptions.
1194.4 Definitions.
1194.5 Equivalent facilitation.

Subpart B—Accessibility Standards

1194.21 General requirements.
1194.23 Component specific requirements.
1194.25 Requirements for compatibility with assistive technology.
1194.27 Functional performance criteria.

Subpart C—Information, Documentation, and Support

1194.31 Information, documentation, and support.

Figures to Part 1194

Authority: 29 U.S.C. 794d.

Subpart A—General

§ 1194.1 Purpose.

The purpose of this part is to implement section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. 794d). Section 508 requires that when Federal agencies develop, procure, maintain, or use electronic and information technology, Federal employees with disabilities have access to and use of information and data that is comparable to the access and use by Federal employees who are not individuals with disabilities, unless an undue burden would be imposed on the agency. Section 508 also requires that individuals with disabilities, who are members of the public seeking information or services from a Federal agency, have access to and use of information and data that is comparable to that provided to the public who are not individuals with disabilities, unless an undue burden would be imposed on the agency.

§ 1194.2 Application.

(a) When developing, procuring, maintaining, or using electronic and information technology, each agency shall comply with the requirements of this part, unless an undue burden would be imposed on the agency.

(1) When compliance with the requirements of this part imposes an undue burden, agencies shall provide individuals with disabilities with the information and data involved by an alternative means of access that allows the individual to use the information and data.

(2) When procuring a product, if an agency determines that compliance with any requirement of this part imposes an undue burden, the documentation by the agency supporting the procurement shall explain why, and to what extent, compliance with each such requirement creates an undue burden.

(b) Except as provided by § 1194.3(b), this part applies to electronic and information technology developed, procured, maintained, or used by agencies directly or used by a contractor under a contract with an agency which requires the use of such product, or requires the use, to a significant extent, of such product in the performance of a service or the furnishing of a product.

(c) This part applies to products procured by agencies when such products are:

(1) Available in the commercial marketplace;

(2) Not yet available in the commercial marketplace, but through advances in technology or performance will be available in time to satisfy the delivery requirements under a Government solicitation; or

(3) Developed in response to a Government solicitation.

(d) Products required to be accessible shall comply with all applicable provisions of this part. Section 1194.21 provides requirements that apply generally to all products. Section 1194.23 provides requirements for specific components of products and shall be applied to each component. Products may have more than one component. Section 1194.25 provides requirements for compatibility of products with assistive technology commonly used by individuals with disabilities. Section 1194.27 provides functional performance criteria for overall product evaluation and for technologies or components for which there is no specific requirement under other sections. Section 1194.31 provides requirements for information, documentation, and support.

§ 1194.3 General exceptions.

(a) This part does not apply to any telecommunications or information system operated by agencies, the function, operation, or use of which involves intelligence activities, cryptologic activities related to national security, command and control of military forces, equipment that is an integral part of a weapon or weapons system, or systems which are critical to the direct fulfillment of military or intelligence missions. Systems which are critical to the direct fulfillment of military or intelligence missions do not include a system that is to be used for routine administrative and business applications (including payroll, finance, logistics, and personnel management applications).

(b) This part does not apply to electronic and information technology that is acquired by a contractor incidental to a contract.

(c) Except as required to comply with the standards in this part, this part does not require the installation of specific accessibility-related software or the attachment of an assistive technology device at a workstation of a Federal employee who is not an individual with a disability.

(d) When agencies provide access to the public to information or data through electronic and information technology, agencies are not required to make equipment owned by the agency available for access and use by individuals with disabilities at a location other than that where the electronic and information technology is provided to the public, or to purchase equipment for access and use by individuals with disabilities at a location other than that where the electronic and information technology is provided to the public.

(e) This part shall not be construed to require a fundamental alteration in the nature of a product or its components.

§ 1194.4 Definitions.

The following definitions apply to this part:

Accessible. Electronic and information technology which complies with the requirements of this part.

Agency. Any Federal department or agency, including the United States Postal Service.

Alternate formats. Alternate formats usable by people with disabilities may include, but are not limited to, Braille, ASCII text, large print, recorded audio, and accessible internet programming or coding languages.

Alternate modes. Different means of providing information, including product documentation, to people with disabilities. Alternate modes may include, but are not limited to, voice, fax, relay service, TTY, Internet posting, captioning, text-to-speech synthesis, and audio description.

Assistive technology. Any item, piece of equipment, or system, whether acquired commercially, modified, or customized, that is commonly used to increase, maintain, or improve functional capabilities of individuals with disabilities.

Electronic and information technology. Includes information technology and any equipment or interconnected system or subsystem of equipment, that is used in the creation, conversion, or duplication of data or information. The term electronic and information technology includes, but is not limited to, telecommunications products (such as telephones), information kiosks and transaction machines, World Wide Web sites, multimedia, and office equipment such as copiers and fax machines. The term does not include any equipment that contains imbedded information technology that is used as an integral part of the product, but the principal function of which is not the acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. For example, HVAC (heating, ventilation, and air conditioning) equipment such as thermostats or temperature control devices, and medical equipment where information technology is integral to its operation, are not information technology.

Information technology. Any equipment or interconnected system or subsystem of equipment, that is used in the automatic acquisition, storage, manipulation, management, movement, control, display, switching, interchange, transmission, or reception of data or information. The term *information technology* includes computers,

[14] U.S. Department of Commerce, Economics and Statistics Administration, "Americans with Disabilities: 1994–95" (P70–61), August 1997.

ancillary equipment, software, firmware and similar procedures, services (including support services), and related resources.

Operable controls. A component of a product that requires physical contact for normal operation. Operable controls include, but are not limited to, mechanically operated controls, paper trays, card slots, keyboards, or keypads.

Product. Electronic and information technology.

Telecommunications. The transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent and received.

TTY. An abbreviation for teletypewriter. Machinery or equipment that employs interactive text based communications through the transmission of coded signals across the telephone network. TTYs may include, for example, devices known as TDDs (telecommunication display devices or telecommunication devices for deaf persons) or computers with special modems. TTYs are also called text telephones.

Undue burden. Undue burden means significant difficulty or expense. In determining whether an action would result in an undue burden, an agency shall consider all agency resources available to the agency or components for which the product is being developed, procured, maintained, or used.

§ 1194.5 Equivalent facilitation.

Nothing in this part is intended to prevent the use of designs or technologies as alternatives to those prescribed in this part provided they result in substantially equivalent or greater access to and use of a product for people with disabilities.

Subpart B—Accessibility Standards

§ 1194.21 General requirements.

(a) Color coding shall not be used as the only means of conveying information, indicating an action, prompting a response, or distinguishing a visual element.

(b) Products which are freestanding, non-portable, and intended to be used in one location and which have operable controls shall comply with the following:

(1) The position of any operable control shall be determined with respect to a vertical plane, which is 48 inches in length, centered on the operable control, and at the maximum protrusion of the product within the 48 inch length (see Fig. 1 of this part).

(2) Where any operable control is 10 inches or less behind the reference plane, the height shall be 54 inches maximum and 15 inches minimum above the floor.

(3) Where any operable control is more than 10 inches and not more than 24 inches behind the reference plane, the height shall be 46 inches maximum and 15 inches minimum above the floor.

(4) Operable controls shall not be more than 24 inches behind the reference plane (see Fig. 2 of this part).

(c) When flashing or blinking text, objects, or other elements are displayed, the flash rate shall not exceed two Hertz.

(d) If a timed response is required, at least one mode which does not require users to respond within a timed interval or allows users to adjust the timing and repetition of those intervals to at least 5 times the default setting, shall be provided.

(e) Where biometric forms of user identification or activation are used, an alternative form of identification or activation, which does not require the user to possess particular biological characteristics, shall also be provided.

(f) Where touchscreens or touch-operated controls are used, such controls shall be operable without requiring body contact or close human body proximity, or all of the operations and functions that are available through such controls shall be made available through an alternate mode that does not require body contact or close human body proximity.

§ 1194.23 Component specific requirements.

(a) *Mechanically operated controls, keyboards or keypads.* (1) Controls and keys shall be tactilely discernible without activating the controls or keys.

(2) The status of all locking or toggle controls or keys shall be visually discernible, and discernible either through touch or sound.

(3) Controls shall be operable with one hand and shall not require tight grasping, pinching, or twisting of the wrist. The force required to activate controls shall be 5 lbs. (22.2 N) maximum.

(4) All actions available or required by the product shall be available from the keyboard or keypad.

(5) If keyboard repeat is supported, the keyboard delay before repeat shall be adjustable to at least 2 seconds. Key repeat rate shall be adjustable to 2 seconds per character.

(b) *Non-embedded software applications and operating systems.*

(1) Logical navigation among interface elements shall be provided by use of keystrokes.

(2) Software shall not interfere with existing features of other products or operating systems that affect the usability for people with disabilities.

(3) A well-defined on-screen indication of the current focus shall be provided that moves among interactive interface elements as the input focus changes. The focus shall be programmatically exposed so that assistive technology can track focus and focus changes.

(4) Sufficient information about a user interface element including the identity, operation and state of the element shall be available to assistive technology.

(5) Where an image represents an interface element or the state of an interface element, there must be a way for assistive technology to associate meaningful text with the image.

(6) The use of images shall be consistent throughout an application.

(7) Text shall be provided through an application programming interface supporting interaction with assistive technology or use system text writing tools. The minimum information that shall be available to assistive technology is text content, text input caret location, and text attributes.

(8) A minimum of 8 foreground and 8 background color selections capable of producing a variety of contrast levels shall be provided.

(9) An option shall be provided to ignore individual application display attributes so system-wide settings will be maintained.

(10) Electronic forms shall allow people using assistive technology to access the information, field elements, and functionality required for completion and submission of the form including all directions and cues. Inaccessible electronic forms may be used, if an alternative accessible electronic form with equivalent information, field elements, and functionality is also provided.

(11) If animated or moving text is provided it shall also be displayable in at least one static presentation mode at the option of the user.

(c) *Web-based information or applications.*

(1) A text equivalent for every non-text element shall be provided via "alt" (alternative text attribute), "longdesc" (long description tag), or in element content.

(2) Web pages shall be designed so that all information required for navigation or meaning is not dependent on the ability to identify specific colors.

(3) Changes in the natural language (e.g., English to French) of a document's text and any text equivalents shall be clearly identified.

(4) Documents shall be organized so they are readable without requiring an associated style sheet.

(5) Web pages shall update equivalents for dynamic content whenever the dynamic content changes.

(6) Redundant text links shall be provided for each active region of a server-side image map.

(7) Client-side image maps shall be used whenever possible in place of server-side image maps.

(8) Data tables shall provide identification of row and column headers.

(9) Markup shall be used to associate data cells and header cells for data tables that have two or more logical levels of row or column headers.

(10) Frames shall be titled with text that facilitates frame identification and navigation.

(11) Pages shall be usable when scripts, applets, or other programmatic objects are turned off or are not supported, or shall provide equivalent information on an alternative accessible page.

(12) Equivalent alternatives for any multimedia presentation shall be synchronized with the presentation.

(13) An appropriate method shall be used to facilitate the easy tracking of page content that provides users of assistive technology the option to skip repetitive navigation links.

(d) *Telecommunications functions.* (1) Telecommunications products which provide a function allowing voice communication and which do not themselves provide a TTY functionality shall provide a standard non-acoustic connection point for TTYs. It shall also be possible for the user to easily turn any microphone on and off to allow the user to intermix speech with TTY use.

(2) Telecommunications products which include voice communication functionality shall support use of all cross-manufacturer non-proprietary standard signals used by TTYs.

(3) Voice mail, auto-attendant, and interactive voice response telecommunications systems shall be usable by TTY users with their TTYs.

(4) Voice mail, messaging, auto-attendant, and interactive voice response telecommunications systems shall provide at least one mode which does not require users to respond within a timed interval or allows users to adjust the timing and repetition of those intervals to a minimum of 5 times the default.

(5) Where provided, caller identification and similar telecommunications functions shall also be available for users of TTYs, telecommunications relay services, and for users who cannot see displays.

(6) For transmitted voice signals, telecommunications products shall provide a gain adjustable up to a minimum of 20 dB. For incremental volume control, at least one intermediate step of 12 dB of gain shall be provided.

(7) If the telecommunications product allows a user to adjust the receive volume, a function shall be provided to automatically reset the volume to the default level after every use but not before.

(8) Where a telecommunications product delivers output by an audio transducer, which is normally held up to the ear, a means for effective magnetic wireless coupling to hearing technologies shall be provided.

(9) Interference to hearing technologies (including hearing aids, cochlear implants, and assistive listening devices) shall be reduced to the lowest possible level that allows a user of hearing technologies to utilize the telecommunications product.

(e) *Video or multimedia products.* (1) All television displays 13 inches and larger, and computer equipment that includes television receiver circuitry, shall be equipped with caption decoder circuitry which appropriately receives, decodes, and displays closed captions from broadcast, cable, videotape, and DVD signals.

(2) Television tuners, including tuner cards for use in computers, shall be equipped with secondary audio program playback circuitry.

(3) All video and multimedia productions, regardless of format, that contain speech or other audio necessary for the comprehension of the content, shall be open or closed captioned if the production is procured or developed for repeated showings to audiences that may include people with hearing impairments.

(4) All video and multimedia productions, regardless of format, that contain visual information necessary for the comprehension of the content, shall be audio described if the production is procured or developed for repeated showings to audiences that may include people with visual impairments.

(5) Display or presentation of alternate text presentation or audio descriptions shall be user-selectable unless permanent.

(f) *Information kiosks and transaction machines.* (1) Information kiosks and transaction machines shall be usable by people with disabilities without requiring an end-user to attach assistive technology to the information kiosk or transaction machine.

(2) Where information kiosks and transaction machines deliver audio output, including speech, a mechanism shall be provided for private listening and user interruptability.

(3) Where information kiosks and transaction machines deliver voice output, incremental volume control shall be provided with output amplification up to a level of at least 65 dB. Where the ambient noise level of the environment is above 45 dB, a volume gain of at least 20 dB above the ambient level shall be user selectable.

§ 1194.25 Requirements for compatibility with assistive technology.

(a) All products that act as a transport or conduit for information or communication shall pass through cross-manufacturer, non-proprietary, industry-standard codes, translation protocols, formats or other information necessary to provide the information or communication in a usable format. Technologies which use encoding, signal compression, format transformation, or similar techniques shall not remove information needed for access or shall restore it upon delivery.

(b) Where provided, at least one of each type of expansion slots, ports and connectors shall comply with publicly available industry standards.

(c) Operating system software shall not interfere with assistive technology.

(d) Products providing auditory output shall provide the auditory signal at a standard signal level through an industry standard connector.

§ 1194.27 Functional performance criteria.

(a) At least one mode of operation and information retrieval that does not require user vision shall be provided, or support for assistive technology used by people who are blind or visually impaired shall be provided.

(b) At least one mode of operation and information retrieval that does not require visual acuity greater than 20/70 shall be provided in audio and enlarged print output working together or independently, or support for assistive technology used by people who are visually impaired shall be provided.

(c) At least one mode of operation and information retrieval that does not require user hearing shall be provided, or support for assistive technology used by people who are deaf or hard of hearing shall be provided.

(d) Where audio information is important for the use of a product, at least one mode of operation and information retrieval shall be provided in an enhanced auditory fashion.

(e) At least one mode of operation and information retrieval that does not

require user speech shall be provided, or support for assistive technology shall be provided.

(f) At least one mode of operation and information retrieval that does not require fine motor control or simultaneous actions and that is operable with limited reach and strength shall be provided.

Subpart C—Information, Documentation, and Support

§ 1194.31 Information, documentation, and support.

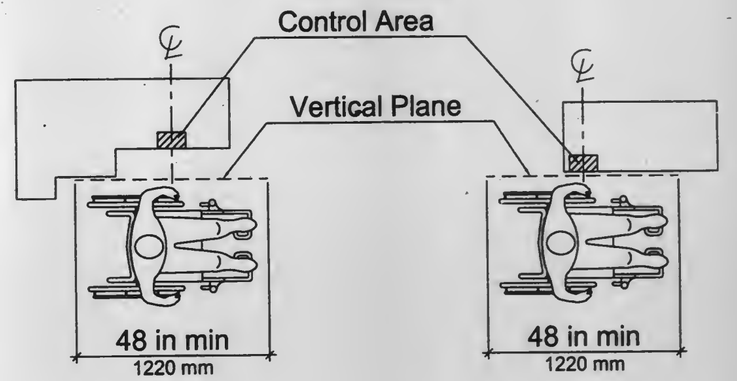
(a) Agencies shall ensure that any product support documentation provided by the agency to end-users, is available in alternate formats upon request, at no additional charge.

(b) Agencies shall ensure that end-users have access to a description of the accessibility and compatibility features of products provided by the agency in alternate formats or alternate modes upon request, at no additional charge.

(c) Agencies shall ensure that support services for products provided by the agency, will accommodate the communication needs of end-users with disabilities.

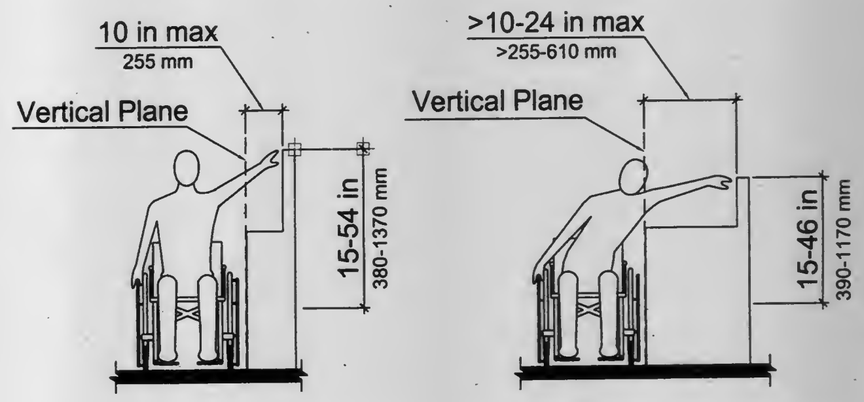
BILLING CODE 8150–01–P

Figures to Part 1194



Vertical Plane Relative to the Operable Control

Figure 1



Height of Operable Control Relative to the Vertical Plane

Figure 2

[FR Doc. 00–7719 Filed 3–30–00; 8:45 am]
BILLING CODE 8150–01–C

Federal Register

Friday,
March 31, 2000

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Part 37

Open Access Same-Time Information System and Standards of Conduct; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM95–9–003; Order No. 638]

Open Access Same-Time Information System and Standards of Conduct

Issued February 25, 2000.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) adopts a set of uniform business practices implementing the Commission's policies on transmission service price negotiation and on improving interactions between transmission providers and customers over OASIS nodes and amends 18 CFR 37.5 to require compliance with these practices. In addition, the Commission adopts a consistent naming convention for path names, replaces the Data Dictionary Element "ANC_SERVICE_TYPE" in the OASIS Standards and Communication Protocols Document (Version 1.3) with the term "AS_TYPE," and clarifies the terms "DISPLACED," "SUPERSEDED," and "REFUSED" in § 4.2.10.2 of that same document and in the Data Dictionary Element.

EFFECTIVE DATE: This Final Rule will become effective on May 30, 2000.

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SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. Discussion
A. Overview
B. Background
C. Composition of CPWG Membership
D. Business Practices for Oasis Phase IA Transactions
1. *Recommended Voluntary Guides ond Mandatory Standard*
2. *Standard Terminology for Transmission and Ancillary Services*
a. *Need for Standard Terminology*
b. *Attribute Values Defining the Period of Service (Standards 2.1–2.1.13)*
c. *Attribute Values Defining Service Class and Type (Standards 2.2–2.3.2)*
d. *Curtailment Priorities (Standard 2.4)*
e. *Other Service Attribute Values (Standards 2.5–2.5.9)*
f. *Scheduling Period (Standards 2.6–2.6.2)*
3. *Entity and Product Registration*
a. *Maintenance of Industry-Wide OASIS Home Page*
b. *Identification of Parties(Standard 3.1)*
c. *Registering Non-Standard Service Attributes (Standards 3.2–3.3)*
d. *Registering Points of Receipt and Delivery (Standards 3.4–3.6)*
4. *On-Line Price Negotiation and Confirmation Process*
a. *On-line Price Negotiation in Short-term Markets (Standards 4.1–4.3)*
b. *Diagram Depicting the Negotiation Process (Standards 4.4–4.5)*
c. *Negotiations Without Competing Bids (Standards 4.6–4.13)*
d. *Negotiations with Competing Bids for Constrained Resources (When Customer Has Not Yet Confirmed a Transmission Provider's Acceptance) (Standards 4.14–4.27)*
5. *Procurement of Ancillary and Other Services*
a. *Transmission Provider Requirements (Standards 5.1–5.4)*
b. *Transmission Customer Requirements (Standards 5.5–5.6)*
6. *Pathnaming Standards (Standards 6.1–6.4)*
7. *Revisions to the S&CP Document*
8. *Requests to Industry Working Groups*
9. *CPWG/How Group Recommended Revisions to the Pro Forma Tariff*
a. *Section 14.2—Reservation Priority*
b. *Section 14.7—Curtailment or Interruption of Service*
c. *Section 17.5—Response to a Completed Application*
III. *Regulatory Flexibility Act*
IV. *Environmental Statement*
V. *Public Reporting Burden*
VI. *Information Collection Statement*
VII. *Effective Date and Congressional Notification*
VIII. *Document Availability*
Attachment A—"*BUSINESS PRACTICE STANDARDS FOR OPEN ACCESS SAME-TIME INFORMATION SYSTEM (OASIS) TRANSACTIONS*"
Attachment B—Quotes sections 13.2, 14.2, 14.7, and 17.5 of the *pro forma* tariff
Attachment C—Revised Status values in section 4.2.10.2 of the S&CP Document
Attachment D—Revisions to Data Element Dictionary
Attachment E—List of Commenters to UBP NOPR

Before Commissioners: James J. Hoecker, Chairman; William L. Massey, Linda Breathitt, and Curt Hébert, Jr., Open Access Same-Time Information System and Standards of Conduct, Docket No. RM95–9–003; Order No. 638.

Final Rule

Issued February 25, 2000.

I. Introduction

In this final rule, the Federal Energy Regulatory Commission (Commission) adopts a set of uniform business practices, as set out in the attached "Business Practice Standards for OASIS Transactions" (BPS). The BPS implements the Commission's policies on transmission service price negotiation and on improving interactions between transmission providers and customers over Open Access Same-Time Information System (OASIS) nodes. The Commission mandates compliance with these practices by adopting a revision to 18 CFR 37.5. In addition, the Commission adopts a consistent naming convention for path names, replaces the Data Dictionary Element "ANC_SERVICE_TYPE" in the OASIS Standards and Communication Protocols Document, Version 1.3 (S&CP Document) with the term "AS_TYPE," and clarifies the terms "DISPLACED," "SUPERSEDED," and "REFUSED" in the Data Dictionary Element and in section 4.2.10.2 of the S&CP Document.

II. Discussion

A. Overview

In this final rule, we adopt a set of uniform business practices for use by transmission providers in conjunction with OASIS transactions. These uniform business practices are set out in the attached BPS. The Commission mandates compliance with these practices by adopting a revision to 18 CFR 37.5 that requires responsible parties to follow the standards set out in the accompanying BPS.

The uniform business practices we are here adopting are largely the same as those proposed in the notice of proposed rulemaking issued by the Commission on January 27, 1999 (UBP NOPR).[1] These uniform business practices originated as a set of recommendations from two industry groups, the Commercial Practices Working Group and the OASIS How Working Group (jointly CPWG/How Group), as presented in two 1998 filings.[2] These industry proposals, accompanied by public comment, evolved into the UBP NOPR, and after

[1] Open Access Same-Time Information System and Standards of Conduct, notice of proposed rulemaking, 64 FR 5206, 86 FERC ¶ 61,061, FERC Stats. & Regs. ¶ 32,539 (1999).

[2] The CPWG is no longer functioning. Its activities have been taken over by a successor industry group, the Market Interface Committee (MIC), also referred to in note 8 *infra*.

a review of comments on the UBP NOPR, have now further evolved into this final rule. However, as discussed below, we have made certain revisions to those proposals, to reflect Commission policy, add clarity,[3] and address comments received from interested persons. In addition, after reviewing comments on whether all of the business practices we adopt in this final rule should be adopted as mandatory standards, rather than as voluntary best practice guides, we are persuaded to do so.

In addition, as proposed in the UBP NOPR, we are adopting a consistent naming convention for path names, replacing the Data Dictionary Element "ANC_SERVICE_TYPE" in the S&CP Document with the term "AS_TYPE," and are clarifying the terms "DISPLACED," "SUPERSEDED," and "REFUSED" in the Data Dictionary Element and in section 4.2.10.2 of the S&CP Document.

B. Background

On June 19, 1998, the CPWG/How Group[4] filed a report entitled "Industry Report to the Federal Energy Regulatory Commission on OASIS Phase IA Business Practices" (June 19 Report) offering a set of uniform business practice standards and guidelines for adoption by the Commission. As explained in the UBP NOPR, the June 19 Report states that the recommended business practice standards and guides are intended to enable the Commission to implement its policy directives related to on-line price negotiation and to improve the commercial operation of OASIS. The UBP NOPR also explained that the June 19 Report states that the recommended standards and guides are intended to support FERC regulations, the *pro forma* tariff, and the S&CP Document. In a few instances, the June 19 Report recommended revisions to the *pro forma* tariff.

The June 19 Report argued that, because many OASIS-related business practice implementation details were left for transmission providers to determine for themselves, significant variation arose among business practices across OASIS nodes and influences the development of markets. To reduce this variation and to promote greater consistency in the implementation of the Commission's open access policy and OASIS policy, the CPWG/How Group proposed that the Commission adopt its recommended "Phase IA Business Practice Standards and Guides" (Business Practices). In addition, on September 15, 1998, CPWG/How Group filed a letter with the Commission recommending standards for transmission path naming and requesting Commission approval coincident with the start of OASIS Phase IA (*i.e.*, starting on March 1, 1999).

After notices were published and comments were received and reviewed, the Commission issued the UBP NOPR, proposing the adoption of uniform business practice guides and standards, and standards for transmission path names. The UBP NOPR largely was modeled on the business practices recommended in the June 19 Report.

In response to the UBP NOPR, comments were filed by 19 interested persons.[5] These comments are generally supportive of the UBP NOPR and of issuance of the BPS, although they contain specific suggestions for revisions. The comments will be discussed below on an issue-by-issue basis.

C. Composition of CPWG Membership

In the UBP NOPR, we reiterated the circumstances under which we would give weight to recommendations from industry working groups. We explained that consistent with Commission precedent,[6] we would heed recommendations from industry working groups only to the extent that the views of those groups reflected an open process with input from diverse industry segments.

Comments

ECI[7] argues that the Interim Market Interface Committee,[8] a new industry working group under the auspices of NERC, does not meet the Commission's criteria for inclusiveness and diversity.[9] In particular, ECI finds troublesome that MIC representatives are hand-picked by NERC, rather than elected by the membership. ECI fears this might lead NERC to choose MIC members based on their support for NERC-preferred positions, and to exclude members who oppose those views, even if those holding opposing views are more representative of that industry segment. In addition, ECI finds the current MIC requirement, that there be at least one representative from each of the ten NERC regions, lacks any built-in safeguards with respect to balancing the makeup of the regional representative group to assure the inclusion of participants from industry segments other than transmission providers. ECI argues that this results in a committee structure that is likely to remain tilted heavily in favor of transmission-owning utilities. Accordingly, ECI argues that MIC's membership selection process needs reform before the Commission should give deference to its recommendations for industry standards.

Discussion

As we stated in the UBP NOPR, we agree with ECI that unqualified deference should not be given to the recommendations of any industry group whose decisions are not made in an open inclusive process with balanced representation reflecting a broad consensus of views from all industry segments. Moreover, contrary to ECI's assertions, the UBP NOPR did not give "unqualified deference" to the recommendations of any industry group. This is shown by two facts: (1) The UBP NOPR contained revisions to the recommendations contained in the June 19 Report; and (2) we are issuing this Final Rule only after our consideration of comments on the UBP NOPR that we invited from any interested person.

Moreover, we reiterate that if, in the future, the MIC (or any other industry group) would like the Commission to consider its recommendations to reflect the views of the entire industry, then it is incumbent on it to demonstrate to the Commission that: (1) Its membership is open to all industry segments through an inclusive process; (2) it makes its decisions in a manner that gives fair voice to participants with diverse viewpoints from all industry segments; and (3) its activities are conducted in an open inclusive manner.[10]

[3] For example, for clarity, we are revising references in the BPS to "providers" to "transmission providers."

[4] As more fully discussed in the UBP NOPR, FERC Stats. & Regs. ¶ 32,539 at 33,606–08, and in earlier orders, *see* Open Access Same-Time Information System and Standards of Conduct, Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,588–91 (1996), *order on reh'g*, Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,549 (1997), *order on reh'g*, Order No. 889–B, 81 FERC ¶ 61,253 (1997), we greatly appreciate the invaluable ongoing efforts contributed by industry working group participants who have strived for consensus on contentious OASIS-related issues and reported on those efforts to the Commission.

[5] Identified in Attachment E.

[6] *See, e.g.*, RIN NOPR, FERC Stats. & Regs. ¶ 32,516 at 33,173–74; Order No. 889, FERC Stats. & Regs. ¶ 31,035 at 31,589, n.13; Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,549, n.7.

[7] For brevity, the abbreviations used to identify the various commenters to the UBP NOPR are listed in Attachment E, and are not separately identified in the text.

[8] This committee is no longer interim and is now the "Market Interface Committee" (MIC) referenced in note 2.

[9] ECI Comments at 3.

[10] *See* UBP NOPR at 33,609.

On the other hand, we encourage interested persons to participate actively in those industry efforts at consensus, rather than remain silent until the Commission invites public comment. *See, e.g.*, note 87, *infra*.

D. Business Practices for Oasis Phase IA Transactions

1. Recommended Voluntary Guides and Mandatory Standards

The June 19 Report recommends certain business practices as mandatory standards and other business practices as voluntary "best practice" guides. In the UBP NOPR, we proposed to maintain the distinction between standards and "best practice" guides as recommended in the June 19 Report. At the same time, we recognized that uniform and consistent business practices are a desired result, and that consistency can best be achieved through mandatory standards rather than suggested guidelines. Accordingly, we invited comment on whether all or some guides should be adopted as standards.[11]

Comments

A number of commenters recommend that all guides be made mandatory now or in the near future.[12] ECI argues that voluntary guides defeat the objective of imposing a uniform and consistent set of business practices and proposes that all the guides be made mandatory. In the alternative, ECI proposes that we set a date certain, at which time we would revisit the voluntary guides to determine whether they should be reclassified as mandatory. At a minimum, ECI argues that Guide 4.13 (Table 4–2)[13] and Guide 4.16 (Table-3)[14] should be made standards. ECI claims that if each transmission provider is permitted different timing requirements and different priorities it will be very difficult for customers to keep up with the "smorgasbord" of business rules when trading power among different transmission providers.[15]

Duke argues that the guides should be mandatory and that it is not appropriate for transmission providers to pick and choose which guides to follow, and which to ignore. Duke claims that the discretionary use of best practice guides will cause confusion among OASIS users trying to learn about, and assess the importance of, differing business practices by various transmission providers. It argues that adopting the proposed standards and guides as mandatory standards would provide substantial and welcome uniformity.[16]

While Cinergy supports uniform consistent business practices, it asserts that more experience with the guides is needed before they are made mandatory. Cinergy proposes that the MIC report back in 12 months with a study containing recommendations and evaluations of the effectiveness of the standards and guides. Cinergy also argues that it is important for the Commission to differentiate in specific detail whether a guideline or standard applies to requests for firm or non-firm transmission, or both, so that incorrect assumptions are not made by the transmission provider and/or customer."[17]

Florida Power Corp argues that, while business practices are evolving it is important to maintain the level of flexibility provided by the guides. However, Florida Power Corp argues that it may be desirable to convert the guides into mandatory standards, after business systems and processes have further developed.

By contrast, several commenters support keeping all or some of the guides voluntary.[18] AEP argues that the distinction between the standards and guides helped the participants in the process to reach agreement on the issues. BPA claims that while there is a need for consistent business practices, it is more important to permit some deviations. Southern argues that the guides are useful to facilitate innovation.

Discussion

Our experience with the natural gas pipeline industry[19] has taught us that business practice standards, in addition to communication standards and protocols, are needed for the development of efficient markets and for the efficient use of the transmission grid.

In the UBP NOPR, we proposed to keep the distinction between the voluntary guides and standards. However, we specifically invited comment on whether we should adopt all of the proposed business practices as mandatory standards.[20] After a review of the comments, we agree with ECI and Duke that all of the business practices being adopted in this final rule should be adopted as mandatory standards.

We agree with ECI and Duke that it would be confusing to customers if each transmission provider could independently decide whether to follow a particular uniform business practice or practices or make up its own unique business practice. Removing this uncertainty will aid customers and make it easier to transact business and move power across the grid.

Moreover, the arguments opposing mandatory standards were not compelling. The commenters favoring retention of voluntary guides failed to persuade us that any potential problems outweigh the advantages that we expect to achieve from the adoption of uniform mandatory business practice standards. We believe that the standards are sufficiently developed to allow their adoption as mandatory standards and that doing so will make it easier for customers to do business. Thus, we will make all the guides mandatory standards.

As to the argument that this is a still evolving area, while we recognize that these are the first OASIS-related business practices developed by the industry and that they will need revisions and enhancements as the industry gains experience doing business with them, we do not believe that this dictates that we defer the adoption of mandatory standards until a later date. However, we request that the MIC/How Group report back to us, within 9 months of the implementation date of these standards, with their recommendations as to any necessary revisions and additions to the standards.[21]

2. Standard Terminology for Transmission and Ancillary Services

a. Need for Standard Terminology

In the June 19 Report, the CPWG/HOW Group recommends that we establish a standard set of attribute values to provide clarity and consistency in the labeling of transmission services.[22]

[11] UBP NOPR at 33,609–10.

[12] Cinergy Comments at 1, Duke Comments at 3, ECI Comments at 2, Florida Power Corp Comments at 2, TEP Comments at 1.

[13] Guide 4.13 specifies reservation timing requirements.

[14] Guide 4.16 specifies priorities for competing reservation requests.

[15] ECI Comments at 2.

[16] Duke Comments at 3.

[17] Cinergy Comments at 10.

[18] AEP Comments at 2, BPA Comments at 2, Southern Comments at 2–3.

[19] *See, e.g.*, Standards for Business Practices of Interstate Natural Gas Pipelines; Order No. 587; Final Rule, 61 FR 39,053, FERC Stats. & Regs. ¶ 31,038 at 30,058–59 (1996)

[20] UBP NOPR at 33,610.

[21] As explained in section VII, *infra*, these regulations are to become effective sixty (60) days from the date of publication of this rule in the **Federal Register**.

[22] *See* June 19 Report at section 2.A, which recommends that standard attribute values be used in OASIS transactions to the greatest extent possible.

Comments

AEP, Cinergy, and TEP[23] support requiring standard terminology for existing and standard transmission and ancillary service products. Cinergy suggests that, to encourage innovation in the market, transmission providers should be allowed to use transmission products in addition to those included in the industry standards, and to document the attributes of these products on the OASIS.[24] AEP cautions that we should not allow standardization to stifle innovation in the market, by imposing excess rigidity on the provision of transmission service.[25]

Discussion

We agree with the CPWG/How Group and commenters that standard attribute values should be used in OASIS transactions to the greatest extent possible. We disagree with concerns that this might impede flexibility and innovation in the marketplace, because standard attributes are intended to make the description of products more uniform, and are not intended as a limitation on what products may be offered. Therefore, transmission providers should use standard attributes to describe established products but, in addition, we continue to encourage transmission providers to offer additional innovative products (*i.e.*, to propose innovative services that are consistent with or superior to the *pro forma* tariff). Products with non-standard attributes are to be registered and documented on the industry-wide Home Page at www.tsin.com and on the OASIS site of the transmission provider offering such products. If the availability of such products becomes widespread, we may later add them to the list of standard attribute values.

b. Attribute Values Defining the Period of Service (Standards 2.1–2.1.13)

In the UBP NOPR, the Commission explained that the Phase IA S&CP Document, approved in the September 29, 1998 Order, provided for the inclusion of "fixed," "sliding," and "extended" transmission service period definitions. We further explained that some proposed definitions were not covered by the *pro forma* tariff, but that there was no prohibition against these services being provided under transmission providers' individual open access tariffs. In the UBP NOPR, we proposed that Standards 2.1 through 2.1.13, as shown below, be adopted.

[23] TEP Comments at 2.

[24] Cinergy Comments at 2.

[25] AEP Comments at 3.

Standard 2.1: A Transmission Provider shall use the values and definitions below for the attributes Service-Increment and Window for all transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use existing attribute values and definitions posted by other Transmission Providers. (See Section 3 for registration requirements.)

Standard 2.1.1: Fixed Hourly—The service starts at the beginning of a clock hour and stops at the end of a clock hour.

Standard 2.1.2: Fixed Daily—The service starts at 00:00 and stops at 24:00 of the same calendar date (same as 00:00 of the next consecutive calendar date).

Standard 2.1.3: Fixed Weekly—The service starts at 00:00 on Monday and stops at 24:00 of the following Sunday (same as 00:00 of the following Monday).

Standard 2.1.4: Fixed Monthly—The service starts at 00:00 on the first date of a calendar month and stops at 24:00 on the last date of the same calendar month (same as 00:00 of the first date of the next consecutive month).

Standard 2.1.5: Fixed Yearly—The service starts at 00:00 on the first date of a calendar year and ends at 24:00 on the last date of the same calendar year (same as 00:00 of the first date of the next consecutive year).

Standard 2.1.6: Sliding Daily—The service starts at the beginning of any hour of the day and stops exactly 24 hours later at the same time on the next day.

Standard 2.1.7: Sliding Weekly—The service starts at 00:00 of any date and stops exactly 168 hours later at 00:00 on the same day of the next week.

Standard 2.1.8: Sliding Monthly—The service starts at 00:00 of any date and stops at 00:00 on the same date of the next month (28–31 days later). If there is no corresponding date in the following month, the service stops at 24:00 on the last day of the next month.

For example: Sliding Monthly starting at 00:00 on January 30 would stop at 24:00 on February 28 (same as 00:00 March 1).

Standard 2.1.9: Sliding Yearly—The service starts at 00:00 of any date and stops at 00:00 on the same date of the following year. If there is no corresponding date in the following year, the service stops at 24:00 on the last day of the same month in the following year.

For example Sliding Yearly service starting on February 29 would stop on February 28 of the following year.

Standard 2.1.10: Extended Daily—The service starts at any hour of a day and stops more than 24 hours later and less than 48 hours later.

Standard 2.1.11: Extended Weekly—The service starts at 00:00 of any date and stops at 00:00 more than one week later, but less than two weeks later.

Standard 2.1.12: Extended Monthly—The service starts at 00:00 of any date and stops at 00:00 more than one month later but less than two months later.

Standard 2.1.13: Extended Yearly—The service starts at 00:00 of any date and stops at 00:00 more than one year calendar year later but less than two calendar years later.

Comments

AEP, Duke, Florida Power Corp and VEPCO filed comments on these proposed standards. All are in support of including the products of "Fixed," "Sliding," and "Extended." VEPCO comments that the "sliding" and "extended" services should not be required to be offered by the transmission provider, but if offered, they should conform to Standards 2.1.6 through 2.1.13, as proposed.[26] AEP comments that the "extended" service should be voluntary, because AEP's tariff would not permit such service. AEP also suggests that we might use the standard definitions of "Fixed," "Sliding," and "Extended," without the more rigid definitions of 2.1.1 through 2.1.13.[27] Duke suggests changes to standards 2.1.10 through 2.1.13, to permit "extended daily" for up to less than 168 hours, "extended weekly" for up to less than four weeks, "extended monthly" for up to less than twelve months, and to limit "extended yearly" to increments of full years. According to Duke, these changes would provide additional marketplace flexibility, and in the case of "extended yearly," would prohibit customers from requesting service for two peak summer seasons without paying for two full years of service.[28] Florida Power Corp opposes the expansion of service attribute definitions for locational marginal pricing and megawatt-mile pricing.[29]

Discussion

We will adopt Standards 2.1 through 2.1.13 as proposed in the UBP NOPR, except, as proposed by Duke, we will revise Standards 2.1.10 through 2.1.13 to read as follows:

2.1.10: EXTENDED DAILY—The service starts at any hour of a day and stops more than 24 hours later and less than 168 hours later.

2.1.1 1: EXTENDED WEEKLY—The service starts at 00:00 of any date and stops at 00:00 more than one week later, but less than four weeks later.

2.1.12: EXTENDED MONTHLY—The service starts at 00:00 of any date and stops at 00:00 more than one month later, but less than twelve months later.

2.1.13: EXTENDED YEARLY—The service starts at 00:00 of any date and stops at 00:00 more than one year later, but must be requested in increments of full years.

We agree with Duke that these changes will provide additional flexibility to transmission providers and customers. We also agree that the revisions to Standard 2.1.13 are

[26] VEPCO Comments at 2.

[27] AEP Comments at 4.

[28] Duke Comments at 4.

[29] Florida Power Corp Comments at 2.

appropriate. Under Standard 2.1.13, as here adopted, extended yearly service must be purchased in yearly increments, and customers reserving transmission for two peak seasons would pay for two full years of service. However, while Standard 2.1.13 would define extended yearly service as being offered in yearly increments, transmission providers may offer more flexible service, if approved by the Commission and posted in compliance with Standard 2.1.

As to the comments from VEPCO and AEP, the Commission clarifies that the products of "sliding" and "extended" service are not required to be offered. Thus, the availability of these products should not create conflicts with any transmission providers' existing tariffs.

As proposed in the UBP NOPR, the definitions of "fixed," "sliding," and "extended," will not be expanded to include attributes for locational marginal pricing and megawatt-mile pricing since these attributes are intended to describe types of services, not prices or rate designs for services. Florida Power Corp, which filed the only comment on this issue, supported the UBP NOPR's proposal.

c. Attribute Values Defining Service Class and Type (Standards 2.2–2.3.2)

In the UBP NOPR, the Commission noted that the Phase IA S&CP Document, approved in the September 29, 1998 Order, included data templates that refer to service class and type, but that did not define these attributes. To fill this gap, the UBP NOPR, in Standards 2.2 through 2.3.2, proposed definitions for these attributes. Based on comments from interested persons, the proposed definitions differed somewhat from those recommended in the June 19 Report. The UBP NOPR proposed the following definitions:

Standard 2.2: A Transmission Provider shall use the values and definitions below to describe the service CLASS for transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use the attribute values and definitions posted by other Providers. (See Section 3 for registration requirements.)

Standard 2.2.1: Firm—Transmission service that always has priority over NON-FIRM transmission service and includes Native Load Customers, Network Customers, and any transmission service not classified as non-firm in accordance with the definitions in the *pro forma* tariff.

Standard 2.2.2: Non-Firm—Transmission service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to Firm transmission service, Native Load Customers, and Network Customers in accordance with the definitions in the *pro forma* tariff.

Standard 2.3: A Transmission Provider shall use the values and definitions below to describe the service TYPE for transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use the attribute values and definitions posted by other Providers. (See Section 3 for registration requirements.)

Standard 2.3.1: Point-to-point—Transmission service that is reserved and/or scheduled between specified Points of Receipt and Delivery pursuant to Part II of the *pro forma* tariff and in accordance with the definitions in the *pro forma* tariff.

Standard 2.3.2: Network—Network Integration Transmission Service that is provided to serve a Network Customer load pursuant to Part III of the *pro forma* tariff and in accordance with the definitions in the *pro forma* tariff.

Comments

VEPCO filed the only comments on this issue. VEPCO has no objection to Standards 2.2 and 2.3, provided that the disclaimer "in accordance with the definitions in the *pro forma* tariff" is added to each definition. VEPCO argues that, if we incorporated the *pro forma* definitions verbatim into Standards 2.2.1, 2.2.2, 2.3.1, and 2.3.2, it would avoid confusion.[30]

Discussion

As proposed in the UBP NOPR, we will include the disclaimer "in accordance with the definitions in the *pro forma* tariff" in Standards 2.2.1, 2.2.2, 2.3.1, and 2.3.2. As to VEPCO's contention that we should incorporate the *pro forma* tariff definitions verbatim into Standards 2.2.1, 2.2.2, 2.3.1, and 2.3.2, we considered and rejected this option when we issued the UBP NOPR and likewise will reject this option in this Final Rule. The definitions in Standards 2.2.1, 2.2.2, 2.3.1, and 2.3.2 are consistent with those in the *pro forma* tariff, but define related, somewhat different, terms. While we have incorporated *pro forma* tariff definitions verbatim when defining identical terms, the terms being defined in Standards 2.2.1, 2.2.2, 2.3.1, and 2.3.2 are not precisely the same as those defined in the *pro forma* tariff.[31] Moreover, in our view, for purposes of this rule, we need to define the precise terms defined in Standards 2.2.1, 2.2.2, 2.3.1, and 2.3.2.

In addition, for clarity we will revise Standard 2.2.2 to reflect that service to Native Load Customers and Network Customers is included within firm service under Standard 2.2.1. We therefore will adopt a revised Standard 2.2.2 that provides as follows:

Standard 2.2.2: Non-Firm—Transmission service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to Firm transmission service, including service to Native Load Customers and Network Customers, in accordance with the definitions in the *pro forma* tariff.

d. Curtailment Priorities (Standard 2.4)

Standard 2.4, as proposed in the June 19 Report, provided as follows:

Standard 2.4: A Transmission Provider shall use the curtailment priority definitions in NERC Policy 9 Security Coordinator Procedures for NERC CURTAILMENT PRIORITY (1–7) for all transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use attribute values and definitions posted by another Provider. (See Section 3 for registration requirements.)

In the UBP NOPR, we stated that "[w]e have not been persuaded to propose the adoption of Standard 2.4 as recommended in the June 19 Report. There is still considerable work to be accomplished in the area of developing procedures/definitions for establishing curtailment policy." In the UBP NOPR, we also clarified the distinction between *establishing* curtailment priorities and *displaying* curtailment priorities. We stated,

> [i]n the June 18 Order, we agreed to displaying curtailment priority information in certain templates contained in the S&CP Document. However, we specifically cautioned that,
>
> our adoption of a place on the OASIS for these data elements does not constitute an approval of the NERC or other curtailment priorities.

As we stated in *Coalition Against Private Tariffs*,[32] curtailment priorities are governed by the *pro forma* tariff.[33]

Comments

Comments on this subject were filed by Cinergy, Florida Power Corp, and VEPCO. Cinergy [34] and Florida Power Corp [35] agree with the Commission that NERC Policy 9 should not be included in the OASIS Business Practices at this time. VEPCO disagrees, however, and urges the Commission to adopt the standard. VEPCO's position is that the NERC Curtailment Priority is a Standard Data Element defined in the S&CP Document, and the only means by which a Transmission Customer is informed on the OASIS of how the service it has requested ranks in relation to other services for curtailment purposes. VEPCO recommends that the proposed standard be adopted as a guide until such time as that curtailment policy becomes more fully developed.[36]

Discussion

As explained in the UBP NOPR, this issue (whether to adopt Standard 2.4) involves how curtailment priorities (as governed by the *pro forma* tariff) are to be displayed. It does not involve what curtailment priorities should be established.

Standard 2.4, as recommended in the June 19 Report, would require those transmission providers who do not use the NERC curtailment priority definitions to post alternative attribute values and associated definitions on the industry-wide OASIS Home Page or to use values and definitions posted on the industry-wide OASIS Home Page by other transmission providers. These attributes are used in the NERC_CURTAILMENT_PRIORITY and OTHER_CURTAILMENT_PRIORITY fields of templates described in the S&CP Document. After a review of the comments, we are persuaded by VEPCO's suggestion that NERC's Policy 9, NERC TLR Procedures, should be adopted as Standard 2.4 so that OASIS users will better understand the information being posted about curtailment priorities. However, NERC TLR Procedures have not been adopted by all transmission providers in all of NERC's regions. Thus, to add clarity, we will make minor revisions to Standard 2.4 to clarify when the definitions in NERC TLR Procedures are to be used (when a transmission provider has adopted NERC TLR Procedures) and when the alternative attribute values and associated definitions are to be used (when a transmission provider has not adopted NERC TLR Procedures). We therefore will adopt a revised Standard 2.4 that provides as follows:

Standard 2.4: A Transmission Provider that has adopted NERC TLR Procedures shall use the curtailment priority definitions contained in NERC TLR Procedures for NERC CURTAILMENT PRIORITY (1–7) for all transmission services offered on OASIS. A Transmission Provider that has adopted alternative curtailment procedures shall post its alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use attribute values and definitions posted by another Transmission Provider. (*See* Section 3 for registration requirements.)

While we agree with Cinergy and Florida Power Corp that there is still considerable work to be accomplished in the area of developing and refining curtailment procedures,[37] this does not negate the need for current postings of curtailment priorities to be as informative as possible. Thus, we will adopt Standard 2.4 at this time, but will consider appropriate revisions to this provision in the future, if the terminology used therein becomes outdated.

e. Other Service Attribute Values (Standards 2.5–2.5.9)

In the UBP NOPR,[38] the Commission noted that Order No. 888 included six ancillary services that must be included in an open access tariff. In addition, a transmission provider may file to revise its open access tariff to include other services.[39] In the UBP NOPR, based on comments from interested persons, we deviated from recommendations in the June 19 Report and proposed the adoption of Standards 2.5 through 2.5.9, as follows:

Standard 2.5: A Transmission Provider shall use the definitions below to describe the AS_TYPEs offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use attribute values and definitions posted by another Provider. (See Section 3 for registration requirements.) FERC Ancillary Services Definitions

Standard 2.5.1: Scheduling, System Control and Dispatch Service (SC)—is necessary to the provision of basic transmission service within every control area. This service can be provided only by the operator of the control area in which the transmission facilities used are located. This is because the service is to schedule the movement of power through, out of, within, or into the control area. This service also includes the dispatch of generating resources to maintain generation/load balance and maintain security during the transaction and in accordance with section 3.1 (and Schedule 1) of the *pro forma* tariff.

Standard 2.5.2: Reactive Supply and Voltage Control from Generation Sources Service (RV)—is the provision of reactive power and voltage control by generating facilities under the control of the control area operator. This service is necessary to the provision of basic transmission service within every control area and in accordance with section 3.2 (and Schedule 2) of the *pro forma* tariff.

Standard 2.5.3: Regulation and Frequency Response Service (RF)—is provided for transmission within or into the transmission provider's control area to serve load in the area. Customers may be able to satisfy the regulation service obligation by providing generation with automatic generation control capabilities to the control area in which the load resides and in accordance with section 3.3 (and Schedule 3) of the *pro forma* tariff.

Standard 2.5.4: Energy Imbalance Service (EI)—is the service for transmission within and into the transmission provider's control area to serve load in the area. Energy imbalance represents the deviation between the scheduled and actual delivery of energy to a load in the local control area over a single hour and in accordance with section 3.4 (and Schedule 4) of the *pro forma* tariff.

Standard 2.5.5: Operating Reserve—Spinning Reserve Service (SP)—is provided by generating units that are on-line and loaded at less than maximum output. They are available to serve load immediately in an unexpected contingency, such as an unplanned outage of a generating unit and in accordance with section 3.5 (and Schedule 5) of the *pro forma* tariff.

Standard 2.5.6: Operating Reserve—Supplemental Reserve Service (SU)—is generating capacity that can be used to respond to contingency situations. Supplemental reserve, is not available instantaneously, but rather within a short period (usually ten minutes). It is provided by generating units that are on-line but unloaded, by quick-start generation, and by customer interrupted load and in accordance with section 3.6 (and Schedule 6) of the *pro forma* tariff.

Other Service Definitions

Other services may be offered to Transmission Customers through individual filed tariffs. Examples of other services that may be offered include the Interconnected Operations Services described below in Guides 2.5.7, 2.5.8, and 2.5.9. Ancillary service definitions may be offered pursuant to an individual transmission provider's specific tariff filings.

Guide 2.5.7: Dynamic Transfer (DT)—is the provision of the real-time monitoring, telemetering, computer software, hardware, communications, engineering, and administration required to electronically move all or a portion of the real energy services associated with a generator or load out of its Host Control Area into a different Electronic Control Area.

Guide 2.5.8: Real Power Transmission Losses (TL)—is the provision of capacity and energy to replace energy losses associated

[30] VEPCO Comments at 2.

[31] For example, while Standards 2.2.1 through 2.3.1 define "Firm," "Non-Firm," and "Point-to-Point," respectively, the *pro forma* tariff, at sections 1.13, 1.18, and 1.27, defines "Firm Point-to-Point Transmission Service," "Long-Term Firm Point-to-Point Transmission Service," and "Non-Firm Point-to-Point Transmission Service."

[32] 83 FERC at 62,462.

[33] UBP NOPR at 33,638–39.

[34] Cinergy Comments at 3.

[35] Florida Power Corp Comments at 5.

[36] VEPCO Comments at 2.

[37] Subsequent to issuance of the UBP NOPR, in North American Electric Reliability Council, 88 FERC ¶ 61,046 (1999), the Commission approved a NERC compliance filing that modified NERC's transmission loading relief (TLR) procedures referred to in the UBP NOPR at 33,614–15 & n.31.

[38] UBP NOPR at 33,615 & n.32.

[39] We note that in Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,704 & n.349, our requirement that the six ancillary services be included in an open access transmission tariff does not preclude the transmission provider from voluntarily offering other interconnected operations services to the transmission customer along with its supply of basic transmission service and ancillary services.

with transmission service on the Transmission Provider's system.

Guide 2.5.9: System Black Start Capability (BS)—is the provision of generating equipment that, following a system blackout, is able to start without an outside electrical supply. Furthermore, Black Start Capability is capable of being synchronized to the transmission system such that it can provide a startup supply source for other system capacity that can then be likewise synchronized to the transmission system to supply load as part of a process of re-energizing the transmission system.

In the UBP NOPR,[40] we also stated that we would replace the definition of "ANC__SERVICE__TYPE" with the term "AS__TYPE."

Comments

VEPCO filed the only comments on this subject and raised no objection to the proposal in the UBP NOPR.

Discussion

Given the absence of any opposing comments, we will adopt these provisions, as proposed in the UBP NOPR, with the exception that, to add clarity, we will modify the paragraph on other service definitions, preceding Guide 2.5.7, to read as follows:

Other Service Definitions

Other services may be offered to Transmission Customers through Commission-approved revisions to their individual open access tariffs. Examples of other services that may be offered include the Interconnected Operations Services described below in Standards 2.5.7, 2.5.8, and 2.5.9. Ancillary service definitions may be offered pursuant to an individual transmission provider's specific tariff filings.

In addition, as discussed in section II.D.1, above, we will adopt proposed Guides 2.5.7–2.5.9 as Standards 2.5.7–2.5.9.

f. Scheduling Period (Standards 2.6–2.6.2)

As we explained in the UBP NOPR:

Recommended Guides 2.6, 2.6.1, and 2.6.2 refer to definitions established for the next-hour experiment, which begins November 1, 1998 and terminates March 1, 1999, with a report due to the Commission by March 31, 1999. It is premature to propose the adoption of these guides at this time, pending the outcome of the industry experiment.[41]

Guides 2.6–2.6.2, as described (but not proposed) in the UBP NOPR,[42] provided as follows:

Guide 2.6: A Transmission Provider should use the definitions below to describe the scheduling period leading up to the start time of a transaction:

2.6.1: Same-day is (i) after 2 p.m. of the preceding day and (ii) more than one hour prior to the service start time.

2.6.2: Next-hour is one hour or less prior to the service start time.

Comments

VEPCO and Florida Power Corp agree with the UBP NOPR that, pending the outcome of the Next-Hour Experiment, it is premature to adopt Guides 2.6–2.6.2.

Discussion

On September 29, 1998, the Commission authorized a four-month experiment, starting November 1, 1998, to test procedures to promote the Next-Hour market.[43] Subsequently, on July 28, 1999, the Commission reauthorized the experiment on an interim basis, until alternative solutions for electronic next-hour reservations on the OASIS are formulated and authorized.[44] In the UBP NOPR, we proposed not to adopt Guide 2.6, pending the outcome of the next-hour experiment and the development of authorized alternative solutions for electronic next-hour reservations. At the time when comments on the UBP NOPR were due to be filed, this matter was still unresolved and, therefore, the commenters agreed that it still was premature to decide this matter.

On December 15, 1999, in *North American Electric Reliability Council*, 89 FERC ¶ 61,277 (1999) (Next Hour Order), the Commission reviewed a NERC proposal presenting the industry's suggested method for treating next-hour transactions. The Commission conditionally accepted NERC's proposal for transmission providers to have the option (but not the obligation) of offering a new transmission service, Next Hour Market Service (NHM Service). Individual transmission providers may file revisions to their individual open access transmission tariffs that would authorize them to provide NHM Service, consistent with the Next Hour Order, and that would specifically describe the rates, terms, and conditions of the NHM Service to be offered; the filings may not merely incorporate the NERC proposal by reference.

Our findings in the Next Hour Order raise a number of issues not foreseen in the UBP NOPR. We believe it would still be useful to adopt definitions of the scheduling period for "same-day" and "next-hour" transactions as recommended in Guides 2.6–2.6.2, but we need to consider: (1) What is the most appropriate location within the BPS for inclusion of such definitions; (2) whether the BPS should include a definition of NHM Service;[45] (3) whether we should revise Table 4–2 (Reservation Timing Requirements) and Table 4–3 (Priorities for Competing Reservation Requests) and related provisions to reflect the availability of NHM Service and its priority vis-a-vis other transmission services; (4) whether we should adopt proposed Guides 4.2 and 4.3 (concerning requests by telephone or facsimile); and (5) whether any other revisions to the BPS are needed in light of the Next Hour Order.

Before deciding these matters, it would be helpful to have these issues considered by the OASIS How Working Group and MIC. We request that the MIC/How Group report back to the Commission, within ninety (90) days of the date of publication of this order in the **Federal Register**, with their recommendations as to any necessary revisions or additions to the BPS to reflect the Commission's findings in the Next Hour Order.

3. Entity and Product Registration

a. Maintenance of Industry-Wide OASIS Home Page

In the UBP NOPR, we proposed to allow the use of an industry-wide OASIS Home Page at www.tsin.com. We stated therein that the operator of the Home Page may only act as an agent of the transmission providers. We also stated that allowing the use of an industry-wide OASIS Home Page does not undermine the responsibilities of individual transmission providers to make their OASIS sites accessible to users and potential users, and to operate their OASIS sites in compliance with all applicable Commission orders and regulations. We proposed that, as long as transmission providers pay only reasonable fees to the third party for operating and maintaining the industry-wide OASIS Home Page, they will be able to recover these fees in their transmission rates.[46]

Comments

Florida Power Corp agrees with the UBP NOPR that the operator of the industry-wide OASIS Home Page should only act as an agent for the transmission providers, and not as an independent entity.[47] PJM questions the need for an industry-wide OASIS Home Page for customer registration since each OASIS node must determine its own registration/access requirements.[48] PJM argues that transmission providers should be permitted to decide whether to post their own registration information, and service definitions, or to contract with the operator of www.tsin.com to do so. Cinergy supports the creation of an industry-wide OASIS Home Page, where potential OASIS users could centrally register for rights to use any individual OASIS site, but seeks clarification of whether registration on such a Home Page would be mandatory or voluntary.[49]

Florida Power Corp proposes that the costs of the OASIS registration process be borne by transmission providers and recovered in open access transmission rates.[50] TEP argues that both customers and transmission providers should be assessed a fee for using the registration process because both would benefit from it. PJM argues that only OASIS users who purchase transmission service products should be required to register at the industry-wide site and that users who only want information from OASIS should be able to get it without charge. PJM claims that the www.tsin.com site is also used in the NERC tagging process and argues that it would be difficult to allocate the costs between OASIS activities and tagging.[51]

Discussion

We expect that a single industry-wide OASIS Home Page for registration that keeps track of OASIS users, transmission providers, and transmission providers' services, would have great benefits.[52] However, we are still concerned that an entity not subject to the Commission's jurisdiction would be setting fees for the use of the industry-wide OASIS Home Page. Thus, we will require transmission providers to: (1) Use the industry-wide OASIS Home Page at www.tsin.com; and (2) ensure that the third-party operator of the industry-wide OASIS Home Page acts as an agent on behalf of affected transmission providers.[53] In our view, such an arrangement would create a mechanism for transmission providers to recover the reasonable fees they paid for the operation and maintenance of the industry-wide OASIS Home Page, while keeping transmission providers responsible for ensuring that the industry-wide OASIS Home Page is properly operated.

b. Identification of Parties (Standard 3.1)

For electronic commerce to succeed, there must be unambiguous identification of the parties to a transaction. In the UBP NOPR, we proposed to adopt the following standard for identification of the parties:

Standard 3.1: All entities or persons using OASIS shall register the identity of their organization (including DUNS number) or person at the OASIS Home Page at www.tsin.com. Registration shall be completed prior to the commencement of Phase IA and renewed annually and whenever changes in identification occur and thereafter. An entity or person not complying with this requirement may be denied access by a provider to that provider's OASIS node.

Comments

Cinergy, TEP, and VEPCO largely support the Commission's proposal in the UBP NOPR.[54] However, Cinergy argues that DUNS numbers do not provide a sufficient link between the DUNS number of the reporting organization and its parent entity. Cinergy argues that such a link is needed for financial guarantee and credit purposes. To remedy this problem, Cinergy proposes that the registration process be revised to include the FERC-registered entity of the reporting organization and that OASIS registrants be required to update this information, whenever necessary to reflect changes in registrants' corporate structures.[55]

Discussion

We agree with Cinergy that it is important that each OASIS registrant provide a link between the registering organization and its parent entity. In addition, Phase IA already has commenced and thus can no longer be used as the deadline for registration. We therefore will adopt a modified Standard 3.1, which provides as follows:

Standard 3.1: All entities or persons using OASIS shall register the identity of their organization (including DUNS number) or person at the OASIS Home Page at www.tsin.com. Registration identification shall include the parent entity (if any) of the registrant. Registration shall be a prerequisite to OASIS usage and renewed annually and whenever changes in identification occur and thereafter. An entity or person not complying with this requirement may be denied access by a transmission provider to that transmission provider's OASIS node.

c. Registering Non-Standard Service Attributes (Standards 3.2–3.3)

In the UBP NOPR, the Commission explained that the OASIS Phase IA S&CP Document, approved in the September 29, 1998 Order, uses attributes to define services. However, the S&CP Document does not define the attributes.[56] While standard definitions are addressed in sections II.D.2–II.D.4 and II.D.6, above, the UBP NOPR also proposed Standard 3.2 and Guide 3.3, to deal with circumstances when standardized attributes and definitions are not appropriate. Standard 3.2 and Guide 3.3, as proposed in the UBP NOPR, provide as follows:

Standard 3.2: Providers of transmission and ancillary services shall use only attribute values and definitions that have been registered on the OASIS Home Page at www.tsin.com for all transmission and ancillary services offered on their OASIS.

Guide 3.3: Providers of transmission and ancillary services should endeavor to use on their OASIS nodes attribute values and definitions that have been posted by other Providers on the OASIS Home Page at www.tsin.com whenever possible.

In addition, in the UBP NOPR,[57] the Commission agreed with the June 19 Report that monitoring is needed to ensure that the non-standard attribute naming process is not abused, and invited comment on which group would be the proper group to perform this function.

Comments

Cinergy, PJM, Southern, and VEPCO filed comments on this issue. Cinergy[58] and Southern[59] suggest that the MIC, the successor to the Commercial Practices Working Group, is the best group to monitor the attribute registration process to ensure that the non-standard attribute naming process is not abused. PJM asserts that monitoring is not necessary; that parties can resolve their own disputes, and that, if these steps fail, parties may, as a last resort, file complaints with the Commission.[60] VEPCO supports the adoption of Standard 3.2 and Guide 3.3,

[40] UBP NOPR at 33,617–18.
[41] UBP NOPR at 33,618.
[42] *Id.*
[43] Open Access Same-Time Information System (OASIS) and Standards of Conduct, 84 FERC ¶ 61,324 (1998) (September 29, 1998 Order).
[44] Open Access Same-Time Information System (OASIS) and Standards of Conduct, 88 FERC ¶ 61,100 (1999) (July 28, 1999 Order).
[45] For example, we could add a provision defining NHM Service as follows: NEXT HOUR MARKET SERVICE is non-firm transmission service that is reserved for one clock hour and is requested within sixty (60) minutes before the start of the next clock hour for service commencing at the start of the clock hour.
[46] UBP NOPR at 33,619.
[47] While the *Industry Report on OASIS Phase IA Business Practices* did not identify the party operating the www.tsin.com industry-wide OASIS Home Page, we have subsequently learned that it is operated by NERC.
[48] Florida Power Corp Comments at 3, TEP Comments at 4.
[49] Cinergy Comments at 3.
[50] Florida Power Corp Comments at 3.
[51] PJM Comments at 4–5.
[52] Registration at the industry-wide OASIS Home Page would replace registration at individual OASIS sites.
[53] UBP NOPR at 33,618–19.
[54] Cinergy Comments at 3, TEP Comments at 4, VEPCO Comments at 3.
[55] Cinergy Comments 3–4.
[56] *See* June 19 Report at section 2.
[57] UBP NOPR at 33,620–21.
[58] Cinergy Comments at 4.
[59] Southern Comments at 3.
[60] PJM Comments at 4.

and recommends that any market participant be allowed to monitor the process for naming non-standard attributes and that complaints can be informally submitted to the MIC for resolution.[61]

Discussion

None of the commenters objected to the proposal in the UBP NOPR that Standard 3.2 and Guide 3.3 be included in the BPS. Thus, we will adopt Standard 3.2 as proposed in the UBP NOPR and, as discussed in section II.D.1, above, we will adopt proposed Guide 3.3 as Standard 3.3.

Furthermore, we find merit in the suggestion from Cinergy and Southern[62] that the NERC-sponsored MIC is the appropriate group to monitor the non-standard attribute registration process. We also agree with VEPCO that any market participant may monitor the process. We believe, contrary to PJM's position, that there are sufficient differences in product attributes (*i.e.*, the names used to identify different products) in the marketplace to warrant a monitoring effort. Furthermore, the Commission is prepared to respond to any complaint that might arise as a result of an unresolved dispute.

d. Registering Points of Receipt and Delivery (Standards 3.4–3.6)

Based on the principle that transmission providers should be encouraged to apply consistent names for connecting paths or common paths, the UBP NOPR proposed the adoption of Standards 3.4 and 3.5 and Guide 3.6. In addition, we requested comments on what would be the appropriate entity to monitor this process and whether this function should be performed in tandem with the monitoring of registration of non-standard attributes. Standards 3.4 and 3.5 and Guide 3.6, as proposed in the UBP NOPR, provide as follows:

Standard 3.4: A Transmission Provider shall register and thereafter maintain on the OASIS Home Page at www.tsin.com all Points of Receipt and Delivery to and from which a Transmission Customer may reserve and schedule transmission service.

Standard 3.5: For each reservable Path posted on their OASIS nodes, Transmission Providers shall indicate the available Point(s) of Receipt and Delivery for that Path. These Points of Receipt and Delivery shall be from the list registered on the OASIS Home Page at www.tsin.com.

Guide 3.6: When two or more Transmission Providers share common Points of Receipt or Delivery, or when a Path connects Points of Receipt and Delivery in neighboring systems, the Transmission Providers owning and/or operating those facilities should apply consistent names for those connecting paths or common paths on the OASIS.

Comments

Comments were filed by Cinergy, Florida Power Corp, and VEPCO. Cinergy suggests that the NERC-sponsored MIC is the best group to monitor the registration of points of receipt (PORs) and delivery (PODs).[63]

Florida Power Corp supports a central point for all registration activities to streamline and bring more consistency to these activities. In addition, Florida Power Corp recommends that NERC would be the best group to monitor the registration of PORs and PODs.[64]

VEPCO recommends that any market participant be allowed to monitor compliance with these standards and that complaints can be informally submitted to the MIC for resolution.[65] VEPCO further suggests that the registration process should allow a transmission provider to identify its neighbor's name for a common path as an alias to its own name for that path when they cannot agree on a single name.

Discussion

We will include Standards 3.4, 3.5, and 3.6[66] in the BPS we are adopting in this Final Rule for several reasons. First, given that there was no objection expressed by any commenters, we see no reason to depart from our proposal on this subject in the UBP NOPR. Second, we remain persuaded that a monitoring effort is appropriate to reduce confusion in the market. Nothing in the comments seeks to dissuade us from this view. Third, the Commission agrees with the comments from Cinergy (as supported in part by Florida Power Corp and VEPCO) that the MIC is the appropriate group to monitor the POR/POD registration process. In fact, no alternative group seems as well positioned to handle this responsibility. Finally, the Commission is prepared to deal with any complaint that might arise as a result of an unresolved dispute.

4. On-Line Price Negotiation and Confirmation Process

a. On-line Price Negotiation in Short-term Markets (Standards 4.1–4.3)

In the UBP NOPR, the Commission proposed the adoption of Standard 4.1 (proposed as a Guide in the June 19 Report) because it restates existing Commission policy, as follows:

Standard 4.1: Consistent with FERC policy and regulations, all reservations and price negotiations should be conducted on OASIS.

The UBP NOPR did not propose the adoption of recommended Guides 4.2 and 4.3 from the June 19 Report,[67] because these guides are essentially the same as those proposed by the CPWG/How Group in a June 1998 letter requesting a four-month next-hour experiment.[68]

Comments

Florida Power Corp and VEPCO agree with the proposal to adopt Standard 4.1.[69] VEPCO suggests that Standard 4.1 be reworded to state explicitly that reservations for network service are not conducted on the OASIS, as follows: "[c]onsistent with FERC policy and regulations, all Point-to-Point requests, associated ancillary service requests, and price negotiations for such requests, should be conducted on OASIS."

Discussion

As proposed in the UBP NOPR, we adopt Standard 4.1 and not Guides 4.2 and 4.3. We reject VEPCO's suggestion that Standard 4.1 be reworded to state that only Point-to-Point service is reserved on the OASIS. The purpose of Standard 4.1 is not to specify what types of transmission transactions are to be conducted on the OASIS, but to clarify that, consistent with FERC policy and regulations, reservations and price negotiations, and not just final transactions, are to be conducted on the OASIS.[70] Moreover, the Commission's Next Hour Order[71] makes Guides 4.2 and 4.3 moot for those transmission providers who file revisions to their individual open access transmission tariffs authorizing them to provide NHM Service. In section II.D.2.f, above, we requested that the MIC/How Group report back to us on various issues related to NHM Service. These issues include the question of whether they still recommend that we adopt proposed Guides 4.2 and 4.3.

b. Diagram Depicting the Negotiation Process (Standards 4.4–4.5)

In the UBP NOPR, we noted that the Process State Diagram proposed in Guide 4.4 (Figure 4–1) is the same as the Diagram of Purchase Transactions (State Diagram) contained in Exhibit 4–1 of Version 1.3 of the S&CP Document. To avoid possible future conflict between the BPS and the S&CP Document, we proposed to incorporate by reference Exhibit 4–1 into the BPS.[72] Guide 4.4, as proposed in the UBP NOPR, provides as follows:

Guide 4.4: The state diagram appearing in Exhibit 4–1 in Section 4.2.10.2 of the Version 1.3 of the S&CP Document constitutes a recommended business practice in OASIS Phase IA.

Exhibit 4–1 of section 4.2.10.2 of the S&CP Document is as follows:

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[61] VEPCO Comments at 3.

[62] While VEPCO did not specifically propose that monitoring functions be assigned to the MIC, it did suggest that informal complaints be submitted to that group for resolution.

[63] Cinergy Comments at 4.

[64] Florida Power Corp Comments at 4.

[65] VEPCO Comments at 3.

[66] As discussed in section II.D.1, above, we are adopting as Standard 3.6 what was proposed as Guide 3.6 in the UBP NOPR.

[67] The June 19 Report recommended adoption of Guides 4.2 and 4.3 as follows:

Guide 4.2: The following is considered "on the OASIS" during Phase 1–A: For a transmission service of hourly duration, requested within the next-hour, a Customer should have the option, subject to the exception allowed by Guide 4.3, of entering a reservation and schedule request electronically on the Provider's OASIS and scheduling system (if such electronic transactions are allowed on the Provider's scheduling system), or arranging the reservation and schedule verbally with the Provider. If a transmission reservation is confirmed verbally, the Provider should have the option of requiring the Customer to enter the reservation on OASIS electronically within one hour after the start of the reservation.

Guide 4.3: If a Provider's OASIS and scheduling processes allow that a Customer's reservation and scheduling requests will be accepted or refused within 15 minutes of the queue time, then the Provider may require that reservations and schedules be entered electronically by the Customer prior to the established scheduling deadline. If in any case the Provider has not responded to the reservation and schedule request within 15 minutes, the Customer has the option of calling the Provider to verbally confirm the reservation and schedule.

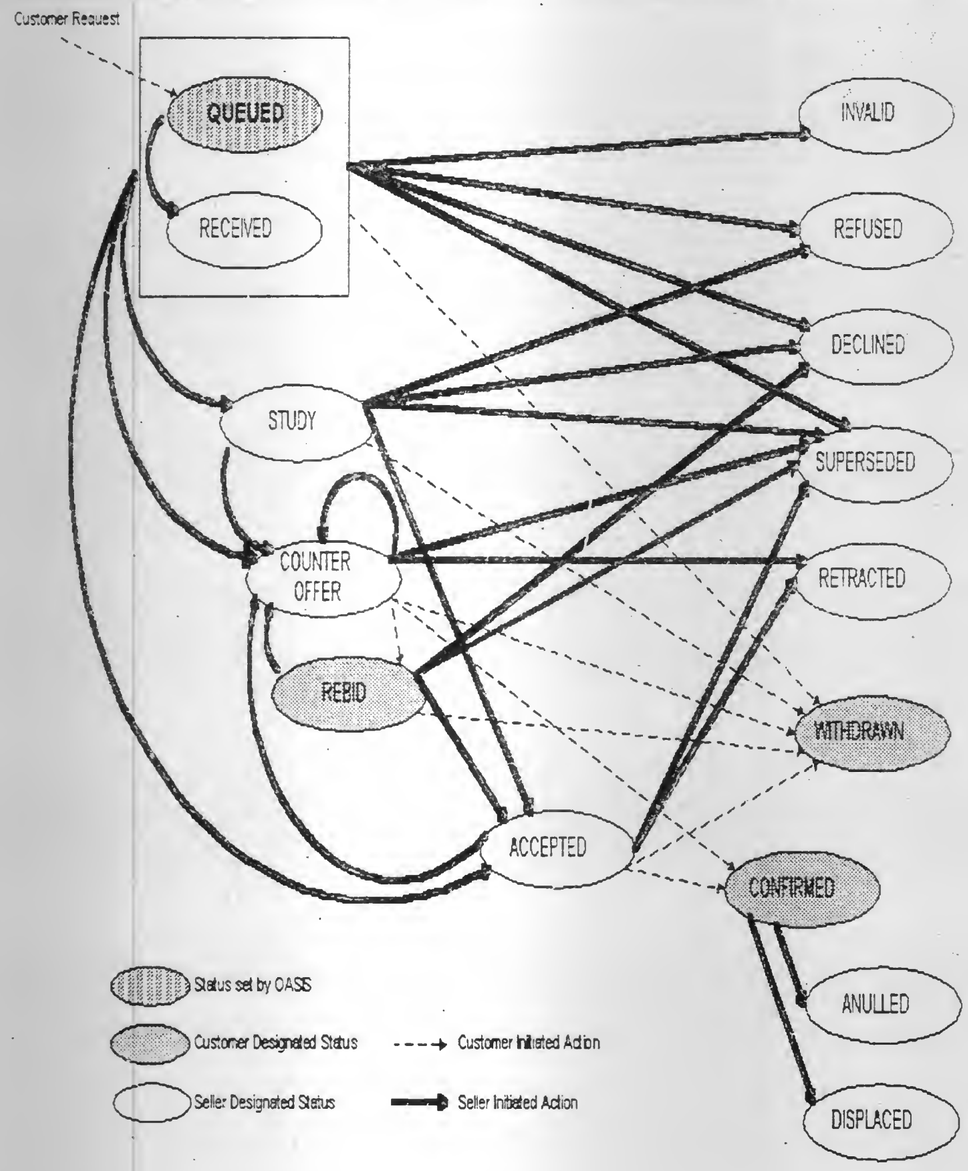
[68] *See* discussion in section II.D.2.f above and letter dated October 19, 1999 from NERC in Docket No. ER00–157–000.

[69] Florida Power Corp Comments at 5, VEPCO Comments at 3–4.

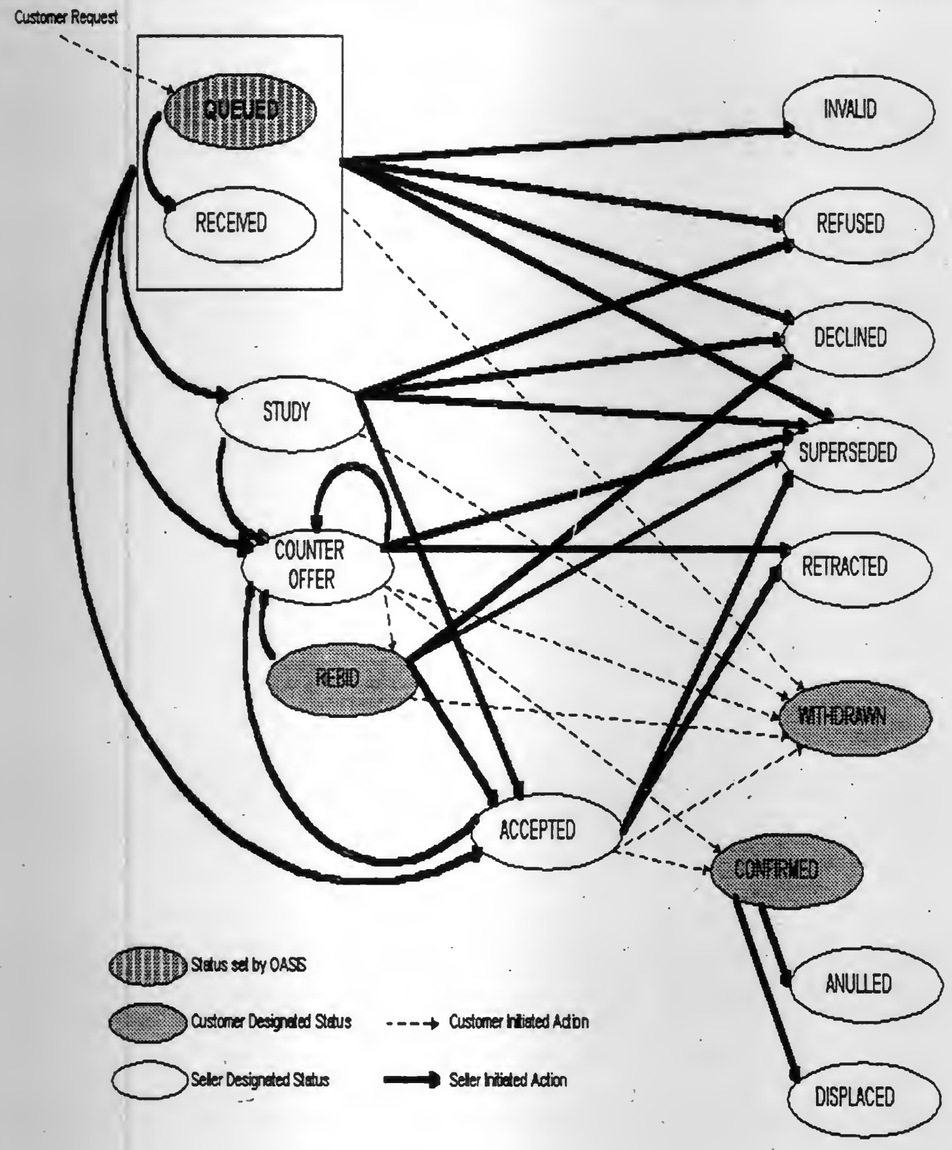
[70] Our previous decisions defining what constitutes an on-the-OASIS transaction during OASIS Phase IA still stand.

[71] This order is further discussed in section II.D.2.f above.

[72] UBP NOPR at 33,626.



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Similarly, we also noted in the UBP NOPR that the table of definitions of the process states in Guide 4.5 (Table 4–1) is similar to the definitions of the same terms appearing at section 4.2.10.2 (status values) of the S&CP Document. To avoid possible future conflict between the BPS and the S&CP Document we proposed to incorporate by reference the definitions in section 4.2.10.2 of the S&CP Document into the BPS. Guide 4.5, as proposed in the UBP NOPR, provides as follows:

Guide 4.5: The definitions in Section 4.2.10.2 of the Version 1.3 of the S&CP Document (status values) should be applied to the process states in OASIS Phase IA.

In the UBP NOPR, we also proposed to improve the definition of "SUPERSEDED" appearing in section 4.2.10.2 and in the Data Element Dictionary of the S&CP Document by substituting the word "preempted" for "displaced." The section 4.2.10.2 definitions (status values), as proposed in the UBP NOPR, are as follows:

The possible STATUS values are:

QUEUED = initial status assigned by TSIP on receipt of "customer services purchase request."
INVALID = assigned by TSIP or Provider indicating an invalid field in the request, such as improper POR, POD, source, sink, etc. (Final state).
RECEIVED = assigned by Provider or Seller to acknowledge QUEUED requests and indicate the service request is being evaluated, including for completing the required ancillary services.
STUDY= assigned by Provider or Seller to indicate some level of study is required or being performed to evaluate service request.
REFUSED = assigned by Provider or Seller to indicate service request has been denied due to lack of availability of transmission capability. SELLER_COMMENTS should be used to communicate details for denial of service. (Final state).
COUNTEROFFER = assigned by Provider or Seller to indicate that a new OFFER_PRICE is being proposed.
REBID = assigned by Customer to indicate that a new BID_PRICE is being proposed.
SUPERSEDED = assigned by Provider or Seller when a request which has not yet been confirmed is preempted by another reservation request. (Final state).
ACCEPTED = assigned by Provider or Seller to indicate the service request at the designated OFFER_PRICE has been approved/accepted. If the reservation request was submitted PRECONFIRMED, the OASIS Node shall immediately set the reservation status to CONFIRMED. Depending upon the type of ancillary services required, the Seller may or may not require all ancillary service reservations to be completed before accepting a request.
DECLINED = assigned by Provider or Seller to indicate that the BID_PRICE is unacceptable and that negotiations are terminated. SELLER_COMMENTS should be used to communicate reason for denial of service. (Final state).
CONFIRMED = assigned by Customer in response to Provider or Seller posting "ACCEPTED" status, to confirm service. Once a request has been "CONFIRMED," a transmission service reservation exists. (Final state, unless overridden by DISPLACED or ANNULLED state).
WITHDRAWN = assigned by Customer at any point in request evaluation to withdraw the request from any further action. (Final state).
DISPLACED = assigned by Provider or Seller when a "CONFIRMED" reservation from a Customer is displaced by a longer term reservation and the Customer has exercised right of first refusal (*i.e.*, refused to match terms of new request). (Final state).[73]
ANNULLED = assigned by Provider or Seller when, by mutual agreement with the Customer, a confirmed reservation is to be voided. (Final state).
RETRACTED = assigned by Provider or Seller when the Customer fails to confirm or withdraw the request within the required time period. (Final state).

In addition, the definition of the term "REBID" appearing in section 4.2.10.2 and in the Data Element Dictionary of the S&CP Document refers to price only. In the UBP NOPR,[74] we requested comment on whether the use of REBID should be limited to price, or whether it would be feasible and/or desirable to allow REBID to lengthen the duration of the period of the requested service.

Comments

VEPCO supports the proposal in the UBP NOPR to incorporate by reference the State Diagram appearing in Exhibit 4–1 in section 4.2.10.2 and the definitions in section 4.2.10.2 of the S&CP Document, as Guides 4.4 and 4.5, respectively, of the BPS.[75] Cinergy and VEPCO support the proposal in the UBP NOPR to improve the definition of "SUPERSEDED" by replacing the word "displaced" with "preempted."[76]

VEPCO sees an apparent conflict between the definition of REBID, which states that it is "assigned by Customer to indicate that a new BID_PRICE is being proposed," and the State Diagram, which does not permit a customer-initiated change of status from ACCEPTED to REBID.[77]

In response to the UBP NOPR's request for comments on whether customers should be able to rebid duration as well as price, Duke and VEPCO argue that the REBID should be limited to price only. Duke argues that allowing customers to REBID duration could cause confusion and lead to gaming of the first-come-first-served process.[78] Duke explains that permitting customers to rebid duration could result in delays if the transmission provider is forced to perform a study to determine if capacity is available for the expanded period. VEPCO argues that it is not evident that there is a need for this type of negotiation and that it would be very expensive to convert back-office systems to allow the expanded definition of REBID.

Cinergy supports rebidding of both duration and price.[79] However, it argues that there is a conflict between the guides and the S&CP Document regarding REBID of duration. Cinergy cites Row 7 of Table 4–3 (Guide 4.16) as permitting rebidding of duration by providing that a subsequent request for non-firm point-to-point of a longer duration entitles an earlier non-firm point-to-point request to a right-of-first-refusal. Cinergy also cites the S&CP Document, at section 4.2.10.2, as not permitting rebidding of duration because REBID is defined solely in terms of price. Cinergy argues that this is inconsistent and asks that we issue a clarification reconciling the two provisions.

Cinergy also argues that Guide 4.5 needs more work before it can be made a standard.[80]

Discussion

As we proposed in the UBP NOPR, we will: (1) Incorporate by reference Exhibit 4–1 (State Diagram) and the Status Values of section 4.2.10.2 of the S&CP Document into the BPS; (2) revise the definition of "SUPERSEDED" by replacing the word "displaced" with "preempted" in section 4.2.10.2 and in the Data Element Dictionary of the S&CP Document; and (3) revise the definition of "REFUSED" to insert the words "lack of" before "availability," as discussed later in this section.[81]

Regarding VEPCO's request for clarification of whether a customer can initiate a change of status from ACCEPTED to REBID, we agree with VEPCO that the State Diagram does not permit a customer to change ACCEPTED to REBID. We disagree, however, with VEPCO's interpretation of the definition

[73] As discussed in section II.D.7, below, we are revising this proposed definition to: (1) Insert the word "not" before "exercised;" and (2) to insert the words "if any" after "refusal."

[74] UBP NOPR at 33,625 n.71.

[75] VEPCO Comments at 4.

[76] Cinergy Comments at 9, VEPCO Comments at 4.

[77] VEPCO Comments at 4.

[78] Duke Comments at 5, VEPCO Comments at 5.

[79] Cinergy Comments at 5.

[80] Cinergy Comments at 5–9.

[81] In addition, in section II.D.7, below, we will order an additional revision to these definitions.

of REBID. While this definition allows

4.8 to clarify this point. In addition, as

COUNTEROFFER to CONFIRMED

specified in Table 4–2 "Reservation Timing

of REBID. While this definition allows a customer to initiate a new BID_PRICE, it does not state that this may be done after an offer is accepted. Thus, we do not see the definitions as being in conflict with the State Diagram, and VEPCO has not convinced us of the need to revise the referenced definitions.

With regard to the issue of whether REBID should be used to rebid both duration and price, we need to draw a distinction between REBID during the negotiation process and exercising the right-of-first-refusal. A REBID differs from exercising the right-of-first-refusal that occurs after a reservation request has been accepted by the transmission provider. The State Diagram provides that the right-of-first-refusal be carried out through COUNTEROFFER and REBID and thus introduces the confusion cited by Cinergy. Cinergy finds troublesome the conflict between Row 7 of Guide 4.16 (Table 4–3) (permitting rebidding of duration when exercising the right-of-first-refusal) and the definition of REBID in section 4.2.10.2 of the S&CP Document (that only allows the rebidding of price). VEPCO proposes, in its comments on section 4.19, to add a "pre-empted with right-of-first-refusal" status to the State Diagram in the S&CP Document. We agree that this would make a clear distinction between rebidding during negotiation and the right-of-first-refusal.

We request that, within ninety (90) days of the date of publication of this Final Rule in the **Federal Register**, the MIC/How Group submit its recommendations on any necessary changes to the State Diagram and definitions in the S&CP Document to accommodate: (1) A transmission provider notifying a customer of its right-of-first-refusal; and (2) a customer making use of its right-of-first-refusal.

For the reasons discussed in section II.D.1, above, we will deny Cinergy's request that Guide 4.5 remain voluntary. As proposed in the UBP NOPR, we are revising Guide 4.4 to incorporate by reference Exhibit 4–1 (State Diagram) of the S&CP Document and are revising Guide 4.5 to incorporate by reference the definitions contained in section 4.2.10.2 of the S&CP Document. In addition, as discussed in section II.D.1, above, we will adopt Guides 4.4 and 4.5 as Standards 4.4 and 4.5.

In addition, the definition of DISPLACED in section 4.2.10.2 of the S&CP Document erroneously states that it would apply to a customer who has exercised its right-of-first-refusal, when it actually is supposed to apply to a customer who does not exercise this right. We will take this opportunity to correct this error in both the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document.

c. Negotiations Without Competing Bids (Standards 4.6–4.13)

In *Commonwealth Edison Company*, 80 FERC ¶ 61,167 at 61,719 (1997), we stated that we were "reluctant to specify confirmation time limits without first soliciting the views of representative industry segments." We also noted that we had asked the industry to address this issue in its Phase II Report.[82] After receipt of the Phase II Report, and consistent with *Commonwealth Edison*, we requested that the CPWG examine the development of predetermined deadlines for acceptances by transmission providers of transmission service requests and confirmations by customers of their requests.[83] We did this because we received comments that convinced us that the parties to negotiations require decisions to be made quickly and in a known time frame. The CPWG/How Group responded to our request by proposing Guides 4.6 and 4.13.[84]

In the UBP NOPR,[85] we proposed to clarify the definition of "REFUSED" in the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document (and which is referred to in Guide 4.6) by inserting the words "lack of" before the word "availability."

Standard 4.6—Reservation Timing Requirements

Guide 4.6 and 4.13 are inextricably connected. We will discuss Guide 4.6, and the comments relating thereto, as part of our discussion of Guide 4.13.

Standard 4.7—Evaluating ATC Prior to Acceptance, Counteroffer, or Refusal

Guide 4.7, as proposed in the UBP NOPR, provides that a Transmission Provider shall determine whether the requested transmission capacity is available before changing the status of a request to ACCEPTED, COUNTEROFFER, or REFUSED. The exact language of Guide 4.7, as proposed in the UBP NOPR, is as follows:

Guide 4.7: Prior to setting a request to ACCEPTED, COUNTEROFFER, or REFUSED a Provider shall evaluate the appropriate resources and ascertain that the requested transfer capability is (or is not) available.

[82] *See also* Wisconsin Electric Power Company, 80 FERC ¶ 61,299 at 62,049 (1997). The industry's Phase II Report was filed with the Commission on November 3, 1997.

[83] *See* Open Access Same-Time Information System and Standards of Conduct, *Order on OASIS Reloted-Issues*, 83 FERC ¶ 61,301 (1998).

[84] UBP NOPR at 33,627.

[85] UBP NOPR at 33,629 n.88.

Comments

VEPCO argues that it would be irresponsible for a transmission provider to change the status of a request to ACCEPTED, COUNTEROFFER, or REFUSED unless the available transfer capability (ATC) has been verified. VEPCO suggests that this guide be made a standard.

Discussion

We agree with VEPCO that ATC must be evaluated before a request is accepted, counteroffered, or refused. Thus, as proposed in the UBP NOPR, we will adopt Guide 4.7. Moreover, as discussed in section II.D.1, above, we will adopt this proposed guide as a standard (Standard 4.7).

Standard 4.8—Invalid or Refused Requests

Guide 4.8 provides that when a request is set to the REFUSED or INVALID states the Transmission Provider should indicate the reason the request was refused or found invalid in the COMMENTS field. The exact language of Guide 4.8, as proposed in the UBP NOPR, is as follows:

Guide 4.8: For any request that is REFUSED or INVALID, the Transmission Provider should indicate in the COMMENTS field the reason the request was refused or invalid.

Comments

VEPCO requests clarification that the COMMENTS field referred to in Guide 4.8 is the STATUS_COMMENT field. With this clarification, VEPCO requests that this guide be made a standard.[86]

Discussion

VEPCO is correct that the COMMENTS field referred to in Guide 4.8 is the STATUS_COMMENT field of the TRANSSTATUS template of the S&CP Document.[87] We will revise Guide

[86] VEPCO Comments at 6.

[87] Although, in this instance, we are adopting VEPCO's suggested clarification, in the future, we encourage VEPCO and other commenters seeking revisions to the BPS to bring their suggestions for editorial and purely technical comments directly to the applicable industry working group before raising these matters with the Commission in comments to a NOPR. We reach this conclusion for three reasons. First, we believe that it is more productive for commenters to participate directly in the industry-led efforts to reach consensus on these issues, rather than to stand silent on the sidelines and propose last-minute changes not subject to peer review and debate. Second, direct participation in industry working groups would give the Commission greater confidence that the proposals would not have any unintended adverse consequences, or hidden ramifications. Third, to the extent that these proposals offer non-controversial technical and editorial revisions, it should not be burdensome for parties to raise them before the applicable industry-led working group in the first instance. As always, however, minority views expressed before industry working groups can be reasserted in comments to the Commission, without prejudice.

[88] VEPCO Comments at 6.

4.8 to clarify this point. In addition, as discussed in section II.D.1, above, we will make this guide a standard. Further, consistent with our decision to adopt this provision as a standard, we will substitute the word "must" for the word "should," which suggests that compliance is not mandatory. With these changes, we will adopt Standard 4.8, as follows:

Standard 4.8: For any request that is REFUSED or INVALID, the Transmission Provider must indicate in the STATUS_COMMENT field of the TRANSSTATUS template the reason the request was refused or invalid.

Standard 4.9—Withdrawn Requests

Guide 4.9, as proposed in the UBP NOPR, would permit a customer to withdraw a request at any time before it is confirmed:

Guide 4.9: The Customer may change a request to WITHDRAWN at any time prior to it being CONFIRMED.

Comments

VEPCO argues that, while Guide 4.9 is correct, it could be made clearer by specifying the status values included. Accordingly, VEPCO proposes the following revision: "The Customer may change a request from QUEUED, RECEIVED, STUDY, COUNTEROFFER, REBID, or ACCEPTED to WITHDRAWN at any time prior to CONFIRMED." VEPCO also suggests that this guide be made a standard.[88]

Discussion

We agree with VEPCO that it would be beneficial to define explicitly the circumstances when a customer could withdraw a request prior to confirmation. Thus, we will make the requested change so that a customer's choices for states that can be changed to WITHDRAWN, prior to confirmation, are specifically enumerated. Also, as discussed in section II.D.1, above, we will adopt this guide as a standard. With these changes, we will adopt Standard 4.9, as follows:

Standard 4.9: The Customer may change a request from QUEUED, RECEIVED, STUDY, COUNTEROFFER, REBID, or ACCEPTED to WITHDRAWN at any time prior to CONFIRMED.

Standard 4.10—Changing Accepted or Counteroffer Status

Guide 4.10, as proposed in the UBP NOPR, permits a customer to change the state of his request from ACCEPTED or COUNTEROFFER to CONFIRMED, WITHDRAWN, or REBID. Guide 4.10 specifies that the time limit to confirm an accepted request is governed by Table 4–2, and that the time is measured from the first time the request is ACCEPTED or COUNTEROFFERED. The exact language of Guide 4.10, as proposed in the UBP NOPR, is as follows:

Guide 4.10: From ACCEPTED or COUNTEROFFER, a Customer may change the status to CONFIRMED, WITHDRAWN, or REBID. The Customer has the amount of time designated as "Customer Confirmation Time Limit" in Table 4–2 "Reservation Timing Requirements" to change the state of the request to CONFIRMED. The Customer time limit is measured from the first time the request is moved to ACCEPTED or COUNTEROFFER, and is not reset with subsequent iterations of negotiation.

Comments

VEPCO argues that proposed Guide 4.10, which allows a customer to change the status of a request from ACCEPTED to REBID, is inconsistent with the S&CP Document and proposes that the guide be modified so as not to permit this change of status. With this modification, VEPCO would make Guide 4.10 a standard.

Discussion

We agree with VEPCO that the State Diagram in the S&CP Document does not permit a customer to change a request from the ACCEPTED state to REBID. We will revise proposed Guide 4.10 to remove any confusion on this point. In addition, as discussed in section II.D.1, above, we will make this guide a standard. With these changes, we will adopt Standard 4.10 as follows:

Standard 4.10: From ACCEPTED or COUNTEROFFER, a Customer may change the status to CONFIRMED or WITHDRAWN. In addition, a Customer may change the status from COUNTEROFFER to REBID. The Customer has the amount of time designated as "Customer Confirmation Time Limit" in Table 4–2 "Reservation Timing Requirements" to change the state of the request to CONFIRMED. The Customer time limit is measured from the first time the request is moved to ACCEPTED or COUNTEROFFER, and is not reset with subsequent iterations of negotiation.

Standard 4.11—Moving Request to Retracted State

Guide 4.11, as proposed in the UBP NOPR, provides that a transmission provider may change the state of a request to RETRACTED after the expiration of a customer's confirmation time limit. The exact language of this proposed guide is as follows:

Guide 4.11: After expiration of the "Customer Confirmation Time Limit," specified in Table 4–2 "Reservation Timing Requirements", the Provider has a right to move the request to the RETRACTED state.

Comments

VEPCO filed the only comment on this issue. VEPCO recommends that this guide be made a standard.

Discussion

Given the absence of any opposing comments, we will adopt this provision, as proposed in the UBP NOPR. As discussed in section II.D.1, above, we will adopt this guide as a standard (Standard 4.11).

Standard 4.12—Responses to Counteroffers

Guide 4.12, as proposed in the UBP NOPR, permits a transmission provider to change the state of a customer's request from REBID to DECLINED, ACCEPTED, or COUNTEROFFER. The guide specifies that the time limit to make the change is governed by Table 4–2, and that the response time is measured from the customer's most recent REBID. The exact language of this proposed guide is as follows:

Guide 4.12: Should the Customer elect to respond to a Provider's COUNTEROFFER by moving a reservation request to REBID, the Provider shall respond by taking the request to a DECLINED, ACCEPTED, or COUNTEROFFER state within the "Provider Counter Time Limit," specified in Table 4–2 "Reservation Timing Requirements". The Provider response time is measured from the most recent REBID time.

Comments

VEPCO, the sole commenter addressing this issue, recommends that we adopt Guide 4.12 as a standard, provided that we also adopt its recommended revisions to Guide 4.13.

Discussion

Given the absence of any opposing comments, we will adopt this provision, as proposed in the UBP NOPR. As discussed in section II.D.1, above, we will adopt this guide as a standard (Standard 4.12).[89]

Standards 4.6 and 4.13—Reservation Timing Requirements

Guide 4.6 provides that, consistent with filed tariffs, transmission providers/sellers shall respond to customer requests within the time limits appearing in Table 4–2, which is contained in proposed Guide 4.13.

[89] In the next section, among other matters, we address VEPCO's request for modifications to proposed Guide 4.13. In our view, VEPCO's suggested revisions to proposed Guide 4.13 offer no reason not to adopt proposed guide 4.12 as a standard.

Proposed Table 4–2 specifies how long

Requirements." The time limit is measured

For each class of service, Guide 4.13,

transmission service and allow the

significantly longer than the

explanatory note to Table 4–2 that

Proposed Table 4–2 specifies how long transmission providers may take to respond to a request for service and how long customers may take to confirm the transmission provider's acceptance. Guide 4.6, as proposed in the UBP NOPR, provides as follows:

Guide 4.6: A Transmission Provider/Seller shall respond to a Customer's service request, consistent with filed tariffs, within the "Provider Response Time Limit" defined in Table 4–2 "Reservation Timing Requirements." The time limit is measured from the time the request is QUEUED. A Provider may respond by setting the state of the reservation request to one of the following:

- INVALID
- DECLINED
- REFUSED
- COUNTEROFFER
- ACCEPTED
- STUDY (when the tariff allows), leading to REFUSED, COUNTEROFFER, or ACCEPTED [90]

For each class of service, Guide 4.13, as proposed in the UBP NOPR, specifies the allowed time limit for: (1) A transmission provider to respond to a reservation request; (2) a customer to confirm the request; and (3) a transmission provider to respond to a customer's rebid. The exact language of this proposed guide is as follows:

Guide 4.13: The following timing requirements should apply to all reservation requests:

TABLE 4–2.—RESERVATION TIMING GUIDELINES

Class	Service increment	Time QUEUED prior to start	Provider evaluation time limit [1]	Customer confirmation time limit after ACCEPTED or COUNTEROFFER [2]	Provider counter time limit after REBID [3]
Non-Firm	Hourly	<1 hour	Best effort	5 minutes	5 minutes.
Non-Firm	Hourly	>1 hour	30 minutes	5 minutes	5 minutes.
Non-Firm	Daily	N/A	30 minutes	2 hours	10 minutes.
Non-Firm	Weekly	N/A	4 hours	24 hours	4 hours.
Non-Firm	Monthly	N/A	2 days	24 hours	4 hours.
Firm	Daily	<24 hours	Best effort	2 hours	30 minutes.
Firm	Daily	N/A	30 days [4]	24 hours	4 hours.
Firm	Weekly	N/A	30 days [4]	48 hours	4 hours.
Firm	Monthly	N/A	30 days [4]	4 days	4 hours.
Firm	Yearly	N/A	30 days	15 days	4 hours.

Notes for Table 4–2:
1. Consistent with regulations and filed tariffs, measurement starts at the time the request is QUEUED.
2. Measurement starts at the time the request is first moved to either ACCEPTED or COUNTEROFFER. The time limit does not reset on subsequent changes of state.
3. Measurement starts at the time the Transmission Customer changes the state to REBID. The measurement resets each time the request is changed to REBID.
4. Subject to expedited time requirements of Section 17.1 of the *pro forma* tariff. Transmission Providers should make best efforts to respond within 72 hours, or prior to the scheduling deadline, whichever is earlier, to a request for Daily Firm Service received during period 2–30 days ahead of the service start time.

Comments

The commenters on Table 4–2 (Guide 4.13) raise a number of issues. For clarity, we will address these issues separately.

1. Time Limits for Requests for Next-Day Non-Firm Hourly Transmission Service

MIC requests that we add a new line to Table 4–2 for non-firm hourly service requested the day before the reservation is to start. It proposes a 30 minute customer confirmation time and a 10 minute transmission provider counter time. MIC asserts that when a service request is made well in advance of the start time, customers can be given more time to confirm and transmission providers can be given more time to respond to a REBID. Cinergy agrees with the MIC's proposal.

Discussion

We agree with the MIC that for non-firm hourly service, when the service is requested on the day previous to the start of the service, the customer confirmation time limit and provider time limit to counter a REBID should be increased. We will make the requested change to Table 4–2, adding new time limits for day-before requests for non-firm hourly service (with 30 minutes for customer confirmations and 10 minutes for provider counteroffers).

2. Calendar Days v. Business Days

Duke argues that the time limits in Table 4–2 that are specified in terms of days could be interpreted as either business days or calendar days. Duke claims that the distinction is important when customers try to arrange for transmission across multiple transmission providers and recommends that calendar days be used. [91]

Discussion

We agree with Duke that the term "days" in Table 4–2 needs to be more clearly defined. If transmission providers are free to define the time limits as either calendar days or business days, customers will have a difficult time arranging for transmission across multiple transmission systems. As Duke suggested, we will add a footnote to Table 4–2 defining "days" as "calendar days."

3. Other Suggestions for Revised Time Limits

AEP asserts that the confirmation periods in Table 4–2 may be too long under certain circumstances. For example, in cases in which transmission providers have numerous competing transactions to sort out and customers have the right-of-first-refusal, then the confirmation time for weekly firm service should be shorter than the proposed 48 hours. AEP requests that transmission providers be allowed to require shorter confirmation periods when these problems occur. [92]

BPA opposes adopting the proposed reservation timing guidelines and instead proposes setting reservation timing deadlines based on the timing of the request in relation to the initial delivery day. [93] BPA asserts that the proposed guidelines, which are based on duration of service, will permit customers to strategically request

[90] UBP NOPR at 33,627.
[91] Duke Commets at 6.
[92] AEP Comments at 5.
[93] BPA Comments at 3–4.

transmission service and allow the confirmation window to expire in order to gain an advantage. Thus, if a customer requests service close to the time of power flow and does not confirm the deal, it leaves its competitors without the ability to reserve firm service.

In the alternative, BPA argues that, if we do not adopt its suggested revisions to Table 4–2, we should allow

any unconfirmed firm transmission request in the queue to be displaced by either (1) a preconfirmed firm transmission request of equal or greater duration, or (2) a request which is lower in the queue but which is confirmed before the unconfirmed request. [94]

Consumers argues that the confirmation timing limits in Table 4–2 need to be revised. [95] Consumers argues that a marketer trying to put a deal together would be squeezed whenever multiple transmission providers are involved and one transmission provider replies immediately and another transmission provider takes a long time to evaluate a request. It asserts that, in these instances, the confirmation response time for the first reservation request could expire before the second transmission provider responds to the evaluation request. Consumers asks that this business problem be resolved.

Duke recommends that the customer confirmation time limit for non-firm hourly requests, submitted when service is to commence less than one hour from the time of the request, be extended from 5 minutes to 15 minutes. Duke asserts that the 5 minute time limit is too restrictive on customers when the next hour market is very active. [96] Duke also recommends that the confirmation time limit for non-firm hourly requests, submitted when service is to commence more than one hour from the time of the request, be extended from 5 minutes to 30 minutes. [97]

VEPCO recommends changing the customer confirmation time for non-firm hourly service from 5 minutes to one hour and changing the transmission provider counter time limit for non-firm hourly service from 5 minutes to 15 minutes. [98] VEPCO argues that the customer confirmation time must be significantly longer than the transmission provider counter time since the customer's confirmation time never resets and the transmission provider's counter time resets every time the request status is set to REBID. VEPCO argues that if the customer and transmission provider time limits are the same, then negotiations on OASIS will not be practical, since the confirmation time could expire before the transmission provider is required to respond to the first REBID. VEPCO claims that a negotiation process takes time and is impractical when a request is made within four hours of the start of service.

Discussion

The Reservation Timing Requirements in Table 4–2, as proposed in the UBP NOPR, represent a balancing of the needs of all parties to OASIS transactions to have sufficient time to consider and respond to circumstances presented. All OASIS transaction participants are being asked to make responses on a fairly expedited basis, so that time remains for other market participants to make similar judgments. As to the various proposals to revise these reservation timing requirements, while we are not persuaded to adopt any of these proposals at this time, we are willing to reexamine this issue if problems arise in transacting business over the OASIS using the reservation timing requirements adopted in this final rule.

4. Table 4–2, Scheduling Deadlines, and Preemption Deadlines

VEPCO argues that the Customer Confirmation Time Limits in Table 4–2 should not be interpreted as extending a scheduling deadline or overriding a preemption deadline, and that a note clarifying this be added to Table 4–2. [99] Likewise, Allegheny Power agrees with the need for predetermined reservation time deadlines for OASIS transactions, but seeks clarification that customer confirmation time limits do not provide for an extension of any reservation or scheduling deadlines contained in a transmission provider's Open Access Tariff. [100]

Discussion

We agree with Allegheny Power and VEPCO that the Customer Confirmation Time Limits in Table 4–2 should not be interpreted as extending a scheduling deadline or overriding a preemption deadline. Accordingly, we will add an explanatory note to Table 4–2 that makes this clear.

5. Time Limits for Requests for Yearly Service

VEPCO argues that the "Time QUEUED Prior to Start" in Table 4–2 for yearly firm service should be changed from "N/A" to "greater than or equal to 60 days" in order to make it consistent with section 17.1 of the *pro forma* tariff.

Discussion

VEPCO is correct that the *pro forma* tariff states that requests for firm point-to-point service for periods of one year or longer must be made at least 60 days in advance of the calendar month in which the service is to commence. However, the tariff also states that requests made less than 60 days in advance should be considered where feasible. We will therefore revise "Time QUEUED Prior to Start" in Table 4–2 for yearly firm service, from "N/A" to "greater than or equal to 60 days" and add the following footnote:

Subject to Section 17.1 of the *pro forma* tariff, whenever feasible and on a non-discriminatory basis, transmission providers should accommodate requests made with less than 60 days notice.

6. Requests Superseded Before Confirmation

VEPCO recommends that note 2 to Table 4–2 be modified to explain that "for competitive nonfirm requests for a limited resource, a request could be [SUPERSEDED] prior to customer confirmation thereby terminating the Confirmation Time Limit." [101]

Discussion

We do not see the need for the footnote suggested by VEPCO. The State Diagram permits a reservation request to be superseded before it is confirmed. The definition of SUPERSEDED in section 4.2.10.2 of the S&CP Document indicates that SUPERSEDED is a final state. As such, the change of status to SUPERSEDED terminates the confirmation rights of the requester.

7. Adoption as Mandatory Standard

Cinergy argues that there is a need for further study of the timing requirements and related guides before the Commission defines the transactional process in standards. [102] By contrast, ECI proposes that this guide be made a standard. It argues that if every transmission provider is permitted to have different timing requirements and priorities for requests that the resulting

[94] BPA Comments at 5.
[95] Consumers Comments at 2.
[96] Duke Comments at 6.
[97] NERC Comments at 7. *See also* Cinergy Comments at 10, Duke Comments at 6.
[98] VEPCO also recommends that, if the Commission changes the non-firm hourly transmission provider counter time limit to 15 minutes, it also should change the transmission provider counter time limit for non-firm daily transmission from 10 minutes to 15 minutes, in order to keep non-firm daily limit at least as long as the non-firm hourly time limit.
[99] VEPCO Comments at 12.
[100] Allegheny Power Comments at 3.
[101] VEPCO Comments at 8.
[102] Cinergy Comments at 9–10.

that is "conditional" could also be

the right-of-first-refusal. Tier 4 service

confirmed, it could be preempted

discrepancies in the rules would make it very difficult for market participants to move power across different transmission systems.[103] We have carefully considered the opposing views on this issue and conclude that Guides 4.6 and 4.13 should be adopted as standards. In our June 18 Order, we recognized the need for parties to negotiations to be able to make decisions quickly and in a known time frame and we requested that the CPWG/How Group examine the development of predetermined deadlines for acceptances by transmission providers of transmission service requests and confirmation by customers of acceptances of their requests. The time limits proposed in the UBP NOPR, based on the recommendations of the CPWG/How Group in the June 19 Report, accomplish this. Notwithstanding arguments to the contrary, we remain convinced that the need for uniform time limits outweighs arguments that these decisions be left to the discretion of individual transmission providers. We remain persuaded that allowing individual transmission providers to set their own time limits for themselves and their customers would inhibit the movement of power. We will, therefore, adopt Guides 4.6 and 4.13[104] as Standards 4.6 and 4.13, with the revisions discussed above.

d. Negotiations with Competing Bids for Constrained Resources (When Customer Has Not Yet Confirmed a Transmission Provider's Acceptance) (Standards 4.14—4.27)

Standard 4.14—Service Request Priority Tiers

As we stated in the UBP NOPR, Guide 4.14 divides transmission service into five tiers of successive priority when competing bids are negotiating for transmission service.[105] Highest priority is given to native load, network, or long-term firm service (subsection 4.4.1). Second highest priority is given to short-term firm service (subsection 4.4.2). Third highest priority is given to network service from non-designated resources (subsection 4.4.3). Fourth highest priority is given to non-firm service (subsection 4.4.4). Fifth highest priority is given to non-firm point-to-point service over secondary receipt and delivery points (subsection 4.4.5).[106]

[103] ECI Comments at 2.

[104] Guide 4.6 is further discussed earlier in this section.

[105] These priorities are not meant to govern curtailments.

[106] UBP NOPR at 33,632–33.

The exact language of this proposed guide is as follows:

Guide 4.14: Consistent with regulations and filed tariffs, the following are recommended relative priorities of Service Request Tiers.* Specific exceptions may exist in accordance with filed tariffs. The priorities refer only to negotiation of service and do not refer to curtailment priority.

4.4.1.Service Request Tier 1: Native load, Network, or Long-term Firm
4.4.2. Service Request Tier 2: Short-term Firm
4.4.3. Service Request Tier 3: Network on Non-designated Resources
4.4.4. Service Request Tier 4: Non-firm
4.4.5. Service Request Tier 5: Service over secondary receipt and delivery points

Note: The term "Tier" is introduced to avoid confusion with existing terms such as "TS—CLASS." [107]

Comments

The only comment received concerning Guide 4.14 was from VEPCO who agrees with our proposal to adopt this guide.[108]

Discussion

Given the absence of any opposing comments, we will adopt these provisions, as proposed in the UBP NOPR, with the following exceptions. First, for clarity, we will revise "Network on Non-designated Resources" to read "Network Service From Non-designated Resources" in the reference to Service Request Tier 3 (4.4.3) in Guide 4.14. Second, we will revise the references to Service Request Tier 5 (4.4.5) in Guide 4.14 and in Table 4–3, Row 9, to clarify that Tier 5 service involves non-firm point-to-point service over secondary receipt and delivery points. Also, as discussed in section II.D.1, above, we will adopt these proposed guides as Standards 4.14 and 4.4.1–4.4.5.[109]

Standard 4.15—First-Come-First-Served

Guide 4.15 provides that, consistent with regulations and filed tariffs, recommended reservation requests should be handled on a first-come-first-served basis based on queue time.[110] The exact language of this proposed guide is as follows:

Guide 4.15: Consistent with regulations and filed tariffs, reservation requests should be handled in a first-come-first-served order based on QUEUE_TIME.

[107] UBP NOPR at 33,655 & n.136.

[108] VEPCO Comments at 8.

[109] As discussed above, we have asked the MIC/How Groups to report to us on whether an additional provision is needed here covering NHM Service.

[110] UBP NOPR at 33,631.

Comments

VEPCO filed the sole comment concerning proposed Guide 4.15. VEPCO supports the proposal in the UBP NOPR to adopt this guide.

Discussion

Given the absence of any opposing comments, we will adopt this provision, as proposed in the UBP NOPR. As discussed in section II.D.1, above, we will adopt this proposed guide as Standard 4.15.

Standard 4.16—Priorities for Competing Reservation Requests

As we stated in the UBP NOPR, recommended Guide 4.16, which includes Table 4–3, describes the relative priorities of competing service requests and rules for offering a right-of-first-refusal, consistent with Commission regulations and filed tariffs.[111] The exact language of this proposed guide is as follows:

Guide 4.16: Consistent with regulations and filed tariffs, Table 4–3 describes the relative priorities of competing service requests and rules for offering right-of-first-refusal. While the table indicates the relative priorities of two competing requests, it also is intended to be applied in the more general case of more than two competing requests.

As we stated in the UBP NOPR, Guide 4.16 would allocate requests for Tier 1 services (native load, network, long-term firm) and Tier 2 services (short-term firm) on a first-come-first-served basis.[112] A request for Tier 1 service could not be preempted. A request for Tier 2 service that is "conditional" could be preempted by a request for Tier 1 service without any right-of-first-refusal.[113] A request for Tier 2 service that is "conditional" could also be preempted by a request for longer term Tier 2 service but, under this circumstance, it would receive the right-of-first-refusal.[114]

Tier 3 service (network service from non-designated resources) could be preempted by requests for either Tier 1 or Tier 2 service and would not receive the right-of-first-refusal. Tier 4 service (all non-firm point-to-point) could be preempted by request for Tier 1, 2, or 3 service and would not receive the right-of-first-refusal. A Tier 4 request could be preempted (except in the hour before service begins) by a longer duration tier 4 service and would receive the right-of-first-refusal. Until a Tier 4 request is confirmed, it could be preempted (except in the hour before service begins) by a preconfirmed Tier 4 request of equal duration and higher price. The request would not receive the right-of-first-refusal. The exact language of Table 4–3, as proposed in the UBP NOPR, is as follows:[115]

[111] UBP NOPR at 33,631–33.

[112] UBP NOPR at 33,633.

[113] In the UBP NOPR at 33,633 n.96, we explained that the distinction between conditional and unconditional service, as related to firm point-to-point service, is discussed in Order No. 888, FERC Stats. & Regs. ¶ 31,036 at 31,746, where we stated:

Accordingly, the Final Rule pro forma tariff provides a mechanism to address this concern while safeguarding the rights of potential customers to obtain access to unused capacity. The tariff provides that reservations for short-term firm point-to-point service (less than one year) will be conditional until one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service. These conditional reservations may be displaced by competing requests for longer-term firm point-to-point service. For example, a reservation for daily firm point-to-point service could be displaced by a request for weekly firm point-to-point service during an overlapping period. Before the applicable reservation deadline, a holder of a conditional firm point-to-point reservation would have the right of first refusal to match any longer-term firm point-to-point reservation before being displaced. After the deadline, the reservation becomes unconditional, and the service would be entitled to the same priorities as any long-term point-to-point or network firm service.

Conditional reservations also are discussed in Madison Gas & Electric Company v. Wisconsin Power & Light Company, 80 FERC ¶ 61,331 at 62,102–03 (1997), *reh'g denied*, 82 FERC ¶ 61,099 at 61,372–73 (1998).

TABLE 4–3.[116]—PRIORITIES FOR COMPETING RESERVATION REQUESTS

Row	Request 1	Is preempted by Request 2	Right of first refusal
1	Tier 1: Long-term Firm, Native Load, and Network Firm.	N/A—Not preempted by a subsequent request.	N/A.
2	Tier 2: Short-term Firm	Tier 1: Long-term Firm, Native Load, and Network Firm), while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted.	No.
3	Tier 2: Short-term Firm	Tier 2: Short-term Firm of longer term (duration), while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted.[1]	Yes, while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted and right of first refusal is not applicable.
4	Tier 3: Network Service From Non-Designated Resources.	Tiers 1 and 2: All Firm (including Network)	No.
5	Tier 4: All Non-Firm PTP	Tiers 1 and 2: All Firm (including Network)	No.
6	Tier 4: All Non-Firm PTP	Tier 3: Network Service from Non-Designated Resources.	No.
7	Tier 4: All Non-Firm PTP	Tier 4: Non-firm PTP of a longer term (duration).[1] Except in the last hour prior to start (see Standard 4.23).	Yes.
8	Tier 4: All Non-Firm PTP	Tier 4: Non-firm PTP of equal term (duration)[1] and higher price, when Request 1 is still unconfirmed and Request 2 is received pre-confirmed. A confirmed non-firm PTP may not be preempted for another non-firm request of equal duration. (See Standard 4.22 and Guide 4.25.).	No.
9	Tier 5: PTP Service over secondary receipt and delivery points.	Tier 5 can be preempted by Tiers 1 through 4.	No.

[1] Longer duration, in addition to being higher SERVICE_INCREMENT (*i.e.*, WEEKLY has priority over DAILY), also may mean more multiples of the same SERVICE_INCREMENT (*i.e.*, 3 Days may have priority over 2 Days).

Comments

The commenters on Table 4–3 and Guide 4.16 raise a number of unrelated issues. For clarity, we will address these issues separately.

1. Multiples of Service Increments

Duke argues that Footnote 1 of Table 4–3 should be revised so that requests for Multiples of the same SERVICE_INCREMENTS would not be given priority during the reservation process.[117] VEPCO argues that giving higher priority to multiple service increments allows participants to "game" the preemption process. For example, a customer who requests 2 days of daily service at 100 MW per day could be preempted by another customer requesting 2 days of daily service at 100 MW per day and 1 day at 1 MW.

Discussion

As we stated in the UBP NOPR, recommended Guide 4.16 defines the priorities of longer duration for non-firm point-to-point service to include both a higher service increment (weekly service has priority over daily service) and multiples of the same service increment (three day service has priority over two day service).[118] We also found these priorities to be consistent with section 14.2 of the *pro forma* tariff.[119] Nothing in Duke and VEPCO's arguments persuades us otherwise. Thus, we deny Duke's request to revise footnote 1 to Table 4–3. Three day service is of a longer duration than one day service and in our view deserves a higher priority because this encourages greater use of the transmission system.

As to VEPCO's concern that granting priority to multiple service increments could lead to gaming by customers who increase their service increments with small amounts of capacity (adding a third and fourth day at 1 MW to a 100 MW request) we do not interpret footnote 1 to Table 4–3 to allow this. Nevertheless, to remove any uncertainty, we will revise note 1 of Table 4–3 to clarify that multiple service

[114] The rights-of-first-refusal shown in Table 4–3 should not be confused with the right-of-first-refusal available to a customer with a pre-existing expiring contract under Order No. 888, *see* FERC Stats. & Regs. ¶ 31,036 at 31,745.

[115] As mentioned above, we have requested that the MIC/How Groups review whether this table needs revision in light of the Next Hour Order.

[116] For clarity, we have identified the rows in Table 4–3.

[117] Duke Comments at 7.

[118] UBP NOPR at 33,634.

[119] *Id.*

increments must be at the same level of

transmission providers are free to devise

section II.D.1, above, we will adopt

Guide 4.18: Given competing requests for

its experience as the reason for

and non-posted ATC values, and how

increments must be at the same level of capacity. Requests for lesser amounts of capacity should be made in a separate unrelated request for transmission service.

2. "Preemption" of Unconfirmed Requests for Non-Firm Point-to-Point Transmission Service

VEPCO argues that a footnote should be added to Row 7 of Table 4–3 stating that a request that is preempted before it is confirmed does not have right-of-first-refusal.[120] VEPCO also requests clarification that as long as a Transmission Provider's methodology for treating preemption and the right-of-first-refusal meets the intent of, or is superior to, the pro forma tariff, and is applied in a non-discriminatory manner, then the transmission provider will be in compliance with this proposed standard.[121]

Discussion

Row 7 of Table 4–3 governs the priorities for competing reservation requests for non-firm point-to-point transmission service. It provides that a request may be preempted by a subsequent request of a longer term (duration). Where applicable, requests may be superseded before being confirmed, and may still be preempted after confirmation. As to whether superseded requests obtain a right-of-first-refusal, this question was already addressed in the UBP NOPR, where we stated:

> Table 4–1's definition of SUPERSEDED is silent as to why and when an unconfirmed request might be preempted. It neither confers nor denies a customer's right to match. When a request for transmission service has been superseded, this occurs before the customer's confirmation. Therefore, the customer has no right to match.[122]

Nonetheless, to remove any uncertainty, we will add the requested footnote to Row 7 of Table 4–2 clarifying that the reference in Row 7 of Table 4–3 to a right-of-first-refusal applies only to confirmed requests. As shown in the quoted language above, this is consistent with our findings on this subject in the UBP NOPR.

As to VEPCO's request for clarification, we disagree with VEPCO's suggested approach. All transmission providers must implement preemption and the right-of-first-refusal in the same manner. This is not an area where transmission providers are free to devise their own unique procedures.

3. Right-of-First-Refusal to Match a Preconfirmed Tier 4 Request of Equal Duration and Higher Price

VEPCO asserts that Row 8 of Table 4–3 is in conflict with proposed Guide 4.26. Specifically, VEPCO argues that Row 8 implies that a transmission provider need not COUNTEROFFER the price of a subsequent request of equal term and higher price if the first request is still unconfirmed. VEPCO recommends that Row 8 be eliminated for the reasons stated in its comments on proposed Guide 4.26, below.

Discussion

VEPCO is correct that Row 8 of Table 4–3 conflicts with Guide 4.26. Table 4–3 provides, without qualification, that an unconfirmed request for non-firm point-to-point service preempted by a preconfirmed Tier 4 request of equal duration and higher price is not entitled to right-of-first-refusal.[123] However, Guide 4.26 would permit a transmission provider to offer the right-of-first-refusal in this instance. We will correct this discrepancy by amending Row 8 of Table 4–3 to give a right-of-first-refusal.

4. Adoption as Mandatory Standard

Comments

ECI argues that, at a minimum, Guide 4.13 (Table 4–2) specifying the reservation timing requirements and Guide 4.16 (Table 4–3), which specifies the priorities for competing reservation requests, must be reclassified as standards.

> If each transmission provider is granted different timing requirements and different priorities, it will be very difficult to keep up with the smorgasbord of business rules when trading power among different transmission providers. The resulting discrepancies in the rules would make it very difficult for market participants to synchronize transmission across the different grids.[124]

Discussion

We agree with ECI that, of all the Uniform Business Practices, the one where uniformity among transmission providers is most urgently needed, is in assigning priorities for competing reservation requests. We agree with ECI that the current "smorgasbord" of practices among transmission providers makes it difficult for customers to move power across the grid and inhibits the development of markets. If the priorities are left voluntary, this will remain the case. Accordingly, as discussed in section II.D.1, above, we will adopt proposed Guide 4.16 as Standard 4.16.

Standard 4.17—Required Posting When a Reservation Request Is Preempted

Guide 4.17, as proposed in the UBP NOPR, provides that when a reservation request is preempted, the transmission provider must post the assignment reference number of the reservation that preempts the reservation request.[125] The exact language of this provision is as follows:

> Guide 4.17: For a reservation request that is preempted, the Transmission Provider should indicate the Assignment Reference Number of the reservation that preempted the reservation request.

Comments

Duke recommends that the assignment reference number of the preempting request be placed in the Seller Comment field of the preempted request. VEPCO would post the assignment reference number in the STATUS_COMMENTS field of the preempted request.

Discussion

Guide 4.17 provides that transmission providers indicate the Assignment Reference Number of the reservation that preempted the reservation. However, the Guide does not specify where the number should appear in the TRANSSTATUS template. This information should be posted in a uniform location within the TRANSSTATUS template so that OASIS users will know where to find it. Thus, we will require that the Assignment Reference Number of the preempting request be placed in the Seller Comment field of the preempted request.

In addition, as discussed in section II.D.1, above, we will adopt this guide as a standard. We therefore will adopt Standard 4.17 that provides as follows:

> Standard 4.17: For a reservation request that is preempted, the Transmission Provider must indicate the Assignment Reference Number of the reservation that preempted the reservation request in the Seller Comment field of the preempted request.

Standard 4.18—Displaced and Superseded Pending Requests for Transmission Service

As we stated in the UBP NOPR, Guide 4.18 lays out the circumstances when a transmission provider may displace or supersede pending requests for service based on the priorities laid out in Table 4–3 (Guide 4.16).[126] The exact language of this provision is as follows:

> Guide 4.18: Given competing requests for a limited resource and a right-of-first-refusal is not required to be offered, the Provider may immediately move requests in the CONFIRMED state to DISPLACED, or from an ACCEPTED or COUNTEROFFER state to SUPERSEDED, if the competing request is of higher priority, based on the rules represented in Table 4–3. These state changes require dynamic notification to the Customer if the Customer has requested dynamic notification on OASIS.

In the UBP NOPR, we clarified that a transmission provider may change a confirmed reservation from the CONFIRMED status to DISPLACED status, at the time a competing request of higher priority is confirmed.[127]

In addition, the UBP NOPR proposed that transmission providers decrement ATC on their internal systems upon accepting a request (without waiting for a customer's confirmation). At the same time, we invited specific comment on whether ATC should be decremented upon acceptance of a customer's request or upon the customer's confirmation of the acceptance. We also proposed that ATC postings be updated when the transmission service is reserved (after confirmation).[128]

We also proposed to clarify the definition of "DISPLACED" by inserting the words "if any" after the word "refusal" to make clear that the existence of a status value for "DISPLACED" in the S&CP Document is not meant to confer any right-of-first-refusal. In addition, we proposed to substitute the word "replaced" for "displaced" in the text of the definition.

Comments

PJM and Cinergy agree with our proposal to require that ATC be decremented internally when a reservation is accepted and that ATC postings be decremented when a reservation is confirmed.[129] PJM argues that if ATC is not decremented when a reservation is accepted, a customer could be placed in the position of having its request accepted, creating a deal based on the acceptance, and, when it was ready to confirm, another customer could be awarded the service.

Allegheny Power, Consumers, Duke, TEP, and VEPCO disagree with the proposal and would decrement ATC (both internally and in postings) when the accepted reservation is confirmed by the customer.[130] Allegheny Power cites its experience as the reason for preferring to decrement on confirmation. Recently, Allegheny Power accepted, without confirmation, as many as 50 reservations on a given path.[131] Allegheny Power claims that decrementing ATC for each reservation would have artificially limited the east to west transmission market by reducing ATC to zero on many paths. Allegheny Power's ability to sell transmission service would have been limited without a commitment from customers. Allegheny Power argues that by setting confirmation time limits, requests that are not confirmed are removed from the queue. Allegheny Power also argues that the procedure avoids the possibility of a customer purposely locking up all ATC on a path with no intention of confirming the request.[132] Duke adds that, if ATC is internally decremented upon acceptance, a transmission provider may find itself in the position of having decremented ATC and subsequently having the customer withdraw the request.

TEP argues that decrementing ATC when a reservation is confirmed assures a commitment by the customer to pay for the service and allows ATC to be adjusted and posted in a single automated process.[133]

Duke also requests that the Commission clarify its rules on transmission providers' practices with regard to the posting of ATC, to decrement and show capacity benefit margin (CBM) and transmission reserve margin (TRM) on the OASIS, in addition to showing transmission reservations, in order to make clear how transmission providers have arrived at their posted ATC.[134]

In the UBP NOPR, we explained that, unless ATC is updated internally on acceptance, a transmission provider could be placed in the awkward position of having accepted numerous requests for the same constrained capacity and having several customers confirm the deal at the same time. VEPCO argues that the solution to having customers confirm at the same time is for the transmission provider to displace the later requests.[135] VEPCO also argues that ATC should not be decremented until a customer agrees to pay for it.[136]

Consumers' request asks us to clarify the goal of maintaining separate posted and non-posted ATC values, and how transmission providers will use non-posted ATC.[137] Consumers' point seems to be that there is no value in a transmission provider maintaining non-posted ATC values.

Discussion

In the UBP NOPR,[138] we proposed to revise the definition of "displaced" in the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document. In addition, as discussed in section II.D.4.b, above, we will correct the definition of "displaced" to add the word "not" that was erroneously omitted. With these changes, the definition of "displaced" in section 4.2.10.2 of the S&CP Document will now read as follows:

> DISPLACED = assigned by Provider or Seller when a "CONFIRMED" reservation from a Customer is replaced by a longer term reservation and the Customer has not exercised right of first refusal, if any (*i.e.*, refused to match terms of new request). (Final state).

We continue to believe that it is preferable for transmission providers to decrement ATC internally as reservations are accepted and to decrement ATC postings as reservations are confirmed. VEPCO suggests that rather than decrement ATC internally when reservations are made, transmission providers should displace customers at the end of the queue when confirmations are made. We believe that VEPCO's suggestion unfairly penalizes customers who have made deals based on acceptance of their reservations and whose unconfirmed reservations are subsequently preempted. If transmission providers decrement ATC internally as requests are made, then customers at the end of the queue will not have their reservations accepted until, and if, space becomes available. Consequently, fewer customers whose requests were accepted will be denied service.

By contrast, VEPCO's suggestion would extend acceptances to customers further down the queue, who could preempt customers who had made their requests earlier, but who had not yet confirmed. This undercuts the customer confirmation time limits agreed on by the industry and that we are adopting in Table 4–2, and is not a desired outcome. In addition, VEPCO's comments here are contradicted by its comments supporting proposed Guide 4.7 and 4.25, where VEPCO asserted that all pending requests should be evaluated at the same time, prior to acceptance, and that subsequent requests at a higher

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[120] VEPCO Comment at 8.

[121] Because we are addressing preemption, we will address VEPCO's comment here, even though it was raised as an aside to its support for Standard 4.21.

[122] UBP NOPR at 33,626, notes omitted.

[123] *See* UBP NOPR, Row 8, Column 3 of Table 4–3, which states "no" to whether a right-of-first-refusal is provided.

[124] ECI Comments at 2.

[125] UBP NOPR at 33,634.

[126] UBP NOPR at 33,632.

[127] UBP NOPR at 33,634.

[128] The transmission provider adjusts its calculation of ATC internally before it is required to post a revised ATC on the OASIS.

[129] PJM Comments at 5, Cinergy Comments at 10.

[130] Duke also raises this argument in connection with pre-confirmation under proposed Guide 4.25. We will address Duke's comment there.

[131] Allegheny Power Comments at 3.

[132] Allegheny Power Comments at 3–4.

[133] TEP Comments at 4.

[134] Duke Comments at 9.

[135] VEPCO Comments at 10.

[136] *But see* discussion of VEPCO's comments (re: proposed Guide 4.7) in section II.D.4.c above and later in this section (re: proposed Guide 4.25).

[137] Consumers Comments at 3.

[138] This proposal was unopposed.

price are not to be evaluated until expiration of the customer's confirmation time limits.

Regarding Consumers' requests for clarification of what we expect to achieve by having transmission providers maintain an internal ATC value and a posted ATC value, keeping track internally of how much ATC has been reserved allows transmission providers to know when reservations reach the capacity limit of a path. This offers the benefit of allowing transmission providers to cease accepting reservations until capacity becomes available (either through the withdrawal of a pending request or the expiration of a confirmation time limit).

The foregoing discussion of Consumers' request for clarification explains why the Commission finds merit in having a transmission provider internally decrement ATC at the time it accepts a customer's request. This discussion should not be interpreted as revising the requirements for updating ATC postings established in Order No. 889,[139] which requires that, "A [ATC and TTC] posting for a constrained path must be updated when transmission service on the path is reserved or service ends or when the path's TTC changes by more than 10 percent," and "[p]ostings for an unconstrained posted path must be updated when the ATC changes by more than 20 percent of the path's TTC."

As to Duke's suggestion that transmission providers decrement and show CBM and TRM on the OASIS, we note that, on January 31, 2000, the MIC and How Group jointly filed recommended revisions to the S&CP Document that, among other matters, propose a method for posting CBM and TRM on the OASIS.[140] We will address Duke's suggestion within the context of our review of the recommended revisions to the S&CP Document. As discussed in section II.D.1, above, we will adopt this guide as Standard 4.18.

Standard 4.19—Counteroffers When Right-of-First-Refusal Is Required

In the UBP NOPR, we stated that Guide 4.19 provides that, in instances where the customer is entitled to a right-of-first-refusal, the transmission provider is to notify the customer through the use of a COUNTEROFFER of the opportunity to match the subsequent offer. The exact language of this proposal is as follows:

Guide 4.19: In those cases where right-of-first-refusal is required to be offered, the Provider shall notify the Customer, through the use of a COUNTEROFFER, of the opportunity to match the subsequent offer.

Comments

VEPCO recommends that Guide 4.19 not be adopted as written. VEPCO asserts that it is not possible to facilitate the exercise of a right-of-first-refusal as envisioned by Guide 4.19. It argues that the State Diagram does not allow the status of a CONFIRMED request to be changed to COUNTEROFFER. VEPCO also argues that even if the diagram permitted the change, the S&CP Document does not permit the customer to modify the term of service of the request after the request is submitted. VEPCO proposes to add a new status, "preempted with right of first refusal," to the diagram. VEPCO states that once a request attains this status, the customer should be permitted to modify the term of service to match the preempting request. VEPCO adds that, as the customer would be able to modify the original request, the original queue time would be preserved.

Discussion

As discussed in section II.D.1, above, we will adopt proposed Guide 4.19 as Standard 4.19. We agree with VEPCO that the State Diagram in the S&CP Document does not permit a COUNTEROFFER to a CONFIRMED reservation. In section II.D.4.b, above (discussing Guide 4.5), we addressed the conflict caused by the definition of REBID, in the S&CP Document, which does not allow rebidding of duration, and Row 7 of Table 4–3, which does allow rebidding of duration. We resolved this conflict by requesting that the MIC/How Group make the necessary changes to the S&CP Document. VEPCO calls our attention to an associated problem: the State Diagram does not have a mechanism for implementing the right-of-first-refusal. VEPCO proposes to add a new STATUS, "preempted with right of first refusal," to the State Diagram. We are reluctant to make this change to the S&CP Document without the MIC and How Group considering the consequences of this change. We, therefore, will adopt Standard 4.19, but request that, within ninety (90) days of the date of publication of this Final Rule in the **Federal Register**, the MIC and How Group propose changes in the State Diagram, templates, and the S&CP Document needed to properly implement this standard.

Standard 4.20—Time Limits for Right-of-First-Refusal

In the UBP NOPR, we proposed Guide 4.20, which provides as follows:

Guide 4.20: A Customer who has been extended a right-of-first-refusal should have a confirmation time limit equal to the lesser of a) the Customer Confirmation Time Limit in Table 4–2 or b) 24 hours.

Comments

Duke claims that the confirmation time limits of Guide 4.20 are too restrictive. It speculates that, in many instances, a significant amount of time will have passed between the confirmation of Request One and the submittal of Request Two. Duke argues that in these circumstances, Request One will need more than 24 hours to decide whether to exercise the right-of-first-refusal if the original confirmation time limits were greater than 24 hours. Duke recommends that the "or 24 hour" limit imposed by Guide 4.20 be dropped and that customer Confirmation Time Limits as set forth in Table 4.2 apply to the right-of-first-refusal.[141]

Discussion

Duke's proposal affects the time limits for three services—firm weekly, firm monthly, and firm yearly. As proposed, Guide 4.20 would allow 24 hours to exercise the right-of-first-refusal in all three cases. Duke proposes to change this to 48 hours, 4 days, and 15 days, respectively. In our view, Duke has failed to show that the 24 hour time limit in Guide 4.20 is too restrictive, given that it deals with the second round of the negotiations. We, therefore, will reject Duke's proposal for a longer response time. As discussed in section II.D.1, above, we will adopt this guide as Standard 4.20.

Standard 4.21—Non-discriminatory Rights-of-First-Refusal

As we stated in the UBP NOPR, recommended Standard 4.21 requires transmission providers to apply all rights-of-first-refusal in a non-discriminatory and open manner.[142] The exact language of this provision is as follows:

Standard 4.21: A Transmission Provider shall apply all rights-of-first-refusal in a non-discriminatory and open manner for all Customers.

[139] Order No. 889, FERC Stats. and Regs. ¶ 31,035 at 31,606 (1996).

[140] This was filed in response to the Commission's clarifying order in Capacity Benefit Margin in Computing Available Transmission Capacity, 88 FERC ¶ 61,099 at 61,237 (1999), where the Commission directed that, for each path for which a utility already posts ATC, a transmission provider should also post (and update) the CBM figure for that path, and also should provide a narrative explanation of its CBM practices.

[141] Duke Comments at 8.

[142] UBP NOPR at 33,636–37.

Comments

VEPCO filed the sole comment regarding Standard 4.21. VEPCO raises no objection to the adoption of this standard.[143]

Discussion

Given the absence of any opposing comments, we will adopt this provision, as proposed in the UBP NOPR.

Standards 4.22 & 4.23—When Confirmed Requests May Not Be Displaced

Standards 4.22 and 4.23 discuss when a confirmed reservation for non-firm point-to-point service is protected from being displaced. The exact language of these provisions, as proposed in the UBP NOPR, is as follows:

Standard 4.22: Once a non-firm PTP request has been confirmed, it shall not be displaced by a subsequent non-firm PTP request of equal duration and higher price.

Standard 4.23: A confirmed, non-firm PTP reservation for the next hour shall not be displaced within one hour of the start of the reservation by a subsequent non-firm PTP reservation request of longer duration.

Comments

Southern seeks clarification of three issues regarding Standards 4.22 and 4.23. First, Southern asserts that Standards 4.22 and 4.23 are in conflict with section 14.2 of the *pro forma* tariff and that if Standards 4.22 and 4.23 are adopted, section 14.2 of the *pro forma* tariff must be modified, as proposed by the CPWG/How Group in the June 17 Report.[144] Southern argues that the conflict arises because, under section 14.2 of the *pro forma* tariff, a request for non-firm point-to-point service is to be displaced by a subsequent request for non-firm point-to-point service of equal duration at a higher price. Southern contends that the Commission has four options available to it: (1) Revise section 14.2 the *pro forma* tariff to match Standards 4.22 and 4.23; (2) clarify that Standards 4.22 and 4.23 can be implemented without changes to the *pro forma* tariff; (3) reclassify Standards 4.22 and 4.23 as guides, and instruct utilities who wish to implement them to file revisions to section 14.2 of their individual open access transmission tariffs; or (4) delete the proposed standards.[145]

Second, Southern requests clarification that Standards 4.22 and 4.23 do not affect the requirement in section 14.2 of the *pro forma* tariff that transmission service for network customers from resources other than designated network resources will have a higher priority than any non-firm point-to-point transmission service.

Third, Southern requests clarification that, if a conflict arises between the BPS and the *pro forma* tariff, the *pro forma* tariff controls.

VEPCO offers an interpretation of the interplay between Standard 4.22 and section 14.2 of the *pro forma* tariff that it asks the Commission to confirm. VEPCO reads section 14.2 of the *pro forma* tariff to require that, in the event of limited resources, competing requests for non-firm point-to-point service of equal duration are to be assigned priority based on price. At the same time, VEPCO reads Standard 4.22 to mean that, prior to confirmation, priority will be assigned as provided in section 14.2 of the *pro forma* tariff, while, after confirmation, a request for non-firm point-to-point service will not be displaced by a subsequent request of equal duration and higher price. Given that section 14.2 of the *pro forma* tariff is silent about confirmation, VEPCO argues that, if its understanding of 4.22 and 14.2 is correct, the two provisions are not in conflict, and it agrees with the Commission's proposal to adopt Standard 4.22. Otherwise, VEPCO recommends that Standard 4.22 be revised to reflect that the price prioritization only pertains to competing requests that are not yet CONFIRMED.[146]

Discussion

The June 19 Report recommended a series of revisions to the *pro forma* tariff to avoid potential conflicts with its recommended guides and standards. Two such suggested revisions were meant to prevent any potential conflict with Standards 4.22 and 4.23. To rule out any conflict with recommended Standard 4.22, the How Group recommended that we revise section 14.2 of the *pro forma* tariff to "prevent displacement of a confirmed non-firm request by a subsequent request of the same duration, but at a higher price."[147] To rule out any conflict with recommended Standard 4.23, the How Group recommended that we revise section 14.2 to "prevent displacement of a confirmed non-firm request by a subsequent longer-term request if the request is made within one hour of the start, for the next hour." In the UBP NOPR, we proposed to adopt Standards 4.22 and 4.23 without making any changes to section 14.2 of the *pro forma* tariff. We found that the recommended revisions were not needed because,

In evaluating competing requests for transmission service, we believe that section 14.2 properly directs the transmission provider to give priority to requests for service at a higher price or for a longer duration. However, section 14.2 does not address displacement of an accepted and confirmed request for transmission service upon receipt of a subsequent request for service.[148]

This being the case, we proposed adoption of Standards 4.22 and 4.23, but found it unnecessary to revise section 14.2 of the *pro forma* tariff to accomplish this. VEPCO supports our adoption of Standards 4.22 and 4.23, but asks us to confirm its understanding that, after confirmation, a request for non-firm point-to-point service will not be displaced by a subsequent request of equal duration and higher price. VEPCO's understanding is correct and is explicitly stated in Standard 4.22.

Regarding Southern's request for clarification, we clarify that, in the event of a conflict between the BPS and the *pro forma* tariff, the *pro forma* tariff controls. However, in our view, Standards 4.22 and 4.23 raise no such conflicts. Accordingly, given the absence of any opposing comments, we will adopt Standards 4.22 and 4.23 as proposed in the UBP NOPR.

In addition, as requested by Southern, we also clarify that Standard 4.23 does not affect the requirement in section 14.2 of the *pro forma* tariff that transmission service for network customers from resources other than designated resources will have a higher priority than non-firm point-to-point transmission service.

Standard 4.24—Requests on Unconstrained Paths

In the UBP NOPR, we proposed Guide 4.24, as follows:

Guide 4.24: A Transmission Provider should honor any reservation request submitted for an unconstrained Path if the Customer's bid price is equal to or greater than the Provider's posted offer price at the time the request was queued, even if later requests are submitted at a higher price. This guide applies even when the first request is still unconfirmed, unless the Customer Confirmation Time Limit has expired for the first request.

Comments

VEPCO argues that Guide 4.24 would better track the OASIS Phase 1–A Standard State Definitions in the S&CP Document if the wording were changed to read "[a] Transmission Provider shall ACCEPT any valid reservation

[143] VEPCO Comments at 12.

[144] For convenience, Attachment B quotes sections 13.2, 14.2, 14.7, and 17.5 of the *pro forma* tariff.

[145] Southern Comments at 3–4.

[146] VEPCO Comments at 12–13.

[147] June 19 Report at A–1 of Appendix A.

[148] UBP NOPR at 33,641.

request * * *." VEPCO also suggests that this guide be made a standard because transmission customers should be able to expect that, absent any resource limitations, a valid request will be accepted.[149]

Discussion

We agree with VEPCO and will revise the guide accordingly. In addition, as discussed in section II.D.1, above, we will make this guide a standard. We therefore will adopt Standard 4.24 as follows:

Standard 4.24: A Transmission Provider should accept any reservation request submitted for an unconstrained Path if the Customer's bid price is equal to or greater than the Provider's posted offer price at the time the request was queued, even if later requests are submitted at a higher price. This standard applies even when the first request is still unconfirmed, unless the Customer Confirmation Time Limit has expired for the first request.

Standard 4.25—Pre-Confirmation and Preemption

Section 14.2 of the pro forma tariff provides that, on constrained paths, requests for non-firm point-to-point transmission service of equal duration will be assigned priority based on price. Guide 4.25 (which we here will adopt as Standard 4.25) would implement this concept for transactions on the OASIS by assigning priorities to requests, as follows:

(1) Once a customer makes a request for service, the transmission provider has a time limit to accept or reject the request.[150]

(2) If, during this evaluation period, a second request for the same service and the same duration but at a higher price is received, the transmission provider would reject the first request.

(3) The clock for the transmission provider's accept or reject decision would be reset upon receipt of a higher bid. If no subsequent higher bids are received, the transmission provider would accept the second (higher) request at the end of the time limit.

(4) A customer whose request is accepted has a time limit to confirm the deal.[151] If the customer fails to confirm within this time limit, its request is deemed withdrawn.[152]

(5) Standard 4.25 gives competing customers an additional opportunity to offer a higher price. Until the customer whose request was accepted confirms the deal, other customers may obtain the service by submitting a pre-confirmed offer (for the same duration) at a higher price. As with all standards, transmission providers are required to implement Standard 4.25 in non-discriminatory manner.

Thus, as we stated in the UBP NOPR, proposed Guide 4.25 would permit Tier 4 (non-firm point-to-point) service of equal term with a higher bid price to preempt a request for the same term and lower bid price, as long as the initial lower bid request has not yet been confirmed and the higher bid request is preconfirmed.[153] The exact language of this provision is as follows:

Guide 4.25: Once an offer to provide non-firm PTP transmission service at a given price is extended to a Customer by the Provider, and while this first request is still unconfirmed but within the Customer Confirmation Time Limit, the Provider should not preempt or otherwise alter the status of that first request on receipt of a subsequent request of the same Tier and equal duration at a higher price, unless the subsequent request is submitted as pre-confirmed.

Comments

The comments on this issue raise a number of separate issues. For clarity, we will discuss these issues separately.

1. Duke Suggestion—Multiple Acceptances with Priority Assigned to First Customer to Confirm

Duke argues that a customer making a subsequent request should not be required to preconfirm the request. In other words, Duke's preference is that a transmission provider should be able to accept multiple competing requests, at the same time, and the first customer to confirm an accepted request would be entitled to the transmission service requested,[154] unless subsequently displaced by a higher priority (higher tier) request, regardless of whether that confirmation is made by traditional confirmation or by pre-confirmation.[155]

Discussion

In contrast to Standard 4.25 (proposed as Guide 4.25), which allows a request to be preempted by a subsequent request only if that subsequent request is pre-confirmed, Duke proposes to have the transmission provider accept both requests and award the service to whichever request is confirmed first. Under this approach, notwithstanding the customer confirmation time limits in Table 4–2, customers would be in a race to confirm first in every transaction. Customers in a position to give prompt confirmation would have a tremendous advantage over customers needing to hear from other parties before committing themselves to making a purchase. Under Duke's proposal, a customer who confirms first preempts customers offering the same or even a higher price,[156] because whichever acceptance was confirmed first, would have priority. By contrast, under Standard 4.25, once a customer's request is accepted by the transmission provider, it would only be displaced by a subsequent request that offered a pre-confirmed higher bid. Otherwise, subsequent requests would not be evaluated until the first customer's confirmation time limit had expired.

We believe this proposal constitutes a significant departure from the recommendations of the June 19 Report and what we proposed in the UBP NOPR. As proposed in the UBP NOPR, pre-confirmation would allow a requester making a subsequent request to obtain priority over an unconfirmed request of the same duration by: (1) Offering a higher price; and (2) pre-confirming. This is consistent with the provisions in section 14.2 of the *pro forma* tariff that give priority based on the highest price offered.

Proposed Guide 4.25 is consistent with the *pro forma* tariff and is reasonable because the first customer is protected from being preempted by a bid at the same or a lower price, the transmission provider gets a higher price and a commitment to pay, and the subsequent customer offering the pre-confirmed higher price gets the transmission, even though it was not the first customer to request the service. By contrast, the priorities that would be established under Duke's proposal are not consistent with those established in the *pro forma* tariff.

2. Status of Subsequent Request That Is Not Pre-Confirmed

VEPCO requests clarification of the proposed Guide 4.25. VEPCO maintains that Guide 4.25 is silent as to what would happen if the subsequent request is not pre-confirmed. VEPCO argues that, if the subsequent request is not pre-confirmed, the transmission provider can change the status of the earlier request only after the later request has been confirmed. VEPCO goes on to say that if its interpretation is correct, it has no objection to this guide.[157]

[149] VEPCO Comments at 13.

[150] The time limit is prescribed by the "Provider Evaluation Time Limit" in Table 4–2 and varies depending on the length of service requested.

[151] The time limit is prescribed by the "Customer Confirmation Time Limit after ACCEPTED or COUNTEROFFER" in Table 4–2 and varies depending on the length of services requested.

[152] If the transmission provider elects to accept a request immediately, then steps 2 and 3, above, do not apply.

[153] UBP NOPR at 33,637.

[154] Duke and Allegheny Power raise similar arguments in connection with the timing of decrementing ATC.

[155] Duke Comments at 8.

[156] Under Standard 4.24, however, the transmission provider would not be required to accept a request if the bid price is below the transmission provider's posted offer price.

[157] VEPCO Comments at 13.

Discussion

We disagree with VEPCO's contention that Guide 4.25 is silent about what transmission providers may do if the subsequent request is not pre-confirmed. The guide specifically states that,

the [Transmission] Provider should not preempt or otherwise alter the status of that first request on receipt of a subsequent request of the same Tier and equal duration at a higher price, unless the subsequent request is submitted as pre-confirmed.

Thus, under Guide 4.25, a transmission provider could not preempt the earlier request (that it already had accepted) to, instead, accept a subsequent request of the same Tier and equal duration at a higher price that is not pre-confirmed, unless the time limit for confirmation of the earlier request had elapsed and the earlier request was not confirmed. By contrast, as further discussed in section II.D.9.a, below, if the subsequent request (for non-firm transmission service of the same duration at a higher price) is pre-confirmed, it would preempt the earlier request, because it has a higher bid price.

3. Priority from Time of Request v. Priority from Time of Confirmation

VEPCO requests clarification of a statement made in the UBP NOPR discussion of proposed Guide 4.25 that "the first-come-first-served reservation priority of section 14.2 of the *pro forma* tariff applies from the time when a request for transmission service is made, not from the time when a request is confirmed." VEPCO states that its understanding of section 14.2 of the *pro forma* tariff is that reservations for non-firm service are to be prioritized based on duration of service and, in the event of competing requests of equal duration for a limited resource, the requests are to be prioritized based on price. VEPCO argues that the best construction of section 14.2 (and most consistent with the first-come-first-served principle) is that requests of equal duration and equal price must be processed in the order in which they are received. VEPCO argues that section 14.2 does not confer any additional rights on a request based on the time when the request is made.

VEPCO also asserts that

[t]he Commission declares that preservation of queue time is appropriate for firm requests since the first-come-first-served provision of section 13.2 of the *pro forma* tariff is based on the time that a request is made. The Commission states this fact in the July 17 Order and repeats it in the discussion on page 73 of the NOPR. On the other hand, our understanding is that non-firm requests do not acquire the right of first refusal until they are confirmed (see our request for clarification within our comments on Guide 4.25, below). If our understanding is correct, then preserving the queue time for non-firm requests is not relevant to the exercise of a right of first refusal for a non-firm request. In fact, the time that a non-firm request is CONFIRMED determines the order in which it is considered for right of first refusal versus other CONFIRMED non-firm requests that are also subject to displacement by the same longer-term request. If our understanding is correct, then a Transmission Customer exercising its right of first refusal should have to submit a new pre-confirmed request for non-firm service in order to match a subsequent longer-term reservation for non-firm service. Once the new preconfirmed request was ACCEPTED, it would automatically become CONFIRMED, and the time of confirmation of the new request would establish the order in which it is considered for right of first refusal in subsequent scenarios. Pre-confirmation should be a requirement in order to expedite the preemption process.

Discussion

Under section 13.2 of the *pro forma* tariff, long-term firm point-to-point transmission service is to be made available on a first-come-first-served basis and shorter term firm point-to-point transmission service (service for less than one year)[158] may be preempted on the basis of duration, but not on the basis of price.

However, under section 14.2 of the *pro forma* tariff, priorities for non-firm point-to-point transmission service are not determined based on first-come-first-served principles.[159] Under section 14.2 of the *pro forma* tariff, a transmission provider evaluates all pending requests for non-firm point-to-point transmission service at the same time. If resources are constrained, the transmission provider is to give priority based on duration. If duration is equal, the transmission provider is to give priority to those requests offering the highest price.

We agree with VEPCO that this evaluation of price is to happen before acceptance and that subsequent requests at a higher price are not to be evaluated until expiration of the customer's confirmation time limits.[160] However, under Guide 4.25, in the event that the subsequent request for non-firm point-to-point service of equal duration offers a higher price and is pre-confirmed, the transmission provider is to preempt the first request, even though the confirmation time limit has not yet expired.[161] As to the right-of-first-refusal, we will address that immediately below.

4. Right-of-First-Refusal

As quoted above, VEPCO asserts that "non-firm requests do not acquire the right-of-first-refusal until they are confirmed." VEPCO also argues that section 14.2 of the *pro forma* tariff confers a right-of-first-refusal to shorter term firm point-to-point service that already has been reserved, to match any longer term reservation before being preempted. VEPCO claims that this right is acquired at the time the earlier request is CONFIRMED, because a customer's confirmation is a commitment to pay and is what gives the customer rights to capacity.

Based on this understanding, VEPCO argues that short-term unconfirmed non-firm requests could be REFUSED or SUPERSEDED outright when subsequent competing requests of longer duration are CONFIRMED. VEPCO argues that if their understanding is incorrect, then short-term unconfirmed non-firm requests have to be included along with confirmed non-firm requests in the iterative preemption process when multiple competing requests exist. VEPCO claims that this overly complicates the prioritization and preemption rules for non-firm service. Specifically, VEPCO states,

[a]ccording to section 14.2 of the *pro forma* tariff, non-firm service is what is available from transmission capability in excess of that needed for reliable service. Keeping the importance of non-firm service in perspective relative to long-term firm service and short-term firm service, it would seem that non-firm service does not warrant the highly complicated and time consuming procedures for prioritization and preemption. Therefore, we request that the Commission clarify that short-term unconfirmed non-firm requests could be REFUSED or SUPERSEDED outright when subsequent competing requests of longer duration are CONFIRMED."

Discussion

Under section 14.2 of the *pro forma* tariff, the right-of-first-refusal to match a subsequent request for a longer duration is given only when a reservation already has been made. We consider a reservation to be made at the point when the customer confirms its

[158] Section 1.42 of the *pro forma* tariff provides that short term point-to-point transmission service has a term of less than one year.

[159] VEPCO's confusion may have resulted from an inadvertent reference in the UBP NOPR to section 14.2 of the *pro forma* tariff in responding to an argument from ECI. *See* UBP NOPR at 33,637.

[160] As seen in our discussion of Standard 4.18, in section II.D.4.d, above, this distinction becomes important in the consideration of when ATC is to be decremented. We also note that VEPCO's arguments here contradict those it raised in regard to Standard 4.18.

[161] We note that we are speaking here about preempting an unconfirmed request for transmission, not about displacing a confirmed reservation with a longer duration.

acceptance. We agree with VEPCO that a right-of-first-refusal is not extended to a request for non-firm point-to-point transmission service that has been accepted, but not yet confirmed. Such a request may be preempted without a right-of-first-refusal.

As to requests for short-term firm point-to-point transmission service, section 13.2 of the *pro forma* tariff provides for preemption before the conditional reservation deadline passes, but not after. Before the conditional reservation deadline passes, a reservation for short-term firm service is given a right-of-first-refusal to match a subsequent request for longer duration short-term firm service (price is not a factor here). As with non-firm service, we consider a reservation to be made at the point when the customer confirms its acceptance.

5. Adoption as Mandatory Standard

As discussed in section II.D.1, above, we will adopt proposed Guide 4.25 as Standard 4.25.

Standard 4.26—Right of Customer Making Request to Match a Subsequent Pre-Confirmed Request at Higher Price

As stated in the UBP NOPR, Guide 4.25 would permit Tier 4 (non-firm point-to-point) service of equal term with a higher bid price to preempt a request for the same term and lower bid price, as long as the lower bid request is not confirmed and the higher bid request is preconfirmed.[162] Guide 4.26 proposes to require a transmission provider to give the first customer the right-of-first-refusal. The exact language of Guide 4.26, as proposed in the UBP NOPR, is as follows:

Guide 4.26: If during a negotiation of service (*i.e.*, prior to Customer confirmation) a subsequent pre-confirmed request for service over the same limited resource of equal duration but higher price is received, the Provider *must* COUNTEROFFER the price of service on the prior COUNTEROFFER or ACCEPTED price to match the competing offer, in order to give the first Customer an opportunity to match the offer. This practice must be implemented in a non-discriminatory manner.

Guide 4.26, as recommended by the CPWG/How Group, stated that, "the Provider *may* COUNTEROFFER the price." In the UBP NOPR, we proposed to change "may" to "must" to indicate that a transmission provider following Guide 4.26[163] would be required to COUNTEROFFER the price to offer the first customer a right-of-first-refusal. We provided two reasons for the proposal: (1) Customers must know what to expect from a transmission provider; and (2) even though the guide provides that the practice be implemented in a non-discriminatory manner, there is too much room for discriminatory practices if providing the right to match is left optional.[164]

Comments

Duke agrees that "may" should be changed to "must." In addition, Duke proposes that Guide 4.26 be made a standard.[165]

VEPCO claims that the purpose of the pre-confirmation process is to expedite the transition of a request from ACCEPTED to CONFIRMED and requests that we clarify that a pre-confirmed request is not negotiable because the procedures used in negotiation defeat the purpose of pre-confirmation.[166] VEPCO also argues that, if Guide 4.26 applies to situations where the first request is unconfirmed, giving the right-of-first-refusal to the first requester would unfairly penalize the submitter of a second, preconfirmed, request. VEPCO argues that, if the second request was submitted as unconfirmed, the first request would not receive the right-of-first-refusal. VEPCO states that submitting a request as pre-confirmed should not decrease the probability of receiving the requested service. VEPCO recommends that Guide 4.26 not be adopted.

Discussion

As proposed in the UBP NOPR, we will replace the word "may" with "must" in Guide 4.26. Regarding Duke's request to make Guide 4.26 a standard, as discussed in section II.D.1, above, we will adopt this guide as Standard 4.26.

As we noted above (in our discussion of proposed Guide 4.16), there was a conflict between Row 8 of proposed Table 4–3 and proposed Guide 4.26. Table 4–3, as proposed in the UBP NOPR, did not permit a right-of-first-refusal when an unconfirmed request for non-firm point-to-point service is preempted by a pre-confirmed request of equal duration and higher price, while Guide 4.26 allowed transmission providers to offer the right-of-first-refusal under the same circumstances. As discussed above, we are resolving this conflict by amending Row 8 to give the right-of-first-refusal. With this revision, there is no longer a conflict between Table 4–3 and Guide 4.26.

Regarding VEPCO's request for clarification that pre-confirmed requests are not negotiable, we disagree with VEPCO's interpretation. The current process allows a transmission provider to COUNTEROFFER the pending unconfirmed request and negotiations would go on as if the subsequent request were not pre-confirmed. VEPCO's proposal, to deny negotiations in response to pre-confirmed requests, would treat pre-confirmed requests as take-it-or-leave-it offers.

VEPCO's objection to Guide 4.26, on the grounds that by submitting the subsequent reservation as pre-confirmed a customer gives up rights he would have had if he submitted the reservation as an unconfirmed reservation, is misplaced. Submitting an unconfirmed request in this instance does not give the second customer any rights. Standard 4.25, as adopted in this Final Rule, clearly states that the Transmission Provider should not preempt or otherwise alter the status of that first request on receipt of a subsequent request of the same Tier and equal duration at a higher price, unless the subsequent request is submitted as pre-confirmed.

Standard 4.27—Curtailment of Non-Firm Point-to-Point Service

Guide 4.27, as recommended in the June 19 Report and as described (but not proposed) in the UBP NOPR, provides that curtailment (as opposed to reservation) of non-firm point-to-point transmission service should not be based on price.[167] The exact language of this provision is as follows:

Guide 4.27: Curtailment of non-firm PTP should not consider price. Based on the fact that curtailments are governed by the *pro forma* tariff, we decided, in the UBP NOPR, not to propose adoption of Guide 4.27. We invited commenters who disagreed with this view to address this matter in their comments to the UBP NOPR.

Comments

Both Florida Power Corp and VEPCO agree that Guide 4.27 should not be adopted.[168]

Discussion

In the UBP NOPR we stated that this matter is governed by the *pro forma* tariff, however, we believe some elaboration on this point would be helpful. In reviewing this provision, it is important to keep in mind the distinction between "curtailment" and "interruption." Curtailment only refers to service not being provided based on reliability concerns. However, under section 14.7 of the *pro forma* tariff, non-firm point-to-point service may be interrupted based on economic concerns. The distinction between "curtailment" and "interruption" is a technical distinction that can easily be confused. Adoption of Guide 4.27 as currently written might be misleading because readers might incorrectly assume that service could not be interrupted based on economic concerns. While we could rewrite the provision to incorporate the curtailment priorities of 14.7 of the *pro forma* tariff, we believe it is safer and preferable to leave these matters to the pro forma tariff, without paraphrase. Thus, we will not adopt Guide 4.27.

5. Procurement of Ancillary and Other Services

a. Transmission Provider Requirements (Standards 5.1–5.4)

In the UBP NOPR, the Commission proposed to adopt recommended Standards 5.1 and 5.3 and Guides 5.2 and 5.4. The Commission recognized that ancillary services are an essential part of a transmission services contract, and that the proposed definitions improve the OASIS reservation process by spelling out the mandatory, required, and optional ancillary services related to the transmission reservation. The exact language of these provisions, as proposed in the UBP NOPR, is as follows:

Standard 5.1: The Transmission Provider shall designate which ancillary services are MANDATORY, REQUIRED, or OPTIONAL for each offered transmission service to the extent these requirements can be determined in advance of the submittal of a reservation request on a specific Path by a Transmission Customer.

Guide 5.2: A Transmission Provider may modify a Transmission Customer's service request to indicate the Transmission Provider as the SELLER of any ancillary service, which is MANDATORY, to be taken from the Transmission Provider.

Standard 5.3: For REQUIRED and OPTIONAL services, the Transmission Provider shall *not* select a SELLER of ancillary service without the Transmission Customer first selecting that SELLER.

Guide 5.4: A Transmission Provider may accept a Transmission Customer's request for an ancillary service, which is not MANDATORY or REQUIRED, but shall indicate to the Transmission Customer at the time of acceptance under PROVIDER COMMENTS that the service is not MANDATORY or REQUIRED.

Comments

Comments were filed by Consumers[169] and VEPCO.[170] Both recommend that ancillary services be categorized on the basis of path. They contend that this approach is consistent with current OASIS technology and requirements that determine whether different ancillary services are required depending on whether a path is into, out of, or through a system. VEPCO recommends that the proposed Standard 5.1 be revised to read as follows:

The Transmission Provider shall designate which ancillary services are MANDATORY, REQUIRED, or OPTIONAL for each offered transmission service or each transmission path to the extent these requirements can be determined in advance of the submittal of a reservation request on a specific Path by a Transmission Customer.

VEPCO suggests that Guide 5.2 be modified to substitute the word "shall" for "may," in the event a transmission customer fails to indicate the SELLER on its request for MANDATORY ancillary services, and be adopted as a standard.

VEPCO requests that the Commission clarify Standard 5.3 to indicate that the transmission provider should be permitted to modify the request to provide REQUIRED ancillary services. In support of this proposal, VEPCO provides an example illustrating the extra steps that would be required if the transmission customer fails to select a SELLER of REQUIRED ancillary services, including the submission of a new request in response to notification of an invalid request.

VEPCO suggests that Guide 5.4 is unnecessary, indicating that the only ancillary services that are not MANDATORY or REQUIRED are those designated as OPTIONAL. VEPCO further argues that Standard 5.1 clearly designates the service as OPTIONAL, and if a transmission customer requests the OPTIONAL service, the transmission provider should be allowed to assume the transmission customer actually wants the service.

Discussion

We find merit in the recommendation presented by Consumers and VEPCO to categorize ancillary services by path. It is apparent from the arguments presented that this can be accomplished with relative ease, and is consistent with the manner in which arrangements are made for such services, *i.e.*, different ancillary services are required depending on whether a path is into, out of, or through a system. Accordingly, we will revise proposed Standard 5.1 to read as follows:

Standard 5.1: The Transmission Provider shall designate which ancillary services are MANDATORY, REQUIRED, or OPTIONAL for each offered transmission service or each transmission path to the extent these requirements can be determined in advance of the submittal of a reservation request on a specific Path by a Transmission Customer.

We also find merit in VEPCO's proposal to revise proposed Guide 5.2 to ensure that the correct seller of mandatory ancillary services is shown on the OASIS. Accordingly, we will revise proposed Guide 5.2, which we adopt as Standard 5.2 as discussed below, to read as follows:

Standard 5.2: A Transmission Provider shall modify a Transmission Customer's service request to indicate the Transmission Provider as the SELLER of any ancillary service, which is MANDATORY, to be taken from the Transmission Provider.

As to Standard 5.3 and proposed Guide 5.4, while we agree with VEPCO that these provisions may create extra steps for a transmission provider, we believe that these extra steps are necessary to ensure that transmission customers are adequately informed, prior to confirmation, of what ancillary services they are to obtain from the transmission provider. Accordingly, we will adopt Standard 5.3 as proposed. In addition, as discussed in section II.D.1, above, we will adopt proposed Guides 5.2 and 5.4 as Standards 5.2 and 5.4.

b. Transmission Customer Requirements (Standards 5.5–5.6)

In the UBP NOPR, the Commission proposed to adopt Guides 5.5 and 5.6, as recommended in the June 19 Report. These guides propose that the transmission customer should inform the transmission provider, at the time of the reservation request, of certain arrangements for ancillary services. The exact language of these provisions is as follows:

Guide 5.5: The Transmission Customer should indicate with the submittal of a transmission reservation request, the preferred options for provision of ancillary services, such as the desire to use an alternative resource.

Guide 5.6: A Transmission Customer may, but is not required to, indicate a third party SELLER of ancillary services, if these services are arranged by the Transmission Customer off the OASIS and if such arrangements are permitted by the Transmission Provider's tariff.

Comments

VEPCO concurs with Guide 5.5 provided that, if the transmission customer fails to indicate its preferred options for provision of ancillary services, the transmission provider is permitted to modify the request so that it is designated as the default SELLER

[162] UBP NOPR at 33,637–38.

[163] As we are here adopting Guide 4.26 as a standard (Standard 4.26) all transmission providers will be required to comply with its provisions.

[164] UBP NOPR at 33,638.

[165] Duke Comments at 9.

[166] VEPCO Comments at 15.

[167] UBP NOPR at 33,638.

[168] Florida Power Corp Comments at 6, VEPCO Comments at 16.

[169] Consumers Comments at 3.

[170] VEPCO Comments at 16.

of the ancillary service.[171] Similarly, VEPCO concurs with Guide 5.6, provided that, if a transmission customer fails to indicate a third party SELLER of ancillary services and the transmission provider has not approved the arrangement between the transmission customer and any third party SELLER, the transmission provider may modify the request to designate itself as the default SELLER of the ancillary service.

AEP asserts that the transmission customer should be required to identify the SELLER in sufficient detail to enable the transmission provider to assure that the services will be provided and it (as control area operator) will not be left as the default transmission provider of such service. AEP supports this argument, by noting that transmission providers are responsible for the reliability of the transmission system, and must have the ability to verify that adequate arrangements have been made for ancillary services.[172]

Discussion

We agree with the commenters that transmission providers need timely notice from customers as to which ancillary services they will be obtaining from the transmission provider, and which they will be obtaining from other sellers. As we stated in the UBP NOPR,

[t]he June 19 Report recommends that the transmission customer should make known to the transmission provider (at the time of the reservation request) certain options related to arrangement of ancillary services, including taking all the MANDATORY and REQUIRED ancillary services from the primary provider, taking REQUIRED ancillary services from a third party seller, purchasing OPTIONAL services, and arranging for ancillary services in the future (prior to scheduling).[173]

We also agree with AEP that transmission providers are responsible for the reliability of the transmission system, and that

the customer should be required to identify the seller in sufficient detail to enable the Transmission Provider to assure that the services will be provided and not be left to it as a control area operator to be a default provider of such service.[174]

Given these concerns, and given that the *pro forma* tariff allows a transmission provider to require that customers specify their ancillary service providers when they make their reservations, we will follow VEPCO's suggestion to have the transmission provider post itself as the default ancillary service provider, if a transmission customer fails to indicate a third party SELLER of ancillary services. However, we will also allow the transmission customer to make a change at a later date, so long as this change is made prior to the scheduling deadline. This change can be made without changing the reservation priority. In addition, as discussed in section II.D.1, above, we will adopt Guides 5.5 and 5.6 as Standards 5.5 and 5.6. We therefore will adopt Standards 5.5 and 5.6 that provide as follows:

Standard 5.5: The Transmission Customer should indicate with the submittal of a transmission reservation request, the preferred options for provision of ancillary services, such as the desire to use an alternative resource. The Transmission Provider shall post itself as the default ancillary service provider, if a Transmission Customer fails to indicate a third party SELLER of ancillary services. However, the Transmission Customer may change this designation at a later date, so long as this change is made prior to the Transmission Provider's scheduling deadline.

Standard 5.6: A Transmission Customer may, but is not required to, indicate a third party SELLER of ancillary services, if these services are arranged by the Transmission Customer off the OASIS and if such arrangements are permitted by the Transmission Provider's tariff. The Transmission Provider shall post itself as the default ancillary service provider, if a Transmission Customer fails to indicate a third party SELLER of ancillary services. However, the Transmission Customer may change this designation at a later date, so long as this change is made prior to the Transmission Provider's scheduling deadline.

6. Pathnaming Standards (Standards 6.1–6.4)

In the UBP NOPR, the Commission proposed Standards 6.1, 6.2 and 6.3 and Guide 6.4 as recommended by the CPWG/How Group. These standards and guide propose using previously optional fields in the S&CP Document to specify control area codes for PORs and PODs. The Commission concluded that this should provide consistency in path naming, and efficiency in the reservation process. The exact language of these provisions, as proposed in the UBP NOPR, is as follows:

Standard 6.1: A transmission provider shall use the path naming convention defined in the S&CP Data Dictionary for the naming of all reservable paths posted on OASIS.

Standard 6.2: A transmission provider shall use the third field in the path name to indicate the sending and receiving control areas. The control areas shall be designated using standard NERC codes for the control areas, separated by a hyphen. For example, the first three fields of the path name will be:

RR/TPTP/CAXX–CAYY/

Standard 6.3: A transmission provider shall use the fourth field of the path name to indicate POR and POD separated by a hyphen. For example, a path with a specific POR/POD would be shown as:

RR/TPTP/CAXX–CAYY/PORPORPORPOR–PODPODPODPOD/

If the POR and POD are designated as control areas, then the fourth field may be left blank (as per the example in 6.2).

Guide 6.4: A transmission provider may designate a sub-level for Points of Receipt and Delivery. For example, a customer reserves a path to POD AAAA. The ultimate load may be indeterminate at the time. Later, the customer schedules energy to flow to a particular load that may be designated by the transmission provider as a sub-level Point of Delivery. This option is necessary to ensure certain providers are not precluded from using more specific service points by the inclusion of the POR/POD in the path name. All sub-level PORs and PODs must be registered as such on *www.tsin.com*.

Comments

VEPCO agrees with the adoption of Standards 6.1, 6.2, and 6.3. However, it seeks clarification of whether, under Guide 6.4, it is possible for a transmission customer to change a POR or POD after a request has been submitted. If so, VEPCO would not object to Guide 6.4, as long as it remains a guide and does not compel a transmission provider to allow transmission customers to change PORs and PODs after transmission customers have submitted requests.[175]

Discussion

The comments raise no objection to Standards 6.1, 6.2, and 6.3. As to Guide 6.4, VEPCO has failed to persuade us that Guide 6.4 should not be adopted as a mandatory standard. VEPCO's concerns are unfounded because, by its terms, Standard 6.4 (even though mandatory) only applies to transmission providers who designate sub-levels for PORs and PODs. A transmission provider need not make such designations, unless it so chooses. In addition, as requested by VEPCO, we clarify that Guide 6.4 does not imply that transmission customers may change PORs and PODs after confirmation. Thus, we will adopt Standards 6.1, 6.2, and 6.3, and, as discussed in section II.D.1, above, will adopt Guide 6.4, as Standard 6.4.

7. Revisions to the S&CP Document

Elsewhere in this Final Rule we have directed that revisions be made to the S&CP Document. For convenience, we will summarize all of these revisions here.

As discussed in section II.D.2.c, above, we will revise the definition of "non-firm" in Standard 2.2.2 to clarify that the firm service that gets priority over non-firm service includes service to Native Load Customers and Network Customers. As discussed in section II.D.2.e, above, we will replace the Data Dictionary Element "ANC_SERVICE_TYPE" in the S&CP Document with the term "AS_TYPE." As discussed in section II.D.4.b, above, will revise the definition of "superseded" in the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document, as follows:

SUPERSEDED = assigned by Provider or Seller when a request which has not yet been confirmed is preempted by another reservation request. (Final state).

Also, as discussed in section II.D.4.d, above, we will revise the definition of "displaced" in the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document, as follows:

DISPLACED = assigned by Provider or Seller when a "CONFIRMED" reservation from a Customer is replaced by a longer term reservation and the Customer has not exercised right of first refusal, if any (*i.e.*, refused to match terms of new request). (Final state).

Further, as discussed in section II.D.2.e, above, we will replace the Data Dictionary Element "ANC_SERVICE_TYPE" in the S&CP Document with the term "AS_TYPE."[176]

Finally, as discussed in section II.D.4.b, above, we will clarify the definition of "REFUSED" in the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document, as proposed in the UBP NOPR, by inserting the words "lack of" before the word "availability." Cinergy supports the change and no commenters oppose it. We, therefore, will adopt a revised definition of "REFUSED" in the Data Element Dictionary and in section 4.2.10.2 of the S&CP Document as follows:

REFUSED = assigned by Provider or Seller to indicate service request has been denied due to lack of availability of transmission capability. SELLER_COMMENTS should be used to communicate details for denial of service. (Final state).

Although we order these changes to become effective as of the effective date of this Final Rule,[177] we will not issue a complete, revised S&CP Document at this time. It is our intention to issue a complete, revised S&CP Document in the near future that will include additional revisions that we contemplate making after receipt of recommendations from the MIC/How Group (see discussion below).

Requests to Industry Working Groups

As discussed in various sections above, we are making several requests to the MIC/How Groups regarding revisions to the S&CP Document. For convenience, we will summarize all of these requests here.

First, in section II.D.1, we request that the MIC/How Group report back to the Commission, within 9 months of the implementation date of these standards, with their recommendations as to any necessary revisions, additions, or enhancements to the BPS that the industry suggests based on its experience doing business under them.

Second, in section II.D.2.f, we request that the MIC/How Group consider the following questions and report back, within ninety (90) days of the date of publication of this order in the **Federal Register**, with their recommendations as to any necessary revisions or additions to the BPS to reflect the Commission's findings in the Next Hour Order:

(1) Where in the BPS should the definitions of the scheduling period for "same-day" and "next-hour" transactions (as recommended in Guides 2.6–2.6.2) be located?

(2) Should the BPS include a definition of NHM Service?

(3) Should the Commission revise Tables 4–2 and 4–3 and related provisions to reflect the availability of NHM Service and its priority vis a vis other transmission services?

(4) Should the Commission adopt proposed Guides 4.2 and 4.3?[178]

(5) In light of the Next Hour Order, are any other revisions to the BPS needed?

Third, consistent with our adoption, in section II.D.4.b, of Standards 4.4 and 4.5, we request that, within ninety (90) days of the date of publication of this order in the **Federal Register**, the MIC/How Group submit its recommendations on any necessary changes to the State Diagram and definitions in the S&CP Document to accommodate a transmission provider notifying a customer that he has the right-of-first-refusal and a customer's response.

Fourth, in section II.D.4.c, we request that the MIC, with input from any interested persons, consider the proposals regarding Table 4–2 presented by AEP, BPA, Duke, and VEPCO, along with other possible options, and that the MIC report back to us on these matters as part of its nine-month report, giving the MIC's recommendations on any further revisions to Table 4–2 that might be needed, along with any dissenting views and the reasons why those views were not adopted by the group as a whole.

Fifth, in section II.D.4.d, we request that the MIC and How Group consider VEPCO's suggestion to add a new STATUS, "preempted with right of first refusal," to the State Diagram and to recommend, within ninety (90) days of the date of publication of this order in the **Federal Register**, whatever changes would be appropriate to the State Diagram, templates, and the S&CP Document to implement the right-of-first-refusal, for implementation as a standard.

9. CPWG/How Group Recommended Revisions to the Pro Forma Tariff

a. Section 14.2—Reservation Priority

In the UBP NOPR, we considered recommendations from the CPWG/How Working Groups (in the June 19 Report) that adoption of certain recommended guides and standards might require modifications to section 14.2 of the *pro forma* tariff. Notwithstanding these concerns, we concluded, preliminarily, that adoption of the recommended Business Practices could be accomplished without the need to make any revisions to the *pro forma* tariff.

Comments

VEPCO filed the sole comments on this issue. VEPCO concurs with the proposal in the UBP NOPR to leave section 14.2 of the *pro forma* tariff unchanged, but seeks clarification as to whether transmission providers need to file revisions to their individual open access tariffs in order to implement the pre-confirmation procedures outlined in Standards 4.16, 4.25, and 4.26.[179]

Discussion

In the UBP NOPR, the Commission found, preliminarily, that there was no compelling reason for changing section 14.2 of the *pro forma* tariff at this time. As none of the comments challenge this conclusion, we now adopt it as a finding of this Final Rule.

VEPCO requests that the Commission clarify its position on whether transmission providers must file revisions to their individual open access tariffs to implement the pre-confirmation proposals proposed in the UBP NOPR. VEPCO asserts,

a pre-confirmation procedure simply provides a mechanism by which to expedite the confirmation of an accepted request. In our view, pre-confirmation does not confer

[171] VEPCO Comments at 17.

[172] AEP Comments at 6.

[173] UBP NOPR at 33,639–40.

[174] AEP Comments at 6.

[175] VEPCO Comments at 19.

[176] In addition, for consistency, we will change the "alias" appearing in the Data Element Dictionary from "ANCTYPE" to "ASTYPE."

[177] Sixty (60) days from the date of publication of this Final Rule in the **Federal Register**.

[178] See discussion in section II.D.4.a.

[179] VEPCO Comments at 18.

any special rights to a request that it would enjoy either prior to or after acceptance of the request by the Transmission Provider." [180]

The Commission's position on pre-confirmation, as applied to section 14.2 of the *pro forma* tariff, was described in our discussion of Standards 4.25 and 4.26, above. VEPCO's position is not totally accurate. Pre-confirmation has certain ramifications. For example, Standard 4.25 provides that subsequent pre-confirmed requests for non-firm transmission service immediately preempt earlier lower-priced bid requests for the same duration service. However, we agree that there is some basis for VEPCO's position. This can be illustrated in the above example, if we assume that the subsequent request is pre-confirmed. In this case, the subsequent request would preempt the earlier request because it has a higher bid price. However, without pre-confirmation, the earlier request would not be preempted until the subsequent request was confirmed, rather than upon acceptance by the transmission provider as is the case with pre-confirmation.

We stand by our earlier conclusion in the UBP NOPR that our policies on pre-confirmation (that we are here adopting in Standards 4.16, 4.25, and 4.26) do not necessitate revisions to section 14.2 of the *pro forma* tariff, because, as we stated in the UBP NOPR, we do not view pre-confirmation to be in conflict with the *pro forma* tariff.

Finally, in response to VEPCO's request for clarification, on further consideration, we do not believe that transmission providers need to file any revisions to their individual Open Access Tariffs to accept pre-confirmed requests for transmission service.

b. Section 14.7—Curtailment or Interruption of Service

In the UBP NOPR, we stated that we were not persuaded to make any modifications to section 14.7 of the *pro forma* tariff at this time. This was discussed in the UBP NOPR and based on the consideration that the Uniform Business Practices recommended in the June 19 Report could be implemented without tariff changes.

Comments

VEPCO concurs with the Commission's conclusion not to make changes to section 14.7 of the *pro forma* tariff.

Discussion

The Commission maintains its conclusion proposed in the UBP NOPR that there is no compelling reason for changing section 14.7 of the *pro forma* tariff at this time. None of the comments suggest otherwise.[181]

c. Section 17.5—Response to a Completed Application

In the UBP NOPR, we stated that we were not persuaded to make any modifications to section 17.5 of the *pro forma* tariff at this time. This was discussed in the UBP NOPR and based on the consideration that the Uniform Business Practices recommended in the June 19 Report could be implemented without tariff changes.

Comments

VEPCO agrees with the Commission's decision not to make changes to section 17.5 of the *pro forma* tariff. VEPCO filed the sole comments on this issue.

Discussion

The Commission maintains its conclusion proposed in the UBP NOPR that there is no compelling reason for changing section 17.5 of the *pro forma* tariff at this time. None of the comments suggested otherwise.

III. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA),[182] requires the Commission to describe the impact that any proposed or final rule would have on small entities or to certify that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities.

The mandatory standards adopted in this Final Rule are applicable to the same entities subject to the requirements of the OASIS Final Rule (*i.e.*, public utilities).[183] Those entities exempt from the requirement to conduct business on the OASIS are likewise exempt from the requirements of this Final Rule.

Moreover, as we explained in Order No. 889–A, under appropriate circumstances the Commission will grant waiver of the OASIS Final Rule requirements to small public utilities. We further explained that the Commission's waiver policy follows the SBA definition of small electric utility [184] and that 34 small entities had received waivers of the requirement to establish and maintain an OASIS and five small entities had received waivers of the OASIS Standards of Conduct requirements.[185] These decisions show that the Commission carefully evaluates the effect of the OASIS Final Rule on small electric utilities and is granting waivers where appropriate, thus mitigating the effect of that rule on small public and non-public utilities.

This Final Rule merely increases the uniformity of the business practices public utilities already have adopted to comply with Order Nos. 888 and 889 and other Commission orders. This being the case, under section 605(b) of RFA, the Commission hereby certifies that this Final Rule will not have a significant economic impact on a substantial number of small entities within the meaning of RFA. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of RFA.

IV. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[186] In the Commission's view, the environmental impact of this proposal is negligible. Transmission providers necessarily already follow business practices in conducting their OASIS transactions. This proposal merely adds some uniformity to the process. Accordingly, we find that this Final Rule does not propose any action that may have a significant effect on the human environment and that no environmental impact statement is required.

V. Public Reporting Burden

This final rule adopts a set of uniform business practices, as set out in the accompanying BPS, that requires transmission providers to comply with

[180] *Id.*

[181] We note that in section II.D.4.d, above, we found that Standards 4.22 and 4.23 are not in conflict with section 14.7 of the *pro forma* tariff and that adoption of Standards 4.22 and 4.23 does not necessitate any revision of section 14.7 of the *pro forma* tariff.

[182] 5 U.S.C. 601–612.

[183] In the OASIS Final Rule, we noted that the entities that would have to comply with the OASIS Final Rule are public utilities. *See* Order No. 899–A, FERC Stats. & Regs ¶ 31,049 at 30,578.

[184] *See* 5 U.S.C. 601(3), 5 U.S.C. 601(6), and 15 U.S.C. 632(a). The RFA defines a small entity as one that is independently owned and not dominant in its field of operation. *See* 15 U.S.C. 632(a). The Small Business Administration defines a small electric utility as one that disposes of 4 million MWh or less of electric energy in a given year. *See* 13 CFR 121.601 (Major Group 49—Electric, Gas and Sanitary Services).

In the Open Access Final Rule, we concluded that, under these definitions, the Open Access Final Rule and the OASIS Final Rule would not have a significant economic impact on a substantial number of small entities. We reaffirmed that conclusion in Order Nos. 888–A and 889–A.

[185] *See* Order No. 889–A, FERC Stats. & Regs. ¶ 31,049 at 30,578.

[186] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); 1986–90 Regs. Preambles FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987) (*codified* at 18 CFR Part 380).

the Commission's policies on transmission service price negotiation and that governs interactions between transmission providers and customers over OASIS nodes. By necessity, transmission providers already follow business practices in operating their OASIS nodes. This final rule makes these practices more uniform across the industry.

This final rule retains the burden estimate used in the UBP NOPR. The UBP NOPR incorporated the Commission's burden estimate in Docket No. IC99–717–000 because it covered all information collected under the requirements of FERC–717 "Open Access Same-Time Information System and Standards of Conduct" (OMB No. 1902–173) from December 1998-December 2001, including the implementation of OASIS Phase IA and any information collected under the UBP NOPR.[187]

None of the 19 comments filed in response to the UBP NOPR took issue with the burden estimate. However, on February 5, 1999, EEI filed comments with OMB in Docket No. IC99–717–000 arguing that the Commission understated companies' overall OASIS cost-projections and citing instances where companies incurred higher costs than projected in that proceeding. On May 12, 1999, the Commission filed a response with OMB to EEI's comments where we acknowledged that some customers may have had higher costs than estimated in FERC–717 but that EEI had not shown that these higher costs were typical or that the Commission's projections were not valid on a composite basis. We also explained that a part of these higher costs was attributable to start-up costs (which are always higher) and that start-up costs had been excluded from the Commission's projections. After a review of these comments, OMB approved the Commission's OASIS burden estimate on August 18, 1999.

Internal Review

For this final rule, we again are relying on the Commission's burden estimate in Docket No. IC99–717–000 as our burden estimate, as we did with the UBP NOPR, because the burden estimate in Docket No. IC99–717–000 covers all information collected under the requirements of FERC–717 "Open Access Same-Time Information System and Standards of Conduct" (OMB No. 1902–0173). After conducting an internal review of the public reporting burden imposed by this final rule, we are convinced, by means of our internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information adopted in this final rule and has determined that this collection of information is necessary and conforms to the Commission's plan, as described in this order, for the collection, efficient management, and use of the required information.[188]

VI. Information Collection Statement

Based on our experience in OASIS implementation over the past four years, the Commission has refined the estimate of reporting entities covered by OASIS regulations. Our latest estimate is that 140 respondents are required to collect information under the OASIS regulations. However, as discussed above, this Final Rule does not impose any new information collection burdens. Collectively, the OASIS rulemaking information collection is covered by FERC–717 as covered by our December 1, 1998 proposed information collection and request for comments in Docket No. IC99–717–000, as follows:

Information Collection Statement:

Title: FERC–717, Open Access Same-time Information Systems and Standards of Conduct.

Action: Proposed Collection.

OMB Control No: 1902–0173.

Respondents: Business or other for profit, including small business.

Frequency of Responses: On Occasion.

Necessity of the information: The Final Rule issues uniform business practices for OASIS Phase IA transactions and path name conventions, replaces the Data Dictionary Element "ANC_SERVICE_TYPE" in the OASIS Standards and Communication Protocols Document (Version 1.3) with the term "AS_TYPE," and clarifies the terms "DISPLACED," "SUPERSEDED," and "REFUSED" in the Data Dictionary Element and section 4.2.10.2 of the S&CP Document. These requirements are intended to support arrangements made for wholesale sales and purchases for third parties. Public utilities and/or their agents will operate under more uniform business practices, which will improve the operation of OASIS sites.

Regulations of the Office of Management and Budget (OMB) [189] require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in this Final Rule will be reported directly to transmission users and will be subject to subsequent audit by the Commission. The distribution of these data will help the Commission carry out its responsibilities under Part II of the FPA.

The Commission is submitting notification of this Final Rule to OMB. Persons wishing to comment on the collections of information proposed by this Final Rule should direct their comments to: Desk Officer for FERC, OMB, Room 10202 NEOB, Washington, D.C. 20503, phone 202–395–3087, facsimile 202–395–7285. Comments must be filed with OMB within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with OMB should be sent to the following address: Mr. David P. Boergers, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, NE, Washington, DC 20426. For further information on the reporting requirements, contact Michael Miller at (202) 208–1415.

VII. Effective Date and Congressional Notification

This rule will take effect May 30, 2000. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of the Office of Management and Budget, that this Rule is not a "major rule" within the meaning of section 351 of the Small Business Regulatory Enforcement Act of 1996.[190]

The Rule will be submitted to both Houses of Congress and the Comptroller General prior to its publication in the **Federal Register.**

VIII. Document Availability

In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.fed.us*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, NE, Room 2A, Washington, DC 20426.

From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

[187] UBP NOPR at 33,605.

[188] *See* 44 U.S.C. 3506(c).

[189] 5 CFR 1320.11.

[190] 5 U.S.C. 804(2).

—CIPS can be accessed using the CIPS link or the Energy Information Online icon. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.
—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to *WebMaster@ferc. fed.us*) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.fed.us*).

During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

List of Subjects in 18 CFR Part 37

Conflict of interests, Electric power plants, Electric utilities, Reporting and recordkeeping requirements.

By the Commission. Commissioner Hébert concurred with a separate statement attached.

David P. Boergers,

Secretary.

In consideration of the foregoing, the Commission hereby adopts the attached "Business Practice Standards for Open Access Same-time Information System (OASIS) Transactions" and amends Part 37 in Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 37—OPEN ACCESS SAME-TIME INFORMATION SYSTEMS AND STANDARDS OF CONDUCT FOR PUBLIC UTILITIES

1. The authority citation for part 37 continues to read as follows:

Authority: 16 U.S.C. 791–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

2. Section 37.5 is amended by revising paragraph (b) to read as follows:

§ 37.5 Obligations of Transmission Providers and Responsible Parties.

* * * * *

(b) A Responsible Party must:

(1) Provide access to an OASIS providing standardized information relevant to the availability of transmission capacity, prices, and other information (as described in this Part) pertaining to the transmission system for which it is responsible;

(2) Operate the OASIS in compliance with the standardized procedures and protocols found in *OASIS Standards and Communication Protocols*, which can be obtained from the Public Reference and Files Maintenance Branch, Room 2A, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426; and

(3) Operate the OASIS in compliance with the *Business Practice Standards for Open Access Same-time Information System (OASIS) Transactions*, which can be obtained at the same address as provided in paragraph (b)(2) of this section.

* * * * *

Note: This attachment will not appear in the Code of Federal Regulations.

Attachment A.—Federal Energy Regulatory Commission Business Practice Standards for Open Access Same-Time Information System (OASIS) Transactions

Version 1.1 (Issued February 25, 2000)

Table of Contents

Section
Table of Contents
Section 1—Introduction
1.1 Business Practice Standards
Section 2—Standard Terminology for Transmission and Ancillary Services
2.1 Attribute Values Defining the Period of Service
2.2 Attribute Values Defining Service Class
2.3 Attribute Values Defining Service Types
2.4 Curtailment Priorities
2.5 Other Service Attribute Values
Section 3—OASIS Registration Procedures
3.1 Entity Registration
3.2 Process to Register Non-Standard Service Attribute Values
3.3 Registration of Points of Receipt and Delivery
Section 4—On-line Negotiation and Confirmation Process
4.1 On-line Price Negotiation in Short-term Markets
4.2 Phase IA Negotiation Process State Transition Diagram
4.3 Negotiations—Without Competing Bids
4.4 Negotiations—With Competing Bids for Constrained Resources
Section 5—Procurement of Ancillary and Other Services
5.1 Introduction
5.2 Transmission Provider Requirements
5.3 Transmission Customer Requirements
Section 6—Pathnaming Standards
6.1 Introduction
6.2 Transmission Provider Requirements

Section 1—Introduction

This document contains business practice standards designed to implement the Commission's policy related to on-line price negotiation and to improve the commercial operation of the Open Access Same-Time Information System (OASIS).

Section 1.1 Business Practice Standards

This document adopts OASIS business practice standards as mandatory requirements.

Section 2—Standard Terminology for Transmission and Ancillary Services

Section 2.1 Attribute Values Defining the Period of Service

The data templates of the Phase IA Standards & Communication Protocols (S&CP) Document have been developed with the use of standard service attributes in mind. What the Phase IA S&CP Document does not offer are specific definitions for each attribute value. This section offers standards for these service attribute definitions to be used in conjunction with the Phase IA data templates.

"Fixed" services are associated with transmission services whose periods align with calendar periods such as a day, week, or month. "Sliding" services are fixed in duration, such as a week or month, but the start and stop time may slide. For example a "sliding" week could start on Tuesday and end on the following Monday. "Extended" allows for services in which the start time may "slide" and also the duration may be longer than a standard length. For example an "extended" week of service could be nine consecutive days. Various transmission service offerings using these terms are defined in Standards 2.1.1 through 2.1.13 below.

Table 1–1 identifies the definitions that are proposed as standard terminology in OASIS Phase IA for the attributes SERVICE_INCREMENT (Hourly, Daily, Weekly, Monthly, and Yearly) and WINDOW (Fixed, Sliding, and Extended). A definition is required for each combination of SERVICE_INCREMENT and WINDOW, except Hourly Sliding and Hourly Extended, which, at the present, are not sufficiently common in the market to require standard definitions.

TABLE 1–1.—STANDARD SERVICE ATTRIBUTE DEFINITIONS REQUIRED IN PHASE IA

	Fixed	Sliding	Extended [1]
Hourly	X	N/A	N/A
Daily	X	X	X
Weekly	X	X	X
Monthly	X	X	X
Yearly	X	X	X

[1] Included in the Phase IA S&CP Data Dictionary, Version 1.3, issued September 29, 1998.

The existence of a definition in this table does not imply the services must be offered by a Transmission Provider. Requirements as to which services must be offered are defined by regulation and tariffs.

Each definition assumes a single time zone specified by the Transmission Provider. It is recognized that daylight time switches must be accommodated in practice, but they have been omitted in the definitions for the purpose of simplicity.

Standard 2.1: A Transmission Provider shall use the values and definitions below for the attributes Service_Increment and Window for all transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use existing attribute values and definitions posted by other Transmission Providers. (*See* Section 3 for registration requirements.)

Standard 2.1.1: Fixed Hourly—The service starts at the beginning of a clock hour and stops at the end of a clock hour.

Standard 2.1.2: Fixed Daily—The service starts at 00:00 and stops at 24:00 of the same calendar date (same as 00:00 of the next consecutive calendar date).

Standard 2.1.3: Fixed Weekly—The service starts at 00:00 on Monday and stops at 24:00 of the following Sunday (same as 00:00 of the following Monday).

Standard 2.1.4: Fixed Monthly—The service starts at 00:00 on the first date of a calendar month and stops at 24:00 on the last date of the same calendar month (same as 00:00 of the first date of the next consecutive month).

Standard 2.1.5: Fixed Yearly—The service starts at 00:00 on the first date of a calendar year and ends at 24:00 on the last date of the same calendar year (same as 00:00 of the first date of the next consecutive year).

Standard 2.1.6: Sliding Daily—The service starts at the beginning of any hour of the day and stops exactly 24 hours later at the same time on the next day.

Standard 2.1.7: Sliding Weekly—The service starts at 00:00 of any date and stops exactly 168 hours later at 00:00 on the same day of the next week.

Standard 2.1.8: Sliding Monthly—The service starts at 00:00 of any date and stops at 00:00 on the same date of the next month (28–31 days later). If there is no corresponding date in the following month, the service stops at 24:00 on the last day of the next month.

For example: Sliding Monthly starting at 00:00 on January 30 would stop at 24:00 on February 28 (same as 00:00 March 1).

Standard 2.1.9: Sliding Yearly—The service starts at 00:00 of any date and stops at 00:00 on the same date of the following year. If there is no corresponding date in the following year, the service stops at 24:00 on the last day of the same month in the following year.

For example Sliding Yearly service starting on February 29 would stop on February 28 of the following year.

Standard 2.1.10: Extended Daily—The service starts at any hour of a day and stops more than 24 hours later and less than 168 hours later.

Standard 2.1.11: Extended Weekly—The service starts at 00:00 of any date and stops at 00:00 more than one week later, but less than four weeks later.

Standard 2.1.12: Extended Monthly—The service starts at 00:00 of any date and stops at 00:00 more than one month later, but less than twelve months later.

Standard 2.1.13: Extended Yearly—The service starts at 00:00 of any date and stops at 00:00 more than one year later, but must be requested in increments of full years.

Section 2.2 Attribute Values Defining Service Class

Standard 2.2: A Transmission Provider shall use the values and definitions below to describe the service CLASS for transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use the attribute values and definitions posted by other Transmission Providers. (See Section 3 for registration requirements.)

Standard 2.2.1: Firm—Transmission service that always has priority over NON-FIRM transmission service and includes Native Load Customers, Network Customers, and any transmission service not classified as non-firm in accordance with the definitions in the *pro forma* tariff.

Standard 2.2.2: Non-Firm—Transmission service that is reserved and/or scheduled on an as-available basis and is subject to curtailment or interruption at a lesser priority compared to Firm transmission service, including Native Load Customers and Network Customers, in accordance with the definitions in the *pro forma* tariff.

Section 2.3 Attribute Values Defining Service Types

Standard 2.3: A Transmission Provider shall use the values and definitions below to describe the service TYPE for transmission services offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use the attribute values and definitions posted by other Transmission Providers. (See Section 3 for registration requirements.)

Standard 2.3.1: Point-to-point (PTP)—Transmission service that is reserved and/or scheduled between specified Points of Receipt and Delivery pursuant to Part II of the *pro forma* tariff and in accordance with the definitions in the *pro forma* tariff.

Standard 2.3.2: Network—Network Integration Transmission Service that is provided to serve a Network Customer load pursuant to Part III of the *pro forma* tariff and in accordance with the definitions in the *pro forma* tariff.

Section 2.4 Curtailment Priorities

Standard 2.4: A Transmission Provider that has adopted NERC TLR Procedures shall use the curtailment priority definitions contained in NERC TLR Procedures for NERC CURTAILMENT PRIORITY (1–7) for all transmission services offered on OASIS. A Transmission Provider that has adopted alternative curtailment procedures shall post its alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use attribute values and definitions posted by another Transmission Provider. (*See* Section 3 for registration requirements.)

Section 2.5 Other Service Attribute Values

The Commission has defined six ancillary services in Order No. 888. Other services may be offered pursuant to filed tariffs.

Standard 2.5: A Transmission Provider shall use the definitions below to describe the AS_TYPEs offered on OASIS, or shall post alternative attribute values and associated definitions on the OASIS Home Page at www.tsin.com, or shall use attribute values and definitions posted by another Transmission Provider. (See Section 3 for registration requirements.)

FERC Ancillary Services Definitions

Standard 2.5.1: Scheduling, System Control and Dispatch Service (SC)—is necessary to the provision of basic transmission service within every control area. This service can be provided only by the operator of the control area in which the transmission facilities used are located. This is because the service is to schedule the movement of power through, out of, within, or into the control area. This service also includes the dispatch of generating resources to maintain generation/load balance and maintain security during the transaction and in accordance with section 3.1 (and Schedule 1) of the *pro forma* tariff.

Standard 2.5.2: Reactive Supply and Voltage Control from Generation Sources Service (RV)—is the provision of reactive power and voltage control by generating

facilities under the control of the control area operator. This service is necessary to the provision of basic transmission service within every control area and in accordance with section 3.2 (and Schedule 2) of the *pro forma* tariff.

Standard 2.5.3: Regulation and Frequency Response Service (RF)—is provided for transmission within or into the transmission provider's control area to serve load in the area. Customers may be able to satisfy the regulation service obligation by providing generation with automatic generation control capabilities to the control area in which the load resides and in accordance with section 3.3 (and Schedule 3) of the *pro forma* tariff.

Standard 2.5.4: Energy Imbalance Service (EI)—is the service for transmission within and into the transmission provider's control area to serve load in the area. Energy imbalance represents the deviation between the scheduled and actual delivery of energy to a load in the local control area over a single hour and in accordance with section 3.4 (and Schedule 4) of the *pro forma* tariff.

Standard 2.5.5: Operating Reserve—Spinning Reserve Service (SP)—is provided by generating units that are on-line and loaded at less than maximum output. They are available to serve load immediately in an unexpected contingency, such as an unplanned outage of a generating unit and in accordance with section 3.5 (and Schedule 5) of the *pro forma* tariff.

Standard 2.5.6: Operating Reserve—Supplemental Reserve Service (SU)—is generating capacity that can be used to respond to contingency situations. Supplemental reserve is not available instantaneously, but rather within a short period (usually ten minutes). It is provided by generating units that are on-line but unloaded, by quick-start generation, and by customer interrupted load and in accordance with section 3.6 (and Schedule 6) of the *pro forma* tariff.

Other Service Definitions

Other services may be offered to Transmission Customers through Commission-approved revisions to their individual open access tariffs. Examples of other services that may be offered include the Interconnected Operations Services described below in Standards 2.5.7, 2.5.8, and 2.5.9. Ancillary service definitions may be offered pursuant to an individual transmission provider's specific tariff filings.

Standard 2.5.7: Dynamic Transfer (DT)—is the provision of the real-time monitoring, telemetering, computer software, hardware, communications, engineering, and administration required to electronically move all or a portion of the real energy services associated with a generator or load out of its Host Control Area into a different Electronic Control Area.

Standard 2.5.8: Real Power Transmission Losses (TL)—is the provision of capacity and energy to replace energy losses associated with transmission service on the Transmission Provider's system.

Standard 2.5.9: System Black Start Capability (BS)—is the provision of generating equipment that, following a system blackout, is able to start without an outside electrical supply. Furthermore, Black Start Capability is capable of being synchronized to the transmission system such that it can provide a startup supply source for other system capacity that can then be likewise synchronized to the transmission system to supply load as part of a process of re-energizing the transmission system.

Section 3—OASIS Registration Procedures

Section 3.1 Entity Registration

Operation of OASIS requires unambiguous identification of parties.

Standard 3.1: All entities or persons using OASIS shall register the identity of their organization (including DUNS number) or person at the OASIS Home Page at www.tsin.com. Registration identification shall include the parent entity (if any) of the registrant. Registration shall be a prerequisite to OASIS usage and renewed annually and whenever changes in identification occur and thereafter. An entity or person not complying with this requirement may be denied access by a transmission provider to that transmission provider's OASIS node.

The registration requirement applies to any entity logging onto OASIS for the purpose of using or updating information, including Transmission Providers, Transmission Customers, Observers, Control Areas, Security Coordinators, and Independent System Operators.

Section 3.2 Process To Register Non-Standard Service Attribute Values

Section 2 of the OASIS business practice standards addresses the use of standard terminology in defining services on OASIS. These standard definitions for service attribute values will be posted publicly on the OASIS Home Page at www.tsin.com and may be used by all Transmission Providers to offer transmission and ancillary services on OASIS. If the Transmission Provider determines that the standard definitions are not applicable, the Transmission Provider may register new attribute values and definitions on the OASIS Home Page. Any Transmission Provider may use the attribute values and definitions posted by another Transmission Provider.

Standard 3.2: Providers of transmission and ancillary services shall use only attribute values and definitions that have been registered on the OASIS Home Page at www.tsin.com for all transmission and ancillary services offered on their OASIS.

Standard 3.3: Providers of transmission and ancillary services should endeavor to use on their OASIS nodes attribute values and definitions that have been posted by other Transmission Providers on the OASIS Home Page at www.tsin.com whenever possible.

Section 3.3 Registration of Points of Receipt and Delivery

In order to improve coordination of path naming and to enhance the identification of commercially available connection points between Transmission Providers and regions, the business practice for Phase IA OASIS requires that:

- Transmission Providers register at the OASIS Home Page at www.tsin.com, all service points (Points of Receipt and Delivery) for which transmission service is available over the OASIS.
- Each Transmission Provider would then indicate on its OASIS node, for each Path posted on its OASIS node, the Points of Receipt and Delivery to which each Path is connected.

A Transmission Provider is not required to register specific generating stations as Points of Receipt, unless they were available as service points for the purposes of reserving transmission service on OASIS. The requirement also does not include registration of regional flowgates, unless they are service points for the purposes of reserving transmission on OASIS.

Standard 3.4: A Transmission Provider shall register and thereafter maintain on the OASIS Home Page at www.tsin.com all Points of Receipt and Delivery to and from which a Transmission Customer may reserve and schedule transmission service.

Standard 3.5: For each reservable Path posted on their OASIS nodes, Transmission Providers shall indicate the available Point(s) of Receipt and Delivery for that Path. These Points of Receipt and Delivery shall be from the list registered on the OASIS Home Page at www.tsin.com.

Standard 3.6: When two or more Transmission Providers share common Points of Receipt or Delivery, or when a Path connects Points of Receipt and Delivery in neighboring systems, the Transmission Providers owning and/or operating those facilities should apply consistent names for those connecting paths or common paths on the OASIS.

Section 4—On-line Negotiation and Confirmation Process

Section 4.1 On-line Price Negotiation in Short-term Markets

Standard 4.1: Consistent with FERC policy and regulations, all reservations and price negotiations should be conducted on OASIS.

Standard 4.2: Reserved.

Standard 4.3: Reserved.

Section 4.2 Phase IA Negotiation Process State Transition Diagram

The Phase IA S&CP Document provides a process state diagram to define the Customer and Transmission Provider interactions for negotiating transmission service. This diagram defines allowable steps in the reservation request, negotiation, approval and confirmation.

Standard 4.4: The state diagram appearing in Exhibit 4–1 in Section 4.2.10.2 of the Version 1.3 of the S&CP Document constitutes a recommended business practice in OASIS Phase IA.

Standard 4.5: The definitions in Section 4.2.10.2 of the Version 1.3 of the S&CP Document (status values) should be applied to the process states in OASIS Phase IA.

Table 4–1 " Reserved.

Section 4.3 Negotiations—Without Competing Bids

The following practices are defined in order to enhance consistency of the reservation process across OASIS Phase IA nodes.

Standard 4.6: A Transmission Provider/Seller shall respond to a Customer's service request, consistent with filed tariffs, within the "Provider Response Time Limit" defined in Table 4–2 "Reservation Timing Requirements." The time limit is measured from the time the request is QUEUED. A Transmission Provider may respond by setting the state of the reservation request to one of the following:

- INVALID
- DECLINED
- REFUSED
- COUNTEROFFER
- ACCEPTED
- STUDY (when the tariff allows), leading to REFUSED, COUNTEROFFER, or ACCEPTED.

Standard 4.7: Prior to setting a request to ACCEPTED, COUNTEROFFER, or REFUSED a Transmission Provider shall evaluate the appropriate resources and ascertain that the requested transfer capability is (or is not) available.

Standard 4.8: For any request that is REFUSED or INVALID, the Transmission Provider must indicate in the STATUS_COMMENT field of the TRANSSTATUS template the reason the request was refused or invalid.

Standard 4.9: The Customer may change a request from QUEUED, RECEIVED, STUDY, COUNTEROFFER, REBID, or ACCEPTED to WITHDRAWN at any time prior to CONFIRMED.

Standard 4.10: From ACCEPTED or COUNTEROFFER, a Customer may change the status to CONFIRMED or WITHDRAWN. In addition, a Customer may change the status from COUNTEROFFER to REBID. The Customer has the amount of time designated as "Customer Confirmation Time Limit" in Table 4–2 "Reservation Timing Requirements" to change the state of the request to CONFIRMED. The Customer time limit is measured from the first time the request is moved to ACCEPTED or COUNTEROFFER, and is not reset with subsequent iterations of negotiation.

Standard 4.11: After expiration of the "Customer Confirmation Time Limit," specified in Table 4–2 "Reservation Timing Requirements," the Transmission Provider has a right to move the request to the RETRACTED state.

Standard 4.12: Should the Customer elect to respond to a Transmission Provider's COUNTEROFFER by moving a reservation request to REBID, the Transmission Provider shall respond by taking the request to a DECLINED, ACCEPTED, or COUNTEROFFER state within the "Provider Counter Time Limit," specified in Table 4–2 "Reservation Timing Requirements." The Transmission Provider response time is measured from the most recent REBID time.

Standard 4.13: The following timing requirements should apply to all reservation requests:

TABLE 4–2.—RESERVATION TIMING REQUIREMENTS

Class	Service increment	Time QUEUED prior to start	Provider evaluation time limit [1]	Customer confirmation time limit [2] after ACCEPTED or COUNTEROFFER [3]	Provider counter time limit after REBID [4]
Non-Firm	Hourly	<1 hour	Best effort	5 minutes	5 minutes.
Non-Firm	Hourly	>1 hour	30 minutes	5 minutes	5 minutes.
Non-Firm	Hourly	Day ahead	30 minutes	30 minutes	10 minutes.
Non-Firm	Daily	N/A	30 minutes	2 hours	10 minutes.
Non-Firm	Weekly	N/A	4 hours	24 hours	4 hours.
Non-Firm	Monthly	N/A	2 days [5]	24 hours	4 hours.
Firm	Daily	24 hours	Best effort	2 hours	30 minutes.
Firm	Daily	N/A	30 days [6]	24 hours	4 hours.
Firm	Weekly	N/A	30 days [6]	48 hours	4 hours.
Firm	Monthly	N/A	30 days [6]	4 days	4 hours.
Firm	Yearly	≥60 days [7]	30 days	15 days	4 hours.

Notes for Table 4–2:

[1] Consistent with regulations and filed tariffs, measurement starts at the time the request is QUEUED.

[2] Confirmation time limits are not to be interpreted to extend scheduling deadlines or to override preexemption deadlines.

[3] Measurement starts at the time the request is first moved to either ACCEPTED or COUNTEROFFER. The time limit does not reset on subsequent changes of state.

[4] Measurement starts at the time the Transmission Customer changes the state to REBID. The measurement resets each time the request is changed to REBID.

[5] Days are defined as calendar days.

[6] Subject to expedited time requirements of Section 17.1 of the *pro forma* tariff. Transmission Providers should make best efforts to respond within 72 hours, or prior to the scheduling deadline, whichever is earlier, to a request for Daily Firm Service received during period 2–30 days ahead of the service start time.

[7] Subject to Section 17.1 of the *pro forma tariff*, whenever feasible and on a non-discriminatory basis, transmission providers should accommodate requests made with less than 60 days notice.

Section 4.4 Negotiations—With Competing Bids for Constrained Resources

Competing bids exist when multiple requests cannot be accommodated due to a lack of available transmission capacity. One general rule is that OASIS requests should be evaluated and granted priority on a first-come-first-served basis established by OASIS QUEUED time. Thus, the first to request service should get it, all else being equal.

Exceptions to this first-come-first-served basis occur when there are competing requests for limited resources and the requests have different priorities established by FERC regulations and filed tariffs. Prior to the introduction of price negotiations, the attribute values that have served as a basis for determining priority include:

- Type (Network, Point-to-point)
- Class (Firm, Non-Firm)
- Increment (Hourly, Daily, Weekly, Monthly, Yearly)
- Duration (the amount of time between the Start Date and the Stop Date)
- Amount (the MW amount)

Under a negotiation model, price can also be used as an attribute for determining priority. The negotiation process increases the possibility that a Transmission Provider will be evaluating multiple requests that cannot all be accommodated due to limited resources. In this scenario, it is possible that an unconfirmed request with an earlier QUEUED time could be preempted (SUPERSEDED). For this to occur, the subsequent request would be of higher priority or of greater price.

Standard 4.14: Consistent with regulations and filed tariffs, the following are recommended relative priorities of Service Request Tiers. Specific exceptions may exist in accordance with filed tariffs. The priorities

refer only to negotiation of service and do not refer to curtailment priority.

4.4.1. Service Request Tier 1: Native load, Network, or Long-term Firm
4.4.2. Service Request Tier 2: Short-term Firm
4.4.3. Service Request Tier 3: Network Service From Non-designated Resources
4.4.4. Service Request Tier 4: Non-firm
4.4.5. Service Request Tier 5: Non-firm Point-to-point Service over secondary receipt and delivery points

Standard 4.15: Consistent with regulations and filed tariffs, reservation requests should be handled in a first-come-first-served order based on QUEUE__TIME.

Standard 4.16: Consistent with regulations and filed tariffs, Table 4–3 describes the relative priorities of competing service requests and rules for offering right-of-first-refusal. While the table indicates the relative priorities of two competing requests, it also is intended to be applied in the more general case of more than two competing requests.

TABLE 4–3:—PRIORITIES FOR COMPETING RESERVATION REQUESTS

[Note: The term Tier is introduced to avoid confusion with existing terms such as TS__CLASS.]

Row	Request 1	Is preempted by request 2	Right of first refusal
1	Tier 1: Long-term Firm, Native Load, and Network Firm.	N/A—Not preempted by a subsequent request	N/A
2	Tier 2: Short-term Firm	Tier 1: Long-term Firm, Native Load, and Network Firm, while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted.	No.
3	Tier 2: Short-term Firm	Tier 2: Short-term Firm of longer term (duration), while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted [1].	Yes, while Request 1 is conditional. Once Request 1 is unconditional, it may not be preempted and right of first refusal is not applicable.
4	Tier 3: Network Service From Non-Designated Resources.	Tiers 1 and 2: All Firm (including Network)	No.
5	Tier 4: All Non-Firm PTP	Tiers 1 and 2: All Firm (including Network)	No.
6	Tier 4: All Non-Firm PTP	Tier 3: Network Service from Non-Designated Resources	No.
7	Tier 4: All Non-Firm PTP	Tier 4: Non-firm PTP of a longer term (duration).[1] Except in the last hour prior to start (*See* Standard 4.23).	Yes.[2]
8	Tier 4: All Non-Firm PTP	Tier 4: Non-firm PTP of equal term (duration) [1] and higher price, when Request 1 is still unconfirmed and Request 2 is received pre-confirmed. A confirmed non-firm PTP may not be preempted for another non-firm request of equal duration. (*See* Standards 4.22 and 4.25.).	Yes.
9	Tier 5: Non-firm PTP Service over secondary receipt and delivery points.	Tier 5 can be preempted by Tiers 1 through 4	No.

[1] Longer duration, in addition to being higher SERVICE__INCREMENT (*i.e.*, WEEKLY has priority over DAILY), also may mean more multiples of the same SERVICE__INCREMENT (*i.e.*, 3 days may have priority over 2 days). Multiple service increments must be at the same level of capacity.

[2] Right of first refusal applies only to confirmed requests.

Standard 4.17: For a reservation request that is preempted, the Transmission Provider must indicate the Assignment Reference Number of the reservation that preempted the reservation request in the Seller Comment field of the preempted request.

Standard 4.18: Given competing requests for a limited resource and a right-of-first-refusal is not required to be offered, the Transmission Provider may immediately move requests in the CONFIRMED state to DISPLACED, or from an ACCEPTED or COUNTEROFFER state to SUPERSEDED, if the competing request is of higher priority, based on the rules represented in Table 4–3. These state changes require dynamic notification to the Customer if the Customer has requested dynamic notification on OASIS.

Standard 4.19: In those cases where right-of-first-refusal is required to be offered, the Transmission Provider shall notify the Customer, through the use of a COUNTEROFFER, of the opportunity to match the subsequent offer.

Standard 4.20: A Customer who has been extended a right-of-first-refusal should have a confirmation time limit equal to the lesser of (a) the Customer Confirmation Time Limit in Table 4–2 or (b) 24 hours.

Standard 4.21: A Transmission Provider shall apply all rights-of-first-refusal in a non-discriminatory and open manner for all Customers.

Standard 4.22: Once a non-firm PTP request has been confirmed, it shall not be displaced by a subsequent non-firm PTP request of equal duration and higher price.

Standard 4.23: A confirmed, non-firm PTP reservation for the next hour shall not be displaced within one hour of the start of the reservation by a subsequent non-firm PTP reservation request of longer duration.

Standard 4.24: A Transmission Provider should accept any reservation request submitted for an unconstrained Path if the Customer's bid price is equal to or greater than the Transmission Provider's posted offer price at the time the request was queued, even if later requests are submitted at a higher price. This standard applies even when the first request is still unconfirmed, unless the Customer Confirmation Time Limit has expired for the first request.

Standard 4.25: Once an offer to provide non-firm PTP transmission service at a given price is extended to a Customer by the Transmission Provider, and while this first request is still unconfirmed but within the Customer Confirmation Time Limit, the Transmission Provider should not preempt or otherwise alter the status of that first request on receipt of a subsequent request of the same Tier and equal duration at a higher price, unless the subsequent request is submitted as pre-confirmed.

Standard 4.26: If during a negotiation of service (*i.e.*, prior to Customer confirmation) a subsequent pre-confirmed request for service over the same limited resource of equal duration but higher price is received, the Transmission Provider *must* COUNTEROFFER the price of service on the prior COUNTEROFFER or ACCEPTED price to match the competing offer, in order to give the first Customer an opportunity to match the offer. This practice must be implemented in a non-discriminatory manner.

Section 5—Procurement of Ancillary and Other Services

Section 5.1 Introduction

Phase IA OASIS data templates allow the coupling of ancillary service arrangements with the purchase of transmission service for the purpose of simplifying the overall process for Customers. Transmission Providers must indicate (consistent with filed tariffs), which services are MANDATORY (must be taken from the Primary Transmission Provider), REQUIRED (must be provided for but may be procured from alternative sources), or OPTIONAL (not required as a condition of transmission service).

The Transmission Customer should make known to the Transmission Provider at the time of the reservation request certain options related to arrangement of ancillary services. The Transmission Customer may indicate:

- I will take all the MANDATORY and REQUIRED ancillary services from the Primary Transmission Provider.
- I will take REQUIRED ancillary services from Third Party Seller "X".
- I would like to purchase OPTIONAL services.
- I will self provide ancillary services.
- I will arrange for ancillary services in the future (prior to scheduling).

While these interactions are available in the Phase IA S&CP Document, there is a need to clarify the associated business practices. The standards in Section 5 apply to services defined in filed tariffs.

Section 5.2 Transmission Provider Requirements

Standard 5.1: The Transmission Provider shall designate which ancillary services are MANDATORY, REQUIRED, or OPTIONAL for each offered transmission service or each transmission path to the extent these requirements can be determined in advance of the submittal of a reservation request on a specific Path by a Transmission Customer.

Standard 5.2: A Transmission Provider shall modify a Transmission Customer's service request to indicate the Transmission Provider as the SELLER of any ancillary service, which is MANDATORY, to be taken from the Transmission Provider.

Standard 5.3: For REQUIRED and OPTIONAL services, the Transmission Provider shall *not* select a SELLER of ancillary service without the Transmission Customer first selecting that SELLER.

Standard 5.4: A Transmission Provider may accept a Transmission Customer's request for an ancillary service, which is not MANDATORY or REQUIRED, but shall indicate to the Transmission Customer at the time of acceptance under PROVIDER COMMENTS that the service is not MANDATORY or REQUIRED.

Section 5.3 Transmission Customer Requirements

Standard 5.5: The Transmission Customer should indicate with the submittal of a transmission reservation request, the preferred options for provision of ancillary services, such as the desire to use an alternative resource. The Transmission Provider shall post itself as the default ancillary service provider, if a Transmission Customer fails to indicate a third party SELLER of ancillary services. However, the Transmission Customer may change this designation at a later date, so long as this change is made prior to the Transmission Provider's scheduling deadline.

Standard 5.6: A Transmission Customer may, but is not required to, indicate a third party SELLER of ancillary services, if these services are arranged by the Transmission Customer off the OASIS and if such arrangements are permitted by the Transmission Provider's tariff. The Transmission Provider shall post itself as the default ancillary service provider, if a Transmission Customer fails to indicate a third party SELLER of ancillary services. However, the Transmission Customer may change this designation at a later date, so long as this change is made prior to the Transmission Provider's scheduling deadline.

Section 6—Pathnaming Standards

Section 6.1 Introduction

The Data Element Dictionary of the OASIS S&CP Document, Version 1.3, defines a path name in terms of a 50-character alphanumeric string:

RR/TPTP/PATHPATHPATH/OPTIONALFROM-OPTIONALTOTO/SPR

RegionCode/TransmissionProviderCode/PathName/OptionalFrom-To(POR-POD)/Spare

This definition leaves it to the Transmission Providers to name the paths from their own perspective. The following standards provide an unambiguous convention for naming paths and will produce more consistent path names.

Section 6.2 Transmission Provider Requirements

Standard 6.1: A transmission provider shall use the path naming convention defined in the S&CP Data Dictionary for the naming of all reservable paths posted on OASIS.

Standard 6.2: A transmission provider shall use the third field in the path name to indicate the sending and receiving control areas. The control areas shall be designated using standard NERC codes for the control areas, separated by a hyphen. For example, the first three fields of the path name will be:

RR/TPTP/CAXX–CAYY/

Standard 6.3: A transmission provider shall use the fourth field of the path name to indicate POR and POD separated by a hyphen. For example, a path with a specific POR/POD would be shown as:

RR/TPTP/CAXX–CAYY/PORPORPORPOR-PODPODPODPOD/

If the POR and POD are designated as control areas, then the fourth field may be left blank (as per the example in 6.2).

Standard 6.4: A transmission provider may designate a sub-level for Points of Receipt and Delivery. For example, a customer reserves a path to POD AAAA. The ultimate load may be indeterminate at the time. Later, the customer schedules energy to flow to a particular load that may be designated by the transmission provider as a sub-level Point of Delivery. This option is necessary to ensure certain transmission providers are not precluded from using more specific service points by the inclusion of the POR/POD in the path name. All sub-level PORs and PODs must be registered as such on www.tsin.com.

[**Note:** This attachment will not appear in the Code of Federal Regulations.]

Sections 13.2, 14.2, 14.7, and 17.5 of the *pro forma* tariff provide as follows:

13.2 Reservation Priority: Long-Term Firm Point-To-Point Transmission Service shall be available on a first-come, first-served basis i.e., in the chronological sequence in which each Transmission Customer has reserved service. Reservations for Short-Term Firm Point-To-Point Transmission Service will be conditional based upon the length of the requested transaction. If the Transmission System becomes oversubscribed, requests for longer term service may preempt requests for shorter term service up to the following deadlines; one day before the commencement of daily service, one week before the commencement of weekly service, and one month before the commencement of monthly service. Before the conditional reservation deadline, if available transmission capability is insufficient to satisfy all Applications, an Eligible Customer with a reservation for shorter term service has the right of first refusal to match any longer term reservation before losing its reservation priority. A longer term competing request for Short-Term Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in section 13.8) from being notified by the Transmission Provider of a longer-term competing request for Short-Term Firm Point-To-Point Transmission Service. After the conditional reservation deadline, service will commence pursuant to the terms of Part II of the Tariff. Firm Point-To-Point Transmission Service will always have a reservation priority over Non-Firm Point-To-Point Transmission Service under the Tariff. All Long-Term Firm Point-To-Point Transmission Service will have equal reservation priority with Native Load Customers and Network Customers. Reservation priorities for existing firm service customers are provided in Section 2.2.

14.2 Reservation Priority: Non-Firm Point-To-Point Transmission Service shall be

available from transmission capability in excess of that needed for reliable service to Native Load Customers, Network Customers and other Transmission Customers taking Long-Term and Short-Term Firm Point-To-Point Transmission Service. A higher priority will be assigned to reservations with a longer duration of service. In the event the Transmission System is constrained, competing requests of equal duration will be prioritized based on the highest price offered by the Eligible Customer for the Transmission Service. Eligible Customers that have already reserved shorter term service have the right of first refusal to match any longer term reservation before being preempted. A longer-term competing request for Non-Firm Point-To-Point Transmission Service will be granted if the Eligible Customer with the right of first refusal does not agree to match the competing request: (a) immediately for hourly Non-Firm Point-To-Point Transmission Service after notification by the Transmission Provider; and, (b) within 24 hours (or earlier if necessary to comply with the scheduling deadlines provided in section 14.6) for Non-Firm Point-To-Point Transmission Service other than hourly transactions after notification by the Transmission Provider. Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have the lowest reservation priority under the Tariff.

14.7 Curtailment or Interruption of Service: The Transmission Provider reserves the right to Curtail, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for reliability reasons when, an emergency or other unforeseen condition threatens to impair or degrade the reliability of its Transmission System. The Transmission Provider reserves the right to Interrupt, in whole or in part, Non-Firm Point-To-Point Transmission Service provided under the Tariff for economic reasons in order to accommodate (1) a request for Firm Transmission Service, (2) a request for Non-Firm Point-To-Point Transmission Service of greater duration, (3) a request for Non-Firm Point-To-Point Transmission Service of equal duration with a higher price, or (4) transmission service for Network Customers from non-designated resources. The Transmission Provider also will discontinue or reduce service to the Transmission Customer to the extent that deliveries for transmission are discontinued or reduced at the Point(s) of Receipt. Where required, Curtailments or Interruptions will be made on a non-discriminatory basis to the transaction(s) that effectively relieve the constraint, however, Non-Firm Point-To-Point Transmission Service shall be subordinate to Firm Transmission Service. If multiple transactions require Curtailment or Interruption, to the extent practicable and consistent with Good Utility Practice, Curtailments or Interruptions will be made to transactions of the shortest term (*e.g.*,hourly non-firm transactions will be Curtailed or Interrupted before daily non-firm transactions and daily non-firm transactions will be Curtailed or Interrupted before weekly non-firm transactions). Transmission service for Network Customers from resources other than designated Network Resources will have a higher priority than any Non-Firm Point-To-Point Transmission Service under the Tariff. Non-Firm Point-To-Point Transmission Service over secondary Point(s) of Receipt and Point(s) of Delivery will have a lower priority than any Non-Firm Point-to-Point Transmission Service under the Tariff. the Transmission Provider will provide advance notice of Curtailment or Interruption where such notice can be provided consistent with Good utility Practice.

17.5 Response to a Completed Application: Following receipt of a Completed Application for Firm Point-To-Point Transmission Service, the Transmission Provider shall make a determination of available transmission capability as required in Section 15.2. the Transmission Provider shall notify the Eligible customer as soon as practicable, but not later than thirty (30) days after the date of receipt of a Completed Application either (i) if it will be able to provide service without performing a System Impact Study or (ii) if such a study is needed to evaluate the impact of the application pursuant to Section 19.1. Responses by the Transmission Provider must be made as soon as practicable to all completed application (including applications by its own merchant function) and the timing of such responses must be made on a non-discriminatory basis.

[**Note:** This attachment will not appear in the Code of Federal Regulations.]

Attachment C

Section 4.2.10.2 of the S&CP Document is revised to provide as follows:

4.2.10.2 Status Values

The possible STATUS values are:

QUEUED=initial status assigned by TSIP on receipt of "customer services purchase request."

INVALID=assigned by TSIP or Provider indicating an invalid field in the request, such as improper POR, POD, source, sink, etc. (Final state).

RECEIVED=assigned by Provider or Seller to acknowledge QUEUED requests and indicate the service request is being evaluated, including for completing the required ancillary services.

STUDY=assigned by Provider or Seller to indicate some level of study is required or being performed to evaluate service request.

REFUSED=assigned by Provider or Seller to indicate service request has been denied due to lack of availability of transmission capability. SELLER__COMMENTS should be used to communicate details for denial of service. (Final state).

COUNTEROFFER=assigned by Provider or Seller to indicate that a new OFFER__PRICE is being proposed.

REBID=assigned by Customer to indicate that a new BID__PRICE is being proposed.

SUPERSEDED=assigned by Provider or Seller when a request which has not yet been confirmed is preempted by another reservation request. (Final state).

ACCEPTED=assigned by Provider or Seller to indicate the service request at the designated OFFER__PRICE has been approved/accepted. If the reservation request was submitted PRECONFIRMED, the OASIS Node shall immediately set the reservation status to CONFIRMED. Depending upon the type of ancillary services required, the Seller may or may not require all ancillary service reservations to be completed before accepting a request.

DECLINED=assigned by Provider or Seller to indicate that the BID_PRICE is unacceptable and that negotiations are terminated. SELLER__COMMENTS should be used to communicate reason for denial of service. (Final state).

CONFIRMED=assigned by Customer in response to Provider or Seller posting "ACCEPTED" status, to confirm service. Once a request has been "CONFIRMED," a transmission service reservation exists. (Final state, unless overridden by DISPLACED or ANNULLED state).

WITHDRAWN=assigned by Customer at any point in request evaluation to withdraw the request from any further action. (Final state).

DISPLACED=assigned by Provider or Seller when a "CONFIRMED" reservation from a Customer is replaced by a longer term reservation and the Customer has not exercised right of first refusal, if any (*i.e.*, refused to match terms of new request). (Final state).

ANNULLED=assigned by Provider or Seller when, by mutual agreement with the Customer, a confirmed reservation is to be voided. (Final state).

RETRACTED=assigned by Provider or Seller when the Customer fails to confirm or withdraw the request within the required time period. (Final state).

[**Note:** This attachment will not appear in the Code of Federal Regulations.]

Attachment D.—Data Element Dictionary

Data dictionary element name	Alias	Field format: minimum characters (type of ASCII) maximum characters	Definition of data element	Restricted values
AFFILIATE_FLAG	AFFLAG	(ALPHANUMERIC)3	Set to YES if customer is an affiliate of the provider	Valid Values YES NO
ANC_SVC_LINK	ANCSVCLINK	0(ALPHANUMERIC) 300	The method for linking ancillary services to a transmission service request. The provider and capacity of each ancillary service is identified using the formatted string: SC:{AA}; RV: {AA[:xxx[:yyy[:nnn]]]}; RF: {AA[:xxx[:yyy[:nnn]]]}; SP: {AA[:xxx[:yyy[:nnn]]]}; SU: {AA[:xxx[:yyy[:nnn]]]}; EI: {AA[:xxx[:yyy[:nnn]]]}; where AA is the appropriate PRI-MARY_PROVIDER_CODE, SELLER_CODE, or CUSTOMER_CODE, and represents the company providing the ancillary services. "AA" may be unspecified for "xxx" type identical to "FT", in which case the ":" character must be present and precede the "FT" type. If multiple "AA" terms are necessary, then each "AA" grouping will be enclosed within parenthesis, with the overall group subordinate to the ANC_SVC_TYPE specified within parenthesis. and where xxx represents either: —"FT" to indicate that the Customer will determine ancillary services at a future time, or —"SP" to indicate that the Customer will self-provide the ancillary services, or —"RQ" to indicate that the Customer is asking the OASIS Node to initiate the process for making an ancillary services reservation with the indicated Provider or Seller on behalf of the Customer. The Customer must then continue the reservation process with the Provider or Seller. If the transmission services request is for preconfirmed service, then the ancillary services shall also be preconfirmed, or —"AR" to indicate an assignment reference number sequence follows. The terms "yyy" and "nnn" are subordinate to the xxx type of "AR". yyy represents the ancillary services reservation number (ASSIGNMENT_REF) and nnn represents the capacity of the reserved ancillary services. Square brackets are used to indicated optional elements and are not used in the actual linkage itself. Specifically, the :yyy is applicable to only the "AR" term and the :nnn may optionally be left off if the capacity of ancillary services is the same as for the transmission services, and optionally multiple ancillary reservations may be indicated by additional (xxx[:yyy[:nnn]]) enclosed within parenthesis. If no capacity amount is indicated, the required capacity is assumed to come from the ancillary reservations in the order indicated in the codes, on an "as-needed" basis. Ancillary services required for a transmission services offering. The appropriate letter (M,R,O,U) will be assigned to each of the six Proforma Ferc ancillary services (see AS_TYPE), where the letters mean the following: • (M) Mandatory, which implies that the Primary Provider must provide the ancillary service. • (R) Required, which implies that the ancillary service is required, but not necessarily from the Primary Provider. • (O) Optional, which implies that the ancillary service is not necessarily required, but could be provided. • (U) Unknown, which implies that the requirements for the ancillary service are not known at this time. Valid types • EI • SP • SU • RV • RF • SC • (Registered)	EI:(M,R,O,U); SU:(M,R,O,U); RF:(M,R,O,U); SC:(M,R,O,U); (registered):(M,R,O,U) SP:(M,R,O,U); RV:(M,R,O,U); SC:(M,R,O,U); {Registered}: (M,R,O,U) Valid Values YES NO Formatted string as follows: SC:{AA}; RV: {AA}; RF: {AA[:xxx[:yyy[:nnn]]]}; EI: {AA[:xxx[:yyy[:nnn]]]}; SP: {AA[:xxx[:yyy[:nnn]]]}; SU: {AA[:xxx[:yyy[:nnn]]]}; {Registered}:{AA[:xxx[:yyy[:nnn]]]}
ANCSVC_REQ	ANCSVCREQ	0(ALPHANUMERIC) 100	Ei—Energy imbalance. SP—Spinning Reserve. SU—Supplemental Reserve. RV—Reactive supply and Voltage Control. RF—Regulation and Frequency response. SC—Scheduling, system Control and Dispatch. {Registered} must be registered with www.tsin.com and listed in the ANCSERV template.	
AS_TYPE	ASTYPE	1(ALPHANUMERIC)20	A unique reference number assigned by a Transmission Information Provider to provide a unique record for each transmission or ancillary service request. A single transmission or ancillary service request will be over a contiguous time period, i.e. from a START_TIME to a STOP_TIME.	
ASSIGNMENT__REF	AREF	1(ALPHANUMERIC)12	The current bid price of a Service in dollars and cents. Used by Customers to designate a price being bid.	
BID__PRICE	BIDPR	1(NUMERIC)5 + .2(NUMERIC)2	Positive number with 2 decimals	Unique value

Data dictionary element name	Alias	Field format: minimum characters {type of ASCII} maximum characters	Restricted values	Definition of data element
CAPACITY	CAP	1{NUMERIC}12	Non-negative number in units of MW.	Transfer capability is the measure of the ability of the interconnected electric system to readily move or transfer power from one area to another over all transmission lines (or paths) between those areas under specified system conditions. In this context "area" may be an individual electric system, powerpool, control area, subregion, or NERC region or portion thereof.
CAPACITY_CURTAILED	CAPCUR	1{NUMERIC}12	Non-negaliive number in units of MW	The amount of transfer capability curtailed by the Primary provider for emergency reasons.
CAPACITY_SCHEDULED	CAPSCH	0{ NUMERIC}12	Non-negative number in units of MW	Transfer capability scheduled on each path.
CATEGORY	CAT	0{ALPHANUMERIC}25	Valid name from CATEGORY in LIST Template	A name to be used to categorize messeges. Valid names would include: , Want-Ad, Curtailment, Outage, Oasis Maint Notice.
CEILING_PRICE	CEILPR	1{NUMERIC}5 + "." +; 2{NUMERIC}2	Positive number with 2 decimals	Ceiling price of the Service as entered by the Transmission Provider.
COLUMN_HEADERS	HEADERS	1{ALPHANUMERIC }Limited to all the elements names in one Template	Headers surrounded with A and separated by commas. Limited to valid Template element names. Must use full element name and not alias	Example: COLUMN_HEADER=APATH NAME"," POINT_OF_RECEIPT"," POINT_OF_DELIVERY"," SOURCE","SINK".
CONTINUATION_FLAG	CONT	1{ALPHANUMERIC}1	"Y" or "N"	Indicates whether or not this record is a continuation from the previous record.
CONTROL_AREA	AREA	1{ALPHANUMERIC}20	Valid name of a control area	A part of the power system with metered tie lines and capable of matching generation and load while meeting scheduled interchange. Location of Ancillary Services is my CONTROL_AREA.
CURTAILMENT_OPTIONS	CUROPT	0{ALPHANUMERIC}80	Free form text	Customer options, if any, to avoid curtailment.
CURTAILMENT_PROCEDURES	CURPROC	0{ALPHANUMERIC}80	Free form text	Curtailment procedures to be followed in the event of a curtailment.
CURTAILMENT_REASON	CURREAS	0{ALPHANUMERIC}80	Free-form text	Reason for curtailment of service.
CUSTOMER_CODE	CUST	1{ALPHANUMERIC}6	Unique value, registered on TSIN.COM	Any entity (or its designated agent) that is eligible to view OASIS information, to execute a service agreement, and/or to receive transmission service.
CUSTOMER_COMMENTS	CUSTCOM	0{ALPHANUMERIC} 80	Free-form text	Informative text.
CUSTOMER_DUNS	CUSTDUNS	9{NUMERIC}9	Unique DUNS number	Unique DUNS number for a Customer.
CUSTOMER_EMAIL	CUSTEMAIL	1{ALPHANUMERIC}25	Valid Internet E-Mail address	Internet E-Mail address of Customer contact person.
CUSTOMER_FAX	CUSTFAX	14{ALPHANUMERIC}20	Area code and telephone number, plus any extensions {aaa}-nnn-nnnn xnnn	FAX phone number of Customer contact parson.
CUSTOMER_NAME	CUSTNAME	1{ALPHANUMERIC}25	Free form text	Name of Customer contact parson.
CUSTOMER_PHONE	CUSTPHON	14{ ALPHANUMERIC}20	Area code and telephone number, plus any extensions {aaa}-nnn-nnnn xnnn	Telephone of Customer contact person.
DATA_ROWS	ROWS	1{NUMERIC} unlimited	Positive Number	Number of records (rows) of data exclusive of header information that are to be uploaded or downloaded in a file.
DATE_TIME_EFFECTIVE	TIMEEFCT	16{ALPHANUMERIC}16	Valid date and time in seconds: yyyy+mo+dd+hh +mm+ss+tz	Date and time a message or service offer is in effect.
DEAL_REF	DREF	0{ALPHANUMERIC}12	Unique valup, Assigned by Customer	The unique reference assigned by a Customer to two or more service purchases to identify each of them as related to others in the same power service deal. These requests may be related to each other in time sequence through a single Provider, or as a series of wheels through multiple Providers, or a combination of both time and wheels. The User uses the DEAL_REF to uniquely identify a combination of requests relating to a particular deal.
DESCRETION_DESCRIPTION	DISCDESC	0{ALPHANUMERIC}1000	Free form text	A detailed description of the discretion being reported.
ELEMENT_NAME	ELEMENT	1{ALPHANUMERIC}40	Valid Template element name	Template element name as indicated in data dictionary.
EMPLOYEE_NAME	EMPNAME	1{ALPHANUMERIC}25	Free form text	Name of person who is transferring from one position to another.
ERROR_MESSAGE	ERROR	1{ALPHANUMERIC}250	Free form text	Error message related to a RECORD_STATUS or REQUEST_STATUS.
FORMER_COMPANY	FORMCO	1{ALPHANUMERIC}25	Free form text	Former company of the person who is transferring.
FORMER_DEPARTMENT	FORMDEPT	1{ALPHANUMERIC}25	Free form text	Former department of the person who is transferring.
FORMER_POSITION	FORMPOS	1{ALPHANUMERIC}25	Free form text	Former position held by the person who is transferring.
INTERFACE_TYPE	INTERFACE	0{ALPHANUMERIC}1	I,E	Type of interface define by path: Internal (I) to a control area or External (E) to a control area.
LIST_ITEM	ITEM	1{ALPHANUMERIC}50	Free form text	Item from LIST, such as list of SELLER, list of PATH_NAME, list of POINT_OF_RECEIPT, list of POINT_OF_DELIVERY, list of SERVICE_INCREMENT, list of TS_CLASS, list of TS_TYPE, list of TS_PERIOD, list of TS_WINDOW, list of TS_SUBCLASS, list of AS_TYPE, list of NERC_CURTAILMENT_PRIORITY, list of OTHER_CURTAILMENT_PRIORITY, list of CATEGORY, list of TEMPLATE, list of LIST.
LIST_ITEM_DESCRIPTION	ITEMDESC	0{ALPHANUMERIC}100	Free form text	A detailed description of the LIST_ITEM.
LIST_NAME	LIST	1{ALPHANUMERIC}50	LIST, SELLER, PATH, POR, POD, SERVICE_INCREMENT, TS_CLASS, TS_TYPE, TS_PERIOD, TS_SUBCLASS, AS_TYPE, NERC_CURTAILMENT_PRIORITY, OTHER_CURTAILMENT_PRIORITY, CATEGORY, TEMPLATE	List of valid names for each of the types of lists. The minimum set of lists defined must be implemented.
MESSAGE	MSG	1{ALPHANUMERIC}200	Free form text	An informative text message.
NEGOTIATED_PRICE_FLAG	NGPRIFLG	0{ALPHANUMERIC}1	H, L, or blank	Set to H if OFFER_PRICE is higher than the currently posted price; set to L if OFFER_PRICE is lower than the currently posted price.
NERC_CURTAILMENT_PRIORITY	NERCURT	1{NUMERIC }1	Integer 1–7	One of the NERC seven curtailment priorities, documented in LIST template.
NEW_COMPANY	NEWCO	1{ALPHANUMERIC}25	Free form text	New company of the person who is transferring.
NEW_DATA	NEWDATA	0{ALPHANUMERIC}200	Any valid date element value	For audit log, the new updated value of a Template data element after update.

NEW_DEPARTMENT	NEWDEPT	1{ALPHANUMERIC}25	Free form text.	New department of the person who is transferring.
NEW_POSITION	NEWPOS	1{ALPHANUMERIC}25	Free form text	New position held by the person who is transferring.
OFFER_PRICE	OFFPR	1{NUMERIC}5 + "." + 2{NUMERIC}2	Positive number with 2 decimals	The current offered price of a Service in dollars and cents. Used by the Seller to indicate the offering price.
OFFER_START_TIME	OFFSTIME	0,16{ALPHANUMERIC} 18	Valid Date and Time to seconds: yyyy+mo+dd+hh +mm+ss+tz	Start time of the window during which a Customer may request a discounted offer. If null, no restrictions on the start of the offering time is implied (other than tariff requirements).
OFFER_STOP_TIME	OFFSPTIME	0,18{ALPHANUMERIC} 16	Valid Date and Time to seconds: yyyy+mo+dd+hh +mm+ss+tz	Stop time of the window during which a Customer may request a discounted offer. (Expiration time of an offer). If null, no restrictions on the end of the offering time is implied (other than tariff requirements).
OLD_DATA	OLDDATA	0{ALPHANUMERIC}200	Any valid data element value	For audit log, the old value of a Template data element prior to being updated. This element is not applicable in the audit log for transaction events.
OPTIONAL_CODE	N/A	0{ALPHANUMERIC}25	Unique path name within region	OPTIONAL_CODE_25 chars, unique for Path. If used for directionality, then the first 12 characters shall represent POR, followed by >>, followed by 12 characters which shall represent POD. Used by PATH_NAME.
OTHER_CURTAILMENT_PRIORITY	OTHCUR	0{ALPHANUMERIC}8	Free form tect	Other than NERC curtailment priorities, such as regional curtailment priorities. Suggested format region+number, for example MAPP4, WSCC7. Documented in LIST template.
OUTPUT_FORMAT	FMT	4{ALPHANUMERIC}4	HTML, DATA	Format of response: HTML=hypertext markup language for presentation using a web browser. DATA=text for use in a downloaded file.
PATH_CODE	N/A	0{ALPHANUMERIC}12	Unique code for each path as defined by primary provider	Unique code within a Region for each path. Used by PATH__NAME.
PATH_NAME	PATH	5{ALPHANUMERIC}50	Unique value	The unique name assigned to a single transmission line or the set of one or more parallel transmission lines whose power transfer capabilities are strongly interrelated and must be determined in aggregate. These lines are typically described as being on a path, corridor or interconnection in some regions, or as crossing an interface or cut-plane in other regions. Multiple lines may be owned by different parties and require prorating of capability shares. The name is constructed from the following codes, with each code separated by a "/". Trailing "/" may be omitted, if there are no values for OPTION__CODE and SPARE__CODE: REGION__CODE—2 chars, unique to OASIS System PRIMARY__PROVIDER__CODE—4 chars, unique within Region PATH__CODE__12 chars, unique for Primary Provider OPTIONAL__CODE__25 chars, unique for Path. If used for directionality, then the first 12 characters shall represent POR, followed by >>, followed by 12 characters which shall represent POD SPARE__CODE__3 chars.
POINT__OF__DELIVERY	POD	1{ALPHANUMERIC}12	Unique value within Primary Provider	Point of Delivery is one or more point(s) of interconnection on the Transmission Provider's transmission system where capacity and/or energy transmitted by the Transmission Provider will be made available to the Receiving Party. This is used along with Point of Receipt to define a Path and direction of flow on that path. For internal paths, this would be a specific location(s) in the area. For an external path, this may be an area-to-area interface.
POINT__OF__RECEIPT	POR	1{ALPHANUMERIC}12	Unique value within Primary Provider	Point of Receipt is one or more point(s) of interconnection on the Transmission Provider's transmission system where capacity and/or energy transmitted will be made available to the Transmission Provider by the Delivering Party. This is used along with Point of Delivery to define a Path and direction of flow on that path. For internal paths, this would be a specific location(s) in the area. For an external path, this may be an area-to-area interface.
POSTING__NAME	POSTNAME	1{ALPHANUMERIC}25	Free form text	Name of person who is posting the information on the OASISNode.
POSTING__REF	POSTREF	1{ALPHANUMERIC}12	Unique Value	Assigned by TSIP when Service or Message is received by TSIP. Unique number can be used by the user to modify or delete the posting.
PRECONFIRMED	PRECONF	2{ALPHA}3	YES or NO	Used by Customer to preconfirm sale in Template transrequest or ancrequest. If customer indicates sale is preconfirmed, then the response is YES and the customer does not need to confirm the sale.
PRICE__UNITS	UNITS	0{ALPHA}20	Free form text	The units used for CEILING__PRICE, OFFER__PRICE, and BID__PRICE. Examples: $/MWhr, $/MWmonth.
PRIMARY __ PROVIDER __ COMMENTS	PPROVCOM	0{ALPHANUMERIC}80	Free-form text	Informative text. Usually entered by the Primary Provider through a back end system.
PRIMARY __ PROVIDER __ CODE	PROVIDER	1{ALPHANUMERIC}4	Unique code	Unique code for each Primary Provider. Used by PATH__NAME and in URL. Registered as part of URL at www.tsin.com.
PRIMARY_PROVIDER_DUNS	PPROVDUNS	9{NUMERIC}9	Valid DUNS number	Unique code for each Primary. Provided by Dun and Bradstreet.
REASSIGNED_CAPACITY	RASCAP	1{NUMERIC}12	Positive number, cannot exceed previous assigned capacity	The amount of transfer capability that wes reassigned from one entity to another.
REASSIGNED_REF	REREF	1{ALPHANUMERIC}12	Unique value	When customer makes a purchase of a transmission service that was posted for resale and a new ASSIGNMENT_REF number is issued the previous ASSIGNMENT_REF number now becomes the REASSIGNMENT_REF. Also used by SELLER when posting transmission or ancillary services for resale to show the previous assignment reference number. Also used by the customer when making a request to use FIRM service as SECONDARY over alternate points of delivery.
REASSIGNED_START_TIME	RESSTIME	18ALPHANUMERIC } 18	Valid date and time to seconds: yyyy+mo+dd+hh+tz	Beginning date and time of the reassigned transmission service.
REASSIGNED_STOP_TIME	RESSPTIME	16{ALPHANUMERIC}18	Valid date and time to hour: yyyy+mo+dd+hh+tz	Date and time of the end of the transmission service that is reassigned to another User.

Data dictionary element name	Alias	Field format: minimum characters {type of ASCII} maximum characters	Restricted values	Definition of data element
RECORD_STATUS	RECSTATUS	1{NUMERIC}3	Error number	Record status indicating record was successful or error code if unsuccessful. 200=Successful.
REGION_CODE	N/A	1{ALPHANUMERIC}2	Unique within OASIS System	Defined for NERC regions, with the following defined: E—ECAR, I—MAIN, S—SERC, T—ERCOT, A—MAPP, P—SPP, M—MAAC, N—NPCC, W—WSCC, F—FRCC. Second character or digit reserved for subregion id as defined by each region.
REQUEST_REF	RREF	0{ALPHANUMERIC}12	Unique value	A reference uniquely assigned by a Customer to a request for service from a Provider.
REQUEST_STATUS	RSTATUS	1{NUMERIC}3	Error number	Message status indicating message was successful (if all RECORD_STATUS show success) or error code if any RECORD_STATUS showed unsuccessful. 200 = Successful.
RESPONSE_TIME_LIMIT	RESPTL	16{ALPHANUMERIC}16	Valid date and time to seconds: yyyy+mo+dd+hh+mm+ss+tz	Date and time to seconds by when a response must be received from a Customer.
RESPONSIBLE_PARTY_NAME	PARTNAME	1{ALPHANUMERIC}25	Free form text	The name of the person responsible for granting the discretion.
RETURN_TZ	TZ	2{ALPHANUMERIC}2	AD, AS, PD, PS, ED, ES, MD, MS, CD, CS, UT	A time zone code, indicating the base time zone, and whether daylight saving time is to be used. This field may be set by a Customer in a query. Returned date and time data is converted to this time zone.
SALE_REF	SREF	0{ALPHANUMERIC}12	Unique value	Identifier which is set by seller (including Primary Provider) when posting a service for sale.
SELLER_CODE	SELLER	1{ALPHANUMERIC}6	Unique value	Organization name of Primary Provider or Reseller.
SELLER_COMMENTS	SELCOM	0{ALPHANUMERIC} 60	Free-form text	Informative text provided by the Seller.
SELLER_DUNS	SELDUNS	9{NUMERIC}9	Valid DUNS number	Unique Data Universal Numbering System provided by Dun and Bradstreet. Code for a Primary Provider or Seller.
SELLER_EMAIL	SELEMAIL	5{ALPHANUMERIC}60	Valid network reference	E-Mail address of Seller contact person.
SELLER_FAX	SELFAX	14{ALPHANUMERIC} 20	Area code and telephone number, plus any extensions Example: (aaa)-nnn-nnnn xnnnn	The fax telephone number for contact person at Seller.
SELLER_NAME	SELNAME	1{ALPHANUMERIC} 25	Free form text	The name of an individual contact person at the Seller.
SELLER_PHONE	SELPHONE	14{ALPHANUMERIC}20	Area code and telephone number, plus any extensions (aaa)-nnn-nnnn xnnnn	The telephone number of a contact person as a Seller.
SERVICE_DESCRIPTION	SVCDESC	0{ALPHANUMERIC} 200	Free-form text	Information regarding a service.
SERVICE_INCREMENT	SRVINCR	1{ALPHANUMERIC}8	Valid increments • HOURLY • Daily • Weekly • Monthly • Yearly • {Registered}	The transmission service increments provided. Five are pre-defined, while additional increments can be used if they are registered on TSIN.COM and shown in the Provider's LIST template.
SERVICE_NAME	SVCNAME	1{ALPHANUMERIC} 25	Free-form text	Name of service affected by the discretionary action.
SERVICE_TYPE	SVCTYPE	1{ALPHANUMERIC} 25	Free-form text	Type of service affected by the discretionary action.
SINK	SINK	0{ALPHANUMERIC}14	Valid area name	The area in which the SINK is located.
SOURCE	SOURCE	0{ALPHANUMERIC}14	Valid area name	The area in which the SOURCE is located.
SPARE_CODE	N/A	0{ALPHANUMERIC}3	Defined by region	Spare code to be used at a later time. Used by PATH—NAME
STANDARDS_OF_CONDUCT_ISSUES	STDISSUE	0{ALPHANUMERIC}800	Free-form text	Issues that were in violation of the FERC Standards of Conduct. This text may include a reference pointer to a more detailed description.
START_TIME	STIME	16{ALPHANUMERIC}16	Valid Date and Time to seconds: yyyy+mo+dd+hh +mm+ss+tz	Start date and clock time of a service. When used as a query variable, it requires the return of all items whose Stop time is after the Start time. Note that for some Templates when used as a query variable the time may be only valid up to the hour, day or month. If more data is given than is valid, the hour, day or month will be used to make the date and time inclusive, i.e. date or time will be truncated to valid hour, day or month.
START_TIME_POSTED	STIMEP	16{ALPHANUMERIC}16	Valid Date and Time to seconds: yyyy+mo+dd+hh +mm+ss+tz	Query parameter to indicate all the records are to be retrieved that were posted on or after this time.
START_TIME_QUEUED	STIMEQ	16{ALPHANUMERIC}16	Valid Date and Time to seconds: yyyy+mo+dd+hh +mm+ss+tz	Start date and clock time of a service, used for requesting transactions queued after this time.
STATUS	STATUS	5{ALPHANUMERIC}25	Valid field {QUEUED, INVALID, RECEIVED, STUDY, REBID, COUNTEROFFER, DECLINED, SUPERSEDED, ACCEPTED, REFUSED, CONFIRMED, WITHDRAWN, DISPLACED, ANNULLED, RETRACTED}	QUEUED = initial status assigned by TSIP on receipt of "customer services purchase request". INVALID = assigned by TSIP or Provider indicating an invalid field in the request, such as improper POR, POD, source, sink, etc. (Final state). RECEIVED= assigned by Provider or Seller to acknowledge QUEUED requests and indicate the service request is being evaluated, including for completing the required ancillary services. STUDY= assigned by Provider or Seller to indicate some level of study is required or being performed to evaluate service request.

				REFUSED = assigned by Provider or Seller to indicate service request has been denied due to lack of availability of transmission capability. SELLER_COMMENTS should be used to communicate details for denial of service. (Final state). COUNTEROFFER= assigned by Provider or Seller to indicate that a new OFFER_PRICE is being proposed. REBID = assigned by Customer to indicate that a new BID_PRICE is being proposed. SUPERSEDED = assigned by Provider or Seller when a request which has not yet been confirmed is preempted by another reservation request. (Final state). ACCEPTED = assigned by Provider or Seller to indicate the service request at the designated OFFER_PRICE has been approved/accepted. If the reservation request was submitted PRECONFIRMED, the OASIS Node shall immediately set the reservation status to CONFIRMED. Depending upon the type of ancillary services required, the Seller may or may not require all ancillary service reservations to be completed before accepting a request. DECLINED = assigned by the Provider or Seller to indicate that the BID_PRICE is unacceptable and that negotiations are terminated. SELLER_COMMENTS should be used to communicate reason for denial of service. (Final state). CONFIRMED = assigned by Customer in response to Provider or Seller posting "ACCEPTED" status, to confirm service. Once a request has been "CONFIRMED", a transmission service reservation exits. (Final state, unless overridden by DISPLACED or ANNULLED state). WITHDRAWN = assigned by Customer at any point in request evaluation to withdraw the request from any further action. (Final state). DISPLACED = assigned by Provider or Seller when a "CONFIRMED" reservation from a Customer is replaced by a longer term reservation and the Customer has not exercised right of first refusal, if any (i.e. refused to match terms of new request). (Final state). ANNULLED = assigned by Provider or Seller when, by mutual agreement with the Customer, a confirmed reservation is to be voided. (Final state). RETRACTED = assigned by Provider or Seller when the Customer fails to confirm or withdraw the request within the required time period. (Final state).
STATUS_COMMENTS	STACOM	0{ALPHANUMERIC} 60	Free form text	Informative text.
STATUS_NOTIFICATION	STATNOT	0{ALPHANUMERIC} 200	http://URL:portnumber/direc otry/cgi script/query parameters or Mailto: <e-mail address>	The STATUS_NOTIFICATION data element shall contain the protocol field "http:", which designates the notification method/protocol to be used, followed by all resource location information required; the target domain name and port designations shall be inserted into the notification URL based on the Customer's Company registration information. The resource location information may include directory information, cgi script identifiers and URL encoded query string name/value pairs as required by the Customer's application. or mailto and email address for the status information the Customer wants to receive upon a change in STATUS of transstatus, or ancstatus.
STOP_TIME	SPTIME	16{ALPHANUMERIC}16	Valid date and time yyyy+mo+dd+hh+mm+ss+tz	Stop date and clock time. When used as a query variable, it requires the return of all items which start before the Stop time. Note that for some Templates when used as a query variable the time may be only valid up to the hour, day or month. If more data is given than is valid, the hour, day or month will be used to make the date and time inclusive, i.e. date or time will be increased to include STOP_TIME.
STOP_TIME_POSTED	STPTIMEP	16{ALPHANUMERIC}16	Valid Date and Time to seconds: yyyy+mo+dd+hh+mm+ss+tz	Query parameter to indicate all the records are to be retrieved that were posted on or before this time.
STOP_TIME_QUEUED	SPTIMEQ	16{ALPHANUMERIC}16	Valid Date and Time to seconds: yyyy+mo+dd+hh+mm+ss+tz	Stop date and clock time, used for requesting transactions queued before this time.
SUBJECT	SUBJ	0{ALPHANUMERIC} 60	Free form text	Informative text used to summarize a topic in a message.
TARIFF_REFERENCE	TARIFF	0{ALPHANUMERIC} 150	Free form text. Name and description of Tariff	Tariffs approved by FERC.
TEMPLATE	TEMPL	1{ALPHANUMERIC}20	Valid Name of Template from Section 4.3 or from LIST Template	The name of a logical collection of DATA_ELEMENTS in a User's interaction with an OASIS Node.
TIME_OF_LAST_UPDATE	TLUPDATE	16{ALPHANUMERIC}16	Valid date and time to seconds: yyyy+mo+dd+hh+mm+ss+tz	Date and time to seconds that data was last updated. May be used to search data updated since a specific point in time.
TIME_POSTED	TIMEPST	16{ALPHANUMERIC}16	Valid Date and Time to seconds: yyyy+mo+dd+hh+mm+ss+tz	Data and time a message is posted.
TIME_QUEUED	TIMEQ	16{ALPHANUMERIC}16	Valid Date and Time to seconds: yyyy+mo+dd+hh+mm+ss+tz	Date and time that the request was queued.
TIME_STAMP	TSTAMP	16{ALPHANUMERIC}16	Valid data and Time to seconds yyyy+mo+dd+hh+mm+ss+tz	Time data is created.
TS_CLASS	TSCLASS	1{ALPHANUMERIC}20	Valid classes: • FIRM • NON–FIRM • TTC • SECONDARY • Registered}	The transmission service classes provided. Four are pre-defined, while additional classes can be used if they are registered on TSIN.COM and shown in the Provider's LIST template page. SECONDARY is defined as alternate points of receipt or delivery for POINT_TO_POINT, or as nondesignated resources for NETWORK service.

Data dictionary element name	Alias	Field format: minimum characters (type of ASCII) maximum characters	Restricted values	Definition of data element
TS_PERIOD	TSPER	1(ALPHANUMERIC)20	Valid periods ON_PEAK OFF_PEAK FULL_PERIOD (Registered) Free Form Valid types • POINT_TO_POINT • NETWORK • ATC • (Registered) Valid windows •FIXED • SLIDING • EXTENDED • (Registered)	The transmission service periods provided. Three are pre-defined, while additional periods can be used if they are registered on TSIN.COM and shown in the Provider's LIST template. The transmission service subclasses provided. These are freeform. The transmission service types provided. Three are pre-defined, while additional types can be used if they are registered on TSIN.COM and shown in the Provider's LIST template.
TS_SUBCLASS TS_TYPE	TSSUBC TSTYPE	0(ALPHANUMERIC)20 1(ALPHANUMERIC)20		
TS_WINDOW	TSWIND	1(ALPHANUMERIC)20		The transmission service windows provided. Three are pre-defined, while additional windows can be used if they are registered on TSIN.COM and shown in the Provider's LIST template.
TZ_	TZ	2(ALPHANUMERIC)2	Valid time zone and indication whether daylight savings time is to be used	Time zones: Atlantic time=AD, AS. Eastern time=ED, ES. Central time=CD, CS. Mountain time=MD, MS. Pacific time=PD, PS. Universal time=UT.
VALID_FROM_TIME	VALFTIME	16(ALPHANUMERIC)16	Valid date and time yyyy+mo+dd+hh+mm+ss+tz	Date and time after which the message is valid.
VALID_TO_TIME	VALTTIME	16(ALPHANUMERIC)16	Valid date and time yyyy+mo+dd+hh+mm+ss+tz	Date and time before which the message is valid.
VERSION	VER1(REAL NUMBER)6	Range of 1.0 to 9999.9	Specifies which version of the OASIS Standards and Communication Protocol to use when interpreting the request.	

[Note: This attachment will not appear in the Code of Federal Regulations.]

Attachment E—List of Commenters to UBP NOPR

No. and commenter name	Abbreviation
1. Allegheny Power Company.	Allegheny Power.
2. American Electric Power Company.	AEP.
3. Bonneville Power Administration.	BPA.
4. Cinergy Services	Cinergy.
5. Consumers Energy Company.	Consumers.
6. Duke Energy Corporation	Duke.
7. Edison Electric Institute ...	EEI.
8. Electric Clearinghouse, Inc..	ECI.
9. Electric Power Supply Association.	EPSA.
10. Electricity Consumers Resource Council.	ELCON.
11. Entergy Services, Inc	Entergy.
12. Florida Power Corporation.	Florida Power Corp.
13. National Rural Electric Cooperative Association.	NRECA.
14. North American Electric Reliability Council.	NERC.
15. New York State Electric & Gas Corporation.	NYSEG.
16. PJM Interconnection, LLC.	PJM.
17. Southern Company Services, Inc.	Southern.
18. Tucson Electric Power Company.	TEP.
19. Virginia Electric & Power Company.	VEPCO.

Open Access Same-Time Information System and Standards of Conduct; Docket No. RM95–9–003.

Issued February 25, 2000.

HÉBERT, Commissioner, *concurring:* I write separately to explain my departure from my colleagues on one discrete issue. Today's rulemaking on uniform business practices is fine in all other respects.

The electric utility industry will be well served by a package of uniform business practices that will provide greater certainty and consistency in the on-line negotiation of discounts for transmission service. This comprehensive package also should improve communications between transmission providers and transmission customers over OASIS sites. One need only look at the natural gas pipeline industry, which already has implemented similar measures, to understand the value of uniformity of business practices in developing efficient, competitive markets.

But uniformity, while laudable in the abstract, should not be pursued at all costs. An equally important—if not more important—objective is to promote and encourage Commission cooperation with industry-led groups established to develop standards for the electronic posting and dissemination of transmission information. As the Commission has recognized in its earlier OASIS orders, such standards are highly complex and technical; their development is best-suited for industry proposals that are representative of a broad coalition of industry participants. And the Commission has previously stated that it is willing to defer, to the extent possible, to industry-developed OASIS proposals that reflect input from diverse industry segments and broad consensus among industry participants.

Here, the Commercial Practices Working Group and the OASIS How Working Group presented the Commission with a package of both mandatory business standards and voluntary "best practices" guides. The CPWG/How Group offered a number of reasons in support of the distinction between mandatory standards and voluntary guides. Chief among them, in my opinion, is the fact that this distinction allowed the participants in the process to develop consensus.

In this order, the Commission, citing its earlier orders, continues to applaud "the invaluable ongoing efforts contributed by industry working group participants who have strived for consensus on contentious OASIS-related issues and reported on those efforts to the Commission." Slip op. at 3 n.4. I too applaud those efforts. I fail to understand, however, why the Commission so cavalierly upsets the consensus-building efforts of the CPWG/How group in rejecting the distinction between mandatory standards and voluntary guides that was so fundamental to their proposal to the Commission.

Among all of the commenters on this issue that are referenced in today's order, *see* slip op. at 8–10, only one (Duke) unequivocally favors upsetting the consensus decision to distinguish—at least for now—between mandatory standards and voluntary guides. All other commenters support either maintaining the consensus proposal indefinitely or revisiting the voluntary guides within a set period of time (say, 9 or 12 months). I agree with the latter, more representative, group of commenters. As the order indicates, slip op. at 12, the uniform business standards the Commission adopts today are likely to require revisions and enhancements as the industry gains familiarity with them. By allowing some of the standards to remain voluntary, at least for the time being, the Commission would act to promote the consensus-building process it previously has encouraged, while allowing industry participants additional time to determine whether additional uniformity is required.

Therefore, I respectfully concur.

Curt L. Hébert, Jr.
Commissioner.

[FR Doc. 00–6930 Filed 3–30–00; 8:45 am]
BILLING CODE 6717–01–U

Federal Register

Friday,
March 31, 2000

Part IV

Department of Transportation

Coast Guard

33 CFR Part 154

Marine Transportation-Related Facility Response Plans for Hazardous Substances; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 154

[USCG–1999–5705]

RIN 2115–AE87

Marine Transportation-Related Facility Response Plans for Hazardous Substances

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking; notice of public meeting.

SUMMARY: The Coast Guard proposes regulations that would require response plans for Marine Transportation-Related facilities that could reasonably be expected to cause substantial or significant and substantial harm to the environment by releasing a hazardous substance into the navigable waters of the United States. These regulations are mandated by the Oil Pollution Act of 1990 (OPA 90), which requires the President to issue regulations requiring the preparation of hazardous substance response plans. The purpose of requiring response plans is to minimize the impact of a hazardous substance discharge on human health and the environment. In addition, this notice announces a public meeting on response plans for Marine Transportation-Related facilities.

DATES: Written comments and related material must reach the Docket Management Facility on or before June 29, 2000. The meeting will be held on Wednesday, May 10, 2000, from 9 a.m. to 5 p.m. and Thursday, May 11, 2000, from 9 a.m. to 1 p.m. The meeting may close early if all business is finished. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before May 30, 2000.

ADDRESSES: The public meeting will be held in the hearing room of the Marine Safety Office, 1615 Poydras Street, New Orleans, LA 70112–1254. To make sure your written comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–1999–5705), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, call LT Michael Roldan, Office of Operating and Environmental Standards (G–MSO), Coast Guard, telephone 202–267–0106; e-mail: mroldan1@comdt.uscg.mil or LT Claudia Gelzer, Office of Response (G–MOR), Coast Guard, telephone 202–267–1983; e-mail: cgelzer@comdt.uscg.mil. These telephones are equipped to record messages on a 24-hour basis. For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1999–5705), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES;** but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We will hold a public meeting regarding this proposed rulemaking on Wednesday, May 10, 2000, from 9 a.m. to 5 p.m. and Thursday, May 11, 2000, from 9 a.m. to 1 p.m. The meeting will be held at the address under **ADDRESSES.**

Background and Purpose

The Clean Water Act (CWA) (33 U.S.C. 1321(j)(5)), as amended by section 4202(a)(5) of OPA 90 (Pub. L. 101–380), requires owners or operators of tank vessels, offshore facilities, and onshore facilities that could reasonably be expected to cause substantial harm to the environment to prepare and submit plans for responding, to the maximum extent practicable, to a worst case discharge, or a substantial threat of such a discharge, of oil or a hazardous substance into or on the navigable waters, adjoining shoreline, or the exclusive economic zone. Final rules for oil spill response plans were published ("Vessel Response Plans" (61 FR 1052; January 12, 1996); and "Response Plans for Marine Transportation-Related Facilities" (61 FR 7890; February 29, 1996)). This proposed rulemaking only addresses OPA 90 response planning requirements for hazardous substances at Marine Transportation-Related (MTR) facilities. We have also published an NPRM entitled "Tank Vessel Response Plans for Hazardous Substances" (64 FR 13734; March 22, 1999).

Consistent with provisions of OPA 90, these proposed regulations are intended to address gaps in hazardous substance spill response readiness that now exist for MTR facilities. The regulations are not intended to duplicate or supersede any other regulations that have been promulgated by the Coast Guard or other Federal agencies. Because response planning at onshore facilities is not limited to bulk hazardous substances, it appears that there exists a potential for redundancy with existing response planning regulations. The redundancy is generally eliminated through use of the National Response Team's Integrated Contingency Plan Guidance. To further ensure that duplication of regulations is avoided, the Coast Guard and the Environmental Protection Agency (EPA) have jointly reviewed the various regulations that cover MTR facilities.

In Executive Order (E.O.) 12777, the President divided the responsibility for implementing the provisions of OPA 90 regarding hazardous substance response plans among various Federal agencies. Through a series of delegations, the Coast Guard was granted the authority to implement hazardous substance response plan requirements for fixed and mobile onshore MTR facilities and for deepwater ports. The EPA was granted the authority to regulate fixed onshore non-transportation-related facilities. The Research and Special Programs Administration (RSPA) was granted the authority to regulate onshore non-marine transportation-related facilities (*i.e.,* pipelines, motor carriers, and railways). The Department of Interior's Mineral Management Service (MMS) was granted the authority to regulate offshore facilities and associated pipelines, other than deepwater ports subject to the Deepwater Ports Act of 1974.

Regulatory History

Advance Notice of Proposed Rulemaking

We published an Advance Notice of Proposed Rulemaking (ANPRM) on this project in the **Federal Register** on May 3, 1996 (61 FR 20084). The ANPRM discussed the background, statutory requirements of section 311(j) of the CWA, and possible regulatory approaches. In addition, the ANPRM raised 96 questions for public comment. We received 42 comment letters addressing the questions the respondents deemed applicable. We considered all of the comment letters in developing this NPRM.

Public Meetings

We conducted public meetings on July 30, 1996, in Washington, DC, and August 5, 1996, in Houston, TX. Comments made during these meetings were considered in the development of these proposed regulations.

We are working on a related rulemaking titled "Tank Vessel Response Plans for Hazardous Substances" (USCG–1998–4354) and have already published proposed rules in the **Federal Register.** As announced in the **Federal Register** (64 FR 31994; June 15, 1999), we held a public meeting for the related rulemaking on August 12 and 13, 1999, in Houston, Texas. Because of similarities in our proposed regulations for tank vessels and facilities, some comments made during the public meeting for tank vessels may also be applied to facilities. As we proceed towards a final rule for facility response plans, we will consider comments made at the August 1999 public meeting for tank vessels along with comments made to this rulemaking.

Response Plan Workshop

In addition to accepting written comments concerning the development of regulations for vessel response plans for hazardous substances, a workshop and meeting were held in Houston, TX, on February 26 and 27, 1997. The purpose of the workshop was to engage various stakeholders in issues that had been identified as significant in response to the ANPRM. Approximately 120 persons participated in the workshop. The workshop focused on four specific issues identified in advance by the Coast Guard. These issues were:

(1) Role and Contents of First Responders' Guides;

(2) Role and Capabilities of Decision Support Systems;

(3) Chemical Removal Technology; and

(4) Public Responder versus Private Responder Issues.

The recommendations from the workshop were considered when developing this NPRM. A summary of the proceedings of the workshop is available for review and copying in the public docket as described under **ADDRESSES.**

Advisory Committee

Under the auspices of the Chemical Transportation Advisory Committee (CTAC), the Hazardous Substances Response Plan Subcommittee was formed to develop and recommend hazardous substance response plan criteria for our consideration in developing requirements for OPA 90-mandated response plans. In addition to the formation of a Steering Committee, the Subcommittee established the following working groups to address appropriate aspects of response planning: Fate and Effects, Response Resources and Methodology, and Planning Process. Based on work done by the groups, the CTAC subcommittee delivered a report containing findings and recommendations. Input from the committee was used in the development of this NPRM.

Discussion of Proposed Rule

1. General

In response to public comments and recommendations from the Chemical Transportation Advisory Committee (CTAC), we established several principles to guide the development of this proposed rule. These principles specify that the regulations should:

a. Primarily address human health, including the health of the general public, vessel crew, facility personnel and responders;

b. Recognize and promote existing industry best practices;

c. Allow for flexibility in plan development to accommodate other existing practices that are effective;

d. Avoid prescriptive "one size fits all" requirements;

e. Not duplicate existing federal regulations;

f. Be consistent, to the utmost, with international standards;

g. Reflect the differences in planning requirements between oil and hazardous substances, specifically as they relate to recoverability and risk of exposure; and

h. Be structured so that oil response plans for MTR facilities may be amended or augmented to meet OPA requirements for hazardous substances.

A basic premise of these proposed regulations is that, for a hazardous substance discharge, the availability of information and expertise is essential to support response decision-making, while the mobilization of containment and collection equipment will be feasible only as conditions allow. For discharges of oil, some portion of the spilled product may be recoverable through containment and collection. The amount recovered is largely a function of how rapidly response equipment can be deployed. For hazardous substances, containment and collection may be viable for certain chemicals, depending on environmental conditions and safety considerations. Limitations on containment and collection are also imposed by the compatibility of equipment with the hazardous substance in question. The most effective mitigation strategy may be to control the source of the discharge, not contain and collect the hazardous substance. We prefer to foster a philosophy of "quickly assess the risk and respond appropriately," instead of "rush in to contain and collect the product." Above all, getting response information is the critical problem due to the large number and various potential behaviors of hazardous substances.

For the reasons previously described, these proposed regulations contain requirements that ensure access to certain information and equipment during a response, and the availability of appropriate technical expertise as necessary. We intend that, through an analysis of the required information by area specialists, the most appropriate response strategies will be identified and performed.

2. Integrated Contingency Plan Guidance

These proposed regulations are intended to fully accommodate the use of the National Response Team's Integrated Contingency Plan (ICP) Guidance, published in the **Federal Register** on June 5, 1996 (61 FR 28642). The purpose of the guidance is to provide a mechanism for consolidating multiple plans that facilities have prepared to comply with various regulations into one functional emergency response plan, minimizing or eliminating duplication of information. The guidance describes essential elements of a "core plan," as well as the need for annexes containing appropriate supplementary information. The following federal regulations are specifically addressed in the National Response Team guidance document:

- Minerals Management Service Facility Response Plan Regulation (30 CFR part 254).
- Department of Transportation Research and Special Programs Administration (RSPA) Pipeline Response Plan Regulation (49 CFR part 194).
- U.S. Coast Guard Response Plans For Oil Facilities Regulations (33 CFR part 154—subpart F).
- Environmental Protection Agency (EPA) Oil Pollution Prevention Regulation (40 CFR 112.7, 112.20, and 112.21).
- EPA Risk Management Programs Regulation (40 CFR part 68).
- EPA Resource Conservation and Recovery Act Contingency Planning Requirements (40 CFR parts 264, 265, and § 279.52).
- Occupational Safety and Health Administration (OSHA) Emergency Action Plan Regulation (29 CFR 1910.38(a)).
- OSHA Process Safety Standard (29 CFR 1919.119).
- OSHA Hazardous Waste Operations and Emergency Response (HAZWOPER) Regulation (29 CFR 1910.120).

If a facility uses the ICP format, then the Coast Guard would only review those portions of the ICP that are specifically required by these proposed regulations and by the Coast Guard's regulations on response plans for oil facilities.

3. Summary of Proposed Requirements

Following is a discussion of sections contained in the proposed rule.

Section 154.2015 indicates who must comply with these regulations. As provided in OPA 90, these regulations apply to owners and operators of an MTR facility that, because of its location, could reasonably be expected to cause substantial harm or significant and substantial harm to the environment by discharging hazardous substances into or on the navigable waters, adjoining shorelines, or the exclusive economic zone. For the purpose of these regulations all MTR facilities that transfer any bulk hazardous substances to vessels are designated as significant and substantial harm facilities unless otherwise reclassified by the Captain of the Port (COTP). All requests for reclassification from significant and substantial harm to substantial harm must be made in writing. Substantial harm facilities need only have plans submitted to the COTP. These proposed regulations do not apply to packaged or containerized hazardous substances; they do apply to bulk transfers of hazardous substances. Bulk is defined in § 154.2020 of the proposed regulations.

Unlike existing regulations, which apply only to facilities that transfer oil or hazardous substances to a vessel with a capacity of 250 barrels or more, these proposed regulations contain no minimum thresholds for compliance. It is assumed that MTR facilities affected by these regulations will not engage in small quantity bulk transfers. The characteristics of hazardous substances further preclude the establishment of any minimum threshold, as the discharge of even a small quantity of a hazardous substance may lead to death, injury, environmental damage, or, as a minimum, a need to notify proper authorities. For these reasons, the 250-barrel threshold is largely irrelevant for the purpose of response planning for hazardous substances.

Because OPA 90 response planning requirements amend the CWA, regulations are statutorily restricted to the hazardous substances covered by the CWA. The complete list of CWA hazardous substances can be found in 40 CFR Table 116.4.

By a Memorandum of Understanding (MOU) between the EPA and the Department of Transportation published in the **Federal Register** on December 18, 1971 (36 FR 24080), we exercise authority on the MTR portion of an oil onshore facility. Due to the relationship of oils and hazardous substances in OPA 90 and FWPCA, we are extending this MOU to include hazardous substances for jurisdictional purposes. Therefore, the list of chemicals is further reduced to those CWA hazardous substances that are transferred in bulk quantities to or from a vessel. If the CWA list of hazardous substances is modified, the modification will automatically be covered under these regulations.

Often bulk "hazardous substance" cargoes consist of mixtures and solutions of CWA listed chemicals. Under 40 CFR 116.4, a hazardous substance is defined as including any isomers and hydrates, mixtures and solutions containing any of the listed substances. If applied to response planning, this definition could potentially apply to mixtures, such as chlorinated drinking water, with extremely low concentrations of listed substances.

To establish a reasonable and recognized standard for response planning, we propose that the regulations apply to any hazardous substance, including isomers and hydrates, as well as any mixtures or solutions that contain 10% or more of a single CWA hazardous substance by weight.

This percentage is consistent with the International Maritime Organization's rules for establishing shipping requirements for mixtures (*Guidelines for the Provisional Assessment of Liquids Transported in Bulk*, MEPC/Circ.265).

Some comments made during public meetings and in response to the ANPRM encouraged us to expand the applicability of these regulations beyond the CWA hazardous substances that are carried in bulk. For the reasons

described previously, OPA 90 and the CWA, as amended, prevent us from doing this. However, a concerted effort was made to ensure that response plans would contain tools that could be used by plan-holders and responders following any hazardous substance release, to include those not covered under these regulations.

Section 154.2020 includes definitions that apply to the subpart. The definitions used in these proposed regulations mirror those used in oil spill response planning regulations. Where appropriate, some of the definitions have been added, deleted or modified to make them more applicable to hazardous substance response activities or to improve clarity.

For oil spill response, the term "adverse weather conditions" includes weather conditions that hinder containment and collection efforts, i.e., rough seas, rain and wind. In the case of hazardous substance discharges, these conditions might be advantageous in that they may aid in the rapid dispersion of the hazardous substance. In contrast, the most adverse weather conditions, or those that could maximize exposure to human health, will often be calm seas, no wind and no precipitation. Therefore, we define "adverse weather" to mean the environmental conditions that magnify the risk when a hazardous substance discharge occurs and must be considered when identifying response resources in a response plan.

The term "bulk" indicates that a hazardous substance is transferred through a pipe or hose to or from a tank vessel. The tank on the vessel may be an independent, integral, or portable tank. However, a marine portable tank that is placed onto a vessel is not considered a "bulk transfer" if the tank was filled before being put on the vessel. We have included the definitions of tanks to clarify the term "bulk." These definitions correspond to the definitions of tanks under 46 CFR 98.30–1, 98.30–2, 151.15–1 and 153.2. We intend to add these definitions to the tank vessel response plan final rule to harmonize the parallel rulemaking.

The terms, "floater" and "sinker," are used to describe hazardous substances that could, under proper conditions, be contained and collected following a discharge. Both of these classifications represent hazardous substances that do not tend to react chemically with water, vaporize, or dissolve.

The term "MTR facility" is that portion of a larger facility or complex designed to conduct transfer operations. The MTR facility extends from the first valve inside a storage tank's secondary containment to the transfer system's connection with the vessel. In the absence of a storage tank's secondary containment, the MTR facility extends from the valve or manifold adjacent to the tanks under EPA's jurisdiction to the transfer system's connection with the vessel. It is our intent to only cover the transfer system outside EPA's jurisdiction.

For both oil and hazardous substances, the CWA defines, in section 311(a)(24), "worst case discharge" for facilities to mean "the largest foreseeable discharge in adverse weather conditions." The CWA further defines, in section 311(a)(2), the term "discharge" to mean "any spilling, leaking, pumping, pouring, emitting, emptying, or dumping. * * *" Hazardous substance discharges, even in the marine environment, may result in airborne releases. Therefore, we have determined, for the purposes of these regulations, the term "discharge" includes both waterborne and airborne releases from MTR facilities. We have also defined "incident" as a discharge or substantial threat of a discharge.

As reflected in existing oil response planning regulations and in this rulemaking, the "largest foreseeable discharge" is a planning volume that constitutes the sum of the following three volumes:

(1) The volume of the entire contents of the in-line and break-out tanks.

(2) The volume of a hazardous substance discharged at the maximum flow rate for the maximum time period from discovery to shutdown.

(3) The leakage after shutdown.

Section 154.2021 discusses the methods that a plan-holder can use to identify resources that must be ensured available under the proposed regulations. These requirements are essentially unchanged from oil response plan regulations, although different types of resources must be ensured available.

Section 154.2022 contains the requirement to designate a Qualified Individual (QI) and alternate QI in the plan. As prescribed by OPA 90, a QI must have full authority to implement all response actions necessary to minimize or mitigate damage to public health, the environment, and public and private property. A QI must be able to, immediately and continuously, communicate with the appropriate federal official and response resource providers, as needed. It is not assumed that a QI for oil spill response will necessarily be an appropriate QI for hazardous substance incidents.

Several comments to the ANPRM and public meetings have indicated that under the oil response planning regulations, some QI's do nothing more than obligate funds. These comments suggest that the role of the QI does not include involvement in decisions relating to a response and therefore, the QI does not need to have any understanding of incident response. This is not our expectation of a QI.

We understand that Congress intended a "qualified individual" to have basic qualifications that demonstrate an ability to coordinate, with full authority from the plan-holder, a response to an incident. Early in a response, when the risks are often greatest, the QI may independently make decisions that could impact the overall response. For example, a plan may identify a list of contractors that provide particular response services. Without a basic knowledge of chemical response, a QI may not know which resource provider to contact or be able to characterize the nature of the incident to responders. This knowledge may not be as important for oil spills, where response options are more standardized, and the immediate threat to human health is not as prevalent. Therefore, we propose minimum training requirements for a QI.

To build on an existing standard that is widely accepted and demonstrates the appropriate skill set, the proposed regulations require QI's to meet the requirements of an incident commander under the OSHA HAZWOPER provisions in 29 CFR 1910.120(q)(6)(v). Qualifications are further described in emergency response training guidance for incident commanders contained in Appendix E to § 1910.120. The OSHA training requirement for incident commanders should be interpreted as a minimum qualification, not an absolute measure of expertise in and of itself. Plans require designating each QI in writing, and indicate that the QI is familiar with the response plan and has full authority to implement actions to contain, remove, or otherwise minimize or mitigate threats to human health, the environment, and public property. Owner or operators should ensure that the QI's training and experience are adequate to carry out designated responsibilities.

We welcome comments regarding the recognition of other standards or certifications that demonstrate a working knowledge of hazardous substance response that is adequate for the responsibilities contained in these regulations for a QI.

At the time of an incident, a responsible employee of the facility becomes the incident commander and initiates notification and mitigation

procedures, as appropriate. When that employee notifies the QI of the hazardous substance incident, the QI may assume the role of incident commander. Individuals acting as incident commander may change as an incident progresses, particularly if the response to the incident is prolonged.

Section 154.2025 describes the actions that could be taken to receive authorization to transfer bulk hazardous substances after submitting a plan to the Coast Guard, but before it has been approved. These proposed requirements mirror those currently required under oil response plans, and enable those owners or operators who are currently conducting hazardous substance operations to continue operations while the plans are being developed, submitted, and approved.

Section 154.2026 describes what owners and operators could do to obtain an interim operating authorization. This requirement is essentially the same as current requirements under oil response plans. A request generally consists of a written request to the COTP certifying that the response resources have either been contracted or identified per the requirements of these regulations.

Section 154.2030 provides plan-holders with the flexibility to modify existing oil response plans with additional information that meets hazardous substance response-specific requirements. As discussed in section two of the "Discussion of Proposed Rule" of this preamble, we also fully endorse the use of the National Response Team's ICP Guidance.

Section 154.2032 contains requirements that pertain to the format and contents of response plans. These requirements have been designed to maximize consistency with facility oil spill response plan requirements.

Section 154.2035 describes the required contents of each section of a response plan. The following is a discussion of several of the proposed requirements that would deviate substantially from existing oil spill response plan provisions.

Paragraph (a) requires facility information such as facility name, address, county, telephone and facsimile numbers, etc. This information is commonly found in other required response plans, and per the ICP Guidance, may be referenced if in another plan.

Paragraph (b) includes:

(1) All required notifications, in a prioritized fashion, that must take place following a hazardous substance incident.

(2) All procedures necessary to ensure that required notifications occur.

(3) An example of a form that contains minimal information to be included in the initial report to Federal, State, and designated local authorities.

Paragraph (c) contains requirements for developing an impact analysis for a worst case discharge. The intent of this requirement is to ensure that in the event of a worst case discharge, owners or operators will have pre-identified the area in which adverse impact to human health and the environment could occur.

Because of the many variables that influence the fate, transport and effects of a hazardous substance discharge, these analyses are not intended to be precise. Rather, they are designed to provide a macroscopic view of potential impacts. By identifying worst case discharge planning volumes, endpoints, and distances to endpoints, diagrams of impacted areas for each hazardous substance can be developed. Further, within these impact areas, owners or operators will be able to identify the magnitude of potential exposure to humans and the environment, and factor this information into the overall response.

An endpoint is a threshold defining a hazardous condition, such as an exposure level or pollutant concentration. For example, under the EPA Risk Management Plans, the endpoint for a toxic substance is its Emergency Response Planning Guideline Level 2 (ERPG–2) developed by the American Industrial Hygiene Association. Endpoints can be obtained or derived from health guideline values from a recognized authority, to include Federal or State agencies, professional associations, or scientific studies. An endpoint is used to determine the perimeter of an area adversely impacted by a hazardous substance discharge.

The EPA is currently developing Acute Exposure Guideline Levels (AEGL's) to establish airborne threshold concentrations for acutely toxic chemicals above which adverse effects are seen in humans. As developed, we may find that these are acceptable endpoints under our hazardous substance response regulations.

The requirement to develop an impact analysis was designed to align with those found in the EPA Risk Management Plan (RMP) regulations (40 CFR part 68); therefore, information completed under those regulations may be referenced or otherwise incorporated. We envision that the analysis will result in a series of diagrams illustrating the areas potentially impacted, as well as human and environmental receptors within those areas.

Paragraph (d) requires that plans contain discharge mitigation procedures. While all plans must include basic procedures such as personnel safety, use of personal protective equipment (PPE), and job responsibilities, several of the procedures will be dictated by the extent facility employees (as opposed to contracted responders) will be involved in mitigating an incident and conducting air and water monitoring.

Paragraph (e) requires that plans describe the organizational structure that will be used to manage response operations. This structure must outline the roles and responsibilities of the specific functional areas contained in the National Interagency Incident Management System (NIIMS) Incident Command System (ICS). This organizational structure is described in the U.S. Coast Guard Field Operations Guide (ICS–OS–420–1). This document can be obtained electronically via Internet URL http://www.uscg.mil/hq/g-m/nmc/response/fog/fog.htm or requested by writing or telephoning U.S. Coast Guard Headquarters (G–MOR–3), 2100 Second Street SW., Washington, DC 20593–0001, 202–267–6860.

Paragraph (e)(4)(i) contains a provision that requires an understanding of the unified command. Briefly summarized, the unified command consists of a—

- Federal On-Scene Coordinator (Federal OSC);
- State On-Scene Coordinator (SOSC);
- Local emergency coordinator; and
- Responsible party's incident commander.

They direct and oversee all public and private resources dedicated to the response. Unified command members are expected to establish joint control over an incident, and develop mutually agreeable response strategies. If the unified command cannot develop mutually agreeable response strategies, or if the Federal OSC believes that the responsible party's actions are unsatisfactory, the Federal OSC may assume overall control of the response. This action is normally used as a last resort when the responsible party is uncooperative with federal and state representatives.

This paragraph also requires that each plan describe the key roles and responsibilities of the incident commander, defined in the proposed regulations as the designated representative of the responsible party in the unified command. This individual may be the QI.

Paragraph (e)(4)(iv) requires that each plan describe how the responsible party will coordinate with local public

response organizations following a hazardous substance incident. Although OPA 90 explicitly requires the availability of private resources to respond to these releases, local responders, such as firefighters and hazardous materials response teams, will probably respond as well. This requirement recognizes the benefits gained by ensuring an effective liaison between the responsible party and these response organizations.

Paragraph (e)(5) contains requirements to have the capability to rapidly integrate the following types of expertise into the spill management team: product specialist, toxicologist, chemist or chemical engineer, and certified industrial hygienist. The need for these areas of specialty to be involved will be dictated by each discharge scenario. However, the response to an incident will be more effectively executed if this expertise is available to advise the unified command. Therefore, these specialties must be accessible.

The requirement contained in paragraph (f) of this section would call for plan-holders to develop a risk-based decision support process. Public comments suggested that the use of automated "decision support systems" or "expert systems" may be an effective tool for use in determining response strategies. This proposed requirement provides a tool to be used by responders to ensure thorough consideration of risk factors that may influence response activities. This section of the plan would include a description of processes to identify, evaluate, control and communicate risks of a hazardous substance incident. This requirement could be met through a checklist, decision tree, flow diagram, automated system, or any other method that contains the required components.

Paragraph (g) contains requirements relating to response resources that must be contracted, as well as resources that need only be identified in the plan. The likelihood of needing certain equipment in a worst case discharge is directly related to whether that equipment must be contracted. It is likely that PPE, monitoring equipment, and dispersion modeling will be necessary in each incident to assess the potential risks and develop response strategies. Unlike oil spills, where containment and collection strategies are standard, many hazardous substances, once discharged, cannot be contained or collected. The first priority for these types of incidents is to minimize the threat to human health. The proposed equipment requirements are designed to do this.

The use of removal equipment (such as in situ treatment equipment, chemical detection equipment and containment and collection equipment) is less probable and is limited to certain recoverable hazardous substances. Consequently, equipment requirements correspond to two recoverable types of hazardous substances: equipment used to recover "sinkers" and equipment used to recover "floaters." It is intended that these recoverable hazardous substances do not include those that are reactive in water, and therefore could not be contained or collected under any conditions.

For plan-holders transferring hazardous substances that can be contained and collected (*i.e.*, floaters), paragraph (g)(2) requires that a specified amount of response resources must be contracted. This rule also proposes times in which contracted equipment needs to be available on-scene; in some cases the equipment may not be deployed. These time requirements are based on the time of discovery of the incident. Decisions pertaining to response strategies and equipment deployment will be made on a case-by-case basis. The time requirement ensures that, if needed, the equipment is available for use.

Beyond this specified amount, additional removal equipment must be identified and listed in the plan, but not contracted, so it can be quickly mobilized when appropriate. The equipment need not be ensured available by contract or other approved means because the probability of its use is limited, and factors influencing a potential incident create an almost limitless number of response scenarios.

Paragraph (i) requires that plans include certain information and activities pertaining to hazardous substance response exercises. The requirements are aligned with the requirements contained in oil spill response plan regulations for facilities, except that plan-holders now conducting oil spill exercises would be allowed to replace between 25 percent and 75 percent of those exercises with hazardous substance exercises. The percentage would be determined by the plan-holder, and should reflect the relative number of oil and hazardous substance transfers conducted. We are currently examining methods in which the Preparedness for Response Exercise Program (PREP) could be modified to assist the regulated community by providing hazardous substance exercise program guidelines.

Section 154.2040 contains the required contents of each appendix to the response plan.

Paragraph (a) requires that the plan contains certain facility-specific information. This information includes physical descriptions of mooring areas, transfer locations, control stations, locations of safety equipment, locations and capacities of all piping and storage tanks, descriptions of vessels transferring at the facility, and other information related to hazardous substance transfers.

Paragraph (b) would require the inclusion of chemical-specific information in each plan. The types of information would include cautionary response considerations, health hazards, fire hazards, chemical reactivity, water pollution, shipping information, hazard classifications, and physical and chemical properties.

Hazardous-substance-specific information required in the proposed rule is essentially the same information that is contained in the Chemical Hazards Response Information System (CHRIS). CHRIS has been expanded to include more chemicals, as well as improvements in format, content, and capabilities. It has historically functioned as a widely accepted source of chemical-specific information for use by responders and response plan developers.

Because CHRIS is one of many tools that responders could use in planning for and during an actual response, and because responders and response planners need the flexibility to choose their own response tools, we do not propose to require the use of the CHRIS manual.

Unlike previous versions of CHRIS, which were available only as hard-copy manuals, the new version is available in hard-copy, electronic, and Internet formats. The revised CHRIS gives users flexibility to tailor the system to meet specific needs. The electronic version resides in a searchable database that allows for customized queries. Comments on how to further improve CHRIS are welcome and may be forwarded to the location listed under **ADDRESSES.**

Section 154.2045 includes requirements to ensure that response resources are periodically inspected and maintained, and that other activities, necessary to ensure that the equipment is in good working order, are conducted.

Section 154.2055 calls for plan-holders to conduct their own evaluations of response resource providers named in response plans. These evaluations would cover both equipment adequacy and competency of personnel resources. The plan-holder must provide written certification of

this evaluation, signed by the owner or operator.

We will consider adopting privately-sponsored programs that establish a standard that assures adequate capabilities of resource providers exist in order to meet the plan requirements. We encourage the development of such a program to reduce the burden on owners and operators of conducting individual provider evaluations.

Facility response plans are "self-certifying" in nature; the plans require two certifications as provided for by 33 CFR 154.2055 and 2065(a)(1). The scope of these certification statements includes the assurance that (1) the response resources required by the applicable subparts have been ensured available through contract or other approved means and are adequate to carry out the planned response requirements, and (2) the plan meets all requirements of the regulations. As such, please note that any knowingly fraudulent statements or misrepresentations regarding contracted resources within the plan can result in an owner or operator being criminally prosecuted under 18 U.S.C. 1001, which, upon conviction, carries criminal penalties of a fine, up to five years of imprisonment, or both.

Assessment

Due to substantial public interest, this proposed rule is a "significant regulatory action" under section 3(f) of Executive Order 12866. The Office of Management and Budget has reviewed it under that Order. It requires an assessment of potential costs and benefits under section 6(a)(3) of that Order. It is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A draft Assessment is available in the docket as indicated under **ADDRESSES.** A summary of the Assessment follows:

The Coast Guard does not anticipate that the proposed rule will result in a significant economic burden on regulated entities. These proposed regulations are expected to impact only those facilities that must comply with any new requirements. The Coast Guard will also incur costs related to plan review and approval.

Benefits are anticipated to result from an increased level of preparedness and efficiency in conducting response operations. Anticipated benefits from these regulations include averted pollution, a reduction in injuries and property damage associated with hazardous substance discharges, the avoidance of costs incurred by both public and private entities directly involved in response operations, and reduction of impacts on populations located in the vicinity of such discharges.

An estimated 225 companies own as many as 450 facilities which transfer bulk chemicals to or from vessels in U.S. waters. While all of these facilities do not transfer the specific hazardous substances covered under these regulations, the analysis uses the conservative assumption that all of these facilities are affected by the regulations.

In determining the costs and benefits of the proposed regulations, the Assessment for this proposed rule considered the following potential regulatory components:

1. The Coast Guard will take no action beyond existing regulations.

2. Regulations will require the submission of response plans containing information regarding QIs, training, exercises, hazardous substance characteristics, notification procedures, and other personnel procedures. This is identified as component A in the Assessment.

3. The regulations will encourage a "first responders guide" and require a "decision support system". This is identified as component B in the Regulatory Assessment.

First responders guides are concise instructions or handbooks that would be immediately available to personnel most likely to be at risk in the event of a hazardous substance incident, and therefore most likely to take immediate actions. The level of detail in these guides would be determined by each facility's expectation of their personnel in the event of an incident. It is intended that the guides would be as specific as possible, and not include generic guidelines that allow for broad interpretation by those expected to use them.

The decision support systems have two elements. The first element consists of tools that responders can use to analyze risks associated with a hazardous substance incident and that assist in making decisions related to identifying and evaluating response strategies. These tools could be automated or manual. The second element consists of a human-based decision support team. Team members will be specialists such as a product specialist, a toxicologist, a chemist or chemical engineer, and an industrial hygienist. A team member may serve as one or more specialists.

4. The preferred regulatory approach includes components A and B, plus requiring companies to contract for spill response equipment and conduct deployment drills. Regulations will essentially mirror requirements for facility response plans for oil now found in 33 CFR part 154 by requiring contracted containment and removal equipment to respond to hazardous substance incidents. This approach, designated as Alternative 1 in the Assessment, is reflected in this proposed rule.

Cost-Effectiveness Summary

The measures included in the selected regulatory alternative are expected to yield a net cost-effectiveness of about $3,419 per barrel of hazardous substance spillage averted. This cost-effectiveness value is expressed in 1997 dollars and is a ten-year present value (PV). The cost of the proposed rule is approximately $99.44 million, while its benefits are approximately 23,300 barrels of pollution averted, and approximately $19.77 million in avoided costs. Subtracting the avoided costs of the proposed rule from its total cost yields a net rule cost of about $79.67 million. Dividing this net cost by 23,300 barrels yields the net cost-effectiveness ratio of $3,419 per barrel unspilled. This procedure allows us to compare pollution and property damage benefits together.

The total first-year cost of these new requirements to industry is estimated to be $18.93 million. The recurring costs are estimated to be $14.56 million per year.

The estimated cost for component A only is $74.17 million. Its benefits include 14,103 barrels of avoided pollution and $11.97 million of damages averted. Its net cost-effectiveness is $4,411 per barrel unspilled.

The marginal cost for the additional measures contained in component B and not included in component A is $1.08 million. Marginal benefits include 3,777 barrels of avoided pollution and $3.21 million of damages averted. The marginal net cost effectiveness of these additional measures is $(563) per barrel unspilled. A negative cost effectiveness results from the damages averted being greater than the cost of the component.

The marginal cost for the additional measures contained in Alternative 1 not included in component B is $24.18 million. Marginal benefits include 5,420 barrels of avoided pollution and $4.59 million of damages averted. The marginal net cost effectiveness of these additional measures is $3,615 per barrel unspilled.

Non-quantified benefits could further decrease the cost per barrel of pollution averted. The most significant non-quantifiable benefit is the usefulness of response plans in many chemical discharge scenarios, not just those involving a worst case discharge of bulk Clean Water Act hazardous substances. History shows that, while only a limited number of "worst case discharges" of Clean Water Act hazardous substances have occurred in recent years, hundreds of discharges involving other chemicals, and in smaller quantities, have occurred. Response to these discharges would also have been enhanced if response plans had been developed.

A. Costs

The 10-year PV cost of the proposed rule is approximately $99.44 million. Costs associated with these proposed regulations are the development of the actual hazardous substance response plans, as well as the costs of operating in compliance with the plan. In calculating costs, the Coast Guard used the estimate that 43% of facilities covered by these regulations are currently holding oil response plans required by 33 CFR part 154 subpart F, and will modify or add to these existing plans rather than develop entirely new plans. Consequently, these facilities have been credited with partial compliance with these proposed regulations. To the extent possible, costs reflect input from a range of industry sectors that will be directly or indirectly affected by these regulations. Unless otherwise specified, "total cost" reflects the aggregate cost to the entire industry affected by these proposed regulations. The Assessment breaks down costs by components. The following is a discussion of the different components considered for MTR facilities:

Baseline

The Coast Guard will take no action beyond existing regulations. By passing OPA 90, Congress indicated a preference for a statutory solution to oil and hazardous substance response planning for MTR facilities and vessels rather than a "free market" solution. Given that OPA 90 has been enacted, "no action" is essentially not a feasible alternative for MTR facilities and vessels.

Component A

The Coast Guard will require that response plans be developed for all facilities that transfer hazardous substances covered by the regulations. The plans must be consistent with associated national and area planning requirements and must include the following:

- General site information
- Designation of a QI with the authority to activate spill response resources
- Contact lists
- Training and drills
- Submission of plans
- Periodic updates as changes occur

Component B

Component B includes cost from the measures in component A, plus the costs from the following two measures:

- "First Responders Guides" or handbooks that provide instructions for initial response.
- Decision Support System to assist in responding to a spill and assessing the risk to the surrounding areas.

Alternative 1

Alternative 1 captures what is mandated by statute. In addition to components A and B, companies will be required to contract or provide by other approved means for spill response capabilities and have equipment deployment drills. This requirement will mirror that required in the oil response plan regulations but will be applied only to those substances that display oil-like characteristics (i.e., those that float on water).

B. Benefits

Based on the preferred alternative and assuming a 10-year PV, the amount of pollution averted is estimated at 23,300 barrels, while the avoided costs are estimated to be about $19.77 million. Anticipated benefits from these regulations include averted pollution, a reduction in injuries and property damage associated with hazardous substance discharges, the avoidance of costs incurred by both public and private entities directly involved in response operations, and reduction of impacts on populations located in the vicinity of such discharges.

The degree to which response operations would be improved was estimated by interviewing 11 subject matter experts who have been directly involved with responding to hazardous substance incidents. These interviewees represent facility and vessel owners or operators, local hazardous material response teams, U.S. Coast Guard Federal OSCs and Marine Safety Offices, and the U.S. Environmental Protection Agency.

Each interviewee was asked to estimate the level of effectiveness for each regulatory component. These estimates, ranging from minimal to significant impact on the efficiency of response operations, were averaged to develop an overall "percent efficiency." This in turn reflects the percent to which costs of a response would be reduced and the amount of pollution that could be averted.

An indirect benefit applies to chemical release discharges not covered under these regulations. These regulations apply to worst case discharges and the threat of such discharges. In reality, the vast majority of these discharges occur during transfer operations and are not worst case discharges, and frequently involve chemicals not transferred in bulk or not covered by these regulations. Realizing that the benefit of the plans would be limited if they could be applied only to worst case discharges involving specific bulk hazardous substances, the Coast Guard designed these regulations with enough flexibility to be useful in guiding a wider range of chemical responses.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

These regulations are not expected to significantly impact small businesses. No comments were made in response to an ANPRM and during two public meetings, and one workshop that expressed concerns about impacts on small entities. We contacted trade associations representing small businesses in the chemical manufacturing industry and received no indications that these regulations would adversely impact small entities. In total, chapter five of the Assessment estimates that these regulations would affect a maximum of 49 small entities.

The proposed regulations provide allowances to modify existing response plans and to take advantage of participation in industry cooperatives. Additionally, the Coast Guard is updating and making CHRIS available. This update would essentially provide affected parties with the hazardous-substance-specific information required in the regulations. For any company that believes it will be significantly affected, the regulations allow the company to request further flexibility in complying with the requirements.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. If you think your business, organization, or governmental jurisdiction qualifies as a

small entity and that this rule would have a significant economic impact on it, please submit a comment to the Docket Management Facility at the address under **ADDRESSES**. In your comment, explain why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult LT Michael Roldan, Office of Operating and Environmental Standards (G–MSO), 202–267–0106; e-mail: mroldan1@comdt.uscg.mil.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, recordkeeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

Title: Marine Transportation-Related Facility Response Plans for Hazardous Substances.

Summary of the Collection of Information: The Coast Guard has prepared and will seek approval for this collection of information under a consolidated collection which applies to these proposed regulations, proposed regulations for Tank Vessel Response Plans for Hazardous Substances as well as existing regulations for Vessel and Facility Oil Response Plans. This proposal contains collection of information requirements in §§ 154.2022 (What are the requirements for qualified individuals and alternate qualified individuals and what is their authority?); 154.2025 (When may I conduct hazardous substance transfer operations?); 154.2026 (How do I obtain interim operating authorization?); 154.2030 (May I augment an existing oil response plan with hazardous substance response information?); 154.2031 (How many copies of the plan must I have, and where must they be maintained?); 154.2032 (What are the required contents of a response plan?); 154.2035 (What are the required contents for each section of the plan?); 154.2055 (How must I certify that my response resource providers are capable of meeting plan requirements?); 154.2065 (What are the procedures for plan submission and approval?); 154.2070 (What are the procedures for plan review, revision, and resubmission?); 154.2072 (When must I resubmit my plan?); 154.2080 (How do I appeal a plan deficiency or COTP determination?); and 154.2085 (What are the procedures for submitting a request for acceptance of alternative planning criteria?).

Need for Information: This information is necessary to ensure that facilities transferring hazardous substances in bulk to or from vessels in U.S. waters are adequately prepared to respond to a hazardous substance incident.

Proposed Use of Information: In part, the purpose of the OPA 90 amendments to section 1321 of the FWPCA is to derive benefits anticipated to result from these regulations because of an increased level of preparedness and efficiency in conducting response operations. Anticipated benefits include averted pollution, reduced injuries and property damage associated with hazardous substance discharges, avoided costs incurred by both public and private entities directly involved in response operations, and minimized impact of the hazardous substance discharges when they occur in U.S. waters. Without the proposed requirements for facility response plans, it is possible that some owners or operators will not maintain the necessary internal resources (effective planning, training, exercises, *etc.*) or external resources (adequate shore-based response capability) to meet the requirements of these proposed regulations. The proposed collection of information requirements help monitor and ensure, through the submission and recurring update of response plans, that facilities conducting transfer operations in U.S. waters have appropriate response plans and response resources.

Submission of facility response plans to the U.S. Coast Guard for approval, the on-sight verification of an approved plan during routine facility inspections, and the maintenance of training and exercise records are the best way to ensure compliance.

Description of the Respondents: Owners and operators of facilities transferring hazardous substances in bulk to or from vessels in U.S. waters.

Number of Respondents: 225.

Frequency of Response: Response plan submitted every 5 years; notice of reviews completed annually; updates as necessary.

Burden of Response: A one-time burden of 44,502 hours for reporting and an annual recordkeeping burden of 4,504 hours for all respondents.

Estimated Total Annual Burden: One-time reporting burden of 198 hours per respondent and an annual recordkeeping burden of 20 hours per respondent.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the date under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

We have analyzed this proposed rule under E.O. 13132 and have determined that this rule does not have implications for federalism under that Order.

However, we have consulted with interested State and local government officials and relevant representative national organizations and have received meaningful and timely input by those officials and organizations.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under E.O. 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of E.O. 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under E.O. 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We considered the environmental impact of this proposed rule and concluded that preparation of an Environmental Impact Statement is not necessary. A draft Environmental Assessment and a draft Finding of No Significant Impact are available in the docket for inspection or copying where indicated under **ADDRESSES**.

The Environmental Assessment indicated that these regulations would not be expected to result in a significant impact on the environment. The Assessment analyzed the range of environmental impacts associated with several potential regulatory strategies considered by us, with a "no action" option as a baseline. A "no action" regulatory option would have adverse environmental impacts. Other regulatory options considered would result in positive impacts by mitigating environmental damage due to increasing response efficiencies. These damage reductions would be approximately 67% less than damages from the baseline. This estimate was established through interviews with individuals having substantial experience in the area of chemical response. No aspects of these regulations would be expected to result in adverse impacts on the environment. Cost reductions associated with environmental damage mitigation include those associated with environmental restoration and natural resources damages.

List of Subjects in 33 CFR Part 154

Incorporation by reference, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 154 as follows:

PART 154—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR FACILITIES

1. The authority citation for part 154 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C), (j)(5), (j)(6) and (m)(2); sec. 2, E.O. 12777, 56 FR 54757, 49 CFR 1.46. Subpart F is also issued under 33 U.S.C. 2735.

2. Add subpart J, consisting of §§ 154.2010 through 154.2085, to read as follows:

Subpart J—Response Plans for Hazardous Substances

Sec.

154.2010 What is the purpose of this subpart?
154.2015 Who must follow this subpart?
154.2016 What is the classification of my facility?
154.2017 How can I have my facility reclassified by the COTP?
154.2018 What are the basic submission requirements for my facility's response plan?
154.2020 What definitions apply to this subpart?
154.2021 What is a "contract or other approved means"?
154.2022 What are the requirements for qualified individuals (QI) and alternate qualified individuals and what is their authority?
154.2025 When may I conduct hazardous substance transfer operations?
154.2026 How do I obtain interim operating authorization?
154.2030 May I augment an existing response plan with hazardous substance response information?
154.2031 How many copies of the plan must I have, and where must they be maintained?
154.2032 What are the required contents of a response plan?
154.2035 What are the required contents for each section of the plan?
154.2040 What appendices must I include in my plan?
154.2045 What inspections and maintenance must I conduct on response resources that I own or operate and are named in my plan?
154.2050 What are the operating criteria that apply to response resource equipment?
154.2055 How must I certify that my response resource providers are capable of meeting plan requirements?
154.2065 What are the procedures for plan submission and approval?
154.2070 What are the procedures for plan review, revision, and resubmission?
154.2072 When must I resubmit my plan?
154.2075 How will the Coast Guard notify me of deficiencies that may exist in my plan?
154.2076 When may my plan be declared invalid?
154.2080 How do I appeal a plan deficiency or COTP determination?
154.2085 What are the procedures for submitting a request for acceptance of alternative planning criteria?

§ 154.2010 What is the purpose of this subpart?

The purpose of this subpart is to establish hazardous substance response planning requirements for all marine transportation-related (MTR) facilities that transfer hazardous substances, in bulk, to or from a vessel. The development of response plans is intended to better prepare owners or operators to respond to a hazardous substance incident. The Coast Guard is not specifying the actions you need to take in case of an incident. Instead, we are specifying problem areas you must address during the planning process before an incident.

§ 154.2015 Who must follow this subpart?

You must follow this subpart if you own or operate an MTR facility that transfers, in bulk, to or from a vessel—

(a) A hazardous substance;

(b) A hazardous substance's isomer or hydrate; or

(c) A mixture or solution with 10% or more by weight of a single hazardous substance.

§ 154.2016 What is the classification of my facility?

(a) The Coast Guard classifies facilities identified in § 154.2015 as "significant and substantial harm" facilities because a discharge may cause significant and substantial harm to the environment.

(b) The Captain of the Port (COTP) may change the classification of a facility identified in § 154.2015 to or from "substantial harm". Before changing the classification of a facility

the COTP will consider, as a minimum, the following factors:

(1) The type and quantity of substance(s) handled.

(2) The spill history of the facility.

(3) The age of the facility.

(4) The public and commercial water supply intakes near the facility.

(5) The navigable waters near the facility. *Navigable waters* is defined in 33 CFR 2.05–25.

(6) The fish, wildlife, and sensitive environments.

§ 154.2017 How can I have my facility reclassified by the COTP?

The COTP will consider reclassifying your facility upon receiving a written request for reclassification. Your request must discuss those factors identified in § 154.2016(b).

§ 154.2018 What are the basic submission requirements for my facility's response plan?

(a) If you own or operate a facility identified in § 154.2017 as a significant and substantial harm facility, then you must submit your plan to the cognizant COTP for review and approval.

(b) If you own or operate a facility identified in § 154.2017 as a substantial harm facility, you must also submit your plan to the cognizant COTP, but it does not require COTP approval.

(c) Section 154.2065 provides specific procedures for plan submission and approval.

§ 154.2020 What definitions apply to this subpart?

As used in this subpart:

Adverse weather means the hydrographic, meteorological, and other environmental conditions that magnify the risk of an adverse impact to human health and the environment when a hazardous substance is discharged, and must be considered when identifying response resources in a response plan.

Bulk means any volume of a hazardous substance transferred to or from an integral tank of a vessel, and any volume of a hazardous substance transferred to or from a marine portable tank or independent tank while on board a vessel.

Captain of the Port (COTP) Zone means a zone specified in 33 CFR part 3 and, for coastal ports, the seaward extension of that zone to the outer boundary of the exclusive economic zone (EEZ).

Endpoint means the level or concentration in air, soil, or water of a hazardous substance below which human health and the environment should not be adversely impacted.

Federal On-Scene Coordinator (Federal OSC) means the Federal official pre-designated by the Coast Guard or Environmental Protection Agency (EPA) to coordinate and direct response efforts at the scene of a hazardous substance incident, as prescribed in the National Oil and Hazardous Substances Pollution Contingency Plan (National Contingency Plan (NCP)) published in 40 CFR part 300.

Fish and Wildlife and Sensitive Environments means areas that may be identified by either their legal designation or by Area Committees in applicable Area Contingency Plans (ACP) (for planning) or by members of the Federal OSC's spill response structure (during responses). These areas may include: wetlands, national and state parks, critical habitats for endangered or threatened species, wilderness and natural resource areas, marine sanctuaries and estuarine reserves, conservation areas, preserves, wildlife areas, wildlife refuges, wild and scenic rivers, areas of economic importance, recreational areas, national forests, Federal and state lands that are research areas, heritage program areas, land trust areas, and historical and archaeological sites and parks. These areas may also include unique habitats such as: Aquaculture sites and agricultural surface water intakes, bird nesting areas, critical biological resource areas, designated migratory routes, and designated seasonal habitats.

Floater means any hazardous substance whose physical and chemical properties, when discharged into water, result in a substance on the water surface that does not rapidly sink, react chemically with water, vaporize, or dissolve.

Great Lakes means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

Hazardous substance means any chemical that is listed in 40 CFR 116.4.

Hazardous substance operations means the transferring of any hazardous substance in bulk to or from a vessel in areas subject to the jurisdiction of the United States.

Incident means a discharge or a substantial threat of a discharge.

Independent tank means a cargo tank that is permanently affixed to the vessel, that is self-supporting, that incorporates no part of the vessel's hull and that is not essential to the integrity of the hull.

Inland area means either the area shoreward of the boundary lines defined in 46 CFR part 7, or in the Gulf of Mexico, the area shoreward of the lines of demarcation (COLREG lines) as defined in 33 CFR 80.740 through 80.850. The Great Lakes are not included in the inland area.

Integral tank means a cargo tank that also is part of, or is formed in part by, the vessel's hull structure so that the tank and the hull may be stressed by the same loads.

Interim operating authorization means authorization granted by the Coast Guard for a significant and substantial harm facility to conduct hazardous substance operations without having an approved plan.

Marine transportation-related facility (MTR facility) means all onshore terminal facilities including transfer hoses, loading arms, and in-line or breakout storage tanks needed for the continuous operation of a pipeline system, and other equipment used for the purpose of handling or transferring hazardous substances in bulk to or from a vessel, but excluding terminal exclusive hazardous substance storage facilities. If the storage facility has secondary containment, the MTR facility extends from the first valve inside a storage tank's secondary containment to the transfer system's connection with the vessel.

Nearshore area means either the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, or, in the Gulf of Mexico, the area extending seaward 12 miles from the lines of demarcation (COLREG lines) as defined in 33 CFR 80.740 through 80.850.

Offshore area means the area from the outer boundary of the nearshore area seaward 38 nautical miles.

Open ocean area means the area from the outer boundary of the offshore area to the seaward boundary of the exclusive economic zone.

Operating area means any of the following: Rivers and canals, Great Lakes, Inland area, Nearshore area, Offshore area, or Open ocean area.

Personal protective equipment (PPE) means equipment that meets the requirements contained in 29 CFR 1910.120.

Portable tank means—

(a) An IM 101 portable tank or an IM 102 portable tank constructed in accordance with 49 CFR 178.270 through 178.272 and approved under 49 CFR 173.32a;

(b) A marine portable tank (MPT) that was inspected and stamped by the Coast Guard on or before September 30, 1992, and that meets the applicable requirements of 46 CFR parts 64 and 98; and

(c) A portable tank authorized for liquid hazardous materials, other than liquefied gases, by the Associate Administrator for Hazardous Materials Safety (AAHMS), Research and Special Programs Administration, under an exemption issued in accordance with subpart B of 49 CFR part 107.

Response activity means any actions necessary to minimize or mitigate damage to human health, the environment, or property.

Response area means the area designated by the Federal OSC in which response activities are occurring.

Response resources means the personnel, equipment, supplies, and other capabilities necessary to perform response activities identified in the response plan.

Response resource provider means an entity that provides response personnel, equipment, supplies, or other capabilities necessary to perform response plan activities identified in a response plan.

Rivers and canals means bodies of water confined within the inland area. These include the Intracoastal Waterways and other waterways artificially created for navigation having a project depth of 12 feet or less.

Sinker means any hazardous substance whose physical and chemical properties, when discharged into water, result in a substance in the water that does not float, react chemically with water, rapidly vaporize, or rapidly dissolve.

Spill management team (SMT) means the personnel identified in a response plan who staff the organizational structure that manages response plan implementation. The term Incident Management Team may also be used.

Worst case discharge means the largest foreseeable hazardous substance discharge in adverse weather conditions.

§ 154.2021 What is a "contract or other approved means"?

A "contract or other approved means" is any of the following methods used to meet the requirements contained in § 154.2035:

(a) A written contract with a response resource provider.

(b) A written certification that the personnel, equipment, and capabilities required by your response plan are available and are under your control.

(c) An active membership in a local or regional response resource provider.

(d) A document such as a letter, memorandum, or other form of written consent that specifies the agreement you have with a response resource provider and that the provider is capable of and intends to commit to meet your plan requirements. This document must give permission for the Coast Guard to verify the identified response resources and their capabilities through tests, inspections, and exercises.

(e) You have found another way you can comply with the requirements of this section and it is approved by the Commandant (G–MOR).

§ 154.2022 What are the requirements for qualified individuals (QI) and alternate qualified individuals and what is their authority?

(a) You must designate a QI and at least one alternate QI in your response plan. You may designate a third party organization to fulfill the role of the QI and alternate QI. The organization must identify a QI and at least one alternate QI. These individuals must be available at any time.

(b) QIs and alternate QIs must—

(1) Speak fluent English;

(2) Be located in the United States;

(3) Be familiar with the implementation of your plan; and

(4) Meet the training requirements contained in 29 CFR 1910.120(q)(6)(v), to include the capabilities contained in Appendix E, 29 CFR 1910.120, in the section entitled "Suggested Training Curriculum Guidelines," in paragraph C.b.(5) entitled "Incident commander."

(c) You must designate each QI and alternate QI in writing. In your designation document you must specify that the QI—

(1) Has full authority to implement actions to contain, remove, or otherwise minimize or mitigate damage to the public health, the environment, and public property;

(2) Is able to immediately and continuously communicate with the Federal OSC and persons providing resources and equipment, as needed;

(3) Is authorized to engage in contracting and to obligate funds to carry out response activities; and

(4) Is adequately trained and experienced to carry out the responsibilities of the QI.

(d) The QI's liability is covered in 33 U.S.C. 1321(c)(4).

(e) As soon as is practicable after an incident, the QI will provide the Federal OSC with the name of the individual who will direct response activities and act as the owner or operator's incident commander. The QI may also be the incident commander.

§ 154.2025 When may I conduct hazardous substance transfer operations?

(a) If you submit a plan prior to [6 months after publication of the final rule], you may conduct hazardous substance operations pending receipt of interim operating authorization. You must conduct these operations consistent with your plan.

(b) If you are waiting for approval of a submitted plan and have received interim operating authorization from the COTP, then you may conduct hazardous substance operations for up to 2 years after the date your plan was submitted.

(c) Your facility may not continue to conduct hazardous substance operations if—

(1) You have not submitted a plan to the COTP prior to [6 months after publication of the final rule];

(2) The COTP determines that the response resources referenced in the plan do not substantially meet the requirements of this subpart;

(3) The contracts or agreements cited in your plan have lapsed or are otherwise no longer valid;

(4) You are not operating consistent with your plan;

(5) Your plan has not been resubmitted or approved within the last 5 years; or

(6) The interim operating authorization under paragraph (b) of this section has expired.

§ 154.2026 How do I obtain interim operating authorization?

To receive interim operating authorization, you must submit a written request with your plan to the COTP certifying that you have identified and ensured available, by contract or other approved means, the private response resources necessary to respond to a worst case discharge or substantial threat of such a discharge.

§ 154.2030 May I augment an existing response plan with hazardous substance response information?

Yes, you may augment an existing response plan with requirements that are specific to this subpart. The use of the National Response Team's Integrated Contingency Plan Guidance is also acceptable as long as you include items required by this subpart.

§ 154.2031 How many copies of the plan must I have, and where must they be maintained?

You must maintain a current copy of the plan at your facility and provide one to each QI and alternate QI named in the plan.

§ 154.2032 What are the required contents of a response plan?

(a) Your response plan must contain, in the same order unless supplemented by a cross-reference table, the following sections:

(1) General information.

(2) Notification procedures and list of contacts.

(3) Worst case discharge impact analysis.

(4) Facility discharge mitigation procedures.
(5) Facility response organization.
(6) Risk-based decision support process.
(7) Response resources.
(8) Training requirements.
(9) Exercise requirements.
(10) Appendices, including the following:
(i) Facility-specific information.
(ii) Hazardous substance-specific information.
(iii) Site-specific safety and health plan.
(iv) Disposal plan.
(b) Your plan must be consistent with the National Oil and Hazardous Substances Pollution Contingency Plan (NCP)(40 CFR part 300) and the Area Contingency Plan (ACP) in effect 6 months prior to the submission of your plan.

§ 154.2035 What are the required contents for each section of the plan?

(a) *General information.* This section of the plan must include—
(1) The facility's name, street address and mailing address (if different), city, county/parish, state, ZIP code, and facility telephone and facsimile numbers;
(2) Information regarding the facility's location described in a manner that would aid a reviewer and a responder in locating the facility;
(3) A table of contents or index of sufficient detail to allow any user to find a specific section of the plan; and
(4) A page showing a record of changes to record information on plan reviews, updates, or revisions.
(b) *Notification procedures and list of contacts.* (1) This section of your plan must include a prioritized list of individuals to be notified in the event of a hazardous substance incident and the notification procedures. The list must include names and 24-hour telephone or other contact numbers for all of the following:
(i) QI and alternate.
(ii) Incident commander (if other than the QI) who is capable of arriving at the incident command post, if established, or at the immediate vicinity of the incident within a reasonable time.
(iii) Facility owner or operator.
(iv) Facility response personnel.
(v) Spill management team.
(vi) Response resource providers.
(vii) Notifications required by 33 CFR part 153.
(viii) Federal, State, and designated local authorities.
(2) Your plan must include procedures to ensure that all notifications are made.
(3) Your plan must describe the primary and alternate methods of communication to be used during incidents, including notifications and communications at the facility and at remote locations within the areas covered by the response plan. You may refer to additional communications packages provided by the response resource providers. This section may reference another existing plan or document.
(4) Your plan must include a form, created by you, which contains information to be provided, if available, in any initial and follow-up notifications to Federal, State and designated local authorities. The form must include the phone number for the National Response Center (1–800–424–8802). The form must also contain a statement advising that initial notification must not be delayed pending collection of all information. Copies of the form must also be placed at the location(s) from which notifications are made. The following table represents the types of information, which must be collected on the form, if available:

Information categories	Types of information
(i) REPORTING PARTY	Name of individual or company. Address. Phone Number(s). Party reported incident to: USCG/EPA/Other Federal, State, or local agency.
(ii) SUSPECTED RESPONSIBLE PARTY	Name of company/individual/organization. Phone number(s). Type of company/individual/organization: Government (Federal/State/local), Private citizen, Private enterprise, Public utility.
(iii) INCIDENT DESCRIPTION	Address/location of incident. Cause and/or source of incident. City nearest incident. Date of incident. Facility capacity. Facility location: Latitude and longitude/mile post or river mile. Storage tank container type: Above or below ground. Tank capacity. Time of incident.
(iv) MATERIALS	Name of discharged substance. Quantity discharged. Quantity in water. Unit of measure.
(v) RESPONSE ACTION	Past, present, or future measures to correct or mitigate the incident.
(vi) IMPACT	Damage: Yes/no/unknown. Damage in dollars. Number of evacuations. Number of fatalities. Number of injuries.
(vii) ADDITIONAL INFORMATION	Any other information not previously provided.

(c) *Worst case discharge impact analysis.* This section of your plan must contain an analysis which will result in "potentially impacted area" diagrams that provide a reference tool for use in quickly assessing the impacts of each hazardous substance worst case discharge. Specific components of the analysis must include:

(1) *Planning volume calculation.* Use the following table to calculate the planning volume for each hazardous substance:

PLANNING VOLUME CALCULATION FOR A WORST CASE DISCHARGE

Item	Description
(i) TRANSFER SYSTEM TANK CAPACITY	Sum of the capacities of all in-line and break out tank(s) needed for the continuous operation of the transfer system.
(ii) PIPING DISCHARGE RATE	Calculate the discharge from the MTR facility's piping carrying a hazardous substance. The discharge from each pipe is calculated as follows: the maximum time to discover the discharge and shut down the flow from the pipe multiplied by the maximum flow rate. See note.
(iii) LEAKAGE AFTER SHUTDOWN	The total volume of the MTR facility's piping.
(iv) PLANNING VOLUME	TRANSFER SYSTEM TANK CAPACITY + PIPING DISCHARGE RATE + LEAKAGE AFTER SHUTDOWN.

Note to paragraph (c)(1) table: Based on the maximum relief valve setting or maximum system pressure when relief valves are not provided.

(2) *Identifying endpoints.* This step in the process requires the identification of endpoints for each hazardous substance. Endpoints can be obtained or derived from health guideline values from a recognized authority, including Federal or State agencies, professional associations, or scientific studies. You must assign air endpoints for each hazardous substance that produces a toxic or flammable airborne constituent. You must also assign water endpoints for each hazardous substance that produces a toxic condition or harmful pH level in the marine environment.
(3) *Determining the distance to air and water endpoints.* Endpoints are critical in determining distances, from the source of an incident, within which human health and the environment could expect to be adversely affected. In addition to the characteristics of the hazardous substances your plan addresses, distances to endpoints are affected by planning volumes and impact analysis parameters.
(i) For those substances that pose a threat by air, you must include the following parameters:
(A) Wind speed.
(B) Atmospheric stability class.
(C) Ambient temperature.
(D) Ambient humidity.
(E) Height of discharge.
(F) Surface roughness (urban, rural).
(G) Gas density.
(H) Temperature of substance during transfer.
(I) Location of incident. Assume the incident occurs at the point of transfer unless you determine that an alternate location presents greater risk. Values for parameters in paragraphs (c)(3)(i) (A) through (D) of this section can be of this section derived from historical data, while parameters in paragraphs (c)(3)(i) (E) through (H) of this section can be determined by actual conditions. Parameters listed in 40 CFR 68.22, paragraphs (b) through (g), for worst case discharge analysis, may also be used.
(ii) For those substances that pose a threat by water, you must include the following parameters:
(A) Water temperature.
(B) Tides (ebb and flood).
(C) Currents.
(D) Salinity.
(E) Wind speed.
(F) Ambient temperature.
(G) Ambient humidity.
(H) Location of incident. Assume the incident occurs at the point of transfer unless you determine that an alternate location presents greater risk. Values for parameters in paragraphs (c)(3)(ii) (A) through (G) of this section can be derived from historical data.
(iii) To determine the distance to each endpoint, you may use a methodology, model, or other technique that accounts for modeling conditions and reflects current industry standards. You may use proprietary models provided that you allow the Coast Guard access to the model and describe the model's features to local emergency planners, upon request.
(4) *Developing diagrams of impacted areas.* You must illustrate on a chart or map the area of impact, originating at the point of discharge, to each endpoint identified in paragraph (c)(2) of this section. This diagram may take into account the effects of physical or geographical obstructions.
(5) *Identifying receptors within impacted areas.* You must identify the potential public and environmental receptors within the impacted areas.
(i) Public receptors are population centers such as off-site residences, institutions (*e.g.*, schools, hospitals), industrial or commercial office buildings, drinking water intakes, parks, and recreational areas.
(ii) Environmental receptors are fish and wildlife and sensitive environments that should be identified in the Area Contingency Plan.
(iii) All of the public and environmental receptors must be indicated or otherwise referenced on the diagrams of impacted areas.
(d) *Facility discharge mitigation procedures.* This section of your plan must contain prioritized procedures necessary to protect the facility's personnel, and mitigate, control or prevent a hazardous substance incident resulting from hazardous substance operations. A copy of these procedures must be maintained at the facility's operations center or other appropriate location. Paragraphs (d)(1) through (3) of this section include the requirements for facility discharge mitigation procedures.
(1) All plans must include procedures for—
(i) Personnel safety, and if applicable, the use of personal protective equipment;
(ii) Facility personnel responsibilities by job title;
(iii) Facility personnel actions in the event of an incident involving the following scenarios:
(A) Failure of manifold, mechanical loading arm, other transfer equipment, or hoses, as appropriate.
(B) Tank overfill.
(C) Tank failure.
(D) Piping rupture.
(E) Piping leak, both under pressure and not under pressure.
(F) Explosion or fire.
(G) Equipment failure (*e.g.*, pumping system failure, relief valve failure, or other general equipment relevant to operational activities associated with internal or external facility transfers.); and
(iv) Facility personnel assigned to gather information that must be provided to response personnel.
(2) If your facility personnel will engage in incident mitigation measures or other response measures (beyond required notification), then include—
(i) The identification and description of responsibilities, and the activities that the personnel have been trained in and are qualified to conduct; and (ii) Facility responsibilities to mitigate a

hazardous substance incident. You must include procedures for use of equipment and personal protective equipment.

(3) If your facility personnel will sample or monitor air or water, then include personnel responsibilities for recordkeeping and sampling of hazardous substances involved in an incident, personal protective equipment requirements, and safety procedures during the sampling or monitoring operation.

(e) *Facility response organization.* This section of your plan must include the following:

(1) The authority and responsibilities of the QI. The authority must allow for immediate and continuous communication with the Federal OSC and notification and activation of the hazardous substance response resource provider(s).

(2) Procedures for transferring the responsibility for direction of response activities from the facility's personnel to the QI or incident commander, if other than the QI.

(3) Procedures for coordinating all response actions with the Federal OSC who oversees or directs those actions.

(4) The organizational structure to be used to manage response actions. You must include the following functional areas and list the responsibilities, duties and functional job descriptions for each:

(i) Command and control (incident commander).

(ii) Public information.

(iii) Safety.

(iv) Liaison with government agencies and other agencies as appropriate.

(v) Response operations.

(vi) Planning.

(vii) Logistics support.

(viii) Finance.

(5) You must list individuals, with the following specific technical specialties, who are available on a 24 hours-a-day basis for integration into the spill management team:

(i) Product specialist.

(ii) Toxicologist.

(iii) Chemist or chemical engineer.

(iv) Industrial hygienist.

(6) You will satisfy the requirements of paragraphs (e)(1) through (4) of this section if you design your spill management team per the U.S. Coast Guard-adopted National Inter-agency Incident Management System (NIIMS) Incident Command System (ICS).

(f) *Risk-based decision support process.* This section of your plan must outline processes which will help responders make decisions relating to the identification, evaluation, and control of risks to human health and the environment following a hazardous substance incident. These outlined processes do not need to be scenario specific, but can be generic in nature. This section of the plan may take the form of a decision tree, an automated decision support system, or any other format that meets the elements described in this paragraph. As a minimum, the process must include all of the following:

(1) *Risk identification* which describes the process which will be used to determine the extent and route of hazardous substance exposure to humans and the environment.

(2) *Risk evaluation* which describes the process which will be used to establish relative degrees of risk and prioritizing risks.

(3) *Risk control* which describes the process which will be used to determine which response methods are feasible to eliminate or reduce impacts of the hazardous substance incident on the humans and environment likely to be exposed.

(4) *Risk communication* which describes the process which will be used to communicate information resulting from paragraphs (f)(1), (2), and (3) of this section to parties internal and external to response activities.

(g) *Response resources.* This section must include the following information:

(1) You must ensure the availability by contract or other approved means of the following resources, adequate to conduct response operations for a worst case discharge, to be on-scene within the times indicated from the detection of an incident. You must list a 24-hour point of contact for each response resource provider.

(i) Air monitoring equipment per 29 CFR 1910.120—2 hours.

(ii) Water sampling equipment—2 hours.

(iii) Personal protective equipment—2 hours.

(iv) Modeling capabilities to include dispersion modeling (water and air)—2 hours.

(v) Firefighting resources—24 hours.

(A) If you determine that adequate local firefighting resources exist, then you do not have to ensure by contract this response resource.

(B) If you rely on local firefighting resources, then you must identify an individual located at the facility to coordinate with the local fire department and verify that adequately trained resources are retained for hazardous substance fires.

(C) The individual may be the QI as defined in § 154.2022 or another appropriate individual located at the facility.

(2) If you transfer a hazardous substance that is a "floater," then you must ensure available, by contract or other approved means, response resource providers that are capable of providing the following services and equipment on-scene within 1 hour of detection of the incident. You must list a 24-hour point of contact for each provider of the following response resources:

(i) 1,000 ft of containment boom, or twice the length of the largest vessel that regularly conducts hazardous substance operations at your facility, whichever is greater.

(ii) The means of deploying and anchoring the boom.

(3) If you transfer a hazardous substance that is a "floater," then you must list response resource providers that are capable of providing the following services and equipment on-scene within 12 hours of detection of the incident. You must list a 24-hour point of contact for each response resource provider.

(i) Recovery devices (including temporary storage).

(ii) 10,000 feet of inland boom for shoreline and wildlife and sensitive area protection operations. Resources, as required in approved oil response plans, will meet this requirement.

(4) If you transport a hazardous substance that is a "sinker," then you must list response resource providers that are capable of providing the following services and equipment on-scene within 12 hours of detection of the incident. You must also list a 24-hour point of contact for each response resource provider.

(i) Sorbent boom, containment boom, silt curtains, or other equipment to contain hazardous substances that may remain floating on the surface or to reduce spreading on the bottom.

(ii) Dredges, pumps, or other equipment necessary to recover hazardous substances from the bottom and shoreline.

(iii) Chemical detection devices, such as sonar or sampling equipment.

(iv) In situ treatment equipment as deemed appropriate by the plan-holder.

(5) The listed response resource providers must meet the equipment criteria contained in § 154.2050. Response resource providers must provide trained personnel to operate equipment, and staff their organization and the spill management team for the first 7 days of the response.

(h) *Training requirements.* This section of your plan must describe the training procedures and programs.

(1) This section does not apply to the individuals listed in § 154.2035(e)(5).

(2) You must identify the training required for personnel having responsibilities under the response plan.

(3) You must differentiate between training provided to vessel personnel and shore-based personnel.

(4) You must document the training of your personnel and make your training records available when requested by the Coast Guard. This applies to both initial and refresher training, as applicable. Records must be maintained for 3 years following completion of training.

(5) Nothing in this section relieves you from the responsibility to ensure that private shore-based response personnel are trained to meet the Occupational Safety and Health Administration (OSHA) standards for emergency response operations in 29 CFR 1920.120.

(i) *Exercise requirements.* This section of your plan addresses your exercise program. These exercises should help to ensure that your plan will function in an emergency. Your exercise program must detail the types of exercises, frequencies, scopes, objectives, and the scheme for exercising your entire response plan every 3 years. You must include announced and unannounced exercises in your plan.

(1) Minimum exercise requirements are:

Exercise type	Frequency	Comments
(i) Qualified individual notification	Quarterly.	
(ii) Emergency procedures	Optional.	
(iii) Spill management team tabletop	Annually	In a 3-year period, one exercise must include a worst case discharge scenario for hazardous substances. See note.
(iv) Response resource providers	Annually	See note.
(v) Owned and operated equipment	Semiannually.	
(vi) Entire response plan	Every 3 years	You must design your exercise program so that every component of the plan is exercised at least once every 3 years. You may exercise the components all at once. The components may be exercised via the required exercises or an area exercise.

Note to paragraph (i)(1) table: One of these exercises must be unannounced in the three year exercise cycle.

(2) You must participate in unannounced exercises, as directed by the COTP. The objectives of these exercises are to verify the ability and evaluate the performance of facility personnel in fulfilling their emergency-related responsibilities under the plan. These exercises will be limited to four per area per year. After participating in an unannounced exercise, you will not be required to participate in another unannounced exercise for at least 3 years from the date of the exercise.

(3) You must participate in area exercises as directed by the Federal OSC. The area exercises will involve those actions necessary to respond to the spill scenario developed by the exercise design team, of which you will be a member. After participating in an area exercise, you will not be required to participate in another area exercise for at least 6 years.

(4) You must maintain adequate exercise records as follows:

(i) Records of the QI notification exercises and the emergency procedures exercises must be maintained at the facility.

(ii) Exercise records must be available to the Coast Guard for 3 years following completion of the exercises.

(5) For holders of approved oil response plans augmented for hazardous substances, oil and hazardous substances exercises are interchangeable. However, a minimum of 25 percent to a maximum of 75 percent of all exercises must be for hazardous substances.

(6) You may satisfy the exercise response plan requirements by complying with the National Preparedness for Response Exercise Program (PREP) Guidelines. These guidelines are available from the United States Government Printing Office, North Capitol and H Sts., NW., Washington, DC 20402 or at their Web site: http://www.access.gpo.gov. You may also order a copy of the guidelines by mail or fax from TASC Dept Warehouse, 3341Q 75th Ave., Landover, MD 20785; fax: 301–386–5394. The publication number is USCG–X0191.

§ 154.2040 What appendices must I include in my plan?

You must include the following:

(a) *Facility-specific information appendix.* This appendix must contain a description of the facility's principal characteristics.

(1) There must be a physical description of the facility including a plan of the facility showing the mooring areas, transfer locations, control stations, locations of safety equipment, and the locations and capacities of all piping and storage tanks.

(2) The appendix must identify the sizes, types, and number of vessels that the facility can transfer hazardous substances to or from simultaneously.

(3) The appendix must identify or illustrate the MTR portion(s) of the facility.

(b) *Hazardous substance-specific appendix.* This section of the plan must include a separate appendix for each hazardous substance transferred to or from a vessel at your facility. The types of information, which must be included, if pertinent, may be found in the Coast Guard's Chemical Hazard Response Information System (CHRIS) manual.

(c) *Site-specific safety and health plan appendix.* This appendix must describe the safety and health plan to be implemented for any response location(s). It must provide as much information as is practicable in advance of an actual incident. This appendix may reference another existing plan required under 29 CFR 1910.120.

(d) *Disposal plan appendix.* This appendix must describe any actions to be taken or procedures to be used to ensure that all recovered hazardous substances and contaminated debris produced as a result of the incident are disposed of according to applicable Federal, State, and local requirements.

§ 154.2045 What inspections and maintenance must I conduct on response resources that I own or operate and are named in my plan?

(a) A facility owner or operator required to submit a response plan under this part must ensure that—

(1) Containment booms, skimmers, vessels, and other major equipment listed or referenced in the plan are periodically inspected and maintained in good operating condition, consistent with the manufacturers' recommendations, and best commercial practices; and

(2) All inspection and maintenance is documented and that these records are maintained for 3 years.

(b) For equipment that must be inspected and maintained under this section, the Coast Guard may—

(1) Verify that the equipment inventories exist as represented;

(2) Verify the existence of records required under this section;

(3) Verify that the records of inspection and maintenance reflect the actual condition of any equipment listed or referenced; and

(4) Inspect and require operational tests of equipment.

(c) This section does not apply to equipment ensured available from a response resource provider through written contract under § 154.2021(d).

§ 154.2050 What are the operating criteria that apply to response resource equipment?

(a) If you transfer a hazardous substance that is a "floater" or "sinker," then the containment boom and recovery devices listed under § 154.2035(g) must meet the following criteria:

(1) Table 1 must be used to identify appropriate hazardous substance recovery devices in the response plan. These criteria reflect conditions used for planning purposes to select mechanical response equipment. They are not conditions that would limit response actions or affect a response vessel's normal operations. Table 1 follows:

TABLE 1.—RESPONSE RESOURCE OPERATING CRITERIA HAZARDOUS SUBSTANCE RECOVERY DEVICES

Operating area	Significant wave height [1] (in feet)	Sea State
Rivers and Canals	≤1	1
Inland	≤3	2
Great Lakes	≤4	2–3
Nearshore, Offshore, Open Ocean	≤6	3–4

[1] Recovery devices and boom must be at least capable of operating in wave heights up to and including the values listed in Table 1 for each operating area.

BOOM

Boom	Use			
	Rivers and canals	Inland	Great lakes	Nearshore, offshore, open ocean
Significant Wave Height	≤1	≤3	≤4	≤6
Sea State	1	2	2–3	3–4
Boom Height—in (draft plus freeboard)	6–18	18–24	18–24	≥24
Reserve Buoyancy to Weight Ratio	2:1	2:1	2:1	3:1 to 4:1
Total Tensile Strength—lbs	4,500	15–20,000	15–20,000	≥20,000
Skirt Fabric Tensile Strength—lbs	200	300	300	500
Skirt Fabric Tear Strength—lbs	100	100	100	125

(2) When evaluating operability of response equipment you must consider limitations identified in the Area Contingency Plans for the COTP zone in which your facility is located, to include—

(i) Ice conditions;

(ii) Debris;

(iii) Temperature ranges; and

(iv) Weather-related visibility.

(b) The COTP may reclassify a specific body of water or location within the COTP zone. Any reclassifications will be listed in the Area Contingency Plan. Reclassifications may be to—

(1) A more stringent operating area if the prevailing wave conditions exceed the significant wave height criteria during more than 35 percent of the year; or

(2) A less stringent operating area if the prevailing wave conditions do not exceed the significant wave height criteria during more than 35 percent of the year.

(c) Response equipment must—

(1) Meet or exceed the criteria listed in Table 1 of paragraph (a)(1) of this section;

(2) Be capable of functioning in the applicable operating area;

(3) Be appropriate for the hazardous substance carried; and

(4) Be periodically inspected and maintained consistent with the manufacturer's recommendations and best commercial practices. All inspections and maintenance must be documented and these records must be maintained for 3 years.

§ 154.2055 How must I certify that my response resource providers are capable of meeting plan requirements?

(a) Your plan must include the original written certification that—

(1) You have evaluated the risks associated with the worst case discharge of a hazardous substance you carry;

(2) You have contracted or listed, as appropriate, the resources that you have determined are necessary to effectively respond to a worst case hazardous substance discharge;

(3) The response resource providers you listed in your plan have acknowledged being listed; and

(4) You have determined that the technical expertise of the response resource providers is adequate to carry out the planned response requirements.

(b) This certification must be signed by the facility's owner or operator.

§ 154.2065 What are the procedures for plan submission and approval?

(a) You must submit one copy of your plan to the COTP for initial review and, if appropriate, approval. Your plan must—

(1) Include a statement certifying that your plan meets the requirements of this subpart; and

(2) Be submitted at least 60 days before your facility intends to perform hazardous substance operations.

(b) If your plan is approved, then the Coast Guard will send you an approval letter. Your plan will be approved for up

to 5 years from the date the plan was submitted.

(c) For a facility that has been reclassified under § 154.2016 as a substantial harm MTR facility, your plan will be valid for 5 years from the date the plan was submitted.

(d) If your plan is not approved, then you will receive written notification of your plan's deficiencies per § 154.2075. You must submit a revised plan or the corrected portions within the time period specified in the Coast Guard's notice.

(e) If you have received interim operating authorization per § 154.2025, then the deficiency provisions of § 154.2075 will also apply.

§ 154.2070 What are the procedures for plan review, revision, and resubmission?

(a) You must review your plan—

(1) Annually within 1 month of the anniversary date of the Coast Guard's approval of your plan; and

(2) After an exercise or hazardous substance incident to evaluate and validate the plan's effectiveness.

(b) Your review must incorporate any revisions to the plan, including listings of fish and wildlife and sensitive environments identified in the ACP in effect 6 months prior to plan review.

(c) After review of your plan, you must submit any amendments or revisions to the COTP for information or approval, as applicable. A cover page that provides a summary of the changes and the pages affected must be included with the revisions. The revised pages must be annotated with the revision number and effective date of the revision. Any changes must be noted on the record of changes page to include what changes were made and the date they were made. You must also note the completion of the annual review on the record of changes page.

(d) You must submit revisions or amendments to your plan to the COTP and all other holders of the response plan for information or approval at least 30 days in advance, whenever there is—

(1) A change in the owner if that owner did not provide the certifying statements required by § 154.2055(a) and § 154.2065(a)(1);

(2) A change in the operator if that operator did not provide the certifying statements required by § 154.2055(a) and § 154.2065(a)(1);

(3) A significant change in your facility's configuration that affects the information in your response plan;

(4) A change in the hazardous substances your facility transfers to or from a vessel that affects the response resource providers;

(5) A change in the name or capability of your response resource providers;

(6) A significant change in your facility's emergency response procedures;

(7) A change in the QI or alternate QI; or

(8) Any other changes that affect the implementation of the plan.

(e) You must submit certification as required by § 154.2055(a) and § 154.2065(a)(1) with all revisions or amendments.

(f) The COTP may require you to revise your response plan at any time as a result of a compliance inspection if the COTP determines that the response plan does not meet the requirements of this subpart or as the result of inadequacies noted in the response plan during an actual hazardous substance incident.

(g) The COTP will review the revisions submitted by you and will give written notice to you of any objections to the proposed revisions within 30 days of the date the revisions were submitted. The revisions shall become effective not later than 30 days from their submission to the COTP unless the COTP indicates otherwise as provided in § 154.2075.

(h) You must advise the Coast Guard and all other holders of the response plan of any revisions to personnel and telephone numbers and provide a copy of these revisions. Amendments to personnel and telephone number lists included in the response plan do not require prior Coast Guard approval, except as required in paragraph (c) of this section.

§ 154.2072 When must I resubmit my plan?

(a) You must resubmit your entire plan to the COTP—

(1) When the owner changes, if that owner provided the certifying statement required by § 154.2055;

(2) When the operator changes, if that operator provided the certifying statement required by § 154.2055;

(3) Six months prior to the expiration of your existing plan's approval; or

(4) For facilities that have been reclassified under § 154.2016, as substantial harm MTR facilities, within 6 months from the date of being reclassified.

(b) A new certifying statement must be submitted in each of these cases as required by § 154.2055.

§ 154.2075 How will the Coast Guard notify me of deficiencies that may exist in my plan?

The COTP will notify you in writing of any deficiencies noted during review of your response plan, revisions, amendments, drills observed by the Coast Guard, or inspection of equipment or records maintained in connection with this subpart.

§ 154.2076 When may my plan be declared invalid?

The COTP may declare your plan invalid, prohibiting you from conducting hazardous substance operations, if you fail to address any deficiency in your plan noted by the COTP.

§ 154.2080 How do I appeal a plan deficiency or COTP determination?

(a) If you disagree with a deficiency issued by the COTP, then you may appeal the deficiency to the COTP within seven days or the time specified by the COTP to correct the deficiency, whichever is less. This time commences from the date you receive the COTP notice.

(b) If you desire to appeal the classification that your facility could reasonably be expected to cause substantial harm or significant and substantial harm to the environment, then you must submit a written request to the COTP requesting review and reclassification. You must identify those factors the COTP should consider regarding reclassification of your facility including, but not limited to, those listed in § 154.2016. After considering all relevant material presented by you and any additional material available to the COTP, the COTP will notify you of the decision on the reclassification of your facility—

(1) Within 10 days of the COTP's decision, you may appeal it by writing to the District Commander via the COTP.

(2) Within 30 days of the District Commander's decision, you may appeal it by writing to Commandant (G–MOR), U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593–0001, via the COTP and District Commander.

(c) Unless you appeal the Coast Guard's decision, you must correct the response plan deficiencies or comply with the COTP's initial determination within the period specified.

(d) When considering an appeal, the COTP, District Commander, or Commandant may stay the effective date of the decision or action being appealed pending the determination of the appeal.

§ 154.2085 What are the procedures for submitting a request for acceptance of alternative planning criteria?

If you believe that national planning criteria contained elsewhere in this part are not applicable to your facility for the areas in which you wish to operate, then you may request the Coast Guard to accept alternative planning criteria. Your request must be made 90 days before you intend to conduct hazardous substance operations under the proposed alternative, and must be forwarded to Commandant (G-MOR), U. S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001, via the COTP and District Commander.

Dated: March 20, 2000.

J.C. Card,

Vice Admiral, U.S. Coast Guard, Acting Commandant.

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Federal Register

Vol. 65, No. 63

Friday, March 31, 2000

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Federal Register/Code of Federal Regulations
General Information, indexes and other finding aids — 202–523–5227

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Presidential Documents
Executive orders and proclamations — 523–5227
The United States Government Manual — 523–5227

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FEDERAL REGISTER PAGES AND DATE, MARCH

10931–11196 1
11197–11454 2
11455–11734 3
11735–11858 6
11859–12060 7
12061–12426 8
12427–12904 9
12905–13234 10
13235–13658 13
13659–13864 14
13865–14206 15
14207–14430 16
14431–14780 17
14781–15052 20
15053–15202 21
15203–15520 22
15521–15822 23
15823–16116 24
16117–16296 27
16297–16508 28
16509–16782 29
16783–17126 30
17127–17434 31

CFR PARTS AFFECTED DURING MARCH

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Proclamations:
7276 11197
7277 11199
7278 11455
7279 11733
7280 12903
7281 15201
7282 16507
7283 16509
Executive Orders:
12170 (See Notice of March 13, 2000) 13863
12957 (Continued by Notice of March 13, 2000) 13863
12959 (See Notice of March 13, 2000) 13863
13059 (See Notice of March 13, 2000) 13863
13146 11201
13147 13233
Administrative Orders:
Memorandum of January 5, 2000 15823
Presidential Determinations:
No. 2000-15 of February 24, 2000 10931
No. 2000-16 of February 29, 2000 15797
No. 2000-17 of March 2, 2000 15821
No. 2000-18 of March 16, 2000 16297
Notices:
March 13, 2000 13863

4 CFR
27 15203
28 15203

5 CFR
Ch. LXXIII 15825
213 14431
315 14431
335 14431
531 15875
532 15521
792 13659
2640 16511
Proposed Rules:
3 14477
213 14477
315 14477

7 CFR
2 12427
75 15830
205 13512
210 12429
215 12429
220 12429
225 12429
226 12429
301 11203
457 11457
600 14781
601 14781
729 16117
761 14432
762 14432
800 16783
868 16787
915 15203
916 15205
917 15205
993 12061
955 12442
985 15832
989 15214
1301 16118
1304 16118
1305 16118
1306 16118
1307 16118
1308 16118
1421 13865
1427 13865
1464 10933
1710 ..... 14207, 14785
1721 10933
3019 14406
Proposed Rules:
6 14478
20 11483
27 10979
28 ..... 10979, 12140
29 13915
57 14652
97 13917
201 12952
205 15579
360 14926
770 17206
930 15580
1140 10981
1160 14484
1205 12146
1210 14485
1306 12141
1307 12141
1309 12141
1710 12952
1717 12952
1718 12952
1823 17206
1956 17206

8 CFR
3 ..... 15835, 15846
212 ..... 14774, 15835, 15846
214 14774
240 ..... 15835, 15846
245 ..... 15835, 15846
248 14774

274a.....15835, 15846
278A.....14774
299.....15835, 15846
340.....17127

9 CFR

74.....15216
78.....12064
93.....15216
94.....15521
130.....16122
424.....17128

Proposed Rules:

71.....11485
77.....11485, 11912, 15877
78.....11485
93.....12486
98.....12486
113.....12151
130.....12486
317.....14486
318.....14486, 14489
319.....144867, 14489
327.....14489
381.....14486
590.....11486

10 CFR

72.....11458, 12444, 14790, 16299
170.....11204
600.....14406
810.....16124
820.....15218
905.....16789

Proposed Rules:

21.....11488
50.....11488
52.....11488
54.....11488
100.....11488
170.....16250
171.....16250
430.....14128
431.....10984
960.....11755
963.....11755
Ch. XVIII.....13700

11 CFR

108.....15221

Proposed Rules:

104.....16534
111.....16534
9038.....15273

12 CFR

5.....12905
201.....16802
204.....12916
208.....14810, 15050
225.....14433, 14440, 15053, 16302, 16460
226.....17129
303.....15526
340.....14816
362.....15526
Ch. IX.....13663
563.....16302
563c.....16302
563g.....16302
701.....15224
724.....10933
745.....10933
925.....13866
950.....13866
1500.....16460
1501.....12064, 14819
1510.....15050

Proposed Rules:

3.....12320
8.....15111
208.....12320
225.....12320
325.....12320
563.....16350
563c.....16350
563g.....16350
567.....12320
614.....14491
620.....14494
709.....11250
716.....10988
741.....10988
742.....15275
1750.....13251

13 CFR

Proposed Rules:

120.....17132
124.....12955

14 CFR

25.....13666, 16128, 16305
39.....10934, 10937, 10938, 11204, 11459, 11859, 11861, 12071, 12072, 12073, 12075, 12077, 12080, 12081, 12082, 12084, 12085, 12460, 12462, 12463, 13668, 13871, 13875, 13877, 14207, 14209, 14822, 14826, 14827, 14831, 14834, 14838, 14844, 14846, 14847, 14849, 14852, 15226, 15230, 15232, 15531, 15534, 15536, 15537, 15857, 15858, 16129, 16309, 16311, 16802, 16804
71.....11369, 11461, 11866, 12630, 12917, 12918, 14344, 14855, 14856, 14857, 15859, 15860, 15861, 16130, 16131, 16808, 17133
91.....16112, 16114, 16736
95.....14442
97.....13669, 13671, 13673, 15540, 15541, 15544
121.....16736
135.....16736
255.....16808
1260.....14406

Proposed Rules:

25.....13703
35.....16542
39.....11006, 11505, 11940, 11942, 12489, 12957, 13251, 13919, 13921, 13923, 14216, 14218, 15278, 15280, 15584, 15878, 15880, 15882, 16151, 16153, 16154, 16157, 16158, 16352, 16845, 17206, 17208
71.....12153, 12957, 13704, 13705, 13707, 14497, 15282, 15586
108.....15113
109.....15113
111.....15113
129.....15113
191.....15113
255.....11009

15 CFR

14.....14406
734.....12919
736.....14858
738.....12919, 14857
740.....12919, 14857
742.....12919, 14857
743.....12919
744.....12919, 14444
748.....12919
756.....14857, 14861
762.....14858
766.....14862
770.....14857
774.....12919, 13879, 14862
902.....16766

16 CFR

305.....16132
1615.....12924
1616.....12924
1630.....12929
1631.....12929
1632.....12935

Proposed Rules:

307.....11944
312.....11947
313.....11174

17 CFR

1.....12466
4.....10939, 12938
15.....14452
16.....14452
17.....14452
200.....12469
211.....16811
240.....13235
242.....13235

Proposed Rules:

4.....11253, 12318
228.....11507, 15043
229.....11507
230.....11507, 15500, 16160
232.....11507
239.....11507, 15500
240.....11507, 16160
243.....16160
248.....12354
249.....11507, 16160
250.....11507
259.....11507
260.....11507
269.....11507
270.....11507, 15500
274.....11507, 15500

18 CFR

35.....12088
37.....17370
157.....11461, 12115, 15234
380.....15234
1301.....16513

19 CFR

4.....16513
12.....12470
18.....16513
24.....13880
111.....13880
122.....16513
123.....16513
144.....16513
146.....16513
178.....13880

Proposed Rules:

101.....16354

20 CFR

220.....14458
322.....14459
401.....16811
402.....16811
404.....11866, 16811
410.....16811
416.....11866, 16811
422.....16811

21 CFR

10.....17134
12.....17134
20.....11881
101.....11205
173.....16312
176.....13675, 16518
177.....15057, 16313, 16816, 17134
178.....15545, 16314, 16315
510.....17134
524.....13904, 16817
558.....11888
640.....13678
801.....17135
803.....17135, 17136
807.....17135, 17136
812.....17136
814.....17136
820.....17135
860.....17136
862.....16520
864.....17138
866.....17138
868.....11464
870.....11465, 17138
872.....17138
874.....17138
876.....17138
878.....17138
884.....17138
886.....17138
888.....17138
897.....17135
1005.....17136
1010.....17136
1020.....17136
1040.....17136
1301.....13235
1308.....13235

Proposed Rules:

16.....16847
101.....14219
314.....12154
900.....16847

22 CFR

22.....14211
23.....14211
41.....14768
51.....14211
139.....14764
145.....14406
226.....14406

Proposed Rules:

22.....13253

23 CFR

1340.....13679

24 CFR

5.....16294, 16692
200.....15043
266.....16294
401.....15452

402.....15452
880.....16692
881.....16692
884.....16692
886.....16692
891.....16692
905.....14422
960.....16692
966.....16692
982.....16817, 16818, 16819
983.....16818, 16819
984.....16692
985.....16692, 16823

Proposed Rules:

81.....12632
201.....17120
202.....17120
990.....11525
3280.....17110

25 CFR

290.....14461

26 CFR

1.....11205, 11467, 12471, 15547, 15548, 15862, 16143, 16316, 16317, 16318, 16319, 17148
35.....17148
40.....17149
41.....17149
47.....17149
48.....17149
145.....17149
301.....11211, 11215
601.....15862
602.....11205, 11211, 11215, 17148

Proposed Rules:

1.....11012, 11269, 15587, 16545, 16546, 16554
48.....17211
301.....11271, 11272

27 CFR

4.....11889
5.....11889
7.....11889
16.....11889
75.....15058

Proposed Rules:

00.....15115
4.....12490
70.....15115
75.....15115
90.....15115

28 CFR

70.....14406

29 CFR

95.....14406
4022.....14752, 14753
4044.....13905, 14752
4050.....14752

Proposed Rules:

1614.....11019
1910.....11948, 13254

30 CFR

202.....11467
206.....11467, 14022
250.....14469, 15862
938.....15553

Proposed Rules:

914.....11950, 12492
934.....17211
936.....17213

31 CFR

103.....13683

32 CFR

22.....14406
32.....14406
668.....13906
776.....15059
2001.....16320

33 CFR

26.....14863
95.....14223
100.....15558
110.....11892
117.....11893, 12943, 15238, 16521
127.....10943
147.....16823
140.....14226
141.....14226
142.....14226
143.....14226
144.....14226
145.....14226
146.....14226
147.....14226
154.....10943
155.....10943, 14470
159.....10943
161.....14863
164.....10943
165.....14864, 16522, 16826
167.....12944
177.....14223
183.....10943
320.....16486
326.....16486
331.....16486

Proposed Rules:

100.....11274, 13926, 14498, 17355, 16358, 16554
110.....13926, 14498, 16355, 16358, 16361, 16554
154.....17416
165.....13926, 14498, 14501, 14502, 15283, 15285, 16355, 16358, 16361
175.....11410
177.....11410
179.....11410
181.....11410
183.....11410

34 CFR

74.....14406
1100.....11894

Proposed Rules:

606.....15115
607.....15115
608.....15115

36 CFR

1.....15077
3.....15077
13.....15077
701.....11735, 11736
1194.....17346
1210.....14406
Ch. XV.....14760

Proposed Rules:

212.....11680
261.....11680
295.....11680
1190.....12493
1191.....12493
1280.....15592

37 CFR

1.....14864

Proposed Rules:

1.....17215
201.....14227, 14505

38 CFR

3.....12116, 16827
19.....14471
20.....14471
21.....12117, 13693

Proposed Rules:

3.....13254

39 CFR

111.....12946

Proposed Rules:

20.....11023
111.....13258, 16859
913.....14229
952.....13707

40 CFR

9.....15090
30.....14406
51.....11222
52.....10944, 11468, 12118, 12472, 12474, 12476, 12481, 12948, 13239, 13694, 14212, 14873, 15240, 15244, 15864, 16320
55.....15867
60.....13242
62.....16320, 16323
63.....11231, 15690
68.....13243
70.....16523
86.....11898
130.....17166
136.....14344
141.....11372
148.....14472
180.....10946, 11234, 11243, 11736, 12122, 12129, 15248, 16143, 17170
258.....16523
261.....14472
262.....12378
268.....14472
271.....14472, 16528
300.....13697, 14475
302.....14472
431.....15091
445.....14344

Proposed Rules:

51.....11024, 16364
52.....11027, 11275, 11524, 12494, 12495, 12499, 12958, 13260, 13709, 14506, 14510, 14930, 15286, 15287, 15883, 16364, 16365, 16864, 17229, 17231
62.....16365
63.....11278
70.....17231
81.....14510
141.....11372
152.....15883
156.....15884
180.....17236
228.....17240
271.....16557
438.....11755
503.....11278
755.....16094

41 CFR

302-51.....16828
302-52.....16828
302-54.....16828
302-70.....16828
302-71.....16828
302-76.....16828

42 CFR

121.....15252
405.....13911
410.....13911

Proposed Rules:

410.....13082
493.....14510

43 CFR

12.....14406
3500.....11475

45 CFR

74.....14406
400.....15410
401.....15410
612.....11740
613.....11740

46 CFR

28.....10943
30.....10943
32.....10943
34.....10943
35.....10943
38.....10943
39.....10943
54.....10943
56.....10943
58.....10943
61.....10943
63.....10943
76.....10943
77.....10943
78.....10943
91.....11904
92.....10943
95.....10943
96.....10943
97.....10943
105.....10943
108.....10943
109.....10943
110.....10943
111.....10943
114.....10943
115.....11904
119.....10943
125.....10943
132.....11904
133.....11904
134.....11904
151.....10943
153.....10943
154.....10943
160.....10943
161.....10943
162.....10943
163.....10943
164.....10943
170.....10943

174.....10943
175.....10943
182.....10943
189.....11904
190.....10943
193.....10943
195.....10943
199.....10943, 11904
515.....15252

Proposed Rules:
2.....11410
10.....11410
15.....11410
24.....11410
25.....11410
26.....11410
28.....11410
30.....11410
70.....11410
90.....11410
114.....11410
169.....11410
175.....11410
188.....11410
199.....11410

47 CFR
1.....14476
20.....15559
22.....15559
24.....14213, 15559
25.....16327
27.....12483
32.....16328
54.....12135
64.....16328
73.....11476, 11477, 11750, 13250, 16149, 16335, 16336, 17179, 17180
76.....12135, 15559
80.....15559
90.....15559
99.....15559

Proposed Rules:
Ch. I.....15599
1.....13933
2.....14230, 17246
26.....14230
27.....14230
54.....13933
61.....13933
69.....13933
73.....11537, 11538, 11539, 11540, 11541, 11955, 12155, 13260, 13261, 15600, 15885, 15886, 16160, 16366, 16558, 16559, 17248

48 CFR
Ch. 1.....16285, 16286
Ch. 2.....14380
Ch. 5.....11246
1.....16285
6.....16285
9.....16285
15.....16285
19.....16275
32.....16276
52.....16276, 16285
202.....14397
204.....14397
207.....14397
208.....14397, 14400
212.....14400
222.....14397, 14402
244.....14400
247.....14400
252.....14397, 14400, 14402
1806.....12484
1808.....12484
1811.....12484
1813.....12484
1815.....12484
1825.....12484
1835.....12484
1837.....12484
1842.....12484
1848.....12484
1851.....12484
2409.....12950

Proposed Rules:
Ch. 9.....13416
2.....16758
3.....16758
4.....16758
9.....16758
15.....16758
52.....16758

49 CFR
19.....14406
193.....10950
350.....15092
355.....15092
385.....11904
571.....11751
572.....10961, 15254, 17180
587.....17196

Proposed Rules:
Ch I.....11541
40.....13261, 15118
171.....11028
172.....11028
173.....11028
174.....11028, 16161
175.....11028
176.....11028
177.....11028, 16161
178.....11028
179.....11028
180.....11028
190.....15290
191.....15290
192.....15290
195.....15290
222.....15298, 16559
229.....15298, 16559

50 CFR
17.....14876, 14886, 14896, 16052
18.....16828
300.....14907
622.....12136, 16336
635.....15873
648.....11478, 11909, 15110, 15576, 16341, 16345, 16532, 16844
660.....11480, 16346
679.....10978, 11247, 11481, 11909, 12137, 12138, 13698, 14918, 14924, 15271, 15272, 15577, 16150, 16532, 17204, 17205

Proposed Rules:
16.....11756
17.....12155, 12181, 13262, 13935, 14513, 14931, 14935, 15887, 16869
216.....11542
223.....12959
224.....12959, 13935
300.....13284
600.....11956
622.....11028, 14518
648.....11029, 11956, 14519
679.....11756, 11973, 12500

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT MARCH 31, 2000

COMMODITY FUTURES TRADING COMMISSION
Commodity pool operators and commodity trading advisors:
Commodity pool operator definition; exclusion of certain otherwise regulated persons; published 3-1-00
Correction; published 3-8-00

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Glufosinate ammonium; published 3-31-00
Water programs:
Water quality planning and management; listing requirements; published 3-31-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Food additives:
Polymers—
Ethylene-vinyl acetate-vinyl alcohol copolymers; published 3-31-00
Medical devices:
Cigarettes and smokeless tobacco products; restriction of sale and distribution to protect children and adolescents; revocation; published 3-31-00
Information processing procedures; obtaining, submitting, executing, and filing of forms; change of address; published 3-31-00

JUSTICE DEPARTMENT
Immigration and Naturalization Service
Nationality:
Naturalization grants; revocation; published 3-31-00

NATIONAL CREDIT UNION ADMINISTRATION
Credit unions:
Trustees and custodians of pension plans; share insurance and appendix; published 3-1-00

TRANSPORTATION DEPARTMENT
Computer reservation systems, carrier-owned
Expiration date extension; published 3-30-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Eurocopter France; published 3-16-00
Rolls-Royce plc; published 3-16-00

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Anthropomorphic test devices:
Occupant crash protection—
Hybrid III test dummies; fifth percentile female adult dummy; design and performance specifications; published 3-1-00

TRANSPORTATION DEPARTMENT
Research and Special Programs Administration
Pipeline safety:
Liquefied natural gas facilities; safety standards—
Liquefied natural gas production, storage, and handling standards; incorporation by reference; published 3-1-00

TREASURY DEPARTMENT
Internal Revenue Service
Excise taxes:
Kerosene, aviation fuel, heavy trucks and trailers, and highway vehicle use taxes; taxable fuel measurement and reporting; published 3-31-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Cotton classing, testing, and standards:
Classification services to growers; 2000 user fees; comments due by 4-7-00; published 3-8-00
Cotton research and promotion order:
Imported content and cotton content of imported products; supplemental assessment calculation; comments due by 4-7-00; published 3-8-00
Meats, prepared meats, and meat products; grading, certification, and standards:
Imported beef, lamb, veal, and calf carcasses; official grading; comments due by 4-3-00; published 2-1-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Plant-related quarantine, domestic:
Asian longhomed beetle; comments due by 4-3-00; published 2-2-00

AGRICULTURE DEPARTMENT
Food and Nutrition Service
Child nutrition programs:
National school lunch and school breakfast programs; alternatives to standard application and meal counting procedures; comments due by 4-7-00; published 2-7-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
International fisheries regulations:
Antarctic marine living resources; harvesting and dealer permits, and catch documentation; comments due by 4-7-00; published 3-13-00
Marine mammals:
Incidental taking—
Eastern Tropical Pacific Ocean; tuna purse seine vessels; compliance with International Dolphin Conservation Program; comments due by 4-3-00; published 1-3-00
Naval activities; USS Winston S. Churchill shock testing; comments due by 4-3-00; published 3-3-00

DEFENSE DEPARTMENT
Vocational rehabilitation and education:
Veterans education—
Educational assistance; new criteria for approving courses; comments due by 4-3-00; published 2-2-00

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural gas companies (Natural Gas Act):
Section 7 new service applications; optional certificate and abandonment procedures; comments due by 4-3-00; published 2-16-00
Practice and procedure:
Public utilities; annual charges; comments due by 4-3-00; published 2-3-00

ENVIRONMENTAL PROTECTION AGENCY
Air programs; State authority delegations:
Arizona; comments due by 4-3-00; published 3-2-00
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-3-00; published 3-2-00
Illinois; comments due by 4-3-00; published 3-3-00
Hazardous wastes:
Land disposal restrictions—
Polychlorinated biphenyls; underlying hazardous constituent in soil; Phase IV standards deferral; comments due by 4-3-00; published 2-16-00
Superfund program:
National oil and hazardous substances contingency plan—
National priorities list update; comments due by 4-4-00; published 2-4-00
Water supply:
National primary drinking water regulations—
Public water systems; unregulated contaminant monitoring regulation; comments due by 4-3-00; published 3-2-00
Public water systems; unregulated contaminant monitoring regulation; comments due by 4-3-00; published 3-2-00

FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Montana; comments due by 4-3-00; published 2-25-00
Texas; comments due by 4-3-00; published 2-23-00
Wisconsin; comments due by 4-3-00; published 2-25-00

FEDERAL TRADE COMMISSION
Children's Online Privacy Protection Act; implementation

Safe harbor guidelines; comments due by 4-6-00; published 3-7-00

HEALTH AND HUMAN SERVICES DEPARTMENT

Medical care and examinations:
Indian health—
Indian Self-Determination Act; contracts; comments due by 4-3-00; published 2-1-00

INTERIOR DEPARTMENT

Fish and Wildlife Service

Endangered and threatened species:
Critical habitat determinations—
Coastal California gnatcatcher; comments due by 4-7-00; published 2-7-00

INTERIOR DEPARTMENT

Surface Mining Reclamation and Enforcement Office

Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 4-6-00; published 3-7-00

JUSTICE DEPARTMENT

Drug Enforcement Administration

Records, reports, and exports of listed chemicals:
Red phosphorus; comments due by 4-3-00; published 2-2-00

JUSTICE DEPARTMENT

Privacy Act; implementation; comments due by 4-3-00; published 2-23-00

MANAGEMENT AND BUDGET OFFICE

Federal Procurement Policy Office

Acquisition regulations:
Cost Accounting Standards Board—
Cost accounting standards coverage; applicability, thresholds, and waivers; comments due by 4-7-00; published 2-7-00

MERIT SYSTEMS PROTECTION BOARD

Practice and procedure:
Uniformed Services Employment and Reemployment Rights Act and Veterans Employment Opportunities Act; implementation—
Appeals; comments due by 4-4-00; published 2-4-00

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records management:
Computer tapes, rewind requirement; elimination; comments due by 4-3-00; published 2-3-00

NATIONAL CREDIT UNION ADMINISTRATION

Credit unions:
Involuntary liquidation; adjudication of creditor claims; comments due by 4-3-00; published 3-2-00

NUCLEAR REGULATORY COMMISSION

Rulemaking petitions:
Barbour, Donald A.; comments due by 4-5-00; published 1-21-00

Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list additions; comments due by 4-5-00; published 1-21-00

SECURITIES AND EXCHANGE COMMISSION

Securities:
Electronic Data Gathering, Analysis, and Retrieval System (EDGAR)—
Modernization; filing requirements; changes; comments due by 4-3-00; published 3-3-00

TRANSPORTATION DEPARTMENT

Coast Guard

Boating safety:
Personal flotation devices; Federal requirements for wearing; comments due by 4-3-00; published 10-5-99
Uninspected passenger vessels; comments due by 4-3-00; published 3-2-00

Outer Continental Shelf activities regulations; revision; comments due by 4-5-00; published 12-7-99

Practice and procedure:
Adjudicative procedures consolidation; comments due by 4-3-00; published 10-5-99

Vocational rehabilitation and education:
Veterans education—
New criteria for approving courses; comments due by 4-3-00; published 2-2-00

TRANSPORTATION DEPARTMENT

Workplace drug and alcohol testing programs:
Procedures; revision; comments due by 4-7-00; published 12-9-99

TRANSPORTATION DEPARTMENT

Federal Aviation Administration

Air carrier certification and operations:
Aviation security screening; comments due by 4-4-00; published 1-5-00

Airworthiness directives:
Boeing; comments due by 4-3-00; published 2-3-00
CFM International, S.A.; comments due by 4-3-00; published 3-3-00
Dornier; comments due by 4-6-00; published 3-7-00
Eurocopter Deutschland GMBH; comments due by 4-4-00; published 2-4-00
Lockheed; comments due by 4-3-00; published 2-16-00
McDonnell Douglas; comments due by 4-3-00; published 2-16-00

Class D and Class E airspace; comments due by 4-3-00; published 2-18-00

Class E airspace; comments due by 4-3-00; published 2-17-00

TREASURY DEPARTMENT

Alcohol, Tobacco and Firearms Bureau

Alcohol; viticultural area designations:
Lodi, CA; comments due by 4-7-00; published 2-7-00

TREASURY DEPARTMENT

Comptroller of the Currency

Electronic banking; facilitation of national banks' use of new technologies; advance notice; comments due by 4-3-00; published 2-2-00

TREASURY DEPARTMENT

Customs Service

Tariff-rate quotas:
Sugar-containing products; export certificates; comments due by 4-4-00; published 2-4-00

TREASURY DEPARTMENT

Internal Revenue Service

Excise taxes:
Deposits and tax returns; comments due by 4-6-00; published 1-7-00

Income taxes:
Credit for increasing research activities; comments due by 4-5-00; published 1-4-00

Procedure and administration:
Agriculture Department; return information disclosures for statistical purposes and related activities; cross reference; comments due by 4-3-00; published 1-4-00

TREASURY DEPARTMENT

Resolution Funding Corporation operations; comments due by 4-7-00; published 3-8-00

VETERANS AFFAIRS DEPARTMENT

Vocational rehabilitation and education:
Veterans educations—
New criteria for approving courses; comments due by 4-3-00; published 2-2-00

LIST OF PUBLIC LAWS

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S. 376/P.L. 106–180

Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

Last List March 16, 2000

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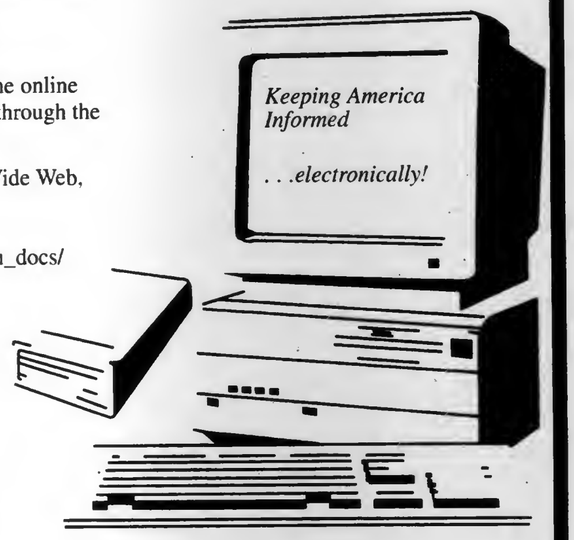
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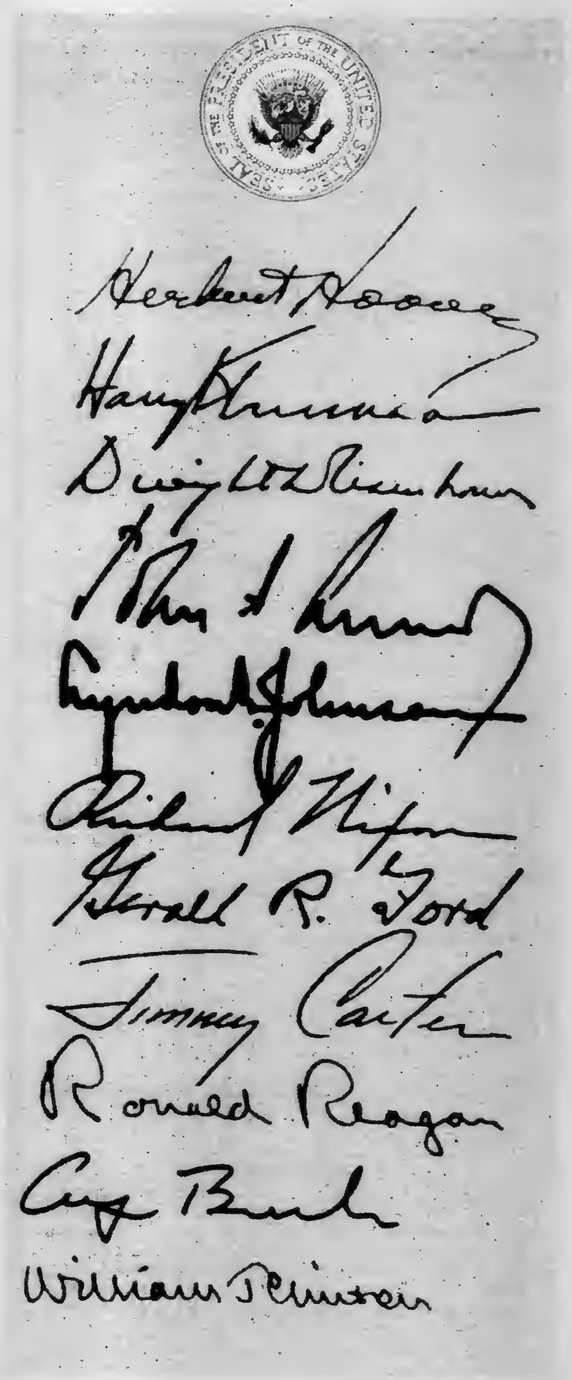
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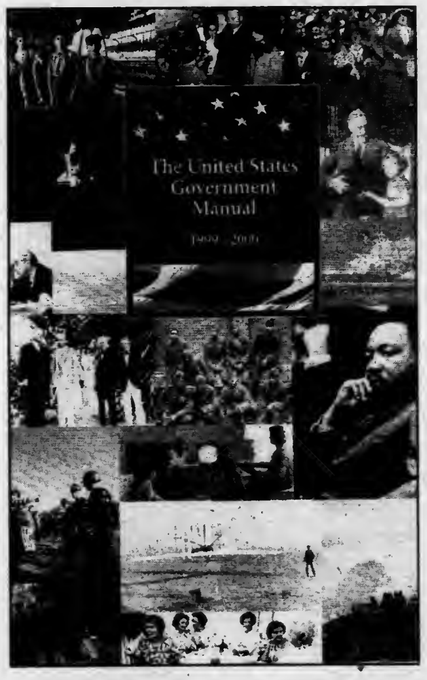
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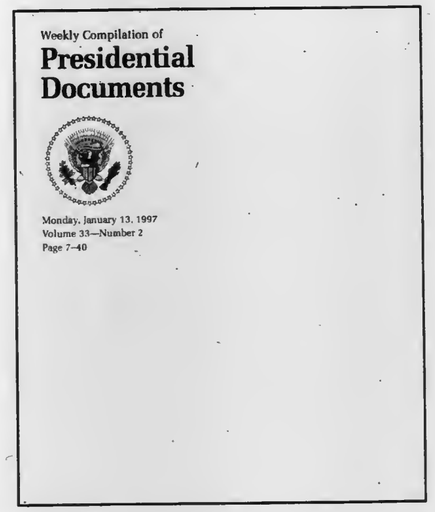
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Contents

Federal Register
Vol. 65, No. 64
Monday, April 3, 2000

Agriculture Department
See Animal and Plant Health Inspection Service
See Forest Service
NOTICES
Meetings:
Small Farms Advisory Committee, 17480

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcohol, tobacco, and other excise taxes:
Tobacco products—
Tobacco product importers qualification and technical miscellaneous amendments, 17477

Animal and Plant Health Inspection Service
PROPOSED RULES
Exportation and importation of animals and animal products:
Horses from contagious equine meritis (CEM)-affected countries—
Spain; Spanish Pure Breed horses, 17455–17458

Antitrust Division
NOTICES
National cooperative research notifications:
Cable Television Laboratories, Inc., 17534
CommerceNet Consortium, 17534
Hart Communication Foundation, 17534–17536
Photonic Batch Processing Consortium, 17536
Salutation Consortium, Inc., 17536
Silicon Integration Initiative, Inc., 17536
Southwest Research Institute, 17536–17537
Wireless Application Protocol Forum, Ltd., 17537

Army Department
RULES
Personnel:
Army Board for Correction of Military Records, 17440–17443
NOTICES
Military traffic management:
Freight traffic and guaranteed traffic rules; computation of freight charges, 17491

Coast Guard
RULES
Drawbridge operations:
Connecticut, 17443–17444

Commerce Department
See International Trade Administration
See National Oceanic and Atmospheric Administration

Committee for the Implementation of Textile Agreements
NOTICES
Cotton, wool, and man-made textiles:
Cambodia, 17488
Korea, 17488–17489

Community Development Financial Institutions Fund
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17550

Customs Service
PROPOSED RULES
Country of origin marking, 17473–17474
NOTICES
General program test:
Accompanied (international) in-transit baggage; transfer procedures, 17550–17551

Defense Department
See Army Department
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Competitive negotiated acquisitions; discussion requirements, 17582
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 17489–17491

Drug Enforcement Administration
RULES
Schedules of controlled substances:
Gamma-hydroxybutyric acid; placement into Schedule I Correction, 17440, 17552

Employment and Training Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17537–17540

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Meetings:
Environmental Management Site-Specific Advisory Board—
Kirtland Area Office (Sandia), NM, 17491–17492

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
Alaska, 17444–17445
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17498–17499
Submission for OMB review; comment request, 17499–17500
Water pollution control:
Marine discharges of vessel sewage, prohibition; petitions, etc.—
New Jersey, 17500–17501
New York, 17501–17502

Executive Office of the President
See Presidential Documents

Federal Aviation Administration
PROPOSED RULES
Airworthiness directives:
General Electric Co., 17471–17473

VOL 65 ISS 64 APR 3 2000 UMI

Federal Communications Commission
RULES
Radio services, special:
Fixed microwave services—
Multiple address systems; 928/952/956, 932/941, and 928/959 MHz band allocations, 17445–17454

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Sun River Electric Cooperative, Inc., et al., 17494–17496
Environmental statements; availability, etc.:
Fall Line Hydro Co., 17496–17497
Pacific Gas and Electric Co., 17497
Hydroelectric applications, 17497–17498
Applications, hearings, determinations, etc.:
Clear Creek Storage Co., L.L.C., 17492
Commonwealth Edison Co. et al., 17492
Niagara Mohawk Power Corp., 17493
TransAlta Energy Marketing (US), Inc., et al., 17493–17494
TransEnergie U.S. Ltd., 17494

Federal Housing Finance Board
RULES
Federal home loan bank system:
Appropriate present-value factors associated with payments made to Resolution Funding Corporation, 17435–17439
PROPOSED RULES
Federal Home Loan Bank directors; election, 17458–17471

Federal Reserve System
NOTICES
Banks and bank holding companies:
Formations, acquisitions, and mergers, 17502

Federal Trade Commission
RULES
Appliances, consumer; energy consumption and water use information in labeling and advertising:
EnergyGuide labels; prohibition against inclusion of non-required information; conditional exemption, 17554–17579
NOTICES
Prohibited trade practices:
Abbott Laboratories et al., 17502–17506
Colegio de Cirujanos Dentistas de Puerto Rico, 17506–17508

Food and Drug Administration
PROPOSED RULES
Food for human consumption:
Food labeling—
Dietary supplements containing ephedrine alkaloids; partially withdrawn, 17474–17477
NOTICES
Food for human consumption:
Food labeling—
Dietary supplements containing ephedrine alkaloids; administrative docket update; availability, 17509–17510
Dietary supplements containing ephedrine alkaloids; adverse event reports, etc., 17510–17512
Reports and guidance documents; availability, etc.:
Street drug alternatives; industry guidance, 17512

Forest Service
NOTICES
Environmental statements; availability, etc.:
White River National Forest, CO, 17480
Environmental statements; notice of intent:
Humboldt-Toiyabe National Forest, NV, et al., 17480–17481
Tongass National Forest, AK, 17481–17483
Meetings:
Klamath Provincial Advisory Committee, 17483
Oregon Coast Provincial Advisory Committee, 17483
Southwest Oregon Province Interagency Executive Committee Advisory Committee, 17483–17484

General Services Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Competitive negotiated acquisitions; discussion requirements, 17582
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 17489–17491

Health and Human Services Department
See Food and Drug Administration
See National Institutes of Health
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17508–17509
Grants and cooperative agreements; availability, etc.:
Bilingual/Bicultural Service Demonstration Program; correction, 17552

Indian Affairs Bureau
NOTICES
Meetings:
Individual Indian money accounts; historical analysis, 17521–17527
Tribal-State Compacts approval; Class III (casino) gambling:
Confederated Tribes of Umatilla Indian Reservation, OR, 17527

Interior Department
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service

International Trade Administration
NOTICES
Antidumping:
Stainless steel flanges from—
India, 17485
Antidumping and countervailing duties:
Five-year (sunset) reviews—
Initiation of reviews, 17484–17485
Cheese quota; foreign government subsidies:
Quarterly update, 17485–17486
Countervailing duties:
Welded carbon steel pipes and tubes from—
Turkey, 17486–17487

International Trade Commission
NOTICES
Import Investigations:
Pure magnesium from—
China and Russia, 17531–17533

Justice Department
See Antitrust Division
See Drug Enforcement Administration
NOTICES
Pollution control; consent judgments:
Brownwood Furniture, Inc., 17533
Migell, Bruce, et al., 17533–17534
Safe Tire Disposal Corp. et al., 17534
Texas City Refining, Inc., et al., 17534

Labor Department
See Employment and Training Administration
See Pension and Welfare Benefits Administration

Land Management Bureau
NOTICES
Closure of public lands:
Montana, 17527–17528
Realty actions; sales, leases, etc.:
Nevada, 17528

Maritime Administration
NOTICES
Coastwise trade laws; administrative waivers:
A QUIT-ALL, 17548–17549

Medicare Payment Advisory Commission
NOTICES
Meetings, 17543

National Aeronautics and Space Administration
PROPOSED RULES
Federal Acquisition Regulation (FAR):
Competitive negotiated acquisitions; discussion requirements, 17582
NOTICES
Federal Acquisition Regulation (FAR):
Agency information collection activities—
Proposed collection; comment request, 17489–17491

National Institutes of Health
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17513
Submission for OMB review; comment request, 17513–17514
Inventions, Government-owned; availability for licensing, 17514–17515
Meetings:
National Cancer Institute, 17515–17516
National Human Genome Research Institute, 17516
National Institute of General Medical Sciences, 17517–17518
National Institute of Mental Health, 17516–17517
Scientific Review Center, 17518–17521
Patent licenses; non-exclusive, exclusive, or partially exclusive:
HyperMed, Inc., 17521

National Oceanic and Atmospheric Administration
NOTICES
Meetings:
Gulf of Mexico Fishery Management Council, 17487–17488

National Park Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17528–17530
Environmental statements; availability, etc.:
Booker T. Washington National Monument, VA; general management plan, 17530
Meetings:
Jimmy Carter National Historic Site Advisory Commission, 17530
National Park System Advisory Board, 17530–17531

Nuclear Regulatory Commission
RULES
Spent nuclear fuel and high-level radioactive waste; independent storage; licensing requirements:
Approved spent fuel storage casks; list additions Correction, 17552
NOTICES
Applications, hearings, determinations, etc.:
Southern Nuclear Operating Co., Inc., 17543–17544

Pension and Welfare Benefits Administration
NOTICES
Employee benefit plans; class exemptions:
Interest free loans, 17540–17542

Presidential Documents
PROCLAMATIONS
Special observances:
Greek Independence Day: A National Day of Celebration of Greek and American Democracy (Proc. 7283)
Correction, 17552

Public Health Service
See Food and Drug Administration
See National Institutes of Health

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17544–17546
Investment Company Act of 1940:
Exemption applications—
Sun Capital Advisers Trust et al., 17546–17547
Meetings; Sunshine Act, 17547–17548
Securities:
Suspension of trading—
Enterprises Solutions, Inc., 17548

Small Business Administration
RULES
Business loans:
Loan loss reserve fund, 17439–17440

State Department
NOTICES
Art objects; importation for exhibition:
Forgotten Friezes from the Castle of Velez Blanco, 17548

Textile Agreements Implementation Committee
See Committee for the Implementation of Textile Agreements

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Maritime Administration

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Community Development Financial Institutions Fund

Veterans Affairs Department
NOTICES
Meetings:
Advisory Committee on Minority Veterans, 17548
Advisory Committee on Women Veterans, 17548–17549

Separate Parts In This Issue
Part II
Federal Communications Commission, 17554–17579
Part III
Environmental Protection Agency, 17582–17583

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.
To subscribe to the Federal Register Table of Contents LISTSERV, send an E-mail message to listserv@www.gsa.gov with the message body: SUBSCRIBE FEDREGTOC-L Your Name.

See Customs Service
NOTICES
Meetings:
Community Adjustment and Investment Program Advisory Committee, 17549–17550

Veterans Affairs Department
PROPOSED RULES
Vocational rehabilitation and education:
Veterans education—
Flight-training programs; information collection, 17477–17479
NOTICES
Meetings:
Minority Veterans Advisory Committee, 17551

Separate Parts In This Issue

Part II
Federal Trade Commission, 17553–17579

Part III
Department of Defense, General Services Administration, National Aeronautics and Space Administration, 17581–17582

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations:
7283.....17552
9 CFR
Proposed Rules:
93.....17455
10 CFR
72.....17552
12 CFR
951.....17435
997.....17435
Proposed Rules:
915.....17458
13 CFR
120.....17439
14 CFR
Proposed Rules:
39.....17471
16 CFR
305.....17554
19 CFR
Proposed Rules:
134.....17473
21 CFR
1301.....17552
1308 (2 documents).....17440, 17552
Proposed Rules:
111.....17474
27 CFR
Proposed Rules:
275.....17477
32 CFR
581.....17440
33 CFR
117.....17443
38 CFR
Proposed Rules:
21.....17477
40 CFR
52.....17444
47 CFR
22.....17445
101.....17445
48 CFR
Proposed Rules:
15.....17582

Rules and Regulations

Federal Register
Vol. 65, No. 64
Monday, April 3, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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FEDERAL HOUSING FINANCE BOARD

12 CFR Parts 951 and 997

[No. 2000–15]

RIN 3069–AA92

Determination of Appropriate Present-Value Factors Associated With Payments Made by the Federal Home Loan Banks to the Resolution Funding Corporation

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is amending its regulations to implement provisions of the Gramm-Leach-Bliley Act (Gramm-Leach-Bliley) that changed the methodology for determining the amount of the payments to be made by the Federal Home Loan Banks (Banks) to the Resolution Funding Corporation (REFCORP). These payments are used to pay a portion of the interest owed on bonds issued by REFCORP. Gramm-Leach-Bliley requires each Bank to pay 20 percent of its net earnings each year to REFCORP and requires the Finance Board to adjust the final payment date so that the value of the payments made under the new methodology equals those that were to have been made under prior law. The Finance Board proposed to discount the Banks' payments using appropriate present-value factors selected by the Finance Board in consultation with the Secretary of the Treasury. After carefully considering the comments received on its proposal, the Finance Board has decided to adopt the proposed rule with the technical changes discussed below.

EFFECTIVE DATES: This final rule is effective on April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph A. McKenzie, Deputy Chief Economist, Office of Policy, Research, and Analysis, (202) 408–2845, *mckenziej@fhfb.gov;* Austin J. Kelly, Senior Financial Economist, Office of Policy, Research, and Analysis, (202) 408–2541, *kellya@fhfb.gov;* or Thomas E. Joseph, Attorney-Advisor, (202) 408–2512, *josepht@fhfb.gov.* Staff also can be reached by regular mail at the Federal Housing Finance Board, 1777 F Street, NW, Washington, DC 20006. A telecommunication device for deaf persons (TDD) is available at (202) 408–2579.

SUPPLEMENTARY INFORMATION:

I. Background Information

As discussed more completely in the proposed rule,[1] the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), Pub. L. 101–73, 103 Stat. 183 (Aug. 9, 1989), established REFCORP to provide funds for the Resolution Trust Corporation (RTC). 12 U.S.C. 1441b. To this end, as of September 20, 1999, REFCORP had issued and had outstanding $29.9 billion in non-callable bonds with maturities ranging from October 15, 2019, to April 15, 2030. FIRREA also amended the Federal Home Loan Bank Act (Bank Act) to require the Banks to pay $300 million annually toward the interest on those bonds. To the extent amounts available from the other statutorily specified sources and the Banks' $300 million are insufficient to pay the annual interest on the REFCORP bonds, the Bank Act directs the United States Department of the Treasury (Treasury) to pay to REFCORP the additional amounts needed to pay the interest. 12 U.S.C. 1441b(f)(2)(E). Treasury has paid more than three-quarters of the annual interest owed on REFCORP bonds.

Gramm-Leach-Bliley changed the Banks' REFCORP assessment from a fixed-dollar $300 million annual payment to an annual payment of 20 percent of each Bank's net earnings. *See* 12 U.S.C. 1441b(f)(2)(C)). Gramm-Leach-Bliley also contains provisions intended to assure that the change in the method of assessing the Banks' REFCORP obligation does not increase or decrease the burden of paying interest on the REFCORP bonds either for the Banks or the Treasury. To implement these provisions of Gramm-Leach-Bliley, the Finance Board proposed a methodology for adjusting the date of the final REFCORP payment due from the Banks. The methodology entails the simulated purchase or sale each quarter of zero-coupon Treasury bonds.[2] As discussed below, after considering the comments received on its proposal, the Finance Board has decided to adopt the methodology for adjusting the final REFCORP payment due from the Banks substantially as proposed. The Finance Board is also adopting the technical amendment to § 951.1 of its regulations, 12 CFR 951.1, as proposed.[3]

II. Comparison of Proposed and Final Rules

A. Comments Received

The Finance Board received five comment letters on its proposed methodology: four from Banks, and one from a national trade association of community banks. All the comments were generally supportive of the Finance Board's proposed methodology. Each of the four Banks, however, proposed that the Finance Board use a zero-coupon bond rate other than that for Treasury instruments in performing the present value calculations. The trade

[1] The proposed rule was published in the **Federal Register** at 65 FR 5447 (Feb. 4, 2000). In that proposal the Finance Board described in some detail the analysis underlying the proposed methodology for adjusting the date of the Banks' final REFCORP payment. As the final rule largely adopts the proposed methodology, the description is not repeated here. Interested parties should read the proposed rule for more complete background information on and the analysis underlying this final rule.

[2] Under the terms of this rule, the Finance Board will obtain from the Treasury's Office of Market Finance interest rates based on estimated market yields on zero-coupon Treasury bonds whose maturities coincide with and bracket the date of the last non-defeased $75 million quarterly payment and apply these rates to Banks' excess or deficit quarterly payments as required by § 997.2 and § 997.3. Because Treasury does not issue marketable zero coupon bonds, the interest rate provided by the Treasury's Office of Market Finance will be based on the current market yield on marketable STRIPS (the principal or interest component of Treasury Separate Trading of Registered Interest and Principal of Securities program). As the yields on marketable STRIPS are quoted on a semiannually compounding basis, the Office of Market Finance will convert the semi-annual yields to their quarterly equivalents when necessary. The Treasury's Office of Market Finance will certify these rates to the Finance Board, as it does for different interest rates for a number of other agencies.

[3] The Finance Board recently renumbered and reorganized its regulations, effective February 18, 2000. *See* 65 FR 8253 (Feb. 18, 2000). Prior to the effective date of this change, § 951.1 of the Finance Board's regulations was designated as § 960.1, 12 CFR 960.1.

association requested that the Finance Board publish the results of its quarterly determination. No comments were received on the proposed technical amendment to § 951.1 of the Finance Board regulations.

Each of the four Banks suggested that the Finance Board modify the calculation set forth in § 997.2 and § 997.3 by replacing the referenced Treasury zero-coupon interest rate with a different, and higher, interest rate. The use of a higher interest rate would have the effect of reducing the present value of the Banks' total REFCORP obligation whenever the Banks' actual quarterly REFCORP payments exceed $75 million.[4] The suggested alternative interest rates were: the rate on REFCORP bonds, the Bank System's cost of funds, and an average of Treasury and agency zero-coupon bond rates. The various arguments made by the Banks to support the requested change can be generally summarized as follows: (1) The alternative rates better reflect the Banks' cost of funds or are more appropriate for discounting the Banks' obligation to pay on the REFCORP bonds; (2) use of the Treasury rate would raise the burden of the REFCORP payment if the Banks' aggregate annual REFCORP payments were to exceed $300 million, as is expected at least in the near future; and (3) the expected reduction in Treasury's issuance of government debt and the recently announced plans by Treasury to retire outstanding government debt will result in artificially low Treasury rates, relative to other rates, or will make it difficult to find accurate Treasury rates to use as the referenced zero-coupon rate for the purposes of making the calculations set forth in this rule.

The Finance Board has considered the arguments made by the commenters but continues to believe that the zero-coupon Treasury rate remains the most appropriate rate for the use in the calculation set forth in § 997.2 or § 997.3. Although the Banks have paid $300 million annually to REFCORP in the past, and are likely to pay well in excess of $400 million in 2000, the total annual interest obligation to REFCORP bondholders exceeds $2.5 billion, of which the Treasury pays in excess of $2.0 billion. Therefore, the effect of an excess or deficit quarterly payment by the Banks, as those terms are defined in § 977.1, will be to decrease, in the case of an excess quarterly payment, or increase, in the case of a deficit quarterly payment, the payment due from Treasury in the current quarter, but to have the opposite effect on payments made by Treasury in future quarters. For example, an excess quarterly payment can be viewed, in effect, as the Banks "lending" to Treasury to reduce Treasury's current expenditures for interest on REFCORP bonds, and as Treasury "paying back" the Banks by paying amounts that would have been due from the Banks for interest on the REFCORP bonds in the future. Similarly, a deficit quarterly payment can be viewed, in effect, as the Banks "borrowing" from Treasury to meet current REFCORP obligations and then "paying back" Treasury in the future by extending the term of the REFCORP obligation.[5] Given the overall effects of excess or deficit quarterly payments on Treasury's residual obligation to REFCORP, the Finance Board believes that the Treasury rates are the most appropriate discount rates to use in the calculations set forth in § 997.2 and § 997.3.

Several of the comment letters raised technical issues about the use of Treasury interest rates, indicating that certain factors in the bond market may cause the yield on a particular Treasury issue to be temporarily or "artificially" high or low. For example, "on-the-run" issues (*i.e.*, the most recently auctioned bond of a particular standard maturity such as the 10-year or 30-year Treasury bond) can trade at a rate significantly lower rate than an adjacent issue, as one Bank noted occurred recently in the 30-year Treasury market.

In response to this comment, there are three observations. First, temporary technical factors may either increase of decrease the interest rates on Treasury issues, and it is impossible to predict the net effect these technical factors will have over the life of the REFCORP obligation. Second, technical factors that have an effect on the Treasury bond market are likely to have a larger effect on non-Treasury bonds because such instruments are far less liquid and potentially subject to widening and narrowing credit spreads. Third, "on-the-run" Treasury issues, the rates of which may be artificially low, will seldom be used in the calculations set forth in this rule. For example, if the benchmark quarterly payment to be "defeased" and the maturity date for the applicable zero-coupon Treasury bond used for that purpose are exactly thirty years from the date of the Banks' actual quarterly payment date, an "on-the-run" Treasury bond would be used in the calculation. However, the interest rate used to discount the next outstanding benchmark quarterly payment would necessarily be for a Treasury bond with a term of less than 30 years, and therefore would not be an "on-the-run" issue. The next "on-the-run issue" is the 10-year Treasury bond, which will not be the appropriate benchmark to use in the calculations set forth in this rule for some time.

Several comments raise the issue about the potential refunding of the United States government debt. Specifically, commenters expressed concern that if the United States budget surpluses occur as projected, the publicly held debt would disappear around 2015, and there would be no Treasury bonds to use as a benchmark. The Finance Board does not believe that this argument requires it to use a different interest rate, as even under somewhat conservative assumptions, the Banks' REFCORP obligation would be fully satisfied between 2013 and 2015, which roughly coincides with the projected date of the elimination of the publicly held debt.

Furthermore, the use of Treasury zero-coupon rates is not unique to the REFCORP calculation. There are other programs and agencies that use these rates. If the Treasury retires publicly held debt, then the Finance Board along with these other agencies and programs would have to determine successor discount factors. Gramm-Leach-Bliley provides the Finance Board with sufficient authority to determine successor discounting factors in consultation with the Secretary of the Treasury. Thus, the Finance Board could reconsider the use of the zero-coupon Treasury rate, if and when it appears imminent that a benchmark Treasury rate would not be available, or would not provide an accurate reference interest rate for the REFCORP calculations.

More generally, the Finance Board believes that the actual effects of the planned reduction of outstanding government debt on the Treasury bond market remain uncertain at this time. In addition, although reduced issuance by Treasury of government debt may result in declining yields on Treasury bonds, these rates remain market rates and are not "artificial." The fact that some commenters believe that the rates on Treasury bonds may be declining does not alter the Finance Board's underlying economic rationale for viewing the Treasury zero-coupon bond rate as the most appropriate present value factor to use for the purposes of this rule. Moreover, Treasury staff has generally endorsed the Finance Board's use of the zero-coupon Treasury bond rate for these calculations.

The trade association requested that the Finance Board regularly publish the results of the calculation and its determination of the new termination date for the REFCORP obligation. The issue of publishing the determination made pursuant to the Gramm-Leach-Bliley requirements was not directly addressed in the proposed rule. However, the Finance Board expects that, after it has reviewed the results of the calculations made in accordance with § 997.4, it will publish its determination as to the new termination date for the Banks' REFCORP obligation in the quarterly and annual combined financial report of the Bank System.[6]

B. Consultations With Treasury

Gramm-Leach-Bliley provides that the Finance Board shall select appropriate present-value factors for making the statutorily required determination in "consultation with the Secretary of the Treasury." 12 U.S.C. 1441b(f)(2)(C)(ii). Before proposing this rule, Finance Board staff met with staff from OMB and Treasury. The Finance Board also provided a copy of the proposed rule to the Secretary of the Treasury. In response, staff from Treasury has informally suggested clarifications to certain aspects of the Finance Board's proposed rule. Primarily, Treasury staff wished to make clear its general approach to estimating the rates that it will provide to the Finance Board, *see* n. 2, *supra.*, and also asked that the final rule clarify the nature of the REFCORP's role in performing the calculations described in § 997.2 and § 997.3. On this latter point, the Finance Board reiterates that REFCORP has agreed to conduct the ministerial task of performing the calculations specifically described in § 997.2 and § 997.3, which will form the basis of the quarterly present value determination. The Finance Board will make the actual quarterly present value determination, after reviewing the results of REFCORP's calculation, as required by § 997.2 and § 997.3. *See* 65 FR at 5451.

In addition, the Finance Board has made a slight change to the wording of § 997.4(c) concerning the maintenance of the official record of the quarterly present value determinations, because the proposed wording could be read to imply that REFCORP would make the present value determination required by Gramm-Leach-Bliley. As proposed, the provisions stated that the Finance Board will keep the official records of all quarterly present value determinations "made under this part by either the REFCORP or the Finance Board." To avoid any confusion, the Finance Board has deleted the phrase "by either the REFCORP or the Finance Board" from the final version of § 997.4(c). This change does not alter the purpose of the provision, which is to make clear that the Finance Board will maintain the official record relating to the quarterly present value determinations. *See id.*

Treasury staff also commented that the maturity date for zero-coupon bonds maturing after 2006 will not always correspond to the date of the benchmark quarterly payment. In such a situation, the Finance Board expects that Treasury will provide an estimated interest rate on a zero-coupon bond with a maturity date that is closest to that of the benchmark quarterly payment. The effect of this change on the present value calculation should be minimal. The Finance Board has also added a definition of "estimated interest rate" to § 997.1 that makes clear that the estimated interest rate will be for a zero-coupon Treasury bond that matures on the date of the quarterly benchmark payment that is being defeased or, if there is no zero-coupon Treasury bond that matures on that date, then on the date that is closest to the date of the quarterly benchmark payment being defeased. In addition, after adding this definition, the repetitive descriptions of the estimated interest rate that had appeared elsewhere in the rule, especially in § 997.2 and § 997.3, are no longer necessary and have been deleted.

C. Effective Date

This rule is effective immediately on publication so that the new methodology may be applied without delay to the first REFCORP payment that will be made by the Banks under the new Gramm-Leach-Bliley provisions on April 17, 2000. Moreover, the implementation of this final rule requires no action or change in activity on the part of the Banks or other parties. The rule merely sets forth a methodology that will be used by the Finance Board in determining the new end date of the Banks' REFCORP obligation as required by Gramm-Leach-Bliley. Thus, the Finance Board finds that it has good cause to adopt this rule with an effective date that is immediate upon publication in the **Federal Register**. *See* 5 U.S.C. 553(d).

After considering all the comments that it received, and for the reasons discussed above and in the preamble to the proposed rule, the Finance Board has decided to adopt new Part 997, with the changes discussed above, and the amendment to § 951.1 of the Finance Board's regulations as proposed.

III. Regulatory Flexibility Act

The final rule applies only to the Finance Board and to the Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that this final rule will not have a significant economic effect on a substantial number of small entities.

IV. Paperwork Reduction Act

The final rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. *See* 44 U.S.C. 3501 *et seq.* Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects

12 CFR Part 951

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

12 CFR Part 997

Federal home loan banks, Resolution funding corporation.

For the reasons set forth in the preamble, the Finance Board hereby amends 12 CFR part 951 and adds 12 CFR part 997 to read as follows:

PART 951—AFFORDABLE HOUSING PROGRAM

1. The authority citation for part 951 continues to read as follows:

Authority: 12 U.S.C. 1430(j)

2. Amend § 951.1 by removing the words "pro rata share of the" from the definition of the term "net earnings of a Bank".

3. Add part 997 to subchapter L to read as follows:

[4] By contrast, use of one of the higher, alternative interest rates rather than the Treasury rate would increase the present value of Treasury's share of the interest payments paid on REFCORP bonds, if the Banks total quarterly REFCORP payments were to exceed $75 million.

[5] As discussed in the preamble to the proposed rule, the use of zero-coupon Treasury bonds is consistent with Office of Management and Budget (OMB) Circular A–11, which implements the Federal Credit Reform Act of 1990 (FCRA). Under the FCRA, cash flows stemming form direct government loans and government loan guarantees are discounted by the interest rate on zero-coupon Treasury securities with the same maturity as each quarter's projected cash flow. Thus, the approach adopted by this rule is consistent with the budgetary treatment of government loan activities. Finance Board staff have informally discussed this methodology with staff from OMB and the Treasury, and they generally supported the overall approach.

[6] On January 4, 2000, the Finance Board published a proposed rule for comment that would assign certain functions now performed by the Finance Board, including preparation of the Bank system's annual and quarterly financial reports, to the Office of Finance. See 65 FR 324,335 (Jan. 4, 2000) (proposed § 941.2(c)).

PART 997—RESOLUTION FUNDING CORPORATION OBLIGATIONS OF THE BANKS

Sec.
997.1 Definitions.
997.2 Reduction of the payment term.
997.3 Extension of the payment term.
997.4 Calculation of the quarterly present-value determination.
997.5 Termination of the obligation.

Authority: 12 U.S.C. 1422b(a) and 1441b(f).

§ 997.1 Definitions.

As used in this part:

Actual quarterly payment means the quarterly amount paid by the Banks to fulfill the Banks' obligation to pay toward interest owed on bonds issued by the REFCORP. The amount will equal the aggregate of 20 percent of the quarterly net earnings of each Bank, or such other amount assessed in accordance with the Act and the regulations adopted thereunder.

Benchmark quarterly payment means $75 million, or such amount that may result from adjustments required by calculations made in accordance with §§ 997.2 and 997.3.

Current benchmark quarterly payment means the benchmark quarterly payment that corresponds to the date of the actual quarterly payment.

Deficit quarterly payment means the amount by which the actual quarterly payment falls short of the current benchmark quarterly payment.

Estimated interest rate means the interest rate provided to the Finance Board by the Department of the Treasury on a zero-coupon Treasury bond, the maturity of which is the same as the date of the benchmark quarterly payment that is being defeased, or if no bond matures on that date, then is the date closest to the date of the payment being defeased.

Excess quarterly payment means the amount by which the actual quarterly payment exceeds the current benchmark quarterly payment.

Quarterly present-value determination means the quarterly calculation that will determine the extent to which an excess quarterly payment or deficit quarterly payment alters the term of the Banks' obligation to the REFCORP. This determination will fulfill the requirements of 12 U.S.C 1441b(f)(2)(C)(ii), *as amended by* Pub. L. 106–102, sec. 607, 113 Stat.1456–57.

REFCORP means the Resolution Funding Corporation established in 12 U.S.C. 1441b.

§ 997.2 Reduction of the payment term.

(a) *Generally.* The Finance Board shall shorten the term of the obligation of the Banks to make payments toward the interest owed on bonds issued by the REFCORP for each quarter in which there is an excess quarterly payment.

(b) *Excess quarterly payment.* Where there is an excess quarterly payment, the quarterly present-value determination shall be as follows:

(1) The future value of the excess quarterly payment shall be calculated using the estimated interest rate corresponding to the last non-defeased benchmark quarterly payment.

(2) The future value calculated in paragraph (b)(1) of this section shall be subtracted from the amount of the last non-defeased quarterly benchmark payment.

(3) If the difference resulting from the calculation in paragraph (b)(2) of this section is greater than zero, then the last non-defeased quarterly benchmark payment is reduced by the future value of the excess quarterly payment.

(4) If the difference resulting from the calculation in paragraph (b)(2) of this section is less than zero, then the last non-defeased quarterly benchmark payment shall be defeased and the payment term shall be shortened.

(5) The amount of the excess quarterly payment that has not already been applied to defeasing the payment under paragraph (b)(4) of this section shall be applied toward defeasing the last non-defeased quarterly benchmark payment using the applicable estimated interest rate.

§ 997.3 Extension of the payment term.

(a) *Generally.* The Finance Board will extend the term of the obligation of the Banks to make payments toward interest owed on bonds issued by the REFCORP for each calendar quarter in which there is a deficit quarterly payment.

(b) *Deficit quarterly payment.* Where there is a deficit quarterly payment, the quarterly present-value determination shall be as follows:

(1) The future value of the deficit quarterly payment shall be calculated using the estimated interest rate corresponding to the last non-defeased benchmark quarterly payment, or to the first quarter thereafter if the last non-defeased benchmark quarterly payment already equals $75 million.

(2) The future value calculated in paragraph (b)(1) of this section shall be added to the amount of the last non-defeased quarterly benchmark payment if that sum is $75 million or less.

(3) If the sum calculated in paragraph (b)(2) of this section exceeds $75 million, the last non-defeased quarterly benchmark payment will become $75 million, and the quarterly benchmark payment term will be extended.

(4) The extended payment will equal the future value of the amount of the deficit quarterly payment that has not already been applied to raising the quarterly benchmark payment to $75 million under paragraph (b)(3) of this section, using the estimated interest rate corresponding to the date of the extended benchmark quarterly payment.

(c) *Term beyond maturity.* The benchmark quarterly payment term may be extended beyond April 15, 2030, if such extension is necessary to ensure that the value of the aggregate amounts paid by the Banks exactly equals the present value of an annuity of $300 million per year that commences on the date on which the first obligation of the REFCORP was issued and ends on April 15, 2030.

§ 997.4 Calculation of the quarterly present-value determination.

(a) *Applicable interest rates.* The Finance Board shall obtain from the Department of the Treasury the applicable estimated interest rates and provide those rates to the REFCORP so that the REFCORP can perform the calculations required under §§ 997.2 and 997.3.

(b) *Calculation by the Finance Board.* If § 997.3 requires that the term for the Banks' actual quarterly payments extend beyond April 15, 2030 or if, for any reason, the REFCORP is unable to perform the calculations or to provide the Finance Board with the results of the calculations, the Finance Board shall make all calculations required under this part.

(c) *Records.* The Finance Board will maintain the official record of the results of all quarterly present-value determinations made under this part.

§ 997.5 Termination of the obligation.

(a) *Generally.* The Banks' obligation to the REFCORP, or to the Department of the Treasury if the term of that obligation extends beyond April 15, 2030, will terminate when the aggregate actual quarterly payments made by the Banks exactly equal the present value of an annuity that commences on the date on which the first obligation of the REFCORP was issued and ends on April 15, 2030.

(b) *Date of the final payment.* The aggregate actual quarterly payments made by the Banks exactly equal the present value of the annuity described in paragraph (a) of this section when the value of any remaining benchmark quarterly payment(s), after the benchmark quarterly payments have been adjusted as required by §§ 997.2 and 997.3, exactly equals the actual quarterly payment.

Dated: March 22, 2000.
By the Board of Directors of the Federal Housing Finance Board:
Bruce A. Morrison,
Chairman.

[FR Doc. 00–8116 Filed 3–31–00; 8:45 am]
BILLING CODE 6725–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 120

Business Loan Program

AGENCY: Small Business Administration (SBA).

ACTION: Final rule.

SUMMARY: This final rule would implement Public Law 106–22, enacted on April 27, 1999, which establishes new rules for the loan loss reserve fund which an intermediary must maintain to participate in SBA's microloan program.

DATE: This rule is effective on April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Jody Raskind, 202–205–6497.

SUPPLEMENTARY INFORMATION: Public Law 106–22, enacted on April 27, 1999, amended section 7(m) of the Small Business Act (15 U.S.C. 636(7)(m)) in order to change the requirements for the loan loss reserve fund (LLRF) which each intermediary in the SBA's microloan program must maintain. The LLRF is an interest-bearing deposit account at a bank. An intermediary must establish an LLRF to pay any shortage in its day-to-day revolving account caused by delinquencies or losses on microloans it makes to qualified small business borrowers. An intermediary must maintain the LLRF until it repays all obligations it owes to the SBA.

On July 26, 1999, SBA published a proposed rule in the **Federal Register** (64 FR 40310). Since SBA received no comments, it is publishing in final the rule as proposed and making it effective on the date of publication in the **Federal Register.**

Under the present rule, an intermediary, during its first year in the microloan program, must maintain its LLRF at a level equal to at least 15 percent of the total outstanding balance of notes receivable owed to it by its microloan borrowers (Portfolio). Thereafter, the minimum balance that an intermediary must maintain in its LLRF must be the percent of its Portfolio equal to its actual average loan loss rate after its first year in the microloan program. The maximum level of the LLRF, under the present rule, cannot exceed 15 percent of the Portfolio. There is no prescribed minimum level.

Under the final rule, until the intermediary is in the microloan program for at least five years, it would be required to maintain a balance on deposit in its LLRF equal to 15 percent of its Portfolio. After an intermediary is in the microloan program for five years, it may request SBA's Associate Administrator for Financial Assistance (AA/FA) to grant the intermediary's request to reduce the percentage of its Portfolio which it must maintain in its LLRF to an amount equal to its actual average loan loss rate during the preceding five year period. The AA/FA would review the intermediary's annual loss rate for that five-year period and determine whether he or she should grant the intermediary's request. The AA/FA could not reduce the loan loss reserve to under ten percent of the Portfolio.

Under the final rule, to get a reduction in its loan loss reserve, an intermediary must demonstrate to the satisfaction of the AA/FA that (1) its average annual loss rate during the preceding five years is under fifteen percent, and (2) no other factors exist that might impair its ability to repay all obligations which it may owe to SBA under the microloan program.

Compliance With Executive Orders 13132, 12988 and 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Paperwork Reduction Act (44 U.S.C. Ch. 35)

This final rule does not constitute a significant rule within the meaning of Executive Order 12866, since it is not likely to have an annual effect on the economy of $100 million or more, result in a major increase in costs or prices, or have a significant adverse effect on competition or the U.S. economy.

SBA has determined that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601–612. SBA estimates that there are a total of 130 microintermediaries who are small entities that will be affected by this rule. However, SBA does not believe that this rule will have a significant economic impact because this rule relates only to Microloan Program intermediarie's internal accounting procedures and is not expected to have any economic effect.

SBA has determined that this final rule does not impose any additional reporting or recordkeeping requirements under the Paperwork Reduction Act, 44 U.S.C. chapter 35.

For purposes of Executive Order 13132, SBA has determined that this final rule has no federalism implications.

For purposes of Executive Order 12988, SBA certifies that this final rule is drafted, to the extent practicable, to accord with the standards set forth in section 3 of that Order.

List of Subjects in 13 CFR Part 120

Loan programs—business.

For the reasons stated in the preamble, under the authority in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), the Small Business Administration amends 13 CFR part 120 as follows:

PART 120—BUSINESS LOANS

1. The authority citation for Part 120 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a) and (h).

2. Amend § 120.710 by revising paragraphs (b) and (c) and by adding paragraphs (d) and (e) to read as follows:

§ 120.710 What is the Loan Loss Reserve Fund?

* * * * *

(b) *Level of Loan Loss Reserve Fund.* Until it is in the Microloan program for at least five years, an Intermediary must maintain a balance on deposit in its LLRF equal to 15 percent of the outstanding balance of the notes receivable owed to it by its Microloan borrowers ("Portfolio").

(c) *SBA review of Loan Loss Reserve Fund.* After an Intermediary has been in the Microloan program for five years, it may request SBA's Associate Administrator for Financial Assistance ("AA/FA") to reduce the percentage of its Portfolio which it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five-year period. Upon receipt of such request, the AA/FA will review the Intermediary's annual loss rate for the most recent five-year period preceding the request.

(d) *Reduction of Loan Loss Reserve Fund.* The AA/FA has the authority to reduce the percentage of an Intermediary's Portfolio that it must maintain in its LLRF to an amount equal to the actual average loan loss rate during the preceding five-year period. The AA/FA can not reduce the LLRF to less than ten percent of the Portfolio.

(e) *What must an intermediary demonstrate to get a reduction in Loan Loss Reserve Fund?* To get a reduction in its LLRF, an Intermediary must demonstrate to the satisfaction of the AA/FA that:

(1) Its average annual loss rate during the preceding five years is less than fifteen percent, and

(2) No other factors exist that may impair the Intermediary's ability to repay all obligations which it owes to the SBA under the Microloan program.

Dated: March 24, 2000.

Aida Alvarez,

Administrator.

[FR Doc. 00–8117 Filed 3–31–00; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

[DEA–200C]

Schedules of Controlled Substances: Scheduling of Gamma Hydroxybutyric Acid Into Schedule I; Correction

AGENCY: Drug Enforcement Administration, Department of Justice.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (DEA–200F) which were published on Monday, March 13, 2000 (65 FR 13235). These regulations relate to the placement of gamma hydroxybutyric acid (GHB) and its salts, isomers and salts of isomers into Schedule I of the Controlled Substances Act pursuant to Public Law 106–172.

EFFECTIVE DATE: April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, (202) 307–7183.

SUPPLEMENTARY INFORMATION: The final regulations that are the subject of these corrections amend title 21, Code of Federal Regulations (CFR), chapter II. As published, the final regulations contained errors that could cause confusion. Specifically, the final regulations published on March 13, 2000 (65 FR 13235) did not take into account the amendment of 21 CFR 1308.13 that was included in a Final Rule published by DEA on July 13, 1999 (64 FR 37673), which became effective on August 12, 1999.

Accordingly, the publication on March 13, 2000, of the final regulations to amend part 1308 which were the subject of **Federal Register** document 00–5925 (65 FR 13235), is corrected as follows:

PART 1308—[CORRECTED]

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871(b) unless otherwise noted.

2. On page 13238, in the third column, correct amendatory instruction #3 to read as follows:

* * * * *

3. Section 1308.13 is amended by redesignating the existing paragraphs (c)(5) through (c)(12) as (c)(6) through (c)(13) and by adding a new paragraph (c)(5) to read as follows:

* * * * *

Dated: March 27, 2000.

Donnie R. Marshall,

Deputy Administrator.

[FR Doc. 00–8047 Filed 3–31–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 581

[AR 15–185]

Army Board for Correction of Military Records

AGENCY: Assistant Secretary of the Army for Manpower and Reserve Affairs, DOD.

ACTION: Final rule.

SUMMARY: This final rule is a revision of the regulation on the Army Board for Correction of Military Records. This revision updates information on the policy and procedures for the operation of the Army Board for Correction of Military Records; implements that portion of 10 U.S.C. 1034, and that portion of Department of Defense Directive (DODD) 7050.6, Military Whistleblower Protection, that pertain to actions by the Army Board for Correction of Military Records; implements Department of Defense Instruction (DODI) 1336.6, Correction of Military Records; prescribes DD Form 149, Application for Correction of Military Record, under the provisions of 10 U.S.C. 1552 and eliminates those portions pertaining to the process of applying to the Army Board for Correction of Military Records, transferring them to a Department of the Army Pamphlet.

EFFECTIVE DATE: March 29, 2000.

ADDRESSES: Department of the Army, The Army Review Boards Agency, ATTN: SFMR–RBR, 1941 Jefferson Davis Highway, Arlington, VA 22202–4508.

FOR FURTHER INFORMATION CONTACT: Ms. Mary L. Howell, Military Personnel Management Specialist, 703–607–1612, FAX 703–602–0935, email address: howelml@hqda.army.mil.

SUPPLEMENTARY INFORMATION:

a. Background

Basic revised information on Army Board for Correction of Military Records was previously published in the **Federal Register**, Volume 63, No. 188, pages 51875–51878, September 29, 1998 for public comment.

b. Comments and Responses

Comment: Only one respondent provided comment. The respondent objected to the authority of the ABCMR staff to review and reject requests for reconsideration without Board consideration.

Response: The respondent had a different interpretation of the ABCMR staff's authority and a different definition of a "request for reconsideration" which was noted. The staff in its administrative review can only reject a request for reconsideration if it fails to meet the published criteria for a proper request for reconsideration. There were no changes in policy made as a result of the respondent's comments.

Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, this final rule will not have an annual effect on the economy of $100 million or have a significant impact on a substantial number of small entities. The final rule only concerns the correction of information in Federal records that pertain to individuals.

Paperwork Reduction Act

In compliance with The Paperwork Reduction Act, information collection is required on Department of Defense Form 149 titled "Application for Correction of Military Record". The form is necessary to identify specific types of information in support of the Army Board requirements. The form was approved previously by the Office of Management Budget (OMB) and assigned OMB Control No. 0704–0003.

Executive Order 12612, Federalism

This final rule has no significant federalism implications to warrant preparation of a Federalism Assessment under the principles and criteria in E.O. 12612.

Executive Order 12630, Government Actions and Interference With Constitutionally Protected Property Rights

This final rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 12630 or the Private Property Rights Act do not apply.

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action pursuant to Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993.

Executive Order 12875, Enhancing the Intergovernmental Partnership

This final rule does not impose non statutory unfunded mandates on small governments and is not subject to the requirements of the executive order.

Executive Order 12988, Civil Justice Reform

This final rule is in compliance with the provisions and requirements of E.O. 12988.

Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

This final rule is issued with respect to a military function of the Defense Department and the provisions of E.O. 13045 do not apply.

Unfunded Mandates Act

This final rule does not impose an enforceable duty upon the private sector nor does it impose unfunded mandates on small governments and is not subject to the requirements of the Unfunded Mandates Reform Act.

National Environmental Policy Act

This final rule will not have a significant impact to the human environment, and preparation of an environmental impact statement is not required.

Submission to Congress and the Comptroller General of the General Accounting Office

Pursuant to Section 801(a)(1)(A) of the Administrative Procedure Act as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, the Army will submit a report containing this rule to the U.S. Senate, House of Representatives, and the Comptroller General of the General Accounting Office. This rule is not a major rule within the meaning of Section 804(2) of the Administrative Procedure Act, as amended.

List of Subjects in 32 CFR Part 581

Administrative practice and procedure, Archives and Records, Military Personnel.

Accordingly, part 581 is amended as follows:

PART 581—[AMENDED]

1. The authority citation for part 581 is revised to read as follows:

Authority: 10 U.S.C. 1552, 1553, 1554, 3013, 3014, 3016; 38 U.S.C. 3103(a).

2. Section 581.3 is revised to read as follows:

§ 581.3 Army Board for Correction of Military Records.

(a) *General*—(1) *Purpose.* This section prescribes the policies and procedures for correction of military records by the Secretary of the Army, acting through the Army Board for Correction of Military Records (ABCMR).

(2) *Statutory authority.* Title 10 U.S.C Section 1552, Correction of Military Records: Claims Incident Thereto, is the statutory authority for this regulation.

(b) *Responsibilities.* (1) *The Secretary of the Army.* The Secretary of the Army will oversee the operations of the ABCMR. The Secretary will take final action on applications, as appropriate.

(2) *The ABCMR Director.* The ABCMR Director will manage the ABCMR's day-to-day operations.

(3) *The chair of an ABCMR panel.* The chair of a given ABCMR panel will preside over the panel, conduct a hearing, maintain order, ensure the applicant receives a full and fair opportunity to be heard, and certify the written record of proceedings in pro forma and formal hearings as being true and correct.

(4) *The ABCMR members.* The ABCMR members will—

(i) Review all applications that are properly before them to determine the existence of error or injustice.

(ii) If persuaded that material error or injustice exists, and that sufficient evidence exists on the record, direct or recommend changes in military records to correct the error or injustice.

(iii) Recommend a hearing when appropriate in the interest of justice.

(iv) Deny applications when the alleged error or injustice is not adequately supported by the evidence, and when a hearing is not deemed proper.

(v) Deny applications when the application is not filed within prescribed time limits and when it is not in the interest of justice to excuse the failure to file in a timely manner.

(5) *The director of an Army records holding agency.* The director of an Army records holding agency will—

(i) Take appropriate action on routine issues that may be administratively corrected under authority inherent in the custodian of the records and that do not require ABCMR action.

(ii) Furnish all requested Army military records to the ABCMR.

(iii) Request additional information from the applicant, if needed, to assist the ABCMR in conducting a full and fair review of the matter.

(iv) Take corrective action directed by the ABCMR or the Secretary of the Army.

(v) Inform the Defense Finance and Accounting Service (DFAS), when appropriate; the applicant; applicant's counsel, if any; and interested Members of Congress, if any, after a correction is complete.

(vi) Return original records of the soldier or former soldier obtained from the Department of Veterans Affairs (VA).

(6) *The commanders of Army Staff agencies and commands.* The commanders of Army Staff agencies and commands will—

(i) Furnish advisory opinions on matters within their areas of expertise upon request of the ABCMR, in a timely manner.

(ii) Obtain additional information or documentation as needed before providing the opinions to the ABCMR.

(iii) Provide records, investigations, information, and documentation upon request of the ABCMR.

(iv) Provide additional assistance upon request of the ABCMR.

(v) Take corrective action directed by the ABCMR or the Secretary of the Army.

(7) *The Director, Defense Finance and Accounting Service (DFAS).* At the request of the ABCMR staff, the Director, DFAS, will—

(i) Furnish advisory opinions on matters within the DFAS area of expertise upon request.

(ii) Obtain additional information or documentation as needed before providing the opinions.

(iii) Provide financial records upon request.

(iv) On behalf of the Army, settle claims that are based on ABCMR final actions.

(v) Report quarterly to the ABCMR Director on the monies expended as a result of ABCMR action and the names of the payees.

(c) *ABCMR establishment and functions.* (1) *ABCMR establishment.* The ABCMR operates pursuant to law (10 U.S.C. 1552) within the Office of the Secretary of the Army. The ABCMR

consists of civilians regularly employed in the executive part of the Department of the Army (DA) who are appointed by the Secretary of the Army and serve on the ABCMR as an additional duty. Three members constitute a quorum.

(2) *ABCMR functions.* (i) The ABCMR considers individual applications that are properly brought before it. In appropriate cases, it directs or recommends correction of military records to remove an error or injustice.

(ii) When an applicant has suffered reprisal under the Military Whistleblower Protection Act 10 U.S.C. 1034 and Department of Defense Directive (DODD) 7050.6, the ABCMR may recommend to the Secretary of the Army that disciplinary or administrative action be taken against any Army official who committed an act of reprisal against the applicant.

(iii) The ABCMR will decide cases on the evidence of record. It is not an investigative body. The ABCMR may, in its discretion, hold a hearing (sometimes referred to as an evidentiary hearing or an administrative hearing in 10 U.S.C. 1034 and DODD 7050.6) or request additional evidence or opinions.

(d) *Application procedures*—(1) *Who may apply.* (i) The ABCMR's jurisdiction under 10 U.S.C. 1552 extends to any military record of the DA. It is the nature of the record and the status of the applicant that define the ABCMR's jurisdiction.

(ii) Usually applicants are soldiers or former soldiers of the Active Army, the U.S. Army Reserve (USAR), and in certain cases, the Army National Guard of the United States (ARNGUS) and other military and civilian individuals affected by an Army military record. Requests are personal to the applicant and relate to military records. Requests are submitted on DD Form 149 (Application for Correction of Military Record under the Provisions of 10 U.S.C. 1552). Soldiers need not submit applications through their chain of command.

(iii) An applicant with a proper interest may request correction of another person's military records when that person is incapable of acting on his or her own behalf, missing, or deceased. Depending on the circumstances, a child, spouse, parent or other close relative, heir, or legal representative (such as a guardian or executor) of the soldier or former soldier may be able to demonstrate a proper interest. Applicants must send proof of proper interest with the application when requesting correction of another person's military records.

(2) *Time limits.* Applicants must file an application within 3 years after an alleged error or injustice is discovered or reasonably should have been discovered. The ABCMR may deny an untimely application. The ABCMR may excuse untimely filing in the interest of justice.

(3) *Administrative remedies.* The ABCMR will not consider an application until the applicant has exhausted all administrative remedies to correct the alleged error or injustice.

(4) *Stay of other proceedings.* Applying to the ABCMR does not stay other proceedings.

(5) *Counsel.* (i) Applicants may be represented by counsel, at their own expense.

(ii) See DODD 7050.6 for provisions for counsel in cases processed under 10 U.S.C. 1034.

(e) *Actions by the ABCMR Director and staff.* (1) *Criteria.* The ABCMR staff will review each application to determine if it meets the criteria for consideration by the ABCMR. The application may be returned without action if—

(i) The applicant fails to complete and sign the application.

(ii) The applicant has not exhausted all other administrative remedies.

(iii) The ABCMR does not have jurisdiction to grant the requested relief.

(iv) No new evidence was submitted with a request for reconsideration.

(2) *Burden of proof.* The ABCMR begins its consideration of each case with the presumption of administrative regularity. The applicant has the burden of proving an error or injustice by a preponderance of the evidence.

(3) *ABCMR consideration.* (i) A panel consisting of at least three ABCMR members will consider each application that is properly brought before it. One panel member will serve as the chair.

(ii) The panel members may consider a case on the merits in executive session or may authorize a hearing.

(iii) Each application will be reviewed to determine—

(A) Whether the preponderance of the evidence shows that an error or injustice exists and—

(*1*) If so, what relief is appropriate.

(*2*) If not, deny relief.

(B) Whether to authorize a hearing.

(C) If the application is filed outside the statute of limitations and whether to deny based on untimeliness or to waive the statute in the interest of justice.

(f) *Hearings.* ABCMR hearings. Applicants do not have a right to a hearing before the ABCMR. The Director or the ABCMR may grant a formal hearing whenever justice requires.

(g) *Disposition of applications.* (1) *ABCMR decisions.* The panel members' majority vote constitutes the action of the ABCMR. The ABCMR's findings, recommendations, and in the case of a denial, the rationale will be in writing.

(2) *ABCMR final action.* (i) Except as otherwise provided, the ABCMR acts for the Secretary of the Army, and an ABCMR decision is final when it—

(A) Denies any application (except for actions based on reprisals investigated under 10 U.S.C. 1034).

(B) Grants any application in whole or in part without a hearing when—

(*1*) The relief is as recommended by the proper staff agency in an advisory opinion; and

(*2*) Is unanimously agreed to by the ABCMR panel; and

(*3*) Does not involve an appointment or promotion requiring confirmation by the Senate.

(ii) The ABCMR will forward the decisional document to the Secretary of the Army for final decision in any case in which—

(A) A hearing was held.

(B) The facts involve reprisals under the Military Whistleblower Protection Act, confirmed by the DOD Inspector General (DODIG) under 10 U.S.C. 1034 and DODD 7050.6.

(C) The ABCMR recommends relief but is not authorized to act for the Secretary of the Army on the application.

(3) *Decision of the Secretary of the Army.* (i) The Secretary of the Army may direct such action as he or she deems proper on each case. Cases returned to the Board for further consideration will be accompanied by a brief statement of the reasons for such action. If the Secretary does not accept the ABCMR's recommendation, adopts a minority position, or fashions an action that he or she deems proper and supported by the record, that decision will be in writing and will include a brief statement of the grounds for denial or revision.

(ii) The Secretary of the Army will issue decisions on cases covered by the Military Whistleblower Protection Act (10 U.S.C. 1034 and DODD 7050.6). In cases where the DODIG concluded that there was reprisal, these decisions will be made within 180 days after receipt of the application and the investigative report by the DODIG, the Department of the Army Inspector General (DAIG), or other Inspector General offices. Unless the full relief requested is granted, these applicants will be informed of their right to request review of the decision by the Secretary of Defense.

(4) *Reconsideration of ABCMR decision.* An applicant may request the ABCMR to reconsider a Board decision under the following circumstances:

(i) If the ABCMR receives the request within 1 year of the ABCMR's action and if the ABCMR has not previously reconsidered the matter, the ABCMR staff will review the request to determine if it contains evidence (including, but not limited to, any facts or arguments as to why relief should be granted) that was not in the record at the time of the ABCMR's prior consideration. If new evidence has been submitted, the request will be submitted to the ABCMR for its determination of whether the new evidence is sufficient to demonstrate material error or injustice. If no new evidence is found, the ABCMR staff will return the application to the applicant without action.

(ii) If the ABCMR receives the request more than 1 year after the ABCMR's action or after the ABCMR has already considered one request for reconsideration, the ABCMR staff will review the request to determine if substantial relevant evidence is submitted showing fraud, mistake of law, mathematical miscalculation, manifest error, or the existence of substantial relevant new evidence discovered contemporaneously or within a short time after the ABCMR's original consideration. If the ABCMR staff finds such evidence, it will be submitted to the ABCMR for its determination of whether a material error or injustice exists and the proper remedy. If the ABCMR staff does not find such evidence, the application will be returned to the applicant without action.

(h) *Claims/Expenses.*—(1) *Authority.* (i) The Army, by law, may pay claims for amounts due to applicants as a result of correction of military records.

(ii) The Army may not pay any claim previously compensated by Congress through enactment of a private law.

(iii) The Army may not pay for any benefit to which the applicant might later become entitled under the laws and regulations managed by the VA.

(2) *Settlement of claims.* (i) The ABCMR will furnish DFAS copies of decisions potentially affecting monetary entitlement or benefits. The DFAS will treat such decisions as claims for payment by or on behalf of the applicant.

(ii) The DFAS will settle claims on the basis of the corrected military record. The DFAS will compute the amount due, if any. The DFAS may require applicants to furnish additional information to establish their status as proper parties to the claim and to aid in deciding amounts due. Earnings received from civilian employment during any period for which active duty pay and allowances are payable will be deducted. The applicant's acceptance of a settlement fully satisfies the claim concerned.

(3) *Payment of expenses.* The Army may not pay attorney's fees or other expenses incurred by or on behalf of an applicant in connection with an application for correction of military records under 10 U.S.C. 1552.

(i) *Miscellaneous Provisions.*—(1) *Special Standards.* (i) Pursuant to the November 27, 1979 order of the United States District Court for the District of Columbia in *Giles* v. *Secretary of the Army* (Civil Action No. 77–0904), a former Army soldier is entitled to an honorable discharge if a less than honorable discharge was issued to the soldier on or before November 27, 1979 in an administrative proceeding in which the Army introduced evidence developed by or as a direct or indirect result of compelled urinalysis testing administered for the purpose of identifying drug abusers (either for the purposes of entry into a treatment program or to monitor progress through rehabilitation or follow-up).

(ii) Applicants who believe that they fall within the scope of paragraph (i)(1)(i) of this section should place the term "CATEGORY G" in block 11b of DD Form 149. Such applications should be expeditiously reviewed by a designated official, who will either send the individual an honorable discharge certificate if the individual falls within the scope of paragraph (i)(1)(i) of this section, or forward the application to the Discharge Review Board if the individual does not fall within the scope of paragraph (i)(1)(i) of this section. The action of the designated official will not constitute an action or decision by the ABCMR.

(2) *Public access to decisions.* (i) After deletion of personal information, a redacted copy of each decision will be indexed by subject and made available for review and copying at a public reading room at Crystal Mall 4, 1941 Jefferson Davis Highway, Arlington, Virginia. The index will be in a usable and concise form so as to indicate the topic considered and the reasons for the decision. Under the Freedom of Information Act (5 U.S.C. 552), records created on or after November 1, 1996 will be available by electronic means.

(ii) Under the Freedom of Information Act and the Privacy Act of 1974 (5 U.S.C. 552a), the ABCMR will not furnish to third parties information submitted with or about an application unless specific written authorization is received from the applicant or unless the Board is otherwise authorized by law.

Karl F. Schneider,

Deputy, Assistant Secretary (Army Review Boards).

[FR Doc. 00–8089 Filed 3–31–00; 8:45 am]

BILLING CODE 3710–08–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–014]

Drawbridge Operation Regulations: Norwalk River, CT

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District, has issued a temporary deviation from the drawbridge operation regulations for the Washington Street S136 Bridge, mile 0.0, across the Norwalk River at Norwalk, Connecticut. This deviation from the regulations allows the bridge owner to keep the S136 Bridge in the closed position Tuesday through Thursday each week from March 28 through April 20, 2000. These closures are necessary to facilitate structural repairs at the bridge.

DATES: This deviation is effective March 28, 2000, through April 20, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Joe Arca, Project Officer, First Coast Guard District, at (212) 668–7165.

SUPPLEMENTARY INFORMATION: The Washington Street S136 Bridge, mile 0.0, across the Norwalk River at Norwalk, Connecticut, has a vertical clearance of 9 feet at mean high water, and 16 feet at mean low water in the closed position. The bridge owner, Connecticut Department of Transportation, requested a temporary deviation from the operating regulations to facilitate structural repairs at the bridge. The existing operating regulations listed at 33 CFR 117.217 require the bridge to open on signal, except that, from 7 a.m. to 8:45 a.m., 11:45 a.m. to 1:15 p.m., and 4 p.m. to 6 p.m., Monday through Friday, except holidays, the draw need not be opened for the passage of vessels that draw less than 14 feet of water.

This deviation to the operating regulations allows the owner of the bridge to keep the bridge in the closed position as follows:

March 28, 2000, through March 30, 2000;

April 4, 2000, through April 6, 2000; April 11, 2000, through April 13, 2000; April 18, 2000, through April 20, 2000.

These repairs are being performed during the time period that there have been few requests to open the bridge. Vessels that can pass under the bridge without an opening may do so at all times.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation from the operating regulations is authorized under 33 CFR 117.35.

Dated: March 22, 2000.

G.N. Naccara

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 00–8139 Filed 3–31–00; 8:45 am]

BILLING CODE 4915–15–U–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–6566–5]

Finding of Failure To Submit a Required State Implementation Plan for Carbon Monoxide; Fairbanks, Alaska

AGENCY: Environmental Protection Agency (EPA).

ACTION: Finding of Failure to Submit.

SUMMARY: EPA is taking final action in making a finding, under the Clean Air Act (CAA or Act), that Alaska failed to make a carbon monoxide (CO) nonattainment area State Implementation Plan (SIP) submittal required for Fairbanks under the Act. Under certain provisions of the Act, states are required to submit SIPs providing for, among other things, reasonable further progress and attainment of the CO National Ambient Air Quality Standards (NAAQS) in areas classified as serious. The deadline for submittal of this plan for Fairbanks was October 1, 1999. This action triggers the 18-month time clock for mandatory application of sanctions and 2-year time clock for a Federal Implementation Plan (FIP) under the Act. This action is consistent with the CAA mechanism for assuring SIP submissions.

EFFECTIVE DATE: This action is effective as of April 3, 2000.

ADDRESSES: Written comments should be addressed to: Ms. Debra Suzuki, Office of Air Quality (OAQ–107), EPA, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: John Pavitt, U.S. EPA, Region 10, Alaska Operations Office, 222 W. 7th Avenue, #19, Anchorage, Alaska, 99513–7588, Telephone (907) 271–5083.

SUPPLEMENTARY INFORMATION:

I. Background

The CAA Amendments of 1990 were enacted on November 15, 1990. Under Section 107(d)(1)(c) of the amended CAA, each CO area designated nonattainment prior to enactment of the 1990 Amendments, such as the Fairbanks area, was designated nonattainment by operation of law upon enactment of the 1990 Amendments. Under section 186(a) of the Act, each CO area designated nonattainment under section 107(d) was also classified by operations of law as either "moderate" or "serious" depending on the severity of the area's air quality problem. CO areas with design values between 9.1 and 16.4 parts per million (ppm), such as the Fairbanks area, were classified as moderate. These nonattainment designations and classifications were codified in 40 CFR part 81. See 56 FR 56846 (November 6, 1991).

(1) The CO nonattainment area is the "Fairbanks Area, Fairbanks Election District (part), Fairbanks nonattainment area boundary." 40 CFR 81.302.

States containing areas that were classified as moderate nonattainment by operation of law under section 107(d) were required to submit SIPs designed to attain the CO NAAQS as expeditiously as practicable but no later than December 31, 1995.

(2) The moderate area SIP requirements are set forth in section 187(a) of the Act and differ depending on whether the area's design value is below or above 12.7 ppm. The Fairbanks area has a design value below 12.7 ppm. 40 CFR 81.302.

On February 27, 1998 EPA made a final finding that the Fairbanks CO nonattainment area did not attain the CO NAAQS under the CAA mandated attainment date of December 31, 1995 for moderate nonattainment. As a result of that finding, which went into effect on March 30, 1998, (63 FR 9945 February 27, 1998) the Fairbanks, Alaska CO nonattainment area was reclassified as serious. The State had 18 months or until October 1, 1999 to submit a new State Implementation Plan (SIP) demonstrating attainment of the CO NAAQS as expeditiously as practicable but no later than December 31, 2000, the CAA attainment date for serious areas. The Fairbanks area continues to exceed the CO standard with three exceedances in 1997, three in 1998, two in 1999 and, based upon preliminary review of the data, at least one in 2000. Notwithstanding significant efforts by the Alaska Department of Environmental Conservation to complete their CO SIP, the state has failed to meet the October 1, 1999 deadline for the required SIP submission. EPA is therefore compelled to find that the State of Alaska has failed to make the required SIP submission for Fairbanks. The CAA established specific consequences if EPA finds that a State has failed to meet certain requirements of the CAA. Of particular relevance here is CAA section 179(a)(1), the mandatory sanctions provisions. Sections 179(a) sets forth four findings that form the basis for applications of a sanction. The first finding, that a State has failed to submit a plan required under the CAA, is the finding relevant to this rulemaking.

If Alaska has not made the required complete submittal by October 3, 2001, pursuant to CAA section 179(a) and 40 CFR 52.31, the offset sanction identified in CAA section 179(b) will be applied in the affected area. If the State has still not made a complete submission by April 3, 2002, then the highway funding sanction will apply in the affected area, in accordance with 40 CFR 52.31. In addition, CAA section 110(c) provides that EPA must promulgate a Federal Implementation Plan (FIP).

(3) In a 1994 rulemaking, EPA established the Agency's selection of the sequence of these two sanctions: the offset sanction under section 179(b)(2) shall apply at 18 months, followed 6 months later by the highway sanction under section 179(b)(1) of the Act. EPA does not choose to deviate from this presumptive sequence in this instance. For more details on the timing and implementation of the sanctions, see 59 FR 39832 (August 4, 1994), promulgating 40 CFR 52.31, "Selection of sequence of mandatory sanctions for findings made pursuant to section 179 of the Clean Air Act."

The sanctions will not take effect if, before October 3, 2001, EPA finds that the State has made a complete submittal of a plan addressing the serious area CO requirements for Fairbanks. In addition, EPA will not promulgate a FIP if the State makes the required SIP submittal and EPA takes final action to approve the submittal before April 3, 2002, (section 110(c)(1) of the Act). EPA encourages the responsible parties in Alaska to continue working together on the CO Plan which can eliminate the need for potential sanctions and FIP.

II. Final Action

A. Finding of Failure to Submit

Today, EPA is making a finding of failure to submit for the Fairbanks CO nonattainment area, due to failure of the State to submit a SIP revision addressing the serious area CO requirements of the CAA.

B. Effective Date Under the Administrative Procedures Act

EPA has issued this action as a rulemaking because the Agency has treated this type of action as rulemaking in the past. However, EPA believes that it would have the authority to issue this action in an informal adjudication, and is considering which administrative process-rulemaking or informal adjudication-is appropriate for future actions of this kind. Because EPA is issuing this action as a rulemaking, the Administrative Procedures Act (APA) applies. Today's action is effective as of April 3, 2000. Under the APA, 5 U.S.C. 553 (d)(3), agency rulemaking may take effect before 30 days after the date of publication in the **Federal Register** if an agency has good cause to mandate an earlier effective date. Today's action concerns a SIP submission that is already overdue and the State is aware of applicable provisions of the CAA relating to overdue SIPs. In addition, today's action simply starts a "clock" that will not result in sanctions for 18 months, and that the State may "turn off" through the submission of a complete SIP submittal. These reasons support an effective date prior to 30 days after the date of publication.

C. Notice-and-Comment Under the Administrative Procedures Act

This document is a final agency action, but is not subject to the notice-and-comment requirements of the APA, 5 U.S.C. 533(b). EPA believes that because of the limited time provided to make findings of failure to submit regarding SIP submissions, Congress did not intend such findings to be subject to notice-and-comment rulemaking. However, to the extent such findings are subject to notice-and-comment rulemaking, EPA invokes the good cause exception pursuant to the APA, 5 U.S.C. 553(d)(3). Notice and comment are unnecessary because no EPA judgment is involved in making a nonsubstantive finding of failure to submit SIPs required by the CAA. Furthermore, providing notice and comment would be impracticable because of the limited time provided under the statute for making such determinations. Finally, notice and comment would be contrary to the public interest because it would divert Agency resources from the critical substantive review of submitted SIPs. See 58 FR 51270, 51272, note 17 (October 1, 1993); 59 FR 39832, 39853 (August 4, 1994).

III. Administrative Requirements

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this notice, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the action in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This action does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.). The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. However, section 808 provides that any rule for which the issuing agency for good cause finds (and incorporates the finding and a brief statement of reasons therefore in the rule) that notice and public procedure thereon are impracticable, unnecessary or contrary to the public interest, shall take effect at such time as the agency promulgating the rule determines. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of April 3, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule is effective as of April 3, 2000.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 2, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations.

Dated: March 20, 2000.

Jane Moore,

Acting Regional Administrator, Region 10.

[FR Doc. 00–7628 Filed 3–31–00; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22 and 101

[WT Docket No. 97–81; FCC 99–415]

Multiple Address Systems

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Commission adopts rules to maximize the use of spectrum designated for Multiple Address Systems (MAS) in the Fixed Microwave Services. Specifically, the Commission lifts the application freeze for the 928/952/956 MHz bands and twenty channels in the 932/941 MHz bands; designates the 928/952/956 MHz bands and twenty channels in the 932/941 MHz bands for public safety and/or private internal services, indicating that these channels will be licensed on a first-come, first-served site-by-site basis; designates five of the twenty channel pairs for public safety/Federal Government use; will license the 928/959 MHz bands and the remaining twenty of the forty paired channels in the 932/941 MHz bands on a geographic-area basis; increases the licensees' technical and operational flexibility in order to allow licensees to provide services that are responsive to market demands; and provides incumbents with sufficient protection to avoid disruption of the marketplace or any undue unfairness.

DATES: Effective June 2, 2000 (except for § 101.1327 which contains an information collection that has not been

approved by the Office of Management Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date of this section. Written comments by OMB and the public on information collection requirements are due June 2, 2000.

FOR FURTHER INFORMATION CONTACT: Shellie Blakeney, Michael Sozan, or Guy Benson at (202) 418–0680, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, or Les Smith, AMD–PERM, Office of Managing Director at (202) 418–0217. In addition to filing comments with the Office of the Secretary, a copy of any comments on the information collection requirements contained herein should be submitted to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the Commission's *Report and Order*, FCC 99–415 in WT Docket No. 97–81, adopted on December 30, 1999, and released on January 19, 2000. The full text of this *Report and Order* is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, S.W., Washington, D.C. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, N.W., Washington, D.C. 20037. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Martha Contee at (202) 418–0260 or TTY (202) 418–2555.

Summary of the Report and Order

2. The *Report and Order* maximizes the use of spectrum designated for MAS in the Fixed Microwave Services. MAS consists of 3.2 megahertz (MHz) of electromagnetic spectrum in the 900 MHz band and is licensed under parts 22 and 101 of our rules. The *Report and Order*: (1) Establishes a flexible regulatory framework for MAS spectrum that provides opportunities for continued development of competitive service offerings by allowing a variety of services; (2) expedites market entry through modified licensing procedures; and (3) promotes technological innovation by eliminating unnecessary regulatory burdens. The rules adopted in the *Report and Order* facilitate the further development and implementation of MAS and will ensure that MAS spectrum is utilized to its fullest potential.

3. Specifically, the Commission designates the 928/952/956 MHz bands and twenty channels in the 932/941 MHz bands for public safety and/or private internal services, and provides that these bands will be licensed on a site-by-site basis. The Commission reserves five of the twenty channel pairs in the 932/941 MHz bands for public safety/Federal Government Services. Additionally, the Commission will license the 928/959 MHz bands and twenty of the forty paired channels in the 932/941 MHz bands on a geographic area basis; grandfathers existing operations on the MAS bands and restricts expansion in the 928/959 MHz bands; establishes service areas based on the Federal Communications Commission's definition of Economic Areas (EAs) and on the U.S. Department of Commerce's definition of EAs; establishes construction/coverage requirements for EA licensees—specifically, coverage to at least one-fifth of the population in their service areas or substantial service within five years of the license grant—and a showing of substantial service within ten years of being licensed; allows licensees to provide mobile and fixed operations on a co-primary basis for point-to-point and point-to-multipoint operations; adopts a flexible approach for defining the regulatory status of MAS licensees by allowing the licensee to indicate its regulatory status; lifts the suspension on the acceptance of applications for the 928/952/956 MHz bands and the twenty channels in the 932/941 MHz bands designated for public safety/Federal Government and/or private internal services upon the release of the *Report and Order*; and adopts Part 1 competitive bidding rules for MAS spectrum.

Final Regulatory Flexibility Act and Final Analysis

1. As required by the Regulatory Flexibility Act (RFA), Initial Regulatory Flexibility Analyses (IRFA) were incorporated in the Amendment of the Commission's rules Regarding Multiple Address Systems, *Notice of Proposed Rule Making*, FCC 97–58, 62 FR 11407 (Mar. 12, 1997), and *Further Notice of Proposed Rule Making*, FCC 99–101, 64 FR 38617 (July 19, 1997). The Commission sought written public comment on the proposals in the *Notice* and *Further Notice*, including comment on the IRFA. This present Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.

I. Reason for, and Objectives of, the Report and Order

2. These proceedings were initiated to secure public comment on proposals to maximize the efficient and effective use of spectrum allocated to Multiple Address Systems (MAS) in the Microwave Services and to analyze the impact of the Balanced Budget Act on these proposals. In attempting to maximize the use of MAS spectrum, we continue our efforts to improve the efficiency of spectrum use, reduce the regulatory burden on spectrum users, facilitate technological innovation, and provide opportunities for development of competitive new service offerings. The rules adopted in this *Report and Order* are also designed to implement Congress' goal of giving small businesses the opportunity to participate in the provision of spectrum-based services in accordance with section 309(j) of the Communications Act of 1934, as amended.

II. Summary of Significant Issues Raised by Public Comments in Response to the Initial Regulatory Flexibility Analyses

3. No petitions/comments were filed in direct response to the IRFA. In general, commenters and reply commenters supported our proposals to provide additional flexibility in the MAS Service. Moreover, many of the commenters and reply commenters were existing MAS licensees many of whom qualify as small businesses. These commenters overwhelmingly supported proposals that would permit (1) acquisitions by partitioning or disaggregation; and (2) MAS licensees and applicants to choose their regulatory status. Commenters generally supported our proposed definitions for "small business" and "very small business" and did not oppose our proposal to use "tiered" bidding credits for these entities. One commenter specifically suggested that the Commission recognize rural phone companies in the category of "designated entities" and create for rural telephone companies specific preferences that would enable them to participate in the provision of MAS services to rural parts of the country.

III. Description and Estimate of the Number of Small Entities to Which the Rules Will Apply

4. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act, unless the Commission has developed one or more definitions that are appropriate for its activities. Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA). A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field."

5. Last, the definition of "small governmental entity" is one with populations of fewer than 50,000. There are 85,006 governmental entities in the nation. This number includes such entities as states, counties, cities, utility districts and school districts. There are no figures available on what portion of this number has populations of fewer than 50,000. However, this number includes 38,978 counties, cities and towns, and of those, 37,556, or ninety-six percent, have populations of fewer than 50,000. The Census Bureau estimates that this ratio is approximately accurate for all government entities. Thus, of the 85,006 governmental entities, we estimate that ninety-six percent, or about 81,600, are small entities that may be affected by our rules. We further describe and estimate the number of small business licensees and regulatees that may be affected by the rules.

6. The rules adopted in this *Report and Order* affect a number of small entities who are either licensees, or may choose to become applicants for licenses, in the MAS Service. Such entities, in general, fall into two categories: (1) Those using MAS spectrum for profit based uses and (2) those using MAS spectrum for private internal uses.

7. With respect to the first category, the Commission has developed and received approval from the Small Business Administration for two definitions of small entities applicable to MAS licensees that do not provide private internal service. The Commission defines a small business as an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues for the preceding three years not to exceed $15 million. We define a very small business as an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues for the preceding three years not to exceed $3 million. These tiers are consistent with those set forth in part 1, subpart Q. The majority of these entities will most likely be licensed in bands where the Commission has implemented a geographic area licensing approach that would require the use of competitive bidding procedures to resolve mutually exclusive applications. The Commission's licensing database indicates that, as of January 20, 1999, there were a total of 8,670 MAS station authorizations. Of these, 260 authorizations were associated with common carrier service.

8. With respect to the second category, which consists of entities that use, or seek to use, MAS spectrum to accommodate their own internal communications needs, we note that MAS serves an essential role in a range of industrial, safety, business, and land transportation activities. MAS radios are used by companies of all sizes, operating in virtually all U.S. business categories, and by all types of public safety entities. We note that some of these entities may seek to use spectrum in which geographic area licensing is implemented to satisfy their internal purposes, in which case they will be subject to the definitions for small business described herein. For the majority of private internal users, the definitions developed by the SBA would be more appropriate. The applicable definition of small entity in this instance appears to be the definition under the SBA rules applicable to establishments engaged in radiotelephone communications. This definition provides that a small entity is any entity employing no more than 1,500 persons. The Commission's licensing database indicates that, as of January 20, 1999, of the 8,670 total MAS station authorizations, 8,410 authorizations were for private radio service, and of these, 1,433 were for private land mobile radio service.

IV. Reporting, Recordkeeping, and Other Compliance Requirements

9. Given that we are using competitive bidding to award certain MAS licenses and have established a small business definition for competitive bidding purposes, then all small businesses that choose to participate in these services will be required to demonstrate that they meet the criteria set forth to qualify as small businesses. Any small business applicant wishing to avail itself of small business provisions will need to make the general financial disclosures necessary to establish that the small business is in fact small.

10. Prior to auction, each small business applicant will be required to submit an FCC Form 175, OMB Clearance Number 3060–0600. The estimated time for completing an FCC Form 175 is forty-five minutes. In addition to filing an FCC Form 175, each applicant must submit information regarding the ownership of the applicant, any joint venture arrangements or bidding consortia that the applicant has entered into, and financial information which demonstrates that a business wishing to qualify for bidding credits is a small business. Applicants that do not have audited financial statements available will be permitted to certify to the validity of their showings. While many small businesses have chosen to employ attorneys prior to filing an application to participate in an auction, the rules are proposed so that a small business working with the information in a bidder information package can file an application on its own. When an applicant wins a license, it will be required to submit an FCC Form 601 (Long-form Application for Authorization), which will require technical information regarding the applicant's proposals for providing service. This application, and any appropriate schedules and attachments, will require information provided by an engineer who will have knowledge of the system's design. MAS applicants and/or licensees will be required to submit certain showings to indicate compliance with the Commission's rules.

V. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

11. We have reduced the economic burden placed on small business where possible. In response to general comments filed in this proceeding, we have adopted final rules designed to maximize opportunities for participation by, and growth of, small businesses in providing wireless services. Specifically, we expect that allowing partitioning and disaggregation of licenses and bidding credits will specifically assist small businesses.

12. There were some entities that opposed our proposals related to implementing geographic area licensing in certain MAS bands because the filing of any mutually exclusive applications would require them to participate in auctions. However, we determined that the public interest would be best served by adopting our proposal. Many of the potentially affected entities would have

an opportunity to secure spectrum in other MAS bands where we retain first-come, first-served, site-based licensing with frequency coordination. However, as stated earlier, many commenters expressed general support for our proposals in the MAS proceeding because these new procedures streamline our licensing requirements, administrative burdens for both applicants and/or licensees, and the Commission, which would ultimately result in less economic burden to the applicants and/or licensees.

Report to Congress: The Commission will send a copy of the *Report and Order*, including this FRFA, in a report to be sent to Congress pursuant to the Small Business Regulatory Enforcement Fairness Act of 1996. In addition, the Commission will send a copy of the *Report and Order*, including FRFA, to the Chief Counsel for Advocacy of the Small Business Administration. A copy of the *Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.

Paperwork Reduction Analysis. The *MAS Report and Order* contains an information collection. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public to comment on the information collection(s) contained in this *Report and Order* as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due June 2, 2000. Comments should address: (a) Whether the new or modified collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–xxxx.
Title: 101.1327 Renewal expectancy for EA licensees.
Form No.: N/A.
Type of Review: New collection.
Respondents: Business or other for-profit; not-for-profit institutions; and/or state, local or tribal governments.
Number of Respondents: 18,820.
Estimated Time per Response: 20 hours.
Total Annual Burden: 284,653 hours.
Cost to Respondents: $18,820,000.
Needs and Uses: The information required by § 101.1327 is used to determine whether a renewal applicant has complied with the requirement to provide substantial service by the end of the ten-year initial license term. The information is used by the Commission staff in carrying out its duties under the Communications Act. Without this information, the Commission would not be able to carry out its statutory responsibilities.

List of Subjects in 47 CFR Parts 22 and 101

Communications equipment, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.
Magalie Roman Salas,
Secretary.

Rule Changes

For reasons discussed in the preamble, the Federal Communications Commission amends parts 22 and 101 as follows:

PART 22—PUBLIC MOBILE SERVICES

1. The authority citation for parts 22 is amended to read as follows:

Authority: 47 U.S.C. 154, 222, 303, 309, and 332.

2. Section 22.621 is amended by removing paragraphs (a) and (b) and by revising the introductory text to read as follows:

§ 22.621 Channels for point-to-multipoint operation.

The following channels are allocated for assignment to transmitters utilized within point-to-multipoint systems that support transmitters that provide public mobile service. Unless otherwise indicated, all channels have a bandwidth of 20 kHz and are designated by their center frequencies in MegaHertz. No new licenses will be issued for any 900 MHz frequencies in this section. See part 101, subpart O of this chapter for treatment of incumbents and for new licensing procedures. Incumbents under part 22 are subject to the restrictions of part 101, subpart O of this chapter but may make permissible modifications, transfers, assignments, or renew their licenses using procedures, forms, fees, and filing requirements of part 22.

* * * * *

PART 101—FIXED MICROWAVE SERVICES

3. The authority citation for part 101 is amended to read as follows:

Authority: 47 U.S.C. 154, 303.

4. Section 101.3 is amended by adding the following definitions.

§ 101.3 Definitions.

* * * * *

MHz Service Bands

(1) *928/952/956 MHz Service.* A flexible radio service using frequencies in the 928.0—928.85 MHz band paired with frequencies in the 952.0—952.85 MHz band or using unpaired frequencies in the 956.25—956.45 MHz band licensed on a site-by-site basis and used for terrestrial point-to-point and point-to-multipoint fixed and mobile operations.

(2) *928/959 MHz Service.* A flexible radio service using frequencies in the 928.85—929.0 MHz band paired with frequencies in the 959.85—960.0 MHz band licensed by Economic Area and used for terrestrial point-to-point and point-to-multipoint fixed and mobile operations.

(3) *932/941 MHz Service.* A flexible radio service using frequencies in the 932.0—932.5 MHz band paired with frequencies in the 941.0–941.5 MHz band used for terrestrial point-to-point and point-to-multipoint fixed and mobile operations. The frequencies from 932.00625/941.00625 MHz to 932.24375/941.24375 MHz are licensed by Economic Area. The frequencies from 932.25625/941.25625 MHz to 932.49375/941.49375 MHz are licensed on a site-by-site basis.

* * * * *

5. Section 101.63 is amended by revising paragraph (c) to read as follows:

§ 101.63 Period of construction; certification of completion of construction.

* * * * *

(c) The frequencies associated with all point-to-multipoint authorizations which have cancelled automatically or otherwise been recovered by the Commission will again be made available for reassignment on a date and under terms set forth by Public Notice. See § 101.1331(d) for treatment of MAS incumbent site-by-site licenses recovered in EAs.

* * * * *

6. Section 101.101 is amended by revising the first six entries of the table and by revising the heading of the fifth column as follows:

§ 101.101 Frequency availability.

Frequency band (MHz)	Radio service: Common carrier (Part 101)	Private radio (Part 101)	Broadcast auxiliary (Part 74)	Other (Parts 15, 21, 22, 24, 25, 74, 78 & 100)	Notes
928—929	MAS	MAS		PRS	
932.0—932.5	MAS	MAS		PRS	
932.5—935.0	CC	OFS			(1)
941.0—941.5	MAS	MAS		PRS	
941.5—944.0	CC	OFS	Aural BAS		(1)
952—958		OFS/MAS		PRS	
958—960	MAS	OFS			

* * * * *

7. Section 101.105 is amended by revising paragraphs (c)(3), (c)(3)(i), (c)(3)(ii), (c)(3)(iii) and (c)(5) as follows:

§ 101.105 Interference protection criteria.

* * * * *

(c) * * *

(3) Applicants for site-based frequencies listed in § 101.147 paragraph (b)(1) must make the following showings that protection criteria have been met over the entire service area of existing systems. Such showings may be made by the applicant or may be satisfied by a statement from a frequency coordinator.

(i) For site-based multiple address stations in the 928–929/952–960 MHz and the 932–932.5/941–941.5 MHz bands, a statement that the proposed system complies with the following co-channel separations from all existing stations and pending applications:

Fixed-to-fixed—145 km;
Fixed-to-mobile—113 km;
Mobile-to-mobile—81 km

Note to paragraph (c)(3)(i): Multiple address systems employing only remote stations will be treated as mobile for the purposes of determining the appropriate separation. For mobile operation, the mileage is measured from the reference point specified on the license application. For fixed operation on subfrequencies in accordance with § 101.147 the mileage also is measured from the reference point specified on the license application.

(ii) In cases where the geographic separation standard in paragraph (c)(3)(i) of this section is not followed, an engineering analysis must be submitted to show the coordination of the proposed assignment with existing systems located closer than those standards. The engineering analyses will include:

(A) Specification of the interference criteria and system parameters used in the interference study;

(B) Nominal service areas of each system included in the interference analysis;

(C) Modified service areas resulting from the proposed system. The propagation models used to establish the service boundary limits must be specified and any special terrain features considered in computing the interference impact should be described; and

(D) A statement that all parties affected have agreed to the engineering analysis and will accept the calculated levels of interference.

(iii) MAS EA licensees shall provide protection in accordance with § 101.1333.

* * * * *

(5) Mobile operation is permitted on any of the MAS frequency bands on a primary basis.

* * * * *

6. Section 101.109(c) is amended by revising footnote 1 following the table to read as follows:

§ 101.109 Bandwidth.

* * * * *

(c) * * *

* * * * *

[1] The maximum bandwidth that will be authorized for each particular frequency in this band is detailed in the appropriate frequency table in § 101.147. If contiguous channels are aggregated in the 928–928.85/952–952.85/956.25–956.45 MHz, the 928.85–929/959.85–960 MHz, or the 932–932.5/941–941.5 MHz bands, then the bandwidth may exceed that which is listed in the table.

* * * * *

7. Section 101.135 is amended by adding paragraph (e) to read as follows:

§ 101.135 Shared use of radio stations and the offering of private carrier service.

* * * * *

(e) Applicants licensed in the MAS frequencies after June 2, 2000, shall not provide service to others on a non-profit, cost-shared basis or on a for-profit private carrier basis in the 928–928.85/952–952.85/956.25–956.45 MHz bands and the 932.25625–932.49375/941.25625–941.49375 MHz bands.

8. Amend § 101.147 as follows:

a. In paragraph (a), revise the numbers in parentheses after the frequency bands; and

b. In paragraph (a), revise note (27) and add note (28).

c. Revise paragraph (b);

d. Revise the text in paragraph (b)(1) and remove the footnotes in Table 1 and Table 2;

e. Revise the text in paragraph (b)(2);

f. Revise the text in paragraph (b)(3) and revise the headings of Table 5 to read "TABLE 5—PAIRED FREQUENCIES (MHz)" and Table 6 to read "TABLE 6—PAIRED FREQUENCIES (MHz)"; and

g. Revise paragraph (b)(4).

§ 101.147 Frequency assignments.

(a) * * *

928.0–929.0 MHz (28)

* * * * *

941.0–941.5 MHz (27)

941.5–944 MHz (17)(18)

952.0–960.0 MHz (28)

* * * * *

(27) Frequencies in the 932 to 932.5 MHz and 941 to 941.5 MHz bands are shared with Government fixed point-to-multipoint stations. Frequencies in these bands are paired with one another and are available for flexible use for transmission of the licensee's products and information services, excluding video entertainment material. 932.00625/941.00625 MHz to 932.24375/941.24375 MHz is licensed by Economic Area. 932.25625/941.25625 MHz to 932.49375/941.49375 MHz is licensed on a site-by-site basis.

(28) Subsequent to July 1, 1999, MAS operations in the 928/952/956 MHz bands are reserved for private internal use. The 928.85–929.0 MHz and 959.85–960.0 MHz bands are licensed on a geographic area basis with no eligibility restrictions. The 928.0–928.85 MHz band paired with the 952.0–952.85 MHz band, in additional to unpaired frequencies in the 956.25–956.45 MHz band, are licensed on a site-by-site basis and used for terrestrial point-to-point and point-to-multipoint fixed and mobile operations. The 928.85–929.0 MHz band paired with the 959.85–960.0 MHz band is licensed by Economic Area and used for terrestrial point-to-point and point-to-multipoint fixed and mobile operations.

(b) Frequencies normally available for assignment in this service are set forth with applicable limitations in the following tables: 928–960 MHz Multiple address system (MAS) frequencies are available for the point-to-multipoint and point-to-point transmission of a licensee's products or services, excluding video entertainment material, to a licensee's customer or for its own internal communications. The paired frequencies listed in this section are used for two-way communications between a master station and remote stations. Ancillary one-way communications on paired frequencies are permitted on a case-by-case basis. Ancillary communications between interrelated master stations are permitted on a secondary basis. The normal channel bandwidth assigned will be 12.5 kHz. EA licensees, however, may combine contiguous channels without limit or justification. Site-based licensees may combine contiguous channels up to 50 kHz, and more than 50 kHz only upon a showing of adequate justification. When licensed for a larger bandwidth, the system still is required to use equipment that meets the ±0.00015 percent tolerance requirement. (See § 101.107). Any bandwidth (12.5 kHz, 25 kHz or greater) authorized in accordance with this section may be subdivided into narrower bandwidths to create additional (or sub) frequencies without the need to specify each discrete frequency within the specific bandwidth. Equipment that is used to create additional frequencies by narrowing bandwidth (whether authorized for a 12.5 kHz, 25 kHz or greater bandwidth) will be required to meet, at a minimum, the ±0.00015 percent tolerance requirement so that all subfrequencies will be within the emission mask. Systems licensed for frequencies in these MAS bands prior to August 1, 1975, may continue to operate as authorized until June 11, 1996, at which time they must comply with current MAS operations based on the 12.5 kHz channelization set forth in this paragraph. Systems licensed between August 1, 1975, and January 1, 1981, inclusive, are required to comply with the grandfathered 25 kHz standard bandwidth and channelization requirements set forth in this paragraph. Systems originally licensed after January 1, 1981, and on or before May 11, 1988, with bandwidths of 25 kHz and above, will be grandfathered indefinitely.

(1) Frequencies listed in this paragraph are designated for private internal use and are subject to site-based licensing.

* * * * *

(2) Frequencies listed in this paragraph are designated for private internal use and are subject to site-based licensing.

* * * * *

(3) Frequencies listed in this paragraph are not restricted to private internal use and are licensed by geographic area. Incumbent facilities must be protected.

* * * * *

(4) Frequencies listed in this paragraph are licensed by either economic area or on a site-by-site basis.

TABLE 7.—PAIRED FREQUENCIES

Remote transmit	Master transmit
Licensed by Economic Area	
(12.5 kHz bandwidth):	
932.00625	941.00625
932.01875	941.01875
932.03125	941.03125
932.04375	941.04375
932.05625	941.05625
932.06875	941.06875
932.08125	941.08125
932.09375	941.09375
(50 kHz bandwidth):	
932.12500	941.12500
(12.5 kHz bandwidth):	
932.15625	941.15625
932.16875	941.16875
932.18125	941.18125
932.19375	941.19375
932.20625	941.20625
932.21875	941.21875
932.23125	941.23125
932.24375	941.24375
Reserved for public safety and private internal use. Licensed on site-by-site basis.	
(12.5 kHz bandwidth):	
932.25625	941.25625
932.26875	941.26875
932.28125	941.28125
932.29375	941.29375
932.30625	941.30625
932.31875	941.31875
932.33125	941.33125
932.34375	941.34375
932.35625	941.35625
932.36875	941.36875
932.38125	941.38125
932.39375	941.39375
932.40625	941.40625
932.41875	941.41875
932.43125	941.43125
Reserved for Public Safety and Federal Government Use. Licensed on site-by-site basis.	
(12.5 kHz bandwidth):	
932.44375	941.44375
932.45625	941.45625
932.46875	941.46875
932.48125	941.48125
932.49375	941.49375

* * * * *

10. Subpart O is added to part 101.

Subpart O—Multiple Address Systems

General Provisions

101.1301 Scope.
101.1303 Eligibility.
101.1305 Private internal service.
101.1307 Permissible communications.
101.1309 Regulatory status.

System License Requirements

101.1311 Initial EA license authorization.
101.1313 License term.
101.1315 Service areas.
101.1317 Competitive bidding procedures for mutually exclusive MAS EA applications.
101.1319 Competitive bidding provisions.
101.1321 License transfers.
101.1323 Spectrum aggregation, disaggregation, and partitioning.

System Requirements

101.1325 Construction requirements.
101.1327 Renewal expectancy for EA licensees.
101.1329 EA Station license, location, modifications.
101.1331 Treatment of incumbents.
101.1333 Interference protection criteria.

General Provisons

§ 101.1301 Scope.

This subpart sets out the regulations governing the licensing and operation of Multiple Address Systems (MAS). The rules in this subpart are to be used in conjunction with applicable requirements contained elsewhere in the Commission's rules, such as those requirements contained in parts 1 and 22 of this chapter.

§ 101.1303 Eligibility.

Authorizations for stations in this service will be granted in cases where it is shown that:

(a) The applicant is legally, financially, technically and otherwise qualified to render the proposed service;

(b) There are frequencies available to enable the applicant to render a satisfactory service; and

(c) The public interest, convenience or necessity would be served by a grant thereof:

§ 101.1305 Private internal service.

A private internal service is a service where entities utilize frequencies purely for internal business purposes or public safety communications and not on a for-hire or for-profit basis.

§ 101.1307 Permissible communications.

MAS users may engage in terrestrial point-to-point and point-to-multi-point fixed and mobile operations.

§ 101.1309 Regulatory status.

(a) The Commission will rely on each applicant to specify on FCC Form 601 the type of service or services it intends to provide. Each application for authorization in the bands designated for private internal use must include a certification stating why the application satisfies the definition of private internal use.

(b) Any interested party may challenge the regulatory status granted an MAS licensee.

System License Requirements

§ 101.1311 Initial EA license authorization.

(a) Winning bidders must file an application (FCC Form 601) for an initial authorization in each market and frequency block.

(b) Blanket licenses are granted for each market and frequency block. Applications for individual sites are not required and will not be accepted, except as specified in § 101.1329.

§ 101.1313 License term.

The license term for stations authorized under this subpart is ten years from the date of original issuance or renewal.

§ 101.1315 Service areas.

In the frequency bands not licensed on a site-by-site basis, the geographic service areas for MAS are Economic Areas (EAs). EAs are 175 areas, including U.S. territories and possessions, defined by the Department of Commerce's Bureau of Economic Analysis, as modified by the Commission.

§ 101.1317 Competitive bidding procedures for mutually exclusive MAS EA applications.

Mutually exclusive initial applications for licenses in the portions of the MAS bands licensed on a geographic area basis are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this part.

§ 101.1319 Competitive bidding provisions.

For the purpose of establishing eligibility requirements and bidding credits for competitive bidding for MAS licenses, pursuant to § 1.2110 of this chapter, the following definitions apply:

(a) *Eligibility for small business provisions.*

(1) A small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues for the preceding three years not to exceed $15 million, as determined pursuant to § 1.2110 of this chapter.

(2) A very small business is an entity that, together with its affiliates and persons or entities that hold interests in such entity and their affiliates, has average gross revenues for the preceding three years not to exceed $3 million, as determined pursuant to § 1.2110 of this chapter.

(b) *Bidding credits.* A winning bidder that qualifies as a small business, as defined in this section, or a consortium of small businesses, may use the bidding credit specified in § 1.2110(e)(2)(ii) of this chapter. A winning bidder that qualifies as a very small business, as defined in this section, or a consortium of very small businesses, may use the bidding credit specified in § 1.2110(e)(2)(i) of this chapter.

(c) *Unjust enrichment.* See § 1.2111 of this chapter.

§ 101.1321 License transfers.

(a) An MAS system license acquired through competitive bidding procedures (including licenses obtained in cases of no mutual exclusivity), together with all appurtenances may be transferred, assigned, sold, or given away only in accordance with the provisions and procedures set forth in § 1.2111 of this chapter.

(b) An MAS system license obtained through site-based licensing procedures, together with all appurtenances may be transferred, assigned, sold, or given away, to any other entity in accordance with the provisions and procedures set forth in § 1.948 of this chapter.

§ 101.1323 Spectrum aggregation, disaggregation, and partitioning.

(a) *Eligibility.* (1) Parties seeking approval for partitioning and disaggregation shall request from the Commission an authorization for partial assignment of license. Geographic area licensees may participate in aggregation, disaggregation, and partitioning within the bands licensed on a geographic area basis. Site-based licensees may aggregate spectrum in any MAS bands, but may not disaggregate their licensed spectrum or partition their licensed sites.

(2) Eligible MAS licensees may apply to the Commission to partition their licensed geographic service areas to eligible entities and are free to determine the portion of their service areas to be partitioned. Eligible MAS licensees may aggregate or disaggregate their licensed spectrum at any time following the grant of a license.

(b) *Technical standards*—(1) *Aggregation.* (i) There is no limitation on the amount of spectrum that an MAS licensee may aggregate.

(ii) Spectrum licensed to MAS licensees does not count toward the CMRS spectrum cap discussed in § 20.6 of this chapter.

(2) *Disaggregation.* Spectrum may be disaggregated in any amount. A licensee need not retain a minimum amount of spectrum.

(3) *Partitioning.* In the case of partitioning, applicants and licensees must file FCC Form 603 pursuant to § 1.948 of this chapter and list the partitioned service area on a schedule to the application. The geographic coordinates must be specified in degrees, minutes, and seconds to the nearest second of latitude and longitude, and must be based upon the 1983 North American Datum (NAD83).

(4) *Combined partitioning and disaggregation.* The Commission will consider requests from geographic area licensees for partial assignment of licenses that propose combinations of partitioning and disaggregation.

(c) *Unjust enrichment.* See § 1.2111(e) of this chapter.

(d) *Construction requirements.* (1) *Disaggregation.* Partial assignors and assignees for license disaggregation have two options to meet construction requirements. Under the first option, the disaggregator and disaggregatee would certify that they each will share responsibility for meeting the applicable construction requirements set forth in § 101.1325 for the geographic service area. If parties choose this option and either party fails to meet the applicable construction requirements, both licenses would be subject to forfeiture at renewal. The second option allows the parties to agree that either the disaggregator or disaggregatee would be responsible for meeting the requirements in § 101.1325 for the geographic service area. If parties choose this option, and the party responsible for meeting the construction requirement fails to do so, only the license of the non-performing party would be subject to forfeiture at renewal.

(2) *Partitioning.* Partial assignors and assignees for license partitioning have two options to meet construction requirements. Under the first option, the partitionor and partitionee would each certify that they will independently satisfy the applicable construction requirements set forth in § 101.1325 for their respective partitioned areas. If either licensee fails to meet its requirement in § 101.1325, only the non-performing licensee's renewal application would be subject to dismissal. Under the second option, the partitionor certifies that it has met or will meet the requirement in § 101.1325

for the entire market. If the partitionor fails to meet the requirement in § 101.1325, however, only its license would be subject to forfeiture at renewal.

(3) All applications requesting partial assignments of license for partitioning or disaggregation must certify in the appropriate portion of the application which construction option is selected.

(4) Responsible parties must submit supporting documents showing compliance with the respective construction requirements within the appropriate construction benchmarks set forth in § 101.1325.

(e) *License term.* The license term for a partitioned license area and for disaggregated spectrum shall be the remainder of the original licensee's license term as provided for in § 101.1313.

System Requirements

§ 101.1325 Construction requirements.

(a) Incumbent site-based licensees are subject to the construction requirements set forth in § 101.63 of subpart B (Applications and Licenses).

(b) Each MAS EA licensee must provide service to at least one-fifth of the population in its service area or "substantial service" within five years of the license grant. In addition, MAS EA licensees must make a showing of continued "substantial service" within ten years of the license grant. Licensees must file maps and other supporting documents showing compliance with the respective construction requirements within the appropriate five- and ten-year benchmarks of the date of their initial licenses.

(c) Failure by any licensee to meet these requirements will result in forfeiture or non-renewal of the initial license, and the licensee will be ineligible to regain it.

§ 101.1327 Renewal expectancy for EA licensees.

(a) A renewal applicant shall receive a renewal expectancy at the end of the license period as long as the applicant:

(1) Demonstrates that the licensee has provided continued "substantial service," *i.e.*, service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal, during its past license term;

(2) Demonstrates that the licensee has substantially complied with applicable Commission Rules, policies, and the Communications Act of 1934, as amended;

(3) Provides an explanation of the licensee's record of expansion, including a timetable of the construction of new facilities to meet changes in demand for services provided by the licensee; and (4) Provides a description of investments made by the licensee in its system.

(b) In determining whether a renewal applicant has complied with the "substantial service" requirement by the end of the ten-year initial license term, the Commission may consider factors such as:

(1) Whether the licensee is offering a specialized or technologically sophisticated service that does not require a high level of coverage to be of benefit to customers; and (2) Whether the licensee's operations service niche markets or focus on serving populations outside of areas served by other licensees. The "substantial service" requirement can, however, be met in other ways, and the Commission will review each licensee's showing on a case-by-case basis.

(c) A "substantial service" assessment will be made at renewal pursuant to the procedures contained in § 1.949 of this chapter.

§ 101.1329 EA Station license, location, modifications.

EA licensees may construct master and remote stations anywhere inside the area authorized in their licenses, without prior approval, so long as the Commission's technical and other Rules are complied with, except that individual licenses are required for any master station that:

(a) Requires the submission of an environmental assessment under § 1.1307 of this chapter;

(b) Requires international coordination; or

(c) Would affect the radio frequency quiet zones described in § 1.924 of this chapter.

§ 101.1331 Treatment of incumbents.

(a) Any station licensed by the Commission prior to July 1, 1999, as well as any assignments or transfers of such station as of January 19, 2000, shall be considered incumbent.

(b) Incumbent operators in the 928.0–928.85/952.0–952.85/956.25–956.45 MHz bands are grandfathered as of January 19, 2000, and may continue to operate and expand their systems pursuant to the interference protection and co-channel spacing criteria contained in § 101.105.

(c) Incumbent operators in the 928.85–929.0/959.85–960.0 MHz bands are grandfathered as of January 19, 2000, and may expand their systems provided that the signal level of the additional transmitter(s) does not increase the composite contour that occurs at a 40.2 kilometer (25-mile) radius from the center of each master station transmitter site. Incumbent operators and geographic area licensees may negotiate alternative criteria.

(d) The frequencies associated with incumbent authorizations in the 928/959 MHz bands that have cancelled automatically or otherwise been recovered by the Commission will automatically revert to the applicable EA licensee.

(e) The frequencies associated with incumbent authorizations in the 928/952/956 MHz bands that have cancelled automatically will revert to the Commission.

§ 101.1333 Interference protection criteria.

(a) *Frequency coordination.* All EA licensees are required to coordinate their frequency usage with co-channel adjacent area licensees and all other affected parties.

(b) EA licensees are prohibited from exceeding a signal strength of 40 dBμ/m at their service area boundaries, unless a higher signal strength is agreed to by all affected co-channel, adjacent area licensees.

(c) EA licensees are prohibited from exceeding a signal strength of 40 dBμV/m at incumbent licensees' 40.2 kilometer (25-mile) radius composite contour specified in § 101.1329(b).

(d) In general, licensees shall comply with the appropriate coordination agreements between the United States and Canada and the United States and Mexico concerning cross-border sharing and use of the applicable MAS frequencies.

(1) *Canada—932.0–932.25 MHz and 941.0–941.25 MHz:*

(i) Within Lines A, B, C, and D, as defined in § 1.928(e) of this chapter, along the U.S./Canada border, U.S. stations operating in the 932.0–932.25 MHz and 941.0–941.25 MHz bands are on a secondary basis and may operate provided that they shall not transmit a power flux density (PFD) at the border greater than -100 dBW/m^2 nor -94 dBW/m^2, respectively. The U.S. has full use of the frequencies in these regions up to the border in the bands 932.25–932.50 MHz and 941.25–941.50 MHz, and Canadian stations may operate on a secondary basis provided they do not exceed the respective PFDs shown above. PFD can be determined using the following formula: PFD (dBW/m^2) = 10 log [EIRP/4π(D^2], where EIRP is in watts, D is in meters, and the power is relative to an isotropic radiator. The technical parameters are also limited by tables 1 and 2:

TABLE 1.—MAXIMUM RADIATED POWER

Class of station	Band MHz	Maximum EIRP		Maximum ERP [1]	
		Watts	dBW	Watts	dBW
Master	941.0–941.5	1000	30	600	27.8
Fixed Remote and Master	932.0–932.5	50	17	30	14.8

[1] Where ERP = EIRP/1.64.

(ii) Maximum antenna height above average terrain for master stations operating at a maximum power shall not exceed 150 meters. Above 150 meters, the power of master stations shall be in accordance with following table:

TABLE 2.—ANTENNA HEIGHT—POWER REDUCTION TABLE

Antenna height above average terrain (meters)	EIRP		ERP	
	Watts	dBW	Watts	dBW
Above 305	200	23	120	20.8
Above 275 to 305	250	24	150	21.8
Above 245 to 275	315	25	190	22.8
Above 215 to 245	400	26	240	23.8
Above 180 to 215	500	27	300	24.8
Above 150 to 180	630	28	380	25.8

Note to Table 2: This information is from the *Arrangement between the Federal Communications Commission and the National Telecommunications and Information Administration of the United States of America, and Industry Canada concerning the use of the bands 932 to 935 MHz and 941 to 944 MHz along the United States-Canada border* signed in 1994. This agreement also lists grandfathered stations that must be protected.

(2) *Canada—928–929 MHz and 952–960 MHz:*

Between Lines A and B and between Lines C and D, as defined in § 1.928(e) of this chapter, along the U.S./Canada border, U.S. stations operating in the 928.50–928.75 MHz and 952.50–952.75 MHz bands are on an unprotected basis and may operate provided that they shall not transmit a power flux density (PFD) at or beyond the border greater than -100 dBW/m^2. The U.S. has full use of the frequencies in these regions up to the border in the bands 928.25–928.50 MHz and 952.25–952.50 MHz, and Canadian stations may operate on an unprotected basis provided they do not exceed the PFD above. Frequencies in the bands 928.00–928.25 MHz, 928.75–929.00 MHz, 952.00–952.25 MHz, and 952.75–952.85 MHz are available for use on a coordinated, first-in-time, shared basis subject to protecting grandfathered stations. New stations must provide a minimum of 145 km (90 miles) separation or alternatively limit the actual PFD of the proposed station to -100 dBW/m^2, at the existing co-channel master stations of the other country, or as mutually agreed upon on a case-by-case basis. Coordination is not required if the PFD at the border is lower than -100 dBW/m^2. The technical criteria are also limited by the following:

Maximum EIRP for master stations in the MHz band: 1000 watts (30 dBW) 952–953

Maximum EIRP for fixed remote stations or stations in the 928–929 MHz band: 50 watts (17 dBW) master

Maximum EIRP for mobile master stations: 25 watts (14 dBW)

Maximum antenna height above average master or control stations: 152 m at 1000 watts terrain for EIRP, power derated in accordance with the following table:

Antenna height above average terrain (m)	EIRP	
	Watts	dBm
Above 305	200	53
Above 275 to 305	250	54
Above 244 to 274	315	55
Above 214 to 243	400	56
Above 183 to 213	500	57
Above 153 to 182	630	58
Below 152	1000	60

Note to Table in paragraph (d)(2): This information is from the *Arrangement between the Department of Communications of Canada and the Federal Communications Commission of the United States of America Concerning the Use of the Bands 928 to 929 MHz and 952 to 953 MHz along the United States-Canada Border* signed in 1991. This agreement also lists grandfathered stations that must be protected.

(3) *Mexico:*

Within 113 kilometers of the U.S./Mexico border, U.S. stations operating in the 932.0–932.25 MHz and 941.0–941.25 MHz bands are on a secondary basis (non-interference to Mexican primary licensees) and may operate provided that they shall not transmit a power flux density (PFD) at or beyond the border greater than −100 dBW/m². Upon notification from the Commission, U.S. licensees must take proper measures to eliminate any harmful interference caused to Mexican primary assignments. The U.S. has full use of the frequencies in these regions up to the border in the bands 932.25–932.50 MHz and 941.25–941.50 MHz, and Mexican stations may operate on a secondary basis (non-interference to U.S. primary licensees) provided they do not exceed the PFD shown above. Stations using the 932–932.5 MHz band shall be limited to the maximum effective isotropic radiated power of 50 watts (17 dBW). Stations using the 941–941.5 MHz band shall meet the limits in the following table:

Antenna height above average mean sea level (meters)	EIRP	
	Watts	dBW
Above 305	200	23
Above 274 to 305	250	24
Above 243 to 274	315	25
Above 213 to 243	400	26
Above 182 to 213	500	27
Above 152 to 182	630	28
Up to 152	1000	30

Note to Table in paragraph (d)(3): This information is from the *Agreement between the Government of the United States of America and the Government of the United Mexican States Concerning the Allocation and Use of Frequency Bands by Terrestrial Non-Broadcasting Radiocommunication Services Along the Common Border, Protocol #6 Concerning the Allotment and Use of Channels in the 932–932.5 and 941–941.5 MHz Bands for Fixed Point-to-Multipoint Services Along the Common Border* signed in 1994.

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Proposed Rules

Federal Register
Vol. 65, No. 64
Monday, April 3, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 93

[Docket No. 99–054–1]

Spanish Pure Breed Horses from Spain

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations that govern the importation of Spanish Pure Breed horses from Spain, a country in which contagious equine metritis, a venereal disease of horses, may exist. We would allow Spanish Pure Breed horses to be imported from Spain into the United States under the same conditions that apply to thoroughbred horses from certain other regions in which contagious equine metritis either exists or may exist. We are proposing this action because Spanish Pure Breed horses, like thoroughbred horses from those other regions, are less likely to be infected with contagious equine metritis than other horses, largely because the life history and medical records of each horse is known and can be certified by a veterinarian of the national government of the region of origin. This action would relieve some restrictions on the importation of Spanish Pure Breed horses into the United States.

DATES: We invite you to comment on this docket. We will consider all comments that we receive by June 2, 2000.

ADDRESSES: Please send your comment and three copies to:

Docket No. 99–054–1, Regulatory Analysis and Development, PPD, APHIS, Suite 3C03, 4700 River Road, Unit 118, Riverdale, MD 20737–1238.

Please state that your comment refers to Docket No. 99–054–1.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue, SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS rules, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

FOR FURTHER INFORMATION CONTACT: Dr. Morley Cook, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 39, Riverdale, MD 20737–1231; (301) 734–6479.

SUPPLEMENTARY INFORMATION:

Background

The animal importation regulations (contained in 9 CFR part 93 and referred to below as the regulations), among other things, prohibit or restrict the importation of certain animals, including horses, into the United States to protect U. S. livestock from communicable diseases, including contagious equine metritis (CEM). CEM is a contagious venereal disease of horses and other equidae that affects breeding and fertility.

To prevent the introduction of CEM, § 93.301(c)(1) lists regions in which CEM exists or in which CEM may exist because those regions have traded horses freely with regions in which CEM exists without testing for CEM. These regions are referred to below as listed regions. Paragraph (c)(1) prohibits the importation of horses into the United States from listed regions unless the horses are imported in accordance with certain requirements. The horses must be:

- Wild species of equidae if captured in the wild or imported from a zoo or other facility where it would be unlikely that the animal would come in contact with domesticated horses used for breeding;
- Geldings;
- Weanlings or yearlings;
- Horses imported in specific cases under conditions prescribed by the Administrator of APHIS as provided in § 93.301(a);
- Thoroughbred horses imported for permanent entry from France, Germany, Ireland, or the United Kingdom as provided in § 93.301(d);
- Stallions or mares over 731 days of age for permanent entry as provided in § 93.301(e) (which requires pre-export testing, Federal quarantine upon arrival, and post-entry quarantine in a State approved to receive horses from listed regions);
- Horses over 731 days of age imported for no more than 90 days to compete in specified events as provided in § 93.301(f); or
- U.S. horses returning to the United States as provided in § 93.301(g).

The Equine Breeding Service of the Spanish Government has requested that we amend the regulations to allow Spanish Pure Breed horses to be imported into the United States from Spain under the same conditions that apply to thoroughbred horses from France, Germany, Ireland, and the United Kingdom. Currently, Spanish Pure Breed horses other than weanlings and yearlings may be imported for permanent entry into the United States only in accordance with § 93.301(e). France, Germany, Ireland, and the United Kingdom are listed regions, as is Spain. However, the requirements in § 93.301(d) for importing thoroughbred horses from France, Germany, Ireland, and the United Kingdom are less restrictive than the requirements in § 93.301(e) because the life history and medical records of each thoroughbred horse imported from these countries is known and can be certified by a veterinarian of the national government of the region of origin.

Under § 93.301(d), each thoroughbred horse from France, Germany, Ireland, and the United Kingdom must be accompanied at the time of importation by an import permit and an import health certificate. The requirements related to import permits are contained in § 93.304 of the regulations. The requirements related to import health certificates are contained in § 93.314 of the regulations.

According to § 93.314, an import health certificate must be issued by a salaried veterinary officer of the national government of the region of origin, and it must certify that each horse has been in that region for the 60 days preceding exportation; that each horse has been inspected on the premises of origin and has been found free of evidence of communicable disease, and exposure to communicable disease, during the 60 days preceeding exportation; and that each horse has not

been vaccinated with a live, attenuated, or inactivated vaccine for the 14 days preceding exportation, unless authorized by the Administrator of APHIS.

Paragraph (d) of § 93.301 requires that the veterinarian signing and issuing the import health certificate also certify that he or she has examined the daily records of the horse's activities maintained by the trainer and the records of the horse's activities maintained by a breed association that is specifically approved by the U.S. Department of Agriculture. The veterinarian must certify that the information in these records is consistent and current.

For thoroughbred horses over 731 days of age, the import health certificate must also certify that cultures negative for CEM have been obtained from sets of specimens collected from each horse on 3 separate occasions within a 7-day period. The last set of specimens must have been collected within 30 days of exportation. All specimens must have been received within 48 hours of collection by a laboratory approved to culture for CEM by the national veterinary service of the region of export. All specimens must have been accompanied by a statement indicating the time and date of their collection.

Under § 93.301(d), if any specimen is found positive for CEM, the horse it was collected from must be treated for CEM in a manner approved by the national veterinary service of the region of export. After the treatment is completed, at least 21 days must pass before the horse is eligible to be tested again.

Additionally, § 93.301(d) requires that thoroughbred horses imported from France, Germany, Ireland, and the United Kingdom complete the Federal quarantine required under § 93.308 before they can be released in the United States. Thoroughbred horses that were found positive for, and were treated for, CEM in the region of export must be further quarantined under State or Federal supervision until they have met the additional testing and treatment requirements in § 93.301(e)(3) for stallions or § 93.301(e)(5) for mares.

Under § 93.301(e)(3), specimens must be collected from each stallion's prepuce, urethral sinus, and fossa glandis, including the diverticulum of the fossa glandis, and must be cultured for CEM. If the results are negative, the stallion must be test bred to two mares, after which the stallion must undergo the following treatment for 5 consecutive days: the prepuce, the penis, including the fossa glandis, and the unrethral sinus of the stallion must be thoroughly cleaned and scrubbed with a solution of not less than 2 percent surgical scrub chlorhexidine, while the stallion is in full erection, and then thoroughly coated with an ointment effective against the CEM organism.

Cultures must be made from sets of specimens collected from the mucosal surfaces of the clitoral fossa and clitoral sinuses of each test mare on the third, sixth, and ninth days after test breeding. A complement fixation test for CEM must be performed on each test mare on the fifteenth day after the test breeding. If the result of any culture taken from either of the test mares or from the stallion is positive for CEM, the stallion must undergo the treatment described above and then be test bred again to two mares no sooner than 21 days after the last day of the treatment. Treatment and test breeding must be repeated until all tests are negative for CEM.

Under § 93.301(e)(5), sets of specimens must be taken from mares on days 1, 4, and 7 of a 7-day period. The specimens must be taken from the mucosal surfaces of the clitoral fossa and the clitoral sinuses and cultures must be made. After the three sets of specimens have been taken, organic debris must be manually removed from the clitoral sinuses of each mare and the sinuses must be flushed with a cerumalytic agent. For 5 consecutive days after the sinuses of the mare have been cleaned, the external genitalia and vaginal vestibule, including the clitoral fossa, must be aseptically cleaned and washed with a solution of not less than 2 percent chlorhexidine in a detergent base, and then the clitoral fossa and the clitoral sinuses must be filled and the external genitalia and vaginal vestibule must be coated with an antibiotic ointment effective against the CEM organism. All test results must be negative for CEM before the mare may be released from quarantine. If any test is positive, the mare must be treated again and then tested no less than 21 days after the last day of the treatment described above. Treatment and testing must be repeated until all tests are negative for CEM.

All specimen collections, test breeding, and treatments required under § 93.301(e)(3) and § 93.301(e)(5) must be performed by an accredited veterinarian. All specimens must be submitted to the National Veterinary Services Laboratories, Ames, IA, or to a laboratory approved by the Administrator to conduct CEM cultures and tests. All test results must be negative for CEM before the horses may be released from quarantine.

These conditions ensure that thoroughbred horses imported into the United States from France, Germany, Ireland, and the United Kingdom are free of CEM.

At the request of the Equine Breeding Service of the Spanish Government, we are proposing to allow Spanish Pure Breed horses to be imported from Spain into the United States under the same conditions that apply to thoroughbred horses from France, Germany, Ireland, and the United Kingdom. We would add the Servicio de Cria Caballar y Remonta as the breed association that is specifically approved by the U.S. Department of Agriculture for the purposes of § 93.301(d).

The Spanish Pure Breed horse is only one of seven or eight breeds of purebred horses originating in Spain, but current and accurate historical and medical information is not readily available for the other breeds, so they are not included in this proposed rule. This action would relieve some restrictions on the importation of Spanish Pure Breed horses from Spain (i.e., the horses would not have to undergo the testing and treatment requirements in § 93.301(e)(3) and § 93.301(e)(5) unless they were found positive for, and were treated for, CEM prior to exportation).

We have conducted a risk assessment for this proposed rule to ensure that this action would pose a negligible risk of introducing CEM into the United States. The risk assessment contains a qualitative analysis of 11 risk factors, which are listed in 9 CFR part 92, "Importation of Animals and Animal Products: Procedures for Requesting Recognition of Regions," and a quantitative analysis that evaluates the frequency with which a Spanish Pure Breed horse infected with CEM might be imported from Spain into the United States if this proposed rule were adopted.

According to the qualitative analysis of the risk assessment, Spain is likely to be free of CEM. Additionally, Spanish veterinary authorities have the capabilities needed to culture and diagnose CEM. Routine breeding soundness examinations and investigations of reproductive diseases and reproductive failures conducted by the Spanish Government and military veterinarians would detect CEM if it were to occur in Spanish Pure Breed horses. There has never been a reported case of CEM in Spain. However, even if CEM were introduced into Spain, there is very little chance that it would affect the Spanish Pure Breed population since Spain does not import Spanish Pure Breed horses and Spanish Pure Breed horses are not bred with other breeds.

The quantitative analysis evaluates the number of Spanish Pure Breed horses that are likely to be imported from Spain, the probability that a randomly selected horse would be infected with CEM, and the probability that the infection would be detected by the testing required under this proposed rule.

According to the quantitative analysis, the predicted average frequency, with a 95 percent confidence level, with which a Spanish Pure Breed horse infected with CEM would be released into the United States is once every 700 years or less often. With a 50 percent confidence level, the predicted average frequency is one release every 2,300 years or less often.

Thus, based on the risk assessment, we have determined that this action would pose a negligible risk of introducing CEM into the United States.

The complete risk assessment for this proposed rule may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT.**

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would allow Spanish Pure Breed horses to be imported from Spain into the United States under the same conditions that apply to thoroughbred horses from France, Germany, Ireland, and the United Kingdom. We are considering this action in response to a request we have received from Spain's Equine Breeding Service to relieve some of the restrictions on the importation of Spanish Pure Breed horses from Spain since the life histories and medical records of these horses can be certified by Spanish Government veterinarians.

The following analysis addresses the economic effect the proposed rule would have on small entities, as required by the Regulatory Flexibility Act.

In 1997, there were 375,218 farms in the United States keeping 2,427,277 horses of all kinds. Approximately 79,516 farms sold 325,306 horses, receiving $1.03 billion in sale revenues. Approximately 98 percent of the farms that sold horses have less than $500,000 in annual revenue and, therefore, are considered small entities by the U.S. Small Business Administration.

U.S. importers and breeders of Spanish Pure Breed horses would be affected by this rule. This rule would make it less expensive for importers to import Spanish Pure Breed horses from Spain.

There are approximately 270 domestic breeders of Spanish Pure Breed horses in the United States, most of which are likely to be small entities. In 1998, there were approximately 2,500 Spanish Pure Breed horses in the United States and only 225 foals were registered that year.

In 1995 and 1996, 4 horses (not all of which were Spanish Pure Breed horses) were imported into the United States from Spain; there were 21 horses in 1997, 39 in 1998, and 46 in 1999. If the proposed rule is adopted, we estimate that the number of Spanish Pure Breed horses imported into the United States from Spain will most likely increase to an average of about 60 per year, for the next 3 to 5 years, with a maximum of 100 in any given year.

Currently, the demand for Spanish Pure Breed horses in the United States is greater than can be supplied by domestic breeders and the small number of these horses imported from Costa Rica, Mexico, and Spain. In 1997, 225 Spanish Pure Breed foals were registered in the United States, while a total of 50 were imported into the United States from all over the world, despite the high costs of shipping (approximately $5000 per horse for air freight plus insurance against mortality, figured at 1 percent of the horse's declared value), quarantine, and testing. Because domestic Spanish Pure Breed horses are less expensive than imports, the demand for domestic Spanish Pure Breed horses would not decrease as a result of this rule. This rule would help satisfy the growing demand for the horses in the United States, and make it less expensive for U.S. breeders and importers to obtain them from Spain.

We do not expect domestic breeders of Spanish Pure Breed horses to be affected by this rule if it is adopted, since the demand in the United States for Spanish Pure Breed horses is greater than the domestic supply and since domestic Spanish Pure Breed horses will still be less expensive than imported ones.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 99–054–1. Please send a copy of your comments to: (1) Docket No. 99–054–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

This proposed rule may increase the number of import permits and import health certificates that will be issued for the importation of thoroughbred horses into the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average .78947 hours per response.

Respondents: Salaried veterinary officers of the Spanish Government and U.S. importers of Spanish Pure Breed horses.

Estimated annual number of respondents: 15.

Estimated annual number of responses per respondent: 6.333.

Estimated annual number of responses: 95.

Estimated total annual burden on respondents: 75 hours.

(Due to rounding, the total annual burden may not equal the product of the annual responses multiplied by the average reporting burden per response.)

Copies of this information collection can be obtained from: Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 93

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, we propose to amend part 93 as follows:

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

1. The authority citation for part 93 continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 11, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.2(d).

§ 93.301 [Amended]

2. In § 93.301, footnote 6 would be amended by adding the words "Servicio de Cria Caballar y Remonta for Spain;" immediately after the word "Department:".

3. In § 93.301, paragraph (c)(2)(v), the heading to paragraph (d), and the introductory text in paragraph (d)(1) would be revised to read as follows:

§ 93.301 General prohibitions; exceptions.

* * * * *

(c) * * *

(2) * * *

(v) Spanish Pure Breed horses imported for permanent entry from Spain or thoroughbred horses imported for permanent entry from France, Germany, Ireland, or the United Kingdom if the horses meet the requirements of paragraph (d) of this section;

* * * * *

(d) *Spanish Pure Breed horses from Spain and thoroughbred horses from France, Germany, Ireland, and the United Kingdom.* (1) Spanish Pure Breed horses from Spain and thoroughbred horses from France, Germany, Ireland, and the United Kingdom may be imported for permanent entry if the horses meet the following requirements:

* * * * *

4. In § 93.301, in paragraph (d)(1)(ii)(D), the first sentence, the words "For thoroughbred horses" would be removed and the words "For Spanish Pure Breed horses and thoroughbred horses" would be added in their place.

5. In § 93.301, in paragraph (d)(3), the words "Thoroughbred horses" would be removed and the words "Spanish Pure Breed horses and thoroughbred horses" would be added in their place each time they appear.

Done in Washington, DC, this 28th day of March 2000.

Bobby R. Acord,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 00–8123 Filed 3–31–00; 8:45 am]

BILLING CODE 3410–34–U

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 915

[No. 2000–12]

RIN 3069–AB00

Election of Federal Home Loan Bank Directors

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulations to address the status of the 1999 and 2000 elections of directors at each Federal Home Loan Bank (Bank), and to provide standards regarding the manner in which the Banks must stagger their boards. The proposed rule also would address the consequences to an incumbent director whose directorship is eliminated or is redesignated as representing Bank members located in a different state before the end of his or her term.

EFFECTIVE DATE: The Finance Board will accept written comments on the rule until May 3, 2000.

FOR FURTHER INFORMATION CONTACT: Neil R. Crowley, Deputy General Counsel, (202) 408–2990, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Background

During 1999, each Bank conducted elections in which the members voted to elect approximately one-half of the elected directors of the Bank. The directors-elect were to have assumed office for two-year terms, commencing on January 1, 2000. On November 12, 1999, the Gramm-Leach-Bliley Act, Pub. Law No. 106–102, 133 Stat. 1338, 1453 (Nov. 12, 1999) (GLB Act), became law, amending Section 7(d) of the Federal Home Loan Bank Act (Bank Act) to establish 3-year terms for all Bank directors. 12 U.S.C. 1427(d), as amended. Because the GLB Act amendments became law upon enactment, they had the effect of extending the two-year terms of all incumbent elected directors by one year.[1] Thus, on January 1, 2000, there were no open directorships for the directors-elect to fill, and those individuals did not assume office on that date.

In previously addressing the effect of the GLB Act on the terms of Bank directorships, the Finance Board expressed its intent to authorize the board of directors of each Bank to decide whether to conduct new elections in 2000 or to adopt the tabulation of votes cast in the 1999 elections for use in the 2000 elections. Finance Board Resolution No. 99–65 (Dec. 14, 1999). The Finance Board indicated that it subsequently would establish the criteria by which the board of each Bank could make that decision, which is one issue addressed in this proposed rulemaking.

The GLB Act also provides that the Finance Board and the board of directors of each Bank shall adjust the term of any director first appointed or elected after enactment of the GLB Act, as necessary to cause the board of each Bank to be staggered into three approximately equal classes. 12 U.S.C. 1427(d), as amended. The GLB Act, however, imposed the staggering requirement without amending existing law, under which the directorships of the Banks are allocated among the states based in part on the amount of Bank stock held by the members located in each state and in part on the number of directorships designated to each state in

[1] See Finance Board Resolution No. 99–65 (Dec. 14, 1999). The GLB Act also had the effect of shortening the terms of all sitting appointed directors from four years to three years. An express transition provision in an earlier version of H.R. 10, which would have mandated that the new 3-year terms take effect with the first post-enactment elections, was not carried over into the GLB Act. H.R. 10, § 164(d), 105th Cong., 2d Sess. (May 13, 1998) (as passed by the House of Representatives).

1960. Under the existing provisions, it is possible for a directorship to be redesignated mid-term to represent the members located in another state. It is also possible that the annual designation of directorships might reduce the number of directorships allocated to a particular state, thus causing a directorship to disappear altogether. The proposed rule includes provisions that are intended to maintain a staggered board notwithstanding the possibility that over time one or more directorships might be eliminated. The proposed rule also would address the consequences to an incumbent director if his or her seat is eliminated or is redesignated mid-term to represent members located in another state.

II. State-Based Directorships

Section 7(b) of the Bank Act requires that the Finance Board designate "[e]ach elective directorship * * * as representing the members located in a particular State" and provides that the seat "shall be filled by a person who is an officer or director of a member located in that State." 12 U.S.C. 1427(b) (1994). Section 7(c) of the Bank Act requires that the designation of directorships "be determined * * * in the approximate ratio of the percentage of the * * * stock [required to be held by] * * * the members located in * * * [a particular] State at the end of the * * * [prior year] to the total required stock * * * of all members of such bank at the end of such year." 12 U.S.C. 1427(c) (1994). Under the stock-based allocation formula, each state must be allocated at least one directorship, but no state can be allocated more than six directorships. Section 7(c) also includes a "grandfather provision," however, under which each state may not be allocated fewer directorships than were allocated to it as of December 31, 1960, without regard to the amount of Bank stock currently held by the members in that state. The effect of the grandfather provision is that the members in 20 states are entitled to a minimum number of directorships that ranges from two to six seats per state. *See* 12 CFR 915.15 (listing the states with more than one grandfathered directorship).

The stock-based designation of the elective directorships is done annually. Because the allocation of directorships depends on the amount of Bank stock held by the members located in each state, the state to which a directorship is designated can change from one year to the next as the relative stockholdings of the members change. Because the constituency of a directorship could "migrate" to another state as a result of a redesignation, the incumbent would no longer be an officer or director of a member located in the designated state, as is required by Section 7(b), and thus would become ineligible to remain in office as a result of the redesignation. If such a redesignation were to occur mid-term, the board of directors of the Bank would be required to fill the resulting vacancy for the remainder of the unexpired term with an eligible successor, *i.e.*, an officer or director of a member located in the newly-designated state, pursuant to Section 7(f) of the Bank Act. 12 U.S.C. 1427(f) (1994).

Apart from the possibility that a given directorship may be redesignated to another state, it is possible that an elected directorship could disappear entirely as a result of a shift in the relative amounts of Bank stock held by the members located in different states. For example, in the New York Bank district an allocation of directorships based solely on the relative stockholdings of the members in New York and New Jersey at the end of 1998 would have resulted in the designation of six directorships to New York and two directorships to New Jersey. Because of the grandfather provision, however, the Finance Board cannot allocate fewer than four directorships to the New Jersey members, which results in four directorships being designated to New Jersey and six directorships being designated to New York. The members located in New York also are entitled to four seats under the grandfather provision. Thus, the fifth and sixth directorships that currently are designated to New York would continue to be designated to New York only if the relative amounts of Bank stock held by the members in each state remains unchanged in subsequent years.

If the amount of stock held by the New York members were to decrease sufficiently, the stock-based allocation might result in the New York members being allocated only five directorships, rather than their current six seats, with the New Jersey members being allocated three directorships. Although the grandfather provision again would result in New Jersey being allocated four seats, there no longer would be any basis for the New York members to retain the sixth directorship, which would be eliminated. There are at present nine states in eight of the Banks that are allocated one or more directorships in excess of the number guaranteed by the grandfather provision in which a directorship could be eliminated as a result of such a scenario.

Separately, Section 7(a) of the Bank Act allows the Finance Board to create additional elected directorships—"discretionary directorships"—for any Bank in which the district includes five or more states. 12 U.S.C. 1427(a), as amended. There are five such Bank districts: Boston, Atlanta, Dallas, Des Moines, and Seattle. The Finance Board has established a total of five discretionary seats for four of those Banks, which are designated to the following states: Massachusetts (1), North Carolina (1), Missouri (1), and Washington (2). The designation of those discretionary directorships is done at the same time as the annual designation of directorships, but is not dependent on the amount of Bank stock held by the members in a particular state, or on any other factor. The existence of the additional elected directorships created pursuant to Section 7(a) is purely a matter of discretion for the Finance Board.

In addition, for any Bank district in which the Finance Board has established a discretionary elected directorship pursuant to Section 7(a), the Bank Act authorizes the Finance Board to establish a limited number of discretionary appointed directorships. The Finance Board has established a total of seven discretionary appointed directorships in the four districts that have discretionary elected seats: Boston (2), Atlanta (1), Des Moines (2), and Seattle (2). The authority to create a discretionary appointed directorship exists only if the Finance Board has exercised its discretion under Section 7(a) to create discretionary elected directorships. Thus, if the Finance Board were to eliminate the existing discretionary elected directorships, the discretionary appointed directorships would cease to exist at the same time. If the Finance Board were to eliminate all of the discretionary elected directorships that it has established, each of the four Banks noted above could lose a total of between two and four directorships at once.

Because of the possibility that a Bank might lose a number of directorships under one or more of the above provisions, the boards of the Banks could become un-staggered over time regardless of the GLB Act, particularly if all directorships are lost from the same class. Because the GLB Act authorizes the adjustment only of the terms of the persons first appointed or elected after enactment, once the initial staggering is accomplished it is not clear that either the Banks or the Finance Board would be authorized subsequently to adjust the terms of the remaining directors, even if only to "re-stagger" a board that has become un-staggered due to a loss of directorships. The Finance Board believes that it is

unlikely that the GLB Act intended only that the boards of the Banks be staggered initially without any consideration being given to how the appropriate staggering might be maintained into the future. The Finance Board believes that by requiring each Bank's core of "guaranteed" directorships, *i.e.*, those authorized by the one-seat per state minimum and the grandfather provisions of Section 7(c), to be separately staggered the proposed rule would best ensure that the staggering required by the GLB Act will continue into the future without the risk that the loss of some directorships would upset the initially staggered board structure.

III. Description of the Proposed Rule

A. The 2000 Election

The first issue addressed by this proposed rule concerns the manner in which the members of each Bank are to elect successors to those directors whose terms will expire on December 31, 2000. The proposed rule generally would allow the board of directors of each Bank two alternatives: (i) conduct new elections during the year 2000 for all states for which an elected directorship is to commence on January 1, 2001, or (ii) adopt the results of the balloting from the 1999 elections for any state that qualifies under the requirements of this proposed rule, and conduct new elections only in those states for which the proposed rule would require a new election to be held. In either case, the designation of directorships conducted by the Finance Board in 2000 is to control as to the number of directorships to be allocated to the individual states.

Before a Bank could decide which alternative to adopt, it would have to comply with two requirements in the proposed rule that are procedural in nature. First, the board of directors of each Bank would have to wait until after receiving from the Finance Board the annual designation of directorships among the states within the Bank's district, in accordance with § 915.3(b). Second, the board would have to determine which states are to be assigned reduced terms in order to implement the staggering provisions of the GLB Act and this proposed rule, as described below.

By regulation, the Finance Board must complete the annual designation of directorships and notify the Banks of the results no later than June 1 of each year. Because the allocation of directorships might vary from year to year, the boards of the Banks cannot know whether the designation of directorships occurring in 2000 will be the same as the designation done in 1999. Mergers, acquisitions, and interstate relocations occurring during 1999, as well as the repeal by the GLB Act of Section 10(e) of the Bank Act (which imposes certain capital-based sanctions on non-qualified thrift lender members), could cause the 2000 designation of directorships to allocate a greater or lesser number of seats to particular states than were allocated to those states in 1999. The proposed rule would provide that the designation of directorships to be provided by the Finance Board in 2000 would be controlling with respect to the states to which the directorships are to be assigned. To avoid the possibility that the Banks might have to revisit the issue yet again if they were to ratify the 1999 election results before knowing whether the designations in 2000 had changed, the Finance Board believes that it would be appropriate for the Banks to await the results of the next annual designation of directorships before deciding how to proceed with the 2000 elections.

The second provision would apply only to those Banks whose boards of directors must decide which of two or more states is to be assigned a directorship with a shortened term. In order to create the third class of directorships required by the GLB Act, certain directorships must be assigned shortened terms in connection with the next two elections. Where the board of directors of a Bank is required to choose among several different states in assigning the shortened term, the proposed rule would require that the board make that determination before considering how to proceed with the 2000 election of directors. For example, the Atlanta Bank has one class of four elected directorships with terms commencing on January 1, 2001, in which each directorship represents a different state. It also has a second class of five elected directorships with terms commencing on January 1, 2002, in which four of the directorships represent different states. For each class, the board of the Atlanta Bank would be required to assign to one state a term of less than three years, and the proposed rule would require the board to make that assignment for both classes before determining how to conduct the 2000 election. The Finance Board believes that the better approach would be for this determination to be made at the outset, so that individuals running for the directorship from the affected states will know beforehand that they will not be serving a full three-year term.

As to the election, although the Finance Board intends to vest the decision regarding the method of selecting directors whose terms will commence on January 1, 2001 with the board of directors of each Bank, the proposed rule would require the Banks to conduct new elections in one case. If the designation of directorships conducted in 2000 were to result in a state being allocated a number of directorships that is greater than the number of nominees from that state in the 1999 election, then the Bank would be required to conduct an election in that state. For example, in the 1999 election the Finance Board had designated one directorship to the members in the state of Rhode Island, and there was only one candidate for that directorship. If the 2000 designation of directorships were to result in Rhode Island being allocated two elected directorships, the proposed rule would require the Boston Bank to conduct a new election in 2000 for both of the Rhode Island directorships. The requirement to conduct a new election in Rhode Island would apply on a state-by-state basis; it would not, for example, require that the Bank conduct a new election in any other states. In this example, had there been additional nominees for the Rhode Island directorship in the 1999 election, the board of directors would not be required to conduct a new election, but could declare elected the nominee who had received the next highest number of votes, assuming he or she remained eligible to serve.

If the proposed rule would not require a Bank to conduct a new election for a particular state, the board of directors of the Bank could decide whether to do so. If the board were to determine that the Bank should conduct new elections in 2000, the Bank would be required to conduct elections for every state for which a directorship is to commence on January 1, 2001, in accordance with the 2000 designation of directorships. In most instances, that would mean that the Bank would conduct elections in all states in which it conducted an election in 1999. The language also would require an election to be held for any other states for which an election may be required by the 2000 designation of directorships, and would require that no election be held in any state for which the Bank held an election in 1999 if none were required by the 2000 designations. If the board of directors of a Bank were to require new elections, the Bank would follow the normal procedures for conducting an election, in accordance with Part 915 of the Finance Board regulations, and the 1999 election results would be given no effect.

If a Bank would not be required to conduct new elections and its board of directors did not opt to do so, the proposed rule would allow the board to adopt the votes cast by the members in 1999 as the basis for electing the directors who are to commence their terms on January 1, 2001. The proposed rule would require that the use of the 1999 elections results be consistent with the 2000 designation of directorships and that there be sufficient eligible nominees remaining from the 1999 elections available to fill the designated seats. The board of each Bank would be required to confirm, on a state-by-state basis, that the use of the 1999 election results would be permissible, *i.e.*, that this rule does not require that a new election be held for a particular state, and that the nominees remain eligible.

If the 2000 designation of directorships among the states proves to be the same as the 1999 designation of directorships, then the proposed rule would allow the board of directors of a Bank to ratify the results of the 1999 election, subject to confirming the eligibility of the directors-elect to serve. If the 2000 designation of directorships were to differ from the 1999 designation, the board of directors still would be able to ratify the results of the 1999 elections, provided that doing so would be consistent with the 2000 designations of directorships. For example, if the number of eligible nominees remaining from the 1999 election for a particular state were to equal or exceed the number of directorships allocated to that state in 2000, the board of directors would be able to adopt the 1999 election results to fill the directorships designated to that state in 2000. In that case, the board would follow the normal elections procedure of declaring elected the nominee who received the greatest number of votes in the 1999 election, as well as each successive nominee until all of the directorships designated to that state have been filled.

If the number of directorships designated to a state in 2000 were to be less than the number of directorships designated to that state in 1999, the proposed rule would allow the board of directors to declare elected only the number of nominees that is required to fill all seats open under the 2000 designation. Thus, if a state in which three directorships were to be filled in the 1999 election were allocated only two directorships in the 2000 designation of directorships, only the two nominees from that state receiving the most votes would be declared elected. Similarly, if the number of directorships designated to a state in 2000 is greater than the number of directorships designated to that state in 1999, the board would declare elected however many nominees from the 1999 election as are required to fill all of the seats allocated to that state under the 2000 designation. Thus, if a state in which two directorships were to be filled in 1999 were allocated three directorships in 2000, and there were other nominees who were not elected in 1999, the board of directors could declare the nominee who received the next highest number of votes elected to the newly created seat.

If the board of directors were to ratify the 1999 election results, the proposed rule would require it to notify the Finance Board, the directors-elect, and each member in the affected state. The notice also would be required to indicate which, if any, terms have been adjusted in order to achieve the staggering required by the GLB Act. This requirement would apply to any directorship with a reduced term. Any such term adjustments must comply with § 915.17 of the proposed rule, described below, which addresses staggering the board of directors.

B. Staggering the Terms of Office

The GLB Act imposed what appears to be a straightforward requirement that the board of directors of each Bank be staggered into three approximately equal classes, *i.e.*, it requires a "class-based" directorship structure for the Banks. Implementing that requirement, however, is not quite so straightforward because the GLB Act also retained the provisions of current law that require that the Banks have a "state-based" directorship structure. To some degree, a "class-based" structure and a "state-based" structure are in conflict. For example, the Banks cannot have and maintain a pure "class-based" staggered directorship structure if other provisions of the Bank Act allow for the possibility that a certain number of directorships may disappear from a given class as a result of shifting stock ownership or at the discretion of the Finance Board. Similarly, the Banks cannot maintain a viable "state-based" directorship structure if the creation, elimination, and redesignation of directorships that are necessary consequences of a system that assigns directorships based on relative stock ownership among the states are constrained by other provisions of the Bank Act that require the maintenance of a strict class structure. The proposed rule attempts to strike a balance between the two directorship structures by focusing on each Bank's core of "guaranteed" directorships, *i.e.*, those that are guaranteed to a particular state by statute, and ensuring that they remain staggered even if a certain number of the "non-guaranteed" directorships are eliminated in the future.

Guaranteed Directorships

The Bank Act guarantees that the members in each state are to be allocated a certain minimum number of Bank directorships. For most states, the Bank Act guarantees each state one directorship. Under the grandfather provision, however, 20 states are guaranteed a minimum number of seats that ranges from two to six directorships. *See* 12 CFR 915.15. Those directorships cannot be eliminated, either by the Finance Board or as a result of shifting stock ownership among the members, nor can they be redesignated as representing members in another state. The proposed rule would define that core group of seats that must be allocated to each state as "guaranteed directorships". Ten of the Banks have eight guaranteed directorships each; the other two Banks, New York and San Francisco, have nine and five guaranteed directorships, respectively.

Non-Guaranteed Directorships

The Bank Act also contemplates that certain states may be allocated directorships beyond the minimum number guaranteed by the Bank Act. The additional directorships result either from the amount of Bank stock held by the members located in a particular state or from the Finance Board's exercise of its authority to create discretionary directorships pursuant to Section 7(a) of the Bank Act. Those seats are not permanently allocated to a particular state and may be redesignated from year to year as representing members in another state; they also could be eliminated entirely. Most of the Banks have such directorships allocated to one or more states within their district, which the proposed rule would define as "non-guaranteed directorships". The proposed rule also would define the two distinct sub-groups of non-guaranteed directorships as: (1) "discretionary directorships," *i.e.*, an elected or appointed directorship created by the Finance Board pursuant to Section 7(a) in districts with five or more states; and (2) "stock directorships," *i.e.*, an elected directorship allocated to a state based on the amount of Bank stock held by the members located in that state, in addition to the minimum number of guaranteed directorships allocated to that state.

Staggering Process

The GLB Act requires that the board of each Bank be staggered into three approximately equal classes. Based on that directive, the proposed rule would first divide the guaranteed directorships at each Bank into three groups that are as nearly equal as possible. For the ten Banks that each have eight guaranteed directorships, that would result in three classes with: two directors, three directors, and three directors, respectively. For the New York Bank, with nine guaranteed directorships, the result would be three classes, each with three directorships; for the San Francisco Bank, with five guaranteed directorships, there would be three classes with one, two, and two directorships, respectively. Accordingly, for eleven of the Banks the maximum number of guaranteed directorships that could be grouped into a single "class", *i.e.*, a group of directorships with terms expiring on the same date, would be three; for the San Francisco Bank the maximum number would be two.

The Finance Board considered attempting to establish a staggering methodology that could apply to the entire board of both appointed and elected directors, rather than the proposed method that focuses on the guaranteed directorships. Because of the differences between the two types of directors, *i.e.*, the different manner of selection, the different interests represented, and the state-based restrictions that apply only to the elected directors, the Finance Board determined that the better approach would be to build the staggered board on the foundation of guaranteed directorships, with non-guaranteed directorships and appointed directorships being assigned adjusted terms, as necessary to result in the approximate one-third staggering required by the GLB Act.

With regard to both the non-guaranteed and the appointed directorships, the terms would be adjusted only as necessary to achieve the appropriately staggered board. For example, eight of the Banks have six appointed directorships each. As the terms for the existing appointed directorships expire over the next two years, *i.e.*, for the first post-GLB Act appointments, the Finance Board intends to adjust the terms of however many successor directorships are necessary to group the appointed directorships into three classes of two directors each. Because the three groups would be equal in number, there would be no effect on the staggering for the boards of those Banks. Similarly, with regard the other four Banks (three of which have eight appointed directorships and one of which has seven), the Finance Board intends to adjust the terms of those additional directorships as necessary to cause the entire board to be appropriately staggered. The Finance Board already has begun that process with the appointments for directorships commencing on January 1, 2000, and intends to follow the same approach with respect to the appointed directorships with terms commencing on January 1, 2001 and 2002, respectively.

Based initially on the maximum number of guaranteed directorships that may be included in a single class, the Finance Board has created a matrix for each Bank that indicates how the existing classes of elected directorships would be divided in order to create three classes of directorships of approximately equal size. The proposed rule would require the board of directors of each Bank to adjust the terms of directorships that commence on January 1, 2001 and January 1, 2002 in accordance with the matrix for that Bank, as described below. Each matrix groups the directorships based on their current status, *i.e.*, one group whose terms will commence on January 1, 2001, and a second group whose terms will commence on January 1, 2002. Within those two groups, the matrices indicate the states to which each directorship would be designated, the length of the term assigned to each directorship (commencing on January 1, 2001 or January 1, 2002, respectively), and whether the seat is "non-guaranteed," *i.e.*, either a discretionary directorship or a stock directorship. The matrices are based on the designation of directorships conducted in 1999, which is the most recent designation available. The matrices to be published in connection with the final rule would show the designation of directorships based on the amount of stock held by the members of each Bank as of December 31, 1999. The Finance Board also intends to provide updated matrices next year, in conjunction with the then-current designation of directorships.

With regard to the directorships commencing on January 1, 2001, each matrix assigns, or requires the board of directors of the Bank to assign, a three-year term to three of the guaranteed directorships (two directorships, in the case of San Francisco), which is the maximum number of guaranteed directorships allowed for any one class of directors. Each of the remaining guaranteed directorships with terms commencing on January 1, 2001 is assigned a two-year term; those directorships would establish, at least in part, the third class of directorships required by the GLB Act. The matrix applies the same methodology to the class of guaranteed directorships with terms commencing on January 1, 2002, except that the shortened terms would be for one year, rather than for two years. The Finance Board believes that assigning the three-year terms to the maximum number of guaranteed directorships possible in any one class is consistent with the GLB Act, which authorizes the adjustment of the term of a directorship only as necessary to achieve the required one-third staggering of the board.

For example, the Pittsburgh Bank has four guaranteed directorships with terms commencing on January 1, 2001. The matrix indicates that three of those seats—the maximum number of guaranteed directorships in any one class—are to have the full three-year term and the one remaining directorship is to have a two-year term. The Pittsburgh Bank also has four other guaranteed directorship with terms commencing on January 1, 2002. Again, the matrix indicates that three of those seats—the maximum number of guaranteed directorships per class—receive a full three-year term, with the fourth directorship receiving a one year term. As a result, the Bank would achieve the required "2–3–3" staggering of its guaranteed directorships by adjusting the terms of only two of the eight guaranteed directorships. Thus, the Bank would have one class of two directorships with terms expiring on December 31, 2002, one class of three directorships with terms expiring on December 31, 2003, and one class of three directorships with terms expiring on December 31, 2004. Though not indicated on the matrix, the Finance Board would adjust the terms of the appointed directorships for the Pittsburgh Bank as necessary to create three classes of two directors each, which would result in the entire board being grouped into classes of "4–5–5", which is the closest to the one-third staggering that can be achieved with a fourteen director board.

The matrix for the Pittsburgh Bank also illustrates the different methods by which a directorship is to be assigned a shortened term, one of which is based on the votes cast by the members and the other of which is based on the number of states with directorships at issue. In the case of the four directorships commencing on January 1, 2001, each directorship is designated as representing the members located in Pennsylvania. In such a case, *i.e.*, where a reduced term must be assigned to one of several directorships from the same state, the proposed rule requires that the assignment be based on the number of votes each director-elect receives in the most recent election. Thus, in the class of directorships commencing on January 1, 2001, the director-elect from Pennsylvania who receives the fourth most votes would be assigned to the two-year term. The same methodology would apply whenever a choice must be made between two or more directorships from the same state, whether the issue is which seat is to receive a reduced term or which seat is to be designated as a "non-guaranteed" directorship.

The methodology for assigning the one reduced term among the directorships with terms commencing on January 1, 2002, however, would differ somewhat from that used for the prior class. In this case, three of the four guaranteed directorships at issue would be from different states: West Virginia, Delaware, and Pennsylvania (which has two guaranteed directorships in this class). Here, again, no more than three of the guaranteed directorships may be assigned a full three-year term, and one must receive a reduced term, which in this case would be for one year. Where the number of states is the same as the number of full-term directorships available, as is the case here, the matrix assigns one full term to each state. The matrices reflect a determination by the Finance Board that to the extent possible each state should be treated equally in the assignment of three-year terms. For that reason, the matrix does not allow both Pennsylvania directorships to receive a full term, as that could not occur unless one of the remaining states—Delaware or West Virginia—were to receive the one-year term. With regard to the two Pennsylvania directorships, the board of directors of the Bank would be required to assign the one-year term to the director-elect from Pennsylvania who receives the second highest number of votes, as described in the preceding paragraph.

For certain other Banks, the methods used for the Pittsburgh Bank would not work because the number of states with guaranteed directorships would be greater than the number of three-year terms that are available. In that case, the proposed rule would require the board of directors of the Bank to assign the full three-year terms and the reduced terms among the guaranteed directorships from the different states; *i.e.*, the three full three-year terms would be allocated among four or five states. Where several states are involved, each directorship has a different constituency and thus the number of votes received by each candidate cannot be used to rank them. Also, because the number of states with guaranteed directorships is greater than the number of three-year terms available, not all of the states can be treated equally, as was the case with the Pittsburgh Bank. Where equal treatment for all states would not be possible, the Finance Board believes that it would be most appropriate, as well as consistent with the GLB Act, for the board of directors of each Bank to make the determination as to which states' directorships should be assigned the reduced term. The matrices reflect that provision, noting that the board of the Bank would be required to select one (and in some cases, two) states that would receive a reduced term. (As noted earlier, the boards must make this decision before determining the effect to be given to the 1999 election results.)

For example, the Atlanta Bank has four guaranteed directorships, representing the members in the District of Columbia, Alabama, Virginia, and South Carolina, with terms commencing on January 1, 2001. Only three of those seats may receive a full three-year term; the remaining directorship must receive a two-year term in order to comply with the staggering requirement. In this case, the matrix indicates that the board of the Atlanta Bank must decide which of those four directorships is to be assigned a two-year term. The proposed rule provides that the manner in which the board of directors assigns the reduced term to a particular state is entirely within its discretion, so long as the method is reasonable and is used consistently. Thus, the rule would allow the board to adopt some objective basis for making the determination or to assign the terms randomly, such as through a lottery among the affected states.

The Finance Board recognizes that certain directors may have an interest in which state's directorship is to be assigned a reduced term, but has not proposed to require that the decision be made only by the disinterested directors. In any case, the individuals who may be at risk of having their next term (or the term of their successors) reduced will likely be a minority not only of the elected directors but of the whole board as well. Moreover, all of the appointed directors, who are disinterested in these matters, must be involved in these determinations. The Finance Board believes that those factors, along with the fiduciary duties of all directors to act in the best interests of the Bank, are sufficient safeguards for the process. Nonetheless, the Finance Board requests comment on whether it would be advisable to require such determinations be made only by the disinterested directors, or to include a "safe harbor" proviso in the final rule that would allow an interested director, *i.e.*, a director whose directorship may be at risk of being assigned a reduced term, to participate in the decision without being deemed to violate the conflict of interest regulations or the conflict policies of the Bank.

For some Banks neither of the above scenarios will apply because the guaranteed directorships will consist in part of directorships representing different states and in part of multiple directorships from the same state; *i.e.*, there are two or more states with guaranteed directorships at issue, and one or more of those states has more than one directorship open. For example, the Boston Bank has five guaranteed directorships with terms commencing on January 1, 2001: two are designated to Massachusetts, and one each is designated to Connecticut, Rhode Island, and Maine. There also is one non-guaranteed directorship open, which is a stock seat allocated to Connecticut. Because there are three three-year terms to be allocated among four states, the board of directors of the Bank first must determine which one of the four states is to receive the two-year term, as described above with regard to the Atlanta Bank. After doing so, the board then would make any necessary distinctions between directorships from the same state on the basis of the votes received, as in the case of the Pittsburgh Bank. Thus, assuming that the board had assigned one of the three-year terms to one of the two Massachusetts directorships, the board would assign the Massachusetts director-elect who received the most votes to the three-year term. The other guaranteed directorship from Massachusetts would be assigned to the director-elect who received the second highest number of votes. Similarly, the matrix indicates that one of the Connecticut directorships is to be a "non-guaranteed" directorship, while the other is to be a "guaranteed" directorship. The proposed rule would require the board of the Boston Bank to assign the non-guaranteed directorship to the Connecticut director-elect who received the second highest number of votes in the election; the Connecticut director-elect who received the most votes then would be assigned to the "guaranteed" directorship.

With regard to the non-guaranteed directorships, the proposed rule also would provide that once a directorship is designated as non-guaranteed it

would retain that status in all subsequent elections unless it is eliminated by the Finance Board (in the case of a discretionary directorship) or as a consequence of a shift in the relative amounts of Bank stock held by members in different states. If, in connection with a subsequent annual designation of directorships, a directorship allocated to a particular state were to be eliminated or redesignated as representing the members in another state, the non-guaranteed directorship from that state would be the directorship that would have to be eliminated or redesignated.

With regard to the non-guaranteed directorships, the matrices have assigned terms to those directorships in a manner that is consistent with the one-third staggering requirement of the GLB Act, as noted previously. For example, the two non-guaranteed directorships at the Boston Bank have been assigned two- and one-year terms, respectively, which both places them into the same class of directors and results in a "4–3–3" class structure, which is consistent with the GLB Act. In the event that one or both of those directorships were to be eliminated, the elected directorships would be grouped either into a "3–3–3" class structure or the "2–3–3" structure of the guaranteed directorships, thus maintaining the one-third staggering of the board.

Eligibility of Directors

The proposed rule also would amend provisions regarding the eligibility of directors to remain in office if the directorship to which they have been elected is redesignated as representing members in another state or is eliminated. As noted above, it is possible that shifting stock ownership among the members in different states could cause the designation of a directorship to change during the course of an incumbent's term of office, or for the seat to disappear. The proposed rule would provide that an elected director becomes ineligible to remain in office if the directorship is designated to another state during that director's term of office or if the directorship is eliminated. The loss of eligibility would take effect on December 31 of the year in which the redesignation occurs.

In the case of a redesignation to another state, the directorship would become vacant and the board of directors of the Bank would fill the vacant directorship for the remainder of the unexpired term in accordance with Section 7(f) of the Bank Act with an officer or director of a member located in the newly-designated state. The proposed rule would make a similar change to the provisions regarding appointed directors, providing that if an appointed directorship that has been created in conjunction with the creation of additional elected directorships in accordance with Section 7(a) of the Bank Act the term of office of the appointed director would terminate on December 31 of the year in which the directorship is terminated.

Conforming Amendments

The proposed rule also includes a number of conforming amendments to other provisions of the regulations to remove references that no longer are accurate in light of the GLB Act and to be consistent with the other elements of the proposed rule.

IV. Regulatory Flexibility Act

The proposed rule would apply only to the Finance Board and to the Federal Home Loan Banks, which do not come within the meaning of small entities as defined in the Regulatory Flexibility Act (RFA). *See* 5 U.S.C. 601(6). Thus, in accordance with section 605(b) of the RFA, 5 U.S.C. 605(b), the Finance Board hereby certifies that the proposed rule, if promulgated as a final rule, will not have a significant impact on a substantial number of small entities.

V. Paperwork Reduction Act

The proposed rule does not contain any collections of information pursuant to the Paperwork Reduction Act of 1995. See 44 U.S.C. 3501 *et seq*. Therefore, the Finance Board has not submitted any information to the Office of Management and Budget for review.

List of Subjects in 12 CFR Part 915

Banks, banking, Conflict of interests, Elections, Ethical conduct, Federal home loan banks, Financial disclosure, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby amends title 12, chapter IX, part 915 of the Code of Federal Regulations, as follows:

PART 915—DIRECTORS, OFFICERS, AND EMPLOYEES OF THE BANKS

1. The authority citation for part 915 continues to read as follows:

Authority: 12 U.S.C. 1422a(a)(3), 1422b(a), 1426, 1427, and 1432.

2. Amend § 915.1 by revising the second paragraph of the definition of "bona fide resident of a Bank district" and by adding in alphabetical order definitions of "discretionary directorship", "guaranteed directorship", "non-guaranteed directorship", and "stock directorship" to read as follows:

§ 915.1 Definitions.

* * * * *

Bona fide resident of a Bank district means an individual who:

* * * * *

(2) If serving as an elective director, is an officer or director of a member located in a voting state within the Bank district; or

* * * * *

Discretionary directorship means an elected or appointed directorship created by the Finance Board pursuant to Section 7(a) of the Act for districts that include five or more states.

Guaranteed directorship means a directorship that is required by Section 7(a) of the Act and § 915.15 to be designated as representing Bank members that are located in a particular state.

Non-guaranteed directorship means an elected directorship that is either a discretionary directorship or a stock directorship.

Stock directorship means an elected directorship that is designated by the Finance Board as representing the members located in a particular state based on the amount of Bank stock held by the members in that state, and which is in excess of the number of guaranteed directorships allocated to that state.

3. Amend § 915.3 by:

a. Revising the fourth sentence of paragraph (a);

b. Adding a new sentence at the end of paragraph (b)(5);

c. Revising the second sentence in paragraph (c); and

d. Removing paragraph (e) to read as follows:

§ 915.3 Director elections.

(a) * * * The term of office of each elective director shall be three years, except as adjusted pursuant to Section 7(d) of the Act and § 915.17 of this chapter to achieve a staggered board, and shall commence on January 1 of the calendar year immediately following the year in which the election is held.

* * *

(b) * * *

(5) * * * If, as part of the annual designation of directorships, the Finance Board eliminates or redesignates to another state an existing discretionary directorship, the term of the directors appointed or elected to the eliminated or redesignated directorship shall terminate on the immediately following December 31.

(c) * * * If the annual designation of elective directorships results in an existing directorship being redesignated as representing members in a different state, the notice also shall state that the directorship must be filled by an officer or director of a member located in the newly designated state as of January 1 of the immediately following year, regardless of whether the term for the incumbent director would have expired by that date.

* * * * *

4. Amend § 915.7, by adding a new paragraph (d), to read as follows:

§ 915.7 Eligibility requirements for elective directors.

* * * * *

(d) *Loss of eligibility.* (1) An elected director shall become ineligible to remain in office if, during his or her term of office, the directorship to which he or she has been elected is eliminated or is redesignated by the Finance Board as representing members located in another state, in accordance with § 915.3(b). The incumbent director shall become ineligible on December 31 of the year in which the directorship is redesignated or eliminated.

(2) In the case of a redesignation to another state, the directorship shall become vacant on December 31 of the year in which the directorship is redesignated and the resulting vacancy shall be filled by the board of directors of the Bank for the remainder of the unexpired term with a person who is an officer or director of a member located in the newly designated state, pursuant to Section 7(f) of the Bank Act.

5. Amend § 915.10, by revising paragraph (b), to read as follows:

§ 915.10 Selection of appointive directors.

* * * * *

(b) *Term of office.* The term of office of each appointive directorship shall be three years, except as adjusted pursuant to Section 7(d) of the Act to achieve a staggered board, and shall commence on January 1. In appointing directors for the terms commencing on January 1, 2001 and 2002, respectively, the Finance Board shall adjust the terms of any appointed directorships as necessary to achieve the one-third staggering of the board of directors required by Section 7(d) of the Act, in accordance with the requirements of this Part and the applicable matrix from the Appendix to this Part. In the case of an appointive directorship that is terminated pursuant to § 915.3(b)(5), the term of office of the directorship shall end on December 31 of that year.

6. Add new § 915.16 to read as follows:

§ 915.16 1999 and 2000 Election of Directors.

(a) *In general.* If the annual designation of Bank directorships conducted by the Finance Board pursuant to § 915.3(b) for the terms commencing on January 1, 2001 differs from the designation conducted for the terms that were to have commenced on January 1, 2000, the former shall control. If for any election the board of directors of a Bank is required by § 915.17(a)(3) to assign a shortened term to one or more directorships from different states, the board shall do so before determining under paragraph (b) of this section whether to adopt the 1999 election results or to hold new elections in 2000.

(b) *Conduct of 2000 elections.* After receipt of the designation of directorships conducted by the Finance Board for directorships with terms commencing on January 1, 2001, the board of directors of each Bank shall determine either:

(1) To conduct new elections for every state in the district for which an elected directorship is to commence on January 1, 2001, or

(2) To conduct new elections only in those states for which this section requires a new election to be held and, for all other states within the district, to use the results of the 1999 elections, for the purpose of electing directors whose terms are to commence on January 1, 2001.

(c) *1999 election results.* If the number of nominees from any state for the 1999 election of directors equals or exceeds the number of directorships designated to that state for terms commencing on January 1, 2001, the board of directors of the Bank may declare elected the nominee receiving the most votes in the 1999 election and, if more than one directorship is to be filled for that state, shall also declare elected each successive nominee receiving the next greatest number of votes, until all directorships designated for that state are filled. Before declaring elected any such nominee, the board of directors of the Bank shall confirm that the nominee is eligible to serve as a director from that state.

(d) *2000 elections.* If the number of directorships designated for any state by the Finance Board for terms commencing on January 1, 2001, exceeds the number of that state's nominees from the 1999 election who remain eligible to serve as a Bank director, then the board of directors of the Bank shall conduct a new election for that state for all of the directorships that have terms commencing on January 1, 2001.

(e) *Report of election.* If the board of directors of a Bank adopts the 1999 election results for any state, it shall provide written notice of its decision to the Finance Board, the directors-elect, and to each member in the affected state. The notice shall indicate the date on which the term of office of each director-elect shall expire, and shall indicate which terms have been adjusted in order to stagger the board of directors as required by Section 7(d) of the Bank Act. Any such adjustments shall be made in compliance with § 915.17. Such notice shall be deemed to constitute the report of election for the 2000 election required by § 915.8(e).

7. Add new § 915.17 to read as follows:

§ 915.17 Staggered directorships in the 2000 and 2001 elections.

(a) *In general.* (1) In conjunction with the annual designation of directorships for directors with terms commencing on January 1, 2001 and January 1, 2002, the Finance Board shall, in addition to allocating directorships among the states, indicate the term of each directorship and which directorships are to be designated as non-guaranteed directorships. A non-guaranteed directorship shall retain that designation in all subsequent elections, unless the directorship is eliminated by the Finance Board pursuant to Section 7(a) of the Bank Act or as a consequence of a change in the amount of Bank stock held by members located in that state.

(2) The board of directors of each Bank shall adjust the terms of any directorships that are to commence on January 1, 2001 or January 1, 2002, in accordance with this section and the matrix for that Bank set forth in the Appendix to this part.

(3) Where the matrix for a Bank indicates that two or more guaranteed directorships are to be filled by persons elected from different states in the same year, and which are to have different terms, the board of directors of the Bank shall assign the shorter terms among the states on any reasonable basis, as determined by Bank's board, provided that:

(i) It uses the same methodology in making all such adjustments; and

(ii) It assigns the terms to the respective states before determining whether to adopt the 1999 election results, in accordance with § 915.16(b).

(b) *Adjustment of terms.* (1) Where the matrix for a Bank indicates that two or more guaranteed directorships are to be filled from the same state in the same year, but which are to have different terms, the board of directors of the Bank shall assign the terms, among the

eligible nominees who have received a sufficient number of votes to be elected, such that the nominees receiving the greater number of votes are assigned the longer terms and those nominees receiving the lesser number of votes are assigned the shorter terms.

(2) In the elections occurring in 2000 and 2001, if the matrix for any Bank indicates that both guaranteed and non-guaranteed directorships are to be filled from the same state in the same year, the board of directors shall assign directorships, among the eligible nominees who have received a sufficient number of votes to be elected, such that the nominees receiving the greatest number of votes are assigned the guaranteed directorships and those nominees receiving the fewest votes are assigned the non-guaranteed directorships.

(c) *Other adjustments.* The board of directors of the Bank may not adjust the term of any director other than as provided in this section.

8. Add a new appendix to part 915 to read as follows:

Appendix to Part 915—Staggering For FHL Bank Boards of Directors

TABLE 1

Boston FHLBank	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
10 Seats: 8 Guaranteed by Statute and 2 Not Guaranteed			
6 Seats to be filled in 2000 Election			
	*Board must allocate 1 Seat to a 2-year term.		
Mass. Seat	3/2 Years*.		
Conn. Seat	3/2 Years*.		
Maine Seat	3/2 Years*.		
R. I. Seat	3/2 Years*.		
Mass. Seat	2 Years.		
Conn. Seat	2 Years	Not Guaranteed (Stock seat).	
4 Seats to be filled in 2001 Election			
Mass. Seat	3 Years.		
N.H. Seat	3 Years.		
Vermont Seat	3 Years.		
Mass. Seat	1 Year	Not Guaranteed (Discretionary Seat).	

Class with Terms Expiring Dec. 31, 2002 (4 seats)
Mass./Conn./Maine/Rhode Island Seat (board to pick 1 of 4)
Mass. Seat
Conn. Seat (not guaranteed by statute)
Mass. Seat (not guaranteed by statute)

Class with Terms Expiring Dec. 31, 2003 (3 seats)
Mass./Conn./Maine/Rhode Island Seat (board to pick 3 of 4)

Class with Terms Expiring Dec. 31, 2004 (3 seats)
Mass. Seat
N.H. Seat
Vermont Seat

TABLE 2

N.Y. FHLBank	Term	Non-guaranteed seats	Guaranteed staggering: 3–3–3 Total staggering: 3–4–4
11 Seats: 9 Guaranteed by Statute and 2 Not Guaranteed			
7 Seats to be filled in 2000 election			
New York Seat	3 Years.		
New Jersey Seat	3 Years.		
Puerto Rico Seat	3 Years.		
New York Seat	3 Years	Not Guaranteed (Stock Seat).	
New York Seat	2 Years.		
New York Seat	2 Years.		
New Jersey Seat	2 Years.		
4 Seats to be filled in 2001 election			
New York Seat	3 Years.		
New York Seat	3 Years	Not Guaranteed (Stock Seat).	
New Jersey Seat	3 Years.		
New Jersey Seat	3 Years.		

Class with Terms Expiring Dec. 31, 2002 (3 seats)
New York Seat
New York Seat
New Jersey Seat

Class with Terms Expiring Dec. 31, 2003 (4 seats)
New York Seat
New York Seat (not guaranteed by statute)
New Jersey Seat
Puerto Rico Seat

Class with Terms Expiring Dec. 31, 2004 (4 seats)
New York Seat
New York Seat (not guaranteed by statute)
New Jersey Seat
New Jersey Seat

TABLE 3

Pitts. FHLBank	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 2–3–3
8 Seats: All Guaranteed by Statute			
4 Seats to be filled in 2000 Election			
Penn. Seat	3 Years.		
Penn. Seat	3 Years.		
Penn. Seat	3 Years.		
Penn. Seat	2 Years.		
4 Seats to be filled in 2001 Election			
West Va. Seat	3 Years.		
Delaware Seat	3 Years.		
Penn. Seat	3 Years.		
Penn. Seat	1 Year.		

Class with Terms Expiring Dec. 31, 2002 (2 seats)
Penn. Seat
Penn Seat

Class with Terms Expiring Dec. 31, 2003 (3 seats)
Penn. Seat
Penn. Seat
Penn. Seat

Class with Terms Expiring Dec. 31, 2004 (3 seats)
Penn. Seat
Delaware Seat
West Va. Seat

TABLE 4

Atlanta FHLBank	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 3–3–3
9 Seats: 8 Guaranteed by Statute and 1 Not Guaranteed			
4 Seats to be filled in 2000 Election			
	*Board must allocate 1 Seat to a 2-year term.		
D.C. Seat	3/2 Years*.		
Alabama Seat	3/2 Years*.		
Virginia Seat	3/2 Years*.		
S. Carolina Seat	3/2 Years*.		
5 Seats to be filled in 2001 Election			
	*Board must allocate 1 Seat to a 1-year term.		
N. Carolina Seat	3/1 Years*.		
Georgia Seat	3/1 Years*.		
Maryland Seat	3/1 Years*.		
Florida Seat	3/1 Years*.		
N. Carolina Seat	1 Year	Not Guaranteed (Discretionary Seat).	

Class with Terms Expiring Dec. 31, 2002 (3 seats)
North Carolina Seat (not guaranteed by statute)
D.C./Alabama/Virginia/So. Carolina Seat (board to pick 1 of 4)

No. Carolina/Georgia/Maryland/Florida Seat (board to pick 1 of 4)

Class with Terms Expiring Dec. 31, 2003 (3 seats)
D.C./Alabama/Virginia/So. Carolina Seat (board to pick 3 of 4)

Class with Terms Expiring Dec. 31, 2004 (3 seats)
No. Carolina/Georgia/Maryland/Florida Seat (board to pick 3 of 4)

TABLE 5

Cincinnati FHLBank	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 3–3–3
9 Seats: 8 Guaranteed by Statute and 1 Not Guaranteed			
4 Seats to be filled in 2000 Election			
	*Board must allocate 1 Seat to a 2-year term.		
Kentucky Seat	3 Years.		
Ohio Seat	3 Years.		
Kentucky Seat	3/2 Years*.		
Ohio Seat	3/2 Years*.		
5 Seats to be filled in 2001 Election			
	*Board must allocate 1 Seat to a 1-year term.		
Ohio Seat	3 Years.		
Tennessee Seat	3 Years.		
Tennessee Seat	3/1 Years*.		
Ohio Seat	3/1 Years*.		
Ohio Seat	1 Year	Not Guaranteed (Stock Seat).	

Class with Terms Expiring Dec. 31, 2002 (3 seats)
Kentucky or Ohio Seat (board to decide)
Ohio Seat (not guaranteed by statute)
Tennessee or Ohio Seat (board to decide)

Class with Terms Expiring Dec. 31, 2003 (3 seats)
Kentucky Seat
Ohio Seat
Kentucky or Ohio Seat (board to decide)

Class with Terms Expiring Dec. 31, 2004 (3 seats)
Ohio Seat
Tennessee Seat
Tennessee or Ohio Seat (board to decide)

TABLE 6

Indianapolis FHLBank	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
10 Seats: 8 Guaranteed by Statute and 2 Not Guaranteed			
4 Seats to be filled in 2000 Election			
Indiana Seat	3 Years.		
Indiana Seat	3 Years.		
Michigan Seat	3 Years.		
Indiana Seat	2 Years.		
6 Seats to be filled in 2001 Election			
	*Board must allocate 1 Seat to a 1-year term.		
Michigan Seat	3 Years.		
Indiana Seat	3 Years.		
Michigan Seat	3/1 Years*.		
Indiana Seat	3/1 Years*.		
Michigan Seat	1 Year	Not Guaranteed (Stock Seat).	
Michigan Seat	1 Year	Not Guaranteed (Stock Seat).	

Class with Terms Expiring Dec. 31, 2002 (4 seats)
Indiana Seat
Michigan or Indiana Seat (board to decide)
Michigan Seat (not guaranteed by statute)
Michigan Seat (not guaranteed by statute)

Class with Terms Expiring Dec. 31, 2003 (3 seats)
Indiana Seat
Indiana Seat
Michigan Seat

Class with Terms Expiring Dec. 31, 2004 (3 seats)
Michigan Seat
Indiana Seat
Michigan or Indiana Seat (board to decide)

TABLE 7

Chicago FHLBank	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
10 Seats: 8 Guaranteed by Statute and 2 Not Guaranteed			
4 Seats to be filled in 2000 Election			
Illinois Seat	3 Years.		
Wisconsin Seat	3 Years.		
Wisconsin Seat	3 Years.		
Wisconsin Seat	2 Years.		
6 Seats to be filled in 2001 Election			
Wisconsin Seat	3 Years.		
Illinois Seat	3 Years.		
Illinois Seat	3 Years.		
Illinois Seat	1 Year.		
Illinois Seat	1 Year	Not Guaranteed (Stock Seat).	
Illinois Seat	1 Year	Not Guaranteed (Stock Seat).	

Class with Terms Expiring Dec. 31, 2002 (4 seats)
Wisconsin Seat
Illinois Seat
Illinois Seat (not guaranteed by statute)
Illinois Seat (not guaranteed by statute)

Class with Terms Expiring Dec. 31, 2003 (3 seats)
Illinois Seat
Wisconsin Seat
Wisconsin Seat

Class with Terms Expiring Dec. 31, 2004 (3 seats)
Wisconsin Seat
Illinois Seat
Illinois Seat

TABLE 8

Des Moines Bank	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
10 Seats: 8 Guaranteed by Statute and 2 Not Guaranteed			
6 Seats to be filled in 2000 Election			
	*Board must allocate 1 Seat to a 2-year term.		
Missouri Seat	3/2 Years*.		
South Dakota Seat	3/2 Years*.		
Iowa Seat	3/2 Years*.		
Minnesota Seat	3/2 Years*.		
Iowa Seat	2 Years.		
Minnesota Seat	2 Years	Not Guaranteed (Stock Seat).	
4 Seats to be filled in 2001 Election			
Missouri Seat	3 Years.		
Minnesota Seat	3 Years.		
North Dakota Seat	3 Years.		
Missouri Seat	1 Year	Not Guaranteed (Discretionary Seat).	

Class with Terms Expiring Dec. 31, 2002 (4 seats)
Iowa Seat
Missouri/So. Dakota/Iowa/Minnesota Seat (board to pick 1 of 4)
Minnesota Seat (not guaranteed by statute)
Missouri Seat (not guaranteed by statute)

Class with Terms Expiring Dec. 31, 2003 (3 seats)
Missouri/So. Dakota/Iowa/Minnesota Seat (board to pick 3 of 4)

Class with Terms Expiring Dec. 31, 2004 (3 seats)
Missouri Seat
Minnesota Seat
North Dakota Seat

TABLE 9

Dallas FHLBank	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 3–3–3
9 Seats: 8 Guaranteed by Statute and 1 Not Guaranteed			
4 Seats to be filled in 2000 Election			
Texas Seat	3 Years.		
Louisiana Seat	3 Years.		
Arkansas Seat	3 Years.		
Louisiana Seat	2 Years.		
5 Seats to be filled in 2001 Election			
Texas Seat	3 Years.		
Mississippi Seat	3 Years.		
New Mexico Seat	3 Years.		
Texas Seat	1 Year.		
Texas Seat	1 Year	Not Guaranteed (Stock Seat).	

Class with Terms Expiring Dec. 31, 2002 (3 seats)
Louisiana Seat
Texas Seat
Texas Seat (not guaranteed by statute)

Class with Terms Expiring Dec. 31, 2003 (3 seats)
Texas Seat
Louisiana Seat
Arkansas Seat

Class with Terms Expiring Dec. 31, 2004 (3 seats)
Texas Seat
Mississippi Seat
New Mexico Seat

TABLE 10

Topeka FHLBank	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 2–3–3
10 Seats: 8 Guaranteed by Statute and 2 Not Guaranteed			
5 Seats to be filled in 2000 Election			
Colorado Seat	3 Years.		
Oklahoma Seat	3 Years.		
Kansas Seat	3 Years.		
Colorado Seat	2 Years.		
Kansas Seat	2 Years.		
5 Seats to be filled in 2001 Election			
Kansas Seat	3 Years.		
Oklahoma Seat	3 Years.		
Nebraska Seat	3 Years.		
Nebraska Seat	1 Year	Not Guaranteed (Stock Seat).	
Oklahoma Seat	1 Year	Not Guaranteed (Stock Seat).	

Class with Terms Expiring Dec. 31, 2002 (4 seats)
Colorado Seat
Kansas Seat
Nebraska Seat (not guaranteed by statute)
Oklahoma Seat (not guaranteed by statute)

Class with Terms Expiring Dec. 31, 2003 (3 seats)
Colorado Seat
Oklahoma Seat
Kansas Seat

Class with Terms Expiring Dec. 31, 2004 (3 seats)
Kansas Seat
Oklahoma Seat
Nebraska Seat

TABLE 11

San Francisco FHLBank	Terms	Non-guaranteed seats	Guaranteed staggering: 1–2–2 Total staggering: 2–3–3
8 Seats: 5 Guaranteed by Statute and 3 Not Guaranteed			
4 Seats to be filled in 2000 Election			

TABLE 11—Continued

San Francisco FHLBank	Terms	Non-guaranteed seats	Guaranteed staggering: 1–2–2 Total staggering: 2–3–3
California Seat	3 Years..		
California Seat	3 Years..		
California Seat	3 Years	Not Guaranteed (Stock Seat).	
California Seat	2 Years	Not Guaranteed (Stock Seat).	
4 Seats to be filled in 2001 Election	*Board must allocate 1 seat to a 1-year term.		
California Seat	3/1 Years*.		
Nevada Seat	3/1 Years*.		
Arizona Seat	3/1 Years*.		
California Seat	1 Year	Not Guaranteed (Stock Seat).	

Class with Terms Expiring Dec. 31, 2002 (3 seats)
California/Nevada/Arizona Seat (board to pick 1 of 3)
California Seat (not guaranteed by statute)

California Seat (not guaranteed by statute)
Class with Terms Expiring Dec. 31, 2003 (3 seats)
California Seat
California Seat

California Seat (not guaranteed by statute)
Class with Terms Expiring Dec. 31, 2004 (2 seats)
California/Nevada/Arizona Seat (board to pick 2 of 3)

TABLE 12

Seattle FHLBank	Term	Non-guaranteed seats	Guaranteed staggering: 2–3–3 Total staggering: 4–3–3
10 Seats: 8 Guaranteed by Statute and 2 Not Guaranteed			
5 Seats to be filled in 2000 Election			
Hawaii Seat	3 Years.		
Utah Seat	3 Years.		
Alaska Seat	3 Years.		
Washington Seat	2 Years	Not Guaranteed (Discretionary Seat).	
Washington Seat	2 Years	Not Guaranteed (Discretionary Seat).	
5 Seats to be filled in 2001 Election	* Board must allocate 2 seats to 1-year terms.		
Montana Seat	3/1 Years*.		
Oregon Seat	3/1 Years*.		
Washington Seat	3/1 Years*.		
Idaho Seat	3/1 Years*.		
Wyoming Seat	3/1 Years*.		

Class with Terms Expiring Dec. 31, 2002 (4 seats)
Montana/Oregon/Idaho/Wyoming/Washington Seat (board to pick 2 of 5)
Washington Seat (not guaranteed by statute)
Washington Seat (not guaranteed by statute)
Class with Terms Expiring Dec. 31, 2003 (3 seats)
Hawaii Seat
Utah Seat
Alaska Seat
Class with Terms Expiring Dec. 31, 2004 (3 seats)
Montana/Oregon/Idaho/Wyoming/Washington Seat (board to pick 3 of 5)

Dated: February 23, 2000.
By the Board of Directors of the Federal Housing Finance Board.
Bruce A. Morrison,
Chairman.
[FR Doc. 00–8052 Filed 3–31–00; 8:45 am]
BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–13–AD]

RIN 2120–AA64

Airworthiness Directives; General Electric Company CT58 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive that would supersede two existing airworthiness directives (AD's), applicable to General Electric Company (GE) CT58 series turboshaft engines. The current AD's revised the counting method for hours in repetitive heavy-lift (RHL) service and reduced the life limit for rotating components. Life-limited rotating components must be removed from service in accordance with the multiplying factors and retirement lives contained in General Electric Alert Service Bulletin (ASB) CT58 A72–162 (CEB–258), dated July 9, 1979. This proposal would require applying an additional multiplying factor to life-limited rotating parts when the engine is used in heavy lifting operations. This proposal is prompted by a review of the current AD's, 69–23–02 and 79–23–04, and a determination that the requirements of those AD's may conflict. This AD would prevent RHL and utility service multiplier factors from being applied incorrectly. The actions specified in the proposed AD are intended to prevent low-cycle fatigue failure of rotating parts that could result in uncontained engine failure and damage to the helicopter.

DATES: Comments must be received by June 2, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may also be sent via the Internet using the following address: "9–ane–adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line. Comments may be inspected at this location between 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from GE Aircraft Engines, General Electric Company, 1000 Western Avenue, Lynn, MA 01910. This information may be examined at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Kevin Donovan, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7743, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–13–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–13–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On November 4, 1969, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 69–23–02, Amendment 39–870 (34FR 18296, November 15, 1969), to reduce the life limits for stage 2 compressor rotor disk shafts and to remove from service stage 2 compressor rotor disk shafts before reaching those reduced life limits. That action was prompted by analyses that indicated the need for a reduced life-limit for certain life-limited parts when the engine is used in repetitive heavy lift (RHL) operations. That condition, if not corrected, could result in low-cycle fatigue failure of rotating parts that could result in uncontained engine failure and damage to the helicopter.

On December 13, 1979, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 79–23–04, Amendment 39–3610 (44 FR 72103, December 13, 1979), to require that the life-limits of certain life-limited rotating parts be revised based on multiplying factors specified in GEAE alert service bulletin (ASB) (CT58) 72–162 CEB 258, dated July 9, 1979, for RHL operations. That action was prompted by the need for lower life limits for life-limited rotating parts that are installed on engines used for RHL operations. That condition, if not corrected, could result in low-cycle fatigue failure of rotating parts that could result in uncontained engine failure and damage to the helicopter.

Events Since the Issuing of AD 69–23–02 and AD 79–23–04

Since the issuance of those AD's, the FAA has determined that some operators may be applying the multiplying factors for RHL operations incorrectly because the requirements of AD 79–23–04 apparently conflict with the requirements of AD 69–23–02. The requirements contained in AD 79–23–04 should have superseded the hourly life limits contained in AD 69–23–02 and should have specified the use of GEAE ASB (CT58) 72–162 CEB 258 for all CT58 series engines.

Service Information

The FAA has reviewed and approved the technical contents of GEAE ASB (CT58) 72–162 CEB 258, revision 9, dated October 6, 1998, that describes procedures for calculating revised cyclic life limits from the hourly life limits based on multiplying factors when the engine is used in RHL and utility service operation.

Requirements of the Proposed AD

Since an unsafe condition has been identified that is likely to exist or develop on other GEAE CT58 series turboshaft engines of the same type design, this AD supersedes AD 69–23–02 and AD 79–23–04 to require calculation of life cycles for life-limited rotating parts based on multipliers for RHL and utility service operation, and replacement of any part that exceeds the revised limits. The actions are required to be accomplished in accordance with the service bulletin described previously.

Economic Impact

There are approximately 380 engines of the affected design in the worldwide fleet. The FAA estimates that 130 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 0.25 work hour per engine to accomplish the proposed calculations, and that the average labor rate is $60 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,950.

Regulatory Impact

This proposed rule does not have federalism implications, as defined in Executive Order (EO) No. 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under EO No. 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–1086 (34 FR 18296, October 15, 1970) and Amendment 39–3610 (44 FR 72103, December 13, 1979), and by adding a new airworthiness directive,

GE Aircraft Engines: Docket No. 99–NE–13–AD.

Applicability: GE Aircraft Engines CT58 series turboshaft engine installed on, but not limited to Boeing -Vertol V–107 series, Kaman UH–1F series; and Sikorsky CH/HH–3E series, S–61 A/L/N/R series, and S–62 series rotorcraft.

Note 1: This airworthiness directive (AD) applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of thisAD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent low-cycle fatigue failure of rotating parts that could result in uncontained engine failure and damage to the helicopter, accomplish the following:

Calculating New Life Limits for Rotating Parts

(a) Within 50 hours time-in-service (TIS) after the effective date of this AD, calculate the new cycles-since-new (CSN) for life-limited rotating parts in accordance with the Accomplishment Instructions, 2.A. through 2.G. of GEAE service bulletin (CT58)72–162 CEB–258, revision 9, dated October 6, 1998.

(b) Remove any part from service that exceeds the new caculated life limit and replace it with a serviceable part.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on March 28, 2000.

David A. Downey,

Assistant Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 00–8134 Filed 3–31–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

RIN 1515–AC32

Country of Origin Marking

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document provides an additional 30 days for interested members of the public to submit comments on the proposal to restructure and clarify the country of origin marking rules set forth in Part 134 of the Customs Regulations. The proposal was published in the **Federal Register** on January 26, 2000, and the comment period was scheduled to expire on March 27, 2000.

DATES: Comments on the proposal must be received on or before April 26, 2000.

ADDRESSES: Comments may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. All comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)) between 9:00 a.m. and 4:30 p.m. on normal business days at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C.

FOR FURTHER INFORMATION CONTACT: Questions with regard to the following subject areas may be directed to the following staff attorneys of the Special Classification and Marking Branch, (202) 927–2310: Definitions of "country," "country of origin" and "ultimate purchaser"—Kristen VerSteeg; Marking of containers—Monika Brenner; and Marking and certification requirements for processed and repackaged articles—Burton Schljssel.

SUPPLEMENTARY INFORMATION:

Background

Customs published a document in the **Federal Register** (65 FR 4193) on January 26, 2000, proposing to restructure and clarify the country of origin marking rules set forth in Part 134 of the Customs Regulations.

The document invited the public to comment on the proposal. Comments on the proposed rule were requested on or before March 27, 2000.

Customs has received a request to extend the comment period for an additional 30 days from the Alliance of Automobile Manufacturers to enable the organization to coordinate its comment with its member companies.

Customs has determined to grant the request for the extension. Accordingly, the period of time for the submission of comments is being extended 30 days. Comments are now due on or before April 26, 2000.

Dated: March 29, 2000.

Stuart P. Seidel,

Assistant Commissioner, Office of Regulations and Rulings.

[FR Doc. 00–8141 Filed 3–31–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 111

[Docket No. 95N–0304]

Dietary Supplements Containing Ephedrine Alkaloids; Withdrawal in Part

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; withdrawal in part.

SUMMARY: The Food and Drug Administration (FDA) is announcing that it is withdrawing certain provisions of a proposed rule that published in the **Federal Register** of June 4, 1997 (62 FR 30678), relating to dietary supplements containing ephedrine alkaloids. FDA is taking this action because of concerns regarding the agency's basis for proposing a certain dietary ingredient level and a duration of use limit for these products. Elsewhere in this issue of the **Federal Register**, FDA is announcing the availability of new adverse event reports and related information associated with these products and its plans to participate in a public forum to discuss this new information at some future date. In addition, FDA is announcing elsewhere in this issue of the **Federal Register** the availability of additional documentation associated with certain adverse events referenced in the 1997 proposed rule.

DATES: The proposed rule that published on June 4, 1997 (62 FR 30678) is withdrawn in part for § 111.100(a), (b), (c), (e), and (f) as of April 3, 2000.

ADDRESSES: Copies of the proposed rule and related comments are available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Center for Food Safety and Applied Nutrition (HFS–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852, 301–827–6733.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 4, 1997 (62 FR 30678), FDA published a proposed rule (hereinafter referred to as the "ephedrine alkaloids proposal") to establish that a dietary supplement is adulterated if it contains 8 milligrams (mg) or more of ephedrine alkaloids per serving, or if its labeling suggests or recommends conditions of use that would result in an intake of 8 mg or more within a 6-hour period or a total daily intake of 24 mg or more of ephedrine alkaloids (hereinafter referred to as "dosing level" or "dietary ingredient level"), and to require that the label of such supplement state that the product is not to be used for more than 7 days (hereinafter referred to as "duration of use limit"). The agency also proposed to prohibit the use of ephedrine alkaloids in dietary supplements with ingredients, or with ingredients that contain substances, that have a known stimulant effect, such as caffeine, which may interact with ephedrine alkaloids; and to prohibit labeling claims, such as weight loss or body building, that require long-term intake to achieve the purported effect. In addition, the agency proposed to require a statement to accompany claims that encourage short-term excessive intake to enhance a purported effect, such as an increase in energy, that taking more than the recommended serving may result in serious adverse health effects: and to require specific warning statements to appear on product labels.

The agency proposed these actions in response to reports of serious illnesses and injuries, including a number of deaths, associated with the use of dietary supplement products containing ephedrine alkaloids and the agency's investigations and assessment of these illnesses and injuries. This action was also supported by many of the recommendations made during the October 1995 meeting of an ad hoc Working Group of the FDA Advisory Committee (Working Group) and the August 1996 meeting of the Food Advisory Committee (FAC) and the Working Group concerning the potential public health problems associated with the use of dietary supplements containing ephedrine alkaloids and the recommended steps FDA should take to address the serious health concerns associated with their use (see Refs. 25 and 27 of the ephedrine alkaloids proposal (Docket No. 95N–0304)).

The comment period for the June 4, 1997 (62 FR 30678), proposed rule closed on August 18, 1997. In a notice in the **Federal Register** of August 20, 1997 (62 FR 44247), FDA announced its intent to reopen the comment period after the agency corrected a number of inadvertent omissions in the administrative record. Subsequently on September 18, 1997 (62 FR 48968), the agency reopened the comment period for an additional 75 days until December 2, 1997.

The agency received approximately 350 letters regarding the use of ephedrine alkaloid-containing dietary supplements prior to publication of the ephedrine alkaloids proposal. These comments have been considered by the agency along with those commenting in response to the proposal. The agency received approximately 14,775 comments on the ephedrine alkaloids proposal. Individual consumers who use ephedrine alkaloid-containing dietary supplements and independent distributors of these products submitted most of the comments. Other comments were received from persons who had, or who knew persons who had, suffered adverse events or who were reporting adverse events associated with the use of an ephedrine alkaloid-containing dietary supplement. The remaining comments included those submitted by medical professionals, scientists, a scientific association, State and local health departments, medical associations, government agencies, dietary supplement manufacturers, Chinese medicine practitioners and associations, dietary supplement industry trade associations, public health associations, and consumer groups.

The House Committee on Science requested that the Government Accounting Office (GAO) examine the scientific bases for the ephedrine alkaloids proposal and the agency's adherence to the regulatory flexibility analysis requirements for Federal rulemaking. On August 4, 1999, GAO released its report entitled "Dietary Supplements: Uncertainties in Analyses Underlying FDA's Proposed Rule on Ephedrine Alkaloids." A copy of this report is available in Docket No. 95N–0304.

Generally, GAO concluded that FDA was justified in determining that the number of adverse event reports relating to dietary supplements containing ephedrine alkaloids warranted the agency's attention and consideration of steps to address safety issues. However, GAO expressed concerns about the use of the reported adverse events in supporting the proposed dosing level and duration of use limit, and concluded that the agency needed additional evidence to support these restrictions.

GAO also concluded that FDA's economic analysis contained the basic elements expected in a Federal agency's cost-benefit analysis, and the ephedrine alkaloids proposal complied with regulatory flexibility analysis requirements under the Regulatory Flexibility Act. GAO noted, however, that FDA's cost-benefit analysis was not always transparent regarding why certain key assumptions were made, the degree of uncertainty involved in those assumptions, or the effect that alternative assumptions would have had on the agency's estimates of the costs and benefits of the proposed action.

GAO recommended that FDA "provide stronger evidence on the relationship between the intake of dietary supplements containing ephedrine alkaloids and the occurrence of adverse reactions that support the proposed dosing level and duration of use limits." In addition, GAO recommended that FDA improve the transparency of its cost-benefit analysis in its final rulemaking.

In light of GAO's conclusions, comments from others on the ephedrine alkaloids proposal, and having further considered issues related to the proposed dietary ingredient level and the duration of use limit, FDA believes that these aspects of its proposed approach to regulating these products should be reassessed. Whether there are appropriate alternative approaches to these aspects of the proposal for regulating dietary supplements containing ephedrine alkaloids will require evaluation of additional information not available to the agency when it issued the proposal. Accordingly, FDA is withdrawing the provisions of the ephedrine alkaloids proposal relating to the dietary ingredient level and duration of use limit for these products. This action will allow FDA to reconsider, with public input, whether any dietary ingredient level or duration of use limit for these products is appropriate or whether alternative measures should be considered. The withdrawn provisions are described briefly below.

II. Withdrawn Provisions of the Ephedrine Alkaloids Proposal

A. Dietary Ingredient Limit for Ephedrine Alkaloids: Per Serving Basis (§ 111.100(a)(1)) and Frequency and Per Total Daily Intake Basis (§ 111.100(b))

As stated above, the agency tentatively concluded in the ephedrine alkaloids proposal that a dietary supplement is adulterated if it contains 8 mg) or more of ephedrine alkaloids per serving (§ 111.100(a)(1)), or if the labeling suggests or recommends conditions of use that would result in an intake of 8 mg or more within a 6-hour period or a total daily intake of 24 mg or more of ephedrine alkaloids (§ 111.100(b)). Having reconsidered the basis for these limits, including comments on that basis by GAO and others to the proposal, FDA believes that it should consider additional information not available to the agency when it issued the ephedrine alkaloids proposal to determine whether a dietary ingredient limit, or some alternative approach, would be appropriate to regulate these dietary ingredients. Therefore, FDA is withdrawing these provisions of the ephedrine alkaloids proposal.

FDA continues to be concerned about the potential risk for individuals who are particularly sensitive to the effects of ephedrine alkaloids, or whose sensitivity or likelihood for adverse effects may be increased through chronic use of these products or other means (e.g., physical exercise). FDA expressed this concern in the proposal, and noted that many members of the FAC agreed.

B. Proposed Compliance Procedures (§ 111.100(a)(2))

In the ephedrine alkaloids proposal, FDA stated that it would use a high performance liquid chromatography method as specified in Laboratory Information Bulletin No. 4053 to determine the level of ephedrine alkaloids in a dietary supplement. Without a requirement that would establish an unacceptable dietary ingredient level for dietary supplements containing ephedrine alkaloids, this provision, alone, is no longer necessary. Accordingly, the agency has determined that this provision should also be withdrawn.

C. Proposed Limitations on Duration of Use (§ 111.100(c))

FDA proposed in § 111.100(c) to require that the label of dietary supplements that contain ephedrine alkaloids state "Do not use this product for more than 7 days." FDA intended to require this provision in conjunction with the 8 mg per serving dietary ingredient limit proposed in § 111.100(a)(1). FDA noted in the ephedrine alkaloids proposal that concern about serious adverse events with the long-term use of ephedrine alkaloids led several members of the Working Group (see Ref. 27 of the ephedrine alkaloids proposal) and of the FAC (see Ref. 25 of the ephedrine alkaloids proposal (Docket No. 95N–0304)) to recommend that, in conjunction with a per serving dietary ingredient limit, FDA require a statement on the label of ephedrine alkaloid-containing dietary supplements to warn consumers not to use the product for a period longer than 7 days. FDA also cited evidence from the scientific literature about the adverse effects of long-term use of ephedrine alkaloids (62 FR 30678 at 30695).

FDA remains concerned with the long-term use of such products and the potential adverse effects such use has in combination with the use of other ingredients that have a stimulant effect. However, having reconsidered the basis for the proposed duration of use limit, including the comments on that basis by GAO and others to the proposal, FDA believes that it should consider additional information not available to the agency when it issued the ephedrine alkaloids proposal to determine whether any duration of use limit, or some alternative approach, is appropriate to regulate these products. In addition, the agency is also withdrawing the proposed 8-mg dietary ingredient limit. Therefore, the agency has determined that the proposed labeling requirement concerning duration of use should also be withdrawn.

D. Prohibition on Claims (§ 111.100(e) and (f))

FDA stated in the proposal that restrictions on claims are necessary to maintain the integrity of the limit on the level of ephedrine alkaloids in dietary supplements that it proposed and of the other proposed restrictions on the conditions of use of these dietary supplements. For example, because safe and significant weight loss and body building cannot be achieved in a 7-day period, FDA tentatively concluded that claims that promote these uses promote long-term use of ephedrine alkaloid-containing dietary supplements, which have been associated with serious adverse events. For this reason, FDA tentatively concluded that any claims that promote long-term use of ephedrine

alkaloid dietary supplements, such as those for weight loss and body building, promote conditions of use that present a significant and unreasonable risk of illness and injury. Consequently, FDA proposed in § 111.100(e) to require that no dietary supplement that contains ephedrine alkaloids may purport to be, or be represented as, either expressly or implicitly, for use for long-term effects, such as weight loss or body building.

Similarly, many claims found on the labels of, or in the labeling for, ephedrine alkaloid-containing dietary supplements, including increased energy, increased mental concentration, and enhanced well-being, encourage the consumer to take more of the product than is indicated on the label to achieve more of the purported effect. Consequently, FDA tentatively concluded that claims that promote excessive consumption are inconsistent with the dietary ingredient limit for these products. Accordingly, FDA proposed in § 111.100(f)(1) that the label or labeling for dietary supplements that contain ephedrine alkaloids that purport to be or are represented, either expressly or implicitly, to be used for short-term effects, such as increased energy, increased mental concentration, or enhanced well-being, must state "Taking more than the recommended serving may cause heart attack, stroke, seizure or death." FDA proposed in § 111.100(f)(2) certain requirements on the size, type, and placement of this statement on the label. Because FDA is withdrawing the proposed dietary ingredient limit and duration of use limit, FDA has determined that the proposed provisions in § 11.100(e) and (f) should also be withdrawn. FDA believes that it should consider additional information not available to the agency when it issued the ephedrine alkaloids proposal before finally determining whether such provisions with respect to claims, or some alternative approach, is appropriate to regulate these products. Nonetheless, FDA remains concerned that adverse effects are associated with long-term consumption of such products and with consumption of such products in excess of labeled serving sizes.

III. Current Provisions of the Ephedrine Alkaloids Proposal

Despite this action to withdraw the proposed dietary ingredient level and duration of use limit, and related provisions of the ephedrine alkaloids proposal, there remain provisions that the agency is not withdrawing in this notice. These provisions concern FDA's proposed prohibition on the use of ingredients with stimulant effects with dietary supplements containing ephedrine alkaloids (§ 111.100(d)) and the proposed warning statement (§ 111.100(g)).

FDA proposed in § 111.100(d) to require that no ingredient, or ingredient that contains a substance, that has a known stimulant effect (e.g, sources of caffeine, yohimbine) may be included in a dietary supplement that contains ephedrine alkaloids. FDA proposed this provision in response to the many adverse events that had been reported to the agency. These adverse events involved the use of dietary supplements that contain ephedrine alkaloids in combination with other ingredients, some with known physiological or pharmacological effects, including kola nut, yohimbe, willow bark, senna, and Uva ursi (see Ref. 164 of the proposed rule (Docket No. 95N–0304)). These adverse events suggested that the other ingredients may act in combination with the ephedrine alkaloids to produce more frequent, more severe, or potentially different patterns of adverse effects than those noted with the use of ephedrine alkaloids alone.

In the ephedrine alkaloids proposal, FDA also tentatively concluded that a warning statement on the labels of dietary supplements containing ephedrine alkaloids is necessary, in conjunction with dietary ingredient limitations and other requirements proposed in that document, to protect the public health. The warning statements proposed in § 111.100(g) contained several elements, including cautions that consumers not use the product if they have certain diseases or health conditions or are using certain drugs, and to stop the use of the product if they develop certain signs or symptoms. As noted in the preamble to the ephedrine alkaloids proposal, persons having certain diseases or taking specific medications known to interact with ephedrine alkaloids are at risk of suffering adverse events with the use of dietary supplements containing ephedrine alkaloids. Generally, use of ephedrine alkaloids at any intake level by these persons is contraindicated. For these persons a warning label statement can be a useful means of alerting them to potential consequences that can result from the use of the product. In addition, many consumers who are unaware that they are sensitive to the effect of ephedrine alkaloids may not recognize the significance of early warning signs and symptoms as potential indicators of more serious side effects (e.g., dizziness or severe headache may be early symptoms of hypertension or stroke). Under these circumstances, a warning statement could provide information on what actions the consumer should take if certain symptoms occur (62 FR 30678 at 30700).

The agency has not at this time concluded that it will finalize the provisions in § 111.100(d) and (g). Rather, the agency intends to consider whether to finalize these provisions, or take additional or alternative regulatory action, after it receives public input on the significance of new information collected by the agency about the safety of dietary supplements containing ephedrine alkaloids.

IV. Continued Monitoring and Followup

Although FDA is withdrawing certain provisions of the ephedrine alkaloids proposal, FDA continues to have a public health concern with respect to the use of dietary supplements containing ephedrine alkaloids. The agency will continue to monitor and provide appropriate followup on adverse events associated with the use of these products. In a notice of availability published elsewhere in this issue of the **Federal Register**, FDA is seeking public input about the significance of new information collected by the agency about the safety of dietary supplements containing ephedrine alkaloids. The agency is also requesting the submission of any other information that the submitters believe is relevant to such a safety assessment. Should additional information suggest that additional action is necessary, FDA will consider what action is appropriate, and take appropriate steps to protect consumers and the public health.

V. Enforcement

Withdrawal of certain provisions of the ephedrine alkaloids proposal does not limit the agency's discretion to initiate enforcement actions with respect to ephedrine alkaloids containing dietary supplements. For example, circumstances may warrant enforcement action against a dietary supplement containing ephedrine alkaloids if an evaluation of the relevant facts show a health hazard or that the product is otherwise adulterated or misbranded.

FDA maintains its street drug alternative policy, as articulated in the preamble to the ephedrine alkaloids proposal, which states that because alternatives to illicit street drugs are not intended to supplement the diet, products that purport to be or that are represented, either expressly or implicitly, for use as alternatives to street drugs are not dietary supplements within the meaning of section 201(ff) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(ff)). (See 62 FR 30678 at 30699 and 30700). FDA is publishing elsewhere in this issue of the **Federal Register** a notice announcing the availability of a guidance entitled "Street Drug Alternatives." The guidance is intended to inform industry and the public that FDA considers any product that is promoted as a street drug alternative to be an unapproved new drug and a misbranded drug in violation of the act. To date, the agency has taken action against several products marketed as alternatives to illicit street drugs, and it may do so in the future, as well.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, the proposed rule published on June 4, 1997 (62 FR 30678), is withdrawn in part for § 111.100(a), (b), (c), (e), and (f).

Dated: March 28, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–8109 Filed 3–31–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 275

[Notice No. 894]

RIN 1512–AB71

Implementation of Public Law 105–33, Section 9302, Requiring the Qualification of Tobacco Products Importers.

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document reopens the comment period for Notice No. 888, a notice of proposed rulemaking cross-referenced to temporary regulations, published in the **Federal Register** on December 22, 1999. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received on or before May 3, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, Attention: Notice Number 888.

FOR FURTHER INFORMATION CONTACT: Clifford A. Mullen by writing to Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226, by phone at 202–927–8210, or by e-mail at *alcohol/tobacco@atfhq.atf.treas.gov.*

SUPPLEMENTARY INFORMATION:

Background

On December 22, 1999, ATF published a notice of proposed rulemaking (NPRM) cross-referenced to temporary regulations in the **Federal Register** soliciting comments from the public and industry on proposed regulations implementing the provisions of the Balanced Budget Act of 1997, Public Law 105–33. These provisions amended the Internal Revenue Code of 1986 to require that, beginning January 1, 2000, importers of tobacco products qualify for a permit to conduct that activity (Notice No. 888; 64 FR 71955).

The comment period for Notice No. 888 was scheduled to close on February 22, 2000. Prior to the close of the comment period, ATF received a request from a manufacturer of tobacco products, RJ Reynolds Tobacco Company to extend the comment period. RJ Reynolds stated that it needed additional time to coordinate the comments of several departments within the company which have an interest in the importation of tobacco products.

In consideration of the above, ATF finds that a reopening of the comment period is warranted. Thus, the comment period is being reopened for an additional 30 days until May 3, 2000. The Bureau believes that a comment period totaling 90 days is a sufficient amount of time for all interested parties to respond.

Disclosure

Copies of this notice, Notice No. 888, and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachussetts Avenue, NW, Washington DC.

Drafting Information. The author of this document is Clifford A. Mullen, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 275

Administrative practices and procedures, Authority delegations, Cigarette papers and tubes, Cigars and cigarettes, Claims, Customs duties and inspections, Electronic funds transfers, Excise taxes, Imports, Labeling, Packaging and containers, Penalties, Reporting and record keeping requirements, Seizures and forfeitures, Surety bonds, U.S. Possessions, Warehouses.

Authority and Issuance

This notice is issued under the authority in 26 U.S.C. 7805.

Signed: March 22, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–8113 Filed 3–31–00; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AJ23

Information Collection Needed in VA's Flight-Training Programs

AGENCIES: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: We propose to amend our educational assistance and educational benefit regulations concerning flight-training courses for which the Department of Veterans Affairs (VA) pays for eligible students. In this regard, we propose to require that flight schools offering such flight-training courses maintain records regarding students to whom VA makes payments. The proposed rule is intended to provide information to VA for determining compliance with requirements for VA payments to students for pursuing flight-training courses. Also, when VA, rather than a separate State entity, is the approving agency, the proposed rule is intended to provide information to VA for determining whether to approve a flight-training course.

DATES: Comments must be received on or before June 2, 2000.

ADDRESSES: Mail or hand-deliver written comments to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420; or fax comments to (202) 273–9289; or e-mail comments to "OGCRegulations@mail.va.gov". Comments should indicate that they are submitted in response to "RIN 2900–AJ23." All comments received will be available for public inspection in the Office of Regulations Management, Room 1158, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays).

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Education

Advisor, Education Service, Veterans Benefits Administration, Department of Veterans Affairs, 202–273–7187.

SUPPLEMENTARY INFORMATION: VA payments are provided to eligible individuals for pursuit of approved flight-training courses under the Montgomery GI Bill—Active Duty, Montgomery GI Bill—Selective Reserve, and Post-Vietnam Era Veterans' Educational Assistance programs.

Educational institutions are required to make available for Government inspection records and accounts, pertaining to veterans who received VA educational assistance, which VA determines necessary to ascertain institutional compliance with requirements for assistance (38 U.S.C. 3676 and 3690(c)). We propose to add 38 CFR 21.4263(h)(3), which would require that flight schools offering approved flight-training courses maintain records as set out in the text portion of this document: i.e., various certificates, flight records, logs, invoices, account ledgers, instructor records, tuition records, and course and training records. It appears that these records regarding students receiving VA flight-training benefits are necessary to assist VA in determining that courses and students meet all requirements for payment of such benefits.

In addition, proposed § 21.4263(h)(3) requires flight schools to maintain those records under 38 U.S.C. 3676(b) and 3676(c)(4), (c)(5), (c)(6), (c)(7), and (c)(13) when VA, rather than a separate State approving agency, is the approving authority for flight-training courses. Maintaining the records specified in the proposed rule appears necessary to assist VA, when it is the approving authority, in determining whether it should approve a course.

This document also makes technical changes for purposes of clarification.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520), a collection of information is set forth in the proposed 38 CFR 21.4263(h)(3). Accordingly, under section 3507(d) of the Act, VA has submitted a copy of this rulemaking action to the Office of Management and Budget (OMB) for its review of the proposed collection of information.

OMB assigns control numbers to collections of information it approves. VA may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Comments on the proposed collection of information should be submitted to the Office of Management and Budget, Attention: Desk Officer for the Department of Veterans Affairs, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies mailed or hand-delivered to the Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Ave., NW, Room 1154, Washington, DC 20420. Comments should indicate that they are submitted in response to "RIN 2900–AJ23."

Title: Recordkeeping at Flight Schools.

Summary of collection of information: Proposed § 21.4263(h)(3) specifies records that flight schools are required to maintain to show that the courses and students are in compliance with requirements for payment of VA benefits and to maintain for VA approval purposes under 38 U.S.C. 3676(b) and 3676(c)(4), (c)(5), (c)(6), (c)(7), and (c)(13) when VA, rather than a separate State approving agency, is the approving authority for the particular flight-training courses.

Description of need for information and proposed use of information: The records appear necessary to assist VA in determining that courses and students meet all requirements for payment to students of VA flight-training benefits and, in cases when VA is the approving authority for flight-training courses, to assist VA in determining whether to approve a course.

Description of likely respondents: Flight schools.

Estimated number of respondents: 310 per year.

Estimated frequency of responses: On occasion.

Estimated burden per collection: 1/3 hour.

Estimated total annual reporting and recordkeeping burden: 667 hours.

The Department considers comments by the public on proposed collections of information in—

Evaluating whether the proposed collections of information are necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; Evaluating the accuracy of the Department's estimate of the burden of the proposed collections of information, including the validity of the methodology and assumptions used; Enhancing the quality, usefulness, and clarity of the information to be collected; and Minimizing the burden of the collections of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

OMB is required to make a decision concerning the collection of information contained in this proposed rule between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Department on the proposed rule.

Regulatory Flexibility Act

The Secretary of Veterans Affairs hereby certifies that the adoption of this proposed rule would not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612. Adoption of this proposed rule would have a minuscule monetary effect, if any, on affected entities. Pursuant to 5 U.S.C. 605(b), this proposed rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance numbers for programs affected by this proposed rule are 64.120 and 64.124. This proposed rule would also affect the Montgomery GI Bill—Selected Reserve program which has no Catalog of Federal Domestic Assistance number.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health care, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 23, 2000.

Togo D. West, Jr.,

Secretary of Veterans Affairs.

For the reasons set forth in the preamble, VA proposes to amend 38 CFR part 21 (subparts D and L) as follows:

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart D—Administration of Educational Assistance Programs

1. The authority citation for part 21, subpart D continues to read as follows:

Authority: 10 U.S.C. 2141 note, ch. 1606; 38 U.S.C. 501(a), chs. 30, 32, 34, 35, 36, unless otherwise noted.

21.4152 [Amended]

2. In § 21.4152, the introductory text of paragraph (b) is amended by removing "on VA." and adding, in its place, "on VA:"; and paragraph (b)(4) is amended by removing "§ 21.4209." and adding, in its place, §§ 21.4209 and 21.4263."

3. In § 21.4263, paragraph (h)(3) is added to read as follows: § 21.4263 Approval of flight training courses.

* * * * *

(h) *Nonaccredited courses.* * * *

(3) A flight school must keep at a minimum the following records for each eligible veteran, servicemember, or reservist pursuing flight training:

(i) A copy of his or her private pilot certificate;

(ii) Evidence of completion of any prior training which may be a prerequisite for the course;

(iii) A copy of the medical certificate required by paragraph (a)(2) of this section for the courses being pursued and copies of all medical certificates (expired or otherwise) needed to support all periods of prior instruction received at the current school;

(iv) A daily flight log or copy thereof;

(v) A permanent ground school record;

(vi) A progress log;

(vii) An invoice of flight charges for individual flights or flight lessons for training conducted on a flight simulator or advanced flight training device;

(viii) Daily flight sheets identifying records upon which the 85–15 percent ratio may be computed;

(ix) A continuous meter record for each aircraft;

(x) An invoice or flight tickets signed by the student and instructor showing hour meter reading, type of aircraft, and aircraft identification number;

(xi) An accounts receivable ledger;

(xii) Individual instructor records;

(xiii) Engine log books;

(xiv) A record for each student above the private pilot level stating the name of the course in which the student is currently enrolled and indicating whether the student is enrolled under 14 CFR part 61, part 63, part 141, or part 142;

(xv) Records of tuition and accounts which are evidence of tuition charged and received from all students; and

(xvi) If training is provided under 14 CFR part 141, the records required by that part, or if training is provided under 14 CFR part 142, the records required by that part.

(Authority: 38 U.S.C. 3471, 3671, 3672, 3676, 3690(c))

* * * * *

Subpart L—Educational Assistance for Members of the Selected Reserve

4. The authority citation for part 21, subpart L continues to read as follows:

Authority: 10 U.S.C. ch. 1606; 38 U.S.C. 501(a), 512, ch. 36, unless otherwise noted.

21.7807 [Amended]

5. Section 21.7807 is amended by removing § 21.4209 and adding, in its place, §§ 21.4209 and 21.4263.

[FR Doc. 00–8072 Filed 3–31–00; 8:45 am]

BILLING CODE 8320–01–P

Notices

Federal Register

Vol. 65, No. 64

Monday, April 3, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Research, Education, and Economics Notice of the Advisory Committee on Small Farms Meeting

AGENCY: Research, Education and Economics, USDA.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, 5 U.S.C. App. 2, the United States Department of Agriculture announces a meeting of the USDA Advisory Committee on Small Farms.

FOR FURTHER INFORMATION CONTACT: Enrique Nelson Escobar, Executive Director of the USDA Advisory Committee on Small Farms, Research, Education and Economics, U.S. Department of Agriculture, Mail Stop 2027, Room 1412, South Agriculture Building, 1400 Independence Avenue SW., Washington, D.C. 20250–3810. Telephone: 202–720–9354, Fax: 202–720–0443, or e-mail: adrain@reeusda.gov.

SUPPLEMENTARY INFORMATION: The USDA Advisory Committee on Small Farms, consisting of 19 members, representing small farms, ranches, and woodlot owners and the diverse groups USDA programs serve, has scheduled a meeting for April 18–20, 2000. The Committee meeting will be held 8:00 a.m.–5:00 p.m. on Tuesday, April 18, on Wednesday, April 20, 8:00 a.m.–5 p.m., and on Thursday, April 20, 8 a.m.–12 p.m. During this time the Advisory Committee will: (1) Hear reports from working sub-committees, (2) hear comments from the general public, (3) finalize plans for achieving the committee objectives, and (4) determine how and when the Committee will make recommendations to the Secretary.

Dates and Locations: April 18—8:00 a.m. to 5:00 p.m., Advisory Committee General Meeting, Jamie L. Whitten Federal Building, Rooms 104–A and 107–A, 1400 Jefferson Drive, S.W., Washington, D.C. April 19—8:00 a.m. to 5:00 p.m., Advisory Committee General Meeting, Jamie L.Whitten Federal Building, Rooms 104–A and 107–A, 1400 Jefferson Drive, S.W., Washington, D.C. On April 19, at 10:00 a.m. to 12:00 p.m., the general public will have an opportunity to provide oral and written comments to the Committee in Room 104–A, 1400 Jefferson Drive, S.W., Washington, D.C. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes. April20—8:00 a.m. to 12:00 p.m., Advisory Committee General Meeting, Jamie L. Whitten Federal Building, Room 104–A, 1400 Jefferson Drive, S.W. Washington, D.C.

Type of Meeting: Open to the public.

Comments: The public may file written comments to the USDA Advisory Committee contact person before or within a reasonable time after the meeting. All statements will become a part of the official records of the USDA Advisory Committee on Small Farms and will be kept on file for public review in the office of the Acting Director of Small Farms, Room 1410 South Building, U.S. Department of Agriculture, Washington, DC . 20250.

I. Miley Gonzalez,

Under Secretary, Research, Education, and Economics.

[FR Doc. 00–8066 Filed 3–31–00; 8:45 am]

BILLING CODE 3410–22–P

DEPARTMENT OF AGRICULTURE

Forest Service

Davis Land Exchange; White River National Forest; Colorado

AGENCY: Forest Service, USDA.

ACTION: Notice; availability of the Davis Land Exchange Environmental Assessment.

SUMMARY: An Environmental Assessment (EA) for the Davis Land Exchange on the Aspen Ranger District of the White River National Forest is available for public review and comment.

DATES: Comments must be postmarked by May 3, 2000.

ADDRESSES: Send written comments to Davis Land Exchange Project Manager, White River National Forest, Aspen Ranger District, 806 West Hallam Street, Aspen, CO 81611. All comments, including names and addresses when provided, are placed in the record and are available for public inspection and copying at the Aspen Ranger District office.

FOR FURTHER INFORMATION CONTACT: Requests for copies of the Environmental Assessment and questions about this project should be addressed to Allan Grimshaw, Aspen Ranger District, 806 West Hallam Street, Aspen CO, 81611, 970–925–3445.

SUPPLEMENTARY INFORMATION: The United States has entered into a settlement agreement which proposes the use of a land exchange to settle a title claim against the United States. The exchange would result in conveyance of 7.32 acres of Federal land for approximately 61 acres of non-Federal land. This environmental assessment has been prepared to evaluate the effects of such a land exchange. It also evaluates the effects of one alternative: Requesting the court release the United States from the settlement agreement and allow the litigation to continue. Comments will be considered in development of a decision.

Dated: March 17, 2000.

James R. Furnish,

Deputy Chief for National Forest System.

[FR Doc. 00–8053 Filed 3–31–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northern Sierra Forest Plan Amendment EIS: Humboldt–Toiyabe National Forest, Stanislaus National Forest, Lake Tahoe Basin Management Unit: Carson City, Douglas, and Washoe Counties, Nevada and Alpine, Eldorado, Nevada, Sierra, Lassen, and Toulumne Counties, California

AGENCY: Forest Service, USDA.

ACTION: Supplement of a notice of intent to revise expected public comment availability, clarify the forest plans amended, and identify changes in the scope of the amendment.

SUMMARY: This **Federal Register** notice revises the Notice of Intent published in the November 10, 1998 **Federal Register** Vol. 63, No. 217, Pages 63023–63024. The agency expects to file the draft EIS with the Environmental Protection Agency and make it available for public comment in May, 2000.

In addition to comprehensive amendment of the Toiyabe Land and Resource Management plan for the Carson Ranger District, the EIS will address amendment of the Stanislaus Land and Resource Management Plan for management of that portion of the Carson Iceberg Wilderness Area in the Stanislaus National Forest and the Lake Tahoe Basin Land and Resource Management Plan for management of that portion of the Mount Rose Wilderness Area in the Lake Tahoe Basin Management Unit.

Based on public input and further analysis, the scope of the amendment for the Toiyabe Plan has been modified from that published in the original notice. Topics to be included are now: (1) Improving public access, (2) enhancing recreation opportunities and reducing user conflicts, (3) protecting scenery along scenic corridors and as a backdrop the areas communities, (4) preserving wilderness character, (5) protecting watersheds, (6) enhancing ecosystem integrity and biodiversity, (7) improving the landownership pattern, (8) protecting and interpreting heritage resources, (9) managing American Indian religious and cultural uses in a government–to–government relationship with tribes, (10) providing for harvest of forest products to achieve ecosystem integrity goals, (11) managing livestock grazing to ensure long-term ecological sustainability, (12) managing mining to protect scenic and other resources, and (13) providing for development of special use facilities compatible with scenic integrity and other resource objectives.

FOR FURTHER INFORMATION CONTACT: David Loomis, Sierra Ecosystem Planner, 1536 South Carson Street, Carson City, NV 89701, phone 775 884–8132.

Dated: March 21, 2000.

Karen Shimamoto,

Deputy Forest Supervisor, Humboldt–Toiyabe National Forest.

[FR Doc. 00–8132 Filed 3–31–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Tuxekan Island Timber Sale Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber for the Tongass National Forest Timber Sale Program. The Record of Decision will disclose how the Forest Service has selected harvest units, designed roads, and planned for future stand management activities. The proposed action is to harvest approximately 20 MMBF of timber on Tuxekan Island. A range of alternatives responsive to significant issues will be developed and include a no-action alternative. The proposed project is located on Tuxekan Island west of Prince of Wales Island in townships 69 and 70 east (T69E, T70E) and ranges 78 and 79 south (R78S, R79S), Copper River Meridian, on the Thorne Bay Ranger District of the Tongass National Forest.

DATES: Comments concerning the scope of this project should be received by May 31, 2000.

ADDRESSES: Please send written comments to District Ranger; Thorne Bay Ranger District; Tongass National Forest; Attn: Tuxekan Island Timber Sale EIS; P.O. Box 19001; Thorne Bay, AK 99919.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to: Stan McCoy, Thorne Bay Ranger District, Tongass National Forest, P.O. Box 19001, Thorne Bay, AK 99919, telephone (907) 828–3243 or E-mail: samccoy@fs.fed.us.

SUPPLEMENTARY INFORMATION:

(1) *Public Participation:* Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Native, Federal, State, local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) Identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Public scoping meetings are scheduled in Alaska at Edna Bay, Klawock, Naukati, and Thorne Bay. Meeting dates are tentatively scheduled for April, 2000 and will be published in the Ketchikan Daily News and the Island News newspapers distributed in southeast Alaska. Meeting dates will also be available from the Thorne Bay Ranger District by calling (907) 828–3304. Written scoping comments are being solicited through a scoping package that will be sent to the project mailing list. For the Forest Service to best use the scoping input, comments should be received by May 31, 2000.

Based on results of scoping and the resource capabilities within the project area, alternatives including a "no action" alternative will be developed for the Draft Environmental Impact Statement (Draft EIS). The Draft EIS filing date with the Environmental Protection Agency (EPA) is scheduled for January 2001. Public comment on the Draft EIS will be solicited for a minimum of 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.** Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska National Interest Lands Conservation Act (ANILCA), are planned during this 45-day comment period if needed. The Final EIS is anticipated by October 2001.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In addition, Federal court decisions have established that reviewers of Draft EIS statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and concerns. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel,* 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that subsistence comments and objections are made available to the Forest Service at a time when it can

meaningfully consider them and respond to them in the Final EIS.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality might be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agencies decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits required for implementation including the following:

1. U.S. Army Corps of Engineers
—Approvals of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act,
—Approval of the construction of structures or work in navigable waters of the United United States under Section 10 of the Rivers and Harbors Act of 1899;
2. Environmental Protection Agency
—National Pollutant Discharge Elimination System (402) Permit;
—Review Spill Prevention Control and Countermeasure Plan;
3. State of Alaska, Department of Natural Resources
—Tideland Permit and Lease or Easement;
4. State of Alaska, Department of Environmental Conservation
—Solid Waste Disposal Permit;
—Certification of Compliance with Alaska Water Quality Standards (401 Certification)

Responsible Official: Thomas Puchlerz, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: March 20, 2000.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 00–8054 Filed 3–31–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Kosciusko Island Timber Sale Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement

SUMMARY: The Department of Agriculture, forest Service, will prepare an Environmental Impact Statement (EIS) to provide timber for the Tongass National Forest Timber Sale Program. The Record of Decision will disclose how the Forest Service has selected harvest units, designed roads, and planned for future stand management activities. The proposed action is to harvest about 17 MMBF of old growth and second growth timber on Kosciusko Island and to improve wildlife habitat conditions with commercial thinning of second growth stands. A range of alternatives responsive to significant issues will be developed and include a no-action alternative. The project is located on the Tongass National Forest on the western peninsula of Kosciusko Island south of Shipley Bay within townships 67 and 68 south (T67S, T68S,) and ranges 75, 76, and 77 east (R75S, R76E, and R77E), Copper River Meridian, on the Thorne Bay Ranger District of the Tongass National Forest.

DATES: Comments concerning the scope of this project should be received by May 31, 2000.

ADDRESSES: Please send written comments to District Ranger; Thorne Bay Ranger District; Tongass National Forest; Attn: Kosciusko Island Timber Sale EIS; P.O. Box 19001; Thorne Bay, AK 99919.

FOR FURTHER INFORMATION CONTACT: Questions about the proposal and EIS should be directed to: Stan McCoy, Thorne Bay Ranger District, Tongass National Forest, P.O. Box 19001, Thorne Bay, AK 99919, telephone (907) 828–3243, or E-mail address: samccoy@fs.fed.us

SUPPLEMENTARY INFORMATION: (1) *Public Participation:* Public participation will be an integral component of the study process and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments, and assistance from Native, Federal, State, local agencies, individuals and organizations that may be interested in, or affected by, the proposed activities. The scoping process will include: (1) identification of potential issues; (2) identification of issues to be analyzed in depth; and (3) elimination of insignificant issues or those which have been covered by a previous environmental review. Public scoping meetings are scheduled in Alaska at Edna Bay, Klawock, Naukati, and Thorne Bay. Meeting dates are tentatively scheduled for April, 2000 and will be published in the Ketchikan Daily news and the Island News newspapers distributed in southeast Alaska. Confirmed meeting dates will also be available from the District Ranger on the Thorne Bay Ranger District by calling (907) 828–3304. Written scoping comments are being solicited through a scoping package that will be sent to the project mailing list. For the Forest Service to best use the scoping input, comments should be received by May 31, 2000.

Based on results of scoping and the resource capabilities within the project area, alternatives including a "no action" alternative will be developed for the Draft Environmental Impact Statement (Draft EIS). The Draft EIS filing date with the Environmental Protection Agency (EPA) is scheduled for January 2001. Public comment on the Draft EIS will be solicited for a minimum of 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**. Subsistence hearings, as provided for in Title VIII, Section 810 of the Alaska national Interest Lands Conservation Act (ANILCA), are planned during this 45-day comment period, if needed. The Final EIS is anticipated by October 2001.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping and comments on the Draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the Draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

In addition, Federal court decisions have established that reviewers of Draft EIS statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and concerns. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, (1978). Environmental objections that could have been raised at the draft environmental impact statement stage may be waived if not raised until after completion of the final environmental impact statement. *City of Angoon* v. *Hodel*. 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that subsistence comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action and will be available for public inspection. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments will not have standing to appeal the subsequent decision under 36 CFR parts 215 or 217. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality might be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agencies decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within 7 days.

Permits required for implementation include the following:

1. U.S. Army Corps of Engineers
—Approvals of discharge of dredged or fill material into the waters of the United States under Section 404 of the Clean Water Act,
—Approval of the construction of structures or work in navigable waters of the United States under Section 10 of the Rivers and Harbors Act of 1899;
2. Environmental Protection Agency
—National Pollutant Discharge Elimination System (402) Permit;
—Review Spill Prevention Control and Countermeasure Plan;
3. State of Alaska, Department of Natural Resources
—Tideland Permit and Lease or Easement;
4. State of Alaska, Department of Environmental Conservation
—Solid Waste Disposal Permit;
—Certification of Compliance with Alaska Water Quality Standards (401 Certification)

Responsible Official: Thomas Puchlerz, Forest Supervisor, Tongass National Forest, Federal Building, Ketchikan, Alaska 99901, is the responsible official. The responsible official will consider the comments, response, disclosure of environmental consequences, and applicable laws, regulations, and policies in making the decision and stating the rationale in the Record of Decision.

Dated: March 20, 2000.

Thomas Puchlerz,

Forest Supervisor.

[FR Doc. 00–8055 Filed 3–31–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Klamath Provincial Advisory Committee (PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Klamath Provincial Advisory Committee will meet on April 13 and 14, 2000, at the Miner's Inn Convention Center, 122 E. Miner, Yreka, California. The meeting on Thursday, April 13, will start at 1 p.m. and adjourn at 5 p.m. The meeting will reconvene on Friday, April 14 at 8 a.m. and will adjourn at 12 p.m. Agenda items for the meeting include: (1) Discussion of the Megram Fire rehabilitation; (2) A presentation of the development of Fire Management Strategies; and (3) Public Member Co-Chair for PAC. All Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Connie Hendryx, USDA, Klamath National Forest, 11263 N. Hwy 3, Fort Jones, California 96032; telephone 530–468–1281 (voice), TDD 530–468–2783.

Dated: March 24, 2000.

Margaret J. Boland,

Forest Supervisor.

[FR Doc. 00–8124 Filed 3–31–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Coast Provincial Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Oregon Coast Provincial Advisory Committee (PAC) will meet on April 27, 2000, at the Siuslaw National Forest, 4077 S.W. Research Way, Corvallis, Oregon. The meeting will begin at 9 a.m. and continue until 3:30 p.m. Agenda items to be covered include: (1) Watershed planning for Tillamook and Five Rivers EIS; (2) Joint meeting with the Willamette PAC in July; (3) Survey results for topics for future meetings; (4) Rechartering; and (5) Public comment period.

Interested citizens are encouraged to attend. The committee welcomes the public's written comments on committee business at any time.

FOR FURTHER INFORMATION CONTACT: Joni Quarnstrom, Public Affairs Specialist, Siuslaw National Forest, (541–750–7075) or write to the Forest Supervisor, Siuslaw National Forest, P.O. Box 1148, Corvallis, Oregon 97339.

Dated: March 23, 2000.

Gloria D. Brown,

Forest Supervisor.

[FR Doc. 00–8056 Filed 3–31–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on April 12, 2000 in Medford, Oregon at the Medford Bureau of Land Management Office at 3040 Biddle Road. The meeting will begin at 9 a.m. and continue until 5 p.m. Agenda items to be covered include: (1) Cascade/Siskiyou Ecological Emphasis Area; (2) Public Comment; (3) Province Advisory Committee Recharter; and (4) Current issues as perceived by Advisory Committee members.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Roger Evenson, Province Advisory Committee Coordinator, USDA, Forest Service, Umpqua National Forest, 2900

NW Stewart Parkway, Roseburg, Oregon 97470, phone (541) 957–3344.

Dated: March 28, 2000.

Michael D. Hupp,

Acting Designated Federal Official.

[FR Doc. 00–8088 Filed 3–31–00; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

International Trade Administration

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Initiation of Five-Year ("Sunset") Reviews.

SUMMARY: In accordance with section 751(c) of the Tariff Act of 1930, as amended ("the Act"), the Department of Commerce ("the Department") is automatically initiating five-year ("sunset") reviews of the antidumping duty orders listed below. The International Trade Commission ("the Commission") is publishing concurrently with this notice its notices of Institution of Five-Year Reviews covering these same orders.

FOR FURTHER INFORMATION CONTACT: Darla D. Brown, Office of Policy, Import Administration, International Trade Administration, U.S. Department of Commerce, at (202) 482–3207, or Vera Libeau, Office of Investigations, U.S. International Trade Commission, at (202) 205–3176.

SUPPLEMENTARY INFORMATION:

Initiation of Reviews

In accordance with 19 CFR 351.218 (see Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998)), we are initiating sunset reviews of the following antidumping duty orders:

DOC case No.	ITC case No.	Country	Product
A–570–832	A–696	China	Pure magnesium.
A–821–805	A–697	Russia	Pure magnesium.

Statute and Regulations

Pursuant to sections 751(c) and 752 of the Act, an antidumping ("AD") or countervailing duty ("CVD") order will be revoked, or the suspended investigation will be terminated, unless revocation or termination would be likely to lead to continuation or recurrence of (1) dumping or a countervailable subsidy, and (2) material injury to the domestic industry.

The Department's procedures for the conduct of sunset reviews are set forth in Procedures for Conducting Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders, 63 FR 13516 (March 20, 1998) ("Sunset Regulations"). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98:3—Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, 63 FR 18871 (April 16, 1998) ("Sunset Policy Bulletin").

Filing Information

As a courtesy, we are making information related to sunset proceedings, including copies of the Sunset Regulations and Sunset Policy Bulletin, the Department's schedule of sunset reviews, case history information (*e.g.*, previous margins, duty absorption determinations, scope language, import volumes), and service lists, available to the public on the Department's sunset internet website at the following address:

"http://www.ita.doc.gov/import_admin/records/sunset/".

All submissions in the sunset review must be filed in accordance with the Department's regulations regarding format, translation, service, and certification of documents. These rules can be found at 19 CFR 351.303 (1999). Also, we suggest that parties check the Department's sunset website for any updates to the service list before filing any submissions. The Department will make additions to and/or deletions from the service list provided on the sunset website based on notifications from parties and participation in this review. Specifically, the Department will delete from the service list all parties that do not submit a substantive response to the notice of initiation.

Because deadlines in a sunset review are, in many instances, very short, we urge interested parties to apply for access to proprietary information under administrative protective order ("APO") immediately following publication in the **Federal Register** of the notice of initiation of the sunset review. The Department's regulations on submission of proprietary information and eligibility to receive access to business proprietary information under APO can be found at 19 CFR 351.304–306 (see Antidumping and Countervailing Duty Proceedings: Administrative Protective Order Procedures; Procedures for Imposing Sanctions for Violation of a Protective Order, 63 FR 24391 (May 4, 1998)).

Information Required From Interested Parties

Domestic interested parties (defined in 19 CFR 351.102 (1999)) wishing to participate in the sunset review must respond not later than 15 days after the date of publication in the **Federal Register** of the notice of initiation by filing a notice of intent to participate. The required contents of the notice of intent to participate are set forth in the Sunset Regulations at 19 CFR 351.218(d)(1)(ii). We note that the Department considers each of the orders listed above as separate and distinct orders and, therefore, requires order-specific submissions. In accordance with the Sunset Regulations, if we do not receive a notice of intent to participate from at least one domestic interested party by the 15-day deadline, the Department will automatically revoke the order without further review.

If we receive an order-specific notice of intent to participate from a domestic interested party, the Sunset Regulations provide that *all parties* wishing to participate in the sunset review must file substantive responses not later than 30 days after the date of publication in the **Federal Register** of the notice of initiation. The required contents of a substantive response, on an order-specific basis, are set forth in the Sunset Regulations at 19 CFR 351.218(d)(3). Note that certain information requirements differ for foreign and domestic parties. Also, note that the Department's information requirements are distinct from the International Trade Commission's information requirements. Please consult the Sunset Regulations for information regarding the Department's conduct of sunset reviews.[1] Please consult the Department's regulations at 19 CFR part 351 (1999) for definitions of terms and for other general information concerning antidumping and countervailing duty proceedings at the Department.

This notice of initiation is being published in accordance with section 751(c) of the Act and 19 CFR 351.218(c).

Dated: March 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8160 Filed 3–31–00; 8:45 am]

BILLING CODE 3150–DS–P

[1] A number of parties commented that these interim-final regulations provided insufficient time for rebuttals to substantive responses to a notice of initiation (Sunset Regulations, 19 CFR 351.218(d)(4)). As provided in 19 CFR 351.302(b) (1999), the Department will consider individual requests for extension of that five-day deadline based upon a showing of good cause.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–809]

Certain Stainless Steel Flanges From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of initiation of new shipper review.

SUMMARY: The Department of Commerce has received a request for a new shipper review of the antidumping duty order on certain stainless steel flanges (stainless flanges) from India issued on February 9, 1994 (59 FR 5994). In accordance with our regulations, we are initiating a new shipper review covering Snowdrop Pvt. Ltd. (Snowdrop).

EFFECTIVE DATE: April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Killiam or Michael Heaney, AD/CVD Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230, telephone: (202) 482–5222 or (202) 482–4475, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all references to the Department's regulations are to 19 CFR part 351 (1999).

Background

On February 29, 2000, the Department received a timely request, in accordance with section 751(a)(2)(B) of the Tariff Act and 19 CFR 351.214(b) of the Department's regulations, for a new shipper review of the antidumping duty order on stainless flanges from India, which has a February anniversary date. (*See Antidumping Duty Order and Amendment to Final Determination of Sales at Less Than Fair Value*, 59 FR 5994 (February 9, 1994).

Initiation of Review

Pursuant to the Department's regulations at 19 CFR 351.214(b), Snowdrop certified in its February 29, 2000 submission that it did not export subject merchandise to the United States during the period of the investigation (POI), (July 1, 1992 through December 31, 1992), and that it was not affiliated with any exporter or producer of the subject merchandise to the United States during the POI. Snowdrop submitted documentation establishing the date on which it first shipped the subject merchandise for export to the United States, the volume shipped and the date of the first sale to an unaffiliated customer in the United States.

In accordance with section 751(a)(2)(B) of the Tariff Act and section 351.214(d) of the Department's regulations, we are initiating a new shipper review of the antidumping duty order on stainless flanges from India. The Department's regulations state that a new shipper review normally will cover entries, exports or sales during the twelve-month period immediately preceding the anniversary month if the review is initiated in the month immediately following the anniversary month, as here. 19 CFR 351.214(g)(1)(i)(A). Thus, the review period for this case normally would be February 1, 1999–January 31, 2000. However, we are extending the review period by two months to ensure inclusion of the sale, export and shipment which Snowdrop has requested the Department to review. Thus, the review covers the period February 1, 1999–February 29, 2000. We intend to issue the preliminary results of the review no later than 180 days from the date of publication of this notice.

We will instruct the Customs Service to suspend liquidation of any unliquidated entries of the subject merchandise from Snowdrop, and allow, at the option of the importer, the posting, until completion of the review, of a bond or security in lieu of a cash deposit for each entry of the merchandise exported by Snowdrop, in accordance with 19 CFR 351.214(e).

Interested parties may submit applications for disclosure under administrative protective order in accordance with 19 CFR 351.305(b).

This initiation and this notice are in accordance with section 751(a) of the Tariff Act (19 U.S.C. 1675(a)) and 19 CFR 351.214.

Dated: March 28, 2000.

Joseph A. Spetrini,

Deputy Assistant Secretary, AD/CVD Enforcement, Group III.

[FR Doc. 00–8159 Filed 3–31–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

Quarterly Update to Annual Listing of Foreign Government Subsidies on Articles of Cheese Subject to an In-Quota Rate of Duty

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Publication of quarterly update to annual listing of foreign government subsidies on articles of cheese subject to an in-quota rate of duty.

SUMMARY: The Department of Commerce, in consultation with the Secretary of Agriculture, has prepared its quarterly update to the annual list of foreign government subsidies on articles of cheese subject to an in-quota rate of duty during the period October 1, 1999 through December 31, 1999. We are publishing the current listing of those subsidies that we have determined exist.

EFFECTIVE DATE: April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Russell Morris or Tipten Troidl, Officer of AD/CVD Enforcement VI, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave., N.W., Washington, D.C. 20230, telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION: Section 702(a) of the Trade Agreements Act of 1979 (as amended) (the Act) requires the Department of Commerce (the Department) to determine, in consultation with the Secretary of Agriculture, whether any foreign government is providing a subsidy with respect to any article of cheese subject to an in-quota rate of duty, as defined in section 702(g)(b)(4) of the Act, and to publish an annual list and quarterly updates of the type and amount of those subsidies. We hereby provide the

Department's quarterly update of subsidies on cheeses that were imported during the period October 1, 1999 through December 31, 1999.

The Department has developed, in consultation with the Secretary of Agriculture, information on subsidies (as defined in section 702(g)(b)(2) of the Act) being provided either directly or indirectly by foreign governments on articles of cheese subject to an in-quota rate of duty. The appendix to this notice lists the country, the subsidy program or programs, and the gross and net amounts of each subsidy for which information is currently available.

The Department will incorporate additional programs which are found to constitute subsidies, and additional information on the subsidy programs listed, as the information is developed.

The Department encourages any person having information on foreign government subsidy programs which benefit articles of cheese subject to an in-quota rate of duty to submit such information in writing to the Assistant Secretary for Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230.

This determination and notice are in accordance with section 702(a) of the Act.

Dated: March 27, 2000.

Robert S. LaRussa,

Assistant Secretary for Import Administration.

APPENDIX.—SUBSIDY PROGRAMS ON CHEESE SUBJECT TO AN IN-QUOTA RATE OF DUTY

Country	Program(s)	Gross [1] subsidy ($/lb)	Net [2] subsidy ($/lb)
Austria	European Union Restitution Payments	$0.21	$0.21
Belgium	EU Restitution Payments	0.06	0.06
Canada	Export Assistance on Certain Types of Cheese	0.24	0.24
Denmark	EU Restitution Payments	0.16	0.16
Finland	EU Restitution Payments	0.24	0.24
France	EU Restitution Payments	0.14	0.14
Germany	EU Restitution Payments	0.15	0.15
Greece	EU Restitution Payments	0.00	0.00
Ireland	EU Restitution Payments	0.16	0.16
Italy	EU Restitution Payments	0.12	0.12
Luxembourg	EU Restitution Payments	0.07	0.07
Netherlands	EU Restitution Payments	0.10	0.10
Norway	Indirect (Milk) Subsidy	0.32	0.32
	Consumer Subsidy	0.14	0.14
Total		0.46	0.46
Portugal	EU Restitution Payments	0.09	0.09
Spain	EU Restitution Payments	0.09	0.09
Switzerland	Deficiency Payments	0.12	0.12
U.K.	EU Restitution Payments	0.11	0.11

[1] Defined in 19 U.S.C. 1677(5).
[2] Defined in 19 U.S.C. 1677(6).

[FR Doc. 00–8158 Filed 3–31–00; 8:45 am]

BILLING CODE 3510–DS–M

DEPARTMENT OF COMMERCE

International Trade Administration

[C–489–502]

Welded Carbon Steel Pipes and Tubes From Turkey; Final Results of Full Sunset Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of final results of full sunset review: welded carbon steel pipes and tubes from Turkey.

SUMMARY: On November 30, 1999, the Department of Commerce ("the Department") published a notice of preliminary results of the full sunset review of the countervailing duty order on welded carbon steel pipes and tubes from Turkey (64 FR 66895) pursuant to section 751(c) of the Tariff Act of 1930, as amended ("the Act"). We provided interested parties an opportunity to comment on our preliminary results. We did not receive comments from either domestic or respondent interested parties. As a result of this review, the Department finds that revocation of this order would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels indicated in the Final Results of Review section of this notice.

FOR FURTHER INFORMATION CONTACT: Kathryn B. McCormick or Melissa G. Skinner, Office of Policy for Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, D.C. 20230; telephone: (202) 482–1930 or (202) 482–1560, respectively.

EFFECTIVE DATE: April 3, 2000.

Statute and Regulations

Unless otherwise indicated, all citations to the Act are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department regulations are to 19 CFR Part 351 (1999). Guidance on methodological or analytical issues relevant to the Department's conduct of sunset reviews is set forth in the Department's Policy Bulletin 98.3—*Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin*, 63 FR 18871 (April 16, 1998) ("*Sunset Policy Bulletin*").

Background

On November 30, 1999, the Department of Commerce ("the Department") published in the **Federal Register** a notice of preliminary results of the full sunset review of the countervailing duty order on welded carbon steel pipes and tubes from Turkey, pursuant to section 751(c) of the Act. In our preliminary results, we found that revocation of the order would be likely to lead to continuation or recurrence of countervailable subsidies, and we preliminarily determined the following net countervailable subsidies likely to prevail if the order were revoked:

Producer/exporter	Margin (percent)
Bant Boru	0.00
Borusan Group	0.68
Yucel Boru Group	0.84
Erbosan	2.89
All Others	2.90

In addition, our preliminary results contained information on the nature of the subsidy. We did not receive a case brief on behalf of either domestic or respondent interested parties within the deadline specified in 19 CFR 351.309(c)(1)(i).

Scope of Review

This order covers shipments of Turkish welded carbon steel pipes and tubes, having an outside diameter of 0.375 inch or more, but not more than 16 inches, of any wall thickness. These products, commonly referred to in the industry as standard pipe and tube or structural tubing, are produced in accordance with various American Society Testing and Materials (ASTM) specifications, most notably A–53, A–120, A–500, or A–501. The subject merchandise was originally classifiable under item number 416.30 of the Tariff Schedules of the United States Annotated ("TSUSA"); currently, they are classifiable under item numbers 7306.30.10 and 7306.30.50 of the Harmonized Tariff Schedule of the United States ("HTSUS"). Although the TSUSA and HTSUS item numbers are provided for convenience and customs purposes, the written description remains dispositive.

Analysis of Comments Received

The Department did not receive case briefs from either domestic or respondent interested parties. Therefore, we have not made any changes to our preliminary results of November 30, 1999 (64 FR 66895).

Final Results of Preview

As a result of this review, the Department finds that revocation of the countervailing duty order would be likely to lead to continuation or recurrence of a countervailable subsidy at the levels listed below:

Producer/Exporter	Margin (percent)
Bant Boru	0.00
Borusan Group	0.68
Yucel Boru Group	0.84
Erbosan	2.89
All Others	2.90

In addition, we are providing information on the nature of the countervailable subsidy programs with respect to Article 3.1 (a) or Article 6 of the Subsidies Agreement as contained in our preliminary results.

The *Deduction from Taxable Income for Export Revenues* and *Pre-Shipment Export Credit* programs fall within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement because the receipt of benefit is contingent on export performance.

The remaining programs, although not falling within the definition of an export subsidy under Article 3.1(a) of the Subsidies Agreement, could be found to be inconsistent with Article 6 if the net countervailable subsidy exceeds five percent, as measured in accordance with Annex IV of the Subsidies Agreement. However, the Department has no information with which to make such a calculation, nor do we believe it appropriate to attempt such a calculation in the course of a sunset review. Rather, we are providing the Commission with the following program descriptions.

Foreign Exchange Loan Assistance. The Government of the Republic of Turkey ("GRT") Resolution Number: 94/5782, Article 4, effective June 13, 1994, concerns the encouragement of exportation, allowing commercial banks to exempt certain fees provided that the loans are used in the financing of exportation and other foreign exchange earning activities. The exempted fees include a Resource Utilization Stabilization Fund fee of six percent of the loan principle, a Banking Insurance Tax equal to five percent of the interested and a stamp tax equal to 0.6 percent of the principal.[1]

Incentive Premium on Domestically Obtained Goods. Companies holding investment incentive certificates under the *General Incentives Program ("GIP")* are eligible for a rebate of 15 percent VAT paid on locally-sourced machinery and equipment. Imported machinery and equipment are subject to the VAT and are not eligible for the rebate. These value added tax ("VAT") rebates are countervailable subsidies within the meaning of section 771(5)(D)(ii) of the Act because the rebates constitute revenue foregone by the GRT, and they provide a benefit in the amount of the VAT savings to the company. Also, they are specific under section 771(5A)(C) because their receipt is contingent upon the use of domestic goods rather than imported goods (62 FR 64808, December 9, 1997).

This notice also serves as the only reminder to parties subject to administrative protective orders ("APO") of their responsibility concerning the return or disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305 of the Department's regulations. Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a violation which is subject to sanction.

This five-year ("sunset") review and notice are in accordance with sections 751(c), 752, and 777(i)(1) of the Act.

Dated: March 28, 2000.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8157 Filed 3–31–00; 8:45 am]

BILLING CODE 3510–DS–P

[1] *See Certain Welded Carbon Steel Pipes and Tubes and Welded Carbon Steel Line Pipe from Turkey; Preliminary Results and Partial Rescission of Countervailing Duty Administrative Reviews*, 62 FR 64808 (December 9, 1997).

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032800E]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting via conference call of the Red Drum Stock Assessment Panel (RDSAP).

DATES: This meeting will be via conference call on April 17, 2000, beginning at 10:00 a.m. EST.

ADDRESSES: A listening station will be available at the following location:

NMFS Southeast Regional Office, 9721 Executive Center Drive, North, St. Petersburg, FL 33702.

Contact: Georgia Cranmore at 727–570–5305.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Peter Hood, Fishery Biologist, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The RDSAP will be convened via conference call on April 17, 2000, beginning at 10:00 a.m. EST. The RDSAP will continue their review of a stock assessment on the status of the red drum stocks in the Gulf of Mexico prepared by NMFS. The RDSAP will consider available information, including but not limited to, commercial and recreational catches, natural and fishing mortality estimates, recruitment, fishery-dependent and fishery-independent data, and data needs. These analyses will be used to determine the condition of the stocks and the levels of acceptable biological catch (ABC). The RDSAP may also review estimates of stock size (biomass at maximum sustainable yield [Bmsy]) and minimum stock size thresholds (MSST). Currently it is illegal to harvest or possess red drum in Federal waters.

The conclusions of the RDSAP will be reviewed by the Council's Standing and Special Red Drum Scientific and Statistical Committee (SSC), and Red Drum Advisory Panel (RDAP) at meetings held between May 3–5, 2000.

A copy of the agenda can be obtained by contacting the Council (see **ADDRESSES**).

Although other non-emergency issues not on the agenda may come before the RDSAP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during this meeting. Actions of the RDSAP will be restricted to those issues specifically identified in the agenda and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The listening station is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (see **ADDRESSES**) by April 10, 2000.

Dated: March 29, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8162 Filed 3–31–00; 8:45 am]

BILLING CODE 3510–22–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Cambodia

March 28, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: April 4, 2000.

FOR FURTHER INFORMATION CONTACT: Roy Unger, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being increased for carryover, carryforward and recrediting unused carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 70217, published on December 16, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 28, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 10, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Cambodia and exported during the twelve-month period which began on January 1, 2000 and extends through December 31, 2000.

Effective on April 4, 2000, you are directed to increase the current limits for the following categories, as provided for under the terms of the current bilateral textile agreement between the Governments of the United States and Cambodia:

Category	Adjusted twelve-month limit [1]
331/631	1,823,730 dozen pairs.
334/634	180,812 dozen.
335/635	76,479 dozen.
338/339	2,559,000 dozen.
340/640	882,450 dozen.
345	110,600 dozen.
347/348/647/648	2,950,800 dozen.
352/652	705,960 dozen.
438	95,068 dozen.
445/446	123,321 dozen.
638/639	957,240 dozen.
645/646	294,150 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–8127 Filed 3–31–00; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Korea

March 28, 2000.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: April 4, 2000.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.ustreas.gov. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for categories are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 64 FR 71982, published on December 22, 1999). Also see 64 FR 68334, published on December 7, 1999.

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

March 28, 2000.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 1, 1999, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Korea and exported during the period which began on January 1, 2000 and extends through December 31, 2000.

Effective on April 4, 2000, you are directed to reduce the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Adjusted limit [1]
Group I 200–223, 224–V [2], 224–O [3], 225, 226, 227, 300–326, 360–363, 369pt. [4], 400–414, 464, 469pt. [5], 600–629, 666, 669–P [6], 669pt. [7], and 670–O [8], as a group.	393,877,020 square meters equivalent.
Sublevels within Group II	
338/339	1,323,212 dozen.
352	197,291 dozen.
638/639	5,243,856 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1999.

[2] Category 224–V: only HTS numbers 5801.21.0000, 5801.23.0000, 5801.24.0000, 5801.25.0010, 5801.25.0020, 5801.26.0010, 5801.26.0020, 5801.31.0000, 5801.33.0000, 5801.34.0000, 5801.35.0010, 5801.35.0020, 5801.36.0010 and 5801.36.0020.

[3] Category 224–O: all remaining HTS numbers in Category 224.

[4] Category 369pt.: all HTS numbers except 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3016, 4202.92.6091, 6307.90.9905, (Category 369–L); 5601.10.1000, 5601.21.0090, 5701.90.1020, 5701.90.2020, 5702.10.9020, 5702.39.2010, 5702.49.1020, 5702.49.1080, 5702.59.1000, 5702.99.1010, 5702.99.1090, 5705.00.2020 and 6406.10.7700.

[5] Category 469pt.: all HTS numbers except 5601.29.0020, 5603.94.1010 and 6406.10.9020.

[6] Category 669–P: only HTS numbers 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020 and 6305.39.0000.

[7] Category 669pt.: all HTS numbers except 6305.32.0010, 6305.32.0020, 6305.33.0010, 6305.33.0020, 6305.39.0000 (Category 669–P); 5601.10.2000, 5601.22.0090, 5607.49.3000, 5607.50.4000 and 6406.10.9040.

[8] Category 670–O: all HTS numbers except 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3031, 4202.92.9026 and 6307.90.9907 (Category 670–L).

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 00–8128 Filed 3–31–00; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0079]

Proposed Collection; Comment Request Entitled Corporate Aircraft Costs

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0079).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Corporate Aircraft Costs. This OMB clearance expires on July 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before June 2, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Office of Federal Acquisition Policy Division, GSA, (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Government contractors that use company aircraft must maintain logs of flights containing specified information to ensure that costs are properly charged against Government contracts and that directly associated costs of unallowable activities are not charged to such contracts.

B. Annual Reporting Burden

Number of Respondents: 3,000.
Responses Per Respondent: 1.
Total Responses: 3,000.
Average Burden Per Response: 6 hours.
Total Burden Hours: 18,000.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0079, Corporate Aircraft Costs, in all correspondence.

Dated: March 29, 2000.

Edward C. Loeb,

Director,Federal Acquisition Policy Division.

[FR Doc. 00–8136 Filed 3–31–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0129]

Proposed Collection; Comment Request Entitled Cost Accounting Standards Administration

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0129).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Cost Accounting Standards Administration. This OMB clearance expires on July 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before June 2, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy Olson, Federal Acquisition Policy Division, GSA, 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

FAR 30.6 and 52.230–5 include pertinent rules and regulations related to the Cost Accounting Standards along with necessary administrative policies and procedures. These administrative policies require certain contractors to submit cost impact estimates and descriptions in cost accounting practices and also to provide information on CAS-covered subcontractors.

B. Annual Reporting Burden

Number of Respondents: 644.
Responses Per Respondent: 2.27.
Total Responses: 1,462.
Average Burden Hours Per Response: 200.85.
Total Burden Hours: 293,643.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0129, Cost Accounting Standards Administration, in all correspondence.

Dated: March 29, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–8137 Filed 3–31–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0132]

Proposed Collection; Comment Request Entitled Contractors' Purchasing Systems Reviews

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0132).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Contractors' Purchasing Systems Reviews. This OMB clearance expires on July 31, 2000.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before June 2, 2000.

ADDRESSES: Comments, including suggestions for reducing this burden, should be submitted to: FAR Desk Officer, OMB, Room 10102, NEOB, Washington, DC 20503, and a copy to the General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Linda Klein, Federal Acquisition Policy Division, GSA, (202) 501–3755.

SUPPLEMENTARY INFORMATION:

A. Purpose

The objective of a contractor purchasing system review (CPSR), as discussed in Part 44 of the FAR, is to evaluate the efficiency and effectiveness with which the contractor spends Government funds and complies with Government policy when subcontracting. The review provides the administrative contracting officer a basis for granting, withholding, or withdrawing approval of the contractor's purchasing system.

B. Annual Reporting Burden

Number of Respondents: 1,580.
Responses Per Respondent: 1.
Total Responses: 1,580.
Average Burden Per Response: 17.

Total Burden Hours: 26,860.

Obtaining Copies of Proposals

Requester may obtain a copy of the proposal from the General Services Administration, FAR Secretariat (MVRS), Room 4035, Washington, DC 20405, telephone (202) 208–7312. Please cite OMB Control No. 9000–0132, Contractors' Purchasing Systems Reviews, in all correspondence.

Dated: March 29, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

[FR Doc. 00–8138 Filed 3–31–00; 8:45 am]

BILLING CODE 6820–34–P

DEPARTMENT OF DEFENSE

Department of the Army

Revision of MTMC Freight Traffic Rules Publication No. 4A, Item 255 and MTMC Guaranteed Traffic Rules Publication No. 50, Item 715, Both Entitled "Computation of Freight Charges"

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice.

SUMMARY: The Military Traffic Management Command (MTMC), as the Department of Defense (DOD) Traffic Manager for surface and surface intermodal traffic management services (DTR vol. 1, pg. 101–113), hereby modifies the text of the existing rule, entitled "Computation of Freight Charges," in MFTRP No. 4A, Item 255 and MGTRP No. 50, Item 715. The purpose of this modification is to change the basis of freight charge computation for bulk petroleum tank truck shipments from gross volume to a different methodology (sometimes referred to as "net" volume) in order to better conform to what has become an accepted industry practice as well as to comply with procedures and automated systems used by or being implemented by the Defense Energy Support Center.

DATES: This change is effective May 1, 2000.

ADDRESSES: Point of Contact: Headquarters, Military Traffic Management Command, ATTN: MTOP–JF, Room 608, 5611 Columbia Pike, Falls Church, VA 22041–5050, fax: 703–681–9871 attn: Jerome Colton, e-mail: coltonj@mtmc.army.mil.

FOR FURTHER INFORMATION CONTACT: For additional information contact Mr. Jerome Colton, MTMC at (703) 681–1417 or Mr. Keith Pladson, DESC at (703) 767–8381.

SUPPLEMENTARY INFORMATION: A notice proposing this change was published in the **Federal Register**, vol. 64, no. 204, page 57075, Tuesday, October 22, 1999. In response to this notice, a total of one (1) comment was received. The synopsis of the comment and response are as follows:

Comment: The phrase "to conform to standard industry practice" is not understood. Standard industry practice is to charge the gross gallons amount. Why should we change this to net gallons just for government locations? For at least 27 years gross gallon charges have been in effect. Changing is a waste of time and money.

Response: 1. DOD has researched the loading points served by the commenter. All locations use temperature compensating meters so all can—and do—provide net volumes.

2. While gross gallons was indeed the industry standard in the past, this standard has been changing in favor of net gallons. As temperature-compensating meters are now in common use, using net gallons is (a) easily determined; (b) the measurement of choice as volume fluctuations due to temperature are eliminated; and (c) used by the majority of transportation modes. DOD has therefore chosen net gallons to be the standard for its new automated system, which covers the transportation of bulk fuel by all modes. In those few instances or locations where temperature-compensating meters are unavailable, conversion tables can be used.

3. All discussions held with carriers both prior to and after the previous **Federal Register** notice proposing this change contradict the commenter's assertions. These discussions indicated, without exception, that carriers either welcome or have no difficulty with this change. The fact that there was only one negative comment reinforces this conclusion.

4. Carriers are free to file rate changes if they believe the change will adversely affect their revenue.

(End of Response)

It is therefore determined that this proposed change should be implemented, effective May 1, 2000. As this change may affect the revenue that bulk petroleum tank truck carriers receive for movements of DOD bulk petroleum shipments, carriers providing such services to DOD may wish to review their existing tenders to see if any further action on their part is in their interests. Effective May 1, 2000, paragraph 1 of the relevant item in the two rules publications (MFTRP No. 4A, Item 255 and MGTRP No. 50, Item 715) will read as follows: "Except as provided in paragraph 2, freight charges in DOD tenders governed by this publication will be the greater of:

a. The amount computed by multiplying the carrier's rate by the minimum gallonage stated in the carrier's applicable tender, or

b. The amount computed by multiplying the carrier's rate by the temperature-corrected gallonage placed in the vehicle at the time of loading. Temperature-corrected gallonage is defined as the volume correction to gallons at 60 degrees Fahrenheit (sometimes referred to as "net volume") and will be determined by the loading facility through either the use of temperature-compensating meters or by manual conversion in accordance with the appropriate tables in the most recent edition of the API Manual of Petroleum Measurement Standards (MPMS)." (end of change)

In general, changes to a rules publication (including this change) will no longer be accompanied by a mass mailing to carriers and other interested parties of the page containing the change. Instead, the rules publication will be updated on the MTMC website (www.mtmc.army.mil) to incorporate changes. From the MTMC website, click in succession on: Transportation Services, Freight Logistics, Freight Traffic Rules Publications, and then select the Rules Publication of your choice.

Regulatory Flexibility Act: This change is not considered rule making within the meaning of the Regulatory Flexibility Act, 5 U.S.C 601–612.

Paperwork Reduction Act: The Paperwork Reduction Act, 44 U.S.C 3051 et seq., does not apply because no information collection requirement or recordskeeping responsibilities are imposed on offerors, contractors, or members of the public.

Walter Scullion,

Chief, Freight Services Division (Acting), Joint Traffic Management Office.

[FR Doc. 00–8090 Filed 3–31–00; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Sandia

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Environmental

Management Site-Specific Advisory Board (EM–SSAB), Kirtland Area Office (Sandia).

DATES: Wednesday, April 19, 2000: 6:00 p.m.–9:00 p.m. (MST)

ADDRESSES: Los Volcanes Senior Citizens Center, 6500 Los Volcanes Road, NW., Albuquerque, NM 87102, Phone: (505) 836–8745.

FOR FURTHER INFORMATION CONTACT: Mike Zamorski, Acting Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185 (505) 845–4094.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda:

6:00 p.m. Check-In/Agenda Approval/Minutes
6:15 p.m. Meeting Manager Update on Coordinating Council decisions made and to be made
6:25 p.m. No Further Action (NFA)—Round 2
Discuss Process Improvement
Questions/Concerns—Terms
Who is Doing What
Process—Site Evaluation
7:05 p.m. Public Comment
7:20 p.m. Break
7:35 p.m. New Mexico Environmental Department (NMED) Presentation on Mixed Waste Landfill (MWLF)—Questions and Answers Session
8:15 p.m. Mark Baskaran Introduction (Independent Contractor)
8:25 p.m. Task Group Reports
8:40 p.m. Board Input into Coordinating Council Agenda for May
8:45 p.m. Adjourn

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Mike Zamorski's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided a maximum of 5 minutes to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Mike Zamorski, Manager, Department of Energy Kirtland Area Office, P.O. Box 5400, MS–0184, Albuquerque, NM 87185, or by calling (505) 845–4094.

Issued at Washington, DC on March 29, 2000.

Rachel Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 00–8114 Filed 3–31–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG00–1–001]

Clear Creek Storage Company, L.L.C.; Notice of Filing

March 28, 2000.

Take notice that on March 8, 2000, Clear Creek Storage Company, L.L.C. filed revised standards of conduct in response to the Commission's February 11, 2000 Order. 90 FERC ¶ 61,143 (2000).

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C., 20426, in accordance with Rules 211 or 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to intervene or protest should be filed on or before April 12, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the web at http://www.ferc.fed.ud/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–8062 Filed 3–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OA00–5–000]

Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc.; Notice of Filing

March 28, 2000.

Take notice that on March 9, 2000, Commonwealth Edison Company and Commonwealth Edison Company of Indiana, Inc. (Commonwealth) submitted revised standards of conduct under Order No. 889 *et seq.*[1] to reflect a reorganization of the transmission function. Commonwealth also states that it has revised its organizational charts and job descriptions on the OASIS.

Commonwealth states that it served copies of the filing on the service list in this proceeding.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 12, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Commonwealth's filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at *http://www.ferc.fed.us/online.rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–8059 Filed 3–31–00; 8:45 am]

BILLING CODE 6717–01–M

[1] Open Access Same-Time Information System (Formerly Real-Time Information Network) and Standards of Conduct, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs., Regulations Preambles January 1991–1996 ¶ 31,035 (April 24, 1996), Order No. 889–A, *order on reheoring*, 62 FR 12484 (March 14, 1997), III FERC Stats. & Regs. ¶ 31,049 (March 4, 1997); Order No. 889–B, *rehearing denied*, 62 FR 64715 (December 9, 1997), III FERC Stats. & Regs. ¶ 31,253 [November 25, 1997).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–57–000]

Niagara Mohawk Power Corporation, Complainant, v. New York Independent System Operator, Respondent; Notice of Filing

March 28, 2000.

Take notice that on March 24, 2000, Niagara Mohawk Power Corporation (Niagara Mohawk) submitted a Complaint pursuant to Section 206 of the Federal Power Act against the New York Independent System Operator (NYISO). The Complaint concerns the NYISO's refusal to permit Niagara Mohawk to self-supply Operating Reserves and the recent increases in the prices for Operating Reserves in the NYISO.

Copies of the filing were served upon the NYISO and other interested parties.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before April 13, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may also be viewed for public inspection in the Public Reference Room. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222) for assistance. Answers to the complaint shall also be due on or before April 13, 2000.

David P. Boergers,

Secretary.

[FR Doc. 00–8115 Filed 3–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

TransAlta Energy Marketing (US), Inc. et al.; Notice of Issuance of Orders

March 28, 2000.

	Docket Nos.
In the matter of:	
TransAlta Energy Marketing (US), Inc.	ER98–3184–000
CinCap V, LLC	ER98–4055–000
Southern Energy California, L.L.C.	ER99–1841–000
Sierra Pacific Energy Company.	ER00–500–000
Storm Lake Power Partners I, LLC.	ER98–4643–000
Southern Energy Potrero, L.L.C.	ER99–1833–000
Southern Energy Delta, L.L.C.	ER99–1842–000
O'Brien (Philadelphia) Cogeneration, Inc.	ER00–644–000
Portland General Electric Co.	ER98–1643–000
Portland General Electric Company.	ER99–1263–000
AG Energy, L.P	ER98–2782–000
Great Bay Power Corporation.	ER98–3470–000
Cadillac Renewable Energy LLC.	ER98–4515–000
Boralex Stratton Energy Inc.	ER98–4652–000
Dighton Power Associates. L.P.	ER99–616–000
AEE 2, L.L.C	ER99–2284–000
Sithe New Jersey Holdings LLC.	ER99–3692–000
Raybum County Electric Cooperative, Inc.	ER00–23–000
Merchant Energy Group of the Americas, Inc.	ER98–1055–000
Western Energy Marketers, Inc.	ER98–537–000
TransCanada Power Marketing Ltd.	ER98–564–000
Equinox Energy, LLC	ER98–1486–000
Energy Unlimited, Inc	ER98–1622–000
Competisys LLC	ER98–1790–000
Pacific Energy & Development Corporation.	ER98–1824–000
Bollinger Energy Corporation.	ER98–1821–000
Micah Tech Industries, Inc.	ER98–1221–000
XERXE Group, Inc	ER98–1823–000
Eastern Pacific Energy	ER98–1829–000
Kamps Propane, Inc	ER98–1148–000
Polaris Electric Power Company.	ER98–1421–000
American Home Energy Corporation.	ER98–1903–000
People's Utility Corporation.	ER98–2232–000
Nine Energy Services, LLC.	ER98–1915–000
Salem Electric, Inc	ER98–2175–000
First Choice Energy	ER98–2181–000
PG Energy Power Plus	ER98–1953–000
Energy International Power Marketing Corporation.	ER98–2059–000
Hafslund Energy Trading LLC.	ER98–2535–000
The FURSTS Group, Inc	ER98–2423–000
Spare, LLC	ER98–2671–000
Energy PM, Inc.	ER98–2918–000
Econnergy Energy Company, Inc.	ER98–2553–000
Nicole Energy Services	ER98–2683–000
TransCurrent, LLC	ER98–1297–000
Pelican Energy Management, Inc.	ER98–3084–000
Rainbow Power USA LLC.	ER98–3012–000
Electrion, Incorporated	ER98–3171–000
Environmental Resources Trust, Inc.	ER98–3233–000
Rocky Mountain Natural Gas & Electric LLC.	ER98–3108–000
Astra Power LLC	ER98–3378–000
Fortistar Power Marketing LLC.	ER98–3393–000
JMF Power Marketing	ER98–3433–000
Reliable Energy, Inc.	ER98–3261–000
Northeast Electricity Inc	ER98–3048–000
American Premier Energy Corporation.	ER98–3451–000
3E Technologies, Inc	ER98–3809–000
ONEOK Power Marketing Company.	ER98–3897–000
Navarco Ltd	ER98–4139–000
Panda Guadalupe Power Marketing, LLC.	ER98–3901–000
Omni Energy	ER98–3344–000
Primary Power Marketing, L.L.C.	ER98–4333–000
International Energy Ventures, Inc.	ER98–4264–000
Abacus Group Ltd	ER98–4240–000
ENMAR Corporation	ER99–254–000
ACN Power, Inc.	ER98–4685–000
Golden Valley Power Company.	ER98–4334–000
Lakeside Energy Services, LLC.	ER99–505–000
Metro Energy Group, LLC.	ER99–801–000
River City Energy, Inc	ER99–823–000
Business Discount Plan, Inc.	ER99–581–000
Commodore Electric	ER99–1890–000
CP Power Sales 15, LLC	ER99–890–000
CP Power Sales 14, LLC	ER99–891–000
CP Power Sales 13, LLC	ER99–892–000
CP Power Sales 12, LLC	ER99–893–000
CP Power Sales 11, LLC	ER99–894–000
CP Power Sales Eleven, LLC.	ER99–3202–000
Merrill Lynch Capital Services, Inc.	ER99–830–000
Salko Energy Services, Inc.	ER99–1052–000
Michigan Gas Exchange, L.L.C.	ER99–1156–000
StratErgy, Inc	ER99–1410–000
SkyGen Energy Marketing LLC.	ER99–972–000
The Legacy Energy Group, LLC.	ER99–3571–000
Cielo Power Market, L.P.	ER99–964–000
Enjet, Inc	ER99–2061–000

	Docket Nos.
Shell Energy Services Company, LLC.	ER99–2109–000
Alliance Energy Services Partnership.	ER99–1945–000
ECONnergy PA, Inc	ER99–1837–000
Trident Energy Marketing, Inc.	ER99–2069–000
Total Gas & Electricity (PA), Inc.	ER99–2182–000
TransAlta Energy Marketing (CA) Inc.	ER99–2343–000
NJR Energy Services Company.	ER99–2384–000
Agway Energy Services—PA, Inc.	ER99–2313–000
Genstar Energy, L.L.C	ER99–2364–000
GreenMountain.com	ER99–4324–000
Old Mill Power Company	ER99–2883–000
Delta Energy Group	ER99–2970–000
Navitas, Inc	ER99–2537–000
Nautilus Energy Company.	ER98–2618–000
Full Power Corporation	ER99–2540–000
Complete Energy Services, Inc.	ER99–3033–000
Occidental Power Marketing, L.P.	ER99–3665–000
Energy Cooperative of Western New York, Inc.	ER99–3411–000
FPH Electric, L.L.C	ER99–3142–000
Power Management Co., LLC.	ER99–3275–000
MCHC—Shared Services, Inc.	ER99–3705–000
International Energy Consultants, Inc.	ER99–3130–000
CP Power Sales 19, L.L.C.	ER99–4338–000
CP Power Sales 17, L.L.C.	ER99–4229–000
CP Power Sales 18, L.L.C.	ER99–4230–000
CP Power Sales 20, L.L.C.	ER99–4231–000
Sandia Resources Corporation.	ER99–4044–000
InPower Marketing Corporation.	ER99–3964–000
SmartEnergy.Com, Inc	ER00–140–000
Strategic Energy Management Corporation.	ER00–167–000
PG Power Sales Three, L.L.C.	ER00–954–000
PG Power Sales One, L.L.C.	ER00–955–000
PG Power Sales Two, L.L.C.	ER00–956–000
Nordic Marketing, L.L.C	ER00–774–000
Energy West Resources, Inc.	ER00–874–000
Alrus Consulting, LLC	ER00–861–000
Sithe PA Holdings LLC	ER99–4245–000
Sithe Mystic LLC	ER99–2671–000
AG Energy, L.P	ER98–2782–000

The above-captioned applicants (Applicants) submitted for filing a rate schedule under which the Applicants will engage in wholesale electric power and energy transactions as a marketer. The Applicants also requested waiver of various Commission regulations. In particular, the Applicants requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by the Applicants.

Pursuant to delegated authority, the Director, Division of Rate Applications, Office of Electric Power Regulations, granted requests for blanket approval under Part 34, subject to the issuance of notices providing for an opportunity to be heard. Accordingly:

Within thirty days of the date of this notice, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by the Applicants should file a motion to intervene or protests with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, the Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of the Applicants' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is April 28, 2000.

Copies of the full text of the Orders are available from the Commission's Public Reference Branch, 888 First Street, NE, Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–8065 Filed 3–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER00–1–000]

TransEnergie U.S. Ltd.; Notice of Filing

March 28, 2000.

Take notice that on March 21, 2000, TransEnergie U.S. Ltd. (TEUS) tendered for filing a supplemental statement to demonstrate how TEUS' proposed Cross Sound Cable (CSC) Interconnector advances the goals of Order No. 2000.

Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions and protests should be filed on or before April 7, 2000. Protests will be considered by the Commission to determine the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–8061 Filed 3–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–55–000, et al.]

Sun River Electric Cooperative, Inc., et al.; Electric Rate and Corporate Regulation Filings

March 27, 2000.

Take notice that the following filings have been made with the Commission:

1. Sun River Electric Cooperative, Inc.

[Docket No. EL00–55–000]

Take notice that on March 20, 2000, Sun River Electric Cooperative, Inc. (SREC) filed a Request for Waiver of the requirements of Order No. 888 and Order No. 889.

Comment date: April 19, 2000, in accordance with Standard Paragraph E at the end of this notice.

2. San Diego Gas & Electric Company v. Public Service Company of New Mexico

[Docket No. EL00–56–000]

Take notice that on March 23, 2000, San Diego Gas & Electric Company (SDG&E) tendered for filing a complaint with the Commission against Public Service Company of New Mexico (PNM). In the complaint, SDG&E states that the demand rate charged SDG&E by PNM under a long-term 100-megawatt system power sale is excessive, unjust, unreasonable, unduly discriminatory, and contrary to the public interest. SDG&E asks the Commission to initiate a proceeding under Section 206(b) of the Federal Power Act to investigate the rate and establish a refund effective date of May 22, 2000. SDG&E asks that the complaint be consolidated for hearing and decision with the proceeding in Docket Nos. EL97–54–002 and EL99–21–000.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice. Answers to the complaint shall also be due on or before April 12, 2000.

3. Entergy Services, Inc.

[Docket No. ER00–1933–000]

Take notice that on March 22, 2000, Entergy Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (collectively, the Entergy Operating Companies), tendered for filing a new Attachment M to its Open Access Transmission Tariff, designated as FERC Electric Tariff Original Volume No. 3, addressing transmission business practices related to source and sink information required for reserving and scheduling point-to-point transmission service.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power Corporation

[Docket No. ER00–1934–000]

Take notice that on March 22, 2000, Florida Power Corporation (Florida Power) tendered for filing a service agreement providing for non-firm point-to-point transmission service and a service agreement providing for short term firm point-to-point transmission service by Florida Power to TXU Energy Trading Company (TXU) pursuant to its open access transmission tariff.

Florida Power requests that the Commission waive its notice of filing requirements and allow the agreements to become effective on March 15, 2000.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

5. Entergy Services, Inc.

[Docket No. ER00–1935–000]

Take notice that on March 22, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), tendered for filing a Notice of Cancellation of the Electric Peaking Power Agreement between City of Campbell, Missouri and Entergy Arkansas.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. Entergy Services, Inc.

[Docket No. ER00–1936–000]

Take notice that on March 22, 2000, Entergy Services, Inc. (Entergy), on behalf of Entergy Arkansas, Inc. (Entergy Arkansas), tendered for filing a Notice of Cancellation of the Electric Peaking Power Agreement between City of Osceola, Arkansas and Entergy Arkansas.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Southwest Power Pool, Inc.

[Docket No. ER00–1937–000]

Take notice that on March 22, 2000, Southwest Power Pool, Inc. (SPP) tendered for filing executed service agreements for Firm Point-to-Point Transmission Service, Non-Firm Point-to-Point Transmission and Loss Compensation Service with Eastex Cogeneration Limited Partnership, El Paso Merchant Energy, L.P., FPL Energy Power Marketing, Inc., and Sunflower Electric Power Corp., as well as executed service agreements for Non-Firm Point-to-Point Transmission and Loss Compensation Service with Conectiv Energy Supply, Inc.

SPP requests an effective date of March 8, 2000 for the agreements with Eastex, March 13, 2000 for the agreements with El Paso, February 25, 2000 for the agreements with FPL, March 13, 2000 for the agreements with Sunflower, and March 14, 2000 for the agreements with Conectiv.

Copies of this filing were served upon all signatories.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Cinergy Services, Inc.

[Docket No. ER00–1938–000]

Take notice that on March 22, 2000, Cinergy Services, Inc. submitted an Interconnection Agreement entered into by and between Cinergy Services, Inc. (Cinergy) and Duke Energy Madison, LLC (Duke Energy Madison) and a Facilities Construction Agreement by and between Cinergy and Duke Energy Madison, both of which are dated February 28, 2000.

The Interconnection Agreement between the parties provides for the interconnection of a generating station with the transmission system of The Cincinnati Gas & Electric Company (CG&E), a Cinergy utility operating company, and further defines the continuing responsibilities and obligations of the parties with respect thereto. The Facilities Construction Agreement between the parties provides for the construction and installation of the interconnection facilities and the additions, modifications and upgrades to the existing transmission facilities of CG&E.

Cinergy requests an effective date of February 28, 2000 for the Interconnection Agreement and the Facilities Construction Agreement.

Cinergy states that it has served a copy of its filing upon the Public Utility Commission of Ohio and Duke Energy Madison.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Cinergy Services, Inc.

[Docket No. ER00–1939–000]

Take notice that on March 22, 2000, Cinergy Services, Inc. submitted an Interconnection Agreement entered into by and between Cinergy Services, Inc. (Cinergy) and Duke Energy Vermillion, LLC ("Duke Energy Vermillion"), and a Facilities Construction Agreement by and between Cinergy and Duke Energy Vermillion, both of which are dated February 28, 2000.

The Interconnection Agreement between the parties provides for the interconnection of a generating station with the transmission system of PSI Energy, Inc. (PSI Energy), a Cinergy utility operating company, and further defines the continuing responsibilities and obligations of the parties with respect thereto. The Facilities Construction Agreement between the parties provides for the construction and installation of the interconnection facilities and the additions, modifications and upgrades to the existing transmission facilities of PSI Energy.

Cinergy requests an effective date of February 28, 2000 for both the Interconnection Agreement and the Facilities Construction Agreement.

Cinergy states that it has served a copy of its filing upon the Indiana

Utility Regulatory Commission and Duke Energy Vermillion.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Duquesne Light Company

[Docket No. ER00–1941–000]

Take notice that on March 22, 2000, Duquesne Light Company (DLC) filed a Service Agreement for Retail Network Integration Transmission Service and a Network Operating Agreement for Retail Network Integration Transmission Service dated March 21, 2000, Niagra Mohawk Energy Marketing, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement and Network Operating Agreement adds Niagra Mohawk Energy Marketing, Inc. as a customer under the Tariff.

DLC requests an effective date of March 21, 2000 for the Service Agreement.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Northern Maine Independent System Administrator, Inc.

[Docket No. ER00–1942–000]

Take notice that on March 22, 2000, Northern Maine Independent System Administrator, Inc. (NMISA) tendered for filing seven service agreements under the Northern Maine Independent System Administrator Tariff (Northern Maine ISA Tariff) for the following Market Participants: Maine Public Service Company, Inc., Houlton Water Company, Energy Atlantic LLC, Eastern Maine Electric Cooperative, Inc., WPS Energy Services, Inc., FPL Energy Power Marketing, Inc. and Alternative Energy. NMISA has determined that these applicants are qualified to become Market Participants under the Northern Maine ISA Tariff.

NMISA requests an effective date for implementation of these service agreements of March 1, 2000, to coincide with the date on which NMISA will commence commercial operation and retail access will begin in Northern Maine.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Southwestern Electric Power Company

[Docket No. ER00–1943–000]

Take notice that on March 22, 2000, Southwestern Electric Power Company (SWEPCO) tendered for filing an estimated return on common equity (Estimated ROE) to be used in establishing estimated formula rates for wholesale service in Contract Year 2000 to Northeast Texas Electric Cooperative, Inc., the City of Bentonville, Arkansas, Rayburn Country Electric Cooperative, Inc., Cajun Electric Power Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc., the City of Hope, Arkansas, and East Texas Electric Cooperative, Inc. SWEPCO provides service to these Customers under contracts which provide for periodic changes in rates and charges determined in accordance with cost-of-service formulas, including a formulaic determination of the return on common equity.

Copies of the filing were served upon the affected wholesale Customers, the Public Utility Commission of Texas, the Louisiana Public Service Commission and the Arkansas Public Service Commission.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. LSP Energy Limited Partnership

[Docket No. ER00–1944–000]

Take notice that on March 22, 2000, LSP Energy Limited Partnership (LSP Energy) tendered for filing under Section 205 of the Federal Power Act a Power Purchase Agreement dated February 25, 2000 between LSP Energy and the Tennessee Valley Authority.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. FirstEnergy System

[Docket No. ER00–1945–000]

Take notice that on March 22, 2000, FirstEnergy System filed a Service Agreement to provide Firm Point-to-Point Transmission Service for Conectiv Energy Supply, Inc., the Transmission Customer. Services are being provided under the FirstEnergy System Open Access Transmission Tariff submitted for filing by the Federal Energy Regulatory Commission in Docket No. ER97–412–000.

The proposed effective date for this Service Agreement is March 20, 2000.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Duquesne Light Company

[Docket No. ER00–1946–000]

Take notice that on March 22, 2000, Duquesne Light Company (Duquesne) tendered for filing under Duquesne's pending Market-Based Rate Tariff, (Docket No. ER98–4159–000) executed Service Agreement at Market-Based Rates with Allegheny Energy Supply Company, LLC (Customer).

Duquesne has requested the Commission waive its notice requirements to allow the Service Agreement to become effective as of March 21, 2000.

Copies of this filing were served upon Customer.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–8058 Filed 3–31–00; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 11301–001 Georgia]

Fall Line Hydro Company; Notice of Availability of Environmental Assessment

March 28, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 4797), the Office of Energy Projects has reviewed the application for an original major license for the Carters Reregulation Dam Hydroelectric Project located on the Coosawatte River in Murray County, Georgia, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch of the Commission's offices at 888 First Street, N.E., Room 2A, Washington, D.C. 20426, and may also be viewed on the web at *http://www.ferc.fed.us/online/rims.htm* (please call (202) 208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–8060 Filed 3–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1121–052]

Pacific Gas and Electric Company; Notice of Availability of Environmental Assessment

March 28, 2000.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, the Office of Energy Projects has reviewed the application requesting the Commission's authorization to amend Article 33 (f) of the existing license and has prepared an Environmental Assessment (EA) for the proposed action.

Flashboards are needed to raise the existing North Battle Creek Reservoir to its full capacity, 1,039-acre-feet, for the recreation season. The proposed amendment to article 33(f) would allow the licensee to delay up to one month (from June 1 to July 1) the placement of flashboards at North Battle Creek dam when late runoff or heavy snow pack precludes road access to the dam by truck. During such years, the licensee: would install flashboards as soon as roads are passable by truck; and would notify the Forest Supervisor of Lassen National Forest five business days prior to June 1 and, subsequently, once the reservoir is at or above 1,039-acre-feet.

In the EA, Commission staff does not identify any significant impacts that would result from Commission's approval of the proposed modification to Article 33(f). Thus, staff concludes that approval of the proposed amendment of license would not constitute a major federal action significantly affecting the quality of the human environment.

The EA has been attached to and made part of an Order Amending Article 33(f), issued March 22, 2000, for the Battle Creek Hydroelectric Project, FERC No. 1121–052. See 90 FERC ¶ 62,201. Also, the EA is available for inspection at the Commission's Public Reference Room, Room 2A, 888 First Street, NE, Washington, DC 20426, or by calling (202) 208–1371. Further, the document may be viewed on the Web at www.ferc.fed.us/online/rims.htm. Call (202) 208–2222 for assistance.

For further information, please contact Jim Haimes at (202) 219–2780.

David P. Boergers,

Secretary.

[FR Doc. 00–8063 Filed 3–31–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Temporary Variance Request and Soliciting Comments, Motions To Intervene, and Protests

March 28, 2000.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Request To Amend Language of Article 29.

b. *Project No.:* 2210–047.

c. *Date filed:* February 22, 2000.

d. *Applicant:* Appalachian Power Company.

e. *Name of Project:* Smith Mountain Project.

f. *Location:* On the Roanoke River, Bedford, Franklin, Campbell, Pittsylvania, and Roanoke Counties, Virginia. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* 18 CFR 4.200.

h. *Applicant Contact:* Frank M. Simms, American Electric Power, 1 Riverside Plaza, Columbus, OH 43215–2373, (614) 223–2918.

i. *FERC Contact:* Robert Fletcher, robert.fletcher@ferc.fed.us, 202–219–1206.

j. *Deadline for filing comments, motions to intervene and protest:* 30 days from the issuance date of this notice. Please include the project number (2210–047) on any comments or motions filed. All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

k. *Description of Application:* Article 29 of the Smith Mountain Project currently read as follows: "Except as provided for in Article 30, the Licensee shall release from the Lower development a minimum average weekly flow of 650 cubic feet per second."

It should be noted that Article 30 addresses flows during the initial filling of the project reservoir. Conditions contained under license articles for other projects issued by the Commission address temporary modifications to project flow. The language generally reads as follows: "These flows may be temporarily modified if required by operating emergencies beyond the control of the licensee, or for short periods upon mutual agreement between the licensee and the appropriate agencies. If the flows are so modified, the licensee shall notify the Commission as soon as possible, but not later than 10 days after each such incident."

The licensee has consulted with the Virginia Department of Fish and Game and Inland Fisheries and the Virginia Department of Environmental Quality to develop the following language to replace the currently contained language of Article 29: "Except as provided in Article 30, the licensee shall release from the Lower Development a minimum average weekly flow of 650 cubic feet per second. These flows may be temporarily modified if required by operating emergencies beyond the control of the licensee, and/or for short periods of time (up to 45 days) during drought and/or low inflow conditions, upon mutual agreement between the licensee and the Virginia Department of Environmental Quality (DEQ), in consultation with the Virginia Department of Game and Inland Fisheries, following appropriate public input as determined by the DEQ. If the flows are so modified, the licensee shall notify the Commission no later than 10 days after each such incident."

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, D.C. 20426, or by calling (202) 208–1371. This filing may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210,

385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If any agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

David P. Boergers,

Secretary.

[FR Doc. 00–8064 Filed 3–31–00; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6565–8]

Agency Information Collection Activities; Training Requirements for Authorization of Compliance Monitoring Inspectors

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following proposed Information Collection Request (ICR) to the Office of Management and Budget (OMB): Training Requirements for Authorization of Compliance Monitoring Inspectors, EPA ICR number 1960.01. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 3, 2000.

ADDRESSES: Jonathan S. Binder (2224A), U.S. EPA, 401 M St., S.W., Washington D.C. 20460. Interested persons may obtain a copy of the ICR without charge by calling Jonathan S. Binder at (202) 564–2516.

FOR FURTHER INFORMATION CONTACT: Jonathan S. Binder, (202) 564–2516. Facsimile number: (202) 564–0009.

SUPPLEMENTARY INFORMATION: *Affected entities:* Entities potentially affected by this action are federally-recognized Indian tribes (tribes), states, and territories, as well as inter-tribal consortia who maintain a cooperative agreement with the EPA, whose environment inspectors are nominated for authorization or are currently authorized to conduct federal inspections on behalf of EPA. The request for information from these affected entities is voluntary and based upon the desire of tribes, states, territories, or inter-tribal consortia to enable their employees to receive federal inspector credentials.

Title: Training Requirements for Authorization of Compliance Monitoring Inspectors.

Abstract: This will be a collection of information on the training background of employees of tribes, states, territories, and inter-tribal consortia who are nominated for authorization or are currently authorized to conduct federal inspections on behalf of EPA.

Various federal environmental laws authorize the Administrator of EPA or her designee to monitor the regulated communities' compliance with statutory and regulatory requirements. Through the development of standard procedures, EPA is planning to "authorize" or "duly designate" inspectors employed by tribes, states, territories, and inter-tribal consortia to conduct environmental compliance inspections (inspections) with federal credentials on behalf of EPA. The standard procedures will be designed to facilitate a partnership between EPA and tribes, states, territories, and inter-tribal consortia to protect human health and the environment.

With this initiative, EPA strives to build the capacity of regulating agencies and/or departments for more effective compliance monitoring of the regulated community. Under the draft national procedures, EPA retains sole responsibility for authorizing inspectors and issuing, replacing, renewing, and revoking federal credentials. EPA also retains decision-making authority for all federal enforcement and compliance assistance activities related to inspections conducted by authorized inspectors using federal credentials. As such, neither tribes, states, nor territories, nor authorized inspectors could take a federal enforcement action with information gathered during an inspection conducted with a federal credential unless otherwise authorized to do so by EPA.

The draft national standards seek to ensure the quality of inspectors who receive or retain authorization to conduct inspections on behalf of EPA. EPA needs to collect certain information that is currently not collected and which does not exist in our current databases. To meet this need, EPA designed a training requirements form that will make it easy for EPA, tribes, states, territories, and their employees to assess the qualifications of inspectors who receive or retain authorization to conduct inspections on EPA's behalf. There are three components to the collection of information on training taken by individual inspectors. First, the " title of the training" is required. Second, the "completion date" of the training is required. Third and finally, the "training sponsor" is required. To ensure that the courses meet the requirements of the draft Inspector Credentials Authorization Procedures, EPA may also request the outline or other information on training courses sponsored by non-EPA entities; tribes, states, territories, and inter-tribal consortium are encouraged to attach this information when sending this form to EPA.

The training requirements form can be completed electronically and E-mailed to the appropriate Agency contact or sent in hardcopy via the postal service or express mail. Moreover, the training requirements form will be available via the Internet.

A Department or agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR Part 9 and 48 CFR Chapter 15.

The EPA is soliciting comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Burden Statement: It is estimated that approximately 80 regulating agencies and/or departments and inter-tribal consortia may voluntarily agree to nominate employees to receive federal inspector credentials and submit information on the training experiences of each inspector. EPA estimates that participating regulating agencies and/or departments and/or inter-tribal consortia may need to spend 45 minutes to complete the form (30 minutes of staff time and 15 minutes of a supervisor's time) for each affected employee. EPA is estimating that each agency, on average, may nominate 2 inspectors for authorization to receive federal credentials. Therefore, a total of 120 person hours within the regulating agencies and/or departments and/or inter-tribal consortia may be expended to provide EPA with the training experiences. This burden hour estimate translates to a cost of $32.66 per each of the 80 regulating agency and/or department and/or inter-tribal consortia that voluntarily completes the background information form for two inspectors and a total cost of $2,612.80. The costs to the regulating agencies and/or departments and/or inter-tribal consortia were calculated based on labor rates of $17.48 per hour, plus $30.34 supervisory time from the United States of Commerce, Bureau of Labor Statistics, March 1998, Table 4: Employment Costs of State and Local Government. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; collect, validate, and verify information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: March 17, 2000.

Michael Stahl,

Acting Director Office of Compliance.

[FR Doc. 00–8154 Filed 3–31–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6570–6]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following proposed Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval:

Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations, ICR 1937.01. The ICR describes the nature of the information collection request and its expected burden and cost.

DATES: Comments must be submitted on or before May 3, 2000.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Sandy Farmer at EPA by phone at (202) 260–2740, by email at farmer.sandy@epa.gov, or download a copy of the ICR off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 1937.01. For technical questions about the ICR contact Charlotte White by telephone: (202) 260–8559.

SUPPLEMENTARY INFORMATION: *Title:* Guidance Manual and Example NPDES Permit for Concentrated Animal Feeding Operations (EPA ICR No. 1937.01). This is a new collection.

Abstract: This information collection burden is a result of EPA's issuance of guidance concerning permits issued to concentrated animal feeding operations (CAFOs), which are point sources subject to permitting under the National Pollutant Discharge Elimination System (NPDES). Also affected by the permit guidance provisions are NPDES-authorized States implementing the NPDES permitting program for CAFOs. The animal livestock industry is shifting toward larger facilities and increased potential for water quality impacts. To help address the potential and actual impacts on water quality, the manual provides guidance for permitting agencies regarding the development of effective NPDES permits for CAFOs. Although the guidance does not increase the number of CAFOs subject to permitting under the NPDES permitting program, it recommends the development of a comprehensive nutrient management plan (CNMP) as a special condition of NPDES permits issued to CAFOs. This proposed ICR covers the development of the CNMP, which includes soil and manure sampling; reporting of CNMP development to the permitting authority; and other reporting and record keeping activities that are not described in the current NPDES program guidance for CAFOs. When CNMPs are part of the NPDES permit, the collection of information requirements of the CNMP are mandatory. EPA has authority to undertake the information collection activities under section 308 of the Clean Water Act and under Title 33, sections 1311, 1318, and 1342 of the United States Code. Components of a CNMP typically include: manure handling and storage, land application of manure, land management, recordkeeping, and other utilization options. EPA believes this CNMP will reduce the potential impact that changes in the industry will have on water quality. CNMP data will be used by EPA and States to develop permits, used by the regulated facilities to ensure appropriate land application, and used by the compliance monitoring and enforcement personnel to document NPDES permit compliance. The guidance also recommends that the permittee maintain records concerning manure generation and disposition, and summarize this information on an annual reporting form. Under the guidance, the permittee would also be asked to certify that the facility's CNMP reflects current conditions. EPA needs this information to more fully and effectively implement the requirements of the Clean Water Act, which prohibits the discharge of pollutants from point sources—including discharges from CAFOs—to waters of the United States without an NPDES permit.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d),

soliciting comments on this collection of information was published on November 19, 1999 (64 FR 63312); no comments were received.

Burden Statement: The annual public reporting and record keeping burden for this collection of information is estimated to average 81 hours per response for CAFO respondents and 2,200 hours for States. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose and provide information to or for a Federal agency. This includes the time needed to: (1) review instructions; (2) develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; (3) adjust the existing ways to comply with any previously applicable instructions and requirements; (4) train personnel to be able to respond to a collection of information; (5) search data sources; (6) complete and review the collection of information; and (7) transmit or otherwise disclose the information.

Respondents/Affected Entities: Concentrated animal feeding operations, EPA, and NPDES-authorized States implementing the NPDES permitting program for CAFOs.

Estimated Number of Respondents: 5,529 per year.

Frequency of Response: CAFOs have one time CNMP record keeping and reporting requirements and annual certification reporting requirements. States have annual record keeping requirements.

Estimated Total Annual Hour Burden: 983,205 hours.

Estimated Total Annualized Cost Burden (non-labor costs): $665,373.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the following addresses. Please refer to EPA ICR No. 1937.01 in any correspondence.

Ms. Sandy Farmer, U.S. Environmental Protection Agency, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460;
and
Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

Dated: March 28, 2000.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 00–8153 Filed 3–31–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6566–1]

New Jersey State Prohibition on Marine Discharges of Vessel Sewage; Receipt of Petition and Tentative Determination

Notice is hereby given that a petition dated June 28, 1999 was received from the State of New Jersey requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to Section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Shrewsbury River, County of Monmouth, State of New Jersey.

This petition was made by the New Jersey Department of Environmental Protection (NJDEP) in cooperation with the North Coast Regional Environmental Planning Council (NCREPC), New Jersey Marine Sciences, Marine Trades Association of New Jersey, Monmouth County Planning Board, Monmouth County Environmental Council and Monmouth County Board of Health. Members of the NCREPC include the Borough of Eatontown, the Borough of Fair Haven, the Borough of Little Silver, the City of Long Branch, the Borough of Monmouth Beach, the Borough of Oceanport, the Borough of Red Bank, the Borough of Rumson, the Borough of Sea Bright, the Borough of Shrewsbury, the Township of Shrewsbury, the Borough of Tinton Falls, and the Borough of West Long Branch. Upon receipt of an affirmative determination in response to this petition, NJDEP would completely prohibit the discharge of sewage, whether treated or not, from any vessel in Shrewsbury River in accordance with Section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

The Shrewsbury River is located in Monmouth County, New Jersey, and is part of the Atlantic Coastal Drainage Basin. The Shrewsbury River drains approximately 27 square miles of urban/suburban residential development and agricultural lands. The Shrewsbury River runs easterly from Eatontown, Tinton Falls, and West Long Branch, New Jersey and then joins the Navesink River and empties into Sandy Hook Bay. The proposed No Discharge Area (NDA) would include the navigable waters of the Shrewsbury River and all its tributaries downstream to the point where the Route 36 Bridge crosses the river. The eastern boundary of the NDA is a line from Lat./Long. 73°58′45″, 40°22′40″ to Lat./Long. 73°58′58″, 40°23′04″. The western boundary of the NDA is at Lat./Long. 74°06′48″, 40°19′12″.

Information submitted by the State of New Jersey and the Shrewsbury Regional Environmental Planning Council states that there are six existing pump-out facilities at five different locations available to service vessels which use the Shrewsbury River. Atlantis Yacht Club, located at 66 River Avenue, Monmouth Beach, operates a stationary pumpout. The pumpout is available from 8 a.m. to 5 p.m. beginning April until October and is operated by the marina staff. A $5.00 fee is charged for the use of the pumpout. Carriage House Marina, located at 1200 Ocean Avenue, Sea Bright, operates a stationary pumpout and a portable pumpout. The pumpouts are available from 9 a.m. to 6 p.m. beginning May until October and is operated by the marina staff. A fee of $5.00 is charged for the use of the pumpout. Channel Club Marina, located at Channel Drive, Monmouth Beach, operates a stationary pumpout. The pumpout is available from 8:00 a.m. to 6:00 p.m. beginning May until October and is operated by the marina staff. No fee is charged for use of the pumpout. Navesink Marina, located at 1410 Ocean Avenue, Sea Bright, operates a stationary pumpout. The pumpout is available from 8:00 a.m. to 5:00 p.m. beginning April until October and is operated by the marina staff. A $5.00 fee is charged for the use of the pumpout. Oceanport Landing, located at 417 River Street, Oceanport, operates a portable pumpout. The pumpout is available from 8 a.m. to 4:30 p.m. beginning April until September and is operated by the marina staff. A $5.00 fee is charged for use of the pumpout. In the case of slip holders and residents of Oceanport, the $5.00 fee is waived. None of the facilities have draft restrictions which would exclude boats access to the pumpouts.

Vessel waste generated from the pumpout facilities within the proposed NDA is discharged into municipal sewer lines and is conveyed to the Northeast Monmouth Regional Sewage Authority (NJPDES Permit No. NJ0024520) at 1 Highland Avenue in Monmouth Beach for treatment.

According to the State's petition, the maximum daily vessel population for the waters of Shrewsbury River is approximately 2115 vessels. This estimate is based on (1) vessels docked at marinas and yacht clubs (1303 vessels), (2) vessels docked at non-marina facilities (584 vessels) and (3) transient vessels (228 vessels). The vessel population based on length is 2240 vessels less than 26 feet in length, 700 vessels between 26 feet and 40 feet in length and 175 vessels greater than 40 feet in length. Based on number and size of boats, and using various methods to estimate the number of holding tanks, it is estimated that between two and four pumpouts are needed for the Shrewsbury River. As previously stated, five pumpout facilities are currently available to service the boating population. Additionally, three additional pumpouts have applied for pumpout grant funding.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Shrewsbury River in the county of Monmouth, New Jersey. A final determination on this matter will be made following the 30-day period for public comment and will result in a New Jersey State prohibition of any sewage discharges from vessels in Shrewsbury River.

Comments and views regarding this petition and EPA's tentative determination may be filed on or before May 3, 2000. Comments or requests for information or copies of the applicant's petition should be addressed to Walter E. Andrews, U.S. Environmental Protection Agency, Region II, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York, 10007–1866. Telephone: (212) 637–3880.

Dated: March 16, 2000.

Jeanne M. Fox,

Regional Administrator, Region II.

[FR Doc. 00–8145 Filed 3–31–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

[FRL–6565–9]

New York State Prohibition on Marine Discharges of Vessel Sewage; Receipt of Petition and Tentative Determination

Notice is hereby given that a petition was received from the State of New York on June 18, 1999 requesting a determination by the Regional Administrator, Environmental Protection Agency (EPA), pursuant to Section 312(f) of Public Law 92–500, as amended by Public Law 95–217 and Public Law 100–4 (the Clean Water Act), that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the waters of the Greater Huntington-Northport Bay Complex, County of Suffolk, State of New York. The waterbodies included in this application are Lower Huntington Bay, Northport Bay, Centerport Harbor, Northport Harbor, Duck Island Harbor and Price Bend. A previous application which was approved by the Regional Administrator on April 21, 1994 designated Huntington Harbor and Lloyd Harbor as a No Discharge Area.

This petition was made by the New York Department of Environmental Conservation (NYSDEC) in cooperation with the Town of Huntington. Upon receipt of an affirmative determination in response to this petition, NYSDEC would completely prohibit the discharge of sewage, whether treated or not, from any vessel in Greater Huntington-Northport Bay Complex in accordance with Section 312(f)(3) of the Clean Water Act and 40 CFR 140.4(a).

The Greater Huntington-Northport Bay Complex is located on the north shore of Long Island with approximately 64 miles of tidal shoreline contiguous to Long Island Sound. Huntington's marine waters are comprised of approximately 8,000 acres of harbors, bays and tidal wetlands that support some of the most productive shellfish growing lands in New York State. Adjacent shores also serve as private and public bathing beaches. The northern boundary line for the proposed NDA shall extend from the southernmost point at East Beach (Lloyd Harbor) easterly to the southernmost point at West Beach or "Sand City Beach."

Information submitted by the State of New York and the Town of Huntington indicate that there are ten existing pumpout facilities and two pumpout boats available to service vessels which use the Greater Huntington-Northport Bay Complex. Mill Dam Marina (Huntington Harbor), located on Mill Dam Road, Huntington, operates a pumpout. The pumpout is available 24 hours a day beginning May 1 through October 31 and is self-service. No fee is charged for the use of the pumpout. Halesite Marina (Huntington Harbor), located on Route 110, Halesite, operates a pumpout. The pumpout is available 24 hours a day and twelve months a year and is self-service. No fee is charged for the use of the pumpout. South Town Dock (Huntington Harbor), located on Route 110, Halesite, operates a pumpout. The pumpout is available from 8:00 a.m. to 8:00 p.m. beginning May 1 through October 31 and is self-service. No fee is charged for the use of the pumpout. Gold Star Mooring and Launch Service (Huntington Harbor), located at West Shore Road and Browns Road, Huntington, operates a pumpout. The pumpout is available from 8:00 a.m. to 8:00 p.m. beginning April 1 through November 15 and is self-service. No fee is charged for the use of the pumpout. West Shore Marina (Huntington Harbor), located at 100 West Shore Road, Huntington, operates a pumpout. The pumpout is available by appointment only from 10 a.m. to 4 p.m. year round. A $10.00 fee is charged for the use of the pumpout. Huntington Yacht Club (Huntington Harbor), located at 95 East Shore Road, Huntington Bay, operates a pumpout. The pumpout is available from 9:00 a.m. to 5:00 p.m. beginning March 1 through November. A fee of $5.00 is charged for the use of the pumpout. Knutson's West Marine (Huntington Harbor), located at 41 East Shore Road, Halesite, operates a pumpout. The pumpout is available from 8:00 a.m. to 6:00 p.m. beginning May 30 through October 31. A fee of $10.00 is charged for the use of the pumpout. The Town of Huntington operates a mobile pumpout vessel which serves the Greater Bay Complex from May 15 through October 12. No fee is charged for the service. The Town of Huntington is in the process of procuring an additional mobile pumpout vessel. Woodbine Marina (Northport Harbor), located at Woodbine Avenue, Northport, operates a pumpout. The pumpout is available twenty-four hours a day beginning May 1 through October 31 and is self-service. No fee is charged for the use of the pumpout. Seymour's Boat Yard (Northport Harbor), located on Bayview Avenue, Northport, operates a pumpout. The pumpout is available from 8:00 a.m. to 4:30 p.m. by appointment beginning May 1 through October 31. A fee of $25.00 is charged for the use of the pumpout. Brittania Yacht and Racquet Club (Northport Harbor), located at 81C Fort Salonga Road, Northport, operates a pumpout. The pumpout is available from 8:00 a.m. to 4:30 p.m. beginning April 15 through October 31. A fee of $200.00 is charged for the use of the pumpout. The Village of Northport operates a mobile pumpout vessel which serves Northport Harbor, Northport Bay and Duck Island Harbor beginning May 23 through October 12. No fee is charged for the service. Powles Marine Agency (Cold Spring Harbor),

located at 74 Harbor Road, Cold Spring Harbor, operates a pumpout. The pumpout is available 24 hours a day beginning May 1 through October 31 and is self-service. No fee is charged for the use of the pumpout. This facility is located outside of the proposed NDA and is not included as one of the ten landside facility. The facility has been included in the application for information purposes.

Vessel waste generated from the pumpout facilities located at West Shore Marina, Knutson's West Marina, Huntington Yacht Club, Brittania Yacht and Seymour's are hauled by privately operated waste haulers. The Town of Huntington provides waste hauling service to the municipally owned pumpout facilities located at Cold Spring Harbor, Halesite Marina, Mill Dam Marina, Woodbine Marina, and Gold Star Mooring and Launch Service. All hauled waste from the pumpout facilities is discharged into and treated at the Town of Huntington sewage treatment plant (SPDES Permit No. NY0021342) located on Creek Road in Halesite.

According to the State's petition, the maximum daily vessel population for the waters of Greater Huntington-Northport Bay Complex is approximately 3200 vessels which are docked or moored with an additional 700 vessels accessing the greater Harbor from boat ramps. An inventory was developed including the number of recreational, commercial and estimated transient vessels that occupy or traverse the greater bay complex. This estimate is based on (1) vessels (approximately 1600 vessels) docked or moored (including transients) in the proposed NDA, (2) vessels (approximately 1600 vessels) docked or moored (including transients) in the existing Huntington/Lloyd Harbor NDA and (3) vessels (approximately 700 vessels) which use the boat ramps in the Greater Bay Complex. While approximately one-third to one-half of the vessels operating in the Greater Bay Complex are not equipped with a MSD, the ratio of boats to pumpout facilities has been based on the total number of vessels which could be expected. With ten shore-side pumpout facilities and two pumpout facilities available to boaters, the ratio of docked or moored boats (including transients) is approximately 267 vessels per pumpout. If we include the vessels (approximately 700) using the available boat ramps, the ratio increase to 325 vessels per pumpout. Standard guidelines refer to acceptable ratios failing in the range of 300 to 600 vessels per pumpout.

The EPA hereby makes a tentative affirmative determination that adequate facilities for the safe and sanitary removal and treatment of sewage from all vessels are reasonably available for the Greater Huntington-Northport Bay Complex in the county of Suffolk, New York. A final determination on this matter will be made following the 30-day period for public comment and will result in a New York State prohibition of any sewage discharges from vessels in Greater Huntington-Northport Bay Complex.

Comments and views regarding this petition and EPA's tentative determination may be filed on or before May 3, 2000. Comments or requests for information or copies of the applicant's petition should be addressed to Walter E. Andrews, U.S. Environmental Protection Agency, Region II, Water Programs Branch, 290 Broadway, 24th Floor, New York, New York, 10007–1866. Telephone: (212) 637–3880.

Dated: March 16, 2000.

Jeanne M. Fox,

Regional Administrator, Region II.

[FR Doc. 00–8146 Filed 3–31–00; 8:45 am]

BILLING CODE 6560–50–U

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 27, 2000.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. First Merchants Corporation, Muncie, Indiana; to merge with Decatur Financial, Inc., Decatur, Indiana, and thereby indirectly acquire Decatur Bank and Trust Company, Decatur, Indiana.

B. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Leackco Bank Holding Company, Inc., Wolsey, South Dakota; to merge with C&L Investment Company, Inc., Miller, South Dakota, and thereby indirectly acquire Hand County State Bank, Miller, South Dakota.

C. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. CBCT Bancshares, Inc., Baltimore, Maryland, to become a bank holding company by acquiring 100 percent of the voting shares of Community Bank of Central Texas, ssb, Smithville, Texas.

Board of Governors of the Federal Reserve System, March 28, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8087 Filed 3–31–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

[File No. 981 0395]

Abbott Laboratories, and Geneva Pharmaceuticals, Inc.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreements.

SUMMARY: The consent agreements in these two matters settle alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreements and the terms of the consent orders—embodied in the consent agreements—that would settle these allegations.

DATES: Comments must be received on or before April 17, 2000.

ADDRESSES: Comments should be directed to FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Richard Parker or Richard Feinstein, FTC/H–374, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–2574 or 326–3688.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 16, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania. Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment

The Federal Trade Commission has accepted for public comment agreements and proposed consent orders with Geneva Pharmaceuticals, Inc. and Abbott Laboratories. The proposed consent orders settle charges that these parties unlawfully agreed that Geneva would refrain from selling its generic vision of one of Abbott's drugs, in exchange for payments from Abbott. The proposed consent orders have been placed on the public record for 30 days to receive comments by interested persons. The proposed consent orders have been entered into for settlement purposes only and do not constitute an admission by Abbott or Geneva that they violated the law or that the facts alleged in the complaint, other than the jurisdictional facts, are true.

Background

Abbott Laboratories develops, manufactures, and sells a variety of health care products and services. Based in Abbott Park, Illinois, Abbott's 1998 net sales worldwide were approximately $12.5 billion. Over 20% of Abbott's net sales of pharmaceutical products in the U.S. are for a drug called Hytrin. Hytrin is used to treat two chronic conditions that affect millions of Americans, particularly senior citizens: hypertension (high blood pressure) and benign prostatic hyperplasia (enlarged prostate).

Geneva is one of the leading generic drug manufacturers in the United States. An indirect wholly-owned subsidiary of Novartis Corp., Geneva is based in Broomfield, Colorado. Geneva developed a generic version of Hytrin, and in March 1998 received approval from the U.S. Food and Drug Administration ("FDA") to market that generic product.

A generic drug is a product that the FDA has found to be bioequivalent to a brand name drug. A company seeking FDA approval to market a new drug must file a New Drug Application ("NDA"). In order to market a generic version of a brand name drug, a company must file an Abbreviated New Drug Application ("ANDA") and receive approval from the FDA.

Generic drugs are chemically identical to their branded counterparts, but typically are sold at substantial discounts from the branded price. A Congressional Budget Office Report estimates that purchasers saved an estimated $8–$10 billion on prescriptions at retail pharmacies in 1994 by purchasing generic drugs instead of the brand name product.[1]

Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984, commonly referred to as "the Hatch-Waxman Act," to facilitate the entry of generic drugs while maintaining incentives to invest in new drug development. In particular, the Hatch-Waxman Act establishes certain rights and procedures in situations where a company seeks FDA approval to market a generic product prior to the expiration of a patent or patents relating to a brand name drug upon which the generic is based. In such cases, the applicant must: (1) Certify to the FDA that the patent in question is invalid or is not infringed by the generic product (known as a "paragraph IV certification"); and (2) notify the patent holder of the filing of the certification. If the holder of patent rights files a patent infringement suit within 45 days, FDA approval to market the generic drug is automatically stayed for 30 months, unless before that time the patent expires or is judicially determined to be invalid or not infringed. This automatic 30-month stay allows the patent holder time to seek judicial protection of its patent rights before a generic competitor is permitted to market its product.

In addition, the Hatch-Waxman Act provides an incentive for generic drug companies to bear the cost of patent litigation that may arise when they challenge invalid patents or design around valid ones. The Act grants the first company to file an ANDA in such cases a 180-day period during which it has the exclusive right to market a generic version of the brand name drug. No other generic manufacturer may obtain FDA approval to market its product until the first filer's 180-day exclusivity period has expired.

Geneva was the first company to file an ANDA for terazosin hydrochloride ("terazosin HCL"), the generic version of Hytrin. It filed applications covering a tablet form and a capsule form of its generic terazosin HCL. Geneva filed a paragraph IV certification with the FDA stating that these products did not infringe any valid patent held by Abbott covering terazosin HCL. In June 1996, Abbott sued Geneva for patent infringement by Geneva's terazosin HCL tablet product, but due to an oversight failed to mane an infringement claim against Geneva's capsule product, although both products raised the same potential infringement issues.

Abbott's lawsuit triggered a 30-month stay of final FDA approval of Geneva's terazosin HCL tablet ANDA, until December 1998. No stay applied to the FDA approval process for Geneva's terazosin HCL capsule ANDA, however, because no infringement claim was filed within the statutory time period required by the Hatch-Waxman Act. The FDA granted Geneva final approval to market generic terazosin HCL capsules on March 30, 1998.

The Challenged Agreement

The complaint challenges an agreement whereby Abbott, following the FDA approval of Geneva's generic terazosin HCL capsule product, paid

[1] Congressional Budget Office, How Increased Competition from Generic Drugs Has Affected Prices and Returns in the Pharmaceutical Industry at xiii, 13 (July 1998).

Geneva not to enter the market during their ongoing patent litigation over the tablet product. According to the complaint, on the day it was granted approval to market its generic terazosin HCL capsules, Geneva contacted Abbott and announced that it would launch its generic terazosin HCL capsules unless it was paid by Abbott not to enter. Two days later, on April 1, 1998, Abbott and Geneva entered into an agreement, pursuant to which Geneva agreed not to enter the market with any generic terazosin HCL capsule or tablet product until the earlier of: (1) The final resolution of the patent infringement litigation involving Geneva's terazosin HCL tables product, including review through the Supreme Court; or (2) entry of another generic terazosin HCL product.

Geneva also agreed-at Abbott's insistence-not to transfer, assign, or relinquish its 180-day exclusively right. The effect of this provision was to ensure that no other company's generic terazosin HCL product could obtain FDA approval; and enter the market during the term of the agreement, because Geneva's agreement not to launch its product meant that the 180-day exclusivity period would not expire.

In exchange, Abbott agreed to pay Geneva $4.5 million per month until a district court judgment in the parties' patent infringement dispute, and then (assuming Geneva won in the district court) to pay the $4.5 million monthly payments into an escrow fund until the final resolution of the litigation, which Geneva would then receive if its district court victory was upheld.

Abbott's payment to Geneva of $4.5 million a month was well over the $1 to $1.5 million per month that, the complaint states, Abbott believed Geneva would forego by staying off the market. The complaint alleges that Abbott was willing to pay Geneva a "premium" to refrain from competing because of the substantial impact that launch of a generic version of Hytrin would have on Abbott's overall financial situation. Abbott forecasted that entry of generic terazosin HCL on April 1, 1998 would eliminate over $185 million in Hytrin sales in just six month. Accordingly, the complaint charges, Abbott sought to forestall Geneva—and all other potential generic competition to Hytrin-from entering the market because of the threat they represented to the high profits it was making from Hytrin.

The complaint further charges that, in accordance with the terms of the agreement, Geneva did not enter the market with its generic terazosin HCL capsules, even after the district court and the court of appeals upheld Geneva's position that Abbott's patent was invalid. In August 1999, Abbott and Geneva—aware of the Commission's investigation—terminated their agreement (which by its terms would not have ended until disposition of the litigation by the Supreme Court). Geneva finally brought its generic terazosin HCL capsule product to market on August 13, 1999.

Competitive Analysis

The complaint charges that the challenged agreement prevented competition that Abbott's Hytrin product would otherwise have faced from generic products of Geneva and other potential generic competitors. Generic drugs can have a swift marketplace impact, because pharmacists generally are permitted, and in some instances are required, to substitute lower-priced generic drugs for their branded counterparts, unless the prescribing physician directors otherwise. In addition, there is a ready market for generic products because certain third-party payers of prescription drugs (*e.g.*, state Medicaid programs and many private health plans) encourage or insist on the use of generic drugs wherever possible. Abbott's forecasts, the complaint states, projected that generic terazosin HCL would capture roughly 70% of Hytrin sales within the first six months following its launch. The agreement, however, ensured that Geneva would not offer generic terazosin HCL in competition with Hytrin, and would not take action-such as relinquishing exclusivity rights-that would have permitted the entry of any other generic manufacturer.

These restraints on generic competition had direct and substantial effects on consumers. Without a lower-priced generic alternative, consumers, government agencies, health plans, pharmacies, hospitals, wholesalers, and others were forced to purchase Abbott's more expensive Hytrin product. Other drugs, the complaint states, are not effective substitutes for terazosin HCL because they are different in terms of chemical composition, safety, efficacy, and side effects. There is little price sensitivity between terazosin HCL and other products. Thus, the complaint alleges that the sale of terazosin HCL in the United States in the relevant market within which to assess the effects of the challenged agreement.

The challenged conduct represents an agreement not to compete between potential horizontal competitors. A firm is a potential competitor if there is evidence that entry by that firm is reasonably probable in the absence of the agreement at issue.[2] Geneva certified to the FDA that its entry with generic HCL would not infringe a valid patent, and was confident that it ultimately would prevail in its patent infringement dispute with Abbott, the complaint states. In early 1998, Geneva was making preparations to launch its generic terazosin HCL capsule product as soon as possible. After receiving FDA approval for the capsule product, Geneva threatened to launch that product unless Abbott paid it not to do so. The challenged agreement directly restrained competition between these potential competitors.

In addition, the agreement created a bottleneck that prevented any other potential competitors from entering the market, because no other ANDA filer could obtain FDA approval until Geneva's 180 day exclusivity period expired. Other companies were developing generic terazosin HCL products, and at least one other generic manufacturer had satisfied the FDA's requirements for approval by February 1999, but was barred from entering the market because Geneva's failure to launch its product meant its 180-day exclusivity right had not even begun to run.

The complaint states that the challenged agreement is not justified by any countervailing efficiency. Although the agreement between Abbott and Geneva provided substantial private benefits to both parties, the facts in this matter demonstrate that the broad restraints were not justified by any benefits to competition and consumer welfare. The Commission considered whether the agreement could be considered a procompetitive effort to effectuate a temporary settlement of a patent dispute, akin to a court-ordered preliminary injunction. However, it finds that any legitimate interest in resolving patent disputes cannot justify the harm to consumers imposed by the agreement in this case. The restraint imposed exceeds what likely would be available to the parties under a court-ordered preliminary injunction. For example, it: (1) Barred Geneva's entry beyond the pendency of the district court litigation; (2) provided large up-front payments that could be expected to create disincentives for Geneva to enter (in contrast to a court-ordered bond to cover damages actually incurred as a result of the court's injunction); (3) barred Geneva from relinquishing its exclusivity rights; (4) prohibited Geneva from developing or marketing non-infringing generic products. Moreover, the restraints contained in the agreement were entered into without any judicial finding that Abbott was likely to succeed on the merits of its infringement suit, without any consideration of whether Abbott would suffer irreparable injury, and without any weighing of the equities, including any consideration of the public interest.

[2] Federal Trade Commission and United States Department of Justice, Antitrust Guidelines for the Licensing of Intellectual Property at § 1.1 n.6(1995)

The complaint also charges that Abbott had a monopoly in the market for terazosin HCL, and, by entering into the agreement with Geneva, Abbott sought to preserve its dominance by delaying the entry of Geneva and other generic companies into the market. As detailed above, there were no countervailing justifications for Abbott's conduct. In addition, the complaint alleges that Abbott and Geneva conspired to monopolize the market for terazosin HCL. As stated in the complaint, Abbott and Geneva acted with specific intent that Abbott monopolize the market for terazosin HCL, and entered into a conspiracy to achieve that goal. Finally, the parties' agreement otherwise amounts to an unfair method of competition in violation of Section 5 of the FTC Act.

The Proposed Orders

The proposed orders are designed to remedy the unlawful conduct charged in the complaint. Although the particular agreement challenged in the complaint has been terminated, prospective relief is necessary to prevent a recurrence of similar agreements with respect to other drugs. Private agreements in which the brand name drug company (the NDA holder) pays the first generic to seek FDA approval (the first filer) not to enter the market can substantially delay generic competition and raise serious antitrust issues. Moreover, the FDA, which has expressed concern about such private agreements, has observed that the incentives for companies to enter into such arrangements are becoming greater, as the returns to the brand name company from extending its monopoly increasingly exceed the potential economic gains to the generic applicant from its 180 days of market exclusivity.[3]

In essence, the proposed orders:

- Bar two particular types of agreements between brand name drug companies and potential generic competitors—restrictions on giving up Hatch-Waxman 180-day exclusivity rights and on entering the market with an non-infringing product;
- Require that agreements involving payments to the generic company to stay off the market be approved by the court when undertaken in the context of an interim settlement of patent litigation, with notice to the Commission to allow it time to present its views to the court;
- Require respondents to give the Commission written notice 30 days before entering into such agreements in other contexts; and
- Require that Geneva waive its right to 180-day marketing exclusivity for its generic terazosin HCL tablet product, so that other generic tablet producers can immediately enter the market.

Paragraph II prohibits two kinds of agreements between "an NDA Holder" and "the ANDA First-Filer" (that is, the party possessing an unexpired right to Hatch-Waxman 180-day exclusivity). Paragraph II.A. bars agreements in which the first company to file an ANDA agrees with the NDA holder not to relinquish its right to the 180-day exclusivity period established under the Hatch-Waxman Act. Paragraph II.B. prohibits the ANDA first filer from agreeing not to develop or market a generic drug product that is not the subject of a patent infringement lawsuit. The order prohibits restrictions on giving up exclusivity rights and on competing with a non-infringing product because under the circumstances of this case these restraints are not justified.

Paragraph II's focus on agreements between an NDA holder and the ANDA first filer does not mean that the Commission believes that there is no risk of competitive harm in other contexts. In particular, Abbott or Geneva's participation in an agreement in which a generic company that is not the ANDA first filer is paid by the NDA holder not to market a non-infringing product could raise substantial competitive concerns. Given the variety of circumstances in which the restraints may arise, however, and the possibility that some legitimate justifications might exist in some other contexts, the Commission believes that it is appropriate at this time to limit the flat bans in Paragraph II to agreements between NDA holders and ANDA first filers.

Paragraphs III bans private agreements involving payments to keep a generic drug off the market during patent infringement litigation brought by an NDA holder. Abbott and Geneva can enter into such arrangements only if (a) They are presented to the court and embodied in a court-ordered preliminary injunction, and (b) the following other conditions are met: (i) Along with any stipulation for preliminary injunction, they provide the court with a copy of the Commission's complaint, order, and this Analysis to Aid Public Comment in this matter, as well as the proposed agreement between the parties; (ii) at least 30 days before submitting the stipulation to the court, they provide written notice to the Commission; and (iii) they do not oppose Commission participation in the court's consideration of the request for preliminary relief.

Thus, the proposed orders bar agreements made in the context of an interim settlement of a patent infringement action, whereby the NDA holder pays the generic not to enter the market, unless the parties obtain court approval through a process that is designed to enhance the court's ability to assess the competitive implications of the agreement. This remedy, in addition to facilitating the court's access to information about the Commission's views, also makes the process public and thereby may prompt other generic drug manufacturers (or other interested parties) to alert the court to potential anticompetitive provisions that could delay their entry into the market. Furthermore, the Commission believes that the requirement that the agreement be filed on the public record with the court will deter Abbott and Geneva from entering into anticompetitive agreements.

Paragraph IV addresses certain agreements to stay off the market that are not covered by Paragraph III because they do not involve interim relief in a litigated matter. Such situations would include agreements that are part of a final settlement of the litigation, and situations in which no litigation has been brought. In these circumstances, there is no judicial role in ordering relief agreed to by the parties. The Commission is concerned about such private agreements in which the first filer is paid by the NDA holder not to enter the market, because of the substantial risk of competitive harm that they may create. Thus, the order requires that Abbott and Geneva notify the Commission 30 days before entering into an agreement in which an ANDA first filer agrees with an NDA holder to refrain from going to market. Such notice will assist the Commission in detecting anticompetitive agreements before they have caused substantial injury to consumers. Absent the order, there is no mechanism for the antitrust enforcement agencies to find out about such agreements.

[3] FDA Proposed Rule Regarding 180–Day Generic Drug Exclusivity for Abbreviated New Drug Applications, 64 FR 42873, 42882–83 (August 6, 1999).

The form of notice that Abbott and Geneva must provide to the Commission under Paragraphs III and IV of the orders is set forth in Paragraph V. In addition to supplying a copy of the proposed agreement, they are required to provide certain other information to assist the Commission in assessing the potential competitive impact of the agreement. Accordingly, the orders require them to identify, among other things, all others who have filed an ANDA for a product containing the same chemical entities as the product a issue, and the court that is hearing any relevant legal proceedings involving either party. In addition, they must provide the Commission with all documents that evaluate the proposed agreement.

In addition, the proposed order against Geneva requires that it waive its 180-day marketing exclusivity period for its generic terazosin HCL tablet product. Although Geneva's exclusivity right with respect to the terazosin capsules product has expired, its exclusivity period for the tablet product still remains as a barrier to entry. This provision of the order will therefore open the market to greater generic competition in terazosin HCL products.

The proposed orders also contain certain reporting and other provisions that are designed to assist the Commission in monitoring compliance with the order and are standard provisions in Commission orders.

The orders will expire in 10 years.

Opportunity for Public Comment

The proposed orders have been placed on the public record for 30 days in order to receive comments from interested persons. Comments received during this period will become part of the public record. After 30 days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements or make the proposed orders final.

The purpose of this analysis is to facilitate public comment on the agreements. The analysis is not intended to constitute an official interpretation of the agreements, the proposed complaint, or the proposed consent orders, or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Chairman Robert Pitofsky and Commissioners Sheila F. Anthony, Mozelle W. Thompson, Orson Swindle, and Thomas B. Leary

The Analysis to Aid Public Comment, published today along with proposed consent orders against Geneva Pharmaceuticals, Inc. and Abbott Laboratories, describes the conduct of those two companies in agreeing that Abbot would pay Geneva to refrain from selling a generic version of Hytrin, Abbott's branded version of terazosin hydrochloride. It also describes relevant provisions of the Drug Price competition and Patent Term Restoration Act of 1984 ("Hatch-Waxman Act"), including particularly the provision that gives the first generic company to seek FDA approval a 180-day period during which it has the exclusive right to market the generic version of a brand name drug.

Pursuant to a private agreement not reviewed by any court, Abbott paid Geneva substantial sums not to enter the market with its generic version of Hytrin, and not to transfer, assign or relinquish its 180-day exclusive marketing right to any other producer of generic products that might compete with Abbot. By not selling its generic version. Geneva prevented the start of the 180-day exclusivity period, with the result that neither Geneva nor any other company could introduce a generic version of Hytrin into the market.

These consent orders represent the first resolution of an antitrust challenge by the government to a private agreement whereby a brand name drug company paid the first generic company that sought FDA approval not to enter the market, and to retain its 180-day period of market exclusivity. Because the behavior occurred in the context of the complicated provisions of the Hatch-Waxman Act, and because this is the first government antitrust enforcement action in this area, we believe the public interest is satisfied with orders that regulate future conduct by the parties. We recognize that there may be market settings in which similar but less restrictive arrangements could be justified, and each case must be examined with respect to its particular facts.

We have today issued an administrative complaint against two other pharmaceutical companies with respect to conduct that is in some ways similar to the conduct addressed by these consent orders. We anticipate that the development of a full factual record in the administrative proceeding, as well as the public comments on these consent orders, will help to shape further the appropriate parameters of permissible conduct in this area, and guide other companies and their legal advisors.

Pharmaceutical firms should now be on notice, however, that arrangements comparable to those addressed in the present consent orders can raise serious antitrust issues, with a potential for serious consumer harm. Accordingly, in the future, the Commission will consider its entire range of remedies in connection with enforcement actions against such arrangements, including possibly seeking disgorgement of illegally obtained profits.

If firms are uncertain about the limits of permissible behavior under the Hatch-Waxman Act, they may, of course, seek advisory opinions from the staff of this agency.

[FR Doc. 00–8129 Filed 3–31–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[File No. 971 0038]

Colegio de Cirujanos Dentistas de Puerto Rico; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 2, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, D.C. 20580.

FOR FURTHER INFORMATION CONTACT: Richard Feinstein or Steven Osnowitz, FTC/S–3115, 600 Pennsylvania Ave., NW, Washington, D.C. 20580. (202) 326–2574 or 326–2746.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 21, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, D.C. 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW,, Washington, D.C. 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, a proposed consent order settling charges that the Colegio de Cirujanos Dentistas de Puerto Rico ("Colegio"), an association of dentists in Puerto Rico: (1) organized boycotts and refusals to deal, and engaged in other anticompetitive conduct, designed to raise prices for dental services; and (2) prohibited its members from engaging in certain types of truthful, nondeceptive advertising. The proposed consent order has been placed on the public record for sixty (60) days to receive comments by interested persons. The proposed consent order has been entered into for settlement purposes only and does not constitute an admission by the Colegio that it violated the law or that the facts alleged in the complaint, other than the jurisdictional facts, are true.

The Complaint

The Colegio is an association of approximately 1800 dentists licensed to practice dentistry in Puerto Rico. Puerto Rico law requires, with certain limited exceptions, that dentists maintain membership in the Colegio to practice in Puerto Rico. Accordingly, the Colegio's members constitute the vast majority of dentists practicing in Puerto Rico.

The complaint charges that the Colegio restrained competition among dentists in Puerto Rico by, among other things, fixing the terms under which individual dentists would deal with health insurers and other payers of health care services, and orchestrating or threatening boycotts of payers by its members to obtain higher reimbursement. According to the proposed complaint, the Colegio promulgated a Code of Ethics that bars dentists from contracting with any health insurance plan ("plan") that is not endorsed by the Colegio. The Colegio refused to approve plans unless they: reimbursed dentists on a fee-for-service basis rather than capitation; were open to participation by all dentists; and were "responsive" to raising fees at the Colegio's request. Plans sought the Colegio's endorsement or approval in order to secure a sufficient number of participating dentists.

The complaint also alleges that the Colegio acted as the collective bargaining agent for its members. Through its Committee on Prepaid Dental Services, and in other ways, the Colegio engaged in discussions with numerous payers about fees and other terms its members would accept from these payers. For example, from 1992 through 1994, the Colegio successfully negotiated on behalf of its members to obtain fee increases from the two largest payers for dental coverage in Puerto Rico, Triple S and La Cruz Azul. In another instance, the complaint charges, the Colegio organized dentists to refuse to deal with a new plan proposed by Triple S that would have paid dentists a set amount per enrollee rather than the traditional fee for service, and Triple S was compelled to cancel the plan.

The complaint further alleges that the Colegio set the prices and other terms under which its member dentists would deal with plans operating under Puerto Rico's Health Insurance Act of 1993 (the "Reform"), a program to provide health care services to the indigent. During 1995, for example, the Colegio successfully blocked Triple S attempts to implement a new plan in the North Region of the Reform, and defeated Triple S plans to implement a 10% discount for dental fees. In the Central Region of the Reform, the Colegio succeeded in forcing PCA to agree that payments to dentists would be based on fee for service, and that its dental panels would be open to all Colegio members. When PCA attempted in 1996 to revise its dental contracts for the Central Region, in order to provide for utilization and quality audits, the Colegio withheld its endorsement, and PCA was unable to secure contracts with a sufficient number of dentists to offer the plan.

The complaint charges that the Colegio has acted to prevent certain forms of truthful, nondeceptive advertising. Its Code of Ethics bans advertising that is not "professionally acceptable," use of most illustrations, advertisements deemed not in good taste, and all personal solicitations. The complaint further alleges that the Colegio applied its ban on unprofessional advertising against dentists from Ponce, Puerto Rico, who truthfully advertised their willingness to accept Reform patients from neighboring areas where dentists were conducting a boycott of the Reform.

According to the complaint, the Colegio has not integrated the practices of its members in any economically significant way, nor has it created any efficiencies that might justify the acts and practices alleged in the complaint. Rather, the complaint charges that the Colegio's conduct has had the purpose and effect of restraining competition among dentists and injuring consumers by, among other things, fixing or increasing prices for dental services; fixing the terms and conditions upon which dentists would deal with payers, thereby raising the price to consumers of insurance coverage; raising prices paid by the Reform and delaying the offerings of dental services under the Reform; and depriving consumers of truthful information about dental services.

The Proposed Consent Order

The proposed consent order prohibits the Colegio from continuing the illegal conduct described in the complaint. Specifically, Part II of the order prohibits the Colegio from endorsing or approving, refusing to endorse or approve, or prohibiting or declaring unethical a dentist's participation in a health plan based on the amount, manner of calculating, or other terms relating to reimbursement for dental services, or on whether the plan is open to participation by all Colegio members. The Colegio also is prohibited from (1) negotiating on behalf of any dentists with any payer or provider; (2) refusing to deal, boycotting, or threatening to boycott any payer or provider; or (3) determining any terms, conditions, or requirements upon which dentists will deal with any provider, including terms of reimbursement, and whether the plan is open to participation by all Colegio members.

Further, the Colegio is prohibited from communicating to any payer or provider any term, condition, or requirement on which Colegio members are willing or unwilling to deal with a payer or provider, and from communicating with any member concerning the desirability or appropriateness of any term or condition of a payer relating to dental services, or whether the plan is open to participation by all Colegio members. The Colegio cannot facilitate in any manner, or transfer the exchange of, information concerning dentists' intentions to contract with any payer, or under what terms.

The proposed order does not restrict legitimate communications between the Colegio and payers. Health care practitioners' provision of certain kinds of information to payers is not likely to raise antitrust concerns, but instead may serve to promote competition and benefit consumers. For example, the DOJ/FTC Statements of Enforcement Policy in Health Care (1996) define two "antitrust safety zones" dealing with the provision of information to payers, and state that conduct falling within these safety zones will not be challenged by the enforcement agencies absent extraordinary circumstances.[1] The proposed order does not prohibit the Colegio from engaging in activities encompassed in these safety zones, or from communicating with payers about other matters, unless the communication is part of an agreement or course of conduct specifically prohibited by the order.

The proposed order likewise does not restrict the right of the Colegio to provide government bodies with information and opinions in an effort to influence legislation or regulatory action. A proviso states explicitly that the order does not prohibit the Colegio from petitioning any federal, state, or Commonwealth government executive agency or legislative body concerning legislation, rules, or procedures, or from participating in any federal, state, or Commonwealth administrative or judicial proceeding, insofar as the activity is protected from antitrust scrutiny by the *Noerr-Pennington* doctrine.[2] That doctrine does not, however, protect price-fixing agreements, refusals to deal, or similar conduct designed to obtain higher prices from government purchasers.[3]

Part III of the proposed order prohibits the Colegio from restricting truthful advertising of dental services or solicitation of patients. The Colegio, however, can formulate, adopt, disseminate, and enforce reasonable ethical guidelines governing the conduct of its members with respect to representations that respondent reasonably believes would be false or deceptive within the meaning of Section 5 of the Federal Trade Commission Act, or with respect to uninvited in-person solicitation of actual or potential patients who, because of their particular circumstances, are vulnerable to undue influence.

Part IV of the proposed order requires the Colegio to distribute copies of the order and accompanying complaint to its employees and members, and to payers or providers who since January 1, 1995, communicated a desire or interest in contracting for dentists' services. Part IV also requires the Colegio to maintain certain records pertaining to advertising for a period of ten years, while other order provisions will remain in effect for twenty years. Parts V and VI of the proposed order impose certain reporting requirements, while Part VII of the proposed order provides for access to the Colegio's documents and personnel. Parts V, VI, and VII are to assist the Commission in monitoring compliance with the proposed order.

Opportunity for Public Comment

The proposed order has been placed on the public record for sixty (60) days in order to receive public comments from interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The purpose of this analysis is to facilitate public comment on the agreement. The analysis is not intended to constitute an official interpretation of the agreement, the proposed complaint, or the proposed consent order, or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–8130 Filed 3–31–00; 8:45 am]

BILLING CODE 6750–01–M

[1] Statement 5 provides a safety zone for providers' collective provision of "factual information concerning the providers' current or historical fees or other aspects of reimbursement, such as discounts or alternative reimbursement methods accepted * * *," so long as collection of the information meets certain requirements designed to ensure that the exchange of price or cost data is not used by competing providers to discuss or coordinate costs or prices. Statements at 44–45. The safety zone in Statement 4 covers the provision of "underlying medical data that may improve purchasers' resolution of issues relating to the mode, quality, or efficiency of treatment," as well as providers' "development of suggested practice parameters—standards for patient management developed to assist providers in clinical decisionmaking—that also may provide useful information to patients, providers, and purchasers." Statements at 41.

[2] See, e.g., FTC v. Superior Court Trial Lawyers Ass'n, 493 U.S. 411 (1990); United Mine Workers v. Pennington, 381 U.S. 657 (1965); Eastern Railroad Presidents Conference v. Noerr Motor Freight, Inc., 365 U.S. 127 (1961).

[3] FTC v. Superior Court Trial Lawyers Ass'n, 493 U.S. at 424–425.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

Project 1. First Follow-Up Survey of Youth and Site Visit and Focus Group Protocols for the Federal Evaluation of Initiatives Funded Under Section 510 of the Maternal and Child Health Block Grant Program—The Personal Responsibility and Work Opportunity Reconciliation Act (Public Law 104–193) established Section 510 of the Maternal and Child Health Block Grant Program, the purpose of which is to support state efforts promoting abstinence only education. The Balanced Budget Act of 1997 (Pub. L. 105–33) established a requirement to "evaluate programs under Section 510." This proposed information collection will gather follow-up information for the evaluation—NEW—Respondents: Individuals, state or local governments—Burden Information for First Follow-Up Survey—Number of Respondents: 6,510; Average Burden per Response: .75 hours; Burden: 4,883 hours—Burden Information for Focus Groups—Number of Respondents: 380; Average Burden per Response: 2 hours; Burden: 760 hours—Burden Information for Executive Interviews—Number of Respondents: 330; Average Burden per Response: 1.5 hours; Burden: 495 hours—Total Burden: 6,138 hours.

OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington DC, 20201. Written comments should be received within 30 days of this notice.

Dated: March 24, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–8049 Filed 3–31–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission for OMB Review; Comment Request

The Department of Health and Human Services, Office of the Secretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Site Visit Protocols for the Multi-Site Evaluation of the Welfare-to-Work Grant Program—0990–0230—Revision—This data collection will provide site specific information for a sample of Welfare-to-Work (WtW) grant programs which will support the Office of the Assistant Secretary for Planning and Evaluation in its efforts to further document the status of the grants program and provide information on implementation issues as part of the Congressionally mandated evaluation of the WtW grants program. Respondents: Individuals, State, Local or Tribal Governments, Non-profit Institutions—Burden Information for Staff Interviews—Number of Responses: 360; Burden per Response: 1 hour; Total Burden for Staff Interviews: 360 hours—Burden Information for Focus Groups—Number of Responses: 350; Burden per Response: 1.5 hours; Total Burden for Focus Groups: 540 hours—Burden Information for Individual Tribal Program Participants—Number of Responses: 50; Burden per Response: .5 hours; Total Burden for Tribal Participants: 30 hours—Total Burden—930 hours.

2. Follow-up Survey for the Multi-Site Evaluation of the Welfare-to-Work Grant Program—New—This information collection will support the Office of the Assistant Secretary for Planning and Evaluation in its efforts to evaluate the WtW grant program by obtaining detailed information on program participants circumstances and experiences with the program. Respondents: Individuals; Number of Respondents: 7225; Number of Responses: 12,750; Burden per Response: 46 minutes; Total Burden: 9819 hours; OMB Desk Officer: Allison Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed information collection should be sent directly to the OMB desk officer designated above at the following address: Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW, Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: March 24, 2000.

Dennis P. Williams,

Deputy Assistant Secretary, Budget.

[FR Doc. 00–8050 Filed 3–31–00; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 95N–0304]

Dietary Supplements Containing Ephedrine Alkaloids; Administrative Docket Update; Availability

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of certain documents to update the administrative docket of the proposed rule on dietary supplements containing ephedrine alkaloids. This action is being taken to ensure that interested persons are aware of the updated information. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing certain provisions of the proposed rule on dietary supplements containing ephedrine alkaloids, and establishing a new docket that will contain new adverse event reports and related information concerning these products.

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Center for Food Safety and Applied Nutrition (HFS–7), Food and Drug Administration, 5630 Fishers Lane, Rockville, MD 20852, 301–827–6733.

SUPPLEMENTARY INFORMATION:

I. Background (Proposed Rule)

In the **Federal Register** of June 4, 1997 (62 FR 30678), FDA published a proposed rule on dietary supplements containing ephedrine alkaloids (the "ephedrine alkaloids proposal"). That proposal would have established a finding that a dietary supplement is adulterated if it contains 8 milligrams or more of ephedrine alkaloids per single serving, required that the labels of products that contain ephedrine alkaloids state, "Don't use this product for more than 7 days," required certain warning statements, and affected other aspects of product labeling for such products. FDA proposed this action after receiving over 800 adverse events associated with the use of dietary supplements that contained, or were suspected to contain, ephedrine alkaloids, and reviewing scientific literature and other data concerning ephedrine alkaloids. FDA received approximately 14,775 comments in response to the ephedrine alkaloids proposal.

II. Updated Information

FDA is updating the docket for the ephedrine alkaloids proposal with additional information, most of which was received after publication of the proposal.

FDA received 270 additional adverse event reports between February and September 1997. FDA added these adverse event reports to the ephedrine alkaloids proposal's docket in two submissions without formal clinical analysis. FDA did not rely on these 270 reports in the ephedrine alkaloids proposal because FDA received them after it began its analysis for the proposal.

FDA has received additional documentation (e.g., copies of product labels and labeling, information on how the consumers used the products at issue and available medical or other clinical records) concerning

approximately 17 of the 270 adverse event reports the agency put in the docket after publication of the ephedrine alkaloids proposal. Consequently, FDA has reorganized these 17 reports to include the additional documentation that the agency has received, and it has redacted the files. FDA is now placing the 17 reorganized and redacted adverse event charts in the ephedrine alkaloids proposal's docket.

Should FDA receive additional information on the adverse events that are part of the administrative docket for the ephedrine alkaloids proposal, the agency will include it in that docket.

This updated information may be seen by interested persons at the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 28, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–8112 Filed 3–31–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1200]

Dietary Supplements Containing Ephedrine Alkaloids; Availability

ACTION: Notice of availability.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of certain new adverse event reports (AER's) and related information, the vast majority of which were received after publication of the proposed rulemaking on dietary supplements containing ephedrine alkaloids. The agency is also announcing its intention to participate in a public forum to address this new information. This document is being issued to ensure that interested persons are aware of the new information the agency has available on these products and its plans to seek public input on this new information. Elsewhere in this issue of the **Federal Register**, FDA is withdrawing certain provisions of the proposed rule on dietary supplements containing ephedrine alkaloids and making available certain documents to update the administrative docket of that proposal.

DATES: Submit written comments by May 18, 2000.

ADDRESSES: Submit written comments on the information in this docket to the Dockets Management Branch, Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Comments are to be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Marquita B. Steadman, Center for Food Safety and Applied Nutrition (CFSAN) (HFS–007), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20852, 301–827–6733. A contact person for the public forum will be announced in the near future.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 4, 1997 (62 FR 30678), FDA published a proposed rule on dietary supplements containing ephedrine alkaloids (hereinafter referred to as "the ephedrine alkaloids proposal"). FDA proposed to establish a finding that a dietary supplement is adulterated if it contains 8 milligrams (mg) or more of ephedrine alkaloids per serving within a 6-hour period or a total daily intake of 24 mg or more of ephedrine alkaloids ("dosing level" or "dietary ingredient level"), and to require the label of such supplement state that the product is not to be used for more than 7 days ("duration of use limit"). In addition, FDA proposed to require certain warning statements, and to affect other aspects of labeling for such products. FDA proposed this action after receiving over 800 adverse events associated with the use of dietary supplements that contained, or were suspected to contain, ephedrine alkaloids, and reviewing scientific literature and other data concerning ephedrine alkaloids. FDA received approximately 14,775 comments in response to the ephedrine alkaloids proposal.

The House Committee on Science requested that the Government Accounting Office (GAO) examine the scientific bases for the ephedrine alkaloids proposal, and the agency's adherence to the regulatory analysis requirements for Federal rulemaking. On August 4, 1999, GAO publicly released its report entitled "Dietary Supplements: Uncertainties in Analyses Underlying FDA's Proposed Rule on Ephedrine Alkaloids." A copy of this report is available in Docket No. 95N–0304.

Generally, the GAO concluded that FDA was justified in determining that the number of AER's relating to dietary supplements containing ephedrine alkaloids warranted the agency's attention and consideration of steps to address safety issues. In addition, the GAO concluded that the available scientific information suggests that the use of products containing synthetic ephedrine alkaloids can result in adverse experiences for some individuals. However, GAO expressed concerns about the use of the adverse events in supporting the proposed dosing level and duration of use limit, and concluded that the agency needed additional evidence to support these restrictions.

GAO also concluded that FDA's economic analysis contained the basic elements expected in a Federal agency's cost-benefit analysis and that the ephedrine alkaloids proposal complied with regulatory flexibility analysis requirements under the Regulatory Flexibility Act. GAO noted, however, that FDA's cost-benefit analysis was not always transparent regarding why certain key assumptions were made, the degree of uncertainty involved in those assumptions, or the effect that alternative assumptions would have had on the agency's estimates of the costs and benefits of the proposed action.

GAO recommended that FDA "provide stronger evidence on the relationship between the intake of dietary supplements containing ephedrine alkaloids and the occurrence of adverse reactions that support the proposed dosing level and duration of use limits." In addition, GAO recommended that FDA improve the transparency of its cost-benefit analysis in its final rulemaking.

Before the GAO report was released, FDA had already begun accumulating and evaluating data on additional adverse events reported to the agency since the publication of the ephedrine alkaloids proposal as well as initiating a process to obtain outside scientific input and review. Since publication of the ephedrine alkaloids proposal and following release of the GAO report, FDA has continued to receive reports of adverse events, conducted its own independent evaluations and analyses, and continued to seek input from outside experts on these issues. FDA is now making available new information, the vast majority of which it has received since publication of the ephedrine alkaloids proposal.

II. New Information—Docket No. 00N–1200

To gain a better perspective on the significance of the public health concern and public health problems associated with the current use of dietary supplements containing ephedrine alkaloids, CFSAN applied its available resources towards conducting

an analysis of 140 AER's with a report date (date the adverse event form was completed) period of June 1, 1997, through March 31, 1999, ("New Case Series"). CFSAN chose the June 1, 1997, date because it was close to the publication date of FDA's ephedrine alkaloids proposal. CFSAN chose the March 31, 1999, cut-off date so that it could have a closed set of data to analyze and prepare for public release. These adverse events, reported during the time period June 1, 1997, through March 31, 1999, had not previously received a comprehensive clinical analysis by the agency. All AER's received by FDA within that timeframe were included in the analysis. CFSAN's evaluation included an initial screening to determine whether the quality of the evidence available was sufficient to support a more comprehensive clinical evaluation of those adverse events that met the screening criteria. These criteria are identified in a document entitled "Assessment of Public Health Risks Associated with the Use of Ephedrine Alkaloid-Containing Dietary Supplements" which is available in this docket. (See section IV of this document for a more detailed outline of this document.) CFSAN used only those adverse events judged to have sufficient information for further evaluation. Following the initial screening of these reports, eight were eliminated from further review. The remaining 132 cases were subjected to an in-depth clinical review. CFSAN has also obtained a clinical review of 139 of the 140 adverse events in the New Case Series from FDA's Center for Drug Evaluation and Research (CDER). (One of the adverse events in the New Case Series reviewed by CFSAN was not identified as being within the designated time period for the New Case Series until after CDER's review began.)

As part of FDA's overall evaluation, it also contracted with outside scientific and clinical experts to obtain additional evaluation on dietary supplements containing ephedrine alkaloids, including the same 139 adverse events that CDER reviewed. FDA also conducted a market review covering August 1999 through March 2000 to determine whether there have been changes in the marketplace, including identification of new products containing ephedrine alkaloids.

A listing of this new information is provided in section IV of this document.

III. Pre-case and Post-case Series

FDA has received additional new AER's that have not been placed in any docket, and fall outside of the New case series timeframe (e.g., June 1, 1997, through March 31, 1999). Of these adverse events, 14 were reported before May 31, 1997, ("Pre-case series"). Moreover, 119 were reported beginning from April 1, 1999, and received by FDA by December 31, 1999, with any additional followup information received by February 15, 2000 ("Post case series"). Neither FDA nor its outside experts have conducted a comprehensive clinical analysis of the AER's in the Pre-case and Post-case series. FDA is announcing the availability of the Pre-case and Post-case series in this document.

IV. Public Docket

FDA is establishing a new docket [Docket No. 00N–1200] and making available at the Dockets Management Branch (address above) for public inspection the following documents:

1. One hundred and Fourty redacted AER's with a report date during the time period June 1, 1997, through March 31, 1999, ("New Case Series") associated with dietary supplement products that were known or suspected to contain ephedrine alkaloids.

2. A document entitled "Assessment of Public Health Risks Associated with the Use of Ephedrine Alkaloid-containing Dietary Supplements," which includes the following sections:

a. Section One: Overview/ Background

b. Section Two: CFSAN's Evaluation of New Case Series. This evaluation included an initial screening to determine whether the quality of evidence available was sufficient to support a more comprehensive clinical evaluation. CFSAN subjected only those adverse events judged to have sufficient information to further evaluation. Following the initial screening of these reports, 8 of the 140 were eliminated from further review. The clinical evaluation of the remaining reports resulted in the following classifications: (1) Adequate information to evaluate the relationship of product use to the adverse event and (2) insufficient data to further assess clinically or nonsupportive of a relationship between dietary supplements containing ephedrine alkaloids and the adverse event. Each of the reports with adequate information was reviewed and classified further into "attributable" and "supporting". The criteria for "attributable" and "supporting" are explained in the document.

c. Section Three: CFSAN's Review of the Published Literature on the Physiological, Pharmacological and Toxic Effects of Ephedrine Alkaloids.

d. Section Four: Bibliography of Scientific References/citations for documents a through c above.

e. Section Five: Appendices to Section Two above.

3. FDA's Center for Drug Evaluation and Research's review of AER's associated with dietary supplements containing ephedrine alkaloids, including a clinical review of 139 of the adverse events evaluated in CFSAN's New Case Series.

4. Reports from Outside Consultants concerning the following clinical/ scientific reviews:

a. Raymond Woosley, M.D., Ph.D., Review of 139 of the adverse events in the New Case Series and the likelihood of the events being associated with ephedrine alkaloids.

b. Neal Benowitz, M.D., Review of 139 of the adverse events in the New Case Series and the likelihood of the events being associated with ephedrine alkaloids.

c. Andrew L. Stoll, M.D., Review of specific neuropsychiatrically-related adverse events from the New Case Series and the likelihood of the events being associated with ephedrine alkaloids.

d. George A. Ricaurte, M.D., Ph.D., Review of specific nerologically-related adverse events from the New Case Series and the likelihood of the events being associated with ephedrine alkaloids.

e. Ka Kit Paul Hui, M.D., Opinion on the use of ephedra by practitioners trained in Traditional Chinese Medicine, including conditions, dosages, interactions, and duration of use.

f. Mario Inchiosa, Ph.D., Scientific literature search and evaluation of the pharmacokinetics of naturally-occurring ephedrine alkaloids and synthetic ephedrine alkaloids.

g. Alexander Walker, M.D., Dr. P.H., Statement concerning the likely reporting rate of adverse events involving dietary supplements.

5. Fourteen redacted AER's with a report date before May 31, 1997, which have not been placed in any docket ("Pre-case series") concerning dietary supplements containing ephedrine alkaloids. These AER's have not received an extensive clinical analysis by FDA.

6. One hundred and nineteen redacted adverse events with report dates beginning April 1, 1999, and received by FDA by December 31, 1999, with followup information received by February 15, 2000 ("Post-case series") concerning dietary supplements containing ephedrine alkaloids. These

AER's have not received an extensive clinical analysis by FDA.

7. CFSAN Market Review—FDA review covering the period August 1999 through March 2000 to determine whether there have been changes in the types of ephedrine alkaloid containing dietary supplement products available in the marketplace since the agency's review in 1995–1996.

Several parties have informed the agency that, since the issuance of the ephedrine alkaloids proposal, there is new usage data, and new scientific information, including clinical trials sponsored by manufacturers, that supports the safety of dietary supplements containing ephedrine alkaloids. FDA has not been provided this information to date and encourages interested persons to submit this information and any other information the submitter believes is relevant to assessing the safety of dietary supplements containing ephedrine alkaloids. FDA encourages interested persons to submit this information to this docket by May 18, 2000, so that it will be available to the public and the agency for review.

Interested persons may submit to the Dockets Management Branch (address above) written comments on the availability. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. These documents and any received comments may be seen by interested persons at the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. Public Forum

A public forum for discussion of the documents being made available in this document will be held at a date and location to be announced. A contact person for the public forum will also be announced.

Written comments received in response to this document, and participation at the public forum, will assist the agency in determining appropriate next steps regarding dietary supplements containing ephedrine alkaloids.

Dated: March 30, 2000.

William K. Hubbard,

Senior Associate Commissioner for Policy, Planning, and Legislation.

[FR Doc. 00–8283 Filed 3–31–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00D–1119]

Guidance for Industry on Street Drug Alternatives; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a guidance for industry entitled "Street Drug Alternatives." The guidance is intended to inform industry and the public that FDA considers any product that is promoted as a street drug alternative to be an unapproved new drug and a misbranded drug in violation of two sections of the Federal Food, Drug, and Cosmetic Act (the act). Such violations may result in regulatory action, including seizure and injunction.

DATES: Submit written comments on agency guidances at any time.

ADDRESSES: Copies of this guidance for industry are available on the Internet at http://www.fda.gov/cder/guidance/index.htm. Submit written requests for single copies of this guidance to the Drug Information Branch (HFD–210), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Send one self-addressed adhesive label to assist that office in processing your requests. Submit written comments on the guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: William Nychis, Center for Drug Evaluation and Research (HFD–310), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7363.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a guidance for industry entitled "Street Drug Alternatives." FDA is issuing this guidance in response to the proliferation of various products that are being manufactured, marketed, or distributed as alternatives to illicit street drugs. FDA is concerned that these products are being abused by individuals, including minors, and pose a potential threat to the public health.

These street drug alternatives are generally labeled as containing botanicals, and some are also labeled as containing other ingredients, such as vitamins, minerals, or amino acids. They are marketed under a variety of brand names with claims implying that these products mimic the effects of controlled substances. These products are intended to be used for recreational purposes to effect psychological states.

This guidance is intended to inform industry and the public that FDA considers any product that is promoted as a street drug alternative to be an unapproved new drug and a misbranded drug in violation of sections 505 and 502 of the act (21 U.S.C. 355 and 352). Such violations may result in regulatory action, including seizure and injunction.

Moreover, FDA is also aware that some of these street drug alternatives are being promoted as dietary supplements. FDA does not consider street drug alternatives to be dietary supplements because they are not intended to supplement the diet.

This Level 1 guidance is being issued consistent with FDA's good guidance practices (62 FR 8961, February 27, 1997). The guidance is being implemented immediately without prior public comment because of the potential hazard to the public health. The guidance represents the agency's current thinking on street drug alternatives. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statute, regulations, or both.

Interested persons may, at any time, submit written comments on the guidance to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: March 28, 2000.

Margaret M. Dotzel,

Acting Associate Commissioner for Policy.

[FR Doc. 00–8110 Filed 3–31–00; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Proposed Collection; Comment Request; Alcohol Prevalence and Gene/Environment Interactions in Native American Tribes (a 10 Tribe Study)

SUMMARY: In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, for opportunity for public comment on proposed data collection projects, the National Institute on Alcohol Abuse and Alcoholism (NIAAA), the National Institutes of Health (NIH) will publish periodic summaries of proposed projects to be submitted to the Office of Management and Budget (OMB) for review and approval.

Proposed Collection: Title: Alcohol Prevalence and Gene/Environment Interactions in Native American Tribes (a 10 Tribe Study). *Type of Information Collection Request:* Extension. *Need and Use of Information Collection*: The Ten Tribe Study is being conducted to collect psychiatric and personal data from tribes with different rates of alcoholism. This data will be analyzed to determine, if possible, why tribes with similar lifestyles have different rates of alcoholism and alcohol abuse. Specifically, the information gathered during this study will be used to: (1) determine prevalence rates of alcoholism in 10 demographically sampled Native American tribes using structured or semi-structured interviews to rigorously diagnose alcoholism; (2) systematically diagnose conditions which are often comorbid with alcoholism including drug abuse, depression, and antisocial personality; (3) address crucial antecedents and consequences of alcoholism and environmental issues in alcohol vulnerability such as post-traumatic stress, violence, acculturation, and child abuse; and (4) investigate genetic vulnerability factors for tribal populations with high, moderate, and low alcoholism prevalence. This study has been ongoing for three years and is to be extended for three additional years. *Frequency of Response*: Once per respondent. *Affected Public*: Individuals. *Type of Respondents*: Adults. The annual reporting burden is as follows: *Estimated Number of Respondents*: 1,800; *Estimated Number of Responses per Respondent*: 1; *Average Burden Hours Per Response*: 4.0; and *Estimated Total Annual Burden Hours Requested*: 7,200. There are no Costs to Respondents to report. There are no Capital Costs to report. There are no Operating or Maintenance Costs to report.

Request For Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the extension of this collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Way to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

FOR FURTHER INFORMATION CONTACT: To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Ms. Ronni Nelson, Laboratory of Neurogenetics, Division of Intramural Clinical and Biological Research, NIAAA, NIH, 12420 Parklawn Drive, Suite 451, Rockville, Maryland 20852 or E-mail your request, including your address to: rn46h@nih.gov. Ms. Nelson can be contacted by telephone at 301–443–5781.

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before June 2, 2000.

Dated: March 28, 2000.

Stephen Long,

Executive Officer, NIAAA.

[FR Doc. 00–8103 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute Submission for OMB Review; Comment Request Women's Health Initiative Observation Study

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the Office of the Director, the National Heart, Lung, and Blood Institute (NHLBI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 7, 1999, pages 48661–48662 and allowed 60-days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised or implemented on or after October 1, 1995 unless it displays a current valid OMB control number.

Proposed Collection: Title: Women's Health Initiative (WHI) Observational Study. *Type of Information Collection Request:* REVISION: OBM No. 0925–0414, Expiration date: 06/30/2000. *Need and Use of Information Collection:* This study will be used by the NIH to evaluate risk factors for chronic disease among older women by developing and following a large cohort of postmenopausal women and relating subsequent disease development to baseline assessments of historical, physical, psychosocial, and physiologic characteristics. In addition, the observational study will complement the clinical trial (which has received clinical exemption) and provide additional information on the common causes of frailty, disability and death for postmenopausal women, namely, coronary heart disease, breast and colorectal cancer, and osteoporotic fractures. *Frequency of Response:* On occasion. *Affected Public:* Individuals and physicians. *Type of Respondents:* Women, next-of-kin, and physician's office staff. The annual reporting burden is as follows:

Type of respondents	Estimated number of respondents	Estimated number of responses per respondents	Average burden hours per response	Estimated total annual burden hours requested
OS Participants	82,044	.96876	.4557	36,219

Type of respondents	Estimated number of respondents	Estimated number of responses per respondents	Average burden hours per response	Estimated total annual burden hours requested
Next-of-kin	2,741	1	.0835	229
Physician's Office Staff	226	1	.0835	19
Total				36,467

The annualized cost burden to respondents is estimated at $365,428. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Evaluate whether the proposed collection is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Enhance the quality, utility and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology permitting electronic submission of responses.

DIRECT COMMENTS TO OMB: Written comments and/or suggestions regarding item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to: The Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plan and instruments, contact: Dr. Linda Pottern, Project Officer, Women's Health Initiative Program Office, 6705 Rockledge Drive, 1 Rockledge Centre, Suite 300, MSC 7966, Bethesda, MD 20892–7966, or call (301) 402–2900 or E-Mail your request, including your address to: Linda_Pottern@nih.gov

COMMENTS DUE DATE: Comments regarding this information collection are best assured of having their full effect if received on or before June 2, 2000.

Dated: March 20, 2000.

Jacques E. Rossouw,

Acting Director, Women's Health Initiative, NHLBI.

[FR Doc. 00–8104 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Government-Owned Invention; Availability for Licensing: "Therapeutic Method to Treat Cancer and Define Cellular Regulatory Processes—Transcription Factor Decoy and Tumor Growth Factor"

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

ADDRESSES: Licensing information and a copy of the U.S. patent application referenced below may be obtained by contacting J. R. Dixon, Ph.D., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 206; fax 301/402–0220; E-Mail: jd212g@NIH.GOV). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

SUPPLEMENTARY INFORMATION: *Invention Title:* "Transcription Factor Decoy and Tumor Growth Inhibitor".

Inventors: Dr. Yoon S. Cho-Chung (NCI).

USPA SN: 08/977,643 [= DHHS Ref. No. E–192–97/0]—Filed with the U.S.P.T.O. on November 24, 1997.

Technology: Alteration of gene transcription by inhibition of specific transcriptional regulatory proteins has important therapeutic potential. Synthetic double-stranded phosphorothioate oligonucleotides with high affinity for a target transcription factor can be introduced into cells as decoy cis-elements to bind the factors and alter gene expression. The CRE (cyclic AMP response element)-transcription factor complex is a pleiotropic activator that participates in the induction of a wide variety of cellular and viral genes. Because the CRE cis-element, TGACGTCA, is palindromic, a synthetic single-stranded oligonucleotide composed of the CRE sequence self-hybridizes to form a duplex/hairpin. The CRE-palindromic oligonucleotide can penetrate into cells, compete with CRE enhancers for binding transcription factors, and specifically interfere with CRE- and AP-1-directed transcription *in vivo*. These oligonucleotides restrained tumor cell proliferation, without affecting the growth of noncancerous cells. This decoy oligonucleotide approach offers great promise as a tool for defining cellular regulatory processes and treating cancer and other diseases. [see J. Biol. Chem. 274, 1573–1580 (1999); online at *http://www.jbc.org/*]

The above mentioned Invention is available, including any available foreign intellectual property rights, for licensing.

Dated: March 24, 2000.

Jack Spiegel,

Director, Division of Technology Development & Transfer, Office of Technology Transfer

[FR Doc. 00–8106 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Opportunity for Licensing: Adenovirus Mediated Transfer of Genes

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: The National Institutes of Health (NIH), Public Health Service (PHS), Department of Health and Human Services (DHHS), seeks a licensee(s) to develop gene therapy-based therapeutics that would be effective in the treatment of a variety of disease states, particularly via transfer of specific genes to the lung. The inventors have developed adenoviral vectors and pharmaceutical compositions comprising (a) a replication defective adenovirus comprising a deletion in the E1A, E1B and E3 regions and further comprising a DNA segment encoding a specific protein of interest operatively linked to a promoter and (b) a pharmaceutically acceptable carrier for said vector. Examples of proteins of interest would include, but not be necessarily limited to, CFTR and α1-antitrypsin.

The NIH seeks licensee(s) who, in accordance with requirements and regulations governing the licensing of government-owned inventions (37 CFR 404), has the most meritorious plan for the development of a therapeutic agent(s) to meet the needs of the public and with the best terms for the government. NIH intends to grant the selected licensee(s) a world-wide royalty-bearing license(s) to practice the inventions embodied in U.S. Patent 6,013,638 entitled "Adenovirus Comprising Deletions on the E1A, E1B and E3 Regions for Transfer of Genes to the Lung" U.S. Patent Application S/N 09/364,839 entitled "Adenovirus-Mediated Transfer of Genes to the Lung"; U.S. Patent Application S/N 09/307,141 entitled "Adenovirus-Mediated Transfer of Genes to the Lung" and U.S. Patent Application S/N 08/442,262 entitled "Replication Deficient Recombinant Adenovirus Vector". The United States of America is an assignee for the patent rights in these inventions.

ADDRESSES: Licensing information, a copy of the U.S. patent or applications referenced to above or a copy of the NIH License Application may be obtained by contacting Richard U. Rodriguez, M.B.A., at the Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, Maryland 20852–3804 (telephone 301/496–7056 ext 287; fax 301/402–0220; and E-mail rr154z@nih.gov). A signed Confidential Disclosure Agreement is required to receive a copy of any patent application.

SUPPLEMENTARY INFORMATION: One of the hurdles to overcome in most forms of somatic gene therapy is the specific delivery of a therapeutic gene, encoding a therapeutic protein, to the organ manifesting the disease. In the case of the lung, a functional gene can be delivered directly to the respiratory epithelium by means of tracheal installation. One serious disadvantage with this approach is encountered with the use of vectors (such as retroviruses) that require proliferation of the target cells for expression of the newly transferred gene because only a small proportion of alveolar and airway epithelial cells go through the proliferative cycle in one day and because a large proportion of these cells are terminally differentiated. Use of the claimed recombinant adenoviral vector to transfer a gene to the respiratory epithelium *in vivo* circumvents the problem of slow target-cell proliferation. Other advantages would include: rare recombination events; no known associations of human malignancies with adenoviral infections despite common human infection with adenoviruses; the adenovirus genome can be manipulated to accommodate foreign genes expressing proteins ranging in size from small peptides up to a peptide of 7.0 to 7.5 kB in length; and live adenovirus has been safely used as a human vaccine.

Dated: March 24, 2000.

Jack Spiegel,

Director, Division of Technology Development and Transfer, Office of Technology Transfer.

[FR Doc. 00–8107 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Advisory Committee to the Director, National Cancer Institute.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Advisory Committee to the Director, National Cancer Institute.

Date: April 24, 2000.

Time: 11:30 AM to 1:30 PM.

Agenda: To discuss the Colorectal Cancer Progress Review Group Report.

Place: National Institutes of Health, National Cancer Institute, Building 31, Room 11A03, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Susan J. Waldrop, Executive Secretary, National Institutes of Health, National Cancer Institute, Office of Science Policy, Bethesda, MD 20892, 301/496–1458.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research, 93.397, Cancer Centers Support; 93.398; Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8091 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the meeting of the Director's Consumer Liaison Group.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(6) and 552b(c)(9)(B), Title 5 U.S.C., as amended. The discussions could reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy and the premature disclosure of discussions related to personnel and programmatic issues would likely to significantly frustrate the subsequent implementation of recommendations.

Name of Committee: Director's Consumer Liaison Group.

Date: April 17–18, 2000.

Open: April 17, 2000, 8:30 AM to 5:00 PM.

Agenda: NCI Director's Report; Status of the NCI Communications Reorganization; Clinical Trial System; Accessibility and appropriateness of NCI services and resources.

Place: National Institutes of Health, Natcher Conference Center, Conference Room D, Bethesda, MD 20892.

Closed: April 18, 2000, 8:30 AM to 4:00 PM.

Agenda: To discuss confidential administrative and personnel issues related to membership and functioning of the DCLG.

Place: National Institutes of Health, Natcher Conference Center, Conference Room D, Bethesda, MD 20892.

Contact Person: Elaine Lee, Acting Executive Secretary, Office of Liaison

Activities, National Institutes of Health, National Cancer Institute, Federal Building 6C10, Bethesda, MD 20892, (301) 594–3194.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 22, 2000.

LaVerne Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8100 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, SBIR Topic 179—Encoding Surgical Pathology Data into Standard Nomenclature within XML.

Date: April 6, 2000.

Time: 1:00 PM to 5:00 PM.

Agenda: To review and evaluate contract proposals.

Place: Executive Plaza North, 6130 Executive Boulevard, Conference Room E, Rockville, MD 20852, (Telephone Conference Call).

Contact Person: Kirt Vener, Branch Chief, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8072, Bethesda, MD 20892, 301/496–7174.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 22, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8101 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Human Genome Research Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Human Genome Research Institute Initial Review Group, Ethical, Legal, Social Implications Review Committee.

Date: March 29, 2000.

Time: 8:30 am to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Rudy O. Pozzatti, PhD., Scientific Review Administrator, Office of Scientific Review, National Human Genome Research Institute, National Institutes of Health, Bethesda, MD 20892, 301 402–0838.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.172, Human Genome Research, National Institutes of Health, HHS)

Dated: March 22, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8097 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Mental Health Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Mental Health Council.

Date: May 4–5, 2000.

Closed: May 4, 2000, 10:30 am to recess.

Agenda: To review and evaluate grant applications.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892.

Open: May 5, 2000, 8:30 am to adjournment.

Agenda: Presentation of NIMH Director's Report and discussion of NIMH program and policy issues.

Place: Neuroscience Center, National Institutes of Health; 6001 Executive Blvd., Bethesda, Md 20892.

Contact Person: Jane A. Steinberg, PHD, Director, Division of Extramural Activities, National Institute of Mental Health, NIH Neuroscience Center, 6001 Executive Blvd., Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–5047.

(Catalogue of Federal Domestic Assistance Program Nos. 93:242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clincians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8093 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Large-Scale Collaborative Project Awards.

Date: April 3, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Helen R. Sunshine, PHD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, NIH Natcher Building, Room 1AS–13, Bethesda, MD 20892, 301–594–2881.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Large-Scale Collaborative Project Awards.

Date: April 12, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Helen R. Sunshine, PHD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, NIH Natcher Building, Room 1AS–13, Bethesda, MD 20892, 301–594–2881.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel Large-Scale Collaborative Project Awards.

Date: April 25, 2000.

Time: 8:00 am to 5:00 pm.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Bethesda, 8120 Wisconsin Ave, Bethesda, MD 20814.

Contact Person: Helen R. Sunshine, PHD, Chief, Office of Scientific Review, National Institute of General Medical Sciences, NIH Natcher Building, Room 1AS–13, Bethesda, MD 20892, 301–594–2881.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 22, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8095 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Mental Health; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Mental Health Special Emphasis Panel.

Date: March 31, 2000.

Time: 1:30 p.m. to 2:30 p.m.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Michael J. Moody, Scientific Review Administrator, Division of Extramural Activities, National Institute of Mental Health, NIH, Neuroscience Center, 6001 Executive Blvd.. Room 6154, MSC 9609, Bethesda, MD 20892–9609, 301–443–3367.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.242, Mental Health Research Grants; 93.281, Scientist Development Award, Scientist Development Award for Clinicians, and Research Scientist Award; 93.282, Mental Health National Research Service Awards for Research Training, National Institutes of Health, HHS)

Dated: March 22, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8098 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Molecular Pharmacology.

Date: March 29–31, 2000.

Time: 8 pm to 12 pm.

Agenda: To review and evaluate grant applications.

Place: The Inn at Penn Hotel, 3600 Sanson Street, Philadelphia, PA 19104.

Contact Person: Arthur L. Zachary, Phd, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–2886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, Molecular Pharmacology.

Date: April 3–5, 2000.

Time: 8:00 PM to 12:00 PM.

Agenda: To review and evaluate grant applications.

Place: Lyden Gardens Hotel, 215 E. 64th Street, New York, NY 10021.

Contact Person: Arthur L. Zachary, Phd, Scientific Review Administrator, Office of Scientific Review, NIGMS, Natcher Building, Room 1AS–19, Bethesda, MD 20892, (301) 594–2886.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 22, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8099 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 10, 2000.

Time: 11:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Sooja K. Kim, PHD, Chief, Nutritional and Metabolic Sciences Initial Review Group, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6158, MSC 7892, Bethesda, MD 20892, (301) 435–1780.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 11, 2000.

Time: 8:30 AM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: Ramada Inn,1775 Rockville Pike, Rockville, Md 20852.

Contact Person: Joe Marwah, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5188, MSC 7846, Bethesda, MD 20892, (301) 435–1253.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 12, 2000.

Time: 1:00 PM to 2:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Zakir Bengali, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5150, MSC 7842, Bethesda, MD 20892, (301) 435–1742.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 13, 2000.

Time: 2:30 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Martin Slater, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 13, 2000.

Time: 4:00 PM to 7:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 2000.

Time: 11:00 AM to 1:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Larry Pinkus, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 2000.

Time: 2:00 PM to 2:45 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Larry Pinkus, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802 Bethesda, MD 20892, (301) 435–1214.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 14, 2000.

Time: 3:05 AM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Larry Pinkus, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4132, MSC 7802, Bethesda, MD 20892, (301) 435–1214.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93,333, Clinical Research, 93.333, 93,337, 93,393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8092 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 27, 2000.

Time: 3:00 pm to 4:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 28, 2000.

Time: 2:00 pm to 3:30 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Timothy J. Henry, PHD. Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4180, MSC 7808, Bethesda, MD 20892, (301) 435–1147.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 3, 2000.

Time: 4:00 pm to 7:00 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Jo Pelham, BA, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4106, MSC 7814, Bethesda, MD 20892, (301) 435–1786.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 24, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8094 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: March 24, 2000.

Time: 3 pm to 4 pm.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Syed Quadri, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4144, MSC 7804, Bethesda, MD 20892, (301) 435–1211.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 22, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8096 Filed 3–31–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 4, 2000.

Time: 2:30 PM to 3:30 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: Martin Slater, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 5, 2000.

Time: 3:00 PM to 4:00 PM.

Agenda: To review and evaluate grant applications.

Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).

Contact Person: George M. Barnas, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 2182, MSC 7818, Bethesda, MD 20892, (301) 435–0696.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: Center for Scientific Review Special Emphasis Panel.

Date: April 6, 2000.

Time: 11:00 AM to 1:00 PM.
Agenda: To provide concept review of proposed grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–0681.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 6, 2000.
Time: 1:00 PM to 2:00 PM.
Agenda: To provide concept review of proposed grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference call).
Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–0681.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 7, 2000.
Time: 8:00 AM to 9:00 AM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: David M. Monsees, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 7, 2000.
Time: 8:30 AM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Ave, Chase Room, Chevy Chase, MD 20815.
Contact Person: Michael A. Lang, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5210, MSC 7850, Bethesda, MD 20892, (301) 435–1265.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 7, 2000.
Time: 9:00 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892.
Contact Person: David M. Monsees, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3199, MSC 7770, Bethesda, MD 20892, (301) 435–0684, monseesd@drg.nih.gov.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 10, 2000.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 28092, (Telephone Conference Call).
Contact Person: Martin Slater, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4184, MSC 7808, Bethesda, MD 20892, (301) 435–1149.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 11, 2000.
Time: 8:30 AM to 6:00 PM.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Bernard F. Driscoll, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5158, MSC 7844, Bethesda, MD 20892, (301) 435–1242.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 11, 2000.
Time: 11:30 AM to 1:30 PM.
Agenda: To provide concept review of proposed grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 28092, (Telephone Conference Call).
Contact Person: Mary Sue Krause, MED, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 3168, MSC 7848, Bethesda, MD 20892, (301) 435–0681.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 11, 2000.
Time: 1:00 PM to 2:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 28092, (Telephone Conference Call).
Contact Person: Ranga V. Srinivas, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 11, 2000.
Time: 1:00 PM to 2:45 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Anthony C. Chung, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4128, MSC 7802, Bethesda, MD 20892, (301) 435–1850.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 11, 2000.
Time: 1:30 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Richard Marcus, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5168, MSC 7844, Bethesda, MD 20892, (301) 435–1245, richard.marcus@nih.gov.
Name of Committee: Center for Scientific Review Special Emphasis Panel, VISB Study Section (02).
Date: April 12, 2000.
Time: 8:00 AM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Leonard Jakubczak, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5172, MSC 7844, Bethesda, MD 20892, (301) 435–1247.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 12, 2000.
Time: 1:30 PM to 3:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Ranga V. Srinivas, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5108, MSC 7852, Bethesda, MD 20892, (301) 435–1167, srinivar@csr.nih.gov.
Name of Committee: Center for Scientific Review Special Emphasis Panel.
Date: April 12, 2000.
Time: 2:00 PM to 5:00 PM.
Agenda: To review and evaluate grant applications.
Place: NIH, Rockledge 2, Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: Marcia Litwack, PHD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4150, MSC 7804, Bethesda, MD 20892, (301) 435–1719.
(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: March 23, 2000.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 00–8102 Filed 3–31–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Prospective Grant of Exclusive License: Development of Instruments for Diagnostic and Surgical Applications Based on Spectroscopic and Hyperspectral Imaging Techniques

AGENCY: National Institutes of Health, Public Health Service, DHHS.
ACTION: Notice.

SUMMARY: This is notice, in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i), that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license worldwide to practice the invention embodied in: U.S. Patent Application Serial No. 09/182,898, entitled "Multispectral/Hyperspectral Medical Instrument", filed October 30, 1998; U.S. Patent Application Serial No. 09/389,342 entitled "Infrared Balloon Probe" filed September 2, 1999, and US Provisional Patent Application SN 60/142,068, entitled "Dual Modality Imaging Apparatus", filed July 2, 1999, to HyperMed, Inc. having a place of business in Chestnut Hill, Massachusetts. The United States of America is an assignee to the patent rights of these inventions.
The contemplated exclusive license may be limited to the development of diagnostic instruments, devices, compositions and methods, to be used for diagnostics based on the spectral differentiation between healthy and unhealthy/damaged tissue.
DATES: Only written comments and/or applications for a license which are received by the NIH Office of Technology Transfer on or before July 3, 2000 will be considered.
ADDRESSES: Requests for a copy of the patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Uri Reichman, Ph.D., Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, 6011 Executive Boulevard, Suite 325, Rockville, MD 20852–3804; Telephone: (301) 496–7056, ext. 240; Facsimile: (301) 402–0220; E-mail: reichmau@od.nih.gov. A signed Confidential Disclosure Agreement will be required to receive copies of the patent application.
SUPPLEMENTARY INFORMATION: The three patent applications describe medical imaging technologies and related instrumentation and their application for surgical "real time" diagnostics. The inventions are based on the difference of spectral images between normal and damaged (*e.g.* ischemic or cancerous) tissues due to chemical differences between them. Patent Application 09/182,898 describes a surgical and diagnostic camera, based on visible and near infrared hyperspectral imaging technique. This instrument can be used during heart surgery to distinguish between ischemic and normal tissues, or for cancer surgery applications to determine tumor margins during resective surgery. Patent Application 09/389,342 describes a device for use in the field of medical endoscopy. It is a fiber-optics imaging device based on a balloon probe that has been adapted to obtain spectroscopic information in the infrared spectral region. It can be used, for example, for the determination of the chemical composition of arterial plaques in situ. Patent application 60/142,068 describes a Dual Modality Imaging Apparatus and method comprising means of fusing thermal image and hyperspectral data. While the hyperspectral data provides information about tissue status and viability, thermal imaging provides information related to blood flow.
The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 90 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.
Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Comments and objections submitted in response to this notice will not be made available for public inspection, and, to the extent permitted by law, will not be released under the Freedom of Information Act, 5 U.S.C. 522.

Dated: March 24, 2000.
Jack Spiege,
Director, Division of Technology, Development and Transfer, Office of Technology Transfer.
[FR Doc. 00–8105 Filed 3–31–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Historical Analysis of Individual Indian Money Accounts

AGENCY: Bureau of Indian Affairs (BIA), Interior.
ACTION: Notice of public meetings and opportunity for comment.

SUMMARY: The Department of the Interior manages property it holds in trust for individual Indians and maintains revenue, in Individual Indian Monies (IIM) accounts, that accrues to individuals holding an interest in trust lands. The Department recognizes that as a result of past weaknesses in its accounting and information systems, IIM account holders have not always had sufficient information to be able to ascertain whether income from their trust assets was properly credited, maintained, and distributed to and from their IIM accounts. As directed by Congress, the Department is continuing development of a reconciliation process to evaluate the reliability of past account activity. This notice initiates an information gathering process with IIM account beneficiaries, and the public, to comply with Congressional directives to determine the most reasonable methods for providing accountholders with information to evaluate their accounts and to determine whether there are discrepancies due to past management practices.
DATES: Written comments will be collected until June 30, 2000. The Department will also conduct public meetings to collect views, as outlined in this notice, at the following dates and locations:

Navajo Region

Western Agency

April 24, 2000; 10:00 A.M.; Western Agency, BIA, Building #407, Warrior Drive, Tuba City, Arizona

Chinle Agency

April 25, 2000; 10:00 A.M.; Chinle Agency, BIA, Bldg #136, Navajo Route 7, Chinle, Arizona

Fort Defiance Agency

April 26, 2000; 10:00 AM; Fort Defiance Agency, BIA, Bldg #40, Blue Canyon Road, Fort Defiance, Arizona

Shiprock Agency

April 27, 2000; 10:00 AM; Ship Rock Agency, BIA, N Highway 666, Shiprock, New Mexico

Eastern Navajo Agency

April 28, 2000; 10:00 AM; Eastern Navajo Agency, BIA, Bldg #222, Navajo Route 9, Crownpoint, New Mexico

Western Region

Colorado River Agency

April 25, 2000; 5:00 PM; Colorado River Agency Conference Room, Agency Road, Building 3, Parker, Arizona

Fort Apache Agency

April 25, 2000; 9:00 AM; Fort Apache Agency Annex Conference Room, State Route 73, West Elm Street, Whiteriver, Arizona

Fort Yuma Agency

April 29, 2000; 2:00 PM; Cocopah Tribal Chambers, County 15, Avenue G, Somerton, Arizona

Fort Yuma Agency

April 29, 2000; 10:00 AM; Quechan Community Center, 604 Picacho Road, Winterhaven, California

Hopi Agency

April 27, 2000; 10:00 AM; Hopi Agency Conference Room, Highway 264, One Main Street, Keams Canyon, Arizona

Papago Agency

April 29, 2000; 9:00 AM; Tohono O'odham Legislative Council, Main Street, (Downtown Sells), South of State Route 86, Sells Arizona

Pima Agency

May 3, 2000; 9:00 AM; Gila River Sprung (White Tent), 5550 W. Wild Horse Pass (Casino) I–10 and Maricopa Road, Chandler, Arizona

Salt River Agency

May 6, 2000; 10:00 AM; Salt River Community Building, 1880 North Longmore, Scottsdale, Arizona

San Carlos Agency

May 3, 2000; 9:00 AM; Apache Gold Casino, Highway 70—5 miles east of Globe, Globe, Arizona

Truxton Agency

April 27, 2000; 1:00 PM; Truxton Canon Field Office Conference Room, 13067 East Highway 66, Valentine, Arizona

Eastern & Western Nevada Agencies

May 6, 2000; 9:00 AM; Atlantis Hotel, 3500 S Virginia Street, Reno, Nevada

Southern Paiute Field Station

April 24, 2000; 8:00 AM; Southern Paiute Field Office Conference Room, 180 North 200 E., Suite 111, St. George, Utah

Uintah & Ouray Agency

May 2, 2000; 9:00 AM; Ute Tribal Auditorium, 988 South 7500 E., Fort Duchesne, Utah

Rocky Mountain Region

Blackfeet Agency

May 1, 2000; 9:00 AM; (A–F)
May 2, 2000; 9:00 AM; (G–N)
May 3, 2000; 9:00 AM; (O–T)
May 4, 2000; 9:00 AM; (U–Z); Blackfeet Agency, BIA, 531 SE Boundary St, Browning, MT

Crow Agency

May 2, 2000; 10:00 AM; Crow Agency (Multi-Purpose Building), Frontage/ Fairground Road, Crow Agency, MT

Fort Belknap Agency

April 25, 2000; 1:00 PM; Ft. Belknap Agency (Fort Belknap Industries Bldg), Main Street/Airport Road, Fort Belknap, MT

Fort Peck Agency

May 4, 2000; 6:00 PM; Tribal Cultural Center, 211 Tribal Street, Poplar, MT

Northern Cheyenee Agency

April 26, 2000; 4:00 PM; Blessed Sacrament Catholic Church Basement, Cheynenne Ave., Lame Deer, MT

Wind River Agency

April 25, 2000; 9:00 AM; Rocky Mountain Hall Gymnasium, 15 Northfork Road, Fort Washakie, WY

Rocky Boy's Agency

May 3, 2000; 6:00 PM; Rocky Boy's Community Center, RR1 Box 542, Box Elder, MT

Northwest Region

Fort Hall Agency

May 4, 2000; 4:00 PM; Fort Hall Housing Authority Conference Room, 161 War Dance Circle, Fort Hall, ID

Colville Agency

May 6, 2000; 9:00 AM; Nespelem Community Center, Nespelem, WA

Flathead Agency

April 28, 2000; 9:00 AM; Tribal Council Chambers, Highway 93 West, Pablo, MT

Yakama Agency

May 3, 2000; 6:00 PM; Eagle Seelatsee Auditorium, Yakama Nation Headquarters Building, Fort Road, Toppenish, WA

Warm Springs Agency

April 26, 2000; 2:00 PM; Forestry Conference Room, Building #4430, Upper Dry Creek Road, Warm Springs, OR

Olympic Peninsula Agency

May 1, 2000; 1:00 PM; Nordic Inn—Convention Center, 1700 S. Boone, Aberdeen, WA

Metlakatla Field Office

May 1, 2000; 8:30 AM; Double Tree, 16500 S. Center Parkway, Seattle, WA

Puget Sound Agency

April 24, 2000; 1:00 PM; Cascadia Inn, 2800 Pacific Avenue, Everett, WA

Makah Field Office

May 1, 2000; 7:00 PM; Makah Community Hall, Neah Bay, WA

Umatilla Agency

May 4, 2000; 12:30 PM; Yellow Hawk Clinic, 73265 Confederated Way, Pendleton, OR

Northern Idaho Agency

May 9, 2000; 9:00 AM; Nez Perce Tribal Headquarters, Pineewau Community Building, Lapwai, ID

Taholah Field Office

April 26, 2000; 4:00 PM; Taholah Community Center, Taholah, WA

Spokane Agency

May 2, 2000; 5:00 PM; Spokane Tribal Community Center Gym, Wellpinit, WA

Northwest Regional Office

April 27, 2000; 9:00 AM; BIA Regional Headquarters, Main Auditorium, 911 N.E. 11th Avenue, Portland, OR

Southern Plains Region

Anadarko Agency

May 3, 2000; 9:00 AM; Anadarko High School Auditorium, U.S. Highway 62 & Warrior Drive, Anadarko, OK

Pawnee Agency

April 26, 2000; 9:00 AM; International Trade Center—OSU Campus Exhibit Hall, 105 Watkins Center, Stillwater, OK

Horton Agency

May 5, 2000; 10:00 AM; Horton Field Office Conference Room, Horton, KA

Concho Field Office

May 3, 2000; 1:00 PM; Redlands Community College Conference Center, 1300 South Country Club Road, El Reno, OK

Southern Plains Regional Office

April 27, 2000; 9:00 AM; Clarion Hotel on Meridian, 737 South Meridian, Oklahoma City, OK

Midwest Region

Great Lakes Agency

April 26, 2000; 5:00 PM; Northern Great Lakes Visitor Center, 2–88 County Trump 6, Ashland, WI

Michigan Agency

April 28, 2000; 1:00 PM; BIA Agency Office, 2901 Point 5 I–75 Business Spur, Sault Ste Marie, MI

Minnesota Agency

April 29, 2000; 1:00 PM; Palace Casino/ Hotel, 6280 Upper Cass Frontage RD NW, Cass Lake, MN

Pacific Region

Southern California Agency

April 27, 2000; 10:00 AM; Best Western Escondido Hotel, 100 Seven Oaks Road, Escondido, CA

Northern California Agency

April 27, 2000; 10:00 AM; Golden Bear Casino, 156 Klamath Beach Road, Klamath, CA

Central California Agency

May 1, 2000; 10:00 AM; Heritage Hotel, 1280 Tribute Road, Sacramento, CA

Palm Springs Field Office

May 5, 2000; 10:00 AM; Spa Hotel and Casino, 100 N. Indian Canyon Drive, Palm Springs, CA

Eastern Oklahoma Regional Office

Talihina Agency

April 24, 2000; 1:00 PM; Talihina School Theater, 600 1st Street, Talihina, OK

Chickasaw Agency

April 25, 2000; 9:00 AM; Chicasaw Nation Bingo Hall, 1500 North Country Club Road, Ada, OK

Okmulgee Field Office

April 26, 2000; 9:30 AM; Creek Nation Complex, Former Elderly Citizens Cafeteria, Okmulgee, OK

Wewoka Agency

April 27, 2000; 9:00 AM; Mekusukey Mission Council House, Seminole, OK

Regional Office

May 1, 2000; 9:00 AM; Cherokee Nation Complex, Tribal Council Chambers, Tahlequah, OK

Osage Agency

May 2, 2000; 9:00 AM; American Legion Hall, 1449 W. Main Street, Pawhuska, OK

Miami Field Office

May 2, 2000; 6:00 PM; Miami Tribe of OK Cafeteria, 202 South 8 Tribes Trail Road, Miami, OK

Alaska Regional Office

Anchorage Agency

May 1, 2000; 9:00 AM; Anchorage Agency Conference Room, 1675 C Street, Anchorage, AK

Fairbanks Agency

May 2, 2000; 9:00 AM; Fairbanks Agency Conference Room, 1012 12th Ave., Fairbanks, AK

Great Plains Region

Cheyenne River Agency

April 27, 2000; 1:00 PM; Cheyenne Eagle Butte High School Auditorium, 2006 Main, Eagle Butte, SD

Crow Creek Agency

May 3, 2000; 1:00 PM; Crow Creek Sioux Tribal Gym, Highway 47, Fort Thompson, SD

Fort Berthold Agency

April 28, 2000; 1:00 PM; Civic Center, 103 Soo Place, New Town, ND

Fort Totten Agency

May 2, 2000; 11:00 AM; Fort Totten Community Center-Tribal Conference Rm, Main Street, Fort Totten, ND

Lower Brule Agency

April 26, 2000; 1:00 PM; Golden Buffalo Convention Center, 321 Crazy Horse St, Lower Brule, SD

Pine Ridge Agency

May 3, 2000; 10:00 AM; Billy Mills Hall, Highway 18 and 279, Pine Ridge, SD

Rosebud Agency

April 28, 2000; 1:00 PM; St. Thomas Hall, U.S. Highway 18, Mission, SD

Sisseton Agency

April 24, 2000; 10:00 AM; Community Gym, Veterans Memorial Drive, Agency Village, SD

Standing Rock Agency

May 4, 2000; 9:00 AM; Fort Yates High School Gym, U.S. Highway 1806, Fort Yates, ND

Turtle Mountain Agency

May 3, 2000; 1:00 PM; Turtle Mountain Casino—Sprung Building, Highway 5, Belcourt, ND

Winnebago Agency

May 3, 2000; 9:00 AM; Blackhawk Community Center, Highway 77, Winnebago, NE

May 3, 2000; 1:00 PM; Gilpin Building, Tribal Avenue, Macy, NE
May 4, 2000; 9:00 AM; Frazier Memorial Building, David Frazier Avenue, Sanatee, NE

Yankton Agency

April 25, 2000; 1:00 PM; Yankton Agency—Conference Room, 29775 South Main St, Wagner, SD

Eastern Region

Syracuse Field Office

April 29, 2000; 10:00 AM; Plummer Building, 3582 Center Rd, Salamanca, NY

Albuquerque Region

Northern Pueblos Agency

April 25, 2000; 10:00 AM; Northern Pueblos Agency Office, San Juan Pueblo, NM

Southern Ute Agency

May 3, 2000; 9:00 AM; Rolling Thunder Hall, 14826 Hwy 172 North, Ignacio, CA

Laguna Agency

May 3, 2000; 9:30 AM; Laguna Tribal Auditorium, I–40 West—Exit 114, Pueblo of Laguna, NM

Southern Pueblos Agency

May 3, 2000; 9:30 AM; Laguna Tribal Auditorium, I–40 West—Exit 114, Pueblo of Laguna, NM

Mescalero Agency

April 26, 2000; 10:00 AM; Carrizo Community Center, Carrizo Canyon Road, Mescalero, NM

Ute Mountain Ute Agency

April 24, 2000; 6:00 PM; Council Chambers, 125 Mike Washroad, Towaoc, CO

ADDRESSES: Written comments or suggestions about the processes that should be undertaken by the Department to meet the stated goals of this notice should be mailed to Bureau of Indian Affairs Office of American Indian Trust, Attention: Director, Loretta Tuell, 1849 C Street, NW, Mail Stop 2472–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Loretta Tuell, Dierector, Office of American Indian Trust, at the above address or by telephone at (202) 208–3338.

SUPPLEMENTARY INFORMATION:

I. Background

Note: Further background information, including historic information on IIM accounts, to aid comments on this notice will be available at these locations prior to the

scheduled meeting times. Please contact your preferred location for further.

Currently, approximately 11 million acres of land are administered in trust by the Secretary of the Interior for the benefit or more than 300,000 individual Indian beneficiaries. In 1997 Departmental auditors estimated approximately $300 million is generated annually from the management of the lands and passes through the IIM accounts. This is a significant expansion since the 1955 GAO Audit report which reported that in 1950 there were only 88,000 IIM accounts and in fiscal year 1955 approximately $66 million was handled within the IIM system. As outlined below, this dramatic growth in beneficiaries since the inception of the IIM system overburdened the existing accounting and distribution systems of the Department. By Congressional mandate, those systems are currently being modernized. However, the Department recognizes, as has the General Accounting Office, that it is not feasible or practicable to re-create past transactions with the same precision that the Department expects the new systems to provide when fully operational.

The Department's obligation to reconcile accounts was initially raised by Congress in the 1987 Supplemental Appropriations Act; and Congress has continued to oversee the development of various options to carry out this obligation. The American Indian Trust Fund Management Reform Act of 1994, 25 U.S.C. 162a. *et seq.*, & 4011, *et seq.*, (the Act or the 1994 Act), anticipates that the Bureau of Indian Affairs will complete a reconciliation of IIM accounts that provides account holders "with a fair and accurate accounting" of trust accounts. 25 U.S.C. 4043. The Act also required the Department account for fund balances and commence "periodic, timely reconciliations to assure the accuracy of accounts." 25 U.S.C. 162a & 4011. The combined effect of these provisions is a requirement to develop a reconciliation process to determine the reliability of account balances. Pursuant to Congress' mandate in the Act, the Department has been designing and installing new accounting and trust management systems to modernize and improve the administration of IIM accounts. The Department believes the new systems and procedures will provide account holders with accurate information about current transactions that affect the balances of their account.

In 1887, Congress enacted the Indian General Allotment Act of 1887, 24 Stat. 388. The Allotment Act authorized the President to allot portions of reservation land to individual Indians. Title to the allotted land was to remain with the United States in trust for at least 25 years, after which it was to be conveyed in fee to the Indian beneficiary. The Allotment Act resulted in a loss of over 90 million acres of Indian-held land, primarily through the distribution to non-Indians of reservation lands remaining after allotment. Land also passed out of the hands of many Indian allottees who received fee title after 25 years through forced sales and the operation of state intestacy laws.

In 1934, Congress enacted the Indian Reorganization Act to protect (and enhance, when possible) the remaining land base of Indian tribes and their members and to permit the tribes to engage in self-government. *See* 25 U.S.C. 452. The Reorganization Act ended the practice of allotment and indefinitely extended the trust period for allotments that had already been made.

Under the Indian General Allotment Act of 1887, 24 Stat. 388, as amended, the Department of the Interior has managed land held in trust for individual Indians which often generates revenue for the beneficial owners. Generally, the primary mechanism for distributing money earned on allotted lands to the beneficiaries has been the IIM account. Historically, funds collected from the use of allotted lands were deposited in either the Federal Treasury or private banks. The funds were then divided based on each individual's proportional interest in the land generating the funds. Each individual's share of the funds was then placed in an IIM account, where it was held until distribution. With certain exceptions, the income was then distributed to the account holder (beneficiary) by a bonded disbursing officer. Funds also have been derived from per capita payments from the Indian Claims Commission, U.S. Court of Claims, and appropriations from legislative claims settlements and were distributed in a similar manner.

As interests in individual allotments continued to pass to subsequent generations, the number of owners of an individual allotment multiplied to the extent that some of the 40, 80, or 160 acre allotments which originally had one owner, today may have hundreds, or even more. While the amount of money generated has increased significantly since the inception of the IIM system, the number of beneficiary accounts has increased at a much greater rate. Today, many of these interests, having been passed through many generations, may entitle the owner to such a small portion of the proceeds generated that the beneficiary receives only pennies a year.

After the passage of the Act, the Department's Special Trustee conducted an examination of the IIM accounts in order to produce the Strategic Plan required by the Act. The Strategic Plan identified a number of problems with the historic management of the accounts. For example, since the record keeping and distribution of money was historically handled at the local level, multiple accounts could be formed if an individual either owned land in several areas or moved and was serviced at a different BIA office. Moreover, the Department's systems for managing IIM accounts have not kept pace with systems available to the private sector. These problems compounded each other and in the end overwhelmed the system such that the Department has been unable to provide many beneficiaries with basic information such as the source of funds, gains and losses, and periodic statements of account performance. As a result, many beneficiaries have been unable to fairly evaluate the management of their accounts to verify they are receiving their proper share of the income collected through the Department's management of their land interests.

In response to accountholder demands and Congressional findings that the systems must be overhauled, Congress enacted The American Indian Trust Fund Management Reform Act of 1994, PL 103–412, which prescribed specific information that would henceforth be required to be provided to individuals about the Department's management of their accounts. The Department believes the systems currently being developed and implemented will comply with the mandates of the Act.

In 1994 Congress, through passage of the Act, mandated a series of specific reforms to the ongoing management of Indian trust funds. *See* for example, 25 U.S.C. 162a. Once the systems are in place to carry out the duties specified in the Act on an ongoing basis, the Department will undertake a process, likely with the aid of the new systems, to provide required information on accounts back to October 25, 1994. As this will involve different requirements and levels of available information, this period will be addressed within this separate process, not necessarily the one that will be developed from this notice.

Although the requirements of the Act are primarily forward-looking, some of the prospective requirements such as periodic reconciliations and determining accurate cash balances necessarily require some level of

historical investigation. For example, Department audits have revealed discrepancies between the ledges of the Department and the Department of the Treasury, the Department will have to continue work on resolving these discrepancies. The implementation of new systems, in and of themselves, will not provide an analysis of transaction which took place before the passage of the Act. To address investigation of historical discrepancies, the Act built on the Department's process for historically reconciling Tribal Trust Fund accounts, requiring the Special Trustee to "monitor" the process and setting a deadline for its completion. The Act required the Secretary to submit a "reconciliation report" to the relevant congressional committees identifying a balance reconciled as of September 30, 1995 for each Tribal Trust Fund account, the methodology used, attestations of account holders as to whether they accepted the balances as reconciled and if not, a statement outlining efforts the Secretary will undertake to resolve the dispute. *See* 25 U.S.C. 4043 & 4044. Reconsilitation reports were submitted in January of 1996.

In contrast to the Tribal trust funds, for which Congress provided a framework for applying the Department's reconciliation process, the Act contains no such guidance for the reconciliation of IIM accounts. At the time the Act was enacted, the Department had not identified a satisfactory methodology for historical IIM reconciliation, given the availability and condition of the records and the high cost of gathering and analyzing relevant documents. The Act simply provided that an IIM reconciliation process would be "monitored" by the Special Trustee to ensure a "fair and accurate accounting" is provided to accountholders. 25 U.S.C. 4043. While Congress did not specify the nature of the remedy, the Act does recognize the existence of both the historical problems and ongoing attempts to devise an approach to resolving them. Given the acknowledged problems with past account management systems, and the 1994 Act's intent to resolve the account management deficiencies, the Department wishes to address the fact that these deficiencies may have resulted in accountholder losses through the development of a fair, reasonable, and practicable solution. Because the Act does not provide the Department with guidance on what type of process should be used to provide beneficiaries with information about their accounts' histories, the Department believes Congress left the initial determination of how, and to what extent, it would achieve an accounting or reconciliation of IIM accounts to the Department.

In 1996, the *Cobell* v. *Babbitt* litigation was filed in the U.S. District Court for the District of Columbia, asserting beneficiaries were due an accounting of their funds. The scope and nature of any such accounting has not yet been fully addressed in the case but the Court has made it clear that it lacks jurisdiction to award damages for losses beneficiaries may have incurred. *See Cobell* v. *Babbitt*, No. 1:96CV01285, slip op. at 55 (Dec. 21, 1999). In addition, because many beneficiaries have very small account balances or little historical activity, the Department believes it would best serve the interests of the beneficiaries and the United States to develop a methodology to foster compensation without the necessity of case-by-case litigation. Therefore, the Department now proposes beginning an information gathering process with beneficiaries to weigh the costs, benefits, and feasibility or alternative approaches to give IIM account holders reasonable confidence that income from their trust assets was properly credited, maintained, and distributed to and from their IIM accounts before October 25, 1994. In addition, because the Department believes that it is in the best interests of most, if not all beneficiaries to develop a process that not only provides assurance that current balances are reliable, but also provides for a final resolution to past discrepancies discovered, the Department also intends to explore approaches to fairly compensate beneficiaries and finally resolve discrepancies.

The Department notes that, although the goals of this process go beyond the remedies available in the *Cobell* case, the Court has pending before it issues related to the scope and nature of an accounting due beneficiaries. The Department intends to keep the Court apprised of the progress on this process. The Department recognizes that future decisions by the Court may affect this process.

II. Goals

Pursuant to this obligation, this notice is intended to initiate a process with beneficiaries and the public to gather information about available options to enable the Department to determine the best process to meet the following goals:

(1) Develop a methodology, consistent with Congressional directives, to examine past account activity and discover information appropriate to enable beneficiaries and the Department to evaluate whether income from their trust assets was properly credited, maintained, and distributed to and from their IIM accounts before October 25, 1994;

(2) Explore approaches to fairly compensate beneficiaries and finally resolve discrepancies.

This process is focused on developing a general methodology to investigate IIM account activity in order to provide reasonable information to account holders. This process will not, for example, address allegations of mismanagement, or other allegations of taking, of the underlying property interests. Although the methodology selected may ultimately result in a procedure which includes bringing individualized grievances related to lost income, these grievances will not be addressed within the process outlined in this notice.

III. Factors To Consider in Evaluating Options

Although the Department intends to consider the widest possible range of options for meeting the goals stated above, the Department will be guided by a number of factors in evaluating the reasonableness of each option. Each approach would require some tradeoff among the level of precision of account information provided to beneficiaries, the cost of obtaining and providing information, the impact on BIA's and OST's other responsibilities, and time needed to develop a basis for compensation. It is important that these tradeoffs be considered in evaluating the various options.

In addition, it is important to consider what has been proposed and rejected in the past and what the Department has learned from studying the accounts. Past proposals to perform IIM reconciliation have been dismissed by both Indian groups and Congress as being too expensive for the limited information produced. From 1988 to 1994, the Department, with the aid of Arthur Andersen, investigated the possibility of performing a reconciliation that would develop information on accounts without regard to the size of the account or transaction. Many of these proposals were dismissed by Congress, the Department, and the Intertribal Monitoring Association ("ITMA") as not being worth the cost. For example, in 1995 Congress declined to fund IIM reconciliation tasks and the Appropriations Committee instructed the Department to, "recommend alternative, less costly approaches to the reconciliation and clarify the implications of not reconciling [IIM]

accounts." H.R. Rep. No. 104–173, at 55. ITMA similarly advocated finding alternatives that will discover the largest discrepancies at the least cost. This experience indicates that the Department should focus on methods that discover discrepancies in the areas that are most reasonably calculated to have had significant problems in the past.

Any approach ultimately selected must also provide a final resolution for both the Department and beneficiaries with regard to the pre-1994 period that is necessary for the Department to fully correct the management of the IIM system into the future. While the level of finality needed may vary according to such issues as the level of precision achieved, it is important to note that a primary consideration for any process selected must be to end uncertainty and achieve finality as to past account activity.

It may well be that accountholders will have differing views on what is necessary to provide them with a satisfactory "accounting." Those with larger accounts may be more interested in an option which offers great precision, even though achieving the desired level of precision will take a long time and substantial resources. In contrast, accountholders with smaller accounts—those with less than $100 in income per year, for example—may be satisfied with a methodology that does not yield a precise result but that leads to a fast result with certain assumptions built in to compensate for the reduced precision. As discussed more fully below, it may not be necessary to use the same methodology for all accountholders. Distinctions among accounts may be made based, for example, on the size of the account or the nature of the underlying assets owned by the accountholder.

The approach selected must provide accountholders with confidence that they have been treated fairly. The Department is spending in excess of $190 million to clean up the trust fund accounts, to install new systems to administer trust resources and trust funds, and to train Departmental officials in meeting their obligations. While the Department is confident it will be able to meet its obligations for the future, it is equally important that this process develop a result that will satisfy accountholders as to the past.

Another factor to be considered is the cost of the process. While achieving the goals of this notice is likely to be expensive regardless of which approach is selected, there is a very large cost range within the various options—from millions of dollars for the sampling or settlement approach to hundreds of millions or more for a traditional transaction-by-transaction reconciliation for all accounts. As an example, the Department's current estimates are that it could cost over $15 million just to locate and organize all documents associated with the transactions of the five named plaintiffs (and 31 related individuals) in the *Cobell* litigation. Using this estimate as a guide, it is reasonable to conclude that merely collecting and organizing—but not analyzing—documents for the approximately 300,000 current accountholders would cost hundreds of millions of dollars.

Closely associated with the overall cost of the process are the cost/benefit considerations of the options. This factor may not be as relevant for large accounts through which tens or even hundreds of thousands of dollars pass each year. This issue more likely arises with respect to the small accounts. If it costs hundreds of dollars, or even more, to undertake a particular analysis for each account, is it cost effective and reasonable to do so for an account that generates $25 or less per year?

The amount of time that a particular process may take is also a consideration. One option, a transaction-by-transaction reconciliation, for example, would doubtless take many years to complete while others, such as a sampling or settlement process, would take considerably less time. Some accountholders may find that they can achieve a sufficient level of certainty to assess past discrepancies with much less information than others may require, particularly if their account has had little activity or they can reasonably determine their interest in the property was unlikely to produce significant income. In such a case, the accountholder may wish to expedite the process in order to receive fair compensation and resolve this issue. Moreover, a process that takes many years to complete will continue to consume the finite resources of the Bureau which accountholders may believe should be better expended on other programs of benefit to Indian people.

Indeed, the Bureau has broad mandates and responsibilities, including programs of importance to many aspects of the lives of individual Indians and Tribes. These include programs relating to education, law enforcement, probate, realty and trust asset administration, and stewardship of the environment. Regardless of which methodology is employed, it will require the substantial attention of Bureau employees and expenditure of significant amounts of money. These expenditures likely do not fit within the current budget estimates and staffing of the Department, and therefore the Department will have to seek new funds from Congress to undertake any process finally selected.

IV. Examples of Alternative Approaches

The following alternative approaches are offered merely as examples to illustrate the range of options the Department could consider. This list is not exhaustive, and other constructive alternatives are invited. As previously noted, the Department recognizes it is possible that no single alternative will serve the interests of all types of accountholders. Accordingly, an approach could be designed that integrates principles from various alternatives to provide a combined methodology depending on the characteristics of the accounts, including, size of the account, region of the country, and nature of the underlying assets producing income for the account.

A. Transaction-by-Transaction Reconciliation

The most precise and extensive information possible would be developed by attempting to undertake a transaction-by-transaction reconstruction of each account. This would involve attempting to research all transactions that have occurred in each account in order to try to locate documents which could demonstrate each transaction was correct and then applying appropriate verification procedures to the reconstruction. This would be the most time consuming and expensive approach. For example, the Department's experience in the *Cobell* litigation suggests that researching and cataloging the millions of documents that would be required would very likely cost hundreds of millions of dollars and take many years. Furthermore, the reconciliation of over one thousand Tribal accounts in the early 1990's consumed $20 million and left the final amounts still in question due to missing documents and other difficulties encountered in the reconciliation process. Given the enormous scope and costs of an account-by-account, transaction-by-transaction reconstruction, it is unlikely to expect that the Congress would provide the Department with the staggering appropriations needed to fund such a process.

B. Limited Reconciliation

Another approach could be to perform a more limited reconciliation for a fixed period of time which would allow some reasonable conclusions to be drawn which could then be applied to the remaining historical period. This is similar to the approach taken by Arthur Andersen for the Tribal reconciliation project. Applying this approach to the IIM accounts would include a search for documentation to confirm data that was contained in the electronic systems used from approximately the mid-1980's to the mid-1999's and develop an error rate based on that comparison. This error rate could then be used to estimate whether accountholders had experienced losses and to arrive at a formula for compensation. Although this would be less expensive than a search for all transaction documents, there would still be significant costs associated with this process due to the fact that it involves reconstructing accounts for a particular period of time through extensive research (Arthur Anderson estimated the cost of this approach for the IIM accounts as somewhere between $108 million and $281 million).

In 1995, the Inter-Tribal Monitoring Association (ITMA) voiced their opposition to the Arthur Andersen limited reconciliation approach and proposed a limited reconciliation that did not involve reconciling transactions in IIM accounts. The ITMA approach included, in part, reconciliation of balances between the IIM subsidiary ledger and the general ledger control account. ITMA advocated focusing on high volume, high dollar activities in active years; not every lease and every property.

C. Sampling

Another approach could involve using statistical sampling to calculate potential losses. One example methodology could be to use a statistically relevant sample of accounts, transactions, or tracts of land to support a reasonable inference about the accuracy of past account transaction activity.

It may also be useful to mix a sampling approach with a more precise transactional analysis based on the general criteria of the likelihood of loss. Under this approach, a sampling methodology could be used for groups of accounts that are unlikely to have many losses (such as accounts which do not have much income) and a more precise, individualized analysis for accounts where the potential for significant loss is greater. For example, a loss amount for accounts with historical annual income of less than $100 may be broadly estimated through sampling, while accounts with annual income over $100,000 may be analyzed on an individual basis. More extensive sampling could be used for accounts in between these ranges.

D. Analysis of Current Account Data

Another approach might be to use data currently collected and tracked electronically on individual accounts to determine if the past level of account activity is consistent. Since the information that is currently tracked is more extensive than the readily available information on the past, this analysis would both provide some context for the historical information and allow some conclusions to be drawn as to its accuracy.

E. Payment Formula

Another approach could be to define a formula to quantify a "rough justice" payment to each accountholder. Such a formula could be based on a variety of factors, including; the amount of money that has flowed through the account each year, the number of years the account has been open, the location of the account, and the type of assets that produced revenue for the account. To counter-balance the lack of precision in this process, the formulas could be weighted to resolve uncertainty in favor of the beneficiary. While this approach lacks precision in determining past losses, the major advantage of this approach is that it is relatively simple to administer, could be done fairly quickly, and would be the least expensive methodology to implement.

VI. Scope of Comments Requested

The Department is soliciting comment on what factors accountholders consider the most important in developing the proper methodology for meeting the goals stated in this notice.

Dated: March 29, 2000.

Kevin Gover,

Assistant Secretary for Indian Affairs.

[FR Doc. 00–8120 Filed 3–31–00; 8:45 am]

BILLING CODE 4310–02–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approval for Amended and Restated Compact.

SUMMARY: Pursuant to Section 11 of the Indian Gaming Regulatory Act of 1988 (IGRA), Pub. L. 100–497, 25 U.S.C. 2710, the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III gaming activities on Indian lands. The Assistant Secretary—Indian Affairs, Department of the Interior, through his delegated authority, has approved the Amended and Restated Compact between the Confederated Tribes of the Umatilla Indian Reservation and the State of Oregon, which was executed on December 27, 1999.

DATES: This action is effective April 3, 2000.

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: March 17, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–8067 Filed 3–31–00; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. 4310–DN–P; MT–060–00–1220–AE–003E]

Closure of Unauthorized Roads Within the BLM Hole-in-the-Wall Recreation Area and Unauthorized Two-track Roads on Adjacent BLM Lands, Upper Missouri National Wild and Scenic River, Chouteau County, Montana

AGENCY: Bureau of Land Management, Lewistown Field Office, Lewistown, Montana.

SUMMARY: Notice is hereby given that unauthorized roads within the Hole-in-the-Wall Recreation Area and on adjacent BLM lands, along the Upper Missouri National Wild and Scenic River in Chouteau County, Montana are hereby closed to all types of motorized vehicles, until this notice is rescinded. The unauthorized closed roads are located on BLM lands in T.24 N., R. 13 E., Section 21, Section 22, Section 23, Section 26, Section 27, Section 28,and Section 33 in Chouteau County, Montana. No off-road motorized travel is allowed on the above listed BLM lands. No motorized vehicles will be allowed to drive through or into the fenced developed recreation area. The main access road to the Hole-in-the-Wall Recreation Area will remain open.

The purpose of these road closures is to prevent soil erosion, spread of

noxious weeds, reduce user conflicts, and to protect BLM recreation improvements and geologic formations in the area. Motorized travel on these closed roads is limited to official administrative, emergency, or law enforcement vehicles only. Use by additional persons, authorized by the BLM Lewistown Field Manager, may be allowed, but must be approved in advance by phone or in writing.

SUPPLEMENTARY INFORMATION: Maps showing the above described area are available at the BLM's Lewistown Field Office for public review. The roads closed under this order will be posted with signs.

The closure is made under the authority of 43 CFR 9268.3 (d)(1)(i,ii,iii,iv,v,) and 8364.1(a). Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 9268.3(c)(2), which includes a fine not to exceed $1,000.00 and/or imprisonment not to exceed 12 months.

EFFECTIVE DATE: These road closures will become effective May 3, 2000, unless substantial and substantive adverse comments are received.

FOR FURTHER INFORMATION CONTACT: Gary Slagel, BLM Assistant Field Office Manager, at 406/538–7461.

Dated: March 22, 2000.

David L. Mari,

Field Manager.

[FR Doc. 00–8125 Filed 3–31–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–07–1430–01; N–60607]

Notice of Realty Action, Lease and Sale of Public Lands for Recreation and Public Purpose (R&PP) Act Application N–60607, Humboldt County, Nevada

SUMMARY: In response to an application from the State of Nevada Department of Transportation for an administration/maintenance facility, the following described land has been identified as suitable for lease and sale and will be classified for lease and sale under the R&PP Act of June 14, 1926, as amended (43 U.S.C. 869, *et seq.*):

Mount Diablo Meridian, Nevada

T. 35 N., R. 37 E., Sec. 10: N½N½S½NE¼, S½NE¼NE¼, NE¼NE¼NE¼, S½NW¼NE¼NE¼, SE¼NW¼NE¼, S½SW¼NW¼NE¼.

Containing approximately 70.00 acres more or less.

The lands are not required for Federal purposes. Disposal is consistent with the Bureau's land use plan for the area and would be in the public's interest.

FOR FURTHER INFORMATION CONTACT: Ken Detweiler, Realty Specialist, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445, telephone (775) 623–1500.

SUPPLEMENTARY INFORMATION: The public lands are being offered to the State of Nevada Department of Transportation for an Administration/Maintenance Facility. The facility would include perimeter fencing, office buildings, vehicle storage areas, utilities including a septic system, storage facilities, fueling facilities and other structures and facilities associated with a typical Nevada Department of Transportation administration/maintenance facility.

The lease and/or patent, when issued will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States pursuant to the Act of August 30, 1890 (43 U.S.C. 945).

2. All mineral deposits in the lands so patented, and to it, or persons authorized by it, the right to prospect for, mine, and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. Those rights for buried fiber optic cable purposes granted to Nevada Bell by Right-of-way CC–08790.

2. Those rights for highway purposes granted to the State of Nevada, Department of Transportation by Right-of-way CC–020742.

3. Those rights for highway purposes granted to the State of Nevada, Department of Transportation by Right-of-way N–3397.

4. Those rights for an access road granted to the Humboldt County, Board of Commissioner by Right-of-way N–48877.

5. An easement 30 feet in width along the south boundary of the N½N½S½NE¼, for road and public utility purposes to insure continued ingress and egress to adjacent lands.

Since the property has been developed, the lease and patent will contain a solid waste/hazardous substances(s) statement indemnifying the United States. Also, since hazardous substances may be stored on the parcel, the patent will contain a list of the hazardous substances and their period of storage on the parcel in compliance with requirements established by section 120(n) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), as amended by the Superfund Amendments & Reauthorization Act (SARA) of 1988.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the R&PP Act.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested persons may submit comments regarding the proposed lease/conveyance or classification of the lands to the Field Office Manager, Winnemucca Field Office, 5100 East Winnemucca Blvd., Winnemucca, Nevada 89445.

Classification Comments

Interested parties may submit comments involving the suitability of the land for an administration/maintenance facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments

Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for an administration/maintenance facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication of this notice in the **Federal Register**.

Dated: March 22, 2000.

Terry A. Reed,

Field Office Manager, Winnemucca.

[FR Doc. 00–8126 Filed 3–31–00; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection of Information; Opportunity for Public Comment

AGENCY: National Park Service, National Capital Parks—Central

ACTION: Notice and request for comments.

SUMMARY: Under the Paperwork Reduction Act of 1995 and 5 CFR Part 1320, Reporting and Record Keeping Requirements, the National Park Service (NPS) invites public comments on a proposed collection of information. The NPS specifically requests comments on: (1) the need for the information being collected, including whether the information has practical utility; (2) the validity and accuracy of the reporting burden estimate; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the information collection on respondents, including the use of automated collection techniques or other forms of information technology.

The NPS requests comments on an application form that allows the Park Programs Division of National Capital Parks—Central to process requests from individuals and organizations to hold public gatherings on NPS property. These public gatherings consist of special events and demonstrations that the NPS is charged with regulating to insure protection of cultural and natural resources within NPS property. The NPS will use the information you submit to determine whether or not to make modifications to the application form. Once the NPS makes any modifications that it may decide to adopt, the NPS plans to submit a proposed collection of information package to OMB with a request that OMB approve the package and reinstate the OMB clearance number.

You may obtain copies of the application from the source listed below (see the "send comments to" section).

DATES: Public comments on the proposed Information Collection Request (ICR) will be accepted on or before June 2, 2000.

SEND COMMENTS TO: Park Programs Division, National Capital Region, 1100 Ohio Dr. Rm. 128, SW, Washington, D.C. 20242. Phone: 202–619–7225, Fax: 202–401–2430.

If you wish to comment, you may submit your comments using several methods. You may mail comments to the postal address given here. You may fax your comments to the fax number given. You may also hand-deliver comments to the address given here. Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the record a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

TO REQUEST PRINTED COPIES OF THE DOCUMENTS CONTACT: Park Program Division, National Capital Region, 1100 Ohio Dr. Rm. 128, SW, Washington, D.C. 20242. Phone: 202–619–7225, Fax: 202–401–2430.

SUPPLEMENTARY INFORMATION:

Title: NATIONAL PARK SERVICE, NATIONAL CAPITAL REGION APPLICATION FOR A PERMIT TO CONDUCT A DEMONSTRATION OR SPECIAL EVENT IN PARK AREAS AND A WAIVER OF NUMERICAL LIMITATIONS ON DEMONSTRATIONS FOR WHITE HOUSE SIDEWALK AND/OR LAFAYETTE PARK.

Departmental Form Number: None.

OMB Number: 1024–0021.

Expiration Date: To be requested.

Type of Request: Reinstatement without change.

Description of Need: The information collection responds to the statutory requirement that the NPS preserve park resources and regulate the use of units of the National Park System. The information to be collected identifies: (1) those individuals and/or organizations that wish to conduct a public gathering on NPS property in the National Capital Region, (2) the logistics of a proposed demonstration or special event that aid the NPS in regulating activities to insure that they are consistent with the NPS mission, (3) potential civil disobedience and traffic control issues for the assignment of United States Park Police personnel, (4) circumstances which may warrant a bond to be assigned to the event for the purpose of covering potential cost to repair damage caused by the event.

Description of Respondents: Respondents are those individuals or organizations that wish to conduct a special event or demonstration on NPS property within the National Capital Region.

Estimated average number of annual respondents: 2200.

Estimated average burden hours per response: .05 hours.

Estimated annual reporting burden: 110 hours.

Leonard E. Stowe,

Information Collection Clearance Officer, WASO Administrative Program Center, National Park Service.

[FR Doc. 00–8045 Filed 3–31–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

60-Day Notice of Intention To Request Clearance of Collection Information; Opportunity for the Public To Comment

AGENCY: National Park Service, The Department of Interior.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the notice announces the National Park Service (NPS) intention to request approval of information collection associated with a voluntary backcountry registration system to be administered by Kenai Fjords National Park.

DATES: Public comments on this notice will be accepted on or before June 2, 2000 to be assured of consideration.

SEND COMMENTS TO: Michael D. Tetreau, Resource Management Specialist, Kenai Fjords National Park, P.O. Box 1727, Seward, AK 99664.

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record. Copies of the information collection can be obtained from Michael D. Tetreau, Resource Management Specialist, Kenai Fjords National Park, P.O. Box 1727, Seward, AK 99664.

FOR FURTHER INFORMATION CONTACT: Michael D. Tetreau, (907) 224–3175.

SUPPLEMENTARY INFORMATION:

Title: Voluntary Coastal Backcountry Registration.

OMB Number: Requested.

Expiration Date of Approval: Requested.

Type of Request: New collection.

Abstract: Kenai Fjords National Park is in the process of developing a backcountry management plan and the collection of accurate visitor use information is necessary in order to formulate appropriate management strategies. The proposed voluntary registration system will also improve information dissemination to visitors prior to their trip to the fjords, thus reducing their impacts to park resources

and the chances of their needing rescue or other assistance from park personnel. In addition, the information being collected will make any emergency response more efficient.

Respondents: Individuals.

Estimated Annual Burden on Respondents: 25 hours.

Estimated average burden hours per response: 0.25 hours.

Estimated average number of respondents: 100 annually.

Estimated frequency of response: 100 annually.

Leonard E. Stowe,

Information Collection Clearance Officer National Park Service, WAPC.

[FR Doc. 00–8046 Filed 3–31–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Availability of Record of Decision—Booker T. Washington National Monument Final General Management Plan and Abbreviated Final Environmental Impact Statement

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of Record of Decision Availability—Booker T. Washington National Monument Final General Management Plan and Abbreviated Final Environmental Impact Statement.

SUMMARY: Following the required 30-day no action period, Marie Rust, Northeast Regional Director, National Park Service signed the Record of Decision on March 22, 2000 for the Final General Management Plan and Abbreviated Final Environmental Impact Statement for Booker T. Washington National Monument in Hardy, Virginia.

The Record of Decision is available on the park's web site: http://www.nps.gov/bowa.

For more information or a copy of the Record of Decision contact Rebecca Harriet, Superintendent, Booker T. Washington National Monument, 12130 Booker T. Washington Highway, Hardy, VA 24101–9688. The superintendent's phone number is 540–721–2094.

Dated: March 22, 2000.

Marie Rust,

Northeast Regional Director, National Park Service.

[FR Doc. 00–8044 Filed 3–31–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Advisory Commission Meeting

AGENCY: National Park Service, Jimmy Carter National Historic Site.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Jimmy Carter National Historic Site Advisory Commission will be held at 1 p.m. to 4 p.m. and 9 a.m. to 11:30 a.m. at the following location and dates.

DATES: April 5 and 6, 2000.

LOCATION: The Carter Library, One Copenhill, Atlanta, Georgia 30309.

FOR FURTHER INFORMATION CONTACT: Mr. Fred Boyles, Superintendent, Jimmy Carter National Historic Site, Route 1, Box 800, Andersonville, Georgia 31711, (912) 924–0343, Extension 105.

SUPPLEMENTARY INFORMATION: The purpose of the Jimmy Carter National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on achieving balanced and accurate interpretation of the Jimmy Carter National Historic Site.

The members of the Advisory Commission are as follows: Dr. Henry King Stanford, Dr. James Sterling Young, Dr. Barbara J. Fields, Dr. Donald B. Schewe, Dr. Steven H. Hochman, Director, National Park Service, Ex-Officio member.

The matters to be discussed at this meeting include the status of park development and planning activities. This meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold from the rulemaking record a respondent's identity, as allowable by law. If you wish for us to withhold your name and/or address, you must state this prominently at the beginning of your comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entity.

Dated: March 21, 2000.

W. Thomas Brown,

Acting Regional Director, Southeast Region.

[FR Doc. 00–8043 Filed 3–31–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

National Park System Advisory Board; Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

Notice is hereby given in accordance with the Federal Advisory Committee Act, 5 U.S.C. Appendix (1994), that the National Park System Advisory Board will meet April 14–16, 2000. The Board will convene for a 1½ hour session on April 14, and reconvene on April 16 for a full-day session in the Ballroom of The Golden Gate Club, 135 Fisher Loop, The Presidio of San Francisco, San Francisco, California. The Board will tour The Presidio of San Francisco and the Golden Gate National Recreation Area on the afternoon of April 14, and will tour Point Reyes National Seashore on April 15.

On April 14, the Board will convene from 8:30 a.m. until 10:00 a.m. The Board will reconvene on April 16, at 8:30 a.m., and adjourn at approximately 5:30 p.m. National Park Service Director Robert Stanton will address the Board. The Board will consider organization and procedural matters relative to undertaking a study of the future of the National Park Service and the National Park System. National Historic Landmark nominations will be reviewed by the Board during the afternoon session on April 16.

The Board may be addressed at various times by other officials of the National Park Service and the Department of the Interior; and other miscellaneous topics and reports may be covered. The order of the agenda may be changed, if necessary, to accommodate travel schedules or for other reasons.

The Board meeting will be open to the public. Space and facilities to accommodate the public are limited and attendees will be accommodated on a first-come basis. Anyone may file with the Board a written statement concerning matters to be discussed. The Board may also permit attendees to address the Board, but may restrict the length of the presentations, as necessary to allow the Board to complete its agenda within the allotted time.

Anyone who wishes further information concerning the meeting, or who wishes to submit a written statement, may contact Mr. Loran Fraser, Office of Policy, National Park Service, 1849 C Street, NW, Washington, DC 20240 (telephone 202–208–7456).

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting, in room 2414, Main Interior Building, 1849 C Street, NW, Washington, DC.

Dated: March 28, 2000.

Robert Stanton,

Director, National Pork Service.

[FR Doc. 00–8163 Filed 3–31–00; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–696–697 (Review)]

Pure Magnesium From China and Russia

AGENCY: United States International Trade Commission.

ACTION: Institution of five-year reviews concerning the antidumping duty orders on pure magnesium from China and Russia.

SUMMARY: The Commission hereby gives notice that it has instituted reviews pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act) to determine whether revocation of the antidumping duty orders on pure magnesium from China and Russia would be likely to lead to continuation or recurrence of material injury. Pursuant to section 751(c)(2) of the Act, interested parties are requested to respond to this notice by submitting the information specified below to the Commission;[1] to be assured of consideration, the deadline for responses is May 23, 2000. Comments on the adequacy of responses may be filed with the Commission by June 19, 2000. For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Messer (202–205–3193), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov).

SUPPLEMENTARY INFORMATION:

Background

On May 12, 1995, the Department of Commerce issued antidumping duty orders on imports of pure magnesium from China and Russia (60 FR 25691). The Commission is conducting reviews to determine whether revocation of the orders would be likely to lead to continuation or recurrence of material injury to the domestic industry within a reasonably foreseeable time. It will assess the adequacy of interested party responses to this notice of institution to determine whether to conduct full reviews or expedited reviews. The Commission's determinations in expedited reviews will be based on the facts available, which may include information provided in response to this notice.

Definitions.—The following definitions apply to these reviews:

(1) Subject Merchandise is the class or kind of merchandise that is within the scope of the five-year reviews, as defined by the Department of Commerce.

(2) The Subject Countries in these reviews are China and Russia.

(3) The Domestic Like Product is the domestically produced product or products which are like, or in the absence of like, most similar in characteristics and uses with, the Subject Merchandise. In its original determinations, the Commission defined the Domestic Like Product as all pure magnesium, whether or not it meets ASTM specifications. One Commissioner defined the Domestic Like Product differently.

(4) The Domestic Industry is the U.S. producers as a whole of the Domestic Like Product, or those producers whose collective output of the Domestic Like Product constitutes a major proportion of the total domestic production of the product. In its original determinations, the Commission defined the Domestic Industry as producers of all pure magnesium, whether or not it meets ASTM specifications. One Commissioner defined the Domestic Industry differently.

(5) The Order Date is the date that the antidumping duty orders under review became effective. In these reviews, the Order Date is May 12, 1995.

(6) An Importer is any person or firm engaged, either directly or through a parent company or subsidiary, in importing the Subject Merchandise into the United States from a foreign manufacturer or through its selling agent.

Participation in the reviews and public service list.—Persons, including industrial users of the Subject Merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in the reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11(b)(4) of the Commission's rules, no later than 21 days after publication of this notice in the **Federal Register**. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Former Commission employees who are seeking to appear in Commission five-year reviews are reminded that they are required, pursuant to 19 CFR 201.15, to seek Commission approval if the matter in which they are seeking to appear was pending in any manner or form during their Commission employment. The Commission's designated agency ethics official has advised that a five-year review is the "same particular matter" as the underlying original investigation for purposes of 19 CFR 201.15 and 18 U.S.C. 207, the post employment statute for Federal employees. Former employees may seek informal advice from Commission ethics officials with respect to this and the related issue of whether the employee's participation was "personal and substantial." However, any informal consultation will not relieve former employees of the obligation to seek approval to appear from the Commission under its rule 201.15. For ethics advice, contact Carol

[1] No response to this request for information is required if a currently valid Office of Management and Budget (OMB) number is not displayed; the OMB number is 3117–0016/USITC No. 00–5–053, expiration date July 31, 2002. Public reporting burden for the request is estimated to average 7 hours per response. Please send comments regarding the accuracy of this burden estimate to the Office of Investigations, U.S. International Trade Commission, 500 E Street, SW, Washington, DC 20436.

McCue Verratti, Deputy Agency Ethics Official, at 202–205–3088.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and APO service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI submitted in these reviews available to authorized applicants under the APO issued in the reviews, provided that the application is made no later than 21 days after publication of this notice in the **Federal Register**. Authorized applicants must represent interested parties, as defined in 19 U.S.C. 1677(9), who are parties to the reviews. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Certification.—Pursuant to section 207.3 of the Commission's rules, any person submitting information to the Commission in connection with these reviews must certify that the information is accurate and complete to the best of the submitter's knowledge. In making the certification, the submitter will be deemed to consent, unless otherwise specified, for the Commission, its employees, and contract personnel to use the information provided in any other reviews or investigations of the same or comparable products which the Commission conducts under Title VII of the Act, or in internal audits and investigations relating to the programs and operations of the Commission pursuant to 5 U.S.C. Appendix 3.

Written submissions.—Pursuant to section 207.61 of the Commission's rules, each interested party response to this notice must provide the information specified below. The deadline for filing such responses is May 23, 2000. Pursuant to section 207.62(b) of the Commission's rules, eligible parties (as specified in Commission rule 207.62(b)(1)) may also file comments concerning the adequacy of responses to the notice of institution and whether the Commission should conduct expedited or full reviews. The deadline for filing such comments is June 19, 2000. All written submissions must conform with the provisions of sections 201.8 and 207.3 of the Commission's rules and any submissions that contain BPI must also conform with the requirements of sections 201.6 and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means. Also, in accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or APO service list as appropriate), and a certificate of service must accompany the document (if you are not a party to the reviews you do not need to serve your response).

Inability to provide requested information.—Pursuant to section 207.61(c) of the Commission's rules, any interested party that cannot furnish the information requested by this notice in the requested form and manner shall notify the Commission at the earliest possible time, provide a full explanation of why it cannot provide the requested information, and indicate alternative forms in which it can provide equivalent information. If an interested party does not provide this notification (or the Commission finds the explanation provided in the notification inadequate) and fails to provide a complete response to this notice, the Commission may take an adverse inference against the party pursuant to section 776(b) of the Act in making its determinations in the reviews.

Information To Be Provided in Response to This Notice of Institution

If you are a domestic producer, union/worker group, or trade/business association; import/export Subject Merchandise from more than one Subject Country; or produce Subject Merchandise in more than one Subject Country, you may file a single response. If you do so, please ensure that your response to each question includes the information requested for each pertinent Subject Country. As used below, the term "firm" includes any related firms.

(1) The name and address of your firm or entity (including World Wide Web address if available) and name, telephone number, fax number, and E-mail address of the certifying official.

(2) A statement indicating whether your firm/entity is a U.S. producer of the Domestic Like Product, a U.S. union or worker group, a U.S. importer of the Subject Merchandise, a foreign producer or exporter of the Subject Merchandise, a U.S. or foreign trade or business association, or another interested party (including an explanation). If you are a union/worker group or trade/business association, identify the firms in which your workers are employed or which are members of your association.

(3) A statement indicating whether your firm/entity is willing to participate in these reviews by providing information requested by the Commission.

(4) A statement of the likely effects of the revocation of the antidumping duty orders on the Domestic Industry in general and/or your firm/entity specifically. In your response, please discuss the various factors specified in section 752(a) of the Act (19 U.S.C. 1675a(a)) including the likely volume of subject imports, likely price effects of subject imports, and likely impact of imports of Subject Merchandise on the Domestic Industry.

(5) A list of all known and currently operating U.S. producers of the Domestic Like Product. Identify any known related parties and the nature of the relationship as defined in section 771(4)(B) of the Act (19 U.S.C. 1677(4)(B)).

(6) A list of all known and currently operating U.S. importers of the Subject Merchandise and producers of the Subject Merchandise in the Subject Countries that currently export or have exported Subject Merchandise to the United States or other countries since 1994.

(7) If you are a U.S. producer of the Domestic Like Product, provide the following information on your firm's operations on that product during calendar year 1999 (report quantity data in metric tons and value data in thousands of U.S. dollars, f.o.b. plant).[2] If you are a union/worker group or trade/business association, provide the information, on an aggregate basis, for the firms in which your workers are employed/which are members of your association.

(a) Production (quantity) and, if know, an estimate of the percentage of total U.S. production of the Domestic Like Product accounted for by your firm's(s') production;

(b) the quantity and value of U.S. commercial shipments of the Domestic Like Product produced in your U.S. plant(s); and

(c) the quantity and value of U.S. internal consumption/company transfers of the Domestic Like Product produced in your U.S. plant(s).

(8) If you are a U.S. importer or a trade/business association of U.S. importers of the Subject Merchandise from the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in metric tons and value data in thousands of U.S. dollars).[2] If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) The quantity and value (landed, duty-paid but not including antidumping or countervailing duties) of U.S. imports and, if known, an estimate of the percentage of total U.S. imports of Subject Merchandise from the Subject Countries accounted for by your firm's(s') imports;

(b) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. commercial shipments of Subject Merchandise imported from the Subject Countries; and

(c) the quantity and value (f.o.b. U.S. port, including antidumping and/or countervailing duties) of U.S. internal consumption/company transfers of Subject Merchandise imported from the Subject Countries.

(9) If you are a producer, an exporter, or a trade/business association of producers or exporters of the Subject Merchandise in the Subject Countries, provide the following information on your firm's(s') operations on that product during calendar year 1999 (report quantity data in metric tons and value data in thousands of U.S. dollars, landed and duty-paid at the U.S. port but not including antidumping duties). If you are a trade/business association, provide the information, on an aggregate basis, for the firms which are members of your association.

(a) Production (quantity) and, if known, an estimate of the percentage of total production of Subject Merchandise in the Subject Countries accounted for by your firm's(s'') production; and

(b) The quantity and value of your firm's(s'') exports to the United States of Subject Merchandise and, if known, an estimate of the percentage of total exports to the United States of Subject Merchandise from the Subject Countries accounted for by your firm's(s'') exports.

(10) Identify significant changes, if any, in the supply and demand conditions or business cycle for the Domestic Like Product that have occurred in the United States or in the market for the Subject Merchandise in the Subject Countries since the Order Date, and significant changes, if any, that are likely to occur within a reasonably foreseeable time. Supply conditions to consider include technology; production methods; development efforts; ability to increase production (including the shift of production facilities used for other products and the use, cost, or availability of major inputs into production); and factors related to the ability to shift supply among different national markets (including barriers to importation in foreign markets or changes in market demand abroad). Demand conditions to consider include end uses and applications; the existence and availability of substitute products; and the level of competition among the Domestic Like Product produced in the United States, Subject Merchandise produced in the Subject Countries, and such merchandise from other countries.

(11) (OPTIONAL) A statement of whether you agree with the above definitions of the Domestic Like Product and Domestic Industry; if you disagree with either or both of these definitions, please explain why and provide alternative definitions.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.61 of the Commission's rules.

By order of the Commission.

Issued: March 24, 2000.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8161 Filed 3–31–00; 8:45 am]

BILLING CODE 7020–02–P

[2] Interested parties that have provided identical information in response to a Commission questionnaire in the ongoing 5-year reviews on alloy and pure magnesium from Canada (invs. Nos. 701–TA–309–A and B and 731–TA–528 (Review)) may reference that response in lieu of providing the information again in response to this notice.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Clean Air Act

Under 28 CFR 50.7, notice is hereby given that on March 22, 2000, a proposed consent decree ("Consent Decree") in *United States* v. *Brownwood Furniture, Inc.*, Civil Action No. EDCV00–182 RT(BQR) (C.D. Cal.), was lodged with the United States District Court for the Central District of California.

The Consent Decree resolves claims that the United States asserted against Brownwood Furniture, Inc. ("Brownwood") in a civil complaint filed concurrently with the lodging of the Consent Decree. The complaint alleges violations of the Clean Air Act and the State Implementation Plan ("SIP") at Brownwood's Rancho Cucamonga facility located in San Bernardino County, California. Specifically, the complaint alleges that defendant, Brownwood violated emissions and record-keeping conditions of its 1989 New Source Review permit to operate its original spray booth. The complaint also alleges that, with respect to the two spray booths defendant added in 1998, it failed to obtain valid permits to construct or permits to operate before constructing and operating that additional equipment; failed to apply Best Available Control Technology ("BACT"); and failed to provide emission offsets. In addition, the complaint alleges that defendant failed to provide all information necessary for the South Coast Air Quality Management District's permit determination. The complaint also alleges in the alternative, that if the permits to operate the new spray booths were valid, then defendant violated the emission limit of one of those permits. The Consent Decree requires defendant to pay a civil penalty of $115,000, plus interest, and follow a compliance plan to reduce volatile organic compound (VOC) emissions at the two additional booths by using ultra-low VOC coatings and/or the addition of control equipment.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611, and should refer to *United States* v. *Brownwood Furniture, Inc.*, Civil Action No. EDCV00–182 RT(BQR) (C.D. Cal.), and D.J. Ref. 90–5–2–1–06555.

The Consent Decree may be examined at the Office of the United States Attorney, Federal Building Room, 7516, 300 North Los Angeles Street, Los Angeles, California 90012, and at U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the Consent Decree may be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 2004–7611. In requesting a copy, please enclose a check in the amount of $4.50 (25 cents per page reproduction cost) payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–8075 Filed 3–31–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in the action entitled *United States of America* v. *Bruce Migell, the Tilton Trust, Bruce Migell-Trustee, and Atlantic Battery Company, Inc., d/b/a*

Surrette American Battery (Civil No. 99–255–M, D. N.H.), was lodged on March 22, 2000, with the United States District Court for the District of New Hampshire. The proposed consent decree resolves claims of the United States, on behalf of the U.S. Environmental Protection Agency ("EPA"), under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. 9601–9675, against Bruce Migell, the Tilton Trust Bruce Migell-Trustee, and Atlantic Battery Company, Inc., d/b/a/ Surrette America Battery (hereinafter, defendants). These claims are for recovery of costs incurred and to be incurred by the United States with respect to the Surrette America Battery Removal Site in Northfield, New Hampshire

Under the terms of the proposed consent decree, defendants will (1) pay the United States $40,000 in partial reimbursement of past and future federal response costs with respect to the Site; and (2) provide EPA with continuing access to property owned by defendants that is part of the Site.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, 950 Pennsylvania Avenue, N.W., Washington, D.C. 20530, and should refer to *United States of America v. Bruce Migell, the Tilton Trust, Bruce Migell-Trustee, and Atlantic Battery Company, Inc., d/b/a/ Surrette American Battery* (Civil No. 99–255–M, D. N.H.), DOJ Ref. No. 90–11–3–06012.

The proposed consent decree may be examined at the offices of EPA Region I, One Congress Street, Suite 1100, Boston, MA 02114–2023, and the Office of the United States Attorney, Federal Building, 55 Pleasant Street, Concord, New Hampshire 03301. A copy may be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, D.C. 20044–7611. In requesting a copy by mail, please refer to the referenced case and enclose a check in the amount of $5.75 (25 cents per page reproduction costs for the Decree and Appendix) made payable to Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 00–8076 Filed 3–31–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Response, Compensation and Liability Act

Under Section 122(i) of CERCLA, 42 U.S.C.A. 9622(i), notice is hereby given that on March 20, 2000, a proposed Consent Decree in *United States* v. *Safe Tire Disposal Corp. and Safe Tire Disposal Corp. of Texas* ("Defendants"), Civil Action No. 398CV2865–T, was lodged with the United States District Court for the Northern District of Texas, Dallas Division.

In this action the United States, on behalf of the United States Environmental Protection Agency ("EPA"), sought recovery of response costs arising from releases of a hazardous substance in connection with a tire fire that occurred on land owned by Safe Tire Disposal Corp., located in the City of Midlothian, Ellis County, Texas. The proposed Consent Decree requires the Defendants to pay $100,000 in partial reimbursement of EPA's response costs. The proposed Consent Decree resolves the Defendants' liability under Section 107(a) of CERCLA, 42 U.S.C. 9607(a).

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, N.W., Washington, DC 20044–7611, and should refer to *United States* v. *Safe Tire Disposal Corp. and Safe Tire Disposal Corp. of Texas*, D. J. Ref. 90–11–3–06553.

The Consent Decree may be examined at U.S. EPA Region 6, Superfund Division, 1445 Ross Avenue, Suite 1200, Dallas Texas. A copy of the Consent Decree may also be obtained by mail from the Consent Decree Library, P.O. Box 7611, U.S. Department of Justice, Washington, DC 20044–7611. In requesting a copy, please enclose a check in the amount of $5.75 payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–8073 Filed 3–31–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to Sections 104 and 107 of Cercla

Notice is hereby given that on March 13, 2000, the United States lodged a proposed Consent Decree with the United States District Court for the Southern District of Texas, in *United States of America* v. *Texas City Refining, Inc.*, No. G–00–145, and *Amoco Chemical Company* v. *United States, et al.*, No. G–96–272, pursuant to Sections 104 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. 9604 and 9607. The proposed Consent Decree resolves civil claims of the United States and Amoco Chemical Company ("Amoco") against Texas City Refining, Inc. in connection with the Tex Tin Superfund Site, located in Texas City and La Marque, Texas. Texas City Refining, a dissolved Delaware corporation, will pay $50,000 to the United States and $12,500 to Amoco in reimbursement of response costs incurred at the Site by the Environmental Protection Agency and Amoco.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC. 20044–7611, and should refer to *United States of America* v. *Texas City Refining, Inc.*, DJ No. 90–11–3–1669/2.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Southern District of Texas, 515 Rusk, Ste. 3300, Houston, Texas 77002, and the Region VI Office of the United States Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. A copy of the proposed Consent Decree may be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044–7611. In requesting a copy, please enclose a check for reproduction costs (at 25 cents per page) in the amount of $8.00, payable to the Consent Decree Library.

Joel M. Gross,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 00–8074 Filed 3–31–00; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Cable Television Laboratories, Inc. ("Cablelabs")

Notice is hereby given that, on August 28, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Cable Television Laboratories, Inc. ("CableLabs") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Seaside Cable TV (1984) Ltd., Glace Bay, Nova Scotia, CANADA; and Media General Cable, Chantilly, VA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Cable Television Laboratories, Inc. intends to file additional written notification disclosing all changes in membership.

On August 8, 1988, Cable Television Laboratories, Inc. filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on September 7, 1988 (53 FR 34593).

The last notification was filed with the Department on May 5, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Division.

[FR Doc. 00–8077 Filed 3–31–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—CommerceNet Consortium

Notice is hereby given that, on January 22, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), CommerceNet Consortium (the "Consortium") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Ericsson, Menlo Park, CA has joined the Consortium as an Executive Sponsor member. Cable & Wireless PLC, London, UNITED KINGDOM has joined the Consortium as a Corporate Sponsor member. Ironside Technologies, Pleasanton, CA; Dunn & Bradstreet, Bethlehem, PA; and Thomas Register/Thomas Publishing Company, New York, NY have joined the Consortium as Portfolio members. FASTchange, Inc., Marina del Rey, CA; Actium, Conshohocken, PA; Federal Reserve Bank of Chicago, Chicago, IL; and Usi, Annapolis, MD have joined the Consortium as Core members. ECNow.com, Cupertino, CA has joined the Consortium as an In-kind member. Also, Softbank GII, Foster City, CA; Anheuser Busch, St. Louis, MO; and ITAA, Arlington, VA have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and CommerceNet Consortium intends to file additional written notification disclosing all changes in membership.

On June 13, 1994, CommerceNet Consortium filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6 (b) of the Act on August 31, 1994 (57 FR 45012).

The last notification was filed with the Department on December 15, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,

Director of Operations, Antitrust Divsion.

[FR Doc. 00–8082 Filed 3–31–00; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Hart Communication Foundation ("HCF")

Notice is hereby given that, on November 3, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Hart Communication Foundation ("HCF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Action Instruments, Inc., San Diego, CA; Amdell Ltd., Thebarton, AUSTRALIA; Burkert GmbH & Company KG, Ingelfingen, GERMANY; Camille Bauer AG, Wohlen, SWITZERLAND; CEGELEC–BPT, Camart, Cedex, FRANCE; DANFOSS A/S, Nordborg, DENMARK; Direct Measurement Corp., Longmont, CO; Druck Ltd., Groby, Leicester, UNITED KINGDOM; Dynisco Instruments, Sharon, MA; Elcon Instruments, Norcross, GA; EMCO Flowmeters, Longmont, CO; Fluke Electronics Corporation, Everett, WA; GLI International Inc., Milwaukee, WI; Huakong Technology Co., Ltd., Beijing, CHINA; Jordan Controls, Inc., Milwaukee, WI; Klay Instruments B. V., Dwingeloo, THE NETHERLANDS; LABOM Mess-und Regeltechnik GmbH, Hude, GERMANY; M-System Co., Ltd., Yokohama, JAPAN; Paper Machine Components, Inc. (PMC), Danbury, CT; Rochester Instrument Systems, Inc., Rochester, NY; Sparling Instruments, Inc., El Monte, CA; Spriano S.p.A., Vimodrone, ITALY; Tokyo Keiso Company, Ltd., Tokyo, JAPAN; TROLEX Limited, Stockport, Cheshire, UNITED KINGDOM; TURBO-Werk Messtechnik GmbH, Koln, GERMANY; U.S. Electrical Motors, St. Louis, MO; Val Controls A/S, Esbjerg, DENMARK; VALCOM S.r.l., Milan, ITALY; VorTek Instruments, LLC, Longmont, CO; W. Borst, Fachingen, GERMANY; WIKA Alexander Wiegand GmbH, Klingenberg, GERMANY; Worcester Controls Corporation, Marlboro, MA; Yokogawa Europe B.V., Amersfoort, THE NETHERLANDS; and Zaklady Automatyki Przemysłowej S.A., Ostrow Wielkopolski, POLAND have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Hart Communication Foundation ("HCF") intends to file additional written notification disclosing all changes in membership.

On March 17, 1994, Hart Communication Foundation ("HCF") filed its original notification pursuant to Section 6(a) of the Act. The Department

of Justice published a notice in the

Reciprocal Engine Systems ("ARES") intends to file additional written

CANADA; RSA Data Security, Redwood

the impact of collection requirements on

of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 5, 1994 (59 FR 23234).

The last notification was filed with the Department on December 8, 1996. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on April 3, 1997 (62 FR 5939).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 00–8078 Filed 3–31–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Photonic Batch Processing ("PBP") Consortium

Notice is hereby given that, on February 3, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Photonic Batch Processing ("PBP") Consortium has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to Section 6(b) of the Act, the identities of the parties are Adept Technology, Inc., San Jose, CA; Newport Corporation, Irvine, CA; Rsoft, Inc., Ossining, NY; and SDL, Inc., San Jose, CA. The nature and objectives of the venture are to develop new technologies for automated batch processing for assembling optics, lasers, and other components into devices.

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 00–8081 Filed 3–31–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Salutation Consortium, Inc.

Notice is hereby given that, on February 8, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Salutation Consortium, Inc. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Granite Systems, Inc., Boulder, CO has been added as party to this venture. Also, RIOS Systems Co., Ltd., Yokohama, JAPAN has been dropped as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Salutation Consortium, Inc. intends to file additional written notification disclosing all changes in membership.

On March 30, 1995, Salutation Consortium, Inc. filed its original notification pursuant to Section 6 (a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on June 27, 1995 (60 FR 33233).

The last notification was filed with the Department on November 16, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 00–8083 Filed 3–31–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Silicon Integration Initiative, Inc. ("S12")

Notice is hereby given that, on June 22, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Silicon Integration Initiative, Inc. ("S12") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, VLSI. San Jose, CA has been added as a party to this venture. Also, Avant!, Sunnyvale, CA; Compass Design Automation, San Jose, CA; Matsushita Electric Ind. Company, Osaka, JAPAN; National Semiconductor Corporation, Santa Clara, CA; Sun Microsystems, Inc., Mountain View, CA; Aspect Development, Boulder, CO; and Veda Design Automatic, LTD., Fareham, Hampshire, ENGLAND have been dropped as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Silicon Integration Initiative, Inc. ("S12") intends to file additional written notification disclosing all changes in membership.

On December 30, 1988, Silicon Integration Initiative, Inc. ("S12") filed its original notification pursuant to Section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on March 13, 1989 (54 FR 10456).

The last notification was filed with the Department on March 6, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 00–8079 Filed 3–31–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Southwest Research Institute ("SwRI"): Advanced Reciprocal Engine Systems ("ARES")

Notice is hereby given that, on June 30, 1999, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Southwest Research Institute ("SwRI"): Advanced Reciprocal Engine Systems ("ARES") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Federal Mogul Ignition Products, Toledo, OH has been added as a party to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Southwest Research Institute ("SwRI"): Advanced Reciprocal Engine Systems ("ARES") intends to file additional written notification disclosing all changes in membership.

On February 9, 1999, Southwest Research Institute ("SwRI"): Advanced Reciprocal Engine Systems ("ARES") filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to Section 6(b) of the Act on May 26, 1999 (64 FR 28521).

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 00–8084 Filed 3–31–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Wireless Application Protocol Forum Ltd. ("WAP")

Notice is hereby given that, on September 17, 1998, pursuant to Section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Wireless Application Protocol Forum, Ltd. ("WAP") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership status. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Alcatel, Columbes, Cedex, FRANCE; AT&T Wireless Services, Inc., Redmond, WA; BellSouth Cellular Corp., Atlanta, GA; Bosch Telecom Danmark A/S, Pandrup, DENMARK; Cellnet, Slough, UNITED KINGDOM; CMG Telecommunications & Utilities B.V., Utrecht, THE NETHERLANDS; Comverse Network Systems, Inc., Wakefield, MA; DDI Corporation, Tokyo, JAPAN; Dolphin Telecommunications Ltd., Basingstoke, UNITED KINGDOM; Gemplus, Gemenos, Cedex, FRANCE; IDO Corporation, Tokyo, JAPAN; Intel Corporation; Folsom, CA; Itochu Techno-Science Corp., Tokyo, JAPAN; Logica Aldiscon Ltd., Dublin, IRELAND; Mitsubishi, Sunnyvale, CA; NEC Technologies (UK) Limited, Slough, UNITED KINGDOM; PageNet Inc., Plano, TX; Philips Consumer Communications, LeMans, Cedex, FRANCE; Puma Technology, Inc., San Jose, CA; QUALCOMM, San Diego, CA; Rogers Cantel Inc., Toronto, Ontario, CANADA; RSA Data Security, Redwood City, CA; Samsung Electronics Co., Ltd., Suwon City, KOREA; SBC Technology Resources; Inc., Austin, TX; Shu-Chin Su Chen, Taiwan, REPUBLIC OF CHINA; Siemens AG, Munich, GERMANY; Sonera Corporation, Helsinki, FINLAND; Sprint Spectrum L.P., Kansas City, MO; SWISSCOM Limited, Berne, SWITZERLAND; Telenor Mobil, Oslo, NORWAY; Telia Mobile AB, Nacka Strand, SWEDEN; and Telstra Corporation Ltd., Sydney, New South Wales, AUSTRALIA have been added as parties to this venture.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and Wireless Application Protocol Forum, Ltd. ("WAP") intends to file additional written notification disclosing all changes in membership.

On March 18, 1998, Wireless Application Protocol forum, Ltd. ("WAP") filed its original notification pursuant to Section 6(a) of the Act. A notice for this filing has not yet been published in the **Federal Register.**

The last notification was filed with the Department on May 13, 1998. A notice has not yet been published in the **Federal Register.**

Constance K. Robinson,
Director of Operations, Antitrust Division.
[FR Doc. 00–8080 Filed 3–31–00; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Investment Act (WIA) Standardized Record Data (WIASRD), Quarterly Summary Report, and Annual Report; Comment Request

ACTION: Notice; Request for Comments.

SUMMARY: The Department of Labor (Department), as part of its continuing effort to reduce paperwork and respondent burden, conducts a pre-clearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 ((PRA95) (44 U.S.C. 3506 (c) (2) (A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the new management information and reporting system including the Workforce Investment Act Standardized Record Data (WIASRD), the Quarterly Summary Report and the Annual Report under the Workforce Investment Act of 1998 (WIA).

DATES: Written comments must be submitted to the office listed in the addresses section below on or before June 2, 2000. The Department is particularly interested in comments which:

—Evaluate the Department's ability to meet its reporting responsibility using the proposed system;
—Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency including whether the information will have practical utility;
—Enhance the quality, utility, and clarity of the information to be collected;
—Minimize the burden of the collection of information on those who are to respond, including the use of appropriate electronic reporting mechanisms; and
—Examine the accuracy of the Department's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used.

ADDRESSES: Please address correspondence concerning the proposed system to: U.S. Department of Labor, Employment and Training Administration, Office of Workforce Security, 200 Constitution Avenue, NW., Room S4231, Washington, DC 20210, Attention: William Rabung, Fax: (202) 219–8506. (This is not a toll-free number.), or E-mail: *wrabung@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

Performance accountability is a key principle under the Workforce Investment Act of 1998 (WIA). The Department intends to support the desired focus on customer service and continuous improvement by providing opportunities for accountability at all levels of the system, especially at the State and local levels.

The basic accountability system will allow the Department to manage its responsibilities under WIA secs. 136(d)

and 189(d) in terms of reporting the

beyond self-service and informational

provide DOL with key information

Citation	Other performance-related items

and 189(d) in terms of reporting the progress of States in achieving negotiated levels of performance on the required core and customer satisfaction measures, its responsibilities under WIA sec. 185(a)(2), (c)(2), and (d) in terms of reports and recordkeeping, and its responsibilities under the Government Performance and Results Act (GPRA). The Federal reporting and record keeping structure will build on, and reflect the customer service focus, the continuous improvement goals, and the partnership expectations. In general, Federal reporting and recordkeeping requirements will be those minimally required to comply with statutory provisions, and will be designed so that they may be satisfied through systems put in place by the State and local partners to ensure State and local accountability.

There will be two basic report systems—financial and program. Financial reports will be required quarterly, as provided for in WIA sec. 185(e). To avoid unnecessary reporting, the quarterly financial report looks at expenditures and records related to WIA sec. 185(f) and (g). The quarterly financial report was addressed in a separate **Federal Register** Notice (65 FR 5897–5898, Feb. 7, 2000). The three program reports include:

A. Individual Records

The Department has established a standard set of core data elements that must be maintained for each individual who receives WIA Title IB services beyond self-service and informational activities. The number of data elements collected for each individual is commensurate with the intensity of the service. Beginning July 1, 2000, States must submit copies of the individual participant records once each year by September 30 for all participants, including participants who exited but for whom information on outcomes is not yet complete. The individual standardized records will be strictly confidential. The Workforce Investment Act Standardized Record Data (WIASRD) will contain:

—Relevant demographic characteristics including race, ethnicity, sex and age and other related information on the participants (WIA sec. 185(d)(1)(A));
—WIA Title IB and partner program activities in which the participants are enrolled and the length of time the participants are engaged in such activities (WIA sec. 185(d)(1)(B)); and
—Outcomes for the participants, including occupations and placement in non-traditional employment (WIA sec. 185(d)(1)(C)).

The proposed WIASRD and related documents can be viewed at the Department's Internet website, *http://www.usworkforce.org.*

B. Quarterly Summary Reports

Quarterly summary reports reflecting statewide activity for negotiated performance and actual performance levels as well as the number of current participants and those participants who exited during the program period, will provide DOL with key information necessary for program oversight purposes. This information will facilitate the Department's efforts in assessing its own performance against established GPRA goals. States will be expected to electronically submit the quarterly summary reports within 45 days following the end of each quarter.

Quarterly reports are described in WIA sec. 185(a)(2)—"Every such recipient shall maintain such records and submit such reports, in such form and containing such information, as the Secretary may require regarding the performance of programs and activities carried out under this title. Such records and reports shall be submitted to the Secretary but shall not be required to be submitted more than once each quarter unless specifically requested by Congress or a committee of Congress, in which case an estimate may be provided."

The proposed Quarterly Summary Report Format and instructions for completing this report can be viewed at the Department's Internet website, *http://www.usworkforce.org.*

C. Annual Reports

On a yearly basis, States must publish and submit to the Secretary an Annual Report which explains the outcomes of WIA Title IB programs to employers, taxpayers, participants and Congress and meets the provisions at WIA sec. 136(d) and WIA sec. 185(d) as described in the following chart:

REQUIRED COMPONENTS OF THE ANNUAL REPORT

WIA citation	Performance-related items
§ 136(d)(1)	State's progress in achieving performance measures including the core indicators of performance, the customer satisfaction indicator, any additional indicators of performance (if any) identified by the State, and the negotiated level of performance for each indicator.
§ 136(d)(1)	Progress of local areas in the States in achieving performance measures including the core indicators of performance and the customer satisfaction indicators.
§ 136(d)(2)(A)	Entry by participants who have completed training services provided under section 134(d)(4) into unsubsidized employment related to the training received.
§ 136(d)(2)(B)	Wages at entry into employment for participants in workforce investment activities who entered unsubsidized employment, including the rate of wage replacement for such participants who are dislocated workers.
§ 136(d)(2)(C)	Cost of workforce investment activities relative to the effect of the activities on the performance of participants. (Please note: States will have the flexibility to define this element.)
§ 136(d)(2)(D)	Retention and earnings received in unsubsidized employment 12 months after entry into the employment.
§ 136(d)(2)(E)	Performance with respect to the indicators of performance specified in subsection (b)(2)(A) of participants in workforce investment activities who received the training services compared with the performance of participants in workforce investment activities who received only services other than the training services (excluding participants who received only self-service and informational activities).
§ 136(d)(2)(F)	Performance with respect to the indicators of performance specified in subsection (b)(2)(A) of recipients of public assistance, out-of-school youth, veterans, individuals with disabilities, displaced homemakers, and older individuals.

Citation	Other performance-related items
§ 136(d)(1)	Status of State evaluations of workforce investment activities described in subsection (e) (evaluation of state programs).
§ 189(d)(1)	A summary of the achievements, failures, and problems of the programs and activities in meeting the objectives of this title.
§ 189(d)(2)	A summary of major findings from research, evaluations, pilot projects, and experiments conducted under this title in the fiscal year prior to the submission of the report.
§ 189(d)(3)	Recommendations for modifications in the programs and activities based on analysis of such findings.

Citation	Other performance-related items
§ 189(d)(4)	Such other recommendations for legislative or administrative action as the Secretary determines to be appropriate.
§ 185(d)(1)(D)	Specified costs of the (programs and) activities.
§ 136(d)(3)	Information dissemination.—The Secretary—(A) shall make the information contained in such reports available to the general public through publication and other appropriate methods; (B) shall disseminate State-by-State comparisons of information; and (C) shall provide the appropriate congressional committees with copies of such reports.

The Annual Report will be prepared by each State in accordance with guidelines established by the Department, including definitions for calculating performance, and specifications for satisfactory completion and submission of the report. The State's Annual Report will include state performance as well as local performance.

The Annual Report will be sent to Congress. The performance outcomes detailed in the report will serve as the basis for awarding incentives or administering sanctions to States for performance which exceeds or falls below the negotiated levels of performance (The negotiation process and details of the incentive and sanction process are described in separate Federal guidance—TEGL 8–99). The final approach to distributing incentive awards is still under development, but may include, among other things, performance reports from each State submitted by the date specified by the Secretary. A State that does not meet the deadline (September 30 of each year) for submission may be subject to sanction as described in WIA sec. 136(g)(1) and Interim Final Rule at 20 CFR 667.300 (e).

The Secretary plans to post these annual reports on a web site. In accordance with the Act, the Secretary will send copies of the State's Annual Report to each Local Workforce Investment Board (local board) and to the State Workforce Investment Board (State Board) if the State does not submit assurance that this has been accomplished by the time of submission to the Secretary.

The instructions for completing an annual report can be accessed and viewed at the Department's Internet website, *http://www.usworkforce.org.*

In order to report on the two required customer satisfaction measures (one for employers and one for participants) in the annual and quarterly summary reports, States must conduct surveys of both groups following the directions contained in Attachment V posted on the Department's Internet website, *http://www.usworforce.org.*

II. Current Actions

The proposed data collection and reporting system will assist the Department in meeting its mandated responsibilities by providing standardized information regarding demographics, activities and outcomes for all registrants receiving more than informational or self-service in all States and workforce investment areas. Information will also be used for general oversight, continuous improvement and research purposes.

Type of Review: New.

Agency: Employment and Training Administration.

Titles: Workforce Investment Act Standardized Record Data, (WIASRD), Annual Report, Quarterly Summary Reports.

OMB Number: 1205–0NEW.

Affected Public: State governments, local workforce investment areas, and local workforce investment boards.

Cite/Reference: Authority to collect this information is provided by the Workforce Investment Act of 1998 in secs. 136, 185, and 189.

Form/etc: See the documents posted on the Department's Internet website, http://www.usworkforce.org.

Total Respondents: 56 (50 States, American Samoa, Commonwealth of the Northern Mariana Islands, District of Columbia, Guam, Puerto Rico, and Virgin Islands).

Frequency: Annual Report—Yearly by September 30 with quarterly summary reports due within 45 days following each quarter Individual Record—Annually by September 30.

Total Responses: One Annual Report for each respondent. States must submit three hard copies and one electronic copy of the annual report to the Secretary of Labor. One electronic submission of the Quarterly Summary Report from each respondent. One electronic data set from each of the respondents containing individual records for each registrant served.

Average Time: 13,862 hours.

Per Response: The actual response time will vary by number of local workforce investment boards and individual records of individuals served in the State.

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden (total nat. hours)
Individual Record	56	Annually	1 set of records per respondent (set will vary in size depending on the number of individuals served in the jurisdiction).	13,152 hours	736,512
Annual Report	56	Annually	56	40 hours	2,240
Customer Satisfaction Survey.	500 participants 500 employers	Quarterly/Annually	56,000	5 min. (1/12 hr.)*	4,667.
(Results to be included in the Annual and Quarterly Reports).	Agency Admin. 56		56	500 hours	28,000
	Overhead 56		56	154 hours	8,624
Quarterly Summary Report (Statewide aggregate data only).	56	Quarterly	224 (56X4)	16 hours	3,584

Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden (total nat. hours)
Total	1,112		56,280		779,627

* Customer satisfaction surveys will be conducted by telephone or mail. Each survey is expected to take 5 minutes.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC, this 28th day of March, 2000.

Raymond L. Bramucci,

Assistant Secretary for Employment and Training.

[FR Doc. 00–8127 Filed 4–3–00; 8:45 am]

BILLING CODE 4510–30–P

Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(B) and (D) of the Code, if the proposed transactions are executed in connection with the termination of the Plan and the establishment of a successor plan that will be implemented in the event that the plans' essential operations are disrupted or destroyed by a specific disruption of computer operations. The commentator further

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Cite/reference	Total respondents	Frequency	Total responses	Average time per response	Burden (total nat. hours)
Totals	1,056	Quarterly/Annually	56,281	13,862 hours	783,627

* Assumes only 3 ASCI questions are administered.

Explanation of Burden Hours

Individual Record—736,512 hrs

Baseline: 8,768 hrs./reporting unit (State) (56 reporting units) in last FRN regarding Job Training Partnership Act (JTPA) reporting system (SPIR). Factor: 50% higher due to (1) increase in size of record, and (2) increase in number of program participants. Increases were not cumulative; some allowance made for economies of scale and learning curve.

Annual Report—2,240 hrs

Estimate based on 40 hrs./reporting unit to produce one report per year (includes program run, checking, report formatting for transmission).

Quarterly Report—3,584 hrs

Estimate based on 64 hrs./reporting unit to produce four reports per year (includes program run, checking, report formatting for transmission)—16 hrs./report.

Customer Satisfaction Survey

Respondents—4,667 hrs.

Estimate based on 1,000 responses per reporting unit (500 WIA participants and 500 employers) and 5 min. (1/12 hr.) per survey. This assumes only the three ACSI questions are asked.

Survey Administration—28,000 hrs.

Estimate based on 30 min. (0.5 hrs.) to obtain a completed survey (telephone contacts, call-backs, data entry).

Survey Preparation and Overhead—8,624 hrs.

Estimate based on:

Survey development (preparation of questionnaire and telephone script for interviewer)—40 hrs./reporting unit.

Sample selection—24 hrs./reporting unit.

Survey set-up (setting up survey for telephone administration and creation of a database)—40 hrs./reporting unit.

Compilation of results (includes generation of descriptive statistics and calculation of index for participants and employers)—50 hrs./reporting unit.

Total Burden Cost (capital/start-up)—$825,906

Estimate based on 1/3 staff year to develop WIASRD data record; this estimate was based on experience of Utah in converting from SPIR to WIASRD and programming time for the Data Validation and Denied Claims Accuracy pilots. A staff year cost factor of $44,245 was applied; this is the salary/benefits rate used in the FY 2000 budget.

Total Burden Cost (operating/maintaining)—$16,653,333.50

The estimate is based on the $44,245 staff year cost factor applied to the burden hours listed above. The burden hours for participant and employer responses to the customer satisfaction surveys equates to $24,035, while the burden cost for developing the survey and start-up totals $183,432.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will become a matter of public record.

III. Documents for Review and Comment

The following documents cited in this notice can be viewed at the Department's Internet website, http://www.usworkforce.org:

—The Workforce Investment Act Title IB Standardized Record Data (WIASRD) layout;

—The Workforce Investment Act Quarterly Summary Report Format;

—The Instructions for Submission of WIA Quarterly Summary Report;

—The instructions for submission of the WIA Annual Report; and

—The instructions for capturing, computing and recording outcomes on the Customer Satisfaction Measures

Dated: March 28, 2000.

Raymond L. Bramucci,

Assistant Secretary of Labor.

[FR Doc. 00–8122 Filed 3–31–00; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 2000–14; Exemption Application D–10830]

Amendment to Prohibited Transaction Exemption 80–26 (PTE 80–26) for Certain Interest Free Loans to Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Adoption of Amendment to PTE 80–26.

SUMMARY: This document provides a temporary amendment to PTE 80–26, a class exemption that permits parties in interest with respect to employee benefit plans to make interest free loans to such plans, provided the conditions of the exemption are met. The amendment affects all employee benefit plans, their participants and beneficiaries, and parties in interest with respect to those plans engaging in the described transactions.

EFFECTIVE DATE: The amendment to PTE 80–26 is effective from November 1, 1999 until December 31, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. J. Martin Jara, Office of Exemptions Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 219–8881. (This is not a toll-free number); or Wendy McColough, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor (202) 219–4600. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: On November 29, 1999, notice was published in the **Federal Register** (64 FR 66666) of the pendency before the Department of a proposed amendment to PTE 80–26 (45 FR 28545, Apr. 29, 1980).[1] PTE 80–26 provides an exemption from the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal

[1] A minor correction was made to the title of the final exemption in a notice published in the **Federal Register** on Mey 23, 1980. (45 FR 35040).

Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(B) and (D) of the Code in connection with certain interest free loans to employee benefit plans.

The amendment to PTE 80–26 adopted by this notice was proposed by the Department on its own motion pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR Part 2570, Subpart B (55 FR 32836, 32847, August 10, 1990).[2]

The notice gave interested persons an opportunity to submit written comments or requests for a public hearing on the proposed amendment to the Department. The Department received three comments and no requests for a public hearing. Upon consideration of the record as a whole, the Department has determined to grant the proposed amendment with minor modifications.

For the sake of convenience, the entire text of PTE 80–26, as amended, has been reprinted with this notice.

Discussion of the Comments Received

The Department received three comments with regard to the proposed amendment, all generally supporting the grant of the exemption. Two of the comments requested additional modifications, as addressed below.

The proposed amendment limited relief to transactions involving the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan for a purpose incidental to the ordinary operation of the plan which arises in connection with the plan's inability to liquidate, or otherwise access its assets or data as a result of a Y2K problem. A Y2K problem was defined in Section III of the proposed amendment as 'a disruption of computer operations resulting from a computer system's inability to process data because such system recognizes years only by the last two digits, causing a "00" entry to read as the year "1900" rather than the year "2000."'

The Association of Private Pension and Welfare Plans (APPWP) raised concerns regarding the language in the preamble to the proposed amendment which states that "* * *" plan fiduciaries must establish a contingency plan that will be implemented in the event that the plans' essential operations are affected."[3] The APPWP is concerned that this language adds a new standard of liability for plan sponsors and other fiduciaries. Accordingly, the APPWP suggests that this sentence be restated as follows: "[a]s in dealing with all situations in which plan operations could suffer some level of disruption, plan fiduciaries should consider whether to create a contingency plan to be implemented in the event that the plan's essential operations are affected by Y2K problems."

The language in the preamble did not create a new fiduciary standard of care. The relevant standard of care is set forth in the Act at section 404(a)(1)(B) as follows:

> A fiduciary shall discharge his duties with respect to the plan * * * with the care, skill and diligence under the circumstances then prevailing that a prudent man acting in like capacity and familiar with such matters would use in the conduct of an enterprise of like character and with like aims.

The preamble merely stated the Department's view that, given the well-documented risk that was associated with Y2K, a prudent person similarly situated would have established a contingency plan. The Department notes that the comprehensiveness of a particular contingency plan an employee benefit plan adopts would necessarily depend on the facts and circumstances of each case. Accordingly, the Department has determined not to adopt the suggested modification to the preamble.

In addition, the APPWP urged the Department to expand the relief under the amendment to include situations such as computer viruses, "hacking," and other technological problems caused by human malfeasance that would impede benefits administration. In this regard, the Department does not believe it has sufficient information on the record at this time to provide additional relief. However, upon further demonstration that there is a need for lending of money to plans in such circumstances, the Department would be prepared to consider further relief.

Another commentator noted that the relief proposed is too restrictive and requested that the language be liberalized. Specifically, the commentator was concerned that the broad relief contemplated by the proposal may not be available if such relief is conditioned on the establishment by a plan fiduciary of a nexus between the cash shortfall and a specific disruption of computer operations. The commentator further stated that, given the rippling nature of Y2K problems, it may be impossible to determine the specific cause of a particular cash shortfall. Accordingly, the commentator urged the Department to modify the final exemption to provide that any cash shortfall incurred by a plan between November 1, 1999 and December 31, 2000, should be presumed to be related to a Y2K problem and, thus, eligible for relief under the final exemption. After reviewing the commentator's suggestion, the Department does not believe that the commentator has adequately demonstrated the need for such broad exemptive relief. Accordingly, the Department has determined not to adopt the commentator's suggestion.

The commentator also suggested that the three day repayment period for interest-free loans made for a purpose incidental to the ordinary operation of the plan be eliminated on a permanent basis. Alternatively, the commentator suggested that either: (1) The concept of ordinary operating expenses be amended to include investment transfers and participant loans; or (2) the three day requirement be amended to require repayment of such loans over a period of time that is materially longer than three days. The Department believes that consideration of the issues involved in amending PTE 80–26 as requested by the commentator are beyond the scope of the current proceeding. In this regard, the Department notes that, pursuant to the requirements of section 408(a) of the Act, it is required to offer interested persons an opportunity to present their views and an opportunity for a hearing prior to amending an exemption. Consequently, the Department has determined not to revise the final exemption in this regard.

Finally, the commentator requested that the Department clarify whether the three day repayment requirement for loans used for a purpose incidental to the ordinary operation of the plan refers to three business days or three calender days. According to the commentator, the adoption of "T plus three" as the normal settlement practice for securities trades means that the proceeds of a sale of securities will generally not be received until three business days after the trade is executed. Accordingly, to be consistent with the prevailing market practice, the commentator urged the Department to clarify that "three days" means three business days for purposes of PTE 80–26. In this regard, it is the view of the Department that the phrase

[2] Section 102 of the Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978. 5 U.S.C. App. 1 (1995)) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

In the discussion of the exemption, references to section 406 of ERISA should be read to refer as well to the corresponding provisions of section 4975 of the Code.

[3] 64 FR 66667 (1999).

"three days" as set forth in section

of the Code that the plan must operate for the exclusive benefit of the

and periodic premiums under an insurance or annuity contract; or

MEDICARE PAYMENT ADVISORY COMMISSION

NUCLEAR REGULATORY COMMISSION

extended operation on the functionality of structures and components that have

"three days" as set forth in section I(b)(2) of PTE 80–26, as amended, means three business days, and the final exemption has been modified to make this clear.

Description of the Exemption

PTE 80–26 permits the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, and the repayment of such loan or other extension of credit in accordance with its terms or other written modifications thereof, provided that:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only:

(1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract; or

(2) For a period of no more than three days, for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured; and

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan.

The amendment to PTE 80–26 granted pursuant to this notice temporarily broadens the availability of PTE 80–26 to include certain interest-free loans to be used for a purpose incidental to the ordinary operations of a plan which arise in connection with a Y2K problem, as defined in the amendment. The amendment to PTE 80–26 permits these loans to be repaid no later than December 31, 2000.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person with respect to a plan from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption does not extend to transactions prohibited under section 406(b)(1) and (3) of the Act or section 4975(c)(1)(E) and (F) of the Code;

(3) In accordance with section 408(a) of the Act and 4975(c)(2) of the Code, the Department makes the following determinations:

(i) The amendment set forth herein is administratively feasible;

(ii) It is in the interests of plans and of their participants and beneficiaries; and

(iii) It is protective of the rights of participants and beneficiaries of plans;

(4) The amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The amendment is supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Exemption

Accordingly, PTE 80–26 is amended under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR 2570, Subpart B (55 FR 32836, 32847, August 10, 1990), as set forth below:

Section I: General Exemption

Effective January 1, 1975, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only:

(1) For the payment of ordinary operating expenses of the plan, including the payment of benefits in accordance with the terms of the plan and periodic premiums under an insurance or annuity contract; or

(2) For a period of no more than three business days, for a purpose incidental to the ordinary operation of the plan;

(c) The loan or extension of credit is unsecured; and

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan.

Section II: Temporary Exemption

Effective November 1, 1999 through December 31, 2000, the restrictions of section 406(a)(1)(B) and (D) and section 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(B) and (D) of the Code, shall not apply to the lending of money or other extension of credit from a party in interest or disqualified person to an employee benefit plan, nor to the repayment of such loan or other extension of credit in accordance with its terms or written modifications thereof, if:

(a) No interest or other fee is charged to the plan, and no discount for payment in cash is relinquished by the plan, in connection with the loan or extension of credit;

(b) The proceeds of the loan or extension of credit are used only for a purpose incidental to the ordinary operation of the plan which arises in connection with the plan's inability to liquidate, or otherwise access its assets or access data as a result of a Y2K problem.

(c) The loan or extension of credit is unsecured;

(d) The loan or extension of credit is not directly or indirectly made by an employee benefit plan;

(e) The loan or extension of credit begins on or after November 1, 1999 and is repaid or terminated no later than December 31, 2000.

Section III: Definition

For the purposes of section II, a Y2K problem is a disruption of computer operations resulting from a computer system's inability to process data because such system recognizes years only by the last two digits, causing a "00" entry to be read as the year "1900" rather than the year "2000."

Signed at Washington, DC, this 28th day of March, 2000.

Ivan L. Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 00–8057 Filed 3–31–00; 8:45 am]

BILLING CODE 4510–29–P

MEDICARE PAYMENT ADVISORY COMMISSION

Notice of Meeting

AGENCY: Medicare Payment Advisory Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, April 13, 2000 and Friday, April 14, 2000 at the Ronald Reagan Building, International Trade Center, 1300 Pennsylvania Avenue, NW, Washington, DC. The meeting is tentatively scheduled to begin at 10 a.m. on April 13, and 9 a.m. on April 14.

Topics for discussion include: payments to teaching hospitals and DRG refinement, improving quality assurance for institutional providers, financial performance and payment update for hospitals covered by PPS, hospital financial performance and payment update for facilities exempt from PPS, work plan on mandated study on medical savings accounts, improving payment policy for hospital outpatient departments and physicians' services, criteria for evaluating proposals to reform Medicare, prescription drug coverage issues, and an update on proposed refinements to the SNF PPS.

Agenda will be mailed on April 4, 2000. The final agenda will be available on the Commission's website (www.MedPAC.gov).

ADDRESSES: MedPAC's address is: 1730 K Street, NW, Suite 800, Washington, DC 20006. The telephone number is (202) 653–7220.

FOR FURTHER INFORMATION CONTACT: Diane Ellison, Office Manager, (202) 653–7220.

SUPPLEMENTARY INFORMATION: If you are not on the Commission mailing list and wish to receive an agenda, please call (202) 653–7220.

Murray N. Ross,

Executive Director.

[FR Doc. 00–8068 Filed 3–31–00; 8:45 am]

BILLING CODE 6820–BW–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–321 and 50–366]

Southern Nuclear Operating Company, Inc., Edwin I. Hatch Nuclear Plant, Units 1 and 2, Notice of Acceptance for Docketing of the Application, and Notice of Opportunity for a Hearing Regarding Renewal of License, Nos. DPR–57 and NPF–5, for an Additional Twenty-Year Period

The U.S. Nuclear Regulatory Commission (the Commission) is considering an application for the renewal of Operating Licenses Nos. DPR–57 and NPF–5, which authorize Southern Nuclear Operating Company, Inc. (SNC) to operate Units 1 and 2 of the Edwin I. Hatch Nuclear Plant (Hatch 1 and Hatch 2, respectively), at 2,763 megawatts thermal. The renewed license would authorize the applicant to operate Hatch 1 and Hatch 2 for an additional 20 years beyond the period specified in the current licenses. The current operating licenses for Hatch 1 and Hatch 2 expire on August 6, 2014 and June 13, 2018, respectively.

SNC submitted an application to renew the operating licenses for Hatch 1 and Hatch 2 on March 1, 2000. A Notice of Receipt of Application, "Southern Nuclear Operating Company, Inc., Edwin I. Hatch Nuclear Plant, Units 1 and 2; Notice of Receipt of Application for Renewal of Facility Operating License Nos. DPR–57 and NPF–5, for an Additional Twenty-Year Period," was published in the **Federal Register** on March 10, 2000 (65 FR 13061).

The Commission's staff has determined that SNC has submitted information in accordance with 10 CFR 54.19, 54.21, 54.22, 54.23, and 51.53(c) that is complete and acceptable for docketing. The current Docket Nos. 50–321 for Operating License No. DPR–57 and 50–366 for Operating License No. NPF–5, will be retained. The docketing of the renewal application does not preclude requesting additional information as the review proceeds, nor does it predict whether the Commission will grant or deny the application.

Before issuance of the requested license renewal, the NRC will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the NRC's rules and regulations. In accordance with 10 CFR 54.29, the NRC will issue a renewed license on the basis of its review and findings that actions have been identified and have been or will be taken with respect to (1) managing the effects of aging during the period of extended operation on the functionality of structures and components that have been identified as requiring aging management review, and (2) time-limited aging analyses that have been identified as requiring review such that there is reasonable assurance that the activities authorized by the renewed license will continue to be conducted in accordance with the current licensing basis (CLB) and that any changes made to the plant's CLB comply with the Act and the Commission's regulations.

Additionally, in accordance with 10 CFR 51.95(c), the NRC will prepare an environmental impact statement that is a supplement to the Commission's NUREG–1437, "Generic Environmental Impact Statement for License Renewal of Nuclear Power Plants," (May 1996). Pursuant to 10 CFR 51.26, and as part of the environmental scoping process, the staff intends to hold a public scoping meeting. Detailed information regarding this meeting will be included in a future **Federal Register** notice. The Commission also intends to hold public meetings to discuss the license renewal process and the schedule for conducting the review. The Commission will provide prior notice of these meetings. As discussed further herein, in the event that a hearing is held, issues that may be litigated will be confined to those pertinent to the foregoing.

By 30 days after publication date, the applicant may file a request for a hearing, and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene with respect to the license renewal in accordance with the provisions of 10 CFR 2.714. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20037. If a request for a hearing or a petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request(s) and/or petition(s), and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order. In the event that no request for a hearing or a petition for leave to intervene is filed by the above date, the NRC may, upon completion of its evaluations and upon making the findings required under 10 CFR Parts 54 and 51, renew the license without further notice.

As required by 10 CFR 2.714, a

contention will not be permitted to

SECURITIES AND EXCHANGE

estimates the total annual burden for all funds is 22.5 hours

of whom must act jointly when

registered management investment

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding, taking into consideration the limited scope of matters that may be considered pursuant to 10 CFR Parts 54 and 51. The petition must specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition must also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the board up to 15 days before the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days before the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene that must include a list of the contentions that the petitioner seeks to have litigated in the hearing. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of each contention and a concise statement of the alleged facts or the expert opinion that supports the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. The petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the action under consideration. The contention must be one that, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement that satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Requests for a hearing and petitions for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington DC 20037, by the above date. A copy of the request for a hearing and the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to Mr. H.L. Sumner, Vice President—Hatch Project, Southern Nuclear Operating Company, Inc. 40 Inverness Center Parkway, P.O. Box 1295, Birmingham, AL 35201–1295.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions, and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

Detailed information about the license renewal process can be found under the nuclear reactors' icon of the NRC's Web page <http://www.nrc.gov>.

A copy of the application to renew the Hatch 1 and Hatch 2 licenses is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20037, and on the NRC's Web page <http://www.nrc.gov>. In addition, the Appling County Library, 242 East Parker Street, Baxley, Georgia 31513, has agreed to make a copy of the application and related information available to the public.

Dated at Rockville, Maryland, this 23rd day of March 2000.

For the Nuclear Regulatory Commission.

Pao-Tsin Kuo,

Acting Chief, License Renewal and Standardization Branch, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8108 Filed 3–31–00; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

Request For Public Comment

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:
Rule 17f–1, SEC File No. 270–236, OMB Control No. 3235–0222
Form N–17f–1, SEC File No. 270–316, OMB Control No. 3235–0359
Rule 17f–2, SEC File No. 270–233, OMB Control No. 3235–0223
Form N–17F–2, SEC File No. 270–317, OMB Control No. 3235–0360

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is publishing for public comment the following summaries of previously approved information collection requirements. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17f–1 under the Investment Company Act of 1940 (the "Act") is entitled: "Custody of Securities with Members of National Securities Exchanges." Rule 17f–1 provides that any registered management investment company ("fund") that wishes to place its assets in the custody of a national securities exchange member may do so only under a written contract that must be ratified initially and approved annually by a majority of the fund's board of directors. The written contract also must contain certain specified provisions. In addition, the rule requires an independent public accountant to examine the fund's assets in the custody of the exchange member at least three times during the fund's fiscal year. The rule requires the written contract and the certificate of each examination to be transmitted to the Commission. The purpose of the rule is to ensure the safekeeping of fund assets.

Commission staff estimates that approximately five funds maintain their assets with a national securities exchange number.[1] The annual burden of the rule's requirements is estimated to be approximately 4.5 hours for each of these funds.[2] Commission staff estimates the total annual burden for all funds is 22.5 hours.

Compliance with the collection of information required by rule 17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange. Responses will not be kept confidential.

Form N–17f–1 is entitled: "Certificate of Accounting of Securities and Similar Investments of a Management Investment Company in the Custody of Members of National Securities Exchanges." Form N–17f–1 is the cover sheet for accountant examination certificates filed under rule 17f–1 of the Act. Rule 17f–1 requires the accountant's certificate of each examination be attached to Form N–17f–1 and transmitted to the Commission promptly after each examination. The form facilitates the filing of the accountant's certificate, and increases the accessibility of the certificate to both Commission's staff and interested investors.

Commission staff estimates that approximately five funds maintain their assets with a national securities exchange member. The annual burden of the rule's requirements is estimated to be approximately 27 minutes for each of these funds.[3] The total annual burden for all funds is therefore estimated to be 2.25 burden hours.

Compliance with the collection of information required by Form N–17f–1 is mandatory for funds that place their assets in the custody of a national securities exchange member.

Rule 17f–2 under the Act is entitled: "Custody of Investments by Registered Management Investment Company." Rule 17f–2 establishes safeguards for arrangements in which a registered management investment company is deemed to maintain custody of its own assets, such as when the funds maintains its assets in a facility that provides safekeeping but not custodial services. The rule includes several recordkeeping or reporting requirements. The fund's directors must prepare a resolution designating not more than five fund officers or responsible employees who may have access to the fund's assets. The designated access persons (two or more of whom must act jointly when handling fund assets) must prepare a written notation providing certain information about each deposit or withdrawal of fund assets, and must transmit the notation to another officer or director designed by the directors. Independent public accountants must verify the fund's assets at least three times a year, and two of the examinations must be unscheduled.

The requirement that directors designate access persons is intended to ensure that directors evaluate the trustworthiness of insiders who handle fund assets. The requirements that access persons act jointly in handling fund assets, prepare a written notation of each transaction, and transmit the notation to another designated person are intended to reduce the risk of misappropriation of fund assets by access persons, and to ensure that adequate records are prepared, reviewed by a responsible third person, and available for examination by the Commission. The requirement that auditors verify fund assets without notice twice each year is intended to provide an additional deterrent to the misappropriation of fund assets and to detect any irregularities.

Commission staff estimates that approximately 204 funds rely upon the rule (and that each fund offers an average of two separate series or portfolios subject to the rule).[4] Commission staff estimates that each fund spends approximately 2 hours annually in drafting resolutions by directors, 24 hours annually in preparing transaction notations, and 100 hours annually assisting independent public accountants perform unscheduled verifications of assets.[5] The total annual burden of the rule's paperwork requirements thus is estimated to be 25,704 hours. This represents an increase of 10,844 hours from a prior estimate of 13,860 hours, based on an increase in the number of funds relying on the rule from 110 to 204 funds.

Form N–17f–2 is entitled "Certificate of Accounting of Securities and Similar Investments in the Custody of Management Investment Companies." Form N–17f–2 is the cover sheet for the accountant examination certificates filed under rule 17f–2 of thee Act by registered management investment companies maintaining custody of securities or other investments. Form N–17f–2 facilitates the filing of the accountant's examination certificates. The use of the form allows the certificates to be filed electronically, and increases the accessibility of the examination certificates to both the Commission's examination staff and interested investors by ensuring that the certificates are filed under the proper SEC file number and the correct name of a fund.

Commission staff estimates that approximately 204 funds rely on rule 17f–2, and therefore, file Form N–17f–2 with the Commission. A fund relying on rule 17f–2 must file the form with the Commission at least three times a year. Commission staff estimates that each funds spends approximately nine minutes (0.15 hours) preparing each response on Form N–17f–2.[6] Therefore, the total annual burden of Form N–17f–2's annual paperwork requirements is estimated to be approximately 92 hours,[7] an increase of 72 hours from the prior estimate of 20 hours. The increase in the annual hour burden is primarily attributable to the increase in the number of respondents from 130 funds to 204 funds.[8]

Complying with the collection of information requirements of the rule is mandatory for those funds that maintain custody of their own assets. The information provided to the Commission by the fund's independent public accountants about each verification of the fund's assets will not be kept confidential.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules.

The Commission requests written comments on: (a) Whether the collections of information are necessary for the proper performance of the functions of the Commission, including

[1] The Commission's records show that five funds filed Form N–17f–1 during calendar year 1999.

[2] The Commission staff estimates, based upon the experience of staff familiar with the information collection requirements of the rule, that each fund spends approximately 4.5 hours annually in complying with the rule's requirements: 4 hours of clerical time (1 hour to prepare the custodial contract for board review and to transmit the contract, and 1 hour to transmit of the accountant's certificates three times yearly) and 0.5 hours for the board of directors to ratify the custodial contract.

[3] Commission staff estimates that it takes approximately 9 minutes of clerical time to prepare each Form N–17f–1. This estimate is based on Commission staff members filling out the Form N–17f–1. Each fund is required to file Form N–17f–1 three times annually, for an average hour burden per fund of 27 minutes.

[4] A fund relying upon rule 17f–2 is required to file Form N–17f–2 with the Commission three times yearly. The Commission's records indicate that approximately 204 funds filed Form N–17f–2 with the Commission during calendar year 1999.

[5] Each of these hour burden estimates is based upon conversations with attorneys and accountants familiar with the information collection requirements of the rule.

[6] This estimate is based on the experience of members of the Commission staff in completing Form N–17f–2.

[7] This estimate is based on the following calculation: 204 (respondents) × 3 (responses per fund per year) × 0.15 (hours per response) = 91.8 burden hours.

[8] The estimate of the hour burden per fund per response remains 9 minutes for each Form N–17f–2 filed with the Commission. The prior annual hour burden estimate was based on a calculation of 0.05 hours (which equals 3 minutes) instead of 0.15 hours (9 minutes). The annual hour burden for Form N–17f–2 has, therefore, increased by only 42.3 burden hours if the prior annual hour burden is recalculated: 110 (respondents) × 3 (responses per respondent per year) × 0.15 (hours per response) = 49.5 burden hours.

whether the information has practical

by 5:30 p.m. on April 21, 2000, and

Life, and by a majority of the Trust's board of trustees (the "Board")

contract approved by a majority of the investment company's outstanding

contemplated by condition 2 below. Similarly, before a Future Fund may

caused by the addition of a new Subadviser. Each Fund will meet this

whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burdens of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: March 27, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8069 Filed 3–31–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. IC–24368; 812–11790]

Sun Capital Advisers Trust and Sun Capital Advisers, Inc.; Notice of Application

March 27, 2000.

AGENCY: Securities and Exchange Commission. ("Commission")

ACTION: Notice of application under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of Application: The requested order would permit applicants, Sun Capital Advisers Trust (the "Trust") and Sun Capital Advisers, Inc. (the "Adviser"), to enter into and materially amend investment subadvisory agreements without obtaining shareholder approval.

Filing Dates: The application was filed on September 29, 1999, and amended on January 18, 2000. Applicants have agreed to file an additional amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 21, 2000, and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609; Applicants, One Sun Life Executive Park, Wellesley Hills, MA 02481–5699.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, N.W., Washington, D.C. 20549–0102 (tel. (202) 942–8090).

Applicants' Representations

1. The Trust, a Delaware business trust, is registered under the Act as an open-end management investment company. The Trust is comprised of six separate series, each with its own distinct investment objectives, policies, and restrictions (each, a "Fund").[1] Each Fund's shares are continually offered for sale as funding vehicles for variable annuity and variable life insurance contracts issued by participating insurance companies and for qualified pension plans.

2. The Adviser, an indirect wholly-owned subsidiary of Sun Life Assurance Company of Canada ("Sun Life"), is registered under the Investment Advisers Act of 1940 ("Advisers Act"). The Trust, on behalf of each fund, has entered into investment advisory agreements with the Adviser (each, an "Advisory Agreement"), pursuant to which the Adviser serves as the investment adviser to the Funds. Each Advisory Agreement has been approved by the Funds' initial shareholder, Sun Life, and by a majority of the Trust's board of trustees (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act, of the Trust or the Adviser ("Independent Trustees").

3. Under the Advisory Agreements, the Adviser, subject to Board oversight, provides each Fund with investment research, advice, and supervision, and furnishes an investment program for each Fund. The Advisory Agreements also provide that the Adviser may delegate its responsibility for providing investment advice and making investment decisions for a particular Fund to one or more subadvisers ("Subadvisers"). The Adviser selects Subadvisers based on the Adviser's continuing evaluation of their skills in managing assets pursuant to particular investment styles. The Adviser screens potential new Subadvisers and engages in an on-going analysis of the continued advisability as to the retention of its existing Subadvisers. From time to time, the Adviser may recommend to the Board that the services of a Subadviser be terminated. Each Fund pays the Adviser a fee for its services based on the Fund's average daily net assets.

4. The Adviser has entered into investment subadvisory agreements ("Subadvisory Agreements") with Wellington Capital Management LLC ("Wellington") to serve as Subadviser to three of the Funds. Wellington is not an "affiliated person," as defined in section 2(a)(3) of the Act ("Affiliated Person"), of the Trust or the Adviser. The Trust may in the future offer Funds managed by other Subadvisers or by multiple Subadvisers. Each Subadviser will have discretionary authority to invest the assets of a particular Fund, subject to general supervision by the Adviser and the Board, and will be registered under the Advisers Act or exempt from registration. The Adviser pays each Subadviser's fees out of the fees the Adviser receives from each Fund.

5. Applicants request relief to permit the Adviser to enter into and materially amend Subadvisory Agreements without obtaining shareholder approval. The requested relief will not extend to a Subadviser that is an Affiliated Person of the Trust or the Adviser, other than by reason of serving as a Subadviser to one or more of the Funds ("Affiliated Subadviser").

Applicant's Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except under a written

[1] Applicants also request relief with respect to future Funds and any other registered open-end management investment company and its series that in the future: (a) Is advised by the Adviser, or a person controlling, controlled by or under common control with the Adviser; (b) operates in substantially the same manner as the Funds with regard to the Adviser's responsibility to select, evaluate, and supervise Subadvisers; and (c) complies with the terms and conditions in the application ("Future Funds"). The only existing registered open-end management investment company that currently intends to rely on the order is named as an applicant

contract approved by a majority of the investment company's outstanding voting shares. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act authorizes the Commission to exempt persons or transactions from the provisions of the Act, or from any rule thereunder, to the extent that the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Applicants request an exemption under section 6(c) of the Act from section 15(a) of the Act and rule 18f–2 under the Act to permit them to enter into and materially amend Subadvisory Agreements without shareholder approval.

3. Applicants assert that a Fund's investors rely on the Adviser to select and monitor Subadvisers best suited to manage the Fund's portfolio. Applicants submit that, from the perspective of an investor, the role of the Subadvisers is comparable to that of individual portfolio managers employed by other investment company advisory firms. Applicants contend that requiring shareholder approval of Subadvisory Agreements would impose expenses and unnecessary delays on the Funds, and may preclude the Adviser from promptly acting in a manner considered advisable by the Board. Applicants note that the Advisory Agreements will remain subject to section 15(a) of the Act and rule 18f–2 under the Act, including the requirements for shareholder approval.

Applicant's Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Fund may rely on the order requested in the application, the operation of the Fund's in the manner described in the application will be approved by a majority of the Fund's outstanding voting securities (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or by its initial shareholder, provided that, in the case of the approval by the initial shareholder, the pertinent Fund's shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below. Similarly, before a Future Fund may rely on the order requested in the application, the operation of the Future Fund in the manner described in the application will be approved by its initial shareholder before a public offering of shares of such Future Fund, provided that shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unitholders of the sub-account) purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below.

2. Each Fund will disclose in its prospectus the existence, substance, and effect of any order granted pursuant to the application. In addition, each Fund will hold itself out to the public as employing the management structure described in the application. The prospectus will prominently disclose that the Adviser has the ultimate responsibility to oversee the Subadvisers and recommend their hiring, termination and replacement.

3. At all times, a majority of the board will be Independent Trustees, and the nomination of new or additional Independent Trustees will be at the discretion of the then-existing Independent Trustees.

4. The Adviser will not enter into a Subadvisory Agreement with any Affiliated Subadviser without the agreement, including the compensation be paid thereunder, being approved by the shareholders of the applicable Fund (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unit holders of the sub-account).

5. When a Subadviser change is proposed for a Fund with an Affiliated Subadviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the Board minutes, that the change is in the best interests of the Fund and its shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the best interests of the Fund and unit holders of any such sub-account), and does not involve a conflict of interest from which the Adviser or the Affiliated Subadviser derives an inappropriate advantage.

6. Within 90 days of the hiring of any new Subadviser for any Fund, the Fund shareholders (or, if the Fund serves as a funding medium for any sub-account of a registered separate account, the unit holders of the sub-account) will be furnished all relevant information about a new Subadviser that would be contained in a proxy statement, including any change in such disclosure caused by the addition of a new Subadviser. Each Fund will meet this condition by providing shareholders (or unit holders) with an information statement meeting the disclosure requirements of Regulations 14C, Schedule 14C, and Item 22 of Schedule 4A under the Securities Exchange Act of 1934 within 90 days of the hiring of a Subadviser.

7. The Adviser will provide general management services to each Fund, including overall supervisory responsibility for the general management and investment of each Fund's portfolio, and, subject to review and approval by the Board, will: (i) Set the Fund's overall investment strategies; (ii) select Subadviser(s); (iii) monitor and evaluate the performance of Subadviser(s); (iv) ensure that the Subadviser(s) comply with each Fund's investment objectives, polices and restrictions by, among other things, implementing procedures reasonably designed to ensure compliance; and (b) allocate and, where appropriate, reallocate a Fund's assets among its Subadvisers when a Fund has more than one Subadviser.

8. No trustee or officer of the Trust or director or officer of the Adviser will own, directly or indirectly (other than through a pooled investment vehicle that is not controlled by that trustee, director or officer), any interest in a Subadviser, except for: (i) ownership of interests in the Adviser or any entity that controls, is controlled by, or is under a common control with the Adviser; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Subadviser or any entity that controls, is controlled by, or is under common control with a Subadviser.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8070 Filed 3–31–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of April 3, 2000.

An open meeting will be held on

open meeting, will be: Post oral

DEPARTMENT OF STATE

the Coastwise Trade Laws for the Vessel A QUIT-ALL.

parties. Comments should refer to the docket number of this notice and the

(6) A statement on the impact this waiver will have on U.S. shipyards

An open meeting will be held on Wednesday, April 5, 2000 at 10:00 a.m. in Room 6600.

The subject matters of the open meeting scheduled for Wednesday, April 5, at 10:00 a.m. in Room 6600 will be:

(1) The Commission will consider whether to propose rule amendments and new rules to (i) require investment advisers to submit their investment adviser filings on an electronic filing system, currently being developed by the Commission and the state securities authorities; (ii) substantially update and revise Form ADV to accommodate electronic filing; and (iii) require advisers to deliver to clients a narrative brochure written in plain English. The Commission and the state securities authorities are creating an Internet-based system of electronic filing for investment advisers. The system is called the Investment Adviser Registration Depository (IARD) and will permit investment advisers to satisfy filing obligations under state and federal laws by making a single electronic filing. Information contained in filings made through the IARD will be stored in a database that members of the public will be able to access free of charge through the Internet. The IARD is being built and will be operated for the Commission by NASD Regulation, Inc. (NASDR). For further information, please contact: Lori H. Price at (202) 942–0716.

(2) The Commission will hear oral argument on appeals by Marc N. Geman and the Division of Enforcement from an administrative law judge's initial decision imposing sanctions on Geman. For further information, contact Kermit Kennedy at (202) 942–0950.

Closed meetings will be held on Wednesday, April 5, 2000, following the 10:00 a.m. open meeting and on Thursday, April 6, 2000 at 11:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10), and 17 CFR 200.402(a)(4), (8), (9)(A) and (10), permit consideration for the scheduled matters at the closed meeting.

Commissioner Unger, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, April 5, 2000, following the 10:00 a.m. open meeting, will be: Post oral argument discussion.

The subject matter of the closed meeting scheduled for Thursday, April 6, 2000, at 11:00 a.m. will be: Institution and settlement of injunctive actions; and Institution and settlement of administrative proceedings of an enforcement nature.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

The Office of the Secretary at (202) 942–7070.

Dated: March 29, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8216 Filed 3–30–00; 11:36 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Enterprises Solutions, Inc.; Order of Suspension of Trading

March 30, 2000.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Enterprises Solutions, Inc., trading under the stock symbol EPSO.OB. Questions have been raised concerning the accuracy and completeness of assertions made by Enterprises Solutions, Inc. in its filings with the Commission, in its recent press releases, and on its Internet website, including questions about the identity of persons in control of the operations and management of the company.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EST, March 30, 2000 through 11:59 p.m. EDT, on April 12, 2000.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8225 Filed 3–30–00; 11:54 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Culturally Significant Objects Imported for Exhibition; Determinations: "The Forgotten Friezes From the Castle of Velez Blanco"

DEPARTMENT: United States Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985, 22 U.S.C. 2459], the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681 *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999, as amended by Delegation of Authority No. 236–1 of November 9, 1999, I hereby determine that the objects to be included in the exhibit, "The Forgotten Friezes from the Castle of Velez Blanco," imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition or display of the exhibit objects at the Metropolitan Museum of Art, New York, NY, from on or about May 11, 2000, to on or about January 7, 2001, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is Room 700, United States Department of State, 301 4th Street, SW, Washington, DC 20547–0001.

Dated: March 24, 2000.

William B. Bader,

Assistant Secretary for Educational and Cultural Affairs, United States Department of State.

[FR Doc. 00–8051 Filed 3–31–00; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2000–7146]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the Vessel A QUIT-ALL.

SUMMARY: As authorized by Public Law 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S. build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Public Law 105–383 and MARAD's regulations at 46 CFR 388 (65 FR 6905; February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before May 3, 2000.

ADDRESSES: Comments should refer to docket number MARAD–2000–7146. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., S.W., Washington, D.C. 20590–0001. You may also send comments electronically via the Internet at http://dmses.dot.gov/submit/. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: Michael Hokana, U.S. Department of Transportation, Maritime Administration, MAR 832 Room 7201, 400 Seventh Street, SW, Washington, DC 20590. Telephone 202–366–0760.

SUPPLEMENTARY INFORMATION: Title V of Pub.L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (less than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commentor's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. Name: A QUIT-ALL, owner: Pescado Rentado, Inc., a Florida corporation (incorporated 1979).

(2) Size, capacity and tonnage of vessel: Length Overall: 44', Tonnage: Gross 33, Net 26 (Pursuant to Coast Guard Document #528959).

(3) Intended use for vessel, including geographic region of intended operation and trade. According to the applicant: "Sportfishing charter from Jupiter Inlet south to Key West and adjacent waters."

(4) Date and place of construction and (if applicable) rebuilding. Date of construction: 1980. Place of original construction: Norway.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. According to the applicant: "This waiver will not have an impact on other commercial passenger vessel operators who offer offshore sportfishing/cruising charters. There are approximately 40 sportfishing charter services which advertise regularly in the Southern Bell Telephone Yellow Pages, for the Greater Miami area. Existing offshore sportfishing charter boats charge between $350.00 (half-day) to $750.00 (full day). This requested waiver will compliment existing offshore charter operations, as the intent is to focus on obtaining longer than one-day charters, including overnight stays and entertaining on the vessel.

The Greater Miami/Fort Lauderdale area continues to have significant tourist, family vacation, and convention business. Granting this administrative waiver will enable the commercial sport fishing industry to better meet the demands of tourists as it expands even more rapidly. This waiver will also create U.S. jobs: 1 boat captain, 1 mate and several (at least part time) support staff from clerical to boat cleaners. In addition, being able to put this vessel into charter sport fishing will require weekly expenditure for bait, tackle, supplies and products necessary to run and maintain a high quality charter operation. Overall, the local economy will be helped by the granting of this waiver."

(6) A statement on the impact this waiver will have on U.S. shipyards. According to the applicant: "This waiver will have no negative impact on U.S. Shipyards. There is no comparable sportfishing vessel (44' Aluminum Hull) currently being manufactured and applicant is unaware of any plans for similar production within the United States.

All future repairs, improvements and upgrades will continue to be undertaken at U.S. (South Florida) shipyards and marinas. Consequently, this vessel will continue to have a positive effect on South Florida (Fort Lauderdale/Miami area) shipyards for routine maintenance and twice-yearly bottom painting, in addition to future refurbishing and refitting. Once in charter use as a working sport fisherman, monthly—if not weekly—maintenance and repairs will become necessary, hence local area shipyards and marinas will benefit."

Dated: March 28, 2000.

By Order of the Maritime Administrator.

Edmund T. Sommer, Jr.,

Acting Secretary, Maritime Administration.

[FR Doc. 00–8131 Filed 3–31–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Domestic Finance; Notice of Open Meeting of the Advisory Committee U.S. Community Adjustment and Investment Program

The Department of the Treasury, pursuant to the North American Free Trade Agreement ("NAFTA") Implementation Act (Pub. L. 103–182) (the "Act"), established an advisory committee (the "Advisory Committee") for the community adjustment and investment program (the "Program") authorized by the Act. The Program provides financing to create or preserve jobs in communities adversely impacted by NAFTA. The charter of the Advisory Committee has been filed in accordance with the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463), with the approval of the Secretary of the Treasury.

The Advisory Committee consists of nine members of the public, appointed by the President, who collectively represent: (1) Community groups whose constituencies include low-income families; (2) scientific, professional, business, nonprofit, or public interest organizations or associations, which are neither affiliated with, nor under the direction of, a government; and (3) for-profit business interests. There is

currently one vacancy in the Advisory Committee.

The objectives of the Advisory Committee are to: (1) Provide informed advice to the President regarding the implementation of the Program; and (2) review on a regular basis, the operation of the Program, and provide the President with the conclusions of its review. Pursuant to Executive Order No. 12916, dated May 13, 1994, the President established an interagency Finance Committee to implement the Program and to receive, on behalf of the President, advice of the Advisory Committee. The Finance Committee is chaired by the Secretary of the Treasury or his designated representative.

A meeting of the Advisory Committee, which will be open to the public, will be held in Washington, D.C. at the Marriott Hotel at Metro Center, 775 12th Street, NW, Washington, D.C. 20005 (Tel. 202–737–2200) from 9 a.m. to 4 p.m. on Tuesday, April 25, 2000. The exact location of the meeting room will be posted in the hotel lobby on the day of the meeting. The meeting room will accommodate approximately 50 persons and seating is available on a first-come, first-serve basis, unless space has been reserved in advance. Due to limited seating, prospective attendees are encouraged to contact the person listed below prior to April 14, 2000.

The purpose of the meeting is to review the operations of the Program, and to provide the Finance Committee with advice regarding the conclusions of its review and other implementation issues. Specifically, the meeting would review the recent status of, and anticipated activities of, the three Program components, namely, the federal agency program, the direct loan program, and the grant program.

If you would like to have the Advisory Committee consider a written statement, material must be submitted to the U.S. Community Adjustment and Investment Program, Advisory Committee, Department of the Treasury, 1500 Pennsylvania Avenue, NW, South Court 17–B, Washington, D.C. 20220 no later than April 7, 2000. If you have any questions, please call Dan Decena at (202) 622–0637 (Please note that this telephone number is not toll-free.)

Harry M. Haigood,

Deputy Assistant Secretary, Government Financial Policy.

[FR Doc. 00–8121 Filed 3–31–00; 8:45 am]

BILLING CODE 4810–25–U

DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

Proposed Collection; Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the Community Development Financial Institutions Fund (the Fund) within the Department of the Treasury is soliciting comments concerning the Bank Enterprise Award (BEA) Program.

DATES: Written comments should be received on or before June 2, 2000 to be assured of consideration.

ADDRESSES: Direct all comments to Jeannine Jacokes, Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW. Suite 200 South, Washington, DC 20005, Fax number (202) 622–7754.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form(s) and instructions should be directed to the Community Development Financial Institutions Fund, U.S. Department of the Treasury, 601 13th Street, NW. Suite 200 South, Washington, DC 20005, or call (202) 622–8662.

SUPPLEMENTARY INFORMATION:

Title: Bank Enterprise Award Program Survey.

OMB Number: 1559–0008.

Abstract: The purpose of the Community Development Banking and Financial Institutions Act of 1994 (Act) was to create the Fund to promote economic revitalization and community development through investment in and assistance to Community Development Financial Institutions (CDFIs). The Fund's BEA Program helps achieve this purpose through an incentive system for insured depository institutions to, among other things, increase their lending to and investment in CDFIs by rewarding participating institutions with awards.

Current Actions: The Fund plans to survey BEA awardees in order to measure the effects of the BEA Program on insured depository institution community development activities.

Type of review: Extension.

Affected Public: Insured depository institutions

Estimated Number of Respondents: 50.

Estimated Time Per Respondent: 1 hour.

Estimated Total Annual Burden Hours: 50 hours.

Requests for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Authority: 12 U.S.C. 1834a, 4701, 4704, 4713; 12 CFR part 1806.

Dated: March 28, 2000.

Maurice A. Jones,

Deputy Director for Policy and Programs, Community Development Financial Institutions Fund.

[FR Doc. 00–8048 Filed 3–31–00; 8:45 am]

BILLING CODE 4810–70–M

DEPARTMENT OF THE TREASURY

Customs Service

General Program Test for Transfer of Accompanied (International) In-Transit Baggage

AGENCY: Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice extends the time period for applying to participate in the general program test for the transfer of accompanied, international in-transit baggage.

DATES: To participate in the test, applicants have until close of business on May 26, 2000, to file the required information with Customs.

ADDRESSES: To apply for participation in the test, air carriers must timely submit to the appropriate port director (having jurisdiction over the airport involved) a written statement of intent to comply with the requirements of the test program.

FOR FURTHER INFORMATION CONTACT: For information relative to the test program and the application to participate: Steve A. Gilbert, Office of Field Operations (202) 927–1391.

SUPPLEMENTARY INFORMATION:

Background

On February 23, 2000, Customs published in the **Federal Register** (65 FR 9054) a notice announcing a general program test for the transfer of accompanied, international in-transit baggage. The notice announced the eligibility requirements for participation in the test, described the information transmission and baggage processing procedures required of participant air carriers, and set forth that applications to participate must be filed on or before March 24, 2000. Comments were also requested, to be submitted to Customs on or before the same date.

Customs anticipates issuance of another notice regarding the test program to announce any changes in the test that might be warranted after Customs evaluates the comments received and reconsiders the test program in light thereof.

This notice announces that the time period for applying to participate in the test has been extended to May 26, 2000.

Dated: March 29, 2000.

Robert J. McNamara,

Acting Assistant Commissioner, Office of Field Operations.

[FR Doc. 00–8140 Filed 3–31–00; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Minority Veterans, Notice of Meeting

The Department of Veterans Affairs (VA), in accordance with Public Law 103–446, gives notice that a meeting of the Advisory Committee on Minority Veterans will be held from Monday, April 17, 2000 to Wednesday, April 19, 2000, in Washington, DC. The purpose of the Advisory Committee on Minority Veterans is to advise the Secretary of Veterans Affairs on the administration of VA benefits and services to minority veterans; to assess the needs of minority veterans and to evaluate whether VA compensation, medical and rehabilitation services, outreach, and other programs are meeting those needs. The Committee will make recommendations to the Secretary regarding such activities.

The meeting will convene in room 230, VA Central Office (VACO) Building, 810 Vermont Avenue, NW, Washington, DC, from 8:30 A.M. to 5:00 P.M. On April 17, the Committee will focus on such health care issues as HIV/AIDS, Hepatitis C, Post Traumatic Stress Disorder, and medical research. On Tuesday, April 18, the Committee will concentrate its efforts on veterans' employment and training issues, the cardiac care program evaluation, and the Veterans' Benefits Administration's Road Map to Excellence. The Committee will work in Subcommittees in the afternoon session. On Wednesday, April 19, the Committee will examine several diversity training programs and will begin drafting its annual report for Fiscal Year 2000. These sessions will be open to the public. It will be necessary for those wishing to attend the meeting to contact Mr. Anthony T. Hawkins, Department of Veterans Affairs, at (202) 273–6708, before April 16, 2000. No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on issues affecting minority veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Minority Veterans, Center for Minority Veterans (00M), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420.

Dated: March 24, 2000.

By Direction of the Secretary.

Marvin R. Eason,

Committee Management Officer.

[FR Doc. 00–8071 Filed 3–31–00; 8:45 am]

BILLING CODE 8320–01–M

Corrections

Federal Register
Vol. 65, No. 64
Monday, April, 3, 2000

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Office of Minority Health; Availability of Funds for Grants for the Bilingual/ Bicultural Service Demonstration Grant Program

Correction

In notice document 00–6897 beginning on page 15159, in the issue of Tuesday, March 21, 2000, make the following correction:

On page 15161, in the first column, in the fourth line, "not" should be added after "will".

[FR Doc. C0–6897 Filed 3–31–00; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Parts 1301 and 1308

Schedules of Controlled Substances: Addition of Gamma–Hydroxybutyric Acid to Schedule I

Correction

In rule document 00–5925 beginning on page 13235, in the issue of Monday, March 13, 2000, make the following corrections:

1. On page 13237, in the third column, in paragraph 6., in the third line, "§§1394,21–1394,23" should read "§§1304.21–1304.23".

2. On the same page, in the same column, in prargraph 10., in the first line, "*Important*" should read "*Importation* ".

[FR Doc. C0–5925 Filed 3–31–00; 8:45 am]
BILLING CODE 1505–01–D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG19

List of Approved Spent Fuel Storage Casks; Revision, NUHOMS 24–P and NUHOMS 52–B

Correction

In rule document 00–7431 beginning on page 16299 in the issue of March 28, 2000, make the following corrections:

§72.214 [Corrected]

1. On page 16302, in the second column, in the fifth line, "Amendment No. 0 is applicable for casks manufactured before [insert effective date of final rule]." should read "Amendment No. 0 is applicable for casks manufactured before April 27, 2000."

2. On the same page, in the same column, in the eighth line, "Amendment No. 1 is applicable for casks manufactured after [insert effective date of final rule]." should read "Amendment No. 1 is applicable for casks manufactured after April 27, 2000."

[FR Doc. C0–7431 Filed 3–31–00; 8:45 am]
BILLING CODE 1505–01–D

The President

3 CFR

Proclamation 7283 of March 24, 2000

Greek Independence Day: A National Day of Celebration of Greek and American Democracy, 2000

Correction

In Presidential document 00–7900 beginning on page 16509 in the issue of March 29, 2000, the date of the proclamation shoud read as above.

[FR Doc. C0–7900 Filed 03–31–00; 8:45 am]
BILLING CODE 1505–01–D

Federal Register

Monday,
April 3, 2000

Part II

Federal Trade Commission

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule"); Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 305

Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission ("the Commission") grants manufacturers of residential appliances covered by its Appliance Labeling Rule ("the Rule") a conditional exemption from the Rule's prohibition against the inclusion of non-required information on the EnergyGuide labels required by the Rule. The exemption enables appliance manufacturers to place the logo of the Department of Energy's ("DOE") and Environmental Protection Agency's ("EPA") joint "ENERGY STAR" Program on required EnergyGuides on some appliances under certain conditions. The Commission also announces a non-substantive amendment to the Rule to include "Federal Trade Commission" on all EnergyGuide labels so consumers and others will be clear as to the identity of the agency with the authority to enforce the Rule.

DATES: Effective: February 25, 2000. Manufacturers may avail themselves of the conditional exemption as of February 25, 2000. Manufacturers must begin to include the new language identifying the Federal Trade Commission on labels as soon as they print new labels.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, Division of Enforcement, Rm 4616, Federal Trade Commission, Washington, DC 20580 (202–326–3035; jmills@ftc.gov).

SUPPLEMENTARY INFORMATION:

I. Background

A. The Commission's Appliance Labeling Rule

The Commission issued the Appliance Labeling Rule, 44 FR 66466 (Nov. 19, 1979), pursuant to a directive in section 324 of the Energy Policy and Conservation Act of 1975 (42 U.S.C. 6294 ("EPCA")). The Rule requires manufacturers to disclose energy information about certain major household appliances ("covered appliances") to enable consumers purchasing appliances to compare the energy use or efficiency of competing models. The Rule initially applied to eight appliance categories: refrigerators, refrigerator-freezers, freezers, dishwashers, water heaters, clothes washers, room air conditioners, and furnaces. Subsequently, the Commission expanded the Rule's coverage five times: In 1987 (central air conditioners, heat pumps, and certain new types of furnaces); 1989 (fluorescent lamp ballasts); 1993 (certain plumbing products); and twice in 1994 (certain lighting products, and pool heaters and certain other types of water heaters).

Manufacturers of all covered appliances must disclose specific energy consumption or efficiency information at the point of sale in the form of an EnergyGuide label that is affixed to the covered product.[1] Manufacturers must derive this information from standardized tests that EPCA directs DOE to develop.[2] Required labels for appliances and required fact sheets for heating and cooling equipment must include an energy consumption or efficiency disclosure and a "range of comparability" bar that shows the highest and lowest energy consumption or efficiencies for all similar appliance models. Labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters, and room air conditioners also must contain a secondary disclosure of estimated annual operating cost based on a specified national average cost for the fuel the appliances use. The Rule prescribes specifications for the size and colors of the EnergyGuides and for the size and style of the type to be used in the required disclosures. Sample labels appear as appendices to the Rule. The Rule also prohibits the inclusion of non-required information on the EnergyGuide to ensure that such information does not detract from the required information:

No marks or information other than that specified in this part shall appear on or directly adjoining this label, except a part or publication number identification may be included on this label, as desired by the manufacturer, and the energy use disclosure labels required by the governments of Canada or Mexico may appear directly adjoining this label, as desired by the manufacturer. * * *[3]

16 CFR 305.11(a)(5)(i)(K).

DOE and EPA staff and an appliance manufacturer[4] have requested that the Commission grant a conditional exemption from this prohibition against non-required information that would allow the placement of the DOE/EPA ENERGY STAR logo on the EnergyGuides on qualifying appliances.

B. The ENERGY STAR Program

1. Description of the Program

Section 127 of the Energy Policy Act of 1992[5] directed DOE, in conjunction with EPA, utilities, and appliance manufacturers, to submit a report to Congress assessing the potential for the development and commercialization of appliances that are substantially more efficient than required by state or federal law,[6] and that are likely to be cost-effective for consumers. The appliances contemplated in the directive include those covered by the Commission's Appliance Labeling Rule. The report, which DOE submitted to Congress in April, 1995, concluded in part that the involvement of the federal government in "market transformation" programs could have a positive effect on consumer purchasing decisions regarding higher efficiency products.

Following the report, DOE began to develop a program—originally called the ENERGY SAVER Program—to promote high efficiency household appliances and water heaters in the U.S. marketplace. Concurrently, EPA was developing a similar program—the ENERGY STAR Program—in response to

[1] The information on the EnergyGuide also must appear in catalogs from which covered products can be ordered. Manufacturers of furnaces, central air conditioners, and heat pumps also must either provide fact sheets showing additional cost information or be listed in an industry directory that shows the cost information for their products.

[2] Section 323 of EPCA (42 U.S.C. 6293) directs DOE to develop test procedures to be used by appliance manufacturers to determine their products' compliance with DOE's standards. Section 324(c)(1)(A) of EPCA (42 U.S.C. 6294(c)(1)(A)) states that the Commission's Rule must require disclosure on labels of energy use information derived from the DOE test procedures.

[3] The language in this section pertains to labels for refrigerators, refrigerator-freezers, freezers, dishwasbers, clothes washers, water heaters, and room air conditioners. Identical language appears in two other sections relating to labels for furnaces and pool heaters, 16 CFR 305.11(a)(5)(ii)(I), and central air conditioners and heat pumps, 16 CFR 305.11(a)(5)(iii)(H)(*1*). The statute itself (EPCA) does not prohibit the inclusion of non-Rule-required information on the EnergyGuide.

[4] The Maytag Company, by petition dated July 25, 1997.

[5] Pub. L. 102–486, 106 Stat. 2776, 2835 (Oct. 24, 1992).

[6] In this context, "federal law" includes DOE's minimum efficiency standards for appliances, which Congress directed DOE to issue in section 325 of EPCA (42 U.S.C. 6295). As amended, the statute itself set the initial national energy efficiency standards for appliances and established a schedule for regular DOE review of the standards for each product category. The statute directed DOE to design these standards to achieve the maximum improvement in energy efficiency for residential appliances that is technologically feasible and economically justified. 42 U.S.C. 6265(o)(2). In accordance with the statutory directive, DOE regularly reviews the established standards and publishes new standards where appropriate. DOE's rules relating to standards, like its test procedure rules, are codified at 10 CFR part 430 (1999).

a directive in section 103(g) of the Clean Air Act, 42 U.S.C. 7403(g), that encompassed home heating and cooling equipment ("HVAC equipment"). EPA also developed ENERGY STAR Programs for lighting products, consumer electronics, office equipment, and home insulation products. Ultimately, the two programs for appliances and HVAC equipment were merged into a single program under the ENERGY STAR name. An ENERGY STAR logo can be used by Program participants in connection with qualifying products directly on the product itself or on an ENERGY STAR label or fact sheet associated with or attached to the product or used in promotional materials or advertising. The logo indicates significantly better energy performance than some specified norm (DOE's minimum efficiency standards, in the case of appliances and HVAC equipment), or indicates the incorporation of a specific energy saving feature on the product.

The Program is a partnership among DOE, EPA, product manufacturers, major national, regional, and local retailers, utilities, state energy offices, industry trade associations and the financial community. The Program's intent is to increase consumer interest in purchasing highly efficient appliances and heating and cooling equipment (as well as other building products) through promotional programs (including national and regional advertising), lower interest financing, product labeling, sales training, and consumer education.

The appliance products that are (or will be) included in DOE's component of the Program are: refrigerator-freezers, dishwashers, clothes washers, room air conditioners, and water heaters. HVAC equipment has been included since 1995 in EPA's earlier version of the ENERGY STAR Program, and there is already a mechanism in place for designating qualifying HVAC products by means of separate labels, as well as in advertising and promotional materials. EPA staff joined in the instant request for Commission permission for the HVAC equipment manufacturers participating in the Program to include the ENERGY STAR logo on the EnergyGuides on their qualifying products.

DOE and EPA have established qualifying energy consumption criteria that specific appliance and HVAC equipment categories must meet to be included in the ENERGY STAR Program.[7] To establish its criteria, DOE held public workshops in several cities, and solicited comments from all segments of the public. DOE received comments from appliance manufacturers and retailers, utilities, state energy agencies, public interest groups, and representatives of the Canadian government.

EPA held approximately 30 public meetings, primarily at EPA Headquarters in Washington, DC, mostly in late 1995 and early 1996. Attending stakeholders included manufacturers, public interest groups, industry trade associations, and utility groups.

The results of these processes as they apply to specific appliance categories are summarized below. Currently, to be included in the Program:

A refrigerator-freezer must have an annual electrical consumption (as determined by the DOE test for that category of products) that is at least 20 percent less than the maximum energy consumption permitted by DOE's standard for refrigerator-freezers;

A dishwasher must have an Energy Factor ("EF") of 0.52 or greater.[8] An EF of 0.52 represents a 13% improvement in efficiency over DOE's minimum EF of 0.46;

A standard clothes washer (top or front loading) must have an EF of 2.5 or greater.[9] An EF of 2.5 is an approximately 112% efficiency improvement over DOE's minimum EF of 1.18. The relatively high percentage of improvement over the standard is due to the existence of a new technology in the clothes washer industry;

A room air conditioner must be rated with an Energy Efficiency Ratio ("EER") that is 15% greater than the DOE minimum EER for the type and size of that unit.[10]

A gas- or oil-fueled furnace must be rated with an Annual Fuel Utilization Efficiency ("AFUE") that is 90 or better; a gas- or oil-fueled boiler must be rated with an AFUE that is 85 or better.[11]

A central air conditioner or the cooling function of an air-source heat pump must be rated with a Seasonal Energy Efficiency Ratio ("SEER") of 12 or better; the heating function of an air-source heat pump must be rated with a Heating Seasonal Performance Factor ("HSPF") of 7 or higher.[12]

To date, DOE has not finished developing the water heater component of the Program.

As discussed in section II., below, the conditional exemption from the Rule's non-required information prohibition is being made available to Program participants only for those appliances that meet DOE's and EPA's criteria.

2. The ENERGY STAR Logo

EPA owns the ENERGY STAR logo and name and has licensed them to DOE. As a result of this joint partnership, the initials of both agencies appear on the logo. DOE and EPA allow the use of the ENERGY STAR logo by retailers, utilities, manufacturers and other organizations participating in their respective programs under clearly established guidelines that are set out in a memorandum of understanding ("MOU") that each participant must sign. Participants that have signed an MOU are then "partners." Under these MOUs, partners may associate the ENERGY STAR logo and name with specific products that DOE and EPA have determined meet the Program's requirements.[13]

Program partners may use the logo as a product label and in catalogs and advertising to designate specific products that are ENERGY STAR qualifying products. A sample EnergyGuide with an ENERGY STAR logo placed in accordance with the conditions the Commission announces today appears at the end of Section II., below. Partners also may display the logo when describing one or more of the ENERGY STAR labeling programs, such as in special educational brochures, newsletters, or annual reports. Retailer and utility partners are allowed to include the logo in general educational or promotional materials, such as utility bill stuffers, newsletters, or annual reports.

[7] A discussion of DOE's criteria, together with lists of qualifying products, can be found on DOE's ENERGY STAR website, at <www.energystar.gov>. EPA maintains a similar website at <www.epa.gov/energystar.html>, which is hyperlinked to DOE's site.

[8] Under the DOE tests, an appliance's EF is a measure of the useful output of its services divided by the energy input.

[9] To date, DOE has included only "standard" clothes washers in the Program because most of the models sold fall within that subcategory. For purposes of its minimum efficiency standards program, DOE's clothes washer category also includes a "compact" subcategory. The criterion for the distinction is tub capacity.

[10] The EER is the efficiency measurement for room air conditioners specified in the DOE test procedure for these products. Only units without reverse cycle (heating function) and with louvered sides can currently qualify for the Program.

[11] The AFUE is the efficiency measurement for forced air furnaces and for boilers that is specified in the DOE test procedure for these products.

[12] The SEER is the efficiency measurements for central air conditioners and the cooling function of air-source heat pumps specified in the DOE test procedure for these products; the HSPF is the DOE test efficiency measurement for the heating function of air-source heat pumps.

[13] The MOUs provide that each partner is responsible for using the logo in accordance with the MOU's terms. Partners must make the logo use guidelines available to other entities, such as advertising agencies, that prepare materials on the partner's behalf. Non-partners must seek specific approval from either EPA or DOE for each specific use of the logo. Under no circumstances may the logo or name be used in a manner that would imply EPA or DOE endorsement. DOE and EPA are responsible for overseeing proper use of the logo and name.

3. Current Use of the Logo and the Proposal To Include It on the EnergyGuide

Currently, retailers apply separate ENERGY STAR labels on qualifying appliances at each store site. The extent and accuracy of label placement is then monitored by participating utilities and DOE contractors. From its public workshops and the comments they generated, DOE learned that many manufacturers, retailers and consumers wanted a single, "augmented" EnergyGuide label, which would be preferable to separate EnergyGuide and ENERGY STAR labels.

Some manufacturers favored an augmented label because it would reduce their costs and allow them to assure proper identification of qualifying models, which is harder to control at the retailer level. Retailers believed that the augmented label would be less confusing to consumers than multiple labels relating to energy use, that an augmented EnergyGuide label could build upon the broad "brand recognition" achieved by the Commission's label, and that an augmented label would make it easier for consumers to distinguish efficient products. DOE staff believed that the efforts of the Commission, EPA, and DOE to provide consumer educational materials explaining a new augmented label, coupled with training for appliance salespeople, would lead to broader overall consumer awareness of the differences in energy consumption among competing appliances, and thus would result in more informed consumer decision-making. Finally, the augmented label could be used by utilities in connection with their efforts to support demand-side load reduction objectives through the use of incentives to consumers.

C. The Notice of Proposed Rulemaking

On November 24, 1998, the Commission published a Notice of Proposed Rulemaking proposing a conditional exemption to allow manufacturers to place the ENERGY STAR logo on EnergyGuides affixed to qualified products (63 FR 64921). The Commission noted that, although the ENERGY STAR logo is already appearing as a separate label on some qualifying appliances and most qualifying HVAC equipment covered by the Rule, an augmented label would be likely to lower manufacturers' labeling and monitoring costs and reduce the likelihood of mislabeling. The logo's highlighting of efficient appliances also could complement the Rule's objective of providing consumers with energy efficiency and consumption information. Finally, in conjunction with the descriptive information already on the EnergyGuide label, the logo could provide a context that would better ensure consumer understanding of the logo than if it were on a separate label.

1. The Terms of the Proposed Conditional Exemption

The Commission proposed adding a new section to the Rule—305.19 Exemptions—to codify the terms of the conditional exemption for those who wished to avail themselves of it. The Commission based the proposed exemption on several conditions. First, the ENERGY STAR logo would be permitted on the EnergyGuides of only those covered appliances and HVAC equipment that meet the ENERGY STAR Program qualification criteria that are current at the time the products are labeled. Second, only manufacturers that have signed an MOU with DOE or EPA would be permitted to affix the augmented labels to qualifying appliances. Third, to ensure that the ENERGY STAR logo is permanently placed in the proper position on the augmented EnergyGuide label, manufacturers that choose to avail themselves of the conditional exemption would be required to print the ENERGY STAR logo on EnergyGuides for qualified products as part of the usual label printing process; that is, manufacturers (or distributors or retailers) would not be permitted to apply a separate logo onto already finished labels subsequent to the time a product is labeled. Fourth, manufacturers would have to draft the logo in conformance with certain technical specifications relating to its appearance, placement on the EnergyGuide, and size. Specifically, the logo would have to appear above the comparability bar in the box that contains the applicable range of comparability. The precise location of the logo would vary depending on where the caret indicating the position of the labeled model on the scale appears (the NPR included a sample label that illustrated an EnergyGuide with the logo printed in conformity with the proposed conditions). The required dimensions of the logo would be no more than one and one-eighth inches (3 cm.) in width and no more than three-quarters of an inch (2 cm.) in height. Manufacturers would be prohibited from placing the logo in a way that would obscure, detract from, alter the dimensions of, or touch any element of the label, which in all other respects would have to conform to the requirements of the Commission's Rule. The ENERGY STAR logo would be in process black ink to match the print specifications for the EnergyGuide. The background would remain in process yellow to match the rest of the label.

As a last condition, the Commission proposed requiring that manufacturers availing themselves of the conditional exemption add a sentence to explain the significance of the ENERGY STAR logo, citing its concern that the addition of the logo to the EnergyGuide without some explanation of its meaning on the face of the label itself might not be meaningful to consumers. The Commission proposed that manufacturers include a brief explanatory sentence below the comparability bar between the "least" and "most" numbers (the exact wording would depend on the product category.): "ENERGY STAR [product type(s)] use at least __% less energy annually than the Federal Maximum." or: "ENERGY STAR [product type(s)] are at least __% more efficient than the Federal Minimum." or: "ENERGY STAR [product type(s)] must be rated with a [type of efficiency rating] of [rating] or higher."[14]

2. Non-Substantive Amendment To Add the Commission's Name to the EnergyGuide

The Commission also proposed amending the Rule so the Federal Trade Commission would be clearly identified as the government entity that requires manufacturers to affix the EnergyGuide label to their appliances, and to eliminate confusion if the Commission grants the proposed conditional exemption and the identifying initials of DOE and EPA appear on the labels of appliances that qualify for the ENERGY STAR Program. The proposal was to change the sentence at the bottom of the EnergyGuide to read:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).[15]

The Commission noted that, because of the non-substantive nature of this proposal, manufacturers would not have to make the change until their supply of current labels is exhausted in the ordinary course of business or they draft new labels for other reasons, such as a change in the ranges of comparability.

[14] *See* 63 FR 64924 for the proposed wording of this statement on labels for the different types of products that would be covered by the proposed conditional exemption.

[15] Currently, this disclosure reads, "Important: Removal of this label before consumer purchase is a violation of Federal law (42 U.S.C. 6302)."

The proposed language was included on the sample EnergyGuide in the NPR.[16]

3. Specific Issues and Questions for Comment

In addition to asking for comment on any issues or concerns the public believed were relevant or appropriate to the Commission's consideration of the proposed exemption, the Commission also asked for comment on several specific questions: Whether the Commission should grant the proposed conditional exemption only to partners in the ENERGY STAR Program; whether the specific conditions under which the Commission was proposing the conditional exemption were appropriate (and if not, what conditions would be appropriate); whether the proposed explanatory statement was effectively worded and would be helpful to consumers; the benefits and economic impact of the proposed conditional exemption (especially on small businesses); and whether the ENERGY STAR logo and promotional materials convey accurate information to consumers (especially regarding overall operating cost over time).[17]

II. Discussion of the Comments and Final Amendments

A. The Proposed Conditional Exemption Generally

The Commission received fifteen comments in response to the NPR.[18] The comments were from four manufacturers,[19] three non-profit public interest groups,[20] two utilities,[21] two appliance manufacturer trade associations,[22] two state energy offices,[23] one utility association,[24] and one federal agency.[25] Generally speaking, all the commenters but two supported the Commission's proposal to make the conditional exemption available to those manufacturers who want to use it.[26]

1. Comments in Support

Thirteen comments expressed general support for the Commission's proposal.[27] DOE's comment included information on the current status of the appliance manufacturing and marketing industry's participation in the Program, indicating that participation now includes two thousand retail stores, including Sears, Circuit City and Montgomery Ward as national retail chain partners, as well as many small retailers, and five major appliance manufacturers—Amana, Frigidaire, General Electric, Maytag, and Whirlpool.[28]

a. Impact on Consumers and Others

Twelve comments addressed the effect the proposed conditional exemption would have on consumers and entities other than appliance manufacturers, such as retailers and utilities.[29] Ten of these mentioned benefits that the exemption would provide consumers.[30] These commenters agreed that the conditional exemption would make it easier for consumers easily to identify the highly efficient products that qualify for the Program. Five commenters noted in particular that the conditional exemption would result in an enhanced EnergyGuide label that would give consumers better, more easily understood information.[31] CEC stated:

> We strongly believe that the proposed conditional exemption will benefit the public. The ENERGY STAR logo on the EnergyGuide label will clearly and consistently identify qualifying highly efficient products. This conditional exemption will help to foster the growing public awareness of the value of energy efficiency in the home and the demand for new products that can help us conserve resources while enjoying the convenience and luxury of technology.[32]

Some commenters said that the exemption would result in a higher degree of assurance that the logo is applied only to qualifying products,[33] or would make it easier for retail sales staff to identify efficient products[34] or to promote qualified appliances.[35] OOE noted that "Retailers, especially, may appreciate the fact that they will no longer have to police which appliances on their sales floor have the ENERGY STAR logo affixed from day to day."[36]

Eight commenters stated that the ENERGY STAR logo and promotional materials convey accurate information to consumers, especially respecting the cost over time of purchasing and operating qualifying appliances.[37] ACEEE pointed out that the ENERGY STAR logo works in concert with the EnergyGuide to provide information on operating cost.[38] NEEA and CEC stated that, with regard to consumer information and promotional materials, and the issue of overall cost over time of purchasing and operating qualifying appliances versus non-qualifying appliances, ENERGY STAR attempts to give consumers the tools to make educated purchasing decisions, taking into account possible utility bill savings.[39] NRDC said that "Much of the supporting materials developed by EPA/DOE and their contractors do indeed try to educate consumers about the overall product cost (purchase cost plus operating costs). * * *"[40] Finally, commenting on the promotional materials it developed for the Program, DOE stated:

> All of the promotional materials developed by DOE convey accurate information about the ENERGY STAR label, its meaning, and the benefits that can be expected by

[16] *See* 63 FR 64924–25.

[17] *Id.* at 64926.

[18] PG&E & Electric Company ("PG&E") (1); Gas Appliance Manufacturers Association ("GAMA") (2); Northwest Energy Efficiency Alliance ("NEEA") (3); American Council for an Energy Efficient Economy ("ACEEE") (4); Maytag Corporation ("Maytag") (5); Air-Conditioning & Refrigeration Institute ("ARI") (6); Natural Resources Defense Council ("NRDC") (7); American Gas Association ("AGA") (8); General Electric Appliances ("GE") (9); Sacramento Municipal Utility District ("SMUD") (10); Oregon Office of Energy ("OOE") (11); Whirlpool Corporation ("Whirlpool") (12); Alliance Laundry Systems ("Alliance") (13); California Energy Commission ("CEC") (14); Department of Energy ("DOE") (15). The comments are on the public record and are available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and the Commission's rules of practice, 16 CFR 4.11, at the Consumer Response Center, Public Reference Section, Room 130, Federal Trade Commission, 600 Pennsylvania Avenue, NW, Washington, DC. The comments are organized under the Appliance Labeling Rule, R611004, Energy Star Rulemaking.

[19] Maytag (5); GE (9); Whirlpool (12); and Alliance (13).

[20] NEEA (3); ACEEE (4); and NRDC (7).

[21] PG&E (1); and SMUD (10).

[22] GAMA (2); and ARI (6).

[23] OOE (11); and CEC (14).

[24] AGA (8).

[25] DOE (15).

[26] AGA (8) and GE (9) opposed the proposal.

[27] PG&E (1) p. 1; GAMA (2) p. 1; NEEA (3) pp. 1, 3; ACEEE (4) pp. 1–2; Maytag (5) p. 1; ARI (6) p. 1 (provided participation in the program remains optional); NRDC (7) pp. 1–2, 3, 8; SMUD (10) pp. 1–2; OOE (11) pp. 1, 5; Whirlpool (12) p. 2; Alliance (13) p. 2 (provided use of the ENERGY STAR logo does not require financial or other support for retail marketing efforts; does not sell its products at retail); CEC (14) p. 1; DOE (15) pp. 1–2.

[28] DOE (15) pp. 1–2.

[29] PG&E (1) p. 1; NEEA (3) p. 2; ACEEE (4) p. 2; Maytag (5) p. 3; ARI (6) p. 2; NRDC (7) p. 5; AGA (8) p. 2; GE (9) pp. 3–5; OOE (11) pp. 3–4; Whirlpool (12) p. 1; CEC (14) p. 2; DOE (15) p. 4.

[30] PG&E (1) p. 1; NEEA (3) p. 2; ACEEE (4) p. 2; Maytag (5) p. 3; ARI (6) p. 2; NRDC (7) p. 5; OOE (11) pp. 3–4; Whirlpool (12) p. 1; CEC (14) pp. 2, 4; DOE (15) p. 4. The comments in opposition from AGA and GE are discussed in II.A.2, below.

[31] NEEA (3) p. 1; ACEEE (4) p. 1; NRDC (7) p. 2; SMUD (10) pp. 1–2; CEC (14) p. 1.

[32] CEC (14) p. 2.

[33] PG&E (1) p. 1; OOE (11) p. 1; Whirlpool (12) p. 1.

[34] NEEA (3) p. 2; NRDC (7) p. 5; CEC (14) p. 4 (would help manufacturers, retailers, and utilities to explain the benefit of these products).

[35] CEC (14) p. 2; DOE (15) p. 4.

[36] OOE (11) p. 4.

[37] NEEA (3) pp. 2–3; ACEEE (4) p. 2; Maytag (5) p. 4; ARI (6) p. 2; NRDC (7) p. 6; OOE (11) p. 4; CEC (14) pp. 2, 5; DOE (15) p. 4. See section II.A.2 for a discussion of the contrary position of AGA and GE.

[38] ACEEE (4) p. 2.

[39] NEEA (3) p. 3; CEC (14) pp. 2, 5.

[40] NRDC (7) p. 6. NRDC hoped that a future, redesigned EnergyGuide would fulfill this function, and pledged its assistance and support to this end.

consumers. The Department has commissioned hundreds of hours of technical and economic analyses concerning the product mixes, expected market penetrations, and consumer payback. The Department has worked very closely with EPA to ensure that our consumer education materials accurately convey the message that the ENERGY STAR differentiates products that use less energy and as such, can save consumers money on their utility bills.[41]

Five commenters observed that the conditional exemption would likely benefit those public utilities that have developed incentive programs that provide rebates to consumers who purchase energy efficient appliances and heating and cooling equipment.[42] These commenters stated that the ENERGY STAR logo on the EnergyGuide would make it easier for utility staff to recognize products that qualify for their programs:

> Appliance manufacturers, major retailers and many utilities have signed partnership agreements to use the symbol to promote efficient products. The conditional exemption will establish consistency in product labeling, making it easier for utilities and retailers to promote qualified products, and most importantly, making it easier for consumers to recognize them in stores.[43]

b. Impact on Manufacturers

Eleven commenters addressed the impact of the proposed conditional exemption on manufacturers.[44] Nine of these thought that the proposal would benefit manufacturers economically.[45] Almost all of these comments contended that the conditional exemption would reduce printing costs to manufacturers over time[46] because they would be able to use one combined label for the required EnergyGuide and voluntary ENERGY STAR disclosures, rather than two, as before. Five commenters believed that the proposal would result in an increase in the sale of energy efficient products or increased sales revenues for manufacturers, with two of these, ACEEE and OOE, suggesting that increased sales of higher efficiency units would result in higher revenues because such units tend to cost more and produce more profit per unit sold.[47]

2. Comments in Opposition

Two commenters opposed the proposed conditional exemption. AGA contended that the EnergyGuide label should disclose energy use and efficiency descriptors derived using source-based data, rather than end-use data:[48]

> The Commission is currently limited in its EnergyGuide labeling program to use energy descriptors, provided by the Department of Energy (DOE), that provide narrow and misleading views of energy efficiency. In some cases, particularly when the appliances have different fuel sources, these descriptors distort how consumers view the overall cost and environmental impacts of operating appliances. For appliances that use competing fuels, this exemption may exacerbate the problem. * * * For appliances that use competing fuels, consumers would not benefit from the addition of the ENERGY STAR on the EnergyGuide label.
>
> The Commission should disclose source-based information on EnergyGuides in order to allow consumers to translate a concern for the environment and a finite supply of fossil fuels into positive action when making purchasing decisions. In addition to promoting sound public policy, using source-based data provides Congress, the Commission, DOE and the public with a more accurate measurement of (1) energy consumption, (2) associated emissions, and (3) conservation potential.[49]

GE also opposed the proposed conditional exemption. Noting that it is "proud to be an Energy Star partner," GE stated that it believed the Program is working in its present form (with the ENERGY STAR logo applied as a separate label) and that it saw no reason for a change such as the one requested in Maytag's petition. GE maintained that the Commission should conduct an evaluation of each aspect of the ENERGY STAR Program, from the logo to the partnership, and provide the public with an opportunity for comment.[50] GE contended:

> Petitioners have failed to demonstrate the need to exempt the Energy Star logo from the general prohibition against placing additional information on the EnergyGuide label. The Energy Star logo is a strictly voluntary program and elements of the program should not appear on the mandatory EnergyGuide label. * * * The current labeling scheme is sufficient to meet consumers' needs for energy consumption information.[51]

GE asserted that the proposed conditional exemption would penalize manufacturers of products that do not qualify for inclusion in the ENERGY STAR Program, and argued that the impact on these manufacturers, as well as the validity of the criteria for inclusion in the Program, should be subject to careful analysis under the standards of the Administrative Procedure Act, 5 U.S.C. 551 *et seq.*:

> [N]either the Commission nor any other agency has developed record evidence to support the minimum qualifications established for Energy Star products. As an example, refrigerators must be ~20% more efficient than the DOE standards. Why? What national objective does a 20% level better achieve than 10%, 5% or 25%? What is the impact on competition of the selected level? Information on these issues, if it exists, has never been provided to interested parties. The Commission must remedy this oversight.[52]

GE also contended that the ENERGY STAR Program's use, with the logo and in Program materials, of the slogan "Saving the Earth," without qualification as to how the Program actually helps the environment, may violate the Commission's Guides for the Use of Environmental Marketing Claims, 16 CFR part 260 (1999), which require that such claims be substantiated.[53]

Finally, GE argued that the conditional exemption would mislead consumers into thinking that they are purchasing superior products when they are not because the Energy Star label does not distinguish between refrigerators that are 20% and 40% better than the standard. It contended that putting both products on an apparent equal footing misleads the consumer, who focuses on the logo, thinking that the less efficient product is just as efficient as the 40% model.[54]

3. Final Amendments

After careful consideration of the comments, the Commission is amending the Rule to permit (but not require)

[41] DOE (15) p. 4.

[42] NEEA (3) p. 2; Maytag (5) p. 3; NRDC (7) p. 5; CEC (14) p. 2; DOE (15) p. 4.

[43] CEC (14) p. 2.

[44] GAMA (2) p. 1; NEEA (3) p. 2; ACEEE (4) p. 2; Maytag (5) p. 3; ARI (6) p. 2; NRDC (7) p. 5; GE (9) p. 2; OOE (11) p. 3; Alliance (13) p. 2; CEC (14) p. 4; DOE (15) p. 4. Some of these commenters also addressed the impact of the proposed conditional exemption on retailers, as discussed in II.A.1.a, above.

[45] GAMA (2) p. 1; NEEA (3) p. 2; ACEEE (4) p. 2; ARI (6) p. 2; NRDC (7) p. 5; OOE (11) p. 3; Alliance (13) p. 2; CEC (14) p. 4; DOE (15) p. 4. Maytag stated that there would be no economic impact on manufacturers. Maytag (5) p. 3. GE contended that the conditional exemption would have a negative impact on manufacturers. GE (9) p. 2. See the discussion of GE's comments in section II.A.2, below.

[46] Three commenters noted that the initial cost of the labeling change, for those who avail themselves of the conditional exemption, would be inconsequential, but that combining the labels would reduce labeling costs in the long run. ARI (6) p. 2; NRDC (7) p. 5; OOE (11) p. 3.

[47] ACEEE (4) p. 2 (ACEEE also pointed out that the conditional exemption would not injure individual manufacturers because it would be voluntary and manufacturers perceiving no benefits could continue with their current labeling programs.); NRDC (7) p. 5; SMUD (10) p. 2; OOE (11) p. 3; Whirlpool (12) p. 1.

[48] Source-based data includes the cost of producing the energy to fuel the appliance, as well as the energy production's impact on the environment; end-use data considers only the amount of energy used to fuel the appliance.

[49] AGA (8) pp. 2, 5.

[50] GE (9) pp.1–2.

[51] *Id.* pp.5–6.

[52] *Id.* p.2.

[53] *Id.*, p.3–4.

[54] *Id.*, p.4.

appliance manufacturers that are members of the EPA/DOE ENERGY STAR Program to place the ENERGY STAR logo on the EnergyGuides they affix to those of their products that qualify for inclusion in the ENERGY STAR Program. The Commission agrees with the comments that maintained that inclusion of the logo on labels for qualified products would help consumers identify and purchase more energy-efficient products, and that manufacturers electing to print the logo on their EnergyGuides, rather than to attach it by means of a separate label, would be able to save labeling costs. The Commission is modifying the wording and some substantive aspects of the proposal, however, in response to comments offering suggestions regarding placement of the logo on the EnergyGuide and the Explanatory Statement, as discussed in sections II.B.2., below.

Based on the comments received, the Commission has concluded that the ENERGY STAR logo and Program convey accurate, useful information to consumers. The Commission recognizes, as DOE pointed out in its comment, that this Program was carefully developed and that extensive public participation was sought and considered in finalizing the Program. The comments describing the ENERGY STAR Program's benefits to consumers, appliance manufacturers and retailers, and public utilities that maintain incentive rebate programs for consumers who purchase energy efficient appliances, strongly support implementation of the conditional exemption.

The Commission disagrees with GE's contention that it must conduct an evaluation—either through administrative rulemaking or otherwise—of every aspect of the ENERGY STAR Program before permitting manufacturers to print the logo on EnergyGuides on their qualifying products. The Commission is not required by statute to exclude non-required information from the EnergyGuide. Rather, the Commission included this prohibition in the Rule on its own initiative. Therefore, the Commission has the authority to repeal this prohibition entirely, or to specify the conditions under which clearly identified non-required information would be permitted. In this instance, the Commission is deciding to permit the addition of information that is truthful and accurate under a program established and monitored by two sister agencies. As discussed in section I.B, above, DOE and EPA both subjected their initially separate versions of the ENERGY STAR Program to extensive public scrutiny and participation during the development of their Programs, and the Commission is satisfied with that aspect of the current Program.

Further, the Commission is not persuaded by GE's argument that the ENERGY STAR logo on EnergyGuides will mislead consumers because the ENERGY STAR label will not distinguish among products that are more efficient than the DOE standard. Because the specific energy use information of the labeled model will appear on the EnergyGuide, the actual difference in energy use among competing models will be readily apparent. Currently, consumers can see both the EnergyGuide and ENERGY STAR labels on products and can use the information together to make purchasing decisions if they wish. Allowing the logo on the EnergyGuide makes it easier for consumers to use the information together, while reducing labeling costs and the possibility of mislabeling.

Nor does the Commission agree with GE that the appearance of the logo on EnergyGuides will create an inappropriate impression of federal government endorsement. The current practice of using separate ENERGY STAR stickers containing DOE's and EPA's names does not appear to raise this concern and it is unlikely that consolidation of the labels will do so.[55]

GE has expressed its concern more than once during this proceeding that promotional materials produced by DOE for the ENERGY STAR Program contain unqualified claims of environmental benefit. DOE has undertaken a review of the claims in its promotional materials. DOE intends to republish its materials with whatever changes may be necessary so that they are in compliance with the Commission's Guides for the Use of Environmental Marketing Claims.

Finally, the Commission does not have the authority to require the inclusion of source-based energy use data on the EnergyGuide, as AGA suggested. As noted in AGA's comment, the directive in section 324(c)(1)(A) of EPCA[56] is that the Commission require a label that discloses energy use information derived from DOE's test procedures, which determine end-use energy use data only.

B. Specific Aspects of the Proposed Conditional Exemption

1. Limitation of the Conditional Exemption to Energy Star Partners

a. Comments

Ten commenters addressed the Commission's proposal to permit only manufacturers who have signed an MOU with DOE or EPA to place the ENERGY STAR logo on EnergyGuides affixed to their qualifying products. Seven of these agreed that the proposed conditional exemption should be limited to partners in the ENERGY STAR Program.[57] ACEEE pointed out that "ENERGY STAR" is a trademark that can only be used with EPA's and DOE's permission, and that it is the prerogative of only those agencies (and not of the FTC) to permit non-partners to use the logo.[58] Three other commenters stated that to permit the use of the logo on EnergyGuides by non-partners would negate the value and credibility of the Program and violate EPA's and DOE's guidelines.[59] OOE stated that EPA and DOE need control over the use of the logo, and that the MOU should pose no problems for manufacturers,[60] and DOE said that the licensing agreement provides the federal government with needed control over the logo's use.[61] Whirlpool agreed that participation in the conditional exemption should be limited to partners that have signed an MOU with DOE or EPA. Whirlpool also recommended that the Commission clarify that partners who sign MOUs that are limited to specific product categories can only put the ENERGY STAR logo on qualifying products within the scope of the MOU. For example, if a full-line manufacturer participates in the ENERGY STAR program only with respect to its refrigerators, that manufacturer would be permitted to use the ENERGY STAR logo only on EnergyGuides affixed to qualifying refrigerators, and not to other

[55] GE apparently believes that, because the EnergyGuide is a mandatory label, consumers would perceive the ENERGY STAR on the Energy Guide as a government endorsement, but would not perceive the separate ENERGY STAR label in the same way. The ENERGY STAR label, which often contains the identifying letters of EPA and/or DOE, is already widely seen on appliances and other products (*e.g.*, computers and televisions) where there are no EnergyGuides. To the extent that consumers perceive such labeled products as "government endorsed" they very likely correctly understand that the "endorsement" is limited to energy efficiency or energy saving features, and not as a government suggestion that ENERGY STAR labeled products are superior to others in all respects. Accordingly, the Commission does not share GE's concerns regarding an inappropriate impression of Federal Government endorsement.

[56] 42 U.S.C. 6294(c)(i)(A).

[57] NEEA (3) p.2; ACEEE (4) p.1: NRDC (7) pp.3–4; OOE (11) p.2; Whirlpool (12) p.1; CEC (14) p.3; DOE (15) p.3.

[58] ACEEE (4) p.1.

[59] NEEA (3) p.2; NRDC (7) pp.3–4; CEC (14) p.3.

[60] OOE (11) p.2.

[61] DOE (15) p.3.

products, such as clothes washers or dishwashers.[62]

Three commenters did not agree with the limitation proposed in the NPR. All of these recommended that the exemption should not be limited only to partners, but should be available to all manufacturers whose products meet the Program's criteria.[63]

b. Final Amendments

The ENERGY STAR logo and name belong to EPA, which has licensed their use to DOE, and use of the name and logo by manufacturers is carefully controlled by the specific guidelines contained in the MOUs that participating manufacturers sign with each agency. Because EPA and DOE use the MOUs to maintain the Program's integrity, the Commission will not permit use of the ENERGY STAR name or logo on EnergyGuides by a manufacturer that has not signed an MOU with EPA or DOE.

To address Whirlpool's concern that a full-line manufacturer that has signed an MOU only with respect to one line of products might use the ENERGY STAR logo on another line, the conditional exemption is drafted to apply only to those products that are the subject of the MOU the manufacturer has signed.

Accordingly, § 305.19(a)(2) of the amended Rule limits the conditional exemption only to partners in the ENERGY STAR Program that have signed an MOU with EPA or DOE, and only to those products that are covered by the MOU.

2. Other Conditions for Use of the EnergyGuide

a. Generally

In response to a general question in the NPR about the appropriateness of the conditions under which the conditional exemption would be granted, four commenters stated without elaboration that the conditions were reasonable or appropriate.[64] Two others agreed that the conditions were appropriate with the exception of the requirement, discussed below, that the logo appear with the Explanatory Statement proposed in the NPR.[65]

b. Placement of the Logo on the EnergyGuide

i. Comments

Ten commenters addressed the question in the NPR regarding the most cost-effective method for placing the ENERGY STAR logo on the EnergyGuide. Six of these said that the best method was for manufacturers to print the logo on the EnergyGuide at the factory.[66] Of these, ACEEE, Alliance, and DOE pointed out that printing at the factory is the most cost-effective method, and PG&E and NRDC stated that the approach would reduce or avoid mislabeling (intentional or unintentional). Two commenters thought that the decision as to the most cost-effective way of placing the ENERGY STAR logo on EnergyGuides should be left to the manufacturers,[67] and two others recommended that the Commission indicate that putting the logo on EnergyGuides would be optional.[68]

ii. Final Amendments

The Commission believes that manufacturers should bear the responsibility for assuring that the ENERGY STAR logo appears properly and consistently on qualifying products. Moreover, manufacturers would be able to ensure consistent and proper placement of the logo more efficiently and at a lower cost if the logo were permitted on the EnergyGuide itself. While the Commission recognizes that the most efficient way for manufacturers to fulfill this responsibility would probably be to print the ENERGY STAR logo on EnergyGuides during the printing process, the Commission nevertheless wishes to afford manufacturers the latitude to place the logo on EnergyGuides by whatever means is most efficient for them, provided the placement complies with the requirements for location and size. They should then affix those EnergyGuides on their ENERGY STAR-qualified covered products in the same manner they use to affix EnergyGuides without the ENERGY STAR logo to their other covered products.

The Commission also notes that the requirement to place the logo on EnergyGuides applies only to those manufacturers who participate in the ENERGY STAR Program and elect to avail themselves of the conditional exemption. The extent to which participating manufacturers wish to use the ENERGY STAR logo on labels attached to qualifying products is up to them.

Accordingly, § 305.19(a)(3) of the amended Rule provides that manufacturers that choose to use the conditional exemption may print the ENERGY STAR logo on EnergyGuides for qualified products as part of the usual label printing process or may place the logo on EnergyGuides by whatever means is most efficient for them, provided the placement complies with the applicable size, location, and appearance requirements specified in § 305.19(a)(4).

c. The Explanatory Statement

i. Comments

Eleven commenters addressed the Explanatory Statement that the Commission proposed for inclusion on the EnergyGuides of qualifying products along with the ENERGY STAR logo.[69] Seven of these contended that consumers needed either the proposed statement or some other language explaining the logo to understand the significance of the logo's presence on the EnergyGuide.[70] NEEA, Maytag, ARI, Whirlpool, and Alliance thought that the Explanatory Statements proposed in the NPR were "appropriate," would help provide consumers with more purchase decision information, or would reinforce consumer understanding.[71] CEC agreed that the proposed Explanatory Statement was appropriate, and suggested that the Commission also include the additional tagline, "The symbol for energy efficiency."[72] NEEA and NRDC agreed with CEC's recommended language.[73] ACEEE contended that explanatory statements are not essential, but, if properly done, could offer some marginal benefits by explaining why

[62] Whirlpool (12) p.1.

[63] Maytag (5) p.2; ARI (6) p.1 (ARI supported requiring manufacturers to have approval from either EPA or DOE to use the logo, but apparently did not believe formal partnership should be required.); Alliance (13) p. 1 (Alliance sells its products only in the multi-housing and Federal Government contract markets, and not at retail).

[64] ACEEE (4) p.1; ARI (6) p.1; Alliance (13) p.1; DOE (15) p.3.

[65] NRDC (7) p.3; OOE (11) p.2.

[66] PG&E (1) p.1; ACEEE (4) p.1; NRDC (7) p.4; OOE (11) p.2; Alliance (13) p.1; DOE (15) p.3.

[67] Maytag (5) p.2; CEC (14) pp.2, 3.

[68] ARI wanted the Commission to make clear that the ENERGY STAR Program was voluntary. ARI (6) p.1. Whirlpool wanted an indication that participating manufacturers would not be required to label qualifying products, in case, for some reason, they inadvertently failed to print the logo on EnergyGuides attached to qualifying products. Whirlpool (12) p.2.

[69] NEEA (3) p.2; ACEEE (4) p.1; Maytag (5) pp.2, 3; ARI (6) pp.1, 2; NRDC (7) pp.3, 5; SMUD (10) p.2; OOE (11) pp.2–3; Whirlpool (12) p.2; Alliance (13) pp.1, 2; CEC (14) pp.3, 4; DOE (15) p.3.

[70] NEEA (3) p.2; ACEEE (4) p.1; Maytag (5) p.2; ARI (6) p.1; Whirlpool (12) p.2; Alliance (13) p.1; CEC (14) p.3.

[71] NEEA (3) p.2; (4) p.1; Maytag (5) p.2 (Maytag noted that "The explanatory statement containing the term 'x% less energy annually that the Federal maximum' is clearer than expressing the same concept as 'x% more efficient that the Federal minimum.'"); ARI (6) p.1; Whirlpool (12) p.2; Alliance (13) p.1.

[72] CEC (14) p.3.

[73] NEEA (3) p.2 (in addition to the proposed explanatory statement); NRDC (7) pp.3, 4 (as an alternative to the proposed explanatory statement).

some products get an ENERGY STAR and others do not, provided the statements are easy to understand and do not contain terms that are unfamiliar to consumers (such as "SEER" and "Federal Maximum"). ACEEE suggested that the statement read, "The ENERGY STAR is awarded to the most efficient products on the market."[74] OOE suggested, "Energy Star is an EPA/DOE program that helps consumers identify the most efficient appliances available today."[75] DOE suggested, "The ENERGY STAR logo identifies the most energy efficient products."[76]

In connection with their suggestions of alternative language for the Explanatory Statement, OOE and NRDC contended that the proposed language in the Explanatory Statements for the different product categories was too complex and technical.[77] OOE also noted that the criteria for qualifying for the ENERGY STAR Program are likely to change over time, which would necessitate corresponding adjustments to labels.[78] Without suggesting specific language, SMUD also recommended against technical product-by-product qualifiers, and urged simplicity.[79]

Seven commenters addressed whether the ENERGY STAR logo or the Explanatory Statement would affect consumers' understanding of the information on the EnergyGuide.[80] Alliance and DOE did not believe that the Explanatory Statement would affect consumers' understanding of the other parts of the EnergyGuide.[81] Maytag, ARI and CEC stated that the Statement would be complementary to or would clarify the other information on the label and would assist consumers in understanding the EnergyGuide's overall content.[82] OOE did not think that the addition of the logo would adversely affect consumer understanding of the other information on the EnergyGuide, primarily because of the amount of promotion of the program done by EPA and DOE.[83] NRDC and CEC contended that the addition of the logo to the EnergyGuide could help overcome what these commenters referred to as the common consumer misconception that the EnergyGuide label itself denotes energy efficiency.[84]

Six commenters addressed whether the Commission should require that the ENERGY STAR logo and Explanatory Statement appear in a color of ink different from the black ink on the rest of the EnergyGuide.[85] Most concluded that the additional expense to manufacturers would not be justified by a sufficiently significant increase in communication effectiveness. Maytag and ARI stated that the ENERGY STAR logo itself is the primary visual attraction, and that the additional cost would be unjustified.[86] OOE thought that a separate color of ink might be helpful, but was not sure that the additional expense would be justified by a commensurate increase in effectiveness.[87] CEC stated:

> Adding the ENERGY STAR logo in a different color might be more visible for consumers, although it would be more expensive for manufacturers. Manufacturers could be given the option of using a "line art" (one color) version of the logo in a different color (such as blue or green), or manufacturers could use the 4-color version of the ENERGY STAR logo.[88]

DOE recommended that black ink be used for all explanatory language concerning ENERGY STAR.[89]

ii. Final Amendments

The record indicates that consumer understanding would be increased with a brief explanation of the ENERGY STAR logo on the EnergyGuide, and that an Explanatory Statement would not adversely affect consumers' understanding of the rest of the information on the EnergyGuide. The majority of the commenters, however, believed that the explanatory language proposed in the NPR is more specific and detailed than necessary. The Commission is persuaded that a simpler, less technical, more generic approach would be more helpful to consumers and more likely to communicate clearly the significance of the ENERGY STAR logo on the label. In addition, a simpler, non-specific Explanatory Statement would have the advantage of not needing to be changed whenever the criteria for ENERGY STAR qualification are modified.

In considering possible alternative language for the Explanatory Statement, the Commission has reviewed the "taglines" suggested by the commenters, and has decided to use a simple statement that draws from these suggestions. In choosing a tagline, the Commission recognizes that, although models labeled with the ENERGY STAR logo are more efficient as a group than most of those not so labeled, some products made by manufacturers not in the ENERGY STAR Program may be as efficient or more efficient. To accommodate this situation, the Commission has adopted a tagline that states that the ENERGY STAR is "A symbol of energy efficiency," instead of "The symbol for energy efficiency," as the tagline currently most often used by DOE and EPA reads. Thus, the Commission has determined to use the phrase "ENERGY STAR A Symbol of Energy Efficiency" as a tagline to replace the Explanatory Statement proposed in the NPR. Accordingly, § 305.19(a)(5) requires that the Explanatory Statement, "ENERGY STAR A Symbol of Energy Efficiency" appear on all EnergyGuides on which the ENERGY STAR logo appears.

Further, in keeping with the comments suggesting the importance of simplicity regarding the explanatory statement and how it functions to inform consumers of the meaning of the logo, the Commission has changed the location of the statement from the location proposed in the NPR. The Commission is concerned that the distance and visual material that separate the tagline from the logo when they are above and below the bar, as proposed in the NPR, are visually confusing and could interfere with the ability of consumers to associate the two together at a glance. Accordingly, § 305.19(a)(5) of the amendments now requires that the tagline be located directly next to the logo above the bar, rather than below the bar.

Virtually of the commenters that addressed whether the Commission should require that the ENERGY STAR logo and the Explanatory Statement appear in a different color of ink agreed that, although the requirement might somewhat increase the communication effectiveness of the logo and statement, the increase would not justify the additional cost to manufacturers. Accordingly, the Commission is not requiring the logo and statement to appear in ink of a color different from that of the other information on the EnergyGuide. Moreover, to avoid potential consumer confusion if some, but not all, manufacturers were to use a different colored ink, the Commission is requiring specifically that the logo and Explanatory Statement appear in process black ink.

[74] ACEEE (4) pp.1–2.

[75] OOE (11) p.2.

[76] DOE (15) p.3.

[77] OOE (1) pp.2–3; NRDC (7) p.3 (recommending that the explanatory statement be simple).

[78] OOE (1) pp.2–3.

[79] SMUD (10) p.2 (also noting that technical terms detract from the abilities of consumers and sales staff to use the label. NRDC made this same point. NRDC (7) p.3.).

[80] Maytag (5) p.3; ARI (6) p.2; NRDC (7) p.5; OOE (11) p.3; Alliance (13) p.2; CEC (14) p.4; DOE (15) p.3.

[81] Alliance (13) p.2; DOE (15) p.3.

[82] Maytag (5) p.3; ARI (6) p.2; CEC (14) p.4.

[83] OOE (1) p.3.

[84] NRDC (7) p.5; CEC (14) p.4.

[85] Maytag (5) p.2; ARI (6) p.2; OOE (11) p.3; Alliance (13) p.1; CEC (14) p.4; DOE (15) p.3.

[86] Maytag (5) p.2; ARI (6) p.2.

[87] OOE (11) p.3.

[88] CEC (14) p.4.

[89] 89 DOE (15) p.3.

C. Proposed Amendment To Add the Commission's Name to the EnergyGuide

1. Comments

Whirlpool and GE addressed the Commission's proposal to add the identity of the Federal Trade Commission on the label as the agency responsible for enforcing the Appliance Labeling Rule. Whirlpool stated:

> This can be easily accomplished as part of a natural transition to new EnergyGuide labels with new model introductions, normal changes emanating from changes in comparability and as inventories of old label stock are consumed.[90]

GE expressed concern about the proposal tangentially in connection with its opposition to the overall proposal to add the ENERGY STAR logo to the EnergyGuide:

> Allowing the Energy Star logo to be placed on the mandatory EnergyGuide label has the potential to mislead consumers to believe that the Federal Government actually endorses the product. Consider the impact of having the names of FTC, DOE and EPA on a product label. The potential is substantial that consumers will conclude that these government agencies together have determined that this product is superior to those that do not contain the label.[91]

2. Final Amendments

The Commission has concluded that the addition of the Federal Trade Commission's name on the EnergyGuide is desirable to clarify the identity of the agency with the authority for enforcing the Appliance Labeling Rule, especially on those labels bearing the ENERGY STAR logo, on which EPA and DOE also will be identified. The Commission does not agree with GE's assertion that the appearance of the Commission's name (along with EPA's and DOE's) will mislead consumers into thinking that the labeled product is superior to those products with labels without the ENERGY STAR logo. Rather, the Commission believes that consumers will see that there is a label on the product, required by the Federal Trade Commission, that contains energy use information and an indication that the product is more energy efficient than many other similar products in the marketplace.[92]

Consequently, §§ 305.11(a)(5)(i)(I), 305.11(a)(5)(ii)(H), and 305.11(a)(5)(iii)(H) of the amended Rule replace the language at the bottom of the current EnergyGuide with the following statement:

> Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR part 305).

D. Initiative of the American Council for an Energy Efficient Economy

The Commission is aware that a group of stakeholders organized by the American Council for an Energy Efficient Economy ("ACEEE"), a public interest group concerned with promoting energy efficiency, has recently undertaken an initiative to study alternative designs for the EnergyGuide. The Commission's staff is involved in an advisory capacity in this project. The Commission understands that ACEEE is not likely to finish its research and prepare a petition for the Commission before the end of a year's time. The Commission will continue to follow this initiative, and will consider ACEEE's recommendations, if appropriate, when, and if, it files a petition at the completion of the project. In the meantime, the Commission believes that it should act now on the present recommendation so the public can realize its intended benefits as soon as possible.

II. Regulatory Flexibility Act

This notice does not contain a regulatory analysis under the Regulatory Flexibility Act ("RFA"), 5 U.S.C. 603–604, because the Commission believes that the conditional exemption will not have "a significant economic impact on a substantial number of small entities," 5 U.S.C. 605.

In the NPR, the Commission noted that the Rule prohibits the inclusion of non-required information on the EnergyGuide in order to ensure that such information does not detract from the required information. The Commission concluded tentatively that the conditional exemption would not impose any new requirements on manufacturers of appliances and HVAC equipment and that, instead, it would allow them the option, under certain conditions, of voluntarily including the DOE/EPA ENERGY STAR logo on EnergyGuides affixed to products that qualify for inclusion in the ENERGY STAR Program. The Commission stated that it therefore believed the impact of the conditional exemption on all entities within the affected industry, if any, would be de minimis.

The Commission also stated in the NPR that, similarly, manufacturers would not have to comply with the proposed amendment to require different language on the EnergyGuide that identifies the Commission as the agency with enforcement authority for the Rule until they were required to print new labels for other reasons, so the Commission believed that the impact of the proposed amendment on all entities within the affected industry, if any, also would be de minimis.

In light of the above, the Commission certified in the NPR, pursuant to section 605 of the RFA, 5 U.S.C. 605, that the proposed conditional exemption would not, if granted, have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact was overlooked, however, the Commission solicited comments concerning the effects of the proposed conditional exemption, including any benefits and burdens on manufacturers or consumers and the extent of those benefits and burdens, beyond those imposed or conferred by the current Rule, that the conditional exemption would have on manufacturers, retailers, or other sellers. The Commission expressed particular interest in comments regarding the effects of the conditional exemption on small businesses. The Commission stated that, after reviewing any comments received, it would determine whether it would be necessary to prepare a final regulatory flexibility analysis if it determined to grant the conditional exemption.

Eight comments responded to the Commission's solicitation in this regard.[93] Maytag said that the proposed conditional exemption would probably produce no economic impact on, or benefits to, small businesses.[94] ARI stated that the impact of the proposal would not differ from small businesses to large, but that the proposal could potentially reduce labeling costs for both.[95] ACEEE believed that the proposal would result in reduced costs to small retailers in the Program because they would no longer have to prepare and affix ENERGY STAR labels at their own expense if manufacturers were to add the ENERGY STAR logo at the factory.[96] Alliance said that the proposal would result in cost savings for manufacturers that are small businesses by permitting them to display the ENERGY STAR logo on their products by means of only one label instead of two.[97] Finally, four commenters[98] shared the following view, as expressed by DOE:

> The proposed conditional exemption will be especially beneficial to small businesses which do not necessarily have a budget for specific promotions to correspond with the ENERGY STAR Program (especially in the future when the government stops creating point-of-purchase materials). These retailers will be able to undertake promotions of energy efficient products at virtually no cost or effort.[99]

While most of the comments on this issue suggest that the conditional exemption may have beneficial results for some small businesses, the Commission believes that the impact of the results will be *de minimis*, because the potential savings in labeling and promotional costs, while helpful, will be small in comparison to the overall budgets of the businesses affected, and thus will not be "significant."

The Commission received no comments regarding the costs of the proposed amendment to include the agency's name on EnergyGuide labels. Thus, the Commission's conclusion in the NPR that the impact of the proposed amendment would be *de minimis* remains unchanged.

In light of the forgoing, the Commission certifies, pursuant to section 605 of the RFA, that the conditional exemption and amendments published today will not have a significant economic effect on a substantial number of small entities.

IV. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require "collections of information" (*i.e.*, recordkeeping, reporting, or third-party disclosure requirements), to obtain approval from the Office of Management and Budget ("OMB"), 44 U.S.C. 3502. The Commission currently has OMB clearance for the Rule's information collection requirements (OMB No. 3084–0069).

In the NPR, the Commission concluded that the conditional exemption would not impose any new information collection requirements. To ensure that no additional burden was overlooked, however, the Commission sought public comment on what, if any, additional information collection burden the proposed conditional exemption would impose.

No comments addressed this issue. The Commission maintains its position, therefore, that the conditional exemption will not impose any new information collection requirements.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

V. Final Amendments

In consideration of the foregoing, the Commission amends title 16, chapter I, subchapter C of the Code of Federal Regulations, as follows:

PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCE AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")

1. The authority for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. In § 305.11, paragraphs (a)(5)(i)(I), (a)(5)(ii)(H), and (a)(5)(iii)(H) are revised to read as follows:

§ 305.11 Labeling for covered products.

(a) * * *

(5) * * *

(i) * * *

(I) The following statement shall appear at the bottom of the label:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

* * * * *

(ii) * * *

(H) The following statement shall appear at the bottom of the label:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

* * * * *

(iii) * * *

(H) The following statement shall appear at the bottom of the label:

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 CFR Part 305).

* * * * *

3. Part 305 is amended by adding a new § 305.19 to read as follows:

§ 305.19 Exemptions.

The Commission has exempted manufacturers, private labelers, distributors, and/or retailers in some instances from specific requirements of this part. These exemptions are listed in this section. In some circumstances, use of the exemptions is conditioned on alternative performance by manufacturers, private labelers, distributors, and/or retailers.

(a) Limited conditional exemption for manufacturers from the prohibition against the inclusion of non-required information on the label of covered products that qualify for inclusion in the ENERGY STAR Program maintained by the Department of Energy ("DOE") and the Environmental Protection Agency ("EPA"). Those manufacturers participating in the DOE/EPA ENERGY STAR Program who wish to place the ENERGY STAR logo on EnergyGuides affixed to covered products they manufacture that qualify for inclusion in the ENERGY STAR Program are granted a conditional exemption from the prohibition against placing "information other than that specified" by the Rule on the EnergyGuides they attach to their qualifying products. This exemption is based on several conditions:

(1) The ENERGY STAR logo is permitted on the EnergyGuides of only those covered products that meet the ENERGY STAR Program qualification criteria that are current at the time the products are labeled.

(2) Only manufacturers that have signed a Memorandum of Understanding with DOE or EPA may add the ENERGY STAR logo to labels on qualifying covered products; such manufacturers may add the ENERGY STAR logo to labels only on those covered products that are contemplated by the Memorandum of Understanding.

(3) Manufacturers that choose to avail themselves of the conditional exemption may print the ENERGY STAR logo on EnergyGuides for qualified products as part of the usual label printing process or may place the logo on EnergyGuides for qualified products by whatever means is most efficient for them, provided such placement complies with the requirements of paragraph (a)(4), of this section.

(4) Manufacturers must place the logo on the EnergyGuide above the comparability bar in the box that contains the applicable range of comparability. The precise location of the logo will vary depending on where the caret indicating the position of the labeled model on the scale appears (see the sample label). The required dimensions of the logo must be one and one-eighth inches (3 cm.) in width and three-quarters of an inch (2 cm.) in height. Manufacturers are prohibited

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[90] Whirlpool (12) p.2.

[91] GE (9) p.5.

[92] Adding the Federal Trade Commission's name also will help consumers who have questions about the EnergyGuide or who observe products without labels to know where to go for additional information or to complain.

[93] ACEEE (4) p.2; Maytag (5) p.3; ARI (6) p.2; NRDC (7) p.5; OOE (11) p.4; Alliance (13) p.2; CEC (14) p.4; DOE (15) p.4.

[94] Maytag (5) p.3.

[95] ARI (6) p.2.

[96] ACEEE (4) p.2.

[97] Alliance (13) p.2.

[98] NRDC (7) p.5; OOE (11) p.4; CEC (14) p.4; DOE (15) p.4.

[99] DOE (15) p.4.

from placing the logo in a way that would obscure, detract from, alter the dimensions of, or touch any element of the EnergyGuide, which in all other respects must conform to the requirements of this part. The ENERGY STAR logo must be in process black ink to match the print specifications for the EnergyGuide. The background must remain in process yellow to match the rest of the label.

(5) Manufacturers must add a sentence in process black ink that explains the significance of the ENERGY STAR logo in ten-point Helvetica Condensed Black typeface. The sentence must be next to the logo, above the comparability bar that shows the "least" and "most" numbers. The sentence must read:

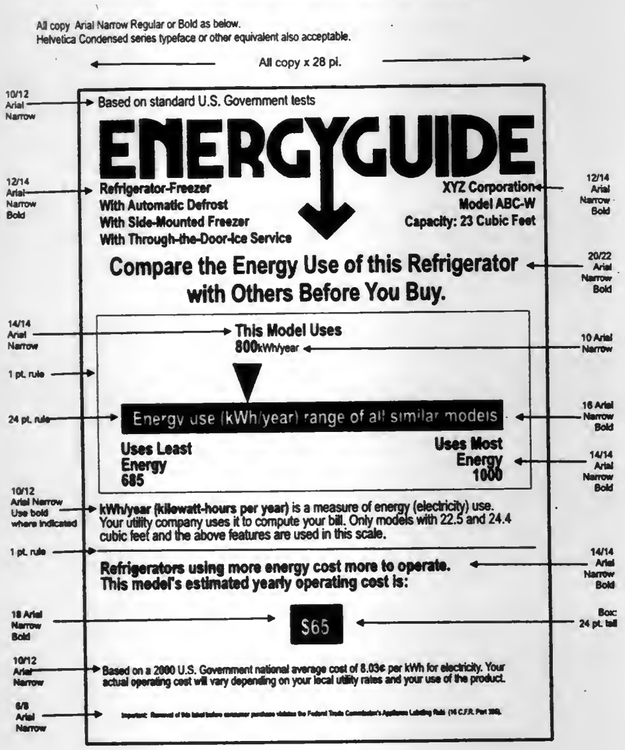
ENERGY STAR A symbol of energy efficiency.

(b) [Reserved]

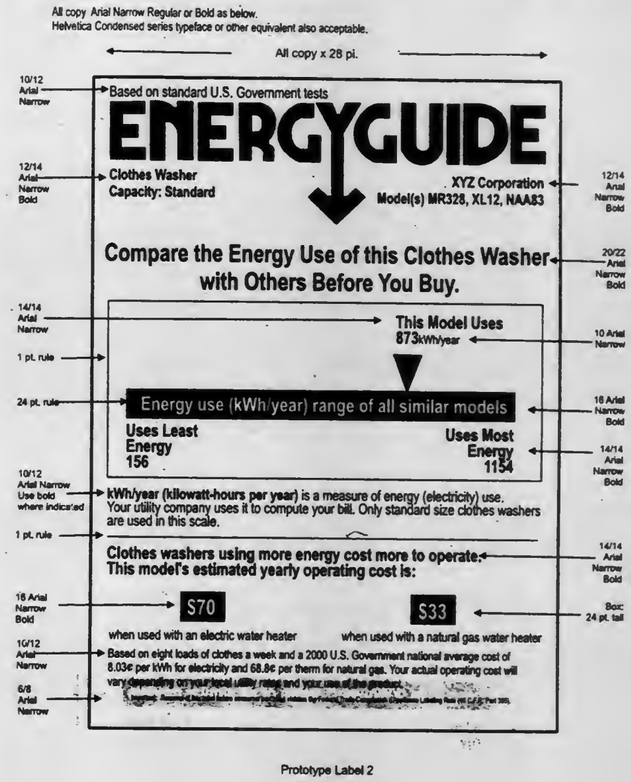
4. Appendix L is amended by revising Prototype Labels 1–5 and Sample Labels 1–10 and by adding Sample Label 11 to read as follows:

BILLING CODE 6750–01–P

Appendix L to Part 305—Sample Labels



Prototype Label 1



Prototype Label 2

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.

All copy x 28 pi.

10/12 Arial Narrow → Based on standard U.S. Government tests

ENERGYGUIDE

12/14 Arial Narrow Bold → Water Heater -- Natural Gas
Capacity (first hour rating):
60 gallons

XYZ Corporation
Model(s) RP23
RP38

12/14 Arial Narrow Bold

Compare the Energy Use of this Water Heater with Others Before You Buy.

20/22 Arial Narrow Bold

14/14 Arial Narrow → This Model Uses
240 Therms/year

10 Arial Narrow

24 pt. rule →

Energy use Therms year range of all similar models

1 pt. rule →

Uses Least Energy
245

Uses Most Energy
295

16 Arial Narrow Bold

The Estimated Annual Energy Consumption of this model was not available at the time the range was published.

14/14 Arial Narrow Bold

10/12 Arial Narrow Use bold where indicated → **Therms/year** is a measure of energy use. Your utility company uses it to compute your bill. Only models with first hour ratings of 56 to 64 gallons are used in this scale.

1 pt. rule →

Natural gas water heaters that use fewer therms/year cost less to operate. This model's estimated yearly operating cost is:

14/14 Arial Narrow Bold

16 Arial Narrow Bold → $165

Box: 24 pt. tall

10/12 Arial Narrow → Based on a 2000 U.S. Government national average cost of 68.8¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

6/8 Arial Narrow → Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Prototype Label 3

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.

All copy x 28 pi.

10/12 Arial Narrow → Based on standard U.S. Government tests

ENERGYGUIDE

12/14 Arial Narrow Bold → Central Air Conditioner
Cooling Only
Split System

XYZ Corporation
Model 12345

12/14 Arial Narrow Bold

Compare the Energy Efficiency of this Air Conditioner with Others Before You Buy.

20/22 Arial Narrow Bold

14/14 Arial Narrow → This Model's Efficiency
11.5 SEER

10 Arial Narrow

1 pt. rule →

24 pt. rule →

Energy efficiency range of all similar models

16 Arial Narrow Bold

Least Efficient
10.0

Most Efficient
16.9

14/14 Arial Narrow Bold

10/12 Arial Narrow Use bold where indicated → **SEER, the Seasonal Energy Efficiency Ratio,** is a measure of energy efficiency for central air conditioners.

1 pt. rule →

Central air conditioners with higher SEERs are more energy efficient.

14/14 Arial Narrow Bold

Bullets 10 pt. →

- This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.
- Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

6/8 Arial Narrow → Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Prototype Label 4

All copy Arial Narrow Regular or Bold as below.
Helvetica Condensed series typeface or other equivalent also acceptable.

All copy x 28 pi.

10/12 Arial Narrow

Based on standard U.S. Government tests

ENERGYGUIDE

12/14 Arial Narrow

Heat Pump
Cooling and Heating
Split System

XYZ Corporation
Model 12345

12/14 Arial Narrow Bold

Compare the Energy Efficiency of this Heat Pump with Others Before You Buy.

20/22 Arial Narrow Bold

14/14 Arial Narrow

This Model (Cooling)
12.0SEER

10 Arial Narrow

24 pt. rule

Energy efficiency range of all similar models

16 Arial Narrow Bold

1 pt. rule

Least Efficient	Most Efficient
10.0	16.4

14/14 Arial Narrow Bold

SEER, the Seasonal Energy Efficiency Ratio, is a measure of energy efficiency for central air conditioners.

This Model (Cooling)
7.5HSPF

1 pt. rule

Energy efficiency range of all similar models

Least Efficient	Most Efficient
6.8	10.2

10/12 Arial Narrow Use bold where indicated

HSPF, the Heating Seasonal Performance Factor, is a measure of energy efficiency for heat pumps when heating.

Bullets 10 pt.

- These energy ratings are based on U.S. Government standard tests of this condenser model combined with the most common coil. The ratings will vary slightly with different coils.
- Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

6/8 Arial Narrow

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Prototype Label 5

Based on standard U.S. Government tests

ENERGYGUIDE

Refrigerator-Freezer
With Automatic Defrost
With Side-Mounted Freezer
With Through-the-Door-Ice Service

XYZ Corporation
Model ABC-W
Capacity: 23 Cubic Feet

Compare the Energy Use of this Refrigerator with Others Before You Buy.

This Model Uses
800kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy	Uses Most Energy
685	1000

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only models with 22.5 and 24.4 cubic feet and the above features are used in this scale.

Refrigerators using more energy cost more to operate.
This model's estimated yearly operating cost is:

$65

Based on a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 1

Based on standard U.S. Government tests

ENERGYGUIDE

Freezer
Upright Type
With Manual Defrost

XYZ Corporation
Model(s) MR328, XL12, NA83
Capacity: 21.2 Cubic Feed

Compare the Energy Use of this Freezer with Others Before You Buy.

This Model Uses
764kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy
630

Uses Most Energy
1079

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only models with 19.5 to 21.4 cubic feet with the above features are used in this scale.

Freezers using more energy cost more to operate. This model's estimated yearly operating cost is:

$61

Based on a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 2

Based on standard U.S. Government tests

ENERGYGUIDE

Clothes Washer
Capacity: Standard

XYZ Corporation
Model(s) MR328, XL12, NAA83

Compare the Energy Use of this Clothes Washer with Others Before You Buy.

This Model Uses
873kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy
156

Uses Most Energy
1154

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size clothes washers are used in this scale.

Clothes washers using more energy cost more to operate. This model's estimated yearly operating cost is:

$70 when used with an electric water heater

$33 when used with a natural gas water heater

Based on eight loads of clothes a week and a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity and 68.8¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 3

Based on standard U.S. Government tests

ENERGYGUIDE

Dishwasher
Capacity: Standard

XYZ Corporation
Model(s) MR328, XL12, NAA83

Compare the Energy Use of this Dishwasher with Others Before You Buy.

This Model Uses
860kWh/year

Energy use (kWh/year) range of all similar models

Uses Least Energy	Uses Most Energy
558	994

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only standard size dishwashers are used in this scale.

Dishwashers using more energy cost more to operate. This model's estimated yearly operating cost is:

$69 when used with an electric water heater

$46 when used with a natural gas water heater

Based on six wash loads a week and a 20009 U.S. Government national average cost of 8.03¢ per kWh for electricity and 68.8¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 4

Based on standard U.S. Government tests

ENERGYGUIDE

Water Heater – Natural Gas
Capacity (first hour rating):
60 gallons

XYZ Corporation
Model(s) RP23
RP38

Compare the Energy Use of this Water Heater with Others Before You Buy.

This Model Uses
240Therms/year

Energy use (Therms/year) range of all similar models

Uses Least Energy	Uses Most Energy
245	295

The Estimated Annual Energy Consumption of this model was not available at the time the range was published.

Therms/year is a measure of energy use. Your utility company uses it to compute your bill. Only models with first hour ratings of 55 to 64 gallons are used in this scale.

Natural gas water heaters that use fewer therms/year cost less to operate. This model's estimated yearly operating cost is:

$165

Based on a 2000 U.S. Government national average cost of 68.8¢ per therm for natural gas. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 5

Based on standard U.S. Government tests

ENERGYGUIDE

Room Air Conditioner
Without Reverse Cycle
With Louvered Sides

XYZ Corporation
Model 122345
Capacity: 13,000 BTUs

Compare the Energy Use of this Air Conditioner with Others Before You Buy.

This Model Efficiency
10.0 EER

Energy efficiency range of all similar models

Least Efficient	Most Efficient
9.0	11.0

EER, the Energy Efficiency Ratio, is a measure of energy efficiency for room air conditioners. Only models between 8,000 and 13,000 BTUs with the above features are used in this scale.

More efficient air conditioners cost less to operate. This model's estimated yearly operating cost is:

$78

Based on a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 6

Based on standard U.S. Government tests

ENERGYGUIDE

Furnace – Natural Gas

XYZ Corporation
Model 2345X

Compare the Energy Efficiency of this Furnace with Others Before You Buy.

This Model's Efficiency
80.7AFUE

Energy efficiency range of all similar models

Least Efficient	Most Efficient
78.0	97.0

The **AFUE, Annual Fuel Utilization Efficiency,** is a measure of energy efficiency for furnaces and boilers. Only furnaces fueled by natural gas are used in this scale.

Natural gas furnaces that have higher AFUEs are more energy efficient.

Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment.

Ask for this information.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 7

Based on standard U.S. Government tests

ENERGYGUIDE

Central Air Conditioner
Cooling Only
Split System

XYZ Corporation
Model 12345

Compare the Energy Efficiency of this Air Conditioner with Others Before You Buy.

This Model's Efficiency
11.5SEER

Energy efficiency range of all similar models

Least Efficient	Most Efficient
10.0	16.9

SEER, the Seasonal Energy Efficiency Ratio, is a measure of energy efficiency for central air conditioners.

Central air conditioners with higher SEERs are more energy efficient.

- This energy rating is based on U.S. Government standard tests of this condenser model combined with the most common coil. The rating may vary slightly with different coils.
- Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 8

Based on standard U.S. Government tests

ENERGYGUIDE

Heat Pump
Cooling and Heating
Split System

XYZ Corporation
Model 12345

Compare the Energy Efficiency of this Heat Pump with Others Before You Buy.

This Model (Cooling)
12.0SEER

Energy efficiency range of all similar models

Least Efficient	Most Efficient
10.0	16.4

SEER, the Seasonal Energy Efficiency Ratio, is a measure of energy efficiency for central air conditioners.

This Model (Cooling)
7.5HSPF

Energy efficiency range of all similar models

Least Efficient	Most Efficient
6.8	10.2

HSPF, the Heating Seasonal Performance Factor, is a measure of energy efficiency for heat pumps when heating.

- These energy ratings are based on U.S. Government standard tests of this condenser model combined with the most common coil. The ratings will vary slightly with different coils
- Federal law requires the seller or installer of this appliance to make available a fact sheet or directory giving further information about the efficiency and operating cost of this equipment. Ask for this information.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 9

Based on standard U.S. Government tests

ENERGYGUIDE

Pool Heater
Natural Gas

ABC Corporation
Model 1428

Compare the Energy Efficiency of this Pool Heater with Others Before You Buy.

This Model's Efficiency
80 Thermal Efficiency

Energy efficiency range of all similar models

Least Efficient	Most Efficient
78	97

The **Thermal Efficiency** (expressed as a percent) is the measure of energy efficiency for pool heaters. Only pool heaters fueled by natural gas are used in this scale.

Natural gas pool heaters that have higher Thermal Efficiencies are more energy efficient.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 10

Based on standard U.S. Government tests

ENERGYGUIDE

Refrigerator-Freezer
With Automatic Defrost
With Side-Mounted Freezer
With Through-the-Door-Ice Service

XYZ Corporation
Model ABC-W
Capacity: 23 Cubic Feet

Compare the Energy Use of this Refrigerator with Others Before You Buy.

This Model Uses
800 kWh/year

ENERGY STAR
A symbol of energy efficiency

Energy use (kWh/year) range of all similar models

Uses Least Energy	Uses Most Energy
685	1000

kWh/year (kilowatt-hours per year) is a measure of energy (electricity) use. Your utility company uses it to compute your bill. Only models with 22.5 and 24.4 cubic feet and the above features are used in this scale.

Refrigerators using more energy cost more to operate. This model's estimated yearly operating cost is:

$65

Based on a 2000 U.S. Government national average cost of 8.03¢ per kWh for electricity. Your actual operating cost will vary depending on your local utility rates and your use of the product.

Important: Removal of this label before consumer purchase violates the Federal Trade Commission's Appliance Labeling Rule (16 C.F.R. Part 305).

Sample Label 11

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–7970 Filed 3–31–00; 8:45 am]

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Federal Register

Monday,
April 3, 2000

Part III

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 15
Federal Acquisition Regulation; Discussion Requirements; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 15

[FAR Case 1999–022]

RIN 9000–AI68

Federal Acquisition Regulation; Discussion Requirements

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) to clarify the scope of discussions in competitive negotiated acquisitions.

DATES: Interested parties should submit comments in writing on or before June 2, 2000, to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVRS), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: farcase.1999–022@gsa.gov

Please submit comments only and cite FAR case 1999–022 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Ralph De Stefano, Procurement Analyst, at (202) 501–1758. Please cite FAR case 1999–022.

SUPPLEMENTARY INFORMATION:

A. Background

The proposed rule amends FAR 15.306(d) to clarify the Councils' view that the contracting officer is not required to discuss every area where the proposal could be improved.

The rule explains that discussions of offerors' proposals beyond deficiencies and significant weaknesses are a matter of contracting officer judgment. GAO has already interpreted the previous FAR language consistently with this clarification in *MRC Federal, Inc.* (B–280969, December 14, 1998) and *Du & Associates* (B–280283.3, December 22, 1998). The rule encourages the contracting officer to discuss other aspects of an offerors' proposal that have the potential, if changed, to materially increase the value of the proposal to the Government (B–280283.3). However, the rule makes clear that whether these discussions would be worthwhile is within the contracting officer's discretion.

This rule was not subject to Office of Management and Budget review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule only clarifies existing policy that the scope and extent of discussions are a matter of contracting officer judgment. Therefore, we have not prepared an Initial Regulatory Flexibility Analysis. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR subpart in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 1999–022), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 15

Government procurement.

Dated: March 29, 2000.

Edward C. Loeb,

Director, Federal Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose that 48 CFR part 15 be amended as set forth below:

PART 15—CONTRACTING BY NEGOTIATION

1. The authority citation for 48 CFR part 15 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Amend section 15.306 by revising paragraph (d)(3); by redesignating paragraph (d)(4) as (d)(5); and by adding a new paragraph (d)(4) to read as follows:

15.306 Exchanges with offerors after receipt of proposals.

* * * * *

(d) * * *

(3) At a minimum, the contracting officer must, subject to paragraphs (d)(5) and (e) of this section and 15.307(a), indicate to or discuss with each offeror still being considered for award significant weaknesses, deficiencies, and adverse past performance information to which the offeror has not yet had an opportunity to respond. The contracting officer also is encouraged to discuss other aspects of the offeror's proposal (such as cost, price, technical approach, past performance, and terms and conditions) that could, in the opinion of the contracting officer, be altered or explained to enhance materially the proposal's potential for award. However, the contracting officer is not required to discuss every area where the proposal could be improved. The scope and extent of discussions are a matter of contracting officer judgment.

(4) In discussing other aspects of the proposal, the Government may, in situations where the solicitation stated that evaluation credit would be given for technical solutions exceeding any mandatory minimums, negotiate with offerors for increased performance beyond any mandatory minimums, and the Government may suggest to offerors that have exceeded any mandatory minimums (in ways that are not integral to the design) that their proposals would be more competitive if the excesses were removed and the offered price decreased.

* * * * *

[FR Doc. 00–8135 Filed 3–31–00; 8:45 am]

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Federal Register

Vol. 65, No. 64

Monday, April 3, 2000

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FEDERAL REGISTER PAGES AND DATE, APRIL

17435–17582..... 3

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 3, 2000

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Natural gas companies (Natural Gas Act):
Facilities construction and operation, etc.; filing of applications; rehearing order; published 3-3-00
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans:
Ozone transport reduction—
Nitrogen oxides emissions; State budgets; findings of significant contribution and rulemaking; technical amendment; published 3-2-00
Air quality implementation plans; approval and promulgation; various States:
Alaska; published 4-3-00
California; published 2-3-00
Maryland; published 2-3-00
South Dakota; published 2-3-00
Texas; published 3-3-00
Virginia; published 2-17-00
FEDERAL COMMUNICATIONS COMMISSION
Radio stations; table of assignments:
Nebraska; published 3-3-00
Oklahoma; published 3-3-00
Texas; published 3-28-00
FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Appropriate present-value factors associated with payments made to Resolution Funding Corporation; published 4-3-00
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
Anesthesiology devices—
Nitric oxide administration apparatus, nitric oxide analyzer, and nitrogen dioxide analyzer; classification into class II; published 3-3-00
SMALL BUSINESS ADMINISTRATION
Business loans:
Loan loss reserve fund; published 4-3-00
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Aerospatiale; published 2-28-00
Cessna; published 2-28-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Plant variety protection office:
Fees revision; comments due by 4-14-00; published 3-15-00
Raisins produced from grapes grown in—
California; comments due by 4-10-00; published 2-9-00
AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Poultry products from Mexico transiting U.S.; comments due by 4-10-00; published 2-8-00
AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meetings:
E. coli in beef products; risk assessment; policy and regulatory changes; comments due by 4-11-00; published 2-11-00
AGRICULTURE DEPARTMENT
Rural Utilities Service
Electric loans:
Minimum Times Interest Earned Ratio (TIER) requirements; reduction; comments due by 4-10-00; published 3-10-00
COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Gulf of Maine; Atlantic salmon; comments due by 4-14-00; published 3-15-00
Marine and anadromous species—
West coast steelhead in California et al.; comments due by 4-11-00; published 2-11-00
DEFENSE DEPARTMENT
Acquisition regulations:
Contract drawings, maps, and specifications; comments due by 4-10-00; published 2-10-00
Mentor-protege program improvements; comments due by 4-10-00; published 2-10-00
ENERGY DEPARTMENT
Defense nuclear facilities; disposal of real property for economic development; comments due by 4-14-00; published 2-29-00
ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Practice and procedure:
Well category determinations; comments due by 4-10-00; published 2-8-00
ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-10-00; published 3-9-00
Connecticut and Rhode Island; comments due by 4-10-00; published 3-9-00
Delaware; comments due by 4-10-00; published 3-9-00
Georgia; comments due by 4-12-00; published 3-13-00
Kentucky; comments due by 4-10-00; published 3-10-00
FEDERAL COMMUNICATIONS COMMISSION
Practice and procedure:
Communication between applicants in spectrum auctions; comments due by 4-10-00; published 2-8-00
Radio stations; table of assignments:
Florida; comments due by 4-10-00; published 3-3-00
Texas; comments due by 4-10-00; published 3-3-00
FEDERAL EMERGENCY MANAGEMENT AGENCY
Disaster assistance:
Hurricane Floyd property acquisition and relocation grants; comments due by 4-11-00; published 2-11-00
Public assistance program administration—
Insurance requirements; comments due by 4-10-00; published 2-23-00
FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Membership regulations; comments due by 4-14-00; published 3-15-00
HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
American Society for Testing and Materials; amendments to reflect current citations; comments due by 4-10-00; published 1-24-00
HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal Housing Enterprise Oversight Office
Equal Access to Justice Act; implementation; comments due by 4-14-00; published 2-14-00
Risk-based capital:
Stress test; House Price Index (HPI) use and benchmark credit loss experience determination; comments due by 4-14-00; published 3-13-00
INTERIOR DEPARTMENT
Land Management Bureau
Land resource management:
Disposition; occupancy and use—
Alaska occupany and use; Alaska Native veterans allotments; comments due by 4-10-00; published 2-8-00
INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Gulf of Maine; Atlantic salmon; comments due by 4-14-00; published 3-15-00
Ohlone tiger beetle; comments due by 4-11-00; published 2-11-00
Showy stickseed; comments due by 4-14-00; published 2-14-00
INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 4-10-00; published 3-9-00
LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Cable compulsory licese:
Network station definition; comments due by 4-11-00; published 2-11-00
NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION
Party to Compact; State eligibility declaration; comments due by 4-13-00; published 3-14-00
POSTAL SERVICE
Domestic Mail Manual:
Commercial mail receiving agency; mail delivery; comments due by 4-12-00; published 3-13-00
Sacking and palletizing periodicals nonletters and standard mail (A) flats, traying first-class flats, and labeling pallets; comments due by 4-14-00; published 2-29-00
Practice and procedure:
False representation and lottery orders; proceedings; subpoenas and civil penalties; comments due by 4-13-00; published 3-14-00
SMALL BUSINESS ADMINISTRATION
Small business size standards:
8(a) business development/ small disadvantaged business status determinations; comments due by 4-10-00; published 3-10-00
SOCIAL SECURITY ADMINISTRATION
Social security benefits:
Federal old age, survivors, and disability insurance—
Medical criteria for disability determinations; comments due by 4-11-00; published 2-11-00
STATE DEPARTMENT
Consular services; fee schedule; comments due by 4-12-00; published 3-13-00
TRANSPORTATION DEPARTMENT
Coast Guard
Regattas and marine parades, anchorage regulations, and ports and waterways safety:
OPSAIL 2000, Hampton Roads, VA; regulated areas; comments due by 4-14-00; published 2-29-00
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Ayres Corp.; comments due by 4-10-00; published 2-16-00
Eurocopter Deutschland GmbH; comments due by 4-11-00; published 2-11-00
Eurocopter France; comments due by 4-11-00; published 2-11-00
Fairchild; comments due by 4-10-00; published 2-16-00
Fokker; comments due by 4-14-00; published 3-15-00
Saab; comments due by 4-14-00; published 3-15-00
Airworthiness standards:
Special conditions—
Boeing Model 727-200 and 727-200F series airplanes; comments due by 4-13-00; published 3-14-00
Raytheon Aircraft Co. Model 4000 airplane; comments due by 4-13-00; published 3-14-00
Class D and Class E airspace; comments due by 4-14-00; published 2-29-00
Class E airspace; comments due by 4-10-00; published 2-24-00
TRANSPORTATION DEPARTMENT
Federal Highway Administration
Engineering and traffic operations:
Utilities; comments due by 4-10-00; published 2-9-00
TREASURY DEPARTMENT
Customs Service
Customs bonds:
Articles subject to exclusion orders issued by International Trade Commission; bond procedures; comments due by 4-10-00; published 2-8-00
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Partnership debt allocation; comments due by 4-12-00; published 1-13-00
Partnership mergers and divisions, hearing; comments due by 4-10-00; published 1-11-00

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S. 376/P.L. 106–180

Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

Last List March 16, 2000

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–038–00001–6)	5.00	[5] Jan. 1, 1999
3 (1997 Compilation and Parts 100 and 101)	(869–038–00002–4)	20.00	[1] Jan. 1, 1999
4	(869–042–00003–0)	8.50	Jan. 1, 2000
5 Parts:			
1–699	(869–042–00004–8)	43.00	Jan. 1, 2000
700–1199	(869–042–00005–6)	31.00	Jan. 1, 2000
1200–End, 6 (6 Reserved)	(869–042–00006–4)	48.00	Jan. 1, 2000
7 Parts:			
1–26	(869–042–00007–2)	28.00	Jan. 1, 2000
27–52	(869–042–00008–1)	35.00	Jan. 1, 2000
53–209	(869–042–00009–9)	22.00	Jan. 1, 2000
210–299	(869–038–00010–5)	47.00	Jan. 1, 1999
300–399	(869–042–00011–1)	29.00	Jan. 1, 2000
400–699	(869–042–00012–9)	41.00	Jan. 1, 2000
700–899	(869–038–00013–0)	32.00	Jan. 1, 1999
900–999	(869–042–00014–5)	46.00	Jan. 1, 2000
1000–1199	(869–038–00015–6)	46.00	Jan. 1, 1999
1200–1599	(869–038–00016–4)	34.00	Jan. 1, 1999
1600–1899	(869–038–00017–2)	55.00	Jan. 1, 1999
1900–1939	(869–038–00018–1)	19.00	Jan. 1, 1999
1940–1949	(869–042–00019–6)	37.00	Jan. 1, 2000
1950–1999	(869–042–00020–0)	38.00	Jan. 1, 2000
2000–End	(869–042–00021–8)	31.00	Jan. 1, 2000
8	(869–042–00022–6)	41.00	Jan. 1, 2000
9 Parts:			
1–199	(869–038–00023–7)	42.00	Jan. 1, 1999
200–End	(869–038–00024–5)	37.00	Jan. 1, 1999
10 Parts:			
*1–50	(869–042–00025–1)	46.00	Jan. 1, 2000
51–199	(869–038–00026–1)	34.00	Jan. 1, 1999
200–499	(869–038–00027–0)	33.00	Jan. 1, 1999
500–End	(869–038–00028–8)	43.00	Jan. 1, 1999
11	(869–038–00029–6)	20.00	Jan. 1, 1999
12 Parts:			
1–199	(869–038–00030–0)	17.00	Jan. 1, 1999
200–219	(869–042–00031–5)	22.00	Jan. 1, 2000
220–299	(869–038–00032–6)	40.00	Jan. 1, 1999
300–499	(869–042–00033–1)	29.00	Jan. 1, 2000
500–599	(869–038–00034–2)	24.00	Jan. 1, 1999
600–End	(869–038–00035–1)	45.00	Jan. 1, 1999
13	(869–038–00036–9)	25.00	Jan. 1, 1999
14 Parts:			
1–59	(869–038–00037–7)	50.00	Jan. 1, 1999
*60–139	(869–042–00038–2)	46.00	Jan. 1, 2000
140–199	(869–038–00039–3)	17.00	Jan. 1, 1999
200–1199	(869–038–00040–7)	28.00	Jan. 1, 1999
1200–End	(869–042–00041–2)	25.00	Jan. 1, 2000
15 Parts:			
0–299	(869–042–00042–1)	28.00	Jan. 1, 2000
300–799	(869–038–00043–1)	36.00	Jan. 1, 1999
800–End	(869–038–00044–0)	24.00	Jan. 1, 1999
16 Parts:			
0–999	(869–038–00045–8)	32.00	Jan. 1, 1999
1000–End	(869–038–00046–6)	37.00	Jan. 1, 1999
17 Parts:			
1–199	(869–038–00048–2)	29.00	Apr. 1, 1999
200–239	(869–038–00049–1)	34.00	Apr. 1, 1999
240–End	(869–038–00050–4)	44.00	Apr. 1, 1999
18 Parts:			
1–399	(869–038–00051–2)	48.00	Apr. 1, 1999
400–End	(869–038–00052–1)	14.00	Apr. 1, 1999
19 Parts:			
1–140	(869–038–00053–9)	37.00	Apr. 1, 1999
141–199	(869–038–00054–7)	36.00	Apr. 1, 1999
200–End	(869–038–00055–5)	18.00	Apr. 1, 1999
20 Parts:			
1–399	(869–038–00056–3)	30.00	Apr. 1, 1999
400–499	(869–038–00057–1)	51.00	Apr. 1, 1999
500–End	(869–038–00058–0)	44.00	[7] Apr. 1, 1999
21 Parts:			
1–99	(869–038–00059–8)	24.00	Apr. 1, 1999
100–169	(869–038–00060–1)	28.00	Apr. 1, 1999
170–199	(869–038–00061–0)	29.00	Apr. 1, 1999
200–299	(869–038–00062–8)	11.00	Apr. 1, 1999
300–499	(869–038–00063–6)	18.00	Apr. 1, 1999
500–599	(869–038–00064–4)	28.00	Apr. 1, 1999
600–799	(869–038–00065–2)	9.00	Apr. 1, 1999
800–1299	(869–038–00066–1)	35.00	Apr. 1, 1999
1300–End	(869–038–00067–9)	14.00	Apr. 1, 1999
22 Parts:			
1–299	(869–038–00068–7)	44.00	Apr. 1, 1999
300–End	(869–038–00069–5)	32.00	Apr. 1, 1999
23	(869–038–00070–9)	27.00	Apr. 1, 1999
24 Parts:			
0–199	(869–038–00071–7)	34.00	Apr. 1, 1999
200–499	(869–038–00072–5)	32.00	Apr. 1, 1999
500–699	(869–038–00073–3)	18.00	Apr. 1, 1999
700–1699	(869–038–00074–1)	40.00	Apr. 1, 1999
1700–End	(869–038–00075–0)	18.00	Apr. 1, 1999
25	(869–038–00076–8)	47.00	Apr. 1, 1999
26 Parts:			
§§ 1.0-1–1.60	(869–038–00077–6)	27.00	Apr. 1, 1999
§§ 1.61–1.169	(869–038–00078–4)	50.00	Apr. 1, 1999
§§ 1.170–1.300	(869–038–00079–2)	34.00	Apr. 1, 1999
§§ 1.301–1.400	(869–038–00080–6)	25.00	Apr. 1, 1999
§§ 1.401–1.440	(869–038–00081–4)	43.00	Apr. 1, 1999
§§ 1.441–1.500	(869–038–00082–2)	30.00	Apr. 1, 1999
§§ 1.501–1.640	(869–038–00083–1)	27.00	[7] Apr. 1, 1999
§§ 1.641–1.850	(869–038–00084–9)	35.00	Apr. 1, 1999
§§ 1.851–1.907	(869–038–00085–7)	40.00	Apr. 1, 1999
§§ 1.908–1.1000	(869–038–00086–5)	38.00	Apr. 1, 1999
§§ 1.1001–1.1400	(869–038–00087–3)	40.00	Apr. 1, 1999
§§ 1.1401–End	(869–038–00088–1)	55.00	Apr. 1, 1999
2–29	(869–038–00089–0)	39.00	Apr. 1, 1999
30–39	(869–038–00090–3)	28.00	Apr. 1, 1999
40–49	(869–038–00091–1)	17.00	Apr. 1, 1999
50–299	(869–038–00092–0)	21.00	Apr. 1, 1999
300–499	(869–038–00093–8)	37.00	Apr. 1, 1999
500–599	(869–038–00094–6)	11.00	Apr. 1, 1999
600–End	(869–038–00095–4)	11.00	Apr. 1, 1999
27 Parts:			
1–199	(869–038–00096–2)	53.00	Apr. 1, 1999

Title	Stock Number	Price	Revision Date
200-End	(869-038-00097-1)	17.00	Apr. 1, 1999
28 Parts:			
0-42	(869-038-00098-9)	39.00	July 1, 1999
43-end	(869-038-00099-7)	32.00	July 1, 1999
29 Parts:			
0-99	(869-038-00100-4)	28.00	July 1, 1999
100-499	(869-038-00101-2)	13.00	July 1, 1999
500-899	(869-038-00102-1)	40.00	[8] July 1, 1999
900-1899	(869-038-00103-9)	21.00	July 1, 1999
1900-1910 (§§ 1900 to 1910.999)	(869-038-00104-7)	46.00	July 1, 1999
1910 (§§ 1910.1000 to end)	(869-038-00105-5)	28.00	July 1, 1999
1911-1925	(869-038-00106-3)	18.00	July 1, 1999
1926	(869-038-00107-1)	30.00	July 1, 1999
1927-End	(869-038-00108-0)	43.00	July 1, 1999
30 Parts:			
1-199	(869-038-00109-8)	35.00	July 1, 1999
200-699	(869-038-00110-1)	30.00	July 1, 1999
700-End	(869-038-00111-0)	35.00	July 1, 1999
31 Parts:			
0-199	(869-038-00112-8)	21.00	July 1, 1999
200-End	(869-038-00113-6)	48.00	July 1, 1999
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-038-00114-4)	46.00	July 1, 1999
191-399	(869-038-00115-2)	55.00	July 1, 1999
400-629	(869-038-00116-1)	32.00	July 1, 1999
630-699	(869-038-00117-9)	23.00	July 1, 1999
700-799	(869-038-00118-7)	27.00	July 1, 1999
800-End	(869-038-00119-5)	27.00	July 1, 1999
33 Parts:			
1-124	(869-038-00120-9)	32.00	July 1, 1999
125-199	(869-038-00121-7)	41.00	July 1, 1999
200-End	(869-038-00122-5)	33.00	July 1, 1999
34 Parts:			
1-299	(869-038-00123-3)	28.00	July 1, 1999
300-399	(869-038-00124-1)	25.00	July 1, 1999
400-End	(869-038-00125-0)	46.00	July 1, 1999
35	(869-038-00126-8)	14.00	[8] July 1, 1999
36 Parts			
1-199	(869-038-00127-6)	21.00	July 1, 1999
200-299	(869-038-00128-4)	23.00	July 1, 1999
300-End	(869-038-00129-2)	38.00	July 1, 1999
37	(869-038-00130-6)	29.00	July 1, 1999
38 Parts:			
0-17	(869-038-00131-4)	37.00	July 1, 1999
18-End	(869-038-00132-2)	41.00	July 1, 1999
39	(869-038-00133-1)	24.00	July 1, 1999
40 Parts:			
1-49	(869-038-00134-9)	33.00	July 1, 1999
50-51	(869-038-00135-7)	25.00	July 1, 1999
52 (52.01-52.1018)	(869-038-00136-5)	33.00	July 1, 1999
52 (52.1019-End)	(869-038-00137-3)	37.00	July 1, 1999
53-59	(869-038-00138-1)	19.00	July 1, 1999
60	(869-038-00139-0)	59.00	July 1, 1999
61-62	(869-038-00140-3)	19.00	July 1, 1999
63 (63.1-63.1119)	(869-038-00141-1)	58.00	July 1, 1999
63 (63.1200-End)	(869-038-00142-0)	36.00	July 1, 1999
64-71	(869-038-00143-8)	11.00	July 1, 1999
72-80	(869-038-00144-6)	41.00	July 1, 1999
81-85	(869-038-00145-4)	33.00	July 1, 1999
86	(869-038-00146-2)	59.00	July 1, 1999
87-135	(869-038-00146-1)	53.00	July 1, 1999
136-149	(869-038-00148-9)	40.00	July 1, 1999
150-189	(869-038-00149-7)	35.00	July 1, 1999
190-259	(869-038-00150-1)	23.00	July 1, 1999
260-265	(869-038-00151-9)	32.00	July 1, 1999
266-299	(869-038-00152-7)	33.00	July 1, 1999
300-399	(869-038-00153-5)	26.00	July 1, 1999
400-424	(869-038-00154-3)	34.00	July 1, 1999
425-699	(869-038-00155-1)	44.00	July 1, 1999
700-789	(869-038-00156-0)	42.00	July 1, 1999
790-End	(869-038-00157-8)	23.00	July 1, 1999
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
18, Vol. II, Parts 6-19		13.00	[3] July 1, 1984
18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-038-00158-6)	14.00	July 1, 1999
101	(869-038-00159-4)	39.00	July 1, 1999
102-200	(869-038-00160-8)	16.00	July 1, 1999
201-End	(869-038-00161-6)	15.00	July 1, 1999
42 Parts:			
1-399	(869-038-00162-4)	36.00	Oct. 1, 1999
400-429	(869-038-00163-2)	44.00	Oct. 1, 1999
430-End	(869-038-00164-1)	54.00	Oct. 1, 1999
43 Parts:			
1-999	(869-038-00165-9)	32.00	Oct. 1, 1999
1000-end	(869-038-00166-7)	47.00	Oct. 1, 1999
44	(869-038-00167-5)	28.00	Oct. 1, 1999
45 Parts:			
1-199	(869-038-00168-3)	33.00	Oct. 1, 1999
200-499	(869-038-00169-1)	16.00	Oct. 1, 1999
500-1199	(869-038-00170-5)	30.00	Oct. 1, 1999
1200-End	(869-038-00171-3)	40.00	Oct. 1, 1999
46 Parts:			
1-40	(869-038-00172-1)	27.00	Oct. 1, 1999
41-69	(869-038-00173-0)	23.00	Oct. 1, 1999
70-89	(869-038-00174-8)	8.00	Oct. 1, 1999
90-139	(869-038-00175-6)	26.00	Oct. 1, 1999
140-155	(869-038-00176-4)	15.00	Oct. 1, 1999
156-165	(869-038-00177-2)	21.00	Oct. 1, 1999
166-199	(869-038-00178-1)	27.00	Oct. 1, 1999
200-499	(869-038-00179-9)	23.00	Oct. 1, 1999
500-End	(869-038-00180-2)	15.00	Oct. 1, 1999
47 Parts:			
0-19	(869-038-00181-1)	39.00	Oct. 1, 1999
20-39	(869-038-00182-9)	26.00	Oct. 1, 1999
40-69	(869-038-00183-7)	26.00	Oct. 1, 1999
70-79	(869-038-00184-5)	39.00	Oct. 1, 1999
80-End	(869-038-00185-3)	40.00	Oct. 1, 1999
48 Chapters:			
1 (Parts 1-51)	(869-038-00186-1)	55.00	Oct. 1, 1999
1 (Parts 52-99)	(869-038-00187-0)	30.00	Oct. 1, 1999
2 (Parts 201-299)	(869-038-00188-8)	36.00	Oct. 1, 1999
3-6	(869-038-00189-6)	27.00	Oct. 1, 1999
7-14	(869-038-00190-0)	35.00	Oct. 1, 1999
15-28	(869-038-00191-8)	36.00	Oct. 1, 1999
29-End	(869-038-00192-6)	25.00	Oct. 1, 1999
49 Parts:			
1-99	(869-038-00193-4)	34.00	Oct. 1, 1999
100-185	(869-038-00194-2)	53.00	Oct. 1, 1999
186-199	(869-038-00195-1)	13.00	Oct. 1, 1999
200-399	(869-038-00196-9)	53.00	Oct. 1, 1999
400-999	(869-038-00197-7)	57.00	Oct. 1, 1999
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1200-End	(869-038-00199-3)	14.00	Oct. 1, 1999
50 Parts:			
1-199	(869-038-00200-1)	43.00	Oct. 1, 1999
200-599	(869-038-00201-9)	22.00	Oct. 1, 1999

Title	Stock Number	Price	Revision Date
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[5] No amendments to this volume were promulgated during the period January 1, 1998 through December 31, 1998. The CFR volume issued as of January 1, 1997 should be retained.

[7] No amendments to this volume were promulgated during the period April 1, 1998, through April 1, 1999. The CFR volume issued as of April 1, 1998, should be retained.

[8] No amendments to this volume were promulgated during the period July 1, 1998, through July 1, 1999. The CFR volume issued as of July 1, 1998, should be retained.

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April 4	April 19	May 4	May 19	June 5	July 3
April 5	April 20	May 5	May 22	June 5	July 5
April 6	April 21	May 8	May 22	June 5	July 5
April 7	April 24	May 8	May 22	June 6	July 6
April 10	April 25	May 10	May 25	June 9	July 10
April 11	April 26	May 11	May 26	June 12	July 10
April 12	April 27	May 12	May 30	June 12	July 11
April 13	April 28	May 15	May 30	June 12	July 12
April 14	May 1	May 15	May 30	June 13	July 13
April 17	May 2	May 17	June 1	June 16	July 17
April 18	May 3	May 18	June 2	June 19	July 17
April 19	May 4	May 19	June 5	June 19	July 18
April 20	May 5	May 22	June 5	June 19	July 19
April 21	May 8	May 22	June 5	June 20	July 20
April 24	May 9	May 24	June 8	June 23	July 24
April 25	May 10	May 25	June 9	June 26	July 24
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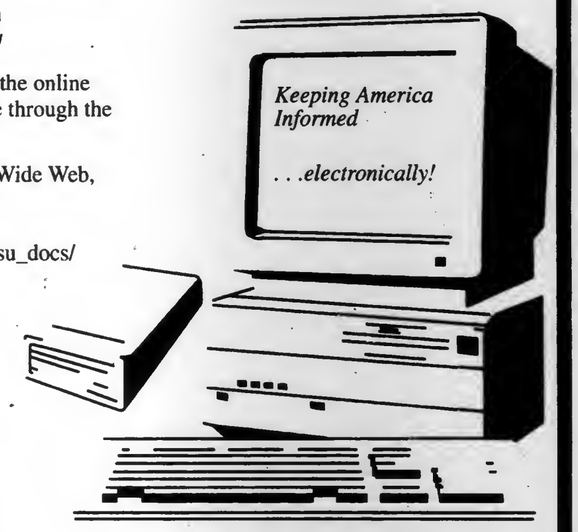
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Contents

Federal Register
Vol. 65, No. 65
Tuesday, April 4, 2000

Agricultural Marketing Service
PROPOSED RULES
American pima cotton; grade standards and classification, 17609–17612
Blueberry promotion, research, and information order, 17612

Agriculture Department
See Agricultural Marketing Service
See Cooperative State Research, Education, and Extension Service
See Farm Service Agency
See Food and Nutrition Service
See Food Safety and Inspection Service
See Forest Service
See National Agricultural Statistics Service

Architectural and Transportation Barriers Compliance Board
NOTICES
Meetings:
Passenger Vessel Access Advisory Committee, 17626–17627

Army Department
See Engineers Corps

Coast Guard
NOTICES
Meetings:
Oil Spill Removal Organization Classification Program; changes, 17697–17698

Commerce Department
See National Oceanic and Atmospheric Administration

Cooperative State Research, Education, and Extension Service
NOTICES
Grants and cooperative agreements; availability, etc.:
Initiative for Future Agriculture and Food Systems Program, 17752–17753

Corporation for National and Community Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17628–17629
Foster Grandparent and Senior Companion Programs; income eligibility levels, 17629–17631
Grants and cooperative agreements; availability, etc.:
AmeriCorps* programs—
North Dakota and South Dakota, 17631

Defense Department
See Engineers Corps
See Navy Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17631–17632
Civilian health and medical program of uniformed services (CHAMPUS):
TRICARE program—
Designated Provider Program; continuous open enrollment demonstration project; military retirees and family members, 17632–17633
Courts-Martial Manual; amendments, 17633–17636
Meetings:
Dependents' Education Advisory Council, 17636
President's Security Policy Advisory Board, 17636
Privacy Act:
Systems of records, 17636–17638
Travel per diem rates, civilian personnel; changes, 17638–17643

Drug Enforcement Administration
NOTICES
Applications, hearings, determinations, etc.:
Pressure Chemical Co., 17675

Education Department
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17647
Submission for OMB review; comment request, 17647–17648
Meetings:
Institutional Quality and Integrity National Advisory Committee, 17648–17650

Employment and Training Administration
NOTICES
Adjustment assistance:
ARCO Permian, 17677
GL&V/Dorr-Oliver, Inc., 17677
Spring Ford Industries, Inc., 17677–17678
NAFTA transitional adjustment assistance:
L&V/Dorr-Oliver, Inc., 17678

Energy Department
See Federal Energy Regulatory Commission
NOTICES
Grants and cooperative agreements; availability, etc.:
Sciences and engineering training for Native Americans, African Americans, Hispanic Americans, Asian-Pacific Americans, women, and disabled students, 17650–17651

Engineers Corps
NOTICES
Meetings:
J. Bennett Johnston Waterway Project, LA; public forum, 17643

Executive Office of the President
See Management and Budget Office

Farm Service Agency
NOTICES
Meetings:
National Drought Policy Commission, 17620

Federal Aviation Administration
RULES
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, AZ; special flight rules in vicinity—
Commercial air tour limitation, 17708–17733
Special flight rules area and flight free zones; modification of dimensions, 17736–17743
Airworthiness directives:
Boeing, 17583–17586
Empresa Brasileira de Aeronautica, S.A., 17586–17588
Colored Federal airways, 17588–17589
Jet routes, 17589–17590
PROPOSED RULES
Airworthiness standards:
Special conditions—
Cessna Model 172/K/L/M/N/P airplanes, etc., 17613–17616
Class E airspace, 17616–17617
NOTICES
Air traffic operating and flight rules, etc.:
Grand Canyon National Park, AZ; commercial routes, 17698–17700
Environmental statements; availability, etc.:
Grand Canyon National Park, AZ; special flight rules and commercial air tour routes, 17700–17701
Meetings:
RTCA, Inc., 17701–17702
Passenger facility charges; applications, etc.:
Eastern Oregon Regional Airport, OR, 17702

Federal Communications Commission
RULES
Common carrier services:
Wireless telecommunications services—
746-764 and 776-794 MHz guard bands; service rules, 17594–17607
Radio stations; table of assignments:
California, 17607
New Hampshire, 17607–17608
PROPOSED RULES
Radio stations; table of assignments:
Georgia, 17617, 17619
Minnesota, 17618
Montana, 17617
New York, 17618–17619
Texas, 17618

Federal Energy Regulatory Commission
NOTICES
Electric rate and corporate regulation filings:
Ameren Energy Generating Co. et al., 17652–17654
Environmental statements; availability, etc.:
Distringas of Massachusetts Corp., 17654–17655
Hydroelectric applications, 17655–17656
New filings made with Commission; voluntary identification, 17656
Applications, hearings, determinations, etc.:
Columbia Gas Transmission Corp., 17651
Iroquois Gas Transmission System, L.P., 17651
Questar Pipeline Co., 17651
Tennessee Gas Pipeline Co., 17652

Federal Highway Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17702–17703

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Alaska Railroad Corp., 17703–17704
Northeast Illinois Railroad Corp., 17704

Federal Reserve System
NOTICES
Banks and bank holding companies:
Change in bank control, 17656
Formations, acquisitions, and mergers, 17656–17657
Permissible nonbanking activities, 17657
Meetings; Sunshine Act, 17657–17658

Federal Trade Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17658–17659
Prohibited trade practices:
Dura Lube Corp. et al., 17659–17660
Motor Up Corp., Inc., et al., 17660–17661

Financial Management Service
See Fiscal Service

Fiscal Service
NOTICES
Surety companies acceptable on Federal bonds:
Planet Indemnity Co., 17705

Fish and Wildlife Service
NOTICES
Coastal Barrier Resources System:
Delaware map; boundary revisions, 17671
North Carolina maps; boundary revisions, 17671–17672
Endangered and threatened species permit applications, 17672

Food and Nutrition Service
NOTICES
Child nutrition programs:
National School Lunch, Commodity School, School Breakfast, Special Milk, Child and Adult Care Food, and Summer Food Service Programs—
Income eligibility guidelines, 17620–17623

Food Safety and Inspection Service
NOTICES
Meetings:
Codex Alimentarius Commission—
Food Labelling Committee, 17623

Foreign Assets Control Office
RULES
Sanctions; blocked persons, specially designated nationals, terrorists, narcotics traffickers, and blocked vessels:
Additional designations and removal and supplementary information on speciallydesignated narcotics traffickers, etc., 17590–17593

Forest Service
NOTICES
Environmental statements; availability, etc.:
Interior Columbia Basin Ecosystem Management Project, OR et al., 17624–17625
Environmental statements; notice of intent:
San Juan National Forest, CO, 17672–17673

General Services Administration
NOTICES
Acquisition regulations:
Summary worksheet for estimating report costs (OF 101); cancellation, 17661

Health and Human Services Department
NOTICES
Meetings:
HIV/AIDS Presidential Advisory Council, 17661

Housing and Urban Development Department
NOTICES
Grant and cooperative agreement awards:
Housing assistance payments (Section 8)—
Rental certificate and rental voucher programs, 17661–17671

Immigration and Naturalization Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17675–17676

Interior Department
See Fish and Wildlife Service
See Land Management Bureau
See National Park Service

Internal Revenue Service
PROPOSED RULES
Procedure and administration:
Investors in potentially abusive tax shelters; requirements to maintain list; cross-reference
Correction, 17617

International Boundary and Water Commission, United States and Mexico
NOTICES
Environmental statements; availability, etc.:
El Paso-Las Cruces Regional Sustainable Water Project, Sierra and Dona Ana Counties, NM, and El Paso County, TX, 17679–17680

Justice Department
See Drug Enforcement Administration
See Immigration and Naturalization Service
See Justice Programs Office
See Juvenile Justice and Delinquency Prevention Office

Justice Programs Office
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17676–17677

Juvenile Justice and Delinquency Prevention Office
NOTICES
Grants and cooperative agreements; availability, etc.:
Parents Anonymous program, 17746–17749

Labor Department
See Employment and Training Administration
See Mine Safety and Health Administration

Land Management Bureau
NOTICES
Environmental statements; availability, etc.:
Interior Columbia Basin Ecosystem Management Project, OR et al., 17624–17625
Environmental statements; notice of intent:
Elko, Eureka, Lander, and White Pine Counties, NV; Falcon to Gonder 345kV Transmission Line Project and establishment of right-of-way corridors, 17674–17675
San Juan and San Miguel Resource Area, San Juan Basin, CO, 17672–17673
Meetings:
Resource Advisory Councils—
Lower Snake River District, 17673
Southwest, 17673
Utah, 17674

Management and Budget Office
NOTICES
Audits of States, local governments, and nonprofit organizations (Circular A-133), 17684–17685

Maritime Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17704–17705

Mexico and United States, International Boundary and Water Commission
See International Boundary and Water Commission, United States and Mexico

Mine Safety and Health Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17678–17679

National Agricultural Statistics Service
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17626

National Archives and Records Administration
NOTICES
Electronic copies previously covered by General Records Schedule 20; records schedules availability and comment request, 17680–17681

National Oceanic and Atmospheric Administration
NOTICES
Environmental statements; availability, etc.:
Incidental take permits—
Oregon and Washington Fish and Wildlife Departments; salmonids, 17627–17628
Meetings:
New England Fishery Management Council, 17628

National Park Service
NOTICES
National Register of Historic Places:
Pending nominations, 17675

National Science Foundation
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17681–17682
Committees; establishment, renewal, termination, etc.:
National Science Board, 17682
Meetings:
Chemistry Special Emphasis Panel, 17682
Social and Political Science Advisory Panel, 17682–17683

Navy Department
NOTICES
Privacy Act:
Systems of records, 17643–17647

Nuclear Regulatory Commission
NOTICES
Decommissioning plans; sites:
University of Virginia Reactor, VA, 17684
Applications, hearings, determinations, etc.:
ABB C-E Nuclear Power, Inc., 17683
Duke Energy Corp., 17683–17684

Office of Management and Budget
See Management and Budget Office

Postal Service
RULES
Domestic Mail Manual:
Deceptive written, printed, and graphic matter; nonmailability, 17593–17594

Public Debt Bureau
See Fiscal Service

Securities and Exchange Commission
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17685
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 17685–17686
Boston Stock Exchange, Inc., 17687–17688
Depository Trust Co., 17688–17689
Pacific Exchange, Inc., 17689–17694

Small Business Administration
NOTICES
Meetings; district and regional advisory councils:
New York, 17694

State Department
NOTICES
Grants and cooperative agreements; availability, etc.:
Anti-Crime Training and Technical Assistance Program, 17694–17696

Statistical Reporting Service
See National Agricultural Statistics Service

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Capital Metropolitan Transportation Authority, 17705

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Highway Administration
See Federal Railroad Administration
See Maritime Administration
See Surface Transportation Board

Treasury Department
See Fiscal Service
See Foreign Assets Control Office
See Internal Revenue Service

Veterans Affairs Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17705–17706

Separate Parts In This Issue

Part II
Department of Transportation, Federal Aviation Administration, 17707–17733

Part III
Department of Transportation, Federal Aviation Administration, 17735–17743

Part IV
Department of Justice, Juvenile Justice and Delinquency Prevention Office, 17745–17749

Part V
Department of Agriculture, Cooperative State Research, Education, and Extension Service, 17751–17753

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

7 CFR
Proposed Rules:
28 17609
1218 17612

14 CFR
39 (2 documents) 17583, 17586
71 (2 documents) 17588, 17589
91 17736
93 (2 documents) 17736
121 17736
135 17736
Proposed Rules:
23 17613
71 17616

26 CFR
Proposed Rules:
301 17617

31 CFR
Ch. 5 17590

39 CFR
111 17593

47 CFR
27 17594
73 (2 documents) 17607
Proposed Rules:
73 (6 documents) 17617, 17618, 17619

Rules and Regulations

Federal Register
Vol. 65, No. 65
Tuesday, April 4, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–84–AD; Amendment 39–11654; AD 2000–06–13]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 737–200, –200C, –300, and –400 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Boeing Model 737–200, –200C, –300, and –400 series airplanes, that currently requires repetitive visual inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. That AD also provides an optional terminating action for certain repetitive inspections. This amendment requires repetitive high frequency eddy current (HFEC) inspections, and corrective actions, if necessary. This amendment also mandates accomplishment of the previously optional terminating action. The actions specified by this AD are intended to prevent fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane.

DATES: Effective May 9, 2000.

The incorporation by reference of Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999, as listed in the regulations, is approved by the Director of the Federal Register as of April 19, 2000.

The incorporation by reference of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, as listed in the regulations, was approved previously by the Director of the Federal Register as of December 24, 1998 (63 FR 67769, December 9, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Nenita Odesa, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW.; Renton, Washington 98055–4056; telephone (425) 227–2557; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–25–06, amendment 39–10931 (63 FR 67769, December 9, 1998), which is applicable to certain Boeing Model 737–200, –200C, –300, and –400 series airplanes, was published in the Federal Register on August 12, 1999 (64 FR 43950). The action proposed to require continuing the current repetitive visual inspections to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, and corrective actions, if necessary. The action also proposed to require repetitive high frequency eddy current (HFEC) inspections, and corrective actions, if necessary. Additionally, the action proposed to mandate accomplishment of the previously optional terminating action.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Concurrence with the Proposal

One commenter concurs with the proposal.

Request to Reference New Service Information

One commenter, the manufacturer, states that the proposal should reference the latest Alert Service Bulletin, 737–52A1079, Revision 6, dated November 18, 1999. That revision adds procedures describing a High frequency eddy current (HFEC) inspection for cracks in the frames of doors that do not have steel modification angles, inspection for cracks in the upper and lower beam outer chord, repair instructions for the lower beam outer chord, and other various changes.

The FAA concurs that Revision 6 of Boeing Alert Service Bulletin 737–52A1079 may be specified in the final rule as an alternative method of compliance with the requirements of this AD. The final rule has been changed to specify that addition.

Request to Revise the Compliance Time of Paragraph (d) of the Proposal

One commenter, the manufacturer, requests that the compliance time for the high frequency eddy current inspections specified in paragraph (d) of the proposal be revised from "within 4,500 flight cycles or one year after the effective date of the AD," to within 12,000 flight cycles after installation of the door. The commenter states that if an operator has an accurate accounting of the history of the cargo door, a threshold of 12,000 flight cycles would provide no adverse effect on safety.

The FAA does not concur with the commenter's request to revise the compliance time. Because cargo doors are rotable parts, i.e., they may be moved from one airplane to another, an airplane's maintenance records may not accurately reflect the total number of flight cycles accumulated on the door. However, under the provisions of paragraph (f) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

Request to Extend the Compliance Time of Paragraph (e) of the Proposal

One commenter, the manufacturer, requests that the compliance time for the accomplishment of the required modification be revised to be in consonance with the compliance threshold required by AD 90–06–02,

amendment 39–6489 (55 FR 8372, March 7, 1990). The new compliance time would then read, "prior to the accumulation of 75,000 total flight cycles." The commenter points out that compliance times should be based on flight cycles rather than calendar time. Fatigue crack growth rates are a function of pressurization cycles, not elapsed time, and a cycle-based compliance threshold would be more appropriate for the proposed rule.

The FAA does not concur that the compliance time should be changed to specify a compliance time of 75,000 total flight cycles. Based on a recent depressurization event that occurred much earlier than 75,000 flight cycles, the FAA has determined that a threshold of 75,000 total flight cycles does not provide for an adequate level of safety. However, the FAA acknowledges that fatigue cracking is a function of pressurization cycles and concurs that a compliance time based on flight cycles may be added. Based on recent information, the FAA has determined that a compliance time of 12,000 total flight cycles is an appropriate compliance time and has added this to the compliance time specified in paragraph (e) of the final rule.

Conclusion

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

Cost Impact

There are approximately 1,636 Model 737 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 707 airplanes of U.S. registry will be affected by this AD.

The detailed visual inspections that currently are required by AD 98–25–06, and retained in this AD, take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required inspections on U.S. operators is estimated to be $84,840, or $120 per airplane, per inspection cycle.

The new high frequency eddy current inspections that are required by this AD will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the new inspections required by this AD on U.S. operators is estimated to be $169,680, or $240 per airplane, per inspection cycle.

The modification that is required by this AD action will take approximately 144 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts will cost approximately $4,530 per airplane. Based on these figures, the cost impact of the modification required by this AD on U.S. operators is estimated to be $9,311,190, or $13,170 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10931 (63 FR 67769, December 9, 1998), and by adding a new airworthiness directive (AD), Amendment 39–11654, to read as follows:

2000–06–13 Boeing: Amendment 39–11654. Docket 99–NM–84–AD. Supersedes AD 98–25–06, Amendment 39–10931.

Applicability: The following airplane models, certificated in any category:

- Model 737–200 and –200C series airplanes, line numbers 6 through 873 inclusive;
- Model 737–200, –200C, –300, and –400 series airplanes; line numbers 874 through 1642 inclusive; equipped with an aft cargo door having Boeing part number (P/N) 65–47952–1 or P/N 65–47952–524; excluding:

1. Those airplanes on which that door has been modified in accordance with Boeing Service Bulletin 737–52–1079; or

2. Those airplanes on which the door assembly having P/N 65–47952–524 includes four straps (P/N's 65–47952–139, 65–47952–140, 65–47952–141, and 65–47952–142) and a thicker lower cross beam web (P/N 65–47952–157).

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the corners of the door frame and the cross beams of the aft cargo door, which could result in rapid depressurization of the airplane, accomplish the following:

Restatement of the Requirements of AD 98–25–06:

Inspections and Corrective Actions

(a) Within 90 days or 700 flight cycles after December 24, 1998 (the effective date of AD 98–25–06, amendment 39–10931), whichever occurs later, perform an internal detailed visual inspection to detect cracking of the corners of the door frame and the cross beams of the aft cargo door, in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999.

(1) If no cracking is detected, accomplish the requirements of either paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) Repeat the internal visual inspection thereafter at intervals not to exceed 4,500 flight cycles. Or

(ii) Prior to further flight, modify the corners of the door frame and the cross beams of the aft cargo door in accordance with the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD.

(2) If any cracking is detected in the upper or lower cross beams, prior to further flight, modify the cracked beam in accordance with paragraph III.C. of Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the repaired beam.

(3) If any cracking is detected in the forward or aft upper door frame, prior to further flight, repair the frame and modify the corners of the door frame of the aft cargo door, in accordance with paragraph III.E. of Part I of the Accomplishment Instructions of the service bulletin, except as provided by paragraph (b) of this AD. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the upper door frame.

Note 2: Cracks of the forward or aft upper door frame, regardless of length, must be repaired prior to further flight in accordance with paragraph III.E. of Part I of the Accomplishment Instructions of the service bulletin.

(4) If any cracking is detected in the forward or aft lower door frame, prior to further flight, replace the damaged frame with a new frame, and modify the corners of the door frame of the aft cargo door, in accordance with paragraph III.F. of Part I of the Accomplishment Instructions of the service bulletin. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (a)(1)(i) of this AD for the lower door frame.

(b) Where Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin, 737–52A1079, Revision 6, dated November 18, 1999, specifies that certain repairs are to be accomplished in accordance with instructions received from Boeing, this AD requires that, prior to further flight, such repairs be accomplished in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

New Requirements of This AD

Inspections and Corrective Actions

(c) If any cracking of the outer chord of the upper or lower cross beams of the aft cargo door is detected as a result of any inspection required by paragraph (a) of this AD, prior to further flight, repair in accordance with a method approved by the Manager, Seattle ACO; Boeing Alert Service Bulletin, 737–52A1079, Revision 6, dated November 18, 1999; or in accordance with data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the FAA to make such findings.

(d) Within 4,500 flight cycles or one year after the effective date of this AD, whichever occurs later: Perform a high frequency eddy current inspection (HFEC) to detect cracking of the four corners of the door frame of the aft cargo door, in accordance with the procedures specified in Boeing 737 Nondestructive Test Manual, Part 6, Chapter 51–00–00 (Figure 4 or Figure 23), or Boeing Alert Service Bulletin, 737–52A1079, Revision 6, dated November 18, 1999;

(1) If no cracking of the corners of the door frame of the aft cargo door is detected, repeat the HFEC inspections thereafter at intervals not to exceed 4,500 flight cycles until accomplishment of the modification specified in paragraph (e) of this AD.

(2) If any cracking of the corners of the door frame of the aft cargo door is detected, prior to further flight, replace the damaged frame with a new frame, and modify the four corners of the door frame, in accordance with Parts II and III of the Accomplishment Instructions of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of paragraph (d)(1) of this AD for that door frame.

Terminating Action

(e) Prior to the accumulation of 12,000 total flight cycles, or within 4 years after the effective date of this AD, whichever occurs later: Modify the four corners of the door frame and the cross beams of the aft cargo door, in accordance with Part II of the Accomplishment Instructions of Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999. Accomplishment of such modification constitutes terminating action for the repetitive inspection requirements of this AD.

Note 3: Accomplishment of the modification required by paragraph (a) of AD 90–06–02, amendment 39–6489, is considered acceptable for compliance with paragraph (e) of this AD.

Note 4: Modification of the corners of the door frame and the cross beams of the aft cargo door accomplished prior to the effective date of this AD in accordance with Boeing Service Bulletin 737–52–1079, dated December 16, 1983; Revision 1, dated December 15, 1988; Revision 2, dated July 20, 1989; Revision 3, dated May 17, 1990; Revision 4, dated February 21, 1991; is considered acceptable for compliance with paragraph (e) of this AD.

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–25–06, amendment 39–10931, are approved as alternative methods of compliance with this AD.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(h) Except as provided in paragraphs (b), (c), (d), and (d)(1) of this AD, the actions shall be done in accordance with Boeing Service Bulletin 737–52–1079, Revision 5, dated May 16, 1996, or Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999.

(1) The incorporation by reference of Boeing Alert Service Bulletin 737–52A1079, Revision 6, dated November 18, 1999, is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of Boeing Service 737–52–1079, Revision 5, dated May 16, 1996, was approved previously by the Director of the Federal Register as of December 24, 1998 (63 FR 67769, December 9, 1998).

(3) Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective on May 9, 2000.

Issued in Renton, Washington, on March 24, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–7877 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–203–AD; Amendment 39–11655; AD 2000–07–01]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica, S.A. (EMBRAER), Model EMB–145 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Empresa Brasileira de Aeronautica, S.A. (EMBRAER), Model EMB–145 series airplanes, that currently requires repetitive emergency extension (free-fall) functional tests of the nose landing gear (NLG), and lubrication of all NLG hinge points, to ensure that the NLG extends and locks down properly; and corrective action, if necessary. This amendment also requires a terminating modification that includes replacement of the NLG door solenoid valve with an improved valve; replacement of the landing gear (LG) safety pins holder with an improved holder; and replacement of the NLG maneuvering actuator with an improved actuator. This amendment also limits the applicability of the existing AD. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent failure of the NLG to extend and lock down properly, which could result in damage to the airplane structure, and consequent reduced controllability of the airplane upon landing.

DATES: Effective May 9, 2000.

The incorporation by reference of EMBRAER Service Bulletin 145–32–0036, dated February 1, 1999; and EMBRAER Service Bulletin 145–32–0037, dated February 12, 1999, as listed in the regulations, is approved by the Director of the Federal Register as of May 9, 2000.

The incorporation by reference of EMBRAER Alert Service Bulletin 145–32–A029, dated April 15, 1998, as listed in the regulations, was approved previously by the Director of the Federal Register as of July 9, 1998 (63 FR 34274, June 24, 1998).

ADDRESSES: The service information referenced in this AD may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Rob Capezzuto, Aerospace Engineer, Systems and Flight Test Branch, ACE–116A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6071; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 98–13–34, amendment 39–10625 (63 FR 34274, June 24, 1998), which is applicable to all Empresa Brasileira de Aeronautica, S.A. (EMBRAER), Model EMB–145 series airplanes, was published in the **Federal Register** on February 2, 2000 (65 FR 4897). The action proposed to continue to require repetitive emergency extension (free-fall) functional tests of the nose landing gear (NLG), and lubrication of all NLG hinge points, to ensure that the NLG extends and locks down properly; and corrective action, if necessary. The action also proposed to require a terminating modification that includes replacement of the NLG door solenoid valve with an improved valve; replacement of the landing gear (LG) safety pins holder with an improved holder; and replacement of the NLG maneuvering actuator with an improved actuator. Additionally, the action proposed to limit the applicability of the existing AD.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public.

Conclusion

The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Cost Impact

There are approximately 66 airplanes of U.S. registry that will be affected by this AD.

The actions that are currently required by AD 98–13–34, and continue to be required by this AD, will take approximately 4 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $15,840, or $240 per airplane, per inspection cycle.

The new replacements that are required in this AD action will take approximately 6 work hours (3 work hours per airplane for the solenoid/holder replacement) and 3 work hours per airplane for the actuator replacement, at an average labor rate of $60 per work hour. EMBRAER and Libherr Aerospace Linberg have previously committed to supplying the necessary parts free of charge. Based on these figures, the cost impact of the replacements required by this AD on U.S. operators is estimated to be $23,760, or $360 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or new requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10625 (63 FR 34274, June 24, 1998), and by adding a new airworthiness directive (AD), amendment 39–11655, to read as follows:

2000–07–01 Empresa Brasileira de Aeronautica S.A. (EMBRAER): Amendment 39–11655. Docket 99–NM–203–AD. Supersedes AD 98–13–34, Amendment 39–10625.

Applicability: All Model EMB–145 series airplanes, serial numbers 145004 through 145103 inclusive, 145105, and 145106; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance:

Required as indicated, unless accomplished previously.

To prevent failure of the nose landing gear (NLG) to extend and lock down properly, which could result in damage to the airplane structure, and consequent reduced controllability of the airplane upon landing, accomplish the following:

Restatement of Requirements of AD 98–13–34, Amendment 39–10625

Functional Test

(a) Within 50 flight hours after July 9, 1998 (the effective date of AD 98–13–34, amendment 39–10625), perform an emergency extension (free-fall) functional test of the NLG, to ensure that the mechanism extends and locks down properly, in accordance with EMBRAER Alert Service Bulletin 145–32–A029, dated April 15, 1998. Repeat the functional test and lubrication procedures thereafter at intervals not to exceed every "A" check, but no later than 400 flight cycles.

Note 2: The alert service bulletin references EMBRAER Aircraft Maintenance Manual (AMM), Chapter 32–34–00, as an additional source of service information for accomplishment of the emergency extension functional test.

(1) If the extension time of the landing gear is within 30 seconds, prior to further flight, lubricate all NLG hinge points in accordance with Figure 1 of the Accomplishment Instructions of the alert service bulletin.

(2) If the extension time of the landing gear exceeds 30 seconds, prior to further flight, accomplish the requirements of paragraphs (a)(2)(i) and (a)(2)(ii) of this AD.

(i) Lubricate all NLG hinge points in accordance with Figure 1 of the Accomplishment Instructions of the alert service bulletin. And

(ii) Perform a normal system functional test of the NLG for five cycles, and repeat the emergency extension functional test specified by paragraph (a) of this AD. If the extension and locking time still exceeds 30 seconds, prior to further flight, repair in accordance with a method approved by either the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate, or the Departmento de Aviacao Civil (DAC) (or its delegated agent).

Note 3: The alert service bulletin references EMBRAER AMM, Chapter 32–30–00, as an additional source of service information for accomplishment of the normal system functional test.

(3) If any malfunction other than that specified in paragraph (a)(2) of this AD is detected, prior to further flight, repair in accordance with a method approved by the Manager, Atlanta ACO, or the DAC (or its delegated agent).

New Requirements of This AD

Terminating Modification

(b) Within 2,000 flight hours after the effective date of this AD, accomplish paragraphs (b)(1) and (b)(2) of this AD. Accomplishment of paragraphs (b)(1) and (b)(2) of this AD constitutes terminating action for the requirements of paragraph (a) of this AD.

(1) Replace the nose landing gear door solenoid valve, part number (P/N) 2225–0100–001, with a new valve, P/N 2225–0100–003; and replace the landing gear (LG) safety pins holder, P/N 145–27571–001, with a new holder, P/N 145–37912–001; in accordance with EMBRAER Service Bulletin 145–32–0036, dated February 1, 1999.

(2) Replace the nose landing gear maneuvering actuator, P/N 1300B0000–01, with a new actuator, P/N 1300B0000–02, in accordance with EMBRAER Service Bulletin 145–32–0037, dated February 12, 1999.

Spares

(c) As of the effective date of this AD, no person shall install a nose landing gear door solenoid valve, P/N 2225–0100–001, a landing gear safety pins holder, P/N 145–27571–001, or a nose landing gear maneuvering actuator P/N 1300B0000–01, on any airplane.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(f) Except as provided by paragraphs (a)(2)(ii) and (a)(3), the actions shall be done in accordance with EMBRAER Alert Service Bulletin 145–32-A029, dated April 15, 1998; EMBRAER Service Bulletin 145–32–0036, dated February 1, 1999; or EMBRAER Service Bulletin 145–32–0037, dated February 12, 1999; as applicable.

(1) The incorporation by reference of EMBRAER Service Bulletin 145–32–0036, dated February 1, 1999; and EMBRAER Service Bulletin 145–32–0037, dated February 12, 1999; is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

(2) The incorporation by reference of EMBRAER Alert Service Bulletin 145–32-A029, dated April 15, 1998, was approved previously by the Director of the Federal Register as of July 9, 1998 (63 FR 34274, June 24, 1998).

(3) Copies may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Brazilian airworthiness directives 98–05–01, dated May 12, 1998, and 98–05–01R1, dated July 8, 1999.

(g) This amendment becomes effective on May 9, 2000.

Issued in Renton, Washington, on March 27, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8018 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–15]

RIN 2120–AA66

Establishment of Colored Federal Airways; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes 13 colored Federal airways located in Alaska (AK) to improve the management of air traffic operations and to enhance safety.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph C. White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1999, the FAA proposed to amend 14 CFR part 71 (part 71) to establish 17 colored Federal airways, G–1, G–2, G–3, G–4, G–16, G–17, G–18, G–19, R–1, R–2, A–7, B–1, B–2, B–4, B–5, B–7, and B–8 in Alaska (64 FR 2450). Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the FAA. No comments were received.

Following the publication of the notice, flight inspections of the 17 colored Federal airways were performed. Six of the proposed colored Federal airways (A–7, B–2, B–5, B–8, G–2, and G–16) met navigational requirements without any changes. Seven colored Federal airways (B–4, G–1, G–4, G–17, G–18, R–1, and R–2) required legal description changes to meet navigational requirements. Four colored Federal airways (B–1, B–7, G–3, and G–19) have been deleted from the proposal as they did not pass flight check. Except for editorial changes, the correction of the descriptions for B–4, G–1, G–4, G–17, G–18, R–1, and R–2, and the deletion of B–1, B–7, G–3, and G–19, this amendment is the same as that proposed in the notice.

Colored Federal airways are published in paragraph 6009 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The colored Federal airways listed in this document will be published subsequently in the order.

The Rule

This action amends part 71 by establishing 13 colored Federal airways, G–1, G–2, G–4, G–16, G–17, G–18, R–1, R–2, A–7, B–2, B–4, B–5, and B–8, in Alaska.

Prior to this action there were a number of uncharted nonregulatory routes that used the same routings as the colored Federal airways in this rule, with the exception of G–16, G–17, and G–18. The latter airways are being adopted, as proposed, as a result of the commissioning of nondirectional radio beacons at Atqasuk, Wainwright, and Nuiqsut, AK. Those nonregulatory routings were used daily by air carrier and general aviation aircraft. The FAA is taking this action to establish these 13 colored Federal airways for the following reasons: (1) The conversion of these uncharted nonregulatory routes to colored Federal airways will add to the instrument flight rules (IFR) airway and route infrastructure in Alaska; (2) pilots will be provided with minimum en route altitudes and minimum obstruction clearance altitudes information; (3) this amendment will establish controlled airspace, thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (4) addition of these routes will improve the management of air traffic operations and thereby enhance safety. Additionally, this action corrects the descriptions of B–4, G–1, G–4, G–17, G–18, R–1, and R–2 to meet flight inspection requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Colored Federal airways are published in paragraph 6009 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The colored Federal airways listed in this document will be published subsequently in the Order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6009(a)–Green Federal Airways

* * * * *

G–1 [New]

From Mt. Moffett, AK, NDB; INT Elfee, AK, NDB 253° and Dutch Harbor, AK, NDB 360°; INT Elfee, AK, NDB 253° and Cold Bay VORTAC 82 DME; to Elfee, AK, NDB.

G–2 [New]

From Borland, AK, NDB; to Woody Island, AK, NDB.

* * * * *

G–4 [New]

From Wood River, AK, NDB; to Iliamna, AK, NDB.

* * * * *

G–16 [New]

From Point Lay, AK, NDB; Wainwright Village, AK, NDB; Browerville, AK, NDB; Nuiqsut Village, AK, NDB; to Put River, AK, NDB.

G–17 [New]

From Wainwright Village, AK, NDB; to Atqasuk, AK, NDB.

G–18 [New]

From Hotham, AK, NDB; Point Lay, AK, NDB; to Atqasuk, AK, NDB.

* * * * *

Paragraph 6009(b)—Red Federal Airways

* * * * *

R–1 [New]

From St. Paul Island, AK, NDB 20 AGL; INT Saldo, AK NDB 262° and Cape Newenham, AK NDB, 131°; to Saldo, AK, NDB.

R–2 [New]

From Elfee, AK, NDB; to Port Heiden, AK, NDB.

* * * * *

Paragraph 6009(c)—Amber Federal Airways

* * * * *

A–7 [New]

From Campbell Lake, AK, NDB; to Mineral Creek, AK, NDB.

* * * * *

Paragraph 6009(d)—Blue Federal Airways

* * * * *

B–2 [New]

From Point Lay, AK, NDB; Cape Lisburne, AK, NDB; Hotham, AK, NDB; Tin City, AK, NDB; to Fort Davis, AK, NDB.

* * * * *

B–4 [New]

From Bishop, AK, NDB; Utopia Creek, AK, NDB; Evansville, AK, NDB; to Yukon River, AK, NDB.

B–5 [New]

From Cape Lisburne, AK, NDB; to Point Hope, AK, NDB.

* * * * *

B–8 [New]

From Shishmaref, AK, NDB; to Tin City, AK, NDB.

* * * * *

Issued in Washington, DC, on March 27, 2000.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 00–8230 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 98–AAL–13]

RIN 2120–AA66

Establishment of Jet Routes; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes nine Jet Routes located in Alaska (AK) to improve the management of air traffic operations and to enhance safety.

EFFECTIVE DATE: 0901 UTC, June 15, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph C. White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On January 14, 1999, the FAA proposed to amend 14 CFR part 71 (part 71) to establish 11 Jet Routes, J–600, J–601, J–602, J–603, J–604, J–605, J–606, J–609, J–617, J–619, and J–711 in Alaska (64 FR 2452). Interested parties were invited to participate in this rulemaking by submitting written comments on the proposal to the FAA. No comments were received.

Following the publication of the notice, flight inspections of the 11 proposed Jet Routes were performed. Five of the proposed Jet Routes (J–603, J–604, J–605, J–617, and J–619) met navigational requirements without any changes. Four Jet Routes (J–600, J–601, J–606, and J–711) required legal description changes to meet navigational requirements. Two Jet Routes (J–602 and J–609) have been deleted from the proposal as they did not pass flight check. Except for editorial changes, and the correction of the descriptions for J–600, J–601, J–606, and J–711, and the deletion of J–602 and J–609, this amendment is the same as that proposed in the notice.

Jet Routes are published in paragraph 2004 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Jet Routes listed in this document will be published subsequently in the order.

The Rule

This action amends part 71 by establishing nine Jet Routes, J–600, J–601, J–603, J–604, J–605, J–606, J–617, J–619, and J–711, in Alaska.

Prior to this action, there were a number of uncharted nonregulatory routes that used the same routings as the Jet Routes in this rule. Those nonregulatory routings were used daily by air carrier and general aviation aircraft. The FAA is taking this action to establish these nine Jet Routes for the following reasons: (1) The conversion of these uncharted nonregulatory routes to Jet Routes will add to the instrument flight rules (IFR) airway and route infrastructure in Alaska; (2) Pilots will be provided with minimum en route altitudes and minimum obstruction clearance altitudes information; (3) This amendment will establish controlled airspace, thus eliminating some of the commercial IFR operations in uncontrolled airspace; and (4) The addition of these routes will improve the management of air traffic operations and thereby enhance safety. Additionally, this action corrects the descriptions of J–600, J–601, J–606, and J–711 to meet flight inspection requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Jet Routes are published in paragraph 2004 of FAA Order 7400.9G, dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Jet Routes listed in this document will be published subsequently in the order.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p.389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 2004–Jet Routes

* * * * *

J–600 [New]

From Mt. Moffett, AK, NDB; to Elfee, AK, NDB.

J–601 [New]

From Port Heiden NDB; Cold Bay, AK; INT Dutch Harbor, AK, NDB, 006° and St. Paul Island, AK, NDB, 111° radials; to St. Paul Island, NDB.

* * * * *

J–603 [New]

From Elfee, AK, NDB; to Dillingham, AK.

J–604 [New]

From Borland, AK, NDB; to Woody Island, AK, NDB.

J–605 [New]

From Biorka Island, AK; to Middleton Island, AK.

J–606 [New]

From St. Paul Island, AK, NDB; to INT Cape Newenham, AK, NDB, 131° and Saldo, AK, NDB, AK, 262° radials; Saldo, AK, NDB.

* * * * *

J–617 [New]

From Homer, AK; to Johnstone Point, AK.

* * * * *

J–619 [New]

From Cape Newenham, AK, NDB; to St. Paul Island, AK, NDB.

* * * * *

J–711 [New]

From Sitka, AK, NDB; INT Hinchinbrook, AK, NDB, 117° and Yakutat, AK, 213° radials; to Hinchinbrook, AK, NDB.

* * * * *

Issued in Washington, DC, on March 27, 2000.

Reginald C. Matthews,

Monager, Airspace and Rules Division.

[FR Doc. 00–8229 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Chapter V

Blocked Persons, Specially Designated Nationals, Specially Designated Terrorists, Foreign Terrorist Organizations, and Specially Designated Narcotics Traffickers: Additional Designations and Removal and Supplementary Information on Specially Designated Narcotics Traffickers

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Amendment of final rule.

SUMMARY: The Treasury Department is amending appendix A to 31 CFR chapter V by adding the names of 11 individuals and 20 entities and supplementing information concerning 15 individuals and 2 entities who have been designated as specially designated narcotics traffickers. The entry for one individual previously listed as a specially designated narcotics trafficker is being removed from appendix A.

EFFECTIVE DATE: March 29, 2000.

FOR FURTHER INFORMATION CONTACT: Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220, tel.: 202/622–2520.

SUPPLEMENTARY INFORMATION:

Electronic and Facsimile Availability

This document is available as an electronic file on The Federal Bulletin Board the day of publication in the **Federal Register**. By modem, dial 202/512–1387 and type "/GO FAC," or call 202/512–1530 for disk or paper copies. This file is available for downloading without charge in ASCII and Adobe Acrobat® readable (*.PDF) formats. For Internet access, the address for use with the World Wide Web (Home Page), Telnet, or FTP protocol is: fedbbs.access.gpo.gov. This document and additional information concerning the programs of the Office of Foreign Assets Control are available for downloading from the Office's Internet Home Page: http://www.treas.gov/ofac, or in fax form through the Office's 24-hour fax-on-demand service: call 202/622–0077 using a fax machine, fax modem, or (within the United States) a touch-tone telephone.

Background

Appendix A to 31 CFR chapter V contains the names of blocked persons, specially designated nationals, specially designated terrorists, foreign terrorist organizations, and specially designated narcotics traffickers designated pursuant to the various economic sanctions programs administered by the Office of Foreign Assets Control ("OFAC"). Pursuant to Executive Order 12978 of October 21, 1995, "Blocking Assets and Prohibiting Transactions with Significant Narcotics Traffickers" (the "Order") and § 536.312 of the Narcotics Trafficking Sanctions Regulations, 31 CFR part 536 (the "Regulations"), the following 11 individuals and 20 entities are added to appendix A as persons who have been determined to play a significant role in international narcotics trafficking centered in Colombia, to materially assist in or provide financial support for, or goods or services in support of other specially designated narcotics traffickers, or to be owned or controlled by, or to act for or on behalf of, persons designated in or pursuant to the Order (collectively "Specially Designated Narcotics Traffickers" or "SDNTs"). All real and personal property in which the SDNTs have any interest, including but not limited to all accounts, that are or come within the United States or that are or come within the possession or control of U.S. persons, including their overseas branches, are blocked. All transactions by U.S. persons or within the United States in property or interests in property of SDNTs are prohibited unless licensed by the Office of Foreign Assets Control or exempted by statute. Supplementary information is added to existing SDNT entries for 15 individuals and 2 entities and those entries are revised in their entirety.

The entry for one SDNT individual is being removed from appendix A because OFAC has determined that this individual no longer meets the criteria for designation as an SDNT. All real and personal property of this individual, including all accounts in which he has any interest, that had been blocked solely due to his designation as an SDNT, is unblocked; and all lawful transactions involving U.S. persons and this individual are permissible.

Designations of foreign persons blocked pursuant to the Order are effective upon the date of determination by the Director of the Office of Foreign Assets Control, acting under authority delegated by the Secretary of the Treasury. Public notice of blocking is effective upon the date of filing with the **Federal Register**, or upon prior actual notice.

Because the Regulations involve a foreign affairs function, Executive Order 12866 and the provisions of the Administrative Procedure Act (5 U.S.C. 553), requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601–612) does not apply.

For the reasons set forth in the preamble, and under the authority of 3 U.S.C. 301; 50 U.S.C. 1501–1651; 50 U.S.C. 1701–1706; E.O. 12978, 60 FR 54579, 3 CFR, 1995 Comp., p. 415, appendix A to 31 CFR chapter V is amended as set forth below:

Appendix A—[Amended]

1. Appendix A to 31 CFR chapter V is amended by adding the following names inserted in alphabetical order to read as follows:

AGROINVERSORA URDINOLA HENAO Y CIA. S.C.S., Calle 5 No. 22–39 of. 205, Cali, Colombia; Calle 52 No. 28E–30, Cali, Colombia; NIT # 800042180–1 (Colombia) [SDNT]

ARIAS CASTRO, Libardo (see CASTRO ARIAS, Libardo) (individual) [SDNT]

CARRERO BURBANO, Emma Alexandra, c/o DROMARCA Y CIA. S.C.S., Bogota, Colombia; c/o FARMACOOP, Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; Cedula No. 52362326 (Colombia) (individual) [SDNT]

CARRION JIMENEZ, Jose Alonso, c/o BONOMERCAD S.A., Bogota, Colombia; c/o GLAJAN S.A., Bogota, Colombia; c/o SHARPER S.A., Bogota, Colombia; Cedula No. 79000519 (Colombia) (individual) [SDNT]

CASTRO ARIAS, Libardo, (a.k.a. ARIAS CASTRO, Libardo), c/o BONOMERCAD S.A., Bogota, Colombia; c/o COMEDICAMENTOS S.A., Bogota, Colombia; c/o DECAFARMA S.A., Bogota, Colombia; c/o GLAJAN S.A., Bogota, Colombia; c/o SHARPER S.A., Bogota, Colombia; Cedula No. 2312291 (Colombia) (individual) [SDNT]

COMECARNES LTDA. (see COMERCIALIZADORA DE CARNES LTDA.) [SDNT]

COMEDICAMENTOS S.A., Transversal 29 No. 39–92, Bogota, Colombia; NIT #830030803–7 (Colombia) [SDNT]

COMERCIALIZADORA DE CARNES LTDA., (a.k.a. COMECARNES LTDA.), Km. 3 Via Marsella, Pereira, Colombia; NIT #800076369–0 (Colombia) [SDNT]

COMTECO LTDA., (a.k.a. COMUNICACIONES TECNICAS DE COLOMBIA LIMITADA), Calle 44 Norte No. 2BN–08, Cali, Colombia; Calle 12N No. 9N–58, Cali, Colombia; NIT #800113514–1 (Colombia) [SDNT]

COMUNICACIONES TECNICAS DE COLOMBIA LIMITADA (see COMTECO LTDA.) [SDNT]

CONAGE LTDA. (see CONSTRUCCIONES AVENDANO GUTIERREZ Y CIA. LTDA.) [SDNT]

CONSTRUCCIONES AVENDANO GUTIERREZ Y CIA. LTDA., (a.k.a. CONAGE LTDA.), Carrera 71 No. 57–07, Bogota, Colombia; NIT #800211560–0 (Colombia) [SDNT]

CONSTRUCTORA E INMOBILIARIA URVALLE CIA. LTDA., Carrera 9 No. 9–49 of. 902, Cali, Colombia; NIT #800094652–7 (Colombia) [SDNT]

CONSTRUCTORA UNIVERSAL LTDA., Carrera 50 No. 9B–20 of. 07, Cali, Colombia; Calle 52 No. 28E–30, Cali, Colombia; NIT #800112051–9 (Colombia) [SDNT]

DIAGNOSTICENTRO LA GARANTIA (see SERVIAUTOS UNO A 1A LIMITADA) [SDNT]

DROMARCA Y CIA. S.C.S., Calle 39 Bis A No. 27–169, Bogota, Colombia; Calle 12B No. 28–58, Bogota, Colombia; NIT #800225556–1 (Colombia) [SDNT]

DUQUE M., Carmen Lucia, c/o COMEDICAMENTOS S.A., Bogota, Colombia; c/o GLAJAN S.A., Bogota, Colombia; c/o PATENTES MARCAS Y REGISTROS S.A., Bogota, Colombia; Cedula No. 51988916 (Colombia) (individual) [SDNT]

ESPITIA PERILLA, Ruben Nowerfaby, c/o ADMACOOP, Bogota, Colombia; c/o DROMARCA Y CIA. S.C.S., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; Cedula No. 79280623 (Colombia) (individual) [SDNT]

EXAGAN (see EXPLOTACIONES AGRICOLAS Y GANADERAS LA LORENA S.C.S.) [SDNT]

EXPLOTACIONES AGRICOLAS Y GANADERAS LA LORENA S.C.S., (a.k.a. EXAGAN), Calle 5 No. 22–39 of. 205, Cali, Colombia; Calle 52 No. 28E–30, Cali, Colombia; NIT #800083192–3 (Colombia) [SDNT]

FIDUSER LTDA., Calle 12A No. 27–72, Bogota, Colombia; NIT #830013160–8 (Colombia) [SDNT]

GLAJAN S.A., Transversal 29 No. 39–92, Bogota, Colombia; NIT #830023266–2 (Colombia) [SDNT]

HAPPY DAYS (see M C M Y CIA. LTDA.) [SDNT]

HENAO MONTOYA, Lorena, Calle 52 No. 28E–30, Cali, Colombia; Calle 8 No. 39–79 of. 201, Cali, Colombia; c/o AGROINVERSORA URDINOLA HENAO Y CIA. S.C.S., Cali, Colombia; c/o CONSTRUCTORA UNIVERSAL LTDA., Cali, Colombia; c/o EXPLOTACIONES AGRICOLAS Y GANADERAS LA LORENA S.C.S., Cali, Colombia; c/o INDUSTRIAS AGROPECUARIAS DEL VALLE LTDA., Cali, Colombia; c/o INVERSIONES EL EDEN S.C.S., Cali, Colombia; DOB 9 Oct 1968; Cedula No. 31981533 (Colombia) (individual) [SDNT]

INDUSTRIAS AGROPECUARIAS DEL VALLE LTDA., Carrera 50 No. 9B–20 of. 07, Cali, Colombia; Calle 52 No. 28E–30, Cali, Colombia; NIT #800068160–5 (Colombia) [SDNT]

INVERSIONES EL EDEN S.C.S., Calle 5 No. 22–39 of. 205, Cali, Colombia; Calle 52 No. 28E–30, Cali, Colombia; NIT #800083195–5 (Colombia) [SDNT]

INVERSIONES Y COMERCIALIZADORA RAMIREZ Y CIA. LTDA., Calle 12N No. 9N–58, Cali, Colombia; Avenida 4 No. 8N–67, Cali, Colombia; NIT #800075600–3 (Colombia) [SDNT]

M C M Y CIA. LTDA., (a.k.a. HAPPY DAYS), Calle 25 Norte No. 3AN–39, Cali, Colombia; Calle 22 Norte No. 5A–75, Cali, Colombia; NIT #800204288–2 (Colombia) [SDNT]

OCCIDENTAL COMUNICACIONES LTDA., Calle 44N No. 2BN–10, Cali, Colombia; Calle 19N No. 2N–29 piso 10 Sur, Cali, Colombia; NIT #800146996–1 (Colombia) [SDNT]

POLIEMPAQUES LTDA., Carrera 13A No. 16–49, Cali, Colombia; Carrera 13A No. 16–55, Cali, Colombia; Carrera 13 No. 16–62, Cali, Colombia; NIT #805003763–5 (Colombia) [SDNT]

PRODUCCIONES CARNAVAL DEL NORTE Y COMPANIA LIMITADA, Calle 22N No. 5A–75 05, Cali, Colombia; NIT #800250531–3 (Colombia) [SDNT]

QUINTANA HERNANDEZ, Gonzalo, c/o DISTRIBUIDORA DE DROGAS LA REBAJA BOGOTA S.A., Bogota, Colombia; c/o GRACADAL S.A., Cali, Colombia; c/o POLIEMPAQUES LTDA., Bogota, Colombia; Cedula No. 16603939 (Colombia) (individual) [SDNT]

RECITEC LTDA., Calle 16 No. 12–49, Cali, Colombia; NIT #800037780–9 (Colombia) [SDNT]

RIVEROS TRIANA, Raul, c/o COMEDICAMENTOS S.A., Bogota, Colombia; c/o DECAFARMA S.A., Bogota, Colombia; c/o FARMACOOP, Bogota, Colombia; c/o PATENTES MARCAS Y REGISTROS S.A., Bogota, Colombia; c/o SHARPER S.A., Bogota, Colombia; Cedula No. 3252672 (Colombia) (individual) [SDNT]

SERVIAUTOS UNO A 1A LIMITADA, (a.k.a. DIAGNOSTICENTRO LA GARANTIA), Calle 34 No. 5A–25, Cali, Colombia; Carrera 15 No. 44–68, Cali, Colombia; NIT #800032413–8 (Colombia) [SDNT]

TREJOS AGUILAR, Sonia, Carrera 8 No. 6–37, Zarzal, Valle del Cauca, Colombia; Cali, Colombia; c/o AGROINVERSORA URDINOLA HENAO Y CIA. S.C.S., Cali, Colombia; c/o EXPLOTACIONES AGRICOLAS Y GANADERAS LA LORENA S.C.S., Cali, Colombia; c/o INDUSTRIAS AGROPECUARIAS DEL VALLE LTDA., Cali, Colombia; c/o INVERSIONES EL EDEN S.C.S., Cali, Colombia; Cedula No. 66675927 (Colombia) (individual) [SDNT]

URDINOLA GRAJALES, Ivan, (a.k.a. URDINOLA GRAJALES, Jairo Ivan), Calle 52 No. 28E–30, Cali, Colombia; Hacienda La Lorena, Zarzal, Valle del Cauca, Colombia; c/o AGROINVERSORA URDINOLA HENAO Y CIA. S.C.S., Cali, Colombia; c/o CONSTRUCTORA UNIVERSAL LTDA., Cali, Colombia; c/o EXPLOTACIONES AGRICOLAS Y GANADERAS LA LORENA S.C.S., Cali, Colombia; c/o INDUSTRIAS AGROPECUARIAS DEL VALLE LTDA., Cali, Colombia; c/o INVERSIONES EL EDEN S.C.S., Cali, Colombia; DOB 1 December 1960; Passport AD129003 (Colombia); Cedula No. 94190353 (Colombia) (individual) [SDNT]

URDINOLA GRAJALES, Jairo Ivan (see URDINOLA GRAJALES, Ivan) (individual) [SDNT]

URDINOLA GRAJALES, Julio Fabio, Carrera 40 No. 5A–40, Cali, Colombia; c/o CONSTRUCTORA E INMOBILIARIA URVALLE CIA. LTDA., Cali, Colombia; Cedula No. 16801454 (Colombia) (individual) [SDNT]

2. Appendix A to 31 CFR chapter V is amended by revising the following existing entries to read as follows:

AVENDAÑO GUTIERREZ, Francisco Eduardo, Carrera 8 No. 66–21 apt. 204, Bogota, Colombia; Transversal 1A No. 69–54 apt. 502, Bogota, Colombia; c/o CONSTRUCCIONES AVENDANO GUTIERREZ Y CIA. LTDA., Bogota, Colombia; c/o LABORATORIOS GENERICOS VETERINARIOS, Bogota, Colombia; Cedula No. 16645182 (Colombia) (individual) [SDNT]

COSMEPOP (a.k.a. COOPERATIVA DE COSMETICOS Y POPULARES COSMEPOP; f.k.a. BLAIMAR; f.k.a. CIA. INTERAMERICANA DE COSMETICOS S.A.; f.k.a. COINTERCOS S.A.; f.k.a. LABORATORIOS BLAIMAR DE COLOMBIA S.A.; f.k.a. LABORATORIOS BLANCO PHARMA S.A.), Calle 12A No. 27–72, Bogota, Colombia; A.A. 55538, Bogota, Colombia; Calle 12B No. 27–37/39, Bogota, Colombia; Calle 26 Sur No. 7–30 Este, Bogota, Colombia; Carrera 99 y 100 No. 46A–10, Bodega 4, Bogota, Colombia; NIT #800251322–5 (Colombia) [SDNT]

ECHEVERRY TRUJILLO, Martha Lucia, c/o CORPORACION DEPORTIVA AMERICA, Cali, Colombia; c/o M C M Y CIA. LTDA., Cali, Colombia; c/o M.O.C. ECHEVERRY HERMANOS LTDA., Cali, Colombia; c/o REVISTA DEL AMERICA LTDA., Cali, Colombia; Cedula No. 31151067 (Colombia) (individual) [SDNT]

ESCOBAR BUITRAGO, Walter, c/o INMOBILIARIA BOLIVAR LTDA., Cali, Colombia; c/o SERVIAUTOS UNO A 1A LIMITADA, Cali, Colombia; DOB 18 Feb 1971; Cedula No. 16785833 (Colombia) (individual) [SDNT]

GONZALEZ QUINTERO, Melba Patricia, c/o COINTERCOS S.A., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR S.A., Bogota, Colombia; c/o FIDUSER LTDA., Bogota, Colombia; Cedula No. 35415232 (Colombia) (individual) [SDNT]

GUTIERREZ PARDO, Elvira Patricia, c/o ADMACOOP, Bogota, Colombia; c/o BONOMERCAD S.A., Bogota, Colombia; c/o COMEDICAMENTOS S.A., Bogota, Colombia; c/o PATENTES MARCAS Y REGISTROS S.A., Bogota, Colombia; Cedula No. 39612308 (Colombia) (individual) [SDNT]

LEAL FLOREZ, Luis Alejandro, c/o COINTERCOS S.A., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR S.A., Bogota, Colombia; c/o FIDUSER LTDA., Bogota, Colombia; Cedula No. 7217432 (Colombia) (individual) [SDNT]

RIZO MORENO, Jorge Luis, Transversal 11, Diagonal 23–30, apt. 304A, Cali, Colombia; c/o CONSTRUCTORA DIMISA LTDA., Cali, Colombia; c/o CONSTRUVIDA S.A., Cali, Colombia; c/o IMPORTADORA Y COMERCIALIZADORA LTDA., Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; c/o INTERVENTORIA, CONSULTORIA Y ESTUDIOS LIMITADA INGENIEROS ARQUITECTOS, Cali, Colombia; c/o INVERSIONES EL PEÑON S.A., Cali, Colombia; c/o PROCESADORA DE POLLOS SUPERIOR S.A., Palmira, Colombia; c/o SERVIAUTOS UNO A 1A LIMITADA, Cali, Colombia; c/o SERVICIOS INMOBILIARIOS LTDA., Cali, Colombia; Cedula No. 16646582 (Colombia) (individual) [SDNT]

RODRIGUEZ ABADIA, William, c/o ANDINA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o ASPOIR DEL PACIFICO Y CIA. LTDA., Cali, Colombia; c/o BLANCO PHARMA S.A., Bogota, Colombia; c/o CLAUDIA PILAR RODRIGUEZ Y CIA. S.C.S., Bogota, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DERECHO INTEGRAL Y CIA. LTDA., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS CONDOR LTDA., Bogota, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DISTRIBUIDORA MIGIL LTDA., Cali, Colombia; c/o INTERAMERICANA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o INVERSIONES MIGUEL RODRIGUEZ E HIJO, Cali, Colombia; c/o LABORATORIOS BLAIMAR DE COLOMBIA S.A., Bogota, Colombia; c/o LABORATORIOS KRESSFOR DE COLOMBIA S.A., Bogota, Colombia; c/o M. RODRIGUEZ O. Y CIA. S. EN C., Cali, Colombia; c/o MUÑOZ Y RODRIGUEZ Y CIA. LTDA., Cali, Colombia; c/o PRODUCCIONES CARNAVAL DEL NORTE Y COMPANIA LIMITADA, Cali, Colombia; c/o RADIO UNIDAS FM S.A., Cali, Colombia; c/o REVISTA DEL AMERICA LTDA., Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador; c/o VALORES MOBILIARIOS DE OCCIDENTE S.A., Bogota, Colombia; DOB 31 Jul 1965; Cedula No. 16716259 (Colombia) (individual) [SDNT]

RODRIGUEZ ARBELAEZ, Carolina, c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o PRODUCCIONES CARNAVAL DEL NORTE Y COMPANIA LIMITADA, Cali, Colombia; DOB 17 May 1979; Cedula No. 29117505 (Colombia) (individual) [SDNT]

RODRIGUEZ ARBELAEZ, Maria Fernanda, c/o D'CACHE S.A., Cali, Colombia; c/o DEPOSITO POPULAR DE DROGAS S.A., Cali, Colombia; c/o DISTRIBUIDORA DE DROGAS LA REBAJA S.A., Bogota, Colombia; c/o DROGAS LA REBAJA BOGOTA S.A., Bogota, Colombia; c/o INTERAMERICANA DE CONSTRUCCIONES S.A., Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o PRODUCCIONES CARNAVAL DEL NORTE Y COMPANIA LIMITADA, Cali, Colombia; c/o RIONAP COMERCIO Y REPRESENTACIONES S.A., Quito, Ecuador; c/o VALORES MOBILIARIOS DE OCCIDENTE S.A., Cali, Colombia; DOB 28 November 1973; alt. DOB 28 August 1973; Passport AC568974 (Colombia); Cedula No. 66860965 (Colombia) (individual) [SDNT]

ROJAS MEJIA, Hernan, Calle 2A Oeste No. 24B–45 apt. 503A, Cali, Colombia; Calle 6A No. 9N–34, Cali, Colombia; c/o COLOR 89.5 FM STEREO, Cali, Colombia; c/o CONSTRUCCIONES COLOMBO-ANDINAS LTDA., Bogota, Colombia; c/o INVERSIONES Y CONSTRUCCIONES ABC S.A., Cali, Colombia; c/o OCCIDENTAL COMUNICACIONES LTDA., Cali, Colombia; DOB 28 Aug 1948; Cedula No. 16242661 (Colombia) (individual) [SDNT]

SARRIA HOLGUIN, Ramiro Hernan (Robert), Avenida 6N No. 23D–16 of. L301, Cali, Colombia; Carrera 100 No. 11–60 of. 603, AA 20903, Cali, Colombia; c/o INVERSIONES ARA LTDA., Cali, Colombia; c/o INVERSIONES MIGUEL RODRIGUEZ E HIJO, Cali, Colombia; c/o INVERSIONES RODRIGUEZ ARBELAEZ, Cali, Colombia; c/o INVERSIONES RODRIGUEZ MORENO, Cali, Colombia; c/o REPARACIONES Y CONSTRUCCIONES LTDA., Cali, Colombia; c/o VALORES MOBILIARIOS DE OCCIDENTE S.A., Cali, Colombia; Cedula No. 6078583 (Colombia) (individual) [SDNT]

SILVA PERDOMO, Alejandro, c/o COMERCIALIZADORA DE CARNES LTDA., Pereira, Colombia; c/o CONSTRUVIDA S.A., Avenida 2N No. 7N–55 y No. 521, Cali, Colombia; c/o INDUSTRIA AVICOLA PALMASECA S.A., Cali, Colombia; Cedula No. 14983500 (Colombia) (individual) [SDNT]

SOSSA RIOS, Diego Alberto, (a.k.a. SOSA RIOS, Diego Alberto), Calle 46 No. 13–56 of. 111, Bogota, Colombia; c/o BONOMERCAD S.A., Bogota, Colombia; c/o COMEDICAMENTOS S.A., Bogota, Colombia; c/o DECAFARMA S.A., Bogota, Colombia; c/o FARMACOOP, Bogota, Colombia; c/o GLAJAN S.A., Bogota, Colombia; c/o PENTAPHARMA DE COLOMBIA S.A., Bogota, Colombia; c/o SHARPER S.A., Bogota, Colombia; Cedula No. 71665932 (Colombia) (individual) [SDNT]

VALORES MOBILIARIOS DE OCCIDENTE S.A., Avenida 6 Norte No. 23DN–16, Cali, Colombia; Avenida Colombia No. 2–45, Cali, Colombia; Carrera 1 No. 2–45, Cali, Colombia; Carrera 100 No. 11–90 of. 602, Cali, Colombia; Bogota, Colombia; NIT ı 800249439–1 (Colombia) [SDNT]

VEGA, Rosalba, c/o BONOMERCAD S.A., Bogota, Colombia; c/o GLAJAN S.A., Bogota, Colombia; c/o PATENTES MARCAS Y REGISTROS S.A., Bogota, Colombia; c/o SHARPER S.A., Bogota, Colombia; Cedula No. 21132758 (Colombia) (individual) [SDNT]

3. Appendix A to 31 CFR chapter V is amended by removing in its entirety the entry for "NUÑEZ PEDROZA, Humberto".

Dated: March 8, 2000.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: March 14, 2000.

Elisabeth A. Bresee,

Assistant Secretary (Enforcement), Department of the Treasury.

[FR Doc. 00–8165 Filed 3–29–00; 4:27 pm]

BILLING CODE 4810–25–p

POSTAL SERVICE

39 CFR Part 111

Nonmailable Written, Printed, and Graphic Matter

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule amends the Domestic Mail Manual (DMM) to provide for changes to the standards concerning written, printed, and graphic matter as a result of the Deceptive Mail Prevention and Enforcement Act.

EFFECTIVE DATE: May 4, 2000.

FOR FURTHER INFORMATION CONTACT: Jerome M. Lease, (202) 268–5188.

SUPPLEMENTARY INFORMATION: The Deceptive Mail Prevention and Enforcement Act, P.L. 106–168, 39 U.S.C., sub-section 3001, enacted on December 12, 1999, generally provides for the nonmailability of certain deceptive matter relating to sweepstakes, skill contests, and facsimile checks.

As a result, the Postal Service is amending Domestic Mail Manual (DMM) C030, Written, Printed, and Graphic Matter, to include changes to the general provisions concerning matter nonmailable by government misrepresentation and to provide new standards regarding sweepstakes, skill contests, and facsimile checks.

The changes announced in this notice are effective May 4, 2000, and will be announced in the Postal Bulletin and incorporated into future issues of the DMM. These amendments are being published without a notice and comment provision because they implement a change in statutory wording.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3404–3406, 3621, 3626, 5001.

2. Revise part C030 of the Domestic Mail Manual to include the following revisions and additional sections 6.0, 7.0, 8.0, and 9.0 to read as follows:

C Characteristics and Content

C000 General Information

* * * * *

C030 Nonmailable Written, Printed, and Graphic Matter

C031 Written, Printed, and Graphic Matter Generally

* * * * *

2.0 SOLICITATIONS DECEPTIVELY IMPLYING FEDERAL CONNECTION, APPROVAL, OR ENDORSEMENT (39 USC 3001(H) AND 3001(I); 39 USC 3005)

* * * * *

2.2 Nonmailable by Government Misrepresentation

A solicitation that misrepresents a government entity is nonmailable subject to these conditions:

a. Matter that contains a solicitation for products, services, information, or funds which imply any federal government connection, approval, or endorsement through the use of a seal, insignia, reference to the Postmaster General, citation to a federal statute, name of a federal agency, department, or commission, or program, trade, or brand name, or any other term or symbol; or contains any reference to the Postmaster General or a citation to a federal statute that misrepresents either the identity of the mailer or the protection or status afforded such matter by the federal government is nonmailable unless it conforms to 2.3. A nonconforming solicitation constitutes prima facie evidence of violation of 39 USC 3005. Compliance with 2.3 does not avoid violation of 39 USC 3005 if the solicitation or accompanying information misrepresents material fact such as the nature, value, quantity, quality, or efficacy of the products or services offered for sale, or of the activities of an organization asking for information or monetary contributions.

b. Such solicitations must not contain a false representation that federal government benefits or services will be affected by whether or not the recipient makes a purchase or contribution.

c. Solicitations for payment for services otherwise available to the recipient free of charge from the federal government are nonmailable unless they contain a clear and conspicuous statement giving notice of that fact.

2.3 Permitted Solicitations

A solicitation described in 2.2(a) may be mailable if it meets at least one of these conditions (see Exhibit 2.3):

[No other changes to current a, b, and c.]

* * * * *

[Add new 6.0 to read as follows:]

6.0 SWEEPSTAKES MATTER (39 USC § 3001(k)(3)(A))

6.1 Definition

The term sweepstakes means a game of chance for which no consideration is required to enter.

6.2 Mailable Matter

Sweepstakes matter is mailable only if it discloses all of the following:

a. In the body, in the rules, and on the order or entry form that no purchase is necessary.

b. In the body, in the rules, and on the order or entry form that a purchase will not increase the odds of winning.

c. All terms and conditions, including rules and entry procedures of the sweepstakes.

d. The sponsor or mailer, with the principal place of business or address at which the sponsor or mailer may be contacted.

e. Sweepstakes rules, including the odds of winning, quantity, value, and nature of the prize and the schedule of any payments over time.

6.3 Nonmailable Matter

Sweepstakes matter is nonmailable if it does any of the following:

a. Represents that individuals not making a purchase may be disqualified from receiving future solicitations.

b. Requires that the entry be accompanied by an order or payment for a product or service previously ordered.

c. Represents that the recipient has won a prize unless that individual has won such prize.

d. Otherwise contradicts or is inconsistent with any disclosure required by 6.2 or 6.3.

7.0 SKILL CONTESTS (39 USC 3001(k)(3)(B))

7.1 Definition

The term skill contest means a puzzle, game, competition, or other contest in which a prize is awarded, the outcome depends upon the skill of the contestant, and for which a payment, purchase, or donation is required to enter.

7.2 Mailable Matter

Skill contests are mailable only if they include all of the following:

a. Disclose the terms and conditions of the contest, including the rules and entry procedures.

b. Disclose the sponsor or mailer, with the principal place of business or address at which the sponsor or mailer may be contacted.

c. Contain rules that state all of the following:

(1) Number of rounds or levels and the cost to enter each round.

(2) If subsequent rounds will be more difficult.

(3) Maximum cost to enter all rounds.

(4) Number of entrants or percentage expected to correctly solve the contest.

(5) Identity or qualifications of the judges, if judged by other than the sponsor.

(6) Method of judging.

(7) Dates the winners will be determined and the prizes awarded.

(8) Quantity, value, and nature of the prize.

(9) Schedule of any payments over time.

8.0 FACSIMILE CHECKS (39 USC § 3001(k)(3)(C))

A facsimile check is nonmailable unless it states on the face of the check that it is not a negotiable instrument and has no cash value.

9.0 EXCLUSIONS AND DISCLOSURES (39 USC §§ 3001(k)(4) & 3001(k)(5))

9.1 Mailable Matter

Matter described in 6.0, 7.0, and 8.0 is mailable if it appears in a magazine, newspaper, or other periodical if the promotions are not directed to a named individual, or the promotions do not include the opportunity to make a payment or order a product or service.

9.2 Notices and Disclaimers

Any notice or disclaimer required under 6.0, 7.0, or 8.0 shall be clearly and conspicuously displayed. Disclaimers required by 6.2a and 6.2b must be more conspicuously displayed than any other disclaimer.

10.0 REMOVAL OF NAMES FROM MAILING LISTS (39 USC § 3001(l))

10.1 Lists

In general, any person who uses the mails for any mailing falling under 2.0, 6.0, 7.0, or 8.0 shall adopt reasonable practices or procedures to prevent the mailing of such matter to any person who, personally or through their legal representative, submits a written request that no such matter shall be mailed to that person. Such request may be made either to the mailer, or the Attorney General, or their representative, of the appropriate state. Such requests shall be honored for a period of five years from the date of the request. The mailer shall maintain a record of all such written requests.

10.2 Special Requirements for Sweepstakes and Skill Contests (Effective December 12, 2000.)

Any promoter of sweepstakes or skill contests must make a clear and conspicuous disclosure of the address or toll-free telephone number by which an individual, or their duly authorized representative, may notify a promoter to have that individual's name and address removed from all lists of names and addresses used by that promoter to mail any skill contest or sweepstakes. Promoters have 60 days from the date of receipt of the removal request to effect the removal of the name and address from all mailing lists used by that promoter for any skill contest or sweepstakes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–8261 Filed 4–3–00; 8:45 am]

BILLING CODE 7710–12–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 27

[CC Docket No. 99–168; FCC 00–90]

Service Rules for the 746–764 and 776–794 MHz Bands

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document establishes service rules for licensing Guard Bands that encompass six megahertz of spectrum in the 746–764 MHz and 776–794 MHz bands which have been reallocated for commercial use from their previous use for the broadcasting service. The Commission previously established service rules for thirty of the thirty-six megahertz reallocated for commercial use, and established two paired Guard Bands, one of 4 megahertz and one of 2 megahertz. This document adopts licensing, technical, and operational rules for these Guard Bands.

DATES: Effective April 4, 2000.

FOR FURTHER INFORMATION CONTACT: Legal Information: Gary Michaels, 202–418–0660; Technical Information: Marty Liebman, 202–418–1310.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Second Report and Order (*Second R&O*) in WT Docket No. 99–168; FCC 00–90, adopted March 8, 2000, and released March 9, 2000. The complete text of this *Second R&O* is available for inspection and copying during normal business hours in the FCC Reference Information Center, Courtyard Level, 445 12th Street, SW, Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services (ITS, Inc.), CY–B400, 445 12th Street, SW, Washington, DC.

Synopsis of the Second Report and Order

1. The Commission adopts a *Second R&O* in WT Docket No. 99–168, establishing service and auction rules for the commercial licensing of 6 megahertz of spectrum in the 746–764 and 776–794 MHz bands (700 MHz band) formerly reserved for analog UHF television service. The Notice of Proposed Rulemaking, *NPRM*, initiating this proceeding may be found at 64 FR 36686, July 7, 1999. The First Report and Order in this proceeding, *First R&O*, 65 FR 3139, (January 20, 2000) adopted service and auction rules for thirty of the thirty-six megahertz reallocated for commercial use, and established two paired Guard Bands, one of 4 megahertz and one of 2 megahertz, located adjacent to spectrum allocated for public safety use. This *Second R&O* adopts licensing, technical, and operational rules for these Guard Bands. The 2 megahertz Guard Band includes 746–747 MHz and 776–777 MHz, and the 4 megahertz Guard Band includes 762–764 MHz and 792–794 MHz.

2. The *Second R&O* seeks to minimize the potential for harmful interference to public safety operations in the immediately adjacent 700 MHz spectrum by adopting a package of interference protections modeled on the interference standards within the 700 MHz public safety spectrum. Thus, 700 MHz public safety licensees should experience no greater interference risk from Guard Band users than from public safety licensees. Accordingly, entities operating in the Guard Bands must comply with specified "out-of-band emission" criteria, and with prescribed frequency coordination procedures that include advance notification to the Commission-recognized public safety frequency coordinators and adjacent area Guard Band users. To reduce the potential for such harmful interference to public safety operations, the Commission also finds that entities operating in the Guard Bands should not be permitted to employ a cellular system architecture, an architecture not used by public safety licensees. Entities using cellular architectures may, however, participate in the 30 megahertz band auction. Additionally, the Commission recently announced an auction of broadband Personal Communications Service (PCS) licenses that would make additional spectrum available for systems using cellular architectures. The technical and operational requirements for Guard Band systems are discussed in more detail in paragraphs 14 through 24 of the full text of the *Second R&O*.

3. The Commission will assign licenses in the Guard Bands to Guard Band Managers using competitive bidding. The Guard Band Manager will be a new class of commercial licensee who will be engaged in the business of leasing spectrum for value to third parties on a for-profit basis. Guard Band Managers will be required to adhere to strict frequency coordination and interference rules, and control use of the spectrum so as to facilitate protection for public safety. The Guard Band Manager may subdivide its spectrum in any manner it chooses and make it available to any system operator, or directly to any end user for fixed or mobile communications, consistent with the frequency coordination and interference rules specified for these bands.

4. Guard Band Managers will be allowed the flexibility to subdivide their spectrum, and lease it to third party users without having to secure approval for the transfer or assignment of their license. Additionally, although the Commission adopts a performance standard under which the Guard Band Manager will be required to provide substantial service during the term of its license, the Guard Band Manager will be able to meet that standard by leasing spectrum, rather than by incurring the substantial capital costs associated with system buildout. This licensing represents an innovative spectrum management approach that should enable parties to acquire spectrum more readily for varied uses, while streamlining the Commission's spectrum management responsibilities.

5. The Commission will not impose any restrictions on the type of customers with whom Guard Band Managers may seek to do business, and will provide Guard Band Manager licensees significant flexibility, within the technical constraints necessary to protect public safety, to tailor use of their assigned spectrum. The Commission's principal reason for licensing Guard Band spectrum to Guard Band Managers is that this is the most effective and efficient way to manage this spectrum while protecting public safety operations in adjacent bands. The Commission also believes that there is a significant benefit to having a single entity in a service area that is responsible for coordinating the selection of Guard Band frequencies to be used and the operating parameters of the sites to be constructed. The use of Guard Band Managers will also enable end users to acquire spectrum that can meet unique geographic requirements. The Guard Band Manager license will also enable small businesses to acquire spectrum in amounts, and for periods of time, that better suit their unique characteristics and specialized communications needs.

6. Each Guard Band Manager will be granted a license under which it will allow others to construct and operate stations at any available site within the licensed area and on any channel for which the Guard Band Manager is licensed. The only exception to this blanket license approach is for stations that require individual Commission review, because submission of an Environmental Assessment is required under § 1.1307 of the Commission's rules; international coordination is required; or the station would affect the radio frequency quiet zones described in § 90.177 of the Commission's rules. Additionally, station antenna structures that require notification to the Federal Aviation Administration must be registered with the Commission prior to construction. In cases where individual Commission review is required, the Guard Band Manager must file a separate application and obtain appropriate approvals or authorizations. Guard Band Managers may allow third-party system operators or end users to modify stations that are covered under a Guard Band Manager's blanket license without prior Commission approval. In all instances, however, a primary responsibility of the Guard Band Manager will be to coordinate carefully operations and modifications of systems in the Guard Bands to ensure non-interference with public safety.

7. To minimize the potential for interference to public safety operations in the adjacent 700 MHz bands, as well as adjacent channel and co-channel operations in adjacent geographic areas, the Commission adopts coordination requirements. Under these coordination requirements, Guard Band Managers must notify Commission-recognized public safety frequency coordinators in the 700 MHz public safety band and adjacent-area Guard Band Managers of the technical parameters of any site constructed in the Guard Band Manager's license area. This notification requirement applies to the coordination of both new stations and station modifications. At a minimum, each notification must include the frequency or frequencies coordinated, antenna height, antenna location, type of emission, effective radiated power, a description of the service area, date of coordination and user name or, in the alternative, a description of the type of operation.

8. Such notifications must be made within one business day after a Guard Band Manager has coordinated the station. To allow the public safety community and other Guard Band Managers time to evaluate the coordinations, entities coordinated by a Guard Band Manager must wait at least ten business days after notification before they can begin operating under the Guard Band Manager's license. Guard Band Managers must also notify the same entities when an application

for an individual station license is filed with the Commission and users must wait the same 10-day period. The Commission expects Guard Band Managers to cooperate with one another and the public safety community in the selection of frequencies. In the event of harmful interference, Guard Band Managers are expected to cooperate to resolve the problem by mutually satisfactory arrangements. If the parties involved are unable to reach a mutually satisfactory solution, the Commission may impose restrictions on the operation(s) of any of the parties involved, consistent with its enforcement powers under the Communications Act.

9. *Statutory Considerations.* The Commission finds that the licensing of spectrum in this band to Guard Band Managers is consistent with section 337 of the Communications Act, the Commission's spectrum management obligations, and the public interest. Congress instructed the Commission to reallocate 24 megahertz of the spectrum between 746 and 806 MHz for public safety services and 36 megahertz for commercial use. The Commission believes it is a reasonable interpretation of the "commercial use" requirement in section 337(a)(2) to permit non-public safety, commercial entities to lease spectrum within the 36 megahertz to third-party users (commercial or individual) upon which no end-use restrictions, except for certain technical restrictions set forth in the *Second R&O*, will be imposed.

10. The Commission's decision to reserve this spectrum for Guard Band Managers is consistent with Congress's direction in section 337(d)(4) of the Communications Act, and the Conference Report language pertaining to that section, that users of the public safety spectrum be protected from interference. Section 337 also supports licensing the Guard Bands to Guard Band Managers because this licensee is a commercial entity that will be engaged in a for-profit use of the spectrum. The Commission concludes that the Guard Band Manager's generation of revenues from its use of the licensed spectrum meets the section 337(a)(2) requirement that the spectrum be for commercial use.

11. The Commission also concludes that the creation of the Guard Band Manager as a new class of licensee is consistent with the Commission's broad licensing and spectrum management authority under sections 301, 303(b), and 309(j) of the Communications Act, and the Commission's broad authority to adopt reasonable rules in the public interest establishing licensing eligibility criteria. Moreover, the Commission believes that the Guard Band Manager concept is consistent with the requirement in section 310(d) of the Communications Act that licensees retain ultimate *de facto* control of their licenses. Guard Band Managers will have full authority and the duty to take whatever actions are necessary to ensure third-party compliance with the Act and the Commission's rules. In establishing this new class of licensee, the Commission does not exceed its statutory authority or relinquish its statutory responsibilities pertaining to the licensing of wireless services. The Commission will continue to fulfill its statutory obligation under section 309(a) to determine whether the public interest, convenience, and necessity will be served by the granting of a Guard Band Manager's license application. As with any other licensee, the Commission will hold Guard Band Managers directly responsible for compliance with all obligations that the Communications Act imposes on licensees. The Commission will also hold Guard Band Managers directly responsible for any interference or misuse of the frequencies arising from their use by non-licensed entities. Further, the Commission intends to exercise its general enforcement powers under section 303 of the Act by imposing appropriate sanctions against noncomplying Guard Band Managers, and, where warranted, revoking licenses pursuant to section 312 of the Act, for violations of the Act or Commission regulations committed by the Guard Band Manager or third-party users of its licensed spectrum. Finally, the Commission emphasizes that third-party spectrum users who violate the Commission's rules or other federal laws are subject to forfeitures under section 503 of the Communications Act, other administrative sanctions, and criminal prosecution.

12. *Rules Governing Guard Band Manager Licenses.* Concerns regarding the Guard Band Manager's ability to manage the spectrum in the best interest of prospective eligible users can be addressed by Commission rules that will govern both the Guard Band Manager's operations and its contractual relationships with third-party users. Commenters suggested a number of terms and conditions that might be included in written agreements between Guard Band Managers and their customers. With respect to many of the contractual terms and conditions suggested in the comments, the Commission elects not to incorporate them in its service rules, but rather to leave to the Guard Band Manager's discretion the decision whether such terms and conditions are necessary in the prudent structuring of the Guard Band Manager-customer relationship. Consistent with its decision to afford licensees in the 746–764 MHz and 776–794 MHz bands maximum practicable flexibility in the use of this spectrum, the Commission will not encumber Guard Band Managers with numerous regulations at this time. The Commission will, however, closely monitor how Guard Band Managers carry out their spectrum management responsibilities and will impose more detailed rules of general applicability if presented with evidence of specific conduct that would warrant imposition of such rules.

13. The Guard Band Manager will contractually provide customers the right to use certain frequencies in its service area, as identified in the contract. The duration of spectrum user agreements may vary; however, no agreement may extend beyond the term of the Guard Band Manager's FCC authorization. The Guard Band Manager may enter into contingent agreements providing any spectrum user with an option or right to renew its agreement if the Guard Band Manager is able to renew its authorization on similar terms and conditions with the Commission. The Commission will also require Guard Band Manager agreements to detail the operating parameters of the spectrum user's system, including power, maximum antenna heights, frequencies of operation, base station location(s), area(s) of operation, and other parameters as appropriate.

Additionally, the spectrum user must agree to operate its system in compliance with all technical specifications for the system consistent with Commission policy, and must use FCC-approved equipment where appropriate. Guard Band Managers will also be required to include provisions in their agreements that the spectrum user complete post-construction proofs of system performance prior to system activation.

14. Guard Band Manager contracts must include provisions that apply all existing licensee obligations to the spectrum user. The spectrum user must agree to comply with all applicable Commission rules, and accept FCC oversight and enforcement consistent with the Guard Band Manager's license. Guard Band Managers also must include provisions in their contracts obligating the spectrum user to cooperate fully with any investigation or inquiry conducted by either the Commission or the Guard Band Manager. In the event that the Guard Band Manager has knowledge or reason to believe that its customer has committed a violation of the Commission's rules, or that the customer's system is causing harmful interference with other systems, the Guard Band Manager will have the right to conduct onsite inspections of all transmission facilities. If the Guard Band Manager determines that there is an ongoing violation of the Commission's rules or that the customer's system is causing harmful interference, the Guard Band Manager shall have the right to suspend or terminate the operation of the system, or take other measures to resolve the interference until the situation can be remedied. Third-party spectrum user agreements must also stipulate that if the customer refuses to comply with a suspension or termination order, the Guard Band Manager will be free to use all legal means necessary to enforce the order. Finally, Guard Band Managers will be required to maintain their written agreements with spectrum users at their principal place of business, and to retain these records for at least two years after the date such agreements expire. These records must be kept current and be made available upon request for inspection by the Commission or its representatives.

15. In the event that there is a dispute between a Guard Band Manager and one of its customers, or among multiple customers of the same Guard Band Manager, the Commission expects such disputes to be resolved by the Guard Band Manager in the same manner as would be used by the parties to resolve other commercial disputes arising under the contract. The Commission will consider any complaints filed against a Guard Band Manager for violating the Act or the Commission's policies. The Commission will resolve such complaints pursuant to its authority granted in sections 308(b) and 309(d) of the Act. With respect to disputes between non-contracting parties and a Guard Band Manager or the Guard Band Manager's customers, when the Guard Band Manager is unable or unwilling to resolve such disputes in a timely fashion, the aggrieved party may file a complaint with the Commission, to ensure that the Guard Band Manager and its customers are complying with the requirements of the Act, Commission rules, and the terms of the Guard Band Manager license. However, the Commission expects Guard Band Managers to coordinate use of their licensed frequencies carefully to ensure that their customers do not interfere with public safety or other licensees on adjacent channels.

16. *Regulatory Status.* Because the Guard Band Manager licensee will act only as a spectrum broker and not as a wireless service provider, it will not be a carrier of any type. Accordingly, as licensed in the 6 megahertz block of the 700 MHz band, the Guard Band Manager will not be a common carrier as defined in section 3 of the Communications Act. Consistent with the Commission's decision to amend Form 601 to allow licensees in the 30 megahertz block to designate the regulatory status of the services they provide, the Commission has also amended item 35 of the Form 601 to add the Guard Band Manager classification.

17. Although Guard Band Managers will not provide services regulated as Commercial Mobile Radio Services (CMRS), they may lease their spectrum to customers that will provide CMRS and that will be required to comply with Commission rules applicable to CMRS providers. CMRS provided on the Guard Bands will not count against the 45/55 megahertz spectrum cap.

18. *Eligibility and Use Restrictions.* The Commission will assign licenses in the Guard Bands exclusively to Guard Band Managers. The Commission will not impose restrictions on the types of entities that may be licensed as Guard Band Managers. Instead it adopts certain basic requirements for Guard Band Managers that will further the Commission's objective of making the Guard Band Manager spectrum available to a wide range of users.

19. The Commission believes that assigning licenses in the 6 megahertz Guard Bands solely to Guard Band Managers will be the most efficient and effective way to manage spectrum that is subject to commercial uses for the protection of public safety licensees in the adjacent bands. Thus, the purpose of the Guard Band Manager will be to lease spectrum to third party, and in doing so, to manage the spectrum efficiently in a manner that also protects adjacent public safety bands from interference. Guard Band Managers will have a financial incentive to coordinate use of their frequencies to ensure non-interference. Guard Band Managers may subdivide their spectrum and make it available to end users for private internal use, or to service providers that may provide common carrier or non-common carrier services to their customers. A Guard Band Manager may also aggregate the various demands for spectrum within its service area to meet the unique needs of that service area. The Commission is currently considering innovative assignment mechanisms that enable parties to more easily aggregate and disaggregate spectrum for alternative uses, and the Guard Band Manager approach adopted in the *Second R&O* can potentially be an important step in that direction.

20. Guard Band Managers will be permitted to lease some of their licensed spectrum to affiliated entities for the affiliate's own internal use or for its provision of commercial or private radio services. However, to ensure that the Commission conducts a useful test of the Band Manager concept and obtains the full benefits of this new licensing approach, a core feature of which is leasing spectrum to third parties, Guard Band Managers will be required to lease the predominant amount of their spectrum to non-affiliates. The Commission also provides Guard Band Managers with a "safe harbor" example of compliance with this requirement. To take advantage of this "safe harbor," a Guard Band Manager must lease no more than 49.9 percent of its licensed spectrum in a geographic service area to its affiliates. For the purpose of measuring the percent of spectrum leased under this rule, if a Guard Band Manager leases spectrum to an affiliate covering any portion of the defined geography of the service area, that spectrum will be considered to be leased to the affiliate.

21. The Commission clarifies that among those that may be licensed as Guard Band Managers in the Guard Bands are entities in the critical infrastructure industries—entities that utilize private communications systems to support their commercial operations. The critical infrastructure industries are not eligible for licensing in the 24 megahertz of spectrum allocated for public safety service providers. The Commission finds nothing in the language of section 337 or its legislative history that indicates Congress intended to treat the critical infrastructure industries differently from other commercial entities by excluding them from both the 24 megahertz of public safety spectrum and the 36 megahertz of commercial spectrum.

22. In the *Second R&O* the Commission considers whether to limit the number of channel blocks in a geographic service area that may be licensed to a Guard Band Manager. The Commission determines that, for the first auction of licenses in the 6 megahertz block, it will limit an entity and its affiliates to holding only one of the two Guard Band Manager licenses that will be available in a geographic service area. However, if any Guard Band Manager licenses remain unsold after the first auction, the Commission

intends to lift this "one-to-a-market" rule in any subsequent auctions in this band. Limiting the number of Guard Band Manager licenses that one entity may hold will provide the Commission with an ability to benchmark one Guard Band Manager against another serving the same geographic area.

23. The Commission anticipates that the competitive environment in which Guard Band Managers will operate will serve to constrain them from unreasonably restricting access to their spectrum. However, some general safeguards are appropriate for at least an initial period. The Commission expects Guard Band Managers to not engage in unjust or unreasonable discrimination among spectrum users and to honor all reasonable requests by potential users for access to the licensed spectrum. The Commission nevertheless recognizes that the number of users that can be granted exclusive use of a Guard Band Manager's channels will be limited. The Commission also recognizes that a Guard Band Manager may have valid business reasons for denying a potential user's request for spectrum. For example, denial of a request for spectrum might be reasonable when the request, if granted, would preclude the Guard Band Manager from entering into an agreement with another user needing coverage of a wider geographic area for a longer period of time.

24. Because the Guard Band Manager license is a new concept and we cannot predict the type or amount of demand that will exist for spectrum licensed in this manner, the Commission finds it appropriate to provide Guard Band Managers with a considerable amount of latitude to develop methods and procedures for determining the most efficient way to apportion their spectrum among prospective users. The Commission believes Guard Band Managers should be free to enter into as many user agreements as they determine to be feasible given the capacity and other technical limits on use of their spectrum, market demand, and the varied needs of their users for different amounts of spectrum for different periods of time. For this reason, the Commission is not imposing specific requirements on the number of users that must be provided access to their spectrum.

25. The Commission also recognizes the potential for Guard Band Managers to impose unnecessary conditions or restrictions on their spectrum users, which may have anticompetitive impacts on those entities with whom the Guard Band Manager is in competition. Therefore, it adopts a rule prohibiting Guard Band Managers from imposing unduly restrictive requirements on use of its licensed frequencies. A requirement is unduly restrictive if it is not reasonably related to the efficient management of the spectrum licensed to the Guard Band Manager. Requirements that *are* reasonably related to the Guard Band Manager's spectrum management responsibilities are those that are necessary to ensure efficient spectrum use or ensure compliance with the Commission's rules, including those rules pertaining to field strength limits, power and antenna height limits, interference, emission limits, and radiofrequency (RF) safety requirements. For example, the Commission would consider it unduly restrictive for a Guard Band Manager to require a spectrum user to purchase telecommunications equipment only from one manufacturer or vendor, to require use of a particular technology, or to impose operating rules that would have the same practical effect. The Commission will consider any complaints filed against a Guard Band Manager for unreasonably denying access to its spectrum or imposing unreasonable terms and conditions on third-party service providers or end users, pursuant to its authority granted in sections 308(b) and 309(d) of the Communications Act.

26. The Commission is prepared to impose additional constraints if it receives complaints indicating that Guard Band Managers are unfairly denying access to spectrum, or imposing unreasonable terms and conditions on its use, thereby undermining the Commission's objectives in licensing Guard Band Managers. Conversely, the Commission is prepared to lift these requirements if experience with the Guard Band Manager licensing approach proves them unnecessary.

27. *Size of Service Areas for Geographic Area Licensing.* The Commission will auction licenses for both the 2 megahertz and the 4 megahertz Guard Bands on the basis of 52 Major Economic Areas (MEAs), rather than Economic Areas (EAs) as proposed by some commenters. The use of MEAs will facilitate greater participation in the auction, and allow a larger number and more diverse pool of Guard Band Managers, than larger regional or nationwide licensing areas, while simultaneously giving medium-sized and larger companies the flexibility to aggregate spectrum to put together regional and nationwide licenses tailored to their particular business needs.

28. *License Term; Renewal Expectancy.* The Commission adopts a license term for the Guard Bands that extends to January 1, 2015. This is eight years beyond the date as of which incumbent broadcasters are required to have relocated to other portions of the spectrum. The Commission also adopts for Guard Band licenses the right to a renewal expectancy established in § 27.14(b) of the Commission's rules. In the event that a Guard Band license is partitioned or disaggregated, any partitionee or disaggregatee is authorized to hold its license for the remainder of the original licensee's term, and the partitionee or disaggregatee may obtain a renewal expectancy on the same basis as other licensees in the band. Guard Band licensees meeting the substantial service requirement discussed herein will be deemed to have met this element of the renewal expectancy requirement.

29. *Performance Requirements.* In establishing the Guard Band Manager as a new class of licensee, the Commission will require Guard Band Managers to provide "substantial service" to their service areas no later than January 1, 2015. The Commission will not impose other build-out requirements or channel usage requirements. In lieu of these more stringent requirements, the Commission is imposing a reporting requirement. Guard Band Managers may avail themselves of either of the following "safe harbors" for the Guard Bands. A Guard Band Manager can satisfy the substantial service requirement by leasing the predominant amount of its licensed spectrum in at least 50 percent of the geographic area covered by its license at the license-renewal mark. A Guard Band Manager can also satisfy the substantial service requirement by providing coverage to 50 percent of the population of the Guard Band Manager's service area at the license-renewal mark. These "safe harbor" examples are intended to provide Guard Band Managers a degree of certainty regarding how to comply with the substantial service requirement. The requirement can be met in other ways, which will vary depending on the market and type of spectrum users served, and the Commission will review licensees' showings on a case-by-case basis.

30. The Commission will, however, reserve the right to review its service rules and impose more stringent performance requirements on Guard Band Managers in the future if it receives complaints from prospective users or determines that reassessment is warranted because spectrum is being anticompetitively warehoused or is otherwise not being made available despite existing demand. To facilitate

such review, the *Second R&O* adopts an annual reporting requirement that will obligate Guard Band Managers to provide the Commission with information about the manner in which their spectrum is being utilized. Guard Band Managers will be required to supply the Commission with basic information about the total number of users and the number of those users that are affiliates of the Guard Band Manager; the amount of spectrum being used by the Guard Band Manager's affiliates in any part of the licensed service area and the amount of spectrum being used pursuant to agreements with unaffiliated third parties; the general nature of its customers' spectrum use; and the length of the term of each user agreement. To minimize the burden placed on Guard Band Managers by this reporting requirement, the Commission anticipates collecting this information electronically, through the Universal Licensing System. The specific information that Guard Band Managers will provide and the procedures that Guard Band Managers will follow in filing this annual report will be announced in a subsequent Public Notice to be issued by the Wireless Telecommunications Bureau. The Commission will make this information available to the public in order to enhance prospective users' ability to determine the availability of frequencies in their service areas that will meet their needs. The Commission also reserves the authority to subject Guard Band Managers to audits using in-house and contract resources.

31. *Disaggregation and Partitioning of Licenses.* Guard Band Managers will be allowed to partition their service areas and to disaggregate their spectrum to any entity that would otherwise be eligible to hold an authorization as a Guard Band Manager for this spectrum. Licensees seeking to partition and disaggregate are required to obtain Commission authorization for partial assignment of their license. In reviewing requests for approval of partitioning and disaggregation, the Commission will consider the impact that such partitioning or disaggregation would have on public safety operations in the adjacent 700 MHz bands. Additionally, the partitioning licensee must include with its request a description of the partitioned service area and calculations of the population of the partitioned service area and the licensed geographic service area, and will be subject to the provisions against unjust enrichment set forth in § 27.15(c) of the Commission's rules.

32. The Commission will also allow partitioning Guard Band Managers to choose between two options for satisfying the performance requirement in § 27.14 of the Commission's rules. Under the first option, the partitioner and partitionee would each certify that it will independently satisfy the substantial service requirement for its respective partitioned area. If a Guard Band Manager fails to meet its substantial service requirement during the relevant license term, the non-performing Guard Band Manager's authorization will be subject to cancellation at the end of the license term. Under the second option, the partitioner can certify that it has met or will meet the substantial service requirement for the entire market. If the partitioner fails to meet the substantial service standard during the relevant license term, only its license will be subject to cancellation at the end of the license term; the partitionee's license will not be affected by the failure.

33. In addition, parties to disaggregation agreements may choose between two options for satisfying the performance requirement. Under the first option, the disaggregator and disaggregatee would certify that they will share responsibility for meeting the performance requirement for the entire geographic service area. If the parties choose this option, both parties jointly will be required to meet the substantial service requirement at the end of the relevant license term, and both Guard Band Manager licenses will be subject to cancellation, if the requirement is not met. The second option allows the parties to agree that either the disaggregator or the disaggregatee will be responsible for meeting the substantial service requirement for the geographic service area. If the parties choose this option, and the Guard Band Manager responsible for meeting the performance requirement fails to do so, only the license of the non-performing Guard Band Manager will be subject to cancellation.

34. *Public Notice of Initial Applications; Petitions to Deny.* Sections 309(b) and 309(c) of the Communications Act require public notice for initial applications for authorizations in, *inter alia*, the broadcasting or common carrier services, and substantial amendments thereof. The administrative procedures for spectrum auctions adopted in section 3008 of the Balanced Budget Act of 1997 and the Consolidated Appropriations Act permit the Commission to shorten notice periods in the auction context to five days for petitions to deny and seven days for public notice, notwithstanding the provisions of section 309(b) of the Communications Act. The Commission exercises its authority under section 309(b)(2)(F) and adopts a seven-day notice requirement for initial applications for Guard Band Manager licenses and a five-day period for petitions to deny such applications.

35. *Foreign Ownership Restrictions.* Section 310(a) of the Communications Act prohibits any foreign government or representative from holding a station license. Section 310(b) prohibits certain defined ownership interests in broadcast, common carrier, aeronautical en route or aeronautical fixed radio station licenses. The Commission determines that § 27.12 of the Commission's rules regarding foreign ownership will apply to applicants for Guard Band licenses. Because the Guard Band Manager is a non-common carrier, an applicant requesting authorization for a Guard Band Manager license will be subject to section 310(a) but not to the additional prohibitions of section 310(b). With respect to the Commission's alien ownership reporting requirements, applicants for the Guard Band spectrum must file changes in foreign ownership information to the extent required by part 27 of the Commission's rules.

36. *Applicability of General Common Carrier Obligations.* Based on the Commission's conclusions set forth in the *First R&O*, and on its assessment that the decisions adopted therein are appropriate for application to the Guard Bands, the Commission adopts for the Guard Bands the forbearance measures discussed in the *First R&O* with respect to tariff and contract filings, interlocking directors, new and discontinued facilities, service provider local number portability, section 226 of the Communications Act, franks, and *pro forma* transfer applications.

37. The Commission also adopts the provisions of § 27.66 of its rules for operations on the Guard Bands. Section 27.66 tracks the provisions of § 63.71, requiring a common carrier voluntarily discontinuing, reducing or impairing service to provide notice to affected customers and the Commission and providing for the automatic grant of a fixed service common carrier's application for discontinuance after 31 days. In the case of Guard Band operations, this notice to the Commission must be provided by the Guard Band Manager. If a non-common carrier voluntarily discontinues, reduces, or impairs service, § 27.66 requires the carrier to give written notice to the Commission within seven days. In the case of Guard Band operations, this notice to the Commission, as well, must be provided

by the Guard Band Manager. A mere change in common carrier or non-common carrier status does not constitute a "discontinuance." If fixed service common carrier operations are involuntarily discontinued, reduced, or impaired for a period exceeding 48 hours, the Guard Band Manager must promptly notify the Commission, in writing, of the reasons for the discontinuance, reduction, or impairment of service, including a statement indicating when normal service is to be resumed. When normal service is resumed, the Guard Band Manager must promptly notify the Commission. The Commission continues to invite suggestions on ways to alleviate or streamline regulations that would otherwise be applicable to fixed services provided on this spectrum.

38. *Equal Employment Opportunity.* Because the Commission's Equal Employment Opportunity (EEO) rules are service-specific, a Guard Band user's EEO requirements will depend on the type of service it chooses to provide. FCC Form 601, as amended, identifies five regulatory statuses: (a) Common carrier, (b) non-common carrier, (c) private, internal communications, (d) broadcast, and (e) Band Manager. However, Guard Band users do not file FCC Form 601, because they are not licensees. Nevertheless, these operators will be subject to such EEO requirements as the nature of the services they provide dictates.

39. *Other Technical Rules.* The Commission adopts a field strength limit for the Guard Bands of 40 dBu/m to control in-band interference. However, users in adjoining areas may agree to alternate field strengths at their common border. The predicted 40 dBu/m field strength shall be calculated using figure 10 in 47 CFR 73.699 with a correction factor for antenna height differential of −9 dB.

40. The Commission adopts a threshold of 1000 w ERP for categorical exclusion from routine evaluation for RF radiation exposure for base and fixed stations in the Guard Bands. The threshold for routine evaluation of mobile devices for RF safety purposes will be 1.5 w or greater, in conformance with § 2.1091. For portable devices in the Guard Bands, the Commission adopts a maximum power limit of 3 w ERP with the provision that these devices be evaluated for RF exposure in compliance with § 2.1093. The Commission is providing guidance on acceptable methods of evaluating compliance with the Commission's RF exposure limits in OET Bulletin No. 65, which has replaced OST Bulletin No. 65.

41. The Commission adopts the following power limits for the Guard Bands:

(i) For base stations and fixed stations operating in the 746–747 MHz and 762–764 MHz bands, an ERP no greater than 1,000 watts and an antenna height above average terrain (HAAT) no greater than 305 m;

(ii) For mobile, fixed, and control stations operating in the 776–777 MHz and 792–794 MHz bands, an ERP no greater than 30 watts; and

(iii) For portable stations operating in the 776–777 MHz and 792–794 MHz bands, an ERP no greater than 3 watts.

42. The second harmonic transmissions of Guard Band services that will be operating on TV channels 65 and 67 fall within a band used for radionavigation in the Global Navigation Satellite System (GNSS), which includes the Global Positioning System (GPS) at 1563.42–1587.42 MHz. The Commission therefore adopts the following out-of-band-emissions limits for all spurious emissions, including harmonics, that fall within the 1559–1610 frequency range, from equipment operating in the 746–747 MHz, 762–764 MHz, 776–777 MHz and 792–794 MHz Guard Bands:

(i) For wideband emissions, -70 dBW/MHz equivalent isotropically radiated power (EIRP); and

(ii) For discrete emissions of less than 700 Hz bandwidth, an absolute EIRP limit of −80 dBW. Outside of emissions into the 1559–1610 MHz RNSS band, the out of band emission standards adopted in section III.A.1 of the *Second R&O* will apply.

43. *Competitive Bidding.* In light of the accelerated schedule for auction of the 746–764 MHz and 776–794 MHz bands the Commission believes that it should not use, combinatorial bidding for the auction of licenses in these bands. Consistent with its decision in the *First R&O*, the Commission will not prohibit any entities from participating in the auction of licenses for the Guard Bands.

44. Also consistent with its decision in the *First R&O*, the Commission will use for the Guard Bands the competitive bidding procedures contained in subpart Q of part 1 of the Commission's rules, including any amendments adopted in the ongoing part 1 proceeding. However, to facilitate the Commission's compliance with its statutory obligation to deposit the proceeds from the auction in the Treasury by September 30, 2000, the Commission delegates to the Wireless Telecommunications Bureau authority to suspend the payment deadlines in §§ 1.2107(b) and 1.2109(a) of the Commission's rules and require that winning bidders on all licenses in the 700 MHz bands pay the full balance of their winning bids upon submission of their long-form applications pursuant to § 1.2107(c) of the Commission's rules.

45. The Commission adopts for the Guard Bands the same definitions of small and very small businesses that it adopted for the 747–762 MHz and 777–792 MHz bands in the *First R&O* in this proceeding. A small business is defined as an entity with average annual gross revenues for the three preceding years not in excess of $40 million, and a very small business is defined as an entity with average annual gross revenues for the three preceding years not in excess of $15 million. In calculating gross revenues for purposes of small business eligibility, the Commission will attribute the gross revenues of the applicant, its controlling interests and its affiliates. For the auction of licenses for the Guard Bands, the Commission also adopts tiered bidding credits for small and very small businesses. Accordingly, small businesses will receive a 15 percent bidding credit. Very small businesses will receive a 25 percent bidding credit.

46. The Commission declines to adopt special preferences for entities owned by minorities or women. The Commission believes the bidding credits adopted in this *Second R&O* for small businesses will further Congress's objective of disseminating licenses among a wide variety of applicants because many minority- and women-owned entities, as well as rural telephone companies, are small businesses and will therefore qualify for these special provisions. The Commission also declines to provide bidding credits to LPTV licensees or state and local governments seeking spectrum for public safety communications.

47. *Protection of Television Services.* In order to protect analog and TV and DTV operations during the DTV transition period, the Commission extends the protection criteria applicable to 30 megahertz spectrum operations to operations in the Guard Bands. Thus, § 27.60, as amended, requires 700 MHz commercial operations, including those in the Guard Bands, to comply with the provisions of § 90.545 of the Commission's rules. The Congressional plan set forth in sections 336 and 337 of the Act and in the 1997 Budget Act is to transition this spectrum from its current use for broadcast services to commercial use and public safety services. Congress also has directed the Commission to auction the 36 megahertz of spectrum for commercial use six years before the relocation deadline for incumbent broadcasters in this spectrum, while adopting interference limits and other technical restrictions necessary to protect full-service analog television service during the transition to DTV. The extended license term specified for 700 MHz commercial services on these bands reflects, in part, the recognition that incumbent television licensees on these frequencies may, under the statutory provision for DTV transition, continue to broadcast for some years, delaying the time when new users have uncompromised use of the spectrum resource.

48. In addition, the Commission indicated in the *First R&O* that it will consider specific regulatory requests needed to implement voluntary agreements reached between incumbent licensees and new users in these bands, and it extends that policy to Guard Band operations.

49. *Canadian and Mexican Border Regions.* There are currently separate agreements with Canada and Mexico covering TV broadcast use of the UHF 470–806 MHz band. Such agreements do not reflect the additional use or services being adopted in the *First R&O* in this proceeding and in this *Second R&O*. While the Commission staff has been involved in discussions with both countries regarding coordination or interference criteria for the use of these bands in the border areas for the additional services, agreements have yet to be reached. Therefore, until such agreements have been finalized, the Commission believes it necessary to adopt certain interim requirements for operations in the Guard Bands along the Canada and Mexico borders. Accordingly, licenses issued for these bands within 120 km of the borders will be subject to whatever future agreements the United States develops with these two countries. In that the existing agreements for the protection of TV stations in these countries are still in effect and must be recognized until they are replaced or modified to reflect the new uses, licenses in the border areas will be granted on the condition that harmful interference may not be caused to, but must be accepted from, UHF TV transmitters in Canada and Mexico. Furthermore, modifications may be necessary to comply with whatever provisions are ultimately specified in future agreements with Canada and Mexico regarding the use of these bands. Pending further negotiations, the *Second R&O* also adopts the protection criteria described in this *Second R&O* for domestic TV and DTV stations as interim criteria for Canadian and Mexican TV and DTV stations.

50. *Procedural Matters.* The *Second R&O* contains new and modified information collections. The actions contained in this *Second R&O* are, however, exempt from the provisions of the Paperwork Reduction Act of 1995, under the Consolidated Appropriations statute, *See* Consolidated Appropriations, Appendix E, Sec. 213. *See* also 145 Cong. Rec. at H12493–94 (November 17, 1999). Implementation of the revisions to part 27 required to assign licenses in these commercial spectrum bands, including revisions to information collections, are therefore not subject to approval by the Office of Management and Budget, and became effective upon adoption. Similarly, the Consolidated Appropriations statute exempts this decision from the Regulatory Flexibility Act provisions and from the Contract With America Advancement Act provisions.

51. *Authority Citation and Ordering Clauses.* This action is taken pursuant to sections 1, 4(i), 7, 10, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 324, 332 and 336 and 337 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 157, 160, 201, 202, 208, 214, 301, 303, 307, 308, 309(j), 309(k), 310, 311, 324, 332, and 336, and 337 and the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501, section 213.

52. Part 27 of the Commission's Rules is amended to establish service rules for the 746–747/ 776–777 MHz and 762–764/ 792–794 MHz bands, as set forth in this synopsis. In accordance with section 213 of the Consolidated Appropriations Act, 2000, Public Law 106–113, 113 Stat. 1501 (1999), these rules shall be effective April 4, 2000.

53. Further, pursuant to 47 U.S.C. 155(c), the Chief of the Wireless Telecommunications Bureau is granted delegated authority to implement and modify auction procedures in the Wireless Communications Services, including the general design and timing of the auction, the number and grouping of authorizations to be offered in any particular auction, the manner of submitting bids, the amount of any minimum opening bids and bid increments, activity and stopping rules, and application and payment requirements, including the amount of upfront payments, and to announce such procedures by Public Notice.

54. Finally, pursuant to 47 U.S.C. 155(c), the Chief of the Wireless Telecommunications Bureau is granted delegated authority to suspend the payment deadlines in §§ 1.2107(b) and 1.2109(a) of the Commission's rules, 47 CFR 1.2107(b), 1.2109(a), and require that winning bidders on all licenses in the 746–764 and 776–794 MHz bands pay the full balance of their winning bids upon submission of their long-form applications pursuant to § 1.2107(c) of the Commission's rules, 47 CFR 1.2107(c).

List of Subjects in 47 CFR Part 27

Guard band managers, Radio, Reporting and recordkeeping requirements, Telecommunications. Federal Communications Commission.

Magalie Roman Salas,
Secretary.

Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 27 as follows:

1. The authority citation for part 27 continues to read as follows:

Authority: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

2. Section 27.1 is amended by revising paragraph (b)(2) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(2) 746–764 MHz and 776–794 MHz.

* * * * *

3. Section 27.2 is amended by redesignating paragraph (b) as paragraph (c), revising paragraph (a), and adding a new paragraph (b) to read as follows:

§ 27.2 Permissible communications.

(a) *Miscellaneous wireless communications services.* Except as provided in paragraph (b) of this section and subject to technical and other rules contained in this part, a licensee in the frequency bands specified in § 27.5 may provide any services for which its frequency bands are allocated, as set forth in the non-Federal Government column of the Table of Allocations in § 2.106 of this chapter (column 5).

(b) *746–747 MHz, 776–777 MHz, 762–764 MHz and 792–794 MHz bands.* Operators in the 746–747 MHz, 776–777 MHz, 762–764 MHz and 792–794 MHz bands may not employ a cellular system architecture. A cellular system architecture is defined, for purposes of this part, as one that consists of many small areas or cells (segmented from a larger geographic service area), each of

which uses its own base station, to enable frequencies to be reused at relatively short distances.

* * * * *

4. Section 27.4 is amended by adding a new definition for "affiliate," and "guard band manager" in alphabetical order to read as follows:

§ 27.4 Terms and definitions.

Affiliate. This term shall have the same meaning as that for "affiliate" in part 1, § 1.2110(b)(4) of this chapter.

* * * * *

Guard band manager. The term *Guard band manager* refers to a commercial licensee in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands that functions solely as a spectrum broker by subdividing its licensed spectrum and making it available to system operators or directly to end users for fixed or mobile communications consistent with Commission Rules. A *Guard band manager* is directly responsible for any interference or misuse of its licensed frequency arising from its use by such non-licensed entities.

* * * * *

5. Section 27.5 is amended by revising paragraphs (b)(1) and (b)(2) to read as follows:

§ 27.5 Frequencies.

* * * * *

(b) * * *

(1) Two paired channels of 1 megahertz each are available for assignment solely to Guard band managers. Block A: 746–747 MHz and 776–777 MHz.

(2) Two paired channels of 2 megahertz each are available for assignment solely to Guard band managers. Block B: 762–764 MHz and 792–794 MHz.

* * * * *

6. Section 27.6 is amended by revising paragraph (b)(1) to read as follows:

§ 27.6 Service areas.

* * * * *

(b) * * *

(1) Service areas for Block A in the 746–747 and 776–777 MHz bands and Block B in the 762–764 and 792–794 MHz bands are based on Major Economic Areas (MEAs), as defined in paragraph (a)(1) of this section.

* * * * *

7. Section 27.10 is amended by adding the introductory text to read as follows:

§ 27.10 Regulatory status.

Except with respect to Guard band manager licenses, which are subject to subpart G of this part, the following rules apply concerning the regulatory status of licensees in the frequency bands specified in § 27.5.

* * * * *

8. Section 27.12 is revised to read as follows:

§ 27.12 Eligibility.

Except as provided in § 27.604 any entity other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

9. Section 27.13 is amended by revising paragraph (b) to read as follows:

§ 27.13 License period.

* * * * *

(b) *746–764 MHz and 776–794 MHz bands.* Initial authorizations for the 746–764 MHz and 776–794 MHz bands, will extend until January 1, 2015, except that a part 27 licensee commencing broadcast services, will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations.

10. Section 27.50 is amended by redesignating paragraph (a) as paragraph (b) and paragraph (b) as paragraph (a), revising newly redesignated paragraph (b) and revising the heading to the table in paragraph (c) to read as follows:

§ 27.50 Power limits.

* * * * *

(b) The following power and antenna height limits apply to transmitters operating in the 746–764 MHz and 776–794 MHz bands:

(1) Fixed and base stations transmitting in the 746–764 MHz band must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section;

(2) Fixed, control, and mobile stations transmitting in the 776–794 MHz band are limited to 30 watts ERP;

(3) Portable stations (hand-held devices) transmitting in the 776–794 MHz band are limited to 3 watts ERP;

(c) * * *

Table 1—Permissible Power and Antenna Heights for Base and Fixed Stations in the 746–764 MHz Band

* * * * *

11. Section 27.53 is amended by redesignating paragraphs (e) and (f) as paragraphs (f) and (g), revising newly redesignated paragraph (f) and adding a new paragraph (e) to read as follows:

§ 27.53 Emission limits.

* * * * *

(e) For operations in the 746–747 MHz, 762–764 MHz, 776–777 MHz, and 792–794 MHz bands, transmitters must meet the following emission limitations:

(1) The adjacent channel coupled power (ACCP) requirements for transmitters designed for various channel sizes are shown in the following tables. Mobile station requirements apply to handheld, car mounted and control station units. The tables specify a maximum value for the ACCP relative to maximum output power as a function of the displacement from the channel center frequency. In addition, the ACCP for a mobile station transmitter at the specified frequency displacement must not exceed the value shown in the tables. For transmitters that have power control, the latter ACCP requirement can be met at maximum power reduction. In the following charts, "(s)" means that a swept measurement is to be used.

6.25 kHz Mobile Transmitter ACCP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
6.25	6.25	−40	not specified
12.50	6.25	−60	−45
18.75	6.25	−60	−45
25.00	6.25	−65	−50
37.50	25.00	−65	−50
62.50	25.00	−65	−50
87.50	25.00	−65	−50

6.25 kHz Mobile Transmitter ACCP Requirements—Continued

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
150.00	100.00	−65	−50
250.00	100.00	−65	−50
>400 to receive band	30(s)	−75	−55
In the receive band	30(s)	−100	−70

12.5 kHz Mobile Transmitter ACCP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
9.375	6.25	−40	not specified
15.625	6.25	−60	−45
21.875	6.25	−60	−45
37.500	25.00	−65	−50
62.500	25.00	−65	−50
87.500	25.00	−65	−50
150.000	100.00	−65	−50
250.000	100.00	−65	−50
>400 to receive band	30(s)	−75	−55
In the receive band	30(s)	−100	−70

25 kHz Mobile Transmitter ACCP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
15.625	6.25	−40	not specified
21.875	6.25	−60	−45
37.500	25.00	−65	−50
62.500	25.00	−65	−50
87.500	25.00	−65	−50
150.000	100.00	−65	−50
250.000	100.00	−65	−50
>400 to receive band	30(s)	−75	−55
In the receive band	30(s)	−100	−70

150 kHz Mobile Transmitter ACCP Requirements 12.5 kHz Mobile Transmitter ACCP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP relative (dBc)	Maximum ACCP absolute (dBm)
100	50	−40	not specified
200	50	−50	−35
300	50	−50	−35
400	50	−50	−35
600 to 1000	30(s)	−60	−45
1000 to receive band	30(s)	−70	−55
In the receive band	30(s)	−100	−75

6.25 kHz Base Transmitter ACCP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
6.25	6.25	−40
12.50	6.25	−60
18.75	6.25	−60
25.00	6.25	−65
37.50	25.00	−65
62.50	25.00	−65
87.50	25.00	−65
150.00	100.00	−65
250.00	100.00	−65

6.25 kHz Base Transmitter ACCP Requirements—Continued

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
>400 to receive band	30(s)	−80 (continues @ −6dB/oct)
In the receive band	30(s)	−100

12.5 kHz Base Transmitter ACCP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
9.375	6.25	−40
15.625	6.25	−60
21.875	6.25	−60
37.500	25.00	−60
62.500	25.00	−65
87.500	25.00	−65
150.000	100.00	−65
250.000	100.00	−65
>400 to receive band	30(s)	−80 (continues @ −6dB/oct)
In the receive band	30(s)	−100

25 kHz Base Transmitter ACCP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
15.625	6.25	−40
21.875	6.25	−60
37.500	25.00	−60
62.500	25.00	−65
87.500	25.00	−65
150.000	100.00	−65
250.000	100.00	−65
>400 to receive band	30(s)	−80 (continues @ −6dB/oct)
In the receive band	30(s)	−100

150 kHz Base Transmitter ACCP Requirements

Offset from center frequency (kHz)	Measurement bandwidth (kHz)	Maximum ACCP (dBc)
100	50	−40
200	50	−50
300	50	−55
400	50	−60
600 to 1000	30(s)	−65
1000 to receive band	30(s)	−75 (continues @ −6dB/oct)
In the receive band	30(s)	−100

(2) *ACCP measurement procedure.* The following procedures are to be followed for making ACCP transmitter measurements. For time division multiple access (TDMA) systems, the measurements are to be made under TDMA operation only during time slots when the transmitter is on. All measurements must be made at the input to the transmitter's antenna. Measurement bandwidth used below implies an instrument that measures the power in many narrow bandwidths (e.g. 300 Hz) and integrates these powers across a larger band to determine power in the measurement bandwidth.

(i) *Setting reference level:* Using a spectrum analyzer capable of ACCP measurements, set the measurement bandwidth to the channel size. For example, for a 6.25 kHz transmitter, set the measurement bandwidth to 6.25 kHz; for a 150 kHz transmitter, set the measurement bandwidth to 150 kHz. Set the frequency offset of the measurement bandwidth to zero and adjust the center frequency of the spectrum analyzer to give the power level in the measurement bandwidth. Record this power level in dBm as the "reference power level".

(ii) *Measuring the power level at frequency offsets <600kHz:* Using a spectrum analyzer capable of ACCP measurements, set the measurement bandwidth as shown in the tables above. Measure the ACCP in dBm. These measurements should be made at maximum power. Calculate the coupled power by subtracting the measurements made in this step from the reference power measured in the previous step. The absolute ACCP values must be less than the values given in the table for each condition above.

(iii) *Measuring the power level at frequency offsets >600kHz:* Set a spectrum analyzer to 30 kHz resolution bandwidth, 1 MHz video bandwidth and sample mode detection. Sweep ±6 MHz from the carrier frequency. Set the reference level to the RMS value of the transmitter power and note the absolute power. The response at frequencies greater than 600 kHz must be less than the values in the tables above.

(iv) *Upper Power Limit Measurement:* The absolute coupled power in dBm measured above must be compared to the table entry for each given frequency offset. For those mobile stations with power control, these measurements should be repeated with power control at maximum power reduction. The absolute ACCP at maximum power reduction must be less than the values in the tables above.

(3) *Out-of-band emission limit.* On any frequency outside of the frequency ranges covered by the ACCP tables in this section, the power of any emission must be reduced below the unmodulated carrier power (P) by at least 43 + 10 log (P) dB.

(4) *Authorized bandwidth.* Provided that the ACCP requirements of this section are met, applicants may request any authorized bandwidth that does not exceed the channel size.

(f) For operations in the 746–764 MHz and 776–794 MHz bands, emissions in the band 1559–1610 MHz shall be limited to −70 dBW/MHz equivalent isotropically radiated power (EIRP) for wideband signals, and −80 dBW EIRP for discrete emissions of less than 700 Hz bandwidth. For the purpose of equipment authorization, a transmitter shall be tested with an antenna that is representative of the type that will be used with the equipment in normal operation.

* * * * *

12. Section 27.55 is amended by revising paragraph (b) to read as follows:

§ 27.55 Field strength limits.

* * * * *

(b) 746–764 and 776–794 MHz bands: 40dBu V/m

13. Section 27.60 is amended by removing the phrase "747–762 MHz and 777–792 MHz" from the introductory text and adding in its place the phrase "746–764 MHz and 776–794 MHz", removing the phrase "747–762 MHz and 777–792 MHz" and "747–762 MHz or 777–792 MHz " from paragraph (b) introductory text and adding in its place the phrase "746–764 MHz and 776–794 MHz" and "746–764 MHz or 776–794 MHz", respectively, removing the phrase "747–762 MHz" from paragraph (b)(2)(i) and adding in its place the phrase "746–764 MHz", and removing the phrase "777–792 MHz" from paragraph (b)(2)(ii) and adding in its place the phrase "776–794 MHz".

14. Section 27.66 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 27.66 Discontinuance, reduction, or impairment of service.

(a) *Involuntary act.* If the service provided by a fixed common carrier licensee, or a fixed common carrier operating on spectrum licensed to a Guard Band Manager, is involuntarily discontinued, reduced, or impaired for a period exceeding 48 hours, the licensee must promptly notify the Commission, in writing, as to the reasons for discontinuance, reduction, or impairment of service, including a statement when normal service is to be resumed. When normal service is resumed, the licensee must promptly notify the Commission.

(b) *Voluntary act by common carrier.* If a fixed common carrier licensee, or a fixed common carrier operating on spectrum licensed to a Guard Band Manager, voluntarily discontinues, reduces, or impairs service to a community or part of a community, it must obtain prior authorization as provided under § 63.71 of this chapter. An application will be granted within 30 days after filing if no objections have been received.

(c) *Voluntary act by non-common carrier.* If a fixed non-common carrier licensee, or a fixed non-common carrier operating on spectrum licensed to a Guard Band Manager, voluntarily discontinues, reduces, or impairs service to a community or part of a community, it must given written notice to the Commission within seven days.

* * * * *

15. The heading for subpart F is revised to read as follows:

Subpart F—Competitive Bidding Procedures for the 746–764 MHz and 776–794 MHz Bands

* * * * *

16. Section 27.501 is revised to read as follows:

§ 27.501 746–764 MHz and 776–794 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 746–764 MHz and 776–794 MHz bands are subject to competitive bidding procedures. The procedures set forth in part 1, subpart Q, of this chapter will apply unless otherwise provided in this part.

17. Part 27 is amended by adding subpart G to read as follows:

Subpart G—Guard Band Managers

Sec.

27.601 Guard Band Manager authority and coordination requirements.
27.602 Guard Band Manager agreements.
27.603 Access to the Guard Band Manager's spectrum.
27.604 Limitation on licenses won at auction.
27.605 Geographic partitioning and spectrum disaggregation.
27.606 Complaints against Guard Band Managers.
27.607 Performance requirements and annual reporting requirement.

Subpart G—Guard Band Managers

§ 27.601 Guard Band Manager authority and coordination requirements.

(a) Subject to the provisions of § 27.2(b) and paragraphs (c) and (d) of this section, a Guard Band Manager may allow a spectrum user, pursuant to a written agreement, to construct and operate stations at any available site within the licensed area and on any channel for which the Guard Band Manager is licensed, provided such stations comply with Commission Rules and coordination requirements.

(b) Subject to the provisions of § 27.2(b) and paragraphs (c) and (d) of

this section, a Guard Band Manager may allow a spectrum user, pursuant to a written agreement, to delete, move or change the operating parameters of any of the user's stations that are covered under the Guard Band Manager's license without prior Commission approval, provided such stations comply with Commission Rules and coordination requirements.

(c)(1) A Guard Band Manager must file a separate station application and obtain all appropriate Commission approvals or authorizations prior to construction of stations that—

(i) Require submission of an Environmental Assessment under § 1.1307 of this chapter;

(ii) Require international coordination; or

(iii) Would affect the radio frequency quiet zones described in § 90.177 of this chapter.

(2) Prior to construction of a station, a Guard Band Manager must register with the Commission any station antenna structure for which notification to the Federal Aviation Administration is required by part 17 of this chapter.

(3) It is the Guard Band Manager's responsibility to determine whether a referral to the Commission is needed for any individual station constructed in the Guard Band Manager's license area.

(d)(1) A Guard Band Manager must notify Commission-recognized public safety frequency coordinators for the 700 MHz public safety band and adjacent-area Guard Band Managers within one business day after the Guard Band Manager has:

(i) Coordinated a new station or modification of an existing station; or

(ii) Filed an application for an individual station license with the Commission.

(2) The notification required in paragraph (d)(1) of this section must include, at a minimum—

(i) The frequency or frequencies coordinated;

(ii) Antenna location and height;

(iii) Type of emission;

(iv) Effective radiated power;

(v) A description of the service area, date of coordination, and user name or, in the alternative, a description of the type of operation.

(3) In the event a Guard Band Manager partitions its service area or disaggregates its spectrum, it is required to submit the notification required in paragraph (d)(1) of this section to other Guard Band Managers in the same geographic area.

(4) Entities coordinated by a Guard Band Manager must wait at least 10 business days after the notification required in paragraph (d)(1) of this section before operating under the Guard Band Manager's license;

(5) If, in the event of harmful interference, the Guard Band Manager is unable to resolve the problem by mutually satisfactory arrangements, the Commission may impose restrictions on the operations of any of the parties involved.

(e) Where a deletion, move or change authorized under paragraph (b) of this section constitutes a discontinuance, reduction, or impairment of service under § 27.66 or where discontinuance, reduction or impairment of service results from an involuntary act subject to § 27.66(a), the Guard Band Manager must comply with the notification and authorization requirements set forth in that section.

§ 27.602 Guard Band Manager agreements.

Guard Band Managers are required to enter into written agreements regarding the use of their licensed spectrum by others, subject to the following conditions:

(a) The duration of spectrum user agreements may not extend beyond the term of the Guard Band Manager's FCC license.

(b) The spectrum user agreement must specify in detail the operating parameters of the spectrum user's system, including power, maximum antenna heights, frequencies of operation, base station location(s), area(s) of operation, and other parameters specified in Commission rules for the use of spectrum identified in § 27.5(b)(1) and (b)(2).

(c) The spectrum user agreement must require the spectrum user to use Commission-approved equipment where appropriate and to complete post-construction proofs of system performance prior to system activation.

(d) The spectrum user must agree to operate its system in compliance with all technical specifications for the system contained in the agreement and agree to cooperate fully with any investigation or inquiry conducted by either the Commission or the Guard Band Manager.

(e) The spectrum user must agree to comply with all applicable Commission rules, and the spectrum user must accept Commission oversight and enforcement.

(f) The spectrum user agreement must stipulate that if the Guard Band Manager determines that there is an ongoing violation of the Commission's rules or that the spectrum user's system is causing harmful interference, the Guard Band Manager shall have the right to suspend or terminate operation of the spectrum user's system. The spectrum user agreement must stipulate that if the spectrum user refuses to comply with a suspension or termination order, the Guard Band Manager will be free to use all legal means necessary to enforce the order.

(g) The spectrum user agreement may not impose unduly restrictive requirements on use of the licensed frequencies, including any requirement that is not reasonably related to the efficient management of the spectrum licensed to the Guard Band Manager.

(h) Guard Band Managers shall maintain their written agreements with spectrum users at their principal place of business, and retain such records for at least two years after the date such agreements expire. Such records shall be kept current and be made available upon request for inspection by the Commission or its representatives.

§ 27.603 Access to the Guard Band Manager's spectrum.

(a) A Guard Band Manager may not engage in unjust or unreasonable discrimination among spectrum users and may not unreasonably deny prospective spectrum users access to the Guard Band Manager's licensed spectrum.

(b) A Guard Band Manager may not impose unduly restrictive requirements on use of its licensed frequencies, including any requirement that is not reasonably related to the efficient management of the spectrum licensed to the Guard Band Manager.

(c) A Guard Band Manager may lease a reasonable amount of its spectrum to an affiliate for the affiliate's own internal use or for the affiliate's provision of commercial or private radio services. However, a Guard Band Manager must lease the predominant amount of its spectrum to non-affiliates.

§ 27.604 Limitation on licenses won at auction.

(a) For the first auction of licenses in Blocks A and B, as defined in § 27.5, no applicant may be deemed the winning bidder of both a Block A and a Block B license in a single geographic service area.

(b) For purposes of paragraph (a) of this section, licenses will be deemed to be won by the same bidder if an entity that wins one license at the auction is an affiliate of any other entity that wins a license at the auction.

§ 27.605 Geographic partitioning and spectrum disaggregation.

An entity that acquires a portion of a Guard Band Manager's geographic area or spectrum subject to a geographic partitioning or spectrum disaggregation agreement under § 27.15 must function as a Guard Band Manager and is subject to the obligations and restrictions on Guard Band Manager licenses set forth in this subpart.

§ 27.606 Complaints against Guard Band Managers.

Guard Band Managers are expected to resolve disputes with their customers or disputes between multiple customers of the Guard Band Manager in the same manner that the parties would resolve other commercial disputes arising out of the spectrum user agreement. The Commission will also consider complaints filed against a Guard Band Manager for violating the Communications Act or the Commission's regulations or policies. When there is a dispute between a Guard Band Manager, or its spectrum user, and a non-contracting party, and the Guard Band Manager is unable or unwilling to resolve such dispute in a timely fashion, the non-contracting party may file a complaint with the Commission pursuant to § 1.41 of this chapter.

§ 27.607 Performance requirements and annual reporting requirement.

(a) Guard Band Managers are subject to the performance requirements specified in § 27.14(a).

(b) Guard Band Managers are required to file an annual report providing the Commission with information about the manner in which their spectrum is being utilized. Such reports shall be filed with the Commission on a calendar year basis, no later than the March 1 following the close of each calendar year, unless another filing date is specified by Public Notice.

(c) Guard Band Managers must, at a minimum, include the following information in their annual reports:

(1) The total number of spectrum users and the number of those users that are affiliates of the Guard Band Manager;

(2) The amount of the Guard Band Manager's spectrum being used by the Guard Band Manager's affiliates in any part of the licensed service area;

(3) The amount of Guard Band Manager's spectrum being used pursuant to agreements with unaffiliated third parties;

(4) The nature of the spectrum use of the Guard Band Manager's customers; and

(5) The length of the term of each spectrum user agreement.

(d) The specific information that Guard Band Managers will provide and the procedures that they will follow in submitting their annual reports will be announced in a Public Notice issued by the Wireless Telecommunications Bureau.

[FR Doc. 00–8144 Filed 4–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–574; MM Docket No. 99–181; RM–9584; RM–9700]

Radio Broadcasting Services; Merced and North Fork, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a proposal filed on behalf of San Joaquin Radio Company, LLC, licensee of Station KAJZ(FM), Merced, California, the Commission substitutes Channel 300B1 for Channel 299A at Merced and reallots Channel 300B1 to North Fork, California, as that community's first local aural transmission service, and modifies the license for Station KAJZ(FM) accordingly. (A competing proposal filed on behalf of Mountain West Broadcasting to allot Channel 300A to Easton, California, was denied.) *See* 64 FR 30291, June 7, 1999. Coordinates used for Channel 300B1 at North Fork are 37–14–39 NL and 119–33–58 WL.

Additionally, this document makes an editorial amendment to 47 CFR Part 73, Radio Broadcast Services, § 73.202(b), Table of FM Allotments, to include Channel 268B at Merced, California. Although Channel 268B was allotted to Merced in the original Table of Allotments, and is licensed at that community, it does not appear in § 73.202(b). With this action, the proceeding is terminated.

DATES: Effective May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–181, adopted March 8, 2000, and released March 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Information Center (Room CY–A257), 445 Twelfth Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., 1231 20th Street, NW., Washington, DC 20036, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Channel 268B at Merced.

3. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 299A at Merced.

4. Section 73.202(b), the Table of FM Allotments under California is amended by adding North Fork, Channel 300B1.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–8174 Filed 4–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–649; MM Docket No. 99–9; RM–9434, RM–9597]

Radio Broadcasting Services; Lancaster, Groveton and Milan, NH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of North Country Radio, Inc., allots Channel 229A to Groveton, NH, as the community's first local aural service, and denies the request of Dana Puopolo to allot Channel 229A to Lancaster, NH, as the community's second local FM service. *See* 64 FR 5625, February 4, 1999. This action also dismisses the counterproposal of Barry P. Lunderville to allot Channel 229A to Milan, NH, as the community's first local aural service, because Channel 229A, at the proposed coordinates, cannot provide the entire community with the required 70 dBu signal due to the intervening terrain. In addition, the counterproposal did not comply with the subscription and verification

requirements of Section 1.52 of the Commission's Rules. Channel 229A can be allotted to Groveton in compliance with the Commission's minimum distance separation requirements with a site restriction of 10 kilometers (6.2 miles) northwest, at coordinates 44–33–55 North Latitude; 71–37–48 West Longitude, to avoid a short-spacing to Station WMWV, Channel 228A, Conway, NH. Canadian concurrence in the allotment, as a specially negotiated short-spaced allotment with respect to unoccupied and unapplied-for Channel 229A at East Angus, Quebec, has been obtained since Groveton is located within 320 kilometers (200 miles) of the U.S.-Canadian border. A filing window for Channel 229A at Groveton will not be opened at this time. Instead, the issue of opening a filing window for this channel will be addressed by the Commission in a subsequent order.

DATES: Effective May 8, 2000.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–9, adopted March 15, 2000, and released March 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334. 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under New Hampshire, is amended by adding Groveton, Channel 229A.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–8170 Filed 4–3–00; 8:45 am]

BILLING CODE 6717–01–P

Proposed Rules

Federal Register
Vol. 65, No. 65
Tuesday, April 4, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 28

[CN–00–003]

RIN 0581–AB82

Grade Standards and Classification for American Pima Cotton

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Marketing Service (AMS) is proposing to revise the official standards for the grade of American Pima to provide for the separation of grade into its chief components of color and leaf. This change was requested by representatives of the American Pima industry. Each component of the composite grade would stand on its own so that its effect on end use value or processing capability can be fully and separately evaluated. The separation of grade into color and leaf will require a change in three of the physical standards for American Pima cotton as currently maintained by USDA. The proposed change will enhance the Agency's ability to provide useful and cost-effective classification, standardization and market news services for American Pima cotton.

DATES: Comments must be received on or before close of business May 4, 2000 to be sure of consideration.

ADDRESSES: Written comments on this proposed rule should be sent to the Cotton Program, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Lee Cliburn, Cotton Program, AMS, USDA, Room 2641–S, P.O. Box 96456, Washington, DC 20090–6456. (202–720–2145)

SUPPLEMENTARY INFORMATION: This proposed rule has been determined to be not significant for purposes of Executive Order 12866, therefore, it has not been reviewed by the Office of Management and Budget (OMB).

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any state or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) AMS has considered the economic impact of this action on small entities and has determined that its implementation will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory actions to the scale of businesses subject to such actions in order that small businesses will not be disproportionately burdened. There are an estimated 1,000 growers of Pima cotton in the U.S. who voluntarily use the AMS cotton classing services annually, and the majority of these entities are small businesses under the criteria established by the Small Business Administration (13 CFR 121.201). The change in procedure will not significantly affect small entities as defined in the RFA because:

(1) Classification will continue to be based upon the Official Standards for American Pima Cotton established and maintained by the Department;

(2) The change in official American Pima cotton standards will be consistently implemented for all American Pima cotton classed by USDA, with each component, color and leaf, standing on its own so that its effect on end use value or processing capability can be fully and separately evaluated. Therefore, it will not adversely affect competition in the marketplace; and

(3) The use of cotton classification services is voluntary. In 1999, 645,000 bales of American Pima cotton were produced—the largest Pima crop on record, and virtually all of them were submitted by growers for USDA classification. Over the last ten years, U.S. production of Pima has averaged 440,000 bales annually.

Paperwork Reduction Act

In compliance with OMB regulations (5 CFR part 1320) which implement the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), the information collection requirements contained in the provisions to be amended by this proposed rule have been previously approved by OMB and were assigned OMB control number 0581–0009 under the Paperwork Reduction Act.

Background

Pursuant to the authority contained in the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*), the Secretary of Agriculture maintains official cotton standards of the United States for the grades of American Pima cotton. These standards are used for the classification of American Pima cotton and provide a basis for the determination of value for commercial purposes. American Pima cotton is extra long staple cotton—1¼ to 1⁹⁄₁₆ inches—from the botanical group Gossypium barbadense, and it accounts for only 3–5 percent of the total U.S. cotton crop each year.

The existing official cotton standards for the grades of American Pima cotton are listed and described in the regulation at 7 CFR 28.501–28.507. There are six physical standards represented by practical forms, and one descriptive standard for which practical forms are not made. The descriptive standard describes cotton which is lower in grade than that represented by the physical standards.

The first grade standards for American Pima (American Egyptian) cotton were promulgated by USDA in 1918. They have been revised several times since, mainly because of changing varietal characteristics and harvesting and ginning practices. The last complete revision of the standards was published in the **Federal Register** of June 18, 1985 (50 FR 25198), and became effective in 1986.

Pursuant to the United States Cotton Standards Act, any standard change or replacement to the standards shall become effective not less than one year after the date promulgated. It is anticipated that the changes proposed in this document, if adopted, would be implemented to coincide with the beginning of the 2001 crop year.

Need for Revisions

The current classification system for American Pima combines color and leaf and some extraneous matter into a composite grade, complicating the individual evaluation of the two primary components of color and leaf. Separation of the composite grade into its chief components of color and leaf and removal of any extraneous matter from the component standards would permit each quality factor to be recognized clearly on its own, and its effect on end use value or processing capability could be fully and separately evaluated. Manufacturers would be able to determine the utility value of each component and any premiums and discounts. American Upland cotton has been classified by separate color and leaf grades since 1993. The success of this separation for American Upland cotton prompted the representatives of the American Pima industry to request this change in the standards for American Pima. The USDA's ability to provide useful and cost-effective cotton classification, standardization, and market news services would be enhanced by this proposed change.

Proposed Revisions

The existing official cotton standards for the grades of American Pima cotton listed and described in the regulations at (7 CFR 28.501–28.507) would be revised.

There would be established seven official cotton standards for color grades of American Pima cotton. Of these seven standards, six would be physical standards represented by practical forms and one would be descriptive for the lowest quality color for which practical forms are not made. The six practical forms would have the same color ranges as currently maintained in the corresponding physical standards for the grades of American Pima cotton for Grade No. 1, Grade No. 2, Grade No. 3, Grade No. 4, Grade No. 5, and Grade No. 6 described at 7 CFR 28.501, 28.502, 28.503, 28.504, 28.505, and 28.506. The descriptive color standard for which practical forms would not be made would have the same color as currently described in the standards for the grade of American Pima cotton for Grade No. 7 at 7 CFR 28.507, which is any color inferior to Grade No. 6.

There would be established seven official cotton standards for leaf grade of American Pima cotton. Of these, six would be physical standards represented by practical forms and one would be a descriptive standard to describe the lowest quality cotton for which practical forms would not be made. The physical standards for leaf grades would each have the same leaf content ranges as currently maintained in the corresponding physical standards for the grades of American Pima cotton for Grade No. 1, Grade No. 2, Grade No. 3, Grade No. 4, Grade No. 5, and Grade No. 6 described at 7 CFR 28.501, 28.502, 28.503, 28.504, 28.505, and 28.506. Grade No. 7 is described at 28.507, and no physical standard will be made for it because it will continue to include all ranges of leaf content inferior to Grade No. 6. The standards for Grade No. 4, Grade No. 5, Grade No. 6, and Grade No. 7 would also be changed to remove the bark now present in those standards. After removal of bark from the standards, the presence of bark, which is extraneous matter, would be noted on classification records without regard to the grades assigned as any other extraneous matter is listed under the current standard. American Pima cotton will not be reduced in grade due to the presence of any extraneous matter when it is present in any grade.

For practical considerations the color standards and the leaf standards would be represented by the same set of physical samples. There would be one container for Grade No. 1 Color and Grade No. 1 Leaf, one container for Grade No. 2 Color and Grade No. 2 Leaf, one container for Grade No. 3 Color and Grade No. 3 Leaf, one container for Grade No. 4 Color and Grade No. 4 Leaf, one container for Grade No. 5 color and Grade No. 5 Leaf, and one container for Grade No. 6 Color and Grade No. 6 Leaf.

The definition of official standards in § 28.2 (p) would be changed to reflect the separation of color and leaf grades for American Upland and American Pima cotton.

A new section, § 28.521, would be added to state that Color Grade designation shall be made independently of the leaf content, and Leaf Grade designation shall be made independently of the color content. Section 28.522 would be added for explanatory terms that would include preparation and extraneous matter.

The table of symbols and code numbers used in lieu of cotton grade names in 7 CFR 28.525 would be revised to reflect the proposed changes.

Interested persons are invited to comment on the proposed changes to the American Pima cotton standards. A thirty day comment period is deemed appropriate because (1) pursuant to the United States Cotton Standards Act, any standard change or replacement to the standards shall become effective not less than one year after the date promulgated; and (2) it is anticipated that the changes proposed in this document, if adopted, would be implemented to coincide with the beginning of the 2001 crop year.

List of Subjects in 7 CFR Part 28

Administrative practice and procedure, Cotton, Cotton Samples, Grades, Market News, Reporting and recordkeeping requirements, Standards, Staples, Testing, Warehouses.

For the reasons set out in the preamble, it is proposed to amend title 7 CFR part 28, subpart A and C as follows:

1. The authority citation for 7 CFR part 28, Subpart A continues to read as follows:

Authority: Sec. 5, 50 Stat. 62, as amended (7 U.S.C. 55); sec. 10, 42 Stat. 1519 (7 U.S.C. 61).

2. In § 28.2, paragraph (p) is revised to read as follows:

§ 28.2 Terms defined.

* * * * *

(p) Official Cotton Standards. Official Cotton Standards of the United States for the color grade and the leaf grade of American upland cotton, the color grade and the leaf grade of American Pima cotton, the length of staple, and fiber property measurements, adopted or established pursuant to the Act, or any change or replacement thereof.

* * * * *

3. The authority citation for Part 28, Subpart C—Standards, Official Cotton Standards of the United States for the Grade of American Pima Cotton, would continue to read as follows:

Authority: Sections 28.501 to 28.507 and 28.511 to 28.517 issued under Sec. 10, 42 Stat. 1519 (7 U.S.C. 61). Interpret or apply sec. 6, 42 Stat. 1518, as amended, sec. 4854, 68A Stat. 580; 7 U.S.C. 56, 26 U.S.C. 4854.

4. The undesignated centerheading following § 28.482 and §§ 28.501 through 28.507 would be revised to read as follows (§§ 25.508 through 25.510 continue to be reserved):

Official Cotton Standards of the United States for the Color Grade of American Pima Cotton

28.501 Color Grade No. 1.
28.502 Color Grade No. 2.
28.503 Color Grade No. 3.
28.504 Color Grade No. 4.
28.505 Color Grade No. 5.
28.506 Color Grade No. 6.
28.507 Color Grade No. 7.
28.508—28.510 [Reserved]

Official Cotton Standards of the United States for the Color Grade of American Pima Cotton

§ 28.501 Color Grade No. 1.

Color grade No. 1 shall be American Pima cotton which in color is within the range represented by a set of samples in the custody of the U. S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Color Grade No. 1, effective July 1, 1986."

§ 28.502 Color Grade No. 2.

Color grade No. 2 shall be American Pima cotton which in color is within the range represented by a set of samples in the custody of the U. S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Color Grade No. 2, effective July 1, 1986."

§ 28.503 Color Grade No. 3.

Color grade No. 3 shall be American Pima cotton which in color is within the range represented by a set of samples in the custody of the U. S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Color Grade No. 3, effective July 1, 1986."

§ 28.504 Color Grade No. 4.

Color grade No. 4 shall be American Pima cotton which in color is within the range represented by a set of samples in the custody of the U. S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Color Grade No. 4, effective July 1, 1986."

§ 28.505 Color Grade No. 5.

Color grade No. 5 shall be American Pima cotton which in color is within the range represented by a set of samples in the custody of the U. S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Color Grade No. 5, effective July 1, 1986."

§ 28.506 Color Grade No. 6.

Color grade No. 6 shall be American Pima cotton which in color is within the range represented by a set of samples in the custody of the U. S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Color Grade No. 6, effective July 1, 1986."

§ 28.507 Color Grade No. 7.

American Pima cotton which in color is inferior to Color Grade No. 6 shall be designated as "Color Grade No. 7."

5. An undesignated centerheading following §§ 28.508–28.510 [Reserved] and §§ 28.511 through 28.517 would be added to read as follows:

Official Cotton Standards of the United States for the Leaf Grade of American Pima Cotton

28.511 Leaf Grade No. 1.
28.512 Leaf Grade No. 1.
28.513 Leaf Grade No. 1.
28.514 Leaf Grade No. 1.
28.515 Leaf Grade No. 1.
28.516 Leaf Grade No. 1.
28.517 Leaf Grade No. 1.

Official Cotton Standards of the United States for the Leaf Grade of American Pima Cotton

§ 28.511 Leaf Grade No. 1.

Leaf grade No. 1 shall be American Pima cotton which in leaf is within the range represented by a set of samples in the custody of the U. S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Leaf Grade No. 1, effective July 1, 1986."

§ 28.512 Leaf Grade No. 2.

Leaf grade No. 2 shall be American Pima cotton which in leaf is within the range represented by a set of samples in the custody of the U. S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Leaf Grade No. 2, effective July 1, 1986."

§ 28.513 Leaf Grade No. 3.

Leaf grade No. 3 shall be American Pima cotton which in leaf is within the range represented by a set of samples in the custody of the U. S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Leaf Grade No. 3, effective July 1, 1986."

§ 28.514 Leaf Grade No. 4.

Leaf grade No. 4 shall be American Pima cotton which in leaf is within the range represented by a set of samples in the custody of the U. S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Leaf Grade No. 4, effective July 1, 2001."

§ 28.515 Leaf Grade No. 5.

Leaf grade No. 5 shall be American Pima cotton which in leaf is within the range represented by a set of samples in the custody of the U. S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Leaf Grade No. 5, effective July 1, 2001."

§ 28.516 Leaf Grade No. 6.

Leaf grade No. 6 shall be American Pima cotton which in leaf is within the range represented by a set of samples in the custody of the U. S. Department of Agriculture in a container marked "Original Official Cotton Standards of the United States, American Pima, Leaf Grade No. 6, effective July 1, 2001."

§ 28.517 Leaf Grade No. 7.

American Pima cotton which in leaf is inferior to Leaf Grade No. 6 shall be designated as "Leaf Grade No. 7."

6. An undesignated centerheading following § 28.517 and §§ 28.521 and 28.522 would be added to read as follows:

Application of Standards and Explanatory Terms

28.521 Application of color and leaf grade standards
28.522 Explanatory terms

Application of Standards and Explanatory Terms

§ 28.521 Application of color and leaf grade standards.

American Pima cotton which in color is within the range of the color standards established in this part shall be designated according to the color standard irrespective of the leaf content. American Pima cotton which in leaf is within the range of the leaf standards established in this part shall be designated according to the leaf standard irrespective of the color content.

§ 28.522 Explanatory terms.

(a) The term preparation is used to describe the degree of smoothness or roughness with which cotton in ginned and the relative neppiness or nappiness of the ginned lint. Normal preparation for any color grade of American Pima cotton for which there is a physical color standard shall be that found in the physical color standard. If the prep is other than normal, it shall be entered on the classification record.

(b) Presence of extraneous matter, such as bark, grass, oil, etc. in the sample, shall be noted. Explanatory terms considered necessary to adequately describe the presence of the extraneous matter will be entered on the classification record.

7. The authority citation for § 28.525, would continue to read as follows:

Authority: Sec. 28.525 issued under Sec. 10, 42 Stat. 1519 (U.S.C. 61). Interpret or apply Sec. 6, 42 Stat. 1518, as amended (7 U.S.C. 56).

8. In § 28.525, paragraph (d) would be redesignated as paragraph (e), paragraph (c) would be revised, and a new paragraph (d) would be added to read as follows:

§ 28.525 Symbols and code numbers.

* * * * *

(c) Symbols and Code Numbers for Color Grades of American Pima Cotton.

* * * * *

Full grade name	Symbol	Code No.
Color Grade No. 1 ...	AP C1	01
Color Grade No. 2 ...	AP C2	02
Color Grade No. 3 ...	AP C3	03
Color Grade No. 4 ...	AP C4	04
Color Grade No. 5 ...	AP C5	05
Color Grade No. 6 ...	AP C6	06
Color Grade No. 7 ...	AP C7	07

(d) Symbols and Code Numbers for Leaf Grades of American Pima Cotton.

Full grade name	Symbol	Code No.
Leaf Grade No. 1	AP L1	1
Leaf Grade No. 2	AP L2	2
Leaf Grade No. 3	AP L3	3
Leaf Grade No. 4	AP L4	4
Leaf Grade No. 5	AP L5	5
Leaf Grade No. 6	AP L6	6
Leaf Grade No. 7	AP L7	7

* * * * *

Dated: March 30, 2000.

Kathleen A. Merrigan,

Administrator, Agricultural Marketing Service.

[FR Doc. 00–8298 Filed 4–3–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1218

[FV–99–702–PR3]

Blueberry Promotion, Research, and Information Order; Reopening and Extension of Voting Period

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and Referendum Order; Amendment to Referendum Order.

SUMMARY: This action reopens and extends the voting period for the referendum during which cultivated blueberry producers and importers will vote on whether the Blueberry Promotion, Research, and Information Order will become effective. The voting period has been extended an additional 21 days to conclude on April 14, 2000, rather than on March 24, 2000. This action will better facilitate voter participation.

DATES: In order to be eligible to vote, blueberry producers and importers must have produced or imported 2,000 pounds or more of cultivated blueberries during the period from January 1, 1999, through December 31, 1999 (representative period). The voting period for the referendum will be March 13 through April 14, 2000.

ADDRESSES: Oliver L. Flake, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535–S, Stop 0244, Washington, DC 20250–0244.

FOR FURTHER INFORMATION CONTACT: Oliver L. Flake at the above address or telephone toll free (888) 720–9917.

SUPPLEMENTARY INFORMATION: Previous documents in this proceeding: Proposed rule on referendum procedures published in the July 22, 1999, issue of the **Federal Register** [64 FR 39803]; Proposed Rule on the Blueberry Promotion, Research, and Information Order, which included a Referendum Order, published in the February 15, 2000, issue of the **Federal Register** [65 FR 7657]; a final rule on referendum procedures published in the February 15, 2000, issue of the **Federal Register** [65 FR 7652].

The February 15, 2000, referendum order [65 FR 7657] specified that the voting period would be from March 13, 2000, through March 24, 2000. However, throughout the voting period, the U.S. Department of Agriculture (USDA) has received numerous telephone calls from potentially eligible voters who did not receive ballots. These calls continued through the last days of the voting period. Therefore, in order to better facilitate full voter participation in the referendum, USDA is extending the voting period through April 14, 2000. In addition, USDA will continue to mail ballots to those potentially eligible voters who request a ballot and others as they become known.

Section 518 of the Commodity Promotion, Research, and Information Act of 1996 (Act) requires that a referendum be conducted among eligible blueberry producers and importers as to whether they favor the Order. The proposed Order [65 FR 7657] would become effective if it is approved by a majority of producers and importers who also represent a majority of the volume of blueberries represented in the referendum.

Any eligible producer or importer who has not received a ballot and related material should telephone the following toll-free telephone number to speak with a referendum agent: 1 (888) 720–9917.

Amended Referendum Order

It is hereby directed that the referendum Order published in the **Federal Register** on February 15, 2000, at 65 FR 7657, be amended so that the voting period for the referendum conducted among eligible blueberry producers and importers to determine whether they favor implementation of the Blueberry Promotion, Research, and Information Order be reopened and extended.

Accordingly, the referendum shall be conducted from March 13 through April 14, 2000. Ballots were mailed to all known cultivated blueberry producers and importers. Eligible voters who did not receive a ballot by mail should call the following toll-free telephone number to receive a ballot: 1 (888) 720–9917. All ballots will be subject to verification.

In order to be eligible to vote, blueberry producers and importers must have produced or imported 2,000 pounds or more of cultivated blueberries during the period from January 1, 1999, through December 31, 1999 (representative period). Ballots must be received by the referendum agents no later than April 14, 2000, to be counted.

Oliver L. Flake and Martha B. Ransom, Research and Promotion Branch, Fruit and Vegetable Programs, Agricultural Marketing Service, U.S. Department of Agriculture, Room 2535–S, Stop 0244, Washington, DC 20250–0244, are designated as the referendum agents of the Secretary of Agriculture to conduct the referendum. The Procedure for the Conduct of the Referenda in Connection with the Blueberry Promotion, Research, and Consumer Information Order, 7 CFR 1218.100–1218.107, which was published separately in the **Federal Register** [65 FR 7652], shall be used to conduct the referendum.

List of Subjects in 7 CFR Part 1218

Administrative practice and procedure, Advertising, Blueberries, Consumer information, Marketing agreements, Blueberry promotion, Reporting and Recordkeeping requirements.

Authority: U.S.C. 7401–7425

Dated: March 30, 2000.

Kathleen A. Merrigan,

Administrator.

[FR Doc. 00–8297 Filed 3–31–00; 10:40 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE159; Notice No. 23–00–01–SC]

Special Conditions: Cessna Models; Diamond Model; Mooney Models; Piper Models; Raytheon Models; Airplanes Modified by Installation of Teledyne Continental Motors Full Authority Digital Engine Control (FADEC) System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes as modified by Teledyne Continental Motors to include a FADEC System. These airplanes, as modified, will have a novel or unusual design feature associated with the installation of an engine that uses an electronic engine control system in place of the engine's mechanical system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before May 4, 2000.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE–7, Attention: Rules Docket, Docket No. CE159, DOT Building, 901 Locust, Kansas City, Missouri 64106, or delivered in duplicate to the Regional Counsel at the above address. Comments must be marked: Docket No. CE159. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Randy Griffith, Aerospace Engineer, Federal Aviation Administration, Aircraft Certification Service, Small Airplane Directorate, ACE–111, 901 Locust, Room 301, Kansas City, Missouri, 816–329–4126, fax 816–329–4090.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. If a comment applies to a specific airplane model, please identify the model in the comment. The proposals described in this notice may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must include with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to CE159." The postcard will be date stamped and returned to the commenter.

Background

On January 7, 2000, Teledyne Continental Motors applied for supplemental type certificates for the installation of engines which use an electronic engine control system in place of the hydromechanical control system for the Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes. Affected airplane models are currently approved under the following Type Certificate Numbers:

Model	Type Certificate No.
Cessna Models 172/K/L/M/N/P.	3A12
Cessna Models 177/A/B.	A13CE
Cessna Model 177RG.	A20CE
Cessna Models 180/E/F/G/H/J/K.	5A6
Cessna Models 182/E/F/G/H/J/K/L/M/N/P/Q/R.	3A13
Cessna Models 185/A/C/D/E/F.	3A24
Cessna Models 188/A/B/C.	A9CE
Cessna Models P206/A/B/C/D/E, U206A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E.	A4CE
Cessna Models 207/A, T207/A.	A16CE
Cessna Models 210/K/L/M/N/R, T210/K/L/M/N/R.	3A21
Cessna Model 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R.	3A10
Cessna Models 320/A/B/C/D/E/F/–1, 340/A.	3A25
Cessna Model 337/A/B/C/D/E/F/G/H.	A6CE
Cessna Models 401/A/B, 411/A, 414/A, 421/A/B/C.	A7CE
Diamond Model DA20–C1.	TA4CH
Mooney Models M20/C/D/E/F/J/K/R.	2A3
Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T.	2A13
Piper Model PA–34–200/–200T/–220T.	A7SO
Piper Model PA–46–310P/–350P.	A25SO
Raytheon Models F33, V35, A36.	3A15
Raytheon Models 58, 95–C55, D55, E55.	3A16
Raytheon Model 58P	A23CE

All the airplanes are small, normal category airplanes powered with either single or dual reciprocating engines. The modification to the airplanes involves replacement of the engine with a new engine model that incorporates an electronic engine control system with full engine authority capability. The new engine model is accomplished with either an amended type certificate to the

engine if the engine is a Teledyne Continental engine or a supplemental type certificate to the engine if the engine is a Lycoming engine. The airframe systems will also be modified as necessary to accommodate the engine's new control system.

Type Certification Basis

Under the provisions of § 21.101, Teledyne Continental Motors must show that affected airplane models, as changed, continue to meet the applicable provisions of the regulations incorporated by reference in Type Certificate Numbers 3A12, A13CE, A20CE, 5A6, 3A13, 3A24, A9CE, A4CE, A16CE, 3A21, 3A10, 3A25, A6CE, A7CE, TA4CH, 2A3, 2A13, A7SO, A25SO, 3A15, 3A16, A23CE or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis" and can be found in the following Type Certificate Numbers:

Model	Type Certificate Number
Cessna Models 172/K/L/M/N/P.	3A12 Rev 65; Dec 15, 99
Cessna Models 177/A/B	A13CE Rev 23; Oct 15, 94
Cessna Model 177RG	A20CE Rev 18; Oct 15, 94
Cessna Models 180/E/F/G/H/J/K.	5A6 Rev 62; Jun 15, 95
Cessna Models 182/E/F/G/H/J/K/L/M/N/P/Q/R.	3A13 Rev 56; Dec 15, 99
Cessna Models 185/A/C/D/E/F.	3A24 Rev 36; Nov 15, 99
Cessna Models 188/A/B/C	A9CE Rev 26; Oct 15, 95
Cessna Models P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E.	A4CE Rev 37; Dec 15, 94
Cessna Models 207/A, T207/A.	A16CE Rev 20; Oct 15, 94
Cessna Models 210/K/L/M/N/R, T210/K/L/M/N/R.	3A21 Rev 45; Aug 15, 96
Cessna Model 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R.	3A10 Rev 61; Nov 15, 97
Cessna Models 320/A/B/C/D/E/F/–1, 340/A.	3A25 Rev 25; Aug 15, 94
Cessna Model 337/A/B/C/D/E/F/G/H.	A6CE Rev 37; Oct 15, 94
Cessna Models 401/A/B, 411/A, 414/A, 421/A/B/C.	A7CE Rev 44; May 15, 99
Diamond Model DA20–C1	TA4CH Rev 4; Apr 8, 99
Mooney Models M20/C/D/E/F/J/K/R.	2A3 Rev 46; Aug 10, 99
Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T.	2A13 Rev 44; Oct 15, 97
Piper Model PA–34–200/–200T/–220T.	A7SO Rev 13; Dec 18, 96
Piper Model PA–46–310P/–350P.	A25SO Rev 8; Mar 4, 99
Raytheon Models F33, V35, A36.	3A15 Rev 88; Jan 15, 00
Raytheon Models 58, 95–C55, D55, E55.	3A16 Rev 80; Jan 18, 00
Raytheon Model 58P	A23CE Rev 14; Apr 15,96

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 23) do not contain adequate or appropriate safety standards for affected airplane models because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Special conditions are initially applicable to the model for which they are issued. Should the applicant apply for a supplemental type certificate to modify any other model included on the same type certificate to incorporate the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

The Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes will incorporate an engine that includes an electronic control system with full engine authority capability. The airframe systems will also be modified as necessary to accommodate the engine's new control system.

Many advanced electronic systems are prone to either upsets or damage, or both, at energy levels lower than analog systems. The increasing use of high power radio frequency emitters mandates requirements for improved high intensity radiated fields (HIRF) protection for electrical and electronic equipment. Since the electronic engine control system developed by Teledyne Continental Motors will perform functions in which a failure may cause an unsafe condition, provisions for protection from the effects of HIRF fields should be considered and, if necessary, incorporated into the airplane design data. The FAA policy contained in Notice 8110.71, dated April 2, 1998, establishes the HIRF energy levels that airplanes will be exposed to in service. The guidelines set forth in this Notice are the result of an Aircraft Certification Service review of existing policy on HIRF, in light of the ongoing work of the ARAC Electromagnetic Effects Harmonization Working Group (EEHWG). The EEHWG adopted a set of HIRF environment levels in November 1997 that were agreed upon by the FAA, JAA, and industry participants. As a result, the HIRF environments in this notice reflect the environment levels recommended by this working group. This notice states that a full authority digital engine control is an example of a system that should address the HIRF environments.

Even though each control system will be certificated as part of the engine, the installation of an engine with an electronic control system requires evaluation due to the possible effects on or by other airplane systems (e.g., radio interference with other airplane electronic systems, shared engine and airplane power sources). The regulatory requirements in 14 CFR Part 23 for evaluating the installation of complex systems, including electronic systems, are contained in § 23.1309. However, when § 23.1309 was developed, the use of electronic control systems for engines was not envisioned; therefore, the § 23.1309 requirements were not applicable to systems certificated as part of the engine (reference § 23.1309(f)(1)). Also, electronic control systems often require inputs from airplane data and power sources and outputs to other airplane systems (e.g., automated cockpit powerplant controls such as mixture setting). Although the parts of the system that are not certificated with the engine could be evaluated using the criteria of § 23.1309, the integral nature of systems such as these makes it unfeasible to evaluate the airplane portion of the system without including the engine portion of the system. However, § 23.1309(f)(1) again prevents complete evaluation of the installed airplane system since evaluation of the engine system's effects is not required.

Therefore, special conditions are proposed for the Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes as modified by Teledyne Continental Motors. Should Teledyne Continental Motors apply at a later date for a supplemental type certificate to modify any other model included on Type Certificate Numbers 3A12, A13CE, A20CE, 5A6, 3A13, 3A24, A9CE, A4CE, A16CE, 3A21, 3A10, 3A25, A6CE, A7CE, TA4CH, 2A3, 2A13, A7SO, A25SO, 3A15, 3A16, A23CE to incorporate the same novel or unusual design feature, the special conditions would apply to that model as well under the provisions of § 21.101(a)(1).

Conclusion

This action affects only certain novel or unusual design features on Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes. It is not a rule of general applicability. It is only applicable to airplanes being modified by Teledyne Continental Motors to include this engine system.

List of Subjects in 14 CFR Part 23

Aircraft, Aviation safety, Signs and symbols.

Citation

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113 and 44701; 14 CFR 21.16 and 21.101 and 14 CFR 11.28 and 11.29(b).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for Cessna Models 172/K/L/M/N/P, 177/A/B/RG, 180/E/F/G/H/J/K, 182/E/F/G/H/J/K/L/M/N/P/Q/R, 185/A/C/D/E/F, 188/A/B/C, P206/A/B/C/D/E, U206/A/B/C/D/E/F/G, TU206/A/B/C/D/E/F/G, TP206/A/B/C/D/E, 207/A, T207/A, 210/K/L/M/N/R, T210/K/L/M/N/R, 310/A/B/C/D/E/F/G/H/I/J/J–1/K/L/N/P/Q/R, 320/A/B/C/D/E/F/–1, 337/A/B/C/D/E/F/G/H, 340/A, 401/A/B, 411/A, 414/A, 421/A/B/C; Diamond Model DA20–C1; Mooney Models M20/C/D/E/F/J/K/R; Piper Models PA–28–180/–201T, PA–28R–201T, PA–28RT–201T, PA–34–200/–200T/–220T, PA–46–310P/–350P; and Raytheon Models F33, V35, A36, 95–C55, D55, E55, 58, 58P airplanes modified by Teledyne Continental Motors to include an engine with a FADEC System.

1. *High Intensity Radiated Fields (HIRF) Protection.* In showing compliance with 14 CFR Part 21 and the airworthiness requirements of 14 CFR Part 23, protection against hazards caused by exposure to HIRF fields for the full authority digital engine control system, which performs functions in which a failure may cause an unsafe condition to the airplane, must be considered. To prevent this occurrence, the electronic engine control system, must be designed and installed to ensure that the operation and operational capabilities of this critical system isare not adversely affected when the airplane is exposed to high energy radio fields.

At this time, the FAA and other airworthiness authorities are unable to precisely define or control the HIRF energy level to which the airplane will be exposed in service; therefore, the FAA hereby defines two acceptable interim methods for complying with the requirement for protection of systems that perform functions in which a failure may cause an unsafe condition.

(1) The applicant may demonstrate that the operation and operational capability of the installed electrical and electronic systems that perform functions in which a failure may cause an unsafe condition, are not adversely affected when the aircraft is exposed to the external HIRF threat environment defined in the following table:

Frequency	Field Strength (volts per meter)	
	Peak	Average
10 kHz–100 kHz	50	50
100 kHz–500 kHz	50	50
500 kHz–2 MHz	50	50
2 MHz–30 MHz	100	100
30 MHz–70 MHz	50	50
70 MHz–100 MHz	50	50
100 MHz–200 MHz	100	100
200 MHz–400 MHz	100	100
400 MHz–700 MHz	700	50
700 MHz–1 GHz	700	100
1 GHz–2 GHz	2000	200
2 GHz–4 GHz	3000	200
4 GHz–6 GHz	3000	200
6 GHz–8 GHz	1000	200
8 GHz–12 GHz	3000	300
12 GHz–18 GHz	2000	200
18 GHz–40 GHz	600	200

The field strengths are expressed in terms of peak root-mean-square (rms) values.

or,

(2) The applicant may demonstrate by a system test and analysis that the electrical and electronic systems that perform functions in which a failure may cause an unsafe condition can withstand a minimum threat of 100 volts per meter peak electrical strength, without the benefit of airplane structural shielding, in the frequency range of 10 KHz to 18 GHz.

When using this test to show compliance with the HIRF requirements, no credit is given for signal attenuation due to installation.

2. *Electronic Engine Control System.* The installation items that affect the electronic engine control system must comply with the requirements of

§ 23.1309 (a) through (e) at Amendment 23–41.

Issued in Kansas City, Missouri on March 22, 2000.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8231 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–13–P st

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 99–ANM–12]

Proposed Revision of Class E Airspace, North Bend, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: This proposal would amend the North Bend, OR, Class E airspace to accommodate the development of a revised Standard Instrument Approach Procedure (SIAP) at the North Bend Municipal Airport, North Bend, OR.

DATES: Comments must be received on or before May 19, 2000.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace Branch, ANM–520, Federal Aviation Administration, Docket No. 99–ANM–12, 1601 Lind Avenue SW, Renton, Washington 98055–4056.

The official docket may be examined in the office of the Assistant Chief Counsel for the Northwest Mountain Region at the same address.

An informal docket may also be examined during normal business hours in the office of the Manager, Air Traffic Division, Airspace Branch, at the address listed above.

FOR FURTHER INFORMATION CONTACT: Dennis Ripley, ANM–520.6, Federal Aviation Administration, Docket No. 99–ANM–12, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 99–ANM–12." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Airspace Branch, ANM–520, 1601 Lind Avenue SW, Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at North Bend, OR, in order to accommodate a revised SIAP to the North Bend Municipal Airport, North Bend, OR. This amendment would provide additional airspace at North Bend, OR, to meet current criteria standards associated with SIAP holding patterns. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. The intended effect of this proposal is designed to provide for the safe and efficient use of the navigable airspace. This proposal would promote safe flight operations under Instrument Flight Rules (IFR) at the North Bend Airport and between the terminal and en route transition stages.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above the surface of the earth, are published Paragraph 6005, of FAA Order 7400.9G dated September 1, 1999, and effective September 16, 1999, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [AMENDED]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9G, Airspace Designations and Reporting Points, dated September 1, 1999, and effective September 16, 1999, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM or E5 North Bend, OR

North Bend VORTAC

(Lat. 43°24'56"N, long. 124°10'06"W)

That airspace extending upward from 700 feet above the surface within an 8 mile radius of the North Bend VORTAC from the 142° radial, and within 2.7 miles north of the VORTAC 268° radial extending from the 8 mile radius to 11 miles west of the VORTAC, and within 1.8 miles south and 5.7 miles north of the VORTAC 241° radial extending from the 8 mile radius to 14.8 miles southwest; that airspace extending upward from 1,200 feet about the surface within a 22 mile radius of the VORTAC extending clockwise from the west edge of V–27 south of the VORTAC, to the west edge of V–287 north of the VORTAC, and within 2.2 miles southeast and 10.1 miles northwest of the VORTAC 241° radial, extending from the VORTAC to 22.2 miles southwest.

* * * * *

Issued in Seattle, Washington, on March 22, 2000.

Daniel A. Boyle,

Acting Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 00–8232 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG–103736–00]

RIN 1545–AX79

Requirement to Maintain List of Investors in Potentially Abusive Tax Shelters; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to cross-reference notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains a correction to a cross-reference notice of proposed rulemaking and notice of public hearing which were published in the **Federal Register** on Thursday, March 2, 2000 (65 FR 11271), relating to the maintenance of lists of potentially abusive tax shelters described in section 6112.

FOR FURTHER INFORMATION CONTACT: Guy Traynor at (202) 622–7180.

SUPPLEMENTARY INFORMATION:

Background

The regulations that are subject to this correction are under section 6112 of the Internal Revenue Code.

Need for Correction

As published, the regulations [REG–103736–00] contain an error in the preamble that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the publication of the notice of proposed rulemaking [REG–103736–00], which was the subject of FR Doc. 00–4847, is corrected as follows:

1. On page 1272, column 2, fifth line from the top of the column, the language "June 22, 2000," is corrected to read "June 20, 2000,".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–7918 Filed 4–3–00; 8:45 am]

BILLING CODE 4830–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–673; MM Docket No. 99–123; RM 9502]

Radio Broadcasting Services; Royston and Commerce, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; denial.

SUMMARY: The Allocations Branch denies a rulemaking petition filed by Southern Broadcasting of Athens, Inc., to reallot Channel 279C3 and to change the community of license of its Station WPUP(FM) from Royston to Commerce, Georgia. The Branch determined that the proposal would not result in a preferential arrangement of allotments. *See* 64 FR 23253, April 30, 1999. With this action, this proceeding is terminated.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Mass Media Bureau, (202) 418–2120

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–123, adopted March 23, 2000, and released March 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, D.C. 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

List of Subjects 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–8175 Filed 4–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–654; MM Docket No. 99–61; RM–9448]

Radio Broadcasting Services; Polson, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal.

SUMMARY: This document dismisses a Petition for Rule Making filed by Mountain West Broadcasting requesting the allotment of Channel 259C3 at Polson, Montana. *See* 64 FR 8788, February 23, 1999. With this action, this proceeding is terminated.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 99–61, adopted March 15, 2000, and released March 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–8173 Filed 4–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–646, MM Docket No. 00–54, RM–9835]

Radio Broadcasting Services; Mount Pleasant, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Leo Ashcraft proposing the allotment of Channel 263A at Mount Pleasant, Texas, as that community's first local FM service. The coordinates for Channel 263A at Mount Pleasant are 33–09–21 and 95–01–21. There is a site restriction 5.1 kilometers (3.1 miles) west of the community.

DATES: Comments must be filed on or before May 15, 2000, and reply comments on or before May 30, 2000.

ADDRESSES: Federal Communications Commission, 445 Twelfth Street, S.W., Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Leo Ashcraft, Michael Celenza, Celenza Communications, 41 Kathleen Crescent, Coram, New York 11727.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–54, adopted March 15, 2000, and released March 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center 445 Twelfth Street, SW, Washington, DC 20554. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–8172 Filed 4–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA No. 00–645, MM Docket No. 00–53, RM–9823]

Radio Broadcasting Services; Detroit Lakes and Barnesville, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a Petition for Rule Making filed by T&J Broadcasting, Inc. proposing the reallotment of Channel 236C1 from Detroit Lakes, Minnesota, to Barnesville, Minnesota, and modification of the license for Station KFGX(FM) to specify Barnesville as its community of license. The coordinates for Channel 236C1 at Barnesville are 46–49–10 and 96–45–56. Canadian concurrence will be requested for the allotment at Barnesville. In accordance with Section 1.420(i) of the Commission's Rules, we will not accept competing expressions of interest for the use of Channel 236C1 at Barnesville.

DATES: Comments must be filed on or before May 15, 2000, and reply comments on or before May 30, 2000.

ADDRESSES: Federal Communications Commission, Washington, DC. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Clifford M. Harrington, Dawn M. Sciarrino, Amy L. Van de Kerckhove, Fisher Wayland Cooper Leader & Zaragoza L.L.P., 2001 Pennsylvania Avenue, N.W., Suite 400, Washington, D.C. 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–53, adopted March 15, 2000, and released March 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center, 445 Twelfth Street, S.W., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 1231 20th Street, NW., Washington, DC. 20036, (202) 857–3800, facsimile (202) 857–3805.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–8171 Filed 4–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–648, MM Docket No. 00–55, RM–9836]

Radio Broadcasting Services; Fredonia and Falconer, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by North County Broadcasting, Inc., licensee of Station WCQA, Fredonia, NY, seeking the reallotment of Channel 243A from Fredonia to Falconer, NY, as the community's first local aural service, and the modification of Station WCQA's license accordingly. Channel 243A can be allotted to Falconer in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.0 kilometers (2.5 miles) southwest, at coordinates 42–05–22 NL; 79–13–38 WL, to accommodate petitioner's desired transmitter site.

Canadian concurrence in the allotment is required since Falconer is located within 320 kilometers (200 miles) of the U.S.-Canadian border.

DATES: Comments must be filed on or before May 15, 2000, and reply comments on or before May 30, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW-A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Daniel C. Fischer, Vice President, North County Broadcasting, Inc., P.O. Box 1199, Jamestown, NY 14701 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–55, adopted March 15, 2000, and released March 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–8169 Filed 4–3–00; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–647, MM Docket No. 00–56, RM–9839]

Radio Broadcasting Services; Eastman, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Clyde and Connie Lee Scott, d/b/a EME Communications, seeking the allotment of Channel 221A to Eastman, GA, as the community's second local FM and third local aural service. Channel 221A can be allotted to Eastman in compliance with the Commission's minimum distance separation requirements with a site restriction of 13.1 kms (8.2 miles) west, at coordinates 32–10–20 NL; 83–18–49 WL, to avoid a short-spacing to Station WKKZ, Channel 224C2, Dublin, GA.

DATES: Comments must be filed on or before May 15, 2000, and reply comments on or before May 30, 2000.

ADDRESSES: Federal Communications Commission, 445 12th Street, S.W., Room TW–A325, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: EME Communications, 293 JC Saunders Road, Moultrie, GA 31768 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 00–56, adopted March 15, 2000, and released March 24, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 1231 20th Street, NW, Washington, DC 20036.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–8168 Filed 4–3–00; 8:45 am]

BILLING CODE 6712–01–P

Notices

Federal Register
Vol. 65, No. 65
Tuesday, April 4, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farm Service Agency

National Drought Policy Commission

AGENCY: Farm Service Agency, USDA.

ACTION: Notice of Commission Meeting.

SUMMARY: The National Drought Policy Commission (Commission) shall conduct a thorough study and submit a report to the President and Congress on national drought policy. This notice announces a meeting to be held on April 19, 2000, and April 20 if necessary. The Commission will review public comments submitted in response to its draft report, as well as discuss and approve the content of the Executive Summary and final report. The meeting is open to the public.

DATES: The Commission will conduct a meeting on April 19, 2000, from 8:00 a.m. to 5:00 p.m., and April 20, 2000, from 9:00 a.m. to 5:00 p.m., if necessary to complete its work, in the Jamie L. Whitten Federal Building, 12th and Jefferson Drive, SW, Washington, D.C. All times are Eastern Daylight Time.

Persons with disabilities who require accommodations to attend or participate in this meeting should contact Leona Dittus, on 202–720–3168, Federal Relay Service at 1–800–877–8339, or Internet: leona.dittus@usda.gov, by COB April 12, 2000.

ADDRESSES: Comments and statements should be sent to Leona Dittus, Executive Director, National Drought Policy Commission, U.S. Department of Agriculture, 1400 Independence Avenue, SW, Room 6701–S, STOP 0501, Washington, D.C. 20250–0501.

FOR FURTHER INFORMATION CONTACT: Leona Dittus (202) 720–3168; FAX (202) 720–9688; Internet: leona.dittus@usda.gov.

SUPPLEMENTARY INFORMATION: The purpose of the Commission is to provide advice and recommendations to the President and Congress on the creation of an integrated, coordinated Federal policy, designed to prepare for and respond to serious drought emergencies. Tasks for the Commission include developing recommendations that will (a) better integrate Federal laws and programs with ongoing State, local, and tribal programs, (b) improve public awareness of the need for drought mitigation, prevention, and response and (c) determine whether all Federal drought preparation and response programs should be consolidated under one existing Federal agency, and, if so, identify the agency.

The Commission's draft vision statement is of a well-informed, involved U. S. citizenry and its governments prepared for and capable of lessening the impacts of drought—consistently and timely. Drought policy should improve national security and foster economic prosperity, environmental quality, and social well being. It should also benefit future generations as well as our own.

Signed at Washington, D.C., on March 29, 2000.

Keith Kelly,

Administrator, Farm Service Agency.

[FR Doc. 00–8227 Filed 4–3–00; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Child Nutrition Programs—Income Eligibility Guidelines

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This Notice announces the Department's annual adjustments to the Income Eligibility Guidelines to be used in determining eligibility for free and reduced price meals or free milk for the period from July 1, 2000 through June 30, 2001. These guidelines are used by schools, institutions, and facilities participating in the National School Lunch Program (and Commodity School Program), School Breakfast Program, Special Milk Program for Children, Child and Adult Care Food Program and Summer Food Service Program. The annual adjustments are required by section 9 of the National School Lunch Act. The guidelines are intended to direct benefits to those children most in need and are revised annually to account for changes in the Consumer Price Index.

EFFECTIVE DATE: July 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, Alexandria, Virginia 22302, or by phone at (703) 305–2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This action is exempted from review by the Office of Management and Budget under Executive Order 12866.

These programs are listed in the Catalog of Federal Domestic Assistance under No. 10.553, No. 10.555, No. 10.556, No. 10.558 and No. 10.559 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and the final rule related notice published at 48 FR 29114, June 24, 1983.)

Background

Pursuant to sections 9(b)(1) and 17(c)(4) of the National School Lunch Act (42 U.S.C. 1758(b)(1) and 42 U.S.C. 1766(c)(4)), and sections 3(a)(6) and 4(e)(1)(A) of the Child Nutrition Act of 1966 (42 U.S.C. 1772(a)(6) and 1773(e)(1)(A)), the Department annually issues the Income Eligibility Guidelines for free and reduced price meals for the National School Lunch Program (7 CFR part 210), the Commodity School Program (7 CFR part 210), School Breakfast Program (7 CFR part 220), Summer Food Service Program (7 CFR part 225) and Child and Adult Care Food Program (7 CFR part 226) and the guidelines for free milk in the Special Milk Program for Children (7 CFR part 215). These eligibility guidelines are based on the Federal income poverty guidelines and are stated by household size. The guidelines are used to determine eligibility for free and reduced price meals and free milk in

accordance with applicable program rules.

Definition of Income

"Income," as the term is used in this Notice, means income before any deductions such as income taxes, Social Security taxes, insurance premiums, charitable contributions and bonds. It includes the following: (1) Monetary compensation for services, including wages, salary, commissions or fees; (2) net income from nonfarm self-employment; (3) net income from farm self-employment; (4) Social Security; (5) dividends or interest on savings or bonds or income from estates or trusts; (6) net rental income; (7) public assistance or welfare payments; (8) unemployment compensation; (9) government civilian employee or military retirement, or pensions or veterans payments; (10) private pensions or annuities; (11) alimony or child support payments; (12) regular contributions from persons not living in the household; (13) net royalties; and (14) other cash income. Other cash income would include cash amounts received or withdrawn from any source including savings, investments, trust accounts and other resources which would be available to pay the price of a child's meal.

"Income," as the term is used in this Notice, does not include any income or benefits received under any Federal programs which are excluded from consideration as income by any legislative prohibition. Furthermore, the value of meals or milk to children shall not be considered as income to their households for other benefit programs in accordance with the prohibitions in section 12(e) of the National School Lunch Act and section 11(b) of the Child Nutrition Act of 1966 (42 U.S.C. 1760(e) and 1780(b)).

The Income Eligibility Guidelines

The following are the Income Eligibility Guidelines to be effective from July 1, 2000 through June 30, 2001. The Department's guidelines for free meals and milk and reduced price meals were obtained by multiplying the year 2000 Federal income poverty guidelines by *1.30* and *1.85*, respectively, and by rounding the result upward to the next whole dollar. Weekly and monthly guidelines were computed by dividing annual income by 52 and 12, respectively, and by rounding upward to the next whole dollar. The numbers reflected in this notice for a family of four represent an increase of 2.09% over the July 1999 numbers for a family of the same size.

INCOME ELIGIBILITY GUIDELINES
(Effective from July 1, 2000 to June 30, 2001)

Household size	Federal Poverty Guidelines		Reduced Price Meals - 185%			Free Meals - 130%		
	Annual	Month	Annual	Month	Week	Annual	Month	Week
48 CONTIGUOUS UNITED STATES, DISTRICT OF COLUMBIA, GUAM AND TERRITORIES								
1	8,350	696	15,448	1,288	298	10,855	905	209
2	11,250	938	20,813	1,735	401	14,625	1,219	282
3	14,150	1,180	26,178	2,182	504	18,395	1,533	354
4	17,050	1,421	31,543	2,629	607	22,165	1,848	427
5	19,950	1,663	36,908	3,076	710	25,935	2,162	499
6	22,850	1,905	42,273	3,523	813	29,705	2,476	572
7	25,750	2,146	47,638	3,970	917	33,475	2,790	644
8	28,650	2,388	53,003	4,417	1,020	37,245	3,104	717
For each add'l family member add	+2,900	+242	+5,365	+448	+104	+3,770	+315	+73
ALASKA								
1	10,430	870	19,296	1,608	372	13,559	1,130	261
2	14,060	1,172	26,011	2,168	501	18,278	1,524	352
3	17,690	1,475	32,727	2,728	630	22,997	1,917	443
4	21,320	1,777	39,442	3,287	759	27,716	2,310	533
5	24,950	2,080	46,158	3,847	888	32,435	2,703	624
6	28,580	2,382	52,873	4,407	1,017	37,154	3,097	715
7	32,210	2,685	59,589	4,966	1,146	41,873	3,490	806
8	35,840	2,987	66,304	5,526	1,276	46,592	3,883	896
For each add'l family member add	+3,630	+303	+6,716	+560	+130	+4,719	+394	+91
HAWAII								
1	9,590	800	17,742	1,479	342	12,467	1,039	240
2	12,930	1,078	23,921	1,994	461	16,809	1,401	324
3	16,270	1,356	30,100	2,509	579	21,151	1,763	407
4	19,610	1,635	36,279	3,024	698	25,493	2,125	491
5	22,950	1,913	42,458	3,539	817	29,835	2,487	574
6	26,290	2,191	48,637	4,054	936	34,177	2,849	658
7	29,630	2,470	54,816	4,568	1,055	38,519	3,210	741
8	32,970	2,748	60,995	5,083	1,173	42,861	3,572	825
For each add'l family member add	+3,340	+279	+6,179	+515	+119	+4,342	+362	+84

Authority: (42 U.S.C. 1758(b)(1)).

Dated: March 27, 2000.

Samuel Chambers, Jr.,

Administrator.

[FR Doc. 00–8205 Filed 4–3–00; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 00–012N]

Codex Alimentarius Commission: Twenty-eighth Session of the Codex Committee on Food Labelling

AGENCY: Office of the Under Secretary for Food Safety, USDA.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of the Under Secretary for Food Safety, U.S. Department of Agriculture (USDA), and the Food and Drug Administration (FDA), U.S. Department of Health and Human Services (HHS), are sponsoring a public meeting on April 17, 2000, to provide information and receive public comments on agenda items that will be discussed at the Twenty-eighth Session of the Codex Committee on Food Labelling (CCFL), which will be held in Ottawa, Canada, May 9–12, 2000. The Under Secretary for Food Safety and FDA recognize the importance of providing interested parties the opportunity to obtain background information on the Twenty-eighth Session of CCFL and to address items on the Agenda.

DATES: The public meeting is scheduled for Monday, April 17, 2000, from 1 p.m. to 4 p.m.

ADDRESSES: The public meeting will be held in Room 1409, Federal Office Building 8, 200 C Street SW, Washington, DC. (Metro Rail stop is Federal Center, SW.) To receive copies of the documents referenced in this notice, contact the FSIS Docket Clerk, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 102, Cotton Annex, 300 12th Street, SW, Washington, DC 20250–3700. The documents will also be accessible via the World Wide Web at the following address: *http://www.fao.org/waicent/faoinfo/economic/esn/codex*. Send comments, in triplicate, to the FSIS Docket Clerk and reference Docket #00–012N. All comments submitted in response to this notice will be available for public inspection in the Docket Clerk's Office between 8:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Patrick J. Clerkin, Associate U.S. Manager for Codex, U.S. Codex Office, Food Safety and Inspection Service, Room 4861, South Building, 1400 Independence Avenue, SW, Washington, DC 20250, Telephone: (202) 205–7760, Fax: (202) 720–3157.

SUPPLEMENTARY INFORMATION:

Background

Codex was established in 1962 by two United Nations organizations, the Food and Agriculture Organization (FAO) and the World Health Organization (WHO). Codex is the major international organization for encouraging fair international trade in food and protecting the health and economic interests of consumers. Through adoption of food standards, codes of practice, and other guidelines developed by its committees, and by promoting their adoption and implementation by governments, Codex seeks to ensure that the world's food supply is sound, wholesome, free from adulteration, and correctly labeled.

The Codex Committee on Food Labelling drafts provisions on labeling applicable to all foods; considers, amends if necessary, and endorses specific provisions on labeling prepared by the Codex Committees drafting standards, codes of practice and guidelines; studies specific labeling problems assigned to it by the Commission, and studies problems associated with the advertisement of food with particular reference to claims and misleading descriptions.

Issues To Be Discussed at the Public Meeting

Agenda items will be described and discussed at the April 17, 2000, public meeting. Attendees will have the opportunity to pose questions and offer comments.

The provisional agenda items to be discussed during the public meeting:

1. Adoption of the Agenda
2. Matters referred by the Codex Alimentarius Commission and other Codex Committees
3. Consideration of Labeling Provisions in Draft Codex Standards
4. Draft Guidelines for the Production, Processing, Labeling and Marketing of Organically Produced Foods (Livestock Production)
5. Recommendations for the Labeling of Foods Obtained through Biotechnology
6. Draft Amendment to the General Standard for the Labeling of Prepackaged Foods (Class Names)
7. Proposed Draft Amendment to the Guidelines on Nutrition Labeling
8. Proposed Draft Recommendations for the Use of Health Claims
9. Proposed Draft Guidelines for the Use of the Term "Vegetarian"
10. Other business:

    Discussion Paper on Misleading Claims

    Discussion Paper on Quantitative Ingredient Declaration

Each issue listed will be fully described in documents distributed, or to be distributed, by the Canadian Secretariat to the Meeting. Members of the public may access or request copies of these documents (see **ADDRESSES**).

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at http://www.fsis.usda.gov. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included.

Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on March 30, 2000.

F. Edward Scarbrough,

U.S. Manager for Codex Alimentarius.

[FR Doc. 00–8247 Filed 4–3–00; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF INTERIOR

Bureau of Land Management

[ID–918–00–1610–DE–UCRB]

Interior Columbia Basin Ecosystem Management Project, Northern, Intermountain, and Pacific Northwest Regions and States of Oregon, Washington, Idaho, Montana

AGENCIES: Forest Service, USDA; Bureau of Land Management, USDI.

ACTION: Notice of availability of a supplemental draft environmental impact statement (EIS).

SUMMARY: The Forest Service and Bureau of Land Management are developing a scientifically sound, ecosystem-based management strategy for certain lands under their jurisdiction east of the Cascade crest in Oregon and Washington and in the Columbia River Basin in Idaho and Montana. Comments following review of the Eastside Draft Environmental Impact Statement and the Upper Columbia River Basin Draft Environmental Impact Statement have led the agencies to revisit and refine the management direction described and analyzed in the draft EISs. The refined management direction addresses those issues which need resolution at the basin-wide scale. The geographic scope of the effort has been narrowed. The agencies have prepared one supplemental draft EIS to analyze the refined strategy, addressing what had been covered by the two draft EISs in one document. The supplemental draft EIS includes a summary of the comments received on the two draft EISs and response to those comments.

DATES: The supplemental draft EIS is now available for public review and comment. A 90-day public comment period is provided. Public outreach to explain the supplemental draft EIS and to assist the public with commenting on it will be conducted throughout the Project area during the comment period. Notice of dates and locations of these efforts will be given through mailings and local media. Comments on the supplemental draft EIS must be submitted in writing by July 6, 2000. The Interior Columbia Basin Ecosystem Management Project (ICBEMP) interdisciplinary team will then analyze the comments and respond to them in a final EIS. The final EIS is expected to be available in late fall, 2000, and the record of decision (ROD) will be signed shortly thereafter.

ADDRESSES: Copies of the supplemental draft EIS may be obtained from ICBEMP, 304 N. 8th Street, Room 250, Boise, ID 83702 or by calling (208) 334–1770, ext. 120. The supplemental draft EIS is also available via the internet (http://www.icbemp.gov). Comments on the supplemental draft EIS should be submitted in writing to SDEIS, P.O. Box 420, Boise, Idaho 83701–0420. Comments may be submitted electronically at the Project's home page (http://www.icbemp.gov), where a comment form is available. Comments, including names and street addresses of respondents, will be available for public review at the Boise office during regular business hours (8 a.m. to 5 p.m. Monday through Friday, except holidays), and may be published as part of the final environmental impact statement. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety. Comments submitted anonymously will be accepted and considered; however, those who submit anonymous comments may not have standing to appeal the decision under 36 CFR 217 (Forest Service) or standing to protest the proposed decision under 43 CFR 1610.5–2 (Bureau of Land Management).

FOR FURTHER INFORMATION CONTACT: Susan Giannettino, Project Manager, 304 North 8th St., Room 250, Boise, Idaho 83702, phone (208) 334–1770; or Geoff Middaugh, Deputy Project Manager, P.O. Box 2344, Walla Walla, Washington 99362, phone (509) 522–4030.

SUPPLEMENTARY INFORMATION: On February 1, 1994, the Forest Service and Bureau of Land Management published, in the **Federal Register**, a notice of intent to prepare an EIS (the Eastside Environmental Impact Statement) to develop a scientifically sound, ecosystem-based management strategy for the lands managed by those two agencies and located east of the Cascade crest in Oregon and Washington. On December 7, 1994, the Forest Service and Bureau of Land Management published a notice of intent to prepare an EIS (the Upper Columbia River Basin Environmental Impact Statement) and conduct planning activity to develop a scientifically sound, ecosystem-based management strategy for lands administered by those two agencies within the Columbia River basin in the states of Idaho, Montana, Wyoming, Utah, and Nevada. On August 7, 1995, the two agencies published an amended notice of intent excluding the Forest Service-administered lands within the Greater Yellowstone Ecosystem from the Upper Columbia River Basin planning effort.

On June 6, 1997, the Environmental Protection Agency published its notice of availability of the two draft EISs—Eastside draft EIS and Upper Columbia River Basin draft EIS—and informed the public of a 120-day public review period. The review period was ultimately extended to eleven months. During the public review period, over 83,000 responses, commenting on the two draft EISs, were received.

To simplify further public review, to clarify the fact that one broad-scale strategy is being developed, and to save time and money in preparation, printing, and distribution of additional documents, the Executive Steering Committee (the responsible officials for this project) has decided that future environmental analysis of alternative management strategies will be documented in one EIS, rather than two. (This unified effort is referred to as the Interior Columbia Basin Ecosystem Management Project (ICBEMP)). Further, alternative management strategies will focus on issues that are best addressed at the basin-wide scale. Those issues that are limited to smaller geographic units (individual or small groupings of administrative units) will be resolved at that level through local public involvement and the land management agencies' existing planning and decision-making processes.

The Executive Steering Committee decided to refine the management direction being developed in response to public comment. They determined that the refined management direction could include substantial changes in the proposed action that would be relevant to environmental concerns, and that the purposes of the National Environmental Policy Act would be furthered by preparing a supplemental draft EIS.

The supplemental draft EIS is responsive to the basin-wide issues identified during the initial public scoping and described in the two draft EISs, the public comments received on the two draft EISs, and the findings of the Science Integration Team, described in An Assessment of Ecosystem Components in the Interior Columbia Basin and Portions of the Klamath and Great Basins (Quigley, and Arbelbide, eds 1997) and Integrated Scientific Assessment for ecosystem management in the interior Columbia basin and portions of the Klamath and Great Basins (Quigley, Haynes and Graham, eds) 1996.

The characteristics of the refined management direction described and analyzed in the supplemental draft EIS are as follows:

1. It addresses the limited number of issues that must be resolved at the Basin level.

2. It describes an aquatic conservation strategy to replace interim strategies, PacFish and InFish. Also, the biological opinion (pursuant to formal consultation under Section 7 of the Endangered Species Act) on the ICBEMP selected alternative will replace the three biological opinions recently completed on the Land and Resource Management Plans as amended by PacFish and InFish (National Marine Fisheries Service (NMFS), 1995, NMFS 1998, US Fish and Wildlife Service, 1998). The aquatic conservation strategy is also to provide adequate habitat and water quality to result in long-term viability for steelhead, salmon, cutthroat, bull trout and other aquatic species; and to address Basin-wide Clean Water Act responsibilities.

3. The refined direction describes a terrestrial habitat strategy to provide habitat for wide-ranging species. Species that have limited ranges and require site-specific information (e.g., woodland caribou) will be addressed at the scale most appropriate to their needs rather than in the ICBEMP planning.

4. Landscape health issues will be addressed through objectives and standards to provide a common set of desired outcomes and to coordinate budgeting, priority setting, and on-the-ground activities. (Specific design of activities will be addressed at the local level, rather than in this basin-wide supplemental draft EIS.) Issues addressed include the spread of noxious weeds, and the potential for unnaturally large and dangerous wild fires.

5. The supplemental draft EIS includes objectives and standards designed to ensure land management considers and, to the extent possible, supports economic and/or social needs of people, cultures, and communities through more sustainable and predictable levels of goods and services from National Forest System and Bureau of Land Management lands. The objectives and standards will respond to the need to contribute to the vitality and resiliency of human communities and to provide for human uses and values of natural resources consistent with maintaining healthy, diverse ecosystems.

Regarding the decisions recorded in the Record of Decision for Amendments to Forest Service and Bureau of Land Management Planning Documents Within the Range of the Northern Spotted Owl, (also referred to as the Northwest Forest Plan) approved April 13, 1994, the Eastside draft EIS said, "While the alternatives and corresponding analysis in the EIS include this overlap area [*i.e.*, that portion of the range of the northern spotted owl found east of the Cascade crest], decisions in the Northwest Forest Plan would not be superseded by Eastside EIS decisions unless subsequent amendments were made per Northwest Forest Plan direction." Many readers were not certain what this meant. To reduce confusion, the Executive Steering Committee for ICBEMP has eliminated this overlap area from the ICBEMP decision space. The record of decision for the ICBEMP will not apply to any area already being managed under the Northwest Forest Plan.

As noted above, the refined management direction is being developed to address issues that are best resolved at the basin-wide scale. The Executive Steering Committee has determined that current issues on Forest Service- and Bureau of Land Management-administered lands within the States of Wyoming, Utah, and Nevada do not need to be resolved at the basin level and will be more efficiently addressed through existing planning processes at the local (National Forest or BLM District/Field Office) level. (The approximate acreage of Forest Service- and Bureau of Land Management-administered lands within the Columbia River Basin within each of these three states is as follows: Wyoming, 23,000; Utah, 111,500; and Nevada, 2.6 million, for a total of 2.7 million acres, or about 4% of the Forest Service- and Bureau of Land Management-administered lands within the ICBEMP area.) No basin-wide issues have been identified on the lands within the Columbia River Basin administered by BLM in Wyoming. In Utah, the Forest Service will replace its interim InFish strategy (which applies to native fish within the planning area) through the Sawtooth National Forest plan revision, scheduled for completion by the end of the year 2000. In Nevada, the Forest Service will replace the interim InFish strategy through the plan amendment process.

Therefore, no Bureau of Land Management- or Forest Service-administered lands in Wyoming, Utah, or Nevada will be included in the supplemental draft EIS, final EIS, or the record of decision for the Interior Columbia Basin Ecosystem Management Project.

The Supplemental draft EIS describes and analyzes three alternatives: a no action alternative, updated from the version presented in the two draft EISs; and two alternatives that share the characteristics of the refined management direction described earlier in this notice. One of these two alternatives describes a relatively conservative approach to decreasing long-term risk. The other explores the potential to decrease long-term risk faster by accepting greater short-term risk. This latter alternative requires less analysis before restoration is undertaken.

The selected alternative may result in amendment to the Forest Service Regional Guides for the Northern, Intermountain, and Pacific Northwest Regions and will amend land use plans for the administrative units of the Forest Service and Bureau of Land Management within the ICBEMP area as follows:

Forest Service: Boise, Payette, Salmon-Challis, and Sawtooth National Forests and the portion of the Caribou National Forest outside the Greater Yellowstone Ecosystem in the Intermountain Region; Panhandle, Clearwater, Nez Perce, Kootenai, Lolo, Flathead, Helena, Deerlodge, and Bitterroot National Forests in the Northern Region; and Ochoco, Winema, Malheur, Deschutes, Fremont, Wallowa-Whitman, Umatilla, Okanogan, and Colville National Forests in the Pacific Northwest Region. Bureau of Land Management: Lower Snake River District, Upper Snake River District, and the Upper Columbia-Salmon Clearwater District in Idaho; Missoula Field Office in Montana; and Prineville, Lakeview, Burns, Vale, and Spokane Districts in Oregon/Washington.

Dated: March 22, 2000.

Martha Hahn,

State Director, Bureau of Land Management.

Dated: March 23, 2000.

Dale Bosworth,

Regional Forester, U.S. Forest Service.

[FR Doc. 00–8208 Filed 4–3–00; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent To Seek Approval to Conduct an Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intent of the National Agricultural Statistics Service (NASS) to request approval for an information collection, the *Women on U.S. Farms Survey*.

DATES: Comments on this notice must be received by June 8, 2000 to be assured of consideration.

ADDITIONAL INFORMATION OR COMMENTS: Contact Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4117 South Building, Washington, D.C. 20250–2000, (202) 720–4333.

SUPPLEMENTARY INFORMATION:

Title: Women on U.S. Farms Survey.

Type of Request: Intent to Seek Approval to Conduct an Information Collection.

Abstract: The goal of this National Agricultural Statistics Service and Penn State University co-operative project is to expand the knowledge base concerning the participation of women in U.S. agriculture. This knowledge will be useful for formulating policy related to agriculture and rural development and will also be helpful for social and economic researchers interested in farming and agriculture. Farm women have been found to contribute substantially to agricultural production through their involvement in farm work, farm decisions, and agricultural organizations. The U.S. Census of Agriculture, the major source of data about agricultural production and farm operators in the United States, undercounts women's involvement in farm enterprises because only one operator per farm is counted. In addition, no national-level study has sought information about women's participation in agriculture since 1980. We have only limited information about how changes in agriculture and farming have affected women's work on farms and their participation in decisions related to farming. The findings from the proposed study will provide information for developing government policies that can more effectively serve women as well as men who live and work on farms. Policies and programs that lower structural barriers and increase opportunities for women can improve the economic viability of U.S. farms.

The project addresses the following objectives: (1) To analyze the nature and extent of women's participation in farm operations in the U.S. today, including their participation in farm tasks, farm decision-making, farm organizations, and government agriculture programs; to ascertain the variation in such involvement by region, type of farm, and the socio-demographic characteristics of the women themselves; and to describe changes that have occurred in the last 20 years. (2) To assess the current participation of women on U.S. farms in nonfarm work, including the type and extent of off-farm employment, nonfarm self-employment, and involvement in the informal economy and changes in nonfarm work patterns since 1980.

The sample is 5,000 farms operated as sole proprietorships, partnerships, or family corporations. The respondent will be the farm operator, if a woman, or the wife of the male farm operator at each of the selected farms. While it is anticipated that the overwhelming majority of farm operators will be men, most are expected to have spouses present in the household. The projected usable sample of farm women is thus approximately 4,000 cases. In addition, 500 farm men will be interviewed to compare the work of farm men and women and to identify differences in men's and women's perceptions of women's involvement in the farm enterprise. The men who will be interviewed will be spouses or partners of 500 of the farm women who are interviewed in the study. All interviews will be conducted using a computer-assisted telephone interviewing system, which provides for quality control monitoring of interviews, managing call scheduling and call-backs, automatic record keeping, question presentation, and response recording. Approximately two weeks prior to the beginning of the interviews, letters will be sent to the sample members explaining the purpose of the study and alerting them to the coming call.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Test interviews indicated that the women's interview will require approximately 28 minutes and the men's approximately 20 minutes. There will be a pre-survey letter mailed to all 5,000 in the sample.

Respondents: Female and male farm operators.

Estimated Number of Respondents: 4,000 women and 500 men.

Estimated Total Annual Burden on Respondents: 2,400 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, Agency OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Comments may be sent to: Ginny McBride, Agency OMB Clearance Officer, U.S. Department of Agriculture, 1400 Independence Avenue SW, Room 4162 South Building, Washington, D.C. 20250–2000. All responses to this notice will become a matter of public record and be included in the request for OMB approval.

Signed at Washington, D.C., March 6, 2000.

Rich Allen,

Associate Administrator.

[FR Doc. 00–8248 Filed 4–3–00; 8:45 am]

BILLING CODE 3410–20–P

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

Passenger Vessel Access Advisory Committee; Meeting

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Notice of meeting.

SUMMARY: The Architectural and Transportation Barriers Compliance Board (Access Board) has established an advisory committee to assist it in developing a proposed rule on accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. This document gives notice of the dates, times, and location of the next meeting of the Passenger Vessel Access Advisory Committee (committee).

DATES: The next meeting of the committee is scheduled for April 26 through 28, 2000, beginning at 9:00 a.m. and ending at 6:00 p.m. each day.

ADDRESSES: The meeting will be held in the 3rd floor training room at 1331 F Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Paul Beatty, Office of Technical and Information Services, Architectural and Transportation Barriers Compliance Board, 1331 F Street, NW., suite 1000, Washington, DC 20004–1111. Telephone number (202) 272–5434 extension 119 (Voice); (202) 272–5449 (TTY). E-mail address: pvaac@access-board.gov. This document is available in alternate formats (cassette tape, Braille, large print, or computer disk) upon request. This document is also available on the Board's Internet Site at http://www.access-board.gov/notices/pvaacmtg.htm.

SUPPLEMENTARY INFORMATION: The Architectural and Transportation Barriers Compliance Board (Access Board) established a Passenger Vessel Access Advisory Committee (committee) to assist the Board in developing proposed accessibility guidelines for newly constructed and altered passenger vessels covered by the Americans with Disabilities Act. 63 FR 43136 (August 12, 1998). The committee is composed of owners and operators of various passenger vessels; persons who design passenger vessels; organizations representing individuals with disabilities; and other individuals affected by the Board's guidelines.

The meeting is open to the public and interested persons can attend and communicate their views. Members of the public will have an opportunity to address the committee on issues of interest to them and the committee during the public comment period generally scheduled at the end of each meeting day. Members of groups, or individuals who are not members of the committee, may also have the opportunity to participate with subcommittees of the committee. Additionally, all interested persons will have the opportunity to comment when the proposed accessibility guidelines for passenger vessels are issued in the **Federal Register** by the Access Board.

The facility is accessible to individuals with disabilities. Individuals who require sign language interpreters or real-time captioning systems should contact Paul Beatty by April 18, 2000. Notices of future meetings will be published in the **Federal Register**.

Lawrence W. Roffee,

Executive Director.

[FR Doc. 00–8202 Filed 4–3–00; 8:45 am]

BILLING CODE 8150–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 010600C] [A]

Notice of Decision and Availability of Decision Documents on the Issuance of Permits for Incidental Take of Threatened and Endangered Species

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration, Commerce

ACTION: Notice of decision and availability of decision documents on the issuance of a permit (1232) for incidental takes of endangered and threatened species.

SUMMARY: This notice advises the public that a decision on the application for an incidental take permit by the State of Oregon Department of Fish and Wildlife (ODFW) and the State of Washington Department of Fish and Wildlife (WDFW), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (ESA), has been made and that the decision documents are available upon request.

DATES: Permit 1232 was issued on March 15, 2000, subject to certain conditions set forth therein, and expires on December 31, 2000.

ADDRESSES: Requests for copies of the decision documents or any of the other associated documents should be directed to the Protected Resources Division (PRD), F/NWR3, NMFS, 525 NE Oregon Street, Suite 500, Portland, OR 97232–2737 (503–230–5400).

FOR FURTHER INFORMATION CONTACT: Robert Koch, Portland, OR (ph: 503–230–5424, fax: 503–230–5435, e-mail: robert.koch@noaa.gov).

SUPPLEMENTARY INFORMATION: The following species, evolutionary significant units (ESU's), and runs are covered in the permit:

Chinook salmon (*Oncorhynchus tshawytscha*): threatened Snake River (SnR) spring/summer, endangered upper Columbia River (UCR) spring.

Sockeye salmon (*O. nerka*): endangered SnR.

Steelhead (*O. mykiss*): endangered UCR.

Decision

Notice was published on February 3, 2000 (65 FR 5322) that ODFW and WDFW jointly applied for a section 10(a)(1)(B) permit for incidental takes of ESA-listed anadromous fish adults associated with otherwise lawful sport and commercial fisheries on non-listed species in the lower and middle Columbia River and its tributaries in the Pacific Northwest. ODFW and WDFW submitted a Conservation Plan with their permit application that describes measures designed to monitor, minimize, and mitigate the incidental taking of ESA-listed anadromous salmonids associated with some or all of the winter/spring/summer fisheries that are expected to occur during 2000. Specifically, this Conservation Plan and Permit cover only those species, ESU's, and runs identified above which occur primarily in Columbia River mainstem fisheries through July 2000. Incidental take of other listed species, ESU's and runs during the conduct of fall season fisheries (i.e., SnR fall chinook, SnR steelhead) are not authorized by this permit and will require a separate application from ODFW and WDFW.

NMFS' decision is to adopt the preferred alternative in the Conservation Plan together with the preferred alternative in the Environmental Assessment that was completed for this permit action and issue a permit with conditions authorizing incidental takes of the ESA-listed anadromous fish species. This decision is based on a thorough review of the alternatives and their environmental consequences. NMFS' conditions will ensure that the incidental takes of ESA-listed anadromous fish will not appreciably reduce the likelihood of the survival and recovery of the species in the wild. By adopting the preferred alternative in the Conservation Plan, with the Conservation Plan's stated assurances that ODFW and WDFW's mitigation program will be implemented, all practicable means to avoid or minimize harm have been adopted.

ODFW and WDFW requested incidental takes of threatened lower Columbia River (LCR) chinook salmon, threatened upper Willamette River (UWR) chinook salmon, threatened SnR steelhead, threatened middle Columbia River (MCR) steelhead, threatened LCR

steelhead, and threatened UWR steelhead. Protective regulations are currently proposed for LCR and UWR chinook salmon (65 FR 169, January 3, 2000) and SnR, MCR, LCR, and UWR steelhead (64 FR 73479, December 30, 1999). NMFS did not act on that part of ODFW and WDFW's permit application. In the future, when NMFS promulgates final rules under section 4(d) of the ESA that will provide take prohibitions for threatened LCR chinook salmon, threatened UWR chinook salmon, threatened SnR steelhead, threatened MCR steelhead, threatened LCR steelhead, and threatened UWR steelhead, NMFS may amend the permit to include the authorization for incidental takes of these species as ODFW and WDFW requested in their application. Issuance of the permit does not presuppose the contents of the eventual protective regulations.

Rationale for Decision

The decision to issue the permit was made because the Conservation Plan proposed by ODFW and WDFW meets the statutory criteria for issuance of an incidental take permit under section 10 of the ESA. In issuing the permit, NMFS determined that ODFW and WDFW's Conservation Plan provides adequate mitigation measures to avoid, minimize, and/or compensate for the anticipated takes of ESA-listed anadromous fish.

The permit was granted only after NMFS determined that the permit was applied for in good faith, that all permit issuance criteria were met, including the requirement that granting the permit would not jeopardize the continued existence of the species, and that the permit is consistent with the purposes and policies set forth in the Endangered Species Act of 1973, as amended.

Dated: March 29, 2000.

Wanda L. Cain,

Chief, Endangered Species Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 00–8250 Filed 4–3–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 032800F]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Capacity Committee in April, 2000. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will be held on April 19, 2000, at 10:00 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 300 Woodbury Avenue, Portsmouth, NH 03801; telephone: (603) 431–8000.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–04922.

SUPPLEMENTARY INFORMATION: The Committee will continue its exploration of fishing capacity issues. The Committee will discuss two proposals that may help alleviate problems caused by excess fishing capacity. These two proposals would allow the transfer of permits under certain conditions. The Committee will also discuss other ways to reduce fishing capacity, such as vessel buybacks, allowing vessels to defer fishing effort until stocks rebuild, or combinations of these and other options. The Committee will receive a qualitative report on fisheries in New England that have excessive fishing capacity.

Although non-emergency issues not contained in this agenda may come before this Council for discussion, those issues may not be the subject of formal Council action during this meeting. Council action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: March 29, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8251 Filed 4–3–00; 8:45 am]

BILLING CODE 3510–22–F

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Proposed Information Collection; Comment Request

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: The Corporation for National and Community Service (hereinafter the "Corporation"), as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. § 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirement on respondents can be properly assessed.

Currently, the Corporation is soliciting comments concerning its proposed applications entitled: AmeriCorps Promise Fellows Continuation Application Instructions. Copies of the information collection requests can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section by June 5, 2000.

ADDRESSES: Send comments to the Corporation for National and Community Service, Tracy Stone, Director, AmeriCorps Promise Fellows, 1201 New York Avenue, N.W., Washington, D.C., 20525.

FOR FURTHER INFORMATION CONTACT: Tracy Stone (202) 606–5000, ext. 173.

SUPPLEMENTARY INFORMATION:

Comment Request

The Corporation is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the Corporation, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

Background

The AmeriCorps Promise Fellows program supports a leadership cadre of AmeriCorps members spearheading community efforts to provide young people with five basic promises:

- Caring adults in their lives as parents, mentors, tutors, and coaches;
- Safe places with structured activities in which to learn and grow;
- A healthy start;
- An effective education that equips them with marketable skills; and
- An opportunity to give back to communities through their own service.

The AmeriCorps Promise Fellows Continuation Application Instructions provide the requirements, instructions and forms that current grantees of the program need to complete an application to the Corporation for continued funding.

Current Action

The Corporation seeks public comment on the forms, the instructions for the forms, and the instructions for the narrative portion of these continuation application instructions.

Type of Review: New collection.

Agency: Corporation for National and Community Service.

Title: AmeriCorps Promise Fellows Continuation Application Instructions.

OMB Number: None.

Agency Number: None.

Affected Public: Entities in their second or third year of operation as grantees of the Corporation's AmeriCorps Promise Fellows program.

Total Respondents: 66.

Frequency: Once per year.

Average Time Per Response: 25 hours.

Estimated Total Burden Hours: 1,650 hours.

Total Burden Cost (capital/startup): None.

Total Burden Cost (operating/maintenance): None.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 28, 2000.

Thomasenia P. Duncan,

General Counsel.

[FR Doc. 00–8206 Filed 4–3–00; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

National Senior Service Corps; Schedule of Income Eligibility Levels

AGENCY: Corporation for National and Community Service.

ACTION: Notice.

SUMMARY: This Notice revises the schedules of income eligibility levels for participation in the Foster Grandparent Program (FGP) and the Senior Companion Program (SCP) of the Corporation, published at 64 FR 17626 on April 12, 1999.

DATES: These guidelines go into effect on March 31, 2000.

FOR FURTHER INFORMATION CONTACT: Corporation for National and Community Service, Ruth Archie, National Senior Service Corps, 1201 New York Avenue NW, Washington, DC 20525, or by telephone at (202) 606–5000, ext. 289.

SUPPLEMENTARY INFORMATION: The revised schedules are based on changes in the Poverty Guidelines issued by the Department of Health and Human Services (DHHS), published in 65 FR 7555, February 15, 2000. In accordance with program regulations, the income eligibility level for each State, Puerto Rico, the Virgin Islands and the District of Columbia is 125 percent of the DHHS Poverty Guidelines, except in those areas determined by the Corporation to be of higher cost of living as of March 1, 2000. In such instances, the guidelines shall be 135 percent of the DHHS Poverty levels. The level of eligibility is rounded to the next highest multiple of $5.00.

In determining income eligibility, consideration should be given to the following, as set forth in 45 CFR 2551–2553 dated October 1, 1999.

Allowable medical expenses are annual out-of-pocket expenses for health insurance premiums, health care services, and medications provided to the applicant, enrollee, or spouse and were not and will not be paid for by Medicare, Medicaid, other insurance, or by any other third party and, must not exceed 15 percent of the applicable Corporation income guideline.

Annual income is counted for the past 12 months and includes: The applicant or enrollee's income and the applicant or enrollee's spouse's income, if the spouse lives in the same residence. Sponsors must count the value of shelter, food, and clothing, if provided at no cost by persons related to the applicant, enrollee or spouse.

Any person whose income is not more than 100 percent of the DHHS Poverty Guideline for her/his specific family unit shall be given special consideration for participation in the Foster Grandparent and Senior Companion Programs.

2000 FGP/SCP Income Eligibility Levels

[Based on 125 percent of DHHS Poverty Guidelines]

States	Family units of:			
	One	Two	Three	Four
All, except High Cost Areas, Alaska and Hawaii	$10,440	$14,065	$17,690	$21,315

For family units with more than four members, add $3,625 for each additional member in all States except designated High Cost Areas, Alaska and Hawaii.

2000 FGP/SCP Income Eligibility Levels for High Cost Areas

[Based on 135 percent of DHHS Poverty Guidelines]

Area	Family Units of			
	One	Two	Three	Four
All, except Alaska and Hawaii	$11,275	$15,190	$19,105	$23,020

2000 FGP/SCP INCOME ELIGIBILITY LEVELS FOR HIGH COST AREAS—Continued

[Based on 135 percent of DHHS Poverty Guidelines]

Area	Family Units of			
	One	Two	Three	Four
Alaska	14,080	18,985	23,885	28,785
Hawaii	12,950	17,455	21,965	26,475

For family units with more than four members, add $3,625 for all areas, $4,900 for Alaska, and $4,510 for Hawaii, for each additional member.

The income eligibility levels specified above are based on 135 percent of the DHHS poverty guidelines and are applicable to the following high cost metropolitan statistical areas and primary metropolitan statistical areas:

High Cost Areas (Including All Counties/Locations Included in That Area as Defined by the Office of Management and Budget)

Alaska

(All Locations)

California

Los Angeles-Compton-San Gabriel-Long Beach-Hawthorne (Los Angeles County)
Santa Barbara/Santa Maria/Lompoc (Santa Barbara County)
Santa Cruz-Watsonville (Santa Cruz County)
Santa Rosa-Petaluma (Sonoma County)
San Diego-El Cajon (San Diego County)
San Jose-Los Gatos (Santa Clara County)
San Francisco/San Rafael (Marin County)
San Francisco/Redwood City (San Mateo County)
San Francisco (San Francisco County)
Oakland-Berkeley (Alameda County)
Oakland-Martinez (Contra Costa County)
Anaheim-Santa Ana (Orange County)
Oxnard-Ventura (Ventura County)

Connecticut

Stamford (Fairfield)

District of Columbia/Maryland/Virginia

District of Columbia and Surrounding Counties in Maryland and Virginia. MD counties: Anne Arundel, Calvert, Charles, Cecil, Frederick, Montgomery and Prince Georges, Queen Annes Counties. VA Counties: Arlington, Fairfax, Loudoun, Prince William, Stafford, Alexandria City, Fairfax City, Falls Church City, Manassas City and Manassas Park City.

Hawaii

(All Locations)

Illinois

Chicago-Des Plaines-Oak Park-Wheaton-Woodstock (Cook, DuPage and McHenry Counties)

Massachusetts

Barnstable (Barnstable)
Edgartown (Dukes)
Boston-Malden (Essex, Norfolk, Plymouth, Middlesex and Suffolk Counties)
Worcester (Worcester City)
Brockton-Wellesley-Braintree-Boston (Norfolk County)
Dorchester-Boston (Suffolk County)
Worcester (City) (Worcester County)

New Jersey

Bergen-Passaic-Paterson (Bergen and Passaic Counties)
Jersey City (Hudson)
Middlesex-Somerset-Hunterdon (Hunterdon, Middlesex and Somerset Counties)
Monmouth-Ocean-Spring Lake (Monmouth and Ocean Counties)
Newark-East Orange (Essex, Morris, Sussex and Union Counties) Trenton (Mercer County)

New York

Nassau-Suffolk-Long Beach-Huntington (Suffolk and Nassau Counties)
New York-Bronx-Brooklyn (Bronx, Kings, New York, Putnam, Queens, Richmond and Rockland Counties)
Westchester-White Plains-Yonkers-Valhalla (Westchester County)

Pennsylvania

Philadelphia-Doylestown-West Chester-Media-Norristown (Bucks, Chester, Delaware, Montgomery and Philadelphia Counties)

Wyoming

(All Locations)

The revised income eligibility levels presented here are calculated from the base DHHS Poverty Guidelines now in effect as follows:

2000 DHHS POVERTY GUIDELINES FOR ALL STATES

Family units of	States			
	One	Two	Three	Four
All, except Alaska/Hawaii	$8,350	$11,250	$14,150	$17,050
Alaska	10,430	14,060	17,690	21,320
Hawaii	9,590	12,930	16,270	19,610

(For family units with more than four members, add: $2,900 for all areas, $3,630 for Alaska, and $3,340 for Hawaii, for each additional member.)

Authority: These programs are authorized pursuant to 42 U.S.C. 5011 and 5013 of the Domestic Volunteer Service Act of 1973, as amended. The income eligibility levels are determined by the current guidelines published by DHHS pursuant to Sections 652 and 673 (2) of the Omnibus Budget Reconciliation Act of 1981 which requires poverty guidelines to be adjusted for Consumer Price Index changes.

March 29, 2000.

Thomas Endres,

Director, National Senior Service Corps, Corporation for National and Community Service.

[FR Doc. 00–8188 Filed 4–3–00; 8:45 am]

BILLING CODE 6050–28–U

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Availability of Funds for AmeriCorps State Formula Program Grants in North Dakota and South Dakota and Notice of Technical Assistance Calls for Potential Applicants

AGENCY: Corporation for National and Community Service.

ACTION: Notice of availability of funds for new and renewal grants; notice of availability of 2000 application guidelines; notice of technical assistance calls.

SUMMARY: The Corporation for National and Community Service (Corporation) announces the availability of approximately $500,000 to support new and continuing national service programs in North Dakota and approximately $500,000 to support new and continuing national service programs in South Dakota. (CFDA #94.004). The Corporation has scheduled two technical assistance calls for potential applicants.

DATES: To be considered, the Corporation must receive applications by 3:30 p.m., Eastern Daylight Time, Monday, May 15, 2000.

ADDRESSES: Applications must be submitted to the Corporation for National Service, 1201 New York Avenue NW, Box SND, Washington, D.C. 20525. The Corporation will not accept applications that are submitted via facsimile or by e-mail transmission.

FOR FURTHER INFORMATION: For further information, to obtain a copy of the application guidelines, or to register for one of the technical assistance calls, please contact Jamia McLean, Corporation for National Service, 1201 New York Avenue, NW, Washington, D.C. 20525, phone (202) 606–5000, ext. 292, TDD (202) 565–2799.

SUPPLEMENTARY INFORMATION: These funds are authorized under the National and Community Service Act of 1990, as amended, and represent the statute's population-based provision of program assistance formula funds that, in most cases, flow through approved state commissions on national and community service. Because neither North Dakota nor South Dakota currently maintains an approved state commission or alternative administrative entity, eligible entities may apply directly to the Corporation for formula funds. Local government agencies, institutions of higher education, public or private nonprofit organizations, and Indian Tribes in North Dakota and South Dakota are eligible entities. An organization described in section 501(c)(4) of the Internal Revenue Code of 1986, 26 U.S.C. 501(c)(4), that engages in lobbying activities is not eligible for these funds.

Requirements relating to this assistance are published at 45 CFR Parts 2510 *et seq.* and are further described in the application guidelines. The Corporation will also provide *Principles for High Quality National Service Programs*, which includes program examples, upon request.

Organizations interested in applying for these program funds may participate in one of two conference calls to be held on April 3, 2000 and April 10, 2000, respectively, during which Corporation staff will provide technical assistance to potential applicants. The calls will begin at 2:00 p.m. and conclude at 4:00 p.m. (E.D.T.). Upon registration for one of the calls, you will be provided with the applicable 800 number needed for participation.

The provision of these grants is subject to the availability of appropriated funds.

Dated: March 30, 2000.

Peter Heinaru,

*Director, AmeriCorps*State/National.*

[FR Doc. 00–8256 Filed 4–3–00; 8:45 am]

BILLING CODE 6050–28–U

DEPARTMENT OF DEFENSE

Office of the Secretary

Proposed Collection; Comment Request

AGENCY: Office of the Under Secretary of Defense (Personnel and Readiness, DOD).

ACTION: Notice.

In compliance with Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, The Office of the Under Secretary of Defense (Personnel and Readiness) announces the following proposed reinstatement of a public information collection and seeks public comment on the provision thereof. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the function of the Agency, including whether the information shall have practical utility: (b) the accuracy of the agency's estimate of the burden of the proposed information collection; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Consideration will be given to all comments received before June 5, 2000.

ADDRESSES: Written comments and recommendation on the proposed information collection should be sent to the Office of the Under Secretary of Defense (Personnel and Readiness), (Force Management Policy/Military Personnel Policy/Accession Policy) ATTN: Lieutenant Colonel Michael R. Ostroski, 4000 Defense Pentagon, Washington, DC 20301–4000.

FOR FURTHER INFORMATION CONTACT: To request additional information on this proposed information collection or to obtain a copy of the proposal and associated collection instruments, please write to the above address or call (703) 695–5529.

Title, Associated Form, and OMB Control Number: Record of Military Processing, Armed Forces of the United States, DD Form 1966, OMB Control Number: 0704–0173.

Needs and Uses: This information collection is to obtain data on individuals applying for enlistment in the Armed Forces of the United States to determine eligibility for enlistment. The information collected accompanies the applicant throughout the enlistment process. It also is used for establishing personnel records on those who enlist.

Affected Public: Individuals or households.

Annual Burden Hours: 170,000.

Number of Respondents: 510,000.

Responses Per Respondent: 1.

Average Burden Per Response: 20 minutes.

Frequency: On occasion.

SUPPLEMENTARY INFORMATION:

Summary of Information Collection

Title 10 U.S.C., Sections 504, 505, 508, 12102 and 520a, Title 14 U.S.C., Sections 351 and 632, and Title 50

U.S.C., Section 451, requires applicants to meet standards for enlistment into the Armed Forces. This information collection is the basis for determining eligibility of applicants for enlistment in the Armed Forces and is needed to verify data given by the applicant and to determin his/her qualification of enlistment. The information collected aids in the determination of qualifications, term of service, and grade in which a person, if eligible, will enter active duty or reserve status.

Dated: March 29, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8179 Filed 4–3–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Continuous Open Enrollment Demonstration for the Designated Provider Program

AGENCY: Health Affairs, Department of Defense.

ACTION: Notice of demonstration project.

SUMMARY: This notice is to advise interested parties of a demonstration project which will enroll military retirees and their family members (to include Medicare-eligible beneficiaries) in the Uniformed Services Family Health Plan on a continuous basis. The continuous open enrollment demonstration project will evaluate the benefits and costs of the program. Continuous open enrollment for retirees and their family members in the Designated Provider program will result in enrollment requirements consistent with the enrollment requirements for the TRICARE Prime option under the TRICARE program. In this project, DoD will allow eligible retirees and their family members to elect to enroll in the Uniformed Services Family Health Plan at any time during the demonstration period in exchange for their agreement to receive comprehensive health care services from the Designated Provider. Funding for the demonstration for care provided will come from existing DoD appropriations. This demonstration will be conducted at three of the seven Designated Provider sites. DoD will conduct an analysis of the benefits and costs of the program using the enrolled populations of the other four Designated Providers as the control group. The demonstration is scheduled to end September 30, 2001.

DATES: May 4, 2000.

FOR FURTHER INFORMATION CONTACT: Earl Hanson, TRICARE Management Activity (703) 681–1757.

SUPPLEMENTARY INFORMATION:

A. Background

Health care for retirees and their family members, to include Medicare-eligible military retirees and family members, is now available under the Designated Provider program. When DoD transitioned the Uniformed Services Treatment Facilities to the Designated Provider program providing the TRICARE Prime benefit in 1998, the Department and the Designated Providers agreed by contract to limit enrollment of retirees and their family members to once per year. In accordance with the National Defense Authorization Act for Fiscal Year 2000, Section 707, the Department of Defense and the Designated Providers randomly selected three sites to actively participate in a continuous open enrollment demonstration that would allow retiree and retiree family members to enroll in the Uniformed Services Family Health Plan without regard to an annual open enrollment season. The remaining four Designated Providers will be control sites. The selected sites will comply with all provisions for their existing contracts and through a modification to the contracts, allow retirees and their family members to enroll at any time during the demonstration period. These enrollees will comply with existing managed care program policies and requirements for the Uniformed Services Family Health Plan.

C. Description of the Continuous Open Enrollment Demonstration

(1) *Location of Project:* Continuous open enrollment will be conducted in the geographical service area of the Sisters of Charity Health Care System located on Staten Island, New York; the Brighton Marine Health Center located in Boston, Massachusetts; and the Pacific Medical Center located in Seattle, Washington. The control group is a geographic service area operated by Martin's Point Health Care located in Portland, Maine; Johns Hopkins Medical Services Corporation located in Baltimore, Maryland; CHRISTUS Health located in Houston, Texas; and Fairview Health System located in Cleveland, Ohio. The geographical service area is identified by zip codes in and around the Designated Providers' corporate centers.

(2) *Continuous Open Enrollment Schedule:* Health care delivery is scheduled to begin on February 1, 2000, for the Sisters of Charity Health Care System and the Brighton Marine Health Center. Pacific Medical Center will begin providing health care services on March 1, 2000. Prior to the beginning of health care delivery under this demonstration, the participating Designated Providers will issue public announcements providing information about the program and the enrollment process. The public announcements will indicate that an application acceptance period will begin in January 2000. The demonstration will continue until September 30, 2000.

(3) *Eligible population:* To be eligible to enroll in this demonstration a military retiree or their family member must, (1) be eligible for care from DoD, (2) reside within geographic service area of participating Designated Providers, and (3) be solely reliant for health care services from the Military Health System and/or Title XVIII of the Social Security Act.

(4) *Enrollment capacity:* Under this demonstration there is no limitation on the number of eligible beneficiaries that may enroll in the Designated Providers' Uniformed Services Family Health Plan. Enrollment outside the demonstration is limited to 110 percent of enrollment as of the first day of the previous fiscal year.

(5) *Enrollment:* Enrollment applications will be accepted by mail or in person at an address designated by the participating Designated Providers. The enrollment fee is currently $230 for single enrollee and maximum of $460 for a family. It is the Department's policy to encourage enrollment in Medicare Part B. Therefore, enrollment fees for Medicare-eligible enrollees that maintain their Medicare Part B monthly premiums are waived under the Uniformed Services Family Health Plan.

Enrollment under the demonstration is for a twelve-month period, which is automatically renewed annually. Beneficiaries may leave the program at the end of their twelve-month period by affirmatively requesting disenrollment approximately 60 calendar days prior to automatic renewal. Enrollees discontinuing their enrollment prior to any twelve-month period are locked out of further enrollment in DoD's TRICARE program for a period of twelve months from the effective date of their disenrollment. Portability, transfers, and split family enrollments exist between TRICARE regions and contractors, although portability and transfers for Medicare-eligible enrollees limited to Designated Provider geographic service areas.

As a condition of enrollment, each dual-eligible beneficiary will be required to receive all of his or her health care services, except emergency care, through the Designated Provider program.

D. Impact of Demonstration Project on Enrollees and the Department of Defense.

The goal of the Designated Provider demonstration project is to allow retired beneficiaries and their dependents the opportunity to enroll throughout the program year. The evaluation will document the benefits of open enrollment opportunities to covered beneficiaries and the cost impact upon the Department of Defense, as well as a recommendation on whether to authorize open enrollments in the managed care plans of the Designated Providers permanently.

Dated: March 29, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8177 Filed 4–3–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Manual for Courts-Martial

AGENCY: Joint Service Committee on Military Justice (JSC), DOD.

ACTION: Notice of Proposed Amendments to the Manual for Courts-Martial, United States, (1998 ed.) and Notice of Public Meeting.

SUMMARY: The Department of Defense is considering recommending changes to the Manual for Courts-Martial, United States, (1998 ed.) (MCM). The proposed changes concern the rules of procedure applicable in trials by courts-martial and implement the amendment to Article 19 of the Uniform Code of Military Justice contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000. Subject to limitations prescribed by the President, the amendment increased the jurisdictional maximum punishment at special courts-martial to confinement for one year and forfeitures not exceeding two-thirds pay per month for one year, vice the previous six-month jurisdictional limitation. The proposed changes have not been coordinated within the Department of Defense under DoD Directive 5500.1, "Preparation and Processing of Legislation, Executive Orders, Proclamations, and Reports and Comments Thereon," May 21, 1964, and do not constitute the official position of the Department of Defense, the Military Departments, or any other government agency.

This notice also sets forth the date, time and location for the public meeting of the JSC to discuss the proposed changes.

This notice is provided in accordance with DoD Directive 5500.17, "Role and Responsibilities of the Joint Service Committee (JSC) on Military Justice," May 8, 1996. A 30-day public comment period is set vice the normal 75-day period due to the need to expedite the conforming amendments to 10 U.S.C. 819 (Article 19, UCMJ). This notice is intended only to improve the internal management of the Federal Government. It is not intended to create any right or benefit, substantive or procedural, enforceable at law by any party against the United States, its agencies, its officers, or any person.

DATES: Comments on the proposed changes must be received no later than May 4, 2000 for consideration by the JSC. A public meeting will be held on Tuesday, April 18, 2000 at 2:00 p.m.

ADDRESSES: Comments on the proposed changes should be sent to Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000. The public meeting will be held at Room 808, 1501 Wilson Blvd, Arlington, VA 22209–2403.

FOR FURTHER INFORMATION CONTACT: Lt Col Thomas C. Jaster, U.S. Air Force, Air Force Legal Services Agency, 112 Luke Avenue, Room 343, Bolling Air Force Base, Washington, DC 20332–8000, (202) 767–1539; FAX (202) 404–8755.

SUPPLEMENTARY INFORMATION: The proposed amendments to the Manual for Courts-Martial are as follows:

Amend R.C.M 201(f)(2)(B)(i) to read as follows:

"Upon a finding of guilty, special courts-martial may adjudge, under limitations prescribed by this Manual, any punishment authorized under R.C.M. 1003 except death, dishonorable discharge, dismissal, confinement for more than 1 year, hard labor without confinement for more than 3 months, forfeiture of pay exceeding two-thirds pay per month, or any forfeiture of pay for more than 1 year."

Amend R.C.M 201(f)(2)(B)(ii) to read as follows:

"(ii) A bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may not be adjudged by a special court-martial unless:

(a) Counsel qualified under Article 27(b) is detailed to represent the accused; and

(b) A military judge is detailed to the trial, except in a case in which a military judge could not be detailed because of physical conditions or military exigencies. Physical conditions or military exigencies, as the terms are here used, may exist under rare circumstances, such as on an isolated ship on the high seas or in a unit in an inaccessible area, provided compelling reasons exist why trial must be held at that time and at that place. Mere inconvenience does not constitute a physical condition or military exigency and does not excuse a failure to detail a military judge. If a military judge cannot be detailed because of physical conditions or military exigencies, a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may be adjudged provided the other conditions have been met. In that event, however, the convening authority shall, prior to trial, make a written statement explaining why a military judge could not be obtained. This statement shall be appended to the record of trial and shall set forth in detail the reasons why a military judge could not be detailed, and why the trial had to be held at that time and place."

Amend the analysis accompanying R.C.M. 201(f) by inserting the following before the discussion of subsection (3):

"2000 Amendment: Subsections (f)(2)(B)(i) and (f)(2)(B)(ii) were amended to remove previous limitations and thereby implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999). Subject to limitations prescribed by the President, the amendment increased the jurisdictional maximum punishment at special courts-martial to confinement for one year and forfeitures not exceeding two-thirds pay per month for one year, vice the previous six-month jurisdictional limitation."

Amend the seventh paragraph of the Discussion accompanying R.C.M. 601(e)(1) to read as follows:

"The convening authority should acknowledge by an instruction that no bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, may be adjudged when the prerequisites under Article 19 will not be met. See R.C.M. 201(f)(2)(B)(ii). For example, this instruction should be given when a court reporter is not detailed."

Amend the first paragraph of the Discussion accompanying R.C.M. 808 to read as follows:

"Except in a special court-martial not authorized to adjudge a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, the trial counsel should ensure that a qualified court reporter is detailed to the court-martial. Trial counsel should also ensure that all exhibits and other documents relating to the case are properly maintained for later inclusion in the record. See also R.C.M. 1103(j) as to the use of videotapes, audiotapes, and similar recordings for the record of trial. Because of the potential requirement for a verbatim transcript, all proceedings, including sidebar conference, arguments, and rulings and instructions by the military judges, should be recorded."

Amend the sixth paragraph of the Discussion accompanying R.C.M. 1003(b)(2 to read as follows:

"At a special court-martial, if a bad-conduct discharge and confinement are adjudged, then the operation of Article 58b results in a forfeiture of two-thirds of pay only (not allowances) during that period of confinement. If only confinement is adjudged, and that confinement exceeds six months, then the operation of Article 58b results in a forfeiture of two-thirds of pay only (not allowances) during the period of confinement. If only a bad conduct discharge is adjudged, Article 58b has no effect on pay."

Amend R.C.M. 1103(b)(2)(B)(i) to read as follows:

"(i) Any part of the sentence adjudged exceeds six months confinement, forfeiture of pay greater than two-thirds pay per month, or any forfeiture of pay for more than six months or other punishments which may be adjudged by a special court-martial; or"

Amend the analysis accompanying R.C.M. 1103(b)(2)(B) by inserting the following before the discussion of subsection (2)(C):

"2000 Amendment: Subsection (2)(B) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. R.C.M. 1103(b)(2)(B) was amended to prevent an inconsistent requirement for a verbatim transcript between a general court-martial and a special court-martial when the adjudged sentence of a general court-martial does not include a punitive discharge or confinement greater than six months, but does include forfeiture of two-thirds pay per month for more than six months but not more than 12 months."

Amend R.C.M. 1103(c) to read as follows:

"(c) Special courts-martial.

(1) Involving a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months. The requirements of subsections (b)(1), (b)(2)(A), (b)(2)(B), (b)(2)(D), and (b)(3) of this rule shall apply in a special court-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, has been adjudged.

(2) All other special courts-martial. If the special court-martial resulted in findings of guilty but a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, was not adjudged, the requirements of subsections (b)(1), (b)(2)(D), and (b)(3)(A)–(F) and (I)–(M) of this rule shall apply."

Amend the analysis accompanying R.C.M. 1103(c) by inserting the following before the discussion of subsection (e):

"2000 Amendment: Subsection (c) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. R.C.M. 1103(c) was amended to conform the requirements for a verbatim transcript with the requirements of Article 19 for a "complete record" in cases where the adjudged sentence includes a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months."

Amend R.C.M. 1103(f)(1) to read as follows:

"(1) Approve only so much of the sentence which could be adjudged by a special court-martial, except that no bad-conduct discharge, confinement for more than six months, or forfeiture of two-thirds pay per month for more than six months, may be approved; or"

Amend the analysis accompanying R.C.M. 1103(f) by inserting the following before the discussion of subsection (g):

"2000 Amendment: Subsection (f)(1) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. R.C.M. 1103(f)(1) was amended to include the additional limitations on sentence contained in Article 19, UCMJ."

Amend R.C.M. 1104(a)(2)(A) to read as follows:

"(A) Authentication by the military judge. In special courts-martial in which a bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, has been adjudged and in general courts-martial, except as provided in subsection (a)(2)(B) of this rule, the military judge present at the end of the proceedings shall authenticate the record of trial, or that portion over which the military judge presided. If more than one military judge presided over the proceedings, each military judge shall authenticate the record of the proceedings over which that military judge presided, except as provided in subsection (a)(2)(B) of this rule. The record of trial of special courts-martial in which no bad-conduct discharge, confinement for more than six months, or forfeiture of pay for more than six months, was adjudged shall be authenticated in accordance with regulations of the Secretary concerned."

Amend the analysis accompanying R.C.M. 1104(a) by inserting the following before the discussion of subsection (b):

"2000 Amendment: Subsection (a)(2)(A) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. R.C.M. 1104(a)(2)(A) was amended to ensure that the military judge authenticates all verbatim records of trial at special courts-martial."

Amend R.C.M. 1104(e) to read as follows:

"(e) Forwarding. After every court-martial, including a rehearing and new and other trials, the authenticated record shall be forwarded to the convening authority for initial review and action, provided that in case of a special court-martial in which a bad-conduct discharge or confinement for one year was adjudged or a general court-martial, the convening authority shall refer the record to the staff judge advocate or legal officer for recommendation under R.C.M. 1106 before the convening authority takes action."

Amend the analysis accompanying R.C.M. 1104(e) by inserting the following at the end of the discussion of subsection (e):

"2000 Amendment: Subsection (e) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. This amendment reflects the change to R.C.M. 1106 for special court-martial with an adjudged sentence that includes confinement for one year."

Amend R.C.M. 1106(a) to read as follows:

"(a) In general. Before the convening authority takes action under R.C.M. 1107 on a record of trial by general court-martial or a record of trial by special court-martial which includes a sentence to a bad-conduct discharge or confinement for one year, that convening authority's staff judge advocate or legal officer shall, except as provided in subsection (c) of this rule, forward to the convening authority a recommendation under this rule."

Amend the analysis accompanying R.C.M. 1106(a) by inserting the following before the discussion of subsection (b):

"2000 Amendment: Subsection (e) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. This amendment requires all special courts-martial cases subject to appellate review to comply with this rule."

Amend the second paragraph of the Discussion accompanying R.C.M. 1107(d)(1) to read as follows:

"When mitigating forfeitures, the duration and amounts of forfeiture may be changed as long as the total amount forfeited is not increased and neither the amount nor duration of the forfeitures exceeds the jurisdiction of the court-martial. When mitigating confinement or hard labor without confinement, the convening authority should use the equivalencies at R.C.M. 1003(b)(6) and (7), as appropriate. One form of punishment may be changed to a less severe punishment of a different nature, as long as the changed punishment is one that the court-martial could have adjudged. For example, a bad-conduct discharge adjudged by a special court-martial could be changed to confinement for up to one year (but not vice versa). A pretrial agreement may also affect what punishments may be changed by the convening authority"

Amend R.C.M. 1107(d)(4) to read as follows:

"(4) Limitations on sentence based on record of trial. If the record of trial does not meet the requirements of R.C.M. 1103(b)(2)(B) or (c)(1), the convening authority may not approve a sentence in excess of that which may be adjudged by a special court-martial, or one which includes a bad-conduct discharge, confinement for more than six months, forfeiture of pay exceeding two-thirds pay per month, or any forfeiture of pay for more than six months."

Amend the analysis accompanying R.C.M. 1107(e) by inserting the following at the end of the discussion of subsection (e):

"2000 Amendment: Subsection (f)(1) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. R.C.M. 1107(d)(4) was amended to include the additional limitations on sentence contained in Article 19, UCMJ.

Amend R.C.M. 1109(e) and (e)(1) to read as follows:

"(e) Vacation of a suspended special court-martial sentence wherein a bad-conduct discharge or confinement for one year was not adjudged.

(1) In general. Before vacating the suspension of a special court-martial punishment that does not include a bad-conduct discharge or confinement for one year, the special court-martial convening authority for the command in which the probationer is serving or assigned shall cause a hearing to be held on the alleged violation(s) of the conditions of suspension."

Amend the analysis accompanying R.C.M. 1109(e) by inserting the following at the end of the discussion of subsection (e):

"2000 Amendment: Subsection (e) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial."

Amend R.C.M. 1109(f) and (f)(1) to read as follows:

"(f) Vacation of a suspended special court-martial sentence that includes a bad-conduct discharge or confinement for one year.

(1) The procedure for the vacation of a suspended approved bad-conduct discharge or of any suspended portion of an approved sentence to confinement for one year, shall follow that set forth in subsection (d) of this rule."

Amend the analysis accompanying R.C.M. 1109(f) by inserting the following at the end of the discussion of subsection (f):

"2000 Amendment: (f) Vacation of a suspended special court-martial sentence that includes a bad-conduct discharge or confinement for one year. Subsection (f) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. This amendment reflects the decision to treat an approved sentence of confinement for one year, regardless of whether any period of confinement is suspended, as a serious offense, in the same manner as a suspended approved bad-conduct discharge at special courts-martial under Article 72, UCMJ and R.C.M. 1109."

Amend the Discussion accompanying R.C.M. 1109(f) to read as follows:

"An officer exercising special court-martial jurisdiction may vacate any suspended punishments other than an approved suspended bad-conduct discharge or any suspended portion of an approved sentence to confinement for one year, regardless of whether they are contained in the same sentence as the bad-conduct discharge or confinement for one year. See Appendix 18 for a sample of a Report of Proceedings to Vacate Suspension of a Special Court-Martial Sentence including a bad-conduct discharge or confinement for one year under Article 72, UCMJ, and R.C.M. 1109 (DD Form 455)."

Amend the title to Appendix to read as follows:

"Report of Proceedings to Vacate Suspension of a General Court-Martial or of a Special Court-Martial Sentence Including a Bad-Conduct Discharge or Confinement for One Year Under Article 72, UCMJ, and R.C.M. 1109 (DD Form 455)."

Amend R.C.M. 1110(a) to read as follows:

"(a) In general. After any general court-martial, except one in which the approved sentence includes death, and after any special court-martial in which the approved sentence includes a bad-conduct discharge or confinement for one year, the accused may waive or withdraw appellate review."

Amend the analysis accompanying R.C.M. 1110(a) by inserting the following at the end of the discussion of subsection (a):

"2000 Amendment: Subsection (a) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P.L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial."

Amend the Discussion accompanying R.C.M. 1110(a) to read as follows:

"Appellate review is not available for special courts-martial in which a bad-conduct discharge or confinement for one year was not adjudged or approved or for summary courts-martial. Cases not subject to appellate review, or in which appellate review is waived or withdrawn, are reviewed by a judge advocate under R.C.M. 1112. Such cases may also be submitted to the Judge Advocate General for review. See R.C.M. 1201(b)(3). Appellate review is mandatory when the approved sentence includes death."

Amend R.C.M. 1111(b) to read as follows:

"(1) Cases including an approved bad-conduct discharge or confinement for one year. If the approved sentence of a special court-martial includes a bad-conduct discharge or confinement for one year, the record shall be disposed of as provided in subsection (a) of this rule.

(2) Other cases. The record of trial by a special court-martial in which the approved sentence does not include a bad-conduct discharge or confinement for one year shall be forwarded directly to a judge advocate for review under R.C.M. 1112. Four copies of the order promulgating the result of trial shall be forwarded with the record of trial, unless otherwise prescribed by regulations of the Secretary concerned."

Amend the analysis accompanying R.C.M. 1111(b) by inserting the following at the end of the discussion:

"2000 Amendment: R.C.M. 1111(b) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. The amendment ensures all special courts-martial not requiring appellate review are reviewed by a judge advocate under R.C.M. 1112."

Amend R.C.M. 1112(a)(2) to read as follows:

"Each special court-martial in which the accused has waived or withdrawn appellate review under R.C.M. 1110 or in which the approved sentence does not include a bad-conduct discharge or confinement for one year; and"

Amend the analysis accompanying R.C.M. 1112 by inserting the following at the end of the discussion:

"2000 Amendment: R.C.M. 1112(a)(2) was amended to implement the amendment to 10 U.S.C. § 819 (Article 19, UCMJ) contained in

section 577 of the National Defense Authorization Act for Fiscal Year 2000, P. L. No. 106–65, 113 Stat. 512 (1999) increasing the jurisdictional maximum punishment at special courts-martial. The amendment ensures all special court-martials not requiring appellate review are reviewed by a judge advocate under R.C.M. 1112."

Amend Page A8–19, Left Margin Entry to Note 100 to read as follows:

Advice in GCMs and SPCMs in which BCD or confinement for one year is adjudged	[Note 100. In cases subject to review by a Court of Criminal Appeals, the following advice should be given. In other cases proceed to Note 101 or 102 as appropriate.]

Amend Page A8–21, Left Margin Entry to Note 102 to read as follows:

SPCM not involving a BCD or confinement for one year	[Note 102. In special courts-martial not involving BCD or confinement for one year, the following advice should be given.]

Amend Page A17–4, first note to paragraph d, to read as follows:

"[Note. Orders promulgating the vacation of the suspension of a dismissal will be published by departmental orders of the Secretary concerned. Vacations of any other suspension of a general court-martial sentence, or of a special court-martial sentence which as approved and affirmed includes a bad-conduct discharge or confinement for one year, will be promulgated by the officer exercising general court-martial jurisdiction over the probationer (Article 72(b)). The vacation of suspension of any other sentence may be promulgated by an appropriate convening authority under Article 72(c). See R.C.M. 1109.]"

Dated: March 29, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8181 Filed 4–3–00; 8:45 am]

BILLING CODE 5001–10–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the Advisory Council on Dependents' Education

AGENCY: Department of Defense Education Activity (DoDEA).

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that a meeting of the Advisory Council on Dependents' Education (ACDE) is scheduled to be held from 8 a.m. to 5 p.m. on Thursday, May 4, 2000. The meeting will be open to the public and will be held in the 9th floor conference room at the Department of Defense Education Activity, 4040 North Fairfax Drive, Arlington, Virginia 22203–1635. The purpose of the Council is to recommend to the Director, Department of Defense Education Activity (DoDEA), general policies for operation of the Defense dependents' education system; to provide the Director with information about effective educational programs and practices that should be considered by DoDEA; and to perform other tasks as may be required by the Secretary of Defense. The focus of this meeting will be the new DoDEA Community Strategic Plan for 2001–2006, DoDEA organizational changes, and a recap of issues discussed at the October 1999 meeting. These issues include (1) the development of an individual plan for each student in conjunction with counseling on post-school opportunities, (2) coordination of on-going initiatives within DoDEA, and (3) a review of the best practices in the use of technology in DoDEA. For further information contact Ms. Polly Purser, at 703–696–4235, extension 1911.

Dated: March 29, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8178 Filed 4–3–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the President's Sedcurity Policy Advisory Board Action Notice

SUMMARY: The President's Security Policy Advisory Board has been established pursuant to Presidential Decision Directive/NSC–29, which was signed by President on September 16, 1994.

The Board advises the President on proposed legislative initiatives and executive orders pertaining to U.S. security policy, procedures and practices as developed by the U.S. Security Policy Board, and functions as a federal advisory committee in accordance with the provisions of Pub. L. 92–463, the "Federal Advisory Committee Act."

The President has appointed from the private sector, three of five Board members each with a prominent background and expertise related to security policy matters. General Larry Welch, USAF (Ret.) chairs the Board. Other members include: Rear Admiral Thomas Brooks, USN (Ret.) and Ms. Nina Stewart.

The next meeting of the Advisory Board will be held on April 11, 2000 at 1400 hrs at the Charles Stark Draper Laboratory, Inc., Albert G. Hill Building, 1 Hampshire Street, Cambridge, Massachusetts 02139, The meeting will be open to the public.

For further information please contact Mr. Bill Isaacs, telephone: 703–602–0815.

Dated: March 29, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 00–8176 Filed 4–3–00; 8:45 am]

BILLING CODE 5001–10–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Privacy Act of 1974; System of Records

AGENCY: Office of the Secretary, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The Office of the Secretary proposes to add a system of records notice to its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on May 4, 2000, unless comments are received which result in a contrary determination.

ADDRESSES: Send comments to OSD Privacy Act Coordinator, Records Section, Directives and Records Division, Washington Headquarter Services, Correspondence and Directives, 1155 Defense Pentagon, Washington, DC 20301–1155.

FOR FURTHER INFORMATION CONTACT: Mr. David Bosworth at (703) 588–0159.

SUPPLEMENTARY INFORMATION: The Office of the Secretary systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on March 23, 2000, to the House Committee on Government Reform and Oversight, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: March 29, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DWHS P45

SYSTEM NAME:

OSD/Joint Staff Voluntary Leave Transfer Program Records.

SYSTEM LOCATION:

Washington Headquarters Services, Directorate for Personnel and Security, Labor Management and Employee Relations, 1777 North Kent Street, Arlington, VA 22209–2164.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OSD and Joint Staff individuals who have volunteered to participate in the leave transfer program as a donor and OSD or Joint Staff individuals who have exhausted or are likely to exhaust the balance of their leave due to a medical emergency and are requesting leave donations from volunteers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Leave Recipient Applications (DD Form 2539 or similar) which contain the individual's name, Voluntary Leave Transfer Recipient Number, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours requested, brief description of the medical or personal hardship which qualifies the individual for inclusion in the program, the status of that hardship, and a statement that selected data elements may be used in soliciting donations.

The file may also contain medical or physician certifications and agency approvals or denials.

Leave Donor Applications (DD Form 2538 or similar) which contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balances, number of hours donated and the name of the designated recipient or Leave Transfer Recipient Number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 6331 et seq. (Leave); 5 CFR Part 630; and OSD Administrative Instruction 98, "Voluntary Leave Transfer Program"; and E.O. 9397 (SSN).

PURPOSE(S):

The file is used in managing the OSD/Joint Staff Voluntary Leave Transfer program. A Voluntary Leave Transfer Recipient Number is assigned to each verified recipient. A brief hardship description with the prospective recipient's assigned number is published internally for solicitation purposes. If insufficient donations of leave are offered by the recipient's immediate organization, solicitation is extended beyond that immediate organization until sufficient leave donations to cover the recipient's uncovered leave is reached. Social Security Numbers of donors and recipients are required to effectuate the transfer of leave from the donor's account to the recipient's account.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness.

To the personnel and pay offices of the Federal agency involved to effectuate the leave transfer where leave donor and leave recipient are employed by different Federal agencies.

The 'Blanket Routine Uses' set forth at the beginning of OSD's compilation of systems of records notices apply to this record system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records are stored in folders in file cabinets and electronic records are stored on magnetic media.

RETRIEVABILITY:

Records are retrieved by name, Social Security Number or Voluntary Leave Transfer Recipient Number.

SAFEGUARDS:

Records are accessed by custodian of the records or by persons responsible for servicing the record system in performance of their official duties. Records are stored in controlled-access office space that is locked during non-business hours.

RETENTION AND DISPOSAL:

Records are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Washington Headquarters Services, Directorate for Personnel and Security, ATTN: Assistant Director, Labor Management and Employee Relations, 1777 North Kent Street, Arlington, VA 22209–2164.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to Washington Headquarters Services, Directorate for Personnel and Security, Labor Management and Employee Relations, 1777 North Kent Street, Arlington, VA 22209–2164.

Individual should provide full name and Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to Washington Headquarters Services, Directorate for Personnel and Security, Labor Management and Employee Relations, 1777 North Kent Street, Arlington, VA 22209–2164.

Individual should provide full name and Social Security Number.

CONTESTING RECORD PROCEDURES:

The OSD rules for accessing records, for contesting contents and appealing initial agency determinations are published in OSD Administrative Instruction 81; 32 CFR part 311; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is provided primarily by the record subject; however, some data may be obtained from personnel and leave records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 00–8182 Filed 4–3–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Office of the Secretary

Revised Non-Foreign Overseas Per Diem Rates

AGENCY: DoD, Per Diem, Travel and Transportation Allowance Committee.

ACTION: Notice of Revised Non-Foreign Overseas Per Diem Rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 215. This bulletin lists revisions in the per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. AEA changes announced in Bulletin Number 194 remain in effect. Bulletin Number 215 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: April 1, 2000.

SUPPLEMENTARY INFORMATION: This document gives notice of revisions in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. It supersedes Civilian Personnel Per Diem Bulletin Number 214. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of revisions in per diem rates to agencies and establishments outside the Department of Defense. For more information or questions about per diem rates, please contact your local travel office. The Text of the Bulletin follows:

BILLING CODE 5001–01–M

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
THE ONLY CHANGES IN CIVILIAN BULLETIN 215 UPDATES RATES FOR GUAM AND NORTHERN MARIANA ISLANDS.						
ALASKA						
ANCHORAGE [INCL NAV RES]						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
BARROW	115		73		188	03/01/1999
BETHEL	92		65		157	01/01/2000
CLEAR AB	80		54		134	01/01/2000
COLD BAY	140		73		213	01/01/2000
COLDFOOT	135		71		206	10/01/1999
CORDOVA	80		72		152	03/01/2000
CRAIG						
05/01 - 08/31	95		66		161	10/01/1998
09/01 - 04/30	79		64		143	10/01/1998
DEADHORSE	80		67		147	03/01/1999
DENALI NATIONAL PARK						
06/01 - 08/31	125		56		181	01/01/2000
09/01 - 05/31	90		53		143	01/01/2000
DILLINGHAM	100		58		158	01/01/2000
DUTCH HARBOR-UNALASKA	110		71		181	03/01/1999
EARECKSON AIR STATION	80		54		134	01/01/2000
EIELSON AFB						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
ELMENDORF AFB						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
FAIRBANKS						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
FT. RICHARDSON						
05/01 - 09/15	161		68		229	01/01/2000
09/16 - 04/30	80		60		140	01/01/2000
FT. WAINWRIGHT						
05/01 - 09/15	149		62		211	01/01/2000
09/16 - 04/30	75		55		130	01/01/2000
GLENNALLEN	94		54		148	01/01/2000
HEALY						
06/01 - 08/31	125		56		181	01/01/2000
09/01 - 05/31	90		53		143	01/01/2000
HOMER						

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
04/30 - 10/03	119	65	184	03/01/2000
10/04 - 04/29	69	60	129	03/01/2000
JUNEAU	95	66	161	01/01/2000
KAKTOVIK	165	75	240	01/01/2000
KAVIK CAMP	125	69	194	03/01/1999
KENAI-SOLDOTNA				
04/01 - 10/31	104	65	169	01/01/2000
11/01 - 03/31	67	61	128	01/01/2000
KENNICOTT	149	68	217	10/01/1998
KETCHIKAN				
04/01 - 10/15	104	71	175	01/01/2000
10/16 - 03/31	80	69	149	01/01/2000
KING SALMON				
05/01 - 10/01	160	88	248	01/01/2000
10/02 - 04/30	100	82	182	01/01/2000
KLAWOCK				
05/01 - 08/31	95	66	161	10/01/1998
09/01 - 04/30	79	64	143	10/01/1998
KODIAK	90	68	158	01/01/2000
KOTZEBUE				
05/01 - 08/31	137	63	200	01/01/2000
09/01 - 04/30	95	54	149	01/01/2000
KULIS AGS				
05/01 - 09/15	161	68	229	01/01/2000
09/16 - 04/30	80	60	140	01/01/2000
MCCARTHY	149	68	217	10/01/1998
METLAKATLA				
05/30 - 10/01	85	52	137	03/01/1999
10/02 - 05/29	78	51	129	03/01/1999
MURPHY DOME				
05/01 - 09/15	149	62	211	01/01/2000
09/16 - 04/30	75	55	130	01/01/2000
NOME	85	58	143	01/01/2000
NUIQSUT	120	47	167	01/01/2000
PETERSBURG	87	57	144	03/01/1999
POINT HOPE	130	70	200	03/01/1999
POINT LAY	105	67	172	03/01/1999
PRUDHOE BAY	80	67	147	03/01/1999
SEWARD				
05/01 - 09/15	119	75	194	03/01/2000
09/16 - 04/30	75	71	146	03/01/2000
SITKA-MT. EDGECOMBE				
05/16 - 09/16	139	73	212	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
09/17 - 05/15	129	72	201	01/01/2000
SKAGWAY				
04/01 - 10/15	104	71	175	01/01/2000
10/16 - 03/31	80	69	149	01/01/2000
SPRUCE CAPE	90	68	158	01/01/2000
TANANA	85	58	143	01/01/2000
UMIAT	107	33	140	03/01/1999
VALDEZ				
05/01 - 10/01	117	68	185	01/01/2000
10/02 - 04/30	99	66	165	01/01/2000
WAINWRIGHT	111	81	192	01/01/2000
WASILLA	95	60	155	01/01/2000
WRANGELL				
04/01 - 10/15	104	71	175	01/01/2000
10/16 - 03/31	80	69	149	01/01/2000
YAKUTAT	110	68	178	03/01/1999
[OTHER]	80	54	134	01/01/2000
AMERICAN SAMOA				
AMERICAN SAMOA	85	67	152	03/01/2000
GUAM				
GUAM (INCL ALL MIL INSTAL)	150	71	221	04/01/2000
HAWAII				
CAMP H M SMITH	99	61	160	01/01/2000
EASTPAC NAVAL COMP TELE AREA	99	61	160	01/01/2000
FT. DERUSSEY	99	61	160	01/01/2000
FT. SHAFTER	99	61	160	01/01/2000
HICKAM AFB	99	61	160	01/01/2000
HONOLULU (INCL NAV & MC RES CTR)	99	61	160	01/01/2000
ISLE OF HAWAII: HILO	71	50	121	01/01/2000
ISLE OF HAWAII: OTHER	89	50	139	01/01/2000
ISLE OF KAUAI				
05/01 - 11/30	103	58	161	01/01/2000
12/01 - 04/30	131	61	192	01/01/2000
ISLE OF KURE	65	41	106	05/01/1999
ISLE OF MAUI	100	64	164	01/01/2000
ISLE OF OAHU	99	61	160	01/01/2000
KANEOHE BAY MC BASE	99	61	160	01/01/2000
KEKAHA PACIFIC MISSILE RANGE FAC				
05/01 - 11/30	103	58	161	01/01/2000
12/01 - 04/30	131	61	192	01/01/2000
KILAUEA MILITARY CAMP	71	50	121	01/01/2000
LUALUALEI NAVAL MAGAZINE	99	61	160	01/01/2000
NAS BARBERS POINT	99	61	160	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
NAVAL AIR FACILITY	99	61	160	01/01/2000
PEARL HARBOR	99	61	160	01/01/2000
SCHOFIELD BARRACKS	99	61	160	01/01/2000
TRIPLER AMC	99	61	160	01/01/2000
WAHIAWA	99	61	160	01/01/2000
WAIANAE	99	61	160	01/01/2000
WAIKIKI	99	61	160	01/01/2000
WHEELER AAF	99	61	160	01/01/2000
[OTHER]	89	50	139	01/01/2000
MIDWAY ISLANDS				
MIDWAY ISLANDS	70	43	113	01/01/2000
NORTHERN MARIANA ISLANDS				
SAIPAN	89	61	150	01/01/2000
[OTHER]	89	50	139	01/01/2000
PUERTO RICO				
BAYAMON	99	61	160	01/01/2000
CAROLINA	99	61	160	01/01/2000
CEIBA	99	61	160	01/01/2000
FAJARDO [INCL ROOSEVELT RDS NAV STA]	99	61	160	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR, GUAYNABO]	99	61	160	01/01/2000
LUQUILLO	99	61	160	01/01/2000
PONCE	99	61	160	01/01/2000
SABANA SECA [INCL ALL MILITARY]	99	61	160	01/01/2000
SAN JUAN & NAVAL STATION	99	61	160	01/01/2000
[OTHER]	89	50	139	01/01/2000
VIRGIN ISLANDS (U.S.)				
ST CROIX	99	61	160	01/01/2000
ST JOHN	99	61	160	01/01/2000
ST THOMAS	99	61	160	01/01/2000
[OTHER]	89	50	139	01/01/2000
WAKE ISLAND				
WAKE ISLAND	70	43	113	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
[OTHER]	89	50	139	01/01/2000

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PEARL HARBOR [INCL ALL MILITARY]	99		61		160	01/01/2000
SCHOFIELD BARRACKS	99		61		160	01/01/2000
WHEELER ARMY AIRFIELD	99		61		160	01/01/2000
[OTHER]	72		61		133	01/01/2000
JOHNSTON ATOLL						
JOHNSTON ATOLL	13		9		22	10/01/1998
MIDWAY ISLANDS						
MIDWAY ISLANDS [INCL ALL MILITAR	150		47		197	02/01/2000
NORTHERN MARIANA ISLANDS						
ROTA	149		72		221	04/01/2000
SAIPAN	154		87		241	04/01/2000
[OTHER]	55		72		127	04/01/2000
PUERTO RICO						
BAYAMON						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
CAROLINA						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
FAJARDO [INCL CEIBA & LUQUILLO]	82		54		136	01/01/2000
FT. BUCHANAN [INCL GSA SVC CTR,						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
HUMACAO	82		54		136	01/01/2000
LUIS MUNOZ MARIN IAP AGS						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
MAYAGUEZ	85		59		144	01/01/2000
PONCE	96		69		165	01/01/2000
ROOSEVELT RDS & NAV STA	82		54		136	01/01/2000
SABANA SECA [INCL ALL MILITARY]						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
SAN JUAN & NAV RES STA						
04/11 - 12/23	155		71		226	01/01/2000
12/24 - 04/10	195		75		270	01/01/2000
[OTHER]	62		57		119	01/01/2000
VIRGIN ISLANDS (U.S.)						
ST. CROIX						
04/15 - 12/14	93		72		165	01/01/2000
12/15 - 04/14	129		76		205	01/01/2000
ST. JOHN						
04/15 - 12/14	219		84		303	01/01/2000

Civilian Bulletin No. 215 **Page 5**

Maximum Per Diem Rates for official travel in Alaska, Hawaii, the Commonwealths of Puerto Rico and the Northern Mariana Islands and Possessions of the United States by Federal Government civilian employees.

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
12/15 - 04/14	382		100		482	01/01/2000
ST. THOMAS						
04/15 - 12/14	163		73		236	01/01/2000
12/15 - 04/14	288		86		374	01/01/2000
WAKE ISLAND						
WAKE ISLAND	60		32		92	09/01/1998

[FR Doc. 00–8180 Filed 4–3–00 8:45 am]
BILLING CODE 5001–01–C

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

Public Forum To Be Held by Vicksburg District

AGENCY: U.S. Army Corps of Engineers, Vicksburg District, DOD.

ACTION: Notice of open meeting.

SUMMARY: The purpose of the meeting: (1) Briefing by Vicksburg District Commander on background and general status of the J. Bennett Johnson Waterway Project; (2) Comments by representatives of the Red River Valley Association and the Red River Waterway Commission re economic and recreation benefits of the project to the region; (3) Comments from Senator Mary Landrieu re the current status and potential future of the waterway and region; (4) A public forum with statements and presentations by public participations on matters pertaining to water resources issues in the Red River Valley.

DATES: The meeting will be held at 2:30 p.m. on April 17, 2000.

ADDRESSES: The meeting will be held on board the MISSISSIPPI V at City Front, Alexandria, LA.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Rottman, telephone, (601) 631–5010.

John A. Hall,
Alternate Army Federal Register Liaison Officer.

[FR Doc. 00–8204 Filed 4–3–00; 8:45 am]
BILLING CODE 3710–PU–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to add an exempt system of records.

SUMMARY: The Department of the Navy proposes to add an exempt system of records to its inventory of records systems notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on May 4, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on March 23, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A-130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: March 29, 2000.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

N05813-4

SYSTEM NAME:

Trial/Government Counsel Files.

SYSTEM LOCATION:

Trial Service Offices, Detachments, and Branch Offices which have trial counsel assigned, regardless of branch of service. Official mailing addresses are published as an appendix to the Navy's compilation of system of record notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Navy, Marine Corps, and Coast Guard members who have been charged with violating the Uniform Code of Military Justice (UCMJ) and pending trial by court-martial, an investigation pursuant to Article 32, UCMJ, or a Court or Board of Inquiry; convicted or acquitted by court-martial; charged with violating the UCMJ in cases in which charges were dismissed; or the subject of a military justice investigation, a Court or Board of Inquiry, or other administrative or

disciplinary hearing, which did not result in a court-martial.

CATEGORIES OF RECORDS IN THE SYSTEM:

Charge sheets; convening orders; appointing orders; investigative reports of Federal, state, and local law enforcement agencies; local command investigations; witness statements; results from witness interviews; witness travel claim programs and files; documentary evidence; pretrial advice; immunity requests; search authorizations; general correspondence; legal research and memoranda; motions; forensic reports; pretrial confinement orders; personnel, financial, and medical records; report of Article 32, UCMJ investigations; report of Court or Board of Inquiry; subpoenas; discovery requests; correspondence reflecting pretrial negotiations; requests for resignation or discharge in lieu of trial by court-martial; work-product of trial counsel and trial department staff; results of trial memoranda; case tracking programs and files; and forms to comply with the Victim and Witness Assistance Program, the Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 42 U.S.C. 10606–10607; E.O. 9397 (SSN); and Rule for Court-Martial 502(d)(5), Manual for Court-Martial; and the Victims' Rights and Restitution Act of 1990.

PURPOSE(S):

To prosecute or otherwise resolve military justice cases.

To obtain support from the U.S. Department of Justice on requests for immunity for civilian witnesses.

To obtain information from a Federal, state, local, or foreign agency, or from an individual or organization, relating to an investigation, charges, or court-martial.

To provide information and support to victims and witnesses in compliance with the Victim and Witness Assistance Program, Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the U.S. Department of Justice to obtain support for requests for immunity for civilian witnesses.

To a Federal, state, local, or foreign agency, or to an individual or organization, if there is reason to believe that such agency, individual, or organization possesses information relating to the investigation, charges, or court-martial, and the disclosure is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an informant.

To victims and witnesses to comply with the Victim and Witness Assistance Program, Sexual Assault Prevention and Response Program, and the Victims' Rights and Restitution Act of 1990.

To attorney licensing and/or disciplinary authorities as required to support professional responsibility investigations and proceedings.

The "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name and/or Social Security Number, year of case.

SAFEGUARDS:

Classified information is stored in locked safe drawers with the proper security measures applicable. Unclassified information is located in file cabinets. Some file cabinets have locking capabilities. Automated files are password protected. Offices are locked during non-working hours. The files are not accessible to the public or to persons within the command without an official need to know.

RETENTION AND DISPOSAL:

Files relating to pretrial matters are destroyed when two years old or purpose is served. Files relating to court-martial reviews and appeals are destroyed four years after completion of appellate review.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Naval Legal Service Command, Washington Navy Yard, 1322 Patterson Avenue SE, Suite 3000, Washington, DC 20374–5066 and at the Trial Service Office, Detachment, or Branch Office where the matter was handled.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the cognizant Trial Service Office, Detachment, or Branch Office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include the full name, Social Security Number, and address of the individual concerned; the name of the case; and any other identifying information which may be of assistance in locating the record. The request must be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the cognizant Trial Service Office, Detachment, or Branch Office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

The request should include the full name, Social Security Number, and address of the individual concerned; the name of the case; and any other identifying information that may be of assistance in locating the record. The request must be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701, or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Court-martial, Article 32, UCMJ investigations, Courts or Boards of Inquiry or other administrative or disciplinary hearings; convening authorities; Federal, state, and local law enforcement agencies; witness interviews; personnel, financial, and medical records; medical facilities; financial institutions; case tracking programs and files; and the work-product of trial counsel, legalmen, and legal assistants working on particular cases.

EXEMPTION CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

Information specifically authorized to be classified under E.O. 12958, as implemented by DoD 5200.1–R, may be exempt pursuant to 5 U.S.C. 552a(k)(1).

Investigatory material compiled for law enforcement purposes may be exempt pursuant to 5 U.S.C. 552a(k)(2). However, if an individual is denied any right, privilege, or benefit for which he would otherwise be entitled by Federal law or for which he would otherwise be eligible, as a result of the maintenance of such information, the individual will be provided access to such information except to the extent that disclosure would reveal the identity of a confidential source.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c), and (e) and published in 32 CFR part 701, subpart G. For additional information, contact the system manager.

[FR Doc. 00–8183 Filed 4–3–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Navy proposes to alter a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The alteration adds a routine use to allow the disclosure of records to state and local authorities for purposes of providing (1) notification that individuals, who have been convicted of a specified sex offense or an offense against a victim who is a minor, will be residing in the state upon release from military confinement and (2) information about the individual for inclusion in a state operated sex offender registry.

DATES: This action will be effective on May 4, 2000, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on March 23, 2000, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: March 29, 2000.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01640-1

SYSTEM NAME:

Individual Correctional Records *(June 25, 1997, 58 FR 34234).*

CHANGES:

* * * * *

SYSTEM LOCATION:

In lines 6-8, delete from "Bureau" to end of sentence and replace with "Navy Personnel Command (Pers-84), 5720 Integrity Drive, Millington, TN 38055-8400."

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

In line 25, delete the words "disciplinary action data cards" and replace with "records". In line 32, after the word "release"; delete the rest of the entry and replace with "reports showing legal status, offense charged, and length of time confined. Names, addresses, and telephone numbers of victims/witnesses."

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Add the following paragraph to entry "To state and local authorities for purposes of providing (1) notification that individuals, who have been convicted of a specified sex offense or an offense against a victim who is a minor, will be residing in the state upon release from military confinement and (2) information about the individual for inclusion in a state operated sex offender registry."

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with "Policy Officials: Commander, Navy Personnel Command (Pers–84) 5720 Integrity Drive, Millington, TN 38055–8400 and Commandant of the Marine Corps (Code POS–40), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001.

Record Holders: United States Naval Brigs and United States Marine Corps Brigs. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Commander, Navy Personnel Command (Pers–84), 5720 Integrity Drive, Millington, TN 38055–8400."

* * * * *

N01640-1

SYSTEM NAME:

Individual Correctional Records.

SYSTEM LOCATION:

United States Navy Brigs and United States Marine Corps Correctional Facilities. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Navy Personnel Command (Pers–84), 5720 Integrity Drive, Millington, TN 38055–8400.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members confined in a naval facility as a result of or pending trial by courts-martial; military members sentenced to three days bread and water or diminished rations; and military members awarded correctional custody to be served in a correctional custody unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to the administration of individual prisoners in the Department of the Navy confinement and correctional custody facilities—courts martial orders; release orders; confinement orders; medical examiners' reports; requests and receipts for health and comfort supplies; reports and recommendations relative to disciplinary actions; clothing and equipment records; mail and visiting lists and records; personal history records; individual prisoner utilization records; requests for interview; initial interview; spot reports; prisoner identification records; parolee agreements; inspection record of prisoner in segregation; personal funds records; valuables and property record; daily report of prisoners received and released; admission classification summary; social history; clemency recommendations and actions; parole recommendations and actions; restoration recommendations and actions; psychiatric, psychological, and sociological reports; certificate of parole; certificate of release from parole; requests to transfer prisoners; records showing name, grade, Social Security Number, sex, education, sentence,

offense(s), sentence computation, organization, ethnic group, discharge awarded, length of unauthorized absence, number and type of prior punishments, length of service, and type release; reports showing legal status, offense charged, and length of time confined. Names, addresses, and telephone numbers of victims/witnesses.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 951; 42 U.S.C. 10601 et seq., Victim's Rights and Restitution Act of 1990 as implemented by DoD Instruction 1030.2, Victim and Witness Assistance Procedures; and E.O. 9397 (SSN).

PURPOSE(S):

To determine initial custody classification; to determine when custody grade change is appropriate; to gauge member's adjustment to confinement or correctional custody; to identify areas of particular concern to prisoners and personnel in correctional custody; to determine work assignment; to determine educational needs; serves as the basis for correctional treatment; serves as a basis for recommendations for clemency, restoration, and parole; and to notify victims/witnesses of crime of release related activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, and local law enforcement and investigative agencies for investigation and possible criminal prosecution, civil court actions or regulatory order.

To state and local authorities for purposes of providing (1) notification that individuals, who have been convicted of a specified sex offense or an offense against a victim who is a minor, will be residing in the state upon release from military confinement and (2) information about the individual for inclusion in a state operated sex offender registry.

To confinement/correctional system agencies for use in the administration of correctional programs to include custody classification; employment, training and educational assignments; treatment programs; clemency, restoration to duty, and parole actions; verifications concerning military offenders or military criminal records, employment records and social histories.

To victims and witnesses of crime for the purpose of notifying them of date of parole or clemency hearing and other release related activities.

The "Blanket Routine Uses" that appear at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computerized data base.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Computer data base is password protected.

RETENTION AND DISPOSAL:

Two years after a prisoner is released or transferred from a brig or expiration of parole, prisoner records are transferred to the appropriate Federal Records Center.

Federal Records Center Atlanta, 1557 St. Joseph Avenue, East Point, GA 30344 has records from ashore brigs under the area coordination of the Commander in Chief, U.S. Atlantic Fleet; Commander in Chief, U.S. Naval Forces Europe; Commander, Naval Education and Training, afloat brig on Atlantic Fleet ships, and Naval Consolidated Brig, Charleston.

Federal Records Center Los Angeles, 2400 Avila Road, P.O. Box 6719, Laguna Niegel, CA 92607–6719 has records for ashore brigs under the area consideration of the Commander in Chief, U.S. Pacific Fleet; afloat brigs on Pacific Fleet ships; and Naval Consolidated Brig, Miramar.

Records of prisoners accompany their transfer to other facilities.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: Commander, Navy Personnel Command (Pers–84), 5720 Integrity Drive, Millington, TN 38055–8400 and Commandant of the Marine Corps (Code POS–40), Headquarters, U.S. Marine Corps, 2 Navy Annex, Washington, DC 20380–0001.

Record Holders: United States Naval Brigs and United States Marine Corps Brigs. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Commander, Navy Personnel Command (Pers–84), 5720 Integrity Drive, Millington, TN 38055–8400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Naval Brig or United States Marine Corps Brig where incarcerated. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Commander, Navy Personnel Command (Pers-84), 5720 Integrity Drive, Millington, TN 38055-8400.

Requests should include full name and Social Security Number and must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the United States Naval Brig or United States Marine Corps Brig where incarcerated. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Commander, Navy Personnel Command (Pers–84), 5720 Integrity Drive, Millington, TN 38055–8400.

Requests should include full name and Social Security Number and must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military personnel records; military financial and medical records; military and civilian investigative and law enforcement agencies; courts-martial proceedings; records of non-judicial administrative proceedings; United States military commanders; staff members and cadre supply information relative to service member's conduct or duty performance; and other individuals or organizations which may supply information relevant to the purpose for which this system was designed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2) if the information is compiled and maintained by a component of the agency which performs as its principle function any activity pertaining to the enforcement of criminal laws.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

[FR Doc. 00–8185 Filed 4–3–00; 8:45 am]

BILLING CODE 5001–10–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 5, 2000.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: March 29, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Annual Performance Report for the Upward Bound, Upward Bound Math/Science, and Veterans Upward Bound Programs.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1.

Burden Hours: 9,000.

Abstract: Upward Bound grantees must submit the report annually. The reports are used to evaluate the performance of grantees prior to awarding continuation funds and to assess a grantee's prior experience at the end of each budget period. The Department will also aggregate the data to provide descriptive information on the programs and to analyze the impact of the program on the academic progress of participating students.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO__IMG__Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe__Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–8198 Filed 4–3–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 4, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, N.W., Room 10235, New Executive Office Building, Washington, D.C. 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 29, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Student Financial Assistance Programs

Type of Review: Revision.

Title: Federal Pell Grant Program Recipient Financial Management System (RFMS).

Frequency: On Occasion.

Affected Public: Not-for-profit institutions; Businesses or other for-profit; Individuals or household.

Reporting and Recordkeeping Hour Burden:

Responses: 5,660.

Burden Hours: 396,200.

Abstract: The Federal Pell Grant Program provides grants to eligible students based on financial need to meet the costs of postsecondary education. The new RFMS modernizes the Federal Pell Grant Program and institutions report data and request funds through RFMS.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, D.C. 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–8199 Filed 4–3–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 4, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 29, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Special Education and Rehabilitative Services

Type of Review: Extension.

Title: Individuals with Disabilities Education Act.

Frequency: Annually.

Affected Public: Businesses or other for-profit; Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 1,200.

Burden Hours: 30,000.

Abstract: Under the Individuals with Disabilities Education Act discretionary grants are authorized to support research and technology, personnel preparation, parent training, and information and technical assistance activities. This grant application provides the forms and information necessary for applicants to submit an application for funding, and information for use by technical reviewers to determine the quality of application.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Sheila Carey at (202) 708–6287 or via her internet address Sheila_Carey@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–8200 Filed 4–3–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

National Advisory Committee on Institutional Quality and Integrity (National Advisory Committee); Meeting

AGENCY: National Advisory Committee on Institutional Quality and Integrity, Department of Education

What Is the Purpose of This Notice?

The purpose of this notice is to announce the public meeting of the National Advisory Committee and invite third-party oral presentations before the Committee. This notice also presents the proposed agenda and informs the public of its opportunity to attend this meeting. The notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

When and Where Will the Meeting Take Place?

We will hold the public meeting on May 24 and 25, 2000 from 10:00 a.m. until 5:30 p.m. at the Ritz Carlton Hotel at Pentagon City, 1250 South Hayes Street, Arlington, Virginia 22202. You may call the Hotel on (703) 415–5000 to inquire about rooms.

What Access Does the Hotel Provide for Individuals With Disabilities?

The meeting site is accessible to individuals with disabilities. If you will need an auxiliary aid or service to participate in the meeting (e.g., interpreting service, assistive listening device, or materials in an alternate format), notify the contact person listed in this notice at least two weeks before the scheduled meeting date. Although we will attempt to meet a request received after that date, we may not be able to make available the requested auxiliary aid or service because of insufficient time to arrange it.

Who Is the Contact Person for the Meeting?

Please contact Ms. Bonnie LeBold, who is the Executive Director of the National Advisory Committee on Institutional Quality and Integrity, if you have questions about the meeting. You may contact her at the U.S. Department of Education, Room 7007—MS 7592, 1990 K Street NW, Washington, DC 20006, telephone: (202) 219–7009, fax: (202) 219–7008. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339.

What Is the Authority for the National Advisory Committee?

The National Advisory Committee on Institutional Quality and Integrity is established under Section 114 of the Higher Education Act (HEA) as amended, 20 U.S.C. 1011.

What are the Functions of the National Advisory Committee?

The Committee advises the Secretary of Education about:

- The establishment and enforcement of the criteria for recognition of accrediting agencies or associations under subpart 2 of part H of Title IV, HEA.
- The recognition of specific accrediting agencies or associations.
- The preparation and publication of the list of nationally recognized accrediting agencies and associations.
- The eligibility and certification process for institutions of higher education under Title IV, HEA.
- The development of standards and criteria for specific categories of vocational training institutions and institutions of higher education for which there are no recognized accrediting agencies, associations, or State agencies in order to establish the interim eligibility of those institutions to participate in Federally funded programs.
- The relationship between: (1) Accreditation of institutions of higher education and the certification and eligibility of such institutions, and (2) State licensing responsibilities with respect to such institutions.
- Any other advisory functions relating to accreditation and institutional eligibility that the Secretary may prescribe.

What Items Will be on the Agenda for Discussion at the Meeting?

Agenda topics will include an update on the Title IV Distance Education Demonstration Program, a panel discussion by Federal and higher education agency representatives on transfer of credit issues, a briefing on ethics requirements, and the review of agencies that have submitted petitions for renewal of recognition or interim reports.

What Agencies Will the Advisory Committee Review at the Meeting?

The Advisory Committee will review the following agencies during its May 24–25, 2000 meeting.

Nationally Recognized Accrediting Agencies

Interim Reports (An interim report is a follow-up report on an accrediting agency's compliance with specific criteria for recognition that was requested by the Secretary when the Secretary granted renewed recognition to the agency.)

1. American Academy for Liberal Education.
2. Association of Advanced Rabbinical and Talmudic Schools, Accreditation Commission.
3. Accrediting Bureau of Health Education Schools.
4. American Veterinary Medical Association, Council on Education.
5. The Council on Chiropractic Education, Commission on Accreditation.
6. Council on Education for Public Health.
7. National Environmental Health Sciences and Protection Accreditation Council.
8. National League for Nursing Accrediting Commission.

State Agency Recognized for the Approval of Public Postsecondary Vocational Education

Petition for Renewal of Recognition

1. Puerto Rico Human Resources and Occupational Development Council.

Interim Report

1. Oklahoma State Board of Vocational and Technical Education.
2. Utah State Board for Applied Technology Education.

State Agencies Recognized for the Approval of Nurse Education

Petition for Renewal of Recognition

1. Montana State Board of Nursing

Interim Report

1. Maryland Board of Nursing

Who Can Make Third-Party Oral Presentations at this Meeting?

We invite you to make a third-party oral presentation before the National Advisory Committee concerning the recognition of any agency listed above.

How Do I Request to Make an Oral Presentation?

You must submit a *written request* to make an oral presentation concerning an agency listed above to the contact person listed in this notice. The request must be received *no later than close of business on May 3, 2000.* Your request should include:

—The names of all persons seeking an appearance,

—The organization they represent, and

—A brief summary of the principal points to be made during the oral presentation.

This notice is *not* a call for third-party written comments. However, if you wish to provide the Advisory Committee with a brief document (no more than 6 pages maximum, including any attachments) illustrating the main points of your oral testimony, please enclose one original and 25 copies of the document with your written request to make an oral presentation. Please do not distribute written materials at the meeting or send materials directly to Committee members.

Materials received by the deadline (May 3, 2000) and in accordance with these instructions become part of the official record and are considered by the Committee in its deliberations. Department staff will not distribute documents received after the May 3, 2000 deadline to the Advisory Committee.

If I Cannot Attend the Meeting, Can I Submit Written Comments Regarding an Accrediting Agency in Lieu of Making an Oral Presentation?

This notice requests third-party oral testimony, not written comment. A request for written comments on agencies that are being reviewed during this meeting was published in the **Federal Register** on January 18, 2000. The Advisory Committee will receive and consider only written comments submitted by the deadlines specified in that **Federal Register** notice.

How Do I Request to Present Comments Regarding General Issues Rather Than Specific Accrediting Agencies?

At the conclusion of the meeting, the Committee, at its discretion, may invite attendees to address the Committee briefly on issues pertaining to the functions of the Committee, which are listed earlier in this notice. If you are interested in making such comments, you should inform Ms. LeBold before the meeting.

How May I Obtain Access to the Records of the Meeting?

We will record the meeting and make a transcript available for public inspection at the U.S. Department of Education, 1990 K St. NW, Washington, DC, telephone (202) 219–7009, between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. It is preferred that an appointment be made in advance of such inspection.

What Agencies Will Be Postponed for Review until the December 2000 Meeting?

The agencies listed below, which were originally scheduled for review during the Committee's May 2000 meeting, will be postponed for review until the Committee's December 2000 meeting. Any third-party written comments regarding these agencies that were received by March 3, 2000, in accordance with the **Federal Register** notice published on January 18, 2000, will become part of the official record and will be considered by the Committee in its deliberations at the December 2000 meeting. There will be another opportunity to provide written comments on these agencies this summer; a **Federal Register** notice requesting comments on all agencies scheduled for review at the December 2000 meeting will be published in June or July 2000.

Nationally Recognized Accrediting Agencies

Petition for Initial Recognition

1. Midwifery Education Accreditation Commission.

Petitions for Renewal of Recognition

1. American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education.
2. American Bar Association, Council of the Section of Legal Education and Admissions to the Bar.
3. Accreditation Commission for Acupuncture and Oriental Medicine.
4. Accrediting Commission on Education for Health Services Administration.
5. American Osteopathic Association, Bureau of Professional Education.
6. American Podiatric Medical Association, Council on Podiatric Medical Education.
7. National Council for Accreditation of Teacher Education.
8. New York State Board of Regents.

Authority: 5 U.S.C. Appendix 2.

Dated: March 29, 2000.

A. Lee Fritschler,

Assistant Secretary for Postsecondary Education.

[FR Doc. 00–8218 Filed 4–3–00; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF ENERGY

Rocky Flats Field Office; Notice of Intent To Solicit Competitive Applications/Proposals for Financial Assistance

AGENCY: Rocky Flats Field Office, Department of Energy (DOE).

ACTION: Notice of intent to solicit competitive applications/proposals for financial assistance.

SUMMARY: The Rocky Flats Field Office (RFFO) of the Department of Energy is entrusted to contribute to the welfare of the nation by providing the scientific foundation, technology, policy and institutional leadership necessary to achieve efficiency in energy use, diversity in energy sources, a more productive and competitive economy, improved environmental quality, and a secure national defense. RFFO intends to fund a series of grants in special emphasis programs to encourage programs to train Native Americans, African Americans, Hispanic Americans, Asian-Pacific Americans, Women and Disabled Students to pursue training in the fields of sciences and engineering; and to fund local community projects contributing to diversity-related programs.

DATES: Applications may be submitted at any time on or before May 4, 2000. Applications received within 30 days from the date of this announcement, will be considered; applications received after that date may or may not be considered depending on the status of proposal review and selection.

ADDRESSES: Department of Energy, Rocky Flats Field Office, Contracts Management Division, 10808 Highway 93, Unit A, Golden, Colorado 80403–8200.

FOR FURTHER INFORMATION CONTACT: Elaine Nix, Department of Energy Rocky Flats Field Office, 10808 Highway 93, Unit A, Golden, Colorado 80403–8200, (303) 966–2054, for application forms and additional information. Completed applications or proposals must be sent to the addresses heading.

SUPPLEMENTARY INFORMATION: DOE RFFO is under no obligation to pay for any costs associated with the preparation or submission of applications/proposals if an award is not made. If an award is made, such costs may be allowable as provided in the applicable cost principles.

Availability Of Fiscal Year 1999 Funds

With this publication; DOE RFFO is announcing the availability of up to $300,000 in grant funds for fiscal year 2000. RFFO anticipates that four or less grants will be made for a total not to exceed $300,000. The awards will be made through a competitive process. Projects may cover a period of up to 5 years funding for out-years is dependent on appropriation from Congress. Length of awards may vary by applicant.

Restricted Eligibility

Eligible applicants for the purposes of funding under this notice include organizations and institutions residing in Colorado proposing to implement minority science and engineering projects in Colorado as described in the summary section of this announcement. Applicants are encouraged to propose project cost-sharing or sharing of in-kind services or resources. The awards will be made through a competitive process to organizations and institutions located in the State of Colorado. The Catalog of Federal Domestic Assistance number assigned to this program is 81.116.

Evaluation Criteria

All responsive Applications will be reviewed by a panel composed of Department of Energy RFFO representatives. Successful proposal(s) will be selected on the opinion of panel members of proposals most able to meet the objectives best able to meet the needs of this office.

Proposals must demonstrate and will be evaluated based on the following criteria:

1. Implementation plan demonstrates experience, qualifications, capabilities, and resources necessary to successfully accomplish the proposed activities. (25%)
2. Exhibits sound administrative and financial management practices. (25%)

- Ability and willingness to perform all administrative requirements of the grant.
- The relationship between direct and indirect costs, and other financial aspects of the proposed grant, demonstrates sound financial practices.
- Cost effectiveness of projects.

3. Relationship of the proposed project to the objectives of the solicitation. (25%)
4. Qualifications of key personnel. (10%)

- Adequacy of availability and level of expertise of proposed personnel resources.
- Level of expertise of key personnel as demonstrated in resumes containing relevant education, training, and experience (resumes should include relevant project work previously conducted by individuals of the team).

5. Successful past performance of similar projects. (15%)

- Proposals lacking records of relevant past performance will receive a neutral score.

DOE RFFO hereby reserves the right to fund, in part or whole, any, all, or none of the proposals submitted in response to this request. All applicants will be notified in writing of the action taken on their applications. Applicants should allow approximately 90 days for DOE evaluation. The status of any application during the evaluation and selection process will not be discussed with applicants. Unsuccessful applications will not be returned to the applicant.

Issued in Golden, Colorado, on March 15, 2000.

Hugh G. Miller,

Contracting Officer.

[FR Doc. 00–8219 Filed 4–3–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Resolution Commission

[Docket No. GP94–2–009]

Columbia Gas Transmission Corporation; Notice of Refund Report

March 29, 2000.

Take notice that on March 21, 2000, Columbia Gas Transmission Corporation (Columbia), tendered for filing with the Federal Energy Regulatory Commission (Commission) its Refund Report made to comply with the April 17, 1995 Settlement (Settlement) in Docket No. GP94–02, *et al.*, as approved by the Commission on June 15, 1995 (Columbia Gas Transmission Corp., 71 FERC ¶ 61,337 (1995)).

Columbia states that on February 21, 2000 Columbia made refunds, as billing credits, in the amount of $309,789.90. The refunds represent deferred tax refunds received from Trailblazer Pipeline Company and Overthrust Pipeline Company. These refunds were made pursuant to Article VIII, Section E of the Settlement using the allocation percentage shown on Appendix G, Schedule 5 of the Settlement. The refunds include interest at the FERC rate, in accordance with the Code of Federal Regulations, Subpart F, Section 154.501(d).

Columbia states that copies of its filing have been mailed to all affected customers and state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before April 5, 2000. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8270 Filed 4–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94–72–012]

Iroquois Gas Transmission System, L.P.; Notice of Proposed Changes in FERC Gas Tariff

March 29, 2000.

Take notice that on March 24, 2000, Iroquois Gas Transmission System, L.P. (Iroquois, tendered for filing the following revised tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, with a proposed effective date of March 24, 2000.

Twenty-Seventh Revised Sheet No. 4
Original Sheet No. 4A
Ninth Revised Sheet No. 5
Fourth Revised Sheet No. 14
Fourth Revised Sheet No. 15
Fourth Revised Sheet No. 29
Fifth Revised Sheet No. 30
Second Revised Sheet No. 75B
Third Revised Sheet No. 75C

Iroquois asserts that the filing is in compliance with the Commission's order issued in the captioned proceedings on February 10, 2000, approving an offer of settlement which was filed on December 17, 1999.

Iroquois states that copies of its filing were served on all jurisdictional customers, interested state commissions and all parties in Docket Nos. RP94–72, FA92–59 and RP97–126.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed as provided in Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8272 Filed 4–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–108–000]

Questar Pipeline Company; Notice of Technical Conference

March 29, 2000.

In the Commission's order issued on March 20, 2000, the Commission directed that a technical conference be held to address issues raised by the filing.

Take notice that the technical conference will be held on Wednesday, April 26, 2000, at 10:00 am, in a room to be designated at the offices of the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

All interested parties and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8271 Filed 4–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–027]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

March 29, 2000.

Take notice that on March 24, 1999, Tennessee Gas Pipeline Company (Tennessee), tendered for filing two firm service agreements and a description of the essential conditions involved in agreeing to two (2) Negotiated Rate Arrangements. Tennessee requests that the Commission approve the Negotiated Rate Arrangements to be effective on April 1, 2000, for one agreement and May 1, 2000, for the other agreement.

Tennessee states that the filed Negotiated Rate Arrangements reflect negotiated rates between Tennessee and Consolidated Edison Company of New York, Inc. (Con Edison) for transportation service, under two transportation agreements for a period to be effective beginning April 1, 2000, until October 31, 2003, for one and for a period beginning May 1, 2000, until November 30, 2002, for the other.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8275 Filed 4–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG00–117–000, et al.]

Ameren Energy Generating Company, et al.; Electric Rate and Corporate Regulation Filings

March 28, 2000.

Take notice that the following filings have been made with the Commission:

1. Ameren Energy Generating Company

[Docket No. EG00–117–000]

Take notice that on March 23, 2000, Ameren Energy Generating Company (Generating Co.), c/o Ameren Services, 1901 Chouteau Avenue, St. Louis, MO 63166, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. Generating Co. proposes to acquire five electric generating stations currently owned by Central Illinois Public Service Company (AmerenCIPS) with approximately 2900 MW of generating capacity, as well as certain additional generating units, and to sell all of the electric energy available from those units at wholesale. The transfer to Generating Co. of generating units owned by AmerenCIPS is intended to implement the Illinois Electric Service Customer Choice and Rate Relief Law of 1997. State Commission determinations allowing such facilities to become eligible facilities have been issued by the Illinois Commerce Commission and the Missouri Public Service Commission.

Comment date: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

2. Indeck Colorado, LLC

[Docket No. EG00–118–000]

Take notice that on March 23, 2000, Indeck Colorado, LLC (Indeck Colorado) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to Section 32 of the Public Utility Holding Company Act of 1935 and part 365 of the Commission's regulations.

Comment date: April 18, 2000, in accordance with Standard Paragraph E at the end of this notice. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application.

3. Western Power Trading Forum, Complainant, v. California Independent System Operator Corporation, Respondent

[Docket No. EL00–58–000]

Take notice that on March 24, 2000, the Western Power Trading Forum (Complainant) filed a complaint and request for expedited relief under Sections 206 and 306, *et seq.*, of the Federal Power Act, 16 U.S.C. 824e and 825e (1994), and Section 206 of the Commission's Rules of Practice and Procedure, 18 CFR 385.206, alleging that the Grid Management Charge of the California Independent System Operator Corporation (ISO) is unjust, unreasonable, unduly discriminatory, anticompetitive, excessive, and in violation of a prior ISO settlement approved in Docket Nos. ER98–211–000, *et al.*

Comment dates: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice. Answers to the Complaint shall also be due on or before April 13, 2000.

4. Western Systems Power Pool

[Docket No. ER91–195–041]

Take notice that on March 23, 2000, the Western Systems Power Pool (WSPP) filed certain information to update its January 31, 2000 quarterly filing. This data is required by Ordering Paragraph (D) of the Commission's June 27, 1991 Order (55 FERC ¶61,495) and Ordering Paragraph (C) of the Commission's June 1, 1992 Order On Rehearing Denying Request Not To Submit Information, And Granting In Part And Denying In Part Privileged Treatment. Pursuant to 18 CFR 385.211, WSPP has requested privileged treatment for some of the information filed consistent with the June 1, 1992 order. Copies of WSPP's informational filing are on file with the Commission, and the non-privileged portions are available for public inspection.

5. CinCap VII, LLC

[Docket No. ER00–1831–001]

Take notice that on March 23, 2000, CinCap VII, LLC (CinCap VII) submitted an amendment to its application for approval of CinCap VII's Rate Schedule FERC No. 1 providing for market-based capacity and energy sales at wholesale, transmission capacity reassignment and the sale of ancillary services at market-based rates.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

6. CinCap VIII, LLC

[Docket No. ER00–1834–001]

Take notice that on March 23, 2000, CinCap VIII, LLC (CinCap VIII) submitted an amendment to its application for approval of CinCap VIII's Rate Schedule FERC No. 1 providing for market-based capacity and energy sales at wholesale, transmission capacity reassignment and the sale of ancillary services at market-based rates.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

7. Virginia Electric and Power Company

[Docket No. ER00–1940–000]

Take notice that on March 22, 2000, Virginia Electric and Power Company (Virginia Power) tendered for filing the following:

1. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Allegheny Energy Supply Company, LLC.

2. Service Agreement for Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to Allegheny Energy Supply Company, LLC.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers dated July 14, 1997. Under the tendered Service Agreements, Virginia Power will provide point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff.

Virginia Power requests an effective date of March 22, 2000, the date of filing of the Service Agreements.

Copies of the filing were served upon Allegheny Energy Supply Company, LLC, the Virginia State Corporation Commission and the North Carolina Utilities Commission.

Comment date: April 12, 2000, in accordance with Standard Paragraph E at the end of this notice.

8. Entergy Services, Inc.

[Docket No. ER00–1947–000]

Take notice that on March 23, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc. (together Entergy) filed an amendment to its Open Access Transmission Tariff (OATT). Entergy states that the purpose of the proposed OATT amendment is to implement the retail access pilot program in Texas (Texas Pilot). The changes to the OATT are designed to provide unbundled transmission access to retail customers participating in Texas Pilot. Entergy states that it has conformed the amendment to be consistent with prior OATT retail access amendments accepted by the Federal Energy Regulatory Commission.

Entergy requests an effective date of June 1, 2001, for the amendment, to coincide with the commencement of the Texas Pilot.

Entergy has served a copy of this filing on its state and local regulatory commissions and its OATT customers.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

9. Tampa Electric Company

[Docket No. ER00–1949–000]

Take notice that on March 23, 2000, Tampa Electric Company (Tampa Electric) filed a Notice of Termination of a letter of commitment under interchange service Schedule D between Tampa Electric and the City of Fort Meade, Florida (Fort Meade).

Copies of the filing have been served on Fort Meade and the Florida Public Service Commission.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

10. Entergy Services, Inc.

[Docket No. ER00–1948–000]

Take notice that on March 23, 2000, Entery Services, Inc. (Entergy Services), on behalf of Entergy Arkansas, Inc. (EAI) (formerly Arkansas Power & Light Company), tendered for filing a 2000 Wholesale Formula Rate Update (Update) in accordance with the Power Coordination, Interchange and Transmission Service Agreements between EAI and the cities of Conway, West Memphis and Osceola, Arkansas (Arkansas Cities); the cities of Campbell and Thayer, Missouri (Missouri Cities), and the Arkansas Electric Cooperative Corporation (AECC); the Transmission Service Agreement between EAI and the Louisiana Energy and Power Authority (LEPA); the Transmission Service Agreement between EAI and the City of Hope, Arkansas (Hope); the Hydroelectric Power Transmission and Distribution Service Agreement between EAI and the City of North Little Rock, Arkansas (North Little Rock); the Wholesale Power Service Agreement between EAI and the City of Prescott, Arkansas (Prescott) and the Wholesale Power Service Agreement between EAI and Farmers Electric Cooperative Corporation (Farmers). Entergy Services states that the Update redetermines the formula rate charges and Transmission Loss factor in accordance with: (1) The above agreements, (2) the 1994 Joint Stipulation between EAI and AECC accepted by the Commission in Docket No. ER95–49–000, as revised by the 24th Amendment to the AECC Agreement accepted by the Commission on March 26, 1996 in Docket No. ER96–1116–000, (3) the formula rate revisions accepted by the Commission on February 21, 1995 in Docket No. ER95–363–000 as applicable to the Arkansas Cities, Missouri Cities, Hope and North Little Rock, (4) the formula revisions as applicable to LEPA accepted by the Commission on January 10, 1997 in Docket No. ER97–257–000, and (5) the Settlement Agreement accepted by the Commission on July 2, 1999 in Docket No ER98–2028–000 (the 1998 Formula Rate Update proceeding).

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

11. Tampa Electric Company

[Docket No. ER00–1950–000]

Take notice that on March 23, 2000, Tampa Electric Company (Tampa Electric) filed a Notice of Termination of a letter of commitment under interchange service Schedule D between Tampa Electric and the City of Wauchula, Florida (Wauchula).

Copies of the filing have been served on Wauchula and the Florida Public Service Commission.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

12. Tampa Electric Company

[Docket No. ER00–1951–000]

Take notice that on March 23, 2000, Tampa Electric Company (Tampa Electric) tendered for filing a service agreement with Cargill-Alliant, LLC (Cargill-Alliant) under Tampa Electric's market-based sale tariff. Tampa Electric requests that the service agreement be made effective on March 23, 2000.

Copies of the filing have been served on Cargill-Alliant and the Florida Public Service Commission.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

13. Indeck Colorado, LLC

[Docket No. ER00–1952–000]

Take notice that on March 23, 2000, Indeck Colorado, LLC, filed an initial rate schedule to sell power at market-based rates and two purchase agreements with Public Service Company of Colorado under said rate schedule.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

14. Ameren Services Company

[Docket No. ER00–00–1953–000]

Take notice that on March 23, 2000, Ameren Services Company (ASC) tendered for filing Service Agreements for Firm Point-to-Point Transmission Services between ASC and Central Illinois Light Company marketing, Central Illinois Light Company Retail and Cargill-Alliant, LLC (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

15. Ameren Services Company

[Docket No. ER00–1954–000]

Take notice that on March 23, 2000, Ameren Services Company (ASC) tendered for filing a Service Agreement for Long-Term Firm Point-to-Point Transmission Services between ASC and Ameren Energy, Inc. as agent for Ameren Services Company (customer). ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to customer pursuant to Ameren's Open Access Transmission Tariff.

ASC requests that the Service Agreement become effective March 10, 2000.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

16. Ameren Services Company

[Docket No. ER00–1955–000]

Take notice that on March 23, 2000, Ameren Services Company (ASC) tendered for filing Service Agreements for Non-Firm Point-to-Point Transmission Services between ASC and Central Illinois Light Company Marketing, Central Illinois Light Company Retail and Cargill-Alliant, LLC (the parties). ASC asserts that the purpose of the Agreements is to permit ASC to provide transmission service to the parties pursuant to Ameren's Open Access Transmission Tariff.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER00–1956–000]

Take notice that on March 23, 2000, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-to-Point Transmission Service Agreement and a Short-Term Firm Point-to-Point Transmission Service Agreement, both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Conectiv Energy Supply, Inc.

Entergy Services, Inc. requests that the Service Agreements become effective by March 14, 2000.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

18. Dayton Power and Light Company

[Docket No. ER00–1957–000]

Take notice that on March 23, 2000, The Dayton Power and Light Company (DP&L) tendered for filing an Interconnection Agreement with DP&L Energy, Inc.

DP&L requests that the Agreement become effective on March 24, 2000.

Comment date: April 13, 2000, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest such filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of these filings are on file with the Commission and are available for public inspection. This filing may also be viewed on the Internet at http://www.ferc.fed.us/ online/rims.htm (call 202–208–2222 for assistance).

David P. Boergers,

Secretary.

[FR Doc. 00–8268 Filed 4–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP00–55–000]

Distrigas of Massachusetts Corporation; Notice of Availability of the Environmental Assessment for the Proposed DOMAC LNG Plant Modifications Project

March 29, 2000.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared this environmental assessment (EA) on the modification of existing facilities proposed by Distrigas of Massachusetts Corporation (DOMAC) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the proposed modification, construction, and operation at an existing liquefied natural gas (LNG) storage facility. The proposed project would allow DOMAC to establish a mutually beneficial thermal energy exchange arrangement between its LNG Plant and the Island End Cogeneration Project (Power Project) and to supply 66,000 MMBtu per day of regasified LNG to the Power Project. The proposed modifications would include:

- Installation of a closed-loop hot and cold water thermal energy transfer system consisting of piping, a warm water storage tank, water-to-water heat exchangers, and five water pumps;
- Substitution of existing low, medium, and high pressure vaporizers with equivalent capacity shell-and-tube hot water heat exchangers compatible with the thermal energy transfer system;
- Minor LNG Plant modifications necessary to meter and connect the Power Project's fuel supply line to the LNG Plant; and
- Installation of a new utility water supply system to serve both the LNG Plant and the Power Project.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow the instructions to ensure that your comments are received in time and properly recorded.

- Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Room 1A, Washington, DC 20426;
- Label one copy of the comments for the attention of Gas Group I, PJ–11.1;
- Reference Docket No. CP00–55–000; and
- Mail your comments so that they will be received in Washington, DC on or before May 1, 2000.

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).

The date for filing timely motions to intervene in this proceeding has passed. Therefore, parties now seeking to file late interventions must show good cause, as required by section 395.214(b)(3), why this time limitation should be waived. Environmental issues have been viewed as good cause for late intervention. You do not need intervenor status to have your environmental comments considered.

Additional information about the proposed project is available from Mr. Paul McKee of the Commission's Office of External Affairs at (202) 208–1088 or on the FERC website (www.ferc.fed.us) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, to select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CHIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the CIPs helpline can be reached at (202) 208–2474.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8273 Filed 4–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulation Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene and Protests

March 29, 2000.

Take notice that the following hydroelectric application has been accepted by the Commission and is available for public inspection.

a. *Type of Application:* Subsequent License.

b. *Project No.:* 2724–023.

b. *Date filed:* September 30, 1999.

d. *Applicant:* City of Hamilton, Ohio.

e. *Name of Project:* City of Hamilton Hydroelectric Project.

f. *Location:* Ford Canal and Great Miami River, Butler County, Ohio. The project would not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Michael Perry, Electric Department, 10 Journal Square, Suite 300, Hamilton, Ohio, 450111, or telephone (513) 868–5907.

i. *FERC Contact:* Nick Jayjack at (202) 219–2825, E–mail address *nicholas.jayjack@ferc.fed.us.*

j. Deadline for filing motions to intervene and protests is 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted, but is not ready for environmental analysis at this time.

l. *The project consists of:* (1) An 8-foot-high (average), 1,660-foot-long concrete overflow diversion dam; (2) an 8-foot-high (average), 196-foot-long concrete overflow diversion dam; (3) a 3-mile-long power canal; (4) a concrete headgate structure at the canal entrance; (5) a 93-foot-wide by 63-foot-long by 50-foot-high powerhouse with an installed capacity of 1,500 kilowatts (kW) to be upgraded to 1,940 kW (the turbine-generator units are currently capable of producing 1,940 kW; however, system governors limit output to 1,500 kW); (6) a 21-foot-long spillway adjacent to the powerhouse; (7) a 50-foot-wide, 1,600-foot-long concrete and earthen tailrace; (8) a 0.25-mile-long, 13.2-kilovolt transmission line; (9) generator leads; and (10) appurtenant facilities.

m. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on http://www.ferc.fed.us/online/rims.htm (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005.

Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8269 Filed 4–3–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice Regarding Voluntary Identification of New Filings Made With the Commission

March 29, 2000.

This notice offers an optional and voluntary means for identification of new filings made with the Commission. Identification of filings as described below will help (1) ensure proper identification of filings, and (2) expedite the initial routing of filings within the Commission.

The filings covered by the optional procedures set out in this Notice are filings that need docket number assignment, *i.e.*, newly-docketed filings, such as pipeline certificate applications, applications for merger authority, applications for hydroelectric licensing, electric or gas rate filings, complaints, petitions for declaratory order. These optional procedures do not apply to interventions, comments, requests for rehearing, or the like, since these filings can be routed according to the docket number assigned to the filing initiating the proceeding.

The Commission receives many types of new filings requesting various forms of action. Upon receipt of these filings, it is currently incumbent upon the staff of the Secretary of the Commission (with advice from technical and legal staff) to determine the type of filing and how best to route that filing through the Commission for processing. However, if filings were more easily identifiable when filed, filings could be routed for processing faster, allowing processing time to be reduced accordingly.

Additionally, as the Commission moves toward implementation of electronic filing, easy and expeditious identification of filings may become more critical for successful routing.

In order to assist filers in identifying filings, an Appendix is attached for reference. The Appendix lists filing types, a brief description of each filing type, and the related statutory reference. Filers may, at their discretion, submit a copy of the appropriate Appendix page with the type of filing highlighted or marked (by placing an 'X' in the box in front of the filing type). If a filer chooses to take this approach, all relevant filing types should be designated. For example, it could be necessary for a filer to submit an application for merger authority, and a new open access tariff. In such an instance, the filer would want to mark two types of filings: (1) application for merger authority, and (2) tariff-transmission. We also take this opportunity to suggest that filers inform the Commission of any related filings or proceedings in their transmittal (or cover) letters.

Please note that this approach for identifying new filings is an option that may or may not be adopted by a filer. The Appendix may be used immediately, and may be downloaded from our web site at http://www.ferc.fed.us/online/rims.htm. Due to technical difficulties the Appendix will not be available on the Commission's Issuance Posting System (CIPS). Alternatively, copies of this notice are on file with the Commission and are available for public inspection in the Public Reference Room. Any questions about or comments on this optional procedure may be directed to David P. Boergers, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, (202) 208–0400.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8274 Filed 4–3–00; 8:45 am]

BILLING CODE 6717–01–M

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than April 19, 2000

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Dickinson Family Stock Retention Trust, Kansas City, Missouri; Amy Dickinson Holewinski, Mission Hills, Kansas and Daniel L. Dickinson, Kansas City, Missouri, as Trustees, to acquire additional voting shares of DFC Acquisition Corporation Two, Kansas City, Missouri, and Dickinson Financial Corporation, Kansas City, Missouri, and thereby indirectly acquire voting shares of Armed Forces Bank of California, San Diego, California; Air Academy National Bank, Colorado Springs, Colorado; Armed Forces Bank, N.A., Fort Leavenworth, Kansas; and Bank Midwest, N.A., Kansas City, Missouri.

Board of Governors of the Federal Reserve System, March 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8278 Filed 4–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 28, 2000.

A. Federal Reserve Bank of Minneapolis (JoAnne F. Lewellen, Assistant Vice President) 90 Hennepin Avenue, Minneapolis, Minnesota 55480–0291:

1. Community Pride Bank Corporation, Ham Lake, Minneapolis; to become a bank holding company by acquiring 100 percent of the voting shares of Community Pride Bank, Ham Lake, Minneapolis (a de novo bank).

B. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Shamrock Bancshares, Inc., Coalgate, Oklahoma; to acquire 100 percent of the voting shares of First Bank of Apache, Apache, Oklahoma.

Board of Governors of the Federal Reserve System, March 29, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8193 Filed 4–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 et seq. (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 28, 2000.

A. Federal Reserve Bank of Kansas City (D. Michael Manies, Assistant Vice President), 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Central Financial Corporation, Hutchinson, Kansas; to acquire 10 percent of the voting shares of Mid-America Bancorp, Inc., Jewell, Kansas, and thereby indirectly acquire Heartland Bank, N.A., Jewell, Kansas.

Board of Governors of the Federal Reserve System, March 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8277 Filed 4–3–00; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

Notice of Proposals To Engage in Permissible Nonbanking Activities or To Acquire Companies That Are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y, (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than April 28, 2000.

A. Federal Reserve Bank of New York (Betsy Buttrill White, Senior Vice President), 33 Liberty Street, New York, New York 10045–0001:

1. North Fork Bancorporation, Inc., Melville, New York; to acquire at least a majority of the voting shares of Dime Bancorp, Inc., New York, New York, and its subsidiaries, including The Dime Savings Bank of New York, FSB, and North American Mortgage Company, and thereby engage in extending credit and servicing loans and activities related to extending credit, pursuant to §§ 225.28(b)(1) and (2) of Regulation Y; operating a savings association pursuant to § 225.28(b)(4)(ii) of Regulation Y; and credit insurance activities pursuant to § 225.28(b)(11)(i) of Regulation Y.

Board of Governors of the Federal Reserve System, March 30, 2000.

Robert deV. Frierson,

Associate Secretary of the Board.

[FR Doc. 00–8279 Filed 4–3–00; 8:45 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Meeting Notice

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11:00 a.m., Monday, April 10, 2000.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Lynn S. Fox, Assistant to the Board; 202–452–3204.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days

before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at http://www.federalreserve.gov for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: March 31, 2000.

Robert deV. Frierson,

Associote Secretary of the Board.

[FR Doc. 00–8384 Filed 3–31–00; 3:06 pm]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Agency Information Collection Activities; Submission for OMB Review; Comment Request

AGENCY: Federal Trade Commission (FTC).

ACTION: Notice.

SUMMARY: The FTC is seeking Office of Management and Budget (OMB) clearance under the Paperwork Reduction Act (PRA) for consumer surveys to gather information for its study of the marketing of violent entertainment to children. The FTC seeks public comment regarding this notice, which is the second of two notices required by the PRA for information collection requests of this nature.

DATES: Comments on the proposed information requests must be submitted on or before May 4, 2000.

ADDRESSES: Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden, to the following addresses: Edward Clarke, Senior Economist, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10202, Washington, D.C. 20503, and to Secretary, Federal Trade Commission, Room H–159, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580, or by e-mail to (entstudy@ftc.gov). The submissions should include the submitter's name, address, telephone number and, if available, FAX number and e-mail address. All submissions should be captioned "Entertainment Industry Study—FTC File No. P994511."

FOR FURTHER INFORMATION CONTACT: Requests for additional information, such as requests for the Supporting Statement, related attachments, or copies of the proposed collection of information, should be addressed to Sally Forman Pitofsky, Attorney, Division of Financial Practices, Bureau of Consumer Protection, Federal Trade Commission, 600 Pennsylvania Avenue, N.W., Washington, D.C. 20580. Telephone: (202) 326-3318, E-mail: (entstudy@ftc.gov).

SUPPLEMENTARY INFORMATION: On August 25, 1999, the FTC published a Federal Register notice with a 60-day comment period soliciting comments from the public concerning the collection of information from: (1) members of the motion picture, music recording, and video and personal computer game industries and (2) consumers. See 64 FR 46392. The second PRA notice for the industry surveys was published on November 18, 1999 (64 FR 63046). OMB approved that collection of information on December 21, 1999 for use through December 31, 2002. This is the second PRA notice regarding the collection of information from consumers.

Comments Received

The FTC received one comment regarding its proposed consumer research from the Interactive Digital Software Association (IDSA). The IDSA recommended that the Commission put out for public comment any survey instrument used to assess consumer attitudes toward and awareness of the IDSA's Entertainment Software Rating Board program and that any such research survey only those who actually buy or play video games. Consistent with the requirements of the PRA, the survey instruments used to study consumer attitudes toward and awareness of the various rating or labeling systems will be made available to interested parties upon request to Commission staff. Moreover, only children whose parents say their children play electronic games will be asked to answer surveys regarding video or personal computer games. The same approach will be taken for surveying children about their experiences regarding motion pictures and music recordings.

Description of the collection of information and proposed use

The FTC proposes to conduct a telephone survey of 750 parents having a child aged 11 to 16 and to survey 400 children aged 11 to 16 in order to gather specific information on their perceptions of the entertainment rating or labeling systems. This information will be collected on a voluntary basis, and the identities of the consumers will remain confidential. The FTC will contract with a consumer research firm to select consumers and conduct the surveys. Survey results will help the FTC assess whether and how consumers use the rating or labeling systems of the motion picture, recording, and electronic games industries.

Estimated Hours Burden

The FTC will contract with a survey firm to: (1) Identify and survey 750 parents with children aged 11 to 16; and (2) survey 400 children aged 11 to 16.

The contractor first will ask screener questions of approximately 5,000 parents in order to provide a large enough random sample for the parent telephone survey. After a parent completes the telephone survey, the contractor will ask the parent whether a child in the household aged 11 to 16 may also participate in it.

The FTC staff estimates that the screening for the survey will consume no more than one minute of each respondent's time. In addition, the FTC will pretest the parent survey on approximately 50 respondents to ensure that all questions are easily understood. This pretest will take approximately 15 minutes per person. Answering the parent survey will take approximately 15 minutes per respondent. Answering the children survey also will impose an individual burden of approximately 15 minutes.

Thus, total hours burden attributable to the consumer research will approximate 383 hours, determined as follows:

Activity	Number of respondents	Number of minutes/activity	Total hours
Screening	5,000	1	83
Parent survey: pretest	50	15	12
Parent survey	750	15	188
Children survey	400	15	100

Activity	Number of respondents	Number of minutes/activity	Total hours
Total			383

Estimated Cost Burden

The cost per respondent should be negligible. Participation is voluntary, and will not require any labor expenditures by respondents. There are no capital, start-up, operation, maintenance, or other similar costs to the respondents.

Debra A. Valentine,

General Counsel.

[FR Doc. 00–8246 Filed 4–3–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Docket No. 9292]

Dura Lube Corporation, et al.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that the Commission issued in April 1999 and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 28, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Heather Hippsley, FTC/S–4302, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3042 or 326–3285.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 3.25(f) of the Commission's Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 29, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement for entry of a consent order from Dura Lube Corporation, Inc., American Direct Marketing, Inc., Howe Laboratories, Inc., Crescent Marketing, Inc. (d/b/a Crescent Manufacturing, Inc.), National Communications Corporation, The Media Group, Inc., and Herman S. Howard and Scott Howard, the principals who control these corporations (referred to collectively as "Respondents"). The agreement would settle a complaint by the Federal Trade Commission that Respondents engaged in unfair or deceptive acts or practices in violation of section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for thirty (30) days for receipt of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns advertising representations made about Super Dura Lube Engine Treatment and Advanced Dura Lube Engine Treatment (referred to collectively as "Dura Lube"), engine oil additives. The administrative complaint alleged that Respondents violated the FTC Act by disseminating ads that made unsubstantiated performance claims about Dura Lube. The Complaint alleged that Respondents represented that, compared to motor oil alone or oil treated with any other product, Dura Lube: (1) Reduces engine wear; (2) reduces engine wear by more than 50%; (3) prolongs engine life; (4) reduces emissions; (5) reduces the risk of serious engine damage when oil pressure is lost; (6) improves gas mileage; and (7) improves gas mileage by up to 35%. The Complaint alleged that one treatment continues to protect engines for up to 50,000 miles. The Complaint alleged that Respondents represented that they had a reasonable basis for making these claims, but in fact did not possess competent evidence supporting them.

The Complaint also challenged, as false, claims that tests prove that, compared to motor oil alone, Dura Lube: (1) Reduces engine wear; (2) prolongs engine life; (3) reduces emissions; (4) reduces the risk of serious engine damage when oil pressure is lost; (5) improves gas mileage; and (6) improves gas mileage by up to 35%. The Complaint also challenged as false claims that tests prove that one treatment continues to protect engines for up to 50,000 miles. Additionally, the Complaint challenged, as false, claims that Dura Lube: (a) Has been tested by the U.S. Environmental Protection Agency; and (b) contains no chlorinated compound.

The Complaint alleged that Respondents represented that product demonstrations in their advertising proved, demonstrated, or confirmed that, (1) compared to motor oil alone, Dura Lube reduces the risk of serious engine damage when oil pressures is lost, and (b) without Dura Lube, motor oil fails to protect automobile engines under hot running conditions, when in fact the demonstrations do not prove, demonstrate, or confirm these product attributes. Finally, the Complaint alleged that Respondents represented that former astronaut Charles "Pete" Conrad had endorsed the product based on a valid exercise of his expertise in

the evaluation of automobile engine lubricants, when in fact Mr. Conrad did not have expertise in the evaluation and testing of automobile engine lubration.

The Complaint gave notice that the Commission had reason to believe that a proceeding under section 19 of the FTC Act for consumer redress ultimately might be appropriate, depending upon the adjudicative record and other relevant factors.

The proposed consent order contains provisions designed to prevent Respondents from engaging in acts and practices similar to those alleged in the complaint in the future. Part I of the proposed consent order prohibits Respondents from falsely claiming that Dura Lube contains no chlorinated compound or that it has been tested by the Environmental Protection Agency. It also prohibits them from claiming that Dura Lube meets the requirements or standards of any governmental or standard setting organization unless they possess competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, substantiating the claim.

Part II of the proposed consent order prohibits Respondents from making unsubstantiated representations regarding the performance, benefits, efficacy, attributes or use of any product for use in an automobile, or from misrepresenting the results of any study. It specifically prohibits unsubstantiated claims that, compared to motor oil alone or oil treated with any other product, the product reduces engine wear or reduces it by any percentage, dollar or other figure; prolongs engine life; reduces emissions; reduces the risk of serious engine damage when oil pressure is lost; or improves gas mileage or improves it by any percentage, miles per gallon, dollar or other figure. It also prohibits unsubstantiated claims that one treatment reduces engine wear for 50,000 or any other number of miles. The evidence required to substantiate such claims includes competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence.

Part III of the proposed consent order prohibits Respondents from using misleading demonstrations in the sale of any product.

Part IV of the proposed consent order prohibits Respondents from representing that any endorser of any product for use in a motor vehicle is an expert unless the endorser possesses the expertise he or she is represented to have and the endorsement is adequately supported by evidence that would be accepted by experts in the area.

Part X of the proposed consent order requires Respondents to pay $2 million in consumer redress. The Federal Trade Commission would administer and distribute the redress as the Commission, in its sole discretion, deemed appropriate. Respondents would be required to provide the Commission with the identities of consumers known to have purchased Dura Lube between January 1, 1994, and December 31, 1999. Consumers electing to accept the redress would release any claims against Respondents.

The remainder of the proposed consent order also contains provisions regarding distribution of the order, replacement of product packaging and labeling with compliant packaging and labeling, record-keeping, notification of changes in corporate status, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–8244 Filed 4–3–00; 8:45 am]

BILLING CODE 6750–01–M

FEDERAL TRADE COMMISSION

[Docket No. 9291]

Motor Up Corporation, Inc., et al.; Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the complaint that the Commission issued in April 1999 and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before April 28, 2000.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine Kolish or Heather Hippsley, FTC/S–4302, 600 Pennsylvania Ave., NW, Washington, DC 20580. (202) 326–3042 or 326–3285.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 3.25(f) of the Commission's Rules of Practice, 16 CFR 3.25(f), notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for March 29, 2000), on the World Wide Web, at "http://www.ftc.gov/ftc/formal.htm." A paper copy can be obtained from the FTC Public Reference Room, Room H–130, 600 Pennsylvania Avenue, NW, Washington, DC 20580, either in person or by calling (202) 326–3627.

Public comment is invited. Comments should be directed to: FTC/Office of the Secretary, Room 159, 600 Pennsylvania Ave., NW, Washington, DC 20580. Two paper copies of each comment should be filed, and should be accompanied, if possible, by a 3½ inch diskette containing an electronic copy of the comment. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Motor Up Corporation, Inc., Motor Up America, Inc., and Kyle Burns, the principal who controls these corporations (referred to collectively as "Motor Up"). The agreement would settle a complaint by the Federal Trade Commission that Motor Up engaged in unfair or deceptive acts or practices in violation of Section 5(a) of the Federal Trade Commission Act.

The proposed consent order has been placed on the public record for thirty (30) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

This matter concerns representations made about Motor Up No Oil Change Engine Treatment Concentrate, an engine oil additive, in advertising. The administrative complaint alleged that Motor Up violated the FTC Act by disseminating ads that made unsubstantiated performance claims about the oil additive. The Complaint alleged that the respondents represented that, compared to motor oil alone, Motor Up: (1) Reduces engine wear; (2) reduces engine wear by up to 50 percent; (3) reduces adhesive engine wear by up to 90.17 percent; (4) reduces engine wear during cold starts; (5) provides more protection against engine wear in cold temperatures; (6) extends the duration of engine life; and (7) helps prevent engine breakdowns. The Complaint also alleged that respondents represented that Motor Up: (1) Prevents corrosion in engines; (2) will not drain out from the engine even when the oil is changed; (3) protects engines for up to 50,000 miles; and (4) protects against engine wear even without motor oil. The Complaint alleged that respondents represented that they had a reasonable basis for making these claims, but in fact did not possess competent evidence supporting the claims. The Complaint alleged that respondents claimed that tests prove that, compared to motor oil alone, Motor Up reduces engine wear by up to 50 percent without possessing tests that prove the claim. The Complaint also alleged that respondents represented that product demonstrations in their advertising proved, demonstrated, or confirmed that Motor UP prevents corrosion in engines and that, compared to motor oil alone, Motor Up helps prevent breakdowns and reduces engine wear, when in fact the demonstrations do not prove, demonstrate, or confirm these product attributes.

The proposed consent order contains provisions designed to prevent Motor UP from engaging in similar acts and practices in the future. Part I of the proposed consent order prohibits Motor Up from making any claims about any engine treatment, fuel treatment, motor oil, grease, transmission fluid, or brake fluid, and any additive intended for use with or as a substitute for these products, unless Motor Up can support the claims with competent and reliable evidence. Part I specifies certain specific claims and states that these and all other claims must be supported by evidence. It also states that the evidence required to support claims may be competent and reliable scientific evidence.

Parts II prohibits Motor Up from misrepresenting in advertising the existence, contents, validity, results, conclusions, or interpretations of any test or study dealing with the Motor Up engine oil additive or any other motor vehicle product.

Part III prohibits Motor Up from using false demonstrations. It prohibits Motor Up from representing that any demonstration, picture, experiment, illustration or test of the Motor Up engine oil additive or any other motor vehicle product proves, demonstrates or confirms the product's attributes unless the demonstration, picture, experiment, illustration or tests does in fact prove, demonstrate, or confirm the attributes. This provision applies to all demonstrations of product attributes, including comparisons with other products.

The proposed order also contains provisions regarding distribution of the order, recordkeeping, notification of changes in corporate status, termination of the order, and the filing of a compliance report.

The purpose of this analysis is to facilitate public comment on the proposed order, and it is not intended to constitute an official interpretation of the agreement and the proposed order or to modify their terms in any way.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 00–8245 Filed 4–3–00; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Office of Communications

Standard and Optional Forms Management Office Cancellation of an Optional Form

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: Because of no usage the following Optional Form is cancelled: OF 101, Summary worksheet for Estimating Report Costs.

DATES: Effective upon publication in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Williams, (202) 501–0581.

Dated: March 17, 2000.

Barbara M. Williams,

Deputy Standard and Optional Forms Management Officer.

[FR Doc. 00–8226 Filed 4–3–00; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of National AIDS Policy Notice of Meeting of the Presidential Advisory Council on HIV/AIDS and its Subcommittees

March 23, 2000.

Pursuant to P.L. 92–463, notice is hereby given of the meeting of the Presidential Advisory Council on HIV/AIDS scheduled for June 5–6, 2000 at the Radisson-Barcelo, Washington, D.C. The meeting of the Presidential Advisory Council on HIV/AIDS will take place on Monday, June 5, and Tuesday, June 6 (8:30 a.m. to 6:00 p.m. on Monday and Tuesday) at the Radisson-Barcelo, 2121 P Street, NW, Washington, D.C. 20037. The meetings will be open to the public.

The purpose of the subcommittee meetings will be to finalize any recommendations and assess the status of previous recommendations made to the Administration. The agenda of the Presidential Advisory Council on HIV/AIDS may include presentations from the Council's subcommittees, Appropriations, International, Prevention, Prison, Racial/Ethnic Populations, Research, and Services Issues.

Daniel C. Montoya, Executive Director, Presidential Advisory Council on HIV and AIDS, Office of National AIDS Policy, 736 Jackson Place, NW, Washington, D.C. 20503, Phone (202) 456–2437, Fax (202) 456–2438, will furnish the meeting agenda and roster of committee members upon request. Any individual who requires special assistance, such as sign language interpretation or other reasonable accommodations, should contact Andrea Hall at (301) 986–4870 no later than May 2, 2000.

Daniel C. Montoya,

Executive Director, Presidential Advisory Council on HIV and AIDS.

[FR Doc. 00–8187 Filed 4–3–00; 8:45 am]

BILLING CODE 3195–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4579–FA–02]

Announcement of Funding Awards for Fiscal Year 1999 for the Rental Voucher and Rental Certificate Programs

AGENCY: Office of Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this document notifies the public of funding awards for Fiscal Year (FY) 1999 to housing agencies (HAs) under the Section 8 rental voucher and rental certificate programs. The purpose of this notice is to publish the names and addresses of the award winners and the amount of the awards made available by HUD to provide rental assistance to very low-income families. Announcements for funding awards for the family unification, mainstream, non-elderly designated housing, and family self-sufficiency coordinators programs will be published under a separate notice.

FOR FURTHER INFORMATION CONTACT: Regina McGill, Director, Funding and Financial Management Division, Office of Public and Assisted Housing Delivery, Office of Public and Indian Housing, Room 4216, Department of Housing and Urban Development, 451 Seventh Street, S.W., Washington, D.C. 20410–8000, telephone (202) 708–1872. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: The regulations governing the rental certificate and rental voucher programs are published at 24 CFR 982. The regulations for allocating housing assistance budget authority under Section 213(d) of the Housing and Community Development Act of 1974 are published at 24 CFR Part 791, Subpart D.

The purpose of the rental voucher and rental certificate programs is to assist eligible families to pay the rent for decent, safe, and sanitary housing. The FY 99 awardees announced in this notice were provided Section 8 funds on an as needed basis, *i.e.*, not consistent with the provisions of a Notice of Funding Availability (NOFAs). Announcements of awards provided consistent with NOFA published on March 8, 1999 (64 FR 11277, 11294, 11310, and 11302) will be published in a separate **Federal Register** notice.

Awards published under this notice were provided to assist families living in HUD-owned properties that are being sold; to assist families affected by the expiration or termination of assistance; to provide relocation and replacement housing in connection with the demolition of public housing; to assist families in properties where the owner has prepaid the HUD mortgage; to partially fulfill the Department's obligations in settlement decrees for various lawsuits; and to provide mobility counseling and assistance to families so that they may move to areas that have low racial and ethnic concentrations.

A total of $185,666,931 in budget authority for rental vouchers and rental certificates (30,098 units) was awarded to recipients under all of the above mentioned categories.

In accordance with Section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (103 Stat. 1987, 42 U.S.C. 3545), the Department is publishing the names, addresses, and amounts of those awards as shown in Appendix A.

Dated: March 28, 2000.

Harold Lucas,

Assistant Secretary for Public and Indian Housing.

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999

Housing agency	Address	Units	Award
Litigation (Vouchers)			
ALLEGHENY CO HSG AUTH	341 FOURTH AVE FIDELITY BL, PITTSBURGH, PA 15222–0000.	100	1,404,460
ARK-TEX COUNCIL OF GOVTS	P O BOX 5307, 210 WEST SIXTH ST, TEXARKANA, TX 75505–5307.	100	785,264
DEEP EAST TX COUNCIL OF GOVTS	274 E LAMAR, JASPER, TX 75951	75	497,448
HSG AUTH OF DALLAS	3939 N HAMPTON RD, DALLAS, TX 75212	640	8,867,544
HSG AUTH OF NACOGDOCHES	715 SUMMIT ST, NACOGDOCHES, TX 75961	25	204,846
Total for Litigation (Vouchers)		940	11,759,562
Preservations/Prepayments (Certificates)			
CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD, LOS ANGELES, CA 90057–0000.	2	3,448
HSG AUTH OF COOK CO	310 SOUTH MICHIGAN AVE, 15TH FL, CHICAGO, IL 60604–4204.	0	31,860
BOSTON HSG AUTH	52 CHAUNCY ST, BOSTON, MA 02111–0000	0	43,752
CAMBRIDGE HSG AUTH	675 MASSACHUSETTS AVE, CAMBRIDGE, MA 02139–0000.	0	22,752
COMM DEV PROG COMM OF MA., E.O.C.D.	ONE CONGRESS ST, 10TH FL, BOSTON, MA 02114.	0	18,456
FALL RIVER HSG AUTH	85 MORGAN ST, P O BOX 989, FALL RIVER, MA 02722–0989.	0	97,116
MILFORD HSG AUTH	45 BIRMINGHAM CT, MILFORD, MA 01757	0	852
NORTHAMPTON HSG AUTH	49 OLD SOUTH ST, NORTHAMPTON, MA 01060	0	69,120
BERKS CO HSG AUTH	1803 BUTTER LANE, READING, PA 19606–0000	0	17,712
HSG AUTH GREENVILLE	P O BOX 10047, GREENVILLE, SC 29603–0047	1	9,792
Total for Preservations/Prepayments (Certificates).		3	314,860
Preservations/Prepayments (Vouchers)			
CITY OF TEMPE	132 E 6TH ST, STE 201, P O BOX 5002, TEMPE, AZ 85280–5002.	50	113,957

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999—Continued

Housing agency	Address	Units	Award
CITY OF LONG BEACH HSG AUTH	333 WEST OCEAN BLVD, LONG BEACH, CA 90802–0000.	26	76,836
CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD, LOS ANGELES, CA 90057–0000.	104	440,414
CITY OF PICO RIVERA	6615 S PASSONS BLVD, P O BOX 1016, PICO RIVERA, CA 90660–0000.	23	90,255
CITY OF VACAVILLE	40 ELDRIDGE AVE, STES 1–5, VACAVILLE, CA 95687–0000.	10	22,777
CO OF BUTTE HSG AUTH	580 VALLOMBROSA AVE, CHICO, CA 95926	111	239,828
CO OF SAN BERNARDINO HSG AUTH	1053 NORTH D ST, SAN BERNARDINO, CA 92410–0000.	56	185,983
CO OF SAN JOAQUIN HSG AUTH	448 SOUTH CENTER ST, P O BOX 447, STOCKTON, CA 95203/01.	48	147,897
LASSEN CO	707 NEVADA ST, STE 5, SUSANVILLE, CA 96130	45	67,649
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA 92113–1012	28	82,128
YUBA CO HSG AUTH	938 14TH ST, MARYSVILLE, CA 95901	67	177,051
WATERBURY HSG AUTH	2 LAKEWOOD RD, WATERBURY, CT 06704–0000	8	26,731
HIALEAH HSG AUTH	70 EAST 7TH ST, HIALEAH, FL 33010–0000	102	422,524
HSG AUTH FORT LAUDERDALE CITY	437 S W 4TH AVE, FORT LAUDERDALE, FL 33315–0000.	15	28,457
HSG AUTH OF JACKSONVILLE	1300 BROAD ST, JACKSONVILLE, FL 32202–0000	32	65,604
SEMINOLE CO HSG AUTH	300 SUNFLOWER CIR, DELAND, FL 32724	220	851,717
HSG AUTH JONESBORO	P O BOX 458, JONESBORO, GA 30237–0000	112	370,200
CITY AND CO OF HONOLULU	DEPT OF COMM & SOCIAL SERVIC, 715 SOUTH KING ST, STE, HONOLULU, HI 96813–0000.	199	876,114
CO OF HAWAII	OFFICE OF HSG & COMM DEV, 50 WAILUKU DR, HILO, HI 96720–0000.	11	55,722
CITY OF CEDAR RAPIDS	CITY HALL, CEDAR RAPIDS, IA 52401–0000	18	37,407
BOISE CITY HSG AUTH	680 CUNNINGHAM PL, BOISE, ID 83702–0000	35	81,202
CHICAGO HSG AUTH	626 WEST JACKSON BLVD, CHICAGO, IL 60661	2	6,016
DUPAGE CO ILLINOIS	128A S CO FARM RD, WHEATON, IL 60187–0000	53	128,536

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999

Housing agency	Address	Units	Award
Litigation (Vouchers)			
HSG AUTH OF COOK CO	310 SOUTH MICHIGAN AVE, 15TH FL, CHICAGO, IL 60604–4204.	315	1,100,869
MAYWOOD HSG AUTH	1701 SOUTH 1ST AVE STE 500, MAYWOOD, IL 60153–0000.	4	14,921
GARY HSG AUTH	578 BROADWAY, GARY, IN 46402–0000	40	121,061
HSG AUTH CITY OF EVANSVILLE	P O BOX 3605, 500 COURT ST, EVANSVILLE, IN 47735–0000.	64	131,958
LEXINGTON-FAYETTE CO HSG AUTH	300 NEW CIR RD, LEXINGTON, KY 40505	48	102,382
BOSTON HSG AUTH	52 CHAUNCY ST, BOSTON, MA 02111–0000	129	3,798,981
CAMBRIDGE HSG AUTH	675 MASSACHUSETTS AVE, CAMBRIDGE, MA 02139–0000.	55	714,092
COMM DEV PROG COMM OF MA., E.O.C.D	ONE CONGRESS ST, 10TH FL, BOSTON, MA 02114.	159	1,121,899
FALL RIVER HSG AUTH	85 MORGAN ST, P O BOX 989, FALL RIVER, MA 02722–0989.	250	1,094,622
LOWELL HSG AUTH	350 MOODY ST, LOWELL, MA 01853–0060	0	120,000
MEDFORD HSG AUTH	121 RIVERSIDE AVE, MEDFORD, MA 02155	284	3,152,792
MILFORD HSG AUTH	45 BIRMINGHAM CT, MILFORD, MA 01757	93	577,873
NORTH ADAMS HSG AUTH	150 ASHLAND ST BOX 511, NORTH ADAMS, MA 01247–0511.	9	19,546
NORTHAMPTON HSG AUTH	49 OLD SOUTH ST, NORTHAMPTON, MA 01060	8	47,141
ANNE ARUNDEL CO HSG AUTH	7885 GORDON CT, P O BOX 817, GLEN BURNIE, MD 21060–2817.	136	441,045
HAGERSTOWN HSG AUTH	35 WEST BALTIMORE ST, HAGERSTOWN, MD 21740.	59	78,320
HSG AUTH PRINCE GEORGES CO	9400 PEPPERCORN PL, LANDOVER, MD 20785–0000.	83	363,920
MONTGOMERY CO HSG AUTH	10400 DETRICK AVE, KENSINGTON, MD 20895–0000.	125	532,884
JACKSON HSG COMMISSION	301 STEWARD AVE, JACKSON, MI 49201–1132	34	108,127
LANSING HSG COMMISSION	310 NORTH SEYMOUR ST, LANSING, MI 48933–0000.	85	270,052

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999—Continued

Housing agency	Address	Units	Award
MICHIGAN STATE HSG DEV'T AUTH	401 S WASHINGTON SQ, LANSING, MI 48909–0000	43	118,731
MICHIGAN STATE HSG DEV'T AUTH	P O BOX 30044, LANSING, MI 48909–0000	47	132,673
PLYMOUTH HSG COMMISSION	1160 SHERIDAN, PLYMOUTH, MI 48170–0000	59	186,032
CLOQUET HRA	950 14TH ST, CLOQUET, MN 55720–0000	20	27,264
ITASCA CO HRA	19 NE THIRD ST, GRAND RAPIDS, MN 55744	16	17,715
OWATONNA HRA	540 WEST HILLS CIR, OWATONNA, MN 55060–0000.	8	8,350
ST. CLOUD HRA	619 MALL GERMAIN, STE 212, ST CLOUD, MN 56301–3689.	14	33,383
LIBERTY HSG AUTH	P O BOX 159, 101 E KANSAS, LIBERTY, MO 64068–0000.	38	61,403
SPRINGFIELD HSG AUTH	421 WEST MADISON, SPRINGFIELD, MO 65806–0000.	43	96,235
MISSOULA HSG AUTH	1319 E BROADWAY, MISSOULA, MT 59802–0000	60	109,987
HSG AUTH OF THE CITY OF CHARLOTTE	P O BOX 36795, 1301 SOUTH BLVD, CHARLOTTE, NC 28236.	304	840,822
HSG AUTH STATESVILLE	110 W ALLISON ST, STATESVILLE, NC 28677	17	47,842
RALEIGH HSG AUTH	600 TUCKER ST, P O BOX 28007, RALEIGH, NC 27611.	102	373,373
MANCHESTER HSG AUTH	198 HANOVER ST, MANCHESTER, NH 03104	198	764,222
NEW JERSEY DEPT OF COMMUNITY AFFAIRS	101 SOUTH BROAD ST, PO BOX 051, TRENTON, NJ 08625–0051.	606	7,005,873
BERNALILLO CO HSG DEPT	620 LOMAS BLVD NW, ALBUQUERQUE, NM 87102–0000.	91	241,191
BOWLING GREEN HSG AUTH	1044 CHELSEA AVE, NAPOLEON, OH 43545	61	101,342
CLERMONT METRO HSG AUTH	65 SOUTH MARKET ST, BATAVIA, OH 45103–2943	47	127,494
COLUMBUS METRO HSG AUTH	960 EAST FIFTH AVE, COLUMBUS, OH 43201–0000.	70	129,999
PARMA PHA	6901 WEST RIDGEWOOD DR, PARMA, OH 44129	192	443,658
HSG AUTH OF PORTLAND	135 SW ASH ST, PORTLAND, OR 97204–0000	48	133,630
HSG AUTH OF THE CO OF CLACKAMAS	P O BOX 1510, OREGON CITY, OR 97045–0510	1	2,597
LINN-BENTON HSG AUTH	1250 SE QUEEN AVE, ALBANY, OR 97321–6661	18	66,252
BERKS CO HSG AUTH	1803 BUTTER LANE, READING, PA 19606–0000	91	245,696
HSG AUTH COLUMBIA	1917 HARDEN ST, COLUMBIA, SC 29204–0000	98	262,041
HSG AUTH GREENVILLE	P O BOX 10047, GREENVILLE, SC 29603–0047	60	160,353
HSG AUTH SOUTH CAROLINA REG NO 1	P O BOX 326, LAURENS, SC 29360–0000	21	54,726
DALLAS CO HSG ASSIST PGM	2377 N STEMMONS FRWY, STE 700, DALLAS, TX 75207–2710.	283	1,179,454
DENTON HSG AUTH	308 S RUDDELL, DENTON, TX 76205–6352	105	447,293
GARLAND HSG AUTH	P O BOX 469002, 701 CLARK ST, GARLAND, TX 75046–9002.	70	299,419

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999

Housing agency	Address	Units	Award
Litigation (Vouchers)			
GRAND PRAIRIE HSNG & COMM DEV'T	P O BOX 534045, 201 NW 2ND ST, STE 150, GRAND PRAIRIE, TX 75053–4045.	206	453,292
HSG AUTH OF DALLAS	3939 N HAMPTON RD, DALLAS, TX 75212	60	265,188
HSG AUTH OF LUBBOCK	P O BOX 2568, 1301 BROADWAY, LUBBOCK, TX 79408–2568.	8	6,553
HSG AUTH OF PLANO	1111 AVE H, BLDG A, PLANO, TX 75074	69	279,598
LANCASTER HSG AUTH	P O BOX 310, 525 WEST PLEASANT RUN, LANCASTER, TX 75146–0310.	9	42,960
MESQUITE HSG AUTH	P O BOX 850137, 720 N EBRITE, MESQUITE, TX 75185–0137.	186	684,352
TARRANT CO HSG ASSIST PGM	1200 CIR DR, #100, FORT WORTH, TX 76119	91	215,721
WEATHERFORD HSG AUTH	P O BOX 700, 1128 FORT WORTH HIGHWAY, WEATHERFORD, TX 76086–0700.	29	80,553
VIRGINIA HSG DEV'T AUTH	601 S BELVIDERE ST, RICHMOND, VA 23220–0000	92	497,810
VIRGINIA HSG DEV'T AUTH	601 S BELVIDERE ST, RICHMOND, VA 23225–0000	107	418,421
HSG AUTH OF CHELAN CO/CITY OF WENATCHEE	1555 SOUTH METHOW ST, WENATCHEE, WA 98801–9417.	0	2,857
HSG AUTH OF JEFFERSON CO	802 SHERIDAN, FIRST FL, P O BOX 1540, PORT TOWNSEND, WA 98368–2459.	6	5,846
HSG AUTH OF THE CITY OF TACOMA	902 SOUTH "L" ST, TACOMA, WA 98405–0000	108	328,020
HSG AUTH OF THE CITY OF WALLA WALLA	501 CAYUSE ST, WALLA WALLA, WA 99362–0000	13	38,403

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999—Continued

Housing agency	Address	Units	Award
SPOKANE HSG AUTH	WEST 55 MISSION ST, STE 104, SPOKANE, WA 99201–2344.	42	122,249
MILWAUKEE CO HSG AUTH	COURTHOUSE ANNEX RM 310, 907 NORTH 10TH ST, MILWAUKEE, WI 53233–0000.	89	251,920
WYOMING COMMUNITY DEV'T AUTH	P O BOX 634, CASPER, WY 82602–0000	0	14,760
Total for Preservations/Prepayments (Vouchers)		7,301	35,935,043
Property Disposition Relocation (Certificates)			
CITY OF HARTFORD	10 PROSPECT ST, HARTFORD, CT 06103–0000	21	107,932
DC HSG AUTH	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002–7599.	36	383,572
MISS REGIONAL HSG AUTH VI	P O DRAWER 8746, JACKSON, MS 39284–8746	0	96,768
Total for Property Disposition Relocation (Certificates).		57	588,272
Property Disposition Relocation (Vouchers)			
CITY OF RICHMOND HSG AUTH	330 24TH ST, RICHMOND, CA 94808–0000	240	1,956,255
CITY OF SACRAMENTO	SACRAMENTO HSG & REDEV'T, P O BOX 1834, SACRAMENTO, CA 95814.	26	118,577
DC HSG AUTH	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002–7599.	170	1,412,659
CHAMPAIGN CO HSG AUTH	205 WEST PARK AVE, CHAMPAIGN, IL 61820	80	371,007
CHICAGO HSG AUTH	626 WEST JACKSON BLVD, CHICAGO, IL 60661	34	232,640
ELGIN HSG AUTH	120 SOUTH STATE ST, ELGIN, IL 60123–0000	132	895,772
HSG AUTH OF THE CITY OF EAST SAINT LOUIS	700 NORTH 20TH ST, EAST ST LOUIS, IL 62205–1814.	55	315,583
HSG AUTH NEW ALBANY	P O BOX 11, NEW ALBANY, IN 47150–0000	59	302,546
SHREVEPORT HSG AUTH	623 JORDAN, SHREVEPORT, LA 71101–0000	125	360,960
TERREBONNE PARISH CONSOLIDATED GOVT	P O BOX 2768, HOUMA, LA 70361–0000	109	470,100
HSG AUTH PRINCE GEORGES CO	9400 PEPPERCORN PL, LANDOVER, MD 20785–0000.	30	156,052
MISSOURI HSG DEV'T COMMISSION	3435 BROADWAY, KANSAS CITY, MO 64111	92	523,830
MO HSG DEV'T COMM	3435 BROADWAY, KANSAS CITY, MO 64111–0000	50	274,914
MISS REGIONAL HSG AUTH VI	P O DRAWER 8746, JACKSON, MS 39284–8746	100	579,745
CINCINNATI METRO HSG AUTH	16 WEST CENTRAL PARKWAY, CINCINNATI, OH 45210–1991.	2	10,044
OKLAHOMA HSG FINANCE AGCY	P O BOX 26720, OKLAHOMA CITY, OK 73126–0720	26	94,442
HSG AUTH MEMPHIS	700 ADAMS AVE, P O BOX 3664, MEMPHIS, TN 38103–3664.	143	645,469
AMARILLO HSG AUTH	P O BOX 1971, 509 E 7TH, AMARILLO, TX 79105–1971.	96	362,827
BRAZOS VALLEY DEV'T COUNCIL	P O DRAWER 4128, BRYAN, TX 77805–4128	35	170,445
HSG AUTH OF DALLAS	3939 N HAMPTON RD, DALLAS, TX 75212	296	2,124,595
VIRGINIA HSG DEV'T AUTH	601 S BELVIDERE ST, RICHMOND, VA 23225–0000	20	127,065

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999

Housing agency	Address	Units	Award
Litigation (Vouchers)			
Total for Property Disposition Relocation (Vouchers).		1,920	11,505,527
Public Housing Relocation/Replacement (Vouchers)			
HSG AUTH BESSEMER	1100 5TH AVE NORTH, BESSEMER, AL 35020–0000.	8	46,360
HSG AUTH OF BIRMINGHAM DISTRICT	1826 3RD AVE SOUTH, BIRMINGHAM, AL 35233	156	803,114
MOBILE HSG BOARD	P O BOX 1345, MOBILE, AL 36633–0000	144	719,074
MARICOPA CO HSG AUTH	2024 N 7TH ST, STE 101, PHOENIX, AZ 85006–2155.	79	651,071
CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD, LOS ANGELES, CA 90057–0000.	297	2,267,666
OAKLAND HSG AUTH	1619 HARRISON ST, OAKLAND, CA 94612–0000	81	819,082

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999—Continued

Housing agency	Address	Units	Award
DC HSG AUTH	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002–7599.	269	2,364,877
WILMINGTON HSG AUTH	400 WALNUT ST, WILMINGTON, DE 19801–0000	234	1,206,906
HSG AUTH FORT PIERCE	707 NORTH 7TH ST, FORT PIERCE, FL 33450	20	149,268
ST. PETERSBURG HSG AUTH	3250 5TH AVE NORTH, ST PETERSBURG, FL 33713.	246	1,249,912
HSG AUTH ATLANTA GA	739 WEST PEACHTREE ST NE, ATLANTA, GA 30308.	241	1,740,720
HSG AUTH FULTON CO	10 PARK PL SE STE 550, ATLANTA, GA 30303–0000.	115	928,054
HSG AUTH OF THE CITY OF COLLEGE PARK	1908 WEST PRINCETON AVE, COLLEGE PARK, GA 30337–0000.	154	1,249,346
PEORIA HSG AUTH	100 S SHERIDAN RD, PEORIA, IL 61605–0000	200	967,537
CITY OF INDIANAPOLIS	FIVE INDIANA SQ, SECOND FL, INDIANAPOLIS, IN 46204.	248	741,007
LEXINGTON-FAYETTE CO HSG AUTH	300 NEW CIR RD, LEXINGTON, KY 40505	219	1,127,323
CAMBRIDGE HSG AUTH	675 MASSACHUSETTS AVE, CAMBRIDGE, MA 02139–0000.	14	226,244
PONTIAC HSG COMMISSION	132 FRANKLIN BLVD, PONTIAC, MI 48341	200	1,296,552
HSG AUTH BILOXI	P O BOX 447, BILOXI, MS 39533–0000	4	13,794
HSG AUTH OF THE CITY OF CHARLOTTE	P O BOX 36795, 1301 SOUTH BLVD, CHARLOTTE, NC 28236.	134	805,710
RALEIGH HSG AUTH	600 TUCKER ST, P O BOX 28007, RALEIGH, NC 27611.	100	683,628
CAMDEN HSG AUTH	1300 ADMIRAL WILSON BLVD, P O BOX 1426, CAMDEN, NJ 08101.	642	5,323,129
ELIZABETH HSG AUTH	688 MAPLE AVE, ELIZABETH, NJ 07202–0000	250	2,167,050
JERSEY CITY HSG AUTH	400 US HIGHWAY #1, JERSEY CITY, NJ 07306–6731.	50	396,060
NEWARK HSG AUTH	57 SUSSEX AVE, NEWARK, NJ 07103–3992	312	2,946,614
SAN MIGUEL CO HSG AUTH	CO COURTHOUSE ANNEX, BUILDING, LAS VEGAS, NM 87701–0000.	34	128,416
CITY OF LAS VEGAS HSG AUTH	420 N 10TH ST, P O BOX 1897, LAS VEGAS, NV 89125–1897.	6	44,922
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007–0000	102	934,700
AKRON MHA	100 W CEDAR ST, AKRON, OH 44307–0000	134	693,058
CINCINNATI METRO HSG AUTH	16 WEST CENTRAL PARKWAY, CINCINNATI, OH 45210–1991.	636	2,658,593
COLUMBUS METRO HSG AUTH	960 EAST FIFTH AVE, COLUMBUS, OH 43201–0000.	330	1,268,485
HSG AUTH OF THE CO OF CHESTER	30 W BARNARD ST, WEST CHESTER, PA 19382	85	508,942
PHILADELPHIA HSG AUTH	2012–18 CHESTNUT ST, PHILADELPHIA, PA 19103–0000.	2,136	15,772,966
POTTSVILLE HSG AUTH	410 LAUREL BLVD, POTTSVILLE, PA 17901–0000	4	16,128
HSG AUTH COLUMBIA	1917 HARDEN ST, COLUMBIA, SC 29204–0000	300	1,534,740
HSG AUTH OF BEAUMONT	P O BOX 1312, 4925 CONCORD RD, BEAUMONT, TX 77704–1312.	50	213,204
HSG AUTH OF LUBBOCK	P O BOX 2568, 1301 BROADWAY, LUBBOCK, TX 79408–2568.	37	239,748
VIRGIN ISLANDS HSG AUTH	P O BOX 7668, ST THOMAS, VI 00801–7668	296	2,054,763
Total for Public Housing Relocation/Replacement (Vouchers).		8,567	56,958,763
Section 8 Counseling (Certificates)			
MIAMI DADE HSG AUTH	1401 NW 7TH ST, MIAMI, FL 33125		500,000
Total for Section 8 Counseling (Certificates)			500,000
Section 8 Counseling (Vouchers)			

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999

Housing agency	Address	Units	Award
Litigation (Vouchers)			
BOSTON HSG AUTH	52 CHAUNCY ST, BOSTON, MA 02111–0000	0	800,000

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999—Continued

Housing agency	Address	Units	Award
HSG AUTH OF DALLAS	3939 N HAMPTON RD, DALLAS, TX 75212	0	640,000
Total for Section 8 Counseling (Vouchers)		0	1,440,000
Terminations/Opt-outs (Certificates)			
HSG AUTH JEFFERSON CO	3700 INDUSTRIAL PARKWAY, BIRMINGHAM, AL 35217.	21	74,259
CITY OF LOS ANGELES HSG AUTH	2600 WILSHIRE BLVD, LOS ANGELES, CA 90057–0000.	34	196,324
NEW YORK STATE HSG FINANCE AGCY	HSG & COMM RENEWAL—LA CAPRA, 25 BEAVER ST, RM 674, NEW YORK, NY 10004.	22	142,156
TEXAS CITY HSG AUTH	817 SECOND AVE NORTH, TEXAS CITY, TX 77590–0000.	17	114,904
FAIRFAX CO RED AND HSG AUTH	3700 PENDER DR, FAIRFAX, VA 22030–0000	29	172,863
VIRGINIA HSG DEV'T AUTH	601 S BELVIDERE ST, RICHMOND, VA 23220–0000	4	34,248
Total for Terminations/Opt-outs (Certificates)		127	734,754
Terminations/Opt-outs (Vouchers)			
HSG AUTH DECATUR	P O BOX 878, DECATUR, AL 35602–0000	4	12,536
HSG AUTH OF BIRMINGHAM DISTRICT	1826 3RD AVE SOUTH, BIRMINGHAM, AL 35233	10	33,489
MOBILE HSG BOARD	P O BOX 1345, MOBILE, AL 36633–0000	34	144,136
HOT SPRING CO SECTION 8 PGM	P O BOX 550, MALVERN, AR 72104–0000	58	167,447
HOT SPRINGS HSG AUTH	P O BOX 1257, HOT SPRINGS, AR 71902	18	60,575
JONESBORO URBAN RENEWAL & HSG AUTH	330 UNION ST, JONESBORO, AR 72401–0000	20	87,794
CITY OF PHOENIX	NEIGH'D IMPROVEMENT HSG D, 251 W WASHINGTON ST, 4TH FL, PHOENIX, AZ 85034–0000.	139	861,001
CITY OF TEMPE	132 E 6TH ST, STE 201, P O BOX 5002, TEMPE, AZ 85280–5002.	12	50,316
WINSLOW HSG AUTH	900 W HENDERSON SQ, WINSLOW, AZ 86047–0000.	85	483,710
CITY OF FAIRFIELD	823–B JEFFERSON ST, FAIRFIELD, CA 94533–0000.	74	468,401
CITY OF LONG BEACH HSG AUTH	333 WEST OCEAN BLVD, LONG BEACH, CA 90802–0000.	15	92,741
CITY OF PICO RIVERA	6615 S PASSONS BLVD, P O BOX 1016, PICO RIVERA, CA 90660–0000.	17	80,353
CITY OF SACRAMENTO	SACRAMENTO HSG & REDEV'T, P O BOX 1834, SACRAMENTO, CA 95814.	167	855,277
CITY OF SANTA ROSA	90 SANTA ROSA AVE, P O BOX 1806, SANTA ROSA, CA 95402–0000.	16	92,741
CITY OF VACAVILLE	40 ELDRIDGE AVE, STES 1–5, VACAVILLE, CA 95687–0000.	73	430,291
CITY OF VALLEJO	251 GEORGIA ST, P O BOX 1432, VALLEJO, CA 94590–0000.	26	184,383
CO OF RIVERSIDE HSG AUTH	5555 ARLINGTON AVE, RIVERSIDE, CA 92504–0000.	40	213,302
CO OF SACRAMENTO	SACRAMENTO HSG & REDEV'T, P O BOX 1834, SACRAMENTO, CA 95814.	290	1,626,218
CO OF SAN DIEGO	3989 RUFFIN RD, SAN DIEGO, CA 92123	124	678,467
CO OF SAN MATEO HSG AUTH	264 HARBOR BLVD, BLDG A, BELMONT, CA 94002	122	1,021,619
CO OF SANTA CLARA HSG AUTH	505 WEST JULIAN ST, SAN JOSE, CA 95110–2300	201	2,384,356
HSG AUTH CO OF KERN	525 ROBERTS LANE, BAKERSFIELD, CA 93308–0000.	3	9,851
IMPERIAL VALLEY HSG AUTH	1401 D ST, BRAWLEY, CA 92227–0000	12	66,510
OAKLAND HSG AUTH	1619 HARRISON ST, OAKLAND, CA 94612–0000	36	258,740
SAN DIEGO HSG COMMISSION	1625 NEWTON AVE, SAN DIEGO, CA 92113–1012	308	1,817,996
SAN FRANCISCO HSG AUTH	440 TURK ST, SAN FRANCISCO, CA 94102–0000	33	269,675
SAN JOSE HSG AUTH	505 WEST JULIAN ST, SAN JOSE, CA 95110–2300	176	1,824,344
SANTA CRUZ CO HSG AUTH	2160—41ST AVE, CAPITOLA, CA 95010–2060	77	488,242
TULARE CO HSG AUTH	5140 W CYPRESS AVE, P O BOX 791, VISALIA, CA 93279–0000.	54	250,222
HSG AUTH OF THE CITY AND CO OF DENVER	P O BOX 40305—MILE HI STN, DENVER, CO 80204–0305.	15	77,212
DC HSG AUTH	1133 NORTH CAPITOL ST NE, WASHINGTON, DC 20002–7599.	10	85,834
HIALEAH HSG AUTH	70 EAST 7TH ST, HIALEAH, FL 33010–0000	166	985,088
HILLSBOROUGH CO—BOCC	9260 BAY PLAZA BLVD, STE 510, TAMPA, FL 33619.	11	58,468

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999—Continued

Housing agency	Address	Units	Award
HSG AUTH LAKE WALES	P O BOX 426, 10 W SESSOMS AVE, LAKE WALES, FL 33859.	2	15,287

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999

Housing agency	Address	Units	Award
Litigation (Vouchers)			
HSG AUTH OF JACKSONVILLE	1300 BROAD ST, JACKSONVILLE, FL 32202–0000	139	606,992
LAKE CO HSG AGCY	PO BOX 7800, TAVARES, FL 32778–0000	55	374,059
MIAMI DADE HSG AUTH	1401 NW 7TH ST, MIAMI, FL 33125	34	277,661
SEMINOLE CO HSG AUTH	300 SUNFLOWER CIR, DELAND, FL 32724	114	588,199
HSG AUTH ATLANTA GA	739 WEST PEACHTREE ST NE, ATLANTA, GA 30308.	8	55,392
HSG AUTH CARROLLTON	PO BOX 627, CARROLLTON, GA 30117–0000	74	524,074
HSG AUTH JONESBORO	PO BOX 458, JONESBORO, GA 30237–0000	0	370,332
CITY AND CO OF HONOLULU	DEPT OF COMM & SOCIAL SERVIC, 715 SOUTH KING ST, STE, HONOLULU, HI 96813–0000.	32	252,095
CENTRAL IOWA REGIONAL HSG AUTH	1111 NINTH ST, STE 390, DES MOINES, IA 50314–0000.	109	203,740
CITY OF CLINTON, IOWA HSG AUTH	215 6TH AVE S STE 33, CLINTON, IA 52732–0000	8	22,259
KNOXVILLE LOW RENT HSG AGCY	305 S THIRD ST, KNOXVILLE, IA 50118–0000	101	226,738
MARSHALLTOWN LRHA	24 NORTH CENTER ST, MARSHALLTOWN, IA 50158–0000.	54	124,351
MUNICIPAL HSG AGCY	505 SOUTH SIXTH ST, COUNCIL BLUFFS, IA 51503–0000.	10	44,736
NORTH IOWA REGIONAL HSG AUTH	217 2ND ST SW, MASON CITY, IA 50401–0000	8	26,163
OSKALOOSA MUNICIPAL PHA	220 SOUTH MARKET, OSKALOOSA, IA 52577–3133	22	75,178
BOISE CITY HSG AUTH	680 CUNNINGHAM PL, BOISE, ID 83702–0000	39	217,233
CHICAGO HSG AUTH	626 WEST JACKSON BLVD, CHICAGO, IL 60661	15	130,417
GREATER METRO HSG AUTH ROCK IS	325 SECOND ST, SILVIS, IL 61282–0000	36	154,410
HSG AUTH ROCKFORD	223 SOUTH WINNEBAGO ST, ROCKFORD, IL 61102.	60	274,917
LAKE CO HSG AUTH	33928 N ROUTE 45, GRAYSLAKE, IL 60030–0000	24	157,101
PEORIA HSG AUTH	100 S SHERIDAN RD, PEORIA, IL 61605–0000	18	58,226
WICHITA HSG AUTH	455 N MAIN CITY HALL 11TH FLO, WICHITA, KS 67202–0004.	33	128,753
JEFFERSON CO HSG AUTH	801 VINE ST, LOUISVILLE, KY 40204–1044	14	40,076
JEFFERSON PARISH HSG AUTH SEC.8 PGM	1718 BETTY ST, MARRERO, LA 70072–0000	43	171,199
LAKE CHARLES HSG AUTH	PO BOX 1206, LAKE CHARLES, LA 70602–0000	143	881,225
NEW IBERIA (CITY OF)	457 E MAIN ST, COURTHOUSE, RM 300, NEW IBERIA, LA 70560.	21	58,203
SHREVEPORT HSG AUTH	623 JORDAN, SHREVEPORT, LA 71101–0000	40	167,851
BOSTON HSG AUTH	52 CHAUNCY ST, BOSTON, MA 02111–0000	444	3,433,453
LOWELL HSG AUTH	350 MOODY ST, LOWELL, MA 01853–0060	137	764,603
MILFORD HSG AUTH	45 BIRMINGHAM CT, MILFORD, MA 01757	52	498,199
SALEM HSG AUTH	27 CHARTER ST, SALEM, MA 01970	57	368,437
DEPT OF HSG & COMMUNITY DEV'T	100 COMMUNITY PL, CROWNSVILLE, MD 21032–2023.	30	115,765
HOWARD CO HSG COMMISSION	6751 COLUMBIA GATEWAY DR, COLUMBIA, MD 21044.	10	38,976
HSG AUTH PRINCE GEORGES CO	9400 PEPPERCORN PL, LANDOVER, MD 20785–0000.	4	26,328
MONTGOMERY CO HSG AUTH	10400 DETRICK AVE, KENSINGTON, MD 20895–0000.	64	506,589
BANGOR HSG AUTH	161 DAVIS RD, BANGOR, ME 04401–0000	32	77,056
DETROIT HSG COMMISSION	JOHN NELSON, EX DIR, 2211 ORLEANS, DETROIT, MI 48207.	74	342,136
JACKSON HSG COMMISSION	301 STEWARD AVE, JACKSON, MI 49201–1132	45	102,260
MICHIGAN STATE HSG DEV'T AUTH	401 S WASHINGTON SQ, LANSING, MI 48909–0000	46	248,550
MICHIGAN STATE HSG DEV'T AUTH	PO BOX 30044, LANSING, MI 48909–0000	87	364,277
WESTLAND HSG COMMISSION	32715 DORSEY RD, WESTLAND, MI 48185–0000	230	1,015,242
FRANKLIN CO PUBLIC HSG AGCY	PO BOX 920, HILLSBORO, MO 63050–0000	40	215,486
INDEPENDENCE HSG AUTH	2600 HUB DR NORTH, INDEPENDENCE, MO 64055–0000.	32	140,695
KIRKSVILLE HSG AUTH	PO BOX 730, KIRKSVILLE, MO 63501–0000	25	70,614
LAFAYETTE CO HSG AUTH	PO BOX 550, 1415 SOUTH ODELL, MARSHALL, MO 65340–0550.	5	21,698
MO HSG DEV'T COMM	3435 BROADWAY, KANSAS CITY, MO 64111–0000	13	60,290

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999—Continued

Housing agency	Address	Units	Award
MARIANA ISLANDS HSG AUTH	PO BOX 514, SAIPAN, MP 96950–0000	25	311,445
MISS REGIONAL HSG AUTH VI	PO DRAWER 8746, JACKSON, MS 39284–8746	33	128,415
MISS REGIONAL HSG AUTH VIII	PO BOX 2347, GULFPORT, MS 39505–0234	110	512,918
MISSISSIPPI REGIONAL HSG AUTH IV	PO BOX 1051, COLUMBUS, MS 39703–1051	20	39,749

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999

Housing agency	Address	Units	Award
Litigation (Vouchers)			
MISSOULA HSG AUTH	1319 E BROADWAY, MISSOULA, MT 59802–0000	21	61,040
HSG AUTH ASHEVILLE	165 S FRENCH BROAD AVE, P O BOX 1898, ASHEVILLE, NC 28802.	100	499,896
HSG AUTH GREENSBORO	450 N CHURCH ST, P O BOX 21287, GREENSBORO, NC 27420.	30	178,394
HSG AUTH OF THE CITY OF CHARLOTTE	P O BOX 36795, 1301 SOUTH BLVD, CHARLOTTE, NC 28236.	50	222,846
HSG AUTH OF THE CITY OF WILMINGTON	508 S FRONT ST, P O BOX 899, WILMINGTON, NC 28402.	10	50,505
ISOTHERMAL PLANNING & DEV COMM	111 W COURT ST, P O BOX 841, RUTHERFORDTON, NC 28139–0841.	20	49,402
RALEIGH HSG AUTH	600 TUCKER ST, P O BOX 28007, RALEIGH, NC 27611.	14	87,356
MORTON CO HSG AUTH	P O BOX 517, MANDAN, ND 58554–0000	15	57,274
DOUGLAS CO HSG AUTH	5404 NORTH 107TH PLAZA, OMAHA, NE 68134–0000.	95	504,321
CONCORD HSG AUTH	15 PITMAN ST, CONCORD, NH 03301	19	61,134
KEENE HSG AUTH	105 CASTLE ST, KEENE, NH 03431	75	308,817
NEW HAMPSHIRE HSG FINANCE AUTH	24 CONSTITUTION DR, MANCHESTER, NH 03108–5087.	140	572,136
NEW JERSEY DEPT OF COMMUNITY AFFAIRS	101 SOUTH BROAD ST, P O BOX 051, TRENTON, NJ 08625–0051.	690	4,572,183
BERNALILLO CO HSG DEPT	620 LOMAS BLVD NW, ALBUQUERQUE, NM 87102–0000.	28	123,332
CITY OF LAS VEGAS HSG AUTH	420 N 10TH ST, P O BOX 1897, LAS VEGAS, NV 89125–1897.	18	105,365
CITY OF RENO HSG AUTH	1525 EAST NINTH ST, RENO, NV 89512–3012	186	1,056,380
CO OF CLARK HSG AUTH	5390 EAST FLAMINGO RD, LAS VEGAS, NV 89122–5338.	53	350,369
NORTH LAS VEGAS HSG AUTH	1632 YALE ST, NORTH LAS VEGAS, NV 89030–6892.	20	145,671
CITY OF BUFFALO	470 FRANKLIN ST, BUFFALO, NY 14202–0000	103	332,318
NEW YORK CITY HSG AUTH	250 BROADWAY, NEW YORK, NY 10007–0000	766	6,128,139
NEW YORK STATE HSG FINANCE AGCY	HSG & COMM RENEWAL—LA CAPRA, 25 BEAVER ST, RM 674, NEW YORK, NY 10004.	103	983,664
BELMONT METRO HSG AUTH	100 SOUTH THIRD ST, P O BOX 398, MARTINS FERRY, OH 43935–0000.	8	22,222
COLUMBUS METRO HSG AUTH	960 EAST FIFTH AVE, COLUMBUS, OH 43201–0000.	12	73,469
DAYTON METRO HSG AUTH	400 WAYNE AVE, DAYTON, OH 45410–1106	8	44,407
HAMILTON CO PUBLIC HSG	138 EAST COURT ST, RM 507, CINCINNATI, OH 45202–1230.	28	108,811
LORAIN MHA	1600 KANSAS AVE, LORAIN, OH 44052–3317	40	243,540
MARION METRO HSG AUTH	150 PARK AVE WEST, MANSFIELD, OH 44901–1029.	2	6,236
SANDUSKY MHA	1358 MOSSER DR, FREMONT, OH 43420–0000	22	85,850
HSG AUTH OF PORTLAND	135 SW ASH ST, PORTLAND, OR 97204–0000	30	125,248
MARION CO HSG AUTH	3150 LANCASTER DR NE, SALEM, OR 97305–0000	8	30,540
MID COLUMBIA HSG AGCY	506 E 2ND ST, THE DALLES, OR 97058–0000	3	14,886
NORTHWEST OREGON HSG ASSOCIATION	1508 EXCHANGE, ASTORIA, OR 97103–0000	27	80,519
BERKS CO HSG AUTH	1803 BUTTER LANE, READING, PA 19606–0000	40	127,498
BUCKS CO HSG AUTH	P O BOX 1329, 350 SOUTH MAIN ST, DOYLESTOWN, PA 18901–0967.	86	452,133
CUMBERLAND CO HSG AUTH	114 NORTH HANOVER ST, CARLISLE, PA 17013–0000.	117	352,851
HSG AUTH CO OF LAWRENCE	481 NESHANNOCK AVE, P O BOX 988, NEW CASTLE, PA 16103–0000.	9	26,775
HSG AUTH COLUMBIA	1917 HARDEN ST, COLUMBIA, SC 29204–0000	36	177,772
HSG AUTH GREENVILLE	P O BOX 10047, GREENVILLE, SC 29603–0047	32	110,133

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999—Continued

Housing agency	Address	Units	Award
HSG AUTH SOUTH CAROLINA REG NO 1	P O BOX 326, LAURENS, SC 29360–0000	10	45,849
S C STATE HSG FINANCE & DEV	919 BLUFF RD, COLUMBIA, SC 29201–0000	108	391,091
ABERDEEN HSG & REDEV'T COMMISSION	104 S LINCOLN ST, #102, ABERDEEN, SD 57401–0000.	26	64,919
SIOUX FALLS HSG & REDEV'T COMMISSION	804 S MINNESOTA, SIOUX FALLS, SD 57104	70	324,779
METRO DEV'T & HSG AGNCY	701 SOUTH SIXTH ST, P O BOX 846, NASHVILLE, TN 37202–0846.	185	1,181,178
BEEVILLE HSG AUTH	P O BOX 427, BEEVILLE, TX 78104–0000	62	254,488
BRAZOS VALLEY DEV'T COUNCIL	P O DRAWER 4128, BRYAN, TX 77805–4128	16	73,511
CUERO HSG AUTH	P O BOX 804, CUERO, TX 77954–0000	17	72,644
DALLAS CO HSG ASSIST PGM	2377 N STEMMONS FRWY, STE 700, DALLAS, TX 75207–2710.	358	2,632,450
GARLAND HSG AUTH	P O BOX 469002, 701 CLARK ST, GARLAND, TX 75046–9002.	85	548,926
GEORGETOWN HSG AUTH	P O BOX 60, GEORGETOWN, TX 78627–0060	51	388,204
HOUSTON HSG AUTH	2640 FOUNTAIN VIEW, HOUSTON, TX 77057	156	707,030

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999

Housing agency	Address	Units	Award
Litigation (Vouchers)			
HSG AUTH OF DALLAS	3939 N HAMPTON RD, DALLAS, TX 75212	208	1,447,654
HSG AUTH OF EL PASO	P O BOX 9895, 5300 E PAISANO, EL PASO, TX 79995.	39	241,822
HSG AUTH OF LUBBOCK	P O BOX 2568, 1301 BROADWAY, LUBBOCK, TX 79408–2568.	45	165,856
HSG AUTH OF NACOGDOCHES	715 SUMMIT ST, NACOGDOCHES, TX 75961	13	56,207
HSG AUTH OF PLANO	1111 AVE H, BLDG A, PLANO, TX 75074	220	1,284,687
HSG AUTH OF PORT ARTHUR	P O BOX 2295, 920 DEQUEEN BLVD, PORT ARTHUR, TX 77643–2295.	28	64,613
LANCASTER HSG AUTH	P O BOX 310, 525 WEST PLEASANT RUN, LANCASTER, TX 75146–0310.	57	390,974
MC ALLEN HSG AUTH	2301 JASMINE AVE, MC ALLEN, TX 78501–0000	5	13,422
MESQUITE HSG AUTH	P O BOX 850137, 720 N EBRITE, MESQUITE, TX 75185–0137.	55	348,744
PASADENA (CITY OF)	P O BOX 672, PASADENA, TX 77501–0000	16	87,895
SCHERTZ HSG AUTH	204 SCHERTZ PARKWAY, SCHERTZ, TX 78154–0000.	53	231,336
SOUTH PLAINS REGIONAL HSG AUTH	P O BOX 690, 411 AUSTIN, LEVELLAND, TX 79336–0690.	9	41,714
TARRANT CO HSG ASSIST PGM	1200 CIR DR, #100, FORT WORTH, TX 76119	93	437,977
WICHITA FALLS HSG ASSIST PGM	P O BOX 1431, 1300 SEVENTH ST, WICHITA FALLS, TX 76307–1431.	15	52,339
HSG AUTH OF THE CO OF SALT LAKE	3595 S MAIN ST, SALT LAKE CITY, UT 84115–0000	18	69,455
FAIRFAX CO RED AND HSG AUTH	3700 PENDER DR, FAIRFAX, VA 22030–000	51	381,813
NEWPORT NEWS REDEV'T & HSG AUTH	P O BOX 77, NEWPORT NEWS, VA 23607–0077	20	100,557
HSG AUTH CITY OF EVERETT	3107 COLBY AVE, P O BOX 1547, EVERETT, WA 98206–1547.	30	214,708
HSG AUTH OF CHELAN CO/CITY OF WENATCHEE	1555 SOUTH METHOW ST, WENATCHEE, WA 98801–9417.	6	19,627
HSG AUTH OF THE CITY OF TACOMA	902 SOUTH "L" ST, TACOMA, WA 98405–0000	75	368,181
HSG AUTH OF THE CITY OF VANCOUVER	500 OMAHSG AUTH WAY, VANCOUVER, WA 98661–0000.	29	176,738
SEATTLE HSG AUTH	120 SIXTH AVE NORTH, SEATTLE, WA 98109–5002.	43	222,092
SPOKANE HSG AUTH	WEST 55 MISSION ST, STE 104, SPOKANE, WA 99201–2344.	9	27,903
DUNN CO HSG AUTH	1421 STOUT RD, STE 100, MENOMONIE, WI 54751	2	7,521
GREEN BAY HSG AUTH	100 N JEFFERSON, RM 608, CITY HALL, GREEN BAY, WI 54301–0000.	48	186,181
HSG AUTH OF THE CITY OF MILWAUKEE	P O BOX 324, MILWAUKEE, WI 53201–0000	84	550,701
KENOSHSG AUTH HSG AUTH	625 52ND ST, KENOSHA, WI 53140–0000	60	293,170
MADISON CDA	P O BOX 1785, MADISON, WI 53701–1785	78	400,278
RACINE CO HSG AUTH	837 MAIN ST, RACINE, WI 53403–1522	113	621,957
HSG AUTH OF THE CITY OF CASPER	1607 CY AVE, #301, CASPER, WY 82604–0000	102	284,556
WYOMING COMMUNITY DEV'T AUTH	P O BOX 634, CASPER, WY 82602–0000	34	69,588

APPENDIX A.—SECTION 8 RENTAL ASSISTANCE PROGRAMS ANNOUNCEMENT OF AWARDS FOR FISCAL YEAR 1999—Continued

Housing agency	Address	Units	Award
Total for Terminations/Opt-outs (Vouchers)		11,183	65,930,150
Grand Total		30,098	185,666,931

[FR Doc. 00–8203 Filed 4–3–00; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Coastal Barrier Improvement Act of 1990; Amendments to the Coastal Barrier Resources System and Otherwise Protected Areas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the Fish and Wildlife Service, have replaced a map of an otherwise protected area (OPA) in Delaware, as directed by Congress. We are using this notice to inform the public about the distribution and availability of the revised map.

DATES: The boundary revisions for this OPA became effective on December 6, 1999, in accordance with Public Law 106–128.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin N. Tuggle, Department of the Interior, U.S. Fish and Wildlife Service, Division of Habitat Conservation, (703) 358–2161.

SUPPLEMENTARY INFORMATION:

Background

In 1982, Congress passed the Coastal Barrier Resources Act (P.L. 97–348) to restrict Federal spending that could foster development of undeveloped coastal barriers along the Atlantic and Gulf of Mexico coasts. In the Coastal Barrier Improvement Act of 1990 (P.L. 101–591), Congress amended the Act to broaden the definition of a coastal barrier, and approved a series of maps entitled "Coastal Barrier Resources System" dated October 24, 1990. These maps identify and depict those coastal barriers located on the coasts of the Atlantic Ocean, Gulf of Mexico, and the Great Lakes and in Puerto Rico and the Virgin Islands that are subject to the Federal funding limitations outlined in the Act. The 1990 Act also approved a related series of maps depicting otherwise protected areas (OPA) along the same coastlines. In full System units most forms of Federal subsidies are prohibited. In OPAs only Federal flood insurance is prohibited.

The Act also defines our responsibilities regarding the System and OPA maps. We have official custody of these maps and prepare and distribute copies of them. We published a notice of the filing, distribution, and availability of the maps dated October 24, 1990, in the **Federal Register** on June 6, 1991 (56 FR 26304–26312). We have announced all subsequent map revisions in the **Federal Register**.

Revisions to an OPA in Delaware

Section 1(a) of Public Law 106–128, enacted on December 6, 1999, requires us to revise the map depicting a specific OPA (designated as DE–03P) in Sussex County, Delaware. The changes to Cape Henlopen Unit DE–03P will add State park land to the OPA and remove privately owned land outside of the park.

How To Get Copies of the Map

The Service is sending copies of the revised map to the House of Representatives Committee on Resources and the Committee on Banking and Financial Services, the Senate Committee on Environment and Public Works, and to each appropriate Federal, State, and local agency having jurisdiction over the areas in which the modified unit is located.

You can purchase copies of System and OPA maps from the U.S. Geological Survey, Earth Science Information Center, P.O. Box 25286, Denver, Colorado 80225. The cost is $4.00 per map, plus a $3.50 shipping and handling fee for the entire order. Maps can also be viewed at the following Fish and Wildlife Service offices:

Washington Office—all System and OPA maps.
U.S. Fish and Wildlife Service, Division of Habitat Conservation, 4401 N. Fairfax Drive, Room 400, Arlington, Virginia 22203, (703) 358–2201
Northeast Regional Office—all System and OPA maps for Connecticut, Delaware, Maine, Maryland, Massachusetts, New Jersey, New York, Rhode Island, and Virginia.
Region 5, U.S. Fish and Wildlife Service, 300 Westgate Center Drive, Hadley, MA 01035–9589, (413) 253–8657
Field Office—System and OPA maps for Delaware.
Field Supervisor, U.S. Fish and Wildlife Service, 177 Admiral Cochrane Drive, Annapolis, MD 21401, (410) 573–4500

Dated: March 23, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–8190 Filed 4–3–00; 8:45 am]
BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Coastal Barrier Improvement Act of 1990; Amendments to the Coastal Barrier Resources System and Otherwise Protected Areas

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: We, the Fish and Wildlife Service, have replaced 7 maps relating to the Coastal Barrier Resources System in North Carolina with 14 maps, as directed by Congress. We are using this notice to inform the public about the distribution and availability of the revised maps.

DATES: The boundary revisions for these units became effective on November 29, 1999, in accordance with P.L. 97–348. The date listed on the official maps is October 18, 1999, as directed by Congress.

FOR FURTHER INFORMATION CONTACT: Dr. Benjamin N. Tuggle, Department of the Interior, U.S. Fish and Wildlife Service, Division of Habitat Conservation, (703) 358–2161.

SUPPLEMENTARY INFORMATION

Background

In 1982, Congress passed the Coastal Barrier Resources Act (P.L. 97–348) to restrict Federal spending that could foster development of undeveloped coastal barriers along the Atlantic and Gulf of Mexico coasts. In the Coastal Barrier Improvement Act of 1990 (P.L. 101–591), Congress amended the Act to

broaden the definition of a coastal barrier, and approved a series of maps entitled "Coastal Barrier Resources System" dated October 24, 1990. These maps identify and depict those coastal barriers located on the coasts of the Atlantic Ocean, Gulf of Mexico, and the Great Lakes and in Puerto Rico and the Virgin Islands that are subject to the Federal funding limitations outlined in the Act. The 1990 Act also approved a related series of maps depicting otherwise protected areas (OPA) along the same coastlines. In full System units most forms of Federal subsidies are prohibited. In OPAs only Federal flood insurance is prohibited.

The Act also defines our responsibilities regarding the System and OPA maps. We have official custody of these maps and prepare and distribute copies of them. We published a notice of the filing, distribution, and availability of the maps dated October 24, 1990, in the **Federal Register** on June 6, 1991 (56 FR 26304–26312). We have announced all subsequent map revisions in the **Federal Register**.

Revisions to a System Unit and OPA in North Carolina

Section 1(a) of Public Law 106–16, enacted on November 29, 1999, requires us to replace 7 maps relating to the System with 14 new maps. These changes affect a Coastal Barrier Resources System Unit (designated as L03) and an OPA (designated as NC–03P) in Dare County, North Carolina. The changes to the Cape Hatteras NC–03P are designed to coincide with the boundary of the Cape Hatteras National Seashore. The changes to Hatteras Island Unit L03 are designed to meet the original intent of Congress.

How To Get Copies of the Maps

The Service has given copies of the revised System and OPA maps to the House of Representatives Committee on Resources and the Senate Committee on Environment and Public Works, and will be sending copies to the House of Representatives Committee on Banking and Financial Services and each appropriate Federal, State, and local agency having jurisdiction over the areas in which the modified units are located.

You can purchase copies of System and OPA maps from the U.S. Geological Survey, Earth Science Information Center, P.O. Box 25286, Denver, Colorado 80225. The cost is $4.00 per map, plus a $3.50 shipping and handling fee for the entire order. Maps can also be viewed at the following Fish and Wildlife Service offices:

Washington Office—all System and OPA maps.

U.S. Fish and Wildlife Service, Division of Habitat Conservation, 4401 N. Fairfax Drive, Room 400, Arlington, Virginia 22203, (703) 358–2201

Southeast Regional Office—all System and OPA maps for Alabama, Florida, Georgia, Louisiana, Mississippi, North Carolina, and South Carolina.

Region 4, U.S. Fish and Wildlife Service, 1875 Century Blvd., Atlanta, Georgia 30345, (404) 679–7125

Field Office—System and OPA maps for North Carolina.

Field Supervisor, U.S. Fish and Wildlife Service, Raleigh Field Office 551–F Pylon Drive, P.O. Box 33726, Raleigh, NC 27636–3726, (919) 856–4520

Dated: March 23, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–8189 Filed 4–3–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Application

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application.

The following applicant has applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

Permit Number TE 024653

Applicant: Mark Hove, Macalester College, St. Paul, Minnesota.

The applicant requests a permit to take (collect) the following endangered species from the St. Croix River, from river miles 0–150 in Minnesota and Wisconsin: Winged mapleleaf (*Quadrula fragosa*) and Higgins' eye pearlymussel (*Lampsilis higginsi*). Activities are proposed for the enhancement of survival of the species in the wild.

Written data or comments should be submitted to the Regional Director, U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, and must be received within 30 days of the date of this publication.

Documents and other information submitted with this application are available for review by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Ecological Services Operations, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056. Telephone: (612/713–5343); FAX: (612/713–5292).

Dated: March 29, 2000.

T.J. Miller,

Acting Assistant Regional Director, Ecological Services, Region 3, Fort Snelling, Minnesota.

[FR Doc. 00–8255 Filed 4–3–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[CO–170000]

Notice of Intent to Prepare an Environmental Impact Statement (EIS) and Public Scoping; San Juan Basin, Colorado

AGENCY: Bureau of Land Management, USDI, and U.S. Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement (EIS) and conduct public scoping; San Juan Basin, Colorado. Also, the action proposes to amend both the BLM's San Juan and San Miguel Resource Management Plan (RMP) of 1985, and the Colorado Oil and Gas Leasing and Development Final EIS of 1991.

SUMMARY: In accordance with the National Environmental Policy Act, notice is hereby given that the Bureau of Land Management (BLM) and the U.S. Forest Service (USFS), as joint lead agencies, are initiating the preparation of an Environmental Impact Statement (EIS) with associated public scoping, on the proposed continued development of Fruitland Coalbed Methane (CBM) gas. The EIS analysis area (106,000 acres) generally encompasses land north of the Southern Ute Line and within the San Juan Basin, and is bordered on the north, west, and east by the Fruitland Outcrop. The east side of the analysis area dips south at the San Juan National Forest boundary and includes all San Juan National Forest lands within the Basin, south of the Southern Ute line. This EIS will be undertaken in cooperation with La Plata County, Colorado. The proposed action, within the analysis area, is for the development of additional Fruitland CBM wells and associated facilities on multi-jurisdictional lands (BLM, USFS, and non-federal) within the San Juan Basin of southwestern Colorado. The EIS will address environmental impacts and mitigation measures associated with drilling, production and eventual abandonment of these additional Fruitland CBM wells. The EIS will also disclose direct, indirect, and cumulative impacts of projected CBM development on non-federal land within the described area.

DATES: Written comments will be accepted until June 1, 2000. Two public scoping meetings will be held, one beginning at 4:00 p.m. on May 16, 2000 at the BLM/USFS Public Lands Center, Durango, Colorado and the other beginning at 5:00 p.m. on May 17, 2000 at the Bayfield High School, in Bayfield, Colorado.

ADDRESSES: Comments should be sent to the Bureau of Land Management, San Juan Field Office Manager, 15 Burnett Court, Durango, Colorado 81301.

FOR FURTHER INFORMATION CONTACT: Ilyse Auringer, Jim Powers, or Paul Peck (970) 247–4874.

SUPPLEMENTARY INFORMATION: The objectives of the EIS will be to study and assess the impacts of additional Fruitland CBM drilling and development within the described area of southwestern Colorado. Potential impacts of the proposed action involve various natural and human resources including, geology, water resources, biological (*e.g.*, threatened and endangered species) wildlife, cultural, visual, land use, suburban interface and subdivisions, socioeconomic and others that are identified through the scoping process.

The proposed action will involve federal jurisdictions of the BLM and Forest Service. Two Record of Decisions, one by the BLM and one by the Forest Service will be issued. Much of the BLM jurisdiction is split estate land (where the mineral owner is not the same as the surface owner). Because of the large proportion of private mineral and surface estate contained in the proposed action, La Plata County will participate on this EIS as a Cooperating Agency. The Colorado Oil and Gas Conservation Commission will be an active, though informal, contributor. A memorandum of agreement is anticipated between the BLM, USFS, and La Plata County.

The BLM and Forest Service will issue interim criteria for those proposed Applications for Permit to Drill (APDs) received prior to the completion of the EIS and the two Record of Decisions (ROD's). The interim criteria will define those actions that would not limit the choice of reasonable alternatives and thus may be approved; as well as define those actions that may preclude future options and therefore may not be approved during preparation of the EIS and ROD's. The interim criteria will be subject to their own 30-day public comment period.

It is anticipated that the EIS process will take 24 months to complete and will include public information and meetings. Publication of the two ROD's is anticipated in March 2002. Public information, scoping meetings, and request for input on the EIS will begin with publication of this notice. Written comments must be submitted on or before June 1, 2000.

Dated: March 27, 2000.

Calvin N. Joyner,

San Juan Field Office Manager, BLM, Colorado, and Forest Supervisor, San Juan National Forest, USFS, Colorado.

[FR Doc. 00–8266 Filed 4–3–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–00–0777–XQ–1784]

Southwest Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice; Southwest Resource Advisory Council Meeting.

SUMMARY: Notice is hereby given that the Southwest Resource Advisory Council (Southwest RAC) will meet in May, 2000 in Gunnison, Colorado.

DATES: The meeting will be held on Thursday, May 11, 2000.

ADDRESSES: For additional information, contact Roger Alexander, Bureau of Land Management, Southwest Center, 2465 South Townsend Avenue, Montrose, Colorado 81401; phone 970–240–5335; TDD 970–240–5366; e-mail Roger_Alexander@co.blm.gov.

SUPPLEMENTARY INFORMATION: The May 11, 2000 meeting will be held at the Gunnison County Fairgrounds Multipurpose Building, 275 South Spruce Street in Gunnison, Colorado. The meeting will begin at 9:00 a.m. and at approximately 4:30 p.m. The morning agenda will focus on the implementation of BLM Colorado Standards for public land health and Guidelines for livestock grazing and the Gunnison Sage Grouse Conservation Plan. General public comment is scheduled for 9:15 a.m. A field trip to nearby grazing allotments is scheduled during the afternoon session. The public is invited to accompany the RAC on the field trip but will need to provide their own transportation; a four wheel drive vehicle is recommended.

Summary minutes for Council meetings are maintained in the Southwest Center Office and on the World Wide Web athttp://www.co.blm.gov/mdo/mdo_sw_rac.htm and are available for public inspection and reproduction within thirty (30) days following each meeting.

Dated: March 23, 2000.

Roger Alexander,

Public Affairs Specialist.

[FR Doc. 00–8192 Filed 4–3–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Notice of Meeting

AGENCY: Lower Snake River District, Bureau of Land Management, Interior.

ACTION: Meeting Notice.

SUMMARY: The Lower Snake River District Resource Advisory Council will meet in Boise. Potential agenda topics are the Interior Columbia Basin Ecosystem Management Plan, the Integrated Natural Resources Management Plan for the U.S. Air Force Enhanced Training in Idaho project, sage grouse habitat management, implementation of rangeland standards and guidelines, proposed land exchanges and other land management issues.

DATES: May 3, 2000. The meeting will begin at 9 a.m. Public comment periods will be held at 9:30 a.m. and 4:00 p.m.

ADDRESSES: The meeting will be held at the Lower Snake River District Office, located at 3948 Development Avenue, Boise, Idaho.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Lower Snake River District Office (208–384–3393).

Dated: March 29, 2000.

Katherine Kitchell,

District Manager.

[FR Doc. 00–8209 Filed 4–3–00; 8:45 am]

BILLING CODE 4310–84–U

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–910–00–0777–XQ]

Utah Resource Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Utah Resource Advisory Council Meeting.

SUMMARY: The Bureau of Land Management's Utah Statewide Resource Advisory Council (RAC) will be meeting on May 4, 2000, Provo, Utah.

The purpose of this meeting is to continue developing guidelines for recreation management on BLM lands in Utah.

The meeting will be held at the Hampton Inn (Sundance Room), 1511 South 40 East, Provo, Utah. It is scheduled to begin at 8 a.m. and conclude at 4 p.m. A public comment period, where members of the public may address the Council, is scheduled from 3:30 p.m.–4 p.m. on May 4. All meetings of the BLM's Resource Advisory Council are open to the public.

FOR FURTHER INFORMATION: Sherry Foot, Special Programs Coordinator, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, 84111; phone (801) 539–4195.

Dated: March 29, 2000.

Robert A. Bennett,

Utah BLM Associate State Director.

[FR Doc. 00–8210 Filed 4–3–00; 8:45 am]

BILLING CODE 4310–DQ–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–5101–ER–F311; N–63162]

Notice of Intent To Prepare an Environmental Impact Statement To Analyze the Proposed Falcon to Gonder 345 kV Transmission Line Project and Associated Bureau of Land Management Resource Management Plan Amendments for the Shoshone-Eureka, Elko, and Egan Resource Areas in Elko, Eureka, Lander, and White Pine Counties, NV

AGENCY: Bureau of Land Management.

COOPERATING AGENCIES: Nevada Division of Wildlife and Nevada State Historic Preservation Office.

ACTION: Notice of intent to prepare an environmental impact statement to analyze Sierra Pacific Power Company's (Sierra) Proposed Falcon to Gonder 345 kV Transmission Line Project and consider amendments to existing Bureau of Land Management (BLM) Resource Management Plans (RMP) for the purpose of establishing right-of-way utility corridors in Elko, Eureka, Lander, and White Pine Counties, Nevada.

SUMMARY: Pursuant to Section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), 40 Code of Federal Regulations 1500–1508 Council on Environmental Quality Regulations, 43 Code of Federal Regulations 2800, and 43 Code of Federal Regulations 1600 the Bureau of Land Management's Battle Mountain, Elko, and Ely Field Offices (BLM) will be directing the preparation of an Environmental Impact Statement (EIS) to analyze a proposed Falcon to Gonder 345 kV transmission line project and associated BLM RMP amendments. The EIS will be prepared by a third party contractor directed by the BLM. The project will involve public and private lands in Elko, Eureka, Lander, and White Pine Counties, Nevada.

DATES: There will be three public scoping meetings hosted by the BLM to solicit input from the public about the scope of the Falcon to Gonder EIS. The meetings will be held from 7–9 pm at the following locations:

Crescent Valley Town Hall, 5045 Tenabo Avenue, Crescent Valley, Nevada on April 18, 2000, Eureka County Opera House, 31 South Main Street, Eureka, Nevada on April 19, 2000, and BLM Ely Field Office, 702 North Industrial Way, Ely, Nevada on April 20, 2000.

The purpose of these meetings is to identify significant issues to be addressed in the EIS, to determine the scope of issues to be addressed, to identify viable alternatives, and to encourage public participation in the NEPA process. Additional briefings will be considered as appropriate.

Written comments must be post-marked or otherwise delivered by 4:30 p.m. on May 8, 2000. Comments may also be presented at the public scoping meetings.

ADDRESSES: Written comments should be addressed to the Bureau of Land Management, Battle Mountain Field Office, Attention: Katherine Moses, 50 Bastian Road, Battle Mountain, Nevada 89820.

FOR FURTHER INFORMATION CONTACT: Mary Craggett, Battle Mountain BLM, at (775) 635–4168 or Katherine Moses, Battle Mountain BLM, at (775) 635–4092.

SUPPLEMENTARY INFORMATION: On December 17, 1998, Sierra filed a right-of-way application with the BLM for the construction, operation, and maintenance of an approximately 165–185 mile long 345 kV electric transmission line that would connect the Falcon substation (north of Dunphy, Nevada) with the Gonder substation (north of Ely, Nevada). The project would improve electricity import and export capabilities to meet anticipated growth in Sierra's system.

The project, as currently proposed, identifies several route alternatives. The northern portion of any route would head south from the Falcon substation to Highway 50 near Eureka along one of several possible alignments. The southern portion of any route alternatives would then head east along Highway 50 to follow an existing Sierra 230 kV line to the Gonder substation. The current alternatives are identified as the: Crescent Valley A, Crescent Valley B, Pine Valley A, Pine Valley B, and Buck Mountain alternatives. The no action alternative will also be analyzed.

As part of the proposed action, the BLM is also considering amending the RMPs for the Shoshone-Eureka Resource Area, Elko Resource Area, and Egan Resource Area to establish possible right-of-way utility corridors in the area of the preferred alignment. Amendments to the Shoshone-Eureka RMP may also include deletion of a utility planning corridor.

Initially, it was not determined what level of NEPA analysis would be required for the Falcon to Gonder project. In July 1999, the BLM determined that an EIS would be necessary to comply with NEPA. In March 2000, the BLM determined that it would be appropriate to analyze possible RMP amendments concurrently with this project. With these changes in the scope of the project, BLM felt it was important to conduct another round of scoping meetings to address public concerns related to the proposed action.

Previous public involvement opportunities included a 30 day scoping period and three public meetings. These meetings were held on the following dates and locations:

Carlin City Hall Court Room, 101 South 8th Street, Carlin, Nevada on June 15, 1999, Eureka Opera House, 31 South Main Street, Eureka, Nevada on June 16, 1999, and BLM Ely Field Office, 702 North Industrial Way, Ely, Nevada on June 17, 1999.

Public comments from the previous scoping meetings will be compiled and incorporated in the EIS, along with comments from the upcoming scoping meetings.

Dated: March 28, 2000.

Gerald M. Smith,

Field Manager, Battle Mountain Field Office.

[FR Doc. 00–8428 Filed 4–3–00; 10:00 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before MARCH 25, 2000. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240. Written comments should be submitted by April 19, 2000.

Carol D. Shull,

Keeper of the National Register.

ALASKA

Kenai Peninsula Borough-Census Area

Berg, Andrew, Cabin, 30 mi. SE of Soldotna, Soldotna, 00000385

CALIFORNIA

Los Angeles County

Municipal Warehouse No. 1, 2500 Signal St., San Pedro, 00000386

Madera County

Spring Street Financial District (Boundary Increase), 401 S. Main St. and 405–11 S. Main St., Los Angeles, 00000387

FLORIDA

Sarasota County

Crisp Building, 1970 Main St., Sarasota, 00000388

GEORGIA

Charlton County

Floyds Island Hammock, Okefenokee National Wildlife Refuge, Folkston, 00000389

Peach County

Fort Valley State College Historic District, Pear St. and State University Dr., Fort Valley, 00000390

MICHIGAN

Oakland County

North Milford Village Historic District, Historic area of North Milford Village, Milford, 00000391

NORTH CAROLINA

Alamance County

East Davis Street Historic District, (Burlington MRA), Roughly bounded by E. Davis St., S. Mebane St., E. Webb Ave., and Tucker St., Burlington, 00000393

Cabarrus County

Isenhour, Daniel, House and Farm, 11970 Mt. Olive Rd., Gold Hill, 00000392

Durham County

City Garage Yard and Fire Drill Tower (Durham MRA), 501 Washington St., Durham, 00000394

Jackson County

Hooper, Dr. D. D., House, 773 W. Main St., Sylva, 00000395

PENNSYLVANIA

Allegheny County

Allegheny River Lock and Dam No. 2 (Allegheny River Navigation System MPS), 7451 Lockway W, Pittsburgh, 00000396

Allegheny River Lock and Dam No. 3 (Allegheny River Navigation System MPS), Approx. 1 mi. N of Barrington, New Kensington, 00000397

Allegheny River Lock and Dam No. 4 (Allegheny River Navigation System MPS), 1 River Ave., Natrona, 00000398

Armstrong County

Allegheny River Lock and Dam No. 6 (Allegheny River Navigation System MPS), 1258 River Rd., Freeport, 00000400

Allegheny River Lock and Dam No. 7 (Allegheny River Navigation System MPS), Along PA 4023, 0.6 mi. N of Kittanning Br., Kittanning, 00000401

Allegheny River Lock and Dam No. 9 (Allegheny River Navigation System MPS), Terminus of PA 1004, 0.2 mi. N of T488, Widnoon, 00000403

Allegheny River Lock and Dam No.8 (Allegheny River Navigation System MPS), Along PA 1033, 1.5 mi. S of Templeton, Templeton, 00000402

Allegheny River Locka and Dam No. 5 (Allegheny River Navigation System MPS), 830 River Rd., Freeport, 00000399

UTAH

Salt Lake County

Hepworth, Thomas and Mary, House, 725 W 200 N, Salt Lake City, 00000404

WASHINGTON

King County

Auburn Post Office (Historic US Post Offices in Washington MPS), 20 Auburn Ave. NE, Auburn, 00000407

Black Diamond Cemetery, Cemetery Hill Rd., Black Diamond, 00000406

Pierce County

Tacoma Mausoleum, 5302 S. Junett St., Tacoma, 00000405

WISCONSIN

Door County

Baileys Harbor Town Hall—McArdle Library (Public Library Facilities of Wisconsin MPS), 2392 Cty Trunk Highway F, Baileys Harbor, 00000408

[FR Doc. 00–8252 Filed 4–3–00; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Application

Pursuant to Section 1301.33(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on February 14, 2000, Pressure Chemical Company, 3419 Smallman Street, Pittsburgh, Pennsylvania 15201, made application by renewal to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of 2,5-dimethoxyamphetamine (7396), a basic class of controlled substance listed in Schedule I.

The firm plans to manufacture 2,5-dimethoxyamphetamine for distribution to its customers.

Any other such applicant and any person who is presently registered with DEA to manufacture such substance may file comments or objections to the issuance of the proposed registration.

Any such comments or objections may be addressed, in quintuplicate, to the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than June 5, 2000.

Dated: March 28, 2000.

John H. King,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 00–8267 Filed 4–3–00; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

Agency Information Collection Activities, Proposed Collection; Comment Request

ACTION: Notice of information collection under review; Application for nonresident alien's Canadian border crossing card.

The Department of Justice, Immigration and Naturalization Service has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is

published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until June 5, 2000.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Extension of currently approved collection.

(2) *Title of the Form/Collection:* Application for Nonresident Alien's Canadian Border Crossing Card.

(3) *Agency form number, if any, and the applicable component sponsoring the collection:* Form I–175. Inspections Division, Immigration and Naturalization Service.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Individuals or Households. The information collected is used to determine eligibility of an applicant for issuance of a Canadian Border Crossing Card to facilitate entry into the United States.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 9,200 responses at 20 minutes (.333 hours) per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 3,063 annual burden hours.

If you have additional comments, suggestions, or need a copy of the proposed information collection instrument with instructions, or additional information, please contact Richard A. Sloan 202–514–3291, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, U.S. Department of Justice, Room 5307, 425 I Street, NW., Washington, DC 20536. Additionally, comments and/or suggestion regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time may also be directed to Mr. Richard A. Sloan.

If additional information is required contact Mr. Robert B. Briggs, Clearance Officer, U.S. Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 850, Washington Center Building, 1001 G Street, NW., Washington, DC 20530.

Dated: March 28, 2000.

Richard A. Sloan,

Department Clearance Officer, United States Department of Justice, Immigration and Naturalization Service.

[FR Doc. 00–8164 Filed 4–3–00; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Reinstatement of a Currently Approved Collection; Comment Request

ACTION: Notice of Information Collection Under Review; Extension of a Currently Approved Collection; Local Law Enforcement Block Grants Program.

The Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, has submitted the following information collection request for review and clearance in accordance with the Paperwork Reduction Act of 1995. Office of Management and Budget approval is being sought for the information collection listed below. This proposed information collection was previously published in the **Federal Register** on September 8, 1999, allowing for a 60-day public comment period.

The purpose of this notice is to allow an additional 30 days for public comment until May 4, 2000. This process in conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Department of Justice Desk Officer, Washington, DC 20530. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285. Comments may also be submtted to the Department of Justice (DOJ), Justice Management Division, Information Management and Security Staff, Attention: Department Clearance Officer, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, DC 20530.

Written comments and/or suggestions from the public and affected agencies concerning the proposed collection of information should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information

(1) *Type of information collection:* Extension of a currently approved collection.

(2) *The title of the form/collection:* Local Law Enforcement Block Grants Program.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* None.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: State, Local or Tribal Government.

Other: None.

The Local Law Enforcement Block Grants Act of 1996 authorizes the Director of the Bureau of Justice Assistance to make funds available to local units of government in order to reduce crime and improve public safety.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* It is estimated that 3,500 respondents will apply for funding and complete an one hour on-line application.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total hour burden to complete the application is 3,500.

If additional information is required contact: Ms. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1220, National Place Building, 1331 Pennsylvania Avenue, NW, Washington, D.C. 20530.

Dated: March 29, 2000.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 00–8197 Filed 4–3–00; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,123, et al.]

ARCO Permian, An Operating Unit of Atlantic Richfield Company, A Delaware Corporation Headquartered in Midland, Texas and Operating at Various Locations in Texas, New Mexico and Colorado; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the U.S. Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 5, 2000 applicable to workers of ARCO Permian headquartered in Midland, Texas and operating at various locations in Texas as well as Jal, New Mexico, Eunice, New Mexico, Artesia, New Mexico and Near Gardner, Colorado. The notice was published in the **Federal Register** on January 14, 2000 (FR 65 2432).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The workers are engaged in employment related to the exploration and production of crude oil and natural gas. Company information shows that ARCO Permian is an operating unit of Atlantic Richfield Company, a Delaware Corporation. Company information also shows that workers separated from employment at ARCO Permian had their wages reported under a separate unemployment insurance (UI) tax account for Atlantic Richfield Company, a Delaware Corporation.

Based on these findings, the Department is amending the certification to properly reflect this matter.

The intent of the Department's certification is to include all workers of ARCO Permian who were adversely affected by increased imports.

The amended notice applicable to TA–W–37,124, TA–W–37,124A, TA–W–37,124B, TA–W–37,124C, and TA–W–37,124D, is hereby issued as follows:

All workers of ARCO Permian, an operating unit of Atlantic Richfield Company, a Delaware Corporation, headquartered in Midland, Texas and operating at various locations in the state of Texas (TA–W–37,124) Jal, New Mexico (TA–W–37,124A), Eunice, New Mexico (TA–W–37,124B), Artesia, New Mexico (TA–W–37,124C) and Near Gardner, Colorado (TA–W–37,124D) who became totally or partially separated from employment on or after November 19, 1998 through January 5, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC this 24th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8242 Filed 4–2–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–37,167 and 167A]

GL&V/Dorr-Oliver, Inc., Hazleton, Pennsylvania and Milford, Connecticut; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Notice of Certification Regarding Eligibility to Apply for Worker Adjustment Assistance on January 13, 2000, applicable to workers of GL&V/Dorr-Oliver, Inc., Hazleton, Pennsylvania. The notice was published in the **Federal Register** on February 4, 2000 (65 FR 5690).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Milford, Connecticut location of GL&V/Dorr-Oliver, Inc. The Milford, Connecticut workers provide administrative functions, designing and customer services to support the production of filtration equipment at the Hazleton, Pennsylvania facility.

Based on these findings, the Department is amending the certification to include workers of GL&V/Dorr-Oliver, Inc., Milford, Connecticut.

The intent of the Department's certification is to include all workers of GL&V/Dorr-Oliver, Inc. who were adversely affected by increased imports of filtration equipment.

The amended notice applicable to TA–W–37,167 is hereby issued as follows:

All workers of GL&V/Dorr-Oliver, Inc., Hazleton, Pennsylvania (TA–W–37,167) and Milford, Connecticut (TA–W–37,167A) who became totally or partially separated from employment on or after November 23, 1998 through January 13, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8240 Filed 4–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–36,949 and 949A]

Spring Ford Industries, Inc.; Plant No. 1 and Plant No. 2, Chilhowie, Virginia and Sparta Plant, Sparta, North Carolina; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 19, 2000, applicable to workers of Spring Ford Industries, Inc., Plant No. 1 and Plant No. 2, Chilhowie, Virginia. The notice was published in the **Federal Register** on February 4, 2000 (65 FR 5690).

At the request of the petitioners, the Department reviewed the certification for workers of the subject firm. New information shows that worker separations occurred in January, 2000 at the Sparta Plant of Spring Ford Industries, Inc., Sparta, North Carolina. The workers are engaged in employment related to the production of tee shirts.

Accordingly, the Department is amending the certification to cover workers of Spring Ford Industries, Inc., Sparta Plant, Sparta, North Carolina.

The intent of the Department's certification is to include all workers of Spring Ford Industries, Inc., adversely affected by increased imports.

The amended notice applicable to TA–W–36,949 is hereby issued as follows:

All workers of Plant No. 1 and Plant No. 2 of Spring Ford Industries, Inc., Chilhowie, Virginia (TA–W–36,949) and Sparta Plant, Sparta, North Carolina (TA–W–36,949A) who became totally or partially separated from employment on or after September 28, 1998 through January 19, 2002 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 24th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8239 Filed 4–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment and Training Administration

[Docket No. NAFTA–03610 and 03610A]

GL&V/Dorr-Oliver, Inc., Hazleton, Pennsylvania and Milford, Connecticut; Amended Certification Regarding Eligibility To Apply for NAFTA-Transitional Adjustment Assistance

In accordance with Section 250(A), Subchapter D, Chapter 2, Title II, of the Trade Act of 1974 (19 USC 2273), the Department of Labor issued a Certification for NAFTA Transitional Adjustment Assistance on January 13, 2000, applicable to workers of GL&V/Dorr-Oliver, Inc., Hazleton, Pennsylvania. The notice was published in the **Federal Register** on February 4, 2000 (65 FR 5691).

At the request of the company, the Department reviewed the certification for workers of the subject firm. The company reports that worker separations occurred at the Milford, Connecticut location of GL&V/Dorr-Oliver, Inc. The Milford, Connecticut workers provide administrative functions, designing and customer services to support the production of filtration equipment at the Hazleton, Pennsylvania facility.

The intent of the Department's certification is to include all workers of GL&V/Dorr-Oliver, Inc. who were adversely affected by increased imports from Canada.

Accordingly, the Department is amending the certification to include worker, of GL&V/Dorr-Oliver, Inc., Milford, Connecticut.

The amended notice applicable to NAFTA—03610 is hereby issued as follows:

All workers of GL&V/Dorr-Oliver, Inc., Hazleton, Pennsylvania (NAFTA–03610) and Milford, Connecticut (NAFTA–3610A) who became totally or partially separated from employment on or after November 23, 1998 through January 13, 2002 are eligible to apply for NAFTA–TAA under Section 250 of the Trade Act of 1974.

Signed at Washington, DC this 24th day of March, 2000.

Grant D. Beale,

Program Manager, Division of Trade Adjustment Assistance.

[FR Doc. 00–8241 Filed 4–3–00; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Proposed Information Collection Request Submitted for Public Comment and Recommendations; Notification of Methane Detected in Mine Atmosphere

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before June 5, 2000.

ADDRESSES: Send comments to Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, 4015 Wilson Boulevard, Room 715, Arlington, VA 22203–1984. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to tomalley@msha.gov, along with an original printed copy. Ms. O'Malley can be reached at (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

FOR FURTHER INFORMATION CONTACT: Theresa M. O'Malley, Program Analysis Officer, Office of Program Evaluation and Information Resources, U.S. Department of Labor, Mine Safety and Health Administration, Room 719, 4015 Wilson Boulevard, Arlington, VA 22203–1984. Ms. O'Malley can be reached at tomalley@msha.gov (Internet E-mail), (703) 235–1470 (voice), or (703) 235–1563 (facsimile).

SUPPLEMENTARY INFORMATION:

I. Background

Sections 103(c), (i), and (j) of the Federal Mine Safety and Health Act of 1977 authorize the recordkeeping and reporting requirements implemented in 30 CFR 57, Subpart T-Safety Standards for Methane in Metal and Nonmetal mines. Methane is a flammable gas found in underground mining. Methane is a colorless, odorless, tasteless gas, and it tends to rise to the roof of a mine because it is lighter than air. Although methane itself is nontoxic, its presence reduces the oxygen content by dilution when mixed with air, and consequently can act as an asphyxiant when present in large quantities. Methane mixed with air is explosive in the range of 5 to 15 percent, provided that 12 percent or more oxygen is present. The presence of dust containing volatile matter in the mine atmosphere may further enhance the explosion potential of methane in a mine.

Metal and Nonmetal mine operators are required to notify MSHA as soon as possible if any of the following events occur: (a) there is an outburst that results in 0.25 percent or more methane in the mine atmosphere; (b) there is a blowout that results in 0.25 percent or more methane in the mine atmosphere; (c) there is an ignition of methane; (d) air sample results indicate 0.25 percent or more methane in the mine atmosphere of a Subcategory I–B, I–C, II–B, V–B, or Category VI mine; If methane reaches 2.0 percent in a Category IV mine; or methane reaches 0.25 percent in the mine atmosphere of a Subcategory I–B, II–B, V–B, and VI mines, MSHA shall be notified immediately. MSHA investigates the occurrence to determine that the mine is placed in the proper category to follow appropriate precautionary standards.

II. Desired Focus of Comments

Currently, the Mine Safety and Health Administration (MSHA) is soliciting comments concerning the proposed extension of the information collection related to the Notification of Methane Detected in Mine Atmospheres. MSHA is particularly interested in comments which:

* evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* enhance the quality, utility, and clarity of the information to be collected; and

* minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed on the Internet by accessing the MSHA Home Page (*http://www.msha.gov*) and then choosing "Statutory and Regulatory Information" and "Paperwork Reduction Act Submissions (http://www.msha.gov/regspwork.htm) Compliance Assistance Information", or by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

MSHA is seeking an extension of the information collection related to certification and notification of methane detected in mine atmosphere.

Type of Review: Extension.

Agency: Mine Safety and Health Administration.

Title: Notification of Methane Detected in Mine Atmosphere.

OMB Number: 1219–0103.

Affected Public: Business or other for-profit.

Recordkeeping: Certification of examinations shall be kept for at least one year.

Cite reference	Total respondents	Frequency	Total responses	Average time per response (hours)	Burden hours[1]
57.22004(c)	1	Annually	1	15 minutes	15 minutes.
57.22229(d) & 57.22230(b) and (c).	7	Weekly	364	5 minutes	30 hours.
Inform miners	7	Annually	7	10 minutes	1 hour, 10 minutes.
Total	8		372	0.0860 minutes	32 hours.

[1] Discrepancies due to rounding.

Total Annualized Capital/Startup Costs: $0.

Total Operating and Maintenance: $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: March 29, 2000.

George M. Fesak,

Director, Program Evaluation and Information Resources.

[FR Doc. 00–8243 Filed 4–3–00; 8:45 am]

BILLING CODE 4510–43–M

INTERNATIONAL BOUNDARY AND WATER COMMISSION, UNITED STATES AND MEXICO

United States Section

Notice of Availability of Draft Environmental Impact Statement and Notice of Public Meetings for the El Paso-Las Cruces Regional Sustainable Water Project, Sierra and Doña Ana Counties, NM and El Paso County, TX

AGENCY: United States Section, International Boundary and Water Commission, United States and Mexico.

ACTION: Notice of Availability of Draft Environmental Impact Statement and Notice of Public Meeting.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, the United States Section, International Boundary and Water Commission (USIBWC) in conjunction with the El Paso Water Utilities/Public Service Board has prepared a draft environmental impact statement (DEIS) on the El Paso-Las Cruces Regional Sustainable Water Project in Sierra and Doña Ana counties, New Mexico and El Paso County, Texas as proposed by the New Mexico-Texas Water Commission. The DEIS analyzes the no action alternative and the impacts of five action alternatives from construction and operation of the project. Public meetings will also be held to discuss and receive comments on the DEIS from interested organizations and individuals.

DATES: Written comments are requested by June 13, 2000. Public meetings will be held on May 2, 3, and 4, 2000 in Anthony and Las Cruces, New Mexico and in El Paso, Texas, respectively. See addresses below for location and time.

ADDRESSES: Comments should be addressed to: Mr. Douglas Echlin, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–310, El Paso, Texas 79902.

Three public scoping meetings will be conducted from 4:00 to 7:00 p.m. MDT each day on Tuesday, May 2, 2000 at the Gadsden Middle School Cafeteria, 1325 West Washington, Anthony, New Mexico; on Wednesday, May 3, 2000 at the Farm and Ranch Heritage Museum, 4100 Dripping Springs Road, Las Cruces, New Mexico; and on Thursday, May 4, 2000 at Chamizal National Memorial, 800 South San Marcial, El Paso, Texas.

Copies of the DEIS are available for inspection and review at the following locations: Branigan Memorial Library, 200 East Picacho Avenue, Las Cruces, New Mexico; El Paso Public Library, 501 North Oregon Street, El Paso, Texas; New Mexico State University Library, Las Cruces, New Mexico; University Library, The University of Texas at El Paso, El Paso, Texas; El Paso Water Utilities, 1154 Hawkins Boulevard, El Paso, Texas; and United States Section, International Boundary and Water Commission, 4171 North Mesa Street, El Paso, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas Echlin, Environmental Protection Specialist, Environmental Management Division, USIBWC, 4171 North Mesa Street, C–310, El Paso, Texas 79902 or call 915/832–4741. E-mail: dougechlin@ibwc.state.gov.

SUPPLEMENTARY INFORMATION: The New Mexico-Texas Water Commission, established in 1991 to help meet the water resource challenges of the region, proposed the El Paso-Las Cruces Regional Sustainable Water Project to secure future drinking water supplies from surface sources for the El Paso-Las Cruces region. The project includes the acquisition, conveyance, treatment, and distribution of a drinking water supply, and upgrading or constructing facilities for water conveyance, treatment, distribution, and aquifer storage and

recovery. These activities comprise the following three project purposes:

- Provide a year-round drinking water supply from the Rio Grande Project that is of sufficient quantity and quality to meet the anticipated municipal needs of Hatch; Las Cruces; northern and southern Doña Ana County; and El Paso.
- Protect and maintain the sustainability of the Mesilla Bolson (ground water basin or aquifer).
- Extend the longevity of the Hueco Bolson.
- Project alternatives presented in this DEIS were designed to achieve these three project purposes. In addition, the project will strive to meet the following criteria:
- The project should attempt to provide high quality water needed to achieve successful treatment and to meet federal drinking water standards.
- The project should seek to deliver water efficiently, and to promote water conservation.
- The project should provide overall benefits to the riverine ecosystem, particularly aquatic and riparian habitats.

The project recognizes and accepts existing institutional and social constraints. The project would continue to meet treaty, compact, and contract requirements for delivery of Rio Grande Project waters. The project would not adversely affect the quantity and quality of water deliveries to agricultural users; impose new responsibilities on state or federal governments; or preclude other opportunities to enhance the Rio Grande ecosystem.

The need for this project is based on the region's future drinking water supply requirements. The project is necessary to avoid both potentially permanent impacts on the Mesilla and Hueco Bolsons and critical drinking water shortages in the El Paso-Las Cruces region. Population growth rates have increased sharply, increasing the demand for drinking water. It is projected that the Texas portion of the Hueco Bolson will be exhausted of all fresh water by the year 2025 because water is being pumped from the aquifer faster than it can be naturally replenished. If additional surface waters are not made available to supplement the drinking water supply, water shortages in the region will likely lead to severe health and sanitation problems.

A copy of the Draft EIS has been filed with the Environmental Protection Agency EPA in accordance with 40 CFR Parts 1500–1508 and USIBWC procedures. Written comments concerning the Draft EIS will be accepted at the address provided above until June 13, 2000.

Dated: March 29, 2000.

William A. Wilcox, Jr.,

Legal Advisor.

[FR Doc. 00–8207 Filed 4–3–00; 8:45 am]

BILLING CODE 4710–03–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules for Electronic Copies Previously Covered by General Records Schedule 20; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal.

This request for comments pertains solely to schedules for electronic copies of records created using word processing and electronic mail where the recordkeeping copies are already scheduled. (Electronic copies are records created using word processing or electronic mail software that remain in storage on the computer system after the recordkeeping copies are produced.)

These records were previously approved for disposal under General Records Schedule 20, Items 13 and 14. The agencies identified in this notice have submitted schedules pursuant to NARA Bulletin 99–04 to obtain separate disposition authority for the electronic copies associated with program records and administrative records not covered by the General Records Schedules. NARA invites public comments on such records schedules, as required by 44 U.S.C. 3303a(a). To facilitate review of these schedules, their availability for comment is announced in **Federal Register** notices separate from those used for other records disposition schedules.

DATES: Requests for copies must be received in writing on or before May 19, 2000. On request, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums concerning a proposed schedule. These, too, may be requested. Requesters will be given 30 days to submit comments.

Some schedules submitted in accordance with NARA Bulletin 99–04 group records by program, function, or organizational element. These schedules do not include descriptions at the file series level, but, instead, provide citations to previously approved schedules or agency records disposition manuals (see **SUPPLEMENTARY INFORMATION** section of this notice). To facilitate review of such disposition requests, previously approved schedules or manuals that are cited may be requested in addition to schedules for the electronic copies. NARA will provide the first 100 pages at no cost. NARA may charge $.20 per page for additional copies. These materials also may be examined at no cost at the National Archives at College Park (8601 Adelphi Road, College Park, MD).

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–713–6852 or by e-mail to records.mgt@arch2.nara.gov.

Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports and/or copies of previously approved schedules or manuals should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: records.mgt@arch2.nara.gov.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs the records to conduct its business. Routine administrative records common to most agencies are approved for disposal in the General Records Schedules (GRS), which are disposition schedules issued by NARA that apply Government-wide.

On March 25, 1999, the Archivist issued NARA Bulletin 99–04, which told agencies what they must do to schedule electronic copies associated with previously scheduled program records and certain administrative records that were previously scheduled under GRS 20, Items 13 and 14. On December 27, 1999, the Archivist issued NARA Bulletin 2000–02, which suspended Bulletin 99–04 pending NARA's completion in FY 2001 of an overall review of scheduling and appraisal. On completion of this review, which will address all records, including electronic copies, NARA will determine whether Bulletin 99–04 should be revised or replaced with an alternative scheduling procedure. However, NARA will accept and process schedules for electronic copies prepared in accordance with Bulletin 99–04 that are submitted after December 27, 1999, as well as schedules that were submitted prior to this date.

Schedules submitted in accordance with NARA Bulletin 99–04 only cover the electronic copies associated with previously scheduled series. Agencies that wish to schedule hitherto unscheduled series must submit separate SF 115s that cover both recordkeeping copies and electronic copies used to create them.

In developing SF 115s for the electronic copies of scheduled records, agencies may use either of two scheduling models. They may add an appropriate disposition for the electronic copies formerly covered by GRS 20, Items 13 and 14, to every item in their manuals or records schedules where the recordkeeping copy has been created with a word processing or electronic mail application. This approach is described as Model 1 in Bulletin 99–04. Alternatively, agencies may group records by program, function, or organizational component and propose disposition instructions for the electronic copies associated with each grouping. This approach is described as Model 2 in the Bulletin. Schedules that follow Model 2 do not describe records at the series level.

For each schedule covered by this notice the following information is provided: name of the Federal agency and any subdivisions requesting disposition authority; the organizational unit(s) accumulating the records or a statement that the schedule has agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency; the control number assigned to each schedule; the total number of schedule items; the number of temporary items (the record series proposed for destruction); a brief description of the temporary electronic copies; and citations to previously approved SF 115s or printed disposition manuals that scheduled the recordkeeping copies associated with the electronic copies covered by the pending schedule. If a cited manual or schedule is available from the Government Printing Office or has been posted to a publicly available Web site, this too is noted.

Further information about the disposition process is available on request.

Schedules Pending

1. Department of Defense, Defense Contract Audit Agency (N9–372–00–1, 158 items, 158 temporary items). Electronic copies of documents created using word processing and electronic mail that pertain to agency programs and operations. Electronic copies relate to such subjects as planning, inspections and investigations, legal matters, relations with the White House and Congress, committee management, historical activities, training, audit policies, and audit administration. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. It also authorizes the agency to apply to any recordkeeping medium the disposition instructions for series that were previously approved for disposal in paper form. Paper copies of the records covered by this schedule are included in Disposition Job Nos. NC–372–75–1, N1–372–89–1, N1–372–90–1, N1–372–90–2, N1–372–93–1, N1–372–94–1, N1–372–94–2, N1–372–94–3, N1–372–95–1, N1–372–95–3, N1–372–96–1, and N1–372–99–1.

2. Department of Defense, Defense Logistics Agency (N9–361–00–2, 180 items, 180 temporary items). Electronic copies of documents created using electronic mail and word processing that relate to agency programs and activities. Included are electronic copies of records relating to command functions, staff support, planning and resource management, telecommunications and information systems, personnel, finance, installation services, defense reutilization and marketing, technical operations, logistics services, quality assurance, contracting, program and technical support, supply and distribution, industrial plant equipment, the defense national stockpile, manufacturing, and alternative fuels. This schedule follows Model 2 as described in the **SUPPLEMENTARY INFORMATION** section of this notice. Recordkeeping copies of these files are included in Defense Logistics Agency Instruction 5015.1.

Dated: March 23, 2000.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 00–8254 Filed 4–3–00; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Comment Request: National Science Foundation—Applicant Survey

AGENCY: National Science Foundation.

ACTION: Notice.

SUMMARY: The National Science Foundation (NSF) is announcing plans to request renewed clearance of this collection. In accordance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we are providing opportunity for public comment on this action. After obtaining and considering public comment, NSF will prepare the submission requesting OMB clearance of this collection for no longer than 3 years.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Agency, including whether the information shall have practical utility; (b) the accuracy of the Agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information on respondents, including through the use of automated collection techniques or other forms of information technology; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be received by June 5, 2000 to be assured of consideration. Comments received after that date will be considered to the extent practicable.

ADDRESSES: Written comments regarding the information collection and requests for copies of the proposed information collection request should be addressed to Suzanne Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Blvd., Rm. 295, Arlington, VA 22230, or by e-mail to splimpto@nsf.gov.

FOR FURTHER INFORMATION CONTACT: Suzanne Plimpton on (703) 306–1125 x 2017 or send email to splimpto@nsf.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Title of Collection: "National Science Foundation Applicant Survey."

OMB Approval Number: 3145–0096.

Expiration Date of Approval: August 31, 2000.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The current National Science Foundation Applicant survey has been in use for several years. Data are collected from applicant pools to examine the racial/sexual/disability composition and to determine the source of information about NSF vacancies.

Use of the Information: Analysis of the applicant pools is necessary to determine if NSF's targeted recruitment efforts are reaching groups that are underrepresented in the Agency's workforce and/or to defend the Foundation's practices in discrimination cases.

Burden on the Public: The Foundation estimates about 5,000 responses annually at 3 minutes per response; this computes to approximately 250 hours annually.

Dated: March 30, 2000.

Suzanne H. Plimpton,

NSF Reports Clearance Officer.

[FR Doc. 00–8228 Filed 4–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

National Science Board; Nominations for Membership

The National Science Board (NSB) is the policymaking body of the National Science Foundation (NSF). The Board consists of 24 members appointed by the President, with the advice and consent of the Senate, for six-year terms, in addition to the NSF Director *ex officio.*

Section 4(c) of the National Science Foundation Act of 1950, as amended, states that: "The persons nominated for appointment as members of the Board: (1) Shall be eminent in the fields of the basic, medical, or social sciences, engineering, agriculture, education, research management, or public affairs; (2) shall be selected solely on the basis of established records of distinguished service; and (3) shall be so selected as to provide representation of the views of scientific and engineering leaders in all areas of the Nation."

The Board and the NSF Director solicit and evaluate nominations for submission to the President. Nominations accompanied by biographical information may be forwarded to the Chairman, National Science Board, 4201 Wilson Boulevard, Arlington, VA 22230, no later than April 28, 2000.

Any questions should be directed to Mrs. Susan E. Fannoney, Staff Assistant, National Science Board Office (703/306–2000).

Dated: March 30, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–8257 Filed 4–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Chemistry; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Chemistry (#1191).

Date/Time: May 1–3; 2000; 8:00 a.m. to 5:00 p.m.

Place: Rooms 320, 330 and 390—NSF, 4201 Wilson Blvd, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Joan Frye, Program Director, Chemical Instrumentation Program. Chemistry Division, Room 1055, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230, Telephone: (703) 306–1849.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals for the Chemical Instrumentation Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–8258 Filed 4–3–00; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Panel for Social and Political Science; Notice of Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, and amended), the National Science Foundation announces the following meetings:

Name: Advisory Panel for Social and Political Science (#1761).

Date and Time: May 4–5, 2000; 9 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Room 970; Arlington, VA 22230.

Contact Person: Dr. Frank Scioli and Dr. Marianne Stewart, Program Directors for Political Science, National Science Foundation. Telephone: (703) 306–1761.

Agenda: To review and evaluate the political science proposals as part of the selection process for awards.

Date and Time: April 22–23, 2000; 9 a.m. to 5 p.m.

Ploce: National Science Foundation, 4201 Wilson Boulevard, Room 970, Arlington VA 22230.

Contact Person: Dr. D. Marie Provine, Program Director, Law and Social Science, National Science Foundation, 4201 Wilson Boulevard, Room 970, Arlington VA 22230. Telephone (703) 306–1762.

Agenda: To review and evaluate the Law and Social Science Proposals as a part of the selection process for awards.

Date and Time: April 27–28, 2000; 9 a.m. to 5 p.m.

Place: 4201 Wilson Boulevard, Room 330 & Room 370, Arlington VA 22230.

Contact Person: Dr. Patricia White and Dr. Murray Webster, National Science Foundation, Telephone (703) 306–1756.

Agenda: To review and evaluate the Sociology proposals as a part of the selection process for awards.

Type of Meetings: Closed.

Purpose of Meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These maters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: March 30, 2000.

Karen J. York,

Committee Management Officer.

[FR Doc. 00–8259 Filed 4–3–00; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

ABB C–E Nuclear Power, Inc.

[Docket No. 70–36]

Hematite Fuel Operations, Notice of Consideration of Approval of Transfer of Facility License and Conforming Amendment and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment pursuant to Part 70 to Title 10 of the Code of Federal Regulations approving the transfer of Material License SNM–33 held by ABB C–E Nuclear Power, Inc. ("ABBCENP") as the owner and responsible licensee. The facility is authorized to use Special Nuclear Material (SNM) for research, development, and the fabrication of nuclear fuel pellets and fuel assemblies. The transfer would be to WAC LLC, an indirect, wholly owned subsidiary of British Nuclear Fuels ("BNFL"). The transfer is necessitated by the sale of the nuclear businesses of ABB Ltd. ("ABB") to BNFL. Included in the sale is the transfer to BNFL of all outstanding shares of ABBCENP stock, the United States based nuclear business of ABB. The Commission is also considering amending the license for administrative purposes to reflect the proposed transfer. The facility is located in Festus, Missouri.

According to an application dated March 10, 2000, for approval filed by ABBCENP, a new company "NewCo" (with the formal name of NewCo to be provided later) would assume ownership of the facility. In a subsequent submittal dated March 16, 2000, the new company name was changed from NewCo to WAC LLC. In the March 10 application it stated that there will be no changes affecting the existing health and safety programs; qualifications of safety personnel; equipment and facilities; or any other existing license requirements.

The proposed amendment would replace references to ABBCENP in the license with references to WAC LLC and make other changes for administrative purposes to reflect the proposed transfer.

Pursuant to 10 CFR 70.36, no license granted under the regulations in Part 70 and no right to possess or utilize special nuclear material granted by any license issued pursuant to the regulations in Part 70 shall be transferred, assigned or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the Commission shall give its prior consent in writing. The Commission will approve an application for the transfer of a license if the Commission determines that the proposed transferee is qualified to hold the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

Before issuance of the proposed conforming license amendment, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By April 24, 2000, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not, the applicant may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR Part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon: Mr. Robert S. Bell, Jr., Esq., Vice President and General Counsel, ABB C–E Nuclear Power, Inc.; 2000 Day Hill Road, Mail Stop 9515–426; Windsor, CT 06095; the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov*); and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A Notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by May 4, 2000, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of the **Federal Register** notice.

For further details with respect to this action, see the application dated March 10, 2000, available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site *(http://www.nrc.gov).*

Dated at Rockville, Maryland this 29th day of March 2000.

For the Nuclear Regulatory Commission.

Charles Emeigh,

Section Chief, Licensing Section, Licensing and International Safeguards Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 00–8212 Filed 4–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Docket Nos. 50–369 and 50–370]

Duke Energy Corporation; Notice of Withdrawal of Application for Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Duke Energy Corporation (the licensee) to withdraw its April 5, 1999, application for proposed amendment to Facility

Operating License Nos. 9 and 17 for the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina.

The proposed amendment would have revised TS Section 3.7.15 and associated Bases, and Section 4.0, to allow the use of credit for soluble boron in spent fuel pool criticality analyses. The request was based on the NRC-approved Westinghouse Owners Group Topical Report WCAP–14416–NP–A, that provides generic methodology for crediting soluble boron.

The Commission had previously issued a Notice of Consideration of Issuance of Amendment published in the **Federal Register** on May 19, 1999 (64 FR 27318). However, by letter dated March 23, 2000, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated April 5, 1999, and the licensee's letter dated March 23, 2000, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www.nrc.gov).

Dated at Rockville, Maryland, this 29th day of March 2000.

For the Nuclear Regulatory Commission.

Frank Rinaldi,

Project Manager, Section 1, Project Directorate II, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8214 Filed 4–3–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–62]

Notice and Solicitation of Comments Pursuant to 10 CFR 20.1405 and 10 CFR 50.82(b)(5) Concerning Proposed Action to Decommission the University of Virginia University of Virginia Reactor (UVAR)

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has received an application from the University of Virginia dated February 9, 2000, for a license amendment approving its proposed decommissioning plan for the UVAR (Facility License No. R–66) located in Charlottesville, Virginia.

In accordance with 10 CFR 20.1405, the Commission is providing notice and soliciting comments from local and State governments in the vicinity of the site and any Indian Nation or other indigenous people that have treaty or statutory rights that could be affected by the decommissioning. This notice and solicitation of comments is published pursuant to 10 CFR 20.1405, which provides for publication in the **Federal Register** and in a forum such as local newspapers, letters to State or local organizations, or other appropriate forum, that is readily accessible to individuals in the vicinity of the site. Comments should be provided within 60 days of the date of this notice to Ledyard B. Marsh, Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Mail Stop O12–D1, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Further, in accordance with 10 CFR 50.82(b)(5), notice is also provided of the Commission's intent to approve the plan by amendment, subject to such conditions and limitations as it deems appropriate and necessary, if the plan demonstrates that decommissioning will be performed in accordance with the regulations in this chapter and will not be inimical to the common defense and security or to the health and safety of the public.

A copy of the application is available for public inspection at the Commission's Public Document Room, the Gelman Building, at 2120 L Street NW, Washington, D.C. 20037. It is also available through *http://www.nrc.gov/OPA/reports* under "What's New on This Page," "Decommissioning," or "Other Documents."

Dated at Rockville, Maryland, this 27th day of March 2000.

For the Nuclear Regulatory Commission.

Ledyard B. Marsh,

Chief, Events Assessment, Generic Communications, and Non-Power Reactors Branch, Division of Regulatory Improvement Programs Office of Nuclear Reactor Regulation.

[FR Doc. 00–8213 Filed 4–3–00; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Audits of States, Local Governments, and Non-Profit Organizations; Circular A–133 Compliance Supplement

AGENCY: Executive Office of the President, Office of Management and Budget.

ACTION: Notice of availability of the 2000 Circular A–133 Compliance Supplement.

SUMMARY: On May 17, 1999 (64 FR 26793), the Office of Management and Budget (OMB) issued a notice of availability of the 1999 Circular A–133 Compliance Supplement. The notice also offered interested parties an opportunity to comment on the 1999 Circular A–133 Compliance Supplement. OMB did not receive any comments. The 2000 Supplement has been updated to add 23 additional programs, updated for program changes, and makes technical corrections. A list of changes to the 2000 Supplement can be found at Appendix 5 of the supplement. Due to its length, the 2000 Supplement is not included in this Notice. See Addresses for information about how to obtain a copy. OMB intends to annually review, revise and/or update this supplement.

This notice also offers interested parties an opportunity to comment on the 2000 Supplement.

DATES: The 2000 Supplement will apply to audits of fiscal years beginning after June 30, 1999 and supersedes the 1999 Supplement. All comments on the 2000 Supplement should be in writing and must be received by October 31, 2000. Late comments will be considered to the extent practicable.

ADDRESSES: Copies of the 2000 Supplement may be purchased at any Government Printing Office (GPO) bookstore (stock No. 041–001–00544–7). The main GPO bookstore is located at 710 North Capitol Street, NW, Washington, DC 20401, (202) 512–0132. A copy may also be obtained under the Grants Management heading from the OMB home page on the Internet which is located at http://www.whitehouse.gov/OMB.

Comments on the 2000 Supplement should be mailed to the Office of Management and Budget, Office of Federal Financial Management, Financial Standards, Reporting and Management Integrity Branch, Room 6025, New Executive Office Building, Washington, DC 20503. Where possible, comments should reference the applicable page numbers. When comments of five pages or less are sent in by facsimile (fax), they should be faxed to (202) 395–4915. Electronic mail comments may be submitted to tramsey@omb.eop.gov. Please include the full body of the electronic mail comments in the text of the message and not as an attachment. Please include the name, title, organization, postal address, phone number, and E-mail address in the text of the message.

FOR FURTHER INFORMATION CONTACT: Recipients should contact their cognizant or oversight agency for audit, or Federal awarding agency, as may be appropriate in the circumstances. Subrecipients should contact their pass through entity. Federal agencies should contact Terrill W. Ramsey, Office of Management and Budget, Office of Federal Financial Management, Financial Standards, Reporting and Management Integrity Branch, telephone (202) 395–3993.

Joshua Gotbaum,

Executive Associate Director and Controller.

[FR Doc. 00–8221 Filed 4–3–00; 8:45 am]

BILLING CODE 3110–01–P

SECURITIES AND EXCHANGE COMMISSION

Request for Public Comment

Upon Written Request, Copies Available From Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549

Extension:

Rule 19b–4 and Form 19b–4, SEC File No. 270–38, OMB Control No. 3235–0045

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Section 19(b) of the Securities Exchange Act of 1934 ("Act") (15 U.S.C. 78s(b)) requires each self-regulatory organization ("SRO") to file with the Commission copies of any proposed rule, or any proposed change in, addition to, or deletion from the rules of such SRO. Rule 19b–4 (17 CFR 240.19b–4) implements the requirements of Section 19(b) by requiring the SROs to file their proposed rule changes on Form 19b–4 and by clarifying which actions taken by SROs are deemed proposed rule changes and so must be filed pursuant to Section 19(b).

The collection of information is designed to provide the Commission with the information necessary to determine, as required by the Act, whether the proposed rule change is consistent with the Act and the rules thereunder. The information is used to determine if the proposed rule change should be approved or if proceedings should be instituted to determine whether the proposed rule change should be disapproved.

The respondents to the collection of information are self-regulatory organizations (as defined by the Act), including national securities exchanges, national securities associations, registered clearing agencies and the Municipal Securities Rulemaking Board.

Twenty-four respondents file an average total of 500 responses per year, which corresponds to an estimated annual response burden of 17,500 hours. At an average cost per response of $2,175, the resultant total related cost of compliance for these respondents is $1,087,500 per year (500 responses × $2,175/response = $1,087,500).

Written comments are invited on (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549.

Dated: March 29, 2000.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8224 Filed 4–3–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42582; File No. SR–Amex 99–42]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC Revising Section 107B of the Amex Company Guide

March 27, 2000

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 13, 1999, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, and II below, which Items have been prepared by the Amex. On December 1, 1999, the Amex submitted Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change, as amended, from interested persons and to grant accelerated approval on the proposed rule change, as amended.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to revise Section 107B of the Amex Company Guide concerning the listing standards for the listing of equity linked notes ("ELNs"). The Exchange proposes to allow more than one equity security to be linked to an ELN, thereby creating a basket of equity securities to be linked to an ELN, provided that each of the underlying equity securities meets the listing standards for ELNs set forth in Section 107B. The Exchange proposes to cap the maximum number of underlying equity securities that may be linked to an ELN at 20.[4]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Amex has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 20, 1993, the Exchange received Commission approval to adopt Section 107B of the Amex Company Guide to provide for the listing and

[3] *See* Letter from Scott Van Hatten, Legal Counsel, Amex, to Nancy Sanow, Senior Special Counsel, Division of Market Regulation, Commission, dated December 1, 1999 ("Amendment No. 1"). Amendment No. 1 proposed to cap the maximum number of underlying equity securities that may be linked to an ELN at 20.

[4] *Id.*

trading of ELNs, hybrid instruments whose values are linked to the performance of highly capitalized, actively traded equity securities.[5] ELNs are non-convertible debt securities. Their value is derived from the value of another issuer's common stock or non-convertible preferred stock.

Section 107B of the Amex Company Guide sets forth the Exchange's listing standards for ELNs. Specifically, Section 107B requires that the equity securities linked to ELNs each must have (i) a minimum market capitalization of $3 billion and during the 12 months preceding listing shown to have traded at least 2.5 million shares; (ii) a minimum market capitalization of $1.5 billion and during the 12 months preceding listing shown to have traded at least 10 million shares; or (iii) a minimum market capitalization of $500 million and during the 12 months preceding listing shown to have traded at least 15 million shares.

The Exchange occasionally receives proposals to list ELNs that are linked to more than one equity security. The Exchange believes that linking more than one equity security to an ELN is appropriate only if each of the underlying securities meets the listing standards for ELNs set forth in Section 107B. Furthermore, the Exchange proposes to cap the maximum number of underlying securities that may be linked to an ELN at 20.[6] Accordingly, the Exchange proposes to amend the text of Section 107B to clarify that ELNs may be linked to more than one equity security only if all of the underlying equity securities individually satisfy the applicable listing standards set forth in Section 107B of the Amex Company Guide.

2. Statutory Basis

The Exchange represents that the proposed rule change is consistent with Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5),[8] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system.

[5] Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833 (May 27, 1993).

[6] *See supra*, note 3.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Additionally, the Commission seeks comment on whether the rule should contain a maximum number of underlying securities linked on an ELN. If so, is 20 an appropriate maximum number of underlying equity securities? Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to the File No. SR–Amex–99–42 and should be submitted by April 25, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission finds, for the reasons set forth below, that the Amex's proposal is consistent with the requirements of the Act and the rules and regulations thereunder. Specifically, the Commission finds that the proposal is consistent with Section 6(b)(5) of the Act.[9] Section 6(b)(5) of the Act requires that the rules of a national securities exchange be designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The proposal is consistent with Section 6(b)(5) of the Act because by requiring each of the equity securities linked to ELNs to meet the listing standards set forth in Amex Company Guide Section 107B, the integrity of the security is strengthened and the likelihood and susceptibility of ELN baskets to manipulation is reduced.[10]

The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice thereof in the **Federal Register**. The Commission finds that because each of the equity securities linked to ELNs must meet the Exchange's listing standards for ELNs, increased financial stability in the marketplace and enhanced market integrity are provided for. Moreover, the Commission finds that these listing standards are designed to reduce the likelihood and susceptibility of ELN baskets to manipulation. Therefore, the Commission finds good cause for approving the proposed rule change on an accelerated basis.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] proposed rule change (SR–Amex–99–42), as amended, is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8194 Filed 4–3–00; 8:45 am]

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[9] 15 U.S.C. 78f(b)(5).

[10] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42585; File No. SR–BSE–00–01]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to its Specialist Performance Evaluation Program

March 28, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on March 14, 2000, the Boston Stock Exchange, Inc. ("Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend its Specialist Performance Evaluation Program ("SPEP") until March 31, 2001.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to extend its SPEP pilot program,[3] until March 31, 2001. The current pilot program will expire on March 31, 2000.[4] Under the SPEP pilot program, the Exchange regularly evaluates the performance of its specialists by using objective measures, such as turnaround time, price improvements, depth and added depth. Generally, any specialist who received a deficient score in one or more objective measures may be required to attend a meeting with the Performance Improvement Action Committee or the Market Performance Committee.

At this time, all aspects of the pilot program will remain the same. The Exchange believes that the SPEP pilot program is an effective tool for measuring specialist performance. However, the Exchange represents that it is not seeking permanent approval of the SPEP pilot program at this time, because the Exchange would like to review the impact of decimal pricing on the SPEP and amend the program, if needed, prior to seeking permanent approval.[5] Thus, the Exchange requests a 12-month extension of the pilot program at this time.

2. Statutory Basis

The statutory basis for the proposed rule change is Section 6(b)(5) of the Act,[6] in that it is designed to promote just and equitable principles of trade; to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; to remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, to protect investors and the public interest; and is not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange: All submissions should refer to SR–BSE–00–01 and should be submitted by April 25, 2000.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the Exchange's proposal to extend the SPEP pilot program until March 31, 2001, is consistent with the requirements of the Act and the rules and regulation thereunder. Specifically, the Commission finds that the amendment is consistent with Section 6(b)(5) of the Act,[7] which requires that the rules of the Exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general to protect investors and the public interest. The Commission believes that the proposed twelve-month extension of the pilot program should allow the Exchange to continue to assess specialist performance while allowing the Exchange adequate time to consider amending the SPEP program in response to decimal pricing.

The Commission expects that during the pilot the Exchange will continue to monitor threshold levels and propose adjustments as necessary and continue to assess whether each SPEP measure is assigned an appropriate weight.[8] In

Continued

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The SPEP pilot program is codified at Section 17 of the Rules of Board of Governors of the Exchange.

[4] *See* Securities Exchange Act Release No. 41563 (June 25, 1999), 64 FR 36058 (July 2, 1999) (extending SPEP pilot program until March 31, 2000).

[5] Telephone conversation between William P. Cummings, Manager of Legal and Regulatory Affairs, Exchange, and Terri L. Evans, Attorney, Division of Market Regulation, Commission on March 21, 2000.

[6] 15 U.S.C. 78f(b)(5).

[7] 15 U.S.C. 78f(b)(5).

[8] *See* Securities Exchange Act Release No. 39730 (March 6, 1998), 63 FR 12847 (March 16, 1998) (order approving amendment to SPEP pilot

addition, the Exchange should continue to closely monitor the conditions for review and should take steps to ensure that all specialists whose performance is deficient and/or diverges widely from the best units will be subject to meaningful review. Finally, the Commission repeats its request that the Exchange incorporate additional objective criteria into the SPEP, most importantly, a measure of quote performance.[9] As previously noted, the Commission would have difficulty granting permanent approval to a SPEP that did not include a satisfactory response to the concerns described above.[10]

The Commission finds good cause for granting the Exchange's request for a twelve-month extension of the SPEP pilot prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Among the obligations imposed upon specialists by the Exchange, and by the Act and the rules promulgated thereunder, is the maintenance of fair and orderly markets in their securities. To ensure that specialists fulfill these obligations, it is important that the Exchange be able to evaluate specialist performance. The Exchange's SPEP pilot assists the Exchange in conducting its evaluation and accelerated approval of the proposed rule change permits the SPEP pilot program to continue on an uninterrupted basis. Therefore, the Commission believes good cause exists to approve the extension of the pilot program until March 31, 2001, on an accelerated basis. Accordingly, the Commission finds that granting accelerated approval of the requested extension is appropriate and consistent with Sections 6(b)(5) and 19(b)(2) of the Act.[11]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[12] that the proposed rule change (SR–BSE–00–01) is hereby approved on an accelerated basis through March 31, 2001.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

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program). In Securities Exchange Act Release No. 39730, the Commission stated certain terms and conditions for approving the SPEP pilot program on a permanent basis, including the need to provide a study to the Commission regarding the SPEP pilot program. Those terms and conditions are hereby incorporated by reference.

[9] *Id.*

[10] *Id.*

[11] 15 U.S.C. 78f(b)(5) and 78s(b)(2).

[12] 15 U.S.C. 78s(b)(2).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42578; File No. SR–DTC–00–02]

Self-Regulatory Organizations; the Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Amendments to the Depository Trust Company's Organization Certificate and Rules In Order To Issue Preferred Stock

March 27, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on February 2, 2000, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") and on February 3, 2000, amended the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would allow DTC to issue $75 million of preferred stock to participants and to decrease the amount of required deposits in the participants fund by $75 million.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[2]

[1] 15 U.S.C. 78s(b)(1).

[2] The Commission has modified the text of the summaries prepared by the DTC.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In March 1999, DTC's organization certificate was amended to provide for up to $150 million of preferred stock as thereafter authorized by the Board of Directors.[3] The board has now determined to increase the capital of DTC by using $75 million of series A preferred stock and to reduce the mandatory deposits to the participants fund by a like amount.[4]

The issuance of the $75 million of series A preferred stock, the corresponding reduction of mandatory participants fund deposits, and the transition to the new arrangements will be governed by the following documents:[5]

(1) *Certificate of Amendment of the Certificate of Incorporation.* The certificate of amendment sets forth the relative rights (including a dividend which will provide an after-tax return comparable to the after-tax return on participant fund deposits), preferences, and limitations of the series A preferred stock.

(2) *Revised DTC Rules.* The revised rules set forth:

(a) The requirement that participants purchase and own shares of series A preferred stock;[6]

(b) The amount of series A preferred stock that participants are required to purchase and own, the manner in which that amount is to be periodically adjusted, the price at which shares of series A preferred stock are to be transferred among participants, the method and timing of payment for shares of series A preferred stock, and certain limitations on the transfer of shares of series A preferred stock;[7]

(c) The right of DTC, acting as agent and attorney-in-fact for its participants,

[3] This Amended Certificate of Organization was the subject of a DTC rule filing approved by the Commission (Securities Exchange Act Release No. 41529 (June 15, 1999), 64 FR 33333 (June 22, 1999) [File No. SR–DTC–99–08].

[4] In connection with this proposed rule change, DTC has requested that the Commission advise that it will take no action with respect to DTC broker-dealer participants treating investments in DTC series A preferred stock as allowable assets for purposes of Section 15c(3)(1) of the Act. Letter from Leopold S. Rassnick, Managing Director and Senior Special Counsel, DTC, to Michael Macchiaroli, Associate Director, Division of Market Regulation, Commission (February 2, 2000).

[5] A copy of DTC's proposed rule change and the attached exhibits, including the Certificate of Amendment of the Organization Certificate, the revised DTC Rules, and the Transition Procedures, are available at the Commission's Public Reference Section or through DTC.

[6] Rule 4, Section 2.

[7] *Id.*

to pledge their shares of series A preferred stock to its end-of-day lenders;[8]

(d) The right of DTC, acting as agent and attorney-in-fact for its participants, to sell their shares of series A preferred stock to other participants (which have a corresponding obligation to purchase such shares) and to apply the proceeds to the participant's obligations to DTC;[9]

(e) Various changes in defined terms to: (i) Describe the series A preferred stock and the required investment of participants in series A preferred stock, (ii) distinguish, when necessary, between the series A preferred stock and the required investment of participants in series A preferred stock (on the one hand) and the participants fund and the required deposit of participants to the participants fund (on the other hand) and (iii) refer collectively, when appropriate, to the series A preferred stock and the required investment of participants in series A preferred stock and the participants fund and the required deposit of participants to the participants fund;[10]

(f) The structure under which DTC, acting as agent and attorney-in-fact for a party that has ceased to be a participant, shall sell all of the shares of series A preferred stock of the former participant to current participants (who shall be required to purchase such shares pro rata to their required preferred stock investments at the time of such purchase) and shall add the proceeds thereof to the actual participants fund deposit of the former participant for disposition in accordance with Rule 4, Section 1(h) (which provides for the return of such actual participants fund deposit to a party ceasing to be a participant).[11]

(g) Certain other conforming and minor stylistic changes.

(3) *Transition Procedure.* The transition procedure sets forth the time and manner in which, without any action required on the part of participants (other than the consent deemed to be given to DTC by virtue of their receipt of all necessary information and their continued use of the services and facilities of DTC), the required deposits of existing participants to the participants fund will be reduced in the aggregate amount of $75 million and such participants will purchase from DTC a corresponding amount of the series A preferred stock.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act and the rules and regulations thereunder applicable to DTC because the proposed rule change will not affect the safeguarding of securities and funds in DTC's custody or control for which it is responsible.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments from DTC participants have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–00–02 and should be submitted by April 25, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8196 Filed 4–3–00; 8:45 am]

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[8] Rule 4, Section 2(f).

[9] Rule 4, Section 2, and Rule (B).

[10] Rule 1.

[11] Rule 4, Section 2(h).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

(Release No. 34–42583; File No. SR–PCX–99–35)

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Pacific Exchange, Inc. To Increase Lead Market Maker Concentration Levels From 10% of 15% of the Issues Traded on the Exchange's Options Floor

March 28, 2000.

I. Introduction

On September 15, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder[2] to amend PCX Rule 6.82(e)(3) to increase the percentage of issues that the PCX's Options Allocation Committee ("Committee") may allocate to a Lead Market Maker ("LMM") from 10% of the number of issues traded on the PCX's options floor to 15% of the number of issues traded on the PCX's options floor.

Notice of the proposed rule change was published for comment in the **Federal Register** on November 1, 1999.[3] No comments were received regarding the proposal. This order approves the proposed rule change.

II. Description of the Proposal

Currently, PCX Rule 6.82(e)(3) states that in the absence of extraordinary circumstances, as determined by the Committee, no LMM may be allocated more than 10% of the number of issues traded on the PCX's options floor. The Exchange proposes to amend PCX Rule 6.82(e)(3) to increase the percentage of issues that the Committee may allocate

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See Securities Exchange Act Release No. 42051 (October 22, 1999), 64 FR 58876.

to an LMM from 10% of the number of issues traded on the PCX's options floor to 15% of the number of issues traded on the PCX's options floor.

The Exchange proposes to amend PCX Rule 6.82(e)(3) for several reasons. First, the Exchange anticipates that the Continued Listing Fee, which the PCX implemented in September 1999, will reduce the total number of issues traded on the PCX's options floor.[4] The Exchange believes that the Continued Listing Fee will result in the delisting of a significant number of options issues, thus lowering the total number of issues that an LMM may hold.[5]

Second, the Exchange believes that it is necessary for competitive reasons to permit the allocation of additional issues to LLMs. The Exchange believes that the proposal will place the PCX's LMMs on a more equal footing with specialists on the American Stock Exchange ("Amex") and Designated Primary Market Makers ("DPMs") on the Chicago Board Options Exchange ("CBOE") with respect to the number of issues that may be allocated to them.[6] The Exchange believes that the current 10% cap is unnecessarily low and that an increase in concentration levels is consistent with rules and guidelines of other options exchanges.

III. Discussion

The Commission finds that the proposed rule change is consistent with the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, with Section 6(b)(5) of the Act, in that the proposal is designed to promote just and equitable principals of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.[7] Specifically, the Commission believes that the proposal will allow the PCX to revise PCX Rule 6.82(e)(3) to provide a limit on options allocations that is comparable to the policies of other options exchanges, thereby helping the PCX to compete more effectively with other options exchanges.[8]

For example, the Commission notes that under the CBOE's policy, the CBOE's Modified Trading System Appointments Committee will review a DPM's concentration level if an event or proposal would cause a DPM to meet any two of the following three criteria: (1) The number of classes allocated to a DPM (and any affiliated DPMs) is 25% or more of the total number of classes traded on the CBOE (excluding DJX, NDX, OEX, and SPX); (2) the volume in the classes allocated to a DPM (and any affiliated DPMs) is 25% or more of the total volume of the CBOE (excluding DJX, NDX, OEX, and SPX); or (3) the number of DPM appointments held by a DPM (and any affiliated DPMs) is 25% or more of the total number of DPMs effective on the CBOE.[9] Similarly, the Amex has no rule limiting the number of options products that may be allocated to a specialist unit, although the Amex considers several factors, including capitalization and the number of persons in a specialist unit, in making allocation decisions. In addition, the Amex will review a proposal merger of specialist units if the proposed merger would result in the concentration in the unit of 25% or more of the trading volume on the Amex or 25% or more of the number of products traded on the Amex.[10]

By increasing the number of issues that may be allocated to an LLM from 10% of the issues traded on the PCX's options floor to 15% of the issues traded on the PCX's options floor, the proposal will help to make PCX Rule 6.82(e)(3) more comparable to the policies of the CBOE and the Amex. Although the proposal increases the percentage of issues that may be allocated to an LMM, the Commission does not believe that the proposal will result in an undue concentration of issues in an LMM. In this regard, the Commission believes that the proposal to limit the number of issues that may be allocated to an LMM to 15% of the number of issues traded on the PCX should address concerns regarding potential adverse effects on the maintenance of a fair and orderly market that could arise from an LMM's insolvency or similar event. In addition, the Commission notes that the PCX's proposal rule is more restrictive than the allocation policies of the CBOE and Amex, which do not impose a specified mandatory limit on the number of options that may be allocated to specialists or DPMs.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposed rule change is consistent with the Act (specifically, Section 6(b)(5) of the Act) and the rules and regulations thereunder applicable to a national securities exchange.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[11] that the proposed rule change (SR–PCX–99–35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8195 Filed 4–3–00; 8:45 am]

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[4] *See* Securities Exchange Act Release No. 42050 (October 21, 1999), 64 FR 58117 (notice of filing and immediate effectiveness of File No. SR–PCX–99–32.) The Continued Listing Fee applies to options market makers and LMM's who wish to continue trading options issues that fail to produce revenue of more than $500 per month through transaction, comparison, and data entry fees. If no LMM or trading crowd is willing to pay the Continued Listing Fee for an option that is subject to the fee, the PCX will delist the option.

[5] Since the implementation of the Continued Listing Fee, 158 isues have been delisted. Telephone conversation between Robert Pacileo, Staff Attorney, Regulatory Policy, PCX, and Yvonne Fraticelli, Special Counsel, Division of Market Regulation "Division"), Commission, on March 23, 2000.

[6] *See e.g.*, CBOE Regulatory Circular RG99–135, discussed in Section III, *infra*.

[7] 15 U.S.C. 78f(b)(5).

[8] In approving the proposal, the Commission has considered the rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[9] *See* CBOE Regulatory Circular RG99–135.

[10] Conversation between Claire P. McGrath, Vice President and Special Counsel, Derivative Securities, Amex, and Yvonne Fraticelli, Special Counsel, Division, Commission, on March 20, 2000.

[11] 15 U.S.C. 78s(b)(2).

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42590; File No. SR–PCX–99–36]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 by the Pacific Exchange, Inc. Relating to Options Trading Rules

March 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on October 1, 1999, the Pacific Exchange, Inc. ("PCX" or "Exchange") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. On March 28, 2000, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange withdrew the proposed changes to PCX Rule 6.6 because the changes were previously made and approved in Securities Exchange Act Release No. 40875 (December 31, 1998), 64 FR 1842 (January 12, 1999). *See* letter from Michael D. Pierson, Director—Regulatory Policy, PCX, to Heather Traeger, attorney, Division of Market Regulation, SEC, on March 27, 2000 ("Amendment No. 1").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX proposes to modify certain rules on options floor trading by clarifying existing provisions, eliminating superfluous provisions, and codifying current policies and procedures. The text of the proposed rule change is available at the Office of the Secretary, the PCX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to make the following changes to the text of the PCX rules on options trading.

A. Definition of Term "Options Issue"

The PCX proposes to adopt new Rule 6.1(b)(12) to define the term "option issue" as "the option contract overlying a particular underlying security." The Exchange notes that the commonly-used term "issue" appears in several locations in the PCX rules.[4] The Exchange believes that the term "issue" means the same as "option" or "option contract" when used, for example, as in PCX Rule 6.65(a), which states: "Trading on the Exchange in any *option contract* shall be halted or suspended whenever * * *." However, the Exchange believes that the use of the terms "option" and "option contract" would often result in ambiguities that the use of "issue" would not create. While the term "class of options" is used in many PCX Rules to refer generally to options overlying a particular underlying security,[5] the Exchange believes that the use of the term "class" can be ambiguous because it may refer either to a "put class" or a "call class."[6] Accordingly, the Exchange is proposing to formally adopt the definition of the term "option issue."

B. General Rules Applicable to Options Trading

PCX Rule 6.1 sets forth a list of general PCX trading rules that are applicable, by cross-reference, to Exchange transactions in option contracts. Most of these rules relate primarily to the trading of equity securities on the Exchange. The Exchange is proposing to remove PCX Rules 5.2(a), 5.6(a)–(c), 5.8(d), 5.8(h), 5.12(a) and 5.13(a)–(b) from that list. Each of the cross-references to be removed is discussed below:

- PCX Rule 5.2(a)—"Types of Orders."[7] The Exchange believes that the first part of this rule—the part stating that all orders on the Exchange must be "day," "immediate or cancel" or "good 'till canceled"—applies to options trading, and accordingly, the Exchange is adopting PCX Rule 6.62, Commentary .01, to incorporate this part of the rule into the rules on options trading. However, the remainder of PCX Rule 5.2(a) either does not apply to options trading[8] or is superfluous.[9]
- PCX Rule 5.6(a)—"Bids—Offers—Quotations."[10] The Exchange believes that PCX Rule 6.74[11] adequately covers the meaning of bids and offers as applied to options trading. The Exchange notes that the part of PCX Rule 5.6 covering the display of bids and offers on other market centers is superfluous in light of PCX Rule 6.73, which provides the requirements for bids and offers to have standing on the Options Floor.[12] Moreover, bids and offers are not displayed on the Options Floor for Intermarket Trading System ("ITS") purposes.
- PCX Rule 5.6(b)—"Regular Way."[13] The Exchange believes that the current cross-reference to this equity trading rule is also superfluous because, unlike settlement of equity securities, settlement of option contracts is not based on a distinction between "regular way" and "non-regular way."
- PCX Rule 5.6(c)—"All or None."[14] The Exchange believes that the cross-reference to this equity trading rule is erroneous and inconsistent with current practices. For example, assume that a floor broker who is holding an order to sell twenty option contracts enters a trading crowd and calls for a market. Next, assume that there are two responses: (1) a floor broker holding an "all or none" order for twenty contracts for a customer bids $3, and (2) a market maker bids $3. Under current practices and consistent with PCX Rule 6.75(a), if the broker were first to vocalize a bid, the broker would have first priority to

[4] *See, e.g.*, PCX Rule 6.8. Com. .08(a) ("If a firm desires to facilitate customer orders in the XYZ option *issue*. * * *"); PCX Rule 6.28(a)(9) ("the permissible size of orders that may be automatically executed" may be increased "in a particular *issue*, or for all option *issues*"); PCX Rule 6.82(e) ("[t]he allocation of option *issues* PCX Rule 6.82(e) ("[t]he allocation of option *issues*) to LMMs shall be effected by the Options Allocation Committee").

[5] *See, e.g.*, PCX Rule 6.4(a) ("After a particular *class* of option * * * has been opened for trading. * * *"); PCX Rule 6.37(c) ("Whenever a Market Maker enters the trading crowd for a *class* of options in which he does not hold a Primary Appointment. * * *"; PCX Rule 6.64, Com .02 ("For those option *classes* and within such time periods as the Options Floor Trading Committee may designate. * * *").

[6] PCX Rule 6.1(a)(10) states that "[t]he term 'class of options' means all option contracts of the same *type* of option covering the same underlying stock" (emphasis added), while the term "type of option" is defined in PCX Rule 6.1(a)(7) to mean "the classification of an option contract *as either a put or call* (emphasis added)." Therefore, the term "class" may refer to either a put call or a call class option contracts.

[7] PCX Rule 5.2(a) states: "All orders on the Exchange must either be 'day,' 'immediate or cancel,' 'good 'til canceled ('GTC'), or 'good 'til canceled' that are eligible for execution in the post—1:00 p.m. auction market trading and closing price protection sessions' ('GTX'). Each class of orders must be recorded on the proper ticket provided therefor."

[8] "GTX" orders are not recognized on the Options Floor. *See* PCX Rule 5.25(f) ("GTX Orders Under P/COAST").

[9] The order ticket requirement of PCX Rule 5.2(a) is superfluous because current PCX Rules 6.67–6.69 expressly cover the use of order tickets for option orders.

[10] PCX Rule 5.6(a) states: "Bids and offers shall be for one trading unit or multiples thereof to constitute an Exchange quotation. Bids and offers in other market centers which may be displayed on the Floor for the purpose of ITS or other purposes shall have no standing in the trading crowd on the Floor."

[11] PCX Rule 6.74 states: "Unless otherwise specified, all bids or offers made on the floor shall be deemed to be for one option contract unless a specific number is expressed in the bid or offer. A bid or offer for more than one option contract shall be deemed to be for that amount or any lesser number of option contracts, unless specified otherwise."

[12] PCX Rule 6.73 states: "Bids and offers to be effective must be made at the post by public outcry, except that bids and offers made by the Order Book Official shall be effective if displayed in a visible manner in accordance with PCX Rule 6.55. All bids and offers shall be general ones and shall not be specified for acceptance by particular members."

[13] PCX Rule 5.6(b) states: "Bids and offers made without stated conditions shall be considered to be 'regular way.' 'Regular way' bids or offers have priority over conditional bids or offers."

[14] PCX Rule 5.6(c) states: "A bid or offer may be made 'all or none'; however, regular bids or offers at equal or better prices shall have priority. No 'all or none'transaction in round lots may be effected unless all regular bids or offers at equal or better prices are executed thereby or simultaneously or unless the holders of such regular bids or offers consent thereto. All bids and offers, unless specifically made 'all or none,' shall be subject to split-up without objection except that in no case may a division of stock be made of less than round lots except by mutual consent."

execute the order.[15] However, if PCX Rule 5.6(c) were applied, the market maker's bid would have priority, even if it were made second in sequence. The Exchange believes that PCX Rule 6.75 should prevail over PCX Rule 5.6(c), in accordance with current practices.

• PCX Rule 5.8(d)—"Simultaneous Bids and Offers."[16] The Exchange notes that simultaneous bids and offers are not recognized in the general rules on priority of bids and offers for options contracts. The Exchange believes that PCX Rule 6.75 and 6.76 are exhaustive and that the cross-reference to Rule 5.8(d) is erroneous.

• PCX Rule 5.8(h)—"Marking Stop loss Orders."[17] This rule covers the manual handling of stop loss orders. The Exchange believes that the procedure covered by this rule is unnecessary and that the responsibility of floor brokers to use due diligence in their handling of orders, as codified in the rules on option trading, is sufficient.[18]

• PCX Rule 5.12(a)—"Seller Responsible for Recording."[19] The Exchange believes that the specific procedures currently set forth for reporting options transactions—Codified in PCX Rule 6.69 and OFPA G–12—adequately address this procedure and that the cross-reference to PCX Rule 5.12 is unhealthy and unnecessary.

• PCX Rule 5.13(a)–(b)—"Comparisons."[20] The Exchange believes that PCX Options Rule 6.16 adequately covers the Exchange procedures for comparison of trade information and that the cross-reference to PCX Rules 5.13(a)–(b) is superfluous.

C. Trading Floor Badges

The Exchange proposes to eliminate superfluous and unnecessary provisions currently set forth in OFPA F–1 and F–6 for trading floor badges on the Options floor.[21] The Exchange is also proposing to merge the remaining parts of those OFPAs into PCX Rule 6.2(d).

D. Visitors to the Options Floor

The Exchange is proposing to re-number OFPA F–2 as PCX Rule 6.2(e)("Visitors on the Options Floor"). The Exchange is also proposing to eliminate subsection 6 of OFPA F–2, which limits the number of visitors and lengths of time during which visitors are permitted on the Options floor.[22] The Exchange is also proposing to make technical changes to OFPA F–2 and to eliminate superfluous provisions, including a summary of the provisions of current PCX Rule 6.2(a).[23] Finally, the Exchange proposes to add a new provision to PCX Rule 6.2(e), stating that a group of visitors comprising more than fifteen persons may not enter the Trading Floor without prior approval of the Chair or Vice Chair of the Options Floor Trading Committee.

E. Complaints from Floor Members

The PCX proposes to adopt PCX Rule 6.2(f) (replacing OFPA E–5[24] and OFPA E–6[25]), which advises options floor members as to where they may direct complaints concerning situations arising on or relating to the Options Trading Floor. Specifically, the proposed rule states that Floor Members may direct complaints concerning situations arising on or relating to the Options Trading Floor to the Options Surveillance Department or to the Enforcement Department so that appropriate follow-up action may be taken.

F. Series of Options Open for Trading

The Exchange is proposing to update PCX Rule 6.4(a) so that it will conform with current practices by changing from three to four the number of different expiration months that will normally be opened at the commencement of trading a particular option issue.[26] The Exchange also proposes to remove erroneous provisions on the specific expiration month that may be added at the commencement of trading of a particular issue and at the time a previous month's series expires. The rule currently states that three months will normally be opened, with the first expiration month being within approximately three months thereafter, the second month being approximately three months after the first and the third being approximately three months after the second. In addition, the rule states that additional series of the same class may be opened for trading on the Exchange at or about the time a prior series expires, and the expiration month of each such series shall normally be approximately nine months following the expiration of such series. However, the current industry practice is normally to add four expiration months, the first two being the two nearest months, and the third and fourth being the next two months of the quarterly cycle previously designated by the Exchange for that specific issue.[27] When a previous expiration month's series expire, a new expiration month is added to assure that there are always four expiration months.

G. Verification of Compared Trades

The PCX proposes to reduce the amount of time during which members or their representatives are required to remain available on the trading floor after the Trade Processing Department closes. The reduction will be based on the number of transactions processed per trading day. Specifically, the Exchange proposes to require that members of their representatives be available after Trade Processing closes for 30 to 60 minutes, depending on the number of transactions involved. Currently, members or their representatives are required by PCX Rule 6.17, Commentary .01 to remain available after the close as follows: when fewer than 8,000 transactions on the Exchange have occurred, 45 minutes; but when more than 8,000 trades have occurred, one hour and 15 minutes. Under the proposal, these times will be modified as follows: 0–8,000 transactions, 30 minutes; 8,000–12,000 transactions, 45 minutes; and over 12,000 transactions, 60 minutes. The Exchange believes that the new requirements are more reasonable and better reflect the Exchange's needs.

H. Resolution of Uncompared Trades

The PCX proposes to modify PCX Rule 6.21 by changing the basis for establishing a loss as the result of an uncompared trade so that it will be the opening price on the business day following the trade date. Currently, the basis is the lesser of either the opening price on the business day following the trade date or the price at which the uncompared trade was closed. After careful consideration and review of this proposal by Exchange members and member firms, the Exchange proposes this change in an effort to simplify and make uniform the administration of pricing uncompared trades.[28] The Exchange is also proposing to require that notice of uncompared trades must be provided no later than the scheduled commencement of trading (unless a floor official directs otherwise). The Exchange believes that the current time requirement—15 minutes from the scheduled commencement of trading—is overly flexible.

I. Reports of Open Exercise Positions

The Exchange is proposing to clarify and simplify PCX Rule 62.7, which currently requires member organizations to file certain reports on open positions with the Exchange. The Exchange is proposing to restate the text of Commentary .01 in the text of PCX Rule 6.27 and to eliminate Commentaries .02 and .03.[29] As amended, PCX Rule 6.27 will provide that the Exchange may require each member organization to file with the Exchange a report, as of the 15th of each month, of all open positions resulting from the exercise of options contracts in accounts carried by a member organization. It will then incorporate current Commentary .01 into the rule by adding that such reports, when required, must be filed no later than the second business day following the day as of which the report is made.

J. Fast Markets

The PCX proposes changes to PCX Rule 6.28 by merging the Text of OFPA G–9 into PCX Rule 6.28. Currently, OFPA G–9 lists procedures that will become effective in a fast market situation. The Exchange proposes this change to simplify and consolidate rules relating to fast market and unusual market conditions. In addition, the rule will add a cross-reference to the current requirement of market makers to trade a minimum of one contract based on quoted markets, pursuant to PCX Rule 6.37(f), during fast markets. The rule change will specify that regular trading procedures will be resumed when two floor officials determine that the conditions supporting the fast market no longer exist. Finally, it will remove, as unnecessary, the current provision allowing floor officials to assign brokerage responsibilities for particular series to specific floor brokers in the trading crowd during fast markets.

2. Statutory Basis

The Exchange believes that the proposal, as amended, is consistent with Section 6(b)(5) of the Act[30] because it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were not solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. by order approve the proposed rule change, or

B. institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the

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[15] PCX Rule 6.75(a) provides in part that "If two or more bids represent the highest price * * * priority shall be afforded to such bids in the sequence in which they are made."

[16] PCX Rule 5.8(d) states: "When bids or offers are made simultaneously, or when it is impossible to determine clearly the order of time in which they were made, all such bids or offers shall be on parity, except as noted in Rule 5.8(e)."

[17] PCX Rule 5.8(h) states: "All stop loss orders must clearly indicate in writing that they are such and, in addition, the amount and the price of the stock appearing at the top of the buy and sell ticket must be circled."

[18] *See* PCX Rule 6.46 ("Responsibilities of Floor Brokers").

[19] PCX Rule 5.12(a) states: "The seller shall be responsible for transactions being properly recorded by the floor reporters."

[20] PCX Rule 5.13(a) states: "Every transaction on the Exchange must be compared as provided herein unless the same shall have been officially removed from the record in accordance with Exchange rules." PCX Rule 5.13(b), Comparison Ticket, states "The comparison ticket shall contain and constitute a record of the name, quantity and price of the securities traded and the names of the buying and selling members from which daily transaction sheets will be prepared for member firms."

[21] The provisions being eliminated include the following: "Rule 6.45 requires that each Floor Broker shall have in effect a Letter of Authorization that has been issued for such Floor Broker by a clearing member, and Section 77 of Rule VI requires that each Market Maker shall have in effect a Letter of Guarantee which has been issued for such market maker by a clearing firm." (OFPA F–6)

[22] Subsection 6 of OFPA F–2 currently provides: "The inviting member of member organization floor manager may not sign in more than four guests at any given time. Visitors may remain on the Options Trading Floor a maximum of two hours during the trading session and one-half hour after it. Visitors, except those referred to in paragraph #4 above, may not be allowed on the Options Trading Floor more than five times in a calendar month, regardless of the duration of each visit."

[23] This part of OFPA F–2 states: "Rule 6.2(a) limits admission to the Floor to members, employees of the Exchange, clerks or messengers employed by members, and such other persons as may be provided for in the Rules. Pursuant to this Rule, the Exchange encourages the presence of appropriate visitors on the Options Trading Floor, but it is deemed necessary to strictly enforce certain procedures governing the admission to the Floor of such visitors."

[24] OFPA E–5 states:

"A Member of the Options Floor with a complaint concerning a situation arising on or relating to the Floor, should: (1) Notify the Surveillance Department of the circumstances involved, and (2) subsequent to such notification, submit the complaint in writing to the Surveillance Director. If the concerned Member believes it necessary for the Surveillance Department to personally review or rectify the situation, a member of the Department will immediately come to the Floor. A study will be conducted on all matters referred to the Surveillance Department pursuant to this Floor Procedure Advice. Upon completion of such study, the Member(s) filing the complaint will be informed of the conclusion (i.e., filed closed or referred to the Compliance Department for further review or action). A written report of each study will be submitted to the Options Floor Trading Committee. General Information regarding such study may be given to concerned Members; however, the specific details shall remain confidential."

[25] OFPA E–6 states: "Upon receipt of a written complaint from a member of the Options Floor, the Compliance Department shall commence an investigation into the allegations contained in such complaint. The Compliance Department may, among other things, interview the Complainant, and any witnesses and parties to the action which gave rise to the complaint. The Compliance Department may request a written response from the parties involved and any witnesses. Upon the Compliance Department obtaining the facts pertinent to the issue, a written recommendation will be drafted and presented to the Options Floor Trading Committee. After the Options Floor Trading Committee has received the written recommendation of the Compliance Department, the item should be placed on the Committee's agenda for discussion, and final action, insofar as the Options Floor Trading Committee is concerned. The Compliance Department may, in addition, commence Disciplinary Proceedings based upon any violation of the Pacific Exchange Constitution, Rules, Commentaries or procedures uncovered during the investigation of the complaint."

[26] *Cf.* CBOE Rule 5.5, Interp. & Policy .03.

[27] *Id.*

[28] *Cf.* CBOE Rule 6.61. Interp. & Policy. 01.

[29] Commentary .02 provides: "An open exercise position with respect to which the Options Clearing Corporation has assigned an exercise notice to the member organization and the member organization has not delivered the shares of the underlying stock in accordance with the Rules of the Options Clearing Corporation and these Rules." Commentary .03 currently provides: "All such reports shall be delivered to the Department of Member Organizations of the Exchange." The Exchange does not believe that a specified department needs to be identified in this rule and, in any event, member firms are currently on notice that such reports must be filed with the Department of Options Surveillance.

[30] 15 U.S.C. 78f(b)(5).

public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–PCX–99–36 and should be submitted by April 25, 2000.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[31]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8222 Filed 4–3–00; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Region II Advisory Council Meeting; Public Meeting

The U.S. Small Business Administration Region II Advisory Council located in the geographical area of Buffalo, New York, will hold a public meeting at 10 a.m. on April 19, 2000, at the Erie County Industrial Development Agency (ECIDA), 275 Oak Street, Board Room at entrance, Buffalo, New York to discuss matters that may be presented by members of the Advisory Council, staff of the U.S. Small Business Administration or others present.

For further information, write or call: Franklin J. Sciortino, District Director, Small Business Administration, 1311 Federal Building, 111 West Huron Street, Buffalo, New York 14202, (716) 551–4301.

Franklin J. Sciortino,

District Director.

[FR Doc. 00–8118 Filed 4–3–00; 8:45 am]

BILLING CODE 8025–01–U

DEPARTMENT OF STATE

(Public Notice 3273)

Bureau for International Narcotics and Law Enforcement Affairs; Anti-Crime Training and Technical Assistance Program (ACTTA)

AGENCY: Office of Europe, NIS, and Training; Bureau for International Narcotics and Law Enforcement Affairs, State.

ACTION: Notice.

SUMMARY: State Department's Bureau for International Narcotics and Law Enforcement Affairs (INL) developed the Anti-crime Training and Technical Assistance Program (ACTTA) in 1994 to bring U.S. Federal law enforcement agencies together to provide training and technical assistance in consultation with their counterparts in Russia, other the Newly Independent States NIS), Hungary and Slovakia. Training continues to focus on combating international organized crime, financial crimes, and narcotics trafficking. The goal of the program is to increase professionalism and develop the technical capabilities of law enforcement institutions to combat organized crime and to assure that through international law enforcement cooperation, U.S. agencies and their foreign counterparts succeed in intercepting the movement of transnational organized criminal elements into the U.S.

The ACTTA program continues to include the participation of non-Federal agencies (*e.g.*, universities, state/local government agencies, private non-profit organizations) in the delivery of law enforcement training and technical assistance to Russia, the NIS and Hungry and Slovakia. This non-Federal component of the ACTTA program has a timeframe of 2000–2002.

DATES: Strict deadlines for submission to the FY 2000 process are: Full proposals must be received at INL no later than Tuesday, May 16, 2000. Letters of intent will not be required. We anticipate that review of full proposals will occur during June 2000 and funding should begin during September of 2000 for most approved projects.

September 1, 2000 should be used as the proposed start date on proposals, unless otherwise directed by a program manager. Applicants should be notified of their status within 6 months, of submission deadline. All proposals must be submitted in accordance with the guidelines below. Failure to heed these guidelines may result in proposals being returned without review.

ADDRESSES: Proposals may be submitted to: U.S. Department of State, Bureau of International Narcotics and Law Enforcement Affairs, Navy Hill South, 2430 E Street NW, Washington, D.C. 20520, Attn: Linda Gower, Grants Officer.

FOR FURTHER INFORMATION CONTACT:

Jo Ann Moore at above address, TEL: 202–736–4380, FAX: 202–736–4515, for Russia and the NIS

Maren Brooks at above address, TEL: 202–736–4379, FAX: 202–736–4515, for Hungary or Slovakia, or

Linda Gower at above address, TEL: 202–776–8774, FAX: 202–776–8775

Once the RFA deadline has passed, DOS staff may not discuss this competition in any way with applicants until the proposal review process has been completed.

SUPPLEMENTARY INFORMATION:

Funding Availability

This Program Announcement is for projects to be conducted by agencies/programs outside the Federal Government, over a period of up to two years. Actual funding levels will depend upon availability of funds. Current plans are for up to $3 million for Russia and the NIS, and $100,000 for Hungary and $400,000 for Slovakia, to be available for new (or renewing) ACTTA awards, in Crime. The funding instrument for extramural awards will be a grant or a cooperative agreement. Funding for non-U.S. institutions and contractual arrangements for services and products for delivery to INL are not available under this announcement. Matching share, though encouraged, in not required by this program. No proposal should exceed a total cost of $750,000.

Program Authority

Authority: Section 635(b) of the Foreign Assistance Act, of 1961 as amended.

Program Objectives

The goal of the ACTTA program is to increase the technical capabilities of foreign country law enforcement institutions to control organized crime, combat corruption, institute democratic practices, and to assure that through international law enforcement cooperation, U.S. agencies succeed in intercepting the movement of transnational organized criminal elements into the U.S.

The ACTTA program has been designed to provide assistance to foreign governments which will complement the training and assistance provided by US Federal agencies. All training and assistance of the ACTTA program should be focused on city or local police forces, with a concentration out of the capital cities.

The program objectives of the ACTTA program are: (1) combat the growing threat to U.S. national security posed by the broad range of organized crime activities, (2) help emerging democracies strengthen their national and law enforcement institutions to counter illegal criminal activities, (3) help emerging democracies develop laws and prosecutorial frameworks to counter organized crime activities, and (4) provide foreign law enforcement institutions with the skills to detect, arrest, and prosecute major transnational criminal offenders.

[31] 17 CFR 200.30–3(a)(12).

Program Priorities

The primary focus of this program is concentrated in Armenia, Georgia, Hungary, Moldova, Russia, Slovakia and the Ukraine. The focus should be on regional areas outside of country's capital city.

All training conducted under this program must utilize a "training-of-trainers" format.

The FY 2000 ACTTA Program Announcement invites training and technical assistance program proposals in the following program priorities:

(1) community policing methods,
(2) combating organized crime,
(3) rule of law.

Note: For Hungary and Slovakia—community policing only.

Eligibility

Eligibility is limited to non-Federal agencies and organizations, and is encouraged with the objective of developing a strong partnership with the state/local law enforcement community. Non-law enforcement proposers are urged to seek collaboration with state/local law enforcement institutions. Letters of support must be included in the proposal. State and local governments, universities, and non-profit organizations are included among entities eligible for funding under this announcement. Funding for non-U.S. institutions is not available under this announcement.

Evaluation Criteria

Consideration for financial assistance will be given to those proposals which address one or more of the Program Priorities identified above and meet the following evaluation criteria:

(1) Relevance (20%): Importance and relevance to the goal and objectives of the ACTTA program identified above.

(2) Methodology (25%): Adequacy of the proposed approach and activities, including development of relevant training curricula, training methods proposed, evaluation methodology, project milestones, and final products.

(3) Readiness (25%): Relevant history and experience in conducting training/technical assistance in the program priority areas identified above, strength of proposed training/technical assistance or evaluation teams, past performance record of proposers.

(4) Linkages (15%): Connections to existing law enforcement agencies in Russia, the NIS and Central European countries named in program priorities, letters of support, from those law enforcement agencies, in addition to previous training or related assistance experience in these countries.

(5) Costs (15%): Adequacy/efficiency of the proposed resources and a percentage of cost sharing.

Selection Procedures

All proposals will be evaluated and ranked in accordance with the assigned weights of the above evaluation criteria by independent peer panel review composed of INL and other Federal USG agency law enforcement experts. The panel's recommendations and evaluations will be considered by the program managers in final selections. Those ranked by the panel and program as not recommended for funding will not be given further consideration and will be notified of non-selection. For the proposals rated for possible funding, the program managers will: (a) Ascertain which proposals meet the objectives, fit the criteria posted, and do not duplicate other projects that are currently funded by INL, other USG agencies or foreign governments, or international (note: proposals or elements that duplicate existing activities of USG agencies will not receive awards. end note); (b) select the proposals to be funded; (c) determine the total duration of funding for each proposal; and (d) determine the amount of funds available for each proposal.

Unsatisfactory performance by a recipient under prior Federal awards may result in an application not being considered for funding.

Proposal Submission

The guidelines for proposal preparation provided below are mandatory. Failure to heed these guidelines may result in proposals being returned without review.

(a) Full Proposals

(1) Proposals submitted to INL must include the original and three unbound copies of the proposal. (2) Applicants are not required to submit more than 3 copies of the proposal, although the normal review process requires 5 copies.

Applicants are encouraged to submit sufficient proposal copies for the full review process if they wish all reviewers to receive color, unusually sized (not 8.5 x 11″), or otherwise unusual materials submitted as part of the proposal. Only three copies of the Federally required forms are needed. (3) Program descriptions must be limited to 20 pages (numbered), not including budget, personnel vitae, letters of support and all appendices, and should be limited to funding requests for one to two year duration. Federally mandated forms are not included within the page count. (4) Proposals should be sent to INL at the above address. (5) Facsimile transmissions of full proposals will not be accepted.

(b) Required Elements

(1) Signed title page: The title page should be signed by the Project Director (PD) and the institutional representative and should clearly indicate which program priority or priorities are being addressed. The PD and institutional representative should be identified by full name, title, organization, telephone number and address. The total amount of Federal funds being requested should be listed for each budget period. A budget period is normally two years.

(2) Abstract: An abstract must be included and should contain an introduction of the problem, rationale and a brief summary of work to be completed. The abstract should appear as a separate page, headed with the proposal title, institution(s) name, investigator(s), total proposed cost and budget period.

(3) Prior training experience: A summary of prior law enforcement training experience should be described, including training related to program priorities identified above and/or conducted in Russia and the NIS. Reference to each prior training award should include the title, agency, award number, period of award and total award. The section should be a brief summary and should not exceed two pages total.

(4) Statement of work: The proposed project must be completely described, including identification of the problem, project objectives, proposed training methodology, relevance to the goal and objectives of the ACTTA program, and the program priorities listed above. Benefits of the proposed project to U.S. law enforcement efforts should be discussed. A year-by-year summary of proposed work must be included clearly indicating that each year's proposed work is severable and can easily be separated into annual increments of meaningful work. Statement of work, including and excluding figures and other visual materials, must not exceed 20 pages of length.

(5) Budget: Applicants must submit a Standard form 424 (4–92) "Application for Federal Assistance," including a detailed budget using the Standard Form 424a (4–92), "Budget Information—Non-Construction Programs." The proposal must include total and annual budgets corresponding with the descriptions provided in the statement of work. Budget text must be

included to justify expenses. Additional text should include salaries and benefits by each proposed staff person; direct costs such as travel (airfare, per diem, miscellaneous travel costs); equipment; supplies; contractual, and indirect costs. Indicate if indirect rates are DCAA or other Federal agency approved or proposed rates and provide a copy of the current rate agreement. In addition, furnish the same level of information regarding subgrantee costs, if applicable, and submit a copy of your most recent A–110 audit report. Consultant fees should not exceed $250 per day.

(6) Vitae: Abbreviated curriculum vitae are sought with each proposal. Vitae for each project staff person should not exceed three pages in length.

(c) Other Requirements

Primary Applicant Certification—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Applicants are also hereby notified of the following:

1. Non procurement Department and Suspension—Prospective participants (as defined at 15 CFR Part 26, section 105) are subject to 15 CFR Part 26, "Non procurement Debarment and Suspension," and the related section of the certification form prescribed above applies;

2. Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR Part 26, Subpart F, "Government wide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying—Persons (as defined at 15 CFR Part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants of more than $100,000; and

4. Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

(1) Recipients must require applicants/bidders for sub-grants or lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure Form SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to Department of State (DOS). SF–LLL submitted by any tier recipient or sub-recipient should be submitted to DOS in accordance with the instructions contained in the award document.

(2) Recipients and sub-recipients are subject to all applicable Federal laws and Federal and Department of State policies, regulations, and procedures applicable to Federal financial assistance awards.

(3) Pre-award Activities—If applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation to the applicant on the part of Department of State to cover pre-award costs.

(4) This program is subject to the requirements of OMB Circular No. A–110, "Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations," OMB Circular No. A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions," and 15 CFR Part 24, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," as applicable. Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

(5) All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associate with the applicant have been convicted of, or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

(6) A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

(7) No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(i) The delinquent account is paid in full,

(ii) a negotiated repayment schedule is established and at least one payment is received, or

(iii) other arrangements satisfactory to the Department of State are made.

(8) Buy American-Made Equipment or Products—Applicants are reminded that any equipment or products authorized to be purchased with funding provided under this program must be American-made to the maximum extent feasible.

(9) The total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct cost dollar amount in the application, whichever is less.

(d) If an application is selected for funding, the Department of State has no obligation to provide any additional future funding in connection with the award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of State.

(e) In accordance with Federal statutes and regulations, no person on grounds of race, color, age, sex, national origin or disability shall be excluded from participation in, denied benefits of or be subjected to discrimination under any program or activity receiving assistance from the INL ACTTA program.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a current valid OMB control number. The standard forms have been approved by the Office of Management and Budget pursuant to the Paperwork Reduction Act under OMB approval number 0348–0043, 0348–0044, and 0348–0046.

Classification: This notice has been determined to be not significant for purposes of Executive Order 12866.

Dated: March 30, 2000.

Jo Ann Moore,

Coordinator, Office of Europe, New Independent States, and Training, Bureau for International Narcotics and Law Enforcement Affairs, U.S. Department of State.

[FR Doc. 00–8260 Filed 4–3–00; 8:45 am]

BILLING CODE 4710–17–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2000–7117]

Notice of Public Meeting and Request for Comments on Proposed Changes to the Oil Spill Removal Organization (OSRO) Classification Program

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting and request for comments.

SUMMARY: The Coast Guard is soliciting comments on proposed changes to the Oil Spill Removal Organization (OSRO) Classification program. The Coast Guard has developed proposed changes to the OSRO Classification program in a document entitled: *Coast Guard Program for Classifying Oil Spill Removal Organizations.* This notice also announces a public meeting to discuss the proposed document.

DATES: The meeting in Arlington, VA will be on May 4, 2000, from 9 a.m. to 5 p.m. The meeting will convene at 9 a.m., and will conclude before 5 p.m. if we finish early. Comments and related material must reach the Docket Management Facility on or before May 19, 2000.

ADDRESSES: The meeting in Arlington, VA will be held at the Hilton Crystal City at National Airport Hotel, 2399 Jefferson Davis Highway, Arlington, VA 22202, 703–418–6800.

To make sure your comments and related materials are not entered in the docket more than once, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility (USCG–2000–7117), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web Site for the Docket Management System at http://dms.dot.gov.

The Docket Management Facility maintains the public docket for this notice. Comments and documents, as indicated in this notice, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza Level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may electronically access the public docket on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this meeting notice, or persons interested in presenting information at the workshop, please contact Lieutenant Commander Roger Laferriere, Office of Response, Response Operations Division (G–MOR–3), telephone 202–267–0448, fax 202–267–4085, or email Rlaferrierre@comdt.uscg.mil.

For questions on viewing or submitting material to the docket, call Dorothy Walker, Chief, Dockets, Department of Transportation, telephone 202–366–9329.

SUPPLEMENTARY INFORMATION:

Agenda of Meeting

Proposed changes to the *Coast Guard Program for Classifying Oil Spill Removal Organizations.* The agenda includes the following:

(1) Addressing OSROs with different capabilities having the same classification.

(2) Increasing measurement of OSRO systems capability.

(3) Development of realistic response times.

(4) Addressing personnel requirements.

(5) Increasing alignment with the regulations.

(6) Strengthening the verification program.

(7) Making the guidelines more user friendly.

(8) Clarifying planner and OSRO responsibilities.

(9) Improving fixed storage counting.

(10) Validating OSRO exercise participation.

A copy of the document entitled, *Coast Guard Program for Classifying Oil Spill Removal Organizations* can be obtained through the National Strike Force Coordination Center at 252–331–6000, extension 3034, or at the Vessel Response Plan program internet site (http: www.uscg.mil/vrp), or at the internet site for the public docket for this notice, http://dms.dot.gov.

Request for Comments

We encourage you to participate by submitting comments and related material. If you do so, please include your name and address, identify the docket number [USCG–2000–7117], indicate the specific section of the *Coast Guard Program for Classifying Oil Spill Removal Organizations* to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under ADDRESSES; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change the document in view of them.

Public Meeting

The purpose of the meeting is to discuss the proposed changes to the OSRO Classification program guidelines as described in *Coast Guard Program for Classifying Oil Spill Removal Organizations.* Also, the Coast Guard will discuss many issues raised during the last five years of the OSRO Classification program. Federal, state, and local agencies, industry, oil spill removal organizations, environmental groups and the public are encouraged to participate and provide written or oral comments on the document.

Background

The primary purpose of the OSRO program is to provide a systematic way to classify OSROs. Once classified, planholders can list them by name and classification as an alternative to listing extensive resources in their tank vessel and facility plans [Title 33 Code of Federal Regulations, sections 154.1035(e)(3)(iii) and 155.1035(i)(8)]. OSROs and plan holders participate and use the classification program on a strictly voluntary basis. Since their inception, five years ago, the OSRO Classification Guidelines have undergone subtle changes to increase alignment with the regulatory requirements. Thirteen separate newsletters were published announcing these changes, eight of which were incorporated into the last revision of the Guidelines in 1997. Since 1997, the guidelines have remained stable in form, but program managers and stakeholders identified more shortfalls, where the guidelines did not meet the regulatory requirements. OSRO classifications were intended strictly as a response "planning" tool that would allow plan writers to identify OSROs that could meet their response needs, as outlined by the regulations. In order to ensure, at a minimum, that an OSRO classification represents as accurately as

possible an OSRO's response capabilities, further changes to the guidelines were needed. The proposed changes are designed to ensure that the Coast Guard classification program provides a more accurate representation of an OSRO's response capability and better addresses the regulatory requirements.

Information on Services for Individuals with Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Lieutenant Commander Roger R. Laferriere, Office of Response, Response Operations Division (G–MOR–3), Coast Guard, telephone 202–267–0448, e-mail *RLaferriere@comdt.uscg.mil* as soon as possible.

Dated: March 29, 2000.

Joseph J. Angelo,

Director of Standards, Marine Safety and Environmental Protection.

[FR Doc. 00–8217 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Commercial Routes for the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability of routes in grand Canyon National Park; disposition of comments.

SUMMARY: This notice disposes of comments made on a notice of availability of routes in the Grand Canyon National Park (GCNP) Special Flights Rules Area (SFRA) published July 9, 1999, and makes available the final map depicting those routes. The commercial routes are not being published in the **Federal Register** because they are depicted on large, detailed charts that would be difficult to read if published in the **Federal Register**. The modifications of certain commercial routes require airspace changes in the GNCP SFRA that are contained in a final rule being published concurrently in this **Federal Register**. The airspace modification and the modification to the route structure support the National Park Service mandate to provide for the substantial restoration of the natural quiet and experience in GNCP.

EFFECTIVE DATE: The routes depicted on the map made available by this notice are effective on December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Air Transportation Division, AFS–200, 800 Independence Avenue, SW., Washington, DC 20591, Telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION:

The final commercial routes are not being published in the **Federal Register** because they are on very large and detailed charts that would not publish well in the **Federal Register**. The Grand Canyon Visual Flight Rules (VFR) Chart can be purchased from National Ocean service (NOS) authorized chart agents throughout the world, or directly from NOS with a credit card on (800) 638–8972. The cost of the chart is $3.35. Please specify 3rd edition.

Discussion

On July 9, 1999, the FAA published a notice of availability of routes in GNCP and request for comments (64 FR 37191). The FAA, in consultation with the National Park Service (NPS), developed the routes based on safety considerations, economic considerations, consultation with Native American tribes, airspace configurations, the need to substantially restore natural quiet and experience in the GNCP, and comments received in response to the notice of availability of routes. The FAA, in consultation with the NPS, also has modified the existing airspace in the SFRA to accommodate these route changes in a companion final rule (Docket No. FAA–99–5926) published elsewhere in this **Federal Register**.

In developing the routes for GNCP, the FAA has consulted with Native American tribes, on a government-to-government basis, in accordance with the Presidential Memorandum on Government-to-Government Consultation with Native American Tribal Governments. This consultation was designed to assess potential effects on tribal trust resources and to assure that tribal government rights and concerns are considered in the decisionmaking process. The FAA also has consulted with Native American Tribes pursuant to the American Indian Religious Freedom Act and the Religious Freedom Restoration Act concerning potential effects of the routes on sacred sites. In accordance with Section 106 of the National Historic Preservation Act, the FAA has consulted with Native American tribes, the Arizona State Historic Preservation Office, the Advisory Council on Historic Preservation, and other interested parties concerning potential effects on historic sites, including traditional cultural properties and Native American sacred sites.

Disposition of Comments on Routes

The FAA received more than 100 comments on the notice of availability published July 9, 1999. Comments were submitted by air tour operators (Air Vegas, Southwest Safaris, Grand Canyon Airlines); industry associations (Aircraft Owners and Pilots Association, National Air Transportation Association, Helicopter Association International); aircraft manufacturers (Twin Otter International, Ltd.); environmental groups (Arizona Raft Adventures, Friends of Grand Canyon, Grand Canyon River Guides, Grand Canyon Trust, Mariposa Audubon Society, Nature Sounds Society, National Parks and Conservation Association, Quiet Skies Alliance, Sierra Club, The Wilderness Society); private individuals, and government and public officials.

General Comments on Routes

Helicopter Association International says that, because of noise considerations, it has consistently objected to implementation of air tour routes that place air tour operations repetitively over or very near areas in which large numbers of persons on the ground congregate. Instead, HAI believes that air tour routes should be designed to avoid the largest number of park ground visitors practicable, consistent with the right of air tour visitors to experience their national park from an aerial perspective. The routes also need to support the safe arrival and departure procedures to facilities on the ground where air tour visitors can safely and conveniently board air tour aircraft.

HAI adds that human activity on the ground has characteristics that may influence acceptable overflight noise thresholds, and that the presence or absence of such activity should be taken into account. For example, automobile traffic and crowd noise in areas frequented by park ground visitors may mask aircraft overflight sound. It may be reasonable, therefore, to permit more such sound in these areas than in areas where automobile traffic and crowd noise are absent.

FAA Response: The NPS has advised the FAA that the noise concerns are less over the highly populated areas of the park, such as Grand Canyon Village, where there are other noise sources, such as buses, and large crowds. The NPS is particularly concerned with protecting the natural quiet that exists on back country trails and on the quiet river waters where park visitors go to experience nature. Thus where possible, the FAA has structured the routes to be consistent with this concern. The FAA has determined that route changes contained in this notice provide safe transit through the SFRA and support safe arrival and departure procedures to local airports.

Eastern Expansion of Desert View (Black 2, Green 3 and Black 2X–4)

Southwest Safaris says that flexibility of route structure is critical. This commenter also notes that weather and lighting changes in GCNP from hour to hour, day to day, and season to season. In order to provide park visitors with the best air tour possible, air tour operators must be able to fly the Canyon both south to north and north to south, as well as in a counterclockwise direction. This commenter believes that some tours need to be longer than others for reasons of price as well as safety.

Southwest Safaris also states that the newly proposed air tour routes in the eastern end of the Park totally destroy an air tour operator's flexibility to design tours appropriate to changing conditions in the Park. Finally, this commenter finds that the newly proposed air tour routes make no reasonable provision for entering and exiting the Park from the east or the northeast. Air tour operators approaching the Canyon from Tuba City and/or Monument Valley will be negatively impacted.

FAA Response: The routes map depicts a modification in the Desert View FFZ moving it back to the GCNP boundary. This modification from the proposed change to the Desert View FFZ is addressed in the final rule, Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones, which appears in this issue of the **Federal Register**. This change will not affect the proposed Green 3 or Black 2 routes and the SFRA boundary will be depicted as it was on the proposed map.

The FAA added the Zuni turnaround to provide some counterclockwise flexibility. It is not revising the entry point at 2X–4 due to altitude congestion. The entrance points to Black 2 and Green 3 located near the Reservation have been modified to provide easier entry onto the routes.

Zuni Corridor (Black 2, Green 1)

Southwest Safaris states that the proposed routes over the canyons of the Little Colorado River are of negative value. Passengers pay to see the Grand Canyon, not the lesser canyons of the Little Colorado River or even the Painted Desert. This commenter states that any air tour operator who diverts east to avoid weather over Saddle Mountain will be compelled to refund the entire money paid for the air tour because this would fly out over the desert where there is nothing to see. Southwest Safaris states that as soon as this financial reality becomes generally known, air tour operators will feel that they "must" fly the longer, higher routes "over the top" of the Canyon (through the extended Dragon Corridor) even in the face of bad weather. This commenter believes that the FAA is forcing air tour operators into a safety risk to the extent that once inside the Canyon airspace there will be no way out.

Grand Canyon Airlines states that the Black 1 route over Saddle Mountain forces air tour operators to fly a longer route over higher terrain. This increases the cost of the air tour without providing any additional benefit to air tour passengers.

FAA Response: The FAA has modified the Zuni Point Corridor routes to permit two-way fixed wing traffic in response to comments. The FAA has concluded that a turnaround at Gunthers Castle is necessary to provide operators with a safe and economic alternative to the Saddle Mountain routes. Additionally, the FAA estimates that with the cap on commercial air tours the noise impact on the park will be improved if air tour operators are permitted shorter flights. For example, if an air tour operator is given only 10 allocations they will produce less noise by conducting 10 half hour air tours rather than 10 one hour air tours. By using the two-way flights in the Zuni Point Corridor, air tours will avoid the much longer flight around Saddle Mountain and through the Dragon Corridor. The FAA believe this change serves three beneficial ends: (1) it improves safety by permitting air tours to use the Zuni Point Corridor as an alternative to flying over Saddle Mountain during bad weather, (2) it decreases air tour noise in the park, and (3) it alleviates economic concerns.

Bright Angel

Grand Canyon Airlines requests that an air tour route be added through the Bright Angel Corridor so that air tour operators will have a safe alternative to flying over Saddle Mountain.

Several environmentalist commenters state that Bright Angel Corridor should never be opened to air tour traffic.

FAA Response: The FAA is not currently implementing a route for all aircraft in the Bright Angel Corridor. The route map shows a future Bright Angel Corridor. The Bright Angel Corridor is reserved as a future incentive route for noise efficient/quiet technology aircraft. However, the FAA notes that in a weather emergency, an operator can use the Bright Angel Corridor to escape weather over Saddle Mountain.

Marble Canyon (Black 4, Black 5)

Southwest Safaris states that the FAA has reversed the route structure in the Marble Canyon Sector. Black 4 and Black 5 have been swapped, with no justification for the needless confusion this will cause air tour operators.

Both Southwest Safaris and Sunrise Airlines state that Black 4 and Black 5 routes should remain as currently depicted under SFAR 50–2. Additionally, Southwest Safaris notes that the FAA proposal unnecessarily and unfairly forces commercial air tour traffic away from the canyon taking away the quality air tour from the entire Marble Canyon.

FAA Response: The FAA and NPS during the 1996 rulemaking process decided to redesign the Marble Canyon Sector to reduce the impact of aircraft noise on the Colorado River. To accomplish this reduction, the FAA eliminated one of two air tour crossovers and the routes were moved further from the river. The elimination resulted in the reversal of the entry and exit points of Black 4 and Black 5. The FAA believes this is a training issue and it is providing a training period, 45 days from publication of the airspace final rule, before these routes will be implemented.

Dragon Corridor (Black 1, Green 1, Green 2)

Several environmental organizations (Arizona Raft Adventures, Friends of Grand Canyon, Grand Canyon River Guides, Grand Canyon Trust, Maricopa Audubon Society, Nature Sounds Society, National Parks and Conservation Association, Quiet Skies Alliance, Sierra Club, The Wilderness Society) oppose the dog-leg in the Dragon Corridor and recommend that the Dragon Corridor be closed to all aviation traffic.

Twin Otter International recommends that the Dragon Corridor be converted within years to a quiet airplane flight corridor. Furthermore, this commenter suggests that the FAA define the operating characteristics an airplane must have in order for it to conduct round-trip air tours within the Dragon Corridor, and immediately permit such fixed-wing air tours in the Dragon Corridor as are currently permitted for helicopter tours.

FAA Response: The FAA is retaining the air tour routes through the Dragon Corridor as proposed and as depicted. The dog-leg contained in the Dragon Corridor route structure moves the route

away from Hermit's Rest and significantly lessens the impact of aircraft noise on those visitors. The necessity for a total closing of the Dragon corridor was considered and rejected since the agencies doe not believe it is necessary to achieve the statutory mandate.

The FAA is not considering the TOIL request to convert the Dragon Corridor to quiet aircraft at this time. The FAA and NPS have not yet defined the characteristics that qualify as quiet technology. Thus, any request to convert to quiet technology at this time is premature.

Sanup FFZ (Blue Direct North, Blue Direct South)

Clark County Department of Aviation says that the FAA's failure to provide sufficient explanation or support for its decision to drop any version of a Blue 1 route creates another dangerous precedent for western aviation. The FAA proposes to eliminate the most-used and highest-revenue tour route on the basis of concerns about possible impacts to Native American cultural or religious sites. However, the FAA does not identify with any specificity what resources are affected by Blue 1, how they are affected or the applicable standard of impact. Without this information, Clark County notes that the public has no ability to assess whether FAA's decision is justified or arbitrary.

National Air Transportation Association objects to the elimination of a vital air tour route from Las Vegas, Nevada. Transferring this corridor to a less scenic "transportation corridor" severely restricts the air tour experience from Las Vegas.

Air Vegas states that with the elimination of the Blue 1 route there needs to be an extended "sightseeing" flight available to Las Vegas fixed wing operators in the western portion of the park. There is also no reverse air tour. Without some changes to the proposed route system there will not be a viable air tour system out of Las Vegas.

Twin Otter International, Ltd., (TOIL) suggests that the existing north rim fixed-wing air tour route and the existing Blue 1 (Las Vegas to Grand Canyon) be limited to quite aircraft in 2 years.

FAA Response: The route map remains as originally set forth in the notice with respect to Blue Direct North and Blue Direct South.

The Blue 1 was severed by the southward extension of the Toroweap-Thunder River FFZ, which was adopted in the 1996 final rule. Since this section of the 1996 final rule has not been implemented yet, air tour operators have continued to operate on the Blue 1. The FFZ extension is due to be implemented on January 31, 2000. Thus, at that time, the Blue 1 would have to be modified in order to be used as a tour route.

In order for the FAA to meet the goal of substantial restoration of natural quiet, decisions had to be made as to how to reduce the current level of noise impacting on GCNP. The Blue 1 air tour route passed over some of the most sensitive backcountry habitat in the GCNP as well as raising significant controversy with some Native American tribes residing under or near the flight path for Blue 1. The FAA decided to keep the east and west end air tours, which would still allow operators transiting from Las Vegas to Tusayan a flight path that offered GCNP vistas while transiting to and from the Park.

TOIL's recommendation for a quit technology route along the existing Blue 1 is premature given that a final rule implementing a quiet technology standard has not yet been adapted.

Grand Canyon West Vicinity (Blue 2, Green 4)

The Hualapai Nation (hereafter the Hualapai Tribe) states that the routes flown by transport flights have served as de facto Brown routes for the Hualapai Tribe comparable to the route proposed to serve the Havasupai Tribe. The Hualapai Tribe would like an officially designated Brown route created that would not be subject to caps, consistent with Congress' intent not to interfere with transportation flights to the Park or tribal lands. To ensure that the Hualapai Tribe's Brown route is used only by flights transporting persons to and from the Hualapai Reservation, the FAA could specify that all flights utilizing the route must have the permission of the Hualapai Tribe to land on the Hualapai Reservation.

FAA Response: The FAA has addressed the Hualapai Tribe's concerns in the final rule, Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area, also published in this **Federal Register**. Thus, there is no need to create a Brown route to service the Hualapai Reservation.

General Aviation

Aircraft Owners and Pilots Association (AOPA) recommends that the FAA identify and chart VFR waypoints and latitude and longitude coordinates for the Dragon and Zuni Point corridors as both have difficult dog-leg course changes. AOPA's other comments, related to flight-free zones and corridors, are addressed in the final rule on airspace modification in GCNP published concurrently in this **Federal Register**.

FAA Response: The General Aviation commenters are reminded that the proposed route map only depicted the air tour routes and corridors and not the general aviation corridors. The general aviation corridors, when published as part of the official map, will contain the necessary latitude and longitude coordinates for navigation.

Environmental Review

The FAA has prepared a final supplemental environmental assessment and finding of no significant impact (FONSI) for this action to ensure conformance with the National Environmental Policy Act of 1969. Copies of the EA have been circulated to interested parties and placed in the docket, where it is available for review.

Dated: Issued in Washington, DC on March 28, 2000.

Jane F. Garvey,

Administrator, Federal Aviation Administration.

[FR Doc. 00–7951 Filed 3–28–00; 4:59 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of the Final Supplemental Environmental Assessment for the Proposed Actions Relating to the Grand Canyon National Park

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: The Federal Aviation Administration (FAA), in cooperation with the National Park Service (NPS) and the Hualapai Indian Tribe, announces the availability of the Final Supplemental Environmental Assessment (SEA) for the proposed Special Flight Rules in the vicinity of Grand Canyon National Park (GCNP) and Commercial Air Tour Routes (64 FR 37296 and 37304, July 9, 1999).

The Final SEA (FSEA) was prepared pursuant to the National Environmental Policy Act (NEPA) of 1969, as amended, FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts, and other applicable environmental laws, and regulations. The FSEA assesses the effects of proposed Federal actions under consideration by the FAA and the Department of the Interior (DOI). These actions are vital for the FAA to assist the NPS in fulfilling its statutory mandate of the National Park Overflights Act, Public Law 100–91, to provide for the substantial restoration of natural quiet in the GCNP by 2008, as called for by Presidential Memorandum dated April 22, 1996, Earth Day Initiative, Parks for Tomorrow. The Undertaking includes those actions for which implementation has been delayed since December 1996, as well as those currently proposed by the FAA. The currently proposed actions include (1) modifying the Special Federal Aviation Regulation Number 50–2; (2) modifying the commercial air tour routes within the Special Flight Rules Area (SFRA); and (3) limiting the commercial air tour operations.

DATES: There is no comment period associated with release of this document. However, any party to this proceeding, having a substantial interest may appeal the order to the Courts of Appeals of the United States or to the United States Court of Appeals for the District of Columbia upon petition, filed within 60 days of issuance of the Final Rules.

ADDRESSES: A copy of the Final SEA is being mailed to all those commenting, either in writing or orally at one of the public meetings and who provided a return address, on the Draft SEA (DSEA). A postcard will be mailed to those individuals that received a copy of the DSEA but did not provide comments indicating how a copy of the FSEA can be obtained. Additional requests for copies of the FSEA should be directed to: Federal Aviation Administration, Air Traffic Airspace Management, Environmental Programs Division, Attention: Tina Hunter, ATA–300.1, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Questions concerning this Final SEA or the environmental process followed should be directed to the FAA, Air Traffic Airspace Management, Environmental Programs Division, ATA–300, Attention: Mr. William Marx, via telephone at (202) 267–3075, or in writing to the address above.

SUPPLEMENTARY INFORMATION: The FAA and DOI considered the proposed actions to assist the NPS in achieving its congressional mandate to provide for the substantial restoration of natural quiet at GCNP. Based upon consultation with Federal, State and local agencies and Native American tribal representatives, and in response to public comments, FAA made revisions to the DSEA and prepared the Final SEA. The FAA modified the Preferred Alternative to address socioeconomic concerns of the Hualapai Tribe and the Navajo Nation and concerns expressed by air tour operators and general aviation pilots. The major changes to the Preferred Alternative between the DSEA and Final SEA are as follows:

(1) Commercial air tour operations that transit the SFRA along Blue-2 and Green-4, that operate under a written contract with the Hualapai Tribe, and that have an operations specification authorizing such flights will be excepted from the commercial air tour allocation requirement. The Hualapai Tribe indicated that the Operations Limitation as proposed in the June 1999 Notice of Proposed Rulemaking would significantly adversely impact the Tribe's economic development efforts. The modifications to the Preferred Alternative will avoid negative impacts to the socioeconomic activities of the Hualapai Indian Tribe;

(2) A turnaround has been added in the Zuni Point Corridor in the vicinity of Gunthers Castle in response to comments from the commercial air tour industry that a turn-around in this corridor was necessary to provide the operators with a safe and economic alternative to the Saddle Mountain route;

(3) The Desert View Flight Free Zone (FFZ) has been modified to extend eastward only to the GCNP boundary in response to safety concerns expressed by general aviation pilots and socioeconomic concerns expressed by the Cameron and Gap/Bodaway Chapters of the Navajo Nation. To allow protection for areas containing TCPs identified during Section 106 consultation, FAA left in place the proposed enlargement of the SFRA eastern boundary and the relocation of commercial air tour routes known as Black-2 and Green-3;

(4) The SRFA boundary has been modified on the southeast corner in response to comments from the general aviation community regarding the Sunny Military Operating Area, and the latitude and longitude dimensions within the proposed Final Rule have been corrected;

(5) The description of the future Bright Angel Incentive Corridor has been corrected;

(6) The Toroweap/Shinumo FFZ has been modified to exclude Hualapai reservation lands; and,

(7) The wording in the document has been clarified based on public and agency comments.

The Final Rule for the Modification to the Airspace in the SFRA, the Final Rule for Limitations to Commercial Air Tours and the Notice of Route Availability (with the accompanying chart) are also being released concurrently with this Final SEA. A summary of the background information relative to the Undertaking is contained in each of these documents.

The Supplemental EA

The scoping process for this Supplemental EA consisted of a public comment period for those interested agencies and parties to submit written comments representing the concerns and issues they believed should be addressed. The FAA received a total of 20 written comments. The Draft SEA, published in June 1999 contained a summary of those comments in Appendix G. FAA and DOI held two public hearings during the comment period, the first in Flagstaff, Arizona on August 17, 1999 and the second in Las Vegas, Nevada on August 19, 1999. The FAA received a total of 51 comments on the Draft SEA (both written and verbal).

Information, data, opinions, and comments obtained throughout the process were used in preparing the FSEA. The purpose of this Notice is to inform Federal, State, local and government agencies, and the public of the availability of the Final SEA. To maximize the opportunities for public participation in this environmental process, the FAA has mailed copies of the Final SEA, the two Final Rules, and the Notice of Route Availability and graphic to those individuals and agencies that commented on the Draft SEA. The graphic containing the proposed route changes and airspace modifications is not being published in today's **Federal Register** due to the detail on the charts.

Issued in Washington, D.C. on March 28, 2000.

William J. Marx,

Manager, Environmental Programs Division, Office of Air Traffic Airspace Management.

[FR Doc. 00–8032 Filed 3–28–00; 4:59 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 194 ATM Data Link Implementation

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for Special Committee 194 meeting to be held April 24–27, 2000, starting at 9 a.m. The meeting will be held at RTCA, 1140 Connecticut Ave., NW, Suite 1020, Washington, DC 20036.

The agenda will include: April 24: 9 a.m.–12 Noon, Working Group (WG) 2, Flight Operations and ATM Integration; 1 p.m.–5 p.m., Plenary Session: (1) Welcome and Introductory Remarks; (2) Review Agenda; (3) Review/Approve Previous Two Meeting Summaries; (4) Approval of WG–3 Document, Minimum Operational Performance Standards of Air Traffic Services Provided via Data Communication Utilizing the ATN, Builds I and IA. April 25–26: (5) Working Group Meetings; (6) Data Link Ops Concept and Implementation Plan (WG–1); (7) Flight Operations and ATM Integration (WG–2); (8) Human Factors (WG–3), and (9) Service Provider Interface (WG–4). April 27: (10) Working Group Reports; (11) Updates on Work Programs and Expected Document Completion Dates; (12) Other Business; (13) Date and Location of Future Meetings; (14) Closing.

Attendance is open to the interested public but limited to space availability. With the approval of the chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC. 20036; (202) 833–9339 (phone); (202) 833–9434 (fax); or http://www.rtca.org (web site). Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on March 28, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–8234 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (00–02–C–00–PDT) to Impose and Use, the Revenue from a Passenger Facility Charge (PFC) at Eastern Oregon Regional Airport at Pendleton, Submitted by the City of Pendleton, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of Intent to Rule on Application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use, PFC revenue at Eastern Oregon Regional Airport at Pendleton under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR 158).

DATES: Comments must be received on or before May 4, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. J. Wade Bryant, Manager; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Larry Dalrymple, Airport Manager, at the following address: 2016 Airport Road, Pendleton, Oregon 97801.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to East Oregon Regional Airport, under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Suzanne Lee-Pang, (425)227–2654, Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW, Suite 250, Renton, Washington 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (00–02–C–00–PDT) to impose and use PFC revenue at Eastern Oregon Regional Airport at Pendleton, under the provisions of 49 U.S.C. 40117 and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 28, 2000, the FAA determined that the application to impose and use, the revenue from a PFC submitted by the City of Pendleton, Pendlton, Oregon was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than June 29, 2000.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: September 1, 2000.

Proposed charge expiration date: September 15, 2010.

Total requested for use approval: $333,159.

Brief description of proposed project: Complete Terminal Renovations; Non-Revenue Parking Lot Improvements—Long Term Parking; Purchase Aircraft Rescue and Fire Fighting Vehicle; General Aviation Apron Rehabilitation; Taxiway D Rehabilitation; Install PAPI Runway 25; Runway 11–29 Rehabilitation; Terminal Apron C Rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: Air taxi/commercial operators who conduct operations in air commerce carrying persons for compensation or hire.

And person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue S.W., Suite 315, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Eastern Oregon Regional Airport at Pendleton.

Issued in Renton, Washington on March 28, 2000.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 00–8233 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Reports, Forms and Recordkeeping Requirements Agency Information Collection Activity Under OMB Review

AGENCY: Federal Highway Administration, DOT.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected burden. The Federal Register Notice with a 60-day comment period soliciting comments on the following information collection was published on January 10, 2000 [65 FR 1425].

DATES: Comments must be submitted on or before May 4, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas Klimek, (202) 366–2212, Office of Freight Management and Operations, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590–0001. Office hours are from 7:30 a.m. to 4:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Title: Certification of Enforcement of Vehicle Size and Weight Laws.

OMB Number: 2125–0034.

Type of Request: Renewal of a currently-approved information collection.

Abstract: Title 23, U.S.C., Section 141, requires each State, the District of Columbia, and Puerto Rico to file an annual certification that they are enforcing their size and weight laws on Federal-aid highways and that their Interstate System weight limits are consistent with Federal requirements to be eligible to receive an apportionment of Federal highway trust funds. To determine whether States are adequately enforcing their size and weight limits, each must submit an updated plan for enforcing their size and weight limits to the FHWA at the beginning of each fiscal year. At the end of the fiscal year, they must submit their certifications and sufficient information to verify that the enforcement goals established in the plan have been met. Failure of a State to file a certification, adequately enforce its size and weight laws, and enforce weight laws on the Interstate System that are inconsistent with Federal requirements, could result in a specified reduction of its Federal highway fund apportionment for the next fiscal year. In addition, each jurisdiction must inventory (1) its penalties for violation of its size and weight laws, and (2) the term and cost of its oversize and overweight permits.

Respondents: The State Departments of Transportation (or equivalent) in the 50 States, the District of Columbia, and Puerto Rico.

Estimated Total Annual Burden: 4,160 hours. This number has not changed from the last approved OMB clearance.

Frequency: The reports must be submitted annually.

Addresses: Send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street, NW., Washington, DC 20503, Attention: DOT Desk Officer. Comments are invited on: whether the proposed collection of information is necessary for the proper performance of the functions of the Department, including whether the information will have practical utility; the accuracy of the Department's estimate of the burden of the proposed information collection; ways to enhance the quality, utility and clarity of the information to be collected; and ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. A comment to OMB is most effective if OMB receives it within 30 days of publication of this Notice.

Issued on: March 23, 2000.

Michael J. Vecchietti,

Director, Office of Information and Management Services.

[FR Doc. 00–8220 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance

In accordance with part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Alaska Railroad Corporation (ARRC) submitted a petition dated November 4, 1999, seeking a waiver of compliance from certain requirements of the Federal Railroad Administration's (FRA) Passenger Equipment Safety Standards (49 CFR part 238). The individual petition is described below, including the nature of the relief being requested and the petitioner's arguments in favor of relief.

Alaska Railroad Corporation

[Waiver Petition Docket Number FRA–1999–6517]

ARRC seeks a permanent waiver of compliance with certain provisions of 49 CFR part 238 for its "Whittier Shuttle" service between Portage and Whittier, Alaska. According to ARRC, this shuttle service involves a train typically consisting of one locomotive, ten to eighteen general service flatcars (modified with full bridge plates between cars), one to three gallery coaches, and a baggage car and caboose occupied only by train crew members. The train runs on a route of approximately 13 miles, including two tunnels of 1.0 and 2.5 miles in length, and is limited to 30 mph.

ARRC notes that Whittier is a port community originally constructed by the United States Government during the early years of the Second World War; there has never been an overland road to Whittier, and the shuttle service is vital to the residents of Whittier. This service transports highway vehicles, including buses, to and from Whittier on the flatcars. Passengers can choose between riding in the passenger coaches or remaining inside their highway vehicles on the flatcars while the train is in motion. Passengers who choose to ride in their highway vehicles are required to remain in their vehicles at all times. ARRC makes special provisions for emergency egress from buses as detailed in its Operating Circular No. 41 included with the petition. ARRC states that while the train is operated, the conductor occupies the car (caboose or baggage) at the opposite end of the train from the locomotive, and crew members have uninterrupted radio communication with each other. According to ARRC, there have been no injuries to any passengers as a result of the shuttle operation during its 28 years of service. ARRC adds that the state of Alaska is in the process of developing an infrastructure for highway travel to Whittier along the railroad right-of-way and expects highway travel to begin early this year. However, ARRC may need to provide limited shuttle service indefinitely for wide highway vehicle loads unable to pass through a tunnel by highway travel, depending on the final configuration of the road.

ARRC petitioned FRA for approval to continue use of its shuttle operation under 49 CFR 238.203(d) believing that its flat cars may not be in compliance with §§ 238.203(a)(1) and 238.231(i). Section 238.203(d) contains the procedures for a railroad to petition FRA for approval to grandfather usage of rail passenger equipment that does not comply with the static end strength requirements for rail passenger equipment in § 238.203(a). Specifically, § 238.203(a)(1) generally requires that on or after November 8, 1999, all passenger equipment resist a minimum static end load of 800,000 pounds applied on the line of draft without permanent deformation of the body structure. ARRC's petition explains that on the basis of strength calculations performed at the time the cars were built, the railroad flat cars used to transport highway passenger vehicles are able to support a compressive load of 1,250,000 pounds at failure. Section 238.203(b) provides that equipment placed in service before November 8, 1999, is presumed to comply with the requirements of paragraph (a)(1) unless the railroad operating the equipment has knowledge, or FRA makes a showing, that such passenger equipment was not built to the requirements specified in paragraph (a)(1). Consequently, unless FRA becomes aware the equipment does not meet the requirements of paragraph (a)(1), no grandfathering approval is required in this instance.

ARRC has also petitioned FRA for relief from the requirements of 49 CFR 238.231(i) which provides that passenger cars shall be equipped with a

means to apply the emergency brake that is accessible to passengers and located in the vestibule or passenger compartment.

The passenger equipment safety standards in part 238 are geared toward the transportation of passengers in typical passenger equipment compartments that have side walls, roofs, windows, doors and other structures commonly found on rail passenger cars to provide protection to persons riding in those cars. See part 238 subparts B and C, standards for existing and new equipment; see also part 239, requirements for passenger train emergency preparedness.

The transportation of passengers on flat cars is not specifically addressed by part 238 and, therefore, a waiver of the requirements of part 238 is necessary to permit ARRC to continue the service. In particular, part 238 has the following requirements designed to protect passengers that ARRC flatcars may not meet (additional requirements would apply to any new equipment): emergency window exits designed to permit rapid and easy removal without requiring the use of a tool or other implement (§ 238.113); glazing (§ 238.221; part 223); safety appliances (§ 238.229); and brake system (§ 238.231, especially (i)—a means to apply the emergency brake that is accessible to passengers and located in the vestibule or passenger compartment). FRA assumes that ARRC is seeking relief from each of the enumerated sections, but will be consulting with ARRC whether this assumption is correct.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number 1999–6517) and must be submitted to the Docket Clerk, DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 7th Street, SW., Washington, DC 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's web site at *http://dms.dot.gov.*

Issued in Washington, DC on March 29, 2000.

Grady C. Cothen, Jr.

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–8166 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

[Docket Number FRA–1999–6364]

Northeast Illinois Railroad Corporation; Public Hearing

The Northeast Illinois Railroad Corporation (Metra) petitioned the Federal Railroad Administration (FRA) seeking a permanent waiver of compliance with the *Passenger Equipment Safety Standards*, Title 49, Code of Federal Regulations (CFR), Part 238.303, which requires exterior calendar day inspection, and 238.313, which requires a Class I brake test be performed by a qualified maintenance person. Metra requests that on weekends (Saturday and Sunday) and holidays these tests be performed by a qualified person, not a qualified maintenance person as required in the *Passenger Equipment Safety Standards*. Metra states that in many cases, the qualified person can be a member of the train crew.

This proceeding is identified as FRA–1999–6364. FRA issued a public notice seeking comments of interested parties and conducted a field investigation in this matter. After examining the carrier's proposal, letters of protest, and field report, FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9:30 a.m. on Tuesday, May 16, 2000, at the John Kluczynski Federal Building, Room 240, at 230 South Dearborn Street, Chicago, Illinois. Interested parties are invited to present oral statements at the hearing. The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR Part 211.25) by a representative designated by FRA. The hearing will be a non-adversarial proceeding; therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make a brief rebuttal will be given the opportunity to do so in the same order in which initial statements were made. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on March 29, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–8167 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket No. MARAD–2000–7158]

Information Collection Available for Public Comments and Recommendations

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Maritime Administration's (MARAD's) intentions to request extension of approval for three years of a currently approved information collection.

DATES: Comments should be submitted on or before June 5, 2000.

FOR FURTHER INFORMATION CONTACT: John Wiegand, Maritime Administration, MAR 611, 400 Seventh St., SW, Washington, DC 20590. Telephone:—202–366–2627. FAX 202–366–3889.

Copies of this collection can also be obtained from that office.

SUPPLEMENTARY INFORMATION:

Title of Collection: Maintenance and Repair Cumulative Summary.

Type of Request: Extension of currently approved information collection.

OMB Control Number: 2133–0007.

Form Numbers: MA–140.

Expiration Date of Approval: November 30, 2000.

Summary of Collection of Information: The collection consists of form MA–140 to which are attached invoices and other supporting documents for expenses claimed for subsidy. Subsidized operators submit form MA–140 to the appropriate MARAD region office for review within 60 days of the termination of a subsidized voyage.

Need and Use of the Information: The collected information is necessary to perform the reviews required in order to permit payment of Maintenance and Repair subsidy.

Annual Responses: 25.

Annual Burden: 300 hours.

Comments: Comments should refer to the docket number that appears at the top of this document. Written comments may be submitted to the Docket Clerk, U.S. DOT Dockets, Room PL–401, 400 Seventh Street, SW, Washington, DC 20590. Comments may also be submitted by electronic means via the Internet at http://dmses.dot.gov/submit. Specifically address whether this information collection is necessary for proper performance of the functions of the agency and will have practical utility, accuracy of the burden estimates, ways to minimize this burden, and ways to enhance the quality, utility, and clarity of the information to be collected. All comments received will be available for examination at the above address between 10 a.m. and 5 p.m. EDT, Monday through Friday, except Federal Holidays. An electronic version of this document is available on the World Wide Web at http://dms.dot.gov.

By Order of the Maritime Administrator.

Dated: March 29, 2000.

Joel C. Richard,

Secretary.

[FR Doc. 00–8253 Filed 4–3–00; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33860]

Trans-Global Solutions, Inc. d/b/a Austin Area Terminal Railroad—Operation Exemption—Capital Metropolitan Transportation Authority

Trans-Global Solutions, Inc. d/b/a Austin Area Terminal Railroad (AATR), a noncarrier, has filed a notice of exemption under 49 CFR 1150.31 to operate approximately 162 miles of rail line owned by Capital Metropolitan Authority (CMTA),[1] between milepost AUNW–MP0.0 (SPT–MP57.00), west of Giddings, TX, and milepost AUNW–MP154.07 (SPT MP 99.04), at Llano, TX, including the Marble Falls Branch (6.43 miles), the Scobee Spur (3.3 miles), and the Burnet Spur (0.93 miles), in Bastrop, Burnet, Lee, Llano, Travis and Williamson Counties, TX. The lines have been operated previously by Central of Tennessee Railway & Navigation Company Incorporated D/B/A The Longhorn Railway Company.[2] AATR states that its annual revenues will not exceed those that would qualify it as a Class III rail carrier and that its revenues are not projected to exceed $5 million.

The transaction was scheduled to be consummated on or after March 16, 2000.

If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33860, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, N.W., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Edward D. Greenberg, Esq., Galland, Kharasch, Greenberg, Fellman & Swirsky, P.C., Canal Square, 1054 Thirty-First Street, N.W., Washington, DC 20007–4492.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 28, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–8238 Filed 4–3–00; 8:45 am]

BILLING CODE 4915–00–P

[1] *See Capital Metropolitan Transportation Authority—Acquisition Exemption—City of Austin, TX*, STB Finance Docket No. 33596 (STB served May 27, 1998).

[2] *See Central of Tennessee Railway & Navigation Company Incorporated D/B/A The Longhorn Railway Company—Change of Operator Exemption—The City of Austin, TX*, STB Finance Docket No. 32885 (Sub-No. 1) (STB served Apr. 18, 1996).

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Change in State of Incorporation—Planet Indemnity Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: This is Supplement No. 18 to the Treasury Department Circular 570; 1999 Revision, published July 1, 1999, at 64 FR 35864.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6905.

SUPPLEMENTARY INFORMATION: Planet Indemnity Company has redomesticated from the state of Colorado to the state of Illinois effective September 20, 1999. The Company was last listed as an acceptable surety on Federal bonds at 64 FR 35886, July 1, 1999.

Federal bond-approving officers should annotate their reference copies of the Treasury Circular 570, 1999 revision, on page 35886 to reflect this change.

The Circular may be viewed and downloaded through the Internet at http://www.fms.treas.gov/c570/index.html or a hard copy may be purchased from the Government Printing Office (GPO), Subscription Service, Washington, DC, telephone (202) 512–1800.

When ordering the Circular from GPO, use the following stock number: 048000–00527–6.

Questions concerning this notice may be directed to the U.S. Department of the Treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6A04, Hyattsville, MD 20782, telephone (202) 874–6905.

Dated: March 27, 2000.

Wanda J. Rogers,

Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 00–8191 Filed 4–3–00; 8:45 am]

BILLING CODE 4810–35–M

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0067]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATE: Comments must be submitted on or before May 4, 2000.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise

McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030 or FAX (202) 273–5981. Please refer to "OMB Control No. 2900–0067."

SUPPLEMENTARY INFORMATION

Title: Application for Automobile or Other Conveyance and Adaptive Equipment, VA Form 21–4502.

OMB Control Number: 2900–0067.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to gather information to determine if a disabled veteran is entitled to an automobile allowance or adaptive equipment.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on December 23, 1999, on page 72144.

Affected Public: Individuals or households.

Estimated Total Annual Burden: 375 hours.

Estimated Total Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Total Number of Respondents: 1,500.

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, Allison Eydt, OMB Human Resources and Housing Branch, New Executive Office Building, Room 12035, Washington, DC 20503 (202) 395–4650. Please refer to "OMB Control No. 2900–0067" in any correspondence.

Dated: March 17, 2000.

Sandra S. McIntyre,

Management Analyst, Information Management Service.

[FR Doc. 00–8280 Filed 4–3–00; 8:45 am]

BILLING CODE 8320–01–P



Federal Register

Tuesday,
April 4, 2000

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 93

Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 93

[Docket No. FAA–99–5927; Amdt. No. 93–81]

2120–AG73

Commercial Air Tour Limitation in the Grand Canyon National Park Special Flight Rules Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This final rule limits the number of commercial air tours that may be conducted in the Grand Canyon National Park Special Flight Rules Area (SFRA) and revises the reporting requirements for commercial air tours in the SFRA. These changes allow the FAA and the National Park Service (NPS) to limit and further asses the impact of aircraft noise on the Grand Canyon National Park (GCNP). In addition, this action adopts non-substantive changes to 14 CFR part 93, subpart U to improve the organization and clarity of the rule. This rule is one part of an overall strategy to control aircraft noise on the part environment and to assist the NPS to achieve the statutory mandate imposed by the National Parks Overflights Act to provide substantial restoration of the natural quiet and experience of the park.

DATES: The effective date for the final rule is May 4, 2000.

Compliance with § 93.325. Until the start of the third quarter (July–September) reports will be due as follows: 30 days after the close of the first trimester (January–April); 30 days after the end of June for the May–June time period. Thereafter, reports are due 30 days after the close of the quarter.

FOR FURTHER INFORMATION CONTACT: Alberta Brown, AFS–200, Office of Flight Standards, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone: (202) 267–8321.

SUPPLEMENTARY INFORMATION:

Availability of Final Rules

Any person may obtain a copy of this Final Rule by submitting a request to the Federal Aviation Administration, Office of Rulemaking, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9677. Communications must identify the notice number of this Final Rule. An electronic copy of this document may be downloaded using a modem and suitable communications software from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: (703) 321–3339) or the **Federal Register's** electronic bulletin board service (telephone: (202) 512–1661). Internet users may access the FAA's Internet site at http://www.faa.gov or the **Federal Register's** Internet site at http://www.access.gpo.gov/su_docs for access to recently published rulemaking documents.

This final rule constitutes final agency action under 49 U.S.C. 46110. Any party to this proceeding, having a substantial interest may appeal the order to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia upon petition, filed within 60 days after issuance of this Order.

Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996, requires the FAA to comply with small entity requests for information or advice about compliance with statutes and regulations within its jurisdiction. Therefore, any small entity that has a question regarding this document may contact their local FAA official. Internet users can find additional information on SBREFA in the "Quick Jump" section of the FAA's web page at *http://www.faa.gov* and may electronic inquiries to the following Internet address: *9–AWA–SBREFA@faa.gov.*

I. History

A. FAA's Actions

Beginning in the summer of 1986, the FAA initiated regulatory action to address increasing air traffic over the GCNP. On March 26, 1987, the FAA issued Special Federal Aviation Regulation (SFAR) No. 50 establishing a special flight rules area and other flight regulations in the vicinity of the GCNP (52 FR 9768). The purpose of the SFAR was to reduce the risk of midair collision and decrease the risk of terrain contact accidents below the rim level. These requirements were modified and extended by SFAR 50–1 (52 FR 22734; June 15, 1987).

In 1987 Congress enacted Public Law (Pub. L.) 100–91, commonly known as the National Parks Overflights Act. Public Law 100–91 stated, in part, that "noise associated with aircraft overflights at Grand Canyon National Park [was] causing a significant adverse effect on the natural quite and experience of the park and current aircraft operations at the Grand Canyon National Park have raised serious concerns regarding public safety, including concerns regarding the safety of park users."

Section 3 of Public Law 100–91 required the Department of Interior (DOI) to submit to the FAA recommendations to protect resources in the Grand Canyon from adverse impacts associated with aircraft overflights. The law mandated that the recommendations provide for, in part, "substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight."

In December 1987, the DOI transmitted its "Grand Canyon Aircraft Management Recommendation" to the FAA, which included both rulemaking and non-rulemaking actions. Public Law 100–91 required the FAA to prepare and issue a final plan for the management of air traffic above the Grand Canyon, implementing the recommendations of DOI without change unless the FAA determined that executing the recommendations would adversely affect aviation safety.

On May 27, 1988, the FAA issued SFAR No. 50–2, revising the procedures for aircraft operation in the airspace above the Grand Canyon (53 FR 20264; June 2, 1988). SFAR No. 50–2 did the following: (1) Extended the Special Flight Rules Area (SFRA) from the surface to 14,499 feet above mean sea level (MSL) in the area of the Grand Canyon; (2) prohibited flight below a certain altitude in each of the five sectors of this area, with certain exceptions; (3) established four flight-free zones from the surface to 14,499 feet MSL; (4) provided for special routes for air tours; and (5) contained certain communications requirements for flights in the area.

A second major provision of section 3 of Public Law 100–91 required the DOI to submit a report to Congress discussing "whether the plan has succeeded in substantially restoring the natural quiet in the part; and * * * such other matters, including possible revisions in the plan, as may be of interest." On September 12, 1994, the DOI submitted its final report and recommendations to Congress. This report, entitled, "Report on Effects of Aircraft Overflights on the National Park System" (Report to Congress), was published in July, 1995. The Report to Congress recommended numerous revisions to SFAR No. 50–2 in order to substantially restore natural quiet the GCNP.

Recommendation No. 10, which is of particular interest to this rulemaking,

states: "Improve SFAR 50–2 to Effect and Maintain the Substantial Restoration of Natural Quiet at Grand Canyon National Park." This recommendation incorporated the following general concepts: simplification of the commercial sightseeing route structure; expansion of the flight-free zones; accommodation of the forecasted growth in the air tour industry; phase-in of noise efficient/quiet technology aircraft; temporal restrictions ("flight-free" time periods); use of the full range of methods and tools for problem solving; and institution of changes in approaches to park management, including the establishment of an acoustic monitoring program by the NPS in coordination with the FAA.

On June 15, 1995, the FAA published a final rule that extended the provisions of SFAR No. 50–2 to June 15, 1997 (60 FR 31608), pending implementation of the final rule adopting DOI's recommendations.

On December 31, 1996, the FAA issued the final rule (61 FR 69302) implementing many of the recommendations set forth in the DOI report including: flight-free zones and corridors; minimum flight altitudes; general operating procedures, curfews in the Dragon and Zuni Point corridors; reporting requirements; and a cap on the number of "commercial sightseeing" aircraft that could operate in the SFRA.

This final rule was issued concurrently with a Notice of Proposed Rulemaking (NPRM) regarding Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park; a Notice of Availability of Proposed Commercial Air Tour Routes for Grand Canyon National Park and Request for Comments; and an Environmental Assessment and Request for Comments; and an Environmental Assessment. The final rule was originally to become effective May 1, 1997. On February 26, 1997, the FAA delayed the effective date until January 31, 1998 (62 FR 8861), for those portions of the December 31, 1996, final rule which define the Grand Canyon SFRA (14 CFR § 93.301), define the flight-free zones and flight corridors (14 CFR § 93.305), and establish minimum flight altitudes in the vicinity of the GCNP (14 CFR § 93.307). The February 26, 1997, final rule also reinstated the corresponding sections of SFAR 50–2 until January 31, 1998 (flight-free zones, the Special Flight Rules Area, and minimum flight altitudes). On December 17, 1997, the effective date for these sections was delayed to January 31, 1999 (62 FR 66248). On December 7, 1998, the effective date for 14 CFR §§ 93.301, 93.305, and 93.307, was delayed until January 31, 2000 (63 FR 67543).

The FAA's final rule published in 1996 was challenged before the U.S. Court of Appeals for the District of Columbia Circuit by the following petitioners: Grand Canyon Air Tour Coalition; the Clark County Department of Aviation and the Las Vegas Convention and Visitors Authority; the Hualapai Indian Tribe; and seven environmental groups led by the Grand Canyon Trust. See *Grand Canyon Air Tour Coalition* v. *FAA*, 154 F.3d 455 (D.C. Cir., 1998). The Court ruled in favor of the FAA and upheld the final rule.

B. Interagency Working Group

On December 22, 1993, Secretary of Transportation, Federico Peña, and Secretary of the Interior, Bruce Babbitt, formed an interagency working group (IWG) to explore ways to limit or reduce the impacts for overflights on national parks, including the GCNP. Secretary Babbitt and Secretary Peña concurred that increased flight operations at GCNP and other national parks have significantly diminished the national park experience for some park visitors, and that measures can and should be taken to preserve a quality park experience for visitors, while providing access to the airspace over the national parks.

C. President's Memorandum

The President, on April 22, 1996, issued a Memorandum for the Heads of Executive Departments and Agencies to address the impact of transportation in national parks. Specifically, the President directed the Secretary of Transportation to issue regulations for the GCNP that would place appropriate limits on sightseeing aircraft to reduce the noise immediately, and to make further substantial progress towards restoration of natural quiet, as defined by the Secretary of the Interior, while maintaining aviation safety in accordance with Public Law 100–91.

This memorandum also indicated that, with regard to overflights of the GCNP, "should any final rulemaking determine that issuance of a further management plan is necessary to substantially restore natural quiet in the Grand Canyon National Park, [the Secretary of Transportation, in consultation with heads of relevant departments and agencies] will complete within 5 years a plan that addresses how the Federal Aviation Administration and the National Park Service" will achieve the statutory goal not more than 12 years from the date of the directive (*i.e.*, 2008).

D. Proposed Rules

On July 9, 1999, the FAA published two NPRMs (Notice 99–11 and Notice 99–12) in accordance with Public Law 100–91, which directs the FAA to implement NPS recommendations to provide for the substantial restoration of natural quiet and experience in GCNP by reducing the impact of aircraft noise from commercial air tours on the GCNP.

Notice 99–11, Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (64 FR 37296, Docket No. 5926) proposed to modify the dimensions of the GCNP SFRA. The proposed changes to the SFRA would modify the eastern portion of the SFRA, the Desert View Flight-free Zone (FFZ), the Bright Angel FFZ and the Sanup FFZ. Notice 99–12, Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area, (64 FR 37304, Docket No. 5927) proposed to limit the number of commercial air tours that may be conducted in the SFRA and to revise the reporting requirements for commercial operations in the SFRA.

While the FAA sought comment on all parts of the NPRMs, there were a number of matters in Notice 99–12 that the FAA specifically requested commenters to address: (1) Whether the FAA should use a 5 month peak season (May–Sept), a three month peak season (July–September), or no peak season for purposes of assigning allocations? (2) Whether the time reported on the quarterly report should be expressed in Universal Coordinated Time (UTC), Mountain Standard Time, or another time measurement? (3) Whether reporting should be imposed as a condition of an FAA Form 7711–1 and, if so, whether the requirements of proposed § 93.325 would be appropriate for such operations? (4) Whether 180 days is a proper measurement of time for the use or lose provision proposed in § 93.321? (5) Whether the initial allocation reflects business operations as of the date of this notice? (6) Whether the allocations should remain unchanged for any specific period of time?

The FAA, in cooperation with the NPS and the Hualapai Indian Tribe, prepared a draft Supplemental Environmental Assessment (SEA) for the proposed rules to assure conformance with the National Environmental Policy Act (NEPA) of 1969, as amended, and other applicable environmental laws and regulations. Copies of the draft SEA were circulated

to interested parties and placed in the Docket, where it was available for review. On July 9, 1999, the Notice of Availability of the Draft Supplemental Environmental Assessment for the Proposed Actions Relating to the Grand Canyon National Park was published in the **Federal Register** (64 FR 37192). Comments on the draft SEA were to be received on or before September 7, 1999. Comments received in response to this Notice of Availability have been addressed in the final SEA published concurrently with this final rule. Based upon the final SEA and careful review of the public comments to the draft SEA, the FAA has determined that a finding of no significant impact (FONSI) is warranted. The final SEA and the FONSI were issued during February 2000. Copies have been placed in the public docket for this rulemaking, have been circulated in interested parties, and may be inspected at the same time and location as this final rule.

On July 20, 1999 (64 FR 38851), the FAA published a notice announcing two public meetings on the NPRM. The meetings, which were held on August 17 and 19, 1999, in Flagstaff, AZ and Las Vegas, NV, respectively, sought additional comment on the NPRMs and on the draft supplemental environmental assessment.

II. Background

The agencies have analyzed the noise situation at the GCNP and decided that a greater effort must be made to reach the statutory goals of Public Law 100–91, especially in light of the President's Memorandum. Noise generated by aircraft conducting commercial air tours presents a specific type of problem because these aircraft generally are operated repeatedly at low altitudes over the same routes. Thus, the FAA issued its 1996 final rule and instituted the aircraft cap as a means to limit aircraft noise generated by air tours.

In the 1996 final rule, however, the FAA underestimated the number of aircraft operated in the SFRA by commercial air tour operators. This problem was identified in the Notice of Clarification issued October 31, 1997 (62 FR 58898). In fact, the FAA concluded in this Notice that "there is enough excess capacity in terms of aircraft numbers for air tours to increase by 3.3 percent annually for the next twelve years if the demand exists (62 FR 58902)." The FAA stated that, "in the aggregated and for most individual operators, the number of air tours provided can continue to increase while the number of aircraft remains the same." In view of this conclusion, the IWG recommended that the FAA and NPS develop a rule that will temporarily limit commercial air tours in the GCNP SFRA at the level reported by the air tour operators for the period May 1, 1997 through April 30, 1998.

The agencies' goal through this rulemaking is to prevent an increase in aircraft noise by limiting the number of commercial air tours. Concurrently with this final rule, the FAA also is issuing a Notice of Availability of Routes which includes certain modifications to aircraft routes through the SFRA, and a final rule modifying airspace in the SFRA. Additionally, the FAA is issuing a Final Supplemental Environmental Assessment which assesses the environmental impact of the route modifications, the commercial air tours limitation and the airspace modifications. The FAA also continues to work on the rulemaking initiated on December 31, 1996 proposing quiet technology aircraft. All of these steps are aimed at controlling or reducing the impact of aircraft noise in the GCNP.

In addition to preventing the noise situation from increasing, controlling the overall number of commercial air tours in the GCNP SFRA will facilitate the analysis of noise conditions in the GCNP and aid in the development of the noise management plan.

For purposes of determining substantial restoration of natural quiet, the noise modeling in the SEA is premised on the NPS' noise evaluation methodology for GCNP, which was published in the **Federal Register** on January 26, 1999 (64 FR 3969). The NPS formally adopted this methodology on July 14, 1999 (64 FR 38006).

III. Comment Discussion and Final Action

At the close of the comment period, over 1,000 comments were received on Notice 99–11 and 556 comments were received on Notice 99–12. Many commenters sent identical comments to both dockets. Comments included form letters sent from the air tour industry and from supporters of environmental groups. Comments were also received from industry associations (*e.g.*, Grand Canyon Air Tour Council (GCATC), Aircraft Owners and Pilots Association (AOPA); Helicopter Association International (HAI), Experimental Aircraft Association (EAA); National Air Transport Association (NATA); an environmental coalition (Sierra Club; Grand Canyon Trust; The Wilderness Society; Friends of the Grand Canyon; Maricopa Audubon Society; National Parks and Conservation Association; Nature Sounds Society; Quiet Skies Alliance); river rafting organizations (Arizona Raft Adventures (ARA); Grand Canyon River Guides); air tour operators (Airstar Helicopters; Grand Canyon Airlines; Heli USA Airways, Inc.; Papillon Grand Canyon Helicopters; Southwest Safaris); aircraft manufacturers (Twin Otter International, Ltd.; Stemme USA, Inc.); tourism organizations (Grand Canyon Air Tourism Association; Arizona Office of Tourism; Flagstaff Chamber of Commerce); government officials (Arizona Speaker of the House; Arizona State Legislature; Governor Hull of Arizona; Arizona Corporation Commission; Senator Harry Reid of Nevada; Clark County Department of Aviation); and representatives of Native American Tribes (Hualapai Tribe; Havasupai Tribe; Grand Canyon Resort Corporation (GCRC)). Some of the substantive comments include commissioned studies, economic analysis and noise impact analyses (J.R. Alberti Engineers; Riddel & Schwer).

A. Modification of SFAR 50–2

A number of air tour operators and elected officials state that SFAR 50–2 is working well and generally oppose further regulation.

AOPA and EAA state that current rules under SFAR 50–2 should be maintained without modification.

In contrast, all environmental groups point out that further regulation is necessary to bring the GCNP into compliance with Public Law 100–91.

FAA Response: This regulatory action is a further response to the legislative mandate set forth in Public Law 100–91 and the President's 1996 Executive Memorandum—to substantially restore natural quiet and experience in GCNP. The NPS Report to Congress was based on a number of studies evaluating whether SFAR 50–2 resulted in a substantial restoration of natural quiet. As discussed in the final rule in 1996 (Docket 28537, December 31, 1996; 61 FR 69302), NPS found that SFAR 50–2 had not resulted in substantial restoration of natural quiet. In that rule the FAA stated, "An NPS analysis using 1989 FAA survey data of commercial sightseeing route activity indicated that 43 percent of GCNP met the NPS criterion for substantially restoring natural quiet. However, a subsequent NPS analysis using 1995 FAA survey data indicated that 31 percent of GCNP met the NPS criterion for substantially restoring natural quiet." These findings led the NPS to conclude that the noise mitigation benefits of SFAR 50–2 were being significantly eroded.

Hence, in 1996, the FAA, in cooperation with NPS, adopted the 1996 Final Rule creating a number of flight-free zones, a curfew in the Dragon and Zuni Point corridors and imposing a cap on the number of aircraft used by each certificate holder in the GCNP SFRA. In the final rule, the FAA estimated that the regulations adopted in 1996 together with the phase out of noisier aircraft would provide substantial restoration of natural quiet by 2008. See 61 FR 69328. However, the Environmental Assessment for this rule was based on a different noise methodology. This methodology was set forth in Figure 4–4 of the EA.

In 1997, however, the FAA issued a Notice of Clarification indicating that the number of aircraft available to operators in the SFRA had been underestimated and thus the aircraft cap was not an adequate surrogate for limiting growth. The FAA found in the Notice that "the impact of increased air tour operations as analyzed in the Written Reevaluation of the Environmental Assessment, serves to reduce the percentage of the GCNP that will achieve substantial restoration of natural quiet * * * when compared to what was originally assumed in the Final EA." Notice of Clarification, 62 FR 58898, 58905 (October 31, 1997).

Subsequent to the Notice of Clarification, the FAA and NPS concluded that further regulatory action was necessary to ensure the substantial restoration of natural quiet and experience in accordance with Public Law 100–91. Thus, this rulemaking together with the airspace modifications adopted in Docket FAA–99–5926 and the adoption of the new SFAR route structure will move the GCNP closer towards the goal of substantial restoration of natural quiet. As documented by the 2000 Supplemental Environmental Assessment, however, the goal of substantial restoration of natural quiet will not be met by these combined rulemakings.

B. Negotiated Rulemaking

A number of commenters, especially those representing air tour operator interests, Clark County Department of Aviation and elected officials inquired as to why the FAA chose to embark upon this rulemaking instead of using the negotiated rulemaking process.

HAI says that the proposed restrictions undermine efforts to achieve consensus on management of air tour overflights of national parks. According to HAI, the future of GCNP overflight rulemaking lies in a process of open, public conversation to seek ways in which the many legitimate, conflicting interests at stake can be balanced and accommodated to the fullest practicable extent. HAI states that the current proposals are large steps in the wrong direction, representing illogical, arbitrary, and unworkable impositions on an already strained process. HAI says that the current proposals for harsh new restrictions undermine the air tour community's hope for reasoned discussion of divergent points of view among persons of good will.

Clark County Department of Aviation (Clark County) criticizes the FAA for failing to develop its proposed rules without extensive and meaningful input from all affected stakeholders. Clark County states that the FAA has repeatedly rejected invitations from Clark County and others to initiate a negotiated rulemaking process.

FAA Response: The FAA notes that this rulemaking requires it to make very difficult decisions that significantly impact small businesses in order to comply with the statutory mandate to substantially restore natural quiet and experience in GCNP. Because of the nature of the issues involved, both the FAA and NPS have reached out to affected parties to try to achieve a workable solution.

For example, in an attempt to work with the stakeholders, the FAA and NPS held a public meeting in Flagstaff, AZ on April 28, 1998. Participants in this group included representatives of air tour operators, environmental groups, Native American Tribes, and local Las Vegas and Tusayan government officials. The group was asked to comment on the agencies then proposed route structure and to use the time together to negotiate a better solution, if the members did not like the proposal. The scheduled two day meeting lasted less than a day as most stakeholders held firm to their established positions and were unwilling to negotiate. Most parties were not willing to even consider another route structure, nor were they willing to consider participating in another group discussion or possible mediation.

A subsequent meeting was held on July 15, 1998 between the FAA and the Hualapai Tribe in Peach Springs, Arizona to discuss a tentative air tour route proposal around the western Grand Canyon/Sanup area. The Hualapai did not view the proposal favorably and informed the agencies of their own plans to meet with the air tour operators in an attempt to reach a separate agreement. Those talks, however, apparently proved fruitless.

The divergence of comments received to this rule reflects the FAA's historical experience with this issue. There are polarized points of view on this topic. During the time that this debate has been ongoing, the various groups have not been able to reach any agreement. Thus, based on the FAA's and NPS' experiences with this issue, the agencies do not see that a timely negotiation process is possible. The FAA and NPS have expressed a willingness to consider negotiated or consensus proposals presented by the stakeholders and have encouraged the stakeholders to try to work toward this goal. However, in the absence of such proposals it is necessary to move ahead to meet the deadline of 2008 for substantial restoration of natural quiet and experience that was imposed by the President's 1996 Executive Memorandum. Any further attempts at negotiated rulemaking will only delay the process.

C. Justification for Rulemaking With Respect to Restoration of Natural Quiet (Pub. L. 100–91)

Air tour operators and many other commenters state that the restoration of natural quiet has already been achieved. These commenters state that there is significant evidence demonstrating that the flights as presently configured fall well within the NPS' target goal that 50% of the park achieve "natural quiet" for 75–100% of the day. Further regulations merely seek to punish the air tour industry. In a form letter, 313 commenters state that the statutory mandate of Public Law 100–91 has been met.

GCATC states that the FAA is charged with the responsibility of promoting and protecting aviation and the safe use of the nation's airspace and that the proposed rule is beyond the scope of this mandate.

The Honorable Mr. Jeff Groscost, Arizona Speaker of the House, stated at the Flagstaff, Arizona public hearing on August 17, 1999 that restricting operations to 1997–1998 levels is unwarranted. He indicated that visitor complaints about noise are at insignificantly low levels because the vast majority of park visitors (over 95%) are concentrated in areas that are off-limits to air tours. Speaker Groscost indicated that the FAA and NPS are off base in attempting to erase noise for the benefit of the remaining 5%. In fact, according to FAA and NPS numbers, Speaker Groscost states that 3% of this 5% are river rafters who could not possibly hear aircraft noise over the sound of the river. He comments that to "restore natural quiet" for the benefit of the 1.6% of park visitors, at the cost of limiting access by air, is grossly unfair and unreasonable. This is especially true in light of the fact that air tour passengers represent over six to eight times the number of backcountry users.

U.S. Senator Harry Reid (Nevada) stated that he voted for Public Law 100–91 and believes strongly in its goals. However, "* * * it was never the intention of Congress to authorize the apparently endless regulatory process that has ensued." Senator Reid stated further that "* * * the most fundamental problem is that the Park Service has based its plan for restoring natural quiet on a controversial and untested approach for measuring noise." The approach used needs to reflect the actual perception of visitors to the park as shown in surveys that show that visitors perceive a dramatic improvement in the noise levels of the park over the last 10 years.

The Grand Canyon River Guides Association and the Utah Chapter of the Public Lands Committee of the Sierra Club state that the number of flights must be reduced in order to meet the goal of substantial restoration of natural quiet. The continued growth alternative is unacceptable. These commenters note that the current annual growth, according to the data, is about three percent per year, despite claims by some air tour operators.

The Grand Canyon River Guides Association states that the goal set forth in the Environmental Assessment—*i.e.*, tour aircraft audible for less than 25 percent of the day in more than half of the park area—is a weak standard. This commenter believes that this should be a minimum goal. The bottom line is that only 19 percent of the park is naturally quiet during the busiest days of the summer. The commenter states that the claims of a 42 percent restoration are based on an annualized day.

The Maricopa Audubon Society says that the FAA's standard of quiet is weak and the substantial restoration of natural quiet should mean most of the park most of the time (for example, 75% of the Park, 100% of the time). This commenter adds that the number of air tours has more than doubled from 50,000 in 1987 to around 120,000 now, and that the FAA should both reduce the cap the number of air tours to at least 1987 levels in order to achieve the natural quiet that the law mandates. Finally, this commenter adds that the FAA should require the removal of all flights below the rim.

The environmental coalition states that Public Law 100–91 provides no statutory authorization for the agencies' attempts to balance the maintenance of a "viable" air tour industry against the mandated restoration of natural quiet. Congress unequivocally provided the NPS' plan, to be issued by FAA, "* * * shall provide for substantial restoration of natural quiet". These commenters do not believe that Congress directed the agencies to temper, delay, or compromise the mandate according to industry needs. The agencies' only duty beyond restoring quiet was ensuring that the plan to restore quiet did not adversely affect air safety. These commenters urge the agencies to choose an alternative that will achieve the statutory mandate within 12 months. It is simply impermissible for the agencies to decide unilaterally to protect the industry, rather than considering readily available alternatives that would immediately restore natural quiet.

The environmental coalition supports the definition of 'natural' used by NPS, however, it believes the definition of "substantial restoration" is flawed. It suggests that a more appropriate definition would require natural quiet throughout the day in 50 percent of the park, as a minimum and natural quiet for at least 80 percent of the day in the other half of the park.

The Utah Chapter of the Public Lands Committee of the Sierra Club noted at the Flagstaff Public Hearing that the derogation of North Rim vista points and trails during the short summer season is emblematic of runaway noise pollution in the canyon generally.

ARA says that the standard that 50% of Grand Canyon National Park must be naturally quiet 75 to 100% of the day is inadequate. This would mean that the relatively quiet half of the park could experience aircraft noise one minute in every four, and the remainder of the park could experience aircraft noise virtually all day long non-stop. ARA states that Congress intended for a visitor to the Grand Canyon to experience a substantial restoration of natural quiet regardless of which day(s) the visitor decides to visit the park. Each visitor should have the opportunity to experience natural quiet regardless of the day, the month, or the season he or she elects to visit.

FAA Response: Public Law 100–91 requires NPS to develop recommendations regarding "actions necessary for the protection of resources in the Grand Canyon from adverse impacts associated with aircraft overflights." These recommendations are to provide for the "substantial restoration of the natural quiet and experience of the park and protection of public health and safety from adverse effects associated with aircraft overflight." Section 3 of the Public Law specifically directed the FAA to "implement the recommendations of the Secretary [of the Department of Interior] without change unless the [FAA] determines that implementing the recommendations would adversely affect aviation safety." Thus FAA's authority to regulate in this manner is clear.

The NPS defined "natural quiet" and identified it as a natural resource in its 1986 "Aircraft Management Plan Environmental Assessment for Grand Canyon National Park" which underwent extensive public review. The term was subsequently discussed in numerous public documents which have undergone public review, including NPS Management Policies (1988) and the Advance Notice of Proposed Rulemaking concerning Overflights of Units of the National Park System published in the Federal Register on March 17, 1994.

The fact that NPS was given the responsibility to define the methods for achieving substantial restoration of natural quiet is entirely consistent with its general authority to manage national parks. NPS' Management Policies (1988, page 1:3) states that, with respect to units of the national park system, the terms "resources and values" refer to the "full spectrum of tangible and intangible attributes for which parks have been established and are being managed" including "intangible qualities such as natural quiet."

The NPS definition of "substantial restoration of natural quiet" involves time, area, and acoustic components. Because many park visitors typically spend limited time in particular sound environments during specific park visits, the amount of aircraft noise present during those specific time periods can have great implications for the visitor's opportunity to experience natural quiet in those particular times and spaces. Visitors with longer exposures, such as backcountry and river users have more opportunity to experience a greater variety of natural ambient and aircraft sound conditions, as they typically move through a number of sound environments.

Based on noise studies, the NPS has concluded that a visitor's opportunity to experience natural quiet during a visit, and the extent of noise impact depends upon a number of factors. These factors include: the number of flights; the sound levels of those aircraft as well as those of other sound sources in the natural environment; and the duration of audible aircraft sound experienced by a visitor.

NPS recommended an operations limitation in its 1994 Report to Congress, See Section 10, Recommendation 10.3.10.3. It is but one method being implemented to control noise in the GCNP. The type of operations limitation adopted in this rule is a modification of the aircraft cap

which was adopted in the 1996 Final Rule. The FAA and NPS determined after adoption of the 1996 Final Rule that the aircraft cap did not adequately limit growth. This conclusion was explained in the reevaluation that was prepared to support the Notice of Clarification (discussed above in section III(A), Modification of SFAR 50–2, of this rule). The written reevaluation was necessary because the number of aircraft available for use in the GCNP SFRA was twice the number that was evaluated in the 1996 rule. The NPS noise modeling, as well as FAA noise modeling, indicated that the potential growth in the number of operations could erode gains made toward substantial restoration of natural quiet.

The FAA, in consultation with the NPS, believes that the operations limitation adopted in this final rule strikes an appropriate balance between the ground and air users of the GCNP while making significant steps towards substantially restoring natural quiet. Thus the rule is consistent with the intent of the Public Law. Nothing in Public Law 100–91 requires the FAA or NPS to ban aircraft overflights of the GCNP to reach substantial restoration of natural quiet. In fact, Senator McCain, in discussing this legislation on the Senate floor indicated that "what this measure [the bill that was adopted as Public Law 100–91] does is propose a process whose end result will be to strike a balance among all those individuals and interests who use our Nation's Park System." 133 Cong. Rec. S 1592. In an Oversight Hearing on the implementation of Public Law 100–91, Senator McCain further indicated that "* * * it has never been my intent or the intent of Congress that air tours should be banned over the Grand Canyon or any other park. Air tours are a legitimate and important means of experiencing the Grand Canyon * * * But other uses and values, including the right of visitors to enjoy the natural quiet of the park, must be protected. Again, the challenge and the goal is balance." Hearing before the Subcommittee on Aviation of the Committee on Public Works and Transportation, House of Representatives, 103rd Cong., 2d Sess. (July 27, 1994).

As a general rule, flights do not operate below the rim. In certain isolated situations aircraft being operated on certain fixed routes and at fixed altitudes may operate below the ground level of the rim temporarily. This occurs because of terrain fluctuations. Safety is not compromised by allowing these flights to operate below the rim for a short period of time. This action is consistent with Pub. L. 100–9 and its legislative history. In Pub. L. 100–91, Congress granted the FAA, in consultation with the NPS, the authority to determine rim level because "delineation of the area needs to be made taking into account the varying rim levels of the canyon and the potential impact of this provision on flight activities and operations." S. Rep. 97 (100th Cong., 1st Sess. (1987)), reprinted in 1987 U.S. Code Cong. Admin. News 664.

D. Quiet Technology Incentives

Several commenters criticize the proposal for failure to offer any quite technology incentives. As an incentive to convert to quiet technology, Papillon proposes special routing similar to the flight route that presently exists at GCNP Airport, and allowing operating hours from 7:00 a.m. to 7:00 p.m. with no limitations on the amount of flight during those daylight hours. Grand Canyon Airlines suggests that allocations should be increased for operators who make use of quiet aircraft technology.

Grand Canyon River Guides Association stated at the Flagstaff Public Hearing that noise-efficient technology still makes noise. The environmental coalition notes that the incentive to convert should be access to the GCNP SFRA airspace.

Governor Hull states that the FAA and NPS have failed in their obligation to provide incentives for quiet technology aircraft. The Governor states that the federal government should provide expanded opportunity and access for all citizens to experience the GCNP. In the proposed rulemaking, however, the Governor notes that the FAA is proposing to limit access to the GCNP rather than pursuing a common sense approach to expand access through improved technology. Governor Hull notes that before proceeding with further limitations on the air tours that provide many citizens with their only access to the wonders of the Grand Canyon, the FAA and NPS should act aggressively to provide the incentives for quite technology. The Governor supports the view expressed by Senator McCain, who sponsored the original Act, that reasonable air tour access can be protected—along with the preservation of natural quiet—if the responsible federal agencies diligently pursue technological incentives.

Stemme USA, Inc., a manufacturer of gliders, requests that the FAA exclude the Stemme S10, as well as other aircraft that can operate silently, from all current and future flight restrictions over the Grand Canyon. Twin Otter International, Ltd. (TOIL) also requests that its aircraft be considered as satisfying the quiet technology standards. Air tour operators also made suggestions regarding the types of aircraft that should be considered as being within the framework of quiet technology. Papillon Helicopters provided information at the public hearing in Flagstaff, Arizona that based on assurances that the NPS would make exceptions for quiet aircraft, Papillon has invested over $6.5 million in quiet aircraft technology. A Papillon representative stated that no exceptions have yet been made and no laws have been passed that justify this investment. Grand Canyon Airlines stated that it, along with several other companies, contributed $50,000 to the NPS to allow them to finish research on quiet technology. Grand Canyon Airlines paid $1.4 million for each of their "Vistaliner" aircraft that employ quiet technology and that are noise efficient because they can carry more passengers on fewer flights.

Grand Canyon Airlines states that the higher fixed costs associated with investments in quieter aircraft make it more likely that Grand Canyon Airlines and other similarly situated operators will suffer disproportionately from the limitations on air tour operations. Not only does the NPRM not encourage investment in quiet aircraft but Grand Canyon Airlines states it also creates an incentive for operators to dump more expensive quiet technology aircraft for cheaper, noisier aircraft.

Grand Canyon Airlines also states that allocations should not be imposed, particularly for quiet aircraft, but if imposed they should be guaranteed not to decrease. Allocations should increase for operators investing in quiet technology. AirStar Helicopters urges the FAA to move quiet aircraft technology to the front burner, not wait and consider it in the future.

Comments received from members of the Arizona State Legislature state that the proposal, combined with the Park Service's newly adopted noise evaluation methodology, creates such uncertainty for the air tour industry that they have little incentive to invest in one of the most effective means of reducing aircraft sound—quiet technology. Without a sense of stability about the future, operators are reluctant to invest in costly new equipment. Faced with caps and curfews, they are understandably concerned about their ability to amortize the investments. Their lenders are equally concerned about the industry's future, adding another dimension of uncertainty for operations.

ARA says that the incentives for quieter aircraft should not further compromise the goal. Rather than allowing quieter aircraft more routes, quieter aircraft should be used to meet the existing substantial restoration goal.

FAA Response: The FAA and NPS note that current comments are a complete reversal in direction from comments to the NPRM on Noise Limitation of Aircraft Operations in the Vicinity of Grand Canyon National Park (Docket 28770). Many air tour operators commenting to the NPRM in Docket 28770 voiced wide dissatisfaction with the FAA's NPRM on quiet technology. Commenters to that docket stated, among other things, that the FAA did not have statutory authority to require quiet technology, and that imposition of quiet technology would pose an unreasonable financial burden on the air tour industry. Additionally, many of these commenters disagreed with the proposed aircraft categories. In contrast, in Docket FAA–99–5927, commenters supported the adoption of quiet technology and urged the FAA to move forward with the final rule in Docket 28770.

The FAA and NPS have been in ongoing discussions to resolve the numerous issues raised in the Noise Limitations rulemaking proceeding. During this time, growth in the air tour industry appears to have been only temporarily arrested by external factors such as the economic downturn in Asia. Thus, the agencies have determined that in order to make significant strides towards meeting the statutory goal of "substantial restoration of the natural quiet" by the 2008 deadline it is necessary to impose this operations limitation. This operations limitation will limit operations while the FAA and NPS work to implement the quiet technology rule and take any other steps necessary to effect the Comprehensive Noise Management Plan.

The FAA received a number of requests from air tour operators and aircraft manufacturers for exceptions to the operations limitations rule based on the type of aircraft used in the GCNP. The FAA declines to adopt any exceptions to this rule at this time. Until the FAA and NPS adopt a final rule defining quiet technology, requests for exceptions to this rule based on quiet technology are premature.

The FAA realizes that this rule may not be consistent with encouraging operators to invest in quiet aircraft. However, since the FAA and NPS have not yet resolved how to define quiet technology/noise efficiency, operators would be premature in making such equipment decisions. Since the FAA intends this operations limitation to be temporary, the continuation of any such limitation will be revisited upon adoption of a rule addressing quiet technology/noise efficiency. The comment suggesting an allocation increase for operators investing in quiet technology is also premature since there is no definition of quiet technology.

E. Delay of Rulemaking

The Arizona Corporation Commission expresses concern over the lack of input from Arizona government officials into the proposed rules. Since the GCNP is Arizona's premier tourist destination and an extremely significant component of Arizona's tourism industry, the FAA should be working with Arizona government officials in developing any rules affecting air tours in the Grand Canyon. This commenter notes that the Rocky Mountain National Park air tour ban was largely prompted by the urgings of Colorado public officials to preemptively ban air touring before it emerged.

A number of air tour operators requested that the FAA delay adoption of the final rule until the noise model validation study has been completed. Papillon says that there should be no allocations until there is a reasonable scientific evaluation of ambient sound levels. This evaluation, according to Papillon should establish what the ambient sound levels are at the sites in question in the Grand Canyon.

FAA Response: The FAA appreciates the input from state and local officials to the proposed rules. The rulemaking process has welcomed and encouraged participation by state and local government officials. The decision to proceed with substantial restoration of natural quiet at the GCNP was made by Congress in Public Law 100–91. Moreover, as discussed above in Section C, that legislation specified the process for moving forward with substantial restoration of natural quiet. This is the process that the FAA and NPS have adhered to in developing these proposed rules.

In response to the requests to delay this rule pending completion of the noise model validation study, the FAA declines to create further delay. The noise methodologies used in support of this rule are explained further in the Supplemental Environmental Assessment Chapter 4 and Appendices A through F. The noise modeling employed in the Supplemental Environmental Assessment is the Integrated Noise Model (INM), the FAA's standard computer methodology for assessing and predicting aircraft noise impacts. This model incorporates the ambient database supplied by the NPS. Since 1978, the INM has been widely used by the aviation community both nationally and internationally, and has been continuously refined and updated by the FAA. For these reasons, the FAA has determined that a modified version of the INM 5 is an appropriate tool to use for the purposes of analyzing noise impacts in the vicinity of the GCNP and for determining substantial restoration of natural quiet in the GCNP.

F. Impact on Native American Tribes

Hualapai Nation

Grand Canyon Resort Corporation (GCRC), representing the economic interests of the Hualapai Nation (hereinafter Hualapai Tribe), opposed the operations limitations. It states that a freeze on overflights will effectively cost the Hualapai Tribe millions of dollars in lost revenue. Air tour operators rely on the marketability of an approach to Grand Canyon West (GCW) through the Grand Canyon as it presently operates. With the imposition of overflight restrictions, GCRC states that the Hualapai Tribe would sustain a combined loss of approximately $3.5 million dollars over the next two years. In comparison to the Hualapai government's annual operating budget of $2.5 million, this is tantamount to shutting down a sovereign tribal nation. In a recent survey to GCRC's primary air tour operators, it was determined that a 220% increase in business is projected by 2001. In 1998, approximately 14,919 flights were conducted at a profit to the Tribe of approximately $950,000. GCRC projects that by 2001, 32,869 flights will be conducted at a profit of $2,799,777. For a Tribe which is attempting to develop its economic resources without the intrusion of casino gambling at the south rim, development of GCW is worthy of federal support rather than federal suppression. GCRC requests that any operations limitation within the SFAR avoid negatively impacting the Native American constituency.

GCRC notes that in addition to the potential loss of landing fees which would occur if the operations limitation were imposed, there would be a loss of potential revenue associated with tourist amenities offered at GCW which are dependent on the discretionary spending of visitors. Sales from gift shops, Hualapai arts and crafts, horseback riding excursions, hiking trails, food items and cultural presentations would suffer. GCRC currently employs 35 full-time Hualapai employees and another 20 seasonal full-time employees. This does not account for 15 Hualapai tribal members employed by air tour operators.

The GCRC and the Hualapai Tribal Counsel both indicate that the proposed operations limitation would have an immediate negative effect upon the number of Hualapai who derive their livelihood from tourism at GCW. Thus they request an exemption for the Hualapai Nation to ensure the continued employment of Hualapai community members whose reservation suffers from a 50–65% unemployment rate.

The GCRC is currently considering measures which would safeguard development at GCW. Environmental threshold studies are in progress, which will review the development capacity of GCW. It should remain, however, in the Tribe's control to determine the quality and quantity of development at GCW. In this regard, GCRC notes that the proposed rulemaking is a subtle violation of the Hualapai Tribe's sovereign right towards self-determination.

Additionally, the GCRC states that the FAA's proposed rulemaking would contradict the initiatives taken by federal agencies, which have funded capital improvements and developments at GCW over the last decade. Approximately $5,000,000 has been expended in the development of GCW in an attempt to follow through with the DOI's commitment to protect and conserve the trust resources of federally recognized Indian tribes and tribal members. The Bureau of Indian Affairs participated in a guaranteed loan to the Tribe for tourist facilities at GCW totaling $1.3 million. The Environmental Protection Agency has expended approximately $1.5 million in solar powered water line construction to GCW. The United States Department of Agriculture has expended approximately $150,000 in water tank construction. In addition to this, the Hualapai Tribe has invested $250,000 in an award-winning land use plan GCW, $1 million in airstrip and road pavements, $150,000 in well drilling procedures, $565,000 in the construction of a terminal building and parking lots, and $25,000 in helicopter landing pads and fuel tank arrangements. This does not include the salaries of Hualapai employees who have dedicated years of planning to the development of GCW.

Havasupai Tribe

The Havasupai Tribe believes that the proposed action to limit commercial tours in the SFRA is not stringent enough and that all commercial fixed-wing tour flights should be removed from the Havasupai Reservation.

Navajo Nation

The Navajo Nation has expressed its satisfaction with the proposed rules during discussions pursuant to consultations conducted in accordance with the National Environmental Policy Act (NEPA) and National Historic Preservation Act (NHPA).

FAA Response: The FAA has consulted with the Native American interests throughout this rulemaking process. Consultations with the ten Native American Tribes and/or Nations potentially impacted by the proposed rules have been conducted in accordance with NEPA and NHPA, Section 106. Currently, such consultations have concluded for all potentially impacted Native American Communities except the Hualapai Tribe. During the comment process it was brought to the FAA's attention that the Hualapai Tribe had a substantial economic interest in air tour business brought to its reservation via air tour operators operating under FAA Form 7711–1, Certificates of Waiver or Authorization, to deviate from the Green 4 helicopter route and Blue 2 fixed wing route and land on the Haulapai Reservation.

The FAA and NPS recognize that as federal agencies they owe a general trust responsibility to Native American Tribes or Nations, including the Haulapai Tribe. Pursuant to this unique trust responsibility, the FAA and NPS are essentially acting in the interest of the Tribe, however, they do so in the context of other federal statutes and implementing regulations. Of particular concern when considering fulfillment of the federal trust responsibility is the economic development and self-sufficiency of the Native American Tribe or Nation.

Based upon information provided by the Hualapai Tribe, approximately 45% of the Hualapai Tribe's global fund budget is derived from air tour operations at GCW. This income includes air tour operator contracts and landing fees, and the tourist dollars brought to the Hualapai Reservation by air tours. The income from the air tour operations is used to support youth activities and other social programs on the Reservation. In addition, air tour operators employ members of the Hualapai Tribe.

The economic analysis in the regulatory evaluation indicates that this rulemaking would significantly adversely impact the Hualapai Tribe's economic development and self-sufficiency, thereby triggering the FAA's and NPS' trust responsibilities. While the air tour numbers derived from the operators' reported data are not identical to the numbers provided by GCRC, the FAA, using its numbers, still finds the impact of the operations limitation to be significantly adverse. The FAA believes that the numbers provided by GCRC in its comments include flights occurring outside the SFRA. In order to fulfill this trust responsibility, the FAA and NPS are excepting flights from the commercial air tour allocations requirement when those flights meet the following conditions: (1) transit the SFRA along the Blue 2 or Green 4; (2) operate under a written contract with the Hualapai Tribe; and (3) have an operations specification authorizing such flights. This exception is discussed in detail in Section H (7).

G. Discrimination Against Air Visitors

Several commenters believe the proposal suggests an intentional discrimination against the rights of air tour visitors to GCNP as compared to ground visitors. Several general aviation commenters have also suggested that the proposal is discriminatory against GA aircraft in favor of air tour aircraft.

One commenter states that the air tour visitors are not being discriminated against but rather they are being asked to abide by the same type visitation limitations that are imposed on other park visitors.

HAI says that visitation of the Grand Canyon by air is uniquely ecologically friendly because air tour visitors start no fires, leave behind no waste or trash, disturb no plants or soil, introduce no alien species, and remove or deface no artifacts. HAI says that efforts to further restrict air touring of GCNP are fundamentally misguided from an environmental perspective and that the current proposed restrictions will be destructive of the environment and the economy, have no basis in fact, and should be withdrawn.

The Cottonwood Chamber of Commerce (Arizona) says that 95% of park visitors are unaffected by aircraft sound, and that devastation of the air tour industry will result in the loss of aerial viewing opportunities for the elderly, handicapped and those with tight time schedules. The commenter says that many persons choose air tours due to physical or health limitations.

Las Vegas Helicopters states that the proposed rule will stifle access to the Grand Canyon by people who are handicapped, impaired or elderly and goes against the policies established by Congress when it adopted the Americans with Disabilities Act.

FAA Response: It is not the intent of the FAA or NPS to discriminate against visitors (air or ground) to the GCNP nor do the agencies believe this rule discriminates against air tour visitors. Indeed, air tour visitors are in many ways inseparable from ground visitors as over 50% of the air tour visitors to GCNP also visit the Park on the ground. Also, people who are handicapped, impaired, or elderly will continue to enjoy air tour access to the GCNP.

As discussed above in Section C, Congress' intent in adopting this legislation was to manage the airspace in the GCNP and to balance the competing interests. The FAA and NPS believe that the rule adopted today, together with the Final Rule in Docket FAA–99–5926, modifying the airspace and the adoption of the new route structure through the SFRA achieve that balance.

One standard method used by the NPS and other land management agencies to protect resources is to limit access to, or use of, certain resources. To protect the ground resources at GCNP, overnight camping in the backcountry and river rafting, for example, are limited through a permit process. Similarly, a number of services offered by park concessionaires, *e.g.*, lodging, mule rides, etc., have limited availability. At GCNP, only entrance to the Park and dayhiking are available to unlimited numbers of visitors. Air tour visitors are presently the only "specialized" park visitors (*i.e.*, river rafters, backcountry campers, mule riders, lodgers, etc.) that are not limited by number.

The agencies do not agree that this rule is misguided from an environmental perspective. While air tour visitors do not have the same type of environmental impact as ground visitors, they do have an environmental impact due to aircraft noise. That impact was recognized by Congress and is the reason for the adoption of Public Law 100–91.

H. Section by Section Review

1. Definitions Section 93.303

This section proposed new terms and definitions for commercial air tour and commercial Special Flight Rules Area Operation.

Several commenters opposed the proposed definition for "commercial air tour" because they believe it is too broad. Clark County states that the greatest long-term threats posed by the proposed rulemakings are the ominous precedents they would create for all facets of commercial aviation in the West, especially non-tour operations. Clark County is concerned because the rule leaves open the possibility that commercial transit flights between Las Vegas and Tusayan may be regulated in the same fashion as "air tours." The risk that restrictions on non-tour flights will be imposed is heightened by the vague guidance in the proposed rules regarding what constitutes an "air tour" instead of a transit flight. Clark County believes that the list of factors FAA says it will consider leaves too much discretion in FAA's hands and allows no certainty for tour operators. Many of the factors identified (*e.g.*, "narratives" referring to areas on the surface, frequency of flights, and area of operations) could apply to all commercial air carrier service operating along established jet routes east of Las Vegas. The danger is even more acute for regional and charter services in the area.

Clark County believes that the threat posed by this precedent extends to commercial aviation beyond the Grand Canyon air tour operators. Almost every commercial flight into and out of Clark County's airports passes over a National Park or Wilderness Area at some point in their route. The suggestion that point-to-point transportation could be the subject of restrictions due to unsubstantiated "natural quiet" concerns creates a specter of significant restrictions on aviation in Nevada and elsewhere in the West. It also constitutes an unreasonable, unprincipled and illegal transfer of airspace jurisdiction from FAA to NPS and other federal land managers.

FAA Response: The FAA is adopting the proposed definitions with modification. The definition for commercial air tour is intentionally broad. This definition requires the operator and the FAA to look at the actual flight and the nature of the operator's business to determine whether a flight is considered a commercial air tour. Simply because a flight may have one or two of the characteristics identified in the definition does not necessarily mean it is a commercial air tour. Clearly the more factors that apply to a particular flight, the more likely that flight will be found to be a commercial air tour. The Administrator may give more weight to some factors than others in making a determination under this definition.

This definition is necessary because currently there is no definition for the term "commercial sightseeing operation," which is the term used in part 93, subpart U.

The FAA appreciates the comments voiced by air tour operators regarding the new definition for commercial SFRA operations. The commenters are concerned because the FAA will begin to collect data on all transportation flights and other flights conducted by commercial air tour operators in addition to commercial air tour flights. The FAA also will require reporting for flights conducted under FAA Form 7711–1. The adoption of this definition is necessary, however, so that the FAA and NPS can begin to understand the aircraft patterns in the SFRA. Public Law 100–91 states that noise associated with aircraft overflights at GCNP is causing "a significant adverse effect on the natural quiet and experience of the park." Thus, the FAA hopes that by creating a broad term capturing many types of flights, and requiring reporting of those flights, it can develop a database that more accurately reflects aircraft noise in the park. The term Commercial SFRA Operations by definition only applies to an operator who holds GCNP SFRA operations specifications. This rule is focused on air tour operations, including flights in support of air tours, because the agencies have determined that other types of operations within the SFRA contribute minimal noise overall.

The definition of Commercial SFRA Operation is modified to eliminate the term "air tour" from the operations specification reference. This recognizes the fact that the FSDO may issue other types of operations specifications due to changes in market dynamics. The term commercial SFRA operations is broader than the term commercial air tour and includes not only air tours, but also transportation, repositioning, maintenance, training/proving flights and Grand Canyon West flights. Grand Canyon West covers flights conducted under the section 93.319(f) exception. All of these flights will be defined in the "Las Vegas Flights Standards District Office Grand Canyon National Park Special Flight Rules Area Procedures Manual." The term "commercial SFRA operations" does not include supply and administrative flights conducted under contract with the Native Americans pursuant to an FAA Form 7711–1 or any other flights conducted under an FAA Form 7711–1.

2. Flight Free Zones and Flight Corridors Section 93.305

The proposed changes to this section incorporate the definitions set forth in section 93.303 by changing the term "commercial sightseeing operation" to "commercial air tour". While there were several comments on section 93.303 regarding the definition of commercial air tour, there were no comments specific to section 93.305. The changes to this section are adopted as proposed and are reflected in the final rule addressing the airspace modifications, Docket No. FAA–99–5926.

3. Minimum Flight Attitudes section 93.307

The proposed changes to this section incorporate the definitions set forth in section 93.303 by changing the term "commercial sightseeing operation" to "commercial air tour". While there were several comments on section 93.303 regarding the definition of commercial air tour, there were no comments specific to section 93.307. The changes to this section are adopted as proposed and are reflected in the final rule addressing the airspace modifications, Docket No. FAA–99–5926.

4. Requirements for Commercial Special Flight Rules Area Operations, Section 93.315

No comments were received specific to this section, thus this section is adopted as proposed. Pursuant to these amendments, section 93.315 is reorganized and revised to remove the capacity limitation on aircraft and to delete the reference to the outdated SFAR 38–2. The FAA believes that removal of the capacity restriction is necessary because it is aware that some air tour operators are using larger capacity aircraft. The FAA wants to ensure that each operator, regardless of the capacity of the aircraft, is held to the same operational and safety standards. This section will continue to require commercial SFRA operators to be certificated under 14 CFR part 119 to operate in accordance with either 14 CFR part 121 or part 135 and to hold appropriate GCNP SFRA operations specifications.

5. Section 93.316

Section 93.316 is removed and reserved as proposed.

6. Curfew Section 93.317

The proposed rule modified section 93.317 slightly to apply the curfew to all commercial SFRA operations. The curfew set forth in current part 93 applies to "commercial sightseeing operations," which is an undefined term.

Some commenters state that the change in the curfew is too broad and captures too many types of flights that are not air tours. GCATC believes the curfew should be eliminated in lieu of the operations limitations cap. Air tour operators contend that the curfews have caused significant loss to operators located at GCNP Airport and air tours should be permitted from 7 a.m. to 7 p.m.

Sunrise Airlines states that the most effective way of restoring natural quite in the GCNP is to remove air tour noise. This penalty against the air tour operators is already in place in the form of curfews for the Dragon and Zuni Point corridors. Using a summer day of 14 hours from sunrise to sunset of which 4 hours is during the curfew, the result is more than 28% of the day has no air tour noise. Sunrise believes consideration also must be given for the many days during the slow months of the winter season when the GCNP attains the goal of "Substantial Restoration of Natural Quiet". Sunrise suggests the possibility of imposing a curfew on the current Blue One route, and believes that would restore natural quiet in much the GCNP without the need to either limit growth (allocations) or further limit the airspace available for air tours (routes).

Grand Canyon River Guides Association states that the curfews are not long enough and should be expanded to narrow the window for air tour operations.

The environmental coalition believes that the existing curfew should be applied to all commercial SFRA flights and should be expanded to provide significantly more quiet time after sunrise and before sunset.

FAA Response: The amendment to this section is adopted as proposed. The definition for commercial SFRA operations includes all commercial operations conducted by certificate holders authorized to conduct flights within the GCNP SFRA. Specifically, the types of flights included within the curfew are commercial air tours, training/proving, maintenance, transportation, and repositioning flights. Only flights conducted under FAA Form 7711–1 are not subject to this curfew. This exclusion is necessary because the limitations applicable to these flights are already specifically defined on the FAA Form 7711–1. In some instances, it may be necessary to issue an FAA Form 7711–1 for the Dragon or Zuni Point corridor for flights that may not be subject to the curfew, *e.g.*, NPS or other public aircraft flights. The FAA believes that amending the curfew to include all commercial SFRA operations will improve the management of aircraft noise in the Dragon and Zuni Point corridors.

While a number of commenters requested changes to the curfew hours, or an extension of the curfew to other areas, these issues were not proposed in the NPRM and thus are outside the scope of the proposed rule.

The agencies believe that the curfew is still required on the Dragon and Zuni Point corridors even with the adoption of the operations limitation. The operations limitation will not affect the timing of flights. The FAA and NPS believe that it is important to protect natural quiet during curfew hours in the most heavily visited portions of the eastern portion of the GCNP. The NPS has identified these areas as some of the most sensitive in the park. For computational purposes the NPS has established the 12-hour period between 7 AM and 7 PM, rather than the period from sun-up to sunset, as the "day" in the definition of substantial restoration. The fixed curfew that was established in the 1996 final rule makes an important contribution to substantially restoring natural quiet on a daily basis and mitigating noise impacts on the experience of the park visitors in this portion of the Canyon.

7. Operations Limitation Section 93.319

Section 93.319 of the proposed rule sets forth the requirement that an air tour operator must have an allocation to conduct commercial air tours in the GCNP SFRA. The NPRM set forth the following parameters regarding the initial allocation process: (1) Initial allocations would be based on the total number of commercial air tours conducted and reported by the certificate holder to the FAA for the period May 1, 1997 through April 30, 1998; (2) allocations would be apportioned between peak and non-peak season and between Dragon and Zuni Point corridors and the rest of the GCNP SFRA; and (3) an operator's allocation will be reflected in its GCNP SFRA operations specification.

Initial Allocations. Grand Canyon River Guides Association supports capping operations at the level reported by operators for May 1, 1997 through April 30, 1998. However, this commenter adds that there are many more flights that should be counted against allocations such as aircraft-repositioning flights, training flights, and transportation flights.

Many air tour industry commenters state that the initial allocations do not reflect the business operations as of the date of Notice 99–12. All air tour industry commenters state that the 1997–1998 base year used for establishing the allocations was an unusually slow year and does not reflect the typical year for Grand Canyon air tour operations.

NATA stated that the base year for determining allocations (May 1, 1997 through April 30, 1998) was one of the worst years ever. This commenter

contends that it is inappropriate for the FAA to base the future number of tours on any single year and that an average of operations over a multiple-year period would provide more reasonable figures.

Similarly, Papillon Grand Canyon states that May 1, 1997 through April 30, 1998, is not an appropriate year for establishing allocations. Governor Hull also believes that the FAA is using an abnormal, low operation year as a baseline in establishing the allocations for air tours.

Windrock Aviation states that, while there is a provision within the NPRM for certificate holders to request modification of the allocation, the NPRM states specifically that the FAA will not consider increasing an initial allocation because of changes in consumer demand or the fact that the base year was not a busy year, operationally. This commenter says that this would result in the revocation of their certificate and put them out of business. Windrock recommends that, in their case, another year be utilized as the base year without reducing that number of flights from the total number of flights allocated from the remaining air tour operators.

The environmental coalition states that allocations must include all commercial SFRA flights, including river takeouts, FAA Form 7711–1 flights, so-called 'transportation' and 'repositioning' flights, and training flights. Flights that are not truly tour flights should be strictly routed to avoid the SFRA. To a visitor on the ground, each pass is a noise event.

AirStar Helicopters believes that the allocation process is predicated on a flawed and non-factual process and therefore should not exist.

Heli USA states that it should not be subject to any allocations or other limitations because it operates under special authorization granted on FAA Form 7711–1. The commenter says that its operations are in support of the Hualapai Nation, and that its flights are not considered commercial air tours. Heli USA recommends that the FAA clarify that all flights under FAA Form 7711–1 be excepted from the definition of "commercial air tours."

A number of air tour operators requested increases in their allocations for specific reasons, in addition to the generic concerns raised above about the representation of the base year. Reasons for these requests can generally be categorized into six main areas: (1) Allocations should be adjusted due to significant aircraft down time during the base year; (2) allocations should be adjusted to incorporate operations that were not reported because they were not conducted in the SFRA but, with the airspace modifications implemented on January 31, 2000, next year will be within the GCNP SFRA; (3) allocations should be adjusted for flights servicing the Grand Canyon West Airport on the Hualapai Reservation; (4) allocations should be adjusted for operators just starting up in the base year; (5) allocations should be adjusted due to FAA error; and (6) allocations should be adjusted where certificate holders merged or acquired the assets of another operator.

FAA Response: The FAA is adopting the operations limitation with modifications discussed below. The FAA and NPS recognize that the operations limitation will limit the ability of the operators to increase the number of commercial air tours in the GCNP SFRA and limit revenue. The FAA and NPS are sensitive to the fact that this limitation may have a trickle down effect with regard to other businesses dependent upon air tour passengers and to the tourism industry generally located in Las Vegas, Nevada and Arizona. However, the NPS recommended in its report to Congress that this operations limitation is necessary in order to control the aircraft noise in the GCNP SFRA and make progress towards reaching the goal of substantial restoration of natural quiet.

Data on operations levels for the year May 1, 1997 through April 30, 1998 comprised the most accurate and current data available during the period that this rule was being drafted. Data subsequently collected from the industry for the year May 1, 1998 through April 30, 1999 show a slight decline in the number of total operations from the previous year. Thus the FAA and NPS believe that the period from May 1, 1997 through April 30, 1998 is a representative year for the purpose of imposing this allocation.

The FAA, in consultation with NPS, seeks to find a balance between the environmental interests of ground visitors and the interests of the air tour industry that will help the agencies manage the GCNP airspace to further achieve substantial restoration of the natural quiet. Thus, to ensure that the allocations process is fair, the FAA has established broad parameters to apply to the various types of allocations issues presented by the operators. Therefore, while the base year remains the same for the implementation of this rule, the FAA has adjusted the air tour allocations in accordance with the following parameters:

First, air tour operators who presented credible documentation indicating significant aircraft down time due to maintenance problems will receive adjusted allocations. The FAA determined that it would not be in the best interest of safety to penalize an operator who had experienced maintenance problems and removed that aircraft from operation to assure safe operations and therefore did not have that aircraft in operation for much of the base year.

Second, air tour operators who presented documentation that they conducted flights that were not reportable during the base year because they were outside the GCNP SFRA, but would be included in the GCNP SFRA in the future, will not be limited at this time. This exception is adopted at § 93.319(g). The FAA is unable to impose a fair limitation since there was no requirement to report these flights. Upon implementation of this rule, certificate holders will be required to report these commercial SFRA operation. At the conclusion of the first year of reporting, the FAA plans to impose an operational limitation equal to the number of commercial air tours reported for the 12-month period. Additionally, the FAA plans to issue a notice of proposed rulemaking to amend section 93.309(g)

Third, the FAA and NPS have decided to except operators complying with specific conditions from the individual allocation process. This is necessary in order to fulfill the government's trust responsibility to the Hualapai Tribe. As detailed in the regulatory evaluation accompanying this rule, the Hualapai Tribe would be significantly adversely impacted from an economic perspective if the operations limitation were applied to operators servicing Grand Canyon West Airport in support of the Hualapai Tribe. These conditions are as follows:

(1) The certificate holder conducts its operation in conformance with the route and airspace authorizations as specified in its GCNP SFRA operations specifications;

(2) The certificate holder must have executed a written contract with the Hualapai Indian Nation which grants the certificate holder a trespass permit and specifies the maximum number of flights to be permitted to land at Grand Canyon West airport and at other sites located in the vicinity of that airport and operates in compliance with that contract; and

(3) The certificate holder must have a valid operations specification that authorizes the certificate holder to conduct the operations specified in the contract with the Hualapai Indian Nation and specifically approves the number of operations that may transit the Grand Canyon National Park Special Flight Rules Area under this exception.

Fourth, the FAA is not adjusting allocations for one operator who stated that he was a start-up business. The FAA notes that this operator was issued operations specifications for GCNP on October 21, 1996. The FAA is not considering growth as a factor in its reassessment.

Fifth, the FAA is adjusting some air tour operators' allocations where the operators presented documentable evidence that there was an error in the FAA calculation.

Sixth, the FAA is adjusting some air tour operators' allocations where they have presented documentable evidence of a contractual transaction such as a merger or acquisition. These adjustments were based on the contracts negotiated between the parties and attempt to reflect the agreements negotiated between those parties.

The FAA is not limiting any other types of flights other than commercial air tours. The FAA considers a commercial air tour to be synonymous with the term commercial sightseeing flight as that term is used in part 93, subpart U. Since operators were only required to report commercial sightseeing flights under current § 93.317, the FAA had no regulatory basis for limiting any other type of flight. The FAA also disagrees with some commenters who suggest that non-tour flights should be routed to avoid the SFRA. The SFRA was designed to ensure the use of standardized routes, altitudes, and flight reporting procedures to improve safety. This standardization has significantly decreased accidents and incidents in the GCNP SFRA.

Peak Season Apportionment. Most air tour industry commenters are opposed to the separation of allocations between peak and off-peak season. Some state that there would be no incentive on the part of operators to move off-peak season allocations to peak season and that this separation would be an unnecessary burden.

Papillon indicates that if allocations do become regulation, there should be no restrictions with regard to what season they can be utilized. Park visitation dictates the number of flights that will be conducted in a given season. If allocations are on an annual basis flight usage will follow the historical past.

Papillon also states that the concern that air tour operators may shut down during off-peak season to move off-season allocations into peak-season is not valid. There would be no incentive to move off-season flights to peak-season. This highly technical business requires continuity of personnel, extensive and recurrent training, off-season maintenance, etc. The locale of operation is home for the employees of these aviation businesses and they must sustain their families on a year-round basis. Papillon indicates that the existing limitation on the number of aircraft is more equitable than a limit to the number of tours.

Sunrise Airlines states that a five-month peak season (May–Sept) would be acceptable for purposes of assigning allocations.

Air Vegas also finds no reason to control peak/off-peak season as the marketplace already does this. They are in agreement with May-September being on average busier months but argue that depending on promotional travel campaigns, other months such as March or October have the potential of equal or more enplanements.

Air Grand Canyon and Windrock Aviation propose that, due to the uncertainty of both the weather and tourism, generally, a five month period be utilized to distinguish "peak" and "non-peak" seasons. As a caveat to the issue of seasonal caps, the commenters recommend that each operator be allowed to shift ten (10) percent of his "non-peak" allocation to the first and last month of the peak season in the event the operator should determine that doing so would better utilize his allocation. Air Grand Canyon and Windrock say that this would allow the operator to compensate for whether problems and tourism volume fluctuations. These commenters believe it also would allow the operator to utilize allocations that might otherwise be lost during a substantial and protracted winter period. Finally, these commenters state that implementation of the recommendation would keep the "non-peak" allocation from being used during the busiest peak months, thereby avoiding the air corridor "congestion" issues that the NPRM anticipates would occur in the event that the operator was allowed to shift all of his allocation to the busiest summer months.

The environmental coalition recommends a seasonal cap to prevent the movement of allocations from one season into another. A peak-season term of May 1 to September 15 is proposed. Certain areas of the park are completely unusable to visitors that seek natural quiet. This coalition recommends that a 24 hour per day tour free season be established for at least the eastern half of the SFRA from September 15–December 15 (this period being prior to the snow season). Additionally, it recommends a daily reservation limit as is applied to other park activities. Such a limit would control the maximum daily number of air operations per route.

ARA is also concerned about allocations shifting into low noise time periods and lesser-used flight routes. This commenter favors the caps becoming far more specific, such that low use periods and areas of the Canyon don't "fill in" given the inadequacy of the restoration standard.

FAA Response: The FAA is not adopting the peak season apportionment for allocations at this time. The FAA is adopting the Dragon and Zuni Point corridor apportionment. The FAA has a number of statutory obligations that apply in this rulemaking in addition to the statutory mandate set forth in Public Law 100–91. These obligations include compliance with the Small Business Regulatory Evaluation and Flexibility Act (SBREFA). SBREFA requires the FAA to consider the impact of FAA regulations on small businesses and to mitigate adverse impacts if possible. In an effort to strike a balance and fulfill the FAA's statutory obligations under Public Law 100–91 and SBREFA, the FAA is not apportioning the allocations between peak and off-speak season. By eliminating this additional allocation restriction, the operators will have some flexibility in their business operations so that they can mitigate revenue losses that this operations limitation may cause them.

The FAA and NPS, however, are still concerned about the level of noise in the GCNP, especially during the peak summer season. Since the goal of this rule is to limit operations to control noise, any significant increases in noise during the summer season when noise in the GCNP is the highest would frustrate that goal. Thus, the NPS will be closely monitoring the noise levels in the GCNP over the next two years to determine whether the noise level in the park is increasing, remaining constant or decreasing. If the NPS determines that the noise levels in the GCNP are increasing during the summer season, it may be necessary to adopt a peak season apportionment of allocations in two years.

The FAA also will closely monitor the level of air tour traffic through the GCNP SFRA to ensure that safety is not compromised by air tour operators concentrating their allocations during the summer time period. If congestion becomes a significant problem during certain time periods such that safety is compromised, the FAA may need to take action to mitigate the problem. As noted in the NPRM, the FAA's Airport and Airspace Simulation Computer

Model (SIMMOD) demonstrated significant use of the routes during the peak season. At this time, based on the information obtained from the operators regarding their current operations, and the specific provisions that are being adopted for operators servicing the Hualapai Indian Reservation at Grand Canyon West airport, the FAA believes that it is not necessary to impose the peak season apportionment from a safety perspective.

While some operators oppose having any restrictions on allocations at all, the FAA and NPS have determined that it is necessary to apportion allocations between the Dragon and Zuni Point corridors and the rest of the GCNP SFRA. This apportionment is necessary because the noise in the Dragon and Zuni Point corridors is higher than elsewhere in the SFRA. For instance, the FAA regulatory evaluation accompanying this rule notes that fixed wing aircraft and helicopters that feature or include the Dragón corridor account for just over 45% of all air tours during the base year. Zuni Point tours account for just over 19% of all air tours. By apportioning allocations, the noise in the Dragon and Zuni Point corridors should not increase overall. Additionally, this restriction will help to maintain the number of air tours in these corridors at a manageable level.

The FAA is not adopting the suggestions that a tour free season be imposed on the eastern half of the SFRA or that a daily reservation limit be imposed on the air tour operators. Neither of these suggestions were considered in the proposed rule, thus they are outside the scope of this rulemaking.

8. Transfer and Termination of Allocations Section 93.321

This section, as proposed in the NPRM, established that allocations are an operating privilege, not a property right. It also sets forth certain conditions applicable to allocations, namely: (1) Allocations will be reauthorized and redistributed no earlier than two years from the date of this rule; (2) any allocations held by the FAA at the time of reauthorization may be redistributed among remaining certificate holders proportionate to the size of each certificate holder's current allocation; (3) the aggregate SFRA allocations will not exceed the number of commercial air tours reported to the FAA for the base year of May 1, 1997 through April 30, 1998; and (4) allocations may be transferred subject to several restrictions. The proposed restrictions on allocation transfer were as follows: (1) These transactions are subject to all other applicable requirements of this chapter; (2) allocations designated for the rest of the SFRA may not be transferred into the Dragon or Zuni Point corridor, but allocations designated for the Dragon and Zuni Point corridor may be transferred into the rest of the SFRA; and (3) a certificate holder must notify the Las Vegas Flight Standards District Office within 10 calendar days of an allocation transfer.

This proposed section also contained a reversion provision whereby the allocations reverted back to the FAA upon voluntary cessation of commercial air tours in the GCNP SFRA for any consecutive 180-day period. Additionally, the FAA retained the right to redistribute, reduce or revoke allocations based on several conditions.

Property Interest: Papillon states that allocations must be considered a property interest; to not consider them as such would be tantamount to the unconstitutional seizure of property. This commenter states that their company and others have spent millions of dollars in the development of employees, facilities, equipment, marketing, promotion, good will, etc., yet the business would be of little value if allocations were only an operating privilege. Papillon believes that allocations if imposed must be an intangible asset belonging to each respective air tour company.

FAA Response: The FAA is adopting without change the limitation that allocations are not a property interest. Title 49 U.S.C. § 40103(a) states that the "United States Government has exclusive sovereignty of airspace of the United States." The FAA is authorized to develop plans and policy for the use of navigable airspace and assign by regulation or order the use of the airspace necessary to ensure the safety of aircraft and the efficient use of airspace. See 49 U.S.C. § 40103(b). Under 49 U.S.C. § 44705(a), all air carriers or charter air carriers are required to hold an operating certificate issued by the FAA authorizing the named person to operate as an air carrier. This operating certificate is issued only after the FAA makes a finding the "the person properly and adequately is equipped and able to operate safely under [the law]." Operating certificates may be amended, modified, suspended or revoked by the FAA as prescribed under Section 44709.

Thus, the FAA has been granted clear authority to regulate airspace and air carriers. The FAA has used this authority, together with its authority in Public law 100–91, to establish the GCNP SFRA and to regulate for noise efficiency. Given its clear mandate to regulate airspace, the FAA cannot grant property rights to an air carrier to use the airspace. Thus an allocation must be an operating privilege.

Two year limitation; Several air tour industry commenters believe that the two-year trial term for the proposed rule puts them at a severe hardship since they will be unable to predict the future of their business activity. These operators argue that the allocation system should not be imposed, but if adopted it should be guaranteed not to decrease.

Sunrise Airlines states that allocations assigned to each operator must not be decreased for a period of at least five years. Less than five years will discourage any potential movement towards quiet aircraft technology.

NATA states that the two-year term of the allocations would impair an operator's ability to invest in new equipment and technologies by allowing for further reductions in the number of tours permitted. NATA points out that operators must have some predictability with regards to the future level of activity in order to obtain financing for capital improvements, investment in quiet technology aircraft, and other business-related investments. In addition, because the allocation system is based on a review of only one year's operations, many businesses will experience significant reductions in activity, further restraining the financial situation of the operators.

Some members of the Arizona State Legislature state that the noise evaluation methodology that will be used during the two-year period that flight limitations are imposed is a cause for great concern among air tour operators. The sound threshold set for Zone 2 is so low that aircraft will be unable to avoid exceeding it, thereby setting the stage for further restrictions at the end of the two-year period.

The Public Lands Committee of the Sierra Club, Utah Chapter, states that it conditionally supports the FAA capping the number of flight operations at 88,000 annually. However, this commenter cannot support the tentative "try it two years and then we'll see" aspect of the proposal.

FAA Response: The FAA is adopting the provision that permits it to reauthorize and redistribute allocations no earlier than every two years. This provision will require allocations to remain unchanged by the FAA for a twenty-four month period from the effective date of this rule. At the end of that time period, the FAA may, but is not required, to engage in another rulemaking to address additional data submitted under § 93.325, updated

noise analysis or the status of the Comprehensive Noise Management Plan. The only way in which allocations could be changed in a shorter time period, would be if it were necessary for the FAA to utilize its authority to regulate for safety. Noise is not a component of the conditions in this section.

The FAA and NPS believe it is necessary to permit modifications of the allocations on a 2-year term based upon the results of additional noise analysis. This is to allow NPS the ability to address noise issues that arise that may impede its ability to meet the statutory goal of substantial restoration of natural quiet as set forth in Public Law 100–91. Thus, for instance, if noise in the GCNP SFRA is increasing due to an increase in commercial SFRA operations, further limitations may be necessary.

The NPS acknowledges that efforts to achieve substantial restoration of natural quiet are path breaking, complex, and controversial. Perhaps the greatest confusion has resulted from the noise evaluation standards employed by the NPS, and specifically the "8 decibels below ambient." While the 8 decibels below ambient standard is a somewhat technical issue, it may be most easily thought of as a mathematical conversion factor necessitated by the computer modeling. The FAA's computer model (INM) uses a "weighting" (averaging) process to derive a single, "average" value to describe the ambient level. The NPS' computer model (NODSS) uses multiple frequency bands. NODSS, like the human ear, can discriminate sounds by both frequency and volume. It is well accepted in the acoustic community that sounds can be heard below the ambient level. In this case, aircraft sounds may be heard below the ambient level because the aircraft is producing sounds of a different frequency than found in the natural environment. Thus, to use INM and to capture the moment when aircraft become audible, a conversion of minus 8 decibels from natural ambient conditions is used. The minus 8 is derived from laboratory studies that showed that sounds of different frequencies become audible at between minus 8 and minus 11 decibels below ambient. To reiterate, the minus 8 decibels below ambient is not the sound level at which aircraft must operate or the acoustic level that must be achieved. It is a mathematical conversion necessitated by the computer modeling. The minus 8 decibels below ambient describes the "starting point" at which the measurement of substantial restoration begins.

Transfer. The Public Lands Committee of the Sierra Club, Utah Chapter, states that what is called for, given expiring time under the 1987 law and 1996 Executive Order, is a decreasing cap until operations are returned to approximately 1975 levels. Congress first identified the noise as a problem as far back as 1975, and Public Law 100–91 was the logical, decisive sequel for a problem only getting worse.

Windrock Aviation and Grand Canyon Air say that limiting the transfer of allocation destroys the value of the business that is entitled to make its profits from the allocation it is otherwise allowed. Additionally, these provisions, along with the provisions of the NPRM limiting the number flights that can be flown, generally, severely impact on the ability of those who might otherwise attempt to establish a profitable business in the flying of scenic tours at the GCNP. They believe that the economic impact of these issues was not raised in the NPRM. These commenters add that limitations on allocation transfer should be dropped from the NPRM, and that free market capitalism should be allowed to control what each individual operator does with its allocations.

ARA believes that allocation caps should not be transferable and supports the notion that allocations that fall into disuse be retired. The retirement of some allocations over time may prove to be the most viable method for reducing air tours toward levels of 1987. It is important not to squander the opportunity that the FAA has to maintain control over allocations of "time in airspace," not allow transfers of allocations between operators, and retire underutilized allocations.

The Environmental Coalition opposes any transfer of allocations from one corridor to another citing possible deterioration of conditions in less-noisy areas.

FAA Response: The FAA is adopting Section 93.321(b)(1)–(4) without modification. The purpose of this operations limitation is to maintain status quo and prevent the noise levels in the GCNP from increasing while the Comprehensive Noise Management Plan is developed. The limitation is not designed to be a declining cap. Thus the FAA is not adopting the request to impose a declining cap. Consistent with the intent of Public Law 100–91, as expressed in the legislative history surrounding the adoption of that law, the FAA is not attempting to ban air tours in the GCNP. It is seeking to make progress toward the mandated goal of substantial restoration of natural quiet.

Thus to provide the operations with some flexibility to meet varying demand, the FAA is permitting allocations to be transferred among air tour operators subject to three restrictions. First, all certificate holders are required to report any transfers to the Las Vegas Flight Standards District Office in writing. Permanent transfers (mergers/acquisitions) require FAA approval through the modification of the operations specifications. Temporary transfers (seasonal or monthly/weekly/daily leases) are effective without FAA approval. The FAA will not modify operations specifications for temporary arrangements.

Second, certificate holders are subject to all other applicable requirements in the Federal Aviation Regulations. Third, allocations authorizing commercial air tours outside of the Dragon or Zuni Point corridors are not permitted to be transferred into the Dragon or Zuni Point corridors. Allocations specified for the Dragon and Zuni Point corridors may be used to other routes in the GCNP SFRA. The FAA believes it is necessary to maintain some restrictions on allocation transfers to safety manage the airspace and manage aircraft noise. This is especially important since the Dragon and Zuni Point corridors tend to be the busiest locations in the park for air tours. The FAA does not see any reason to limit transfer of allocations from the Dragon and Zuni Point corridor into the rest of the SFRA since this airspace is not as congested as these corridors and the noise level is not as high. Additionally, given the consumer demand to see the Dragon and Zuni Point corridors by air, the FAA does not believe that significant levels of tours will be transferred from those corridors into the rest of the SFRA.

Termination after 180-day lapse. Several air tour industry commenters state that the period allowed for inactivity should be lengthened. This is of particular concern for small operators that are susceptible to slow-downs inherent in the business.

Windrock and Air Grand Canyon (AGC) recommend that this provision be dropped. They note that it is possible for an operator to use all of its non-peak allocations early in the non-peak season and delay using its peak season allocations until a month after the peak season starts and thereby lose its allocations because of the 180-day lapse rule. These commenters maintain that this portion of the NPRM makes no logical, financial, or "noise reduction" sense. Windrock and AGC state that "the taking away of 'allocation' that has not been used for 180 days by any

scenic tour operator is inconsistent with both the rights of the tour operators and the stated purpose of PL 100–91."

Papillon states that in fairness to all operators, but in particular small operators, the period allowed for inactivity should be lengthened. Small operators are most susceptible to slow downs caused by the seasonal nature of the business, equipment failures, serious illness of key employees or other adversities beyond the operators' control. Papillon proposes that subsequent to a 180-day inactive period, the FAA should secure a "Statement of Intent to Operate" from the tour operator. This statement would outline the operator's business plan for the following three-year period. If upon the three-year anniversary of that statement, the operator has not resumed air tours or sold the business, the FAA would reassign its allocations on a *pro rata* basis to the other active operators.

AirStar Helicopters maintains that 180 days is too arbitrary and recommends a minimum of 360 days, especially in light of the "use it or lose it" provisions.

The proposed 180-day lapse period is supported by the Environmental Coalition.

FAA Response: This provision is adopted with the modifications discussed below. The FAA recognizes that the loss of an air tour operator's allocations would be a significant action. It is not the intent of this provision to be punitive. Rather the intent is to ensure that allocations are distributed amongst operators who are conducting an air tour business in the GCNP SFRA. The use or lose provision is important because it recognizes that the FAA is the sole controller of the allocations. If not used, the air tour operator will lose its allocations, thus its operating privilege in the GCNP SFRA, and the FAA will assert its control.

Based on comments from the air tour operators, the FAA, in consultation with NPS, is modifying this section to establish a show cause provision prior to the end of 180 consecutive days. Under this provision, an operator who does not use its allocations for 180 consecutive days, but who intends to do so in the future, must submit a written request for extension to the Las Vegas FSDO prior to the expiration of the 180-consecutive-day period. This written request must show why the operator did not conduct business during the prior 180 days and when it intends to resume business operations. In response the FSDO will issue a letter indicating whether the request for an extension is approved and the length of the extension granted, if any, which will not exceed 180 consecutive days. Operators will be allowed to request one extension; thus the maximum amount of time an operator would be granted under the use or lose provision would be 360 days.

9. Flight Plans Section 93.323

This section of the NPRM proposed to require each certificate holder conducting a commercial SFRA operation to file an FAA visual flight rules (VFR) flight plan with an FAA Flight Service Station for each flight. Each flight segment (one take-off and one landing) would require a flight plan. Each certificate holder filing a VFR flight plan will be responsible for indicating in the "remarks" section of the flight plan the purpose of the flight. There will be at least six possible purposes: commercial air tour; transportation; repositioning; maintenance training/proving and Grand canyon West. The term "commercial air tour" will be as already defined in the proposed rule. The other five terms will be defined in the "Las Vegas Flight Standards District Office Grand Canyon National Park Special Flight Rules Area Procedures Manual" as follows:

1. Transportation—A flight transporting passengers for compensation or hire from point A to point B on a flight other than an air tour.

2. Repositioning—A non-revenue flight for the purpose of repositioning the aircraft (*i.e.*, a return flight without passengers that is conducted to reposition the aircraft for the next flight).

3. Maintenance flight—A flight conducted under a special flight permit, or a support flight to transport necessary repair equipment of personnel to an aircraft that has a mechanical problem.

4. Training/proving—A flight taken for one of the following purposes: (1) pilot training in the SFRA; (2) checking the pilot's qualifications to fly in the SFRA in accordance with FAA regulations; or (3) an aircraft proving flight conducted in accordance with section 121.163 or 135.145.

5. Grand Canyon West flight—A flight conducted in accordance with conditions set forth in section 93.319(f).

One commenter explained that using flight plans to ensure compliance with the commercial air tour limitations is a flight safety hazard. If pilots are required to open VFR flight plans, an additional workload will detract from the necessary concentration in monitoring approach control and/or enroute frequencies while maintaining a constant visual vigil.

Air Vegas notes that its past experience with filing VFR flight plans was not positive. It encountered difficulty and confusion when numerous aircraft attempted to contact the flight service station to open VFR flight plans simultaneously. This commenter stats that the opening and closing of VFR flight plans by the pilots, particularly the opening, is unacceptable. The commenter says that all operators from Las Vegas follow the same route from Hoover Dam to the GCNP SFRA. Once inside the GCNP SFRA all aircraft are on the same route, which makes the airspace to and in the GCNP SFRA heavily concentrated. If pilots are required to open VFR flight plans, an additional workload will detract from the necessary concentration in monitoring approach control and/or enroute frequencies while maintaining a constant visual vigil.

FAA Response: This section is adopted with modification. The information obtained from the flight plan will be used to ensure compliance with the commercial air tours operation limitation. Certificate holders may wish to develop "canned" flight plans that may be opened and closed quickly. Copies will not have to be maintained. The FAA does not believe this poses an unreasonable burden on the pilot since the pilot does not have to open or close the plan. The rule specifies that the certificate holder is responsible for filing a VFR flight plan. Thus the certificate holder must designate someone who will be responsible for this task. It could be a pilot or a dispatcher or someone else employed by the certificate holder who is assigned this duty. At this time, the FAA does not believe that there will be a resource problem at the flight service stations due to this new requirement. However, the FAA will be closely monitoring this situation and will take action to mitigate any problems that may develop. Certificate holders conducting operations under § 93.309(g) are not subject to the VFR flight plan requirements and must continue to file an IFR flight plan for GCNP SFRA operations in accordance with their operations specifications.

10. Reporting Requirements Section 93.325

The FAA also proposed to modify the reporting requirements by requiring quarterly reports instead of trimester reports. The FAA requested comments on requiring reporting from operators conducting operations in the GCNP SFRA under an FAA Form 7711–1. A question also was raised in the NPRM as to the time standard that should be used in the reports.

No comments were received on the switch from trimester to quarterly reporting. Several air tour industry commenters state that reporting requirements should not be imposed as a condition of FAA Form 771–1. Papillon states that the increased regulation of operations conducted under this form would harm the Native American Tribes who are the beneficiaries of these activities. Furthermore, these commenters state that since these forms are granted under tight restrictions there is no need for further control.

Several commenters suggest that Mountain Standard Time should be used for the quarterly reporting requirements. GCATC states that their membership is evenly divided on which time measurement to use.

The Environmental Coalition states that the reporting requirements should be applied to all commercial SFRA flights, including transportation, repositioning, maintenance, FAA Form 7711–1, and training flights. Complete reporting will allow better planning and evaluation of resource degradation.

FAA Response: The FAA is adopting this provision without modification. Therefore, under the Final Rule, all commercial SFRA operations, including those conducted under §§ 93.309(g) and 93.319(f), must be reported on a quarterly basis to the Las Vegas Flight Standards District Office. Since commenters are divided on the time measurement issue, the FAA has decided that operators are required to report operations using UTC time. The information submitted in these reports will be used by the FAA and NPS to assess the noise situation in the GCNP and in development of the Comprehensive Noise Management Plan. Certificate holders will continue to submit their reports in written form. Electronic submission is preferable and encouraged.

Additionally, the FAA will require operators conducting operations under an FAA Form 7711–1 to report those operations to the Las Vegas FSDO. The FAA and NPS need this information to develop a clearer picture of the types and numbers of flights operating in the GCNP SFRA. The reporting will be set forth as a condition of the FAA Form 7711–1. This requirement will apply to public aircraft, such as NPS aircraft, as well. The FAA does not believe requiring operators to report FAA Form 7711–1 flights will harm the Indian tribes.

The reporting requirements will become effective 30 days after publication. Because the rule is being implemented after the start of a quarter, operators will report 30 days after the close of the first trimester (January—April) under the old rule, 30 days after the end of June for the May—June time period. July 1st would then start the quarterly reporting requirement.

Paperwork Reduction Act

Information collection requirements pertaining to this final rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), and have been assigned OMB Control Number 2120–0653. No comments were received on this information collection submission. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to these regulations.

Regulatory Evaluation Summary

This rule is considered significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11034; February 26, 1979) but is not considered a significant regulatory action under Executive Order 12866.

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980, as amended March 1996, requires agencies to analyze the economic effects of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effects of regulatory changes on international trade.

The final rule will impose a significant economic impact on a substantial number of small entities. In terms of international trade, the rule will neither impose a competitive trade disadvantage to U.S. air carriers operating domestically nor to foreign air carriers deplaning or enplaning passengers within the United States. This rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

The FAA analyzed the expected costs of this regulatory proposal for a 10-year period (2000 through 2009). All costs in this analysis are expressed in 1998 dollars.

This summary examines the costs and benefits of the final rule that will temporarily limit the number of commercial air tours that may be conducted in the Special Flight Rules Area (SFRA) of the Grand Canyon National Park (GCNP). This rule is necessary as part of an effort to achieve the statutory mandate imposed by Public Law 100–91 to provide substantial restoration of natural quiet and experience in GCNP.

The estimated 10-year cost of this regulation will be $155.4 million ($100.3 million, discounted). The majority of the impact of this regulation will be $154.3 million, ($99.6 million, discounted) in lost revenue (net of variable operating costs) due to the imposition of air tour operations limits. After two years, this requirement may be reviewed and subject to change. At the end of the two years review, the cost in lost revenue will be $13.2 million ($11.9 million, discounted). The status of the quiet technology rulemaking and the Comprehensive Aircraft Noise Management Plan will also be taken into consideration at that time. The estimated 10-year cost of the other provisions to air tour operators is $30,000 or $23,000, discounted. FAA costs are estimated at $1.06 million or $746,400, discounted over ten years.

The primary benefit of this rule is its contribution toward meeting the statutory mandate of substantially restoring natural quiet in GCNP. Quantifiable benefits are the use benefits perceived by individuals from the direct use of a resource such as hiking, rafting, or sightseeing. The estimated 10-year use benefits for ground visitors only, as a result of this rule, are $20.36 million, discounted at 7 percent. In addition to these use benefits, this rulemaking may generate non-use benefits. The non-use benefits of this rulemaking along with the associated rule and commercial air tour routes notice include reduction in existing commercial air tour aircraft noise impacts to certain traditional cultural properties of importance to several Native American Tribes and Nations in the vicinity of the Grand

Canyon National Park. Related benefits to these Native Americans include protection of their religious practices from interference from overhead commercial air tour aircraft flights. The FAA, at this time, does not have adequate data to estimate these non-use benefits of commercial air tour aircraft noise reduction at the Grand Canyon National Park and adjacent traditional cultural properties, but believes that they are significant. The FAA is promulgating this rule in response to congressional mandate.

Commercial Air Tour Industry Profile

The Grand Canyon is the most active commercial air tour location in the United States. Based on Grand Canyon air tour operator reports, requirements contained in § 93.317, and comments containing additional statistical detail, the FAA has revised its original estimates for the first full year of reporting (May 1, 1997 through April 30, 1998)—hereafter referred to as the baseline period, from approximately 88,000 to 90,000 commercial air tours. These air tours provided aerial viewing of the Canyon to about 642,000 passengers, and accounted for just under $100 million ($99.3 million) in revenue. In the baseline period there were 24 air tour operators reporting, 17 of whom conducted air tours over GCNP in airplanes, 6 in helicopters, and 1 operator in a mixed fleet.

Benefits

The primary intended benefit of this rule is its contribution toward achieving the statutory mandate imposed by Public Law 100–91 to substantially restore natural quiet in GCNP. The FAA's and NPS' benefits analysis is limited to commercial air tour aircraft noise because only commercial air tours will be affected by this rule.

The policy decision of GCNP is that a substantial restoration requires that 50% or more of the park achieve "natural quiet" (*i.e.*, no aircraft audible) for 70–100 percent of the day. That level of "quiet" (50 percent) does not exist today in the park, in spite of past actions to limit noise. Based on noise modeling, the FAA estimates that today only about 32 percent of the park area has had natural quiet restored. Furthermore, if no additional action is taken, estimated future air tour growth will reduce that number to about 25 percent in 9 to 10 years. On the other hand, noise modeling indicates that this rule, together with the other two FAA actions, will increase the restoration of natural quiet to slightly more than 41 percent and maintain that level in the future. The FAA will monitor future operations in the park to determine the actual level of natural quiet that is restored.

Increased Value of Ground Visit Analysis

The benefits of aircraft noise reduction attributable to this rulemaking can be broadly categorized as use and non-use benefits. Increased use benefits from reduced aircraft noise are the added benefits perceived by ground visitors from the direct use of a resource such as hiking, rafting, or sightseeing. However, use benefits also include the benefits perceived by individuals taking air tours. If restrictions are imposed on air tour operations, some of the use benefits perceived by individuals taking air tours will be lost. The benefits to air tourists have not been quantified due to a lack of information. The benefits to ground visitors due to this rulemaking have been quantified and are presented below. Non-use benefits are the benefits perceived by individuals from merely knowing that a resource exists, or is preserved, in a given state. The non-use benefits attributable to this rulemaking have not been estimated.

An economic study has not been conducted specifically to estimate the benefits of this rulemaking. While generally accepted methodologies exist to estimate such values, those techniques are costly and require a significant period of time for the requisite study design, data collection, and analysis steps. An alternative to these resource-intensive techniques is the "benefits transfer" methodology. That methodology combines value estimates from existing economic studies with site-specific information (in this case, regarding visitation levels and the nature and extent of noise impacts) to estimate benefits. The benefits transfer methodology has been accepted as an appropriate methodology for estimating natural resource values in two other rulemakings.

The benefits transfer methodology was used to estimate the benefits of this rulemaking where sufficient information existed to do so. This estimation was possible for ground visitors to GCNP, but not for air tourists or for the non-use benefits.

Benefits of Ground Visitors

The site-specific information used in the estimation of benefits accruing to ground visitors includes visitation data for GCNP for calendar year 1998 and a visitor survey conducted to document the visitor impacts of aircraft noise within GCNP. The available visitation data for GCNP permits the categorization of visitors into backcountry users, river users, and other visitors. The activities included in the "other visitors" category primarily involves canyon rim sightseeing, as well as other activities not related to backcountry or river use. The total number of visitor-days in 1998 for these visitor groups was 92,100 for backcountry, 66,900 for river and 5.31 million for "other visitors".

For purposes of this benefits estimate, the number of visitor-days at GCNP is assumed to remain constant at 1998 levels throughout the evaluation period of the rulemaking. The GCNP visitor survey indicates that these different visitor groups are variously affected by aircraft noise. This survey asked respondents to classify the interference of aircraft noise with their enjoyment of GCNP as either "not at all", "slightly", "moderately", "very much", or "extremely".

The economic studies selected for use in the benefits transfer discuss visitor-day values, which are also known as "consumer surplus". Consumer surplus is the maximum amount an individual would be willing to pay to use a resource, minus the actual costs of use. It is a measure of the net economic benefit gained by individuals from participating in recreational activity.

The visitor-day value for backcountry use, $37.13, was derived from a national study of outdoor recreation. The visitor-day value for river use, $92.44, was derived from the economic analysis contained in the Final Environmental Impact Statement for Glen Canyon Dam operations. The visitor-day value for all other visitor uses in GCNP, $48.72, was derived from an economic analysis of recreation at Bryce Canyon National Park.

FAA assumed that these visitor-day values represented the net economic benefits obtained from recreational uses in GCNP absent any impacts from aircraft noise. Therefore, it is important to note that these values potentially under-state recreational benefits to the extent that they were estimated in conditions where aircraft noise was present.

There is no known economic study that estimates the reduction in the value of recreational uses due to aircraft noise for areas similar to GCNP. Therefore, reductions were assumed in the present analysis. The data and assumptions imply the total value of $17.7 million, which was calculated as the product of the number of visitor-days, the proportion of visitors affected by aircraft noise, the visitor-day value, and the assumed proportional reduction in the visitor-day value, for respective impact levels and visitor categories.

The benefit of this rulemaking is that portion of the total lost value that is associated with the resulting future levels of noise reduction. Through aircraft noise modeling, FAA has predicted the number of square miles within GCNP that would be affected by various levels of aircraft noise, both with and without the commercial air tour limitation.

The reductions in aircraft noise were applied to the total lost consumer surplus value from all aircraft noise in 1998 ($17.73 million) to estimate the current use benefits for future years. This calculation assumes that benefits increase linearly with noise reduction (*i.e.*, a constant marginal benefit from noise reduction). The resulting use benefit estimates the sum to $31.29 million ($25.83 million at the 3 percent discount rate and $20.36 million at the 7 percent discount rate) over ten years. The use benefits for this rule and the airspace final rule will be $45.86 million over ten years, discounted at 7 percent.

Benefits of Air Tourists

The use benefits perceived by individuals taking air tours will likely decrease as a result of this rulemaking. This is due to a reduction in the number of air tours that will be available because of the commercial air tour limitation. FAA estimates that the number of commercial air tours in GCNP would increase an average of 3.3 percent per year without this rulemaking. The effect of the commercial air tour limitation will be to control the number of air tours on affected routes by limiting the amount of growth that would otherwise occur.

FAA estimates that commercial air tours serving approximately 530,000 air tourists in the base year will be subject to the limitation. Assuming that the passenger capacity and load factors for commercial air tours remain constant, the impact of the commercial air tour limitation will be to eliminate the average 3.3 percent annual growth rate in air tourists that would otherwise occur.

The FAA was unable to estimate the visitor-day value of air tourists, given the available data. Nevertheless, an average visitor-day value for air tourists that exceeds the visitor-day value for ground tourists would suggest the use benefit losses of air tourists exceed the use benefit gains of ground tourists. The undiscounted total use benefits of ground tourists from 2000 to 2009 was estimated above as $31.29 million, given the commercial air tour limitation only. Dividing that value by the estimated 1,490,000 individuals who will be potentially excluded from taking air tours over the same period indicates a threshold value for air tourists of $18.70 per visitor-day. The threshold value for air tourists given both the commercial air tour limitation and route changes is $40.06 per visitor-day.

It is important to recognize that this simple analysis of air tourist use benefits does not necessarily indicate a complete loss of benefits associated with this rulemaking. As noted above, increases in either the passenger capacity or load factors of affected flight operations will decrease the reduction in use benefits of air tourists.

Benefits to Native American Communities

Benefits of this rulemaking and the associated airspace rulemaking and the changes to the commercial air tour routes also include those accruing to several local native American cultural and religious practices. The overall size of the 20 LAEQ12hr noise exposure area over tribal lands will be reduced as a result of these actions. This rulemaking and related actions will also reduce air tour aircraft noise levels from the existing noise levels over certain traditional cultural properties and ensure increased privacy and protect Native American religious practices (however, some traditional cultural properties in the vicinity of the direct routes from Las Vegas to the Grand Canyon Airport will receive an increase in noise).

Costs of Compliance and Regulatory Flexibility Determination and Analysis

The FAA estimates that the regulation will result in a potential reduction in future net operating revenue of $154.3 million ($99.6 million, discounted). Additionally, the FAA estimates that there would be approximately $22,320 ($20,860 discounted) start-up costs to operators to implement the flight plan (*i.e.*, filing, activating, and closing a flight plan) adopted from this rulemaking. For quarterly reporting and the other provisions of the rule ((1) requesting modification and initial allocations and (2) transfer of allocations), the cost to air tour operators is estimated to be $30,000 over ten years or $23,000, discounted. Finally, the FAA costs over the next 10 years (including initial allocations) will be $1.06 million or $746,400 discounted. In sum, the total cost of this rule over the next 10 years will be $155.4 million or $100.3 million, discounted.

The main economic impact resulting from the commercial air tour limitation in the GCNP SFRA is the reduction in potential future net operating revenue. This can be calculated by subtracting the net operating revenue associated with the projected future number of commercial air tours under the air tour limitation from the net operating revenue associated with the projected future number of commercial air tours without the air tour limitation.

The baseline period gross operating revenue by route was calculated by multiplying the estimated number of passengers that flew on a specific route for a specific operator by the published retail fare. Variable operating costs for GCNP air tour operators are defined as the costs for crews, fuel and oil, and maintenance per flight hour. Baseline net operating revenue for each aircraft by route is the difference between the gross operating revenue for each route by aircraft and the variable operating costs for each route by aircraft. An air tour operator's total net operating revenue is the sum of the net operating revenues from all of the routes used by that air tour operator.

Commercial air tours in GCNP currently are fixed to the extent that air tour operators cannot increase the number of aircraft shown on their operations specifications for use in the GCNP SFRA. The FAA estimated the future number of monthly operations without the final rule. In some cases, it would not be practically feasible to conduct more air tours in a given day because the aircraft were already used to their fullest extent practical.

The final rule assumes that the allocations awarded to each operator will be valid for a two-year period. After that time, the air tour operator's allocations may be revised for various reasons. In this analysis the FAA assumed that this allocation would continue beyond two years.

The analysis does not take into consideration that air tour operators could switch from smaller-sized aircraft to larger-sized aircraft. Consequently, in this analysis, the number of available seats is fixed throughout the entire time period. Holding the number of seats constant and assuming that more individuals will want to take air tours in the future implies that air tour operators should be able to raise air tour prices. This analysis does not consider a new equilibrium price given that supply becomes fixed while demand increases.

Cost of Operating Scenario to Operators—Uniform Year With No Peak/Off Peak Delineation on Commercial Air Tours

In the final rule, the FAA is not adopting either peak season

apportionment for allocations discussed in the NPRM Based on these decisions:

- After the first two years, the certificate holder's allocations may be revised based on the data submitted under § 93.325, an updated noise analysis, and/or the status of the Comprehensive Noise Management Plan.
- Allocations will be separated into those that may be used in the Dragon and Zuni Point corridors and those that may be used in the rest of the SFRA except in the Dragon and Zuni Point corridors. Dragon and Zuni Point corridor allocations again will be determined based on the number of operations an air tour operator conducted in this region for the base year period. Operators conducting no operations in these corridors for the base year will receive no allocations for this region.

The final rule will limit all commercial air tours in the GCNP SFRA on a 12 month basis so that such operations conducted by certificate holders in the SFRA do not exceed the amount of air tours reported in accordance with current § 93.317 for the base year. The number of commercial air tours that a certificate holder can conduct will be shown on the certificate holder's operations specifications as allocations.

Revisions in Accordance With Specific Rule Changes in Consideration of the Hualapai Tribe and Substantial Economic Impact

Ninety percent of the helicopter and 10 percent of the airplane tours that are conducted along the SFAR 50–2 Green 4 and Blue 2 air tour routes respectively, land on the Hualapai Indian Reservation (the Reservation) either along the Colorado river, at Grand Canyon West Airport (GCW), or both. Both the helicopter and airplane tours landing at the Reservation are a significant source of income and employment to the Hualapai Indian Nation (the Tribe).

The Hualapai Reservation encompasses approximately 1 million acres adjoining the southwestern quadrant of GCNP and includes 108 miles of the Colorado River through the Grand Canyon. The majority of the Reservation's inhabitants live below the poverty level and unemployment was estimated in 1995 to range from 50–70 percent of the adult population. Much of the Tribal economy is based on tourism, and Grand Canyon West has been identified by the Tribe as the primary means by which to address its high unemployment rate while preserving the Tribe's natural and cultural resources.

In the NPRM, the FAA considered the impact of an operations limitation on the Tribe within the context of the 2.5 multiplier. However, the FAA, through comments and testimony offered at the Las Vegas public hearing held in August 1999, believes the direct impact to the Tribe is more severe than initially believed. Therefore, in this Final rule, the FAA will not impose a limitation on certain air tours to the Reservation due to the significant adverse economic impact on the Tribe so long as these tours are operated in compliance with § 93.319(f).

The FAA is adopting May 1, 1998 through April 30, 1999 as the more appropriate baseline to assess its cost relief estimates for the Tribe because the FAA believes this baseline more accurately portrays the current economic activity at GCW and the Reservation. After the completion of federally funded airport renovations and runway resurfacing during the fall of 1997, there was a significant increase in air tours and tourism to the Reservation. In addition, a helicopter operator, well established in the Tusayan air tour market, expanded operations to the West end and began conducting helicopter tours in support of the Tribe after the close of the May 1, 1997 through April 30, 1998 baseline period.

Comparing May 1, 1998 through April 30, 1999 to the May 1, 1997 through April 30, 1998 baseline, the FAA estimates that all applicable air tours increased to about 21,850 (10,950 airplane; 10,900 helicopter). The Tribe collects at least $2.3 million annually from air tour operators in the form of landing fees, monthly leases, trespass permits and per passenger payments for a Reservation guided tour and lunch plus an unspecified amount derived from passenger purchases of crafts and souvenirs.

Assuming the 3.3 percent compound annual rate of growth, the FAA estimates that in the absence of an exception being extended to the applicable air tours, the Tribe would forego the potential revenue generated from an additional 25,700 air tours carrying 133,900 over the 2000–2009 time period. The restoration to the Tribe of future revenue over the years 2000–2009 resulting from the elimination of operations limitations on those tours will be approximately $643,400 in landing fees and $4.3 million in ground tour revenue. This action, then, removes a restraint placed on the Tribe's uninterrupted access to these air tours and their passengers, the principal revenue source for the Reservations's continued economic development, and the FAA estimates that this cost relief will be $4.9 million ($3.1 million, discounted) over the next ten years.

To remain consistent with the overall Regulatory Evaluation and costs of this Final Rule, the analysis that follows concerning the operators and tours that are conducted to GCW Airport and the Reservation will use the May 1, 1997 through April 30, 1998 baseline. From this baseline data, the FAA estimates that about 19,200 (11,300 airplane; 7,900 helicopter) air tours were conducted along the Blue 2 and Green 4 air tour routes. These air tours were conducted by 10 airplane and 4 helicopter operators, and carried approximately 119,000 passengers that generated $19.9 million in gross operating revenue ($16.2 million in net operating revenue). Using the 3.3 percent compound annual rate of growth, if no exception were granted, the FAA estimates that the total cost of the final rule will be $198.4 million. The part of this final rule cost attributable to an operations limitation along these two air tour routes would be approximately $58.3 million ($37.6 million, discounted) in gross operating revenue losses and $48.3 million ($31.4 million, discounted) in net operating revenue losses for the years 2000 through 2009.

By excepting the air tours of the operators maintaining valid contracts with the Tribe that are conducted along these two air tour routes, the FAA has reduced the overall cost (net operating revenue) of this Final Rule by $43.9 million ($28.5 million, discounted) to $154.5 million ($99.5 million, discounted) for the ten-year period 2000–2009. These amounts were calculated based on an estimated reduction in air tours and air tour passengers of approximately 51,550 and 320,500, respectively, for the same ten-year time frame. Thus, by excepting those air tours conducted along these two air tour routes that are in support of the Tribe, the FAA estimates that the actual amount of the cost contributed to the total cost of this final rule will be reduced to $5.1 million ($3.3 million, discounted) in gross operating revenue losses and $4.5 million ($2.9 million, discounted) in net operating revenue losses for the years 2000 through 2009.

In the absence of the exception, the FAA estimates the portion of the above costs that are directly associated with a 3.3 percent growth in the current level of tours conducted along the two air tour routes in support of Tribal economic development is $34.2 million ($20.2 million, discounted) in reduced gross operating revenue and $31.2 million ($20.25 million, discounted) in reduced net operating revenue over ten

years. This is based on reductions in air tours and passengers of 22,000 and 119,200, respectively, resulting from the operations limitation part of the final rule.

The FAA does not have data indicating the percentage of air tours reported in the baseline period that landed at the Reservation. Thus, those operators who currently hold contracts with the Hualapai will also receive their allocations as originally established. The FAA estimates that the non-Hualapai portion of the air tour business conducted by these operators along these two routes could expand at 3.3 percent for twelve years before the cost impact of the operations limitation becomes measurable. Thus, during the ten-year time frame 2000–2009, there will be no costs incurred by operators maintaining contracts with the Tribe for that portion of their air tour business conducted along these two routes that does not necessarily contribute to the economic development of the Tribe. The FAA estimates that the portion of the above costs associated with a 3.3 percent growth in the current level of non-Hualapai tours conducted along the two air tour routes is $19.0 million ($12.3 million, discounted) in reduced gross operating revenue and $12.7 million ($8.2 million, discounted) in reduced net operating revenue for the years 2000–2009.

By extending an exception from the operations limitation part of the final rule to those air tours and air tour operators who maintain contracts with and provide economic support to the Tribe, the FAA estimates the final costs of this rule attributable to air tours conducted along these two air tour routes will be reduced to $5.1 million ($3.3 million, discounted) in gross operating revenue and $4.5 million ($2.9 million, discounted) in net operating revenue for the years 2000–2009.

The overall total cost relief accruing to the operators for the years 2000–2009 provided in this Final Rule by excepting the air tour businesses that maintain contracts with the Tribe from the operations limitation component is estimated to be $53.2 million ($34.3 million, discounted) in gross operating revenues and $43.9 million ($28.5 million, discounted) in net operating revenues. Therefore, by excepting the air tours along these two air routes that are conducted in support of the Tribe, the FAA has reduced the overall cost (net operating revenue) of this Final Rule to $155.4 million ($100.3 million, discounted) for the ten-year period 2000–2009.

Cost of Reporting Requirements to Operators

The FAA considered two reporting requirement alternatives in the NPRM, these being quarterly reporting and trimester reporting. The existing rule requires certificate holders to report three times annually, but the final rule will change this to quarterly reporting, in § 93.325. Since the existing rule already requires certificate holders to establish a system to implement the reporting requirement, the FAA assumed there will be no start-up costs to implement this requirement.

Under the reporting requirement scenario, the written information will have to be provided to the Las Vegas FSDO four times per year. The FAA assumes that each operator will have to collate and verify the information that they have been collecting throughout the year. The time it takes to complete these two tasks would be 2 hours per operator regardless of the number of aircraft; this assumes that the operators have been recording the information throughout the year. The total incremental cost to the industry to move to quarterly reporting is estimated at $11,000 for 10 years or $8,600, discounted.

The FAA considered two alternative means of monitoring the allocations, a form system and the filing of flight plans, in the NPRM. The requirement to file a flight plan is in the final rule. Section 93.323 of the final rule will require each certificate holder conducting a commercial SFRA operation to file a visual flight rules (VFR) flight plan with an FAA Flight Service Station for each such flight. A flight consists of one take-off and one landing. The "remarks" section of the flight plan will be completed to indicate the purpose of the flight out of six designated purposes. The information obtained from the flight plan will be used to ensure compliance with the commercial air tour limitation. Copies will not have to be maintained by the certificate holder or carried on board the aircraft.

The extent to which an operator will be impacted will depend upon the volume of his/her commercial air tour business in GCNP and the number of aircraft and pilots providing air tour service. Additionally, the cost impact will be influenced by whether the operator conducts air tours daily on a regular frequency.

Relying on information from the Las Vegas FSDO, the FAA has identified the following four principal areas where start up costs for the larger, more regularly scheduled operators will be incurred: (a) Creation of "canned" VFR flight plans (templates) to be filed with the Reno or Prescott Flight Service Station; (b) rewriting of existing General Operations Manuals to incorporate the new procedures; (c) set-up of a pilot training program; and (d) training of pilots. The FAA assumes the first three tasks and possibly the fourth, the instructing of the pilots in the new procedures, will be the responsibility of each operator's Director of Operations. The FAA estimates that the total initial fixed costs to the Grand Canyon air tour operators for the VFR flight filing requirements will be about $22,300 or $20,900, discounted.

Cost of Other Provisions to Operators

Operators will incur costs associated with (1) requesting modification and allocations and (2) transfer of allocations. The FAA estimates that the cost of these provisions can be up to $20,000 or $14,000, discounted over 10 years.

The FAA recognizes that the air tour business in the GCNP is constantly changing. Thus, due to mergers/acquisitions, bankruptcies, etc., certificate holders may believe that the data submitted for May 1, 1997 to April 30, 1993 was not reflective of their business operations. Therefore, the FAA permitted any certificate holder who believed that the base year data does not reflect its business operation to submit a written statement requesting that its initial allocation be revised.

Ten operators requested modifications to their proposed initial allocations following publication of the NPRM. The one-time cost to the industry would be between $2,500 and $5,000 (which includes ten days or 80 hours of effort) or between $2,300 and $4,700, discounted.

The FAA also recognizes that air tour operators often utilize a variety of contracting/subcontracting methods to handle passenger loads during busy periods. Therefore, the FAA will allow an allocation to be transferred among certificate holders, subject to the restrictions enumerated in the Preamble of this rule. Under the final rule, all certificate holders are required to report any transfer of allocations to the Law Vegas FSDO in writing. The FAA distinguishes between temporary and permanent transfers of allocations.

The FAA assumes any operator costs associated with temporary transfers to be part of the on-going business cost of conducting air tours of the Grand Canyon and views such costs as de minimus. Permanent transfers of allocations resulting from mergers/acquisitions, bankruptcies, or other

reasons that affect operations, will require FAA approval through the modification of the operations specifications in addition to the required reporting to the Law Vegas FSDO in writing.

For this analysis, the FAA assumes two operator transfers per year. The annual cost to the industry will be between $1,000 and $2,000 annually (about a total of 32 hours annually) or between $900 and $1,900, discounted. The cost over 10 years will be between $10,000 and $20,000 or between $7,000 and $14,000, discounted.

Cost of the Final Rule to the FAA

The FAA, as a result of this rule, will incur costs associated with the initial allocation, recording and tracking, filing of flight plans, and transfer of allocations. Over the next 10 years, FAA costs are expected to be $1.06 million or $746,400 discounted.

Under this final rule, each certificate holder reporting commercial air tours to the FAA in accordance with current § 93.317 will receive one allocation for each air tour conducted and reported during the base year period. Certificate holders identified in the NPRM as receiving allocations to conduct air tours in the SFRA received written notification of their allocations.

The FAA will need to develop an allocation process and prepare the necessary information to send to each air tour operator. This one-time administrative work will require analyst, clerical, legal, and management resources. The FAA assumes that it will take about two weeks to set up a spreadsheet and prepare the necessary information to send to each air tour operator. The initial cost to implement this part of the rule will be $3,800 in the first year only.

In addition, the FAA will incur recurring annual costs from the recording and tracking of the information provided by the provided by the operators. Again, this will require analyst, clerical, legal,and management resources. The agency estimates that the total cost of these elements would be about $99,300 annually and $992,800 over ten years ($697,300, discounted).

Allocations to conduct air tour operations in the GCNP SFRA will be an operating privilege initially granted to the certificate holders who conducted air tour operations during the base year and reported them to the FAA. This allocation will be subject to reassessment after two years.

The FAA estimates that, on average, the FAA will spend about 80 hours managing the transfer of allocations from each merger or 160 hours annually assuming two mergers, transfers, etc. annually. The FAA estimates that cost will be about $6,500 annually or $64,800 over ten years or $45,500, discounted.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities (small business and small not-for-profit government jurisdictions) are not unnecessarily and disproportionately burdened by Federal regulations. The RFA, which was amended March 1996, requires regulatory agencies to review rules to determine if they have "a significant economic impact on a substantial number of small entities." The Small Business Administration defines airlines with 1,500 or fewer employees for the air transportation industry as small entities. For this final rule, the small entity group is considered to be operators conducting commercial air tours in the GCNP SFRA and having 1,500 or fewer employees. The FAA has identified a total of 25 such entities that meet this definition.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

The FAA has estimated the annualized cost impact on each of these 25 small entities potentially impacted by the rule. The final rule is expected to impose an estimated total cost on operators of $155.4 million ($100.3 million, discounted). The average annualized cost over ten years is estimated at about $960,000 for each operator (with a range of $200 to $6.3 million). The FAA has determined that the rule will have a significant impact on a substantial number of small entities, and has performed a regulatory flexibility analysis. As discussed above, most small entities will incur an economically significant impact.

Under Section 603(b) of the RFA (as amended), each regulatory flexibility analysis is required to consider alternatives that will reduce the regulatory burden on affected small entities. The FAA has examined several alternative provisions of this final rule that will be discussed below. In addition, the FAA is also required to address these points: (1) Reasons why the FAA is considering the rule, (2) the objectives and legal basis for the rule, (3) the kind and number of small entities to which the rule will apply, (4) the projected reporting, recordkeeping, and other compliance requirements of the rule, and (5) all Federal rules that may duplicate, overlap, or conflict with the rule.

Reasons Why the FAA Is Considering the Final Rule

Public Law 100–91 recognizes that noise associated with "aircraft overflights" at the GCNP is causing "a significant adverse effect on the natural quiet and experience of the park." This legislation directed the NPS to develop recommendations to achieve the substantial restoration of natural quiet in GCNP. The FAA was directed, pursuant to Public Law 100–91, to implement these recommendations unless there was a safety reason not to do so. The FAA and NPS believe it is necessary to impose a commercial air tour limitation in order to stabilize noise levels in the SFRA while further noise analysis is conducted.

The Objectives and Legal Basis for the Final Rule

The objective of the final rule is to limit all commercial air tours in the GCNP SFRA on a 12-month basis. Commercial air tours conducted by certificate holders in the SFRA are not to exceed the amount of air tours reported in accordance with current § 93.317 for the period from May 1, 1997 through April 30, 1998.

The legal basis for the rule is found in Public Law 100–91, commonly known as the National Parks Overflights Act. Public Law 100–91 stated in part, that "noise associated with aircraft overflights at GCNP [was] causing a significant adverse effect on the natural quiet and experience of the park and current aircraft operations at the Grand Canyon National Park have raised serious concerns regarding public safety, including concerns regarding the safety of park users." Further congressional direction is discussed in the history section of this regulatory evaluation.

The Kind and Number of Small Entities to Which the Final Rule Would Apply

The final rule applies to 24 affected part 135 and part 121 commercial air tour operators, each having 1,500 or fewer employees. The FAA estimates that all 24 operators (25 entities) will be impacted by the final rule. The FAA has limited financial profile information (e.g., operating revenue, operating expenses, operating profit, net operating revenue, and passenger revenue) for six of the impacted operators. Balance sheet information on assets and liabilities is not readily available. However, the FAA received financial information from two air tour operators; a summary of their submitted material is discussed in the Appendix to the full economic analysis.

The Projected Reporting, Recordkeeping, and Other Compliance Requirements of the Final Rule

Each of the operators affected by this rule will need to comply with certain reporting requirements. Certificate holders conducting commercial SFRA operations will complete a flight plan for each flight. The FAA estimates this compliance effort can impose an additional one to five minutes on the part of the certificate holder per operation for each of the small entities during each year of compliance, for a total of 4,500 hours annually.

In addition, certificate holders conducting commercial air tours will need to report quarterly to the FAA certain information on the total operations conducted in the SFRA to the FAA. The FAA estimates that this compliance effort will take place four times per year (one additional time compared to the current rule) and will impose an additional 50 hours of labor on the industry annually. This provision will cause an operator, regardless of the number of aircraft, to expend an additional 2 hours of labor annually (including record maintenance).

The initial assigned allocation involved operator requests for modifications that the FAA estimates will impose about 1 to 2 person days of added work. Ten operators requested modification to their allocations. As discussed above, the FAA estimates that the paperwork burden to each of these firms will range from 8 to 16 hours.

Finally, the FAA assumes that no more than 2 operators each year are likely to submit requests for permanent transfers of allocations (e.g., to enter, leave or merge). The FAA estimates that the two firms will spend about 32 hours annually preparing the required documentation to be submitted to the FAA.

Excluding the provisions that impose a one-time burden (initial allocations that will affect five operators the first year annually of 80 hours total), the FAA estimates each certificate holder will have imposed an additional annual reporting burden on average of 575 hours of labor. Over a period of 10 years, a total of approximately 143,750 hours will be spent.

All Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rule

The FAA is unaware of any federal rules that either duplicate, overlap, or conflict with the final rule.

Alternatives

Aircraft noise in the GCNP can be controlled in a number of ways. Hence, noise-reducing measures can be accomplished through any one or a combination of these methods. As directed by Public Law 100–91, NPS developed a number of recommendations to substantially restore natural quiet. These recommendations were included in NPS' 1994 Report to Congress. These recommendations included a number of different approaches to achieving the statutory mandate of Public Law 100–91. Some of these recommendations were adopted in 1996. Others have been under consideration. The following summarize the status of each of these recommendations:

Altitude Restrictions

As one alternative, aircraft could be required to fly above specific altitudes in certain parts of GCNP. The noise generated by these aircraft flying at higher altitudes would be more widely dispersed before it reached the ground than if these aircraft were flying at lower altitudes. Ground visitors would then be less likely to hear the aircraft the higher up they are flying. Air tour passengers, however, would see less dramatic views of the Grand Canyon when flying at higher altitudes.

The FAA has adopted this approach as one of the several options it is using to control aircraft noise in GCNP. On May 27, 1998, the FAA issued SFAR No. 50–2. This SFAR established four flight-free zones from the surface to 14,499 feet above mean sea level in the area of the Grand Canyon. It also prohibited flight below a certain altitude in certain sectors of the Grand Canyon. On December 31, 1996, the FAA issued a final rule (61 FR 69302) which raised the ceiling of the SFRA to 17,999.

Establishment of Air Tour Routes

Another approach used by the FAA is to contain aircraft noise to certain parts of the Grand Canyon by establishing air tour routes. On May 27, 1998, the FAA issued SFAR No. 50–2, which provided for special routes for air tours. On December 31, 1996, the FAA issued a final rule (61 (FR 69302) which established a new FFZ and altered the boundaries of the other already established FFZs. This rule change necessitates a change in the air tour routes, which the FAA will establish next year (enforcement of the airspace actions in 61 FR 69302 has been delayed until after the establishment of these new routes).

Air Tour Curfews

Visitors to the Grand Canyon are likely to be more annoyed by aircraft noise during certain times of the day than at other times of the day. The FAA established air tour curfews in 61 FR 69302 to address this problem. In the summer season, air tours may not operate in the Dragon and Zuni Point corridors between the hours of 6 pm and 8 am; in the winter, the curfew is between 5 pm and 9 am. In future rulemakings, this curfew may be expanded to the rest of the Grand Canyon or the curfew hours may be expanded.

Limits on the Number of Aircraft That Can Be Used

On December 31, 1996, the FAA issued a final rule (61 FR 69302) which placed a cap on the number of "commercial sightseeing" aircraft that could operate in the SFAR. The FAA is revising this final rule to limit the number of air tours instead of aircraft because it was determined the aircraft cap was not an adequate limit on growth.

Limits on the Number of Air Tour Operations

Capping the number of flights allowed in the GCNP is another approach for limited aircraft noise that may be permitted in the park. This approach is being adopted by the FAA with this particular rulemaking. This final rule temporarily limits all commercial air tours in the GCNP SFRA on a calendar year basis so that such air tours conducted by certificate holders in the SFRA do not exceed the amount of air tours reported in accordance with current § 93.317.

Expansion of Flight Free Zones

Another approach that the FAA uses to control aircraft noise in the Grand Canyon is to establish Flight Free Zones. Aircraft, under this alternative, would be forbidden from flying over certain parts of the GCNP. This highly restrictive alternative is designed to protect certain areas from any noise emanating from aircraft overhead. SFAR 50–2 established four flight-free zones from the surface to 14,499 feet mean sea level. On December 31, 1996, the FAA established a new FFZ, merged to existing FFZs, and expanded the other two FFZs.

Phase Out of Noisy Aircraft

An approach that the FAA is currently considering is mandating that noisy aircraft be phased out of service over the Grand Canyon. The FAA proposed such an action by issuing an

NPRM on December 31, 1996 to phase out noisy aircraft by 2008. This could be a very expensive rulemaking; costs were estimated at $173 million (undiscounted) in the 1996 NPRM. All these costs would have to be borne by 25 small operators. The FAA has delayed issuing a final rule in order to consider other less costly actions. However, the FAA may choose to issue a final rule on this action in the future.

Encourage the Use of Quiet Aircraft

This recommendation would require aircraft used in GCNP to meet a yet to be defined standard to be considered quiet technology. As stated in the December 1996 final rule on Special Flight Rules in the Vicinity of Grand Canton National Park, quieter aircraft technology incentives are viewed as another approach to substantially restore natural quiet to the Grand Canyon while maintaining a viable tour industry.

Establishment of Aircraft Noise Budgets

An approach that the FAA has not yet adopted, but which is under consideration is the noise budget. In this alternative, the FAA would consider letting the market place allow the aircraft owners to determine which airplanes to fly by rationing the amount of noise that any tour operator could emit. Each tour operator would be allotted a specific amount of noise "credits" to be spent over a specific period of time, such as a day, week, or month. These credits would be allocated based on a formula that takes into account the number of tours, and the number and type of aircraft that they had in the base year. Each aircraft type would be assigned a rating based on how noisy it was when compared to a certain decibel level; the noisier the aircraft, the higher its rating. When an operator flew any particular aircraft on its tour, it would use up this numerical rating against the number of noise credits that it had been allocated.

Tour operators could increase their number of tours in two basic ways. They could purchase credits from other operators, thus allowing more tours and/or noisier aircraft. Alternatively, they could invest in quieter aircraft, thus allowing them to fly more tours. Of course, operators could do both, which would certainly increase their number of flights.

A variation on this alternative would be to assign specific routes or specific times of day with positive and negative bonus "points". These points could either add to or subtract from the aircraft's rating as incentive for operators to fly or not to fly certain routes or at certain times of the day. Thus, an operator who chose the "negative points" routes and/or times of the day would be rewarded by being able to fly more tours. On the other hand, since some of the "positive point" routes and/or times of the day might be the more lucrative ones (where and when everyone would want to fly), operators would also be free to try to maximize profits by fling these.

While the FAA has not currently adopted this alternative, the FAA may consider adopting this alternative or elements of this alternative in the future.

Time of Week Restriction

Another alternative not yet under active consideration would be to restrict tours to specific days during the week. This way, certain parts of the Park or the entire Park could be noise free for entire days. This approach might be used during the October "oars only rafting period." A variation would be to combine this alternative with time of day restrictions. Hence, a certain corridor could, for example, be off-limits for tours for 2 mornings and 3 afternoons during the week.

Another variation would be to give the tour operators a number of day-of-the-week "credits" and allow the tour operators to bid on which days they would want to fly each corridor and how many tours would be flown on each of the days when tours would be allowed. This variation would allow operators to maximize profits given the constraint of days of the week when tours would not be allowed.

It should be noted that these and, possibly additional alternative, may be considered in the context of efforts to encourage the use of quiet technology. Where possible, the FAA will seek to implement options that will lower air tour operators' overall costs while promoting the goal of substantial restoration of natural quiet.

Affordability Analysis

For the purpose of this RFA, an affordability analysis is an assessment of the ability of small entities to meet costs imposed by the final rule. These are two types of costs imposed by the rule: (1) out-of-pocket costs (actual expenditures) associated with applications and documentation and (2) loss of potential future operating revenue associated with an increase in the level above current levels. This latter burden may be significant to financial viability because companies depend on growth in operating revenue to provide necessary cash to meet long-term obligations such as equipment purchase loans. A company's short-run financial strength is substantially influenced, among other things, by its liquidity (working capital position and its ability to pay short-term liabilities). Unfortunately, most of the data to analyze this are not available.

There is an alternative perspective to the assessment of affordability, which pertains to the size of the annualized costs of the rule relative to annual revenues. The lower the relative importance of those costs, the greater the likelihood of implementing either offsetting cost saving efficiencies or raising fares to cover increased costs without substantially decreasing passengers.

This analysis assesses affordability by examining the annualized cost of compliance relative to an estimate of total Grand Canyon commercial air tour operating revenues for each of the small entities. The annualized change in net operating revenues corresponds to foregoing the anticipated 3.3 percent per year growth of undiscounted net operating revenues. This number is relatively constant across all air tour operators because the majority of the negative impact (lost revenues) imposed by this rulemaking is directly related to the number of air tours that are being conducted. For these operators, there may be some prospect of absorbing the cost of the rule through fare increases.

It appears that given the current state of the industry, changes in net operating revenues might be offset by increased airfares. The limit on air tours will restrict the future supply of Grand Canyon air tours while demand for air tours is expected to increase, which might make it easier for affected entities to increase prices. No clear conclusion can be drawn with regard to the abilities of small entities to afford the reductions in net operating revenues that will be imposed by this final rule because the FAA is not able to estimate the amount of revenue increase obtained through price increases.

Disproportionality Analysis

The FAA does not believe any of the 25 entities will be disadvantaged relative to larger operators because within the context of the RFA, all Grand Canyon commercial air tour operators are small regardless of their size relative to one another.

Competitiveness Analysis

All air tour operators currently operating in GCNP are small entities. All these operators will be proportionately impacted by the commercial air tour limitation provision of this rulemaking (the commercial air tour limitation has the greatest impact of

all provisions of this rulemaking). The smaller operators will not be put at a disadvantage relative to the largest operators as a result of this provision.

Except for air tours to and from Grand Canyon West Airport, this rulemaking contains one feature impacting competitiveness. The commercial air tour limitation will protect established operators from competition from new entrants or form newly established operators who are just getting set up and therefore provide only a limited number of air tours. In this instance, the commercial air tour limitation puts new entrants and newly established operators at a disadvantage to the established operators because that provision will limit the number of air tours they can provide to only those allocation that they can obtain through transfer.

Business Closure Analysis

The FAA is unable to determine with certainty the extent to which the final rule will cause small entities to close their operations. However, the limited profit and loss data that the FAA has and the affordability analysis can be an indicator in business closures. In 1997 and 1998, of the data that the FAA has for 6 air tour operators, two of these air tour operators experienced losses in both years.

In determining whether or not any of the 25 small entities will close business as the result of compliance with this rule, one question must be answered: "Will the cost of compliance be so great as to impair an entity's ability to remain in business?" The FAA has incomplete information on which or how many of these small entities are already in serious financial difficulty and the limited number of commenters who supplied information to the docket did not elaborate on this. However, this rule can have a significant impact on those small entities that re already experiencing financial difficulty. This rulemaking can prevent them from escaping their financial difficulties through increased revenues from an increase in futurecommercial air tours. To what extent the proposed rule makes the difference in whether these entitles remain in business is difficult to answer.

Summary of Benefits and Costs

Public Law 100–91 was adopted to substantially restore natural quiet and experience in GCNP. The primary intended benefit of this rule is its contribution toward restoring natural quiet and experience in GCNP. The FAA estimates that this rule, together with its two associated actions of route adjustments, will restore natural quiet to about 41 percent of the park. The estimated 10-year use benefits (benefits derived from hiking, rafting, or sightseeing) as a result of this rule and the associated actions will be about $39.8 million, discounted as 7 percent over 10 years. This rule, without the associated actions, will provide a discounted "use" benefit to ground visitors of about $20.4 million over the same period. The FAA does not have adequate data to estimate the non-use benefits of aircraft noise reduction at GCNP, but believes this rulemaking may generate significant non-use benefits.

The estimated 10-year cost of these regulations will be $155.4 million ($100.3 million, discounted). The majority of the costs of these regulations will be $154.3 million ($98.6 million, discounted) due to the imposition of air tour operations limits. After two years, this requirement may be reviewed and subject to change. At the end of the two years review, the cost in lost revenue will be $13.2 million ($11.9 million, discounted). The status of the quiet technology rulemaking and the Comprehensive Aircraft Noise Management plan will also be taken into consideration at that time. The estimated 10-year cost of the other provisions to air tour operators is $30,000, or $23,000, discounted. FAA costs are estimated at $1.06 million or $746,400 discounted.

International Trade Impact Assessment

The FAA has determined that the rulemaking will not affect non-U.S. operators of foreign aircraft operating outside the United States nor will affect U.S. trade. It can, however, have an impact on commercial air tour business at GCNP, much of which is foreign.

The United States Air Tour Association estimated that 60 percent of all commercial air tourists in the United States are foreign nationals. The Las Vegas FSDO and some operators, however, believe this estimate to be considerably higher at the Grand Canyon, perhaps as high as 90 percent. To the extent the air tour limitation rulemaking disrupts the marketing of Grand Canyon air tours to foreign visitors and thereby reduces their patronage of these tour, the commercial air tour industry can potentially experience an additional loss of revenue beyond what is expected as a result of the cap.

The FAA cannot put a dollar value on the portion of the potential loss in commercial air tour revenue associated with a weakening in foreign demand for U.S. services concomitant with the limitation on commercial air tours of the Grand Canyon.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that will impose an enforceable duty upon State, local, and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

Federalism Implications

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA determined that this action does not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this final rule does not have federalism implications.

Environmental Review

The FAA has prepared a Final Supplemental Environmental Assessment (FSEA) for this final rule to

ensure conformance with the National Environmental Policy Act of 1969. Copies of the FSEA will be circulated to interested parties and a copy has been placed in the docket, where it will be available for review.

Energy Impact

The energy impact of the notice has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) Public Law 94–163, as amended (43 U.S.C. 6362) and FAA Order 1053.1. It has been determined that the final rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 93

Air traffic control, Airports, Navigation (Air), Reporting and Recordkeeping requirements.

The Amendment

For the reasons set forth above, the Federal Aviation Administration amends part 93, in chapter I of title 14, Code of Federal Regulations, as follows:

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

1. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

2. Section 93.303 is revised to read as follows:

§ 93.303 Definitions.

For the purposes of this subpart:

Allocation means authorization to conduct a commercial air tour in the Grand Canyon National Park (GCNP) Special Flight Rules Area (SFRA).

Commercial air tour means any flight conducted for compensation or hire in a powered aircraft where a purpose of the flight is sightseeing. If the operator of a flight asserts that the flight is not a commercial air tour, factors that can be considered by the Administrator in making a determination of whether the flight is a commercial air tour include, but are not limited to—

(1) Whether there was a holding out to the public of willingness to conduct a sightseeing flight for compensation or hire;

(2) Whether a narrative was provided that referred to areas or points of interest on the surface;

(3) The area of operation;

(4) The frequency of flights;

(5) The route of flight;

(6) The inclusion of sightseeing flights as part of any travel arrangement package; or

(7) Whether the flight in question would or would not have been canceled based on poor visibility of the surface.

Commercial Special Flight Rules Area Operation means any portion of any flight within the Grand Canyon National Park Special Flight Rules Area that is conducted by a certificate holder that has operations specifications authorizing flights within the Grand Canyon National Park Special Flight Rules Area. This term does not include operations conducted under an FAA Form 7711–1, Certificate of Waiver or Authorization. The types of flights covered by this definition are set forth in the "Las Vegas Flight Standards District Office Grand Canyon National Park Special Flight Rules Area Procedures Manual" which is available from the Las Vegas Flight Standards District Office.

Flight Standards District Office means the FAA Flight Standards District Office with jurisdiction for the geographical area containing the Grand Canyon.

Park means Grand Canyon National Park.

Special Flight Rules Area means the Grand Canyon National Park Special Flight Rules Area.

3. Section 93.315 is revised to read as follows:

§ 93.315 Requirements for commercial Special Flight Rules Area operations.

Each person conducting commercial Special Flight Rules Area operations must be certificated in accordance with Part 119 for Part 135 or 121 operations and hold appropriate Grand Canyon National Park Special Flight Rules Area operations specifications.

§ 93.316 [Removed and Reserved]

4. Section 93.316 is removed and reserved.

5. Section 93.317 is revised to read as follows:

§ 93.317 Commercial Special Flight Rules Area operation curfew.

Unless otherwise authorized by the Flight Standards District Office, no person may conduct a commercial Special Flight Rules Area operation in the Dragon and Zuni Point corridors during the following flight-free periods:

(a) Summer season (May 1–September 30)–6 p.m. to 8 a.m. daily; and

(b) Winter season (October 1–April 30)–5 p.m. to 9 a.m. daily.

6. Section 93.319 is added to read as follows:

§ 93.319 Commercial air tour limitations.

(a) Unless excepted under paragraph (f) or (g) of this section, no certificate holder certificated in accordance with part 119 for part 121 or 135 operations may conduct more commercial air tours in the Grand Canyon National Park in any calendar year than the number of allocations specified on the certificate holder's operations specifications.

(b) The Administrator determines the number of initial allocations for each certificate holder based on the total number of commercial air tours conducted by the certificate holder and reported to the FAA during the period beginning on May 1, 1997 and ending on April 30, 1998, unless excepted under paragraph (g).

(c) Certificate holders who conducted commercial air tours during the base year and reported them to the FAA receive an initial allocation.

(d) A certificate holder must use one allocation for each flight that is a commercial air tour, unless excepted under paragraph (f) or (g) of this section.

(e) Each certificate holder's operation specifications will identify the following information, as applicable:

(1) Total SFRA allocations; and

(2) Dragon corridor and Zuni Point corridor allocations.

(f) Certificate holders satisfying the requirements of § 93.315 of this subpart are not required to use a commercial air tour allocation for each commercial air tour flight in the GCNP SFRA provided the following conditions are satisfied:

(1) The certificate holder conducts its operations in conformance with the routes and airspace authorizations as specified in its Grand Canyon National Park Special Flight Rules Area operations specifications;

(2) The certificate holder must have executed a written contract with the Hualapai Indian Nation which grants the certificate holder a trespass permit and specifies the maximum number of flights to be permitted to land at Grand Canyon West Airport and at other sites located in the vicinity of that airport and operates in compliance with that contract; and

(3) The certificate holder must have a valid operations specification that authorizes the certificate holder to conduct the operations specified in the contract with the Hualapai Indian Nation and specifically approves the number of operations that may transit the Grand Canyon National Park Special Flight Rules Area under this exception.

(g) Certificate holders conducting commercial air tours at or above 14,500 feet MSL but below 18,000 feet MSL who did not receive initial allocations in 1999 because they were not required to report during the base year may operate without an allocation when conducting air tours at those altitudes. Certificate holders conducting commercial air tours in the area affected by the eastward shift of the SFRA who did not receive initial allocations in 1999 because they were not required to report during the base year may continue to operate on the specified routes without an allocation in the area bounded by longitude line 111 degrees 42 minutes east and longitude line 111 degrees 36 minutes east. This exception does not include operation in the Zuni Point corridor.

7. Section 93.321 is added to read as follows:

§ 93.321 Transfer and termination of allocations.

(a) Allocations are not a property interest; they are an operating privilege subject to absolute FAA control.

(b) Allocations are subject to the following conditions:

(1) The Administrator will re-authorize and re-distribute allocations no earlier than two years from the effective date of this rule.

(2) Allocations that are held by the FAA at the time of reallocation may be distributed among remaining certificate holders, proportionate to the size of each certificate holder's allocation.

(3) The aggregate SFRA allocations will not exceed the number of operations reported to the FAA for the base year beginning on May 1, 1997 and ending on April 30, 1998, except as adjusted to incorporate operations occurring for the base year of April 1, 2000 and ending on March 31, 2001, that operate at or above 14,500 feet MSL and below 18,000 feet MSL and operations in the area affected by the eastward shift of the SFRA bounded by longitude line 111 degrees 42 minutes east to longitude 111 degrees 36 minutes east.

(4) Allocations may be transferred among Part 135 or Part 121 certificate holders, subject to all of the following:

(i) Such transactions are subject to all other applicable requirements of this chapter.

(ii) Allocations authorizing commercial air tours outside the Dragon and Zuni Point corridors may not be transferred into the Dragon and Zuni Point corridors. Allocations authorizing commercial air tours within the Dragon and Zuni Point corridors may be transferred outside of the Dragon and Zuni Point corridors.

(iii) A certificate holder must notify in writing the Las Vegas Flight Standards District Office within 10 calendar days of a transfer of allocations. This notification must identify the parties involved, the type of transfer (permanent or temporary) and the number of allocations transferred. Permanent transfers are not effective until the Flight Standards District Office reissues the operations specifications reflecting the transfer. Temporary transfers are effective upon notification.

(5) An allocation will revert to the FAA upon voluntary cessation of commercial air tours within the SFRA for any consecutive 180-day period unless the certificate holder notifies the FSDO in writing, prior to the expiration of the 180-day time period, of the following: the reason why the certificate holder has not conducted any commercial air tours during the consecutive 180-day period; and the date the certificate holder intends on resuming commercial air tours operations. The FSDO will notify the certificate holder of any extension to the consecutive 180-days. A certificate holder may be granted one extension.

(6) The FAA retains the right to re-distribute, reduce, or revoke allocations based on:

(i) Efficiency of airspace;

(ii) Voluntary surrender of allocations;

(iii) Involuntary cessation of operations; and

(iv) Aviation safety.

8. Section 93.323 is added to read as follows:

§ 93.323 Flight plans.

Each certificate holder conducting a commercial SFRA operation must file a visual flight rules (VFR) flight plan in accordance with § 91.153. This section does not apply to operations conducted in accordance with § 93.309(g). The flight plan must be on file with a FAA Flight Service Station prior to each flight. Each VFR flight plan must identify the purpose of the flight in the "remarks" section according to one of the types set forth in the "Las Vegas Flight Standards District Office Grand Canyon National Park Special Flight Rules Area Procedures Manual" which is available from the Las Vegas Flight Standards District Office.

9. Section 93.325 is added to read as follows:

§ 93.325 Quarterly reporting.

(a) Each certificate holder must submit in writing, within 30 days of the end of each calendar quarter, the total number of commercial SFRA operations conducted for that quarter. Quarterly reports must be filed with the Las Vegas Flight Standards District Office.

(b) Each quarterly report must contain the following information.

(1) Make and model of aircraft;

(2) Identification number (registration number) for each aircraft;

(3) Departure airport for each segment flown;

(4) Departure date and actual Universal Coordinated Time, as applicable for each segment flown;

(5) Type of operation; and

(6) Route(s) flown.

Issued in Washington, DC, on March 28, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–7949 Filed 3–28–00; 4:59 pm]

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Federal Register

Tuesday,
April 4, 2000

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91, et al.
Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 93, 121, and 135

[Docket No. FAA–99–5926; Amendment No. 93–80]

RIN 2120–AG74

Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends special operating rules and airspace for those persons operating aircraft in the area designated as the Grand Canyon National Park Special Flight Rules Area (SFRA). Specifically, this action modifies the eastern portion of the SFRA and the Desert View Flight-free Zone (FFZ); establishes a corridor through the Bright Angel FFZ for future noise efficient/quiet technology aircraft; and modifies the Sanup FFZ to provide for a commercial route over the northwestern section of the Grand Canyon National Park (GCNP). In addition, this action makes editorial corrections to several previously issued special operating rules for this affected area. The FAA is taking this action to assist the National Park Service in fulfilling the statutory mandate of substantially restoring the natural quiet and experience in GCNP.

EFFECTIVE DATE: This final rule is effective on December 1, 2000.

FOR FURTHER INFORMATION CONTACT: Joseph C. White, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

History

On December 31, 1996, the FAA published three concurrent actions (a final rule, a Notice of Proposed Rulemaking (NPRM), and a Notice of Availability of Proposed Commercial Air Tour Routes) in the **Federal Register** (62 FR 69301) as part of an overall strategy to further reduce the impact of aircraft noise on the GCNP environment and to work with the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law (Pub. L.) 100–91 of substantially restoring the natural quiet and experience in GCNP. The final rule amended Title 14, Part 93, of the Code of Federal Regulations by adding a new Subpart U to codify the provisions of Special Federal Aviation Regulation No. 50–2 (SFAR 50–2). Additionally, this rule modified the dimensions of the GCNP SFRA, established new and modified existing FFZs; established new and modified existing flight corridors; and established reporting requirements for commercial air tour operators operating in the SFRA. In addition, the final rule prohibited commercial air tours in the Zuni Point and Dragon corridors during certain time periods, and placed a temporary limit on the number of aircraft that could be used for commercial air tour operations in the GCNP SFRA. These provisions originally were to become effective on May 1, 1997.

On February 26, 1997, the FAA published a final rule that delayed the implementation of certain sections of the December 31, 1996, final rule (62 FR 8862). Specifically, this action delayed the effective date, until January 31, 1998, of those sections of the rule that address the SFRA, FFZs, and flight corridors, respectively §§ 93.301, 93.305, 93.307. In addition, certain portions of SFAR No. 50–2 were reinstated and the expiration date extended. Implementation was delayed to allow the FAA and the NPS to consider comments and suggestions to improve the route structure. On December 17, 1997, the FAA took action to delay further the implementation of the above mentioned sections of the rule and continued the extension of certain portions of SFAR No. 50–2 until January 31, 1999 (62 FR 66248). On February 3, 1999, the FAA again took action to further delay implementation of the above mentioned sections and continued the extension of certain portions of SFAR No. 50–2 until January 31, 2000 (64 FR 5152). It is noted that these actions did not affect or delay the implementation of the curfew, aircraft cap, or reporting requirements of the rule, which were effective May 1, 1997.

Recent Actions

On May 15, 1997, the FAA published a Notice of Availability of Proposed Routes and a companion NPRM (Notice No. 97–6) that proposed two quiet technology incentive corridors over the GCNP. The first corridor, through the Bright Angel FFZ, was planned for quiet technology aircraft use only. The second corridor, through National Canyon, would be for westbound quiet-technology aircraft after December 31, 2001. The FAA, in consultation with the NPS and Native Americans, determined not to proceed with a corridor through National Canyon. Consequently, on July 15, 1998, the FAA withdrew Notice 97–6 (63 FR 38232) in its entirety.

On July 9, 1999, the FAA published two NPRMs (Notice 99–11 and Notice 99–12) to assist the NPS in achieving the statutory mandate imposed by Pub. L. 100–91 to provide for the substantial restoration of natural quiet and experience in GCNP by reducing the effect of aircraft noise from commercial air tours on GCNP. Notice 99–11, Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones (64 FR 37296, Docket No. 5962) proposed to modify the dimension of the GCNP SFRA. The proposed changes to the SFRA would modify the eastern portion of the SFRA, the Desert View FFZ, the Bright Angel FFZ and the Sanup FFZ. Notice 99–12, Commercial Air Tour Limitations in the Grand Canyon National Park Special Flight Rules Area, (64 FR 37304, Docket No. 5927) proposed to limit the number of commercial air torus that may be conducted in the SFRA and to revise the reporting requirements for commercial SFRA operations. The specific proposals of Notice No. 99–12 are discussed in a final rule found elsewhere in this **Federal Register**.

On July 20, 1999 (64 FR 38851), the FAA published a notice announcing two public meetings on the NPRMs. The meetings, which were held on August 17 and 19, 1999, in Flagstaff, Arizona, and Las Vegas, Nevada, sought additional comment on the NPRMs and on the associated supplemental draft environmental assessment.

Proposed Actions of Notice 99–11

The airspace modification proposal, Notice No. 99–11, the subject of this final rule, proposed to modify the Grand Canyon SFRA and Desert View FFZ by moving the respective boundaries five (5) nautical miles to the east. The rationale for the proposal was to allow entry and exit to routes as well as to curtail travel over several Traditional Cultural Properties (TCP) on the eastern side of the GCNP, which concerns the Zuni, Hopi, and Navajo Tribes. These sites were identified through consultation with affected tribes in accordance with the National Historic Preservation Act (NHPA). It is noted that specific locations of these Traditional Cultural Properties are not identified pursuant to section 304 of the NHPA, which provides for confidentiality of cultural and religious sites. In the proposed rule, the FAA sought to reduce the impact of air tours over these TCPs by the proposed

modification of the eastern portion of the SFRA and the Desert View FFZ.

In addition, Notice No. 99–11 proposed to establish a provisional incentive corridor through the Bright Angel FFZ, one nautical mile in width, to be used in the future only by aircraft meeting a noise efficiency/quiet technology standard, which has yet to be developed.

This proposed incentive corridor would pass through the Bright Angel FFZ along the northern boundary of the current Bright Angel FFZ as defined in SFAR 50–2. Once quiet technology/noise efficient aircraft are defined and the Bright Angel FFZ is implemented, the FAA would anticipate a three fold benefit. First, fewer aircraft would be flying over the northern rim of the canyon along the Saddle Mountain Wilderness Area, where the NPS and U.S. Forest Service have indicated that noise-sensitive activity regularly occurs. Second, noise from the air tour aircraft would be dispersed between the northern boundary of the Bright Angel FFZ and the proposed incentive corridor, thereby reducing the level of concentrated aircraft noise along any one route. Third, opening this corridor only to aircraft meeting the noise efficiency/quiet technology standard would provide a valuable and tangible incentive for the air tour operators to convert to quieter aircraft. The Bright Angel Corridor could thereby provide the benefit of a reduction in the level of aircraft noise over time.

Finally, the FAA proposed to modify the Sanup FFZ to provide for a route over the northwestern section of the GNCP, and to provide for two transportation routes to Tusayan. The elimination of current routes Blue 1 and Blue 1A, to be replaced by Blue Direct North and Blue Direct South, would cause traffic to transit to over the Sanup FFZ. To accommodate these two routes, the FAA proposed to modify the northern portion of the Sanup FFZ so that the Blue Direct South does not fly over a FFZ. In addition, it was proposed to eliminate a small area in the northwestern portion of the Sanup FFZ to accommodate the Blue 2 air tour route. The FAA acknowledged that this modification would eliminate a small area of previously designated FFZ; however, the elimination of the Blue 1 and Blue 1A routes, which transit more pristine areas of the SFRA, would have added benefits for the restoration of natural quiet and experience in GCNP.

Discussion of Comments

In response to Notice 99–11, the FAA received more than 1,000 comments, and 556 comments on Notice 99–12. Many commenters sent the identical comments to both dockets. Many of these comments included form letters from the air tour industry and supporters of environmental groups. Comments were also received from industry associations (e.g., Grand Canyon air Tour Council (CGATC); Aircraft Owners and Pilots Association (AOPA); Helicopter Association International (HAI); Experimental Aircraft Association (EAA); National Air Transportation Association (NATA)); an environmental coalition (Sierra Club; Grand Canyon Trust; The Wilderness Society; Friends of the Grand Canyon; Maricopa Audubon Society; National Parks and Conservation Association; Natural Sounds Society; Quiet Skies Alliance); river rafting organizations (Arizona Raft Adventures; Grand Canyon River Guides); air tour operators (AirStar Helicopters; Sunrise Airlines; Southwest Safaris; Grand Canyon Airlines; Papillon Grand Canyon Helicopters; Windrock Aviation; Air Vegas; Heli USA; Eagle Jet Charter, Inc.); aircraft manufacturers (Twin Otter International, Ltd.; Stemme USA, Inc.); tourism organizations (Grand Canyon Air Tourism Association; Arizona Office of Tourism); governmental officials (Arizona Speaker of the House; Arizona State Legislature; Governor of Arizona; Arizona Corporation Commission; Clark County Department of Aviation); and Native American tribes (Hualapai; Havasupai; Navajo). Some of the substantive comments include commissioned studies, and economic and noise impact analyses (J.R. Engineering; Riddel and Schwer).

The following is an analysis of the pertinent general comments received in response to Notice 99–11 by specific proposal and the rationale of the final rule.

AOPA Comments/Petition for Reconsideration

AOPA, on behalf of its members, comments that the FAA should clarify the raised floors of the Marble Canyon and North Canyon sectors as amended in the 1996 final rule. Further, AOPA states that the FAA should include language clarifying that the new ceiling will not impact other types of non-commercial general aviation flights. AOPA comments that the elimination of the Fossil Canyon Corridor and the raised floors of the Marble Canyon and North Canyon sectors unfairly penalizes general aviation flights. AOPA recommends restoring the sector altitudes for general aviation overflights to the original altitudes of 5,999' MSL and 4,999' MSL respectively. In its comment, AOPA also refers to a January 15, 1997, petition for reconsideration of the December 1996 final rule. In that petition, AOPA raised similar issues as presented in its comment to the airspace modification proposal. Specifically AOPA asks that the FAA reconsider and (1) restore the floor of the North Canyon sector to 5,000 feet MSL for general aviation overflight; (2) restore the floor for the Marble Creek Canyon sector to 6,000 feet MSL; (3) establish the Fossil Canyon for general aviation overflight; and (4) establish the proposed Tuckup corridor for general aviation flight.

FAA response and final rule action:

In the December 1996 final rule, the FAA took action to prohibit air tour operations in the Tuckup Corridor. However, the Tuckup Corridor has always been open to general aviation traffic. The FAA regrets that this was not made clear when it provided a map for public comment on the new routes. General aviation pilots should refer to the Grand Canyon VFR Aeronautical Chart (General Aviation), which clearly shows the Tuckup Corridor and its flight altitudes. The FAA stated that it was not modifying the Tuckup Corridor as recently as May 15, 1997, when it published Notice 97–6 proposing that certain corridors be established for quiet technology aircraft. Comments regarding Marble Canyon and Fossil Canyon corridors are addressed below.

The FAA apologizes for not responding to AOPA's petition earlier, but addresses and disposes of that petition in this final rule. The December 1996 final rule simplified the northeast sector of the SFRA by combining the Marble Canyon and the North Canyon sector into one sector and renaming the section the Marble Canyon Sector with the minimum sector altitude of 8,000 MSL. The route altitude for commercial air tour aircraft, for the most part, in this sector is 7,500 MSL, thus allowing for a 500 foot MSL buffer. The FAA is aware that between Cave Springs Rapids and Saddle Mountain, air tour operators are climbing so as to join the Saddle Mountain and North Rim air traffic (Black 1 route). Areas for general aviation operations are to be conducted at a slightly higher altitude than the commercial air tour routes to segregate general aviation operations from the relatively heavy commercial air tour operations. While the routes reserve different altitudes for different types of operations, they do not in any way assure separation of individual aircraft (all pilots flying in the SFRA remain fully responsible for seeing and avoiding other aircraft). Consequently, it is not feasible to consider lowering the altitude for general aviation traffic in

this sector below 8,000 feet MSL. Therefore, the FAA denies this portion of AOPA's petition for reconsideration.

AOPA also requests that the FAA consider and reopen the Fossil Canyon Corridor to general aviation traffic. In promulgating the December 1996 final rule, it was the FAA's intention to close the Fossil Canyon corridor for commercial air tour flights only. As stated in the preamble to that rule, the FAA found that the Fossil Canyon corridor was not heavily used for commercial air tour purposes and that the operators who do use the corridor will have alternative routes. The FAA inadvertently did not include the Fossil Canyon corridor in section 93.307, Minimum flight altitudes for commercial air tour aircraft and transient and general aviation operation. The FAA corrects that error in this rulemaking by making the Fossil Canyon Corridor available only to transient and general aviation operations at a flight altitude of 10,500 feet MSL and above.

Delay of Rulemaking

Twin Otter International, Ltd., and its affiliate, Grand Canyon Airlines, comments that the proposals should be withdrawn. These commenters state that they are prepared to pursue every remedy available to stop these proposals.

The Arizona Corporation Commission expresses concern over the lack of state input into the proposed rules to further restrict the air tour industry at GCNP. The Commission expresses that the Grand Canyon is an extremely important component of Arizona's tourism industry. It believes that the same consideration should be given to Arizona officials that the FAA gave to Colorado officials in banning air tours over Rocky Mountain National Park.

FAA response and final rule action:

The FAA believes that Twin Otter's comment is directed to changes in the route structure and limitations on operations rather than the minor changes to the SFRA and FFZs of this rulemaking.

In response to the Arizona Commission, the FAA finds that this final rule does no harm to the Arizona tourist industry. The modification to the Sanup FFZ to accommodate two routes through the center of the park and the proposed extension of the SFRA do not restrict commercial air tours. The FAA has responded to the issues of changed routes and limits on operations in the appropriate documents published concurrently in the **Federal Register**. Thus the FAA does not believe it is necessary to delay implementation of this rule other than for training purposes.

Modifying the SFRA and FFZs

Air Vegas comments that it does not matter how the SFRA is realigned, because what really matters is how the route system is carved out of the SFRA.

The Maricopa Audubon Society recommends that the FAA close the Dragon Corridor (which is located just west of Hermit's Rest); this corridor impacts the Hermit, Boucher, Waldron, and Tonto trails. This commenter adds that the proposal would wrap tour flights closer around the south side of Point Sublime, which is "an unacceptable way to treat visitor experience at such a spectacular and noted backcountry vista site." Finally, this commenter says that FFZs need to be large or they do not work and recommends enlargement of the Marble Canyon corridor and Powell Plateau area.

Clark County Department of Aviation says that Congress did not give the FAA the power to arbitrarily limit airspace. Clark County notes that the United States Court of Appeals for the District of Columbia Circuit recently stressed the need for agencies to identify "intelligible principles" guiding their actions under power delegated by Congress. *American Trucking Assn* v. *EPA*, No. 97–1440 D.C. Cir. 1999. Clark County states that the FAA must carefully revisit its decision to avoid creating a precedent that could affect flights over thousands of sites across the West for which some cultural, historic and/or religious claim could be made.

Arizona Raft Adventures says that there appears to be modest improvement on some of the reconfiguration of air tour routes, especially as pertains to the Colorado River in Marble Canyon (flights would be further away from the rim of the Marble Platform); the route which passes between the Bright Angel and Zuni corridors; and the National Canyon area (routes have moved south, providing relief to the Havasupai). The commenter points out, however, that there are other compromises, such as effects on Point Sublime, Point Imperial, and Saddle Mountain. This commenter concurs with others who call for the elimination of the Dragon corridor.

FAA response and final rule action:

The route structure for GCNP is being addressed in a separate disposition of comments document that is being published concurrently with this final rule.

In response to commenters who want to close the Dragon Corridor to aircraft overflights, the FAA did not propose such a change. NPS and FAA are seeking to impose the regulations necessary to achieve substantial steps towards the statutory mandate. At this time, the agencies have decided not to close the Dragon Corridor.

The FAA disagrees with Clark County that it is arbitrarily limiting available airspace in GCNP. Congress mandated the goal of substantial restoration of natural quiet in GCNP in Pub. L. 100–91. Pub. L. established the process for substantially restoring the natural quiet and experience in GCNP. Additionally, Congress granted NPS the discretion to use its expertise to establish a definition of the substantial restoration of natural quiet. NPS determined that substantial restoration of natural quiet required that over 50% of the GCNP should be quiet 75–100% of the time. The NPS in its 1994 Report to Congress to set forth the methods it would consider to achieve its goal of substantial restoration of natural quiet. The FAA, consistent with the direction of the statute, implements NPS recommendations unless it has safety concerns with the recommendations. Thus the statute and the NPS recommendations provide guiding principles for the agencies implementing the regulations effecting the statutory goal. Additionally, the FAA has developed standards in its relations with the Native American Tribes and Nations and, as explained in the Final Supplemental Environmental Assessment, Chapter 4 (Sections regarding Noise and Department of Transportation Section 4(f)), the FAA has used the same criteria in these rulemakings as were used in evaluating the expansion of arrivals into Los Angeles International Airport. See *Morongo Band of Mission Indians* v. *FAA*, 161 F.3d 569 (9th Cir. 1998).

Extending the SFRA East and Modifying the Desert View FFZ

The FAA received a number of comments opposing the SFRA expansion. AOPA also raises the issue that if hazardous weather or flight conditions required a route change that might penetrate the boundaries or transition area, the GCNP "has no controlling authority to contact for permission." This commenter states that general aviation traffic will have difficulty safely avoiding the Sunny Military Operations Area (MOA) and "legally avoiding the SFRA when flying from the south to destinations such as Tuba City and Page." AOPA recommends modifying the southeastern boundary "to allow at least five (5) nautical miles of airspace between the boundary of the SFRA and the Sunny MOA." Moreover, AOPA also finds that this change is outside scope of Pub. L. 100–91 which relates to restoration of natural quiet, not protection of Native American Traditional Cultural Properties.

EAA comments that moving the SFRA boundary as well as the Desert View FFZ to the east imposes air space regulations on the Navajo Nation that did not previously exist. EAA further comments that this proposal pushes GA flights too close to the Sunny MOA. Some commenters state that this is an unnecessary infringement on the limited National Airspace available for public use.

Comments from general aviation pilots indicate that they do not want to see the boundaries of the Desert View FFZ expanded to the east because the canyons of the Little Colorado are a de facto flyway, serving as the obvious entrance point to Grand Canyon airport from the east.

AirStar Helicopters says that the extension of the Desert View FFZ will have a negative economical impact on the Navajo Nation through loss of business and will add cost to operators with the additional miles being flown. Likewise, a film industry spokesman from Locations Southwest comments that he works with the Navajo and Hualapai in filming areas outside the jurisdiction of GCNP. His concern is that the extension of the Desert view FFZ may adversely affect his ability to film and thus affect the income of the two tribes. Papillon Helicopters comments that the Navajo tribe will lose fees paid in compensation for access to their lands. Such fees would now go to the NPS.

Sunrise Airlines comments that the proposed easterly expansion does not provide a benefit to the GCNP and therefore the boundaries should not be moved easterly from its current location. This commenter disagrees with the expansion of the Desert View FFZ. Although accommodating the concerns of the Native Americans may seem to be "the right thing to do"; it is not consistent with the intent of Pub. L. 100–91. Expanding the Desert View FFZ does nothing to restore natural quiet in the National Park, and the proposed easterly expansion of the FFZ is entirely outside the GCNP. This commenter posits that creating an FFZ outside the GCNP boundaries will set a very dangerous precedent giving implied rights to land owners.

The environmental coalition supports expanding the SFRA east onto the Navajo Nation and extending the Desert View FFZ five miles east thus offering some protection to the Little Colorado River and important Native American cultural sites.

FAA Response and Final Rule Action:

The FAA proposed the SFRA and Desert View FFZ expansion to improve the safe navigation of general aviation pilots, to realign the Desert View FFZ with the GCNP boundaries, and to protect TCPs. The FAA agrees that the proposed action could be perceived as forcing general aviation traffic closer to the Sunny MOA and compromise safety, especially in inclement weather. Further, it was not the intent of the proposal to establish a FFZ over non-park land.

Therefore, in this final rule the Desert View FFZ's eastern boundary will be moved back to the GCNP boundary. The SFRA boundary is moved 5 miles to the east as proposed. Additionally, the FAA has modified the southeastern portiou of the SFRA to allow three and a half (3½) nautical miles between the boundary of the SFRA and the Sunny MOA. The FAA finds that this action in the final rule both protects the confluence of the Little Colorado River and allows for safe general aviation transit through the area.

To operate safely in the vicinity of a MOA, general aviation operators should contact the appropriate flight service station to stay aware of actions in the MOA. The FAA also reminds general aviation visitors to GCNP that a provision for deviations into the SFRA is provided in section 93.305 for emergencies and other safety of flight situations.

Bright Angel FFZ

The FAA received several comments from air tour operators who maintain that the failure to immediately implement a quiet aircraft incentive route creates a disincentive to development of quiet aircraft technology and imposes a burden on operators that have already acquired quiet aircraft. Furthermore, these commenters state that the Bright Angel corridor would improve flight safety by giving air tour operators the ability to fly a safer route at a lower altitude. Without the Bright Angel corridor operators must fly over Saddle Mountain Wilderness Area which is a longer route over higher terrain and increases aircraft direct operating costs by 20%.

The Grand Canyon River Guides Association opposes the proposed future incentive route for noise-efficient aircraft through the Bright-Angel FFZ because FFZs should be flight-free. The FAA and NPS should not even consider such routes while the minimum goal of substantial restoration of natural quiet still had not been met.

Sunrise Airlines states that the expansion of the SFRA to the south will benefit the Bright Angel FFZ by placing aircraft further from this zone and therefore should be adopted west of the Zuni Point Corridor but not east of the Zuni Point Corridor where there is no benefit.

The environmental coalition opposes the addition of an "incentive corridor" through the Bright Angel FFZ. These associations state that rather than allowing quiet aircraft to fly on more routes, quieter aircraft should be used to meet the existing substantial restoration requirement.

FAA response and final rule action:

The FAA reiterates its commitment to an incentive corridor as stated in NPRM 96–15, Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park. Adoption of such a corridor is consistent with the Comprehensive Noise Management Plan, which "will address the best available technology, provision of appropriate incentives for investing in quieter aircraft, and appropriate treatment for operators that have already made such investments." (62 FR 69338: December 31, 1996) However, the Bright Angel corridor cannot be used until the standards for quiet technology are developed.

In this final rule the FAA retains the Bright Angel Corridor for future used by quiet technology aircraft once quiet technology is defined in a subsequent final rule. Additionally, the location of this incentive corridor would overlie the current location of the Black 1A and Green 1A routes. Consequently, the coordinates for this incentive corridor have been further defined using North American Datum 83 (NAD 83) versus NAD 27. This new defined area will place the incentive corridor .6 to .8 nautical miles north of the coordinates that were proposed in Notice 97–6.

Editorial Corrections

The FAA corrects an inadvertent error in the Toroweap/Shinumo FFZ. In SFAR 50–2, a portion of the airspace in the vicinity of the Hualapai Reservation was inadvertently included as part of the Toroweap FFZ, which was subsequently combined into the Toroweap/Shinumo FFZ in the 1996 final rule (61 FR 69331). The FAA never intended to extend the FFZ over the Hualapai Reservation. Therefore, a small circular area in the southeast portion of that FFZ, near Toroweap Overlook, is removed. This will allow the boundaries of the Toroweap/Shinumo FFZ to

coincide with the boundaries of the Hualapai Reservation.

On December 31, 1996 the FAA published the Special Flight Rules in the Vicinity of Grand Canyon National Park final rule. The final rule amended part 93 of Title 14, Code of Federal Regulations (14 CFR), by adding a new subpart to codify the provisions of Special Federal Aviation Regulation (SFAR) 50–2, Special Flight Rules in the Vicinity of Grand Canyon National Park, AZ. However, the December 31, 1996 final rule contained a typographical error that inadvertently moved a portion of the northwestern boundary of the SFRA of the GCNP. This error causes a certain air tour route (Green 4) to fall partially outside of the SFRA.

Further, in describing the SFRA around the Peach Springs VORTAC, a typographical error of ten seconds in Latitude caused the SFRA not to be adjoined in this area.

The Tuweep Airstrip was unintentionally left out of SFAR 50–2. This omission causes the Tuweep Airstrip not to have charted information regarding general operating procedures used within 3 nautical miles and below 3,000 feet above the airport's elevation. This action corrects those errors by revising the legal description of the SFRA boundary as described in section 93.301, and adding the Tuweep Airstrip to section 93.309(f).

SFAR 50–2

SFAR 50–2 is removed in this final rule as of December 1, 2000. At that time the airspace modifications of this final rule will become effective to accommodate the new Blue Direct North and Blue Direct South routes. The FAA has determined that delaying implementation until December 1, 2000, will enable the air tour operators to ensure sufficient training on the new routes during a time period outside their peak season. Therefore, SFAR 50–2 is removed, effective December 1, 2000.

Environmental Review

The FAA, in cooperation with NPS and the Hualapai Indian Tribe, prepared a Draft Supplemental Environmental Assessment (SEA) for the proposed rules to assure conformance with the National Environmental Policy Act (NEPA) of 1969, as amended, and other applicable environmental laws and regulations. Copies of the Draft SEA were circulated to interested parties and placed on the Docket, where it was available for review. On July 9, 1999, the Notice of Availability of the SEA for the Proposed Actions Relating to the GCNP was published in the **Federal Register** (64 FR 37192). Comments on the Draft SEA were to be received on or before September 7, 1999.

Comments received in response to this Notice of Availability have been addressed in the final SEA published concurrently with this final rule. Based upon the final SEA and careful review of the public comments to the draft SEA, the FAA has determined that a finding of no significant impact (FONSI) is warranted. The final SEA and the FONSI were issued in February 2000. Copies have been placed in the public docket for this rulemaking, have been circulated to interested parties, and may be inspected at the same time and location as this final rule.

Economic Summary

Any changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. A regulatory evaluation of the proposal is in the docket.

Because of the continued high public interest surrounding GCNP regulations and the potential implications within a small locality, the FAA has determined that this final rule will be "a significant regulatory action" as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). The FAA, however, has determined that this final rule will not have a significant economic impact on a substantial number of small entities (commercial air tour operators conducting flights within Grand Canyon National Park), and does not warrant further regulatory flexibility action. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities. In addition, the final rule will not have a significant impact on international trade.

Costs

The costs associated with the reconfiguration of the Desert View and Bright Angel Flight-free Zones (FFZ) as described in 14 CFR 93.305, were accounted for in the December 31, 1996 final rule (61 FR 69302). This analysis therefore, is concerned only with the costs associated with the modifications to the reconfigurations.

Special Flight Rules Area

The SFAR 50–2 Black 2 and Black 3 routes currently used are the only air tour routes that will be affected by the concomitant eastward shifts of the SFRA. The Black 2 route extends mostly over plateau, not the Canyon, and is utilized as an access route to the Black 1 tour route over the Canyon. The Black 2 route is not a prominent feature of any air tour. Information provided for the base year indicates that only one operator utilized the Black 2 route to conduct air tours of the Grand Canyon. Similarly, the Black 3 route is more of an access within the SFRA to the more scenic Black 1 air tour route. Operators accessing the Grand Canyon via the Black 3 route, however, split south at Imperial Point and remain on the Black 1 route through the Zuni Point Corridor.

The FAA believes that a shift in the Black 2 route eastward resulting from the eastward shift in the SFRA by five nautical miles will serve only to realign the access/approach to the Black 1 tour route. It will not alter the tour offerings of the individual operator discussed above, and any changes in the operator's variable operating costs resulting from adding five nautical miles to the overall air tour (about 2–3 minutes) are negligible. Similarly, the FAA believes there will be no impact on the operators entering the SFRA on the Black 3 route to conduct air tours of the Canyon. The eastward extension of the SFRA by five nautical miles will not necessarily add distance and time to the tours using the Black 3, but rather, it will tend to substitute distance and time in controlled airspace for distance and time in unrestricted airspace. Therefore, the FAA concludes that the costs for this part of the final rule are *de minimus*. However, as discussed in the comments section to the Regulatory Evaluation, Southwest Safaris may experience a cost impact due to the SFRA shift and the route change. The FAA can not assess the specific impact of the shift because it has not received data from Southwest Safaris to document the number of air tours conducted during May 1, 1997–April 30, 1998.

Bright Angel Flight-Free Zone

The FAA is establishing the Bright Angel corridor for future use by quiet technology aircraft. Readers must understand that until a standard for quiet technology aircraft is developed and adopted, this corridor will not be available for use.

The Bright Angel incentive corridor is parallel to the route that is currently depicted on the Grand Canyon VFR Aeronautical Chart as the Green 1A and Black 1A, or Alpha routes. This corridor will be available in the future only to noise efficient/quiet technology aircraft. Currently, the FAA and the NPS have not defined what is a noise efficient/quiet technology aircraft. Consequently, the route will not be available for immediate use except in weather emergencies but potentially should be available for use in the future.

Other Areas

The Sanup FFZ will be modified to accommodate the new route system contained in the concurrent Notice of Route Availability. No estimated costs are associated with this alternative. In addition, no estimated costs are associated with reopening the Fossil Canyon Corridor.

Cost Summary

The FAA estimates that any costs associated with the SFRA expansion of five nautical miles to the east will be *de minimus*, except, possibly, in the case of Southwest Safaris, based on the same reasoning as previously stated. Also, the FAA determines that the modification to the Sanup FFZ, and the reopening of the Fossil Canyon Corridor will result in no additional costs. The potential cost of the incentive corridor through the Bright Angel FFZ cannot be estimated at this time. The potential cost will be estimated in a future regulatory evaluation for the rulemaking that defines noise efficient/quiet technology aircraft.

Benefits

The primary benefit associated with this final rule is a reduction of circumnavigation costs for general aviation operators. The potential benefit of the incentive corridor through the Bright Angel FFZ cannot be estimated at this time. The potential benefits will be estimated in a future regulatory evaluation for the rulemaking that defines noise efficient/quiet technology aircraft.

The reopening of the Fossil Canyon Corridor will reduce circumnavigation costs for GA operators. The expansion of the eastern boundary of the SFRA addresses certain concerns of the Native Americans in that area while at the same time posing no perceived additional costs on operators. Benefits associated with the modification to the Sanup FFZ cannot be quantified without additional information regarding the air tour route alternative.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act of 1980 estimates "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principal, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rational for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act. However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the end of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This final rule will only have a de minimus cost impact on the certificate holders for whom cost have been estimated. Accordingly, pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Federal Aviation Administration certifies that this rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The FAA has determined that the final rule will have no affect on non-U.S. operators of foreign aircraft operating outside the United States nor will it have an affect on U.S. trade or trade relations.

Unfunded Mandates Assessment

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, requires each Federal Agency, to the extend permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure of $100 million or more (when adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector. Section 204(a) of the Act, 2 U.S.C. 1534(a), requires the Federal agency to develop an effective process to permit timely input by elected officers (or their designees) of State, local, and tribal governments on a proposed "significant intergovernmental mandate." A "significant intergovernmental mandate" under the Act is any provision in a Federal agency regulation that would impose an enforceable duty upon State, local and tribal governments in the aggregate of $100 million (adjusted annually for inflation) in any one year. Section 203 of the Act, 2 U.S.C. 1533, which supplements section 204(a), provides that, before establishing any regulatory requirements that might significantly or uniquely affect small governments, the agency shall have developed a plan, which, among other things, must provide for notice to potentially affected small governments, if any, and for a meaningful and timely opportunity for these small governments to provide input in the development of regulatory proposals.

This final rule does not contain any Federal intergovernmental or private sector mandates. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

International Compatibility

The FAA has reviewed corresponding International Civil Aviation Organization standards and recommended practices and Joint Aviation Authorities requirements and has identified no comparable amendments in foreign regulations.

International Trade Impact Analysis

In accordance with the OMB memorandum dated March 1983, Federal agencies engaged in rulemaking activities are required to assess the effects of regulatory changes on international trade. The modification to the FFZs and SFRA in Grand Canyon National Park of this final rule do not impact international trade for the air tour operators, Native Americans, and park visitors affected by this final rule.

Federalism Implications

The FAA has analyzed this proposed rule under the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action will not have a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the

various levels of government. Therefore, the FAA has determined that this final rule will have the sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 requires that agencies consider the impact of paperwork and other information collection burdens imposed on the public. Under the Act, no person is required to respond to a collection of information unless it displays a valid Office of Management and Budget (OMB) control number.

There are no requirements for information collection associated with this proposed rule that would require approval under the Act.

List of Subjects

14 CFR Parts 91, 121, and 135

Aircraft, Airmen, Aviation Safety.

14 CFR Part 93

Air traffic control, Airports, Navigation (Air), Reporting and recordkeeping requirements.

Adoption of Amendments

For the reasons set forth above, the Federal Aviation Administration amends parts 91, 93, 121, and 135 of Title 14 of the Code of Federal Regulations, effective December 1, 2000, as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46502, 46504, 46506–46507, 47122, 47508, 47528–47531.

PART 121 [AMENDED]

2. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 40119, 444101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 44901, 44903–44904, 44912, 46105.

PART 135 [AMENDED]

3. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

SFAR No. 50–2 [Removed]

4. In parts 91, 121, and 135, Special Federal Aviation Regulation No. 50–2, the text of which appears at the beginning of part 91, is removed.

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

5. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40109, 40113, 44502, 44514, 44701, 44719, 46301.

6. Section 93.301 is revised to read as follows. This supersedes § 93.301 published on December 31, 1996 (61 FR 69330) and delayed until January 31, 2001 (65 FR 5397, February 3, 2000).

§ 93.301 Applicability.

This subpart prescribes special operating rules for all persons operating aircraft in the following airspace, designated as the Grand Canyon National Park Special Flight Rules Area: That airspace extending from the surface up to but not including 18,000 feet MSL within an area bounded by a line beginning at Lat. 35°55′12″ N., Long. 112°04′05″ W.; east to Lat. 35°55′30″ N., Long. 111°45′00″ W.; to Lat. 35°59′02″ N., Long. 111°36′03″ W.; north to Lat. 36°15′30″ N., Long. 111°36′06″ W.; to Lat. 36°24′49″ N., Long. 111°47′45″ W.; to Lat. 36°52′23″ N., Long. 111°33′10″ W.; west-northwest to Lat. 36°53′37″ N., Long. 111°38′29″ W.; southwest to Lat. 36°35′02″ N., Long. 111°53′28″ W.; to Lat. 36°21′30″ N., Long. 112°00′03″ W.; west-northwest to Lat. 36°30′30″ N., Long. 112°35′59″ W.; southwest to Lat. 36°24′46″ N., Long. 112°51′10″ W., thence west along the boundary of Grand Canyon National Park (GCNP) to Lat. 36°14′08″ N., Long. 113°10′07″ W.; west-southwest to Lat. 36°09′30″ N., Long. 114°03′03″ W.; southeast to Lat. 36°05′11″ N., Long. 113°58′46″ W.; thence south along the boundary of GCNP to Lat. 35°58′23″ N., Long. 113°54′14″ W.; north to Lat. 36°00′10″ N., Long. 113°53′48″ W.; northeast to Lat. 36°02′14″ N., Long. 113°50′16″ W.; to Lat. 36°02′17″ N., Long. 113°53′48″ W.; northeast to Lat. 36°02′14″ N., Long. 113°50′16″ W.; to Lat. 36°02′17″ N., Long. 113°49′11″ W.; southeast to Lat. 36°01′22″ N., Long. 113°48′21″ W.; to Lat. 35°59′15″ N., Long. 113°47′13″ W.; to Lat. 35°57′51″ N., Long. 113°46′01″ W.; to Lat. 35°57′45″ N., Long. 113°45′23″ W.; southwest to Lat. 35°54′48″ N., Long. 113°50′24″ W.; southeast to Lat. 35°41′01″ N., Long. 113°35′27″ W.; thence clockwise via the 4.2-nautical mile radius of the Peach Springs VORTAC to Lat. 36°38′53″ N., Long. 113°27′49″ W.; northeast to Lat. 35°42′58″ N., Long. 113°10′57″ W.; north to Lat. 35°57′51″ N., Long. 113°11′06″ W.; east to Lat. 35°57′44″ N., Long. 112°14′04″ W.; thence clockwise via the 4.3-nautical mile radius of the Grand Canyon National Park Airport reference point (Lat. 35°57′08″ N., Long. 112°08′49″ W.) to the point of origin.

7. Sections 93.305 and 93.307 published on December 31, 1996 (61 FR 69330), corrected at 62 FR 2445 (January 16, 1997), and delayed at 65 FR 5397 (February 3, 2000) becomes effective December 1, 2000.

8. Section 93.305 is amended by revising paragraph (a), by revising the last sentence and adding a new sentence to the end of paragraph (b), by revising paragraph (c), and by revising paragraph (d) to read as follows:

§ 93.305 Flight-free zones and flight corridors.

* * * * *

(a) *Desert View Flight-free Zone.* That airspace extending from the surface up to but not including 14,500 feet MSL within an area bounded by a line beginning at Lat. 35°59′58″ N., Long. 111°52′47″ W.; thence east to Lat. 36°00′00″ N., Long. 111°51′04″ W.; thence north to 36°00′24″ N., Long. 111°51′04″ W.; thence east to 36°00′24″ N., Long. 111°45′44″ W.; thence north along the GCNP boundary to Lat. 36°14′05″ N., Long. 111°48′34″ W.; thence southwest to Lat. 36°12′06″ N., Long. 111°51′14″ W.; to the point of origin; but not including the airspace at and above 10,500 feet MSL within 1 nautical mile of the western boundary of the zone. The corridor to the west between the Desert View and Bright Angel Flight-free Zones, is designated the "Zuni Point Corridor." This corridor is 2 nautical miles wide for commercial air tour flights and 4 nautical miles wide for transient and general aviation operations.

(b) * * * This corridor is 2 nautical miles wide for commercial air tour flights and 4 nautical miles wide for transient and general aviation operations. The Bright Angel Flight-free Zone does not include the following airspace designated as the Bright Angel Corridor: That airspace one-half nautical mile on either side of a line extending from Lat. 36°14′57″ N., Long. 112°08′45″ W. and Lat. 36°15′01″ N., Long. 111°55′39″ W.

(c) *Toroweap/Shinumo Flight-free Zone.* That airspace extending from the surface up to but not including 14,500 feet MSL within an area bounded by a line beginning at Lat. 36°05′44″ N., Long. 112°19′27″ W.; north-northeast to Lat. 36°10′49″ N., Long. 112°13′19″ W.; to Lat. 36°21′02″ N., Long. 112°08′47″ W.; thence west and south along the GCNP boundary to Lat 36°10′58″ N., Long. 113°08′35″ W.; south to Lat. 36°10′12″ N., Long. 113°08′34″ W.; thence in an easterly direction along the park boundary to the point of origin; but not including the following airspace designated as the "Tuckup Corridor": at or above 10,500 feet MSL within 2 nautical miles either side of a line extending between Lat. 36°24′42″ N., Long. 112°48′47″ W. and Lat. 36°14′17″ N., Long. 112°48′31″ W. The airspace designated as the "Fossil Canyon Corridor" is also excluded from the Toroweap/Shinumo Flight-free Zone at or above 10,500 feet MSL within 2 nautical miles either side of a line extending between Lat. 36°16′26″ N., Long. 112°34′35″ W. and Lat. 36°22′51″ N., Long. 112°18′18″ W. The Fossil Canyon Corridor is to be used for transient and general aviation operations only.

(d) *Sanup Flight-free Zone.* That airspace extending from the surface up to but not including 8,000 feet MSL within an area bounded by a line beginning at Lat. 35°59′32″ N., Long. 113°20′28″ W.; west to Lat. 36°00′55″ N., Long. 113°42′09″ W.; southeast to Lat. 35°59′57″ N., Long. 113°41′09″ W.; to Lat. 35°59′09″ N., Long. 113°40′53″ W.; to Lat. 35°58′45″ N., Long. 113°40′15″ W.; to Lat. 35°57′52″ N., Long. 113°39′34″ W.; to Lat. 35°56′44″ N., Long. 113°39′07″ W.; to Lat. 35°56′04″ N., Long. 113°39′20″ W.; to Lat. 35°55′02″ N., Long. 113°40′43″ W.; to Lat. 35°54′47″ N., Long. 113°40′51″ W.; southeast to Lat. 35°50′16″ N., Long. 113°37′13″ W.; thence along the park boundary to the point of origin.

* * * * *

9. Section 93.307 is amended by revising the heading for paragraphs (a)(1) and (b)(1) and adding a new paragraph (b)(2)(iv) to read as follows:

§ 93.307 Minimum flight altitudes.

(a) * * *

(1) *Commercial air tours*—

* * * * *

(a) * * *

(1) *Commercial Air tours*— * * *

(2) * * *

(iv) Fossil Canyon Corridor. 10,500 feet MSL.

10. Section 93.309 is amended by revising paragraphs (b) and (f) to read as follows:

§ 93.309 General operating procedures.

* * * * *

(b) Unless necessary to maintain a safe distance from other aircraft or terrain, proceed through the Zuni Point, Dragon, Tuckup, and Fossil Canyon Flight Corridors described in § 93.305 at the following altitudes unless otherwise authorized in writing by the Flight Standards District Office:

(1) *Northbound.* 11,500 or 13,500 feet MSL.

(2) *Southbound.* 10,500 or 12,500 feet MSL.

* * * * *

(f) Is conducted within 3 nautical miles of Grand Canyon Bar Ten Airstrip, Pearce Ferry Airstrip, Cliff Dwellers Airstrip, Marble Canyon Airstrip, or Tuweep Airstrip at an altitude less than 3,000 feet above airport elevation, for the purpose of landing at or taking off from that facility; or

* * * * *

Issued in Washington, DC, on March 28, 2000.

Jane F. Garvey,

Administrator.

[FR Doc. 00–7950 Filed 3–28–00; 4:59 pm]

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Federal Register

Tuesday,
April 4, 2000

Part IV

Department of Justice

Office of Juvenile Justice and Delinquency Prevention

Program Announcement for the Evaluation of Parents Anonymous®; Notice

DEPARTMENT OF JUSTICE

Office of Juvenile Justice and Delinquency Prevention

[OJP (OJJDP)–1268]

Program Announcement for the Evaluation of Parents Anonymous®

AGENCY: Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention, Justice.

ACTION: Notice of solicitation.

SUMMARY: The Office of Juvenile Justice and Delinquency Prevention (OJJDP) is requesting applications for the evaluation of the Parents Anonymous® program. The purpose of the evaluation is to assess the implementation and effectiveness of Parents Anonymous® programs in preventing and treating child abuse and neglect.

DATES: Applications must be received by June 19, 2000.

ADDRESSES: Interested applicants must obtain an application kit from the Juvenile Justice Clearinghouse at 800–638–8736. The application kit is also available at OJJDP's Web site at www.ojjdp.ncjrs.org/grants/about.html#kit. (See "Format" and "Delivery Instructions" later in this announcement for instructions on required standards and the address to which applications must be sent.)

FOR FURTHER INFORMATION CONTACT: Dean Hoffman, Program Manager, Office of Juvenile Justice and Delinquency Prevention, 202–353–9256. [This is not a toll-free number.]

SUPPLEMENTARY INFORMATION:

Purpose

To assess the implementation and effectiveness of Parents Anonymous® programs in preventing and treating child abuse and neglect. This 3-year process and outcome evaluation will be funded as a cooperative agreement.

Background

Parents Anonymous® is a national child abuse prevention program dedicated to family strengthening in partnership with local communities. From a single group in 1970, Parents Anonymous® has grown into more than 1,000 weekly mutual support groups for parents and complementary children's programs. In communities throughout the country, partnerships are formed between local communities, Parents Anonymous® organizations, and Parents Anonymous, Inc., the national accrediting entity. With a 30-year history and more than 30,000 local volunteers, Parents Anonymous® worked with 100,000 parents and their children in 1997 to help prevent child abuse and neglect.

The Parents Anonymous® national network consists of 32 State and local Parents Anonymous® organizations, which oversee the weekly Parents Anonymous® groups and children's programs. Parents Anonymous, Inc., provides training and technical assistance to Parents Anonymous® organizations and State and local government agencies to foster the development and maintenance of Parents Anonymous® programs. Program materials, technical assistance services, and regional and national trainings are designed and conducted by Parents Anonymous, Inc.

Mutual support and shared leadership are the cornerstones of the Parents Anonymous® model. Parents Anonymous® programs partner in local communities with volunteers, agencies, and parents to establish groups to strengthen families. The program is both a community development model and a prevention and treatment model. Parent leaders are assigned meaningful and identifiable roles at both the group and organizational levels to ensure shared leadership and the development of more responsive programs to meet the needs identified by families. This unique model actualizes the principles of mutual support and shared leadership not just in the group model but at the organizational level. This is accomplished through the leadership roles of parents who participate in effective outreach to other parents, program planning and implementation, strategic planning, fundraising, policy decisions, organizational governance, and evaluation activities.

Applicants can obtain a Parents Anonymous® information package through the Office of Juvenile Justice and Delinquency Prevention's (OJJDP's) Juvenile Justice Clearinghouse by calling 800–638–8736. Information about Parents Anonymous® will also be available during the bidders' conference discussed later in this Notice.

Evaluation Strategy

This evaluation will be conducted in two phases. During Phase I (12 months), the process evaluation will investigate how the theoretical premises, principles, best practices, and model of Parents Anonymous® are implemented in a sample of programs selected by the evaluator. The process evaluation should result in an in-depth understanding of why parents seek help, how the program tries to help parents change, what factors influence initial and continued involvement in the program, and other relevant issues. A wide range of individuals should be included in the evaluation, including participants and facilitators, parent leaders, and program coordinators. Applicants should present a detailed approach to conducting the process evaluation.

Applicants should present a preliminary approach to conducting the outcome evaluation (Phase II, 24 months) in the selected programs. This should include a detailed discussion of the overall design of the outcome evaluation and include methods for selecting programs and comparison groups, designing and testing data collection instruments, and collecting and analyzing data. Multiple methods should be used to collect baseline and followup data. The outcome evaluation should be able to assess the effectiveness of Parents Anonymous® in preventing and treating child abuse and neglect. The outcome evaluation design should be described as specifically as possible but recognize that the design will be refined during Phase I. The design of the outcome evaluation is to be completed by the end of Phase I.

The number and type of programs included in the evaluation should be selected in a manner that will provide information on a wide variety of programs. Applicants should include a methodology for selecting programs in their proposal, but it is possible that this methodology will be modified after the first meeting of the Project Advisory Board (see below). The evaluator can anticipate being able to use a national listing of programs to be provided by Parents Anonymous, Inc., for the purpose of sampling. This national database, which is currently under development, will be able to provide the evaluator with information on the scope and nature of Parents Anonymous® organizations and types of programs across the Nation.

Upon award of the cooperative agreement, Parents Anonymous, Inc., will introduce the evaluator to the Parents Anonymous® national network, emphasize the usefulness of the evaluation, and encourage programs, participants, and staff to share information, opinions, and ideas. The applicant's strategies for conducting the process and outcome evaluation should reflect an understanding of the collaboration between Parents Anonymous, Inc., and its regional and local organizations, shared leadership with program participants, and methodological issues related to evaluating mutual support programs and community-based prevention programming.

Goal

To assess the implementation and effectiveness of Parents Anonymous® programs in preventing and treating child abuse and neglect.

Phase I Objectives

- Identify, investigate, and document how the theoretical premises, principles, best practices, and model of Parents Anonymous® are implemented in a sample of programs to be selected by the evaluator.
- Document how programs are established, staffed, and operated.
- Produce, in the selected groups, an in-depth understanding of who participates in Parents Anonymous®, the circumstances behind their participation, the methods for producing changes in behavior and attitudes, the factors that influence initial and continued involvement with the program, and other relevant issues.
- Describe how the Parents Anonymous® model is implemented in different settings (e.g., agencies, prisons, schools).
- Describe any variability in the implementation of the Parents Anonymous® model across settings and communities.
- Finalize the design of the outcome evaluation.

Phase II Objectives

- Assess the effectiveness of the Parents Anonymous® programs and their different structures in preventing and treating child abuse and neglect.
- Assess the differences between families that continue in Parents Anonymous® and those that do not.
- Investigate which factors and circumstances either contribute to or detract from the effectiveness of the Parents Anonymous® program.
- Identify effective techniques for monitoring program outcomes that might be adapted for ongoing self-assessment of local Parents Anonymous® programs.

Project Advisory Board

A Project Advisory Board (PAB) will provide guidance on the overall design of the evaluation, data collection instruments and procedures, and other similar issues. Also, the PAB will advise the evaluator on ways to help ensure the cooperation and collaboration of Parents Anonymous® programs.

The PAB will consist of five members. The evaluator will be responsible for identifying and recommending four PAB members. In their proposal, applicants should identify two potential members of the PAB and include signed letters of commitment from them. These two individuals must have demonstrated expertise in the child maltreatment and domestic violence fields and evaluation of mutual support and self-help groups. These experts should be able to offer guidance on the evaluation design and data collection instruments. The other two PAB members will be identified and recommended after the cooperative agreement is awarded. These members will be parents, staff, or volunteers involved in the Parents Anonymous® program. OJJDP will approve all PAB recommendations. The fifth member will be identified by OJJDP and Parents Anonymous, Inc.

The PAB will be convened twice during Phase I. The first meeting should be held within 2 months of the award. The PAB will be charged with reviewing the detailed process evaluation design, the preliminary outcome evaluation design, and the program sampling strategy. The second meeting will be held 10 months into Phase I. At this meeting, the PAB will be charged with reviewing the process evaluation findings, reviewing refined outcome evaluation design, and guiding evaluation activities for the remainder of the project. Additional meetings will be held during Phase II, but the number and timing of these will be determined at a later date.

The evaluator will be responsible for coordinating both PAB meetings. One meeting is to be held in Washington, DC, and the other is to be held in Claremont, CA. The evaluator must include in its budget expenses for the meeting location, materials, and travel and related expenses and preparation day(s) for the PAB members.

Products

The following products will be delivered during Phase I:

1. One month after the first PAB meeting, the evaluator will submit (1) a final process evaluation design and methodology, including a plan for selecting programs, and (2) a revised outcome evaluation design, the feasibility of which is to be determined during the process evaluation.

2. At 10 months, the evaluator will submit (1) An interim report describing the results of the process evaluation and (2) A refined outcome evaluation design that builds upon the PAB's first round of comments and the evaluator's experience in the field. The PAB will meet and review these products.

3. At 12 months, the evaluator will submit a final outcome evaluation plan.

During Phase II, the following products will be delivered:

1. The evaluator will submit an interim report at month 24 (that is, 12 months into Phase II) that summarizes preliminary findings and discusses the progress of the evaluation.

2. The evaluator will provide a draft final report at least 60 days prior to the end of the 3-year grant period to allow for review and comment by the PAB and OJJDP.

3. The evaluator will provide a final report, including an executive summary that can be published as a separate document. These documents will be submitted 30 days prior to the end of the 3-year grant period. In addition, a summary version of the report suitable for publication as an OJJDP Bulletin must be prepared at the same time.

Eligibility Requirements

OJJDP invites applications from public and private agencies, organizations, institutions, and individuals. Private, for-profit organizations must agree to waive any profit or fee. Joint applications from two or more eligible applicants are welcome; however, one applicant must be clearly indicated as the primary applicant (for correspondence, award, and management purposes) and the others indicated as coapplicants.

Selection Criteria

Applicants will be evaluated and rated by a peer review panel according to the criteria outlined below.

Problem(s) To Be Addressed (5 points)

Applicants should demonstrate their understanding of the causes of child maltreatment and its relationship to domestic violence, family strengthening research, strategies to prevent and treat child abuse and neglect, and the role of mutual support and self-help programs, such as Parents Anonymous®, in terms of how they are designed to address the theoretical factors in child maltreatment. The application should discuss how some types of interventions may be counterproductive.

Goals and Objectives (10 points)

Applicants must define specific goals and measurable objectives for conducting, managing, and producing the products of this evaluation. This section of the proposal should expand upon the goals outlined in this solicitation and be closely tied to the project design. A detailed time line should be included as appendix A (see "Appendixes" below).

Project Design (40 points)

Applicants should demonstrate a thorough understanding of appropriate

evaluation designs, identify the methodological issues and problems associated with the type of evaluation to be conducted here, and propose solutions for these problems. (5 points)

The applicant must present a clear, detailed project design that describes the approach to conducting the process and outcome evaluations. The project design should include a detailed strategy for selecting Parents Anonymous® programs and comparison groups. Applicants must present a plan for addressing cultural diversity and satisfy confidentiality and protection of human subjects requirements (see requirements regarding privacy certificates and Institutional Review Boards below). A clear plan must be presented for developing and pilot testing data collection instruments and collecting and analyzing data. (30 points)

The applicant should demonstrate an ability to conduct the evaluation in a manner compatible with the shared leadership-mutual support model of Parents Anonymous". Applicants should discuss how they have addressed confidentiality and cultural diversity issues in previous research and how these will be addressed in the current study. (5 points)

Management and Organizational Capability (25 points)

The application should include a discussion of how the grantee will coordinate and manage this evaluation. The applicant's management structure and staffing must be adequate and appropriate for the successful implementation of the project. (10 points)

The applicant must identify responsible individuals, their time commitment, and their specific task assignments. Key staff should have significant experience in the fields of childhood maltreatment and domestic violence and with designing and conducting multisite evaluations and conducting appropriate analysis. Applicants should discuss their experience with evaluations of mutual support programs, self-help programs, and community-based child abuse and neglect prevention programs. (10 points)

Applicants must discuss how they will work with and maintain the involvement of parents, parent leaders, facilitators, and program coordinators in data collection and analysis issues and other requirements of the project. (5 points)

Budget (15 points)

The applicant must provide a proposed budget that is detailed, reasonable, and cost effective in relation to the activities to be undertaken.

Appendixes (5 points)

Appendix A: 3-Year Project Time line. The time line should clearly and comprehensively show when the evaluation's goals and objectives will be achieved.

Appendix B: Résumés of personnel and consultants. Key staff should have significant experience with designing and conducting multisite evaluations and conducting appropriate analysis.

Appendix C: Résumés of two proposed PAB members and their signed letters of agreement. These two individuals must have demonstrated expertise in the child maltreatment and domestic violence fields and evaluation of mutual support and self-help groups. These experts should be able to offer guidance on the evaluation design and data collection instruments.

Bidders' Conference

OJJDP will host a bidders' conference on May 10, 2000, at 1:00 p.m. to answer questions potential applicants have about the Request for Proposals and general operation of Parent Anonymous® programs. The conference will be conducted via conference call. Interested parties should call 703–871–3073 (for those within the Washington, DC, metropolitan area) and 877–282–0743 (for those outside the Washington, DC, metropolitan area) up to 10 minutes before the conference is to begin and follow the instructions. Applicants have the opportunity to ask questions during the conference; the instructions on how to do this will be provided when applicants call in for the conference. For those applicants who cannot participate in the conference, OJJDP will post the transcript of the proceedings on its Web site (www.ojjdp.ncjrs.org) and make it available through the Juvenile Justice Clearinghouse (800–638–8736). Applicants should not contact Parents Anonymous, Inc., directly.

Format

The application must be submitted on 8½- by 11-inch paper. All text must be double-spaced on one side of the paper in 12-point, Times Roman font. One-inch margins must be used on all sides. These requirements apply to the narrative portion of the application, which includes the problem to be addressed, goals and objectives, project design, and management and organizational capability. Graphics, tables, budget, and the appendixes are exempt from these requirements. This is necessary to maintain fair and uniform standards among all applicants. If the narrative does not conform to these standards, OJJDP will deem the application ineligible for consideration.

The narrative portion must not exceed 30 pages.

Award Period

This project will be funded for 3 years in three 1-year budget periods. Funding after the first budget period depends on grantee performance, availability of funds, and other criteria established at the time of award.

Award Amount

Up to $300,000 is available for the initial 12-month budget period. Applicants need provide a detailed budget only for Phase I.

Confidentiality

Applicants proposing research and statistical activities that will involve the collection of data identifiable to a private person must comply with the confidentiality requirements of 42 U.S.C. section 3789g and 28 CFR part 22. Specifically, applicants should submit a Privacy Certificate in accordance with 28 CFR section 22.23 as part of the application package.

Human Subjects

Applicants are advised that any project that will involve the use of human research subjects must be reviewed by an Institutional Review Board (IRB), in accordance with Department of Justice regulations at 28 CFR Part 46. IRB review is not required prior to submission of the application. However, if an award is made and the project involves research using human subjects, OJJDP will place a special condition on the award requiring that the project be approved by an appropriate IRB before Federal funds can be expended on human subjects activities. Applicants should include plans for IRB review, where applicable, in the project time line submitted with the proposal.

Catalog of Federal Domestic Assistance (CFDA) Number

For this program, the CFDA number, which is required on Standard Form 424, Application for Federal Assistance, is 16.542. This form is included in the *OJJDP Application Kit*, which can be obtained by calling the Juvenile Justice Clearinghouse at 800–638–8736 or sending an e-mail request to puborder@ncjrs.org. *The Application Kit* is also available online at www.ojjdp.ncjrs.org./grants/about.html#kit.

Coordination of Federal Efforts

To encourage better coordination among Federal agencies in addressing State and local needs, the U.S. Department of Justice (DOJ) is requesting applicants to provide information on the following: (1) Active Federal grant award(s) supporting this or related efforts, including awards from DOJ; (2) Any pending application(s) for Federal funds for this or related efforts; and (3) Plans for coordinating any funds described in items (1) or (2) with the funding sought by this application. For each Federal award, applicants must include the program or project title, the Federal grantor agency, the amount of the award, and a brief description of its purpose.

"Related efforts" is defined for these purposes as one of the following:

1. Efforts for the same purpose (*i.e.*, the proposed award would supplement, expand, complement, or continue activities funded with other Federal grants).

2. Another phase or component of the same program or project (*e.g.*, to implement a planning effort funded by other Federal funds or to provide a substance abuse treatment or education component within a criminal justice project).

3. Services of some kind (*e.g.*, technical assistance, research, or evaluation) to the program or project described in the application.

Delivery Instructions

All application packages should be mailed or delivered to the Office of Juvenile Justice and Delinquency Prevention, c/o Juvenile Justice Resource Center, 2277 Research Boulevard, Mail Stop 2K, Rockville, MD 20850; 301–519–5535. Note: *In the lower left-hand corner of the envelope, you must clearly write "Evaluation of Parents Anonymous®"*

Due Date

Applicants are responsible for ensuring that the original and five copies of the application package are received by 5:00 p.m. EDT on June 19, 2000.

Contact

For further information call Dean Hoffman, Program Manager, Research and Program Development Division, 202–353–9256, or send an e-mail inquiry to hoffmand@ojp.usdoj.gov.

Suggested References

Belsky, J. 1993. Etiology of child maltreatment: A developmental-ecological analysis. *Psychological Bulletin* 114(3):413–434.

Cohn, A. H. 1979. Essential elements of successful child abuse and neglect treatment. *Child Abuse and Neglect* 3:491–496.

Cohn, A. H., and Daro, D. 1987. Is treatment too late: What ten years of evaluative research tells us. *Child Abuse and Neglect* 11:433–442.

Gray, E. 1986. *Child Abuse: Prelude to Delinquency*. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Hawkins, J., VonCleve, E., and Catalano, R. 1991. Reducing early childhood aggression: Results of a primary prevention program. *Journal of the American Academy of Child and Adolescent Psychiatry* 30:208–217.

Humphreys, K., and Rappaport, J. 1994. Researching self-help/mutual aid groups and organizations: Many roads, one journey. *Applied & Preventive Psychology* 3:217–231.

Levine, M. 1988. An analysis of mutual assistance. *American Journal of Community Psychology* 19:167–187.

Rafael, T., and Pion-Berlin, L. 1999. *Parents Anonymous®: Strengthening Families*. Bulletin. Washington, DC: U.S. Department of Justice, Office of Justice Programs, Office of Juvenile Justice and Delinquency Prevention.

Riessman, F., and Carroll, D. 1995. *Redefining Self-Help: Policy and Practice*. San Francisco: Jossey-Bass Publishers.

Widom, C. 1991. Childhood victimization: Risk factor for delinquency. In *Adolescent Stress: Causes and Consequences*, edited by M. Colton and S. Gore. New York: Aldine de Gruyer.

Dated: March 29, 2000.

John J. Wilson,

Acting Administrator, Office of Juvenile Justice and Delinquency Prevention.

[FR Doc. 00–8201 Filed 4–3–00; 8:45 am]

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Tuesday,
April 4, 2000

Part V

Department of Agriculture

Cooperative State Research, Education, and Extension Service

Request for Proposals: Initiative for Future Agriculture and Food Systems, FY 2000; Notice

DEPARTMENT OF AGRICULTURE

Cooperative State Research, Education, and Extension Service; Request for Proposals: Initiative for Future Agriculture and Food Systems, FY 2000

AGENCY: Cooperative State Research, Education and Extension Service.

ACTION: Notice; Clarification, Revision and Addition to Request for Proposals, and Extension of Date for Submission.

SUMMARY: The Cooperative State Research, Education, and Extension Service (CSREES) published a request for proposals document for the Initiative for Future Agriculture and Food Systems (IFAFS) in the **Federal Register** on March 6, 2000 (65 FR 11838). This document clarifies the nature of proposals sought, adds a new program sub-area, extends the date for receipt of proposals, and makes certain specific revisions to the request for proposals contained in the original notice.

DATES: The original notice provided that proposals for the IFAFS must be submitted by May 8, 2000. That date is extended to May 22, 2000. All other requirements for submittal of proposals remain the same as those specified in the notice of March 6, 2000.

ADDRESSES: The addresses for submission of proposals remain the same as those specified in the notice of March 6, 2000.

FOR FURTHER INFORMATION: For further clarification of the intent of this notice, contact Dr. Cynthia Huebner, Assistant Director, IFAFS, Cooperative State Research, Education, and Extension Service; U.S. Department of Agriculture; STOP 2242; telephone: (202) 401–4114; email: chuebner@reeusda.gov.

SUPPLEMENTARY INFORMATION: On March 6, 2000, CSREES published a request for proposals for the IFAFS (65 FR 11838). CSREES wishes to clarify the types of proposals it seeks, revise certain portions of the request for proposals, and add a new program area for funding. Revisions to the original request for proposals made herein have been incorporated in full in the copy of the IFAFS request for proposals available on the CSREES website at www.reeusda.gov/IFAFS.

In General

Programs within IFAFS can bring the agricultural knowledge system to bear on issues impacting small- and mid-sized producers and land managers, enabling improvements in quality of life and community. Thus, applicants are encouraged to address issues impacting small and mid-sized operations in each IFAFS program area as appropriate. In support of the agency's goals to enhance the competitiveness and sustainability of U.S. agriculture, consideration also will be given to projects (with U.S. institutions as the lead) that incorporate an international dimension with demonstrable domestic benefits. Proposals should reflect substantial involvement of agricultural producers, nutrition and health professionals, individuals and groups concerned with the environment, or other stakeholders or their representative organizations, in project planning, design, and implementation.

In the Agricultural Genomics program area (10.0) of the request for proposals, emphasis was placed on research focusing on economically important species, genes, or traits. CSREES wishes to clarify that it will accept proposals related to all agriculturally important species, genes, or traits, regardless of their economic importance or value. Accordingly, the terms "economic" and "economically" have been stricken from the version of the request for proposals available on the CSREES website consistent with this statement as appropriate.

Revisions

In the notice of request for proposals for the IFAFS published on March 6, 2000 (65 FR 11838), make the following revisions.

On page 11839, in the third column, revise the definitions of "Education activity" and "Extension activity" to read as follows:

(7) *Education activity* means formal classroom instruction, laboratory instruction, and practicum experience in the food and agricultural sciences and other related matters such as faculty development, student recruitment and services, curriculum development, instructional materials and equipment, and innovative teaching methodologies.

(8) *Extension activity* means an act or process that delivers science-based knowledge and informal educational programs to people, enabling them to make practical decisions.

On page 11844, second column, under "2. Agricultural Biotechnology (Program Area 11.0)," revise the second and third full paragraphs to read as follows:

Successful application of this technology to food and agriculture requires a sufficient level of consumer acceptance of biotechnology-derived products to provide economic incentive to product developers. Consumer acceptance is currently affected by doubts about biotechnology in food and agriculture. Research and education focused on assessing and reducing present and predicted risks associated with agricultural biotechnology will aid in alleviating public concerns. For example, developing and implementing effective on-farm practices to address issues such as pest resistance and adverse non-target species impact (e.g. pollen drift concerns) will provide critical information to farmers and the general public. Mechanisms for increasing public awareness of the benefits, as well as the risks, of biotechnology-derived products are needed to provide consumers, farmers, regulators, and policymakers with the facts they need to make informed decisions about production, use, regulation and trade of biotechnology-derived foods and products.

This program area will support research, extension, and education that addresses public questions and concerns associated with agricultural biotechnology by assessing, reducing, and developing monitoring strategies for present and anticipated risks. The program will maximize knowledge and understanding of both risks and benefits accrued to the public from products derived through biotechnology.

On page 11844, third column, under "11.1 Effects Agricultural Biotechnology on Human, Animal and Plant Health," first full paragraph:

(1) Revise the beginning of the paragraph to read: "Research, extension, and education activities regarding the effects of genetically modified (GM) organisms and GM food on human, animal, and plant health, include but are not limited to:"; and

(2) Revise clause (f) to read as follows: "techniques to minimize or eliminate potential negative impacts of GM products on non-target species, agricultural systems and the environment;".

On page 11845, first column, third full paragraph, second sentence, add after "public interest": ", producer,".

On page 11848, second column, first full paragraph, strike the parenthetical phrase referring to the Food Quality and Protection Act in clause (d).

New Program Sub-Area

CSREES adds a new program sub-area soliciting proposals related to Critical and Emerging Pest Management Challenges as follows.

On page 11847, in the second column:

(1) Revise the first heading in the column to read: "5. Natural Resource Management, Including Precision Agriculture and Critical and Emerging Pest Management Challenges (Program Area 14.0)"; and

(2) Add before the period at the end of the second full paragraph under that heading: "and critical and emerging pest management challenges".

On page 11849, second column, add the following new program sub-area before the heading, "5. Farm Efficiency and Profitability," as follows:

14.5 Critical and Emerging Pest Management Challenges

(For clarification of this program area, contact the Program Director, Dennis Kopp, at (202) 401–6437; e-mail: dkopp@reeusda.gov.)

Recent, more stringent regulations, such as the Food Quality Protection Act (FQPA), new provisions of the Clean Air Act, and new pesticide re-registration actions under the Federal Insecticide, Fungicide and Rodenticide Act, will contribute to the loss or significant restriction of pesticides and pesticide uses. Commodities that are heavily consumed by infants and children and commodities that are reliant on a few classes of chemicals for pest control are particularly vulnerable. Problems related to the loss or restriction of current pest management tools are exacerbated by pest resistance, consumer demand for safer foods, and lack of effective alternatives. New conventional chemistries and biological, biotechnological and organic farming techniques offer the promise of new, safe and effective alternatives. New technologies, however, are more complex requiring a higher degree of management and may require a significant investment in user education and training. Therefore, comprehensive science-based approaches are needed for the development and implementation of new pest management technologies.

CSREES has or is initiating a number of programs to address the impact of FQPA on crops production systems. These programs include, the Pest Management Alternatives Program (PMAP), and the following programs in the new integrated Research, Education and Extension Competitive Grants Program: Crops at Risk from FQPA Implementation (CAR), Risk Avoidance and Mitigation Program (RAMP), and Methyl Bromide Transition (MBT). IFAFS provides an opportunity to bring together concepts from the above mentioned programs by supporting proposals that are more comprehensive in nature and have multi-tactical approaches to pest management systems.

Proposals are invited on broad systems that go beyond the scope of the Integrated and PMAP pest management programs. Proposals for this section should support integrated research, education and extension on regional or national systems and approaches that will provide pest management strategies for at-risk production systems. In addition, proposals should identify and assess ways to reduce actual or potential adverse human health, occupational and/or environmental effects. Wherever possible, proposals should include multi-state and multidisciplinary partnerships with producers, industry, other stakeholders groups and the research, education and extension community.

Done at Washington, D.C., this 28th day of March, 2000.

Charles W. Laughlin,

Administrator, Cooperative State Research, Education, and Extension Service.

[FR Doc. 00–8235 Filed 3–30–00; 8:45 am]

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FEDERAL REGISTER PAGES AND DATE, APRIL

17435–17582..... 3
17583–17754..... 4

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Proclamations:
7283.....17552

7 CFR
Proposed Rules:
28.....17609
1218.....17612

9 CFR
Proposed Rules:
93.....17455

10 CFR
72.....17552

12 CFR
951.....17435
997.....17435
Proposed Rules:
915.....17458

13 CFR
120.....17439

14 CFR
39 (2 documents).....17583, 17586
71 (2 documents).....17588, 17589
91.....17736
93 (2 documents).....17736
121.....17736
135.....17736
Proposed Rules:
23.....17613
39.....17471
71.....17616

16 CFR
305.....17554

19 CFR
Proposed Rules:
134.....17473

21 CFR
1301.....17552
1308 (2 documents).....17440, 17552
Proposed Rules:
111.....17474

26 CFR
Proposed Rules:
301.....17617

27 CFR
Proposed Rules:
275.....17477

31 CFR
Ch. 5.....17590

32 CFR
581.....17440

33 CFR
117.....17443

38 CFR
Proposed Rules:
21.....17477

39 CFR
111.....17593

40 CFR
52.....17444

47 CFR
22.....17445
27.....17594
73 (2 documents).....17607
101.....17445
Proposed Rules:
73 (6 documents).....17617, 17618, 17619

48 CFR
Proposed Rules:
15.....17582

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 4, 2000

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; published 2-4-00

FEDERAL COMMUNICATIONS COMMISSION
Common carrier services:
Wireless telecommunications services—
746-764 and 776-794 MHz guard bands; service rules; published 4-4-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Boeing; published 2-29-00
Dassault; published 2-29-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Plant variety protection office:
Fees revision; comments due by 4-14-00; published 3-15-00
Raisins produced from grapes grown in—
California; comments due by 4-10-00; published 2-9-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Poultry products from Mexico transiting U.S.; comments due by 4-10-00; published 2-8-00

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meetings:
E. coli in beef products; risk assessment; policy and regulatory changes; comments due by 4-11-00; published 2-11-00

AGRICULTURE DEPARTMENT
Rural Utilities Service
Electric loans:
Minimum Times Interest Earned Ratio (TIER) requirements; reduction; comments due by 4-10-00; published 3-10-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Gulf of Maine; Atlantic salmon; comments due by 4-14-00; published 3-15-00
Marine and anadromous species—
West coast steelhead in California et al.; comments due by 4-11-00; published 2-11-00

DEFENSE DEPARTMENT
Acquisition regulations:
Contract drawings, maps, and specifications; comments due by 4-10-00; published 2-10-00
Mentor-protege program improvements; comments due by 4-10-00; published 2-10-00

ENERGY DEPARTMENT
Defense nuclear facilities; disposal of real property for economic development; comments due by 4-14-00; published 2-29-00

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Practice and procedure:
Well category determinations; comments due by 4-10-00; published 2-8-00

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-10-00; published 3-9-00
Connecticut and Rhode Island; comments due by 4-10-00; published 3-9-00
Delaware; comments due by 4-10-00; published 3-9-00
Georgia; comments due by 4-12-00; published 3-13-00
Kentucky; comments due by 4-10-00; published 3-10-00

FEDERAL COMMUNICATIONS COMMISSION
Practice and procedure:
Communication between applicants in spectrum auctions; comments due by 4-10-00; published 2-8-00
Radio stations; table of assignments:
Florida; comments due by 4-10-00; published 3-3-00
Texas; comments due by 4-10-00; published 3-3-00

FEDERAL EMERGENCY MANAGEMENT AGENCY
Disaster assistance:
Hurricane Floyd property acquisition and relocation grants; comments due by 4-11-00; published 2-11-00
Public assistance program administration—
Insurance requirements; comments due by 4-10-00; published 2-23-00

FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Membership regulations; comments due by 4-14-00; published 3-15-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
American Society for Testing and Materials; amendments to reflect current citations; comments due by 4-10-00; published 1-24-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal Housing Enterprise Oversight Office
Equal Access to Justice Act; implementation; comments due by 4-14-00; published 2-14-00
Risk-based capital:
Stress test; House Price Index (HPI) use and benchmark credit loss experience determination; comments due by 4-14-00; published 3-13-00

INTERIOR DEPARTMENT
Land Management Bureau
Land resource management:
Disposition; occupancy and use—
Alaska occupany and use; Alaska Native veterans allotments; comments due by 4-10-00; published 2-8-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Gulf of Maine; Atlantic salmon; comments due by 4-14-00; published 3-15-00
Ohlone tiger beetle; comments due by 4-11-00; published 2-11-00
Showy stickseed; comments due by 4-14-00; published 2-14-00

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 4-10-00; published 3-9-00

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Cable compulsory licese:
Network station definition; comments due by 4-11-00; published 2-11-00

NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION
Party to Compact; State eligibility declaration; comments due by 4-13-00; published 3-14-00

POSTAL SERVICE
Domestic Mail Manual:
Commercial mail receiving agency; mail delivery; comments due by 4-12-00; published 3-13-00
Sacking and palletizing periodicals nonletters and standard mail (A) flats, traying first-class flats, and labeling pallets; comments due by 4-14-00; published 2-29-00
Practice and procedure:
False representation and lottery orders; proceedings; subpoenas and civil penalties; comments due by 4-13-00; published 3-14-00

SMALL BUSINESS ADMINISTRATION
Small business size standards:
8(a) business development/ small disadvantaged business status determinations; comments due by 4-10-00; published 3-10-00

SOCIAL SECURITY ADMINISTRATION
Social security benefits:
Federal old age, survivors, and disability insurance—
Medical criteria for disability determinations; comments due by 4-11-00; published 2-11-00

STATE DEPARTMENT
Consular services; fee schedule; comments due by 4-12-00; published 3-13-00

TRANSPORTATION DEPARTMENT
Coast Guard
Regattas and marine parades, anchorage regulations, and ports and waterways safety:
OPSAIL 2000, Hampton Roads, VA; regulated areas; comments due by 4-14-00; published 2-29-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Ayres Corp.; comments due by 4-10-00; published 2-16-00
Eurocopter Deutschland GmbH; comments due by 4-11-00; published 2-11-00
Eurocopter France; comments due by 4-11-00; published 2-11-00
Fairchild; comments due by 4-10-00; published 2-16-00
Fokker; comments due by 4-14-00; published 3-15-00
Saab; comments due by 4-14-00; published 3-15-00
Airworthiness standards:
Special conditions—
Boeing Model 727-200 and 727-200F series airplanes; comments due by 4-13-00; published 3-14-00
Raytheon Aircraft Co. Model 4000 airplane; comments due by 4-13-00; published 3-14-00
Class D and Class E airspace; comments due by 4-14-00; published 2-29-00
Class E airspace; comments due by 4-10-00; published 2-24-00

TRANSPORTATION DEPARTMENT
Federal Highway Administration
Engineering and traffic operations:
Utilities; comments due by 4-10-00; published 2-9-00

TREASURY DEPARTMENT
Customs Service
Customs bonds:
Articles subject to exclusion orders issued by International Trade Commission; bond procedures; comments due by 4-10-00; published 2-8-00

TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Partnership debt allocation; comments due by 4-12-00; published 1-13-00
Partnership mergers and divisions; hearing; comments due by 4-10-00; published 1-11-00

LIST OF PUBLIC LAWS

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S. 376/P.L. 106–180

Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

Last List March 16, 2000

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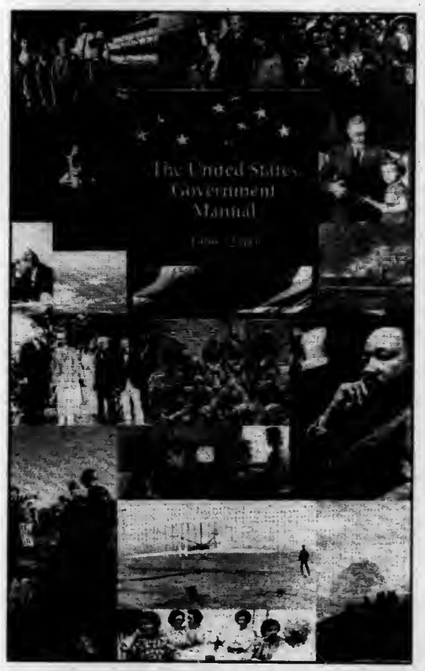
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Pages 17755–17986

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Contents

Federal Register
Vol. 65, No. 66
Wednesday, April 5, 2000

Agricultural Marketing Service
RULES
Spearmint oil produced in Far West, 17756–17758
PROPOSED RULES
Walnuts grown in—
California, 17809–17811

Agriculture Department
See Agricultural Marketing Service
See Grain Inspection, Packers and Stockyards Administration

Alcohol, Tobacco and Firearms Bureau
PROPOSED RULES
Alcoholic beverages:
Wine; labeling and advertising—
Flavored wine products, 17839–17840

Centers for Disease Control and Prevention
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17884–17885

Children and Families Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17885

Civil Rights Commission
NOTICES
Meetings; State advisory committees:
Oregon, 17855
Virginia, 17855

Coast Guard
RULES
Drawbridge operations:
Massachusetts, 17766
NOTICES
Meetings:
Lower Mississippi River Waterway Safety Advisory Committee, 17936

Commerce Department
See Export Administration Bureau
See International Trade Administration
See National Oceanic and Atmospheric Administration
See Patent and Trademark Office
See Technology Administration

Commodity Futures Trading Commission
NOTICES
Contract market proposals:
New York Cotton Exchange—
Cotton No. 1; stocks simultaneously included in both Exchange-certified stocks and Commodity Credit Corporation loan; prohibition, 17859–17860

Copyright Office, Library of Congress
PROPOSED RULES
Copyright office and procedures:
Sound recordings, public performance; service definition, 17840–17841

Education Department
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17860–17861

Energy Department
See Federal Energy Regulatory Commission
See Hearings and Appeals Office, Energy Department
NOTICES
Grants and cooperative agreements; availability, etc.:
High-energy density and laser-matter interaction studies, 17861
Meetings:
Asia-Pacific Economic Cooperation Energy Ministers Conference, 17861–17862

Environmental Protection Agency
RULES
Air quality implementation plans; approval and promulgation; various States:
California, 17768–17773
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Spinosad, 17773–17775
PROPOSED RULES
Air quality implementation plans; approval and promulgation; various States:
California, 17841–17842
Water supply:
National primary drinking water regulations—
Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule; meeting, 17842
NOTICES
Confidential business information and data transfer, 17869
Pesticide, food, and feed additive petitions:
BioTEPP, Inc., 17869–17872
Interregional Research Project (No. 4), 17872–17876

Executive Office of the President
See Presidential Documents

Export Administration Bureau
NOTICES
Meetings:
Information Systems Technical Advisory Committee, 17855–17856

Federal Aviation Administration
RULES
Airworthiness directives:
McDonnell Douglas, 17763–17766
PROPOSED RULES
Airworthiness directives:
Airbus, 17822–17827
Boeing, 17827–17829
McDonnell Douglas, 17818–17821
NOTICES
Aviation Rulemaking Advisory Committee; task assignments, 17936–17938
Environmental statements; availability, etc.:
Piedmont Triad International Airport, NC, 17938

Meetings:
RTCA, Inc., 17938–17939
Passenger facility charges; applications, etc.:
Huntsville International Airport, AL, 17939
Nashville International Airport, TN, 17939–17940

Federal Communications Commission
RULES
Radio stations; table of assignments:
Various States, 17775–17776
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17876
Reporting and recordkeeping requirements, 17876–17879
Rulemaking proceedings; petitions filed, granted, denied, etc., 17879

Federal Energy Regulatory Commission
NOTICES
Hydroelectric applications, 17863
Meetings:
Regional Transmission Organizations; regional collaborative workshops, 17863–17864
Applications, hearings, determinations, etc.:
Canyon Creek Compression Co., 17862
Pacific Gas & Electric Co., 17862
PacifiCorp, 17862
Trailblazer Pipeline Co., 17862–17863

Federal Maritime Commission
NOTICES
Agreements filed, etc., 17879
Ocean transportation intermediary licenses:
Providence Services Inc. et al., 17879–17880

Federal Railroad Administration
NOTICES
Exemption petitions, etc.:
Canadian Pacific Railway, 17940

Federal Trade Commission
NOTICES
Premerger notification; reporting and waiting period requirements:
Hart-Scott-Rodino Act—
Interpretation 17; banking and nonbanking businesses; acquisition filing obligations; premerger antitrust review, 17880–17883

Fish and Wildlife Service
RULES
Endangered and threatened species:
Northern Idaho ground squirrel, 17779–17786

General Accounting Office
NOTICES
Financial management systems:
Joint Financial Management Improvement Program—
Property management systems requirements; availability and comment request, 17883–17884

Grain Inspection, Packers and Stockyards Administration
RULES
Packers and stockyards regulations:
Feed weight, 17758–17763

Health and Human Services Department
See Centers for Disease Control and Prevention
See Children and Families Administration
See National Institutes of Health
See Public Health Service

Hearings and Appeals Office, Energy Department
NOTICES
Special refund procedures; implementation, 17864–17869

Housing and Urban Development Department
RULES
Mortgage and loan insurance programs:
Single family mortgage insurance—
Appraiser roster; placement and removal procedures, 17974–17978

Indian Affairs Bureau
NOTICES
Liquor and tobacco sale or distribution ordinance:
Colusa Indian Community Council trust lands, CA, 17893–17896

Interior Department
See Fish and Wildlife Service
See Indian Affairs Bureau
See Land Management Bureau
See National Park Service
See Surface Mining Reclamation and Enforcement Office

Internal Revenue Service
PROPOSED RULES
Income taxes:
Basis adjustments among partnership assets; allocation, 17829–17835
Lifetime charitable lead trusts, 17835–17839
Tax-exempt organizations; taxation of income from corporate sponsorship
Correction, 17829

International Trade Administration
NOTICES
Antidumping:
Stainless steel sheet and strip in coils from—
Japan, 17856–17857
North American Free Trade Agreement (NAFTA); binational panel reviews:
Live cattle from—
Canada, 17857

International Trade Commission
NOTICES
Import investigations:
Andean Trade Preference Act; effect on U.S. economy and Andean drug crop eradication, 17900–17901
Color picture tubes from—
Various countries, 17901
Gray portland cement and clinker from—
Various countries, 17901–17902
Porcelain-on-steel and top-of-the-stove stainless steel cooking ware from—
Various countries, 17902–17903

Land Management Bureau
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17896–17897
Coal leases, exploration licenses, etc.:
Colorado, 17897–17898

Public land orders:
Colorado, 17898

Library of Congress
See Copyright Office, Library of Congress

National Aeronautics and Space Administration
NOTICES
Meetings:
Advisory Council
Earth Systems Science and Applications Advisory Committee, 17903
Advisory Council task forces, 17903

National Archives and Records Administration
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17903–17904

National Highway Traffic Safety Administration
RULES
Fuel economy standards:
Light trucks; 2002 model year, 17776–17778
PROPOSED RULES
Motor vehicle safety standards:
Occupant crash protection—
Occupant protection in interior impact; head impact protection, 17842–17852

National Institutes of Health
NOTICES
Meetings:
National Cancer Institute, 17885–17886
National Center for Research Resources, 17886–17887
National Eye Institute, 17887
National Institute of Allergy and Infectious Diseases, 17888
National Institute of Arthritis and Musculoskeletal and Skin Diseases, 17888–17889
National Institute of Child Health and Human Development, 17888
National Institute of General Medical Sciences, 17887–17888
National Institute of Neurological Disorders and Stroke, 17887

National Oceanic and Atmospheric Administration
RULES
Endangered and threatened species:
Critical habitat designation—
Johnson's seagrass, 17786–17804
Fishery conservation and management:
Alaska; fisheries of Exclusive Economic Zone—
Pollock, 17808
West Coast States and Western Pacific fisheries—
Pacific Coast groundfish, 17807
Pacific Coast groundfish; trip limit adjustments, 17805–17807
West Coast salmon, 17807–17808
International fisheries regulations:
Pacific halibut—
Catch sharing plans; correction, 17805
PROPOSED RULES
Endangered and threatened species:
Sea turtle conservation requirements; technical changes, 17852–17854
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17857–17858

National Park Service
NOTICES
Mining plans of operations; availability, etc.:
Wrangell-St. Elias National Park and Preserve, AK, 17898
Native American human remains and associated funerary objects:
Bernice Pauahi Bishop Museum, Honolulu, HI—
Inventory from Kawaihae, Kohala, Island of Hawaii, 17899–17900
Wooden images, feather cape fragment, wooden funnel, bracelet, etc., from Kawaihae, Kohala, Island of Hawaii, 17898–17899

Nuclear Regulatory Commission
NOTICES
Agency information collection activities:
Submission for OMB review; comment request, 17904–17905
Meetings:
Reactor Safeguards Advisory Committee, 17907–17908
Meetings; Sunshine Act, 17908
Operating licenses, amendments; no significant hazards considerations; biweekly notices, 17908–17930
Petitions; Director's decisions:
Power Authority of State of New York, 17930
Applications, hearings, determinations, etc.:
Entergy Nuclear Generation Co., 17905–17906
Washington Public Power Supply System, 17906–17907

Patent and Trademark Office
PROPOSED RULES
Patent cases:
Patent applications, pending; eighteen-month publication; implementation, 17946–17971
NOTICES
Organization, functions, and authority delegations:
Agency reestablishment as United States Patent and Trademark Office and adoption of seal, 17858

Personnel Management Office
RULES
Prevailing rate systems, 17755–17756

Postal Service
RULES
Domestic Mail Manual:
Delivery record filing system; electronic storage and retrieval system implementation, 17766–17768
NOTICES
Government Performance and Results Act:
Five-year strategic plan development, 17930–17932

Presidential Documents
PROCLAMATIONS
Special observances:
Cancer Control Month (Proc. 7284), 17981–17982
Census Day (Proc. 7286), 17985–17986
Child Abuse Prevention Month, National (Proc. 7285), 17983–17984

Public Health Service
See Centers for Disease Control and Prevention
See National Institutes of Health

NOTICES
National Toxicology Program:
Carcinogens Report, Tenth Edition—
Substances, mixtures, and exposure circumstances for listing or delisting, 17889–17893

Research and Special Programs Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17940–17943

Securities and Exchange Commission
NOTICES
Investment Company Act of 1940:
Shares substitution applications—
Fidelity Investments Life Insurance Co. et al., 17932–17934
Self-regulatory organizations; proposed rule changes:
American Stock Exchange LLC, 17934–17936

Surface Mining Reclamation and Enforcement Office
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17900

Surface Transportation Board
NOTICES
Railroad operation, acquisition, construction, etc.:
Kansas City Southern Railway Co., 17943

Technology Administration
NOTICES
Agency information collection activities:
Proposed collection; comment request, 17858–17859

Thrift Supervision Office
PROPOSED RULES
Lending and investments:
Responsible alternative mortgage lending, 17811–17818

Transportation Department
See Coast Guard
See Federal Aviation Administration
See Federal Railroad Administration
See National Highway Traffic Safety Administration
See Research and Special Programs Administration
See Surface Transportation Board
NOTICES
Meetings:
Minority Business Resource Center Advisory Committee, 17936

Treasury Department
See Alcohol, Tobacco and Firearms Bureau
See Internal Revenue Service
See Thrift Supervision Office
NOTICES
Meetings:
Debt Management Advisory Committee, 17943

Separate Parts In This Issue

Part II
Department of Commerce, Patent and Trademark Office, 17945–17971

Part III
Department of Housing and Urban Development, 17973–17978

Part IV
The President, 17979–17986

Reader Aids
Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.

CFR PARTS AFFECTED IN THIS ISSUE

A cumulative list of the parts affected this month can be found in the Reader Aids section at the end of this issue.

3 CFR
Proclamations
7284.....17981
7285.....17983
7286.....17985

5 CFR
532.....17755

7 CFR
985.....17756
Proposed Rules:
984.....17809

9 CFR
201.....17758

12 CFR
Proposed Rules:
560.....17811

14 CFR
39.....17763
Proposed Rules:
39 (4 documents).....17818, 17822, 17824, 17827

24 CFR
200.....17974

26 CFR
Proposed Rules:
1 (3 documents).....17829, 17835
20.....17835
25.....17835

27 CFR
Proposed Rules:
4.....17839

33 CFR
117.....17766

37 CFR
Proposed Rules:
1.....17946
5.....17946
201.....17840

39 CFR
111.....17766

40 CFR
52 (2 documents).....17768, 17771
180.....17773
Proposed Rules:
52 (2 documents).....17841
141.....17842
142.....17842

47 CFR
73.....17775

49 CFR
533.....17776
Proposed Rules:
571.....17842

50 CFR
17.....17779
226.....17786
300.....17805
600.....17805
660 (3 documents).....17805, 17807
679.....17808
Proposed Rules:
223.....17852

Rules and Regulations

Federal Register
Vol. 65, No. 66
Wednesday, April 5, 2000

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AI75

Prevailing Rate Systems; Abolishment of the King, WA, Nonappropriated Fund Wage Area

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management is issuing a final rule that will abolish the King, Washington, nonappropriated fund (NAF) Federal Wage System (FWS) wage area, establish a new Snohomish, WA, NAF FWS wage area, and remove Whatcom County, WA, as an area of application. It is necessary to abolish the King wage area and establish a new Snohomish wage area because the King wage area's host installation, Naval Station Puget Sound, has closed. This closure left the Department of Defense without an installation in the survey area capable of hosting annual local wage surveys. It is necessary to remove Whatcom County because NAF FWS employees no longer work in the county.

DATES: *Effective Date:* This regulation is effective on May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jennifer Hopkins by phone at (202) 606–2848, by FAX at (202) 606–0824, or by email at jdhopkin@opm.gov.

SUPPLEMENTARY INFORMATION: On November 15, 1999, the Office of Personnel Management (OPM) published a proposed rule (64 FR 61793) to abolish the King, Washington, nonappropriated fund (NAF) Federal Wage System (FWS) wage area, establish a new Snohomish, WA, NAF FWS wage area, and remove Whatcom County, WA, as an area of application. Under section 5343 of title 5, United States Code, OPM is responsible for defining FWS wage areas. For this purpose, we follow the regulatory criteria established in § 532.219(b) of title 5, Code of Federal Regulations.

The King wage area currently has one survey county, King County, and four area of application counties, Island, Snohomish, Whatcom, and Yakima Counties, WA. The closure of the King wage area's host activity, Naval Station Puget Sound, left the Department of Defense (DOD) without an activity in the survey area with the capability to conduct annual local NAF wage surveys. In July 1996, DOD scheduled a full-scale wage survey in the King NAF wage area. The local wage survey committee had to conduct the King survey from Naval Station Everett in Snohomish County. Because the host installation closed and relocated to Snohomish County, we are establishing Snohomish County as a new NAF wage area. Snohomish County meets the regulatory requirements for an NAF survey area. Approximately 103 NAF FWS employees work at Naval Station Everett, and the base has the capability to host annual local wage surveys. Also, Snohomish County has more than the required minimum number of private enterprise employees in establishments within survey specifications.

We are removing Whatcom County from an NAF wage area definition because Blaine Air Force Station has closed, and NAF FWS employees no longer work in the county. Under 5 U.S.C. 5343(a)(1)(B)(i), NAF wage areas "shall not extend beyond the immediate locality in which the particular prevailing rate employees are employed." Therefore, we are not defining Whatcom County to an NAF wage area.

The new Snohomish, WA, NAF wage area will have one survey county, Snohomish County, and three area of application counties, Island, King, and Yakima Counties, WA. DOD will order full-scale wage surveys in the Snohomish, WA, NAF wage area in July of even fiscal years, with the first full-scale wage survey for the Snohomish wage area beginning in July 2000. The Federal Prevailing Rate Advisory Committee, the national labor-management committee responsible for advising OPM on matters concerning the pay of FWS employees, has reviewed and concurred by consensus with these changes. The proposed rule had a 30-day public comment period, during which OPM did not receive any comments.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Freedom of information, Government employees, Reporting and recordkeeping requirements, Wages.

Office of Personnel Management.

Janice R. Lachance,

Director,

Accordingly, the Office of Personnel Management amends 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

2. Appendix B to subpart B of part 532 is amended for the State of Washington by removing the entry for "King" and by adding alphabetically a new entry for "Snohomish" with a beginning survey month of "July" and a fiscal year of full-scale survey of "Even".

3. Appendix D to subpart B is amended by removing the wage area listing for King, Washington, and by adding alphabetically a new entry for Snohomish, Washington, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

WASHINGTON

* * * * *

SNOHOMISH

Survey Area

Washington:
Snohomish

Area of Application. Survey area plus:

Washington:
Island
King

Yakima

[FR Doc. 00–8333 Filed 4–4–00; 8:45 am]

BILLING CODE 6325–01–U

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 985

[Docket No. FV00–985–4 IFR]

Marketing Order Regulating the Handling of Spearmint Oil Produced in the Far West; Decreased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This rule decreases the assessment rate established for the Spearmint Oil Administrative Committee (Committee) for the 2000–2001 and subsequent marketing years from $0.10 per pound to $0.09 per pound of spearmint oil handled. The Committee is responsible for local administration of the marketing order which regulates the handling of spearmint oil produced in the Far West. Authorization to assess spearmint oil handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The marketing year begins June 1 and ends May 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

DATES: Effective June 1, 2000. Comments received by May 5, 2000, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; Fax: (202) 720–5698, or E-mail: moab.docketclerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert J. Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1220 SW Third Avenue, room 369, Portland, Oregon 97204; telephone: (503) 326–2724, Fax: (503) 326–7440; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, room 2525–S, PO Box 96456, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 985, as amended (7 CFR part 985), regulating the handling of spearmint oil produced in the Far West (Washington, Idaho, Oregon, and designated parts of Nevada and Utah), hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Far West spearmint oil handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable spearmint oil beginning June 1, 2000, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule decreases the assessment rate established for the Committee for the 2000–2001 and subsequent marketing years from $0.10 per pound to $0.09 per pound of spearmint oil handled.

The spearmint oil order provides authority for the Committee, with the approval of the Department, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers of spearmint oil. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 1995–1996 and subsequent marketing years, the Committee recommended, and the Department approved, an assessment rate that would continue in effect from marketing year to marketing year unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other information available to the Secretary.

The Committee met on February 23, 2000, and unanimously recommended 2000–2001 expenditures of $212,900 and an assessment rate of $0.09 per pound of spearmint oil handled. In comparison, last year's budgeted expenditures were $219,028. The assessment rate of $0.09 is $0.01 lower than the rate currently in effect. The Committee discussed assessment rates both lower and greater than $0.09 per pound. However, the Committee decided that an assessment rate of less than $0.09 would not generate the income necessary to administer the program with an adequate reserve. The Committee recommended the decreased assessment rate to help offset the negative effects the current depressed spearmint oil market is having on the industry.

Expenditures recommended by the Committee for the 2000–2001 marketing year include $178,500 for Committee expenses and $34,400 for administrative expenses. For 2000–2001, a total of $156,000 is budgeted for agency fees, $21,000 is budgeted for Committee per diem and travel, $16,500 is budgeted for agency staff travel, and $10,700 is budgeted for copying, mail handling,

postage, telephone and fax, cellular phone charges, officer liability insurance, and auditing. Actual expenses for these items in 1999–2000 are estimated to total $165,000, $22,133, $16,843, and $10,900. For 2000–2001, funds also are budgeted for market development ($5,000) and for compliance ($1,000). Expenditures for these items in 1999–2000 are expected to total $5,000.

The Committee estimates that spearmint oil sales for the 2000–2001 marketing year will be approximately 2,058,474 pounds, which should provide $185,263 in assessment income. This assessment income, when combined with $13,029 from the monetary reserve, $3,500 in interest income, and $11,108 from the sale of certain assets should be adequate to meet this year's expenses of $212,900. The Committee estimates that its monetary reserve will be approximately $156,757 at the beginning of the 2000–2001 marketing year. It is not anticipated that the reserve fund will exceed the maximum permitted by the order of approximately one marketing year's operational expense (§ 985.42).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by the Secretary upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate is effective for an indefinite period, the Committee will continue to meet prior to or during each marketing year to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or the Department. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2000–2001 budget and those for subsequent marketing years will be reviewed and, as appropriate, approved by the Department.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, the AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 7 spearmint oil handlers subject to regulation under the marketing order and approximately 119 producers of Scotch spearmint oil and 105 producers of Native spearmint oil in the regulated production area. Small agricultural service firms are defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $5,000,000, and small agricultural producers have been defined as those whose annual receipts are less than $500,000.

Based on the SBA's definition of small entities, the Committee estimates that 2 of the 7 handlers regulated by the order could be considered small entities. Most of the handlers are large corporations involved in the international trading of essential oils and the products of essential oils. In addition, the Committee estimates that 25 of the 119 Scotch spearmint oil producers and 7 of the 105 Native spearmint oil producers would be classified as small entities under the SBA definition. Thus, a majority of handlers and producers of Far West spearmint oil may not be classified as small entities.

This rule decreases the assessment rate established for the Committee and collected from handlers for the 2000–2001 and subsequent marketing years from $0.10 per pound to $0.09 per pound of spearmint oil handled. The Committee estimates that spearmint oil sales will total 2,058,474 pounds in the 2000–2001 marketing year. The $0.09 per pound assessment rate should provide an estimated income of $185,263, which, when combined with $13,029 from the monetary reserve, $3,500 in interest income, and $11,108 from the sale of certain assets should be adequate to meet this year's expenses of $212,900. The Committee estimates that its monetary reserve will be approximately $156,757 at the beginning of the 2000–2001 marketing year and that the fund will not exceed the maximum permitted by the order of approximately one marketing year's operational expense (§ 985.42).

The Committee reviewed and unanimously recommended 2000–2001 expenditures of $212,900 which is $6,128 less than approved for last year. Prior to arriving at this budget, the Committee considered information from various sources, including the Committee's Executive Committee and the current marketing year's actual and anticipated expenditures. Alternative expenditure levels and assessment rates were discussed by the Committee officers prior to presentation to the full Committee for approval. The Committee decided that an assessment rate of less than $0.09 would not generate the income necessary to administer the program with an adequate reserve. The Committee recommended the decreased assessment rate to help offset the negative effects the current depressed spearmint oil market is having on the industry.

Expenditures recommended by the Committee for the 2000–2001 marketing year include $178,500 for Committee expenses and $34,400 for administrative expenses. For 2000–2001, a total of $156,000 is budgeted for agency fees, $21,000 is budgeted for Committee per diem and travel, $16,500 is budgeted for agency staff travel, and $10,700 is budgeted for copying, mail handling, postage, telephone and fax, cellular phone charges, officer liability insurance, and auditing. Actual expenses for these items in 1999–2000 are estimated to total $165,000, $22,133, $16,843, and $10,900. For 2000–2001, funds also are budgeted for market development ($5,000) and for compliance ($1,000). Expenditures for these items in 1999–2000 are expected to total $5,000.

Based on 1999 prices, the average price paid to producers for both Scotch and Native spearmint oils during the 2000–2001 marketing year could be about $9.80 per pound. Therefore, the estimated assessment revenue for the 2000–2001 marketing year as a percentage of total producer revenue could be about 0.92 percent.

This action decreases the assessment obligation imposed on handlers. While this rule will impose some additional costs on handlers, the costs are minimal and in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the order. In addition, the Committee's meeting was widely publicized throughout the Far West spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the February 23, 2000, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit

information on the regulatory and informational impacts of this action on small businesses.

This action imposes no additional reporting or recordkeeping requirements on either small or large spearmint oil handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect because: (1) The 2000–2001 marketing year begins June 1, 2000, and the marketing order requires that the rate of assessment for each marketing year apply to all assessable spearmint oil handled during such marketing year; (2) this action decreases the assessment rate for assessable spearmint oil beginning with the 2000–2001 marketing year; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this interim final rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

Interested persons are invited to comment on this rule. A 30-day comment period is provided. This period is deemed appropriate because the 2000–2001 marketing year begins June 1, 2000.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 985.141 is revised to read as follows:

§ 985.141 Assessment rate.

On and after June 1, 2000, an assessment rate of $0.09 per pound is established for Far West spearmint oil. Unexpended funds may be carried over as a reserve.

Dated: March 30, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–8299 Filed 4–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

9 CFR Part 201

RIN 0580–AA64

Regulations Issued Under the Packers and Stockyards Act

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Final rule.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is amending existing scales and weighing regulations under the Packers and Stockyards (P&S) Act to include requirements regarding the weighing of feed whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The current regulations do not contain any requirements regarding the weighing of feed although, in some circumstances, feed weight affects payment or settlement to livestock growers and poultry growers. The amendment to the current regulations will provide livestock growers and poultry growers with a measure of assurance that feed weight is accurately or reasonably determined and feed weight is properly documented whenever feed weight affects payment or settlement to livestock growers or poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement.

EFFECTIVE DATE: May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Dr. Michael J. Caughlin Jr., Director, Office of Policy/Litigation Support, GIPSA, USDA, 1400 Independence Ave., SW, Stop 3646, Washington, DC 20250–3646. He can be reached by phone at 202–720–6951.

SUPPLEMENTARY INFORMATION: GIPSA is amending existing scales and weighing regulations to include requirements regarding the weighing of feed when the weight of feed is a factor in determining payment or settlement to livestock growers and poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement.

Background

On February 12, 1997, GIPSA published an Advance Notice of Proposed Rulemaking (ANPRM) (62 FR 5935–5937) soliciting comments from poultry growers, integrators, and other interested parties on the need for and the possible wording of regulations regarding comparison contracts, feed weighing procedures, and live poultry weighing. GIPSA received 3,415 comments, of which 1,129 expressed concerns regarding feed weighing procedures including concerns that feed is not properly weighed; the weight should be printed electronically and not handwritten; the truck delivering the feed should be sealed to secure each individual lot of feed; and excess feed that is returned should be measured and properly documented to credit the grower for the unused feed.

Many of those comments also suggested that feed scales should be better regulated by requiring semiannual testing by competent testing agencies or companies as is currently required for scales used to weigh live poultry. In addition, GIPSA received comments prior to initiating this rulemaking process from livestock growers and continues to receive complaints that indicate that these same concerns exist in the livestock industry. Furthermore, GIPSA continues to receive complaints from individual livestock growers and poultry growers concerning feed weights both with respect to feed deliveries and excess feed picked up or returned at the end of the growing cycle.

On April 2, 1999, GIPSA published a Notice of Proposed Rulemaking (NPRM) (64 FR 15938—15942) proposing to amend existing scales and weighing regulations under the P&S Act to include requirements regarding the weighing of feed whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement.

Comments in Response to the NPRM

We received 37 comments in response to the NPRM. Of the comments received, 25 supported the NPRM, 7 opposed, 2 were neutral and 3 commented on issues other than those proposed in the NPRM. Commenters were located in the States of Alabama (1), Arkansas (5), Delaware (2), Georgia (2), Iowa (1), Maryland (1), Minnesota (3), Mississippi (1), Missouri (2), North Carolina (3), Pennsylvania (1), Virginia (3), and West Virginia (1). State location could not be determined for 6 commenters, and 5 commenters were from the District of Columbia. Comments were received from: poultry trade associations (8), producer and grower associations (5), poultry growers (14), poultry integrators (7), feed companies (2), and a state weights and measures department.

Comments Supporting the NPRM

Six growers commented that the proposed regulation changes would help ensure fair dealings between contract growers and integrators. A poultry integrator and a national trade association, which represents the producers/processors of more than 95 percent of the broiler/fryer chickens marketed in the United States, commented that the amendment will help to alleviate concerns that some growers have with respect to weighing feed. Three poultry integrators commented that the proposed feed weighing regulation either was reasonable, has been standard procedure in their firms for many years, or does not differ greatly from their present practices. A State farm association, whose State's poultry production was $730 million in cash receipts, commented it believes the substantive regulation governing feed weighing will improve company accuracy and fairness in determining growers' individual pay within a competitive pay or settlement system as well as the accountability of individual companies and production complexes. The nation's largest general farm association commented that GIPSA's action to strengthen production contract-related feed weighing rules is consistent with GIPSA's mission to facilitate the marketing of grains, livestock, poultry, and meat. A farmers' association, with 300,000 farm and ranch members, commented it believes the proposed rule is a good first step and supports the proposed rule. A national grower association stated that this rule is very important, and the rule should go a long way towards ensuring accurate weighing. A State poultry association and a national poultry association, which represents more than 95 percent of the U.S. turkey industry including all phases of growing and processing, commented that they support the basic concept of amending the regulations to regulate the weighing of feed under the P&S Act. A broiler trade association commented that, in general, it commends GIPSA for the proposed rule.

Comments Generally Opposing the NPRM

Seven comments were filed in opposition to the NPRM. There were two general reasons given for opposing the NPRM. One was that the rule was not needed, and the other was that the rule did not go far enough. A feed company and a national trade association, representing about 1,000 grain, feed, processing, and grain-related firms comprising 5,000 facilities that handle more than two-thirds of all U.S. grains and oilseeds, commented that several provisions are redundant or inconsistent with existing Federal and State regulatory requirements that govern scales used to weigh feed. These comments cited two regulations: 21 CFR 225.30 and 225.130. These two regulations pertain to scales used in the production of a medicated feed of intended potency and purity and do not regulate scales used to weigh feed where the weight of feed is a factor in determining payment or settlement to livestock growers or poultry growers.

A State trade association, representing country elevators and feed mills, commented that the NPRM unfairly focuses too much attention on feed weighing and feed delivery as factors affecting feed efficiency contracts and not enough on other factors such as ration density, sanitation and disease. Two growers commented that the proposed feed weighing regulation is inadequate to ensure that feed is accurately weighed or reasonably determined.

Objections or Concerns About Specific Parts of the NPRM

Many commenters, both those in general support of and those in opposition to the rule, raised some objections or concerns about some part of the NPRM. These objections or concerns regarding the NPRM and GIPSA's response to those comments are as follows.

Comment: Seals—Thirteen commenters mentioned the use of seals to seal feed bins or feed compartments. The comments ranged from seeing the use of seals as a small step forward or as a burden. The majority of the comments questioned the need for seals or objected to their use.

Response: The proposed rule does not require each feed bin or feed compartment be sealed. However, if a feed supplier uses seals to help assure the grower receives all of his or her feed, the proposed rule requires a feed supplier to use numbered seals and record the seal numbers on the weigh ticket.

Comment: Pick Up of Excess Feed—Eleven comments were received regarding excess feed that is picked up from a grower and the NPRM's proposal that § 201.55(b) require the weight of excess feed be "reasonably determined" using a "mutually acceptable" method. The comments ranged from asserting the language will not work, to suggesting that the language be clarified to indicate that alternative systems to weighing picked up excess feed on a scale are acceptable to determine feed weight.

Response: To address the concerns raised in these comments, we have changed the language in § 201.55(b) to read as follows. "Whenever the weight of feed is a factor in determining payment or settlement to such livestock grower or poultry grower when the livestock or poultry is produced under a livestock or poultry growing arrangement, any feed that is picked up from or returned by a livestock grower or poultry grower must be weighed or its weight must be reasonably determined. When feed is picked up or returned and not weighed, the stockyard owner, market agency, dealer, packer, or live poultry dealer must document that the method used reasonably determines weight and is mutually acceptable to it and the livestock grower or poultry grower. The stockyard owner, market agency, dealer, packer, or live poultry dealer must document and account for the picked up or returned feed weight."

Comment: Scale Ticket Printing and Completion—Nine commenters mentioned scale ticket printing and completion. The comments primarily requested clarification on the information needed to adequately identify the feed delivery vehicle and grower/lot identification.

Response: The amendment to § 201.49 requires that scale tickets evidencing the weighing of feed contain the same information that is required on scale tickets completed when weighing live

poultry except that scale tickets do not need to include weather conditions or the number of poultry.

Comment: Printing Tare, Gross and Net Weight—Eight comments were received related to printing tare, gross and net weight. The comments ranged from suggesting that handwritten net weight determined from mechanically printed gross and tare should be acceptable, to suggesting that printing a net weight on bulk weighing systems should be sufficient.

Response: If the net weight is determined by the difference between scale-printed tare and gross weights and the mechanical or electronic printer does not have the capability to print the net weight, the net weight can be handwritten. On bulk weighing systems where only the net weight is determined, the gross and tare weights do not have to be printed.

Comment: Scale Testing and Providing Report of Test to P&S Regional Offices—Five comments were received regarding testing and submission of the test reports to the P&S regional offices. The comments ranged from suggesting that this provision is redundant or inconsistent with existing Federal and State regulatory requirements for scales used to weigh feed to suggesting that scale test reports not be sent to the regional offices.

Response: GIPSA's research did not identify any other Federal agency that has jurisdiction over all scales used to weigh feed where the weight of the feed is a factor in determining payment or settlement to livestock growers or poultry growers. The rule imposes the same requirements for scales used to weigh feed as for all other scales used by industry members who are subject to the P&S Act, including the requirement that scale test reports be sent to the appropriate P&S regional office.

Comment: Qualified Scale Operator—Three comments were received requesting that "qualified" be defined or requesting guidance on what certification or training is required by the rule.

Response: A scale operator is "qualified" if the operator is trained to operate scales in a manner that assures the accurate weight of livestock, livestock carcasses, live poultry, or feed. The rule does not require a specific training method to qualify someone to operate scales.

Other Comments to the NPRM

GIPSA received several comments related to feed weighing but not directly related to the rule. These comments and GIPSA's response to the comments follow:

Comment: GIPSA has specific authority to request the reweighing of livestock; however, no amendments were proposed to extend the Agency's authority to cover feed.

Response: Sections 402 and 407 of the P&S Act (7 U.S.C. 222, 228) grant the Secretary the authority to issue regulations as may be necessary to carry out the provisions of the Act. Inaccurately weighed feed may preclude full payment to growers. Therefore, weighing feed inaccurately would constitute an unfair practice under sections 202 and 312 of the Act. 7 U.S.C. 192, 213. Sections 402 and 407 authorize the Secretary to promulgate regulations governing the weighing of feed when feed weight affects payment or settlement to a producer or grower and to prevent violation of the Act. Therefore, no amendment to GIPSA's authority is necessary.

Comment: The rule should provide for compensation to growers (livestock and poultry), plus punitive damages against integrators (live poultry dealers).

Response: Administrative sanctions for violations of the Act by livestock firms are set forth in sections 203(b) (packers) and 312(b) (stockyard owners, market agencies, or dealers) of the P&S Act. 7 U.S.C. 193(b), 213(b). Administrative sanctions for certain violations of the Act by live poultry dealers are set forth in section 411 of the Act. 7 U.S.C. 228b–2. Section 404 sets forth the procedures for prosecuting violations not covered by section 411. 7 U.S.C. 224. Section 308 of the Act sets forth the liability of subject entities to injured persons and the procedures to pursue a private right of action. 7 U.S.C. 209.

Comment: The rule should allow the grower (livestock or poultry) to be present for weighing if the grower so chooses.

Response: The rule does not address this issue. However, livestock growers and poultry growers have the right to be present during the weighing of feed whenever the weight of feed is a factor in determining payment or settlement under a livestock or poultry growing arrangement.

Comment: The rule should allow a grower to require feed trucks to weigh feed at the farm if the grower has a scale.

Response: The rule does not address this issue. We do not have jurisdiction over growers, and we cannot require growers to maintain scales in compliance with regulations promulgated under the P&S Act.

The rule addresses the concerns of livestock growers and poultry growers who produce livestock or poultry under a livestock or poultry growing arrangement. When the weight of the feed is a factor in determining payment or settlement to livestock growers or poultry growers, the rule requires stockyard owners, market agencies, dealers, packers, or live poultry dealers to weigh feed accurately, to weigh or reasonably determine the weight of excess feed that is picked up from or returned by the livestock grower or poultry grower and to properly account for feed weight. "Growing arrangement" with respect to poultry means "poultry growing arrangements" as defined in section 2(a)(9) of the Act (7 U.S.C. § 183(a)(9)). "Growing arrangement" with respect to livestock means an arrangement in which livestock is produced under contract with a packer. Weight of feed is not considered to be a factor in determining payment to livestock producers in feedlot transactions in which the producer is charged a fee based on feed costs.

All feed scales, including those which are not generally used to sell directly to the general public and are usually not required to be tested by State weights and measures officials, fall under the purview of this rule. In most States, feed scales are not considered commercial devices unless the feed is sold directly to the general public. Therefore, State regulatory oversight of the weighing of feed delivered to livestock growers or poultry growers is not adequate to address the growers' concerns. Extending existing regulations of the P&S Act governing weighing practices and technical requirements for scales to include scales used to weigh feed will result in uniform requirements for weighing feed whenever feed weight affects the payment or settlement to livestock growers and poultry growers when livestock or poultry is produced under a livestock or poultry growing agreement. Basic scale requirements and weighing practices, therefore, will assure that payment or settlement is based on accurate weights whenever feed weight affects payment or settlement to livestock growers or poultry growers in livestock and poultry growing arrangements.

This rule amends 9 CFR 201.49, 201.55, 201.71, 201.72, and 201.73 to include requirements regarding the weighing of feed whenever feed weight is a factor in determining payment or settlement to a livestock grower or poultry grower when livestock or poultry is produced under a livestock or poultry growing arrangement. The modifications in these sections make the requirements for feed weighing consistent with the requirements for weighing livestock and live poultry.

Specifically, the rule amends § 201.49 to include paragraph (c) which requires that scale tickets be issued whenever feed weight is a factor in determining payment or settlement to livestock growers or poultry growers when livestock or poultry is produced under a livestock or poultry growing arrangement. The amendment specifies the information that must be shown on the scale ticket. Section 201.71 is amended to require that scales weighing feed: (1) Be installed, maintained, operated, and tested in accordance with the National Institute of Standards and Technology (NIST) Handbook 44, 1996 edition, entitled "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices"; (2) be equipped with a printing device used for recording weight; (3) be of sufficient length and capacity to weigh an entire load when feed is weighed on a vehicle scale; and (4) be found, upon test and inspection, to be in a condition to provide accurate weight. Section 201.72 is amended to include scales used to weigh feed in the requirement that scales be tested twice during each calendar year at intervals of approximately six months by competent persons and that copies of test reports be furnished to the appropriate P&S Programs' regional office. Section 201.73 is amended to require that stockyard owners, market agencies, dealers, packers and live poultry dealers employ, or insure that their feed suppliers employ, qualified persons to operate scales used to weigh feed and that they require such employees to operate these scales in accordance with the regulations.

Section 201.55 is amended to require that the actual weight of feed be shown on scale tickets or otherwise explained and that picked up or returned feed be weighed or its weight reasonably determined. The stockyard owner, market agency, dealer, packer, or live poultry dealer must document and account for the picked up or returned feed weight. The language of the amendment to section 201.55(b) has been modified slightly from the language of the proposed rule. The modification clarifies the rule's requirements but does not change the requirements as proposed in the NPRM.

This rule will not impose any significant additional regulatory burden on the affected industries since the feed scales of many subject firms are already routinely tested by State weights and measures organizations or by private scale companies. The additional recordkeeping required under this rule will impose little burden upon subject firms since a majority of the affected entities already utilize adequate weighing and documentation procedures. Subject firms that choose to use seals may incur costs to document the use of numbered seals if they are not currently documenting their use of seals. However, the use of seals is optional, and, according to seal makers contacted by the Agency, numbered seals are less expensive than unnumbered seals. Therefore, at least part of the cost of documentation may be offset by the lower cost of numbered seals.

Civil Rights Statement

Pursuant to Departmental policy, GIPSA has considered the potential civil rights implications of this rule on minorities, women and persons with disabilities to ensure that no person or group will be discriminated against on the basis of race, color, sex, national origin, religion, age, disability, or marital or familial status. This rule will apply in the same manner to all persons and groups whose activities are regulated, regardless of race, color, sex, national origin, religion, age, disability, or marital or familial status.

Executive Order 12866

This rule has been determined to be significant for the purpose of E.O. 12866 and, therefore, has been reviewed by the Office of Management and Budget. A separate regulatory impact assessment was prepared and is available from Dr. Michael J. Caughlin, Jr., Director, Office of Policy/Litigation Support, GIPSA, USDA, 1400 Independence Ave., SW, Washington, DC 20250–3646; (202) 720–6951.

Executive Order 12988

This rule has been reviewed under E.O. 12988, Civil Justice Reform, and is not intended to have retroactive effect. This amendment will not pre-empt State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule.

Effect on Small Entities

GIPSA is amending §§ 201.49, 201.55, 201.71, 201.72, and 201.73 of Title 9 of the Code of Federal Regulations to include feed weighing when the weight of feed is a factor in determining payment or settlement to livestock growers or poultry growers. The additional information collection is required to provide livestock growers and poultry growers (generally small entities) assurance that feed scales are being tested and maintained properly, that feed is accurately weighed or its weight is reasonably determined, and that they are receiving proper and adequate documentation of the feed weight.

GIPSA has determined that this rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*). This rule will affect both parties in growing arrangements in which the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower. In most instances, the livestock grower or poultry grower will be a small entity and is the intended beneficiary of this rule. Because the costs of complying with this rule usually will be borne by the stockyard owner, market agency, dealer, packer or live poultry dealers, the economic impact on growers is expected to be negligible.

The costs of compliance will be borne by any stockyard owner, market agency, dealer, packer or live poultry dealer who is party to a growing arrangement in which the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower. However, the economic impact on these entities is expected to be minimal. Approximately 260 poultry integrators currently supply feed to poultry growers and an estimated 50 additional entities operating subject to the P&S Act currently supply feed to livestock growers where the weight of feed is a factor in determining payment or settlement to livestock growers or poultry growers. Most of these 310 firms are considered small entities.

Subject firms will be responsible for ensuring that scales used to determine the weight of feed, whether theirs or their feed provider's, have a printing device and conform to the specifications of NIST Handbook 44 (H–44), 1996 edition. Scale installation companies usually do not install a scale system that would not comply with the requirements of this amendment to the regulations. Currently, most feed scales, including those used by small entities, have a weight-printing device and conform to H–44 requirements. GIPSA did not receive any comments on the NPRM from any subject entity claiming that it currently supplied feed under a growing arrangement and had no weight-printing device. One association for feed companies stated that many of its members do not have a weight-printing device, but it did not state whether any of those members also currently provide feed for a subject entity under a growing arrangement.

GIPSA contacted several scale installation companies and was advised that they would charge less than $10,000 to equip an existing scale with a printing device and any additional equipment needed for the operation of the printing device. The subject entity, including any small entity, could spread this cost over many years because a printing device and any other needed equipment are used for many years. GIPSA anticipates that the cost of equipping an existing scale with a printing device would increase the costs of doing business to live poultry dealers or their feed supplying entities, including small entities, by less than one percent. Therefore, GIPSA does not anticipate any significant economic impact on small entities.

Under this rule, subject firms will be required to test scales twice a year and to submit a copy of each test report to the appropriate P&S regional office. Feed manufacturers, as is customary in most industries dealing in bulk commodities, have their scales tested frequently to ensure accurate weights, prevent system malfunction, and avoid down time. In addition, most entities affected by this rule currently have their scales tested at least twice a year, either by State or local weights and measures officials or by private scale companies. Any of these tests will satisfy the semiannual testing requirement. Those entities currently not conducting two scale tests a year will be required to obtain a second test either from a private scale company or from a State or local weights and measures department.

There will be a minimal recordkeeping burden on all subject entities, including small entities, who weigh or supply feed when the weight of feed is a factor in determining payment or settlement to a livestock or poultry grower who produces livestock or poultry under a growing arrangement. Those entities will be required to submit a copy of scale test reports, on a semiannual basis, to the appropriate P&S regional office. This will entail obtaining a copy of the scale test report, which generally is completed either by the State or local weights and measures department or by the private scale company as a matter of routine documentation, and mailing it to the appropriate P&S regional office. Many State and local weights and measures departments and scale companies already mail the copies of the scale test reports to the appropriate P&S regional office. If any of the subject firms chooses to use seals, the additional paperwork burden will be to note the seal number(s) on the feed ticket that the subject firm is already required to supply to the grower.

Compliance with the requirements for scale tickets is projected to cause minimal burden on the industry. Those entities that do not print a scale ticket for weighed feed or that print scale tickets that do not include all the required information will have to change their procedures to print scale tickets for weighed feed and to include the required information on the scale tickets. However, the additional time to add the required information, such as truck or trailer numbers, grower's name, and whether the truck driver was on or off at the time of weighing, is insignificant.

In addition, subject firms will be required to retain weight records in accordance with the recordkeeping provisions of the Act. In general, this will not entail any retention burden beyond that of normal and customary business practices.

Information Collection and Recordkeeping Requirements

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3504(h)), GIPSA has submitted a copy of this rulemaking to the Office of Management and Budget (OMB) for its review. GIPSA received no response to its invitation in the NPRM to comment on the increased paperwork burden associated with this regulation. Information and reporting collection burdens imposed by Part 201 have been approved under OMB control number 0580–0015.

List of Subjects in 9 CFR Part 201

Confidential business information, Reporting and recordkeeping requirements, Stockyards, Surety bonds, Trade practices.

For the reasons set forth in the preamble, GIPSA is amending 9 CFR part 201 to read as follows:

PART 201—[AMENDED]

1. The authority citation for Part 201 is revised to read as follows:

Authority: 7 U.S.C. 222 and 228; 7 CFR 2.22 and 2.81.

2. Section 201.49 is amended by revising the heading and adding paragraph (c) to read as follows:

§ 201.49 Requirements regarding scale tickets evidencing weighing of livestock, live poultry, and feed.

* * * * *

(c) *Feed.* (1) Whenever feed is weighed by or on behalf of a stockyard owner, market agency, dealer, packer, or live poultry dealer where the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower, a scale ticket shall be issued which shall show:

(i) The name of the agency performing the weighing service or the name and location of the firm responsible for supplying the feed;

(ii) The name and address of the livestock grower or poultry grower;

(iii) The name or initials or number of the person who weighed the feed, or if required by State law, the signature of the weigher;

(iv) The location of the scale;

(v) The gross weight, tare weight, and net weight of each lot assigned to an individual grower, if applicable;

(vi) The date and time gross weight and tare weight, if gross and tare weights are applicable, are determined;

(vii) The identification of each lot assigned to an individual grower by vehicle or trailer compartment number and seal numbers, if applicable;

(viii) Whether the driver was on or off the truck at the time of weighing, if applicable; and

(ix) The license number or other identification numbers on the truck and trailer, if weighed together, or trailer if only the trailer is weighed, if applicable.

(2) Scale tickets issued under this paragraph shall be at least in duplicate form and shall be serially numbered and used in numerical sequence. One copy shall be retained by the person subject to the P&S Act, and a second copy shall be furnished to the livestock grower or poultry grower.

(Approved by the Office of Management and Budget under control number 0580–0015)

3. Section 201.55 is revised to read as follows:

§ 201.55 Purchases, sales, acquisitions, payments and settlements to be made on actual weights.

(a) Except as provided in paragraph (b) of this section, whenever livestock or live poultry is bought, sold, acquired, paid, or settled on a weight basis, or whenever the weight of feed is a factor in determining payment or settlement to a livestock grower or poultry grower by a stockyard owner, market agency, dealer, packer, or live poultry dealer when livestock or poultry is produced under a growing arrangement, payment or settlement shall be on the basis of the actual weight of the livestock, live poultry, and/or feed shown on the scale ticket. If the actual weight used is not obtained on the date and at the place of transfer of possession, this information shall be disclosed with the date and location of the weighing on the accountings, bills, or statements issued.

Any adjustment to the actual weight shall be fully and accurately explained on the accountings, bills, or statements issued, and records shall be maintained to support such adjustment.

(b) Whenever the weight of feed is a factor in determining payment or settlement to such livestock grower or poultry grower when the livestock or poultry is produced under a livestock or poultry growing arrangement, any feed that is picked up from or returned by a livestock grower or poultry grower must be weighed or its weight must be reasonably determined. When feed is picked up or returned and not weighed, the stockyard owner, market agency, dealer, packer, or live poultry dealer must document that the method used reasonably determines weight and is mutually acceptable to it and the livestock grower or poultry grower. The stockyard owner, market agency, dealer, packer, or live poultry dealer must document and account for the picked up or returned feed weight.

(Approved by the Office of Management and Budget under control number 0580–0015)

4. Section 201.71 is revised to read as follows:

§ 201.71 Scales; accurate weights, repairs, adjustments or replacements after inspection.

(a) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement shall be installed, maintained, and operated to ensure accurate weights. Such scales shall meet applicable requirements contained in the General Code, Scale Code, and Weights Code of the 1996 edition of National Institute of Standards and Technology (NIST) Handbook 44, "Specifications, Tolerances, and Other Technical Requirements for Weighing and Measuring Devices," which is hereby incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register on January 11, 1989, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. These materials are incorporated as they exist on the date of approval and a notice of any change in these materials will be published in the **Federal Register**. This handbook is for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. It is also available for inspection at the Office of the Federal Register Information Center, 800 North Capitol Street, NW, Suite 700, Washington, DC 20408.

(b) All scales used by stockyard owners, market agencies, dealers, packers, and live poultry dealers to weigh livestock, livestock carcasses, live poultry, or feed for the purpose of purchase, sale, acquisition, payment, or settlement of livestock or live poultry, and all scales used for the purchase, sale, acquisition, payment, or settlement of livestock on a carcass weight basis shall be equipped with a printing device which shall record weight values on a scale ticket or other document.

(c) All vehicle scales used to weigh livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry shall be of sufficient length and capacity to weigh the entire vehicle as a unit: Provided, That a trailer may be uncoupled from the tractor and weighed as a single unit.

(d) No scale shall be operated or used by any stockyard owner, market agency, dealer, packer, or live poultry dealer to weigh livestock, livestock carcasses, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses or live poultry unless it has been found upon test and inspection, as specified in § 201.72, to be in a condition to give accurate weight. If a scale is inspected or tested and found to be in a condition to give incorrect or inaccurate weights or if any repairs, adjustments or replacements are made to a scale, it shall not be used until it has been inspected and tested and determined to meet all accuracy requirements specified in the regulations in this section.

5. Section 201.72 is revised to read as follows:

§ 201.72 Scales; testing of.

(a) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, live poultry, or feed for purposes of purchase, sale, acquisition, payment, or settlement of livestock or live poultry, or who weighs livestock carcasses for the purpose of purchase on a carcass weight basis, or who furnishes scales for such purposes, shall cause such scales to be tested by competent persons in accordance with the regulations in this part at least twice during each calendar year at intervals of approximately 6 months. More frequent testing will be required in cases where the scale does not maintain accuracy between tests.

(b) Each stockyard owner, market agency, dealer, packer, or live poultry dealer who weighs livestock, livestock carcasses or live poultry shall furnish reports of such tests and inspections on forms prescribed by the Administrator. The stockyard owner, market agency, dealer, packer or live poultry dealer shall retain one copy of the test and inspection report and shall file one copy with the P&S regional office for the region in which the scale is located.

(c) When scales used for weighing livestock, livestock carcasses, live poultry, or feed are tested and inspected by an agency of a State or municipality or other governmental subdivision, the forms ordinarily used by such agency for reporting test and inspection of scales shall be accepted in lieu of the forms prescribed for this purpose by the Administrator if such forms contain substantially the same information.

(Approved by the Office of Management and Budget under control number 0580–0015)

6. Section 201.73 is revised to read as follows:

§ 201.73 Scale operators to be qualified.

Stockyard owners, market agencies, dealers, packers, and live poultry dealers shall employ qualified persons to operate scales for weighing livestock, livestock carcasses, live poultry, or feed for the purposes of purchase, sale, acquisition, payment, or settlement of livestock, livestock carcasses, or live poultry, and they shall require such employees to operate the scales in accordance with the regulations in this part.

Dated: March 29, 2000.

James R. Baker,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 00–8236 Filed 4–4–00; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–86–AD; Amendment 39–11656; AD 2000–07–02]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is

applicable to certain McDonnell Douglas Model MD–11 series airplanes. This action requires deactivation of the map light assemblies; or modification and reidentification of the insulation blankets adjacent to certain map light assemblies, if applicable, a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies, and follow-on actions. This amendment is prompted by incidents in which a broken or cracked light bulb housing of the First Officer map light was found. The actions specified in this AD are intended to detect a broken light bulb housing, which could expose the power contactor. An exposed power contactor could cause the Captain, First Officer, or Right Observer map light to short or overheat, which could result in smoke or fire in the cockpit.

DATES: Effective April 20, 2000.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of April 20, 2000.

Comments for inclusion in the Rules Docket must be received on or before June 5, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–86–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Technical Specialist, Systems Safety and Integration, Systems and Equipment Branch, ANM–130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: As part of its practice of re-examining all aspects of the service experience of a particular aircraft whenever an accident occurs, the FAA has become aware of an incident in which a broken light bulb housing of the First Officer map light was found on a McDonnell Douglas Model MD–11 series airplane. This breakage exposed the power contactor that goes to the base of the light bulb and allowed the contactor to short circuit to the lamp housing mounting plate. In another incident on the same airplane model, the light bulb housing cracked without exposing the contactor. The cause of the breakage/cracking has not been determined. A broken light bulb housing, if not corrected, could expose the power contactor and cause the Captain, First Officer, or Right Observer map light to short or overheat, which could result in smoke or fire in the cockpit.

These incidents are not considered to be related to an accident that occurred off the coast of Nova Scotia involving a McDonnell Douglas Model MD–11 series airplane. The cause of that accident is still under investigation.

Other Relevant Rulemaking

The FAA, in conjunction with Boeing and operators of Model MD–11 series airplanes, is continuing to review all aspects of the service history of those airplanes to identify potential unsafe conditions and to take appropriate corrective actions. This AD is one of a series of actions identified during that process. The process is continuing and the FAA may consider additional rulemaking actions as further results of the review become available.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–33A069, dated March 10, 2000, which describes procedures for accomplishing either of the following actions:

- Deactivation of the map light assemblies by disconnecting, coiling, and stowing power wires to the Captain, First Officer, and Right Observer map light assemblies; or
- Modification and reidentification of the insulation blankets adjacent to the Captain and First Officer map light assemblies (for certain airplanes); a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies; and follow-on actions. The follow-on actions include repetitive inspections, replacement of the map light assembly with a new or serviceable light assembly; or deactivation of damaged map light assemblies; as applicable.

Explanation of the Requirements of the Rule

Since an unsafe condition has been identified that is likely to exist or develop on other McDonnell Douglas Model MD–11 series airplanes of the same type design, this AD is being issued to detect a broken light bulb housing, which could expose the power contactor. An exposed power contactor could result in the Captain, First Officer, or Right Observer map light shorting or overheating, and consequent smoke or fire in the cockpit. This AD requires accomplishment of the actions specified in the alert service bulletin described previously.

Interim Action

This is considered to be interim action. The FAA is continuing to investigate the existing design of the map light assemblies of certain configuration crew rest areas. In addition, the manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once final action is identified, or once the modification is developed, approved, and available, the FAA may consider additional rulemaking.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–86–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

2000–07–02 McDonnell Douglas: Amendment 39–11656. Docket 2000–NM–86–AD.

Applicability: Model MD–11 series airplanes, as listed in McDonnell Douglas Alert Service Bulletin MD11–33A069, dated March 10, 2000; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect a broken light bulb housing and the resultant exposed power contactor, which could cause the Captain, First Officer, or Right Observer map light to short or overheat, and consequent smoke or fire in the cockpit, accomplish the following:

(a) Within 30 days after the effective date of this AD, accomplish the actions specified in either paragraph (a)(1), or (a)(2) or (a)(3) of this AD, as applicable, in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A069, March 10, 2000.

Option 1 (Deactivate Map Light Assemblies)

(1) For Groups 1 and 2 airplanes identified in the alert service bulletin: Disconnect, coil, and stow power wires to each Captain, First Officer, and Right Observer map light assembly, until the requirements of paragraph (a)(2) or (a)(3) of this AD, as applicable, have been accomplished.

Note 2: Repetitive inspections of the deactivated map light assemblies are not required.

Option 2 (Inspect/Replace/Deactivate Map Light Assemblies)

(2) For Group 1 airplanes identified in the alert service bulletin: Modify and reidentify the insulation blankets adjacent to the Captain and First Officer map light assemblies; and perform a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies.

Note 3: For the purposes of this AD, a general visual inspection is defined as "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

(i) Condition 1 (No Damage Found). If no damage is detected, repeat the general visual inspection of the map light assemblies and adjacent insulation blankets thereafter at intervals not to exceed 700 flight hours.

(ii) Condition 2 (Damage Found). If any damage is detected, prior to further flight, accomplish the actions specified in either paragraph (a)(2)(ii)(A) or (a)(2)(ii)(B) of this AD in accordance with the alert service bulletin.

(A) Option 1 (Replace Damaged Map Light Assemblies). Replace the map light assembly with a new or serviceable light assembly. Repeat the general visual inspection of the map light assemblies and adjacent insulation blankets thereafter at intervals not to exceed 700 flight hours.

(B) Option 2 (Deactivate Damaged Map Light Assemblies). Disconnect, coil, and stow power wires to each damaged Captain, First Officer, and Right Observer map light assembly, until the requirements of paragraph (a)(2)(ii)(A) of this AD have been accomplished.

(3) For Group 2 airplanes identified in the alert service bulletin: Perform a general visual inspection to detect damage of the Captain, First Officer, and Right Observer map light assemblies, and perform the actions specified in either paragraph (a)(2)(i) or (a)(2)(ii) of this AD, as applicable, at the time(s) indicated in that paragraph.

Note 4: For Group 2 airplanes identified in McDonnell Douglas Alert Service Bulletin MD11–33A069, dated March 10, 2000: Modification and reidentification of the insulation blankets are not required. Prior to delivery of Group 2 airplanes, the insulation blankets were modified.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(d) The actions shall be done in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A069, dated March 10, 2000. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on April 20, 2000.

Issued in Renton, Washington, on March 28, 2000.

John J. Hickey,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8133 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD01–00–018]

Drawbridge Operation Regulations: West Bay, MA

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation from regulations.

SUMMARY: The Commander, First Coast Guard District has issued a temporary deviation from the existing drawbridge regulations for the West Bay Bridge, mile 1.2, across West Bay in Osterville, Massachusetts. This deviation requires the bridge owner to open the bridge from April 1, 2000 to April 30, 2000, 8 a.m. to 4 p.m., only if at least a four hour advance notice is given by calling (508) 790–6330. This deviation is necessary to facilitate necessary repairs to the bridge.

DATES: This deviation is effective from April 1, 2000 to April 30, 2000.

FOR FURTHER INFORMATION CONTACT: Mr. John McDonald, Project Officer, First Coast Guard District, (617) 223–8364.

SUPPLEMENTARY INFORMATION: The West Bay Bridge has a vertical clearance of 15 feet at mean high water and 17 feet at mean low water.

The existing regulations for the bridge in 33 CFR 117.622 require the bridge to open on signal April 1 through October 31 as follows:

(1) April 1 through June 14 and October 12 through October 31; 8 a.m. to 4 p.m.

(2) June 15 through June 30; 8 a.m. to 6 p.m.

(3) July 1 through Labor Day; 8 a.m. to 8 p.m.

(4) Labor Day through October 11; 8 a.m. to 5 p.m.

(5) At all other times from April 1 through October 31, the draw shall open on signal if at least 4 hours advance notice is given.

(6) From November 1 through March 31, the draw shall open on signal if at least 24 hours advance notice is given.

The bridge owner, the Town Of Barnstable, asked the Coast Guard to allow the bridge to open on signal, from April 1, 2000 through April 30, 2000, 8 a.m. to 4 p.m., only if at least 4 hours advance notice is given by calling (508) 790–6330. These repairs are being performed during the month of April when there have been few requests to open the bridge. Mariners may use an alternate route through Cotuit Bay to avoid using the West Bay Bridge if they do not wish to provide the 4 hour advance notice for bridge openings.

In accordance with 33 CFR 117.35(c), this work will be performed with all due speed in order to return the bridge to normal operation as soon as possible. This deviation is authorized under 33 CFR 117.35.

Dated: March 28, 2000.

G.N. Naccara,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District 3.

[FR Doc. 00–8377 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–15–U

POSTAL SERVICE

39 CFR Part 111

Changes to Current Delivery Record Filing System

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth revised Domestic Mail Manual (DMM) standards adopted by the Postal Service to implement an electronic storage and retrieval system for delivery records. Conforming changes are proposed in portions of the Domestic Mail Manual concerning delivery record information to reflect the new system, in particular the fact that hardcopy records will no longer be retained at the office of address for delivery record inquiry and receipt purposes. Additionally, changes are proposed to the DMM to indicate the change in how information from the delivery record, requested using PS Form 3811–A, Domestic Return Receipt (After Mailing), will be conveyed to customers. A notice of intent on this issue was published in the **Federal Register** on June 10, 1998 (63 FR 31815). Responses to that notice are addressed in this rule.

EFFECTIVE DATES: May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Carrie Bornitz, (202)–268–6797.

SUPPLEMENTARY INFORMATION:

Scope: A national Postal Service electronic database for maintaining records of delivery date, time, and other information is already in place and is being used for Express Mail and Delivery Confirmation items. Testing of the database included material handling, operations, and systems tests for the capturing, routing, optical scanning, storage, and retrieval of electronic records that include a signature. Testing of this universal strategy for signature capture began in November 1998 and was completed in December 1999. The increased accessibility of an electronic database will improve customer service and response time and speed up processes involving the filing of indemnity claims.

Current Internal Use (Hardcopy Records): Delivery records are maintained for Postal Service use to reply to delivery inquiries and to substantiate indemnity claims (additional internal uses exist as well). Current delivery records include type of special service item, article number, recipient signature, printed name, delivery address, and delivery date. When applicable, the delivery record includes where a mailpiece was forwarded or if an item was returned or refused. Records are also made available to customers in the form of a Return Receipt After Mailing or Duplicate Return Receipt. The Postal Service currently maintains hardcopy delivery records for Express Mail, COD, Certified, Numbered Insured, Registered, Restricted Delivery, International Accountable, and Return Receipt for Merchandise items. Electronic records, without signature information, are maintained for Express Mail and Delivery Confirmation items in a centralized database.

Internal Use Under the New System: The use of delivery record information will not change under this program. Hardcopy delivery records filed up to the implementation of this program will be maintained for the full stated

retention periods. The electronic delivery record program only applies to domestically delivered items; APO and FPO deliveries are not included, nor are the majority of deliveries to territories, possessions, and freely associated states. The electronic delivery record will include the article number, date of delivery, signature of recipient, printed name of recipient, and addressee's delivery address. Information on items that were forwarded or returned to sender will also be maintained as part of the electronic mailpiece record. All electronic delivery records will be maintained in a Postal Service centralized database. PS Form 3811–A, Domestic Return Receipt (After Mailing), will not be used to convey electronic delivery record information to customers for records stored electronically. Instead, customers will receive a dated letter, generated from the centralized database, providing one of the following: (1) The full delivery record, (2) the delivery record absent the signature/name/address information (if that information is not available), (3) a statement that the delivery record could not be found, or (4) a statement that duplicate IDs prohibited final results. These responses, with the exception of response four, are similar to the current responses provided via the PS Form 3811–A. The time to respond to customer inquiries for electronic delivery records will improve significantly.

Current Customer Use: Option 1: When a customer requests a Return Receipt After Mailing (PS Form 3811–A), the Postal Service provides the name and date of delivery only. Option 2: If a Duplicate Return Receipt is requested because the original return receipt was not provided, the Postal Service uses the delivery record to provide the recipient's name, date of delivery, and the addressee's delivery address if different from the address shown on the mailpiece. The customer is also informed if a record of delivery is not found. No actual signatures are provided with either option. All information is provided via the mail in hardcopy format.

Customer Use Under the New System: Service will be improved for Duplicate Return Receipt and Return Receipt After Mailing by the inclusion of an electronically produced image of the customer/recipient's signature, printed name, and address (when available) for items filed electronically. Requesters will receive a Duplicate Return Receipt or Return Receipt After Mailing for electronically filed items via fax or mail. The new form design is a letter which will be automatically generated by the centralized database. Requests for Duplicate Return Receipt and Return Receipt After Mailing must continue to be made at a post office.

On June 10, 1998, the Postal Service published for public comment in the **Federal Register** (63 FR 31815), the proposed rule to convert to a system of electronic record keeping. Seven comments from two individuals were submitted to the Postal Service regarding the **Federal Register** notice. These comments concentrated on the following subject areas: Inclusion of printed name on delivery receipt, multiple uses of PS Form 3849, return receipt procedures, availability of records on web site, record security, and the extension of certain special services to other classes of mail. The comments were considered in developing the final rule.

The notice stated that the capture of the recipient's printed name was optional. This has been changed in accordance with DMM section D042.1.7[b].

The notice stated that the hardcopy record will no longer be maintained. The Uniform Photographic Copies of Business and Public Records as Evidence Act (UPA) and the Federal Business Records Act have made records and copies or reproductions that produce a durable medium for reproducing the original admissible in courts of law. The original may be destroyed in the regular course of business. The new process of record storage meets these requirements, and accordingly, the Postal Service will not longer retain these items for delivery record inquiry purposes.

One comment asked how this system of electronic records will be used for recipients of large amounts of accountable mail and the completion of the return receipt (PS Form 3811). This program does not replace or change the current process for PS Form 3811, Return Receipt.

One comment stated that it would be advantageous to have delivery records available on the USPS Web site. The availability of accessing delivery records via the Internet is limited, at this time, to Express Mail and Delivery Confirmation items only, but may be expanded in the future. No signature images will be shown on the Internet for any items.

One commentor raised a question regarding system security to ensure tamper-proof records and originality. The comment asserted that the original delivery receipt must be maintained and be accessible, and that any duplicate return receipts must be validated as they presently are with both the postmark of the completing office and the initials of the postal employee. This electronic system of delivery records is designed to replace, rather than supplement, the current hardcopy filing system for the purpose of customer inquiries. The USPS database that houses delivery records is secure against outside access. Additionally, records are encrypted as they travel to and from the database to ensure record integrity. Delivery record responses will not carry a postmark or any employee designation but will be dated and clearly marked as Postal Service correspondence.

An additional comment was made on the extension of the Signature Confirmation and Delivery Confirmation services to other classes of mail besides Priority Mail and Standard Mail. The electronic record management program does not address the issue of service offerings among classes of mail.

For the reasons discussed above, the Postal Service hereby adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations (see 39 CFR part 111).

List of Subjects in 39 CFR Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Revise the following sections of the Domestic Mail Manual to read as follows:

R Rates and Fees

R 900 Services

* * * * *

19.0 Return Receipt

Fee, in addition to postage and other fees, per mailpiece:

Requested at time of mailing (showing to whom delivered, signature, date of delivery, and addressee's address, if different) Requested after mailing (showing to whom delivered, signature, date of delivery, and delivery address, if available)

S Special Services

* * * * *

S900 Special Postal Services

S910 Security and Accountability

S911 Registered Mail

1.0 Basic Information

1.1 Description

Registered mail is the most secure service that the USPS offers. It incorporates a system of receipts to monitor the movement of the mail from the point of acceptance to delivery. Registered mail service provides the sender with a mailing receipt, and a delivery record is maintained by the Postal Service.

* * * * *

S912 Certified Mail

1.0 Basic Information

1.1 Description

Certified mail service provides the sender with a mailing receipt, and a delivery record is maintained by the Postal Service. No record is kept at the office from which certified mail is mailed. No insurance coverage is provided. Certified mail is dispatched and handled in transit as ordinary mail.

* * * * *

S913 Insured Mail

1.0 Basic Information

1.1 Description

Retail insured mail provides up to $5,000 indemnity coverage for a lost, rifled, or damaged article, subject to the standards for the service and payment of the applicable fee. A bulk insurance discount is available for insured articles entered by authorized mailers who meet the criteria in 3.0. No record of insured mail is kept at the office of mailing. Insured mail service provides the sender with a mailing receipt. For mail insured for more than $50, a delivery record is maintained by the Postal Service. Insured mail is dispatched and handled in transit as ordinary mail.

* * * * *

S915—Return Receipt

1.0 Basic Information

1.1 Description

Return receipt service provides a mailer with evidence of delivery (to whom the mail was delivered and date of delivery). A return receipt may be requested before or after mailing. A return receipt requested before mailing also supplies the recipient's actual delivery address, if the delivery address is different from the address used by the sender.

* * * * *

2.0 OBTAINING SERVICE

* * * * *

2.2 After Mailing

The mailer may request a return receipt after mailing by completing Form 3811–A and paying the appropriate fee. The acceptance office will initiate the inquiry or send the form to the delivery post office for completion. When a delivery record is available, the USPS provides the mailer information from that record, including to whom the mail was delivered and the date of delivery. A request for a return receipt after mailing for Express Mail must be requested within 90 days after the date of mailing, and all other requests are limited to 2 years.

* * * * *

4.0 REQUESTS FOR DELIVERY INFORMATION

4.1 Receipt Not Received

After a reasonable period, not longer than 2 years after the date of mailing, a mailer who did not receive return receipt service for which the mailer had paid may request information from the delivery record, using Form 3811–A. Any request for such information for Express Mail must be filed within 90 days after the date of mailing.

4.2 Form 3811–A

The mailer may request information from the delivery record at any post office by completing Form 3811–A. The applicable fee is waived if the mailer can produce a mailing receipt showing the applicable return receipt fee was paid.

* * * * *

S917 Return Receipt for Merchandise

1.0 Basic Information

1.1 Description

Return receipt for merchandise service is a form of return receipt service that provides the sender with a mailing receipt and a return receipt. A delivery record is maintained by the Postal Service, but no record is kept at the office of mailing. A return receipt for merchandise also supplies the recipient's actual delivery address if it is different from the address used by the sender. Mail using this service is dispatched and handled in transit as ordinary mail. This service does not include insurance coverage. A return receipt for merchandise may not be requested after mailing, and restricted delivery service is not available.

* * * * *

S921 Collect on Delivery (COD) Mail

1.0 Basic Information

1.1 Description

Any mailer may use collect on delivery (COD) service to mail an article for which the mailer has not been paid and have its price and the cost of the postage collected from the recipient. If the recipient remits the amount due by check payable to the mailer, the USPS forwards the check to the mailer. If the recipient pays in cash, the USPS sends a postal money order to the mailer. The amount collected from the recipient may not exceed $600. COD service provides the mailer with a mailing receipt, and a delivery record is maintained by the Postal Service.

* * * * *

An appropriate amendment to 39 CFR 111.3 will be published to reflect these changes.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 00–8282 Filed 4–4–00; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–157–0222; FRL–6569–9]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision: Sacramento Metropolitan Air Quality Management District, San Diego County, San Joaquin Valley Unified, and Ventura County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action on revisions to the California State Implementation Plan (SIP). The revisions concern rule rescissions from the Sacramento Metropolitan Air Quality Management District (SMAQMD), San Diego County Air Pollution Control District (SDCAPCD), San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD), and amendments to Ventura County Air Pollution Control District (VCAPCD). This approval action will rescind and amend these rules from the federally approved SIP. The intended effect of approving these rule rescissions and amendments is to update and clarify the State Implementation Plan in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). The rule rescissions consist of obsolete rules that have been superseded or removed from the district's regulations. EPA is finalizing the approval of these revisions to the California SIP under provisions of the CAA regarding EPA action on SIP submittals, SIP requirements for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: This rule is effective on June 5, 2000 without further notice, unless EPA receives adverse comments by May 5, 2000. If EPA receives such comment, it will publish a timely withdrawal in the **Federal Register** informing the public that this rule will not take effect.

ADDRESSES: Written comments must be submitted to Andrew Steckel, Chief, Rulemaking Office at the Region IX office listed below. Copies of the rule revisions and EPA's evaluation report for each rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, S.W., Washington, D.C. 20460

California Air Resources Board Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Rd., Sacramento, CA 95826

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415–744–1189).

SUPPLEMENTARY INFORMATION:

I. Applicability

The rule revisions to the California SIP are listed below.

Sacramento Metropolitan Air Quality Management District (SMAQMD)

Rule 445, Perchloroethylene Dry Cleaning, submitted 05/18/98; rescission adopted 10/03/96.

San Diego County Air Pollution Control District (SDCAPCD)

Rule 67.8, Dry Cleaning Facilities Using Halogenated Organic Solvent, submitted 07/23/99, rescission adopted 11/04/98.

San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)

Rule 4671, Perchloroethylene Dry Cleaning System, submitted 10/13/95, rescission adopted 06/15/95.

Ventura County Air Pollution Control District (VCAPCD)

Rule 74.5.2, Dry Cleaning Facilities Using Halogenated Organic Solvents, submitted 08/10/95 revision adopted 05/09/95.

II. Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 Act or pre-amended Act), that included the SMAQMD, SDCAPCD, SJVUAPCD, and VCAPCD. 43 FR 8964, 40 CFR 81.305. In response to section 110 (a) of the Act and other requirements, SMAQMD, SDCAPCD, SJVUAPCD, and VCAPCD submitted many rules which EPA approved into the SIP.

On February 7, 1996 (61 FR 4588) EPA published a final rule excluding perchloroethylene from the definition of volatile organic compound. This compound was determined to have negligible photochemical reactivity and, thus, was added to the Agency's list of Exempt Compounds.

The State of California submitted the rule revisions listed above to update the federally enforceable SIP for the SMAQMD, SDCAPCD, SJVUAPCD, and VCAPCD, and to be consistent with EPA's 1996 rulemaking. The following is EPA's evaluation and final action for each rule.

III. EPA Evaluation and Action

In determining whether to approve each revision to the SIP, EPA must evaluate the revisions for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA, and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents.

The rules that are being rescinded are not appropriate for the SIP because they do not control criteria pollutants. EPA regulates perchloroethylene as a hazardous air pollutant under section 112 of the Act.

EPA has evaluated the rule revisons and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, all of the rule revisions listed in section I, Applicability are being approved under section 110(k) of the CAA as meeting the requirements of section 110(a) and part D.

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective June 5, 2000 without further notice unless the Agency receives adverse comments by May 5, 2000.

If the EPA receives such comments, then EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule is effective on June 5, 2000, and no further action will be taken on the proposed rule.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria,

the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

C. Executive Order 13084

Under Executive Order 13084, Consultation and Coordination with Indian Tribal Governments, EPA may not issue a regulation that is not required by statute, that significantly affects or uniquely affects the communities of Indian tribal governments, and that imposes substantial direct compliance costs on those communities, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by the tribal governments. If the mandate is unfunded, EPA must provide to the Office of Management and Budget, in a separately identified section of the preamble to the rule, a description of the extent of EPA's prior consultation with representatives of affected tribal governments, a summary of the nature of their concerns, and a statement supporting the need to issue the regulation.

In addition, Executive Order 13084 requires EPA to develop an effective process permitting elected and other representatives of Indian tribal governments "to provide meaningful and timely input in the development of regulatory policies on matters that significantly or uniquely affect their communities." Today's rule does not significantly or uniquely affect the communities of Indian tribal governments. Accordingly, the requirements of section 3(b) of Executive Order 13084 do not apply to this rule.

D. Executive Order 13132

Executive Order 13121, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

F. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated annual costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

G. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

I. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 15, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

1. Section 52.220 is amended by adding paragraphs (c)(183)(i)(A)(*8*), (c)(184)(i)(A)(*3*), (c)(185)(i)(C)(*7*), and (c)(224)(i)(B)(*3*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(183) * * *

(i) * * *

(A) * * *

(*8*) Previously approved on March 24, 1992 and now deleted without replacement Rule 67.8.

* * * * *

(184) * * *

(i) * * *

(A) * * *

(*3*) Previously approved on August 20, 1991 and now deleted without replacement Rule 445.

* * * * *

(185) * * *

(i) * * *

(C) * * *

(*7*) Previously approved on April 24, 1992 and now deleted without replacement Rule 467.1.

* * * * *

(224) * * *

(i) * * *

(B) * * *

(*3*) Rule 74.5.2, adopted on May 5, 1995.

* * * * *

[FR Doc. 00–8149 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 236–0225a; FRL–6569–5]

Revision to the California State Implementation Plan, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from adhesive and sealants. We are approving a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on June 5, 2000 without further notice, unless EPA receives adverse comments by May 5, 2000. If we receive such comment, we will withdraw the document and notify the public in the **Federal Register** that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, N.W., Washington D.C. 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Santa Barbara County Air Pollution Control District, 26 Castilian Dr. Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

Table of Contents

I. The State's Submittal
A. What Rule Did the State Submit?
B. Are there other versions of this rule?
C. What is the purpose of the submitted rule?
II. EPA's Evaluation and Action
A. How is EPA evaluating the rule?
B. Does the rule meet the evaluation criteria?
C. Public comment and final action.
III. Background Information
Why was this rule submitted?
IV. Administrative Requirements

I. The State's Submittal

A. What Rule Did the State submit?

Table 1 lists the rule we are approving with the date that it was adopted by local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE

Local agency	Rule #	Rule title	Adopted	Submitted
SBCAPCD	353	Adhesives and sealants	08/19/99	10/29/99

On December 16, 1999, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other versions of This Rule?

There are no previous versions of Rule 353 in the SIP and no earlier versions of this rule were adopted by the SBCAPCD.

C. What Is the Purpose of the Submitted Rule?

Rule 353 limits VOC emissions from the application of adhesive and sealants. The TSD has more information about this rule and its provisions.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SBCAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 353 must fulfill RACT.

Guidance and policy documents that we used to define specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24, 1987 **Federal Register** document," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. The State of California Air Resources Board's "Determination of Reasonably Available Control Technology (RACT) and Best Available Retrofit Control Technology (BARCT) for Adhesives and Sealants," December 1998.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. Rule 353 contains one deviation from RACT which was determined to meet EPA's 5% equivalency policy (see the Blue Book). The TSD has more information on our evaluation.

C. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this, so we are finalizing the approval without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by May 5, 2000, we will notify the public in the **Federal Register** that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on June 5, 2000. This will incorporate this rule into the federally enforceable SIP.

III. Background Information

Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency VOC rule.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this rule also does not significantly or uniquely affect the communities of tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely approves a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by June 5, 2000. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401 et seq.

Dated: March 17, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(270)(i)(D)(*1*) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(270) * * *

(i) * * *

(D) Santa Barbara County Air Pollution Control District.

(*1*) Rule 353, adopted on August 19, 1999.

* * * * *

[FR Doc. 00–8147 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300960A; FRL–6551–9]

RIN 2070–AB78

Spinosad; Pesticide Tolerance Technical Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; technical correction.

SUMMARY: EPA issued a final rule in the **Federal Register** of January 12, 2000, establishing tolerances for spinosad. This document is being issued to correct tolerances for "animal feed, nongrass, group" at 0.02 ppm, "apple" at 0.2 ppm, "barley, grain" at 0.02 ppm, and "teosinte, grain" at 0.02 ppm.

DATES: This document is effective April 5, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney Jackson, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7610; e-mail address: jackson.sidney@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

The Agency included in the final rule a list of those who may be potentially affected by this action. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under " FOR FURTHER INFORMATION CONTACT."

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–300960A. The official record consists of the documents specifically referenced in this action, any public

comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. What Does this Technical Correction Do?

A final rule to establish tolerances for spinosad on various commodities was published in the **Federal Register** of January 12, 2000 (65 FR 1802) (FRL–6399–7). This correction is being published to establish tolerances for "animal feed, nongrass, group" at 0.02 ppm, "apple" at 0.2 ppm, "barley, grain" at 0.02 ppm, and "teosinte, grain" at 0.02 ppm which were incorrectly listed in the table in § 180.495(a).

IV. Why Is this Technical Correction Issued as a Final Rule?

EPA is publishing this action as a final rule without prior notice and opportunity to comment because the Agency believes that providing notice and an opportunity to comment is unnecessary and would be contrary to the public interest. As explained above, the correction contained in this action will simply correct § 180.495(a) by revising the listing and residue tolerances for commodities that were incorrectly stated. EPA therefore finds that there is "good cause" under section 553(b)(3)(B) of the Administrative Procedure Act (APA) (5 U.S.C. 553) to make this amendment without prior notice and comment. For the same reasons, EPA also finds that there is "good cause" under FFDCA section 408(b)(2) to make this minor modification to the establishment of a tolerance without notice and comment.

V. Do Any of the Regulatory Assessment Requirements Apply to this Action?

No. This final rule implements technical corrections to the Code of Federal Regulations (CFR), and does not impose any new requirements.

Under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993), the Office of Management and Budget (OMB) has determined that a technical correction is not a "significant regulatory action" subject to review by OMB.

Because this action is not economically significant as defined by section 3(f) of Executive Order 12866, this action is not subject to Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997).

This action will not result in environmental justice related issues and does not, therefore, require special consideration under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994).

Since the Agency has made a "good cause" finding that this action is not subject to notice-and-comment requirements under the APA or any other statute (see Unit IV.), this action is not subject to the regulatory flexibility provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), or to sections 202 and 205 of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). In addition, this action does not significantly or uniquely affect small governments or impose a significant intergovernmental mandate, as described in sections 203 and 204 of UMRA. Nor does this action significantly or uniquely affect the communities of tribal governments as specified by Executive Order 13084, entitled *Consultation and Coordination with Indian Tribal Governments* (63 FR 27655, May 10, 1998). This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999).

This action does not involve any technical standards that require the Agency's consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note).

This rule does not contain any information collection requirements that require review and approval by OMB pursuant to the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 *et seq.*).

In issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct, as required by section 3 of Executive Order 12988, entitled *Civil Justice Reform* (61 FR 4729, February 7, 1996).

EPA has complied with Executive Order 12630, entitled *Governmental Actions and Interference with Constitutionally Protected Property Rights* (53 FR 8859, March 15, 1988), by examining the takings implications of this rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the Executive Order.

EPA's compliance with these statutes and Executive Orders for the underlying rule is discussed in Unit VIII. of the final rule (65 FR 1802, January 12, 2000).

VI. Will EPA Submit this Final Rule to Congress and the Comptroller General?

Yes. The Congressional Review Act (CRA) (5 U.S.C. 801 *et seq.*), as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. Section 808 allows the issuing agency to make a rule effective sooner than otherwise provided by the CRA if the agency makes a good cause finding that notice and public procedure is impracticable, unnecessary or contrary to the public interest. This determination must be supported by a brief statement. 5 U.S.C. 808(2). As stated previously, EPA has made such a good cause finding, including the reasons therefore, and established an effective date of April 5, 2000. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 22, 2000.

James Jones,

Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is corrected as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

2. Section 180.495, is amended by revising the entries for "Animal feed, nongrass, group," "Apple," and "Teosinte, grain" and removing the entry for "Barley" and adding in its place "Barley, grain" to the table in paragraph (a) to read as follows:

§ 180.495 Spinosad; tolerances for residues.

* * * * *

(a) * * *

Commodity	Parts per million	Expiration/ Revocation Date
* *	* *	*
Animal feed, nongrass, group	0.02	None
* *	* *	*
Apple	0.2	None
* *	* *	*
Barley, grain	0.02	None
* *	* *	*
Teosinte, grain	0.02	None
* *	* *	*

* * * * *

[FR Doc. 00–8265 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 00–596; MM Docket No. 99–96, RM–9534; MM Docket No. 99–193, RM–9561; MM Docket No. 99–194, RM–9562; MM Docket No. 99–308, RM–9693; MM Docket No. 99–309, RM–9694; MM Docket No. 99–310, RM–9742]

Radio Broadcasting Services; Newell, SD; Moville, IA, Rockford, IA; Watseka, IL; Keosauqua, IA; Box Elder, SD

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document grants six proposals that allot new channels to Newell, South Dakota; Moville, Iowa; Rockford, Iowa; Watseka, Illinois; Keosauqua, Iowa; and Box Elder, South Dakota. Filing windows for Channel 279C2 at Newell, South Dakota; Channel 246A at Moville, Iowa, Channel 225A at Rockford, Iowa; Channel 240A at Watseka, Illinois; Channel 271C3 at Keosauqua, Iowa; and Channel 274A at Box Elder, South Dakota, will not be opened at this time. Instead, the issue of opening a filing window for these channels will be addressed by the Commission in a subsequent order.

DATES: Effective May 1, 2000.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 418–2180.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 99–96; MM Docket No. 99–193; MM Docket No. 99–194; MM Docket No. 99–308; MM Docket No. 99–309; MM Docket No. 99–310, adopted March 8, 2000, and released March 17, 2000. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Information Center (Room CY–A257), 445 12th Street, SW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1231 20th Street, NW., Washington, DC 20036.

The Commission, at the request of Mountain West Broadcasting, allots Channel 279C2 at Newell, South Dakota, as the community's first local aural transmission service. *See* 64 FR 15713, April 1, 1999. Channel 279C2 can be allotted at Newell in compliance with the Commission's minimum distance separation requirements with a site restriction of 1.8 kilometers (1.1 miles) north to avoid a short-spacing to the licensed site of Station KIQK(FM), Channel 281C1, Rapid City, South Dakota. The coordinates for Channel 279C2 at Newell are 44–43–58 North Latitude and 103–25–18 West Longitude.

The Commission, at the request of Mountain West Broadcasting, allots Channel 246A at Moville, Iowa, as the community's first local aural transmission service. *See* 64 FR 29978, June 4, 1999. Channel 246A can be allotted to Moville in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.2 kilometers (3.2 miles) east to avoid a short-spacing to the licensed site of Station KMXC(FM), Channel 247C1, Sioux Falls, Iowa. The coordinates for Channel 246A at Moville are 42–29–11 North Latitude and 96–00–36 West Longitude.

The Commission, at the request of Mountain West Broadcasting, allots Channel 225A at Rockford, Iowa, as the community's first local aural transmission service. *See* 64 FR 29978, June 4, 1999. Channel 225A can be allotted at Rockford in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.3 kilometers (1.4 miles) southwest to avoid short-spacings to the licensed sites of Station KATF(FM), Channel 225C1, Dubuque, Iowa, and Station KFSI(FM), Channel 225A, Rochester, Minnesota. The coordinates for Channel 225A at Rockford are 43–01–55 North Latitude and 92–57–53 West Longitude.

The Commission, at the request of Iroquois County Broadcasting Company, allots Channel 240A at Watseka, Illinois, as the community's second local FM transmission service. *See* 64 FR 57838, October 27, 1999. Channel 240A can be allotted at Watseka in compliance with the Commission's minimum distance separation requirements with a site restriction of 5.4 kilometers (3.3 miles) northwest to avoid a short-spacing to the licensed site of Station WKKD–FM, Channel 240A, Aurora, Illinois. The coordinates for Channel 240A at Watseka are 40–48–00 North Latitude 87–47–15 West Longitude.

The Commission, at the request of McTronix, allots Channel 271C3 at Keosauqua, Iowa, as the community's first local aural transmission service. *See* 64 FR 57838, October 27, 1999. Channel 271C3 can be allotted at Keosauqua in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 271C3 at Keosauqua are 40–43–48 North Latitude and 91–57–48 West Longitude.

The Commission, at the request of La Nina Education Association, allots Channel 274A at Box Elder, South Dakota, as the community's first local aural transmission service. *See* 64 FR 57837, October 27, 1999. Channel 274A can be allotted at Box Elder in compliance with the Commission's minimum distance separation requirements at city reference coordinates. The coordinates for Channel 274A at Box Elder are 44–06–48 North Latitude and 103–04–12 West Longitude.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, 336.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under South Dakota, is amended with respect to the communities listed below, as follows:

a. By adding Newell, Channel 279C2; and

b. By adding Box Elder, Channel 274A.

3. Section 73.202(b), the Table of FM Allotments under Iowa, is amended with respect to the communities listed below, as follows:

a. By adding Moville, Channel 246A;

b. By adding Rockford, Channel 225A; and

c. By adding Keosauqua, Channel 271C3.

4. Section 73.202(b), the Table of FM Allotments under Illinois, is amended by adding Channel 240A at Watseka.

Federal Communications Commission.

John A. Karousos,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 00–8343 Filed 4–4–00; 8:45 am]

BILLING CODE 6712–01–U

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION

49 CFR Part 533

[Docket No. NHTSA–00–7033]

RIN 2127–AH95

Light Truck Average Fuel Economy Standard, Model Year 2002

AGENCY: National Highway Traffic Safety Administration (NHTSA).

ACTION: Final rule.

SUMMARY: This final rule establishes the average fuel economy standard for light trucks manufactured in model year (MY) 2002. The issuance of the standard is required by statute. As required by section 321 of the fiscal year (FY) 2000 DOT Appropriations Act, the light truck standard for MY 2002 is identical to the standard for MY 2001, 20.7 mpg.

DATES: This final rule becomes effective on June 5, 2000.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, call Henrietta Spinner, Office of Consumer Programs, at (202) 366–0846, facsimile (202) 366–2738, electronic mail "hspinner@nhtsa.dot.gov" For legal issues, call Otto Matheke, Office of the Chief Counsel, at 202–366–5263.

SUPPLEMENTARY INFORMATION:

I. Background

In December 1975, during the aftermath of the energy crisis created by the oil embargo of 1973–74, Congress enacted the Energy Policy and Conservation Act. The Act established an automotive fuel economy regulatory program by adding Title V, "Improving Automotive Efficiency," to the Motor Vehicle Information and Cost Saving Act. Title V has been amended and recodified without substantive change as Chapter 329 of Title 49 of the United States Code. Chapter 329 provides for the issuance of average fuel economy standards for passenger automobiles and automobiles that are not passenger automobiles (light trucks).

Section 32902(a) of Chapter 329 states that the Secretary of Transportation shall prescribe by regulation corporate average fuel economy (CAFE) standards for light trucks for each model year. That section also states that "[e]ach standard shall be the maximum feasible average fuel economy level that the Secretary decides the manufacturers can achieve in that model year." (The Secretary has delegated the authority to implement the automotive fuel economy program to the Administrator of NHTSA. 49 CFR 1.50(f).) Section 32902(f) provides that in determining the maximum feasible average fuel economy level, we shall consider four criteria: Technological feasibility, economic practicability, The effect of other motor vehicle standards of the Government on fuel economy, and The need of the United States to conserve energy. Using this authority, we have set light truck CAFE standards through MY 2001. See 49 CFR 533.5(a). The standard for MY 2001 is 20.7 mpg.

We began the process of establishing light truck CAFE standards for model years after MY 1997 by publishing an Advance Notice of Proposed Rulemaking (ANPRM) in the **Federal Register**. 59 FR 16324 (April 6, 1994). The ANPRM outlined the agency's intention to set standards for some or all of model years 1998 to 2006.

On November 15, 1995, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1996 was enacted. Pub. L. 104–50. Section 330 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

We then issued a notice of proposed rulemaking (NPRM) limited to MY 1998, which proposed to set the light truck CAFE standard for that year at 20.7 mpg, the same standard as had been set for MY 1997. 61 FR 145 (January 3, 1996). This 20.7 mpg standard was adopted by a final rule issued on March 29, 1996. 61 FR 14680 (April 3, 1996).

On September 30, 1996, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1997 was enacted. Pub. L. 104–205. Section 323 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations * * * prescribing corporate average fuel economy standards for automobiles * * * in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

On March 31, 1997, we issued a final rule (62 FR 15859) establishing light truck fuel economy standards for the 1999 model year. This final rule was not preceded by an NPRM. The agency concluded that the restriction contained in Section 323 of the FY 1997 Appropriations Act prevented us from issuing any standards other than the standard set for the 1998 model year. Because we had no other course of action, we determined that issuing an NPRM was unnecessary and contrary to the public interest.

We followed that same procedure for following years and did not issue an NPRM prior to establishing the 2000, and 2001 light truck fuel economy standards. The agency concluded, as it had when setting the 1999 standard, that the restrictions contained in the appropriations acts prevented us from issuing any standards other than the standard set for the prior model year. We also determined that issuing an NPRM was unnecessary and contrary to the public interest because we had no other course of action.

On October 9, 1999, the Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 2000 was enacted. Public Law 106–69. This law contained the appropriations provisions for the Department of Transportation for the 2000 fiscal year. Section 321 of that Act provides:

> None of the funds in this Act shall be available to prepare, propose, or promulgate any regulations pursuant to title V of the Motor Vehicle Information and Cost Savings Act prescribing corporate average fuel economy standards for automobiles, as defined in such title, in any model year that differs from standards promulgated for such automobiles prior to enactment of this section.

Because light truck CAFE standards must be set no later than eighteen months before the beginning of the model year in question, the deadline for us to set the MY 2002 standard is approximately April 1, 2000. As the agency cannot spend any funds in violation of the terms of Section 321, it cannot undertake any work in preparation of a standard for MY 2002 unless it is identical to the MY 2001 standard. Preparation of any fuel economy standard requires the agency to spend money to determine what the appropriate fuel economy level would be, to analyze the costs and benefits of that standard and to prepare documents and studies regarding the standard. Incurring these costs when the legislation dictates the fuel economy level would not be a productive use of resources. Accordingly, the agency is foregoing any analysis of what the appropriate fuel economy level for MY 2002 might be.

We note that the language contained in Section 321 of the FY 2000 Act is identical to that found in Section 330 of the FY 1996 Appropriations Act, Section 323 of the FY 1997 Appropriations Act, Section 322 of the FY 1998 Appropriations Act, and Section 322 of the FY 1999 Appropriations Act. The adoption of identical language in these acts leads us to conclude that Congress considered our prior view of this language to be correct: the limitation precludes NHTSA from setting a light truck standard that differs from one adopted in the previous year.

As explained above, Section 321 precludes NHTSA from preparing, proposing, or issuing any CAFE standard that is not identical to those previously established for MYs 1998, 1999 and 2000 and 2001. We are therefore establishing the MY 2002 light truck standard through the issuance of this final rule. In our view, the express directive in the FY 2000 Department of Transportation and Related Agencies Appropriations Act stops us from considering a new CAFE standard for the 2002 model year. As we cannot expend any funds to set the 2002 standard at any level other than the MY 2001 standard, issuing a notice of proposed rulemaking and providing an opportunity for notice and comment would be unnecessary and contrary to the public interest. Accordingly, this final rule sets the MY 2002 light truck CAFE standard at the MY 2001 level of 20.7 mpg.

II. Final Rule

These regulations are being published as a final rule. Accordingly, the fuel economy standards in Part 533 are fully in effect 30 days after the date of the document's publication. No further regulatory action by the agency is necessary to make these regulations effective.

These regulations have been published as a final rule without prior issuance of a notice of proposed rulemaking because Section 321 of the FY2000 Department of Transportation and Related Agencies Appropriations Act prevents us from issuing any fuel economy standard for the 2002 model year that differs from those in effect for the 2001 model year. Because of this, providing for prior notice and opportunity for comment would have been superfluous.

In the agency's view, vehicle manufacturers and other parties will not be harmed by the agency's decision not to issue an NPRM before issuing a final rule to establish the MY 2002 light truck fuel economy standard. The applicable fuel economy standards established in this final rule do not differ from those established for the prior model year. As these standards cannot be modified by the agency, use of a final rule without a prior NPRM has no impact on the positions of any interested party.

III. Impact Analyses

A. Economic Impacts

We have not prepared a final economic assessment because of the restrictions imposed by Section 321 of the FY 2000 DOT Appropriations Act. All past fuel economy rules, however, have had economic impacts in excess of $100 million per year. The rule was reviewed by the Office of Management and Budget under Executive Order 12866 and is considered significant under the Department's regulatory procedures. Although we have no discretion under the statute (as well as with respect to the costs it imposes), we are treating this rule as "economically significant" under Executive Order 12866 and "major" under 5 U.S.C. 801.

B. Environmental Impacts

We have not conducted an evaluation of the impacts of this action under the National Environmental Policy Act. There is no requirement for such an evaluation where Congress has eliminated the agency's discretion by precluding any action other than the one announced in this document.

C. Impacts on Small Entities

We have not conducted an evaluation of this action pursuant to the Regulatory Flexibility Act. The agency notes that this final rule, which was not preceded by a Notice of Proposed Rulemaking, is not a "rule" as defined by the Regulatory Flexibility Act and is, therefore, not subject to its provisions. As Congress has eliminated the agency's discretion by precluding any action other than the one taken in this document, we would not be able to take any action in the event such an analysis supported setting the light truck fuel economy at a different level. Past evaluations indicate, however, that few, if any, light truck manufacturers would have been classified as a "small business" under the Regulatory Flexibility Act.

The Regulatory Flexibility Act of 1980 (Public Law 96–354) requires each agency to evaluate the potential effects of a final rule on small businesses. Establishment of a fuel economy standard for light trucks affects motor vehicle manufacturers, few of which are small entities. The Small Business Administration (SBA) has set size standards for determining if a business within a specific industrial classification is a small business. The Standard Industrial Classification code used by the SBA for Motor Vehicles and Passenger Car Bodies (3711) defines a small manufacturer as one having 1,000 employees or fewer.

Very few single stage manufacturers of motor vehicles within the United States have 1,000 or fewer employees. Those that do are not likely to have sufficient resources to design, develop, produce and market a light truck. For this reason, we certify that this final rule would not have a significant economic impact on a substantial number of small entities.

D. Executive Order 13132 (Federalism)

We have analyzed this final rule in accordance with the principles and criteria contained in E.O. 13132, and have determined that this final rule does not have significant Federalism implications to warrant the preparation of a Federalism Assessment. As a historical matter, prior light truck standards have not had sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. The Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (Public Law 104–4) requires agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

The agency notes that Section 321 of the FY 2000 Department of Transportation and Related Agencies Appropriations Act precludes the agency from the expenditure of any funds to prepare, propose or promulgate any fuel economy standard that differs from those currently in effect. This directive forbids NHTSA from studying any alternative fuel economy standards other than those presently in force. The agency cannot consider any other alternative standards that may result in lower costs, lesser burdens, or more cost-effectiveness for state, local or tribal governments or the private sector. Furthermore, as we are precluded from expending any funds to prepare an alternative fuel economy standard, it cannot embark on any studies of such alternatives. We have therefore not prepared a written assessment of this final rule for the purposes of the Unfunded Mandates Act.

F. Paperwork Reduction Act

There are no information collection requirements in this final rule.

G. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

H. Plain Language

Executive Order 12866 and the President's memorandum of June 1, 1998, require each agency to write all rules in plain language. Application of the principles of plain language includes consideration of the following questions:

—Have we organized the material to suit the public's needs?
—Are the requirements in the rule clearly stated?
—Does the rule contain technical language or jargon that is not clear?
—Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand?
—Would more (but shorter) sections be better?
—Could we improve clarity by adding tables, lists, or diagrams?
—What else could we do to make the rule easier to understand?

If you have any responses to these questions, please forward them to Otto Matheke, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

I. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under E.O. 12866, and (2) Concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rulemaking does not have a disproportionate effect on children. The primary effect of this rulemaking is to conserve energy resources by setting fuel economy standards for light trucks.

J. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) requires NHTSA to evaluate and use existing voluntary consensus standards [1] in its regulatory activities unless doing so would be inconsistent with applicable law (*e.g.*, the statutory provisions regarding NHTSA's vehicle safety authority) or otherwise impractical. In meeting that requirement, we are required to consult with voluntary, private sector, consensus standards bodies. Examples of organizations generally regarded as voluntary consensus standards bodies include the American Society for Testing and Materials (ASTM), the Society of Automotive Engineers (SAE), and the American National Standards Institute (ANSI). If NHTSA does not use available and potentially applicable voluntary consensus standards, we are required by the Act to provide Congress, through OMB, an explanation of the reasons for not using such standards.

In establishing this fuel economy standard, the agency is simply establishing a goal for manufacturers to meet. Therefore, setting this standard does not involve the use of any voluntary standards.

K. Department of Energy Review

In accordance with 49 U.S.C. 32902(j), we submitted this final rule to the Department of Energy for review. That Department did not make any comments that we have not responded to.

V. Conclusion

Based on the foregoing, we are establishing a combined average fuel economy standard for non-passenger automobiles (light trucks) for MY 2002 at 20.7 mpg.

List of Subjects in 49 CFR Part 533

Energy conservation, Fuel economy, Motor vehicles.

PART 533—[AMENDED]

In consideration of the foregoing, 49 CFR Part 533 is amended as follows:

1. The authority citation for part 533 continues to read as follows:

Authority: 49 U.S.C. 32902; delegation of authority at 49 CFR 1.50.

2. Section 533.5 is amended by revising Table IV in paragraph (a) to read as follows:

§ 533.5 Requirements.

(a) * * *

TABLE IV

Model year	Standard
1996	20.7
1997	20.7
1998	20.7
1999	20.7
2000	20.7
2001	20.7
2002	20.7

Issued on March 30, 2000.

Rosalyn G. Millman,

Acting Administrator.

[FR Doc. 00–8249 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–59–P

[1] Voluntary consensus standards are technical standards developed or adopted by voluntary consensus standards bodies. Technical standards are defined by the NTTAA as "performance-based or design-specific technical specifications and related management systems practices." They pertain to "products and processes, such as size, strength, or technical performance of a product, process or material."

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AE84

Endangered and Threatened Wildlife and Plants; Determination of Threatened Status for the Northern Idaho Ground Squirrel

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), determine the northern Idaho ground squirrel (*Spermophilus brunneus brunneus*) to be a threatened species under the authority of the Endangered Species Act (Act) of 1973, as amended. This subspecies is known from 36 sites in Adams and Valley counties, Idaho. It is primarily threatened by habitat loss due to forest encroachment into former suitable meadow habitats. Forest encroachment results in habitat fragmentation, eliminates dispersal corridors; and restricts the northern Idaho ground squirrel population into small isolated habitat areas. The subspecies is also threatened by competition from the larger Columbian ground squirrel (*Spermophilus columbianus*), land use changes, recreational shooting, poisoning, and naturally occurring events. This rule extends Federal protection provisions provided by the Act for the northern Idaho ground squirrel.

EFFECTIVE DATE: This final rule is effective May 5, 2000.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Snake River Basin Office, 1387 South Vinnell Way, Room 368, Boise, Idaho 83709.

FOR FURTHER INFORMATION CONTACT: Robert Ruesink, Supervisor, at the above address (telephone 208/378–5243; facsimile 208/378–5262).

SUPPLEMENTARY INFORMATION:

Background

The northern Idaho ground squirrel has the most restricted geographical range of any *Spermophilus* taxa, and one of the smallest ranges among North American mainland mammals (Gill and Yensen 1992). The first specimens, collected by L.E. Wyman in 1913, were described by A.H. Howell as *Citellus townsendii brunneus*, a subspecies of the Washington ground squirrel (*Spermophilus washingtoni*) (Howell 1938). In 1938, Howell subsequently classified the Idaho ground squirrel as a full species, *Citellus brunneus*. Hershkovitz (1949) demonstrated that *Spermophilus* is the correct name for this genus. Nadler (1966) first presented chromosome descriptions and confirmed the systematics of *Spermophilus*. Yensen (1991) described the southern Idaho ground squirrel (*Spermophilus brunneus endemicus*) as taxonomically distinct, based on morphology, pelage (fur), and apparent life-history differences including biogeographical evidence of separation.

Both the northern and southern Idaho ground squirrels are found only in western Idaho. Of the two subspecies, the northern Idaho ground squirrel is the rarest (Yensen 1991). A relatively small member of the genus *Spermophilus*, the mean length of northern Idaho ground squirrel males and females is 235 millimeters (mm) (9.25 inches (in.)) and 226 mm (8.9 in.), respectively. In comparison, the mean length of southern Idaho ground squirrel males is 241 mm (9.5 in.) and 235 mm (9.25 in.) for females (Yensen 1991). Pelage in northern Idaho ground squirrel differs from the southern Idaho ground squirrel in its mid-dorsal area, which consists of long, dark guard hairs and shorter, dark guard hairs with one paler-colored band on the shield (Yensen 1991). Most northern Idaho ground squirrels are found in areas with shallow reddish parent soils of basaltic origin, while the southern Idaho ground squirrel lives on lower elevation, paler colored soils formed by granitic sands and clays from the Boise Mountains (Yensen 1985, 1991). Marked differences in pelage coloration between the disjunct subspecies are related to soil color.

The baculum (penis bone) of northern Idaho ground squirrel is also generally smaller than the southern Idaho ground squirrel. A principal component analysis, which is a statistical analysis that proves similarities or differences, indicated a striking difference among bacula of the two subspecies (Yensen 1991). Genetic differentiation between the two subspecies was also confirmed using enzyme restriction analysis, blood allozyme analyses, and DNA protein sequencing, all of which analyze blood constituents to determine genetic differences (Gill and Yensen 1992; Sherman and Yensen 1994).

The northern Idaho ground squirrel emerges in late March or early April, remains active above ground until late July or early August (Yensen 1991), and spends the rest of the year in hibernation underground (Eric Yensen, Albertson College, pers. comm. 1999). Populations occur at elevations ranging from 1,155 to 1,580 meters (m) (3,800 to 5,200 feet (ft)) in Adams and Valley counties of western Idaho. In contrast, the southern Idaho ground squirrel occurs at elevations ranging from 669 to 973 m (2,200 to 3,200 ft) in the low rolling hills and valleys along the Payette River in Gem, Payette, and Washington counties of western Idaho (Yensen 1991). The southern subspecies emerges in late January or early February where snow melt begins 1 to 2 months earlier in spring, and ceases above-ground activity in late June or early July. The emergence of the northern Idaho ground squirrel in late March or early April begins with adult males, followed by adult females, then young of the year.

The northern Idaho ground squirrel normally becomes reproductively active within the first 2 weeks of emergence (Yensen 1991). Females that survive the first winter live, on average, nearly twice as long as males (3.2 years for females and 1.7 years for males). Individual females have lived for 8 years (Yensen 1991). Males normally die at a younger age due to behavior associated with reproductive activity. During the mating period, males move considerable distances in search of receptive females for mating and often fight with other males for copulations, thereby exposing themselves to predation by raptors including prairie falcon (*Falco mexicanus*), goshawk (*Accipiter gentilis*), and red-tailed hawk (*Buteo jamaicensis*). Significantly more males die or disappear during the 2-week mating period than during the rest of the 12- to 14-week period of above-ground activity (Sherman and Yensen 1994). Seasonal torpor (a state of sluggishness or inactivity) generally occurs in early to mid-July for males and females, and late July to early August for juveniles.

Unlike many ground squirrel species, the northern Idaho ground squirrel is not truly colonial. In this final rule, local areas where this subspecies occurs are referred to as "sites." In 1985, the estimated population of northern Idaho ground squirrels at 18 known sites was approximately 5,000 squirrels (John Woflin, Service, *in litt.* 1985). Subsequent surveys were conducted on a sporadic basis from 1986 through 1993; more intensive efforts to estimate populations at 10 sites began in 1994 (Sherman and Yensen 1994). While new population sites were found during these surveys, several previously active sites became extirpated (Paul Sherman, Cornell University, pers. comm., 1997). In 1996, the total population had

declined to fewer than 1,000 individuals found at 19 sites (Sherman and Gavin 1997). Only 1 of these sites contained more than 60 animals. In 1997 and 1998, additional locations with northern Idaho ground squirrels were found for a total of 36 historic and currently active sites. However the total population estimate still remains less than 1,000 individuals. Of the 36 sites, 14 occur on public lands (Federal and State). At 3 of these 14 sites, the subspecies has been extirpated, and at 1 site, the subspecies was extirpated but has been reintroduced. There are 22 sites on private lands, but at 7 of the sites, the subspecies has been extirpated. The number of squirrels in many of the active sites has been decreasing for over 10 years (Yensen 1980, 1985; J. Woflin, *in litt.* 1985; Sherman and Yensen 1994; Gavin *et al.* 1998).

Soil texture and depth can be a primary factor in determining species distribution for most *Spermophilus* (Brown and Harney 1993). The northern Idaho ground squirrel often digs burrows under logs, rocks, or other objects (Sherman and Yensen 1994). Dry vegetation sites with shallow soil horizons of less than 50 centimeters (19.6 in.) depth above basalt bedrock to develop burrow systems are preferred (Yensen *et al.* 1991). Burrows associated with shallow soils are called auxiliary burrows. Nesting burrows are found in well-drained soils greater than 1 m (3 ft) deep, in areas not covered with trees or used by Columbian ground squirrels (*Spermophilus columbianus*). Although Columbian ground squirrels overlap in distribution with the northern Idaho ground squirrel (Dyni and Yensen 1996), Columbian ground squirrels prefer moister areas with deeper soils. Sherman and Yensen (1994) report that the lack of extensive use of the same areas by the two subspecies is likely due to competition, rather than to each subspecies having different habitat requirements.

Nearly all of the meadow habitats utilized by northern Idaho ground squirrels are bordered by coniferous forests of *Pinus ponderosa* (ponderosa pine) and/or *Pseudotsuga menziesii* (Douglas-fir). However, this ground squirrel is not abundant in meadows that are surrounded by high densities of small young trees (Sherman and Yensen 1994).

The northern Idaho ground squirrel is granivorous (eats small seeds and grain) seasonally, similar to the Columbian ground squirrel (Dyni and Yensen 1996), and ingests large amounts of *Poa* species (bluegrass) and other grass seeds to store energy for the winter. The northern Idaho ground squirrel will consume the roots, bulbs, leaf stems, and flower heads of another 45 to 50 plant species that are major components of the diet during key periods of the spring and summer. The Columbian ground squirrel often inhabits areas with denser vegetation than the northern Idaho ground squirrel (Dyni and Yensen 1996). Such areas contain more abundant food resources than habitats occupied by northern Idaho ground squirrel (Belovsky and Schmitz 1994). The northern Idaho ground squirrel is found on lands administered by the U.S. Forest Service (Forest Service), Idaho State Department of Lands, and private property.

Previous Federal Action

In a status review published January 6, 1989, we determined that the northern Idaho ground squirrel was a category 1 candidate (56 FR 562). Category 1 candidates were those taxa for which we had on file substantial information on biological vulnerability and threats to support preparation of listing proposals. Upon publication of the February 28, 1996, Notice of Review (61 FR 7596), we ceased using category designations and included the northern Idaho ground squirrel as a candidate species. Candidate species are those for which we have on file sufficient information on biological vulnerability and threats to support proposals to list the species as threatened or endangered. Candidate status for this animal was continued in the September 19, 1997, Notice of Review (62 FR 49398).

As a result of long-standing litigation with the Fund for Animals, a lawsuit settlement of January 21, 1997, directed us to make a decision (*i.e.*, prepare a proposed rule to list or remove from Federal candidacy) concerning the northern Idaho ground squirrel on or before April 1, 1998. A proposed rule to list the subspecies as threatened was published on March 23, 1998 (63 FR 13825).

The processing of this final rule conforms with our Listing Priority Guidance published in the **Federal Register** on October 22, 1999 (64 FR 57114). The guidance clarifies the order in which we will process rulemakings. Highest priority is processing emergency listing rules for any species determined to face a significant and imminent risk to its well-being (Priority 1). Second priority (Priority 2) is processing final determinations on proposed additions to the lists of endangered and threatened wildlife and plants. Third priority is processing new proposals to add species to the lists. The processing of administrative petition findings (petitions filed under section 4 of the Act) is the fourth priority. This final rule is a Priority 2 action and is being completed in accordance with the current Listing Priority Guidance. We have updated this rule to reflect any changes in information concerning distribution, status, and threats since the publication of the proposed rule.

Summary of Comments and Recommendations

In the proposed rule (63 FR 13825), we requested all interested parties to submit factual reports or information that might contribute to the development of a final rule for the northern Idaho ground squirrel. We contacted appropriate State agencies, county governments, Federal agencies, scientists, landowners, and other interested parties and requested them to comment. We opened a public comment period of 60 days on March 23, 1998, and closed it on May 22, 1998 (63 FR 13825). On March 13, 1998, we sent legal notices that invited public comment and announced a public hearing. The notice was published in The Idaho Statesman, Council Record, Adams County Leader, and the Central Idaho Star News on March 28, 1998. In anticipation of public interest, we conducted a public hearing on May 5, 1998, in Council, Idaho at the Council Elementary School. To consider new scientific information, we reopened the public comment period for 30 days on October 21, 1998 (63 FR 56134). A legal notice concerning the public comment period was published on October 27, 1998, in The Idaho Statesman. This comment period closed on November 20, 1998.

During the 3-month comment period, we received a total of seven comments. Of these comments, one supported listing, and two opposed the listing. Four comments were noncommittal. We reviewed all of the comments (*i.e.*, written and oral testimony) referenced above. The comments were grouped and are discussed under the following issue headings. In addition, we considered and incorporated, as appropriate, into the final rule, all biological and commercial information obtained through the public comment period.

Peer Review

In compliance with our July 1, 1994, Peer Review Policy (59 FR 34270), we solicited the expert opinion of an independent scientist regarding pertinent scientific or commercial data and issues relating to the supportive biological and ecological information for the northern Idaho ground squirrel. Information and suggestions provided by the reviewer were considered in developing this final rule, and incorporated where applicable.

Issue 1: One commenter believed there was a general lack of adequate information about the squirrels or sufficient searches for additional sites to publish a final rule. This responder was also concerned that key Forest Service staff and the primary research personnel involved in studying the northern Idaho ground squirrel intend to leave the project.

Our Response: We, the Forest Service, and the Idaho Department of Fish and Game have provided equipment, funding, and staff to support surveys for new populations and monitoring of existing populations since 1994. In 1998, additional surveys for the northern Idaho ground squirrel were conducted on lands owned by Boise Cascade Corporation (John Haufler, Boise Cascade Corporation, pers. comm., 1998). The surveys used vegetation habitat analysis, historical references, and anecdotal information from foresters, ranchers, engineers, and biologists. Staff at the Payette National Forest collated and field-validated the information and placed it on a geographical information systems (GIS) map. Analysis of GIS maps allows biologists to predict potential habitat for the species throughout its present range. A team of biologists spent several weeks in 1997 and 1998 surveying the potential sites for ground squirrel activity. The known historic and extant sites increased from 19 in 1996 to 36 in 1998. Of these 36 sites, 27 are currently occupied by northern Idaho ground squirrels. However, most of these sites have less than 20 individuals, and the total population numbers less than 1,000. Only by conducting annual monitoring of sites where animals were translocated from other sites and existing sites will we be able to document future population trends.

Two scientists from Cornell University, Ithaca, New York, who have overseen recent translocations, surveys, and annual monitoring notified us that they will not be able to continue this work in the future. However, one of these scientists agreed to assist with field surveys in 1999, and instructed a team of biologists from the Idaho Department of Fish and Game, Payette National Forest, and the Service for 2 weeks in survey and monitoring methods. This team will continue to coordinate annual surveys for new populations, collect data on population trends, and monitor habitat changes in coordination with the Payette National Forest staff.

Issue 2: One commenter requested that the northern Idaho ground squirrel not be listed because listing does not consider the impact of human welfare, local economy, public value, and private property rights.

Our Response: In accordance with 16 U.S.C. 1533(b)(1)(A) and 50 CFR 424.11 (b), listing decisions are made solely on the basis of the best scientific and commercial data available. In adding the word "solely" to the statutory criteria for listing a species, Congress specifically addressed this issue in the 1982 amendments to the Act (16 U.S.C. 1531 *et seq.*). The legislative history of the 1982 amendments states: "The addition of the word solely is intended to remove from the process of the listing or delisting of species any factor not related to the biological status of the species' H.R. Rep. No. 567, Part I, 97th Cong., 2d Sess. 20 (1982).

Issue 3: One commenter asserted that constitutional powers were being violated to list the northern Idaho ground squirrel under the Act since there is no substantial and documented interstate commerce involving this subspecies. This assertion is based on the belief that the intention of the U.S. Constitution is to regulate only those activities that substantially affect interstate commerce.

Our Response: The Federal Government has the authority under the Commerce Clause of the U.S. Constitution to protect this subspecies, for the reasons given in Judge Wald's opinion and Judge Henderson's concurring opinion in *National Association of Home Builders* v. *Babbitt*, 130 F.3d 1041 (D.C. Cir. 1997), *cert. denied*, 1185 S. Ct. 2340 (1998). That case involved a challenge to application of the Act's prohibitions to protect the listed Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*). As with the northern Idaho ground squirrel, the Delhi Sands flower-loving fly is endemic to only one State. Judge Wald held that application of the Act's prohibition against taking of endangered species to this fly was a proper exercise of Commerce Clause power to regulate: (1) Use of channels of interstate commerce; and (2) activities substantially affecting interstate commerce, because it prevented loss of biodiversity and destructive interstate competition. Judge Henderson upheld protection of the fly because doing so prevents harm to the ecosystem upon which interstate commerce depends, and because doing so regulates commercial development that is part of interstate commerce.

The Federal Government also has the authority under the Property Clause of the Constitution to protect this subspecies. The northern Idaho ground squirrel occurs on the Payette National Forest, Idaho State lands, and private lands. If this subspecies were to become extinct, the diversity of vertebrate life in the Payette National Forest would be diminished. The courts have long recognized Federal authority under the Property Clause to protect Federal resources in such circumstances (See *Kleppe* v. *New Mexico*, 429 U.S. 873 (1976); *United States* v. *Alford*, 274 U.S. 264 (1927); *Camfield* v. *United States*, 167 U. S. 518 (1897); *United States* v. *Lindsey*, 595 F. 2d 5 (9th Cir. 1979).

Summary of Factors Affecting the Species

Section 4 of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the northern Idaho ground squirrel are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The historic range of the northern Idaho ground squirrel is not well known. However, it is thought that this subspecies was relatively uncommon throughout its historic range (Forest Service 1997a). All remaining habitat sites for the northern Idaho ground squirrel are small in relation to those of other ground squirrels, ranging in size from 1.2 to 16 hectares (3 to 40 acres), and all are threatened by one or more of the following: forest encroachment into grassland meadows; conversion to agriculture; residential construction; development of recreational facilities such as golf courses; and road construction and maintenance.

The primary threat to the northern Idaho ground squirrel is meadow invasion by conifers (Sherman and Yensen 1994; E. Yensen, pers. comm. 1998, 1999). Fire suppression and the dense regrowth of conifers resulting from past logging activities have significantly reduced meadow habitats suitable for northern Idaho ground squirrels over the past 40 years. As the amount of suitable meadow habitat on public and private lands has been reduced, northern Idaho ground squirrel dispersal corridors have been reduced or eliminated, further constricting the subspecies into smaller isolated habitat areas (Truksa and Yensen 1990). The loss of dispersal corridors has caused some isolated populations to become extirpated in recent years (Sherman and

Yensen 1994; Service 1996). Small populations at several remaining sites are likely to become extirpated as well (Sherman and Yensen 1994; Mangel and Tier 1994).

The fragmented distribution of the northern Idaho ground squirrel is a remnant of what may once have been a more continuous distribution from Round Valley, Idaho, in Valley County north to New Meadows, Idaho, and southwest to Council, Idaho, in Adams County. The forest structure in the area has changed markedly over the past century due to logging and fire suppression, resulting in denser, more even-aged younger stands of trees with thinner and less heterogeneous (not uniform) under-story plant communities (Burns and Zborowski 1996). Fire suppression allowed conifers to invade once suitable meadow habitats, thereby shrinking the size of forb/grass meadows or closing open grassy dispersal/migration corridors entirely to nearby meadow sites. These changes isolated the dry meadows with suitable shallow soils where the northern Idaho ground squirrel finds refuge from the Columbian ground squirrel, in addition to eliminating migration between northern Idaho ground squirrel sites. Remaining dry meadow habitats supporting northern Idaho ground squirrels are now being invaded by young conifer trees, reducing availability of the preferred forage and burrow habitat of this subspecies. Habitat dissection and reduced opportunities for dispersal among habitats prevents gene flow and results in considerable population differentiation (Sherman and Yensen 1994).

Agricultural conversion and rural housing developments near the communities of Round Valley, north to New Meadows, and south to Council, during the past 40 years have fragmented suitable habitats formerly occupied by the northern Idaho ground squirrel. Various types of developments continue to threaten remaining occupied sites in Adams and Valley counties. Occupied ground squirrel habitat near New Meadows was converted to a golf course and associated housing development (Yensen 1985), which resulted in the eradication of northern Idaho ground squirrels by poisoning because they were impacting the fairways and golf greens (E. Yensen, pers. comm. 1999).

A 51.5 kilometer (km) (32 mile (mi)) gravel road from Council to Cuprum, Idaho, is scheduled to be paved by the year 2001 (U.S. Department of Transportation 1998). Approximately 6.4 km (4 mi) of this project runs through historic and currently occupied habitat of the northern Idaho ground squirrel. The road improvement project will seasonally extend vehicle access to four occupied northern Idaho ground squirrel sites. These four sites will be subject to increased mortality risk from vehicular traffic, and possibly recreational shooting (Forest Service 1997a). The Federal Highways Administration consulted with us and the Forest Service in developing conservation measures as part of their biological assessment for the Council to Cuprum Road paving project (Forest Service 1997a). Conservation measures include actions to attract northern Idaho ground squirrels away from the paved highway to adjacent but suitable habitat to avoid passing vehicles. Funding for these conservation measures was approved by the U.S. Department of Transportation to monitor the measures before and after the road improvements have been made. Monitoring was initiated in 1998 and will continue through 2003. At this time, it is uncertain whether the proposed conservation measures will be successful in protecting remaining populations in the vicinity of the road improvement project.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Recreational shooting has contributed to the decline of northern Idaho ground squirrels at various sites (Yensen 1985, 1991; E. Yensen, pers. comm. 1999). Sites adjacent to housing developments, farms, and roads, in particular, are subject to a high rate of recreational shooting.

Four population sites have been documented as being subjected to recreational shooting (E. Yensen, pers. comm. 1998). One site is located next to a road on National Forest land. It was common to find .22 rifle casings on the road from people presumably shooting the ground squirrels. The subspecies has now been extirpated from this site as a result of shooting. Another site on private land that had both northern Idaho ground squirrels and Columbian ground squirrels was routinely used by recreational shooters, and, as a result, the population is now extinct there. Another site on private land at New Meadows was periodically used by recreational shooters until a golf course was put in at the site. The operators of the golf course then poisoned the remaining population of northern Idaho ground squirrels to eliminate them. The fourth site is partially located on private land and partially located on Forest Service land and also is subjected to shooting (E. Yensen, pers. comm. 1999).

Vandalism, either by shooting or poisoning, is a threat to most of the populations. Many private landowners consider ground squirrels to be a pest that requires elimination. In June 1998, Dr. Eric Yensen of Albertson College, who has done research on the subspecies, approached a private landowner for permission to check on a northern Idaho ground squirrel population occurring on his land. The landowner told Dr. Yensen he wanted to know where the population was so he could go out and poison them. Since the landowner was threatening to eliminate the population, Dr. Yensen declined to tell him exactly where the site was. Dr. Yensen was then refused permission to check on the site by the landowner. Other landowners have made similar threats against northern Idaho ground squirrel populations to Dr. Yensen (E. Yensen, pers. comm. 1999). Since most of the population sites contain less than 20 animals, and less than 1,000 animals overall, shooting and poisoning could have significant adverse impacts (E. Yensen, pers. comm. 1999).

C. Disease or Predation

Disease is not thought to be a major factor affecting the northern Idaho ground squirrel. The parasitic nematode, *Pelodera strongyloides*, infects the eyes of the northern Idaho ground squirrel (Sherman and Yensen 1994; Yensen *et al.* 1996). This eye worm is not currently known to be a cause of mortality in existing populations (Yensen *et al.* 1996). Plague (*Yersina pestis*) a contagious bacterial disease in rodents, has not yet been found in any northern Idaho ground squirrel populations (Yensen *et al.* 1996.). The disease, once established, could decimate these squirrels. Blood analysis to determine whether pandemic diseases are present have not been done on the northern Idaho ground squirrel.

The primary predators of the northern Idaho ground squirrel include badger (*Taxidea taxus*), goshawk (*Accipiter gentilis*), prairie falcon (*Falco mexicanus*), and occasionally red-tailed hawk (*Buteo jamaicensis*). Predators may threaten many of the smaller, more isolated populations of northern Idaho ground squirrel. Badger activity has been noted at several of these sites (Sherman and Gavin 1997). Badgers are efficient predators and could eliminate an entire population of 20 or so animals in just a few days. Male ground squirrels, due to their above-ground active behavior patterns, are particularly subject to increased predation risk

during the mating period. Juveniles are also subject to a high degree of predation during their first year (Sherman and Yensen 1994). Also, domestic cat (*Felis catus*) predation has been documented at two sites because the sites are located near residential housing (E. Yensen, pers. comm. 1999).

D. The Inadequacy of Existing Regulatory Mechanisms

The State of Idaho recognizes the northern Idaho ground squirrel as a "Species of Special Concern" (Idaho Department of Fish and Game 1994). Because of this status, the northern Idaho ground squirrel is, by State law, protected from taking (shooting, trapping, poisoning) or possession. To date, however, protection from recreational shooting has not been adequately enforced by the State, and the northern Idaho ground squirrel remains vulnerable to this type of activity (Yensen 1985).

Local land use ordinances and other regulations are inadequate to protect this subspecies. For example, in Adams County where 99 percent of northern Idaho ground squirrel population sites are found, land use regulations allow for single and multiple housing developments under a permit system. There is no consideration under the existing permit system for impacts that may result to northern Idaho ground squirrels from housing or recreation developments in or adjacent to their habitat. With no limitations on development of northern Idaho ground squirrel habitat, it is anticipated that human population growth and development in the foreseeable future will impact ground squirrel sites.

E. Other Natural or Manmade Factors Affecting its Continued Existence

Other factors affecting conservation actions for this subspecies include land ownership patterns, prelisting activities, and conservation efforts on private and public lands. All active northern Idaho ground squirrel sites occur on private, State, and Payette National Forest lands. A conservation agreement (Agreement) was finalized in July 1996, between us and the Payette National Forest (Service 1996). The duration of the Agreement is 5 years. The Agreement identifies conservation and land management actions that will provide habitat favorable to the northern Idaho ground squirrel. These actions, some already in the implementation phase, include controlled burning of selected meadows to reduce over-story and to improve forage preferred by the northern Idaho ground squirrel, timber harvest in select areas to open meadows where active sites are found, and timber harvest to provide dispersal corridors for improved connectivity between active populations (Forest Service 1998). For example, 3.3 million board feet of timber is proposed for harvest in the Lick Creek drainage from 1998 to 2000 (Forest Service 1997b). The sale is designed to reconnect an active population with other nearby populations. It will also expand the size of 12 meadow habitats on Federal lands that are favorable to recolonization by the northern Idaho ground squirrel. Two units were completed in 1999, and the rest will be harvested in 2000. Although the Agreement does not currently remove or reduce threats to the degree where listing may be precluded, the conservation actions implemented will facilitate recovery.

A relocation plan, developed by scientists from Cornell University and Albertson College, was initiated in the spring of 1997, and continued in 1998 and 1999. A total of 76 squirrels were transplanted to 2 sites on lands managed by the Forest Service that had been treated through burning and timber harvest (Sherman and Gavin 1997; Gavin *et al.* 1998). One site had a small existing population of northern Idaho ground squirrels, and at the other site, the subspecies had been extirpated. Initial results indicate that some translocated females were lactating, and juveniles were observed at both sites, indicating successful reproduction (Sherman and Gavin 1997; Gavin *et al.* 1998). A report compiling the results of monitoring the transplant is expected in the spring of 2000. Whether long-term benefits to ground squirrel recovery result from these actions will be unknown for several years.

Habitat and resource competition with the Columbian ground squirrel is a factor affecting the survival of the northern Idaho ground squirrel. Competition from the Columbian ground squirrel could be an important factor in the decline of the northern Idaho ground squirrel (Dyni and Yensen 1996). The northern Idaho ground squirrel may have been forced into areas containing shallower soils due to competition from Columbian ground squirrels (Sherman and Yensen 1994). The Columbian ground squirrel is larger and prefers deeper areas with soils that provide better over-winter protection and higher nutrients. Where both subspecies occur, the northern Idaho ground squirrel tends to occupy the shallower soils but requires deeper soils less than 1 m (3.2 ft) for nests (Yensen *et al.* 1991). The Columbian ground squirrel is not restricted by soil depth; typically, their burrow systems are associated with degree of slope, well-drained soils, and number of native forbs (Weddell 1989).

Winter mortality may be a contributing factor for northern Idaho ground squirrel decline, especially when juvenile squirrels enter torpor without sufficient fat reserves and snow levels are below average (Paul Sherman, pers. comm., 1997). Soils tend to freeze to greater depths where snow levels are shallow. When this occurs, ground squirrels are unable to thermoregulate or maintain sufficient fat reserves. Although the relationship between ground squirrels and weather is complex, (Yensen *et al.* 1992) sites may have been adversely affected by drought and over winter mortality in the early 1990's. Winter mortality is of special concern since many remaining sites contain few individuals. High winter mortality combined with the loss of suitable vegetation conditions can result in the permanent loss of isolated populations.

As a result of the factors discussed above, and due to the small population sizes at remaining sites and the low total number of individuals, the northern Idaho ground squirrel may have little resilience to naturally occurring events (Gavin *et al.* 1993). Small populations are often highly vulnerable to natural climatic fluctuations as well as catastrophic natural events (Mangel and Tier 1994). Gavin *et al.* (1993) used a computer population viability simulation program (VORTEX), using natality (birth) and mortality (death) values recorded over 8 years from an intensively studied northern Idaho ground squirrel population (Sherman and Yensen 1994) to examine population viability. Variables in the model included no natural immigration. The population viability analysis used 50 individuals, a figure that was 30 individuals lower than the actual population size of 80 individuals (Sherman and Yensen 1994). The model calculated that all but 1 of 100 populations would become extinct in less than 20 years.

In developing this rule, we have carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by the northern Idaho ground squirrel. Based on this evaluation, the preferred action is to list the northern Idaho ground squirrel as a threatened species. The subspecies has declined from approximately 5,000 animals in 1985 to fewer than 1,000 animals in 1998. Although additional occupied sites have been recently discovered, numerous extirpations have occurred. Most remaining populations

consist of small numbers of individuals isolated from other populations. Remaining occupied sites on private land are not protected from threats to the species or its' habitat. Existing land use regulations are inadequate to protect the northern Idaho ground squirrel from habitat destruction resulting from development. Some ground squirrel habitat improvement projects have been initiated at two sites on Payette National Forest lands. While these efforts may be important to the long-term conservation of the northern Idaho ground squirrel, they are currently very limited in their applicability and the threat of meadow loss still continues. Benefits to the northern Idaho ground squirrel from current conservation actions may not be realized or quantifiable for years. While the northern Idaho ground squirrel is not in immediate danger of extinction because of ongoing conservation efforts, the subspecies could become endangered in the foreseeable future if remaining sites decline further. Not listing this taxon would be inconsistent with the intent of the Act.

Critical Habitat

Critical habitat is defined in section 3 of the Act as: (i) The specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection and; (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures needed to bring the species to the point at which listing under the Act is no longer necessary.

In the proposed rule, we indicated that designation of critical habitat was not prudent for the northern Idaho ground squirrel because of a concern that publication of precise maps and descriptions of critical habitat in the **Federal Register** could increase the vulnerability of this species to incidents of shooting and other forms of human activity. We also indicated that designation of critical habitat was not prudent because we believed it would not provide any additional benefit beyond that provided through listing as endangered.

In the last few years, a series of court decisions have overturned Service determinations regarding a variety of species that designation of critical habitat would not be prudent (*e.g., Natural Resources Defense Council* v. *U.S. Department of the Interior* 113 F. 3d 1121 (9th Cir. 1997); *Conservation Council for Hawaii* v. *Babbitt*, 2 F. Supp. 2d 1280 (D. Hawaii 1998)). Based on the standards applied in those judicial opinions, we have reexamined the question of whether critical habitat for the northern Idaho ground squirrel would be prudent.

Due to the small number of populations, the northern Idaho ground squirrel is vulnerable to shooting, colony destruction, or other disturbance. We remain concerned that these threats might be exacerbated by the publication of critical habitat maps and further dissemination of locational information. We have examined the evidence available for the northern Idaho ground squirrel, and have knowledge of two separate incidents where northern Idaho ground squirrel colonies were eliminated on private lands from poisoning and shooting. As stated in threat factor D, northern Idaho ground squirrels are, by Idaho State law, protected from taking (shooting, trapping, poisoning) or possession, but protection from recreational shooting has not been adequately enforced by the State, especially in those areas where recreational shooting of nearby Columbian ground squirrels is popular. However, we do not have any evidence that the publication of critical habitat maps would provide additional location information that was not already available and thus increase the threat to northern Idaho ground squirrels from shooting and poisoning. Consequently, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and recent case law, at this time we cannot make a finding that the identification of critical habitat will increase the degree of threat to these species from taking or other human activity.

In the case of this species, some benefits may result from designation of critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely modifies critical habitat. While a critical habitat designation for habitat currently occupied by this species would not be likely to change the section 7 consultation outcome because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species, in some instances section 7 consultation might be triggered only if critical habitat is designated. Examples could include unoccupied habitat or occupied habitat that may become unoccupied in the future. Designating critical habitat may also provide some educational or informational benefits. Therefore, we find that designation of critical habitat is prudent for the northern Idaho ground squirrel.

As explained in detail in our Listing Priority Guidance for FY 2000 (64 FR 57114), our listing budget is currently insufficient to allow us to immediately complete all of the listing actions required by the Act. Deferral of the critical habitat designation for the northern Idaho ground squirrel will allow us to concentrate our limited resources on higher priority critical habitat and other listing actions, while allowing us to put in place protections needed for the conservation of the northern Idaho ground squirrel without further delay. However, because we have successfully reduced, although not eliminated, the backlog of other listing actions, we anticipate in FY 2000 and beyond giving higher priority to critical habitat designation, including designations deferred pursuant to the Listing Priority Guidance, such as the designation for this species, than we have in recent fiscal years.

We plan to employ a priority system for deciding which outstanding critical habitat designations should be addressed first. We will focus our efforts on those designations that will provide the most conservation benefit, taking into consideration the efficacy of critical habitat designation in addressing the threats to the species, and the magnitude and immediacy of those threats. We will develop a proposal to designate critical habitat for the northern Idaho ground squirrel as soon as feasible, considering our workload priorities. Unfortunately, for the immediate future, most of Region 1's listing budget must be directed to complying with numerous court orders and settlement agreements, as well as due and overdue final listing determinations (like the one at issue in this case).

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. Without the elevated profile that Federal listing affords, little likelihood exists that any conservation activities would be undertaken. The Act provides for possible land acquisition and cooperation with the States and requires

that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer with us on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with us.

The Act requires the appropriate land management agencies to evaluate potential impacts to the species that may result from activities they authorize or permit. Consultation under section 7 of the Act is required for activities on Federal, State, county, or private lands that may impact the survival and recovery of the northern Idaho ground squirrel, if such activities are funded, authorized, carried out, or permitted by Federal agencies. Federal agencies that may be involved with this subspecies include the Forest Service, Federal Highway Administration, BLM, Office of Surface Mining, and Natural Resource Conservation Service. Section 7 requires these agencies to consider potential impacts to the northern Idaho ground squirrel prior to approval of any activity authorized or permitted by them.

Federal agency actions that may require consultation include removing, thinning, or altering vegetation; constructing of roads or camping sites in the vicinity of active and historical sites; recreational home developments; off-road vehicle use areas; gravel or sand mining activities; campground construction; mining permits and expansion; highway construction; and timber harvest.

Listing this subspecies as threatened provides for development of a recovery plan. Such a plan would identify both State and Federal efforts for conservation of the subspecies and establish a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan would set recovery priorities and describe site-specific management actions necessary to achieve conservation and survival of the subspecies. Additionally, pursuant to section 6 of the Act, we would be able to grant funds to affected States for management actions promoting the protection and recovery of this subspecies.

The Act and implementing regulations found at 50 CFR 17.31 describe general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to our agents and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits for threatened species are at 50 CFR 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities. For threatened species, permits are also available for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act.

As published in the **Federal Register** on July 1, 1994 (59 FR 34272), our policy is to identify, to the maximum extent practicable at the time when a species is proposed for listing, those activities that would or would not constitute a violation of section 9 of the Act. The intent of this policy is to increase public awareness of the effect of the listing on proposed and ongoing activities within a species' range. We believe that, based upon the best available information, the following action will not likely result in a violation of section 9:

(1) Activities authorized, funded, or carried out by Federal agencies (*e.g.*, logging, flood and erosion control, mineral and housing development, off-road vehicle permitting or park development, recreational trail and campground development, road construction, prescribed burns, pest control activities, utility lines or pipeline construction) when such activity is conducted in accordance with any incidental take statement prepared by us in accordance with section 7 of the Act; and

(2) Clearing of a firebreak around one's personal residence.

Activities that we believe could potentially result in a violation of section 9 include but are not limited to:

(1) Activities that directly or indirectly result in the actual death or injury of the northern Idaho ground squirrel, or that modify the known habitat of the subspecies by significantly modifying essential behavior patterns (*e.g.*, intensive plowing and conversion to cropland, shooting, intentional poisoning, road and trail construction, water development and impoundment, mineral extraction or processing, off-road vehicle use, and unauthorized application of herbicides or pesticides);

(2) Activities within the northern Idaho ground squirrel hibernating period (mid July through early April) and near burrow areas that include road, pipeline, or utility construction, herbicide application, or other activities that would alter the burrow systems and food sources of the northern Idaho ground squirrel; and

(3) Activities authorized, funded, or carried out by Federal agencies (*e.g.*, logging, flood and erosion control, mineral and housing development, off-road vehicle permitting or park development, recreational trail and campground development, road construction, prescribed burns, pest control activities, utility lines or pipeline construction) when such activity is not conducted in accordance with any incidental take statement prepared by us in accordance with section 7 of the Act.

Questions regarding whether specific activities will constitute a violation of section 9 or requests to obtain approved guidelines for actions within northern Idaho ground squirrel habitat should be directed to the U.S. Fish and Wildlife Service, Snake River Basin Office, Boise, Idaho (see **ADDRESSES** section). Requests for copies of the regulations concerning listed animals and inquiries regarding prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Endangered Species Permits, 911 N.E. 11th Avenue, Portland, Oregon 97232–4181 (telephone 503/231–2063; Facsimile 503/231–6243).

National Environmental Policy Act

We determined that we do not need to prepare an Environmental

Assessment or Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969 in connection with regulations adopted under section 4(a) of the Endangered Species Act, as amended. A notice outlining our reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

Required Determinations

This rule does not contain any new collections of information other than those already approved under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and assigned Office of Management and Budget clearance number 1018–0094. An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. For additional information concerning permit and associated requirements for threatened species, see 50 CFR 17.32.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Snake River Basin Office (see **ADDRESSES** above).

Author

The primary author of this proposed rule is Richard Howard, U.S. Fish and Wildlife Service, Snake River Basin Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and record keeping requirements, Transportation.

Regulation Promulgation

Accordingly, we amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as follows:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend §17.11(h) by adding the following, in alphabetical order under MAMMALS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
MAMMALS							
•	•	•	•	•	•	•	•
Ground squirrel, northern Idaho.	*Spermophilus brunneus brunneus.*	U.S.A. (ID)	NA	T	693	NA	NA
•	•	•	•	•	•	•	•

Dated: March 29, 2000.

Jamie Rappaport Clark,

Director, Fish and Wildlife Service.

[FR Doc. 00–8346 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 226

[Docket No. 991116305–0083–02; I.D. No. 110599D][A]

RIN 0648–AL82

Designated Critical Habitat: Critical Habitat for Johnson's Seagrass

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS is designating critical habitat for Johnson's seagrass (*Halophila johnsonii*) pursuant to section 4 of the Endangered Species Act (ESA). Johnson's seagrass is found on the east coast of Florida from Sebastian Inlet to central Biscayne Bay. Within this range, 10 areas are being designated as critical habitat: a portion of the Indian River Lagoon, north of the Sebastian Inlet Channel; a portion of the Indian River Lagoon, south of the Sebastian Inlet Channel; a portion of the Indian River Lagoon near the Fort Pierce Inlet; a portion of the Indian River Lagoon, north of the St. Lucie Inlet; a portion of Hobe Sound; a site on the south side of Jupiter Inlet; a site in central Lake Worth Lagoon; a site in Lake Worth Lagoon, Boynton Beach; a site in Lake Wyman, Boca Raton; and a portion of Biscayne Bay. NMFS is modifying various aspects of the proposed rule, including the removal as critical habitat of the Intracoastal Waterway (ICW) channel in the designated areas, and enlarging the Lake Wyman site.

The designation of critical habitat provides explicit notice to Federal agencies and the public that these areas and features are vital to the conservation of the species.

DATES: This rule is effective May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Layne Bolen, NMFS, Southeast Region, 850–234–6541 ext 237, or Marta Nammack, NMFS, Office of Protected Resources, 301-713-1401.

SUPPLEMENTARY INFORMATION:

Background

NMFS published a proposed rule to list Johnson's seagrass as a threatened species on September 15, 1993 (58 FR 48326), and a proposed rule to designate critical habitat on August 4, 1994 (59 FR 39716). A public hearing on both the proposed listing and critical habitat designation was held in Vero Beach, Florida, on September 20, 1994. As a result of public input during the comment period, NMFS postponed further action on listing. In order to update the original status report (Kenworthy, 1993) and to include information from new field and laboratory research on species distribution, ecology, genetics and phylogeny, NMFS convened a workshop on the biology, distribution, and abundance of *H. johnsonii*. The results of this workshop were summarized in the proceedings (Kenworthy, 1997) submitted to NMFS on October 15, 1997. NMFS reopened the comment period for the proposed listing on April 20, 1998 (63 FR 19468). The final rule to list Johnson's seagrass as a threatened

species was published by NMFS on September 14, 1998 (63 FR 49035).

Section 4(a)(3)(A) of the ESA requires that, to the maximum extent prudent and determinable, NMFS designate critical habitat concurrently with a determination that a species is endangered or threatened. At the time of final listing, critical habitat was not determinable because new information needed to perform the required analysis was not yet available. On February 23, 1999, NMFS established and convened a recovery team to prepare a recovery plan and develop recommendations for critical habitat for Johnson's seagrass. Based on these recommendations and the best available scientific data on the distribution, ecology, and genetics of this species, NMFS published a re-proposed rule on December 2, 1999 (64 FR 67536), to designate critical habitat for Johnson's seagrass. This final rule takes into consideration the new information and comments received in response to this re-proposed rule.

The final designation identifies those physical and biological features of the habitat that are essential to the conservation of the species and that may require special management consideration or protection. The economic and other impacts resulting from designating critical habitat, over and above those that result from listing the species, are expected to be minimal.

The use of the term "essential habitat" within this document refers to critical habitat as defined by the ESA and should not be confused with the requirement to describe and identify Essential Fish Habitat pursuant to the Magnuson-Stevens Fishery Conservation and Management Act, 16 U.S.C. 1801 et seq.

Definition of Critical Habitat

Critical habitat is defined in section 3(5)(A) of the ESA as "(i) the specific areas within the geographical area occupied by the species...on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species...upon a determination by the Secretary of Commerce (Secretary) that such areas are essential for the conservation of the species." The term "conservation" as defined in section 3(3) of the ESA, means "...to use and the use of all methods and procedures which are necessary to bring any endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary."

In designating critical habitat, NMFS must consider the requirements of the species, including: (1) space for individual and population growth, and for normal behavior; (2) food, water, air, light, minerals, or other nutritional or physiological requirements; (3) cover or shelter; (4) sites for breeding, reproduction, or rearing of offspring; and, generally, (5) habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of the species (50 CFR 424.12(b)).

In addition, NMFS must focus on and list the known physical and biological features (primary constituent elements) within the designated area(s) that are essential to the conservation of the species and that may require special management considerations or protection. These essential features may include, but are not limited to, food resources, water quality or quantity, and vegetation and sediment types and stability (50 CFR 424.12(b)).

Benefits of Designating Critical Habitat

The designation of critical habitat does not, in itself, restrict state or private activities within the area or mandate any specific management or recovery actions. A critical habitat designation contributes to species conservation primarily by identifying important areas and describing the features within those areas that are essential to the species, thus alerting public and private entities to the importance of the area. Under the ESA, the only regulatory impact of a critical habitat designation is through the provisions of ESA section 7. Section 7 applies only to actions with Federal involvement (e.g., authorized, funded, or conducted by a Federal agency) and does not affect exclusively state or private activities.

Under the ESA section 7 provisions, a designation of critical habitat would require Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to destroy or adversely modify the designated critical habitat. Activities that destroy or adversely modify critical habitat are defined as those actions that "appreciably diminish the value of critical habitat for both the survival and recovery" of the species (50 CFR 402.02). Regardless of a critical habitat designation, Federal agencies must ensure that their actions are not likely to jeopardize the continued existence of the listed species. Activities that jeopardize a species are defined as those actions that "reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery" of the species (50 CFR 402.02). Using these definitions, in most cases activities that are likely to destroy or adversely modify critical habitat would also be likely to jeopardize the species. Therefore, in most cases the protection provided by a critical habitat designation generally duplicates the protection provided under the section 7 jeopardy provision. Critical habitat may provide additional benefits to a species in cases where areas outside of the species' current range have been designated. In these cases, Federal agencies are required to consult with NMFS under section 7 (50 CFR 402.14 (a)) when these designated areas may be affected by their actions. The effects of these actions on designated areas may not have been recognized but for the critical habitat designation.

A designation of critical habitat provides Federal agencies with a clearer indication as to when consultation under section 7 of the ESA is required, particularly in cases where the action would not result in direct mortality, injury, or harm to individuals of a listed species (e.g., an action occurring within the critical habitat area when or where Johnson's seagrass is not present). The critical habitat designation, in describing the essential features of the habitat, also helps determine which activities conducted outside the designated area are subject to ESA section 7 (i.e., activities that may affect essential features of the designated area). For example, disposal of waste material in water adjacent to a critical habitat area may affect an essential feature of the designated habitat (water quality) and would be subject to the provisions of section 7 of the ESA.

A critical habitat designation also assists Federal agencies in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in ESA section 7 consultations. This is particularly true in cases where there are alternative areas that would provide for the conservation of the species and the success of the action. With a designation of critical habitat, potential conflicts between Federal actions and endangered or threatened species can be identified and possibly avoided early in the agency's planning process.

Another indirect benefit of designating critical habitat is that it helps focus Federal, state and private conservation and management efforts in those areas. Recovery efforts may address special considerations needed in critical habitat areas, including

conservation regulations that restrict private as well as Federal activities. No additional conservation regulations are associated with this critical habitat designation, however. Any future proposal would require a full, separate rulemaking. Other Federal, state and local laws or regulations, such as zoning or wetlands protection, may also provide special protection for critical habitat areas.

Consideration of Economic and Other Factors

The economic, environmental, and other impacts of a designation must also be evaluated and considered. NMFS must identify present and future activities that may adversely modify designated critical habitat or be affected by a designation. An area may be excluded from a critical habitat designation if NMFS determines that the overall benefits of exclusion outweigh the benefits of designation, unless the exclusion will result in the extinction of the species (16 U.S.C. 1533(b)(2)).

The impacts considered in this analysis are only those incremental impacts that specifically result from designating critical habitat above the economic and other impacts attributable to listing the species or resulting from other authorities. These incremental impacts are expected to be minimal (see Benefits of Designating Critical Habitat section). In general, the designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself.

Section 9 of the ESA prohibits certain activities that directly or indirectly affect endangered species. These prohibitions apply to all persons and entities subject to U.S. jurisdiction. Section 9 prohibitions apply automatically to endangered species; however, this is not the case for threatened species. Section 4(d) of the ESA directs the Secretary to implement regulations "to provide for the conservation of [threatened] species" that may include extending any or all of the prohibitions of section 9(a)(2) to threatened species.

Section 9(a)(2)(E) of the ESA also prohibits violations of protective regulations for threatened species of plants implemented under section 4(d). NMFS may issue protective regulations pursuant to section 4(d) for Johnson's seagrass in a future rulemaking.

Impacts attributable to listing also include those resulting from the responsibility of all Federal agencies under section 7 of the ESA to ensure that their actions are not likely to jeopardize endangered or threatened species. An action could be likely to jeopardize the continued existence of a listed species through the destruction or adverse modification of its habitat, whether or not that habitat has been designated as critical.

Need for Special Management Consideration or Protection

NMFS has determined that the essential areas and features described here are at risk and may require special management consideration or protection. Special management may be required because of the following activities: (1) Vessel traffic and the resulting propeller dredging and anchor mooring; (2) dredging; (3) dock, marina, and bridge construction and shading from these structures; (4) water pollution; and (5) land use practices including shoreline development, agriculture, and aquaculture. Activities associated with recreational boat traffic account for the majority of human use associated with the critical habitat areas. The destruction of the benthic community due to boating activities, propeller dredging, anchor mooring, and dock and marina construction was observed at all sites during a study by NMFS from 1990 to 1992. These activities severely disrupt the benthic habitat, breaching root systems, severing rhizomes, and significantly reducing the viability of the seagrass community. Propeller dredging and anchor mooring in shallow areas are a major disturbance to even the most robust seagrasses. This destruction is expected to worsen with the predicted increase in boating activity. Trampling of seagrass beds, a secondary effect of recreational boating, also disturbs seagrass habitat. Populations of Johnson's seagrass inhabiting shallow water and water close to inlets, where vessel traffic is concentrated, will be most affected.

The constant sedimentation patterns in and around inlets require frequent maintenance dredging, which could either directly remove essential seagrass habitat or indirectly affect it by redistributing sediments, burying plants and destabilizing the bottom structure. Altering benthic topography or burying the plants may remove them from the photic zone.

Permitted dredging of channels, basins, and other in-and on-water construction projects cause loss of Johnson's seagrass and its habitat through direct removal of the plant, fragmentation of habitat, and shading. Docking facilities that, upon meeting certain provisions, are exempt from state permitting also contribute to loss of Johnson's seagrass through construction impacts and shading. Fixed add-ons to exempt docks (such as finger piers, floating docks, or boat lifts) have recently been documented as an additional source of seagrass loss due to shading (Smith and Mezich, 1999).

Decreased water transparency caused by suspended sediments, water color, and chlorophylls could have significant detrimental effects on the distribution and abundance of the deeper water populations of Johnson's seagrass. A distribution survey in Hobe and Jupiter Sounds indicates that the abundance of this seagrass diminishes in the more turbid interior portion of the lagoon where reduced light limits photosynthesis.

Other areas of concern include seagrass beds located in proximity to rivers and canal mouths where low salinity, highly colored water is discharged. Freshwater discharge into areas adjacent to seagrass beds may provoke physiological stress upon the plants by reducing the salinity levels. Additionally, colored waters released into these areas reduce the amount of sunlight available for photosynthesis by rapidly attenuating shorter wavelengths of Photosynthetically Active Radiation.

Also, continuing and increasing degradation of water quality due to increased land use and water management threatens the welfare of seagrass communities. Nutrient over-enrichment caused by inorganic and organic nitrogen and phosphorous loading via urban and agricultural land run-off stimulate increased algal growth that may smother Johnson's seagrass, shade rooted vegetation, and diminish the oxygen content of the water. Low oxygen conditions have a demonstrated negative impact on seagrasses and associated communities.

Special consideration and protection for these and other habitat features are evaluated in the ESA section 7 consultation process. Special management needs and the protection of these habitat features are being addressed in the development and implementation of the recovery plan.

Activities That May Affect Critical Habitat

A wide range of activities funded, authorized or carried out by Federal agencies may affect the essential habitat requirements of Johnson's seagrass. These include authorization by the COE for beach nourishment, dredging, and related activities including construction of docks and marinas; bridge construction projects funded by the Federal Highway Administration; actions by the U.S. Environmental Protection Agency and the COE to manage freshwater discharges into

waterways; regulation of vessel traffic by the U.S. Coast Guard (USCG); management of national refuges and protected species by the U.S. Fish and Wildlife Service; management of vessel traffic (and other activities) by the U.S. Navy; approval of changes to Florida's coastal zone management plan by NOAA's National Ocean Service; and management of commercial fishing and protected species by NMFS.

Expected Impacts of Designating Critical Habitat

This designation will identify specific habitat areas that have been determined to be essential for the conservation of Johnson's seagrass and that may be in need of special management considerations or protection. It will require Federal agencies to evaluate their activities with respect to the critical habitat of this species and to consult with NMFS pursuant to section 7 of the ESA before engaging in any action that may affect the critical habitat.

As discussed in the section on activities that may impact essential habitat and features, the Federal activities that may affect critical habitat are the same activities that may affect the species itself. For plants, this is particularly true when analyzing the impacts of designating critical habitat. For example, the activities that affect water quality, an essential feature of critical habitat, will also be considered in terms of how they affect the species itself.

Federal agencies will continue to engage in ESA section 7 consultations to determine if the actions they authorize, fund or carry out are likely to jeopardize the continued existence of Johnson's seagrass; however, with designation, they would also need to address explicitly impacts to the species' critical habitat. This is not expected to affect materially the scope of future consultations or result in greater economic impacts, since most impacts to Johnson's seagrass habitat will already be considered in ESA section 7 consultations.

The economic costs to be considered in a critical habitat designation are the incremental costs of designation above the economic impacts attributable to listing or attributable to authorities other than the ESA. NMFS has determined that there are few, if any, incremental net costs for areas within the species' current distribution, and no areas outside the current range are being designated as critical habitat.

Critical Habitat of Johnson's Seagrass

The biology of Johnson's seagrass is discussed in the final rule to list the species as threatened (63 FR 49035, September 14, 1998) and includes information on the current status of the species, its life history characteristics and habitat requirements, as well as projects, activities and other factors affecting the species. The physical habitat that supports Johnson's seagrass includes both shallow intertidal and deeper subtidal zones. The species prospers and is able to colonize and maintain stable populations either in water that is clear and deep (2-5 m) or in water that is shallow and turbid. In tidal channels, it inhabits coarse sand substrates.

Based on published reports and discussions with seagrass experts, the distributional range of Johnson's seagrass is limited to the east coast of Florida from central Biscayne Bay (25°45′ N. lat.) to Sebastian Inlet (27°51′ N. lat.). There have been no reports of healthy populations of this species outside the presently known range.

Although the species occurs throughout the Indian River Lagoon and Lake Worth, the designated critical habitat areas encompass the largest known contiguous populations of Johnson's seagrass, those areas known to have persistent populations, those populations known to have persistent flowering, those populations found to have unique genetic variability, and/or populations that include the northern and southern limits of the species' range.

The species is distributed in patches within its range. The dimensions of patches range from a few square centimeters to approximately 327 square meters (sq.m). The survival of the species likely depends on maintaining its existing viable populations, especially the areas where the larger patches are found. The Sebastian Inlet population is believed to be the northern limit of its distribution and includes flowering patches that have a known persistence of at least 10 years. Ft. Pierce Inlet and Jupiter Inlet are also found to have persistent and flowering populations. The other designated critical habitat areas represent the core range of the species where Johnson's seagrass is found to be abundant compared to other parts of its range, exhibits unique genetic make-up, or comprises the southern limit of its range.

Spread of the species into new areas is limited by its reproductive potential. Johnson's seagrass possesses only female flowers; thus vegetative propagation, most likely through asexual branching, appears to be its only means of reproduction and dispersal. If an established community is disturbed, regrowth and reestablishment are extremely unlikely. If extirpated from an area, it is doubtful that the species would be capable of repopulation. This species' method of reproduction impedes the ability to increase distribution as establishment of new vegetation requires considerable stability in environmental conditions and protection from human-induced disturbances.

Based on the best available information, general physical and biological features of the critical habitat areas include adequate water quality, salinity levels, water transparency, and stable, unconsolidated sediments that are free from physical disturbance. The specific areas occupied by Johnson's seagrass are those with one or more of the following criteria: (1) Locations with populations that have persisted for 10 years; (2) locations with persistent flowering populations; (3) locations at the northern and southern range limits of the species; (4) locations with unique genetic diversity; and (5) locations with a documented high abundance of Johnson's seagrass compared to other areas in the species' range. Explanations for these criteria are:

1. *Persistent populations.* Surveys of *H. johnsonii* distribution and abundance in the Indian River Lagoon indicate that populations fluctuate dramatically. In some areas populations disappear and re-appear on both intra- and inter-annual time scales (Virnstein *et al.*, 1997). Some populations have disappeared and not returned. Since sexual reproduction and seed dispersal are unknown, this species may rely on vegetative fragmentation for recruitment and establishment of new populations. Recruitment from fragmentation and migration are random processes which do not guarantee the persistence of the species in any one location. Perennial populations which have persisted for 10 years exist in several locations, including Sebastian Inlet, Fort Pierce Inlet, Jupiter Inlet, and Hobe Sound. Environmental characteristics of these sites appear favorable to the species, while in other locations in the lagoon, populations have disappeared. Locations where populations have persisted have been designated as critical habitat.

2. *Persistent flowering populations.* The existence of male flowers or recruitment by seed have not been documented for *H. johnsonii.* These observations suggest that this species does not reproduce sexually, and if it

does, it is a very rare event. Yet, large clones of mature female plants flower prolifically at several locations, including Sebastian Inlet, Fort Pierce Inlet, Jupiter Inlet, and Lake Worth Lagoon. The environmental conditions at these sites appear to be suitable for flowering, and if there are any males present, these would be likely habitats for successful reproduction. Locations where there are persistent flowering populations have received critical habitat designation.

3. *Northern and southern ranges of the populations.* The geographical limits of the distributional range of a species can indicate a reduction or expansion of the species' range. Greater adaptative stresses can occur at the limits of the species' range. If the range extension were shrinking, the edges should be protected to prevent further loss. In the alternative, the distribution limits may be a point where the populations are expanding and invading new environments. The unique phenotypic and genotypic characteristics of these populations could be an important reservoir for characteristics resistant to extinction and conducive to survival and growth. The northern and southern ranges of Johnson's seagrass are defined as Sebastian Inlet and central Biscayne Bay, respectively. Portions of these limits to the species' range have been designated as critical habitat for Johnson's seagrass.

4. *Populations with unique genetic variability.* The Boca Raton and Boynton Beach sites have populations which are distinguished by a higher index of genetic variation than any of the central and northern populations examined to date. These two sites possibly represent a genetically semi-isolated group which could be the reservoir of a large part of the overall genetic variation found in this species. Information is lacking on the geographic extent of this genetic variability. Locations with populations that have unique genetic variability have been designated as critical habitat.

5. *Areas of abundance.* The Lake Worth Lagoon and Palm Beach County seagrass populations represent an abundant core of *Halophila* species, including Johnson's seagrass. Previously a freshwater lake, Lake Worth was transformed into a lagoon beginning in 1877 when an ocean inlet was stabilized. With dredging of the ICW, shoreline development, and sewage disposal, the lagoon was permanently altered. Presently, there are about 2000 acres of seagrass in the lagoon covering 35 percent of the bottom. It is estimated that between 20 and 25 percent of the seagrass coverage is comprised of mixed assemblages of *H. decipiens* and *H. johnsonii*. This is proportionately more *Halophila* coverage than occurs elsewhere along the southeast coast of Florida. Presently, conditions within Lake Worth Lagoon and in Palm Beach County in general appear to be conducive to the survival of *H. johnsonii*. Three locations within Lake Worth Lagoon have been designated as critical habitat. The critical habitat area in Lake Worth Lagoon, near Bingham Island, consists of the largest recorded contiguous patch of Johnson's seagrass: a 30-acre meadow of Johnson's seagrass intermixed with sparse coverage of *H. decipiens* and *Halodule wrightii* (Smith and Mezich, 1991 and 1999).

NMFS is not including in the final designation any areas outside the species' currently known geographical range. NMFS has concluded that, at this time, proper management of the essential features of the areas around Sebastian and Ft. Pierce Inlet, Hobe Sound, Jupiter Inlet, Lake Worth, Boca Raton, and northern Biscayne Bay will be sufficient to provide for the survival and recovery of this species. NMFS may reconsider this evaluation and propose additional areas for critical habitat at any time. Johnson's seagrass occurs in numerous locations throughout its range in areas outside of those currently being designated as critical habitat. Information on genetic variability and persistence of Johnson's seagrass is currently lacking in these areas. Future research, however, involving genetic studies and comprehensive, long-term field surveys, could identify additional areas that are essential to the conservation of the species and require special management considerations, and would, therefore, warrant designation as critical habitat. Long-term surveys of the distribution of Johnson's seagrass may allow further refinement of the Biscayne Bay critical habitat area in the future. Additional areas that may be considered for critical habitat in future rulemaking include locations between Ft. Pierce Inlet and St. Lucie Inlet, west of the Jupiter Inlet, near the Boynton Beach Inlet and other areas of Lake Worth Lagoon. Also, if a male flower of Johnson's seagrass is identified in an area, this area should be designated as critical habitat.

The regulatory description of critical habitat for Johnson's seagrass can be found at the end of this **Federal Register** document.

Summary of Responses

Two public hearings were held on the proposed action: one in West Palm Beach, Florida, on December 16, 1999, and one in Miami, Florida, on January 31, 2000. Thirty-seven individuals provided oral testimony at the public hearings. Forty-nine comments were submitted in response to the proposed rule. Many comments were in support of designating critical habitat for Johnson's seagrass. However, the majority of comments were concerned about economic impacts from the designation. New information and comments received in response to the proposed rule are summarized here.

1. Economic Considerations

Many commenters believed that critical habitat designation would create a substantial economic burden that could delay projects and possibly prohibit certain activities, including recreational boating. The COE commented that critical habitat would place an unnecessary significance to these areas and an additional coordination and consultation burden that would be costly both in terms of the project delay and the cost directly associated with the consultation. Additional commenters believed that the designation would impose additional requirements or economic impacts upon small and/or private entities beyond those which may accrue from section 7 of the ESA.

Response: The designation of critical habitat highlights geographical areas of concern and reinforces the substantive protection resulting from the listing itself. Incremental costs are expected to be no greater than those which occurred at the time of listing (See Consideration of Economic and Other Factors).

ESA section 7 applies only to Federal actions and requires Federal agencies to ensure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or result in the destruction or adverse modification of habitat determined to be critical. The consultation requirements of section 7 are non-discretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS to ensure their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

Most of the effect on non-Federal interests will result from the no-jeopardy requirement of section 7 of the ESA, which is a function of listing a species, not designating its critical habitat. Whether or not critical habitat is designated, non-Federal interests must conduct their actions in a manner consistent with the requirements of the ESA. If the activity is funded, permitted, or authorized by a Federal agency, that agency must comply with the non-jeopardy mandate of section 7 of the ESA, which results from listing a

species, not from designating its critical habitat. Once critical habitat is designated, the agency must avoid actions that destroy or adversely modify that critical habitat. However, pursuant to NMFS' ESA implementing regulations, in most cases any action that destroys or adversely modifies critical habitat is also likely to jeopardize the continued existence of the species (See the definitions in 50 CFR 402.02). Therefore, NMFS does not anticipate that the designation will result in significant additional requirements for non-Federal interests.

Notwithstanding its lack of economic impact, the designation of critical habitat remains important because it identifies habitat that is essential for the continued existence of a species and, therefore, indicates habitat that may require special management attention. This facilitates and enhances Federal agencies' ability to comply with section 7 of the ESA by ensuring that they are aware when their activities may affect listed species and habitats essential to support them. In addition to aiding Federal agencies in determining when consultations are required pursuant to section 7(a)(2) of the ESA, critical habitat can aid an agency in fulfilling its broader obligation under section 7(a)(1) to use its authority to carry out programs for the conservation of listed species.

On September 1, 1998, NMFS completed a conference opinion (CO) with the U.S. Army Corps of Engineers (COE) on maintenance dredging which concluded that normal maintenance dredging activities and routine operations on ports are not likely to jeopardize the continued existence of Johnson's seagrass or adversely modify proposed critical habitat. If requested by the COE, NMFS will review the CO, and, if no significant changes have occurred in the action as planned or in the information used during the conference, NMFS will confirm the CO as the biological opinion on the project and no further section 7 consultation will be necessary. NMFS expects that maintenance dredging will not be negatively impacted by this final critical habitat designation.

2. Permitting Delays

Various commenters voiced concern that dredging projects, including maintenance dredging, would be impaired and possibly prohibited in these areas. Concerns were that the designation would: (a) disrupt the COE permitting process and result in major permitting delays from the section 7 consultation process; (b) impair Palm Beach Harbor expansion projects and Lake Worth Lagoon clean-up efforts; (c) prevent or slow down and make more costly, a dredging project to remove contaminated sediments of the Miami River; (d) essentially stop the maintenance dredging of inlets, the ICW, and many private marina facilities; and (e) further delay and possibly impede FDOT bridge construction and other projects due to the section 7 process.

Response: NMFS expects that normal maintenance dredging activities and routine operations on ports will not be negatively impacted by this critical habitat designation. The COE has already conferred with NMFS on the proposed designation for maintenance dredging. Furthermore, there are fewer delays in permitting because the Federal agency knows in the planning process where designated critical habitat areas are for the species (See Benefits of Designating Critical Habitat). The critical habitat areas account for approximately 7 percent of the entire range of the species, and the designation assists Federal agencies (or those delegated to represent Federal lead agencies) in planning future actions because the designation establishes, in advance, those habitats that will be given special consideration in ESA section 7 consultations. Individual permits issued by the COE are being dealt with through the ESA section 7 process and in review by the COE's Nationwide Permit process. These projects will be examined programmatically by waterbody and/or project type.

As noted earlier, excluding an area from critical habitat does not exclude it from consultation under ESA section 7, based on expected impacts to the species. The species has been listed since September 1998, and Federal agencies have been required to confer on impacts to this species since it was proposed for listing in 1994. The designation would not impair or prohibit the timely and economical maintenance of the ICW or other federally-funded projects. The requirement for a Federal action agency to consult on actions which may affect a listed species occurs at the time the species is listed.

3. Stop or Prohibit Projects/Activities

Many commenters believed that the outcome of critical habitat designation and the intention of NMFS is to stop or prohibit projects or activities. One commenter believed that NMFS seeks to "kill the public's recreational use of Biscayne Bay."

Response: The designation of critical habitat does not, in and of itself, restrict human activities within an area or mandate any specific management or recovery action. The designation of critical habitat helps alert public and private entities to the area's importance, and under section 7 provisions, a critical habitat designation requires Federal agencies to ensure that any action they authorize, fund, or carry out is not likely to adversely modify or destroy critical habitat. The designation assists agencies in planning future actions. It is not the intention of NMFS to prohibit boating or other activities in the range of Johnson's seagrass.

The designation of critical habitat allows for early consultation and development of project alternatives. The Section "Need For Special Management Considerations" provides an overview of recognized impacts or threats to the species and its primary constituent elements (such as water quality and substrate stability) that may require special management considerations. Special consideration and protection for these and other habitat features are evaluated in the ESA section 7 consultation process. Special management needs and the protection of these habitat features are being addressed in the development and implementation of the recovery plan.

4. Intracoastal Waterway and Maintenance Dredging

This is a subset of the concerns raised earlier. A number of commenters felt that the inclusion of the channel of the ICW was unnecessary for the conservation of the species and an economic burden to maintenance dredging of the waterway and that it would impair and probably prohibit the proper maintenance of the ICW. Similar comments were that the proposed designation would potentially decrease or possibly eliminate maintenance dredging of the ICW in Martin County, substantially impacting public safety and Martin County's economy, and that loss of ICW maintenance dredging may include total prohibition of boating activity within the critical habitat limits.

Response: After re-evaluation of the information, feedback from Recovery Team members with expertise in the distribution, abundance and habitat needs for the species, and public input, NMFS has determined that the (approximately 18.5 km) Federally marked navigation channel of the ICW occurring in the critical habitat areas will be excluded from critical habitat designation. NMFS has determined that the exclusion of the channel of the ICW is possible while still allowing for conservation of the species. The exclusion of the ICW channel occurs in

the following critical habitat areas: (1) An interior portion of the Indian River Lagoon, north of the St. Lucie Inlet; (2) Hobe Sound; (3) the site in central Lake Worth Lagoon near Bingham Island; (4) a site in Lake Worth Lagoon, Boynton Beach; (5) a site in Lake Wyman, Boca Raton; and (6) a portion of Biscayne Bay Aquatic Preserve.

As stated earlier, the COE requested formal conference with NMFS when the species was proposed for listing in order to address and plan for the maintenance dredging projects. The NMFS' CO, issued September 1, 1998, concluded that the maintenance dredging of the ICW and ports in the range of Johnson's seagrass is not likely to jeopardize the continued existence of the species, and is not likely to destroy or adversely modify its proposed critical habitat. Johnson's seagrass is known to occur in parts of the ICW, but the exclusion of the ICW channel in the designated area will not affect NMFS' ability to review and prohibit adverse impacts to the species. The CO contains pre-dredging survey guidelines which provide that the number and severity of impacts to the species be tracked over time in conjunction with other impacts affecting the species in its range. New dredging or expansion projects will be reviewed separately under section 7.

5. Exclusion of Other Project Types or Areas

Some commenters requested exclusion of other project types or areas besides that of the ICW channel, including: (a) the ICW right-of-way in addition to the channel; (b) all Florida Department of Transportation right-of-way and Submerged Land Easements which encompass existing bridges; (c) current docks, canals, and areas requiring dredging and boat use; (d) public boat ramps and existing basins; (e) any access channels and public and private maintenance of existing channels and piers and docking facilities; (f) public navigation channels; (g) areas adjacent to the Town of Jupiter; (h) Sealine Marina Yachting Center basin; (i) clean-up dredging of the Miami River. One commenter recommended exclusion of: (1) a 500-ft. (152.4 m) buffer adjacent to all privately-owned uplands, (2) the ICW and its adjacent right-of-way, (3) all areas within the preempted area of State submerged land leases, easements, consents of use or other State proprietary authorizations, (4) all marina facilities in existence at the time of listing, and (5) all existing access channels.

Response: The ICW channel has been excluded from critical habitat since it involves ongoing maintenance of a disturbed area. The CO developed for these ICW and ports maintenance projects analyzed the impacts of these activities on Johnson's seagrass. The CO did not consider new ICW dredging or expansion projects involving deepening or widening of the right-of-way. Because of the additional adverse impacts these projects will have on the species and habitat, above those considered in the CO, these projects will be considered separately in the ESA section 7 process. With regard to other areas, the critical habitat designation may be revised in the future as data become available. Critical habitat designation should have no effect on currently existing structures such as docks, marinas, and basins in designated critical habitat unless Federal authorization is required. NMFS would review, at that time, any proposed changes to those structures or facilities. In Biscayne Bay, the Miami River, the Little River, and the Oleta River are excluded from Johnson's seagrass critical habitat beyond its mouth. Any proposed dredging projects of this river that are authorized, funded, or carried out by a Federal agency may be reviewed under the section 7 process for impacts to listed species under NMFS purview.

6. Submerged Land Lease Holding

One commenter, representing a private party holding the lease to submerged lands included in critical habitat designation, questioned how this party would be compensated for loss of this land.

Response: The land designated as critical habitat is not a taking of private property. A critical habitat designation does not impose any additional burdens on private property rights than those imposed by the species listing. A private landowner continues to be free to use his land as he sees fit, using care that his land management does not violate any ESA 4(d) regulations. The critical habitat designation simply clarifies the areas within which one's activity may impact Johnson's seagrass. The designation may affect such property if there is a Federal action that triggers the section 7 process.

7. Biscayne Bay Comments

There were numerous comments on the size of Biscayne Bay compared to the other areas proposed for designation in the north and central part of its range. Some commenters supported the designation. Comments opposed to the size of the designation included: (a) the area should not be so big because it is highly industrialized, with heavy commerce and recreational boating and development; (b) the area is too large as most of it is already dredged and seawalled; (c) the size of the area is not scientifically supported and is overreaching; and (d) the designation will stall and frustrate the orderly expansion of facilities to support recreation in the Bay. Those in support of the designation believed it to be beneficial to the species where the risk of development is great. One commenter suggested a more focused approach in Biscayne Bay Aquatic Preserve.

Response: NMFS believes that this designation, based upon criteria for Johnson's seagrass critical habitat, is currently appropriate and necessary for the survival of Johnson's seagrass in its southern range. Based on comments received, this critical habitat area was re-evaluated by NMFS and by members of the Recovery Team.

The species, by nature, is patchily distributed. Johnson's seagrass occurs in approximately a 2-percent abundance in comparison to all species of seagrass throughout its range. In Biscayne Bay, a highly-impacted system, Johnson's seagrass is not known to occur in the same abundance or to be as widely distributed as in areas of its northern and middle range. Larger seagrasses, predominantly *Thalassia*, begin to out-compete Johnson's seagrass in this area. Eiseman and McMillan (1980) documented Johnson's seagrass in the vicinity of Virginia Key, Key Biscayne (Lat 25°45′); this location is considered to be the southern limit of the species range. There have been no reports of this species further south of the currently known southern distribution.

The presence of Johnson's seagrass in northern Biscayne Bay (north of Virginia Key) is well documented. In addition to localized surveys, the presence of Johnson's seagrass has been documented by various field experiences and observations of the area by Federal, state and county entities. Johnson's seagrass has been documented in various COE and USCG permit applications reviewed by NMFS. The Dade County Department of Environmental Resources has mapped a general seagrass coverage of Biscayne Bay, and a wide-range, long-term monitoring program for Johnson's seagrass is recommended.

Development, man-made impacts, and human use of the submerged lands in this waterbody are heavy and there is a management need to protect critical habitat for Johnson's seagrass based on this pressure. Protection of the northern and southern ranges of the species is identified as a criteria essential to the protection of Johnson's seagrass. Genetic diversity in its southern range may be greater than in the north or central parts of the range and unique from either the north or central range. The unique phenotypic and genotypic characteristics of these populations could be an important reservoir for characteristics resistant to extinction and conducive to survival and growth.

The State of Florida designated Biscayne Bay as an aquatic preserve, recognizing it as "an exceptional area of submerged bay lands and natural waterways tidally connected to the bay" (Florida Administrative Code 18–18). Concurrently, the section of Biscayne Bay Aquatic Preserve designated as critical habitat for Johnson's seagrass is considered by NMFS to be essential to the survival of the species. Final critical habitat designation may be revised as new data become available. New information, possibly through a long-term, wide-range monitoring program and increased ground-truthing of seagrass species in the Bay, could identify the distribution, abundance, and persistence of Johnson's seagrass. This new information could allow NMFS, in the future, to further refine areas in the southern end of the species' range. The species may not occur in 100 percent of the area. However, protection of Johnson's seagrass throughout this area is considered by NMFS to be essential to the conservation and survival of the species.

8. Additional Areas Recommended For Critical Habitat Designation

Various parties recommended the increase in the size and/or the addition of sites in the north and central parts of the range. Commenters believed that the modest acreage proposed, representing only about 7 percent of the species' range, does not fully represent the area occupied by the respective beds over time. The following areas were recommended for expansion: (a) Sebastian Inlet, (b) Fort Pierce Inlet, (c) Jupiter Inlet, (d) Jupiter Sound, (e) Lake Worth/Bingham Island, and (f) Lake Wyman.

The following new areas were recommended to be added as new critical habitat: (a) The entire area of Indian River Lagoon, from Ft. Pierce Inlet to St. Lucie Inlet; (b) Herman's Bay, St. Lucie County; (c) three sites in the Loxahatchee River/Estuary; (d) a site south of Lake Worth Inlet and Peanut Island; (e) a site at Royal Park Bridge, Palm Beach County; (f) two sites south of Boynton Inlet; and (g) site(s) in Broward County. A few commenters believed that the 10-year persistence criterion eliminates significant populations from critical habitat consideration, and that it is too strict. They recommended reduction in the time frame to 3 years to identify a persistent population of Johnson's seagrass.

Response: Five criteria for designating Johnson's seagrass critical habitat were developed by the members of the recovery team (See Critical Habitat for Johnson's seagrass). The size of the areas in the north and central part of the species range were based on the criteria for persistent and flowering populations and indicate the shoals of persistent beds. These areas have been studied for 10 years and have shown the ability to persist where other areas in the general vicinity have not. Johnson's seagrass is patchily distributed, has rapid growth and turnover, and migrates across the sea floor. Recruitment from fragmentation and migration are random processes which do not guarantee the persistence of the species in any one location. The areas designated in Indian River Lagoon, Hobe Sound, Jupiter Inlet, and Lake Worth Lagoon indicate populations that have persisted and flowered for 10 years despite these species characteristics. Environmental characteristics of these sites appear favorable to the species, while in other locations in the lagoon, populations have disappeared. Based upon the Recovery Team recommendations, NMFS believes that 10-year persistence is a valid criterion for designating critical habitat for Johnson's seagrass. Refinement of these areas was possible due to the information from permanent transects, genetic information, State of Florida marina siting and dock shading studies, and Palm Beach County Lake Worth Lagoon surveys.

The Lake Wyman site is a critical area for the existing genetic variability of Johnson's seagrass found in the central part of its range. With a re-examination and further interpretation from Florida Fish and Wildlife Conservation Commission's (FFWCC) marina survey and dock shading data, NMFS concurs that the proposed designation of 3.3 acres excluded the contiguous and dense beds of Johnson's seagrass southward. As a result, NMFS has expanded the southern boundary of this area approximately 1500 ft. (457.2 m) in order to more adequately protect this genetic variability in the central range, particularly from stochastic events.

Some of the recommendations to add new areas were based on reducing the criterion for persistence from 10 years to 3 years. However, NMFS believes, based on Recovery Team recommendations, that the 10-year time period most accurately identifies persistent areas of Johnson's seagrass. The Loxahatchee Estuary, just west of the Jupiter Inlet, holds a large monotypic population of Johnson's seagrass. However, historical survey data on the persistence of Johnson's seagrass in this area do not currently exist. Future data on the ability of Johnson's seagrass to persist in this euryhaline (wide range of salinity) environment, with its extreme changes in salinity, may indicate this to be a unique site for Johnson's seagrass. NMFS may, therefore, consider this site as critical habitat in future rulemaking based on its unique environmental characteristics.

Comments were made that there should be more than two areas proposed for critical habitat designation in Lake Worth Lagoon, which is an essential area of abundance for *Halophila* species. Further analysis from FFWCC, and a re-evaluation of the data provided by Palm Beach County and State of Florida marina siting surveys and dock studies, support the addition of a critical habitat site in Lake Worth Lagoon, south of Lake Worth Inlet and Peanut Island. The population of Johnson's seagrass in this area is well-documented as an abundant, persistent (at least 10 years) and flowering population of mixed *Halophila* and monotypic Johnson's seagrass. Any additions or revisions that may be made in the future to this final rule will go through another proposed and final rule process with public input.

9. Protection of All Seagrasses/ ecosystem

Many individuals expressed support for the designation and voiced the need to protect all seagrasses, emphasizing the ecological benefits (such as a nursery/spawning ground) of seagrass conservation, not only for a single species, but for the ecosystem. Many commenters expressed concerns about massive releases of freshwater by the COE from Lake Okechobee and threats to the entire system from development.

Response: NMFS supports efforts and plans to conserve and manage ecosystems and appreciates the role that the ESA can take in protecting those species most threatened or endangered in these systems. NMFS' authority is under the ESA in protecting listed species, and NMFS believes that the ESA section 7 consultation process benefits the protection of other seagrasses and the diversity of the shallow estuarine ecosystem. NMFS appreciates the opportunity to participate in the Lake Worth Lagoon project, Indian River Lagoon Management Plan, Biscayne Bay initiative and the South Florida Ecosystem Restoration Plan.

10. Lack of Scientific Information

A few commenters suggested that critical habitat was not determinable and should not be designated at this time. Reasons given included: (a) a lack of information on how the species propagates; (b) the need for further study on habitat preferences; and (c) a lack of essential information determining the physical and biological features that are essential to the conservation of a given species.

Response: These factors were considered in the decision to list the species. Essential information does exist for Johnson's seagrass, as provided at the time of listing. The range of the species has been delineated and there is a clear understanding of how the species grows and propagates (Kenworthy, 1999, 1997). Since its listing, further information in terms of genetic variability, patch dynamics, persistence and abundance, and transplanting capabilities has been found for Johnson's seagrass. Further studies will be valuable in answering questions about the species' patch and population dynamics, dispersion, and transplanting capabilities. However, NMFS believes that sufficient and conclusive information exists at this time for the designation of critical habitat for Johnson's seagrass.

11. Critical Habitat is Only to be Designated Where Species Physically Occurs

Some commenters interpreted the ESA definition of "critical habitat" (section 3 (5)(i); "The specific areas within the geographic area occupied by the species") as meaning that critical habitat can only be designated where the species physically occurs.

Response: A species does not have to occupy 100 percent of a critical habitat area. This would be similar to drawing a "box" around a plant or animal but not providing it with its requirements for space, population growth, normal behavior, food, or other physiological, nutritional, and reproductive requirements (See Definition of Critical Habitat). NMFS must focus on the primary constituent elements within the designated areas that are essential to the conservation of the species and that may require special management considerations or protection, and not only the space taken up by the species. This final rule designates "critical habitat", as defined by the ESA, for Johnson's seagrass.

12. Existing Regulations

Some commenters questioned the current regulations for the protection of seagrass habitat and whether these were not enough to assure the protection of Johnson's seagrass.

Response: This concern was also covered at the time the species was listed. Despite existing Federal and Florida State laws aimed to conserve and protect seagrass habitat, there is a continued and well documented loss of seagrass habitat in the United States. NMFS acknowledges that many portions of the proposed critical habitat for Johnson's seagrass overlap with other special areas, such as the Indian River Lagoon and Biscayne Bay Aquatic Preserves. The critical habitat designation will underscore and strengthen the protective goals of these areas.

Changes to the Proposed Rule

Based on comments and new information received on the proposed rule, NMFS is modifying the proposed critical habitat designation for Johnson's seagrass as follows:

(1) Exclusion of Federal navigation channels of the ICW that occur in critical habitat areas. This includes the following areas: (a) An interior portion of the Indian River Lagoon, north of the St. Lucie Inlet; (b) Hobe Sound; (c) the site in central Lake Worth Lagoon near Bingham Island; (d) a site in Lake Worth Lagoon, Boynton Beach; (e) a site in Lake Wyman, Boca Raton; and the portion of Biscayne Bay designated as critical habitat.

(2) Extension of Lake Wyman critical habitat area by 1500 ft. (457.2 m) south from the proposed area.

(3) Exclusion of the Miami River and Little River beyond their mouths at Biscayne Bay.

Maps are provided for reference purposes to guide Federal agencies and other interested parties in locating the general boundaries of the critical habitat. They do not constitute the definition of the boundaries of critical habitat. Persons must refer to the regulations at 50 CFR 226.213 for the actual boundaries of the designated critical habitat. Figures 1 through 9 illustrate the ten areas being designated as critical habitat for Johnson's seagrass. These maps do not illustrate the exclusion of the ICW channel.

References

The complete citations for the references used in this document are available upon request (see **FOR FURTHER INFORMATION CONTACT**).

Classification

NMFS has determined that Environmental Assessments or an Environmental Impact Statement, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared for this critical habitat designation. See *Douglas County* v. *Babbitt*, 48 F.3d 1495 (9th Cir. 1995), cert. denied, 116 S.Ct. 698 (1996).

NMFS is designating ten areas in the range of Johnson's seagrass as critical habitat. This designation will not impose any additional requirements or economic effects upon small entities beyond those which may accrue from section 7 of the ESA. Section 7 requires Federal agencies to ensure that any action they carry out, authorize, or fund is not likely to jeopardize the continued existence of any listed species or to result in the destruction or adverse modification of critical habitat (ESA section 7(a)(2)). The consultation requirements of section 7 are nondiscretionary and are effective at the time of species' listing. Therefore, Federal agencies must consult with NMFS to ensure that their actions do not jeopardize a listed species, regardless of whether critical habitat is designated.

In the future, should NMFS determine that designation of additional habitat areas in the species' range and/or outside the species' current range is necessary for conservation and recovery, NMFS will analyze the incremental costs of the action and assess its potential impacts on small entities, as required by the Regulatory Flexibility Act.

Accordingly, the Chief Counsel for Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy of the Small Business Administration that the critical habitat designation would not have a significant economic impact on a substantial number of small entities, as described in the Regulatory Flexibility Act.

The Assistant Administrator for Fisheries, NOAA, has determined that the designation is consistent to the maximum extent practicable with the approved Coastal Zone Management Program of the State of Florida. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

The Assistant Administrator for Fisheries, NOAA, has determined this rule is not significant for purposes of E.O. 12866.

This final rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

In accordance with E.O. 13132, NMFS has prepared the following federalism summary impact statement. When

NMFS issued a proposed rule to designate critical habitat for Johnson's seagrass in 1994, NMFS began consulting with the State of Florida. While the state expressed support for protection of Johnson's seagrass, it also expressed concern over the possible economic impacts of a critical habitat designation. NMFS understands the concerns of the state regarding timely maintenance of state and Federal navigation channels, ports, and inlets, and NMFS' goal is to protect the species with minimal effects to these activities. Concerns regarding possible economic impacts of a critical habitat designation are addressed in the preamble to this final rule. In addition, NMFS has completed a conference opinion with the COE on the effects of maintenance dredging on Johnson's seagrass and its critical habitat. NMFS expects that maintenance dredging will not be negatively impacted by this final critical habitat designation.

List of Subjects in 50 CFR Part 226

Endangered and threatened species.

Dated: March 30, 2000.

Andrew A. Rosenberg,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 226 is amended as follows:

PART 226—DESIGNATED CRITICAL HABITAT

1. The authority citation for part 226 continues to read as follows:

Authority: 16 U.S.C. 1533.

2. Section 226.213 is added to part 226 to read as follows:

§ 226.213 Critical habitat for Johnson's seagrass.

Critical habitat is designated to include substrate and water in the following ten portions of the Indian River Lagoon and Biscayne Bay within the current range of Johnson's seagrass.

(a) A portion of the Indian River, Florida, north of Sebastian Inlet Channel, defined by the following coordinates:

Northwest corner: 27°51′15.03″N, 80°27′55.49″W
Northeast corner: 27°51′16.57″N, 80°27′53.05″W
Southwest corner: 27°51′08.85″N, 80°27′50.48″W
Southeast corner: 27°51′11.58″N, 80°27′47.35″W

(b) A portion of the Indian River, Florida, south of the Sebastian Inlet Channel, defined by the following coordinates:

Northwest corner: 27°51′01.32″N, 80°27′46.10″W
Northeast corner: 27°51′02.69″N, 80°27′45.27″W
Southwest corner: 27°50′59.08″N, 80°27′41.84″W
Southeast corner: 27°51′01.07″N, 80°27′40.50″W

(c) A portion of the Indian River Lagoon in the vicinity of the Fort Pierce Inlet. This site is located on the north side of the entrance channel just west of a small mangrove vegetated island where the main entrance channel bifurcates to the north. The area is defined by the following coordinates:

Northwest corner: 27°28′06.00″N, 80°18′48.89″W
Northeast corner: 27°28′04.43″N, 80°18′42.25″W
Southwest corner: 27°28′02.86″N, 80°18′49.06″W
Southeast corner: 27°28′01.46″N, 80°18′42.42″W

(d) A portion of the Indian River Lagoon, Florida, north of the St. Lucie Inlet, from South Nettles Island to the Florida Oceanographic Institute, defined by the following coordinates and excluding the Federally-marked navigation channel of the Intracoastal Waterway (ICW):

Northwest corner: 27°16′44.04″N, 80°14′00.00″W
Northeast corner: 27°16′44.04″N, 80°12′51.33″W
Southwest corner: 27°12′49.70″N, 80°11′46.80″W
Southeast corner: 27°12′49.70″N, 80°11′02.50″W

(e) Hobe Sound beginning at State Road 708 (27°03′49.90″N, 80°07′20.57″W) and extending south to 27°00′00.00″N, 80°05′32.54″W and excluding the federally-marked navigation channel of the ICW.

(f) Jupiter Inlet at a site located just west of the entrance to Zeek's Marina on the south side of Jupiter Inlet and defined by the following coordinates (note a south central point was included to better define the shape of the southern boundary):

Northwest corner: 26°56′43.34″N, 80°04′47.84″W
Northeast corner: 26°56′40.93″N, 80°04′42.61″W
Southwest corner: 26°56′40.73″N, 80°04′48.65″W
South central point: 26°56′38.11″N, 80°04′45.83″W
Southeast corner: 26°56′38.31″N, 80°04′42.41″W

(g) A portion of Lake Worth, Florida, just north of Bingham Island defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northwest corner: 26°40′44.00″N, 80°02′39.00″W
Northeast corner: 26°40′40.00″N, 80°02′34.00″W
Southwest corner: 26°40′32.00″N, 80°02′44.00″W
Southeast corner: 26°40′33.00″N, 80°02′35.00″W

(h) A portion of Lake Worth Lagoon, Florida, located just north of the Boynton Inlet, on the west side of the ICW, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northwest corner: 26°33′28.00″N, 80°02′54.00″W
Northeast corner: 26°33′30.00″N, 80°03′04.00″W
Southwest corner: 26°32′50.00″N, 80°03′11.00″W
Southeast corner: 26°32′50.00″N, 80°02′58.00″W

(i) A portion of northeast Lake Wyman, Boca Raton, Florida, defined by the following coordinates and excluding the Federally-marked navigation channel of the ICW:

Northwest corner: 26°22′27.00″N, 80°04′23.00″W
Northeast corner: 26°22′27.00″N, 80°04′18.00″W
Southwest corner: 26°22′05.00″N, 80°04′16.00″W
Southeast corner: 26°22′05.00″N, 80°04′18.00″W

(j) A portion of Northern Biscayne Bay, Florida, defined by the following: The northern boundary of Biscayne Bay Aquatic Preserve, NE 163rd Street, and including all parts of the Biscayne Bay Aquatics Preserve as defined in 18-18.002 of the Florida Administrative Code (F.A.C.) excluding the Oleta River, Miami River and Little River beyond their mouths, the federally-marked navigation channel of the ICW, and all existing federally authorized navigation channels, basins, and berths at the Port of Miami to the currently documented southernmost range of Johnson's seagrass, Central Key Biscayne (25°45′N).

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Figure 1

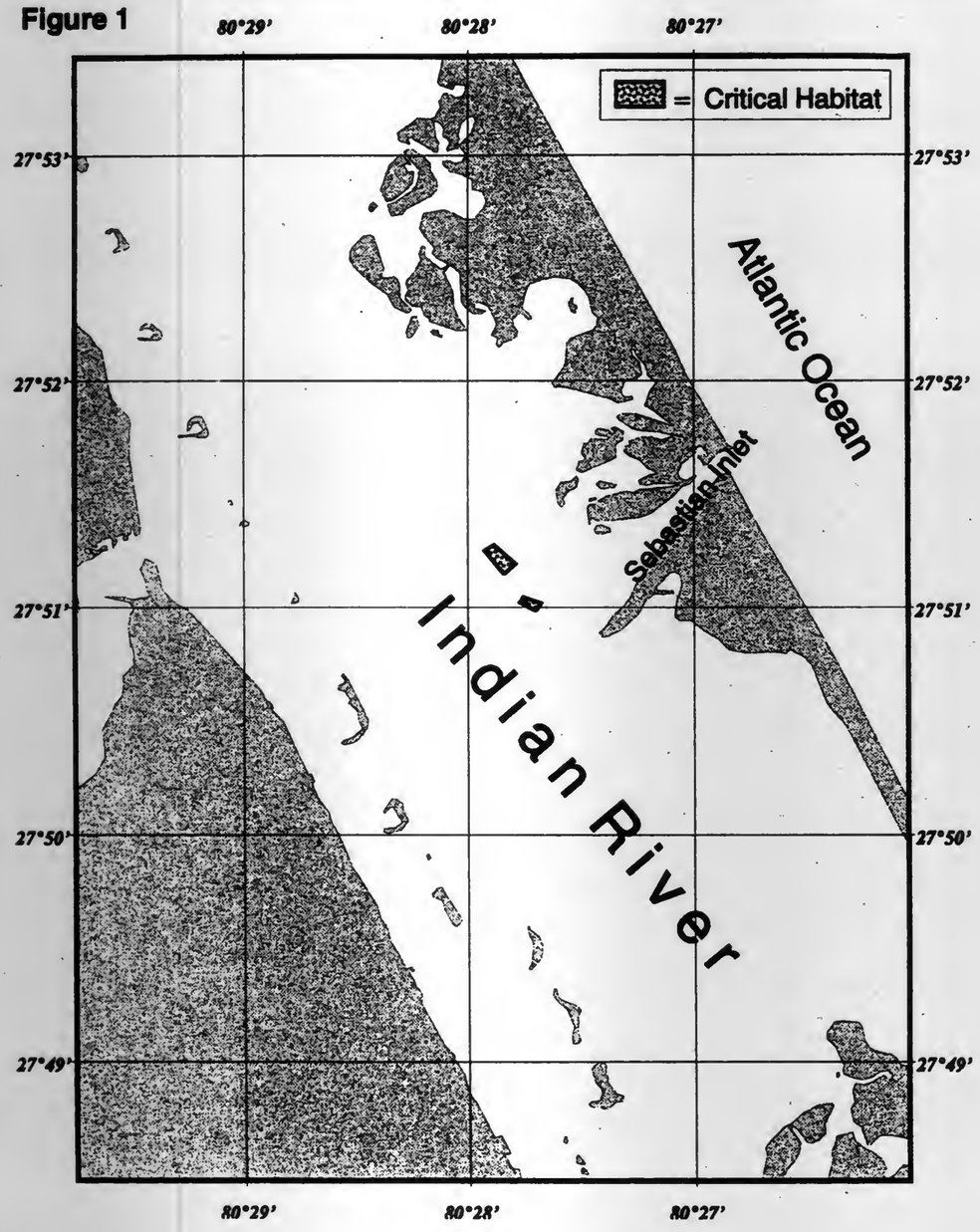


Figure 2

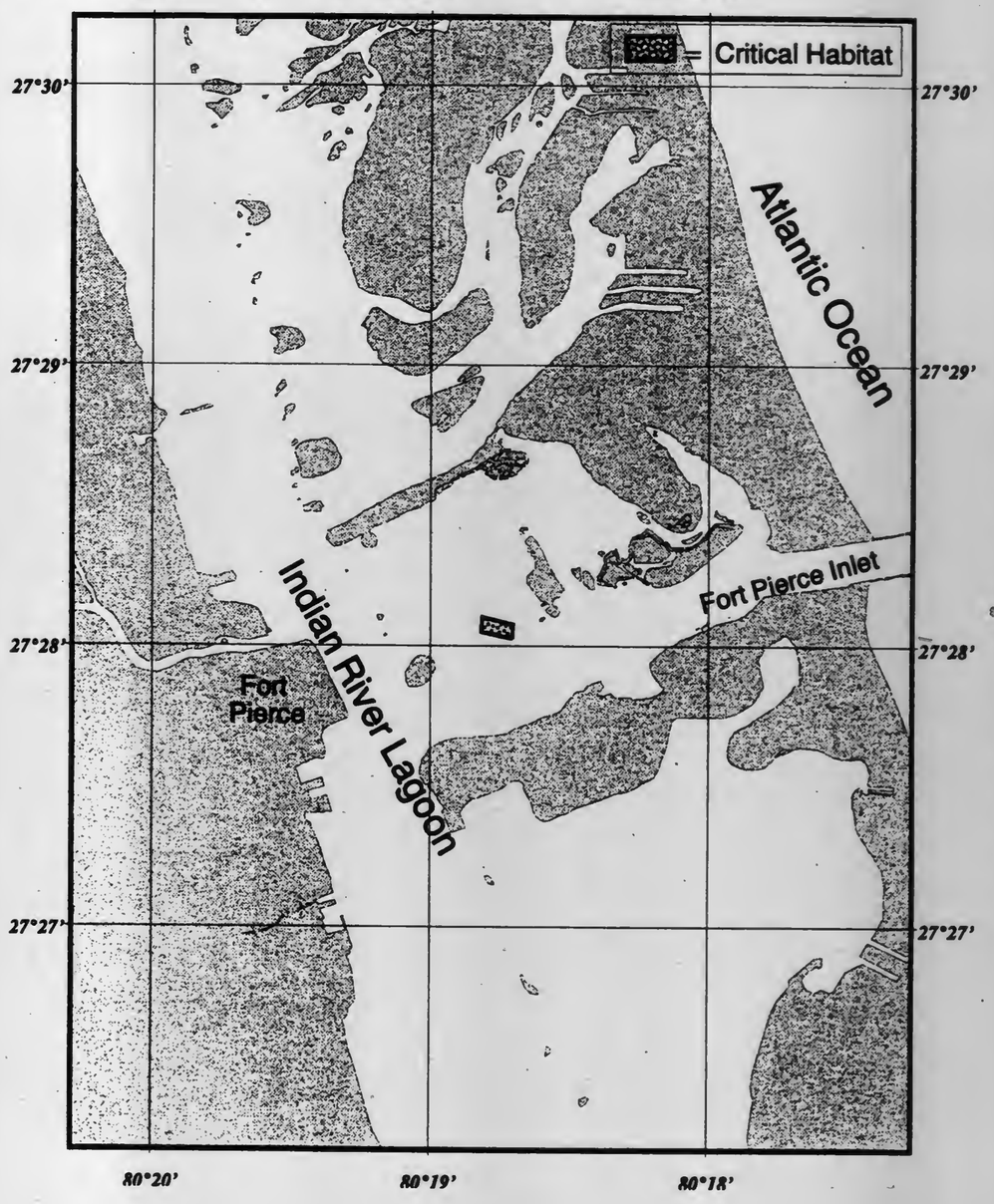


Figure 3

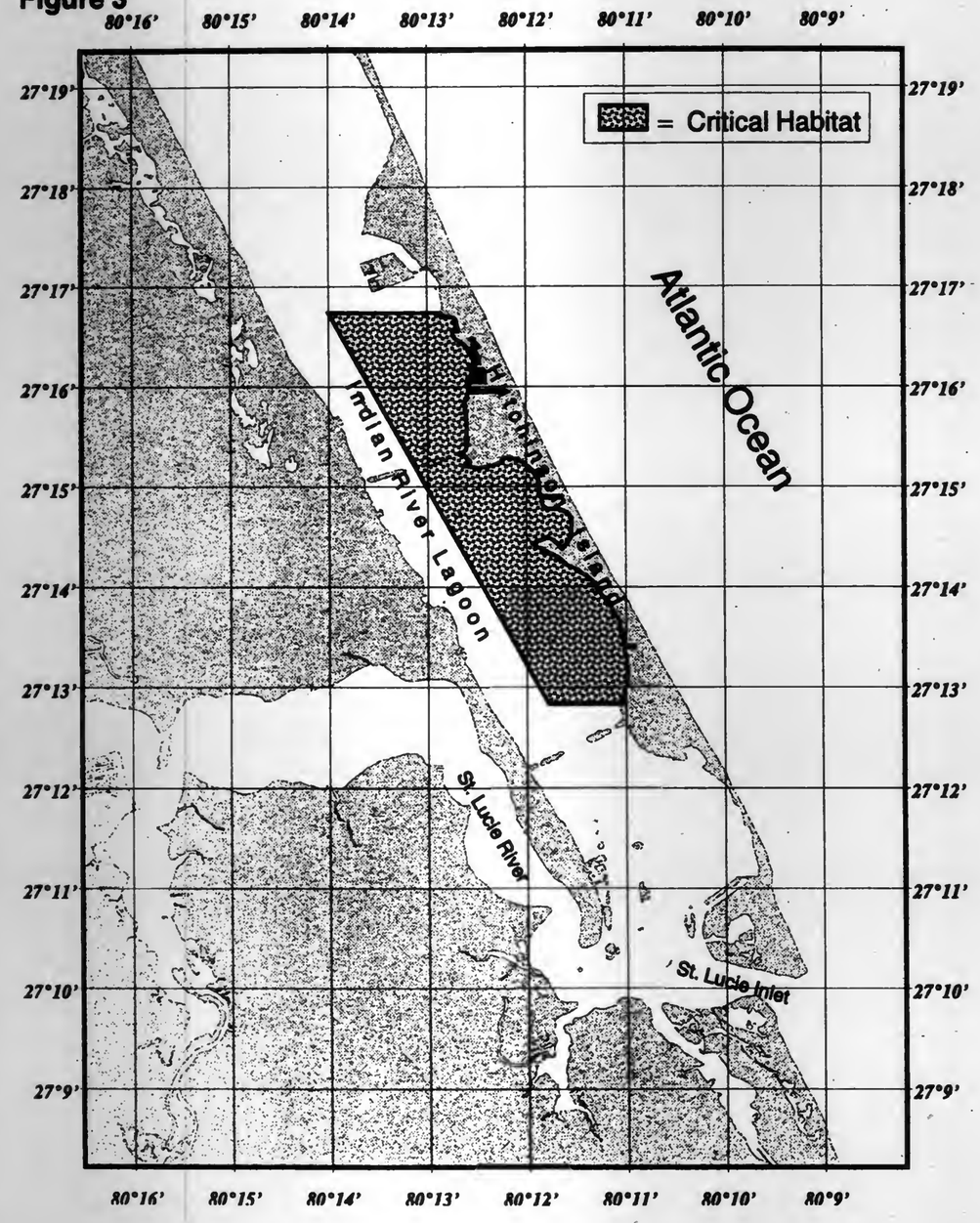


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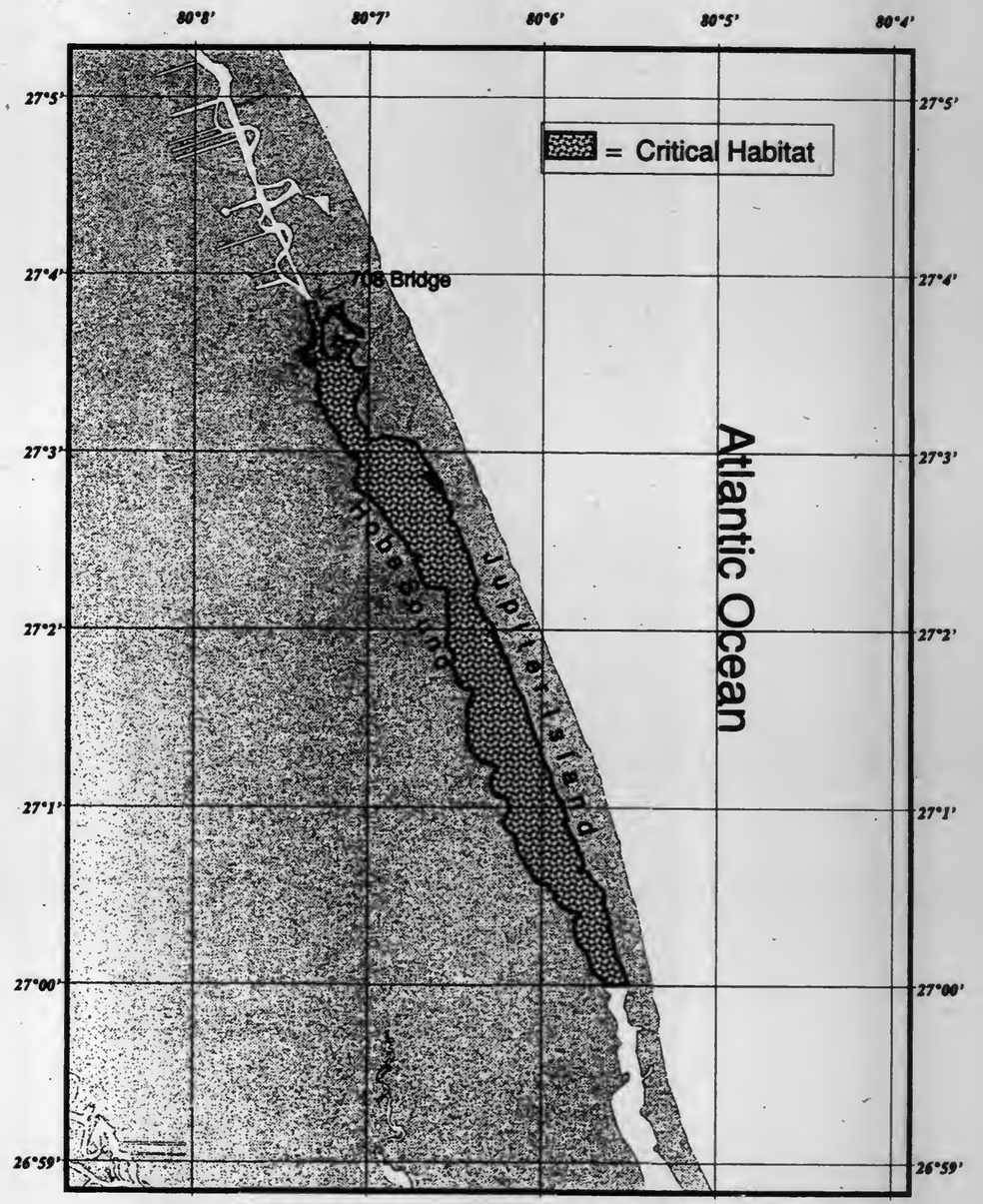


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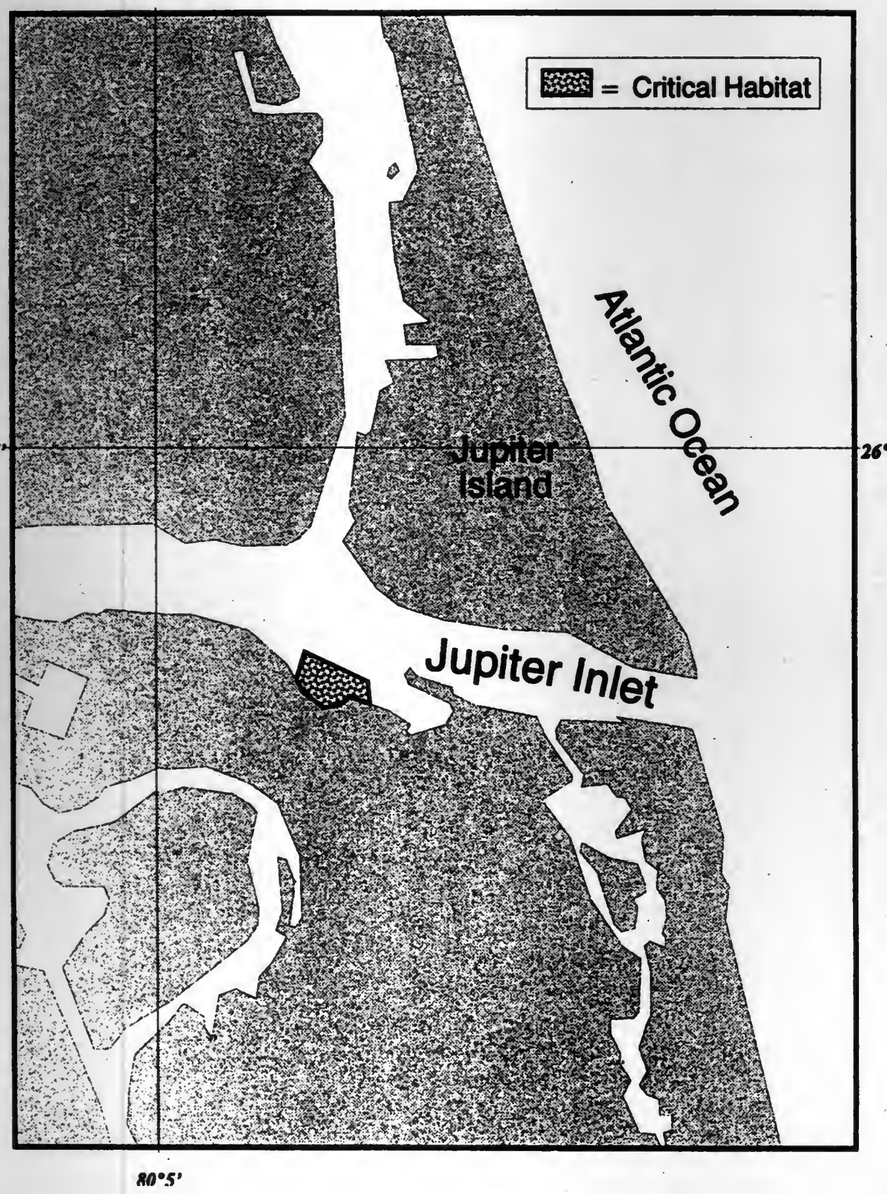


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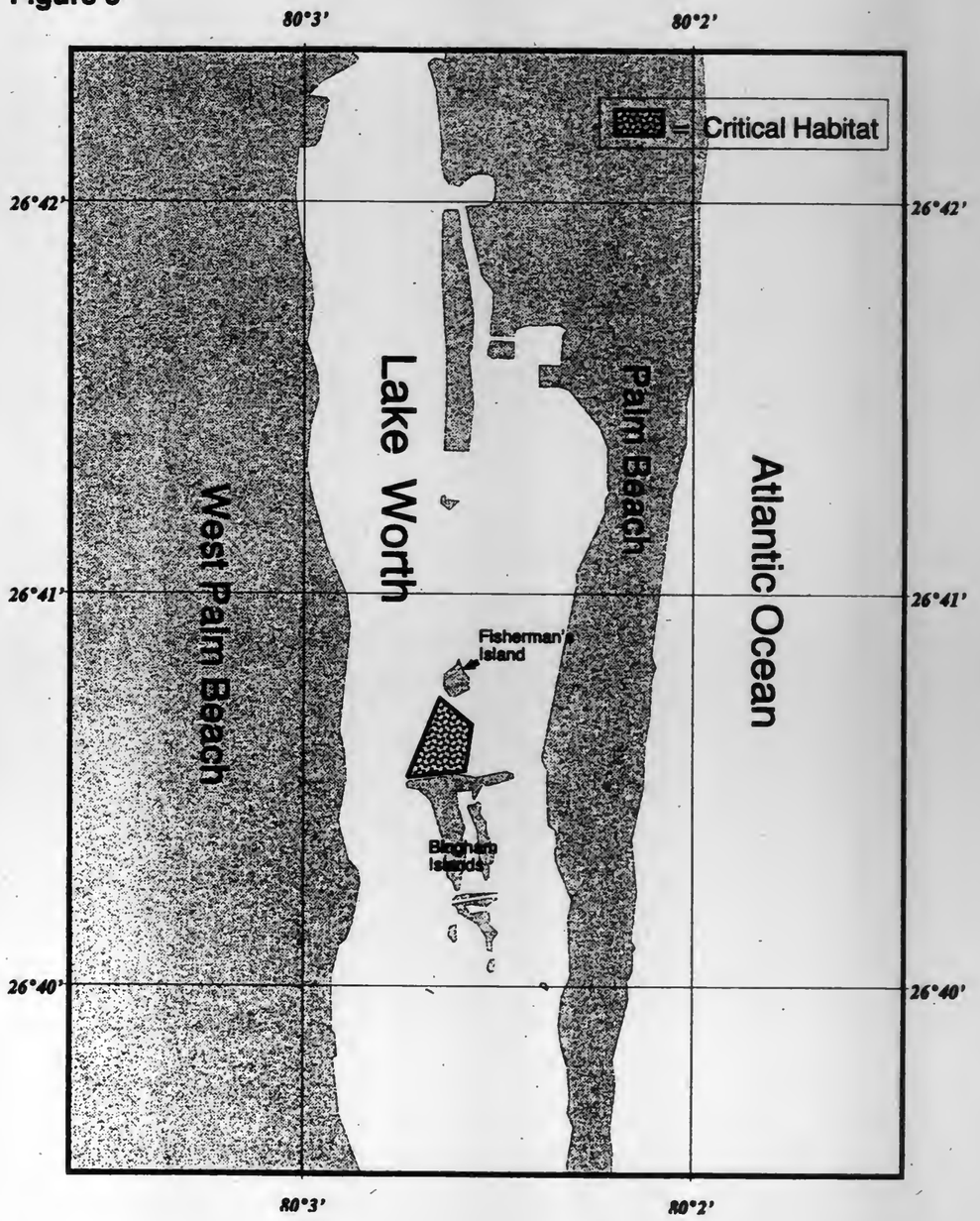


Figure 7

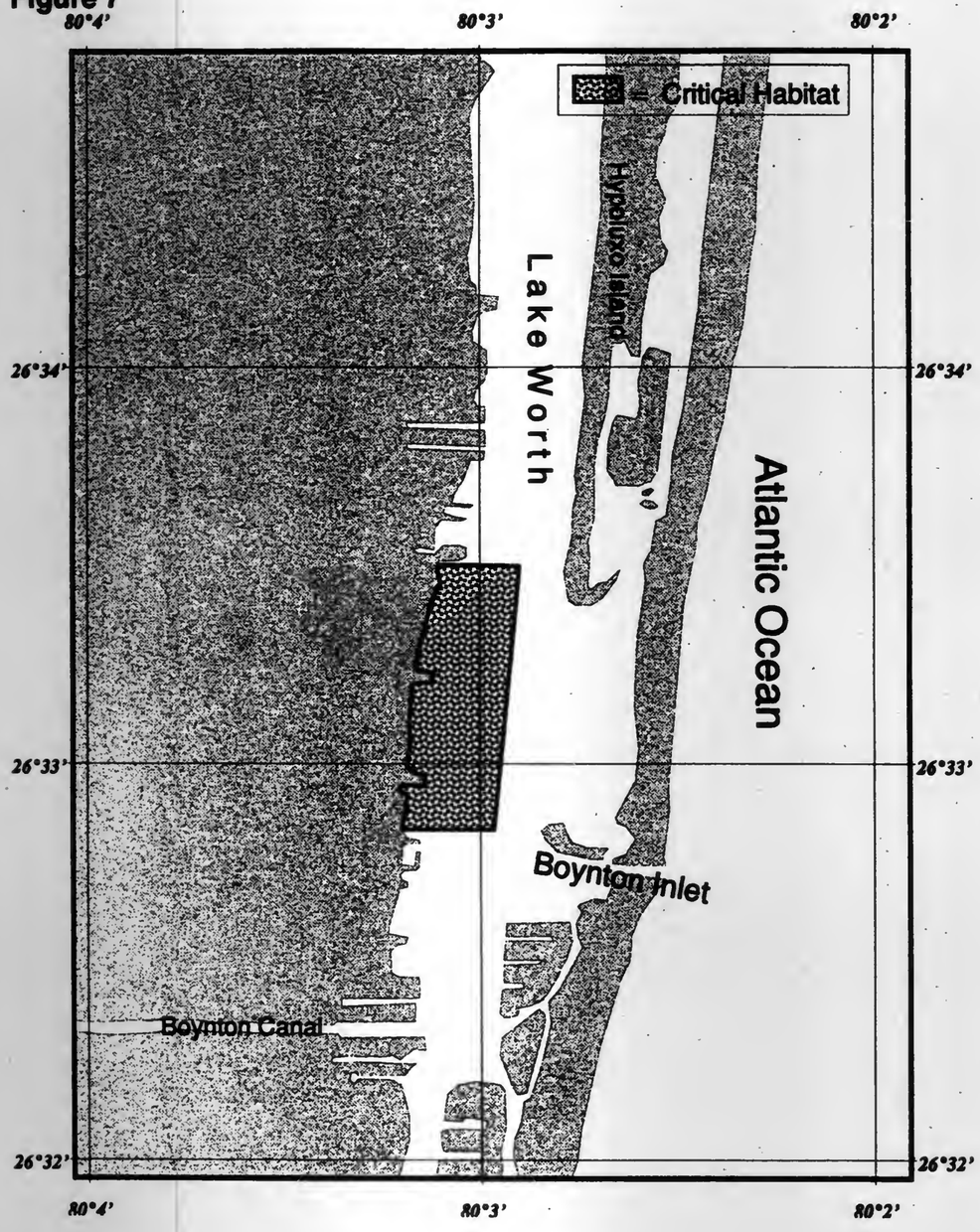


Figure 8

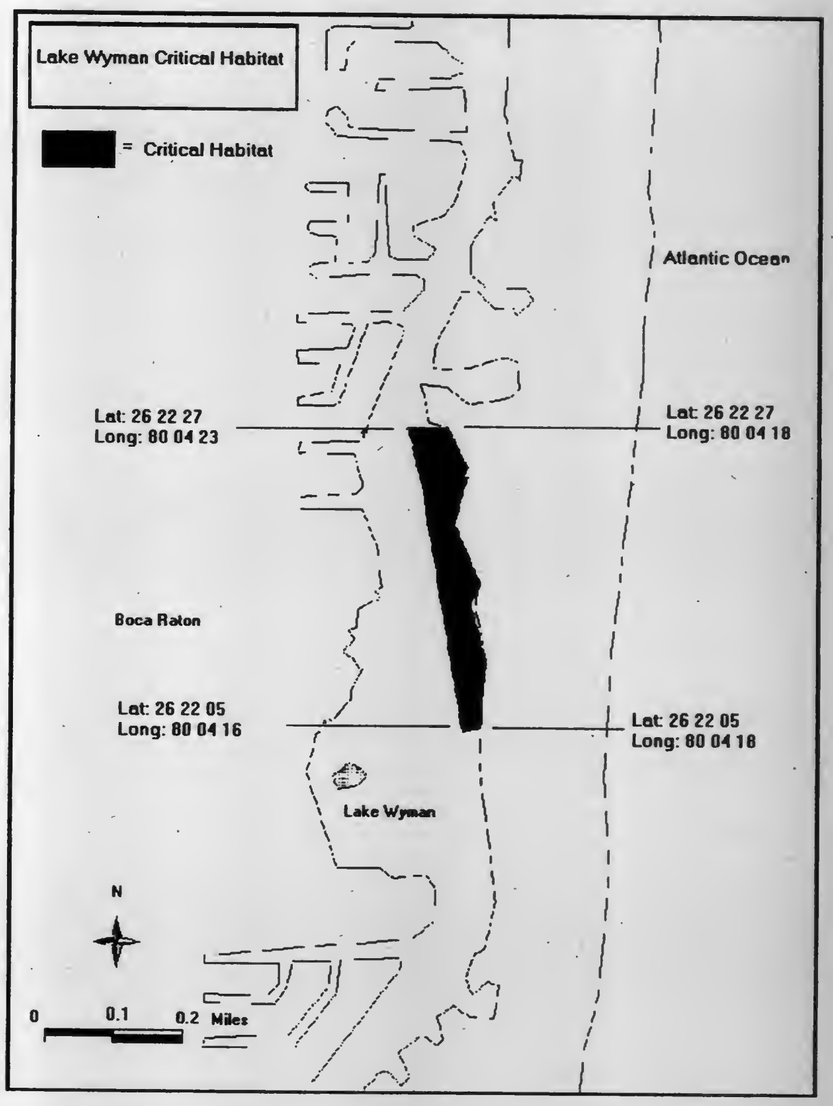
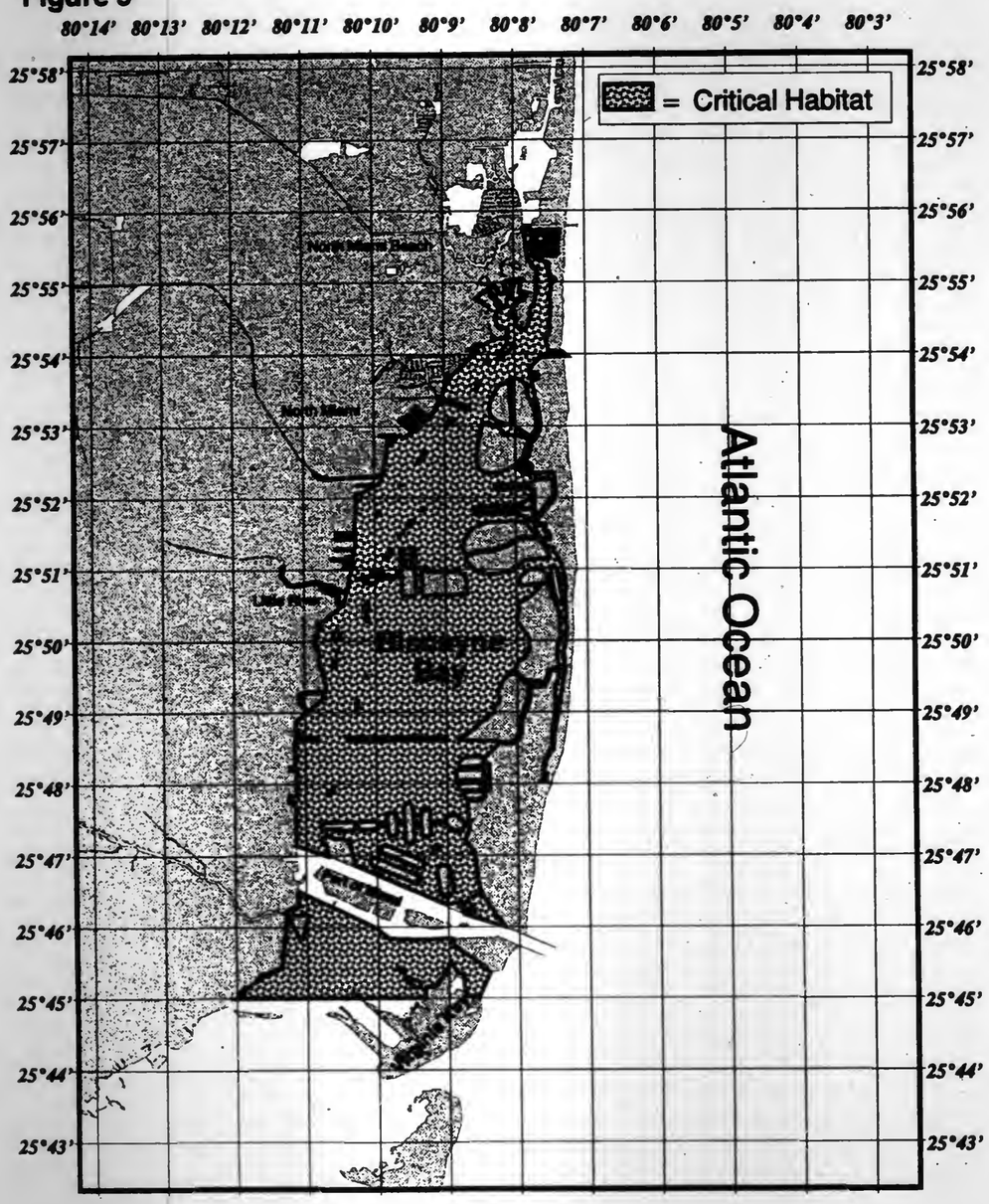


Figure 9



[FR Doc. 00–8394 Filed 4–4–00; 8:45 am]
BILLING CODE 3510–22–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 991220343–0071–02; I.D. 120999D]

RIN 0648–AM52

Pacific Halibut Fisheries; Catch Sharing Plans; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; correction.

SUMMARY: This document corrects the final rule, published in the **Federal Register** on March 20, 2000, which contains annual management measures for Pacific halibut fisheries and an approval of catch sharing plans.

DATES: Effective March 15, 2000.

FOR FURTHER INFORMATION CONTACT: James Hale, 907–586–4345, or Yvonne deReynier, 206–526–6140.

SUPPLEMENTARY INFORMATION: A final rule was published in the **Federal Register** on March 20, 2000 (65 FR 14909), to publish annual management measures on behalf of the International Pacific Halibut Commission and to announce approval of modifications to the Catch Sharing Plan and implementing regulations for Area 2A.

An editorial comment was unintentionally added to the preamble of the final rule, which must be removed.

Correction

In the final rule Pacific Halibut Fisheries; Catch Sharing Plans, published in 65 FR 14909, March 20, 2000, FR Doc 00–6837, on page 14912, in the second column, in paragraph (2), the last two sentences are removed.

Dated: March 30, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8395 Filed 4–4–00; 8:45 am]
BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 600 and 660

[Docket No. 991223347–9347; I.D. 032700D]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Trip Limit Adjustments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Fishing restrictions; request for comments.

SUMMARY: NMFS announces changes to trip limits in the Pacific Coast groundfish open access fishery for vessels using pink shrimp trawl gear, and clarifies restrictions for other exempted trawl gears. These actions, which are authorized by the Pacific Coast groundfish fishery management plan (FMP), are intended to help the fisheries achieve optimum yield (OY).

DATES: Effective 0001 hours local time April 1, 2000, unless modified, superseded or rescinded, until the effective date of the 2001 annual specifications and management measures for the Pacific Coast groundfish fishery, which will be published in the **Federal Register**. Comments on this rule will be accepted through April 20, 2000.

ADDRESSES: Submit comments to William Stelle, Jr., Administrator, Northwest Region (Regional Administrator), NMFS, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Rodney McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213. Comments will not be accepted if submitted via email or the Internet.

FOR FURTHER INFORMATION CONTACT: Katherine King or Yvonne deReynier, Northwest Region, NMFS, 206–526–6140.

SUPPLEMENTARY INFORMATION: The following changes to current management measures were recommended by the Pacific Fishery Management Council (Council), in consultation with the States of Washington, Oregon, and California, at its March 6–10, 2000, meeting in Sacramento, CA. Pacific coast groundfish landings will be monitored throughout the year, and further adjustments to the trip limits will be made as necessary to stay within the OYs and allocations announced in the annual specifications and management measures for the groundfish fishery, published in the **Federal Register** at 65 FR 221 (January 4, 2000).

At its November 1999 meeting, the Council recommended the following groundfish limits for a vessel using shrimp trawl gear (an open access exempted trawl gear): 500 lb (227 kg) per day (multiplied by the number of days in the fishing trip), not to exceed 2,000 lb (907 kg) per trip. The Council also announced its intent to review and recommend at its March 2000 meeting any additional sublimits that should apply for the pink shrimp fishery which starts April 1, 2000. The groundfish trip limits are intended to provide for a reasonable level of incidental harvest in the pink shrimp fishery: Trip limits that are too high could encourage targeted fishing for groundfish and trip limits that are too low could result in discarding groundfish that exceed the trip limits. At its March 2000 meeting, the Council recommended maintaining the overall groundfish limits announced in January for the pink shrimp trawl fishery, and added the following sublimits that count toward the overall groundfish limits: for canary rockfish—100 lb (45 kg) in April and 300 lb (136 kg) per month May through October, (the same as for limited entry vessels using small-footrope trawl gear); for lingcod—no retention in April, and 400 lb (181 kg) per month in May through October, the same as for limited entry vessels using small-footrope trawl gear, and with a minimum size limit of 24 inches (61 cm) north of 40°10′ N. lat. and 26 inches (66 cm) south of 40°1010′ N. lat., the same size limits as for open access nontrawl gear; for sablefish, 2,000 lb (907 kg) per month, which is smaller than the open access nontrawl or limited entry trawl cumulative limits for sablefish. These limits are based on landings data for the shrimp fishery, and as consistent as practicable with other limits for the groundfish fishery.

The trip limits are complicated by the fact that many vessels that fish for pink shrimp also participate in other groundfish fisheries. Provisions are added in this document to clarify which limits apply if a vessel participates in both pink shrimp and other groundfish fisheries during the same trip limit period. If a vessel that takes and retains pink shrimp also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative trip limit period, the vessel may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with

that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery. Minor housekeeping revisions also are made to clarify which trip limits apply to the other exempted trawl gears.

The Council remains concerned about the amount of canary rockfish, an overfished species, that may be taken incidentally in the pink shrimp fishery and will reconsider this issue at its April meeting.

NMFS Actions

For the reasons stated here, NMFS concurs with the Council's recommendations and announces the following changes to the 2000 annual management measures (65 FR 221, January 4, 2000, as modified). The annual management measures are modified as follows:

In Section IV, paragraphs IV.A.(11), C.(1), the title of Table 5, C.(2), C.(2)(a), and C.(3) are revised to read as follows:

IV. NMFS Actions

* * * * *

A. General Definitions and Provisions

* * * * *

(11) Operating in both limited entry and open access fisheries. The open access trip limit applies to any fishing conducted with open access gear, even if the vessel has a valid limited entry permit with an endorsement for another type of gear. A vessel that operates in both the open access and limited entry fisheries is not entitled to two separate trip limits for the same species. If a vessel has a limited entry permit and uses open access gear, and the open access limit is smaller than the limited entry limit, then the open access limit cannot be exceeded and counts toward the limited entry limit. If a vessel has a limited entry permit and uses open access gear, and the open access limit is larger than the limited entry limit, the smaller limited entry limit applies, even if taken entirely with open access gear. Special provisions that apply to a vessel using exempted trawl gear to fish for pink shrimp are found at paragraph C.(3)(d).

* * * * *

C. Trip Limits in the Open Access Fishery

* * * * *

(1) *All open access gear.* The trip limits, size limits, seasons, and other management measures for open access groundfish gear, except exempted trawl gear engaged in fishing for pink shrimp, are listed in Table 5. The trip limit at 50 CFR 660.323(a)(i) for black rockfish caught with hook-and-line gear also applies. (The black rockfish limit is repeated at paragraph IV.B.(4).) Additional limits for exempted trawl gears are found in paragraphs IV.C.(2) and (3).

* * * * *

"Table 5. 2000 Trip Limits 1/ for All Open Access Gear except Exempted Trawl Gear Engaged in Fishing for Pink Shrimp".

* * * * *

(2) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers.*

(a) *Trip limits.* The trip limit is 300 lb (136 kg) of groundfish per fishing trip. Limits and closures in Table 5 also apply and are counted toward the 300-lb (136-kg) groundfish limit. In any landing by a vessel engaged in fishing for spot and ridgeback prawns, California halibut, or sea cucumbers with exempted trawl gear, the amount of groundfish landed may not exceed the amount of the target species landed, except that the amount of spiny dogfish (*Squalas acanthias*) landed may exceed the amount of target species landed. Spiny dogfish are limited by the 300-lb (136-kg) per trip overall groundfish limit. The daily trip limits for sablefish coastwide and thornyheads south of Pt. Conception, and the overall groundfish "per trip" limit may not be multiplied by the number of days of the fishing trip.

* * * * *

(3) *Groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp.* (a) Starting April 1, 2000, the trip limit is 500 lb (227 kg) of groundfish per day, multiplied by the number of days of the fishing trip, but not to exceed 2,000 lb (907 kg) of groundfish per trip. The following sublimits also apply and are counted toward the overall 500-lb (227 kg) per day and 2,000-lb (907 kg) per trip groundfish limits:

(i) Canary rockfish—

(A) April 1–30, 2000: 100 lb (45 kg) per month

(B) Starting May 1, 2000: 300 lb (136 kg) per month

(ii) Lingcod—

(A) April 1–30, 2000: closed.

(B) Starting May 1, 2000: 400 lb (181 kg) per month, with a minimum size limit (total length) of 24 inches (61 cm) north of 40°10′ N. lat. and 26 inches (66 cm) south of 40°10′ N. lat.

(iii) Sablefish—Starting April 1, 2000: 2,000 lb (907 kg) per month;

(iv) Thornyheads—closed north of Pt. Conception (34°27′ N. lat.)

(b) The trip limits in Table 5 do not apply to groundfish taken with exempted trawl gear by vessels engaged in fishing for pink shrimp.

(c) In any trip in which pink shrimp trawl gear is used, the amount of groundfish landed may not exceed the amount of pink shrimp landed.

(d) *Operating in pink shrimp and other fisheries during the same cumulative trip limit period.* If a vessel that takes and retains pink shrimp also takes and retains groundfish in either the limited entry or another open access fishery during the same applicable cumulative trip limit period that it takes and retains pink shrimp (which may be 1 month or 2 months, depending on the fishery and the time of year), the vessel may retain the larger of the two limits, but only if the limit(s) for each gear or fishery are not exceeded when operating in that fishery or with that gear. The limits are not additive; the vessel may not retain a separate trip limit for each fishery. (The provisions at IV.A.(11) do not apply.)

* * * * *

Classification

These actions are authorized by the regulations implementing the FMP, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

NMFS finds good cause to waive the requirement to provide prior notice and an opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impractical. It would be impractical because the pink shrimp fishery begins April 1, 2000, and affording additional notice and opportunity for public comment would impede the due and timely execution of the agency's function of managing fisheries to achieve OY.

NMFS also finds good cause to waive the 30-day delay in effectiveness pursuant to 5 U.S.C. 553(d)(3), because such a delay would be contrary to the public interest. This action should be implemented at the beginning of a cumulative trip limit period to avoid confusion and reduce the potential that fishers will exceed the appropriate limits. For these reasons good cause exists to waive the 30-day delay in effectiveness.

These actions are taken under the authority of 50 CFR 660.323(b)(1), and are exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8376 Filed 3–31–00; 3:40 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[ID. 032700A]

Fisheries Off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Renewal of Exempted Fishing Permit

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Renewal of Exempted Fishing Permits (EFPs) for monitoring incidental catch of salmon and groundfish in the Washington-Oregon-California (WOC) shore-based Pacific whiting fishery.

SUMMARY: NMFS announces the receipt of an application, and NMFS' intent to renew EFPs for vessels participating in an observation program to monitor the incidental take of salmon and groundfish in the shore-based component of the Pacific whiting fishery. These EFPs are necessary to allow trawl vessels fishing for Pacific whiting to delay sorting their catch, and thus to retain prohibited species and groundfish in excess of cumulative trip limits until the point of offloading. These activities are otherwise prohibited by Federal regulations.

DATES: The EFPs will be effective no earlier than April 1, 2000, and would expire no later than May 31, 2001, but could be terminated earlier under terms and conditions of the EFPs and other applicable laws.

ADDRESSES: Copies of the EFP are available from Becky Renko or Katherine King Northwest Region, NMFS, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: Becky Renko or Katherine King 206–526–6140.

SUPPLEMENTARY INFORMATION: This action is authorized by Magnuson-Stevens Fishery Conservation and Management Act provisions at 50 CFR 600.745 which state that EFPs may be used to authorize fishing activities that would otherwise be prohibited.

NMFS received an application requesting renewal of these EFPs from the States of Washington, Oregon, and California at the March 6–10, 2000, Pacific Fishery Management Council (Council) meeting in Sacramento California. An opportunity for public testimony was provided during the Council meeting. The Council recommended that NMFS issue the EFPs, as requested by the States.

Renewal of these EFPs, to about 40 vessels, would continue an ongoing program to collect information on the incidental catch of salmon and groundfish in whiting harvests delivered to shoreside processing facilities by domestic trawl vessels operating off WOC. Because whiting deteriorates rapidly, it must be handled quickly and immediately chilled to maintain the quality. As a result, many vessels dump catch directly or near directly into the hold and are unable to effectively sort their catch.

The issuance of EFPs will allow vessels to delay sorting of prohibited species and groundfish caught in excess of cumulative trip limits until offloading. Delaying sorting until the vessel offloads will allow state biologists to collect incidental catch data for total catch estimates while maintaining whiting quality. Without an EFP, groundfish regulations at 50 CFR 660.306(b) require vessels to sort out prohibited species and return them to sea as soon as practicable with minimum injury. To allow state biologists to sample unsorted whiting, it is also necessary to include provisions for potential overages of groundfish trip limits which would be otherwise prohibited by regulations at 50 CFR 660.306(h).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8380 Filed 3–31–00; 3:40 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 990430113–913–01; I.D. 032700C]

Fisheries off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; Inseason Adjustments From Cape Falcon to Humbug Mountain, OR

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason adjustments; request for comments.

SUMMARY: NMFS announces that the commercial and recreational fisheries for all salmon except coho, in the areas from Cape Falcon to Humbug Mountain, OR, will open April 1, 2000, and continue through dates to be determined in the 2000 management measures for 2000 ocean salmon fisheries in the U.S. exclusive economic zone (EEZ). This action is necessary to conform to the 1999 announcement of management measures for year 2000 salmon seasons opening earlier than May 1, 2000, and is intended to ensure conservation of chinook salmon.

DATES: Effective April 1, 2000, until the effective date of the year 2000 management measures, which will be published in the **Federal Register** for the west coast salmon fisheries. Comments will be accepted through April 20, 2000.

ADDRESSES: Comments on this action must be mailed to William Stelle, Jr., Regional Administrator, Northwest Region, NMFS, NOAA, 7600 Sand Point Way NE., Bldg. 1, Seattle, WA 98115–0070; or faxed to 206–526–6376; or Rodney McInnis, Acting Regional Administrator, Southwest Region, NMFS, NOAA, 501 W. Ocean Blvd., Suite 4200, Long Beach, CA 90802–4132; or faxed to 562–980–4018. Comments will not be accepted if submitted via e-mail or the Internet. Information relevant to this document is available for public review during business hours at the Office of the Regional Administrator, Northwest Region, NMFS.

FOR FURTHER INFORMATION CONTACT: William Robinson, 206–526–6140, or Svein Fougner, 562–980–4030.

SUPPLEMENTARY INFORMATION: In the 1999 annual management measures for ocean salmon fisheries (64 FR 24078,

May 5, 1999), NMFS announced that the Pacific Fishery Management Council (Council) would consider at its March 2000 meeting a recommendation to open commercial and recreational seasons for all salmon except coho in areas off Oregon. Due to the timing of the March and April Council meetings, where the major 2000 salmon seasons are developed, this action is necessary to implement the opening of these seasons prior to May 1, 2000. In the 1999 management measures for 2000 ocean salmon fisheries, NMFS announced that the recreational fishery would not open until May 1, 2000, between Cape Falcon and Humbug Mountain, OR, for all salmon except coho, unless opened following an inseason recommendation of the Council at the March 2000 meeting. In addition, the Council may also consider inseason modifications to open or modify commercial fisheries off Oregon for all salmon except coho, prior to May 1, 2000.

At the March 2000 meeting, the Council made its inseason recommendations to open the recreational and commercial fisheries, for all salmon except coho, from Cape Falcon to Humbug Mountain, OR, on April 1, 2000. The closing dates for both fisheries will be determined at the April 2000 meeting when the entire 2000 management measures for the 2000 ocean salmon fisheries are finalized.

The recreational fishery for all salmon except coho, from Cape Falcon to Humbug Mountain, OR, opens on April 1, 2000. The daily possession limit is two fish per day, with no more than six fish retained in 7 consecutive days. The minimum size limit is 20 inches (50.8 cm). Allowed gear is artificial lures and plugs of any size, or bait no less than 6 inches (15.2 cm) long (excluding hooks and swivels). All gear must have no more than two single-point, single-shank, barbless hooks. Divers are prohibited and flashers may only be used with downriggers. Oregon State regulations describe a closure at the mouth of Tillamook Bay.

The commercial fishery for all salmon except coho, from Cape Falcon to Humbug Mountain, OR, opens on April 1, 2000. No more than four spreads are allowed per line. The minimum size limit is 26 inches (66.0 cm) (19.5 in (49.5 cm) head-off). Chinook not less than 26 inches (66.0 cm) (19.5 inches (49.5 cm) head-off) taken during open seasons south of Cape Falcon may be landed north of Cape Falcon only while the season is closed north of Cape Falcon. Oregon state regulations describe a closure at the mouth of Tillamook Bay.

The Regional Administrator consulted with representatives of the Council, Washington Department of Fish and Wildlife, Oregon Department of Fish and Wildlife, and the California Department Fish and Game regarding these adjustments. As provided by the inseason notification procedures at 50 CFR 660.411, actual notice to fishermen of these actions will be given prior to 0001 hours local time, April 1, 2000, by telephone hotline number 206–526–6667 or 800–662–9825 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 kHz.

Because of the need for immediate action, NMFS has determined that good cause exists for this document to be issued without affording a prior opportunity for public comment. This document does not apply to other fisheries that may be operating in other areas.

Classification

This action is authorized by 50 CFR 660.409 and 660.411 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 2000.

Bruce C. Morehead,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8385 Filed 3–31–00; 3:40 pm]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 000211039–0039–01; I.D. 033100A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pollock in the West Yakutat District in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is opening directed fishing for pollock in the West Yakutat District in the Gulf of Alaska (GOA). This action is necessary to fully utilize the 2000 total allowable catch (TAC) of pollock.

DATES: Effective 1200 hrs, Alaska local time, April 1, 2000.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

In accordance with § 679.20(c)(3)(ii), the pollock TAC for 2000 in the West Yakutat District of the GOA is 2,340 metric tons (mt) under the Final 2000 Harvest Specifications of Groundfish for the GOA (65 FR 8298, February 18, 2000).

NMFS closed the directed fishery for pollock in the West Yakutat District of the GOA under § 679.20(d)(1)(iii) on March 28, 2000 (65 FR 17205, March 31, 2000).

NMFS has determined that currently, approximately 600 mt remain in the directed fishing allowance. Therefore, NMFS is terminating the previous closure and is opening directed fishing for pollock in the West Yakutat District of the GOA.

Classification

All other closures remain in full force and effect. This action responds to the best available information recently obtained from the fishery. It must be implemented immediately in order to allow full utilization of the pollock TAC. Providing prior notice and opportunity for public comment for this action is impracticable and contrary to the public interest. NMFS finds for good cause that the implementation of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under E.O. 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: March 31, 2000.

Gary C. Matlock,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8372 Filed 3–31–00; 3:40 pm]

BILLING CODE 3510–22–F

Proposed Rules

Federal Register
Vol. 65, No. 66
Wednesday, April 5, 2000

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 984

[Docket No. FV00–984–1 PR]

Walnuts Grown in California; Report Regarding Interhandler Transfers of Walnuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule invites comments on revising the administrative rules and regulations of the Federal marketing order for California walnuts (order) regarding reports of interhandler transfers of walnuts. The order regulates the handling of walnuts grown in California and is administered locally by the Walnut Marketing Board (Board). Currently, handlers report to the Board transfers of walnuts between handlers on monthly shipment reports. This rule would require handlers to report such interhandler transfers on a separate form. This action would facilitate program administration by providing the Board with more accurate and complete information on transfers and shipments.

DATES: Comments must be received by June 5, 2000.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule. Comments must be sent to the Docket Clerk, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; Fax: (202) 720–5698; or E-mail: moabdocket.clerk@usda.gov. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, Suite 102B, Fresno, California 93721; telephone: (559) 487–5901. Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202) 720–5698.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, PO Box 96456, room 2525–S, Washington, DC 20090–6456; telephone: (202) 720–2491, Fax: (202)720–5698, or E-mail: Jay.Guerber@usda.gov.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this proposed rule in conformance with Executive Order 12866.

This proposal has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This proposal will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order or any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This proposed rule invites comments on revising the order's administrative rules and regulations regarding reports of interhandler transfers of walnuts. Currently, handlers report to the Board transfers of walnuts between handlers on monthly shipment reports. This rule would require handlers to report such interhandler transfers on a separate form. This action would facilitate program administration by providing the Board with more accurate and complete information on transfers and shipments. This action was unanimously recommended by the Board at a meeting on February 18, 2000.

Section 984.76 of the order provides authority for the Board, with the approval of the Secretary, to require handlers to furnish reports and information to the Board as needed to enable the Board to perform its duties under the order. The Board meets during the season to make decisions on various programs authorized under the order. These programs include quality control (minimum grade and size requirements for both inshell and shelled walnuts placed into channels of commerce), volume regulation, and projects regarding production research, and marketing research and development.

Section 984.59 of the order provides authority for handlers to transfer walnuts between handlers. Paragraph (a) of that section states that inshell walnuts may be sold or delivered by one handler to another for packing or shelling within California. In such cases, the receiving handler assumes marketing order obligations with respect to the transferred walnuts, including assessment and inspection requirements. Paragraph (b) of § 984.59 pertains to transfers of walnuts when volume regulation is in effect. Specifically, handlers may, for purposes of meeting their reserve obligation, acquire walnuts from other handlers. In such cases, the buying handler assumes marketing order obligations with respect to the transferred walnuts, including assessment, reserve, and inspection

requirements. Paragraph (c) of § 984.59 provides that, with the exceptions stated in paragraphs (a) and (b) of § 984.59, whenever transfers of walnuts are made between handlers, the first handler thereof shall assume all marketing order obligations pertaining to the walnuts.

Currently, handlers are required to report interhandler transfers on monthly shipment reports, WMB Form No. 6. However, the monthly shipment reports do not require handlers to indicate the date the walnuts were transferred, and whether the transferred walnuts were certified by the Dried Fruit Association (DFA). The agency designated under the order to provide inspection services for handlers. Also, the reports do not indicate the date the walnuts were received by the handler accepting the walnuts, or include a confirmation by the accepting handler that such walnuts were received. This information on transfers would be useful to the Board as it reconciles handler shipments and inventories.

The Board recommended that a new form be developed specific to interhandler transfers. A handler who transferred walnuts to another handler would have to complete and submit WMB Form No. 8 to the Board within 10-calendar days following the transfer. The report would have the following information: (1) The date of the transfer; (2) the net weight, in pounds, of the walnuts transferred; (3) whether such walnuts were certified by the DFA; (4) whether such walnuts were inshell or shelled; (5) the name and address of the transferring handler; and (6) the name and address of the receiving handler. The transferring handler would be required to send two copies of the report to the receiving handler at the same time the transferring handler would submit the report to the Board. The receiving handler would then certify, on one copy of the report, that he or she received the walnuts. The receiving handler would then submit the report to the Board within 10-calendar days after the walnuts, or copies of the report, have been received, whichever is later. Transfers of reserve walnuts during periods of volume regulation would continue to be reported on WMB Form No. 17.

This rule would provide the Board with more accurate and complete information regarding handler transfers and shipments of walnuts, thereby facilitating program administration. Accordingly, a new § 984.459 is proposed to be added to the order's administrative rules and regulations.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this initial regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5,000 producers of walnuts in the production area and approximately 50 handlers subject to regulation under the order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000. The majority of producers of California walnuts may be classified as small entities.

During the 1998–99 season, as a percentage, 24 percent of the handlers shipped over 2.6 million kernelweight pounds of walnuts, and 76 percent of the handlers shipped under 2.6 million kernelweight pounds of walnuts. Based on an average price of $1.88 per kernelweight pound at the point of first sale, the majority of handlers of California walnuts may be classified as small entities.

This rule would add a new § 984.459 to the order's administrative rules and regulations which would require handlers to report transfers of walnuts between handlers on a separate form. Currently, interhandler transfers are reported on handlers' monthly shipment reports. This action would facilitate program administration by providing the Board with more accurate and complete information on transfers and shipments. Authority for requiring handlers to submit this information to the Board is provided in §§ 984.59 and 984.76 of the order.

Regarding the impact of the proposed action on affected entities, this rule would impose a minimal, additional reporting burden on handlers who transfer walnuts. Handlers who transfer walnuts are already reporting transfers to the Board on monthly shipment reports. This action would require such handlers to report transfers on a separate form. Board staff estimates that there are about 25 interhandler transfers per year (20 total during the months of October, November, and December, and 0–1 during the other 9 months). This action is designed to provide the Board with more accurate and complete information on shipments and transfers which would facilitate program administration.

Regarding alternatives to the recommended action, the Board and industry members discussed at the Board's February 18, 2000, meeting different time frames for the submission of the separate, interhandler transfer report. A 5-day time frame was considered whereby transferring handlers would submit their report to the Board within 5 days of the transfer, and the receiving handler would submit their report within 5 days of receiving the walnuts. However, the Board believed that 5 days was too short a time frame for handlers, and recommended the 10-day time frame.

This action would impose some additional reporting and recordkeeping burden on handlers. As previously mentioned, it is estimated that there are about 25 interhandler transfers per year. It would take handlers about 10 minutes to complete the new form for a total industry burden of about 4 hours per year. With interhandler transfers no longer on monthly shipment reports, the burden for handlers to complete the monthly shipment report would be reduced from 15 to 10 minutes per report, or from a total of 3 to 2 hours per year. Thus, the total annual increase in burden for the industry is estimated at 3 hours. The revised shipment report and the new, interhandler transfer report have been submitted to the Office of Management and Budget (OMB) for approval under OMB Control No. 0581–0178. As with other similar marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. The Department has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

In addition, the Board's meeting on February 18, 2000, where this action was deliberated was a public meeting

In addition, the Board's meeting on February 18, 2000, where this action was deliberated was a public meeting widely publicized throughout the walnut industry. All interested persons were invited to attend the meeting and participate in the Board's deliberations. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may

be viewed at the following web site: http://www.ams.usda.gov/fv/moab.html. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 60-day comment period is provided to allow interested persons to respond to this proposal.

List of Subjects in 7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR part 984 is proposed to be amended as follows:

PART 984—WALNUTS GROWN IN CALIFORNIA

1. The authority citation for 7 CFR part 984 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 984.459 is added to read as follows:

§ 984.459 Reports of interhandler transfers.

(a) Any handler who transfers walnuts to another handler within the State of California shall submit to the Board, not later than 10-calendar days following such transfer, a report showing the following:

(1) The date of transfer;

(2) The net weight, in pounds, of the walnuts transferred;

(3) Whether such walnuts were certified by the inspection service;

(4) Whether such walnuts were inshell or shelled;

(5) The name and address of the transferring handler; and

(6) The name and address of the receiving handler.

(b) The transferring handler shall send two copies of the report to the receiving handler at the time the report is submitted to the Board. The receiving handler shall certify, on one copy of the report, to the receipt of such walnuts and submit it to the Board within 10-calendar days after the walnuts, or copies of such report, have been received, whichever is later.

Dated: March 30, 2000.

Robert C. Keeney,

Deputy Administrator, Fruit and Vegetable Programs.

[FR Doc. 00–8300 Filed 4–4–00; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 560

[No. 2000–34]

RIN 1550–AB37

Responsible Alternative Mortgage Lending

AGENCY: Office of Thrift Supervision, Treasury

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) is reviewing its mortgage lending regulations to determine their effect in today's markets on not only savings associations and their customers but also on state-regulated housing creditors who may be making alternative mortgage transactions under the Alternative Mortgage Transactions Parity Act and their customers. This advance notice of proposed rulemaking (ANPR) seeks public input on questions OTS will consider as part of that review. OTS could pursue a variety of regulatory approaches to help ensure that the lending regulations are meeting the purposes for which they were intended: encouraging the safe and sound, efficient delivery of low-cost credit to the public free from undue regulatory duplication and burden. The agency welcomes comments on the advantages, disadvantages, and potential interactions and side effects of various approaches. The agency is particularly interested in public input on potential approaches that will facilitate thrifts' efforts to responsibly address the lending needs of traditionally underserved markets, consistent with safe and sound operation.

DATES: Comments must be received on or before July 5, 2000.

ADDRESSES: Please send comments to Manager, Dissemination Branch, Information Management and Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 2000–34. Hand deliver comments to 1700 G Street, NW., lower level, from 9:00 a.m. to 5:00 p.m. on business days. Send facsimile transmissions to FAX Number (202) 906–7755 or (202) 906–6956 (if the comment is over 25 pages). Send e-mails to public.info@ots.treas.gov and include your name and telephone number. Interested persons may inspect comments at 1700 G Street, NW., from 9:00 a.m. until 4:00 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Donna Deale, Manager, Supervision Policy, (202) 906–7488; Theresa Stark, Project Manager, Compliance Policy, (202) 906–7054; Paul Robin, Assistant Chief Counsel, (202) 906–6648; Ellen Sazzman, Counsel (Banking and Finance), (202) 906–7133; Koko Ives, Counsel (Banking and Finance), (202) 906–6661, Regulations and Legislation Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Goals of the ANPR

Savings associations have long played a major role in providing responsible, affordable home financing. Over the past 25 years, however, the types of loans they have offered—and the competitors they face—have changed considerably. In today's market, mortgage lenders offer potential borrowers a wide variety of options besides the traditional 30-year fixed-rate purchase money mortgage. A secondary market has developed that has narrowed the interest-rate spread on high quality mortgages. Securitization, once available only for high quality fixed-rate mortgages, now funds much of the subprime market. Changes in tax laws have encouraged home equity lending for traditionally unsecured consumer lending purposes.

As the mortgage market has changed over time, so too have OTS's lending regulations, currently codified at 12 CFR part 560. These regulations are based in large part on the assumption that most components of a loan contract should, within the bounds of safety and soundness, be a matter of negotiation between the borrower and the lender. In our experience, that assumption has proven sound for the overwhelming majority of traditional mortgage loans made by savings associations. One of the key issues on which we want public input in this ANPR is whether that assumption holds true for newly developed types of mortgage products—in both the purchase money mortgage and home equity contexts.

We recognize that data about the characteristics of these new products and the markets to which they may be targeted is still being developed. We encourage commenters to share data with us about market trends and the types of loans, lenders, and borrowers involved in various transactions and products. We are particularly interested in data involving high-cost lending and the subprime market, as we believe thrifts are not engaged in significant levels of these activities. Because the

subprime market is growing, we would like to have a thorough understanding of it before thrifts have significant exposure in that market, so our regulations and supervisory strategies address the issues adequately.

Our lending regulations are intended to serve several purposes. As OTS considers whether changes in the lending market should cause the agency to make changes in its regulations, we must balance several goals.

First and foremost, we want our lending regulations to encourage safe and sound lending. Whatever type of mortgage lending or market on which a thrift may focus, the loans it makes must be prudently underwritten. In evaluating mortgage loan applications, institutions must carefully evaluate the capacity of the borrower to make payments on the debt, the level of equity in the property, and the overall credit worthiness of the borrower. The ability of the lender to acquire the borrower?s collateral in order to pay off a loan is no substitute for ensuring that the borrower has the ability to make loan payments in accordance with the terms of the loan contract.

Second, we want to encourage innovation in identifying potential customers and meeting customers' needs. Nontraditional markets may present new opportunities that require novel underwriting approaches but that can still be pursued safely and soundly. Overly detailed regulatory restrictions may quickly prove obsolete as technology advances and potential customers change.

Third, we want to discourage lending practices that prey upon customers' lack of knowledge or options. Such practices may seem like an easy avenue to profitability in the short run, but they are inconsistent with long-term safety and soundness and are contrary to the purposes for which thrifts were created.

Fourth, we want to enable thrifts to compete with other lenders. Except where regulatory restrictions unique to savings associations are statutorily mandated, the agency believes that thrift regulations should be carefully crafted to keep thrifts competitive, consistent with safety and soundness, especially in the area of mortgage lending. Approaches that rely entirely upon OTS's examination, supervision, and enforcement, without addressing OTS regulations that apply both to thrifts and other housing creditors with whom they compete, could have inadvertent negative effects on thrifts' competitiveness without effectively addressing the underlying problems.

Fifth, federal savings associations operate under a uniform system of regulation. Section 5(a) of the Home Owners' Loan Act (HOLA) authorizes OTS "to provide for the organization, incorporation, examination, operation, and regulation" of federal savings associations. 12 U.S.C. 1464(a)(1). Uniformity in regulation, examination, and supervision, regardless of geographic location, is a key component of the federal thrift charter. Federal thrifts know they are subject to one set of federal laws and regulations in all of the key areas of their operations, which enables them to conduct those operations consistently and efficiently.

Finally, but by no means of the least importance, we want to minimize regulatory burden on savings associations. Generally, the market should drive the products offered and terms and conditions in loan contracts should be the result of negotiation between well-informed borrowers and lenders. In some instances, where some level of regulation is required, regulatory burden may be minimized by differentiating among different types of institutions based upon their condition, characteristics, activities, or size.

As we evaluate input on potential approaches to modify our mortgage lending regulations, OTS will be keeping each of these goals in mind. We hope that commenters on this ANPR will provide us with a wide variety of useful insights on how potential changes may further—or impair—any of these goals. While every regulatory change cannot further each of these goals, the agency is particularly interested in hearing from commenters about how any proposed approach that advances one goal might have an inadvertent side effect of impairing another goal.

This ANPR and any subsequent rulemaking affecting OTS's mortgage lending regulations could affect not only federal savings associations, but, through the operation of the Alternative Mortgage Transactions Parity Act ("Parity Act"), may also apply to certain mortgage transactions of state-licensed and regulated housing creditors. As discussed more fully in section II.B below, that statute was enacted to enable those state housing creditors to enter into alternative mortgage transactions, such as variable rate loans, notwithstanding state law, so long as they complied with the regulations on alternative rate mortgage transactions that applied to federally chartered depository institutions. OTS does not have licensing, supervision, examination, or enforcement authority over these housing creditors. Those responsibilities rest with the states, even when the housing creditors choose to provide alternative mortgages under the Parity Act. OTS's statutorily assigned role is solely to designate which OTS lending regulations affecting alternative mortgage transactions are appropriate and applicable to housing creditors when they make such loans under the Parity Act. OTS does not collect information about how many housing creditors choose to take advantage of the Parity Act's preemption of state laws affecting alternative mortgage transactions. Today, as OTS considers whether our mortgage lending regulations continue to meet the purposes for which they were intended, we also solicit comments about how the application of these regulations in the context of the Parity Act may affect housing creditors and their borrowers.

This ANPR first discusses the background of changes and developments in statutes, regulations, and the market that have given rise to questions about how best to encourage responsible, and discourage predatory, lending in the market for alternative mortgages. The ANPR then discusses various regulatory approaches the agency may consider in any rulemaking that may follow this ANPR. Non-regulatory approaches such as education, examination, enforcement of existing statutes and regulations, interagency regulations or supervisory guidance, or industry best practices, may also be appropriate to address some identified issues. The agency is committed to considering all viewpoints presented before determining what approaches to pursue.

II. Background

A. Evolution of OTS's Lending Regulations and the Changing Financial Climate

Mortgage lending—both purchase money mortgages and home equity lending—has always been, and remains, a key area of thrift operations. OTS has periodically conducted comprehensive reviews of its lending and investment regulations to ensure that they enhance safe and sound lending, implement statutory requirements, protect consumers, minimize regulatory burden, and are clearly written and consistent with the regulations of other banking agencies. OTS lending regulations have been considerably modified over time as savings associations, their markets, their competition, and the economy have changed.

Historically, mortgage lending regulations for savings associations were extremely detailed, limiting the loan terms such as permissible length, location of collateral, loan-to-value ratios, and amortization schedules. Over the last two decades, the regulatory approach of OTS and its predecessor agency, the Federal Home Loan Bank Board (Bank Board), has been to gradually move away from detailed authorization of lending products and specific restrictions on their structure. For the most part, OTS has taken a market-based approach to provide flexibility for thrifts and encourage innovations in lending to stimulate credit. To protect consumers, OTS has required thrifts to disclose terms and conditions to consumers on the assumption that, with this knowledge, the parties would be free to negotiate the lending terms. Ideally such negotiation would result in lenders making competitive safe and sound loans that meet borrowers' needs responsibly—a win-win situation for all involved. One of the reasons OTS is publishing this ANPR, however, is evidence indicating that some provisions in our lending regulations may have a different effect in subprime or high-cost loan markets, where borrowers may not have access to the same information or options, as compared with more traditional markets.

For example, in 1993, as part of a regulatory burden reduction effort, the agency removed a requirement that no institution could impose a prepayment penalty on an ARM borrower within 90 days of a notice of a rate adjustment. This permitted prepayment penalties to be imposed on adjustable rate mortgages under the same conditions as apply for fixed-rate mortgages: prepayments must first be applied to loan principal, but the loan contract governs the terms of any prepayment penalty. In the fixed-rate market, and indeed, in ARMs made by thrifts, prepayment penalties generally have not been abused, and have been a means by which some borrowers can negotiate a lower interest rate on their loans. In the subprime market, however, some studies and news reports indicate that prepayment penalties have been particularly subject to abuse by predatory lenders.[1]

[1] Prepayment penalties arise in the case of subprime lending with much greater frequency than in the conventional market. Rich Connell, "Safeguards Sought for Inner City Borrowers," Los Angeles Times, March 12, 2000, at B6. For example, in 1998 Merrill Lynch estimated that 50–75% of home equity loans (primarily subprime) that they securitized included some kind of prepayment penalty. "Lenders Test Whether Mortgage Prepayment Penalties Insulate Against Portfolio Runoff," Inside Mortgage Finance, January 16, 1998. In contrast, in the case of home loan purchases by Fannie Mae, the overwhelming majority of which are conventional, less than 2% carry prepayment penalties. "Fannie Revamps Prepayment Penalty Bonds," American Banker, July 20, 1999.

We have been told that some nonfederally chartered housing creditors active in the subprime home equity market often structure their loans as alternative mortgage transactions in order to rely on these federal regulations under the Parity Act, because it gives them more flexibility than state law in charging prepayment penalties and late charges.[2] We solicit comment on the accuracy of these observations and the role the Parity Act plays in today's mortgage markets.

B. The Alternative Mortgage Transactions Parity Act

Congress enacted the Parity Act in 1982, a time of high interest rates, to encourage variable rate mortgages and other creative financing to stimulate credit. In hearings before the Senate in 1981, mortgage bankers testified that statutes in 26 states barred mortgage bankers or state-chartered lending institutions from originating alternative mortgage loans or imposed significantly higher restrictions on such loans than applied to federally chartered lenders operating under federal regulations. Congress wanted to give those state-chartered housing creditors parity with federally chartered institutions by authorizing those creditors to make, purchase and enforce alternative mortgage loans.[3]

The Parity Act applies to loans with any "alternative" payment features, such as variable rates, balloon payments, or call features. It allows state licensed housing creditors[4] to engage in "alternative mortgage transactions" notwithstanding "any State constitution, law, or regulation," provided the transactions are in conformity with certain federal lending regulations.[5]

The Parity Act does not place state housing creditors under the supervision of federal agencies, but instead merely enables those creditors to make alternative mortgage transactions that comply with designated federal regulations, as an alternative to state law.[6] The Parity Act specifically provides that in order to qualify as a housing creditor and take advantage of the Parity Act's preemption, the creditor must be "licensed under applicable State law and [remain or become] subject to the applicable regulatory requirements and enforcement mechanisms provided by State law".[7] Housing creditors, other than state-chartered banks and state-chartered credit unions,[8] that wish to make an alternative mortgage transaction under the authority of the Parity Act must abide by designated OTS regulations.

The Parity Act directed the Bank Board, OTS's predecessor agency, to identify, describe, and publish those portions of its regulations that were inappropriate for, and thus inapplicable to, nonfederally chartered housing creditors.[9] In 1982, the Bank Board published a "Notice to Housing Creditors" (1982 Notice) with a request for comments.[10] The 1982 Notice provided that state housing creditors, other than commercial banks, credit unions or federal associations, may make alternative mortgage loans subject to the Bank Board's requirements on adjustments to rate, payment, balance or term of maturity and disclosure. The agency premised this approach on the statement of Congressional intent that Title VIII "does not place state housing creditors under the supervision of the federal agencies, but instead merely enables them to follow a federal program as an alternative to state law."[11] The 1982 Notice identified as appropriate and applicable those regulations that "describe and define" alternative mortgage transactions and not those regulations intended for the

[2] For example, the National Home Equity Mortgage Association (NHEMA), the largest national trade association focusing primarily on the home equity lending market, sued to enjoin Virginia from enforcing its statutes limiting prepayment penalties for alternative mortgage transactions. NHEMA's members include mortgage lending corporations and secured equity lenders. The federal district court found that the Virginia statutes were preempted by the Parity Act and that NHEMA had standing to bring the suit. "NHEMA's members are state housing creditors subject to the Parity Act who are suffering or will suffer injury from the enforcement of penalties announced by the state." *National Home Equity Mortgage Association* v. *Face*, 64 F. Supp. 2d 584, 591 (E.D. Va. 1999), appeal docketed, No. 99–2331 (4th Cir. Oct. 21, 1999).

[3] 12 U.S.C.A. 3801(b) (West 1989). *See also NHEMA* v. *Face*, 64 F. Supp. 2d at 587.

[4] A "housing creditor" is a depository institution, a lender approved by the Secretary of Housing and Urban Development for participation in certain mortgage insurance programs, "any person who regularly makes loans, credit sales or advances secured by interests in properties referred to in [the Parity Act]; or * * * any transferee of any of them." 12 U.S.C.A. 3802(2).

[5] *Id.;* 12 U.S.C.A. 3803 (West 1989).

[6] OTS Op Chief Counsel (May 3, 1996) at 8, fn. 16 citing Report of the Committee on Banking, Housing, and Urban Affairs, Senate Report No. 97–463 at p. 55 (May 28, 1982), 97th Cong., 2d Sess. 55 and 48 FR 23,032, 23,053 (May 1983).

[7] 12 U.S.C. 3802(2).

[8] 12 U.S.C.A. 3803(a) (West 1989). State-chartered banks and state-chartered credit unions must comply respectively with regulations of the Office of the Comptroller of the Currency and the National Credit Union Administration.

[9] Section 807 of Pub. L. 97–320 (1982).

[10] 47 FR 51733 (November 17, 1982).

[11] U.S. Senate Report No. 97–463 at p. 55 (May 28, 1982), 97th Cong., 2d Sess. 55 and 48 FR 23032, 23053 (May 23, 1983).

general supervision of federal associations.

In 1983, the Bank Board published a final rule incorporating a revised Notice to Housing Creditors (1983 Notice). The 1983 Notice identified as applicable three provisions that the Bank Board described as an integral part of, and particular to, alternative mortgage transactions, namely § 545.33(c) (authority to make partially amortized or non-amortized loans and to adjust the interest rate payment, balance or term of maturity); (e) (limitations on adjustments on loans secured by borrower-occupied property); and (f)(4)–(11) (requirements for disclosures on loans secured by borrower-occupied property that are not fixed-rated and fully amortized).[12]

In 1996, after reexamining the purposes of the Parity Act, OTS reevaluated which regulations should be deemed appropriate and applicable to alternative mortgage transactions. OTS concluded that variable rate loans made by Wisconsin-chartered savings and loan associations in conformity with the Parity Act are not subject to a Wisconsin statute restricting prepayment penalties on variable rate loans.[13] The opinion stated that because OTS regulations permitted federal thrifts, through terms in their loan contracts, to impose prepayment penalties on variable rate loans (as well as other loans), state housing creditors lending under the Parity Act could impose those penalties. Otherwise state housing creditors would be disadvantaged vis-a-vis federal thrifts—the very result Congress intended to prevent. Using this analysis, the agency did not limit potentially appropriate and applicable regulations for state housing creditors to those regulations applying only to alternative mortgage transactions and not other mortgage loans.

Later that year, OTS modified its Parity Act regulations, now codified at 12 CFR 560.220.[14] The list of OTS regulations applicable to state housing creditors now includes regulations on late charges (§ 560.33), prepayments (§ 560.34), adjustments to home loans (§ 560.35), and disclosure (§ 560.210).[15] Housing creditors must comply with the requirements contained in these regulations in order to obtain the benefit of the Parity Act's preemption of state laws.

C. Subprime Lending and Potentially Predatory Practices

The flow of responsibly delivered credit to underserved markets is critical to their survival. Thrifts and other lenders that provide credit and other financial services in ways that actually reach and fairly serve underserved borrowers fill an important community need. OTS believes it is important for thrifts to reach out to underserved markets and to make safe and sound loans—both prime and subprime—in such markets.

The 1990's have seen an explosive growth in subprime lending: *i.e.*, extending credit to borrowers whose past credit problems make them a higher risk. Subprime lenders use risk-based pricing to serve borrowers with troubled credit histories who cannot obtain credit in the prime market. Subprime loans pose higher risks to an institution and require a lender to have or develop particularized loan underwriting and management skills.[16] The higher degree of risk associated with subprime borrowers often necessitates a higher cost or other non-traditional terms for a subprime loan.

Subprime lending helps provide borrowers with a bridge to conventional financing once the borrower resolves temporary credit problems. However, subprime lending can become predatory if it makes it difficult for borrowers to get out of debt once their credit improves. Unfortunately, some segments of the subprime lending market use unscrupulous practices, more fully described below, to pressure a borrower into a commitment for a high-cost loan. It is important that our mortgage lending regulations actively discourage, rather than inadvertently allow, predatory practices by those who rely upon our regulations—whether they be thrifts, their subsidiaries or affiliates, or non-depository institution housing creditors relying upon the Parity Act.

Predatory practices that unfairly disadvantage borrowers can take a variety of forms. For example, an unscrupulous lender may use pressure tactics to convince the borrower to consolidate mortgage and consumer debt into a loan that is in fact less advantageous to the borrower; refinance a low interest rate mortgage loan to one with higher rates and fees but a longer term that lowers the borrower's current mortgage costs while vastly increasing the total cost of financing; undertake unnecessarily expensive home improvements; or finance unnecessary fees for products like credit insurance.[17]

Predatory lenders may also include loan terms in mortgage documents that make it difficult for the borrower to pay off the loan. Some examples of such loan terms include negative amortization repayment terms where monthly payments fail to pay off accrued interest and increase the principal loan balance; high balloon payments at the end of the loan; high loan-to-value (LTV) loans that lock the borrower into additional debt; mandatory arbitration partially paid for by the borrower; and high prepayment penalties that prevent borrowers from refinancing or selling their home. While these terms may be reasonable when fully understood by a sophisticated borrower with the ability and motivation to shop for a loan, they can be grossly unfair when misunderstood by an unsophisticated borrower pressured into accepting them.

D. Interagency Implications

OTS recognizes that its regulations can only go so far to address predatory practices. Some practices may raise issues involving the Truth in Lending Act, the Home Ownership and Equity Protection Act, the Equal Credit Opportunity Act, the Real Estate Settlement Procedures Act, the Home Mortgage Disclosure Act, and other statutes and regulations generally affecting depository institutions or creditors. These laws are implemented through regulations imposed by agencies other than OTS, including the Federal Reserve Board and the Department of Housing and Urban Development. Like other insured depository institutions, thrifts are subject to regular examination and supervision for their compliance with this comprehensive federal network of laws and their implementing regulations. Most non-depository institution creditors may be equally subject to such laws, but their regulators do not use the same examination and supervision process to regularly monitor their compliance. OTS will share with other regulators any issues that commenters raise that implicate any of these statutes or their implementing regulations.

OTS participates in a number of interagency efforts to address responsible subprime lending and limit predatory practices. An interagency working group has been established to examine predatory lending issues. This group, which includes the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Department of Justice, the Federal Trade Commission, the Department of Housing and Urban Development, the Federal Housing Finance Board, and the Office of Federal Housing Enterprise Oversight, is considering a variety of policy, regulatory, and legislative options as well as consumer education initiatives.

E. State Initiatives to Address Predatory Lending

OTS is aware that several states have undertaken statutory or regulatory initiatives to protect their citizens from some of the abuses of predatory lending. OTS believes that such initiatives are worth studying as it considers the scope and direction of any potential regulatory actions. We are interested in learning more about these initiatives and other states' proposed statutory or regulatory initiatives in these areas. Commenters are therefore urged to address the advantages and disadvantages of these initiatives, especially in connection with state-regulated housing creditors.

North Carolina, for example, has recently enacted legislation that addresses predatory lending and covers all consumer home loans including first and junior liens and manufactured housing. The legislation limits prepayment penalties, financing credit insurance, flipping (repeated unjustified refinancing of loans), and default incentives. The act also establishes a class of "high-cost home loans" (*e.g.*, loans with total points and fees in excess of 5–8% of the loan amount or an annual percentage rate more than 10 percentage points higher than the yield on Treasury securities of comparable maturities). The act applies additional consumer protections to these high-cost loans including required consumer counseling, prohibitions on financing fees and points in the loans, and other safeguards. Violations of the act may result in a determination that the loan is usurious or that an unfair trade practice has occurred. Additionally, the borrower may be permitted to recover attorney's fees.

New York has proposed regulations to impose certain limitations on the making of high-cost home loans to consumers. The proposed regulations define high-cost home loans as loans that are made either at a rate exceeding eight percentage points over U.S. Treasury securities of comparable maturities or, in the case of junior mortgages, nine percentage points above such securities. High-cost home loans also include any mortgage loan with total points and fees (other than bona fide discount points) exceeding five percent of the principal amount of the loan. The proposed regulations prohibit high-cost home loans from including terms such as balloon payments within seven years of origination, negative amortization, elevated rates of interest after default, certain mandatory arbitration clauses, modification or deferral fees, and accelerated payment schedules at the discretion of the lender. The proposed regulations also prohibit high-cost home lending without a disclosure at the time of application concerning home ownership counseling and without due regard to the obligor's ability to repay the loan.

F. Other Regulatory Incentives to Encourage Responsible Lending

OTS invites public comment on potential federal regulatory incentives to encourage financial institutions to seek out responsible ways to meet the lending and other financial services needs of underserved borrowers consistent with safety and soundness. We are interested in innovative approaches to facilitate responsible lending in underserved markets—whether prime or subprime—and to limit predatory practices that subject borrowers to improper pressures, unduly limited options, and unnecessary costs.

III. Potential Regulatory Approaches

This ANPR solicits public input from any interested parties, including savings associations, consumers, housing creditors, and state and local regulators, on a wide variety of potential regulatory approaches that would encourage responsible lending and discourage predatory practices. OTS is particularly interested in learning from the states' experience with recent statutory and regulatory actions dealing with subprime lending and predatory lending practices, such as the North Carolina statute and New York proposed regulation discussed above.

The approaches discussed below focus on mortgage lending, with an emphasis on the high-cost loan arena that has proven particularly vulnerable to potential abuses. We would like input about other potential approaches, consistent with OTS's overall goals for its lending regulations, to address these issues. We recognize that changes in regulations may not ultimately turn out to be the best way to address some of these issues. In some cases supervisory guidance or industry best practices may be more effective and less burdensome.

We encourage commenters to identify potential regulatory or paperwork burdens that some approaches might impose and ways to minimize such burdens. We are also interested in identifying approaches that might impose a disproportionate burden upon small savings associations and alternatives that might minimize such burdens.

Should OTS Modify Its Regulations Implementing the Alternative Mortgage Transactions Parity Act?

As discussed above, the Bank Board and OTS have identified various regulations over time as appropriate and applicable to alternative mortgage transactions under the Parity Act. We solicit comment on whether all of the regulations that are currently designated as appropriate and applicable should continue to be so designated. Should only those OTS regulations that apply exclusively to alternative mortgage transactions be designated appropriate and applicable (the approach taken by the Bank Board in 1982)? Should every regulation that imposes conditions or restrictions on a federal savings association's ability to make an alternative mortgage transaction be designated appropriate and applicable, even if the regulation applies to a broader category of loans (the approach taken by OTS in 1996)? Is another standard appropriate?

The Parity Act, as discussed above, authorizes housing creditors to make alternative mortgage loans as long as the transactions are "in accordance with" appropriate and applicable OTS regulations. The Act does not grant housing creditors the same powers as federal savings associations outside of the context of alternative mortgage transactions. Even within that context, state law governs those aspects of a housing creditor's operations not covered by regulations designated as applicable to alternative mortgage transactions under the Parity Act. The limited role the Parity Act plays in the

[12] 48 FR 23032, 23053 (May 23, 1983).

[13] OTS Op. Chief Counsel (April 30, 1996).

[14] As a federal court recently recognized, OTS may revise, on a continuing basis, the list of provisions that apply to housing creditors lending under the authority of the Parity Act. The Parity Act "implies no temporal limit on [OTS] rulemaking as it applies to state chartered housing creditors." *NHEMA* v. *Face*, 64 F. Supp. 2d at 589. As the court noted, the legislative history of the Parity Act shows that Congress contemplated future revisions to federal agency regulations and expected conforming agency actions so that the regulatory list would continue to provide parity to state housing creditors. *Id.*, quoting S. Rep. 97–463, at 55 (1982)(Congressional expectation that "any future amendments that the agencies make to regulations that are within the scope of this title will conform to the objectives of this title.")

[15] 12 CFR 560.220 (1999).

[16] On March 1, 1999, the four federal banking agencies—OTS, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency—issued "Interagency Guidance on Subprime Lending." That guidance discussed a variety of controls that an insured depository institution engaging in subprime lending should have in place to ensure that it is properly controlling the risks the activity can present.

[17] For example, a recent New York Times/ABC News article reported examples of a variety of such practices. "Profiting From Fine Print With Wall Street's Help," New York Times (March 15, 2000).

overall regulation of housing creditors has not always been clearly understood. OTS solicits comments on how best to clarify the interaction between federal and state regulatory schemes affecting housing creditors. OTS is also interested in information about how state laws and regulations on alternative mortgage transactions have changed since the Parity Act was enacted in 1982.

If commenters believe OTS should revise the scope of applicable regulations designated under the Parity Act, we are interested in recommendations about what factors and standards the agency should consider in determining appropriate and applicable regulations. The agency has a continuing responsibility to implement congressional intent as expressed in the 1982 Parity Act consistent with the realities of the current market in which federal savings associations and state housing creditors make alternative mortgage transactions. Therefore, we also are interested in whether additional regulations, including any that may result from a rulemaking following this ANPR, should be added to the list of appropriate regulations.

In determining appropriate and applicable regulations, OTS must keep the overall congressional goal of parity in mind.[18] Like other insured depository institutions, savings associations are subject to a comprehensive regime of regular examination, supervision, and enforcement to determine their compliance with applicable laws and regulations. Non-depository institution state housing creditors are not. How should these significant differences in examination, supervision and enforcement be taken into account so that alternative mortgage transactions by non-depository institution state housing creditors under the Parity Act are treated neither more harshly nor more leniently than similar transactions by savings associations?

In considering whether to alter the operation of OTS lending regulations with respect to institutions benefiting from the Parity Act, we wish to act on an informed basis. OTS is interested in receiving evidence of the extent to which housing creditors taking advantage of the Parity Act are engaged in predatory or abusive lending practices. We recognize that the actions of a few entities do not necessarily represent an entire industry. While a number of press reports have recounted instances of egregious practices in connection with mortgage credit, the degree of participation in such practices by housing creditors that have used the Parity Act and OTS's implementing regulations to avoid state law restrictions has not been studied in any focused manner. Accordingly, we raise the following questions:

- To what extent are housing creditors engaging in predatory or abusive mortgage lending practices that would be contrary to existing state law but for the provisions of the Parity Act and OTS's implementation thereof?
- To what extent are housing creditors engaging in predatory or abusive mortgage lending practices that are contrary to existing laws, but are not being prosecuted by state authorities whose power is specifically reserved by the Parity Act for that purpose?

As previously noted, OTS has curtailed its lending regulations to permit savings associations to respond more efficiently to competitive market forces. Some have argued that the ability of housing creditors to rely on these limited regulations through the Parity Act may have resulted in abuses in markets where there are fewer competitive pressures and no regular governmental oversight. To explore this possibility, we solicit comment on the following questions:

- To what extent do housing creditors lending under the Parity Act use different practices and impose more onerous loan terms in under-served or financially unsophisticated markets than they (or their affiliates) use in other more mainstream markets?
- To what extent do housing creditors lending under the Parity Act provide mortgage credit at rates and with terms significantly above those of conventional prime mortgages to persons with good or excellent credit records?
- To what extent does the use or terms of prepayment penalties, the financing of prepaid credit life insurance or loan fees, or the frequency of partial amortizing, non-amortizing or negative amortizing loans vary among housing creditors or between housing creditors and insured depository institutions? Do variations relate to characteristics of the borrower (such as race or age) or the neighborhood in which the borrower resides or to quantifiable differences in the creditworthiness of the borrower? Do variations result in returns that compensate lenders in excess of risk-adjusted prices or loan terms?
- Do housing creditors refinance their own (or an affiliate's) borrowers' mortgage loans (including the financing of loan fees) at rates at or above those on the existing loan? Does this practice exist at insured depository institutions?
- How, if at all, do the answers to any of the above questions differ for housing creditors who do not make alternative mortgage transactions under the Parity Act but rely instead upon state law?

Should OTS Adopt Regulations on High-Cost Mortgage Loans?

The explosive growth in subprime lending has occurred, and many of the predatory practices in the mortgage market discussed above have developed, since OTS last modified its lending regulations. Where borrowers are less knowledgeable or more in need of credit than has been the case in the past, a market-based approach to regulation that relies on disclosures to equalize the negotiation postures of the lender and borrower may not be effective. As a result, some states have gone beyond the loans covered and disclosures required by the Home Ownership and Equity Protection Act of 1994, Pub. L. 103–325, Title I, Subtitle B (Sept. 23, 1994) (HOEPA), to impose more substantive restrictions and limitations to protect such borrowers. OTS could similarly choose to enact regulations that would apply to high-cost loans originated by some or all savings associations. Depending on the scope of the OTS's Parity Act regulations and whether a state with its own statutes or regulations on high-cost loans had opted out from the Parity Act, these regulations could also apply to high-cost loans made by state housing creditors, as such loans are nearly always structured as alternative mortgage transactions.[19] Such regulations would raise a variety of issues, including:

What loans should be covered? HOEPA applies to certain mortgages where either the annual percentage rate at consummation of the transaction exceeds by more than 10 percentage points the yield on Treasury securities of comparable maturities or the total points or fees the borrower must pay exceed the greater of 8% of the loan amount or $400 (as adjusted annually based on changes in the Consumer Price Index). The North Carolina and New York provisions discussed above apply to a broader range of loans, but similarly use the annual percentage rate and the ratio of total points and fees to loan amount to define the scope of loans covered. Some criteria differ depending on whether senior or junior mortgage liens were involved. What are the advantages or disadvantages of these approaches? Are there other factors that should be considered in defining high-cost loans? How should high-cost loans be defined to reach areas where the potential for abuse is highest without having an unnecessarily chilling effect on non-traditional, but non-abusive, loan structures?

Should OTS impose limits on financing of certain fees or charges? Predatory loans are often dependent on the financing of points and fees in the loan, including charges to third parties. Financing these fees may hide their magnitude and impact from the borrower and enable unethical lenders to pile on unwarranted fees. Should OTS, in connection with high-cost loans, limit an institution's ability to finance fees and points above a certain amount, credit life insurance, and/or brokerage commissions?

Are limits on refinancing appropriate? Should any OTS regulation on high-cost loans limit rollovers and refinancings on such loans within a specified time frame or where a refinancing would actually increase the cost of funds previously loaned? Should we limit or prohibit refinancing an institution's own (or an affiliate's) mortgage unless the annual percentage rate for the new loan is less than the rate reflected on the existing note and no fees are financed?

Are prepayment penalties appropriate for high-cost loans? Do high-cost loans present such potential for the abusive use of prepayment penalties that OTS should limit such penalties on such loans, either with respect to amount or when they can be imposed (*e.g.*, not within a certain number of days after a change in interest rate)? Should prepayment penalty terms in such loans be prohibited except where initial mortgage rates are set at less than market rate?

What limits on balloon payments, negative amortization, post-default interest rates and mandatory arbitration clauses would be appropriate for high-cost loans? Should OTS limit the inclusion of such terms as balloon payments (at least prior to seven years), negative amortization, higher interest penalties after default, and mandatory arbitration clauses for high-cost loans?

Should OTS require lenders to determine the suitability of a mortgage loan product for a particular borrower? As discussed above, an important component of safe and sound lending is determining the borrower's ability to repay the loan. Should OTS require institutions to document the suitability of a particular high-cost loan product for a particular customer/borrower, including an analysis of the customer's ability to repay the loan without relying on the collateral? This approach would be similar to the "sophisticated investor" or suitability analysis standard used in the securities industry in determining whether a particular investment product should be sold to a potential investor. Suitability standards as applied to the residential mortgage industry might include a relatively straight-forward analysis of factors such as comparing projected monthly payments against the applicant's income or determining the propriety of add-on features that the consumer may not need, such as credit life insurance where the individual does not have any dependents. If "suitability" is not established, then the institution would be subject to additional limits and higher requirements in making a loan. Such standards could impose regulatory burdens on thrifts if they required thrifts to go beyond the factors normally considered in underwriting a loan. Would such a burden be outweighed by the benefits of the potential deterrent effect of such a requirement?

Should OTS require institutions to notify applicants for high cost loans of the availability of home loan counseling programs before closing? For borrowers that do not fully understand the credit process and the choices available to them, a disclosure of the availability of counseling programs may prompt them to more fully explore their options before closing on a high cost loan. The New York provisions, for example, prohibit the making of a high cost loan without first notifying applicants that they should consider counseling and providing them with a list of approved counselors. Should OTS consider imposing some similar type of requirement for institutions that provide high cost loans? How could such a list be generated and by whom? How could we minimize any associated paperwork burden?

Is Differential Regulation Appropriate?

For the past decade, OTS has differentiated among thrifts in determining whether they must file a notice or application with the agency before engaging in certain activities. This differentiation looks at, among other things, a thrift's capital, safety and soundness rating, and compliance ratings. *See* 12 CFR part 516. Such differentiation may be appropriate in the context of subprime or high-cost loan programs. As discussed in the interagency guidance on subprime lending cited above, subprime and high-cost lending can pose potential safety and soundness risks. Before an institution with a lower safety and soundness or compliance rating undertakes a significant level of subprime or high-cost lending, it may be appropriate for the agency to review that thrift's management and internal controls. Thrifts with stronger ratings and management that are eligible for expedited treatment could be subject to different, less onerous restrictions.

If OTS were to take the examination ratings, among other characteristics, of federal savings associations making certain types of alternative mortgage loans, into account in determining whether the agency should receive advance notice of certain lending activities, how could a differential approach apply to housing creditors making similar loans? State-regulated housing creditors are not subject to the same level of regular comprehensive examination as federally insured depository institutions. They are unlikely to have capital, safety and soundness, or compliance ratings. Under these circumstances, enabling such housing creditors to offer certain alternative mortgage loans in parity with federal savings associations—under neither harsher nor more lenient conditions—will require careful agency consideration. Thus, if OTS were to require some federal savings associations to notify OTS before making alternative mortgage transactions as part of a high-cost loan program, how would a comparable requirement be implemented for housing creditors? How, if at all, do states differentiate among the conditions and characteristics of housing creditors they license and regulate?

The Parity Act contemplates situations where a housing creditor may not be able to comply with the letter of an applicable OTS regulation in making an alternative mortgage transaction. In such circumstances, the Parity Act considers the alternative mortgage transaction to be in accordance with the regulation if the transaction is in "substantial compliance" with the regulation and any error is corrected within 60 days.[20] OTS solicits comments from housing creditors and their state regulators about how to determine "substantial compliance" with OTS regulations using different standards for federal savings associations in different conditions. We seek input from housing creditors and their state regulators about any other practical implications of a differential regulatory approach.

[18] See discussion in footnote 14, *supra*.

[19] Of course, Parity Act lenders could, if their home state regulations were more lenient than revised OTS regulations, simply follow state law rather than the OTS regulations.

[20] 12 U.S.C. 3803(b).

How Should OTS Deal With Potential Lending Issues Raised by Thrift Subsidiaries or Affiliates?

Some believe that subsidiaries and affiliates of insured depository institutions engage in lending practices that may disadvantage potentially vulnerable customers. OTS is interested in any evidence on this issue. Subsidiaries of savings associations are subject to OTS examination and supervision. If, however, they pose different or higher risks than their parent thrifts in this area, OTS could consider modifying its subordinate organizations regulations, 12 CFR Part 559, to address these risks. Should OTS impose limits on subsidiaries engaged in a significant amount of subprime lending on behalf of their parent federal thrifts? Should OTS restrict institutions' efforts to steer customers who are labeled high risk to one particular organizational unit of a thrift? Should thrifts and their subsidiaries that offer a variety of loans be required to inform customers of all available lending alternatives regardless of the location at which the customer initially seeks assistance? Should OTS consider restricting a thrift's interactions with affiliates that engage primarily in subprime lending? Would any such limits or restrictions affect a thrift's ability to develop expertise in different components of its organization or its ability to manage the risks associated with different types of lending?

Should OTS Impose Certain Due Diligence Requirements?

It has been argued that the secondary market has had a disproportionate impact in facilitating some potentially predatory practices in the high-cost loan market.[21] In addition to their role in originating mortgage loans, thrifts form an important part of the secondary market through their purchase of whole loans or investments in mortgage-backed securities. Given that the secondary market both plays a role in the high-cost loan market and is a vital part of housing credit liquidity. potential solutions to some of the problems in the high-cost mortgage loan market may be found in the secondary market. Accordingly, should OTS require federal thrifts to conduct a due diligence review of potential loan purchases to determine whether the loans meet applicable federal or state rules relating to predatory practices? For example, an institution might sample loan files to ensure that the originating lender has appropriately priced the product, looking for evidence of excessive fees. This review may be merely an adjunct to any other due diligence analysis that prudent institutions would undertake to ensure that purchased loans are properly secured and have been authenticated. How could any burden of such a requirement be minimized consistent with achieving the goal of ensuring that purchased loans meet applicable laws and regulations?

Similarly, should OTS encourage thrifts to inquire whether securitizers from whom they purchase interests in loan pools have conducted their own due diligence efforts with regard to the underlying loans? The institution could, for example, make inquiries to the securitizers concerning their efforts to minimize the inclusion of predatory loans in their securitized pools. Would the concerted efforts by institutions to conduct such inquiries help to deter predatory practices?

We are also interested in understanding the extent of due diligence conducted by secondary market mortgage investors to determine whether housing creditors benefiting from the Parity Act comply with applicable federal consumer protection and fair lending laws. Does due diligence vary depending on whether the selling institution is an insured depository institution undergoing regular federal compliance examinations or an unsupervised housing creditor?

[21] See, for example, the New York Times/ABC News article cited in footnote 17, *supra*.

IV. Conclusion and Request for Comments

The flow of responsibly delivered credit to underserved markets is critical to their survival, and any regulatory or enforcement solutions that might be crafted to deal with predatory lenders must proceed with this caution in mind. With this ANPR, OTS seeks input from all interested parties to assist in determining how best to address some of the issues that have arisen in the alternative mortgage market. OTS is interested in hearing from any and all potentially affected persons, including representatives of the thrift industry, housing creditors, consumers, and state governments. Hearing from commenters with diverse viewpoints will help the agency to develop strategies to identify the lending risks and opportunities in underserved communities and to help thrifts develop and institute responsible lending programs in low-income and minority communities. We are interested in data that will help identify where problems exist and whether and how OTS regulations could be modified to help address those problems. We encourage commenters to suggest other approaches not discussed above that could meet our overall goal of encouraging the safe and sound, efficient delivery of low-cost credit to the public free from undue regulatory duplication and burden.

Dated: March 24, 2000.

By the Office of Thrift Supervision.

Ellen Seidman,

Director.

[FR Doc. 00–8375 Filed 4–4–00; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–333–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 Series Airplanes, and C–9 (Military) Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes, that currently requires a one-time visual inspection to determine if the doorstops and corners of the doorjamb of the forward passenger door have been modified, various follow-on repetitive inspections, and modification, if necessary. This action would require a reduction in the inspection threshold and repetitive intervals for a certain doubler configuration and an increase in the repetitive inspection interval for a certain other doubler configuration. This proposal is prompted by a determination that certain inspection compliance times were incorrect. The actions specified by the proposed AD are intended to detect and correct fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

DATES: Comments must be received by May 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Technical Publications Business Administration, Dept. C1–L51 (2–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Wahib Mina, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5324; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–333–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–333–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On December 11, 1998, the FAA issued AD 98–26–09, amendment 39–10949 (63 FR 70005, December 18, 1998), applicable to certain McDonnell Douglas Model DC–9–10, –20, –30, –40, and –50 series airplanes and C–9 (military) airplanes, to require a one-time visual inspection to determine if the doorstops and corners of the doorjamb of the forward passenger door have been modified, various follow-on repetitive inspections, and modification, if necessary. That action was prompted by reports of fatigue cracks found in the fuselage skin and doubler at the corners and doorstops of the doorjamb of the forward passenger door. The requirements of that AD are intended to detect and correct such fatigue cracking, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, the manufacturer has informed the FAA that the initial and repetitive inspection compliance times were incorrect in McDonnell Douglas Service Bulletin DC9–53–280, Revision 01, dated July 30, 1998, for the doorstops and corners of the forward passenger doorjamb that have been modified previously, using steel doublers. Therefore, McDonnell Douglas has issued Service Bulletin DC9–53–280, Revision 02, dated July 26, 1999, to correct this condition. Paragraph (c)(1) of the existing AD specifies that the high frequency eddy current (HFEC) initial inspection should be performed "Prior to accumulation of 28,000 landings after accomplishment of the modification, or within 3,500 landings after the effective date of this AD, whichever occurs later. * * *" The correct initial HFEC inspection compliance time should be 6,000 landings after accomplishment of the modification, or within 3,575 landings after the effective date of the AD, whichever occurs later.

Also, paragraph (c)(1)(i) of AD 98–26–09 specifies that the HFEC repetitive inspection interval is 20,000 landings. The correct repetitive HFEC inspection interval is 3,000 landings.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Service Bulletin DC–9–53–280, Revision 02, dated July 26, 1999, which describes procedures for the following:

1. Performing a one-time visual inspection to determine if the doorstops and corners of the forward passenger door doorjamb have been modified;
2. For certain airplanes: Performing a low frequency eddy current (LFEC) or x-ray inspection to detect cracks at all corners and doorstops of the doorjamb of the forward passenger door;
3. For certain other airplanes: Performing an HFEC inspection to detect cracks on the skin adjacent to the modification;
4. Conducting repetitive inspections, or modifying the doorstops and corners of the doorjamb of the forward passenger door, and performing follow-on HFEC inspections, if no cracking is detected;
5. Performing repetitive HFEC inspections to detect cracks on the skin adjacent to any doorstop or corner that has been modified; and
6. Modifying doorstops and corners if any crack is found to be 0.5 inch or less in length at all doorstops and corners that have not been modified, and performing follow-on repetitive HFEC inspections.

Accomplishment of the action specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–26–09, amendment 39–10949, to require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

The FAA has also noted that a typographical error exists in paragraph (d) of AD 98–26–09 that involves the compliance time for performing an HFEC inspection to detect cracks in the skin adjacent to a certain modification of the doorstops and corners of the forward passenger door doorjamb. That AD specifies that the HFEC inspection should be performed "Prior to the accumulation of 28,000 landings since accomplishment of that modification, or within 3,500 landings after the effective date of this AD, whichever occurs later." However, the intent of the FAA was to specify that compliance time as

"Prior to the accumulation of 28,000 landings since accomplishment of that modification, or within 3,575 landings after the effective date of this AD, whichever occurs later." Paragraph (d) of this proposed AD has been revised to correctly specify 3,575 landings.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, although the service bulletin specifies that the manufacturer must be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are approximately 809 airplanes of the affected design in the worldwide fleet. The FAA estimates that 572 airplanes of U.S. registry would be affected by this proposed AD.

The visual inspection that is currently required by AD 98–26–09 and that is retained in this AD takes approximately 1 work hour per airplane to accomplish the proposed visual inspection, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required visual inspection proposed by this AD on U.S. operators is estimated to be $34,320 or $60 per airplane.

Should an operator be required to accomplish the proposed LFEC or x-ray inspection, it would take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary LFEC or x-ray inspection proposed by this AD on U.S. operators is estimated to be $120 per airplane, per inspection cycle.

Should an operator be required to accomplish the proposed HFEC inspection, it would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of any necessary HFEC inspection proposed by this AD on U.S. operators is estimated to be $60 per airplane, per inspection cycle.

Should an operator be required to accomplish the proposed modification, it would take approximately 8 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Required parts would cost between $898 and $1,037 per airplane, depending on the service kit purchased. Based on these figures, the cost impact of the modification proposed by this AD on U.S. operators is estimated to be between $1,378 and $1,517 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 98–26–09, amendment 39–10949 (63 FR 70005, December 18, 1998), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 99–NM–333–AD. Supersedes AD 98–26–09, Amendment 39–10949.

Applicability: Model DC–9–10, –20, –30, –40, and –50 series airplanes, and C–9 (military) airplanes, as listed in McDonnell Douglas Service Bulletin DC9–53–280, Revision 02, dated July 26, 1999, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct fatigue cracking in the doorstops and corners of the doorjamb of the forward passenger door, which could result in rapid decompression of the fuselage and consequent reduced structural integrity of the airplane, accomplish the following:

Note 2: Where there are differences between the service bulletin and the AD, the AD prevails.

Note 3: The words "repair" and "modify/modification" in this AD and the referenced service bulletin are used interchangeably.

Visual Inspection

(a) Prior to the accumulation of 48,000 total landings, or within 3,575 landings after January 22, 1999 (the effective date of AD 98–26–09, amendment 39–10949), whichever occurs later, perform a one-time visual inspection to determine if the doorstops and corners of the forward passenger door doorjamb have been modified. Perform the inspection in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997, Revision 01, dated July 30, 1998, or Revision 02, dated July 26, 1999.

Group 1, Low Frequency Eddy Current Inspection

(b) For airplanes identified as Group 1 in McDonnell Douglas Service Bulletin DC9–53–280, Revision 01, dated July 30, 1998: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb *have not been modified*, prior to further flight, perform a low frequency eddy current (LFEC) or x-ray inspection to detect cracks at all corners and doorstops of the forward passenger door doorjamb, in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997, Revision 01, dated July 30, 1998, or Revision 02, dated July 26, 1999.

(1) Group 1, Condition 1. If no crack is detected during any LFEC or x-ray inspection required by paragraph (b) of this AD, accomplish the requirements of either paragraph (b)(1)(i) or (b)(1)(ii) of this AD, in accordance with the service bulletin.

(i) *Option 1.* Repeat the LFEC inspection required by this paragraph thereafter at intervals not to exceed 3,575 landings, or the x-ray inspection required by this paragraph thereafter at intervals not to exceed 3,075 landings; or

(ii) *Option 2.* Prior to further flight, modify the doorstops and corners of the forward passenger door doorjamb, in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an high frequency eddy current (HFEC) inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(A) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(1)(ii) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(B) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(1)(ii) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(2) Group 1, Condition 2. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is 0.50 inch or less in length: Prior to further flight, modify the doorstops and corners of the forward passenger door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after accomplishment of the modification, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(2) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (b)(2) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(3) Group 1, Condition 3. If any crack is found during any LFEC or x-ray inspection required by paragraph (b) of this AD, and the crack is greater than 0.5 inch in length: Prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Group 2, Inspection of Door Corners With Steel Doublers

(c) Group 2, Condition 1. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–280, Revision 01, dated July 30, 1998: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb have been modified previously in accordance with the McDonnell Douglas DC–9 Structural Repair Manual (SRM), using a steel doubler, accomplish either paragraph (c)(1) or (c)(2) of this AD in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997, Revision 01, dated July 30, 1998, or Revision 02, dated July 26, 1999.

(1) *Option 1.* Prior to the accumulation of 6,000 landings after accomplishment of the modification, or within 3,575 landings after January 22, 1999, or within 2,000 landings after the effective date of this AD, whichever occurs latest: Perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(1) of this AD, repeat the HFEC inspection within 2,000 landings after the effective date of this AD or within 3,000 landings from the last inspection in accordance with paragraph (c)(1) of this AD, whichever occurs later, and thereafter at intervals not to exceed 3,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(1) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

(2) *Option 2.* Prior to further flight, modify the doorstops and corners of the forward passenger door doorjamb in accordance with the service bulletin. Prior to the accumulation of 28,000 landings after the accomplishment of the modification, perform a HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with the service bulletin.

(i) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(2) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(ii) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (c)(2) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Group 2, Inspection of Door Corners With Aluminum Doublers

(d) Group 2, Condition 2. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–280, Revision 01, dated July 30, 1998: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb have been modified previously in accordance with McDonnell Douglas DC–9 SRM or Service Rework Drawing, using an aluminum doubler, prior to the accumulation of 28,000 landings after the accomplishment of the modification, or within 3,575 landings after January 22, 1999, whichever occurs later, perform an HFEC inspection to detect cracks on the skin adjacent to the modification, in accordance with McDonnell Douglas Service Bulletin DC9–53–280, dated December 1, 1997, Revision 01, dated July 30, 1998, or Revision 02, dated July 26, 1999.

(1) If no crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (d) of this AD, repeat the HFEC inspection thereafter at intervals not to exceed 20,000 landings.

(2) If any crack is detected on the skin adjacent to the modification during any HFEC inspection required by paragraph (d) of this AD, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Group 2, Inspection of Door Corners With Non-SRM Modifications

(e) Group 2, Condition 3. For airplanes identified as Group 2 in McDonnell Douglas Service Bulletin DC9–53–280, Revision 02, dated July 26, 1999: If the visual inspection required by paragraph (a) of this AD reveals that the doorstops and corners of the forward passenger door doorjamb have been modified previously, but not in accordance with McDonnell Douglas DC9 SRM or the Service Rework Drawing, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles ACO.

Terminating Action for Supplemental Inspection Document, AD 96–13–03

(f) Accomplishment of the actions required by this AD constitutes terminating action for inspections of Principal Structural Element (PSE) 53.09.031 (reference McDonnell Douglas Model DC–9 Supplemental Inspection Document) required by AD 96–13–03, amendment 39–9671.

Alternative Methods of Compliance

(g)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

(2) Alternative methods of compliance, approved previously in accordance with AD 98–26–09, amendment 39–10949, or AD 96–13–03, amendment 39–9671, are approved as alternative methods of compliance with this AD.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8387 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–47–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A300 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes and all Airbus Model A300–600 series airplanes. This proposal would require a one-time high frequency eddy current inspection to detect cracking of the splice fitting at fuselage frame (FR) 47 between stringers 24 and 25, and corrective actions, if necessary. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct cracking of the splice fitting at fuselage FR47, which could result in reduced structural integrity of the airplane.

DATES: Comments must be received by May 5, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice, must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–47–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–47–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on certain Airbus Model A300 series airplanes and all Airbus Model A300–600 series airplanes. The DGAC advises that it has received reports indicating that cracking occurred in the area surrounding the fastener holes that attach the splice fitting to fuselage frame (FR) 47 on airplanes on which Airbus Modification 5890 had been installed. This modification specifies cold working of the fastener holes in the splice fitting at fuselage FR47. As a result of a laboratory analysis of the cracked splice fittings, the DGAC further advises that inspection of all subject airplanes to detect cracking of the splice fitting at fuselage FR47 is necessary, regardless of whether the modification is installed. Such cracking, if not detected and corrected, could result in reduced structural integrity of the airplane.

Explanation of Relevant Service Information

The manufacturer has issued Airbus All Operators Telexes (AOT) A300–53A0350 (for Model A300 series airplanes) and A300–600–53A6123 (for Model A300–600 series airplanes), both dated October 25, 1999. These AOT's describe procedures for a one-time high frequency eddy current (HFEC) inspection to detect cracking of the splice fitting at fuselage FR47 between stringers 24 and 25, and corrective actions, if necessary. The corrective actions involve additional HFEC inspections to determine whether any cracking extends beyond fastener "A" of the splice fitting at fuselage FR47 and to detect cracking in the area surrounding the fastener holes of the splice fitting on the face of FR47. If cracking is determined to extend beyond fastener 'A', but is not detected in the area surrounding the fastener holes, the corrective actions involve replacing the splice fitting with a new splice fitting. The DGAC classified these AOT's as mandatory and issued French airworthiness directive 1999–515–298(B), dated December 29, 1999, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require a one-time high frequency eddy current inspection to detect cracking of the splice fitting at fuselage FR47 between stringers 24 and 25, and corrective actions, if necessary. The actions would

be required to be accomplished in accordance with the AOT's described previously, except as discussed below.

Differences Between Proposed AD and Related Service Information

Operators should note that, although the Airbus AOT's specify that the manufacturer may be contacted for disposition of certain conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by either the FAA or the DGAC (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for the proposed AD, a repair approved by either the FAA or the DGAC would be acceptable for compliance with this proposed AD.

The Airbus AOT's describe procedures for an additional HFEC inspection, which under certain circumstances allows operators to defer replacement of the splice fitting. This proposed AD would not require this inspection. Unlike the procedures described in the Airbus AOT's, this proposed AD would not permit further flight if cracks are detected in the splice fitting at fuselage FR47. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject area that is found to be cracked must be repaired or modified prior to further flight.

Interim Action

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Cost Impact

The FAA estimates that 83 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed one-time HFEC inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $4,980, or $60 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 2000–NM–47–AD.

Applicability: All Model A300–600 series airplanes; and Model A300B4–2C, A300B2K–3C, A300B4–103, A300B4–203, A300B4–600, A300B4–600R, and A300F4–600R series airplanes on which Airbus Modification 5890 (Airbus Service Bulletin A300–53–0199) has been installed; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect and correct cracking of the splice fitting at fuselage frame (FR) 47, which could result in reduced structural integrity of the airplane, accomplish the following:

Inspection

(a) Perform a one-time high frequency eddy current (HFEC) inspection to detect cracking of the splice fitting at fuselage FR47 between stringers 24 and 25 (left-and right-hand sides), in accordance with Airbus All Operators Telex (AOT) A300–53A0350 (for Model A300 series airplanes) or A300–600–53A6123 (for Model A300–600 series airplanes), both dated October 25, 1999; as applicable; at the applicable time specified in paragraph (a)(1), (a)(2), (a)(3), or (a)(4) of this AD.

For Model A300 Series Airplanes

(1) For Model A300 B4–100 series airplanes: Perform the one-time HFEC inspection at the applicable time specified in paragraph (a)(1)(i) or (a)(1)(ii) of this AD.

(i) For airplanes that, as of the effective date of this AD, have accumulated fewer than 20,000 flight cycles since installation of Airbus Modification 5890 (Airbus Service Bulletin A300–53–0199): Perform the one-time HFEC inspection at the later of the times specified in paragraphs (a)(1)(i)(A) and (a)(1)(i)(B) of this AD.

(A) Within 10,900 flight cycles or 22,000 flight hours since installation of Airbus Modification 5890, whichever occurs earlier.

(B) Within 1,500 flight cycles after the effective date of this AD.

(ii) For airplanes that, as of the effective date of this AD, have accumulated 20,000 or more flight cycles since installation of Airbus Modification 5890: Perform the one-time HFEC inspection within 750 flight cycles after the effective date of this AD.

(2) For Model A300B4/F4–200 series airplanes: Perform the one-time HFEC inspection at the applicable time specified in paragraph (a)(2)(i) or (a)(2)(ii) of this AD.

(i) For airplanes that, as of the effective date of this AD, have accumulated fewer than 20,000 flight cycles since installation of Airbus Modification 5890 (Airbus Service Bulletin A300–53–0199): Perform the one-time HFEC inspection at the later of the times specified in paragraphs (a)(2)(i)(A) and (a)(2)(i)(B) of this AD.

(A) Within 8,950 flight cycles or 18,600 flight hours since installation of Airbus Modification 5890, whichever occurs earlier.

(B) Within 1,500 flight cycles after the effective date of this AD.

(ii) For airplanes that, as of the effective date of this AD, have accumulated 20,000 or more flight cycles since installation of Airbus Modification 5890 (Airbus Service Bulletin A300–53–0199): Perform the one-time HFEC inspection within 750 flight cycles after the effective date of this AD.

For Model A300–600 Series Airplanes

(3) For Model A300–600 series airplanes on which Airbus Modification 5890 is not installed: Perform the one-time HFEC inspection at the applicable time specified in paragraph (a)(3)(i) or (a)(3)(ii) of this AD.

(i) For airplanes that have accumulated fewer than 10,000 total flight cycles as of the effective date of this AD: Perform the one-time HFEC inspection at the later of the times specified in paragraphs (a)(3)(i)(A) and (a)(3)(i)(B) of this AD.

(A) Prior to the accumulation of 2,500 total flight cycles or 6,400 total flight hours, whichever occurs earlier.

(B) Within 1,500 flight cycles after the effective date of this AD.

(ii) For airplanes that have accumulated 10,000 or more total flight cycles as of the effective date of this AD: Perform the one-time HFEC inspection within 500 flight cycles after the effective date of this AD.

(4) For Model A300–600 series airplanes on which Airbus Modification 5890 is installed: Perform the one-time HFEC inspection at the applicable time specified in paragraph (a)(4)(i) or (a)(4)(ii) of this AD.

(i) For airplanes that have accumulated fewer than 10,000 total flight cycles as of the effective date of this AD: Perform the one-time HFEC inspection at the later of the times specified in paragraph (a)(4)(i)(A) and (a)(4)(i)(B) of this AD.

(A) Prior to the accumulation of 6,500 total flight cycles or 16,700 total flight hours, whichever occurs earlier.

(B) Within 1,500 flight cycles after the effective date of this AD.

(ii) For airplanes that have accumulated 10,000 or more total flight cycles as of the effective date of this AD: Perform the one-time HFEC inspection within 500 flight cycles after the effective date of this AD.

Corrective Actions

(b) If any cracking is detected during the one-time HFEC inspection required by paragraph (a) of this AD, prior to further flight, remove the splice fitting and perform an HFEC inspection to detect cracking in the area surrounding the fastener holes (fastener holes "A" to "N") on the face of FR47 adjacent to the affected splice fitting, in accordance with Airbus AOT A300–53A0350 (for Model A300 series airplanes) or A300–600–53A6123 (for Model A300–600 series airplanes), each dated October 25, 1999, as applicable.

(1) If no cracking is detected in the area surrounding the fastener holes on the face of FR47, prior to further flight, replace the splice fitting with a new splice fitting in accordance with the applicable AOT.

(2) If any cracking is detected in the area surrounding the fastener holes on the face of FR47, prior to further flight, repair in accordance with a method approved by either the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate; or the Direction Générale de l'Aviation Civile (DGAC) (or its delegated agent). For a repair method to be approved by the Manager, International Branch, ANM–116, as required by this paragraph, the Manager's approval letter must specifically reference this AD.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in French airworthiness directive 1999–515–298(B), dated December 29, 1999.

Issued in Renton, Washington, on March 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8389 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–95–AD]

RIN 2120–AA64

Airworthiness Directives; Airbus Model A319, A320, and A321 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that currently requires an initial inspection of fastener holes on certain outer frames of the fuselage to detect fatigue cracking, and modification of the area by cold expanding the holes and installing oversized fasteners. This action would revise the applicability to include additional airplanes; require a high frequency eddy current inspection to detect fatigue cracking in the frames and frame feet at fuselage frames FR37 through FR41; and follow-on actions. This proposal also provides for an optional terminating action for the follow-on repetitive inspections. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to prevent fatigue cracking of the fuselage frames and frame feet, and consequent reduced structural integrity of the fuselage.

DATES: Comments must be received by May 5, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NM–95–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 99–NM–95–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On May 12, 1997, the FAA issued AD 97–11–01, amendment 39–10030 (62 FR 28324, May 23, 1997), applicable to certain Airbus Model A320 series airplanes, to require an initial inspection of fastener holes on certain outer frames of the fuselage to detect fatigue cracking, and modification of the area by cold expanding the holes and installing oversized fasteners. That action was prompted by a report from the manufacturer indicating that, during full-scale fatigue testing of the test article, fatigue cracking was detected in the area where the center fuselage joins the wing. The requirements of that AD are intended to prevent fatigue cracking and consequent reduced structural integrity of this area, which could lead to rapid depressurization of the fuselage.

Actions Since Issuance of Previous Rule

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has advised the FAA that, during accomplishment of the eddy current rotating probe inspection to detect fatigue cracking of fastener holes on certain outer frames of the fuselage (required by AD 97–11–01), some operators have reported also finding cracks in the frame and frame feet at fuselage frames FR37 through FR41, stringer 23. This condition, if not detected and corrected, could result in reduced structural integrity of the fuselage.

Explanation of Relevant Service Information

Airbus has issued Service Bulletin A320–53–1141, Revision 1, dated October 4, 1999. This service bulletin describes procedures for conducting a high frequency eddy current (HFEC) inspection to detect fatigue cracking in the frames and frame feet at fuselage frames FR37 through FR41, and follow-on actions. For cases where no cracking is detected, the follow-on actions include one of the following: (1) Repetitive inspections; (2) the modifications specified in Airbus Service Bulletin A320–53–1128 described below; or (3) if applicable, modification of certain fastener holes of the fuselage frames FR37 through FR41 adjacent to stringer 23, and follow-on repetitive inspections. For certain cracking conditions, the follow-on actions involve a bushing repair, or accomplishment of the modifications in Airbus Service Bulletin A320–53–1128. For certain other cracking conditions, the follow-on actions involve simultaneous replacement of the frame segment or frame foot with a new frame segment or frame foot and accomplishment of the modifications in Airbus Service Bulletin A320–53–1128.

Airbus also has issued Service Bulletin A320–53–1128, Revision 01, including Appendix 01; both dated October 4, 1999. This service bulletin describes procedures for a rotating probe eddy current inspection to detect cracks in the fastener holes where the existing fasteners are removed; repair of the fastener hole; installation of four doublers on each frame; cold working of certain fastener holes; installation of new fasteners in the cold-worked holes; and installation of new modified system brackets at fuselage frames FR37 through FR41. These modifications would improve the fatigue strength in the frame and frame feet of left and right fuselage frames FR37 through FR41, and would eliminate the need for the repetitive HFEC inspections in this area.

Accomplishment of the actions specified in the service bulletins is intended to adequately address the identified unsafe condition. The DGAC classified both of these service bulletins as mandatory for certain actions, recommended Airbus Service Bulletin A320–53–1128 for certain other actions, and issued French airworthiness directive 98–509–123(B), dated December 16, 1998, in order to assure the continued airworthiness of these airplanes in France.

FAA's Conclusions

These airplane models are manufactured in France and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would supersede AD 97–11–01 to require an HFEC inspection to detect fatigue cracking in the frames and frame feet of left and right fuselage frames FR37 through FR41; and follow-on actions. This proposal also would allow for an optional terminating action for the follow-on repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletins described previously, except as discussed below.

Differences Between Proposed Rule and Service Bulletin

Operators should note that, unlike the procedures described in Airbus Service Bulletin A320–53–1141, this proposed AD would not permit further flight if cracks are detected in the frame or frame feet. The FAA has determined that, because of the safety implications and consequences associated with such cracking, any subject frames or frame feet that are found to be cracked must be repaired or modified prior to further flight.

Operators also should note that, in consonance with the findings of the DGAC, the FAA has determined that the repetitive inspections proposed by this AD can be allowed to continue in lieu of accomplishment of a terminating action. In making this determination, the FAA considers that, in this case, long-term continued operational safety will be adequately assured by accomplishing the repetitive inspections to detect cracking before it represents a hazard to the airplane.

Cost Impact

There are approximately 198 airplanes of U.S. registry that would be affected by this proposed AD.

The new HFEC inspection that is proposed in this AD action would take approximately 2 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $23,760, or $120 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no

operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Should an operator elect to accomplish the optional terminating action rather than continue the repetitive inspections, it would take between 297 and 316 work hours per airplane to accomplish the inspection and modification, at an average labor rate of $60 per work hour. Required parts would cost between $40 and $5,290 per airplane. Based on these figures, the cost impact of this optional terminating action is estimated to be between $17,860 and $24,250 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10030 (62 FR 28324, May 23, 1997), and by adding a new airworthiness directive (AD), to read as follows:

Airbus Industrie: Docket 99–NM–95–AD. Supersedes AD 97–11–01, Amendment 39–10030.

Applicability: Model A319, A320, and A321 series airplanes, certificated in any category; except those on which Airbus Modification 25896, 25592, or 25593, or Airbus Service Bulletin A320–53–1128, Revision 01, dated October 4, 1999, has been accomplished.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (g) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking of the fuselage frames and frame feet, and consequent reduced structural integrity of the fuselage, accomplish the following:

Inspection

(a) Perform a high frequency eddy current (HFEC) inspection to detect fatigue cracks in the frames and frame feet at fuselage frames FR37 through FR41, adjacent to stringer 23, at the time specified in paragraph (a)(1), (a)(2), or (a)(3), as applicable; in accordance with Airbus Service Bulletin A320–53–1141, Revision 01, dated October 4, 1999.

(1) For Configuration 01 airplanes, as identified in Airbus Service Bulletin A320–53–1141: Within 3,500 flight cycles after the effective date of this AD.

(2) For Configuration 02 airplanes, as identified in Airbus Service Bulletin A320–53–1141: Within 16,000 flight cycles after accomplishment of Airbus Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994, or within 3,500 flight cycles after the effective date of this AD, whichever occurs later.

(3) For Configurations 03, 04, and 05 airplanes, as identified in Airbus Service Bulletin A320–53–1141: Prior to the accumulation of 20,000 total flight cycles, or within 3,500 flight cycles after the effective date of this AD, whichever occurs later.

Repetitive Inspections or Corrective Action(s)

(b) For Configuration 01 airplanes: If no crack is detected during the HFEC inspection required by paragraph (a) of this AD, accomplish the action specified in either paragraph (b)(1) or (b)(2) of this AD.

(1) Repeat the HFEC inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3,500 flight cycles until accomplishment of paragraph (f) of this AD. Or

(2) Prior to further flight, modify each fastener hole of the outer frame flanges of left and right fuselage frames FR37 through FR41, adjacent to stringer 23, in accordance with Airbus Service Bulletin A320–53–1141, Revision 01, dated October 4, 1999. Within 16,000 flight cycles after accomplishment of this modification, and thereafter at intervals not to exceed 3,500 flight cycles, repeat the HFEC inspection required by paragraph (a) of this AD until accomplishment of paragraph (f) of this AD.

Note 2: Airbus Service Bulletin A320–53–1141, Revision 01, dated October 4, 1999, references Airbus Service Bulletin A320–53–1025, Revision 1, dated November 24, 1994, as an additional source of information for accomplishing the modification required by paragraph (b)(2) of this AD.

Note 3: Accomplishment of the modification in accordance with Airbus Service Bulletin A320–53–1125, dated August 5, 1994, prior to the effective date of this AD, is considered acceptable for compliance with the modification requirements of paragraph (b)(2) of this AD.

(c) For Configurations 02, 03, 04, and 05 airplanes: If no crack is detected during the inspection required by paragraph (a) of this AD, repeat the HFEC inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3,500 flight cycles until accomplishment of paragraph (f) of this AD.

(d) If any crack less than 0.20 inches (5.0 mm) in length is detected during any HFEC inspection required by this AD, prior to further flight, accomplish the actions specified in either paragraph (d)(1) or (d)(2) of this AD.

(1) Repair in accordance with Airbus Service Bulletin A320–53–1141, Revision 01, dated October 4, 1999. Repeat the HFEC inspection required by paragraph (a) of this AD thereafter at intervals not to exceed 3,500 flight cycles. Or

(2) Accomplish the actions specified in paragraph (f) of this AD.

(e) If any crack is 0.20 inches (5.0 mm) or greater in length, or if more than one crack per frame side is detected during any HFEC inspection required by this AD, prior to further flight, simultaneously accomplish the actions specified in paragraphs (e)(1) and (e)(2) of this AD.

(1) Replace the frame segment and/or frame foot with a new frame segment or frame foot in accordance with Airbus Service Bulletin A320–53–1141, Revision 01, dated October 4, 1999. And

(2) Accomplish the actions specified in paragraph (f) of this AD.

Optional Terminating Action

(f) Modification of the frames and frame feet area at fuselage frames FR37 through FR41 (including the rotating probe eddy current inspection to detect cracks, fastener hole repair, installation of doublers on each frame, cold working of specified fastener holes, installation of new fasteners in the cold-worked holes, and installation of new modified system brackets), as applicable, in accordance with Airbus Service Bulletin A320–53–1128, Revision 01, including Appendix 01, both dated October 4, 1999, constitutes terminating action for the requirements of this AD.

Note 4: Accomplishment of the modification in accordance with Airbus Service Bulletin A320–53–1128, including Appendix 1, both dated October 3, 1997, prior to the effective date of this AD, is considered acceptable for compliance with the modification requirements of paragraph (f) of this AD.

Alternative Methods of Compliance

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 5: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(h) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 6: The subject of this AD is addressed in French airworthiness directive 98–509–123(B), dated December 16, 1998.

Issued in Renton, Washington, on March 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8391 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–27–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727–100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 727–100 series airplanes. This proposal would require repetitive inspections to detect corrosion of the lower surface of the wing center section and the surrounding area, and follow-on actions. This proposal is prompted by reports of corrosion progression through the lower surface of the wing center section into the center wing fuel tank, and subsequent fuel leakage into the ram air duct. The actions specified by the proposed AD are intended to detect and correct such conditions, which, if combined with a leak in the primary or secondary heat exchanger, could result in the release of fuel vapors into the cabin, and consequent adverse effects on flight crew and passengers.

DATES: Comments must be received by May 22, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–27–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, PO Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stan Wood, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2772; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–27–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–27–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 7, 1985, the FAA issued AD 85–24–02, amendment 39–5170 (50 FR 47356, November 18, 1985), applicable to all Boeing Model 727–200 series airplanes, which requires repetitive inspections for corrosion, and repair, as necessary, of the lower surface of the wing center section, which forms the upper wall of the ram air plenum chambers.

Since the issuance of that AD, the manufacturer has notified the FAA that certain airplanes were inadvertently not included in the effectivity listing in Boeing Service Bulletin 727–51–17, dated April 26, 1974, which was referenced as the appropriate source of service information for accomplishment of the actions required by AD 85–24–02. That service bulletin describes corrosion inspections for Model 727–200 series airplanes having integral fuel cells installed. Model 727–100 series airplanes were not included in the effectivity of that service bulletin, and consequently, in the applicability of the existing AD, due to the fact that bladder-type fuel cells are installed on the majority of those airplanes. However, it has now been determined that there are three Model 727–100 series airplanes having integral fuel cells installed that are subject to the same unsafe condition as the airplanes that are included in the applicability statement of AD 85–24–02. Therefore, the FAA finds that additional rulemaking is necessary to ensure that the unsafe condition is addressed on all affected airplanes.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 727–51–17, Revision 1, dated January 24, 1986, which describes procedures for repetitive inspections to detect corrosion of the lower surface of the wing center section and the surrounding area, and follow-on actions. The follow-on actions consist of the application of corrosion-inhibiting compound and repair of any corrosion. Accomplishment of the actions described in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Difference Between Proposed Rule and Service Bulletin

Operators should note that Revision 1 of the service bulletin (as well as the original issue of the service bulletin, which was referenced as the appropriate source of service information for accomplishment of the actions required by AD 85–24–02), specifies the effectivity of that service bulletin as, "all Model 727–200 series airplanes." However, the manufacturer has informed the FAA that it has identified three Model 727–100 series airplanes that were inadvertently not included in the effectivity listing and have not accomplished the actions required by that AD. Therefore, the applicability section of this proposed rule specifies only those airplanes (described as Group 1 airplanes in the service bulletin).

Operators also should note that, although the service bulletin specifies that the manufacturer may be contacted for disposition of certain corrosion repair conditions, this proposal would require the repair of those conditions to be accomplished in accordance with a method approved by the FAA.

Cost Impact

There are 3 Model 727–100 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 2 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 12 work hours per airplane to accomplish the proposed inspection, and that the average labor rate is $60 per work hour. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $1,440, or $720 per airplane, per inspection cycle.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) Is not a "significant regulatory action" under Executive Order 12866; (2) Is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) If promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–27–AD.

Applicability: Model 727–100 series airplanes, serial numbers 20512, 20513, and 20533; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To detect corrosion of the lower surface of the wing center section and the surrounding area, and subsequent fuel leakage into the ram air duct, which, if combined with a leak in the primary or secondary heat exchanger, could result in the release of fuel vapors into the cabin, and consequent adverse effects on flight crew and passengers, accomplish the following:

Detailed Visual Inspection

(a) Within 1 year or 3,000 hours time-in-service after the effective date of this AD, whichever occurs first: Perform a detailed visual inspection in accordance with Part II.B. of the Accomplishment Instructions of Boeing Service Bulletin 727–51–17, Revision 1, dated January 24, 1986. Repeat the inspection thereafter at intervals not to exceed 4 years or 8,000 hours time-in-service, whichever occurs first.

Note 2: For the purposes of this AD, a detailed visual inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Follow-On Actions

(1) If no corrosion is detected, prior to further flight, apply corrosion inhibiting compound in accordance with Part II.C. of the Accomplishment Instructions of the service bulletin.

(2) If any corrosion is detected, prior to further flight, repair in accordance with Part II.D. of the Accomplishment Instructions of the service bulletin; or in accordance with a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permit

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on March 30, 2000.

Donald L. Riggin,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 00–8390 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–209601–92]

RIN 1545–AR19

Taxation of Tax-Exempt Organizations' Income From Corporate Sponsorship; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains corrections to a notice of proposed rulemaking and notice of public hearing which was published in the **Federal Register** on Wednesday, March 1, 2000 (65 FR 11012), relating to the tax treatment of sponsorship payments received by exempt organizations.

FOR FURTHER INFORMATION CONTACT: Stephanie Lucas Caden at (202) 622–6080.

SUPPLEMENTARY INFORMATION:

Background

The proposed regulations that are the subject of this correction are under section 512 of the Internal Revenue Code.

Need for Correction

As published, the proposed regulations [REG–209601–92] contain errors that may prove to be misleading and are in need of clarification.

Correction of Publication

Accordingly, the publication of the proposed regulations [REG–209601–92], which were the subject of FR Doc. 00–4848, is corrected as follows:

1. On page 11012, third column, in the preamble, the last sentence under the caption **ADDRESSES** is corrected to read, "The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.".

2. On page 11012, third column, in the preamble, the text under the caption **FOR FURTHER INFORMATION CONTACT** is corrected to read, "Concerning the regulations, Stephanie Lucas Caden at (202) 622–6080; concerning submissions and the hearing, LaNita VanDyke at (202) 622–7180 (not toll-free numbers).".

3. On page 11015, second column, the first sentence of the second paragraph under the caption Comments and Public Hearing is corrected to read, "A public hearing has been scheduled for June 21, 2000, at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.".

§ 1.513–4 [Corrected]

4. On page 11018, third column, in the 22nd line of § 1.513–4(f) *Example 8*, the language "Music Shop's name and address in the lobby" is corrected to read, "Music Shop's name, address and telephone number in the lobby".

Dale D. Goode,

Federal Register Liaison, Assistant Chief Counsel (Corporate).

[FR Doc. 00–8030 Filed 4–4–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–107872–99]

RIN 1545–AXI8

Coordination of Sections 755 and 1060 Relating to Allocation of Basis Adjustments Among Partnership Assets

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the allocation of basis adjustments among partnership assets under section 755. The proposed regulations are necessary to implement section 1060(d), which applies the residual method to certain partnership transactions. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written comments must be received by July 5, 2000.

Outlines of topics to be discussed at the public hearing scheduled for July 12, 2000, must be received by June 21, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–107872–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–107872–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS internet site at http://www.irs.ustreas.gov/tax_regs/reglist.html. The public hearing will be held in room 2716, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Matthew Lay or Craig Gerson, (202) 622–3050; concerning submissions, the hearing, and/or to be placed on the building access list to attend the hearing, LaNita VanDyke, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

As part of the Tax Reform Act of 1986, Congress enacted section 1060, which generally requires the use of the residual method in order to allocate the purchase price of "applicable asset acquisitions" among individual assets purchased. An applicable asset acquisition is defined as any transfer of assets that constitute a trade or business where the transferee's basis is determined wholly by reference to the consideration paid for the assets. Both direct and indirect transfers of a business were intended to be covered by the provision, including "the sale of a partnership interest in which the basis of the purchasing partner's proportionate share of the partnership's assets is adjusted to reflect the purchase price." See section 1060(c) and S. Rep. No. 99–313, 1986–3 C.B. Vol. 3 at 254–255.

In July of 1988, the IRS and the Treasury Department issued temporary and proposed regulations, which, among other things, provided guidance concerning the application of section 1060 and coordinated the application of sections 755 and 1060. TD 8215 (1988–2 C.B. 305).

In 1988, shortly after the IRS and the Treasury Department issued its temporary and proposed regulations, Congress enacted section 1060(d), which expressly addresses the extent to which section 1060 should apply to transactions involving partnerships. As amended in 1993, section 1060(d)(1) applies the section 1060 residual method in the case of a distribution of partnership property or a transfer of an interest in a partnership, but only in determining the value of section 197 intangibles for purposes of applying section 755. Section 1060(d)(2) provides that if section 755 applies, such distribution or transfer (as the case may be) shall be treated as an applicable asset acquisition for purposes of section 1060(b) (which imposes certain reporting requirements for applicable asset acquisitions).

Section 755 governs the allocation of certain adjustments to the basis of partnership property among partnership assets. Section 1.755–2T applies the residual method to transfers and distributions which trigger basis adjustments under section 743(b) (involving certain transfers of partnership interests) or section 732(d) (involving certain distributions within two years of a partnership interest transfer) if the assets of the partnership constitute a trade or business for purposes of section 1060(c). Section 1.755–2T(c) contains a cross reference to the reporting requirements applicable to such transfers and distributions.

Explanation of Provisions

1. Application of Proposed Regulations

The temporary regulations under section 755 apply only if the assets of the partnership comprise a trade or business within the meaning of section 1060(c), and the basis adjustments are made under section 743(b) or section 732(d). They do not apply the residual method in valuing partnership property for the purpose of allocating basis adjustments under section 734(b). However, the temporary regulations were issued prior to the enactment of section 1060(d)(1), which expressly refers to basis adjustments triggered by partnership distributions, and does not reference a trade or business requirement.

The IRS and the Treasury Department anticipate that the regulations under § 1.755–2, when finalized, will apply to all transfers of partnership interests and partnership distributions to which section 755 applies, and not just to transfers and distributions relating to partnerships conducting a trade or business. This approach is consistent with the language of section 1060(d) and is supported by language contained in the legislative history. See H.R. Rep. No. 100–795, at 70 n.34 (1988) (the IRS is not precluded from applying the residual method under other provisions of the Code).

Proposed § 1.755–2(d) contains a cross reference to the reporting requirements applicable to such transfers and distributions.

2. Basis Adjustments Under Section 743(b) or 732(d)

In the case of a basis adjustment under section 743(b) or section 732(d), the proposed regulations determine the fair market value of partnership assets in two steps. In most situations, it first is necessary to determine partnership gross value. Second, partnership gross value must be allocated among partnership property.

(a) Partnership gross value. In general, partnership gross value equals the amount that, if assigned to all partnership property, would result in a liquidating distribution to the partner equal to the transferee's basis in the transferred partnership interest immediately following the relevant transfer (reduced by the amount, if any, of such basis that is attributable to partnership liabilities). Here, the amount paid for the partnership interest provides the frame of reference for valuing the entire partnership.

In the case of basis adjustments which are triggered by an exchange of a partnership interest in which the transferee's basis in the interest is determined in whole or in part by reference to the transferor's basis in the interest (transferred basis exchange), the transferee's basis does not necessarily have any connection to the value of partnership assets. Accordingly, a transferred basis exchange provides no frame of reference for valuing partnership assets. Furthermore, if the valuation rules which apply to other transfers were applied to transferred basis exchanges, then partners could use these exchanges to shift basis from capital gain assets to ordinary income assets, or vice versa. The proposed regulations do not provide a rule addressing transferred basis exchanges. Comments are requested as to how the residual method should apply if basis adjustments under section 743(b) are triggered by transferred basis exchanges, or if basis adjustments under section 732(d) relate to prior transferred basis exchanges.

(b) Allocating partnership gross value among partnership property. Once determined, partnership gross value is allocated among five classes of property, as follows: first among cash and general deposit accounts (including savings and checking accounts) other than certificates of deposit held in banks, savings and loan associations, and other depository institutions (referred to hereafter as cash); then among partnership assets other than cash, capital assets, section 1231(b) property, and section 197 intangibles (referred to hereafter as ordinary income property); then among capital assets and section 1231(b) property other than section 197 intangibles; then among section 197 intangibles other than goodwill and going concern value; and finally to goodwill and going concern value (referred to hereafter as goodwill).

In determining the values to be assigned to assets in the third, fourth, and fifth classes, properties or potential gain within these classes that are treated as unrealized receivables under the flush language in section 751(c) are not counted as assets in the second class. To provide otherwise would be inconsistent with the residual method, because the residual method is justified, at least in part, by the fact that goodwill is not readily subject to valuation. Where goodwill is subject to amortization under section 197, the portion of the intangible that is subject to recapture under section 1245 will be treated as an unrealized receivable under the flush language of section 751(c). To assign value to this portion of the asset in the second class would require a determination that the goodwill has a value equal to at least the amount of the recapture. If these assets are not readily subject to valuation, this determination presumably could not be made. Accordingly, in allocating value among the five classes under the residual method, it is appropriate to include properties or potential gain treated as unrealized receivables under the flush language of section 751(c) within the overall class to which the underlying property belongs rather than treating the section 751(c) portion of such property as a separate asset included in the second class.

Although properties or potential gain treated as unrealized receivables under the flush language of section 751(c) are not included in the second class of assets under these proposed regulations for purposes of allocating value, they are treated as separate assets that are ordinary income property for purposes of allocating basis adjustments among such assets under § 1.755–1.

With respect to allocating value within the asset classes, in general, if the value assigned to a class is less than the sum of the fair market values of the assets in that class (determined without regard to the residual method), then the assigned value must be allocated among the individual assets in proportion to their fair market values. Although, as discussed above, it is not appropriate to treat properties or potential gain treated as unrealized receivables under the flush language of section 751(c) as separate ordinary income assets, it is appropriate to allocate value within each class by giving priority to the portions of the assets that will be taxed at higher rates as ordinary income. Such treatment better equates the basis adjustments of the transferee with the higher taxed income recognized by the transferor, thereby avoiding duplicative recognition of ordinary income on subsequent transfers with respect to the same asset. Accordingly, once values have been assigned generally to the third, fourth, and fifth classes of assets, such values will be assigned within each of these classes first to properties or potential gain treated as unrealized receivables under the flush language in section 751(c), if any, in proportion to the income that would be recognized if the underlying assets were sold for their fair market values (determined without regard to the residual method), but only to the extent of the income attributable to the unrealized receivables. Any remaining value in each class will be allocated among the remaining portions of the assets in that class in proportion to the fair market values of such portions (determined without regard to the residual method).

In general, the value assigned to an asset (other than goodwill) cannot exceed the fair market value (determined without regard to the residual method) of that asset on the date of the relevant transfer. Therefore, if partnership gross value exceeds the aggregate value of the partnership's individual assets, the excess must be allocated entirely to the value of goodwill. However, an exception is provided if partnership gross value exceeds the aggregate value of the partnership's individual assets, and goodwill could not under any circumstances attach to the assets. Under this exception, the excess partnership gross value must be allocated among all partnership assets other than cash in proportion to their fair market values (determined without regard to the residual method).

(c) Special situations. In general, partnership gross value may be determined without reference to the value of individual partnership assets. In calculating partnership gross value, it is only necessary to determine the relevant partner's share of book value in partnership assets and how much book gain or loss must be recognized by the partnership on the disposition of all such assets to cause the partner to receive the appropriate liquidating distribution. The manner in which the book gain or loss is allocated among the partnership's assets generally will not affect the amount of the liquidating distribution to the partner.

In certain circumstances, however, such as where book income or loss with respect to particular partnership properties is allocated differently among partners, partnership gross value may vary depending on the value of particular partnership assets. In these situations, it is not possible to first determine the total value of the partnership (i.e., partnership gross value) and then apply the residual method to allocate that value to the partnership's individual assets. Instead, it is necessary first to determine the fair market value of the partnership's individual assets (determined taking into account all relevant facts and circumstances), and then to assign such value among the asset tiers described in the residual method such that the combined value of all partnership assets would cause the appropriate distribution to the relevant partner. The proposed regulations include a rule to address these special situations. In addition, under this rule, if the value determined for assets in the first four asset classes is not sufficient to cause the appropriate liquidating distribution, then, so long as goodwill could attach to the assets of the partnership, the value of goodwill is presumed to be an amount that, if assigned to such property, would cause the appropriate liquidating distribution.

3. Basis Adjustments Under Section 734(b)

The proposed regulations do not provide a rule for valuing partnership assets in the case of distributions that result in a basis adjustment under section 734(b). The IRS and the Treasury Department have considered several alternative approaches, described below. Two of these approaches utilize a method similar to the one provided for basis adjustments under sections 743(b) and 732(d); that is, first determine partnership gross value and then allocate such amount among the partnership property applying the residual method. The third approach does not rely on the concept of partnership gross value. The IRS and the Treasury Department request comments as to which, if any, of these approaches should be utilized in applying the residual method in the context of basis adjustments under section 734(b). In addition, comments are requested concerning whether the second or third approach should be adopted in the context of basis adjustments under sections 743(b) and 732(d) involving transferred basis transactions.

Under the first approach, in the case of a distribution which results in a basis adjustment under section 734(b) and which causes the distributee partner's interest in the partnership to decrease, partnership gross value would be deemed to equal the amount that, if assigned to all partnership property, would result in a liquidating distribution to the partner (attributable to the reduction in interest) equal to the value of the consideration received by the distributee partner in the distribution. Under this approach, the amount distributed in exchange for the relinquished interest would provide the frame of reference for valuing the entire partnership. The reduction in a partner's interest could be measured as the difference between the partner's interest in the partnership immediately before the distribution and the partner's interest in the partnership immediately after the distribution. However, the IRS and the Treasury Department recognize that measuring the reduction in a partner's interest in the partnership in connection with a distribution can be difficult in some situations (for example, situations in which partners do not share profits or other items in proportion to their relative capital account balances). Moreover, in the case of a distribution that results in a basis adjustment under section 734(b) and does not reduce the distributee partner's interest in the partnership (such as in a pro rata distribution of cash), the transaction provides no frame of reference to value the partnership.

A second approach would be to determine partnership gross value as the value of the entire partnership as a going concern, and to apply the residual method by reference to that overall value. This method has the disadvantage of divorcing the valuation of partnership property from the transaction that gives rise to the adjustment. However, there would be no need to measure the reduction in the distributee partner's interest or even to have a reduction in the distributee partner's interest to apply this method. The method would work equally well for distributions where the partner's interest in the partnership is reduced and for distributions where it is not.

Under a third possible approach, the concept of partnership gross value would be disregarded, and, instead, value would be allocated to goodwill for

section 755 purposes only if the amount of a positive basis adjustment under section 734(b) exceeds the appreciation in all assets of the character required to be adjusted which are not goodwill. This approach avoids the problems relating to the measurement or presence of a reduction in the distributee partner's interest and has the added benefit of avoiding a valuation of the partnership's overall operations. In contrast with the second approach, however, the value that is assigned to goodwill under this approach would not necessarily bear any relation to the actual value of goodwill in the hands of the partnership. In addition, this rule arguably would be inconsistent with the rule in § 1.755–1(c), which requires that positive basis adjustments must be allocated to undistributed property of like character to the distributed property (or capital gain property in the case of adjustments attributable to gain recognized by the distributee partner) first in proportion to unrealized appreciation with respect to such property and then in proportion to fair market value. Under the third approach, a basis adjustment under section 734(b) to the class of assets composed of capital assets and property described in section 1231(b) could not exceed the unrealized appreciation with respect to any such partnership property other than goodwill. Accordingly, a section 734(b) basis adjustment never would be made in proportion to the fair market value of the property in the class of capital assets and property described in section 1231(b).

4. Effect on § 1.755–1

Section 1.755–1(b)(3)(ii)(B) of the Income Tax Regulations published on December 15, 1999 (64 FR 69903) contains a rule allocating discounts among capital assets following the transfer of a partnership interest that results in a basis adjustment under section 743(b). Because proposed § 1.755–2 takes discounts and premiums into account when assigning values to partnership property for purposes of section 755 in such cases, the rule in § 1.755–1(b)(3)(ii)(B) would become unnecessary.

5. Possible Expansion of Regulations

With respect to transfers of partnership interests, the IRS and the Treasury Department are considering applying the rules contained in these proposed regulations not just for valuing partnership assets for purposes of applying section 755, but also to determine the value of assets for purposes of applying section 1(h)(6)(B) (collectibles gain or loss) with respect to partnerships, section 1(h)(7) (section 1250 capital gain), and section 751(a) (ordinary income treatment upon sale or exchange of an interest in a partnership). Applying the rules in these proposed regulations in connection with these provisions is consistent with the legislative history to section 1060(d) and would provide greater uniformity with respect to the amount and character of income recognized upon the transfer of a partnership interest and the basis adjustments to partnership assets to which the different income character is attributable. However, this application of the rules could cause an increase in complexity, particularly if a section 754 election is not in effect for a year in which the transfer of a partnership interest occurs (so that application of the residual method otherwise would not be required). The IRS and the Treasury Department request comments on whether partnerships should value partnership assets using the residual method for purposes of sections 1(h)(6)(B), 1(h)(7), and 751(a).

Proposed Effective Date

The regulations are proposed to be effective for any basis adjustment resulting from any distribution of partnership property or transfer of a partnership interest that occurs on or after the date final regulations are published in the **FEDERAL REGISTER.**

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small businesses.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are timely submitted to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed rule and how it may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for July 12, 2000, beginning at 10 a.m., in room 2716 of the Internal Revenue Building. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of the preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons that wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by June 21, 2000.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Matthew Lay of the Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, personnel from other offices of the IRS and the Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a new entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.755–2 also issued under 26 U.S.C. 755 and 26 U.S.C. 1060. * * *

Par. 2. Section 1.755–2 is added to read as follows:

§ 1.755–2 Coordination of sections 755 and 1060.

(a) *Coordination with section 1060*—(1) *In general.* If there is a basis adjustment to which this section applies, the partnership must determine the fair market value of each item of partnership property under the residual method, as described in paragraph (b) of this section, and the rules of § 1.755–1 must be applied using the values so determined.

(2) *Application of this section.* This section applies to any basis adjustment made under section 743(b) (relating to certain transfers of interests in a partnership) or section 732(d) or section 734(b) (relating to certain partnership distributions).

(b) *Residual method*—(1) *In general*—(i) *Five classes.* (A) Except as provided in paragraph (b)(3) of this section, partnership gross value (as defined in paragraph (c) of this section) is allocated among five asset classes in the following order—

(*1*) Among cash and general deposit accounts (including savings and checking accounts) other than certificates of deposit held in banks, savings and loan associations, and other depository institutions (referred to hereafter as cash);

(*2*) Among partnership assets other than cash, capital assets, section 1231(b) property, and section 197 intangibles (referred to hereafter as ordinary income property);

(*3*) Among capital assets and section 1231(b) property other than section 197 intangibles;

(*4*) Among section 197 intangibles other than goodwill and going concern value; and

(*5*) To goodwill and going concern value (referred to hereafter as goodwill).

(B) In determining the values to be assigned to each class, properties or potential gain treated as unrealized receivables under the flush language in section 751(c) are not counted as assets in the second class. For example, any portion of goodwill that would result in ordinary income under section 1245 if the goodwill were sold would be included in the residual class for goodwill.

(ii) *Impaired classes.* If the value assigned to a class is less than the sum of the fair market values (determined under paragraph (b)(2)(i) of this section) of the assets in that class, then the assigned value generally must be allocated among the individual assets in proportion to such fair market values. However, in the third, fourth, and fifth classes, values must be assigned first to properties or potential gain treated as unrealized receivables under the flush language in section 751(c), if any, in proportion to the income that would be recognized if the underlying assets were sold for their fair market values (determined under paragraph (b)(2)(i) of this section), but only to the extent of the income attributable to the unrealized receivables. Any remaining value in each class will be allocated among the remaining portions of the assets in that class in proportion to the fair market values of such portions (determined under paragraph (b)(2)(i) of this section).

(2) *Special rules.* For purposes of this section:

(i) Except as otherwise provided in this section, the fair market value of each item of partnership property (other than goodwill) shall be determined on the basis of all the facts and circumstances, taking into account section 7701(g).

(ii) If goodwill could not under any circumstances attach to the assets of a partnership, then the value of goodwill is zero. This might occur, for example, if a partnership's only asset is a vacant parcel of real estate that does not produce current income.

(iii) (A) The value assigned to an asset (other than goodwill) shall not exceed the fair market value (determined under paragraph (b)(2)(i)) of that asset on the date of the relevant transfer, unless—

(*1*) Partnership gross value (as defined in paragraph (c) of this section) exceeds the aggregate value of the partnership's individual assets; and

(*2*) Goodwill could not under any circumstances attach to the assets.

(B) If both of these conditions are satisfied, the excess must be allocated among all partnership assets other than cash in proportion to such fair market values.

(3) *Special situations.* In certain circumstances, such as where book income or loss with respect to particular partnership properties is allocated differently among partners, partnership gross value may vary depending on the value of particular partnership assets. In these special situations, the fair market value of each item of partnership property (other than goodwill) first shall be determined on the basis of all the facts and circumstances, taking into account section 7701(g). Such value then shall be assigned within the first four asset classes under the residual method described in paragraph (b)(1) of this section in a manner that is consistent with the ordering rule used in paragraph (b)(1) of this section (together with the special rules in paragraph (b)(2) of this section) so that the amount of the liquidating distribution described in paragraph (c)(1) of this section would equal the transferee's basis in the transferred partnership interest. If the value so determined for the assets in the first four asset classes is not sufficient to cause the appropriate liquidating distribution, then, so long as goodwill may attach to the assets of the partnership, the fair market value of goodwill shall be presumed to equal an amount that if assigned to goodwill would cause the appropriate liquidating distribution.

(c) *Partnership gross value*—(1) *Basis adjustments under section 743(b) and section 732(d)*—(i) *In general.* In the case of a basis adjustment under section 743(b) or 732(d), partnership gross value generally is equal to the amount that, if assigned to all partnership property, would result in a liquidating distribution to the partner equal to the transferee's basis in the transferred partnership interest immediately following the relevant transfer (reduced by the amount, if any, of such basis that is attributable to partnership liabilities) pursuant to the hypothetical transaction (as defined in paragraph (c)(3) of this section). Solely for the purpose of determining partnership gross value under the preceding sentence, where a partnership interest is transferred as a result of the death of a partner, the transferee's basis in its partnership interest is determined without regard to section 1014(c), and is deemed to be adjusted for that portion of the interest, if any, which is attributable to items representing income in respect of a decedent under section 691.

(ii) *Transferred basis transactions.* [Reserved]

(2) *Basis adjustments under section 734(b).* [Reserved]

(3) *Hypothetical transaction.* For purposes of this paragraph (c), the hypothetical transaction means the disposition by the partnership of all partnership property in a fully taxable transaction for cash, followed by the payment of all partnership liabilities (within the meaning of section 752 and the regulations thereunder), and the distribution of all remaining proceeds to the partners.

(d) *Required statements.* See § 1.743–1(k)(2) for provisions requiring the transferee of a partnership interest to provide information to the partnership relating to the transfer of an interest in the partnership. See § 1.743–1(k)(1) for a provision requiring the partnership to attach a statement to the partnership return showing the computation of a basis adjustment under section 743(b) and the partnership properties to which the adjustment is allocated under section 755. See § 1.732–1(d)(3) for a

provision requiring a transferee partner to attach a statement to its return showing the computation of a basis adjustment under section 732(d) and the partnership properties to which the adjustment is allocated under section 755. See § 1.732–1(d)(5) for a provision requiring the partnership to provide information to a transferee partner reporting a basis adjustment under section 732(d).

(e) *Examples.* The provisions of this section are illustrated by the following examples, which assume that the partnerships have an election in effect under section 754 at the time of the transfer. Except as provided, no partnership asset (other than inventory) is property described in section 751(a). The examples are as follows:

Example 1. (i) A is the sole general partner in ABC, a limited partnership. ABC has goodwill and three other assets with fair market values (determined under paragraph (b)(2)(i) of this section) as follows: inventory worth $1,000,000, a building (a capital asset) worth $2,000,000, and section 197 intangibles (other than goodwill) worth $800,000. ABC has one liability of $1,000,000, for which A bears the entire risk of loss under section 752 and the regulations thereunder. Each partner has a one-third interest in partnership capital and profits. D purchases A's partnership interest for $1,000,000.

(ii) D's basis in the transferred partnership interest (reduced by the amount of such basis that is attributable to partnership liabilities) is $1,000,000 ($2,000,000–$1,000,000). Under paragraph (c) of this section, partnership gross value is $4,000,000 (the amount that, if assigned to all partnership property, would result in a liquidating distribution to D equal to $1,000,000).

(iii) Under paragraph (b) of this section, partnership gross value is allocated first to the inventory ($1,000,000), then to the building ($2,000,000), and third to section 197 intangibles $800,000. The partnership must allocate the remainder of partnership gross value, $200,000, to goodwill ($4,000,000–$3,800,000). D's section 743(b) adjustment must be allocated under § 1.755–1 using these fair market value calculations for the partnership's assets.

Example 2. (i) D is the sole general partner in DEF, a limited partnership. DEF has goodwill and three other assets with fair market values (determined under paragraph (b)(2)(i) of this section) as follows: inventory worth $1,000,000, a building (a capital asset) worth $2,000,000, and equipment (section 1231(b) property) worth $750,000. DEF has one liability of $1,000,000, for which D bears the entire risk of loss under section 752 and the regulations thereunder. Each partner has a one-third interest in partnership capital and profits. If the equipment were sold for $750,000, $250,000 would be depreciation recapture treated as an unrealized receivable under the flush language in section 751(c). G purchases E's limited partnership interest for $750,000.

(ii) Under paragraph (c) of this section, partnership gross value is $3,250,000 (the amount that, if assigned to all partnership property, would result in a liquidating distribution to G equal to $750,000).

(iii) Under paragraph (b) of this section, partnership gross value is allocated first to inventory ($1,000,000), and then to the class containing capital assets and section 1231(b) property ($2,250,000). Within that class, value must be assigned first to the $250,000 ordinary gain portion of the equipment (properties or potential gain treated as unrealized receivables under the flush language in section 751(c)). The remaining value in the class ($2,250,000 minus $250,000, which is $2,000,000) must be allocated among the remaining portions of the assets in that class in proportion to the fair market values of such portions (determined under paragraph (b)(2)(i) of this section). The remaining portion of the building is $2,000,000. The remaining portion of the equipment is $500,000 ($750,000, its fair market value, minus $250,000, the section 751(c) portion). Thus, the remaining portion of the building will be allocated $1,600,000 ($2,000,000 multiplied by $2,000,000/$2,500,000) and the remaining portion of the equipment will be allocated $400,000 ($2,000,000 multiplied by $500,000/$2,500,000). Nothing is allocated to goodwill. G's section 743(b) adjustment must be allocated under § 1.755–1 using these fair market value calculations for the partnership's assets.

Example 3. (i) G and H are partners in partnership GH. GH has goodwill and three other assets with fair market values (determined under paragraph (b)(2)(i) of this section) as follows: inventory worth $1,000,000 and two buildings (capital assets), each worth $500,000. GH has no liabilities. The GH partnership agreement provides that the partners will allocate all income, gain, loss, and deductions equally, except with respect to depreciation, loss, and gain from the buildings. With respect to the buildings, depreciation and loss are allocated two-thirds to G and one-third to H. Gain from the disposition of the buildings is charged back two-thirds to G and one-third to H to the extent of accrued depreciation, and then is allocated equally between G and H. G transfers one-half of its interest in GH to I for $450,000. At the time of the transfer, the book value of the inventory is $900,000, the book value of each building is $300,000, and $150,000 of book depreciation has accrued with respect to each building. The capital account attributable to the partnership interest purchased by I from G is equal to $350,000. H's capital account is equal to $800,000, and the capital account attributable to G's retained partnership interest is equal to $350,000.

(ii) Because gain with respect to the inventory and buildings are shared in different ratios as between H, and G and I, a partnership gross value cannot be determined without assuming values for the individual assets of the partnership. Accordingly, the rule for special situations in paragraph (b)(3) of this section must be used to compute the value of the partnership's assets.

(iii) Applying paragraph (b)(2)(i) of this section, the fair market value of the inventory is $1,000,000 and the fair market value of each building is $500,000. These values would result in a liquidating distribution to I under paragraph (c)(1) of this section equal to $500,000, determined as follows. The book gain from the sale of the inventory would equal $100,000 ($1,000,000 − $900,000) and the book gain from the sale of each building would equal $200,000 ($500,000 − $300,000). Book gain from the inventory equal to $25,000 ($100,000 × ¼) and book gain from each building equal to $62,500 (($150,000 × ⅓) + ($50,000 × ¼)) would be allocated to I. The sum of this book gain ($25,000 + $62,500 + $62,500 = $150,000) and I's capital account inherited from G ($350,000) would equal $500,000.

(iv) Because I's basis in the transferred partnership interest is only $450,000, under paragraph (b)(2)(ii) of this section, the value with respect to the buildings must be reduced in proportion to the fair market values of such assets to an amount that would cause a liquidating distribution to I equal to $450,000. This calculation is accomplished as follows. In order for I to receive a liquidating distribution of $450,000, the book gain attributable to the buildings that is allocated to I must equal $75,000 ($350,000 inherited capital account + $25,000 book gain from inventory + $75,000 book gain from buildings). Each building has the same book value and fair market value, and the allocations with respect to each building are the same as between G, H, and I. Accordingly, I's share of book gain should be allocated equally between the two buildings, $37,500 to each. In order for I to be allocated $37,500 of book gain with respect to each building, the total amount of book gain with respect to each building would have to be $112,500 ($112,500 × ⅓ = $37,500). Adding this book gain to the current book value of each building results in a value for each building of $412,500 ($300,000 + $112,500). Nothing is allocated to goodwill. I's section 743(b) adjustment must be allocated under § 1.755–1 using these fair market value calculations for the partnership's assets.

Example 4. The facts are the same as *Example 3*, except that I purchases one-half of G's partnership interest for $550,000. Because the fair market value of the partnership's assets (as determined under paragraph (b)(2)(i) of this section) in the first four asset classes under the residual method is not sufficient to cause a liquidating distribution to I equal to its basis in the purchased interest (i.e., $550,000), the additional value necessary to cause such a distribution must be allocated to goodwill. Accordingly, under paragraph (b)(3) of this section, the value of the partnership's assets is as follows: inventory $1,000,000, each building $500,000, and goodwill $200,000. I's section 743(b) adjustment must be allocated under § 1.755–1 using these fair market value calculations for the partnership's assets.

(f) *Effective date.* This section applies to any basis adjustment resulting from any distribution of partnership property or transfer of a partnership interest that occurs on or after the date final regulations are published in the **Federal Register.**

§ 1.755–2T [Removed]

Par. 3. Section 1.755–2T is removed.

Robert E. Wenzel,
Deputy Commissioner of Internal Revenue.
[FR Doc. 00–8276 Filed 4–4–00; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1, 20, and 25

[REG–100291–00]

RIN 1545–AX74

Lifetime Charitable Lead Trusts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: These proposed regulations relate to the definitions of a guaranteed annuity interest and a unitrust interest for purposes of the income, gift, and estate tax charitable deductions. The proposed regulations will affect taxpayers who make transfers to charitable lead trusts. The purpose of these proposed regulations is to restrict the permissible terms for charitable lead trusts in order to eliminate the potential for abuse. This document also provides notice of a public hearing.

DATES: Written and electronic comments must be received by June 23, 2000. Outlines of topics to be discussed at the public hearing scheduled for June 29, 2000, must be received by June 8, 2000.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG–100291–00), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may also be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG–100291–00), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.gov/tax_regs/regslist.html. The public hearing will be held in room 4718, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Scott S. Landes, (202) 622–3090; concerning submissions of comments, the hearing, and/or to be placed on the building access list to attend the hearing, Guy R. Traynor, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

In general, if interests in the same property are transferred for both charitable and noncharitable purposes, the charitable interest will qualify for the charitable deduction for federal income, gift, and estate tax purposes only if the interest is in one of certain prescribed forms. If the charitable interest is not a remainder interest, sections 170, 2522, and 2055 of the Internal Revenue Code (Code) require that the charitable interest be in the form of either a guaranteed annuity interest or a fixed percentage of the annual fair market value of the property (unitrust interest). In addition, an income tax charitable deduction is available only if the grantor is treated as the owner of the entire trust under subpart E, part I of subchapter J of the Code.

The requirement that a nonremainder interest passing to charity be in the form of a guaranteed annuity interest or a unitrust interest was added to the Code by the Tax Reform Act of 1969. That Act also added the requirement that a remainder interest passing to charity must generally be in the form of a charitable remainder unitrust or annuity trust or a pooled income fund. The statutory provisions for charitable remainder trusts and pooled income funds specifically state the permissible terms for these entities. Section 664(d)(1)(A) and (d)(2)(A) provide that the permissible term for a charitable remainder trust is a period of years (not to exceed 20 years) or the life or lives of individuals who are living at the creation of the trust. Similarly, section 642(c)(5)(A) provides that the permissible term for the noncharitable income interest in a pooled income fund is the life of one or more beneficiaries living at the time of the transfer.

Unlike the statutory provisions for charitable remainder trusts and pooled income funds, neither the statute nor the legislative history sets forth the permissible term for which a charitable guaranteed annuity interest or a unitrust interest must be paid. Rather, the permissible term for these interests is set forth in the regulations as either a specified term of years, or the life or lives of an individual or individuals, each of whom must be living at the date of the transfer and can be ascertained at such date.

The IRS and the Treasury Department are aware of situations in which taxpayers attempt to take advantage of the regulations by using an unrelated individual's measuring life, as the term of a charitable lead trust, to artificially inflate the charitable deduction. Taxpayers select as a measuring life an individual who is seriously ill but not "terminally ill" within the meaning of the section 7520 regulations. Because the individual is not "terminally ill" as defined in the regulations, the charitable interest is valued based on the actuarial tables. These tables take into account the life expectancies of all individuals of the same age as the individual who is the measuring life, even though such individual has been carefully chosen because he or she likely will not live to an average life expectancy. When the seriously ill individual dies prematurely, the amount the charity actually receives will be significantly less than the amount on which the gift or estate tax charitable deduction was based. Conversely, the amount of the actual transfer to the remainder beneficiaries will be significantly greater than the amount subject to gift or estate tax.

These charitable lead trusts are being marketed in a package which includes the name of a seriously ill individual and access to the individual's medical records. A token payment is made to the ill individual who is serving as a measuring life. Sometimes the individual is led to believe that a charitable organization interested in the individual's particular illness will receive some benefit from the transaction. In the words of one author, "[t]his technique (which is not strictly speaking wealth transfer planning for the terminally ill, but rather wealth transfer planning using the terminally ill) falls somewhere between ghoulish and grotesque." Marketing schemes that exploit the misfortunes of some for the benefit of others are contrary to public policy.

The IRS and the Treasury Department believe that this scheme is abusive and frustrates the Congressional purpose in limiting the charitable deduction to specific types of split-interest transfers.

Congress enacted the provisions regarding guaranteed annuity interests, unitrust interests, charitable remainder trusts, and pooled income funds in order to ensure that the amount the taxpayer claims as a charitable deduction reasonably correlates to the amount ultimately passing to the charitable organization. H.R. Rep. No. 413 (Part 1), 91st Cong., 1st Sess. 61 (1969); S. Rep. No. 552, 91st Cong., 1st Sess. 93 (1969). In this scheme, taxpayers choose a measuring life that ensures the amount passing to charity will be substantially less than the allowable charitable deduction. This kind of adverse selection of an unrelated measuring life to artificially inflate the charitable deduction is contrary to Congressional intent.

Explanation of Provisions

Under the proposed regulations, the permissible term for guaranteed annuity interests and unitrust interests is either a specified term of years, or the life of certain individuals living at the date of the transfer. Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable guaranteed annuity interest or unitrust interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a guaranteed annuity or unitrust interest even if the governing instrument contains a "savings clause" intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. For example, a guaranteed annuity or unitrust interest that will terminate on the earlier of 30 years or 21 years after the death of the last survivor of the descendants of any grandparent of the donor living on the date of the creation of the interest will be treated as payable for a specified term of years.

The proposed regulations will allow the use of an individual's measuring life when appropriate for estate planning purposes. Thus, the regulations permit the donor, the donor's spouse, or an individual who is an ancestor of the remainder beneficiaries to be used as the measuring life. A transfer using the donor or the donor's spouse as the measuring life is a substitute for a testamentary disposition to the remainder beneficiaries. In other situations, the donor may desire to benefit an individual's heirs only after the death of the individual currently providing their support. For example, a donor may establish a charitable lead trust for the life of the donor's sibling with the sibling's children named as the remainder beneficiaries. A measuring life unrelated to the remainder beneficiaries is not appropriate for estate planning purposes and therefore is not permitted under the proposed regulations.

The proposed regulations apply to transfers to inter vivos charitable lead trusts made on or after April 4, 2000. In addition, the proposed regulations apply to transfers made pursuant to wills or revocable trusts where the decedent dies on or after April 4, 2000. Two exceptions from the application of the proposed regulations are provided in the case of transfers pursuant to a will or revocable trust executed on or before April 4, 2000. One exception is for a decedent who dies on or before the date that is 6 months after the date these regulations are published as final regulations without having republished the will (or amended the trust) by codicil or otherwise. The other exception is for a decedent who was on April 4, 2000 under a mental disability to change the disposition of the decedent's property, and either does not regain competence to dispose of such property before the date of death, or dies prior to the later of: 90 days after the date on which the decedent first regains competence, or 6 months after the date these regulations are published as final regulations without having republished the will (or amended the trust) by codicil or otherwise.

The IRS will not disallow the charitable deduction where the charitable interest is payable for the life of an individual, other than one permitted under the proposed regulations, if the interest is reformed into a lead interest payable for a specified term of years. The term of years must be determined by taking the factor for valuing the annuity or unitrust interest for the named individual's measuring life and identifying the term of years (rounded up to the next whole year) that corresponds to the equivalent term of years factor for an annuity or unitrust interest. For example, in the case of an annuity interest payable for the life of an individual age 40 at the time of the transfer, assuming an interest rate of 7.4% under section 7520, the annuity factor from column 1 of Table S(7.4), contained in Publication 1457, Book Aleph, for the life of an individual age 40 is 12.0587. (Publication 1457 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.) Based on Table B(7.4), contained in Publication 1457, Book Aleph, the factor 12.0587 corresponds to a term of years between 31 and 32 years. Accordingly, the annuity interest must be reformed into an interest payable for a term of 32 years. In the case of inter vivos transfers, a judicial reformation must be commenced prior to the later of: (1) The date that is 6 months after the date these regulations are published as final regulations; or (2) October 15th of the year following the year in which the transfer is made. In the case of testamentary transfers, a judicial reformation must be commenced prior to the later of: (1) The date that is 6 months after the date these regulations are published as final regulations; or (2) the date prescribed by section 2055(e)(3)(C)(iii). Any judicial reformation must be completed within a reasonable time after it is commenced. A non-judicial reformation is permitted if effective under state law, provided it is completed by the date on which a judicial reformation must be commenced.

An alternative to reformation may be available for any transfer made on or after April 4, 2000 and on or before the date that is 60 days after the date these regulations are published as final regulations. If a court, in a proceeding that is commenced within 6 months after these regulations are published as final regulations, declares the transfer null and void ab initio, the Service will treat such transfer in a manner similar to that described in section 2055(e)(3)(J).

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these proposed regulations, and because these proposed regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Code, the proposed regulations will be submitted to the Small Business Administration for comment on their impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and eight (8) copies) or electronic comments that are submitted timely (in the manner described in the **ADDRESSES** portion of this preamble) to the IRS. The IRS and the Treasury Department request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for June 29, 2000, at 10 a.m., room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the 10th Street entrance, located between Constitution and Pennsylvania Avenues, NW. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 15 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit comments by June 23, 2000, and submit an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by June 8, 2000.

A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these proposed regulations is Scott S. Landes, Office of the Chief Counsel, IRS. Other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 20

Estate taxes, Reporting and recordkeeping requirements.

26 CFR Part 25

Gift taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 1, 20, and 25 are proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding a new entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Section 1.170A–6 also issued under 26 U.S.C. 170(f)(4); 26 U.S.C. 642(c)(5). * * *

Par. 2. Section 1.170A–6 is amended as follows:

1. Paragraph (c)(2)(i)(A) is amended as follows:

a. In the first sentence, the comma is removed.

b. In the second sentence, the language "of years" is added after the word "term", the language "an individual or individuals" is removed, and "certain individuals" is added in its place.

c. The third sentence is removed, and four new sentences are added in its place.

d. In the sentence beginning "For example, the amount", the language "of years" is added after the word "term", the language "an individual" is removed, and "the donor" is added in its place.

2. Paragraph (c)(2)(ii)(A) is amended as follows:

a. In the fifth sentence, the language "of years" is added after the word "term", "an individual or individuals" is removed, and "certain individuals" is added in its place.

b. The last sentence is removed, and four new sentences are added in its place.

3. Paragraph (e) is amended by adding four sentences to the end of the paragraph.

4. The authority citation at the end of the section is removed.

The additions read as follows:

§ 1.170A–6 Charitable contributions in trust.

* * * * *

(c) * * *

(2) * * *

(i) * * * (A) * * * Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable guaranteed annuity interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a guaranteed annuity interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. * * *

* * * * *

(ii) * * * (A) * * * Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable unitrust interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a unitrust interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust.

* * * * *

(e) *Effective date.* * * * In addition, the rule in paragraphs (c)(2)(i)(A) and (ii)(A) of this section that guaranteed annuity interests and unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals, applies to transfers made on or after April 4, 2000. If a transfer is made to a trust on or after April 4, 2000 that uses an individual other than one permitted in paragraphs (c)(2)(i)(A) and (ii)(A) of this section, the trust may be reformed to satisfy this rule. As an alternative to reformation, rescission may be available for a transfer made on or before the date that is 60 days after the date these regulations are published as final regulations. See § 25.2522(c)–3(e) of this chapter for the requirements concerning reformation or possible rescission of these interests.

PART 20—ESTATE TAX; ESTATES OF DECEDENTS DYING AFTER AUGUST 16, 1954

Par. 3. The authority citation for part 20 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 4. Section 20.2055–2 is amended as follows:

1. Paragraph (e)(2)(vi)(*a*) is amended as follows:

a. In the third sentence, the language "of years" is added after the word "term", the language "an individual or individuals" is removed, and "certain individuals" is added in its place.

b. The fourth sentence is removed, and four new sentences are added in its place.

c. In the sentence beginning "For example, the amount", the language "of years" is added after the word "term", the language "an individual" is removed, and "the decedent's spouse" is added in its place.

2. Paragraph (e)(2)(vii)(*a*) is amended as follows:

a. In the sixth sentence, the language "of years" is added after the word "term", the language "of an individual or individuals" is removed, and "of certain individuals" is added in its place.

b. The last sentence is removed, and four new sentences are added in its place.

3. Paragraph (e)(3) is amended as follows:

a. The period at the end of paragraph (e)(3)(ii)(*c*) is removed, a comma is added and the word "and" is added after the comma.

b. A new paragraph (e)(3)(iii) is added.

The additions read as follows:

§ 20.2055–2 Transfers not exclusively for charitable purposes.

* * * * *

(e) * * *

(2) * * *

(vi) * * * (*a*) * * * Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable guaranteed annuity interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a guaranteed annuity interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. * * *

* * * * *

(vii) * * * (*a*) * * * Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable unitrust interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a unitrust interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust.

* * * * *

(3) * * *

(iii) The rule in paragraphs (e)(2)(vi)(*a*) and (vii)(*a*) of this section that guaranteed annuity interests or unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals, is generally effective in the case of transfers pursuant to wills and revocable trusts where the decedent dies on or after April 4, 2000. Two exceptions from the application of the rule in paragraphs (e)(2)(vi)(*a*) and (vii)(*a*) of this section are provided in the case of transfers pursuant to a will or revocable trust executed on or before April 4, 2000. One exception is for a decedent who dies on or before the date that is 6 months after the date these regulations are published as final regulations without having republished the will (or amended the trust) by codicil or otherwise. The other exception is for a decedent who was on April 4, 2000 under a mental disability to change the disposition of the decedent's property, and either does not regain competence to dispose of such property before the date of death, or dies prior to the later of: 90 days after the date on which the decedent first regains competence, or 6 months after the date these regulations are published as final regulations without having republished the will (or amended the trust) by codicil or otherwise. If a guaranteed annuity interest or unitrust interest created pursuant to a will or revocable trust where the decedent dies on or after April 4, 2000 uses an individual other than one permitted in paragraphs (e)(2)(vi)(*a*) and (vii)(*a*) of this section, and the interest does not qualify for this transitional relief, the interest may be reformed into a lead interest payable for a specified term of years. The term of years is determined by taking the factor for valuing the annuity or unitrust interest for the named individual measuring life and identifying the term of years (rounded up to the next whole year) that corresponds to the equivalent term of years factor for an annuity or unitrust interest. For example, in the case of an annuity interest payable for the life of an individual age 40 at the time of the transfer, assuming an interest rate of 7.4% under section 7520, the annuity factor from column 1 of Table S(7.4), contained in IRS Publication 1457, Book Aleph, for the life of an individual age 40 is 12.0587. (Publication 1457 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.) Based on Table B(7.4), contained in Publication 1457, Book Aleph, the factor 12.0587 corresponds to a term of years between 31 and 32 years. Accordingly, the annuity interest must be reformed into an interest payable for a term of 32 years. A judicial reformation must be commenced prior to the later of the date that is 6 months after the date these regulations are published as final regulations, or the date prescribed by section 2055(e)(3)(C)(iii). Any judicial reformation must be completed within a reasonable time after it is commenced. A non-judicial reformation is permitted if effective under state law, provided it is completed by the date on which a judicial reformation must be commenced. In the alternative, if a court, in a proceeding that is commenced on or before 6 months after these regulations are published as final regulations, declares any transfer made pursuant to a will or revocable trust where the decedent dies on or after April 4, 2000 and on or before the date that is 60 days after the date these regulations are published as final regulations, null and void *ab initio*, the Internal Revenue Service will treat such transfers in a manner similar to that described in section 2055(e)(3)(J).

* * * * *

PART 25—GIFT TAX; GIFTS MADE AFTER DECEMBER 31, 1954

Par. 5. The authority citation for part 25 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 6. Section 25.2522(c)–3 is amended as follows:

1. Paragraph (c)(2)(vi)(*a*) is amended as follows:

a. In the third sentence, the language "of years" is added after the word "term", the language "a named individual or individuals" is removed, and "certain individuals" is added in its place.

b. The fourth sentence is removed, and four new sentences are added in its place.

c. In the sentence beginning "For example, the amount", the language "of years" is added after the word "term", the language "an individual" is removed, and "the donor" is added in its place.

2. Paragraph (c)(2)(vii)(*a*) is amended as follows:

a. In the sixth sentence, the language "of years" is added after the word "term", the language "an individual or individuals" is removed, and "certain individuals" is added in its place.

b. The last sentence is removed, and four new sentences are added in its place.

3. Paragraph (e) is amended by adding nine new sentences to the end of the paragraph.

The additions read as follows:

§ 25.2522(c)-3 Transfers not exclusively for charitable, etc., purposes in the case of gifts made after July 31, 1969.

* * * * *

(c) * * *

(2) * * *

(vi) * * * (*a*) * * * Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable guaranteed annuity interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a guaranteed annuity interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust. * * *

* * * * *

(vii) * * * (*a*) * * * Only one or more of the following individuals may be used as measuring lives: the donor, the donor's spouse, and a lineal ancestor of all the remainder beneficiaries. However, this limitation regarding permissible measuring lives does not apply in the case of a charitable unitrust interest payable under a charitable remainder trust described in section 664. An interest payable for a specified term of years can qualify as a unitrust interest even if the governing instrument contains a savings clause intended to ensure compliance with a rule against perpetuities. The savings clause must utilize a period for vesting of 21 years after the deaths of measuring lives who are selected to maximize, rather than limit, the term of the trust.

* * * * *

(e) *Effective date.* * * * In addition, the rule in paragraphs (c)(2)(vi)(*a*) and (vii)(*a*) of this section that guaranteed annuity interests or unitrust interests, respectively, may be payable for a specified term of years or for the life or lives of only certain individuals, applies to transfers made on or after April 4, 2000. If a transfer is made on or after April 4, 2000, that uses an individual other than one permitted in paragraphs (c)(2)(vi)(*a*) and (vii)(*a*) of this section, the interest may be reformed into a lead interest payable for a specified term of years. The term of years is determined by taking the factor for valuing the annuity or unitrust interest for the named individual measuring life and identifying the term of years (rounded up to the next whole year) that corresponds to the equivalent term of years factor for an annuity or unitrust interest. For example, in the case of an annuity interest payable for the life of an individual age 40 at the time of the transfer, assuming an interest rate of 7.4% under section 7520, the annuity factor from column 1 of Table S(7.4), contained in IRS Publication 1457, Book Aleph, for the life of an individual age 40 is 12.0587 (Publication 1457 is available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.). Based on Table B(7.4), contained in IRS Publication 1457, Book Aleph, the factor 12.0587 corresponds to a term of years between 31 and 32 years. Accordingly, the annuity interest must be reformed into an interest payable for a term of 32 years. A judicial reformation must be commenced prior to the later of the date that is 6 months after the date these regulations are published as final regulations, or October 15th of the year following the year in which the transfer is made and must be completed within a reasonable time after it is commenced. A non-judicial reformation is permitted if effective under state law, provided it is completed by the date on which a judicial reformation must be commenced. In the alternative, if a court, in a proceeding that is commenced on or before 6 months after these regulations are published as final regulations, declares any transfer, made on or after April 4, 2000 and on or before the date that is 60 days after the date these regulations are published as final regulations, null and void ab initio, the Internal Revenue Service will treat such transfers in a manner similar to that described in section 2055(e)(3)(J).

Charles O. Rossotti,

Commissioner of Internal Revenue.

[FR Doc. 00–7522 Filed 4–4–00; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 4

[Notice No. 895; Ref: Notice No. 890]

RIN: 1512–AB86

Labeling of Flavored Wine Products (98R–317P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking; reopening of comment period.

SUMMARY: This notice reopens the comment period for Notice No. 890, a notice of proposed rulemaking, published in the **Federal Register** on December 28, 1999. ATF has received a request to extend the comment period in order to provide sufficient time for all interested parties to respond to the issues raised in the notice.

DATES: Written comments must be received on or before May 5, 2000.

ADDRESSES: Send written comments to: Chief, Regulations Division; Bureau of Alcohol, Tobacco and Firearms; P.O. Box 50221; Washington, DC 20091–0221; *ATTN: Notice No. 895.* Written comments must be signed. Submit e-mail comments to: nprm@atfhq.atf.treas.gov. E-mail comments must contain your name, mailing address, and e-mail address. They must also reference this notice number and be legible when printed on not more than three pages 8½″ × 11″ in size. We will treat e-mail as originals and we will not acknowledge receipt of e-mail. See Public Participation section of this notice for alternative means of commenting.

FOR FURTHER INFORMATION CONTACT: James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8210).

SUPPLEMENTARY INFORMATION:

Background

On December 28, 1999, we published a notice of proposed rulemaking (NPRM) in the **Federal Register** soliciting comments from the public and industry on a proposal to amend the regulations to create a new standard of identity for flavored wine products (Notice No. 890, 64 FR 72612).

The comment period for Notice No. 890 closed on March 29, 2000. Prior to the close of the comment period ATF

received a request from Heaven Hill Distilleries, Inc. ("Heaven Hill") to extend the comment period 90 days. Heaven Hill stated that it has a number of specialty products that would be affected by the proposed changes and that it needed additional time to evaluate all products concerned in order to develop an appropriate response to the issues addressed in the notice.

In consideration of the above, we believe that a reopening of the comment period is warranted. However, the comment period is being reopened for 30 days. We believe that a comment period totaling 120 days is a sufficient amount of time for all interested parties to respond.

Public Participation

You may also submit comments by facsimile transmission to (202) 927–8602. Facsimile comments must:

- Be legible;
- Reference this notice number;
- Be 8½" x 11" in size;
- Contain a legible written signature; and
- Be not more than three pages long.

We will not acknowledge receipt of facsimile transmissions. We will treat facsimile transmissions as originals.

Disclosure

Copies of this notice, Notice No. 890, and the written comments will be available for public inspection during normal business hours at: ATF Public Reading Room, Room 6480, 650 Massachusetts Avenue, NW, Washington, DC.

Drafting Information

The author of this document is James P. Ficaretta, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects 27 CFR Part 4

Advertising, Consumer protection, Customs duties and inspection, Imports, Labeling, Packaging and containers, and Wine.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 205.

Signed: March 30, 2000.

Bradley A. Buckles,

Director.

[FR Doc. 00–8353 Filed 4–4–00; 8:45 am]

BILLING CODE 4810–31–P

LIBRARY OF CONGRESS

Copyright Office

37 CFR Part 201

[Docket No. RM 2000–3A]

Public Performance of Sound Recordings: Definition of a Service

AGENCY: Copyright Office, Library of Congress.

ACTION: Request for comments.

SUMMARY: The Copyright Office is seeking comments on a motion to suspend the rulemaking proceeding which would determine whether transmissions of a broadcast signal over a digital communications system, such as the internet, are exempt from copyright liability.

DATES: Written comments are due on April 17, 2000. Reply comments are due May 1, 2000.

ADDRESSES: If sent by mail, an original and ten copies of comments and reply comments should be addressed to: Copyright Arbitration Royalty Panel (CARP), P.O. Box 70977, Southwest Station, Washington, D.C. 20024. If hand delivered, they should be brought to: Office of the General Counsel, James Madison Memorial Building, Room LM–403, First and Independence Avenue, S.E., Washington, D.C. 20559–6000.

FOR FURTHER INFORMATION CONTACT: David O. Carson, General Counsel, or Tanya M. Sandros, Senior Attorney, Copyright Arbitration Royalty Panel, PO Box 70977, Southwest Station, Washington, DC 20024. Telephone: (202) 707–8380. Telefax: (202) 252–3423.

SUPPLEMENTARY INFORMATION:

Background

On March 1, 2000, the Recording Industry Association of America, Inc. ("RIAA") filed a petition with the Copyright Office, requesting that it initiate a rulemaking proceeding to determine whether over-the-air broadcast radio transmissions that are transmitted over the Internet are exempt from copyright liability pursuant to section 114 of the Copyright Act, title 17 of the United States Code. On March 16, 2000, the Office published a notice of proposed rulemaking in which it requested comments on the scope of the section 114(a) exemption and whether the Office should decide this question through a notice and comment proceeding. 65 FR 14227 (March 16, 2000).

In response to that notice, the National Association of Broadcasters ("NAB") filed, on behalf of its members, a complaint against the RIAA in the U.S. District Court for the Southern District of New York seeking a declaratory ruling that a simultaneous transmission of an over-the-air broadcast of an FCC-licensed radio station over the Internet is exempt from the digital performance right in sound recordings and, consequently, is not subject to compulsory licensing under section 114 of the Act, or to discretionary licensing by individual copyright holders. Subsequently, NAB and ABC, Inc., AMFM, Inc., Bonneville International Corporation, CBS Corporation, Clear Channel Communications, Inc., Cox Radio, Inc., Emmis Communications Corporation and the Walt Disney Company (collectively "movants") filed a motion with the Copyright Office on March 29, 2000, requesting a suspension of the rulemaking proceeding regarding the Digital Performance Right in Sound Recordings.

In the motion, Movants suggest that the resolution of a fundamental question involving nothing more than the interpretation of a statutory provision is best left to a court of competent jurisdiction. Motion at 5. they intimate that an agency need not involve itself in such issues, at least in the first instance, unless the question raises regulatory policy concerns or falls within the unique expertise of the agency. They also argue that a rulemaking proceeding is an inadequate means for resolving such a "fundamental" issue, and for that reason such questions should be decided by a court.

Since the issues raised in the motion merely respond to the Office's request for comment on whether the Office should proceed to decide the question concerning the scope of the section 114(a) exemption through a notice and comment proceedings, the Office cannot address the merits of the motion until those parties with an interest in the proceeding have an opportunity to comment. Because the motion sets forth concrete arguments urging the Office defer addressing the scope of the section 114(a) exemption in a notice and comment proceeding in order to allow a court—in this instance, the U.S. District Court for the Southern District of New York—the opportunity to resolve the issue, the Office is making the motion available at this time in order to give all interested parties notice of the motion and an opportunity to comment on the arguments set forth therein.

Copies of the motion are available from the Office of the General Counsel of Copyright at the address listed in this notice. The motion has also been posted

to the Copyright Office website (http://www.loc.gov/copyright/licensing/motion-suspend.pdf). Comments on the motion to suspend are to be included in the comments a party submits on the substantive issues set forth in the initial notice of proposed rulemaking. Comments are due on April 17, 2000, and reply comments are due on May 1, 2000, the dates specified in the initial notice of proposed rulemaking, and should be included as part of any comments interested parties submit in response to the initial notice of proposed rulemaking.

Dated: March 31, 2000.

Marilyn J. Kretsinger,

Assistant General Counsel.

[FR Doc. 00–8386 Filed 4–4–00; 8:45 am]

BILLING CODE 1410–31–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA–157–0222 b; FRL–6570–1]

Approval and Promulgation of State Implementation Plans; California State Implementation Plan Revision; Sacramento Metropolitan Air Quality Management District, San Diego County, San Joaquin Valley Unified, and Ventura County Air Pollution Control Districts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing revisions to the California State Implementation Plan (SIP) which concern rule rescissions from the Sacramento Metropolitan Air Quality Management District (SMAQMD), San Diego County Air Pollution Control (SDCAPCD), San Joaquin Valley Unified Air Pollution Control District and amendments to the Ventura County Air Pollution Control District (APCD).

The intended effect of this action is to update and clarify the State Implementation Plan in accordance with the requirements of the Clean Air Act, as amended in 1990 (CAA or the Act). In the Final Rules section of this **Federal Register**, the EPA is approving the state's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial revision and anticipates no adverse comments. A detailed rationale for this approval is set forth in the direct final rule. If no adverse comments are received, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. The EPA will not institute a second comment period. Any parties interested in commenting should do so at this time.

DATES: Written comments must be received by May 5, 2000.

ADDRESSES: Comments should be addressed to: Andrew Steckel, Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Rd., Sacramento, CA 95826

San Diego County Air Pollution Control District, 9150 Chesapeake Drive, San Diego, CA 92123–1096

San Joaquin Valley Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721

Ventura County Air Pollution Control District, 669 County Square Drive, Ventura, CA 93003

FOR FURTHER INFORMATION CONTACT: Cynthia G. Allen, (AIR–4), Air Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105–3901; Telephone: (415) 744–1189.

SUPPLEMENTARY INFORMATION: This document concerns the rule revisions listed below, submitted to EPA by the California Resources Board on the dates listed for each rule.

Sacramento Metropolitan Air Quality Management District (SMAQMD)

Rule 445, Perchloroethylene Dry Cleaning, submitted 05/18/98; rescission adopted 10/03/96.

San Diego County Air Pollution Control District (SDCAPCD)

Rule 67.8, Dry Cleaning Facilities Using Halogenated Organic Solvent, submitted 07/23/99, rescission adopted 11/04/98.

San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD)

Rule 4671, Perchloroethylene Dry Cleaning System, submitted 10/13/95, rescission adopted 06/15/95.

Ventura County Air Pollution Control District (VCAPCD)

Rule 74.5.2, Dry Cleaning Facilities Using Halogenated Organic Solvents, submitted 08/10/95 revision adopted 05/09/95.

For further information, please see the information provided in the direct final action that is located in the rules section of this **Federal Register**.

Dated: March 15, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–8150 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 236–0225b; FRL–6569–6]

Revision to the California State Implementation Plan, Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the Santa Barbara County Air Pollution Control District (SBCAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from adhesives and sealants. We are proposing to approve a local rule to regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by May 5, 2000.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted rule revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted rule revision at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 2020 "L" Street, Sacramento, CA 95812.

Santa Barbara County Air Pollution Control District, 26 Castilian Dr., Suite B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 744–1199.

SUPPLEMENTARY INFORMATION: The table below lists the rule addressed by this proposal with the date that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

SUBMITTED RULE

Local agency	Rule No.	Rule title	Adopted	Submitted
SBCAPCD	353	Adhesives and Sealants	08/19/99	10/29/99

In the Rules section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, we will withdraw the direct final rule and address the comments in subsequent action based on this proposed rule. We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 17, 2000.

Laura Yoshii,

Acting Regional Administrator, Region IX.

[FR Doc. 00–8146 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 141 and 142

[FRL–6570–8]

Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Notice is hereby given that the Environmental Protection Agency (EPA) is holding a public meeting on April 14, 2000 in the EPA Auditorium located at 401 M Street SW, Washington, DC 20460. The meeting will provide a description and summary of the proposed Long Term 1 Enhanced Surface Water Treatment and Filter Backwash Rule (LT1FBR) to be published in the **Federal Register** on April 10, 2000. The LT1FBR proposal, LT1FBR fact sheet, and LT1FBR draft implementation guidance may be obtained from *www.epa.gov/safewater* or by calling the Safe Drinking Water Hotline, telephone (800) 426-4791.

EPA is inviting all interested members of the public to attend the meeting. EPA is instituting an open door policy to allow any member of the public to attend the meeting for any length of time. Approximately 150 seats will be available for the public. Seats will be available on a first-come, first served basis.

DATES: The meeting will start at 9:00 AM on April 14 and will adjourn at 1:00 PM.

ADDRESSES: For additional information about the meeting, please contact Jeffery Robichaud (4607), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, telephone (202) 260–7575, or by e-mail at *robichaud.jeffery@epa.gov*.

FOR FURTHER INFORMATION CONTACT: Jeffery Robichaud, Office of Ground Water and Drinking Water, telephone 202–260–2568.

Dated: March 29, 2000.

Janet D. Pawlukiewicz,

Acting Deputy Director, Office of Ground Water and Drinking Water.

[FR Doc. 00–8156 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 571

[Docket No. 00–7145]

RIN No. 2127–AH61

Federal Motor Vehicle Safety Standards; Head Impact Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the upper interior impact requirements of Standard No. 201, Occupant Protection in Interior Impact, to modify the minimum distance between certain target points on vertical surfaces inside a vehicle. Compliance with the upper interior impact requirements is determined, in part, by measuring the forces experienced by a test device known as the Free Motion Headform (FMH) when it is propelled into certain target points in the vehicle interior. To ensure that tests conducted within the same vehicle do not affect each other, the standard specifies that tested targets be at least a certain distance apart; currently 150 mm (6 inches). We are proposing to expand this minimum distance to 200 mm (8 inches) for tests performed on certain vertical surfaces in order to alleviate concerns that the current distance is not large enough to prevent FMH impact overlap to nearby target points in the same vehicle. We are also proposing to add target points for pillar-like structures that do not meet the definition of "pillar," *i.e.*, certain door frames and vertical seat belt mounting structures.

DATES: You should submit your comments early enough to ensure that Docket Management receives them not later than June 5, 2000.

ADDRESS: You should mention the docket number of this document in your comments and submit your comments in writing to: Docket Management, Room PL–401, 400 Seventh Street, SW, Washington, DC, 20590.

You may call the Docket at 202–366–9324. You may visit the Docket from 10 a.m. to 5 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: For non-legal issues, you may call Dr. William Fan, Office of Crashworthiness Standards, at (202) 366–4922, facsimile (202) 366–4329, electronic mail "bfan@nhtsa.dot.gov"

For legal issues, you may call Otto Matheke, Office of the Chief Counsel, at 202–366–5263.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Safety Problem
II. Background
A. August 1995 Final Rule on Upper Interior Impact Protection
B. April 1997 Final Rule
C. Petitions for Reconsideration
D. March 31, 1998 Letter
E. August 1998 Meeting
F. New Vehicle Configurations
III. Agency Proposal
A. Minimum Distance Between Tested Targets on Pillars
B. Pillar Surrogates
1. Door Frames
2. Seat Belt Mounting Structures
IV. Costs and Benefits
V. Effective Date
VI. Rulemaking Analyses and Notices
A. Regulatory Policies and Procedures
B. Executive Order 13132 (Federalism) and Unfunded Mandates Act
C. Executive Order 13045
D. Executive Order 12778
E. Regulatory Flexibility Act
F. National Environmental Policy Act
G. Paperwork Reduction Act
H. National Technology Transfer and Advancement Act
I. Unfunded Mandates Reform Act
J. Regulation Identifier Number (RIN)
VII. Submission and Availability of Comments

I. Safety Problem

In an August 18, 1995 final rule (60 FR 43031) adding requirements for upper interior impact protection to Standard No. 201, "Occupant Protection in Interior Impact," NHTSA estimated that even with air bags installed in all passenger cars, trucks, buses, and multipurpose passenger vehicles (collectively, passenger cars and LTVs) with a gross vehicle weight rating (GVWR) of 4,536 kilograms (10,000 pounds) or less, head impacts with the pillars, roof side rails, windshield header, and rear header would result in 1,591 annual passenger car occupant fatalities and 575 annual LTV occupant fatalities. We also stated that we believed such head impacts also result in nearly 13,600 moderate to critical (but non-fatal) passenger car occupant injuries (MAIS 2 or greater), and more than 5,200 serious LTV occupant injuries. (The AIS or Abbreviated Injury Scale is used to rank injuries by level of severity. An AIS 1 injury is a minor one, while an AIS 6 injury is one that is currently untreatable and fatal. The Maximum Abbreviated Injury Scale or MAIS is the maximum injury per occupant.) In the August 18, 1995 final rule, we estimated that the new requirements would prevent 675 to 975 AIS 2–5 head injuries and 873 to 1,192 fatalities per year.

II. Background

A. August 1995 Final Rule on Upper Interior Impact Protection

The August 1995 final rule amended Standard No. 201 to require passenger cars and LTVs to provide protection when an occupant's head strikes upper interior components, including pillars, side rails, headers, and the roof, during a crash. This final rule, which required compliance beginning on September 1, 1998, significantly expanded the scope of Standard 201. Previously, the standard applied only to the portion of the vehicle interior in front of the front seat and the backs of the front seats.

B. April 1997 Final Rule

NHTSA received nine timely petitions for reconsideration of the August 1995 final rule. These petitions raised a number of issues, including: (1) Application of the new requirements to dynamic (*i.e.*, crash-deployed) head protection systems, (2) variability of test results attributed to width of the drop test calibration corridor for the FMH, (3) lead time and phase-in, (4) exclusion of certain vehicles, and (5) test procedures. We considered dynamic head protection systems to be beyond the scope of the original rulemaking and addressed the petitions filed on this issue in a final rule published in the **Federal Register** in August 1998. The remaining issues were addressed through a final rule published on April 8, 1997 (62 FR 16718). The April 1997 final rule amended Standard 201 to establish another phase-in option, allow manufacturers to carry forward credits for vehicles certified to the new requirements prior to the beginning of the phase-in period, exclude buses with a GVWR of more than 3,860 kilograms (8,500 pounds), specify that all attachments to the upper interior components are to remain in place during compliance testing, and make some clarifying changes to the test procedure.

An area of concern considered in both the petitions for reconsideration and the April 8, 1997 final rule was the appropriate minimum distance between tested target areas within the same vehicle. S8.14(c) of the Standard provides that in the event that target areas are located in near proximity to each other, no test impact may occur within 150 mm (6 inches) of any other impact. This provision forbids testing of target areas that are so close together that the FMH would impact two or more targets in a single impact and that damage resulting from the one test impact may impair countermeasures located at the nearby target area. In the petitions submitted in response to the August 1995 rule, manufacturers argued that the 150mm (6 inches) distance provided in the Standard was inadequate, particularly in those instances in which the installed countermeasure did not use padding but relied on another means. However, because the petitioners did not submit any data substantiating their claim that the 150 mm (6 inches) distance was inadequate, NHTSA rejected their request to increase this distance when it issued the April 1997 final rule.

C. Petitions for Reconsideration

Petitions for reconsideration of the April 1997 final rule were filed by the American Automobile Manufacturers Association (AAMA) and ASC, Incorporated (ASC). ASC's petition expressed concerns about the impact of the final rule on the integrated convertible roof and frame designs and requested a further amendment to the definition of "convertible roof frame system." AAMA's petition requested that NHTSA reconsider and modify the final rule in reference to approach angles, moveable side glazing, multiple impacts, the procedure for locating CG–F (a reference point corresponding to the location of a front seat occupant's head), and the definition of "forehead impact zone."

In a notice published on April 22, 1998, (63 FR 19839) we denied these petitions for reconsideration. In regard to approach angles, NHTSA rejected AAMA's request for the exclusion of targets that cannot be tested using the existing approach angles contained in S8.13.4. We concluded that targets that cannot be tested using the existing approach angles can be relocated under the protocols found in S10(b) or S10(c). Thus, excluding the targets would not be necessary. We denied AAMA's request that hinges and latches for sunroofs and moveable side glazing be exempted from the 24 km/h (15 mph) test requirements, as we concluded that it was feasible to pad these components. The April 22 notice also explained that AAMA's concern regarding the location of CG–F had been resolved by an amendment to Standard 201 and that we believed that the organization's concerns about the proper definition of the forehead impact zone resulted from a misunderstanding of the terms of that definition. Accordingly, we declined to modify the definition.

The April 1998 notice also set forth our reasoning for rejecting AAMA's request that we reconsider our decision not to expand the minimum distance between two target areas. Without providing supporting test data, AAMA argued that the existing 150 mm (6 inches) distance was not sufficient because test damage to one target could affect the performance of a nearby target, depending on the type of countermeasure, the target location, the size of the target component, the approach angles used and the effects of chin loading on one target when another is struck. We rejected AAMA's arguments, explaining that we were satisfied that existing evidence showed that the 150 mm (6 inches) exclusion distance was adequate. As the

maximum width of the FMH is 150 mm (6 inches) and the forehead impact zone on the FMH was smaller, we concluded that the existing difference was sufficient to prevent FMH impact overlap between targets. We also noted that Standard 201 allowed testing of targets on both the right and left side of the vehicle interior and that manufacturers could use this as an opportunity to ensure that target areas were much farther apart from each other than 150 mm (6 inches) when actual testing is performed.

AAMA also requested that we consider limiting impacts to one impact per component. Again, AAMA did not submit any data indicating that limiting tests to one impact per component was necessary. We therefore rejected this request because there were no test data indicating that such a limitation was realistic and necessary.

As noted below, AAMA forwarded a letter to NHTSA on March 31, 1998 which discussed several of the issues addressed in the agency's April 22, 1998 notice denying the AAMA and ASC petitions for reconsideration. As this letter arrived shortly before the agency issued the April 22, 1998 notice, the issues raised by AAMA in this letter were not considered or discussed in that notice. They are addressed below.

D. March 31, 1998 Letter

On March 31, 1998, AAMA forwarded a letter to the agency expressing concern about the laboratory test procedure for Standard 201. In order to provide guidance and assistance to agency contractors performing compliance tests, the agency produced laboratory test procedures outlining recommended practices for performing compliance tests for different safety standards. These test procedures are not surrogates for the safety standards—they are merely used by NHTSA to facilitate testing by its contractors.

AAMA expressed its belief that multiple impacts and chin contacts during Standard 201 testing using the laboratory test procedure could create uncertainty about the ability of certain countermeasures to meet the Standard. The letter included test data from testing on prototype countermeasures which, in AAMA's view, supported its contention that multiple impacts and chin contacts compromised the ability of countermeasures to perform adequately when adjacent target points were subject to successive impacts. AAMA requested that the agency's test procedure include a restriction on testing adjacent target points and should also contain a provision stating that any test failure should be carefully scrutinized to determine if and when chin contact occurred. If chin contact occurred, AAMA suggested that the test procedure require that the test be run again with the headform rotated to a new position where early chin contact would not occur.

E. August 1998 Meeting

On August 19, 1998, AAMA staff persons and representatives of AAMA member companies met with NHTSA officials to discuss ongoing concerns regarding test issues in Standard 201. These issues included multiple impacts on the same component, headform chin and cheek contact during HIC calculations, and window position during testing. In this meeting, AAMA members displayed samples of prototype A- and B-pillar trim pieces being developed to meet Standard 201. They also presented data generated from tests in which individual trim components were subjected to multiple impacts. The trim samples showed that instead of using padding as a countermeasure, AAMA members were developing energy absorbing plastic trim composed of conventional plastic trim with ribs on the reverse side. Test data submitted by Ford showed the results of a series of impacts on simulated pillar structures in which one test impact was followed by a second test impact 150 mm (6 inches) below the first. The trim used in these tests was constructed of plastic with a smooth facing and ribs cast into the backside. Data presented by Ford showed that trim that had been subjected to impacts at the upper location suffered a degradation in performance at the lower impact site ranging from 7.3 percent to 32.1 percent. On average, when a trim component equipped with countermeasures was tested at the lower location after an upper location of the same trim had been tested, the HIC scores were 19.2 percent higher than those resulting from impacts at the same point into identical trim components that had never been impacted. The Ford data also showed that the rib structures on the backside of the trim were deformed up to six inches below the impact area. Representatives of AAMA, AIAM, Chrysler, GM, Ford and Mitsubishi indicated that secondary impacts by the chin and lower portion of the FMH after primary impacts by the FMH forehead impaired the ability of target points on or near the secondary impact to meet the requirements of the Standard when subjected to testing.

F. New Vehicle Configurations

As light trucks continue to grow in popularity and consumers expect greater versatility from their vehicles, manufacturers are responding by introducing designs that differ from the traditional sedan. A number of manufacturers are now producing pickup trucks with 3- and 4-door designs which, unlike the established "crew cab" design, do not have pillars between doors. In these vehicles, the rearmost door is hinged at the rear rather than the front. The front and the rear door latch together without an intervening pillar. A similar design has also recently been introduced in a 3-door coupe manufactured by Saturn. If this design is successful in the marketplace, other passenger vehicles with this feature may appear in the future. In these vehicles, the frames of the two doors, when closed and latched, form a structure that presents a surface that may be viewed as the structural equivalent of a pillar. However, because these door frames are not pillars as defined in Standard 201, they are not subject to the requirements of the Standard.

We are also aware of other designs used in soft top light utility vehicles that involve the use of a vertical structure to provide an attachment point for the upper anchorage of a lap and shoulder belt. This structure, which must be relatively stiff in order to ensure the stability of the belt anchorage, is necessarily located near the head of the occupant of the seating position for which the belt is provided. However, because this structure does not support the roof of the vehicle and is not a stiffener or a roll bar, it does not, by definition, have any target areas that would be subject to the requirements of Standard 201.

We are concerned about the potential safety consequences of these new designs. Because these door frames and seat belt mounting structures do not fit within the existing definitions of "pillar," "roll bar" or "stiffener" found in Standard 201, there are no target areas located on these structures and they need not meet the head impact protection criteria. However, these door frames and seat belt mounting structures provide the same potential for head injury as a pillar, roll bar, or stiffener.

III. Agency Proposal

After consideration of the issues raised by the petitions for reconsideration, the March 31, 1998 AAMA letter, and the information presented in the August 1998 meeting, the agency has decided to propose amendments to Standard 201 to modify the existing test procedure. The agency proposes to enlarge the minimum distance between pillar target areas to

prevent testing to areas that suffered damage from an impact overlap from a previous test impact, and to include pillar surrogates within the standard. To address the former, we are proposing to amend S8.14 to add a 200 mm (8 inches) minimum spacing exclusion for certain vertically oriented target locations to prevent FMH impact overlap from earlier impacts impairing the performance of the vehicle when other target points are tested. To address the performance of newer vehicle designs with structures that are functionally equivalent to pillars, roll bars and braces, we are proposing to add new sections to S3 and S10 defining pillar surrogates and establishing procedures for locating target areas on those pillar surrogates.

A. Minimum Distance Between Tested Targets on Pillars

The head impact protection provisions of Standard 201 set minimum performance requirements for vehicle interiors by establishing target areas within the vehicle that must be properly padded or otherwise have energy absorbing properties to minimize head injury in the event of a crash. Compliance with these performance requirements is tested by launching the FMH within a specified angle range at either 18 km/h or 24 km/h (12 mph or 15 mph) at a specific target area. Target locations are identified through use of the procedures contained in S10 of the Standard. Some of these targets are located on vertically oriented surfaces such as the A-pillar (S10.1), B-Pillar (S10.2), rearmost pillar (S10.4) and, if they exist, other pillars (S10.3). Therefore, when the FMH is launched at a target area located on one of these pillars and the forehead impact area contacts the intended target, the chin or lower portions of the FMH may contact another target area lower on the same pillar.

As Standard 201 sets performance requirements for a number of points and areas within the vehicle, S8.14(a) provides that, subject to certain limitations, a vehicle being tested may be impacted multiple times. S8.14(b), which was included in the standard to allow sufficient time for resilient countermeasures to recover after impacts, provides that impacts within 300mm (12 inches) of each other may not occur less than 30 minutes apart. S8.14(c) specifies that no impact may occur within 150 mm (6 inches) of any other impact. The latter provision is intended to prevent damage caused by the overlap of one impact from impairing the performance of countermeasures for a nearby target in a second impact. The selection of the 150mm (6 inches) distance was based on the maximum width of the FMH.

The 150 mm (6 inches) distance currently in S8.14(c) does not, however, address the potential impact overlap damage caused by the height of the FMH rather than its width. Information and test data presented to the agency by AAMA and others indicate that contact between the lower portions of the FMH and target points below a test target on vertically oriented surfaces could substantially impair the performance of countermeasures on or near those lower target points. For vertical pillar targets, increasing the 150mm (6 inches) minimum spacing distance to 200 mm (8 inches) would, in our view, preclude impact overlap damage caused by impacts to target points below the intended target. Our belief is based on the fact that the characteristics of the principal structure of the FMH—the metal skull—are such that the lowest point of the device likely to contact the interior in a test, is less than 200 mm (8 inches) from any point within the forehead impact zone. As contact between the forehead impact zone and the intended target area is required in a valid test, the proposed 200 mm (8 inches) distance should be sufficient to ensure that target areas located in areas impacted by earlier tests will not be subject to testing.

We believe that this proposed spacing exclusion is consistent with our past actions in creating Standard 201. While we are concerned that multiple impacts can and will occur in the event of a crash, we have never required that a target point be subjected to multiple impacts or that targets located in or over an area already tested be tested again. As noted above, S8.14, which we inserted in Standard 201 after consideration of data developed using foam countermeasures, already provided that impacts may not occur within 150 mm (6 inches) of each other. Because we believed that resilient foam would be used to meet Standard 201's requirements, S8.14 also specifies that impacts located within 300 mm (12 inches) of each other may not occur less than 30 minutes apart. The proposal to create a similar exclusion for vertically oriented surface target locations less than 200 mm (8 inches) apart simply recognizes that materials other than resilient foam may be used to protect occupants and that these materials may perform differently while providing an equivalent level of safety.

The proposed exclusion would not result in any decrease in safety. We wish to emphasize that excluding target locations located on vertical components that are less than 200 mm (8 inches) apart does not mean that an excluded point will not be subject to testing. If, for example, the B-pillar target point known as BP2 is located within 200 mm (8 inches) of another B-pillar target location such as BP1, BP2 would be excluded only if the BP1 on the same side of the vehicle had been impacted in a test. Because pillar target locations are available on both sides of the vehicle, we believe that by alternately locating targets on opposite sides of the vehicle, all target locations are likely to be available for testing. In the event that target locations are so near to each other that the use of alternate sides of a vehicle does not provide access to all target locations, additional vehicles may be used for testing. Adoption of the proposed exclusion would therefore provide manufacturers with some assurance that target locations contacted by the FMH during a test of another location on the same side of the vehicle would not be subjected to a second impact. At the same time, we would retain the ability to test all pillar target points by using both sides of the vehicle for compliance tests.

B. Pillar Surrogates

The target location requirements currently specified in Standard 201 envision vehicles having more than one door on a side will also have a pillar between those doors. However, as noted above, there are a number of recent designs that do not conform to that expectation. These vehicles, including the Saturn 3-door coupe and pickup trucks with 3- and 4-door configurations, have more than one door on a side but do not have a pillar between the doors. In these designs, the door frames where the two doors meet are, from a safety standpoint, the equivalent of a pillar. The door frames are stiff like pillars and are located close to an occupant's head. If proper countermeasures are not provided on these structures, occupants of these vehicles would have less protection in a crash than those occupying more conventional vehicles. The agency is also aware of other vehicle designs in which stiff structures that are not pillars, roll bars, or braces are used as mounts for upper belt anchorages. Like the door frames discussed above, these structures provide the same safety risks for occupants as pillars do, but are not currently covered by the Standard.

1. Door Frames

We are proposing to add two new sections to S10 of Standard 201 that will specify target locations on frames of

pairs of adjacent doors that are not separated by an intervening pillar. Specifying these target locations would necessitate the addition of definitions of "door frame" and "other door frame" to S3. The proposed definitions of "door frame" and "other door frame" encompass the structure rearward of the daylight opening of a forward door and the structure forward of the daylight opening of a rear door where the doors are adjacent side doors with opposing hinges that latch together without engaging or contacting an intervening pillar. As defined in the proposal, "door frame" is distinguished from "other door frame" by the relationship of each of these structures to other pillars. A "door frame" refers to the perimeter structure of doors located rearward of an A-pillar and forward of any other pillars, while "other door frame" refers to the perimeter structure of doors rearward of the B-pillar.

The proposed target location procedure for these door frames takes into account that seat belt anchorages may be located on these door frames and that the frames themselves are two structures. We are proposing that four targets be located on the door frames.

The first of these, which would be known as DF1, would be located in a fashion similar to that presently used for locating the B-Pillar target known as BP1. We propose that DF1 be located on a reference point, DFR. Under the proposal, DFR would be located on the vehicle interior at a point along the intersection of the interior roof surface and a transverse vertical plane tangent to the rear edge of the forward door when the adjacent rear door is in the open position. The location of DFR would be determined by finding the midpoint, along the intersection line, between the nearest edge of the upper roof and the point at which a horizontal plane passing through the highest point of the highest adjacent daylight opening intersects with the transverse vertical plane and the vehicle interior. We propose that the second door frame target, DF2, be located at any point on any seat belt anchorage located on the door frame. Target DF3 would be located on the interior surface of the door frame. As proposed, DF3 would be located in the horizontal plane midway between DFR and a horizontal plane passing through the lowest point of the lowest adjacent daylight opening and would be the point on the door frame that is closest to the head center of gravity of an occupant in the seating position whose seating reference point is immediately forward of the transverse vertical plane tangent to the rear edge of the forward door. To protect occupants in any seats whose seating reference point is immediately rearward of the transverse vertical plane tangent to the rear edge of the forward door, we are proposing to locate another target, DF4, at a point on the interior surface of the door frame. As proposed, DF4 would be located in the horizontal plane midway between DF3 and the horizontal plane passing through the lowest point of the lowest daylight opening of an adjacent door. DF 4 would be the point inside this plane that is closest to the head center of gravity of an occupant in the seat whose seating reference point is immediately rearward of the transverse vertical plane tangent to the rear edge of the forward door.

For "other door frame" targets, we are proposing a target location procedure similar to that already being used for the two existing other pillar targets. An "other door" reference point, ODR, is a point on a line formed by the intersection of the roof interior surface and a transverse vertical plane passing through the vertical center line of the width of the door frame, as viewed laterally with the doors closed, and is the midpoint between the nearest edge of the "upper roof" and the point at which a horizontal plane passing through the highest daylight opening of the adjacent door intersects with the vertical center line of the width of the door frame. If no seat belt anchorage is located on the door frame, ODR serves as target OD1. If a seat belt anchorage is located on the door frame, target OD1 is located on the anchorage. The second other door frame target, OD2, is located on the interior surface of the door frame inside the longitudinal horizontal plane midway between the horizontal planes passing through the ODR and the lowest points in the daylight openings of the door frames. As proposed, OD2 would be that point within this plane and on the vertical center line of the width of the door frame, as viewed laterally with the doors closed.

The proposed procedure for locating these target areas is intended to be similar to that used for locating B-pillar and other pillar targets. The same approach angles are specified for the door frame and other door frame targets as are currently employed for the B-pillars and other pillars. We also note that as is the case with the existing specifications for targets that are seat belt anchorages, the vertical approach angle specified for seat belt anchorages differs from that for other targets on the same pillar or door frame. The selection of the approach angle for anchorage targets reflects the agency's judgement that such angles are more appropriate for anchorages—which commonly project above the nominal surface of a pillar or door frame. Further, in specifying distinct approach angles for seat belt anchorages, NHTSA intends that the approach angles specified generally for pillars and door frames do not apply to anchorage targets.

We have tentatively concluded that these proposed target procedures are the most appropriate target locating procedures for door frames that are, from a safety perspective, similar to B-pillars and other pillars. Nonetheless, we may also consider alternative target location schemes, including simply providing that the entire interior surface of the door frame should be considered to be a target location. We also note that because the door frames are two separate components, that it may be appropriate to specify additional target locations to adequately ensure that both the front and the rear frames provide adequate protection, particularly in light of the fact that the present proposal does not locate any target on the rear door frame at the upper portion of the frame. Unlike the case of a B-pillar, the trim and the countermeasures on door frames will not be a single component, but two separate components. These separate components are, in our view, likely to be less susceptible to damage caused by other impacts. Therefore, we believe that the minimum distances between targets now specified in S8.14 as well as the current proposal to extend these distances for pillar targets may not be necessary in the case of door frames.

We request that those submitting comments in response to this proposal provide their views on the following issues: Is the proposed location procedure for DF1 appropriate? Are the proposed location procedures for the other door frame target locations appropriate? Should additional target locations be specified to assure the performance of countermeasures located in the rear door frame? Is the proposed definition of "door frame" appropriate?

2. Seat Belt Mounting Structures

Certain vehicle designs, particularly those with removable or convertible tops, may provide manufacturers with few options for mounting and locating upper anchorages for the shoulder portion of Type II safety belts. In those instances in which it is not possible or desirable to locate this upper anchorage on the seat itself and the particular design does not readily offer another mounting location, the manufacturer may choose to incorporate a dedicated structure into the vehicle to serve as the shoulder belt anchorage. If this structure, which by necessity must be stiff and relatively near the occupant

served by the belt, does not fit within the definition of pillar, roll bar, or stiffener, currently contained in Standard 201, it need not meet the Standard's requirements.

We are proposing to amend S3 to include a definition of "Seat Belt Mounting Structure" and to amend S10 to add a new target location procedure for placing target areas on these structures. The proposed definition describes a "Seat Belt Mounting Structure" as follows:

> Seat Belt Mounting Structure means a component of the vehicle body or frame, including trim, to which an upper seat belt anchorage conforming to the requirements of S4.2.1. and S4.3.2 of Standard No. 210 is attached. The term does not include a pillar, roll bar, brace or stiffener, side rail, seat, or part of the roof.

We tentatively conclude that this definition would provide adequate guidance to manufacturers in identifying which components are covered by the Standard.

We are proposing to locate three target areas on seat belt mounting structures in an effort to maintain consistency with the target locations for pillars. This is appropriate because, in the agency's view, pillars most closely approximate seat belt mounting structures in terms of safety and safety countermeasures. However, we are proposing that fewer target locations be specified for these structures than are presently specified for testing pillars. Our view is that manufacturers are likely only to use a purpose-built seat belt anchorage structure in those instances in which the design of the vehicle precludes more conventional alternatives such as the pillars or seat. We also believe that such structures are not likely to be integrated into roofs, which are usually not as rigid or strong as other areas of the vehicle such as the sides or floors. Therefore, our proposal does not call for locating any targets higher than the head center of gravity of occupants in nearby seating positions unless the seat belt anchorage itself is higher.

We propose that the first target point, known as SB1, be located on the seat belt anchorage attached to the seat belt mounting structure. The remaining two target points, SB2 and SB3, would be located in reference to the head CG of occupants nearest to the seat belt mount in question. We propose that target SB2 be the point on the nominal surface of the seat belt mounting structure that is closest to CG–F2 of the nearest front outboard designated seating position and is on the intersection of the seat belt mounting structure and the horizontal plane passing through that CG–F2. If the seating reference point of any rear outboard seating position is forward of the transverse vertical plane passing through the vertical center line of the seat belt mounting structure, SB2 would be the point that is closest to the CG–R nearest the seat belt mounting structure and is at the intersection of the seat belt mounting structure and the horizontal plane passing through that CG–R. The proposed location for SB3 is fixed in a similar fashion. SB3 is the point nearest to CG–R that is 225 mm (8.6 inches) below the intersection of the surface of the seat belt mounting structure and the horizontal plane passing through the CG–R of the designated seating position whose seating reference point is rearward of the transverse vertical plane passing through the vertical center line of the seat belt mounting structure.

The proposal also contains approach angles for the seat belt mounting structures that are similar to the approach angles currently employed for B-pillar targets. We have tentatively concluded that these approach angles are appropriate because the specification of single approach angle or a narrow range of approach angles would preclude testing of the proposed target areas. We also note that, as is the case with the existing specifications for targets that are seat belt anchorages, the vertical approach angle specified for seat belt anchorages differs from that for other targets on the seat belt mounting structure. It is the agency's judgement that such angles are more appropriate for anchorages—which commonly project above the nominal surface of a seat belt mounting structure. Further, in specifying an approach angle for anchorage targets, it is the agency's intention that the approach angles specified generally for pillars and door frames do not apply to anchorage targets.

While the location of the seat belt anchorage attached to such a structure will be fixed, to some extent, by the requirements of Standard 210, Seat Belt Assembly Anchorages, the remaining characteristics of such structures are not well known. Since the ability to test target areas on seat belt mounting structures may be limited by their configuration, i.e., the ability to properly strike a target area with the forehead impact zone of the FMH, we tentatively conclude that specifying a range of approach angles is in the best interest of safety.

We also tentatively conclude that the definition of a seat belt mounting structure allows identification of the target locations and that the proposed target locations are both appropriate and readily identified. However, we ask for comments on the definition and its utility. Comments on the proposed location of the targets and the procedure used to locate them would also, in our view, assist us in formulating an appropriate final rule.

IV. Costs and Benefits

The proposed amendments would change performance requirements, test procedures and revise definitions to include structures that are the equivalents to the pillars that are already subject to Standard 201's requirements. Because these structures, door frames and seat belt mounting structures, are very similar in design, construction and location to existing pillars, we have decided that the cost and benefit methodology prepared for the August 1995 final rule will not change. The four proposed door frame target points are substitutes for the existing four B-pillar targets points that would be located on the B-pillar that the door frames replace. Similarly, the three proposed seat belt mounting structure target points would be in-place of, rather than in addition to, existing targets such as those located on the rear pillar (RP1, RP2), rear header (RH) and rear side rail (SR3) target points not present in some soft top sport utility vehicles.

Based on data in the June 1995 Final Economic Assessment on Upper Interior Head Protection, it is estimated that the cost of padding the two B-pillars of a passenger car and light truck would be $5.80/vehicle and $9.71/vehicle, respectively. This is the cost of the padding material countermeasure. Adjusting these figures to 1998 values and for the slightly greater amount of padding that would be needed for LTVs, the average cost per vehicle is estimated to be not more than $6 per vehicle for 3-door passenger cars similar to the 3 door Saturn sedan and $10 per 4-door crew cab LTV. A 3 door crew cab LTV would already have one padded B-pillar so costs would be less, possibly as low as $5 per vehicle. For soft top sport utility vehicles with 3 newly target points per vertical belt mounting structure, the cost per vehicle would be less than that required to install countermeasures on two B-pillars—approximately $6–$10 per vehicle.

The addition of the proposed new door frame and seat belt mounting structure targets would, in our view, not require further benefits analysis. Our original June 1995 Final Economic Assessment did not envision pillarless designs such as 3-door coupes, crew cab LTVs or soft top LTVs with seat belt mounting structures as being part of the U.S. vehicle fleet. The overall cost/

benefit calculations performed in that assessment assumed that all vehicles had conventional pillars, roll bars, or stiffeners. The current proposal brings vehicles without conventional pillars, roll bars, or stiffeners within the scope of Standard 201 and, as noted above, at approximately the same cost as other vehicles. Therefore, our earlier benefits analysis is merely brought up to date by the inclusion of these vehicles in Standard 201.

V. Effective Date

The agency is proposing that the final rule become effective 180 days after it is published.

VI. Rulemaking Analyses and Notices

A. Regulatory Policies and Procedures

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), provides for making determinations whether a regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and to the requirements of the Executive Order. The Order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

We have considered the impact of this rulemaking action under Executive Order 12866 and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed by the Office of Management and Budget under E.O. 12866. It is also not considered to be significant under the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979).

This document proposes to amend 49 CFR part 571.201 by modifying existing test procedures to increase the minimum distance between tested targets. It would also specify targets on certain door frames and seat belt mounting structures not previously covered by the Standard. The agency notes that these structures, i.e., door frames and freestanding seat belt mounting structures, are surrogates for pillars and are not, to NHTSA's knowledge, present in vehicles with more conventional configurations. In particular, seat belt mounting structures appear to be used only in soft top vehicles where no roof structure, pillars (except the A pillar), roll bars or stiffeners exist.

The agency's previous economic analysis was based on the assumption that all vehicles would have conventional pillar layouts. As a result of that assumption, vehicles that actually had pillar surrogates were mistakenly included in that analysis and were treated, for the purpose of estimating costs, as though they had conventional pillar layouts. The number of pillars that these vehicles were assumed to have is the same as the total number of pillars and pillar surrogates that they actually have.

The agency has tentatively concluded that the costs of installing countermeasures on these pillar surrogates will not differ appreciably from installing the same countermeasures on pillars. Thus, despite the erroneous assumptions, the previous economic analysis correctly estimated the compliance costs for vehicles with pillar surrogates, and included those costs in the overall estimate of the costs of the upper interior head protection requirements. Since the economic costs of extending those requirements to vehicles with surrogate pillars have already been accounted for, we believe that the economic impacts of this proposal do not warrant further regulatory evaluation.

B. Executive Order 13132 (Federalism) and Unfunded Mandates Act

The agency has analyzed this rulemaking action in accordance with the principles and criteria set forth in Executive Order 13132. NHTSA has determined that the amendment does not have sufficient federalism implications to warrant application of the requirements of section 6 of the Executive Order to this rule.

C. Executive Order 13045

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) is determined to be "economically significant" as defined under E.O. 12866, and (2) concerns an environmental, health or safety risk that NHTSA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This rule is not subject to the Executive Order because it is not economically significant as defined in E.O. 12866 and does not involve decisions based on environmental, safety or health risks having a disproportionate impact on children.

D. Executive Order 12778

Pursuant to Executive Order 12778, "Civil Justice Reform," we have considered whether this proposed rule would have any retroactive effect. We conclude that it would not have such effect. Under 49 U.S.C. 30103, whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. 49 U.S.C. 30161 sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

E. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). However, no regulatory flexibility analysis is required if the head of an agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act to require Federal agencies to provide a statement of the factual basis for certifying that a rule will not have a significant economic impact on a substantial number of small entities.

The Administrator has considered the effects of this rulemaking action under the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) and certifies that this proposal would not have a significant economic impact on a substantial number of small entities. We estimate that there are at most five small manufacturers of passenger cars in the U.S., producing a combined total of at most 500 cars each year. We do not believe small businesses manufacture even 0.1 percent of total U.S. passenger car and light truck production each year.

The primary cost effect of the proposed requirements would be on manufacturers of passenger cars and LTVs. Final stage manufacturers, those who use incomplete vehicles produced by larger manufacturers to produce specialty products, are generally small businesses. However, NHTSA believes that the proposed requirements would not be burdensome for final stage manufacturers. The amendments proposed in this rulemaking impose additional mandatory requirements only on those vehicles with specific door configurations or specialized seat belt mounting structures. We note that vehicles with these configurations presently represent only a small percentage of annual production. Further, a final stage manufacturer could test, or could sponsor a test, of a padded component outside of the vehicle on a test fixture, to the extent such testing may be needed to support certification. Manufacturer associations could also sponsor generic tests to determine the amount and type of padding or design needed for basic structures that would be used by a number of final stage manufacturers, to reduce certification costs.

Other entities which would qualify as small businesses, small organizations and governmental units would be affected by this rule to the extent that they purchase passenger cars and LTVs. They would not be significantly affected, since the potential cost increases associated with this action should only slightly affect the purchase price of new motor vehicles. Accordingly, the agency has not prepared a preliminary regulatory flexibility analysis.

F. National Environmental Policy Act

We have analyzed this proposed amendment for the purposes of the National Environmental Policy Act and determined that it would not have any significant impact on the quality of the human environment.

G. Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995, a person is not required to respond to a collection of information by a Federal agency unless the collection displays a valid OMB control number. This proposal does not propose any new information collection requirements.

H. National Technology Transfer And Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272) directs us to use voluntary consensus standards in its regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards. We note that there are no available voluntary consensus standards that are equivalent to Standard 201.

I. Unfunded Mandates Reform Act

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires Federal agencies to prepare a written assessment of the costs, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local or tribal governments, in the aggregate, or by the private sector, of more than $100 million in any one year (adjusted for inflation with base year of 1995). Before promulgating a NHTSA rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if we publish with the final rule an explanation why that alternative was not adopted.

This proposal would not result in costs of $100 million or more to either State, local, or tribal governments, in the aggregate, or to the private sector. Thus, this proposal is not subject to the requirements of sections 202 and 205 of the UMRA.

J. Regulation Identifier Number (RIN)

The Department of Transportation assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. You may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda.

VII. Submission and Availability of Comments

How Do I Prepare and Submit Comments?

Your comments must be written and in English. To ensure that your comments are correctly filed in the Docket, please include the docket number of this document in your comments.

Your comments must not be more than 15 pages long. (49 CFR 553.21). We established this limit to encourage you to write your primary comments in a concise fashion. However, you may attach necessary additional documents to your comments. There is no limit on the length of the attachments.

Please submit two copies of your comments, including the attachments, to Docket Management at the address given above under **ADDRESS.**

How Can I Be Sure That My Comments Were Received?

If you wish Docket Management to notify you upon its receipt of your comments, enclose a self-addressed, stamped postcard in the envelope containing your comments. Upon receiving your comments, Docket Management will return the postcard by mail.

How Do I Submit Confidential Business Information?

If you wish to submit any information under a claim of confidentiality, you should submit three copies of your complete submission, including the information you claim to be confidential business information, to the Chief Counsel, NHTSA, at the address given above under **FOR FURTHER INFORMATION CONTACT.** In addition, you should submit two copies, from which you have deleted the claimed confidential business information, to Docket Management at the address given above under **ADDRESS.** When you send a comment containing information claimed to be confidential business information, you should include a cover letter setting forth the information specified in our confidential business

information regulation. (49 CFR Part 512.)

Will the Agency Consider Late Comments?

We will consider all comments that Docket Management receives before the close of business on the comment closing date indicated above under DATES. To the extent possible, we will also consider comments that Docket Management receives after that date. If Docket Management receives a comment too late for us to consider it in developing a final rule (assuming that one is issued), we will consider that comment as an informal suggestion for future rulemaking action.

How Can I Read the Comments Submitted by Other People?

You may read the comments received by Docket Management at the address given above under **ADDRESS**. The hours of the Docket are indicated above in the same location.

You may also see the comments on the Internet. To read the comments on the Internet, take the following steps:

A. Go to the Docket Management System (DMS) Web page of the Department of Transportation (*http://dms.dot.gov/*).
B. On that page, click on "search."
C. On the next page (http://dms.dot.gov/search/), type in the last four digits of the docket number shown at the beginning of this document. Example: If the docket number were "NHTSA–1998–1234," you would type "1234." After typing the docket number, click on "search."
D. On the next page, which contains docket index and summary information for the docket you selected, click on the desired comments. You may view or download the comments. However, since the comments are imaged documents, instead of word processing documents, the downloaded comments are not word searchable.

Please note that even after the comment closing date, we will continue to file relevant information in the Docket as it becomes available. Further, some people may submit late comments. Accordingly, we recommend that you periodically check the Docket for new material.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

In consideration of the foregoing, 49 CFR part 571 would be amended as follows:

PART 571—[AMENDED]

1. The authority citation for part 571 would continue to read as follows:

Authority: 49 U.S.C. 322, 21411, 21415, 21417, and 21466; delegation of authority at 49 CFR 1.50.

2. Section 571.201 would be amended by adding, in alphabetical order, definitions of Door Frame and Seat Belt Mounting Structure to S3; by revising S8.13.4, S8.13.4.2(b)(2), S8.14, and S10(a) through (b); and by adding S8.13.4.1(e) through (h), S10.14, S10.15 and S10.16 to read as follows:

S3. * * *

* * * * *

Door Frame means the rearmost perimeter structure, including trim but excluding glass, of the forward door and the forwardmost perimeter structure, including trim but excluding glass, of the rear door of a pair of adjacent side doors that:

(a) Have opposing hinges;

(b) Latch together without engaging or contacting an intervening pillar;

(c) Are forward of any pillar other than the A-pillar on the same side of the vehicle; and

(d) are rearward of the A pillar.

* * * * *

Other Door Frame means the rearmost perimeter structure, including trim but excluding glass, of the forward door and the forwardmost perimeter structure, including trim but excluding glass, of the rear door of a pair of adjacent side doors that:

(a) Have opposing hinges;

(b) Latch together without engaging or contacting an intervening pillar; and

(c) Are rearward of the B-pillar.

* * * * *

Seat Belt Mounting Structure means a component of the vehicle body or frame, including trim, that has an upper seat belt anchorage conforming to the requirements of S4.2.1. and S4.3.2 of Standard No. 210 attached to it and that is not a pillar, roll bar, brace or stiffener, side rail, seat, or part of the roof.

* * * * *

S8.13.4 *Approach Angles.* The headform launching angle is as specified in Table 1. For components for which Table 1 specifies a range of angles, the headform launching angle is within the limits determined using the procedures specified in S8.13.4.1 and S8.13.4.2, and within the range specified in Table 1, using the orthogonal reference system specified in S9.

TABLE 1.—APPROACH ANGLE LIMITS

[In degrees]

Target component	Horizontal angle	Vertical angle
Front Header	180	0–50
Rear Header	0 or 360	0–50
Left Side Rail	270	0–50
Right Side Rail	90	0–50
Left Sliding Door Track	270	0–50
Right Sliding Door Track	90	0–50
Left A-Pillar	195–255	−5–50
Right A-Pillar	105–165	−5–50
Left B-Pillar	195–345	−10–50
Right B-Pillar	15–165	−10–50
Left Door Frame	195–345	−10–50
Right Door Frame	15–165	−10–50
Other Left Pillars	270	−10–50
Other Right Pillars	90	−10–50
Other Left Door Frame	270	−10–50
Other Right Door Frame	90	−10–50
Left Rearmost Pillar	270–345	−10–50
Right Rearmost Pillar	15–90	−10–50
Upper Roof	Any	0–50

TABLE 1.—APPROACH ANGLE LIMITS—Continued

[In degrees]

Target component	Horizontal angle	Vertical angle
Overhead Rollbar	0 or 180	0–50
Brace or Stiffener	90 or 270	0–50
Left Seat Belt Mounting Structure	195–345	−10–50
Right Seat Belt Mounting Structure	15–165	−10–50
Seat Belt Anchorages	Any	0–50

* * * * *

S8.13.4.1 Horizontal approach angles for headform impacts.

* * * * *

(e) *Left door frame horizontal approach angles.*

(1) Locate a line formed by the shortest horizontal distance between CG–F2 for the left seat and the left door frame. The maximum horizontal approach angle for the left door frame equals the angle formed by that line and the X-axis of the vehicle measured counterclockwise, or 270 degrees, whichever is greater.

(2) Locate a line formed by the shortest horizontal distance between CG-R for the left seat and the left door frame. The minimum horizontal approach angle for the left door frame equals the angle formed by that line and the X-axis of the vehicle measured counterclockwise.

(f) *Right door frame horizontal approach angles.*

(1) Locate a line formed by the shortest horizontal distance between CG–F2 for the right seat and the right door frame. The minimum horizontal approach angle for the right door frame equals the angle formed by that line and the X-axis of the vehicle measured counterclockwise, or 90 degrees, whichever is less.

(2) Locate a line formed by the shortest horizontal distance between CG–R for the right seat and the right door frame. The maximum horizontal approach angle for the right door frame equals the angle between that line and the X-axis of the vehicle measured counterclockwise

(g) *Left seat belt mounting structure horizontal approach angles.*

(1) Locate a line formed by the shortest horizontal distance between CG–F2 for the left seat and the left seat belt mounting structure. The maximum horizontal approach angle for the left seat belt mounting structure equals the angle formed by that line and the X-axis of the vehicle measured counterclockwise, or 270 degrees, whichever is greater.

(2) Locate a line formed by the shortest horizontal distance between CG–R for the left seat and the left seat belt mounting structure. The minimum horizontal approach angle for the left seat belt mounting structure equals the angle formed by that line and the X-axis of the vehicle measured counterclockwise.

(h) *Right seat belt mounting structure horizontal approach angles.*

(1) Locate a line formed by the shortest horizontal distance between CG–F2 for the right seat and the right seat belt mounting structure. The minimum horizontal approach angle for the right seat belt mounting structure equals the angle formed by that line and the X-axis of the vehicle measured counterclockwise, or 90 degrees, whichever is less.

(2) Locate a line formed by the shortest horizontal distance between CG–R for the right seat and the right seat belt mounting structure. The maximum horizontal approach angle for the right seat belt mounting structure equals the angle between that line and the X-axis of the vehicle measured counterclockwise

S8.13.4.2 Vertical approach angles.

* * * * *

(b) * * *

(2) For all pillars except A-pillars and all door frames and seat belt mounting structures, keeping the forehead impact zone in contact with the target, rotate the FMH downward by 10 degrees for each target to determine the maximum vertical angle.

S8.14 Multiple impacts.

(a) A vehicle being tested may be impacted multiple times, subject to the limitations in S8.14(b), (c) and (d).

(b) As measured as provided in S8.14(e), impacts within 300 mm of each other may not occur less than 30 minutes apart.

(c) As measured as provided in S8.14(e), no impact may occur within 150 mm of any other impact.

(d) As measured as provided in S8.14(e), no impact on any pillar or vertical component of a roll bar, brace, stiffener, door frame or seat belt mounting structure may occur within 200 mm of any other impact.

(e) For S8.14(b), S8.14(c), and S8.14(d), the distance between impacts is the distance between the centers of the target circle specified in S8.11 for each impact, measured along the vehicle interior.

* * * * *

S10 * * *

(a) The target locations specified in S10.1 through S10.16 are located on both sides of the vehicle and, except as specified in S10(b), are determined using the procedures specified in those paragraphs.

(b) Except as specified in S10(c), if there is no combination of horizontal and vertical angles specified in S8.13.4 at which the forehead impact zone of the free motion headform can contact one of the targets located using the procedures in S10.1 through S10.16, the center of that target is moved to any location within a sphere with a radius of 25 mm, centered on the center of the original target, which the forehead impact zone can contact at one or more combination of angles.

* * * * *

S10.14 *Door frame targets.*

(a) *Target DF 1.* Locate the point (Point 21) on the vehicle interior at the intersection of the horizontal plane passing through the highest point of the forward door opening and a transverse vertical plane (Plane 32) tangent to the rearmost edge of the forward door, as viewed laterally with the adjacent door open. Locate the point (Point 22) at the intersection of the interior roof surface, Plane 32, and the plane, described in S8.15(h), defining the nearest edge of the upper roof. The door frame reference point (Point DFR) is the point located at the middle of the line from Point 21 to Point 22 in Plane 32, measured along the vehicle interior surface. Target DF1 is located at Point DFR.

(b) *Target DF2.* If a seat belt anchorage is located on the door frame, Target DF2 is located at any point on the anchorage.

(c) *Target DF3.* Locate a horizontal plane (Plane 33) which intersects Point DFR. Locate a horizontal plane (Plane 34) which passes through the lowest point of the adjacent daylight opening forward of the door frame. Locate a

horizontal plane (Plane 35) half-way between Plane 33 and Plane 34. Target DF3 is the point located in Plane 35 and on the interior surface of the door frame, which is closest to CG–F2 for the nearest seating position.

(d) *Target DF4.* Locate a horizontal plane (Plane 36) half-way between Plane 34 and Plane 35. Target DF4 is the point located in Plane 36 and on the interior surface of the door frame which is closest to CG–R for the nearest seating position.

S10.15 *Other door frame targets.*

(a) *Target OD1.*

(1) Except as provided in S10.15(a)(2), target OD1 is located in accordance with this paragraph. Locate the point (Point 23), on the vehicle interior, at the intersection of the horizontal plane through the highest point of the highest adjacent door opening or daylight opening (if there is no adjacent door opening) and the center line of the width of the other door frame, as viewed laterally with the doors in the closed position. Locate a transverse vertical plane (Plane 37) passing through Point 23. Locate the point (Point 24) at the intersection of the interior roof surface, Plane 37 and the plane, described in S8.15(h), defining the nearest edge of the upper roof. The other door frame reference point (Point ODR) is the point located at the middle of the line between Point 23 and Point 24 in Plane 37, measured along the vehicle interior surface. Target OD1 is located at Point ODR.

(2) If a seat belt anchorage is located on the door frame, Target OD1 is any point on the anchorage.

(b) *Target OD2.* Locate the horizontal plane (Plane 38) intersecting Point ODR. Locate a horizontal plane (Plane 39) passing through the lowest point of the daylight opening forward of the door frame. Locate a horizontal plane (Plane 40) half-way between Plane 38 and Plane 39. Target OD2 is the point located on the interior surface of the door frame at the intersection of Plane 40 and the center line of the width of the door frames, as viewed laterally, with the doors in the closed position.

S10.16 *Seat belt mounting structure targets.*

(a) *Target SB1.* Target SB1 is located at any point on the seat belt anchorage mounted on the seat belt mounting structure.

(b) *Target SB2.* Locate a horizontal plane (Plane 41), containing either CG–F2 or CG–R, as appropriate, for any outboard designated seating position whose seating reference point, SgRP, is forward of and closest to, the vertical center line of the width of the seat belt mounting structure as viewed laterally. Target SB2 is located on the seat belt mounting structure and in Plane 41 at the location closest to either CG–F2 or CG–R, as appropriate.

(c) *Target SB3.* Locate a horizontal plane (Plane 42), containing CG–R for any outboard designated seating position rearward of the forwardmost designated seating position or positions whose seating reference point, SgRP, is rearward of and closest to, the vertical center line of the width of the seat belt mounting structure, as viewed laterally. Measuring along the nominal surface of the seat belt mounting structure locate a horizontal plane (plane 43) 225 mm below Plane 42. Target SB2 is located on the seat belt mounting structure and in Plane 43 at the location closest to CG–R, as appropriate.

* * * * *

Issued on March 28, 2000.

Stephen R. Kratzke,

Acting Associate Administrator for Safety Performance Standards.

[FR Doc. 00–8008 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 223

[Docket No. 000320077–0077–01; I.D. 021500C]

RIN 0648–AN62

Endangered and Threatened Wildlife; Sea Turtle Conservation Requirements

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; request for comments.

SUMMARY: NMFS issues this advance notice of proposed rulemaking to announce that it is considering technical changes to the requirements for turtle excluder devices (TEDs). NMFS proposes to modify the size of the TED escape opening, modify or decertify hooped hard TEDs and weedless TEDs, and change the requirements for the types of flotation devices allowed. NMFS is also considering modifications to the leatherback conservation zone regulations to provide better protection to leatherback turtles. The proposed measures are necessary to effectively protect all life stages and species of sea turtles.

DATES: Written comments (see **ADDRESSES**) will be accepted through May 5, 2000.

ADDRESSES: Written comments on this action and request for copies of the 1999 TED opening evaluation report and the Leatherback Contingency Plan should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Charles A. Oravetz (ph. 727–570–5312, fax 727–570–5517, e-mail Chuck.Oravetz@noaa.gov), or Barbara A. Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail Barbara.Schroeder@noaa.gov).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act of 1973 (ESA). The Kemp's ridley (*Lepidochelys kempii*), leatherback (*Dermochelys coriacea*), and hawksbill (*Eretmochelys imbricata*) are listed as endangered. The loggerhead (*Caretta caretta*) and green turtles (*Chelonia mydas*) are listed as threatened, except for breeding populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered.

The incidental take and mortality of sea turtles as a result of trawling activities has been documented in the Gulf of Mexico and along the Atlantic seaboard. Under the ESA and its implementing regulations, taking sea turtles is prohibited, with exceptions identified in 50 CFR Part 223. The incidental taking of turtles during shrimp or summer flounder trawling is excepted from the taking prohibition of section 9 of the ESA if the conservation measures specified in the sea turtle conservation regulations (50 CFR Part 223) are followed. The regulations require most shrimp trawlers and summer flounder trawlers operating in the Southeastern United States. (Atlantic Area and Gulf Area) to have a NMFS-approved TED installed in each net that is rigged for fishing to provide for the escape of sea turtles. TEDs currently approved by NMFS include single-grid hard TEDs and hooped hard TEDs conforming to a generic description, two types of special hard TEDs (the flounder TED and the Jones TED), and one type of soft TED–the Parker soft TED.

TEDs incorporate an escape opening, usually covered by a webbing flap, that allow sea turtles to escape from trawl nets. To be certified by NMFS, a TED design must be shown to be 97 percent effective in excluding sea turtles during experimental TED testing. TEDs must meet generic criteria based upon certain parameters of TED design, configuration, and installation, including height and width dimensions of the TED opening through which the turtles escape. In the Atlantic Area, these requirements are ≥35 inches (≥89 cm) in width and ≥12 inches (≥30) in height. In the Gulf Area the requirements are ≥32 inches (81 cm) in width and ≥10 inches (≥25 cm) in height.

NMFS TED Opening Study

The proportion of large, mature loggerheads and greens that are documented to strand on coastal beaches appear to be greater than the proportion that would be expected given the size distribution of sea turtles found in nearshore waters (Turtle Expert Working Group, in preparation). The disparity in size may be a result of the minimum size requirement for TED openings which only allows smaller turtles to escape. NMFS (Epperly and Teas, 1999; copies available, see **ADDRESSES**) conducted analyses of the size of TED openings in relation to the carapace width and body depth of stranded sea turtles and concluded that body depth, not carapace width, was a factor in the turtle's ability to exit the TED opening. Up to 47 percent of the body depths for stranded loggerheads and 7percent for green turtles exceeded the minimum height requirements for TED openings.

Leatherback Contingency Plan

NMFS in cooperation with the U.S. Fish and Wildlife Service, South Carolina, Georgia, and Florida developed the Leatherback Contingency Plan (copies available, see **ADDRESSES**) to reduce leatherback mortality in shrimp trawls. Leatherback sea turtles are too large to be excluded through the standard size TED opening; when mature they can weigh between 600 and 1300 pounds (273 and 591 kg). The Leatherback Contingency Plan established procedures to identify when and where TEDs with large escape openings should be used to protect leatherbacks during their annual, spring migration along the Atlantic seaboard. In 1995, NMFS established the leatherback conservation zone regulations (50 CFR 223.206) to implement the Leatherback Contingency Plan (60 FR 25260, May 12, 1995; 60 FR 25663, May 12, 1995). The waters north of Cape Canaveral, Florida to the North Carolina-Virginia border were identified as the leatherback conservation zone. Within this zone, weekly aerial surveys for leatherback sightings are conducted from January 1 through June 30 of each year. If sightings, in replicate surveys, exceed 10 leatherback turtles per 50 nautical miles (nm)(92.6 km) of trackline, NMFS will close, for a 2-week period, waters within 1°lat. of the trackline to shrimp trawlers unless they use a TED modified with the leatherback exit opening.

In 1999, NMFS became concerned that the leatherback conservation zone regulation was not adequate to protect leatherbacks. In the spring of 1999, NMFS implemented the 2-week closures in areas of South Carolina and North Carolina (64 FR 25460, May 12, 1999; 64 FR 27206, May 19, 1999; 64 FR 28761, May 27, 1999; 64 FR 29805, June 3, 1999). In implementing the regulation, it was determined that replicate surveys were not always feasible due to weather, staff, or equipment constraints and that a sighting of less than 10 leatherbacks per 50 nm (92.6 km) in the replicate survey was not necessarily an indication that the turtles had moved away from the closed area, and that the 2-week closure duration was insufficient to ensure protection while leatherbacks were present in the area.

From October 1 through to December 15, 1999, 15 leatherbacks stranded in Nassau through Brevard counties on the east coast of Florida. Since these strandings occurred outside of the seasonal provisions specified in the leatherback conservation zone regulation, NMFS issued an emergency 30-day rule requiring shrimp trawlers to use the leatherback TED modification (64 FR 69416, December 13, 1999). The 30-day restriction was necessary because leatherbacks were expected to be present in the area through that period. The leatherback conservation zone regulation is also limited to only a portion of the Atlantic coast. From 1986 through 1999 an average of 9 leatherbacks per year have been found stranded in the western Gulf with a high of 21 leatherbacks in 1999. Leatherbacks are also documented to strand in the eastern Gulf with an average of 5 per year from 1986 through 1999, with a high of 19 in 1989.

In summary, the leatherback conservation zone regulation may not adequately address leatherback mortality in shrimp trawls for the following reasons: The aerial surveys are limited to the Spring and do not cover the Fall when leatherbacks are known to strand, the leatherback conservation zone does not encompass all areas where leatherbacks may be present, the ability to conduct the replicate surveys required in the regulation is constrained by weather, staff and equipment and may not adequately determine whether leatherbacks have moved from the survey area, and the 2-week closures may not encompass the time that leatherbacks are present in high numbers in certain areas. Therefore, NMFS would like comments on whether the leatherback conservation zone regulation should be modified based on the problems identified previously or eliminated by requiring the use of leatherback TED modifications with long flaps year-round or, at a minimum, along the Atlantic Area in the Spring and Fall, or in other specified areas or during other specified times of the year.

TED Opening Size Options

NMFS is considering two options to modify TED openings. The first option would require the leatherback modification (the opening must have a 142-inch (361-cm) circumference with a corresponding 71-inch (180-cm) straight line stretched measurement) with a minimum 32-inch (81-cm) grid for all TEDs in all areas at all times. The advantages of this option are (1) decreased escape times for all turtles (this size opening will release leatherbacks and all large loggerhead and green turtles); (2) elimination of the leatherback conservation zone regulation which may not adequately protect leatherbacks; and (3) the leatherback TED modification would allow long flaps on bottom opening TEDs which may reduce shrimp loss and eliminate debris in the trawl. The disadvantages of this option are the 32-inch (81-cm) grid TED may not fit into small nets and small vessels may not be able to handle this size TED. Also, data on shrimp retention with the leatherback TED modification are lacking. NMFS intends to conduct tests on shrimp loss in the leatherback TED modification by early 2000.

The second option would require the use of an opening that is 35-inch (89-cm) wide by 16-inch (41-cm) high with a minimum 30-inch (76-cm) grid in all areas at all times. The advantages of this option are (1) increased release of larger loggerhead turtles and small leatherbacks; and (2) based on reports from NMFS enforcement agents and gear specialists, many fisherman already use this size opening or larger. The disadvantages are (1) this size opening will not release most leatherback turtles; and (2) use of this opening will require the continued use and modification of

the leatherback conservation zone regulation.

Other TED Modifications (Hooped Hard TED, Weedless TED, Flotation Devices)

Information from enforcement personnel and recent net shop surveys conducted by NMFS gear specialists have shown little or no use of the hooped hard TED. Enforcement personnel also report confusion with the differing regulatory requirements for escape openings for single grid and hooped hard TEDs. The weedless TED (a TED with the deflector bars not attached to the bottom to the grid frame) has been documented by NMFS enforcement with bent bars and spacing more than 4 inches (10-cm) apart. The bars of the weedless TED may bend during commercial use due to poor construction or inherent weakness in the design. NMFS TED testing in 1996 showed that weedless TEDs with the bars bent inward (toward the codend of the trawl) caught 100 percent of the turtles introduced into the trawl net. NMFS is considering either eliminating the weedless TED or requiring reinforcement of the bars. NMFS is soliciting public comment on these options.

NMFS enforcement has documented improper or inoperable flotation which will cause the TED to drag on the bottom resulting in damage and improper function. Flotation devices such as spongex do not perform well on deep-water offshore trawls because they collapse and lose buoyancy. NMFS is seeking public comment on whether different flotation, such as aluminum or hard plastic should be required in deep water areas where traditional spongex floats are ineffective.

Conclusion

NMFS is seeking advanced public input on potential changes to the TED regulations. NMFS wants to improve the performance of TEDs to protect large turtles, streamline and simplify the regulations, and improve the ability to enforce such regulations. The options NMFS is currently considering are:

Requiring the leatherback opening and long flap with a minimum 32-inch (81-cm) grid in all areas; or

Requiring a 35-inch (89-cm) by 16-inch (41-cm) opening with a minimum 30-inch (76-cm) grid in all areas;

Modifying or decertifying hooped hard TEDs and weedless TEDs;

Changing the requirements for the types of flotation devices allowed;

Modifying or eliminating the leatherback conservation zone regulation to provide better protection to leatherback turtles.

Authority: 16 U.S.C. 1531 *et seq.*; 16 U.S.C. 742a *et seq.*; 31 U.S.C. 9701.

Dated: March 31, 2000.

Penelope D. Dalton,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 00–8388 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–22–F

Notices

Federal Register

Vol. 65, No. 66

Wednesday, April 5, 2000

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Oregon Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Oregon Advisory Committee to the Commission will convene at 12 p.m. and adjourn at 4 p.m. on April 20, 2000, The Sweetbrier Inn, Board Room, 7125 SW Nyberg Road, Tualatin, Oregon 97062. The purpose of the meeting is to discuss the background and methods for conducting the Committee's planned law enforcement project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–3435). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 30, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–8330 Filed 4–4–00; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Virginia Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Virginia Advisory Committee to the Commission will convene at 10:30 a.m. and adjourn at 1 p.m. on Thursday, April 27, 2000, at the State Capital Building, Senate Room 4, First Floor, 9th and Grace Streets, Richmond, Virginia 23219. The Committee will hold a press conference and panel briefing to mark the public release of its report, "Unequal Justice: African Americans in the Virginia Criminal Justice System." Following questions by the news media, African American community leaders, commonwealth's attorneys and defense counselors, State legislators, the State attorney general and the governor will be invited to participate in a panel discussion on the report and related matters.

Persons desiring additional information, or planning a presentation to the Committee, should contact Ki-Taek Chun, Director of the Eastern Regional Office, 202–376–7533 (TDD 202–376–8116). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, March 30, 2000.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 00–8331 Filed 4–4–00; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Bureau of Export Administration Information Systems

Technical Advisory Committee; Notice of Partially Closed Meeting

The Information Systems Technical Advisory Committee (ISTAC) will meet on April 26 & 27, 2000, 9: a.m., in the Herbert C. Hoover Building, Room 3884, 14th Street between Pennsylvania Avenue and Constitution Avenue, NW., Washington, DC. The ISTAC advises the Office of the Assistant Secretary for Export Administration on technical questions that affect the level of export controls applicable to information systems equipment and technology.

April 26

Open Session

1. Comments or presentations by the public.
2. Prototype demonstration of internet submission of license application support documents.
3. Inter-processors communications: the Infiniband and the Intel 870 chipset.
4. The future of Complementary Metal-Oxide Semiconductors and the Semiconductor Industry Association roadmap.
5. A detailed look at Infiniband technology.
6. Advances in digital signal processors.

April 26 & 27

Closed Session

7. Discussion of matters properly classified under Executive Order 12958, dealing with U.S. export control programs and strategic criteria related thereto.

A limited number of seats will be available for the open session. Reservations are not accepted. To the extent time permits, members of the public may present oral statements to the ISTAC. The public may submit written statements at any time before or after the meeting. However, to facilitate distribution of public presentation materials to Committee members, the ISTAC suggests that public presentation materials or comments be forwarded before the meeting to the address listed below: Ms. Lee Ann Carpenter, OSIES/EA/BXA MS: 3876, U.S. Department of Commerce 14th St. & Constitution Ave., N.W. Washington, D.C. 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on September 10, 1999, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of this Committee and of any Subcommittees thereof dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of

meetings of this Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: March 30, 2000.

Lee Ann Carpenter,

Committee Liaison Officer.

[FR Doc. 00–8361 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–JT–M

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–845]

Stainless Steel Sheet and Strip in Coils From Japan: Final Results of Changed Circumstance Antidumping Duty Review, and Determination To Revoke Order in Part

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Final results of changed circumstance antidumping duty review, and determination to revoke order in part.

EFFECTIVE DATE: April 5, 2000.

SUMMARY: On February 8, 2000, the Department of Commerce (the Department) published a notice of initiation of a changed circumstances antidumping duty review and preliminary results of review with intent to revoke, in part, the antidumping duty order on stainless steel sheet and strip in coils from Japan. We are now revoking this order in part, with regard to the following product: Stainless steel welding electrode strips, as described in the "Scope" section of this notice, based on the fact that domestic parties have expressed no further interest in the relief provided by the order with respect to the importation or sale of this steel coil, as so described.

FOR FURTHER INFORMATION CONTACT: Robert Bolling, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone (202) 482–3434.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations at 19 CFR part 351 (1999).

Background

On August 13, 1999, the Department of Commerce (the Department) received a request on behalf of Watanabe Trading Co., Ltd. (Watanabe) and Byram Steel Trading Co. (Byram) for a changed circumstance review and an intent to revoke in part the antidumping duty (AD) order with respect to specific stainless steel sheet and strip from Japan. The Department received a letter on August 30, 1999, from petitioners (Allegheny Ludlum Corporation, Armco, Inc., J&L Specialty Steel, Inc., Washington Steel Division of Bethlehem Steel Corporation (formerly Lukens, Inc.), the United Steelworkers of America, AFL–CIO/CLC, the Butler Armco Independent Union and the Zanesville Armco Independent Organization, Inc. of CA) expressing no opposition to the request of Watanabe and Byram for revocation in part of the order pursuant to a changed circumstance review with respect to the subject merchandise defined in the Scope of the Review section below.

We preliminarily determined that petitioners' affirmative statement of no interest constituted changed circumstances sufficient to warrant a review and partial revocation of the order. Consequently, on February 8, 2000, the Department published an initiation of a changed circumstances review and preliminary results of review with an intent to revoke the order in part (65 FR 6155).

The merchandise under review is currently classifiable under subheading 7220.20.70 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope is dispositive.

Scope of Changed Circumstance Review

The products covered by this exclusion request and changed circumstances review are stainless steel welding electrode strips that are manufactured in accordance with American Welding Society (AWS) specification ANSI/AWS A5.9–93. The products are 0.5 mm in thickness, 60 mm in width, and in coils of approximately 60 pounds each. The products are limited to the following AWS grade classifications: ER 308L, ER 309L, ER 316L and ER 347, and a modified ER 309L or 309LCb which meets the following chemical composition limits (by weight):

Carbon—0.03% maximum
Chromium—20.0–22.0%
Nickel—10.0–12.0%
Molybdenum—0.75% maximum
Manganese—1.0–2.5%
Silicon—0.65% maximum
Phosphorus—0.03% maximum
Sulphur—0.03% maximum
Copper—0.75% maximum
Columbium—8 times the carbon level minimum—1.0% maximum

Comments

In the preliminary results, we provided parties the opportunity to comment. We did not receive any comments from the interested parties.

Final Results of Review and Partial Revocation of the Antidumping Duty Order

The affirmative statement of no interest by petitioners concerning the steel coil (*i.e.*, stainless steel welding electrode strips) and the fact that no interested parties objected to or otherwise commented on our preliminary results of review, constitute changed circumstances sufficient to warrant partial revocation of the order. Therefore, the Department is partially revoking the order on stainless steel sheet and strip in coils with respect to the product described above, in accordance with sections 751(b) and (d) and 782(h) of the Act and 19 CFR 351.222(g)(i). This partial revocation applies to all unliquidated entries of the above-described merchandise not subject to final results of administrative review as of the date of publication in the **Federal Register** of these final results of changed circumstances review.

The Department will instruct the Customs Service (Customs) to proceed with liquidation, without regard to antidumping duties, of any unliquidated entries of steel coil (*i.e.*, stainless steel welding electrode strips), as specifically described in the "Scope of Changed Circumstance Review" section above, and entered, or withdrawn from the warehouse, for consumption on or after March 24, 2000. The Department will further instruct Customs to refund with interest any estimated duties collected with respect to unliquidated entries of steel coils (*i.e.*, stainless steel welding electrode strips) entered or withdrawn from warehouse for consumption on or after the publication date of the final results of this changed circumstances review, in accordance with section 778 of the Act and 19 CFR 351.222(f)(4).

This notice also serves as a final reminder to parties subject to administrative protection orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.34(d)(1997). Failure to timely notify the Department in writing of the return/destruction of APO material is a sanctionable violation.

This changed circumstances review, partial revocation of the antidumping duty order, and notice are in accordance with sections 751(b) and (d) and 782(h) of the Act and sections 351.216, 351.2221(c)(3), and 351.222(g) of the Department's regulations.

Dated: March 23, 2000.

Richard Moreland,

Acting Assistant Secretary for Import Administration.

[FR Doc. 00–8287 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of termination of the panel review of the final injury determination made by the International Trade Commission, respecting Live Cattle from Canada (Secretariat File No. USA/CDA–99–1904–07).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review by the Complainant, the panel review is terminated as of March 15, 2000. Complaints were filed pursuant to Rule 39, Notices of Appearance were filed pursuant to Rule 40, however, no panel has been appointed. All "participants" in this review as defined in Rule 3 of the *Rules of Procedure for Article 1904 Binational Panel Review* have consented to the motion for termination. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: March 15, 2000.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 00–8288 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 033100B]

Raised Footrope Whiting Trawl Exemption Requests and Notifications; Proposed Information Collection; Request for Comments

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 5, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Commerce, Room 5327, 14th and Constitution Avenue NW, Washington DC 20230 (or via Internet at LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Peter Christopher, NMFS, 1 Blackburn Drive, Gloucester, MA 01930, 978–281–9288.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Massachusetts Division of Marine Fisheries has been conducting an experimental fishery, referred to as the Raised Footrope Whiting Trawl Experimental Fishery (Raised Footrope Experiment), to allow trawlers to target whiting, red hake, dogfish and other small mesh species using a raised footrope trawl. The experiment was designed to assess the effectiveness of a raised footrope small mesh otter trawl in reducing bycatch of regulated multispecies. The proposed Framework Adjustment 35 to the Multispecies Fishery Management Plan will recommend that the Raised Footrope Experiment become a multispecies exempted fishery. The collection-of-information requirements are: (1) A request for a certificate to fish in the Raised Footrope Whiting Trawl Exemption; and (2) a notification of intention to withdraw from the Raised Footrope Whiting Trawl Exemption. Requests for a certificate identify the person, the vessel name, the permit number, and how long he/she intends to fish in the exemption area (no less than seven days but not more than four months).

II. Method of Collection

Requests and notifications are made by telephone.

III. Data

OMB Number: None.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Business and other for-profit (commercial fishermen).
Estimated Number of Respondents: 288.
Estimated Time Per Response: 2 minutes.
Estimated Total Annual Burden Hours: 231 hours.
Estimated Total Annual Cost to Public: $81.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the

proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and /or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: March 29, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 00–8396 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–22–F

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

[Docket No. 000328087–0087–01]

RIN 0651–XX23

Reestablishment of the Patent and Trademark Office as the United States Patent and Trademark Office

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of reestablishment and adoption of seal.

SUMMARY: The Patent and Trademark Office Efficiency Act reestablishes the Patent and Trademark Office as the United States Patent and Trademark Office (USPTO), an agency of the United States, within the Department of Commerce. USPTO will continue to issue patents, register trademarks, and disseminate information about patents and trademarks under the policy direction of the Secretary of Commerce, but will otherwise exercise independent control of its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions. This notice will explain some key aspects of USPTO's new functions and authorities.

EFFECTIVE DATE: March 29, 2000.

ADDRESSES: Director of the United States Patent and Trademark Office, Washington, D.C. 20231.

FOR FURTHER INFORMATION CONTACT: Richard Torczon, 703–305–9035.

SUPPLEMENTARY INFORMATION: The Patent and Trademark Office Efficiency Act (PTOEA) (Pub. L. 106–113, 113 Stat. 1501A–572) becomes effective March 29, 2000, and reestablishes the Patent and Trademark Office as an agency of the United States, within the Department of Commerce. The PTOEA transforms USPTO into a performance-based organization that uses quantitative and qualitative measures and standards for evaluating cost-effectiveness that are consistent with the principles of impartiality and competitiveness. Under the PTOEA, USPTO will continue to issue patents, register trademarks, and disseminate information about patents and trademarks under the policy direction of the Secretary of Commerce, but USPTO will exercise independent control over its budget allocations and expenditures, personnel decisions and processes, procurements, and other administrative and management functions. Some key aspects of the reestablishment of USPTO include:

1. New Titles

The head of USPTO is the "Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office". The Director is assisted by the "Deputy Under Secretary of Commerce for Intellectual Property and Deputy Director of the United States Patent and Trademark Office".

The patent operations of USPTO are now headed by the "Commissioner for Patents".

The trademark operations of USPTO are now headed by the "Commissioner for Trademarks".

Under section 4741(b) of the PTOEA, any reference to the Commissioner of Patents and Trademarks, the Assistant Commissioner for Patents, or the Assistant Commissioner for Trademarks is deemed to refer to the Director, the Commissioner for Patents, or the Commissioner for Trademarks, respectively. Hence, until further notice, no change is necessary to any mailing procedure, form, or other document submitted to USPTO. Appropriate use of the new titles is acceptable as well.

2. Mailing Address

The mailing address remains the same, as reflected in the **ADDRESSES** section above. USPTO will accept mail addressed to either the Director of the United States Patent and Trademark Office or the Commissioner of Patents and Trademarks.

3. Continuity of Operations

Under subsection 4743(a) of the PTOEA, all orders, determinations, rules, regulations, permits, grants, loans, contracts, agreements, certificates, licenses, and privileges in effect on March 28, 2000, shall remain in effect with equal force. Similarly, under subsection 4743(b), all proceedings under way on March 28, 2000, shall continue. To this end, USPTO adopts all authorities, including rules, manuals, orders, and precedent, of the Patent and Trademark Office in effect on March 28, 2000. Until otherwise indicated, USPTO will continue to follow the Federal Acquisition Regulations and Department of Commerce regulations applicable to the Patent and Trademark Office on March 28, 2000.

USPTO may continue to use existing stocks of letterhead and other products.

5. Seal

USPTO adopts the following as its seal which shall be judicially noticed and with which letters patent, certificates of trademark registrations, and papers issued by USPTO shall be authenticated:



(Authority: Sec. 4712, Pub. L. 106–113, 113 Stat. 1501A–572 (35 U.S.C. 2(b)).)

Dated: March 30, 2000.

Q. Todd Dickinson,

Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office.

[FR Doc. 00–8285 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–16–P

DEPARTMENT OF COMMERCE

Technology Administration

National Medal of Technology

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce (DOC), as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to comment on the continuing and proposed information collection, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before June 5, 2000.

ADDRESSES: Direct all written comments to Linda Engelmeier, Departmental Forms Clearance Officer, Department of Comment, Room 5027, 1401 Constitution Avenue, NW, Washington, DC 20230 or via the Internet (LEngelme@doc.gov).

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to the attention of S.J. Dapkunas, Acting Director, National Medal of Technology Program, Technology Administration, 1401 Constitution Avenue, NW, Room 4226, Washington, DC 20230. In addition, written comments may be sent via fax, 202/501–8153, and e-mail to stanley_dapkunas@ta.doc.gov.

SUPPLEMENTARY INFORMATION:

I. Abstract

The National Medal of Technology is the highest honor bestowed by the President to America's leading innovators. The Medal is given to individuals, teams, or companies for accomplishments in the innovation, development, commercialization, and management of technology, as evidenced by the establishment of new or significantly improved products, processes, or services. The information provided is used by the Nomination Evaluation Committee in determining the merit and eligibility of nominees.

II. Method of Collection

By mail, but the nomination forms and instructions are electronically posted on the National Medal of Technology web site so interested parties can review criteria and informational requirements at their convenience.

III. Data

OMB Number: 0692–0001.
Form Number: None.
Type of Review: Reinstatement of a previously approved collection.
Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; and, Federal Government.
Estimated Number of Respondents: 102.
Estimated Time Per Response: 25 hours.
Estimated Total Annual Respondent Burden Hours: 2,550.
Estimated Total Annual Respondent Cost Burden: None (no capital expenditures).

IV. Requests for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, *e.g.*, the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarize or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: March 29, 2000.

Linda Engelmeier,

Departmental Forms Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–8286 Filed 4–4–00; 8:45 am]

BILLING CODE 3510–18–P

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange: Proposed Amendment to the Cotton No. 2 Futures Contract Prohibiting Cotton Stocks Under Commodity Credit Corporation Loan From Simultaneously Being Exchange-Certified for Delivery on the Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of proposed amendment to contract terms and condition.

SUMMARY: The New York Cotton Exchange (NYCE or Exchange) has proposed an amendment to the Exchange's cotton No. 2 futures contract. The proposed amendment would prohibit cotton stocks from simultaneously being included in both Exchange-certified stocks and under Commodity Credit Corporation (CCC) loan. The Acting Director of the Division, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that the proposed amendment is of major economic significance, within the meaning of section 5a(a)(12) of the Commodity Exchange Act (Act), and that its publication is in the public interest and will assist the Commission in considering the views of interested persons.

DATES: Comments must be received on or before May 5, 2000.

ADDRESSES: Interested person should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. In addition, comments may be sent by facsimile transmission to facsimile number (202) 418–5521, or by electronic mail to secretary@cftc.gov. Reference should be made to the proposed amendment to the New York Cotton Exchange cotton No. 2 futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact John Bird of the Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581, telephone (202) 418–5274. Facsimile number: (202) 418–5527. Electronic Mail: jbird@cftc.gov.

SUPPLEMENTARY INFORMATION: The cotton No. 2 futures contract requires that cotton intended for delivery be inspected for conformity with the contract's quality specifications. Cotton that is found to meet the contract's quality specifications is certified by the Exchange as deliverable on the futures contract.

The proposal will specify that no bale of cotton may simultaneously be included in both certified stocks and Commodity Credit Corporation (CCC) loan stocks. The Exchange intends to make the proposed amendment effective within 30 days following Commission approval, if granted, with respect to the first contract month with no open interest on such effective date and for all contract months listed thereafter.

In support of the proposal, the Exchange stated that:

> From the perspective of the cotton futures market, the significant change to the cotton loan program which took effect in 1986 was the provision that the CCC would waive interest charges and pay some or all of the storage charges that accrued during the loan period as necessary to make the loan repayable at the lower of the loan rate plus storage and interest, or the AWP [Adjusted World Price for cotton]. In the event of forfeiture to the CCC, no interest is charged, and the CCC assumes responsibility for the warehouse storage charges that accrued during the period that the cotton was under loan.
>
> Therefore, it is clear that, particularly at times when the AWP is below the loan rate, cotton under loan is subject to non-commercial forces. This is in contrast to "free" cotton stocks, which are subject to commercial market forces, particularly to the intertemporal relationships in the cotton No. 2 futures market. For producers and cooperatives, the loan program effectively provides a free put option at an exercise (the

loan rate) which may be significantly above the prevailing market price.

While the impact of the loan program on the cash market is not within the Exchange's jurisdiction, the rules relating to certification of stocks for futures delivery are, and the Exchange is concerned that the interplay between the loan program and the stocks certification process does not adversely affect the economic performance of the futures market.

The level of certified stocks is an important influence in the day-today behavior of the futures market. It is, after all, (and is designed to be), the most relevant measure of available deliverable supply. Furthermore, * * * the level of certified stocks is the primary determinant of inter-temporal price relationships in the cotton No. 2 futures market, which in turn underpin the role of the futures market in guiding commercial inventory management activity.

Hence, the Exchange's concern that, if certified stocks include cotton which is under loan, it is not responsive to commercial market forces and is eligible to be forfeited to the CCC on non-commercial terms, the future market will not be properly informed as to commercially available deliverable supply and its role in guiding commercial inventory management will be impaired.

In support of its view that the level of certified cotton stocks is the primary determinant of inter-temporal cotton futures price relationships, the Exchange provided an econometric analysis comparing the relationship between the December/March cotton futures price spread and the level of stocks certified for futures delivery with the relationships between the same cotton futures price spread and total cotton stocks in public warehouses and total U.S. stocks. Based on this analysis, the Exchange concluded that "[t]he results confirm the critical role of certified stocks in determining price spread behavior and demonstrate the markedly superior explanatory power of certified stocks in this regard over that of other publicly available stocks data."

The Exchange also said that, since 1993, it has monitored and included in its weekly stocks report data on certified stocks which are under CCC loan. The Exchange indicated that, during this period, certified stocks under CCC loan have never been more than several hundred bales and that, since 1995, there have been no certified stocks under loan.

The Division is requesting comments on the proposed amendment. The Division is particularly interested in comments in regard to whether: (1) the continuation of the practice of allowing certified cotton stocks to remain under CCC loan represents a threat to orderly trading and delivery in the futures market; (2) the proposal will reduce deliverable supplies to levels that would make the futures market susceptible to price manipulation or distortion; and (3) the proposal, by precluding the use of a method of financing that is commonly used in the cash market, is consistent with the requirements of section 15 of the Commodity Exchange Act.[1]

The proposed amendment was submitted under the Commission's Fast Track procedure for the review of rule changes which provides that, absent and contrary action by the Commission, the proposed amendment may be deemed approved 45 days after the Commission received the proposal. However, in view the complex issues posed by the proposal and to provide an adequate period for interested parties to comment, the Fast Track review period has been extended by an additional 30 days to May 31, 2000, pursuant to the provisions of Commission Regulation 1.41(b).

Copies of the proposed amendment will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581. Copies of the proposed amendment can be obtained through the Office of the Secretariat by mail at the above address, by phone at (202) 418–5100, or via the Internet at secretary@cftc.gov.

Other materials submitted by the Exchange in support of the proposal may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1997)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Request for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed amendment, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW, Washington, DC 20581 by the specified date.

[1] Section 15 stipulates that, in requiring or approving any bylaw, rule, or regulation of a contract market, the Commission must take into consideration the public interest to be protected by the antitrust laws and endeavor to take the least anticompetitive means of achieving the objectives of the Act, as well as the policies and purposes of the Act.

Issued in Washington, DC, on March 31, 2000.

Richard Shilts,

Acting Director.

[FR Doc. 00–8354 Filed 4–4–00; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before May 5, 2000.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Danny Werfel, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address DWERFEL@OMB.EOP.GOV.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.*, new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

Dated: March 30, 2000.

William Burrow,

Leader, Information Management Group, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: New.

Title: Application for Grants Under the Community Scholarship Mobilization Program.

Frequency: Annually.

Affected Public: Individuals or households; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 100.

Burden Hours: 6,000.

Abstract: This application is essential to conducting the competition for new awards in Fiscal Year 2000 for national organizations to support the establishment or ongoing work of regional, state, local, or community program centers.

This information collection is being submitted under the Streamlined Clearance Process for Discretionary Grant Information Collections (1890–0001). Therefore, the 30-day public comment period notice will be the only public comment notice published for this information collection.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, or should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 5624, Regional Office Building 3, Washington, DC 20202–4651. Requests may also be electronically mailed to the internet address OCIO_IMG_Issues@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request. Comments regarding burden and/or the collection activity requirements should be directed to Joseph Schubart at (202) 708–9266 or via his internet address Joe_Schubart@ed.gov. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 00–8302 Filed 4–4–00; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Financial Assistance Award (Grant)

AGENCY: Department of Energy (DOE).

ACTION: Notice of solicitation of applications for grant awards for high-energy density and laser-matter interaction studies.

SUMMARY: Pursuant to 10 CFR 600.8, the DOE announces that it plans to conduct a technically competitive solicitation for basic research experiments in high energy density and laser matter interaction studies at the National Laser Users' Facility (NLUF) located at the University of Rochester Laboratory for Laser Energetics (UR/LLE). Grant Solicitation No. DE–PS03–00SF22056. Universities or other higher education institutions, private sector not-for-profit organizations, or other entities are invited to submit grant applications. The total amount of funding (project cost) expected to be available for Fiscal Years 2001 and 2002 program cycle is $1,400,000. Multiple awards are anticipated under the total budget of $700,000 per year.

FOR FURTHER INFORMATION CONTACT: Janice Williams, Contract Specialist, DOE Oakland Operations Office, 1301 Clay Street, Room 700N, Oakland, CA 94612–5208, Telephone No.: (510) 637–1914, Facsimile No.: (510) 637–2074, E-mail janice.williams@oak.doe.gov.

SUPPLEMENTARY INFORMATION: The solicitation document contains all the information relative to this action for prospective applicants. The solicitation is targeted for release on or about March 31, 2000. The actual work to be accomplished will be determined by the experiments and diagnostic techniques that are selected for award. Proposed experiments and diagnostic techniques will be evaluated through scientific peer review against predetermined, published and available criteria. Final selection will be made by the DOE. It is anticipated that multiple grants will be awarded within the a available funding. The unique resources of the NLUF are available to scientists for state-of-the art experiments primarily in the area of inertial confinement fusion (ICF) and related plasma physics. Other areas such as spectroscopy of highly ionized atoms, laboratory astrophysics, fundamental physics, material science, and biology and chemistry will be considered on a secondary basis. The LLE was established in 1970 to investigate the interaction of high power lasers with matter. Available at the LLE for NLUF researchers is the OMEGA LASER, a 30 kJ UV 60 beam laser system (at 0.35 um) suitable for direct-drive ICF implosions. This system is suitable for a variety of experiments including laser-plasma interactions and atomic spectroscopy. The NLUF program for FY 2001 & FY 2002 is to concentrate on experiments that can be done with the OMEGA laser at the University of Rochester and development of diagnostic techniques suitable for the OMEGA system. Measurements of the laser coupling, laser-plasma interactions, core temperature, and core density are needed to determine the characteristics of the target implosions. Diagnostic techniques could include either new instrumentation, development of analysis tools, or development of targets that are applicable for 30 kJ implosions. Additional information about the facilities and potential collaboration at the NLUF can be obtained from: Dr. John Soures, Manager, National Laser Users' Facility, University of Rochester/LLE, 250 East River Road, Rochester, NY 14623.

Issued in Oakland, CA on March 28, 2000.

Joan Macrusky,

Director, Financial Assistance Center, Department of Energy, Oakland Operations Office.

[FR Doc. 00–8328 Filed 4–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of International Affairs; Asia-Pacific Economic Cooperation Energy Ministers Conference

AGENCY: Department of Energy.

ACTION: Notice of upcoming conference.

SUMMARY: The U.S. Department of Energy and the City of San Diego, California, will co-sponsor the Asia-Pacific Economic Cooperation (APEC) Energy Ministers Conference: "Turning Vision Into Reality," in San Diego, California. The Conference will focus on strategies to implement existing policy commitments and to enhance investment in clean and sustainable energy development, on opportunities for regional energy market integration, and on continued transition to a market-oriented business climate. The region's energy ministers, and representatives of the private sector, multilateral institutions and nongovernment organizations will work together to create a vision for the 21st Century that will support clean and sustainable energy and economic development.

DATES: The three-day conference will be held from May 10–12, 2000.

FOR FURTHER INFORMATION CONTACT: For further information and to register on line, please visit our website on *www.apecenergy.org*. You may also contact APEC Conference Headquarters on 703–352–7633, or via fax on 703–352–9513 for further information regarding the conference. For inquires regarding exhibits for industry displays, please contact John Reyes in San Diego,

California by telephone on 619–557–2803.

SUPPLEMENTARY INFORMATION: This is the first time the Department of Energy has hosted an APEC Energy Ministers Conference. Initial plans for the Conference were announced in February.

Attendees: Approximately 600 participants are expected to attend the event, including representation by international and regional organizations such as the World Bank, International Finance Corporation, and the Asian Development Bank; Energy Ministers and representatives of APEC member economies; and private sector representatives from the region's major electricity, oil, gas, renewable and energy efficiency, energy service and coal companies.

Issued in Washington, DC on March 24, 2000.

David L. Goldwyn,

Assistant Secretary for International Affairs.

[FR Doc. 00–8327 Filed 4–4–00; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–21–000]

Canyon Creek Compression Company; Notice of Proposed Changes in FERC Gas Tariff

March 30, 2000.

Take notice that on March 28, 2000, Canyon Creek Compression Company (Canyon) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective May 1, 2000.

Canyon states that the purpose of this filing is to make several minor "clean-up" type changes to its Tariff. None of these changes are substantive in nature, but rather are administrative changes to correct references in Canyon's Tariff which have become inaccurate due to changed circumstances. Specifically, the changes are to: (1) revise the Preliminary Statement to reflect a change in address and status of Canyon's Rate Schedules FCS and ICS to reflect a change in address and telecopy number for Canyon's Houston, Texas office; (3) revise Section 15.4 of the General Terms and Conditions (GT&C) of Canyon's Tariff regarding the installation of Internet software related to users of Canyon's DART software; (4) revise Section 31.2(a) of the GT&C of Canyon's Tariff to reflect a title and general office location reference change regarding the addressing of formal complaints; and (5) revise Section 34.3 of the GT&C of Canyon's Tariff to reflect a change in Canyon's Internet website address.

Canyon requests any waivers of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective May 1, 2000.

Canyon states that copies of the filing have been mailed to Trailblazer's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 285.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http://www.ferc.fed.us/online/rims.htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8290 Filed 4–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 137–002]

Pacific Gas & Electric Company; Notice of Meetings

March 30, 2000.

Take notice the Ecological Resources subgroup of the Mokelumne Relicensing Collaborative will meet on April 12 and 13, 2000, from 9 a.m. to 5 p.m. The Recreation subgroup will meet on April 14, 2000, from 9 a.m. to 4 p.m. These meetings will be held at the PG&E offices, 2740 Gateway Oaks Drive, in Sacramento, California. Expected participants need to give their names to David Moller (PG&E) at (415) 973–4696.

For further information, please contact Diana Shannon at (202) 208–7774 or Tim Welch at (202) 219–2666.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8293 Filed 4–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2342–011]

Pacific Corp; Notice of Deadline for Answers and Reply Comments

March 30, 2000.

The Commission's February 2, 2000, Notice of Offer of Settlement and Application for Amendment of License, as clarified by a notice issued on March 9, 2000, set a deadline for filing comments and or motions in Project No. P–2342–011 of March 27, 2000. The deadline for filing answers and reply comments to filings submitted in response to the February 2 notice is April 11, 2000.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8294 Filed 4–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT00–22–0000]

Trailblazer Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

March 30, 2000.

Take notice that on March 28, 2000, Trailblazer Pipeline Company (Trailblazer) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective May 1, 2000.

Trailblazer states that the purpose of this filing is to make several minor "clean-up" type changes to its Tariff. None of these changes are substantive in nature, but rather are administrative changes to correct references in Trailblazer's Tariff which have become inaccurate due to changed circumstances. Specifically, the changes are to: (1) Revise the Preliminary Statement to reflect the names of Trailblazer's current partners; (2) revise Section 3.2 of Trailblazer's Rate Schedules FTS and ITS to reflect a change in address and telecopy number for Trailblazer's Houston, Texas office; (3) revise Section 18.4 of the General Terms and Conditions (GT&C) of Trailblazer's Tariff regarding the installation of Internet software related to users of Trailblazer's DART software; (4) revise Section 34.3(a) of the GT&C of Trailblazer's Tariff to reflect a title and general office location reference change regarding the addressing of formal complaints; and (5) revise Section 37.3 of the GT&C of Trailblazer's Tariff to reflect a change in Trailblazer's Internet website address.

Trailblazer requests any waivers of the Commission's Regulations to the extent necessary to permit the tendered tariff sheets to become effective May 1, 2000.

Trailblazer states that a copies of the filing have been mailed to Trailblazer's customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with Commission and are available for public inspection in the Public Reference Room. This filing may be viewed on the web at http: //www. ferc. fed. us/online/rims. htm (call 202–208–2222 for assistance).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8291 Filed 4–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application To Amend License, and Soliciting Comments, Motions To Intervene, and Protests

March 30, 2000.

a. *Application Type:* Request for Approval to Convey Project Property.

b. *Project No.:* 2169–015.

c. *Date Filed:* February 24, 2000.

d. *Applicant:* Alcoa Power Generating Inc. (APGI), Tapoco Division.

e. *Name of Project:* Little Tallassee.

f. *Location:* The Project is located on the Little Tennessee River in Monroe and Blount Counties, Tennessee, and Cheoah River in River in Graham and Swain Counties, North Carolina. The project does not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* J.E. Adams, Alcoa Power Generating Inc., 300 N. Hall Road, Alcoa, TN 37701; Tel: (423) 977–3333.

i. *FERC Contact:* Any questions on this notice should be addressed to Vedula Sarma at (202) 219–3273 or by e-mail at vedula.sarma@ferc.fed.us.

j. *Deadline for Filing Comments and/or Motions:* May 10, 2000. Please include the project number (2169–015) on any comments or motions filed.

k. *Description of Filing:* APGI is proposing to revise the project boundary of the Santeetlah development of the Little Tallassee Project, FERC No. 2169, at the property of Robert H. and Joan K. Mosley (Mosleys). The purpose is to resolve a discrepancy of the project boundary line at the Mosleys' property and set it along the edge of the retaining wall that runs along the reservoir edge. The area represents a de minimis portion of the project boundary.

l. *Location of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may be viewed on http://www. ferc. fed.us/online/rims. htm [call (202) 208–2222 for assistance]. A copy is also available for inspection and reproduction at the address in item h above.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8292 Filed 4–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM99–2–000; EL00–39–000; EC00–50–000; ER00–1520–000; EC00–67–000; EL00–46–000; EL00–13–000; ER98–4410–000; ER98–2910–000; EL98–74–000; ER95–112–000; ER96–586–000; ER95–1001–000; EL95–17–000; ER95–1615–000; EL00–12–000; ER96–2709–000; ER00–1743–000; EL99–87–000; ER95–1042–000; ER93–465–000; ER93–922–000; EL00–34–000; EL00–9–000; ER99–2770–000; EL99–69–000; ER99–4392–000; EL98–36–000; ER91–569–000; EL98–8–000; ER99–4400–000; ER00–1655–000; TX93–4–000; EL93–51–000; EF98–3011–000; ER93–465–000; ER93–922–000; ER00–1713–000; ER00–801–000; ER00–1947–000; EL95–33–000]

Regional Transmission Organizations; Southwest Power Pool, Inc.; CP&L Holdings, Inc. On Behalf of its Public Utility Subsidiaries and Florida Progress Corporation On Behalf of its Public Utility Subsidiaries; Louisville Gas and Electric Company; Kentucky Utilities Company; Merger Sub; Entergy Power Marketing Corporation v. Southwest Power Pool; Seminole Electric Cooperative, Inc. and Florida Municipal Power Agency; v. Florida Power & Light Company; Entergy Services, Inc.; Entergy Services, Inc.; Entergy Services, Inc.; Entergy Services, Inc. and Entergy Power, Inc.; Entergy Power Marketing Corp. Tennessee Power Company; Entergy Services, Inc.; Entergy Services, Inc.; Clarksdale Public Utilities Commission v. Entergy Services, Inc. as agent for Entergy Arkansas, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Gulf States, Inc.; System Energy Resources, Inc.; Florida Power & Light Company; ExxonMobil Chemical Company and ExxonMobil Refining & Supply Company v. Entergy Gulf States, Inc.; Cherokee County Cogeneration Partners, L.P. v. Duke Electric Transmission—a division of Duke Energy Corporation; Florida Power & Light Company; Southwest Power Pool, Inc.; Aquila Power Corporation v. Entergy Services, Inc. as agent for Entergy Arkansas, Inc.; Entergy Louisiana, Inc.; Entergy Mississippi, Inc.; Entergy New Orleans, Inc.; Entergy Gulf States, Inc.; Entergy Services, Inc.; Florida Power & Light Company; Southern Company Services, Inc.; Southern Company Services, Inc.; Florida Municipal Power Agency v. Florida Power & Light Company; United States Department of Energy—Southeastern Power Administration; Florida Power & Light Company; Entergy Services, Inc.; Tampa Electric Company; Entergy Services, Inc.; Louisiana Public Service Commission v. Entergy Services, Inc.; Notice of Meeting

March 29, 2000.

On December 20, 1999, the Commission issued Order No. 2000 to advance the formation of Regional Transmission Organizations (RTOs). Order No. 2000 announced the initiation of a regional collaborative process to aid in the formation of RTOs. To initiate the collaborative process, the Commission organized a series of regional workshops. These workshops are open to all interested parties. The fifth workshop is scheduled for April 6–7, 2000 in Atlanta, Georgia. During the course of the Atlanta workshop, discussion of the above-listed cases could arise. Any person having an interest in an above-listed case is invited to attend the Atlanta workshop. there will be no Commission transcript of any of the workshops, and information discussed or disseminated in the workshop will not constitute part of the decisional record in the above-listed cases, unless formally filed in accordance with Commission regulations.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 00–8373 Filed 4–4–00; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Implementation of Special Refund Procedures

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of Implementation of Special Refund Procedures.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces the procedures for disbursement of $1,369,404.60, plus accrued interest, in refined petroleum overcharges obtained by the DOE under the terms of remedial and consent orders with respect to Bi-Petro Refining Company, Inc., *et al.* (Bi-Petro), Case Nos. VEF–0035, *et al.* The OHA has determined that the funds will be distributed in accordance with the provisions of 10 C.F.R. Part 205, Subpart V and 15 U.S.C. § 4501, the Petroleum Overcharge Distribution and Restitution Act (PODRA).

DATES AND ADDRESSES: Applications for Refund must be filed in duplicate, addressed to Bi-Petro Refining Co., Inc., *et al.* Special Refund Proceeding and sent to the Office of Hearings and Appeals, Department of Energy, 1000 Independence Ave., S.W., Washington, DC, 20585–0107. All applications should display a reference to Case Nos. VEF–0035, *et al.* and be postmarked on or before September 30, 2000.

FOR FURTHER INFORMATION CONTACT: Thomas L. Wieker, Deputy Director Office of Hearings and Appeals, 1000 Independence Ave., S.W., Washington, DC 20585–0107, (202) 426–1527.

SUPPLEMENTARY INFORMATION: In accordance with 10 CFR 205.282(b), notice is hereby given of the issuance of the Decision and Order set out below. The Decision sets forth the procedures that the DOE has formulated to distribute to eligible claimants $1,369,404.60, plus accrued interest, obtained by the DOE under the terms of Remedial Orders and Consent Orders regarding Bi-Petro Refining Company, Inc., *et al.* Under the Remedial Orders, companies were found to have violated the Federal petroleum price and allocation regulations involving the sale of refined petroleum products during the relevant audit periods. The Consent Orders resolved alleged violations of these regulations.

The OHA will distribute the funds in a two-stage refund proceeding. Purchasers of certain covered petroleum products from any one of the firms considered in the proceeding have an opportunity to submit refund applications in the first stage. Refunds will be granted to applicants who satisfactorily demonstrate they were injured by the pricing violations and who document the volume of refined petroleum products they purchased from one of the firms during the relevant audit periods. In the event that money remains after all first-stage claims have been disposed of, the remaining funds will be disbursed in accordance with the provisions of 15 U.S.C. § 4501, the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA).

Applications for Refund must be postmarked on or before September 30, 2000. Instructions for the completion of refund applications have been set forth in Section III of the Decision immediately following this notice. Refund applications should be mailed to the address listed at the beginning of this notice.

Unless labeled as "confidential", all submissions must be made available for public inspection between the hours of 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays, in the Public Reference Room of the Office of Hearings and Appeals, 950 L'Enfant Plaza, Washington, D.C.

Dated: March 28, 2000.

George B. Breznay,

Director, Office of Hearings and Appeals.

March 28, 2000.

Decision and Order

DEPARTMENT OF ENERGY

Implementation of Special Refund Procedures

Names of Firms: Bi-Petro Refining Co., Inc., *et al.*

Dates of Filing: October 19, 1999, *et al.*

Case Numbers: VEF–0035, *et al.*

On October 19, 1999, the Office of General Counsel (OGC) of the Department of Energy (DOE) filed a Petition requesting that the Office of Hearings and Appeals (OHA) formulate and implement Subpart V special refund proceedings. Under the procedural regulations of the DOE, special refund proceedings may be implemented to refund monies to persons injured by violations of the DOE petroleum price regulations, provided DOE is unable to readily identify such persons or to ascertain the amount of any refund. 10 C.F.R. § 205.280. We have considered OGC's request to formulate refund procedures for the disbursement of monies remitted by Bi-Petro Refining Co., Inc. and eight other firms pursuant to Remedial Orders and Consent Orders (Remedial Order and Consent Order funds), and have determined that such procedures are appropriate. Each firm's name, case number and amount of money remitted to remedy its pricing violations has been set out in the Appendix immediately following this Decision.

Under the terms of the Remedial Orders and Consent Orders, a total of $1,369,404.60 has been remitted to DOE to remedy pricing violations which occurred during the relevant audit periods. These funds are being held in an escrow account established with the United States Treasury pending a determination of their proper distribution. This Decision sets forth OHA's plan to distribute those funds. The specific application requirements appear in Section III of this Decision.

I. Jurisdiction and Authority

The general guidelines that govern OHA's ability to formulate and implement a plan to distribute refunds are set forth at 10 C.F.R. Part 205, Subpart V. These procedures apply in situations where the DOE cannot readily identify the persons who were injured as a result of actual or alleged violations of the regulations or ascertain the amount of the refund each person should receive. For a more detailed discussion of Subpart V and the authority of the OHA to fashion procedures to distribute refunds, see *Office of Enforcement*, 9 DOE ¶ 82,508 (1981) and *Office of Enforcement*, 8 DOE ¶ 82,597 (1981).

II. Background

On January 21, 2000, we issued a Proposed Decision and Order (PDO) establishing tentative procedures to distribute the funds that each firm remitted to DOE. We proposed implementing a two-stage refund proceeding and we stated that applicants who purchased certain covered petroleum products from any one of the retailers identified in the Appendix to the PDO would be provided an opportunity to submit refund applications in the first stage. In the event funds remained after all first stage claims had been considered, we stated that the remaining funds would be disbursed in the second stage in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (15 U.S.C. § 4501) (PODRA).

We provided a 30-day period for the submission of comments concerning the proposed procedures. However, we have received no comments since the PDO was published in the **Federal Register** more than 30 days ago. The proposed procedures will therefore be adopted in the same form in which they were originally outlined. Immediately set forth below are the specific considerations that will guide our evaluation of refund applications during the first stage.

III. The First-Stage Refund Procedures

Refund applications submitted in these special refund proceedings will be evaluated in exactly the same manner as applications submitted in other refined product proceedings. In those proceedings, we have frequently chosen to adopt a number of rebuttable presumptions relating to pricing violations and injury. Such a policy reflects our belief that adoption of certain presumptions (1) permits applicants to participate in refund proceedings in larger numbers by avoiding the need to incur inordinate expense; and (2) facilitates our consideration of first stage refund applications. 10 C.F.R. § 205.282(e). For those reasons, we have adopted similar presumptions in the present proceeding.

A. Calculating the Refund

We have presumed that the pricing violations were dispersed equally throughout each firm's refined petroleum product sales during the relevant audit period. We therefore proposed that each applicant's potential refund should be calculated on a volumetric basis. Under the volumetric approach, refunds are calculated by multiplying the gallons of refined product each applicant purchased by the per gallon refund amount, multiplied by the percentage of funds DOE succeeded in collecting (volumetric). Applicants believing they were disproportionately overcharged by the pricing violations may present documentation which supports that claim. Those who succeed in showing they were disproportionately overcharged will be eligible to receive refunds calculated at a higher volumetric.

We have established a volumetric for each of the firms whose name appears in the Appendix accompanying this Decision. The precise volumetric for each firm can be found in the Appendix.

Each volumetric was obtained by multiplying $.0004 by the collection percentage.[1] This percentage was calculated by dividing the amount collected (with interest accrued by the DOE as of the date of issuance of this final implementation order) by the amount the firm was either ordered to pay in a Remedial Order or agreed to pay in a Consent Order.[2]

B. Eligibility for a Refund

In order to be eligible to receive a refund in this proceeding, each applicant must (1) document the volume of certain petroleum products listed in the Appendix that it purchased during the relevant period; and (2) demonstrate that it was injured by the overcharges. The threshold requirement for any applicant is documenting the volume of product it purchased. This requirement is typically satisfied when the applicant successfully demonstrates ownership of the business for which the refund is sought and submits documentation which supports the volume claimed in its refund application.

The injury showing, however, is a potentially more difficult requirement for applicants to satisfy, especially those seeking smaller refund amounts. This is true because an applicant must demonstrate that it was forced to absorb the overcharges. Our cases have often stated that an applicant accomplishes this by demonstrating that it maintained a "bank" of unrecovered product costs and showing that market conditions would not permit them to pass through those increased costs. *See, Quintana Energy Corp.*, 21 DOE ¶85,032 at 88,117 (1991).

We recognized that the cost to the applicant of gathering evidence of injury

[1] However, if the collection percentage is 100 percent or greater, the volumetric was not reduced.

[2] Nevertheless, we realize that the impact on an individual claimant may have been greater than the volumetric amount. We therefore propose that the volumetric presumption will be rebuttable, and we will allow a claimant to submit evidence detailing the specific overcharges that it incurred in order to be eligible for a larger refund. *E.g., Standard Oil Co./Army and Air Force Exchange Service*, 12 DOE ¶85,015 (1984). In addition, we note that we may need to lower the volumetric for a particular proceeding, if the volume claimed by applicants multiplied by the volumetric indicates that if all volume were claimed, the fund would be exhausted or insufficient to satisfy all claims. We may also need to lower a particular volumetric if it appears inappropriate, based on our experience in these cases.

to support a relatively small refund claim could exceed the expected refund and thereby cause some injured parties to forego an opportunity to obtain a refund. In view of these difficulties, we proposed adopting a number of injury presumptions which simplify and streamline the refund process. The simplified procedures reduce the burden that would have been placed on this Office had we required detailed injury showings for relatively small refund applications.

C. Presumptions of Injury

Set forth below are the presumptions of injury that have been adopted for each class of applicant likely to submit refund applications in this proceeding. These presumptions are not unlike injury presumptions adopted by OHA in many other refined product proceedings. Each presumption turns on the category of applicant.

Small-claim Presumption

We have adopted a small claim presumption of injury for resellers, retailers and refiners whose claim is $10,000 or less. Such an applicant need only document the volume of certain covered petroleum products listed in the Appendix he or she purchased during the audit period from one or more of the firms named in the Appendix to be eligible to receive a full refund. *See Enron Corporation*, 21 DOE ¶ 85,323 at 88,957 (1991).

Medium Range Presumption

Medium range applicants; that is, applicants seeking refunds in excess of $10,000 but less than $50,000, are eligible to receive 40 percent of their allocable share without proving injury. Like small-claim applicants, these applicants will only be required to document the volume of certain covered petroleum products listed in the Appendix they purchased during the audit period from any one of the firms named in the Appendix to be eligible to receive a refund. *See Shell*, 17 DOE at 88,406.

End-user Presumption

We have presumed that end-users of petroleum products whose businesses were unrelated to the petroleum industry and were not subject to the regulations promulgated under the Emergency Petroleum Price and Allocation Act of 1973 (EPAA), 15 U.S.C. §§ 751–760h, were injured by each of the firm's pricing violations. Unlike regulated firms, end-users were not subject to price controls during the audit period. Moreover, these firms were not required to keep records that justified selling price increases by reference to cost increases. An analysis of the impact of the alleged overcharges on the final prices of non-petroleum goods and services is beyond the scope of a special refund proceeding. *See American Pacific International, Inc.*, 14 DOE ¶85,158 at 88,294 (1986). End-users seeking refunds in this proceeding will therefore be presumed to have been injured. In order to receive a refund, end-user applicants need only document the volume of certain refined petroleum products they purchased during the relevant audit period from any of the nine firms whose name appears in the Appendix following this Decision. Meritorious applicants are eligible to receive their full allocable share. *See Shell*, 17 DOE at 88,406.

Refunds in Excess of $50,000 and Other Applicants

Applicants seeking refunds in excess of $50,000, excluding interest, will be required to submit detailed evidence of injury. These applicants must show that the overcharges were absorbed, not passed through to their customers. They will therefore be unable to rely upon injury presumptions utilized in many refined product refund cases. *Id.*

Regulated Firms and Cooperatives

Regulated firms (such as public utilities) and agricultural cooperatives, which are required to pass on to their customers the benefit of any refund received, are exempted from the requirement that they make a detailed showing of injury. *Marathon Petroleum Co.*, 14 DOE ¶ 85,269 at 88,515 (1986); *see also Office of Special Counsel*, 9 DOE ¶ 82,538 at 85,203 (1982). We require a regulated firm or cooperative to establish that it was a customer of one of the firms or a successor thereto. In addition, we require each such claimant to certify that it will pass any refund received through to its customers, to provide us with a full explanation of the manner in which it plans to accomplish this restitution to its customers and to notify the appropriate regulatory or membership body of the receipt of the refund money. If a regulated firm or cooperative meets these requirements, it will receive a refund equal to its full pro-rata share. However, any public utility claiming a refund of $10,000 or less, or accepting the medium-range presumption of injury, will not be required to submit the above referenced certifications and explanation. A cooperative's sales of covered petroleum products to non-members will be treated in the same manner as sales by other resellers or retailers.

Indirect Purchasers

Firms which made indirect purchases of covered petroleum products from one of the firms during the relevant period may also apply for refunds. If an applicant did not purchase directly from one of the firms, but believes that the covered petroleum products it purchased from another firm were originally purchased from the firms at issue, the applicant must establish the basis for its belief and identify the reseller from whom the covered petroleum products were purchased. Indirect purchasers who either fall within a class of applicant whose injury is presumed, or who can prove injury, may be eligible for a refund if the reseller of one of the nine firms' products passed through these firms' alleged overcharges to its own customers. *E.g., Dorchester Gas Corp.*, 14 DOE ¶ 85,240 at 88,451–52 (1986).

Spot Purchasers

We adopt the rebuttable presumption that a claimant who made only spot purchases from one of the firms was not injured as a result of those purchases. A claimant is a spot purchaser if it made only sporadic purchases of significant volumes of covered petroleum products from one of the firms. Accordingly, a spot purchaser claimant must submit specific and detailed evidence to rebut the spot purchaser presumption and to establish the extent to which it was injured as a result of its spot purchases from one of these firms. *E.g., Office of Enforcement*, 8 DOE ¶ 82,597 at 85,396–97 (1981).

Applicants Seeking Refunds Based on Allocation Claims

We also recognize that we may receive claims alleging these firms' failure to furnish petroleum products that they were obliged to supply under the DOE allocation regulations that became effective in January 1974. *See* 10 CFR Part 211. Any such application will be evaluated with reference to the standards we set forth in Subpart V implementation decisions such as *Office of Special Counsel*, 10 DOE ¶ 85,048 at 88,220 (1982), and refund application cases such as *Mobil Oil Corp./Reynold Industries, Inc.*, 17 DOE ¶ 85,608 (1988). These standards generally require an allocation claimant to demonstrate the existence of a supplier/purchaser relationship with the firm at issue and the likelihood that the firm at issue failed to furnish petroleum products that it was obliged to supply to the claimant under 10 CFR Part 211. In addition, the claimant should provide evidence that it sought redress from the alleged allocation violation. Finally, the claimant must establish that it was injured and document the extent of the injury.

In our evaluation of whether allocation claims meet these standards, we will consider various factors. For example, we will seek to obtain as much information as possible about the DOE's (or its predecessors') treatment of complaints made to it by the claimant. We will also look at any affirmative defenses that the firm may have had to the alleged allocation violation. In assessing an allocation claimant's injury, we will evaluate the effect of the alleged allocation violation on its entire business operations with particular reference to the amount of product that it received from suppliers other than the firm at issue. In determining the amount of an allocation refund, we will utilize any information that may be available regarding the amount of the firm's allocation violations in general and regarding the specific allocation violation alleged by the claimants. We will also pro rate any allocation refunds that would otherwise be disproportionately large in relation to the funds collected. *cf. Amtel, Inc./ Whitco, Inc.*, 19 DOE ¶ 85,319 (1989).

Consignees

We adopt a rebuttable level of injury presumption of 10 percent for all consignees of the instant firms during the relevant periods. *See Gulf Oil Corp.*, 16 DOE ¶ 85,381 (1987). Accordingly, a consignee may elect to receive a refund based on 10 percent of its total allocable share. Any consignee applicant will be free to rebut this presumption and prove a greater injury in order to receive a larger refund.

D. How To Apply for a Refund

To apply for a refund from one or more of the firms' remitted funds, an applicant should submit an Application for Refund containing all of the following information:

(1) The applicant's name; the current name and address of the business for which the refund is sought; the name and address during the refund period of the business for which the refund is sought; the taxpayer identification number; a statement specifying whether the applicant is an individual, corporation, partnership, sole proprietorship or other business entity; the name, title, and telephone number of a person to contact for additional information; and the name and address of the person who should receive any refund check.[3] If the applicant operated under more than one name or under a different name during the price control period, the applicant should specify those names.

(2) The applicant should specify the source of its gallonage information. In calculating its purchase volumes, an applicant should use actual records from the relevant period of purchase, if available. If these records are not available, the applicant may submit estimates of its relevant refined petroleum product purchases, but the estimation methodology must be reasonable and must be explained.

(3) A statement indicating whether the applicant or a related firm has filed, or has been authorized to file on its behalf, any other application in this refund proceeding. If so, an explanation of the circumstances of the other filing or authorization should be submitted;

(4) If the applicant is or was in any way affiliated with the firm from whom it purchased covered petroleum products and consequently is filing its present application, the applicant should explain this affiliation, including the time period in which it was affiliated. If not, a statement that the applicant was not affiliated with that firm.

(5) The statement listed below, provided it has been signed by the applicant or a responsible official of the firm filing the refund application:

I swear (or affirm) that the information contained in this application and its attachments is true and correct to the best of my knowledge and belief. I understand that anyone who is convicted of providing false information to the Federal government may be subject to a fine, a jail sentence, or both, pursuant to 18 U.S.C. § 1001. I understand that the information contained in this application is subject to public disclosure. I have enclosed a duplicate of this entire application which will be placed in the OHA Public Reference Room.

All applications should be either typed or printed and should clearly refer to the entity from whom it bought the relevant covered petroleum products and its respective case number as listed in the Appendix. Each applicant must submit an original and one copy of the application. If the applicant believes that any of the information in its application is confidential and does not wish this information to be publicly disclosed, the applicant must submit an original application, clearly designated "confidential", containing the confidential information, and two copies of the application with the confidential information deleted. All refund applications should be postmarked no later than September 30, 2000, and sent to: Bi-Petro Refining Co, Inc., *et al.*, VEF–0035, *et al.*, Office of Hearings and Appeals, Department of Energy, 1000 Independence Avenue, S.W., Washington, D.C. 20585–0107.

E. Minimal Amount Requirement

Only claims for at least $15 will be processed. This minimum has been adopted in refined product refund proceedings because the cost of processing claims for refunds of less than $15 outweighs the benefits of restitution in those instances. *See Mobil Oil Corporation*, 13 DOE ¶ 85,339 (1985).

F. Additional Information

OHA reserves the authority to require additional information before granting any refund in these proceedings. Applications lacking the required information may be dismissed or denied.

G. Refund Applications filed by Representatives

OHA reiterates its policy to closely scrutinize applications filed by filing services. Applications submitted by a filing service should contain all of the information indicated in this final Decision and Order. Strict compliance with the filing requirement as specified in 10 C.F.R. § 205.283, particularly the requirement that applications and the accompanying certification statement be signed by the applicant, will be required.

H. Filing Deadline

The deadline for filing an Application for Refund is September 30, 2000. We are not anticipating extending this deadline for any reason.

IV. Second-Stage Refund Procedures

Any funds that remain after all first-stage claims have been decided will be distributed in accordance with the provisions of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA), 15 U.S.C. §§ 4501–07. PODRA

[3] Under the Privacy Act of 1974, the submission of a social security number by an individual applicant is voluntary. An applicant who does not wish to submit a social security number must submit an employer identification number if one exists. This information will be used in processing refund applications. It is requested pursuant to our authority under the Petroleum Overcharge Distribution and Restitution Act of 1986 and the regulations codified at 10 C.F.R. Part 205, Subpart V. The information may be shared with other Federal agencies for statistical, auditing or archiving purposes, and with law enforcement agencies when they are investigating a potential violation of civil or criminal law. Unless an applicant claims confidentiality, this information will be available to the public in the Public Reference Room of the Office of Hearings and Appeals.

requires that the Secretary of Energy determine annually the amount of oil overcharge funds that will not be required to refund monies to injured parties in Subpart V proceedings and make those funds available to state governments for use in four energy conservation programs. The Secretary has delegated these responsibilities to OHA, and any funds that OHA determines will not be needed to effect direct restitution to injured customers will be distributed in accordance with the provisions of PODRA.

It Is Therefore Ordered That:

Applications for Refund from the funds remitted to the Department of Energy by any one of the firms named in the Appendix to this Decision may now be filed.

Dated: March 28, 2000.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX

Name of firm primary operating location or headquarters location	OHA case No.	Consent order tracking system No. (COTS)	Type of business	Covered products	Applicable Dates*	Amounts	Actual payment principal	With interest through 01/31/00	Collection percentage	Volumetric
						Agreed to or ordered				
South Central Terminal Co., Inc., f/k/a Bi-Petro Refining Co., Inc., P.O. Box 3245, Springfield, Il 62708.	VEF–0035 ..	720S00565W	refiner	gasoline ..	July 1978–Dec. 1979.	$236,242.00	$167,287.26	$217,597.33	92	0.00037
Don Rettig/Don's Shell 1097 W. Tennyson Rd., Hayward, CA 94544.	VEF–0037 ..	999K90058W	retailer	gasoline ..	Aug. 1979–April 1980.	4,208.40	1,800.00	3,944.04	94	0.00038
Gugino's Exxon, 25th and Pine St., Niagara Falls, NY 14301.	VEF–0040 ..	999K90074W	retailer	gasoline ..	Aug.–Sept. 1979.	1,772.00	530.00	1,113.02	63	0.00025
J.D. Streett & Company, Inc., 144 Weldon Parkway, M.D. Heights, MO 63043.	VEF–0042 ..	720H00555W	reseller-retailer.	all covered products.	Aug. 1973–Jan. 1981.	400,000.00	532,362.00	716,949.37	179	****0.00040
McWhirter Distributing Co., Inc., 6633 Valjean Ave., Van Nuys, CA 91406.	VEF–0045 ..	930H00291W	reseller-retailer.	gasoline ..	April–Sept. 1979.	128,171.06	28,101.00	30,747.05	24	0.00010
Charles B. Luna, formerly d/b/a Ozark County Gas Co., P.O. Box 1339, Branson, MO 65616.	VEF–0046 ..	720H00606W	reseller-retailer.	all covered products.	July 1977–Jan. 1981.	***154,128.74	26,397.43	43,942.80	29	0.00012
Sherer Oil Company/Ringer Tri-State Oil Co., 608 Central Ave., Johnstown, PA 15902.	VEF–0052 ..	340H00496W	reseller-retailer.	gasoline ..	April–Sept. 1979.	387,465.05	96,921.55	150,832.70	39	0.00016
Swann Oil Company** 111 Presidential Blvd., Bala-cynwyda, PA 19004.	VEF–0053 ..	320H00222W	reseller-retailer.	heating oil, residual fuel oil.	Nov.–Dec. 1973.	6,874,342.08	362,811.45	497,562.97	7	0.00003
Vantage Petroleum Co., 515 Johnson Ave., Bohemia, NY 11716.	VEF–0056 ..	200H00026W	reseller-retailer.	gasoline ..	April–Aug. 1979.	2,049,481.61	153,193.91	209,157.98	10	0.00004
Totals						10,235,810.94	1,369,404.60	1,871,847.26		

* Or until relevant decontrol date.
** Subsidiaries include: Swann Oil Co. of Allentown, Swann Oil of Georgia, L.A. Swann Oil Co., and Swann Oil Co. of Philadelphia.
*** The amount the applicant was originally ordered to pay was increased from $125,000.00 to $154,128.74.
**** As explained in the Decision, since the collection percentage in this case is greater than 100 percent, the volumetric will not be reduced.

[FR Doc. 00–8329 Filed 4–4–00; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–100156; FRL–6499–8]

Systems Integration Group, Inc.; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Systems Integration Group, Inc. in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Systems Integration Group, Inc. has been awarded a contract to perform work for OPP, and access to this information will enable Systems Integration Group, Inc. to fulfill the obligations of the contract.

DATES: Systems Integration Group, Inc. will be given access to this information on or before April 10, 2000.

FOR FURTHER INFORMATION CONTACT: By mail: Erik R. Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: 703–305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

II. Contractor Requirements

EPA's Office of Pesticide Programs (OPP) is responsible for regulating the supply and use of chemical and biological agents produced, marketed, or used for pest control in the United States. Under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and portions of the Federal Food, Drug, and Cosmetic Act (FFDCA), OPP registers and classifies pesticide residues in food and feed commodities, and as appropriate, suspends or cancels registrations and other regulatory clearances of pesticides found likely to cause unreasonable adverse effects on man or the environment. In carrying out these responsibilities, OPP makes thousands of discrete regulatory decisions each year. Some decisions are of narrow scope and impact and relatively simple; others are of a very board scope and impact and are extremely complex. Most of these decisions are based on review of applications submitted by regulated firms, and of supporting technical data describing the properties, effects, and other characteristics of the pesticides.

Under Contract No.68–W–00–096, the contractor will provide in-processing and indexing support for studies and other technical documents of archival significance and in-processing and data capture support for regulatory applications, decisions, and incident reports. The contract also provides on site full-time operational data entry support and staffing for the OPP computer terminal room and management of the Information Services Center located in Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

This contract involves no subcontractors.

OPP has determined that the contract described in this document involves work that is being conducted in connection with FIFRA, in that pesticide chemicals will be the subject of certain evaluations to be made under this contract. These evaluations may be used in subsequent regulatory decisions under FIFRA.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408 and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(3), the contract with Systems Integrations Group, Inc., prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Systems Integration Group, Inc. is required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Systems Integration Group, Inc. until the requirements in this document have been fully satisfied. Records of information provided to Systems Integration Group, Inc. will be maintained by EPA Project Officers for this contract. All information supplied to Systems Integration Group, Inc. by EPA for use in connection with this contract will be returned to EPA when Systems gration Group, Inc. has completed its work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: March 21, 2000.

Richard D. Schmitt,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs.

[FR Doc. 00–8002 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–927; FRL–6498–3]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–927, must be received on or before May 5, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–927 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Linda Hollis, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone

number: (703) 308–8733; e-mail address: hollis.linda@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**--Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–927. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–927 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov*," or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–927. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 22, 2000.

Kathleen D. Knox,

Acting Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioner. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

EPA has received a pesticide petition 0F6105 from BioTEPP, Inc, 177, 71 e Street East, Charlesbourg, Qc, Canada G1L 1H4, proposing pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 to establish an exemption from the requirement of a tolerance for the microbial pesticide *Mamestra configurata nucleopolyhedrosis* virus.

Pursuant to section 408(d)(2)(A)(i) of the FFDCA, as amended, BioTEPP, Inc. has submitted the following summary of information, data, and arguments in support of their pesticide petition. This summary was prepared by BioTEPP, Inc. and EPA has not fully evaluated the merits of the pesticide petition. The summary may have been edited by EPA if the terminology used was unclear, the summary contained extraneous material, or the summary unintentionally made the reader conclude that the findings reflected EPA's position and not the position of the petitioner.

BioTEPP, Inc. Petition Summary

0F6105

A. Product Name and Proposed Use Practices

Virosoft^{BA3} is an insect specific viral insecticide for the control of the Bertha Armyworm on canola in the ecozone 3. It is to be applied either preventively directly on the ground at seeding or curatively on canopy upon appearance of adult moths. This product can be used in an integrated pest management program because of its high specificity which leaves the rest of the ecological system unaltered (including bees, natural predators, parasitoids, soil fauna, etc.).

B. Product Identity/Chemistry

1. *Identity of the pesticide and corresponding residues.* The active ingredient in Virosoft^{BA3} is a wildtype *baculovirus Mamestra configurata Nucleopolyhedrosis* virus that has been selected from the same ecozone in which it will be produced and distributed. This group of insect viruses is known to be highly specific and able to infect only very closely related species. Their greatest advantage is their high host specificity; and the fact that they consist of the same molecular structures as all other living beings: nucleic acids and amino acids. Both facts account for the complete environmental safety of *baculoviruses*. There has been no literature which reports any adverse effects to humans or to any member of the ecosystem as these *baculoviruses* do no leave behind any threatening residues. Their ability to efficiently kill insect larvae and to increase in number in the environment, their long shelf life, ability to adapt to changes in their host species, and their complete environmental safety characterize *baculoviruses* as one of the most promising means in insect pest control for the future.

2. *Magnitude of residue at the time of harvest and method used to determine the residue.* Residues if any, are not expected to pose any threat to human health or to any member of the ecosystem due to the lack of toxicity associated with insect *baculoviruses*.

3. *A statement of why an analytical method for detecting and measuring the levels of the pesticide residue are not needed.* Because of their complete environmental safety for the environment, non-target species like bees or ants and for humans, it is considered that no analytical tests for detecting and measuring levels of *baculovirus* residue are necessary.

C. Mammalian Toxicological Profile

Both *baculovirus* types or genera (GVs and NPVs) have seen widespread development, testing, and use in biological pest control. During the past 40 years, extensive testing of the safety of *baculoviruses* for vertebrate species has been carried out. To date, at least 26 different *baculoviruses* have been tested in detail for pathogenicity. The data obtained from these studies proved *baculoviruses* to be harmless to and unable to replicate in microorganisms, non-invertebrate cell lines, vertebrates and plants. In 1973 a FAO document covered the use of viruses in pest management. Their view was that the use of *baculoviruses* had been sufficiently studied to allow its recommendation for insect pest control.

The long history of safe use as indigenous microbial pest control agent is an important element of its safety. Moreover, *baculoviruses* occur naturally in the environment for hundreds of thousands of years. They have been used extensively in many countries without any adverse effects on the existing fauna beside the target insect pest. Because the MCNPV/BIOTEPP in Virosoft^{BA3} is an indigenous insect virus it constitutes an extension of the natural system that does not carry the risk associated with the introduction of foreign elements in the ecosystem.

In addition to the safe history of insect *baculoviruses*, invertebrate pathology disciplines as well as medical, veterinary and phytopathology sciences have failed to find incidences of NPVs and GVs infecting hosts outside of the arthropods. This gives rise to increasing confidence that new *baculoviruses* need to be subjected to only a reduced range of standardized tests required for registration.

The degree of exposure of vertebrates to naturally occurring *baculoviruses* is vast in scope and time and no adverse effects were ever observed on non-target animals or plants. Feces of birds, for example, contained 18% by weight of inclusion bodies when they fed on infected caterpillars with naturally occurring viruses. NPVs have undergone the most extensive safety test of all entomopathogenic viruses and no adverse effects were observed in many years of artificial applications and for many different *baculoviruses* on birds, wild mammals, fish, microorganisms and plants.

Virosoft ^{BA3} has been tested for its innocuity against mammalians and non-target arthropods and proven the lack of toxicological effects on non-target beneficial organisms or mammalians.

D. Aggregate Exposure

1. *Dietary exposure*— i. *Food.* Since Virosoft^{BA3} is a naturally occurring *baculovirus* and that naturally occurring insect virus are present in the environment and consequently on our food, and because the amount of virus applied to one hectare (ha) of crop is equivalent to 100 insect larvae, the amount of virus expected to be present on food is not expected to be higher than in a natural system when insect control is maintained by a naturally occurring virus. As the lack of mammalian toxicity and of allergenic effects has been demonstrated over

many years for *baculoviruses* and that the safety of Virosoft[BA3] has been demonstrated both in the field and in the laboratory (mammalians and non-target arthropods), aggregate exposure is considered to be insignificant as well as completely safe for human consumption.

ii. *Drinking water.* Because the amount of virus applied to one ha of crop is equivalent to 100 insect larvae, the amount of virus expected to be present in drinking water is not expected to be higher than in a natural system when insect control is maintained by a naturally occurring virus. As the lack of mammalian toxicity and of allergenic effects has been demonstrated over many years for *baculoviruses* and that the safety of Virosoft[BA3] has been demonstrated both in the field and in the laboratory (mammalians and non-target arthropods), aggregate exposure is considered to be insignificant as well as completely safe for human consumption.

2. *Non-dietary exposure.* Because the amount of virus applied to one ha of crop is equivalent to 100 insect larvae, the amount of virus expected to be present on food, water and non-dietary exposure is not expected to be higher than in a natural system when insect control is maintained by a naturally occurring virus. As the lack of mammalian toxicity and of allergenic effects has been demonstrated over many years for baculoviruses and that the safety of Virosoft[BA3] has been demonstrated both in the field and in the laboratory (mammalians and non-target arthropods), aggregate exposure is considered to be insignificant as well as completely safe for human consumption.

E. Cumulative Exposure

The unique high specificity of insect *baculovirus* coupled with the demonstrated absence of mammalian toxicity of Virosoft[BA3] excludes the expectation of cumulative exposure with other compounds.

F. Safety Determination

1. *U.S. population.* Both *baculovirus* types or genera (GVs and NPVs) have seen widespread development, testing, and use in biological pest control in the United States. There has been no human safety problems attributed to the use of *baculoviruses.* Our request for an exemption from the requirement of a tolerance is strongly supported by the safety characteristics of *baculoviruses* in terms of lack of mammalian toxicity/allergenicity and the environmental safety provided in this study and in numerous studies conducted in the United States and abroad.

2. *Infants and children.* Both *baculovirus* types or genera (GVs and NPVs) have seen widespread development, testing, and use in biological pest control in the United States. There have been no safety problems for infants and children that have been attributed to the use of *baculoviruses.* Our request for an exemption from the requirement of a tolerance is strongly supported by the safety characteristics of *baculoviruses* in terms of lack of mammalian toxicity/allergenicity and the environmental safety provided in this study and in numerous studies conducted in the United States and abroad.

G. Effects on the Immune and Endocrine Systems

There is no known information which suggests that *Mamestra configurata* NPV will have an effect on the immune and endocrine systems.

H. Existing Tolerances

There are no known tolerances, tolerance exemptions or exemptions from the requirement of a tolerance for *Mamestra configurata* NPV.

I. International Tolerances

There are no known international tolerances, international tolerance exemptions or international exemptions from the requirement of a tolerance for *Mamestra configurata* NPV.

[FR Doc. 00–7890 Filed 4–4–00; 8:45 am]
BILLING CODE 6560–50–F

ENVIRONMENTAL PROTECTION AGENCY

[PF–931; FRL–6550–7]

Notice of Filing a Pesticide Petition to Establish a Tolerance for Certain Pesticide Chemicals in or on Food

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of a pesticide petition proposing the establishment of regulations for residues of certain pesticide chemicals in or on various food commodities.

DATES: Comments, identified by docket control number PF–931, must be received on or before May 5, 2000.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I.C. of the "SUPPLEMENTARY INFORMATION." To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–931 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Shaja R. Brothers, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–3194; e-mail address: brothers.shaja@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under "FOR FURTHER INFORMATION CONTACT."

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations" and then look up the entry for this document under the "**Federal Register**–Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number PF–931. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number PF–931 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Ariel Rios Bldg., 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: "*opp-docket@epa.gov,*" or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in Wordperfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number PF–931. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI That I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person identified under "FOR FURTHER INFORMATION CONTACT."

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Make sure to submit your comments by the deadline in this notice.

7. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. What Action is the Agency Taking?

EPA has received a pesticide petition as follows proposing the establishment and/or amendment of regulations for residues of certain pesticide chemical in or on various food commodities under section 408 of the Federal Food, Drug, and Comestic Act (FFDCA), 21 U.S.C. 346a. EPA has determined that this petition contains data or information regarding the elements set forth in section 408(d)(2); however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data supports granting of the petition. Additional data may be needed before EPA rules on the petition.

List of Subjects

Environmental protection, Agricultural commodities, Feed additives, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: March 28, 2000

James Jones

Director, Registration Division, Office of Pesticide Programs.

Summary of Petition

The petitioner summary of the pesticide petition is printed below as required by section 408(d)(3) of the FFDCA. The summary of the petition was prepared by the petitioner and represents the view of the petitioners. EPA is publishing the petition summary verbatim without editing it in any way. The petition summary announces the availability of a description of the analytical methods available to EPA for the detection and measurement of the pesticide chemical residues or an explanation of why no such method is needed.

Interregional Research Project Number 4

5E4499

EPA has received a pesticide petition (5E4499) from Rutgers, the State University of New Jersey, 681 U.S. Highway No. 1 South, New Brunswick, NJ 08902 proposing, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a(d), to amend 40 CFR part 180 by establishing a tolerance for residues of diflubenzuron in or on the raw agricultural commodity rangeland grass at 6.0 parts per million (ppm). EPA has determined that the petition contains data or information regarding the elements set forth in section 408(d)(2) of the FFDCA; however, EPA has not fully evaluated the sufficiency of the submitted data at this time or whether the data support granting of the petition. Additional data may be needed before EPA rules on the petition. This notice includes a summary of the petition prepared by Uniroyal Chemical Company, 74 Amity Road, Bethany, CT 06525.

A. Residue Chemistry

1. *Plant metabolism.* The qualitative nature of the residue in plants is adequately understood based on data from soybeans, oranges, and rice metabolism studies.

2. *Analytical method.* A practical analytical method for detecting and measuring levels of diflubenzuron in or on food with a limit of detection that allows monitoring of the residue at or above the level set in the tolerance was used to determine residues in rangeland grass. Rangeland grass samples are analyzed by high performance liquid chromotography and detected by UV–absorption at 254 nanometers liquid chromatography for quantitation of diflubenzuron residues at a limit of quantitation (LOQ) for the method on rangeland grass of 0.05 ppm.

B. Toxicological Profile

1. *Acute toxicity.* Studies for diflubenzuron technical indicate the acute oral toxicity in rats and mice >4,640 milligrams/kilograms (mg/kg), and the acute dermal toxicity in rats is >10,000 mg/kg. The acute inhalation lethal concentration: $(LC)_{50}$ in rats is >35 mg/L (6 hours). Diflubenzuron technical is not an eye or skin irritant to rabbits, and is not a dermal sensitizer in guinea pigs.

2. *Genotoxcity.* Diflubenzuron did not show any mutagenic activity in point mutation assays employing *Salmonella typhimurium, S. cerevisiae,* or L5178Y mouse lymphoma cells. Diflubenzuron did not induce chromosomal aberrations in Chinese hamster ovary cells and it did not induce unscheduled DNA synthesis in human WI–38 cells. Diflubenzuron was also negative in mouse micronucleus and mouse dominant lethal assays and it did not induce cell transformation in Balb/3T3 cells.

3. *Reproductive and developmental toxicity.* In a rat reproduction study, diflubenzuron was fed to 2 generations of male and female rats at dietary concentrations of 0, 10, 20, 40, and 160 ppm. No effects were seen on parental body weight gain and there were no reproductive effects. A subsequent study was conducted on 1-generation (one litter) of rats at dietary concentrations of 0, 1,000 and 100,000 ppm. Systemic effects were seen in adults at these doses but there was no effect on reproductive parameters. The no observed adverse effect level (NOAEL) for reproductive toxicity was greater than 100,000 ppm (5 mg/kg/day).

In a rat developmental toxicity study, diflubenzuron was administered by oral gavage to pregnant female rats at dosage levels of 0, 1, 2, and 4 mg/kg/day. No treatment related effects were seen. A subsequent study was conducted in pregnant Sprague Dawley rats at a dose of 0 and 1,000 mg/kg/day. No maternal toxicity was observed. The incidence of fetuses with skeletal abnormalities was slightly increased in the treated group, but was within historical background range. The NOAEL for maternal and developmental toxicity in rats was greater than 1,000 mg/kg/day.

Diflubenzuron was also administered by oral gavage to pregnant New Zealand white rabbits at dosage levels of 0, 1, 2, and 4 mg/kg/day. No treatment related effects were seen. A subsequent study was conducted in pregnant rabbits at doses of 0 and 1,000 mg/kg/day. No maternal or developmental toxicity was seen. The NOAEL for maternal and developmental toxicity in rabbits was greater than 1,000 mg/kg/day.

4. *Subchronic toxicity.* A 4–week inhalation study and a 3–week dermal study were conducted. In the inhalation study, rats were exposed (nose only) to 10, 30, or 100 mg/m^3 for 6 hours per day, 5 days per week for 4 weeks. Treatment related findings were a slight reduction in erythrocytes, hemoglobin and hematocrit in male and female rats at a concentration of 100 mg/m^3 and an increase in total bilirubin in high dose female rats. There was no effect on methemoglobin concentration at any dose level. The NOAEL for subchronic inhalation toxicity was 30 mg/m^3.

5. *Chronic toxicity.* Diflubenzuron was given by capsule to male and female beagle dogs for 1–year at dose levels of 0, 2, 10, 50, and 250 mg/kg/day. Body weight gain was slightly reduced in females at 250 mg/kg/day. Absolute liver and spleen weights were increased in males given 50 and 250 mg/kg/day. A reduction in hemoglobin and mean corpuscular hemoglobin concentration, with an elevation in reticulocyte count, was seen at 50 and 250 mg/kg/day. Methemoglobin and sulfhemoglobin values were increased at doses of 10 mg/kg/day and greater. Histopathological findings were limited to pigmented macrophages and kupffer cells in the liver at doses of 50 and 250 mg/kg/day. The NOAEL for chronic toxicity in dogs was 2 mg/kg/day.

Diflubenzuron was fed to male and female Sprague Dawley rats for 2 years at dose levels of 0, 156, 625, 2,500, and 10,000 ppm. Methemoglobin values were elevated in female rats at all dose levels and in male rats at the two highest dose levels (HDL). Sulfhemoglobin was elevated in females, only, at dose levels of 2,500 and 10,000 ppm. Mean corpuscular volume (MCV) and reticulocyte counts were increased in high dose females. Spleen and liver weights were elevated at the two highest doses. Histopathological examination demonstrated an increase in hemosiderosis of the liver and spleen, bone marrow and erythroid hyperplasia and areas of cellular alteration in the liver. In another study, diflubenzuron was administered to male and female CD rats for 2 years at dose levels of 0, 10, 20, 40, and 160 ppm. Elevated methemoglobin levels were seen in high dose males and females. No additional effects, including carcinogenic findings, were observed. The NOAEL for chronic toxicity in rats was 40 ppm (2 mg/kg/day).

Carcinogenicity. A 91–week carcinogenicity study in CFLP mice was conducted at doses of 0, 16, 80, 400, 2,000, and 10,000 ppm. There was no increase in tumor incidence as a result of diflubenzuron administration. Target organ effects included: increased methemoglobin and sulfhemoglobin values, heinz bodies, increased liver and spleen weight, hepatocyte enlargement and vacuolation, extramedullary hemopoiesis in the liver and spleen, siderocytosis in the spleen and pigmented kupffer cells. A NOAEL for these effects was 16 ppm (2 mg/kg/day).

6. *Animal metabolism.* Diflubenzuron in rats at a single dose of 100 mg/kg and 5 mg/kg single and mutiple oral doses depicted limited absorption from the gastrointestinal tract. No major difference was observed between the single and multiple doses. In single dose treatments, after 7 days, 20 and 3% of the applied dose 5 and 100 mg/kg, respectively, were excreted in urine, while 79 and 98% of the applied dose 5 and 100 mg/kg, respectively, were eliminated in the feces. Very little bioaccumulation in the tissues was observed. In the feces, only unchanged parent compound was detected. Several metabolites were observed in the urine which are, among others, 2,6–diflurobenzoic acid (DFBA), 2,6–difluorophippuric acid, 2,6–difluorobenzamide (DFBAM), and 2–hydroxydiflubenzuron (2–HDFB). An unresolved peak that was characterized as p–chloroaniline (PCA) and/or p–chlorophenylurea (CPU) was found. This latter peak accounted for about 2% of the administered dose (5 mg/kg). To resolve if PCA and CPU are indeed metabolites of diflubenzuron, rats were administered a single oral dose, 100 mg/kg of 14C DFB. The major metabolites identified in rat urine were 4–chloroaniline–2–sulfate, accounting for almost 50% of the total radioactive residue (TRR) in the urine and N–(4–chlorophenyl)oxamic acid which accounted for about 15% of the TRR. Neither CPU, PCA nor their N–hydroxyl derivatives were found in rat urine at a limit of detection of 23 ppb. As in the previous study diflubenzuron was the only residue found in the feces.

7. *Metabolite toxicology.* PCA hydrochloride for male and female F344/N rats, and PCA hydrochloride for male B6C3F1 mice under the condition of a 2–year gavage study showed evidence of carcinogenic activity. In addition to PCA, 4–chlorophenylurea (CPU) is also a potential minor metabolite of diflubenzuron.

8. *Endocrine disruption.* The standard battery of required studies has been completed and evaluated to determine potential estrogenic or endocrine effects of diflubenzuron. These studies include an evaluation of the potential effects on reproduction and development, and an evaluation of the pathology of the endocrine organs following repeated or long-term exposure. These studies are generally considered to be sufficient to detect any endocrine effects. No such effects were noted in any of the studies with diflubenzuron.

C. Aggregate Exposure

1. *Dietary exposure*— i. *Food.* Since 1-day single dose oral studies in rats and mice indicated only marginal effects, an acute exposure risk assessment is not needed, as there were no significant acute effects observed.

a. *Diflubenzuron.* The chronic dietary exposure from diflubenzuron was estimated based on the average residue values from the various currently labeled raw agricultural commodities. Percent of crop treated was also factored into the estimate. The dietary exposure analysis was estimated based on 1989–92 USDA food consumption data.

The U.S. population (total), the dietary exposure of diflubenzuron was estimated as 0.000013 mg/kg/day. For nursing and non-nursing infants, the exposure was estimated as 0.000003 mg/kg/day and 0.000007 mg/kg/day, respectively. For children, the exposure was 0.000015 mg/kg/day and 0.000011 mg/kg/day for 1–6 year olds and 7–12 year olds, respectively.

b. *p–Chloroaniline.* The chronic dietary exposure from p–chloroaniline (PCA) which has been detected in some food products was also determined. Average residues from field trials for mushrooms and rice were used. Residues in liver were obtained from extrapolation of metabolism data to anticipated livestock dietary burdens. EPA has previously used a 2 percent in *vivo* conversion factor of DFB to PCA for foods derived from plant products. However, based on results of a recent rat metabolism study showing that no PCA is formed, this is no longer appropriate. The percent treated of each crop was also factored into the exposure estimate.

The U.S. population (total), the dietary exposure of PCA was estimated as <0.000001 mg/kg/day. For nursing and non-nursing infants, the exposure was estimated as <0.000001 mg/kg/day and 0.000001 mg/kg/day, respectively. For children 1–6 years old and 7–12 years old, the exposure was <0.000001 mg/kg/day.

ii. *Drinking water.* Diflubenzuron degrades in soil relatively quickly with aerobic half-life ranging from 3–7 days. Major degradates include difluorobenzoic acid (DFBA) and CPU. DFBA is further metabolized through decarboxylation and ring cleavage by soil microbes whereas CPU is slowly degraded to soil-bound entities. Under aerobic aquatic conditions, diflubenzuron has a half-life of 34 days with the main degradates being DFBA and CPU. In surface water, diflubenzuron is degraded by microbes with a half-life of 5–10 days. The soil mobility of diflubenzuron is considered quite limited based on a number of experimental studies as well as by computer modeling. CPU has also been shown to be relatively immobile in soil. Although DFBA shows mobility in soil, it is rapidly degraded. Therefore, based on results of laboratory and field studies, it is not likely that diflubenzuron or its degradates will impact ground water quality to any significant extent.

Based on EPA's PRZM/EXAMS modeling, the average annual mean concentration of diflubenzuron in surface water sources is not expected to exceed 0.05 ppb. The drinking water level of concern (DWLOC) for chronic (non-cancer) exposure to diflubenzuron in drinking water was determined as 699 parts per billion (ppb) for the U.S. population (total) and approximately 200 ppb for infants and children. The estimated maximum concentration of diflubenzuron in surface water (0.05 ppb) is much less than the DWLOCs as a contribution to chronic (non-cancer) aggregate exposure.

2. *Non-dietary exposure.* Diflubenzuron is a restricted use pesticide based on its toxicity to aquatic invertebrates. This restricted use classification makes it unavailable for use by homeowners. Occupational uses of diflubenzuron may expose people in residential locations, parks, or forests treated with diflubenzuron. Based on very low residues detected in forestry dissipation studies, low dermal absorption rate (0.05%), and extremely low dermal and inhalation toxicity, these uses are expected to result in insignificant risk, and will, therefore, not be included in the aggregate risk assessment.

D. Cumulative Effects

Uniroyal Chemical Company has considered the potential for cumulative effects of diflubenzuron and other substances with a common mechanism of toxicity. The mammalian toxicity of diflubenzuron is well defined. We are not aware of any other pesticide product registered in the U.S. that could be metabolized to p–chloroaniline. For this reason, consideration of potential cumulative effects of residues from pesticidal substances with a common mechanism of action as diflubenzuron is not appropriate. Thus, only the potential exposures to diflubenzuron were considered in the total exposure assessment.

E. Safety Determination

1. *U.S. population.* Dietary exposure to the U.S. population (total) from diflubenzuron was estimated at 0.000013 mg/kg/day. Based on the 0.02 mg/kg/day RfD (reference dose) derived from the dog chronic NOAEL of 2 mg/kg/day and a 100–fold safety factor, this dietary exposure is <0.1% of the RfD. Since estimated concentrations of diflubenzuron in drinking water are well below the drinking water levels of concern, aggregate exposure is not expected to exceed 100% of the RfD. Therefore, there is a reasonable certainty that no harm will result from aggregate exposure to diflubenzuron residues.

For PCA, dietary exposure to the U.S. population (total) was estimated as less than 0.000001 mg/kg/day. The risk from diflubenzuron-derived PCA can be estimated using a linear extrapolation of the dose-response from the rat chronic study conducted by the National Toxicology Program in which rats were dosed via gavage with p–chloroaniline [hydrochloride] for 24 months. EPA has determined the q1* as 0.0638, based on the combined sarcoma incidence in the spleen of male rats. In view of the results of recent CPU rat mechanistic and metabolism studies, and the diflubenzuron rat metabolism study, the dietary risk assessment included here considers only actual residues of PCA found in food and animal by-products. This is consistent with a parent compound, such as diflubenzuron, which is negative (Category E) for carcinogenicity. It is also consistent with EPA's manner of treatment of other active ingredients that are clearly negative for carcinogenicity. Using the q1* of 0.0638, the risk to the U.S. population (total) from dietary exposure

to diflubenzuron-derived PCA is 1.31 x 10^{-8}. This risk is below EPA's level of concern.

2. *Infants and children.* The same assumptions as for the U.S. population were used for the dietary exposure risk determination in infants and children. The dietary exposure of diflubenzuron was calculated as 0.000003 mg/kg/day and 0.000007 mg/kg/day respectively for nursing and non-nursing infants. These values are 0.2% and 0.4%, respectively of the RfD for diflubenzuron. The dietary exposure from diflubenzuron in children 1–6 and 7–12 years old was determined as 0.000015 mg/kg/day and 0.000011 mg/kg/day, respectively. These values are <0.1% of the RfD.

As previously discussed, the NOAELs for maternal and developmental toxicity in rats and rabbits were greater than 1,000 mg/kg/day, and the NOAEL for reproductive toxicity was greater than 5,000 mg/kg/day. Therefore, based on the completeness and reliability of the toxicity data and the conservative exposure assessment, Uniroyal concludes that there is reasonable certainty that no harm will result in infants and children from aggregate exposure to residues of diflubenzuron and its conversion products containing the p–chloroaniline moiety.

F. International Tolerances

There is no Codex Alimentarius Commission Maximum Residue Level for Residues of diflubenzuron on range grass.

[FR Doc. 00–8262 Filed 4–4–00; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

March 28, 2000.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 5, 2000. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to jboley@fcc.gov.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judy Boley at 202–418–0214 or via the Internet at jboley@fcc.gov.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0400.
Title: Tariff Review Plan.
Form No.: N/A.
Type of Review: Revision of a currently approved collection.
Respondents: Business or other for-profit.
Number of Respondents: 45.
Estimated Time Per Response: 61 hours.
Frequency of Response: On occasion reporting, biennial and annual requirements.
Total Annual Burden: 2,745.
Total Annual Cost: N/A.
Needs and Uses: Local telephone companies are required to update their rates annually or biennially to reflect Federal Communications Commission (FCC) requirements. To reduce the regulatory burden on reporting Local Exchange Carriers (LECs) as well as reviewers, the Commission developed tariff review plans (TRPs). The TRPs set for the summary material that LECs must file to support revisions to the rates in their interstate access service rates. The TRPs display basic data on rate development in a consistent manner, thereby facilitating review of the LEC rate revisions by the Commission and interested parties.

As of August 1999, there were 151 tariff filing entities. Of these, there were 16 Class A LECs with regulated state and interstate telecommunications revenues of $100 million or more. These LECs file pursuant to price cap regulations under 47 CFR 61.43 of the Commission's rules. There were 29 LECs filing pursuant to rate of return regulation under 47 CFR 61.38 of the Commission's rules. One hundred and six (106) LECs with revenues less than $50 million file pursuant to 47 CFR 61.39 of the Commission's rules and are not required to submit a TRP. Thus, the number of filing entities is 45.

As stated above, the largest LECs, those with regulated state and interstate telecommunications revenue of $100 million or greater per year (Class A LECs), file pursuant to price cap regulation under § 61.43. This regulation was implemented in 1990 and has dramatically reduced the reporting burden of these companies, from a TRP of 173 pages to a TRP of 36 pages. The 29 LECs that file pursuant to § 61.38 file a TRP of 29 pages, which also represents a reduction in reporting burden compared to earlier years.

The TRP material is used by FCC staff to determine whether the access charges are just and reasonable as required by the Communications Act. If the information were not filed, the FCC would not be able to carry out its responsibility as required by the Act.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8366 Filed 4–4–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

March 24, 2000.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0395.
Expiration Date: September 30, 2000.
Title: The ARMIS USOA Report; The ARMIS Service Quality Report; and The ARMIS Infrastructure Report.
Form No.: FCC Report Nos. 43–02; 43–05; 43–07.
Respondents: Business or other for-profit.
Estimated Annual Burden: 50 respondents; 929.52 hours per response (avg). 46,476 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annual.
Description: FCC Report 43–02 contains company-wide data for each account specified in the Uniform System of Accounts (USOA). It provides the annual operating results of the carriers' activities for every account in the USOA. (FCC Report 43–02 has 50 respondents, 637.6 hours per response (avg.), 31,880 total annual hours).

FCC Report 43–05 collects data at the study area and holding company levels and is designed to capture trends in service quality under price cap regulations. It provides service quality information in the areas of interexchange access service installation and repair intervals, local service installation and repair intervals, trunk blockage and total switch downtime for price cap companies. (FCC Report 43–05 has 12 respondents, 849 hours per response (avg.), 10,197.4 total annual hours).

FCC Report 43–07 is designed to capture trends in telephone industry infrastructure development under price cap regulation. It provides switch deployment and capabilities data. (FCC Report 43–07 has 8 respondents, 555 hours per response (avg.) 4,400 total annual hours). Obligation to respond: Mandatory.

OMB Control No.: 3060–0496.
Expiration Date: March 31, 2002.
Title: The ARMIS Operating Data Report.
Form No.: FCC Report 43–08.
Respondents: Business or other for-profit.
Estimated Annual Burden: 50 respondents; 160 hours per response (avg.); 8000 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annual.
Description: The ARMIS Operating Data Report consists of statistical schedules which are needed by the Commission to monitor network growth, usage, and reliability. Obligation to respond: Mandatory.

OMB Control No.: 3060–0511.
Expiration Date: September 30, 2000.
Title: ARMIS Access Report.
Form No.: FCC Report 43–04.
Respondents: Business or other for-profit.
Estimated Annual Burden: 150 respondents; 621 hours per response (avg.); 93,150 total annual burden.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annual.
Description: The Access Report is needed to administer the results of the FCC's jurisdictional separations and access charge procedures in order to analyze revenue requirements, joint cost allocations, jurisdictional separations and access charges. Obligation to respond: Mandatory.

OMB Control No.: 3060–0512.
Expiration Date: September 30, 2000.
Title: The ARMIS Annual Summary Report.
Form No.: FCC Report No. 43–01.
Respondents: Business or other for-profit.
Estimated Annual Burden: 150 respondents; 135 hours per response (avg.); 20,250 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annual.
Description: The ARMIS Annual Summary Report contains financial and operating data and is used to monitor the incumbent local exchange carriers and to perform routine analyses of costs and revenues on behalf of the Commission. Obligation to respond: Mandatory.

OMB Control No.: 3060–0513.
Expiration Date: September 30, 2000.
Title: ARMIS Joint Cost Report.
Form No.: FCC Report 43–03.
Respondents: Business or other for-profit.
Estimated Annual Burden: 150 respondents; 83 hours per response (avg.); 12,450 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annual.
Description: The Joint Cost Report is needed to administer our Part 64 joint cost rules and to analyze the regulated and nonregulated cost and revenue allocations by study area in order to prevent cross-subsidization of nonregulated operations by the regulated operations. Obligation to respond: Mandatory.

OMB Control No.: 3060–0763.
Expiration Date: March 31, 2002.
Title: The ARMIS Customer Satisfaction Report.
Form No.: FCC Report 43–06.
Respondents: Business or other for-profit.
Estimated Annual Burden: 8 respondents; 720 hours per response (avg.); 5760 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annual.
Description: The Customer Satisfaction Report collects data from carrier surveys designed to capture trends in service quality. Obligation to respond: Mandatory.

OMB Control No.: 3060–0410.
Expiration Date: June 30, 2000.
Title: Forecast of Investment Usage Report and Actual Usage of Investment Report.
Form No.: FCC 495A; FCC 495B.
Respondents: Business or other for-profit.
Estimated Annual Burden: 300 respondents: 40 hours per response; 12,000 total annual burden hours.
Estimated Annual Reporting and Recordkeeping Cost Burden: $0.
Frequency of Response: Annual.
Description: The Forecast of Investment Usage Report is used by carriers to submit the forecasts of investments used. The Actual Usage of Investment Report is used to submit the actual investments used. These reports are part of the Automated Reporting Management Information System (ARMIS). The information contained in these two reports provides the necessary detail to enable this Commission to fulfill its regulatory responsibility to ensure that the regulated operations of the carriers do not subsidize the nonregulated operations of those same carriers. Obligation to respond: Mandatory.

Several of the ARMIS Reports have been revised pursuant to an Order issued in AAD 95–91, released December 15, 1999. The Order implemented changes to ARMIS necessitated by recent Commission orders and provides improved definitions, descriptions, and instructions that will lead to greater clarity and consistency in reporting by incumbent local exchange carriers. The Appendix to the Order contains all the revisions made to the reports. See AAD 95–91. For copies of the procedures and formats for the ARMIS reports, please call Barbara Van Hagen at 202–418–0849. Copies of the procedures and formats may also be obtained via the Internet at http://www.fcc.gov/ccb/armis.

OMB Control No.: 3060–0076.
Expiration Date: February 28, 2000.
Title: Annual Employment Report for Common Carriers.
Form No.: FCC Form 395.
Respondents: Business or other for-profit.
Estimated Annual Burden: 4000 respondents; 1 hour per response (avg.); 4000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annual.

Description: The Annual Employment Report is a data collection device for enforcement and assessment of the Commission's EEO Rules. All common carrier licensees or permittees with sixteen (16) or more full-time employees are required to file this report and retain it for a two-year period. The report identifies each carrier's staff by gender, race, color and/or national origin in each of nine major job categories. The information describes applicant's compliance with the EEO rules. The information, in addition to being useful for the Commission's purposes, has also been used by public interest groups, NTIA, the Equal Employment Opportunity Commission, the Congress and the U.S. Commission on Civil Rights to assess progress in accordance with their particular objectives. FCC Form 395 has been revised to incorporate the new OMB expiration date. Copies of the revised edition of the form are available via the Internet at *www.fcc.gov/formpage.html*. Printed copies of the form may be obtained either by writing to the Commission's Forms Distribution Center, 9300 E. Hampton Drive, Capital Heights, Maryland 20431, or by calling telephone number 1–800–418–3676 and leaving a request on the answering machine provided for that purpose. Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0921.

Expiration Date: August 31, 2000.

Title: Petitions for LATA Boundary Modification for the Deployment of Advanced Services.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 20 respondents; 8 hours per respondent (avg.); 160 hours total annual burden.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: Bell Operating Companies (BOCs) that petition for LATA boundary modifications to encourage the deployment of advanced services on a reasonable and timely basis are requested to include information in accordance with the criteria specified in CC Docket 98–147, Fourth Report and Order and Memorandum Opinion and Order, released February 11, 2000.

A BOC must include the following criteria to the extent applicable in any request for LATA boundary modification to supply advance services: (i) The customer and type of customer to be serviced; (ii) the specific service or services currently provided, or to be provided, to that customer; (iii) the capacity required to provide the service; (iv) the protocols to be used to provide the service; (v) the physical mode of transport; (vi) the path that the network would take if the LATA modification were to be granted, with a map of the proposed modification indicating the location of the nearest NAP; (vii) efforts made to obtain interLATA access from an interexchange carrier (IXC), or other provider of interLATA services; and (vii) any response, or offer to supply advanced service, received from another provider of interLATA transport. The BOC should describe the quality of the service offered by available interLATA providers; the affordability of the service; and include any other information that may be needed on a case by case basis. See CC Docket No. 98–147 for complete details on criteria. The Commission will use this information to review the petitions.

In order to review request for LATA modifications promptly and efficiently, it is necessary that BOCs provide the information specified in the Order. The criteria set forth in the Order will serve to ease the petition process on BOCs by providing guidelines that will service to narrow the scope of their petitions to the issues and facts that the Commission is primarily concerned with. In addition, the request will also expedite the petition review process by ensuring that petitioners will provide all of the information the Commission needs to properly review the requests. Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0804.

Expiration Date: September 30, 2000.

Title: Universal Service—Health Care Providers Universal Service Program.

Form No.: FCC Forms 465, 466, 467 and 468.

Respondents: Business or other for-profit.

Estimated Annual Burden: 14,700 respondents; 3.94 hours per response (avg.); 58,050 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible health care providers. Health care providers who want to participate in the universal service program must file several forms, one being FCC form 465. FCC Form 465 was recently revised, among other things, to remove the data element concerning consortia as each health care provide now files this information individually. Health care providers must now certify their compliance with state and local procurement rules. Other items on the form have been renumbered and reorganized to enhance the flow of information. Rural health care providers ordering discounted telecommunications services under the universal service program must submit FCC Form 465. Rural health care providers must certify their eligibility to receive discounted telecommunication services. Call RHCD at 800–229–5476 for questions concerning or copies of FCC Forms 465, 466, 467 and 468. Obligation to respond: Required to obtain or retain benefits.

OMB Control No.: 3060–0855.

Expiration Date: August 31, 2000.

Title: Telecommunications Reporting Worksheet and Associated Requirements, CC Docket No. 98–171.

Form No.: FCC Form 499.

Respondents: Business or other for-profit.

Estimated Annual Burden: 5500 respondents; 7.2 hours per response (avg.); 40,000 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: All contributors to the federal universal service support mechanisms, the TRS Fund, the cost recovery mechanism for numbering administration, and the cost recovery mechanism for the shared costs of local number portability must file the revised Telecommunications Reporting Worksheet, FCC Form 499–A) (April 2000 Worksheet). Contributors to the mechanisms include every telecommunications carrier providing interstate telecommunications and certain other providers of interstate telecommunications for a fee. Data filed on the April 2000 Worksheet will be used to calculate contributions to the universal service support mechanisms, as well as to the TRS Fund, the cost recovery for numbering administration, and the cost recovery for the shared costs of local number portability. Copies of the April 2000 Worksheet (FCC Form 499–A) and instructions may be downloaded from the Commission's Forms Web Page (*www.fcc.gov/formpage.html*). Copies may also be obtained from NECA at (973) 560–4400. Obligation to respond: Mandatory.

OMB Control No.: 3060–0147.

Expiration Date: February 28, 2003.

Title: Section 64.804—Extension of Unsecured Credit for Interstate and Foreign Communications Services to Candidates for Federal Office.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 13 respondents; 8 hours per response (avg.); 104 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: Annually.

Description: Communications common carriers with operating revenues exceeding $1 million who extend unsecured credit to a candidate or person on behalf of such candidates for Federal office must file with the FCC a report including due and outstanding balances. The information is used for monitoring purposes. Obligation to respond: Required to obtain or retain benefits.

Public reporting burden for the collection of information is as noted above. Send comments regarding the burden estimate or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8342 Filed 4–4–00; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2397]

Petition for Reconsideration of Action in Rulemaking Proceeding

March 28, 2000.

Petition for Reconsideratiaon have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR Section 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, S.W., Washington, D.C. or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by April 20, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Federal-State Joint Board on Universal Service (CC Docket No. 96–45)

Number of Petitions Filed: 1

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8344 Filed 4–4–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2398]

Petition for Reconsideration and Clarification of Action in Rulemaking Proceeding

March 30, 2000.

Petition for Reconsideration and Clarification have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room CY–A257, 445 12th Street, SW, Washington, DC or may be purchased from the Commission's copy contractor, ITS, Inc. (202) 857–3800. Oppositions to this petition must be filed by April 20, 2000. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies (MM Docket No. 98–204)

Number of Petitions Filed: 1.

Federal Communications Commission.

Magalie Roman Salas,

Secretary.

[FR Doc. 00–8345 Filed 4–4–00; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 962. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 203–011443–003.

Title: Space Charter and Cooperative Working Agreement Between NYK and WW Lines.

Parties: Wallenius Wilhelmsen Lines AS. Nippon Yusen Kaisha.

Synopsis: The amendment revises the agreement by deleting NYKNOS Joint Service as a party to the agreement and substitutes WW Lines. The amendment restates and changes the name of the agreement, as well as providing for authority for the parties to discuss and voluntarily agree on rates in the trade between the U.S. and the Middle East.

Agreement No.: 217–11699.

Title: CMA CGM/Wan Hai Lines Ltd. Cooperation Agreement.

Parties: CMA CGM S.A. Wan Hai Lines Ltd.

Synopsis: Under the proposed agreement, the parties agree to charter slots to each other on vessels operating in the trades between the U.S. West Coast and ports in the Far East in the Japan/Singapore/South East Asia range. The agreement authorizes the parties to consult on the number and size of vessels, sailings, schedules, and port calls as well as certain cooperative activities involving chartering of space, facilities and supplies. The parties request expedited approval.

By Order of the Federal Maritime Commission.

Dated: March 31, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–8359 Filed 4–4–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicant

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for licenses as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel-Operating Common Carrier Ocean Transportation Intermediary Applicants

Providence Services Inc., 8565 N.W. 68th Street, Miami, FL 33166; Officer: Rodolfo Lang, President (Qualifying Individual)

Fulway International, Inc. d/b/a Air-Sea, International Logistics, Inc., 15355 Vantage Parkway W., Suite 103, Houston, TX 77032; Officer:

Mengmeng Liu, President (Qualifying Individual)
Sky 2 C Freight Systems, Inc., 39655 Trinity Way, #3108, Fremont, CA 94538; Officer: Tarun Tandon, Director (Qualifying Individual)

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Alex Nichols Agency, division of National Horse Transfer, Inc., 31 Plainfield Avenue, Elmont, NY 11003; Officers: Ronald Beckerman, Vice President (Qualifying Individual), William A. Nichols, President
LRG International, Inc., 8428 Sunstate Street, Tampa, FL 33634; Officer: Henrik A. Jorgensen, President (Qualifying Individual)

Ocean Freight Forwarders—Ocean Transportation Intermediary Applicants

Import logistics, Inc., 3847 Exchange Avenue, Aurora, IL 60504; Officers: Carol Gallagher, Director (Qualifying Individuals), Colin P. Hann, President
P-Serv Technologies, Inc., 4473 Willow Road, Suite 110, Pleasanton, CA 94588; Officer: Mitsuko Mizushima, CEO (Qualifying Individual)

Dated: March 31, 2000.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 00–8360 Filed 4–4–00; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL TRADE COMMISSION

Premerger Notification: Reporting and Waiting Period Requirements

AGENCY: Federal Trade Commission.

ACTION: Notice of issuance of Formal Interpretation 17.

SUMMARY: The Premerger Notification Office ("PNO") of the Federal Trade Commission ("FTC"), with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice ("DOJ"), is adopting a Formal Interpretation of the Hart-Scott-Rodino Act, ("the HSR Act," "the Act"), which requires persons planning certain mergers, consolidations, or other acquisitions to report information about the proposed transactions to the FTC and DOJ in order to allow for effective premerger antitrust review. The Act exempts from Hart-Scott-Rodino premerger review certain classes of acquisitions that require premerger competitive review by a specialized regulatory agency. This Interpretation describes the PNO's position regarding transactions that may occur under the recently enacted Gramm-Leach-Bliley Act that have some portions subject to advance competitive review by a banking agency and other, non-bank portions that are not subject to such review. Under the Interpretation, the non-bank portion of such a transaction is subject to the reporting requirements of the HSR Act regardless of whether the non-bank business is housed in an affiliate of a financial holding company or a financial subsidiary of a bank. The Interpretation also addresses HSR treatment of certain transactions in which portions of the transaction require approval under different sections (section 3 and section 4) of the Bank Holding Company Act. This Interpretation does not address questions concerning how to apply the HSR rules to the portion of a mixed transaction that is subject to the HSR Act. These issues will be addressed by the PNO on a case-by-case basis.[1]

DATES: Formal Interpretation 17 is effective on April 3, 2000.

FOR FURTHER INFORMATION CONTACT: Marian R. Bruno, Assistant Director, telephone (202) 326–2846, or Thomas F. Hancock, Attorney, telephone (202) 326–2946; Premerger Notification Office, Bureau of Competition, Room 301, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The text of Formal Interpretation Number 17 is set out below:

FORMAL INTERPRETATION 17, PURSUANT TO § 803.30 OF THE PREMERGER NOTIFICATION RULES, 16 CFR § 803.30, REGARDING FILING OBLIGATIONS FOR CERTAIN ACQUISITIONS INVOLVING BANKING AND NON-BANKING BUSINESSES UNDER THE (c)(7) AND (c)(8) EXEMPTIONS OF THE HART-SCOTT-RODINO ACT AS AMENDED BY THE GRAMM-LEACH-BLILEY ACT

Pursuant to § 803.30 of the Hart-Scott-Rodino premerger notification rules ("the rules"), the Premerger Notification Office ("PNO") of the Federal Trade Commission ("FTC"), with the concurrence of the Assistant Attorney General in charge of the Antitrust Division of the Department of Justice ("DOJ", collectively, "the enforcement agencies"), issues this formal interpretation of the Hart-Scott-Rodino Act, as amended.

[1] Parties wishing to determine the application of the HSR Act and the Rules to a particular set of facts will find source materials on the FTC Web site at *www.ftc.gov*. Parties may also call the PNO for advice at (202) 326–3100.

The Gramm-Leach-Bliley Act

The Gramm-Leach-Bliley Act, Public Law 106–102, was signed into law by President Clinton on November 12, 1999. Title I of Gramm-Leach-Bliley, Facilitating Affiliation Among Banks, Securities Firms and Insurance Companies, generally became effective March 11, 2000. Under the new law, bank holding companies and banks are allowed to affiliate with companies that participate in financial services markets that were previously off limits to such entities. In particular, Gramm-Leach-Bliley repeals the restrictions on banks affiliating with securities firms contained in sections 20 and 32 of the Glass-Steagall Act. The statute creates a new "financial holding company" category under section 4(k) of the Bank Holding Company Act ("BHCA"). Such holding companies can engage in a statutorily provided list of financial activities, including insurance and securities underwriting and agency activities, merchant banking and insurance company portfolio investment activities. Other financial activities and activities incidental to financial activities may be approved if the Federal Reserve Board and the Treasury Department agree. Activities that are "complementary" to financial activities are also authorized and such activities may be specified by the Federal Reserve Board at a later date. A bank holding company that does not become a financial holding company can continue to engage in activities closely related to banking, such as trust services, data processing services, investment advising and ATM network ownership, under section 4(c)(8) of the BHCA.

Gramm-Leach-Bliley also allows a national bank that meets certain standards to engage in the same new financial activities in "financial subsidiaries," except for insurance underwriting, merchant banking (which may be approved as a permissible activity beginning five years after enactment), insurance company portfolio investments, and, unless permitted by other law, real estate development and real estate investment. Other financial activities and activities incidental to financial activities may be approved if the Federal Reserve Board and the Treasury Department agree. The aggregate assets of all financial subsidiaries must not exceed 45% of the parent bank's assets or $50 billion, whichever is less. National banks may continue to have traditional operating subsidiaries. Gramm-Leach-Bliley prohibits operating subsidiaries of national banks from doing anything that a bank cannot do directly.[2]

Amendments to the HSR Act Made by Gramm-Leach-Bliley

The HSR Act exempts from HSR premerger antitrust review several classes of acquisitions that are "already subject to advance antitrust review" by other agencies, thus avoiding duplicative reporting. See H.R. Rep. No. 1373, 94th Cong., 2d Sess. 6 (1976).

Section 133(c) of Gramm-Leach-Bliley amended the HSR Act's (c)(7) exemption, pertaining to transactions which require agency approval under section 3 of the BHCA, section 18(c) of the Federal Deposit Insurance Act ("FDI Act"), or section 10(e) of the Home Owners' Loan Act, and the HSR Act's (c)(8) exemption, pertaining to transactions which require agency approval under section 4 of the BHCA or section 5 of the Home Owners' Loan Act. Specifically, the HSR Act's (c)(7) exemption, 15 USC § 18a(c)(7), as amended by section 133(c)(1) of Gramm-Leach-Bliley, provides an exemption from HSR requirements for "transactions which require agency approval under * * * section 1828(c) of title 12 [section 18(c) of the FDI Act], or section 1842 of title 12 [Section 3 of BHCA], except that a portion of a transaction is not exempt under this paragraph if such portion of the transaction (A) is subject to section 4(k) of the Bank Holding Company Act of 1956; and (B) does not require agency approval under section 3 of the Bank Holding Company Act of 1956." (Language added by section 133(c)(1) is italicized.)

The HSR Act's (c)(8) exemption, 15 USC § 18a(c)(8), pertaining to transactions which require agency approval under section 4 of the BHCA, is amended in a parallel fashion by section 133(c)(2) of Gramm-Leach-Bliley. Section (c)(8) of the HSR Act exempts such transactions provided that the materials filed with the agency are contemporaneously submitted to the enforcement agencies at least thirty days prior to consummation.

Treatment of Mixed Bank and Non-Bank Transactions

It has always been the case that some transactions are "mixed," that is, have some aspects or portions subject to regulatory agency premerger competitive review and approval and other aspects or portions not. Such mixed transactions can and have occurred involving all regulated industries, including banking, as discussed below. The PNO's longstanding position has been to treat the portion of a mixed transaction not subject to advance competitive review and approval by a regulatory agency as being subject to the HSR Act.[3] Moreover, when the Commission (with the concurrence of the Department of Justice) promulgated § 802.6(b) of the rules in 1983 to exempt from the HSR Act "any transaction which requires approval by the [CAB] prior to consummation," the agencies made clear in the rule that the non-aeronautic part of a transaction—which did not require such approval—was essentially to be treated as a separate transaction potentially reportable under the HSR Act.

The PNO views the amendments of the HSR Act made by section 133(c) of the Gramm-Leach-Bliley Act as confirming that the PNO's longstanding treatment of mixed transactions is to be applied to transactions involving the banking industry. As described below, the non-bank portion of a transaction is subject to the reporting requirements of the HSR Act, regardless of whether the non-bank business is housed in an affiliate of a financial holding company or a financial subsidiary of a bank.[4]

The Joint Explanatory Statement of the Committee of Conference contained in the Conference Report demonstrates that Congress considered section 133(c) of Gramm-Leach-Bliley to be a clarification and affirmation of the existing treatment of mixed transactions under HSR:

> This clarification for the new [financial holding company] structure is consistent with, and does not disturb, existing law and precedents under which mergers involving complex corporate entities, some parts of which are in industries subject to merger review by specialized regulatory agencies and other parts of which are not, are considered according to agency jurisdiction over their respective parts, so that normal H–S–R Act requirements apply to those parts that do not fall within the specialized agency's specific authority. See 16 C.F.R. § 802.6.

Cong. Rec. H11296 (Nov. 2, 1999).

The PNO's interpretation of the HSR exemptions amended by Gramm-Leach-Bliley is further guided by the explanatory Floor Remarks of House Judiciary Committee Chairman Hyde:

> Under current law, bank mergers are reviewed under special bank merger statutes, and they do not go through the Hart-Scott-Rodino merger review process that covers most other mergers. Now banks will be able to get into other businesses which they have not been able to do before.
>
> The principle that we have followed is that when mergers occur, the bank part of that merger will be judged under the current bank merger statutes, and we do not intend any change in that process or in any of the agencies' respective jurisdictions. The non-bank part of that merger will be subject to the normal Hart-Scott-Rodino merger review by either the Justice Department or the Federal Trade Commission.
>
> This is, in all likelihood, the result that would have been obtained anyway. Hybrid transactions involving complex corporate entities—some parts of which are in industries subject to merger review by specialized regulatory agencies and other parts of which are not—have occurred in the past. In those cases, the various parts of the consolidation were considered according to agency jurisdiction over the respective parts, so that normal Hart-Scott-Rodino Act requirements applied to those parts that did not fall within the specialized agency's specific authority. See, *e.g.*, 16 CFR § 802.6. I think the precedents would have already dictated the desired result here.
>
> In short, under this bill and the precedents, no bank is treated differently than it otherwise would be because it has some other business within its corporate family. Likewise, no other business is treated differently than it otherwise would be because it has a bank within its corporate family.

Cong. Rec. H11549 (Nov. 4, 1999).

The HSR Act (c)(7) exemption, as amended, expressly addresses acquisitions in which a bank and its financial affiliate are being acquired by a financial holding company (the affiliate structure). The financial affiliate portion of that transaction is not exempt from the HSR Act, because it is subject to section 4(k) and does not require Federal Reserve Board approval under section 3 of the BHCA. Gramm-Leach-Bliley does not expressly address acquisitions of a bank with a financial subsidiary by another bank or holding

[2] Gramm-Leach-Bliley also recognizes that state banks may have subsidiaries that engage in the same activities as financial subsidiaries, subject to certain restrictions. It does not eliminate existing authority for subsidiaries of state banks to engage in state-authorized activities not permissible for national banks or their subsidiaries, subject to approval by the Federal Deposit Insurance Corporation.

[3] This PNO position has been noted by HSR practitioners and commentators. See, e.g., American Bar Association Section of Antitrust Law, Premerger Notification Practice Manual (1991 ed.) Interpretations 33, 36; S. Axinn, Acquisitions Under the Hart-Scott-Rodino Antitrust Improvements Act (1996) § 6.06[3][b].

[4] Of course, a comparable approach to mixed transactions also applies to transactions involving thrifts or thrift holding companies.

company (the subsidiary structure). Chairman Hyde explained the absence of an express clarification regarding the subsidiary structure similar to the clarification that expressly addresses the affiliate structure:

As the shape of the new activities in which banks were going to be permitted to engage through operating subsidiaries became clear in conference, the conferees ideally would have further revised the House language to make a similar clarification, regarding consolidations of non-banking entities that are operating subsidiaries of merging banks. But the operating subsidiary situations so closely parallels the precedents I have mentioned that a clarification for that situation was probably unnecessary.

Of course, whatever aspect of a banking merger is not subject to normal Hart-Scott-Rodino premerger review will be subject to the alternative procedures set forth in the Bank Merger Act and the Bank Holding Company Act, including the automatic stay. So one way or another, there will be some avenue for effective premerger review by the antitrust agencies. These alternative procedures would be in some ways more potentially disruptive to the merging banking entities, particularly when the antitrust concern involves non-banking entities. But it is our intent that the precedents will be followed.

Cong. Rec. H11549, Floor Statement of Chairman Hyde (Nov. 4, 1999).

Accordingly, consistent with the intent of Congress, the PNO interprets the HSR Act, as amended by section 133(c) of Gramm-Leach-Bliley, as reaching the non-bank portion of a transaction when housed in a financial subsidiary of a bank as well as when housed in an affiliate of a financial holding company. Thus, in acquisitions of a bank with a financial subsidiary (or of a holding company in which a bank has a financial subsidiary) by another bank or holding company, the acquisition of the financial subsidiary will be reportable under the HSR Act if the applicable size-of-person and size-of-transaction tests are met and no other exemption applies.

A Related Point

As noted above, the HSR Act (c)(7) exemption covers transactions which require agency approval under section 3 of the BHCA. The HSR Act (c)(8) exemption applies to transactions which require agency approval under section 4 of the BHCA if copies of materials filed with such agency are contemporaneously filed with the enforcement agencies at least 30 days prior to consummation. If a bank holding company acquired another bank holding company that has one or more so-called "4(c)(8) affiliates,"[5] approvals would be required under both section 3 and section 4 of the BHCA.[6] The question has arisen—and may continue to arise with Gramm-Leach-Bliley in effect—whether parties to such a transaction need comply with the copies/waiting conditions of the (c)(8) exemption for the section 4 part of the transaction or may instead regard (c)(7) as covering the entire transaction. Based on discussions with Federal Reserve Board staff, we believe that in this type of transaction, the Federal Reserve Board review and approval under section 3 of the BHCA does not entail competitive review and approval of the section 4 portion of the transaction. Accordingly, parties to a transaction that involves approvals under section 3 and section 4 of the BHCA should comply with the copies/waiting conditions of the HSR Act (c)(8) exemption for the section 4 part of the transaction.[7]

The following Examples illustrate the application of this Formal Interpretation. In these Examples, "subject to HSR" means that the parties will have to comply with HSR notification and waiting requirements if applicable size criteria and thresholds are met and no other exemption applies.

1. Financial Holding Company A acquires Bank B. B does not own any financial subsidiaries. This is a transaction which requires Federal Reserve Board approval under section 3 of the BHCA and there is no non-bank part of this merger. The transaction is exempt from the HSR Act under (c)(7).

2. Financial Holding Company A acquires Securities Company B. This transaction does not require banking agency approval under any of the relevant banking statutes, and is thus not covered by the HSR Act (c)(7) or (c)(8) exemptions. The acquisition is subject to the HSR Act.

3. Financial Holding Company A acquires Financial Holding Company B. B owns banks and financial affiliates, including insurance companies and securities companies. While A's acquisition of B's banks is exempt under HSR section (c)(7), the acquisition of the financial affiliates is subject to HSR. This situation is expressly addressed by the language of section (c)(7) as amended by Gramm-Leach-Bliley. The acquisition of the financial affiliates is a portion of a transaction that is subject to section 4(k) of the BHCA and does not require agency approval under section 3 of the BHCA. If in this Example B owned 4(c)(8) affiliates such as thrifts in addition to banks and financial affiliates, A's acquisition of B's 4(c)(8) affiliates would require Federal Reserve Board approval under section 4 of the BHCA. HSR Act section (c)(8) as amended by Gramm-Leach-Bliley would exempt A's acquisition of B's 4(c)(8) affiliates (provided that A complied with the requirements of that section—see Example 7), but the acquisition of the financial affiliates would still be subject to HSR. Under HSR Act sections (c)(7) and (c)(8) as amended, the acquisition of the financial affiliates would be a portion of a transaction that is subject to section 4(k) of the BHCA and does not require agency approval under section 3 or section 4 of the BHCA.

4. Securities company A will acquire Bank B. B does not own any financial subsidiaries. In order to make the acquisition, A must apply to become a financial holding company. Because the acquisition of B requires Federal Reserve Board approval under section 3 of the BHCA and there is no non-bank business being acquired, this transaction is exempt under HSR Act section (c)(7). See Example 1.

5. Bank A acquires Securities Company B as a financial subsidiary under Gramm-Leach-Bliley. This transaction does not require banking agency approval under any of the banking statutes referenced in the HSR Act, and is thus not exempted by HSR Act sections (c)(7) or (c)(8). The acquisition is subject to HSR. See Example 2. Note that if Bank A, instead of acquiring a financial subsidiary, had acquired Mortgage Company B as a traditional operating subsidiary, either before or after the Gramm-Leach-Bliley Act takes effect, that transaction also would not require banking agency approval under any of the relevant banking statutes specified in the HSR Act (c)(7) and (c)(8) exemptions, and thus would be subject to HSR.

6. Bank A from Example 5, which now holds Financial Subsidiary B, is acquired by Bank C. While C's acquisition of A requires agency approval (by the Office of the Comptroller of the Currency, Federal Reserve Board or Federal Deposit Insurance Corporation, depending on whether C is a national bank, state member bank, or state non-member bank) under section 18(c) of the FDI Act and is exempt under HSR section (c)(7), the acquisition of financial subsidiary B is subject to HSR. If in this example C is not a Bank but rather a financial holding company, bank holding company or a securities firm, the result is the same. The non-bank portion of a merger is subject to HSR regardless of whether the non-bank business is housed in an affiliate of a financial holding company or a financial subsidiary of a bank.

7. A and B are bank holding companies that have not become financial holding companies under Gramm-Leach-Bliley. They may engage in activities closely related to banking under section 4(c)(8) of the BHCA, but not in the broader array of activities allowed under section 4(k). A acquires B, including the banks owned by B and non-bank section 4(c)(8) affiliates. The acquisition of the banks requires Federal Reserve Board approval under section 3 of the BHCA and is exempt under HSR Act section (c)(7). The acquisition of the non-bank affiliates requires Federal Reserve Board approval under section 4 of the BHCA and is exempt under HSR Act section (c)(8) if copies of all information and documents filed with the Federal Reserve Board are filed contemporaneously with the FTC and DOJ at least 30 days prior to consummation. Although the parties need not make HSR filings, (c)(7) does not exempt the entire transaction, and the copies/30-day requirements of the (c)(8) exemption must be observed for the non-banking affiliates.

8. A is a national bank that has one or more operating subsidiaries but does not have any financial subsidiaries. Under Gramm-Leach-Bliley, A's operating subsidiaries cannot engage in any activities that A cannot engage in directly. If A is to be acquired by another entity, the PNO will view this for purposes of HSR as a purely banking transaction that requires agency approval under section 3 of the Bank Holding Company Act or section 18(c) of the FDI Act and not as a mixed transaction. The entire transaction will be exempt under HSR Act section (c)(7).

9. Ten entities plan to form and each have a 10% interest in a new corporation, A, which will own and operate an ATM network. Formation of joint venture corporations is generally analyzed under § 801.40 of the rules, which may require one or more of the contributors to the joint venture to file under the HSR Act for the acquisition of voting securities of the joint venture. For HSR purposes, the formation of A involves ten potentially reportable acquisitions. Each contributor that is a bank holding company will require Federal Reserve Board approval for its acquisition under section 4 of the BHCA, and accordingly, each such acquisition is exempt under HSR Act section (c)(8). In addition, a special rule, § 802.42, applies, if at least one of the ten entities forming A is a bank holding company whose acquisition of A is exempt pursuant to the (c)(8) exemption. In that case, under § 802.42, the contributors that are not bank holding companies and whose acquisitions of A are not exempted by HSR Act section (c)(8) receive a partial exemption. These entities can file the affidavits described in Rule 802.42(a) in lieu of filing HSR Forms, but otherwise remain subject to the Act and Rules (*e.g.*, waiting period; second requests).

10. Corporation A from Example 9, an ATM network owned by ten entities, now plans to acquire another ATM network, B. For HSR purposes, there will be one acquisition with A as the acquiring person. If any of the ten entities that own A is a bank holding company, it will need Federal Reserve Board approval under section 4 of the BHCA. The PNO will apply the rationale of the HSR Act section (c)(8) and § 802.42 in such an instance. Accordingly, the PNO will treat A's acquisition of B as exempt under HSR Act section (c)(8) if: (i) At least one of the entities owning A must get Federal Reserve Board approval under section 4 of the BHCA; and (ii) each such entity that must get such Federal Reserve Board approval complies with the requirements of HSR section (c)(8) by filing copies of all information and documentary material filed with the Federal Reserve Board with the FTC and DOJ contemporaneously and at least 30 days prior to consummation of the proposed transaction. If A's acquisition of B does not require any approval under section 4 of the BHCA (because none of the owners of A is a bank holding company), then A's acquisition of B will be subject to HSR. The PNO believes that this treatment of mergers of ATM networks assures effective premerger competitive review while avoiding duplicative review and minimizing burdens and costs for the parties.

Donald S. Clark,

Secretary.

[FR Doc. 00–8426 Filed 4–4–00; 8:45 am]

BILLING CODE 6750–01–P

[5] A bank holding company can acquire a company engaged in activities closely related to banking if it gets approval under section 4 of the BHCA.

[6] By way of contrast, when a financial holding company acquires another financial holding company that has section 4(k) financial affiliates, the acquisition of the financial affiliates does not require Federal Reserve Board approval.

[7] In the past, the PNO informally advised that the (c)(7) exemption could be relied on exclusively in such a transaction. This advice was based on the belief that all portions of the transaction were reviewed by the Federal Reserve Board under section 3. This view is no longer held by the PNO.

GENERAL ACCOUNTING OFFICE

[Documents No. JFMIP–SR–00–02]

Joint Financial Management Improvement Program (JFMIP)—Federal Financial Management System Requirements (FFMSR)

AGENCY: Joint Financial Management Improvement Program (JFMIP).

ACTION: Notice of document availability.

SUMMARY: The JFMIP is seeking public comment on an exposure draft entitled "Property Management Systems Requirements," dated April 2000. The draft is the first FFMSR document to address standard requirements for federal agency property management systems. The document is intended to assist agencies when developing new property management systems and when improving or evaluating existing property management systems. It provides the baseline functionality that property management systems must have a support agency missions and comply with laws and regulations. The final issuance of this JFMIP Property Management Systems Requirements document will provide the functional requirements definition necessary for agencies to comply with mandates of the Chief Financial Officers Act and the Federal financial Management Improvement Act.

DATES: Comments are due by May 31, 2000.

ADDRESSES: Copies of the exposure draft have been mailed to agency senior financial officials, together with a cover memo listing the questions on which JFMIP is soliciting feedback. The exposure draft and cover memo are available on the JFMIP website: *http://www.financenet.gov/financenet/fed/jfmip/jfmipexp.htm*. Comment should be addressed to JFMIP, 1990 K Street, NW, Suite 430, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Dorothy Sugiyama, (202) 219–0536 or via Internet: *dorothy.sugiyama@gsa.gov*

SUPPLEMENTARY INFORMATION: The Federal Financial Management Improvement Act (FFMIA) of 1996 mandated that agencies implement and maintain systems that comply substantially with Federal Financial management systems requirements, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The FFMIA statute codified the JFMIP financial systems requirements documents as a key benchmark that agency systems must meet to be substantially in compliance with systems requirements provisions

under FFMIA. To support the requirements outlined in the FFMIA, we are updating requirements documents that are obsolete and publishing additional requirements documents.

Comments received will be reviewed and the exposure draft will be revised as necessary. Publication of the final requirements will be mailed to agency senior financial officials and will be available on the JFMIP website.

Karen Cleary Alderman,

Executive Director, Joint Financial Management Improvement Program.

[FR Doc. 00–8332 Filed 4–4–00; 8:45 am]

BILLING CODE 1610–02–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control And Prevention

[60Day–00–31]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Disease Control and Prevention is providing opportunity for public comment on proposed data collection projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 639–7090.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques for other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

1. List of Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products—(0920–0338)—Renewal—Office of Smoking and Health (OSH)—Oral use of smokeless tobacco represents a significant health risk which can cause cancer and a number of noncancerous oral conditions, and can lead to nicotine addiction and dependence. Furthermore, smokeless tobacco use is not a safe substitute for cigarette smoking.

The Centers for Disease Control and Prevention (CDC), Office on Smoking and Health (OSH) has been delegated the authority for implementing major components of the Department of Health and Human Services' (HHS) tobacco and health program, including collection of tobacco ingredients information. HHS's overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research.

The Comprehensive Tobacco Health Education Act of 1986 (15 U.S.C. 4401 *et seq.*, Pub. L. 99–252) requires each person who manufactures, packages, or imports smokeless tobacco products to provide the Secretary of Health and Human Services with a list of ingredients added to tobacco in the manufacture of smokeless tobacco products. This legislation also authorizes HHS to undertake research, and to report to the Congress (as deemed appropriate), on the health effects of the ingredients. The total annual burden is 286 hours.

The total cost to respondents is $22,000. This cost is based on an average of $1,972 per company.

Respondents	Number of respondents	Number of responses	Average burden/response (in hours)	Total burden (in hrs.)
Tobacco Manufacturers	11	1	26	286
Total				286

2. List of Ingredients Added to Tobacco in the Manufacture of Cigarette Products—(0920–0210)—Renewal—The Office of Smoking and Health (OSH)—Cigarette smoking is the leading preventable cause of premature death and disability in our Nation. Each year more than 400,000 premature deaths occur as the result of cigarette smoking related diseases.

The Centers for Disease Control and Prevention (CDC), Office on Smoking and Health (OSH) has the primary responsibility for the Department of Health and Human Services' (HHS) smoking and health program. HHS's overall goal is to reduce death and disability resulting from cigarette smoking and other forms of tobacco use through programs of information, education and research.

The Comprehensive Smoking Education Act of 1984 (15 U.S.C. 1336 Pub. L. 98–474) requires each person who manufactures, packages, or imports cigarettes to provide the Secretary of Health and Human Services with a list of ingredients added to tobacco in the manufacture of cigarettes. This legislation also authorizes HHS to undertake research, and to report to the Congress (as deemed appropriate), on the health effects of the ingredients. The total annual burden is 2,660 hours.

The total cost to respondents is $189,000. This cost is based on an average cost of $13,491 per company.

Respondents	Number of respondents	Number of responses	Average burden/response (in hours)	Total burden (in hrs.)
Tobacco Manufacturers	14	1	190	2,660
Total				2,660

Dated: March 29, 2000.

Charles Gollmar,

Acting Associate Director for Policy, Planning, and Evaluation, Centers for Disease Control and Prevention (CDC).

[FR Doc. 00–8308 Filed 4–4–00; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Proposed Information Collection Activity; Comment Request

Proposed Projects

Title: Low Income Home Energy Assistance Program (LIHEAP) Household Report.

OMB No.: 0970–0060.

Description: The report is an annual activity which is required by law of Low Income Home Energy Assistance Program (LIHEAP) grantees for receipt of federal LIHEAP block grant funds. States, the District of Columbia, and the Commonwealth of Puerto Rico are required to report statistics for the previous federal fiscal year on the number and income levels of LIHEAP applicant and assisted households, and the number of LIHEAP assisted households with at least one member who is elderly, disabled or a young child. Insular areas receiving less than $200,000 annually in LIHEAP funds and Indian Tribal Grantees are required to submit data only on the number of households receiving heating, cooling, energy crisis, or weatherization benefits. The information is being collected for the Department's annual LIHEAP report to Congress. The data also provide information about the need for LIHEAP funds. Finally, the data are beginning to be used in the calculation of LIHEAP performance measures under the Government Performance Results Act of 1993.

Respondents: State Governments, Tribal Governments and Territories.

ANNUAL BURDEN ESTIMATES

Instrument	Number of respondents	Number of responses per respondent	Average burden hours per response	Total burden hours
Assisted Hhd. Report—LF	52	1	25	1300
Assisted Hhd. Report—SF	132	1	1	132
Applic. Hhd. Report	52	1	13	676
Estimated Total Annual Burden Hours:				2108

In compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Administration for Children and Families is soliciting public comment on the specific aspects of the information collection described above. Copies of the proposed collection of information can be obtained and comments may be forwarded by writing to the Administration for Children and Families, Office of Information Services, 370 L'Enfant Promenade, SW, Washington, DC 20447, Attn: ACF Reports Clearance Officer. All requests should be identified by the title of the information collection.

The Department specifically requests comment on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted within 60 days of this publication.

Dated: March 30, 2000.

Bob Sargis,

Reports Clearance Officer.

[FR Doc. 00–8296 Filed 4–4–00; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel Novel Technologies for Noninvasive Detection, Diagnosis and Treatment of Cancer.

Date: April 26–28, 2000.

Time: 7:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate contract proposals.

Place: Hilton Gaithersburg, 620 Perry Parkway, Gaithersburg, MD 20877.

Contact Person: C.M. Kerwin, PHD, Scientific Review Administrator, Special Review, Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, 6116 Executive Boulevard, Room 8086, Rockville, MD 20892–7405, 301/496–7421.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.3983, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control. National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8319 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosures of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, National Cooperative Drug Discovery Group.

Date: April 10–12, 2000.

Time: 6:00 p.m. to 5:00 p.m.

Agenda: To review and evaluate grant applications.

Place: Gaithersburg Hilton, 620 Perry Parkway, Gaithersburg, MD.

Contact Person: Sherwood Githens, PHD, Scientific Review Administrator, National Institutes Of Health, National Cancer Institute, Special Review, Referral and Resources Branch, 6116 Executive Boulevard, Room 8068, Bethesda, MD 20892, (301) 435–1822.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institute of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8321 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Record Linkage Studies Utilizing Resources in Population Based Tumor Registries.

Date: March 31, 2000.

Time: 8:00 a.m. to 5:00 p.m.

Agenda: to review and evaluate contract proposals.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: C.M. Kerwin, PHD; Scientific Review Administrator; Special Review; Referral and Resources Branch; Division of Extramural Activities; National Cancer Institute; National Institutes of Health; 6116 Executive Boulevard; Room 8086; Rockville, MD 20892–7405; 301/496–7421.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8322 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Center for Research Resources; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of meetings of the National Advisory Resources Council.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Research Resources Council Executive Subcommittee.

Date: May 18, 2000.

Open: 8:00 a.m. to 9:00 a.m.

Agenda: To discuss policy issues.

Place: National Center for Research Resources, National Institutes of Health, Conference Room 3B13, Building 31, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PHD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

Name of Committee: National Advisory Research Resources Council.

Date: May 18, 2000.

Open: 9:15 a.m. to 2:00 p.m.

Agenda: Report of Center Director and other issues related to Council business.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, MD 20892.

Closed: 2:00 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: National Institutes of Health, 9000 Rockville Pike, Conference Room 6, Building 31C, Bethesda, MD 20892.

Contact Person: Louise E. Ramm, PHD, Deputy Director, National Center for Research Resources, National Institutes of Health, Building 31, Room 3B11, Bethesda, MD 20892, 301–496–6023.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333; 93.371, Biomedical Technology; 93.389, Research Infrastructure, National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8316 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Eye Institute Special Emphasis Panel.

Date: April 20, 2000.

Time: 9 a.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: 6120 Executive Blvd. Suite 350, Rockville, MD 20892.

Contact Person: Andrew P Mariani, PHD, Chief, Scientific Review Branch, 6120 Executive Blvd, Suite 350, Rockville, MD 20892, 301/496–5561.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: March 29, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8320 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 12, 2000.

Time: 1 PM to 4 PM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This Notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 13, 2000.

Time: 1 PM to 3 PM.

Agenda: To review and evaluate contract proposals.

Place: Neuroscience Center, National Institutes of Health, 6001 Executive Blvd, Bethesda, MD 20892 (Telephone Conference Call).

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This Notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel.

Date: April 18, 2000.

Time: 8:30 AM to 5 PM.

Agenda: To review and evaluate contract proposals.

Place: One Washington Circle Hotel, Conference Center, One Washington Circle, Washington, DC 20037.

Contact Person: Phillip F. Wiethorn, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This Notice is being published less than 15 days prior to the meeting due to the timinig limitations imposed by the review and funding cycle.

(Catalogue of Federal Domesic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: March 28, 2000.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 00–8312 Filed 4–4–00; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory General Medical Sciences Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory General Medical Sciences Council.

Date: May 18–19, 2000.

Closed: May 18, 2000, 8:30 AM to 11 AM.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.
Open: May 18, 2000, 11 AM to 5 PM.
Agenda: For the discussion of program policies and issues, opening remarks, report of the Director, NIGMS, and other business of the Council.
Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.
Closed: May 19, 2000, 8:30 AM to adjournment.
Agenda: To review and evaluate grant applications.
Place: Natcher Building, 45 Center Drive, Conference Rooms E1/E2, Bethesda, MD 20892.
Contact Person: Norka Ruiz Bravo, PHD, Acting Associate Director for Extramural Activities, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 2AN24G, Bethesda, MD 20892, (301) 480–1852.
(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93–859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Development Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: March 28, 2000.
Laverne Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 00–8313 Filed 4–4–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Prenatal Malnntrition & Mental Retardation.
Date: April 10, 2000.
Time: 2:30 PM to 4:00 PM.
Agenda: To review and evaluate grant applications.
Place: 6100 Executive Blvd., Room 5E01, Rockville, MD 20852 (Telephone Conference Call).
Contact Person: Norman Chang, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, 6100 Executive Blvd., Room 5E03, Bethesda, MD 20892, (301) 496–1485.
This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.
(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: March 28, 2000.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 00–8314 Filed 4–4–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Nome of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel.
Date: April 26–27, 2000.
Time: 8:30 a.m. to 5:00 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Contact Person: Edward W. Schroder, PHD, Scientific Review Administrator, Scientific Review Program, Division of Extramural Activities, NIAID, NIH, Room 2156, 6700–B Rockledge Drive, MSC 7610, Bethesda, MD 20892–7610, 301–496–2550.
(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: March 29, 2000.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 00–8315 Filed 4–4–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.
Date: April 14, 2000.
Time: 8:30 a.m. to 10:30 a.m.
Agenda: To review and evaluate grant applications.
Place: 45 Center Drive; Bethesda, MD 20892, (Telephone Conference Call).
Contact Person: John R. Lymangrover, PHD; Scientific Review Administrator; National Institutes of Health, NIAMS; Natcher Bldg., Room 5As25N; Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 29, 2000.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 00–8317 Filed 4–4–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases; Noticed of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Arthritis and Musculoskeletal and Skin Diseases Special Emphasis Panel.
Date: April 7, 2000.
Time: 8 a.m. to 4:30 p.m.
Agenda: To review and evaluate grant applications.
Place: Kenwood Country Club, 5601 River Road, Bethesda, MD 20816.
Contact Person: John R. Lymangrover, PHD, Scientific Review Administrator, National Institutes of Health, NIAMS, Natcher Bldg., Room 5As25N, Bethesda, MD 20892, 301–594–4952.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.846, Arthritis, Musculoskeletal and Skin Diseases Research, National Institutes of Health, HHS)

Dated: March 29, 2000.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 00–8318 Filed 4–4–00; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments on Substances, Mixtures and Exposure Circumstances Proposed for Listing in the Report on Carcinogens, Tenth Edition

Background

The National Toxicology Program (NTP) announces its intent to review additional agents, substances, mixtures and exposure circumstances for possible listing in the Report on Carcinogens (RoC), Tenth Edition. This Report (previously known as the Annual Report on Carcinogens) is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301(b)(4) of the Public Health Service Act, as amended, provides that the Secretary, DHHS shall publish a report which contains a list of all substances (1) which either are known to be human carcinogens or may reasonably be anticipated to be human carcinogens, and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

The scientific review of the nominated agents, substances, mixtures or exposure circumstances involves three separate scientific reviews: two Federal review groups and one non-government peer review body (a subcommittee of the NTP Board of Scientific Counselors) that meets in an open, public forum. Throughout the review process, multiple opportunities are provided for public input including at the Subcommittee meeting. In reviewing nominations for the RoC, all available data and public comments, which are relevant to application of the criteria for inclusion or removal of candidate agents, substances, mixtures or exposure circumstances or for a change in a candidate's classification, are evaluated. The criteria used in the review process are as follows:

Known To Be Human Carcinogens

There is sufficient evidence of carcinogenicity from studies in humans which indicates a causal relationship between exposure to the agent, substance or mixture and human cancer.

Reasonably Anticipated To Be Human Carcinogens

There is limited evidence of carcinogenicity from studies in humans which indicates that causal interpretation is credible but that alternative explanations such as chance, bias or confounding factors could not adequately be excluded; or

There is sufficient evidence of carcinogenicity from studies in experimental animals which indicates there is an increased incidence of malignant and/or a combination of malignant and benign tumors: (1) in multiple species, or at multiple tissue sites, or (2) by multiple routes of exposure, or (3) to an unusual degree with regard to incidence, site or type of tumor or at onset; or

There is less than sufficient evidence of carcinogenicity in humans or laboratory animals; However, the agent, substance or mixture belongs to a well defined, structurally-related class of substances whose members are listed in a previous Report on Carcinogens as either a known to be human carcinogen, or reasonably anticipated to be human carcinogen or there is convincing relevant information that the agent acts through mechanisms indicating it would likely cause cancer in humans.

Conclusions regarding carcinogenicity in humans or experimental animals are based on scientific judgment, with consideration given to all relevant information. Relevant information includes, but is not limited to dose response, route of exposure, chemical structure, metabolism, pharmacokinetics, sensitive subpopulations, genetic effects, or other data relating to mechanism of action or factors that may be unique to a given substance. For example, there may be substances for which there is evidence of carcinogenicity in laboratory animals but there are compelling data indicating that the agent acts through mechanisms which do not operate in humans and would therefore not reasonably be anticipated to cause cancer in humans.

A detailed description of the review procedures, including the steps in the formal review process, is available at *http://ntp-server.niehs.nih.gov* or can be obtained by contacting: Dr. C.W. Jameson, National Toxicology Program, Report on Carcinogens, MD EC–14, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–0144, email: jameson@niehs.nih.gov.

Public Comment Requested

The NTP is considering 11 agents, substances, mixtures and exposure circumstances for possible review in 2000, as either a new listing in or changing the current listing from reasonably anticipated to be a human carcinogen to the known to be a human carcinogen category in the Tenth Report. These nominations are provided in the following table with their Chemical Abstracts Services (CAS) Registry numbers (where available) and pending review action. The NTP solicits public input on these 11 nominations and asks for relevant information anyone may have concerning their carcinogenesis, as well as current production data, use patterns, or human exposure information. The NTP also invites interested parties to identify any scientific issues related to the listing of a specific nomination in the RoC that they feel should be addressed during the reviews. Comments concerning these nominations for listing in, changing the current listing in, or delisting from the Tenth Report on Carcinogens will be accepted through June 5, 2000. Individuals submitting public comments are asked to include relevant contact information (name, affiliation (if any), address, telephone, fax, and email). Comments or questions should be directed to Dr. C. W. Jameson at the address listed above.

Additional Nominations for Delisting or Listing Encouraged

The NTP solicits and encourages the broadest participation from interested individuals or parties in nominating agents, substances, or mixtures for listing in or delisting from the Tenth and future RoCs. Nominations should contain a rationale for listing or delisting. Appropriate background information and relevant data (e.g. Journal articles, NTP Technical Reports, IARC listings, exposure surveys, release inventories, etc.), which support a nomination, should be provided or referenced when possible. Contact information for the nominator should also be included (name, affiliation (if any), address, telephone, fax, and email). Nominations should be sent to Dr. Jameson's attention at the address given above.

Dated: March 27, 2000.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY FOR NOMINATIONS TO BE REVIEWED IN 2000 FOR CONSIDERATION OF LISTING IN OR DELISTING FROM THE TENTH REPORT ON CARCINOGENS

Nomination/CAS No.	Primary uses or exposures	To be reviewed for	Basis of nomination
Chloramphenicol (56–75–7)	Used widely as an antiblotic since the 1950s. Veterinary use of chloramphenicol has resulted in the occurrence of residues in animal-derived food.	Listing in the 10th Report.	Nominated by RG1[1] based on the IARC[2] identification of chloramphenicol as a Group 2A–Probable Human Carcinogen (Vol. 50, 1990). IARC listing based on findings of limited evidence of carcinogenicity in humans based on case reports, which described an unusual succession of leukemia following chloramphenicol-induced aplastic anemia and bone-marrow depression.
Human Papillomaviruses (HPVs)	HPVs are small, non-enveloped viruses that contain a double-stranded, circular 8 kb DNA genome. HPV infections are common throughout the world, are highly host-specific and, with the exception of some ungulate papillomaviruses, infect only epithelial cells.	Listing in the 10th Report.	Nominated by RG1[1] based on IARC[2] finding of sufficient evidence of carcinogenicity in human epidemiology studies and identifying certain human papillomaviruses as a Group 1—Known Human Carcinogen (Vol. 64, 1995). HPVs are found in over 90% of all invasive cervical cancers and in a high proportion of certain other anogenital cancers. Carcinogenicity in humans has been most firmly established for HPV–16, but strong evidence of carcinogenicity also exists for certain other HPV types.
Lead and Lead Compounds	Widespread uses which have included use in pipes for water distribution, lead-based paints, lead additives in gasoline, and many other applications.	Listing in the 10th Report.	Nominated by RG1[1] based on recent published data that indicate an excess of cancers in workers exposed to lead and lead compounds.
Methyleugenol (93–15–2)	Flavoring agent used in jellies, baked goods, nonalcoholic beverages, chewing gum, candy, and ice cream. Also used as a fragrance for many perfumes, lotions, detergents and soaps.	Listing in the 10th Report.	Nominated by RG1[1] based on recent NTP Technical Report (TR 491, 1998) reporting clear evidence of carcinogenic activity of methyleugenol in rats and mice based on the increased incidences of liver neoplasms in rats and mice, neuroendocrine tumors of the glandular stomach in male and female rats and male mice, and the increased incidences of kidney neoplasms, malignant mesothelioma, mammary gland fibroadenoma, and subcutaneous fibroma and fibroma or fibrosarcoma (combined) in male rats.
Nickel and Nickel Compounds including Metallic Nickel & Nickel Alloys.	Widely used in commercial applications for over 100 years.	Listing in the 10th Report.	Action required to complete review of Nickel and Nickel Compounds. This review will be of metallic nickel and nickel alloys. Review of nickel compounds for listing in the Report on Carcinogens was completed in 1998.

SUMMARY FOR NOMINATIONS TO BE REVIEWED IN 2000 FOR CONSIDERATION OF LISTING IN OR DELISTING FROM THE TENTH REPORT ON CARCINOGENS—Continued

Nomination/CAS No.	Primary uses or exposures	To be reviewed for	Basis of nomination
Estrogens, steroidal	Estrogens are widely used in oral contraceptives and in post-menopausal therapy for women.	Listing in the 10th Report.	Nominated by RG1[1] based on IARC[2] identification of Estrogens, Steroidal as a Group 1–Known Human Carcinogen (Vol. 72, 1999) IARC listing based on a consistent, strongly positive association between exposure to a number of estrogenic substances and risk of endometrial and breast cancer in women.
Talc (14807–96–6) (Non-Asbestiform).	Talc (non-asbestiform) occurs in various geological settings around the world. Occupational exposure occurs during mining, milling and processing. Exposure to general population occurs through use of products such as cosmetics.	Listing in the 10th Report.	Nominated by RG1[1] based on NTP Technical Report (TR 421, 1993) which reported clear evidence of carcinogenic activity of talc (non-asbestiform) based on increased incidences of alveolar/bronchiolar adenomas and carcinomas of the lung in female rats and also recently published epidemiology studies that suggests that talc exposure among pottery workers has been associated with lung cancer, and ovarian neoplasms in women.
Talc (14807–96–6) (Containing Asbestiform Fibers).	Talc (containing asbestiform fibers) occurs in various geological settings around the world. Occupational exposure occurs during mining, milling and processing.	Listing in the 10th Report.	Nominated by RG1[1] based on IARC[2] identification of talc (containing asbestiform fibers) as a Group 1–Known Human Carcinogen (Sup 7, 1987). IARC listing based on the observed association between exposure to talc containing asbestiform fibers and mesothelioma in humans.
Trichloroethylene (TCE) (79–01–6).	Trichloroethylene is widely used as a solvent with 80–90% used worldwide for degreasing metals.	Upgrade to Known	Recommended by RG1[1] to be upgraded to a known human carcinogen based on recent published data that indicate an excess of kidney cancers in workers exposed to trichloroethylene.
Broad Spectrum UV Radiation	Solar and artificial sources of ultraviolet radiation.	Listing in the 10th Report.	Review of UVA, UVB and UVC recommended by RG2[3] based on earlier Report on Carcinogens review of solar UV radiation.
Wood Dust	It is estimated that at least two million people are routinely exposed occupationally to wood dust worldwide. Non-occupational exposure also occurs. The highest exposures have generally been reported in wood furniture and cabinet manufacture, especially during machine sanding and similar operations.	Listing in the 10th Report.	Nominated by the Occupational Safety and Health Administration based on IARC[2] identification of wood dust as a Group 1–Known Human Carcinogen (Vol. 62, 1995). IARC listing based on increases in cancer, particularly cancer of the nasal cavities and paranasal sinuses, associated with exposure to wood dust.

[1] The NIEHS Review Committee for the Report on Carcinogens (RG1).
[2] International Agency For Research On Cancer (IARC).
[3] The NTP Executive Committee* Interagency Working Group for the Report on Carcinogens (RG2).
*Agencies from the NTP Executive Committee represented on RG2 include: Agency for Toxic Substances and Disease Registry (ATSDR), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), National Center for Environmental Health of the Centers for Disease Control and Prevention (NCEH/CDC), National Center for Toxicological Research of the Food and Drug Administration (NCTR/FDA), National Institute for Occupational Safety and Health/CDC (NIOSH/CDC), Occupational Safety and Health Administration (OSHA), National Cancer Institute of the National Institutes of Health (NCI/NIH), and National Institute of Environmental Health Sciences/NIH(NIEHS/NIH)

[FR Doc. 00–8310 Filed 4–4–00; 8:45 am]
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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program; Call for Public Comments on 9 Substances Proposed for Listing in or Delisting from the Report on Carcinogens, Tenth Edition

Background

The National Toxicology Program (NTP) solicits final public comments on additional agents, substances, mixtures and exposure circumstances for listing in or delisting from the Report on Carcinogens, Tenth Edition. This Report (previously known as the Annual Report on Carcinogens) is a Congressionally mandated listing of known human carcinogens and reasonably anticipated human carcinogens and its preparation is delegated to the National Toxicology Program by the Secretary, Department of Health and Human Services (DHHS). Section 301 (b) (4) of the Public Health Service Act, as amended, provides that the Secretary, (HHS), shall publish a biennial report which contains a list of all substances (1) which either are

known to be human carcinogens or may reasonably be anticipated to be human carcinogens; and (2) to which a significant number of persons residing in the United States (US) are exposed. The law also states that the reports should provide available information on the nature of exposures, the estimated number of persons exposed and the extent to which the implementation of Federal regulations decreases the risk to public health from exposure to these chemicals.

In 1999 and early 2000, nine substances were reviewed for listing in the Tenth Report. This review included two Federal and one non-government, scientific peer reviews and public comment and review. The three scientific review committees evaluated all available data relevant to the criteria for inclusion of candidate substances in the Report. The criteria used in the review process and the detailed description of the review procedures, including the steps in the current formal review process, can be obtained from the NTP Home Page web site at http://ntp-server.niehs.nih.gov/ or by contacting: Dr. C. W. Jameson, National Toxicology Program, Report on Carcinogens, 79 Alexander Drive, Room 3217, P.O. Box 12233, Research Triangle Park, NC 27709; phone: (919) 541–4096, fax: (919) 541–2242, email: jameson@niehs.nih.gov.

Public Comment Requested

The nominated substances reviewed in 1999 and early 2000 are provided in the following table with their Chemical Abstracts Services (CAS) Registry numbers (where available) and the recommendations from the three scientific peer reviews of the nominations. The NTP will be making a final recommendation in 2001 for these nine substances for listing in, or changing the current listing from reasonably anticipated to be a human carcinogen to the known to be a human carcinogen category in the Tenth Report.

Background documents provided to the review committees and the public are available on the web in pdf version at the address above. Hard copies of these documents are also available upon request. The NTP will review the recommendations of each of the review committees and consider the public comments received throughout the process in making decisions regarding the NTP recommendations to the Secretary, DHHS, for listing of the nominated substances in the Tenth Edition of the Report on Carcinogens. The NTP solicits final public comment to supplement any previously submitted comments or to provide comments for the first time on any substance in the following table. Comments will be accepted through June 5, 2000. Comments or questions should be directed to Dr. C. W. Jameson at the address listed above.

Dated: March 28, 2000.

Kenneth Olden,

Director, National Toxicology Program.

SUMMARY OF RG1[1], RG2[2] AND NTP BOARD SUBCOMMITTEE[3] AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES REVIEWED IN 1999–2000 FOR LISTING INOR DELISTING FROM THE REPORT ON CARCINOGENS[4], 10TH EDITION

Nomination/CAS No.	Primary uses or exposures	RG1 action	RG2 action	NTP board subcommittee action
Beryllium and Beryllium compounds/7440–41–7.	Used in fiber optics and cellular network communications systems, aerospace, defense and other industry applications.	RG1 unanimously recommended (8/0) listing as known to be a human carcinogen.	RG2 recommended (5 yes votes to 4 no votes) listing as known to be a human carcinogen.	The Subcommittee unanimously recommended (7/0) listing as known to be a human carcinogen.
2,2-bis-(bromomethyl)-1,3-propanediol (Technical Grade) 3296–90–9.	Used as a fire retardant in unsaturated polyester resins, in molded products, and in rigid polyurethane foam.	RG1 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	RG2 unanimously recommended (8/0) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee unanimously recommended (7/0) to list as reasonably anticipated to be a human carcinogen.
2,3-Dibromo-1-Propanol/96–13–9.	Used as a flame retardant, as an intermediate in the preparation of the flame retardant tris(2,3-dibromopropyl) phosphate, and as an intermediate in the manufacture of pesticides and pharmaceutical preparations.	RG1 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	RG2 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee unanimously recommended (7/0) to list as reasonably anticipated to be a human carcinogen.
Dyes metabolized to 3,3′-Dimethylbenzidine.	Dyes mainly used for textile industries with other applications in paper, plastics, and rubber industries.	RG1 recommended (5 yes votes to 1 no vote with 1 abstention) to list as reasonably anticipated to be a human carcinogen.	RG2 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee unanimously recommended (7/0) to list as reasonably anticipated to be a human carcinogen.
Dyes metabolized to 3,3′-Dimethoxybenzidine.	Dyes mainly used for textile industries with other applications in paper, plastics, and rubber industries.	RG1 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	RG2 recommended (8 yes votes to 0 no vote with 1 abstention) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee unanimously recommended (7/0) to list as reasonably anticipated to be a human carcinogen.
IQ (2-Amino-3-methylimidazo[4,5-f]quinoline)/76180–96–6.	Found in cooked meat and fish and in cigarette smoke.	RG1 unanimously recommended (7/0) listing as reasonably anticipated to be a human carcinogen.	RG2 unanimously recommended (8/0) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee unanimously recommended (7/0 to list as reasonably anticipated to be a human carcinogen.

SUMMARY OF RG1[1], RG2[2] AND NTP BOARD SUBCOMMITTEE[3] AGENTS, SUBSTANCES, MIXTURES OR EXPOSURE CIRCUMSTANCES REVIEWED IN 1999–2000 FOR LISTING INOR DELISTING FROM THE REPORT ON CARCINOGENS[4], 10TH EDITION—Continued

Nomination/CAS No.	Primary uses or exposures	RG1 action	RG2 action	NTP board subcommittee action
Styrene 7,8-oxide/96–09–3	Used mainly in the preparation of fragrances and in some epoxy resin formulations.	RG1 recommended (7 yes votes to 1 no votes) to list as reasonably anticipated to be a human carcinogen.	RG2 recommended (6 yes votes to 3 no votes) to list as reasonably anticipated to be a human carcinogen.	The Subcommittee recommended (6 yes votes to 0 no votes with 1 abstention) to list as reasonably anticipated to be a human carcinogen.
Vinyl Bromide/593–60–2	Used primarily in the manufacture of flame retardant synthetic fibers.	RG1 unanimously recommended (10/0) listing as reasonably anticipated to be a human carcinogen.	RG2 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee recommended (4 yes votes to 3 no votes) listing as known to be a human carcinogen.
Vinyl Fluoride/75–02–5	Used in the production of polyvinylfluoride which is used for plastics.	RG1 recommended (7 yes votes to 2 no votes) to list as reasonably anticipated to be a human carcinogen.	RG2 unanimously recommended (9/0) listing as reasonably anticipated to be a human carcinogen.	The Subcommittee recommended (4 yes votes to 3 no votes) listing as known to be a human carcinogen.

[1] The NIEHS Review Committee for the Report on Carcinogens (RG1).
[2] The NTP Executive Committee* Interagency Working Group for the Report on Carcinogens (RG2).
* Agencies represented on the NTP Executive Committee include: Agency for Toxic Substances and Disease Registry (ATSDR), Consumer Product Safety Commission (CPSC), Environmental Protection Agency (EPA), Food and Drug Administration (FDA), National Center for Toxicological Research (NCTR), National Institute for Occupational Safety and Health (NIOSH), Occupational Safety and Health Administration (OSHA), Department of Health and Human Services (DHHS), National Institutes of Health (NIH), National Cancer Institute (NCI), National Library of Medicine (NLM), and National Institute of Environmental Health Sciences/NTP (NIEHS/NTP).
[3] The NTP Board of Scientific Counselors Report on Carcinogens Subcommittee (the External Peer Review Group).
[4] RoC—Report on Carcinogens.

[FR Doc. 00–8311 Filed 4–4–00; 8:45 am]
BILLING CODE 4140–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Colusa Indian Community Council Liquor Ordinance, Resolution No. 08–02–99–01

AGENCY: Bureau of Indian Affairs, Interior

ACTION: Notice.

SUMMARY: This Notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8, and in accordance with the Act of August 15, 1953, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983). I certify that by Resolution No. 08–02–99–01, the Colusa Indian Community Council Liquor Ordinance, was duly adopted by the Colusa Indian Community Council on August 5, 1999. The Ordinance regulates the control of, the possession of, and the sale of liquor on Colusa Indian Community Council trust lands, and is in conformity with the State of California.

DATES: This Ordinance is effective as of April 5, 2000.

FOR FURTHER INFORMATION CONTACT: Jim D. James, Office of Tribal Services, 1849 C Street NW, MS 4631-MIB, Washington, D.C. 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: The Colusa Indian Community Council Liquor Ordinance, Resolution No. 08–02–99–01, is to read as follows:

Colusa Indian Community Council Liquor Ordinance, Resolution No. 08–02–99–01

Article I—Declaration of Public Policy and Purpose

Section 1. The introduction, possession, and sale of liquor on the lands of the Colusa Indian Community (Community) of the Colusa Indian Reservation is a matter of special concern to the Colusa Indian Community Council (Community Council).

Section 2. Federal law (18 U.S.C. §§ 1154, 1161) currently prohibits the introduction of liquor into Indian Country except as provided therein and in accordance with State law as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), and expressly delegates to each tribe the decision regarding when and to what extent the introduction, possession and sale of liquor shall be permitted.

Section 3. It is in the best interests of the Community, acting pursuant to Article V, Section 1(f) of the Constitution of the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community, to enact a tribal ordinance governing the introduction, possession and sale of liquor on the Colusa Indian Reservation, and which also provides for exclusive purchase, distribution, and sale of liquor only on tribal lands within the exterior boundaries of the reservation. Further, the Community has determined that said purchase, distribution and sale shall take place only at tribally-owned enterprises and/or at tribally-licensed establishments operating on land leased from or otherwise owned by the Community as a whole.

Section 4. The Community Council further finds that violations of this Ordinance would damage the Community in an amount of five hundred dollars ($500) per violation because of the costs of enforcement, investigation, adjudication and disposition of such violations, and that to defray the costs of enforcing this Ordinance the Community will impose a tax on the sale of liquor on the reservation.

Based upon the foregoing findings and determinations, the Community Council hereby ordains as follows.

Article II—Definitions

As used in this title, the following words shall have the following meanings unless the context clearly requires otherwise.

Section 1 *Alcohol.* Means that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including dilutions and mixtures of this substance.

Section 2. *Alcoholic Beverage.* Has the same meaning as the term "liquor" as defined in Article II, subsection f of this Ordinance.

Section 3. *Bar.* Means any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

Section 4. *Beer.* Means any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than 4 percent of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than 4 percent of alcohol by weight shall be referred to as "strong beer."

Section 5. *Community Council.* Means the Colusa Indian Community Council as defined in the Constitution of the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community.

Section 6. *Liquor.* Means the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spiritous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spiritous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than 1 percent of alcohol by weight shall be conclusively deemed to be intoxicating.

Section 7. *Liquor Store.* Means any store at which liquor is sold and, for the purpose of this Ordinance, including any store only a portion of which is devoted to the sale of liquor or beer.

Section 8. *Malt Liquor.* Means beer, strong beer, ale, stout, and porter.

Section 9. *Package.* Means any container or receptacle used for holding liquor.

Section 10. *Public Place.* Includes gaming facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access, and which generally are used by the public.

Section 11. *Sale and Sell.* Means any exchange, barter, and traffic; and also includes the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

Section 12. *Spirits.* Means any beverage, which contains alcohol obtained by distillation, including wines exceeding 17 percent of alcohol by weight.

Section 13. *Tribal Land.* Means any land within the exterior boundaries of the Colusa Indian Reservation that is held in trust by the United States for the Cachil Dehe Band of Wintun Indians of the Colusa Indian Community.

Section 14. *Tribal Gaming Commission.* Means the gaming regulatory body established under the Gaming Ordinance of the Colusa Indian Community that has been approved by the Chairperson of the National Indian Gaming Commission.

Section 15. *Wine.* Means any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, applies, etc.), or fruit juice and containing not more than 17 percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding 17 percent of alcohol by weight.

Article III—Powers of Enforcement

Section 1. The Tribal Gaming Commission, in furtherance of this Ordinance, shall have the following powers and duties:

(a) To publish and enforce rules and regulations adopted by the Community Council governing the sale, manufacture, and distribution of alcoholic beverages in public places on the Colusa Indian Reservation;

(b) To employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Tribal Gaming Commission to perform its functions. Such employees shall be tribal employees;

(c) To issue licenses permitting the sale, manufacture and/or distribution of liquor in public places on the Colusa Indian Reservation;

(d) To hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;

(e) To bring suit in the appropriate court to enforce this Ordinance as necessary;

(f) To determine and seek damages for violation of this Ordinance;

(g) To make such reports as may be required by the Community Council;

(h) To collect sales taxes and fees levied or set by the Community Council on liquor sales and the issuance of liquor licenses, and to keep accurate records, books and accounts; and

(i) To exercise such other powers as may be delegated from time to time by the Community Council.

Section 2. *Limitation on Powers.* In the exercise of its powers and duties under this Ordinance, the Tribal Gaming Commission and its individual members and staff shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

(b) Waive the sovereign immunity of the Colusa Indian Community from suit without the express consent of the Community Council.

Section 3. *Inspection Rights.* The public places on or within which liquor is sold or distributed shall be open for inspection by the Tribal Gaming Commission at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant thereto.

Article IV—Sale of Liquor

Section 1. *Licenses Required.* No sales of alcoholic beverages shall be made on or within public places within the exterior boundaries of the Colusa Indian Reservation, except at a tribally-licensed or tribally-owned business operated on tribal land within the exterior boundaries of the reservation.

Section 2. *Sales for Cash.* All liquor sales within the reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with the use of cashiers or personal checks, payroll checks or debit cards or credit cards issued by any financial institution.

Section 3. *Sale for Personal Consumption.* All sales shall be for the personal use and consumption by the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one. Resale of any alcoholic beverage purchased within the exterior boundaries of the reservation is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the reservation and re-sells it, whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to exclusion from tribal lands or liability for money damages of up to $500, as determined by the Tribal Gaming Commission after notice and an opportunity to be heard.

Article V.—Licensing

Section 1. *Procedure.* In order to control the proliferation of establishments on the reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within the exterior boundaries of the Colusa Indian Reservation must apply to the Tribal Gaming Commission for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor within a private single-family residence on the reservation for which no money is requested or paid.

Section 2. *State Licensing.* No person shall be allowed or permitted to sell or provide liquor on the Colusa Indian Reservation if he/she does not also have a license from the State of California to sell or provide such liquor. If such license from the State is revoked or suspended, the tribal license shall automatically be revoked or suspended as well.

Section 3. *Application.* Any person applying for a license to sell or provide liquor on the Colusa Indian Reservation shall complete and submit an application provided for this purpose by the Tribal Gaming Commission and pay such application fee as may be set from time-to-time by the Tribal Gaming Commission for this purpose. An incomplete application will not be considered.

Section 4. *Issuance of License.* The Tribal Gaming Commission may issue a license if it believes that the issuance of such a license would be in the best interest of the Colusa Indian Community, the residents of the Colusa Indian Reservation and the surrounding community. Licensure is a privilege, not a right, and the decision to issue any license rests in the sole discretion of the Tribal Gaming Commission.

Section 5. *Period of License.* Each license may be issued for a period of not to exceed 2 years from the date of issuance.

Section 6. *Renewal of License.* A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of California; however, the Tribal Gaming Commission may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the members of the Colusa Indian Community.

Section 7. *Revocation of License.* The Tribal Gaming Commission may revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

Section 8. *Transferability of Licenses.* Licenses issued by the Tribal Gaming Commission shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Article VI—Taxes

Section 1. *Sales Tax.* There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on the reservation in the amount of 1 percent of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor on the reservation and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 2. *Payment of Taxes to the Tribe.* All taxes from the sale of alcoholic beverages on the Colusa Indian Reservation shall be paid over to the General Treasury of the Colusa Indian Community and be subject to the distribution by the Community Council in accordance with its usual appropriation procedures for essential governmental and social services, including operation of the Tribal Gaming Commission and administration of this Ordinance.

Section 3. *Taxes Due.* All taxes upon the sale of alcoholic beverages on the reservation are due on the first day of the month following the end of the calendar quarter for which the taxes are due. Past due taxes shall accrue interest at 18 percent per annum.

Section 4. *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 5. *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the reservation. Said review or audit may be done periodically by the Tribal Gaming Commission through its agents or employees whenever in the discretion of the Tribal Gaming Commission such a review or audit is necessary to verify the accuracy of reports.

Article VII—Rules, Regulations and Enforcement

Section 1. In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish *prima facie* intent or purpose of unlawfully keeping liquor for sale, selling liquor, or distributing liquor in violation of this title.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner any liquor in violation of this Ordinance, or who shall operate or shall have liquor in his/her possession without a permit, shall be guilty of a violation of this Ordinance subjecting him/her to civil damages assessed by the Tribal Gaming Commission. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the Colusa Indian Community for their personal or other non-commercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the Colusa Indian Reservation shall be governed solely by the laws of the State of California.

Section 3. Any person within the boundaries of the Colusa Indian Reservation who, in a public place, buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this Ordinance.

Section 4. Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

Section 5. No person under the age of 21 years shall consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

Section 6. Any person who, in a public place, shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this Ordinance for each such sale or drink provided.

Section 7. Any person guilty of a violation of this Ordinance shall be liable to pay the Colusa Indian Community up to five hundred dollars ($500) per violation as civil damages to defray the tribe's cost of enforcement of this Ordinance. The amount of such damages in each case shall be determined by the Tribal Gaming Commission based upon a preponderance of the evidence available to the Tribal Gaming Commission after the person alleged to have violated this Ordinance has been given notice and an opportunity to respond to such allegations.

Section 8. Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of 27, the prospective purchaser shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Driver's license of any state or identification card issued by any State Department of Motor Vehicles;

(2) United States Active Duty Military;

(3) Passport; and

(4) Gaming license or work permit issued by the Tribal Gaming Commission, if said license or permit contains the bearer's correct age, signature and photograph.

Article VIII—Abatement

Section 1. Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 2. The Chairman of the Community Council or, if he/she fails or refuses to do so, a majority of the Community Council acting at a duly-called meeting at which a quorum is present, shall institute and maintain an action in a court of competent jurisdiction in the name of the Community to abate and perpetually enjoin any nuisance declared under this Ordinance. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure, or place closed for a period of one year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than twenty five thousand dollars ($25,000), payable to the Community and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provision of this title of any other applicable tribal law, and that he/she will pay all fines, costs and damages assessed against him/her for any violation of this title or other tribal liquor laws. If any conditions of the bond be violated, the whole amount may be recovered for the use of the Community.

Section 3. In all cases where any person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Ordinance shall be *prima facie* evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Article IX—Profits

Section 1. The gross proceeds collected by the Tribal Gaming Commission from all licensing of the sale of alcoholic beverages on the Colusa Indian Reservation, and from proceedings involving violations of this Ordinance, shall be distributed as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and

(b) Second, the remainder shall be turned over to the General Fund of the Colusa Indian Community and expended by the Colusa Indian Community for governmental services and programs on the Colusa Indian Reservation.

Article X—Severability and Effective Date

Section 1. If any provision or application of this Ordinance is determined by judicial review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title, or to render such provisions inapplicable to other persons or circumstances.

Section 2. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 3. Any and all prior enactments of the Colusa Indian Community that are inconsistent with the provisions of this Ordinance are hereby rescinded and repealed.

Section 4. All acts and transactions under this Ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. § 1154, but only to the extent required by the laws of the United States.

Article XI—Amendment

This Ordinance may only be amended by a two-thirds majority vote of members of the Colusa Indian Community Council attending a duly-noticed meeting at which a quorum is present.

Article XII—Certification and Effective Date

This Ordinance was passed at a duly held, noticed, and convened meeting of the Colusa Indian Community Council Tribal Council by a vote of 15 for, 3 against and 2 abstaining which vote constitutes a quorum held on the 5th day of August 1999, as attested to and certified by Lavern Thomas Pina, Secretary-Treasurer of the Colusa Indian Community Council and shall be effective upon approval by the Secretary of the Interior or his designee as provided by federal law.

Dated: March 29, 2000.

Kevin Gover,

Assistant Secretary—Indian Affairs.

[FR Doc. 00–8347 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–02–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WO–320–1990–PB–02 24 1A]

OMB Approval Number 1004–0176; Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The Bureau of Land Management (BLM) has submitted the proposed collection of information listed below to the Office of Management and Budget (OMB) for approval under the Provisions of the Paperwork Reduction Act of 1995, 44 U.S.C. 3510 *et seq.* On October 19, 1999, BLM published a notice in the **Federal Register** at 64 FR 56360 requesting comments on this collection. The comment period ended on December 20, 1999. One comment was received in response to that notice. The comment contained information supporting an increase in BLM's burden estimate for certain notices and plans required by the information collection. You may obtain copies of the proposed collection of information and related forms and explanatory material by contacting the BLM Clearance Officer at the telephone number listed below.

OMB is required to respond within 60 days but may respond after 30 days. For maximum consideration your comments and suggestions on the requirements should be made within 30 days directly to the Office of Management and Budget, Interior Department Desk Officer (1004–0176), Office of Information and Regulatory Affairs, Washington, DC 20503. Please provide a copy of your comments to the BLM Information Clearance Officer (WO–630), 1849 C St., NW, Mail Stop 401 LS, Washington, DC 20240.

Nature of Comments

We specifically request your comments on the following:

1. Whether the collection of information is necessary for the proper functioning of BLM, including whether the information will have practical utility;

2. The accuracy of BLM's estimate of the burden associated with collecting the information, including the validity of the methodology and assumptions used;

3. The quality, utility and clarity of the information to be collected; and

4. How to minimize the burden of collecting the information on those who are to respond, including the use of appropriate automated electronic, mechanical, and other forms of information technology.

Title: Surface Management Activities Under the General Mining Law, Regulations at 43 CFR 3802 and 3809.

OMB Approval Number: 1004–0176.

Abstract: BLM requests an extension of OMB approval to collect certain information from mining claimants and operators who want to prospect, explore, mine and reclaim lands subject to the General Mining Law. This information is contained in the surface management regulations at 43 CFR 3802 and 3809 and three bond forms, Surface Management Surety Bond Form (BLM 3809–1), Surface Management Personal Bond Form (BLM 3809–2), and Generalized Bond Rider Form (BLM 3809–4).

The information requested is associated with filing notices of intent to conduct mining operations, where 5 acres or less of land will be disturbed in any calendar year, and plans of operation, in which exploration and mining activities will disturb more than 5 acres of land in any given year. Information associated with notices includes names and mailing addresses of operators and owners; the serial numbers of all mining claims, mill sites, and tunnel sites; maps showing the location of surface disturbances; and a description of the proposed operation, showing how the operator would conduct the activities. Generally, the greater the surface disturbance, the more detail is required. A full-blown plan of operations would contain descriptions of all proposed and existing access routes, aircraft landing areas, and other means of access; of how the operator will prevent unnecessary and undue degradation of the land; of how the operator will reclaim the areas disturbed by mining activities; and of measures to be taken to maintain the area in a safe and clean manner and to reclaim the land to avoid erosion and other adverse impacts.

BLM has re-examined its hour burden estimates in response to the public comment received on this collection and in response to six comments on a related information collection for the proposed surface management regulations at 43 CFR 3809 (64 FR 6422, February 9, 1999) and changed the burden estimates accordingly.

Bureau Form Numbers: Surface Management Surety Bond Form (BLM Form 3809–1) Surface Management Personal Bond Form (BLM Form 3809–2), and Surface Management Generalized Bond Rider Form (BLM Form 3809–4).

Frequency: On occasion, as applied for or reported.

Description of Respondents: Respondents are claimants and operators who want to prospect, explore, mine or reclaim locatable mineral on public lands.

Estimated Completion Times:

(1) Notices of intent—600 per year, as follows: 390 at 24 hours each for exploration activities; 120 at 40 hours each for placer operations; 90 at 40 hours each for all others;

Total annual burden—17,700 hours.

(2) Plans of operation—150 per year, as follows: 52 for exploration activities 24 hours each for exploration activities; 49 for placer/strip mining at 80 hours each; and 49 for open pit mining at 240 hours each.

Total annual burden—53,100 hours.

(3) Compliance with the National Environmental Policy Act (NEPA) Plans of operations—EA's for 52 mines conducting exploration activities at 320 hours each; EA's for 93 mines conducting mining activities at 64 hours each; EIS's for 5 mines conducting mining activities at 2480 hours each.

Total annual burden—88,560 hours.

(4) Complying with Requirements of the National Historic Preservation Act Plans of operations—150 plans at 30 hours each per cultural survey.

Total annual burden—450 hours.

(5) Forms: 8 minutes per form for all forms.

Total annual burden—22 hours.

Annual responses: 750 (1 per respondent per year).

Annual burden hours: 125,808 hours.

Collection Clearance Officer: Carole Smith, (202) 452–0367.

Dated: March 28, 2000.

Carole Smith,

BLM Clearance Officer.

[FR Doc. 00–8303 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–700–00–5440–00–C023]

Notice of Availability of Records of Decisions

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of svailability of North Fork Coal Records of Decisions (ROD's) for the Iron Point Coal Exploration License application (COC61945), Iron Point Coal Lease Tract application (COC61209) and the Elk Creek Coal Lease Tract application (COC61357) of Federal coal reserves in Delta and Gunnison Counties, Colorado.

RESPONSIBLE OFFICIAL: Mike Pool, Associate State Director, Colorado State Office, Bureau of Land Management, 2850 Youngfield, Denver, CO 80215.

SUMMARY: The BLM has issued Records of Decisions (RODs) to offer for competitive sale Federal coal reserves in the Iron Point Coal Lease Tract (COC61209) and the Elk Creek Coal Lease Tract (COC61357). BLM has also issued a ROD to grant the Iron Point Coal Exploration License (COC61945) to Bowie Resources Limited.

DATES: The decisions are subject to appeal for 30 days under the provisions of 43 CFR part 4.

ADDRESSES: Please address questions on the ROD's to the Bureau of Land Management, Attn: Jerry Jones, 2465 South Townsend Ave., Montrose, CO, 81401.

FOR FURTHER INFORMATION CONTACT: Jerry Jones at the above address, or phone number 970–240–5338, or fax number 970–240–5368. E-mail can be sent to Jerry_Jones@co.blm.gov.

SUPPLEMENTARY INFORMATION: As a result of two applications for coal leasing and one application for a coal exploration license, the North Fork Coal Environmental Impact Statement (EIS) was prepared. The BLM and the U.S.D.A. Forest Service were joint lead agencies in the preparation of the document. The U.S.D.I. Office of Surface Mining was a cooperating agency. The Final EIS was made available to the public with the publication of the EPA Notice of Availability on February 25, 2000.

The BLM has decided to offer for competitive sale the Federal coal reserves in two coal lease tracts, the Iron Point Coal Lease Tract (COC61209) and the Elk Creek Coal Lease Tract (COC61357). The decisions generally implement Alternative D, No Subsidence in Sensitive Areas, in the North Fork Coal Final EIS. The described actions plus additional mitigation measures would prevent subsidence under perennial streams and the Curecanti-Rifle 230/345 kv power line and protect important other resources.

The BLM has also decided to grant the Iron Point Coal Exploration License (COC61945) to Bowie Resources Limited. The decision generally implements Alternative B, Proposed Action, in the North Fork Coal Final EIS. The described actions plus additional mitigation measures would protect important other resources.

The decisions are in accordance with the Mineral Leasing Act of 1920 as amended, the Federal Coal Leasing Amendments Act of 1975 and 43 CFR 3400. The decisions are subject to appeal for 30 days under the provisions of 43 CFR part 4.

Dated: March 30, 2000.

Jerry Jones,

EIS Project Manager, Bureau of Land Management.

[FR Doc. 00–8307 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–935; COC–23841]

Public Land Order No. 7442; Extension of Public Land Order No. 5718; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order extends Public Land Order No. 5718, which withdrew approximately 1,365 acres of National Forest System land from mining, for an additional 20-year period. This extension is necessary to continue the protection of the Eisenhower/Johnson Memorial Tunnel on Interstate Highway 70. The land has been and remains open to Forest management and to mineral leasing.

EFFECTIVE DATE: April 14, 2000.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(1994), it is ordered as follows:

1. Public Land Order No. 5718, which withdrew 1,365 acres, more or less, of land in the White River National Forest from location and entry under the United States mining laws for the protection of the Eisenhower/Johnson Memorial Tunnel on Interstate Highway 70, is hereby extended for an additional 20-year period.

2. This withdrawal will expire 20 years from the effective date of this order, unless as a result of a review conducted before the expiration date pursuant to Section 204(f) of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714(f) (1994), the Secretary determines that the withdrawal shall be extended.

Dated: March 21, 2000.

Sylvia V. Baca,

Assistant Secretary of the Interior.

[FR Doc. 00–8289 Filed 4–4–00; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

National Park Service

Wrangell-St. Elias National Park and Preserve, Alaska; Proposed Mining Plan of Operations

AGENCY: National Park Service, Interior.

ACTION: Availability of proposed mining plan of operations.

SUMMARY: The National Park Service (NPS) announces the availability of a proposed mining plan of operations. Pursuant to the provisions of Section 2 of the Mining in the Parks Act of September 28, 1976, 16 U.S.C. 1901 *et seq.*, and in accordance with the provisions of Section 9.17 of Title 36 Code of Federal Regulations Part 9, Subpart A, Kirk Stanley has filed a proposed mining plan of operations on patented lode mining claims known as the Nabesna Mine, USMS 1591 within Wrangell-St. Elias National Preserve.

DATES: Indefinite.

ADDRESSES: The proposed mining plan of operations is available for inspection during normal business hours at the following two locations: (1) Alaska Regional Office, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503–2892; and (2) Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573.

FOR FURTHER INFORMATION CONTACT: Danny Rosenkrans, Wrangell-St. Elias National Park and Preserve, P.O. Box 439, Copper Center, Alaska 99573, (907) 822–7228.

Dated: March 28, 2000.

Robert D. Barbee,

Regional Director, Alaska Region.

[FR Doc. 00–8301 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Intent to Repatriate Cultural Items from Kawaihae, Kohala, Island of Hawaii, HI in the Possession of the Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service

ACTION: Notice

Notice is hereby given under the Native American Graves Protection and Repatriation Act, 43 CFR 10.10 (a)(3), of the intent to repatriate cultural items in the possession of the Bernice Pauahi Bishop Museum, Honolulu, HI which meet the definition of "unassociated funerary objects" under Section 2 of the Act.

The five cultural items include two wooden images, a feather cape fragment, a wooden funnel, and a bracelet. In 1905, these five cultural items were removed from a lava tube complex in Kawaihae, Kohala, HI by William Wagner and Friedrich A. Haenisch, who transferred these cultural items to the Bishop Museum in 1907.

The 13 cultural items are samples of bark cloth. In 1919, these 13 cultural items from a lava tube complex in Kawaihae, Kohala, HI and donated by David Forbes, William Wagner, and Friedrich A. Haenisch were found in Bishop Museum collections. These cultural items were most likely collected during the 1905 expedition to the Kawaihae site.

The six cultural items are six pieces of bark cloth. In 1921, these six cultural items from a lava tube complex in Kawaihae, Kohala, HI were donated to the Bishop Museum by Robert Van Deusen.

The one cultural item is a piece of bark cloth. In 1923, this cultural item, from a lava tube complex in Kawaihae, Kohala, HI and collected by Jay M. Kuhns, M.D., was donated to the Bishop Museum by Ditley Due Thaanum.

The one cultural item is a piece of a canoe. In 1934, this cultural item from a lava tube complex in Kawaihae, Kohala, HI was donated to the Bishop Museum by D. Billam-Walker.

The nine cultural items include wood, bark cloth, and mat samples. In 1935, these nine cultural items from a lava tube complex in Kawaihae, Kohala, HI were removed by J. Everett Brumaghim and donated to the Bishop Museum in 1939.

The 12 cultural items include bark cloth, mat, and cordage samples. In 1939, these 12 cultural items were removed from a lava tube complex in Kawaihae, Kohala, HI by Kenneth P. Emory of the Bishop Museum and Keith K. Jones.

The two cultural items are two sets of bark cloth samples. In 1939, these two cultural items from a lava tube complex in Kawaihae, Kohala, HI were donated to the Bishop Museum by Julius Rodman.

The one cultural item is a sample of cordage. This cultural item, labeled from a lava tube complex in Kawaihae, Kohala, HI was found in the Bishop Museum's collections in 1939.

The 14 cultural items include a series of mat, cordage, and bark cloth samples. In 1954, these 14 cultural items from a lava tube complex in Kawaihae, Kohala, HI were donated to the Bishop Museum by Mrs. Annabelle L. Ruddle.

The 73 cultural items are bark cloth samples. In 1960, these 73 cultural items from a lava tube complex in Kawaihae, Kohala, HI were donated to the Bishop Museum by Mrs. Cy Gillette. At an earlier date, these cultural items had been give to Mrs. Gillette by Keith K. Jones.

The four cultural items include four binders of bark cloth samples. In 1980, these cultural items from a lava tube complex in Kawaihae, Kohala, HI were donated to the Bishop Museum by John L. Earle, who had collected them at an earlier date.

The four cultural items include four binders of bark cloth samples and a cordage sample. In 1994, these cultural items from a lava tube complex in Kawaihae, Kohala, HI were found in the Bishop Museum's collections.

The 20 cultural items include samples of cordage, mat, and bark cloth. In 1985, these cultural items from a lava tube complex in Kawaihae, Kohala, HI were donated to the Bishop Museum by Catherine Summers, who complied these samples from Bishop Museum collections.

Based on the style and type of the unassociated funerary objects, the manner of interments, and recovery locations from a lava tube complex in Kawaihae, Kohala, HI, these individuals have been determined to be Native American.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2(d)(2)(ii), these 168 cultural items are reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony and are believed, by a preponderance of the evidence, to have been removed from a specific burial site of an Native American individual. Officials of the Bishop Museum have also determined that, pursuant to 43 CFR 10.2 (e), there is a relationship of shared group identity which can be reasonably traced between these items and the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, and the Office of Hawaiian Affairs.

This notice has been sent to officials of the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, the Office of Hawaiian Affairs, Henry A. Auwae, and Melvin Kalahiki, Sr. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these objects should contact Valerie Free, Unit Manager, Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817, telephone: (808) 847–8205 before May 5, 2000. Repatriation of these objects to the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, and the Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: March 22, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–8350 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Inventory Completion for Native American Human Remains and Associated Funerary Objects from Kawaihae, Kohala, Island of Hawaii, HI in the Possession of Bernice Pauahi Bishop Museum, Honolulu, HI

AGENCY: National Park Service.

ACTION: Notice.

Notice is hereby given in accordance with provisions of the Native American Graves Protection and Repatriation Act (NAGPRA), 43 CFR 10.9, of the completion of an inventory of human remains and associated funerary objects from Kawaihae, Kohala, Island of Hawaii, HI in the possession of Bernice Pauahi Bishop Museum, Honolulu, HI.

A detailed assessment of the human remains was made by professional staff in consultation with representatives of the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, and the Office of Hawaiian Affairs.

In 1905, human remains representing a minimum of four individuals were removed from a lava tube complex by David Forbes, William Wagner, and Friedrich A. Haenisch. In 1907, these human remains, incorporated into two wooden bowls, one wooden image, and one wig, were donated to the Bishop Museum. No known individuals were identified. No associated funerary objects are present.

Based on 43 CFR 10.2(d)(2–4), officials of the Bishop Museum have determined that these cultural items listed above are not unassociated funerary objects, sacred objects, or objects of cultural patrimony, however, the human remains incorporated into these cultural items do meet the definition of "human remains" in 43 CFR 10.2(d)(1). Based on historical and anthropological evidence, officials of the Bishop Museum have determined that these human remains were not freely given or naturally shed from the individuals from whose bodies they were obtained. Based on historical and anthropological evidence, officials of the Bishop Museum have determined these human remains are most likely those of Native Hawaiians.

In 1935, human remains representing five individuals were removed from a lava tube complex in Kawaihae, Kohala, HI by J. Everett Brumagh. In 1939, these human remains were donated to the Bishop Museum by Mr. Brumagh. No known individuals were identified. The one associated funerary object is part of a coffin.

In 1939, human remains representing nine individuals were removed from a lava tube complex in Kawaihae, Kohala, HI by Kenneth P. Emory, Bishop Museum Ethnologist, and Keith K. Jones. No known individuals were identified. No associated funerary objects can be identified.

Based on the style and type of the associated funerary object and unassociated funerary objects from this lava tube complex, manner of interments, and recovery locations, these individuals have been determined to be Native American. In consultation with the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i

Nei, and the Office of Hawaiian Affairs, the Bishop Museum decided that no attempt would be made to determine the age of the human remains. Due to the lack of identifiable individuals, the Bishop Museum has been unable to make any lineal descent determinations. Bishop Museum officials believe the claims of the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, and the Office of Hawaiian Affairs address and encompass individual, family, and community interests.

Based on the above mentioned information, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2(d)(1), the human remains listed above represent the physical remains of a minimum of 18 individuals of Native American ancestry. Officials of the Bishop Museum have also determined that, pursuant to 43 CFR 10.2 (d)(2), the one object listed above is reasonably believed to have been placed with or near individual human remains at the time of death or later as part of the death rite or ceremony. Lastly, officials of the Bishop Museum have determined that, pursuant to 43 CFR 10.2(e), there is a relationship of shared group identity which can be reasonably traced between these Native American human remains and associated funerary object and the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, and the Office of Hawaiian Affairs.

This notice has been sent to officials of the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, the Office of Hawaiian Affairs, Henry A. Auwae, and Melvin Kalahiki, Sr. Representatives of any other Indian tribe that believes itself to be culturally affiliated with these human remains and associated funerary object should contact Valerie Free, Unit Manager, Bishop Museum, 1525 Bernice Street, Honolulu, HI 96817, telephone: (808) 847–8205, before May 5, 2000. Repatriation of the human remains and associated funerary object to the Hawaii Island Burial Council, Hui Malama I Na Kupuna O Hawai'i Nei, the Department of Hawaiian Homelands, and the Office of Hawaiian Affairs may begin after that date if no additional claimants come forward.

Dated: March 22, 2000.

Francis P. McManamon,

Departmental Consulting Archeologist, Manager, Archeology and Ethnography Program.

[FR Doc. 00–8351 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–70–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

Notice of Proposed Information Collection

AGENCY: Office of Surface Mining Reclamation and Enforcement.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Office of Surface Mining and Reclamation and Enforcement (OSM) is announcing its intention to request approval for the collection of information for 30 CFR part 785, Requirements for permits for special categories of mining.

DATES: Comments on the proposed information collection must be received by June 5, 2000, to be assured of consideration.

ADDRESSES: Comments may be mailed to John A. Trelease, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Ave, NW, Room 210—SIB, Washington, DC 20240. Comments may also be submitted electronically to jtreleas@osmre.gov.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact John A. Trelease, at (202) 208–2783.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). This notice identifies an information collection activity that OSM will submit to OMB for extension. This collection is contained in 30 CFR part 785, Requirements for permits for special categories of mining.

OSM has revised burden estimates, where appropriate, to reflect current reporting levels of adjustments based on reestimates of burden or respondents. OSM will request a 3-year term of approval for this information collection activity.

Comments are invited on: (1) The need for the collection of information for the performance of the functions of the agency; (2) the accuracy of the agency's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collection; and (4) ways to minimize the information collection burden on respondents, such as use of automated means of collection of the information. A summary of the public comments will accompany OSM's submission of the information collection request to OMB.

This notice provides the public with 60 days in which to comment on the following information collection activity:

Title: Requirements for permits for special categories of mining, 30 CFR 785.

OMB Control Number: 1029–0040.

Summary: The information is being collected to meet the requirements of sections 507, 508, 510, 515, 701 and 711 of Pub. L. 95–87, which requires applicants for special type of mining activities to provide descriptions, maps, plans and data of the proposed activity. This information will be used by the regulatory authority in determining if the applicant can meet the applicable performance standards for the special type of mining activity.

Bureau Form Number: None.

Frequency of Collection: Once.

Description of Respondents: Applicants for coal mine permits.

Total Annual Responses: 353.

Total Annual Burden Hours: 16,372.

Dated: March 30, 2000.

Richard G. Bryson,

Chief, Division of Regulatory Support.

[FR Doc. 00–8306 Filed 4–4–00; 8:45 am]

BILLING CODE 4310–05–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–352]

Andean Trade Preference Act: Effect on the U.S. Economy and on Andean Drug Crop Eradication

AGENCY: United States International Trade Commission.

ACTION: Notice of opportunity to submit comments in connection with 1999 annual report.

EFFECTIVE DATE: March 22, 2000.

FOR FURTHER INFORMATION CONTACT: Joanne Guth (202–205–3264), Country and Regional Analysis Division, Office of Economics, U.S. International Trade Commission, Washington, D.C. 20436.

Background

Section 206 of the Andean Trade Preference Act (ATPA) (19 U.S.C. 3204) requires that the Commission submit annual reports to the Congress regarding the economic impact of the Act on U.S. industries and consumers and, in conjunction with other agencies, the effectiveness of the Act in promoting drug-related crop eradication and crop substitution efforts of the beneficiary countries. Section 206(b) of the Act requires that each report include:

(1) The actual effect of ATPA on the U.S. economy generally as well as on specific domestic industries which produce articles that are like, or directly competitive with, articles being imported under the Act;

(2) The probable future effect that ATPA will have on the U.S. economy generally and on domestic industries affected by the Act; and

(3) the estimated effect that ATPA has had on drug-related crop eradication and crop substitution efforts of beneficiary countries.

In addition, in this year's report the Commission plans to examine the effectiveness of ATPA in promoting export-oriented growth and diversification of production in the beneficiary countries.

Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of March 10, 1994 (59 FR 11308). The Commission's seventh annual report on ATPA, covering calendar year 1999, is to be submitted by October 2, 2000.

Written Submissions

The Commission does not plan to hold a public hearing in connection with the preparation of the seventh annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section 201 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than June 23, 2000. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

Address all submissions to Office of the Secretary, U.S. International Trade Commission, 500 E St., SW., Washington, DC 20436. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

Issued: March 31, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8369 Filed 4–4–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–367–370 (Review)]

Color Picture Tubes From Canada, Japan, Korea, and Singapore

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on color picture tubes from Canada, Japan, Korea, and Singapore would not be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.

Background

The Commission instituted these reviews on March 1, 1999 (64 FR 10014) and determined on June 3, 1999 that it would conduct full reviews (64 FR 31609, June 11, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on July 19, 1999 (64 FR 38690).[2] The hearing was held in Washington, DC, on February 17, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission will transmit its determinations in these reviews to the Secretary of Commerce on April 13, 2000. The views of the Commission are contained in USITC Publication 3291 (April 2000), entitled Color Picture Tubes from Canada, Japan, Korea, and Singapore: Investigations Nos. 731–TA–367–370 (Review).

Issued: March 30, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretory.

[FR Doc. 00–8370 Filed 4–4–00; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 303–TA–21 (Review) and 731–TA–451, 461, and 519 (Review)]

Gray Portland Cement and Cement Clinker from Japan, Mexico, and Venezuela [1]

AGENCY: United States International Trade Commission.

ACTION: Scheduling of full five-year reviews concerning the antidumping duty orders and suspended investigations on gray portland cement from Japan, Mexico, and Venezuela.

SUMMARY: The Commission hereby gives notice of the scheduling of full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether revocation of the antidumping duty orders and termination of the suspended investigations on gray portland cement and cement clinker from Japan, Mexico, and Venezuela would be likely to lead to continuation or recurrence of material injury. The Commission has determined to exercise its authority to extend the review period by up to 90 days pursuant to 19 U.S.C. 1675(c)(5)(B). For further information concerning the conduct of these reviews and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Pursuant to a request by parties in support of continuation of the orders, the Commission revised and extended its schedule for these reviews on November 30, 1999 (64 FR 68116, December 6, 1999).

[1] The investigation numbers are as follows: Japan is 731–TA–461 (Review); Mexico is 731–TA–451 (Review); and Venezuela is 303–TA–21 (Review) and 731–TA–519 (Review).

201), and part 207, subparts A, D, E, and F (19 CFR part 207).

DATES: March 27, 2000.

FOR FURTHER INFORMATION CONTACT: Jim McClure (202–205–3191), Office of Investigations, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (*http://www.usitc.gov*).

SUPPLEMENTARY INFORMATION:

Background

On November 10, 1999, the Commission determined that responses to its notice of institution of the subject five-year reviews were such that full reviews pursuant to section 751(c)(5) of the Act should proceed (64 FR 62689, November 17, 1999). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements will be available from the Office of the Secretary and at the Commission's web site.

Participation in the Reviews and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in these reviews as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the reviews need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the reviews.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these reviews available to authorize applicants under the APO issued in the reviews, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. 1677(9), who are parties to the reviews. A party granted access to BPI following publication of the Commission's notice of institution of the reviews need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the reviews will be placed in the nonpublic record on July 26, 2000 and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the reviews beginning at 9:30 a.m. on August 15, 2000, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before August 7, 2000. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on August 10, 2000, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by sections 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the reviews may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of section 207.65 of the Commission's rules; the deadline for filing is August 4, 2000. Parties may also file written testimony in connection with their presentation at the hearing, as provided in section 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of section 207.67 of the Commission's rules. The deadline for filing posthearing briefs is August 24, 2000; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the reviews may submit a written statement of information pertinent to the subject of the reviews on or before August 24, 2000. On September 18, 2000, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 20, 2000, but such final comments must not contain new factual information and must otherwise comply with section 207.68 of the Commission's rules. All written submissions must conform with the provisions of section 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with sections 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the reviews must be served on all other parties to the reviews (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These reviews are being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to section 207.62 of the Commission's rules.

Issued: March 29, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8355 Filed 4–4–00; 8:45 am]

BILLING CODE 7020–02–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 701–TA–267 and 268 (Review) and 731–TA–297–299, 304 and 305 (Review)]

Porcelain-on-Steel Cooking Ware From China, Mexico, and Taiwan, and Top-of-the-Stove Stainless Steel Cooking Ware From Korea and Taiwan

Determinations

On the basis of the record [1] developed in the subject five-year reviews, the United States International Trade Commission determines, pursuant to section 751(c) of the Tariff Act of 1930 (19 U.S.C. 1675(c)) (the Act), that revocation of the antidumping duty orders on porcelain-on-steel cooking ware from China, Mexico, and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[2] The Commission also determines that the revocation of the countervailing duty orders and the revocation of the antidumping duty orders on top-of-the-stove stainless steel cooking ware from Korea and Taiwan would be likely to lead to continuation or recurrence of material injury to an industry in the United States within a reasonably foreseeable time.[3]

Background

The Commission instituted these reviews on February 1, 1999 (64 FR 4896) and determined on May 6, 1999, that it would conduct full reviews (64 FR 27295, May 19, 1999). Notice of the scheduling of the Commission's reviews and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** on July 16, 1999 (64 FR 38471). The hearing was held in Washington, DC, on January 27, 2000, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this review to the Secretary of Commerce on March 30, 2000. The views of the Commission are contained in USITC Publication 3286 (March 2000), entitled Porcelain-on-Steel Cooking Ware from China, Mexico, and Taiwan, and Top-of-the-Stove Stainless Steel Cooking Ware from Korea and Taiwan: Investigations Nos. 701-TA–267 and 268 (Review) and 731-TA–297–299, 304 and 305 (Review).

Issued: March 31, 2000.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 00–8368 Filed 4–4–00; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Thelma J. Askey dissenting.

[3] Chairman Lynn M. Bragg and Commissioners Thelma J. Askey and Deanna Tanner Okun dissenting.

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00-032]

NASA Advisory Council (NAC), Technology Subcommittee of the Earth Systems Science and Applications Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a meeting of the NASA Advisory Council, Technology Subcommittee of the Earth Systems Science and Applications Advisory Committee.

DATES: Tuesday, May 2, 2000, 9:00 a.m. to 5:30 p.m. and Wednesday May 3, 2000, 9:00 a.m. to 5:30 p.m.

ADDRESSES: Jet Propulsion Laboratory: 4800 Oak Grove Drive, Building 264, room 654, Pasadena, CA 91109–8099.

FOR FURTHER INFORMATION CONTACT: Mr. Granville Paules, Code YF, National Aeronautics and Space Administration, Washington, DC 20546, 202/358–0706.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Welcome by a Senior JPL Manager

—Introductions, Comments, Adoption of the Agenda

—General status of the overall ESE Technology Programs

—Critique of Candidate Technology Roadmaps for Post EOS First Series Missions and for those potentially requiring space flight validation.

—Round Table discussion of recent ESE Vision Workshop Findings and Recommendations by TSC Attendees at the Workshops

—Review of the ESE Technology Development/Investment Plan for FY2000

—Discussion of external partnering opportunities (continued from earlier meetings)

—(Second Day-Tours of JPL Advanced Technology Development Facilities)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitor's register.

Dated: March 30, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–8349 Filed 4–4–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (00–031]

NASA Advisory Council (NAC), Task Force on International Space Station Operational Readiness; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting change.

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 65 FR 56, Notice Number 00–027, March 22, 2000.

PREVIOUSLY ANNOUNCED DATE AND ADDRESS OF MEETING: Wednesday, April 5, 2000, 12:00 p.m.–1:00 p.m. Eastern Standard Time; NASA Headquarters, 300 E Street, SW, Room 7W31, Washington, DC 20546.

CHANGES IN THE MEETING: Date changes to April 17, 2000; Time changed to 4:00 p.m.–5:00 p.m. Eastern Standard Time

FOR FURTHER INFORMATION CONTACT: Mr. Philip Cleary, Code IH, National Aeronautics and Space Administration, Washington, DC 20546–0001, 202/358–4461.

SUPPLEMENTARY INFORMATION: This meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Review the readiness of the Shuttle (STS–101) Mission (International Space Station assembly flight 2A.2A)

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants. Visitors will be requested to sign a visitors register.

Dated: March 30, 2000.

Matthew M. Crouch,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 00–8348 Filed 4–4–00; 8:45 am]

BILLING CODE 7510–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice.

SUMMARY: NARA is giving public notice that the agency has submitted to OMB for approval the information collection described in this notice. The public is invite to comment on the proposed information collection pursuant to the Paperwork Reduction Act of 1995.

DATES: Written comments must be submitted to OMB at the address below on or before May 5, 2000 to be assured of consideration.

ADDRESSES: Comments should be sent to: Office of Information and Regulatory Affairs, Office of Management and Budget, Attn: Jonathan Womer, Desk Officer for NARA, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection and supporting statement should be directed to Scott Birckhead at telephone number 301–713–6730 or fax number 301–713–6913.

SUPPLEMENTARY INFORMATION: Pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13), NARA invites the general public and other Federal agencies to comment on proposed information collections. NARA published a notice of proposed collection for this information collection on December 29, 1999 (64 FR 73075). No comments were received. NARA has submitted the described information collection to OMB for approval.

In response to this notice, comments and suggestions should address one or more of the following points: (a) Whether the proposed information collection is necessary for the proper performance of the functions of NARA; (b) the accuracy of NARA's estimate of the burden of the proposed information collection (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of information technology. In this notice, NARA is soliciting comments concerning the following information collection:

Title: National Personnel Records Center (NPRC) Survey of Customer Satisfaction

OMB number: 3095–00XX

Agency form number: N/A

Type of review: Regular.

Affected public: Veterans, government agencies, and other individuals who write the Military Personnel Records (MPR) facility for information from or copies of official military personnel files.

Estimated number of respondents: Year One: 3,120. Subsequent years: 12,480.

Estimated time per response: 10 minutes.

Frequency of response: On occasion (when respondent writes to MPR requesting information from official military personnel files).

Estimated total annual burden hours: Year One: 520 hours. Subsequent years: 2,080 hours.

Abstract: The information collection is prescribed by EO 12862 issued September 11, 1993, which requires Federal agencies to survey their customers concerning customer service. The general purpose of this data collection is to initially support the business process reengineering (BPR) of the MPR reference service process and then provide MPR management with an ongoing mechanism for monitoring customer satisfaction. In particular, the purpose of the proposed National Personnel Records Center (NPRC) Survey of Customer Satisfaction is to (1) provide baseline data concerning customer satisfaction MPR's reference service process, (2) identify areas within the reference service process, (2) identify areas within the reference service process for improvement, and (3) provide MPR management with customer feedback on the effectiveness of BPR initiatives designed to improve customer service as they are implemented. In addition to supporting the BPR effort, the proposed National Personnel Records Center (NPRC) Survey of Customer Satisfaction will help NARA in responding to performance planning and reporting requirements contained in the Government Performance and Results Act (GPRA).

Dated: March 30, 2000.

L. Reynolds Cahoon,

Assistant Archivist for Human Resources and Information Services.

[FR Doc. 00–8352 Filed 4–4–00; 8:45 am]

BILLING CODE 7515–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Revision.

2. *The title of the information collection:* 10 CFR Part 140, "Financial Protection Requirements and Indemnity Agreements."

3. *The form number if applicable:* Not applicable.

4. *How often the collection is required:* As necessary in order for NRC to meet its responsibilities called for in Sections 170 and 193 of the Atomic Energy Act of 1954, as amended (the Act).

5. *Who will be required or asked to report:* Licensees authorized to operate reactor facilities in accordance with 10 CFR Part 50 and licensees authorized to construct and operate a uranium enrichment facility in accordance with 10 CFR Parts 40 and 70.

6. *An estimate of the number of responses:* Approximately one each for 178 licensees.

7. *The estimated number of annual respondents:* 178.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 821.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* 10 CFR Part 140 of the NRC's regulations specifies information required to be submitted by licensees to enable the NRC to assess (a) The financial protection required of licensees and for the indemnification and limitation of liability of certain licensees and other persons pursuant to Section 170 of the Atomic Energy Act of 1954, as amended, and (b) the liability insurance required of uranium enrichment facility licensees pursuant to Section 193 of the Atomic Energy Act of 1954, amended.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by May 5, 2000. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Erik Godwin, Office of Information and Regulatory Affairs (3150–0039), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 30th day of March 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Office, Office of the Chief Information Officer.

[FR Doc. 00–8334 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* 10 CFR Part 62—"Criteria and Procedures for Emergency Access to non-Federal and Regional Low-level Waste Disposal Facilities."

3. *The form number, if applicable:* N/A.

4. *How often the collection is required:* Requests are made only when access to a non-Federal low-level waste disposal facility is denied, which results in a threat to public health and safety and/or common defense and security.

5. *Who is required or asked to report:* Generators of low-level waste who are denied access to a non-Federal low-level waste facility.

6. *An estimate of the number of responses:* It is estimated that up to one response would be received every three years.

7. *The estimated number of annual respondents:* No requests for emergency access have been received to date. It is estimated that up to one request would be made every three years.

8. *An estimate of the number of hours needed annually to complete the requirement or request:* It is estimated that 680 hours would be required to prepare the request, or approximately 227 hours per year.

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract:* Part 62 sets out the information which will have to be provided to the NRC by any low-level waste generator seeking emergency access to an operating low-level waste disposal facility. The information is required to allow NRC to determine if denial of disposal constitutes a serious and immediate threat to public health and safety or common defense and security.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, 2120 L Street, NW (lower level), Washington, DC. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/NRC/PUBLIC/OMB/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer by May 5, 2000: Erik Godwin, Office of Information and Regulatory Affairs (3150–0143), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 30th day of March , 2000.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 00–8337 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–U

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–293]

Entergy Nuclear Generation Company (Pilgrim Nuclear Power Station); Exemption

I

Entergy Nuclear Generation Company (Entergy or the licensee) is the owner of the Pilgrim Nuclear Power Station (Pilgrim), and is authorized to possess, use, and operate the facility as reflected in Facility Operating License No. DPR–35. Pilgrim is a boiling-water reactor located at the licensee's site in Plymouth County, on the southeast coast of the State of Massachusetts. The license provides, among other things, that the licensee is subject to all rules, regulations, and orders of the U.S. Nuclear Regulatory Commission (NRC or the Commission) now or hereafter in effect.

II

Section IV.F.2.c of Appendix E to 10 CFR Part 50 requires each licensee at each site to conduct an exercise of offsite emergency plans biennially with full participation by each offsite authority having a role under the plan. During such biennial full-participation exercises, the NRC evaluates onsite and the Federal Emergency Management Agency (FEMA) evaluates offsite emergency preparedness activities. The licensee conducted a biennial full-participation exercise and 6-year ingestion exercise in December 1999. By letter dated July 30, 1999, as supplemented on September 23, 1999, the licensee requested an exemption from Sections IV.F.2.c of Appendix E regarding the conduct of a full-participation exercise in 2001. The requested exemption is to conduct the next biennial full-participation exercise that should occur in 2001, a few months later, tentatively in May 2002. Future full-participation exercises will be scheduled biennially from the year 2002. The NRC has provided flexibility in scheduling these exercises by allowing licensees to schedule full-participation exercises at any time during the biennial calendar year. This provides a 12- to 36-month window to schedule full-participation exercises while still meeting the biennial requirement specified in the regulations. Conducting the Pilgrim full-participation exercise in calendar year 2002 places the exercise past the previously scheduled biennial exercise that had been scheduled for calendar year 2001. However, the interval

between biennial exercises would be 29 months, which is within the parameters of the existing general policy and practice.

The Commission, pursuant to 10 CFR 50.12(a)(1), may grant exemptions from the requirements of 10 CFR Part 50 that are authorized by law, will not present an undue risk to public health and safety, and are consistent with the common defense and security. The Commission, however, pursuant to 10 CFR 50.12(a)(2), will not consider granting an exemption unless special circumstances are present. Under 10 CFR 50.12(a)(2)(ii), special circumstances are present when application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule. Under 10 CFR 50.12(a)(2)(v), special circumstances are present whenever the exemption would provide only temporary relief from the applicable regulation and the licensee or applicant has made good faith efforts to comply with the regulation.

III

The staff has completed its evaluation of Entergy's request for an exemption and the measures that will be taken to maintain the level of emergency preparedness at Pilgrim between December 1999 and May 2002. By letter dated September 23, 1999, the licensee provided supplemental information in support of the exemption request. The existing training and drill schedule currently in place for emergency response activities will remain in place to ensure the readiness of both onsite and offsite emergency response personnel. For onsite emergency responders, this includes annual classroom training and participation in drills. The licensee will conduct quarterly combined functional and/or activation drills and a self-evaluated annual exercise. These drills and the self-evaluated annual exercise satisfy the drill requirements of 10 CFR Part 50, Appendix E, IV.F.2.b. Offsite agencies in Massachusetts are routinely invited to, and actively participate in, these drills and exercises as a training activity for offsite responders personnel. Local response groups are offered annual training and participation in emergency operations center drills. Representatives of the licensee meet monthly with State and local emergency management and support groups. The rescheduling of the biennial exercise has been discussed in these meetings and greeted with support by both State and local representatives. Rescheduling the exercise to 1 year later allows more freedom in the scheduling of exercises by scheduling the exercise to the years in which the licensee does not have scheduled refueling outages. The staff considers that these measures are adequate to maintain an acceptable level of emergency preparedness during this period, satisfying the underlying purpose of the rule. Therefore, the special circumstances of 10 CFR 50.12(a)(2)(ii) are satisfied.

Only temporary relief from the regulation is provided by the requested exemption since an exercise will be conducted at a future date. The licensee has made a good faith effort to comply with the regulation. The exemption is being sought by the licensee in voluntary response to a request by the NRC to accommodate an adjustment in exercise scheduling that affects multiple agencies. The revised exercise schedule allows for better balance in the utilization of Federal resources, and added flexibility to the scheduling of exercises for the licensee and State and local agencies. The exercise will be conducted in a timeframe that is within generally accepted policy. The staff, having considered the schedule and resource issues within FEMA and the NRC, and the proposed licensee compensatory measures, believes that the exemption request meets the special circumstances of 10 CFR 50.12(a)(2)(v) and should be granted.

IV

The Commission has determined that, pursuant to 10 CFR Part 50, Appendix E, this exemption is authorized by law, will not endanger life or property or the common defense and security, and is otherwise in the public interest. Further, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances of 10 CFR 50.12(a)(2)(ii) and 10 CFR 50.12(a)(2)(v) are applicable in that application of the regulation is not necessary to achieve the underlying purpose of the rule, and the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation. Therefore, the Commission hereby grants the exemption from Section IV.F.2.c of Appendix E to 10 CFR Part 50.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will have no significant impact on the quality of the human environment (65 FR 16972).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of March 2000.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8336 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–460–OL; ASLBP No. 82–479–06–OL]

Atomic Safety and Licensing Board; Washington Public Power Supply System (Nuclear Project No. 1), Memorandum and Order; (Order to Show Cause)

MARCH 30, 2000. Before Administrative Judges: G. Paul Bollwerk, III, Chairman, Dr. David R. Schink.

The Atomic Safety and Licensing Board hereby directs the parties to this proceeding to show cause as to why this litigation should not be dismissed for want of prosecution.

The locus of this case is a challenge by intervenor Coalition for Safe Power (CSP) to the operating license application of Washington Public Power Supply System (WPPSS) (now doing business as Energy Northwest) for its Nuclear Project No. 1. CSP, along with the State of Washington (State) as a 10 C.F.R. § 2.715(c) interested governmental entity, were admitted as parties to this proceeding in 1983. *See Washington Public Power Supply System* (WPPSS Nuclear Project No. 1), LBP–83–66, 18 NRC 780, 780–81 (1983). Since then, however, this proceeding has been in hiatus as a result of WPPSS declarations that it first wished to suspend facility construction and consideration of its operating license request and, thereafter, that it was canceling the project, albeit without withdrawing its operating license application.

After a number of years of filing quarterly reports indicating there had been no change in the status of its application, on January 4, 2000, WPPSS submitted a request to withdraw its operating license application and terminate this adjudicatory proceeding. The Board twice sought, and did not receive, CSP and State comments on the WPPSS withdrawal motion. Before the Board could act on the WPPSS request, however, the applicant filed a February 29, 2000 pleading asking that the Board defer action on its application withdrawal motion. In a March 7, 2000 order providing a schedule for party comments on this WPPSS deferral request, noting the lack of CSP and State responses to its other issuances, the Board asked that on or before March 22, 2000, those participants each provide the Board with some indication it wished to continue to participate in this operating license adjudication.

The allotted time having passed without a response from CSP or the State, it appears to the Board that neither has an interest in further pursuing this litigation. As a consequence, the Board hereby gives notice that, absent some response from these parties within *thirty days* of the date of publication of this issuance in the **Federal Register** that demonstrates a continued interest in this cause, the Board will terminate the proceeding.[1] Applicant WPPSS and the NRC staff likewise are permitted to file a response to this issuance within that time frame if either wishes to do so.

It is so *Ordered.*

For the Atomic Safety and Licensing Board[2]

This memorandum and order is issued pursuant to the authority of the Chairman of the Atomic Safety and Licensing Board designated for this proceeding.

Rockville, Maryland.

Dated: March 30, 2000.

G. Paul Bollwerk, III,

Administrative Judge.

[FR Doc. 00–8338 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy and on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy and on Reliability and Probabilistic Risk Assessment will hold a joint meeting on April 27, 2000, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, April 27, 2000—1 p.m. until the conclusion of business.

The Subcommittees will review a draft Commission paper concerning options for potential revisions to the pressurized thermal shock rule acceptance criterion. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Noel F. Dudley (telephone 301/415–6888) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 30, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–8339 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Joint Meeting of the ACRS Subcommittees on Plant Operations and on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Plant Operations and on Reliability and Probabilistic Risk Assessment will hold a joint meeting on April 28, 2000, in Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Friday, April 28, 2000—8:30 a.m. until the conclusion of business.

The Subcommittees will discuss NRC staff and industry initiatives related to risk-informed technical specifications. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman and written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the cognizant ACRS staff engineer named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the cognizant ACRS staff engineer, Mr. Michael T. Markley (telephone 301/415–6885) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the

[1] As it has done in its January 11, February 16, and March 7, 2000 issuances, the Board requests that each participant who has the capability to do so send a copy of its response by facsimile transmission or internet e-mail to the two Board members, the Office of the Secretary, counsel for WPPSS, and counsel for the any other party who has provided a facsimile number and/or e-mail address.

[2] In addition to service by regular mail to all parties on the service list, copies of this memorandum and order were sent this date by Internet e-mail transmission to counsel for applicant WPPSS, a State representative previously identified by WPPSS, and the staff.

above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: March 29, 2000.

Howard J. Larson,

Acting Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 00–8340 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Nuclear Regulatory Commission.

DATES: Weeks of April 3, 10, 17, 24, May 1 and 8, 2000.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

Matters To Be Considered

Week of April 3

Thursday, April 6

8:30 a.m. Briefing by the Executive Branch (Closed—Ex. 1).

Week of April 10—Tentative

There are no meetings scheduled for the Week of April 10.

Week of April 17—Tentative

There are no meetings scheduled for the Week of April 17.

Week of April 24—Tentative

There are no meetings scheduled for the Week of April 24.

Week of May 1—Tentative

Tuesday, May 2

9:30 a.m. Briefing on Oconee License Renewal (Public Meeting) (Contact: Dave Lange, 301–415–1730).

Wednesday, May 3

9:25 a.m. Affirmation Session (Public Meeting) (if needed).

9:30 a.m. Briefing on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185).

Week of May 8—Tentative

Monday, May 8

10:00 a.m. Briefing on Lessons Learned from the Nuclear Criticality Accident at Tokaimura and the Implications on the NRC's Program (Public Meeting) (Contact: Bill Troskoski, 301–415–8076).

Tuesday, May 9

8:55 a.m. Affirmation Session (Public Meeting) (if needed).

9:00 a.m. Meeting with Stakeholders on Efforts Regarding Release of Solid Material (Public Meeting) (Contact: Frank Cardile, 301–415–6185).

* The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 415–1292. Contact person for more information: Bill Hill (301) 415–1661.

Additional Information

By a vote of 5–0 on March 30, the Commission determined pursuant to U.S.C. 552b(e) and ¶9.107(a) of the Commission's rules that "Affirmation of (a) Petition for Leave to Intervene in Proceeding Regarding Commonwealth Edison Request for Exemption at Zion Facility; and, (b) International Uranium (USA) Corporation Commission Affirmation of Presiding Officer Decisions Denying Envirocare's Petitions for Intervention" be held on March 30, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at:

http://www.nrc.gov/SECY/smj/schedule.htm

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to it, please contact the Office of the Secretary, Attn: Operations Branch, Washington, D.C. 20555 (301–415–1661). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to wmh@nrc.gov or dkw@nrc.gov

Dated: March 31, 2000.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 00–8429 Filed 4–3–00; 10:53 am]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from March 11 through March 24, 2000. The last biweekly notice was published on March 22, 2000 (65 FR 15375).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the

Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By May 5, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Docketing and Services Branch; or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

Commonwealth Edison Company, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of amendment's request: February 15, 2000.

Description of amendment's request: The proposed amendments would revise the technical specifications to permit use of the Westinghouse core monitoring and support system known as Best Estimate Analyzer for Core Operations Nuclear (BEACON).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Power Distribution Monitoring System (PDMS) performs continuous core power distribution monitoring. It in no way provides any protection or control system functionality. Fission product barriers are not impacted by these proposed changes. The proposed changes occurring with PDMS will not result in any additional challenges to plant equipment that could increase the probability of any previously evaluated accident. The changes associated with the PDMS do not affect plant systems such that their function in the control of radiological consequences is adversely affected. These proposed changes will therefore not affect the mitigation of the radiological consequences of any accident described in the Updated Final Safety Analysis Report (UFSAR).

Continuous on-line monitoring through the use of PDMS provides significantly more information about the power distributions present in the core than is currently available. This results in more time (*i.e.*, earlier determination of an adverse condition developing) for operator action prior to having any adverse condition develop that could lead to an accident condition or to unfavorable initial conditions for an accident.

Each accident analysis addressed in the Byron and Braidwood Stations' UFSAR will be examined with respect to changes in cycle-dependent parameters, which are obtained from application of the NRC approved reloaddesign methodologies, to ensure that the transient evaluation of new reloads are bounded by previously accepted analyses. This examination, which will be performed in accordance with the requirements set forth in 10 CFR 50.59, "Changes, tests and experiments," will ensure that future reloads will not involve a significant increase in the probability or consequences of any accident previously evaluated.

The proposed change, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

As stated previously, the implementation of the PDMS system has no influence or impact on plant operations or safety, nor does it contribute in any way to the probability or consequences of an accident. No safety-related equipment, safety function, or plant operation will be altered as a result of this proposed change. The possibility for a new or different type of accident from any accident previously evaluated is not created since the changes associated with PDMS does not result in a change to the design basis of any plant component or system. The evaluation of the effects of the PDMS changes shows that all design standards and applicable safety criteria limits are met. These changes, therefore, do not cause the initiation of any accident nor create any new failure mechanisms. All equipment important to safety will operate as designed. Component integrity is not challenged. The proposed changes do not result in any event previously deemed incredible being made credible. The PDMS changes will not result in more adverse conditions and will not result in any increase in the challenges to safety systems. The cycle specific variables required by the PDMS are calculated using NRC approved methods. The Technical Specifications (TS) will continue to require operation within the required core operating limits and appropriate actions will be taken when or if limits are exceeded.

The proposed change, therefore, does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in the margin of safety?

The margin of safety is not affected by the implementation of PDMS. The margin of safety presently provided by current TS remains unchanged. Appropriate measures exist to control the values of these cycle-specific limits. The proposed changes continue to require operation within the core limits that are based on NRC approved reload design methodologies. The proposed changes continue to ensure that appropriate actions will be taken if limits are violated. These actions remain unchanged. The development of the reload specific limits, including Relaxed Axial Offset Control (RAOC) bands, for future reloads will continue to conform to those methods described in NRC approved documentation. In addition, each future reload involves a 10 CFR 50.59, "Changes, tests and experiments," safety review to assure that operation of the units, within the cycle-specific limits, will not involve a reduction in margin of safety.

The proposed changes, therefore, do not impact the operation of the Byron and Braidwood Stations in any manner that involves a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: February 18, 2000.

Description of amendment request: The proposed amendments would remove the anticipatory reactor scram signal for turbine electro-hydraulic control (EHC) low oil pressure trip from the reactor protection system (RPS) trip function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes remove the "Turbine Electro-Hydraulic Control (EHC) Control Oil Pressure-Low" scram function and the associated Limiting Safety System Setting (LSSS). The purpose of the Turbine EHC Control Oil Pressure scram is to anticipate the pressure transient which would be caused by imminent control valve fast closure on loss of control oil pressure. This function does not serve as an initiator for any accidents evaluated in Chapter 15 of the Updated Final Safety Analysis Report (UFSAR). In addition, this trip function is not credited in any design basis event and is functionally redundant to the Turbine Control Valve Fast Closure RPS trip function during a loss of EHC control oil. The Turbine Control Valve Fast Closure will initiate a scram on a loss of control oil event coincident with turbine control valve closure.

Therefore, these proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The removal of this function does not represent a change in operating parameters or introduce a new mode of operation. The pressure switches associated with the Turbine Control Valve Fast Closure function provide equivalent protection from a loss of EHC oil. For this reason, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

Does the change involve a significant reduction in a margin of safety?

Operation with the proposed changes in place will not change any plant operating parameters, nor any protective system actuation setpoints other than removal of the Turbine EHC Control Oil Pressure-Low scram function. The scram function associated with the Turbine Control Valve Fast Closure provides equivalent protection for events involving turbine control valve fast closure including the loss of EHC control oil pressure. For this reason, eliminating the EHC Control Oil Pressure-Low scram function, which is redundant to other protective instrumentation, does not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–237 and 50–249, Dresden Nuclear Power Station, Units 2 and 3, Grundy County, Illinois

Date of amendment request: February 23, 2000.

Description of amendment request: The proposed amendments would change the pressure-temperature (P–T) limits by revising the heatup, cooldown and inservice test limitations for the Reactor Pressure Vessel (RPV) to a maximum of 32 Effective Full Power Years (EFPY).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes do not modify the reactor coolant pressure boundary, do not make changes in operating pressure, materials or seismic loading. The proposed changes adjust the reference temperature for the limiting beltline material to account for radiation effects and provide the same level of protection as previously evaluated. The proposed changes do not adversely affect the integrity of the Reactor Coolant System (RCS) such that its function in the control of radiological consequences is affected. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not create the possibility of a new or different kind of accident previously evaluated for Dresden Nuclear Power Station. No new modes of operation are introduced by the proposed changes. The proposed changes will not create any failure mode not bounded by previously evaluated accidents. Use of the revised P–T curves will continue to provide the same level of protection as was previously reviewed and approved.

Further, the proposed changes to the P–T curves do not affect any activities or equipment, and are not assumed in any safety analysis to initiate any accident sequence for Dresden Nuclear Power Station. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

Does the change involve a significant reduction in a margin of safety?

The proposed changes reflect an update of the P–T curves to extend the RPV operating limit to 32 Effective Full Power Years (EFPYs). The revised curves are based on the latest American Society of Mechanical Engineers (ASME) guidance and actual operational data for the units. These proposed changes are acceptable because the ASME guidance maintains the relative margin of safety commensurate with that which existed at the time that the ASME Section XI Appendix G was approved in 1974. Therefore, the proposed changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, P.O. Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Commonwealth Edison Company, Docket Nos. 50–373 and 50–374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: February 29, 2000.

Description of amendment request: The proposed amendments would revise the pressure-temperature (P–T) limits for heatup, cooldown, critical operation and inservice leak and hydrostatic test limitations for the reactor pressure vessel (RPV). The proposed changes replace the current RPV P–T limit curves with three recalculated curves that are applicable to 32 effective full power years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

The proposed changes to the LaSalle County Station reactor pressure vessel (RPV) pressure-temperature (P–T) limits do not modify the boundary, operating pressure, materials or seismic loading of the rector coolant system. The proposed changes do adjust the P–T limits for radiation effects to ensure that the RPV fracture toughness is consistent with analysis assumptions and NRC regulations. Thus, the proposed changes do not involve a significant increase in the probability of occurrence of an accident previously evaluated.

The proposed changes do not adversely affect the integrity of the reactor coolant system such that its function in the control of radiological consequences is affected. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes to the reactor pressure vessel pressure-temperature limits do not affect the assumed accident performance of any structure, system or component previously evaluated. The proposed changes do not introduce any new modes of system operation or failure mechanisms. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in the margin of safety?

Appendices G, "Fracture Toughness Requirements," and H, "Reactor Vessel Material Surveillance Program Requirements," of 10 CFR 50 describe specific requirements for fracture toughness and reactor vessel material surveillance that must be considered in establishing P–T limits. Appendix G of 10 CFR 50 specifies fracture toughness and testing requirements for reactor vessel material in accordance with the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code and that the beltline material in the surveillance capsules be tested in accordance with Appendix H of 10 CFR 50. Appendix G also requires the prediction of the effects of neutron irradiation on the vessel embrittlement. Generic Letter 88–11, "NRC Position on Radiation Embrittlement of Reactor Vessel Materials And Its Impact on Plant Operations," requests that the methods in Regulatory Guide 1.99, Revision 2, "Effects of Residual Elements on Predicted Radiation Damage to Reactor Vessel Material," be used to predict the effect of neutron irradiation on the reactor vessel material.

The current P–T limits for LaSalle County Station were approved by the NRC in Amendment No. 71 for Unit 1 and Amendment No. 55 for Unit 2. The NRC approval of the current pressure-temperature limits was based on their conformance to the requirements of Appendices G and H of 10 CFR 50. The NRC also noted that current P–T limits satisfied Generic Letter 88–11

because the method in Regulatory Guide 1.99, Revision 2 was used to calculate the Adjusted Reference Temperature (ART).

The methodology used to generate the revised P–T limits in the proposed changes is similar to the methodology used to generate the currently approved P–T limits, in conformance with the requirements of Appendices G and H of 10 CFR 50, consistent with the methods of Regulatory Guide 1.99, Revision 2, and consistent with the calculations contained in our July 14, 1999, proposed TS change for power uprate operation. These proposed changes are acceptable because the ASME B&PV Code guidance maintains the relative margin of safety commensurate with that which existed at the time that the ASME B&PV Code Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," Appendix G was approved in 1974. Thus, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Ms. Pamela B. Stroebel, Senior Vice President and General Counsel, Commonwealth Edison Company, PO Box 767, Chicago, Illinois 60690–0767.

NRC Section Chief: Anthony J. Mendiola.

Consolidated Edison Company of New York, Inc., Docket No. 50–003, Indian Point Nuclear Generating Station, Unit 1, Buchanan, New York

Date of application for amendment: February 14, 2000.

Description of amendment request: The proposed amendment would revise Technical Specifications Sections 2.10.2, 3.1.2, 3.2.1, 4.1.8.1.b, and 4.1.8.1. Specifically, Sections 3.1.2, 3.2.1, and 4.1.8.1.b, are organizational title changes that are administrative in nature and reflect a streamlining of the Consolidated Edison Company of New York, Inc.'s, management structure. Section 4.1.8.1 is changed to reference the current sections of Part 20 of Title 10 of the *Code of Federal Regulations* (10 CFR) and to remove any ambiguity that may exist by referring to obsolete sections of the regulations. A footnote was moved from Section 2.11 to Section 2.10.2.6 to improve the clarity of the Technical Specification since it pertains to text in subsection 2.10.2.4.

Basis for proposed no significant hazards determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(a) Changes to Sections 3.1.2, 3.2.1, and 4.1.8.1.b To Reflect Organizational Title Changes

(1) Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

No. The proposed change is administrative in nature. The changes involve updating Sections 3.2.1.h and 4.1.8.b to use the title "Shift Manager" instead of "Senior Watch Supervisor" and updating Section 3.1.2 and 3.1.2.b to use the title "Plant Manager" instead of "General Manager—Nuclear Power Generation" and movement of the footnote, "*Licensed Operator for IP2." These changes do not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed changes would not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes are administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently no new failure modes are introduced as a result of the proposed change. Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed changes are administrative in nature. Since there are no changes to the operation of the facility or the physical design, the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

(b) Change to Section 4.1.8.1 to Reference the Current Sections of 10 CFR 20

(1) Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

No. The proposed change [to Section 4.1.8.1] is administrative in nature. The change involves updating Section 4.1.8.1 to reference 10 CFR 20.1601(a) and 10 CFR 20.1601(b). This change does not affect possible initiating events for accidents previously evaluated or alter the configuration or operation of the facility. The Limiting Safety System Settings and Safety Limits specified in the current Technical Specifications remain unchanged. Therefore, the proposed change would not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed change is administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently no new failure modes are introduced as a result of the proposed change. Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed change is administrative in nature. Since there are no changes to the operation of the facility or the physical design, the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Brent L. Brandenburg, Esq., Consolidated Edison Co. of New York, Inc., 4 Irving Place–1830, New York, NY 10003.

NRC Section Chief: Michael Masnik.

Consolidated Edison Company of New York, Inc., Docket Nos. 50–003, 50–247 Indian Point Nuclear Generating Station, Units 1 and 2, Buchanan, New York

Date of application for amendment: February 14, 2000.

Description of amendment request: The proposed amendment to the Indian Point Nuclear Generating Station, Unit Nos. 1 and 2, Environmental Technical Specifications (ETS) would change Section 5.4.1, eliminating the discussions of Section 4.2. Specifically, in ETS Section 5.4.1, Routine Reports, the proposed change seeks to delete the reference to and discussions about Section 4.2, which was deleted from the Unit 2 Operating License as part of Amendment #90. The change is administrative in nature and improves the clarity of the ETS by eliminating the reference to a section that no longer exists.

Basis for proposed no significant hazards determination: As required by

10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below.

(1) Does the proposed license amendment involve a significant increase in the probability or in the consequences of an accident previously evaluated?

No. The proposed change is administrative in nature. The change involves deleting, in Section 5.4.1, the reference to and the discussions about Section 4.2, which no longer exists. The monitoring requirements specified in the current Environmental Technical Specifications remain unchanged. Therefore, the proposed changes would not involve a significant increase in the probability or in the consequences of an accident previously evaluated.

(2) Does the proposed amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

No. The proposed changes are administrative in nature. The safety analysis of the facility remains complete and accurate. There are no physical changes to the facility and the plant conditions for which the design basis accidents have been evaluated are still valid. The operating procedures and emergency procedures are unaffected. Consequently no new failure modes are introduced as a result of the proposed change. Therefore, the proposed changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

No. The proposed changes are administrative in nature. Since there are no changes to the operation of the facility or the physical design, the Updated Final Safety Analysis Report (UFSAR) design basis, accident assumptions, or Technical Specification Bases are not affected. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The Nuclear Regulatory Commission (NRC) staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Brent L. Brandenburg, Esq., Consolidated Edison Co. of New York, Inc., 4 Irving Place-1830, New York, NY 10003.

NRC Section Chief: Michael Masnik.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: November 22, 1999.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Sections 3.7.B.1 and 3.7.B.2 to reference American Society for Testing and Materials (ASTM) D3803–1989 for testing charcoal samples from the standby gas treatment system (SGTS) and the control room high efficiency air filtration systems (CRHEAFS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

(1) The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The accident analyses performed to ensure compliance with the dose limits of 10 CFR Part 100 and 10 CFR Part 50, Appendix A, GDC 19, use assumptions regarding SGTS and CRHEAFS performance. The analyses assume SGTS train efficiency for radioiodine removal of 99% and CRHEAFS train efficiency of 95%. They also assume individual charcoal bank efficiencies of 95%.

Obtaining charcoal samples from both systems in accordance with Regulatory Position C.6.b of Regulatory Guide (RG) 1.52, Revision 2, March 1978, ensures the laboratory tests a representative sample of the activated charcoal in each system. Testing these samples in accordance with ASTM D3803–1989 at a temperature of 86 °F and 70% RH [relative humidity] ensures accurate and reproducible test results are obtained. Specifying the allowable removal efficiency as ≥97.5% ensures an appropriate safety factor is applied. This safety factor is consistent with GL 99–02. Inlet methyl iodide concentrations are specified by ASTM D3803–1989. Finally, increasing the acceptance criteria for halogenated hydrocarbon tests to 99.9% ensures system performance is consistent with accident analysis assumptions.

No accident initiators are affected by the proposed change. Increasing charcoal adsorber efficiency and reducing allowable bypass leakage ensures SGTS and CRHEAFS performance are consistent with that assumed in Pilgrim's accident analyses. Therefore, the postulated consequences are unchanged from the previously evaluated analyses.

There are no safety consequences and environmental impacts associated with the TS 5.0 pagination revision. The proposed pagination revision incorporates, in orderly fashion, pages approved by Amendments 177 and 179.

(2) The operation of Pilgrim Station in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

No new or different types of accidents or malfunctions than those previously analyzed in the Updated Final Safety Analysis Report are introduced by this proposed change because there are no new failure modes being introduced. Rather, the changes being proposed reduce the possibility that existing failure modes could occur. As discussed above in the first part of this No Significant Hazards Consideration, specifying sampling and testing of charcoal adsorber banks to NRC approved standards, increasing charcoal efficiency requirements and reducing allowable bypass leakage does not challenge plant safety and will not create the possibility of a new or different kind of accident from any accident previously analyzed.

There are no safety consequences and environmental impacts associated with the TS 5.0 pagination revision. The proposed pagination revision incorporates, in orderly fashion, pages approved by Amendments 177 and 179.

(3) The operation of Pilgrim Station in accordance with the proposed amendment will not involve a significant reduction in the margin of safety.

Collecting charcoal for testing in accordance with RG 1.52 ensures a representative sample is obtained. Testing the sample in accordance with ASTM D3803–1989 at 86 °F and 70% RH ensures accurate and reproducible results are obtained. Increasing the minimum allowable charcoal efficiency from 95% to 97.5% increases the margin of safety. Increasing the minimum allowable halogenated hydrocarbon removal requirement from 99% to 99.9% also increases the margin of safety.

There are no safety consequences and environmental impacts associated with the TS 5.0 pagination revision. The proposed pagination revision incorporates, in orderly fashion, pages approved by Amendments 177 and 179.

Based on the staff's analysis, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: W. S. Stowe, Esquire, Entergy Nuclear Generation Company, 800 Boylston Street, 36th Floor, Boston, Massachusetts 02199.

NRC Section Chief: James W. Clifford.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of amendment request: March 8, 2000.

Description of amendment request: The proposed amendment would change the technical specification definition of core alteration from "* * * the movement or manipulation of any component within the reactor pressure vessel with the vessel head removed and fuel in the vessel* * *" to "* * * the movement or manipulation of any fuel, sources, or reactivity control components [excluding coupling/uncoupling of CEAs [control element assemblies]] within the reactor vessel with the vessel head removed and fuel in the vessel.* * *"

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The intent of the definition is to ensure that activities which could result in reactivity changes or have the potential to cause fuel damage are considered a core alteration. The current definition could be [interpreted] to apply to other activities that would not result in reactivity changes or have the potential to cause fuel damage. Thus, the modification of the definition clarifies the wording such that movement of only those components that result in reactivity changes or have the potential to cause fuel damage are specified. The modified NUREG–1432 [Standard Technical Specifications, Combustion Engineering Plants] definition was derived to limit those actions that could cause reactivity changes and potentially affect the probability or consequences of fuel handling accidents. Therefore, changing the definition of a core alteration to movement of those components that directly affect reactivity will not result in an increase in the probability or consequences associated with a fuel handling accident.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed definition identifies specific components that if moved or manipulated would result in reactivity changes. The movement or manipulation of items such as lights, video cameras, and reactor vessel material specimen capsules within the reactor vessel will not result in changes in reactivity. Additionally, no reactivity change would result with the withdrawal and insertion of incore detectors or the movement of the reactor vessel upper internals within the reactor vessel with fuel in the vessel.

Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

Criterion 3 Does Not Involve a Significant Reduction in the Margin of Safety

The core alteration definition is based on the need for control of reactivity changes and the consequences of fuel handling accidents. The proposed change provides clarity as to what component movement or manipulation results in reactivity changes. The proposed change is in accordance with the guidance provided in NUREG–1432 for a core alteration.

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

Entergy Operations, Inc., Docket No. 50–368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas.

Date of amendment request: March 9, 2000.

Description of amendment request: The proposed amendment would revise the license as follows:

For Cycle 14 only, Entergy Operations[, Inc.] shall be permitted to operate the reactor based on a risk-informed demonstration that predicted steam generator tube integrity, with consideration of eggcrate axial flaws, is adequate to meet Regulatory Guide 1.174 numerical acceptance criteria. In accordance with Principle 5 in Regulatory Guide 1.174 concerning monitoring operational experience to ensure that performance is consistent with risk predictions, if Entergy Operations plugs or repairs steam generator tubes during Cycle 14, then the steam generators shall be reinspected to the extent necessary to verify that they have been returned to a condition consistent with the risk assessment.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Criterion 1 Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

A steam generator tube rupture is an accident previously evaluated in the ANO–2 [Arkansas Nuclear One, Unit 2] Safety Analysis Report. The probability of tube burst under design basis accident conditions is only slightly increased by the proposed change due to the minor reduction in margin of safety associated with tubing structural integrity, but is within the current industry guidance of NEI [Nuclear Energy Institute] 97–06, "Steam Generator Program Guidelines." Detailed studies have been performed to evaluate the probable condition of the steam generator tubing for the remainder of cycle 14 operation. These studies show less than a 0.1 percent increase in the probability of tube rupture under worst case design basis accident conditions as a result of the proposed change.

This change does not modify any parameter that will increase radioactivity in the primary system or increase the amount of radioactive steam released from the secondary safety valves or atmospheric dump valves in the event of a tube rupture.

Therefore, this change does not involve a significant increase in the probability or consequences of any accident previously evaluated.

Criterion 2 Does Not Create the Possibility of a New or Different Kind of Accident from any Previously Evaluated

The scope of this change does not establish a potential new accident precursor. The design basis accident analyses for ANO–2 include the consequences of a double-ended break of one steam generator tube which bounds other postulated failure mechanisms. The proposed change does not modify any mode of operation or modify existing periodic inservice inspection requirements.

Therefore, this change does not create the possibility or a new or different kind of accident from any previously evaluated.

Criterion 3 Does Not Involve a Significant Reduction in the Margin of Safety

The proposed change justifies a minor reduction in the steam generator tubing structural integrity margin of safety of three times normal differential operating pressure (4050 psi). However, the margin of safety for a tube burst still remains well in excess of the 2500 psi maximum differential pressure used in the design basis accident analysis for a main steam line break. The proposed change is technically consistent with the criteria of NEI 97–06 and Regulatory Guide 1.174, "An Approach for Using Probabilistic Risk Assessment in Risk-Informed Decisions on Plant-Specific Changes to the Licensing Basis."

Therefore, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Esquire, Winston and Strawn, 1400 L Street, NW., Washington, DC 20005–3502.

NRC Section Chief: Robert A. Gramm.

FirstEnergy Nuclear Operating Company, et al., Docket No. 50–412, Beaver Valley Power Station, Unit 2, Shippingport, Pennsylvania

Date of amendment request: November 29, 1999, supplemented December 20, 1999.

Description of amendment request: The proposed amendment would add license condition 2.C(12) to allow a one-time extension of the steam generator inspection interval of Technical Specification 4.4.5.3.a. This would allow the steam generator inspection interval to coincide with the 8th refueling outage scheduled to begin in September 2000.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is temporary and allows a one time extension of the steam generator (SG) surveillance requirement (SR) for Cycle 8 to allow surveillance testing to coincide with the 8th refueling outage (2R8). The proposed surveillance interval extension will not cause a significant reduction in system reliability nor affect the ability of a system to perform its design function. Current monitoring of plant conditions and the surveillance monitoring required during normal plant operation will be performed as usual to assure conformance with technical specification (TS) operability requirements.

The TS SG tube inspection is intended to prevent the "Steam Generator Tube Failure" analyzed in [Updated Final Safety Analysis Report] UFSAR Section 15.6.3 by maintenance of the integrity of the primary to secondary coolant boundary represented by SG tubes. The process by which this integrity is maintained is inspection of SG tubes at prescribed intervals, and the repair or removal of defective tubes from service. Inspection intervals are based on preventing corrosion growth from exceeding tube structural limits, thereby preventing tube failure. The 1998 SG inspection characterized existing tube degradation, and degraded tubes were removed from service at that time. Degradation growth rates were evaluated for the next operating interval and it was determined that the steam generator tube structural integrity is maintained. Degradation of SG tubes was prevented during the extended outage by a corrosion prevention program.

The surveillance extension does not involve a change to plant equipment and does not affect the performance of plant equipment used to mitigate an accident. This change, therefore, does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

Extending the surveillance interval for the performance of specific inspections will not create the possibility of any new or different kind of accidents. No change is required to any system configurations, plant equipment or analyses.

SG tube inspections determine tube integrity and provide reasonable assurance that a tube rupture or primary to secondary leak will not occur. The only type of accident that can be postulated from extending the SG inspection interval would be a tube leak or rupture and these are analyzed in the UFSAR. No new failure modes are created by the surveillance extension. Therefore, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the change involve a significant reduction in a margin of safety?

Surveillance interval extensions will not impact any plant safety analyses since the assumptions used will remain unchanged. The safety limits assumed in the accident analyses and the design function of the equipment required to mitigate the consequences of any postulated accidents will not be changed since only the surveillance interval is being extended. Extending the surveillance interval for the performance of these specific inspections does not involve a significant reduction in the margin of safety derived from the required surveillances.

The margin of safety depends upon maintenance of specific operating parameters within design limits. In the case of SGs, that margin is maintained through assurance of tube integrity as the primary to secondary boundary. Assurance of tube integrity is provided through periodic in-service inspection of tubes and repair or removal of defective tubes from service. Radiation monitors provide a detection capability of primary to secondary leakage to enable a prompt response. The water chemistry of the steam generators during shutdown was maintained as described previously in Section C [Section C of Attachment B to the licensee's November 29, 1999, amendment request]. Maintenance of the SG water chemistry during power operation in accordance with Electric Power Research Institute (EPRI) guidelines provides additional margin of safety. Therefore, the plant will be maintained within the analyzed limits and the proposed extension will not significantly reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mary E. O'Reilly, Attorney, FirstEnergy Nuclear Operating Company, FirstEnergy Corporation, 76 South Main Street, Akron, OH 44308.

NRC Section Chief: Marsha Gamberoni.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: January 19, 2000.

Description of amendment request: These proposed license amendments will revise the Technical Specifications to be consistent with the Standard Technical Specifications requirements that allow for an expanded as-found testing acceptance tolerance for the main steam safety valves (MSSV) and pressurizer code safety valves (PSV). Mode 5 operability requirements for the PSVs will also be deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The probability of occurrence of an accident previously evaluated has not been increased. The changes provided in this safety evaluation do not affect the assumptions or results of any accident evaluated in the UFSAR [updated final safety analysis report]. The actual setpoints and as-left setpoint tolerances of the MSSVs and PSVs are not changed as a result of this evaluation.

Likewise, the consequences of any accident previously evaluated have not been increased. The ability of the MSSVs and PSVs to respond to accident conditions as assumed in any accident analysis has not been affected (i.e., adequate overpressure protection is provided). The proposed changes allow for the acceptance of safety valve lift test results based on tolerances that are consistent with accident analysis assumptions.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed activity does not create the possibility of an accident of a different type than any previously evaluated. No physical plant changes are being made and no new failure modes have been introduced by the proposed changes. This evaluation revises the acceptance criteria for MSSV and PSV lift

test results based on tolerances that are consistent with accident analysis assumptions. The actual setpoints and as-left setpoint tolerances of the MSSVs and PSVs are not changed as a result of this evaluation.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The margin of safety as defined in the basis for any Technical Specification or in any licensing document has not been reduced. MSSV and PSV setpoint values are not being changed. MSSV and PSV setpoints are still required to be set within a tolerance of plus or minus 1% (the as-left setpoint tolerance). This evaluation allows for the revision of acceptance criteria for MSSV and PSV lift test results such that testing criteria is consistent with accident analysis assumptions. This will allow for the accommodation of setpoint drift without invalidating the accident analyses. The proposed changes are consistent with the Standard Technical Specifications, which require MSSV and PSV setting within a plus or minus 1% tolerance, but allow surveillance testing to accept valves that lift within plus or minus 3%. A review of the plants' accident analyses has identified the plant-specific tolerances that may be used for this surveillance testing.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420.

NRC Section Chief: Richard P. Correia.

Florida Power and Light Company, et al. (FPL), Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment request: February 16, 2000.

Description of amendment request: These proposed license amendments will revise the Technical Specifications (TS) to delete references to certain motor operated valve thermal overload protection bypass devices for Unit 2 and to revise the TS for accident monitoring instrumentation for both Units 1 and 2. The proposed amendments also make an administrative change to the Unit 2 TS Index.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The addition of the new ACTION statements for the Unit 1 accident monitoring instrumentation adds conservatism that does not exist in the current Technical Specifications. These changes are consistent with either FPL's originally proposed license amendment for this instrumentation or consistent with the Technical Specification allowed outage time for the component being monitored (*i.e.*, the auxiliary feedwater pumps). Unit 2 valves MV–21–4A and MV–21–4B were modified to be manually operated valves and no longer perform an accident mitigation function. Unit 2 wide range T_{hot} instrumentation is used to satisfy Regulatory Guide 1.97 accident monitoring requirements.

These Technical Specification changes either correct existing errors or add conservatism to the way the Unit is operated. Based on the above, the physical changes to plant equipment or plant operation would not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

Accident monitoring instrumentation monitors the process of postulated events, and is not an accident initiator. Unit 2 valves MV–21–4A and MV–21–4B were modified to be manually operated valves and no longer have an active safety function, therefore, these valves are not accident initiators. These Technical Specification changes either correct existing errors or add conservatism to the way the Unit is operated. Based on the above, the physical changes to plant equipment or plant operation would not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed amendments do not involve a significant reduction in a margin of safety. FPL determined that these proposed license amendments are necessary to correct existing errors or add conservatism to the way the Unit is operated. As such, the assumptions and conclusions of the accident analyses in the UFSAR [Updated Final Safety Analysis Report] remain valid and the associated safety limits will continue to be met.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: M.S. Ross, Attorney, Florida Power & Light, P.O. Box 14000, Juno Beach, Florida 33408–0420

NRC Section Chief: Richard P. Correia.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 18, 2000.

Description of amendment request: The technical specification (TS) changes are being proposed to provide flexibility of operation. These changes include: (1) The ability to have a standby Safety Injection (SI) pump available during Reactor Coolant System (RCS) reduced inventory conditions with the RCS pressure boundary intact; (2) The ability to respond more rapidly with additional makeup sources than currently established by TSs in the unlikely event of a loss of decay heat removal capability or unexpected reduction in RCS inventory; (3) Realigning a footnote to clarify the allowance of an inoperable SI pump to be energized for testing or filling accumulators; (4) Recognition that a substantial vent area exists for cold overpressure protection when the reactor vessel head is on and the studs are fully detensioned; (5) Limit maneuvering the plant beyond Hot Shutdown when one charging pump is operable; and (6) Establishment of a new value for the open permissive interlock associated with the Residual Heat Removal System suction isolation valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes do not affect plant systems such that their function in the control of radiological consequences is adversely affected. The proposed changes do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or manner in which structures, systems, and components perform their intended safety function to mitigate the consequences of an initiating event within the acceptance limits assumed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes do not affect the source term, containment isolation, or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated. Since there are no changes to previous accident analysis, the radiological consequences associated with these analyses remain unchanged; therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not result in a change to the design basis of any plant structure, system, or component. All equipment important to safety will operate as designed. The proposed TS changes in conjunction with administrative controls will provide adequate control measures to ensure component integrity is not challenged. The proposed changes do not cause the initiation of any accident nor create any new failure mechanisms. The changes do not result in any event previously deemed incredible being made credible. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes do not adversely affect equipment design or operation and there are no changes being made to the TS-required safety limits or safety system settings that would adversely affect plant safety. The proposed TS changes in conjunction with administrative controls will provide adequate control measures to ensure component integrity is not challenged. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: February 18, 2000.

Description of amendment request: Changes to technical specification (TS) Sections 4.0.5 and 4.4.6.2.2.e are being proposed to clarify that the Inservice Testing (IST) program will be performed in accordance with the requirements of surveillance requirement (SR) 4.0.5 and the American Society of Mechanical Engineers (ASME) Code for Operation and Maintenance of Nuclear Power Plants (ASME OM Code), instead of Section XI of the ASME Boiler and Pressure Vessel Code.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Seabrook Station has proposed to utilize the ASME OM Code-1995 including the 1996 Addenda (OMa Code-1996) for the IST of pumps and valves as an alternative to the requirements of the 1989 Edition of Section XI pursuant to 10 CFR 50.55a(f)(4)(iv) subject to the limitations modifications listed in paragraph (b). The use of the ASME OM Code-1995 including the 1996 Addenda has been evaluated by the NRC (64 FR 51370) and has supplanted Section XI of the 1989 Edition of the ASME Boiler and Pressure Vessel Code as the Code referenced in paragraph (b) for the IST of pumps and valves effective November 22, 1999. The proposed administrative changes only add ASME OM and applicable terms from that Code into the TSs. These proposed changes are administrative in nature and do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes to the TSs clarify that the IST program will be performed in accordance with the requirements of SR 4.0.5 and the ASME OM Code and to clarify the surveillance interval requirements for components tested on a Semi-quarterly and Biennial frequency. The proposed changes are administrative in nature and do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, or configuration of the facility. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any previously evaluated.

3. Involve a significant reduction in a margin of safety.

The changes to the TSs do not involve a reduction in the margin of safety. As previously identified the subject changes are administrative in nature and will clarify that the IST program will be performed in accordance with the requirements of SR 4.0.5 and the ASME OM Code. The use of the ASME OM Code-1995 including the 1996 Addenda in lieu of Section XI of the ASME Boiler and Pressure Vessel Code will result in a net improvement in the measures for performing the IST of pumps and valves and has been previously evaluated by the NRC. Therefore, the proposed changes to the TSs will not result in a significant reduction in a margin of safety. Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

Northern States Power Company, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: February 29, 2000:

Description of amendment request: The proposed amendment would approve continued use of two exceptions previously granted by the Nuclear Regulatory Commission (NRC) to the American Society of Mechanical Engineers N510–1989 testing requirements for the emergency filtration train (EFT) system, revise the Technical Specifications (TSs) to reflect modifications to the EFT system that eliminate the need for additional test exceptions, revise the TSs to be consistent with the guidance of NRC Generic Letter 99–02, and revise the TSs to include operability requirements for the EFT system during operations that could result in a fuel handling accident.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

During an accident, the Control Room Emergency Filtration [EFT] System provides filtered air to pressurize the Control Room to minimize the activity, and therefore the radiological dose, inside the Control Room. The SBGT [standby gas treatment] System maintains a small negative pressure in the Reactor Building to minimize ground level escape of airborne radioactivity. Technical Specification operability and surveillance requirements are established in order to ensure that the SBGT and EFT Systems will perform their safety functions during an accident. The proposed amendment documents the test method for laboratory testing of charcoal adsorbers in both systems, implements adequate test acceptance criteria, and improves the methodology of in-place testing of charcoal filters in the EFT System. The additional operability requirements for the EFT System ensure that the systems will be available when required. The surveillances adequately show that the system is operable and capable of performing its safety function. Dose to the public and the Control Room operators are not affected by the proposed change.

Since neither system is an accident initiator, the probability of an accident is not increased.

The proposed Technical Specification change does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes.

Therefore, the proposed amendment will not significantly increase the probability or the consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed Technical Specification change does not introduce new equipment operating modes, nor does the proposed change alter existing system relationships. The proposed amendment does not introduce new failure modes. The proposed surveillance requirements are consistent with industry and regulatory guidance and show that the system is capable of performing its safety function. The added operability requirements for the EFT System ensure that the system will be available when required.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

The proposed amendment is consistent with current industry and regulatory standards for testing filters. The proposed amendment maintains margins of safety. Off-site and Control Room dose assessments are not affected by the proposed amendment, since the ability of the SBGT and EFT Systems to perform their safety function is shown by the proposed surveillance requirements. The proposed change to the surveillances provides assurance that the system will perform at the filter efficiency used in the evaluation of the radiological consequences of the postulated events. Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: Claudia M. Craig.

PP&L, Inc., Docket Nos. 50–387 and 50–388, Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: January 13, 2000.

Description of amendment request: The amendment would revise the Technical Specifications (TSs) for both units to clarify Figure 3.4.10–1, "Reactor Vessel Pressure vs. Minimum Vessel Temperature." The amendment would also revise the Unit 2 TS to correct a reference in TS 5.6.5.b, "Core Operating Limits Report (COLR)."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposal does not involve an increase in the probability or consequences of an accident previously evaluated. The proposed revision to Technical Specification Figure 3.4.10.1 and the proposed revision to the references in the Unit 2 Technical Specification section 5.6.5.b are administrative and/or editorial in nature, and do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This proposal does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed revision to Technical Specification Figure 3.4.10.1 and the proposed revision to the references in the Unit 2 Technical Specification section 5.6.5.b are administrative and/or editorial in nature. The proposed revisions do not change any plant systems, structures, or components, nor do they change any existing accident analysis, or create any new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

This proposal does not involve a significant reduction in the margin of safety. The proposed revision to Technical Specification Figure 3.4.10.1 and the proposed revision to the references in the Unit 2 Technical Specification section 5.6.5.b are administrative and/or editorial in nature, and do not result in [a] significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Bryan A. Snapp, Esquire, Assoc. General Counsel, PP&L, Inc., 2 North Ninth St., GENTW3, Allentown, PA 18101–1179.

NRC Section Chief: Marsha Gamberoni, Acting.

Rochester Gas and Electric Corporation, Docket No. 50–244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of amendment request: March 8, 2000.

Description of amendment request: The proposed amendment would revise the R. E. Ginna Nuclear Power Plant Improved Technical Specifications associated with the Spent Fuel Pool Storage (SFP) (limiting condition for operation (LCO) 3.7.13), and Design Features Fuel Storage (4.3).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Ginna [Nuclear Power Plant] in accordance with the proposed changes does not involve a significant increase in the probability or consequences of an accident previously evaluated. The administrative change only involves how the maximum initial fuel assembly enrichment is described and has no impact on the probability or consequences of an accident. The remaining change is evaluated below.

The regions of the SFP and specific storage cell types differ from each other in regards to the specific absorber material within the cells. Administrative controls are used to maintain the specified storage patterns and to assure storage of a fuel assembly in a proper location based on initial U–235 enrichment, burnup, and decay time. Procedures which perform this surveillance will include independent verification provisions.

There is no significant increase in the probability of an accident concerning the potential insertion of a fuel assembly in an incorrect location in the storage racks. Ginna currently uses administrative controls to move fuel assemblies from location to location within the SFP. Fuel assembly placement will continue to be controlled pursuant to approved fuel handling procedures and will be in accordance with the Improved Technical Specification spent fuel rack storage configuration limitations. Fuel movement procedures are planned to include independent verification of fuel handling steps.

There is no increase in the consequences of the accidental misloading of spent fuel assemblies into the spent fuel pool racks. The criticality safety analysis demonstrate that the pool K_{eff} will remain ≤0.95 following an accidental misloading due to the boron concentration of the pool. The existing Improved Technical Specification limitation on soluble boron within the SFP will ensure that an adequate boron concentration is maintained.

Based on the above, it is concluded that the proposed changes do not significantly increase the probability or consequences of any accident previously analyzed.

2. Operation of Ginna [Nuclear Power Plant] in accordance with the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The administrative change to the Improved Technical Specifications has no impact on plant hardware or operations and therefore cannot create a new or different kind of an accident.

Criticality accidents in the SFP are not new or different types of accidents, they have been analyzed in the Updated Final Safety Analysis Report and in criticality safety analysis reports associated with specific licensing amendments for fuel enrichments up to the nominal 5.0 weight percent U–235 that is assumed for the proposed change.

The current Improved Technical Specifications contain limitations on the minimum SFP boron concentration. The proposed changes to the Improved Technical Specifications to allow credit for soluble boron for a K_{eff} < 0.95 in the SFP is consistent with the results of the new criticality safety analysis. Since soluble boron has always been maintained in the SFP water, and is currently required by Improved Technical Specifications, the implementation of this new requirement will have no effect on normal SFP operations and maintenance. A dilution of the spent fuel pool soluble boron has always been a possibility, however, it has been shown in the SFP boron dilution analysis that there are no credible dilution events for which the spent fuel pool K_{eff} could increase to >0.95. Therefore, the implementation of crediting soluble boron in the SFP will not result in the possibility of a new kind of accident.

The proposed changes to Improved Technical Specifications LCO 3.7.13 continue to specify the requirements for the spent fuel rack storage configurations. Since the proposed SFP storage configuration limitations will be similar to the current ones, the new limitations will not have any significant effect on normal spent fuel pool operations and maintenance and will not create any possibility of a new or different kind of accident. Verifications will be performed to ensure that the spent fuel pool loading configuration meets specified requirements.

The misloading of a fuel assembly in the required storage configuration has been evaluated. In all cases, the rack K_{eff} remains ≤0.95.

Under the proposed amendment, no changes are being made to the racks themselves, any other systems, or to the physical structures of the Auxiliary Building itself. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of Ginna [Nuclear Power Plant] in accordance with the proposed changes does not involve a significant reduction in a margin of safety. The proposed administrative change to the Improved Technical Specifications has no impact on any acceptance criteria, plant operations or the actual failure of any systems, components or structure; therefore the change has no impact on the margin of safety.

The spent fuel storage operation limits will provide adequate safety margin to ensure that the stored fuel assembly array will always remain subcritical. Those limits are based on a plant specific criticality safety analysis performed in a manner analogous to that of the NRC approved Westinghouse spent fuel rack criticality safety analysis methodology.

While the criticality safety analysis utilized credit for soluble boron, storage configurations have been defined using 95/95 K_{eff} calculations to ensure that the spent fuel rack K_{eff} will be <1.0 with no soluble boron. Soluble boron credit is used to offset uncertainties, tolerances, and off-normal conditions (such as a misplaced assembly) and to provide subcritical margin such that the spent fuel pool K_{eff} is maintained at ≤0.95.

The loss of substantial amounts of soluble boron from the spent fuel pool which could lead to K_{eff} exceeding 0.95 has been evaluated and shown to be not credible. An evaluation has been performed which shows that dilution of the SFP boron concentration from 2300 ppm to 975 ppm is not credible. Also, the spent fuel rack K_{eff} will remain <1.0 (with a 95/95 confidence level) with the SFP flooded with unborated water. These analyses demonstrate a level of safety comparable to the conservative criticality safety analysis methodology required by Westinghouse WCAP–14416. Therefore, these changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Nicholas S. Reynolds, Winston & Strawn, 1400 L Street, NW., Washington, DC 20005.

NRC Section Chief: Marsha Gamberoni, Acting.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of amendment request: March 15, 2000.

Description of amendment request: The proposed amendment would change to the technical specifications, to provide a completion time of 7 days of continued reactor operation with two CAD subsystems inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The safety-related function of the Containment Atmosphere Dilution (CAD) system is to mitigate the effects of a loss-of-coolant-accident (LOCA) by limiting the volumetric concentration of oxygen in the primary containment atmosphere. The CAD System is not an event initiator, therefore, the probability of the occurrence of an accident is not affected by this proposed Technical Specification (TS) change. Emergency procedures preferentially use the normal containment inerting system to provide post-accident vent and purge capability, with the CAD system only serving in a backup role to this system. Hence, in the event of the inoperability of both CAD subsystems, the proposed TS require the normal containment inerting system to be verified available as an alternate oxygen control means.

Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This TS change does not result in any changes to the CAD equipment design or capabilities or to the operation of the plant. Since the change impacts only the required action completion time for periods of CAD subsystem inoperability and does not result in any change in the response of the equipment to an accident, the change does not create the possibility of a new or different kind of accident from any previously analyzed.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

As stated in GL 84–09, a Mark I type boiling water reactor (BWR) plant is not considered to rely upon purge/repressurization systems such as CAD as its primary means of hydrogen control when the unit(s) is operated in accordance with certain technical criteria. The BFN units are operated in accordance with these criteria. The BFN Unit 2 and Unit 3 containments are inerted

with nitrogen during normal operation, recycled containment atmosphere is used for pneumatically operated components inside containment, and there are no potential sources of oxygen generation inside containment other than the radiolytic decomposition of water. The system preferred by the EOIs for oxygen control post-accident is the normal primary containment inerting system. Because the probability of an accident involving hydrogen and oxygen production is small, CAD is not the primary system used to mitigate the creation of combustible containment atmosphere mixtures, and because the requested LCO where both CAD subsystems is inoperable is not long, no significant reduction in the margin of safety is associated with this proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard Correia.

Tennessee Valley Authority; Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: February 18, 2000.

Description of amendment request: The proposed amendment would revise the technical specifications to identify (1) M5 alloy as a material used in the construction of fuel assemblies, and (2) The associated topical report that describes the fuel.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS revision will allow the use of a new advance alloy material for the fuel rod cladding. The new M5 alloy properties are not significantly different than the characteristics of the currently used zircaloy-4 as demonstrated in the NRC approved Topical Report BAW–10227P–A for the use of the M5 alloy for fuel rod cladding. In this topical, the M5 alloy was shown to perform very similar to the zircaloy-4 with improved performance in several areas including fuel cladding corrosion, hydrogen pickup, fuel rod and fuel assembly growth, and fuel rod cladding creep. The proposed revision will not alter the operating characteristics of the plant or plant components. The fuel rod cladding function will not be changed even though some of the rod cladding properties could be enhanced.

The M5 alloy will maintain fuel rod cladding integrity such that the potential for rod cladding failures is not increased. The fuel rod cladding is not assumed to arbitrarily fail as an accident initiator even though it does function to ensure that initial core conditions are within the analysis assumptions and to provide a barrier to the release of radiation. Therefore, the proposed revision will not increase the possibility of an accident based on the new M5 alloy having similar properties as the zircaloy-4 material.

The ability of the new M5 fuel rod cladding material to provide a barrier against the release of radioactive fuel material has not been reduced with respect to the zircaloy-4 material and the generation of hydrogen has been reduced. The approved topical report evaluated postulated accidents that involved adverse core conditions and the release of radionuclides and found the M5 alloy to perform similar to the current fuel rod cladding material. Rod cladding failures are assumed to occur in the fuel handling accident; however, the consequences of this event is independent of the properties of the fuel rod cladding. This is based on the fuel handling event assuming the rupture of fuel rods regardless of the rod cladding material. Therefore, based on the topical report results, the proposed revision to allow the use of M5 fuel rod cladding material will not significantly increase the consequences of an accident and the potential for the release of radioactive material to the environment.

B. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed M5 rod cladding material has been demonstrated to have properties that are not significantly different than the current zircaloy-4 in maintaining the integrity of the fuel rods. The new material will not alter the functions of the rod cladding which is to provide a barrier against the release of radioactive material. Initial plant conditions, which is considered in the accident analysis, will also be maintained such that no new plant conditions will exist that could affect the analysis results. Since plant functions and conditions are not impacted by the proposed revision and the new M5 rod cladding is not postulated to become an accident initiator based on the similarity with zircaloy-4, the possibility of a new or different kind of accident is not created.

C. The proposed amendment does not involve a significant reduction in a margin of safety.

The margin of safety is established by the acceptance criteria used by NRC. Meeting the acceptance criteria assures that the consequences of accidents are within known and acceptable limits. The loss-of-coolant accident (LOCA) acceptance criteria are unchanged: peak cladding temperature of ≤ 2200 degrees Fahrenheit; maximum cladding oxidation of ≤17 percent of the total cladding thickness before oxidation; maximum hydrogen generation of ≤1 percent of the hypothetical amount if all of the cladding metal were to react; coolable geometry such that the core remains amenable to cooling; and long-term cooling to maintain core temperature at an acceptably low value and removal of decay heat for an extended period.

These requirements continue to be met with the new M5 fuel rod cladding material. The acceptance criteria for Departure from Nucleate Boiling (DNB) events has not changed and is still the 95 percent probability and 95 percent confidence interval that DNB is not occurring during the transient. The changes to material properties have been evaluated in BAW–10227P–A and all applicable acceptance criteria are met. In addition, the proposed revision to allow the use of M5 fuel rod cladding will not impact plant setpoints that maintain the margin of safety. Based on these results, it is concluded that the margin of safety is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: March 6, 2000 (ULNRC–04197).

Description of amendment request: The proposed amendment will revise Table 3.7.1–1, "Operable Main Steam Safety Valves [MSSVs] versus Maximum Allowable Power," of the technical specifications to reduce the maximum allowable reactor power for a given number of operable MSSVs per steam generator. There are five MSSVs on each of the four steam generators for the plant. This change will increase restrictions on the operation of the plant to account for (1) Westinghouse letter, SCP–99–129, dated July 7, 1999, and (2) Westinghouse Nuclear Safety Advisory Letter, NSAL–94–001, dated January 20, 1994. This change will decrease the setpoint values for the power range neutron flux high channels, which are part of the reactor trip system (RTS) instrumentation in Table 3.3.1–1, "Reactor Trip System Instrumentation," of the TSs, and will result in the reactor being shut down at a lower reactor power for a given number of operable MSSVs per steam generator. There is also a change to the Required Action A.1 for Limiting Condition for Operation (LCO) 3.7.1, "Main Steam Safety Valves (MSSVs)." The licensee has administrative controls in place to ensure that the proposed reduced maximum allowable reactor power values are in effect at the plant.

In addition to the changes to LCO 3.7.1 above, the licensee also proposed to correct two format errors in the actions for LCO 3.7.1. The first correction is to add a separating line between Conditions A and B; the second correction is to move the word "(continued)" above the bottom line for Condition B. Neither of these corrections have any affect on the requirements stated in LCO 3.7.1. The licensee also showed the changes to the Bases of LCO 3.7.1 that are related to the proposed amendment including two editorial corrections to the Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The operability of the MSSVs ensures that the secondary side system pressure is limited to within 110% of its design pressure during the most severe anticipated system operational transient, which is the Loss of Load/Turbine Trip Event. As stated in FSAR [Callaway final safety analysis report] 15.2.3.3, these events do not present a hazard to the integrity of the reactor core, the reactor coolant system, or the main steam system. The Power Range Neutron Flux High Reactor Trip function and the MSSVs are designed to mitigate the consequences of the Loss of Load/Turbine Trip event. The Loss of Load event is initiated as a result of an electrical system disturbance and the Turbine trip event is initiated as a result of a signal derived from the turbine emergency trip fluid pressure transmitters and turbine stop valve limit switches.

The Power Range Neutron Flux High Reactor Trip function and the MSSVs ensure that the FSAR Loss of Load/Turbine Trip analyses are bounding for cases when not all of the MSSVs are operable. Technical Specification Table 3.7.1–1 controls the Power Range Neutron Flux High Setpoints when a MSSV is found to be inoperable. The controls under this proposed change, which are more restrictive than the ones in Technical Specification Table 3.7.1–1, do not install or modify any plant equipment. The revised Power Range Neutron Flux High Setpoints with inoperable MSSVs proposed under this change are bounded by the reactor trip setpoints currently provided in Table 3.7.1–1. In addition the functionality of plant equipment is unaffected by the proposed change.

Therefore, these changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes ensure that the FSAR Loss of Load/Turbine Trip analyses are bounding for cases when not all of the MSSVs are operable. Furthermore, the changes do not result in any previously incredible accidents becoming credible. No additional equipment is being [added to the plant or] credited in the mitigation of any [FSAR] Chapter 15 accident events, and the proposed changes do not invalidate any previous conclusions.

Thus, the changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

Using the Power Range Neutron Flux High Setpoints with inoperable MSSVs provided by Westinghouse (Reference 2 [in the licensee's application letter]) in lieu of the ones calculated using the equation provided in the Current Technical Specifications Bases, results in more conservative reactor trip setpoints. This increases the margin of safety. The margin of safety as determined in the basis for the Technical Specification is not reduced.

Therefore, the changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037.

NRC Section Chief: Stephen Dembek.

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of amendment request: February 18, 2000.

Description of amendment request: The amendment requests approval to Baltimore Gas and Electric Company's (BGE's) operating license that the new identified failure mode is acceptable on the basis that BGE will assure on every shift that safety-related loads are sufficiently available to Diesel Generator 1A to ensure the minimum load is met.

Date of publication of individual notice in ***Federal Register:*** March 7, 2000 (65 FR 12038).

Expiration date of individual notice: April 6, 2000.

Consolidated Edison Company of New York, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: July 26, 1999, as supplemented January 20, 2000.

Brief description of amendment: The proposed amendment would revise Technical Specifications associated with the degraded voltage trip and the under-frequency reactor trip surveillance tests.

Date of publication of individual notice in ***Federal Register:*** February 28, 2000 (65 FR 10565).

Expiration date of individual notice: March 29, 2000.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: January 27, 2000.

Brief description of amendments: The amendments revised the Facility Operating Licenses by (a) deleting the license conditions that have been fulfilled by actions that have been completed, (b) changing the license conditions that have been superseded by the current plant status, and (c) incorporating other administrative changes.

Date of publication of individual notice in ***Federal Register:*** February 8, 2000 (64 FR 6243).

Expiration date of individual notice: March 9, 2000.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the

Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) The applications for amendment, (2) The amendment, and (3) The Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: December 16, 1999.

Brief description of amendment: The amendment allowed a one-time extension of some Technical Specification surveillance intervals to support elimination of a planned spring 2000 midcycle outage. The surveillances would be extended to no later than November 30, 2000.

Date of issuance: March 17, 2000.

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 125.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 12, 2000 (65 FR 1921).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–461, Clinton Power Station, Unit 1, DeWitt County, Illinois

Date of application for amendment: October 25, 1999 (U–603282).

Brief description of amendment: The amendment revised the Technical Specification allowable values for the reactor protection system electric power monitoring assembly overvoltage and undervoltage trip setpoints.

Date of issuance: March 21, 2000.

Effective date: Immediately upon date of issuance and shall be implemented within 30 days.

Amendment No.: 126.

Facility Operating License No. NPF–62: The amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 12, 2000 (65 FR 1919).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 2000.

No significant hazards consideration comments received: No.

AmerGen Energy Company, LLC, Docket No. 50–289, Three Mile Island Nuclear Station, Unit 1, Dauphin County, Pennsylvania

Date of application for amendment: May 13, 1999.

Brief description of amendment: The amendment revised Sections 2.a., 2.c.(3) and 2.c.(7) of the Facility Operating License to delete already completed license conditions or update out-of-date reporting references, and made a change to the Bases of Technical Specification 3.1.1 regarding the pressurizer safety valves lift setpoint.

Date of issuance: March 14, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 222.

Facility Operating License No. DPR–50. Amendment revised the Technical Specifications and License.

Date of initial notice in ***Federal Register:*** June 30, 1999 (64 FR 35206).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 2000.

No significant hazards consideration comments received: No.

Baltimore Gas and Electric Company, Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: November 18, 1999.

Brief description of amendment: The amendment incorporated a change in the pressure-temperature curves in the Calvert Cliffs Nuclear Power Plant, Unit No. 1 Technical Specifications. Baltimore Gas and Electric Company changed the fluence level for which the curves are valid from 2.61×10^{19} n/cm^2 to 4.49×10^{19} n/cm^2.

Date of issuance: March 20, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 234.

Facility Operating License No. DPR–53: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70078).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 20, 2000.

No significant hazards consideration comments received: No.

Commonwealth Edison Company, Docket No. 50–374, LaSalle County Station, Unit 2, LaSalle County, Illinois

Date of application for amendment: February 21, 2000.

Brief description of amendment: The amendment changed Technical Specification Surveillance Requirement 4.0.5.f to allow the required examination of weld RH–2005–29 to be deferred until the next scheduled refueling outage or December 31, 2000, whichever is earlier.

Date of issuance: March 22, 2000.

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 123.

Facility Operating License No. NPF–18: The amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (65 FR 11809 dated March 6, 2000). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by April 5, 2000, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, and final no significant hazards consideration determination are contained in a Safety Evaluation dated March 22, 2000.

Detroit Edison Company, Docket No. 50–341, Fermi 2, Monroe County, Michigan

Date of application for amendment: December 17, 1999, as supplemented January 26, 2000.

Brief description of amendment: The amendment revises Technical Specification Surveillance Requirement 3.6.1.3.9 to allow a representative sample of reactor instrumentation line excess flow check valves to be tested every 18 months, instead of testing each excess flow check valve every 18 months.

Date of issuance: March 14, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment No.: 137.

Facility Operating License No. NPF–43: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4270) The January 26, 2000, letter provided clarifying information that was within the scope of the original **Federal Register** notice and did not change the staff's initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: November 3, 1999, as supplemented by letter dated January 14, 2000.

Brief description of amendments: The amendments revised the Technical Specifications Surveillance Requirements (SR) 3.8.1.13 and SR 3.8.1.14 for emergency diesel generators at Catawba Nuclear Station. Specifically, these SR may now be performed at any operational power level for Catawba Nuclear Station. In addition, in November 3, 1999, application, licensee requested that the power factor requirements be deleted from SR 3.8.1.9, and 3.8.1.14. However, licensee withdrew the power factor deletion part of the request for Catawba Nuclear Station, Units 1 and 2, in a letter dated January 14, 2000.

Date of issuance: March 16, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–185; Unit 2–177.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 1, 1999 (64 FR 67332).

The January 14, 2000, letter provided additional clarifications that did not enlarge the scope of the previous no significant hazard consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 16, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: November 3, 1999, as supplemented by letters dated January 14 and February 17, 2000.

Brief description of amendments: The amendments revise the following Technical Specifications Surveillance Requirements (SR): (1) SR 3.8.1.9 to allow performance of the diesel generator (DG) load rejection test at any operational power level and to delete the power factor requirements, (2) SR3.8.1.10 to allow performance of the DG full load rejection test at any power level, and (3) SR 3.8.1.14 to allow performance of the 24-hr DG run at any operational power level and delete the power factor requirement. No plant modification is involved.

Date of issuance: March 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–192; Unit 2–173.

Facility Operating License Nos. NPF–9 and NPF–17: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 1, 1999 (64 FR 67333).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 2000.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: January 27, 2000.

Brief description of amendments: The amendments revised the Facility Operating Licenses by (a) Deleting the license conditions that have been fulfilled by actions that have been completed, (b) Changing the license conditions that have been superseded by the current plant status, and (c) Incorporating other administrative changes.

Date of Issuance: March 13, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–311; Unit 2–311; Unit 3–311.

Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Facility Operating Licenses and License Conditions.

Date of initial notice in ***Federal Register:*** February 8, 2000 (65 FR 6243).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 13, 2000.

No significant hazards consideration comments received: No.

Entergy Gulf States, Inc., and Entergy Operations, Inc., Docket No. 50–458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: October 29, 1999.

Brief description of amendment: This amendment authorizes a revision to the post loss-of-coolant accident (LOCA) dose calculations described in the River Bend Station (RBS) Updated Safety Analysis Report (USAR). The analyses are being updated to account for several changes that were determined by the licensee to involve an unreviewed safety question in accordance with title 10 of the *Code of Federal Regulations*, section 50.59(a)(2)(i). Specifically, the licensee requested the following changes to the RBS USAR, Sections 6.2.3 and 15.6.5:

Increase of the positive pressure period of the secondary containment following a design basis accident to 195.5 seconds from 189 seconds.

Decrease of the suppression pool water volume to 1.2E5 ft^3 from 1.35E5 ft^3 for use in the post-LOCA dose calculation.

Change to the engineered safety feature (ESF) liquid leakage model adding the leakage resulting from a gross failure of a passive component outside of primary containment.

Direct release of ESF leakage through the Standby Gas Treatment System to the environment without hold up in the auxiliary building.

Date of issuance: March 17, 2000.

Effective date: As of the date of issuance and shall be implemented 30 days from the date of issuance.

Amendment No.: 111.

Facility Operating License No. NPF–47: The amendment revised the USAR.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70084).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2000.

No significant hazards consideration comments received: No.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: November 18, 1999.

Brief description of amendment: This amendment removes license condition 3.H, "Long Term Program," from Facility Operating License No. DPR–35 for the Pilgrim Nuclear Power Station.

Date of issuance: March 13, 2000.

Effective date: As of its date of issuance, and shall be implemented within 30 days.

Amendment No.: 183.

Facility Operating License No. DPR–35: Amendment revised the License.

Date of initial notice in ***Federal Register:*** February 9, 2000 (65 FR 6404).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 2000.

No significant hazards consideration comments received: No.

Entergy Nuclear Generation Company, Docket No. 50–293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 5, 1999, as supplemented January 31, 2000.

Brief description of amendment: This amendment modifies the licensing basis for the on-site fuel storage requirements for the emergency diesel generators. Various sections of the technical specifications were amended to reflect the new licensing basis.

Date of issuance: March 17, 2000.

Effective date: As of its date of issuance, and shall be implemented within 30 days.

Amendment No.: 184.

Facility Operating License No. DPR–35: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** June 2, 1999 (64 FR 29708).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2000.

No significant hazards consideration comments received: No.

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Entergy Mississippi, Inc., Docket No. 50–416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: November 3, 1998, as supplemented by letter dated October 7, 1999.

Brief description of amendment: This amendment authorizes revision of the Grand Gulf Nuclear Station Updated Final Safety Analysis Report for implementation of a limited scope application of the alternative accident source term described in NUREG–1465. The amendment allows a change in the minimum time assumed for the onset of fission product release from perforated fuel rods following a postulated design basis loss-of-coolant accident.

Date of issuance: March 22, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment No: 143.

Facility Operating License No. NPF–29: The amendment changes the Grand Gulf Nuclear Station design basis by revising the Updated Final Safety Analysis Report.

Date of initial notice in ***Federal Register:*** December 1, 1999 (64 FR 67333).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 22, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: November 2, 1999.

Brief description of amendment: This amendment revises the Technical Specifications (TSs) to (1) Relocate the requirements of TS 3/4.1.2.8, Reactivity Control Systems—Borated Water Sources—Shutdown, in its entirety, to the DBNPS Updated Safety Analysis Report (USAR) Technical Requirements Manual (TRM); (2) Relocate the requirements of TS 3/4.1.2.9, Reactivity Control Systems—Borated Water Sources—Operating, to the USAR TRM, except for portions applicable to the Borated Water Storage Tank, which have been deleted because they are redundant to the existing provisions of TS 3/4.5.4, Emergency Core Cooling Systems—Borated Water Storage Tank; (3) Modify TS 3/4.1.2.1, Reactivity Control Systems—Borated Water Sources—Shutdown, by deleting references to TS 3.1.2.8: (4) Incorporate corresponding changes to the TS index; and (5) Incorporate corresponding changes to the TS Bases.

Date of issuance: March 14, 2000.

Effective date: Immediately upon date of issuance and shall be implemented within 120 days.

Amendment No.: 238.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70086).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 2000.

No significant hazards consideration comments received: No.

FirstEnergy Nuclear Operating Company, Docket No. 50–346, Davis-Besse Nuclear Power Station, Unit 1, Ottawa County, Ohio

Date of application for amendment: September 8, 1998.

Brief description of amendment: This amendment revises Technical Specification (TS) 5.3.1, "Design Features—Reactor Core—Fuel Assemblies," and TS Bases Section 2.1, "Safety Limits." The amendment permits the use of the Framatome Cogema Fuels "M5" advanced alloy for fuel rod cladding and fuel assembly spacer grids.

Date of issuance: March 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 120 days.

Amendment No.: 239.

Facility Operating License No. NPF–3: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 7, 1998 (63 FR 53961).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 2000.

No significant hazards consideration comments received: No.

Florida Power and Light Company, Docket Nos. 50–250 and 50–251, Turkey Point Plant, Units 3 and 4, Dade County, Florida.

Date of application for amendments: November 23, 1999, as supplemented March 9, 2000.

Brief description of amendments: The amendments revised the Technical Specifications (TS) surveillance testing of the safety-related ventilation system charcoal to meet the actions requested in Generic Letter 99–02, "Laboratory Testing of Nuclear-Grade Activated Charcoal," dated June 3, 1999. Other systems impacted include the emergency containment filtering system, post accident containment vent system, and the control room emergency ventilation system.

Date of issuance: March 21, 2000.

Effective date: March 21, 2000.

Amendment Nos.: 205 and 199.

Facility Operating License Nos. DPR–31 and DPR–41: Amendments revised the TS.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70089). The March 9, 2000, submittal provided clarifying information that did not change the scope of the original request or change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 2000.

No significant hazards consideration comments received: No.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Nuclear Generating Plant, Unit 3, Citrus County, Florida.

Date of application for amendment: February 19, 1999, as supplemented February 23, 2000.

Brief description of amendment: Changes the Crystal River Unit 3 Technical Specifications (TS) to incorporate the requirements of 10 CFR 50.55a relating to containment inspections.

Date of issuance: March 16, 2000.

Effective date: March 16, 2000.

Amendment No.: 191.

Facility Operating License No. DPR–72: Amendment revised the TS.

Date of initial notice in ***Federal Register:*** October 20, 1999 (64 FR 56530). The February 23, 2000, supplement did not affect the original no significant hazards consideration determination, or expand the scope of the amendment request as originally noticed.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 16, 2000.

No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of application for amendments: December 3, 1998.

Brief description of amendments: The amendments incorporate the Distribution Ignition System requirements into the Unit 1 and Unit 2 Technical Specifications.

Date of issuance: March 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 242 and 223.

Facility Operating License Nos. DPR–58 and DPR–74: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4279).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 2000.

No significant hazards consideration comments received: No

Nebraska Public Power District, Docket No. 50–298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: March 31, 1999.

Brief description of amendment: The change modifies Cooper Nuclear Station's Technical Specifications, Section 5.3.1, "Unit Staff Qualifications." The change endorses the provisions of Regulatory Guide 1.8, Revision 2, "Qualification and Training of Personnel for Nuclear Power Plants," for the shift supervisor, senior operator, licensed operator, shift technical advisor, and radiological manager.

Date of issuance: March 15, 2000.

Effective date: March 15, 2000, to be implemented within 30 days.

Amendment No.: 181.

Facility Operating License No. DPR–46: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 5, 1999 (64 FR 24197).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 2000.

No significant hazards consideration comments received: No.

Northeast Nuclear Energy Company, et al., Docket No. 50–336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: November 23, 1999, as supplemented December 7, 1999.

Brief description of amendment: The amendment updates the list of documents which describe the analytical methods used to determine the core operating limits specified in Technical Specification 6.9.1.8b.

Date of issuance: March 17, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment No.: 242.

Facility Operating License No. DPR–65: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4284).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2000.

No significant hazards consideration comments received: No.

PECO Energy Company, Docket Nos. 50–352 and 50–353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of application for amendments: September 27, 1999.

Brief description of amendments: Revised the technical specifications to clarify several administrative requirements, delete redundant requirements, and correct typographical errors, and are considered administrative in nature.

Date of issuance: March 14, 2000.

Effective date: As of date of issuance, to be implemented within 30 days.

Amendment Nos.: Unit 1–139; Unit 2–102.

Facility Operating License Nos. NPF–39 and NPF–85. The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 17, 1999 (64 FR 62714).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 14, 2000.

No significant hazards consideration comments received: No.

Power Authority of The State of New York, Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: September 9, 1996, as supplemented June 6, 1997, and June 7, 1999.

Brief description of amendment: The amendment removes the requirement for the Plant Operating Review Committee review of the fire protection program and implementing procedures.

Date of issuance: March 13, 2000.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 201.

Facility Operating License No. DPR–64: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 1, 1999 (64 FR 67339).

No significant hazards consideration comments received: No.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 13, 2000.

No significant hazards consideration comments received: No.

Public Service Electric & Gas Company, Docket Nos. 50–272 and 50–311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 24, 1997, as supplemented,

January 8, September 21, and December 22, 1998; and January 7, February 17, June 21, and August 23, 1999, and February 7, 2000.

Brief description of amendments: These amendments revise the Salem Technical Specifications (TSs), Section 3/4.7.7, "Auxiliary Building Exhaust Air Ventilation System," to require two auxiliary building ventilation system (ABVS) supply fans, and three ABVS exhaust fans to be operable, and clarify administrative controls.

Date of issuance: March 21, 2000.

Effective date: As of the date of issuance, and shall be implemented within 60 days.

Amendment Nos.: 228 and 209.

Facility Operating License Nos. DPR–70 and DPR–75: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 17, 1997 (62 FR 66140).

The January 8, September 21, and December 22, 1998; and January 7, February 17, June 21 and August 23, 1999; and February 7, 2000, letters provided clarifying information that did not change the staff's initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original notice.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 21, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application or amendments: November 30, 1999.

Brief description of amendments: The amendments revise Technical Specifications and associated Bases to Surveillance Requirement 3.8.1.12 to remove the restriction which prevents performance of the diesel generator 24-hour run while operating in either Mode 1 or 2.

Date of issuance: March 15, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–218; Unit 2–159.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73098)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 15, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: October 15, 1999.

Brief description of amendments: The amendments revise the Safety Limit Minimum Critical Power Ratios (SLMCPR) in Technical Specification 2.1.1.2 to reflect the results of a cycle-specific calculations for Unit 1 Cycle 19 and Unit 2 Cycle 16. The calculations were performed using the new NRC-approved methodology for determining SLMCPRs.

Date of issuance: March 22, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–219; Unit 2–160.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 17, 1999 (64 FR 62715 and 64 FR 62716).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 2000.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: April 6, 1999.

Brief description of amendments: The amendments revise the Technical Specifications to allow an increase of 168 fuel assemblies in the storage capacity of Unit 1's spent fuel pool and an increase of 88 fuel assemblies in the storage capacity of Unit 2's spent fuel pool.

Date of issuance: March 23, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–220; Unit 2–161.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** May 4, 1999 (64 FR 23877).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 23, 2000.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: November 12, 1999 (PCN–505).

Brief description of amendments: The amendments revise Technical Specification 5.5.2.13, "Diesel Fuel Oil Testing Program."

Date of issuance: March 20, 2000.

Effective date: March 20, 2000, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—167; Unit 3–158.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 1, 1999 (64 FR 67339).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 20, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: September 28, 1999, as supplemented February 4, 2000 (TS–399).

Brief description of amendments: The Technical Specifications (TS) have been changed to increase the allowable leakage for any one of the four main steam line (MSL) penetrations from 11½ to 100 standard cubic feet per hour (scfh), and to establish a 150 scfh limit on the maximum allowable combined leakage of all four MSL penetrations.

Date of issuance: March 14, 2000.

Effective date: March 14, 2000.

Amendment Nos.: 263 and 223.

Facility Operating License Nos. DPR–52 and DPR–68: Amendments revised the TS.

Date of initial notice in ***Federal Register:*** November 3, 1999 (64 FR 59807). The supplemental letter dated February 4, 2000, contained clarifying information that did not change the initial no significant hazards determination.

The Commission's related evaluation of the amendment is contained in an Environmental Assessment dated February 22, 2000, and a Safety Evaluation dated March 14, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: September 30, 1999, as supplemented February 29, 2000.

Brief description of amendment: The amendment revises the Technical Specifications (TS) analytical methods for core operating limits to implement an analysis supporting a more negative moderator temperature coefficient for the end-of-cycle, rated thermal power condition.

Date of issuance: March 14, 2000.

Effective date: March 14, 2000.

Amendment No.: 20.

Facility Operating License No. NPF–90: Amendment revises the TS.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4291). The supplemental letter dated February 29, 2000, contained clarifying information and did not change the initial proposed No Significant Hazards Consideration Determination or expand the application beyond the scope of the original notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 14, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: June 25, 1999, as supplemented January 25, 2000.

Brief description of amendment: The amendment changes the Technical Specifications (TS) to apply the Westinghouse generic best estimate large break loss-of-coolant accident analysis methodology, using the WCOBRA/TRAC code to the Watts Bar Unit 1 plant.

Date of issuance: March 17, 2000.

Effective date: March 17, 2000.

Amendment No.: 21.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 9, 2000 (65 FR 611). The January 25, 2000, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination or expand the application beyond the scope of the original notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 17, 2000.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket No. 50–390 Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: November 15, 1999 (TS 99–16).

Brief description of amendment: The amendment changes the methodology and frequency for sampling the ice condenser ice bed (stored ice) and adds a new Technical Specification (TS) and associated Bases to change the methodology and frequency for sampling requirements for all ice additions to the ice bed.

Date of issuance: March 21, 2000.

Effective date: March 21, 2000.

Amendment No.: 22.

Facility Operating License No. NPF–90: Amendment revises the TSs.

Date of initial notice in ***Federal Register:*** December 15, 1999 (64 FR 70092).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 21, 2000.

No significant hazards consideration comments received: No.

Virginia Electric and Power Company, et al., Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of application for amendments: October 28, 1999, as supplemented December 21, 1999.

Brief description of amendments: The amendments remove the operability and surveillance requirements of Technical Specifications (TS) Section 3/4.6.4.3, "Waste Gas Charcoal Filter System," from the TS and relocate them to the Technical Requirements Manual.

Date of issuance: March 13, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days.

Amendment Nos.: 222 and 203.

Facility Operating License Nos. NPF–4 and NPF–7. Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 9, 2000 (65 FR 6412).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 13, 2000.

No significant hazards consideration comments received: No.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: July 1, 1999.

Brief description of amendments: These amendments reflect a change to Technical Specification Section 15.5.4. The amendments remove one of the two separate methods for verifying the acceptability of reactor fuel for placement and storage in the spent fuel pool and new fuel storage vault.

Date of issuance: March 20, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 194 and 199.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 28, 1999 (64 FR 40911).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 20, 2000.

No significant hazards consideration comments received: No.

Wisconsin Electric Power Company, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: November 15, 1999.

Brief description of amendments: This amendment changes the control rod surveillance interval in TS Table 15.4.1–2, Item 10, "Partial movement of all rods," from once "Every 2 weeks" to "Quarterly." This change implements the recommendation of NRC Generic Letter 93–05, "Line Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation."

Date of issuance: March 22, 2000.

Effective date: As of the date of issuance and shall be implemented within 45 days.

Amendment Nos.: 195 and 200.

Facility Operating License Nos. DPR–24 and DPR–27: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 29, 1999 (64 FR 73103).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated March 22, 2000.

No significant hazards consideration comments received: No.

Wisconsin Public Service Corporation,Docket No. 50–305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: June 22, 1999, as supplemented on December 2, 1999, and January 17, 2000.

Brief description of amendment: The amendment extends the application of the length-based pressure boundary definition (L-criterion) for the Westinghouse mechanical hybrid expansion joints in sleeved steam generator tubes to the end of operating cycle 24.

Date of issuance: March 15, 2000.

Effective date: Immediately upon its date of issuance and is to be implemented within 30 days of the date of issuance.

Amendment No.: 146.

Facility Operating License No. DPR–43: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 26, 2000 (65 FR 4266).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 15, 2000.

No significant hazards consideration comments received: No.

Wolf Creek Nuclear Operating Corporation, Docket No. 50–482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 21, 1999.

Brief description of amendment: The amendment revised Technical Specification (TS) 3.4.10, Pressurizer Safety Valves [PSV], of the improved Technical Specifications (TSs) issued March 31, 1999. The amendment reduced the safety valve set pressure in Limiting Condition for Operation (LCO) 3.4.10 and decreased the setpoint in Surveillance Requirement (SR) 3.4.10.1. The PSV setpoint and setpoint tolerance were changed from 2485 psig ±1% to 2460 psig ±2% in the LCO. The tolerance of ±1% in the SR for resetting the setpoint after testing, it needed, was not changed.

Date of issuance: March 23, 2000.

Effective date: March 23, 2000, and shall be implemented before the restart from refueling outage 11, which is the next refueling outage scheduled to begin October 2000.

Amendment No.: 133.

Facility Operating License No. NPF–42. The amendment revised the Technical Specifications.

Date of initiol notice in ***Federal Register:*** November 17, 1999 (64 FR 62718).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated March 23, 2000.

No significant hazards consideration comments received: No.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity for a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room).

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By May 5, 2000, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and electronically from the ADAMS Public Library component on the NRC Web site, *http://www.nrc.gov* (the Electronic Reading Room). If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) The nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) The possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

Consumers Energy Company, Docket No. 50–255, Palisades Plant, Van Buren County, Michigan

Date of amendment request: February 18, 2000, as supplemented March 8, 2000.

Description of amendment request: The amendment changes current Technical Specification (TS) 4.9a.2 and improved TS 3.7.5 and its associated bases to remove requirements associated with the backup steam supply to turbine-driven auxiliary feedwater pump P–8B.

Date of issuance: March 14, 2000.

Effective date: As of the date of issuance and shall be implemented within 30 days, except that implementation with respect to the improved TSs shall be on or before October 31, 2000.

Amendment No. 190.

Facility Operating License No. DPR–20: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (65 FR 11089, March 1, 2000). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received.

The notice also provided for an opportunity to request a hearing by March 31, 2000, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated March 14, 2000.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Energy Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Section Chief: Claudia M. Craig.

Tennessee Valley Authority, Docket No. 50–390, Watts Bar Nuclear Plant, Unit 1, Rhea County, Tennessee

Date of application for amendment: February 25, 2000.

Brief description of amendment: The amendment revised Technical Specification Table 3.3.2–1, "Engineered Safety Feature Actuation System Instrumentation" to provide a one-time exception, until the next time the turbine is removed from service, from the requirement to perform response time testing for the solenoid valve 1–FSV–47–027. The amendment also supersedes the Notice of

Enforcement Discretion granted on February 23, 2000, and confirmed by letter dated February 25, 2000 (00–6–004).

Date of issuance: March 22, 2000.

Effective date: March 22, 2000.

Amendment No.: 23.

Facility Operating License No. NPF–90: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration (NSHC): Yes (65 FR 11348 dated March 2, 2000). The notice provided an opportunity to submit comments on the Commission's proposed NSHC determination. No comments have been received. The notice also provided for an opportunity to request a hearing by March 15, 2000, but indicated that if the Commission makes a final NSHC determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of NSHC are contained in a Safety Evaluation dated March 22, 2000.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 10H, Knoxville, Tennessee 37902.

NRC Section Chief: Richard P. Correia.

Dated at Rockville, Maryland, this 29th day of March 2000.

For The Nuclear Regulatory Commission.

John A. Zwolinski,

Director Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8211 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–286]

Power Authority of the State of New York; Facility Operating License No. DPR–64, Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated February 10, 2000, Mr. David A. Lochbaum, on behalf of the Union of Concerned Scientists (Petitioner), has requested that the U.S. Nuclear Regulatory Commission (NRC) take action with regard to the Indian Point Nuclear Generating Unit No. 3 (IP3), owned and operated by the Power Authority of the State of New York (the licensee). The Petitioner requests that the NRC order the licensee to assess the corrective action program and the work environment at IP3 and to take immediate actions to remedy any deficiencies they identify. The Petitioner requested that this order be closed out before the sale of IP3 is authorized.

As the basis for this request, the Petitioner states that the NRC's new safety monitoring program assumes that the licensee has both a safety-conscious work environment and an effective method of correcting identified problems. In support of this request, the Petitioner cites concerns by a former member of the licensee's Operations Review Group (ORG) that the corrective action process at IP3 is not effective and that the work environment in the ORG is not safety-conscious. The Petitioner also cites several NRC letters that point out deficiencies in the licensee's corrective action program and one letter that points out an apparent instance of discrimination against an employee who raised safety concerns. In a telephone conference on February 16, 2000, the Petitioner voiced concern that under the NRC's new risk-informed inspection process a breakdown in the licensee's corrective action procedures for a non safety-related system would not be pursued. The Petitioner expressed concern that NRC inspectors might not be able to identify a programmatic breakdown in the licensee's corrective action process before such a breakdown affected plant safety.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of the Office of Nuclear Reactor Regulation. As provided by Section 2.206, appropriate action will be taken on this Petition within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and accessible electronically through the ADAMS Public Electronic Reading Room link at the NRC Web site (http://www/nrc.gov).

Dated at Rockville, Maryland, this 24th day of March 2000.

For the Nuclear Regulatory Commission.

Jon R. Johnson,

Acting Director, Office of Nuclear Reactor Regulation.

[FR Doc. 00–8335 Filed 4–4–00; 8:45 am]

BILLING CODE 7590–01–U

POSTAL SERVICE

Request for Comments on Revising and Updating Five-Year Strategic Plan, Pursuant to the Government Performance and Results Act of 1993

AGENCY: Postal Service.

ACTION: Request for comments.

SUMMARY: The Government Performance and Results Act of 1993 (GPRA) mandated, in 1997, that the Postal Service publish a five-year plan outlining its goals, targets, and strategies, and that the Postal Service update and revise its five-year plan at intervals of no less than three years. In so doing, GPRA states that the Postal Service must, as an aspect of its strategic planning process, solicit and consider the ideas, knowledge, and opinions of those potentially affected by or interested in its Five-Year Strategic Plan. This notice, therefore, asks for public comment concerning the development and drafting of the Postal Service's Five-Year Strategic Plan for fiscal years 2001–2005.

DATES: Comments must be received by May 15, 2000.

ADDRESSES: Written comments should be directed to Robert A.F. Reisner, Vice President, Strategic Planning, United States Postal Service, 475 L'Enfant Plaza SW, Washington, DC 20260–1520. Comments may also be sent to: stratpln@email.usps.gov.

FOR FURTHER INFORMATION CONTACT: Paul Van Coverden, (202) 268–8130.

SUPPLEMENTARY INFORMATION:

Statutory Background

The Government Performance and Results Act of 1993, Pub. L. 103–62 (GPRA), was enacted to make federal programs more effective and publicly accountable by requiring agencies to institute results-driven improvement efforts, service-quality metrics, and customer satisfaction programs. Other statutory goals were to improve Congressional decision making and the internal management of the United States Government, as cited in Pub. L. 103–62, sec. 2(b), 107 Stat. 285. Because of the Postal Service's role as an independent establishment of the Executive Branch of the Government of the United States, section 7 of the law establishes separate provisions which apply to the Postal Service (sections 2801–2805 of title 39, United States Code).

Section 2802 of title 39, United States Code, required that the Postal Service submit to the President and the Congress a strategic plan for its program activities, no later than September 30, 1997. Additionally, Section 2802 requires the Postal Service to update and revise its strategic plan at least every three years. The plan is to contain:

(1) A comprehensive mission statement covering the major functions and operations of the Postal Service.

(2) General goals and objectives, including outcome-related goals and objectives, for the major functions and operations of the Postal Service.

(3) A description of how the goals and objectives are to be achieved, including a description of the operational processes, skills, and technology, and the human, capital, information, and other resources required to meet the goals and objectives.

(4) A description of how the performance goals included in the annual performance plan required under section 2803 shall be related to the general goals and objectives in the strategic plan.

(5) An identification of the key factors that are external to the Postal Service and beyond its control which could significantly affect the achievement of the general goals and objectives.

(6) A description of the program evaluations used in establishing or revising general goals and objectives, with a schedule for future program evaluations. 39 U.S.C. 2802(a).

GPRA also requires the preparation of annual performance plans covering each program activity set forth in the Postal Service budget. 39 U.S.C. 2803. These plans link the organizational goals in the Strategic Plan with ongoing operations. Finally, the law requires the preparation of annual performance reports, which review and compare actual performance with the performance targets stated in the annual plans. 39 U.S.C. 2804.

In order to continue to involve the public in this planning process, GPRA also requires the Postal Service, as it develops each new iteration of the strategic plan, to "solicit and consider the views and suggestions of those entities potentially affected by or interested in such a plan, and shall advise the Congress of the contents of the plan." 39 U.S.C. 2802(d).

Discussion of the Postal Service Mission, Vision, and Objectives

In 1970, the Congress enacted the Postal Reorganization Act, transforming the former Post Office Department into the United States Postal Service. Its intent was to ensure that the former department became a self-sustaining federal entity that operates more like a business. While fulfilling its basic mission of providing universal service at an affordable price, the Postal Service as a unique government enterprise would also focus more clearly on the needs of all its customers than had its predecessor Executive Branch department.

The Postal Reorganization Act states that the Postal Service shall have the "basic and fundamental" responsibility to provide postal services to bind the nation together through the personal, educational, literary, and business correspondence of the people. Prompt, reliable, and efficient postal services, the legislation mandates, shall be extended to patrons in all areas and to all communities.

In recent years, the historic mission of the Postal Service, as described in section 101 of title 39, United States Code, has been amplified by an organizational statement of purpose, published most recently in the Preliminary Annual Performance Plan for 2001. That statement describes the Postal Service's role as one "to provide every household and business across the United States with the ability to communicate and conduct business with each other and the world through prompt, reliable, secure and economic services" for the collection, transportation, and delivery of messages, merchandise, and money.

A vision statement, published most recently in the Preliminary Annual Performance Plan for 2001, describes the strategic direction the Postal Service intends to take in order to continue to achieve its mission and statement of purpose. The vision statement says, "Within the decade ahead, the Postal Service must be transformed into a high-performing enterprise, able to compete with agile competitors, to be responsive to more sophisticated customer demands, and to establish goals aligned with the vision of becoming the service customers choose to use, rather than have to use. All employees must have appropriate incentives and tools, not only to service their customers, but to meet or exceed competitors' offerings. We must, in short, develop an operationally excellent, financially sound, performance-based culture and mindset. Given our expectations and beliefs about the future marketplace, it is imperative that the Postal Service achieve a state of operational excellence and competitive performance so high that a partial loss of the letter monopoly would not make a difference to our ability to serve customers and to our success."

Solicitation of Comments

The United States Postal Service solicits comment on core statements that seek to interpret the Postal Service's statutory mission in a 21st century market context. Specifically, it asks for stakeholder comment on:

(1) The Postal Service role and responsibility to provide "universal service" and what that should entail.

(2) The scope of postal services necessary and appropriate "to bind the nation together."

(3) The impact of the development of new technologies on the public service objectives of universal service, and whether those objectives might be achieved through alternative means.

(4) The Postal Service vision of the necessity to transform itself into a high-performing, agile, customer-responsive enterprise able to compete in a re-regulated future business environment.

(5) Steps for improving the businesslike operation of the Postal Service.

(6) Other topics relating to the competitive, customer, regulatory, technology, and organizational dimensions of the postal business environment as they may affect the Postal Service's mission, statement of purpose, and vision.

The Postal Service also invites comment on its long-range organizational goals, or objectives, published most recently in the Preliminary Annual Performance Plan for 2001. The Postal Service has employed long-range goals, or objectives, as part of a strategic planning process for nearly two decades, along with systematic assessments of performance. Since 1994, when the Postal Service applied the Malcolm Baldrige National Quality Award criteria to create its CustomerPerfect! performance management system, the Postal Service has used process management tools and an annual cycle of goal definition, deployment, review, and assessment to improve organizational performance by revising and updating goals and strategies. The input of the public will support and enhance both the performance management process and the new Five-Year Strategic Plan.

Specifically, the Postal Service solicits stakeholder comment on the following long-range organizational goals:

(1) Voice of the Customer goal: To earn customers' business in a marketplace where they have choices by providing them with world-class quality at competitive prices.

(2) Voice of the Employee goal: To foster an inclusive and welcoming workplace consistent with Postal Service values of fairness, opportunity, safety, and security; where everyone is

given the knowledge, tools, training, and encouragement to be successful; and where everyone is recognized for and takes pride in their participation in customers' and the Postal Service's success.

(3) Voice of the Business goal: To generate financial performance that assures the commercial viability of the Postal Service as a service provider in a changing, competitive marketplace, and generate cash flow to finance high-yield investments for the future while providing competitively priced products and services.

Any comments pertaining to the means by which the Postal Service can best achieve these goals are welcome. Comments on other aspects of strategic planning, goal-definition, and performance measurement are also welcome.

This request for comments initiates a formal process for the development of the 2001–2005 Five-Year Strategic Plan and offers an opportunity for stakeholder comments to be given careful consideration in the development of the plan's goals, targets, and strategies. While its May 15 deadline corresponds with a need and requirement for formality in the development of this plan, the strategic planning process itself is continuous and welcomes ongoing input from all stakeholders in the development of annual business environmental assessments, annual performance plans, and annual performance reports.

Stanley F. Mires,
Chief Counsel, Legislative.

[FR Doc. 00–8281 Filed 4–4–00; 8:45 am]
BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. IC–24370; File No. 812–11890]

Fidelity Investments Life Insurance Company, et al.

March 29, 2000.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order pursuant to Section 26(b) of the Investment Company Act of 1940 (the "1940 Act") approving certain substitution of securities.

Applicants: Fidelity Investments Life Insurance Company ("FILI"), Fidelity Investments Variable Annuity Account I ("Account I"), Empire Fidelity Investments Life Insurance Company ("EFILI"), Empire Fidelity Investments Variable Annuity Account A ("Account A") and Fidelity Brokerage Services, Inc. ("FBSI") (hereinafter "Applicants").

Summary of Application: Applicants request an order to permit the substitution of shares of Variable Insurance Products Fund III Mid Cap Portfolio Initial Class ("Mid Cap"), a fund affiliated with FILI and EFILI, for shares of Strong Discovery Fund II Portfolio ("Discovery"), a fund currently held by Account I and Account A to support certain deferred and immediate variable annuity contracts. FILI's and EFILI's variable annuity contracts are referred to herein as the "Contracts."

Filing Date: The Application was filed on December 15, 1999, and was amended and restated on March 23, 2000.

Hearing or Notification of Hearing: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Secretary of the Commission and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on April 28, 2000, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Secretary of the Commission.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Jorden Burt Boros Cicchetti Berenson & Johnson, LLP, 1025 Thomas Jefferson Street, NW, Suite 400 East, Washington, DC 20007–0805, Attention: Michael Berenson, Esq.

FOR FURTHER INFORMATION CONTACT: Jane G. Heinrichs, Senior Counsel, at (202) 942–0699, or William J. Kotapish, Assistant Director, at (202) 942–0672, Office of Insurance Products, Division of Investment Management.

SUPPLEMENTARY INFORMATION: The following is a summary of the Application. The complete Application is available for a fee from the Commission's Public Reference Branch of the Commission, 450 Fifth Street, NW, Washington, DC 20549–0102 (Tel. (202) 942–8090).

Applicants' Representations

1. FILI is a stock life insurance company organized under the laws of the State of Utah. FILI was organized under the laws of the Commonwealth of Pennsylvania and redomesticated to Utah in 1992. FILI offers life insurance policies and annuity contracts in 49 states and the District of Columbia.

2. EFILI is a stock life insurance company organized under the laws of the State of New York. EFILI offers life insurance policies and annuity contracts solely in the State of New York.

3. EFILI is a direct, wholly-owned subsidiary of FILI. FILI is a direct, wholly-owned subsidiary of FMR Corp., the parent company of the group of companies commonly known as Fidelity Investments.

4. Account I is a separate account of FILI which acts as a funding vehicle for FILI's deferred and immediate variable annuity contracts. Account A is a separate account of EFILI which acts as a funding vehicle for EFILI's deferred and immediate variable annuity contracts. Account I and Account A are referred to herein as "Separate Accounts."

5. The assets of Account I and Account A are owned by FILI and EFILI, respectively. The obligations under FILI's Contracts are obligations of FILI and the obligations under EFILI's Contracts are obligations of EFILI. FILI and EFILI are required to maintain sufficient assets in Account I and Account A, respectively, to meet anticipated obligations of the Contracts.

6. The assets of Account I and the assets of Account A are kept separate from the other assets of FILI and EFILI, respectively. The income, gains, and losses of each of the Separate Accounts, whether or not realized, are credited to or charged against the Separate Account without regard to other income, gains, or losses of any other separate account or arising out of any other business FILI or EFILI may conduct.

7. Account I and Account A each has 28 investment divisions ("Subaccounts"), each of which invests exclusively in a single underlying mutual fund portfolio registered as an open end management investment company. The 28 portfolios are members of five different mutual fund families: Fidelity (13 portfolios), Morgan Stanley Asset Management (four portfolios), Strong (three portfolios), PBHG (five portfolios) and Warburg Pincus (three portfolios). The portfolios span a wide variety of investment objectives and policies.

8. Account I was established by FILI as a separate account on July 22, 1987, pursuant to a resolution of FILI's Board of Directors. Account I is a unit investment trust ("UIT") and has filed a registration statement with the Commission on Form N–4 (Registration No. 33–24400) for the purpose of registering Account I under the 1940 Act and to register its deferred variable annuity contracts under the Securities Act of 1933 (the "1933 Act"). Account I has also filed a registration statement under the 1933 Act for its immediate variable annuity contracts (Registration No. 33–54926).

9. Account A was established by EFILI as a separate account under the laws of the State of New York on July 15, 1991, pursuant to a resolution of EFILI's Board of Directors. Account A is a UIT and has filed a registration statement on Form N–4 (Registration No. 33–42376) for the purpose of registering Account A under the 1940 Act and registering its deferred variable annuity contracts under the 1933 Act. Account A has also filed a registration statement under the 1933 Act for its immediate variable annuity contracts (Registration No. 33–54924).

10. FBSI is the principal underwriter for all the Contracts. FBSI is registered with the Commission under the Securities Exchange Act of 1934 (the "1934 Act") as a broker/dealer and is a member of the National Association of Securities Dealers, Inc.

11. The Contracts are immediate variable annuity contracts ("Immediate Contracts") and deferred variable annuity contracts ("Deferred Contracts"). FILI's and EFILI's Immediate Contracts are identical in all respects material to the Application except as specifically noted herein below. FILI's and EFILI's Deferred Contracts are also identical in all respects material to the Application except as specifically noted herein below.

12. The Deferred Contracts are offered as non-qualified contracts and Individual Retirement Annuity contracts. The Immediate Contracts are offered as non-qualified contracts, Individual Retirement Annuity contracts, and Section 403(b) tax-sheltered annuity contracts. Contracts offered on a non-qualified basis are purchased with after-tax dollars. Contracts offered as Individual Retirement Annuities can be purchased only with dollars rolled over from other individual retirement arrangements, 403(b) plans or qualified plans. Contracts offered as Section 403(b) tax-sheltered annuities can be purchased only with dollars in 403(b) arrangements.

13. Deferred Contracts have no front-end or contingent deferred sales load.

14. There are currently no limits on the number of permitted transfers among Subaccounts under Deferred Contracts. FILI reserves the right to limit the number of permitted transfers to not less than five per years, and, for Contracts issued after May 1, 1997, to impose a transfer fee for transfers in excess of twelve per calendar year. Currently FILI imposes no transfer fee and no limit on the number of transfers. EFILI reserves the right to limit the number of permitted transfers to not less than six per years, and to impose a charge not to exceed $15 per transfer for transfers in excess of six per year. Currently EFILI imposes no transfer fee and no limit on the number of transfers.

15. Deferred Contracts have an annual maintenance charge of $30. This charge is currently waived for any Deferred Contract containing at least $25,000 of premium payments. This charge may be reduced or waived for FILI's Deferred Contracts issued under certain sponsored arrangements.

16. Deferred Contracts impose daily charges against the assets of the Separate Accounts attributable to the contracts at an annual rate of 0.80%. Of this amount, 0.75% is for the assumption of mortality and expense risks, and 0.05% is an administrative charge.

17. Immediate Contracts have no front end or contingent deferred sales load.

18. There are currently no limits on the number of permitted transfers among Subaccounts under Immediate Contracts. FILI and EFILI reserve the right to limit the number of permitted transfers to not less than six per year. Immediate Contracts have no transfer charges.

19. Immediate Contracts have no annual contract fee.

20. Immediate Contracts impose daily charges against the assets of the Separate accounts attributable to the contracts at an annual rate of 1.00%. Of this amount, 0.75% is for the assumption of mortality and expense risks, and 0.25% is an administrative charge.

21. The Contracts expressly reserve FILI's and EFILI's right to make additions to, deletions from, or substitutions for any of the investment portfolios in which the Subaccounts invest, subject to obtaining all necessary approvals.

22. Mid Cap is not currently an investment option under the Contracts. It will be added as an investment option effective April 30, 2000. In this regard, FILI and EFILI will each create a new subaccount of their respective Separate Accounts. The new subaccounts will hold the shares of Mid Cap.

23. FILI and EFILI propose to exercise their contractual right to eliminate Discovery as an investment option under the Contracts, and to substitute shares of Mid Cap. The subaccounts currently holding shares of Discovery would be merged into the subaccounts already holding shares of Mid Cap following the substitution. The substitution would not result in a reduction in the number of variable investment options under the Contracts, which would remain at 28. The substitution will take place (contingent upon the requested Order) on a date selected by FILI and EFILI, currently anticipated to be on or about May 29, 2000.

24. As more fully described below, Applicants believe the substitution will benefit Contract owners by eliminating an investment option that has had poor investment performance and replacing it with an investment option having a similar investment objective and better historical performance, and which Applicants believe is likely to have better investment performance in the future. In addition, Mid Cap has had and is expected to continue to have a lower expense ratio than Discovery, providing an additional benefit to Contract owners.

25. The April 30, 2000, prospectuses for the Contracts will disclose the date of the substitution Affected Contract owners (those with Contract values allocated to Discovery) will be notified soon after the Order is granted (if indeed it is) advising them of (1) the pending substitution and of their ability to transfer free of charge to one or more of the remaining subaccounts of their choice in advance of the substitution, and (2) their ability to remain in the subaccount that invests in Discovery until the date of the substitution, and the fact that if they do so they will have values transferred to the new subaccount that will invest in Mid Cap on the date of the substitution.

26. Contract owners who elect to remain in the Discovery subaccount through the date of the substitution will receive confirmations evidencing the substitution in accordance with the provisions of the 1934 Act. Confirmations will be delivered the day after the substitution is effected. The confirmation will be accompanied by a notice reminding Contract owners of their ability to transfer without charge to other subaccounts. Presently, there are no transfer charges under the Contracts. However, if such charges are imposed, Contract owners affected by the substitution will be given 60 days after the substitution to make transfers without charge.

27. FILI and EFILI have sought to provide continuity of investment choice following the substitution, and believe that Discovery and Mid Cap offer important similarities. The investment objective of both Discovery and Mid Cap

is to seek capital growth. Both Discovery and Mid Cap normally invest the bulk of their assets in equity securities, although both can invest in other types of instruments as well. Both can invest in domestic as well as foreign securities. Both can invest in growth stocks or value stocks.

28. Minor differences between the two funds exist. For example, Mid Cap has somewhat less flexibility in its choice of investments, with a policy of investing at least 65% of its assets in securities of companies with medium market capitalizations, while Discovery may invest 100% of its assets in securities of companies of any size.

29. After the substitution, Contract owners invested in Mid Cap instead of Discovery will still be invested in a portfolio seeking capital growth primarily through investment in equity securities.

30. The net expense ratio for Mid Cap is lower than for Discovery. For the fiscal year ended December 31, 1999, the expense ratio for Discovery was 1.10% and the gross expense ratio for Mid Cap was 3.34%. Mid Cap's expenses, however, are subject to a voluntary 1.00% cap, which can be eliminated at any time. If this voluntary cap is eliminated and Mid Cap's expense ratio exceeds 1.00% at any time before July 1, 2001, FILI and EFILI will reimburse, from their general account assets, the accounts of their respective Contract owners who have been affected by the substitution to the extent necessary to limit the expenses actually incurred to 1.00%. Any reimbursement will be calculated on the same basis as under the voluntary cap currently in place and will be made by FILI's or EFILI's purchase of additional units (or fractional units) of the Mid Cap subaccount for the benefit of the accounts of their respective "substituted" Contract owners.

31. For the fiscal years ended December 31, 1998, 1997, and 1996 Discovery's total return was 7.3%, 11.4%, and 0.8%, respectively. In each year the fund trailed significantly the performance of its benchmark, the Standard & Poor's Composite Stock Price Index ("S & P 500"), which had returns of 28.58% in 1998, 33.36% in 1997 and 22.96% in 1996. Mid Cap's operations did not commence until December 28, 1998. Through September 30, 1999, Mid Cap's 1999 year to date total return was 12.8% and Discovery's was negative 16.61%. During the same period the S & P 500's return was 5.36%. Mid Cap has substantially outperformed Discovery in 1999, and the Applicants expect that it will continue to do so.

32. Applicants represent that (1) the substitution will be effected by redeeming shares of Discovery in cash on the date of the substitution at net asset value and using the proceeds to purchase shares of Mid Cap at net asset value on the same date; (2) Contract owners will not incur any fees or charges, including brokerage costs, as a result of the transfer of values from Discovery to Mid Cap; (3) all Contract values will remain unchanged and fully invested; (4) the substitution will not increase Contract or Separate Account fees and charges after the substitution; (5) Contract owners' rights and FILI's EFILI's obligations under the Contracts will not be altered in any way; and (6) all expenses incurred in connection with the substitution, including legal, accounting and other expenses, will be paid by FILI and EFILI. In addition, as of the date of filing the Application, Applicants represent that to the best of their knowledge, the substitution will not result in any adverse federal income tax consequences for Contract owners. Following the substitution, the sub-accounts of FILI and EFILI that invest in Discovery will be terminated.

Applicants' Legal Analysis and Conditions

1. Section 26(b) of the 1940 Act provides that it shall be unlawful for any depositor or trustee of a registered unit investment trust holding the security of a single issuer to substitute another security for such security unless the Commission shall have approved such substitution; and the Commission shall issue an order approving such substitution if the evidence establishes that it is consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the 1940 Act.

2. Section 26(b) protects the expectations that the UIT will accumulate shares of a particular issuer. That Section insures that unnecessary or burdensome sales loads, additional reinvestment costs, or other charges will not be incurred due to an unapproved substitution of securities.

3. Applicants represent that the purposes, terms, and conditions of the substitution are consistent with the protections for which Section 26(b) was designed and will not result in any of the harms which Section 26(b) was designed to prevent.

4. Any Contract owner who does not want his or her assets allocated to Mid Cap would be able to transfer assets to any one or more of the other subaccounts available under his or her Contract without charge. Such transfers could be made prior to or after the date of the substitution. Contract owners would, in all cases, have alternative investment options available, and Contract owners could transfer their assets at any time to those alternative options without the imposition of transfer charges or other sales charges.

5. The substitution will be effected at net asset value in conformity with Section 22 of the 1940 Act and Rule 22c-1 thereunder. Contract owners will not incur any fees or charges as a result of the transfer of account values from any Portfolio. There will be no increase in the Contract or Separate Account fees and charges after the substitution. All contract values will remain unchanged and fully invested. In addition, as of the date of filing of the Application, Applicants represent that to the best of their knowledge the substitution will not result in any adverse federal income tax consequences for Contract owners.

6. In light of the foregoing facts and representations, Applicants believe that the request to allow the substitution meets the applicable standards for an order under Section 26(b) of the 1940 Act. The application is consistent with applicable precedent. The staff of the Commission has previously granted similar requests for orders pursuant to Section 26(b) of the 1940 Act.

Conclusion

Applicants assert that, for the reasons summarized above, the Substitution is consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8295 Filed 4–4–00; 8:45 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–42592; File No. SR–Amex–00–06]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Providing Access to the Trading Floor by Allied Members and Former Members

March 29, 2000.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on March 7, 2000, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Amex filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[2] and Rule 19b–4(f)(6) thereunder,[3] which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its Constitution to provide access to its trading floor ("Trading Floor" or "Floor") by allied members and to establish a formal policy of permitting former members who have worked on the Trading Floor for more than 10 years to visit the Floor. The text of the proposed rule change is available upon request from the Amex or the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Allied members are individuals who exercise control over members or member organizations. From time to time, allied members visit the Floor to exercise managerial oversight and to discuss business with their personnel, clients and others. Currently, allied members are not allowed on the Floor unless they are signed-in as visitors. These visitor clearance procedures are inconsistent with the status of allied members at the Exchange and unnecessarily delay the access of allied members to the Floor. To rectify this situation, the Exchange proposes to amend Article IV to provide that allied members may have access to the Trading Floor without the need for clearing the Exchange's security procedures for visitors. Allied members will continue to be prohibited from effecting securities transactions on the Floor, except when effected in compliance with the provisions of Article IV, Section 3, of the Constitution, which provides that, under certain conditions, an approved allied member may be authorized to effect securities transactions as a "representative" when (i) a governor who is associated with the allied member is away from the Floor on Exchange business, (ii) an Exchange Official who is associated with the allied member is away from the Floor to attend a meeting of the Amex Board, or (iii) a member who is associated with the allied member is away from the Floor due to the requirements of military service or training.

The Exchange is proposing to establish a formal policy of providing those individuals who were members for more than 20 years before leaving the Floor with gold identification badges allowing them access to the Floor as visitors without going through the sign-in procedures applicable to visitors.[4] Individuals who currently hold gold identification badges, but who have worked less than 20 years as members, would be permitted to keep their badges once the proposed policy is implemented. Going forward, however, an individual must have worked 20 years as a member on the Floor in order to receive the special gold identification badge. Eligible former members may only use their special access privileges for social purposes or to discuss membership leases. In addition, a Floor Official or other officer of the Exchange may terminate the special access privileges of a former member if these are used for purposes other than those expressly permitted, or if a former member disturbs the conduct of business at the Exchange.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5)[5] in particular in that its terms are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investor and the public interest; and are not designed to permit unfair discrimination between customers, issuers, brokers or dealers.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, and since the Amex has given the Commission written notice of its intent to file the proposed rule change, along with a brief description and text of the proposed rule change, at least five business days prior to the date of filing of the proposed rule change, it has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(6) thereunder.[7] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[8]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule

[2] 15 U.S.C. 78s(b)(3)(A).

[3] 17 CFR 240.19b–4(f)(6).

[4] As visitors, former members would remain subject to the Exchange's policies regarding visitors' access to the Floor. Telephone conversation between Bill Floyd-Jones, Assistant General Counsel, Amex, and Matthew Boesch, Paralegal, Division of Market Regulation, Commission, on March 29, 2000.

[5] 15 U.S.C. 78f(b)(5).

[6] 15 U.S.C. 78s(b)(3)(A).

[7] 17 CFR 240.19b–4(f)(6).

[8] In reviewing this proposal, the Commission has considered the proposal's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–00–06 and should be submitted by April 26, 2000.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 00–8323 Filed 4–4–00; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Minority Business Resource Center Advisory Committee; Cancellation of Meeting

Notice is hereby given of the cancellation of the Minority Business Resource Center Advisory Committee meeting for Tuesday, April 18, 2000, at 10:00 a.m. until 12:00 p.m. in Room 4438–4440 at the Department of Transportation, 400 7th Street, SW., Washington, DC 20590. (Originally announced at Vol. 65, No. 53, FR 14640, March 17, 2000.)

Issued in Washington, DC on March 27, 2000.

Luz A. Hopewell,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 00–8324 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–62–P

[9] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD08–00–002]

Lower Mississippi River Waterway Safety Advisory Committee

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC) will meet to discuss various issues relating to navigational safety on the Lower Mississippi River and related waterways. The meeting will be open to the public.

DATES: LMRWSAC will meet on Wednesday, April 26, 2000, from 9:00 a.m. to 12 noon. This meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before April 17, 2000. Requests to have a copy of your material distributed to each member of the committee should reach the Coast Guard on or before April 17, 2000.

ADDRESSES: LMRWSAC will meet in the basement conference room of the Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA. Send written material and requests to make oral presentations to M.M. Ledet, Committee Administrator, c/o Commander, Eighth Coast Guard District (m), 501 Magazine Street, New Orleans, LA 70130–3396. This notice is available on the Internet at http://dms.dot.gov.

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact M.M. Ledet, Committee Administrator, telephone (504) 589–6271, Fax (504) 589–4999.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

Lower Mississippi River Waterway Safety Advisory Committee (LMRWSAC). The agenda includes the following:

(1) Introduction of committee members.

(2) Remarks by RADM P. Pluta, Committee Sponsor.

(3) Approval of the September 8, 1999 minutes.

(4) Old Business:

a. PAWSS update.

b. Soft Dikes Working Group Report.

(5) New Business: Physical Oceanographic Real-Time System (PORTS).

(6) Next meeting.

(7) Adjournment.

Procedural

The meeting is open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Committee Administrator no later than April 17, 2000. Written material for distribution at the meeting should reach the Coast Guard no later than April 17, 2000. If you would like a copy of your material distributed to each member of the committee or subcommittee in advance of the meeting, please submit 28 copies to the Committee Administrator at the location indicated under Addresses no later than April 17, 2000.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meetings, contact the Committee Administrator at the location indicated under Addresses as soon as possible.

Dated: March 13, 2000.

K.J. Eldridge,

Captain, U.S. Coast Guard, Acting Commander, 8th Coast Guard Dist.

[FR Doc. 00–8378 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Rotorcraft Issues—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignments for the Aviation Rulemaking Advisory Committee (ARAC)

SUMMARY: Notice is given of two new tasks assigned to and accepted by the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of ARAC.

FOR FURTHER INFORMATION CONTACT: Mark Shilling, Rotorcraft Standards Staff (ASW—119), Federal Aviation Administration, 2601 Meacham Blvd, Fort Worth, Texas 76137–4298; phone (817) 222–5110; fax (817) 222–5961 email Mark.R.Schilling@faa.gov.

SUPPLEMENTARY INFORMATION:

Background

The FAA has established an Aviation Rulemaking Advisory Committee to provide advice and recommendations to the FAA Administrator, through the Associate Administrator for Regulation and Certification, on the full range of the FAA's rulemaking activities with respect to aviation-related issues. This includes obtaining advice and recommendations on the FAA's commitment to harmonize the Federal Aviation Regulations (FAR) and practices with its trading partners in Europe and Canada.

The Task

This notice is to inform the public that the FAA has asked ARAC to provide advice and recommendations on the following harmonization tasks:

Task No. 1: Damage Tolerance and Fatigue Evaluation of Metallic Rotorcraft Structure

- The project is to be a harmonized Joint Aviation Regulation (JAR)/FAR 27/29 ARAC program.
- Evaluate: the European Association of Aerospace Industries and the Aerospace Industry Association's White Paper, the recommendations contained in the Technical Oversight Group for Aging Aircraft letters to the FAA, and the ongoing activities and results of rotorcraft damage tolerance research and development.
- Identify the information needed to commence rulemaking and define an acceptable means of compliance.
- Recommend appropriate changes to FAR/JAR 29 regarding damage tolerance and fatigue evaluation of metallic structure, and recommend appropriate changes to FAR/JAR 27 that would allow damage tolerance as an option. Any recommended changes should be practical and appropriate to the unique characteristics of rotorcraft. Where feasible and appropriate, provide consistency with FAR/JAR 23/25.
- Evaluate and revise, as appropriate, the following advisory materials: AC 29–2; AC 27–1; and AC 20–95, Fatigue Evaluation of Rotorcraft Structure; and related guidance.
- The recommendation should be forwarded to the Federal Aviation Administration (FAA) and the Joint Aviation Authorities (JAA) in the format of a proposed rule.

Although this tasking for metallic structure does not depend on the completion of the composite structure project, the Composite Rotorcraft Structure and Metallic Rotorcraft Structure working groups should communicate to avoid possibly conflicting recommendation to amend the same regulatory sections.

The FAA requests that ARAC draft appropriate regulatory documents with supporting economic and other required analyses, and any other related guidance material or collateral documents to support its recommendations. If the recommendation results in one or more notice of proposed rulemaking (NPRM) published by the FAA, the FAA may ask ARAC to dispose of any substantive comments the FAA receives.

A progress report should be provided at each Joint Harmonization Working Group meeting. The recommendation should be forwarded to the FAA and the FAA by September 2002.

Task No. 2: Damage Tolerance and Fatigue Evaluation of Composite Rotorcraft Structure

- The project is to be a harmonized FAR/JAR 29/29 ARAC program.
- Revise current FAR/JAR 27 and 29 to add regulations for composite structure. Consider creating a new FAR/FAR 27/29.573 to address composite structure.
- Evaluate and revise, as appropriate, the regulations and the following advisory materials: AC 20–107A, Composite Aircraft Structure; AC 27–1; AC 29–2; and related guidance to achieve the goal of improved tolerance to flaws and defects in composite structure with methodology and procedures which are practical and appropriate to rotorcraft. Where feasible and appropriate, provide consistency with FAR/JAR 23/25.
- The recommendation should be forwarded to the FAA and JAA in the format of a proposed rule.

Although this tasking for composite structure does not depend on the completion of the metallic structure project, the Composite Rotorcraft Structure and Metallic Rotorcraft Structure working groups should communicate to avoid possibly conflicting recommendations to amend the same regulatory sections.

The FAA requests that ARAC draft appropriate regulatory documents with supporting economic and other required analyses, and any other related guidance material or collateral documents to support its recommendations. If the recommendation results in one or more NPRM's published by the FAA, the FAA may ask ARAC to dispose of any substantive comments the FAA receives.

A progress report should be provided at each Joint Harmonization Working Group meeting. The recommendation should be forwarded to the FAA and JAA by November 2002.

ARAC Acceptance of Task

ARAC has accepted the tasks and has chosen to establish two new working groups, the Composite Rotorcraft Structure working group and the Metallic Rotorcraft Structure working group. The working groups will serve as staff to ARAC to assist ARAC in the completion of the assigned tasks. Working group recommendations must be reviewed and approved by ARAC. If ARAC accepted the working groups' recommendations, ARAC will forward them to the FAA as recommendations.

Working Group Activity

The Composite Rotorcraft Structure working group and the Metallic Rotorcraft Structure working group is expected to comply with the procedures adopted by ARAC. As part of the procedures, the working groups are expected to:

1. Recommend a work plan for completion of the task, including the rationale supporting such a plan, for consideration at the Rotorcraft Issues ARAC meeting held following publication of this notice.

2. Given a detailed conceptual presentation of the proposed recommendations prior to proceeding with the work stated in item 3 below.

3. Draft appropriate regulatory documents with supporting economic and other required analyses, and/or any other related guidance material or collateral documents the working group determines to be appropriate; or, if new or revised requirements or compliance methods are not recommended, a draft report stating the rationale for not making such recommendations.

4. Provide a status report at each meeting of ARAC held to consider rotorcraft issues.

Participation in the Working Group

The Composite Rotorcraft Structure working group and the Metallic Rotorcraft Structure working group will be composed of technical experts having an interest in the assigned tasks. A working group member need not be a representative of a member of the full committee.

An individual who has expertise in the subject matter and wishes to become a member of the working group should write to the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and stating the expertise he or she would bring to the working group. All requests to participate must be received no later than April 10, 2000. The requests will be reviewed by the

assistant chair and the assistant executive director, and the individuals will be advised whether or not the request can be accommodated.

Individuals chosen for membership on the working group will be expected to represent their aviation community segment and participate actively in the working group (*e.g.*, attend all meetings, provide written comments when requested to do so, *etc.*). They also will be expected to devote the resources necessary to ensure the working group meets any assigned deadline(s). Members are expected to keep their management chain advised of working group activities and decisions to ensure that the agreed technical solutions do not conflict with their sponsoring organization's position when the subject is presented to ARAC for a vote.

Once the working group has begun deliberations, members will not be added or substituted without the approval of the assistant chair, the assistant executive director, and the working group chair.

The Secretary of Transportation has determined that the formation and use of ARAC are necessary and in the public interest in connection with the performance of duties imposed on the FAA by law.

Meetings of ARAC will be open to the public. Meetings of the working groups will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on March 28, 2000.

Anthony F. Fazio,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 00–8382 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Availability of Draft Environmental Impact Statement; Piedmont Triad International Airport, Greensboro, NC

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969, as amended, as implemented by the Council on Environmental Quality (40 CFR Parts 1500–1508), the Federal Aviation Administration (FAA) will file with the Environmental Protection Agency, and make available to other government and interested private parties, the Draft Environmental Impact Statement (DEIS) for the proposed Runway 5L/23R, a proposed air cargo sorting and distribution facility (FedEx Mid Atlantic Hub), and associated development at Piedmont Triad International Airport, Greensboro, North Carolina. The DEIS will be on file with the EPA and available to the public for review starting April 6, 2000, after 1 p.m. at locations listed under **SUPPLEMENTARY INFORMATION**. A Public Hearing and Information Workshop will be held on May 23, 2000; between the hours of 5:00 p.m. and 8:00 p.m. at the Greensboro Coliseum Exhibit Hall, 1921 W. Lee Street, Greensboro, North Carolina. Written comments on the DEIS will be accepted by the FAA until June 7, 2000, or 45 days after the publication of this Federal Register Notice, whichever is later.

FOR FURTHER INFORMATION CONTACT: Ms. Donna M. Meyer, Environmental Program Specialist, Federal Aviation Administration, Atlanta Airports District Office, 1701 Columbia Avenue, Suite 2–260, College Park, Georgia 30337–2747, Phone (404) 305–7150.

SUPPLEMENTARY INFORMATION: The Piedmont Triad Airport Authority (PTAA), owner and operator of the airport is proposing airside and landside improvements to the Piedmont Triad International Airport. The PTAA's proposed project consists of a new widely spaced Transport Category parallel runway (Runway 5L/23R) that would be 9,000 feet long and 150 feet wide. The runway would be located on the western side of the airport. Other associated projects include the development and operation of an air cargo sorting and distribution facility (FedEx Mid-Atlantic Hub), surface transportation improvements, NAVAIDS for new Runway 5L/23R, property acquisition and relocation of several airport tenant operations. The DEIS has examined the sponsor's proposed project and improvements along with other reasonable alternatives to the proposed project. The Federal Highway Administration (FHWA) is acting as a cooperating agency to the FAA in this DEIS.

A Public Hearing will be held by the FAA to afford interested parties the opportunity to provide their comments on the merits and findings of the DEIS and to consider the economic, social, and environmental effects of PTAA's proposed development and its consistency with the goals and objectives of such urban planning as has been carried out by the community. The Public Hearing will be conducted in conjunction with an informal Information Workshop. During the Information Workshop, participants will be able to view project related materials and speak with representatives of the FAA and the consulting team.

In addition, the public is invited to comment in one of four ways during the Public Hearing/Information Workshop: (1) Written comments may be submitted anytime during the Hearing/Workshop; (2) Pre-addressed written comment forms may be mailed to the Individual listed above, (3) Private oral comments may be given to a certified court reporter anytime during the Hearing/Workshop, and, (4) Oral comments may be made in front of the Hearing Officer who will be present to preside over and conduct the Public Hearing. The FAA encourages interested parties to review the DEIS and provide comments during the public comment period.

For the convenience of interested parties, the DEIS may be reviewed at the following locations:

Greensboro Public Library, 219 No. Church Street, Greensboro
Hege Library of Guilford College, 5800 West Friendly Avenue, Greensboro
High Point Public Library, 901 North Main Street, High Point
Forsyth County Library, 660 West Fifth Street, Winston-Salem
Piedmont Triad International Airport, 6415 Airport Parkway, Greensboro
Federal Aviation Administration, Atlanta District Office, 1701 Columbia Avenue, College Park, Georgia

Dated: Issued in Atlanta, Georgia, March 31, 2000.

Scott L. Seritt,

Manager, Atlanta Airports District Office.

[FR Doc. 00–8383 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA, Inc.; Free Flight Steering Committee

Revised Agenda

The April 13 RTCA Free Flight Steering Committee Meeting announced in the **Federal Register**, 65 FR 16240 (Monday, March 27, 2000), third column, has been revised.

The revised agenda reads as follows: The agenda will include: (1) Welcome and Opening Remarks: (a) Recognize Departing Members of the Steering Committee; (b) Welcome Incoming Members. (2) Review Summary of the Previous Meeting: (3) Reports from FAA on: (c) Free Flight Phase 1 Baseline Data and Performance Assessments Update; (d) Controller-Pilot Data Link Communications (CPDLC) Update; (4) Satellite Navigation Users Group Report; (5) Report and Recommendations from the Free Flight Select Committee; (6) Other Business; (7) Date and Location of Next Meeting; (8) Closing Remarks.

Person wishing to obtain further information should contact RTCA at (202) 833–9339 (phone), (202) 833–9434 (fax), or dclarke@rtca.org (e-mail).

Issued in Washington, DC, on March 30, 2000.

Janice L. Peters,

Designated Official.

[FR Doc. 00–8381 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Huntsville International Airport, Huntsville, AL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 5, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: FAA/Airports District Office, 100 West Cross Street, Suite B, Jackson, MS 39208–2307.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Luther H. Roberts, Jr., AAE, Deputy Director of the Huntsville-Madison County Airport Authority at the following address: 1000 Glenn Hearn Boulevard, Box 20008, Huntsville, AL 35834.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Huntsville-Madison County Airport Authority under § 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Roderick T. Nicholson, Program Manager, FAA Airports District Office, 100 West Cross Street, Suite B, (601) 664–9884. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Huntsville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 29, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Huntsville-Madison County Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 15, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–09–C–00–HSV.

Level of the proposed PFC: $3.00.

Proposed charge effective date: March 1, 1999.

Proposed charge expiration date: October 31, 2006.

Total estimated PFC revenue: $577,969.

Brief description of proposed project(s): Air Cargo Apron Expansion (Phase 2); Replace Airline Ticket Counters/HVAC Improvements; Terminal Renovations/Baggage Claim Expansion Design; Y2K Upgrades; Security Vehicle (1999); Access/Security Road; Snozzle for Crash Vehicle; Air Carrier Apron Repair; and Two (2) 7.5 KV Runway Regulators.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Any Air Taxi/Commercial Operator (ATCO), Certified Air Carriers (CAC) and Certified Route Air Carriers (CRAC) having fewer than 500 annual enplanements.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Huntsville-Madison County Airport Authority.

Dated: Issued in Jackson, Mississippi on March 29, 2000.

David Shumate,

Acting Manager, Jackson, Mississippi Airports District Office, Southern Region.

[FR Doc. 00–8364 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–4

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (FPC) at Nashville International Airport, Nashville, TN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990, (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

DATES: Comments must be received on or before May 5, 2000.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 3385 Airways Blvd., Suite 302, Memphis, TN 38116–3841.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to General William G. Moore, Jr., President of the Metropolitan Nashville Airport Authority at the following address: One Terminal Drive, Suite 501, Nashville, TN 37214–4144.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Metropolitan Nashville Airport Authority under section 158.23 of Part 158.

FOR FURTHER INFORMATION CONTACT: Cynthia K. Wills, Program Manager, Memphis Airports District Office, 3385 Airways Blvd, Suite 302, Memphis, TN 38116–3841, (901) 544–3495 Ext. 16. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Nashville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR Part 158).

On March 30, 2000, the FAA determined that the application to impose and use the revenue from a PFC submitted by Metropolitan Nashville

Airport Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than July 21, 2000.

The following is a brief overview of the application.

PFC Application No.: 00–07–C–00–BNA.

Level of the proposed PFC: $3.00.

Proposed charge effective date: January 1, 2002.

Proposed charge expiration date: March 1, 2002.

Total estimated net PFC revenue: $2,094,000.

Brief description of proposed project(s): Air Cargo Ramp.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Metropolitan Nashville Airport Authority.

Issued in Memphis, Tennessee on March 30, 2000.

LaVerne F. Reid,

Manager, Memphis Airports District Office, Southern Region.

[FR Doc. 00–8363 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance and Notice of Public Hearing

In accordance with Part 211 of Title 49 Code of Federal Regulations (CFR), notice is hereby given that the Federal Railroad Administration (FRA) received a request for a waiver of compliance with certain requirements of its safety standards. The individual petition is described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested, and the petitioner's arguments in favour of relief.

Canadian Pacific Railway

[Docket Number FRA–1999–6139]

The Canadian Pacific Railway (CPR), on behalf of itself and its Delaware and Hudson (D&H) and SOO Line (SOO) subsidiaries, seeks a permanent waiver of compliance with the Locomotive Safety Standards, 49 CFR 229.47(a), which requires each car body type road locomotive be equipped with an emergency brake valve adjacent to each end exit door, that these brake pipe valve locations shall be stencilled as "EMERGENCY BRAKE VALVE" or shall be identified on adjacent badge plate. CPR seeks this waiver for 25 car body locomotives (Electro-Motive Division SD40–F models, R/N CP 9000–9024) utilized to haul freight, that have never been equipped with an emergency brake valve at the rear exit door. CPR states that they do not believe the emergency brake valve at the rear exit of these locomotives would serve a meaningful purpose since the locomotives are equipped with a rear exterior walkway which is used by crew members during reverse movements, enabling them to signal the locomotive engineer if they see a need for a brake application, and putting the crew member in a position where he could not reach the emergency brake valve, even if it was present.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. In addition, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 9 a.m. on Wednesday, April 12, 2000, at DOT Headquarters, located at 400 Seventh Street, SW, Washington, DC, Room 2230. Interested parties are invited to present oral statements at the hearing. This hearing will be held immediately following a hearing being held on another waiver petition filed by CPR (see Docket Number FRA–1999–5894, available for inspection on the Internet at the docket facility's Web site at *http://dms.dot.gov.*)

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversarial proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

All communications concerning these proceedings should identify the appropriate docket number (*e.g.*, Waiver Petition Docket Number FRA–1999–6139) and must be submitted to the DOT Docket Management Facility, Room PL–401 (Plaza Level), 400 Seventh Street SW, Washington, DC., 20590. Communications received within 45 days of the date of this notice will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) at the above facility. All documents in the public docket are also available for inspection and copying on the Internet at the docket facility's Web site at http://dms.dot.gov.

Issued in Washington, DC, on March 29, 2000.

Grady C. Cothen, Jr.,

Deputy Associate Administrator for Safety Standards and Program Development.

[FR Doc. 00–8379 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–06–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–2000–6944 (Notice No. 00–1)]

Information Collection Activities

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, RSPA invites comments on certain information collections pertaining to hazardous materials transportation for which RSPA intends to request approval from the Office of Management and Budget (OMB).

DATES: Interested persons are invited to submit comments on or before June 5, 2000.

ADDRESSES: Submit written comments to the Dockets Management System, U.S. Department of Transportation, 400 Seventh Street, SW, Washington, DC 20590–0001. Comments should identify the Docket Number RSPA–2000–6944 and be submitted in two copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. Comments may also be submitted to the docket electronically by logging onto the Dockets Management System website at *http://dms.dot.gov.* Click on "Help & Information" to obtain instructions for filing the document electronically. In every case, the comment should refer to the Docket number "RSPA–2000–6944".

The Dockets Management System is located on the Plaza Level of the Nassif Building, at the above address. Public dockets may be reviewed at the address above between the hours of 9:00 a.m. to 5:00 p.m., Monday through Friday, excluding Federal holidays. In addition, the Notice and all comments can be reviewed on the Internet by accessing the Hazmat Safety Homepage at "http://hazmat.dot.gov."

Requests for a copy of an information collection should be directed to Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), at the address and telephone number listed below.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe, Office of Hazardous Materials Standards (DHM–10), Research and Special Programs Administration, Room 8422, 400 Seventh Street, SW, Washington, DC 20590–0001, Telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: Section 1320.8(d), Title 5, Code of Federal Regulations requires that RSPA provide interested members of the public and affected agencies an opportunity to comment on information collection and recordkeeping requests. This notice identifies information collections that RSPA is submitting to OMB for extension. The collections are contained in the Hazardous Materials Regulations (HMR; 49 CFR 171–180). RSPA has revised burden estimates, where appropriate, to reflect current reporting levels for adjustments based on changes in proposed or final rules published since the information collections were last approved. The following information is provided for each information collection: (1) Title of the information collection, including former title if a change is being made; (2) OMB control number; (3) summary of the information collection activity; (4) description of affected public; (5) estimate of total annual reporting and recordkeeping burden; and (6) frequency of collection. RSPA will request a three-year term of approval for each information collection activity and, when approved by OMB, publish notice of the approval in the **Federal Register**.

RSPA requests comments on the following information collection requests:

Title: Rail Carriers and Tank Car Tanks Requirements.

OMB Control Number: 2137–0559.

Summary: This information collection consolidates and describes the information collection provisions in parts 172, 173, 174, 179, and 180 of the HMR on the transportation of hazardous materials by rail and the manufacture, qualification, maintenance and use of tank cars. The types of information collected include:

(1) Approvals of the AAR Tank Car Committee: An approval is required from the AAR Tank Car Committee for a tank car to be used for a commodity other than those specified in part 173 and on the certificate of construction. This information is used to ascertain whether a commodity is suitable for transportation in a tank car. AAR approval also is required for an application for approval of designs, materials and construction, conversion or alteration of tank car tanks constructed to a specification in part 179 or an application for construction of tank cars to any new specification. This information is used to ensure that the design, construction or modification of a tank car or the construction of a tank car to a new specification is performed in accordance with the applicable requirements.

(2) Progress reports: Each owner of a tank car that is required to be modified to meet certain requirements specified in § 173.31(b) must submit a progress report to the Federal Railroad Administration (FRA). This information is used by FRA to ensure that all affected tank cars are modified before the regulatory compliance date.

(3) FRA approvals: An approval is required from FRA to transport a bulk packaging (such as a portable tank, IM portable tank, intermediate bulk container, cargo tank, or multi-unit tank car tank) containing a hazardous material in container-on-flat-car or trailer-on-flat-car service other than as authorized by § 174.63. FRA uses this information to ensure that the bulk package is properly secured using an adequate restraint system during transportation. Also an FRA approval is required for the movement of any tank car that does not conform to the applicable requirements in the HMR. RSPA proposed (September 30 1999; 64 FR 53169) to broaden this provision to include the movement of covered hopper cars, gondola cars, and other types of railroad equipment when they no longer conform to Federal law but may safely be moved to a repair location. These latter movements are currently being reported under the information collection for exemption applications.

(4) Manufacturer reports and certificate of construction: These documents are prepared by tank car manufacturers and are used by owners, users and FRA personnel to verify that rail tank cars conform to the applicable specification.

(5) Quality Assurance Program: Facilities that build, repair and ensure the structural integrity of tank cars are required to develop and implement a quality assurance program. This information is used by the facility and DOT compliance personnel to ensure that each tank car is constructed or repaired in accordance with the applicable requirements.

(6) Inspection reports: A written report must be prepared and retained for each tank car that is inspected and tested in accordance with § 180.509 of the HMR. Rail carriers, users, and the FRA use this information to ensure that rail tank cars are properly maintained and in safe condition for transporting hazardous materials.

Affected Public: Manufacturers, owners and rail carriers of tank cars.

Annual Reporting and Recordkeeping: 2,759.

Number of Respondents: 260.

Total Annual Responses: 16,640.

Total Annual Burden Hours: 2,759.

Frequency of Collection: Annually.

Title: Requirements for Cargo Tanks.

OMB Control Number: 2137–0014.

Summary: This information collection consolidates and describes the information collection provisions in parts 178 and 180 of the HMR involving the manufacture, qualification, maintenance and use of all specification cargo tank motor vehicles. Also it includes the information collection and recordkeeping requirements for persons who are engaged in the manufacture, assembly, requalification and maintenance of DOT specification cargo tank motor vehicles. The types of information collected include:

(1) Registration Statements: Cargo tank manufacturers and repairers and cargo tank motor vehicle assemblers are required to be registered with DOT by furnishing information relative to their qualifications to perform the functions in accordance with the HMR. The registration statements are used to identify these persons so that DOT can ensure that they have the knowledge and skills necessary to perform the required functions and that they are performing the specified functions in accordance with the applicable regulations.

(2) Requalification and maintenance reports: These reports are prepared by persons who requalify or maintain cargo tanks. This information is used by cargo tank owners, operators and users, and DOT compliance personnel to verify that the cargo tanks are requalified, maintained and are in proper condition

for the transportation of hazardous materials.

(3) Manufacturers' data reports, certificates and related papers: These reports are prepared by cargo tank manufacturers, certifiers and are used by cargo tank owners, operators, users and DOT compliance personnel to verify that a cargo tank motor vehicle was designed and constructed to meet all requirements of the applicable specification.

Affected Public: Manufacturers, assemblers, repairers, requalifiers, certifiers and owners of cargo tanks.

Annual Reporting and Recordkeeping Burden: 106,262.

Number of Respondents: 41,366.

Total Annual Responses: 132,600.

Total Annual Burden Hours: 106,262.

Frequency of Collection: Periodically.

Title: Rulemaking, Exemption, and Preemption Requirements.

OMB Control Number: 2137–0051.

Summary: This collection of information applies to rulemaking procedures regarding the Hazardous Materials Regulations (HMR). Specific areas covered in this information collection include Part 106, Subpart B, "Procedures for Adoption of Rules," Part 107, subpart B, "Exemptions," Part 107, Subpart C, "Preemption." The Federal hazardous materials transportation law directs the Secretary of Transportation to prescribe regulations for the safe transportation of hazardous materials in commerce. RSPA is authorized to accept petitions for rulemaking and for reconsideration of rulemakings, as well as applications for exemptions, preemption determinations and waivers of preemption. The types of information collected include:

(1) Petitions for Rulemaking: Any person may petition the Associate Administrator for Hazardous Materials Safety to establish, amend, or repeal a substantive regulation, or may petition the Chief Counsel to establish, amend, or repeal a procedural regulation in Parts 106 or 107.

(2) Petitions for Reconsideration: Except as provided in § 106.39(d), any person may petition the Associate Administrator for reconsideration of any regulation issued under Part 106, or may petition the Chief Counsel for reconsideration of any procedural regulation issued under Part 106 and contained in Part 106 or 107.

(3) Application for Exemption: Any person applying for an exemption must include the citation of the specific regulation from which the applicant seeks relief; specification of the proposed mode or modes of transportation; detailed description of the proposed exemption (e.g., alternative packaging, test procedure or activity), including written descriptions, drawings, flow charts, plans and other supporting documents, etc.

(4) Application for Preemption Determination: Any person directly affected by any requirement of a State, political subdivision, or Indian tribe may apply for a determination whether that requirement is preempted under 49 U.S.C. 5125, or regulations issued thereunder. The application must include the text of the State or political subdivision or Indian tribe requirement for which the determination is sought; specify each requirement of the Federal hazardous material transportation law or the regulations issued thereunder with which the applicant seeks the State, political subdivision or Indian tribe requirement to be compared; explanation of why the applicant believes the State or political subdivision or Indian tribe requirement should or should not be preempted under the standards of § 107.202; and how the applicant is affected by the State or political subdivision or Indian tribe requirements.

(5) Waivers of Preemption: With the exception of requirements preempted under 49 U.S.C. 5125(c), any person may apply to the Associate Administrator for a waiver of preemption with respect to any requirement that the State or political subdivision thereof or an Indian tribe acknowledges to be preempted under the Federal hazardous material transportation law or the regulations issued thereunder, or that has been determined by a court of competent jurisdiction to be so preempted. The Associate Administrator may waive preemption with respect to such requirement upon a determination that such requirement affords an equal or greater level of protection to the public than is afforded by the requirement of the Federal hazardous material transportation law or the regulations issued thereunder and does not unreasonably burden commerce.

The information collected under these application procedures is used in the review process by RSPA in determining the merits of the petitions for rulemakings and for reconsideration of rulemakings, as well as applications for exemptions, preemption determinations and waivers of preemption to the HMR. The procedures governing these petitions for rulemaking and for reconsideration of rulemakings are covered in Subpart A of Part 106. Applications for exemptions, preemption determinations and waivers of preemption are covered in Subparts B and C of Part 107. Rulemaking procedures enable RSPA to determine if a rule change is necessary, is consistent with public interest, and maintains a level of safety equal to or superior to that of current regulations. Exemption procedures provide the information required for analytical purposes to determine if the requested relief provides for a comparable level of safety as provided by the HMR. Preemption procedures provide information for RSPA to determine whether a requirement of a State, political subdivision, or Indian tribe is preempted under 49 U.S.C. 5125, or regulations issued thereunder, or whether a waiver of preemption should be issued.

Affected Public: Shippers, carriers, packaging manufacturers, and other affected entities.

Total Reporting and Recordkeeping Burden: 4,219.

Number of Respondents: 3,304.

Total Annual Responses: 4,294.

Total Annual Burden Hours: 4,219.

Frequency of Collection: Periodically.

Title: Approvals for Hazardous Materials.

OMB No.: 2137–0557.

Summary: This information collection consolidates and describes the information collection provisions in parts 107, 172, 173, 174, 176, and 178 regarding requirements for approvals for hazardous materials in the HMR. Responses to these information collection requirements are required to obtain benefits, such as to become an approval or certification agency or to obtain a variance from packaging or handling requirements based on information provided by the respondent. The types of information collected include: applications to become designated approval agencies, independent cylinder testing agencies, and foreign manufacturers of cylinders; applications for approval of classifications of new explosives; applications for safety determinations to the adequacy of old packagings for materials with special hazards; applications to allow the regulated public to use alternative packagings or test methods; etc.

The information collected is used to:

(1) determine whether applicants who apply to become designated approval agencies are qualified to evaluate package design, test packages, classify hazardous materials, etc.;

(2) verify that various containers and special loading requirements for vessels meet the requirements of the HMR;

(3) assure that regulated hazardous materials pose no danger to life and property during transportation; and

(4) allow minor variations to regulatory requirements (as specifically authorized by regulation), based on information provided by respondents, without requiring the respondent to apply using less timely and more burdensome exemption procedures.

Affected Public: Businesses and other entities who must meet the approval requirements in the HMR.

Annual Reporting and Recordkeeping: 18,381.

Total Respondents: 3,518.

Total Annual Responses: 3,869.

Total Annual Burden Hours: 18,381.

Frequency of Collection: On occasion.

Issued in Washington, DC on March 30, 2000.

Edward T. Mazzullo,

Director, Office of Hazardous Materials Standards.

[FR Doc. 00–8325 Filed 4–4–00; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 33854]

Meridian Southern Railway, LLC—Acquisition and Operation Exemption—Line of Kansas City Southern Railway Company

Meridian Southern Railway, LLC (MDS), a noncarrier, has filed a verified notice of exemption under 49 CFR 1150.31 to acquire (by purchase) Kansas City Southern Railway Company's ownership interest in, and to operate, approximately 54.5 miles of rail line between approximately milepost 134.2 at Meridian, MS, and approximately milepost 79.7 at Waynesboro, MS, in Clarke, Lauderdale and Wayne Counties, MS.[1]

The transaction is expected to be consummated on or after March 31, 2000, the effective date of the exemption (7 days after the exemption was filed).

[1] MDS certifies that its projected revenues as a result of this transaction will not result in the creation of a Class I or Class II rail carrier.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 33854, must be filed with the Surface Transportation Board, Office of the Secretary, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, one copy of each pleading must be served on Kevin M. Sheys, Oppenheimer Wolff Donnelly & Bayh LLP, 1350 Eye Street, NW., Suite 200, Washington, DC 20005.

Board decisions and notices are available on our website at "WWW.STB.DOT.GOV."

Decided: March 29, 2000.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 00–8237 Filed 4–4–00; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to 5 U.S.C. App. § 10(a)(2), that a meeting will be held at the U.S. Treasury Department, 15th and Pennsylvania Avenue, NW., Washington, DC, on May 2, 2000, of the following debt management advisory committee:

The Bond Market Association Treasury Borrowing Advisory Committee.

The agenda for the meeting provides for a technical background briefing by Treasury staff, followed by a charge by the Secretary of the Treasury or his designate that the committee discuss particular issues, and a working session. Following the working session, the committee will present a written report of its recommendations.

The background briefing by Treasury staff will be held at 9:00 a.m. Eastern time and will be open to the public. The remaining sessions and the committee's reporting session will be closed to the public, pursuant to 5 U.S.C. App. 10(d).

This notice shall constitute my determination, pursuant to the authority placed in heads of departments by 5 U.S.C. App. 10(d) and vested in me by Treasury Department Order No. 101–05, that the closed portions of the meeting are concerned with information that is exempt from disclosure under 5 U.S.C. 552b(c)(9)(A). The public interest requires that such meetings be closed to the public because the Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community. When so utilized, such a committee is recognized to be an advisory committee under 5 U.S.C. App. 3.

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of the advisory committee, premature disclosure of the committee's deliberations and reports would be likely to lead to significant financial speculation in the securities market. Thus, these meetings fall within the exemption covered by 5 U.S.C. 552b(c)(9)(A).

The Office of Financial Markets is responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of 5 U.S.C. 552b.

Dated: March 29, 2000.

Lee Sachs,

Assistant Secretary, Financial Markets.

[FR Doc. 00–8305 Filed 4–4–00; 8:45 am]

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Federal Register

Wednesday,
April 5, 2000

Part II

Department of Commerce

Patent and Tradmark Office

37 CFR Parts 1 and 5
Changes To Implement Eighteen-Month Publication of Patent Applications; Proposed Rule

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Parts 1 and 5

[Docket No.: 000308065–0065–01]

RIN 0651–AB05

Changes To Implement Eighteen-Month Publication of Patent Applications

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (Office) is proposing changes to the rules of practice in patent cases to implement certain provisions of the "American Inventors Protection Act of 1999." These provisions of the "American Inventors Protection Act of 1999" provide, with certain exceptions, for the publication of pending patent applications (other than for a design patent) at eighteen months from the earliest claimed priority date.

DATES: *Comment Deadline Date:* To be ensured of consideration, written comments must be received on or before May 22, 2000. No public hearing will be held.

ADDRESSES: Comments should be sent by electronic mail message via the Internet addressed to pregrantpub.comments@uspto.gov. Comments may also be submitted by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr. Although comments may be submitted by mail or facsimile, the Office prefers to receive comments via the Internet. If comments are submitted by mail, the Office would prefer that the comments be submitted on a DOS formatted 3½ inch disk accompanied by a paper copy.

The comments will be available for public inspection at the Special Program Law Office, Office of the Deputy Assistant Commissioner for Patent Policy and Projects, located at Room 3–C23 of Crystal Plaza 4, 2201 South Clark Place, Arlington, Virginia, and will be available through anonymous file transfer protocol (ftp) via the Internet (address: http://www.uspto.gov). Since comments will be made available for public inspection, information that is not desired to be made public, such as an address or phone number, should not be included in the comments.

FOR FURTHER INFORMATION CONTACT: *Concerning this notice of proposed rulemaking:* Robert W. Bahr, Karin L. Tyson, or Robert A. Clarke by telephone at (703) 308–6906, or by mail addressed to: Box Comments—Patents, Assistant Commissioner for Patents, Washington, D.C. 20231, or by facsimile to (703) 872–9411, marked to the attention of Robert W. Bahr.

Concerning the electronic filing system (EFS): Jay Lucas or Michael Lewis by electronic mail message via the Internet addressed to jay.lucas@uspto.gov.

SUPPLEMENTARY INFORMATION: The "American Inventors Protection Act of 1999" (Title IV of the "Intellectual Property and Communications Omnibus Reform Act of 1999" (S. 1948) as introduced in the 106th Congress on November 17, 1999) was incorporated and enacted into law on November 29, 1999, by § 1000(a)(9), Division B, of Public Law 106–113, 113 Stat. 1501 (1999). The "American Inventors Protection Act of 1999" contains a number of changes to title 35, United States Code. This notice proposes changes to the rules of practice to implement the provisions of §§ 4501 through 4508 (Subtitle E, Domestic Publication of Patent Applications Published Abroad) of the "American Inventors Protection Act of 1999." These provisions of the "American Inventors Protection Act of 1999" provide that, with certain exceptions, applications for patent shall be published promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code ("eighteen-month publication").

Section 4502 of the "American Inventors Protection Act of 1999" amends 35 U.S.C. 122 (35 U.S.C. 122(b)) to provide that applications for patent shall be published promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code, and that an application may be published earlier than the end of such eighteen-month period at the request of the applicant. Section 4502 of the "American Inventors Protection Act of 1999" (35 U.S.C. 122(b)) also contains a number of exceptions to eighteen-month publication of patent applications.

First: An application shall not be published if it is: (1) no longer pending; (2) subject to a secrecy order under 35 U.S.C. 181 or an application for which publication or disclosure would be detrimental to national security; (3) a provisional application under 35 U.S.C. 111(b); or (4) an application for a design patent under 35 U.S.C. chapter 16. *See* 35 U.S.C. 122(b)(2)(A) and (d).

Second: An application shall not be published if an applicant makes a request upon filing, certifying that the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires eighteen-month publication. An applicant may rescind such a request at any time. In addition, an applicant who has made such a request but who subsequently files an application directed to the invention disclosed in the application filed in the Office in a foreign country, or under a multilateral international agreement, that requires eighteen-month publication, must notify the Office of such filing within forty-five days after the date of the filing of such foreign or international application. An applicant's failure to timely provide such a notice to the Office will result in abandonment of the application (subject to revival if it is shown that the delay in submitting the notice was unintentional). If an applicant rescinds such a request or notifies the Office that an application was filed in a foreign country or under a multilateral international agreement that requires eighteen-month publication, the application is subject to eighteen-month publication. *See* 35 U.S.C. 122(b)(2)(B)(i)–(iv).

Third: If an applicant has filed applications in one or more foreign countries, directly or through a multilateral international agreement, and such foreign-filed applications or the description of the invention in such foreign-filed applications is less extensive than the application or description of the invention in the application filed in the Office, the applicant may submit a redacted copy of the application filed in the Office eliminating any part or description of the invention in such application that is not also contained in any of the corresponding applications filed in a foreign country. The Office may only publish the redacted copy of the application unless the redacted copy of the application is not received within sixteen months after the earliest filing date for which a benefit is sought under title 35, United States Code. *See* 35 U.S.C. 122(b)(2)(B)(v).

Section 4503(a) of the "American Inventors Protection Act of 1999" amends 35 U.S.C. 119(b) to provide that no application for patent shall be entitled to a right of priority under 35 U.S.C. 119(a)–(d) unless a claim is filed in the Office, identifying the foreign application by specifying the application number of that foreign application, the intellectual property

authority or country in or for which the application was filed, and the date of filing the application, at such time during the pendency of the application as required by the Director. Section 4503(a) of the "American Inventors Protection Act of 1999" also amends 35 U.S.C. 119(b) to provide that the Director may consider the failure of the applicant to file a timely claim for priority as a waiver of any such claim, and may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed claim under 35 U.S.C. 119(b)–(d). Section 4503(a) of the "American Inventors Protection Act of 1999" also amends 35 U.S.C. 119(b) to authorize the Director to determine whether to require a certified copy of the original foreign application.

Section 4503(b)(1) of the "American Inventors Protection Act of 1999" amends 35 U.S.C. 120 to provide that no application shall be entitled to the benefit of an earlier filed application under 35 U.S.C. 120 unless an amendment containing the specific reference to the earlier filed application is submitted at such time during the pendency of the application as required by the Director. Section 4503(b)(1) of the "American Inventors Protection Act of 1999" also amends 35 U.S.C. 120 to provide that the Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under 35 U.S.C. 120, and may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under 35 U.S.C. 120.

Section 4503(b)(2) of the "American Inventors Protection Act of 1999" amends 35 U.S.C. 119(e) to provide that no application shall be entitled to the benefit of an earlier filed provisional application under 35 U.S.C. 119(e) unless an amendment containing the specific reference to the earlier filed provisional application is submitted at such time during the pendency of the application as required by the Director. Section 4503(b)(2) of the "American Inventors Protection Act of 1999" also amends 35 U.S.C. 119(e) to provide that the Director may consider the failure to submit such an amendment within that time period as a waiver of any benefit under 35 U.S.C. 119(e), and the Director may establish procedures, including the payment of a surcharge, to accept an unintentionally delayed submission of an amendment under 35 U.S.C. 119(e) during the pendency of the application.

Case law has indicated that, in certain instances, priority claims may be perfected after issuance. The U.S. Court of Appeals for the District of Columbia has held that the equitable or remedial provisions of 35 U.S.C. 251 authorize patentees to correct or perfect a claim for priority under 35 U.S.C. 119 in an issued patent by reissue. *See Brenner* v. *State of Israel*, 400 F.2d 789, 158 USPQ 584 (D.C. Cir. 1968). The U.S. District Court for the District of Columbia applied this rationale to permit a patentee to amend an intermediate abandoned application in a chain of applications for which a benefit was claimed under 35 U.S.C. 120 to include the specific reference required by 35 U.S.C. 120. *See Sampson* v. *Commissioner*, 195 USPQ 136 (D.D.C. 1976). In appropriate circumstances, the Office has permitted patentees to state claims under 35 U.S.C. 119, 120 or 121 in an issued patent by certificate of correction under 35 U.S.C. 255 and § 1.323. *See In re Schuurs*, 218 USPQ 443 (Comm'r Pat. 1983); *In re Lambrech*, 202 USPQ 620 (Comm'r Pat. 1976); *In re Van Esdonk*, 187 USPQ 671 (Comm'r Pat. 1975).

The amendments to 35 U.S.C. 119 and 120 provide that the Director may consider the failure of the applicant to file a timely claim under 35 U.S.C. 119 or 120 as a waiver of any such claim. Sections 1.55 and 1.78 as proposed implement these amendments to 35 U.S.C. 119 and 120 by specifying time periods during the pendency of the application within which claims under 35 U.S.C. 119(a)–(d), 119(e), and 120 must be stated (or are considered waived). 35 U.S.C. 119(b), 119(e), and 120 each provide that the Director may establish procedures to accept an unintentionally delayed submission of a claim under 35 U.S.C. 119(b), 119(e), or 120 (respectively); however, 35 U.S.C. 119(e) requires that such unintentionally delayed claim (amendment) be submitted during the pendency of the application. Thus, a claim under 35 U.S.C. 119(a)–(d) or 120 for the benefit of a prior application may be added (or corrected) in an issued patent by reissue or certificate of correction (assuming the conditions for reissue or certificate of correction are otherwise met) by submitting such untimely claim under the procedures established in § 1.55 or § 1.78 (including payment of any applicable surcharge). A claim under 35 U.S.C. 119(e) for the benefit of a prior provisional application, however, must be added or corrected during the pendency of the application.

Section 4504 of the "American Inventors Protection Act of 1999" amends 35 U.S.C. 154 to provide that, subject to a number of conditions, a patent includes the right to obtain a reasonable royalty during the period beginning on the date of publication of the application for such patent under 35 U.S.C. 122(b) (or the date of publication under Patent Cooperation Treaty (PCT) Article 21(2) of an international application designating the United States) and ending on the date the patent is issued ("provisional rights").

Section 4505 of the "American Inventors Protection Act of 1999" amends 35 U.S.C. 102(e) to, *inter alia*, set forth the conditions under which an application published under 35 U.S.C. 122(b) or under PCT Article 21(2) is prior art as of its filing date.

Section 4506 of the "American Inventors Protection Act of 1999" provides that the Office shall recover the cost of early publication required by 35 U.S.C. 122(b) by charging a separate publication fee after a notice of allowance is given under 35 U.S.C. 151.

Section 4508 of the "American Inventors Protection Act of 1999" provides that its eighteen-month publication provisions take effect on November 29, 2000, and apply to applications (other than for a design patent) filed under 35 U.S.C. 111(a) on or after November 29, 2000, and to applications in compliance with 35 U.S.C. 371 that resulted from international applications filed under 35 U.S.C. 363 on or after November 29, 2000.

In August of 1995, the Office published a notice of proposed rulemaking to implement legislation pending before the 104th Congress that (if enacted) would have provided for the eighteen-month publication of pending patent applications. *See Changes to Implement 18-Month Publication of Patent Applications*, Notice of Proposed Rulemaking, 60 FR 42352 (August 15, 1995), 1177 *Off. Gaz. Pat. Office* 61 (August 15, 1995). The Office is now publishing a notice of proposed rulemaking, rather than simply adopting changes based upon the notice of proposed rulemaking published in 1995, because: (1) The eighteen-month publication provisions of the "American Inventors Protection Act of 1999" are different from those pending before the 104th Congress; and (2) the Office's planning approach to implementing eighteen-month publication is different from its 1995 planning approach. The Office's current planning approach to eighteen-month publication includes: (1) Disseminating a publication document (patent application publication) for each published application; and (2) providing (under conditions set forth below) any member of the public with access to the file wrapper and contents of each published application (which may be limited to a

copy of the file wrapper and contents of the application).

Patent application publication: The patent application publication will include a front page containing information similar to that contained on the front page of a patent, and the drawings (if any) and specification (including claims) of the published application. To create the patent application publication, the Office plans to use its Patent Application Capture and Review (PACR) system to create an electronic database (PACR database) containing: (1) The application papers and drawings deposited on the filing date of the application; and (2) any subsequently filed application papers and drawings needed to create the patent application publication. The application information contained in the Office's PACR database will be used to create the patent application publication, unless the applicant provides a copy of the application via the Office's electronic filing system (EFS) to be used to create the patent application publication (discussed below).

The Office currently uses the PACR database as the Office's record of the application papers submitted on the filing date of the application (*i.e.*, the original disclosure of the invention). The application papers submitted on the filing date of the application, however, may not include the content needed (*e.g.*, an abstract), and the application papers or drawings may not be of sufficient quality (*e.g.*, papers not having sufficient contrast to permit electronic capture by digital imaging and conversion to text by optical character recognition or drawings not having sufficient quality) to be used, to create a patent application publication. Since the patent application publication will be a prior art document (and, in most cases, the prior art document having the earliest effective date under 35 U.S.C. 102(a), (b), and (e)), the Office must consider the usability of the patent application publication as a prior art document when determining what drawing quality is needed to create the patent application publication.

If the application papers submitted on the filing date of the application do not include the content needed, or the application papers or drawings are not of sufficient quality to be used, to create a patent application publication, the Office of Initial Patent Examination (OIPE) will issue a notice requiring that the applicant submit the needed application content, or application papers or drawings of sufficient quality, for use in creating a patent application publication. The applicant's reply to that notice (application papers and drawings needed to create the patent application publication) will then be added to the PACR database. The Office must separate the application papers and drawings deposited on the filing date of the application and the subsequently filed application papers and drawings in its PACR database because the PACR database is also used to create any requested certified copy of the application (which may only include the application papers and drawings deposited on the filing date of the application).

Initially, an application filed under 35 U.S.C. 111(a) (nonprovisional) must be entitled to a filing date (*i.e.*, contains a written description of the invention, a drawing (if necessary for an understanding of the invention), and at least one claim) for the application to be in condition for publication. In addition, if an application filed under 35 U.S.C. 111(a) otherwise entitled to a filing date appears to omit a portion of the description or a drawing figure, the omitted portion of the description or drawing figure(s) must be supplied, or the period for supplying such portion of the description or drawing figure(s) must have expired, for the application to be in condition for publication. The requirements for an application filed under 35 U.S.C. 111(a) to be entitled to a filing date and the treatment of an application filed under 35 U.S.C. 111(a) that appears to omit a portion of the description or a drawing figure is set forth in sections 601.01(d) through 601.01(g) of the *Manual of Patent Examining Procedure* (7th ed. 1998) (MPEP).

In addition, an application filed under 35 U.S.C. 111(a) must include an executed oath or declaration (§ 1.63), an abstract (§ 1.72(b)), and an English translation (if filed in a language other than English), for the application to have the content necessary to create the patent application publication. For eighteen-month publication purposes, the oath or declaration must at a minimum: (1) Name each inventor at least by a family and given name; and (2) be signed by each inventor or a party qualified to sign under §§ 1.42, 1.43, or 1.47 in compliance with § 1.64. Finally, an application filed under 35 U.S.C. 111(a) will not be published until the basic filing fee (§ 1.16(a) or (g)) is paid.

A PCT international application must satisfy the requirements of 35 U.S.C. 371 to be subject to eighteen-month publication under 35 U.S.C. 122(b) (and to have the content necessary to create the patent application publication).

Even if an application has the content necessary to create the patent application publication, the application papers and drawings must also be reviewed to determine whether they are of sufficient quality to be used in creating the patent application publication. To be of sufficient quality to create the patent application publication, the specification must be on sheets of paper that: (1) Are flexible, strong, smooth, non-shiny, durable, and white; (2) are either A4 (21 cm x 29.7 cm) or 8½″ x 11″ with each sheet having a left margin of at least 2.5 cm (1″) and top, bottom and right margins of at least 2.0 cm (¾″); (3) are written on one side only in portrait orientation; (4) are plainly and legibly written either by a typewriter or machine printer in permanent dark ink or its equivalent; (5) have lines that are either 1½ or double-spaced; and (6) have sufficient clarity and contrast between the paper and the writing on the paper to permit direct reproduction and electronic capture by digital imaging and optical character recognition. These quality standards and requirements are currently set forth in § 1.52(a) and (b). In addition, the title must meet the character type and length requirements of § 1.72(a); the abstract must commence on a separate sheet and meet the word-length requirement of § 1.72(b); the claims must commence on a separate sheet; and the sequence listing (if applicable) must comply with §§ 1.821 through 1.825.

As discussed above, the Office must consider not only whether drawings are of sufficient quality to create a publication (the patent application publication), but whether they are sufficient for the publication to be routinely used as a prior art document. Thus, the drawing sheets (if drawings are included) must comply with the following requirements of § 1.84. Drawings must be done in dark ink (not pencil), except where color drawings or photographs are permitted. Photographs (or photomicrographs) are not permitted unless they are reproducible and the invention cannot be clearly illustrated in an ink drawing. *See Interim Waiver of 37 C.F.R. § 1.84(b)(1) for Petitions to Accept Black and White Photographs and Advance Notice of Change to M.P.E.P. § 608.02*, Notice, 1213 *Off. Gaz. Pat. Office* 108 (August 4, 1998). Drawing sheets must be reasonably free from erasures and must be free from alterations, overwritings, interlineations, folds, and copy marks. Drawing sheets must be either 21.0 cm by 29.7 cm (DIN size A4) or 21.6 cm by 27.9 cm (8½ by 11 inches). Each drawing sheet must include a top margin of at least 2.5 cm (1 inch), a left side margin of at least 2.5 cm (1 inch), a right side margin of at least 1.5 cm (⅝ inch), and a bottom margin of at least 1.0 cm (⅜ inch). Lines, numbers, and letters must be clean, dark (not of poor line quality), uniformly thick, and well defined. The English alphabet must be used for letters, except where another alphabet is customarily used (such as the Greek alphabet to indicate angles, wavelengths, and mathematical formulas). Numbers, letters, and reference characters must measure at least 0.32 cm (⅛ inch) in height. Lead lines are required for each reference character (except for those which indicate the surface or cross section on which they are placed, in which case the reference character must be underlined to make it clear that a lead line has not been left out by mistake). Finally, drawing views must be numbered in consecutive Arabic numerals, starting with 1.

In September of 1996, the Office revised the standard and format requirements for the specification (including the abstract and claims), drawings, and other application papers set forth in § 1.52 and § 1.84 for the purpose of obtaining initial application papers in condition for eighteen-month publication. *See Miscellaneous Changes in Patent Practice*, Final Rule Notice, 61 FR 42790 (August 19, 1996), 1190 *Off. Gaz. Pat. Office* 67 (September 17, 1996). Applicants are advised that the Office will: (1) Begin more rigorous enforcement of the provisions of § 1.52(a) and (b) and § 1.84; and (2) no longer permit applicants to request that objections under § 1.84 be held in abeyance pending allowance of the application.

As discussed below, if applicant timely provides the Office with a copy of the application via the Patent and Trademark Office electronic filing system, the Office will use the electronic copy provided by the applicant (rather than the PACR database records) to create the patent application publication. Applicants may use this procedure to obtain inclusion of amendments submitted during prosecution in the patent application publication. Applicants must use this procedure when requesting: (1) Voluntary publication of an application; (2) republication of a previously published application; or (3) publication of only a redacted copy of an application.

The electronic filing system (EFS) is an electronic system for the submission of patent applications to the Office. The EFS encompasses the preparation of the application parts in a special manner on the applicant's computer (authoring), the assembling of the pieces of the application so authored, and the secure communication of that application to the Office.

The EFS is currently in place as a pilot program for use by a limited number of applicants, who on a voluntary basis, file applications under the EFS program. The same EFS software must be used by applicants who wish to submit a copy of the application for the patent application publication.

The steps for submission of an electronic version of a patent application are as follows: (1) Obtaining a digital certificate; (2) obtaining the authoring and the submission software packages from the Office; (3) authoring the patent application; and (4) assembling the parts of the application, and validating, digitally signing, and submitting the application.

To file a copy of an application using the EFS, an applicant (or representative) must submit a request and receive an Office digital certificate to enable secure communication between the applicant and the Office. A digital certificate will allow the authorized person to conduct electronic filing, as well as have access to the Office's Patent Application Information Retrieval (PAIR) software to display patent application status information.

The digital certificate is given to individuals and firms that obtain a customer number, and also request the digital certificate. Instructions on how to obtain the necessary digital certificate are located at the Office's Electronic Business Center on the Office's Internet Web site (http://www.uspto.gov) (under the section Electronic Business Center, select New User for the PAIR system).

The Office makes its branded version of the security software product called Entrust Direct software available to authorized persons. The software operates in conjunction with an Office Public Key Infrastructure (PKI) that is secure and enables communication only between authorized persons who are registered with the Office and the Office.

A person signing up for EFS application filing receives a package with his or her digital certificate including: (1) The software that will attach a digital signature to a document or set of documents; (2) an authoring tool that will allow the applicant to convert a standard patent application into a specialized format; and (3) the electronic Packaging and Validation Engine (ePave) program that will assemble the parts of the application, validate that the parts are complete, encrypt and digitally sign them, and then send them to the Office.

The applicant is responsible for correctly authoring the electronic application, which is defined as reformatting the application into a form that complies with the requirements of XML (the standard eXtensible Markup Language of Internet authoring). The XML requires that all the pieces of information in the application (e.g., the inventor's name, title of the invention, the claims) are tagged with standard XML named tags before and after each piece of information. For example, XML could require that the title be tagged:

MAKING A WIDGIT

The tagged information, in turn, is ordered and positioned on the submitted document according to the formula for that document in the document type definition (DTD). The DTD contains a list of all the tagged data elements (pieces of information) that should be on that document, and the relative positioning of the elements. When combined with the document's style sheet (which contains formatting information), the DTD will completely define what the document should contain and, when printed or viewed, what it will look like.

The applicant does the authoring using the software authoring tool given to him or her by the Office and operating on the applicant's computer. The authoring tool displays on the left of the applicant's computer screen a list of all of the data elements that should be in a patent application (according to the Office's DTD). The applicant clicks each element in the list, and when a window opens, types the information requested into the window. For example, the applicant clicks the data element "TITLE" and types "MAKING A WIDGIT" when the window opens. The authoring tool will add the tags, paragraph numbers, and other elements that are required by XML. The applicant can continue through this whole process adding the required information to each of the data elements until the application is fully authored.

The applicant can also use the authoring tool to "cut and paste" a fully written application into the proper format. In this mode, the applicant will open up that written application, and also open up the authoring tool to reveal all of the data elements. When the applicant clicks the data element to reveal the data entry window, the applicant will copy the relevant section from the previously written application and paste that section into the window (for tagging by the authoring tool).

Paper copies of the oath or declaration (§ 1.63), drawings, and certain other documents are scanned on the applicant's digital scanner and stored in tagged image file format (TIFF). The TIFF is not tagged by the authoring tool, but is similar to an electronic photograph.

Using either mode, the applicant will produce a copy of the application in compliance with the Office EFS, including a specification and claims (in XML), an oath or declaration (in TIFF), and drawings (also in TIFF).

Once the various parts of the application are prepared, the applicant will use the software tool ePave to assemble those parts and submit the application to the Office. The ePave software interacts with the applicant to fill out an electronic transmittal and fee information letter. This document is developed in the tagged XML format. The applicant then uses the ePave software to associate these documents with the previously produced application.

This association of the related files to be submitted is called bundling. The bundle of files that will be sent to the Office will be compressed using Zip technology to reduce their size. Then ePave will apply the digital signature to the compressed bundle, to both indicate who is sending the package to the Office and to check the file's integrity. The digital signature process also encrypts the bundle, for safety during transmission.

Obviously, fees submitted via EFS must be by an authorization to charge the fee to a credit card or Office deposit account. Therefore, any publication fee or processing fee required for a copy of an application submitted via EFS for use in the patent application publication must be by an authorization to charge the fee to a credit card or Office deposit account.

The authoring tool and ePave software on the applicant's computer perform all of this activity almost invisibly. The applicant must enter a password to apply the digital signature, and the software will finish processing the application for submission to the Office. During the processing of a copy of an application for submission to the Office for use in a patent application publication, the applicant will be advised that the application of a digital signature constitutes a statement that the EFS copy of the application contains no new matter, and, except for a redacted copy of an application (which requires the concurrent submission of other certifications on paper), that the EFS copy of the application corresponds to the application as amended by any amendment filed in the application. When processing is finished, the software will ask the applicant if the list of displayed files should be sent to the Office. The applicant will click or otherwise express his or her concurrence, and the EFS application files are electronically transmitted to the Office.

On receipt of the bundle of files comprising the application, the Office stores the bundle and takes it apart. The bundle is decrypted, the digital signature is checked, and the integrity of the package is confirmed. In the course of events, the Office sends an acknowledgment back to the applicant's computer listing the date and time of submission, the names and sizes of the files received, and other information to confirm the submission.

If a copy of an application being submitted to the Office for eighteen-month publication purposes contains a sequence listing, and the sequence listing is identical to a sequence listing previously submitted to the Office (*e.g.*, the sequence listing is not amended or redacted) in compliance with §§ 1.821 through 1.825, the EFS copy of the application may contain a reference to the previously filed sequence listing in lieu of a copy of the previously filed sequence listing.

Finally, EFS is currently a pilot program. The Office anticipates that EFS will be capable of receiving copies of applications for eighteen-month publication purposes on a routine basis by November 29, 2000. In the event that EFS is not capable of receiving copies of applications for eighteen-month publication purposes on a routine basis by November 29, 2000, the Office will provide for submission by paper of copies of applications for applicants requesting: (1) A patent application publication reflecting amendments to the application; (2) voluntary publication of an application; (3) republication of a previously published application; or (4) publication of only a redacted copy of an application.

Publication process: The current planning approach involves a fourteen-week publication cycle that results in the publication of patent application publications on Thursday of each week. Ideally, the publication date of an application will be the first Thursday after the date that is eighteen months after the filing date of the application, or if the application claims the benefit of an earlier filing date, the first Thursday after the date that is eighteen months after the earliest filing date for which a benefit is sought. An application, however, may not be published the first Thursday after the date that is eighteen months after the earliest filing date for which a benefit is sought if the application is not in condition for publication approximately fourteen months after the earliest filing date for which a benefit is sought (eighteen months less the fourteen-week publication cycle).

Obviously, there are events that will delay publication of some applications until a later date: *e.g.*, (1) the application claims the benefit under 35 U.S.C. 120 of an application filed more than eighteen months before the actual filing date of the application; (2) the basic filing fee or oath (or declaration) is not provided within eighteen months after the earliest filing date for which a benefit is sought; or (3) the application does not contain papers or drawings of publication quality within eighteen months after the earliest filing date for which a benefit is sought. In such situations, the publication date of an application will be the first Thursday after the date that is fourteen weeks after the application is in condition for publication. Applicants who attempt to delay publication by intentionally delaying the submission of the application content necessary for publication, however, will encounter a reduction (under regulations established pursuant to 35 U.S.C. 154(b)(2)(C)(iii)) in any patent term adjustment under 35 U.S.C. 154(b).

The Office plans to indicate a projected publication date on the filing receipt or indicate "to be determined" if the application is not in condition for publication. If events change the projected publication date by more than two weeks (*e.g.*, claim for priority under 35 U.S.C. 119(e) presented after mailing of the filing receipt) or the application content necessary for publication is provided, the Office will issue a change notification indicating the revised projected publication date.

The publication process involves producing weekly volumes of patent application publications on a variety of media: *e.g.*, the Office's Examiner Automated Search Tool (EAST) and Web-based Examiner Search Tool (WEST) search systems, optical disk products for sale to the public, and exchange with the Office's Intellectual Property exchange partners. Patent application publications will be available for viewing by the public in the Public Search Room via an on-line search system. The Office does not plan to provide paper copies of the patent application publications for placement in either the Public Search Room or the examiners' search rooms. The Office, however, will provide paper copies of the patent application publications to any member of the public on request (for a fee) in the manner that paper copies of patents are currently provided.

The publication process provides for: (1) Assembly of application bibliographic information for the patent application publication at fourteen weeks prior to the projected publication date; (2) assembly of the technical content (specification, including claims and abstract, and drawings) of the application for the patent application publication at nine weeks prior to the projected publication date; and (3) placing the application information as assembled into the patent application publication on publication media (*e.g.*, optical disks, magnetic tape) at four weeks prior to the projected publication date.

Any applicant seeking to abandon the application for the purpose of avoiding publication must take appropriate action (see § 1.138 discussed below) well prior to the projected publication date. If the application is not expressly abandoned at least four weeks prior to the projected publication date, the Office will probably not be able to avoid publication of the application or at least some application information because the Office will place the application (along with the thousands of other applications being published each week) on publication media (*e.g.*, optical disks, magnetic tape) four weeks prior to the projected date. This does not imply that a request to expressly abandon an application to avoid publication (§ 1.138) filed prior to this "four-week" time frame will ensure that the Office will be able to remove an application from publication. The Office simply cannot ensure that it can remove an application from publication or avoid publication of application information any time after the publication process for the application is initiated.

Access to the file wrapper and contents of a published application: The Office plans to permit: (1) Any member of the public to obtain (for a fee) a copy of the complete file wrapper and contents of, or a copy of a specific paper in, any published application, provided that no redacted copy was timely submitted for publication; (2) any member of the public to obtain (for a fee) an appropriately redacted copy of the file wrapper and contents of, or a copy of a specific paper in, any published application for which a redacted copy was timely submitted for publication; and (3) any member of the public to physically inspect (under the conditions that inspection of patented files is permitted) the file of any abandoned published application, provided that no redacted copy was timely submitted for publication.

Any member of the public may obtain status information concerning any published application via the Office's PAIR system. Permitting physical inspection of pending published applications, however, would interfere with the Office's ability to act on the applications within the time frames set forth in 35 U.S.C. 154(b)(1)(A) and (B). Thus, the Office must limit public access to the file wrapper of pending published applications to obtaining a copy produced by the Office (for a fee) to avoid conferring patent term adjustment on the applicant due to actions by members of the public.

Section 4805 of the "American Inventors Protection Act of 1999" provides that the Comptroller General (in consultation with the Office) shall conduct a study and submit a report to Congress on the potential risks to the United States biotechnology industry relating to biological deposits in support of biotechnology patents, and that the Office shall consider the recommendations of such study in drafting regulations affecting biological deposits (including any modification of § 1.801 *et seq.*). Therefore, this notice does not contain any proposed amendment to § 1.801 *et seq.* concerning the treatment of biological deposits in applications subject to eighteen-month publication.

The term "Commissioner" wherever it is present in the rules of practice affected by this notice is proposed to be changed to "Director" for consistency with § 4732 of the "American Inventors Protection Act of 1999." The provisions of the rules of practice not involved in this notice will be revised for consistency with § 4732 of the "American Inventors Protection Act of 1999" in due course.

Finally, the Office proposed a number of changes to the rules of practice in a rulemaking to support the Patent Business Goals. *See Changes to Implement the Patent Business Goals*, Notice of Proposed Rulemaking, 64 FR 53772 (October 4, 1999), 1228 *Off. Gaz. Pat. Office* 15 (November 2, 1999). The Office indicated in the Patent Business Goals Notice of Proposed Rulemaking that it would have to reconsider its business processes and make such further changes to the rules of practice as are necessary in the event of enactment of patent legislation. *See Id.* Sections 1.9, 1.14, 1.17, 1.55, 1.72, 1.78, 1.89, 1.131, 1.132, 1.137, 1.138, 1.311, and 5.1 as proposed to be amended in this notice also reflect changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Discussion of Specific Rules

Title 37 of the Code of Federal Regulations, Parts 1 and 5, are proposed to be amended as follows:

Section 1.9: Section 1.9(c) is proposed to be amended to define a published application as used in 37 CFR chapter I to mean an application for patent which has been published under 35 U.S.C. 122(b).

Section 1.9 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.11: Section 1.11(a) is proposed to be amended to include the file of an abandoned published application (except if a redacted copy of the application was used for the patent application publication) among the files that are open to inspection by the public.

Section 1.12: Section 1.12(a)(1) is proposed to be amended to include the assignment records of a published patent application among the patent assignment records that are available to the public. Section 1.12(b) is proposed to be amended to provide the patent assignment records, digests, and indexes that are available to the public unless they relate to pending or abandoned patent applications that have not been published under 35 U.S.C. 122(b).

Section 1.13: Section 1.13 is proposed to be amended to include patent application publications among the records of the United States Patent and Trademark Office that are open to the public, and of which a copy (certified or uncertified) will be furnished (upon payment of the fee therefor).

Section 1.14: Section 1.14(a) is proposed to be amended to generally maintain the confidentiality of applications that have not been published as a U.S. patent application publication (*see* 35 U.S.C. 122(b)) pursuant to 35 U.S.C. 122(a). Status information is defined to include identification of whether the application has been published under 35 U.S.C. 122(b), as well as whether the application is pending, abandoned, or patented, and the application numerical identifier.

Section 1.14(b) is proposed to be amended to provide that status information may also be supplied when the application is referred to by its numerical identifier in a U.S. patent application publication as well as a U.S. patent or a published international application. Section 1.14(b) is also proposed to be amended to provide that status information may be supplied for an application which claims the benefit of the filing date of an application for which status information may be

supplied. As a result, the public will be able to obtain continuity data for applications that have been published as a U.S. patent application publication or as a U.S. patent.

Section 1.14(c)(1) as proposed provides that a copy of an application-as-filed or a file wrapper and contents may be supplied where the appropriate fee is paid, and: (1) the application is incorporated by reference in a U.S. patent application publication or U.S. patent; or (2) the application is relied upon for priority under 35 U.S.C. 119(e) or 120 in a U.S. patent application publication or U.S. patent.

Section 1.14(c)(2) as proposed provides that copies of the file wrapper and contents of an application are available to the public when the application has been published as a U.S. patent application publication.

Section 1.14(e) is proposed to be amended to provide public access to an abandoned application that is referenced in a U.S. patent application publication as well as a U.S. patent, or another application that is open to public inspection.

Section 1.14(i) is proposed to provide for greater access to international application files kept by the Office. Specifically, 35 U.S.C. 374 equates the publication under the PCT of an international application designating the U.S. to the publication of a U.S. application under 35 U.S.C. 122(b). As a result of the publication under 35 U.S.C. 122(b) of applications having an international filing date on or after November 29, 2000, the Office will make available copies of the application files and also allow for access to those files in accordance with § 1.14(c) and (e), respectively. Therefore, after publication of an international application having an international filing date on or after November 29, 2000, and designating the U.S. under PCT Article 21, the Office will make available copies of, and allow access to, those international application files which are kept in the Office (the Home, Search, and Examination Copies) to the extent permitted under the PCT. Additionally, § 1.14(i)(2) provides that copies of English language translations of international applications, which were published in a non-English language and which designated the U.S., and which have been submitted to the Office pursuant to 35 U.S.C. 154(d)(4), will also be available to the public. Requests for copies of, or access to, an application file under § 1.14(i) must be in the form of a written request and must include a showing that the international application has been published and that the U.S. was designated. Such a showing should preferably be in the form of the submission of a copy of the front page of the published international application. Additionally, requests for copies of international application files must also be accompanied by the appropriate fee.

Section 1.14(j) is proposed to be amended to provide that this section not only applies when the Office provides access to or copies of the application, but also when the Office provides access to or copies of part of an application.

Section 1.14 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.17: Section 1.17(h) is proposed to be amended to include a petition under § 1.138 to expressly abandon an application to avoid publication among the petitions requiring the fee ($130) set forth in § 1.17(h).

Section 1.17(i) is proposed to be amended to include processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication (§ 1.217), a request for voluntary publication or republication of an application (§ 1.221), and for processing a belated submission under § 1.99 (§ 1.99(e)) to the processing services requiring the processing fee ($130) set forth in § 1.17(i).

Sections 1.17(l) and 1.17(m) (and the heading of § 1.17) are proposed to be amended to set forth the fees for filing a petition under § 1.137 for revival of a terminated reexamination proceeding (on the basis of unavoidable and unintentional delay), and are discussed in a separate rulemaking (to implement the optional *inter partes* reexamination provisions of the "American Inventors Protection Act of 1999").

Section 1.17(p) is proposed to be amended to make its fee ($240) applicable to a third party submission under § 1.99, as well as an information disclosure statement under § 1.97(c) or (d).

Section 1.17(u) is proposed to be added to set forth the surcharge ($1,210) for accepting an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (§§ 1.55 and 1.78).

Section 1.17 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.18: Section 1.18(d) is proposed to be added to specify the publication fee ($300). In view of this proposed addition to § 1.18, the heading of § 1.18 is also proposed to be amended to refer to "post-allowance (including issue) fees" (instead of only "issue fees").

Section 1.24: Section 1.24 is proposed to be removed and reserved. The practice of using coupons to purchase patents, statutory invention registrations, trademark registrations, *etc.*, is inefficient as compared to alternatives such as payment by credit card (especially for orders placed via the Internet). Coupons sold by the Office (before coupon practice is abolished) may still be used but cannot be redeemed.

Section 1.52: Section 1.52(d) is proposed to be amended to provide for nonprovisional applications and provisional applications filed in a language other than English. The treatment of nonprovisional applications filed in a language other than English are revised for clarity, but otherwise remain unchanged (§ 1.52(d)(1)).

Section 1.52(d)(2) as proposed provides that if a provisional application is filed in a language other than English, an English translation will not be required in the provisional application. Section 1.52(d)(2) as proposed also contains a reference to § 1.78(a) concerning the requirements for claiming the benefit of the filing date of such a provisional application in a later filed nonprovisional application.

Section 1.55: Section 1.55 is proposed to be amended to implement the provisions of 35 U.S.C. 119(b) as amended by § 4503(a) of the "American Inventors Protection Act of 1999," by providing: (1) a time period within which a claim for the benefit of a prior foreign application must be stated or waived; and (2) provisions for the acceptance of an unintentionally delayed submission of a claim to the benefit of a prior foreign application.

Section 1.55(a) is proposed to be amended to provide that: (1) in an original application filed under 35 U.S.C. 111(a) (other than a design application), the claim for priority must be presented during the pendency of the application, and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application; (2) in an application that entered the national stage from an international application after compliance with 35 U.S.C. 371, the claim for priority must be made during the pendency of the application and within the time limit set forth in the PCT and the Regulations under the PCT; and (3) the claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) or PCT Rule 17 must, in any event, be filed before the patent is granted.

Section 1.55(c) is proposed to provide that any claim for priority under 35 U.S.C. 119(a)–(d), or 365(a) or (b) not presented within the time period provided by § 1.55(a) is considered to have been waived. Section 1.55(c) as proposed also provides that if a claim to priority under 35 U.S.C. 119(a)–(d) or 365(a) or (b) is presented after the time period provided by § 1.55(a), the claim may be accepted if the claim identifying the prior foreign application by specifying its application number, country, and the day, month and year of its filing was unintentionally delayed. Section 1.55(c) as proposed also provides that a petition to accept a delayed claim for priority under 35 U.S.C. 119(a)–(d) or 365(a) or (b) must be accompanied by: (1) The surcharge set forth in § 1.17(u); and (2) a statement that the entire delay between the date the claim was due under § 1.55(a)(1) and the date the claim was filed was unintentional, and that the Director may require additional information where there is a question whether the delay was unintentional.

Section 1.55 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.72: Section 1.72(a) is proposed to be amended to provide that the title of the invention may include only characters capable of being created by a keyboard and may not exceed 500 characters in length. The title character type and number limitations are necessary to ensure that the title can be completely and accurately captured in the Office's Patent Application Locating and Monitoring (PALM) system. Section 1.72 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.78: Section 1.78(a) is proposed to be amended to implement the provisions of 35 U.S.C. 119(e) and 120 as amended by § 4503(b) of the "American Inventors Protection Act of 1999," by providing: (1) A time period within which a claim to the benefit of a prior nonprovisional or provisional application must be stated or waived; and (2) provisions for the acceptance of the unintentionally delayed submission of a claim to the benefit of a prior nonprovisional or provisional application.

Section 1.78(a)(2) is proposed to be amended to provide that (except for a continued prosecution application filed under § 1.53(d)) any claim to the benefit of a nonprovisional application or international application must be made during the pendency of the application and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. Section 1.78(a)(2) as proposed also provides that the failure to timely submit the reference required by 35 U.S.C. 120 and § 1.78(a)(2) is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior application, but that the time period set forth in § 1.78(a)(2) does not apply to an application for a design patent.

Section 1.78(a)(2) also provides that if the application claims the benefit of an international application, the first sentence of the specification must include an indication of whether the international application was published under PCT Article 21(2) in English (regardless of whether benefit to such application is claimed in the application data sheet).

Sections 1.78(a)(3) and 1.78(a)(4) are proposed to be redesignated as §§ 1.78(a)(4) and 1.78(a)(5), respectively.

Section 1.78(a)(3) as proposed provides that if the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in a nonprovisional application after the time period provided by § 1.78(a)(2), the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior filed copending nonprovisional application or international application designating the United States may be accepted if the claim identifying the prior application by application number or international application number and international filing date was unintentionally delayed. Section 1.78(a)(3) as proposed also provides that a petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior filed copending application must be accompanied by: (1) The surcharge set forth in § 1.17(u); and (2) a statement that the entire delay between the date the claim was due under § 1.78(a)(2) and the date the claim was filed was unintentional, but the Director may require additional information where there is a question whether the delay was unintentional.

Section 1.78(a)(4) is proposed to be amended to provide that, for a nonprovisional application to claim the benefit of a provisional application, the provisional application must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(k) must be paid within the time period set forth in § 1.53(g).

Section 1.78(a)(5) as proposed provides that any nonprovisional application claiming the benefit of a provisional application filed in a language other than English must (in addition to the reference required by 35 U.S.C. 119(e) and proposed § 1.78(a)(5)) contain an English language translation of the non-English language provisional application and a statement that the translation is accurate. Section 1.78(a)(5) as proposed also provides any claim for the benefit of a provisional application and English language translation of a non-English language provisional application must be submitted during the pendency of the nonprovisional application, and within the later of four months from the actual filing date of the nonprovisional application or sixteen months from the filing date of the prior provisional application. Section 1.78(a)(5) as proposed also provides that the failure to timely submit the reference and English language translation of a non-English language provisional application required by 35 U.S.C. 119(e) and § 1.78(a)(5) is considered a waiver of any benefit under 35 U.S.C. 119(e) to such prior provisional application.

Section 1.78(a)(6) as proposed provides that if the reference or English language translation of a non-English language provisional application required by 35 U.S.C. 119(e) and § 1.78(a)(5) is presented in a nonprovisional application after the time period provided by § 1.78(a)(5), the claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application may be accepted during the pendency of the nonprovisional application if the claim identifying the prior application by provisional application number and any English language translation of a non-English language provisional application were unintentionally delayed. Section 1.78(a)(6) as proposed also provides that a petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application must be accompanied by: (1) The surcharge set forth in § 1.17(u); and (2) a statement that the entire delay between the date the claim was due under § 1.78(a)(5) and the date the claim was filed was unintentional, but that the Director may require additional information where there is a question whether the delay was unintentional.

Section 1.78 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.84: Section 1.84(a)(2) as proposed is amended to provide that color drawings are not permitted in an application, or copy thereof, submitted under the Office electronic filing system. Section 1.84(a)(2) as proposed is also amended to provide that any petition to accept color drawings must include a black and white photocopy that accurately depicts, to the extent possible, the subject matter shown in the color drawing. Since § 1.84(b)

provides that color photographs will be accepted in utility patent applications if the conditions for accepting color drawings have been satisfied, the provisions and restrictions in amended § 1.84(a)(2) would also apply to color photographs.

Section 1.84(e) is proposed to be amended to provide that photographs must be developed on paper meeting the sheet-size requirements of § 1.84(f) and the margin requirements of § 1.84(g).

Section 1.84(j) is proposed to be amended to refer to the view suitable for the front page, rather than the view suitable for the *Official Gazette*, since the front page of the patent (and patent application publication) includes the information that is (or would be) included in the *Official Gazette*, and the Office does not plan on creating an *Official Gazette* for patent application publications. Section 1.84(j) is also proposed to be amended to provide that: (1) One of the views should be suitable for inclusion on the front page of the patent application publication and patent as the illustration of the invention; and (2) applicant may suggest a single view (by figure number) for inclusion on the front page of the patent application publication and patent. Applicants should indicate in the application transmittal letter the figure number of the view suggested for inclusion on the front page of the patent application publication and patent. The Office, however, is not bound by applicant's suggestion.

Section 1.85: Section 1.85(a) is proposed to be amended to provide that a utility or plant application will not be placed on the files for examination until objections to the drawings have been corrected. As discussed above, these objections will concern deficiencies that must be corrected for the drawings to be of sufficient quality for use in creating a patent application publication. Since the Office plans to use the copy of the application (including the drawings) from its PACR database to create the patent application publication, the Office must require that new or corrected drawings correcting the objections to the drawings be filed before the application is released from OIPE and placed on the files for examination.

Even if an applicant files the application with a request that the application not be published pursuant to 35 U.S.C. 122(b), the applicant may rescind that request at any time. *See* 35 U.S.C. 122(b)(2)(B)(ii). In addition, at the time the Office is recording a copy of the application in its PACR database, the Office is not in a position to know whether the applicant will file an electronic filing system copy of the application for use creating the patent application publication. Therefore, the Office must be prepared to create a patent application publication from its PACR database for each application and insist that objections to the drawings be corrected in all utility and plant applications before the application can be released from OIPE.

Section 1.85(a) is also proposed to be amended to provide that (except as provided in § 1.215(c)), any patent application publication will not include drawings filed after the application has been placed on the files for examination. Thus, corrected drawings submitted after the application has been released from OIPE will not be added to the PACR database or used to create the patent application publication.

Section 1.85(a) is also proposed to be amended to provide that, unless applicant is otherwise notified in an Office action, objections to the drawings in a utility or plant application will not be held in abeyance, and a request to hold objections to the drawings in abeyance will not be considered a *bona fide* attempt to advance the application to final action (§ 1.135(c)). That is, if an Office action or notice contains an objection to the drawings (and does not expressly permit such objection to be held in abeyance) and the applicant's reply does not correct the objection, the applicant will be advised that the reply is non-responsive and given the remainder of the period set in the original Office action or notice (and not a new period under § 1.135(c)) within which to correct the objection.

Since design applications are not subject to the eighteen-month publication provisions of 35 U.S.C. 122(b), drawings in a design application will continue to be admitted for examination if the drawings meet the requirements of § 1.84(e), (f), and (g) and are suitable for reproduction.

Section 1.98: Section 1.98(a)(2)(i) is proposed to be amended to also refer to U.S. patent application publications. Section 1.98(b) is proposed to be amended to provide that each U.S. patent application publication listed in an information disclosure statement shall be identified by applicant, patent application publication number, and publication date. The proposed changes to § 1.98 also reflect changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.99: Section 1.99(a) as proposed provides that a submission by a member of the public of patents or publications relevant to a pending published application will be entered in the application file if the submission complies with the requirements of § 1.99 and the application is still pending when the submission and application file are brought before the examiner. The entry of such a submission does not mean that the patents or printed publications contained in the submission will be necessarily considered and cited by the examiner. If the examiner considers a patent or printed publication contained in the submission to be pertinent in determining patentability, the examiner will initial that patent or printed publication on the listing of the patents or publications submitted for consideration by the Office.

Section 1.99(b) as proposed provides that a submission under § 1.99 must identify the application to which it is directed by application number and include: (1) The fee set forth in § 1.17(p); (2) a listing of the patents or publications submitted for consideration by the Office; (3) a copy of each listed patent or publication in written form or at least the pertinent portions thereof; and (4) an English language translation of all the necessary and pertinent parts of any non-English language patent or publication in written form relied upon.

Section 1.99(c) as proposed provides that a submission under § 1.99 must be served upon the applicant in accordance with § 1.248.

Section 1.99(d) as proposed provides that a submission under § 1.99 may not include any explanation of the patents, publications, or any other information, and is limited to twenty total patents or publications.

Section 1.99(e) as proposed also provides that a submission under § 1.99 must be filed within two months of the date of publication of the application (§ 1.215(a)), or prior to the mailing of a notice of allowance (§ 1.311), whichever is earlier, and that any submission under § 1.99 not filed within this period is permitted only when the patents or publications could not have been submitted to the Office earlier, and must also be accompanied by the processing fee set forth in § 1.17(i). Section 1.99(e) as proposed also provides that a submission by a member of the public to a pending published application that does not comply with the requirements of § 1.99 will be returned or disregarded.

Section 1.99(f) as proposed provides that the involvement of a member of the public in filing a submission under § 1.99 ends with the filing of the submission.

Section 1.104: Section 1.104(d) is proposed to be amended to provide that if domestic (U.S.) patent application publications are cited by the examiner,

their publication number, publication date, and the names of the applicants will be stated.

Section 1.130: Section 1.130(a) is proposed to be amended to refer to published applications (as well as patents). Specifically, § 1.130 is proposed to also be applicable to a rejection of a claim in an application or patent under reexamination based upon a patent application publication in the situation in which the application or patent under reexamination and the published application are currently owned by the same party.

Section 1.131: Section 1.131(a) is proposed to be amended to provide that: (1) The effective date of a U.S. patent, U.S. patent application publication, or international application publication under PCT Article 21(2) is the date that it is effective as a reference under 35 U.S.C. 102(e); and (2) prior invention may not be established under § 1.131 if the rejection is based upon either a U.S. patent or a U.S. patent application publication of a pending or patented application to another or others which claims the same patentable invention as defined in § 1.601(n).

Section 1.131 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.132: Section 1.132 is proposed to be amended to provide that an oath or declaration may not be submitted under § 1.132 to traverse a rejection if the rejection is based upon a U.S. patent or a U.S. patent application publication of a pending or patented application to another or others which claims the same patentable invention as defined in § 1.601(n).

Section 1.132 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.137: Section 1.137 is proposed to be amended to: (1) Make its provisions applicable to the revival of a terminated reexamination proceeding; (2) provide for the revival of an application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty; and (3) reorganize certain provisions for clarity.

The provisions for revival of a terminated reexamination proceeding (on the basis of unavoidable and unintentional delay) are discussed in a separate rulemaking (to implement the optional *inter partes* reexamination provisions of the "American Inventors Protection Act of 1999").

As discussed above, if an applicant makes a request (nonpublication request) upon filing with the appropriate certifications, the application will not be published under 35 U.S.C. 122(b)(1). *See* 35 U.S.C. 122(b)(2)(B)(i). An applicant who has made a nonpublication request but who subsequently files an application directed to the invention disclosed in the application filed in the Office in a foreign country, or under a multilateral international agreement, that requires eighteen-month publication, must notify the Office of such filing within forty-five days after the date of such filing, with the failure to timely provide such a notice to the Office resulting in abandonment of the application. *See* 35 U.S.C. 122(b)(2)(B)(iii). 35 U.S.C. 122(b)(2)(B)(iii), however, also provides that an application abandoned as a result of the failure to timely provide such a notice to the Office is subject to revival if the "delay in submitting the notice was unintentional." *See id.*

Section 1.137(f) as proposed provides for the revival of an application abandoned for failure to timely notify the Office of a foreign filing. 35 U.S.C. 122(b)(2)(B)(iii) provides for revival only on the basis of unintentional delay, and not on the basis of unavoidable delay. *Compare* 35 U.S.C. 122(b)(2)(B)(iii)("delay * * * was unintentional") *with* 35 U.S.C. 111(a)(4) ("delay * * * was unavoidable or unintentional"). Therefore, § 1.137(f) as proposed provides that a nonprovisional application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires eighteen-month publication may be revived only pursuant to § 1.137(b). Section 1.137(f) as proposed also provides that the reply requirement of § 1.137(c) is met by the notification of such filing in a foreign country or under a multinational treaty, but the filing of a petition under § 1.137 will not operate to stay any period for reply that may be running against the application. Since the Office cannot ascertain whether an application is abandoned under 35 U.S.C. 122(b)(2)(B)(iii), the Office may continue to process and examine the application until the applicant notifies the Office that the application is abandoned. Therefore, § 1.137(f) provides that the filing of a petition under § 1.137 to revive such an application will not operate to stay any period for reply that may be running against the application.

Section 1.137 is also proposed to be amended to locate the "reply requirement" provisions in § 1.137(c), rather than include duplicative provisions concerning the reply requirement in each of § 1.137(a) and (b). Thus, the terminal disclaimer provisions of § 1.137(c), reconsideration provisions of § 1.137(d), and provisional application provisions of § 1.137(e) are proposed to be moved to § 1.137(d), § 1.137(e), and § 1.137(g), respectively. In addition, § 1.137(c) also provides that in an application abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee. Thus, even if an application abandoned for failure to pay the publication fee is being revived solely for purposes of continuity with a continuing application, the petition to revive under § 1.137 must include payment of the publication fee (unless previously submitted).

Section 1.137 is also proposed to be amended to take into account the provisions of 35 U.S.C. 119(e)(3), which extend the pendency of a provisional application to the next succeeding secular or business day if the day that is twelve months after the filing date of the provisional application falls on a Saturday, Sunday, or Federal holiday within the District of Columbia.

Section 1.137 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.138: Section 1.138(a) is proposed to be amended to add "or publication" to clarify that a letter of express abandonment may not be recognized by the Office unless it is actually received by appropriate officials in time to act thereon before the date of publication.

Section 1.138(c) is proposed to be added to provide for a petition for express abandonment to avoid publication. Section 1.138(c) as proposed provides that an applicant seeking to abandon an application to avoid publication of the application (see § 1.211(a)(1)) must submit a declaration of express abandonment by way of a petition including the fee set forth in § 1.17(h) in sufficient time to permit the appropriate officials to recognize the abandonment and remove the application from the publication process. The petition will be granted when it is recognized in sufficient time to avoid publication of application information and will be denied when it is not recognized in sufficient time to avoid publication of application information. This will avert the situation in which an applicant files a letter of express abandonment to avoid publication, the letter of express abandonment is not recognized in sufficient time to avoid publication, upon publication the applicant wishes to rescind the letter of express

abandonment, and the Office cannot revive the application (once the letter of express abandonment is recognized) because the application was expressly and intentionally abandoned by the applicant.

As discussed above, the publication process is a fourteen-week process, and applicant should expect that the petition will not be granted and application will be published in regular course unless such declaration of express abandonment and petition are received by the appropriate officials more than four weeks prior to the projected date of publication.

Section 1.138 as proposed (§ 1.138(b)) also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.165: Section 1.165 is proposed to be amended to provide that if plant application drawings include a color drawing or photograph, a black and white photocopy that accurately depicts, to the extent possible, the subject matter shown in the color drawing or photograph must be submitted.

Section 1.211: Sections 1.211, 1.213, 1.215, 1.217, 1.219, and 1.221 are proposed to be added to provide for the pre-grant publication of applications under 35 U.S.C. 122(b).

Section 1.211(a) as proposed provides that (with certain exceptions) each U.S. national application for patent filed in the Office under 35 U.S.C. 111(a) and each international application in compliance with 35 U.S.C. 371 will be published promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code.

Section 1.211(a)(1) as proposed provides that the Office will not publish applications that are recognized as no longer pending. The phrase "that are recognized by the Office as no longer pending" is meant to cover the situation in which the period for reply (either the shortened statutory period or the maximum extendable period for reply) to an Office action has expired, but the Office has not yet entered the change of status (to abandoned) of the application in the PALM system and mailed a notice of abandonment. An application will remain in the publication process until the PALM system indicates that the application is abandoned. Obviously, once the PALM system indicates that an application is abandoned, the Office will attempt to remove the application from the publication process and avoid dissemination of application information. How much dissemination of application information can be avoided depends upon how close it is to the publication date when the Office recognizes the application as abandoned. Unless an applicant has received a notice of abandonment, an applicant who wants to abandon the application to avoid publication must file a petition under § 1.138(c) to expressly abandon the application and avoid publication. An applicant permitting an application to become abandoned (for failure to reply to an Office action) to avoid publication by passively waiting for the Office to recognize that the application has become abandoned must bear the risk that the Office will not recognize that the application has become abandoned and change the status of the application in the PALM system in sufficient time to avoid publication.

Section 1.211(a)(2) as proposed provides that the Office will not publish applications that are national security classified (see § 5.2(c)), subject to a secrecy order under 35 U.S.C. 181, or under national security review.

Section 1.211(a)(3) as proposed provides that the Office will not publish applications that have issued as a patent in sufficient time to be removed from the publication process. If the pre-grant publication process coincides with the patent issue process, the Office will continue with the pre-grant publication process until a patent actually issues. This is because there are many instances in which the Office mails a notice of allowance (§ 1.311) in an application but the application does not issue as a patent in regular course (abandonment due to failure to pay the issue fee, or withdrawal from issue either *sua sponte* by the Office or on petition of the applicant). Therefore, the Office will not discontinue the pre-grant publication process until a patent has actually issued. Since the Office cannot discontinue the pre-grant publication process during the last two weeks of the publication process, this will result in a few applications being issued as a patent and subsequently being published as a patent application publication. The Office will refund the publication fee (if paid) if the application is not published as a patent application publication, but will not refund the publication fee if the application is published as a patent application publication, even if published after the patent issues.

Section 1.211(a)(4) as proposed also provides that the Office will not publish applications that were filed with a nonpublication request in compliance with § 1.213(a).

Section 1.211(b) as proposed provides that provisional applications under 35 U.S.C. 111(b) shall not be published. Section 1.211(b) as proposed also provides that design applications under 35 U.S.C. chapter 16 and reissue applications under 35 U.S.C. chapter 25 shall not be published under § 1.211. Provisional applications under 35 U.S.C. 111(b) and design applications under 35 U.S.C. chapter 16 are excluded from the pre-grant publication provisions of 35 U.S.C. 122(b). *See* 35 U.S.C. 122(b)(2)(A)(iii) and (iv). Reissue applications under 35 U.S.C. chapter 25 are not maintained in confidence under 35 U.S.C. 122(a). *See* § 1.11(b).

Section 1.211(c) as proposed provides that the Office will not publish an application filed under 35 U.S.C. 111(a) until it includes the basic filing fee, an English translation if in a language other than English, and an executed oath or declaration. Section 1.211(c) as proposed also provides that publishing may be delayed until the application includes a specification on papers in compliance with § 1.52 and having an abstract (§ 1.72(b)), drawings in compliance with § 1.84, and a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable), and until any petition under § 1.47 is granted. That is, if an application does not contain the application content on papers or drawings of sufficient quality to create a patent application publication by eighteen months from its earliest claimed filing date, the Office will publish the application as soon as practical after these deficiencies are corrected.

Section 1.211(d) as proposed provides that the Office may refuse to publish an application, or to include a portion of an application in the patent application publication (§ 1.215), if publication of the application or portion thereof would violate Federal or state law, or if the application or portion thereof contains offensive or disparaging material. A similar provision exists in PCT practice, in that the International Bureau may omit expressions or drawings in an international application from its publications if the expressions or drawings are contrary to morality or public order, or contain disparaging statements. *See* PCT Article 21(6) and Rule 9.

Section 1.211(e) as proposed provides that the publication fee set forth in § 1.18(d) must be paid in each application published under this section before the patent will be granted, but does not require that the publication fee be paid prior to publication. If an application is subject to publication under this section, the sum specified in the notice of allowance under § 1.311 will also include the publication fee

which must be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. This three-month period is not extendable. If the application is not published under this section, the publication fee (if paid) will be refunded.

Section 1.213: Section 1.213 implements the provisions of 35 U.S.C. 122(b)(2)(B)(i)–(iii). An applicant may request that the application not be published under 35 U.S.C. 122(b) and § 1.211 if the invention disclosed in an application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing. Section 1.213(a) requires that a request that an application not be published under 35 U.S.C. 122(b) (nonpublication request) must: (1) Be submitted with the application upon filing; (2) state in a conspicuous manner that the application is not to be published under 35 U.S.C. 122(b); (3) contain a certification that the invention disclosed in the application has not been and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing; and (4) be signed in compliance with § 1.33(b). The requirement that a nonpublication request be submitted "upon filing" is a requirement of statute (35 U.S.C. 122(b)(2)(B)(i)), and, as such, the Office must deny any petition requesting a waiver of this provision of § 1.213(a).

Section 1.213(b) as proposed provides that the applicant may rescind a nonpublication request at any time. *See* 35 U.S.C. 122(b)(2)(B)(ii). Section 1.213(b) as proposed also provides that a request to rescind a nonpublication request under § 1.213(a) must: (1) Identify the application to which it is directed (§ 1.5); (2) state in a conspicuous manner that the request that the application is not to be published under 35 U.S.C. 122(b) is rescinded; and (3) be signed in compliance with § 1.33(b). Once a request under § 1.213(b) to rescind a nonpublication request is filed and processed by the Office, the application will be scheduled for publication in accordance with § 1.211(a).

Section 1.213(c) reiterates the provisions of 35 U.S.C. 122(b)(2)(B)(iii). Section 1.213(c) specifically states that if an applicant who has submitted a nonpublication request under § 1.213(a) subsequently files an application directed to the invention disclosed in the application in which the nonpublication request was submitted in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the applicant must notify the Office of such filing within forty-five days after the date of the filing of such foreign or international application. The failure to timely notify the Office of the filing of such foreign or international application shall result in abandonment of the application in which the nonpublication request was submitted. *See* 35 U.S.C. 122(b)(2)(B)(iii).

Section 1.215: Section 1.215(a) as proposed indicates that the publication of an application under 35 U.S.C. 122(b) shall include a patent application publication. The Office will not mail a paper copy of the patent application publication to the applicant, but will mail a notice to the applicant indicating that the application has been published.

Section 1.215(a) as proposed also provides that the date of publication shall be indicated on the patent application publication.

Section 1.215(a) as proposed also provides that (except as discussed below in § 1.215(c)) the patent application publication will be based upon the application papers deposited on the filing date of the application, except for preliminary amendments, as well as the executed oath or declaration submitted to complete the application, and any application papers or drawings submitted in reply to a preexamination notice requiring a title and abstract in compliance with § 1.72, application papers in compliance with § 1.52, drawings in compliance with § 1.84, or a sequence listing in compliance with §§ 1.821 through 1.825. That is, the patent application publication will not reflect the application as it was amended during the examination process, but will only reflect the application as recorded in the Office's PACR database.

Section 1.215(b) as proposed provides a mechanism by which applicants may have assignee information (the name and address of the assignee of the entire right, title, and interest in an application) included on the patent application publication. To have assignee information included on the patent application publication, the applicant must include a separate paper indicating that such information is being provided for inclusion on the patent application publication. The assignee information might not be included on the patent application publication if such paper is not included with the application on filing. Finally, § 1.215(b) clarifies that providing assignee information for inclusion on the patent application publication does not substitute for an assignment submitted to the Office for recording under 37 CFR part 3.

Section 1.215(c) as proposed provides a mechanism by which applicants may have the patent application publication reflect the application as amended during the examination process (rather than the application as recorded in the Office's PACR database). Section 1.215(c) as proposed provides that the Office will use an applicant-supplied copy of the application (specification, drawings, and oath or declaration), provided that: (1) The copy is in compliance with the Office electronic filing system (EFS) requirements; and (2) the EFS copy is filed within one month of the actual filing date of the application or fourteen months of the earliest filing date for which a benefit is sought, whichever is later.

The fourteen-month period differs from the sixteen-month period provided in § 1.217 for submitting a redacted copy of an application because the sixteen-month period provided in § 1.217 is not based upon the fourteen-week publication cycle but is provided for by statute (35 U.S.C. 122(b)(2)(B)(v)).

Section 1.215(d) as proposed provides that if the copy of the application does not comply with the Office EFS requirements, the Office will publish the application based upon the application records in the Office's PACR database (as provided in § 1.215(a)). If, however, the Office has not started the publication process, the Office may use an untimely filed copy of the application supplied by the applicant under § 1.215(c) in creating the patent application publication.

Section 1.217: Section 1.217(a) as proposed implements the provisions of 35 U.S.C. 122(b)(2)(B)(v), and provides that if an applicant has filed applications in one or more foreign countries, directly or through a multilateral international agreement, and such foreign-filed applications or the description of the invention in such foreign-filed applications is less extensive than the application or description of the invention in the application filed in the Office, the applicant may submit a redacted copy of the application filed in the Office for publication, eliminating any part or description of the invention that is not also contained in any of the corresponding applications filed in a foreign country. Section 1.217(a) as proposed also provides that the Office will publish the application as provided in § 1.215(a) unless the applicant files a redacted copy of the application in

compliance with § 1.217 within sixteen months after the earliest filing date for which a benefit is sought under title 35, United States Code. This sixteen-month period is provided by statute (35 U.S.C. 122(b)(2)(B)(v)), and as such, requests for waiver of this sixteen-month period will be denied.

As discussed above, this sixteen-month period provided in § 1.217 differs from the fourteen-month period provided in § 1.215(c) because the sixteen-month period provided in § 1.217 is not based upon the fourteen-week publication cycle but is provided for by statute (35 U.S.C. 122(b)(2)(B)(v)). If a redacted copy of an application is submitted in compliance with § 1.217 but later than four months prior to the projected publication date, the Office will be required to reprocess the patent application publication (for which assembly will have already started) using the redacted copy of the application provided by applicant.

Section 1.217(b) as proposed provides that the redacted copy of the application must be submitted in compliance with the Office EFS requirements. Section 1.217(b) as proposed also provides that the title of the invention in the redacted copy of the application must correspond to the title of the application at the time the redacted copy of the application is submitted to the Office. The Office uses the title of the invention (among other information) as provided in an EFS copy of an application to confirm the identity of the application for which the EFS copy is submitted. Thus, if a portion of the title has been redacted such that the title (as redacted) in the EFS copy of the application is different from the title of the invention for the application as shown in PALM, it will appear that the redacted EFS copy of the application incorrectly identifies the application for which the redacted EFS copy is submitted. If an applicant wants to redact a portion of the title, the applicant must first submit an amendment to the title of the invention such that it will correspond to the title as redacted. Section 1.217(b) as proposed also provides that if the redacted copy of the application does not comply with the Office EFS requirements, the Office will publish the application based upon the unredacted records in the Office's PACR database.

Section 1.217(c) as proposed provides that the applicant must also concurrently submit in paper (§ 1.52(a)) to be filed in the application: (1) A certified copy of each foreign-filed application that corresponds to the application for which a redacted copy is submitted; (2) a translation of each such foreign-filed application that is in a language other than English, and a statement that the translation is accurate; (3) a marked-up copy of the application showing the redactions in brackets; and (4) a certification that the redacted copy of the application eliminates only a part or description of the invention that is not contained in any application filed in a foreign country, directly or through a multilateral international agreement, that corresponds to the application filed in the Office. The provisions of § 1.217(c) are designed to ensure that any patent application publication based upon a redacted copy of an application contains the parts and description of the invention contained in any of the corresponding applications filed in a foreign country.

Section 1.217(d) as proposed provides a mechanism for obtaining an appropriately redacted copy of the application contents to provide to members of the public requesting a copy of the file wrapper and contents of the application. Section 1.217(d) as proposed provides that the Office will provide a complete unredacted copy of the file wrapper and contents of an application for which a redacted copy was submitted under § 1.217 (upon payment of a fee) unless the applicant complies with the requirements of § 1.217(d). Since the processing required to provide redacted copies of the application content is the result of an applicant choosing to submit a redacted copy under § 1.217, it is appropriate to require the applicant to timely provide appropriate redacted copies of Office correspondence and applicant submissions, and to pay a processing fee for the special handling required for these papers, should the applicant wish to maintain the redacted portions of the application in confidence prior to the grant of a patent.

Section 1.217(d)(1) as proposed provides that the applicant must accompany the submission required by § 1.217(c) with: (1) a copy of any Office correspondence previously received by applicant including any desired redactions, and a second copy of all Office correspondence previously received by applicant showing the redacted material in brackets; and (2) a copy of each submission previously filed by the applicant including any desired redactions, and a second copy of each submission previously filed by the applicant showing the redacted material in brackets. Section 1.217(d)(2) as proposed provides that the applicant must also: (1) Within one month of the date of mailing of any correspondence from the Office, file a copy of such Office correspondence including any desired redactions, and a second copy of such Office correspondence showing the redacted material in brackets; and (2) with each submission by the applicant, include a copy of such submission including any desired redactions, and a second copy of such submission showing the redacted material in brackets. Section 1.217(d)(3) as proposed provides that each submission under § 1.217(d)(1) or § 1.217(d)(2) must also be accompanied by the processing fee set forth in § 1.17(i) and a certification that the redactions included therein are limited to the elimination of material that is relevant only to the part or description of the invention that is not contained in the redacted copy of the application submitted for publication. If the applicant fails to comply with these requirements, the Office will provide a complete unredacted copy of the file wrapper and contents of the application to any member of the public (upon payment of a fee).

Section 1.217(e) provides that the certificate of mailing or transmission procedure set forth in provisions of § 1.8 do not apply to the time periods set forth in § 1.217.

Section 1.219: Section 1.219 implements the provisions of 35 U.S.C. 122(b)(1) that authorize (but do not require) the Office to publish earlier than at the eighteen-month period set forth in 35 U.S.C. 122(b)(1) at the request of the applicant. Section 1.219 as proposed provides that any request for early publication must be accompanied by the publication fee set forth in § 1.18(d). Section 1.219 as proposed provides that if the applicant does not submit a copy of the application in compliance with the Office EFS requirements, the Office will publish the application based upon the application records in the Office's PACR database (as provided in § 1.215(a)). Section 1.219 as proposed also provides that no consideration will be given to requests for publication on a certain date (which includes a request that certain applications be published on the same date), and such requests will be treated as a request for publication as soon as possible.

Section 1.221: Section 1.221 provides for voluntary publication of applications filed before, but pending on, November 29, 2000, and for requests for republication of applications previously published under § 1.211. Applicants may request republication of an application under § 1.221 to obtain a patent application publication that: (1) corrects immaterial errors or errors not the result of Office mistake; or (2)

reflects the application as amended during prosecution of the application.

Section 1.221(a) as proposed provides that a request for voluntary publication or republication must include a copy of the application in compliance with the Office EFS requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i). Since voluntary publication or republication of applications is not mandated by 35 U.S.C. 122(b)(1), if a request for voluntary publication or republication does not comply with the requirements of § 1.221, or the copy of the application does not comply with the Office EFS requirements, the Office will not publish the application based upon the application records in the Office's PACR database (as provided in § 1.215(a)) but will simply not publish the application and will refund the publication fee (but not the processing fee).

Section 1.221(b) as proposed provides that the Office will grant a request for a corrected or revised patent application publication other than as provided in § 1.221(a) only when the Office makes a material mistake which is apparent from Office records. The phrase "material mistake" means a mistake that affects the public's ability to appreciate the technical disclosure of the patent application publication or determine the scope of the provisional rights that an applicant may seek to enforce upon issuance of a patent (*e.g.*, error in the claims, serious error in a portion of the written description or drawings that is necessary to support the claims). The Office will permit applicants to review the bibliographic information contained in the Office's PALM database via its PAIR system. Therefore, applicants are expected to review that information and bring errors to the Office's attention at least fourteen weeks before the projected date of publication. Section 1.221(b) as proposed also provides that any request for a corrected or revised patent application publication other than as provided in § 1.221(a) must be filed within two months from the date of the patent application publication, and that this period is not extendable.

Section 1.291: Section 1.291(a)(1) implements the provisions of 35 U.S.C. 122(c), which specify that the Office shall establish appropriate procedures to ensure that no protest or other form of pre-issuance opposition to the grant of a patent may be initiated after publication of the application without the applicant's express written consent. Section 1.291 is proposed to be amended to provide that a protest must be submitted prior to the date the application was published or the mailing of a notice of allowance under § 1.311, whichever occurs first.

Section 1.292: Section 1.292(b)(3) is proposed to be amended to require that any petition to institute a public use proceeding be submitted prior to the date the application was published or mailing of a notice of allowance under § 1.311, whichever occurs first.

Section 1.311: Section 1.311(a) is proposed to be amended to provide that the sum specified in the notice of allowance may (in addition to the issue fee) also include the publication fee, in which case the issue fee and publication fee (§ 1.211(f)) must both be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. Section 1.311(a) is also amended to provide that this three-month period is not extendable. Section 1.311(b) is proposed to be amended to provide that an authorization to charge any of the post-allowance fees set forth in § 1.18 to a deposit account may be filed in an individual application only after mailing of the notice of allowance.

Section 1.311(b) as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Section 1.417: Section 1.417 is proposed to be added to provide for the submission of international publications or English language translations of international applications pursuant to 35 U.S.C. 154(d)(4). This section as proposed sets forth the requirements for the filing of an English language international publication or translation of an international application in order to ensure proper handling by the Office. Section 1.417 as proposed provides that such a submission must clearly identify the international application to which it pertains under § 1.5(a), and unless it is being submitted pursuant to § 1.494 or § 1.495, must be clearly identified as a submission pursuant to 35 U.S.C. 154(d)(4). Failure to properly identify such submissions will result in the English language international publication or translation of the description and claims of the international application being processed as the filing of a national application under 35 U.S.C. 111(a). Additionally, failure to properly identify the international publication or translation as a submission under 35 U.S.C. 154(d)(4) may cause the Office to be unable to properly track or retrieve the international publication or translation in relation to its international application number. Section 1.417 as proposed also provides that such submissions should be marked "Box PCT."

The submission of an international publication or translation of an international application for the purposes of national stage entry in accordance with § 1.494 or § 1.495 may also be relied upon as the submission for the purposes of 35 U.S.C. 154(d)(4). Likewise, an earlier filed international publication or translation (submitted for the purposes of 35 U.S.C. 154(d)(4) and properly identified as such) may also be relied upon for the purpose of satisfying the requirement of 35 U.S.C. 371(c)(2). If applicant intends to rely on such an earlier filed international publication or translation, the submission of documents under § 1.494(f) and § 1.495(g) should include an indication that the international publication or translation has been previously submitted for the purposes of 35 U.S.C. 154(d)(4) to avoid the mailing of either a Notice of Abandonment (PCT/DO/EO/909) indicating that a copy of the international application was not timely filed, or a Notice of Missing Requirements (PCT/DO/EO/905) indicating that a translation of the international application is required. While (as discussed above) applicants may rely on an earlier filed international publication or translation for the purposes of national stage entry and processing, the Office strongly recommends that a second copy of the international publication or translation be included with the initial national stage papers in order to ensure the integrity of the first submitted international publication or translation. Otherwise, processing of the national stage application may result in the alteration of the originally filed international publication or translation through, *e.g.*, the entry of amendments.

Section 1.494: Section 1.494(f) is amended to exempt a copy of the international publication or translation of the international application identified as provided in § 1.417 from the documents that must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371 to avoid being considered a submission under 35 U.S.C. 111(a).

Section 1.495: Section 1.495(g) is amended to exempt a copy of the international publication or translation of the international application identified as provided in § 1.417 from the documents that must be clearly identified as a submission to enter the national stage under 35 U.S.C. 371 to avoid being considered a submission under 35 U.S.C. 111(a).

Part 5

Section 5.1: Section 5.1 is proposed to be amended to implement the provisions of 35 U.S.C. 122(d), which

specify that the application will not be published under 35 U.S.C. 122(b)(1) if publication or disclosure of the application would be detrimental to national security. Section 5.1 as proposed provides that an application under national security review will not be published at least until six months from its filing date or three months from the date the application was referred to a defense agency, whichever is later. These are the current national security review screening time frames for foreign filing license purposes. Section 5.1 as proposed also provides that a national security classified patent application will not be published under § 1.211 of this chapter or allowed under § 1.311 of this chapter until the application is declassified and any secrecy order under § 5.2(a) has been rescinded.

Section 5.1 as proposed also reflects changes proposed in the Patent Business Goals Notice of Proposed Rulemaking.

Classification

Regulatory Flexibility Act

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that the changes proposed in this notice, if adopted, would not have a significant impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). This rulemaking implements the eighteen-month publication provisions of §§ 4501 through 4508 of the "American Inventors Protection Act of 1999." The changes proposed in this notice (if adopted) would provide procedures for the eighteen-month publication of patent applications.

An applicant may file a nonpublication request (opt-out of eighteen-month publication) if the invention disclosed in the application has not and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires eighteen-month publication. Since almost all small entities file patent applications only in the United States, almost all small entities can choose whether they want their applications to be subject to eighteen-month publication. The Office receives roughly 60,000 applications each year from small entities. Based upon input from small entity groups during the legislative process, the Office expects that small entities will file a nonpublication request for roughly 30,000 applications (fifty percent) with the remaining 30,000 applications being subject to eighteen-month publication. Since the current application allowance rate is roughly sixty-seven percent, roughly 20,000 applications subject to eighteen-month publication will be allowed, at which time a publication fee ($300.00) will be due. Since the publication fee is less than one-third of the combined cost of the application filing fee ($345.00) and patent issue fee ($605.00), there will not be a significant economic impact on a substantial number of small entities due to eighteen-month publication.

Executive Order 13132

This rulemaking does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

Executive Order 12866

This rulemaking has been determined to be not significant for purposes of Executive Order 12866 (September 30, 1993).

Paperwork Reduction Act

This notice of proposed rulemaking involves information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). The collections of information involved in this notice of proposed rulemaking have been reviewed and previously approved by OMB under OMB control numbers: 0651–0021, 0651–0027, 0651–0031, 0651–0032, 0651–0033, and 0651–0034.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Patent and Trademark Office has submitted an information collection package to OMB for its review and approval of the proposed information collections under OMB control number 0651–0031 and 0651–0032. The Patent and Trademark Office is submitting these information collections to OMB for its review and approval because this notice of proposed rulemaking will add the nonpublication request, rescission of the nonpublication request, electronic filing system copy of the application (for publication purposes), copy of the application file content showing redactions, and petition to accept a delayed priority claim to these collections.

As discussed above, this notice of proposed rulemaking also involves currently approved information collections under OMB control numbers: 0651–0021, 0651–0027, 0651–0033, and 0651–0034. The Patent and Trademark Office is not resubmitting those information collection packages to OMB for its review and approval because the changes in this notice of proposed rulemaking do not affect the information collection requirements associated with the information collections under those OMB control numbers.

The title, description and respondent description of each of the information collections are shown below with an estimate of each of the annual reporting burdens. Included in each estimate is the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information.

OMB Number: 0651–0021.
Title: Patent Cooperation Treaty.
Form Numbers: PCT/RO/101,ANNEX/134/144, PTO–1382, PCT/IPEA/401, PCT/IB/328.
Type of Review: Approved through May of 2000.
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Federal Agencies or Employees, Not-for-Profit Institutions, Small Businesses or Organizations.
Estimated Number of Respondents: 102,950.
Estimated Time Per Response: 0.9538 hour.
Estimated Total Annual Burden Hours: 98,195 hours.
Needs and Uses: The information collected is required by the Patent Cooperation Treaty (PCT). The general purpose of the PCT is to simplify the filing of patent applications on the same invention in different countries. It provides for a centralized filing procedure and a standardized application format.

OMB Number: 0651–0027.
Title: Changes in Patent and Trademark Assignment Practices.
Form Numbers: PTO–1618 and PTO–1619, PTO/SB/15/41.
Type of Review: Approved through May of 2002.
Affected Public: Individuals or Households and Businesses or Other For-Profit Institutions.
Estimated Number of Respondents: 209,040.
Estimated Time Per Response: 0.5 hour.
Estimated Total Annual Burden Hours: 104,520 hours.
Needs and Uses: The Office records about 209,040 assignments or documents related to ownership of patent and trademark cases each year. The Office requires a cover sheet to expedite the processing of these documents and to ensure that they are properly recorded.

OMB Number: 0651–0031.

Title: Patent Processing (Updating).
Form Numbers: PTO/SB/08/21–27/31/42/43/61/62/63/64/67/68/91/92/96/97.
Type of Review: Approved through October of 2002.
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 2,040,630.
Estimated Time Per Response: 0.39 hours.
Estimated Total Annual Burden Hours: 788,421 hours.
Needs and Uses: During the processing of an application for a patent, the applicant/agent may be required or desire to submit additional information to the Office concerning the examination of a specific application. The specific information required or which may be submitted includes: Information Disclosure Statements; Terminal Disclaimers; Petitions to Revive; Express Abandonments; Appeal Notices; Petitions for Access; Powers to Inspect; Certificates of Mailing or Transmission; Statements under § 3.73(b); Amendments, Petitions and their Transmittal Letters; and Deposit Account Order Forms.

OMB Number: 0651–0032.
Title: Initial Patent Application.
Form Number: PTO/SB/01–07/13PCT/17–19/29/101–110.
Type of Review: Approved through October of 2002.
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 344,100.
Estimated Time Per Response: 8.7 hours.
Estimated Total Annual Burden Hours: 2,994,160 hours.
Needs and Uses: The purpose of this information collection is to permit the Office to determine whether an application meets the criteria set forth in the patent statute and regulations. The standard Fee Transmittal form, New Utility Patent Application Transmittal form, New Design Patent Application Transmittal form, New Plant Patent Application Transmittal form, Declaration, and Plant Patent Application Declaration will assist applicants in complying with the requirements of the patent statute and regulations, and will further assist the Office in processing and examination of the application.

OMB Number: 0651–0033.
Title: Post Allowance and Refiling.
Form Numbers: PTO/SB/13/14/44/50–57; PTOL–85b.
Type of Review: Approved through September of 2000.
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 135,250.
Estimated Time Per Response: 0.325 hour.
Estimated Total Annual Burden Hours: 43,893 hours.
Needs and Uses: This collection of information is required to administer the patent laws pursuant to title 35, U.S.C., concerning the issuance of patents and related actions including correcting errors in printed patents, refiling of patent applications, requesting reexamination of a patent, and requesting a reissue patent to correct an error in a patent. The affected public includes any individual or institution whose application for a patent has been allowed or who takes action as covered by the applicable rules.

OMB Number: 0651–0034.
Title: Secrecy/License to Export.
Form Numbers: None.
Type of Review: Approved through January of 2001.
Affected Public: Individuals or Households, Business or Other For-Profit Institutions, Not-for-Profit Institutions and Federal Government.
Estimated Number of Respondents: 2,187.
Estimated Time Per Response: 0.67 hour.
Estimated Total Annual Burden Hours: 1,476 hours.
Needs and Uses: In the interest of national security, patent laws and regulations place certain limitations on the disclosure of information contained in patents and patent applications and on the filing of applications for patent in foreign countries.

The principal impact of the changes in this notice of proposed rulemaking is to implement the changes to Office practice necessitated by §§ 4501 through 4508 of the "American Inventors Protection Act of 1999" (enacted into law by § 1000(a)(9), Division B, of Public Law 106–113).

Comments are invited on: (1) Whether the collection of information is necessary for proper performance of the functions of the agency; (2) the accuracy of the agency's estimate of the burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information to respondents.

Interested persons are requested to send comments regarding these information collections, including suggestions for reducing this burden, to Robert J. Spar, Director, Special Program Law Office, Patent and Trademark Office, Washington, D.C. 20231, or to the Office of Information and Regulatory Affairs of OMB, New Executive Office Building, 725 17th Street, N.W., Room 10235, Washington, D.C. 20503, Attention: Desk Officer for the Patent and Trademark Office.

Notwithstanding any other provision of law, no person is required to respond to nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB control number.

List of Subjects

37 CFR Part 1

Administrative practice and procedure, Courts, Freedom of Information, Inventions and patents, Reporting and recordkeeping requirements, Small businesses.

37 CFR Part 5

Classified information, foreign relations, inventions and patents.

For the reasons set forth in the preamble, 37 CFR Parts 1 and 5 are proposed to be amended as follows:

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.9 is amended by revising paragraph (c) to read as follows:

§ 1.9 Definitions.

* * * * *

(c) A published application as used in this chapter means an application for patent which has been published under 35 U.S.C. 122(b).

* * * * *

3. Section 1.11 is amended by revising paragraph (a) to read as follows:

§ 1.11 Files open to the public.

(a) The specification, drawings, and all papers relating to the file of an abandoned published application, except if a redacted copy of the application was used for the patent application publication, a patent, or a statutory invention registration are open to inspection by the public, and copies may be obtained upon the payment of

the fee set forth in § 1.19(b)(2). See § 2.27 for trademark files.

* * * * *

4. Section 1.12 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 1.12 Assignment records open to public inspection.

(a)(1) Separate assignment records are maintained in the Patent and Trademark Office for patents and trademarks. The assignment records, relating to original or reissue patents, including digests and indexes, for assignments recorded on or after May 1, 1957, published patent applications, and assignment records relating to pending or abandoned trademark applications and to trademark registrations, for assignments recorded on or after January 1, 1955, are open to public inspection at the Patent and Trademark Office, and copies of those assignment records may be obtained upon request and payment of the fee set forth in § 1.19 and § 2.6 of this chapter.

* * * * *

(b) Assignment records, digests, and indexes relating to any pending or abandoned patent application which has not been published under 35 U.S.C. 122(b) are not available to the public. Copies of any such assignment records and information with respect thereto shall be obtainable only upon written authority of the applicant or applicant's assignee or attorney or agent or upon a showing that the person seeking such information is a bona fide prospective or actual purchaser, mortgagee, or licensee of such application, unless it shall be necessary to the proper conduct of business before the Office or as provided by these rules.

* * * * *

5. Section 1.13 is revised to read as follows:

§ 1.13 Copies and certified copies.

(a) Non-certified copies of patents, patent application publications, and trademark registrations and of any records, books, papers, or drawings within the jurisdiction of the United States Patent and Trademark Office and open to the public, will be furnished by the United States Patent and Trademark Office to any person, and copies of other records or papers will be furnished to persons entitled thereto, upon payment of the fee therefor.

(b) Certified copies of patents, patent application publications, and trademark registrations and of any records, books, papers, or drawings within the jurisdiction of the United States Patent and Trademark Office and open to the public or persons entitled thereto will be authenticated by the seal of the United States Patent and Trademark Office and certified by the Director, or in his or her name attested by an officer of the United States Patent and Trademark Office authorized by the Director, upon payment of the fee for the certified copy.

6. Section 1.14 is amended by revising paragraphs (a), (b), (c) and (e), and adding paragraphs (h), (i) and (j) to read as follows:

§ 1.14 Patent applications preserved in confidence.

(a) *Confidentiality of patent application information.* Patent applications that have not been published under 35 U.S.C. 122(b) are generally preserved in confidence pursuant to 35 U.S.C. 122(a). Information concerning the filing, pendency, or subject matter of an application for patent, including status information, and access to the application, will only be given to the public as set forth in § 1.11 or in this section.

(1) *Status information* is:

(i) Whether the application is pending, abandoned, or patented;

(ii) Whether the application has been published under 35 U.S.C. 122(b); and

(iii) The application "numerical identifier" which may be:

(A) The eight digit application number (the two digit series code plus the six digit serial number); or

(B) The six digit serial number plus any one of the filing date of the national application, the international filing date, or date of entry into the national stage.

(2) *Access* is defined as providing the application file for review and copying of any material.

(b) *When status information may be supplied.* Status information of an application may be supplied by the Office to the public if any of the following apply:

(1) Access to the application is available pursuant to paragraph (e) of this section;

(2) The application is referred to by its numerical identifier in a published patent document (*e.g.*, a U.S. patent, a U.S. patent application publication, or an international application publication), or in a U.S. application open to public inspection (§ 1.11(b), or paragraph (e)(2)(i) or (e)(2)(ii) of this section); or

(3) The application is a published international application in which the United States of America has been indicated as a designated state.

(4) The application claims the benefit of the filing date of an application for which status information may be provided pursuant to paragraphs (b)(1) through (b)(3) of this section.

(c) *When copies may be supplied.* A copy of an application-as-filed or a file wrapper and contents may, subject to paragraph (j) of this section (addresses international applications), be supplied by the Office to the public if any of the following apply:

(1) *Application-as-filed.* If a U.S. patent application publication or patent incorporates by reference, or includes a specific reference under 35 U.S.C. 119(e) or 120 to, a pending or abandoned application, a copy of that application-as-filed may be provided to any person upon written request, including the fee set forth in § 1.19(b)(1).

(2) *File wrapper and contents.* A copy of the specification, drawings, and all papers relating to the file of an abandoned or pending published application may be provided to any person upon written request, including the fee set forth in § 1.19(b)(2). If a redacted copy of the application was used for the patent application publication, the copy of the specification, drawings, and papers may be limited to a redacted copy.

* * * * *

(e) *Public access to a pending or abandoned application may be provided.* Access to an application may, subject to paragraph (j) of this section, be provided to any person if a written request for access is submitted, the application file is available, and any of the following apply:

(1) The application is open to public inspection pursuant to § 1.11(b); or

(2) The application is abandoned, it is not within the file jacket of a pending application under § 1.53(d), and it is referred to:

(i) In a U.S. patent application publication or patent; or

(ii) In another U.S. application which is open to public inspection either pursuant to § 1.11(b) or paragraph (e)(2)(i) of this section.

* * * * *

(h) [Reserved]

(i) *International applications.* (1) Copies of international application files for international applications filed on or after November 29, 2000, and which designate the U.S. and which have been published in accordance with PCT Article 21(2), or copies of a document in such application files, will be furnished in accordance with Patent Cooperation Treaty (PCT) Articles 30 and 38 and PCT Rules 94.2 and 94.3, upon written request including a showing that the publication of the application has occurred and that the U.S. was designated, and upon payment of the appropriate fee (§ 1.19(b)(2) or § 1.19(b)(3)), if:

(i) With respect to the Home Copy, the international application was filed with the U.S. Receiving Office;

(ii) With respect to the Search Copy, the U.S. acted as the International Searching Authority; or

(iii) With respect to the Examination Copy, the United States acted as the International Preliminary Examining Authority, an International Preliminary Examination Report has issued, and the United States was elected.

(2) A copy of an English language translation of an international application, which has been filed in the Patent and Trademark Office pursuant to 35 U.S.C. 154(2)(d)(4) will be furnished upon written request including a showing that the publication of the application in accordance with PCT Article 21(2) has occurred and that the U.S. was designated, and upon payment of the appropriate fee (§ 1.19(b)(2) or § 1.19(b)(3)).

(3) Access to international application files for international applications filed on or after November 29, 2000, and which designate the U.S. and which have been published in accordance with PCT Article 21(2), or copies of a document in such application files, will be furnished in accordance with Patent Cooperation Treaty (PCT) Articles 30 and 38 and PCT Rules 94.2 and 94.3, upon written request including a showing that the publication of the application has occurred and that the U.S. was designated.

(4) In accordance with PCT Article 30, copies of an international application-as-filed under paragraph (c)(1) of this section will not be provided prior to the international publication of the application pursuant to PCT Article 21(2).

(5) Access to international application files under paragraphs (e) and (i)(3) of this section will not be permitted with respect to the Examination Copy in accordance with PCT Article 38.

(j) *Access or copies in other circumstances.* The Office, either *sua sponte* or on petition, may also provide access or copies of all or part of an application if necessary to carry out an Act of Congress or if warranted by other special circumstances. Any petition by a member of the public seeking access to, or copies of, all or part of any pending or abandoned application preserved in confidence pursuant to paragraph (a) of this section, or any related papers, must include:

(1) The fee set forth in § 1.17(h); and

(2) A showing that access to the application is necessary to carry out an Act of Congress or that special circumstances exist which warrant petitioner being granted access to all or part of the application.

7. Section 1.17 is amended by revising its heading and paragraphs (h), (i), (l), (m) and (p) and adding paragraph (u) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

* * * * *

(h) For filing a petition under one of the following sections which refers to this paragraph: 130.00

§ 1.12—for access to an assignment record.
§ 1.14—for access to an application.
§ 1.47—for filing by other than all the inventors or a person not the inventor.
§ 1.53(e)—to accord a filing date.
§ 1.59—for expungement and return of information.
§ 1.84—for accepting color drawings or photographs.
§ 1.91—for entry of a model or exhibit.
§ 1.102—to make an application special.
§ 1.103(a)—to suspend action in application.
§ 1.138(c)—to expressly abandon an application to avoid publication.
§ 1.182—for decision on a question not specifically provided for.
§ 1.183—to suspend the rules.
§ 1.295—for review of refusal to publish a statutory invention registration.
§ 1.313—to withdraw an application from issue.
§ 1.314—to defer issuance of a patent.
§ 1.377—for review of decision refusing to accept and record payment of a maintenance fee filed prior to expiration of a patent.
§ 1.378(e)—for reconsideration of decision on petition refusing to accept delayed payment of maintenance fee in an expired patent.
§ 1.644(e)—for petition in an interference.
§ 1.644(f)—for request for reconsideration of a decision on petition in an interference.
§ 1.666(b)—for access to an interference settlement agreement.
§ 1.666(c)—for late filing of interference settlement agreement.
§ 1.741(b)—to accord a filing date to an application for extension of a patent term.
§ 5.12—for expedited handling of a foreign filing license.
§ 5.15—for changing the scope of a license.
§ 5.25—for retroactive license.

(i) Processing fee for taking action under one of the following sections which refers to this paragraph: 130.00

§ 1.28(c)(3)—for processing a non-itemized fee deficiency based on an error in small entity status.
§ 1.41—for supplying the name or names of the inventor or inventors after the filing date without an oath or declaration as prescribed by § 1.63, except in provisional applications.
§ 1.48—for correcting inventorship, except in provisional applications.
§ 1.52(d)—for processing a nonprovisional application filed with a specification in a language other than English.
§ 1.55—for entry of late priority papers.
§ 1.99(e)—for processing a belated submission under § 1.99.
§ 1.103(b)—for requesting limited suspension of action in continued prosecution application.
§ 1.217—for processing a redacted copy of a paper submitted in the file of an application in which a redacted copy was submitted for the patent application publication.
§ 1.221—for requesting voluntary publication or republication of an application.
§ 1.497(d)—for filing an oath or declaration pursuant to 35 U.S.C. 371(c)(4) naming an inventive entity different from the inventive entity set forth in the international stage.

* * * * *

(l) For filing a petition for the revival of an unavoidably abandoned application under 35 U.S.C. 111, 133, 364, or 371, for delayed payment of the issue fee under 35 U.S.C. 151, or for the revival of an unavoidably terminated reexamination proceeding under 35 U.S.C. 133 (§ 1.137(a)):

By a small entity (§ 1.9(f)): 55.00
By other than a small entity: 110.00

(m) For filing a petition for revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.9(f)): 605.00
By other than a small entity: 1,210.00

* * * * *

(p) For an information disclosure statement under § 1.97(c) or (d) or a submission under § 1.99: 240.00

* * * * *

(u) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365 (§§ 1.55 and 1.78): 1,210.00

8. Section 1.18 is amended by revising its heading and adding paragraph (d) to read as follows:

§ 1.18 Patent post-allowance (including issue) fees.

* * * * *

(d) Publication fee: 300.00

§ 1.24 [Removed and Reserved]

9. Section 1.24 is removed and reserved.

10. Section 1.52 is amended by revising paragraph (d) to read as follows:

§ 1.52 Language, paper, writing, margins.

* * * * *

(d) A nonprovisional or provisional

for priority or the certified copy of the

title should be as short and specific as

apply to an application for a design

translation of a non-English language

invention registration. The color

(d) A nonprovisional or provisional application may be filed in a language other than English.

(1) *Nonprovisional application.* If a nonprovisional application is filed in a language other than English, an English language translation of the non-English language application, a statement that the translation is accurate, and the processing fee set forth in § 1.17(i) are required. If these items are not filed with the application, applicant will be notified and given a period of time within which they must be filed in order to avoid abandonment.

(2) *Provisional application.* If a provisional application is filed in a language other than English, an English language translation of the non-English language provisional application will not be required in the provisional application. See § 1.78(a) for the requirements for claiming the benefit of such provisional application in a nonprovisional application.

11. Section 1.55 is amended by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 1.55 Claim for foreign priority.

(a) An applicant in a nonprovisional application may claim the benefit of the filing date of one or more prior foreign applications under the conditions specified in 35 U.S.C. 119(a) through (d), 172, and 365(a) and (b).

(1)(i) In an original application filed under 35 U.S.C. 111(a), the claim for priority must be presented during the pendency of the application, and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior foreign application. This time period is not extendable. The claim must identify the foreign application for which priority is claimed, as well as any foreign application for the same subject matter and having a filing date before that of the application for which priority is claimed, by specifying the application number, country (or intellectual property authority), day, month, and year of its filing. The time period in this paragraph does not apply to an application for a design patent.

(ii) In an application that entered the national stage from an international application after compliance with 35 U.S.C. 371, the claim for priority must be made during the pendency of the application and within the time limit set forth in the PCT and the Regulations under the PCT.

(2) The claim for priority and the certified copy of the foreign application specified in 35 U.S.C. 119(b) or PCT Rule 17 must, in any event, be filed before the patent is granted. If the claim for priority or the certified copy of the foreign application is filed after the date the issue fee is paid, it must be accompanied by the processing fee set forth in § 1.17(i), but the patent will not include the priority claim unless corrected by a certificate of correction under 35 U.S.C. 255 and § 1.323 of this part.

(3) When the application becomes involved in an interference (§ 1.630), when necessary to overcome the date of a reference relied upon by the examiner, or when deemed necessary by the examiner, the Office may require that the claim for priority and the certified copy of the foreign application be filed earlier than provided in paragraphs (a)(1) or (a)(2) of this section.

(4) An English-language translation of a non-English-language foreign application is not required except when the application is involved in an interference (§ 1.630), when necessary to overcome the date of a reference relied upon by the examiner, or when specifically required by the examiner. If an English-language translation is required, it must be filed together with a statement that the translation of the certified copy is accurate.

* * * * *

(c) Unless such claim is accepted in accordance with the provisions of this paragraph, any claim for priority under 35 U.S.C. 119(a)–(d), or 365(a) or (b) not presented within the time period provided by paragraph (a) of this section is considered to have been waived. If a claim for priority under 35 U.S.C. 119(a)–(d) or 365(a) or (b) is presented after the time period provided by paragraph (a) of this section, the claim may be accepted if the claim identifying the prior foreign application by specifying its application number, country, and the day, month and year of its filing was unintentionally delayed. A petition to accept a delayed claim for priority under 35 U.S.C. 119(a)–(d) or 365(a) or (b) must be accompanied by:

(1) The surcharge set forth in § 1.17(u); and

(2) A statement that the entire delay between the date the claim was due under paragraph (a)(1) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

12. Section 1.72 is amended by revising paragraph (a) to read as follows:

§ 1.72 Title and abstract.

(a) The title of the invention may include only characters capable of being created by a keyboard and may not exceed 500 characters in length. The title should be as short and specific as possible. Unless the title is supplied in an application data sheet (§ 1.76), the title of the invention should appear as a heading on the first page of the specification.

* * * * *

13. Section 1.78 is amended by revising paragraphs (a)(2), (a)(3), and (a)(4), and adding new paragraphs (a)(5) and (a)(6) to read as follows:

§ 1.78 Claiming benefit of earlier filing date and cross references to other applications.

(a)(1) * * *

(2) Except for a continued prosecution application filed under § 1.53(d), any nonprovisional application claiming the benefit of one or more prior filed copending nonprovisional applications or international applications designating the United States of America must contain a reference to each such prior application, identifying it by application number (consisting of the series code and serial number) or international application number and international filing date and indicating the relationship of the applications. This reference must be submitted during the pendency of the application, and within the later of four months from the actual filing date of the application or sixteen months from the filing date of the prior application. This time period is not extendable. Unless the reference required by this paragraph is included in an application data sheet (§ 1.76), the specification must contain or be amended to contain such reference in the first sentence following the title. If the application claims the benefit of an international application, the first sentence of the specification must include an indication of whether the international application was published under PCT Article 21(2) in English (regardless of whether benefit for such application is claimed in the application data sheet). The request for a continued prosecution application under § 1.53(d) is the specific reference required by 35 U.S.C. 120 to the prior application. The identification of an application by application number under this section is the specific reference required by 35 U.S.C. 120 to every application assigned that application number. Cross references to other related applications may be made when appropriate (see § 1.14). Except as provided in paragraph (a)(3) of this section, the failure to timely submit the reference required by 35 U.S.C. 120 and this paragraph is considered a waiver of any benefit under 35 U.S.C. 120, 121, or 365(c) to such prior application. The time period set forth in this paragraph does not apply to an application for a design patent.

(3) If the reference required by 35 U.S.C. 120 and paragraph (a)(2) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(2) of this section, the claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior filed copending nonprovisional application or international application designating the United States of America may be accepted if the reference identifying the prior application by application number or international application number and international filing date was unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 120, 121, or 365(c) for the benefit of a prior filed application must be accompanied by:

(i) The surcharge set forth in § 1.17(u); and

(ii) A statement that the entire delay between the date the claim was due under paragraph (a)(2) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

(4) A nonprovisional application other than for a design patent may claim an invention disclosed in one or more prior filed provisional applications. In order for a nonprovisional application to claim the benefit of one or more prior filed provisional applications, each prior provisional application must name as an inventor at least one inventor named in the later filed nonprovisional application and disclose the named inventor's invention claimed in at least one claim of the later filed nonprovisional application in the manner provided by the first paragraph of 35 U.S.C. 112. In addition, each prior provisional application must be entitled to a filing date as set forth in § 1.53(c), and the basic filing fee set forth in § 1.16(k) must be paid within the time period set forth in § 1.53(g).

(5) Any nonprovisional application claiming the benefit of one or more prior filed copending provisional applications must contain a reference to each such prior provisional application, identifying it as a provisional application, and including the provisional application number (consisting of series code and serial number), and, if the provisional application is filed in a language other than English, an English language translation of the non-English language provisional application and a statement that the translation is accurate. This reference and English language translation of a non-English language provisional application must be submitted during the pendency of the nonprovisional application, and within the later of four months from the actual filing date of the nonprovisional application or sixteen months from the filing date of the prior provisional application. This time period is not extendable. Unless the reference required by this paragraph is included in an application data sheet (§ 1.76), the specification must contain or be amended to contain such reference in the first sentence following the title. Except as provided in paragraph (a)(6) of this section, the failure to timely submit the reference and English language translation of a non-English language provisional application required by 35 U.S.C. 119(e) and this paragraph is considered a waiver of any benefit under 35 U.S.C. 119(e) to such prior provisional application.

(6) If the reference or English language translation of a non-English language provisional application required by 35 U.S.C. 119(e) and paragraph (a)(5) of this section is presented in a nonprovisional application after the time period provided by paragraph (a)(5) of this section, the claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application may be accepted during the pendency of the nonprovisional application if the claim identifying the prior application by provisional application number and any English language translation of a non-English language provisional application were unintentionally delayed. A petition to accept an unintentionally delayed claim under 35 U.S.C. 119(e) for the benefit of a prior filed provisional application must be accompanied by:

(i) The surcharge set forth in § 1.17(u); and

(ii) A statement that the entire delay between the date the claim was due under paragraph (a)(5) of this section and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

* * * * *

14. Section 1.84 is amended by revising paragraphs (a)(2), (e), and (j) to read as follows:

§ 1.84 Standards for drawings.

(a) * * *

(2) *Color.* On rare occasions, color drawings may be necessary as the only practical medium by which to disclose the subject matter sought to be patented in a utility or design patent application or the subject matter of a statutory invention registration. The color drawings must be of sufficient quality such that all details in the drawings are reproducible in black and white in the printed patent. Color drawings are not permitted in international applications (see PCT Rule 11.13), or in an application, or copy thereof, submitted under the Office electronic filing system. The Office will accept color drawings in utility or design patent applications and statutory invention registrations only after granting a petition filed under this paragraph explaining why the color drawings are necessary. Any such petition must include the following:

(i) The fee set forth in § 1.17(h);

(ii) Three (3) sets of color drawings;

(iii) A black and white photocopy that accurately depicts, to the extent possible, the subject matter shown in the color drawing; and

(iv) An amendment to the specification to insert (unless the specification contains or has been previously amended to contain) the following language as the first paragraph of the brief description of the drawings:

The patent or application file contains at least one drawing executed in color. Copies of this patent or patent application publication with color drawing(s) will be provided by the Patent and Trademark Office upon request and payment of the necessary fee.

* * * * *

(e) *Type of paper.* Drawings submitted to the Office must be made on paper which is flexible, strong, white, smooth, non-shiny, and durable. All sheets must be reasonably free from cracks, creases, and folds. Only one side of the sheet may be used for the drawing. Each sheet must be reasonably free from erasures and must be free from alterations, overwritings, and interlineations. Photographs must be developed on paper meeting the sheet-size requirements of paragraph (f) of this section and the margin requirements of paragraph (g) of this section. See paragraph (b) of this section for other requirements for photographs.

* * * * *

(j) *Front page view.* One of the views should be suitable for inclusion on the front page of the patent application publication and patent as the illustration of the invention. Applicant may suggest a single view (by figure number) for inclusion on the front page of the patent application publication and patent.

* * * * *

15. Section 1.85 is amended by revising paragraph (a) to read as follows:

§ 1.85 Corrections to drawings.

(a) A utility or plant application will not be placed on the files for examination until objections to the drawings have been corrected. Except as provided in § 1.215(c), any patent application publication will not include drawings filed after the application has been placed on the files for examination. Unless applicant is otherwise notified in an Office action, objections to the drawings in a utility or plant application will not be held in abeyance, and a request to hold objections to the drawings in abeyance will not be considered a *bona fide* attempt to advance the application to final action (§ 1.135(c)). If a drawing in a design application meets the requirements of § 1.84(e), (f), and (g) and is suitable for reproduction, but is not otherwise in compliance with § 1.84, the drawing may be admitted for examination.

* * * * *

16. Section 1.98 is amended by revising paragraphs (a)(2) and (b) to read as follows:

§ 1.98 Content of information disclosure statement.

(a) * * *

(2) A legible copy of:

(i) Each U.S. patent application publication and U.S. and foreign patent;

(ii) Each publication or that portion which caused it to be listed;

(iii) For each cited pending U.S. application, the application specification including the claims, and any drawing of the application, or that portion of the application which caused it to be listed including any claims directed to that portion; and (iv) All other information or that portion which caused it to be listed; and

* * * * *

(b) Each U.S. patent listed in an information disclosure statement shall be identified by patentee, patent number, and issue date. Each U.S. patent application publication listed in an information disclosure statement shall be identified by applicant, patent application publication number, and publication date. Each listed U.S. application shall be identified by the inventor, application number, and filing date. Each listed foreign patent or published foreign patent application shall be identified by the country or patent office which issued the patent or published the application, an appropriate document number, and the publication date indicated on the patent or published application. Each listed publication shall be identified by author (if any), title, relevant pages of the publication, date, and place of publication.

* * * * *

17. A new § 1.99 is added to read as follows:

§ 1.99 Third party submission in published application.

(a) A submission by a member of the public of patents or publications relevant to a pending published application will be entered in the application file if the submission complies with the requirements of this section and the application is still pending when the submission and application file are brought before the examiner.

(b) A submission under this section must identify the application to which it is directed by application number and include:

(1) The fee set forth in § 1.17(p);

(2) A listing of the patents or publications submitted for consideration by the Office;

(3) A copy of each listed patent or publication in written form or at least the pertinent portions thereof; and

(4) An English language translation of all the necessary and pertinent parts of any non-English language patent or publication in written form relied upon.

(c) The submission under this section must be served upon the applicant in accordance with § 1.248.

(d) A submission under this section may not include any explanation of the patents, publications, or any other information, and is limited to twenty total patents or publications.

(e) A submission under this section must be filed within two months of the date of publication of the application (§ 1.215(a)) or prior to the mailing of a notice of allowance (§ 1.311), whichever is earlier. Any submission under this section not filed within this period is permitted only when the patents or publications could not have been submitted to the Office earlier, and must also be accompanied by the processing fee set forth in § 1.17(i). A submission by a member of the public to a pending published application that does not comply with the requirements of this section will be returned or discarded.

(f) A member of the public may include a self-addressed postcard with a submission to receive an acknowledgment by the Office that the submission has been received. A member of the public filing a submission under this section will not receive any communications from the Office relating to the submission other than the return of a self-addressed postcard. In the absence of a request by the Office, an applicant has no duty to, and need not, reply to a submission under this section. The limited involvement of the member of the public filing a submission pursuant to this section ends with the filing of the submission, and no further submission on behalf of the member of the public will be considered, except for additional prior art, or unless such submission raises new issues which could not have been earlier presented.

18. Section 1.104 is amended by revising paragraph (d)(1) to read as follows:

§ 1.104 Nature of examination.

* * * * *

(d) *Citation of references.* (1) If domestic patents are cited by the examiner, their numbers and dates, and the names of the patentees will be stated. If domestic patent application publications are cited by the examiner, their publication number, publication date, and the names of the applicants will be stated. If foreign published applications or patents are cited, their nationality or country, numbers and dates, and the names of the patentees will be stated, and such other data will be furnished as may be necessary to enable the applicant, or in the case of a reexamination proceeding, the patent owner, to identify the published applications or patents cited. In citing foreign published applications or patents, in case only a part of the document is involved, the particular pages and sheets containing the parts relied upon will be identified. If printed publications are cited, the author (if any), title, date, pages or plates, and place of publication, or place where a copy can be found, will be given.

* * * * *

19. Section 1.130 is amended by revising its heading and paragraph (a) to read as follows:

§ 1.130 Affidavit or declaration to disqualify commonly owned patent or published application as prior art.

(a) When any claim of an application or a patent under reexamination is rejected under 35 U.S.C. 103 on a U.S. patent or U.S. patent application publication which is not prior art under 35 U.S.C. 102(b), and the inventions defined by the claims in the application or patent under reexamination and by the claims in the patent or published application are not identical but are not patentably distinct, and the inventions are owned by the same party, the applicant or owner of the patent under reexamination may disqualify the patent or patent application publication as prior art. The patent or patent application publication can be disqualified as prior art by submission of:

(1) A terminal disclaimer in accordance with § 1.321(c); and

(2) An oath or declaration stating that the application or patent under reexamination and patent or published application are currently owned by the same party, and that the inventor named in the application or patent under reexamination is the prior inventor under 35 U.S.C. 104.

* * * * *

20. Section 1.131 is amended by revising its heading and paragraph (a) to read as follows:

§ 1.131 Affidavit or declaration of prior invention.

(a) When any claim of an application or a patent under reexamination is rejected, the inventor of the subject matter of the rejected claim, the owner of the patent under reexamination, or the party qualified under §§ 1.42, 1.43, or 1.47, may submit an appropriate oath or declaration to establish invention of the subject matter of the rejected claim prior to the effective date of the reference or activity on which the rejection is based. The effective date of a U.S. patent, U.S. patent application publication, or international application publication under PCT Article 21(2) is the date that it is effective as a reference under 35 U.S.C. 102(e). Prior invention may not be established under this section in any country other than the United States, a NAFTA country, or a WTO member country. Prior invention may not be established under this section before December 8, 1993, in a NAFTA country other than the United States, or before January 1, 1996, in a WTO member country other than a NAFTA country. Prior invention may not be established under this section if either:

(1) The rejection is based upon a U.S. patent or U.S. patent application publication of a pending or patented application to another or others which claims the same patentable invention as defined in § 1.601(n); or

(2) The rejection is based upon a statutory bar.

* * * * *

21. Section 1.132 is revised to read as follows:

§ 1.132 Affidavits or declarations traversing rejections or objections.

When any claim of an application or a patent under reexamination is rejected or objected to, an oath or declaration may be submitted to traverse the rejection or objection. An oath or declaration may not be submitted under this section to traverse a rejection if the rejection is based upon a U.S. patent or a U.S. patent application publication of a pending or patented application to another or others which claims the same patentable invention as defined in § 1.601(n).

22. Section 1.137 is revised to read as follows:

§ 1.137 Revival of abandoned application, terminated reexamination proceeding, or lapsed patent.

(a) *Unavoidable.* Where the delay in reply by applicant or patent owner was unavoidable, a petition may be filed to revive an abandoned application, a terminated reexamination proceeding, or a lapsed patent pursuant to this paragraph. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(l);

(3) A showing to the satisfaction of the Director that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unavoidable; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

(b) *Unintentional.* Where the delay in reply by applicant or patent owner was unintentional, a petition may be filed to revive an abandoned application, a terminated reexamination proceeding, or a lapsed patent pursuant to this paragraph. A grantable petition pursuant to this paragraph must be accompanied by:

(1) The reply required to the outstanding Office action or notice, unless previously filed;

(2) The petition fee as set forth in § 1.17(m);

(3) A statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional. The Director may require additional information where there is a question whether the delay was unintentional; and

(4) Any terminal disclaimer (and fee as set forth in § 1.20(d)) required pursuant to paragraph (d) of this section.

(c) *Reply.* In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must include payment of the issue fee or any outstanding balance thereof. In an application, abandoned for failure to pay the publication fee, the required reply must include payment of the publication fee.

(d) *Terminal disclaimer.* (1) Any petition to revive pursuant to this section in a design application must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the period of abandonment of the application. Any petition to revive pursuant to this section in either a utility or plant application filed before June 8, 1995, must be accompanied by a terminal disclaimer and fee as set forth in § 1.321 dedicating to the public a terminal part of the term of any patent granted thereon equivalent to the lesser of:

(i) The period of abandonment of the application; or

(ii) The period extending beyond twenty years from the date on which the application for the patent was filed in the United States or, if the application contains a specific reference to an earlier filed application(s) under 35 U.S.C. 120, 121, or 365(c), from the date on which the earliest such application was filed.

(2) Any terminal disclaimer pursuant to paragraph (d)(1) of this section must also apply to any patent granted on a continuing utility or plant application filed after June 8, 1995, or a continuing design application, that contains a specific reference under 35 U.S.C. 120, 121, or 365(c) to the application for which revival is sought.

(3) The provisions of paragraph (d)(1) of this section do not apply to applications for which revival is sought solely for purposes of copendency with a utility or plant application filed on or after June 8, 1995, to lapsed patents, or to reexamination proceedings.

(e) *Request for reconsideration.* Any request for reconsideration or review of a decision refusing to revive an abandoned application or lapsed patent upon petition filed pursuant to this section, to be considered timely, must be filed within two months of the decision refusing to revive or within such time as set in the decision. Unless a decision indicates otherwise, this time period may be extended under the provisions of § 1.136 for an abandoned

application or lapsed patent; under the provisions of § 1.550(c) for a terminated *ex parte* reexamination proceeding filed under § 1.510; and under the provisions of § 1.956 for a terminated *inter partes* reexamination proceeding filed under § 1.913.

(f) *Abandonment for failure to notify the Office of a foreign filing.* A nonprovisional application abandoned pursuant to 35 U.S.C. 122(b)(2)(B)(iii) for failure to timely notify the Office of the filing of an application in a foreign country or under a multinational treaty that requires publication of applications eighteen months after filing, may be revived only pursuant to paragraph (b) of this section. The reply requirement of paragraph (c) of this section is met by the notification of such filing in a foreign country or under a multinational treaty, but the filing of a petition under this section will not operate to stay any period for reply that may be running against the application.

(g) *Provisional applications.* A provisional application, abandoned for failure to timely respond to an Office requirement, may be revived pursuant to this section. Subject to the provisions of 35 U.S.C. 119(e)(3) and § 1.7(b), a provisional application will not be regarded as pending after twelve months from its filing date under any circumstances.

23. Section 1.138 is revised to read as follows:

§ 1.138 Express abandonment.

(a) An application may be expressly abandoned by filing in the Patent and Trademark Office a written declaration of abandonment identifying the application. Express abandonment of the application may not be recognized by the Office unless it is actually received by appropriate officials in time to act thereon before the date of issue or publication.

(b) A written declaration of abandonment must be signed by a party authorized under § 1.33(b)(1), (b)(3) or (b)(4) to sign a paper in the application, except as otherwise provided in this paragraph. A registered attorney or agent not of record who acts in a representative capacity under the provisions of § 1.34(a) when filing a continuing application may expressly abandon the prior application as of the filing date granted to the continuing application.

(c) An applicant seeking to abandon an application to avoid publication of the application (see § 1.211(a)(1)) must submit a declaration of express abandonment by way of a petition under this section including the fee set forth in § 1.17(h) in sufficient time to permit the appropriate officials to recognize the abandonment and remove the application from the publication process. Applicant should expect that the petition will not be granted and the application will be published in regular course unless such declaration of express abandonment and petition are received by the appropriate officials more than four weeks prior to the projected date of publication.

24. Section 1.165 is amended by revising paragraph (b) to read as follows:

§ 1.165 Plant drawings.

* * * * *

(b) The drawings may be in color. The drawing must be in color if color is a distinguishing characteristic of the new variety. Two copies of color drawings or photographs and a black and white photocopy that accurately depicts, to the extent possible, the subject matter shown in the color drawing or photograph must be submitted.

25. A new, undesignated center heading and new sections 1.211, 1.213, 1.215, 1.217, 1.219, and 1.221 are added to Subpart B to read as follows:

Publication of Applications

§ 1.211 Publication of applications.

(a) Each U.S. national application for patent filed in the Office under 35 U.S.C. 111(a) and each international application in compliance with 35 U.S.C. 371 will be published promptly after the expiration of a period of eighteen months from the earliest filing date for which a benefit is sought under title 35, United States Code, unless:

(1) The application is recognized by the Office as no longer pending;

(2) The application is national security classified (see § 5.2(c)), subject to a secrecy order under 35 U.S.C. 181, or under national security review;

(3) The application has issued as a patent in sufficient time to be removed from the publication process; or

(4) The application was filed with a nonpublication request in compliance with § 1.213(a).

(b) Provisional applications under 35 U.S.C. 111(b) shall not be published, and design applications under 35 U.S.C. chapter 16 and reissue applications under 35 U.S.C. chapter 25 shall not be published under this section.

(c) An application filed under 35 U.S.C. 111(a) will not be published until it includes the basic filing fee (§ 1.16(a) or 1.16(g)), any English translation required by § 1.52(d), and an executed oath or declaration under § 1.63. The Office may delay publishing any application until it includes a specification on papers in compliance with § 1.52 and having an abstract (§ 1.72(b)), drawings in compliance with § 1.84, and a sequence listing in compliance with §§ 1.821 through 1.825 (if applicable), and until any petition under § 1.47 is granted.

(d) The Office may refuse to publish an application, or to include a portion of an application in the patent application publication (§ 1.215), if publication of the application or portion thereof would violate Federal or state law, or if the application or portion thereof contains offensive or disparaging material.

(e) The publication fee set forth in § 1.18(d) must be paid in each application published under this section before the patent will be granted. If an application is subject to publication under this section, the sum specified in the notice of allowance under § 1.311 will also include the publication fee which must be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. This three-month period is not extendable. If the application is not published under this section, the publication fee (if paid) will be refunded.

§ 1.213 Nonpublication request.

(a) If the invention disclosed in an application has not been and will not be the subject of an application filed in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the application will not be published under 35 U.S.C. 122(b) and § 1.211 provided:

(1) A request (nonpublication request) is submitted with the application upon filing;

(2) The request states in a conspicuous manner that the application is not to be published under 35 U.S.C. 122(b);

(3) The request contains a certification that the invention disclosed in the application has not been and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication at eighteen months after filing; and

(4) The request is signed in compliance with § 1.33(b).

(b) The applicant may rescind a nonpublication request at any time. A request to rescind a nonpublication request under paragraph (a) of this section must:

(1) Identify the application to which it is directed;

(2) State in a conspicuous manner that the request that the application is not to be published under 35 U.S.C. 122(b) is rescinded; and

(3) Be signed in compliance with § 1.33(b).

(c) If an applicant who has submitted a nonpublication request under paragraph (a) of this section subsequently files an application directed to the invention disclosed in the application in which the nonpublication request was submitted in another country, or under a multilateral international agreement, that requires publication of applications eighteen months after filing, the applicant must notify the Office of such filing within forty-five days after the date of the filing of such foreign or international application. The failure to timely notify the Office of the filing of such foreign or international application shall result in abandonment of the application in which the nonpublication request was submitted (35 U.S.C. 122(b)(2)(B)(iii)).

§ 1.215 Patent application publication.

(a) The publication of an application under 35 U.S.C. 122(b) shall include a patent application publication. The date of publication shall be indicated on the patent application publication. The patent application publication will be based upon the application papers deposited on the filing date of the application, except for preliminary amendments, as well as the executed oath or declaration submitted to complete the application, and any application papers or drawings submitted in reply to a preexamination notice requiring a title and abstract in compliance with § 1.72, application papers in compliance with § 1.52, drawings in compliance with § 1.84, or a sequence listing in compliance with §§ 1.821 through 1.825, except as otherwise provided in this section.

(b) If applicant wants the patent application publication to include assignee information, the applicant must include a separate paper indicating that such information is being provided for inclusion on the patent application publication. Assignee information might not be included on the patent application publication if such paper is not included with the application on filing. Assignee information as used in this paragraph means the name and address of the assignee of the entire right, title, and interest in an application. Providing this information does not substitute for compliance with any requirement of part 3 of this chapter to have an assignment recorded by the Office.

(c) At applicant's option, the patent application publication will be based upon the copy of the application (specification, drawings, and oath or declaration) as amended during examination, provided that applicant supplies such a copy in compliance with the Office electronic filing system requirements within one month of the actual filing date of the application or fourteen months of the earliest filing date for which a benefit is sought under title 35, United States Code, whichever is later.

(d) If the copy of the application submitted pursuant to paragraph (c) of this section does not comply with the Office electronic filing system requirements, the Office will publish the application as provided in paragraph (a) of this section. If, however, the Office has not started the publication process, the Office may use an untimely filed copy of the application supplied by the applicant under paragraph (c) of this section in creating the patent application publication.

§ 1.217 Publication of a redacted copy of an application.

(a) If an applicant has filed applications in one or more foreign countries, directly or through a multilateral international agreement, and such foreign-filed applications or the description of the invention in such foreign-filed applications is less extensive than the application or description of the invention in the application filed in the Office, the applicant may submit a redacted copy of the application filed in the Office for publication, eliminating any part or description of the invention that is not also contained in any of the corresponding applications filed in a foreign country. The Office will publish the application as provided in § 1.215(a) unless the applicant files a redacted copy of the application in compliance with this section within sixteen months after the earliest filing date for which a benefit is sought under title 35, United States Code.

(b) The redacted copy of the application must be submitted in compliance with the Office electronic filing system requirements. The title of the invention in the redacted copy of the application must correspond to the title of the application at the time the redacted copy of the application is submitted to the Office. If the redacted copy of the application does not comply with the Office electronic filing system requirements, the Office will publish the application as provided in § 1.215(a).

(c) The applicant must also concurrently submit in paper (§ 1.52(a)) to be filed in the application:

(1) A certified copy of each foreign-filed application that corresponds to the application for which a redacted copy is submitted;

(2) A translation of each such foreign-filed application that is in a language other than English, and a statement that the translation is accurate;

(3) A marked-up copy of the application showing the redactions in brackets; and

(4) A certification that the redacted copy of the application eliminates only the part or description of the invention that is not contained in any application filed in a foreign country, directly or through a multilateral international agreement, that corresponds to the application filed in the Office.

(d) The Office will provide a copy of the complete file wrapper and contents of an application for which a redacted copy was submitted under this section to any person upon written request pursuant to § 1.14(c)(2), unless applicant complies with the requirements of paragraphs (d)(1), (d)(2), and (d)(3) of this section.

(1) Applicant must accompany the submission required by paragraph (c) of this section with the following:

(i) A copy of any Office correspondence previously received by applicant including any desired redactions, and a second copy of all Office correspondence previously received by applicant showing the redacted material in brackets; and

(ii) A copy of each submission previously filed by the applicant including any desired redactions, and a second copy of each submission previously filed by the applicant showing the redacted material in brackets.

(2) In addition to providing the submission required by paragraphs (c) and (d)(1) of this section, applicant must:

(i) Within one month of the date of mailing of any correspondence from the Office, file a copy of such Office correspondence including any desired redactions, and a second copy of such Office correspondence showing the redacted material in brackets; and

(ii) With each submission by the applicant, include a copy of such submission including any desired redactions, and a second copy of such submission showing the redacted material in brackets.

(3) Each submission under paragraph (d)(1) or (d)(2) of this paragraph must also be accompanied by the processing fee set forth in § 1.17(i) and a certification that the redactions included therein are limited to the elimination of material that is relevant

only to the part or description of the invention that were not contained in the redacted copy of the application submitted for publication.

(e) The provisions of § 1.8 do not apply to the time periods set forth in this section.

§ 1.219 Early publication.

(a) Applications that will be published under § 1.211 may be published earlier than as set forth in § 1.211(a) at the request of the applicant. Any request for early publication must be accompanied by the publication fee set forth in § 1.18(d). If the applicant does not submit a copy of the application in compliance with the Office electronic filing system requirements, the Office will publish the application as provided in § 1.215(a). No consideration will be given to requests for publication on a certain date, and such requests will be treated as a request for publication as soon as possible.

§ 1.221 Voluntary publication or republication of patent application publication.

(a) Any request for publication of an application filed before, but pending on, November 29, 2000, and any request for republication of an application previously published under § 1.211, must include a copy of the application in compliance with the Office electronic filing system requirements and be accompanied by the publication fee set forth in § 1.18(d) and the processing fee set forth in § 1.17(i). If the request does not comply with the requirements of this paragraph or the copy of the application does not comply with the Office electronic filing system requirements, the Office will not publish the application and will refund the publication fee.

(b) The Office will grant a request for a corrected or revised patent application publication other than as provided in paragraph (a) of this section only when the Office makes a material mistake which is apparent from Office records. Any request for a corrected or revised patent application publication other than as provided in paragraph (a) of this section must be filed within two months from the date of the patent application publication. This period is not extendable.

26. Section 1.291 is amended by revising paragraph (a)(1) to read as follows:

§ 1.291 Protests by the public against pending applications.

(a) * * *

(1) The protest is submitted prior to the date the application was published or the mailing of a notice of allowance under § 1.311, whichever occurs first; and

* * * * *

27. Section 1.292 is amended by revising paragraph (b)(3) to read as follows:

§ 1.292 Public use proceedings.

* * * * *

(b) * * *

(3) The petition is submitted prior to the date the application was published or the mailing of a notice of allowance under § 1.311, whichever occurs first.

* * * * *

28. Section 1.311 is revised to read as follows:

§ 1.311 Notice of allowance.

(a) If, on examination, it shall appear that the applicant is entitled to a patent under the law, a notice of allowance will be sent to the applicant at the correspondence address indicated in § 1.33. The notice of allowance shall specify a sum constituting the issue fee which must be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. The sum specified in the notice of allowance may also include the publication fee, in which case the issue fee and publication fee (§ 1.211(f)) must both be paid within three months from the date of mailing of the notice of allowance to avoid abandonment of the application. This three-month period is not extendable.

(b) An authorization to charge the issue or other post-allowance fees set forth in § 1.18 to a deposit account may be filed in an individual application only after mailing of the notice of allowance.

29. A new § 1.417 is added to read as follows:

§ 1.417 Submission of translation of international application.

The submission of the international publication or an English language translation of an international application pursuant to 35 U.S.C. 154(d)(4) must clearly identify the international application to which it pertains (§ 1.5(a)) and, unless it is being submitted pursuant to § 1.494 or § 1.495, be clearly identified as a submission pursuant to 35 U.S.C. 154(d)(4). Otherwise, the submission will be treated as a filing under 35 U.S.C. 111(a). Such submissions should be marked "Box PCT."

30. Section 1.494 is amended by revising paragraph (f) to read as follows:

§ 1.494 Entering the national stage in the United States of America as a Designated Office.

* * * * *

(f) The documents and fees submitted under paragraphs (b) and (c) of this section must, except for a copy of the international publication or translation of the international application that is identified as provided in § 1.417, be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise, the submission will be considered as being made under 35 U.S.C. 111(a).

* * * * *

31. Section 1.495 is amended by revising paragraph (g) to read as follows:

§ 1.495 Entering the national stage in the United States of America as an Elected Office.

* * * * *

(g) The documents and fees submitted under paragraphs (b) and (c) of this section must, except for a copy of the international publication or translation of the international application that is identified as provided in § 1.417, be clearly identified as a submission to enter the national stage under 35 U.S.C. 371. Otherwise, the submission will be considered as being made under 35 U.S.C. 111(a).

* * * * *

PART 5—SECRECY OF CERTAIN INVENTIONS AND LICENSES TO EXPORT AND FILE APPLICATIONS IN FOREIGN COUNTRIES

32. The authority citation for 37 CFR Part 5 is revised to read as follows:

Authority: 35 U.S.C. 2(b)(2), 41, 181–188, as amended by the Patent Law Foreign Filing Amendments Act of 1988, Pub. L. 100–418, 102 Stat. 1567; the Arms Export Control Act, as amended, 22 U.S.C. 2751 *et seq.*; the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2011 *et seq.*; and the Nuclear Non Proliferation Act of 1978, 22 U.S.C. 3201 *et seq.*; and the delegations in the regulations under these Acts to the Director (15 CFR 370.10(j), 22 CFR 125.04, and 10 CFR 810.7).

33. Section 5.1 as proposed to be revised at 64 FR 53844 is amended by revising paragraph (e) to read as follows:

§ 5.1 Applications and correspondence involving national security.

* * * * *

(e) An application will not be published under § 1.211 of this chapter or allowed under § 1.311 of this chapter if publication or disclosure of the application would be detrimental to national security. An application under national security review will not be published at least until six months from its filing date or three months from the date the application was referred to a defense agency, whichever is later. A national security classified patent application will not be published under § 1.211 of this chapter or allowed under § 1.311 of this chapter until the application is declassified and any secrecy order under § 5.2(a) has been rescinded.

* * * * *

Dated: March 24, 2000.

Q. Todd Dickinson,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 00–7939 Filed 4–4–00; 8:45 am]

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Wednesday,
April 5, 2000

Part III

Housing and Urban Development

24 CFR Part 200
Single Family Mortgage Insurance; Appraiser Roster Removal Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Part 200

[Docket No. FR–4429–F–03]

RIN 2502–AH29

Single Family Mortgage Insurance; Appraiser Roster Removal Procedures

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule adopts provisions concerning the functioning of HUD's Appraiser Roster that were published for public comment in a proposed rule on July 2, 1999. The Appraiser Roster lists appraisers who are eligible to perform Federal Housing Administration single family appraisals. The provisions adopted by this final rule provide procedures for addressing unsatisfactory appraisers, including removing an appraiser from the Roster.

DATES: *Effective Date:* May 5, 2000.

FOR FURTHER INFORMATION CONTACT: Vance T. Morris, Director, Home Mortgage Insurance Division, Office of Insured Single Family Housing, Room 9266, U.S. Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410–8000; telephone (202) 708–2700 (this is not a toll-free number). Hearing- or speech-impaired individuals may access this number via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. The July 2, 1999 Proposed Rule

On July 2, 1999, HUD published a rule (64 FR 36216) for public comment that proposed to codify the current placement procedures for HUD's Appraiser Roster and proposed procedures for removing an appraiser from the Appraiser Roster. The Appraiser Roster lists appraisers who are eligible to perform Federal Housing Administration (FHA) single family appraisals. HUD maintains the Appraiser Roster to provide a means by which HUD can monitor the quality of appraisals performed on single family homes financed through FHA single family programs and to ensure that appraisers performing FHA appraisals meet high competency standards.

The Appraiser Roster is an important part of the FHA Single Family Mortgage Insurance program because accurate appraisals are vital to the success of the Program and HUD's ability to protect the FHA insurance funds. A more complete description of these procedures is presented in the preamble to the July 2, 1999 proposed rule.

The public comment period for the proposed rule closed on August 2, 1999. HUD received 2 comments, one from a banking institution and the other from a trade association. One of the commenters wrote in favor of the proposed rule. The other commenter raised a number of concerns about the proposed removal procedure. This comment is discussed below, in section III.B. of this preamble.

II. The December 28, 1999 Final Rule

On December 28, 1999, HUD published a final rule (64 FR 72868) that adopted certain of the provisions concerning HUD's Appraiser Roster published in the July 2, 1999 proposed rule. Specifically, that final rule adopted the provisions that codify the current Appraiser Roster placement procedure, but did not adopt the independent removal procedure nor certain other related provisions of the July 2, 1999 proposed rule. The structure of the proposed rule was also revised in the December 28, 1999 final rule to comply with President Clinton's Memorandum of June 1, 1998, entitled "Plain Language in Government" (63 FR 31885). In particular, the section numbering of the proposed rule was expanded to cover additional headings and the language was revised to present the rule in question-and-answer format.

III. This Final Rule

This final rule adopts the provisions concerning an independent procedure for removing an appraiser from HUD's Appraiser Roster published in the July 2, 1999 proposed rule and also follows the plain language structure of the December 28, 1999 final rule. HUD proposed this independent removal procedure, separate and apart from HUD's existing debarment, suspension, and limited denial of participation administrative remedies, in order to better safeguard the FHA insurance funds and to better protect homebuyers. A summary of the provisions adopted by this final rule is presented in section IV. of this preamble. This section of the preamble provides some additional background on this rulemaking and presents a discussion of the significant issues raised by the public comments.

A. Background

At the outset, it is important to note that HUD proposed § 200.200 to fill a regulatory void created by the removal in 1996 of part 267 HUD's regulations. HUD removed part 267 as part of a page-by-page review of HUD's regulations initiated in response to President Clinton's March 4, 1995, memorandum requiring all Federal departments and agencies to conduct a page-by-page review of their regulations and to eliminate or revise those regulations that were outdated or unnecessary. HUD removed part 267 in a final rule published in the **Federal Register** on April 1, 1996 (61 FR 14395).

Part 267 (previously entitled "Appraisal and Property Valuation") was originally implemented in a final rule published in the **Federal Register** on October 3, 1994 (59 FR 50456). The part established the Appraiser Roster in lieu of fee appraisers and contained standards for placement on, and removal from, the Roster. HUD removed the part because, as noted in the preamble to the April 1, 1996 final rule, "[t]he standards and requirements [for appraisal and property valuation] that are applicable to HUD insured single family and multifamily properties are set forth in contracts or handbooks, and need not be repeated in the CFR." The removal of part 267 by the April 1, 1996 final rule did not change any part of HUD's appraisal and property valuation policy.

This rulemaking was instituted because rulemaking is an appropriate means of implementing a procedure having the binding effect of the removal procedure adopted by this final rule and, as noted in the preamble to the July 2, 1999 proposed rule, because HUD had intended to retain the predecessor procedure as part of its regulations despite "streamlining" the rest of part 267. HUD inadvertently failed to retain the predecessor removal procedure, and this final rulemaking is intended, in part, to correct this omission.

The original removal procedure, contained in § 267.8(d)(3), read as follows:

> (3) Removal from the Roster. HUD may at any time remove the appraiser from the Roster for cause. Cause includes, but is not limited to, significant deficiencies in appraisals, failure to maintain standing as a State certified or State licensed appraiser and prosecution for committing or attempting to commit fraud, misrepresentation or other offence that may reflect on the appraiser's character and integrity. Such removal shall not be governed by the procedures of part 24 of this title. The appraiser shall, however, be subject to other sanctions in accordance with part 24 of this title.

B. Discussion of Significant Issues Raised by Public Comments

Comment—The proposed rule fails to provide appraisers with even minimally sufficient due process protections. The commenter wrote that the proposed rule

falls short of the minimal due process safeguards to which appraisers are entitled. In particular, the commenter was concerned that the removal procedure does not provide for a judicial-type procedure, as is the case with HUD's existing debarment, suspension and limited denial of participation administrative remedies. The commenter was also concerned that no due process protections were provided for under § 200.200(f) (entitled, "Education sanctions").

HUD Response. As noted previously, the Appraiser Roster was created by HUD to replace the previous system of appraiser fee panels. HUD created the Roster to provide a means by which HUD could ensure that appraisers performing FHA appraisals met high competency standards and that their appraisals met high quality standards. Because the purpose of the Roster is to ensure that certain requirements and standards are met, placement on the Roster is similar to the granting of a license to perform FHA appraisals.

Under section 9(c) of the Administrative Procedure Act, now 5 U.S.C. 558(c) (the APA), a license may be withdrawn, suspended, or revoked if the licensee has been given (a) notice by the agency in writing of the facts or conduct that may warrant the action; and (b) opportunity to demonstrate or achieve compliance with all lawful requirements for the license.

The removal procedure adopted in this final rule provides an appraiser with written notice of a proposed removal (which must include the reasons for the action and the duration of the action), a right to submit a written response challenging the proposed removal and to request a conference, and a review by an official who was neither involved in HUD's initial decision nor who reports to a person involved in the initial decision. These procedures clearly meet, and even exceed, the APA requirements.

These procedures also meet the due process standards enunciated by the Supreme Court in *Matthews* v. *Eldridge*, 424 U.S. 319 (1976), in which the Court created a three-pronged test to determine the adequacy of procedural safeguards in an administrative process. This test calls for the balancing of three factors: the private interest affected by the agency; the risk of error; and the Government's interest.

Regarding the first factor, appraisers do not have privity of contract with HUD because they are engaged by lenders and by HUD property management contractors. Therefore, appraisers have no property interest in retention on the Appraiser Roster. This position is supported by *Sutton* v. *United States Department of Housing and Urban Development, et al.*, 885 F. 2d 471 (8th Cir., 1989), cert. den. 493 U.S. 1075 (1990), reh. den. 494 U.S. 1092 (1990), affirming a decision of the U.S. District Court, E.D. MO., that a fee appraiser was not entitled to relief after the Department refused to recertify him. The District Court held that the appraiser's interest in recertification was not within the range of property and liberty interests protected by the due process clause and that his due process rights were not violated by HUD's refusal to recertify him without notice and hearing when he had been given a right to meet with a HUD Official to discuss his nonrecertification and his right to appeal the decision. Although *Sutton* involved a fee panel appraiser (a predecessor to the Appraiser Roster), the similarities between that method for lenders to obtain appraisers and the present method of selection are far greater than the differences. The same is true of the methods for removing appraisers from fee panels and the method for removal from the Appraisal Roster in the proposed rule.

With regard to the second factor, the risk of error is minimal because an appraiser's performance that would lead to removal from the Appraiser Roster will be checked against performance standards. See HUD's response to the next comment.

Insofar as the third factor is concerned, HUD needs a method to remove poorly performing appraisers from the Appraiser Roster as expeditiously as possible to protect its insurance funds from risks resulting from deficient appraisals.

Furthermore, removing unsatisfactory appraisers in an expeditious manner is vital to the continued well-being of the FHA insurance funds because an accurate appraisal is fundamental to making informed financing decisions. HUD's existing debarment, suspension, and limited denial of participation administrative remedies are not always effective as an initial remedy in the case of the Appraiser Roster because of the time required to utilize these procedures.

It is clear that this final rule implements a removal procedure that provides an appropriate level of due process protection for appraisers placed on the Appraiser Roster. It should also be noted that the removal procedures contained in this final rule significantly exceed the due process protections provided for in the original Appraiser Roster removal procedure contained in part 267 (see § 267.8(d)(3) contained in the April 1, 1995 edition of 24 CFR and repeated in section III.(A) of this preamble).

With regard to the commenter's concern about § 200.200(f) of the proposed rule, there is no need for due process protections for this provision because the provision is intended to benefit appraisers placed on the Roster. If HUD determines that an appraiser is not meeting the standards required for continued placement on the Roster, § 200.200(f) gives HUD the option of remedying the situation by requiring the appraiser to attend further professional training. This provision appears at § 200.204(c) of this final rule, and is re-named "education requirements" to clarify that it is non-punitive.

The appraiser may, of course, choose not to seek the additional training. In this case, HUD may then choose to remove the appraiser from the Roster. At this point, the appraiser has available to him or her the full range of due process protections provided for by the removal procedure. Section 200.200(f) of the proposed rule allows HUD to provide an alternative and less rigorous response to an appraiser who is not meeting the Appraiser Roster standards. Deletion of the requirements of § 200.200(f) would leave HUD with fewer choices with regard to non-performing appraisers. With § 200.200(f), an appraiser may have the option to rehabilitate his or her performance, making removal unnecessary.

Comment—Causes for removal are broader than those for debarment, suspension, and limited denial of participation. The commenter wrote that the causes for removal listed in the removal procedure are broader, and in some cases, less specific than the causes listed for debarment, suspension, or limited denial of participation. In particular, the commenter was concerned about HUD's interpretation of the term "significant deficiencies in appraisals" as a cause for removal.

HUD Response. The removal procedure for the Appraiser Roster is not related to HUD's existing debarment, suspension, and limited denial of participation administrative remedies. The removal procedure and the causes for removal are targeted to the Appraiser Roster. HUD developed these causes for removal with the Appraiser Roster specifically in mind. Any comparison with causes for action under any of HUD's other administrative remedies is misplaced. It may be the case that Appraiser Roster causes for removal are similar, in some cases, to the causes for action under HUD's other remedies. Where the causes differ, however, it is because HUD has

determined that it is necessary to have an expansive list of causes for removal for the Appraisal Roster to ensure effective compliance with the Appraiser Roster requirements and standards.

Regarding the commenter's concern about how HUD will interpret the term "significant deficiencies," the HUD Appraiser Handbook provides important guidance on how the Appraiser Roster is managed. In particular, the Handbook lists a number of violations in chapter 7–4 that provide a more complete picture of what HUD considers significant deficiencies. While this list is not exhaustive, it does provide a substantial guide as to how HUD will enforce HUD's appraisal standards. HUD's Appraiser Handbook may be obtained from HUD's web page at http://www.hud.gov/reac/reasfappr.html or http://www.hudclips.org.

Comment—HUD has offered no evidence that indicates that an independent removal procedure is necessary. The commenter was concerned that HUD had not provided any evidence that indicated that an independent removal procedure, separate from HUD's existing debarment and suspension procedures, was necessary.

HUD Response. In many cases, HUD's existing remedies involve a formal administrative-type procedure. This type of procedure requires a significant investment in time and other resources. Because of the importance of maintaining the high quality of FHA appraisals, HUD has determined that an expeditious means of removing an appraiser from the roster is necessary.

Comment—HUD's stated purpose for "streamlining" the disciplinary process contradicts its earlier actions. The commenter was concerned that HUD had failed to discuss in the preamble to the July 2, 1999 proposed rule the reasons why HUD removed predecessor appraiser removal procedure in 1996 during our "streamlining" review of all of HUD's regulations. The commenter wrote that "[i]t is baffling why just three years ago the Department believed that repealing the less formal removal procedure was considered streamlining and now the Department considers recodifying a similar less formal removal provision to be streamlining.

HUD Response. As noted in the preamble to the July 2, 1999 proposed rule and the preamble to this final rule, the removal of the Appraiser Roster removal procedure was inadvertent, and this final rulemaking is intended, in part, to correct this mistake.

IV. Summary of Provisions Adopted by this Final Rule and the December 28, 1999, Final Rule

The following table presents a summary of the provisions adopted by this final rule and the final rule published on December 28, 1999. Both of these final rules are taken from the July 2, 1999, proposed rule. The first column of the table lists the provisions of the proposed rule. The second column lists where the proposed provision appears under the new section numbering of the rule that was initiated by the December 28, 1999 final rule, and which final rule adopted the provision.

Provision in proposed rule . . .	adopted by final rule at . . .
§ 200.200(a)	§ 200.200(a) (December 22, 1999).
§ 200.200(b)	§ 200.200(b) (December 22, 1999).
§ 200.200(c)	§ 200.202 (December 22, 1999).
§ 200.200(d)	§ 202.204(a) of this final rule.
§ 200.200(e)	§ 200.206 (December 22, 1999).
§ 200.200(f)	§ 202.204(b) of this final rule.
§ 200.200(g)	§ 202.204(a) of this final rule.
§ 200.200(h)	§ 202.204(c) of this final rule.

V. Findings and Certifications

Paperwork Reduction Act Statement

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) and assigned OMB control number 2502–0538. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a valid control number.

Environmental Impact

This final rule does not direct, provide for assistance or loan and mortgage insurance for, or otherwise govern or regulate, real property acquisition, disposition, leasing, rehabilitation, alteration, demolition, or new construction, or establish, revise or provide for standards for construction or construction materials, manufactured housing, or occupancy. Accordingly, under 24 CFR 50.19(c)(1), this final rule is categorically excluded from environmental review under the National Environmental Policy Act of 1969 (42 U.S.C. 4321).

Regulatory Flexibility Act

The Secretary has reviewed this final rule before publication, and by approving it certifies, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), that this final rule would not have a significant economic impact on a substantial number of small entities. Generally, HUD expects that the number of removal proceedings initiated under this proposed rule would be relatively low. For example, in fiscal year 1998, of the over 30,000 appraisers listed on the Appraiser Roster, HUD initiated enforcement proceedings against only 36 appraisers (most of these enforcement proceedings were Limited Denial of Participation proceedings).

Further, the proposed rule would provide several procedural safeguards designed to minimize any potential impact on small entities. For example, the rule grants appraisers, selected for removal from the Appraiser Roster, with the opportunity to provide a written response and to request a conference regarding a proposed removal. The rule also specifies that the official designated by HUD to review an appeal may not be the same HUD official involved in the initial removal decision.

With respect to removing an appraiser from the Appraiser Roster, or taking other appropriate enforcement action against an appraiser, HUD is cognizant that section 222 of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121, 110 Stat. 847) ("SBREFA") requires the Small Business and Agriculture Regulatory Enforcement Ombudsman to "work with each agency with regulatory authority over small businesses to ensure that small business concerns that receive or are subject to an audit, on-site inspection, compliance assistance effort or other enforcement related communication or contact by agency personnel are provided with a means to comment on the enforcement activity conducted by this personnel." To implement this statutory provision, the Small Business Administration has requested that agencies include the following language on agency publications and notices that are provided to small businesses concerns at the time the enforcement action is undertaken. The language is as follows:

Your Comments Are Important

The Small Business and Agriculture Regulatory Enforcement Ombudsman and 10 Regional Fairness Boards were established to receive comments from small businesses about federal agency enforcement actions. The Ombudsman will annually evaluate the enforcement activities and rate each agency's responsiveness to small business. If you wish to comment on the enforcement actions of [insert agency name], call 1–888–REG–FAIR (1–888–734–3247).

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) (UMRA) requires Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and on the private sector. This final rule does not impose, within the meaning of the UMRA, any Federal mandates on any State, local, or, tribal governments or on the private sector.

Federalism Impact

Executive Order 13132 (entitled "Federalism") prohibits, to the extent practicable and permitted by law, an agency from promulgating a regulation that has federalism implications and either imposes substantial direct compliance costs on State and local governments and is not required by statute, or preempts State law, unless the relevant requirements of section 6 of the Executive Order are met. This final rule does not have federalism implications and does not impose substantial direct compliance costs on State and local governments or preempt State law within the meaning of the Executive Order.

VI. List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Home improvement, Housing standards, Incorporation by reference, Lead poisoning, Loan programs—housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Penalties, Reporting and recordkeeping requirements, Social security, Unemployment compensation, Wages.

For the reasons discussed in the preamble, HUD amends 24 CFR part 200 as follows:

PART 200—INTRODUCTION TO FHA PROGRAMS

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701–1715z-18; 42 U.S.C. 3535(d).

2. Section 200.204 is revised to read as follows:

§ 200.204 What actions may HUD take against unsatisfactory appraisers on the Appraiser Roster?

An unsatisfactory appraiser may be subject to removal, education requirements, or other actions, as follows:

(a) *Removal from the Appraiser Roster.* HUD officials, as designated by the Secretary, may at any time remove a listed appraiser from the Appraiser Roster for cause in accordance with paragraphs (a)(1) through (a)(3) of this section. The provisions of paragraphs (a)(1) through (a)(3) of this section do not apply to removal actions taken under any section in 24 CFR part 24 nor to any other remedy against an appraiser available to HUD by statute or otherwise.

(1) *Cause for removal.* Cause for removal includes, but is not limited to:

(i) Significant deficiencies in appraisals, including non-compliance with Civil Rights requirements regarding appraisals;

(ii) Failure to maintain standing as a state-certified or state-licensed appraiser;

(iii) Prosecution for committing, attempting to commit, or conspiring to commit fraud, misrepresentation, or any other offense that may reflect on the appraiser's character or integrity;

(iv) Failure to perform appraisal functions in accordance with instructions and standards issued by HUD;

(v) Failure to comply with any agreement made between the appraiser and HUD or with any certification made by the appraiser;

(vi) Being issued a final debarment, suspension, or limited denial of participation;

(vii) Failure to maintain eligibility requirements for placement on the Appraiser Roster as set forth under this subpart or any other instructions or standards issued by HUD; or

(viii) Failure to comply with HUD-imposed education requirements under paragraph (c) of this section within the specified period for complying with such education requirements.

(2) *Procedure for removal.* If you are a listed appraiser and HUD decides to remove you for cause from the Appraiser Roster, the following procedure applies to you unless you have been issued a final debarment, suspension, or limited denial of participation, in which case you are subject to paragraph (a)(3) of this section:

(i) You will be given written notice of your proposed removal. The notice will include the reasons for your proposed removal and the duration of your proposed removal.

(ii) You will have 20 days from the date of your notice of proposed removal to submit a written response appealing the proposed removal and to request a conference. A request for a conference must be in writing and must be submitted along with a written response.

(iii) Within 30 days of receiving your written response, or if you have requested a conference, within 30 days after the completion of your conference, a HUD official, designated by the Secretary, will review your appeal and will send you a final decision either affirming, modifying, or canceling your removal from the Appraiser Roster. HUD may extend this time upon giving you notice. The HUD official designated by the Secretary to review your appeal will not be someone involved in HUD's initial removal decision nor will it be someone who reports to a person involved in that initial decision.

(iv) If you do not submit a written response, your removal will be effective 20 days after the date of HUD's initial removal notice. If you submit a written response, and the removal decision is affirmed or modified, your removal or modification will be effective on the date of HUD's notice affirming or modifying the initial removal decision.

(3) *Automatic removal for issuance of final debarment, suspension, or limited denial of participation.* If you are a listed appraiser and you have been issued a final debarment, a suspension, or a limited denial of participation, the provisions of paragraph (a)(2) of this section do not apply to you, and you will be automatically removed from the Appraiser Roster.

(b) *Reinstatement.* If an appraiser who has been removed from the Roster wants to be reinstated on the Roster, the appraiser must follow the procedures and requirements contained in this subpart for placement on the Roster. Before an appraiser is eligible to reapply for placement on the Roster, the appraiser shall comply with the terms of any applicable remedial training education requirements, and the time

period for the appraiser's removal from the Roster shall have expired.

(c) *Education requirements.* Where there is evidence that an appraiser is deficient in FHA appraisal requirements, HUD may require an appraiser to undergo professional training and retake the HUD test on FHA appraisal methods and reporting.

(d) *Other action.* Nothing in this section prohibits HUD from taking such other action, against an appraiser, as provided under 24 CFR part 24, or from seeking any other remedy against an appraiser available to HUD by statute or otherwise.

Dated: March 29, 2000.

William C. Apgar,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 00–8421 Filed 4–4–00; 8:45 am]

BILLING CODE 4210–27–P



Federal Register

Wednesday,
April 5, 2000

Part IV

The President

Proclamation 7284—Cancer Control Month, 2000

Proclamation 7285—National Child Abuse Prevention Month, 2000

Proclamation 7286—Census Day, 2000

Federal Register
Vol. 65, No. 66
Wednesday, April 5, 2000

Presidential Documents

Title 3—

The President

Proclamation 7284 of March 31, 2000

Cancer Control Month, 2000

By the President of the United States of America

A Proclamation

Since the discovery of the DNA double helix in 1953, we have learned much about the relationship between genetics and cancer, and researchers have begun to isolate and study genes whose alteration and dysfunction may cause the disease. In the last decade, increased understanding of cancer and growing public awareness of its symptoms and risks have helped us to reverse the upward trend in cancer rates in our Nation. Cancer cases and death rates have declined slightly but steadily in the United States; the 5-year survival rate has improved for all cancers; and 8.4 million Americans are now cancer survivors.

Despite these encouraging trends, this is no time for complacency. Last year alone, more than 1 million people were diagnosed with cancer, and more than 560,000 died from it. And cancer rates are still disproportionately high among certain racial, ethnic, and socioeconomic groups. That is why my Administration remains committed to fighting this deadly disease in every sector of our population. Since 1998, we have boosted investment in biomedical research at the National Institutes of Health by an unprecedented $4.1 billion, including a dramatic increase in funding for the National Cancer Institute (NCI), the primary Federal cancer research agency.

Early detection and preventative treatment remain the best weapons we have in the battle against this disease, and several promising initiatives at the NCI will improve our effectiveness in both areas. The NCI recently issued a "Director's Challenge" to spur research nationwide into defining key genetic changes that mark tumors as malignant or precancerous. This information will improve the way tumors are classified and lay the ground work for more precise molecular diagnosis. The NCI is also developing and testing molecular markers specific to certain cancers, as well as working on new technologies to improve detection. This research will help doctors to intervene early, with minimally invasive procedures, to prevent the disease from becoming full-blown.

Another powerful weapon in our crusade is information. Better understanding of risk factors can help people make smarter choices—like quitting smoking or undergoing needed cancer screening. The Cancer Information Service (CIS), a free education service provided by the NCI, acts as the public's link to clear and understandable cancer information. I encourage Americans seeking information on the latest cancer research and treatments to call CIS at 1–800–4–CANCER or to access the NCI directly on the Internet at http://www.cancer.gov.

Finally, as we intensify our efforts to fight cancer, we must ensure that no American is left behind. The NCI is working to implement cancer control and prevention programs in minority and underserved communities, as well as to increase minority participation in clinical trials and research. As a result of these efforts, nearly 20 percent of the more than 20,000 patients now entering clinical treatment trials are from an ethnic minority group.

Investment in science and technology produced tremendous progress in health care during the last century. In this new century, we must reaffirm our dedication to the research, information sharing, and access to care that will help us ultimately win the fight against cancer.

In 1938, the Congress of the United States passed a joint resolution (52 Stat. 148; 36 U.S.C. 103) requesting the President to issue an annual proclamation declaring April as "Cancer Control Month."

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim April 2000 as Cancer Control Month. I invite the Governors of the 50 States and the Commonwealth of Puerto Rico, the Mayor of the District of Columbia, and the appropriate officials of all other areas under the American flag to issue similar proclamations. I also call upon health care professionals, private industry, community groups, insurance and managed care companies, and all other interested organizations and individuals to unite in support of our Nation's determined efforts to control cancer.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–8569
Filed 4–4–00; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7285 of March 31, 2000

National Child Abuse Prevention Month, 2000

By the President of the United States of America

A Proclamation

Children are our link to the future and our hope for a better tomorrow. Within a few short years, we will look to today's children for the vision, strength, creativity, and leadership to guide our Nation through the challenges of this new century. If they are to grow into healthy, happy adults and responsible citizens, we must provide our children with the love, nurturing, and protection they need and deserve.

However, many of America's children are not safe, even in their own homes. The statistics are staggering. Every year, there are nearly one million reported incidents of child abuse; and even more disturbing, more than 2,000 of these incidents result in the child's death. Whether suffering neglect, harsh physical punishment, sexual abuse, or psychological trauma, the children who survive will carry the scars of their abuse for the rest of their lives.

We now know that there are a variety of risk factors that contribute to child abuse and neglect—including parental substance abuse, lack of parenting skills and knowledge, domestic violence, or extreme stress—and there are practical measures and programs we can use to mitigate such factors. Social service providers can offer substance abuse programs for adults with children; schools can offer educational programs to teach parenting skills to teen mothers or instruct children on how to protect themselves from sexual predators; faith organizations can offer respite care for parents of children with special needs; and employers can introduce family-friendly policies, from child care to parental leave to flexible work schedules, to reduce the stress on working families.

Keeping children safe is a community responsibility, and prevention must be a community task. Every segment of society must be involved, including health and law enforcement professionals, schools, businesses, the media, government agencies, community and faith organizations, and especially parents themselves. Teachers and physicians need to recognize the symptoms of child abuse; parents need to ask for help in overcoming addictions or controlling violent behavior; communities must be willing to fund programs and services to protect children from abuse; and the media needs to raise public awareness of the availability of those programs and services.

My Administration is committed to doing its part to ensure the health and well-being of all our Nation's children. We have worked to increase funding at the State level for child protection programs and family preservation services. Working with the Congress, we have enacted the Child Abuse Prevention and Treatment Act and the Adoption and Safe Families Act, and we have established the Safe and Stable Families Program. Just a few weeks ago, I signed into law the Child Abuse Prevention and Enforcement Act, which gives State and local officials greater flexibility in using Department of Justice grant programs to prevent child abuse and neglect. This new legislation will increase funding to enforce child abuse and neglect laws, to enhance the investigation of child abuse and neglect crimes, and to promote programs to prevent such abuse and neglect. Through these and other measures, we continue our efforts to create a society where every child is cherished and no child bears the lasting scars of abuse or neglect.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 2000 as National Child Abuse Prevention Month. I call upon all Americans to observe this month by demonstrating our gratitude to those who work to keep our children safe, and by taking action in our own communities to make them healthy places where children can grow and thrive.

IN WITNESS WHEREOF, I have hereunto set my hand this thirty-first day of March, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–8570
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Billing code 3195–01–P

Presidential Documents

Proclamation 7286 of April 1, 2000

Census Day, 2000

By the President of the United States of America

A Proclamation

Every 10 years, as mandated by our Constitution, all persons living in the United States are called upon to participate in the census. As the foremost method of gathering information about our Nation, the census plays a crucial role in helping us to maintain our democratic form of government.

An accurate census helps to ensure that the rights and needs of every person are recorded and recognized as we shape public policies, programs, and services. Too often in the past, children, minorities, and low-income individuals have not been counted and, as a result, have not been fully and fairly served. Census data are also used to determine the number of seats each State is allocated in the U.S. House of Representatives, and State and local governments depend upon these data to draw legislative districts that accurately represent their residents.

The census also serves as the basis for many public funding and private investment decisions. Census results play a part in determining the portion each State receives of more than $185 billion in funds distributed by the Federal Government each year. State and local public officials use census data to decide where to build public facilities such as schools, roads, hospitals, and libraries. Census data also are a valuable resource for businesses that are trying to identify where to build stores, office buildings, or shopping centers.

The census is unique. It reaches every population group, from America's long-time residents to its most recent immigrants, and every age group from newborns to centenarians. The census touches every social class and every racial and ethnic group. The census is truly a democratic process in which we all can participate.

Census 2000 offers each of us an important opportunity to shape the future of our Nation. By taking part, we help ensure the well-being of our families and our communities, and we fulfill one of our fundamental civic duties. The U.S. Census Bureau has taken unprecedented steps to ensure full participation in this first census of the new millennium. At the same time, the Bureau will continue its long tradition of protecting the personal information of America's citizens, and no other Government agency will be able to see any individual or family census form. I strongly urge every man and woman living in the United States to fill out and return his or her census form or to cooperate with census takers who will help them do so.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 1, 2000, as Census Day. I call upon all the people of the United States to observe this day with ceremonies, activities, and programs that raise awareness of the importance of participating in Census 2000.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of April, in the year of our Lord two thousand, and of the Independence of the United States of America the two hundred and twenty-fourth.

William J. Clinton

[FR Doc. 00–8571
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Federal Register

Vol. 65, No. 66

Wednesday, April 5, 2000

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FEDERAL REGISTER PAGES AND DATE, APRIL

17435–17582 3
17583–17754 4
17755–17986 5

CFR PARTS AFFECTED DURING APRIL

At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

3 CFR
Proclamations:
7283 17552
7284 17981
7285 17983
7286 17985

5 CFR
532 17755

7 CFR
985 17756
Proposed Rules:
28 17609
984 17809
1218 17612

9 CFR
201 17758
Proposed Rules:
93 17455

10 CFR
72 17552

12 CFR
951 17435
997 17435
Proposed Rules:
560 17811
915 17458

13 CFR
120 17439

14 CFR
39 ..... 17583, 17586, 17763
71 ..... 17588, 17589
91 17736
93 17736
121 17736
135 17736
Proposed Rules:
23 17613
39 ..... 17471, 17818, 17822, 17824, 17827
71 17616

16 CFR
305 17554

19 CFR
Proposed Rules:
134 17473

21 CFR
1301 17552
1308 ..... 17440, 17552
Proposed Rules:
111 17474

24 CFR
200 17974

26 CFR
Proposed Rules:
1 ..... 17829, 17835
20 17835
25 17835
301 17617

27 CFR
Proposed Rules:
4 17839
275 17477

31 CFR
Ch. 5 17590

32 CFR
581 17440

33 CFR
117 ..... 17443, 17766

37 CFR
Proposed Rules:
1 17946
5 17946
201 17840

38 CFR
Proposed Rules:
21 17477

39 CFR
111 ..... 17593, 17766

40 CFR
52 ..... 17444, 17768, 17771
180 17773
Proposed Rules:
52 17841
141 17842
142 17842

47 CFR
22 17445
27 17594
73 ..... 17607, 17775
101 17445
Proposed Rules:
73 ..... 17617, 17618, 17619

48 CFR
Proposed Rules:
15 17582

49 CFR
533 17776

Proposed Rules:
571.....17842

50 CFR

17.....17779
226.....17786
300.....17805
600.....17805
660.....17805, 17807
679.....17808
Proposed Rules:
223.....17852

REMINDERS

The items in this list were editorially compiled as an aid to Federal Register users. Inclusion or exclusion from this list has no legal significance.

RULES GOING INTO EFFECT APRIL 5, 2000

ENVIRONMENTAL PROTECTION AGENCY
Pesticides; tolerances in food, animal feeds, and raw agricultural commodities:
Spinosad; published 4-5-00
Water pollution control:
Underground injection control program—
Class V wells; requirements for motor vehicle waste and industrial waste disposal wells and cesspools in ground water-based source protection areas; published 12-7-99

NATIONAL SCIENCE FOUNDATION
Freedom of Information Act and Privacy Act; implementation; published 3-6-00

TRANSPORTATION DEPARTMENT
Coast Guard
Pollution:
Marine transportation-related facilities and tank vessels; response plans; on-water oil recovery capacity; cap increases review; published 1-6-00

TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Bell; published 3-1-00
MD Helicopters Inc.; published 3-1-00

TRANSPORTATION DEPARTMENT
National Highway Traffic Safety Administration
Motor vehicle safety standards:
School bus body joint strength; technical amendment; published 3-6-00

COMMENTS DUE NEXT WEEK

AGRICULTURE DEPARTMENT
Agricultural Marketing Service
Plant variety protection office:
Fees revision; comments due by 4-14-00; published 3-15-00
Raisins produced from grapes grown in—
California; comments due by 4-10-00; published 2-9-00

AGRICULTURE DEPARTMENT
Animal and Plant Health Inspection Service
Exportation and importation of animals and animal products:
Poultry products from Mexico transiting U.S.; comments due by 4-10-00; published 2-8-00

AGRICULTURE DEPARTMENT
Food Safety and Inspection Service
Meetings:
E. coli in beef products; risk assessment; policy and regulatory changes; comments due by 4-11-00; published 2-11-00

AGRICULTURE DEPARTMENT
Rural Utilities Service
Electric loans:
Minimum Times Interest Earned Ratio (TIER) requirements; reduction; comments due by 4-10-00; published 3-10-00

COMMERCE DEPARTMENT
National Oceanic and Atmospheric Administration
Endangered and threatened species:
Gulf of Maine; Atlantic salmon; comments due by 4-14-00; published 3-15-00
Marine and anadromous species—
West coast steelhead in California et al.; comments due by 4-11-00; published 2-11-00

DEFENSE DEPARTMENT
Acquisition regulations:
Contract drawings, maps, and specifications; comments due by 4-10-00; published 2-10-00
Mentor-protege program improvements; comments due by 4-10-00; published 2-10-00

ENERGY DEPARTMENT
Defense nuclear facilities; disposal of real property for economic development; comments due by 4-14-00; published 2-29-00

ENERGY DEPARTMENT
Federal Energy Regulatory Commission
Practice and procedure:
Well category determinations; comments due by 4-10-00; published 2-8-00

ENVIRONMENTAL PROTECTION AGENCY
Air quality implementation plans; approval and promulgation; various States:
California; comments due by 4-10-00; published 3-9-00
Connecticut and Rhode Island; comments due by 4-10-00; published 3-9-00
Delaware; comments due by 4-10-00; published 3-9-00
Georgia; comments due by 4-12-00; published 3-13-00
Kentucky; comments due by 4-10-00; published 3-10-00

FEDERAL COMMUNICATIONS COMMISSION
Practice and procedure:
Communication between applicants in spectrum auctions; comments due by 4-10-00; published 2-8-00
Radio stations; table of assignments:
Florida; comments due by 4-10-00; published 3-3-00
Texas; comments due by 4-10-00; published 3-3-00

FEDERAL EMERGENCY MANAGEMENT AGENCY
Disaster assistance:
Hurricane Floyd property acquisition and relocation grants; comments due by 4-11-00; published 2-11-00
Public assistance program administration—
Insurance requirements; comments due by 4-10-00; published 2-23-00

FEDERAL HOUSING FINANCE BOARD
Federal home loan bank system:
Membership regulations; comments due by 4-14-00; published 3-15-00

HEALTH AND HUMAN SERVICES DEPARTMENT
Food and Drug Administration
Medical devices:
American Society for Testing and Materials; amendments to reflect current citations; comments due by 4-10-00; published 1-24-00

HOUSING AND URBAN DEVELOPMENT DEPARTMENT
Federal Housing Enterprise Oversight Office
Equal Access to Justice Act; implementation; comments due by 4-14-00; published 2-14-00
Risk-based capital:
Stress test; House Price Index (HPI) use and benchmark credit loss experience determination; comments due by 4-14-00; published 3-13-00

INTERIOR DEPARTMENT
Land Management Bureau
Land resource management:
Disposition; occupancy and use—
Alaska occupany and use; Alaska Native veterans allotments; comments due by 4-10-00; published 2-8-00

INTERIOR DEPARTMENT
Fish and Wildlife Service
Endangered and threatened species:
Gulf of Maine; Atlantic salmon; comments due by 4-14-00; published 3-15-00
Ohlone tiger beetle; comments due by 4-11-00; published 2-11-00
Showy stickseed; comments due by 4-14-00; published 2-14-00

INTERIOR DEPARTMENT
Surface Mining Reclamation and Enforcement Office
Permanent program and abandoned mine land reclamation plan submissions:
Indiana; comments due by 4-10-00; published 3-9-00

LIBRARY OF CONGRESS
Copyright Office, Library of Congress
Cable compulsory licese:
Network station definition; comments due by 4-11-00; published 2-11-00

NORTHEAST INTERSTATE LOW-LEVEL RADIOACTIVE WASTE COMMISSION
Party to Compact; State eligibility declaration; comments due by 4-13-00; published 3-14-00

POSTAL SERVICE
Domestic Mail Manual:
Commercial mail receiving agency; mail delivery; comments due by 4-12-00; published 3-13-00

Public Papers

Sacking and palletizing periodicals nonletters and standard mail (A) flats, traying first-class flats, and labeling pallets; comments due by 4-14-00; published 2-29-00
Practice and procedure:
False representation and lottery orders; proceedings; subpoenas and civil penalties; comments due by 4-13-00; published 3-14-00
SMALL BUSINESS ADMINISTRATION
Small business size standards:
8(a) business development/ small disadvantaged business status determinations; comments due by 4-10-00; published 3-10-00
SOCIAL SECURITY ADMINISTRATION
Social security benefits:
Federal old age, survivors, and disability insurance—
Medical criteria for disability determinations; comments due by 4-11-00; published 2-11-00
STATE DEPARTMENT
Consular services; fee schedule; comments due by 4-12-00; published 3-13-00
TRANSPORTATION DEPARTMENT
Coast Guard
Regattas and marine parades, anchorage regulations, and ports and waterways safety:
OPSAIL 2000, Hampton Roads, VA; regulated areas; comments due by 4-14-00; published 2-29-00
TRANSPORTATION DEPARTMENT
Federal Aviation Administration
Airworthiness directives:
Ayres Corp.; comments due by 4-10-00; published 2-16-00
Eurocopter Deutschland GmbH; comments due by 4-11-00; published 2-11-00
Eurocopter France; comments due by 4-11-00; published 2-11-00
Fairchild; comments due by 4-10-00; published 2-16-00
Fokker; comments due by 4-14-00; published 3-15-00
Saab; comments due by 4-14-00; published 3-15-00
Airworthiness standards:
Special conditions—
Boeing Model 727-200 and 727-200F series airplanes; comments due by 4-13-00; published 3-14-00
Raytheon Aircraft Co. Model 4000 airplane; comments due by 4-13-00; published 3-14-00
Class D and Class E airspace; comments due by 4-14-00; published 2-29-00
Class E airspace; comments due by 4-10-00; published 2-24-00
TRANSPORTATION DEPARTMENT
Federal Highway Administration
Engineering and traffic operations:
Utilities; comments due by 4-10-00; published 2-9-00
TREASURY DEPARTMENT
Customs Service
Customs bonds:
Articles subject to exclusion orders issued by International Trade Commission; bond procedures; comments due by 4-10-00; published 2-8-00
TREASURY DEPARTMENT
Internal Revenue Service
Income taxes:
Partnership debt allocation; comments due by 4-12-00; published 1-13-00
Partnership mergers and divisions; hearing; comments due by 4-10-00; published 1-11-00

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S. 376/P.L. 106–180

Open-market Reorganization for the Betterment of International Telecommunications Act (Mar. 17, 2000; 114 Stat. 48)

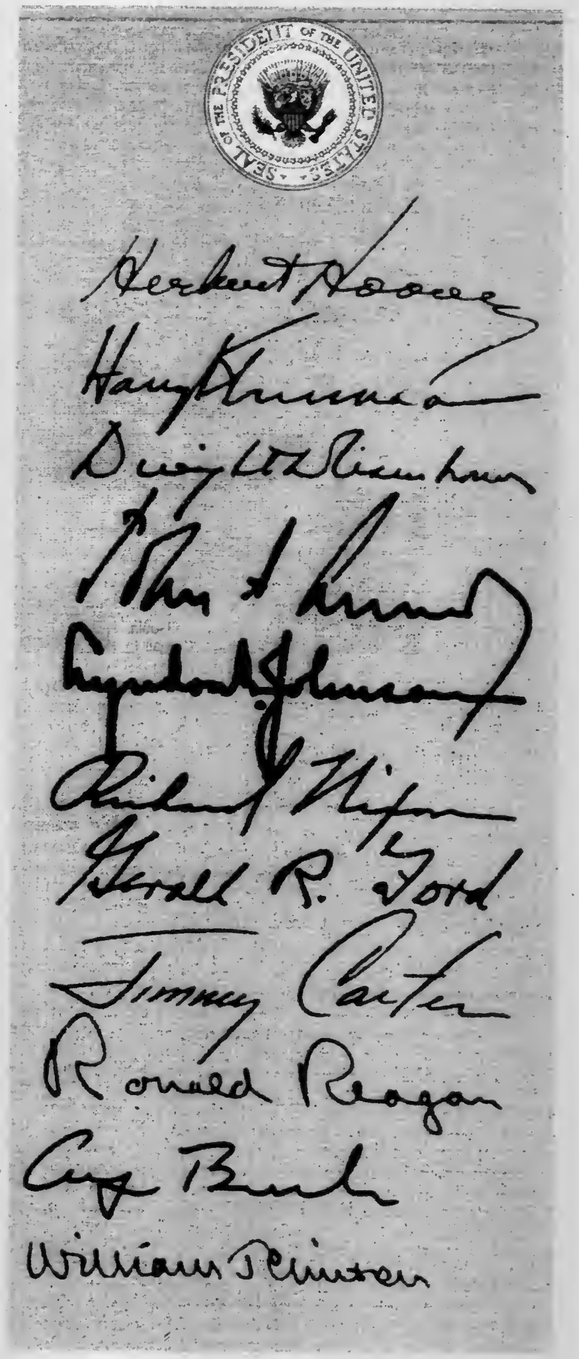
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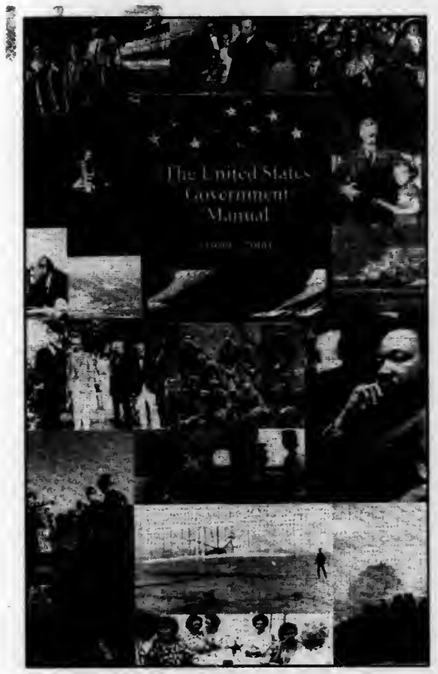
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